

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION
RIGHT OF ENTRY AGREEMENT
WITH
CITY OF CORONA**

THIS RIGHT OF ENTRY AGREEMENT (hereinafter referred to as the "Agreement"), is made this 26th day of NOVEMBER, 2019 by and between the **RIVERSIDE COUNTY TRANSPORTATION COMMISSION**, a public agency existing under the authority of the laws of the State of California (hereinafter referred to as "RCTC") and the **CITY OF CORONA**, a California municipal corporation (hereinafter referred to as "Permittee").

RECITALS

A. RCTC is the owner in fee of certain real property located in the City of Corona, County of Riverside, State of California.

B. Permittee wishes to enter a certain portion of property owned by RCTC for the purposes specified in Item 2 of the Basic Provisions of this Agreement.

PART I. BASIC PROVISIONS

1. Description of Property:

A portion of RCTC real property in the City of Corona, County of Riverside, State of California, as more particularly depicted in the attached **Exhibit "A"** (the "Property").

2. Use of Property:

To enter onto the Property, on a temporary basis, for the purpose of placing debris removed from the Bedford Wash PCC Channel and stockpiling removed debris ("**Stockpiled Material**") onto the Property (the "**Activity**").

Stockpiled Material may be stored on the Property until October 31, 2021 ("**Restoration Deadline**").

To enter onto the Property in order to remove the Stockpiled Material and restore the Property, as further detailed in Part II, Section 14 below ("**Restoration Work**").

3. Term:

This Agreement shall remain in effect until the earlier of: October 31, 2021 or the date the City provides notification to RCTC that the Restoration Work is completed, subject to the following.

- a. Permittee shall have the right to enter onto the Property for the Activity from November 18, 2019 to February 15, 2020.
- b. If the Restoration Work is not completed by February 15, 2020, Permittee shall have the right to enter onto the Property for thirty (30) calendar days to complete the Restoration Work prior to the Restoration Deadline, after providing written notification to RCTC of its intention to commence the Restoration Work, and providing current evidence of the insurance required under this Agreement.

4. Processing/ Agreement Fee: Not Applicable.

5. RCTC's Address:

Riverside County Transportation Commission
4080 Lemon Street, Third Floor
Riverside, California 92502-2208
Attention: Executive Director

6. Permittee's Address:

City of Corona
400 S. Vicentia Avenue, Suite 210
Corona, CA 92882
Attention: Barry Ghaemi

PART II. GENERAL AGREEMENT PROVISIONS

1. Right of Entry. RCTC hereby grants to Permittee and its agents, employees and contractors the temporary right to enter onto the Property for the purpose of the Activity and the Restoration Work, at Permittee's sole cost and expense, and for no other purpose.

2. Term. The term ("Term") of this Agreement is as specified in Item 3 of the Basic Provisions. This Agreement shall be a right of entry for the term specified in Item 3 of the Basic Provisions; provided, however, that RCTC shall have the absolute right to terminate this Agreement prior to the date specified in Item 3 in its sole discretion pursuant to the termination provisions provided herein.

3. Use. Permittee shall use the Property solely for the purposes specified in Item 2 of the Basic Provisions and for such lawful purposes as may be directly incidental thereto. No change shall be made by Permittee in the use of the Property without RCTC's prior written approval. In using the Property under this Agreement, Permittee shall not interfere with RCTC's normal operation of its Property, or any adjacent properties.

4. Condition of Premises. PERMITTEE ACCEPTS THE PROPERTY IN ITS "AS IS" CONDITION, WITH ALL FAULTS. PERMITTEE ACKNOWLEDGES AND AGREES THAT PERMITTEE IS ENTERING THE PROPERTY UNDER THIS AGREEMENT BASED ON PERMITTEE'S OWN INVESTIGATIONS AND KNOWLEDGE OF THE PROPERTY AND THAT, EXCEPT AS OTHERWISE SPECIFICALLY STATED IN THIS AGREEMENT, NEITHER RCTC NOR ANY AGENT OF RCTC, HAS MADE ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO THE PHYSICAL CONDITION OF THE PROPERTY OR THE SUITABILITY OF THE PROPERTY FOR ANY PARTICULAR PURPOSE OR USE, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATIONS OR WARRANTIES REGARDING THE APPLICABILITY OR NON-APPLICABILITY OF ANY LAWS, THE SOIL OR SUBSOIL, SURFACE OR SUBSURFACE CONDITIONS, TOPOGRAPHY, POSSIBLE HAZARDOUS SUBSTANCES CONTAMINATION, FILL, DRAINAGE, ACCESS TO PUBLIC ROADS, AVAILABILITY OF UTILITIES, EXISTENCE OF UNDERGROUND STORAGE TANKS, APPLICABILITY OF OR COMPLIANCE WITH ANY ENVIRONMENTAL LAWS OR ANY OTHER MATTER OF ANY NATURE WHATSOEVER. RCTC IS NOT RESPONSIBLE FOR DAMAGE TO OR LOSS BY THEFT OF PERMITTEE'S PROPERTY LOCATED IN OR ON THE PROPERTY.

5. Liens. Permittee shall not permit to be placed against the Property, or any part thereof, any design professionals', mechanics', materialmen's contractors' or subcontractors' liens with regard to any actions upon the Property pursuant to this Agreement. Permittee agrees to hold RCTC harmless for any loss or expense, including reasonable attorneys' fees and costs, arising from any such liens which may be filed against the Property.

6. Indemnification and Defense.

6.1. Permittee hereby agrees to indemnify, defend, assume all liability for and hold harmless RCTC and its officers, employees, agents and representatives, to the maximum extent allowed by law, from all actions, claims, suits, penalties, obligations, liabilities, damages to property, costs and expenses (including, without limitation, any fines, penalties, judgments, settlements, actual litigation expenses and experts' and actual attorneys' fees), environmental claims or bodily and/or personal injuries or death to any persons, arising out of or in any way connected to any of the following: (i) the use of the Property pursuant to this Agreement, (ii) the Activity, (iii) the Restoration Work, or (iv) any acts or omissions of Permittee or anyone authorized to enter the Property pursuant to Item 1 of the General Agreement Provisions in connection with or arising from

any entry onto the Property or the performance of the Activity or the Restoration Work. This provision shall apply regardless of whether such damage or claim shall accrue or be discovered before or after the termination of this Agreement.

6.2. Upon written notice from RCTC, Permittee agrees to assume the defense of any lawsuit, administrative action or other proceeding for which Permittee has an obligation to defend pursuant to Section 6.1 above.

6.3. The obligations under this Section 6 shall apply except to the extent of the sole negligence or willful misconduct of RCTC, and are in addition to any other rights or remedies under the law or under this Agreement. This Section 6 shall survive the revocation or termination of this Agreement.

7. Assumption of Risk and Waiver. To the maximum extent allowed by law, Permittee releases RCTC from and assumes any and all risk of loss, damage or injury of any kind to any person or property, including without limitation, the Property, RCTC's property and any other property of, or under the control or custody of Permittee, which is on or near the Property. Permittee's assumption of risk shall include, without limitation, loss or damage caused by defects in any structure or improvement on the Property, accident or fire or other casualty on the Property. Permittee, on behalf of itself and its Personnel, as a material part of the consideration for this Agreement, hereby waives all claims and demands against RCTC for any such loss, damage or injury of Permittee and/or its Personnel. In that connection, Permittee waives, for itself and its Personnel, the benefit of California Civil Code Section 1542, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

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

8. Compliance with Laws/Permits. Permittee shall, in all activities undertaken pursuant to this Agreement, comply and cause its contractors, agents and employees to comply with all federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, policies and decrees. Without limiting the

generality of the foregoing, Permittee, at its sole cost and expense, shall obtain any and all permits which may be required by any law, regulation or ordinance for any activities Permittee desires to conduct or have conducted pursuant to this Agreement including, but not limited to, any environmental permits required for the Restoration Work including for movement of the Stockpiled Material from the Property to the wash banks and invert to restore the channel to its pre-eroded condition by the Restoration Deadline.

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

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

11. Notice. Any notice hereunder to be given by RCTC to Permittee shall be deemed to be properly served on the date it is deposited in the United States Mail, postage prepaid, addressed as specified in Part I.

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

13. Revocable Right; Termination. Notwithstanding any other provision of this Agreement, this Agreement is revocable and may be terminated at any time by either party upon one (1) business day's prior notice in writing to be served upon the other party. In cases of an emergency or a breach of this Agreement by Permittee, this Agreement may be terminated by RCTC immediately. In the event of termination pursuant to this section, Permittee shall complete the Restoration Work and restore the Property to the condition in which it was prior to Permittee's initial entry within fifteen (15) business days of the effective date of termination.

14. Restoration of the Property. Permittee shall be responsible for the Restoration Work. As part of the Restoration Work, Permittee shall, at its own cost and expense, restore the Property to the same condition in which it was prior to Permittee's initial entry. The Restoration Work shall include removal of the Stockpiled Material from the temporary site on the Property. In case Permittee shall fail to complete the Restoration Work and restore the Property to its prior condition within ten (10) business days after the Restoration Deadline, RCTC may proceed with such work at the expense of Permittee. This section shall survive the expiration, termination or revocation of this Agreement.

15. Insurance. Permittee shall comply with the insurance provisions contained in Exhibit "B", attached hereto and incorporated herein by reference.

16. Continuing Liability. No termination of this Agreement shall release Permittee from any liability or obligation hereunder resulting from any acts, omissions or events happening prior the termination of this Agreement and restoration of the property to its prior condition.

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

18. Electronic Delivery of Agreement. A manually signed copy of this Agreement which is transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes.

19. Severability. Should any term of this Agreement be deemed unlawful or unenforceable by a court of competent jurisdiction, that provision shall be severed and the remaining terms may continue to be fully enforced.

20. Authority. The persons signing below represent and warrant that they have the requisite authority to bind the entities on whose behalf they are signing.

21. Entire Agreement. This Agreement and the exhibits attached hereto constitute the entire agreement between RCTC and Permittee with respect to the subject matter hereof and supersede all prior verbal or written agreements and understandings between the parties with respect to the items set forth herein.

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

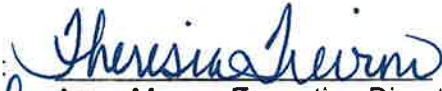
[Signatures on following page]

**SIGNATURE PAGE TO
RIGHT OF ENTRY AGREEMENT**

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

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

CITY OF CORONA

By: 
for Anne Mayer, Executive Director

By:  *TH*
Title: William C. Henderson

APPROVED AS TO FORM:

ATTEST:

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

By: 
City Clerk

APPROVED AS TO FORM:

By: 
City Attorney

EXHIBIT "A"

DEPICTION OF PROPERTY

The Property is identified on the attached grading plan as the "Stockpile location".

[plan attached behind this page]

EXHIBIT "B"

INSURANCE REQUIREMENTS

Permittee shall obtain, and shall require any consultant, contractor or agent entering the Property on its behalf to obtain insurance (or acceptable proof of adequate self-insurance, as determined in RCTC's sole discretion) of the types and in the amounts described below and satisfactory to RCTC.

A. Commercial General Liability Insurance. Permittee shall maintain occurrence version commercial general liability insurance or equivalent form with a combined single limit of not less than two million dollars (\$2,000,000) per occurrence. If such insurance includes a general aggregate limit, it shall apply separately to this Agreement or be no less than two times the occurrence limit. Such insurance shall:

B. Automobile Liability. Permittee shall acquire and maintain during the period of the Activity, automobile liability with a combined single limit of one million dollars (\$1,000,000).

C. Insurance Endorsements. The general liability and automobile liability policies required in (A) and (B) above shall comply with the following:

1. Include RCTC and its officials, officers, employees, agents, and consultants as additional insureds with respect to the performance of the Activity and the use of the Property and shall contain no special limitations on the scope of coverage or the protection afforded to these insureds;

2. Be primary with respect to any insurance or self-insurance programs covering RCTC, its officials, officers, employees, agents and consultants;

3. Contain standard separation of insured provisions; and

4. If the Activity is to be held within fifty (50) feet of RCTC's railroad right of way or railroad tracks, the general liability insurance shall not include any restrictions related to indemnity for work performed within fifty (50) feet of the Commission's railroad right of way/tracks.

D. Workers' Compensation Insurance. Permittee shall maintain workers' compensation insurance with statutory limits and employers' liability insurance with limits of not less than one million dollars (\$1,000,000) each accident.

E. Certificates of Insurance. Permittee, and any consultant, contractor or agent entering the Property on its behalf, shall, prior to entering the Property,

furnish RCTC with properly executed certificates of insurance or self-insurance (if permitted in the sole discretion of RCTC) and, if requested by RCTC, certified copies of endorsements and policies, which clearly evidence all insurance required under this Agreement and provide that such insurance shall be not canceled, allowed to expire or be materially reduced in coverage, except on prior written notice to RCTC. If the Activity is within fifty (50) feet of active railroad tracks, the certificate shall also evidence the insurer's knowledge of the proximity of the operations of Permittee to active railroad tracks. RCTC shall have the sole discretion to determine whether the certificates and endorsements presented comply with the provisions of this Agreement.

F. Coverage Maintenance. Permittee shall replace certificates, policies and endorsements for any insurance expiring prior to the termination of this Agreement. Permittee shall maintain such insurance from the execution of this Agreement until the performance of the Activity is complete and the Property is fully restored.

G. Licensed Insurer. Permittee shall place such insurance with insurers having A.M. Best Company ratings of no less than A:VIII and licensed to do business in California, unless otherwise approved, in writing, by RCTC, or unless the coverage is met with the appropriate self-insurance of Permittee.