

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

423A



**FROM:** TLMA - Transportation Department

**SUBMITTAL DATE:**  
July 6, 2009

**SUBJECT:** Right of Entry Agreement with Burlington Northern Santa Fe (BNSF) Railway Company for Magnolia Avenue Railroad Grade Separation in the Home Gardens Area

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the attached Right of Entry Agreement between The County of Riverside and BNSF Railway Company, and;
2. Authorize the Chairman of the Board to execute the same.

**BACKGROUND:** Magnolia Avenue is a four-lane Arterial Highway that provides primary access to commercial, industrial and residential land uses in the Home Gardens Community of Riverside County, which neighbors the City of Riverside to the east and City of Corona to the

Juan C. Perez  
Director of Transportation

(Continued On Attached Page)  
JCP:JA

FORM APPROVED COUNTY COUNSEL  
 BY: Synthia M. Gunzel 6-25-09  
 DATE: \_\_\_\_\_  
 DEPARTMENTAL CONCURRENCE

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 2,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2009/2010
<b>SOURCE OF FUNDS:</b> TUMF (100%) Project No. B70784			<b>Positions To Be Deleted Per A-30</b>	<input type="checkbox"/>
			<b>Requires 4/5 Vote</b>	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:**

APPROVE

BY:   
Tina Grande

County Executive Office Signature

Policy  Policy   
 Consent  Consent   
 Dept't Recomm.: \_\_\_\_\_  
 Per Exec. Ofc.: \_\_\_\_\_

Prev. Agn. Ref. 07/29/08, Item 3.149 | District: 2 | Agenda Number:

The Honorable Board of Supervisors

RE: Magnolia Avenue Railroad Grade Separation Right of Entry Agreement with BNSF Railway Company

July 6, 2009

Page 2 of 2

north. A Burlington Northern Santa Fe (BNSF) at grade crossing currently exists on Magnolia Avenue between Lincoln Street and Buchanan Street. At this crossing, there are two mainline tracks that service freight trains, as well as Metrolink and Amtrak commuter trains.

The Transportation Department has a proposed project to grade separate Magnolia Avenue where it currently crosses the BNSF mainline tracks. On July 29, 2008, the Board approved Resolution No. 2008-353 and the Project Baseline Agreement between the County of Riverside (sponsoring agency), the California Transportation Commission (funding agency) and the California Department of Transportation - Caltrans (oversight agency) to secure Trade Corridor Improvement Funds (TCIF) for the construction phase of this project.

The attached Agreement between Riverside County Transportation Department and BNSF Railway Company will authorize County surveyors to access BNSF right of way to verify and supplement the previously flown aerial topography survey. The agreement will also enable survey crews to follow the safety procedures and coordinate activities as required by BNSF for operations within the railroad right of way.

It is anticipated that the surveying activities covered by the agreement between the County and BNSF shall be completed by March 12, 2010.

Project No. B70784

### TEMPORARY OCCUPANCY PERMIT

**THIS AGREEMENT** ("Agreement"), made as of the \_\_\_\_ day of \_\_\_\_\_, 2009, ("Effective Date") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Licensor") and **COUNTY OF RIVERSIDE**, on behalf of the Transportation Department, a political subdivision of the State of California, ("Licensee").

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, the parties agree to the following:

#### GENERAL

1. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, licenses, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to temporarily occupy the area of Licensor's property shown on the attached Drawing No. 3-45667A-E, dated January 30, 2009, attached hereto, marked Exhibit "A", and made a part hereof, situated at or near Riverside, County of Riverside, State of California, Line Segment 7602, between Mile Post 19.68 -21.81 ("Premises") for the purposes specified in Section 3 below
2. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use of such improvements.
3. Licensee shall use Premises exclusively as a site to set aerial survey target and collect and verify other survey data. Licensee shall not use the Premises for any other purpose. Licensee shall not use or store hazardous substances, as defined by the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA") or petroleum or oil as defined by applicable Environmental Laws on the Premises.
4. In case of the eviction of Licensee by anyone owning or claiming title to or any interest in the Premises, Licensor shall not be liable to refund Licensee any compensation paid hereunder or for any damage Licensee sustains in connection therewith.
5. Any contractors or subcontractors performing work on the Premises, or entering the Premises on behalf of Licensee, shall be deemed agents of Licensee for purposes of this Agreement.

#### TERM

6. This Agreement shall commence on the Effective Date and shall continue until March 12, 2010, subject to prior termination as hereinafter described.

#### COMPENSATION

7. (a) Licensee shall pay to Licensor, prior to the Effective Date, the sum of Two Thousand Dollars (\$2000.00) as compensation for the use of the Premises.

- (b) Licensee agrees to reimburse Licensor (within thirty (30) days after receipt of bills therefor) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred. The cost of flagger services provided by Licensor, when deemed necessary by Licensor's representative, will be borne by Licensee. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); Licensor and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for Licensor labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. The flagging rates in effect at the time of performance by the flaggers will be used to calculate the costs of flagging pursuant to this paragraph.
- (c) All invoices are due thirty (30) days after the date of invoice. In the event that Licensee shall fail to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by Licensee at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2 1/2%), and for the period July 1 through December 31, the prime rate last published in *The Wall Street Journal* in the preceding June plus two and one-half percent (2 1/2%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

#### COMPLIANCE WITH LAWS

8. (a) Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("Legal Requirements") relating to the use of the Premises.
- (b) Prior to entering the Premises, Licensee shall and shall cause its contractor to comply with all Licensor's applicable safety rules and regulations. Prior to commencing any work on the Premises, Licensee shall complete and shall require its contractor to complete the safety-training program at the Website "<http://contractororientation.com>". This training must be completed no more than one year in advance of Licensee's entry on the Premises.
9. Any activities performed by Licensee shall be in accordance with prudent standards of professional environmental practices exercised by the environmental engineering profession.

**DEFINITION OF COST AND EXPENSE**

10. For the purpose of this Agreement, "cost" or "costs" "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.

**RIGHT OF LICENSOR TO USE**

11. Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:
- (a) to maintain, renew, use, operate, change, modify and relocate any existing pipe, power, communication lines and appurtenances and other facilities or structures of like character upon, over, under or across the Premises;
  - (b) to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; or
  - (c) to use the Premises in any manner as the Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in Section 3 above.

**LICENSEE'S OPERATIONS**

12. (a) Licensee shall notify Licensor's Roadmaster, at 740 Carnegie Drive, San Bernardino, California, 92408, telephone (909) 386-4061 (Office) or (909) 322-4464 (Cell), at least five (5) business days prior to entering the Premises. After completion of use of the Premises for the purpose specified in Section 3, Licensee shall notify Licensor in writing that such use has been completed.
- (b) In performing the work described in Section 3, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.
13. Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any Licensor track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to be a source of danger to or interference with the existence or use of present or future tracks, roadbed or property of Licensor, or the safe operation and activities of Licensor. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely

Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this Agreement.

14. Upon completion of Licensee's work on the Premises or upon termination of this Agreement, whichever shall occur first, Licensee shall, at its sole cost and expense:
- (a) remove all of its equipment from the Premises;
  - (b) report and restore any damage to the Premises arising from, growing out of, or connected with Licensee's use of the Premises;
  - (c) remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
  - (d) leave the Premises in the condition which existed as of the Effective Date of this Agreement.
15. Licensee's on-site supervision shall retain/maintain a fully executed copy of this Agreement at all times while on the Premises.

#### LIABILITY

16. (a) **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LICENSOR AND LICENSOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):**
- (i) THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
  - (ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS AGREEMENT,**
  - (iii) LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**
  - (iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED BY LICENSEE, OR**

(v) ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER,

EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH LICENSEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.

- (b) FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN SECTION 16(a), LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS WHETHER BASED ON STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT LICENSOR IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO SETTING THE AERIAL SURVEY TARGET AND COLLECTING AND VERIFYING OTHER SURVEY DATA FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LICENSEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LICENSEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS AGREEMENT SHALL NOT IN ANY WAY SUBJECT LICENSOR TO CLAIMS THAT LICENSOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL LICENSOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.
- (c) TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE FURTHER AGREES, AND SHALL CAUSE ITS CONTRACTOR TO AGREE, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF LICENSEE OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE

**OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**

- (d) Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this Agreement for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

**PERSONAL PROPERTY WAIVER**

17. **ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

**INSURANCE**

18. Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

- A. **Commercial General Liability Insurance.** This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000 but in no event less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 1998 ISO occurrence or equivalent and include coverage for, but not limited to, the following:
- ◆ Bodily Injury and Property Damage
  - ◆ Personal Injury and Advertising Injury
  - ◆ Fire legal liability
  - ◆ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ The employee and workers compensation related exclusions in the above policy shall not apply with respect to claims related to railroad employees.
- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of Licensor property.
- ◆ Any exclusions related to explosion, collapse and underground hazards shall be removed.

No other endorsements limiting coverage may be included on the policy.

- B. **Business Automobile Insurance.** This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:
- ◆ Bodily injury and property damage
  - ◆ Any and all vehicles owned, used or hired
- C. **Workers Compensation and Employers Liability Insurance.** This insurance shall include coverage for, but not limited to:
- ◆ Licensee's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
  - ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, its insurers, through policy endorsement, waive their right of subrogation against Licensor for all claims and suits. The certificate of insurance must reflect waiver of subrogation endorsement. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Licensor for loss of its owned or leased property or property under its care, custody, or control.

Licensee's insurance policies through policy endorsement must include wording, which states that the policy shall be primary and non-contributing with respect to any insurance carried by Licensor. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers' Compensation) shall include a severability of interest endorsement and shall name Licensor and Jones Lang LaSalle Global Services, Inc. as additional insureds with respect to work performed under this Agreement. Severability of interest and naming Licensor and Jones Lang LaSalle Global Services, Inc. as additional insureds shall be indicated on the certificate of insurance.

Licensee is not allowed to self-insure without the prior written consent of Licensor. If granted by Licensor, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licensor liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Licensee's insurance will be covered as if Licensee elected not to include a deductible, self-insured retention, or other financial responsibility for claims.

Prior to commencing any work, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Licensor in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. In the event of a claim or lawsuit involving Licensor arising out of this Agreement, Licensee will make available any required policy covering such claim or lawsuit.

Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

Licensee represents that this Agreement has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this Agreement. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, Licensor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the Licensor industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

Failure to provide evidence as required by this Section 18 shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Licensee's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.

For purposes of this Section 18, Licensor shall mean "Burlington Northern Santa Fe Corporation", "BNSF Railway Company" and the subsidiaries, successors, assigns, and affiliates of each.

## ENVIRONMENTAL

19. (a) Licensee shall strictly comply with all federal, state and local environmental laws and regulations in its use of the Premises, including, but not limited to, the

Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA (collectively referred to as the "Environmental Laws"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.

- (b) Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any release on or from the Premises. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- (c) In the event that Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to setting aerial survey target and collecting and verifying other survey data, which occurred or may occur during the term of this Agreement, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.
- (d) Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this Agreement. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

#### ALTERATIONS

- 20. Licensee may not make any alterations of the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

#### NO WARRANTIES

- 21. **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS AGREEMENT AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS AGREEMENT. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES WITH RESPECT TO THE PREMISES, EXPRESS OR IMPLIED, OR**

**WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**QUIET ENJOYMENT**

22. **LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

**DEFAULT**

23. If default shall be made in any of the covenants or agreements of Licensee contained in this document, or in case of any assignment or transfer of this Agreement by operation of law, Licensor may, at its option, terminate this Agreement by serving five (5) days' notice in writing upon Licensee. Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this Agreement. The remedy set forth in this Section 23 shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

**TERMINATION**

24. This Agreement may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Upon expiration of the time specified in such notice, this Agreement and all rights of Licensee shall absolutely cease.
25. If Licensee fails to surrender to Licensor the Premises, upon any termination of this Agreement, all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered. Termination shall not release Licensee from any liability or obligation, whether of indemnity or otherwise, resulting from any events happening prior to the date of termination.

**ASSIGNMENT**

26. Neither Licensee, nor the heirs, legal representatives, successors or assigns of Licensee, or any subsequent assignee, shall assign, transfer, sell, or hypothecate this Agreement or any interest herein (either voluntarily or by operation of law) without the prior written consent and approval of Licensor, which may be withheld in Licensor's sole discretion. **THIS AGREEMENT SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.**

**NOTICES**

27. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii)

deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Jones Lang LaSalle Global Services - RR, Inc.  
3017 Lou Menk Drive, Suite 100  
Fort Worth, TX 76131-2800  
Attn: Licenses/Permits

with a copy to: BNSF Railway Company  
2500 Lou Menk Dr. – AOB3  
Fort Worth, TX 76131  
Attn: Manager – Land Revenue Management

If to Licensee: County of Riverside Transportation Department  
3525 14th Street  
Riverside, CA 92501

**SURVIVAL**

28. Neither termination nor expiration will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Premises are restored to its condition as of the Effective Date.

**RECORDATION**

29. It is understood and agreed that this Agreement shall not be recorded in the official records of the County of Riverside.

**APPLICABLE LAW**

30. All questions concerning the interpretation or application of provisions of this Agreement shall be decided according to the substantive laws of the State of California without regard to conflicts of law provisions.

**SEVERABILITY**

31. To the maximum extent possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this Agreement.

**MISCELLANEOUS**

- 32. In the event that Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
- 33. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.
- 34. All provisions contained in this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this Agreement.
- 35. Jones Lang LaSalle Global Services – RR, Inc. is acting as representative for BNSF Railway Company.

**IN WITNESS WHEREOF**, this License has been duly executed, in duplicate, by the parties hereto as of the day and year first above written.

**BNSF RAILWAY COMPANY**  
P. O. Box 961050  
Fort Worth, Texas 76161-0050

By: \_\_\_\_\_  
Dalen E. Wintermute  
Title: Manager – Land Revenue Management

**COUNTY OF RIVERSIDE**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

FORM APPROVED COUNTY COUNSEL  
BY: Synthia M. Gunzel 10-25-09  
SYNTHIA M. GUNZEL DATE

TRACKING NO. 09-37555

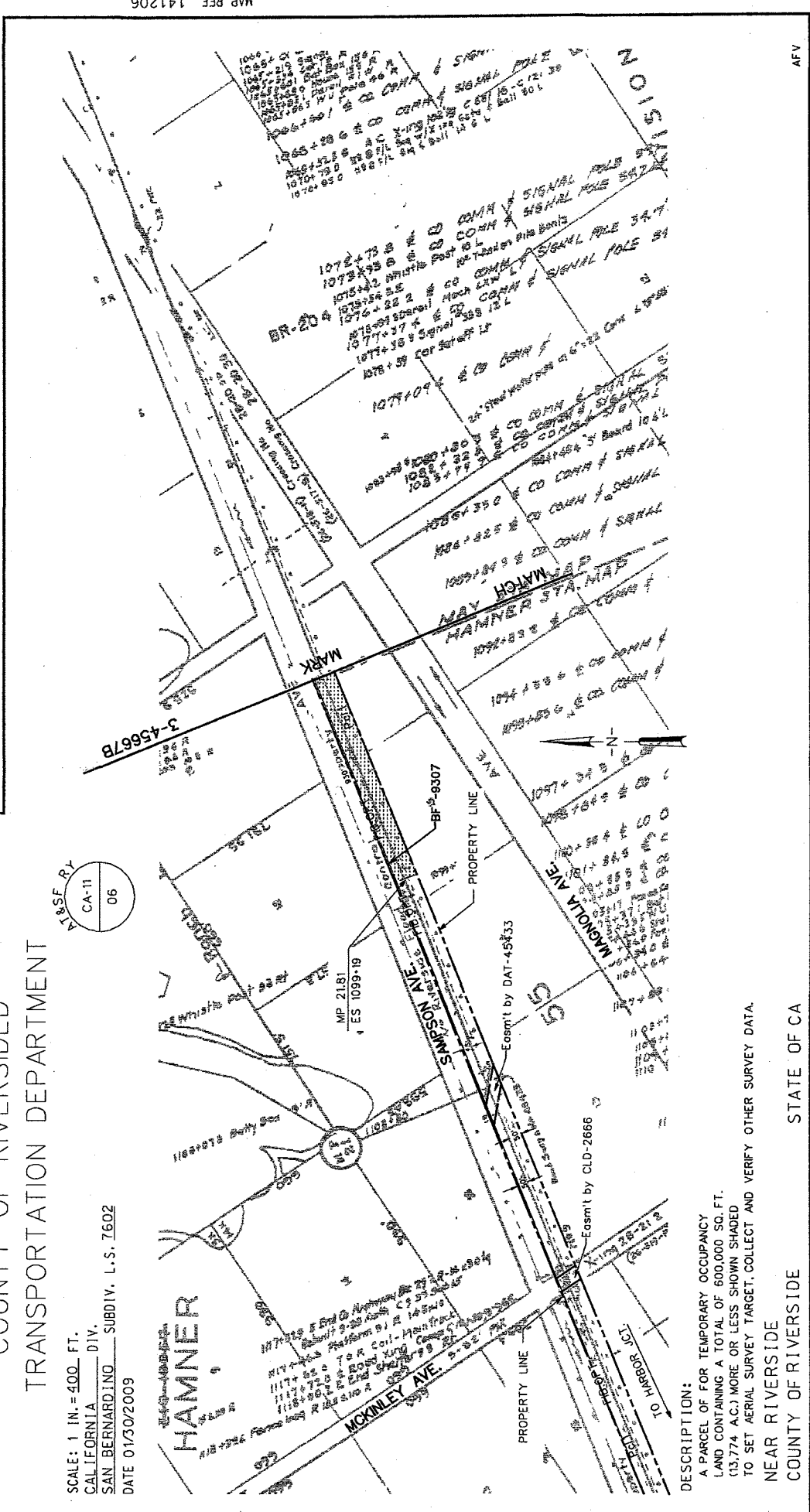
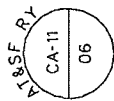
# EXHIBIT "A"

ATTACHED TO CONTRACT BETWEEN  
BNSF RAILWAY COMPANY

AND

COUNTY OF RIVERSIDE  
TRANSPORTATION DEPARTMENT

SCALE: 1 IN. = 400 FT.  
CALIFORNIA DIV.  
SAN BERNARDINO SUBDIV. L.S. 7602  
DATE 01/30/2009



### DESCRIPTION:

A PARCEL OF FOR TEMPORARY OCCUPANCY  
LAND CONTAINING A TOTAL OF 600,000 SQ. FT.  
(13.774 AC.) MORE OR LESS SHOWN SHADED  
TO SET AERIAL SURVEY TARGET, COLLECT AND VERIFY OTHER SURVEY DATA.

NEAR RIVERSIDE  
COUNTY OF RIVERSIDE  
STATE OF CA

AFV

DRAWING NO. 3-45667A

MAP REF. 141206

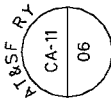
TRACKING NO. 09-37555

# EXHIBIT "A"

ATTACHED TO CONTRACT BETWEEN  
BNSF RAILWAY COMPANY

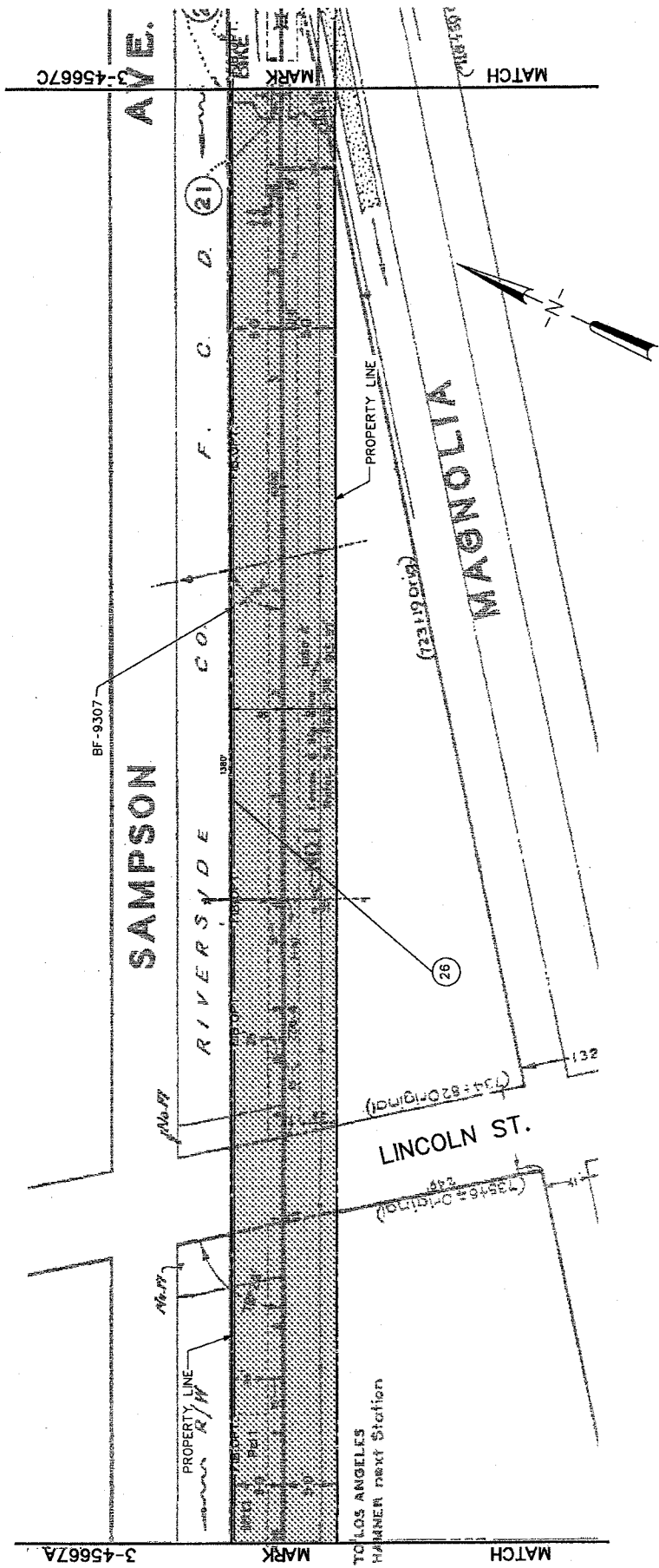
AND

COUNTY OF RIVERSIDE  
TRANSPORTATION DEPARTMENT



SCALE: 1 IN. = 100 FT.  
CALIFORNIA DIV.  
SAN BERNARDINO SUBDIV. L.S. 1602  
DATE 01/30/2009

MAP REF. 506063



AT MAY  
COUNTY OF RIVERSIDE

STATE OF CA

AFV

DRAWING NO. 3-45667B



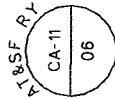
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# EXHIBIT "A"

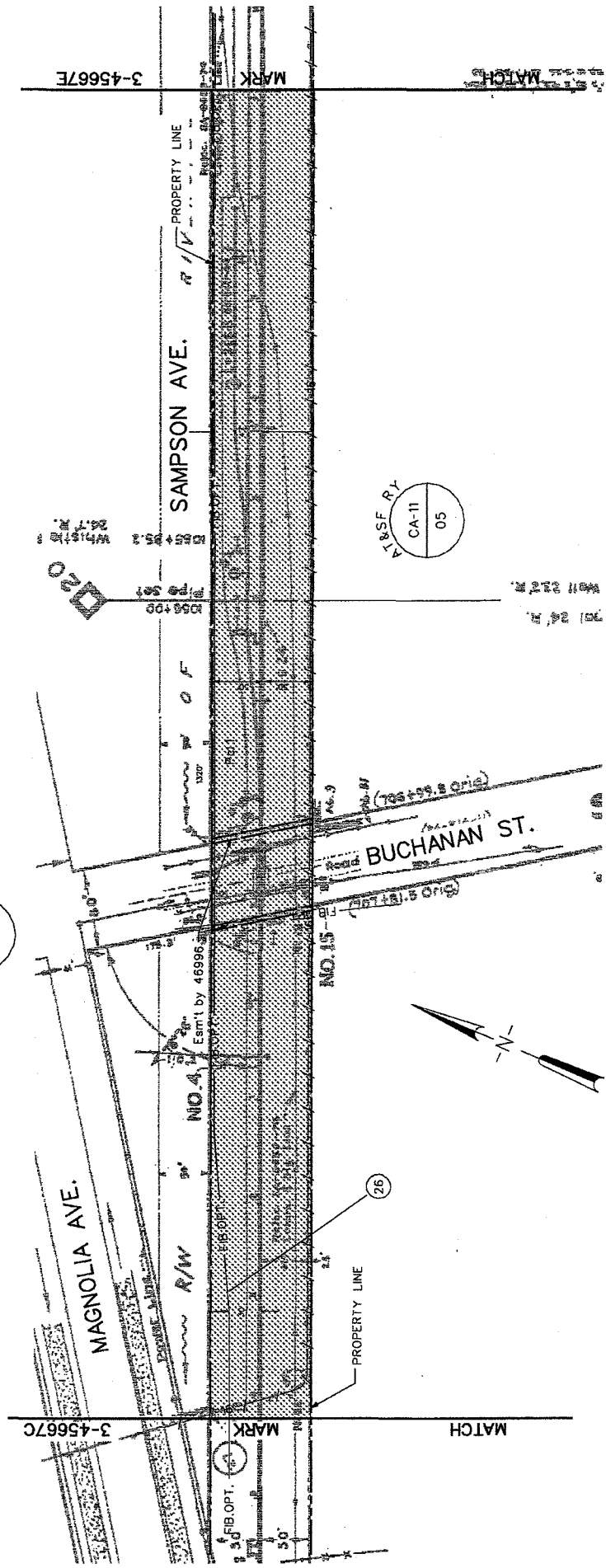
ATTACHED TO CONTRACT BETWEEN  
BNSF RAILWAY COMPANY  
AND

COUNTY OF RIVERSIDE  
TRANSPORTATION DEPARTMENT

SCALE: 1 IN. = 100 FT.  
CALIFORNIA DIV.  
SAN BERNARDINO SUBDIV. L.S. 7602  
DATE 01/30/2009



MAP REF. 506063



AT MAY  
COUNTY OF RIVERSIDE

STATE OF CA

AFV

DRAWING NO. 3-45667D

TRACKING NO. 09-37555

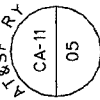
# EXHIBIT "A"

ATTACHED TO CONTRACT BETWEEN  
BNSF RAILWAY COMPANY

AND

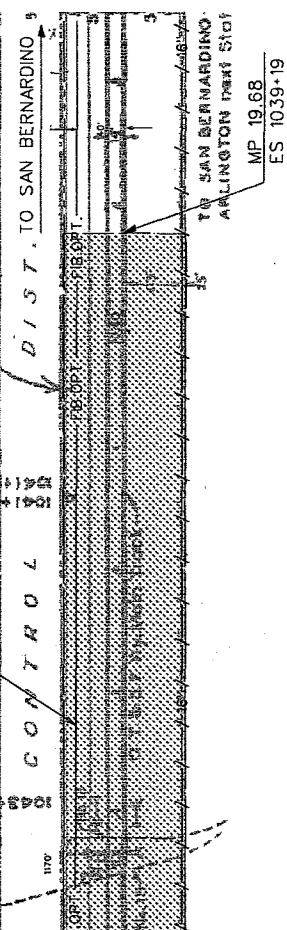
COUNTY OF RIVERSIDE  
TRANSPORTATION DEPARTMENT

SCALE: 1 IN. = 100 FT.  
CALIFORNIA DIV.  
SAN BERNARDINO SUBDIV. L.S. I602  
DATE 01/30/2009



3-45667D

RIVERSIDE COUNTY  
PROPERTY LINE N T Y SAMPSON AVE.



MATCH

AT MAY COUNTY OF RIVERSIDE STATE OF CA

AFV

DRAWING NO. 3-45667E

MAP REF. 506063