ITEM NO. 9

STAFF REPORT

CITY OF OCEANSIDE

DATE: November 5, 2014

TO: Honorable Mayor and City Councilmembers

FROM: Development Services Department

SUBJECT: **ACCEPTANCE OF THE COASTAL RAIL TRAIL PROJECT, PHASE 2B – OCEANSIDE BOULEVARD TO WISCONSIN AVENUE, FROM THE SAN DIEGO ASSOCIATION OF GOVERNMENTS**

SYNOPSIS

Staff recommends that the City Council adopt a resolution accepting the improvements of the Coastal Rail Trail Phase Project, Phase 2B, Oceanside Boulevard to Wisconsin Avenue, from the San Diego Association of Governments per the Memorandum of Understanding dated May 15, 2013.

BACKGROUND

The City of Oceanside is participating in the regional Coastal Rail Trail Project which provides multimodal, non-motorized transportation along the railroad corridor and right-of-way between Oceanside and San Diego. Within the City of Oceanside there are two primary phases of the Coastal Rail Trail that have been designated and constructed.

Phase 1 of the Coastal Rail Trail Project is a Class I facility along Broadway and South Myers Streets, between Vista Way and Pacific Street, and was completed in April 2005. Phase 2 of the Coastal Rail Trail Project extends the Class I trail facility from Oceanside Boulevard to the Oceanside Transit Center along the westerly edge of the railroad from Oceanside Boulevard to Tyson Street. Due to the size, scope, and project costs, Phase 2 of the project was split up into two smaller scale projects; Phase 2A and Phase 2B.

Phase 2A of the project was constructed as part of the expansion of Parking Lot 26 and consisted of a Class I facility from Tyson Street, at the Oceanside Transit Center to Wisconsin Avenue. This phase was completed in October 2012.

Phase 2B of the project was constructed through SANDAG due to lack of available City funding and SANDAG's priority of implementing "shovel ready" regional bicycle projects in the county. This was accomplished through the use and approval of a Memorandum of Understanding ("MOU") through the City and SANDAG for the design and construction of this phase. The project consisted of a Class I facility from Wisconsin Avenue to Oceanside Boulevard. This phase of the project was completed in April 2014.

ANALYSIS

The MOU between the City and SANDAG gave the City the right to inspect, and approve or reject the quality of materials and workmanship, prior to the acceptance of the completed improvements from SANDAG.

As part of the MOU, upon satisfactory completion of the improvements, the City shall accept the improvements from SANDAG by resolution and shall assume responsibility of the maintenance of the improvements.

FISCAL IMPACT

The estimated construction cost of the project was $1,459,000, with an actual construction cost of $1,554,509 due to contract change orders. The project was funded by SANDAG through Transportation Enhancement Funds and Transnet Sales Tax Funds.

The City is responsible for the ongoing maintenance of the completed improvements. The maintenance of the proposed improvements will cost approximately $8,400 per year. Costs will be expended from the Parkway/Median Program account (600619213.5355) which has sufficient funds available.

INSURANCE REQUIRMENTS

The insurance coverage required for this project was met and is currently being provided through the City's self-insured program.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council adopt a resolution accepting the improvements of the Coastal Rail Trail Phase Project, Phase 2B, Oceanside Boulevard to Wisconsin Avenue, from the San Diego Association of Governments per the Memorandum of Understanding dated May 15, 2013.

PREPARED BY:

Darra L. Woods
Associate Traffic Engineer

SUBMITTED BY:

Steven R. Jepsen
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Assistant City Manager

Scott O. Smith, City Engineer

James R. Riley, Financial Services Director

David DiPierro, City Traffic Engineer

Doug Eddow, Real Estate Manager

Hans Koger, Public Works Division Manager

Attachment

1. Resolution

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE ACCEPTING THE COASTAL RAIL TRAIL PROJECT, PHASE 2B – OCEANSIDE BOULEVARD TO WISCONSIN AVENUE, FROM THE SAN DIEGO ASSOCIATION OF GOVERNMENTS.

WHEREAS, the Coastal Rail Trail Project, Phase 2B (Project No. R12-00001) ("Project") was designed, constructed, and maintained pursuant to a Memorandum of Understanding dated May 15, 2013, between the City of Oceanside and San Diego Association of Governments, a San Diego Metropolitan Planning Organization ("SANDAG"); and

WHEREAS, the Memorandum of Understanding between the City of Oceanside and SANDAG provides that upon satisfactory completion of the Project, the City shall accept the improvements and assume responsibility for their maintenance.

WHEREAS, the City finds that construction of the Project has been completed to the City's satisfaction.

NOW, THEREFORE, the City Council of the City of Oceanside hereby finds, determines, and resolves as follows:

1. The City of Oceanside accepts the improvements of the Coastal Rail Trail Phase Project, Phase - 2B Oceanside Boulevard to Wisconsin Avenue (Project No. R12-00001) from the San Diego Association of Governments per the Memorandum of Understanding.

PASSED AND ADOPTED by the City Council of the City of Oceanside, California, this _____day of _____, 2014, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

_____
MAYOR OF THE CITY OF OCEANSIDE

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

MEMORANDUM OF UNDERSTANDING
BETWEEN SAN DIEGO ASSOCIATION OF GOVERNMENTS
AND CITY OF OCEANSIDE
REGARDING EASMENT AGREEMENT FOR COASTAL RAIL TRAIL PROJECT

SANDAG CONTRACT 5001679

THIS MEMORANDUM OF UNDERSTANDING ("MOU") dated April 18, 2013, solely for identification purposes, is made by and between the City of Oceanside, a California Charter City created by its charter and California Statute ("City"), and the San Diego Association of Governments, created and existing pursuant to California Statute ("SANDAG"). The effective date of this Agreement shall be the date that this Agreement is approved by the City (the "Effective Date").

RECITALS

WHEREAS, the City and North County Transit District, formerly known as the North San Diego County Transit Development Board ("NCTD"), have entered into an Easement for Coastal Rail Trail (Wisconsin Avenue to Oceanside Boulevard), dated January 24, 2006, and filed in the Office of the County Recorder of San Diego County on September 26, 2006, as Document No. 2006-0683167, concerning the construction, operation, and maintenance of a Coastal Rail Trail within NCTD's 200-foot wide railroad right-of-way between Oceanside Boulevard and Wisconsin Avenue, in the City of Oceanside, County of San Diego, State of California, commonly referred to as Phase 2B of the Coastal Rail Trail Project (the "Project"), which Easement Agreement was amended by that certain Amendment to Easement Agreement dated April 17, 2013, and filed in the Office of the County Recorder of San Diego County on May 1, 2013, as Document No. 2013-0274234, and also included Description of Expanded Premises and Graphical Depiction of Expanded Premises (collectively referred to herein as the "Easement Agreement"), marked Exhibit A, attached hereto, made a part hereof, and incorporated herein by reference;

WHEREAS, on April 22, 2011, SANDAG approved funding for the implementation of regional bicycle projects throughout San Diego County, the Project was part of the group of projects to receive funding for the construction phase;

WHEREAS, as part of this funding, SANDAG assumed responsibility as a lead agency in project and program implementation of these regional bicycle projects from the various local agencies, including the Project for the City;

WHEREAS, under the terms, conditions, and provisions of the Easement Agreement, the City is responsible for the design, construction, maintenance, and operations of the Project; and

WHEREAS, SANDAG has agreed to assume responsibility for the design and construction of the Project, and the City and SANDAG desire to enter into this MOU to set forth the obligations of SANDAG under the Easement Agreement and a process for turning over the improvements to the City for long-term maintenance and operations after completion of construction of the Project.

UNDERSTANDING AND AGREEMENT

NOW THEREFORE, in consideration of the foregoing Recitals and the mutual understanding, agreement, and promises contained herein, the Parties hereto do hereby agree as follows:

1. SANDAG hereby agrees to abide by the terms, conditions, and provisions of the Easement Agreement contained in Sections 3.a) through 3.b) Limitation on Easement; 5) Permitted Uses; 6) Development Standards; 7) Construction Matters; 9) Indemnity; 10) Condition of Easement; 11) Utilities; and 13) Insurance, with regard to the design and construction of the improvements associated with the Project. Terms, conditions, and provisions with regard to maintenance and operations of the improvements associated with the Project are explicitly excluded.

2. City reserves the right to perform inspections and testing of the materials used in and the method of construction of the improvements, together with the right to approve or disapprove the same in its reasonable discretion. City will perform plan checking services for the improvements.

3. SANDAG has entered into a separate agreement with NCTD (SANDAG Agreement No. 5000710, Addendum 18 Scope of Work [SOW], Coastal Rail Trail – Oceanside 2B Project [CIP 1223024]), wherein SANDAG has agreed to assume all of City's responsibilities for design and construction of the Project, including but not limited to reimbursing NCTD for all costs and expenses incurred by NCTD in connection with the planning, design, and construction of the Project (Exhibit B hereto; "Addendum 18 SOW"). The responsibilities of SANDAG under the Addendum 18 SOW shall be in place of City's responsibilities under Section 7.3 of the Easement Agreement, and shall relieve City of any such responsibilities.

4. Upon the completion of the improvements in all particulars, and free and clear of any and all mechanics' liens, SANDAG shall remit to City a copy of the Notice of Completion, in a form satisfactory to the City Attorney; and an assignment of all warrants and guarantees, licenses, and other instruments related to the improvements or any part thereof to the City Engineer. Upon receipt of such documents and instruments, City shall take all steps necessary to accept the improvements and adopt a resolution evidencing such acceptance. Acceptance shall not be unduly withheld. Upon the effective date of said resolution, SANDAG shall be relieved of all obligations and duties under this MOU and the Easement Agreement.

5. The Parties have had the opportunity to seek the advice of independent legal counsel prior to executing this Agreement. The parties acknowledge that no Party, agent, or attorney of any Party has made a promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter of this Agreement to induce the other Party to execute this Agreement. Each Party acknowledges that it has not executed this Agreement in reliance upon any promise, representation, or warranty not contained herein.

6. Each Party to this MOU and its counsel has reviewed and revised this MOU. The rule of construction that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this MOU or of any amendments or exhibits to this MOU.

7. This MOU, and all attachments and exhibits hereto, constitute the entire agreement of the Parties. There are no oral or written agreements which are not expressly set forth in this MOU or the related documents being executed in connection with this MOU.

8. This MOU may be amended, modified, or changed only in writing as mutually agreed to and duly executed by the Parties hereto.

9. This MOU may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

10. Time is of the essence in this MOU and every provision contained in this MOU.

11. This MOU is executed in two (2) duplicate copies, each of which is deemed to be an original. This MOU includes Exhibit A (Easement Agreement) and Exhibit B (Addendum 18 SOW) thereto, which constitutes the entire understanding and agreement of the Parties.

12. Whenever requested by the other Party, each Party shall execute, acknowledge, and deliver any further conveyances, assignments, confirmations, satisfactions, releases, instruments of further assurance, approvals, consents, and any other instrument or document as may be necessary, expedient, or proper to complete the transaction contemplated by this MOU, and to do any other acts and to execute, acknowledge, and deliver any requested document to carry out the intent and purpose of this MOU.

13. If any legal action or other proceeding, including mediation, arbitration, or an action for declaratory relief, is brought to enforce this MOU or because of a dispute, breach, default, or misrepresentation in connection with this MOU, the prevailing Party shall be entitled to recover reasonable attorney fees and other costs in addition to any other relief. Venue for enforcement of this MOU shall be in the Superior Court of San Diego County, North County Branch. The Parties agree that before either Party commences any legal or equitable action, action for the declaratory relief, suit, proceeding, or arbitration that the Parties shall first attempt to resolve the dispute by submitting the dispute to mediation through a mutually acceptable professional mediator in San Diego County, or if a mediator cannot be agreed upon, by a mediator appointed by the Judicial Arbitration and Mediation Service in San Diego County. The Parties shall share the cost of mediation equally.

14. This MOU shall be construed according to its fair meaning and as if prepared by both Parties hereto. This MOU shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this MOU. Article and Section titles and captions are for convenience only and shall not constitute a portion of this MOU. As used in this MOU, masculine, feminine, or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates. In the event of any litigation between the Parties hereto, subject to Section 13, the Superior Court of the State of California in and for the County of San Diego shall have exclusive jurisdiction.

15. All notices required to be delivered under this MOU to the other Party must be in writing and shall be effective: (i) when personally delivered by the other Party, messenger, or courier thereof; (ii) three (3) business days after deposit in the United States mail, registered, or certified; (iii) twenty-four (24) hours after deposit before the daily deadline time with a

reputable overnight courier or service; or (iv) upon receipt of a telecopy or fax transmission, provided a hard copy of such transmission shall be thereafter delivered in one of the methods described in the foregoing (i) through (iii); in each case postage fully prepaid and addressed to the respective Parties as set forth below or to such other address and to such other persons as the Parties may hereafter designate by written notice to the other Parties hereto:

To City: City of Oceanside
Attn: Scott O. Smith, City Engineer
300 North Coast Highway
Oceanside, CA 92054
Fax: (760) 435-6174

Copy to: Barbara L. Hamilton
Assistant City Attorney
City of Oceanside
300 North Coast Highway
Oceanside, CA 92054
Fax: (760) 435-3970

To SANDAG: San Diego Association of Governments
Attn: Emilio Rodriguez, P.E.
401 B Street, Suite 800
San Diego, CA 92101-4231
Fax: (619) 699-4889

Copy to: San Diego Association of Governments
Attn: Executive Director
401 B Street, Suite 800
San Diego, CA 92101-4231
Fax: (619) 699-1995

16. If any term, provision, condition, or covenant of this MOU or the application thereof to any Party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument, or the application of such term, provision, condition, or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this MOU shall be valid and enforceable to the fullest extent permitted by law.

17. All covenants, stipulations, promises, agreements, and obligations of the Parties hereto contained in this MOU shall be deemed to be the covenants, stipulations, promises, agreements, and obligations of the Parties hereto, respectively, and not of any member, officer, employee, or agent of the Parties hereto in an individual capacity, and no recourse shall be had for any claim based on or under this MOU against any member, officer, employee, or agent of the Parties hereto.

18. The person(s) executing this MOU on behalf of the Parties hereto warrant that: (i) such Party is duly organized and existing; (ii) they are duly authorized to execute and deliver this MOU on behalf of said Party; (iii) by so executing this MOU, such Party is formally bound to the

provisions of this MOU; and (iv) the entering into this MOU does not violate any provision of any other agreement to which said Party is bound.

IN WITNESS WHEREOF, the Parties hereto have executed this MOU as of, but not necessarily on, the Effective Date hereof.

SAN DIEGO ASSOCIATION OF GOVERNMENTS

Renée Wasmund 4/25/13

for **GARY L. GALLEGOS** **DATE**
Executive Director

APPROVED AS TO FORM:

John Kirk 4.25.13

Office of General Counsel **DATE**

CITY OF OCEANSIDE, A CALIFORNIA CHARTER CITY

Peter Weiss **DATE**
City Manager

APPROVED AS TO FORM:

Paul Hamilton, ASST. 5-2-13

for **John Mullen** **DATE**
City Attorney

EXHIBIT "A"

5001679
MOU

THE ORIGINAL OF THIS DOCUMENT
WAS RECORDED ON MAY 01, 2013
DOCUMENT NUMBER 2013-0274234
Ernest J. Dronenburg, Jr., COUNTY RECORDER
SAN DIEGO COUNTY RECORDER'S OFFICE
TIME: 2:01 PM

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City Clerk
City of Oceanside
300 North Coast Highway
Oceanside, California 92054

NO FEES DUE
FOR BENEFIT OF PUBLIC AGENCY
(Gov. Code § 6109)

(Space above this line reserved for Recorder's use)

City Document No. 13-D0248-1
4/17/13 (8)

AMENDMENT TO EASEMENT AGREEMENT BY AND BETWEEN NORTH COUNTY TRANSIT DISTRICT AND THE CITY OF OCEANSIDE

THIS AMENDMENT TO EASEMENT AGREEMENT ("Amendment") is made this 17 day of April, 2013, by and between the North County Transit District, formerly known as the North San Diego County Transit Development Board, ("NCTD"), and the City of Oceanside ("CITY"). NCTD and the CITY may be collectively referred to herein as the "Parties."

RECITALS

A. By Easement Agreement dated January 24, 2006 ("Easement Agreement"), recorded September 26, 2006, as Document No. 2006-0683167 with the San Diego County Recorder's Office, NCTD conveyed to CITY an easement for the construction, use, maintenance and operation of a Rail Trail upon NCTD's property situated in the City of Oceanside, County of San Diego, State of California, and described and depicted in further detail in Exhibit "2" to the Easement Agreement (the "Easement"). A copy of the Easement Agreement is attached hereto as Attachment "A" to this Amendment and incorporated herein. Capitalized terms used herein and not otherwise defined shall have the meanings assigned to those terms in the Easement Agreement.

B. The Easement Agreement so conveyed was for the purpose of locating and installing the Rail Trail within the Easement.

C. Section 17 of the Easement Agreement prohibits the modification of the Easement Agreement except by written agreement of the Parties.

D. In order to expand the Rail Trail for drainage design improvements, ("Expanded Rail Trail") CITY desires to increase the size of the Easement.

E. Parties additionally desire to further define design, construction and maintenance responsibilities and update contact information for notices to be given to the parties under the Easement Agreement.

F. The Parties desire that the Easement Agreement be modified to expand (widen) the Easement granted therein, to change contact information for construction and other notifications to the Parties hereto, and to further define design, construction and maintenance responsibilities; and the Parties hereto hereby amend the Easement Agreement to provide for the same.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises contained herein, the Parties agree as follows:

1. Exhibit 2 to the Easement Agreement is deleted, superseded and replaced in its entirety with Attachment "B" and Attachment "C" to this Amendment. The Easement, as modified by this Amendment at all times after the recordation of this Amendment with the San Diego County Recorder's Office, shall consist of that portion of real property located in the City of Oceanside, County of San Diego, State of California, and described in further detail in Attachment "B" and depicted in Attachment "C" ("Expanded Premises").

2. The Easement Agreement is hereby modified by adding Section 5.3 which shall read as follows:

   "5.3 Notwithstanding anything to the contrary, CITY's right to construct, use, maintain and operate the Expanded Rail Trail on the Expanded Premises shall be in strict accordance with all applicable laws, the conditions and obligations set forth in the Easement Agreement and NCTD's policies regulating and governing the use of its rights-of-way."

3. The Parties acknowledge that the San Diego Association of Governments has assumed the responsibilities and duties of the CITY with regard to the design and construction of improvements. CITY and SANDAG shall enter into a separate agreement with regard to reimbursement of costs, construction and acceptance to the completed improvements.

4. Section 7.5 of the Easement Agreement is hereby modified, deleted, superseded and replaced in its entirety with the following:

   "7.5 The following individuals shall be contacted prior to the start of

construction of the Improvements and shall be the contacts regarding work on the Easement:

NCTD Contact
ROW Coordinator
North County Transit District
810 Mission Avenue
Oceanside, CA 92054 Phone: 760-966-6500

CITY Contact
City Engineer
City of Oceanside
300 North Coast Highway
Oceanside, CA 92054 Phone: 760-435-5074

SANDAG Contact
Emilio Rodriguez, P.E.
Senior Engineer
SANDAG TransNet Project Office
401 B Street, Suite 800
San Diego, CA 92101 Phone: 619-699-6984"

5. Section 8.1 of the Easement Agreement is hereby modified, deleted, superseded and replaced in its entirety with the following:

"8.1 NCTD shall have no obligation whatsoever to maintain or repair the Easement or the Improvements. CITY shall be solely responsible for the 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 separating the Easement from the working Right-of-Way, removal of all graffiti on all Improvements as well as adjacent property walls and/or fences, cleaning the drainage facility and the watering and maintenance of landscaping, as necessary to keep them in good order, in a safe condition, and in accordance with all applicable Federal, State, and local laws and regulations, including NCTD's Rules and Regulations."

6. In consideration of NCTD's agreement to enter into this Amendment, the Easement Agreement is hereby modified by adding Section 8.4 which shall read as follows:

"In the event that NCTD is required to perform maintenance on any of the improvements within the Expanded Premises due to CITY's negligence or failure to maintain said improvement in a safe and decent manner or condition, CITY agrees to reimburse NCTD, within 30 days of invoice, for

all of NCTD's reasonable expenses, including without limitation expenses for staff time, consultant fees, attorney's fees and engineering fees associated with the work so performed by NCTD within the Expanded Premises pursuant to this Section 8.4. Notwithstanding the foregoing, prior to performing any maintenance of said improvements, NCTD agrees to consult with CITY as to the nature and conditions of deficiencies within the Expanded Premises and provide CITY with a reasonable timeframe in which to correct the conditions of NCTD's concerns prior to NCTD performing any such maintenance or causing maintenance to be performed by a third party."

7. Section 16 "Notices" of the Easement Agreement is hereby modified, deleted, superseded and replaced in its entirety with the following:

"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 party to this Agreement.

To CITY at: City of Oceanside
Attn: Property Management
300 North Coast Highway
Oceanside, CA 92054

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

8. Except as amended by this Amendment, all provisions of the Easement Agreement, including without limitation the indemnity and insurance provisions, shall remain in full force and effect, are hereby ratified and reaffirmed, and shall govern the actions of the Parties under this Amendment.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY
[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the date first above written, by their duly authorized representatives.

NORTH COUNTY TRANSIT DISTRICT

By: _____

Name: Mathew O. Tucker

Title: Executive Director

CITY OF OCEANSIDE

By: _____

Name: Peter A. Weiss

Title: City Manager

APPROVED AS TO FORM

By: _____

Name: LORI A. WINFRETT

Title: GENERAL COUNSEL

APPROVED AS TO FORM

By: _____

Name: Barbara L. Hamilton

Title: Assistant City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California)
County of San Diego)ss.

On April 30, 2013 (Date) before me, Jillayne Marie McNaughton, Notary Public (Name and Title of Officer (e.g. "Jane Doe, Notary Public"))

personally appeared Matthew O. Tucker (Name(s) of Signer(s)),

who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

JILLAYNE MARIE MCNAUGHTON
Commission # 1996019
Notary Public - California
San Diego County
My Comm. Expires Nov 25, 2016

Jillayne Marie McNaughton
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable for 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: Amendment to Easement Agreement by and Between NCTD and City of Oceanside

Document Date: April 17, 2013 Number of Pages: Five

Signer(s) Other Than Named Above: —

Capacity(ies) Claimed by Signer

Signer's Name: Matthew O. Tucker

[ ] Individual
[X] Corporate Officer – Title(s): Executive Director
[ ] Partner – [ ] Limited [ ] General
[ ] Attorney-in-Fact
[ ] Trustee
[ ] Guardian or Conservator
[ ] Other:

Signer Is Representing: North County Transit District

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California)
County of San Diego)ss.

On April 18, 2013 (Date) before me, Elizabeth S. Hedrick, Notary Public, (Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared Peter Weiss (Name(s) of Signer(s))

who 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.

ELIZABETH S. HEDRICK
Commission # 1852087
Notary Public -- California
San Diego County
My Comm. Expires Jul 1, 2013

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Elizabeth S. Hedrick
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable for 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: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

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

ATTACHMENT "A"

DOC # 2006-0683167

SEP 26, 2006 10:47 AM

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 0.00
PAGES: 40

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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

F8
4DP
NF

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

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

Document No. 06-D0417-1
6/28/06 (10)

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~~ Barry Martin
~~City~~ Manager (Interim)

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 August 21, 2006 (Date), before me, HOLLY J. TROBAUGH, NOTARY PUBLIC (Name and Title of Officer (e.g., "Jane Doe, Notary Public")) personally appeared BARRY MARTIN (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.

HOLLY J. TROBAUGH
Commission # 1528002
Notary Public - California
San Diego County
My Comm. Expires Nov 19, 2008

WITNESS my hand and official seal.

Place Notary Seal Above

Holly J. Trobaugh
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

Document Date: January 24, 2006 Number of Pages: 15

Signer(s) Other Than Named Above: Karen King and C. MICHAEL Cowett

Capacity(ies) Claimed by Signer(s)

Signer's Name: Barry Martin
☐ Individual
☐ Corporate Officer — Title(s):
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☒ Other: Interim City Manager
Signer Is Representing: City of Oceanside

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 September 14, 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))

JILLAYNE MCNAUGHTON
Commission # 1529373
Notary Public - California
San Diego County
My Comm. Expires Nov 28, 2008

JILLAYNE MCNAUGHTON
Commission # 1529373
Notary Public - California
San Diego County
My Comm. Expires Nov 28, 2008

Place Notary Seal Above

☒ 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.

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 - Wisconsin Ave to Oceanside Blvd

Document Date: September 14, 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 Dir
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other:

Signer Is Representing: North County Transit District

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. Gremon, Notary Public (Name and Title of Officer (e.g., "Jane Doe, Notary Public"))

personally appeared C. Michael Cowell (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.

LISA M. GREMON
Commission # 1408248
Notary Public - California
San Diego County
My Comm. Expires Oct 19, 2009

WITNESS my hand and official seal.

Lisa M. Gremon
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

Document Date: 1/30/06 Number of Pages: 36 w/exhibits

Signer(s) Other Than Named Above: —

Capacity(ies) Claimed by Signer

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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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.

227
227
ALLEY
PACIFIC
WISCONSIN
MYERS
TAIT
HAYES
MARRON
FORSTER
LEONARD
CLEVELAND
ALLEY
TREMONT
WEST
STANLEY
DITMAR
EUCALYPTUS
COAST HIGHWAY
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

LICENSED LAND SURVEYOR
PETER A. WEISS
No. 6876
Exp. 9-30-06
STATE OF CALIFORNIA

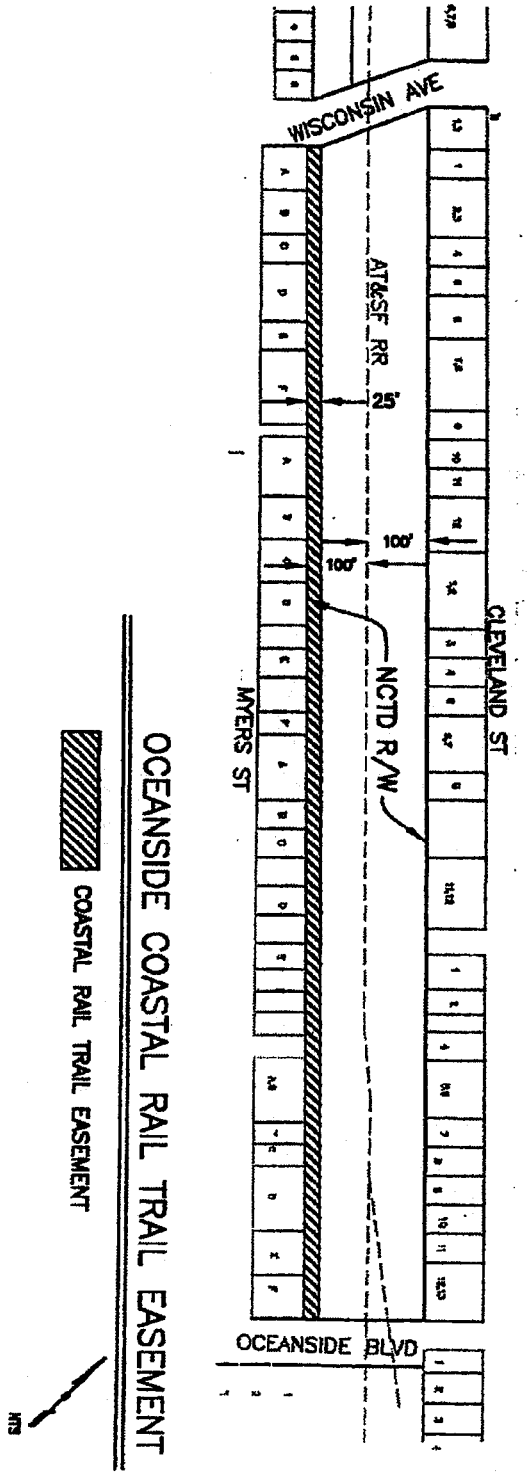

EXHIBIT 2
PAGE 2 OF 2

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

EXHIBIT 4

Specification for Fence

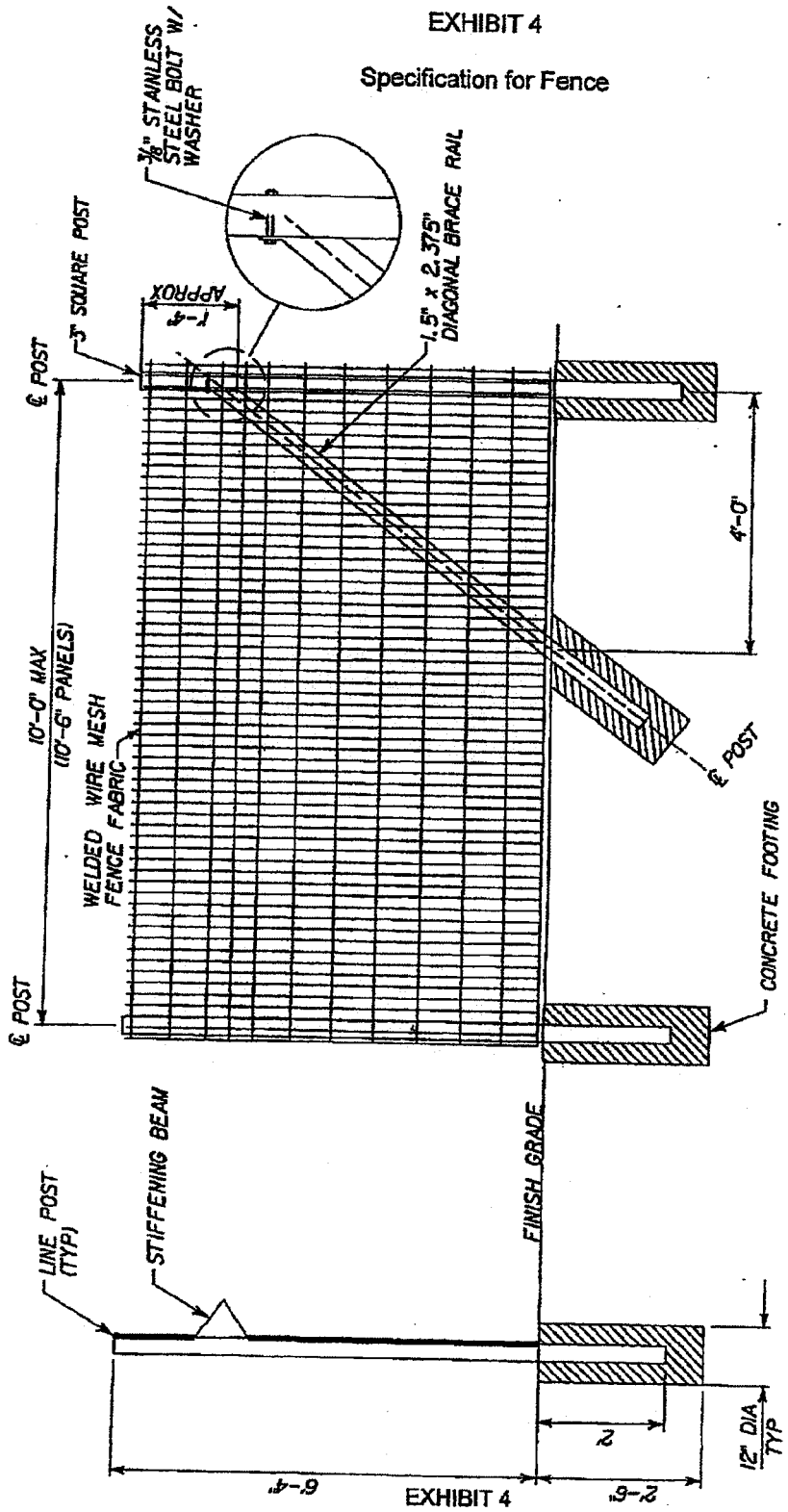

EXHIBIT 4

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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 Permittee 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.

<u>Emergency Number</u>. 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:_____

ATTACHMENT "B"
LEGAL DESCRIPTION
COASTAL RAIL TRAIL EASEMENT
WISCONSIN AVENUE TO OCEANSIDE BOULEVARD

THAT PORTION OF LAND DESCRIBED IN QUITCLAIM DEED TO 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, RECORDED DECEMBER 15, 1992 AS DOCUMENT NO. 1992-0802209 OF OFFICIAL RECORDS OF THE SAN DIEGO COUNTY RECORDER'S OFFICE, LYING WITHIN SECTIONS 26 AND 35, TOWNSHIP 11 SOUTH, RANGE 5 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBES AS FOLLOW:

BEGINNING AT A 2" BRONZE CAP SET IN CONCRETE AND STAMPED "N.C.T.D. LS 7019, 2009 R/W MONUMENT" AS SHOWN ON RECORD OF SURVEY MAP NO. 20499, FILED IN SAID SAN DIEGO COUNTY RECORDER'S OFFICE JUNE 2, 2009, SAID BRONZE CAP MARKING THE INTERSECTION OF THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF WISCONSIN AVENUE (80.00 FEET WIDE) AND THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF SAID NORTH SAN DIEGO COUNTY TRANSIT DEVELOPMENT BOARD (N.C.T.D.) LAND (200.00 FEET WIDE), SAID BRONZE CAP BEARING NORTH 34°41'42" WEST, 2080.01 FEET FROM ANOTHER 2" BRONZE CAP SET IN CONCRETE WITH SAID STAMPING MARKING THE INTERSECTION OF THE CENTERLINE OF OCEANSIDE BOULEVARD AND SAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF N.C.T.D. LAND, ALL AS SHOWN ON SAID RECORD OF SURVEY MAP;

THENCE ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF N.C.T.D. LAND SOUTH 34°41'42" EAST, 2040.01 FEET TO THE NORTHWESTERLY RIGHT-OF-WAY LINE OF OCEANSIDE BOULEVARD (80.00' FEET WIDE);

THENCE ALONG SAID NORTHWESTERLY RIGHT-OF-WAY LINE OF OCEANSIDE BOULEVARD NORTH 55°27'20" EAST TO A POINT 30.00 FEET, AS MEASURED AT RIGHT ANGLES, FROM SAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF N.C.T.D. LAND;

THENCE PARALLEL TO SAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF N.C.T.D. LAND NORTH 34°41'42" WEST, 2050.91 FEET TO SAID SOUTHEASTERLY RIGHT-OF-WAY LINE OF WISCONSIN AVENUE;

THENCE ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE SOUTH 35°28'36" WEST, 31.89 FEET TO THE **POINT OF BEGINNING.**

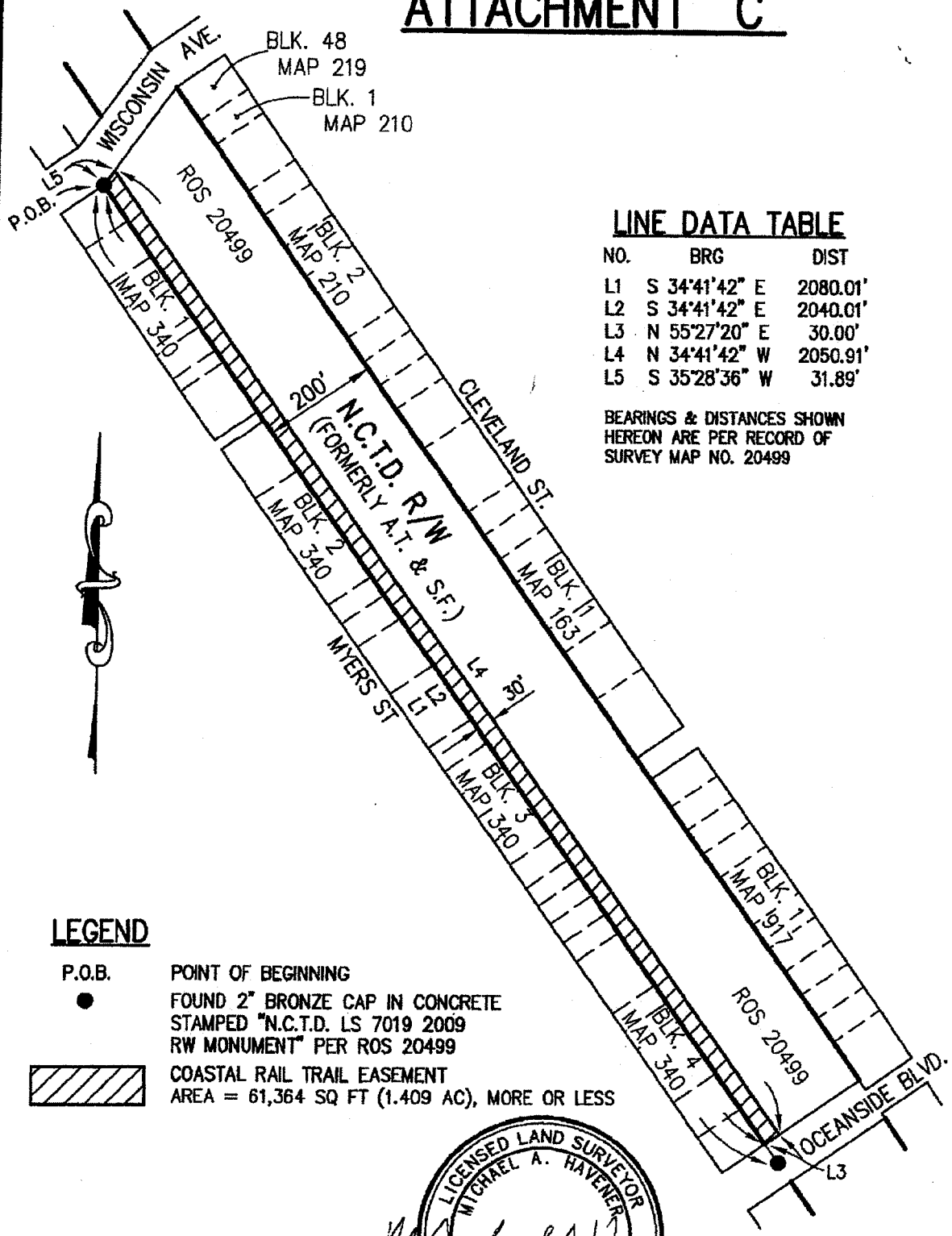
CONTAINING 61,364 SQ. FT. (1.409 AC), MORE OR LESS.

SEE EXHIBIT 'B' ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

Michael A Havener 2-15-2013
MICHAEL A. HAVENER, PLS 7354 DATE

LICENSED LAND SURVEYOR
MICHAEL A. HAVENER
Exp. 12/31/13
No. 7354
STATE OF CALIFORNIA

ATTACHMENT "C"



LINE DATA TABLE

NO.	BRG	DIST
L1	S 34°41'42" E	2080.01'
L2	S 34°41'42" E	2040.01'
L3	N 55°27'20" E	30.00'
L4	N 34°41'42" W	2050.91'
L5	S 35°28'36" W	31.89'

BEARINGS & DISTANCES SHOWN HEREON ARE PER RECORD OF SURVEY MAP NO. 20499

LEGEND

P.O.B. POINT OF BEGINNING

● FOUND 2" BRONZE CAP IN CONCRETE STAMPED "N.C.T.D. LS 7019 2009 RW MONUMENT" PER ROS 20499

COASTAL RAIL TRAIL EASEMENT
AREA = 61,364 SQ FT (1.409 AC), MORE OR LESS

LICENSED LAND SURVEYOR
MICHAEL A. HAVENER
No. 7354
STATE OF CALIFORNIA

PREPARED BY: MH/MA	
DATE: 2-15-2013	
SCALE: NOT TO SCALE	
SHEET 1 OF 1 SHEET	

EXHIBIT B
Addendum 18 Project Scope of Work

Coastal Rail Trail – Oceanside 2B Project (CIP 1223024)

NCTD File No.:

SANDAG Ref. No.: 5000710 ADD 18 SOW

CIP Title: Coastal Rail Trail Phase 2B - Oceanside

CIP No.: 1223024

Project Manager: Emilio Rodriguez

Lead Agency: SANDAG

Operating Agency: City of Oceanside

PLANNING	DESIGN	CONSTRUCTION
Estimated Start Date: N/A	Estimated Start Date: 7/1/11	Estimated Start Date: 5/1/13
Estimated Completion: N/A	Estimated Completion: 10/31/12	Estimated Completion: 9/30/13
Estimated Budget: $N/A	Estimated Budget: $389,000	Estimated Budget: $1,459,000

PROJECT BUDGET: $1,848,000

EFFECTIVE DATE: 3/15/13

Intended Source of Funds

Transportation Enhancement Funds	$1,517,000
TransNet Sales Tax Funds	$331,000
Totals =	$1,848,000

Describe Any Necessary Transfers of Project Funds Between the Parties:

SANDAG shall reimburse NCTD for all costs and expenses incurred by NCTD in connection with the planning, design, and construction of the Improvements and consistent with the NCTD Scope of Work herein.

Project Description ("Improvements"):

The Project Improvements are located on the westerly NCTD property between Wisconsin Avenue (north end) and Oceanside Boulevard (south end) in the City of Oceanside. The Improvements are described in the "Easement for Coastal Rail Trail (Wisconsin Avenue to Oceanside Boulevard) by and between North County Transit Development Board and City of Oceanside" ("Easement"), recorded as Document number 2006-0683167 as amended in April, 2013 and attached in both original and amended version hereto as Attachments A and B respectively. The Improvements may include, but are not limited to, construction of 2,000 LF of a 12 foot wide Class 1 bike facility, fencing, signage, landscaping and irrigation, drainage, and lighting.

Scope of Work to be Performed by NCTD:

NCTD hereby grants SANDAG permission to plan and construct the Improvements within the Easement.

NCTD agrees to provide services as warranted for this Project as described in "NCTD Services" in Addendum 18 including but not limited to, consultants fees, mark out of railroad facilities, inspectors, security and flag protection as NCTD deems reasonably necessary.

Budget for NCTD Services in support of Improvements: $ _____

Scope of Work to be Performed by SANDAG:

SANDAG is to provide design, construction management, and construction services for the Improvements. This scope of work includes, but is not limited to, the following:

SANDAG shall assume City of Oceanside ("City") responsibilities for design and construction of the Improvements as shown in Easement. SANDAG's responsibilities do not include ownership of Easement, or operations and maintenance of said Easement or Improvements.

Any Additional Project-Specific Conditions:

CITY and SANDAG shall enter into a separate agreement with regard to reimbursement of costs, construction and acceptance of the completed Improvements.

Parties also acknowledge that the CITY and NCTD shall enter into a separate agreement with regard to operations and maintenance of Improvements after the construction of the Improvements has reached Substantial Completion.

APPROVED BY:

SAN DIEGO ASSOCIATION OF GOVERNMENTS		NORTH COUNTY TRANSIT DISTRICT	
Gary L. Gallegos Executive Director	Date	Matthew O. Tucker Executive Director	Date