

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

DATE:	January 13, 2010
TO:	Riverside County Transportation Commission
FROM:	Min Saysay, Right of Way Manager
THROUGH:	Anne Mayer, Executive Director
SUBJECT:	North Main Corona Metrolink Station Pedestrian Tower Agreement for Construction, Maintenance, and Operation of a Seismic Separation Joint

STAFF RECOMMENDATION:

This item is for the Commission to:

- 1) Approve Agreement No. 10-51-037-00 with the Riverside Transit Agency (RTA) for the construction, maintenance, and operation of a seismic separation joint at the North Main Corona Metrolink Station Pedestrian Tower; and
- 2) Authorize the Chair, pursuant to legal counsel review, to execute the agreement on behalf of the Commission.

BACKGROUND INFORMATION:

The Burlington Northern Santa Fe Railway (BNSF) owns and operates the San Bernardino Subdivision rail line and corridor in the city of Corona. On April 10, 2001, BNSF and the Commission entered into an agreement for the construction of a passenger station and pedestrian overhead crossing improvements, as well as a license for the pedestrian overhead crossing improvements. The passenger station is more commonly known as the North Main Corona Metrolink station, which includes the improvement commonly referred to as the pedestrian tower. The Commission owns the North Main Corona Metrolink station and pedestrian tower.

The RTA is constructing the Corona Transit Center adjacent to the North Main Corona Metrolink station in the city of Corona. In order to provide passengers of trains and buses operated by the Commission and RTA a safe and convenient means of transferring between the North Main Corona Metrolink station and the Corona Transit Center, it was determined that such means of passenger transfer would be best provided by the construction of a bridge extension connecting the center to the station over the railroad tracks that separate them. Therefore, RTA seeks to obtain a license from the Commission to construct and maintain a seismic

separation joint on the property of the Commission in order to connect the Corona Transit Center and the North Main Corona Metrolink station.

Staff recommends approval of Agreement No. 10-51-037-00 and grant RTA a revocable license in, on and over a portion of the Commission's property commonly known as the pedestrian tower, to install, maintain, and operate a seismic separation joint connecting the Corona Transit Center bridge extension to the pedestrian tower (seismic separation joint), under the following general conditions:

1. The seismic separation joint shall be constructed, maintained and operated at RTA's sole cost and expense;
2. All work and design shall be approved by Commission staff;
3. RTA shall at all times indemnify and hold harmless Commission against and pay in full all losses, damages, or expenses that the Commission may sustain, incur or become liable for, resulting in any manner from the construction, maintenance, use, state of repair, or presence of the seismic separation joint or RTA's use and maintenance of the licensed property; and
4. RTA shall comply with the Commission's insurance requirements.

Attachment: Agreement with RTA

**NORTH MAIN CORONA TOWER
AGREEMENT FOR CONSTRUCTION, MAINTENANCE AND OPERATION OF A
SEISMIC SEPARATION JOINT**

This North Main Corona Tower Agreement for Construction, Maintenance and Operation of a Seismic Separation Joint (“**Agreement**”), is made and entered into effective as of this _____ day of _____, 200__ (“**Effective Date**”), by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION, a public entity within the State of California (“**Commission**”) and the RIVERSIDE TRANSIT AGENCY, a joint powers agency organized under the laws of the State of California (“**Agency**”). Commission and Agency are sometimes referred to herein collectively as the “Parties” and individually as “Party”.

RECITALS

WHEREAS, the Burlington Northern and Santa Fe Railway Company (“**BNSF**”) owns and operates the San Bernardino Subdivision rail line and rail corridor in the City of Corona, County of Riverside, State of California; and

WHEREAS, BNSF and Commission have entered into that certain Agreement for Passenger Station and Pedestrian Overhead Crossing Improvements dated as of April 10, 2001 (“**RCTC/BNSF Agreement**”), which provided for the construction of the improvements described therein, as well as a license for the Pedestrian Overhead Crossing Improvements; and

WHEREAS, the Passenger Station constructed pursuant to the RCTC/BNSF Agreement is commonly referred to as the “**North Main Corona Station**” and includes the improvement commonly referred to as the “**Pedestrian Tower**” as depicted in the attached Exhibit A, attached hereto and incorporated herein by reference; and

WHEREAS, Commission is the owner of the North Main Corona Station and the Pedestrian Tower; and

WHEREAS, Agency is constructing the “**Corona Transit Station**” in the same City of Corona adjacent to the North Main Corona Station; and

WHEREAS, the Parties desire to provide passengers of trains and buses operated by them a safe and convenient means of transferring between the North Main Corona Station and the Corona Transit Station (referred to herein, collectively as the “**Stations**”); and

WHEREAS, the Parties have determined that such means of passenger transfer would be best provided by the construction of a bridge extension connecting the Stations over the railroad tracks that separate them; and

WHEREAS, Agency seeks to obtain a license from Commission to construct and maintain a “seismic separation joint” on the personal property of Commission, in order to connect the Corona Transit Station to the North Main Corona Station; and

WHEREAS, Commission desires to grant a license to Agency for the purpose specified in the foregoing recital, subject to the terms and conditions contained in this Agreement, and subject to the approval by BNSF of the use of its real property for the purposes specified herein.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements of the Parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I - SCOPE OF PROJECT WORK

The work required to complete the project includes all work necessary for the construction, maintenance and safe operation of the Seismic Separation Joint on the Licensed Property to connect the Corona Transit Station bridge extension and the Pedestrian Tower. The work involved in the construction, maintenance and operation of the Corona Transit Station bridge extension and connection thereof to the Seismic Separation Joint is sometimes referred to herein as the “**Project**”. The Project is more particularly described on the attached Exhibit B.

ARTICLE II – COMMISSION OBLIGATIONS - GRANT OF LICENSE

Subject to the terms and conditions hereinafter set forth, Commission hereby grants to Agency a revocable license in, on and over a portion of the personal property of Commission commonly referred to as the Pedestrian Tower, as shown in Exhibit A (the “**Licensed Property**”) to install, maintain and operate a seismic separation joint connecting the Corona Transit Station bridge extension to the Pedestrian Tower (the “**Seismic Separation Joint**”) on the Licensed Property, the exact location of the Seismic Separation Joint being more particularly identified on Exhibit A as the “connection point”.

ARTICLE III – AGENCY GENERAL OBLIGATIONS

1. At Agency’s sole cost and expense, Agency shall furnish all labor, materials, tools, and equipment required for the construction, maintenance and operation of the Project as further described herein.
2. Agency work required for construction of the Project is shown on Exhibit B attached hereto and made a part hereof. Any item of work incidental to the items listed on Exhibit B not specifically mentioned therein may be included as a part of this Agreement upon written approval of Commission, which approval will not be unreasonably withheld.
3. Agency shall comply with all statutes, ordinances, rules, regulations, orders and decisions (hereinafter referred to as “**Standards**”) relating to Agency's use of the Licensed Property hereunder and construction and maintenance of the Project. In its use of the Licensed Property, Agency shall at all times be in full compliance with all Standards, present or future. In the event Agency fails to be in full compliance with

Standards, Commission may, but shall not be obligated to, after giving notice of the failure to Agency, and if Agency, within fifteen (15) days of such notice, fails to correct such non-compliance, take whatever action it determines in its sole discretion to be necessary to protect the Licensed Property and the North Main Corona Station. Agency shall reimburse Commission for all costs (including but not limited to, consulting, engineering, clean-up and disposal, and legal costs) incurred by Commission as a result of Agency's failure to comply with such Standards, and also such costs incurred by Commission in abating a violation of such Standards, protecting against a threatened violation of such Standards, defending any claim of violation of such Standards in any proceeding before any Agency or court, and paying any fines or penalties imposed for such violations. Agency shall, to the extent permitted by law, assume liability for and shall save and hold harmless Commission from any claim of a violation of the Standards regardless of the nature thereof or Agency or person asserting such claim, which results from Agency's use of Licensed Property, whether such claim arises in whole or in part from the negligence or alleged negligence of Commission or otherwise. Agency, at its cost, shall assume the defense of all such claims as provided for in Article VI of this Agreement.

ARTICLE IV – AGENCY OBLIGATIONS REGARDING CONSTRUCTION OF PROJECT

1. The Project shall be installed and constructed at Agency's sole cost and expense in accordance with the design plans attached hereto as Exhibit B. Any deviation from the plans that may impact the Seismic Separation Joint, the Pedestrian Tower or the Licensed Property and any changes to the design of the Corona Transit Station bridge extension shall be approved in writing by Commission's Executive Director or her designee.

2. The construction of the Project shall be accomplished in such a manner so that it will not interfere with or be a source of danger to the safe use and operation of the Pedestrian Tower or any other portion of the North Main Corona Station or other activities on the Licensed Property. Any construction method which will interfere with use of the Pedestrian Tower or any other portion of the North Main Corona Station shall be approved in advance by Commission. Commission may require that Commission's representative be present during some or all of the Project construction. If Commission's representative determines that the construction is not being accomplished in accordance with this Agreement, he or she may, but shall not be required to, halt the work. Notwithstanding the presence of Commission's representative, Agency shall, at all times, retain full liability and responsibility for all aspects of the construction. Agency shall reimburse Commission for the cost of its representative.

3. All construction work contemplated in this Agreement shall be performed in a good and workmanlike manner and shall be diligently prosecuted to conclusion in its timely and logical order and sequence. Construction work shall be planned so as to cause as little interference as possible with the operation and use of the Pedestrian Tower and all other portions of the North Main Corona Station.

4. Prior to commencement of construction, Agency shall obtain all required agreements and approvals from BNSF, and any other entities with jurisdiction over the Project. If required by

BNSF, Agency shall, at its sole cost and expense, obtain and pay for the cost of flagmen to protect rail traffic during the construction, repair and maintenance of the Project.

5. Agency shall, at its sole cost and expense, acquire all permits and approvals, and all rights of way and property rights necessary for the construction and maintenance of the Project.

6. Agency shall advise Commission in writing of the completion date of the Project within thirty (30) days after such completion date. Additionally, Agency shall notify Commission of the date on which Commission and/or Agency will meet for the purpose of making final inspection of the Project.

7. Agency shall provide one set of as built plans (prepared in English Units) to Commission, as well as one set of computer diskettes containing as built CAD drawings of the Project and identifying the software used for the CAD drawings. The "as built plans" must also include plan and profile, structural bridge drawings and specifications. All improvements and facilities must be shown.

ARTICLE V - AGENCY OBLIGATIONS FOR MAINTENANCE AND OPERATION OF PROJECT

1. In addition to the terms and conditions set forth elsewhere in this Agreement, including, but not limited to, the terms and conditions stated in Exhibit D, Agency and Commission agree to the following terms upon completion of construction of the Project:

- (a) Agency shall own and maintain, at its sole cost and expense, the Project installed pursuant to this Agreement;
- (b) Agency shall provide Commission with any and all necessary permits at no cost to Commission, when reasonably requested by Commission to allow Commission to inspect the Project;
- (c) *Maintenance and Repair.* Agency shall, at its own cost and subject to the approval of Commission's Executive Director or his or her designee, repair, maintain and utilize the Project and the Licensed Property so that it will not at any time be a source of danger to or interference with the safe use and operation of the Pedestrian Tower or any other portion of the North Main Corona Station. Any repair and maintenance work shall be done in a good and workmanlike manner and to Commission's standards. Agency shall provide Commission no less than thirty (30) days written notice and shall acquire all necessary approvals from Commission prior to Agency's commencement of any such repair or maintenance work, excluding any day-to-day maintenance of the Corona Transit Station bridge extension. If, at any time, Agency shall, in the judgment of Commission, fail to perform properly its obligations under this section, Commission may, at its option, perform such work itself as it deems necessary for the safe operation of its facilities. In such event, Agency agrees to pay, within fifteen (15) days after a bill is rendered therefore, the cost so incurred by Commission. However, failure on

the part of Commission to perform the obligations of Agency shall not release Agency from liability hereunder for any loss or damage occasioned thereby.

ARTICLE VI. - AGENCY INDEMNIFICATION AND DEFENSE OBLIGATIONS; AGENCY ASSUMPTION OF RISK; INSURANCE REQUIREMENTS

1. Indemnity. Agency shall at all times indemnify and save harmless Commission against and pay in full all losses, damages, or expenses that Commission may sustain, incur or become liable for, resulting in any manner from the construction, maintenance, use, state of repair, or presence of the Project or the Agency's use and maintenance of the Licensed Property, including, but not limited to, any such losses, damages or expenses arising out of (a) loss of or damage to property, (b) injury to or death of persons, (c) mechanics' or other liens of any character, (d) taxes or assessments of any kind, or (e) interference with the use of the Pedestrian Tower or any other portion of the North Main Corona Station. It is the intention of the Parties that Commission's right to indemnity hereunder shall be valid and enforceable against Agency regardless of negligence (whether active or passive) on the part of Commission, its officers, agents and employees, unless such injury is a result of the sole negligence of Commission.

2. Assumption of Risk and Waiver. To the maximum extent allowed by law, Agency assumes any and all risk of loss, damage or injury of any kind to any person or property, including without limitation, the Project, the Licensed Property, Agency's personal property and any other property of, or under the control or custody of, Agency, which is on or near the Seismic Separation Joint. Agency's assumption of risk shall include, without limitation, loss or damage caused by defects in any structure or improvement on the Licensed Property or any other portion of the North Main Corona Station, accident or fire or other casualty on the Licensed Property or any other portion of the North Main Corona Station, or electrical discharge, and noise or vibration resulting from Commission's transit operations on or near the Licensed Property. The term "Commission" as used in this section shall include: (i) any transit or rail-related company operating upon or over Commission's tracks or other property, and (ii) any other persons or companies employed, retained or engaged by Commission. Agency, on behalf of itself and its Personnel, as a material part of the consideration for this Agreement, hereby waives all claims and demands against Commission for any such loss, damage or injury of Agency and/or its Personnel. In that connection, Agency waives, for itself and its Personnel, the benefit of California Civil Code Section 1542, which provides as follows:

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

The provisions of this Article VI shall survive the termination of this Agreement. As used in this section, "Personnel" means the Agency, or its officers, directors, affiliates, or anyone directly or indirectly employed by Agency or for whose acts Agency is liable.

3. Defense. Upon written notice from Commission, Agency agrees to assume the defense of any lawsuit, administrative action or other proceeding brought against Commission by any public body, individual, partnership, corporation, or other legal entity, relating to any matter covered by

this Agreement for which Agency has an obligation to assume liability for and/or to indemnify or save and hold harmless Commission. Agency shall pay all the costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation expenses, settlement payments, and amounts paid in satisfaction of judgments. Any and all lawsuits or administrative actions brought or threatened on any theory of relief available at law, in equity or under the rules of any administrative agency shall be covered by this section, including, but not limited to, the theories of intentional misconduct, negligence, breach of statute or ordinance, or upon any theory created by statute or ordinance, state or federal.

4. Attorneys' Fees. In any judicial or arbitration proceeding involving performance under this Agreement, or default or breach thereof, the prevailing party shall be entitled to its reasonable attorney's fees and costs.

5. Insurance. Agency, at its sole cost and expense, shall obtain and maintain in full force and effect insurance as required by Commission in the amounts and coverage specified and issued by insurance companies as described on Exhibit C. Commission reserves the right, to review and change the amount and type of insurance coverage it requires in connection with this Agreement or the work to be performed on the Project. Prior to (i) entering the Licensed Property or (ii) performing any work or maintenance on the Project, Agency shall furnish Commission with the insurance endorsements and certificates in the form and amounts specified in Exhibit C, evidencing the existence, amounts and coverage of the insurance required to be maintained hereunder. Such insurance shall be maintained in the amounts as specified in Exhibit C at all times during the term of this Agreement.

ARTICLE VII – JOINT PROVISIONS REGARDING CONSTRUCTION/ MAINTENANCE OF PROJECT

1. Agency shall use the Licensed Property and the Seismic Separation Joint solely for connection of the Corona Transit Station bridge extension to the Pedestrian Tower and shall not use it for any other purpose whatsoever. No change shall be made by Agency in the use of the Licensed Property or the Seismic Separation Joint without Commission's prior written approval.

2. Any approval of the design plans by Commission shall in no way obligate Commission in any manner with respect to the finished product design and/or construction. Any approval by Commission shall mean only that the design plans meet the subjective standards of Commission, and such approval by Commission shall not be deemed to mean that the design plans or construction is structurally sound, appropriate or that the design plans meet applicable regulations, laws, statutes or local ordinances and/or building codes.

3. To facilitate scheduling for the Project, the Parties shall meet in advance of the commencement of construction of the Project work and develop a construction schedule for the Project. Agency shall provide to Commission updated construction schedules as they become available and shall provide two (2) week "look ahead" schedules during construction in order to keep Commission apprised of any work that may interfere with or impact use of Commission's property. Agency shall identify, in such "look ahead" schedules, the work that will occur on or require entrance to Commission property.

4. Commission shall have the right to stop construction work on the Project if any of the following events take place: (i) the Project work is performed in a manner contrary to the design plans; (ii) the Project work is performed in a manner which is hazardous to the Pedestrian Tower or any other portion of the North Main Corona Station. The work stoppage shall continue until all necessary actions are taken to rectify the situation to the satisfaction of Commission. Any such work stoppage under this provision shall not give rise to any liability on the part of Commission. Commission's right to stop the work is in addition to any other rights Commission may have including, but not limited to, actions or suits for damages or lost profits. In the event that Commission desires to stop construction work on the Project, Commission agrees to immediately notify the following individual in writing:

Bob Bach, Director of Maintenance
Riverside Transit Agency
1825 Third Street
Riverside, CA 92507
951-565-5032 ph; 951-565-5001 fax
bbach@riversidetransit.com

5. Any and all representatives of any of the Parties, including their employees, agents, contractors and invitees shall wear Personal Protective Equipment (“PPE”) when on Commission's property during construction of the Project or performing subsequent maintenance after completion of construction. The PPE shall meet applicable OSHA and ANSI specifications. A partial list of PPE requirements include; a) safety glasses: permanently affixed side shields; no yellow lenses, b) hard hats with high visibility orange cover, c) safety shoes: hardened toe, above-the-ankle lace-up with a defined heel and d), high visibility retro-reflective orange vests. Hearing protection, fall protection and respirators will be worn as required by State and Federal regulations.

6. *Tests and Inspections.* Commission shall have the right, but not the obligation, at any time to inspect the Licensed Property and the Project so as to monitor compliance with this Agreement. If, in Commission's sole judgment, any construction on, or use or condition of the Licensed Property or the Project may have an adverse effect on Commission's real property, adjacent property (whether or not owned by Commission) or Commission's operations, Commission shall be permitted to conduct any tests or assessments of, on or about the Licensed Property and the Project, as it determines to be necessary or useful to evaluate the condition of the Licensed Property and the Project. Agency shall cooperate with Commission in any tests or inspections deemed necessary by Commission. Agency shall pay or reimburse Commission, as appropriate, for all reasonable costs and expenses incurred due to the tests, inspections or any necessary corrective work and inspections thereafter within thirty days of a request for payment.

ARTICLE VIII – TERMINATION

1. Notwithstanding any other term or provision of this Agreement, Commission shall have the right to terminate this Agreement and shall have no obligation to reimburse Agency for any of its improvements to the Licensed Property, under any of the following circumstances:

A. In the event that Commission determines in its sole discretion that it requires the Licensed Property for its own uses, or requires changes to the use of the Licensed Property or the Pedestrian Tower that make placement of the Seismic Separation Joint undesirable, which determination shall be made by the Executive Director or his or her designee and shall not require proof of or satisfaction of any legal standard of necessity. Should Commission exercise this option, Commission may terminate this Agreement by providing ninety (90) days written notice to Agency of the intent to terminate this Agreement.

B. Commission may terminate this Agreement at any time for cause, for a breach by Agency of any covenant or term of this Agreement, or a default by Agency of any term or provision of this Agreement, which acts of Agency shall include but not be limited to: (i) The failure by Agency to pay any amount in full when it is due under this Agreement; or (ii) The failure by Agency to perform any obligation under this Agreement. Notification of such termination shall be in writing.

2. Agency may terminate this Agreement at any time for its convenience by providing written notice to Commission one (1) year prior to the date of termination.

3. In the event construction of the Project does not commence within one (1) year of the Effective Date, this Agreement will become null and void.

4. Neither termination nor expiration of this Agreement will release any Party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.

ARTICLE IX- MISCELLANEOUS

1. Successors and Assigns. The covenants and provisions of this Agreement are binding upon and shall inure to the benefit of the successors and assigns of the Parties. Notwithstanding the preceding sentence, no Party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other Party.

2. Interpretation; Severability. To the maximum extent possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.

3. Entire Agreement. This Agreement (including exhibits and other documents, manuals, etc. incorporated herein) is the full and complete agreement between the Parties with respect to the subject matter herein. Notwithstanding the foregoing, this Agreement shall not supersede any

related agreement referenced in the recitals hereto and shall be interpreted and enforced in conjunction therewith.

4. Assignment. This Agreement and the license granted herein are personal to the Agency. Agency shall not assign or transfer (whether voluntary or involuntary) this Agreement 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 Commission, which may be withheld in Commission's sole and absolute discretion. Any attempted act in violation of this section shall be void and without effect and give Commission the right to immediately terminate this Agreement.

5. Waiver of Covenants or Conditions. The waiver by Commission of the performance of any covenant or condition under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by it of any other covenant or condition under this Agreement.

6. Amendment. This Agreement may be amended at any time by the written agreement of Commission and Agency. All amendments to this Agreement shall be binding upon the parties despite any lack of legal consideration, so long as the same shall be in writing and executed by the parties hereto.

7. Revocation. If, at any time, Agency shall fail or refuse to comply with or carry out any of the covenants herein contained, Commission may, at its election, immediately revoke and terminate this Agreement unless a longer notice period is specifically provided for elsewhere in this Agreement.

8. Abandonment. Should Agency at anytime abandon the use of the Project or the Licensed Property, or any part thereof, or fail at any time for a continuous period of six (6) months to use the same for the purposes contemplated by this Agreement, then Commission may terminate this Agreement to the extent of the portion so abandoned or discontinued. In addition to any other rights or remedies, Commission shall immediately be entitled to exclusive possession and ownership of the portion so abandoned or discontinued, without the encumbrance of this Agreement.

9. Eviction, Abandonment or Sale. In the case of the eviction of Agency by anyone owning or obtaining title to the premises on which the Seismic Separation Joint is located, or the sale or abandonment by Commission of said premises, Commission shall not be liable to Agency for any damage of any nature whatsoever or to refund any payment made by Agency to Commission hereunder, except the proportionate part of any recurring rental charge which may have been paid hereunder in advance.

10. Revocable Licenses and Termination. Agency agrees that notwithstanding the improvements made by Agency to the Licensed Property or the installation of the Seismic Separation Joint, or other sums expended by Agency in furtherance of the Project or this Agreement, the license granted herein is revocable and may be terminated by Commission in accordance with the terms of this Agreement.

11. Restoration of Commission's Property, Claims for Costs. Upon the termination, revocation or cessation of this Agreement in any manner provided in this Agreement, Agency, upon demand

of Commission and at Agency's own cost and expense, shall abandon the use of the Seismic Separation Joint and remove it and restore the Licensed Property including the right-of-way and tracks of Commission to the same condition in which they were prior to the placing of the Seismic Separation Joint thereunder, reasonable wear and tear excepted. In no event shall Agency have any claim against Commission for any of the costs of constructing, maintaining or removing the Project. In case Agency shall fail to restore Licensed Property as aforesaid within ten (10) days after the effective date of termination, Commission may proceed with such work at the expense of Agency or may assume title and ownership of the Seismic Separation Joint and any other property of Agency located on Commission's property. No termination hereof shall release Agency from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date the Seismic Separation Joint is removed and the right-of-way and track of Commission restored as above provided.

12. Nondiscrimination. Agency certifies and agrees that all persons employed thereby and/or the affiliates, subsidiaries, or holding companies thereof and any contractors retained thereby with respect to Commission's property and the Project 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.

13. Non-Exclusive License. The license granted by this Agreement is not exclusive and Commission specifically reserves the right to grant other licenses within the vicinity of the Seismic Separation Joint.

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

15. Time of Essence. Time is of the essence in this Agreement.

16. Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

17. Liens. Agency shall not permit to be placed against the Property, or any part thereof, any design professionals', mechanics', materialmen's, contractors' or subcontractors' liens with regard to Agency's actions upon the Property. The Agency agrees to hold Commission harmless for any loss or expense, including reasonable attorneys' fees and costs, arising from any such liens which might be filed against the Property.

18. Further Acts. Agency 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 Agreement, including, at Commission's sole discretion, the relocation of the Seismic Separation Joint and the license granted by this Agreement.

19. Incorporation of Recitals. The recitals set forth above are true and correct and are incorporated into this Agreement by reference as though fully set forth herein.

20. Notice. Any notice provided for herein or concerning this Agreement shall be in writing and will be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

Commission:

Riverside County
Transportation Commission
4080 Lemon Street, Third Floor
Riverside, CA 92502-7141
Attention: Director of Rail Projects

Fax: (951) 787-7906

Agency:

Riverside Transit Agency

1825 Third Street
Riverside, CA 92507
Attention: V. Rouzaud, Chief Procurement
& Logistics Officer
Fax: (951) 565-5001

21. Survival of Obligations. All obligations of Agency hereunder not fully performed as of the termination or cessation of this Agreement, in any manner, shall survive the termination of this Agreement including, without limitation, all indemnification and defense obligations.

**SIGNATURE PAGE
TO
NORTH MAIN CORONA TOWER
AGREEMENT FOR CONSTRUCTION, MAINTENANCE AND OPERATION OF A
SEISMIC SEPARATION JOINT**

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first above written.

RIVERSIDE COUNTY TRANSPORTATION
COMMISSION

RIVERSIDE TRANSIT AGENCY

By: _____

By:_____

APPROVED AS TO FORM

APPROVED AS TO FORM

By: _____

Best, Best & Krieger, LLP
Counsel to the Riverside County
Transportation Commission

By: _____

Counsel to the Riverside Transit
Agency

EXHIBIT A
DEPICTION OF THE LICENSED PROPERTY

[to be attached behind this page]

Exhibit A

EXHIBIT B

PROJECT DESCRIPTION AND DRAWINGS

PROJECT DESCRIPTION:

The Project consists of Agency construction of a new RTA Corona Transit Station with a stairway and bridge extension over the BNSF tracks, connecting to the RCTC existing pedestrian tower and overcrossing, creating a multi-use transportation hub for the area.

The new steel frame structural design and sustainable finish materials will match the existing bridge's architecture. This includes translucent clear span roofing and side panels, wire mesh guardrails, and an elevator tower with painted metal siding and standing seam roofing.

The specific construction related to this Agreement is the seismic separation joint that will provide the weather-sealing between the two independent structures.

DRAWINGS/DESIGN PLANS:

Title sheet, 08-108P, Sheet 1;

Drawing No. A1.01, Site Plan and Site Details;

Drawing A2.04, Bridge Extension and Tower Plans;

Drawing A2.05, Bridge Extension and Tower Plans;

Drawing A2.07, Enlarged Bridge Extension and Tower Plans;

Drawing A3.01, Bridge and Tower Elevations;

Drawing A4.01, Bridge Extension and Tower Sections;

Drawing S-5, Bridge Deck Level Framing Plan;

Drawing S-6, Roof Framing Plan;

Drawing No. A5.04, Bridge Details;

Drawing C-2, Project Information

EXHIBIT C

INSURANCE PROVISIONS

Agency shall obtain, and shall require any consultant or contractor entering Commission's property on its behalf to obtain insurance of the types and in the amounts described below and satisfactory to Commission.

A. Commercial General Liability Insurance. Agency and its contractors shall maintain occurrence version commercial general liability insurance or equivalent form with a combined single limit of not less than \$5,000,000 per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two times the occurrence limit. Such insurance shall:

1. Include Commission and the Southern California Regional Rail Authority and its contractors and their officials, officers, employees, agents, and consultants as insureds with respect to the construction of the Project and Commission's property and shall contain no special limitations on the scope of coverage or the protection afforded to these insureds;
2. Be primary with respect to any insurance or self-insurance programs covering Commission, its officials, officers, employees, agents and consultants; and
3. Contain standard separation of insured provisions.

B. Railroad Protective Liability. Agency and its contractors shall, in connection with any construction activities undertaken with respect to the Project either directly by Agency or by its contractors, acquire and keep in force during the period of such construction, railroad protective liability insurance with a combined single limit of \$1,000,000 and a general aggregate of \$1,000,000.

C. Pollution Liability Insurance. **[IF APPLICABLE]** If the Project is used to carry Hazardous Materials, Agency and its contractors shall maintain pollution liability insurance in the amount of \$1,000,000.

D. Workers' Compensation Insurance. Agency and its contractors shall maintain workers' compensation insurance with statutory limits and employers' liability insurance with limits of not less than \$1,000,000 each accident.

E. Certificates of Insurance. Agency and its contractors shall, prior to entering Commission's property, furnish Commission with properly executed certificates of insurance and, if requested by Commission, certified copies of endorsements and policies, which clearly evidence all insurance required under this Agreement and provide that such insurance shall be not canceled, allowed to expire or be materially reduced in coverage, except on thirty (30) days' prior written notice to Commission. The certificate shall also evidence the insurer's knowledge of the proximity of the operations of Agency and its contractors to active railroad tracks.

Commission shall have the sole discretion to determine whether the certificates and endorsements presented comply with the provisions of this Agreement.

F. Coverage Maintenance. Agency and its contractors shall replace certificates, policies and endorsements for any insurance expiring prior to the termination of this Agreement. Unless otherwise provided for in this Agreement, Agency's contractors shall maintain such insurance from the execution of this Agreement until the construction of Project and all other work related to construction of the Corona Transit Station bridge extension is complete and Commission's property fully restored, except as otherwise provided in this Agreement. Agency shall maintain the insurance required herein, unless otherwise agreed upon in writing by the Parties, until this Agreement is terminated.

G. Licensed Insurer. Agency and its contractors shall place such insurance with insurers having A.M. Best Company ratings of no less than A:VIII and licensed to do business in California, unless otherwise approved, in writing, by Commission.

EXHIBIT D

AGENCY OPERATION OBLIGATIONS RELATED TO CONNECTION OF CORONA TRANSIT STATION TO PEDESTRIAN TOWER VIA SEISMIC SEPARATION JOINT

Agency shall, at its sole cost and expense, maintain the Project, including the Corona Transit Station bridge extension (the “Bridge”) and the Seismic Separation Joint at all times in a good and safe condition and shall comply with the following:

1. Agency shall conduct regular cleaning and janitorial maintenance of the Bridge so that trash and debris from the Bridge does not enter into Commission’s property.
2. Agency shall maintain and shall be solely responsible for the electrical and lighting system of the Bridge so that sufficient lighting of the Bridge is provided at all times for the safety and security of persons utilizing the Bridge.
3. Agency shall at all times maintain the appearance of the Bridge, including paint and coatings on the Bridge, in good and clean condition consistent with the condition of Commission’s adjoining property.
4. Agency shall promptly remove any graffiti from the Bridge. Graffiti shall be removed by Agency within forty-eight (48) hours of notice from Commission of the existence of any graffiti.
5. Agency shall be responsible for providing security for the Bridge. Commission security personnel will not patrol the bridge.
6. Prior to the opening date of the Bridge, Agency shall install a swing gate for security purposes (the “Gate”) in order to prohibit persons from accessing the Bridge during non-operational hours of commuter rail service. Agency shall obtain Commission’s approval of the proposed Gate prior to installation. The Gate shall have two sides and shall lock in the middle. The Gate shall be of sturdy material and of sufficient height to keep persons from climbing or otherwise getting over the Gate. The Gate shall be installed on Agency’s property at the connection between the Corona Transit Station and the Bridge. Agency shall be responsible for locking and unlocking the Gate **in accordance with the schedule to be agreed upon by the Parties**. Agency shall provide keys for the Gate to Commission upon Commission’s request. Commission employees, agents or contractors shall be entitled to unlock the Gate in the case of emergencies.
7. Prior to the opening date of the Bridge, Agency shall place signage on the Bridge notifying users that the Bridge is owned, operated and maintained by Agency. Such signage shall be easily visible by users of the Bridge and shall include appropriate Agency contact information for comments or complaints.
8. Agency shall maintain current an on-call service company available to address any issues related to its elevator which provides access from the Corona Transit Station to the Bridge. Agency shall establish procedures for transporting persons who are unable to access the Bridge during times that said elevator is out of service.

Exhibit D

9. Should Agency fail to maintain appropriate safety and security of the Bridge, in Commission's sole discretion, in addition to any other remedies of Commission under this Agreement, Commission may require Agency, at its sole cost and expense, to install a gated entry on the Licensed Property which Commission may keep locked during non-operational hours of commuter rail service.