

RIGHT OF ENTRY AGREEMENT

This Right of Entry Agreement ("Right of Entry") is entered in this __ day _____, 200_ by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION (the "COMMISSION") and **[INSERT NAME OF PARTY]** ("_____").

RECITALS

A. WHEREAS, the COMMISSION is the owner in fee of that certain real property commonly referred to as **[INSERT DESCRIPTION OF PROPERTY]**, as more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property").

B. WHEREAS, **[INSERT NAME OF PARTY]** desires to obtain the COMMISSION's permission to enter onto the Property, on a temporary basis, to perform **[INSERT DESCRIPTION OF ACTIVITY]**.

C. WHEREAS, the Parties wish to enter into this Right of Entry whereby the COMMISSION will allow **[INSERT NAME OF PARTY]** to enter the Property, on a temporary basis, for the purpose of performing **[INSERT DESCRIPTION OF ACTIVITY]**, more particularly described in Exhibit "B" attached hereto and incorporated herein by reference.

NOW, THEREFORE, the COMMISSION and **[INSERT NAME OF PARTY]** do hereby agree as follows:

AGREEMENT

1. Right of Entry. The COMMISSION hereby grants to **[INSERT NAME OF PARTY]** and its agents, employees and contractors the temporary right to enter onto the Property for the purpose of performing **[INSERT DESCRIPTION OF ACTIVITY]**, and for no other purpose.

2. Term. The term of this Right of Entry shall automatically terminate thirty (30) days from the date first herein written above unless earlier terminated as provided herein. The term may be extended by written notice to **[INSERT NAME OF PARTY]** in the sole and absolute discretion of the COMMISSION. This Right of Entry is subordinate to all prior or future rights and obligations of the COMMISSION in the Property, except that the Commission shall grant no rights inconsistent with the reasonable exercise by **[INSERT NAME OF PARTY]** of its rights under this Right of Entry.

3. Liens. **[INSERT NAME OF PARTY]** shall not permit to be placed against the Property, or any part thereof, any design professionals', mechanics',

materialmen's contractors' or subcontractors' liens with regard to **[INSERT NAME OF PARTY]**'s actions upon the Property. The **[INSERT NAME OF PARTY]** agrees to hold the COMMISSION harmless for any loss or expense, including reasonable attorneys' fees and costs, arising from any such liens which might be filed against the Property.

4. Indemnification. **[INSERT NAME OF PARTY]** hereby agrees to indemnify, defend, assume all liability for and hold harmless the COMMISSION and its officers, employees, agents and representatives from all actions, claims, suits, penalties, obligations, liabilities, damages to property, environmental claims or injuries to persons, which may be caused by **[INSERT NAME OF PARTY]**'s activities pursuant to this Right of Entry or arising out of or in connection with such activities, whether such activities or performance thereof is by **[INSERT NAME OF PARTY]** or anyone directly or indirectly employed or under contract with **[INSERT NAME OF PARTY]**, and whether such damage or claim shall accrue or be discovered before or after the termination of this Right of Entry. The **[INSERT NAME OF PARTY]**, specifically, and not by way of limitation agrees that it shall be responsible for the repair, maintenance and cleanup of any **[INSERT DESCRIPTION OF ACTIVITY]**. The indemnity and other rights afforded to the COMMISSION by this section shall survive the revocation or termination of this Right of Entry.

5. Compliance with Laws/Permits. **[INSERT NAME OF PARTY]** shall, in all activities undertaken pursuant to this Right of Entry, comply and cause its contractors, agents and employees to comply with all federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, policies and decrees. Without limiting the generality of the foregoing, **[INSERT NAME OF PARTY]**, at its sole cost and expense, shall obtain any and all permits which may be required by any law, regulation or ordinance for any activities **[INSERT NAME OF PARTY]** desires to conduct or have conducted pursuant to this Right of Entry.

6. Inspection. The COMMISSION and its representatives, employees, agents or independent contractors may enter and inspect the Property or any portion thereof or any improvements thereon at any time and from time to time at reasonable times to verify **[INSERT NAME OF PARTY]**'s compliance with the terms and conditions of this Right of Entry.

7. Not Real Property Interest. It is expressly understood that this Right of Entry does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Property to **[INSERT NAME OF PARTY]**. This Right of Entry is not exclusive and the COMMISSION specifically reserves the right to grant other rights of entry within the vicinity of the Property.

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

9. Revocable Licenses and Termination. Notwithstanding any improvements made by **[INSERT NAME OF PARTY]** to the Property or any sums expended by **[INSERT NAME OF PARTY]** in furtherance of this Right of Entry, the right of entry granted herein is revocable and may be terminated by the COMMISSION in accordance with the terms of this Agreement. This Right of Entry may be terminated at any time by either party upon one (1) business day's prior notice in writing to be served upon the other party. In cases of an emergency or a breach of this Agreement by **[INSERT NAME OF PARTY]**, this Right of Entry may be terminated by the COMMISSION immediately.

10. Restoration of the Property. Upon the termination or revocation of this Right of Entry, **[INSERT NAME OF PARTY]** shall, at its own cost and expense, restore the Property to the same condition in which it was prior to **[INSERT NAME OF PARTY]**'s entry. In case **[INSERT NAME OF PARTY]** shall fail to restore the Property to its prior condition within ten (10) business days after the effective date of the termination, the COMMISSION may proceed with such work at the expense of **[INSERT NAME OF PARTY]**.

11. Continuing Liability. No termination of this Right of Entry shall release **[INSERT NAME OF PARTY]** from any liability or obligation hereunder resulting from any acts, omissions or events happening prior the termination of this Right of Entry and restoration of the property to its prior condition.

12. Counterparts. 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.

IN WITNESS WHEREOF, the Parties hereto have executed this Right of Entry on the date first written above.

[SIGNATURES ON THE FOLLOWING PAGE]

RIVERSIDE COUNTY
TRANSPORTATION COMMISSION

[INSERT NAME OF PARTY]

By: _____
Eric Haley, Executive Director

By: _____

APPROVED AS TO FORM:

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

EXHIBIT "A"

DESCRIPTION OF PROPERTY

EXHIBIT "B"

DESCRIPTION OF ACTIVITY

EXHIBIT "C"

INSURANCE PROVISIONS

(ATTACHED IS CERTIFICATE OF INSURANCE)

[INSERT NAME OF PARTY] shall obtain, and shall require any consultant or contractor entering the Property on its behalf to obtain insurance of the types and in the amounts described below and satisfactory to the Commission.

A. Commercial General Liability Insurance. **[INSERT NAME OF PARTY]** shall maintain occurrence version commercial general liability insurance or equivalent form with a combined single limit of not less than \$5,000,000 per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Right of Entry Agreement or be no less than two times the occurrence limit. Such insurance shall:

1. Include the Commission and the Southern California Regional Rail Authority and their officials, officers, employees, agents, and consultants as insureds with respect to the construction of the **[INSERT DESCRIPTION OF ACTIVITY]** and the Property and shall contain no special limitations on the scope of coverage or the protection afforded to these insureds;

2. Be primary with respect to any insurance or self-insurance programs covering the Commission, its officials, officers, employees, agents and consultants; and

3. Contain standard separation of insured provisions.

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

C. Pollution Liability Insurance. **[IF APPLICABLE]** If the **[INSERT DESCRIPTION OF ACTIVITY]** is used to carry Hazardous Materials, **[INSERT NAME OF PARTY]** shall maintain pollution liability insurance in the amount of \$1,000,000.

D. Workers' Compensation Insurance. **[INSERT NAME OF PARTY]** 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. **[INSERT NAME OF PARTY]** shall, prior to entering the Property, furnish the Commission with properly executed certificates of insurance and, if requested by the Commission, certified copies of endorsements and policies, which clearly evidence all insurance required under this Right of Entry Agreement and provide that such insurance shall be not canceled, allowed to expire or be materially reduced in coverage, except on thirty (30) days' prior written notice to the Commission. The certificate shall also evidence the insurer's knowledge of the proximity of the operations of **[INSERT NAME OF PARTY]** to active railroad tracks. The Commission shall have the sole discretion to determine whether the certificates and endorsements presented comply with the provisions of this Right of Entry Agreement.

F. Coverage Maintenance. **[INSERT NAME OF PARTY]** shall replace certificates, policies and endorsements for any insurance expiring prior to the termination of this Right of Entry Agreement. Unless otherwise provided for in this Right of Entry Agreement, **[INSERT NAME OF PARTY]** shall maintain such insurance from the execution of this Right of Entry Agreement until the construction of the **[INSERT DESCRIPTION OF ACTIVITY]** are complete and the Property fully restored, except as otherwise provided in this Right of Entry Agreement.

G. Licensed Insurer. **[INSERT NAME OF PARTY]** shall place such insurance with insurers having A.M. Best Company ratings of no less than A:VIII and licensed to do business in California, unless otherwise approved, in writing, by the Commission.