

## LICENSE AGREEMENT

**THIS LICENSE AGREEMENT** ("Agreement") is made and entered into as of the effective date of January 26, 2006 ("Effective Date") by and between the North County Transit District ("NCTD"), and Southern California Edison Company, a corporation, ("Licensee").

### RECITALS

- A. NCTD has policies regulating and governing the use of its Rights-of-Way.
- B. Licensee has applied for the issuance of a License in accordance with such policies and NCTD has agreed to allow Licensee to use that portion of the Right of Way identified in Exhibit A ("License Area"), subject to the terms and conditions of this Agreement.
- C. Licensee agrees to be bound by the terms and conditions of this Agreement.

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

1. **License to Use.** In consideration of a one-time payment of Fifteen Thousand Dollars (\$15,000.00) and of the covenants and conditions set forth in this Agreement, NCTD licenses and permits Licensee to **install, own, inspect, maintain, and repair a stone revetment berm at the northeast end of the Del Mar Wye tail track, approximate Milepost 243.4**, (the Facility"), subject to applicable local, state and federal law and this Agreement.
2. **Authority Not Exclusive.** This License is non-exclusive. The Licensee shall respect the rights and property of NCTD and other authorized users of the Rights-of-way, easements, power poles, street light poles, vaults, and conduits. Except as otherwise required by applicable law, disputes between the Licensee and parties other than NCTD over the use, pursuant to this Agreement, of the easements, power poles, street light poles, vaults, conduits and other rights-of-way shall be submitted to NCTD for resolution. Licensee expressly agrees the Facility shall not interfere with any use of the surface property.
3. **Relocation.** Licensee shall, at Licensee's sole expense and within thirty (30) days after receiving written notice from NCTD, remove the Facility if NCTD determines, in its sole and absolute discretion that the Facility is inconsistent or interferes with NCTD's current or planned use of the License Area or Right-of-Way. In consideration of NCTD's agreement to enter into this License, Licensee hereby waives any and all rights it may now have, or hereafter obtain, to any "relocation assistance benefits" pursuant to the Federal Uniform Relocation Assistance Act (42 U.S.C. § 4601 et seq.), the California Relocation Assistance law (Cal. Gov. Code § 7260 et seq.) or any other statute that replaces or provides rights similar to such

statutes, if NCTD requires Licensee to remove the Facility or makes use of the Right-of-Way in such a way as to 'displace' Licensee from the License Area. Licensee, further, shall in the future execute any further documentation of the release and waiver provided hereby as NCTD may reasonably require.

#### **4. Limitations on Use.**

4.1 Licensee shall comply with all applicable terms, conditions and requirements of NCTD's policies regarding rights-of-way and other NCTD ordinances, rules and regulations. Licensee shall comply with all applicable laws and regulations of the federal, state, county, local governments and all administrative agencies thereof which may have jurisdiction over Licensee's proposed use of the License Area and the use, construction, and maintenance of the Facility.

4.2 Licensee shall not cause or permit any Hazardous Material to be used, stored, transported, generated, or disposed in or about the License Area by Licensee or Licensee's agents, employees, contractors, licensees, or invitees. "Hazardous Material" means any hazardous, toxic, or infectious substance, material, or waste which is or becomes regulated by any local governmental entity, the State of California, or the United States Government under any law, regulation or ordinance regulating or controlling any Hazardous Material (the "Hazardous Materials Laws"), including, without limitation, any material, or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under California Health and Safety Code §§ 25115, 25117 or 25122.7, or listed pursuant to California Health and Safety Code § 25140, (ii) defined as a "hazardous substance" under California Health and Safety Code § 25316, (iii) defined as a "hazardous material," "hazardous substance" or "hazardous waste" under California Health and Safety Code § 25501 (v) defined as a "regulated medical waste" under 40 C.F.R. § 259.10(a) or § 259.30, (v) petroleum or petroleum product, (vi) asbestos, (vii) designated as a "hazardous substance" pursuant to § 311 of the Federal Water Pollution Control Act (33 U.S.C. § 1317), (ix) defined as a "hazardous waste" pursuant to § 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq. (42 U.S.C. § 6903), or (x) defined as a "hazardous substance" pursuant to § 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (42 U.S.C. § 9601).

4.3 No use, construction, or maintenance by Licensee or on Licensee's behalf on the License Area will interfere with any railroad operations on the Right-of-Way.

4.4 Licensee shall not cross or permit the crossing over of the railroad tracks on the Right-of-Way except at public crossings approved by the California Public Utilities Commission.

4.5 Licensee shall not leave any personal property or equipment on the Right-of-Way unattended at any time, except as provided in the License to Use provision contained herein.

4.6 Licensee shall not install or use any underground storage tanks on the License Area.

5. **Insurance.** Licensee, at Licensee's sole cost and expense, shall procure and maintain the following insurance:

5.1 General Liability.

- a. Coverage for commercial general liability shall be at least as broad as Insurance Services Office Commercial General Liability Coverage (Occurrence Form CG 0001).
- b. Limits shall be no less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply to the Right-of-Way (with the ISO CG 2503, or ISO CG 2504, or insurer's equivalent endorsement provided to NCTD) or the general aggregate limit shall be twice the required occurrence limit.
- c. The policy shall cover bodily injury (including death) and property damage liability, owned and non-owned equipment, and blanket contractual liability.
- d. All policy or endorsement limitations relating specifically to operations on or near railroad property or track shall be eliminated.

5.2 Automobile Liability.

- a. Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Automobile Liability Coverage (Form CA 0001), covering Symbol 1 (any auto).
- b. Limits shall be not less than one million dollars (\$1,000,000) for bodily injury and property damage each accident limit.
- c. The insurance shall indemnify against loss from liability imposed by law for damages on account of bodily injury, property damage, and personal injury. The automobile liability policy shall cover all owned, non-owned, and hired automobiles.

5.3 Licensee shall cover or insure under the applicable laws relating to workers' compensation insurance, all of their employees working on or about the Right-of-

Way, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof. Licensee shall provide employers liability insurance in the amount of not less than one million dollars (\$1,000,000) per accident for bodily injury and disease. By his/her signature hereunder, Licensee certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and it will comply with such provisions in connection with any work performed on the Site. Any persons providing services with or on behalf of Licensee shall be covered by workers' compensation (or qualified self-insurance).

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

- a. NCTD, its directors, officers, employees, contractors, agents or authorized volunteers are to be named as additional insureds as respects liability arising out of Licensee's operations and activities or automobiles owned, leased, hired or borrowed by Licensee. The coverage shall contain no special limitations on the scope of protection afforded to NCTD, its directors, officers, employees, agents or authorized volunteers.
- b. For any claims arising from Licensee's operations or activities, Licensee's insurance shall be primary insurance to NCTD, its directors, officers, employees, contractors, agents or authorized volunteers. Any insurance, self-insurance or other coverage maintained by NCTD, its directors, officers, employees, agents or authorized volunteers shall not contribute to it.
- c. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to NCTD, its directors, officers, employees, contractors, agents or authorized volunteers.
- d. Licensee'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.

5.5 All of the insurance shall be provided on policy forms and through companies reasonably satisfactory to NCTD.

5.6 Insurance is to be placed with insurers having a current A.M. Best rating of no less than A-, VII or equivalent or as otherwise approved by NCTD.

5.7 Prior to execution of this License, Licensee shall file with NCTD a certificate of insurance signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include

required provisions as set forth in section 5.4. Licensee shall, upon the reasonable demand of NCTD, deliver to NCTD such policy or policies of insurance. Each insurance policy required by this clause shall state or be endorsed to state that coverage shall not be amended or canceled, except after thirty (30) days prior written notice by U.S. mail has been given to NCTD.

5.8 Every contractor or subcontractor of Licensee entering upon, using, or performing any work upon the Right-of-way by or on behalf of Licensee shall provide evidence of insurance required under this section 5 prior to entering upon the Right-of-Way.

5.9 NCTD reserves the right to increase the limits for the insurance required by this section 5 to amounts recommended by NCTD's insurance risk manager or insurance representative.

5.10 Notwithstanding any other provision of this License, Licensee may self-insure for any risk set forth in this Section in the manner and to the extent that Licensee self-insures for similar risks with respect to its operations, equipment, and property. The manner in which such self-insurance is provided and the extent of such self-insurance shall be set forth in a Certificate of Self Insurance, delivered to NCTD and signed by an authorized representative of Licensee, which full describes the self-insurance program and how the program covers the risks set forth in this Section. Insurance provided by a joint powers agency insurance pool shall be considered self-insurance for the purposes of this paragraph. If, at any time during the term of this License, Licensee elects not to self-insure, Licensee shall comply with all applicable provisions of this Section to the extent that Licensee does not so self-insure.

6. **Indemnification.** Licensee agrees to protect, save, defend, and hold harmless NCTD and its Board and each member of the Board, the San Diego Northern Railroad, the National Railroad Passenger Corporation ("AMTRAK"), the Southern California Regional Rail Authority ("SCRRA" or "Metrolink"), and the Burlington Northern Santa Fe Railway Company ("BNSF"), their officers, agents and employees from any and all liability or claim of liability, loss or expense, including defense costs and legal fees and claims for damages of whatsoever character, nature and kind, whether directly or indirectly arising from or connected with an act or omission of Licensee, or any employee, agent, invitee, or contractor of Licensee, or other person acting by or on behalf of Licensee on or about the Right-of-Way, including, but not limited to, liability, expense, and claims for bodily injury, death, personal injury, or property damage; provided, however, that nothing herein shall relieve any party indemnified hereunder from liability to the extent that such liability arises from such party's sole established negligence or willful misconduct. The requirements as to the types and limits of insurance coverage to be maintained by Licensee as required by section 5, and any approval of such insurance by NCTD, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise

assumed by Licensee pursuant to this Agreement, including but not limited to the provisions concerning indemnification.

## **7. Construction.**

7.1 Any work performed or caused to be performed by Licensee on the License Area 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 NCTD's rules and regulations) and (c) in a manner that is satisfactory to NCTD and which meets or exceeds the then applicable standards of the industry for such work.

7.2 Licensee shall submit to NCTD for review and approval prior to commencement of any construction drawings, specifications, and other construction documents describing any proposed work in the License Area in sufficient detail to enable NCTD to determine the scope and nature of the proposed work and the potential effect of such work on the Right-of-Way and train operations. NCTD may approve or disapprove any work in NCTD's sole and absolute discretion, and NCTD may require such changes or impose such conditions as NCTD, in its sole and absolute discretion, deems necessary or appropriate.

7.3 Licensee shall provide NCTD and all holders of underground utility facilities located within the License Area with at least seven (7) calendar days written notice prior to commencement of any work on the License Area. In the event of an emergency, Licensee shall notify NCTD personally or by telephone prior to commencing any work. Upon completion of any work, Licensee shall restore the License Area to its condition immediately preceding the commencement of the work.

7.4 Every individual who will be entering upon the License Area or Right-of-Way under this Agreement, before entering, shall first attend a class conducted by NCTD or NCTD's designee on Railroad Worker Protection Safety rules and regulations. Licensee shall pay all costs associated with such class.

7.5 Not less than three (3) business days prior to each entry on the License Area or Right-of-Way, Licensee shall complete the "Flag Protection Right-of-Way Work Request" form, attached hereto as Exhibit "B." The need for flag protection for Licensee's operations on or adjacent to the Right-of-Way shall be determined in the sole discretion of NCTD's Manager of Maintenance of Way. In the event that the Manager of Maintenance of Way determines that flag protection is necessary, Licensee shall not enter upon or use the License Area until flag protection has been provided. Licensee shall pay all costs of flag protection. NCTD shall use reasonable efforts to provide flag protection on the dates and times of Licensee's requested entries, provided that any work by NCTD, BNSF, or AMTRAK that requires flag protection shall take priority. NCTD shall not be liable for any costs, expenses, or claims if flag protection is not provided on Licensee's requested dates or times of entry.

7.6 Licensee shall, upon NCTD's request and at Licensee's expense, install barrier fencing, K-rail, and/or landscaping to shield the railroad track area from public access and or the improvements thereon from public view. NCTD shall have the right to review and approve fencing and/or landscaping plans prior to installation.

7.7 NCTD's review and inspection of the drawings, specifications, construction documents, and work is for the purpose of examining the general arrangement, design, and details of the work for potential impact on the Right-of-Way and railroad operations. NCTD and NCTD's employees, consultants, and agents assume no responsibility for and make no representations or warranties, express or implied, as to the design, condition, workmanship, or adequacy of the drawings, specifications, construction documents, or work. No review, comments, requirements, or inspection shall relieve Licensee or Licensee's engineers, contractors, subcontractors, or consultants from the entire responsibility for the errors or omissions in the drawings, specifications, or construction documents, or for the quality or adequacy of the work.

8. **Reimbursement of NCTD.** Licensee shall reimburse NCTD, within 30 days of invoice, for all cost and expense incurred by NCTD in connection with NCTD's review and processing of this Agreement and any work performed by or for Licensee on the License Area. These costs include, but are not limited to, NCTD staff time and consultants fees for the expenses of reviewing construction documents, conducting railroad safety training, marking out of railroad facilities, inspections, security, flag protection, the installation and removal of false work beneath tracks, equipment rentals, and restoration of the Right-of-Way to the same condition as when Licensee entered thereon. Upon execution of this License, Licensee shall deposit with the NCTD the amount determined by NCTD to be the probable amount of reimbursable expenses. NCTD may deduct the costs and expenses from the deposit as such costs and expenses are incurred. Costs of services provided by NCTD employees will be charged at the employees' fully loaded productive hourly rates (monthly salary and benefits divided by 150 hours). Services provided by NCTD consultants, equipment rentals, and other third party costs will charged at cost plus a 7.2% administrative fee. Upon demand by NCTD, Licensee shall make any additional deposits that NCTD determines are necessary to reimburse NCTD for the costs and expenses incurred by NCTD. In the event that the costs and expenses incurred by NCTD exceed the amounts deposited, Licensee shall reimburse NCTD for all such costs and expenses within 30 days of invoice.

9. **Maintenance and Repair.** Licensee shall, at Licensee's sole expense, maintain the Facility and License Area in a condition satisfactory to NCTD and in accordance with applicable governmental codes. Licensee shall be responsible for any citations issued by any agency having jurisdiction as a result of Licensee's failure to comply with any applicable law, regulation, ordinance, rule, or order.

**10. Taxes.** Nothing contained in this Agreement shall be construed to exempt the Licensee from any tax levy or assessment which is or may be hereafter lawfully imposed. Notice is hereby given pursuant to Revenue and Tax Code Article 107.6 that this License may create a property interest subject to property taxation and may subject Licensee to the payment of property taxes levied on such interest.

**11. Default; Termination.** In the event that Licensee fails to perform any obligation under this Agreement, Licensee shall pay all costs and expenses incurred by NCTD in obtaining performance of such obligations, including costs of suit and reasonable attorney's fees. If Licensee uses the Right-of-Way for any purpose not expressly authorized by this Agreement or fails to act strictly in accordance with the terms and conditions of this Agreement, and if such default is not corrected within 30 days' notice from NCTD to Licensee, NCTD may terminate this Agreement and prevent Licensee from using or remaining upon the Right-of-Way. If NCTD determines that any default by Licensee does or has the potential to cause a danger to the Right-of-Way or railroad operations, NCTD may immediately and without prior notice to Licensee terminate this Agreement and prevent Licensee from using or remaining upon the Right-of-Way, with or without process of law. Upon termination of this Agreement, at Licensor's sole discretion, Licensee shall, at Licensee's sole expense, remove the Facility and all other Licensee improvements in or upon the Right-of-Way and restore the Right-of-Way in a manner satisfactory to NCTD. Should Licensee fail or refuse to comply with the terms of this section, NCTD may, at its option, perform such work, and Licensee shall reimburse NCTD for all costs and damages so incurred.

**12. Service of Notice.** Except as otherwise provided in this Agreement, any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery or by certified or registered mail, and shall be deemed sufficiently given if delivered or addressed to Licensee at the address listed below the Licensee's signature or to NCTD at North County Transit District, 810 Mission Avenue, Oceanside, CA 92054, Attention: Manager of Real Estate. Mailed notices shall be deemed given upon actual receipt at the address required, or forty-eight hours following deposit in the mail, postage prepaid, whichever first occurs. Either party may by notice to the other specify a different address for notice purposes.

**13. Vibration and Noise From Train Operation; Barricades.** Licensee recognizes and acknowledges that railroad tracks are located on or adjacent to the License Area, and that the operation of trains over the tracks does and will produce vibrations which may affect the Facility and Licensee's use of the License Area. With knowledge and understanding of these facts, Licensee by execution of this Agreement, agrees that no legal action or complaint of any kind whatsoever shall be instituted against NCTD by Licensee or on Licensee's behalf as result of vibrations or as a result of the use of the railroad tracks in general.

**14. Laws, Venues, and Attorneys' Fees.** This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to

interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of San Diego, State of California. In the event of any claim, legal action or proceeding between the parties arising under or concerning this License, the prevailing party shall be entitled to reasonable attorneys' fees and expenses as part of the judgment resulting therefrom.

**15. Acceptance of License Area.** Licensee accepts the License Area in its present physical "as-is" condition, and agrees to make no demands upon NCTD for any improvements or alterations. By signing this License, Licensee represents and warrants that Licensee has independently inspected the License Area and the area immediately surrounding and made all investigations, tests, and observations necessary to satisfy Licensee as to the condition of the License Area, zoning and land use laws, regulations, and ordinances affecting the License Area, and all of the conditions, restrictions, encumbrances, and other matters of record relating to the License Area. Licensee agrees that Licensee is relying solely on Licensee's independent inspection and that NCTD has made no warranty or representation with regard to the License Area. NCTD shall not be responsible for any latent defect or change in condition in the License Area and Licensee's obligations under this License shall not be diminished on account of any defect in the License Area, any change of condition, or any damages occurring on the License Area. In case of the eviction of Licensee by anyone owning or claiming title to or any interest in the License Area, NCTD shall not be liable to Licensee for any damage of any nature whatsoever or to refund any moneys paid hereunder. Licensee hereby releases NCTD from all future claims, actions, or demands that Licensee may have or may hereinafter have, known and unknown, in any way relating to the quality, fitness, or condition of the License Area, and Licensee specifically waives all rights under California Civil Code section 1542, which provides as follows:

*[intentionally left blank]*

"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."


**Emergency Number. Licensee shall immediately notify the Dispatcher at (800) 500-7346 if the tracks become damaged, blocked, or fouled in any way.**

IN WITNESS WHEREOF, the parties have signed below, effective as of the Effective Date, by their duly authorized representatives.

North County Transit District

Southern California Edison Company,  
a corporation

  
Karen H. King  
Executive Director

By:   
Name: Nolan Lam  
Title: Right of Way Agent

2244 Walnut Grove Avenue  
Rosemead, CA 91770