

INFORMATION HANDOUT

For Contract No. 08-0G7804

At 08-Riv-215-8.4/38.8

Identified by

Project ID 0814000173

AGREEMENTS

Riverside County Transportation Commission License Agreement No. 15-33-109-00.

Memorandum Of Understanding Fiber Optic Cable Agreement.

**LICENSE AGREEMENT
BETWEEN
RIVERSIDE COUNTY TRANSPORTATION COMMISSION
AND
THE STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

THIS LICENSE AGREEMENT (hereinafter referred to as the “**Agreement**”), is made this 24th day of JUNE, 2015 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 “**RCTC**”) and the **STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION** (hereinafter referred to as “**STATE**”). RCTC and STATE are sometimes referred to herein individually as “Party” and collectively as “Parties.”

RECITALS

A. RCTC is the owner in fee of certain properties located throughout the County of Riverside, and part of the Perris Valley Line Commuter Rail extension.

B. STATE wishes to enter a certain portion of property owned by RCTC for the purposes specified in Item 2 of the Basic License Provisions.

PART I. BASIC LICENSE PROVISIONS

1. Description of Licensed Property:

That portion of RCTC railroad right-of-way in the County of Riverside, State of California, as more particularly described and depicted in the attached **Exhibit “A”** (the “**Licensed Property**”).

2. Use of Licensed Property:

Access to the the fiber optic backbone on the Perris Valley Line Commuter Rail extension for the installation, operation and maintenance of the Facility, as defined below (the “**Project**”).

3. Commencement Date: Date of the Agreement first specified above.

4. Term: Concurrent with the term of that certain Memorandum of Understanding - Fiber Optic Cable Agreement ("**MOU**") entered into by the Parties of even date herewith.

5. RCTC's Address:

Riverside County Transportation Commission
4080 Lemon Street, Third Floor
Riverside, California 92502-2208
Attention: Executive Director

6. STATE's Address:

Caltrans District 8
464 W 4th Street, 6th Floor
San Bernardino, CA 92401

7. Facility:

Fiber optic strands to be installed by STATE in the fiber optic backbone on the Perris Valley Line Commuter Rail extension to be used as part of the STATE Transportation Management Center, as further described in the MOU (the "**Facility**").

The foregoing Basic License Provisions and the General License Provisions set forth in the attached Part II are incorporated into and made part of this Agreement.

PART II. GENERAL LICENSE PROVISIONS

1. General Grant. Subject to the terms and conditions hereinafter set forth, RCTC hereby grants a revocable, non-exclusive license to STATE under, over and across the Licensed Property for the purposes described in Item 2 of the Basic License Provisions. In connection with this grant of license, STATE, its employees, agents, customers, visitors, invitees, STATEs and contractors (collectively, "**STATE's Parties**"), may, subject to the provisions hereof, have reasonable rights of entry and access onto adjoining real property of RCTC if necessary for the use of the Facility or the Licensed Property, with the time and manner of such entry and access to be subject to RCTC's prior written approval. The Licensed Property, adjoining real property of RCTC and personal property of RCTC located thereon including, but not limited to, the fiber optic backbone on the Perris Valley Line Commuter Rail extension and all components thereof, as further described in the MOU, shall hereinafter collectively be referred to as "**RCTC Property**".

A. The performance of the Project 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,

the property of RCTC, or the safe operation of the railroad or other activities on the Property. Except in the event of an emergency, any performance of the Project which will interfere with rail traffic or other uses on the Property must be approved in advance by RCTC. RCTC may require that RCTC's representative be present during some or all of the performance of the Project. Except in the event of an emergency, if RCTC's representative determines that the performance of Project is not being accomplished in accordance with this License, he or she may, but shall not be required to, halt the work. Notwithstanding the presence of RCTC's representative, STATE shall, at all times, retain full liability and responsibility for all aspects of the performance of the Project.

B. STATE shall contract directly with Southern California Regional Rail Authority (hereinafter referred to as "**SCRRA**") for flagmen to protect rail traffic during the performance of Project, as may be required by SCRRA, and shall be responsible for all costs thereof. STATE shall notify both RCTC's Property Agent at (951) 787-7141 and SCRRA's encroachment coordinator at (909) 394-3418 at least thirty (30) days prior to performance of any work within Licensed Property, including construction, installation or maintenance. STATE shall comply with all SCRRA requirements applicable to the Project.

2. Term. The term ("**Term**") of this Agreement shall commence on the "**Commencement Date**" specified in Item 3 of the Basic License Provisions. This Agreement shall continue in full force and effect as provided in Item 4 of the Basic License Provisions, unless otherwise terminated as provided herein.

3. Use. STATE shall use the Licensed Property and Facility solely for the purposes specified in Item 2 of the Basic License Provisions and for such lawful purposes as may be directly incidental thereto. No change shall be made by STATE in the use of the Licensed Property, the Facility, or the commodity or product being conveyed through the Facility, if any, without RCTC's prior written approval.

4. Condition of Premises. STATE ACCEPTS THE LICENSED PROPERTY IN ITS "AS IS" CONDITION, WITH ALL FAULTS. STATE ACKNOWLEDGES AND AGREES THAT STATE IS ENTERING THE LICENSED PROPERTY UNDER THIS AGREEMENT BASED ON STATE'S OWN INVESTIGATIONS AND KNOWLEDGE OF THE PROPERTY AND THAT, EXCEPT AS OTHERWISE SPECIFICALLY STATED IN THIS AGREEMENT, NEITHER RCTC NOR ANY AGENT OF RCTC, HAS MADE ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO THE PHYSICAL CONDITION OF THE PROPERTY OR THE SUITABILITY OF THE PROPERTY FOR ANY PARTICULAR PURPOSE OR USE, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATIONS OR WARRANTIES REGARDING THE APPLICABILITY OR NON-APPLICABILITY OF ANY LAWS, THE SOIL OR SUBSOIL, SURFACE OR SUBSURFACE CONDITIONS, TOPOGRAPHY, POSSIBLE HAZARDOUS SUBSTANCES CONTAMINATION, FILL, DRAINAGE, ACCESS TO PUBLIC ROADS, AVAILABILITY OF UTILITIES, EXISTENCE OF UNDERGROUND STORAGE TANKS, APPLICABILITY OF OR COMPLIANCE WITH ANY ENVIRONMENTAL LAWS OR ANY OTHER MATTER OF ANY NATURE WHATSOEVER. THE RCTC IS NOT

RESPONSIBLE FOR DAMAGE TO OR LOSS BY THEFT OF STATE'S PROPERTY LOCATED IN OR ON THE PROPERTY.

5. Termination of License.

A. Notwithstanding any other term or provision of this Agreement, RCTC shall have the right to terminate this Agreement and shall have no obligation to reimburse STATE for the Facility or any other improvements to the Licensed Property, under any of the following circumstances:

i In the event that RCTC determines in its sole discretion that it requires the Licensed Property for its own uses, 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 RCTC exercise this option, RCTC may terminate this Agreement by providing thirty (30) days written notice to STATE of the intent to terminate this Agreement.

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

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

C. If this Agreement is terminated as provided herein, the Parties shall also terminate the MOU.

6. Hazardous Materials Use and Related Indemnity.

A. Use. STATE shall operate and maintain the Licensed Property in compliance with all, and shall not cause or permit the Licensed Property to be in violation of 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 STATE or the Licensed Property (collectively, "**Environmental Laws**" and, individually, an "**Environmental Law**"). Except for Hazardous Materials expressly approved by RCTC in writing as shown on Exhibit "B", STATE shall not cause or permit, or allow any of STATE's Parties to cause or permit, any Hazardous Materials to be brought upon, stored, used, generated, handled, transported, treated or disposed of on or about the RCTC Property. Any Hazardous Materials on or about the RCTC Property shall be stored, used, generated, handled, transported, treated or disposed of in accordance with all applicable Environmental Laws. As used herein, "**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.

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 6, regardless of the negligence or alleged negligence of RCTC, STATE agrees to assume liability for and to save and hold harmless RCTC from and against any and all injuries to any person, including wrongful death, and damage to property, including without limitation, property of or managed by RCTC and STATE, and all related expenses, including without limitation attorneys' fees, investigators' fees and litigation expenses, resulting in whole or in part from STATE's failure to comply with any Hazardous Materials Standards issued by any governmental authority concerning Hazardous Materials. STATE, at its cost, shall assume the defense of all claims, in accordance with Section 20 hereof. STATE agrees to reimburse RCTC for all costs of any kind incurred as a result of the STATE's failure to comply with this Section 6, including, but not limited to, fines, penalties, clean-up and disposal costs, and legal costs incurred as a result of STATE's handling, transporting, or disposing of Hazardous Materials on the property of or managed by RCTC

C. Remediation. In addition, in the event of any release on or contamination of the RCTC Property and/or any adjacent property, STATE, at its sole expense, shall promptly take all actions necessary to clean up the affected property and to return the affected property to the condition existing prior to such release or contamination, to the satisfaction of RCTC and any governmental authorities having jurisdiction thereover.

D. Termination for Breach of Hazardous Materials Obligations. Upon providing STATE notice of failure to comply with the above-stated hazardous materials obligations and a reasonable amount of time for STATE to cure such failure to comply, should STATE not make good faith efforts to cure such failure, RCTC may, in its sole discretion, terminate this Agreement by serving five (5) days' notice of termination upon STATE. Any waiver by RCTC of any breach of STATE'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, STATE shall remove the Facility and restore the Licensed Property as herein provided.

E. Inapplicability. It is understood and agreed that if STATE does not now, or in the future, generate, handle, transport, treat, store or dispose of Hazardous Materials on the RCTC Property within the meaning of this Section, STATE is not subject to the provisions of Section 6.B.

7. Permits. Without limiting the generality of any other provision hereunder, STATE, at its sole cost and expense, shall obtain and shall comply with any and all permits which may be required by any law, regulation or ordinance for any activities STATE desires to conduct or have conducted pursuant to this Agreement.

8. Maintenance and Repair. STATE shall, at its own cost and subject to the approval of RCTC's Executive Director or his or her designee, repair, maintain and utilize the Facility and Licensed Property so that they will not at any time be a source of danger to or

interference with the RCTC Property (which may include present or future tracks and roadbed), or the safe operation of its railroad or any other activities on the RCTC Property.

Any repair and maintenance work shall be done to the Standards (defined below). STATE shall provide RCTC no less than thirty (30) days written notice and shall acquire all necessary approvals from RCTC prior to STATE's commencement of any such repair or maintenance work. If, at any time, STATE shall, in the judgment of RCTC, fail to perform properly its obligations under this Section, RCTC may, at its option, perform such work itself as it deems necessary for the safe operation of its railroad and other uses on the RCTC Property. In such event, STATE agrees to pay, within fifteen (15) days after a bill is rendered therefor, the cost so incurred by RCTC. However, failure on the part of RCTC to perform the obligations of STATE shall not release STATE from liability hereunder for any loss or damage occasioned thereby.

9. Standards. STATE shall comply with all applicable statutes, ordinances, rules, regulations, orders and decisions (hereinafter referred to as "Standards"), issued by Burlington Northern Santa Fe Railway Company or any federal, state or local governmental body or agency established thereby including without limitation, the United States Department of Transportation, the California Public Utilities Commission and the Southern California Regional Rail Authority (hereinafter collectively referred to as "Agency"), relating to STATE's use of the Licensed Property hereunder. In its use of the Licensed Property, STATE 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 STATE fails to be in full compliance with Standards set by any Agency, RCTC may, but shall not be obligated to, after giving notice of the failure to STATE, and if STATE, within fifteen (15) days following receipt of such notice (unless such period is extended by RCTC), fails to correct such non-compliance, take whatever action it determines in its sole discretion to be necessary to protect the RCTC Property. STATE shall reimburse the RCTC for all costs (including but not limited to, consulting, engineering, clean-up and disposal, and legal costs) incurred by the RCTC as a result of the STATE's failure to comply with such Standards, and also such costs incurred by the RCTC 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. STATE shall, to the extent permitted by law, assume liability for and shall save and hold harmless the RCTC 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 STATE's use of the Licensed Property in violation of the Standards, even if such claim arises in whole or in part from the negligence or alleged negligence of the RCTC. STATE, at its cost, shall assume the defense of all such claims as provided for in Section 20 hereof.

10. Tests and Inspections. RCTC shall have the right at any time to inspect the Licensed Property and the Facility so as to monitor compliance with this Agreement. If, in RCTC's sole judgment, any installation on, or use or condition of the Licensed Property may have an adverse effect on the RCTC Property (whether or not owned by RCTC) or RCTC's operations, RCTC 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 Facility, as it determines to be necessary or useful to evaluate the condition of the Licensed Property and the Facility. STATE shall cooperate with RCTC in any tests or inspections deemed necessary by RCTC. STATE shall pay or reimburse RCTC, 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.

11. Construction and Installation.

A. The Facility shall be installed and constructed at the STATE's sole cost in accordance with design plans approved in writing by RCTC. Any deviation from the approved plans shall be approved in writing by the RCTC's Executive Director or his or her designee.

B. The Facility, or any portion thereof, occupying a longitudinal location on the Licensed Property shall be located as far as practicable from any railroad track; but, under no circumstances shall the Facility be located within less than twenty-five (25) feet of the centerline of any railroad track, unless otherwise approved by RCTC. Construction, installation, and maintenance of the Facility shall be accomplished in such a manner so that it will not interfere with or be a source of danger to the RCTC Property (which may include present or future railroad tracks and roadbed), or the safe operation of its railroad or other activities on the RCTC Property. Any aspect of the Facility which will interfere with rail traffic or other uses on the RCTC Property shall be approved in advance by RCTC. RCTC may require that RCTC's representative be present during some or all of the construction, installation or maintenance of the Facility. If RCTC's representative determines that the construction, installation or maintenance of the Facility 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 the RCTC's representative, STATE shall, at all times, retain full liability and responsibility for all aspects of the construction, installation or maintenance of the Facility.

C. STATE shall reimburse RCTC or the Southern California Regional Rail Authority (SCRRA) for any expense incurred by RCTC or SCRRA for work to support RCTC's tracks and other improvements on, under or near the Licensed Property and for flagmen to protect rail traffic during the construction, installation or maintenance of the Facility, if required by RCTC or SCRRA, and for any and all other expenses incurred by RCTC on account of the Facility; including, without limitation, the cost of RCTC's representatives. The STATE shall notify both RCTC's Property Agent at (951) 787-7141, and the Burlington Northern Santa Fe Railway Company's Roadmaster at (951) 386-4061 at least five (5) days prior to constructing, installing, or maintaining the Facility.

12. Markers. If required by RCTC, Project markers in form and size satisfactory to RCTC, identifying the Facility and its owners, shall be installed and constantly maintained by and at the expense of STATE at such locations as RCTC shall designate. Such markers shall be relocated or removed upon request of RCTC without expense to RCTC. Absence of markers in or about RCTC Property does not constitute a warranty by RCTC of the absence of subsurface installations.

13. Insurance. STATE, at its sole cost and expense, shall maintain, and require its contractors and subcontractors to obtain and maintain, in full force and effect insurance as required by RCTC in the amounts and coverage specified and issued by insurance companies as described on Exhibit "C". STATE may meet this requirement through a program of self-insurance. RCTC 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 Facility. Any such changes shall follow a 90 day written notice to STATE of RCTC's intent to change the insurance requirements. Prior to (i) entering the Licensed Property or (ii) performing any work or maintenance on the Facility, STATE shall furnish RCTC 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. RCTC shall not be liable for the payment of any premiums or assessments for insurance required to be maintained by STATE under this Agreement. Evidence of insurance shall mean, at least, an explanation of STATE's self-insurance program and/or a certificate of insurance.

14. Subordinate Rights. This Agreement is subject and subordinate to the prior and future rights and obligations of RCTC, 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 RCTC, 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, pipeline facility 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. If applicable, this Agreement is also subordinate to the Shared Use Agreement executed between the RCTC and Santa Fe dated as of October 30, 1992 and any subsequent amendments thereto.

15. Indemnity. STATE shall at all times indemnify and save harmless RCTC and its subsidiaries, officials, officers, employees, agents, contractors, successors and assigns (the "**Indemnitees**") against and pay in full all losses, damages, or expenses that the Indemnitees may sustain, incur or become liable for, resulting in any manner from the installation, construction, operation, maintenance, repair, reconstruction, alteration, removal, condition, use or presence of the Facility or the use and maintenance of the Licensed Property by the STATE, STATE's Parties or any person or entity claiming, using or occupying the Licensed Property by, under or through STATE, or anyone directly or indirectly employed by or for whose acts STATE is liable, 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 RCTC's tracks. It is the intention of the Parties that RCTC's right to indemnity hereunder shall be valid and

enforceable against STATE regardless of negligence (whether active or passive) on the part of the Indemnitees, unless such injury is a result of the sole negligence of RCTC.

16. Assumption of Risk and Waiver. To the maximum extent allowed by law, STATE assumes any and all risk of loss, damage or injury of any kind to any person or property, including without limitation, the Facility or appurtenances, if any, the RCTC Property and any other property of, or under the control or custody of, STATE, which is on or near the Facility and the railroad tracks owned or managed by RCTC. STATE'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 RCTC's transit operations on or near the Licensed Property, if applicable. The term "RCTC" as used in this Section shall include: (i) any transit or rail-related company operating upon or over RCTC's tracks or other property, and (ii) any other persons or companies employed, retained or engaged by RCTC. STATE, on behalf of itself and its Personnel, as a material part of the consideration for this Agreement, hereby waives all claims and demands against RCTC for any such loss, damage or injury of STATE and/or its Personnel. In that connection, STATE 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 or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The provisions of this Section and of Sections 6.B, 18 and 20 shall survive the termination of this Agreement. As used in this Section, "Personnel" means the STATE, or its officers, directors, affiliates, or anyone directly or indirectly employed by STATE or for whose acts STATE is liable.

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

18. 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 attorneys' fees and costs.

19. 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 RCTC and STATE to the same extent and effect as the same are binding upon and inure to the benefit of the Parties hereto.

20. Survival of Obligations. All obligations of STATE 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 Facility and the RCTC Property.

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

22. Waiver of Covenants or Conditions. The waiver by RCTC 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.

23. Amendment. This Agreement may be amended at any time by the written agreement of RCTC and STATE. 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.

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

25. Abandonment. Should STATE at anytime abandon the Facility 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 RCTC may terminate this Agreement to the extent of the portion so abandoned or discontinued. In addition to any other rights or remedies, RCTC shall immediately be entitled to exclusive possession and ownership of the portion so abandoned or discontinued, without the encumbrance of this Agreement or any license granted herein. STATE may abandon the Facility, or any portion thereof, in place subject to the RCTC's prior written approval if RCTC determines in its sole and absolute discretion that the abandoned Facility does not conflict with an existing or proposed project or RCTC's use of the RCTC Property. Should STATE abandon the Facility, or any portion thereof, STATE shall provide RCTC with any documentation RCTC deems necessary for said abandonment, which may include, but not be limited to, a certificate of abandonment. RCTC shall have no obligation to permit the Facility to be abandoned in place or relocated to any other location on the RCTC Property.

26. Revocable Licenses and Termination. STATE agrees that notwithstanding the improvements made by STATE to the Licensed Property or the installation of the Facility, or other sums expended by STATE in furtherance of this Agreement, the license granted herein is revocable and may be terminated by RCTC in accordance with the terms of this Agreement.

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

28. Notice. Any notice hereunder to be given by RCTC to STATE shall be deemed to be properly served on the date it is deposited in the United States Mail, postage prepaid, addressed to such party at its address set forth in the Basic License Provisions. Either RCTC or STATE may change its address for the receipt of notice by giving written notice thereof to the other party of such change. Notices shall be effective on the date delivered to custody of the U.S. Postal Service.

29. Interest on Past-due Obligations. Except as expressly herein provided, any amount due to RCTC 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 RCTC as it accrues. Payment of such interest shall not excuse or cure any default by STATE under this Agreement, provided, however, that interest shall not be payable on late charges incurred by STATE.

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

31. Nondiscrimination. STATE 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 Facility 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.

32. Taxes. STATE 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 Facility, the Licensed Property and/or any personal property, fixtures or equipment of STATE used in connection therewith or (b) as a result of the Facility's operations.

33. Liens. STATE will fully and promptly pay for all materials whether or not joined or affixed to the Facility or the Licensed Property, and fully and promptly pay all persons who perform labor whether or not upon said Facility or the Licensed Property. STATE shall not suffer or permit to be filed or enforced against the RCTC Property or the Facility, 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 or work, or out of any other claim or demand of any kind. STATE shall pay or cause to be paid all such liens, claims or demands, including sums due with respect to stop notices, together with attorneys' fees incurred by RCTC with respect thereto, within ten (10) business days after notice thereof and shall indemnify, hold harmless and defend RCTC from all obligations and claims made against RCTC for and with respect to the above described work, including attorneys' fees. STATE shall furnish evidence of payment upon request of RCTC. STATE may contest any lien, claim or demand by furnishing a statutory lien bond or equivalent with respect to stop notices to RCTC in compliance with applicable California law. If STATE does not discharge any mechanic's lien or stop notice for works performed for STATE, RCTC shall have the right to discharge same (including by paying the claimant) and STATE shall reimburse RCTC for the cost of such discharge within ten (10) business days after billing. RCTC reserves the right at any time to post and maintain on the RCTC Property such notices as may be necessary to protect RCTC against liability for all such liens and claims. The provisions of this Section shall survive the termination of this Agreement.

34. Non-Exclusive License. The license granted by this Agreement is not exclusive and RCTC specifically reserves the right to grant other licenses within the vicinity of the Facility.

35. Counterparts; Facsimile Signatures. This Right of Entry may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures shall be considered original signatures.

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.

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.

38. Time of Essence. Time is of the essence in this Agreement.
39. No Recording. STATE shall not record or permit to be recorded in the official records of the county where the Licensed Property or Facility is located any memorandum of this Agreement or any other document giving notice of the existence of this Agreement or the license granted hereby.
40. Entire Agreement. This Agreement and the Exhibits hereto constitute the entire agreement between the RCTC and STATE 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.
41. Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE
TO
LICENSE AGREEMENT NO. 15-33-109-00**

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

**RIVERSIDE COUNTY TRANSPORTATION
COMMISSION**

By: 
Anne Mayer, Executive Director

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

By: 

Name: René Fletcher

Title: Acting Deputy District Director
Right of Way

APPROVED AS TO FORM:

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

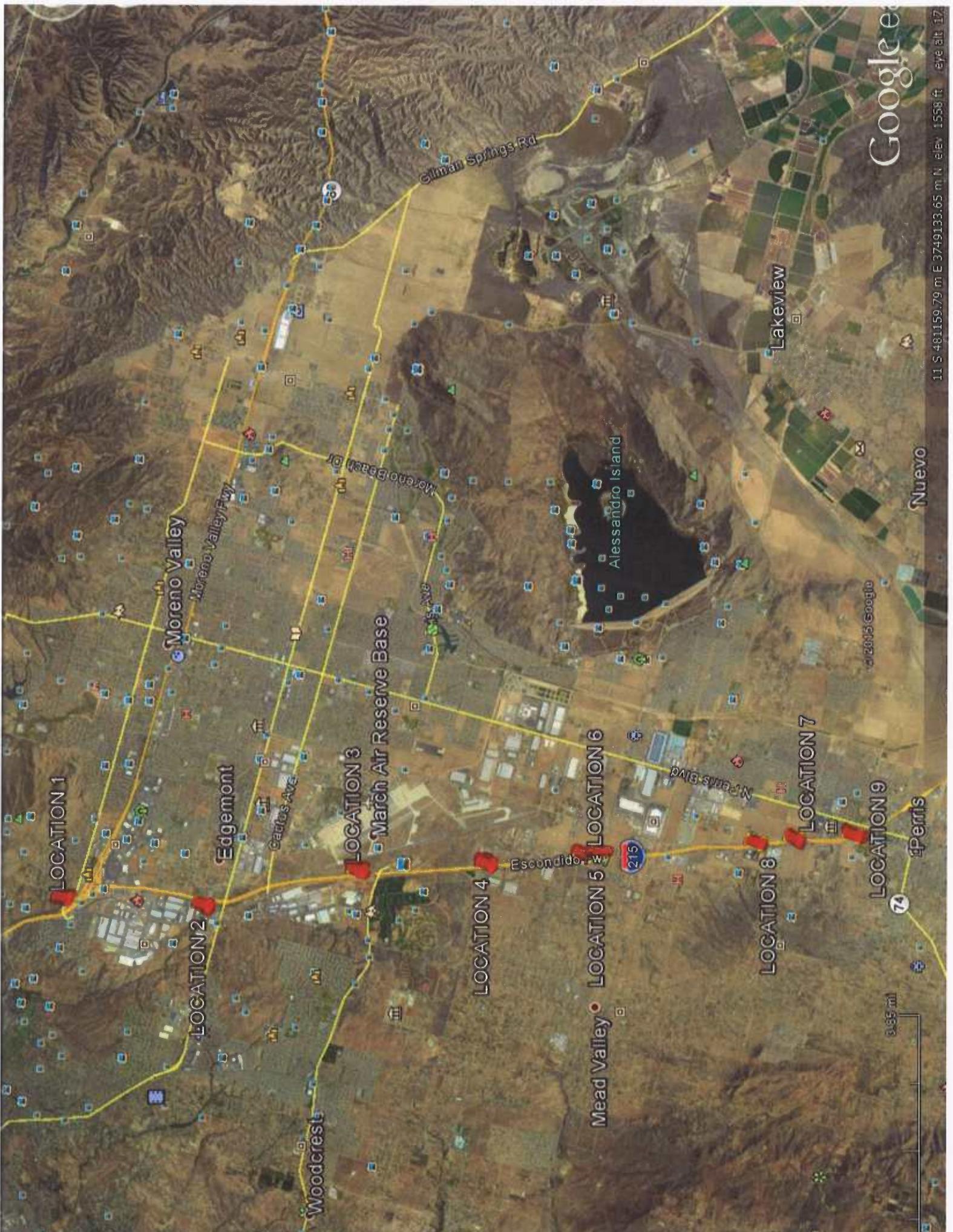
EXHIBIT "A"

DESCRIPTION AND DEPICTION OF LICENSED PROPERTY

1. NE quadrant of I-215 SB/SR-60 EB overhead truck bypass
2. NE quadrant of Alessandro Blvd. overhead
3. NE quadrant of Van Buren Blvd. overhead
4. NE quadrant of Oleander Ave. overhead
5. NE quadrant of Cajalco Expy. overhead
6. Approx 1000' south of Cajalco Expy
7. Approx 3000' north of Nuevo Rd. overhead
8. SE quadrant of Nuevo Rd. overhead
9. I-215/D St. offramp

The Licensed Property is depicted on the map attached behind this page.

Exhibit "A"



LOCATION 1

LOCATION 2

LOCATION 3

LOCATION 4

LOCATION 5

LOCATION 8

LOCATION 7

LOCATION 9

Moreno Valley

Edgemont

March Air Reserve Base

Mead Valley

Alessandro Island

Lakeview

Perris

Nuevo

Calman Springs Rd

Moreno Valley Fwy

Moreno Beach Dr

Escondido

N. Paines Blvd

Caule's Ave

Woodcrest

3.85 mi

Google

11 S 481159.79 m E 3749133.65 m N elev 1558 ft epe alt 17

EXHIBIT "B"

HAZARDOUS MATERIALS ALLOWANCES

The Parties acknowledge and agree that RCTC is not providing an exception for any Hazardous Material. As such, STATE shall not cause or permit, or allow any of STATE's Parties to cause or permit, any Hazardous Materials to be brought upon, stored, used, generated, handled, transported, treated or disposed of on or about the RCTC Property.

Exhibit "B"

EXHIBIT "C"

INSURANCE REQUIREMENTS

STATE is self insured and maintains, and shall maintain for the term of this Agreement, coverage greater to or equivalent with the requirements herein. STATE shall require any consultant or contractor of STATE ("STATE Contractor") entering the Licensed Property on its behalf to obtain insurance of the types and in the amounts described below and satisfactory to RCTC, and to comply with the requirements herein.

A. Commercial General Liability Insurance. STATE Contractor shall maintain occurrence version commercial general liability insurance or equivalent form with a combined single limit of not less than **\$2,000,000** 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 include coverage for, but not be limited to: (i) bodily injury and property damage; (ii) personal injury and advertising injury; (iii) fire legal liability; and (iv) products and completed operations. Such insurance policy or policy endorsement shall:

1. Include the RCTC, its officials, officers, employees, agents, and consultants as additional insureds with respect to the Licensed Property and STATE Contractor's installation, construction, operation, maintenance, repair, reconstruction, alteration, removal or any other work that STATE Contractor undertakes with respect to the Facility.
2. Not contain special limitations on the scope of coverage or the protection afforded to RCTC, its officials, officers, employees, agents and consultants as additional insureds.
3. Be primary with respect to any insurance or self-insurance programs covering RCTC, its officials, officers, employees, agents and consultants.
4. Contain standard separation of insured provisions.
5. Contain a waiver of subrogation that waives any right the insurer has against RCTC for any claims or suits.
6. Not include any restrictions related to indemnity for work performed within fifty (50) feet of RCTC's railroad right-of-way/tracks.

B. Railroad Protective Liability. STATE Contractor shall, if required by RCTC in connection with the Licensed Property and STATE Contractor's installation, construction, operation, maintenance, repair, reconstruction, alteration, removal or any other work that

STATE Contractor undertakes with respect to the Facility, acquire and keep in force during the period of such activities **\$3,000,000** (combined single limit)/ **\$6,000,000** (aggregate limit) of railroad protective liability insurance naming only RCTC as the insured. If STATE is self performing any work on the Licensed Property, and does not carry the coverage provided for in this Subsection (B), if required by RCTC, STATE shall comply with the requirements for railroad protective liability insurance as set forth herein.

C. Automobile Liability. STATE Contractor shall acquire and maintain during the period of the Project, automobile liability with a combined single limit of one million dollars (\$1,000,000).

D. Workers' Compensation Insurance. STATE Contractor 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. STATE Contractor shall, prior to (i) entering the Licensed Property or (ii) performing any installation, construction, operation, maintenance, repair, reconstruction, alteration, removal or any other work that STATE Contractor undertakes with respect to the Facility, furnish RCTC with properly executed certificates of insurance and, if requested by RCTC, certified copies of endorsements and policies, which clearly evidence all insurance required under this Agreement and provide that such insurance shall not be canceled, allowed to expire or be materially reduced in coverage, except on thirty (30) days' prior written notice to RCTC. RCTC shall have the sole discretion to determine whether the certificates and endorsements presented comply with the provisions of this Agreement.

F. Coverage Maintenance. STATE Contractor shall replace certificates, policies, and endorsements for any insurance expiring prior to the termination of work by STATE Contractor hereunder.

H. Licensed Insurer. STATE Contractor 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.

MEMORANDUM OF UNDERSTANDING

FIBER OPTIC CABLE AGREEMENT

{ **STATE OF CALIFORNIA**
{ **Department of Transportation**
{ **District 8**

PARTIES TO AGREEMENT

AND

{ **Riverside County Transportation**
Commission

WHEREAS, the Department of Transportation of the State of California, hereinafter referred to as "**STATE**", has developed the Transportation Management Center (**TMC**) for the purpose of developing an optimum system of freeway traffic flow monitoring, traffic management service, and advisory information intended to provide a minimum of delay and inconvenience to the traveler confronted with traffic congestion; and

WHEREAS, – the **STATE** desires to avail itself of fiber optic strands from the fiber optic backbone on the Perris Valley Line Commuter Rail extension and would like to use these fiber optic strands as part of the communication backbone serving the **TMC**; and

WHEREAS, **STATE**, as part of its Advanced Traffic Management System (**ATMS**) Program, monitors freeway conditions in and around the Inland Empire, and has provided for methods of information gathering by means of an electronic surveillance system which utilizes electronic loop detectors placed in the pavement, and by means of a Closed Circuit Television (**CCTV**) system which utilizes cameras mounted along the freeways; and

WHEREAS, the traffic information from the loop detectors and the video from the cameras is transmitted via a fiber optic network to a central location within the **TMC**; and

WHEREAS, it is intended that the information be communicated to the public in order to alert them of traffic congestion; and

WHEREAS, - **Riverside County Transportation Commission** has requested that the **STATE** provide individual fiber strands from the fiber cable backbone; and

WHEREAS, -**Riverside County Transportation Commission hereinafter** referred to as **RCTC**, desires to avail itself of fiber optic strands from the fiber optic backbone along State Routes 60 ,91and Interstate 215 operated by the **STATE** and would like to use these fiber optic strands as part of the **RCTC** Metrolink Station Video surveillance program; and

NOW, THEREFORE, the parties hereto agree as follows:

Article I- Obligation of STATE

- A. Connect state-owned fiber optic cable to a maximum of nine (9) fiber optic strands within the **RCTC** fiber optic cable at the following locations:
1. NE quadrant of I-215 SB/SR-60 EB overhead truck bypass
 2. NE quadrant of Alessandro Blvd. overhead
 3. NE quadrant of Van Buren Blvd. overhead
 4. NE quadrant of Oleander Ave. overhead
 5. NE quadrant of Cajalco Expy. overhead
 6. Approx 1000' south of Cajalco Expy
 7. Approx 3000' north of Nuevo Rd. overhead
 8. SE quadrant of Nuevo Rd. overhead
 9. I-215/D St. offramp
- B. Pay all installation costs to connect the **STATE** fiber to the **RCTC** fiber backbone.

- C. Isolate **STATE** fibers from **RCTC** fiber backbone by installing demarcation points outside of **RCTC** Right of Way. The connection point shall include a cabinet enclosure, Fiber Distribution Unit, Fiber Jumpers and all other equipment needed to install the connection point.
- D. Should any of **STATE** transmitting equipment impact the **RCTC's** operation in any way, **STATE** shall as soon as possible, take reasonable steps to remedy the situation in a manner satisfactory to the **RCTC**.
- E. Provide up to 16 fiber optic strands to **RCTC** between the I-215 SB/SR-60 EB overpass truck bypass and the Downtown Riverside station.
- F. Install necessary jumpers in each communication hub to create a link from the I-215 SB/SR-60 EB overpass truck bypass to the Downtown Riverside station for up to 16 fiber optic strands.
- G. **STATE** will continue to maintain and monitor the fiber optic backbone, as resource levels permit. The fiber optic cable is exposed to construction activities and vandalism. **STATE** will make reasonable efforts to keep the fiber optic system operational at all times, but does not guarantee its availability.
- H. **STATE** will allow **RCTC** to utilize the existing fiber optic strands as long as they are not needed for a higher priority activity, as determined by the **STATE**.
- I. If **STATE** determines that it is necessary to terminate this agreement for any reason it can do so by giving **RCTC** a 30 day written notice.

Article II - Obligation of RCTC

- A. Connect **RCTC**-owned fiber optic cable to a maximum of twenty-four (24) fiber optic strands within **STATE's** fiber optic cable at the I-215 SB/SR-60 EB overpass truck bypass.
- B. Provide, at no cost to the **STATE**, the necessary fiber optic communication equipment between the Metrolink stations and the fiber optic backbone.
- C. Pay all installation costs to connect the **RCTC** fiber to **STATE** fiber backbone.
- D. **RCTC** to provide 8 fiber optic strands to **STATE** between the I-215 SB/SR-60 EB overpass truck bypass and the D St. off ramp.

- E. Provide **STATE** access to **RCTC** Right of Way in accordance with that certain License Agreement, **RCTC** Agreement No. 15-33-109-00, executed by **STATE** and **RCTC** of even date herewith, and on file at the offices of the parties.
- F. Should any of **RCTC** transmitting equipment impact the **STATE's** operation in any way, **RCTC** shall as soon as possible, take reasonable steps to remedy the situation in a manner satisfactory to the **STATE**.
- G. **RCTC** will continue to maintain and monitor the fiber optic backbone, as resource levels permit. The fiber optic cable is exposed to construction activities and vandalism. **RCTC** will make reasonable efforts to keep the fiber optic system operational at all times, but does not guarantee its availability.
- J. **RCTC** will allow **STATE** to utilize the existing fiber optic strands as long as they are not needed for a higher priority activity, as determined by the **RCTC**.
- K. If **RCTC** determines that it is necessary to terminate this agreement for any reason it can do so by giving **STATE** a 30 day written notice.

Article III - Mutual Obligations of the Parties

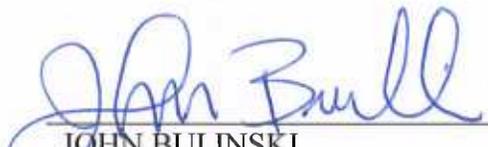
- A. **STATE** coordinator shall be the Senior Transportation Electrical Engineer – Transportation Management Systems (**TMS**) located at the Inland Empire Transportation Management Center.
- B. For purposes of coordination, **RCTC** shall designate a coordinator with whom the Engineer may communicate on matters affecting this agreement. **RCTC** shall keep **STATE** informed of any change in the status of the coordinator.
- C. This agreement shall commence on the final signature date below and will remain in effect until the communication link is no longer needed or until superseded by another agreement. It may, however, be terminated by the parties hereto upon 30 days written notice by either party whereupon all equipment and communications hardware owned by each agency will be removed from the respective Right of Way's by the owner at the owner's expense within 60 days.
- D. This agreement is not transferable except upon written approval of both parties hereto.

- E. **STATE** shall have no liability to **RCTC** by reason of the information provided or for the termination of the agreement and removal of the equipment provided, in accordance with the terms hereof.
- F. **RCTC** shall have no liability to **STATE** by reason of the information provided or for the termination of the agreement and removal of the equipment provided, in accordance with the terms hereof.
- G. **RCTC** agrees to indemnify and save harmless and defend the State of California and all agents thereof from all claims, suits or actions of every name, kind and description, brought forth, or on account of, injuries to or death of any person including claims based on a theory of negligent infliction of emotional distress resulting from **RCTC** airing the video from the Closed Circuit Television Cameras to the public.
- H. **STATE** agrees to indemnify and save harmless and defend the **RCTC** and all agents thereof from all claims, suits or actions of every name, kind and description, brought forth, or on account of, injuries to or death of any person including claims based on a theory of negligent infliction of emotional distress resulting from **STATE** airing the video from the Closed Circuit Television Cameras to the public.
- I. If for any reason any of the terms of this agreement are violated by either the **STATE** or **RCTC**, the other party shall have the option to renegotiate or terminate, with 30 days written notice, this agreement.

IN WITNESS WHEREOF, this agreement has been executed by the parties hereto upon the date as shown below.

STATE OF CALIFORNIA
Department of Transportation

**Riverside County Transportation
Commission**

BY: 
JOHN BULINSKI
Interim District 8 Director

BY: 
ANNE E. MAYER
Executive Director

DATED: 6/23/15

DATED: 6/24/15

Memorandum

*Serious drought.
Help Save Water!*

To: **GEORGE MORHIG, Chief**
Dist.-Office of Office Engineer

Date: September 22, 2015

File: 08-RIV-215-PM-R8.4/R38.8

EA: 0G7801

Project ID: 0814000173

Project Description: Install Fiber Optic
Communication System

From:  **DAVID BUZON, Chief**
Right of Way Railroad Coordinator
District 8

Subject: Railroad Clearance

We have reviewed the plans for the above-referenced project, and determined that the work does require coordination with the Railroad for the work identified within the project limits, at the following location.

SCRRA (Metrolink) OH BR 56.175 PM R23.05

The work that will be required by the Railroad is Flagging & Inspection work, and the project does require Railroad Protective Insurance. SCRRA (Metrolink) has approved the plans for 0G7801 under their number SCRRA Project #: 881308. The following items will be required:

Completed SCRRA Form 6 along with Insurance Certificates meeting SCRRA Parameters of Coverage (see attached SCRRA Form 6 for application and SCRRA Form 6 – Exhibit for Ins. Req.)

Deposit to cover:

- o SCRRA's \$1,200.00 – Contingency Fee
- o \$1,200.00 for 1-day (up to 8-hrs. a day, including Travel Time for the (EIC) Flagger, Monday – Friday during normal business hours.) of (EIC) Flagging Services (if more than 1-day of EIC-Flagging Services will be needed add an additional \$1,200 for each day Flagging will be required. Additionally a railroad flagmen, EIC, is required to be present when any work is conducted on railway property, when men or equipment have the potential to foul the railroad tracks or when within 20ft of the nearest rail)
- o \$500.00 for 3rd Party Safety Training

The check should be made out to SCRRA or METROLINK, referencing SCRRA Project #: 881308 and should be sent in, along with the completed SCRRA Form 6 and Insurance via FED EX to:

Southern California Regional Rail Authority (SCRRA)
ATTN: Christos Sourmelis – ROW Encroachments Coordinator
2558 Supply St.
Pomona, CA 91767

Once SCRRA gets the above mentioned, they will advise their Finance Dept. to UPDATE the project budget. Once that is done, the process will move forward in executing the ROE Permit, Form 6, permit allowing them to schedule (EIC) Flagging Services, 3rd Party Safety Training, etc.

Section 5-1.20C Short Clause has been prepared for insertion into the Project Specifications.

This project is now cleared for advertising in so far as the Railroad, is concerned

The District Railroad Agent will update the District status in PMCS.

Attachment

5-1.20C Railroad Relations

Replace “Reserved” in section 5-1.20C with:

If Contract includes an agreement with a railroad company, the Department makes the provisions of the agreement available in the *Information Handout* in the document titled:”Railroad and Insurance Requirements.” Comply with the provisions.

SCRRA (Metrolink) OH BR 56.175 PM R23.05

The work that will be required by the Railroad is Flagging & Inspection work, and the project does require Railroad Protective Insurance. SCRRA (Metrolink) has approved the plans for OG7801 under their number SCRRA Project #: 881308. The following items will be required:

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**EXHIBIT "A"
INSURANCE REQUIREMENTS FOR RIGHT OF ENTRY AGREEMENTS**

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to Right-of-Way, which may arise from or in connection with the performance of the work by the Contractor, his agents, representatives, employees or subcontractors.

1. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- Insurance Services Office form No. CA 0001 (Ed. 1/87) covering Auto. Liability, code 1(any auto).
- Worker's Compensation insurance as required by the State of CA. & Employer's Liability Insurance.
- Course of Construction insurance form providing coverage for "all risks" of loss.
- Property insurance against all risks of loss to any tenant improvements or betterment.
- Contractor's Pollution Liability

2. Minimum Limits of Insurance

Contractor shall maintain limits no less than:

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

3. Certificate Holder/Additional Insured

Certificate holder and/or insured will be the following:

Southern California Regional Rail Authority (SCRRA)

Additionally Insured will be the following:

Los Angeles County Metropolitan Trans. Auth. (MTA)
Orange County Transportation Authority (OCTA)
Riverside County Transportation Commission (RCTC)
San Bernardino Associated Government (SANBAG)
Ventura County Transportation Commission (VCTC)

Burlington Northern Santa Fe Corp. (BNSF)
Union Pacific Railroad Company (UPRR)
National Railroad Passenger Corp. (AMTRAK)

4. Railroad Protective Liability Insurance

- Railroad Protective Liability Insurance

The Contractor shall provide, with respect to the operations they or any of their subcontractors perform on the Right-of-Way, Railroad Protective Liability Insurance, AAR-AASHTO (ISO/RIMA) in the name of the SCRRA with additional insured specified in Section 3 above.

The policy shall have limits of liability of not less than **\$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 coverage is provided 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.

For certain low-hazard activity, Contractor may request that the SCRRA and Member Agency waive the requirement to provide the Railroad Protective Liability Insurance. 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 that they are not permitted to have any contact with the track, the Railroad Protective Liability Insurance requirement may be waived by SCRRA's Manager Public Projects or his/her designated representative.

5. **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by SCRRA and Member Agency. At the option of SCRRA, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects SCRRA and Member Agency, its officials and employees or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

6. **Other Insurance Provisions**

The General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

- A. SCRRA and Member Agency, its subsidiaries, officials and employees are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; premises owned, occupied or used by the Contractor, or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to SCRRA and Member Agency, its subsidiaries, officials and employees.
- B. For any claims related to this work, the Contractor's insurance coverage shall be primary insurance as respects SCRRA and Member Agency, its subsidiaries, officials and employees. Any insurance or self-insurance maintained by SCRRA and Member Agency, its subsidiaries, officials and employees shall be excess of the Contractor'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 SCRRA and Member Agency, its subsidiaries, officials and employees.

- D. The Contractor 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 party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to SCRRRA and/or Member Agency.

Course of Construction policies shall contain the following provisions:

- A. SCRRRA and Member Agency shall be named as loss payee.
- B. The insurer shall waive all rights subrogation against SCRRRA and Member Agency.

7. **Acceptability of Insurers**

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

8. **Verification of Coverage**

Contractor shall furnish SCRRRA with original endorsements evidencing coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by SCRRRA. All endorsements are to be received and approved by SCRRRA before work commences. As an alternative to SCRRRA's forms, the Contractor's insurer may provide complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

9. **Subcontractors**

Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

10. **Train Services**

The train traffic information is available on SCRRRA's website at www.metrolinktrains.com (About Us, Engineering and Construction). The following is the direct link to the file. <http://www.metrolinktrains.com/pdfs/EngineeringConstruction/TrainTrafficDensityExhibitforSCRRASystem.pdf>

11. **Submittal**

The original insurance policy (s) shall be submitted to:

Assistant Director, Standards and Design
Southern California Regional Rail Authority (SCRRRA)
2558 Supply Street
Pomona, CA 91767
Attn: Mr. Christos Sourmelis - ROW Encroachments Coordinator
E-mail: sourmelisc@scrra.net
Office Number: (909) 392-8463

**EXHIBIT "B"
RAILROAD PROTECTIVE LIABILITY POLICY
DECLARATION**

POLICY			
Insurance Company: _____		From: _____ To: _____	
Policy Number: _____		12:01am Standard time at location	
Policy Period: _____			
CERTIFICATE HOLDER AND ADDITIONALLY INSURED			
Certificate Holder/Insured:			
Southern California Regional Rail Authority (SCRRA) 2558 Supply Street, Pomona, CA 91767			
Additionally Insured:			
Los Angeles County Metropolitan Transportation Authority (MTA)	Burlington Northern Santa Fe Corporation (BNSF)		
Orange County Transportation Authority (OCTA)	Union Pacific Railroad Company (UPRR)		
Riverside County Transportation Commission (RCTC)	National Railroad Passenger Corp. (AMTRAK)		
San Bernardino Associated Governments (SANBAG)			
Ventura County Transportation Commission (VCTC)			
LIMITS OF INSURANCE			
Aggregate Limit	\$6,000,000	Each Occurrence Limit	\$2,000,000
DESCRIPTION OF WORK AND JOB LOCATION(S)			
NAME AND ADDRESS OF DESIGNATED CONTRACTOR			
NAME AND ADDRESS OF INVOLVED GOVERNMENT AUTHORITY OR OTHER CONTRACTING PARTY			
PREMIUM			
Contract Cost	_____	Rate per 1,000 of	_____
Premium Base	_____	Advance Premium	_____
FORM OF ENDORSEMENT			
<u>Title</u>		<u>Number</u>	
COUNTERSIGNATURE			
Countersigned by	_____	Date	_____
	<i>(Authorized Representative)</i>		

EXHIBIT "B"

CERTIFICATE OF INSURANCE Southern California Regional Rail Authority (SCRRA)					ISSUE DATE (MM/DD/YY)	
PRODUCER			THIS CERTIFICATE OF INSURANCE IS NOT AN INSURANCE POLICY AND DOES NOT AMEND, EXTEND OR ALTER THIS COVERAGE AFFORDED BY THE POLICY BELOW. COMPANIES AFFORDING COVERAGE COMPANY A LETTER COMPANY B LETTER COMPANY C LETTER COMPANY D LETTER COMPANY E LETTER			
INSURED						
COVERAGES THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENTS, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR. <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT. <input type="checkbox"/> OTHER _____				GENERAL AGGREGATE PRODUCTS-COMP/OP AGG. \$ PERSONAL & ADV. INJURY \$ EACH OCCURRENCE \$ FIRE DAMAGE (Any one fire) \$ MED. EXPENSE \$ (Any one person)	
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTO <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> GARAGE LIABILITY				COMBINED SINGLE LIMIT \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$	
	EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$	
	PROPERTY INSURANCE <input type="checkbox"/> COURSE OF CONSTRUCTION				AMOUNT OF INSURANCE \$	
	WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY				STATUARY LIMITS EACH ACCIDENT \$ DISEASE-POLICY LIMIT \$ DISEASE-EACH EMPLOYEE \$	
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS						
THE FOLLOWING PROVISIONS APPLY: 1. None of the above-described policies will be canceled, limited in scope of coverage or nonrenewed until after 30 days' written notice has been given to SCRRA at the address indicated below. 2. As respects operations of the named Insured performed on behalf of SCRRA, the following are added as additional Insured on all liability insurance policies listed above: SCRRA, its Member Agencies, Operating Railroads, its subsidiaries, officials and employees. 3. It is agreed that any insurance of self-insurance maintained by SCRRA will apply in excess of and not contribute with, the insurance described above. 4. SCRRA is named a loss payee on the property insurance policies described above, if any. 5. All rights of subrogation under the property insurance policy listed above have been waived against SCRRA. 6. Any failure by the insured to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to SCRRA, its Member Agencies, its subsidiaries, officials and employees. 7. The worker's compensation insurer named above, if any, agrees to waive all rights of subrogation against SCRRA for injuries to employees of the insured resulting from work for SCRRA or use of Member Agencies premises or facilities.						
CERTIFICATE HOLDER Southern California Regional Rail Authority (SCRRA) 2558 Supply Street, Pomona, CA 91767 ADDITIONAL INSURED MTA, OCTA, RCTC, SANBAG, VCTC, BNSF, UPRR, AMTRAK				AUTHORIZED REPRESENTATIVE SIGNATURE _____ TITLE _____ PHONE NO. _____		

TEMPORARY RIGHT-OF-ENTRY AGREEMENT

SCRRA FORM NO. 6

SCRRA File No.	
SCRRA Project/Task No.	
Subdivision	
Mile Post	
Thomas Guide Location	

This Temporary Right-of-Entry Agreement (“Agreement”) is between the Southern California Regional Rail Authority (hereinafter referred to as “SCRRA”) and _____ (hereinafter referred to as "Contractor"). This Agreement is for entry upon, over and under SCRRA and Member Agency Right-of-Way (“Right-of-Way”) at or near _____ in the City of _____ or in the Unincorporated County of _____ (as such location is more specifically identified above) for the purpose of _____ (as shown on attached drawings).

1. Definitions

- A. Contractor is an individual, firm, partnership or corporation or combination thereof, private, municipal or public, including joint ventures, which are referred to throughout this document by singular number and masculine gender. For purposes of this agreement, Contractor also includes any subcontractor, supplier, agent or other individual entering the Right-of-Way during performance of work.
- B. Indemnitees are SCRRA, Member Agencies and Operating Railroad and their respective officers, commissioners, employees, agents, successors and assigns.
- C. Operating Railroad is/are any specific passenger or freight-related railroad company(s) validly operating on SCRRA and Member Agency track(s). Operating Railroads are any combination(s) of the SCRRA (METROLINK), the National Railroad Passenger Corporation (AMTRAK), the Union Pacific Railroad Company (UPRR) and the BNSF Railway Company.
- D. Right-of-Way is defined herein to mean the real and/or personal property of SCRRA and/or Member Agencies.
- E. SCRRA is a five-county joint powers authority, created pursuant to State of California Public Utilities Code Section 130255 and California Government Code Section 6500 et seq., to build and operate the “Metrolink” commuter train system in the five-county area on rail rights-of-ways owned by the Member Agencies. The five-county Member Agencies (“Member Agency”) are comprised of the following: Los Angeles County Metropolitan

Transportation Authority (MTA), Ventura County Transportation Commission (VCTC), Orange County Transportation Authority (OCTA), San Bernardino Associated Governments (SANBAG), and Riverside County Transportation Commission (RCTC).

- F. SCRRA Employee-In-Charge (EIC) is a Southern California Regional Rail Authority employee or contractor (SCRRA General Code of Operating Rules and Territory Qualified) providing warning to Public Agency or Contractor personnel of approaching trains or on track equipment and who has the authority to halt work and to remove personnel from the Right-of-Way to assure safe work.
- G. SCRRA Safety Trainer is a qualified SCRRA employee or contracted employee (SCRRA General Code of Operating Rules qualified) as authorized by the SCRRA Director of Engineering and Construction to provide Contractor training.

2. **References**

When working on the Right-of-Way, the Contractor must comply with the rules and regulations contained in the current editions of the following documents which are "references" incorporated in this document as if they were set out in full in this paragraph. The Contractor, by its signature on this Agreement, acknowledges receipt of these documents and agrees to abide by said rules and regulations at all times when on the Right-of-Way. The documents are available on SCRRA's website at www.metrolinktrains.com (About Us, Engineering and Construction)

- A. Rules and Requirements for Construction on SCRRA Property, SCRRA Form No. 37.
- B. General Safety Regulations for Third Party Construction and Utility Workers on SCRRA Property.

3. **Entry onto Right-of-Way**

No verbal approvals will be granted. The Contractor shall not enter onto the Right-of-Way unless Contractor has arranged for SCRRA safety training as well as protective services (EIC and/or other protective services to be determined by SCRRA) and has paid all charges and fees. A fully executed copy of this Form 6 must be in the possession of the contractor at the job site and must be produced by Contractor upon request by SCRRA, a law enforcement officer or Member Agency's representative. If said Agreement is not produced, SCRRA has the right to suspend work in the Right-of-Way until Contractor demonstrates possession of Agreement at the job site.

4. **Termination of Agreement**

SCRRA or Member Agency reserves the right to terminate or revoke this temporary Agreement at any time upon two hours notice; however, in the event of an unsafe condition on the Right-of-Way, SCRRA shall have the right to terminate this Agreement immediately, without any advanced notice. Unless subsequently modified, extended, terminated or revoked by SCRRA, this temporary Agreement shall extend until access to the Right-of-Way is no longer necessary. In any event, however, the Agreement shall be automatically terminated if or when the insurance that the Contractor is required to maintain hereunder lapses or expires. The Contractor agrees to return the Right-of-Way to a condition substantially the same as before work, including replacement, repair, or reinstallation of railroad signs and property.

Railroad signs include but are not limited to "No Trespassing", "Speed Limit", "Milepost", "Whistle", "Station Stop" and "Fiber Optics". The Contractor agrees to notify SCRRA, in writing and orally, when use of the Right-of-Way or work is completed. The Contractor shall also complete and return the Confirmation of Completion form. Under no circumstances shall the temporary right of entry provided for under this Agreement be construed as granting to the Contractor or its Subcontractors and agents any right, title or interest of any kind or character in, on or about any Right-of-Way

At the request of SCRRA or Member Agency, Contractor shall remove from the Right-of-Way any employee or other individual who has not completed safety training or otherwise fails to conform to the instructions of SCRRA's or Member Agency's representative in connection with work on the Right-of-Way. Any right of Contractor to enter upon the Right-of-Way shall be suspended until such request of SCRRA or Member Agency is met. Contractor shall defend, indemnify and hold harmless SCRRA and Member Agency against any claim arising from the removal of any such employee or other individual from the Right-of-Way.

5. **Indemnification**

Contractor, on behalf of itself and its employees, subcontractors, agents, successors and assigns, agrees to indemnify, defend, by counsel satisfactory to SCRRA and Member Agency, and hold harmless "Indemnitees", and each of them to the maximum extent allowed by law, from and against all loss, liability, claims, demands, suits, liens, claims of lien, damages (including incidental consequential damages), costs and expenses (including, without limitation, any fines, penalties, judgments, actual litigation expenses and experts' and actual attorneys' fees), that are incurred by or asserted against Indemnitees arising out of or connected in any manner with (i) the acts or omissions of the Contractor or its officers, directors, affiliates, subcontractors or agents or anyone directly or indirectly employed by them or for whose acts the foregoing persons are liable (collectively, "Personnel") in connection with or arising from the presence upon or performance of activities by the Contractor or its Personnel with respect to the Right-of-Way, (ii) bodily and/or personal injury or death of any person (including without limitation employees of Indemnitees) or damage to or loss of use of Right-of-Way resulting from such acts or omissions of the Contractor or its Personnel or (iii) non-performance or breach by Contractor or its Personnel of any term or condition of this Agreement, in each case whether occurring during the term of this Agreement or thereafter.

The foregoing indemnity shall be effective regardless of any negligence (whether active, passive, derivative, joint, concurrent or comparative) on the part of Indemnitees, unless caused by the sole 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 Agreement.

Claims against the Indemnitees by the Contractor or its Personnel shall not limit the Contractor's indemnification obligations hereunder in any way, whether or not such claims against Indemnitees may result in any limitation of the amount or type of damages, compensation or benefits payable by or for the Contractor or its Personnel under workers' compensation acts, disability benefit acts or other employee benefit acts or insurance.

The provisions of this section shall survive the termination or expiration of this Agreement.

6. **Assumption of Liability**

To the maximum extent allowed by law, the Contractor releases Indemnitees from and

assumes any and all risk of loss, damage or injury of any kind to any person or property, including without limitation, the Right-of-Way and any other property of or under the control or custody of, the Contractor or its personnel in connection with any acts undertaken under or in connection with this Agreement. The Contractor's assumption of risk shall include, without limitation, loss or damage caused by defects in any structure or improvements (including easement, lease or license agreements for other existing improvements and utilities) on the Right-of-Way, accident or fire or other casualty on the Right-of-Way or electrical discharge, noise or vibration resulting from SCRRA, Member Agency and Operating Railroad transit operations on or near the Right-of-Way and any other persons or companies employed, retained or engaged by SCRRA or Member Agency. The Contractor, on behalf of itself and its Personnel (as defined in Section 5, "Indemnification") as a material part of the consideration for this Agreement, hereby waives all claims and demands against the Indemnitees for any such loss, damage or injury of the Contractor and/or its Personnel. The Contractor 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 or expiration of this Agreement.

7. **Insurance**

The Contractor, at its sole cost and expense, shall obtain and maintain in full force and effect during the term of this Agreement insurance as required by SCRRA or Member Agency in the amounts, coverage, and terms and conditions specified, and issued by insurance companies as described on Exhibit "A". SCRRA or Member Agency reserve the right, throughout the term of this Agreement, to review and change the amount and type of insurance coverage it requires in connection with this Agreement. Prior to entering the Right-of-Way or performing any work or maintenance on the Right-of-Way, the Contractor shall furnish SCRRA with insurance endorsements or certificates in the form of Exhibit "B", evidencing the existence, amounts and coverage of the insurance and signed by a person authorized by the insurer to bind coverage on its behalf. In most instances, SCRRA and Member Agency do not allow self-insurance; however, if the Contractor can demonstrate assets and retention funds meeting SCRRA and Member Agency self-insurance requirements, SCRRA and Member Agency may in SCRRA's sole and absolute discretion permit the Contractor to self-insure. The right to self-insure with respect to any coverage required hereunder may be granted or revoked at the sole and absolute discretion of SCRRA or any Member Agency. SCRRA or Member Agency shall not be liable for the payment of any premiums or assessments for insurance required to be maintained by the Contractor under this Agreement. Contractor affirms that all subcontractors covered by this Agreement are insured to the same limits required of the Contractor or included in Contractor's policy.

Prior to the expiration of any policy, the Contractor shall furnish SCRRA with certificates of renewal or "binders" thereof. Each certificate shall expressly state that such policies shall not be cancelable or otherwise subject to modification except after thirty (30) days prior written notice to SCRRA and Member Agency.

8. **No Assignment**

The Contractor shall not assign this Agreement or any right hereunder without SCRRA's and Member Agency's prior written consent.

9. **Compliance by Contractor**

The Contractor shall take all steps necessary to assure that its subcontractors comply with the terms and conditions of this Agreement and applicable laws and regulations. The Contractor shall assure that no lien is placed against the Right-of-Way arising from performance of work hereunder by Contractor or any subcontractor, and in the event of such a lien, Contractor shall immediately remove or cause to be removed such lien.

10. **Safety and Protective/Flagging Services Notification**

The Contractor and his subcontractors shall be required to attend a SCRRA Safety Orientation Class prior to receiving permission to enter the Right-of-Way. The Contractor shall request SCRRA's consultant/contractor for safety training by calling 1-877-452-0205 to arrange for third party safety training. Allow 72 hours from the request for safety training to arrange the training. Upon completion of safety training and prior to start of work activities, the Contractor shall notify SCRRA's consultant/contractor at (714) 920-9037 a minimum of fifteen (15) working days prior to beginning work on the Right-of-Way and secure any safety EIC services SCRRA deems necessary. This prior notification does not guarantee the availability of on-track safety protection for the proposed date of work. In no event shall SCRRA be liable to Contractor in the event that track safety protection cannot be provided due to force majeure event or for any other reason. SCRRA will advise Contractor as soon as reasonably practicable once it is determined that track safety protection will be unavailable on a proposed date of construction.

11. **SCRRA Safety and Protective Services**

The Contractor must request and arrange for on-track safety protection satisfactory to SCRRA in the following circumstances:

- A. When the Contractor's work activities are within the right-of-way of SCRRA.
- B. When the Contractor's work activities are located over or under a track or tracks.
- C. When cranes, pile drivers, drill rigs, concrete pumps, or similar equipment positioned outside of the right-of-way could foul the track in the event of tip-over or other catastrophic occurrence.
- D. When in the opinion of the SCRRA it is necessary to safeguard the employees, trains, engines and facilities of SCRRA.
- E. When any excavation is performed below the elevation of the track sub-grade, or track or other railroad facilities may be subject to movement or settlement.
- F. When work in any way interferes with the safe operation of trains at timetable speeds.
- G. When any hazard is presented to railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
- H. When clearing, grubbing, grading, or blasting is in proximity to the right-of-way which, in the opinion of SCRRA or representative of an SCRRA Member Agency, may endanger the right-of-way or operations.
- I. When street work and maintenance activities, located within the right-of-way or in the

vicinity of the highway-rail grade crossing, requiring temporary work area traffic control, which may affect or create unsafe conditions for employees, public, trains and vehicles.

The Contractor, and his subcontractors, shall complete SCRRA's Safety Orientation Class, as instructed in Item 10. Upon completion individuals will received a safety sticker which shall be adhered to their hardhat while working on railroad Right-of-Way as proof of completion of safety training.

12. Underground Utilities

Signal, communication, fiber-optic, petroleum, natural gas, electric power and other utilities are present in SCRRA right-of-way. The Contractor shall contact the Southern California Underground Service Alert (DigAlert) at 811 to locate underground utilities. SCRRA is not a member of DigAlert. The Contractor shall call SCRRA at (909) 592-1346 a minimum of five days prior to beginning work to mark SCRRA's signal and communication cables and conduits.

Delays and disruptions to service may cause business interruptions involving loss of revenue and profits, danger to train operations, and release of potentially hazardous or flammable compounds.

13. Reimbursement of Costs and Expenditures

The Contractor agrees to reimburse SCRRA or any Member Agency and/or any Operating Railroad for all cost and expense incurred by SCRRA or Member Agency in connection with work and safety services, including without limitation the expense of engineering plan review, administrative costs to process approvals and agreements, annual overhead rates, safety training, utility markings, and SCRRA EIC and protective services as SCRRA deems necessary. Contractor agrees to reimburse SCRRA for all work related services including but not limited to installation and removal of falsework beneath tracks, restoration of railroad roadbed and tracks, installation of appropriate protective devices, temporary and permanent repairs of signal or communication equipment, restoration of the Right-of-Way to a condition satisfactory to SCRRA's and Member Agency's representative.

The Plan review, administrative, safety training, and utility marking costs and fees paid to SCRRA as a part of the Right-of-Entry are not refundable. Refer to SCRRA's Schedule of Fees for more information.

The Contractor agrees to reimburse SCRRA or any Member Agency actual cost and expense incurred for flagging services and work performed in connection with said work, including annual overhead rates. SCRRA will charge the Contractor four hours minimum for the mandatory safety training class and for other services four hours or less in duration. SCRRA will charge the Contractor for eight hours minimum if the Contractor cancels SCRRA services after SCRRA EIC or SCRRA Safety Training Officer is on site on the day of the appointment.

The Contractor also agrees to reimburse SCRRA, any Member Agency and/or any Operating Railroad for any and all cost and expense incurred as a result of Contractor's work which may result in (i) unscheduled delay to the trains or interference in any manner with the operation of trains, (ii) unscheduled disruption to normal train operation, (iii) unreasonable inconvenience to the public or private user of the system, (iv) loss of revenue and (v) alternative method of transportation for passengers. SCRRA will submit final bills to the Contractor for cost incurred.

SCRRA will provide the cost of all SCRRA services based on Contractor's input. Prior to commencement of work, the Contractor shall provide deposit representing the estimated expense to be incurred by SCRRA and Member Agency in connection with said work. As the work progresses, SCRRA may require additional progress payments as the scope of work changes or becomes clearer. SCRRA may discontinue services to Contractor pending receipt of progress payments. The deposit and progress payments shall be applied to SCRRA's and Member Agency's actual costs and expenditures. The Contractor shall be responsible to pay any amount exceeding the above payments upon receipt of notice or invoice by SCRRA. SCRRA shall exercise its best efforts to provide final invoicing to Contractor within 90 days following completion of the work; however, Contractor acknowledges that it shall be responsible for payment of all expenses incurred by SCRRA and Member Agency in connection with the work even if the final invoicing is provided to Contractor thereafter. Upon completion of all work, any payments in excess of SCRRA's and Member Agency's costs and expenditures shall be returned to the Contractor within a reasonable time.

If the Contractor stop the work in the right-of-way for three months or longer and then plans to resume the work, he/she shall notify SCRRA as per contact information shown in Section 18 prior to resumption of the work.

14. **Temporary Traffic Control**

Temporary traffic control shall be used when a maintenance or construction activity is located on the Right-of-Way or when the activity is located in the vicinity of a highway-rail grade crossing, which could result in queuing of vehicles across the railroad tracks. Temporary traffic control will comply with the current editions of the CA MUTCD, WATCH and SCRRA Engineering Standard ES4301. Refer to SCRRA's "Temporary Traffic Control Guidelines" for further information on definitions, referenced standards, traffic control plans, submittals, traffic control elements and responsibility/authority for temporary traffic control at highway-rail grade crossings. The guidelines provide acceptable alternatives and procedures, which prescribe appropriate temporary traffic control measures at highway-rail grade crossings.

15. **Environmental Health and Safety Plan**

Contractor shall immediately notify SCRRA and the appropriate regulatory agency (ies) of any spill, release, discharge or discovery of any hazardous material or contaminants in, on or under the Right-of-Way. After providing such notice to SCRRA and the appropriate regulatory agency (ies), any contaminated soils or hazardous materials which are spilled, released, discharged or discovered by the Contractor, shall be promptly removed and disposed of by Contractor in accordance with all the applicable laws at Contractor's sole cost and expense. To the extent preexisting contamination or hazardous material, which was not caused or contributed to by Contractor, is discovered or unearthed by Contractor, Contractor shall only be obligated by this provision to removing and disposing of that portion of the contaminated soils or hazardous materials that are unearthed or otherwise disturbed during Contractor's operations. Prior to entry onto the Right-of-Way, Contractor (s) performing trenching, excavations or soil borings may be required by SCRRA to submit a "Hazardous Materials Work Plan." If required, said plan shall include Contractor's site-specific health and safety plan and any other information that SCRRA may require. Contractor shall ensure that all documentation for transportation or disposal of contaminated soils of hazardous materials is prepared in the Contractor's name only and that neither SCRRA nor Member Agency shall have any responsibility or liability therefor. Contractor shall defend and indemnify SCRRA for

any spill, release or discharge of contaminants or hazardous materials by Contractor in connection with activities hereunder in accordance with Section 5 Indemnification.

16. **Warranty for Plan Review**

Review and or approval of the plans and calculations by SCRRA shall not relieve the Contractor of responsibility for full compliance with contract requirements, correctness of design drawings and details, proper fabrication and construction techniques and coordination with other government and private permitting agencies, nor shall such review or approval by SCRRA in any way relieve Contractor from, or otherwise modify, Contractors' indemnity obligations (Section 5) or assumption of liability obligations (Section 6). Execution of this right of entry does not imply design warranty or responsible charge on the part of SCRRA engineering employees. The parties expressly agree that SCRRA makes no warranty of any kind and assumes no responsibility therefor.

17. **Emergency Telephone Numbers**

The Contractor must immediately contact SCRRA in case of accidents, personal injury, defect in track, bridge or signals or any unusual condition that may affect the safe operation of the railroads. The following are SCRRA's emergency numbers:

Signal Emergencies and Grade Crossing Problems	(888) 446-9721
Metrolink Chief Dispatcher	(909) 596-3584 or (888) 446-9715
Metrolink Sheriff's Dispatch Center	(323) 563-5280
Signal and Communications Cable Location	(909) 592-1346

18. **Notices**

Except as otherwise provided in this agreement, all notices, statements, demands, approvals or other communications to be given under or pursuant to this agreement will be in writing, addressed to the parties at their respective addresses as provided below and will be delivered in person or by certified or registered mail, postage paid or by telegraph or cable, charges pre-paid.

SCRRA: Assistant Director, Standards and Design
Southern California Regional Rail Authority (SCRRA)
2558 Supply Street
Pomona, CA 91767
Attn: Mr. Christos Sourmelis - ROW Encroachments Coordinator
E-mail: sourmelisc@scrra.net
Office Number: (909) 392-8463

Contractor: Contractor's address is shown on the next page.

19. **California Law/Venue**

This agreement shall be construed and interpreted in accordance with and governed by the laws of the State of California. Venue shall be located in courts in Los Angeles County.



The Contractor hereby agrees to the terms as set forth in this Agreement and hereby acknowledges receipt of this Agreement and of the insurance certificate forms (Exhibits A & B) herein provided.

(Name of Contractor)

(Signature)

(Address)

(Print Name)

(Title)

(Telephone)

(Contractor's State License No.)

(Fax)

(Email)

Receipt of the foregoing agreement and certificated of insurance furnished by the Contractor are hereby acknowledged on this ____ day of ____ 20 ____.

SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY

By: _____
ROW Encroachments Coordinator

By: _____
Assistant Director, Standards and Design

[Approved As To Form By Legal Counsel]

**EXHIBIT "A"
INSURANCE REQUIREMENTS FOR RIGHT OF ENTRY AGREEMENTS**

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to Right-of-Way, which may arise from or in connection with the performance of the work by the Contractor, his agents, representatives, employees or subcontractors.

1. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- Insurance Services Office form No. CA 0001 (Ed. 1/87) covering Auto. Liability, code 1(any auto).
- Worker's Compensation insurance as required by the State of CA. & Employer's Liability Insurance.
- Course of Construction insurance form providing coverage for "all risks" of loss.
- Property insurance against all risks of loss to any tenant improvements or betterment.
- Contractor's Pollution Liability

2. Minimum Limits of Insurance

Contractor shall maintain limits no less than:

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

3. Certificate Holder/Additional Insured

Certificate holder and/or insured will be the following:

Southern California Regional Rail Authority (SCRRA)

Additionally Insured will be the following:

Los Angeles County Metropolitan Trans. Auth. (MTA)	Burlington Northern Santa Fe Corp. (BNSF)
Orange County Transportation Authority (OCTA)	Union Pacific Railroad Company (UPRR)
Riverside County Transportation Commission (RCTC)	National Railroad Passenger Corp. (AMTRAK)
San Bernardino Associated Government (SANBAG)	
Ventura County Transportation Commission (VCTC)	

4. Railroad Protective Liability Insurance

- Railroad Protective Liability Insurance

The Contractor shall provide, with respect to the operations they or any of their subcontractors perform on the Right-of-Way, Railroad Protective Liability Insurance, AAR-AASHTO (ISO/RIMA) in the name of the SCRRA with additional insured specified in Section 3 above.

The policy shall have limits of liability of not less than **\$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 coverage is provided 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.

For certain low-hazard activity, Contractor may request that the SCRRA and Member Agency waive the requirement to provide the Railroad Protective Liability Insurance. 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 that they are not permitted to have any contact with the track, the Railroad Protective Liability Insurance requirement may be waived by SCRRA's Manager Public Projects or his/her designated representative.

5. **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by SCRRA and Member Agency. At the option of SCRRA, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects SCRRA and Member Agency, its officials and employees or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

6. **Other Insurance Provisions**

The General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

- A. SCRRA and Member Agency, its subsidiaries, officials and employees are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; premises owned, occupied or used by the Contractor, or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to SCRRA and Member Agency, its subsidiaries, officials and employees.
- B. For any claims related to this work, the Contractor's insurance coverage shall be primary insurance as respects SCRRA and Member Agency, its subsidiaries, officials and employees. Any insurance or self-insurance maintained by SCRRA and Member Agency, its subsidiaries, officials and employees shall be excess of the Contractor'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 SCRRA and Member Agency, its subsidiaries, officials and employees.

- D. The Contractor 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 party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to SCRRA and/or Member Agency.

Course of Construction policies shall contain the following provisions:

- A. SCRRA and Member Agency shall be named as loss payee.
- B. The insurer shall waive all rights subrogation against SCRRA and Member Agency.

7. **Acceptability of Insurers**

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

8. **Verification of Coverage**

Contractor shall furnish SCRRA with original endorsements evidencing coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by SCRRA. All endorsements are to be received and approved by SCRRA before work commences. As an alternative to SCRRA's forms, the Contractor's insurer may provide complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

9. **Subcontractors**

Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

10. **Train Services**

The train traffic information is available on SCRRA's website at www.metrolinktrains.com (About Us, Engineering and Construction). The following is the direct link to the file. <http://www.metrolinktrains.com/pdfs/EngineeringConstruction/TrainTrafficDensityExhibitforSCRRASystem.pdf>

11. **Submittal**

The original insurance policy (s) shall be submitted to:
 Assistant Director, Standards and Design
 Southern California Regional Rail Authority (SCRRA)
 2558 Supply Street
 Pomona, CA 91767
 Attn: Mr. Christos Sourmelis - ROW Encroachments Coordinator
 E-mail: sourmelisc@scrra.net
 Office Number: (909) 392-8463



**EXHIBIT "B"
RAILROAD PROTECTIVE LIABILITY POLICY
DECLARATION**

POLICY			
Insurance Company:	_____		
Policy Number:	_____		
Policy Period:	_____	_____	From: _____ To: _____ 12:01am Standard time at location
CERTIFICATE HOLDER AND ADDITIONALLY INSURED			
Certificate Holder/Insured:			
Southern California Regional Rail Authority (SCRRA) 2558 Supply Street, Pomona, CA 91767			
Additionally Insured:			
Los Angeles County Metropolitan Transportation Authority (MTA)	Burlington Northern Santa Fe Corporation (BNSF)		
Orange County Transportation Authority (OCTA)	Union Pacific Railroad Company (UPRR)		
Riverside County Transportation Commission (RCTC)	National Railroad Passenger Corp. (AMTRAK)		
San Bernardino Associated Governments (SANBAG)			
Ventura County Transportation Commission (VCTC)			
LIMITS OF INSURANCE			
Aggregate Limit	\$6,000,000	Each Occurrence Limit	\$2,000,000
DESCRIPTION OF WORK AND JOB LOCATION(S)			
NAME AND ADDRESS OF DESIGNATED CONTRACTOR			
NAME AND ADDRESS OF INVOLVED GOVERNMENT AUTHORITY OR OTHER CONTRACTING PARTY			
PREMIUM			
Contract Cost	_____	Rate per 1,000 of	_____
Premium Base	_____	Advance Premium	_____
FORM OF ENDORSEMENT			
<u>Title</u>			<u>Number</u>
COUNTERSIGNATURE			
Countersigned by	_____	Date	_____
	<i>(Authorized Representative)</i>		

EXHIBIT "B"

CERTIFICATE OF INSURANCE Southern California Regional Rail Authority (SCRRA)				ISSUE DATE (MM/DD/YY)		
PRODUCER		THIS CERTIFICATE OF INSURANCE IS NOT AN INSURANCE POLICY AND DOES NOT AMEND, EXTEND OR ALTER THIS COVERAGE AFFORDED BY THE POLICY BELOW.				
INSURED		COMPANIES AFFORDING COVERAGE				
		COMPANY A LETTER COMPANY B LETTER COMPANY C LETTER COMPANY D LETTER COMPANY E LETTER				
COVERAGES THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENTS, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR. <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT. <input type="checkbox"/> OTHER _____				GENERAL AGGREGATE PRODUCTS-COMP/OP AGG. \$ PERSONAL & ADV. INJURY \$ EACH OCCURRENCE \$ FIRE DAMAGE (Any one fire) \$ MED. EXPENSE \$ (Any one person)	
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTO <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> GARAGE LIABILITY				COMBINED SINGLE LIMIT \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$	
	EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$	
	PROPERTY INSURANCE <input type="checkbox"/> COURSE OF CONSTRUCTION				AMOUNT OF INSURANCE \$	
	WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY				STATUARY LIMITS EACH ACCIDENT \$ DISEASE-POLICY LIMIT \$ DISEASE-EACH EMPLOYEE \$	
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS						
THE FOLLOWING PROVISIONS APPLY: 1. None of the above-described policies will be canceled, limited in scope of coverage or nonrenewed until after 30 days' written notice has been given to SCRRA at the address indicated below. 2. As respects operations of the named insured performed on behalf of SCRRA, the following are added as additional insured on all liability insurance policies listed above: SCRRA, its Member Agencies, Operating Railroads, its subsidiaries, officials and employees. 3. It is agreed that any insurance of self-insurance maintained by SCRRA will apply in excess of and not contribute with, the insurance described above. 4. SCRRA is named a loss payee on the property insurance policies described above, if any. 5. All rights of subrogation under the property insurance policy listed above have been waived against SCRRA. 6. Any failure, by the insured to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to SCRRA, its Member Agencies, its subsidiaries, officials and employees. 7. The worker's compensation insurer named above, if any, agrees to waive all rights of subrogation against SCRRA for injuries to employees of the insured resulting from work for SCRRA or use of Member Agencies premises or facilities.						
CERTIFICATE HOLDER Southern California Regional Rail Authority (SCRRA) 2558 Supply Street, Pomona, CA 91767 ADDITIONAL INSURED MTA, OCTA, RCTC, SANBAG, VCTC, BNSF, UPRR, AMTRAK				AUTHORIZED REPRESENTATIVE SIGNATURE _____ TITLE _____ PHONE NO. _____		

SCHEDULE OF FEES

NO	ITEM	AMOUNT	DESCRIPTION
1	Plan Review	\$1,500.00	SCRRA plan review, site visits and correspondence
2	Administration	\$1,000.00	SCRRA permit processing; and schedule of flagging & signal location services
3	SCRRA Third Party Safety Training	\$500.00	Safety training is provided by SCRRA Contractor or consultant. Costs assume the following: Two (2) hours training class and two (2) hours travel time. Class size – up to 20-participants
4	Contingency	\$1,200.00	Monies to cover potential (unforeseen) project administration and support and agency overhead costs. Any monies not utilized will be refunded once project is closed out by SCRRA's Finance Dept.
5	Signal and Communications Line locations	\$500.00	Signal and Communications location service is provided by SCRRA Contractor. Costs assume the following: <ul style="list-style-type: none"> • Signal marking for one location • Travel time • Additional locations are estimated at \$275.00 each
6	Flagging	\$1,200.00 Per day	Railroad flagging is provided by SCRRA Contractor or consultant. Costs assume the following: <ul style="list-style-type: none"> • Eight (8) hours of EIC Railroad Protection; 2.5 hours of preparation, set-up, and flag take down if Form B is used. • Vehicle costs • Management oversight
7	Inspection	\$1,250.00 Per day	Railroad inspection is provided by SCRRA Contractor or consultant. Costs assume one days of inspection including travel time, vehicle costs.
8	Major Construction Type I	\$10,000.00	Roadway alterations The deposits are estimates for initial reviews. These costs do not include inspection, construction, material or reviews by SCRRA Consultants. Costs may vary depending on the complexity of the project.
9	Major Construction Type II	\$25,000.00	Roadway/bridge widening/bike trails The deposits are estimates for initial reviews. These costs do not include inspection, construction, material or reviews by SCRRA Consultants. Costs may vary depending on the complexity of the project.
10	Major Construction Type III	\$50,000.00	Grade separations The deposits are estimates for initial reviews. These costs do not include inspection, construction, material or reviews by SCRRA Consultants. Costs may vary depending on the complexity of the project.

The local agency or contractor shall reimburse SCRRA the actual cost and expense incurred by SCRRA and its contractors and consultants for all services and work performed in connection with the request, including an allocated overhead representing SCRRA's costs for administration and management.