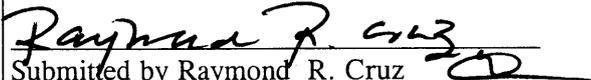


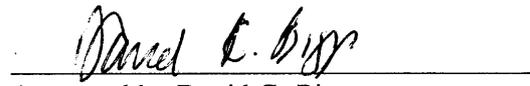


City of Carson Report to Mayor and City Council

October 4, 2011
New Business Consent

SUBJECT: CONSIDER APPROVAL OF A GRAFFITI REMOVAL AGREEMENT WITH THE METROPOLITAN TRANSIT AUTHORITY REGARDING THE RAILWAY BRIDGE NEAR THE INTERSECTION OF MAIN STREET AND SEPULVEDA BOULEVARD


Submitted by Raymond R. Cruz
Public Services General Manager


Approved by David C. Biggs
City Manager

I. SUMMARY

South of the intersection at Main Street and Sepulveda Boulevard is a railway bridge that is operated by the Metropolitan Transit Authority (MTA). For several years, this bridge has been a magnet for graffiti, often covering the "Carson" painted in block letters on the street-facing sides. Though the bridge is owned by the MTA and therefore they have the responsibility to remove the graffiti, MTA has been slow with this task. As a result, the city has received several complaint calls and letters from residents. Should the MTA continue to be responsible for the graffiti removal, the agency will remove the graffiti according to its own schedule, but will not repaint the city's name on the bridge. If the city wishes to remove the graffiti in a more timely manner, as well as keep its name on the bridge, the city has the option of taking responsibility for the bridge's clean-up. Tonight, the City Council is asked to consider approving the agreement with the MTA to transfer graffiti removal responsibilities to the city of Carson. Additionally, an allocation of \$13,000.00 is required to cover the cost of the graffiti removal until the end of the fiscal year.

II. RECOMMENDATION

TAKE the following actions:

1. APPROVE the agreement with the Metropolitan Transit Authority to transfer responsibility for graffiti removal on the railway bridge located south of the intersection at Sepulveda Boulevard and Main Street to the city of Carson.
2. AUTHORIZE the Mayor to execute the agreement following approval as to form by the City Attorney.
3. APPROPRIATE \$13,000.00 from the unreserved, undesignated general fund balance to cover the graffiti removal cost until the end of the fiscal year.

10

III. ALTERNATIVES

1. RELINQUISH total graffiti removal of the railway bridge to the MTA, knowing that they will not keep "CARSON" stenciled on the bridge.
2. TAKE another action the City Council deems appropriate.

IV. BACKGROUND

For many residents, the sky blue rail bridge located just south of the intersection of Main Street and Sepulveda Boulevard is a community landmark, as the city's name is painted in black block letters on both street-facing sides. For others, the bridge serves as an informal gateway to the city's south side. Unfortunately, it also regularly attracts taggers who paint their graffiti all along its façade.

For the last few years, the city has removed the graffiti and repainted the city's name on the railway bridge. The cost each time the city has completed this maintenance is approximately \$6,500.00. Though MTA officially has this responsibility, the city has taken on this task to ensure that the removal is done in a timely manner and the city's name remains on the side of the bridge. It is for these reasons that staff is tonight requesting that the City Council consider approving the agreement with the MTA to transfer responsibility of graffiti removal to the city. This maintenance will cost the city approximately \$13,000.00 until the end of the fiscal year. Beginning with FY 2012/13, \$19,500.00 will be budgeted to cover the cost of this maintenance for the full fiscal year.

V. FISCAL IMPACT

Funds for this item were not included in the adopted FY 2011/12 budget; therefore, if this item is approved, the General Fund budget appropriations will need to be increased by \$13,000.00. Funds can be appropriated from the unreserved, undesignated General Fund fund balance to account no. 01-90-970-109-6009, which will reduce the City's General Fund fund balance from approximately \$20.9 million to \$20.89 million. This will result in the General Fund fund balance being approximately 30.3% of annual operating expenditures, which is still above the City Council fund balance goal (policy) of \$20 million.

VI. EXHIBITS

1. Draft Agreement with the MTA. (pgs. 4-21)
2. Before and After Photos of Bridge. (pg. 22)

Reviewed by:

City Clerk	City Treasurer
Administrative Services <i>Jacquelyn Acosta</i>	Development Services
Economic Development <i>JAC</i>	Public Services

Action taken by City Council

Date _____ Action _____

File:

LICENSE AGREEMENT

BETWEEN

**LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION AUTHORITY**

AND

City of Carson

EXHIBIT NO. 01



LICENSE AGREEMENT

This LICENSE AGREEMENT ("Agreement") is made and entered into as of _____, 20____ by and between the **LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY**, a public agency existing under the authority of the laws of the State of California ("MTA"), and the city of Carson, 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:
(DIMENSIONS AND LOCATION)(INCLUDING RAIL LINE, IF APPLICABLE)
Approximate area:
(SQUARE FEET, ACRES) (¶1.1)
2. Use of License Property:
(DESCRIBE TYPE OF INSTALLATION OR USE) only, and no other uses (¶1.1, §10)
3. Commencement Date:
(DATE PROPERTY OCCUPIED) (¶1.2)
4. Term (circle one):
 A. Month-to-month
 B. (TERM PERIOD) months, ending (DATE AGREEMENT EXPIRES)
 20 (YEAR), unless canceled by MTA as provided in Section 1.2 on 30
 days' notice (¶1.2)
5. License Fees:
 A. Base License Fee:
 \$(RENT) per month, payable (circle one):
 a. Annually in advance
 b. Monthly in advance (¶2.1)
 B. Additional License Fee:
 a. One time fee: \$(AMOUNT)
 b. Other fees: \$(AMOUNT) (¶2.1)
 C. Base License Fee Adjustment Dates (Circle, if applicable)
 a. Annually based on CPI
 b. At intervals of not less than three (3) years based on current
 fair market rent (¶2.2)



6. Insurance Amount (See Exhibit "B") (§16)
7. MTA's Address:
Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza - 13th Floor
Los Angeles, CA 90012-2952
Attn: Director of Real Estate (§24.1)
8. Licensee's Address:
(LICENSEE'S NAME AND ADDRESS) (§24.1)
Attn: (LICENSEE'S CONTACT)
9. Facility:
(DESCRIPTION OF INSTALLATION) (§1.1)

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.



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

MTA:

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

By: _____

Name: Velma C. Marshall

Title: Director of Real Estate

LICENSEE:

(LICENSEE'S NAME)

By: _____

Name: (SIGNATORY'S NAME , IF AVAILABLE)

Title: (SIGNATORY'S TITLE, IF AVAILABLE)



INDEX TO LICENSE AGREEMENT - PART II

<u>Section</u>	<u>Page</u>
1. GRANT OF LICENSE/TERM.....	1
2. PAYMENTS.....	1
3. TAXES.....	2
4. CONSTRUCTION.....	2
5. CONTRACTORS; APPROVAL AND INSURANCE	2
6. REIMBURSEMENT	3
7. LIENS	3
8. MAINTENANCE AND REPAIR	3
9. LANDSCAPING	3
10. USE.....	3
11. ABANDONMENT	3
12. BREACH	4
13. SURRENDER.....	4
14. INDEMNIFICATION.....	4
15. ASSUMPTION OF RISK AND WAIVER.....	5
16. INSURANCE.....	5
17. TESTS AND INSPECTIONS.....	5
18. HAZARDOUS/TOXIC MATERIALS USE AND INDEMNITY.....	5
19. UNDERGROUND STORAGE TANKS	6
20. SUBORDINATE RIGHTS.....	6
21. COMPLIANCE WITH LAWS.....	6
22. CONDEMNATION.....	6
23. MARKERS	7
24. GENERAL PROVISIONS	7

Exhibits:

- "A" License Property
- "B" Insurance Requirements
- "C" Permitted Hazardous Materials
- "D" Additional Provisions



PART II - GENERAL LICENSE PROVISIONS

1. GRANT OF LICENSE/TERM

1.1 Grant of License. MTA hereby grants a non-exclusive license to Licensee in, on, over, under, across and along the real property of MTA in the location shown in the diagram attached hereto as Exhibit A and described in Item 1 of the Basic License Provisions (the "License Property"), for 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 (the "Facility"), for the purposes described in Item 2 of the Basic License Provisions, together with rights for access and entry onto the License Property as necessary or convenient for the use of the Facility. In connection with this grant of license, Licensee, its employees, agents, customers, visitors, invitees, licensees and contractors (collectively, "Licensee's Parties") subject to the provisions hereof, may have reasonable rights of entry and access onto adjoining real property of MTA if necessary for the use of the Facility or the License Property, with the time and manner of such entry and access to be subject to MTA's prior written approval. The License Property, adjoining real property of MTA and personal property of MTA located thereon shall hereinafter collectively be referred to as "MTA Property".

1.2 Term of Agreement. The term of this Agreement shall commence on the "Commencement Date" specified in Item 3 of the Basic License Provisions. Unless a specific term of this Agreement is filled in at Item 4.B of the Basic License Provisions, or if Item 4.A is circled, this Agreement shall continue in full force and effect on a month-to-month basis as provided in Item 4.A of the Basic License Provisions until terminated by either party on thirty (30) days' prior written notice. If Item 4.B of the Basic License Provisions is filled in, then this Agreement shall be a license for the term specified in said Item 4.B; provided, however, that MTA shall have the right to terminate this Agreement prior to the date specified in Item 4.B by delivering thirty (30) days' prior written notice to Licensee, provided that MTA, in its sole, reasonable judgment, determines that it then may require possession of the License Property for its primary, transportation-related purposes. The term of this Agreement as provided above is referred to as the "Term".

1.3 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 Agreement is granted. Execution of this Agreement by Licensee shall be conclusive to establish that the License Property is in good and satisfactory condition as of the Commencement Date.

2. PAYMENTS

2.1 License Fee. As consideration for the rights herein granted, Licensee agrees to pay to MTA the amount per month specified in Item 5 of the Basic License Provisions, as such amount may be adjusted as set forth in Section 2.2. If Item 5.B.a of the Basic License Provisions is circled, the one time fee noted therein shall be due and payable upon execution of this Agreement. If Item 5.B.b of the Basic License Provisions is circled, the fee noted therein shall be due and payable as indicated in that item. If Item 5.A.a of the Basic License Provisions is circled, an amount equal to twelve (12) times 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, annually in advance for the convenience of both parties, without affecting the Term of this Agreement as specified in Section 1.2. If Item 5.A.b of the Basic License Provisions is circled, the first month's Base License Fee noted therein shall be 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 the first day of each calendar month succeeding the Commencement Date during the Term, except that the Base License Fee for any fractional calendar month at the commencement or end of the Term shall be prorated on a daily basis.

2.2 License Fee Adjustment.

2.2.1 Annual CPI Adjustment. If Item 5.C.a of the Basic Lease Provisions is circled, then the Base License Fee shall be increased, but not decreased, as provided below on the first day of each month during which an annual anniversary of the Commencement Date occurs unless another date(s) is provided in Item 5 of the Basic License Provisions (the "Adjustment Date"). The adjusted Base License Fee as of each Adjustment Date shall be the greater of the Base License Fee on the day preceding that Adjustment Date or that amount multiplied by a fraction, the numerator of which is the CPI figure for the third month preceding the month during which the particular Adjustment Date occurs and the denominator of which is the CPI figure for the month that is three (3) months prior to the month containing the prior Adjustment Date or, if none, the Commencement Date. As used in this section, the "CPI" means the Consumer

Price Index for Urban Wage Earners and Clerical Workers, Los Angeles/Riverside/Orange County, all items (1982-84 = 100), published by the U.S. Department of Labor, Bureau of Labor Statistics, or if such index is no longer published, the U.S. Department of Labor's most comprehensive official index then in use that most nearly corresponds to the index named above. If it is calculated from a base different from the base period 1982-84 = 100, figures used for calculating the adjustment shall first be converted to the base period used under a formula supplied by the Bureau. If a comparable index shall no longer be published by the U.S. Department of Labor, another index generally recognized as authoritative shall be substituted by MTA.

2.2.2 Fair Market Adjustment. If Item 5.C.b of the Basic Lease Provisions is circled, then, at intervals of not less than three (3) years, the Base License Fee (as such fee may be adjusted by Section 2.2.1, above) payable under this Section 2 shall be increased, but not decreased, in order to adjust the fee to the then fair market rental value of the License Property as determined by MTA in good faith. Such increases shall be effective on an anniversary date of the Commencement Date. MTA shall give Licensee written notice of the date and amount of any such adjustment not less than thirty (30) days prior to the applicable anniversary date. If no adjustment is made on the third anniversary of the Commencement Date, an adjustment may nevertheless be made on a subsequent date and thereafter at intervals of not less than three (3) years apart.

2.3 Late Charge. Licensee acknowledges that late payment by Licensee of any payment owed to MTA under this Agreement will cause MTA to incur costs not contemplated by this Agreement, the exact amount of such costs being extremely difficult and impracticable to fix. Therefore, if any payment due from Licensee is not received by MTA within five (5) days of when due, Licensee shall pay to MTA an additional sum of ten percent (10%) of the overdue payment as a late charge, up to a maximum amount of \$500 for each late payment. The parties agree that this late charge represents a fair and reasonable estimate of the administrative costs that MTA will incur by reason of a late payment by Licensee. Acceptance of any late payment charge shall not constitute a waiver of Licensee's default with respect to the overdue payment, nor prevent MTA from exercising any of the other rights and remedies available to MTA under this Agreement, at law or in equity, including, but not limited to, the interest charge imposed pursuant to Section 24.5.

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, the License Property and/or any personal property, fixtures or equipment of Licensee used in connection therewith or (b) as a result of the Facility's operations.

4. CONSTRUCTION

Any work performed or caused to be performed by Licensee on the Facility or the License Property shall be performed (a) at Licensee's sole cost and expense; (b) in accordance with any and all applicable laws, rules and regulations (including the MTA's rules and regulations), and (c) in a manner which is (i) equal to or greater than the then applicable standards of the industry for such work, and (ii) satisfactory to MTA. Prior to commencement of any construction, reconstruction, installation, restoration, alteration, repair, replacement or removal (other than normal maintenance) (hereinafter, "Work") on the License Property, Licensee shall submit work plans to MTA for review and approval. Any such Work must be carried out pursuant to work plans approved in writing by MTA. In addition, Licensee shall provide MTA 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 shall notify MTA's representative personally or by phone prior to commencing any Work. Unless otherwise requested by MTA, upon completion of any Work, Licensee shall restore the MTA Property to its condition immediately preceding the commencement of such Work.

5. CONTRACTORS; APPROVAL AND INSURANCE

Any contractors of Licensee performing Work on the Facility or the License Property shall first be approved in writing by MTA. With respect to such Work, Licensee 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 MTA, in the amounts and coverages specified on, and issued by insurance companies as described on, Exhibit "B". Additionally, Licensee shall cause any and all of its contractors and subcontractors which may (i) be involved with such Work, or (ii) 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 MTA, in the amounts and coverages specified on, and issued by insurance companies as described on, Exhibit "B". MTA 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 or the Work to be performed on the License Property.

6. REIMBURSEMENT

Licensee agrees to reimburse MTA for all reasonable costs and expenses incurred by MTA in connection with Work on or maintenance of the License Property or the Facility, including, but not limited to, costs incurred by MTA in furnishing any materials or performing any labor, reviewing Licensee's Work plans and/or inspecting any Work, installing or removing protection beneath or along MTA's tracks, furnishing of watchmen, flagmen and inspectors as MTA deems necessary and such other items or acts as MTA 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 the Facility or MTA Property, and fully and promptly pay all persons who perform labor upon said Facility or MTA Property. Licensee shall not suffer or permit to be filed or enforced against the MTA 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 MTA with respect thereto, within ten (10) business days after notice thereof and shall indemnify, hold harmless and defend MTA from all obligations and claims made against MTA for the above described work, including attorney's fees. Licensee shall furnish evidence of payment upon request of MTA. Licensee may contest any lien, claim or demand by furnishing a statutory lien bond or equivalent with respect to stop notices to MTA in compliance with applicable California law. If Licensee does not discharge any mechanic's lien or stop notice for works performed for Licensee, MTA shall have the right to discharge same (including by paying the claimant) and Licensee shall reimburse MTA for the cost of such discharge within ten (10) business days after billing. MTA reserves the right at any time to post and maintain on the MTA Property such notices as may be necessary to protect MTA 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 first-class condition during the Term of this Agreement and shall perform all maintenance and clean-up of the License Property and the Facility as necessary to keep the License Property and the Facility in good order and condition, to MTA's satisfaction. If any portion of the MTA Property, including improvements or fixtures, suffers damage by reason of the access to or use of the License Property, by Licensee, Licensee's Parties or by Licensee's partners, officers or directors, including but not limited to damage arising from any tests or investigations conducted upon the License Property, Licensee shall, at its own cost and expense, immediately repair all such damage and restore the MTA 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 any excavation by Licensee or Licensee's Parties.

9. LANDSCAPING

If required by MTA, then Licensee, at its sole cost and expense, shall install barrier landscaping to shield the Facility from public view. MTA shall have the right to review and approve landscaping plans prior to installation. All landscaping work shall be done in accordance with the provisions of Section 4 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 and for such lawful purposes as may be directly incidental thereto. No change shall be made by Licensee in the use of the License Property, the Facility or the commodity or product being conveyed through the Facility (if any) without MTA's prior written approval.

11. ABANDONMENT

Should Licensee at anytime 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, MTA shall immediately be entitled to exclusive possession and ownership of the portion so abandoned or discontinued, without the encumbrance of this Agreement.

12. BREACH

Should Licensee 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, MTA at its option may:

(a) perform any necessary or appropriate corrective work at Licensee's expense, which Licensee agrees to pay to MTA 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 and any other person occupying the License Property by lawful means, and again repossess and enjoy the License Property and the Facility, without prejudice to any of the remedies that MTA may have under this Agreement, at law or equity by reason of Licensee's default or of such termination.

13. SURRENDER

Upon termination of this Agreement, unless otherwise requested in writing by MTA prior to the date of termination, Licensee, at its own cost and expense, shall immediately remove the Facility and restore the MTA 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, MTA may at its option (i) perform the same at Licensee's expense, which costs Licensee agrees to pay to MTA on demand, or (ii) assume title and ownership of said Facility. No termination hereof shall release Licensee 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 MTA Property is restored.

14. INDEMNIFICATION

Licensee, on behalf of itself and its successors and assigns, agrees to indemnify, defend (by counsel satisfactory to MTA), and hold harmless MTA and its subsidiaries, officers, directors, 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 its officers, directors, affiliates, Licensee's Parties or anyone directly or indirectly employed by or for whose acts Licensee is liable (collectively, "Personnel") or invitees of Licensee in connection with the MTA Property or arising from the presence upon or performance of activities by Licensee or its Personnel with respect to the MTA 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 (iii) non-performance or breach by Licensee 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 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. Upon request of MTA, Licensee 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 a 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 MTA Property and any other property of, or under the control or custody of, Licensee, which is on or near the License Property. Licensee's assumption of risk shall include, without limitation, loss or damage caused by defects in any structure or improvement on the MTA Property, accident or fire or other casualty on the MTA Property, or electrical discharge, noise or vibration resulting from MTA's transit operations on or near the MTA Property. The term "MTA" as used in this section shall include: (i) any transit or rail-related company validly operating upon or over MTA's tracks or other property, and (ii) any other persons or companies employed, retained or engaged by MTA. Licensee, on behalf of itself and its Personnel (as defined in Section 14) as a material part of the consideration for this Agreement, hereby waives all claims and demands against MTA for any such loss, damage or injury of Licensee and/or its Personnel. In that connection, Licensee 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 favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The provisions of this section shall survive the termination of this Agreement.

16. INSURANCE

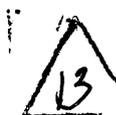
Licensee, at its sole cost and expense, shall obtain and maintain in full force and effect during the Term of this Agreement insurance as required by MTA in the amounts and coverages specified and issued by insurance companies as described on Exhibit "B". MTA reserves the right, throughout the Term of this Agreement, to review and change the amount and type of insurance coverage it requires in connection with this Agreement or the Work to be performed on the License Property. Prior to (i) entering the License Property or (ii) performing any Work or maintenance on the License Property, Licensee shall furnish MTA with insurance endorsements or certificates evidencing the existence, amounts and coverages of the insurance required to be maintained hereunder. In most instances, MTA does not allow self-insurance, however, if Licensee can demonstrate assets and retention funds meeting MTA's self-insurance requirements, MTA may permit Licensee to self-insure, provided, however that the right to self-insure with respect to any coverage required to be maintained hereunder may be granted or revoked by MTA at its sole and absolute discretion. MTA shall not be liable for the payment of any premiums or assessments for insurance required to be maintained by Licensee under this Agreement.

17. TESTS AND INSPECTIONS

MTA shall have the right at anytime to inspect the License Property and the Facility so as to monitor compliance with this Agreement. If, in MTA's sole judgment, any installation on, or use or condition of the License Property may have an adverse effect on the MTA Property, adjacent property (whether or not owned by MTA) or MTA operations, MTA 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 or useful to evaluate the condition of the License Property. Licensee shall cooperate with MTA in any tests or inspections deemed necessary by MTA. Licensee shall pay or reimburse MTA, as appropriate, for all reasonable costs and expenses incurred due to the tests, inspections or any necessary corrective work and inspections thereafter.

18. HAZARDOUS/TOXIC MATERIALS USE AND INDEMNITY

Licensee shall operate and maintain the License Property in compliance with all, and shall not cause or permit the License Property to be in violation of any federal, state or 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 or the License Property ("Environmental Laws"). Except for Hazardous Materials expressly approved by MTA in writing as shown on Exhibit "C", Licensee shall not cause or permit, or allow any of Licensee's Parties to cause or permit, any Hazardous Materials to be brought upon, stored, used, generated, treated or disposed of on or about the MTA Property. Any Hazardous Materials on the site shall be stored, used, generated and disposed of in accordance with all applicable Environmental Laws. 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 shall indemnify, defend (by counsel acceptable to MTA) and hold harmless the Indemnities (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'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 contamination of the MTA Property or adjacent property (i) which occurs due to the use and occupancy of the Facility or the MTA Property by Licensee or Licensee's Parties, or (ii) which is made worse due to the act or failure to act of Licensee or Licensee's 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, Licensee, at its sole expense, shall promptly take all actions necessary to clean up the affected property (including the MTA Property and all affected adjacent property -- whether or not owned by MTA) and to return the affected property to the condition existing prior to such release or contamination, to the satisfaction of MTA and any governmental authorities having jurisdiction thereover.

19. UNDERGROUND STORAGE TANKS

NEITHER LICENSEE NOR LICENSEE'S PARTIES SHALL INSTALL OR USE ANY UNDERGROUND STORAGE TANKS ON THE LICENSE PROPERTY UNLESS SPECIFICALLY APPROVED IN ADVANCE IN WRITING BY MTA, WHICH APPROVAL MAY BE WITHHELD IN MTA'S SOLE DISCRETION.

At MTA's option, upon the termination of this Agreement at any time and for any reason, Licensee shall, prior to the effective date of such termination, remove and close all underground storage tanks and related equipment and clean up and remove all Hazardous Materials in, on, under and about the MTA Property, in accordance with the requirements of all Environmental Laws and to the satisfaction of MTA and any governmental authorities having jurisdiction thereover, and deliver to MTA a copy of a certificate of closure issued for such tanks by the appropriate governmental authority.

20. SUBORDINATE RIGHTS

This Agreement is subject and subordinate to the prior and continuing right and obligation of MTA, its successors and assigns, to use the MTA Property in the exercise of its powers and in the performance of its duties, including those as a public transportation body. Accordingly, there is reserved and retained unto MTA, 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 MTA Property, and in connection therewith the right to grant and convey to others, rights and interests to the MTA Property on the License Property and in the vicinity of 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 MTA Property now or hereafter, and the words "grant" or "convey" as used herein shall not be construed as a covenant against the existence of any such title exceptions.

21. COMPLIANCE WITH LAWS

Licensee 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 MTA Property and shall furnish satisfactory evidence of such compliance promptly upon request of MTA. MTA may enter the License Property to inspect the Facility at any time, upon provision of reasonable notice of inspection to Licensee. Licensee 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.

22. 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) 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 MTA.

23. MARKERS

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

24. GENERAL PROVISIONS

24.1 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 delivery, by express courier service or by certified mail 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.

24.2 Non-Exclusive License. The license granted herein is not exclusive and MTA specifically reserves the right to grant other licenses within the License Property.

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

24.4 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.

24.5 Interest on Past-due Obligations. Except as expressly herein provided, any amount due to MTA 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 MTA as it accrues. Payment of such interest shall not excuse or cure any default by Licensee under this Agreement, provided, however, that interest shall not be payable on late charges incurred by Licensee.

24.6 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.

24.7 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 MTA Property and the Facility.

24.8 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.

24.9 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 MTA and Licensee. Each individual executing this License on behalf of MTA or Licensee represents and warrants to the other party that he or she is authorized to do so.

24.10 Amendment. This Agreement may be amended at any time by the written agreement of MTA 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.

24.11 Assignment. This Agreement and the license granted herein are personal to the Licensee. Licensee shall not assign or transfer (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 MTA, which may be withheld in MTA's sole and absolute discretion, and any attempted act in violation of the foregoing shall be void and without effect and give MTA the right to immediately terminate this Agreement.

24.12 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 attorney's fees and costs.

24.13 Nondiscrimination. Licensee certifies and agrees that all persons employed thereby and/or the affiliates, subsidiaries, or holding companies thereof and any contractors retained thereby with respect to the License Property are and shall be treated equally without regard to or because of race, religion, ancestry, national origin, 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.

24.14 Further Acts. 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, at MTA's sole discretion, the relocation of the Facility and the license granted hereby.

24.15 Termination for Public Project. Licensee hereby expressly recognizes and agrees that the License Property is located on MTA property that may be developed for public projects and programs which may be implemented by MTA or other public agencies, such as, but not limited to: rail and bus transitways, bikeways, walkways, beautification projects and other public uses (collectively "Project"), and that Licensee's use of the License Property under this Lease is an interim use. Accordingly, as a condition to entering into this Lease, MTA expressly reserves the right to terminate the Lease for any of such public Project. Licensee expressly acknowledges and agrees that: (1) MTA may terminate this License for any public project; (2) Licensee will **NOT** oppose any public Project when planned or implemented on or adjacent to the License Property, and (3) in the event MTA terminates this License and requires Licensee to vacate the License Property for any -public Project, Licensee (a) shall not be entitled to receive any 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. §4601 et seq. and/or the California Relocation Assistance Law, as amended, California Government Code §7260 et seq; and (b) shall not be entitled to any compensation under the eminent domain law, as a result of such termination and vacation of the License Property.

Licensee
MTA

24.16 Future Need of License Property. If MTA shall at any time, or from time to time, so require by written notice thereof to Licensee based on the need of MTA, in its sole discretion, for the License Property for its public purposes Licensee shall reconstruct, alter, make changes as required by MTA, relocate or remove its Facility at Licensee's sole cost and expense.

24.17 Time of Essence. Time is of the essence.

24.18 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 hereby.

24.19 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 herein is revocable by MTA in accordance with the terms of this Agreement.

24.20 Entire Agreement; Amendments. 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. This Agreement may be amended at any time by the written agreement of MTA 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.24.20

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



Exhibit "A"

License Property

[To Be Inserted]



Exhibit "B"

INSURANCE REQUIREMENTS FOR LEASES, LICENSES, AND PERMITS

Lessee, Licensee, or Permittee shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the use of MTA property hereunder by the Lessee, Licensee, or Permittee, his agents, representatives, employees or subcontractors.

Minimum Scope of Insurance (Check all applicable boxes)

Coverage shall be at least as broad as:

- Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- Insurance Services Office Form No. CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
- Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance.
- Course of Construction insurance form providing coverage for "all risks" of loss.
- Property insurance against all risks of loss to any licensee improvements or betterments.
- Insurance Services Office Railroad Protective Liability
- Contractor's Pollution Liability with coverage for:
 - a. bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;
 - b. property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed;
 - c. defense, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; and
 - d. losses caused by pollution conditions that arise from the operations of the contractor described under the scope of services of this contract.

Minimum Limits of Insurance (Check all applicable boxes)

Lessee, Licensee, or Permittee shall maintain limits no less than:

- General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
- Course of Construction: Completed value of the project.
- Property Insurance: Full replacement cost with no coinsurance penalty provision.
- Railroad Protective Liability: \$2,000,000 per occurrence. Aggregate limit shall apply separately to this project/location or the aggregate limit shall be twice the required per occurrence limit
- Contractors Pollution Liability: \$1,000,000 per occurrence/\$2,000,000 annual aggregate.



Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by MTA. At the option of MTA, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects MTA, its officials and employees; or the Lessee, Licensee, or Permittee shall procure a bond guaranteeing payment of losses, and related investigations, claim administration and defense expenses.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. MTA, its subsidiaries, officials and employees are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Lessee, Licensee, or Permittee; products and completed operations of the Lessee, Licensee, or Permittee; License Property owned, occupied or used by the Lessee, Licensee, or Permittee; and automobiles owned, leased, hired or borrowed by the Lessee, Licensee, or Permittee. The coverage shall contain no special limitations on the scope of protection afforded to MTA, its subsidiaries, officials and employees.
2. For any claims related to this project, the Lessee, Licensee, or Permittee's insurance coverage shall be primary insurance as respects MTA, its subsidiaries, officials and employees. Any insurance or self-insurance maintained by MTA, its subsidiaries, officials and employees shall be excess of the contractor's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to MTA, its subsidiaries, officials and employees.
4. The Lessee, Licensee, or Permittee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either a party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to MTA.
6. Workers' Compensation and Employer's Liability policies shall contain the inclusion of the MTA, its Subsidiaries, officials and employees as additional insured, or provide a waiver of subrogation.

Course of construction policies shall contain the following provisions:

1. MTA shall be named as loss payee.
2. The insurer shall waive all rights subrogation against MTA.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved by MTA.

Verification of Coverage

Lessee, Licensee, or Permittee shall furnish MTA with original endorsements and certificates of insurance evidencing coverage required by this clause. All documents are to be signed by a person authorized by that insurer to bind coverage on its behalf. All documents are to be received and approved by the MTA before work commences. As an alternative, the Lessee, Licensee, or Permittee may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

Contractors and Subcontractors

Lessee, Licensee, or Permittee shall include all contractors and subcontractors as insureds under its policies or require certificates and endorsements for each contractor and subcontractor. All coverages for contractors and subcontractors shall be subject to all of the requirements stated herein. The administration of insurance compliance of contractors and subcontractors shall be subject to audit review by MTA.



Exhibit "C"

Permitted Hazardous Materials

No hazardous materials are permitted to be used or stored on License Property.



Exhibit "D"

Additional Provisions

1. **Paving and Fencing.** If applicable, Licensee will pave lease area with asphalt or concrete, and Licensee will construct a chain link fence (or better quality) measuring a minimum of six (6) feet high around the entire perimeter of License Property described in Exhibit "A". Licensee shall be responsible for the total expense of fencing and asphalt.
2. **Importation of Soil/Fill Dirt.** Lessee shall not bring upon or use any Import Soil on the License Property in conjunction with any purposes allowed under this Agreement, until said Import Soil has been laboratory tested by a certified hazardous waste testing laboratory and the test results have been approved by MTA's Environmental Consultant. Additionally, any soil currently existing on the License Property may not be spread on the License Property unless and until it is characterized as Clean Soil to the reasonable satisfaction of MTA's Environmental Consultant.
3. **Maintenance of License Property.** Lessee shall keep the License Property free and clear of weeds, trash, vegetation, unauthorized vehicle parking, graffiti and occupancy by transients/homeless persons or individuals. Lessee shall be fully responsible for ALL maintenance and maintenance that is required or necessary in connection with Lessee's use of License Property.
4. **Protection of Underground and Aboveground Installations.** Lessee shall ensure that it and Lessee's Parties protect, from and against any and all damage, all underground and aboveground installations and improvements, such as pipes, fiber optic lines and wires, which may be impacted by any work or any use of the License Property by Lessee.
5. **Improvements.** Both Lessee and MTA acknowledge that the License Property is leased in "AS IS" condition and, if applicable, any track removal, grading, paving and fencing as may be necessary or required to meet Lessee's needs will be the sole responsibility of the Lessee. No permanent structures may be constructed on the License Property without Lessor's prior written approval. Licensee will be responsible for the removal of all permitted improvements upon termination of Lease.
6. **Utilities.** Lessee shall pay for any and all utilities for its benefit, security and use.
7. **Warranties.** The MTA makes no warranties as to the suitability of the location for Licensee's intended use as to zoning, visibility, traffic count or any other factors, which may cause Licensee to want to lease the License Property.
8. **Zoning or Permitting.** The property is currently zoned "Public Facilities" which carries a restricted use, and will require the licensee to obtain a zone variance, or a conditional use permit. Any permits, inspection fees, or costs associated with the use or maintenance of the Premise by any governmental agency, department, or organization, or any labor expenses for the installation or maintenance of any permitted improvements are the Licensee's sole responsibility. Copies of permits are to be readily available for inspection by MTA personnel.
9. **Signage.** NO SIGNS PERMITTED on or along the perimeter of the leasehold unless such signs were requested and approved under your original proposal and covered by the required insurance.
10. **Property Under Study for Public Projects and Programs.** Licensee hereby acknowledges and agrees that this Lease (or License) is located on MTA property that may be developed for public projects and programs, such as, but not limited to: rail and bus transitways, bikeways, walkways, beautification projects and other related uses, and that Licensee understands and acknowledges that its use of the License Property under this lease (or license) may be impacted by such public projects and programs, **including the termination of this Lease (or License).** Further, Licensee hereby acknowledges and agrees that as a condition of MTA granting this Lease (or License) to Licensee, which is an interim, temporary use until a public project and program is implemented, Licensee covenants that it will **NOT** oppose any -public projects and programs when planned or implemented on this property.

Licensee	MTA

Initials





EXHIBIT NO. 02