

**Right of Way Use Agreement
Related to the
DesertXpress High-Speed Rail Project
Apple Valley to California/Nevada Border Segment**

This Right of Way Use Agreement Related to the DesertXpress High-Speed Rail Project – Apple Valley to California/Nevada Border Segment (this “LEASE”) is made this ___ day of _____, 2020 (the “EFFECTIVE DATE”) by and between DesertXpress Enterprises, LLC, a Nevada limited liability company (together with its successors and permitted assigns), and the State of California, acting by and through the Department of Transportation.

RECITALS

A. DesertXpress Enterprises, LLC, which does business as XpressWest, (“LESSEE”) proposes to design, construct, operate, and maintain a private interstate high-speed passenger railroad between Southern California and Las Vegas, Nevada. The dedicated passenger-only high-speed rail line will be designed and constructed for operation and maintenance within an approximately 170-mile corridor that will generally follow the Interstate 15 freeway and right-of-way (“I-15”) and is proposed to be built primarily in the median of I-15 (the “PRIVATE RAIL LINE”). Approximately 135 miles of the PRIVATE RAIL LINE and associated highway changes are proposed to be constructed in California (the “PROJECT”).

B. The State of California, acting by and through the Department of Transportation (“CALTRANS”), is a public entity with full possession and control of all state highways, property, and rights in property acquired for state highway purposes, and is authorized under sections 90, 91, 91.2, 92, and 660 (et seq.) of the **Streets and Highways Code** and sections 14000(c) and 14520.3(b) of the **Government Code** to oversee impacts to and projects on the California State Highway System (“SHS”), including the ability to make final agency decisions regarding the use and disposition of its assets. Pursuant to section 14038(b) of the **Government Code**, CALTRANS may contract with the private sector for the design, improvement, or construction of rail lines and related facilities. Pursuant to sections 14036 and 14038(b) of the **Government Code**, CALTRANS is charged with the responsibility to prepare a State Rail Plan, which currently includes the integration of interstate rail service to Las Vegas with support for investments in the High Desert Corridor (a potential state project to the west of Victorville,) and for its connection to the California high-speed train system and existing statewide rail network.

C. The California State Transportation Agency ("CalSTA") is a California state agency responsible for developing and coordinating the policies and programs of the State's transportation entities to achieve the State's mobility, safety, and air-quality objectives from its transportation system and is the approving agency for the State Rail Plan.

D. The California legislature has enacted **Public Utilities Code** section 7551.1 to authorize private rail use within its highways as follows: "[t]he Secretary of Transportation may grant to every railroad corporation whose primary business is the transportation of passengers, the rights-of-way for the location, construction, and maintenance of its necessary works and for every necessary adjunct thereto over any portion of highway owned by the State of California which is not otherwise disposed of or in use, not in any case exceeding in length or width that which is necessary for the construction of works and adjuncts, or for the protection thereof, and in no case to exceed 200 feet in width."

E. LESSEE, CalSTA, and CALTRANS acknowledge that the PRIVATE RAIL LINE and the SHS will complement each other and that the occupancy and use of the I-15 by LESSEE serves the important purposes of providing multiple transit modes within CALTRANS' operating I-15 right-of-way and promoting the State's mobility, safety, and air quality objectives.

F. CALTRANS has acquired sufficient legal right, title, and interest in the I-15 right-of-way and sufficient land exists within the publicly acquired I-15 right-of-way to accommodate the construction, operation, and maintenance of the PRIVATE RAIL LINE by LESSEE. Development of the PRIVATE RAIL LINE is in the public interest and is compatible with and will not impair I-15 or interfere with the free and safe flow of traffic on I-15. CALTRANS has also determined that the right-of-way to be used for the PRIVATE RAIL LINE is not exclusively required presently or in the reasonably foreseeable future for the safe and proper operation and maintenance of the I-15.

G. The Federal Railroad Administration ("FRA") served as the lead agency for the environmental review of the PRIVATE RAIL LINE and completed the environmental review pursuant to the National Environmental Policy Act ("NEPA") with the Surface Transportation Board ("STB"), the United States Bureau of Land Management ("BLM"), and the Federal Highway Administration ("FHWA") serving as cooperating agencies. The FRA released a draft environmental impact statement for public review on March 19, 2009. On July 8, 2011, the FRA issued its Record of Decision ("ROD"). In October 2011, the BLM issued its ROD. In November 2011, the California and Nevada Divisions jointly issued the FHWA ROD. Owing to design modifications, including the decision to relocate most of the PRIVATE RAIL LINE to the I-15 median, the FRA is leading a reevaluation of the NEPA approval.

H. The STB has held that the Interstate Commerce Commission Termination Act, 49 U.S.C. § 10501, preempts application of the California Environmental Quality Act (“CEQA”) with respect to the PROJECT. (DesertXpress Enterprises, LLC – Petition for Declaratory Order, FD 34914 (STB served May 7, 2010).) For purposes of the State of California documenting compliance with CEQA regarding its proprietary use of State property, CALTRANS will document compliance with CEQA for this LEASE by the filing of a Notice of Exemption with the State Clearinghouse of the Office of Planning and Research.

I. The right-of-way leasehold as contemplated by this transaction for the purposes of **California Public Utility Code** section 7551.1 would occupy a portion of the highway that is not otherwise disposed of or in use and is therefore available for a grant of use for rail purposes. CALTRANS, CalSTA, the California High-Speed Rail Authority, and LESSEE executed a Memorandum of Understanding, entered into as of January 28, 2019 (the “MOU”). With the exception of Section 2 of the MOU pertaining to certain preconditions and timing of this grant, which is hereby modified, the parties agree that this LEASE will not negate or otherwise modify the terms and conditions of the MOU.

J. The parties now wish to enter this LEASE to memorialize the terms under which CALTRANS leases the PROPERTY to LESSEE.

AGREEMENT

Now, therefore, the parties agree as follows:

Section 1. RECITALS

The recitals set forth above are hereby incorporated into the terms of this LEASE.

Section 2. DEFINITIONS

2.1 ADJUSTMENT DATE has the meaning set forth in Section 5.2.

2.2 AERIALY DEPOSITED LEAD or ADL SOIL means excavated soil whose only constituent of concern that poses an unacceptable risk to human health or the environment is lead, primarily from exhaust emissions from the operation of motor vehicles, in concentrations greater than considered appropriate for unrestricted use by DTSC (currently 80 milligrams per kilogram [mg/kg] total lead based on a 95 percent upper confidence limit [UCL]) and/or 5 mg/l extractable lead based on a 95 percent UCL, as determined by the CA Waste Extraction Test (CA-WET).

2.3 BLM is the United States Bureau of Land Management as set forth in Recital G.

2.4 CalSTA is the California State Transportation Agency as set forth in Recital C.

2.5 CALTRANS is the State of California Department of Transportation as set forth in Recital B.

2.6 CALTRANS STANDARDS are defined as standard and directive drawings, including as applicable: any applicable FHWA standards; any CALTRANS Standard Specifications; any CALTRANS Standard Plans; CALTRANS manuals (including but not limited to Construction Manual, Highway Design Manual, California Manual on Uniform Traffic Control Devices) and technical memoranda; CALTRANS guidelines; and CALTRANS plans, policies, practices and procedures, including the guidance provided in CALTRANS' Plans Preparation Manual, including specifically Chapter 17 (Encroachments) of the Project Development Procedures Manual, and guidance provided in CALTRANS' Stormwater Monitoring Guidance Manual, which is generally available at <http://dot.ca.gov>.

2.7 CEQA is the California Environmental Quality Act, as set forth in Recital H.

2.8 CLAIMS has the meaning set forth in Section 19.1.

2.9 CONTRACTOR means the contractor or contractors hired by LESSEE, regardless of delivery method selected for construction, to perform any PRIVATE RAIL LINE work on any portion of the PROPERTY or on any portion of the adjacent or potentially impacted SHS. CONTRACTOR also includes a contractor's subcontractors and a contractor's and subcontractor's respective employees, officers, and agents, and others acting under its or their authority.

2.10 CPUC means the California Public Utilities Commission.

2.11 CTC means the California Transportation Commission, a 13-member body responsible for programming and allocating funds to construct highway, passenger rail, transit, and active transportation improvements throughout California. The CTC also advises and assists the Secretary of the California State Transportation Agency and the Legislature in formulating and evaluating state policies and plans for California's transportation programs.

2.12 DESIGN AND CONSTRUCTION AGREEMENT means the design and construction agreement to be entered into between LESSEE and CALTRANS prior to the commencement of construction of the PROJECT.

2.13 DISPLAY ADVERTISEMENTS are stationary advertising structures and signs, as defined and regulated by the Outdoor Advertising Act, **California Business and Professions Code** section 5200 et seq.

2.14 EFFECTIVE DATE has the meaning set forth in the preamble.

2.15 ENCROACHMENT PERMIT(S) FOR CONSTRUCTION are the CALTRANS permits required for the construction of the PRIVATE RAIL LINE as it impacts the SHS, as defined in section 660 of the **California Streets and Highways Code**, and as required by this LEASE to ensure that the use of the PROPERTY for the construction, operation, and maintenance of the PRIVATE RAIL LINE is in the public interest, is compatible with and will not impair I-15, or unreasonably interfere with the free and safe flow of traffic on I-15. There may be one or more permits required for construction, including without limitation any encroachment permits as needed for temporary construction staging, temporary traffic control measures, etc. and for the permanent installation of any necessary railroad appurtenances such as electric substations.

2.16 EVENT OF DEFAULT has the meaning set forth in Sections 17.1 and 17.2.

2.17 FHWA means the Federal Highway Administration, as set forth in Recital G.

2.18 FIRST LEASEHOLD LENDER has the meaning set forth in Section 21.4.4.

2.19 FRA means the Federal Railroad Administration, as set forth in Recital G.

2.20 GENERAL NON-COMPLIANCE DEFAULT has the meaning set forth in Section 17.1.9.

2.21 HAZARDOUS MATERIAL means any hazardous substance, hazardous material, or hazardous waste as defined under state or federal law and any substance, waste, or other material of any nature that may give rise to liability or regulatory action under federal or state law.

2.22 HIGHWAY FACILITY is defined as real or personal property located within or immediately adjacent to the route of the PRIVATE RAIL LINE, such as structures, improvements, and other properties under the jurisdiction of CALTRANS or other local authorities and includes, but is not limited to: roads, highways, bridges, sign standards, traffic control systems, roadway lighting, landscaping, drainage systems, conduits, emergency access for California Highway Patrol and first responders, and maintenance facilities.

2.23 HM MANAGEMENT is the management activities, including during construction, operation, or maintenance of the PRIVATE RAIL LINE, related to HAZARDOUS MATERIALS, including any necessary manifest requirements and disposal facility designations.

2.24 I-15 has the meaning set forth in Recital A.

- 2.25 INDEMNIFIED PARTIES has the meaning set forth in Section 19.1.
- 2.26 INDEX has the meaning set forth in Section 5.2.
- 2.27 INITIAL TERM has the meaning set forth in Section 25.
- 2.28 LEASE means this lease, as set forth in the preamble, including any attachments, exhibits, and amendments.
- 2.29 LEASEHOLD DEED OF TRUST has the meaning set forth in Section 21.2.1.
- 2.30 LEASEHOLD LENDER has the meaning set forth in Section 21.2.1.
- 2.31 LESSEE has the meaning set forth in Recital A.
- 2.32 MOU has the meaning set forth in Recital I.
- 2.33 NEPA means the National Environmental Policy Act, as set forth in Recital G.
- 2.34 NEW LEASE has the meaning set forth in Section 21.2.2.
- 2.35 OPERATING AND MAINTENANCE AGREEMENT means the operating and maintenance agreement to be entered into between LESSEE and CALTRANS prior to the commencement of construction of the PROJECT.
- 2.36 PASSENGER RAIL SERVICE means the private high-speed passenger service provided by LESSEE on the PRIVATE RAIL LINE.
- 2.37 PERMITTED TRANSFER has the meaning set forth in Section 21.1.1.
- 2.38 PLANS has the meaning set forth in Section 9.2.
- 2.39 PRIVATE RAIL LINE has the meaning set forth in Recital A.
- 2.40 PROJECT has the meaning set forth in Recital A.
- 2.41 PROPERTY has the meaning set forth in Section 3.1.1.
- 2.42 QUALITY MANAGEMENT ASSESSMENT or QMA is defined as CALTRANS' independent activities performed by CALTRANS, at CALTRANS' sole discretion, which it will not exercise unreasonably or arbitrarily, to assure and verify as needed that the PRIVATE RAIL LINE complies with applicable standards, laws, regulations, and policies to ensure a quality PROJECT as it impacts the SHS. It is understood and agreed that QMA activities are for the benefit and protection of CALTRANS as the owner and operator of the SHS only, and will not constitute acceptance,

approval, or ratification of any work or process, or of the PRIVATE RAIL LINE. QMA activities will be focused on the specific potential or real impacts to facilities owned, operated, or maintained by CALTRANS.

2.43 RAIL IMPROVEMENTS has the meaning set forth in Section 10.1.

2.44 REARRANGED HIGHWAY FACILITIES means the final product of any conflicting HIGHWAY FACILITY that was relocated, replaced, modified, or somehow adjusted to accommodate the PROJECT work for the benefit of the PRIVATE RAIL LINE and that will form a portion of the STATE HIGHWAY SYSTEM, regardless of ownership or maintenance obligations by either CALTRANS or a local entity.

2.45 RECOGNIZED LENDER means a public or private lending source or institution, federal, state, county or municipal governmental agency or bureau, bank, savings and loan, pension fund, investment fund, insurance company, real estate investment trust, tax credit syndication entity, or other real estate investment or lending entity, savings bank, whether local, national or international, or the holder of any purchase money mortgage given back to a transferor, and the successors or assigns of such holder, mortgagee or beneficiary, and will be deemed to include, without limitation, the trustee under any such trust indenture and the successors or assigns of such trustee.

2.46 RENEWAL TERM has the meaning set forth in Section 25.

2.47 RIGHT-OF-WAY OF UTILITY OWNER means a property right held by a UTILITY owner in either a recorded or fully executed deed in the usual form or other recorded or fully executed valid instrument that conveys a permanent property right to the UTILITY owner for the UTILITY to be located in a defined area of real property, including without limitation to a defined area within the PROPERTY.

2.48 ROD means Record of Decision, as set forth in Recital G.

2.49 STATE HIGHWAY SYSTEM or SHS means the California state highway system as it is described in Division 1, Chapter 2 of the **California Streets and Highway Code**.

2.50 STB means the Surface Transportation Board, as set forth in Recital G.

2.51 TERM has the meaning set forth in Section 25.

2.52 TERMINATION EVENT OF DEFAULT has the meaning set forth in Section 18.1.2.

2.53 UTILITY means without limitation a line, facility, or system for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, sewage, waste, storm water, or any other similar commodity that directly or indirectly serves the public, including any irrigation system and any fire or police signal system owned and operated by a UTILITY owner. The appurtenances to each UTILITY (including fire hydrants as appurtenances to water lines and drainage basins for storm water lines) are considered part of such UTILITY.

Section 3. PROPERTY

3.1 Property.

3.1.1 CALTRANS hereby leases to LESSEE, and LESSEE hereby leases from CALTRANS, for the term, at the rent, and upon the covenants and conditions hereinafter set forth, that certain property known as High-Speed Rail Right of Way Use Area No. RW00360 in the CALTRANS' State Highway record maps, generally shown on Exhibit A attached to this LEASE (the "PROPERTY"). The PROPERTY is intended to provide LESSEE with sufficient high-speed passenger rail right-of-way for the location, construction, operation, and maintenance of the LESSEE's PRIVATE RAIL LINE primarily within the median of CALTRANS' owned, operated, or maintained right-of-way for the I-15 corridor, and in no case to exceed a width of 200 feet, nor to exceed CALTRANS' existing right, title, and interest in the I-15 right-of-way. The parties acknowledge that final design and construction of the PROJECT will require adjustment of the description and boundaries of the PROPERTY, based on survey data as established through the progression of engineering design and agree to periodically during the progression of engineering design accordingly amend the references in the CALTRANS' State Highway record maps to reflect any such adjustment and the actual boundaries of CALTRANS' owned, operated, or maintained right-of-way that are granted under this LEASE. Upon completion of construction of the PROJECT and provision of the survey and final Lease Area Maps required under Section 9.1 of this LEASE, CALTRANS and LESSEE will amend Exhibit A and CALTRANS' references thereto in the State Highway record maps to accurately describe the PROPERTY. This agreement to adjust the description of the PROPERTY is intended to provide a mechanism to allow for shifts in the PROJECT alignment based on conditions on the ground or constraints or conditions developed in final design as may be agreed to by CALTRANS and LESSEE but will not be construed to conflict with the other terms of this LEASE.

3.1.2 This LEASE is subject to all easements, covenants, conditions, restrictions, reservations, rights of way, liens, encumbrances, and other matters of record, including those shown on Exhibit A. LESSEE acknowledges that LESSEE's use of the PROPERTY is subordinate to these rights as they may exist as of the EFFECTIVE DATE of this LEASE and subject to the terms of this LEASE. CALTRANS

retains all rights to cross over, across, or under the PROPERTY as set forth below and to continue utilization and allow continued public utilization of all existing HIGHWAY FACILITIES that cross the PROPERTY. Pursuant to **California Streets & Highways Code** Section 670 et seq., CALTRANS reserves all rights to (i) implement transverse crossings of its SHS, and (ii) develop the airspace above the SHS in the future, including over, across, and under the PROPERTY, in compliance with governing statutes and regulations and CALTRANS' published procedures; provided, however, that the exercise of such rights reserved by CALTRANS will be conducted in a manner so as to not unreasonably interfere with LESSEE's use and enjoyment of the PROPERTY (with it being understood that it is material for LESSEE to be able to operate, maintain, and improve the PRIVATE RAIL LINE in a safe and continuous manner in order to deliver uninterrupted service to its passengers.) LESSEE acknowledges it is material for CALTRANS to provide for the convenient, safe, and continuous use, or the maintenance and improvement, of any existing or REARRANGED HIGHWAY FACILITIES that form a part of the SHS and that may be located on, over, under, or adjacent to the PROPERTY, continually and concurrently with LESSEE's use of the PROPERTY. LESSEE acknowledges that the use by LESSEE of the PROPERTY will not preclude the future development by CALTRANS of multiple uses of CALTRANS' HIGHWAY FACILITIES, the I-15 corridor, or the SHS.

3.2 Condition of PROPERTY. LESSEE acknowledges that it is accepting the PROPERTY in "as-is" condition except as otherwise expressly set forth in this LEASE, without warranty of title. LESSEE acknowledges that CALTRANS has afforded and has agreed to continue to afford LESSEE the opportunity of a full and complete investigation, examination, and inspection of the PROPERTY and all matters and items related or connected to the PROPERTY. LESSEE has inspected the PROPERTY to the extent desired by LESSEE and is satisfied with the physical condition of the PROPERTY. Except as otherwise expressly set forth in this LEASE, CALTRANS has not made and does not make any representations or warranties as to the physical condition or any matter or thing affecting or pertaining to the PROPERTY or its suitability for LESSEE's intended use. All understandings and discussions of the parties concerning the use of the PROPERTY are merged into this LEASE, with neither party relying upon any statements or representations of the other not embodied in this LEASE. CALTRANS has given no express or implied warranties to LESSEE in connection with the PROPERTY except as otherwise expressly set forth in this LEASE. LESSEE EXPRESSLY RELEASES CALTRANS, CalSTA, AND THE STATE OF CALIFORNIA FROM ANY LIABILITY, WARRANTY, OR OBLIGATION TO LESSEE RELATING TO THE CONDITION OF THE PROPERTY, SPECIFICALLY INCLUDING: LATENT AND PATENT CONDITIONS; ZONING; PERMITTING; SUBSOIL CONDITIONS; STORMWATER DRAINAGE CONDITIONS; THE EXISTENCE OR CONDITION OF ANY UTILITIES; AND ANY AND ALL OTHER MATTERS RELATING TO THE PHYSICAL CONDITION OF THE PROPERTY (OTHER THAN WITH RESPECT TO HAZARDOUS MATERIAL); AND FURTHER EXPRESSLY RELEASES CALTRANS, CalSTA, AND THE STATE OF CALIFORNIA FROM ANY LIABILITY, WARRANTY, OR OBLIGATION FOR

HAZARDOUS MATERIALS WITHIN THE PROPERTY AS PROVIDED IN SECTION 4.2 AND HEREBY ACCEPTS RESPONSIBILITY FOR HM MANAGEMENT FOR HAZARDOUS MATERIALS THAT MAY REQUIRE REMOVAL OR DISPOSAL PURSUANT TO FEDERAL OR STATE LAW WHEN DISTURBED BY PROJECT CONSTRUCTION AS PROVIDED IN SECTION 4.2. THE PROVISIONS OF THIS SECTION 3.2 WILL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS LEASE.

3.3 Covenant of Quiet Possession. CALTRANS further hereby covenants that, subject to the terms of this LEASE, LESSEE will have exclusive peaceful and quiet enjoyment of the PROPERTY for the PRIVATE RAIL LINE during the TERM, without interruption or interference by CALTRANS or any person claiming rights by, through, or under CALTRANS. LESSEE acknowledges and agrees that LESSEE's exclusive right to possession of the PROPERTY during the TERM of this LEASE will be subject to: (i) CALTRANS' rights of entry or access rights expressly provided for in this LEASE; (ii) the rights of third parties under any permits for existing UTILITIES as of the EFFECTIVE DATE, any permits that must be granted as a matter of law, and under any permits for UTILITIES issued after the EFFECTIVE DATE, so long as the subsequently issued permits are compatible with the rights of LESSEE and do not interfere with LESSEE's construction, operation, and maintenance of a PRIVATE RAIL LINE, subject to the terms of this LEASE; provided however, that, upon request by LESSEE, CALTRANS will provide UTILITY contact information and make its right-of-way utility staff available (on a reimbursable basis) for meetings with third-party UTILITY owners to facilitate LESSEE'S property access and construction activities; and (iii) any rights expressly reserved by CALTRANS' grantors in documents recorded in the Public Records of San Bernardino County, California, or expressly reflected or indicated on CALTRANS' right-of-way maps, as of the EFFECTIVE DATE.

Section 4. USE

4.1 Specified Use. The PROPERTY will be used for the public purpose of the construction, operation, and maintenance of a privately owned and operated interstate high-speed passenger railroad, and ancillary and incidental uses related thereto, initially contemplated between Apple Valley, California and Las Vegas, Nevada, including without limitation the installation and maintenance of track infrastructure, communications infrastructure, electrical power systems, signal systems, drainage systems, and rail-related fiber optic lines that are used in the operation of the PROJECT or for the benefit of LESSEE's employees, CONTRACTORS, vendors, or passengers, with it being understood and agreed that the private high-speed passenger rail service may be expanded to other destinations beyond the current destinations during the TERM of this LEASE (which understanding will not be construed as obligating CALTRANS to grant an easement or lease or otherwise provide LESSEE the right to use additional rights-of-way owned, operated, or maintained by CALTRANS.) LESSEE will not use the PROPERTY for non-high-speed passenger rail uses, including but not limited to the provision of freight transportation services, the placement of non-railroad related

UTILITIES, pipelines, non-railroad related fiber optic cables, non-railroad related wire lines, non-railroad related conduits, non-railroad related fences or any other non-railroad improvement without prior written approval by CALTRANS, which approval will not be unreasonably withheld. Any access for the installation, operations, or maintenance of non-passenger rail uses will be determined at the time (if any) when CALTRANS grants rights for such uses. LESSEE will not use the PROPERTY in any manner that would unreasonably obstruct or interfere with any transportation facilities existing as of the EFFECTIVE DATE unless doing so is expressly permitted and described elsewhere in this LEASE, provided that, as between the parties, the operation of the PROJECT, including the operation of a high-speed passenger train service and its ancillary train noise and emissions, will not be deemed to be an unreasonable obstruction, interference, or nuisance.

4.2 Hazardous Materials.

4.2.1 LESSEE will comply at all times during construction, operation, and maintenance of the PRIVATE RAIL LINE with all applicable federal and state laws relating to HAZARDOUS MATERIALS, and any rules and regulations promulgated thereunder, including but not limited to, ensuring that the transportation, storage, handling, and disposal of such HAZARDOUS MATERIALS are conducted in full compliance with applicable environmental laws.

4.2.2 LESSEE agrees to provide CALTRANS, CalSTA, and the State of California, upon request, copies of all hazardous waste permit application documentation, permits, monitoring reports, transportation, responses, storage, disposal and contingency plans, and material safety data sheets, within thirty (30) days of any such requests by CALTRANS, CalSTA, and the State of California. LESSEE is required to have, and to implement as needed, a written plan addressing containment and clean up of fuel or oil spills.

4.2.3 LESSEE will not use the PROPERTY for the manufacture or storage of flammable, explosive, or HAZARDOUS MATERIALS, with it being acknowledged that flammable, explosive, or HAZARDOUS MATERIALS as would customarily be found in or on or used in the construction, operation, and maintenance of a high-speed passenger railroad are permitted, so long as LESSEE complies with all state and federal laws and regulations regarding HAZARDOUS MATERIALS or substances that are applicable to the operation of a commercial enterprise such as the PROJECT or the PRIVATE RAIL LINE.

4.2.4 Notwithstanding any other provision of this LEASE, ADL SOIL handled during construction of the PROJECT may only be stored, stockpiled, deposited, or disposed of on the PROPERTY pursuant to a separate written agreement among CALTRANS, LESSEE, and the Department of Toxic Substances Control.

4.2.5 LESSEE will indemnify, defend, and hold harmless the INDEMNIFIED PARTIES from all CLAIMS resulting from the presence or use of HAZARDOUS MATERIALS on the PROPERTY arising by reason of anything done or omitted to be done by LESSEE, its CONTRACTOR, or its agents under Section 4.2, unless caused by the negligence or willful misconduct of an INDEMNIFIED PARTY after the EFFECTIVE DATE.

4.2.6 Notwithstanding any other term of this LEASE, responsibility for HM MANAGEMENT will be allocated between the parties as follows:

4.2.6.1 As between the parties, LESSEE will be responsible, at LESSEE's expense, and within a reasonable scope based on the design of the PROJECT, to investigate the PROPERTY for potential HAZARDOUS MATERIAL both within the PROPERTY and within any other SHS right-of-way that will be used in the construction of the PROJECT, including the location of any anticipated REARRANGED HIGHWAY FACILITIES. At LESSEE's cost, LESSEE will prepare and provide a report of its investigative findings to CALTRANS. LESSEE will promptly notify CALTRANS of any HAZARDOUS MATERIAL discovered through LESSEE's investigation under this paragraph. CALTRANS represents that as of the EFFECTIVE DATE it is unaware of any pending cleanup and/or abatement orders issued by any state or federal regulatory agencies, nor is Caltrans aware of any state or federal litigation related to any HAZARDOUS MATERIALS on the PROPERTY or within any other SHS right-of-way that will be used in the construction of the PROJECT, including the location of any anticipated REARRANGED HIGHWAY FACILITIES. Upon request by LESSEE and to the extent available, CALTRANS will provide site assessment information in its possession and will cooperate in any efforts by LESSEE to obtain such information, both at the time of execution of this LEASE and on a continuing basis.

4.2.6.2 As between CALTRANS and LESSEE, LESSEE will be solely responsible for HM MANAGEMENT and remediation of any HAZARDOUS MATERIALS that are present on or under the PROPERTY or within other specific SHS right-of-way that will be used in the construction of the PROJECT, including the location of any anticipated REARRANGED HIGHWAY FACILITIES, as of the EFFECTIVE DATE, to the extent that the HM MANAGEMENT is required under state or federal law because of construction of the PROJECT.

4.2.6.3 As between CALTRANS and LESSEE, LESSEE will be solely responsible for HM MANAGEMENT of any HAZARDOUS MATERIALS that may require managerial, custodial, or remedial action if imported onto the PROPERTY through LESSEE's construction, operations, or maintenance activities.

4.2.7 As between CALTRANS and LESSEE, LESSEE will be responsible, to the extent required by federal or state law, for any required managerial, custodial, or remedial action of any HAZARDOUS MATERIALS present on or under the

PROPERTY, including but not limited to HAZARDOUS MATERIALS present as of the EFFECTIVE DATE, to the extent that LESSEE's activities, including but not limited to its operations or maintenance activities, cause, exacerbate, or contribute to the presence or condition of such HAZARDOUS MATERIALS.

4.2.8 Nothing in this LEASE is intended to be or will be interpreted to be a limitation on LESSEE's ability to seek indemnity or recovery from parties other than CALTRANS, CalSTA, or the State of California for conditions requiring HM MANAGEMENT, remediation, or other responsibility for HAZARDOUS MATERIALS under the terms of Section 4.2 or any other provision of this LEASE.

4.2.9 The provisions of Section 4.2 will survive the expiration or earlier termination of this LEASE.

4.3 Stormwater Pollution Control. LESSEE will comply with all applicable State and Federal water pollution control requirements regarding storm water and non-stormwater discharges from the PROPERTY with respect to construction of the PROJECT and use and maintenance of the PROPERTY for PASSENGER RAIL SERVICE and will be responsible for all applicable permits, including but not limited to the National Pollutant Discharge Elimination System (NPDES) General Permit and Waste Discharge Requirements for Discharges of Stormwater Associated with Industrial Activities (Excluding Construction), the NPDES General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities, and the Caltrans Municipal Separate Storm Sewer System NPDES Permit. Copies of current storm water related NPDES permits are available on the State Water Resources Control Board website at www.swrcb.ca.gov under Stormwater. LESSEE understands the discharge of non-stormwater into the storm sewer system is prohibited unless specifically authorized by one of the permits or ordinances listed above. In order to prevent the discharge of non-stormwater into the storm sewer system, LESSEE will not wash, fuel, maintain, or repair railcars or locomotives on the PROPERTY.

4.4 Petroleum Products. LESSEE will neither install facilities for nor operate on the PROPERTY a gasoline or petroleum supply station, nor will the transportation or storage of gasoline or petroleum products be permitted on the PROPERTY, except those products stored within an operable vehicle for exclusive use by that vehicle and a reasonable amount of those products stored as a reserve for vehicles used in the inspection and maintenance of the PRIVATE RAIL LINE.

4.5 Advertising. LESSEE will not install or allow any DISPLAY ADVERTISEMENTS within the PROPERTY without prior written approval of CALTRANS. Notwithstanding this prohibition, LESSEE may utilize the display of advertising in the form of wrapping of trains without further prior approval. CALTRANS will not object to wrapping of trains to promote LESSEE, the PRIVATE RAIL LINE, PASSENGER RAIL SERVICE, rail transportation business, civic interests, tourism and related business, sporting

events, public information campaigns, services, and products. Any advertising inside of trains will comply with any applicable laws and will not require further prior approval from CALTRANS.

4.6 Gambling. LESSEE will comply with California law with respect to any gambling on board trains on the PROPERTY.

4.7 Concessions. As part of LESSEE's operation of the PRIVATE RAIL LINE, LESSEE, without CALTRANS' further consent, may elect to enter into concession and similar leases for various services to be provided as part of the PASSENGER RAIL SERVICE, including without limitation, food and beverage service and Wi-Fi.

4.8 Payment of Utilities. LESSEE will be solely responsible for all bills for electricity, lighting, power, gas, water, telephone, or any other UTILITY or service used by LESSEE on the PROPERTY for the PROJECT. CALTRANS is responsible for any such UTILITY bills for the REARRANGED HIGHWAY FACILITIES and for installations of CALTRANS as part of the SHS that may be located on the PROPERTY.

4.9 Exclusive High-Speed Passenger Rail Use. Notwithstanding the rights expressly reserved to CALTRANS in this LEASE in connection with CALTRANS' use of the PROPERTY, in no event will CALTRANS enter into any other lease, easement, or other agreement for all or any part of the I-15 right of way between Apple Valley, California and the California/Nevada border that would allow or authorize any part of the I-15 right of way between those points to be utilized by a third party for purposes of providing passenger rail service at operating speeds of eighty (80) m.p.h. or higher. For avoidance of doubt, nothing in this LEASE prohibits CALTRANS from authorizing a portion of the I-15 right of way other than the PROPERTY to be used for local commuter rail service that is otherwise consistent with the preceding sentence and LESSEE's rights under the terms of the LEASE, with it also being understood that LESSEE has no obligation to allow CALTRANS or a third party access to use the PRIVATE RAIL LINE or RAIL IMPROVEMENTS. A determination by a court or other governmental agency with jurisdiction over the subject matter that the covenant of CALTRANS expressed in this section is: (i) wholly or partially void or unenforceable; (ii) otherwise in excess of CALTRANS' statutory authority; or (iii) otherwise not controlling on the State of California, CALTRANS, or its successors, will not constitute an EVENT OF DEFAULT by CALTRANS, and neither the State nor CALTRANS will have any liability to LESSEE, any RECOGNIZED LENDER, or any other person as a result thereof.

4.10 Revocation. The rights for LESSEE to use the PROPERTY are revocable by CALTRANS as set forth in Section 18.1 only for a TERMINATION EVENT OF DEFAULT.

Section 5. RENT

5.1 Annual Rent. LESSEE will pay annual rent to CALTRANS in the amount of eight hundred forty-two thousand dollars (\$842,000) as adjusted every three years as provided below, payable on the first business day of each year for that calendar year, without offset, counterclaim, or deduction except as may otherwise be expressly set forth in this LEASE. As the prorated rent due for the remainder of the year between the EFFECTIVE DATE and December 31, 2020, within thirty (30) days of the EFFECTIVE DATE, LESSEE will pay to CALTRANS five hundred sixty-one thousand three hundred thirty-six dollars (\$561,336). All rent payments will be made by delivery to CALTRANS at the address for notices set forth in Section 27.10, or at such other address or by such other method as CALTRANS may designate in writing from time to time.

5.2 Adjustment to Annual Rent.

On January 1, 2024 and each three (3) year anniversary thereof (each such date an "ADJUSTMENT DATE") during the TERM of this LEASE, the then-current rent will be adjusted to the lesser of an amount equal to: (a) the rent as of the EFFECTIVE DATE multiplied by a fraction, the numerator of which will be the Consumer Price Index (All Urban Consumers - All Items) in the Southern California area, published by the United States Department of Labor, Bureau of Labor Statistics (the "INDEX"), which is published for the third month prior to the month of the ADJUSTMENT DATE, and the denominator of which will be the INDEX for the fifteenth month preceding the month of the ADJUSTMENT DATE; or (b) an increase to the then-current rent by six percent (6%). If the INDEX is changed so that the base year differs from that used in calculating the beginning INDEX, the INDEX will be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the INDEX is discontinued or revised during the TERM of this LEASE, any similar index published by any branch of the United States Government will be used in order to obtain substantially the same result as if the INDEX had not been discontinued or revised, and if no such other index is published, another index generally recognized as authoritative will be substituted by CALTRANS. For avoidance of doubt, an adjustment in rent under this paragraph will not result in a new rent that is less than the original rent amount of eight hundred forty-two thousand dollars (\$842,000.) At least thirty (30) days prior to the ADJUSTMENT DATE, CALTRANS will notify LESSEE in writing of the adjusted rent. LESSEE will begin paying the adjusted rent on the ADJUSTMENT DATE following receipt of written notice of the adjustment from CALTRANS. Changes in rent made under this paragraph will be deemed to be effective without formal amendment to this LEASE.

Section 6. RIGHTS OF ENTRY ONTO THE PROPERTY

6.1 CALTRANS' Rights of Entry onto the PROPERTY. CALTRANS reserves for itself, its officers, employees, and for FHWA and all others who are duly authorized by CALTRANS the right to enter the PROPERTY at reasonable times and upon reasonable prior notice, subject to the further conditions of this LEASE. In all events, CALTRANS will exercise its access rights in a reasonable manner so as to minimize interference with LESSEE's use and enjoyment of the PROPERTY and safe and reliable operation of the PRIVATE RAIL LINE.

6.2 Rules and Standards for CALTRANS' Rights of Entry onto the PROPERTY. Any access to the PROPERTY under Section 6.1 will be subject to LESSEE's standards and requirements for entries onto railroad property, which include the positioning of flag persons and insurance requirements that are uniformly applicable to contractors performing work within the boundaries of the PROPERTY (which insurance requirements will apply to CALTRANS' contractors, but will not be construed to require CALTRANS to purchase insurance in connection with any access that it may exercise through its employees in accordance with the provisions of this LEASE.) CALTRANS also acknowledges that access to the PROPERTY following the commencement of operations of the PRIVATE RAIL LINE will be subject to LESSEE's operating and third-party access rules and procedures in order to protect the safety of the public and to prevent injury or loss to persons and property, including rules and regulations mandated by the FRA regarding access to rights of way used for railroad purposes. Without limitation of the foregoing, certain rules that will govern access for CALTRANS and its agents and employees before and after the commencement of operation of the PRIVATE RAIL LINE will be established in the DESIGN AND CONSTRUCTION AGREEMENT or the OPERATING AND MAINTENANCE AGREEMENT.

6.3 Highway and Road Access. LESSEE acknowledges that CALTRANS and other local authorities have and will need access to and across the PROPERTY and over, across, or under the PRIVATE RAIL LINE to construct, use, operate, and maintain both existing and REARRANGED HIGHWAY FACILITIES that form a part of the SHS and that may be located on, over, under, or adjacent to the PROPERTY. The existing and proposed grade-separated road crossing structures and drainage systems culverts that will serve these purposes are generally depicted on Exhibit A. Operation and maintenance responsibilities for these access facilities will be established either through the OPERATING AND MAINTENANCE AGREEMENT or through third-party agreements.

6.4 Future Highway Uses. It is the parties' mutual intent to avoid any action with respect to the design, construction, or operation of the PRIVATE RAIL LINE that negatively impairs the functionality of the I-15 for highway uses. The parties agree with respect to the design, construction, or operation of the PRIVATE RAIL LINE to mutually cooperate, in conjunction with FRA and FHWA, to harmonize

the shared use of state rights-of-way for both highway and high-speed passenger rail purposes.

6.4.1 LESSEE will incorporate in the PLANS any changes to the future use of the I-15 corridor for highway purposes that are known as of the EFFECTIVE DATE. Specifically: (i) where the PROJECT passes under existing overcrossings, and where reasonably practicable, LESSEE will design and construct its RAIL IMPROVEMENTS with sufficient horizontal clearance to allow CALTRANS to widen its structures by constructing additional bridge columns on either side of the existing overcrossing without having to rearrange LESSEE'S RAIL IMPROVEMENTS. LESSEE may assume the future bridge columns would, to the extent feasible, be designed to be constructed parallel to tracks and in line with the existing bridge columns, and that CALTRANS will design any widening to conform to current standards and regulatory requirements, including those of the CPUC; and (ii) where reasonably practicable, LESSEE will design any new overcrossing structures constructed for the PROJECT as part of the REARRANGED HIGHWAY FACILITIES to provide sufficient span for at least one additional highway lane on I-15 in each direction without adjustment of the RAIL IMPROVEMENTS. The parties agree that the PLANS approved by CALTRANS for initial construction of the PROJECT will be deemed to satisfy all requirements of this paragraph.

6.4.2 Subject to the terms of this LEASE, if a future public project for highway purposes affecting the I-15 corridor, (such as an overcrossing seismic retrofit, work on an existing or new overcrossing, or transverse utility crossing,) requires temporary occupancy or a proposed additional use of any portion of the PROPERTY in use by LESSEE, CALTRANS and LESSEE will diligently and timely work together in good faith, each at its own expense, to identify engineering solutions that give reasonable consideration to SHS uses and use for connectivity between the SHS and the local public roadway transportation systems, that will not materially impact LESSEE's use and operation of the PROPERTY for railroad purposes (with it being understood that it is material for LESSEE to be able to construct, operate, maintain, and improve the PRIVATE RAIL LINE in a safe and continuous manner in order to deliver uninterrupted service to its passengers) with the goal of avoiding all material impacts to railroad operations.

6.4.3 If CALTRANS, in its sole discretion, finds it necessary to modify an existing overcrossing or engineer a new overcrossing, including without limitation adding bridge columns and footings within the PROPERTY, then to the extent (after the foregoing coordination in Section 6.4.2) such crossings do not adversely impact the operation of the PRIVATE RAIL LINE in any material aspect, and provided the plans and specifications and encroachment permits are approved by LESSEE, which approval will not be unreasonably nor untimely withheld and which review and approval will be limited to the lack of any material impact, CALTRANS will seek authorization from the CPUC to construct the project or alter

the existing crossing at no cost to LESSEE and without modification of the lease area of the PROPERTY or rent amount of the LEASE. For any design submittal from CALTRANS related to a project that requires LESSEE review or approval, LESSEE will provide comprehensive comments or approval within 30 days of receiving the written submittal.

6.4.4 The parties agree that it is material to both the continued operation and maintenance of the SHS and the PRIVATE RAIL LINE to preserve in the future the grade-separated crossing structures between the PRIVATE RAIL LINE and the SHS that will be designed, constructed, and effectively created as part of the PROJECT, and any grade-separated crossing structures which may be designed and constructed in the future (pursuant to the foregoing coordination in Sections 6.4.2 and 6.4.3). As a reflection of this mutual interest, the parties agree as follows:

6.4.4.1 LESSEE will work in good faith with CALTRANS to maximize the windows of time during which CALTRANS will be able to perform its maintenance and construction work on grade-separated crossings during the hours LESSEE's trains are not in operation and will provide CALTRANS with standard workshift windows when reasonably and commercially practicable.

6.4.4.2 Because CALTRANS will perform any maintenance and construction work on grade-separated crossings that may otherwise require a railroad flagman during times when LESSEE's trains are not in operation, the parties do not anticipate that a railroad flagman will normally be required during CALTRANS' work. In the event that a flagman may be required from time to time for this sort of CALTRANS work, LESSEE agrees to provide a flagman at no charge to CALTRANS in an amount up to one hundred thousand dollars (\$100,000) per year, as measured by LESSEE's actual costs for providing flagging, including standard additives.

6.5 Emergency Entry.

6.5.1 In the event of an actual or reported emergency, danger, or threat that is reasonably believed by CALTRANS or police, fire, emergency services, armed forces, or any other governmental security or emergency personnel to have caused (or to present the imminent potential to cause) injury to individuals, damage to PROPERTY, or threat to the environment, the personnel of such agencies may enter the PROPERTY to take at such times as CALTRANS or another governmental entity with jurisdiction determines necessary in its reasonable judgment and with such notice to LESSEE as is practicable under the circumstances, such actions as CALTRANS or another governmental entity with jurisdiction determines necessary to respond to such emergency, danger, or threat.

6.5.2 In the event of an actual or reported emergency, danger, or threat that is reasonably believed by LESSEE or police, fire, emergency services, armed forces, and any other governmental security or emergency personnel to have caused (or to present the imminent potential to cause) injury to individuals, damage to PROPERTY, or threat to the environment, the personnel of LESSEE or such agencies may enter the SHS to take at such times as LESSEE or a governmental entity determines necessary in its reasonable judgement and with such notice to CALTRANS as is practicable under the circumstances, such actions as LESSEE or a governmental entity with jurisdiction determines necessary to respond to such emergency, danger, or threat.

6.5.3 In the event of any circumstance or event affecting the PRIVATE RAIL LINE that is not an actual or reported emergency, danger, or threat addressed by Section 6.5.1 above, but is reasonably believed by CALTRANS to have caused an impairment to the continuous safe operation of any portion of the SHS or a HIGHWAY FACILITY, and if CALTRANS in the exercise of its reasonable judgment determines that, following written notice to LESSEE describing the circumstance or event with particularity, LESSEE is not taking the steps reasonably necessary to respond to or to rectify such circumstance or event within a reasonable time as is practicable under the circumstances, CALTRANS may enter the PROPERTY to take, at such times as CALTRANS determines necessary in its reasonable judgment to be exercised with any lawful limitations imposed by the STB, the FRA, the Federal Transit Administration, or the California Public Utilities Commission, and with prior written notice to LESSEE, such actions as CALTRANS determines may be necessary to respond to or to rectify such circumstance or event or to restore the safe operation of the SHS or the affected HIGHWAY FACILITY, with it being understood and agreed that the use of the PROPERTY for the PROJECT and PASSENGER RAIL SERVICE in accordance with applicable law will not be deemed to cause an impairment to the continuous safe operation of SHS or a HIGHWAY FACILITY.

6.6 No Duty to Act. Except as may otherwise be provided by law or by another term of this LEASE, the reservation of a right by CALTRANS to enter upon the PROPERTY and perform any act will not be deemed to: (i) impose any obligation on CALTRANS to do so; (ii) make CALTRANS responsible to LESSEE or any third party for the failure to do so; or (iii) relieve LESSEE from any of its obligations under this LEASE.

Section 7. UTILITIES

7.1 Existing UTILITIES.

7.1.1 LESSEE acknowledges that the PROPERTY is subject to existing RIGHT-OF-WAY OF UTILITY OWNERS and that LESSEE's use of the PROPERTY is subordinate to the rights of third-party UTILITIES as they may exist as of the EFFECTIVE DATE of

this LEASE and subject to the terms of this LEASE; provided however, that, upon request by LESSEE, CALTRANS will provide UTILITY contact information and make its right-of-way utility staff available (on a reimbursable basis) for meetings with third-party UTILITY owners to help facilitate LESSEE'S property access and construction activities. Subject to the foregoing, any required relocation of a UTILITY that interferes with the PROJECT is the sole responsibility of LESSEE.

7.1.2 LESSEE acknowledges that CALTRANS has issued permits for the installation and maintenance of UTILITIES and structures within the PROPERTY and, under current law, is required to continue to issue such permits. CALTRANS and the owners of any UTILITIES or structures existing as of the EFFECTIVE DATE, may install, permit, design, manage, maintain, inspect, repair, and rehabilitate any of their existing UTILITIES and structures (whether provided by CALTRANS, the State, or third parties) in, on, under, across, over, or through the PROPERTY, upon reasonable notice to LESSEE and in compliance with governing statutes and regulations, CALTRANS' processes, LESSEE's standards, and in any manner that does not affect materially LESSEE's use and operation of the PROPERTY (with it being understood that it is material for LESSEE to be able to operate, maintain, and improve the PRIVATE RAIL LINE in a safe and continuous manner in order to deliver uninterrupted service to its passengers.)

7.2 Future UTILITIES. With regard to new permits for the installation and maintenance of UTILITIES within the PROPERTY from and after the EFFECTIVE DATE, this LEASE does not preclude CALTRANS from issuing new permits to third parties nor does it preclude CALTRANS from amending or extending the term of existing encroachment permits in accordance with governing statutes, regulations, and CALTRANS' processes, provided that LESSEE is first provided notice of any proposed new encroachment permits or amendments to existing encroachment permits, is afforded a reasonable opportunity to review and comment on the issuance or amendment of such permits, and provided that such permits will not materially interfere with LESSEE's construction, maintenance, and operation of the PRIVATE RAIL LINE. Notwithstanding the foregoing, LESSEE will have the right, but not the obligation, at all times during the TERM of this LEASE, to install, design, manage, maintain, repair, and rehabilitate UTILITIES or other services for its own account (and not for LESSEE to lease or resell for the provision of services to third parties who are not PROJECT passengers or LESSEE's contractors or vendors engaged in the construction, operation, or maintenance of the PROJECT) to the extent that the said UTILITIES or services are necessary or desirable for the PROJECT.

Section 8. NO PRIVATE RAIL LINE EXPENSE TO BE BORNE BY CALTRANS OR FHWA

LESSEE agrees that no PRIVATE RAIL LINE costs and expenses are to be borne by CALTRANS or FHWA. LESSEE will reimburse CALTRANS for all actual costs incurred by CALTRANS as a result of LESSEE's occupancy and use of the PROPERTY,

including, but not limited to any flagging required by law or contract. In addition, CALTRANS is not required to contribute any public funds administered by CALTRANS to the PRIVATE RAIL LINE or the PROJECT unless specifically agreed to by the parties and allocated by the CTC.

Section 9. PLANS

9.1 Development of Plans. At no cost to CALTRANS, and as will be further described in the DESIGN AND CONSTRUCTION AGREEMENT, LESSEE will prepare or cause to be prepared by others, the detailed plans and specifications for the PROJECT, including without limitation survey and final Lease Area Maps depicting the surveyable area of the PROPERTY and submit such plans and specifications to CALTRANS or its authorized representative, for prior QMA review and approval. The issuance by CALTRANS of ENCROACHMENT PERMIT(S) FOR CONSTRUCTION will be at CALTRANS' sole discretion, which it will not exercise unreasonably or arbitrarily, and contingent upon such prior QMA review and approval by CALTRANS.

9.2 Final Plans. The final one hundred percent (100%) completed plans and any released for construction plans under certain design-build delivery methods that are approved in writing by CALTRANS' issuance of the ENCROACHMENT PERMIT(S) FOR CONSTRUCTION are herein referred to as the PLANS. The PLANS will be marked by those CALTRANS engineers with the requisite authority as "Approved as to impact on state facilities and conformance with applicable standards and practices and that technical Quality Management Assurance was performed."

9.3 Caltrans' QMA Role.

9.3.1 CALTRANS, as the owner/operator of the SHS, will perform quality management work, including QUALITY MANAGEMENT ASSESSMENT (QMA), of the PLANS. The parties understand and agree that CALTRANS' QMA governs all modifications or additions to the SHS regardless of project sponsor or funding source; verifies that the PROJECT and PROJECT components are safe, operational, maintainable, and compatible; and ensures that all work is planned, developed, and constructed in accordance with standards and practices as set forth in state policies, procedures, manuals, and guidance documents with respect to portions of the PRIVATE RAIL LINE that affect I-15 and its operation.

9.3.2 QMA does not include any PROJECT-related work deemed necessary to actually develop and deliver the PRIVATE RAIL LINE. CALTRANS' QMA process is only intended to evaluate the PRIVATE RAIL LINE's effects on the highway system, not the PRIVATE RAIL LINE itself. QMA activities are for the benefit of CALTRANS and exercised at CALTRANS' sole discretion, (which it will not exercise unreasonably or arbitrarily,) and will not constitute acceptance,

approval, or ratification of any work or process, and any reliance on the PLANS by LESSEE or the CONTRACTOR is at the sole risk of LESSEE and the CONTRACTOR.

9.4 QMA Standards. CALTRANS' QMA of the PLANS will be performed in accordance with applicable CALTRANS STANDARDS and FHWA standards and consistent with the jurisdiction of the CPUC.

9.5 As-Built Plans. Upon completion of the PROJECT, LESSEE at its expense will furnish CALTRANS with a full-size film-positive reproducible set of "as-built" plans, together with electronic files that conform to the latest CALTRANS CADD Manual, including survey documents and copies of all structure plans together with electronic files, showing all HIGHWAY FACILITIES installed and all contract records. Marked as-built plans will be signed by a civil engineer who is licensed by the State of California.

9.6 Alteration of RAIL IMPROVEMENTS. Upon acceptance by CALTRANS, the as-built plans for the PROJECT will define the final compatible uses of the PROPERTY. Any additional use or occupancy of the PROPERTY will be the subject of an amendment to this LEASE, a separate lease, encroachment permits, revised plans, or other applicable document approved by CALTRANS and will be subject to concurrence by FHWA.

Section 10. OWNERSHIP

10.1 Ownership of RAIL IMPROVEMENTS. During the TERM of this LEASE, LESSEE will own all facilities and improvements constructed on the PROPERTY as part of the PROJECT (the "RAIL IMPROVEMENTS"), with it being understood that such RAIL IMPROVEMENTS owned by LESSEE will exclude those improvements to CALTRANS' transportation facilities constructed by or through LESSEE, e.g. the REARRANGED HIGHWAY FACILITIES. LESSEE acknowledges that constructing the REARRANGED HIGHWAY FACILITIES is a required element of its PROJECT and is part of the terms and conditions of the LEASE.

10.2 Ownership of HIGHWAY FACILITIES. Except as may otherwise be described in the maintenance and operations agreement to be entered between the parties, upon the earlier of (i) CALTRANS' acceptance of the REARRANGED HIGHWAY FACILITIES or (ii) the use of such REARRANGED HIGHWAY FACILITIES by the public, all HIGHWAY FACILITIES will be owned by CALTRANS and operated and maintained at its risk only.

10.3 Removal of RAIL IMPROVEMENTS upon Termination. Subject to the approval of the STB and the rights of any RECOGNIZED LENDER under this LEASE, including the rights set forth in Sections 21.2 through 21.7, upon the termination or the expiration of this LEASE, LESSEE may, within one hundred eighty (180) days after termination or expiration of this LEASE, with no obligation to do so, remove all RAIL

IMPROVEMENTS constructed as part of the PROJECT at no cost to CALTRANS or FHWA. LESSEE may also remove any and all moveable trade fixtures and equipment (specifically including, without limitation, the rolling stock, wayside signals, and communications equipment used in the operation of the PRIVATE RAIL LINE) at no cost to CALTRANS. If LESSEE removes any RAIL IMPROVEMENTS, it will remove all the RAIL IMPROVEMENTS and will then restore the PROPERTY where such improvements have been removed to a condition reasonably consistent with the conditions that existed as of the EFFECTIVE DATE (by, for example, removing embankments, track structures and associated improvements, restoring existing topography, re-grading, and seeding the areas where improvements were removed and where grass had previously existed) within three hundred sixty-five (365) days after the termination or expiration of this LEASE. CALTRANS will, if necessary, provide LESSEE with an encroachment permit for reasonable access to the PROPERTY for LESSEE to complete actions permitted or required by this paragraph. The terms and provisions of this paragraph will survive the expiration or earlier termination of this LEASE until completion of such removal and restoration. If LESSEE elects to not remove all the RAIL IMPROVEMENTS, as evidenced by its failure to begin removing RAIL IMPROVEMENTS within one hundred eighty (180) days after the termination or expiration of this LEASE, and absent a different agreement between the parties at the time of termination, all RAIL IMPROVEMENTS and any other LESSEE property then remaining on the PROPERTY will be deemed to have been abandoned by LESSEE, and may be retained or disposed of by CALTRANS, in its sole discretion, in accordance with applicable law, in which event CALTRANS will have no further liability to LESSEE and LESSEE will be liable to CALTRANS for any actual costs to restore the PROPERTY. If LESSEE removes all the RAIL IMPROVEMENTS as provided in this paragraph, any other LESSEE property remaining on the PROPERTY on the date that is three hundred sixty-five (365) days after the termination or expiration of this LEASE will be deemed to have been abandoned by LESSEE, and may be retained or disposed of by CALTRANS, in its sole discretion, in accordance with applicable law, in which event CALTRANS and LESSEE will have no further liability to each other on account thereof.

Section 11. COMMENCEMENT AND COMPLETION OF INITIAL CONSTRUCTION

11.1 Commencement of Construction. LESSEE will commence construction of the PROJECT within three (3) years of the EFFECTIVE DATE. Construction may be done in segment limits to be agreed upon between CALTRANS and LESSEE. For purposes of this Section, construction will be deemed to have commenced upon the completion or occurrence of all of the preconditions described in Section 11.2. In the event construction is not commenced within three (3) years, CALTRANS will grant an extension on a year-to-year basis so long as LESSEE has made material progress toward meeting the requirements of Section 11.2 and is diligently engaged in completing the remaining requirements. If LESSEE does not commence construction within three (3) years or by the end of an extension and

does not qualify for a further extension under the preceding sentence, CALTRANS may terminate this LEASE.

11.2 Preconditions to Use for Construction. Neither LESSEE nor the CONTRACTOR may commence any construction of the PROJECT for the PRIVATE RAIL LINE on the PROPERTY until:

11.2.1 LESSEE and CALTRANS have executed this LEASE and CALTRANS has received written concurrence for the LEASE from the FHWA.

11.2.2 CALTRANS has provided to LESSEE written approval of the PLANS for the applicable PROJECT segment and documented such approval by issuing the related ENCROACHMENT PERMIT(S) FOR CONSTRUCTION.

11.2.3 LESSEE and each CONTRACTOR has obtained from CALTRANS the ENCROACHMENT PERMIT(S) FOR CONSTRUCTION and has obtained or provided to CALTRANS any construction bonding, insurance policies, certificates, binders, and endorsements required under Section 15 and Section 20.

11.2.4 LESSEE (i) has completed its additional NEPA reevaluation reflecting any changes to the alignment or to design of the PROJECT for the PRIVATE RAIL LINE and (if necessary) has obtained original or revised Records of Decision from the lead and cooperating agencies (to the extent required by the lead and cooperating agencies) for the PROJECT; (ii) has obtained all necessary governmental permits for commencement of construction of the PROJECT; (iii) has received a modified lease from the BLM for all federal land required for the PROJECT (to the extent required by BLM); and (iv) has obtained, implemented, or renewed all state and federal resource agency permits necessary for commencement of construction of the PROJECT.

Section 12. OPERATIONS

12.1 General Operation. LESSEE will operate the PRIVATE RAIL LINE in a safe and reliable manner in compliance with the terms and conditions of this LEASE, all applicable federal and state laws and regulations, and according to the OPERATION AND MAINTENANCE AGREEMENT.

12.2 Performance. If at any time CALTRANS determines that LESSEE is not operating on the PROPERTY in accordance with the requirements of this Section, CALTRANS will provide written notice to LESSEE and an opportunity to respond or cure within thirty (30) calendar days from its receipt of such notice. If LESSEE fails to cure within this time, or fails to commence and pursue the cure of any such failure that cannot be cured within such thirty (30) days, then CALTRANS may provide written notice to LESSEE as provided below for notice upon the occurrence of an EVENT OF DEFAULT pursuant to Section 17.1.9.

Section 13. MAINTENANCE

13.1 RAIL IMPROVEMENTS. At no cost to CALTRANS, and as will be further described in the OPERATING AND MAINTENANCE AGREEMENT, LESSEE will maintain all RAIL IMPROVEMENTS in a manner consistent with applicable legal and industry standards. LESSEE will also otherwise generally keep and maintain the PROPERTY, the RAIL IMPROVEMENTS, and any other structure erected on the PROPERTY by LESSEE in reasonably safe and good working order and repair, with it being understood and agreed that the use of the PROPERTY for rail purposes in accordance with applicable law will not require remedial action. The OPERATING AND MAINTENANCE AGREEMENT will describe the terms under which LESSEE will have access on and over the SHS and HIGHWAY FACILITIES to maintain the RAIL IMPROVEMENTS.

13.2 Abatement. At no cost to CALTRANS, LESSEE will keep the PROPERTY reasonably free of overgrown weeds and brush and accumulation of trash and debris.

13.3 No Duty to Inspect. CALTRANS will have no duty to inspect or maintain any land, buildings, or other structures that are owned or controlled by LESSEE during the TERM of this LEASE; however, CALTRANS will have the right, under the terms described in Section 6 of this LEASE, to enter the PROPERTY for purposes of inspection, including conducting an environmental assessment if CALTRANS has reason to believe that a legal violation exists on the PROPERTY. Such assessment may include but would not be limited to: surveying; sampling of building materials, soil, and groundwater; monitoring well installations; soil excavation; groundwater remediation; emergency asbestos abatement; and any other action that might be required by applicable law or commercially reasonable industry practice. CALTRANS' right of entry will not obligate inspection of the PROPERTY by CALTRANS, nor will it relieve LESSEE of its duty to maintain the PROPERTY. Any such inspection by CALTRANS will not affect LESSEE's use and operation of the PRIVATE RAIL LINE in any material respect (with it being understood that it is material for LESSEE to be able to operate, maintain, and improve the PRIVATE RAIL LINE in a safe and continuous manner in order to deliver uninterrupted service to its passengers.)

13.4 Notice and Cure. If at any time CALTRANS determines that LESSEE is not maintaining the PROPERTY in accordance with the requirements of this Section, CALTRANS will provide written notice to LESSEE and an opportunity to respond or cure within thirty (30) calendar days from its receipt of such notice. If LESSEE fails to cure within this time, or fails to commence and pursue the cure of any such failure that cannot be cured within such thirty (30) days, then CALTRANS may provide written notice to LESSEE as provided below for notice upon the occurrence of an EVENT OF DEFAULT pursuant to Section 17.1.9.

13.5 Scope of Inspections. Notwithstanding any other term of this LEASE, CALTRANS will not inspect facilities and operations on the PROPERTY for purposes of enforcing compliance with laws and regulations within the jurisdiction of the STB, the FRA, or the CPUC.

13.6 REARRANGED HIGHWAY FACILITIES. Upon the earlier of (i) CALTRANS' acceptance of the REARRANGED HIGHWAY FACILITIES, or (ii) the use of such REARRANGED HIGHWAY FACILITIES by the public, the REARRANGED HIGHWAY FACILITIES will thereafter form part of the STATE HIGHWAY SYSTEM and will be owned and maintained by CALTRANS in accordance with its standard highway maintenance program and at no cost to LESSEE.

Section 14. REGULATORY APPROVALS

14.1 Regulatory Approvals. LESSEE will obtain all regulatory approvals for the PROJECT and the PRIVATE RAIL LINE that may be required under applicable federal and state law, including without limitation any approvals required from the CPUC for any electric transmission lines, overhead catenary, and crossings. LESSEE will indemnify, defend, and hold harmless CALTRANS, CalSTA, and the State of California against all legal challenges against the PROJECT based on a failure of LESSEE to obtain or implement a permit or other governmental authority for construction, operation, or maintenance of the PROJECT or the PRIVATE RAIL LINE.

14.2 Timing of CPUC Approvals. Notwithstanding any other term of this LEASE, LESSEE may begin construction of PROJECT elements that are unrelated to grade-separated crossings prior to having CPUC authority for construction of all grade-separated crossings. LESSEE will not construct a grade-separated crossing prior to having CPUC authorization for construction of that crossing, to the extent that CPUC authorization is required.

Section 15. SECURITY

15.1 Payment and Performance Bonds. LESSEE will, as a condition precedent to the commencement of construction of the PROJECT, obtain or cause to be obtained and deliver to CALTRANS:

15.1.1 REARRANGED HIGHWAY FACILITIES

(i) a payment bond furnished by the CONTRACTOR in an amount of no less than one hundred percent (100%) of the construction contract price for construction of the REARRANGED HIGHWAY FACILITIES (as determined by LESSEE and CONTRACTOR, with notification to CALTRANS) issued by one or more admitted sureties in the State of California, on a joint and several basis, in a form reasonably acceptable to CALTRANS, and will include a multiple obligee rider

that will name CALTRANS as an additional obligee and may also name any lender as an additional obligee; and

(ii) a performance bond furnished by the CONTRACTOR in an amount no less than fifty percent (50%) of the construction contract price for construction of the REARRANGED HIGHWAY FACILITIES (as determined by LESSEE and CONTRACTOR, with notification to CALTRANS) as set forth in the contract between LESSEE and CONTRACTOR, issued by one or more admitted sureties in the State of California on a joint and several basis, in a form reasonably acceptable to CALTRANS, and will include a multiple obligee rider that will name CALTRANS as an additional obligee; and

15.1.2 RAIL IMPROVEMENTS

Prior to commencing construction of the PROJECT, the LESSEE, as principal, shall provide to CALTRANS, as obligee, a performance bond in an amount agreed to by the LESSEE and CALTRANS reasonably calculated as the cost of the removal of the RAIL IMPROVEMENTS in the event the PROJECT is not completed issued by one or more admitted sureties in the State of California, on a joint and several basis, in a form reasonably acceptable to CALTRANS, which shall be conditioned upon the removal of the RAIL IMPROVEMENTS in the event the PROJECT is not completed. The performance bond shall be an annually renewable bond, and the surety may elect not to extend the performance bond at its sole discretion. If notice is given by the surety that the performance bond will not be automatically extended as required above, and the RAIL IMPROVEMENTS have not been completed, the LESSEE, as principal, shall furnish a replacement bond at least 30 days prior to the expiration of the performance bond. In no event shall non-renewal of this performance bond or failure by the principal to file a replacement bond or replacement security constitute a loss or basis of claim under the performance bond regardless of the number of successive renewal periods the performance bond has been in effect. Upon completion of the RAIL IMPROVEMENTS, CALTRANS shall deliver a written statement to the surety acknowledging the completion and the surety's obligations under this performance bond shall terminate; and

15.1.3 For greater certainty, the obligations of the sureties under the performance and payment bonds will not extend to or include any obligations relating to the financing of the PROJECT, or the cost of such financing, and will not include any obligations relating to the maintenance and operation of the RAIL IMPROVEMENTS.

15.2 Default Prior to Completion of Construction. In the event of the failure of the LESSEE by and through its CONTRACTOR to complete construction of the RAIL IMPROVEMENTS as set forth in the contract between LESSEE and CONTRACTOR, and subject to the dispute resolution terms set forth in Section 24, the limitation of

remedies terms set forth in Section 18.2, the notice and cure provision of Section 17, and any other relevant provisions herein, CALTRANS may look to the LESSEE and performance bond surety to remove the RAIL IMPROVEMENTS.

Section 16. CLOSING PROCEDURES

Upon execution of this LEASE and after concurrence from FHWA pursuant to Section 11.2, the parties will execute a memorandum of the LEASE, in a form to be mutually approved by the parties, with approval not to be unreasonably withheld, that LESSEE will record, with the recording fees and transfer taxes, if any, to be paid by LESSEE, in the County Recorder's Office of San Bernardino County, California.

Section 17. EVENT OF DEFAULT

17.1 EVENT OF DEFAULT by LESSEE. The occurrence of any of the following will constitute a material breach and default of this LEASE by LESSEE (an "EVENT OF DEFAULT" by LESSEE):

17.1.1 Failure to pay rent or make payment of any other monetary sums required to be paid hereunder to CALTRANS when it is due if such failure will continue for a period of thirty (30) days after receipt of written notice of such failure to pay.

17.1.2 The determination that any warranty, representation, or other statement by LESSEE contained in this LEASE, was known to be false or misleading at the time made in any material respect.

17.1.3 The entry of an order or decree, with the acquiescence of LESSEE, appointing a receiver for any part of the PROJECT; or if such order or decree, having been entered without the consent or acquiescence of LESSEE, will not be vacated or discharged or stayed on appeal within one hundred twenty (120) days after the entry thereof.

17.1.4 The institution of any proceeding, with the acquiescence of LESSEE, for the purpose of effecting a composition between LESSEE and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereafter enacted; or if such proceeding, having been instituted without the consent or acquiescence of LESSEE, will not be vacated or discharged or stayed on appeal within one hundred twenty (120) days after the institution thereof.

17.1.5 The institution of any bankruptcy, insolvency, or other similar proceeding by LESSEE under federal or state bankruptcy or insolvency law now or hereafter in effect or the failure by LESSEE to obtain a dismissal within one hundred

twenty (120) days after filing of any bankruptcy, insolvency, or other similar proceeding against LESSEE under federal or state bankruptcy or insolvency law now or hereafter in effect.

17.1.6 The failure by LESSEE to timely start construction of the PROJECT as provided in Section 11.1.

17.1.7 The failure by LESSEE to complete construction of the PROJECT and begin providing interstate high-speed passenger rail service on the PROPERTY between Apple Valley, California and Las Vegas, Nevada within seven (7) years of the EFFECTIVE DATE of this LEASE (subject to a force majeure event or any extension by written agreement of the parties.)

17.1.8 The failure to operate interstate high-speed passenger rail service following commencement of service for a period longer than eighteen (18) consecutive months (unless the period of non-operation is due to construction or maintenance work that LESSEE is performing with reasonable diligence, or subject to a force majeure event or any extension by written agreement of the parties.)

17.1.9 Any failure to comply with the material provisions of this LEASE or failure in the performance or observance of any of the covenants or actions required by this LEASE in any material respects beyond the cure period applicable thereto, if any (a "GENERAL NON-COMPLIANCE DEFAULT"); provided, however, that LESSEE will have a period of thirty (30) days following receipt of written notice from CALTRANS within which to cure a GENERAL NON-COMPLIANCE DEFAULT; provided, however, that if the GENERAL NON-COMPLIANCE DEFAULT reasonably requires more than thirty (30) days to cure, LESSEE will have an additional reasonable period to cure the GENERAL NON-COMPLIANCE DEFAULT so long as LESSEE commences to cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.

17.2. EVENTS OF DEFAULT by CALTRANS. Any failure by CALTRANS to comply with the material provisions of this LEASE or failure in the performance or observance of any of the covenants or actions required by this LEASE in any material respects will be a default (an "EVENT OF DEFAULT" by CALTRANS); provided, however, that CALTRANS will have a period of thirty (30) days following receipt of written notice from LESSEE within which to cure an EVENT OF DEFAULT; provided, however, that if the EVENT OF DEFAULT reasonably requires more than thirty (30) days to cure, CALTRANS will have an additional reasonable period to cure the EVENT OF DEFAULT so long as CALTRANS commences to cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.

Section 18. REMEDIES

18.1 Remedies.

18.1.1 Upon any EVENT OF DEFAULT by LESSEE, CALTRANS may pursue any available remedy at law or in equity, including:

18.1.1.1 By mandamus or other proceeding at law or in equity, seek to cause LESSEE to remit to CALTRANS funds sufficient to enable CALTRANS to cure the EVENT OF DEFAULT.

18.1.1.2 By action or suit in equity, seek to require LESSEE to account for all moneys owed to CALTRANS pursuant to this LEASE.

18.1.1.3 By action or suit in equity, seek to enjoin any acts or things that may be unlawful.

18.1.1.4 By suing LESSEE for payment of amounts due, or becoming due, with interest on overdue payments together with all costs of collection, including attorneys' fees.

18.1.2 Notwithstanding anything to the contrary contained in this LEASE, CALTRANS will not have the right to unilaterally terminate or seek to terminate or revoke this LEASE for any EVENT OF DEFAULT except for an EVENT OF DEFAULT under Sections 17.1.6 and 17.1.7 regarding failure to either start or complete construction or Section 17.1.8 regarding failure to operate (each, a "TERMINATION EVENT OF DEFAULT"). The termination of this LEASE will be CALTRANS' exclusive remedy for a TERMINATION EVENT OF DEFAULT. If CALTRANS elects to terminate this LEASE for a TERMINATION EVENT OF DEFAULT, CALTRANS may do so by providing ninety (90) days advance written notice to LESSEE (subject to the rights of any RECOGNIZED LENDER under this LEASE, including the rights set forth in Sections 21.2 through 21.7).

18.1.3 Upon any EVENT OF DEFAULT by CALTRANS, LESSEE may pursue any available remedy at law or in equity. LESSEE may also elect to terminate this LEASE at any time prior to the commencement of construction of the PROJECT on the PROPERTY, for any reason or for no reason, by providing ninety (90) days advance written notice to CALTRANS (subject to the rights of any RECOGNIZED LENDER under this LEASE, including the rights set forth in Sections 21.2 through 21.7)

18.1.4 In the event that (i) a lease or other definitive agreement is executed by and between the Nevada Department of Transportation and LESSEE for the use of I-15 right-of-way owned by the Nevada Department of Transportation for the purposes of constructing and operating a passenger rail service between Apple Valley, California and Las Vegas, Nevada, and (ii) that lease or other

definitive agreement is terminated and LESSEE or its lender is not disputing such termination, then LESSEE may elect to terminate this LEASE by providing ninety (90) days advance written notice to CALTRANS (subject to the rights of any RECOGNIZED LENDER under this LEASE, including the rights set forth in Sections 21.2 through 21.7).

18.2 Limitation of Remedies. Notwithstanding anything to the contrary in this LEASE, in no event will LESSEE or CALTRANS be liable to each other for any indirect, punitive, special, or consequential damages (including, but not limited to, loss of profits, interest, earnings, or use,) whether arising in contract, tort, or otherwise. The limitation of remedies provided in this paragraph will survive the expiration or termination of this LEASE.

18.3 Remedies Not Exclusive; Delay and Waiver. Except as otherwise expressly set forth in this LEASE, no remedy conferred upon or reserved to CALTRANS or LESSEE under this LEASE is exclusive and every such remedy will be cumulative and will be in addition to every other remedy. No delay or omission by CALTRANS or LESSEE to exercise any right or power accruing as a result of an EVENT OF DEFAULT will impair any such right or power or will be construed to be a waiver of any such default. No waiver of any EVENT OF DEFAULT will extend to or affect any subsequent default, whether of the same or different provision of this LEASE, or will impair consequent rights or remedies.

Section 19. INDEMNIFICATION

19.1 Third Party Claims. Except as set forth in Section 4.2.5 for matters related to HAZARDOUS MATERIALS, LESSEE will indemnify, defend, and hold harmless CALTRANS, CalSTA, the State of California, and their officers, employees, agents, and volunteers (i.e, as may be the case under the CALTRANS Adopt-a-Highway program or participants in alternative punishment probation programs)(collectively the "INDEMNIFIED PARTIES") from any and all claims, suits, judgments, fines, penalties, reasonable attorney's fees (including appellate and regulatory attorney's fees), actions of every nature, kind, and description brought forth under, but not limited to, tortious, contractual, equitable, environmental, inverse condemnation, or other theories and assertions of liability and any damage to property and injury or death of persons (collectively "CLAIMS") proximately caused by reason of the uses authorized by this LEASE and the location and placement of RAIL IMPROVEMENTS within the PROPERTY by the associated ENCROACHMENT PERMITS FOR CONSTRUCTION, unless caused by an INDEMNIFIED PARTY's sole or active negligence or willful misconduct.

19.2 Damage to Caltrans Highway Facilities. LESSEE will indemnify, defend, and hold harmless CALTRANS from any actual losses or damages of any kind or nature to I-15 or any other CALTRANS' owned facility or property, to the extent proximately caused by any act, error, omission, or negligence by or through

LESSEE or its employees, agents, contractors, or subcontractors in connection with LESSEE'S use of the PROPERTY, or any part thereof, for LESSEE's construction, operation, or maintenance of the PRIVATE RAIL LINE, unless caused by CALTRANS' sole or active negligence or willful misconduct.

19.3 Risk of Loss. LESSEE agrees that all RAIL IMPROVEMENTS constructed on the PROPERTY will be at its risk only and that CALTRANS will not be liable for loss or damage to the RAIL IMPROVEMENTS caused by the act of any person, except to the extent caused by the sole or active negligence or willful misconduct of CALTRANS, its officers, or its employees, but with respect to tort claims for loss or damage, only to the extent the Legislature has by law waived CALTRANS' sovereign immunity in tort under the Constitution and laws of the State of California.

19.4 Survival of Indemnification. The provisions of this Section will survive the termination or expiration of this LEASE. In no event will this Section or any other provision of this LEASE be deemed to limit any liability LESSEE may have to any INDEMNIFIED PARTY by statute or under common law.

Section 20. INSURANCE

20.1 Insurance Prior to Construction. On or before the EFFECTIVE DATE, LESSEE will procure and maintain, at its sole cost and expense, the following insurance:

Commercial General Liability (CGL) with a limit not less than twenty-five million dollars (\$25,000,000) each occurrence and a general aggregate limit of not less than twenty-five million dollars (\$25,000,000) providing coverage for bodily injury, property damage, and personal injury through any combination of primary and excess or umbrella liability insurance policies with limits restating annually. The CGL insurance must be written on an ISO occurrence form CG 00 01 04 13 or substitute forms providing equivalent coverage. All excess or umbrella policies shall be "follow form" and afford no less coverage than the primary policy. Such CGL shall provide coverage to the INDEMNIFIED PARTIES as additional insureds using ISO Additional Insured Endorsement CG 20 10. Coverage shall be provided to the INDEMNIFIED PARTIES for CLAIMS proximately caused by reason of the uses authorized by this LEASE and the location and placement of RAIL IMPROVEMENTS within the PROPERTY by the associated ENCROACHMENT PERMITS FOR CONSTRUCTION, unless caused by an INDEMNIFIED PARTY's sole or active negligence or willful misconduct.

20.2 Insurance During Construction.

20.2.1 Prior to commencing physical construction of the PROJECT within the PROPERTY, LESSEE will procure or cause to be procured and maintained throughout construction the following insurance coverage:

20.2.1.1 Liability Insurance. Commercial General Liability (CGL) with a limit not less than three hundred million dollars \$300,000,000 each occurrence, three hundred million dollars (\$300,000,000) products and completed operations aggregate, and a general aggregate limit of not less than three hundred million dollars (\$300,000,000) providing coverage for bodily injury, property damage, and personal injury through any combination of primary and excess or umbrella liability insurance policies with one reinstatement general aggregate limit for the period of the policy(ies) term. Such policies must be project-specific with dedicated limits to this to the PROJECT. The CGL insurance must be written on an ISO occurrence form CG 00 01 04 13 or substitute forms providing equivalent coverage. All excess or umbrella policies shall be “follow form” and afford no less coverage than the primary policy. Such CGL shall cover the INDEMNIFIED PARTIES as additional insureds using ISO Additional Insured Endorsement CG 20 26 (or 20 10 accompanied by 20 37 or equivalent forms providing coverage to the additional insured for completed operation losses). Coverage shall be provided to the INDEMNIFIED PARTIES for CLAIMS proximately caused by reason of the uses authorized by this LEASE and the location and placement of RAIL IMPROVEMENTS within the PROPERTY by the associated ENCROACHMENT PERMITS FOR CONSTRUCTION, unless caused by an INDEMNIFIED PARTY’s sole or active negligence or willful misconduct.

The policy or policies shall be endorsed to remove exclusions pertaining to any railroads. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability assumed under an insured contract. Completed operations coverage shall extend for as long as there is any exposure to liability under a statute of repose or any other applicable statute of limitations. If completed operations coverage through the end of statutory exposure is not commercially available, completed operations coverage shall extend for at least ten (10) years from the completion date of the PROJECT. All excess or umbrella policies shall contain a drop-down clause in the event of exhaustion of primary limits and provide coverage for primary CGL.

20.2.1.2 Commercial Automobile Insurance. During all phases of the PROJECT, LESSEE shall provide evidence of commercial business auto coverage written on ISO form CA 00 01 10 01 (or substitute form providing equivalent liability coverage) with a limit not less than one million dollars (\$1,000,000) for each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). The policy must contain an endorsement for coverage to operations in connection with a railroad and an endorsement to cover liabilities arising out of the Motor Carrier Act – Hazardous materials clean up (MCS-90) with a sublimit of no less than one million dollars (\$1,000,000).

During all phases of the PROJECT, LESSEE shall require its General Contractor to provide evidence of commercial business auto coverage written on ISO form CA 00 01 10 01 (or substitute form providing equivalent liability coverage) with a limit not less than twenty-five million dollars (\$25,000,000) for each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos) and may be satisfied by a combination of primary and excess and/or umbrella policies. The policy(ies) must contain an endorsement for coverage to operations in connection with a railroad and an endorsement to cover liabilities arising out of the Motor Carrier Act – Hazardous materials clean up (MCS-90) with a sublimit of no less than one million dollars (\$1,000,000).

All excess or umbrella policies shall contain a drop-down clause in the event of exhaustion of primary limits and provide coverage for primary auto liability.

20.2.1.3 Workers' Compensation and Employers Liability Insurance. During all phases of the PROJECT, LESSEE shall provide evidence of Workers' Compensation insurance as required under California statute including coverage for Employer's Liability with limits of at least one million dollars (\$1,000,000) each accident, one million dollars (\$1,000,000) each employee by disease, and a policy limit of one million dollars (\$1,000,000) by disease. The excess liability policy must include employer's liability coverage limits to at least twenty-five million dollars (\$25,000,000) and may be satisfied by a combination of primary and excess and/or umbrella policies.

The workers' compensation policies shall provide the following:

- a. A waiver of subrogation in favor of CALTRANS and the INDEMNIFIED PERSONS;
- b. A provision extending coverage to all states' operations;
- c. A voluntary compensation endorsement;
- d. An alternative employer endorsement, if applicable to LESSEE's operations;
- e. Coverage for liability under the United States Longshore and Harbor Workers' Compensation Act on an "if any" basis or as otherwise appropriate;
- f. Coverage for liability under Title 46 of the U.S.C. § 688 ("Jones Act") on an "if any" basis or as otherwise appropriate; and
- g. An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act on an "if any" basis or as otherwise appropriate.

20.2.1.4 Professional Liability Insurance. During all phases of the PROJECT, the LESSEE will provide evidence of professional liability insurance, including prior acts coverage sufficient to cover all claims arising out of any

professional services, including without limitation engineering, architectural, or land surveying work required in constructing the PROJECT on the PROPERTY, procured and maintained by those third parties performing such work for or on behalf of LESSEE. For the lead design contractor for the RAIL IMPROVEMENTS in privity with LESSEE, the coverage shall not be less than ten million dollars (\$10,000,000) per claim and in the aggregate. For environmental assessments, land surveying work and any other site work, the coverage shall not be less than two million dollars (\$2,000,000) per claim and in the aggregate. For architectural, geotechnical engineers, and electrical engineers, the coverage shall not be less than two million dollars (\$2,000,000) per claim and in the aggregate. For structural engineers and civil engineers relating to the PROJECT, the coverage shall not be less than five million dollars (\$5,000,000) per claim and in the aggregate. LESSEE will also require any member of its design-build team, any subconsultant, or any Subcontractor performing professional design services for any portion of the PROJECT, to obtain and maintain professional liability insurance providing the same coverage, with limits of at least one million dollars (\$1,000,000) per claim and in the aggregate. LESSEE shall procure and maintain a project specific Owner's Protective Professional Indemnity (OPPI) policy that provides coverage with limits of at least twenty-five million dollars (\$25,000,000) per claim and in the aggregate for claims arising out of the liability of design and construction professionals. Such coverage will include coverage for claims filed directly against LESSEE by third-parties alleging negligence (arising from professional services of design firms.)

No self-insured retention for the LESSEE or any lead design entity shall exceed five hundred thousand dollars (\$500,000), unless commercially unavailable and without prior written approval from CALTRANS, in its good faith discretion. Coverage shall apply specifically to professional activities performed or contracted by LESSEE in support of the PROJECT. The policy(ies) shall have a retroactive date consistent with the inception of the first date of design or project or construction management activities, and no later than the date on which any contract or subcontract was issued.

The LESSEE agrees to maintain or to require its design professionals, subconsultants, or design-build Subcontractors to maintain, as appropriate, this required coverage for a period of no less than three years after the commencement of revenue service or to purchase an extended reporting period for no less than three years after the commencement of revenue service. If the CONTRACTOR is working with a separate lead design entity, CONTRACTOR shall require the lead design entity to agree to maintain this coverage for a period of no less than three years after the commencement of revenue service or to purchase an extended reporting period for no less than three years after the commencement of revenue service.

20.2.1.5 Contractor's Pollution Liability. The LESSEE shall procure or cause to be procured CONTRACTOR's pollution liability ("CPL") coverage throughout the period of construction. Coverage should be provided by a stand-alone policy with PROJECT dedicated limits of no less than twenty-five million dollars (\$25,000,000) per occurrence and twenty-five million dollars (\$25,000,000) in the aggregate per policy period dedicated to this PROJECT. Coverage must be written on an occurrence basis and extended for a minimum ten (10) year period with a separate limit available exclusively to the PROJECT.

The CPL policy shall include coverage for investigation, removal, and remediation costs including monitoring or disposal of contaminated soil, surface water, groundwater or other media to the extent required by environmental laws caused by pollution conditions resulting from or exacerbated by covered operations; third-party bodily injury and property damage, provided that the third-party property damage liability coverage includes loss of use of damaged property or of property that has not been physically injured or destroyed, resulting from pollution conditions caused by or from conditions exacerbated by covered operations. The policy shall have no exclusions or limitations for loss occurring over water including but not limited to a navigable waterway or for lead or asbestos.

Coverage as required in this paragraph shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants. The CPL policy shall also provide coverage for losses due to loading, unloading or transportation and liability imposed by off-Site disposal of materials at a third-party disposal site including testing, monitoring, measuring operations or laboratory analysis and remediation.

If the scope of work includes the disposal of any hazardous or non-hazardous materials from the job site, LESSEE must furnish CALTRANS, CalSTA and the State of California evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of five million dollars (\$5,000,000) per loss and an annual aggregate of five million dollars (\$5,000,000).

20.2.1.6 Railroad Protective Liability. The LESSEE shall provide, or cause to be maintained, any coverage as may be required by any railroad as a condition of the railroad's consent for entry onto railroad facilities or property. Such policy shall be effective during the period any construction is being performed within 50 feet of any railroad ROW. Coverage shall be written on Insurance Services Office occurrence Form CG 00 35 (or substitute form providing equivalent coverage) on behalf of any railroad as a Named Insured, with a limit specified by any railroad.

20.2.1.7 Aircraft Liability. If applicable, the LESSEE shall procure, or cause to be procured and maintained, aircraft liability insurance with a limit of not less than ten million dollars (\$10,000,000) per occurrence in all cases where any aircraft is used on the PROJECT that is owned, leased or chartered by any Contractor-Related Entity or its subcontractors of any tier, protecting against claims for damages resulting from such use. Any aircraft intended for use in performance of the work, the aircraft crew, flight path and altitude, including landing of any aircraft on the Project or on any property owned, rented or leased by CALTRANS or the INIDEMNIFIED PARTIES shall be subject to review and written acceptance by CALTRANS prior to occurrence of any such usage. If any aircraft are leased or chartered with crew and/or pilot, evidence of non-owned aircraft liability insurance will be acceptable in lieu of the coverage listed above but must be provided prior to use of the aircraft.

20.2.1.8 Builder's Risk Insurance. The LESSEE shall, upon commencement of construction and with approval of CALTRANS, obtain and maintain a policy of builder's risk insurance for the PROJECT. Coverage shall be written on an "all risk" basis and provided through a stand-alone policy dedicated solely to the PROJECT.

The insureds shall include the CONTRACTOR, all Subcontractors (excluding those solely responsible for design Work) of any tier, suppliers, and CALTRANS. Coverage shall include property owned by CALTRANS and the Indemnified Persons that is part of the PROJECT and shall not be limited by use of the phrase "as their interests may appear."

The policy shall cover all property, roads, buildings, bridge structures, other structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment (excluding contractor's equipment) that are part of or related to the portions or elements of the Project, and the works of improvement, including permanent and temporary works and on -site materials, and including goods intended for incorporation into the works located at the PROPERTY, in storage or in the course of transit to the PROPERTY and all improvements that are within the PROPERTY.

The builder's risk policy must include coverage for:

- a. Any ensuing loss from faulty workmanship or nonconforming work, including L.E.G. 3 wording;
- b. Machinery accidents and operational testing involving equipment covered by the policy;
- c. Removal of debris, with a sublimit of 25 percent of the loss subject to a limit of twenty-five million dollars (\$25,000,000) and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project;

d. Transit, including ocean marine coverage (unless insured by the supplier or through a separate marine cargo policy), with sublimits sufficient to insure the full replacement value of any key equipment item;

e. Replacement value of any property or equipment stored either on or off the Site;

f. Coverage limits sufficient to insure for the following perils subject to applicable sub-limits for these perils based on the probable maximum loss of the insured property:

- Collapse;
- Terrorism;
- Earthquake;
- Flood;

g. Plans, blueprints and specifications; and

h. Demolition and increased cost of construction as required by law or ordinance subject to applicable sublimits.

There shall be no coinsurance penalty provision in any such policy. All deductibles or self-insured retentions shall be the sole responsibility of the LESSEE. The policy shall provide a "severability of interests provision," or "multiple insured's clause" or similar wording that the policy shall apply to each insured as if a separate policy had been issued to each insured except as to limits.

LESSEE shall also require the General Contractor and its Subcontractors to procure and maintain coverage for tools and equipment owned, leased or used by the Contractor or Subcontractors in the performance of the Scope.

20.2.2 Upon completion of construction of the PROJECT and prior to commencing operations of the PROJECT within the PROPERTY, LESSEE will provide evidence of "all risk" property insurance covering the RAIL IMPROVEMENTS, with coverage sufficient to cover the probable maximum loss of such RAIL IMPROVEMENTS and alterations made by LESSEE pursuant to the terms hereof, which will include "all risk" coverage using the ISO Causes of Loss - Special Form or its equivalent, as well as flood insurance, subject to applicable sub-limits for natural hazard exposures based on the probable maximum loss of such RAIL IMPROVEMENTS.

20.3 Insurance During Operations. Upon the commencement of revenue service operations, LESSEE will procure and maintain, at its sole cost and expense, Commercial General Liability (CGL) with a limit not less for personal injury, death, and property damage in an amount not less than two hundred ninety-five million dollars (\$295,000,000), or such other limit of liability as Congress may establish from time to time applicable to LESSEE's passenger rail operations. Such policy or

policies will provide coverage to the INDEMNIFIED PARTIES as additional insured. All excess or umbrella policies shall be "follow form" and afford no less coverage than the primary policy and the policies up to two hundred ninety-five million dollars \$295,000,000 shall include one reinstatement limit for the period of the policy(ies) term.

20.4 Self Insurance.

20.4.1 The policy or policies under which coverage required by this LEASE is provided may include a deductible or self-insured retention not in cumulative excess of ten million dollars (\$10,000,000) on the condition that:

20.4.1.1 Each insurance policy expressly provides that the obligations of the policy issuer to CALTRANS as an additional insured will not be diminished in any way by LESSEE's failure to pay its deductible or self-insured retention obligation for any reason;

20.4.1.2 LESSEE provides a declaration under penalty of perjury by a CPA certifying the accountant has applied GAAP guidelines confirming the LESSEE has enough funds and resources to cover any self-insured retentions if the cumulative self-insured retentions from all required insured policies are in excess of ten million dollars (\$10,000,000); and

20.4.1.3 LESSEE promptly pays any and all amounts due under such deductible or self-insured retention in lieu of insurance proceeds that would have been payable if the insurance policies had not included a deductible or self-insured retention amount.

20.4.2 As used in this LEASE, "self insurance" means that LESSEE is itself acting as if though it were the insurance company providing the insurance required under the provisions of this LEASE.

20.5 Evidence of Insurance. In accordance with the insurance requirements above, LESSEE will furnish evidence of insurance reasonably acceptable to CALTRANS before the EFFECTIVE DATE, before commencing physical construction of the PROJECT within the PROPERTY, and before the beginning of operations. LESSEE will provide CALTRANS with evidence of renewal or replacement insurance no later than thirty (30) days after the expiration or termination of such insurance. The LESSEE must submit full copies of the commercial general liability policy, excess/umbrella liability policy, builder's risk policy, and the project-specific professional liability policy or binders with full specimen copies of the forms for each policy until such time as full copies of the policies are available. This requirement applies prior to LESSEE starting work on the PROJECT, including all subsequent renewal policies. Certificates of insurance are required for all other lines of insurance. If, through no fault of LESSEE, any of the coverage required

becomes unavailable, LESSEE will provide good faith alternative insurance packages and programs, subject to prior approval by CALTRANS, with the goal of reaching agreement on a package providing coverage equivalent to that specified herein.

20.6 Eligible Insurers. All insurance policies required to be carried by LESSEE as provided in this Section will be issued by insurance companies authorized by the Department of Insurance of the State of California or an eligible surplus lines insurer, with a Best's Rating of "A-" or better and a Financial Size Category of "VII" or better according to the most recent edition of "Best's Key Rating Guide" for insurance companies. LESSEE will furnish to CALTRANS, not less than fifteen (15) days before the date the insurance is first required to be carried by LESSEE, and thereafter before the expiration of each policy, true and correct certificates of insurance, using the appropriate ACORD form of certificate or its equivalent, evidencing the coverages required under this Section, with a copy of each policy, if requested by CALTRANS. Such certificates will provide that should any policies described therein be cancelled before the expiration date thereof, notice will be delivered to the certificate holder by the insurer in accordance with the policy provisions regarding same. Further, LESSEE agrees that the insurance coverage required hereunder will not be terminated or modified in any material way without thirty (30) days advance written notice from LESSEE to CALTRANS.

20.7 Cure. In the event LESSEE fails to procure insurance required under this Section or fail to maintain the same in full force and effect continuously during the TERM of this LEASE and any renewal thereof or fail to meet its obligations with respect to any deductible or self-insured retention amount under this LEASE, subject to the provisions of Section 20.5 above, CALTRANS will be entitled, after thirty (30) days prior written notice to LESSEE of LESSEE's default hereunder and LESSEE's failure to cure such default within said thirty (30) days, 10 days for non-payment, to require LESSEE to immediately discontinue all construction activities related to the PROJECT and immediately discontinue operation of the PRIVATE RAIL LINE until LESSEE has provided CALTRANS reasonably satisfactory evidence that the required insurance has been obtained and the other obligations of LESSEE under this Section have been met. No cessation of construction or operations required by CALTRANS under this Section will relieve LESSEE or CALTRANS of any of its other obligations under this LEASE.

20.8 CALTRANS Invitees. Should CALTRANS grant access to third parties to perform work over, near, or adjacent to the PRIVATE RAIL LINE, in accordance with its standard temporary access permit requirements, CALTRANS will require the third party to provide evidence of Commercial General Liability (CGL) with a minimum limit not less than five million dollars (\$5,000,000) each occurrence and a general aggregate limit of not less than ten million dollars (\$10,000,000) providing coverage for bodily injury, property damage, and personal injury through any combination of primary and excess or umbrella liability insurance

policies with limits restating annually. The CGL insurance must be written on an ISO occurrence form CCG 00 01 04 13 or substitute forms providing equivalent coverage. All excess or umbrella policies shall be "follow form" and afford no less coverage than the primary policy. Such CGL shall cover CALTRANS, the State of California, LESSEE, and their officers, employees, parents, subsidiaries, affiliates and agents, and volunteers (i.e, as may be the case under the CALTRANS Adopt-a-Highway program or participants in alternative punishment probation programs) and any other indemnified parties as defined in CALTRANS' temporary access permit as additional insureds using ISO Additional Insured Endorsement CG 20 10 and provide coverage for the CALTRANS and LESSEE's negligence whether sole or partial, active or passive and will not be limited to any indemnity agreement applicable to the third party's work under any temporary access permit issued by CALTRANS. The LESSEE has the right to periodically review the adequacy of the insurance coverage required by this Section in the Agreement. LESSEE may require a change or increase in the insurance coverage if the coverage requested by CALTRANS of any third party so long as the coverage required by LESSEE is customary and commonly required for work of similar in type, size, and location.

CALTRANS shall also require the third party to provide evidence of Commercial Auto Liability and Workers' Compensation coverage in limits consistent to what is required in CALTRANS temporary access permit.

If any of the work by third parties is performed within fifty (50) feet of the PRIVATE RAIL LINE, CALTRANS will also require the third party to obtain and maintain a railroad protective liability policy to protect the LESSEE and the PRIVATE RAIL LINE in a minimum amount of two million dollars (\$2,000,000) per occurrence and six million dollars (\$6,000,000) aggregate. CALTRANS will require evidence of these coverages to be provided to the LESSEE no less than fifteen (15) days prior to the commencement of the work.

20.9 Waiver. To the extent permitted by applicable law, CALTRANS and LESSEE hereby waive all rights against each other, and against the other's consultants, contractors, subcontractors, sub-subcontractors, agents, and employees, for damages covered by property insurance obtained by either in connection with the PROPERTY. The property insurance policies obtained by LESSEE related to the PROPERTY from and after the EFFECTIVE DATE will provide such waivers of subrogation by endorsement or otherwise.

Section 21. RESTRICTIONS ON TRANSFERS AND PROHIBITION OF ENCUMBRANCES

21.1 Voluntary Assignments, Subleases, and Permitted Transfers. LESSEE will not sublet the PROPERTY or any part of the PROPERTY, nor voluntarily assign this LEASE, (unless such assignment is a PERMITTED TRANSFER as stated in Section 21.1.1,) without the prior written approval of CALTRANS and the written concurrence of

FHWA. Pursuant to applicable law, the interests of BLM and CALTRANS in the PROPERTY are not subject to a lien of any kind. Except as provided below, LESSEE will not allow any mortgages, liens, or other encumbrances to attach to fee interest in the PROPERTY as a result of the financing or construction of the PROJECT or use of the PROPERTY by LESSEE and LESSEE indemnifies and agrees to hold CALTRANS harmless of and from any such encumbrances:

21.1.1 LESSEE may, without CALTRANS' written consent, assign this LEASE or transfer an equity interest in LESSEE as follows (each a "PERMITTED TRANSFER"): (i) in connection with a transaction with (A) a parent, subsidiary, affiliate, division, or entity controlling, controlled by, or under common control with LESSEE or (B) a successor entity as a result of merger, consolidation, reorganization, or government action; (ii) any transfer by the member of LESSEE of a portion of its ownership interests in LESSEE to any person provided the member of LESSEE retains an interest therein. In addition, any change in ownership of the equity interests of LESSEE as a result of a public or private offering of stock, and any transfer of the equity interests of LESSEE by persons or parties through the "over-the-counter market" or through any recognized stock exchange or through any other secondary market transaction or through a tender offer, will not be deemed to be a transfer requiring CALTRANS and FHWA consent; or any transfer permitted by Section 21.1.2.2.

21.1.2 If after completion of construction of the PROJECT and the provision of bona fide high-speed passenger rail service to the paying public on the PROPERTY for a period of at least three years, LESSEE requests CALTRANS' consent in connection with an assignment or transfer of this LEASE that is not a PERMITTED TRANSFER, CALTRANS' written consent will not be unreasonably withheld if there is no existing uncured EVENT OF DEFAULT by LESSEE and CALTRANS reasonably determines that the proposed transferee is capable of performing the obligations and covenants of LESSEE under this LEASE, which determination will be based upon and take into account the following factors: (i) the financial strength and integrity of the proposed transferee, its direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective affiliates; (ii) the experience of the proposed transferee or any operator to be engaged by the proposed transferee in operating rail systems similar to the PRIVATE RAIL LINE and performing other relevant projects; (iii) whether the proposed transferee, its proposed operator, or any of their respective officers, directors, managers, general partners, or senior management personnel (A) have been convicted of any felony or misdemeanor involving fraudulent behavior, any violation of state or federal antitrust laws with respect to a public contract, or any violation of any state or federal law involving bribery, collusion, conspiracy, or material misrepresentation with respect to a public contract, or (B) have failed to resolve any material regulatory compliance issue for a sustained period of time; and (iv) any law that would prohibit CALTRANS from directly entering into this LEASE with the proposed transferee. Any proposed transferee will be required to deliver to

CALTRANS a certificate in which the proposed transferee agrees to be bound by all the terms and conditions of this LEASE from and after the effective date of the transfer. Upon obtaining CALTRANS' written approval as provided herein, LESSEE will be solely responsible to obtain the concurrent written approval of FHWA to any assignment or transfer that is not a PERMITTED TRANSFER.

21.1.3 No assignment or transfer will relieve LESSEE of its obligations under this LEASE with respect to any period after the EFFECTIVE DATE through the effective date of the transfer. LESSEE will have no responsibility or liability for obligations under this LEASE to the extent arising from and after the effective date of such assignment or transfer. LESSEE's failure to obtain CALTRANS' required written approval of any assignment or transfer of this LEASE that is not a PERMITTED TRANSFER, will render such assignment or transfer void. Occupancy of the PROPERTY by a prospective assignee or transferee before any required written approval of the assignment or transfer by CALTRANS and FHWA will constitute a breach of this LEASE. CALTRANS' consent to any assignment or transfer will not constitute a waiver of any of the terms, covenants, or conditions of this LEASE. Such terms covenants and conditions will apply to each and every assignment and transfer of this LEASE and will be severally binding upon each and every party thereto. Any document to mortgage, pledge, hypothecate, encumber, transfer, sublet, or assign the PROPERTY or any part thereof will incorporate directly or by reference all the provisions of this LEASE.

21.2 Encumbrances. CALTRANS and LESSEE acknowledge and agree that LESSEE intends to encumber by deed of trust LESSEE's interest in the PROPERTY for the purpose of constructing the PROJECT thereon and/or the permanent financing of improvements. Any such encumbrance may be undertaken by LESSEE, at its sole cost and expense and without the consent of CALTRANS or FHWA as follows:

21.2.1 Right to Mortgage. Notwithstanding any provision of this LEASE to the contrary, LESSEE will have the right, at any time and from time to time during the TERM, and in each case without the consent of CALTRANS, to grant a trust deed to all or any portion of the leasehold estate created by this LEASE (whether or not such trustee will also cover other properties), and give as collateral to a LEASEHOLD LENDER (as defined below) an assignment of and security interest in (a) the PROPERTY and any improvements constructed by LESSEE thereon, (b) the rents, income, receipts, revenues, issues and profits issuing to the LESSEE from the PROPERTY and PROJECT, (c) any subleases entered into by LESSEE consistent with the terms of this LEASE, and (d) LESSEE's entire interest in this LEASE and the leasehold estate created hereby; provided, however, that, in order for such trust deed to be a LEASEHOLD DEED OF TRUST (as defined below) entitled to the benefits hereof: (i) such trust deed must be held by a RECOGNIZED LENDER (as defined below), (ii) such trust deed secures a loan that by its terms is required to be paid in full no later than the end of the TERM, (iii) no such trust deed will be a

lien on all or any interest of CALTRANS, (iv) a duplicate original or copy of such trust deed will be delivered to CALTRANS (together with written notice specifying the name and address of the LEASEHOLD LENDER), and (v) such trust deed will provide that insurance proceeds will be applied, and disbursed, as described in this LEASE. Any such trust deed, as the same may be renewed, extended, modified, consolidated, and replaced from time to time, is hereinafter referred to as a "LEASEHOLD DEED OF TRUST" and the holder of such a LEASEHOLD DEED OF TRUST a "LEASEHOLD LENDER". Notwithstanding the foregoing, no trust deed which LESSEE may execute or create at any time will include CALTRANS's right, title and interest in and to the PROPERTY, nor will any such trust deed subordinate or be deemed to subordinate the fee title to the PROPERTY or CALTRANS' interest in this LEASE to the security interest created by such trust deed. It is the intention and agreement of the parties hereto that during the TERM of this LEASE CALTRANS' right, title, and interest in and to the PROPERTY will not be subject to any liens or encumbrances of any kind or nature created either by LESSEE or by CALTRANS. Nothing contained in any such trust deed, and no such trust deed, will release or be deemed to release LESSEE from the full and faithful observance and performance of any covenants and conditions in this LEASE contained and on the part of LESSEE to be observed and performed, nor be deemed to constitute a waiver of any rights of CALTRANS hereunder. The terms, covenants, and conditions of this LEASE will control in case of any conflict between this LEASE and any such trust deed.

21.2.2 Foreclosure or Sale; Subsequent Transfer by Recognized Lender. Notwithstanding any provision of this LEASE to the contrary, foreclosure of a LEASEHOLD DEED OF TRUST or any sale of LESSEE's interest in this LEASE and the PROPERTY in connection with a foreclosure, whether by judicial proceedings or by virtue of any power of sale contained in a LEASEHOLD DEED OF TRUST, or any conveyance of LESSEE's interest in this LEASE and the PROPERTY from LESSEE to the LEASEHOLD LENDER or its nominee or designee by virtue of or in lieu of foreclosure or other appropriate proceedings, or the appointment of a receiver, or any transfer of the equity interests of LESSEE in connection with a foreclosure on a pledge of such equity interests (or a conveyance of such equity interests in lieu of foreclosure or other appropriate proceedings) to a RECOGNIZED LENDER (or its nominee or designee, if applicable), will not require the consent or approval of CALTRANS or constitute a breach of any provision of or a default under this LEASE. Furthermore, the prior written consent of CALTRANS will not be required for any subsequent transfer by a RECOGNIZED LENDER (or its nominee or designee, if applicable) of its interest in this LEASE (or a new lease entered into consistent with Section 21.4 (a "NEW LEASE")) or the equity interests of LESSEE if the RECOGNIZED LENDER (or its nominee or designee, if applicable) is the purchaser at such foreclosure sale, provided that the RECOGNIZED LENDER (or its nominee or designee, if applicable) forthwith gives notice to CALTRANS in writing of any such transfer, setting forth the name and address of the transferee, the effective date of such transfer and, if applicable, the express agreement of the transferee of any

interest in this LEASE assuming and agreeing to perform all of the obligations of this LEASE (or a NEW LEASE, if applicable), together with a copy of the document of which such transfer was made and, in the case of the transfer of any interest in this LEASE, the payment to CALTRANS of the processing fee provided in Section 21.8.2. Any transferee under this section will be liable to perform the obligations of the LESSEE under this LEASE (or a NEW LEASE, if applicable) only so long as such transferee holds title to the leasehold. Any subsequent transfer of the leasehold will be subject to the conditions relating thereto as set forth in this LEASE (or a NEW LEASE, if applicable).

21.3 No Amendments or Merger; Right to Cure; New Lease; Insurance Adjustments and Awards. For so long as any LEASEHOLD DEED OF TRUST is in effect:

21.3.1 Amendments. Without limiting the provisions of Section 21.3.5, but subject to Section 21.7, there will be no cancellation, termination, waiver, surrender, acceptance of surrender, amendment, change, or modification of this LEASE by joint action of CALTRANS and LESSEE or by LESSEE alone without, in each case, the prior written consent of each LEASEHOLD LENDER (and if any such action is taken without the prior written consent of a LEASEHOLD LENDER, then such action will not be effective as against such LEASEHOLD LENDER). The foregoing will not apply with respect to any CALTRANS right of cancellation or termination expressly set forth in this LEASE or any amendment hereto that is obtained in compliance with the immediately preceding sentence.

21.3.2 No Merger. There will be no merger of (i) CALTRANS's fee title to the PROPERTY, on the one hand, with (ii) this LEASE and LESSEE's leasehold estate, on the other hand, notwithstanding that said fee title and this LEASE or leasehold estate may be owned by the same person or persons. Without limiting the generality of the foregoing, no merger will result from the acquisition by LESSEE of fee title to any part of the PROPERTY (or the devolution upon any one entity of both the fee interest of CALTRANS and the leasehold estate of LESSEE).

21.3.3 Concurrent Notices. Upon and immediately after the recording of a LEASEHOLD DEED OF TRUST, LESSEE at LESSEE's expense, will [(i) cause to be recorded in the office of the Recorder of San Bernardino County, California, a duly executed and acknowledged written request for a copy of any notice of default and of any notice of sale under such LEASEHOLD DEED OF TRUST as provided by statutes relating thereto]; and (ii) furnish to CALTRANS a complete copy of the LEASEHOLD DEED OF TRUST and note secured thereby, together with the name and address of the holder thereof. CALTRANS will, upon serving LESSEE with any notice of default or termination hereunder, simultaneously serve a copy of such notice upon each LEASEHOLD LENDER, and no such notice of default or termination to LESSEE will be effective unless and until a copy is so served upon each LEASEHOLD LENDER in the manner provided in this LEASE for the giving of

notices. Each notice of default given by CALTRANS will state the amounts of whatever rent and other payments herein provided for are then claimed to be in default (or, in the case of any other default, will describe the default with reasonable specificity.) Notwithstanding anything to the contrary in this LEASE, any LEASEHOLD LENDER following the occurrence of a default under the LEASEHOLD DEED OF TRUST may (but will not be obligated to) exercise all of LESSEE's rights under this LEASE.

21.3.4 Right to Cure. In the event of any default by LESSEE under this LEASE that is reasonably susceptible to cure, each LEASEHOLD LENDER will have the same period, commencing upon written notice to each such LEASEHOLD LENDER of such default, to remedy or cause to be remedied the default complained of as LESSEE has hereunder to cure such default, plus an additional sixty (60) days in the case of default in the payment of rent and ninety (90) days in the case of any other default which is capable of being cured by the LEASEHOLD LENDER (such ninety (90) day period will be extended for a reasonable period of time to gain possession of the interest of LESSEE under the LEASE through legal proceedings if necessary to cure such default,) which period will be extended as necessary for a LEASEHOLD LENDER to obtain relief from any stay in a bankruptcy proceeding in which LESSEE is a debtor, and CALTRANS will accept performance by such LEASEHOLD LENDER within the time specified herein as timely performance by LESSEE; provided, however, that (i) nothing contained herein will be deemed to impose upon any LEASEHOLD LENDER the obligation to perform any obligation of LESSEE under this LEASE or to remedy any default by LESSEE hereunder and (ii) in the event that the LEASEHOLD LENDER or a third party succeeds to LESSEE's interest under this LEASE pursuant to foreclosure of the LEASEHOLD DEED OF TRUST, exercise of a power of sale thereunder or a deed in lieu thereof, CALTRANS waives, as against the LEASEHOLD LENDER or such third party, any default by LESSEE that is not susceptible to cure by the LEASEHOLD LENDER. Any provision of this LEASE to the contrary notwithstanding, no performance by or on behalf of a LEASEHOLD LENDER will cause it to become a "mortgagee in possession" or otherwise cause it to be deemed to be in possession of the PROPERTY or bound by or liable under this LEASE. In addition, the parties agree that if there is more than one (1) LEASEHOLD LENDER (or collateral assignee), then all cure periods provided in this paragraph will run concurrently.

21.3.5 No Right to Terminate. Notwithstanding the provisions of Section 18, CALTRANS will not have the right to terminate this LEASE or re-enter the PROPERTY by reason of a default by LESSEE that is reasonably susceptible of cure by LEASEHOLD LENDER, during the period specified in Section 21.3.4 in which a LEASEHOLD LENDER is entitled to cure a default by LESSEE, as long as:

21.3.5.1 all monetary defaults have been cured;

21.3.5.2 in the case of a non-monetary default, a LEASEHOLD LENDER will have notified CALTRANS within sixty (60) days after receipt of notice of default from CALTRANS of its intention to cure and such LEASEHOLD LENDER thereafter prosecutes the same to completion with reasonable diligence and continuity prior to the expiration of such LEASEHOLD LENDER's cure period specified in Section 21.3.4;

21.3.5.3 if possession of the PROPERTY is required in order to cure the default in question, a LEASEHOLD LENDER (i) will have entered into possession of the PROPERTY with the permission of LESSEE for such purpose or (ii) will have notified CALTRANS of its intention to institute foreclosure proceedings and will have instituted foreclosure proceedings, to obtain possession directly or through a receiver, in each case within sixty (60) days after receiving from CALTRANS a copy of a default notice, and thereafter prosecutes such proceedings with reasonable diligence and continuity or receives an assignment of this Lease in lieu of foreclosure from LESSEE, and, upon obtaining possession pursuant to clause (i) or clause (ii) above, commences promptly to cure the default in question and prosecutes the same to completion with reasonable diligence and continuity and within the time frames set out in Section 21.3.4; and

21.3.5.4 a LEASEHOLD LENDER will have proceeded pursuant to this Section and, during the period specified in Section 21.3.4, such default is cured;

provided, that, in each case the LEASEHOLD LENDER will have delivered to CALTRANS its non-binding notice of intention to take the action described in subparagraphs 21.3.5.2 or 21.3.5.3, and that during the period in which such action is being taken (and any foreclosure or sale under power proceedings are pending), all rent is paid when due. Notwithstanding the foregoing, at any time after the delivery of the aforementioned notice of intention, the LEASEHOLD LENDER may notify CALTRANS, in writing, that it has relinquished possession of the PROPERTY or that it will not institute foreclosure proceedings or, if such proceedings have been commenced, that it has discontinued them, in which case CALTRANS may immediately terminate this LEASE. For all purposes of this LEASE, the term "foreclosure proceedings" will include, in addition to proceedings to foreclose a trust deed or exercise a power of sale thereunder, where applicable, any foreclosure or similar proceedings commenced by a collateral assignee with respect to its collateral assignment.

21.4. New Lease. In the event of a termination of this LEASE for any reason whatsoever or upon the rejection of this LEASE by LESSEE or a trustee in connection with any bankruptcy proceeding, CALTRANS will promptly notify the LEASEHOLD LENDER of such termination and the amount of the sums then due to CALTRANS under this LEASE, and the LEASEHOLD LENDER will have, within a period of forty-five (45) days, the right to require CALTRANS to (and CALTRANS will) enter into a

new lease of the PROPERTY with the LEASEHOLD LENDER or its nominee or designee in accordance with the following provisions:

21.4.1 The LEASEHOLD LENDER or its nominee or designee will be entitled to such new lease if the LEASEHOLD LENDER makes written request upon CALTRANS for such new lease on or before the date which is forty-five (45) days after the date on which the LEASEHOLD LENDER receives the notice from CALTRANS of such termination and if such written request is accompanied by the LEASEHOLD LENDER's written agreement to pay to CALTRANS simultaneously with the execution and delivery of the new lease, and as a condition precedent to the effectiveness thereof, all sums then due to CALTRANS under this LEASE, including all rent and all expenses of CALTRANS, including reasonable attorneys' fees and reasonable court costs incurred by CALTRANS in connection with any and all defaults by LESSEE, the termination of this LEASE and the preparation of the new lease.

21.4.2 Such new lease will be for what would have been the remainder of the TERM (if this LEASE had not been terminated), effective as of the date of such termination, and at the same rent and upon the same terms, provisions, covenants and agreements as herein contained (other than ministerial changes), including all rights and options herein contained.

21.4.3 Such new lease will be prior to any mortgage or other lien, charge or encumbrance on CALTRANS's interest in the PROPERTY. Such new lease will, however, be subject to the same conditions of title as this LEASE is subject to on the date immediately preceding such termination.

21.4.4 If more than one LEASEHOLD LENDER makes written request upon CALTRANS in accordance with the provisions hereof for a new lease, the new lease will be delivered pursuant to the request of the LEASEHOLD LENDER holding the LEASEHOLD DEED OF TRUST that is prior in lien to all other LEASEHOLD DEEDS OF TRUST (the "FIRST LEASEHOLD LENDER"), unless the FIRST LEASEHOLD LENDER otherwise agrees in writing.

21.4.5 The conveyance by the LEASEHOLD LENDER or its nominee or designee of its interest as tenant under the new lease and in and to the PROPERTY will be permitted in accordance with the terms of 21.1.

21.4.6 Concurrently with the execution and delivery of the new lease, CALTRANS will assign to the tenant named therein (without recourse, representation or warranty) all of its right, title and interest in and to monies, if any, then held by or payable to CALTRANS which LESSEE would have been entitled to receive but for the termination of this LEASE (including all rents received from subtenants during such period).

21.4.7 Claims for Insurance Proceeds. No property insurance claims will be settled without the prior written consent of the FIRST LEASEHOLD LENDER, not to be unreasonably withheld, conditioned, or delayed, unless otherwise provided in the applicable LEASEHOLD DEED OF TRUST.

21.5 Not an Assignment, Limitation on Liability. LESSEE's making of a LEASEHOLD DEED OF TRUST will not be deemed to constitute an assignment or transfer of this LEASE, nor will any LEASEHOLD LENDER, as such, or in the exercise of its rights under this LEASE, be deemed to be an assignee or transferee of this LEASE so as to require such LEASEHOLD LENDER, as such, to assume or otherwise be obligated to perform any of LESSEE's obligations hereunder except when, and then only for so long as, such LEASEHOLD LENDER has acquired ownership and possession of LESSEE's leasehold estate pursuant to a foreclosure, sale under power, or other exercise of rights or remedies under its LEASEHOLD DEED OF TRUST or assignment in lieu of foreclosure (as distinct from its rights under this Lease to cure defaults of LESSEE hereunder). Any provision of this LEASE to the contrary notwithstanding, no LEASEHOLD LENDER, or any person acting for or on behalf of a LEASEHOLD LENDER, or any person acquiring LESSEE's leasehold estate pursuant to any foreclosure, sale under power or other exercise of a LEASEHOLD LENDER's rights under its LEASEHOLD DEED OF TRUST or assignment in lieu of foreclosure, will have any liability under or with respect to this LEASE or a new lease except with respect to such period as such person is LESSEE under this LEASE or a new lease; provided that the foregoing will not limit the obligation of such successor lessee to correct any conditions of a continuing nature that existed as of the date such successor lessee will become the lessee and are susceptible to cure by such successor lessee.

21.6 Further Assurances. Upon request by LESSEE or by any existing or prospective LEASEHOLD LENDER (and provided that LESSEE pays any reasonable costs incurred by CALTRANS in respect thereof), CALTRANS will deliver to the requesting party such documents and agreements as the requesting party reasonably requests to further effectuate the intentions of the parties with respect to LEASEHOLD DEEDS OF TRUST as set forth in this LEASE, including a separate written instrument in recordable form signed and acknowledged by CALTRANS setting forth and confirming, directly for the benefit of specified LEASEHOLD LENDERS, any or all rights of LEASEHOLD LENDERS, provided any such document or instrument does not diminish or in any material respect adversely affect any of CALTRANS's rights, benefits, or protections under this LEASE or increase in any material respect the obligations of CALTRANS. LESSEE will pay the reasonable expense CALTRANS' legal counsel incurs in connection with any document or instrument required by this Section 21.6.

21.7 Requests for Modification of Lease by LEASEHOLD LENDER. If any LEASEHOLD LENDER (including any prospective LEASEHOLD LENDER that becomes a LEASEHOLD LENDER contingent upon such modification being implemented)

requires any modifications of this LEASE, CALTRANS will, at LESSEE's request, promptly execute and deliver to LESSEE such instruments effecting such modifications as LESSEE reasonably requires, provided that such modifications (in CALTRANS's good faith judgment) do not diminish or in any material respect adversely affect any of CALTRANS's rights, benefits, or protections under this LEASE or increase the obligations of CALTRANS. LESSEE will pay the reasonable expense CALTRANS legal counsel incurs in connection with modifications of the LEASE required by this Section 21.7.

21.8 Processing Fees for Assignments, Permitted Transfers and Encumbrances.

21.8.1 A fee of two thousand five-hundred dollars (\$2,500) will be paid to CALTRANS for processing each consent to mortgage, pledge, hypothecation, or encumbrance submitted to CALTRANS except for the initial such document submitted to CALTRANS as required by this LEASE. This processing fee will be deemed earned by CALTRANS when paid and will not be refundable.

21.8.2 A fee of two thousand five-hundred dollars (\$2,500) will be paid to CALTRANS for processing each consent to assignment, transfer, or sublease to CALTRANS as required by this LEASE. This processing fee will be deemed earned by CALTRANS when paid and will not be refundable.

21.8.3 If a processing fee has been paid by LESSEE for another phase of the same transaction, a second fee will not be charged.

21.8.4 The amounts specified above for processing fees will be automatically adjusted at the end of the first year of this LEASE and every year thereafter in accordance with an annual fee schedule adopted by CALTRANS. CALTRANS will make said fee schedule available to LESSEE upon receiving a request therefor.

Section 22. NON-DISCRIMINATION

LESSEE will comply with all applicable state and federal non-discrimination and public accommodation laws with respect to its use of the PROPERTY.

Section 23. FORCE MAJEURE

Notwithstanding anything to the contrary contained in this LEASE, should any fire or other casualty, act of nature, earthquake, flood, hurricane, lightning, tornado, epidemic, landslide, war, terrorism, riot, civil commotion, general unavailability of materials, strike, slowdown, labor dispute, governmental laws or regulations, or other occurrence beyond LESSEE's or CALTRANS' control prevent performance of this LEASE in accordance with its provisions, provided that such event does not arise by reason of the negligence or misconduct of the performing

party, performance of this LEASE by either party will be suspended or excused to the extent and for a period commensurate with such occurrence.

Section 24. Dispute Resolution.

24.1 Good Faith. The parties agree to work in good faith to resolve any dispute that may arise under this LEASE through direct discussions.

24.2 Dispute Resolution Process.

24.2.1 If the parties are unable to resolve a dispute within ten (10) days of written notice of a dispute, LESSEE and CALTRANS will, at the written request of either party, require that the matter be reviewed by a senior level executive of each party (in the case of LESSEE, by a Senior Vice President or higher, and in the case of CALTRANS, by the District Director or higher.)

24.2.2 If senior officers are unable to resolve the matter within ten (10) business days, then LESSEE and CALTRANS will, at the written request of either party, attempt to mediate their dispute for a period of thirty (30) days, using a third-party mediator who is neutral and independent of the parties, such mediator to be jointly selected by LESSEE and CALTRANS within seven (7) business days after the end of the 10-day period of discussions between senior level officers. If the parties cannot agree on the mediator within such time period, then within five (5) days thereafter, each party will select an independent neutral, and those two neutrals will within five (5) days select the mediator. Mediation will be conducted in San Bernardino County, California.

24.2.3 No information exchanged in mediation will be discoverable or admissible in any litigation involving the parties, consistent with California Evidence Code sections 1119 et seq. and 1121. Neither party will be bound by the result of the mediation process described in this Section, but participation in such mediation process will be a condition for either of the parties to file a lawsuit or to initiate a formal administrative proceeding related to this LEASE or the PROJECT. All statutes of limitation related to claims or defenses that can be asserted by either party in relation to the dispute will be tolled during the formal dispute-resolution process described in this Section.

24.3 Each party will bear its own costs, including attorney fees, that it incurs in relation to the dispute-resolution process described in this Section. In the event the parties use a mediator, they will share equally in the costs of the mediator's services.

Section 25. TERM

The term of this LEASE will be a period of fifty (50) years commencing on the EFFECTIVE DATE, unless otherwise terminated in accordance with the terms and conditions contained herein or otherwise agreed to in writing by the parties (the "INITIAL TERM"). LESSEE will have the right to renew this LEASE for an additional term of forty-nine (49) years (the "RENEWAL TERM"), under the same terms and conditions, by delivering a written notice of its intention to renew the LEASE to CALTRANS no later than one hundred eighty (180) days before the end of the INITIAL TERM. The INITIAL TERM and the RENEWAL TERM (if any) are collectively referred to as the "TERM" throughout this LEASE.

Section 26. TERMINATION

26.1 Termination. Subject to the rights of any RECOGNIZED LENDER under this LEASE, including the rights set forth in Sections 21.2 through 21.7, upon the termination or the expiration of this LEASE, this LEASE will end, the obligation to pay costs will terminate, and CALTRANS and LESSEE will have no further obligation or commitment under this LEASE, except as to obligations and commitments that are expressly stated to survive the expiration or termination of this LEASE.

26.2 Termination by Mutual Consent. Notwithstanding any provision herein to the contrary, this LEASE may be terminated by mutual written consent of CALTRANS and LESSEE.

Section 27. GENERAL CONDITIONS

27.1 Governing Law. Except on subjects preempted by federal law, this LEASE will be governed by and construed in accordance with the laws of the State of California. Nothing herein is meant to be or will be interpreted to be a waiver of principles of legal preemption or preclusion that may apply to LESSEE because of its status as a common carrier regulated by the federal government.

27.2 Entire LEASE. This LEASE, (including exhibits, attachments, and other documents, manuals, etc. incorporated herein,) is the full and complete agreement between the parties with respect to the transaction contemplated herein.

27.3 Exhibits. All exhibits attached to this LEASE are made a part of this LEASE by this reference.

27.4 Reasonableness. Unless this LEASE specifically provides for the granting of consent or approval at a party's sole discretion, then consents and approvals which may be given or requested by a party under this LEASE will not (whether or not so indicated elsewhere in this LEASE) be unreasonably withheld or conditioned by such party and will be given or denied within the time period provided, and if no such time period has been provided, within a reasonable time. Upon disapproval of any request for a consent or approval, the disapproving party will, with notice of such disapproval, submit to the requesting party a written statement setting forth with specificity its reasons for such disapproval.

27.5 Severability. If any provision of this LEASE, or the application of a provision to any person, place, or circumstance, is held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, such provision will be enforced to the maximum extent possible so as to effect the intent of the parties; or, if incapable of such enforcement or unable to achieve the intent of the parties, will be deemed to be deleted, and the remainder of this LEASE and such provisions as applied to other persons, places, and circumstances will remain in full force and effect. In such an event, the parties agree to negotiate an amendment to replace or modify any invalid or illegal or unenforceable provision and related provisions with valid, legal, and enforceable provisions that most closely and reasonably approximate the intent and economic effect of the invalid, illegal, or unenforceable provision.

27.6 Interpretation. The section and paragraph headings in this LEASE are for convenience only and will not be used for any purpose in the interpretation of this LEASE. When the context requires, the plural will include the singular and the singular the plural. References to agreements or contracts are to such agreement or contract as may be amended, restated, or otherwise modified from time to time. The words "include," "includes," and "including" are used without limitation and are deemed to be followed by the phrase "without limitation." Notwithstanding specific references to "good faith," the duty of good faith and fair dealing applies generally with respect to this LEASE, except where the context requires otherwise.

27.7 Amendments. This LEASE may only be modified or changed by written amendment signed by authorized representatives of the parties.

27.8 Relationship of the Parties. Each party is and will at all times be and remain independent from the other party and will not be deemed an agent, fiduciary, partner, joint-venturer, employee, or employer of the other party. Nothing contained herein will have the effect of creating a trust, joint venture, partnership, or employment relationship between the parties. Neither of the parties has any right or power to obligate or bind the other party in any manner whatsoever.

27.9 Waivers. Any waiver, modification, consent, or acquiescence with respect to any provision of this LEASE must be set forth in writing and duly executed by or on behalf of the party to be bound by it. No waiver by any party of any breach will be deemed a waiver of any other or subsequent breach.

27.10 Notices. Any communication, notice, or demand of any kind whatsoever which a party may be required or may desire to give to or serve upon the other party must be in writing and delivered by personal service (including express or courier service) or by registered or certified mail, postage prepaid, return receipt requested, or by a nationally recognized overnight delivery service, in each case addressed as follows:

LESSEE: DesertXpress Enterprises, LLC
Attn: Sarah Watterson, President
6700 Via Austi Way, Suite B
Las Vegas, NV 89119

With a copy to:

David Pickett
Associate General Counsel
DesertXpress Enterprises, LLC
6700 Via Austi Way, Suite B
Las Vegas, NV 89119

CALTRANS: California Department of Transportation, District 8
Attn: Michael Beauchamp, District Director
464 West 4th Street
San Bernardino, CA 92401

With a copy to:

Julie Del Rivo
Assistant Chief Counsel
California Department of Transportation, Legal Division
100 S. Main Street, Suite 1300
Los Angeles, CA 90012

Without requiring an amendment to this LEASE, either party may change its address for notice by written notice given to the other party in the manner provided in this Section. Any such communication, notice, or demand will be deemed to have been duly given or served on the date personally served, if by personal service; three (3) days after being placed in the U.S. Mail, if mailed; or

one (1) day after being delivered to an overnight delivery service, if sent by overnight delivery.

27.11 No Third-Party Beneficiaries. This LEASE is for the exclusive benefit of the parties to it and not for the benefit of any third party, except to the extent expressly contemplated in this LEASE in favor of any RECOGNIZED LENDER.

27.12 Authority and Binding Effect. Each individual executing this LEASE affirms that he or she has the capacity set forth on the signature pages and has full power and authority to execute this LEASE and, through his or her execution, bind the party on whose behalf he or she is executing the LEASE.

27.13 Counterparts. This LEASE may be signed in counterparts, each of which will be deemed an original but all of which will together constitute one and the same instrument.

The parties have executed this LEASE as of the EFFECTIVE DATE.

DESERTXPRESS ENTERPRISES, LLC

**CALIFORNIA DEPARTMENT OF
TRANSPORTATION**

By: _____
Sarah Watterson
President
DesertXpress Enterprises, LLC

By: _____
Name: _____
Title: _____

Approved as to Form:

Approved as to Form:

By: _____
Myles Tobin
General Counsel
DesertXpress Enterprises, LLC

By: _____
Name: _____
Title: _____

EXHIBIT A

Drawings Showing General Depiction of Leased Property