

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

RAILROAD LICENSE AGREEMENT

WITH (INSERT NAME OF PARTY)

1. Parties and Date.

THIS LICENSE AGREEMENT (hereinafter referred to as the "Agreement"), is made this ____ day of _____ 200_ by and between the **RIVERSIDE COUNTY TRANSPORTATION COMMISSION**, a public agency existing under the authority of the laws of the State of California (hereinafter referred to as "Licensor") and **(INSERT NAME OF PARTY)**, a **(INSERT TYPE OF ENTITY, i.e. corporation, limited liability partnership)** (hereinafter referred to as "Licensee").

2. Recitals.

2.1 Licensor is the owner in fee of certain railroad tracks known as the _____ (the "Line").

2.2 Licensee has requested permission to **[INSERT DESCRIPTION OF ACTIVITY]** on Licensor's right of way and adjacent to such tracks.

3. Terms.

3.1 General Grant. Subject to the terms and conditions hereinafter set forth, Licensor hereby grants to Licensee a revocable, non-exclusive license in, on, over, under and across the real property shown in Exhibit "A" (the "Licensed Property") to **[INSERT DESCRIPTION OF ACTIVITY, i.e. construct a [DESCRIPTION OF ACTIVITY]]** on the Licensed Property, across or along the right-of-way of Licensor at **[INSERT DESCRIPTION OF LOCATION]**, Riverside County, California, the exact location of the **[DESCRIPTION OF ACTIVITY]** being more particularly shown on Exhibit "A" attached hereto and incorporated herein by reference.

3.2 Use. Licensee shall use Licensed Property and the **[DESCRIPTION OF ACTIVITY]** solely for **[INSERT LIMITED USE]** and shall not use it for any other purpose whatsoever. No change shall be made by Licensee in the use of the Licensed Property or **[DESCRIPTION OF ACTIVITY]** without Licensor's prior written approval.

3.3 Liens. Licensee 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 Licensee's actions upon the Property. The Licensee agrees to hold the Licensor harmless for any loss or expense, including reasonable

attorneys' fees and costs, arising from any such liens which might be filed against the Property.

3.4 Hazardous Materials Use and Related Indemnity.

A. Use and Termination. Licensee covenants that it will not handle or transport Hazardous Materials on the [DESCRIPTION OF ACTIVITY] or the Licensed Property. As used in this license, "Hazardous Materials" means any chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects. As used in this preceding sentence, "Environmental Law" means any federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adopted in the future which are or become applicable to the Licensee or the Licensed Property. In the event the [DESCRIPTION OF ACTIVITY] or the Licensed Property is now or in the future used in the handling or transporting of Hazardous Materials, Licensee agrees fully to comply with all applicable federal, state, and local laws, rules, regulations, orders, decisions and ordinances (hereinafter referred to as "Hazardous Materials Standards") concerning Hazardous Materials. Licensee further agrees that at Licensor's request it will furnish Licensor with proof, satisfactory to Licensor, that Licensee is in such compliance. Should Licensee not comply fully with the above-stated obligations, Licensor may, in its sole discretion, terminate this Agreement by serving five (5) days' notice of termination upon Licensee. Any waiver by Licensor of any breach of Licensee's obligation shall not constitute a waiver of the right to terminate this Agreement for any subsequent breach which may occur, or to enforce any other provision of this Agreement. Upon termination, Licensee shall remove the [DESCRIPTION OF ACTIVITY] and restore Licensed Property as herein provided.

B. Indemnity. Notwithstanding anything else contained in this agreement and to the extent permitted by law, in case of a breach of the obligations contained in this Section 3.4, regardless of the negligence or alleged negligence of Licensor, Licensee agrees to assume liability for and to save and hold harmless Licensor from and against any and all injuries to any person, including wrongful death, and damage to property, including without limitation, property of Licensor and Licensee, and all related expenses, including without limitation attorneys' fees, investigators' fees and litigation expenses, resulting in whole or in part from Licensee's failure to comply with any Hazardous Materials Standards issued by any governmental authority concerning Hazardous Materials. Licensee, at its cost, shall assume the defense of all claims, in accordance with Section 3.15 hereof. Licensee agrees to reimburse Licensor for all costs of any kind incurred as a result of the Licensee's failure to comply with this Section 3.4, including, but not limited to, fines, penalties, clean-up and disposal costs, and legal costs incurred as a result of Licensee's handling, transporting, or disposing of Hazardous Materials on the property of Licensor.

C. Prior to the execution of this Agreement, Licensor has provided Licensee with a Phase 1 environmental review of the Licensed Property. Upon termination of this Agreement, Licensor, at its cost, may perform another Phase 1 environmental review of Licensed Property. If this second Phase 1 environmental review shows the presence of

Hazardous Materials which were not present at the time of the first Phase 1 environmental review, then Licensee shall be conclusively presumed to have released Hazardous Materials on the site and shall, in addition to any other responsibilities herein, be responsible for cleaning up the site to remove any such Hazardous Materials and taking such other remedial steps required under federal, state or local law or regulation.

D. Inapplicability. It is understood and agreed that a Licensee who does not now, or in the future, generate, handle, transport, treat, store or dispose of on Licensed Property Hazardous Materials within the meaning of this section, is not subject to the provisions of Section 3.4(B).

3.5 Fees.

A. Processing Fee. Licensee agrees to reimburse Licensor for all costs incurred by Licensor to process this Agreement. Licensee deposited an amount of **[INSERT AMOUNT]** Dollars (\$_____) on or about **[INSERT DATE]** (the "Deposit") for processing costs. Such reimbursements shall be made first out of the Deposit made by Licensee for such purpose. Any processing costs exceeding that amount shall be reimbursed within 30 days of request.

B. Annual Fee.

1. Licensee shall pay Licensor as compensation for this license a Base License Fee of **[INSERT AMOUNT]** Dollars (\$_____) per annum. The Base License Fee shall be due and payable on the first day of the month following the execution of this Agreement (the "Payment Date") and then on that same date during each succeeding year for as long as this Agreement is in effect.

2. The Base License Fee shall be increased, but not decreased, annually as provided below. The adjusted Base License Fee as of each Payment Date shall be the greater of the Base License Fee on the day preceding that Payment Date or that amount multiplied by a fraction, the numerator of which is the CPI figure for the third month preceding the month during which the particular Payment 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 Payment Date. As used in this section, the "CPI" means the Consumer Price Index for Urban Wage Earners and Clerical Workers, Los Angeles/Anaheim/Riverside, all items (1982-84 = 100), published by the U.S. Department of Labor, Bureau of Labor Statistics, or if such index is no longer published, the U.S. Department of Labor's most comprehensive official index then in use that most nearly corresponds to the index named above. If it is calculated from a base different from the base period 1982-84 = 100, figures used for calculating the adjustment shall first be converted to the base period used under a formula supplied by the Bureau. If a comparable index is no longer published by the U.S. Department of Labor, another index generally recognized as authoritative shall be substituted by the Licensor.

3. At intervals of not less than three (3) years, the Base License Fee (as such fee may be adjusted by paragraph 2, above) payable under this Section, at

the sole discretion of the Licensor, may be increased, but not decreased, in order to adjust the fee to the then fair market rental value of the Licensed Property as determined by the Licensee in good faith. Such increases shall be effective on the Payment Date. Licensor shall give Licensee written notice of the date and amount of any such adjustment not less than thirty (30) days prior to the applicable Payment Date. If no adjustment is made on a given Payment Date, an adjustment may nevertheless be made on a subsequent date and thereafter at intervals of not less than three (3) years apart.

C. Late Payment. Licensee acknowledges that late payment by Licensee of any payment owed to Licensor under this Agreement will cause Licensor to incur costs not contemplated by this Agreement, the exact amount of such costs being extremely difficult and impracticable to fix. Therefore, if any payment due from Licensee is not received by Licensor within fifteen (15) days of when due, Licensee shall pay to Licensor an additional sum of ten percent (10%) of the overdue payment as a late charge, up to a maximum amount of \$1,000. The parties agree that this late charge represents a fair and reasonable estimate of the administrative costs that Licensor will incur by reason of a late payment by Licensee. Acceptance of any late payment charge shall not constitute a waiver from exercising any of the other rights and remedies available to Licensor under this Agreement, at law or in equity, including, but not limited to, any interest charges imposed herein.

3.6 Maintenance and Repair. Licensee shall, at its own cost and subject to the approval of Licensor's Executive Director or his designee, repair and maintain the parts of the [DESCRIPTION OF ACTIVITY] and Licensed Property that are not in Licensor's right of way so that it will not at any time be a source of danger to or interference with the present or future tracks, roadbed and property of Licensor, or the safe operation of its railroad or any other activities on the Licensed Property. Any repair and maintenance work shall be done to Licensor's standards. Licensee shall provide Licensor no less than thirty (30) days written notice and shall acquire all necessary approvals from Licensor prior to Licensee's commencement of any such repair or maintenance work. If, at any time, Licensee shall, in the judgment of Licensor, fail to perform properly its obligations under this section, Licensor may, at its option, perform such work itself as it deems necessary for the safe operation of its railroad and other uses on the Licensed Property. In such event, Licensee agrees to pay, within fifteen (15) days after a bill is rendered therefor, the cost so incurred by Licensor. However, failure on the part of Licensor to perform the obligations of Licensee shall not release Licensee from liability hereunder for any loss or damage occasioned thereby.

3.7 Standards. Licensee shall comply with all statutes, ordinances, rules, regulations, orders and decisions (hereinafter referred to as "Standards"), issued by any federal, state or local governmental body or agency established thereby including without limitation, the Interstate Railroad Commission, the California Public Utilities Commission and the Southern California Regional Rail Authority, (hereinafter collectively referred to as "Agency"), relating to Licensee's use of the Licensed Property hereunder. In its use of the premises, Licensee shall at all times be in full compliance with all Standards, present or future, set by any Agency, including, but not limited to, Standards concerning air quality, water quality, noise, and Hazardous Materials. In the event Licensee fails to be in full

compliance with Standards set by any Agency, Licensor may, but shall not be obligated to, after giving notice of the failure to Licensee, and if Licensee, 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 Licensor's railroad and other adjacent property. Licensee shall reimburse the Licensor for all costs (including but not limited to, consulting, engineering, clean-up and disposal, and legal costs) incurred by the Licensor as a result of the Licensee's failure to comply with such Standards, and also such costs incurred by the Licensor 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. Licensee shall, to the extent permitted by law, assume liability for and shall save and hold harmless the Licensor from any claim of a violation of the Standards regardless of the nature thereof or the Agency or person asserting such claim, which results from Licensee's use of Licensed Property, whether such claim arises in whole or in part from the negligence or alleged negligence of the Licensor or otherwise. Licensee, at its cost, shall assume the defense of all such claims as provided for in Section 3.15 hereof.

3.8 Tests and Inspections. Licensor shall have the right at any time to inspect the Licensed Property and the **[DESCRIPTION OF ACTIVITY]** so as to monitor compliance with this Agreement. If, in Licensor's sole judgment, any installation on, or use or condition of the Licensed Property may have an adverse effect on Licensed property, adjacent property (whether or not owned by Licensor) or Licensor's operations, Licensor shall be permitted to conduct any tests or assessments, including but not limited to environmental assessments, of, on or about the Licensed Property and the **[DESCRIPTION OF ACTIVITY]**, as it determines to be necessary or useful to evaluate the condition of the Licensed Property and the **[DESCRIPTION OF ACTIVITY]**. Licensee shall cooperate with Licensor in any tests or inspections deemed necessary by Licensor. Licensee shall pay or reimburse Licensor, as appropriate, for all reasonable costs and expenses incurred due to the tests, inspections or any necessary corrective work and inspections thereafter within thirty (30) days of a request for payment.

3.9 Construction and Installation.

A. The **[DESCRIPTION OF ACTIVITY]** shall be installed and constructed at the Licensee's sole cost in accordance with the design plans attached hereto as Exhibit "B." Any deviation from the plans shall be approved in writing by the Licensor's Executive Director or his designee.

B. The construction of the **[DESCRIPTION OF ACTIVITY]** shall be accomplished in such a manner so that it will not interfere with or be a source of danger to present or future tracks, roadbed and the property of Licensor, or the safe operation of its railroad or other activities on the Licensed Property. Any installation method which will interfere with rail traffic or other uses on the property of the Licensor shall be approved in advance by Licensor. Licensor may require that Licensor's representative be present during some or all of the installation or maintenance of the **[DESCRIPTION OF ACTIVITY]**. If Licensor's representative determines that the installation or maintenance is not being

accomplished in accordance with this Agreement, he may, but shall not be required to, halt the work. Notwithstanding the presence of the Licensor's representative, Licensee shall, at all times, retain full liability and responsibility for all aspects of the installation or maintenance.

C. Licensee shall reimburse Licensor for any expense incurred by Licensor for work to support Licensor's tracks and other improvements on or near the Licensed Property and for flagmen to protect rail traffic during the installation, repair and maintenance of the **[DESCRIPTION OF ACTIVITY]** and for any and all other expenses incurred by Licensor on account of the **[DESCRIPTION OF ACTIVITY]**; including, without limitation, the cost of Licensor's representatives. The Licensee shall notify both the Licensor's Property Agent at (951) 787-7141, and the Burlington Northern and Santa Fe Railway Company's Roadmaster, Mr. David Gonzales, at (951) 386-4061 at least 5 days prior to construction.

D. Licensee shall provide Licensor with "As Builts" within twenty (20) days of completion of the construction activities.

3.10 Underground Storage Tanks. Licensee shall not install or use any underground storage tanks on the Licensed Property unless specifically approved in advance in writing by Licensor, which approval may be withheld in Licensor's sole discretion. At Licensor's option, upon the termination of this Agreement 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 Materials in, on, under and about the Licensed Property, in accordance with the requirements of all federal, state and local environmental laws and to the satisfaction of Licensor and any governmental authorities having jurisdiction thereof, and deliver to Licensor a copy of a certificate of closure issued for such tanks by the appropriate governmental authority.

3.11 Insurance. Licensee, at its sole cost and expense, shall obtain and maintain in full force and effect insurance as required by Licensor in the amounts and coverage specified and issued by insurance companies as described in Exhibit "C". Licensor 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 **[DESCRIPTION OF ACTIVITY]**. Prior to (i) entering the Licensed Property or (ii) performing any work or maintenance on the **[DESCRIPTION OF ACTIVITY]**, Licensee shall furnish Licensor 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.

3.12 Subordinate Rights. This Agreement is subject and subordinate to the prior and future rights and obligations of Licensor, its successors and assigns, to use its property in the exercise of its powers and in the performance of its duties, including those as a County transportation commission and a member of the Southern California Regional Rail Authority. Accordingly, there is reserved and retained unto Licensor, its successors, assigns and permittees, the right to construct, reconstruct, maintain and use existing and

future rail tracks, facilities and appurtenances and existing and future transportation, communication, **[DESCRIPTION OF ACTIVITY]** and other facilities and appurtenances in, upon, over, under, across and along the Licensed Property, and in connection therewith, the right to grant and convey to others, rights and interests to the Licensed Property in, on and around the Licensed Property. This Agreement is subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens, claims and other matters of title (hereinafter referred to as "Title Exceptions") which may affect the Licensed Property now or hereafter, and the words "grant" or "convey" as used herein shall not be construed as a covenant against the existence of any such Title Exceptions. This Agreement is also subordinate to the Shared Use Agreement, executed between the Licensor and AT&SF Railway Company, dated as of October 30, 1992, and any subsequent amendments thereto.

3.13 Indemnity. Licensee shall at all times indemnify and save harmless Licensor against and pay in full all losses, damages, or expenses that Licensor may sustain, incur or become liable for, resulting in any manner from the construction, maintenance, use, state of repair, or presence of the **[DESCRIPTION OF ACTIVITY]** or the Licensee'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 Licensor's tracks. It is the intention of the parties that Licensor's right to indemnity hereunder shall be valid and enforceable against Licensee regardless of negligence (whether active or passive) on the part of Licensor, its officers, agents and employees, unless such injury is a result of the sole negligence of the Licensor.

3.14 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 **[DESCRIPTION OF ACTIVITY]**, the Licensed Property, Licensor's property and any other property of, or under the control or custody of, Licensee, which is on or near the **[DESCRIPTION OF ACTIVITY]**. Licensee's assumption of risk shall include, without limitation, loss or damage caused by defects in any structure or improvement on the Licensed Property, accident or fire or other casualty on the Licensed Property, or electrical discharge, and noise or vibration resulting from Licensor's transit operations on or near the Licensed Property. The term "Licensor" as used in this section shall include: (i) any transit or rail-related company operating upon or over Licensor's tracks or other property, and (ii) any other persons or companies employed, retained or engaged by Licensor. Licensee, on behalf of itself and its Personnel, as a material part of the consideration for this Agreement, hereby waives all claims and demands against Licensor for any such loss, damage or injury of Licensee and/or its Personnel. In that connection, Licensee waives, for itself and its Personnel, 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 and of Section 3.13 shall survive the termination of this Agreement. As used in this section, "Personnel" means the Licensee, or its officers, directors, affiliates, or anyone directly or indirectly employed by Licensee or for whose acts Licensee is liable.

3.15 Defense. Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit, administrative action or other proceeding brought against Licensor by any public body, individual, partnership, corporation, or other legal entity, relating to any matter covered by this Agreement for which Licensee has an obligation to assume liability for and/or to indemnify or save and hold harmless the Licensor. Licensee 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.

3.16 Attorneys' Fees. In the event of a dispute between the parties with respect to the terms or conditions of this Agreement, the prevailing party shall be entitled to collect from the other its reasonable attorneys' fees as established by the judge or arbitrator presiding over such dispute.

3.17 Successors and Assigns. All the covenants and provisions of this Agreement shall be binding upon and inure to the benefit of the successors, legal representatives and assigns of the Licensor and Licensee to the same extent and effect as the same are binding upon and insure to the benefit of the parties hereto.

3.18 Survival of Obligations. All obligations of Licensee 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 payment obligations with respect to fees and all obligations concerning the condition of the Licensor's property, the **[DESCRIPTION OF ACTIVITY]** and the Licensed Property.

3.19 Assignment. This Agreement and the license granted herein are personal to the Licensee. Licensee 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 Licensor, which may be withheld in Licensor's sole and absolute discretion. Any attempted act in violation of this section shall be void and without effect and give Licensor the right to immediately terminate this Agreement.

3.20 Waiver of Covenants or Conditions. The waiver by Licensor 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.

3.21 Amendment. This Agreement may be amended at any time by the written agreement of Licensor and Licensee. 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.

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

3.23 Abandonment. Should Licensee at anytime abandon the use of the **[DESCRIPTION OF ACTIVITY]** 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 the Licensor may terminate this Agreement to the extent of the portion so abandoned or discontinued. In addition to any other rights or remedies, Licensor shall immediately be entitled to exclusive possession and ownership of the portion so abandoned or discontinued, without the encumbrance of this Agreement.

3.24 Eviction, Abandonment or Sale. In the case of the eviction of Licensee by anyone owning or obtaining title to the premises on which the **[DESCRIPTION OF ACTIVITY]** is located, or the sale or abandonment by Licensor of said premises, Licensor shall not be liable to Licensee for any damage of any nature whatsoever or to refund any payment made by Licensee to Licensor hereunder, except the proportionate part of any recurring rental charge which may have been paid hereunder in advance.

3.25 Condemnation. In the event all or any portion of the Licensed Property shall be taken or condemned for public use (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 **[DESCRIPTION OF ACTIVITY]**. Any other commission or damages arising out of such taking or condemnation awarded to Licensee are hereby assigned by Licensee to Licensor.

3.26 Revocable Licenses and Termination. The license granted herein is revocable and may be terminated by Licensor in accordance with the terms of this Agreement. Notwithstanding any other term or provision of this Agreement, Licensor shall have the right to terminate this Agreement and shall have no obligation to reimburse Licensee for any of its improvements to the Licensed Property.

This Agreement is given by Licensor and accepted by Licensee upon the express condition that it may be terminated at any time by either party upon thirty (30) days' notice in writing to be served upon the other party. Such notice shall state therein the date that such termination shall take place.

3.27 Restoration of Licensed Property, Claims for Costs. Upon the termination, revocation or cessation of this Agreement in any manner provided in this Agreement, Licensee, upon demand of Licensor and at Licensee's own cost and expense, shall abandon the use of the **[DESCRIPTION OF ACTIVITY]** and remove it and restore the Licensed Property including the right-of-way and tracks of Licensor to the same condition in which they were prior to the placing of the **[DESCRIPTION OF ACTIVITY]** thereunder, reasonable wear and tear excepted. In no event shall Licensee have any claim against the Licensor for any of the costs of constructing, maintaining or removing the **[DESCRIPTION OF ACTIVITY]**. In case Licensee shall fail to restore Licensed Property as aforesaid within ten (10) days after the effective date of termination, Licensor may proceed with such work at the expense of Licensee or may assume title and ownership of the **[DESCRIPTION OF ACTIVITY]** and any other property of Licensee located on Licensor's property. 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 **[DESCRIPTION OF ACTIVITY]** is removed and the right-of-way and track of Licensor restored as above provided.

3.28 Notice. Any notice hereunder to be given by Licensor to Licensee shall be deemed to be properly served on the date it is deposited in the United States Mail, postage prepaid, addressed to **[ENTER ADDRESS AND CONTACT NAME]**. Any notice to be given hereunder by Licensee to Licensor shall be deemed to be properly served on the date it is deposited in the United States Mail, postage prepaid, addressed to Executive Director, Riverside County Transportation Commission, 4080 Lemon Street, Third Floor, Riverside, CA 92502-2208. Either Licensor or Licensee may change its address for the receipt of notice by giving written notice thereof to the other party of such change.

3.29 Interest on Past-due Obligations. Except as expressly herein provided, any amount due to Licensor which is not paid when due shall bear interest, from the date due, at the rate of ten percent (10%) per annum. Such interest will be due Licensor as it accrues. Payment of such interest shall not excuse or cure any default by Licensee under this Agreement, provided, however, that interest shall not be payable on late charges incurred by Licensee.

3.30 Joint and Several. In the event that two or more parties execute this Agreement as Licensee, all the covenants and agreements of Licensee in this Agreement shall be the joint and several covenants and agreements of such parties.

3.31 Nondiscrimination. Licensee 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 the Licensed Property and the **[DESCRIPTION OF ACTIVITY]** 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.

3.32 Taxes. Licensee shall be liable for and agrees to pay promptly and prior to delinquency, any tax or assessment, including but not limited to any possessory interest tax, levied by any governmental authority: (a) against the **[DESCRIPTION OF ACTIVITY]**, the Licensed Property and/or any personal property, fixtures or equipment of Licensee used in connection therewith or (b) as a result of the **[DESCRIPTION OF ACTIVITY]**'s operations.

3.33 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 Agreement, including, at Licensor's sole discretion, the relocation of the **[DESCRIPTION OF ACTIVITY]** and the license granted by this Agreement at Licensee's expense.

3.34 WAIVER OF RELOCATION RIGHTS. LICENSEE HEREBY WAIVES ANY RIGHT TO RELOCATION ASSISTANCE, MOVING EXPENSES, GOODWILL OR OTHER PAYMENTS TO WHICH LICENSEE MIGHT OTHERWISE BE ENTITLED, BUT FOR THIS WAIVER AND LICENSOR'S EXPRESS RIGHT OF TERMINATION, UNDER THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970, AS AMENDED, 42 UNITED STATE CODE SECTION 4601 ET SEQ. AND/OR THE CALIFORNIA RELOCATION ASSISTANCE LAW, AS AMENDED, GOVERNMENT CODE SECTION 7260 ET SEQ.

3.35 Non-Exclusive License. The license granted by this Agreement is not exclusive and Licensor specifically reserves the right to grant other licenses within the vicinity of the **[DESCRIPTION OF ACTIVITY]**.

3.36 Severability. If any term, covenant, condition or provision of this Agreement, 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 Agreement, 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.

3.37 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.

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

3.39 No Recording. Licensee shall not record or permit to be recorded in the official records of the county where the Licensed Property or the **[DESCRIPTION OF ACTIVITY]** is located any memorandum of this Agreement or any other document giving notice of the existence of this Agreement or the license granted hereby.

3.40 Entire Agreement. This Agreement and the Exhibits hereto constitute the entire agreement between the Licensor and Licensee with respect to the subject matter

hereof and supersede all prior verbal or written agreements and understandings between the parties with respect to the items set forth herein.

3.41 Governing Law. This Agreement shall be governed by the laws of the State of California.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate the day and year first above written.

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

[INSERT NAME OF PARTY]

By: _____

By: _____

Eric Haley, Executive Director

Its: _____

APPROVED AS TO FORM:

By: _____
Best, Best & Krieger
Counsel to the Riverside
County Transportation
Commission

EXHIBIT "A"

MAP DEPICTING EXACT LOCATION OF [DESCRIPTION OF ACTIVITY]
AND LICENSED PROPERTY

EXHIBIT "B"
DESIGN PLANS

EXHIBIT "C"

INSURANCE REQUIREMENTS

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

A. Commercial General Liability Insurance. Licensee shall maintain occurrence version commercial general liability insurance or equivalent form with a combined single limit of not less than \$_____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 the Licensor and Burlington Northern and Santa Fe Railway Company, their officials, officers, employees, agents, and consultants as insureds with respect to the maintenance of the **[DESCRIPTION OF ACTIVITY]** and the Licensed 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 the Licensor, its officials, officers, employees, agents and consultants; and

3. Contain standard separation of insured provisions.

B. Pollution Liability Insurance. **[IF APPLICABLE]** Licensee shall, in connection with any construction, operation or maintenance activities undertaken with respect to **[DESCRIPTION OF ACTIVITY]** either directly by Licensee or by its contractors, acquire and keep in force during the period of such construction \$_____ (combined single limit) of pollution legal liability insurance.

C. Workers' Compensation Insurance. Licensee shall maintain workers' compensation insurance with statutory limits and employers' liability insurance with limits of not less than \$_____ each accident.

D. Certificates of Insurance. Licensee shall, prior to commencement of services, furnish the Licensor with properly executed certificates of insurance and, if requested by the Licensor, 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 the Licensor. The Licensor shall have the sole discretion to determine whether the certificates and endorsements presented comply with the provisions of this Agreement.

E. Coverage Maintenance. Licensee shall replace certificates, policies and endorsements for any insurance expiring prior to the termination of this Agreement. Further, Licensee shall maintain such insurance from the execution of this Agreement until the [**DESCRIPTION OF ACTIVITY**] is removed and the Licensed Property fully restored, except as otherwise provided in this Agreement.

F. Licensed Insurer. Licensee shall place such insurance with insurers licensed to do business in California, unless otherwise approved in writing by the Licensor, and having A.M. Best Company ratings of no less than A: VIII if operating railroad right of way is involved or B+:VIII if no operating railroad right of way is involved.