

**VENTURA COUNTY TRANSPORTATION  
COMMISSION LICENSE AGREEMENT**

This LICENSE AGREEMENT (“Agreement”) is made and entered into as of October 5, 2018, by and between the VENTURA COUNTY TRANSPORTATION COMMISSION, a public entity (“VCTC”), and the City of Moorpark, a municipal corporation (“LICENSEE”), upon and in consideration of the agreements, covenants, terms, and conditions below:

**PART I - BASIC LICENSE PROVISIONS**

1. **Description of License Property:** A portion of the VCTC railroad right of way near Mile Post 427 located in Moorpark, CA as shown on Exhibit A attached.  
  
**Approximate Area:** 67,000 ± square feet
2. **Use of License Property:** Fencing, parking stalls, landscaping and other hardscape improvements as shown on Exhibit B attached. No other use is authorized by this Agreement.
3. **Commencement Date:** Effective as of the date all parties have signed this Agreement.
4. **Term:** Five years beginning on the Commencement Date with automatic one-year renewals after the initial term unless one party terminates this Agreement as provided herein
5. **License Fees:**
  - A. **Base License Fee:** \$1, payable annually in advance.
6. **Insurance Requirements:** Insurance requirements are detailed in Section 16, *Insurance*.
7. **VCTC’s Address:**  
  
VENTURA COUNTY TRANSPORTATION COMMISSION  
950 County Square Drive, Suite 207  
Ventura, CA 93003
8. **LICENSEE’s Address:**  
  
City of Moorpark  
799 Moorpark Avenue  
Moorpark, CA 93021
9. **Facility:** The uses identified in Section 2 and no others.

The foregoing Basic License Provisions and the General License Provisions set forth in attached Part II are incorporated into and made part of this Agreement.

## **PART II - GENERAL LICENSE PROVISIONS**

### **1. License/Term.**

1.1 **Grant of License.** VCTC hereby grants to LICENSEE a non-exclusive license to use the real property owned by VCTC described on the attached Exhibit A and incorporated herein by reference, and described in Item 1 of the Basic License Provisions (the "License Property"), for the limited purpose of construction, installation, operation, alteration, maintenance, reconstruction and/or removal of the Facility described in Item 9 of the Basic License Provisions, and any usual, necessary and related appurtenances thereto, for the purposes described in Item 2 of the Basic License Provisions, together with rights for access and entry through existing driveways or any replacement driveways authorized or installed by VCTC onto the License Property as necessary or convenient for the use of the Facility. In connection with this Agreement, LICENSEE, its officers, directors, employees, agents, customers, visitors, invitees, licensees, and contractors (collectively, "LICENSEE Parties"), subject to the provisions hereof, may have reasonable rights of entry and access onto the License Property, with the time and manner of such entry and access to be subject to VCTC's prior written approval. The License Property, adjoining real property (or any interest therein) of VCTC and personal property of VCTC located thereon shall hereinafter collectively be referred to as "VCTC Property." LICENSEE may, upon approval by VCTC, assign its rights under this agreement and the license granted hereby in writing and in accordance with the terms of this Agreement. This Agreement shall be made an Exhibit to the document creating such assignment to a successor in interest (SUBLICENSEE).

1.2 **Term of Agreement.** The term of this Agreement ("Term") shall commence on the "Commencement Date" specified in Item 3 of the Basic License Provisions. This Agreement shall continue in full force and effect on an annual basis as provided in Item 4 of the Basic License Provisions until terminated by either party on thirty (30) days' prior written notice. VCTC shall have the absolute right to terminate this Agreement prior to the date specified in Item 4 in its sole discretion by delivering thirty (30) days' prior written notice to LICENSEE.

1.3 **Public Use.** In addition to any and all other termination rights of VCTC described herein, LICENSEE hereby expressly recognizes and agrees that the "License Property" are located on VCTC property that may be developed for public projects and programs which may be implemented by VCTC or other public agencies, such as, but not limited to: rail and bus transitways, bikeways, walkways, beautification projects, roadways, parking facilities, and/or any other public or other governmental uses (collectively and individually "Public Use"); and that LICENSEE or SUBLICENSEE's use of the License Property under this License is a temporary, interim use as to which LICENSEE or SUBLICENSEE has no right to nor expectation of use for any particular length of time and that may be terminated by VCTC by one hundred eighty (180) days' written notice to LICENSEE as set forth in Section 1.2 above. Accordingly, as a condition to entering into this License, LICENSEE expressly acknowledges and agrees that:

- (a) VCTC may terminate this License as set forth above for any Public Use, to be determined in the sole and absolute discretion of VCTC's Executive Director, or designee;
- (b) LICENSEE waives any objection to, opposition, or protest at any approval proceeding; nor file suit to prevent or delay any Public Use when planned or implemented on or adjacent to the Licensed Property;
- (c) If VCTC's Executive Director, or designee, at any time, or from time to time, determines in his or her sole and absolute discretion, that there is a need for the Premises or any adjoining property for a Public Use and such Public Use requires relocation or removal of the Improvements, LICENSEE shall reconstruct, alter, modify, relocate or remove its Improvements, as directed by VCTC or any parties having operating rights over the Premises, at LICENSEE's sole cost and expense, within sixty (60) days after written notice from VCTC; and
- (d) LICENSEE expressly assumes all risk of any future Public Use as determined by VCTC and in the event VCTC terminates this License and requires LICENSEE and/or SUBLICENSEE to vacate the Premises for any Public Use, LICENSEE and SUBLICENSEE shall not, as a result

of such termination and vacation of the Premises, be entitled to receive any:

- (i) relocation assistance, moving expenses, goodwill or other payments under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. sections 4601 et seq. and/or the California Relocation Assistance Law, as amended, California Government Code sections 7260 et seq.; and
- (ii) compensation under any eminent domain or inverse condemnation law.

LICENSEE and any SUBLICENSEE shall not be entitled to any damages under California's Eminent Domain Law in the event of such termination.

1.4 **Condition of License Property.** LICENSEE acknowledges that it has inspected and accepts the License Property in its present condition as suitable for the use for which this license is granted. Execution of this Agreement by LICENSEE shall be conclusive to establish that the License Property is in a condition which is satisfactory to LICENSEE as of the Commencement Date.

## 2. **Payments.**

2.1 **License Fee.** As consideration for the rights given hereunder, LICENSEE agrees to pay to VCTC the Base License Fee specified in Item 5 of the Basic License Provisions, as such amount may be adjusted as set forth in Section 2.2, and the additional One-Time License Fee specified in Item 5 of the Basic License Provisions. The One-Time License Fee and the first month's or first year's, as the case may be, Base License Fee are due and payable upon execution of this Agreement. Thereafter, the Base License Fee, as such fee may be adjusted pursuant to the provisions of Section 2.2, shall be due and payable, without demand, on or before one month or year, as the case may be, after the Commencement Date and in each month or year, as the case may be thereafter. The Base License fee for any fractional period at the end of the Term shall be prorated on a daily basis and shall be reimbursed to LICENSEE. If the Agreement is terminated, and the LICENSEE is not in breach of the Agreement at such time, the Base License fee for any fractional period shall be prorated on a daily basis and shall be reimbursed to LICENSEE.

3. **Taxes.** LICENSEE shall be liable for and agrees to pay promptly and prior to delinquency, any tax or assessment, including but not limited to any possessory interest tax, levied by any governmental authority: (a) against the Facility and its operations, the License Property and/or any personal property, fixtures or equipment of LICENSEE or SUBLICENSEE used in connection therewith, or (b) as a result of the LICENSEE Parties' use of the License Property, or the Facility.

4. **Construction.** All work performed or caused to be performed by LICENSEE or SUBLICENSEE on the Facility or the License Property shall be performed (i) in accordance with and any and all applicable laws, rules and regulations (including the VCTC's rules and regulations), and (ii) in a manner which meets or exceeds the then applicable standards of the industry for such work, and (iii) is satisfactory to VCTC. Prior to commencement of any construction, maintenance, reconstruction, installation, restoration, alteration, repair, replacement or removal (other than normal maintenance) (hereinafter, "Work") on the License Property, LICENSEE or SUBLICENSEE shall submit work plans to VCTC for review and approval. Any such Work must be carried out pursuant to work plans approved in writing by VCTC. In addition, LICENSEE or SUBLICENSEE shall provide VCTC and all holders of underground utility facilities located within the License Property with at least 10 calendar days' written notice prior to commencement of any Work on the License Property or the Facility, except in cases of emergency, in which event LICENSEE or SUBLICENSEE shall notify VCTC's representative personally or by phone prior to commencing any Work. Unless otherwise requested by VCTC, upon completion of any Work, LICENSEE or SUBLICENSEE shall restore the VCTC Property to its condition immediately preceding the commencement of such Work.

5. **Contractors - Approval and Insurance.** Any contractors of LICENSEE or SUBLICENSEE

performing Work on the Facility or the License Property shall first be approved in writing by VCTC. With respect to such Work, LICENSEE or SUBLICENSEE shall, at its sole cost and expense, obtain and maintain in full force and effect, throughout the term of such Work, insurance, as required by VCTC, in the amounts and coverages specified on, and issued by insurance companies as described Section 16 below. Additionally, LICENSEE or SUBLICENSEE shall cause any and all of its contractors and subcontractors which may (a) be involved with such Work, or (b) may, for any reason, need to enter onto the License Property, to obtain and maintain in full force and effect during the Term of this Agreement, or throughout the term of such Work (as applicable), insurance, as required by VCTC, in the amounts and coverages specified on, and issued by insurance companies as described in Section 16 below. VCTC reserves the right, throughout the Term of this Agreement, to review and change the amount and type of insurance coverage it requires in connection with this Agreement for the Work to be performed on the License Property; provided VCTC provides to LICENSEE prior written notice of such change.

6. **Reimbursement.** LICENSEE agrees to reimburse VCTC for all reasonable costs and expenses incurred by VCTC in connection with Work on, or maintenance of, the License Property or the Facility, including, but not limited to, costs incurred by VCTC in furnishing any materials or performing any labor, reviewing LICENSEE or SUBLICENSEE's Work plans and/or inspecting any Work, installing or removing protection beneath or along VCTC's tracks, furnishing of watchmen, flagmen and inspectors as VCTC deems necessary and such other items or acts as VCTC in its sole discretion deems necessary to monitor or aid in compliance with this Agreement.

7. **Liens.** LICENSEE will fully and promptly pay for all materials joined or affixed to Facility or the License Property, and fully and promptly pay all persons who perform labor upon said Facility or the License Property. LICENSEE shall not suffer or permit to be filed or enforced against the License Property or the Facility, or any part thereof, any mechanics', materialmen's, contractors', or subcontractors' liens or stop notices arising from, or any claim for damage growing out of, any testing, investigation, maintenance or Work, or out of any other claim or demand of any kind. LICENSEE shall pay or cause to be paid all such liens, claims or demands, including sums due with respect to stop notices, together with attorney's fees incurred by VCTC with respect thereto, within ten (10) business days after notice thereof and shall indemnify, hold harmless and defend VCTC from all obligations and claims made against VCTC for the above described work, including attorney's fees. LICENSEE shall furnish evidence of payment upon request of VCTC. LICENSEE may contest any lien, claim or demand by furnishing a statutory lien bond or equivalent with respect to stop notices to VCTC in compliance with applicable California law. If LICENSEE does not discharge any mechanic's liens or stop notice for works performed for LICENSEE, VCTC shall have the right to discharge same (including by paying the claimant), and LICENSEE shall reimburse VCTC for the cost of such discharge within ten (10) business days after billing. VCTC reserves the right at any time to post and maintain on the VCTC Property and on the License Property such notices as may be necessary to protect VCTC against liability for all such liens and claims. The provisions of this Section shall survive the termination of this Agreement.

8. **Maintenance and Repair.** LICENSEE, at LICENSEE's sole expense, shall maintain the License Property and the Facility in a condition satisfactory to VCTC and in accordance with Exhibit B during the Term of this Agreement and shall be responsible for all clean up and maintenance of the License Property and VCTC Property resulting from its use thereof under this License. LICENSEE or SUBLICENSEE shall be responsible for any citations issued by any agency having jurisdiction as a result of LICENSEE or SUBLICENSEE's failure to comply with local codes. If any portion of the VCTC Property, including improvements or fixtures, suffers damage by reason of the access to or use thereof by LICENSEE, SUBLICENSEE, or LICENSEE's Parties, including but not limited to damage arising from any test or investigations conducted upon the License Property, LICENSEE shall, at its own cost and expense, immediately repair all such damage and restore the VCTC Property to as good a condition as before such cause of damage occurred. Repair of damage shall include, without limitation, regrading and resurfacing of any holes, ditches, indentations, mounds or other inclines created by an excavation by LICENSEE, SUBLICENSEE, or LICENSEE Parties.

9. **Landscaping/Protective Fencing.** If required by VCTC, LICENSEE, at its sole cost and expense, shall install barrier fencing and or landscaping to shield the railroad track area from public access and/or the Facility. VCTC shall have the right to review and approve fencing and/or landscaping plans prior to installation. All fencing and/or landscaping work shall be done in accordance with the provisions of Sections 4 and 5 above and will be subject to the maintenance and repair provisions of Section 8 above.

10. **Use.** The License Property and the Facility shall be used only for the purposes specified in Item 2 of the Basic License Provisions above and for such lawful purposes as may be directly incidental thereto. No change shall be made by LICENSEE or SUBLICENSEE in the use of the License Property or the Facility without VCTC's prior written approval.

11. **Abandonment.** Should LICENSEE at any time abandon the use of the Facility or the License Property, or any part thereof, or fail at any time for a continuous period of ninety (90) days to use the same for the purposes contemplated herein, then this Agreement shall terminate to the extent of the portion so abandoned or discontinued, and in addition to any other rights or remedies, VCTC shall immediately be entitled to exclusive possession and ownership of the portion so abandoned or discontinued, without the encumbrance of this Agreement. VCTC, at its option, may remove any improvements remaining on the abandoned property, at LICENSEE's expense.

12. **Breach.** Should LICENSEE or SUBLICENSEE breach, or fail to keep, observe or perform any agreement, covenant, term or condition on its part herein contained, then, in addition to any other available rights and remedies, VCTC, at its option may:

(a) perform any necessary or appropriate corrective work at LICENSEE's expense, which LICENSEE agrees to pay to VCTC upon demand, or

(b) with or without written notice or demand, immediately terminate this Agreement and at any time thereafter, recover possession of the License Property or any part thereof, and expel and remove therefrom LICENSEE, SUBLICENSEE, or any other person occupying the License Property, by any lawful means, and again repossess and enjoy the License Property and the Facility, without prejudice to any of the rights and remedies that VCTC may have under this Agreement, at law or in equity by reason of LICENSEE's default or of such termination.

13. **Surrender.** Upon termination of this Agreement, unless otherwise requested in writing by VCTC to leave all, or any portion of, the Facility in place on VCTC Property prior to the date of termination, LICENSEE, at its own cost and expense, shall immediately remove the Facility and restore the License Property and VCTC Property as nearly as possible to the same state and condition as existed prior to the construction, reconstruction or installation of said Facility. Should LICENSEE fail to comply with the requirements of the preceding sentence, VCTC may at its option (a) perform the same at LICENSEE's expense, which costs LICENSEE agrees to pay to VCTC on demand, or (b) assume title and ownership of said Facility. No termination hereof shall release LICENSEE or SUBLICENSEE from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date the Facility is removed and the VCTC Property is restored.

14. **Indemnification.** LICENSEE and any SUBLICENSEE approved by VCTC, on behalf of itself and its successors and assigns, agrees to indemnify, defend (by counsel satisfactory to VCTC), and hold harmless VCTC, its subsidiaries and their respective, members, directors, partners, officers, commissioners, employees, agents, successors and assigns (individually and collectively, "Indemnitees"), to the maximum extent allowed by law, from and against all loss, liability, claims, demands, suits, liens, claims of lien, damages (including consequential damages), costs and expenses (including, without limitation, any fines, penalties, judgments, litigation expenses, and experts' and attorneys' fees), that are incurred by or asserted against Indemnitees arising out of or connected in any manner with (i) the acts or omissions to act of the LICENSEE or SUBLICENSEE, or its officers, directors, affiliates, LICENSEE or SUBLICENSEE Parties or anyone directly or indirectly employed by or for whose acts LICENSEE or SUBLICENSEE is liable (collectively, "Personnel") or invitees of LICENSEE or SUBLICENSEE in connection with the License Property or arising from the presence upon or performance of activities by LICENSEE or its Personnel or SUBLICENSEE or its Personnel with respect to the License Property, (ii) bodily injury to or death of any person (including employees of Indemnitees) or damage to or loss of use of property resulting from such acts or omissions of LICENSEE or its Personnel or SUBLICENSEE or its Personnel, or (iii) nonperformance or breach by LICENSEE or its Personnel or SUBLICENSEE or its Personnel of any term or condition of this Agreement, in each case whether occurring during the Term of this Agreement or thereafter.

The foregoing indemnity shall be effective regardless of any negligence (whether active, passive,

derivative, joint, concurring or comparative) on the part of Indemnitees, unless caused solely by the negligence or willful misconduct of Indemnitees; shall survive termination of this Agreement; and is in addition to any other rights or remedies which Indemnitees may have under the law or under this Agreement. Upon request of VCTC, LICENSEE or when applicable SUBLICENSEE shall provide insurance coverage for possible claims or losses covered by the indemnification and defense provisions of this Agreement.

Claims against the Indemnitees by LICENSEE or its Personnel shall not limit the LICENSEE's indemnification obligations hereunder in any way, whether or not such claims against Indemnitees may result in any limitation on the amount or type of damages, compensation, or benefits payable by or for LICENSEE or its Personnel under workers' compensation acts, disability benefit acts, or other employee benefit acts or insurance.

15. **Assumption of Risk and Waiver.** To the maximum extent allowed by law, LICENSEE assumes any and all risk of loss, damage, or injury of any kind to any person or property, including, without limitation, the Facility, the License Property and any other property of, or under the control or custody of, LICENSEE, or any SUBLICENSEE, which is on or near the License Property. LICENSEE's, or when applicable, SUBLICENSEE's assumption of risk shall include, without limitation, loss or damage caused by defects in any structure or improvement on the VCTC Property, accident, fire or other casualty on the VCTC Property, or electrical discharge, noise, or vibration resulting from VCTC's transit operations on or near the VCTC Property. The term "VCTC" as used in this section shall include: (a) any transit or rail-related company validly operating upon or over VCTC's tracks or other property, and (b) any other persons or companies employed, retained or engaged by VCTC. LICENSEE, on behalf of itself and its Personnel (as defined in Section 14) and SUBLICENSEE or its Personnel, as a material part of the consideration for this Agreement, hereby waives all claims and demands against VCTC for any such loss, damage or injury of LICENSEE and/or its Personnel and SUBLICENSEE and its Personnel. **In that connection, LICENSEE and SUBLICENSEE waives the benefit of California Civil Code Section 1542, which provides as follows:**

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

LICENSEE accepts the risk that the facts or the law may later turn out to be different than LICENSEE understands them to be at this time and acknowledges that this assumption of risk and waiver will not be affected by such different state of facts or law. The provisions of this Section shall survive the termination of this Agreement.

16. **Insurance.**

A. LICENSEE, at its sole cost and expense, shall procure and maintain in full force and effect insurance coverage or evidence of self-insurance as required by VCTC against claims for injuries to persons or damages to property which may arise from, or in connection with, the use of VCTC property hereunder by the LICENSEE, SUBLICENSEE, or LICENSEE Parties, agents, representatives, employees, or subcontractors during the entire term of this Agreement. LICENSEE shall provide, at minimum, the following coverage:

1. Commercial General Liability [CGL], to include Products/Completed Operations, Independent Contractors', Contractual Liability, and Personal Injury Liability with a minimum of \$2,000,000.00 of coverage per occurrence for bodily injury, personal injury, and property damage, with:

1. Removal of the CGL exclusion for pollution liability, or
2. A Pollution Liability policy with minimum limits of \$1,000,000.00; and
3. Automobile Liability Insurance with combined single limits of a minimum of \$1,000,000.00 per accident for bodily injury and property damage; and

4. Workers' Compensation with limits as required by the State of California; with a waiver of subrogation rights; and
5. Employer's Liability with limits of a minimum of \$1,000,000.00 per accident for bodily injury or disease.

B. Subject to prior approval by VCTC, LICENSEE may meet the requirements through (i) self-insurance, (ii) coverage through a joint powers insurance authority (JPIA) which is duly formed under the laws of the State of California, or (iii) utilize a combination of self-insurance and JPIA coverage, or (iiii) commercial insurance policies.

C. VCTC, its officers, directors, employees and agents must be designated as additional insured on the LICENSEE's Comprehensive General and Automobile Liability Insurance policies. LICENSEE shall furnish VCTC with insurance endorsements and certificates, evidencing the existence, amounts and coverages of the insurance required to be maintained hereunder.

D. The coverage shall be primary and any insurance or self-insurance maintained by VCTC shall be excess of the LICENSEE's insurance and shall not contribute to it.

E. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled or reduced in coverage or in limits, except only after thirty (30) days prior written notice has been given to VCTC. In the event VCTC learns that LICENSEE's insurance coverage is terminated and LICENSEE fails to provide adequate assurances that continuous coverage is being provided, VCTC, at its sole discretion, may obtain such coverage at LICENSEE's expense.

F. VCTC retains the right to increase the amounts of coverage required by this Agreement as it determines are reasonably necessary to protect itself against potential liability caused by entering into this Agreement. VCTC shall give LICENSEE 60 days' notice of the need for it to increase its coverage. By the end of the 60 days, LICENSEE shall provide proof of such coverage in the manner set forth in this section.

G. LICENSEE further agrees that shall require any SUBLICENSEE to comply with the insurance requirements set forth herein and to require that any SUBLICENSEE name VCTC as an additional insured.

## 17. **VCTC'S RIGHT OF ACCESS**

LICENSEE will permit VCTC and its agents, at all reasonable times and at any time in case of emergency, in such manner as to cause as little disturbance to LICENSEE as reasonably practicable (a) to enter into and upon the Premises to inspect them, to protect the VCTC's interest therein, or to post notices of non-responsibility, (b) to take all necessary materials and equipment onto the Premises, and perform necessary work thereon, and (c) to perform environmental testing, monitoring, sampling, digging, drilling and analysis for Hazardous Materials on, under or about the Premises. VCTC may at any time place on or about the Premises (including the Improvements) any ordinary "for sale" and "for lease" signs. LICENSEE shall also permit VCTC and its agents, upon request, to enter the Premises or any part thereof, at reasonable times during normal business hours, to show the Premises to prospective tenants, purchasers or mortgagees.

## 18. **ASSIGNMENT AND SUBLICENSING**

18.1 VCTC's Consent. The Agreement and the license granted hereunder are personal to the LICENSEE. LICENSEE shall not assign all or any portion of its interest in this License, whether voluntarily, involuntarily by operation of law or otherwise, and shall not sublicense all or any portion of the Premises, including, but not limited to, sharing them, permitting another party to occupy them or granting concessions or licenses to another party, except with the prior written consent of VCTC, which VCTC may withhold in its sole and absolute discretion. Any



attempted act in violation of the foregoing shall be void and without effect and grant VCTC the right to immediately terminate this Agreement.

18.2 Fees. LICENSEE shall pay VCTC's reasonable attorneys' fees incurred in evaluating any proposed assignment or sublicense and documenting VCTC's consent.

18.3 Procedure. Whenever LICENSEE has obtained an offer to assign any interest in this License or to sublicense all or any portion of the Premises, Licensee shall provide to VCTC the name and address of said proposed assignee or sublicensee, the base rent and all other compensation, the proposed use by the proposed assignee or sublicensee, the proposed effective date of the assignment or sublessing, and any other business terms which are material to the offer and which differ from the provisions of this License ("Notice of Offer"). Licensee shall also provide to VCTC the nature of business, financial statement and business experience resume for the immediately preceding five (5) years of the proposed assignee or sublicensee and such other information concerning such proposed assignee or sublicensee as VCTC may require. The foregoing information shall be in writing and shall be received by VCTC no less than sixty (60) days prior to the effective date of the proposed assignment or sublicense.

Within thirty (30) days of receiving a Notice of Offer for the proposed assignment or sublicensing, VCTC shall either notify Licensee that VCTC consents to the proposed assignment or sublicensing or withholds its consent for reasons to be specified in the notice. If VCTC does not provide a notice granting its consent to Licensee within thirty (30) days of receiving a Notice of Offer, VCTC shall be deemed to have withheld its consent to the proposed assignment or sublicensing, and VCTC's reasons for such action shall be furnished to Licensee upon request.

18.4 Profits. If any interest in this License is assigned or all or any portion of the Premises are sublicensed, VCTC shall have the right to condition its consent thereto upon VCTC's receiving some or all the "profit" to be made from such assignment or sublicensing.

18.5 Continuing Licensee Obligations. Any such sublicensing or assignment, even with the approval of VCTC, shall not relieve Licensee from liability for payment of all forms of Rent and other charges herein provided or from the obligations to keep and be bound by the terms, conditions and covenants of this License.

18.6 Waiver, Default and Consent. The acceptance of Rent from any other person shall not be deemed to be a waiver of any of the provisions of this License or a consent to the assignment or sublicensing of the Premises. Any assignment or sublicense without the VCTC's prior written consent shall be voidable, at VCTC's election, and shall constitute a default hereunder. Consent to any assignment or sublicensing shall not be deemed a consent to any future assignment or sublicensing.

**19. Tests and Inspection.** VCTC shall have the right at any time to inspect the License Property and the Facility so as to monitor compliance with the terms of this Agreement. VCTC shall be permitted to conduct any tests or assessments, including but not limited to environmental assessments, of, on or about the License Property, as it determines to be necessary in its sole judgment or useful to evaluate the condition of the License Property, or if VCTC determines that any installation on, or use or condition of the License Property may have an adverse effect on the VCTC Property, adjacent property (whether or not owned by VCTC) or VCTC operations. LICENSEE shall cooperate with VCTC and its agents in any tests or inspections deemed necessary by VCTC. LICENSEE shall pay or reimburse VCTC and appropriate regulatory agencies, as appropriate, for all reasonable costs and expenses incurred due to the tests, inspections or any necessary corrective work and inspections thereafter.

**20. Hazardous/Toxic Materials Use and Indemnity.** LICENSEE and any SUBLICENSEE approved by VCTC, shall operate and maintain the License Property in compliance with all applicable federal, state and local environmental, health and/or safety- related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adopted in the future which are or become applicable to LICENSEE, SUBLICENSEE, or the License Property ("Environmental Laws"). LICENSEE shall not cause or

permit, or allow SUBLICENSEE or any of LICENSEE Parties to cause or permit, any Hazardous Materials to be brought upon, stored, used, generated, treated or disposed of on or about the brought upon, stored, used, generated, treated or disposed of on the License Property or the VCTC Property. As used herein, "Hazardous Materials" means any chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects.

LICENSEE and where applicable any SUBLICENSEE, shall indemnify, defend (by counsel acceptable to VCTC) and hold harmless the Indemnitees (as defined in Section 14) from and against all loss, liability, claim, damage, cost or expense (including without limitation, any fines, penalties, judgments, litigation expenses, attorneys' fees, and consulting, engineering, and construction fees and expenses) incurred by Indemnitees as a result of (a) LICENSEE or SUBLICENSEE's breach of any prohibition or provision of this Section or (b) any release of Hazardous Materials upon or from the Facility or the License Property or VCTC Property or contamination of the VCTC Property (i) which occurs due to the use and occupancy of the Facility or the License Property by LICENSEE, SUBLICENSEE or LICENSEE Parties, or (ii) which is made worse due to the act or failure to act of LICENSEE, SUBLICENSEE or LICENSEE Parties.

The foregoing indemnity shall be effective regardless of any negligence (whether active, passive, derivative, joint, concurring, or comparative) on the part of Indemnitees, unless caused solely by the gross negligence or willful misconduct of Indemnitees; shall survive termination of this Agreement; and is in addition to any other rights or remedies which Indemnitees may have under the law or under this Agreement.

In addition, in the event of any release on or contamination of the License Property and/or any adjacent property, whether or not owned by VCTC, LICENSEE, at its sole expense, shall promptly take all actions necessary to clean up all such affected property (including the VCTC Property and all affected adjacent property, whether or not owned by VCTC) and to return the affected property to the condition existing prior to such release or contamination, to the satisfaction of VCTC and any governmental authorities having jurisdiction thereover.

Upon the termination of this Agreement at any time and for any reason, LICENSEE shall, prior to the effective date of such termination, clean up and remove all Hazardous Materials in, on, under and/or about the VCTC Property which LICENSEE, SUBLICENSEE, or LICENSEE Parties caused or permitted to be brought upon the VCTC Property, in accordance with the requirements of all Environmental Laws and to the satisfaction of VCTC and any governmental authorities having jurisdiction thereover.

21. **Underground Storage Tanks.** NEITHER LICENSEE NOR LICENSEE PARTIES, INCLUDING ANY SUBLICENSEE, SHALL INSTALL OR USE ANY UNDERGROUND STORAGE TANKS ON THE LICENSE PROPERTY.

22. **Subordinate Rights.** This Agreement is subject and subordinate to the prior and continuing right and/or obligation of VCTC, SCRRA, Amtrak, Union Pacific Railroad (UPRR) and their successors and assigns, to use the VCTC Property in the exercise of its powers and in the performance of its duties, or for any other purpose, including but not limited to those as a public transportation body. Accordingly, there is reserved and retained unto VCTC, its successors, assigns and permittees, the right to construct, reconstruct, maintain, and use existing and future rail tracks, facilities and appurtenances and existing and future transportation, communication, pipeline and other facilities and appurtenances in, upon, over, under, across and along the VCTC Property, and to otherwise use the VCTC Property, and in connection therewith the right of VCTC, its successors and assigns, to grant and convey to others, rights to and interests in the VCTC Property on the License Property and in the vicinity of the Facility. This Agreement is subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens, claims and other matters of title ("Title Exceptions") which may affect the VCTC Property now or hereafter, and no provision of this Agreement shall be construed as a covenant or warranty against the existence of any such present or future Title Exceptions, whether or not arising out of the actions of VCTC, its successors or assigns. VCTC makes no representations or warranties of any kind with regard

to title to the License Property.

23. **Compliance with Laws.** LICENSEE and any SUBLICENSEE shall comply with all applicable federal, state and local laws, regulations, rules and orders in its work on, or maintenance, inspection, testing or use of, the Facility and the License Property. VCTC may enter the License Property to inspect the Facility at any time, upon provision of reasonable notice of inspection to LICENSEE. LICENSEE or, where applicable SUBLICENSEE shall obtain all required permits or licenses required by any governmental authority for its use of the License Property and the Facility, at its sole cost and expense.

24. **Condemnation.** In the event all or any portion of the License Property shall be taken or condemned for public use (including conveyance by deed in lieu of or in settlement of condemnation proceedings), LICENSEE shall receive compensation (if any) from the Condemner only for the taking and damage to the Facility. Any other compensation or damages arising out of such taking or condemnation awarded to LICENSEE are hereby assigned by LICENSEE to VCTC. LICENSEE shall have no rights under California law or federal law to the receipt of any damages arising out of any use or proposed use of the License Property by VCTC or SCRRA, Amtrak, UPRR, or their respective agents, officers, contractors or employees and in entering into this Agreement expressly waives any such rights.

25. **Markers.** Project markers in form and size satisfactory to VCTC, identifying the Facility and its owners, will be installed and constantly maintained by and at the expense of LICENSEE or SUBLICENSEE at such locations as VCTC shall designate. Such markers shall be relocated or removed upon request of VCTC without expense to VCTC. Absence of markers in or about the License Property and VCTC Property does not constitute a warranty by VCTC of the absence of subsurface installations.

## 26. **General Provisions.**

26.1 **Notices.** All notices and demands which either party is required to or desires to give to the other shall be made in writing by personal mail, by express courier service, or by certified mail, return receipt requested, postage prepaid, and addressed to such party at its address set forth in the Basic License Provisions. Either party may change its address for the receipt of notice by giving written notice thereof to the other party in the manner herein provided. Notices shall be effective only upon receipt by the party to whom notice or demand is given.

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

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

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

26.5 **Interest on Past-Due Obligations.** Except as expressly herein provided, any amount due to VCTC which is not paid when due shall bear interest, from the date due, at the maximum rate then allowable by law. Such interest will be due to VCTC as it accrues. Payment of such interest shall not excuse or cure any default by LICENSEE under this Agreement. Interest shall not be payable on late charges incurred by LICENSEE.

26.6 **Survival of Obligations.** All obligations of LICENSEE hereunder not fully performed as of the expiration or earlier termination of the Term of this Agreement shall survive the expiration or earlier termination of this Agreement, including without limitation, all payment obligations with respect to License Fees and all

obligations concerning the condition of the License Property and the Facility.

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

26.8 Effective Date/Nonbinding Offer. Submission of this License for examination or signature by LICENSEE does not constitute an offer or option for license, and it is not effective as a license or otherwise until executed and delivered by both VCTC and LICENSEE. Each individual executing this License on behalf of VCTC or LICENSEE represents and warrants to the other party that he or she is authorized to do so.

26.9 Amendment. This Agreement may be amended at any time by the written agreement of VCTC and LICENSEE. All amendments, changes, revisions, and discharges of this Agreement in whole or in part, and from time to time, shall be binding upon the parties despite any lack of legal consideration, so long as the same shall be in writing and executed by the parties hereto.

26.10 Attorneys' Fees. In any judicial or arbitration proceeding involving performance under this Agreement, or default or breach thereof, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.

26.11 Nondiscrimination. LICENSEE certifies and agrees that all persons employed and any contractors retained, by either LICENSEE or LICENSEE's affiliates, subsidiaries, or holding companies, with respect to the License Property, are and shall be treated equally without regard to or because of race, religion, ancestry, national origin, disability or sex, and in compliance with all federal and state laws prohibiting discrimination in employment, including but not limited to the Civil Rights Act of 1964; the Unruh Civil Rights Act; the Cartwright Act; and the California Fair Employment Practices Act.

26.12 Further Acts. At VCTC's sole discretion, but at the sole expense of LICENSEE, and without a LICENSEE claim for reimbursement, LICENSEE agrees to perform any further acts and to execute and deliver in recordable form any documents which may be reasonably necessary to carry out the provisions of this Agreement, including the relocation of the Facility and the license granted hereunder.

26.13 Acknowledgement of No Right to Claim Relocation Benefits Against VCTC. LICENSEE hereby acknowledges that if VCTC asks LICENSEE or SUBLICENSEE to vacate the property, then LICENSEE is not entitled to any relocation benefits under this agreement or by virtue of state or federal law. Further, LICENSEE agrees it is not entitled to loss of good will or moving expenses from VCTC, SCRRRA, Amtrak or BNSF.

26.14 Time of Essence. Time is of the essence in the performance of this Agreement.

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

26.16 Revocable License. LICENSEE agrees that notwithstanding the improvements made by LICENSEE to the License Property or other sums expended by LICENSEE in furtherance of this Agreement, the license granted hereunder is revocable by VCTC in accordance with the terms of this Agreement.

26.17 Entire Agreement. This Agreement and the Exhibits hereto constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior verbal or written agreements and understandings between the Parties with respect to the items set forth herein. All amendments, changes, revisions, and discharges of this Agreement in whole or in part, and from time to time, shall be binding upon the

parties despite any lack of legal consideration, so long as the same shall be in writing and executed by the parties hereto.

26.18 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 provisions hereof, or in any way affect the interpretation of this Agreement.

26.19 Additional Provisions. Those additional provisions set forth in Exhibit B, if any, are hereby incorporated by this reference as if fully set forth herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

VENTURA COUNTY TRANSPORTATION COMMISSION

By: \_\_\_\_\_  
Darren Kettle  
Executive Director, VCTC

Date: \_\_\_\_\_

Approved As To Form:

By: \_\_\_\_\_  
Steve Mattas  
General Counsel, VCTC

LICENSEE – CITY OF MOORPARK

By: \_\_\_\_\_  
Troy Brown  
City Manager

Date: \_\_\_\_\_

**EXHIBIT A**

**Description of License Property**

**(Description to be attached with City of Moorpark approval)**

## **EXHIBIT B**

This License is subject to the following additional terms and conditions:

1. The LICENSEE agrees to execute and deliver to SCRRA, prior to commencing any work within the rail right-of-way, SCRRA Temporary Right-of-Entry agreement (Form No. 6), and deliver and secure approval of the insurance required by the two exhibits attached to SCRRA Form No.6. If the LICENSEE retains a contractor to perform any of work within the rail right-of-way, then the LICENSEE shall incorporate in its contract documents SCRRA Form No. 6 and Rules and Requirements for Construction on Railway Property (SCRRA Form No. 37). Mr. Christos Sourmelis with SCRRA's Right-of-Way Encroachments Office can be reached at (909) 394-3418. These forms can be accessed through SCRRA's website [www.metroinktrains.com](http://www.metroinktrains.com), ("About Us," "Engineering and Construction," and "Manuals").
2. LICENSEE's contractor, at its sole cost and expense, shall obtain and maintain, in full force and effect, insurance as required by SCRRA during the entire construction period. The Contractor shall furnish copies of the insurance certificates to all affected operating railroads.
3. Third Party Safety training is required for all work near or within the railroad right-of-way. LICENSEE's contractor shall contact SCRRA at 1-877-452-0205 to schedule safety training. The contractor will need a valid SCRRA project number, located in the upper right hand corner of the Right-of-Entry. No work may commence on the railroad right of way until this training has been completed.
4. The LICENSEE agrees to comply and to ensure that its contractor complies with instructions of SCRRA's Employee-In-Charge (EIC) and representatives, in relation to the proper manner of protection of the tracks and the traffic moving thereon, pole lines, signals and other property of SCRRA or its member agency tenants or LICENSEES at or in the vicinity of the work, and shall perform the work at such times as not to endanger or interfere with safe and timely operation of SCRRA's track and other facilities.
5. LICENSEE shall prepare and submit traffic control plan for SCRRA approval for projects that will affect vehicular traffic at an existing highway-rail grade crossing.
6. LICENSEE shall install and maintain an SCRRA approved safety fence or wall at the limit of the licensed area to prevent any trespassing into the active rail corridor.