

**ATTACHMENT "E"**  
**CONSENT TO ASSIGNMENT AND ASSUMPTION OF LEASE**

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For SBCTA Contract No. \_\_\_\_\_

The parties to this Consent to Assignment and Assumption of Lease (“Agreement”) are:

LANDLORD (“SBCTA”):

SAN BERNARDINO ASSOCIATED GOVERNMENTS, acting  
solely in its capacity as the San Bernardino County Transportation  
Authority

TENANT (“ASSIGNOR”):

\_\_\_\_\_

ASSIGNEE:

\_\_\_\_\_

RECITALS

ASSIGNOR is party to a lease with SBCTA dated \_\_\_\_\_ and known to SBCTA as Contract No. \_\_\_\_\_ (the “Lease”), relating to the use by ASSIGNOR of a portion of SBCTA’s property (the “Premises”) located at \_\_\_\_\_ in San Bernardino County, as described in the Lease, which Lease, together with any and all modifications, supplements and amendments thereto, whether or not referred to above, are attached as Exhibit “A” to this Agreement, and incorporated herein by reference; and  
ASSIGNOR has agreed to the assignment to ASSIGNEE of all of the interest of ASSIGNOR in the Lease for use by ASSIGNEE exclusively for the purpose described in the Lease, such agreement, however, being subject to the consent of SBCTA as required by Lease; and  
ASSIGNOR and ASSIGNEE hereby seek SBCTA’s consent to such assignment, and in consideration therefore, agree to the terms and conditions set forth herein.

NOW, THEREFORE, SBCTA, ASSIGNOR and ASSIGNEE, for valid consideration hereby acknowledged and received, do hereby agree as follows:

1. Consent to Assignment. SBCTA hereby consents to the assignment by ASSIGNOR to ASSIGNEE of all of ASSIGNOR’s interest in the Lease. As consideration for SBCTA’s consent, ASSIGNOR shall pay to SBCTA the sum of \_\_\_\_\_ (\$ \_\_\_\_\_).
  
2. Further Assignment. The parties hereto acknowledge and agree that ASSIGNEE shall not be permitted to further assign the Lease or any right or interest therein, nor sublease the Premises, or any portion thereof, without the prior written consent of SBCTA in each instance, which shall not be unreasonably withheld or delayed.

3. Acknowledgement. SBCTA hereby represents and warrants to ASSIGNEE that as of the date hereof, (a) the Lease has not been terminated by either ASSIGNOR or SBCTA and the Lease is in full force and effect; and (b) to the best of SBCTA's knowledge (i) except as included in the Lease attached hereto, there are no modifications, amendments, consents, arrangements, agreements or understandings, either oral or written, which modify, amend, or supplement the terms of the Lease; and (ii) ASSIGNOR is not in default under or in breach of the Lease, nor are there any events which, with the mere passage of time, would constitute a default or breach thereunder.
4. Modification of Lease. Nothing herein contained shall be construed to modify, waive, impair or affect any of the covenants, agreements, terms provisions or conditions contained in the Lease except as may be expressly provided herein.
5. Indemnity. ASSIGNEE, on behalf of itself and its successors and assigns, agrees to indemnify, defend (by counsel satisfactory to SBCTA), and hold harmless ASSIGNOR and SBCTA in all its capacities, and their respective commissioners, officers, directors, members, employees, agents, consultants, contractors, partners, affiliated entities, subsidiaries, permittees, licensees, successors and assigns (individually and collectively, "Indemnified Parties"), to the maximum extent allowed by law, from any loss, liability, claims, demands, suits, liens, claims of lien, damages (including consequential damages), costs and expenses (including, without limitation, any fines, penalties, judgments, litigation expenses, and experts' and attorneys' fees) (collectively, "Liabilities"), incurred by or asserted against ASSIGNOR and/or SBCTA or their respective Indemnified Parties by reason of any breach by ASSIGNEE from and after the effective date hereof of any of ASSIGNEE's obligations under the Lease. ASSIGNOR, on behalf of itself and its successors and assigns, agrees to indemnify, defend (by counsel satisfactory to SBCTA), and hold harmless ASSIGNEE and SBCTA, and their respective Indemnified Parties, to the maximum extent allowed by law, from any Liabilities incurred by or asserted against ASSIGNEEs and/or SBCTA or their respective Indemnified Parties by reason of any breach by ASSIGNOR of any of ASSIGNOR's obligations under the Lease. ASSIGNOR and ASSIGNEE, jointly and severally, shall indemnify, defend (by counsel satisfactory to SBCTA), and hold harmless SBCTA and its respective Indemnified Parties, to the maximum extent allowed by law, from any Liabilities incurred by or asserted against SBCTA or its respective Indemnified Parties, by reason of, or in any way related to, any contract, understanding or other agreement, whether oral or written, other than the Lease, that has been or shall be entered into by and between ASSIGNOR and ASSIGNEE relating to the Premises, and ASSIGNOR and ASSIGNEE agree that SBCTA shall have no obligations or liabilities whatsoever with respect to any such contract, understanding or other agreement.
6. Assignee's Obligations. ASSIGNEE hereby accepts said Assignment and assumes and agrees to observe and discharge all of the covenants, terms and conditions of the Lease.

7. Public Use. Pursuant to the terms of the Lease, ASSIGNEE hereby expressly recognizes and agrees that the Premises are located on SBCTA property that may be developed for public projects and programs which may be implemented by SBCTA or other public agencies, such as, but not limited to: rail and bus transitways, bikeways, walkways, beautification projects, roadways, parking facilities, flood control and drainage facilities and/or any other public or other governmental uses (collectively and individually "Public Use"); and that ASSIGNEE's use of the Premises under the Lease and this Agreement is a temporary, interim use as to which ASSIGNEE has no right to nor expectation of use for any particular length of time. ASSIGNEE acknowledges and agrees that: a) ASSIGNEE was not an occupant of the Premises at the time SBCTA acquired it; b) ASSIGNEE is occupying the Premises on a rental basis for a short term or a period subject to termination when the Premises is needed for a public project within the meaning of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, specifically Section 4601(B)(ii) of Title 42 of the United States Code; and c) therefore ASSIGNEE is not a displaced person entitled to relocation assistance under such Act. Nevertheless, as a condition to assignment of the Lease, and in addition to ASSIGNEE's acknowledgement and agreement set forth above, SBCTA expressly reserves the right to terminate the Lease and this Agreement for any such Public Use by thirty (30) days written notice to ASSIGNEE. ASSIGNEE expressly acknowledges and agrees that:

- (a) SBCTA may terminate the Lease and this Agreement for any Public Use, to be determined in SBCTA's sole and absolute discretion;
- (b) ASSIGNEE shall **NOT** object to, oppose or protest at any approval proceeding, nor file suit to prevent or delay any Public Use when planned, proposed or implemented on or adjacent to the Premises;
- (c) If SBCTA's Executive Director or designee at any time, or from time to time, determines in its sole and absolute discretion, that there is a need for the Premises or any adjoining property for a Public Use and such Public Use requires relocation or removal of its facilities and/or improvements, ASSIGNEE shall reconstruct, alter, modify, relocate or remove its facilities and/or improvements, as required by SBCTA or any parties having operating rights over the Premises, at Sublessee's sole cost and expense, within thirty (30) days after written notice from SBCTA; and
- (d) ASSIGNEE expressly assumes all risk of any future Public Use as determined by SBCTA and in the event SBCTA terminates the Lease and this Agreement and requires ASSIGNEE to vacate the Premises for any Public Use, ASSIGNEE shall not, as a result of such termination and vacation of the Premises, be entitled to receive any:
  - (i) relocation assistance, moving expenses, goodwill or other payments under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §4601 et seq. and/or the California Relocation Assistance Law, as amended, California Government Code §7260 et seq; or
  - (ii) compensation under the eminent domain law.

8. Subordinate Rights. This Agreement is subject and subordinate to the prior and continuing right and obligation of SBCTA, its successors and assigns, to use the SBCTA Property or any portion thereof in the exercise of its powers and in the performance of its duties, including those as a public transportation body and to all Bonds, and their respective indentures, issued by SBCTA in any of its capacities and/or by any of its affiliated entities now in place or hereafter issued. Accordingly, there is reserved and retained unto SBCTA, its successors, assigns and permittees, the right to construct, reconstruct, operate, maintain, use and/or relocate existing and future rail tracks, facilities and appurtenances and existing and future transportation, communication, pipeline and other facilities and appurtenances in, upon, over, under, across and along the SBCTA Property or any portion thereof, and in connection therewith the right to grant and convey to others, rights and interests to the SBCTA Property or any portion thereof. This Agreement is subject to all licenses, leases, easements, reservations, restrictions, conditions, covenants, encumbrances, liens, claims and other matters of title ("title exceptions") which may affect the SBCTA Property now or hereafter. This Agreement is executed and delivered by SBCTA without any warranty of title, express or implied, and the words "grant" or "convey" as used herein shall not be construed as a warranty of title or as a covenant against the existence of any such title exceptions.

9. Notices. ASSIGNEE hereby acknowledges that its address for the receipt of any notice or document required or permitted to be delivered under the assignment or this Consent Agreement is:

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10. Effective Date. This Agreement shall be effective as of \_\_\_\_\_.

IN WITNESS WHEREOF, the parties have executed this Agreement in triplicate as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SBCTA

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

LICENSEE/TENANT (“ASSIGNOR”)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ASSIGNEE

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT "A"

TO

CONSENT TO ASSIGNMENT AND ASSUMPTION OF LEASE