

July 29, 2003

File: RRND007627



Metropolitan
Transportation
Authority

One Gateway Plaza
Los Angeles, CA
90012-2952

City Clerk's Office
City of Redlands
P.O. Box 3005
Redlands, CA 92373

Subject: Executed License Agreement

Attn: City Clerk

Enclosed for your records is one fully executed Greenways License Agreement between the San Bernardino Associated Governments (SANBAG) and the City of Redlands (Licensee).

As we have previously discussed with all the parties involved, the Burlington Northern Santa Fe (BNSF) has agreed to the City of Redlands tree planting along Redlands Blvd. subject to some basic guidelines.

In order for BNSF to waive the normal required railroad flagging protection during the planting, no heavy equipment (cars, trucks, etc.) shall be used on the railroad right of way. All vehicles and heavy equipment shall be kept on City property on the Redlands Blvd. side. Perhaps a lane of traffic could be temporarily closed during the planting, in order to provide adequate space. In addition, City and/or City's contractor shall contact DIG ALERT and research City records in order to locate all underground facilities, prior to any digging.

Please contact Mark Moorhusen, Sr. Real Estate Officer at the MTA in Los Angeles, at (213) 922-3051 to advise as to the proposed timing of the installation, so that BNSF can also be made aware of the approximate time line involved and to advise the train crews that make use of these active rails.

The Los Angeles County Metropolitan Transportation Authority (MTA) is an agent for the San Bernardino Associated Governments (SANBAG).

Please call me at (213) 922-3051 if you have any questions.

Sincerely,

Mark Moorhusen
Sr. Real Estate Officer

cc: Chron, Dominguez, Lucey-Smith, Robb (MTA)

City of Redlands
Attn: Dan McHugh, City Attorney
P.O. Box 3005
Redlands, CA 92373

Kevin Daugherty
ESRI
380 New York St.
Redlands, CA 92373-8100

**GREENWAYS
LICENSE AGREEMENT**

BETWEEN

SAN BERNARDINO ASSOCIATED GOVERNMENTS

AND

CITY OF REDLANDS

GREENWAYS LICENSE AGREEMENT

This LICENSE AGREEMENT ("Agreement") is made and entered into as of 7-25, 2003, by and between the **SAN BERNARDINO ASSOCIATED GOVERNMENTS**, a public agency existing under the authority of the laws of the State of California ("SANBAG"), and **CITY OF REDLANDS** ("Licensee"), upon and in consideration of the agreements, covenants, terms and conditions below:

PART I - BASIC LICENSE PROVISIONS

1. Description of License Property:
A strip of land for planting trees measuring approximately 5' X 3000' +/-, between the railroad mileposts 7.50 +/- to 8.07 +/- on the Redlands Subdivision in the City of Redlands, County of San Bernardino, State of California. Excludes tree plantings within 100' of all road crossings. Please see attached Exhibit A dated 6/18/03.
Approximate area:
15,000 +/- square feet (S1.1)
2. Use of License Property:
Planting and ongoing maintenance of trees and drip irrigation system within southwesterly 5' of SANBAG owned right of way only, and no other uses. (S1.1, S10)
3. Commencement Date:
July 15, 2003 (S1.2)
4. Term:
Five (5) years commencing July 15, 2003, ending July 14, 2008, and continuing month to month thereafter, except as otherwise provided in Section 1.2. (S1.2)
5. License Fees: No fee
6. Insurance Amount: See Exhibit "B" (S16)
7. SANBAG's Address:
San Bernardino Associated Governments c/o MTA
One Gateway Plaza, 13th Floor
Los Angeles, CA 90012-2952
Attn: Director of Real Estate (S24.1)
8. Licensee's Address:
City of Redlands
P.O. Box 3005
Redlands, CA 92373 (S24.1)

9. Facility (hereinafter referred to as "Greenway"):
Installation and ongoing maintenance of trees and drip irrigation system. (§1.1)

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

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

SANBAG:

SAN BERNARDINO ASSOCIATED GOVERNMENTS

By: Velma C. Marshall
Name: Velma C. Marshall
Title: Director of Real Estate

LICENSEE:

CITY OF REDLANDS

By: Karl N. Haws
Name: Karl N. Haws
Title: Mayor

Attest:

By: Lorrie Poyzer
Name: Lorrie Poyzer
Title: City Clerk

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Exhibits:

- "A" License Property
- "B" Insurance Requirements
- "C" Permitted Hazardous Materials
- "D" Additional Provisions

PART II - GENERAL LICENSE PROVISIONS

1. GRANT OF LICENSE/TERM

1.1 Grant of License. SANBAG hereby grants a non-exclusive temporary license to Licensee in, on, over, under, across and along the real property of SANBAG in the location shown in the diagram attached hereto as Exhibit "A" and described in Item 1 of the Basic License Provisions (the "License Property"), for construction, installation, operation, alteration, maintenance, reconstruction and/or removal of the Greenway described in Item 9 of the Basic License Provisions, and any usual, necessary and related appurtenances thereto (the "Greenway"), for the purposes described in Item 2 of the Basic License Provisions, together with rights for access and entry onto the License Property as necessary or convenient for the use of the Greenway. In connection with this grant of license, Licensee, its employees, agents, customers, visitors, invitees, licensees and contractors (collectively, "Licensee's Parties") subject to the provisions hereof, may have reasonable rights of entry and access onto adjoining real property of SANBAG if necessary for the use of the Greenway or the License Property, with the time and manner of such entry and access to be subject to SANBAG's prior written approval. The License Property, adjoining real property of SANBAG and personal property of SANBAG located thereon shall hereinafter collectively be referred to as "SANBAG Property".

1.2 Term of Agreement. The term of this Agreement shall commence on the "Commencement Date" specified in Item 3 of the Basic License Provisions. This Agreement shall be a license for the initial term specified in said Item 4. After the initial term, this Agreement shall continue until terminated by either party delivering thirty (30) days' prior written notice to the other party, provided Licensee returns the License Property in accordance with Section 13 of this Agreement. The decision by SANBAG to terminate this Agreement will be based upon its determination, in its sole, reasonable judgment, that it then may require possession of the License Property for transportation-related purposes. The term of this Agreement as provided above is referred to as the "Term".

1.3 Condition of License Property. Licensee acknowledges that it has inspected and accepts the License Property in its present condition as suitable for the use for which this Agreement is granted. Execution of this Agreement by Licensee shall be conclusive to establish that the License Property is in good and satisfactory condition as of the Commencement Date.

2. PAYMENTS

No fees for document preparation. No annual License fee.

3. TAXES

Intentionally omitted.

4. DESIGN AND CONSTRUCTION

4.1 Performance of Work. Any work performed or caused to be performed by Licensee on the Greenway or the License Property shall be performed (a) at Licensee's sole cost and expense; (b) in accordance with any and all applicable laws, rules and regulations (including the SANBAG's rules and regulations), and (c) in a manner which is (i) equal to or greater than the then applicable standards of the industry for such work, and (ii) satisfactory to SANBAG.

4.2 Submittal of Plans. Prior to commencement of any construction, reconstruction, installation, restoration, alteration, repair, replacement or removal (hereinafter, "Work") on the License Property, Licensee shall submit work plans, including, without limitation, the irrigation plans and the specific types of trees and landscape contemplated in the design, to SANBAG for review and approval. Licensee may consult with SANBAG during the design phase to insure SANBAG's approval and to coordinate project concerns. Any such Work must be carried out pursuant to work plans approved in writing by SANBAG. If there are existing tenants on the License Property, Licensee will work with the tenants and will prepare work plans compatible with the existing tenants.

4.3 Contents of Workplans. SANBAG will approve only low maintenance trees and plants, including non-deciduous trees and shrubs which provide minimal root disruption to the surface and which require minimal trimming. If there are existing tenants on the License Property, Licensee will work with the tenants and will prepare work plans compatible with the existing tenants. No landscape materials will be planted in the proximity of any

existing billboards which, even when fully mature, would obstruct any visibility of the billboards from adjacent vehicular roadways.

Licensee will indicate in the work plans that it had contacted Dig-Alert and considered any underground utilities in its design and construction plans.

In addition, Licensee shall provide SANBAG with at least 10 calendar days' written notice prior to commencement of any Work on the License Property or the Greenway, except in cases of emergency, in which event Licensee shall notify SANBAG's representative personally or by phone prior to commencing any Work.

In no event can the License Property be used for park or recreational purposes.

5. CONTRACTORS; APPROVAL AND INSURANCE

Any contractors of Licensee performing Work on the Greenway or the License Property shall first be approved in writing by SANBAG. With respect to such Work, Licensee shall, at its sole cost and expense, obtain and maintain in full force and effect throughout the term of such Work, insurance, as required by SANBAG, in the amounts and coverages specified on, and issued by insurance companies as described on, Exhibit "B". Additionally, Licensee shall cause any and all of its contractors and subcontractors which may (i) be involved with such Work, or (ii) may, for any reason, need to enter onto the License Property to obtain and maintain in full force and effect during the Term of this Agreement, or throughout the term of such Work (as applicable), insurance, as required by SANBAG, in the amounts and coverages specified on, and issued by insurance companies as described on, Exhibit "B". SANBAG reserves 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 or the Work to be performed on the License Property.

6. COMMUNITY CONCERNS

Licensee shall be responsible for addressing any community concerns and questions relating to the Greenway, including, without limitation, ongoing maintenance of the License Property and the removal of the Greenway at the termination of this Agreement, as provided in Section 13.

7. LIENS

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

8. MAINTENANCE AND REPAIR

Licensee, at Licensee's sole expense, shall maintain the License Property and the Greenway in a first-class condition during the Term of this Agreement and shall be responsible for all incremental costs related to development of the Greenway, including up keep, maintenance of the License Property and the Greenway as necessary to keep the License Property and the Greenway in good order and condition, to SANBAG's satisfaction, including, without limitation, weed abatement and clean-up of all trash and litter. Licensee shall pay for all costs to irrigate the Greenway and the costs for associated utilities, including, without limitation, water. If any portion of the SANBAG Property, including improvements or fixtures, suffers damage by reason of the access to or use of the License Property by Licensee, Licensee's Parties or by Licensee's partners, officers or directors, including but not limited to damage arising from any

tests or investigations conducted upon the License Property, Licensee shall, at its own cost and expense, immediately repair all such damage and restore the SANBAG Property to as good a condition as before such cause of damage occurred. Repair of damage shall include, without limitation, regrading and resurfacing of any holes, ditches, indentations, mounds or other inclines created by any excavation by Licensee or Licensee's Parties. If Licensee fails to maintain the License Property to SANBAG's satisfaction, SANBAG may, but is not obligated to, maintain and clean up the License Property and Licensee shall immediately reimburse SANBAG for its cost. Licensee must provide its maintenance program in advance to SANBAG's Facility Maintenance Manager. The requirements of said maintenance program are further described in Exhibit "D", attached hereto.

9. LANDSCAPING

Intentionally omitted.

10. USE

The License Property and the Greenway shall be used only 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 Licensee in the use of the License Property or the Greenway without SANBAG's prior written approval.

11. ABANDONMENT

Should Licensee at anytime abandon the use of the Greenway or the License Property, or any part thereof, or fail at any time for a continuous period of ninety (90) days to use the same for the purposes contemplated herein, then this Agreement shall terminate to the extent of the portion so abandoned or discontinued, and in addition to any other rights or remedies, SANBAG shall immediately be entitled to exclusive possession and ownership of the portion so abandoned or discontinued, without the encumbrance of this Agreement.

12. BREACH

Should Licensee breach, or fail to keep, observe or perform any agreement, covenant, term or condition on its part herein contained, then, in addition to any other available rights and remedies, SANBAG at its option may:

(a) perform any necessary or appropriate corrective work at Licensee's expense, which Licensee agrees to pay to SANBAG upon demand, or

(b) with or without written notice or demand, immediately terminate this Agreement and at any time thereafter, recover possession of the License Property or any part thereof, and expel and remove therefrom Licensee and any other person occupying the License Property by lawful means, and again repossess and enjoy the License Property and the Greenway, without prejudice to any of the remedies that SANBAG may have under this Agreement, at law or equity by reason of Licensee's default or of such termination.

13. SURRENDER

As a condition to termination of this Agreement for any reason or on the expiration of this Agreement, unless otherwise agreed to by SANBAG in writing to leave in place any part of the Greenway, Licensee, at its own cost and expense, shall (i) relocate the trees and improvements or remove the Greenway, as determined by the SANBAG in its sole discretion; and (ii) restore the SANBAG Property to a state and condition satisfactory to SANBAG. Should Licensee fail to comply with the requirements of the preceding sentence, SANBAG may at its option, perform the same at Licensee's expense, which costs Licensee agrees to pay to SANBAG on demand. SANBAG may, in its sole discretion, assume title and ownership of said Greenway. No termination hereof shall release Licensee from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date the Greenway is removed and the SANBAG Property is restored.

14. INDEMNIFICATION

Licensee, on behalf of itself and its successors and assigns, agrees to indemnify, defend (by counsel satisfactory to SANBAG), and hold harmless SANBAG and its subsidiaries, officers, commissioners, employees, agents, successors and assigns (individually and collectively, "Indemnitees"), to the maximum extent allowed by law, from and against all loss, liability, claims, demands, suits, liens, claims of lien, damages (including consequential damages), costs and expenses (including, without limitation, any fines, penalties, judgments, litigation expenses, and experts' and

reasonable attorneys' fees), that are incurred by or asserted against Indemnitees arising out of or connected in any manner with (i) the acts or omissions to act of the Licensee, or its officers, directors, affiliates, Licensee's Parties or anyone directly or indirectly employed by or for whose acts Licensee is liable (collectively, "Personnel") or invitees of Licensee, in connection with the SANBAG Property or arising from the presence upon or performance of activities by Licensee or its Personnel with respect to the SANBAG Property, (ii) bodily injury to or death of any person (including employees of Indemnitees) or damage to or loss of use of property resulting from such acts or omissions of Licensee or its Personnel, or (iii) non-performance or breach by Licensee or its Personnel of any term or condition of this 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, concurring or comparative) on the part of Indemnitees, unless caused solely by the gross negligence or willful misconduct of Indemnitees, shall survive termination of this Agreement, and is in addition to any other rights or remedies which Indemnitees may have under the law or under this Agreement. Upon request of SANBAG, Licensee shall provide insurance coverage, as provided in Section 16, for possible claims or losses covered by the indemnification and defense provisions of this Agreement.

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

15. ASSUMPTION OF RISK AND WAIVER

To the maximum extent allowed by law, Licensee assumes any and all risk of loss, damage or injury of any kind to any person or property, including without limitation, the Greenway, the SANBAG Property and any other property of, or under the control or custody of, Licensee, which is on or near the License Property. Licensee's assumption of risk shall include, without limitation, loss or damage caused by defects in any structure or improvement on the SANBAG Property, accident or fire or other casualty on the SANBAG Property, or electrical discharge, noise or vibration resulting from SANBAG's transit operations on or near the SANBAG Property. The term "SANBAG" as used in this section shall include: (i) any transit or rail-related company validly operating upon or over SANBAG's tracks or other property, and (ii) any other persons or companies employed, retained or engaged by SANBAG. Licensee, on behalf of itself and its Personnel (as defined in Section 14) as a material part of the consideration for this Agreement, hereby waives all claims and demands against SANBAG for any such loss, damage or injury of Licensee and/or its Personnel. In that connection, Licensee waives the benefit of California Civil Code Section 1542, which provides as follows:

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

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

16. INSURANCE

Licensee, 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 SANBAG in the amounts and coverages specified and issued by insurance companies as described on Exhibit "B". SANBAG reserves the right, throughout the Term of this Agreement, to review and upon giving 60 days' notice to Licensee, to change the amount and type of insurance coverage it requires in connection with this Agreement or the Work to be performed on the License Property. Prior to (i) entering the License Property or (ii) performing any Work or maintenance on the License Property, Licensee shall furnish SANBAG with insurance endorsements or certificates in the form of Exhibit "C", evidencing the existence, amounts and coverages of the insurance required to be maintained hereunder. As a public entity, Licensee may satisfy this requirement through the use of commercial insurance, self insurance, risk pooling or risk retention, or any combination thereof at Licensee's option. SANBAG shall not be liable for the payment of any premiums or assessments for insurance required to be maintained by Licensee under this Agreement.]

17. TESTS AND INSPECTIONS

SANBAG shall have the right at anytime to inspect the License Property and the Greenway so as to monitor compliance with this Agreement. If, in SANBAG's sole judgment, any installation on, or use or condition of the License Property may have an adverse effect on the SANBAG Property, adjacent property (whether or not owned by

SANBAG) or SANBAG operations, SANBAG shall be permitted to conduct any tests or assessments, including but not limited to environmental assessments, of, on or about the License Property, as it determines to be necessary or useful to evaluate the condition of the License Property. Licensee shall cooperate with SANBAG in any tests or inspections deemed necessary by SANBAG. Licensee shall pay or reimburse SANBAG, as appropriate, for all reasonable costs and expenses incurred due to tests, inspections or any necessary corrective work and inspections thereafter.

18. HAZARDOUS/TOXIC MATERIALS USE AND INDEMNITY

Licensee shall operate and maintain the License Property in compliance with all, and shall not cause or permit the License 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 Licensee or the License Property ("Environmental Laws"). Except for Hazardous Materials expressly approved by SANBAG in writing as shown on Exhibit "D", Licensee shall not cause or permit, or allow any of Licensee's Parties to cause or permit, any Hazardous Materials to be brought upon, stored, used, generated, treated or disposed of on or about the SANBAG Property. Any Hazardous Materials on the site shall be stored, used, generated and 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. SANBAG has conducted a pre-acquisition environmental due diligence assessment of its right of way properties, and any pre-existing hazardous waste concerns have already been identified, remediated or turned over to the appropriate agencies for further action. Licensee will not be responsible for any condition existing prior to the commencement of this License.

Licensee shall indemnify, defend (by counsel acceptable to SANBAG) and hold harmless the Indemnitees (as defined in Section 14) from and against all loss, liability, claim, damage, cost or expense (including without limitation, any fines, penalties, judgments, litigation expenses, attorneys' fees, and consulting, engineering, and construction fees and expenses) incurred by Indemnitees as a result of (a) Licensee's breach of any prohibition or provision of this section, or (b) any release of Hazardous Materials upon or from the Greenway or the License Property or contamination of the SANBAG Property or adjacent property (i) which occurs due to the use and occupancy of the Greenway or the SANBAG Property by Licensee or Licensee's Parties, or (ii) which is made worse due to the act or failure to act of Licensee or Licensee's Parties.

The foregoing indemnity shall be effective regardless of any negligence (whether active, passive, derivative, joint, concurring or comparative), on the part of Indemnitees, unless caused solely by the gross negligence or willful misconduct of Indemnitees, shall survive termination of this Agreement, and is in addition to any other rights or remedies which Indemnitees may have under the law or under this Agreement.

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

19. UNDERGROUND STORAGE TANKS

NEITHER LICENSEE NOR LICENSEE'S PARTIES SHALL INSTALL OR USE ANY UNDERGROUND STORAGE TANKS ON THE LICENSE PROPERTY UNLESS SPECIFICALLY APPROVED IN ADVANCE IN WRITING BY SANBAG, WHICH APPROVAL MAY BE WITHHELD IN SANBAG'S SOLE DISCRETION.

At SANBAG's option, upon the termination of this Agreement at any time and for any reason, Licensee shall, prior to the effective date of such termination, remove and close all underground storage tanks and related equipment and clean up and remove all Hazardous Materials in, on, under and about the SANBAG Property, in accordance with the requirements of all Environmental Laws and to the satisfaction of SANBAG and any governmental authorities having jurisdiction thereover, and deliver to SANBAG a copy of a certificate of closure issued for such tanks by the appropriate governmental authority.

20. SUBORDINATE RIGHTS

Subordinate Rights. This Agreement is subject and subordinate to the prior and continuing right and obligation of SANBAG, its successors and assigns, to use the SANBAG Property or any portion thereof in the

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

21. COMPLIANCE WITH LAWS

Licensee shall comply with all applicable federal, state and local laws, regulations, rules and orders in its work on, or maintenance, inspection, testing or use of, the Greenway and the SANBAG Property and shall furnish satisfactory evidence of such compliance promptly upon request of SANBAG. SANBAG may enter the License Property to inspect the Greenway at any time, upon provision of reasonable notice of inspection to Licensee. Licensee shall obtain all required permits or licenses required by any governmental authority for its use of the License Property and the Greenway, at its sole cost and expense.

22. CONDEMNATION

In the event all or any portion of the License Property shall be taken or condemned for public use (including conveyance by deed in lieu of or in settlement of condemnation proceedings), Licensee shall receive compensation (if any) only for the taking and damage to the Greenway. Any other compensation or damages arising out of such taking or condemnation awarded to Licensee are hereby assigned by Licensee to SANBAG.

23. MARKERS

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

24. GENERAL PROVISIONS

24.1 Notices. All notices and demands which either party is required to or desires to give to the other shall be made in writing by personal delivery, by express courier service or by certified mail postage prepaid, and addressed to such party at its address set forth in the Basic License Provisions. Either party may change its address for the receipt of notice by giving written notice thereof to the other party in the manner herein provided. Notices shall be effective only upon receipt by the party to whom notice or demand is given.

24.2 Non-Exclusive License. The license granted herein is not exclusive and SANBAG specifically reserves the right to grant other licenses within the License Property.

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

24.4 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.

24.5 Interest on Past-due Obligations. Except as expressly herein provided, any amount due to SANBAG that is not paid when due shall bear interest, from the date due, at the maximum rate then allowable by law. Such interest will be due SANBAG as it accrues. Payment of such interest shall not excuse or cure any default by Licensee under this Agreement, provided, however, that interest shall not be payable on late charges incurred by Licensee.

24.6 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.

24.7 Survival of Obligations. All obligations of Licensee hereunder not fully performed as of the expiration or earlier termination of the Term of this Agreement shall survive the expiration or earlier termination of this Agreement, including without limitation, all obligations concerning the condition of the SANBAG Property and the Greenway.

24.8 Waiver of Covenants or Conditions. The waiver by one party 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.

24.9 Amendment. This Agreement may be amended at any time by the written agreement of SANBAG and Licensee. All amendments, changes, revisions, and discharges of this Agreement in whole or in part, and from time to time, 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.

24.10 Assignment. This Agreement and the license granted herein are personal to the Licensee. Licensee shall not assign or transfer (whether voluntary or involuntary) this Agreement in whole or in part, or permit any other person or entity to use the rights or privileges hereby conveyed, without the prior written consent of SANBAG, which may be withheld in SANBAG's sole and absolute discretion, and any attempted act in violation of the foregoing shall be void and without effect and give SANBAG the right to immediately terminate this Agreement.

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

24.12 Nondiscrimination. Licensee certifies and agrees that all persons employed thereby and/or the affiliates, subsidiaries, or holding companies thereof and any contractors retained thereby with respect to the License Property are and shall be treated equally without regard to or because of race, religion, ancestry, national origin, or sex, and in compliance with all federal and state laws prohibiting discrimination in employment, including but not limited to the Civil Rights Act of 1964; the Unruh Civil Rights Act; the Cartwright Act; and the California Fair Employment Practices Act.

24.13 Further Acts. Licensee agrees to perform any further acts and to execute and deliver in recordable form any documents which may be reasonably necessary to carry out the provisions of this Agreement, including, at SANBAG's sole discretion, the relocation of the Greenway and the license granted hereby.

24.14 Termination for Public Project. Licensee hereby expressly recognizes and agrees that the Premises are located on SANBAG property that may be developed for public projects and programs which may be implemented by SANBAG or other public agencies, such as, but not limited to: rail and bus transitways, bikeways, walkways, beautification projects and other public uses (collectively "Project"), and that Licensee's use of the Premises under this Lease is an interim use. Accordingly, as a condition to entering into this Lease, SANBAG expressly reserves the right to terminate the Lease for any of such public Project. Licensee expressly acknowledges and agrees that: (1) SANBAG may terminate this license for any public project; (2) Licensee will **NOT** oppose any public Project when planned or implemented on or adjacent to the Premises; and (3) in the event SANBAG terminates this License and requires Licensee to vacate the Premises for any -public Project, Licensee (a) shall not be entitled to receive any relocation assistance, moving expenses, goodwill or other payments under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §4601 et seq. and/or the California Relocation Assistance Law, as amended, California Government Code §7260 et seq; and (b) shall not be entitled to any compensation under the eminent domain law, as a result of such termination and vacation of the Premises.

Licensee

SANBAG


24.15 Time of Essence. Time is of the essence.

24.16 No Recording. Licensee shall not record or permit to be recorded in the official records of the county where the License Property is located, this Agreement any memorandum of this Agreement or any other document giving notice of the existence of this Agreement or the license granted hereby.

24.17 Revocable License. Licensee agrees that notwithstanding the improvements made by Licensee to the License Property or other sums expended by Licensee in furtherance of this Agreement, the license granted herein is revocable by SANBAG in accordance with the terms of this Agreement.

24.18 Entire Agreement; Amendments. This Agreement and the Exhibits hereto constitute the entire agreement between the Parties 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. This Agreement may be amended at any time by the written agreement of SANBAG and Licensee. All amendments, changes, revisions, and discharges of this Agreement in whole or in part, and from time to time, 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.

24.19 Additional Provisions. Those additional provisions set forth in Exhibit "D", if any, are hereby incorporated by this reference as if fully set forth herein.

Exhibit "B"

INSURANCE REQUIREMENTS FOR LEASES, LICENSES, AND PERMITS

Lessee, Licensee, or Permittee shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the use of SANBAG and MTA property hereunder by the Lessee, Licensee, or Permittee, his agents, representatives, employees or subcontractors.

Minimum Scope of Insurance (Check all applicable boxes)

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 Automobile Liability, code 1 (any auto).
- ☒ Worker's Compensation insurance as required by the State of California and 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 betterments.
- ☐ Insurance Services Office Railroad Protective Liability
- ☐ Contractor's Pollution Liability with coverage for:
 - a. bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;
 - b. property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed;
 - c. defense, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; and
 - d. losses caused by pollution conditions that arise from the operations of the contractor described under the scope of services of this contract.

Minimum Limits of Insurance (Check all applicable boxes)

Lessee, Licensee, or Permittee shall maintain limits no less than:

- ☒ General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage.
- ☒ If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- ☒ 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.
- ☐ Railroad Protective Liability: \$2,000,000 per occurrence. Aggregate limit shall apply separately to this project/location or the aggregate limit shall be twice the required per occurrence limit
- ☐ Contractors Pollution Liability: \$1,000,000 per occurrence/\$2,000,000 annual aggregate.

Deductibles and Self-Insured Retentions

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

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. SANBAG and MTA, its subsidiaries, officials and employees are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Lessee, Licensee, or Permittee; products and completed operations of the Lessee, Licensee, or Permittee; premises owned, occupied or used by the Lessee, Licensee, or Permittee; and automobiles owned, leased, hired or borrowed by the Lessee, Licensee, or Permittee. The coverage shall contain no special limitations on the scope of protection afforded to SANBAG and MTA, its subsidiaries, officials and employees.
2. For any claims related to this project, the Lessee, Licensee, or Permittee's insurance coverage shall be primary insurance as respects SANBAG and MTA, its subsidiaries, officials and employees. Any insurance or self-insurance maintained by SANBAG and MTA, its subsidiaries, officials and employees shall be excess of the contractor's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to SANBAG and MTA, its subsidiaries, officials and employees.
4. The Lessee, Licensee, or Permittee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either a party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to SANBAG and MTA.
6. Workers' Compensation and Employer's Liability policies shall contain the inclusion of the SANBAG and MTA, its Subsidiaries, officials and employees as additional insured, or provide a waiver of subrogation.

Course of construction policies shall contain the following provisions:

1. SANBAG and MTA shall be named as loss payee.
2. The insurer shall waive all rights subrogation against SANBAG and MTA.

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 SANBAG and MTA.

Verification of Coverage

Lessee, Licensee, or Permittee shall furnish SANBAG and MTA with original endorsements and certificates of insurance evidencing coverage required by this clause. All documents are to be signed by a person authorized by that insurer to bind coverage on its behalf. All documents are to be received and approved by the SANBAG and MTA before work commences. As an alternative, the Lessee, Licensee, or Permittee may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

Contractors and Subcontractors

Lessee, Licensee, or Permittee shall include all contractors and subcontractors as insureds under its policies or require certificates and endorsements for each contractor and subcontractor. All coverages for contractors and subcontractors shall be subject to all of the requirements stated herein. The administration of insurance compliance of contractors and subcontractors shall be subject to audit review by SANBAG and MTA.

Exhibit "C"

Permitted Hazardous Materials

No hazardous materials are permitted to be used or stored on License Property.

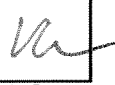
Exhibit "D"

“ADDITIONAL PROVISIONS”

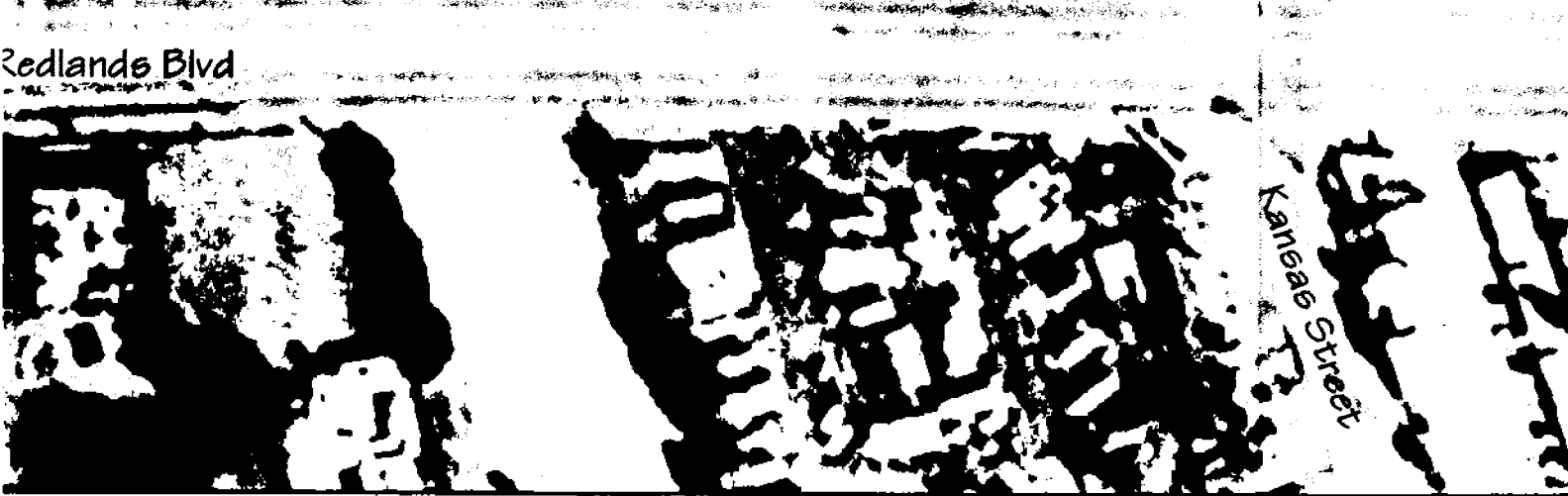
1. CONTRACTOR'S INSURANCE Licensee's contractor, at its sole cost and expense, shall obtain and maintain, in full force and effect, insurance as required by SANBAG during the entire construction period. The Contractor shall furnish copies of the insurance certificates to all affected operating railroads.
2. INSPECTION AND FLAGGING SERVICES Licensee or licensee's contractor must contact SCRRA's Maintenance of Way office at (909) 392-4506, to arrange for inspection and flagging services, a minimum of five (5) working days prior to beginning any of the following work:
 - Personnel will be working within 25 feet of the nearest rail
 - Equipment will be operating within or adjacent to the right-of-way
 - Excavation, grading, and blasting will be undertaken on the right-of-way

This prior notification does not guarantee the availability of protective services for the proposed date of construction.

3. PROTECTION OF OTHER LINES AND STRUCTURES Licensee or licensee's contractor shall be responsible for the location and protection of any and all surface, sub-surface, and overhead lines and structures. Protection measures shall include contacting DIG ALERT, consulting city records, and consulting with SANBAG c/o MTA.
4. MAINTENANCE OF LANDSCAPE MATERIAL All branches shall be kept trimmed to maintain a minimum distance of 10' from all wires lines at all times. Licensee shall maintain all planting material in a first class manner at all times.

Licensee	SANBAG
	
Initials	

um clearance = 100' from intersection of tracks and edge of all streets to be kept clear at all times.
Including private driveway to Auto Body shop east of Tennessee Street.



SANBAG owned right of way 100' wide.

Land boundary approximated by gray line (not accurate for survey purposes).

N

A

N

- | | | | |
|-------|--|-------|---------------------------|
| ↓ | Drainage direction | ✕ | 1 1/4" Valves |
| ○ | Proposed new trees
(<i>Platanus racemosa</i>) | ■ | 1 1/4" Pressure regulator |
| —+—+— | Railroad center line | ●— | Water Main |
| ▧ | Right of way | — | 1 1/4" Irrigation line |
| | | - - - | 3/4" Drip line |

Each tree will be irrigated with a 1/8" 4GPH em

ght of Way

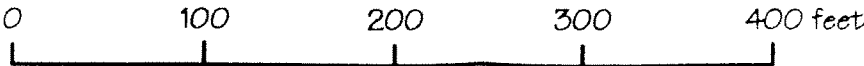


um clearance = 100' from intersection of tracks and edge of all streets to be kept clear at all times.
Including private driveway to Auto Body shop east of Tennessee Street.

s are to be planted within the outer (southwesterly) five feet (5') of the SANBAG owned land.
s are to be planted closer than five feet in from the edge of the SANBAG property line.

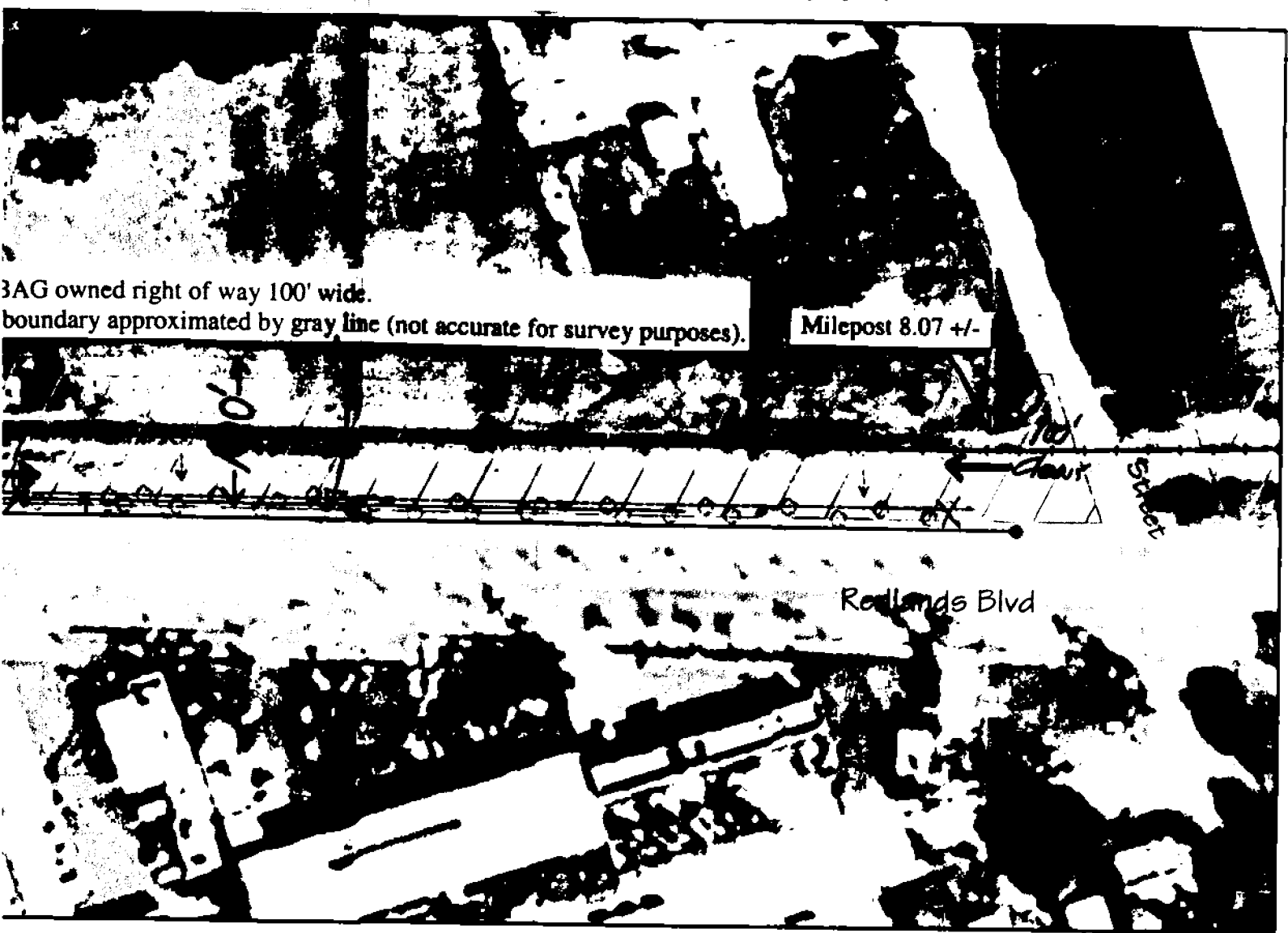
by a ¾" drip line

1 inch = 100 feet



Minimum clearance = 100' from intersection of tracks and edge of all streets to be kept clear at all times.
 Including private driveway to Auto Body shop east of Tennessee Street.

trees are to be planted within the outer (southwesterly) five feet (5') of the SANBAG owned land.
 trees are to be planted closer than five feet in from the edge of the SANBAG property line.



	Branch/Line	Map Reference	Mile Post	EXHIBIT 'A'	Lessee/Licensee	
	Redlands	RND 3	7.5 to 8.07 +/-		City of Redlands	
	Engineers Station 395+00 to 425+00	Community Redlands	City Redlands		MTA File No. RRND07627	
	County San Bernardino	Nearest Cross St. Redlands Bl.	Thomas Guide Grids 607 J6, J7	Los Angeles Metropolitan Transportation Authority One Gateway Plaza Los Angeles, CA 90012-2902	Scale	Date
	Area 15,000 SF +/-	Use Trees	Legend 5' Strip along Redlands Blvd.		1" = 100'	MM 6/18/03