STAFF REPORT

ITEM NO. 10

CITY OF OCEANSIDE

DATE: June 28, 2006

TO: Honorable Mayor and City Councilmembers

FROM: Public Works Department

SUBJECT: **EASEMENT AGREEMENT WITH NCTD RELATED TO COASTAL RAIL TRAIL PHASE 2 – OCEANSIDE BOULEVARD TO WISCONSIN AVENUE**

SYNOPSIS

Staff recommends that the City Council approve an easement agreement with North County Transit District (NCTD) for the use of a portion of its railroad right-of-way between Oceanside Boulevard and Wisconsin Avenue for the Coastal Rail Trail Phase 2 project, and authorize the City Manager to execute the agreement.

BACKGROUND

The City of Oceanside is participating in the regional Coastal Rail Trail which provides multimodal non-motorized vehicular transportation and incidental activities along the railroad corridor and right-of-way between Oceanside and San Diego.

Phase 1 of the Coastal Rail Trail along Broadway and South Myers Streets between Vista Way and Pacific Street was completed in April 2005. Phase 2 of the project will extend the trail from Oceanside Boulevard to the Oceanside Transit Center along the westerly edge of the railroad right-of-way from Oceanside Boulevard to Wisconsin Avenue and through the existing and future expansion of the Community Development Commission-owned parking lots between Wisconsin Avenue and Tyson Street.

In order to construct Phase 2 of the project it is necessary to obtain an easement from NCTD in its right-of-way between Oceanside Boulevard and Wisconsin Avenue.

ANALYSIS

Staff has negotiated the terms of the easement agreement with NCTD representatives. The easement will be for a term of fifty (50) years, subject to permitted uses as designated by Congress, for $1 consideration to NCTD for granting the easement.

Permitted uses of the easement include non-motorized transportation and incidental activities for bicyclists, pedestrians, roller-bladers and skaters, and other non-motorized transportation modes.

The City shall be responsible for the construction, maintenance and replacement of the improvements to be installed within and along the easement area in accordance with plans approved by NCTD and subject to rail safety regulations.

The easement agreement has been presented to and approved by NCTD's Planning Committee and Board of Directors.

FISCAL IMPACT

There is no adverse budgetary impact associated with this item. The consideration of $1 to be paid to NCTD for granting the easement will be paid from the project account. The estimated costs for this project is $1.9 million for construction and $7,500 for annual maintenance.

INSURANCE REQUIREMENTS

The insurance coverage required to be provided to NCTD for the use of its right-of-way under the easement agreement will be provided through the City self-insured program.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

The referenced document has been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council approve an easement agreement with North County Transit District (NCTD) for the use of a portion of its railroad right-of-way between Oceanside Boulevard and Wisconsin Avenue for the Coastal Rail Trail Phase 2 project, and authorize the City Manager to execute the agreement.

PREPARED BY:

William F. Marquis
Senior Property Agent

SUBMITTED BY:

Barry E. Martin
Interim City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Assistant to the City Manager

Peter A. Weiss, Public Works Director

Douglas E. Eddow, Real Property Manager

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City Clerk
City of Oceanside
300 North Coast Highway
Oceanside CA 92054

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

APN: 150-353-15
150-371-12
152-072-18
152-073-16

EASEMENT FOR COASTAL RAIL TRAIL
(WISCONSIN AVENUE TO OCEANSIDE BOULEVARD)

BY AND BETWEEN
NORTH COUNTY TRANSIT DEVELOPMENT BOARD
AND
CITY OF OCEANSIDE

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION

EASEMENT FOR RAIL TRAIL

This Easement Agreement (the "Agreement") is made this 24th day of January, 2006 between the NORTH SAN DIEGO COUNTY TRANSIT DEVELOPMENT BOARD, hereinafter referred to as "NCTD," and the CITY OF OCEANSIDE, hereinafter referred to as "CITY."

RECITALS

A. NCTD owns the railroad right-of-way (the "Right-of-Way") more particularly described in Exhibit 1 attached hereto and made a part hereof.

B. The Burlington Northern Santa Fe Railroad owns an easement over the Right-of-Way permitting it to conduct freight operations on the track located within the Right-of-Way.

C. CITY and other cities and agencies seek to construct a "coastal rail trail" (the "Rail Trail") within the Right-of-Way.

D. NCTD and CITY have agreed that CITY may plan, construct, maintain and operate the Rail Trail within the easement pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties hereto agree as follows:

1. Grant of Easement. NCTD hereby agrees to grant CITY an easement ("Easement") within the Right-of-Way for the purposes of and pursuant to conditions set forth in this Agreement.

2. Location of Easement. The Easement is located in the Right-of-Way within the City of Oceanside as further described in Exhibit 2 attached hereto and made a part hereof. [The Rail Trail will be the subject of separate license agreements as it passes over public streets and railroad crossings.]

3. Limitation on Easement. Easement is subject to the following:

a. All pre-existing rights, interests and easements affecting the use of the Right-of-Way; and

i. CITY acknowledges that NCTD's Right-of-Way is an easement for railroad purposes granted to NCTD's predecessor-in-interest pursuant to the General Right-of-Way Act of 1875. The United States is the owner of the underlying fee interest in the Right-of-Way. The Right-of-Way is subject to the right of reversion in the event the Easement is not utilized for appropriate purposes designated by acts of Congress. The Congress permits the "interim" use of such rights of way for permitted uses. The permitted uses could be modified by Federal law or judicial decision and upon such an adverse change this license would terminate.

ii. CITY acknowledges that the Easement (and the rights granted to CITY by this Agreement) is subject to a reserved freight easement in favor of the Burlington Northern and Santa Fe Railway Company as successor by merger to the Santa Fe and the terms and conditions of the San Diego County Shared Use Agreement by and between MTDB and NCTD and the Santa Fe dated October 30, 1992, as well as other rights and agreements that NCTD has entered into, or may enter into in the future concerning the use of the Right-of-Way for railroad purposes.

iii. CITY acknowledges that NCTD's Right-of-Way is the subject of leases with private parties and joint development agreements the terms and conditions of which enable the tenants to rights and access to portions of the Right-of-Way.

b. A reservation of an easement in favor of NCTD to utilize the airspace above the Easement and sub-surface of said Easement for uses not inconsistent with the City's use of the Easement, including but not limited to, third party uses for utility purposes.

3.1 This Agreement shall have a term of fifty (50) years beginning on January 24, 2006 (the "Commencement Date") and ending on January 23, 2056 or at an earlier date. (The "Term").

4. Payment of Use Fee. CITY shall pay a use fee to NCTD in the sum of one dollar ($1.00) as partial consideration for the Easement, payable in advance, on the first day of the Term.

5. Permitted Use.

5.1 During the Term, the Easement shall be used for the exclusive purpose of the construction, maintenance and operation of the Rail Trail and for uses normally incident to that purpose as set forth on Exhibit 3 attached hereto. CITY shall not use or permit the Easement to be used for any other purpose without the prior written consent of NCTD. CITY shall not commit or permit the commission by others of any damage, nuisance or waste on the Easement. CITY shall not place or permit to be placed upon the Easement any gasoline or any hazardous or explosive material, waste or substance. CITY's use of the Easement shall not interfere with any railroad operations on the Right-of-Way.

5.2 If CITY, its successors or assigns, shall use the Easement for any purpose other than as stated in this Section 5, or fail to act in strict accordance with the provisions of this Agreement, then NCTD shall provide CITY with a timely written notice of any claim of default, meet and confer with CITY regarding said claim of default, and allow CITY an opportunity to cure said default so long as CITY proceeds expeditiously to cure said default. The timeliness of the notice will depend upon the nature of the default. It is acknowledged that, given the

safety issues involved, some defaults may require very expeditious cures. If CITY fails to cure said default in a timely manner, NCTD may exercise its remedies at law or equity against CITY including termination of this Agreement.

6. Development Standards and Approvals. The development of improvements on the Easement as a Rail Trail ("Improvements") shall be planned and constructed by CITY at CITY's expense subject to the following development standards:

6.1 The landscaping of the Easement shall be subject to the following conditions and restrictions:

1. No sprinklers or irrigation waters are permitted within the Right-of-Way outside of the Easement; and

2. Adequate drainage must be provided for the Easement so that at all times all water shall flow away from the rails and ties and other railroad facilities.

6.2 Portions of the Improvements may be lighted.

6.3 CITY may install signage in connection with the Improvements.

6.4 CITY shall install barrier fencing along the entire length of the Easement between the Rail Trail and NCTD's adjacent railroad tracks. Said fence shall be designed and constructed in accordance with specifications set forth in Exhibit 4 attached hereto.

6.5 Plans for the development of the Improvements, including all vertical barriers, lighting and signage shall be subject to approval by NCTD prior to any construction, which approval shall not be unreasonably withheld or delayed.

7. Construction Matters.

7.1 CITY agrees that all work to be done hereunder by CITY and/or its contractors in the construction and/or maintenance of Improvements shall be performed in a good and workmanlike manner and in accordance with plans and specifications approved by NCTD. Changes or modifications to the project during construction

that affect the Easement or rail operations, improvements or equipment shall be subject to approval by NCTD, which approval shall not be unreasonably withheld or delayed. All work performed on, over, or under the Easement shall be done to the satisfaction of NCTD.

7.2 In the construction of the Improvements CITY shall require its contractor, at the contractor's expense, to:

(a) obtain a Right-of-Entry Permit from NCTD, a copy of which is attached hereto as Exhibit 5, and

(b) procure and maintain in force at all times during the construction of the Improvements, and for additional periods as described in the specifications for the construction of the Improvements, the insurance required by the Right-of-Entry Permit.

7.3 CITY shall reimburse NCTD within 30 days of invoice for all costs and expenses incurred by NCTD (including a 7.2% administrative fee which shall be equal to 7.2% of NCTD's actual expenses) in connection with the planning, design and construction of the Improvements, including, but without limitation, consultants fees, mark out of railroad facilities, inspectors, security and flag protection as NCTD deems necessary, the installation and removal of false work beneath tracks, equipment rentals and restorations of the Right-of-Way. Upon receipt of the Right of Entry Permit, CITY shall deposit with NCTD an amount equal to NCTD's estimated costs and expenses projected to complete construction.

7.4 Flag protection shall be required when construction of the Improvements and/or CITY's operations on or adjacent to the Right-of-Way present a danger to NCTD's rail facilities. NCTD shall determine the need for Flag Protection in its sole discretion. CITY agrees to execute time cards as required by NCTD for personnel providing Flag Protection services.

7.5 The following individuals shall be contacted prior to the start of construction of the Improvements and shall be the CITY's contacts regarding work on the Easement:

(a) NCTD Contact.
Ed Singer, Real Estate Asset Administrator
North County Transit District
810 Mission Avenue
Oceanside, CA 92054 Phone: (760) 966-6556

(b) CITY Contact.

Brian Grove, Project Manager
City of Oceanside
300 North Coast Highway
Oceanside, CA 92054 Phone: (760) 435-5106

7.6 NCTD shall have the right to enter the Easement to post notices of non-responsibility. CITY shall not permit any mechanics' or other liens to be filed against the Easement nor against CITY's interest herein by reason of labor and materials furnished to the Easement at CITY's insistence or request. If any such lien is filed against the Easement, CITY shall cause the same to be discharged of record, either by payment of the claim or by posting and recording the bond contemplated by California Civil Code 3143, within twenty (20) days after demand by NCTD.

7.7 The requirements of this Agreement related to the construction of the Improvements shall be specifically identified in any project specifications and bidding documents prepared by CITY for the construction of all or any part of the Improvements, and shall be subject to approval by NCTD.

7.8 Any contractor or subcontractor performing work on, or in connection with the CITY's use of or entry onto the Easement pursuant to this Agreement, shall be conclusively deemed to be the servant and agent of CITY, acting on behalf and

within the scope of such contractor's or subcontractor's employment for CITY and subject to the provisions of this Agreement.

7.9 Any and all construction work performed or caused to be performed by CITY on the Easement shall be performed in accordance with any and all applicable Federal, State and local agency laws, rules and regulations, including, but not limited to, such rules and regulations as are established by NCTD.

8. Maintenance.

8.1 NCTD shall have no obligation whatsoever to maintain or repair the Easement or the Improvements. CITY shall be solely responsible for maintenance and repair of all Improvements constructed on the Easement and all costs in connection therewith, including, but not limited to, the repair, resurfacing and resealing of the pedestrian path, repair of fencing and the watering and maintenance of landscaping, as necessary. CITY shall perform all maintenance and clean-up of the Easement and the Improvements thereon as necessary to keep both in good order and a safe condition and in accordance with all applicable Federal, State and local laws and regulations including NCTD Rules and Regulations.

8.2 NCTD and other entities having rights and obligations in the Right-of-Way may require use of the Right-of-Way (including the Easement) to maintain and repair their Improvements on or within the Right-of-Way. Accordingly, NCTD, and its agents, invitees, licensees and employees, shall have the right at any time to barricade any portion of the Easement and prevent public use thereof on a temporary basis as NCTD deems necessary for the duration of repair work. In the event such barricading is installed, NCTD shall provide prompt notice to CITY by phone or telefax and in accordance with Section 16, below. In the exercise of rights under this Section 8.2, NCTD shall ensure that adequate precautions are provided for the protection of the public.

8.3 CITY shall provide security on the Easement as required and shall utilize its uniformed peace officers to enforce applicable rules and regulations on the Easement.

9. Indemnity.

9.1 In addition to and without limitation on any other provision of this Agreement, CITY hereby agrees to investigate, defend, indemnify and hold NCTD, its members, officers, agents and employees, and easement holder Burlington Northern and Santa Fe Railroad and Amtrak, harmless from any and all loss, damage, liability, claims, demands, detriments, costs, charges and expenses (including reasonable attorneys' fees) and causes of action of whatever character which may be incurred, sustained or be subject to by any indemnified party on account of loss of or damage to or destruction of property and loss of use thereof, or for bodily injury to or death of any persons (including, but not limited to employees, subcontractors, easement holders, agents, servants, licensees, franchisees, and invitees of NCTD or the City), arising out of or in any way related, in whole or in part, to (i) the condition of the Easement, (ii) the use of the Easement by the CITY, including, but not limited to, the authorized or unauthorized use of the Improvements by any person, excepting trespassers outside the Easement, or (iii) the use of the Easement by the general public for cycling, jogging, walking, and all other activities, except to the extent that such claims or expenses arise from NCTD's, BNSF's or Amtrak's negligence, combined negligence, or the negligence of their officers, employees, agents, servants, contractors, licensees, franchisees or other easement holders, or lessees. CITY shall have the right to select outside counsel (subject to approval of NCTD which may not be unreasonably withheld) to defend NCTD and all indemnified parties pursuant to this Paragraph.

9.2 Notwithstanding the foregoing, nothing in this Agreement is intended to abrogate or limit any statutory or common law immunities that would otherwise attach to the actions or undertakings of CITY or to those of NCTD.

9.3 This indemnity shall not apply to bodily injury or death of any persons arising who are found to have been trespassing on the Right-of-Way outside of the Easement at the time of their injury or death.

10. Condition of Easement.

10.1 CITY warrants that it has inspected the Improvements and accepts the Easement in an "AS IS, WHERE IS CONDITION, WITHOUT WARRANTY AS TO QUALITY, CHARACTER, PERFORMANCE OR CONDITION" with all fault and with full knowledge of (i) the physical condition of the Easement, (ii) all zoning and other land use laws and regulations affecting the Easement, (iii) all matters of record relating to the Easement and (iv) all other conditions, restrictions, encumbrances relating to the Easement.

10.2 CITY hereby recognizes and acknowledges that railroad tracks are located on or adjacent to the Easement. CITY recognizes that the current and potential expanded future operation of trains over the Right-of-Way and construction on the Right-of-Way does and will produce vibrations, fumes, visual impacts and noise levels which may be considered objectionable by the employees, agents, residents or invitees of the CITY. With knowledge and understanding of these facts CITY hereby accepts the Easement as provided in this Article 10 and agrees that no legal action or complaint of any kind whatsoever shall be instituted against NCTD or other authorized users of the Right-of-Way by CITY or on CITY's behalf as a result of such vibrations, fumes, visual impacts and noise levels or as a result of the operation of the Right-of-Way.

11. Utilities. CITY shall arrange and pay before delinquency all charges for utilities, including without limitation, water, power, heat, garbage, communications and sewer

services reasonably necessary to conduct CITY's permitted use of the Easement under this Agreement.

12. Relocation of Facilities.

12.1 The Rail Trail has been sited and designed to avoid conflicts with all major Projects planned for the Right of Way for the next 20 years, thus, preserving the integrity of the Rail Trail for not less than 20 years by allowing for alternate equivalent routing whenever modifications are necessary. To the maximum feasible extent, all major Improvements to the Right of Way shall be designed to preserve the overall integrity of the Rail Trail.

12.2 If NCTD determines that modifications to segments of the Rail Trail for the purposes set forth below are necessary, NCTD shall provide a written notice to the CITY or its assignees of the requirement to relocate specific Improvements. The purposes for which NCTD could require modifications to segments of the Rail Trail are as follows:

1. Improvements necessary to ensure safety of Rail Trail users, railroad personnel and rail passengers;
2. Operational improvements necessary to maintain rail and freight service, including, but not limited to the addition of passing tracks, grade separations and other grade crossing improvements;
3. Changes necessary to meet the requirements of regulatory authorities.

Modifications to the Rail Trail set forth in this section shall be accomplished at the expense of CITY or its assignees. Unless the notice is given for the purpose of facilitating remediation caused by an emergency, CITY shall relocate the Affected Improvements within one hundred eighty (180) days of receipt of said notice. In the event the notice is to facilitate remediation of transit facilities resulting from an emergency NCTD may discontinue use of the Easement pending relocation of the Improvements.

13. Insurance.

13.1 At all times while this Agreement is in effect, the CITY shall, at its sole expense, maintain commercial general liability insurance written through an insurance company having a Best's rating of B+13 or better and licensed to do business in the State of California, meeting the requirements stated in this Article 13 in a form satisfactory to NCTD for a policy amount of not less than Ten Million Dollars ($10,000,000) (stated on a per occurrence basis).

13.2 The policy of commercial general liability insurance required by Paragraph 13.1 shall include the following provisions:

(A) The insurance shall not be modifiable or cancelable or non-renewable without 30 days' prior written notice to NCTD (except in the case of cancellation for non-payment of premium in which case cancellation shall not take effect until at least 10 days notice has been given to NCTD). This provision is hereinafter referred to as "Notice of Modification or Cancellation";

13.3 All policy or endorsement limitations relating specifically to operations on or near railroad property or track(s) shall be eliminated to the extent that they conflict with the obligations set forth in Paragraph 9 herein.

13.4 A properly completed certificate of insurance executed by an authorized representative of the insurer or insurers shall be furnished to the other Party prior to the Commencement Date and upon each renewal.

13.5 The requirements regarding the types and limits of insurance coverage to be maintained as required by this Article 13, and any approval of said insurance by the other Party and/or its agents, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by either Party pursuant to this Agreement, including but not limited to, the provisions concerning indemnification contained in Article 9 of this Agreement.

13.6 CITY shall upon knowledge notify NCTD within twenty-four (24) hours after the occurrence of any accident or incident on the Easement or adjacent property which could give rise to a claim under any of the insurance policies required hereunder.

13.7 Notwithstanding any other provision of this Agreement, the CITY may self-insure for any risk set forth in this Article 13 in the manner and to the extent that the CITY self-insures for similar risks with respect to its operations, equipment and property. To the extent the Certificates of Insurance provided pursuant to Paragraph 13.4 do not describe the self-insurance, the manner in which such self-insurance is provided and the extent of such self-insurance shall be set forth in a Certificate of Self Insurance, delivered to NCTD and signed by an authorized representative of the self-insured Party, which fully describes the self-insurance program and how the program covers the risks set forth in this Article 13. Insurance provided by a joint powers agency insurance pool shall be considered self-insurance for the purposes of this paragraph. If at any time during the term of this Agreement the CITY elects to not self-insure, CITY shall comply with all applicable provisions of this Article 13 to the extent it does not so self-insure.

13.8 Workers' Compensation and Employer Liability. CITY and its contractors shall cover or insure under the applicable laws relating to workers' compensation insurance, all of their employees working on or about the Easement, and CITY shall defend, protect and save harmless NCTD, its directors, officers, employees, agents and volunteers from and against all claims, suits, and actions arising from any failure of the CITY or any of CITY's contractors or assigns to maintain such insurance. Evidence of such insurance satisfactory to the NCTD will be delivered to the NCTD concurrent with execution of this Agreement or within ten (10) days thereafter or on such other date agreed to by NCTD in writing.

14. Termination. This Agreement may be terminated: (1) at any time upon the mutual agreement of NCTD and the CITY; (2) upon the proper exercise of rights described in paragraph 3(a)(i); (3) upon the proper exercise of rights by Burlington Northern and Santa Fe Railway Company described in paragraph 3(a)(ii); or (4) as provided in paragraph 5.2, above. Upon termination of this Agreement, CITY shall leave the Easement in a neat and safe condition and all Improvements, made by CITY on the Easement pursuant to this Agreement shall be the property of NCTD and remain on the Easement. However, NCTD may, at NCTD's option, by ninety (90) day written notice of its intent to terminate, require CITY to remove any Improvements from the Easement and to restore the Easement to its original condition (normal wear and tear excepted) prior to termination of this Agreement at CITY's sole cost and expense. If CITY fails to do so, NCTD may perform such removal and restoration in which case CITY shall pay NCTD within ninety (90) days after demand therefor the cost of removal of such Improvements. NCTD will use reasonable diligence in the removal of such Improvements if it elects to do so. Termination of this Agreement shall not release either party from any liability or obligation hereunder resulting from an event which occurred before termination.

15. Nonwaiver. The failure of either party to this Agreement to enforce or exercise its rights with respect to any term, covenant or condition of this Agreement shall not be construed as a waiver of that term, covenant or condition for any subsequent breach of the same or any other term, covenant or condition contained in this Agreement.

16. Notices. All notices shall be in writing and shall be deemed to have been given when delivered personally or deposited in the United States Mail, registered or certified, postage prepaid, and addressed to the party to whom the notice is directed at the address set forth below.

To NCTD at: North County Transit District
Attn: Real Estate Department
810 Mission Avenue
Oceanside CA 92054

or to such other address as NCTD may designate by written notice to the other parties to this Agreement.

To CITY at: City of Oceanside
Attn: Public Works Department
300 North Coast Highway
Oceanside, CA 92054

or to such other address as CITY may designate by written notice to the other parties to this Agreement.

17. Entire Agreement. This Agreement sets forth the entire agreement between the parties with respect to the Easement and supersedes all prior agreements, communications, and representations, oral or written, express or implied, since the parties intend that this be an integrated agreement. This agreement shall not be modified except by written agreement of the parties.

18. Invalidity of Particular Provisions. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant and condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

19. Successors. This Agreement shall bind and inure to the benefit of both NCTD and CITY and their respective successors, heirs and legal representatives.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

NORTH SAN DIEGO COUNTY TRANSIT DEVELOPMENT BOARD

By: _____
Karen H. King
Executive Director

Approved as to form:

_____
C. Michael Cowett
General Counsel
North San Diego County Transit
Development Board

CITY OF OCEANSIDE

By: _____
Steven R. Jepsen
City Manager

Approved as to form:

_____ ASST.
Barbara L. Hamilton
City Attorney
City of Oceanside

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of San Diego } ss.

On January 24, 2006 (Date) before me, Jillayne McNaughton Notary Public (Name and Title of Officer (e.g., "Jane Doe, Notary Public"))

personally appeared Karen H. King (Name(s) of Signer(s)),

☒ personally known to me

☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

JILLAYNE MCNAUGHTON
Commission # 1529373
Notary Public - California
San Diego County
My Comm. Expires Nov 25, 2009

Place Notary Seal Above

WITNESS my hand and official seal.

Jillayne McNaughton
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Easement for Coastal Rail Trail (Wisc Ave to Oceanside Blvd) By and Between North County Transit Development Board and City of Oceanside

Document Date: January 24, 2006 Number of Pages: one

Signer(s) Other Than Named Above: —

Capacity(ies) Claimed by Signer(s)

Signer's Name: Karen H. King

☐ Individual
☒ Corporate Officer — Title(s): Executive Director
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of San Diego } ss.

On January 30, 2006 (Date) before me, Lisa M. Grennon, Notary Public (Name and Title of Officer (e.g., "Jane Doe, Notary Public"))

personally appeared C. Michael Cowett (Name(s) of Signer(s)),

~~#~~ personally known to me
☐ proved to me on the basis of satisfactory evidence

to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity~~(ies)~~, and that by his/~~her~~/~~their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

WITNESS my hand and official seal.

Lisa M. Grennon
Signature of Notary Public

LISA M. GRENNON
Commission # 1608248
Notary Public - California
San Diego County
My Comm. Expires Oct 19, 2009

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Easement for Coastal Rail Trail

Document Date: 1/30/06 Number of Pages: 3 & 4 exhibits

Signer(s) Other Than Named Above: —

Capacity(ies) Claimed by Signer

Signer's Name: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

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EXHIBIT 1

Railroad Right-of-Way

PARCEL 15:
THAT PORTION OF THAT CERTAIN 200 FOOT RIGHT OF WAY OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY AS GRANTED TO CALIFORNIA SOUTHERN RAILWAY COMPANY UNDER THE PROVISIONS OF THE ACT OF CONGRESS OF RAILWAY COMPANY UNDER THE PROVISIONS OF THE ACT OF CONGRESS OF MARCH 3, 1875 (18 STAT. 482) AND SHOWN ON THE MAP OF SAID RIGHT OF WAY FILED IN THE OFFICE OF THE SECRETARY OF THE INTERIOR MARCH 14, 1881 AND APPROVED MAY 12, 1881, LYING WITHIN SECTION 26, TOWNSHIP 11 SOUTH, RANGE 5 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF OCEANSIDE, COUTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO OFFICIAL PLAT THEROF.

EXCEPTING THEREFROM SAID 200 FOOT RIGHT OF WAY, ANY PORTION LYING WITHIN THE DEPOT GROUNDS OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY AS DESCRIBED IN THAT CERTAIN DEED RECORDED FEBRUARY 23, 1887 IN BOOK 78 PAGE 390, OF DEEDS IN SAID OFFICE.

ALSO EXCEPTING THEREFROM SAID 200 FOOT RIGHT OF WAY, THAT PORTION CONDEMNED BY THE CITY OF OCEANSIDE, DESCRIBED IN CASE NO. N20564 OF THE SUPERIOR COURT, A CERTIFIED COPY OF THE FINAL ORDER OF CONDEMNATION, RECORDED DECEMBER 10, 1986 AS INSTRUMENT NO. 86-57602, OFFICIAL RECORDS IN SAID OFFICE.

ALSO EXCEPTING THEREFROM SAID 200 FOOT RIGHT OF WAY, THAT PORTION QUITCLAIMED TO THE OCEANSIDE COMMUNITY DEVELOPMENT COMMISSION, DESCRIBED IN THAT CERTAIN DEED RECORDED DECEMBER 18, 1989 AS INSTRUMENT NO. 89-683345,OFFICIAL RECORDS, IN SAID OFFICE.

AND,

PARCEL 16:
THAT PORTION OF THAT CERTAIN 200 FOOT RIGHT OF WAY OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY AS GRANTED TO CALIFORNIA SOUTHERN RAILWAY COMPANY UNDER THE PROVISIONS OF THE ACT OF CONGRESS OF RAILWAY COMPANY UNDER THE PROVISIONS OF THE ACT OF CONGRESS OF MARCH 3, 1875 (18 STAT. 482) AND SHOWN ON THE MAP OF SAID RIGHT OF WAY FILED IN THE OFFICE OF THE SECRETARY OF THE INTERIOR MARCH 14, 1881 AND APPROVED MAY 12, 1881, LYING WITHIN SECTION 35, TOWNSHIP 11 SOUTH, RANGE 5 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF OCEANSIDE, ACCORDING TO OFFICIAL PLAT THEROF.

ALLEY
PACIFIC
WISCONSIN
MYERS
TAIT
HAYES
LEONARD
CLEVELAND
WEST
STANLEY
DITMAR
227
227
SEC 26-11-5W*W H*3.66 AC M/L IN BLKS 2 MAP 3408/M
SEC 26-11-5W*W P*1.58 AC M/L IN LOTS C THRU F BLK 2 MP 3408/M
SEC 26-11-5W*W H*2.44 AC M/L IN BLK 3 MAP 3408/M SEC 35&/M
SEC 35-11-5W*2.07 AC M/L IN LOTS A THRU F BLK 4 MAP 3408/M SEC 26&/M
EUCALYPTUS
ALLEY
TREMONT
COAST HIGHWAY
MARRON
FORSTER
OCEANSIDE
PRIVATE
GODFREY

EXHIBIT 2

Description of Easement

EXHIBIT 2

Description of Easement
COASTAL RAIL TRAIL
OCEANSIDE BOULEVARD TO WISCONSIN AVENUE

THAT PORTION OF THAT CERTAIN 200-FOOT WIDE STRIP OF LAND BEING THE RAILWAY RIGHT-OF-WAY OF THE NORTH SAN DIEGO COUNTY TRANSIT DEVELOPMENT BOARD, A PUBLIC ENTITY EXISTING UNDER THE AUTHORITY OF SECTION 125000, ET SEQ., OF THE CALIFORNIA PUBLIC UTILITIES CODE, AS SUCCESSOR IN INTEREST TO THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, A DELAWARE CORPORATION, AS SAID RAILWAY RIGHT-OF-WAY GRANTED TO THE CALIFORNIA SOUTHERN RAILWAY COMPANY UNDER THE PROVISIONS OF THE ACT OF CONGRESS OF MARCH 3, 1875 (18 STAT. 482) ENTITLED "AN ACT GRANTING TO RAILROADS THE RIGHT-OF-WAY THROUGH THE PUBLIC LANDS OF THE UNITED STATES" AND SHOWN ON THE MAP OF SAID RIGHT-OF-WAY FILED IN THE UNITED STATES LAND OFFICE, LOS ANGELES, CALIFORNIA, MARCH 14, 1881 AND APPROVED BY THE SECRETARY OF THE INTERIOR, MAY 12, 1881, SITUATED IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, LYING WITHIN SECTIONS 26 AND 35, TOWNSHIP 11 SOUTH, RANGE 5 WEST, SAN BERNARDINO MERIDIAN, AS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING THE SOUTHWESTERLY 25.00 FEET OF SAID 200-FOOT WIDE RAILWAY RIGHT-OF-WAY LYING BETWEEN OCEANSIDE BOULEVARD (FORMERLY SHORT STREET) TO THE SOUTH, AND WISCONSIN AVENUE (FORMERLY COUTS STREET) TO THE NORTH, AS SAID STREETS ARE SHOWN ON MYER'S ADDITION TO THE CITY OF OCEANSIDE, ACCORDING TO MAP THEREOF NO. 340, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY OF SAN DIEGO, AUGUST 28, 1885; WHICH RAILWAY RIGHT-OF-WAY ALSO INCLUDES THE NORTHEASTERLY 10.00 FEET OF LOTS A THROUGH F IN BLOCKS 1 THROUGH 4, INCLUSIVE, OF SAID MAP NO. 340.

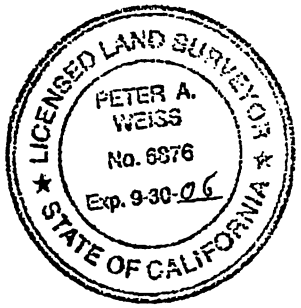
THE SOUTHWESTERLY AND NORTHEASTERLY SIDELINES OF SAID SOUTHWESTERLY 25.00 FEET OF SAID 200-FOOT WIDE RAILWAY RIGHT-OF-WAY SHALL BE LENGTHEN OR FORESHORTENED TO TERMINATE TO THE SOUTH AT THE NORTHWESTERLY LINE OF THE OCEANSIDE BOULEVARD AT-GRADE CROSSING AND TO THE NORTH AT THE SOUTHEASTERLY LINE OF THE WISCONSIN AVENUE AT-GRADE CROSSING, OF SAID RAILWAY RIGHT-OF-WAY.

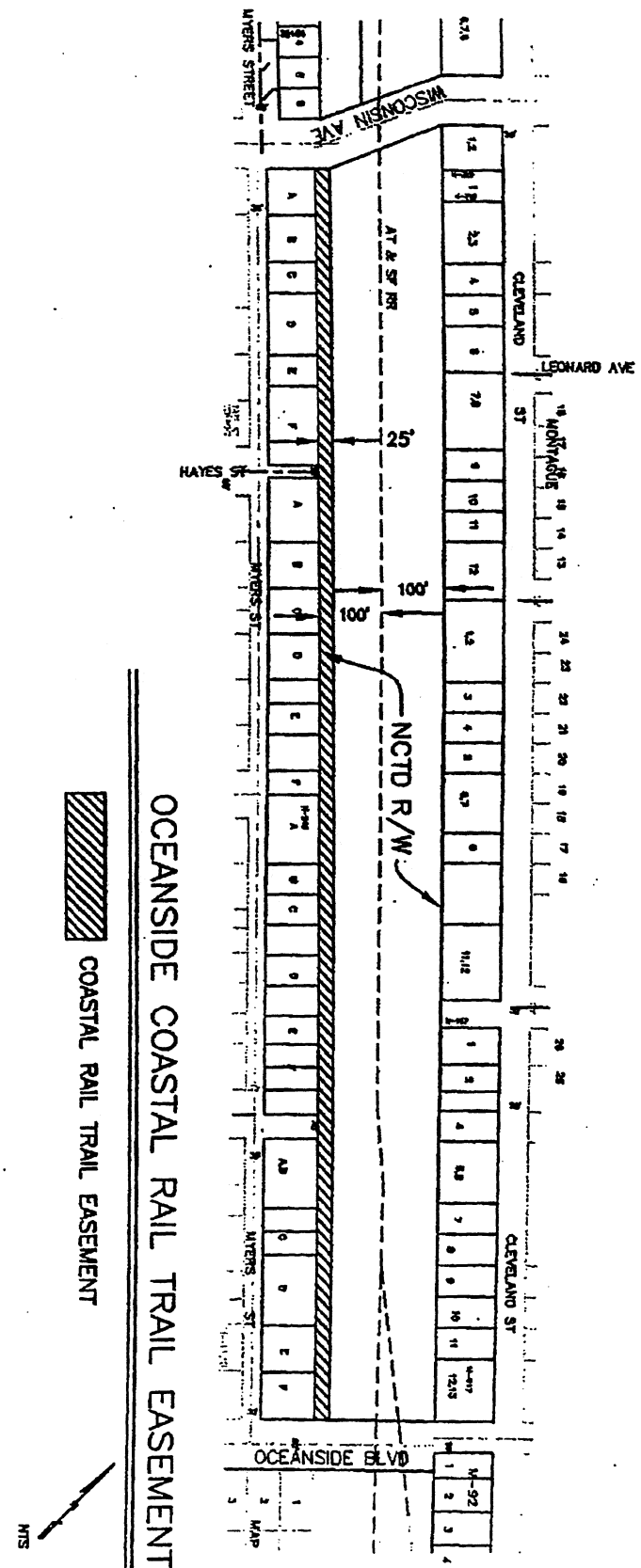
CONTAINING 1.17 ACRES (51,000 SQUARE FEET), MORE OR LESS.

THIS REAL PROPERTY DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.

Peter Weiss

PETER A. WEISS, PUBLIC WORK DIRECTOR
CITY OF OCEANSIDE
LS 6876 EXP. 09/30/2006
RCE 43161 EXP. 03/31/2006





COASTAL RAIL TRAIL EASEMENT

NTS

OCEANSIDE COASTAL RAIL TRAIL EASEMENT

EXHIBIT 2
Page2of 2

EXHIBIT 3

Uses of Rail Trail

The Oceanside Coastal Rail Trail will provide a multi-modal, non-motorized trail for transportation and incidental activities such as:

- Bicyclists
- Pedestrians
- Roller Bladers
- Roller Skaters
- Skate Boarders
- Other non-motorized Transportation Modes

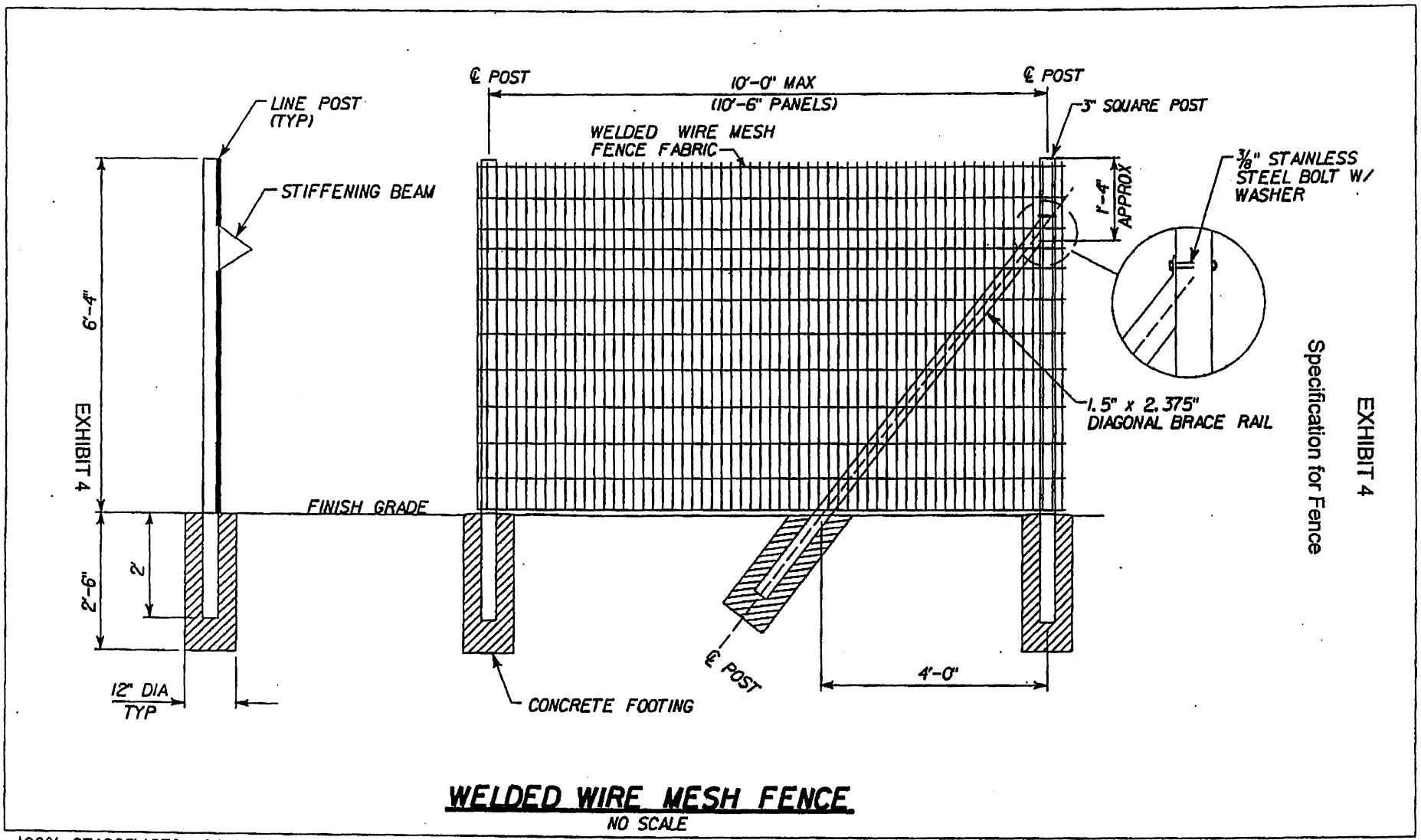


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EXHIBIT 5

Right-of Entry Permit Form

RIGHT OF ENTRY PERMIT

THIS RIGHT OF ENTRY PERMIT ("Permit"), entered into as of _____, 2005 between the NORTH SAN DIEGO COUNTY TRANSIT DEVELOPMENT BOARD ("NSDCTDB" or "Board") and _____ ("Permittee").

RECITALS

A. Board is the owner of certain railroad right-of-way assets extending from Orange County to San Diego and from Oceanside to Escondido (the "Right-of-Way"). The Right-of-Way is in active use for the operation of freight trains (by the Burlington Northern Santa Fe Railway Company ["BNSF"]), intercity passenger trains (by the National Railroad Passenger Corporation ["AMTRAK"]) and commuter trains (by Board).

B. Permittee desires to enter onto and use that portion of the Right-of-Way more particularly described in Exhibit A attached hereto (the "Permit Area").

C. Board is willing to allow Permittee to enter onto and use a portion of the Right-of-Way, provided that Permittee's entry and use do not interfere with the Board's operations, including response to emergencies and routine maintenance, or the safe use of the Right-of-Way by Board, BNSF, and AMTRAK, and provided that Permittee's entry and use are in strict accordance with terms and conditions set forth in this Permit.

NOW, THEREFORE, BOARD AND PERMITTEE AGREE AS FOLLOWS:

1. Basic Permit Terms.

1.1 Permit Fee: Five Hundred Dollars ($ 500.00).

1.2 Expense Reimbursement Deposit: _____ Dollars ($_____).

1.3 Permit Expiration Date: _____, 2005

1.4 Permitted Use: _____

_____

1.5 Board Permit Coordinator: Edward J. Singer, Real Estate Asset Administrator
Telephone number: (760) 966-6556

1.6 Permittee's Address:

Telephone Number:

1.7 Emergency Number: (800) 500-7346

2. Grant of Permit. Board hereby permits Permittee to enter upon and use the Permit Area for the purpose and during the time periods set forth in this Permit.

3. Permit Fee. Permittee shall pay to Board, in advance, the non-refundable Permit Fee set forth in section 1.1 as partial consideration for the rights and privileges set forth in this Permit. The Permit Fee is payable to North San Diego County Transit Development Board on or before execution of this Permit.

4. Cost Reimbursement. In addition to the Permit Fee, Permittee shall reimburse Board for all costs and expenses incurred by Board in the review of Permittee's request for this Permit, Permittee's entry upon and use of the Permit Area, and review and inspection of any work performed in the Permit Area; markout of railroad facilities; inspection, flagging, and security services; and installation, removal, repair, and restoration of the Right-of Way and railroad facilities. Upon execution of this Permit, Permittee shall deposit with the Board the Expense Reimbursement Deposit amount set forth in section 1.2. Board may deduct the costs and expenses from the Expense Reimbursement Deposit as such costs and expenses are incurred. Costs of services provided by Board employees will be charged at the employees' fully loaded productive hourly rate (monthly salary and benefits divided by 150 hours). Services provided by Board consultants, equipment rentals, and other third party costs will be charged at cost plus a 7.2% administrative fee. Upon demand by Board, Permittee shall make any additional deposits that Board determines are necessary to reimburse Board for the costs and expenses incurred by Board. In the event that the costs and expenses incurred by Board exceed the amounts deposited, Permittee shall reimburse Board for all such costs and expenses within 30 days of invoice.

5. Use of Right of Way.

   5.1 Permitted Use. Permittee's entry upon and use of the Permit Area is solely for the purpose set forth in section 1.4.

   5.2 Time of Use.

   a. Permittee shall not enter upon or use the Permit Area or any Right-of-Way until Permittee has paid the Permit Fee set forth in section 1.1, paid the Expense Reimbursement Deposit set forth in section 1.2, satisfied the safety conditions set forth in section 5.3(d), and delivered to Board the evidence of insurance set forth in section 8.

   b. Permittee shall deliver to Board a written Flag Protection Right-of-Way Work Request, in the form attached as Exhibit B, not less than three (3) business days prior to each entry upon the Permit Area. The need for flag protection shall be determined in the sole discretion of the Board's Manager of Maintenance of Way. In the event that the Manager of Maintenance of Way determines that

flag protection is necessary, Permittee shall not enter upon or use the Permit Area until flag protection has been provided. Board shall use reasonable efforts to provide flag protection on the dates and times of Permittee's requested entries, provided that any work by Board, BNSF, or AMTRAK that requires flag protection shall take priority. Board shall not be liable for any costs, expenses, or claims if flag protection is not provided on Permittee's requested dates or times of entry.

c. The Board's Manager of Maintenance of Way has the right to approve the dates and times that Permittee may use the Permit Area.

d. This Permit and Permittee's rights hereunder shall terminate automatically upon the completion of the purpose stated in section 1.4, or at 5:00 p.m. on the Permit Expiration Date set forth in section 1.3, which ever is first to occur.

5.3 Restrictions on Use.

a. Permittee has no right to use any portion of the Right-of-Way other than the Permit Area for any purpose.

b. No use by Permittee shall interfere with or delay any railroad operations on the Right-of-Way or interfere with or cause damage to any railroad facilities.

c. Permittee shall protect all railroad facilities, public improvements, public utilities, communication lines, survey and subdivision monuments, and other facilities of like character, existing or constructed during the term of this Permit upon, over, under, or across the Right-of-Way from damage from Permittee's use. Permittee shall promptly replace or repair all such improvements or facilities which are destroyed or damaged as a result of any entry by Permittee under this Permit. Permittee shall bear the entire cost of replacement or repairs of any and all improvements and facilities damaged or destroyed by reason of Permittee's use under this Permit, whether such improvements or facilities are owned by Board or any other owner. Any repair or replacement shall be to the satisfaction, and subject to the approval of, the Board or the owner of the improvements or facilities.

d. Every individual who will be entering upon the Right-of-Way under this Permit, before entering onto the Right-of-Way, shall first attend a class conducted by the Board or the Board's designee on Railroad Worker Protection Safety rules and regulations. Permittee shall comply with the SDNR rules and regulations of the San Diego Northern Railway and the Track Safety Standards, Part 213, Subpart A-F, Class of tracks 1-5, Federal Railroad Administration (FRA) at all times while on the Right-of-Way. Such rules and regulations include, but are not limited to, the wearing of hard hats, protective goggles, reflective vests and steel-toed (or equivalent) shoes at all times while working on the Right-of-Way.

All costs of the safety training and of complying with the Board' s safety requirements will be at the expense of the Permittee.

e. Permittee shall be solely responsible for compliance with all federal, state, and local laws, regulations, rules, and orders applicable to Permittee's entry upon and use of the Right-of-Way. Permittee shall obtain all federal, state, and local permits and approvals applicable to Permittee's entry upon and use of the Right-of-Way.

f. No object which can be moved by two persons shall be left on the Right-of-Way unattended. This requirement also applies to objects above and/or outside the Right-of-Way on the uphill side which can be thrown or rolled downhill onto the track(s).

6. Improvements and Work.

6.1 No Permanent Improvements. This Permit does not authorize Permittee to place any improvements or facilities in the Right-of-Way that will remain in the Right-of-Way after the termination of this Permit. Any such improvements or facilities can be authorized only by a separate written license or agreement between Board and Permittee or the owner of the improvements or facilities, which license or agreement shall contain such other terms, conditions, covenants, representations, and warranties as Board, in Board's sole and absolute discretion, determines to be appropriate, including, without limitation, provisions relating to maintenance, term, payments for use of the Right-of-Way, relocation, indemnity, and insurance.

6.2 Approval of Work. Permittee shall deliver to Board, for Board's review and approval, drawings, specifications, and other construction documents describing any proposed work in the Permit Area in sufficient detail to enable Board to determine the scope and nature of the proposed work and the potential effect of such work on the Right-of-Way and the train operations. Board may approve or disapprove any work in Board's sole and absolute discretion, and Board may require such changes or impose such conditions as Board, in its sole and absolute discretion, deems necessary or appropriate. In the event that Board approves any proposed work, the work by Permittee in the Permit Area shall be done in compliance with the drawings, specifications, and documents approved by Board, with the terms and conditions set forth in this Permit, and with all applicable federal, state, and local laws, rules, regulations, permits, and orders. Permittee shall only use a contractor approved by Board. Board shall have the right inspect the work to determine whether the work is performed in accordance with the terms and conditions of this Permit and to order Permittee to correct or remove any work that does not comply with the terms and conditions of this Permit. Permittee shall reimburse Board for the costs of inspections and costs of furnishing any flag protection for the work.

6.3 No Representation or Warranties Regarding Work. Board's review and inspection of the drawings, specifications, construction documents, and work is for the purpose of examining the general arrangement, design, and details of the work for potential impact on the Right-of-Way and railroad operations. Board and Board's employees, consultants, and agents assume no responsibility for and make no representations or warranties, express or implied, as to the design, condition, workmanship, or adequacy of the drawings, specifications, construction documents, or work. No review, comments, requirements, or inspection shall relieve Pemittee or Permittees engineers, contractors, subcontractors, or consultants from the entire responsibility for the errors or omissions in the drawings, specifications, or construction documents, or for the quality or adequacy of the work.

6.4 Permittee's Notification Requirements.

a. Permittee shall contact the Board Permit Coordinator named in section 1.5 of the Basic Permit Terms prior to the start of any construction work for a markout of Board facilities. Please be advised that Board is not a member of Dig Alert.

b. Permittee shall contact Dig-Alert at (800) 422-4133 prior to any excavation in the Right-of-Way.

c. Permittee shall contact Underground Service Alert for MCI Telecommunications installations at (800) 227-2600 prior to any excavation in the Right-of-Way.

7. Exculpation and Indemnity.

7.1 Exculpation of Board. Board shall not be liable to Permittee for any damage to Permittee or Permittee's property from any cause. Permittee waives all claims against Board, BNSF, AMTRAK and their respective directors, officers, employees, and agents for damage to person or property arising for any reason. Permittee acknowledges that the Right-of-Way is used for operation of trains operating at high speeds.

7.2 Indemnity. Permittee hereby indemnifies, defends, and holds the Board, BNSF, AMTRAK, and their respective directors, officers, employees, and agents, harmless from and against any and all liability or claim of liability, loss or expense, including defense costs and legal fees and claims for damages of whatsoever character, nature and kind, whether directly or indirectly arising from or connected with an act or omission of Permittee, or any employee, agent, invitee, contractor of Permittee, or other person acting by or on behalf of Permittee on or about the Right-of-Way, including, but not limited to, liability, expense, and claims for: bodily injury, death, personal injury, or property damage; provided, however, that nothing herein shall relieve any party indemnified hereunder from liability to the extent that such liability arises from such party's

sole established negligence or willful misconduct. This indemnity shall not require payment of a claim by the Board, BNSF, AMTRAK, or any of their respective directors, officers, employees, or agents as a condition precedent to the Board' s recovery hereunder. Permittee' s obligation to indemnify hereunder shall not be restricted to insurance proceeds, if any, received by Board, BNSF, AMTRAK, or their respective directors, officers, employees, or agents.

7.3 Delay/Cancellation of Trains. Without limiting the indemnity set forth in section 7.2, Permittee agrees to pay all costs associated with the delay or cancellation of trains caused by Permittee. Delay charges are estimated to be $2,000 per passenger train delayed over 30 minutes and may include the cost of busing passengers around the work area, if necessary.

7.4 Indemnity Not Limited to Insurance Coverage. The requirements as to the types and limits of insurance coverage to be maintained by Permittee as required by section 8, and any approval of such insurance by Board, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Permittee pursuant to this Permit, including but not limited to the provisions concerning indemnification.

8. Insurance. Permittee, at Permittee's sole cost and expense, shall procure and maintain the following insurance:

8.1 Railroad Protective Liability Insurance.

a. Railroad Protective Liability Insurance covering the operations performed by Permittee or any subcontractor of Permittee within fifty (50) feet vertically or horizontally of railroad tracks.

b. The AAR-AASHTO (ISO/RIMA) Occurrence Form (claims-made forms are unacceptable) shall be issued in the names of the North San Diego County Transit Development Board, San Diego Northern Railroad, Burlington Northern Santa Fe Railway Company, and National Railroad Passenger Corporation.

c. The Railroad Protective Liability Insurance policy shall have limits of liability of not less than $5 million per occurrence, combined single limit, for Coverages A and B, for losses arising out of injury to or death of all persons, and for physical loss or damage to or destruction of property, including the loss of use thereof. Additionally, Policy Endorsement CG 28 31 - Pollution Exclusion Amendment, is required to be endorsed onto the policy. A $5 million annual aggregate shall apply.

d. The original Railroad Protective Liability Insurance Policy must be submitted to NCTD prior to any entry upon the right-of-way

8.2. Commercial General Liability Insurance.

a. Commercial General Liability Insurance covering liability of the Permittee with respect to all operations to be performed and all obligations assumed by the Permittee under the terms of this Permit. Products-completed operations, independent contractors, and contractual liability coverages are to be included, with the contractual exclusion related to construction/demolition activity within fifty (50) feet of the railroad and any X-C-U exclusions deleted.

b. Coverage for commercial general liability shall be at least as broad as Insurance Services Office Commercial General Liability Coverage (Occurrence Form CG 0001).

c. The commercial general liability policy must name North San Diego County Transit Development Board, San Diego Northern Railroad, Burlington Northern Santa Fe Railway Company, National Railroad Passenger Corporation and their respective directors, officers, employees, contractors and agents as additional insureds.

d. Limits shall be no less than two million dollars ($2,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply to the Right-of-Way (with the ISO CG 2503, or ISO CG 2504, or insurer's equivalent endorsement provided to Board) or the general aggregate limit shall be twice the required occurrence limit.

8.3 Automobile Liability.

a. Automobile liability insurance covering the liability of Permittee arising out of the use of all owned, non-owned, and hired vehicles which bear, or are required to bear, license plates according to the laws of California and which are not covered under the Permittee's Commercial General Liability insurance. Coverage under this policy shall have limits of liability of not less than $2 million per occurrence, combined single limit, for bodily injury and property damage (including loss of use) liability.

b. Coverage shall be at least as broad as Insurance Services Office Automobile Liability Coverage (Form CA 0001), covering Symbol 1 (any auto).

c. The automobile liability policy must name North San Diego County Transit Development Board, San Diego Northern Railroad, Burlington Northern Santa Fe Railway Company, National Railroad Passenger Corporation and their respective directors, officers, employees, contractors and agents as additional insureds.

d. Limits shall be not less than one million dollars ($1,000,000) for bodily injury and property damage each accident limit.

8.4 Workers' Compensation and Employer's Liability Insurance.

a. Workers' compensation and employer's liability insurance complying will the requirements of all applicable laws relating to workers' compensation insurance, covering or insure all of the Permittee's employees working on or about the Right-of-Way.

b. Limits shall be no less than one million dollars ($1,000,000) per accident for bodily injury and disease.

c. By his/her signature hereunder, Permittee certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and it will comply with such provisions in connection with any work performed on the Site.

d. Any persons providing services with or on behalf of Permittee shall be covered by workers' compensation (or qualified self-insurance).

8.5 Policy Forms. All of the insurance shall be provided on policy forms and through companies reasonably satisfactory to Board.

8.6 Acceptability of Insurers. Insurance is to be placed with insurers having a current A.M. Best rating of no less than A-, VII or equivalent or as otherwise approved by Board.

8.7 Evidences and Cancellation of Insurance.

a. Prior to entry on the Right-of-way, Permittee shall file with the Permit Coordinator a certificate of insurance for the commercial general liability and automobile liability policies required by sections 8.2 and 8.3, with an original signature of the insurer's representative . An endorsement shall be attached to the certificate demonstrating that the policy was changed to reflect the additional insured requirements.

b. Each insurance policy required by this clause shall state or be endorsed to state that coverage shall not be amended or canceled, except after thirty (30) days prior written notice by U.S. mail has been given to Board.

9. Default; Termination.

9.1 Default. If Permittee uses the Right-of-Way for any other purpose than as stated in section 1.4 of the Basic Permit Terms, or fails to act strictly in accordance with the terms and conditions of this Permit, then Board may immediately and without prior notice to Permittee terminate this Permit and prevent Permittee from using or remaining upon the Right-of-Way, with or without process of law. In the event that Permittee fails to perform any obligation under this Permit, Permittee shall pay all costs and expenses incurred by Board in obtaining performance of such obligations, including costs of suit and reasonable attorney's fees.

9.2 Removal of Work. If Permittee fails to complete any work in accordance with the terms and conditions of this Permit, Board may remove such work and restore the Right-of-Way at the expense of Permittee, and Permittee shall be liable to Board for all costs and damages occasioned thereby.

9.3 Permittee's Obligations on Termination. Upon termination of this Permit, and at Permittee's sole expense, Permittee shall remove any and all equipment, tools, vehicles, materials, and other personal property, placed on the Right-of-Way or used in connection with Permittee's entry onto or use of the Right-of-Way and Permittee shall restore the Right-of-Way in a manner satisfactory to Board. Should Permittee fail or refuse to comply with the terms of this section, Board may, at its option, perform such work. Permittee shall reimburse Board for the cost so incurred. Failure on the part of Board to perform the obligations of Permittee shall not release Permittee from liability hereunder for loss or damage occasioned thereby.

9.4 Continuing Obligations of Permittee. No termination or cancellation of this Permit shall relieve or release Permittee from any liability or obligation (whether of indemnity, payment of costs, or otherwise) which may have attached or accrued previous to or which may be accruing at the time of such termination or cancellation.

10. Notices. Except as otherwise provided in this Permit, any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery or by certified or registered mail, and shall be deemed sufficiently given if delivered or addressed to Tenant at the address in section 1.6 of the Basic Permit Terms or to Board at North San Diego County Transit Development Board, 810 Mission Avenue, Oceanside, CA 92054, Attention: Manager of Real Estate. Mailed notices shall be deemed given upon actual receipt at the address required, or forty-eight hours following deposit in the mail, postage prepaid, whichever first occurs. Either party may by notice to the other specify a different address for notice purposes.

11. Permittee's Agents. Any contractor or subcontractor performing work on, or in connection with the Permittee's use of or entry onto the Right-of-Way pursuant to this

Permit, shall be conclusively deemed to be the servant and agent of Permittee, acting on behalf and within the scope of such contractor's or subcontractor's employment for Permittee.

12. Board Agents. Except as otherwise provided in this Permit, the term Board shall include Board's staff and employees.

13. Board Contacts. The Board Permit Coordinator named in section 1.5 serves as a liaison between Board staff and Permittee to assist Board staff in the coordination of the reviews, approvals, and scheduling of Board activities in connection with this Permit. The Board Permit Coordinator does not have the authority make agreements on behalf of Board or bind Board to any decision.

14. Covenant of Non-Discrimination. Permittee covenants for itself, and its successors and assigns, and all persons claiming under and through Permittee, that there shall be no discrimination or segregation of any person or group of persons on account of sex, marital status, race, color, creed, religion, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of any portion of the Right-of-Way.

15. No Partnership, Joint Venture or Principal-Agent Relationship Nothing contained in this Permit shall be deemed or construed to create the relationship of principal and agent, or of joint venture, or of partnership between Permittee and Board.

16. General Provisions.

16.1 No Further Rights.

a. This Permit constitutes a permit only to enter upon and use the Right-of-Way for the purpose set forth in section 1.4 of the Basic Permit Terms and shall not be construed as granting to Permittee any right-of-possession, estate, title or interest whatsoever in or to the Right-of-Way, or any part thereof.

b. Permittee hereby acknowledges that it has been informed that Board is a public entity and that the subject property has previously been acquired by Board for a public purpose. Permittee further acknowledges that any rights acquired under this Permit arose after the date of acquisition of the subject property and that such rights are subject to termination when the property is needed by Board for the public purpose. Permittee hereby acknowledges and agrees that at the time of termination of this Permit by Board, Permittee will not be a "displaced person" entitled to any of the relocation assistance or benefits offered to displaced persons under State or Federal law.

16.2 Modification of Permit. This Permit and any provision, covenant, condition, or restriction contained herein may be extended, modified, or amended with the unanimous consent of the Parties. No such extension, modification or amendment will be effective until a written instrument setting forth its terms has been executed by Board and Permittee.

16.3 Captions The captions of this Permit are inserted only as a matter of convenience and for reference. It does not define, limit or describe the scope of intent of this Permit, and they shall not affect the interpretation thereof.

16.4 Agreement for Exclusive Benefit of Parties Except where expressly provided otherwise in this Permit, the provisions of this Permit are for the exclusive benefit of the Parties hereto and not for the benefit of any other person nor shall this Permit be deemed to have conferred any rights, express or implied, upon any other person. Neither Permittee, its heirs, legal representatives, successors or assigns, nor any subsequent assignee, shall assign this Permit or any interest herein, without first securing the written consent of Board in each instance, and that at the option of Board, this Permit shall be forfeited by any such unauthorized assignment, transfer or lease or by any assignment or transfer thereof by operation of law.

16.5 Waiver of Default A waiver by any Party of any default by another Party must be in writing, and no such waiver shall be implied from any omission by a Party to take any action in respect of such default. No express written waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more written waivers of any default in the performance of any provision of this Permit shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provisions contained herein. The consent or approval by a Party to or of any act or request by another Party requiring consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar acts or requests.

16.6 Successors. This Permit shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns of the parties.

16.7 Governing Laws. This Permit shall be construed, interpreted, governed and enforced in accordance with the laws of the State of California.

16.8 Time of Essence. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Permit.

16.9 Severability. If any clause, sentence, or other portion of the terms, conditions, covenants, and restrictions of this Permit becomes or is declared to be illegal,

null, or void for any reason, or be held by any court of competent jurisdiction to be so, the remaining portions of this Permit will remain in full force and effect.

Emergency Number. Permittee shall immediately notify the Dispatcher at the Emergency Number set forth in section 1.7 if the tracks become fouled in any way.

NORTH SAN DIEGO COUNTY
TRANSIT DEVELOPMENT BOARD

By:_____
Karen H. King
Executive Director

Permittee:

By:_____

Title:_____