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- Liability of railroad company for injury to trespassers or licensees other than employees or passengers struck by object projecting, or thrown, from a passing train*, 112 A.L.R. 850 (1938).
- Liability for death or injury as a result of suction from passing train*, 149 A.L.R. 907 (1944).
- Duty of railroad toward persons using private crossing or commonly used footpath over or along railroad tracks*, 167 A.L.R. 1253 (1947).

APPENDIX A:

Definitions

The American Association of State Highway and Transportation Officials (AASHTO) Guide for the Development of Bicycle Facilities (1999): Provides information and guidelines for the planning, design, and maintenance of bicycle facilities. The AASHTO Bike Guide provides information to help accommodate bicycle traffic in a way that is sensitive to bicyclists and other roadway users. It also provides specific information about the design of shared use paths, railroad grade crossings, and path roadway intersections.

Centerline: An imaginary line midpoint between the track rails that conforms to the geometry of that track. “Centerline” often is used in reference to the nearest track to an RWT when discussing such issues as setback and separation.

Class I Railroad: A railroad with annual gross operating revenue in excess of \$250 million based on 1991 dollars.

Class II Railroad: Railroads with an annual gross operating revenue of between \$250 million and \$20 million.

Class III Railroad: Railroads with gross operating revenue of less than \$20 million. These include short-line and light-density railroads.

Commuter Rail: Urban passenger train service for travel between a central city and adjacent suburbs, excluding rapid rail transit and light rail service.

Department of Transportation: Established by an Act of Congress in 1966, the U.S. Department of Transportation (USDOT) works to build a safe transportation system. The USDOT includes the Federal Highway Administration, Federal Railroad Administration, Federal Transit Administration, National Highway Traffic Safety Administration, and Surface Transportation Board.

Excursion Trains: Generally, trains used by a private enterprise catering to the leisure or tourism market, such as dinner trains or tourist trains to an historical destination.

Federal Highway Administration: The Federal Highway Administration (FHWA) coordinates highway transportation programs in cooperation with States and other partners to enhance the country’s safety, economic vitality, quality of life, and the environment. Major program areas include the Federal-Aid Highway Program, which provides Federal financial assistance to the States to construct and improve the National Highway System, urban and rural roads, bridges, and pedestrian and bicycle facilities.



Federal Railroad Administration: The Federal Railroad Administration (FRA) promotes safe and environmentally sound rail transportation. FRA sets and enforces safety standards for track, signals, motive power and equipment, hazardous materials, operating practices, and highway-rail crossings. The FRA conducts research and development projects to support its safety mission and enhance the railroad system as a national transportation resource. FRA also administers public education campaigns addressing highway-rail grade crossing safety and the danger of trespassing on rail property.

Federal Transit Administration: The Federal Transit Administration (FTA) assists in developing improved mass transportation systems for cities and communities nationwide. Through its grant programs, FTA helps plan, build, and operate transit systems with convenience, cost, and accessibility in mind.

Fixed Transit: Transit service with fixed guideways includes heavy and light transit rail. In general usage, fixed transit also is known as rapid rail, rapid transit rail, transit mode, or transit railway.

Heavy Rail: Exclusive rights-of-way, multi-car trains, high speed rapid acceleration, sophisticated signaling, and high platform loading characterize fixed transit heavy rail. In general terms, heavy rail also is known as subway, elevated railway, or metropolitan railway (metro).

Light Rail: Light rail transit may be exclusive or shared rights-of-way, high or low platform loading, multi-car trains or single cars, automated or manually operated. In general usage, light rail includes trolley cars, streetcars, and tramways.

Manual on Uniform Traffic Control Devices: The Manual on Uniform Traffic Control Devices (MUTCD) provides standards and guidelines for traffic control devices that regulate, warn, and guide road users along the highways and byways in the United States. The FHWA published the most recent edition, The Millennium Edition, in December of 2000, with revisions in December 2001. Part 8 provides guidelines for signs, signals, markings, and other warning devices at all highway-rail grade crossings. Part 9 provides standards for bicycle facilities including on-road treatments and shared use paths. Part 10 provides standards and guidelines for highway-light rail grade crossings. See http://mutcd.fhwa.dot.gov/kno-millennium_12.28.01.htm.

National Highway Traffic Safety Administration: The National Highway Traffic Safety Administration (NHTSA) sets and enforces safety and performance standards for motor vehicles and equipment; helps States and local communities reduce the threat of impaired drivers; promotes the use of safety belts, child safety seats, and air bags; provides consumer information on motor vehicle safety topics; conducts research on driver behavior and traffic safety; and promotes traffic safety for pedestrians and bicyclists.

Railbanking: The preservation of otherwise abandoned railroad easements for possible future railroad activity by interposition of interim trail use.

Rail-Trail: Usually refers to a trail developed on an abandoned or converted railroad line (a rail-to-trail), where there is no active rail service; however, it may be used to refer to any trail associated with active rail or rail property, e.g., RWT.



Rail-with-Trail (RWT): Any shared-use path that is located on or directly adjacent to an active railroad or fixed route transit corridor.

Setback: The lateral distance between the centerline of the “nearest track” (that track located closest to the RWT or other physical feature under consideration) to the nearest edge of the trail or to the separation feature (fence, wall, etc.).

Separation: A feature, such as fencing, wall, vegetation, body of water, or vertical elevation difference, that is found, placed, or used to separate a railroad track or railroad corridor and an RWT, sufficient to prevent or discourage access to an active rail right-of-way by trail users.

Shared use path: A trail that is physically separated from motorized vehicular traffic by an open space or barrier and either within the highway right-of-way or within an independent right-of-way. Shared use paths may be used by bicyclists, pedestrians, skaters, wheelchair users, runners and other nonmotorized users.

Short Line Railroad: See Class III Railroad.

Trespasser: A person who enters or remains upon property in the possession of another without a privilege to do so, created by the possessor’s consent or otherwise.

APPENDIX B:

State-by-State Matrix of Applicable Laws and Statutes

Provided by Andrea Ferster, Esq., as of 2002

This matrix is intended to present the state of the law as of the year 2002. Every effort has been made to assure accuracy in the information contained in this matrix as provided by Andrea Ferster, Esq. However, due to the broad scope of this project and the fluid nature of state statutory law, the Department of Transportation cannot guarantee complete accuracy of the material presented. For more detailed and up-to-date information, the reader is encouraged to review the relevant state statutes directly.



State-by-State matrix of applicable laws and statutes

State	Recreational Use Statute (RUS)	Trail, Rails-to-Trails Program, Recreational Trails System, or Similar Statute	Government Tort Liability Act	Railroad Fencing Laws
Alabama	Ala. Code § 35-15-1 (1975)		Ala. Code § 41-9-62 et seq. (2000) Ala. Code § 11-93-1 et seq. (2000)	Ala. Code § 37-2-89 (2000.) – RR liable if Pub. Serv. Commission has deemed fence necessary and livestock injured by unfenced right-of-way; does not apply to injury to dogs
Alaska	Alaska Stat. § 09.65.200 (Michie 2000) – limited to undeveloped lands	Alaska Stat. § 42.40.420 (Michie 2000.) – allows a municipality or the State to petition to use railroad land, including along active railroads for public use, including trails. Must be established that the use will not create a safety hazard, and the municipality or State must enter into an agreement to indemnify the railroad.	Alaska Stat. §§ 09.50.250, -.300 (Michie 2000.)	
Arizona	Ariz. Rev. Stat. Ann. § 33-1551 (West 2000.)		Ariz. Rev. Stat. § 12-820 et seq. (2000.)	
Arkansas	Ark. Code Ann. §§ 18-11-301 to -307 (Michie 2000.)	Ark. Code Ann. § 22-4-401 et seq. (Michie 2000.) – Trails System Statute – no liability provision	Ark. Code Ann. § 21-9-201 et seq. (Michie 2000.)	
California	Cal. Civ. Code § 846 (West 2000.)	Cal. Pub. Res. Code § 5070 et seq. (Deering 2000.) – Recreational Trails Act – limits liability for adjacent property owners	Cal. Gov't Code § 810-996.6 et seq. (West 2000.)	Cal. Pub. Util. Code § 7626 et seq. (West 2000.) – RR liable for injury to livestock, domestic animals injured due to unfenced right-of-way
Colorado	Colo. Rev. Stat. Ann. §§ 33-41-101 to -106 (West 2000.)	Colo. Rev. Stat. § 33-11-101 et seq. (2000.) – Recreational Trails System Act of 1971 – no liability provision	Colo. Rev. Stat. Ann. § 24-10-101 et seq. (West 2000.)	Colo. Rev. Stat. Ann. § 40-27-102 (West 2000.) – RR liable if livestock injured by unfenced right-of-way
Connecticut	Conn. Gen. Stat. Ann. §§ 52-557(f)-(k) (West 2000.)		Conn. Gen. Stat. Ann. § 4-140 et seq. (West 2000.) – administrative claims or procedure	Conn. Gen. Stat. Ann. § 13b-299 (West 2000.) – Commissioner of Transportation directs where and when RR Co.'s should erect and maintain fences
Delaware	Del. Code Ann. tit. 7, §§ 5901–5907 (2000.)		Del. Code Ann. tit. 10, § 4001 et seq. (2000.) – State and local	Del. Code Ann. tit. 2, § 1811 (2000.) – RR liable for injury to livestock if injured on unfenced right-of-way
District of Columbia			D.C. Code Ann. § 1-1201 et seq. (2000.)	



State-by-State matrix of applicable laws and statutes (cont'd.)

State	Recreational Use Statute (RUS)	Trail, Rails-to-Trails Program, Recreational Trails System, or Similar Statute	Government Tort Liability Act	Railroad Fencing Laws
Florida	Fla. Stat. ch. 375.251 (2000.)	Fla. Stat. ch. 260.011 et seq. (2000.) – Recreational Trails System Statute – § 260.012(4) of the Recreational Trails System Chapter makes the Recreational Use Statute (RUS) – § 375.251 is applicable to the Recreational Trails System Chapter	Fla. Stat. Ann. § 768.28 et seq. (West 2000.) – Tort Claims Act	
Georgia	Ga. Code Ann. §§ 51-3-20 to -26 (2000.)	Ga. Code Ann. § 12-3-110 et seq. (2000.) – Scenic Trails Act – § 12-3-116 limits liability for property owners whose land is traversed by trails system	Ga. Code Ann. § 36-33-1 et seq. (2000.)	
Hawaii	Haw. Rev. Stat. §§ 520-1 to -8 (2000.)	Haw. Rev. Stat. Ann. § 198D-7 to -7.5 (Michie 2000.) – Statewide Trail and Access System – § 198D-7 requires review by the State of the legal issues relating to trails, including exposures to liability for the State, counties, and private landowners, and strategies to reduce or limit that liability exposure – § 198D-7.5 permits the State to enter into agreements to defend and indemnify owners of public or private land to further the purposes of the chapter (e.g., developing a trails system)	Haw. Rev. Stat. Ann. § 662-2 et seq. (Michie 2000.)	
Idaho	Idaho Code §§ 36-1601 to -1604 (2000.)	Idaho Code § 67-4236 (2000.) – indemnification of owners of land adjacent to trails – allows State to indemnify the owner of private land adjacent to trail, for damage caused by trail users, for which the owner was unable to recover from the user who caused the damage	Idaho Code § 6-901 et seq. (2000.)	Idaho Code §§ 62-1201, 62-406 (2000.) – RR liable if livestock injured by unfenced right-of-way
Illinois	745 Ill. Comp. Stat. Ann. 65/1-31 to -37 (West 2000.)	20 Ill. Comp. Stat. Ann. 862/1 et seq. (West 2000.) – Recreational Trails of Illinois Act	705 Ill. Comp. Stat. 505/8 (West 2000.) – Court of Claims Jurisdiction – State 745 Ill. Comp. Stat. 10/1-101 (West 2000.) – local gov't units	625 Ill. Comp. Stat. Ann. 5/18c-7504 (West 2000.) – RR liable if livestock injured by unfenced right-of-way
Indiana	Ind. Code §14-2-6-3 (2000.)	Ind. Code Ann. § 8-4.5-5-1 et seq. (Michie 2000.) – Recreational Trails Program – § 8-4.5-5-5 designates abandoned railroad corridors as eligible for grant program to create recreational trails – § 8-4.5-6-5, Liability for injury; relieves property owner of “duty of care” for recreational trail user that would otherwise be owed	Ind. Code Ann. § 34-6-2-34 et seq. (West 2000.) – Indiana Tort Claims Act	Ind. Code Ann. § 8-4-33-1 (West 2000.) – RR liable if livestock injured by unfenced right-of-way

State-by-State matrix of applicable laws and statutes (*cont'd.*)

State	Recreational Use Statute (RUS)	Trail, Rails-to-Trails Program, Recreational Trails System, or Similar Statute	Government Tort Liability Act	Railroad Fencing Laws
Iowa	Iowa Code Ann. §§ 111C.1 to -.7 (West 2000.)	Iowa Code § 465B.1 et seq. (2000.) – Recreational Trails Statute – no liability provision	Iowa Code Ann. §§ 669.1 to -.24 (West 2000.) – Iowa Tort Claims Act – state Iowa Code Ann. §§ 670.1 to -.13 (West 2000.) – Tort Liability of Governmental Subdivisions	Iowa Code Ann. § 327G.3 (2000.) – RR liable if livestock injured by unfenced right-of-way
Kansas	Kan. Stat. Ann. §§ 58-3201 to -3207 (2000.)	Kan. Stat. Ann. § 58-3211 et seq. (2000.) – Recreational Trails Statute – § 58-3212 provides an extensive list of duties for trail managers – § 58-3214 provides that an adjacent property owner has “no duty of care” to any person using a recreational trail, except where an injury is a direct result of negligence or willful or wanton misconduct	Kan. Stat. Ann. §§ 75-6101 to -6115 (2000.)	
Kentucky	Ky. Rev. Stat. Ann. §§ 150.645, 411.190 (Michie 2000.)	Ky. Rev. Stat. Ann. § 147A.250 (Banks-Baldwin 2000.) Ky. Rev. Stat. Ann. § 277.402 et seq. (Banks-Baldwin 2000.) – RUS § 411.190 defines owner as including the possessor of a “reversionary, or easement interest.” – The trespass statute, §511.090, was amended to include the following: “(5) Private land adjoining a railtrail that is neither fenced nor otherwise enclosed shall be presumed to be land where notice against trespassing has been given by the owner of the land, and a person utilizing the railtrail shall be presumed to lack privilege or license to enter upon that land unless the person has permission from an adjoining landowner to do so.”	Ky. Rev. Stat. Ann. § 44.070 et seq. (Banks-Baldwin 2000.)	Ky. Rev. Stat. Ann. § 256.110 (Michie 2000.) – requires RR and adjoining property owner to construct and maintain a good lawful fence
Louisiana	La. Rev. Stat. Ann. tit. 9, §§ 2791, 2795 (West 2000.)	La. Rev. Stat. Ann. § 56:1781 et seq. (West 2000.) – program to establish rails-to-trails – § 1785 of the statute transfers ownership and all legal rights and obligations to trail administrator, and the railroad or corporation shall be relieved of all responsibilities and legal obligations, unless agreed otherwise through contractual obligations	La. Const., art. XII, § 10.	
Maine	Me. Rev. Stat. Ann. tit.14, § 159-A (West 2000.)	Me. Rev. Stat. Ann. tit. 12, § 1892 (West 2000.) – Trails System Statute – no liability provision	Me. Rev. Stat. Ann. tit.14, § 8101 et seq. (West 2000.) – Tort Claims Act	Me. Rev. Stat. Ann. tit. 23, § 6021 (West 2000.) – RR liable if livestock injured by unfenced right-of-way



State-by-State matrix of applicable laws and statutes (*cont'd.*)

State	Recreational Use Statute (RUS)	Trail, Rails-to-Trails Program, Recreational Trails System, or Similar Statute	Government Tort Liability Act	Railroad Fencing Laws
Maryland	Md.Code Ann., Nat. Res. I §§ 5-1101 to -1108 (2000.)	Md. Code Ann., Nat. Res. I. § 5-1010 (2000.) – abandoned railroad corridor as trails – establishes program to convert abandoned railroad corridors into recreational trails – no liability provision	Md. Code Ann., State Gov’t § 12-101 et seq. (2000.) – Tort Claims Act – State gov’t Md. Code Ann., Cts. & Jud. Proc. § 5-401 et seq. (2000.) – local gov’t	
Massachusetts	Mass. Gen. Laws Ann. ch. 21, § 17C (West 2000.)		Mass. Ann. Laws ch. 258, § 1 et seq. (Law. Co-op. 2000.) – Tort Claims Act	Mass. Gen. Laws Ann. ch. 160, § 93 (West 2000.) – RR liable if livestock owned by adjacent property owner injured by unfenced right-of-way
Michigan	Mich. Comp. Laws Ann. § 324.73301 (West 2000.) – RUS protects the owner, tenant, or lessee of land used to enter or exit a public trail or trail covered by the Trailways Act § 721	Mich. Comp. Laws § 324.72101 et seq. (2000.) – Michigan Trailways Act – § 72105(a) provides that volunteer groups may adopt trailways or rail-to-trails segments, and that volunteers will be granted the same immunity from civil liability as a State employee while they are working on an “adopt-a-trail” project	Mich. Comp. Laws Ann. §§ 691.1401 to -.1415 (West 2000.)	Mich. Comp. Laws Ann. § 462.325 (West 2000.) – RR liable if livestock injured by unfenced right-of-way
Minnesota	Minn. Stat. Ann. §§ 87.01 to -.03 (West 2000.)	Minn. Stat. § 222.63 (2000.) – establishes rail bank program for public use Minn. Stat. § 84.029 (2000.) – permits the State to acquire land, including abandoned railroad rights-of-way, for trails – no liability provision	Minn. Stat. Ann. § 3.736 et seq. (West 2000.) – Tort Claims Act, Minn. Stat. Ann. § 466.01 et seq. (West 2000.)	Minn. Stat. Ann. § 219.31 (West 2000.) – RR liable if livestock or children who could not scale legal fence injured by unfenced right-of-way
Mississippi	Miss. Code Ann. §§ 89-2-1 to -7, 89-2-21 to -27 (2000.)	Miss. Code Ann. § 55-25-1 et seq. (2000.) – Rails-to-Trails Recreational District Statute – no liability provision	Miss. Code Ann. §§ 11-46-1 to -16 (2000.)	
Missouri	Mo. Ann. Stat. §§ 537.345 to -.348 (West 2000.)	Mo. Rev. Stat. § 258.100 (2000.) – trails have civil immunity – specifically covers railroad rights-of-way acquired by State for use as a recreational trail – provides immunity from liability for adjacent property owners for injuries to person or property if the person entered from the trail; does not apply if person on land is invitee, or the injury was caused by an intentional, unlawful, willful, or wanton act	Mo. Ann. Stat. § 537.600 et seq. (West 2000.)	Mo. Ann. Stat. § 389.650 (West 2000.) – RR liable if livestock injured by unfenced right-of-way

State-by-State matrix of applicable laws and statutes (*cont'd.*)

State	Recreational Use Statute (RUS)	Trail, Rails-to-Trails Program, Recreational Trails System, or Similar Statute	Government Tort Liability Act	Railroad Fencing Laws
Montana	Mont. Code Ann. §§ 70-16-301 to -302 (2000.)		Mont. Code Ann. § 2-9-101 et seq. (2000.) – MT Comprehensive State Insurance Plan and Tort Claims Act – State and local Mont. Code Ann. § 7-1-4125 et seq. (2000.) – municipal immunity is waived	
Nebraska	Neb. Rev. Stat. Ann. §§ 37-1001 to -1008 (Michie 2000.)	Neb. Rev. Stat. Ann. § 37-1002 et seq. (Michie 2000.)– Recreational Trails Statute – § 37-1012, Responsibility for fences. The Game and Park Commission shall “have the same responsibility as a railroad as provided in §74-601 to 74-602.”	Neb. Rev. Stat. § 81-8, 209 et seq. (2000.) Neb. Rev. Stat. § 13-902 et seq. (2000.) – Political Subdivisions Tort Claims Act	Neb. Rev. Stat. § 74-601 (2000.) – RR liable if livestock injured by unfenced right-of-way
Nevada	Nev. Rev. Stat. § 41.510 (2000.)		Nev. Rev. Stat. Ann. § 41.031 et seq. (Michie 2000.)	
New Hampshire	N.H. Rev. Stat. Ann. § 212.34 (2000.)	N.H. Rev. Stat. Ann. § 228:60-a et seq. (2000.) – Railroad Right-of-Way Statute – § 228:60-c allows the State to enter into agreements for the use of railroad rights-of-way that relieve the landowner from civil liability for personal injury or property damage for the period of the agreement	N.H. Rev. Stat. Ann. § 541-B: 1 et seq. (2000.) – administrative claims against the State – political subdivisions excluded	N.H. Rev. Stat. Ann. § 373:30 (2000.) – RR liable if livestock of adjacent property owner injured by unfenced right-of-way
New Jersey	N.J. Stat. Ann. §§ 2A:42A-1 to -7 (West 2000.)	N.J. Stat. Ann. § 13:8-30 et seq. (West 2000.) – Trails System Act – no liability provision	N.J. Stat. Ann. § 59:1-1 et seq. (West 2000.) – Tort Claims Act	N.J. Stat. Ann. § 48:12-46 (West 2000.) – RR liable if livestock injured by unfenced right-of-way
New Mexico	N.M. Stat. Ann. §§ 16-3-9, 17-4-7 (Michie 2000.)	N.M. Stat. Ann. § 16-3-3 et seq. (Michie 2000.) – State Trails System Statute – § 16-3-9 limits liability for landowner who has granted right-of-way or easement to State for recreational trail	N.M. Stat. Ann. §§ 41-4-1 to -27 (Michie 2000.) – Tort Claims Act	N.M. Stat. Ann. § 77-16-16 (Michie 2000.) – RR liable if livestock injured by unfenced right-of-way
New York	N.Y. Gen. Oblig. Law § 9-103 (Consol. 2000.)		N.Y. Ct. Cl. Act § 8 (McKinney 2000.)	N.Y. R.R. Law § 52 (McKinney 2000.) – RR liable if livestock injured by unfenced right-of-way but RR not liable for injuries to livestock resulting from engine frightening animal
N. Carolina	N.C. Gen. Stat. § 113A-95 (2000.)	N.C. Gen. Stat. § 113A-84 et seq. (2000.) – Trails System Statute – § 113A-95 limits liability for landowner who allows land to be used for trail by limiting “duty of care” owed to users to that owed to a trespasser	N.C. Gen. Stat. §§ 143-291 to -300.1 (2000.)	



State-by-State matrix of applicable laws and statutes (*cont'd.*)

State	Recreational Use Statute (RUS)	Trail, Rails-to-Trails Program, Recreational Trails System, or Similar Statute	Government Tort Liability Act	Railroad Fencing Laws
N. Dakota	N.D. Cent. Code §§ 53-08-01 to -06 (2000.)		N.D. Cent. Code § 32-12.1-01 et seq. (2000.) – history of statute found in Chapter 303, S.L. 1977 – applicable to political subdivisions of State	N.D. Cent. Code § 49-11-24 et seq. (2000.) – every owner or lessee of land abutting any RR's right-of-way may make written request of owners/operators of RR to construct a fence N.D. Cent. Code §49-11-30 – RR liable if livestock injured by unfenced right-of-way
Ohio	Ohio Rev. Code Ann. §§ 1533.18, 1533.181 (Anderson 2000.)	Ohio Rev. Code Ann. § 1519.01 to -.02 (Anderson 2000.) – Recreational Trails Statute – § 1519.02 permits the State authority to acquire land on an “existing or abandoned” railroad for use as a recreational trail – no liability provision	Ohio Rev. Code Ann. § 2743.01 et seq. (West 2000.) – Court of Claims Act – applicable only to the State and its agencies or instrumentalities Ohio Rev. Code Ann. § 2744.01 et seq. (West 2000.) – Political Subdivisions Act – applicable to political subdivisions of State	
Oklahoma	Okla. Stat. tit. 76, §§ 10 to 15 (2000.)	Okla. Stat. tit. 74, § 1853 et seq. (2000.) – Trails System Act – § 1859 C makes it a misdemeanor to damage adjacent properties Okla. Stat. tit. 74, § 3458 (2000.) – limits liability of landowners who permit the State to use their land for trails system	Okla. Stat. Ann. tit. 51, § 151 et seq. (West 2000.) – Political Subdivision Tort Claims Act	Okla. Stat. Ann. tit. 66, § 141 (West 2000.) – every RR Corp. has duty to fence its road with a good & lawful fence
Oregon	Or. Rev. Stat. § 105.688 (2000.)	Or. Rev. Stat. § 390.950 et seq. (2000.) – Recreational Trails Statute – § 390.980 permits the State to use funds to indemnify landowners adjacent to recreational trails for damage to their property caused by trail users for which the landowner was unable to recover from the user causing the damage	Or. Rev. Stat. §§ 30.260 to -.300 (2000.) – § 30.265(2) pertains to State and subdivisions	Or. Rev. Stat. § 608.310 (2000.) – every person owning or operating any railroad shall erect and maintain good and sufficient lawful fences on both sides of the RR line, with exceptions
Pennsylvania	68 Pa. Cons. Stat. §§ 477-1 to -8 (2000.)	32 Pa. Cons. Stat. § 5611 et seq. (2000.) – Rails-to-Trails Act – § 5619(c) encourages the preservation of the trails, if possible, when a rail line is reactivated, creating a rails-with-trail – § 5621 limits liability for landowners who allow their land to be used for trails, trail, owners and adjacent property owners with the protections similar to a RUS	1 Pa. Cons. Stat. Ann. § 2310 (West 2000.) – commonwealth 42 Pa. Cons. Stat. Ann. § 8541 et seq. (West 2000.) – local agencies Pa. R. Civ. P. 2101 et seq. – commonwealth and political subdivisions	

State-by-State Matrix of Applicable Laws and Statutes (*cont'd.*)

State	Recreational Use Statute (RUS)	Trail, Rails-to-Trails Program, Recreational Trails System, or Similar Statute	Government Tort Liability Act	Railroad Fencing Laws
Rhode Island	R.I. Gen. Law § 32-6-1 to -7 (2000.)		R.I. Gen. Laws § 9-31-1 et seq. (2000.) – State and subdivisions	R.I. Gen. Laws § 39-8-18 (2000.) – every RR shall erect /maintain fence along boundary lines of right-of-way
S. Carolina	S.C. Code Ann. § 27-3-10 to -70 (Law. Co-op. 2000.)		S.C. Code Ann. § 15-78-10 et seq. (Law. Co-op. 2000.) – Tort Claims Act – State and local	
S. Dakota	S.D. Codified Laws § 20-9-12 to -18 (Michie 2000.)		S.D. Codified Laws § 3-21-1 et seq. (Michie 2000.) – State	S.D. Codified Laws § 49-16A-91 (Michie 2000.) – if owner of land abutting the road fences their property, except for the side abutting the road, the RR shall supply landowner with materials needed to construct fence not less than 4.5 feet high
Tennessee	Tenn. Code Ann. §§ 70-7-101 to -104, 11-10-101 to -104 (2000.)	Tenn. Code Ann. § 11-11-101 (2000.) – Trails System Act Tenn. Code Ann. § 11-11-111 et seq. (2000.) – § 11-111 provides for consideration of abandoned railroad for recreational trails – §§ 11-113 and 11-114, respectively, prohibit hunting and the use of motor vehicles on trails	Tenn. Code Ann. § 9-8-101 et seq. (2000.) – State Board of Claims Act – administrative claims procedure against State Tenn. Code Ann. § 29-20-101 et seq. (2000.) – Governmental Tort Liability Act – applicable only to units of local government and not to the State	Tenn. Code Ann. § 65-6-301 (2000.) – RR liable if livestock injured by unfenced right-of-way
Texas	Tex. Civ. Prac. & Rem. Code Ann. § 75.001 to -.003 (West 2000.)	Tex. Parks & Wild. Code Ann. § 28.001 et seq. (West 2000.) – Trails System Act – no liability provision	Tex. Civ. Prac. & Rem. Code Ann. § 101.001 et seq. (West 2000.)	
Utah	Utah Code Ann. § 57-14-1 to -7 (2000.)	Utah Code Ann. § 63-11a-101, -102(3)(c), -301 (2000.) – Recreational Trails System Act – § 301 permits the State to enter into cooperative agreements with private landowners and corporations that specify the responsibilities for development, operation, and maintenance, including law enforcement along trails	Utah Code Ann. §§ 63-30-1 to -34 (2000.) – Governmental Immunity Act	Utah Code Ann. § 56-1-13 (2000.) – RR liable if livestock injured by unfenced right-of-way



State-by-State Matrix of Applicable Laws and Statutes (cont'd.)

State	Recreational Use Statute (RUS)	Trail, Rails-to-Trails Program, Recreational Trails System, or Similar Statute	Government Tort Liability Act	Railroad Fencing Laws
Vermont	Vt. Stat. Ann. tit. 12, §§ 5791–5794 (2000.)	Vt. Stat. Ann. tit. 10, § 443 et seq. (2000.) – Trails System Act – does not specifically cover trails on active or inactive railroad – § 444 requires written permission to use land for trail that must address liability for persons or property and states that for fee simple or lesser interest in property, the State will hold harmless the private landowner who conveyed land – § 448 limits liability for public and private land owner	Vt. Stat. Ann. tit. 12, § 5601 et seq. (2000.) – Tort Claims Act – State	Vt. Stat. Ann. tit. 5, § 3642 (2000.) – RR liable if livestock injured by unfenced right-of-way
Virginia	Va. Code Ann. § 29.1-509 (Michie 2000.)	Va. Code Ann. § 15.2-1806 (Michie 2000.) – Statute provides: “In furtherance of the purposes of this subsection, a locality may provide for the protection of persons whose property interests or personal liability, may be related to or affected by the use of such trails.”	Va. Code Ann. § 8.01-195.1 et seq. (Michie 2000.) – Tort Claims Act, – State Va. Code Ann. § 8.01-222 (Michie 2000.) – notice of claims to cities and towns	Va. Code Ann. § 56-429 (Michie 2000.) – need written request by adjacent landowner to the registered agent of RR to require RR Co. to erect and to maintain fence; once request is made, RR liable if livestock injured by unfenced right-of-way
Washington	Wash. Rev. Code Ann. §§ 4-24.200, -210 (West 2000.)	Wash. Rev. Code Ann. § 79A.35.010 et seq. (West 2000.) – Recreational Trails System Act – does not specifically cover rail-trails on active or inactive railroad – limits liability for volunteers working with public agencies on trails	Wash. Rev. Code Ann. § 4.92.090 (West 2000.) – State and subdivisions	
West Virginia	W. Va. Code § 19-25-1 to -5 (2000.)	W. Va. Code § 5B-1A-1 et seq. (2000.) – Rails-to-Trails Program – § 5B-1A-8 relieves an owner of an abandoned railroad right-of-way from liability during the interim period when it is being held by the State for future development – § 5B-1A-9 adopts a RUS-type provision for owners of trails and adjacent property owners under this article	W. Va. Code § 14-2-1 et seq. (2000.) – Court of Claims Act – State W. Va. Code § 29-12A-1 et seq. (2000.) – Governmental Tort Claims and Insurance Reform Act – political subdivisions	
Wisconsin	Wis. Stat. Ann. § 895.52 (West 2000.)	Wis. Stat. § 85.09 (2000.) – acquisition of abandoned rail property – no liability provision	Wis. Stat. Ann. § 893.80 (West 2000.) – claims against governmental bodies or officers, agents, or employees	Wis. Stat. Ann. § 192.33 (West 2000.) – RR liable if livestock injured by unfenced right-of-way
Wyoming	Wyo. Stat. Ann. § 34-19-101 (Michie 2000.)		Wyo. Stat. Ann. §§ 1-39-101 to -118 (Michie 2000.) – Governmental Claims Act	Wyo. Stat. Ann. § 37-9-304 (West 2000.) – RR liable if livestock injured by unfenced right-of-way

APPENDIX C:

Sample Legal Agreements



License Agreement, Los Angeles Metropolitan Transportation Authority for the Mission City Trail

File: RVAL008562**LICENSE AGREEMENT**

This LICENSE AGREEMENT ("Agreement") is made and entered into as of JANUARY 9, 1997 by and between THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY, a public agency existing under the authority of the laws of the State of California ("MTA"), and THE CITY OF SAN FERNANDO, a general law city and a municipal corporation duly organized and existing under the laws of the State of California ("Licensee"), upon and in consideration of the agreements, covenants, terms and conditions below:

PART I.**BASIC LICENSE PROVISIONS**1. Description of License Property:

A parcel of land lying entirely within the MTA's right-of-way, along the Valley Subdivision, as more particularly described in Exhibit A, attached hereto.

2. Use of License Property:

The License Property shall be used as a bicycle/pedestrian trail. As such, this Agreement allows Licensee to access and use the License Property to construct, install, alter, maintain, reconstruct, remove and repair the Facility. In addition, this Agreement permits the Licensee to allow the public to access and use the Facility. The public's use, however, is limited to bicycle, jogging and pedestrian purposes, only. Except for: (i) the maintenance and police vehicles of Licensee (which are allowed on the License Property only when being used in conjunction with Licensee's maintenance responsibilities hereunder or in conjunction with Licensee's law enforcement activities, as applicable); (ii) the vehicles of SCRRA (as defined in Section 4.1 of the General License Provisions); (iii) the vehicles of MTA; and (iv) the vehicles of tenants, licensees, permittees, easement holders and others with rights to access and/or use all, or a portion of, the License Property under agreements with SCRRA or MTA, no motorized vehicles shall be permitted or allowed on the License Property. No other uses of the License Property are allowed under this Agreement.

3. Commencement Date:

The date that this Agreement is made and entered into.

4. Term:

An initial term of thirty-six (36) months, ending 36 months after the Commencement Date, and year-to-year thereafter, unless canceled by MTA as provided in Section 1.2.



5. License Fees:

- A. Base License Fee: \$1, for the term of this Agreement.
- B. Additional License Fee:
 - a. One time fee: - None -
 - b. Other fees: - None -

6. Insurance Amount: See Exhibits B and C

7A. MTA's Address:

Los Angeles County Metropolitan Transportation Authority
 One Gateway Plaza
 Los Angeles, California 90012-2932
 Attn.: Real Estate Department
 Property Management Section

7B. SCRRA's Address:

Southern California Regional Rail Authority
 P. O. Box 86425
 Los Angeles, California 90086-0425
 Attn.: Ron Mathieu, Manager of Public Projects

8. Licensee's Address:

City of San Fernando
 117 Macniel Street
 San Fernando, California 91340
 Attention: City Engineer

9. Facility:

A bicycle/pedestrian trail, including, but not limited to: (i) a pedestrian sidewalk, (ii) a jogging trail, (iii) a two-way, two-lane bike path, (iv) landscaping, (v) an irrigation system, (vi) fencing, (vii) gates, (viii) drainage facilities (including culverts, culvert extensions, inlets, drainage pipes, swales, and ditches), (ix) paving, (x) street lighting, (xi) benches, and (xii) bike racks.



The foregoing Basic License Provisions and the General License Provisions set forth in attached Part II are incorporated into and made part of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

MTA:

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

By: *Velma C. Marshall*
Name: VELMA C. MARSHALL
Title: Director of Real Estate

APPROVED AS TO FORM BY:
Dewitt Clinton
County Counsel

by *Jorge Choy*

LICENSEE:

THE CITY OF SAN FERNANDO

By: *Rosa Chacon*
Name: ROSA CHACON
Title: Mayor of the City of San Fernando

APPROVED AS TO FORM BY:

Michael E...
City Attorney
City of San Fernando

ATTEST:

Wilma E. Miller
City Clerk
City of San Fernando

[SFBikeway-092496-gsa]



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Exhibits:

- A License Property
- B Insurance Requirements
- C Form of Insurance Endorsement/Certificate
- D Permitted Hazardous Materials
- E Additional Provisions

PART II - GENERAL LICENSE PROVISIONS1. Grant of License/Term.

1.1 Grant of License. MTA hereby grants a non-exclusive license to Licensee in, on, over, under, across and along the real property of MTA in the location shown in the diagram attached hereto as Exhibit A and described in Item 1 of the Basic License Provisions (the "License Property"), to:

- A. Carry out Licensee's obligations under this Agreement; and
- B. Use the License Property in the manner set forth in Item 2 of the Basic License Provisions.

In connection with this grant of license, Licensee, its council members, officers, directors, affiliates, employees, agents, customers, visitors, invitees, licensees, contractors, subcontractors, consultants, attorneys, and/or any other person or entity acting by, through or under Licensee (collectively, "Licensee's Parties"), subject to the provisions hereof, may have reasonable rights of entry and access onto adjoining real property of MTA if necessary to carry out Licensee's obligations to construct, install, alter, maintain, reconstruct, remove and/or repair the Facility, so long as Licensee has received MTA's prior written approval for the use of such adjoining property of MTA. This grant of license onto adjoining real property of MTA does not extend to the public, which Licensee shall take all reasonable methods to exclude from such adjoining property of MTA. The License Property, adjoining real property of MTA and personal property of MTA located thereon shall hereinafter collectively be referred to as "MTA Property".

1.2 Term of Agreement. The term of this Agreement shall commence on the "Commencement Date" specified in Item 3 of the Basic License Provisions. This Agreement shall be a license for the term specified in Item 4 of the Basic License Provisions; provided, however, that MTA shall have the right to terminate this Agreement, at any time, for the following reasons:

- A. MTA, in its sole and absolute judgment, determines that it then may require possession of all, or any portion, of the License Property for a transportation-related purpose other than the bicycle/pedestrian trail contemplated herein. In this instance, MTA shall provide Licensee with at least one hundred eighty (180) days prior written notice of such termination, and this Agreement shall terminate one hundred eighty (180) days from receipt of such notice by Licensee.
- B. Licensee breaches this Agreement. In this instance, no notice of termination is necessary, and this Agreement shall immediately terminate, as set forth in Section 12 of this Agreement's General License Provisions.
- C. Licensee abandons the Facility or the License Property, as set forth in Section 11 of this Agreement's General License Provisions. In this instance, no notice of termination is necessary, and this Agreement shall immediately terminate as set forth in Section 11.

The term of this Agreement as provided above is referred to as the "Term".

1.3 Condition of Premises. Licensee acknowledges that it has inspected and accepts the License Property in its present condition as suitable for the use for which this Agreement is granted. Execution of this Agreement by Licensee shall conclusively establish that the License Property is in good and satisfactory condition as of the Commencement Date.

2. Payments.2.1 License Fee.

[INTENTIONALLY OMITTED]



2.2 License Fee Adjustment.

[INTENTIONALLY OMITTED]

2.2.1 Annual CPI Adjustment.

[INTENTIONALLY OMITTED]

2.2.2 Fair Market Adjustment.

[INTENTIONALLY OMITTED]

2.3 Late Charge.

[INTENTIONALLY OMITTED]

3. Taxes. Licensee shall be liable for, and agrees to pay promptly and prior to delinquency, any tax or assessment, including but not limited to any possessory interest tax, levied by any governmental authority: (a) against the Facility, the License Property and/or any personal property, fixtures or equipment of Licensee used in connection therewith, or (b) as a result of Licensee's use of the License Property or the Facility.

4. Construction.

4.1 General Provisions. Any work performed or caused to be performed by Licensee on the Facility or the License Property shall be performed: (a) at Licensee's sole cost and expense; (b) in accordance with any and all applicable laws, rules and regulations (including the MTA's and the Southern California Regional Rail Authority's ("SCRRA's") rules and regulations); and (c) in a manner which is (i) equal to or greater than the then applicable standards of the industry for such work, and (ii) reasonably satisfactory to MTA and SCRRA. Licensee shall prepare detailed work plans (the "Work Plans") setting forth any and all construction, reconstruction, installation, restoration, alteration, repair, replacement, removal, landscaping, fencing and sign erection work (hereinafter, "Construction Work") Licensee plans to perform on the License Property. Such Work Plans shall be submitted to MTA and SCRRA for their review and approval, and shall be developed, altered and/or changed so as to meet the requirements of MTA and/or SCRRA. Licensee shall not perform, nor cause any of Licensee's Parties to perform, any Construction Work on the License Property until it has received written approval of the relevant Work Plans from MTA and SCRRA. Changes to approved Work Plans are allowed hereunder. However, all such changes must be reviewed and approved in writing by the MTA and the SCRRA prior to their implementation. Any Construction Work to be performed on the License Property must be carried out pursuant to Work Plans or changes approved in writing by MTA and SCRRA. In no event shall approval by MTA or SCRRA of any plans for any Construction Work be a representation that any such plans comply with any applicable laws. Licensee shall comply with all laws applicable to any Construction Work, and shall be solely responsible for obtaining all required approvals and permits for the same.

4.2 Initial Construction of Facility. With respect to the initial construction and installation of the Facility, Licensee shall ensure that neither it nor any of Licensee's Parties shall enter upon the License Property to commence any Construction Work relating to the Facility until Licensee and each of Licensee's Parties which plan to enter the License Property have met all of the requirements of the SCRRA, which may include a requirement that each of such Licensee's Parties enter into a written right-of-entry agreement with the SCRRA. Licensee's request for such SCRRA requirements shall be in writing and should be delivered to SCRRA, at the address set forth in Item 7B of this Agreement's Part I, at least ten (10) working days prior to any of Licensee's Parties' proposed entry onto the License Property. Licensee shall deliver a copy of such request to the MTA at the address set forth in Item 7A of this Agreement's Part I.



4.3 Work Performed After Initial Construction. Except for emergency work (which may be required from time to time) and normal day-to-day maintenance work, the provisions of Sections 4.1 and 4.2 of this Agreement's General License Provisions shall apply to all work which may need to be performed on the Facility or the License Property after the initial construction and installation of the Facility. In cases of emergency, Licensee shall notify MTA's representative personally or by phone prior to commencing such work. Normal, day-to-day maintenance work on the Facility or the License Property, may be performed by Licensee or any of Licensee's Parties without written notice to MTA or SCRRA, without Work Plans and without Work Plan approval by MTA or SCRRA (subject to the other provisions of this Agreement), so long as Licensee and any of Licensee's Parties wishing to perform such day-to-day maintenance: (i) have previously received SCRRA's requirements, (ii) have previously received MTA's and SCRRA's written approval to access the License Property, (iii) abide by SCRRA's requirements at all times while on the License Property, and (iv) perform all such maintenance work from entirely within the License Property.

4.4 As-Built Drawings. Within ninety (90) days after the substantial completion of the construction and installation of the Facility, Licensee shall deliver to MTA, for MTA's and SCRRA's review and approval, two (2) full sets of as built drawings for the Facility (the "As Built Drawings"). The As Built Drawings are subject to the review and approval of MTA and SCRRA, and shall be developed, altered and/or changed so as to meet the requirements of MTA and/or SCRRA. At a minimum, however, such As Built Drawings shall: (i) be substantially of the form of the Work Plans approved by MTA and SCRRA; (ii) include all changes to the Work Plans which were approved, in writing, by MTA and SCRRA; (iii) show all improvements and construction performed by Licensee, or caused to be performed by Licensee, on the License Property; (iv) clearly indicate and label the area of the License Property; (v) show the centerline of all railroad tracks existing on the MTA Property as of the date that construction and installation of the Facility was substantially complete; and (vi) show, to scale, on all overhead and cross section drawings the easterly and westerly boundaries of the License Property, and the Facility with respect to the centerline of the mainline railroad track existing on the MTA Property as of the date that construction and installation of the Facility was substantially complete. To the extent that the As-Built Drawings indicate or show that the Facility has not been constructed pursuant to the Work Plans approved by MTA and SCRRA or any change thereto approved by MTA and SCRRA, Licensee shall, at the request of MTA, rebuild, reconstruct and/or reinstall the Facility, at Licensee's sole cost and expense, so that the Facility will be constructed, located and installed in accordance with the approved Work Plans and the approved changes thereto. Failure to provide As Built Drawings to the MTA as set forth herein shall be deemed a material breach of this Agreement.

5. Contractors: Approval and Insurance. Any contractors of Licensee performing work on the Facility or the License Property shall first be approved in writing by MTA and SCRRA. With respect to such work, Licensee shall, at its sole cost and expense, obtain and maintain in full force and effect throughout the term of such work, insurance, as required by MTA and SCRRA, in the amounts and coverages specified on, and issued by insurance companies as described on Exhibit B. Additionally, Licensee shall cause any and all of its contractors and subcontractors which may (i) be involved with such work, or (ii) may, for any reason, need to enter onto the License Property to obtain and maintain in full force and effect during the Term of this Agreement, or throughout the term of such work (as applicable), insurance, as required by MTA and SCRRA, in the amounts and coverages specified on, and issued by insurance companies as described on, Exhibit B. MTA reserves the right, throughout the Term of this Agreement, to review and change the amount and type of insurance coverage it requires in connection with this Agreement or the work to be performed on the License Property.

6. Reimbursement. Licensee agrees to reimburse MTA and/or SCRRA for all reasonable costs and expenses incurred by them in connection with work on, or maintenance of, the License Property or the Facility, as a result of City's acts or omissions under this Agreement, including, but not limited to, costs incurred by MTA and/or SCRRA in: (i) furnishing any materials or performing any labor, (ii) reviewing Licensee's Work Plans and/or inspecting any Construction Work, (iii) installing or removing protection beneath or along MTA's tracks, (iv) furnishing of those watchmen, flagmen and inspectors as MTA and/or SCRRA deems necessary, and (v) furnishing other items or performing other acts as MTA and/or SCRRA in their sole discretion deems necessary to monitor or aid in compliance with this Agreement.

7. Liens. Licensee shall fully and promptly pay for all materials joined or affixed to the Facility or



MTA Property, in connection with the construction or maintenance of the Facility and/or Licensee's acts under this Agreement, and fully and promptly pay all persons who perform labor upon said Facility or MTA Property, in connection with the construction or maintenance of the Facility and/or Licensee's acts under this Agreement. Licensee shall not suffer or permit to be filed or enforced against the MTA Property or the Facility, or any part thereof, any mechanics', materialmen's, contractors', or subcontractors' liens or stop notices arising from, or any claim for damage growing out of, any testing, investigation, maintenance, Construction Work or other work, or out of any other claim or demand of any kind. Licensee shall pay or cause to be paid all such liens, claims or demands, including sums due with respect to stop notices, together with attorney's fees incurred by MTA with respect thereto, within ten (10) business days after notice thereof and shall indemnify, hold harmless and defend MTA from all obligations and claims made against MTA for the above described work, including attorney's fees. Licensee shall furnish evidence of payment upon request of MTA. Licensee may contest any lien, claim or demand by furnishing a statutory lien bond or equivalent with respect to stop notices to MTA in compliance with applicable California law. If Licensee does not discharge any mechanic's lien or stop notice for works performed for Licensee, MTA shall have the right to discharge same (including by paying the claimant) and Licensee shall reimburse MTA for the cost of such discharge within ten (10) business days after billing. MTA reserves the right at any time to post and maintain on the MTA Property such notices as may be necessary to protect MTA against liability for all such liens and claims. The provisions of this section shall survive the termination of this Agreement.

8. Maintenance and Repair. Licensee, at Licensee's sole expense, shall maintain the Facility and all other facilities and improvements of Licensee on the License Property in a first-class condition during the Term of this Agreement and shall perform all maintenance and clean-up of the Facility and all other facilities and improvements of Licensee on the License Property as necessary to keep the Facility and all other facilities and improvements of Licensee on the License Property in good order and condition, to MTA's and SCRRA's satisfaction. Licensee's maintenance responsibilities hereunder shall include, but shall not be limited to, keeping each and every portion of the Facility and all other facilities and improvements of Licensee on the License Property weed, graffiti and litter-free to the satisfaction of MTA and SCRRA. In addition, Licensee shall ensure that: (i) any and all landscaping associated with the Facility be, at all times, adequately watered, fed, and pruned, so as to keep it in a healthy condition; (ii) any and all signs required by the MTA or the SCRRA to be kept on the License Property by Licensee be maintained in a readable condition; and (iii) any and all culverts, culvert extensions, inlets, drainage pipes or other drainage facilities constructed to accommodate the Facility be maintained to allow for the free-flow of water therethrough. Licensee shall further ensure that all fencing, gates and barrier landscaping, be maintained in conjunction with one another to prevent those members of the public (as defined in Section 14 of this Agreement's General License Provisions) who may access and use the License Property and the Facility from accessing the MTA Property lying adjacent to the License Property. Licensee shall use its reasonable efforts to ensure that any and all gates installed in the fencing remain closed and locked at all times. Licensee shall close and lock any gates which it finds open and/or unlocked. If any portion of the MTA Property (including, but not limited to, any portion of the Facility, or any improvements or fixtures of the MTA) suffers damage by reason of the access to or use of the License Property or the Facility by Licensee, the public, Licensee's Parties or Licensee's partners, officers or directors, including, but not limited to, damage arising from vandalism (including graffiti), or from any tests or investigations conducted upon the License Property, Licensee shall, at its own cost and expense, immediately repair all such damage and restore the MTA Property to as good a condition as before such cause of damage occurred. If any portion of the Facility's fencing, gates or barrier landscaping suffers damage by reason of the presence upon the License Property or the adjacent MTA Property of any of the beneficiaries of the Title Exceptions set forth in Section 20 of this Agreement's General License Provisions, then Licensee shall, at its own cost and expense, immediately repair all such damage and restore such fencing, gates and/or barrier landscaping to as good a condition as existed immediately prior to the occurrence of such damage. Repair of damage shall include, without limitation, regrading and resurfacing of any holes, ditches, indentations, mounds or other inclines created by any excavation by Licensee or Licensee's Parties.

9. Landscaping, Fencing, Gates and Signs. Licensee, at its sole cost and expense, shall install barrier landscaping, fencing and signs on the License Property so as to prevent those members of the public who may access and use the License Property and the Facility from accessing the MTA Property lying adjacent to the License Property. Licensee, at its sole cost and expense, shall also install signs indicating that MTA is the owner of the License Property, that the right to enter thereon is by permission, and that all persons who enter upon and use the License Property and the Facility do so at their sole risk. The barrier landscaping, fencing and signs required herein



shall be installed and maintained to the satisfaction of the MTA and the SCRRA. Licensee shall prepare landscaping, fencing and sign plans as part of the Work Plans to be prepared by Licensee pursuant to the provisions of Section 4.1 of this Agreement's General License Provisions. As with all other Work Plans, such landscaping, fencing and sign plans shall be submitted to the MTA and the SCRRA for review and approval prior to the installation of any barrier landscaping, fencing or signs. Licensee agrees to provide gaps in the Facility's barrier landscaping and to install locked gates in the Facility's fencing at locations to be specified by MTA and SCRRA. Such locations will be used to provide access to the MTA Property lying adjacent to and easterly of the License Property for the benefit of MTA, SCRRA and the beneficiaries of any lease, license, sign lease, sign license, permit, easement or other property right affecting such MTA Property. All landscaping, fencing (including gates) and sign installation and work shall be done in accordance with the provisions of Section 4 and Section 5 of this Agreement's General License Provisions, and shall be subject to Section 6 and Section 7 of this Agreement's General License Provisions. After installation, all landscaping, fencing (including gates) and signs shall be maintained and repaired in accordance with the provisions of Section 8 of this Agreement's General License Provisions.

10. Use. The License Property shall be used only for the purposes specified in Item 2 of the Basic License Provisions and for such lawful purposes as may be directly incidental thereto. No change shall be made by Licensee in the use of the License Property or the Facility without MTA's prior written approval.

11. Abandonment. Should Licensee at any time abandon the use of the Facility or the License Property, or any part thereof, or fail at any time for a continuous period of ninety (90) days to use the same for the purposes contemplated herein, or should the Facility, or any portion thereof, be closed to the public for a continuous period of ninety (90) days (except for periods of construction, reconstruction, maintenance or repair which have been approved in writing by MTA), then this Agreement shall immediately terminate to the extent of the portion so abandoned, discontinued, or closed to the public, and in addition to any other rights or remedies, MTA shall immediately be entitled to exclusive possession and ownership of the portion so abandoned, discontinued, or closed, without the encumbrance of this Agreement.

12. Breach. Should Licensee breach, or fail to keep, observe or perform any agreement, covenant, term or condition on its part herein contained, then, in addition to any other available rights and remedies, MTA at its option may:

(a) perform any necessary or appropriate corrective work at Licensee's expense, which Licensee agrees to pay to MTA upon demand, or

(b) with or without written notice or demand, immediately terminate this Agreement and at any time thereafter, recover possession of the License Property or any part thereof, and expel and remove therefrom Licensee and any other person occupying the License Property by lawful means, and again repossess and enjoy the License Property and the Facility, without prejudice to any of the remedies that MTA may have under this Agreement, at law or equity by reason of Licensee's default or of such termination.

13. Surrender. Upon any termination of this Agreement (including, but not limited to, a termination resulting from an abandonment of all or a portion of the Facility or the License Property, as described in Section 11 of this Agreement's General License Provisions), unless otherwise requested in writing by MTA prior to or within thirty (30) days after the date of termination, Licensee, at its own cost and expense, shall, within ninety (90) days after the date of termination, remove the Facility from the License Property and restore the MTA Property as nearly as possible to the same state and condition as existed prior to the construction, reconstruction or installation of said Facility. Should Licensee fail to comply with the requirements of the preceding sentence, MTA may at its option (i) perform the same at Licensee's expense, which costs Licensee agrees to pay to MTA on demand, or (ii) assume title and ownership of said Facility. No termination hereof shall release Licensee from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date the Facility is removed and the MTA Property is restored. Notwithstanding anything to the contrary contained herein, upon any termination of this Agreement, Licensee shall comply with any MTA request that Licensee leave all, or any portion of, the Facility in place on the License Property. Should MTA make such a request, title and ownership of such Facility, or portion thereof, shall, upon termination hereof, immediately vest with MTA, at no cost to MTA.



14. **Indemnification.** Licensee, on behalf of itself and its successors and assigns, agrees to indemnify, defend (by counsel satisfactory to MTA), and hold harmless MTA, SCRRA and their respective subsidiaries, officers, commissioners, employees, agents, attorneys, consultants, contractors, invitees, licensees, customers, visitors, passengers, successors and assigns (individually and collectively, "Indemnitees"), to the maximum extent allowed by law, from and against all 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), that are incurred by or asserted against Indemnitees (individually and collectively, the "Claims") arising out of or connected in any manner with (i) the acts or omissions to act of Licensee, Licensee's Parties or anyone directly or indirectly employed by Licensee, or for whose acts Licensee is liable (collectively, "Personnel"), in connection with the MTA Property, or arising from the presence upon or performance of activities by Licensee or its Personnel with respect to the MTA Property, (ii) the acts or omissions to act of any member of the public arising from such member of the public's activities with respect to the License Property, or such member of the public's presence upon the License Property; (iii) bodily injury to or death of any person (including employees of Indemnitees or employees of any Indemnitee) or damage to or loss of use of property resulting from such acts or omissions of Licensee, its Personnel, or the public, or (iv) non-performance or breach by Licensee 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 or any Indemnitee, unless caused solely by the gross negligence or willful misconduct of Indemnitees or any Indemnitee; shall survive termination of this Agreement; and is in addition to any other rights or remedies which Indemnitees may have under the law or under this Agreement. Upon request of MTA, Licensee shall provide insurance coverage for possible claims or losses covered by the indemnification and defense provisions of this Agreement.

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

15. **Assumption of Risk and Waiver.** To the maximum extent allowed by law, Licensee assumes any and all risk of loss, damage or injury of any kind to any person or property, including without limitation, the Facility, the MTA Property and any other property of, or under the control or custody of, Licensee which is on or near the MTA Property. Licensee's assumption of risk shall include, without limitation, loss or damage to the Facility or any other facility or improvement of Licensee located on the MTA Property, bodily injury to, or death of, any person located on the MTA Property, or damage to, or loss of use of, property of any such person located on the MTA Property, in each event to the extent caused by: (i) defects in any structure or improvement on the MTA Property, (ii) accident or fire or other casualty on the MTA Property, (iii) electrical discharge, noise or vibration resulting from MTA's transit operations on or near the MTA Property, (iv) soil conditions on the MTA Property, or (v) any response by MTA, SCRRA or any Indemnitee with respect to any event resulting from the foregoing Items (i) through (iv). The term "MTA" as used in this section shall include: (i) any transit or rail-related company (including, but not limited to SCRRA) validly operating upon or over MTA's tracks or other property, and (ii) any other persons or companies employed, retained or engaged by MTA and/or SCRRA. Licensee, on behalf of itself, its Personnel (as defined in Section 14 of this Agreement's General License Provisions) and, to the extent permitted by law, the public, as a material part of the consideration for this Agreement, hereby waives all claims and demands against MTA or any Indemnitee for any such loss, damage or injury of Licensee, its Personnel and/or, to the extent permitted by law, the public. In that connection, Licensee, on behalf of itself, its Personnel and, to the extent permitted by law, the public, 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 of this Agreement.

16. Insurance. Licensee, at its sole cost and expense, shall obtain and maintain in full force and effect during the Term of this Agreement insurance as required by MTA and SCRRA in the amounts and coverages specified and issued by insurance companies as described on Exhibit B. MTA and SCRRA reserve the right, throughout the Term of this Agreement, to review and change the amount and type of insurance coverage each may require in connection with this Agreement or any work to be performed on the License Property. Prior to (i) entering the License Property or (ii) performing any work or maintenance on the License Property, Licensee shall furnish MTA and SCRRA with insurance endorsements or certificates in the form of Exhibit C, evidencing the existence, amounts and coverages of the insurance required to be maintained hereunder. In most instances, self-insurance is not allowed hereunder; however, if Licensee can demonstrate assets and retention funds meeting MTA's and SCRRA's self-insurance requirements, Licensee may be permitted to self-insure, provided, however that the right to self-insure with respect to any coverage required to be maintained hereunder may be granted or revoked by MTA at its sole and absolute discretion. Neither MTA nor SCRRA shall be liable for the payment of any premiums or assessments for insurance required to be maintained by Licensee under this Agreement.

17. Tests and Inspections. MTA and SCRRA shall have the right at anytime to inspect the License Property and the Facility, so as to monitor compliance with this Agreement. If, in MTA's or SCRRA's sole judgment, any installation on, or use or condition of, the License Property may have an adverse effect on the MTA Property, adjacent property (whether or not owned by MTA), or MTA or SCRRA operations, MTA and/or SCRRA shall be permitted to conduct any tests or assessments, including but not limited to environmental assessments, of, on or about the License Property, as MTA and/or SCRRA determines to be necessary or useful to evaluate the condition of the License Property. Licensee shall cooperate with MTA and SCRRA in any tests or inspections deemed necessary by MTA and/or SCRRA. Licensee shall pay or reimburse MTA and/or SCRRA, as appropriate, for all reasonable costs and expenses incurred due to the tests, inspections or any necessary corrective work and inspections thereafter.

18. Hazardous/Toxic Materials Use and Indemnity. Licensee shall construct the Facility, and shall use, operate and maintain the License Property in compliance with all, and shall not cause or permit the License Property to be in violation of any, federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adopted in the future which are or become applicable to Licensee or the License Property ("Environmental Laws"). Except for Hazardous Materials expressly approved by MTA in writing as shown on Exhibit D, Licensee shall not cause or permit, or allow any of Licensee's Parties or the public to cause or permit, any Hazardous Materials to be brought upon, stored, used, generated, treated or disposed of on or about the MTA Property. Any Hazardous Materials on the site shall be stored, used, generated and disposed of in accordance with all applicable Environmental Laws. As used herein, "Hazardous Materials" means any chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects.

Licensee shall indemnify, defend (by counsel acceptable to MTA) and hold harmless the Indemnitees (as defined in Section 14 of this Agreement's General License Provisions) from and against all loss, liability, claim, damage, cost or expense (including without limitation, any fines, penalties, judgments, litigation expenses, attorneys' fees, and consulting, engineering, and construction fees and expenses) incurred by Indemnitees as a result of (a) Licensee's breach of any prohibition or provision of this section, or (b) any release of Hazardous Materials upon or from the Facility or the License Property, or any contamination of the MTA Property or adjacent property (i) which occurs due to the use and occupancy of the Facility or the MTA Property by Licensee, Licensee's Parties or the public, or (ii) which is made worse due to the act or failure to act of Licensee or Licensee's Parties.

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 solely by the gross negligence or willful misconduct of Indemnitees; shall survive termination of this Agreement; and is in addition to any other rights or remedies which Indemnitees may have under the law or under this Agreement.



In addition, in the event of any release on, or contamination of, the License Property which: (i) occurs due to Licensee's, Licensee's Parties' or the public's access, use and/or occupancy of the Facility or the MTA Property, or (ii) becomes worse as a result of Licensee's failure to promptly notify MTA, as set forth in the following sentence, Licensee, at its sole expense, shall promptly take all actions necessary to clean up the affected property (including the MTA Property and all affected adjacent property, whether or not owned by MTA) and to return the affected property to the condition existing prior to such release or contamination, to the satisfaction of MTA and any governmental authorities having jurisdiction thereover. In all cases, Licensee shall promptly notify MTA of any release on, or contamination of, the MTA Property of which Licensee or any of Licensee's Parties becomes aware.

19. Underground Storage Tanks. NEITHER LICENSEE NOR LICENSEE'S PARTIES SHALL INSTALL OR USE ANY UNDERGROUND STORAGE TANKS ON THE LICENSE PROPERTY UNLESS SPECIFICALLY APPROVED IN ADVANCE IN WRITING BY MTA, WHICH APPROVAL MAY BE WITHHELD IN MTA'S SOLE DISCRETION.

At MTA's option, upon the termination of this Agreement at any time and for any reason, Licensee shall, prior to the effective date of such termination, remove and close all underground storage tanks and related equipment placed on the License Property by Licensee, or any of Licensee's Parties, and clean up and remove all Hazardous Materials associated therewith in, on, under and about the MTA Property, in accordance with the requirements of all Environmental Laws and to the satisfaction of MTA and any governmental authorities having jurisdiction thereover, and deliver to MTA a copy of a certificate of closure issued for such tanks by the appropriate governmental authority.

20. Subordinate Rights. This Agreement is subject and subordinate to the prior and continuing right and obligation of MTA, its successors and assigns, to use the MTA Property in the exercise of its powers and in the performance of its duties, including those as a public transportation body. Accordingly, there is reserved and retained unto MTA, its successors, assigns and permittees (including the SCRRA), the right to construct, reconstruct, maintain and use 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 MTA Property, and in connection therewith the right to grant and convey to others, rights and interests to the MTA Property in, upon, over, under, across, along and on the License Property and in the vicinity of Facility. This Agreement is subject to: (i) all rights, licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens, claims and other matters of title (collectively, "Title Exceptions", and, individually, a "Title Exception") which may affect the MTA Property now or hereafter, and (ii) to the rights of the beneficiaries of any such Title Exceptions. Neither MTA, SCRRA or any Indemnitee shall have any liability or obligation with respect to any acts or omissions of any of the beneficiaries described in the preceding sentence. The words "grant" or "convey" as used herein shall not be construed as a covenant against the existence of any such Title Exceptions. MTA and SCRRA shall, at all times, have the right to enter upon and use the License Property in common with Licensee, provided that such entry and use does not materially and adversely affect Licensee's use thereof (except as set forth in Section 24.20.8 and 24.20.9 attached hereto as a portion of Exhibit "E" and except to the extent required in an emergency). In addition, MTA may, at any time, grant lease rights, license rights, permit rights, easement rights and/or other rights in, upon, over, under, across, along and/or on the License Property to pipeline companies, utility companies, communications companies, fiber optic companies, advertising sign companies and/or other companies or users, provided that such rights do not materially and adversely affect Licensee's use of the License Property hereunder (except as set forth in Section 24.20.8 and 24.20.9 attached hereto as a portion of Exhibit "E" and except to the extent required in an emergency). Licensee agrees to consent to the granting of any such rights, to the extent such consent is required or is reasonably requested by MTA, and to execute, acknowledge and deliver any and all documents MTA may require in connection therewith.

21. Compliance with Laws. Licensee shall comply, and shall use its best efforts to cause each of its Personnel and the public to comply, with all applicable federal, state and local laws, regulations, rules and orders in its work on, or maintenance, inspection, testing or use of, the Facility and the MTA Property, and shall furnish satisfactory evidence of such compliance promptly upon request of MTA. MTA and SCRRA may enter the License Property to inspect the Facility at any time. Licensee shall obtain all required permits or licenses required by any governmental authority for its use of the License Property and the Facility, at its sole cost and expense.



22. Condemnation. Licensee hereby assigns to MTA all compensation which may be awarded to Licensee as a result of any taking or condemnation (including any conveyance by deed in lieu of, or in settlement of, any condemnation proceeding) of all, or a portion of, the License Property for a public use by any public agency.

23. Markers. Project markers in form and size satisfactory to MTA, identifying the Facility and its owners, will be installed and constantly maintained by and at the expense of Licensee at such locations as MTA shall designate. Such markers shall be relocated or removed upon request of MTA without expense to MTA. Absence of markers in or about MTA Property does not constitute a warranty by MTA of the absence of subsurface installations.

24. General Provisions.

24.1 Notices. All notices and demands which either party is required to or desires to give to the other shall be made in writing by personal delivery, by express courier service or by certified mail postage prepaid, and addressed to such party at its address set forth in the Basic License Provisions. Either party may change its address for the receipt of notice by giving written notice thereof to the other party in the manner herein provided. Notices shall be effective only upon receipt by the party to whom notice or demand is given.

24.2 Non-Exclusive License. The license granted herein is not exclusive and MTA specifically reserves the right to grant other licenses, easements or other rights within the License Property, as is more particularly set forth in Section 20 of this Agreement's General License Provisions.

24.3 Governing Law. This Agreement shall be governed by the laws of the State of California.

24.5 Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions, or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

24.6 Interest on Past-due Obligations. All amounts payable to MTA hereunder, shall be due forty five (45) days after the date of an invoice therefore to Licensee. Except as expressly herein provided, any amount due MTA which is not paid when due shall bear interest, from the date due MTA as it accrues. Payment of such interest shall not excuse or cure any default by Licensee under this Agreement.

24.7 Captions. The captions included in this Agreement are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this Agreement or any provision hereof, or in any way affect the interpretation of this Agreement.

24.8 Survival of Obligations. All obligations of Licensee hereunder not fully performed as of the expiration or earlier termination of the Term of this Agreement shall survive the expiration or earlier termination of this Agreement, including without limitation, all payment obligations and all obligations concerning the condition of the MTA Property and the Facility.

24.9 Waiver of Covenants or Conditions. The waiver by one party of the performance of any covenant or condition under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by it of any other covenant or condition under this Agreement.

24.10 Amendment. This Agreement may be amended at any time by the written agreement of MTA and Licensee. All amendments, changes, revisions, and discharges of this Agreement in whole or in part, and from time to time, shall be binding upon the parties despite any lack of legal consideration, so long as the same shall be in writing and executed by the parties hereto.

24.11 Assignment. This Agreement and the license granted herein are personal to the Licensee.



Licensee shall not assign or transfer (whether voluntarily or involuntarily) this Agreement in whole or in part, or permit any other person or entity to use the rights or privileges hereby conveyed, without the prior written consent of MTA, which may be withheld in MTA's sole and absolute discretion, and any attempted act in violation of the foregoing shall be void and without effect and shall give MTA the right to immediately terminate this Agreement.

24.12 Attorneys' Fees. In any judicial or arbitration proceeding involving performance under this Agreement, or default or breach thereof, the prevailing party shall be entitled to its reasonable attorney's fees and costs.

24.13 Nondiscrimination. Licensee certifies and agrees that all persons employed thereby and/or the affiliates, subsidiaries, or holding companies thereof and any contractors retained thereby with respect to the License Property are and shall be treated equally without regard to or because of race, religion, ancestry, national origin, or sex, and in compliance with all federal and state laws prohibiting discrimination in employment, including but not limited to the Civil Rights Act of 1964; the Unruh Civil Rights Act; the Cartwright Act; and the California Fair Employment Practices Act.

24.14 Further Acts. The Parties agree to perform any further acts and to execute and deliver in recordable form any documents which may be reasonably necessary to carry out the provisions of this Agreement.

24.15 Waiver of Relocation Rights. Licensee hereby waives any right to relocation assistance, moving expenses, goodwill or other payments to which Licensee might otherwise be entitled 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, Government Code § 7260 *et seq.* but for this waiver and MTA's express right of termination.

24.16 Time of Essence. Time is of the essence.

24.17 No Recording. Licensee shall not record or permit to be recorded in the official records of the county where the License Property is located any memorandum of this Agreement or any other document giving notice of the existence of this Agreement or the license granted hereby.

24.18 Revocable License. Licensee agrees that notwithstanding the improvements made by Licensee to the License Property or other sums expended by Licensee in furtherance of this Agreement, the license granted herein is revocable by MTA in accordance with the terms of this Agreement.

24.19 Entire Agreement. This Agreement and the Exhibits attached hereto constitute the entire agreement between the parties 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.

24.20 Additional Provisions. Those additional provisions set forth in Exhibit E, if any, are hereby incorporated by this reference as if fully set forth herein.



Easement Agreement with Conrail for the Schuylkill River Trail, PA



AGREEMENT AND GRANT OF EASEMENT

THIS AGREEMENT made this *12th* day of *August* A.D. 1994, by and between CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation (hereinafter called "Conrail") parties of the first part, and the County of Montgomery, (hereinafter called "County"), party of the second part.

WHEREAS, Conrail, is the owner of a tract or tracts of land being more particularly shown on the plan attached hereto and made a part hereof as Exhibit "A" sheets 1,2,3,4, and 5 or as amended by mutual consent of both parties, situate in the Borough of Conshohocken, the Borough of Norristown, and Whitemarsh Township, Montgomery County, Pennsylvania, (hereinafter referred to as "Premises"); and

WHEREAS, County desires to establish a hiking and biking trail, better known as the Philadelphia to Valley Forge Bikeway together with associated recreation including, but not limited to bicycling, walking, jogging, and cross country skiing (hereinafter called "Bikeway") for use by the general public through and over the surface of the Premises, and Conrail is willing to grant a fifteen (15) foot wide exclusive surface easement in perpetuity (hereinafter referred to as "Easement") for said use to County for such Bikeway purposes.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, that Conrail, for and in consideration of the sum of \$54,740.00, lawful money of the United States, and other good and valuable consideration paid to it by the County, receipt of which is hereby acknowledged, Conrail and County intending to be legally bound hereby agree as follows:

(1) Conrail hereby grants unto County, its successors and assigns, an exclusive Easement in perpetuity to construct, reconstruct, improve, operate, repair, and maintain the Bikeway which will connect with and become a part of a bicycle path system, and the necessary accessories and appurtenances used in connection therewith, and the right to enter upon the Premises for such Bikeway purposes, on, across, through, and along the Premises. The fifteen (15) foot wide easement area hereby granted is shown as a dotted line on Exhibit A, attached hereto.

(2) Conrail, its successors or assigns shall not erect or maintain any improvements on, over or under the Easement, which would affect access to or use of the Easement, and other rights and privileges granted herein, without first obtaining the written approval of the County, which approval shall not be unreasonably withheld.

(3) Conrail and its successors and assigns reserves the right after prior written notice to the County, to grant such other easements, rights, or privileges in, on, over, under, above, across or through the Easement to such persons, corporations, partnerships, and entities as Conrail and its successors and assigns may elect so long as such easements, rights or privileges do not interfere with this Easement, the safe use of this Easement for a Bikeway, any improvements made by the County in the easement area, and such other rights granted to County herein.

(4) The County hereby covenants and agrees with Conrail to continuously maintain the Easement so as to provide safe bicycle and pedestrian access thereto.

(5) This Easement shall be exercised only for purposes of a bikeway and hiking trail, and at all times so as not to interfere with Conrail's use, operation and maintenance of its property for its corporate purposes here or elsewhere. Conrail, except in an emergency, shall not park or stop its rolling stock or other equipment in any manner on the easement area that will impede the use or safety of the bikeway. Conrail, however, agrees that it will use its own best efforts to assure the safety of such property and facilities as remain within its control.

(6) County hereby releases and will protect, defend, indemnify and save harmless Conrail from and against all claims, liabilities, demands, actions at law and equity (including without limitation claims and actions under the federal Employer's Liability Act), judgments, settlements, losses, damages and expenses of every character whatsoever (hereinafter collectively referred to as "claims") for injury to or death of any person or persons whomsoever which results from the unauthorized use of motorized vehicles, such as, but not limited to, motorcycles, minibikes, and snowmobiles within the easement area,



and for damage to or loss or destruction of property of any kind by whomsoever owned, caused by, resulting from or arising out of the exercise of this Easement granted hereby, except to the extent that such claims arise from Conrail's negligence.

(7) All the installation, repair, renewal and rehabilitation expenses including material and labor costs and related overhead costs for the Bikeway, railroad Bikeway crossings, and pedestrian gates, which are necessary for the safe construction of the Bikeway whether done by Conrail or by the County, shall be at the sole cost and expense of County and all future maintenance costs associated with the Easement area and Bikeway shall be at the sole cost and expense of the County.

(8) All track and tie removal and/or recovery required for the bikeway shall be at the sole cost and/or gain of Conrail and all work shall be done by Conrail.

WWE (9) The County shall pay to Conrail a sum of money the amount not to exceed \$100,000.00 for the actual cost of the railroad Bikeway crossings (per Article 13 Section (a) of this agreement) which are necessary for the future construction of the Bikeway, and Conrail shall complete said construction work at the sole cost and expense of the County within one hundred eighty (180) days of the signing of this agreement.

(10) County shall at its sole cost and expense maintain the Bikeway in a safe, clean and orderly condition including the prompt removal of ice and snow from all railroad Bikeway crossings.

(11) County shall prohibit the Bikeway from being used by motorized recreational vehicles, such as, but not limited to, motorcycles, minibikes, and snowmobiles, except that motorized vehicles shall be permitted to be used by authorized County employees, Rangers, municipal police, or others specifically authorized by County and Conrail for the purpose of patrolling and maintaining the Bikeway.

(12) Prior to the construction of the Bikeway and any facilities for the Bikeway, such as, but not limited to a paved bikeway, parking, access, road crossing approaches, railroad Bikeway crossing approaches, signs or similar facilities or any changes in grade, County shall comply with the following conditions:

(a) County agrees to provide Conrail's Chief Engineer-Design and Construction with a Bikeway construction plan for written approval by Conrail prior to the installation and/or construction now or in the future which approval shall not be unreasonably withheld, of any improvements, alterations or changes in grade on Conrail property and Easement area, to notify Conrail upon completion of such installation and or construction in order that a final inspection can be made by Conrail for acceptance, which acceptance shall not be unreasonably withheld, and to forward an "as built" plan to Conrail upon completion of said installation and or construction.

(b) All work will be done at the sole cost and expense of County and in a manner that will not adversely affect existing drainage patterns.

(c) Following approval by Conrail of any proposed construction, County shall notify Conrail at least thirty (30) working days prior to beginning any construction or future alterations.

(d) County shall not do anything which would block or impede Conrail ingress and egress with personnel, vehicles and equipment as necessary for the construction and maintenance of its facilities or the operation of its facilities for its corporate business.

(13) County covenants and agrees that the Easement for the Bikeway, where it crosses Conrail tracks, shall be under and subject to the following terms and conditions:

(a) The Crossings shall be located as indicated by Exhibit "A" as determined by Conrail and County and no departure shall at any time be made therefrom except upon the mutual consent of the parties hereto.

(b) Conrail, at the sole cost and expense of the County, shall construct the railroad Bikeway Crossings with design specifications acceptable to the County for safe bicycle use.



(14) In the event Conrail shall be required, or may desire at any time, or from time to time to change the grade or location of any of its tracks or facilities which adversely affect the Bikeway, railroad Bikeway crossings or any other Bikeway related facility within the Premises, then Conrail shall, at its own cost and expense make such changes in its tracks and facilities and relocate and reconstruct the Bikeway Facilities at a location on the Premises acceptable to the County.

(15) No waiver by either party of any breach or default on the part of the other of any of the terms, covenants, or conditions of this agreement shall be deemed or construed to constitute a waiver of any subsequent similar breach or default.

(16) In the event County vacates or abandons the use of this Easement or any part thereof, for the purposes intended, it shall forthwith notify Conrail and within thirty (30) days after such notification execute a Release prepared by Conrail, in recordable form, which would in effect abrogate this Easement, or part thereof of record, and the County shall, at its sole cost and expense remove pavement of the bikeway within the hereby granted easement area or part thereof.

(17) Every notice, approval, consent, or other communication desired or required under this agreement shall be effective only if the same shall be in writing and sent postage prepaid by overnight mail, United States registered or certified mail (or a similar mail service available at the time), directed to the other party at its address as follows (or such other address as either party may designate by notice given from time to time).

mtc

If to Owner: CONSOLIDATED RAIL CORPORATION
2001 Market Street - Room 19-B
P.O. Box 41419
Philadelphia, Pa. 19101-1419
Attn: Director-Asset Management

If to Owner: COUNTY OF MONTGOMERY PARKS DEPARTMENT
Courthouse
Norristown, Pa. 19404
Attn: Director

Notwithstanding anything to the contrary set forth above, in the event Owner is unable to locate County, such notices may be posted at or near the Crossings.

TO HAVE AND TO HOLD: The Easement to the County, its successors and assigns, together with the right and privilege at any and all times to it and to its agents to enter the Easement, or any part thereof, for the purpose of constructing, reconstructing, operating, repairing, and maintaining the said Bikeway and for making connection therewith.

The words "Conrail" and "County" used herein shall be construed to include at all times and in all cases their legal representatives, successors, or assigns.

IN WITNESS WHEREOF, CONSOLIDATED RAIL CORPORATION and the COUNTY OF MONTGOMERY intending to be legally bound hereby have caused their respective common or corporate seals to be hereunto affixed, duly attested, the day and year first above written.

ATTEST:

Wilberta C. Jackson
Assistant Secretary
WILBERTA C. JACKSON

CONSOLIDATED RAIL CORPORATION

By: *M. Virginia Ebert*
M. Virginia Ebert
Director-Asset Management

WITNESS:

Michael D. Mey

COMMISSIONERS, COUNTY OF MONTGOMERY

Mario Mela
Joseph M. Helgeson



Lease and Operating Agreement for the Union Pacific Steel Bridge Walkway, Portland, OR



LEASE AND OPERATING AGREEMENT

THIS LEASE AND OPERATING AGREEMENT (Agreement), is made and entered this 17th day of January, 2000, by and between the City of Portland, Oregon (City) and the Union Pacific Railroad Company, a Delaware corporation (Railroad).

RECITALS

- A. The Railroad owns a double track, double-deck bridge called the Steel Bridge (Bridge) that extends across the Willamette River in the City of Portland, Oregon.
- B. The authority to construct that bridge was granted by an ordinance adopted by the Port of Portland on August 17, 1909, and amended on December 30, 1940, and the benefits and obligations of that ordinance were accepted and assumed by the Railroad.
- C. The Port ordinance provided that the upper deck of the bridge structure should be available for travel by streetcars, wagons, automobiles and vehicles of all kinds, and pedestrians.
- D. Pursuant to the provisions of the Port ordinance, the Railroad, Multnomah County, the Oregon Department of Transportation (ODOT) and the Tri-County Metropolitan Transportation District (Tri-Met) entered into agreements providing for the use of the upper deck for the purposes for which it was constructed.
- E. An Agreement dated March 23, 1984, entered into by the Railroad, ODOT and Tri-Met permitted operation of light rail vehicles across the upper deck.
- F. The City now wishes to construct outside of the lower deck of the south side of the Steel Bridge a walkway along with access ramps to the Willamette River's east and west banks along with an aerial connection across Railroad's tracks, and a pathway along the east river bank to the south. This walkway, connections, and facilities are to be constructed for the purpose of providing a public pedestrian transportation system with ADA-accessible, improved and safe access across the Willamette River.
- G. The operation of a walkway within the Railroad right-of-way is subject to the control and supervision of the Railroad.
- H. The Railroad is willing to grant the City the right to construct, maintain, remove and replace the walkway and attachments to the Bridge on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in the Agreement, the parties hereto mutually agree to enter into this Agreement regarding the construction, operation and maintenance of the walkway



facility and to define the rights and responsibilities of the parties, as follows:

I. DEFINITIONS AND DOCUMENTS

1. **Waikway** means the pedestrian and bicycle facilities that are physically attached to and/or supported by the Bridge, including the east and west bank approach structures, east and west lower deck fixed spans, the lower deck lift span depicted on the Attached Exhibit A, together with counter weights, transverse balance weights, railings, conduit, conductors, lighting, automatic and manual gate systems, public address systems, closed circuit monitoring systems, drainage, and other related facilities and appurtenances.

2. The City and the Railroad are also parties to other documents that relate to this project. Those documents are:

a. Steel Bridge Pedestrian Crossing and River Access Construction Agreement, covering the terms under which construction will take place on or adjacent to the Railroad's property;

b. Permanent Public Right of Way Easement, Railroad Folder No. 1733-68, for purposes including public waikway, bicycle paths, over-crossing structures, ramp, stairs and retaining wall structures, storm water drainage systems, retaining wall foundation drainage system, public restrooms and service buildings, landscaping, irrigation, lighting, utilities and signage over five parcels of land outside the Railroad's operating right of way on the east bank of the Willamette River;

c. Beautification Lease, Railroad Folder No. 1655-78, covering fencing, slope pavers and maintenance access rights to property within the Railroad's operating right of way on the east bank of the Willamette River;

d. Public Highway Crossing Agreement, Railroad Folder No. 1846-86, covering the pedestrian overcrossing of the Railroad's tracks on the east bank of the Willamette River;

e. Supplement to an existing Wireline Crossing Agreement, covering the extension of power and telephone services from Block 17 beneath the Railroad's tracks; and

f. Pipeline Crossing Agreement, covering a water line crossing under the Railroad's tracks from the Overlook and a storm water drainage system located behind the retaining wall structure to the west of the railroad tracks, running along the tracks within a portion of the operating right of way.

3. If any property or rights other than the rights granted in this agreement or the above agreements are necessary for the construction, maintenance and use of the project, the City will acquire all such other property and rights at its own expense and without expense to the Railroad.



II. TERM

1. The City and the Railroad hereby agree that the term of this Agreement is 99 years. Provided however, that the Railroad shall not be obligated to maintain the Bridge solely for the benefit of the City in the event it determines to abandon or transfer ownership of the Bridge for any cause.

2. In the event the Bridge is destroyed, dismantled or damaged beyond justifiable repair, the Railroad may elect to rebuild the Bridge or not as it may determine. Likewise, if the lower deck of the Bridge is destroyed, dismantled or damaged, the Railroad may elect to repair it or not as it may determine. Unless the Railroad elects to rebuild the Bridge or repair the lower deck within one (1) year, this Lease and Operating Agreement shall terminate as of the date the damage or destruction was sustained and the parties shall make an equitable apportionment of the City's annual payments. The City shall not be required to make payments for the period of time during which the City had no use of the Walkway.

III. LEASE OF RAILROAD FACILITY

1. The Railroad, in consideration of a one-time lump sum payment of Three Hundred Forty-two Thousand Nine Hundred Eighty-Eight Dollars (\$342,988), hereby leases and grants to the City the right to occupy those portions of the Steel Bridge necessary for the City's construction and maintenance of the Walkway as provided herein.

2. The use of the Walkway shall be limited to crossing of the Willamette River by pedestrians and bicycles and special uses agreed to in advance by the City and the Railroad. Motorized vehicles shall not be allowed on the Walkway, except that fire and life safety or maintenance vehicles and equipment shall be allowed to the extent they are compatible with the capacity of the Walkway. The Walkway may also be used by the Portland Police Mounted Patrol.

3. The City will pay all electrical costs associated with the Walkway that are not metered or otherwise charged to the Railroad. The Railroad shall be responsible for the any additional utility costs incurred because of the more frequent operation of the span required by the presence of the Walkway, as provided in Section VIII. The City shall pay all taxes associated with the Walkway. The City is now tax exempt.

4. The City has made its own investigation and determination regarding the use of the Bridge for the purposes intended in this Agreement and is not relying on any representations of the Railroad regarding the condition of the Bridge or the appropriateness of the intended use.

IV. CONSTRUCTION OF THE WALKWAY

1. The City may construct the Walkway along and across the Steel Bridge in accordance with the approved plans and specifications provided by the City to the



Railroad in accordance with the Construction Agreement between the parties.

2. The Walkway shall be designed and constructed so as to be completely removable and the Bridge capable of being restored to its previous condition.

3. The City shall obtain all necessary federal, state and local permits necessary for the construction, operation and maintenance of the Walkway, shall comply with all requirements of those permits for the life of this Agreement and shall make any improvements necessary to keep such permits in full force and effect until such time as the Walkway and related fixtures are removed from the Bridge.

4. The City, at its own expense, shall install and maintain in good repair such fences and signage as shall be agreed to for the purpose of distinguishing and keeping separate the Railroad operating corridors and the Walkway facilities.

5. The Railroad, at its own expense, shall relocate or protect any signal wires that it determines are at risk due to the addition of the Walkway to the Bridge or the operation of the Bridge. The Railroad shall be responsible for the maintenance and repair of signal wires.

6. The City's monitoring and communications equipment is to be designed so as to permit the installation of additional cameras by the Railroad for its own use. The Railroad shall install and maintain any such additional camera equipment at its own expense.

7. The Railroad shall support the City in its negotiations with the U.S. Coast Guard and river users to secure a period of lockdown for the lower deck of the Bridge to allow construction of the Walkway and for additional lockdowns of the Bridge needed for maintenance or removal of the Walkway or portions of it.

V. MAINTENANCE

1. The Walkway shall be maintained at the expense of the City to the reasonable satisfaction of the Railroad's Chief Engineer or the Chief Engineer's designated representative. The Walkway, including all operating and monitoring facilities, shall be inspected at regular intervals and kept in good operating condition at all times by the City.

2. The City at its own expense shall provide, keep and maintain adequate and necessary lighting, monitoring and communications equipment, manual or mechanically operated pedestrian and maintenance gates, railings, special signals, devices, electronic controls, structural supports and decking, paint, walkway surfaces or any other materials or devices required for the safe operation and use of the Walkway.

3. If the Railroad determines that the City's maintenance or repair of the Walkway is not reasonably satisfactory for the safe and efficient operation of the Bridge, the Railroad shall notify the City in writing of the specific measures that are required to bring the Walkway into a satisfactory condition. The City shall perform the



necessary repairs or maintenance within a reasonable time, not to exceed 60 days. If the repairs or maintenance are not completed as required, the City shall close the Walkway. If the City fails to do so and the Railroad believes that public safety is jeopardized by the failure of the City to perform the repair or maintenance activity, the Railroad may, but is not required to, conduct the repair or maintenance required after giving notice to the City. The City shall reimburse the Railroad for its reasonable costs so incurred, including customary additives.

4. The City shall notify the Railroad and shall obtain approval from the Railroad before beginning maintenance activities on the Walkway that involve the Bridge or attachments. The City shall give Railroad 7 days notice of repair or maintenance or as much notice as practicable under the circumstances. Maintenance or work on the Walkway itself within the limits of the Walkway railings shall not require notice to the Railroad provided that work does not utilize equipment or procedures that could foul a track or affect the Bridge or rail operations.

5. The City shall not cause or allow any structural or substantive modification to the Walkway without prior notice to and approval by the Railroad.

VI. REMOVAL AND CLOSURE

1. The parties acknowledge that it may be necessary for the repair and maintenance of the Bridge by the Railroad for the Walkway to be removed from the Bridge. The parties acknowledge that removal of the Walkway will be a major expense for the City. The City agrees that the Walkway shall be designed so as to be removable in segments. Upon two years written notice from the Railroad, the City shall remove such Walkway segments as are reasonably required for repair or maintenance of the Bridge by the Railroad.

2. In the event the Bridge requires emergency repair, and should the Railroad in the interest of public safety declare an emergency, the Railroad may require removal of segments of the Walkway or remove segments of the Walkway itself to allow repair of the Bridge. If the Railroad removes Walkway segments, it shall take reasonable steps to preserve those segments for the City.

3. If the Walkway is removed under the provisions of paragraph 1 or 2 above, removal and replacement will be at the City's sole cost.

4. In the event the repair or maintenance of the Bridge by the Railroad shall require the temporary closure of the Walkway in order to reduce costs or delays to rail traffic, the City shall, at its expense, close the Walkway. If the closure is required to remain in effect for longer than 30 days, the annual charges payable by the City shall be abated during the period of the closure.

5. Should the Railroad replace the Bridge with a new structure, the City may, at its own expense, place the Walkway on such new bridge in accordance with plans and specifications approved by the Railroad, with no additional charge to be made



during the term of this Lease and Agreement.

VII. BRIDGE OPERATION

1. The Railroad agrees to provide monitoring and operation of the Walkway. Monitoring is to include observation of whether anyone is occupying or approaching the lift section of the Walkway at times when the lift section needs to be raised and alerting such persons to the impending raising of the lift section. The monitoring and operation shall be conducted in accordance with procedures to be agreed upon between the parties and incorporated by the Railroad in its Operations and Maintenance Guide for the Steel Bridge. Any modifications of those procedures shall be by mutual agreement of the parties.

2. The lower span of the Bridge shall be kept in a down position during the times the Walkway is open for use. The Railroad shall lift the lower span of the Bridge to allow river traffic to pass beneath the Bridge and for testing and maintenance purposes as required by the Railroad. If the City notifies the Railroad that the Walkway is not going to be used for transportation or repair and maintenance purposes, the Railroad may store the lower span in the position chosen by the Railroad. The City shall notify the Railroad of closures of the Walkway other than those agreed to or included in the normal scheduled operations, testing, inspection, restoration or maintenance of the Walkway.

3. The Railroad shall give the City reasonable notice if it is necessary to close the Walkway for purposes of Railroad maintenance or repair. Notice will be given as soon as possible under the circumstances. The length of the notice shall depend on the length of the anticipated closure. Specific notice requirements will be included in the Operations and Maintenance Guide for the Steel Bridge. The City shall close the Walkway as necessary. If such use by the Railroad interferes completely with the use of the Walkway by the City and continues for a period longer than 30 days the City's annual payment shall be pro-rated so that the City is not required to pay for that portion of the year in which interference with the use of the Walkway extends beyond that 30-day period.

4. The City, at its own expense, shall install a video-based monitoring system for operation of the Walkway, the design and location of which are acceptable to the Railroad. In the event the City assumes responsibility for the operation and supervision of the Walkway, the City shall pay the full cost of removing the portion of the system no longer deemed by the railroad to have utility to railroad operations. In the event the City closes or discontinues the use of the Walkway, the City will pay the full cost of removing the monitoring system or whatever portion of the system the Railroad determines has no utility to railroad operations.

5. The City and the Railroad both have a long term commitment to public safety in the operation of their facilities. Each party agrees to cooperate with the other to resolve any safety concerns that may arise in the activities conducted under the



Agreement.

VIII. PAYMENT

1. The Railroad will incur increased operating and maintenance costs due to the addition of the Walkway. The number of additional lifts of the lower span has been forecast and an analysis performed to determine the increased costs for electricity, labor, lubrications, replacement parts and other routine maintenance of the Bridge. In addition, the Railroad is leasing to the City the right to maintain the Walkway across and along the Bridge. Based on this analysis, the parties agree that the City shall pay to the Railroad the annual sum of \$36,000 for the increased costs of maintenance and repair of the Bridge, exclusive of lift rope replacement. The City's payment shall be adjusted annually based on the Consumer Price Index (CPI) for all Urban Consumers (1982-84 equals 100), Portland, Oregon, for All Items, or a comparable index published by the United States Bureau of Labor Statistics if such Consumer Price Index be discontinued. The redetermination of the payment for each period shall be based on the most recently available CPI that precedes the adjustment date.

2. The City shall bear the proportional cost of the replacement of the lift ropes for the lower deck caused by the increased number of lifts due to the use of the Walkway. The parties agree at this time that that cost is \$8200 per year, which shall be paid annually by the City to the Railroad. The payment for lift rope replacement shall be adjusted annually based on the Consumer Price Index (CPI) for all Urban Consumers (1982-84 equals 100), Portland, Oregon, for All Items, or a comparable Index published by the United States Bureau of Labor Statistics if such Consumer Price Index be discontinued. The redetermination of the payment for each period shall be based on the most recently available CPI that precedes the adjustment date. This cost is based on the following assumptions: a) there will be a 41% increase in lower deck lifts because of the Walkway; b) the total cost of lift rope replacement for the entire Bridge is approximately \$1,000,000 at the time of the execution of this Agreement; c) 30% of the rope cost is attributable to the lower deck; and d) the life of the lift rope is not less than 15 years. ($\$1,000,000 \times 30\% = \$300,000 \times 41\% = \$123,000 \div 15 \text{ years} = \8200) Either party may seek adjustment of the lift rope replacement payment based on a study performed by that party that documents the need for adjustment. If the parties are unable to reach agreement, the matter shall be determined by arbitration as provided in Section XIV below.

IX. LIABILITY AND INSURANCE

1. Before the Walkway is opened to the public and no later than the expiration of the insurance coverage required under the Steel Bridge Pedestrian Crossing and River Access Construction Agreement, the City agrees to purchase and to maintain during the remaining life of this Agreement the following insurance coverage:

- a. Commercial General Liability insurance including but not limited to:



providing bodily injury including death, personal injury, property damage and punitive damage liability (ISO Form CG 00010196 or equivalent) coverage with a single limit of at least \$5,000,000 each occurrence or claim and an aggregate limit of at least \$10,000,000. This insurance shall contain broad form contractual liability. Exclusions for railroads (except where the Job Site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed. The policy shall also contain the following endorsement: "For purposes of this insurance, Union Pacific Railroad payments related to the federal Employers Liability Act or any Union Pacific Wage Continuation Program or similar programs are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits or unemployment compensation law or similar law.

b. The City and its insurers shall endorse the required insurance policy(ies) to waive their right of subrogation against Railroad. The City and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under its care, custody or control. The City's insurance shall be primary with respect to any insurance carried by the Railroad. The policy(ies) shall provide severability of interests and shall name Railroad as an additional insured.

c. Before commencing Work, the City shall furnish to Railroad original certificate(s) of insurance evidencing the required coverage, and upon request, a certified duplicate original of any required policy. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing of any material alteration.

d. The insurance policy(ies) shall be written by a reputable insurance company(ies) acceptable to Railroad or with a current Best's Insurance Guide Rating of A or Class VII or better, and, unless otherwise agreed by Railroad, shall be authorized to do business in the state in which the Job Site is located.

e. The City WARRANTS that this Agreement has been thoroughly reviewed by the city's insurance agent(s)/broker(s), who have been instructed by the City to procure the insurance coverage required by this Agreement and acknowledges that the City's insurance coverage will be primary.

f. If the City fails to procure and maintain insurance as required, Railroad may elect to do so at the cost of the City.

2. It is understood by the parties that the Railroad's willingness to allow the Walkway to be attached to its Bridge is contingent upon the Railroad being exposed to no additional risks for doing so. It is therefore agreed, as one of the material considerations for this Agreement and without which the same would not be granted by the Railroad, that, to the extent it lawfully can do so, the City assumes all risk of loss or destruction of or damage to the Walkway, to property brought thereon by the City or by any other person with the knowledge or consent of the City, and to all other property, including property of the Railroad, and all risk of injury or death of all persons whomsoever, including employees of the Railroad, where such loss, damage,



destruction, injury, or death would not have occurred but for the presence of the Walkway on the Bridge, whether caused by or resulting from the negligence of the Railroad, or otherwise. The City further agrees, to the extent it lawfully can do so to indemnify and hold harmless and defend the Railroad, its officers, agents, and employees, against and from all liability, causes of action, claims or demand which any person may hereafter have or assert, arising out of or by reason of any such loss, damage, destruction, injury, or death of persons to the extent of the insurance coverage required under this Agreement. In addition, the City shall indemnify the Railroad for any deductible amount under any insurance policy provided.

3. If the City, in the performance of any work authorized or required to be performed under this agreement or by the failure to do or perform anything for which the City is responsible under this agreement, shall damage or destroy any property of the Railroad or of any other person lawfully occupying or using the property of the Railroad, or if such property is otherwise damaged or destroyed where such damage or destruction would not have occurred but for the presence of the Walkway on the Bridge, such property shall be replaced or repaired by the city at the City's own expense, or by the Railroad at the expense of the city, and to the satisfaction of the Railroad's Vice President-Engineering Services. If it is not feasible to replace or repair the damaged or destroyed property, the City agrees to make a suitable settlement with the Railroad.

X. COMPLIANCE WITH LAWS

1. This Agreement shall be construed according to the laws of the State of Oregon. Any litigation between the City and the Railroad arising under this Agreement shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

2. In connection with its activities under this Agreement, each party shall comply with all applicable federal state and local laws and regulations, including but not limited to with the applicable Workers' Compensation law or Federal Employees Liability Act law or equivalent as they apply to that party's employees working under this Agreement.

XI. TERMINATION

1. This Agreement may be terminated by the City on one year's notice to the Railroad. Upon termination of this Agreement, the City, to the reasonable satisfaction of the Railroad and at the City's own expense, shall remove the Walkway and whatever portion of the video system the Railroad determines has no utility to railroad operations and restore the Bridge to its condition before construction of the Walkway.

2. Either party may terminate this Agreement upon substantial breach by the other, which breach is not cured within 60 days after notice from the non-breaching party. If the breach is of the nature that is cannot reasonably be cured within 60 days, the Agreement shall not be terminated if the breaching party begins to cure the breach



within the 60 day period and makes diligent efforts to complete the cure.

3. In the event the Bridge or its upper or lower deck is acquired by a public body by purchase under the threat of condemnation or after trial through the exercise of the power of eminent domain, the right of exercising that power being specifically reserved to the City, then in that event the Walkway constructed by the City pursuant to this Agreement shall not be considered in fixing or determining the reasonable market value of the Bridge.

XII. AUTHORITY and NOTICES

1. Each party represents and warrants that it has obtained the necessary authority to execute and enter into this Agreement.

2. Any notice, consent or approval to be given under this Agreement shall be in writing and shall be mailed by first class mail or sent by facsimile

if to the Railroad, to

Chief Engineer
Union Pacific Railroad Company
Room 1030
1416 Dodge Street
Omaha, NE 68179
Facsimile No. (402) 271-3298

if to the City, to

Director, Portland Office of Transportation
1120 SW Fifth Avenue
Portland, Oregon 97204
Facsimile No. (503) 623-7576

XIII. LEGAL EXPENSES

The City agrees to pay the reasonable expenses for the Railroad to have the agreements between the City and the Railroad regarding construction and operation of the Walkway, real property acquisition and related agreements reviewed by the Railroad's outside legal counsel, Carolyn Larson, and Kirner, Voorhees & Laurick, P.C. Compensation for those costs shall be based on actual invoiced costs and shall not exceed \$15,000.

XIV. ARBITRATION

1. The parties agree that should any disputes arise under this Agreement, they will attempt to resolve those disputes through mediation.



- 2. If mediation is unsuccessful, the dispute will be submitted to non-binding arbitration.
- 3. Arbitration will be conducted pursuant to the arbitration provisions of the Uniform Trial Court Rules and the Supplemental Rules of the Multnomah County Circuit Court.
- 4. An arbitrator shall be selected jointly by the parties. If they are unable to agree on the selection of an arbitrator, one shall be appointed by the Presiding Judge of the Multnomah County Circuit Court.

APPROVED AS TO FORM
Linda Meyer
 CHIEF DEPUTY CITY ATTORNEY

CITY OF PORTLAND
Carl H. ...
 Commissioner of Public Safety

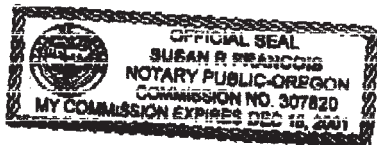
SUBSCRIBED AND SWORN TO before me this 8th day of March, 2000, by Charlie Hales, Commissioner



Tom M. Anderson
 Notary Public for Oregon
 My Commission Expires: 4-21-2002

CITY OF PORTLAND
Gay B. ...
 Auditor

SUBSCRIBED AND SWORN TO before me this 9th day of March, 2000, by City Auditor Gay B. ...



Susan R. Francis
 Notary Public for Oregon
 My Commission Expires: 2-18-01

UNION PACIFIC RAILROAD COMPANY
 Asst. Vice President - Contracts & Real Estate

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2000, by _____

 Notary Public for Oregon
NEB PASTA

APPENDIX D:

Photo Credits

PAGE	DESCRIPTION, LOCATION, CREDIT
Cover	Riding alongside a freight train on the La Crosse River State Trail, La Crosse, WI, <i>Suzan Pinsof</i>
I	Baltimore-York RWT, MD, <i>Jennifer Toole</i>
III	The proposed Union Pacific RWT is feasible in parts and must be rerouted in others, Cupertino, CA, <i>George Hudson</i>
III	The Reading and Northern Railroad Company experienced a reduction in illegal dumping after the trail went in, Jim Thorpe, PA, <i>Charles Denney</i>
V	Trail designers worked with Conrail designers to ensure that their interests were addressed, concurrent to negotiation of the RWT agreement, Norristown, PA, <i>Charles Denney</i>
VI	Portland's regional government, Metro, acquired the railroad property in the 1990s to allow for RWT development. Future Springwater Corridor Trail, Portland, OR, <i>Barbara Plummer</i>
VII	Setback of 7.6 m (25 ft) or greater often is needed for higher speed train corridors, Stavich River Trail, OH and PA, <i>Rails-to-Trails Conservancy</i>
VII	Narrower setback distances may be acceptable for short distances, as on this Union Pacific railroad bridge with slow-moving trains, Portland, OR, <i>Mia Birk</i>
VIII	Wrought iron fencing offers an aesthetically pleasing separation option. Mission City Rail Trail, San Fernando, CA, <i>Ron Mathieu, SCRRA/Metrolink</i>
IX	Dual track grade crossing, Burlington, VT, <i>Craig Della Penna</i>
IX	Undercrossing of Alaska Railroad Corporation tracks, Tony Knowles Coastal Rail Trail, Anchorage, AK, <i>Andy Clarke</i>
IX	Overcrossing of Union Pacific tracks, Eastbank Esplanade, Portland, OR, <i>Mia Birk</i>
X	Steel Bridge Riverwalk, Portland, OR, <i>Mia Birk</i>
ii	Traction Line Recreational Trail, Morristown, NJ, <i>Craig Della Penna</i>
iv	Trespasser crossing Union Pacific tracks, Del Mar, CA, <i>Peggy Gentry</i>
iv	4,000 student bicycle commuters use the Libba Cotton Trail daily, Chapel Hill, NC, <i>Jennifer Toole</i>
v	Elliot Bay Rail Trail, Seattle, WA, <i>Timothy Witten</i>
2	Joggers on the Burlington Waterfront Bikeway, Burlington, VT, <i>Craig Della Penna</i>
5	Coastal Rail Trail. The trail is proposed to be located near the station, Carlsbad, CA, <i>Peggy Gentry</i>
7	The BLS-Lötschberg Railway produces a series of brochures promoting the BLS-Lötschberg Railway Trail, Kander Valley, Switzerland, <i>Unknown</i>
7	Reseau Verte along Canadian Pacific Railway mainline, Montreal, Quebec, Canada, <i>François Vermette</i>
8	A section of RWT in Perth illustrates typical design and construction parameters, including 3 m (10 ft) wide asphalt path, set back from the adjacent rail line, and a 1.8 m (6 ft) chain mesh fence with three strands of barbed wire, Perth, Australia, <i>Michael Maher</i>
11	Crossing the Metrolink track on the ATSF Trail, Irvine, CA, <i>Peggy Gentry</i>
12	Location of the future Blackstone River Bikeway along the PWRR tracks, Albion, RI, <i>Craig Della Penna</i>
13	Planned future site of the Burke-Gilman Extension along the BTR tracks, Seattle, WA, <i>Timothy Witten</i>
13	Burlington Waterfront Bikeway located along the Vermont Railway Company tracks, Burlington, VT, <i>Eric Stachon</i>
15	Future trail alignment of the Coastal Rail Trail extension adjacent to the Coastline tracks, Carlsbad, CA, <i>Peggy Gentry</i>
15	Columbus Riverwalk (Chattahoochee Trail) segment located along Norfolk Southern tracks. Columbus, GA, <i>Michele Brown</i>
16	Existing segment of the Cottonbelt Trail along the DART tracks, Grapevine, TX, <i>Michele Brown</i>



- 17 Future site of the Five Star Trail along the Westmoreland County train tracks, Youngwood, PA, *Charlie Denney*
- 18 Built portion of the Kennebec River Trail, Farmingdale, ME, *Russell Spinney, Maine Department of Transportation*
- 19 Riding alongside a freight train on the La Crosse River State Trail, La Crosse, WI, *Suzan Pinsof*
- 20 Lehigh River Gorge Trail, adjacent to the Reading and Northern Railroad Company tracks, Jim Thorpe, PA, *Charlie Denney*
- 21 Mission City Rail Trail along the Metrolink commuter rail line, San Fernando, CA, *Ron Mathieu, SCRRA/Metrolink*
- 22 Platte River Trail, Denver County, CO, *Rails to Trails Conservancy*
- 23 The 22-mile Railroad Trail located along the Lake State Railroad, Gaylord, MI, *Suzan Pinsof*
- 24 Schuylkill River Trail, Norristown, PA, *Charlie Denney*
- 25 The highly utilized Elliot Bay Trail parallels the BNSF switching yard along a portion of the waterfront, Seattle, WA, *Timothy Witten*
- 25 Location of the future Springwater Corridor Trail Extension along the Oregon Pacific Railroad, Portland, OR, *Barbara Plummer*
- 26 Current illegal crossing location over CSX tracks on Three Rivers Heritage Trail, Pittsburgh, PA, *Charlie Denney*
- 30 Living fence on the Waterfront Bikeway, Burlington, VT, *Craig Della Penna*
- 30 Beaten path made by children crossing tracks, Oshawa Creek, Ontario (Canada), *Constable William Law, Canadian Pacific Railway*
- 30 New trail next to tracks leads to track undercrossing, Oshawa Creek, Ontario (Canada), *Constable William Law, Canadian Pacific Railway*
- 31 Amtrak station bike parking being used to capacity, Davis, CA, *Michael Kiesling*
- 33 Adequate space along parts of proposed RWT, Cupertino, CA, *George Hudson*
- 33 Tunnel along proposed RWT. Trail will be re-routed in this section, Cupertino, CA, *George Hudson*
- 34 The Union Pacific Railroad planned track expansion led to a search for better alternatives, Davis, CA, *Michael G Jones*
- 34 Proposed site of Indian Head Trail, adjacent to Naval Surface Warfare Center Railroad, Charles County, MD, *Jennifer Toole*
- 35 Environmentally sensitive area on proposed Downeast Trail along the abandoned Calais Branch owned by the State of Maine. *Rizzo Associates*
- 52 Trespassing can lead to potentially deadly consequences. Lake State Railroad tracks, Gaylord, MI, *Suzan Pinsof*
- 54 Derailed train, Bourbonnais, IL, *National Traffic Safety Board*
- 58 Elliot Bay Trail, Seattle, WA, *Timothy Witten*
- 65 Setback and fencing along the Showgrounds Pathway RWT, Perth, Australia, *Michael Maher*
- 68 Grade separation along Schuylkill River Trail, Norristown, PA, *Charlie Denney*
- 69 At-grade crossing, Dixon, CA, *Chris Gioia*
- 70 Crossing treatment on the suburban rail network in Perth. Gates automatically close when train is approaching. Users are alerted to the presence of approaching train by flashing lights and audible bells. Gates remain locked until trains have passed, Perth, Australia, *Michael Maher*
- 71 Crossing at the City West Station, Perth, Australia, *Michael Maher*
- 71 Transit station pedestrian crossing, Beaverton, OR, *David Lanning, Oregon Department of Transportation*
- 73 Dual track grade crossing, Burlington, VT, *Craig Della Penna*
- 76 Steel Bridge Riverwalk warning sign, Portland, OR, *Mia Birk*
- 76 Transit station warning sign, Beaverton, OR, *David Lanning, Oregon Department of Transportation*
- 76 Warning sign, Kennebec Rail-Trail, Farmingdale, ME, *Michael G. Jones*
- 77 Active warning devices at Burlington Waterfront Bikeway track crossing, Burlington, VT, *Eric Stachon*
- 80 Appletree Park Underpass, Vancouver, WA, *George Hudson*
- 80 Platte River Trail, Denver County, CO, *Rails to Trail Conservancy*
- 80 Tony Knowles Coastal Rail Trail tunnel, Anchorage, AK, *Andy Clarke*
- 80 Trail-rail overcrossing, San Luis Obispo, CA, *Bill Mulder, RRM Design Group*
- 80 Bridge over Union Pacific Tracks, Portland, OR, *Mia Birk*
- 84 Buried fiber optic cable under Washington & Old Dominion Trail, Fairfax County, VA, *Hugh Morris*
- 85 Siding along site of proposed RWT, Kelowna, B.C., Canada, *George Hudson*
- 86 Steel Bridge Riverwalk, Portland, OR, *Mia Birk*
- 86 Harpers Ferry Bridge, Harpers Ferry, VA, *Rails to Trails Conservancy*
- 87 Single track tunnel on Lake Oswego Trolley Line, Lake Oswego, OR, *Mia Birk*
- 88 RWT designs must take endangered species into consideration, Victorville, CA, *George Hudson*
- 89 Tree-lined RWT looking north, Burlington, VT, *Craig Della Penna*
- 90 Lighting on Eastbank Esplanade, Portland OR, *George Hudson*
- 90 Trailhead Sign, Burlington, VT, *Eric Stachon*
- 90 Signing on the Railroad Trail, Gaylord, MI, *Suzan Pinsof*
- 91 Equestrian RWT users require special design considerations, Bourbon, MO, *Meramec Trail Riding Club*
- 95 Steel Bridge Riverwalk warning sign, Portland, OR, *Mia Birk*
- 100 Trail regulations sign, Santa Clarita, CA, *Ron Mathieu, SCRRA/Metrolink*