

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



981

**FROM:** TLMA - Transportation Department

**SUBMITTAL DATE:**  
December 07, 2010

**SUBJECT:** Construction and Maintenance Agreement between the Riverside County Transportation Commission, State of California Department of Transportation and the County of Riverside for the replacement of Box Springs Road Overhead Bridge (commonly referred to as the Frontage Road Overhead Bridge) and associated improvements.

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

1. Approve the Construction and Maintenance Agreement, and;
2. Authorize the Chairman of the Board to execute the Agreement and any other documents necessary to complete this transaction, and;
3. Direct the Clerk of the Board to hold the Easement Deeds in favor of the County of Riverside from Chairman's execution of the certificate of acceptance and recordation

Juan C. Perez  
Director of Transportation

(Continued On Attached Pages)

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2010/11

<b>SOURCE OF FUNDS:</b>	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

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

APPROVE

BY:

Jennifer L. Sargent

County Executive Office Signature

**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Stone, seconded by Supervisor Benoit and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley  
Nays: None  
Absent: None  
Date: December 14, 2010  
xc: Transp.

Kecia Harper-Ihem  
Clerk of the Board  
By:   
Deputy

Prev. Agn. Ref.

District: 5

Agenda Number:

3.60

FORM APPROVED COUNTY COUNSEL  
BY:   
DATE: 12-7-10  
CYNTHIA M. GUNZEL  
Departmental Concurrence

Dep't Recomm.: ☐ Consent ☒ Policy  
Per Exec. Ofc.: ☐ Consent ☒ Policy

The Honorable Board of Supervisors

RE: Construction and Maintenance Agreement between the Riverside County Transportation Commission, State of California Department of Transportation and the County of Riverside for the replacement of Box Springs Road Overhead Bridge (commonly referred to as the Frontage Road Overhead Bridge) and associated improvements.

December 07, 2010

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until after the Box Springs Frontage Road Overhead Structure is complete and accepted by the County pursuant to the terms of the Agreement.

**BACKGROUND:** The Riverside County Transportation Commission (RCTC) in cooperation with the State of California Department of Transportation (Caltrans) is planning to construct two new High Occupancy Vehicle (HOV) lane structures at the I-215/SR-60 "East Junction", between Box Springs Overcrossing (OC) and Day Street Undercrossing (UC) in Moreno Valley. This project is necessary to close the gap that will exist between the SR-60 HOV lanes constructed by RCTC in Moreno Valley and the HOV lanes on 60/215 constructed as part of the Caltrans Design Sequencing project on the I-215. The project will add another critical lane of traffic in each direction through the East Junction (between Moreno Valley and Riverside). Due to budget constraints certain portions of the ultimate interchange design were not included in the Caltrans Design Sequencing project, including the realignment and widening of the Box Springs Frontage Road and the Ultimate Widening of the I-215 Box Springs OC. These portions have been incorporated into the East Junction Project and will be constructed so that interchange will meet the ultimate design.

As part of these improvements, the existing Box Springs Frontage Road Overhead Bridge structure (Bridge Number 56C-0056) over Burlington Northern Santa Fe (BNSF) tracks will be replaced with a new bridge structure. The existing and a new overhead structures both are partly in RCTC's right of way as RCTC being the owner in fee for the San Jacinto Rail Corridor and partly located in the County's right of way. The certification of acceptance and recordation of the easement interest in favor of the County will be signed by the County only upon completion and acceptance of the Box Springs Frontage Road Overhead Structure and related improvements. BNSF Railway Company has a freight easement for the use of the rail corridor.

The attached agreement outlines the roles and responsibilities of each agency in regards to managing, administering, and financing the project activities for the construction of these improvements as well as the future maintenance of these facilities. RCTC is responsible to provide funding for the project; however, Caltrans will be the lead for advertising, awarding and administering (AAA) the construction phase of the project.

As of the date of this Agreement, RCTC has finalized the plans, specifications and estimates (PS&E) and obtained all necessary construction permits from the involved regulatory agencies. This project was advertised on November 8<sup>th</sup>, 2010 with an anticipated bid opening on January 11<sup>th</sup>, 2011. The construction of this project is expected to be completed in the winter of 2013.

## CONSTRUCTION AND MAINTENANCE AGREEMENT

(Box Springs Road Overhead Bridge also referred to herein as the  
Frontage Road Overhead Bridge)

This CONSTRUCTION AND MAINTENANCE AGREEMENT ("Agreement") is made and entered in as of December 14, 2010 ("Effective Date") by and amongst the RIVERSIDE COUNTY TRANSPORTATION COMMISSION (the "COMMISSION"), STATE OF CALIFORNIA, acting through its Department of Transportation ("STATE"), and the COUNTY OF RIVERSIDE ("COUNTY"). The COMMISSION, STATE, and the COUNTY are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

### RECITALS

A. WHEREAS, the COMMISSION is the owner in fee of that certain real property commonly referred to as the San Jacinto Subdivision ("Rail Corridor").

B. WHEREAS, Burlington Northern and Santa Fe Railway Company ("BNSF") has a freight easement for use of the Rail Corridor and is currently responsible for maintenance thereof pursuant to its Shared Use Agreement with the COMMISSION.

C. WHEREAS, the COUNTY is the owner in fee of that certain real property commonly referred to as the Box Springs Road Overhead Bridge (referred to herein as the "Frontage Road Overhead Bridge"), Bridge Number 56C-0056, which includes all portions thereof ("Existing Structure"). The Existing Structure is presently located within the COUNTY's right-of-way. The Parties intend that the Existing Structure shall be demolished and a new Frontage Road Overhead Bridge, to be identified as Bridge Number 56C-0566, built on, over and across a portion of the COMMISSION's right-of-way ("New Structure"), as further shown on the attached Exhibit "A".

D. WHEREAS, STATE desires to obtain the COMMISSION's permission to enter onto that portion of the Rail Corridor as more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property"), to complete work related to the construction of the New Structure (the "Project"). The Project shall include the erection of falsework and its removal at the completion of construction as further detailed in the Scope of Work set forth in "Exhibit C" attached hereto and incorporated herein by reference. Project is part of a larger project to construct High Occupancy Vehicle (HOV) lanes sponsored by COMMISSION.

E. WHEREAS, the plans and specifications for the Project have been reviewed and approved by BNSF, and the plans and specifications for the falsework shall be reviewed upon completion thereof by STATE's contractor and shall be subject to approval by BNSF and the COMMISSION (collectively the "Plans and Specifications"). Project plans and specifications for the falsework must be submitted by State for review and approved by BNSF and the

COMMISSION prior to commencement of any work on or about the Property. The Parties agree that the Project shall be constructed in accordance with approved Plans and Specifications.

F. WHEREAS, the Parties now wish to enter into this Agreement whereby the COMMISSION will set forth the terms and conditions under which STATE may construct the New Structure, for the benefit of the COUNTY, on the Property.

G. WHEREAS, as of the date Work on the Project commences, STATE shall assume all rights and liabilities for the Existing Structure, including all rights to demolish said structure.

H. WHEREAS, upon satisfactory completion of the Project, as determined by the Parties (referred to herein as "Contract Acceptance"), COUNTY assumes all maintenance and liabilities related to the New Structure.

I. WHEREAS, the COMMISSION and COUNTY intend, upon completion of construction, to execute an easement in favor of the COUNTY for the permanent location of the New Structure on the Property (the "Easement"). The Easement, attached hereto as Exhibit "F" provides that the Easement is subject to the terms and conditions contained in this Agreement.

J. WHEREAS, pursuant to a separate agreement, STATE shall obtain or shall require its contractor to obtain flagging services for the Project work from BNSF. The COUNTY shall obtain or shall require its contractor to obtain necessary flagging services for repair and maintenance work from BNSF or SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY ("SCRRA"), as applicable, pursuant to a separate agreement.

K. WHEREAS, STATE and COMMISSION have entered into a Cooperative Agreement No. 08-1451 on February 11, 2010, and subsequent Amendment No. 1 to said Cooperative Agreement on August 13, 2010 for construction of the above referenced HOV project, including construction of Project over the Rail Corridor (collectively, the "Cooperative Agreement").

L. WHEREAS, except as otherwise specified herein, COMMISSION has prepared the plans and specifications for Project.

M. WHEREAS, COMMISSION is the sponsor (as that term is used in the Cooperative Agreement) for construction of Project, and is responsible for construction funding.

NOW, THEREFORE, the COMMISSION, the COUNTY and the STATE do hereby agree as follows:

## AGREEMENT

### 1. Grant of License for Use of the Property; Easement.

1.1 Grant of License to STATE for Construction of New Structure. The COMMISSION hereby grants to STATE and its employees, agents and contractors a non-exclusive license in, on, over, and across the Property for the purpose of constructing the Project, including the erection and removal of falsework, and repair and maintenance of the New Structure until Contract Acceptance, as defined above in Recital H, and for no other purpose, subject to the terms of this Agreement.

1.2 COMMISSION Grant of Right of Entry to COUNTY During Construction. Subject to the terms and conditions of this Agreement, including the indemnification and defense obligations, COUNTY and its employees and agents shall have the right, but not the obligation, to enter onto the Property during construction for the purpose of ensuring that the Project is constructed by STATE in accordance with approved Plans and Specifications.

1.3 Easement. Upon completion of construction of the New Structure and concurrent with Contract Acceptance, COMMISSION and COUNTY shall execute the Easement for the permanent location of the New Structure on the Property. Said Easement Agreement shall be recorded against the Property, and provides that all repair and maintenance of the New Structure shall be subject to and conducted by COUNTY pursuant to the terms and conditions of this Agreement. Parties agree that, upon Contract Acceptance, "Property", as that term is used herein, shall refer to that portion of COMMISSION's property as shown on the Easement.

### 2. Rights in Existing and New Structure.

2.1 Transfer of Possession and Control of Existing Structure to STATE. As of the date the Work commences, COUNTY authorizes STATE to demolish the Existing Structure at no cost to COUNTY. STATE hereby accepts possession and control of the Existing Structure subject to the foregoing terms.

2.2 Rights in New Structure. Upon satisfactory completion of the Project in accordance with the Plans and Specifications, as determined by the Parties, STATE shall transfer possession and control of the New Structure to the COUNTY. At such time, COUNTY shall accept ownership of the New Structure and shall be responsible for the repair, maintenance and liabilities thereof, at its sole cost, expense and risk.

### 3. Term.

3.1 The term of this Agreement shall be from the Effective Date and shall continue in effect until completion of construction of the New Structure, and thereafter for so long as the Easement Agreement is in effect. This Agreement is subordinate to all prior or future rights and obligations of the COMMISSION in the Property, except that the COMMISSION shall grant no rights inconsistent with the reasonable exercise by STATE and/or COUNTY of its rights under this Agreement.

3.2 Notwithstanding Section 3.1, STATE may, upon providing written notice to the COMMISSION and COUNTY, as pertains to its rights and obligations hereunder, terminate this Agreement as to STATE upon acceptance of the New Structure by COUNTY. Notwithstanding any termination of STATE's rights and obligations under this Agreement as permitted in the foregoing sentence, STATE's indemnification and defense obligations, as set forth herein, shall continue in full force and effect as to any liability arising prior to such termination.

### 4. STATE Obligations Regarding Construction of the Project.

4.1 STATE shall provide for and maintain minimum vertical and horizontal clearances as shown in the Plans and Specifications for the Project, and in accordance with the Contractor Requirements set forth in Exhibit "B" and the State Bridge/Falsework Clearance Requirements as provided in Exhibit "E", both of which are attached hereto and incorporated herein by reference.

4.2 STATE shall construct the Project in a good and workmanlike manner and as shown on approved Plans and Specifications. Any changes or modifications to approved Plans and Specifications for the Project, before or during the Project construction shall be subject to the County's approval prior to the commencement of any such changes or modifications. The principal elements of the Project work ("Work") are as follows:

(a) Construction of the Project, including demolition of the Existing Structure;

(b) All necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on the Rail Corridor;

(c) Provision of suitable drainage, both temporary and permanent;

(d) Maintenance of the job site at all times so that it will not present any source of danger to any person or property during construction.

(e) Removal of all trash and debris associated with the construction of the Project.

(f) Job site cleanup to the pre-construction condition and to the COMMISSION's satisfaction.

(g) Maintain the New Structure in good condition until Contract Acceptance.

4.3 The Work shall be performed by STATE or its contractor(s) in a manner that will not endanger or interfere with the safe and timely operations of the COMMISSION or BNSF facilities.

4.4 The Work, including shoring, false work or cribbing used by STATE, shall comply with the BNSF Bridge Requirements, which STATE has obtained from BNSF and which are incorporated herein by reference, and all applicable requirements promulgated by state and federal agencies, departments, commissions and other legislative bodies.

4.5 Prior to commencing any construction on the Property, STATE shall require its contractor to provide plans and specifications for the falsework to BNSF and the COMMISSION for review and approval.

4.6 Parties mutually agree that construction activities for the Project shall not interfere with BNSF's or SCRRRA's operation of trains on the Rail Corridor.

(a) Emergency work will be permitted only upon prior notification to BNSF's Network Operations Center (telephone number: 800 832-5452) until such date that SCRRRA assumes operations and maintenance responsibility for the corridor, anticipated to start at the middle of 2011. At such time, the required notification for emergency work shall be provided to SCRRRA ((909) 593-0661 or (888) 446-9715). In addition, RCTC's Assets and Property Manager shall be notified prior any emergency work (telephone number: 951-787-7141).

(b) STATE and COMMISSION mutually understand and agree that trains cannot be subject to delay once SCRRRA Metrolink Commuter Rail Service commences in late 2012.

4.7 Any changes or modifications during Project construction that affect safety or operation or the Rail Corridor shall be subject to the COMMISSION's approval prior to the commencement of any such changes or modifications.

4.8 STATE's contractors and agents of STATE performing work on the Property, or any part thereof, shall comply with the insurance requirements specified in Exhibit "D", attached to this Agreement and incorporated herein by reference.

As pertains to the foregoing, STATE declares that, in conformance with and limited to the applicable effect of California Laws insofar as the indemnity and insurance provisions set forth in any of the sections herein, or any rider, amendment or addendum hereto, STATE is self-insured. If STATE performs (i) construction of, alterations or modifications to the Structure, or (ii) any maintenance or other work on the Structure with heavy tools, equipment or machinery at ground surface level horizontally within 25'-0" of the centerline of the nearest track, or (iii) any maintenance or other work outside the limits of the deck of the Structure vertically above the top of the rail, then STATE shall provide COMMISSION defense and indemnification at least equal to the defense, indemnification and insurance provisions contained in Exhibit D in accordance with California Government Code section 14662.5. Nothing herein shall be deemed to insure COMMISSION against its sole negligence or willful misconduct. This section is in addition to and by no way limits any indemnification and defense obligations of STATE pursuant to Sections 10 and 12 of this Agreement.

4.9 STATE is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various utility companies may be buried on the Property. As applicable, the locations of these known Lines have been included on the Plans and Specifications based on information from the utility companies but not all utility locations may be shown or known by the COMMISSION. STATE shall be responsible for contacting the COMMISSION and the utility companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. As applicable, STATE must also mark all Lines shown on the Plans and Specifications or marked in the field in order to verify their locations. STATE must also use all reasonable methods when working on or adjacent to the Property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.

(a) STATE shall be responsible, at COMMISSION's expense, for the rearrangement of any facilities or relocation of Lines determined to interfere with construction. STATE shall cooperate fully with any utility company(ies) in performing such rearrangements.

(b) Failure to mark or identify these Lines will be sufficient cause for the COMMISSION to stop construction of the Project until this work is completed.

4.10 STATE and STATE contractors on the Project shall conform with and meet the Contractor Requirements set forth in Exhibit "B" attached hereto and incorporated herein by reference.

4.11 As may be required by BNSF, prior to performing any work on the Project, STATE and STATE contractors shall obtain copies of and execute BNSF's most-current standard "Exhibit 'C' – Contractor Requirements" and BNSF's most-current standard "Exhibit 'C-1' – Contractor Insurance



Requirements". STATE contractors shall provide evidence to the COMMISSION of compliance with this requirement.

4.12 The COMMISSION shall not be responsible to STATE for any changes in BNSF operations over the Rail Corridor.

4.13 STATE shall supervise and inspect the operations of its contractors completing the Work to assure compliance with the Plans and Specifications, the terms of this Agreement and all safety requirements specified herein.

4.14 STATE shall provide written notification to the BNSF Manager of Public Projects, the COUNTY and the COMMISSION within thirty (30) days after Project completion date. Additionally, prior to Project completion, STATE shall notify BNSF's Manager of Public Projects, in writing, of the date on which the COMMISSION and COUNTY will meet with STATE for the purpose of making final inspection of the Project.

4.15 In addition to the working drawings required in Exhibit "B", STATE shall provide one set of as-built plans (prepared in English Units) to BNSF, the COUNTY and the COMMISSION, as well as one set of computer diskettes containing as-built microstation format computer aided design drawings ("CAD drawings") of the New Structure and identifying the software used for the CAD drawings. The "as-built plans" must comply with the Bridge Requirements and depict all information in BNSF engineering stationing and mile post pluses. The "as-built plans" must also include plan and profile, structural bridge drawings and specifications, and all drainage plans. All improvements and facilities must be shown.

4.16 STATE shall require all of its contractors and agents engaged under contract to perform work on the Property, or any part thereof, to include the COMMISSION and COUNTY as indemnified parties under STATE's standard contractual indemnification, hold harmless and defense requirements. Each such contract shall also incorporate all applicable material provisions of this Agreement as binding terms contained therein.

## 5. COMMISSION Rights Regarding Construction.

5.1 The COMMISSION shall have the right, in its reasonable discretion, to request any employee or contractor who enters the Rail Corridor and because of their incompetence, neglect of duty, unsafe conduct or misconduct and/or because they adversely affected operations on the Rail Corridor, be removed from the Rail Corridor. In the event STATE elects not to honor such request, the COMMISSION may stop work within the Rail Corridor until the matter has been fully resolved to the COMMISSION's reasonable satisfaction.

5.2 The COMMISSION shall have the right to stop construction work on the Project if any of the following events take place: (i) the Project work is performed in a manner contrary to approved Plans and Specifications; (ii) the

Project work is performed in a manner which is hazardous to the Rail Corridor, facilities or the safe and expeditious movement of railroad traffic; or (iii) the insurance described in the attached Exhibit "D" is canceled during the course of the Project. The work stoppage shall continue until all necessary actions are taken to rectify the situation to the satisfaction of the COMMISSION. Any such work stoppage under this provision shall not give rise to any liability on the part of the COMMISSION. The COMMISSION's right to stop the work is in addition to any other rights the COMMISSION may have. In the event that the COMMISSION desires to stop construction work on the Project, the COMMISSION agrees to immediately notify the following individual in writing: Caltrans Resident Engineer.

6. COUNTY Rights Regarding Construction.

6.1 The COUNTY shall have the right, but not the obligation, to inspect, at its sole expense, the Project work to ensure that the Project is constructed in accordance with approved Plans and Specifications.

7. COUNTY Obligations for Repair, Maintenance and Operation of New Structure. The repair, maintenance and operation of the New Structure shall be performed in accordance with the following express conditions, to which COUNTY covenants and agrees to comply with upon Contract Acceptance, by and for itself, its successors and assigns:

7.1 No additional improvements shall be constructed by COUNTY and no non-emergency repairs shall be made to the New Structure or on the Property by COUNTY, its contractors, employees or agents unless approved in writing by the COMMISSION.

7.2 The COUNTY shall repair, maintain and operate the New Structure at its sole cost and expense.

7.3 Repair and maintenance of the New Structure, including, without limitation, any parts of the New Structure that extend outside of the Property, shall be accomplished in such a manner so that it does not interfere with or be a source of danger to: (i) present or future tracks, roadbed, and personal and real property within the Property and surrounding area, and (ii) the safe operation of railroad and related activities within the Property and surrounding area.

7.4 COUNTY shall provide the COMMISSION with no less than thirty (30) days prior written notice of any non-emergency repair work or maintenance work to be performed for the New Structure, excepting for routine street sweeping, removal of graffiti and/or routine checks. Repair and maintenance work performed for the New Structure shall not interfere with rail traffic and related activities within the Property and surrounding area and must be approved in writing by the COMMISSION prior to commencement of any non-emergency repair work or maintenance work for the New Structure, excepting for routine street sweeping, removal of graffiti and/or routine checks.

7.5 COUNTY shall not, without the express written consent of the COMMISSION: (i) place any signs, billboards or advertisements on the New Structure, other than project monument signs; (ii) erect or construct any building or structures within the Property; (iii) park or store any vehicles within the Property; or (iv) store any material or permit any activity within the Property and surrounding area that in any manner involves or includes combustible, hazardous or toxic material that has the reasonable potential to cause, directly or indirectly, a fire, explosion, implosion or corrosive damage.

7.6 This Agreement does not include any right of COUNTY to permit third party installation of utilities within the Property. Any such right shall be governed by a separate permit or license.

7.7 Additional COUNTY Obligations Regarding Maintenance of the New Structure:

(a) COUNTY shall, at its sole cost and expense, keep the New Structure painted and free from graffiti, and shall at all times maintain the strength, soundness and integrity of the New Structure.

(b) COUNTY shall maintain the D.O.T. Crossing Number 027312L (PUC Crossing No. is 002X-6.38-A) in legible condition and in a conspicuous location on the New Structure where applied by or on behalf of COUNTY.

(c) All work to be conducted pursuant to this Section 7 shall be performed in good and workmanlike manner and all work shall be promptly commenced and prosecuted to conclusion in its logical order and sequence.

(d) To facilitate the schedule of maintenance and repair services for the New Structure, the Parties and any other necessary outside parties, as determined by the COMMISSION, shall meet in advance and shall develop a maintenance and repair schedule that does not create any interference with trains operating within the Rail Corridor.

7.8 COUNTY shall notify and obtain prior authorization from BNSF's Manager of Public Projects before entering the Rail Corridor for maintenance purposes if BNSF is maintaining the Rail Corridor at the time maintenance is to be performed.

7.9 COUNTY shall notify and obtain prior authorization from the Manager of Public Projects for SCRRA before entering the Rail Corridor for maintenance purposes if SCRRA is maintaining the Rail Corridor at the time maintenance is to be performed.

7.10 Prior to entering or permitting any contractor or agent of COUNTY to enter into the Rail Corridor pursuant to this Section 7, COUNTY shall comply with and shall require any contractor or agent of STATE to comply with the

insurance requirements set forth in Exhibit "D" or as otherwise required by the COMMISSION. COUNTY shall ensure that evidence satisfactory to the COMMISSION of such compliance, including submission to COMMISSION of any required insurance certificates and/or endorsements, has been provided.

7.11 COUNTY shall require all of its contractors and agents engaged under contract to perform work on the Property, or any part thereof, to include the COMMISSION as an indemnified party under COUNTY's standard contractual indemnification, hold harmless and defense requirements. Each such contract shall also incorporate all applicable material provisions of this Agreement as binding terms contained therein.

7.12 The COMMISSION shall have the right, but not the obligation, to request any employee or contractor of COUNTY who enters the Rail Corridor and because of their incompetence, neglect of duty, unsafe conduct or misconduct and/or because they adversely affected operations within the Rail Corridor, be removed from the Rail Corridor.

8. No Liability of COMMISSION, COUNTY or BNSF for Approval of Plans and Specifications. Any approval of the Plans and Specifications by BNSF, COUNTY and/or the COMMISSION shall in no way obligate BNSF, COUNTY or the COMMISSION in any manner with respect to the finished product design and/or construction. Any approval by BNSF, COUNTY and/or the COMMISSION shall mean only that the Plans and Specifications meet the subjective standards of BNSF, COUNTY and/or the COMMISSION, and such approval by BNSF, COUNTY and/or the COMMISSION shall not be deemed to mean that the Plans and Specifications or construction is structurally sound, appropriate or that the Plans and Specifications meet applicable regulations, laws, statutes or local ordinances and/or building codes.

9. Liens. Neither STATE nor COUNTY shall be permitted to place against the Property, or any part thereof, any design professionals', mechanics', materialmen's contractors' or subcontractors' liens with regard to either party's actions upon the Property. STATE and COUNTY agree to hold the COMMISSION harmless for any loss or expense, including reasonable attorneys' fees and costs, arising from any such liens which might be filed against the Property.

10. Indemnification Obligations.

10.1 Indemnification. PURSUANT TO CALIFORNIA government CODE SECTION 14662.5, STATE HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS COMMISSION FROM, AND TO REPAIR OR PAY FOR, ANY DAMAGE PROXIMATELY CAUSED BY REASON OF THE USES AUTHORIZED TO STATE BY THIS AGREEMENT. To the fullest extent permitted by law, STATE and COUNTY, respectively, hereby release, indemnify, defend and hold harmless COMMISSION, its successors, assigns, legal representatives, officers, directors, employees, agents and representatives 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 and attorneys' fees) of any nature, kind or description of any person (including, without limitation, the employees of the parties hereto) or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) (i) the use, occupancy or presence of STATE or COUNTY, respectively, or their contractors, subcontractors, employees or agents in, on, or about the construction site, (ii) the performance, or failure to perform by the STATE or COUNTY, respectively, their contractors, subcontractors, employees, or agents, its work or any obligation under this Agreement, (iii) the acts or omissions of STATE or COUNTY, respectively, their contractors, subcontractors, employees, or agents in, on, or about the construction site, (iv) STATE's or COUNTY's, respectively, breach of this Agreement or COUNTY's breach of the Easement Agreement, (v) any rights or interests granted to STATE or COUNTY, respectively, pursuant to this Agreement or to COUNTY pursuant to the Easement Agreement (vi) STATE's or COUNTY's, respectively, occupation and use of RCTC's property or right-of-way, including, without limitation, subsequent maintenance of the New Structure by STATE, or (vii) an act or omission of STATE or COUNTY, respectively, or their officers, agents, invitees, employees or contractors or anyone directly or indirectly employed by any of them, or anyone they control or exercise control over. THE LIABILITY ASSUMED BY STATE WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF COMMISSION, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE WILLFUL MISCONDUCT OR SOLE NEGLIGENCE OF COMMISSION

10.2 STATE Indemnification of COUNTY. STATE hereby agrees to indemnify, defend, assume all liability for and hold harmless the COUNTY and its officers, employees, agents and representatives ("COUNTY Indemnitees") from all actions, claims, suits, penalties, costs (including reasonably attorney fees), obligations, liabilities, damages to property, environmental claims or injuries to persons, including death, which may be caused by STATE's activities related to the Existing Structure, including demolition thereof, whether such activities or performance thereof is by anyone directly or indirectly employed or under

contract with STATE, save and except to the extent claims or liabilities arise from or are related to the sole negligence or willful misconduct of COUNTY Indemnitees. The terms of this Section shall apply whether such damage or claim shall accrue or be discovered before or after the termination of this Agreement.

11. Assumption of Risk and Waiver. To the maximum extent allowed by law, STATE and COUNTY, respectively, assume any and all risk of loss, damage or injury of any kind to any person or property, including without limitation, the New Structure, the falsework, STATE's or COUNTY property, respectively, and any other property of, or under the control or custody of, STATE or COUNTY, respectively, which is on or near the Property. STATE and COUNTY's assumption of risk shall include, without limitation, loss or damage caused by defects in any structure or improvement on or near the Property including the New Structure, accident or fire or other casualty on or near the Property, or electrical discharge, and noise or vibration resulting from the COMMISSION's or BNSF's transit operations on or near the Property. The term "COMMISSION" as used in this section shall include: (i) any transit or rail-related company operating upon or over the COMMISSION's tracks or other property, and (ii) any other persons or companies employed, retained or engaged by the COMMISSION. STATE and COUNTY, respectively, on behalf of themselves and their Personnel, as a material part of the consideration for this Agreement, hereby waive all claims and demands against the COMMISSION for any such loss, damage or injury of STATE or COUNTY, respectively, and/or their Personnel.

The provisions of this section and of Section 10 and 12 shall survive the termination of this Agreement. As used in this section, "Personnel" means STATE, or its officers, directors, affiliates, or anyone directly or indirectly employed by STATE or for whose acts STATE is liable.

Further, STATE AND COUNTY, RESPECTIVELY, ACCEPT THE PROPERTY IN ITS "AS IS" CONDITION, WITH ALL FAULTS. STATE AND COUNTY, respectively, acknowledge and agree that STATE and COUNTY, respectively, are entering the Property under this Agreement based on STATE's and COUNTY's, respectively, own investigations and knowledge of the Property and that, except as otherwise specifically stated in this Agreement, neither the COMMISSION nor any agent of the COMMISSION, has made any representation or warranty whatsoever, express or implied, with regard to the physical condition of the Property or the suitability of the Property for any particular purpose or use, including, without limitation, any representations or warranties regarding the applicability or non-applicability of any laws, the soil or subsoil, surface or subsurface conditions, topography, possible hazardous substances contamination, fill, drainage, access to public roads, availability of utilities, existence of underground storage tanks, applicability of or compliance with any environmental laws or any other matter of any nature whatsoever.

12. Defense. Upon written notice from the COMMISSION, STATE agrees to assume the defense of any lawsuit, administrative action or other proceeding

brought against the COMMISSION by any public body, individual, partnership, corporation, or other legal entity, relating to any matter covered by this Agreement for which STATE has an obligation to assume liability for and/or to indemnify or save and hold harmless the COMMISSION. STATE shall pay all the costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation expenses, settlement payments, and amounts paid in satisfaction of judgments. Any and all lawsuits or administrative actions brought or threatened on any theory of relief available at law, in equity or under the rules of any administrative agency shall be covered by this section, including, but not limited to, the theories of intentional misconduct, negligence, breach of statute or ordinance, or upon any theory created by statute or ordinance, state or federal.

Upon written notice from the COMMISSION, COUNTY agrees to assume the defense of any lawsuit, administrative action or other proceeding brought against the COMMISSION by any public body, individual, partnership, corporation, or other legal entity, relating to any matter covered by this Agreement for which COUNTY has an obligation to assume liability for and/or to indemnify or save and hold harmless the COMMISSION. COUNTY shall pay all the costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation expenses, settlement payments, and amounts paid in satisfaction of judgments. Any and all lawsuits or administrative actions brought or threatened on any theory of relief available at law, in equity or under the rules of any administrative agency shall be covered by this section, including, but not limited to, the theories of intentional misconduct, negligence, breach of statute or ordinance, or upon any theory created by statute or ordinance, state or federal.

13. Compliance with Laws/Permits. STATE and COUNTY shall, respectively, in all activities undertaken pursuant to this Agreement, comply and cause their respective contractors, agents and employees to comply with all federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, policies and decrees. Without limiting the generality of the foregoing, the STATE and COUNTY shall, respectively, at each party's sole cost and expense, obtain any and all permits which may be required by any law, regulation or ordinance for any activities or obligations each desires to conduct or have conducted pursuant to this Agreement.

14. Inspection. The COMMISSION and its representatives, employees, agents or independent contractors may enter and inspect the Property or any portion thereof or any improvements thereon at any time and from time to time at reasonable times to verify STATE's and COUNTY's, respectively, compliance with the terms and conditions of this Agreement.

15. Default. If STATE or COUNTY, respectively, fail to fulfill any material obligation of STATE or COUNTY, respectively, under this Agreement, COMMISSION may give written notice to STATE or COUNTY, as applicable, of such failure, and in the event that STATE or COUNTY, respectively, fails to

remedy such failure within forty-five (45) calendar days following receipt of such notice, or if such remedy cannot reasonably be completed within thirty (30) days, to commence such remedy within said time period and to diligently complete such remedy within a reasonable period of time, COMMISSION may, at its option, and in addition to any other available legal or equitable remedy, perform such work itself as it deems necessary for the safe operation of uses on the Property. In such event, STATE or COUNTY, as applicable, agree to pay, within fifteen (15) days after a bill is rendered therefor, the cost so incurred by COMMISSION. However, failure on the part of COMMISSION to perform the obligations of STATE or COUNTY shall not release STATE or COUNTY from liability hereunder for any loss or damage occasioned thereby.

16. Not Real Property Interest. It is expressly understood that this Agreement does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Property to STATE. This Agreement is not exclusive and the COMMISSION specifically reserves the right to grant other rights of entry within the vicinity of the Property.

17. Attorneys' Fees. In the event of a dispute between the parties with respect to the terms or conditions of this Agreement, the prevailing Party shall be entitled to collect from the other its reasonable attorneys' fees and costs as established by the judge or arbitrator presiding over such dispute.

18. Revocation and Termination. It is the intent of the Parties that this Agreement for continued maintenance of the New Structure granted herein shall continue and remain in full force and effect so long as the Easement Agreement is in effect. Notwithstanding any improvements made by STATE or COUNTY to the Property or any sums expended by STATE or COUNTY in furtherance of this Agreement, this Agreement is revocable and may be terminated by the COMMISSION upon termination of the Easement Agreement.

19. Restoration of the Property. If the Easement, or any portion thereof, shall cease to be needed for public crossing purposes, then such portion(s) of the Easement shall be vacated in accordance with any and all applicable State and Federal laws. In addition, the then-current owner of the New Structure shall, at the COMMISSION's option, to be exercised in writing, be required to either: 1) leave the New Structure in good operating condition and transfer title of the New Structure to the COMMISSION; or 2) at its own cost and expense, remove the New Structure and restore the Property to the same condition in which it was prior to commencement of the Project, reasonable wear and tear excepted. In case the Party responsible for such work fails to commence restoration of the Property to its prior condition within ten (10) business days after the effective date of the termination and to diligently pursue completion of such restoration, the COMMISSION may proceed with such work at the expense of such Party.

20. Continuing Liability. No termination of this Agreement shall release STATE or COUNTY from any liability or obligation hereunder resulting from any acts, omissions or events happening prior to the termination of this Agreement



and restoration of the Property to its prior condition and/or transfer of the New Structure pursuant to Section 19.

21. Notice. Any notice provided pursuant to or required by this Agreement shall be in writing and shall be deemed sufficiently provided when sent by certified mail, return receipt requested, to the Parties at the following addresses:

COMMISSION:

Riverside County Transportation  
Commission  
4080 Lemon Street, Third Floor  
Riverside, California 92502-7141  
Attn. Director of Rail Projects  
Fax: (951) 787-7906

BNSF:

BNSF Railway Company  
Manager of Public Projects  
740 E. Carnegie Drive  
San Bernardino, CA. 92408  
Email: Melvin.Thomas@bnsf.com

BNSF Railway Company  
Assistant Director Structural  
Engineering  
4515 Kansas Avenue  
Kansas City, KS 66106  
Email: Donald.Lozano@bnsf.com

STATE:

State of California  
Department of Transportation  
Division of Right of Way and  
Land Surveys—  
Railroad Agreements  
1120 N. Street, MS 37  
Sacramento, CA 95814

22. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

23. Third Party Beneficiaries. BNSF shall be a third party beneficiary as to Sections 4.3, 4.11, 4.14, 4.15, 7.8 and Section 8 of this Agreement. SCRRRA shall be a third party beneficiary as to Section 7.9 of this Agreement. Except as specified in the foregoing, there are no third party beneficiaries, and this Agreement is not intended, and shall not be construed to be for the benefit of, or be enforceable by, any other person or entity whatsoever.

24. Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions, or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

25. Captions. The captions included in this Agreement are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this Agreement or any provision hereof, or in any way affect the interpretation of this Agreement.

26. Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

27. Assignment. This Agreement and the rights granted herein are personal to STATE and COUNTY. STATE and COUNTY shall not assign or transfer, except as required by law, (whether voluntary or involuntary) this Agreement in whole or in part, or permit any other person or entity to use the rights or privileges hereby conveyed, without the prior written consent of the COMMISSION, which may be withheld in the COMMISSION's sole and absolute discretion. Any attempted act in violation of this section shall be void and without effect and give the COMMISSION the right to immediately terminate this Agreement.

28. Waiver of Covenants or Conditions. Waiver by the COMMISSION of the performance of any covenant or condition under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by it of any other covenant or condition under this Agreement.

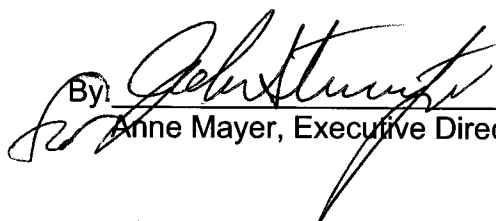
29. Entire Agreement. This Agreement, the attached exhibits and any other documents specifically referenced and incorporated herein constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all prior verbal or written agreements and understandings between the Parties with respect to the matters addressed in this Agreement.

30. Recitals. The Recitals set forth above are incorporated herein by reference.

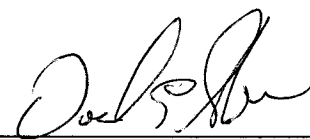
**SIGNATURE PAGE TO  
CONSTRUCTION AND MAINTENANCE LICENSE AGREEMENT  
(Frontage Road Overhead Bridge)**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first written above.

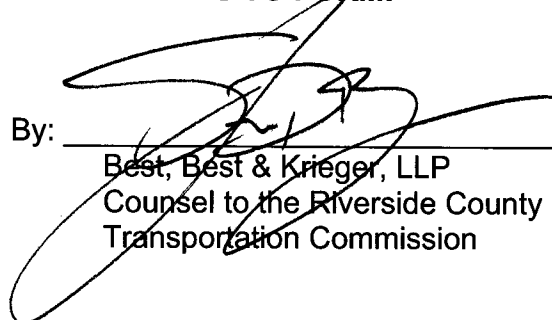
**RIVERSIDE COUNTY  
TRANSPORTATION COMMISSION**

By:   
Anne Mayer, Executive Director


**STATE OF CALIFORNIA,  
DEPT. OF TRANSPORTATION**

By:   
Donald E. Grebe, Chief  
Office of Project Delivery,  
Division of Right of Way and  
Land Surveys

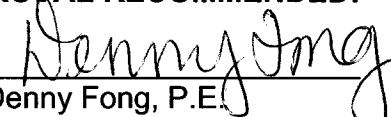
**APPROVED AS TO FORM:**

By:   
Best, Best & Krieger, LLP  
Counsel to the Riverside County  
Transportation Commission

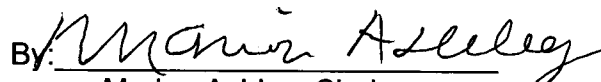
**APPROVED AS TO FORM:**

By:   
Counsel, Department of  
Transportation

**APPROVAL RECOMMENDED:**

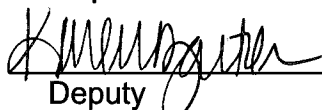
By:   
Denny Fong, P.E.  
Railroad

**COUNTY OF RIVERSIDE**

By:   
Marion Ashley, Chairman  
Board of Supervisors

**ATTEST:**

Clerk of the Board  
Kecia Harper-Ihem

By:   
Deputy

FORM APPROVED COUNTY COUNSEL

BY:  12-7-10  
SYNTHIA M. GUNZEL DATE

## **EXHIBIT "A"**

### **DESCRIPTION OF PROPERTY**

The Property is as shown on the Project plans, and as described in Exhibit "A" to the attached Easement.

**ATTACHMENTS FILED**  
**WITH**  
**THE CLERK OF THE BOARD**