



Pacific Railroad Company, (UPRR) and the BNSF Railway Corporation. (BNSF).

- E. Oversized Load is any load or vehicle required by State of California Department of Motor Vehicles current Vehicle Code Division 15 - Size, Weight, and Load. Oversize Load is required to obtain a permit to operate on a highway or any vehicle or load otherwise required by any local municipality to obtain a permit to operate on a street.
- F. Property and Right-of-Way is defined herein to mean the real and/or personal property of SCRRA and/or Member Agencies.
- G. SCRRA is a five-county joint powers authority, created pursuant to State of California Public Utilities Code Section 130255 and California Government Code Section 6500 et seq., to build and operate the "Metrolink" commuter train system in the five-county area on rail rights-of-ways owned by the Member Agencies. The five-county Member Agencies are comprised of the following: Los Angeles County Metropolitan Transportation Authority (MTA), Ventura County Transportation Commission (VCTC), Orange County Transportation Authority (OCTA), San Bernardino County Transportation Authority (SBCTA), and Riverside County Transportation Commission (RCTC).
- H. SCRRA Facilities are railroad signal or communication line equipment, crossing warning devices, or other real property owned by Member Agency or SCRRA.
- I. SCRRA Employee-In-Charge (EIC) is a Southern California Regional Rail Authority employee or contractor (SCRRA General Code of Operating Rules and Territory Qualified) providing warning to Public Agency or Contractor personnel of approaching trains or on track equipment and who has the authority to halt work and to remove personnel from the Right-of-Way to assure safe work.

## 2. **Entry Onto Right-of-Way**

No verbal approvals will be granted. A fully executed copy of this Form 4 must be in the possession of the contractor at the crossing site and must be produced by Contractor upon request by SCRRA or Member Agency's representative. If said Agreement is not produced, SCRRA has the right to delay the crossing until Contractor demonstrates possession of the Form 4 at the crossing site. SCRRA EIC must be present whenever the Contractor crosses the Right-of-Way. SCRRA will also provide additional personnel and equipment for protection deemed necessary by SCRRA. SCRRA involvement in providing positive protection shall not relieve the Contractor from its complete responsibility for the adequacy and safety of its operation. The Contractor shall furnish information so that SCRRA can take all precautionary measures to eliminate the risk of a collision between a train and the oversize load being moved. If movement of signal or communication line equipment, crossing warning devices, or any other facility alterations are required, the Contractor will pay the expense before the move is scheduled. If, for any reason, it is necessary to change the time and/or date when this move is scheduled, the Contractor shall contact SCRRA's ROW Encroachments Coordinator (See SCRRA Contact on Page 5) and not begin work until it has been approved in writing and appropriate safety protection can be rescheduled.

## 3. **Termination of Agreement**

SCRRA or Member Agency reserves the right to terminate or revoke this Agreement at any time upon two hours notice; however, in the event of an unsafe condition on the Right-of-Way, SCRRA shall have the right to terminate this Agreement immediately, without any advanced notice. Unless subsequently modified, extended, terminated or revoked by SCRRA, this temporary Agreement shall extend until the work authorized hereunder is completed or accepted by SCRRA. The Contractor agrees to notify SCRRA, in writing and orally, when crossing of the Right-of-Way is completed. (See SCRRA contact on Page 5)

At the request of SCRRA or Member Agency, Contractor shall remove from the Right-of-Way any employee or other individual who fails to conform to the instructions of SCRRA's or Member Agency's representative in connection with the crossing of the Right-of-Way. Any right of Contractor to cross the Right-of-Way shall be suspended until such request of SCRRA or Member Agency is met. Contractors shall defend, indemnify and hold harmless SCRRA and Member Agency against any claim arising from the removal of any such employee or other individual from the Right-of-Way.

#### 4. **Indemnification**

Contractor, on behalf of itself and its employees, subcontractors, agents, successors, and assigns, agrees to indemnify, defend, by counsel satisfactory to SCRRA and Member Agency, and hold harmless "Indemnitees", and each of them to the maximum extent allowed by law, from and against all loss, liability, claims, demands, suits, liens, claims of lien, damages (including incidental consequential damages), costs and expenses (including, without limitation, any fines, penalties, judgments, actual litigation expenses, and experts' and actual attorneys' fees), that are incurred by or asserted against Indemnitees arising out of or connected in any manner with (i) the acts or omissions of the Contractor, or its officers, directors, affiliates, subcontractors or agents or anyone directly or indirectly employed by them or for whose acts the foregoing persons are liable (collectively, "Personnel") in connection with or arising from the presence upon or performance of activities by the Contractor or its Personnel with respect to the Right-of-Way, (ii) bodily and/or personal injury or death of any person (including without limitation employees of Indemnitees) or damage to or loss of use of Property resulting from such acts or omissions of the Contractor or its Personnel, or (iii) non-performance or breach by Contractor or its Personnel of any term or condition of this Agreement, in each case whether occurring during the term of this Agreement or thereafter.

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

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

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

#### 5. **Assumption of Liability**

To the maximum extent allowed by law, the Contractor releases Indemnitees 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 and/or Right-of-Way and any other property of, or under the control or custody of, the Contractor or its personnel in connection with any acts undertaken under or in connection with this Agreement. The Contractor's assumption of risk shall include, without limitation, loss or damage caused by defects in any structure or improvements (including easement, lease or license agreements for other existing improvements and utilities) on the Right-of-Way, accident or fire or other casualty on the Right-of-Way, or electrical discharge, noise or vibration resulting from SCRRA, Member Agency, and Operating Railroad transit operations on or near the Right-of-Way and any other persons or companies employed, retained or engaged by SCRRA or Member Agency. The Contractor, on behalf of itself and its Personnel (as defined in Section 4, "Indemnification") as a material part of the consideration for this Agreement, hereby waives all claims and demands against the Indemnitees for any such loss, damage or injury of the Contractor and/or its Personnel. The Contractor waives the benefit of California Civil Code Section 1542, which provides as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

The provisions of this Section shall survive the termination or expiration of this Agreement.

## 6. **Reimbursement of Costs and Expenditures**

The Contractor agrees to reimburse SCRRA or any Member Agency actual cost and expense incurred. This includes cost of plan review, administrative, safety training, utility marking, flagging services fees, and work performed in connection with said work, including applicable overhead rates. Refer to SCRRA's Schedule of Fees for more information. SCRRA will charge the Contractor four hours minimum for the mandatory safety training class and for other services four hours or less in duration. SCRRA will charge the Contractor for eight hours minimum if the Contractor cancels SCRRA services after SCRRA EIC or SCRRA Safety Training Officer is on site on the day of the appointment.

The Contractor also agrees to reimburse SCRRA, any Member Agency and/or any Operating Railroad for any and all cost and expense incurred as a result of Contractor's work which may result in (i) unscheduled delay to the trains or interference in any manner with the operation of trains, (ii) unscheduled disruption to normal train operation, (iii) unreasonable inconvenience to the public or private user of the system, (iv) loss of revenue, and (v) alternative method of transportation for passengers. SCRRA will submit final bills to the Contractor for cost incurred.

SCRRA will provide the cost of all SCRRA services based on Contractor's input. Prior to commencement of work, the Contractor shall provide deposit representing the estimated expense to be incurred by SCRRA and Member Agency in connection with said work. As the work progresses, SCRRA may require additional progress payments as the scope of work changes or becomes clearer. SCRRA may discontinue services to Contractor pending receipt of progress payments. The deposit and progress payments shall be applied to SCRRA's and Member Agency's actual costs and expenditures. The Contractor shall be responsible to pay any amount exceeding the above payments upon receipt of notice or invoice by SCRRA. SCRRA shall exercise its best efforts to provide final invoicing to Contractor within 90 days



following completion of the work; however, Contractor acknowledges that it shall be responsible for payment of all expenses incurred by SCRRA and Member Agency in connection with the work even if the final invoicing is provided to Contractor thereafter. Upon completion of all work, any payments in excess of SCRRA's and Member Agency's costs and expenditures shall be returned to the Contractor within a reasonable time.

If the Contractor stop the work in the right-of-way for three months or longer and then plans to resume the work, he/she shall notify SCRRA as per contact information shown in Section 9 below prior to resumption of the work.

7. **Emergency Telephone Numbers**

The Contractor must immediately contact SCRRA in case of accidents, personal injury, defect in track, bridge or signals, or any unusual condition that may affect the safe operation of the railroads. The following are SCRRA's emergency numbers:

<b>Signal Emergencies and Grade Crossing Problems</b>	<b>(888) 446-9721</b>
<b>Metrolink Chief Dispatcher</b>	<b>(909) 596-3584 or (888) 446-9715</b>
<b>Metrolink Sheriff's Dispatcher</b>	<b>(323) 563-5280</b>
<b>Signal and Communications Cable Location</b>	<b>(909) 592-1346</b>

8. **California Law**

This agreement shall be construed and interpreted in accordance with and governed by the laws of the State of California. Venue shall be located in courts in Los Angeles County.

9. **SCRRA Contact**

All information and documents shall be submitted to the following:

Southern California Regional Rail Authority (SCRRA)  
2558 Supply Street  
Pomona, California 91767  
Attn: Mr. Christos Sourmelis - ROW Encroachments Coordinator  
Email: sourmelisc@scrra.net  
(909) 392-8463



The Contractor hereby agrees to the terms as set forth in this Agreement, and hereby acknowledges receipt of this Agreement.

\_\_\_\_\_  
*(Name of Contractor)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Address)*

\_\_\_\_\_  
*(Print Name)*

\_\_\_\_\_

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Telephone)*

\_\_\_\_\_  
*(Contractor's State License No.)*

\_\_\_\_\_  
*(Fax)*

\_\_\_\_\_  
*(Email)*

Receipt of the foregoing agreement is hereby acknowledged on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

By: \_\_\_\_\_  
ROW Encroachments Coordinator

By: \_\_\_\_\_  
Principal Engineer, Project Delivery

[Approved as To Form By Legal Counsel]