

RRND007650B
SANBAG CONTRACT (C09121)

CONTRACT NO: C09121
Amended and Restated License Agreement

By and Between

SAN BERNARDINO ASSOICATED GOVERNMENTS acting as
the SAN BERNARDINO COUNTY TRANSPORTATION
COMMISSION

And

CITY OF REDLANDS

For

Bikeway License on the Redlands Subdivision
Mile Post 10.1

AMENDED AND RESTATED LICENSE AGREEMENT

This AMENDED AND RESTATED LICENSE AGREEMENT ("Agreement") is made and entered into as of _____, 2013 by and between the **SAN BERNARDINO ASSOCIATED GOVERNMENTS**, acting in its capacity as the SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION AND THE SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY ("SANBAG"), and the **CITY OF REDLANDS** a municipal corporation, ("LICENSEE"), with reference to the following facts:

A. WHEREAS, The parties previously entered into Contract C09121, a License Agreement permitting a Bikeway to be built and maintained by Licensee along and across a specific portion of SANBAG's railroad right of way; and

B. WHEREAS, The parties now desire to modify and correct certain provisions of Contract C09121 and to restate the Agreement between them in all other respects.

Now therefore the parties, upon and in consideration of the agreements, covenants, terms and conditions below, agree that Contract C09121 is hereby amended and restated and therefore replaced with the following:

PART I

BASIC LICENSE PROVISIONS

1. Description of License Property: An at grade use of the property known as SANBAG's Redlands Subdivision right-of-way between Grove Street on the western extent, at Mile Post 10.1 and Wabash Avenue at the easterly extent at Mile Post 11.7, in the City of Redlands, County of San Bernardino, State of California, as shown on the attached Exhibit "A"

Approximate area: Eighty Thousand Four Hundred Forty Eight Linear Feet (80,448 Lin. Ft.) One and Six Tenths Miles (1.6 Miles) (§1.1)

2. Use of License Property:
Construction, maintenance and use by the public as a bikeway and pedestrian walkway and associated landscaping and appurtenances only, and no other uses (§1.1, §10)
3. Commencement Date:
January 1, 2009 (§1.2)
4. Term (check one):
☐ A. Month-to-month

- ☒ B. The initial term shall be Twenty years,
Commencing on the Commencement Date and ending on December 31, 2028,
unless terminated sooner by SANBAG as provided in Item 1.2 or Item
26.14 of the General License Provisions.
License shall automatically extend five (5) additional years at the end of
the initial term, and shall continue with recurring five (5) year renewal
options for each extension period after Term. (§1.2)

5. License Fees: (§2.1)

Licensee will pay to SANBAG the sum of \$11,000.00 (Eleven Thousand Dollars) as a one-time administrative fee for the recovery of SANBAG's expenses, which shall be payable upon execution of this Amended and Restated License Agreement.

6. Insurance Amount (See Exhibit "B") (§16)

7. SANBAG's Address:

SAN BERNARDINO ASSOCIATED GOVERNMENTS
1170 W. 3rd Street, 2nd Floor
San Bernardino, California 92410-1715
Attn: Director of Transit and Rail Programs

(§24.1)

8. Licensee's Address:

CITY OF REDLANDS
35 Cajon Street, Ste 15A
Redlands, California 92373
Attn: Ross Wittman

(§24.1)

9. Facility (Hereinafter referred to as "Bikeway"):

A bicycle path, pedestrian walkway, trash receptacles, appurtenant improvements, drainage facilities, irrigation system and all landscaping materials, whether planted as part of this project or pre-existing and allowed to remain in place by Licensee.

(§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 hereto have executed this Agreement on the day and year below written, but effective as of the day and year first set forth above.

CITY OF REDLANDS

By:

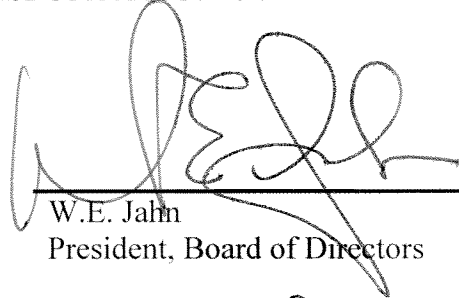


Date:

November 15, 2013

**San Bernardino Associated Government,
acting in its capacity as the:
SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY
and SAN BERNARDINO COUNTY
TRANSPORTATION COMMISSION**

By:


W.E. Jahn
President, Board of Directors

Date:

12-2-13

ATTEST:


Sam Irwin, City Clerk

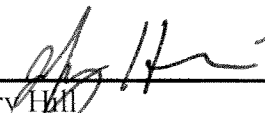
APPROVED AS TO FORM

By:


Asst. GC for Eileen Monaghan Teichert
General Counsel

CONCURRENCE

By:


Jeffery Hill
Contract Administrator

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PART II - GENERAL LICENSE PROVISIONS

1. GRANT OF LICENSE/TERM

1.1 Grant of License. SANBAG hereby grants a non-exclusive 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 Bikeway described in Item 9 of the Basic License Provisions, and any usual, necessary and related appurtenances thereto (the "Bikeway"), 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 Bikeway. In connection with this grant of license, Licensee, its council members, officers, directors, affiliates, 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 construction, operation and maintenance of the Bikeway, but only after Licensee has received the prior written approval of SANBAG for such entry and access. Right of access onto adjoining real property of SANBAG does not extend to the public, which Licensee shall take all reasonable methods to exclude from such adjoining property of SANBAG. 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. Unless a specific term of this Agreement is filled in at Item 4.B of the Basic License Provisions, or if Item 4.A is checked, this Agreement shall continue in full force and effect on a month-to-month basis as provided in Item 4.A of the Basic License Provisions until terminated by either party on thirty (30) days' prior written notice. If Item 4.B of the Basic License Provisions is filled in, then this Agreement shall be a license for the term specified in said Item 4.B; provided, however, that SANBAG shall have the right to, without cost or liability to SANBAG, terminate the License, relocate, alter, and/or make other changes to the License Property as required by SANBAG at Licensee's sole cost and expense prior to the date specified in Item 4.B as further specified in Item 26.14, by delivering one hundred eighty (180) days'-prior written notice to Licensee, provided that SANBAG, in its sole, reasonable judgment, determines that it is required to carry out a public project.

SANBAG shall also have the right to terminate this Agreement, at any time, for the additional following reasons:

- (a) If Licensee abandons the Bikeway or the License Property, no notice of termination is necessary, and this Agreement shall immediately terminate as set forth in Section 13.
- (b) If Licensee breaches this Agreement, no notice of termination is necessary, and this Agreement shall immediately terminate, as set forth in Section 14.

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

Licensee will pay to SANBAG the sum of \$11,000.00 (Eleven Thousand Dollars) as a one-time administrative fee as set forth in Item 5 of the Basic License Provisions. There shall be no annual License Fee.

3. TAXES

Intentionally omitted

4. DESIGN AND CONSTRUCTION

4.1 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 will consult with SANBAG during the design phase to ensure 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, if at all possible, will prepare work plans compatible with the existing tenants.

4.2 Contents of Work plans. The 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. No landscape materials will be planted in the proximity of any existing billboards, which, even when fully mature, would obstruct any visibility of the billboard from adjacent vehicular roadways. Licensee will also indicate in the work plans that it had contacted Dig-Alert and considered any underground utilities in its design and construction plans.

4.3 Performance of Work. Any Work performed or caused to be performed by Licensee on the Bikeway 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), building codes and ordinances; (c) only after execution of a written right of entry agreement with SANBAG by Licensee and/or Licensee's Parties, and (d) 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. 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 Bikeway, except in cases of emergency, in which event Licensee shall notify SANBAG's representative personally or by phone, as outlined in Section 11 hereof, prior to commencing any Work.

To avoid damaging SANBAG's underground signaling system, Licensee or Licensee's Parties shall not perform any excavation work along any portion of the Licensee Property lying within one hundred fifty (150) feet of any at-grade road crossing, until it has received approval from SANBAG to perform such work.

4.4 Prior Notification for Work and Request for Protective Services. Prior to commencing any Work which is conducted entirely within the License Property, Licensee shall notify SANBAG in writing, at least ten (10) business days in advance of the date Licensee would like to commence such Work. In such notice, Licensee shall specify: (i) the type of work to be performed and its location; (ii) the date(s) the work is scheduled to be performed, (iii) the name, contact person and telephone number of the contact person for each contractor or Licensee department planning to access the SANBAG Property to conduct the work, and (iv) whether any person or equipment will be within twenty five (25) feet of any track during the course of the work.

SANBAG shall then determine whether an SANBAG flag person needs to be present during the work, whether Licensee, SANBAG needs to implement any special protective or safety measures, and whether additional insurance is required during the course of the work. The provision of a flag person and the implementation of any special protective or safety measures shall collectively be referred to in this Agreement as "Protective Services". If Protective Services are required and performed by SANBAG, Licensee shall pay SANBAG (as applicable) for same.

Licensee understands that prior notification of SANBAG as set forth herein does not guarantee the availability of Protective Services for the date Licensee proposes to do the work, and Licensee agrees not to enter the SANBAG Property to conduct the work, nor allow Licensee's Parties to do same, prior to securing the SANBAG required Protective Services and approval to proceed with such work.

4.5 Soil Handling Procedures. Only Clean Soil (defined below) may be brought upon, used and/or spread on the SANBAG Property by Licensee in conjunction with Licensee's construction or maintenance of the Bikeway. Any soil currently existing on the SANBAG Property may not be spread on the property unless and until it is characterized as Clean Soil to the reasonable satisfaction of SANBAG. The terms used in this Section shall have the following meanings:

(a) "Clean Soil": Soil that is free from Hazardous Materials.

(b) "Import Soil": Soil which did not originate from the SANBAG Property.

(c) "Hazardous Materials": As defined in Section 18 of this Agreement.

(d) "Soil": Soil, dirt, soil amendments, topsoil, soil conditioners, fertilizers, backfill mix and any other soil mixture.

Licensee shall not bring upon or use any Import Soil on SANBAG Property in conjunction with the Work provided under this Agreement, unless the following conditions have been met: (i) the Import Soil does not contain rubbish, debris, or rocks greater than six (6) inches in dimension; (ii) the Import Soil is Clean Soil; and (iii) prior to putting the Import Soil on the SANBAG Property, Licensee provides documentation to SANBAG's reasonable satisfaction that the requirements (i) and (ii) above have been met.

4.6 As-Built Drawings. Within ninety (90) days after the substantial completion of the construction and installation of the Bikeway, Licensee shall deliver to SANBAG, for SANBAG's review and approval, two (2) full sets of as-built drawings for the Bikeway (the "As-Built Drawings"), which shall be developed, altered and/or changed so as to meet the requirements of SANBAG. At a minimum, however, such As-Built Drawings shall: (i) be substantially of the form of the work plans which were approved in writing by SANBAG; (ii) include all changes to the work plans which were approved in writing by SANBAG; (iii) show all improvements and construction performed by Licensee on the License Property; (iv) clearly indicate and label the area of the License Property; (v) show the centerline of the railroad tracks existing on the SANBAG Property, as of the date that construction and installation of the Bikeway was substantially complete; and (vi) show, to scale, on all plan view and cross section drawings, the northeasterly and southwesterly boundaries of the License Property with respect to the centerline of the railroad tracks set forth in item (v) above, and the northeasterly and southwesterly extent of the Bikeway with respect to the centerline of the railroad tracks set forth in item (v) above. To the extent that the As-Built Drawings indicate or show that the Bikeway has not been constructed pursuant to the construction plans and specifications approved by SANBAG Licensee shall, at the request of SANBAG, rebuild, reconstruct and/or reinstall the Bikeway, at Licensee's sole cost and expense, so that the Bikeway will be constructed, located and installed in accordance with the approved construction plans and specifications and the approved changes thereto. Failure to provide As-Built Drawings to the SANBAG as set forth herein shall be deemed a material breach of this Agreement.

5. CONTRACTORS; APPROVAL AND INSURANCE

5.1 Approval. Any contractors of Licensee (Licensees' Parties) performing Work on the Bikeway or the License Property shall first be approved in writing by SANBAG, and shall enter into a written right-of-entry agreement with SANBAG. SANBAG reserves the right, throughout the Term of this Agreement, to refuse entry to the License Property to any of Licensee's Parties if SANBAG have cause to do so. Licensee agrees to refuse entry onto the License Property to any of Licensee's Parties rejected by SANBAG in accordance with the provisions of this Section.

5.2 Insurance. Licensee shall cause any of Licensee's Parties which (i) may be involved with such Work, or (ii) may, for any reason, need to enter onto the License Property, to obtain

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 Bikeway or the License Property.

6. COMMUNITY CONCERNS

Licensee shall be responsible for addressing any community concerns and questions relating to the Bikeway, and any Work performed on License Property including, without limitation, termination of existing leases, and ongoing maintenance of the License Property and the removal of the Bikeway at the termination of this Agreement, as provided in Section 15.

7. REIMBURSEMENT

Licensee agrees to reimburse SANBAG for all reasonable costs and expenses incurred by them in connection with any work on, or maintenance of, the License Property or the Bikeway, including, but not limited to costs incurred by SANBAG in: (i) furnishing any materials or performing any labor, (ii) reviewing Licensee's construction plans and specifications, and/or any changes thereto, (iii) inspecting any work of Licensee or Licensee's Parties, (iv) furnishing of those watchmen, flagmen and inspectors as SANBAG deems necessary, and (v) furnishing other items or performing other acts as SANBAG in their sole discretion deems necessary to monitor or aid in compliance with this Agreement. Licensee shall reimburse SANBAG for any such cost or expense immediately upon receipt of a bill or an invoice therefor.

8. LIENS

Licensee will fully and promptly pay for all materials joined or affixed to the Bikeway or SANBAG Property, and fully and promptly pay all persons who perform labor upon said Bikeway or SANBAG Property. Licensee shall not suffer or permit to be filed or enforced against the SANBAG Property or the Bikeway, 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.

9. LANDSCAPING

SANBAG shall have the right to review and approve landscape plans prior to installation of the landscape materials, as outlined in Section 4, including any modifications made to the landscaping throughout the term of this License.

10. FENCING AND GATES

Licensee, at its sole cost and expense, shall install fencing and gates on the License Property, which shall be approved by SANBAG and shall maintain fencing on SANBAG Property in conjunction with one another so as to prevent the public from accessing the SANBAG Property lying adjacent to the Bikeway. The fencing shall be referred to collectively in this Agreement as the "Barrier Fencing". If requested by SANBAG, Licensee agrees to install locked gates in the Barrier Fencing at locations to be specified by SANBAG. The new fencing and gates to be installed by Licensee shall be manufactured and installed pursuant to the specifications of SANBAG. Such gates will be used to provide access to adjacent SANBAG Property for the benefit of SANBAG and the beneficiaries of any agreement or other property right affecting such SANBAG Property. The Barrier Fencing and any required gates shall be included on any work plans required by SANBAG. All fencing and gate installation and Barrier Fencing maintenance work shall be done in accordance with the provisions of this Agreement, and to the satisfaction of SANBAG. SANBAG shall retain custody and be fully responsible for all locks and keys which allow access through the installed protective gates.

11. MAINTENANCE AND REPAIR

11.1 General Maintenance Responsibilities. Licensee, at Licensee's sole expense, shall maintain the License Property and the Bikeway in a first-class condition during the Term of this Agreement and shall be responsible for all incremental costs related to development of the Bikeway, and maintenance of the License Property and the Bikeway as necessary to keep the License Property and the Bikeway in good order and condition, to SANBAG's satisfaction. Licensee's maintenance responsibilities shall include, but not be limited to, keeping the Bikeway and all other facilities and improvements of Licensee on the License Property weed, graffiti and litter-free to the satisfaction of SANBAG. In, addition, Licensee shall ensure that (i) all landscaping which is a part of the Bikeway be adequately watered, fed and pruned, so as to be maintained in a healthy condition; (ii) any and all signs required by SANBAG as part

of the Bikeway be maintained in a clean, readable condition, and (iii) all drainage facilities constructed to accommodate the Bikeway be maintained to allow for free flow of water. Licensee's maintenance obligations are further described in Exhibit "D", attached hereto.

11.2 Irrigation. Licensee shall pay for all costs to irrigate the Bikeway and the costs for associated utilities, including without limitation, water.

11.3 Maintenance of Barrier Fencing. Licensee shall further ensure that all approved Barrier Fencing be maintained to prevent unauthorized access to SANBAG Property lying adjacent to the License Property. All materials used to maintain and repair the Barrier Fencing shall be materially similar to the original fencing material, and shall be to the satisfaction of SANBAG.

11.4 Immediate Repair. 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 or Licensee's Parties, including but not limited to damage to the Barrier Fencing, damage arising from vandalism (including graffiti), accident, or 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, regarding 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 satisfaction, SANBAG may, but is not obligated to, maintain and clean up the License Property and Licensee shall immediately reimburse the applicable party for its costs.

11.5 Overhead and Underground Installations. Licensee shall ensure that Licensee or Licensee's Parties protect from damage all underground and aboveground installations and improvements, including pipelines, fiber optic cables, overhead wire lines and billboards which are located on SANBAG Property and which may be impacted by construction, maintenance and/or use of the Bikeway. Licensee shall call Underground Service Alert (Dig-Alert) prior to any underground probe or excavation within the SANBAG Property. In addition, Licensee shall coordinate all work so as to not adversely hinder access to these installations and improvements by the owners.

11.6 Access for Normal Maintenance Work. Normal maintenance work which is conducted entirely within the License Property and southwesterly of the Barrier Fencing may be performed by Licensee or Licensee's parties without written notice to SANBAG; provided that Licensee and Licensee's Parties performing such maintenance work have previously received SANBAG's written approval to access the License Property for such purposes. Prior to commencing such normal maintenance work, however, the party performing such work is to provide SANBAG with at least 48 hours' advance notice by phone, identifying the time, duration and location of said work.

11.7 Access for Emergency Work. In cases where Licensee reasonably determines that emergency work is necessary, Licensee shall use its best efforts to contact SANBAG's representative personally or by phone prior to commencing such work. During any emergency work, Licensee shall comply with all requests and requirements of SANBAG staff or contractors responding to the emergency.

12. USE

The License Property and the Bikeway 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 to the Bikeway without SANBAG's prior review and written approval.

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

13. ABANDONMENT

Should Licensee at any time abandon the use of the bikeway 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.

14. 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 Bikeway, 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.

15. 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 Bikeway, Licensee at its own cost and expense, shall (i) relocate the landscaping and improvements, except for SANBAG's fencing, or remove the Bikeway, 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. Notwithstanding anything herein to the contrary, SANBAG may, in its sole discretion, request Licensee to leave all or a portion of the Bikeway in place on the License Property, in which case, it would elect to assume title and ownership of said Bikeway, at no cost to SANBAG. 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 Bikeway is removed and the SANBAG Property is restored.

16. 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, directors, employees, agents, successors, invitees, licensees, successors and assigns (individually and collectively, "Indemnitees"), to a reasonable extent allowed by law, from and against all loss, liability, claims, demands, suits, liens, claims of lien, damages, costs and expenses (including, without limitation, any fines, penalties, judgments, litigation expenses, and experts' and 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 License Property or arising from the presence upon or performance of activities by Licensee or its Personnel with respect to the License 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 except to the extent any liability is caused by the active negligence or willful misconduct of Indemnitees or unless Indemnitees are fully indemnified by any other lessee and/or licensee (unrelated to this License), 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 18, 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.

17. 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 Bikeway, the License Property and any other property of, or under the control or custody of, Licensee. Licensee's assumption of risk shall include, without limitation, loss or damage caused by: (i) defects in Licensee's improvement on the License Property, (ii) accident or fire or other casualty caused by Licensee on the License Property, (iii) normal and customary railroad activity, including SANBAG's transit operations, freight or other passenger rail operations, and the operations of any construction, maintenance or repair company validly operating on the SANBAG Property and including electrical discharge, noise or vibration resulting from said railroad activity on or near SANBAG Property but not including derailments caused by such rail activity, or (iv) any normal and customary response by SANBAG or any of the Indemnitees with respect to any event resulting from the foregoing Items (i) through (iii). The "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 16), and to the extent permitted by law, its invitees, 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.

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

18. 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 any 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 evidencing the existence, amounts and coverage's 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.

19. TESTS AND INSPECTIONS

SANBAG shall have the right at any time to inspect the License Property and the Bikeway 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 the tests, inspections or any necessary corrective work and inspections thereafter.

20. 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 "C", 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. 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 16) 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 Bikeway or the License Property or contamination of the SANBAG Property or adjacent property (i) which occurs due to the use and occupancy of the Bikeway 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 except to the extent any liability is caused by the act of negligence or willful misconduct of Indemnitees or unless Indemnitees are fully indemnified by any other lessee and/or licensee (unrelated to this License), 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.

Licensee shall promptly notify SANBAG of any release on, or contamination of, SANBAG Property of which Licensee or any of Licensee's Parties becomes aware. In addition, in the event of any release on or contamination of the License Property by Licensee or Licensee's Parties, 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.

21. 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.

22. 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 and 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, 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 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.

In the event SANBAG is made aware of any intent by its permittees to perform any of the above-referenced activities, SANBAG agrees to request said permittees to promptly advise and fully inform Licensee with respect to said intentions.

This Agreement is subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens, claims and other matters of title ("title exceptions") which may affect the SANBAG Property now or hereafter, and the works "grant" or "convey" as used herein shall not be construed as a covenant against the existence of any such title exceptions.

Neither SANBAG nor any Indemnitee shall have any liability or obligation with respect to any acts or omissions of any of the beneficiaries of the above-referenced title exceptions. SANBAG, its successors, assigns and permittees shall, at all times, have the right to enter upon and use the License Property in common with Licensee, provided that such entry and use does not materially and adversely affect Licensee's long term use of said SANBAG Property.

The beneficiaries of the title exceptions and any other business operating on or possessing rights to use SANBAG Property, including the owners of any advertising signs located on said Property, are referred to herein as "Businesses".

Licensee agrees to pay any and all costs or expenses resulting from, or arising out of, construction of the Bikeway or related to Licensee's use and occupancy of the License Property, including all costs and expenses resulting from any Relocation Negotiations with any Business, the termination of such Business' right to use and occupy the SANBAG Property, and any relocation of any Business resulting therefrom.

23. 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 Bikeway 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 Bikeway 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 Bikeway, at its sole cost and expense.

24. CONDEMNATION

In the event all or any portion of the License Property shall be taken or condemned for another public use (including conveyance by deed in lieu of or in settlement of condemnation proceedings), Licensee assigns to SANBAG all compensation (if any) arising out of such taking or condemnation awarded to Licensee.

25. MARKERS

Intentionally omitted.

26. GENERAL PROVISIONS

26.1 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.

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

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

26.4 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.

26.5 Interest on Past-due Obligations. Except as expressly herein provided, any amount due to SANBAG arising out of this agreement which 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 applicable, 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.

26.6 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.

26.7 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 payment obligations concerning the condition of the SANBAG Property and the Bikeway.

26.8 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.

26.9 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.

26.10 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.

26.11 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.

26.12 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.

26.13 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 Bikeway and the license granted hereby.

26.14 Termination for Public Project. Licensee hereby expressly recognizes and agrees that the License Property is 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 License Property under this License is subject to SANBAG's right to terminate this License and/or to require Licensee to relocate the License Property, alter, or make changes as required by SANBAG, at Licensee's sole cost and expense unless relocation of the Bikeway is incorporated in the Project. Accordingly, as a condition to entering into this License, SANBAG expressly reserves the right to require Licensee to remove, relocate, alter, or make changes to the Bikeway as required by SANBAG, for any public Project. Licensee expressly acknowledges and agrees that: (1) SANBAG may relocate the License Property for any public project; (2) Licensee will **NOT** oppose any public Project when planned or implemented on or adjacent to the License Property; and (3) in the event SANBAG requires Licensee to cease using or relocate the License Property for any public Project, Licensee (a) shall not be entitled to receive any relocation assistance,

Licensee

SANBAG


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 License Property.

26.15 Future Need of License Property. If SANBAG shall at any time, or from time to time, so require by written notice thereof to Licensee based on the need of SANBAG, in its sole discretion, for the License Property for its public purposes Licensee shall reconstruct, alter, make changes as required by SANBAG, relocate or remove its Bikeway at Licensee's sole cost and expense.

26.16. Relocation. Licensee acknowledges that this License does not result in a tenancy or occupancy of real property subject to relocation assistance requirements of state or federal law, but to the extent that any government agency or court determines to the contrary, Licensee hereby expressly waives any right to relocation assistance, moving expenses, goodwill or other payments to which Licensee might otherwise be entitled 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, Government Code 7260 et seq. but for this waiver and SANBAG's express right of termination.

26.17 Time of Essence. Time is of the essence.

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

26.19 [omitted]

26.20 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.

24.21 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 "A"

License Property

[To Be Inserted]

Exhibit "B"

INSURANCE REQUIREMENTS FOR LEASES, LICENSES, AND PERMITS

Licensee 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 San Bernardino Associated Governments (SANBAG) property hereunder by the Licensee, 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. At the option of SANBAG, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects SANBAG, its officials and employees; or the Licensee shall procure a bond guaranteeing payment of losses, and related investigations, claim administration and defense expenses.

Exhibit "B"

Other Insurance Provisions

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

1. SANBAG, its subsidiaries, officials and employees are to be covered as insured parties as respects: liability arising out of activities performed by or on behalf of the Licensee; products and completed operations of the Licensee; premises owned, occupied or used by the Licensee; and automobiles owned, leased, hired or borrowed by the Licensee. The coverage shall contain no special limitations on the scope of protection afforded to SANBAG, its subsidiaries, officials and employees.
2. For any claims related to this project, the Licensee's insurance coverage shall be primary insurance as respects SANBAG, its subsidiaries, officials and employees. Any insurance or self-insurance maintained by SANBAG, 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, its subsidiaries, officials and employees.
4. The Licensee'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.
6. Workers' Compensation and Employer's Liability policies shall contain the inclusion of the SANBAG, 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 shall be named as loss payee.
2. The insurer shall waive all rights subrogation against SANBAG.

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.

Verification of Coverage

Licensee shall furnish SANBAG with original endorsements and certificates of insurance evidencing coverage required by this Exhibit "B". 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 before work commences. As an alternative, the Licensee may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

Contractors and Subcontractors

Licensee 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.

Exhibit "C"

Permitted Hazardous Materials

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

Exhibit "D-1"

Additional Provisions

1. **Importation of Soil/Fill Dirt.** Licensee shall not bring upon or use any Import Soil on the Premises in conjunction with any purposes allowed under this Agreement, until said Import Soil has been laboratory tested by a certified hazardous waste testing laboratory and the test results have been approved by SANBAG's Environmental Consultant. Additionally, any soil currently existing on the Premises may not be spread on the Premises unless and until it is characterized as Clean Soil to the reasonable satisfaction of SANBAG's Environmental Consultant.
2. **Maintenance of Premises.** Licensee shall keep the Premises free and clear of weeds, trash, vegetation, unauthorized vehicle parking, graffiti and occupancy by transients/homeless persons or individuals. Licensee shall be fully responsible for ALL maintenance and maintenance that is required or necessary in connection with Licensee's use of Premises.
3. **Protection of Underground and Aboveground Installations.** Licensee shall ensure that it and Licensee's Parties protect, from and against any and all damage, all underground and aboveground installations and improvements, such as pipes, fiber optic lines and wires, which may be impacted by any work or any use of the Premises by Licensee. Any new utility lines and/or fiber optic crossings, etc., proposed to be added within the right of way by any party shall be applied for in the normal process and covered by separate License Agreement directly with SANBAG.
4. **Improvements.** Both Licensee and SANBAG acknowledge that the Premises is Licensed in "AS IS" condition and any track removal, grading, paving and fencing as may be necessary or required to meet Licensee's needs will be the sole responsibility of the Licensee. No permanent structures may be constructed on the premises without SANBAG's prior written approval. Licensee will be responsible for the removal of all permitted improvements upon termination of License.
5. **Utilities.** Licensee shall pay for any and all utilities for its benefit, security and use.
6. **Warranties.** SANBAG makes no warranties as to the suitability of the location for Licensee's intended use as to zoning, visibility, traffic count or any other factors which may cause Licensee to want to License the premises.
7. **Zoning or Permitting.** Any permits, inspection fees, or costs associated with the use or maintenance of the Premise by any governmental agency, department, or organization, or any labor expenses for the installation or maintenance of any permitted improvements are the Licensee's sole responsibility. Copies of permits are to be readily available for inspection by SANBAG personnel.
9. **Signage.** NO SIGNS PERMITTED on, or along the perimeter of the Premises unless such signs were requested and approved under your original proposal and covered by the required insurance.
10. **SANBAG'S Right to Control Leasing and Licensing within entire Right-of-Way.** SANBAG shall continue to control Leasing and Licensing within the entire Right of Way. All applications for new utility crossings, ground Leases, or similar uses outside the scope of the approved Bikeway Plan, shall continue to be under the direct control and management of SANBAG.

Exhibit "D-2"

Additional Maintenance Provisions. Licensee shall provide labor, equipment, tools and materials necessary to fully maintain the Bikeway and its landscaping. Maintenance tasks that Licensee will be responsible for shall include, but will not be limited to:

(a) Weed abatement, which will be performed on a monthly basis, or when necessary.

(b) Removal and disposal of refuse and debris, including broken concrete and asphalt, construction debris, scrap metal, broken glass, paper trash, furniture, appliances, automobile parts, shopping carts, tires, bicycles, dead vegetation, and other materials illegally dumped on the Bikeway. Debris shall be removed monthly and/or upon request.

(c) Landscape Maintenance:

Provide adequate watering for the planted trees, shrubbery and ground cover to keep plantings in a healthy condition.

Pruning of trees. During the first five years of establishment, trees shall receive at least annual pruning. All cuttings shall be disposed of off-site, the same day.

Planting design and subsequent trimming plans shall incorporate compliance with existing regulations related to visibility and clearance for vehicles and pedestrians (including bus stop clearance requirements) and to maintain adequate visibility to existing advertising billboards.

Tree trimming at bus stops shall meet requirements that no part of any tree shall extend beyond the curb line for the entire length of the red curb and that at the curb line, no part of any tree shall be lower than 13-feet above the street level.

Maintenance levels shall be sufficient to not pose a fire hazard to all SANBAG buildings and structures, including poles and wire lines.

City must respond to emergency situations, including trimming for public safety and visibility of traffic devices, signs, etc.

To facilitate railroad operations, the landscaping shall also be maintained so as to not:

- (i) Obstruct railroad signs and signals
- (ii) Interfere with railroad employees performing their duties on the SANBAG Property
- (iii) Prevent the proper functioning of signal and communication lines
- (iv) Railroad employees from visually inspecting moving equipment from their normal duty stations

Licensee shall maintain the all landscaping associated with the Bikeway and the License Property such that the same are at all times no closer than twenty (20) feet from the centerline of the nearest railroad track of the License Property.

Fencing and landscaping associated with the Bikeway lying within one hundred and fifty (150) feet of the centerline of any at-grade road crossing of SANBAG Property shall meet the following minimum requirements:

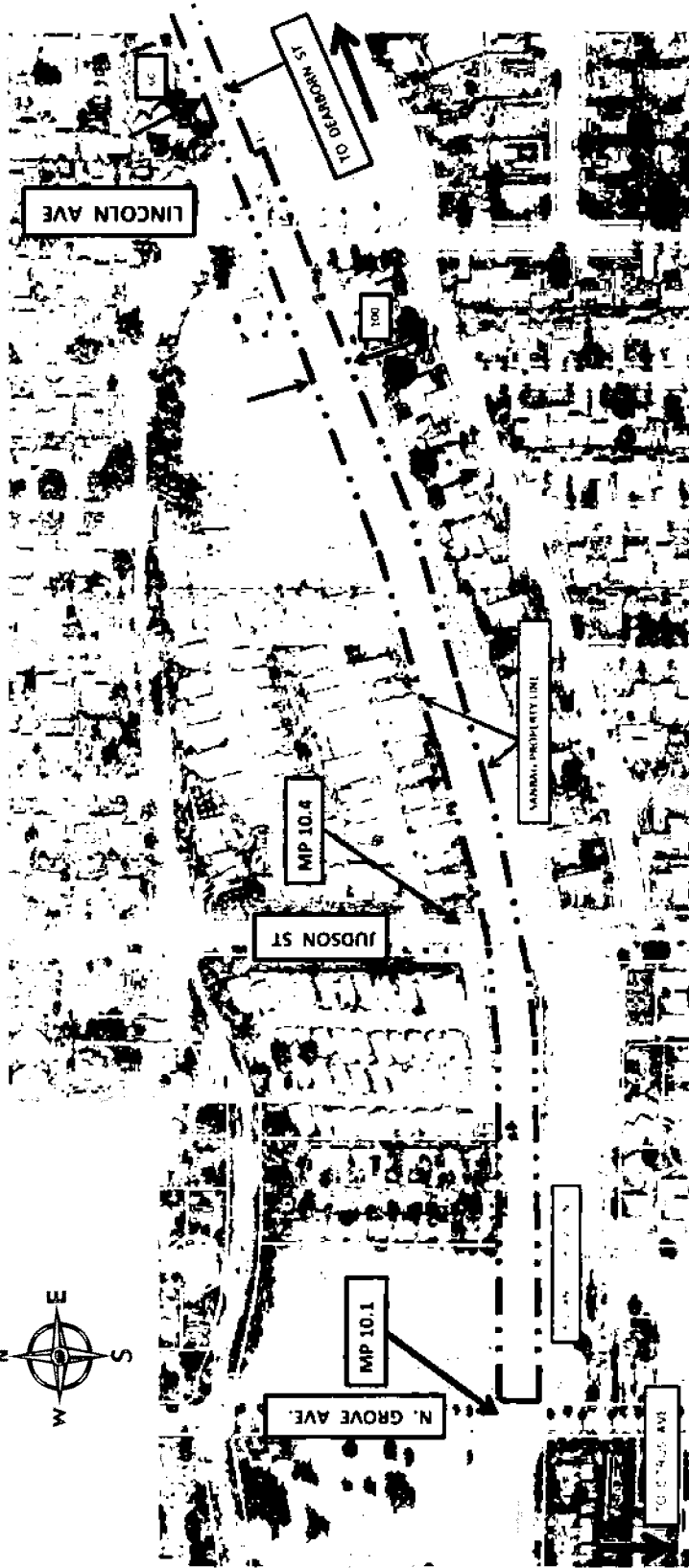
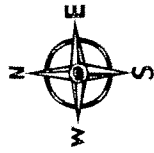
- (i) Landscaping shall be maintained to a height of not more than three (3) feet above surrounding ground level
- (ii) Fencing shall be maintained to a height of not more than four (4) feet above surrounding ground level

Investigate and resolve maintenance request as quickly as possible consistent with staff and equipment availability and City policy.

Post SANBAG approved signs regarding the Bikeway project and/or ownership of the Right of Way. **Maintain and replace** signs as necessary.

Remove graffiti from signs, posts and all hard structures appurtenant to the Bikeway and its landscaping on a weekly basis. Licensee shall not be responsible for maintenance of any erected billboards or appurtenances thereto.

In the event the Bikeway and SANBAG Property is not being maintained as herein provided, to SANBAG's satisfaction, SANBAG may perform, at Licensee's expense, any necessary work including, but not limited to, tree and other landscape trimming and fence replacement, and Licensee agrees to reimburse SANBAG for all incurred costs.



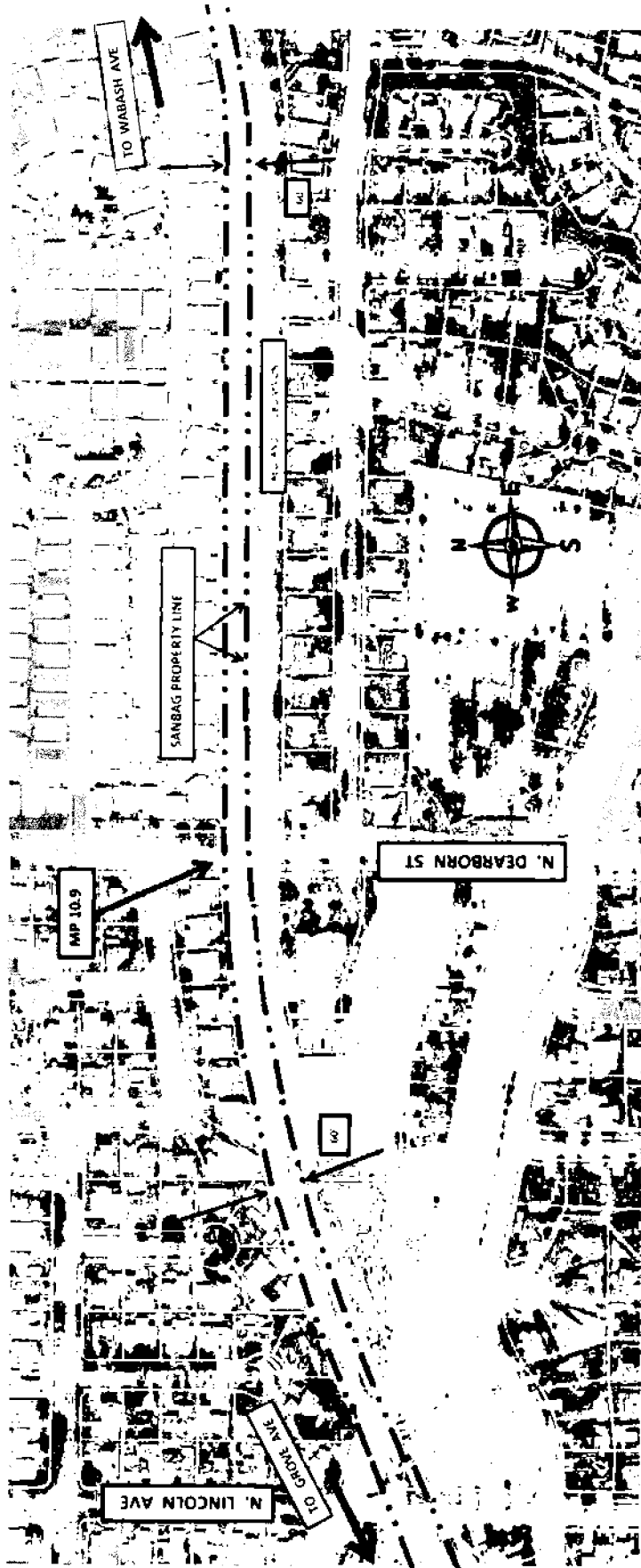
APN:

Date	10/11/2013	Mile Post	Lessee/Licensee
Branch/Line	SANBAG 10.1 - 11.7		CITY OF REDLANDS
REDLANDS		Nearest Cross Street	SANBAG File Number
County	REDLANDS	GROVE - WABASH	RRND007650
Area	0.9 MILE	City	Scale
80,448 LIN FEET		REDLANDS	1"=30'
Map Reference		Use	Thomas Guide Grid
RND4A,B		BIKEWAY	608E7-G5

EXHIBIT A-1

Governments
SANBAG
Working Together

SAN BERNARDINO
ASSOCIATED GOVERNMENTS
1170 W. 3rd Street, 2nd Floor
San Bernardino, CA 92410-1715

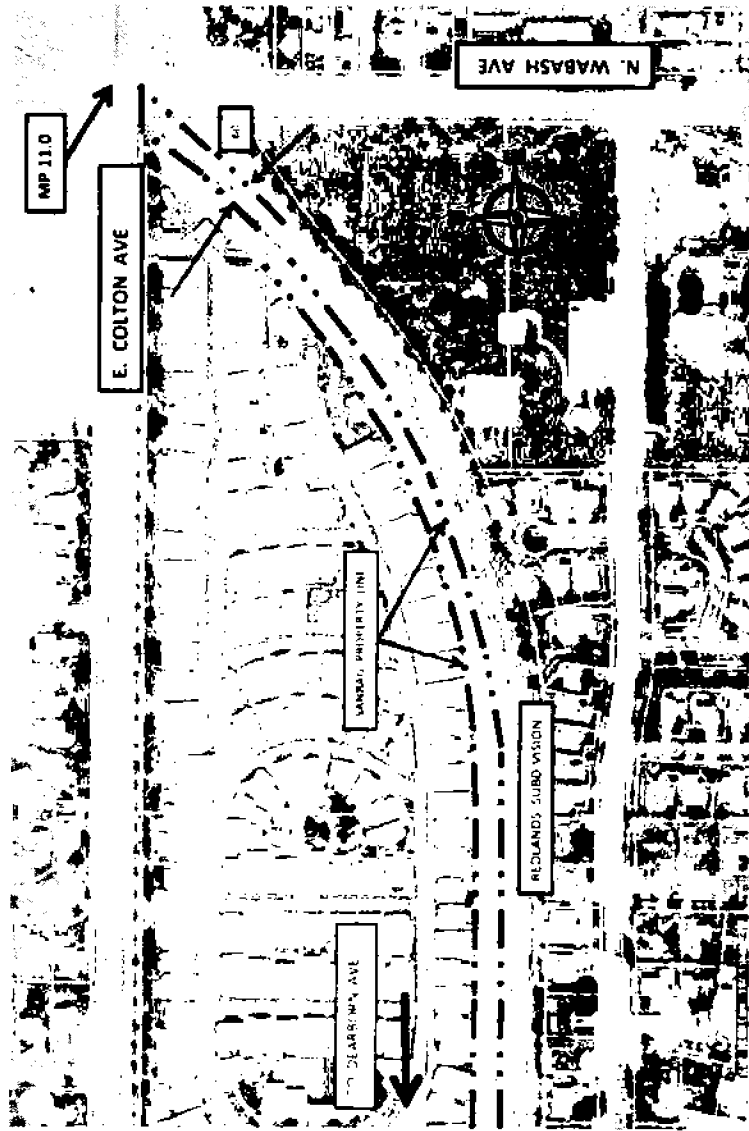


0170-201-31
 0170-221-10
 0170-281-11
 0170-291-20
 0170-301-03
 0168-291-09

COOK TO GROVE
 GROVE TO JUDSON
 JUDSON TO LINCOLN
 LINCOLN TO DEARBORN
 DEARBORN TO COLTON
 COLTON TO WABASH

APN: Date Branch/Line County Area Map Reference 10/11/2013 SANBAG 10.1 - 11.7 REDLANDS 0.9 MILE 80,448 LIN FEET RND4A.B Mile Post Nearest Cross Street City City Use License/Licensee CITY OF REDLANDS SANBAG File Number RRND007650 Scale 1"=30' Thomas Guide Grid 608E7-G5			
Governments SANBAG Working Together SAN BERNARDINO ASSOCIATED GOVERNMENTS 1170 W. 3rd Street, 2nd Floor San Bernardino, CA 92410-1715			

EXHIBIT A-2



0170-201-31
0170-221-10
0170-281-11
0170-291-20
0170-301-03
0168-291-09

COOK TO GROVE
GROVE TO JUDSON
JUDSON TO LINCOLN
LINCOLN TO DEARBORN
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EXHIBIT A-3			
Governments SANBAG <i>Working Together</i>		SAN BERNARDINO ASSOCIATED GOVERNMENTS 1170 W. 3rd Street, 2nd Floor San Bernardino, CA 92410-1715	
APN: Date: 10/11/2013 Branch/Line: REDLANDS County: REDLANDS Area: 0.9 MILE 80,448 LIN FEET Map Reference: RND4A.B	Mile Post: SANBAG 10.1 - 11.7 Nearest Cross Street: GROVE - WABASH City: REDLANDS Use: BIKEWAY	Lessee/Licensee: CITY OF REDLANDS SANBAG File Number: REND007650 Scale: 1"=30' Thomas Guide Grid: 608E7-G5	