



**Santa Cruz County Regional
Transportation Commission
SPECIAL MEETING**

AGENDA

**Thursday, October 14, 2010
2:30 p.m.**

NOTE LOCATION

**SCCRTC Conference Room
1523 Pacific Avenue
Santa Cruz, CA 95060**

NOTE

See the last page for details about access for people with disabilities and meeting broadcasts.

En Español

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AGENDAS ONLINE

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COMMISSION MEMBERSHIP

Caltrans (ex-officio)	Rich Krumholz
City of Capitola	Kirby Nicol
City of Santa Cruz	Don Lane
City of Scotts Valley	Randy Johnson
City of Watsonville	Antonio Rivas
County of Santa Cruz	Ellen Pirie
County of Santa Cruz	John Leopold
County of Santa Cruz	Mark Stone
County of Santa Cruz	Neal Coonerty
County of Santa Cruz	Tony Campos
Santa Cruz Metropolitan Transit District	Dene Bustichi
Santa Cruz Metropolitan Transit District	Ron Graves
Santa Cruz Metropolitan Transit District	Marcela Tavantzis

The majority of the Commission constitutes a quorum for the transaction of business.

Article 8 Transportation Development Act Claims – only City and County representatives vote

Article 4 Transportation Development Act Claims, Policy Issues, and SAFE – all 12 members vote

1. Roll call
2. Oral communications

Any member of the public may address the Commission for a period not to exceed three minutes on any item within the jurisdiction of the Commission that is not already on the agenda. The Commission will listen to all communication, but in compliance with State law, may not take action on items that are not on the agenda

Speakers are requested to sign the sign-in sheet so that their names can be accurately recorded in the minutes of the meeting.

3. Additions or deletions to consent and regular agendas

CONSENT AGENDA

All items appearing on the consent agenda are considered to be minor or non-controversial and will be acted upon in one motion if no member of the RTC or public wishes an item be removed and discussed on the regular agenda. Members of the Commission may raise questions, seek clarification or add directions to Consent Agenda items without removing the item from the Consent Agenda as long as no other Commissioner objects to the change.

No consent items

REGULAR AGENDA

4. Review of items to be discussed in closed session

CLOSED SESSION

5. Conference with Real Property Negotiator Pursuant to Government Code 54956.8 relating to the freight easement: Santa Cruz Branch Rail Line from Watsonville Junction to Davenport

Agency Negotiator: Kirk Trost, Miller Owen & Trost

Negotiation Parties: SCCRTC, Sierra Northern Railway

Under Negotiation: Price and Terms

OPEN SESSION

6. Report on closed session
7. Acquisition of Santa Cruz Branch Rail Line and Administration, Coordination and License Agreement
(*Luis Mendez, Deputy Director*)
 - a. Staff report
 - b. Resolution authorizing the Executive Director to enter into agreements with Sierra and to complete the purchase of the branch line
8. Next Meetings

The next Transportation Policy Workshop meeting scheduled for Thursday, October 21, 2010 has been canceled

The next SCCRTC meeting is scheduled for Thursday, November 4, 2010 at 9:00 a.m. at the Board of Supervisors Chambers, 701 Ocean St., Santa Cruz, CA.

HOW TO REACH US

Santa Cruz County Regional Transportation Commission
1523 Pacific Avenue, Santa Cruz, CA 95060
phone: (831) 460-3200 / fax (831) 460-3215
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HOW TO REQUEST

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AGENDA: October 14, 2010 SPECIAL MEETING

TO: Regional Transportation Commission (RTC)
FROM: Luis Pavel Mendez, Deputy Director
RE: Acquisition of Santa Cruz Branch Rail Line and Administration, Coordination and License Agreement

RECOMMENDATIONS

Staff and negotiating consultants recommend that the Regional Transportation Commission (RTC) approve the attached resolution (Attachment 1) authorizing the Executive Director to:

1. Enter into an administration, coordination and license agreement (Exhibit A of Attachment 1) and an assignment and assumption agreement (Exhibit 2 of Attachment 1) with Sierra Northern Railway; and
 2. Take the necessary actions to complete the purchase of the Santa Cruz Branch Rail Line (Branch Line) on behalf of the RTC.
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BACKGROUND

In 2001, with the assistance of negotiating consultants Miller, Owen and Trost, the RTC initiated negotiations with Union Pacific (UP) to purchase the Santa Cruz Branch Rail Line (Branch Line). On May 6, 2010, the Regional Transportation Commission (RTC) approved purchasing the Branch Line for \$14.2 million. On August 19, 2010, the RTC approved the final purchase and sale agreement (PSA) with UP. On June 30, 2010, the California Transportation Commission (CTC) approved the RTC's application for purchase of the Branch Line, subject to certain conditions. The RTC has been working to meet all conditions by completing agreement negotiations with the operator (Sierra Northern Railway).

DISCUSSION

Agreement with Rail Service Operator

On three occasions, the RTC has approved entering into an Administration, Coordination and License Agreement (ACLA) with Sierra Northern Railway for operation of the Branch Line. After each approval, revisions to the agreement have required that the RTC approve a revised agreement. At its October 7, 2010 meeting, the RTC approved the most recent version of the agreement and gave Sierra Northern Railway a deadline of 5:00 pm on October 8, 2010 to sign the agreement. That deadline was not met; therefore, the RTC must again consider approval of the ACLA.

The ACLA included with this report (Exhibit A to Attachment 1) is no different from that approved by the RTC at its October 7, 2010 meeting. This means that a trackage rights

agreement between Union Pacific (UP) and Santa Cruz Big Trees and Pacific Railway (Big Trees) will be assigned to the RTC by UP because it addresses both freight and passenger operations. An assignment and assumption agreement will assign relevant elements of the trackage rights agreement to Sierra Northern Railway. However, Sierra Northern Railway would not sign the ACLA approved by the RTC until negotiation of the assignment and assumption agreement was complete.

Negotiation of the assignment and assumption agreement consistent with directions from the RTC is now complete. Both the ACLA agreement and the assignment and assumption agreement have been signed by Sierra Northern Railway as included with this staff report.

Completion of Branch Line Purchase

After approving and executing the agreements with Sierra Northern Railway for operations on the Branch Line, the RTC may proceed with obtaining the funding from the CTC. This will also mark the last of the major RTC decisions required for purchase of the Branch Line. The other three major decisions were:

- After considering all of the due diligence work and information, purchase the Branch Line – Approved unanimously by the RTC on May 6, 2010;
- Resolutions with funding commitments required by the CTC – Approved by the RTC on May 6, 2010 and August 5, 2010; and
- Final purchase and sale agreement (PSA) with Union Pacific – Approved by the RTC on August 19, 2010.

The remaining decisions will secure the funding, obtain the necessary regulatory authority, purchase insurance policies and satisfy necessary requirements to carry out the RTC's decision to purchase the Branch Line and enter into the RTC approved agreements with UP and Sierra Northern. Therefore, **staff and negotiating consultants recommend that the RTC approve the attached resolution (Attachment 1) authorizing the Executive Director to enter into an administration, coordination and license agreement and assignment and assumption agreement with Sierra Northern (Exhibits A and B to Attachment 1) and to complete the purchase of the Branch Line on behalf of the RTC.** If approved, the resolution gives the Executive Director the authority to fully carry out the RTC decision to purchase the Branch Line without the need to return to the RTC for further approvals. The Executive Director would keep the RTC abreast of progress through the Director's Report at RTC meetings. If any follow up decision would bind the RTC in a manner inconsistent with the RTC's approvals regarding this project, staff will bring those decisions to the RTC for consideration.

SUMMARY

In May 2010, the RTC approved purchasing the Branch Line and has executed a purchase and sale agreement with UP. Previously, the RTC has approved entering into an administration, coordination and license agreement (ACLA) with Sierra Northern Railway for operation of the Branch Line. The ACLA being considered is the same as that approved by the RTC on October 7th and now is accompanied by an assignment and assumption agreement. After execution of the agreements with Sierra Northern Railway, the RTC may proceed with securing the funding

and completing the Branch Line purchase from UP. Staff and negotiating consultants recommend that the RTC consider approving the attached resolution (Attachment 1) authorizing the Executive Director to enter into agreements with Sierra Northern Railway and to complete all of the actions necessary to take possession of the Branch Line on behalf of the RTC.

Attachments:

1. Resolution Authorizing Executive Director to Enter into Agreements with Sierra Northern Railway and to Complete Purchase of the Branch Line

RESOLUTION NO.

Adopted by the Santa Cruz County Regional Transportation Commission (RTC)
on the date of October 14, 2010
on the motion of Commissioner
duly seconded by Commissioner

A RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO AN
ADMINISTRATION, COORDINATION AND LICENSE AGREEMENT AND AN
ASSIGNMENT AND ASSUMPTION AGREEMENT WITH SIERRA NORTHERN
RAILWAY AND COMPLETE ACQUISITION OF THE SANTA CRUZ BRANCH RAIL
LINE ON BEHALF OF THE SANTA CRUZ COUNTY REGIONAL TRANSPORTATION
COMMISSION

WHEREAS, on May 6, 2010, the RTC approved purchasing the Santa Cruz Branch Rail
Line (Branch Line); and

WHEREAS, the RTC and Union Pacific (UP) have signed a purchase and sale agreement
with escrow instructions and conditions for acquisition of the Branch Line at a price of \$14.2
million; and

WHEREAS, the RTC has previously approved entering into an administration,
coordination and license agreement (ACLA) for the Branch Line with Sierra Northern Railway;
and

WHEREAS, the RTC and Sierra Northern Railway have been negotiating an assignment
and assumption agreement for a trackage rights agreement between Union Pacific and Santa
Cruz Big Trees and Pacific Railway; and

WHEREAS, on June 30, 2010 the California Transportation Commission (CTC)
approved the RTC's application for purchase of the Branch Line subject to certain conditions;
and

WHEREAS, execution of an ACLA with Sierra Northern Railway helps complete the
CTC conditions for funding the acquisition of the Branch Line;

BE IT RESOLVED BY THE SANTA CRUZ COUNTY REGIONAL TRANSPORTATION
COMMISSION:

1. The Executive Director is authorized to enter into the attached administration,
coordination, and license agreement (Exhibit A) for the Santa Cruz Branch Rail Line
(Branch Line) with Sierra Northern Railway on behalf of the Santa Cruz County
Regional Transportation Commission (RTC); and
2. The Executive Director is authorized to enter into the attached assignment and
assumption agreement (Exhibit B) with Sierra Northern Railway on behalf of the Santa

Cruz County Regional Transportation Commission (RTC) for a trackage rights and interchange agreement between Southern Pacific Transportation Company and Santa Cruz Big Trees and Pacific Railway; and

3. The Executive Director is authorized to request funding, enter into and amend funding agreements, accept funding and spend secured funds as necessary on behalf of the RTC to ensure acquisition of the Branch Line; and
4. The Executive Director is authorized to meet and/or accept all escrow instructions and conditions set in the executed purchase and sale agreement, to expend the necessary funds to purchase all of the necessary insurance policies, make the necessary filings with the appropriate regulatory agencies, enter into and make amendments to agreements, and take all of the necessary actions and steps on behalf of the RTC to complete the purchase of the Branch Rail Line and take possession of the property for the RTC.

AYES: COMMISSIONERS

NOES: COMMISSIONERS

ABSTAIN: COMMISSIONERS

ABSENT: COMMISSIONERS

Randy Johnson, Chair

ATTEST:

George Dondero, Secretary

Exhibit A: Administration, Coordination and License Agreement with Sierra Northern Railway for the Santa Cruz Branch Rail Line

Exhibit B: Assignment and Assumption Agreement with Sierra Northern Railway for Trackage Rights and Interchange Agreement between Southern Pacific Transportation Company and Santa Cruz Big Trees and Pacific Railway

Distribution: CTC, RTC Fiscal, Sierra Northern Railway, Santa Cruz Big Trees and Pacific Railway, Union Pacific Railroad

ADMINISTRATION, COORDINATION, AND LICENSE AGREEMENT

This administration, coordination, and license agreement is dated September 28, 2010, and is between the Santa Cruz County Regional Transportation Commission (the "Commission"), a public agency created under California law, and Sierra Northern Railway, a California Corporation ("Sierra").

The Commission purchased the Santa Cruz Branch railroad line (the "Property") from Union Pacific Railroad Company ("UP"), via an August 20, 2010, Purchase and Sale Agreement (the "Purchase and Sale Agreement"); and

UP reserved an easement to conduct common carrier freight railroad operations on and over the Property (the "Freight Easement"), which Freight Easement is set forth in the Quitclaim Deed by which UP, as grantor, quitclaimed all of its right, title and interest in and to the Property to the Commission, as grantee; and

UP has quitclaimed all of its right, title, and interest in and to the Freight Easement to Sierra and Sierra is the sole freight rail operator on the Freight Easement;

Sierra needs a long-term agreement of at least 10 years, covering all facets of railroad operations, in order to justify its investment of time and money needed to conduct such railroad operations; and

Sierra and the Commission desire to establish their respective rights and obligations with respect to the Property and the Freight Easement by entering into this agreement.

The parties therefore agree as follows:

1. **Definitions**

- 1.1 The term "Commission" is defined in the introductory paragraphs of this agreement and includes its directors, officers, employees, agents, parents, subsidiaries, affiliates, commonly controlled entities, and all others acting under its or their authority.
- 1.2 The term "Coordination Committee" is defined as the committee established by the parties pursuant to Section 11.
- 1.3 The term "FRA" is defined as the United States Federal Railroad Administration or its regulatory successor.
- 1.4 The term "Freight Easement" is defined in the introductory paragraphs of this agreement.

- 1.5 The term “Freight Easement Property” is defined as the portion of the Property subject to the Freight Easement consisting of all real and personal property within 10 feet of the centerline of any track on the Property except where roadways, buildings, or Property boundary lines reduce such distance to less than 10 feet, and except for any retained rights and personal property described herein.
- 1.6 The term “Freight Service” is defined as any and all common carrier rail freight operations, rights, or obligations as to the Freight Easement Property including freight transportation, switching, temporary rail car storage (subject to the conditions of Section 2.4), transloading freight and dispatching.
- 1.7 The term “Hazardous Materials” is defined as any substance: (a) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as any hazardous waste, hazardous substance, bio-hazard, medical waste, pollutant, or contaminant under any governmental statute, code, ordinance, regulation, rule, or order, or any amendment thereto, including the Hazardous Material Transportation Act 49 U.S.C. § 5101 *et seq.*, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, and the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, or (b) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous, or otherwise hazardous, including gasoline, diesel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon, and urea formaldehyde foam insulation.
- 1.8 The term “Hazardous Materials Laws” means all present and future governmental statutes, codes, ordinances, regulations, rules, orders, permits, licenses, approvals, authorizations, and other requirements of any kind applicable to Hazardous Materials.
- 1.9 The terms “include”, “includes”, and “including” are to be read as if they were followed by the phrase “without limitation.”
- 1.10 The term “Loss” is defined as any loss, damage, claim, demand, action, cause of action, penalty, fine, payment, cost, liability, or expense of whatsoever nature, including court costs and reasonable attorneys’ fees, resulting from or related to: (a) any injury to or death of any person, including officers, agents, and employees of the Commission or Sierra; or (b) damage to or loss or destruction of any property, including the Property, any adjacent property, and the roadbed, tracks, equipment, other property of the Commission or Sierra, and any property in the Commission’s or Sierra’s care or custody.

- 1.11 The term “Property” is defined as the entire Santa Cruz Branch railroad line right-of-way purchased from UP by the Commission, including all improvements thereto, whether now existing or hereafter constructed.
- 1.12 The term “Railroad Facilities” is defined as all tracks and other railroad property and fixtures, including ties, switches, trackbeds, bridges, trestles, retaining walls, culverts, railroad signs, switch mechanisms, signals, grade crossings, active and passive grade crossing warning devices and other appurtenances associated with the trackage described on Exhibit A and located on the Freight Easement Property.
- 1.13 The term “Sierra” is defined in the introductory paragraphs of this agreement and includes its directors, officers, employees, agents, parents, subsidiaries, affiliates, commonly controlled entities, any other related persons and entities, and all others acting under its or their authority.
- 1.14 The term “STB” is defined as the United States Surface Transportation Board or its regulatory successor.
- 1.15 The term “Tourist Service” is defined as the transportation of tourists by rail. Tourist Service does not include regularly-scheduled passenger transit or commuter service.
- 1.16 The term “UP” is defined in the introductory paragraphs of this agreement.

2. **Commission Grants Rights**

- 2.1. Freight Service. The Commission grants Sierra the exclusive right and obligation to provide Freight Service on the Freight Easement Property. Sierra's rights and obligations to provide Freight Service under this agreement are limited to those set forth in the Freight Easement or in this agreement. Sierra may not, in performing such Freight Service, exceed the maximum speeds authorized by applicable law for the existing track conditions or transport rail cars exceeding the applicable track and bridge weight limits.
- 2.2. Trackage License. The Commission grants Sierra an exclusive license to use, maintain, repair, and operate all of the Railroad Facilities for all Freight Service purposes. Notwithstanding their location on the Freight Easement Property, buildings and other fixtures which are not appurtenances associated with the tracks and related railroad property are not included as part of this license.

2.3. Tourist Service and Other Third-Party Licenses.

2.3.1. Sierra Tourist Service. The Commission grants Sierra a non-exclusive license to use the Freight Easement Property and Railroad Facilities to provide Tourist Service between Milepost 18.74 in Santa Cruz and Milepost 31.39 in Davenport; provided that prior to the commencement of operations (a) the Commission has approved in writing a detailed plan from Sierra describing such Tourist Service, (b) the Tourist Service will not materially conflict with, and will be subject and subordinate to Freight Service, and (c) Sierra has obtained any governmental authorizations required under applicable law for such Tourist Service. Sierra's Tourist Service plan shall include, at a minimum, the proposed seasons, dates and times of operation (including a proposed train schedule), a financial plan and a marketing plan. The parties understand and agree that Sierra may assign this Tourist Service license to Mendocino Railway by written assignment approved in writing by the Commission. The assignment shall require Mendocino Railway to be bound by the terms and conditions of this agreement relating to this Tourist Service license and to attorn to the Commission as the licensor. No such assignment shall relieve Sierra of its obligations under this agreement, including obligations related to this Tourist Service license.

2.3.2. Third-Party Licenses. The Commission reserves the right to grant additional licenses over the Freight Easement Property and the Railroad Facilities provided that any such licenses: (a) do not materially conflict with, and are subject and subordinate to, Sierra's right to use, maintain, repair, and operate all of the Railroad Facilities for all Freight Service purposes, (b) do not materially conflict with any other license with a plan previously approved in writing by the Commission, (c) require the licensee to pay its proportionate share of Sierra's costs (including labor costs, materials costs, equipment costs — using equivalent rental costs as a proxy for capital and maintenance and repair costs — travel, fuel, contract labor, and appropriate overhead) to maintain and repair the portion of the Freight Easement Property and Railroad Facilities used by the licensee, and (d) require the licensee to (i) provide insurance equal to or better than that required of Sierra in Section 9 and (ii) indemnify and hold harmless Sierra and the Commission as to any Loss arising out of or related to licensee's operations.

2.3.2.1. For a period of three years after the effective date of this agreement, any third-party license for Tourist Service between Milepost 20.9 and Milepost 31.39 will be deemed to materially conflict with Sierra's Tourist Service license, except in the case of special Tourist Service events as described in Section 2.3.2.9. The provisions of this Section 2.3.2.1 are conditioned on the following (all dates are measured following the effective date of this agreement):

- a. Within 6 months: Sierra shall submit its plan for its initial Tourist Service to the Commission pursuant to Section 2.3.1.
- b. Within 3 months after Commission approval of initial plan: Sierra shall ensure that the Railroad Facilities for its initial Tourist Service meet and are maintained to Class 1 track standards and obtain appropriate FRA and PUC inspections to verify the same.
- c. Within 5 months after Commission approval of initial plan: Sierra shall secure all permits and agreements required to operate its initial Tourist Service.
- d. Within 6 months after Commission approval of initial plan: Sierra shall initiate its initial Tourist Service.
- e. Levels of Service: Sierra's Tourist Service shall carry the following numbers of revenue passengers:
 - I. First Year of Service: 5,000 passengers.
 - II. Second Year of Service: 10,000 passengers.
 - III. Third Year of Service: 15,000 passengers.

2.3.2.2. Following the date that is three years after the effective date of this agreement, a third-party license will be deemed to materially conflict with another license with a plan previously approved in writing by the Commission if the third party (a) operates on a substantially similar portion of the Freight Easement Property and Railroad Facilities covered by the previously-approved license/plan,

(b) permits an activity that is substantially similar to the previously-approved license/plan and (c) operates during substantially similar seasons, and on substantially similar days and times of day, as the previously-approved license/plan.

2.3.2.3. If Sierra or any third-party licensee ("Tourist Operator") fails to initiate and continue to operate Tourist Service substantially in accordance with the plan approved by the Commission, then the applicable Tourist Operator's operations may, at the Commission's option, lose priority over any other operations, but only to the extent of such failure to operate.

2.3.2.4. If Sierra constructs capital improvements to the portion of the Freight Easement Property and Railroad Facilities used by the licensee, the Commission shall promptly and reasonably determine (i) the benefit of such improvements to the licensee, (ii) the cost apportionment of such improvements between Sierra and the licensee, and (iii) the appropriate amortization period for such improvements (for capital improvements the Commission shall make such determination concurrently with its approval of such capital improvements pursuant to Section 6.2). The licensee will, within 30 days following receipt of written notice, pay amounts due. As used in this agreement, the term "capital improvement" means any improvement or repair that is subject to the capital depreciation rules of the Internal Revenue Service.

2.3.2.5. The licensee's proportionate share of Sierra's costs shall be calculated in advance by Sierra (based on the prior year's maintenance and repair costs plus any reasonably anticipated extraordinary maintenance and repair costs, and the parties' relative need or usage during the licensee's operating season) on a car-mile basis as to the portion of the Freight Easement Property and Railroad Facilities used by any licensee. (As used in this subsection, "repair costs" refers to the cost of repairs that maintain property in good operating condition and not to repairs that are "capital improvements," which are dealt with in Subsection

2.3.2.4.) The licensee shall pay its proportionate share of costs monthly in advance during the months of the licensee's operations. Sierra shall at the end of each calendar year reconcile the amounts paid to the actual costs incurred. If the actual costs exceed the amount charged to the licensee, the licensee will within 30 days following receipt of written notice of such reconciliation pay the additional amount to Sierra. If the actual costs are less than the amount charged to the licensee, Sierra will within 30 days following such reconciliation refund the balance to the licensee.

2.3.2.6. If the Commission, in its discretion, elects to require a lower level of insurance coverage for the licensee than the level of coverage then required of Sierra under Section 9, the Commission shall correspondingly lower the limits of coverage required of Sierra under Section 9, provided that if Sierra elects to reduce the levels of its insurance, it shall also reduce the self-insured retention to the level required of the third-party licensee.

2.3.2.7. The Commission or its designee shall have the right to review, obtain, and copy all books, records, computer records, accounts, documentation and any other materials (collectively "Records") pertaining to Sierra's costs that are subject to apportionment under this section, including any Records in the possession of any subcontractors, for the purpose of monitoring, auditing, or otherwise verifying said costs. Sierra agrees to provide the Commission or its designees with any Records requested for this purpose and shall permit the Commission or its designees access to its premises, upon reasonable notice, during normal business hours, for the purpose of inspecting and copying such Records. Sierra further agrees to maintain such Records for a period of three years. The Commission acknowledges and agrees that these Records constitute Sierra's confidential information and shall not be disclosed to any third-party without Sierra's prior written approval, except as otherwise required by applicable law.

2.3.2.8. Sierra will reasonably cooperate with any third party holding rights to use the Property, including,

without limitation, any third-party Tourist Service operator seeking to secure the necessary certification or qualification required by applicable law to operate on the Railroad Facilities.

2.3.2.9. In addition to all other rights of Commission under this agreement, and notwithstanding anything to the contrary in this agreement, the Commission reserves the right to use the Freight Easement Property and Railroad Facilities for special events. Such special events shall be subject to the provisions of Sections 2.3.2.(a) and (b), provided that such special events will only be deemed to materially conflict with another license with a plan previously approved in writing by the Commission if they operate during the same season, and on the same days and times of day, as the previously-approved license/plan. The Commission will consult with Sierra regarding Sierra's willingness and ability to operate such special events.

If the Commission elects to have Sierra operate the special event, Sierra will operate the special event for an all-inclusive fee (for locomotive, crew, fuel, trainset, and trackage rights) (the "Special Event Fee") in the amount of \$4,500 per day. If the Commission elects to have another operator operate the special event, the Special Event Fee paid to Sierra will be \$2,500 per day, which fee shall cover all services to be provided by Sierra to support an event operated by a third party including, but not limited to, dispatching, inspections, and maintenance (but excluding Sierra's provision of any locomotive, trainset, crew, and fuel). The Special Event Fee shall be adjusted annually as of July 1st of each year to an amount calculated by multiplying the Special Event Fee specified above by a fraction, the numerator of which shall be the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index, All Urban Consumers, All Items, San Francisco-Oakland-San Jose, CA (1982-84=100), or the successor of such index (the "CPI"), for the month immediately preceding such adjustment, and the denominator of which shall be the CPI for June 2010. Nothing in this paragraph shall preclude the Commission and Sierra from negotiating other arrangements for

special events (e.g., special events for which there is a different operational or fee structure, including events for which Sierra is both the operator and receives all or a portion of the fare revenue).

2.4. Temporary Rail Car Storage. Subject to the terms and conditions of this agreement, Sierra may enter into agreements with any party for temporary rail car storage or repairs. However, Sierra shall not enter into any agreements pursuant to this section without obtaining the Commission's prior written consent.

2.4.1. Unless otherwise expressly agreed by the Commission in writing, Sierra will not (i) store more than 100 rail cars, (ii) store rail cars in locations other than those marked on Exhibit B (which locations are intended to substantially avoid visibility from Highway 1 and blocking designated public beach access), or (iii) store any rail car for more than six months. Absent the Commission's prior written consent, which consent may be withheld in the Commission's sole discretion, Sierra may not store railcars that have been used to transport Hazardous Materials unless such railcars are empty or contain only residual amounts of Hazardous Materials.

2.4.2. Following the earlier of (i) Sierra's institution of Tourist Service pursuant to Subsection 2.3.1, or (ii) three years after the effective date of this agreement, Sierra shall not exercise its right to use the Freight Easement Property or Railroad Facilities for temporary rail car storage or repair in a manner that materially affects the ability of any third-party Tourist Service licensee to access the Railroad Facilities for the purpose of exercising its licensed rights. A reciprocal provision will be placed in any third-party license for Tourist Service granted by the Commission.

2.4.3. The provisions of Subsections 2.4.1 and 2.4.2 apply to future storage agreements as well as storage agreements existing as of the effective date of this agreement.

2.5. Investigation.

2.5.1. Sierra hereby acknowledges that (a) it has satisfied itself at the time of this agreement with respect to the condition of the Freight Easement Property and Railroad Facilities and their suitability for Sierra's intended use; (b) it has made such investigations as it deems necessary with respect to the Freight Easement Property and Railroad Facilities, as

they exist at the time of this agreement, and assumes responsibility therefor as to its occupancy and use thereof; and (c) neither the Commission nor any of the Commission's agents has made any oral or written representations or warranties with respect to the Freight Easement Property or Railroad Facilities.

2.5.2. The Commission acknowledges that Sierra cannot make any investigation, or satisfy itself, with respect to how the Property or the public's use of the Property may change following the Commission's purchase of the Property from UP. In the event that any public use of the Property, or illegal activities by third parties including trespassing, cause any significant economic or operational problems for Sierra, Sierra may terminate this agreement, provided Sierra complies with the provisions of Section 8.3.

2.6. As-Is, Where-Is. Sierra shall take the Freight Easement Property in an "as-is, where-is" condition and without any express or implied warranties, including, but not limited to, any warranties of merchantability, fitness for a particular purpose or volume or quality of traffic on the Freight Easement Property, and subject to: (i) encroachments or other existing conditions, (ii) all existing ways, alleys, privileges, rights, appurtenances and servitudes, howsoever created, and (iii) the Commission's rights hereunder.

2.7. Release. Sierra, for itself, its successors and assigns, to the maximum extent permitted by law, hereby waives, releases, remises, acquits and forever discharges the Commission, its officers, employees, agents, successors and assigns, from any Loss in any way arising out of, or connected with, the known or unknown, existing or future physical or environmental condition of the Freight Easement Property and Railroad Facilities (including any Hazardous Materials contamination in, on, under, or adjacent to, the Freight Easement Property, or any clearance constraints on the Freight Easement Property), or any federal, state, or local law, ordinance, rule or regulation applicable thereto.

2.7.1. Sierra hereby grants to Commission, on behalf of any insurer providing property, general liability, or automobile liability insurance to either Sierra or Commission with respect to the operations of Sierra, a waiver of any right to subrogation which any such insurer of Sierra may acquire against Commission by virtue of the payment of any loss under such insurance.

2.7.2. If any Loss described in Section 2.7 is caused by a third party under contract with the Commission, the Commission may, at its option, (i) pursue any claim it may have against the third party contractor, or (ii) assign to Sierra any such claim, provided that Sierra shall not be obligated to pursue such claim. Any amounts recovered as a result of any such claim shall, to the extent they exceed any fees and costs incurred in pursuing such claim, be used to repair or replace any of the following that are damaged or destroyed in connection with the subject Loss:

2.7.2.1. First, Freight Easement Property and Railroad Facilities;

2.7.2.2. Then, railroad equipment.

If Sierra commences abandonment proceedings for the subject portion of the Property under Section 8.3, the Commission will not assign any such claim to Sierra and neither party will have any further responsibility under this Subsection 2.7.2 as to such claim. If Sierra's abandonment application is withdrawn, or not approved by the STB, the Commission may assign such claim to Sierra, as provided above.

2.7.3. The provisions of this Section 2.7 shall survive the termination or expiration of this agreement.

2.8. The rights granted by the Commission under Sections 2.1 - 2.4 are subject to all existing licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title that may affect the Property and the word "grant" as used herein shall not be construed as a covenant against the existence of any thereof.

3. Limitation and Subordination of Rights Granted

3.1. Commission's Use of Property. The foregoing granted rights are subject and subordinate to the Commission's prior and continuing right to use and maintain the Property for any purpose that is not inconsistent with this agreement. Without limiting the generality of the foregoing, the Commission may construct, maintain, repair, renew, use, operate, change, modify or relocate public projects of any kind, railroad tracks, signals, communication equipment, fiber optics, pipelines, or other facilities upon, along, or across any or all of the Property, all or any of which the Commission may freely do at any time or times without liability to Sierra for compensation or damages; provided, however, that the Commission may not

materially interfere with Sierra's rights and operations under this agreement or Sierra's Freight Service rights and obligations under federal law (unless first approved by the STB); and provided, further, that the Commission shall to the extent possible notify Sierra as soon as practicable of any such planned or actual interference and provided that the Commission takes all practicable measures to minimize any such interference. Sierra shall reasonably cooperate with the Commission in implementing the foregoing uses of the Property. If the Commission or its designee requests Sierra's assistance to transport materials or to perform other transportation or construction services for public projects, Sierra will provide such assistance at rates reasonably to be determined between the parties.

- 3.2. Commission's Inspection Access; Access for Maintenance. The Commission may, as reasonable and as coordinated in advance with Sierra, (i) inspect the Freight Easement Property and the Railroad Facilities, including any rail-yard or maintenance facility used in connection with Freight Service or Tourist Service, and (ii) access the Freight Easement Property and Railroad Facilities (including access with Commission or third party rail vehicles) as necessary to maintain areas of the Property outside of the Freight Easement Property that are not otherwise reasonably accessible. The Commission shall defend, indemnify and hold Sierra, its officers, directors, employees, and agents, harmless from and against Loss arising from injuries to or death of the Commission's officers, directors, employees, agents, invitees, and contractors relating to such inspections, regardless of the cause of such injuries, death, or damage and regardless of the negligence of any person, except to the extent caused by the willful misconduct or gross negligence of Sierra, its employees, or agents. The Commission shall ensure that any of its officers, directors, employees, agents, invitees, and contractors involved in such inspections are trained in all safety requirements and qualified for any operations related to work conducted on or near railroad operations.
- 3.3. Future At-Grade Crossings. The parties acknowledge that (i) local governments may desire to create future at-grade public crossings of the Freight Easement Property, and (ii) the Aptos Village Plan, dated February 23, 2010, specifically includes a future at-grade roadway crossing of the Freight Easement Property at approximately Milepost 12.55. Sierra shall, at no cost or expense to itself, cooperate with the efforts of any applicable local governments to secure PUC approval of such crossings; provided, however, that Sierra shall be entitled to raise any reasonable safety concerns related to such crossings. The fees and costs associated

with the construction, maintenance, and repair of such crossings shall be set either by agreement between Sierra and the applicable local government (which agreement shall become a Sierra Agreement under Sections 4.2 and 4.3), or by the PUC pursuant to Public Utilities Code Section 1202, *et seq.*

4. **Assignment of certain Contracts and Agreements**

- 4.1. Pursuant to the Assignment and Assumption Agreement dated as of December 18, 2009, Union Pacific assigned to Sierra certain agreements concerning the operation of the Railroad Facilities, including all track agreements, grade crossing agreements, and other operating agreements set forth in Exhibit C hereto (all such agreements hereinafter referred to as the “Sierra Agreements”). Upon close of escrow under the Purchase and Sale Agreement, Union Pacific will assign to the Commission all other agreements relating to the Property, including all easements, licenses, and leases (all such agreements hereinafter referred to as the “Commission Agreements”).
- 4.2. Any new Sierra Agreement is subject to the Commission’s prior written consent and is to be documented by Sierra using forms approved by the Commission, which forms shall, among other things, include provisions indemnifying the Commission and holding it harmless from any Loss in connection with the exercise of rights under such agreements, and the construction, maintenance, or operation, of any facilities constructed in connection with such agreements.
- 4.3. In addition to the general consent requirement of Section 4.2, Sierra is not, without the Commission’s prior written consent, to execute any new Sierra Agreements affecting the Freight Easement Property or Railroad Facilities for a term exceeding the term of this agreement.
- 4.4. Sierra is not, without the Commission’s prior written consent, to terminate or modify any Sierra Agreement.

5. **Maintenance and Operation of Railroad Facilities**

- 5.1. Initial Rehabilitation and Repair Projects. The Commission may, subject to the Commission’s contracting policies, rules, and procedures and to the terms of this agreement, including Section 6.1, perform any rehabilitation of, or repairs to, the Railroad Facilities required to be performed under the terms of the Purchase and Sale Agreement.

5.2. Maintenance of Freight Easement Property and Railroad Facilities.

5.2.1. Freight Easement Property and Railroad Facilities. Sierra, at its expense, shall keep the Freight Easement Property and Railroad Facilities used by Sierra (including occasional use, or use for rail car storage or lay down space) in good repair and in a good and safe condition in conformity with applicable law or any Sierra Agreement.

5.2.2. Weeds, Trash, Drainage and Graffiti. The parties agree that Sierra shall be responsible for: (i) drainage and culvert maintenance and clearance on the Property unless a third person or entity is contractually responsible for such maintenance and clearance, and (ii) weed abatement, vegetation management, and trash collection over the Freight Easement Property as required by applicable law. The Commission grants Sierra a license to enter all portions of the Property as necessary to perform such maintenance; Sierra shall be required to repair any damage caused as the result of Sierra's performance of any such maintenance. Except as required by applicable law, Sierra shall not be responsible for the prevention, removal, or abatement of graffiti wheresoever it may occur. Sierra shall also not be responsible for drainage maintenance, weed abatement, vegetation management, or trash collection related to any construction by the Commission (except for Railroad Facilities that Sierra is entitled to use), or necessitated by the actions of any third party authorized by the Commission to be on the Property, or related to any actions, omissions, or situations off or outside of the Property.

5.2.3. Slopes, Trees and Other Conditions outside of Freight Easement Property. Sierra may, at its option, enter portions of the Property outside the Freight Easement Property to maintain or repair slopes, clear fallen trees and branches, or address other conditions, as necessary to ensure the safety of Sierra's operations. The Commission grants Sierra a license to enter all portions of the Property as necessary to perform such work; Sierra shall be required to repair any damage caused as the result of Sierra's performance of any such maintenance. The Commission shall have no liability to Sierra for maintenance of portions of the Property outside of the Freight Easement Property and Sierra's exclusive remedies for damage to the Freight Easement Property or Railroad Facilities shall be limited to those set forth in Sections 5.5.3 and 8.3. However, this section shall

not apply to any claims that result from the sole active negligence or willful misconduct of the Commission or its officers, directors, employees, agents, contractors, or a third party under contract with the Commission, in which case Sierra's exclusive remedies are those set forth in Section 2.7.2, 8.3 and 14.2.

- 5.2.4. Scope of Maintenance. For purposes of this section 5.2, the maintenance and repairs to be performed by Sierra include, as required by applicable law, (a) inspections, testing, track profiling, adjustments, lubricating, welding, re-spiking surfacing, tamping, and any other tasks constituting customary and routine maintenance of track structures; (b) repair, renewal, replacement, or other customary and routine work required to ensure the safety of Railroad Facilities, including compliance with any applicable bridge safety management program regulations that may be promulgated by the Secretary of Transportation pursuant to Public Law 110-432, Section 417, including the regulations set forth in 49 CFR Part 237; (c) weed and brush control and drainage management; and (d) compliance with all mandated reporting. Sierra shall not be in default under this agreement if it does not perform tie replacement programs or upgrades of rail, switches, bridges, or other track material provided that (e) Sierra's failure to perform such replacement programs or upgrades does not violate applicable law or Sierra's specific maintenance obligations under this agreement, and (f) Sierra uses reasonable diligence to seek outside funding sources for such work. The Commission shall have no responsibility to maintain the trackage, structures, or any other Railroad Facilities.
- 5.2.5. Concurrently with the execution of this agreement and deposit into escrow, both parties shall execute and deliver to the FRA a written notice of the assignment of track inspection and maintenance responsibilities, and bridge safety management responsibilities, to Sierra in accordance with 49 CFR § 213.5(c) and 49 CFR § 237.3. The notice of assignment shall attach a copy of this agreement.
- 5.2.6. Limits of Commission Liability. Notwithstanding the limitations on the Commission's maintenance responsibilities set forth in Section 5.2, the Commission shall be responsible for the maintenance of any improvement it constructs on any portion of the Property. As used in this subsection, the term "improvement" excludes improvements made to the Railroad Facilities,

unless such improvement is made at the request of a third-party, in which case such third-party shall be responsible for the incremental increase in the maintenance thereof. Notwithstanding the foregoing, maintenance responsibility for improvements to public crossings shall be governed by the provisions of Section 3.3.

5.3. Ownership of Track Materials. All track materials installed by Sierra as part of the Railroad Facilities shall be of equal or better quality than those track materials existing at the time of execution of this agreement, or after completion of rehabilitation and repair projects by the Commission, including the projects described in Section 5.1, and shall become the Commission's property. All materials removed by Sierra from the Railroad Facilities and replaced as part of maintenance, repairs, or capital improvements shall, if the decision to remove them was Sierra's, become the property of Sierra. Sierra shall not, without the prior written approval of Commission, remove track materials or other improvements from the Property unless they are replaced as provided in this section. Sierra shall keep a written record of track materials and other improvements removed from, or installed upon, the Property and shall provide an updated copy of the record to the Commission on or before the end of each calendar quarter.

5.4. Clearing of Obstructions, Derailments, and Wrecks. Sierra shall as soon as practicable clear any obstructions, derailments, and wrecks of railroad equipment or Railroad Facilities.

5.4.1. To the extent that any such obstruction, derailment, or wreck damages the Property, Sierra shall as soon as practicable restore the Property to the condition it was in prior to the obstruction, derailment, or wreck.

5.4.2. If Sierra fails to comply with the provisions of this section, the Commission may perform the required action and charge Sierra the reasonable cost thereof. Notwithstanding the foregoing, the Commission shall not charge Sierra for the restoration of any damage caused by any third party (i) to any bridge, if Sierra abandons the subject portion of the Property under Section 8.3, or (ii) to Property other than bridges, if in the Commission's reasonable judgment, such damage does not expose the Commission to potential liability to the FRA, PUC, or any other third party, and either (A) such damage does not obstruct or interfere with any roadway or other property or facility used by the Commission or another third party, or (B) Sierra abandons the subject portion of the Property under Section 8.3. In

addition, the Commission shall not charge Sierra for the restoration of any damage caused by the Commission's contractors, or any third party granted access to the Property by specific agreement with the Commission.

5.4.3. Nothing in this section is intended to preclude legal action by Sierra or the Commission against any third party causing such obstruction, derailment, or wreck.

5.5. Responsibility for Repair or Replacement.

5.5.1. Damage Caused by Freight Operations. Except as otherwise set forth in this agreement, Sierra will be responsible to repair or replace any damage to the Freight Easement Property or Railroad Facilities caused by, or related to, Sierra's operations.

5.5.2. Damage Caused by Commission. Sierra will not be responsible to repair or replace any damage to the Freight Easement Property or Railroad Facilities caused by the Commission, its officers, directors, employees, agents, or contractors.

5.5.3. Damage Caused by Acts of God or Other Factors beyond Sierra's Control. If any portion of the Freight Easement Property or the Railroad Facilities are damaged or destroyed by flood, fire, civil disturbance, earthquake, earth movement, storm, sabotage, act of God, terrorism, accident or any other event beyond Sierra's reasonable control, including damage or destruction caused by third parties, even if said damage or destruction originates outside of the Freight Easement Property, then Sierra may, but shall not be required to, at no cost or expense to the Commission, (a) repair, or cause to be repaired, the damaged or destroyed portion of the Railroad Facilities; (b) replace, or cause to be replaced, such portion of the Freight Easement Property or the Railroad Facilities; or (c) seek to abandon Tourist Service or Freight Service over all or such portion of the Property as Sierra deems appropriate as set forth in Section 8.3.

6. Construction, Relocation, or Removal of Railroad Facilities

6.1. By the Commission.

6.1.1. The license herein granted is subject to the Commission's needs and requirements to improve and use the Property. Subject to Sierra's rights under this agreement, the

Commission, at its sole cost and expense, may add to or remove any portion of the Railroad Facilities, or change or relocate them to new locations as reasonably designated by the Commission, whenever, in the furtherance of the Commission's needs and requirements, the Commission finds such action to be necessary.

- 6.1.2. In the course of performing such work, the Commission may not materially reduce, or otherwise materially interfere with, Sierra's rights and operations under this agreement or Sierra's Freight Service rights and obligations under federal law (unless first approved by the STB). The Commission shall to the extent possible notify Sierra as soon as practicable of any such planned or actual interference and take all practicable measures to minimize any such interference.
- 6.1.3. Sierra shall in such cases provide the Commission with a fixed-price quote for performing any related work, and the Commission shall have the option of accepting Sierra's quote and having Sierra perform the work, performing the work itself, or having another qualified rail contractor perform such work. If the Commission selects a third-party contractor, the contractor shall execute Sierra's Right of Entry Agreement (a copy of which is attached as Exhibit D).
- 6.1.4. The Commission shall have the right to salvage, stockpile, or otherwise dispose of any Railroad Facilities removed pursuant to this section; provided, however, that if the removed Railroad Facilities are reusable elsewhere on the Freight Easement Property, then Sierra shall have the right to so reuse them. Any Railroad Facilities not so reused on the Freight Easement Property shall be returned to the Commission upon expiration or termination of this agreement and may not be sold to third parties or used elsewhere.
- 6.1.5. All such work performed, and any installation of Railroad Facilities, shall be in conformance with all applicable laws. If the Commission relocates any portion of the tracks used for Freight Service, the centerline of the Freight Easement Property shall, upon completion of the relocation work, be deemed to have been modified to coincide with the centerline of the realigned tracks.

- 6.2. By Sierra. Sierra may, at its cost and expense, modify or improve the Freight Easement Property and Railroad Facilities as needed to accommodate its Freight Service or Tourist Service; provided, however, that Sierra first obtains the Commission's written approval of Sierra's plans for such modifications and improvements, which approval may be granted or withheld in the Commission's sole and absolute discretion. Sierra's modification or improvement of the Freight Easement Property and Railroad Facilities may not interfere with or impede any existing or future legal public use of the Property that the Commission may authorize. Sierra may, upon the termination of this agreement or upon the abandonment of any applicable section of the Freight Easement Property or portion of the Railroad Facilities, remove any modifications or improvements to such Freight Easement Property or Railroad Facilities that were paid for by Sierra, that do not constitute any repair or replacement to such Freight Easement Property or Railroad Facilities, and that have not become fixtures to such Freight Easement Property or Railroad Facilities.
- 6.3. The Commission understands that Sierra requires locations at which to store and maintain equipment and materials necessary for Sierra's Freight Operations including a locomotive pit. The parties agree that Sierra may store equipment and materials at the location known as Wrigley's, located between Swift Street and Natural Bridges Drive at or about Milepost 21.5. The parties agree that Sierra will need to identify and construct additional maintenance and storage locations on the Property, which Sierra may do as needed, subject to applicable law and the Commission's prior written consent, which consent may be granted or withheld in the Commission's sole and absolute discretion.
- 6.4. The terms, conditions, and stipulations expressed in this agreement as to the Freight Easement Property and Railroad Facilities shall apply to the Freight Easement Property and Railroad Facilities as they may at any time be expanded, added to, modified, changed, or relocated.

7. **License Fees**

- 7.1. For consideration of the rights granted under this agreement, Sierra shall pay the Commission the following fees as calculated on a quarterly basis:

7.1.1. Freight Service:

7.1.1.1. First 500 carloads per quarter: \$0.00;

7.1.1.2. Any additional carloads per quarter: 5% of Sierra's handling revenue for such carloads.

7.1.1.3. Storage: \$1.00 per day per car in storage.

7.1.2. Temporary Use of Laydown Space. Sierra may from time to time make arrangements with a temporary shipper by rail for the use of otherwise unused laydown space (open space next to railroad track). The parties agree that Sierra will need to identify such temporary laydown locations on the Property, which Sierra may do as needed, subject to applicable law and the Commission's prior written consent. Sierra shall also notify the Commission of the expected duration of each such use. If subsequently the Commission reasonably objects to any specific use of laydown space by Sierra or its shipper, Sierra shall as soon as practicable discontinue that use of such laydown space. Sierra shall, in addition to the license fees set forth above, pay the Commission 20% of all revenue (if any) received by Sierra by such shippers for such use of such laydown space.

7.1.3. Tourist Service: \$1.00 per passenger.

7.2. Sierra shall, on or before the last day of the month following the end of each calendar quarter, determine the amounts payable to the Commission arising from the preceding calendar quarter and shall provide the Commission with a statement describing all amounts due the Commission during the quarter. Sierra shall also, upon reasonable request from the Commission, make available for inspection and copying all documents and receipts upon which such fees are based.

7.3. Sierra shall, on or before January 31 of each calendar year, pay the Commission all amounts due the Commission for the prior four calendar quarters.

8. **Term and Termination**

8.1. This agreement shall become effective when fully executed and delivered to the parties in accordance with Section 27.4, and shall continue in full force and effect for a period of 10 years unless otherwise terminated as provided herein.

8.2. If (i) Sierra does not regularly use the Freight Service or Tourist Service rights in accordance with the plan approved by the Commission (other than railcar storage rights) herein granted over any segment of the Freight Easement Property, or the Railroad Facilities on such segment, for a period of one year without the

Commission's prior written approval, or (ii) Sierra remains in default in its performance of any covenant or agreement contained herein for a period of 30 days after written notice from the Commission to Sierra specifying such default, the Commission may, at its option, forthwith terminate this agreement by written notice; provided however, that if such default cannot reasonably be cured within 30 days after such notice, the Commission may not terminate this agreement provided that Sierra begins to cure the default within the 30-day notice period and proceeds diligently to complete such cure. Upon expiration or termination of this agreement by either party, Sierra shall proceed to abandon Freight Service in accordance with section 8.3. As used in this Section 8.2, the term "regularly use" means revenue train operations for either Freight Service or Tourist Service consisting of a minimum of 40 freight cars per year, or 15,000 passengers per year (beginning with the third year following the effective date of this agreement), as applicable.

8.2.1. The parties recognize that there are currently little or no revenue train operations on the Freight Easement Property or Railroad Facilities and that it may take time for Sierra to develop such operations, if they can be developed. The Commission thus agrees that it shall not terminate this agreement due to the lack of any such revenue train operations for a period of three years from the effective date of this agreement.

8.2.2. The Commission also agrees that it shall not terminate this agreement due to Sierra's failure to use the rights herein granted with respect to any segment of the Freight Easement Property or Railroad Facilities that is necessary to support any Freight Service or Tourist Service over any regularly-used portion of the Freight Easement Property north of any unused segment.

8.3. Abandonment.

8.3.1. Sierra may at any time, in its sole and absolute discretion, immediately and without any liability to the Commission: (a) abandon Tourist Service over all or such portion of the Property as Sierra deems appropriate, and (b) seek STB approval to abandon Freight Service over all or such portion of the Property as Sierra deems appropriate. In the event that Sierra seeks to abandon Freight Service, Sierra shall provide the Commission with 90 days advance notice of Sierra's intention and shall, at no cost to Sierra, cooperate with the Commission's efforts to take upon itself

all Freight Service operations relating to the Property, to appoint another person or entity to do so, or to rail bank any portion of the Property as to which Sierra intends to abandon Freight Service. Nothing in this agreement is intended by the parties to limit these rights on the part of Sierra and the Commission agrees that it will cooperate with Sierra in Sierra's efforts to so abandon any Tourist Service or Freight Service.

8.3.2. Any abandonment proceedings instituted by Sierra shall comply with the abandonment provisions set forth in the Freight Easement, including the railbanking/OFA provisions thereof.

8.3.3. To the extent that Sierra abandons Freight Service over all or any part of the Freight Easement Property or Railroad Facilities, this agreement and any other rights and obligations of Sierra to the Commission, shall, at the time of consummation of such abandonment, terminate with respect to any abandoned portions of the Freight Easement Property and Railroad Facilities. Upon the effective date of such abandonment, Sierra shall, if so requested by the Commission, (i) assign to the Commission any Sierra Agreements affecting the abandoned portions of the Freight Easement Property and Railroad Facilities, (ii) quitclaim the abandoned portion of the Freight Easement to the Commission, and (iii) execute any additional documents reasonably necessary to effectuate the purpose and intent of this agreement.

8.4. All obligations incurred by the parties prior to the termination of this agreement shall be preserved until satisfied. Notwithstanding the foregoing, if Sierra terminates this agreement as to any portion of the Freight Easement Property or Railroad Facilities after damage to the same by any third party, or because the cost to maintain, repair, or replace the same is not economical, Sierra shall thereafter have no liability to the Commission for the cost to perform any related obligations.

8.5. Upon the effective date of termination of this agreement, Sierra shall, if so requested by the Commission, (i) assign to the Commission all Sierra Agreements, (ii) quitclaim the Freight Easement to the Commission, and (iii) execute any additional documents reasonably necessary to effectuate the purpose and intent of this agreement.

9. **Insurance.** Sierra and the Commission shall obtain the insurance set forth below, to be kept in force during the life of this agreement. All insurance policies must be written by a reputable insurance company reasonably acceptable to the Commission, or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in California. The limits of insurance coverage required under this section shall be increased every five years during the term hereof and any extended term based on any increases or decreases in the Producer Price Index, or any successor index.

9.1. Sierra Insurance: Sierra shall, at its own cost and expense, provide and procure Commercial General Liability ("CGL") and, as applicable, Workman's Compensation or Federal Employer's Liability Act ("FELA"), insurance.

9.1.1. The CGL insurance policy providing bodily injury, including death, personal injury and property damage coverage shall have a limit of not less than \$25 million each occurrence and an aggregate limit of not less than \$50 million. The self-insured retention may not exceed \$100,000 (as that value is periodically adjusted by the Consumer Price Index from and after the effective date of this agreement.) The CGL insurance policy must be written on ISO occurrence form CG 00 01 12 04 or a substitute form providing reasonably equivalent coverage. This insurance shall contain broad form contractual liability covering the indemnity provisions contained in this agreement, coverage for railroad operations, and coverage for construction or demolition work on or near railroad tracks. Prior to the execution of this agreement, Sierra shall provide the Commission with a certificate of insurance on a standard ACORD form, or other form reasonably acceptable to the Commission, substantiating the required coverages and limits set forth herein. Upon request by the Commission, Sierra shall immediately furnish a complete copy of any policy required hereunder, including all endorsements, with said copy certified by the insurance company to be a true and correct copy of the original policy.

9.1.2. The CGL insurance policy must include the Commission as an "additional insured" (using ISO Additional Insured Endorsement CG 20 26 or a substitute form reasonably acceptable to the Commission providing reasonably equivalent coverage).

- 9.1.3. Required Provisions: The CGL insurance policy shall contain, or be endorsed to contain, the following provisions:
- 9.1.3.1. For any claims related to this agreement, Sierra's insurance coverage shall be primary insurance as respects the Commission, its directors, officers, employees, and agents and any insurance or self-insurance maintained by the Commission, its directors, officers, employees, or agents, shall be in excess of Sierra's insurance and shall not contribute to it. However, this section shall not apply to any claims that result from the sole negligence or willful misconduct of the Commission or its officers, directors, employees, agents, or invitees; as to any such claim, the Commission's insurance shall be primary and any insurance or self-insurance maintained by Sierra, its directors, officers, employees, or agents, shall be in excess of Commission's insurance and shall not contribute to it.
 - 9.1.3.2. Any failure by Sierra to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Commission, its directors, officers, employees, or agents.
 - 9.1.3.3. Sierra's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - 9.1.3.4. Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the Commission.
- 9.1.4. Workers' Compensation or FELA insurance shall cover any statutory liability as determined to be applicable by the compensation laws of the State of California or FELA, as applicable, with a limit of at least \$1 million.
- 9.1.5. The fact that insurance is obtained by Sierra or by the Commission on behalf of Sierra will not be deemed to

release or diminish Sierra's liability, including liability under the indemnity provisions of this agreement. Damages recoverable by the Commission from Sierra or any third party will not be limited by the amount of the required insurance coverage.

9.2. Commission Insurance: The Commission shall, at its own cost and expense, provide and procure such Commercial General Liability ("CGL") and Workman's Compensation insurance as it deems necessary to cover its obligations under this agreement.

10. **Notices**. All correspondence, notices, and other papers shall be delivered either in person or by certified or registered mail, postage prepaid, to the parties hereto at the following addresses:

If to Sierra: President
Sierra Northern Railway
341 Industrial Way
Woodland, CA 95616
Fax: 530-666-2919

If to Commission: Executive Director
Santa Cruz County Regional Transportation
Commission
1523 Pacific Avenue
Santa Cruz, CA 95060
Fax: 831-460-3215

11. **Coordination Committee**

11.1. In order to ensure the safety and efficiency of all operations on the Property, the parties shall establish a Coordination Committee. The Coordination Committee shall be composed of two representatives from each party (and any other persons or entities as the parties may mutually agree) and shall (a) serve as a forum to coordinate the parties' activities and resolve questions or disputes (but only to the extent the parties' representatives have been so authorized), and (b) be responsible to make recommendations to the parties. The Coordination Committee shall meet on a regular schedule to be determined by the parties, but may be convened for special meetings by either party upon 10 days written notice to the other party. Following each meeting, the Coordination Committee shall deliver written minutes of such meeting to Sierra and the Commission.

12. **Claims and Liens for Labor and Material**

- 12.1. Sierra agrees to pay in full for all materials joined or affixed to the Property, to pay in full all persons who perform labor upon the Property, and not to permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the Property, as to any work done or materials furnished thereon by Sierra or at Sierra's request. Sierra shall indemnify, hold harmless and defend Commission (with counsel reasonably acceptable to Commission) against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed or materials furnished.

13. **Property Taxes**

- 13.1. So far as it lawfully may do so, the Commission shall assume, bear, and pay all property and other taxes and assessments of whatsoever nature or kind (whether general, local, or special) levied or assessed upon or against the Property, excepting taxes levied upon and against any Freight Easement Property or Railroad Facilities. Sierra shall assume, bear, and pay all property and other taxes and assessments of whatsoever nature or kind (whether general, local, or special) levied or assessed upon or against any Freight Easement Property or Railroad Facilities, including possessory interest taxes under California Revenue and Taxation Code section 107 *et seq.*, unless applicable law otherwise excuses payment of taxes due to the Commission's ownership of the Property, the Freight Easement Property, or the Railroad Facilities.

14. **Indemnity**

- 14.1. Sierra shall indemnify, defend and hold harmless the Commission from any Loss which is due to or arises from: (a) Sierra's operation, maintenance, repair, or use of the Freight Easement Property, Railroad Facilities, any appurtenances thereto, or any part thereof; (b) Sierra's provision of Freight Service or Tourist Service; or (c) Sierra's failure to comply with or perform any of the terms and conditions set forth in this agreement; except to the extent that the Loss is caused by the sole negligence or willful misconduct of the Commission, its officers, agents, or employees, or a breach of an express material warranty of the Commission. The provisions of this section shall survive the termination or expiration of the term of this agreement.
- 14.2. The Commission shall indemnify, defend and hold harmless Sierra from any Loss which is due to or arises from the sole negligence or willful misconduct of the Commission, its officers, agents, employees, and contractors. For purposes of this Section 14.2 only,

the term "Loss" is limited to any loss, damage, claim, demand, action, cause of action, penalty, fine, payment, cost, liability, or expense of whatsoever nature, including court costs and reasonable attorneys' fees, resulting from or related to: (a) any injury to or death of any person, including officers, agents, and employees of the Commission or Sierra; or (b) damage to or loss or destruction of Sierra's equipment, rolling stock and any items being transported on behalf of Sierra's customers. Any Loss related to damage to or destruction of the Freight Easement Property or Railroad Facilities is subject to the provisions of Section 2.7. The provisions of this section shall survive the termination or expiration of the term of this agreement.

15. **Removal of Sierra Equipment, Personnel, and Property upon Termination of Agreement.** Prior to, or upon, the termination of this agreement, Sierra shall, at its sole expense, remove its equipment, personnel, and other property from the Freight Easement Property and Railroad Facilities and shall restore, to the Commission's reasonable satisfaction, such portions of the Freight Easement Property and Railroad Facilities used by Sierra to as good a condition as they were in at the beginning of this agreement or after the completion of rehabilitation and repairs by the Commission, including the projects specified in Section 5.1, excepting normal wear and tear. If Sierra fails to do the foregoing, the Commission may do such work at the cost and expense of Sierra. Sierra may not remove any property, including the Railroad Facilities, that is or becomes the property of the Commission under this agreement.

16. **Hazardous Substances and Wastes**

- 16.1. Sierra shall not be liable or responsible for any Hazardous Materials present on, in, or under the Property, or other problems relating to the Property, prior to December 31, 2009, which is the commencement date of its operations under its lease agreement with Union Pacific Railroad, except to the extent Sierra's activities exacerbate the contamination of any such pre-existing Hazardous Materials.
- 16.2. Sierra shall comply with all applicable laws in its occupancy, operation, and maintenance of the Freight Easement Property and Railroad Facilities. Without first obtaining the Commission's written permission (which may be withheld in the Commission's sole reasonable discretion), Sierra shall not treat or dispose of Hazardous Materials on the Freight Easement Property or Railroad Facilities. Sierra shall not release any Hazardous Materials on or at the Freight Easement Property or Railroad Facilities, including through any drainage or sewer systems. Sierra assumes all responsibility for the investigation and cleanup of any such release

or exacerbation by Sierra and shall indemnify, defend, and hold harmless the Commission and its property, its officers, agents, and employees, for all costs, including reasonable environmental consultant and reasonable attorneys' fees, and claims resulting from or associated with any such release or exacerbation by Sierra. Sierra shall assume all responsibility for and shall indemnify, defend, and hold harmless Commission against all costs and claims associated with a release or leak of Hazardous Materials, or exacerbation of pre-existing Hazardous Materials, occurring between December 31, 2009, and the expiration or sooner termination of this agreement, and related to Sierra's use of the Freight Easement Property and Railroad Facilities, unless such event was caused by the sole negligence or willful misconduct of the Commission, its officers, employees, or agents.

- 16.3. Sierra shall not install any above-ground or underground storage tanks without the Commission's prior written consent, which consent may be granted or withheld in Commission's sole and absolute discretion. If such consent is granted, Sierra shall obtain any necessary permits, notify the proper authorities, and provide the Commission with copies of any such permits and notifications. Sierra shall assume all responsibility for and shall indemnify, defend, and hold harmless the Commission against all costs and claims associated with a release or leak of the contents of any such tank occurring between December 31, 2009, and the expiration or termination of this agreement, unless such event was caused by the sole negligence or willful misconduct of the Commission, its officers, employees, or agents.
- 16.4. The Commission understands and acknowledges that the regular operation and maintenance of railroad equipment and tracks involve the storage, use, and release of *de minimus* amounts of Hazardous Materials, including petroleum products, creosote, and chromated copper arsenate. The Commission agrees that Sierra shall not be liable or responsible for the *de minimus* release of any such Hazardous Materials, unless (i) such release violates applicable law, or (ii) the Commission is otherwise entitled to defense and indemnity under Section 14.1.
- 16.5. If Sierra knows, or has reasonable cause to believe, that any Hazardous Materials have come to be located under or about the Freight Easement Property or Railroad Facilities, other than as specifically provided herein or as previously consented to in writing by the Commission, Sierra shall immediately give the Commission written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to or received

from any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Materials.

- 16.6. This Section 16 shall continue in full force and effect regardless of whether this agreement is terminated pursuant to any other provision or the Freight Easement Property and Railroad Facilities are abandoned and vacated by Sierra.
17. **Trespassers and Dangerous Conditions.** Sierra shall not be required to take any action or incur any expense (including posting signage or warnings, providing fencing or other security) as to or against trespassers on the Property, or invitees of the Commission, other than to promptly notify local law enforcement and the Commission concerning any trespassers observed on the Property by Sierra personnel. If Sierra becomes aware of any dangerous conditions on or about the Property, Sierra shall promptly notify the Commission of such conditions.
18. **Waivers.** The failure of either party hereto to enforce any of the provisions of this agreement, or to enforce any right or option which is herein provided, shall in no way be construed to be a waiver of such provision(s) as to the future, nor in any way to affect the validity of this agreement or any part hereof, or the right of either party to thereafter enforce each and every such provision and to exercise any such right or option. No waiver of any breach of this agreement shall be held to be a waiver of any other or subsequent breach.
19. **Consent.** Unless expressly provided to the contrary elsewhere in this agreement, whenever the consent, approval, judgment, or determination (collectively, "consent") of a party is required or permitted under this agreement, the consenting party shall exercise good faith and reasonable judgment in granting or withholding such consent. No party may unreasonably withhold or delay its consent; consent shall be deemed to have been withheld if a party fails to consent to the other party within 30 days of having been given written notice of the other party's intention to take any action as to which consent is required or permitted.
20. **Non-binding Mediation**
- 20.1. If at any time a question or controversy shall arise between the parties hereto in connection with this agreement and upon which the parties cannot agree, such question or controversy shall be submitted to a single mediator within 20 days after written notice by one party to the other party of its desire for mediation. The parties shall in good faith consult to select a mutually acceptable mediator. The mediator so selected shall be a person with at least

one-year of exposure to the concepts of railroad operations and maintenance.

- 20.2. Upon selection of the mediator, said mediator shall with reasonable diligence determine the questions as disclosed in said notice of demand for mediation and shall give both parties reasonable notice of the time and place of any mediation. Until the completion of mediation, performance under the agreement shall continue in the manner and form existing prior to the rise of such question.
- 20.3. The compensation, cost, and expenses of the mediator shall be paid in equal shares by the parties.
21. **Entire Agreement.** This document, and the exhibits attached hereto, constitute the entire agreement between the parties, all oral agreements being merged herein, and supersedes all prior representations, agreements, arrangements, understandings, or undertakings, whether oral or written, between or among the parties relating to the subject matter of this agreement that are not fully expressed herein.
22. **Modification to Agreement.** The provisions of this agreement may be modified at any time by agreement of the parties hereto, provided such modification is in writing and signed by all parties to this agreement. Any agreement made after the date of this agreement and related to the subject matter contained herein shall be ineffective to modify this agreement in any respect unless in writing and signed.
23. **No Assignment Absent Consent.** Except as specifically provided in this agreement, Sierra shall not assign this agreement, in whole or in part, or any rights herein granted, without the Commission's prior written consent.
24. **Successors and Assigns.** Subject to the provisions of Section 23, this agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and assigns.
25. **Venue and Choice of Law**
 - 25.1. Any and all disputes, controversies, or claims arising out of, relating to, or in connection with this agreement shall be instituted and maintained in a competent court in San Francisco County, California and the parties hereby consent to the jurisdiction of any such court and to service of process by any means authorized under California law.
 - 25.2. This agreement shall be governed, construed, and enforced in accordance with the laws of the State of California, without reference to its conflicts of laws provisions. The prevailing party in

any claim or action arising out of or connected with this agreement shall be entitled to recover all reasonable attorneys' fees and related costs, in addition to any other relief that may be awarded by any court or other tribunal of competent jurisdiction.

26. **Acts of God and Other Disruptions of Service.** Neither party shall be deemed to be in default of this agreement if any failure to meet any condition or to perform any obligation or provision hereof is caused by, a result of, or due to strikes, insurrections, acts of God, or any other causes beyond the party's control; provided, however, that performance shall only be excused for as long as the disruption persists.

27. **Miscellaneous**

27.1. In the event that any of the provisions of this agreement are held by a court or other tribunal of competent jurisdiction to be invalid or unenforceable, the remaining portions hereof shall remain in full force and effect and any invalid or unenforceable provisions shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary to make such provisions valid and enforceable. Without limiting the generality of the foregoing, if the requirement in Section 5.2 that Sierra comply with applicable bridge safety management program regulations (under Public Law 110-432, Section 417) is held to be a non-delegable duty of the Commission, the Commission may, at its option, (i) undertake this obligation and charge Sierra for the cost thereof, or (ii) terminate this agreement.

27.2. Each party has participated in negotiating and drafting this agreement so if an ambiguity or a question of intent or interpretation arises, this agreement is to be construed as if the parties had drafted it jointly, as opposed to being construed against a party because it was responsible for drafting one or more provisions of this agreement.

27.3. Each party acknowledges that the officer executing this agreement has the authority to enter into this agreement on behalf of the party and in so doing is authorized to bind the party on whose behalf he is signing, to the terms and conditions of this agreement.

27.4. This agreement may be executed in one or more counterparts and by facsimile signature, each of which shall be deemed an original, but all of which together constitute one and the same instrument. Each party shall deposit the executed agreement into escrow with instructions to deliver the agreement upon close of escrow under the Purchase and Sale Agreement.

In witness whereof, the parties hereto have caused this agreement to be executed as of the date first herein written.

SIERRA NORTHERN RAILWAY

**SANTA CRUZ COUNTY REGIONAL
TRANSPORTATION COMMISSION**

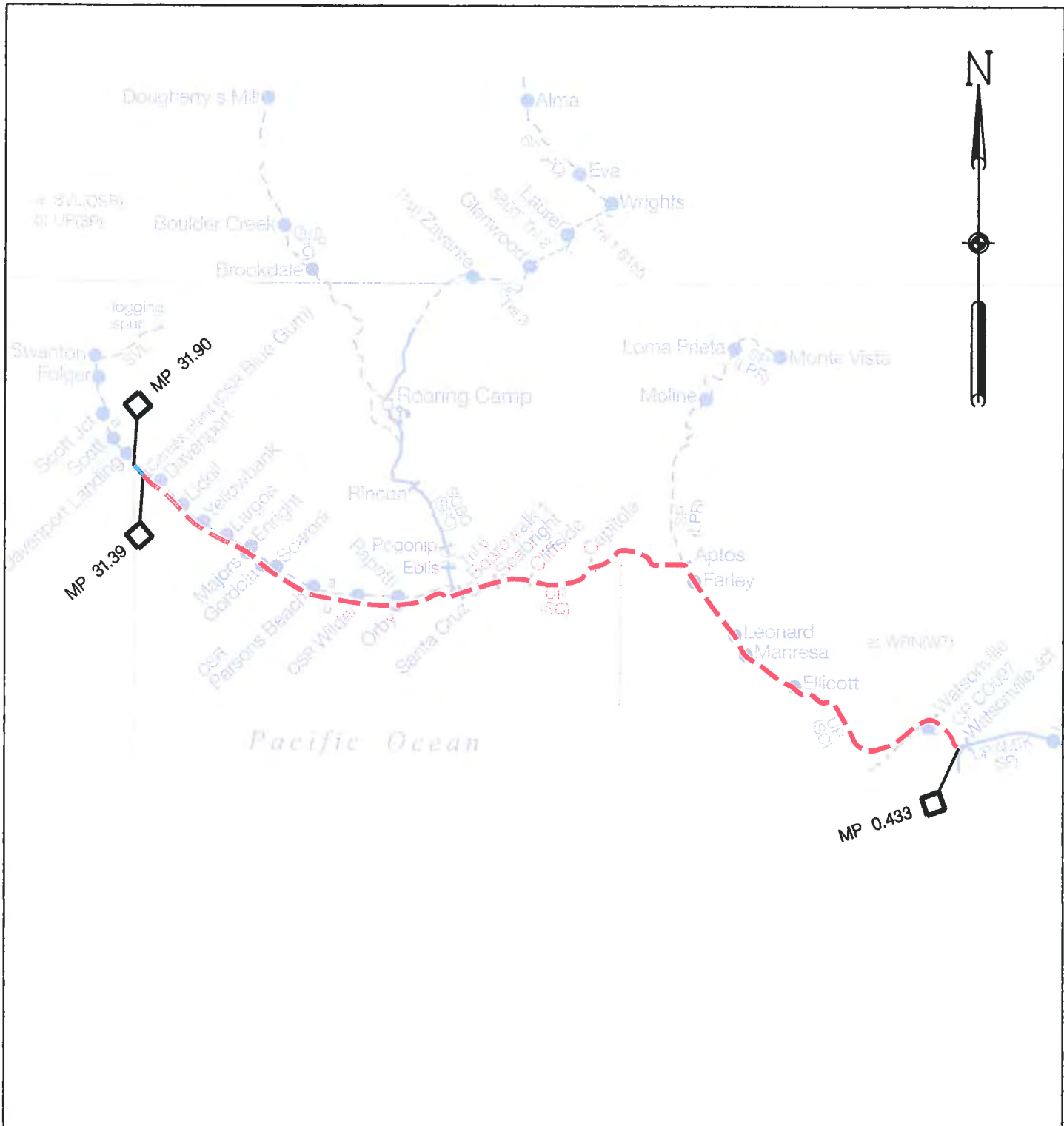
By: _____
David Magaw
President

By: _____
George A. Dondero
Executive Director

By its signature below, Sierra Railroad Company, a California corporation, acknowledges that it is the parent company of Sierra Northern Railway and agrees to be bound by the terms and conditions of this agreement as if it were a party, except for such terms and conditions that relate to Sierra Northern Railway's obligations to provide common carrier freight rail service.

SIERRA RAILROAD COMPANY

By: _____
Mike Hart, President



NOT TO SCALE

LEGEND

LINE SALE SHOWN
MP 0.433 - 31.39



RIGHT OF WAY LICENSE
MP 31.39 - 31.90



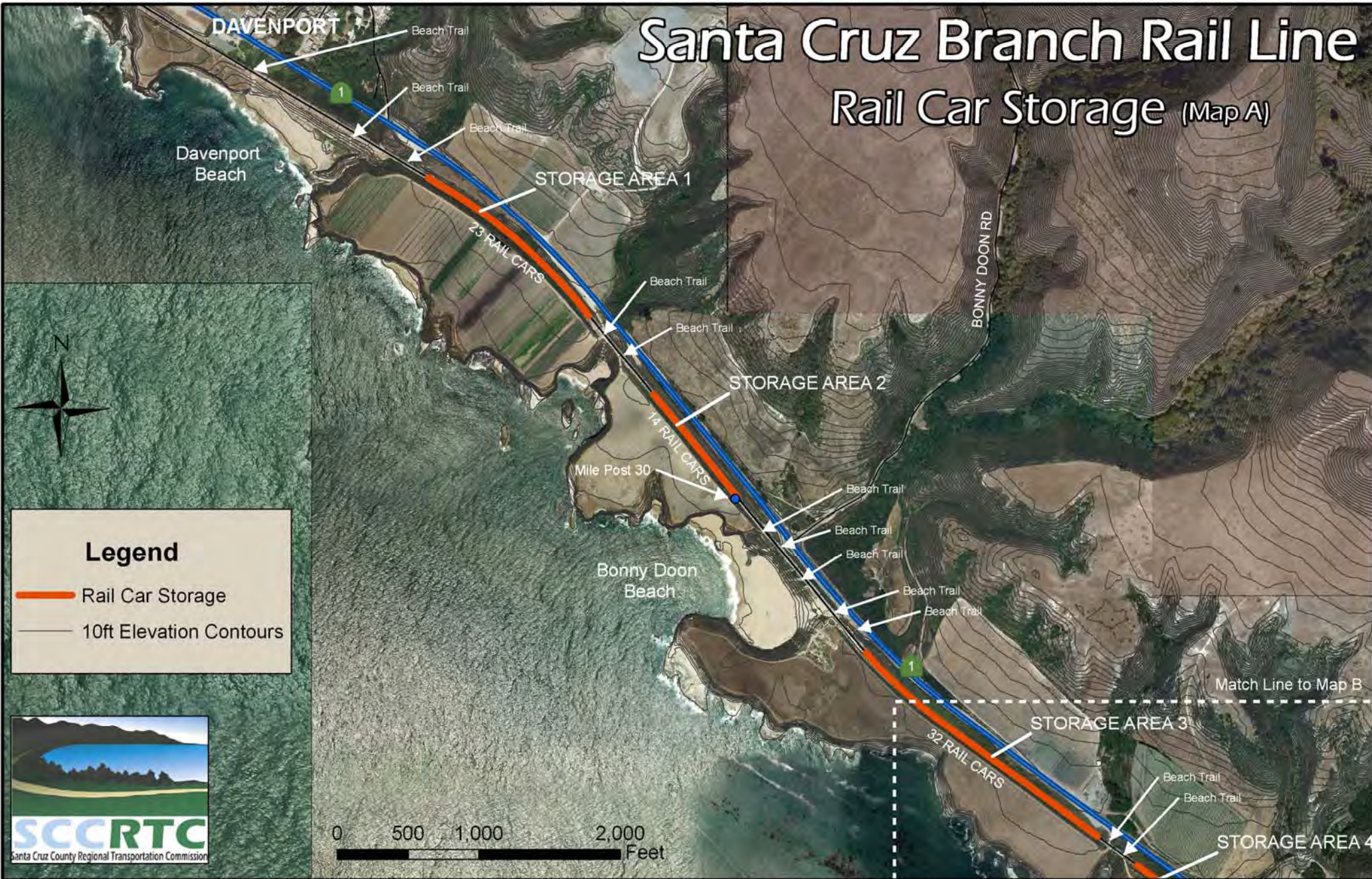
EXHIBIT "A"
UNION PACIFIC RAILROAD CO.

TO ACCOMPANY AGREEMENT WITH

WATSONVILLE JCT - DAVENPORT, CA.
M.P. 0.433 - 31.90+- SANTA CRUZ SUB.
SP CA V72 /1-6 & V89 /1-7

REAL ESTATE DEPARTMENT OMAHA NE.
FILE #1728-03 DATE: 11-2-2009 T.D.A.

Santa Cruz Branch Rail Line Rail Car Storage (Map A)



Santa Cruz Branch Rail Line Rail Car Storage (Map B)



Match Line to Map A



Legend

- Rail Car Storage
- 10ft Elevation Contours



PROJECT	AUDIT	FOLDER	FILENET	LEG STAT	PARTY NAME	PURPOSE	MANAGER	COUNTY	CITY	ST	SUBDV	MP START	ANNUAL AMT
186878	207416	158035	85264492	Active	CITY OF WATSONVILLE	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	WATSONVILLE	CA	MoJave	102.62	\$0
190837	202098	161195	81633173	Active	SANTA CRUZ CITY OF	Warning Devices - Public Roadway	Paul G. Farrell	Santa Cruz	SANTA CRUZ	CA	SANTA CRUZ BRANCH	119.4	\$0
200142	5155932		138504731	Active	APTOS SEASCAPE CORP	Crossing - Private Roadway	Joan M. Preble	Santa Cruz	APTOS	CA	SP Route Code EC	111.04	\$0
200154	5157723		138597466	Active	SANTA CLARA COUNTY OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	APTOS	CA	SP Route Code EC	111	\$0
200156	5156717		138597266	Active	SANTA CRUZ COUNTY OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	APTOS	CA	SP Route Code EC	113.7	\$0
200157	5157786		138597471	Active	SANTA CRUZ COUNTY OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	APTOS	CA	SP Route Code EC	108	\$0
203028	5158150		138596753	Active	SANTA CRUZ CITY OF	Crossing - Private Roadway	Paul G. Farrell	Santa Cruz	ORBY	CA	SP Route Code EL	81.4	\$0
203789	5163007		138596941	Active	SANTA CRUZ PORT DISTRI	Crossing - Private Roadway	Joan M. Preble	Santa Cruz	SEABRIGHT	CA	SP Route Code EC	119.09	\$0
206269	5032513	250763	72879530	Active	COUCH DISTRIBUTING CO INC	Track: Industry Track Agreement	Dan L. Zack	Santa Cruz	WATSONVILLE	CA	SP Route Code EC	103.1	\$0
208017	5027248	155176	73553975	Active	JOSEPH GEORGE DIST	Track	Dan L. Zack	Santa Cruz	SANTA CRUZ	CA	SP Route Code EC	118.1	\$0
208855	SPX0329		74806317	Active	MONDO BROS INC	Track	Dan L. Zack	Santa Cruz	SANTA CRUZ	CA	SP Route Code EL	80.6	\$0
210400	SPX0507		74584532	Active	SANTA CRUZ ARTICHOKE & SPROUT GRWRS ASSN	Track	Dan L. Zack	Santa Cruz	SANTA CRUZ	CA	SP Route Code EL	80.7	\$0
210408	5189267		138608562	Active	SANTA CRUZ COUNTY OF	Crossing - Private Roadway	Joan M. Preble	Santa Cruz	CLIFFSIDE	CA	SP Route Code EC	118.1	\$0
211518	5012360			Active	TOBEYS RASP SERVICE INC	Track	Dan L. Zack	Santa Cruz	SANTA CRUZ	CA	SP Route Code EL	80.7	\$0
231292	5194780		88201370	Active	RESETAR, ANTHONY P / PILO, MARY	Crossing - Private Roadway	Joan M. Preble	Santa Cruz	WATSONVILLE	CA	SP Route Code EC	102	\$0
233023	5018043	155201	74205556	Active	MOCEO, JM (MRS)	Track	Dan L. Zack	Santa Cruz	SANTA CRUZ	CA	SP Route Code EL	80.7	\$0
235323	5191872		138609734	Active	TRESTLE BEACH ASSOCIATES	Crossing - Private Roadway	Joan M. Preble	Santa Cruz	APTOS	CA	SP Route Code EC	109.6	\$0
238757	5182045		89052655	Active	CALIFORNIA UNIVERSITY REGENTS	Crossing - Private Roadway	Joan M. Preble	Santa Cruz	ORBY	CA	SP Route Code EL	81.8	\$10
239770	5161499		90183973	Active	SULLIVAN, R. & A.	Crossing - Private Roadway	Joan M. Preble	Santa Cruz	APTOS	CA	SP Route Code EC	109.07	\$10
245617	5171658		89674339	Active	GARCIA, R.L.	Crossing - Private Roadway	Joan M. Preble	Santa Cruz	CAPITOLA	CA	SP Route Code EC	115.6	\$10
245622	5212398	206085	86922350	Active	HOLCOMB CORPORATION	Crossing - Private Roadway	Joan M. Preble	Santa Cruz	APTOS	CA	SP Route Code EC	110.54	\$128.09
246802	5014667	149487	74522703	Active	WRIGLEY W M JR CO	Track	Dan L. Zack	Santa Cruz	SANTA CRUZ	CA	SP Route Code EL	81.15	\$0
252817	5157272		90435574	Active	LORENZI, G,B,LO & ZEIHNER, K	Crossing - Private Roadway	Joan M. Preble	Santa Cruz	MAJORS	CA	SP Route Code EL	86.51	\$10
256900	5181065		138596191	Active	SANTA CRUZ COUNTY CA	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	CLIFFSIDE	CA	SP Route Code EC	117.1	\$0
256902	5192311		88282628	Active	SANTA CRUZ COUNTY CA	Crossing - Private Roadway	Joan M. Preble	Santa Cruz	APTOS	CA	SP Route Code EC	112.81	\$0
257860	5211909	181663	138598594	Active	SANTA CRUZ CITY OF	Crossing - Private Roadway	Joan M. Preble	Santa Cruz	SANTA CRUZ	CA	SP Route Code EC	120.41	\$80
260304	5708852	195115	72001973	Active	CASCADE REFRIGERATED NORTHERN CALIF., INC.	Track: Track Lease (Non-Haz)	Dan L. Zack	Santa Cruz	WATSONVILLE	CA	SP Route Code EC	102.01	\$2,160
367101	207254	58589	83992413	Active	MARTINELLI & COMPANY	Crossing - Private Roadway	Joan M. Preble	Santa Cruz	SYSTEM	CA		0	\$119.41
408724	5006275		74992691	Active	HOMER T HAYWARD LUMBER COMPANY	Track	Dan L. Zack	Santa Cruz	SANTA CRUZ	CA			\$
409395	SPX7232		75095156	Active	SANTA CRUZ CITY OF	Track	Dan L. Zack	Santa Cruz	SANTA CRUZ	CA			\$
410634	5015548	250762	74461604	Active	DEL MAR FOOD PRODUCTS CORPORATION	Track: Industry Track Agreement	Dan L. Zack	Santa Cruz	WATSONVILLE	CA		103.1	\$
410859	5003303		75283601	Active	THE UNION ICE COMPANY	Track	Dan L. Zack	Santa Cruz	SANTA CRUZ	CA			\$
411066	5002819		75291400	Active	BORCOVICH & DRAGOVICH COMPANY	Track	Dan L. Zack	Santa Cruz	WATSONVILLE	CA			\$
411500	5002518	233844	75335962	Active	PAJARO VALLEY COLD STORAGE COMPANY	Track	Dan L. Zack	Santa Cruz	WATSONVILLE	CA			\$
412157	SPX7852		75400986	Active	SANTA CRUZ PORTLAND CEMENT COMPANY	Track	Dan L. Zack	Santa Cruz	DAVENPORT	CA			\$
412474	SPX7967		75485582	Active	ASSOCIATED OIL COMPANY	Track	Dan L. Zack	Santa Cruz	WATSONVILLE	CA			\$
412823	5000771		75513451	Active	B PISTA	Track	Dan L. Zack	Santa Cruz	WATSONVILLE	CA			\$
437887	5076726		74997348	Active	HIHN, FRED D.	Track	Dan L. Zack	Santa Cruz	SANTA CRUZ	CA			\$
438233	SP71662		78219062	Active	APPLE GROWERS COLD STORAGE CO PACIFIC TELEPHONE & TELEGRAPH CO	Track	Dan L. Zack	Santa Cruz	WATSONVILLE	CA			\$
442068	SP25134		78964216	Active	CALIFORNIA, STATE OF	Track	Dan L. Zack	Santa Cruz	SANTA CRUZ	CA			\$
455330	SPA3997		83085683	Active	COUNTY OF SANTA CRUZ	Crossing - Public Roadway	Paul G. Farrell	Monterey	APTOS	CA			\$
455863	5080717		83171718	Active	CITY OF SANTA CRUZ	Crossing - Public Roadway	Paul G. Farrell	Monterey	APTOS	CA			\$
457023	5087624		83333021	Active	CAPITOLA, CITY OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	CAPITOLA	CA			\$

PROJECT	AUDIT	FOLDER	FILENET	LEG STAT	PARTY NAME	PURPOSE	MANAGER	COUNTY	CITY	ST	SUBDV	MP START	ANNUAL AMT
57497	S091557		83409248	Active	CAPITOLA, CITY OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	CAPITOLA	CA			\$
57879	S095809		83507962	Active	CAPITOLA, CITY OF	Easement - Roadway	Paul G. Farrell	Santa Cruz	CAPITOLA	CA			\$
59511	S108176		83747796	Active	COAST DAIRIE & LAND CO.	Crossing - Private Roadway	Joan M. Preble	Santa Cruz	DAVENPORT	CA			\$
65104	SPA7491		85337230	Active	SANTA CRUZ COUNTY OF	Warning Devices - Public Roadway	Paul G. Farrell	Monterey	APTOS	CA		112.8	\$
14595	211721	76287	138604735	Active	SANTA CRUZ, CITY OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	SANTA CRUZ	CA			\$
155249	227449	211468	114039215	Active	SANTA CRUZ, CITY OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	SANTA CRUZ	CA	Santa Cruz Sub.	20.78	\$
155250	227485	211469	114212611	Active	SANTA CRUZ, CITY OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	SANTA CRUZ	CA	Santa Cruz Sub.	20.75	\$0
155251	228377	211470	114675818	Active	SANTA CRUZ, CITY OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	SANTA CRUZ	CA	Santa Cruz Sub.	19.02	\$
166949	231783	223078	117905095	Active	MONTEREY COUNTY	Warning Devices - Public Roadway	Paul G. Farrell	Monterey	WATSONVILLE JCT	CA	Santa Cruz Sub.	1.12	\$
167395	231857	223367	117989761	Active	RMC PACIFIC MATERIALS	Track	Dan L. Zack	Santa Cruz	DAVENPORT	CA			\$
189438	244025	207714	154264038	Active	CEMEX	Industrial Track Agreement w/o Maint Chg	Dan L. Zack	Santa Cruz	DAVENPORT	CA	Santa Cruz Ind Lead	31.8	\$
190096	242123	232126	152672800	Active	SANTA CRUZ, CITY OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	SANTA CRUZ	CA	Santa Cruz Lead	22.09	\$

446570 S017462 79955856 Santa Cruz County of Crossing – public roadway Paul G. Garrell Monterey Aptos CA

CONTRACTOR'S RIGHT OF ENTRY AND INDEMNITY AGREEMENT

This contractor's right of entry and indemnity agreement is dated _____ 2010 and is between **Sierra Northern Railway**, a California Corporation ("Railroad") and _____ ("Contractor").

Contractor has requested that Railroad permit Contractor to enter upon property used by Railroad in order to permit Contractor to conduct certain work on, under, adjacent to, or related to such property. Railroad is agreeable thereto subject to the terms and conditions set forth in this agreement.

The parties therefore agree as follows:

1. Definitions

- 1.1 The term "Applicable Law" is defined as the applicable rules and regulations of the Federal Railroad Administration, the California Public Utilities Commission, and any other statewide or federal governmental agency with general jurisdiction over railroad operations or operations on, under, or adjacent to railroad property.
- 1.2 The term "Contractor" is defined as Contractor and includes its directors, officers, employees, agents, parents, subsidiaries, affiliates, commonly controlled entities, subcontractors, any other related persons and entities, and all others acting under its or their authority.
- 1.3 The terms "include", "includes", and "including" are to be read as if they were followed by the phrase "without limitation."
- 1.4 The term "Railroad" is defined in the introductory paragraphs of this agreement and includes its directors, officers, employees, agents, parents, subsidiaries, affiliates, commonly controlled entities, any other related persons and entities, and all others acting under its or their authority.
- 1.5 The term "Railroad Representative" is defined as Railroad's General Manager or Track and Maintenance Manager, as appropriate.
- 1.6 The term "Railroad's Right-of-Way" is defined as all real and personal property within 10 feet of the centerline of any track on the portion of the Santa Cruz Branch railroad line right-of-way, including all improvements thereto, purchased from the Union Pacific Railroad Company by the Santa Cruz County Regional Transportation Commission (the "Commission"), except where roadways, buildings, or property boundary lines reduce such

Contract No. _____

distance to less than 10 feet and except for any retained rights and personal property described in the _____, 2010 Administration, Coordination, and License agreement between Sierra and the Commission. Railroad's Right-of-Way is depicted on Exhibit A attached hereto.

1.7 The term “Work” is defined as all work, activities, and services to be performed by Contractor on, under, adjacent to, or relating to the _____ Property including the following:

_____.

2. **Right Granted; Purpose.** Railroad hereby grants Contractor the right, upon the terms, provisions, and conditions set forth in this agreement, to enter upon, have ingress to, and egress from, the Railroad’s Right-of-Way for the purpose of performing the Work described herein.
3. **Terms and Conditions contained in Exhibits B and B-1.** The terms and conditions contained in Exhibits B and B-1 hereto are hereby made a part of this agreement.
4. **All Expenses to be Borne by Contractor; Railroad Representative.** Contractor shall bear any and all costs and expenses associated with Contractor’s Work and any and all costs and expenses incurred by Railroad caused by or related to Contractor’s Work. Contractor shall perform all Work on the Railroad’s Right-of-Way in a manner that is reasonably satisfactory to the Railroad Representative.
5. **Term, Termination.** The grant of right herein made to Contractor shall commence on the date first set forth above and shall continue until _____, unless sooner terminated as herein provided, or until such time as Contractor has completed its Work on the Railroad’s Right-of-Way, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its Work on the Railroad’s Right-of-Way.
6. **License and other fees.** As compensation to Railroad for the rights herein granted and for Railroad’s administrative and other costs, Contractor agrees to pay Railroad the amount of \$2,500 as a license fee. The license fee shall be payable upon execution of this agreement and the effectiveness of this agreement is contingent upon Contractor’s payment of such license fee. Such license fee shall be in addition to any flagging,

Contract No. _____

switching, or other costs or expenses payable by Contractor under the terms of this agreement.

7. Certificate of Insurance

7.1 Before commencing any Work, Contractor will provide Railroad with a certificate issued by its insurance carrier providing the insurance coverage required pursuant to Exhibit B-1 of this agreement.

7.2 Contractor warrants that this agreement has been thoroughly reviewed by its insurance agents and brokers and that such agents and brokers have been instructed to procure insurance coverage and an endorsement as required herein.

7.3 All insurance correspondence shall be directed to: President, Sierra Northern Railway, 341 Industrial Way, Woodland, California 95776; telephone number (530) 666-9646.

8. Enforceability; Choice of Law; Choice of Forum

8.1 Any and all disputes, controversies, or claims arising out of, relating to, or in connection with this agreement shall be instituted and maintained in a competent court in the City and County of San Francisco, California and the parties hereby consent to the jurisdiction of any such court and to service of process by any means authorized under California law.

8.2 This agreement shall be governed, construed, and enforced in accordance with the laws of the State of California, without reference to its conflicts of laws provisions. The prevailing party in any claim or action arising out of or connected with this agreement shall be entitled to recover all reasonable attorneys' fees and related costs, in addition to any other relief that may be awarded by any court or other tribunal of competent jurisdiction.

9. Payment of Fees, Bills: Construction Contracts Only. Contractor agrees to pay to Railroad, at the time of Contractor's signing of this agreement, an advance against fees and costs to be incurred by Contractor for Railroad's services in accordance with this agreement in an amount equal to 1% of (i) the total amount of the contract between Contractor and the Commission (if the contract is payable on a lump sum basis), or (ii) the Commission's budgeted amount (if the contract is payable on a time and materials basis). Contractor authorizes Railroad to use such funds from time to time to pay for Railroad's services in accordance with this agreement. Any funds remaining after the completion of all Work and of all of Railroad's services rendered in accordance with this agreement shall

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be returned to Contractor. Contractor shall not be entitled to any interest on such funds while held by Railroad. If the reasonable cost of Railroad's services exceeds the 1% advance paid under this section, Contractor shall pay Railroad's invoices for such services in arrears on a monthly basis. This Section 9 applies to rights of entry issued for construction purposes only.

- 10. Notices.** Each notice given pursuant to this agreement shall be effective when delivered by hand or upon mailing by certified or registered mail, postage prepaid, to the party for whom it is intended at the address set forth below or such other address as may be specified from time to time in writing by one party to the other.

To Railroad:

Sierra Northern Railway
Attn: President
341 Industrial Way
Woodland, CA 95776-6012
Telephone 530-666-9646
Facimile 530-666-2919

To Contractor:

11. Miscellaneous.

11.1 In the event that any of the provisions of this agreement are held by a court or other tribunal of competent jurisdiction to be invalid or unenforceable, the remaining portions hereof shall remain in full force and effect and any invalid or unenforceable provisions shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary to make such provisions valid and enforceable.

11.2 Each party acknowledges that the officer executing this agreement has the authority to enter into this agreement on behalf of the party and in so doing is authorized to bind the party on whose behalf he is signing, to the terms and conditions of this agreement.

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11.3 This agreement may be executed in one or more counterparts and by facsimile signature, each of which shall be deemed an original, but all of which together constitute one and the same instrument.

In witness whereof, the parties hereto have caused this agreement to be executed as of the date first herein written.

Sierra Northern Railway

By: _____
President

Contractor

By: _____

EXHIBIT B

GENERAL PROVISIONS FOR CONTRACTOR'S RIGHT OF ENTRY AND INDEMNITY AGREEMENT

1. Notice of Commencement of Work; Flagging.

- 1.1** Contractor agrees to notify the Railroad Representative at least 48 hours in advance of Contractor commencing its Work and at least 24 hours in advance of the proposed performance of any Work in which any person or equipment will be on Railroad's Right-of-Way, or will be near enough to any railroad track that any equipment extension (including a crane boom) will encroach on Railroad's Right-of-Way. If an emergency should arise requiring immediate attention, Contractor shall provide as much notice as practicable to Railroad before commencing any Work.
- 1.2** Upon receipt of such notice, the Railroad Representative will determine in its reasonable discretion, and will inform Contractor, whether one or more flagmen will need to be present and whether Contractor will need to implement any special protective or safety measures. Any flagman or other special protective or safety measures shall, at Railroad's reasonable discretion, be performed by Railroad at Contractor's sole cost and expense with the understanding that Railroad's provision of any such flagging or other services shall not relieve Contractor of any of its responsibilities or liabilities set forth in this agreement. Flagging costs are billed in hourly increments at \$75 per hour per flagman for regular working hours, and \$112.50 per hour, per flagman, for overtime hours, holidays, and weekends, or such higher rate as may be in effect at the time of the flagging; provided that rate increases from the date of the Administration and Coordination Agreement shall not exceed increases in the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index, All Urban Consumers, All Items, San Francisco-Oakland-San Jose, CA.
- 1.3** The flagging requirements of this agreement shall apply only on days when Railroad has scheduled train movements and then only to those areas of the Railroad's Right-of-Way on which the train movements are scheduled to occur. Otherwise, Contractor may establish working limits for its construction activities pursuant to any means permissible under the provisions of 49 CFR 214.319.

2. Limitation and Subordination of Rights Granted

- 2.1** The foregoing grant of right is subject and subordinate to any prior and continuing right and obligation of Railroad to use and maintain all or some portion of the Railroad's Right-of-Way, including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify, or relocate railroad tracks, signals, communications equipment and lines, and other railroad facilities upon, along, or across any or all parts of Railroad's Right-of-Way, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.
- 2.2** The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Railroad's Right-of-Way, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

3. No Interference with Railroad's Operations. Subject to the terms and conditions of the Administration and Coordination Agreement, no Work performed by Contractor shall cause any material interference with Railroad's ability to fulfill its rights and obligations under the Administration and Coordination Agreement and federal law, unless specifically permitted under this agreement, or the Administration and Coordination Agreement, or specifically authorized in writing, in advance, by the Railroad Representative. Nothing shall be done or suffered to be done by Contractor at any time that would in any manner impair the safety thereof. When not in use, Contractor's machinery and materials shall be kept clear of Railroad's Right-of-Way.

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4. **Permits.** Prior to beginning any Work, Contractor, at its sole cost and expense, shall obtain all necessary permits to perform any Work contemplated by this agreement.
5. **Mechanic's Liens.** Contractor shall pay in full all persons who perform labor or provide materials for the Work to be performed by Contractor. Contractor shall not permit or suffer any mechanic's or materialman's liens of any kind or nature to be enforced against the Railroad's Right-of-Way or against any property of Railroad. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs, and expenses of whatsoever nature in any way connected with, or growing out of, such Work done, labor performed, or materials furnished.
6. **Compliance with Laws.** In the prosecution of the Work covered by this agreement, Contractor shall comply with all applicable federal, state, and local laws, regulations, and enactments affecting the Work. Contractor shall use only such methods as are consistent with safety, both as concerns Contractor, Contractor's agents and employees, the Railroad's Right-of-Way, the officers, agents, employees, and property of Railroad, and the public in general. Contractor (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupation safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when Work is performed on the Railroad's Right-of-Way. If any failure by Contractor to comply with any such laws, regulations, and enactments results in any fine, penalty, cost, or charge being assessed, imposed, or charged against Railroad, Contractor shall reimburse and indemnify Railroad for any such fine, penalty, cost, or charge, including attorney's fees and court costs and expenses. Contractor further agrees, in the event of any such action and upon notice thereof being provided by Railroad, to defend such action free of cost, charge, or expense to Railroad.
7. **Safety Instructions.** Safety of personnel, property, rail operations, and the public is of paramount importance in the prosecution of the Work pursuant to this agreement. As reinforcement and in furtherance of overall safety measures to be observed by Contractor (and not by way of limitation), the following special safety rules shall be followed:
 - 7.1 Contractor shall keep the job site free from safety and health hazards and ensure that any person working on its behalf is competent and adequately trained in all safety and health aspects of the job. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services can be provided to any person that may be injured on the job site. Contractor shall promptly notify Railroad of any any hidden dangers discovered by Contractor and of U.S. Occupational Safety and Health Administration reportable injuries occurring to any person that may arise during the Work performed on the job site. Contractor shall have a non-delegable duty to control its employees while they are on the job site, on the Railroad's Right-of-Way, or on any property of Railroad to be certain they do not use, are not under the influence of, and do not have in their possession any alcoholic beverage or illegally obtained drug, narcotic, or other similar or illegal substance.
 - 7.2 Contractor's employees and agents shall be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision and hearing or their free use of their hands and feet. Only waist length shirts with sleeves and trousers that cover the entire leg are to be worn. If flare-legged trouser are worn, the trouser bottoms must be tied to prevent catching. Contractor's employees and agents should wear sturdy and protective footwear. Such employees and agents shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal. In addition, Contractor shall require its employees and agents to wear personal protective equipment as specified by Railroad rules, regulations or by any Railroad officials overlooking the Work at the job site. In particular, the protective equipment to be worn shall be:
 - 7.2.1 Protective head gear that meets American National Standard Z89.1, latest revision. It is suggested that all hard-hats be affixed with Contractor's or subcontractor's company logo or name.
 - 7.2.2 Eye protection that meets American National Standard for occupational and educational eye and face protection, Z87.1, latest revision. Additional eye

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protection must be provided to meet specific job situations such as welding, grinding, burning, etc.; and

7.2.3 Hearing protection which affords enough attenuation to give protection from noise levels that will be occurring on the job site.

7.3 All heavy equipment provided or leased by Contractor shall be equipped with audible back-up warning devices. If in the opinion of the Railroad Representative any of Contractor's or any of Contractor's subcontractor's equipment is unsafe for use on the Railroad's right-of-way, Contractor, at the request of the Railroad Representative, shall remove such equipment from Railroad's right-of-way.

7.4 If Contractor will or does have persons or equipment on Railroad's Right-of-Way, then Contractor's employees who will be or are within such zone shall be trained in safety as prescribed by the Federal Roadway Worker Protection clauses of the Code of Federal Regulations (49 CFR 214 *et seq.*) prior to working within such limits and shall at all times follow Railroad's reasonable trackworker safety rules and procedures. If Contractor's employees have been trained by another common carrier railroad within one year prior to their working on the Railroad's Right-of-Way, only a refresher training will be required on Railroad's trackworker safety program and rules. Strict compliance with Railroad's trackworker safety program shall be required at all times and Contractor agrees to indemnify and hold Railroad harmless from any fines or fees caused by Contractor's failure to comply at all times with Railroad's trackworker safety program.

7.5 Contractor shall not cross the railroad tracks of Railroad with any vehicles except at existing, open public or private crossings.

7.6 Contractor's employees must be familiar with procedures to clear men and equipment from any railroad track area for approaching trains. In addition, all applicable safety procedures, including the following, shall be adhered to by all of Contractor's employees:

Always be on the alert for moving equipment while working near any railroad tracks or facilities.

Do not step or walk on the top of the rail, frogs, switches, guard rails, or other track components.

In passing around ends of standing railroad cars, engines, railroad machinery, and other on-track equipment, leave at least one rail car length (50 feet) between yourself and the end of the equipment.

Avoid walking or standing on railroad track at any time.

When it is necessary to walk or work on railroad track, always keep a sharp lookout in both directions for approaching trains.

Before stepping or crossing railroad tracks, look in both directions first. The same is true when walking around machinery and equipment on and about the railroad tracks.

Do not sit on, lie under, or cross between railroad cars except as required in performance of your duty, and only when railroad track and equipment are under proper protection.

In multiple railroad track territory, do not stand on one railroad track while a train is passing on another.

8. Warranty of Work

- 8.1** Contractor warrants to Railroad for a period of one (1) year, or until Railroad no longer conducts any railroad operations on the Railroad's Right-of-Way, whichever is less, that its Work (including all materials and workmanship) is new, of good quality, suitable for its intended purpose, free from any faults and defects, and in accordance with any and all applicable laws, rules, and regulations. Contractor shall promptly either repair or replace, at Railroad's option and to Railroad's reasonable satisfaction, all Work that Railroad determines, in its reasonable discretion, to be defective in workmanship or materials within the warranty period, ordinary wear and tear, and unusual abuse or neglect, excepted, together with all other work or property which may be damaged or displaced in so doing. All repairs or replacements shall have a warranty period equal to the original warranty period as herein stated, dated from Railroad's final acceptance of such repairs or replacements.
- 8.2** This section 8 shall continue in full force and effect regardless of whether this agreement is terminated pursuant to any other provision of this agreement.

9. Indemnity

- 9.1** As used in this section, the term "Railroad" is defined to include both Railroad and any other railroad companies (including passenger or tourist railroads) using Railroad's Right-of-Way at or near the location of Contractor's Work and their respective officers, agents, employees, and customers.
- 9.2** As used in this section, "Loss" is defined as any and all losses, damages, claims, demands, actions, causes of action, penalties, fines, costs, and expenses of whatsoever nature (including court costs and reasonable attorney's fees) resulting from or related to (a) Contractor's Work; (b) any injury to or death of any person whomsoever (including Railroad's officers, agents, employees, customers, and passengers, Contractor's officers, agents, and employees, and any other persons or entities); and (c) any damage to or loss or destruction of any property whatsoever (including Railroad's Right-of-Way, any adjacent property, Contractor's property, Railroad's property, the property of any customers of Railroad, and any property in Railroad's care or custody).
- 9.3** As a major inducement, and in consideration of the license and permission herein granted, Contractor agrees to indemnify and hold harmless Railroad from any Loss which is due to or arises from any cause associated either in whole or part, directly or indirectly, with the Work performed under this agreement, with any breach of this agreement, with any failure to observe the health and safety provisions herein, or with any activity or omission arising out of the performance or nonperformance of this agreement. However, Contractor shall not be required to indemnify Railroad when the Loss is caused by the sole negligence or willful misconduct of Railroad.
- 9.4** Contractor accepts Railroad's Right-of-Way and all of Railroad's property in its present condition and hereby assumes the risk of any injury to or death of persons, and any damage to or destruction of property, resulting from the condition of, or defects anywhere in or upon, Railroad's Right-of-Way or any of Railroad's property regardless of whether such condition or defects are known or unknown, apparent or latent, and regardless of whether such condition or defects exist at the commencement of this agreement or at some later time.
- 9.5** This section 9 shall continue in full force and effect regardless of whether this agreement is terminated pursuant to any other provision.

- 10. Restoration of Railroad's Property.** In the event Railroad or the Commission authorizes Contractor to take down any fence or structure on Railroad's Right-of-Way or of Railroad, or in any manner move or disturb any of Railroad's Right-of-Way or other property of Railroad in connection with the Work, Contractor shall, as soon as possible and at Contractor's sole cost and expense, restore such fence or structure or other property to the same condition as it was in before it was taken down, moved, or disturbed and Contractor shall indemnify and hold harmless Railroad, its officers, agents, and employees against and from any and all liability, loss, damages, claims, demands, costs, and expenses of whatsoever nature, including court costs and reasonable

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attorney's fees, which may result from any injury to or death of any persons whomsoever, or any damage to or loss or destruction of any property whatsoever, when such injury, death, damage, loss, or destruction grows out of or arises from the taking down of any fence or the moving or disturbance of any property. Railroad will not pay Contractor for any betterments or improvements by Contractor of such fence or other property.

11. Hazardous Materials.

11.1 Contractor shall comply with all federal, state and local environmental laws and regulations in its Work. Without first obtaining Railroad's written permission (which may be withheld in Railroad's sole reasonable discretion), Contractor shall not treat or dispose of Hazardous Materials on Railroad's Right-of-Way. Contractor shall not release any Hazardous Materials on or at Railroad's Right-of-Way, including through any drainage or sewer systems. Contractor assumes all responsibility for the investigation and cleanup of any such release by Contractor and shall indemnify, defend, and hold harmless Railroad and its property, its officers, agents, and employees for all costs, including reasonable environmental consultant and reasonable attorneys' fees, and claims resulting from or associated with any such release by Contractor. Commencing upon the effective date of this agreement and until Contractor has provided Railroad with the required notice concerning Contractor's completion of its Work, Contractor shall assume all responsibility for and shall indemnify, defend, and hold harmless Railroad against all costs and claims associated with a release or leak of Hazardous Materials related to Contractor's Work, unless such event was caused by the sole negligence or willful misconduct of Railroad.

11.2 If Contractor knows, or has reasonable cause to believe, that any Hazardous Materials have come to be located under or about the Railroad's Right-of-Way, other than as specifically provided herein or as previously consented to by Railroad, Contractor shall immediately give Railroad written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to or received from any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Materials.

11.3 This section 11 shall continue in full force and effect regardless of whether this agreement is terminated pursuant to any other provision of this agreement.

12. Waiver of Breach. The waiver by Railroad of the breach of any condition, covenant, or agreement herein contained to be kept, observed, and performed by Contractor shall in no way impair the right of Railroad to avail itself of any subsequent breach thereof.

13. Assignment – Subcontracting. Contractor shall not assign, sublet, or subcontract this agreement or any interest therein without Railroad's or Commission's prior written consent and any attempt to so assign, sublet, or subcontract without such prior written consent shall be void. If Contractor obtains such permission to subcontract all or any portion of the Work, Contractor is and shall remain responsible for all Work of any such subcontractors and all Work of any such subcontractors shall be governed by the terms of this agreement.

EXHIBIT B-1

**CONTRACTOR'S RIGHT OF ENTRY AND INDEMNITY AGREEMENT
INSURANCE REQUIREMENTS**

1. Contractor shall, at its own cost and expense, provide and procure Commercial General Liability ("CGL") insurance, Automobile Public Liability insurance, and, as applicable, Workman's Compensation or Federal Employers Liability Act ("FELA") insurance.

1.1. The CGL insurance policy providing bodily injury, including death, personal injury and property damage coverage shall have a limit of not less than \$5 million each occurrence and an aggregate limit of not less than \$5 million. If the Commission requires higher insurance limits from the licensee, such insurance limits shall apply to this agreement as well. The CGL insurance policy must be written on ISO occurrence form CG 00 01 12 04 or a substitute form providing reasonably equivalent coverage. This insurance shall contain broad form contractual liability covering the indemnity provisions contained in this agreement, and coverage for construction or demolition work on or near railroad tracks. Contractor shall provide Railroad with a certificate of such insurance prior to the execution of this agreement. Upon request by Railroad, Contractor shall immediately furnish a complete copy of any policy required hereunder, including all endorsements, with said copy certified by the insurance company to be a true and correct copy of the original policy.

1.2. The CGL insurance policy must include Railroad and any other railroad users, including any tourist or passenger railroads and their customers and passengers, as an "additional insured" (using ISO Additional Insured Endorsement CG 20 26 or a substitute form providing reasonably equivalent coverage).

1.3. The CGL insurance policy shall contain, or be endorsed to contain, the following additional provisions:

1.3.1. For any claims that result from the misconduct or negligence of Contractor or its officers, directors, employees, agents, or invitees, Contractor's insurance shall be primary and any insurance or self-insurance maintained by Railroad, its directors, officers, employees, or agents, shall be in excess of Contractor's insurance and shall not contribute to it.

1.3.2. Any failure by Contractor to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to Railroad, its directors, officers, employees, or agents.

1.3.3. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

1.3.4. Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after 30 days' prior written notice by certified mail, return receipt requested, has been given to Railroad.

1.4. Automobile Public Liability insurance providing bodily injury and property damage coverage with a combined single limit of at least \$1,000,000 each occurrence or claim. This insurance shall provide contractual liability covering all motor vehicles including hired and non-owned and mobile equipment to the extent it may be excluded from the general liability insurance.

1.5. Workers' Compensation insurance covering any statutory liability determined to be applicable under the compensation laws of the State of California.

1.6. FELA insurance, if applicable, as required by federal law.

2. All insurance policies must be written by a reputable insurance company reasonably acceptable to Railroad, or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in California, and must be kept in force during the life of this agreement.

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3. The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish Contractor's liability, including liability under the indemnity provisions of this agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

ASSIGNMENT AND ASSUMPTION AGREEMENT

(Trackage Rights and Interchange Agreement with Santa Cruz, Big Trees and Pacific Railway Company)

FOR VALUE RECEIVED, SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION, a public agency created under California law ("**Assignor**"), ASSIGNS AND TRANSFERS to SIERRA NORTHERN RAILWAY, a California corporation ("**Assignee**"), its successors and assigns, all of Assignor's right, title and interest in and to the attached February 1, 1985 Trackage Rights and Interchange Agreement made by and between Southern Pacific Transportation Company and Santa Cruz, Big Trees and Pacific Railway Company ("**Big Trees**"), as amended on August 21, 1986, (the "**Trackage Agreement**"), subject to the following terms, conditions and exceptions:

1. This assignment shall take effect upon the close of escrow on Assignor's purchase of the Santa Cruz Branch railroad line from Union Pacific Railroad Company via an August 20, 2010 Purchase and Sale Agreement.
2. Assignee agrees to (a) perform all of the obligations of Assignor pursuant to the Trackage Agreement accruing after the date hereof, and (b) indemnify, defend and hold Assignor harmless from and against any and all claims, causes of actions and expenses (including reasonable attorney's fees) incurred by Assignor and arising out of (1) Assignee's failure to comply with terms of the Trackage Agreement after the date hereof, and (2) claims under the Trackage Agreement by Big Trees accruing after the date hereof.
3. The Trackage Agreement shall become a "Sierra Agreement" under the terms and conditions of the September 28, 2010 Administration, Coordination and License Agreement between Assignor and Assignee (the "**Administration Agreement**") and shall be subject to the terms and conditions set forth therein.
4. Assignee acknowledges Big Trees' rights to operate under the terms of the Trackage Agreement. Any agreement to expand Big Trees' operations beyond those permitted under the Trackage Agreement shall be subject to the terms and conditions of the Administration Agreement (including Section 2.3.2 *et seq.*).
5. With respect to Article VII of the Trackage Agreement, Assignor assigns to Assignee only the right to collect payments for maintenance, repair and capital improvements, as set forth in Section 2.3.2 *et seq.* of the Administration Agreement, provided that such payments shall not exceed the amount otherwise collectible under Article VII. Assignor retains all other rights under Article VII of the Trackage Agreement.
6. With respect to Article IX of the Trackage Agreement, Assignee shall instruct Big Trees to name Assignor as an additional insured under the insurance policy required by that Article.

7. Assignor retains the right to enforce all terms and conditions of the Trackage Agreement as a third-party beneficiary thereof.
8. Section 2.3.2.8 of the Administration Agreement is incorporated by reference into this assignment, as if set forth in full.
9. This assignment is made and accepted without recourse against Assignor as to the performance by any party under the Trackage Agreement.

Dated the ____ day of _____, 2010.

**SANTA CRUZ COUNTY REGIONAL
TRANSPORTATION COMMISSION, a public
agency created under California law**

By: _____

Title: _____

**SIERRA NORTHERN RAILWAY,
a California corporation**

By: _____

Title: _____

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TRACKAGE RIGHTS AND INTERCHANGE AGREEMENT

THIS AGREEMENT, made and entered into this 14th day of February, 1985, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY ("SP") and SANTA CRUZ, BIG TREES & PACIFIC RAILWAY COMPANY ("SCR"):

WHEREAS, SP presently owns a line of railroad extending through the City of Santa Cruz, California;

WHEREAS, SCR proposes to acquire from SP under a separate agreement of even date SP's Santa Cruz Branch north of Mile Post 120.96 in the City of Santa Cruz;

WHEREAS, SCR desires to use certain of SP's tracks at Santa Cruz for the purpose of turning locomotives and railroad equipment, interchanging cars with SP and operating passenger trains to and from trackage between SP's Mile Post 120 and 120.418;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I. DEFINITION OF CERTAIN TERMS

- A. The term "track" or plural thereof and the term "trackage" shall mean track structure and all appurtenances thereof, including but not necessarily limited to rail and fastenings, switches and frogs complete, bumpers, ties, ballast, roadbed, embankment, signals, bridges, trestles, culverts or any other structures or things necessary for support of and entering into construction thereof, and if any portion thereof is located in a thoroughfare the terms shall include pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing material at vehicular crossings of tracks, culverts, drainage facilities, crossing warning devices, and any and all work required by lawful authority in connection with construction, renewal, maintenance and operation of said track structures and all appurtenances thereof.

- B. The term "Joint Track", as herein used shall mean trackage, including underlying property, shown by red line on Exhibit "A", attached hereto and hereby made a part hereof, over which SCR is granted joint operating rights.
- C. The Term "Interchange Track" or plural thereof, as herein used, shall mean any SP tracks shown by blue line on Exhibit "A" which SP may from time to time designate for the interchange of cars between SP and SCR.

ARTICLE II. GRANT OF RIGHTS

SP hereby grants to SCR for the term of this agreement, and subject to limitations herein set forth, the right to operate its trains, engines and cars with its own employees, over the Joint Track and on the Interchange Track, as defined herein, in common with SP and such other parties as SP may hereafter admit to the use of the Joint Track and Interchange Track.

ARTICLE III. LIMITATION ON USE BY SCR

The Joint Track shall be used by SCR only for the purpose of turning locomotives and other railroad equipment, operating passenger trains to and from trackage between Mile Post 120 and 120.418, and interchanging railway traffic with SP, it being distinctly understood that SCR is not granted the right to use for any other purpose any industrial, team, loading, unloading or other track or other facility now or hereafter located along the Joint Track. SCR, at its expense, shall provide fuel and any other necessary supplies for its operations on the Joint Track.

ARTICLE IV. ADMINISTRATION, OPERATION AND MAINTENANCE OF JOINT TRACK

- A. SP shall have exclusive control with respect to management, maintenance and operation of the Joint Track and shall maintain and keep same in reasonable repair and reasonably suitable for the combined requirements of the parties hereto, but it is expressly understood and agreed that SCR shall not by reason of any defect in the Joint Track or Interchange Track or in any track, structure or appliance appurtenant thereto, or by reason of failure or neglect of SP to repair any such defect, have or make against SP any claim or demand for any

loss, damage, or injury whatsoever arising from such defect, failure or neglect.

- B. SCR shall assume the entire cost of any changes, additions or betterments to the Joint Track that may be required for its operations, including but not limited to any changes or improvements for the handling of passengers and passenger trains, or as the result of entering into this agreement.
- C. SP shall order and direct the movement of trains and cars on the Joint Track under such reasonable rules and regulations as SP from time to time may adopt. All interpretations and application of the rules shall be by SP.
- D. SCR shall, at the request of SP, bar from service upon the Joint Track any SCR employees who shall be found by SP to be responsible for violation of SP rules and regulations. SCR shall bear and assume all expenses which it and SP may incur as a result of any such barring from service. If such disciplinary action is appealed by an SCR employee to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on the Joint Track by reason of such occurrence.
- E. SCR's operations shall be scheduled so as not to interfere with SP's normal operations. SCR shall not operate on any portion of the Joint Track or Interchange Track when SP is operating or about to operate thereon.
- F. Each party agrees to comply with all lawful requirements for operation of the Joint Track and Interchange Track, and if failure to comply therewith shall result in any fine, penalty, cost or charge being suffered or incurred by either party, the party so failing agrees promptly and fully to reimburse and indemnify the other party for and on account thereof. Any locomotive, train or car used or operated by either party over or upon said trackage covered by this agreement shall be deemed to be the locomotive, train or car of such party, whether owned by it or not.

- G. SCR shall secure such additional permits from public bodies for its train operations above and beyond those covered by the currently outstanding franchises and/or permits of SP, including those franchises and/or permits for the loading and unloading of passengers.
- H. SCR, at its expense, shall install and maintain upon its engines and cars such equipment or devices as may now or in the future be necessary or appropriate, in the reasonable judgment of SP and as installed and maintained by SP, on its own engines and cars, or as required by rules and regulations of public agencies having jurisdiction, for operation of trains upon the Joint Track.
- I. In the event any SCR engine or car shall be wrecked or derailed on the Joint Track or Interchange Track, said wreck or derailment shall be picked up or rerailed by SP, unless otherwise agreed by the parties, and SP shall repair the damage to said tracks. The cost incurred shall be borne in accordance with Article VIII hereof.

ARTICLE V. INTERCHANGE

- A. SCR shall deliver and receive cars to be interchanged between the parties hereto on Interchange Tracks designated from time to time by SP.
- B. Cars that are interchanged between the parties shall be placed on said Interchange Tracks by the delivering party and billing therefor delivered to the receiving party. Such placing and delivering of billing shall constitute delivery, and such cars shall be considered in the custody of the receiving party from the time of such delivery.
- C. Subject to the provisions of Paragraph B of this Article V, the interchange of cars between the parties shall be in accordance with the Code of Rules of the Association of American Railroads then in effect.

ARTICLE VI. EMPLOYEE CLAIMS

SCR shall reimburse Southern Pacific in full for any and all costs incurred by SP in satisfying and complying with any conditions prescribed by the Interstate Commerce Commission pursuant to the provisions of 49 U.S.C. Section 11347 of the

Interstate Commerce Act for protection of interests of railroad employes affected by this agreement.

ARTICLE VII. PAYMENTS

SCR shall pay SP the sum of \$1.00 per annum, the receipt of which is hereby acknowledged, for the rights granted herein; provided, however, that SCR shall pay SP the additional sum of \$1,000 for each month it receives and discharges passengers on that portion of the Joint Track between Mile Post 120 and 120.418. Said additional amount of \$1,000 shall be increased, but not decreased, commencing July 1, 1985 and on July 1 of each subsequent year, in accordance with percentage changes in the AAR Railroad Cost Recovery Index, Series RCR (1977=100) of Railroad Material Prices and Wage Rates, Railroads of Class I, Western District, Material Prices Wage Rates and Supplements Combined (excluding fuel), from the year 1983 which shall be used as the base year, to the calendar year immediately prior to the year in which the change is to be made. Thus, the percentage change from the year 1983 to the year 1984 shall be used to adjust the rate effective July 1, 1985.

ARTICLE VIII. LIABILITY

- A. Determination, as among the parties hereto, of liability for "Loss and Damage" as defined in this Article shall be governed by the following provisions:
- B. The term "Loss and Damage" shall mean all loss of or damage to any property and injury to or death of any person, including amounts paid or payable under all applicable laws, and shall also embrace all cost and expense incident to any such injury, death, loss or damage (including without limitation expense of rerailling the equipment and clearing wrecks) arising in connection with operations on or adjacent to the Joint Tracks and Interchange Tracks under this agreement.
- C. SP shall be bound to use only reasonable and customary care, skill and diligence in the maintenance, repair and renewal of its trackage used hereunder, and SCR shall not, be reason of any

defect in said trackage or by reason of the failure or neglect of SP to repair any such defect, have or make against SP any claim or demand for any loss, damage or injury whatsoever, arising from such defect, failure or neglect.

D.. Except as provided in subparagraph C of this Article VII, liability for Loss and Damage shall be fixed among the parties as follows:

- (1) When caused solely by the acts or omissions of the employees of one party or the defective property of one party (other than said trackage), such loss and damage shall be borne solely by such party.
- (2) When caused by the acts or omissions of the employees of one party or defective property (other than said trackage) of one party in combination with the acts or omissions of the employees of the other party or the defective property (other than trackage) of the other party, then, whether or not the acts or omissions of the employees of a third party or the defective property of a third party is involved, all such Loss and Damage which occurs shall be borne solely by each party hereto as to its own passengers, employees and property (other than said trackage, and equally as to Loss and Damage to said trackage and to third persons and their property.
- (3) Loss and Damage due to any other cause shall be borne solely by each party as to its own passengers, employees and property in its custody, and equally as to damage to trackage and as to loss or damage suffered by third parties and their property.

The foregoing notwithstanding, if such Loss and Damage involves the trains, engines or cars of only one party, that party shall bear all Loss and Damage.

Anything hereinbefore in this Article VIII to the contrary notwithstanding, none of the parties shall have any claim against any other party for Loss and Damage caused by or resulting from interruption of or delay to such party's business.

Each of the parties hereto covenants and agrees that it will forever indemnify and save harmless the other party, its successors and assigns, from and against any and all liability or claims for damages, costs and expenses herein assumed by it; PROVIDED, HOWEVER, that the party liable, in whole or in part, as to any claim or suit filed against the other party, shall be given prompt notice thereof and an opportunity to join in or take over, as may be appropriate, the defense and settlement of such claim or suit. All releases taken pursuant to the settlement of claims or suits involving joint liability shall include each of the parties hereto involved, and copies thereof shall be furnished each of them.

ARTICLE IX. INSURANCE

SCR, at its expense, shall procure and keep in effect during the term of this Agreement, a Comprehensive General Liability Insurance policy issued in the name of SCR, covering any liability arising out of or in any way connected with operations on the Joint Track and Interchange Tracks. Said policy shall provide coverage in the amount of not less than Seven Million Dollars (\$7,000,000 .00) combined single limit for all damages arising out of bodily injury to or death of persons and for loss of or damage to property; shall name SP as an additional insured, with a cross liability endorsement; cover all of SCR's contractual liability hereunder; and shall provide 30 days' prior written notice to SP in case of cancellation or material reduction. SCR shall furnish SP a certified copy of such policy prior to commencing the operations herein involved. The form, substance and limits of said policy shall be subject to the approval of SP.

ARTICLE X. ARBITRATION

Any dispute over the terms of this agreement shall be settled by a board of three arbitrators experienced in railroad operations, one to be named by each party and the third by the two so named. If one party fails to name an arbitrator (or the two chosen do not name the third) within sixty days (60) after notice to do so, such arbitrator shall be named upon application by either party hereto to any judge of the U.S. District Court whose jurisdiction includes the Joint Track. The decision of the arbitrators shall be final and binding upon the parties. The expenses of arbitration shall be apportioned by the arbitrators. The parties may agree upon a single arbitrator.

ARTICLE XI. DEFAULT

If SCR fails to cure its breach of any term or condition of this agreement within 60 days after notice from SP to do so, SP may, at its option, terminate this agreement forthwith.

ARTICLE XII. SUCCESSORS AND ASSIGNS

This agreement shall be binding upon the successors and assigns of SP and SCR, except that SCR may not assign this agreement without the prior written approval of SP.

ARTICLE XIII. EFFECTIVE DATE AND TERM

This agreement is conditioned upon its approval by the Interstate Commerce Commission and any other prerequisite legal authority. It shall be effective for an initial period of ten (10) years from the date hereof and shall continue thereafter until terminated by either party on one (1) year's written notice.

ARTICLE XIV. OBLIGATION TO PROVIDE TRACKAGE

If at any time during the term of this agreement SP elects to abandon its own operations on the Joint Track, or any portion thereof, it shall no longer have an obligation to provide or maintain it for SCR. Thereupon the Joint Track shall be subject to the applicable portions of the Right of First Refusal given to SCR by SP in the Purchase Agreement of even date between the parties.

IN WITNESS, the parties hereto have executed this agreement in duplicate as of the date and year first above written.

SOUTHERN PACIFIC TRANSPORTATION COMPANY

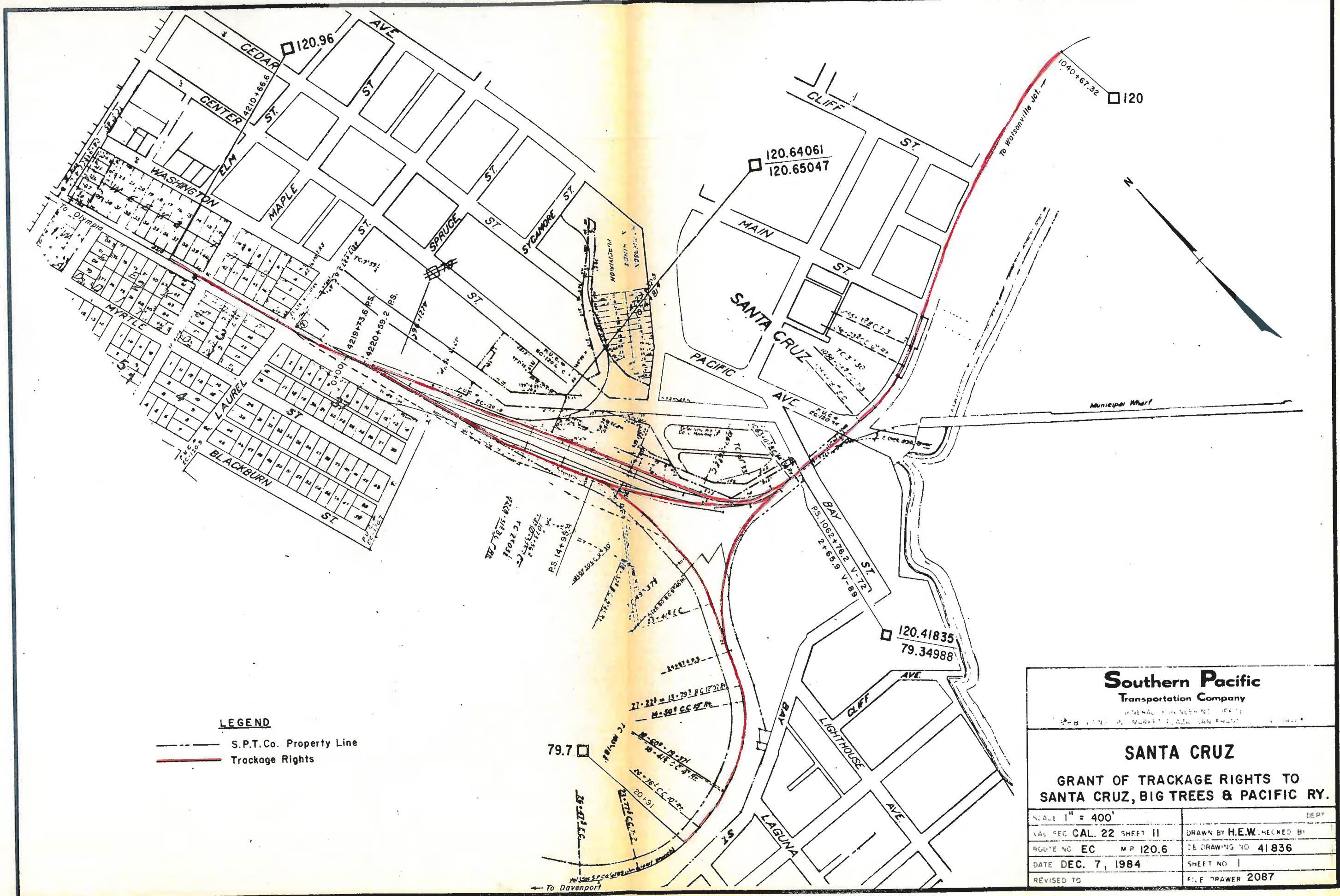
By

Z. L. Johnson
(Title) *Vice President - Finance*

SANTA CRUZ, BIG TREES & PACIFIC
RAILWAY COMPANY

By

M. M. Clark
(Title)



LEGEND
 - - - - - S.P.T.Co. Property Line
 ———— Trackage Rights

Southern Pacific Transportation Company	
SANTA CRUZ	
GRANT OF TRACKAGE RIGHTS TO SANTA CRUZ, BIG TREES & PACIFIC RY.	
SCALE 1" = 400'	DEPT
VAL SEC CAL. 22 SHEET 11	DRAWN BY H.E.W. CHECKED BY
ROUTE NO EC M.P. 120.6	DE DRAWING NO 41836
DATE DEC. 7, 1984	SHEET NO 1
REVISED TO	FILE DRAWER 2087

TRACKAGE REVISION

THIS SUPPLEMENTAL AGREEMENT, made this 21st day of August, 1986, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY ("SP"), Delaware corporation, and SANTA CRUZ, BIG TREES & PACIFIC RAILWAY COMPANY ("SCR"), a California corporation;

RECITALS:

The parties entered into an agreement dated February 1, 1985 (SP's Document Audit No. 166136), providing for use by SCR of certain trackage owned by SP at Santa Cruz, California, for the purposes of turning locomotives and railroad equipment, interchanging cars with SP and operating passenger trains. The parties now desire to amend said agreement in the manner herein set forth.

AGREEMENT:

NOW, THEREFORE, it is mutually agreed as follows:

1. The combined single limit of \$7,000,000.00 of insurance liability coverage called for in Article IX of said agreement dated February 1, 1985, is hereby reduced to a combined single limit of Five Million Dollars (\$5,000,000.00); provided, however, that this reduced limit shall be effective only through the end of this current year.

2. Article III (Limitation on Use by SCR) of said agreement dated February 1, 1985, is hereby amended to read as follows:

The Joint Track shall be used by SCR only for the purpose of turning locomotives and other railroad equipment, operating passenger trains to and from trackage between Mile Posts 120 and 120.418, and between Mile Posts 120.418 and 120.96, and interchanging railway traffic with SP, it being distinctly understood that SCR is not granted the right to use for any other purpose any industrial, team, loading, unloading or other track or other facility now or hereafter located along the Joint Track. SCR, at its expense, shall provide fuel and any other necessary supplies for its operations on the Joint Track.

3. Notwithstanding the provisions of Article II and III (as herein amended) of said agreement dated February 1, 1985, SCR shall hereafter operate its passenger trains over the Joint Track only to a point 300 feet south of the existing station building, until such time as the \$5,000,000 of insurance liability coverage is provided by SCR. *WES*

4. Except as herein otherwise provided, all the terms, covenants and conditions of said agreement dated February 1, 1985, shall remain in full force and effect, subject to termination as therein provided.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate as of the day and year first herein written.

SOUTHERN PACIFIC TRANSPORTATION
COMPANY,

By W. E. Fowler
(Title) Manager - Joint Facilities

SANTA CRUZ, BIG-TREES & PACIFIC RAILWAY
COMPANY,

By Michael J. Donato V.P.
(Title)

RESOLUTION NO.

Adopted by the Santa Cruz County Regional Transportation Commission (RTC)
on the date of October 14, 2010
on the motion of Commissioner
duly seconded by Commissioner

A RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO AN
ADMINISTRATION, COORDINATION AND LICENSE AGREEMENT AND AN
ASSIGNMENT AND ASSUMPTION AGREEMENT WITH SIERRA NORTHERN
RAILWAY AND COMPLETE ACQUISITION OF THE SANTA CRUZ BRANCH RAIL
LINE ON BEHALF OF THE SANTA CRUZ COUNTY REGIONAL TRANSPORTATION
COMMISSION

WHEREAS, on May 6, 2010, the RTC approved purchasing the Santa Cruz Branch Rail Line (Branch Line); and

WHEREAS, the RTC and Union Pacific (UP) have signed a purchase and sale agreement with escrow instructions and conditions for acquisition of the Branch Line at a price of \$14.2 million; and

WHEREAS, the RTC has previously approved entering into an administration, coordination and license agreement (ACLA) for the Branch Line with Sierra Northern Railway; and

WHEREAS, the RTC and Sierra Northern Railway have been negotiating an assignment and assumption agreement for a trackage rights agreement between Union Pacific and Santa Cruz Big Trees and Pacific Railway; and

WHEREAS, on June 30, 2010 the California Transportation Commission (CTC) approved the RTC's application for purchase of the Branch Line subject to certain conditions; and

WHEREAS, execution of an ACLA with Sierra Northern Railway helps complete the CTC conditions for funding the acquisition of the Branch Line;

BE IT RESOLVED BY THE SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION:

1. The Executive Director is authorized to enter into the attached administration, coordination, and license agreement (Exhibit A) for the Santa Cruz Branch Rail Line (Branch Line) with Sierra Northern Railway on behalf of the Santa Cruz County Regional Transportation Commission (RTC); and
2. The Executive Director is authorized to enter into the attached assignment and assumption agreement (Exhibit B) with Sierra Northern Railway on behalf of the Santa

Cruz County Regional Transportation Commission (RTC) for a trackage rights and interchange agreement between Southern Pacific Transportation Company and Santa Cruz Big Trees and Pacific Railway; and

3. The Executive Director is authorized to request funding, enter into and amend funding agreements, accept funding and spend secured funds as necessary on behalf of the RTC to ensure acquisition of the Branch Line; and
4. The Executive Director is authorized to meet and/or accept all escrow instructions and conditions set in the executed purchase and sale agreement, to expend the necessary funds to purchase all of the necessary insurance policies, make the necessary filings with the appropriate regulatory agencies, enter into and make amendments to agreements, and take all of the necessary actions and steps on behalf of the RTC to complete the purchase of the Branch Rail Line and take possession of the property for the RTC.

AYES: COMMISSIONERS

NOES: COMMISSIONERS

ABSTAIN: COMMISSIONERS

ABSENT: COMMISSIONERS

Randy Johnson, Chair

ATTEST:

George Dondero, Secretary

Exhibit A: Administration, Coordination and License Agreement with Sierra Northern Railway for the Santa Cruz Branch Rail Line

Exhibit B: Assignment and Assumption Agreement with Sierra Northern Railway for Trackage Rights and Interchange Agreement between Southern Pacific Transportation Company and Santa Cruz Big Trees and Pacific Railway

Distribution: CTC, RTC Fiscal, Sierra Northern Railway, Santa Cruz Big Trees and Pacific Railway, Union Pacific Railroad

ADMINISTRATION, COORDINATION, AND LICENSE AGREEMENT

This administration, coordination, and license agreement is dated September 28, 2010, and is between the Santa Cruz County Regional Transportation Commission (the “Commission”), a public agency created under California law, and Sierra Northern Railway, a California Corporation (“Sierra”).

The Commission purchased the Santa Cruz Branch railroad line (the “Property”) from Union Pacific Railroad Company (“UP”), via an August 20, 2010, Purchase and Sale Agreement (the “Purchase and Sale Agreement”); and

UP reserved an easement to conduct common carrier freight railroad operations on and over the Property (the “Freight Easement”), which Freight Easement is set forth in the Quitclaim Deed by which UP, as grantor, quitclaimed all of its right, title and interest in and to the Property to the Commission, as grantee; and

UP has quitclaimed all of its right, title, and interest in and to the Freight Easement to Sierra and Sierra is the sole freight rail operator on the Freight Easement;

Sierra needs a long-term agreement of at least 10 years, covering all facets of railroad operations, in order to justify its investment of time and money needed to conduct such railroad operations; and

Sierra and the Commission desire to establish their respective rights and obligations with respect to the Property and the Freight Easement by entering into this agreement.

The parties therefore agree as follows:

1. **Definitions**

- 1.1 The term “Commission” is defined in the introductory paragraphs of this agreement and includes its directors, officers, employees, agents, parents, subsidiaries, affiliates, commonly controlled entities, and all others acting under its or their authority.
- 1.2 The term “Coordination Committee” is defined as the committee established by the parties pursuant to Section 11.
- 1.3 The term “FRA” is defined as the United States Federal Railroad Administration or its regulatory successor.
- 1.4 The term “Freight Easement” is defined in the introductory paragraphs of this agreement.

- 1.5 The term “Freight Easement Property” is defined as the portion of the Property subject to the Freight Easement consisting of all real and personal property within 10 feet of the centerline of any track on the Property except where roadways, buildings, or Property boundary lines reduce such distance to less than 10 feet, and except for any retained rights and personal property described herein.
- 1.6 The term “Freight Service” is defined as any and all common carrier rail freight operations, rights, or obligations as to the Freight Easement Property including freight transportation, switching, temporary rail car storage (subject to the conditions of Section 2.4), transloading freight and dispatching.
- 1.7 The term “Hazardous Materials” is defined as any substance: (a) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as any hazardous waste, hazardous substance, bio-hazard, medical waste, pollutant, or contaminant under any governmental statute, code, ordinance, regulation, rule, or order, or any amendment thereto, including the Hazardous Material Transportation Act 49 U.S.C. § 5101 *et seq.*, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, and the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, or (b) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous, or otherwise hazardous, including gasoline, diesel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon, and urea formaldehyde foam insulation.
- 1.8 The term “Hazardous Materials Laws” means all present and future governmental statutes, codes, ordinances, regulations, rules, orders, permits, licenses, approvals, authorizations, and other requirements of any kind applicable to Hazardous Materials.
- 1.9 The terms “include”, “includes”, and “including” are to be read as if they were followed by the phrase “without limitation.”
- 1.10 The term “Loss” is defined as any loss, damage, claim, demand, action, cause of action, penalty, fine, payment, cost, liability, or expense of whatsoever nature, including court costs and reasonable attorneys’ fees, resulting from or related to: (a) any injury to or death of any person, including officers, agents, and employees of the Commission or Sierra; or (b) damage to or loss or destruction of any property, including the Property, any adjacent property, and the roadbed, tracks, equipment, other property of the Commission or Sierra, and any property in the Commission’s or Sierra’s care or custody.

- 1.11 The term “Property” is defined as the entire Santa Cruz Branch railroad line right-of-way purchased from UP by the Commission, including all improvements thereto, whether now existing or hereafter constructed.
- 1.12 The term “Railroad Facilities” is defined as all tracks and other railroad property and fixtures, including ties, switches, trackbeds, bridges, trestles, retaining walls, culverts, railroad signs, switch mechanisms, signals, grade crossings, active and passive grade crossing warning devices and other appurtenances associated with the trackage described on Exhibit A and located on the Freight Easement Property.
- 1.13 The term “Sierra” is defined in the introductory paragraphs of this agreement and includes its directors, officers, employees, agents, parents, subsidiaries, affiliates, commonly controlled entities, any other related persons and entities, and all others acting under its or their authority.
- 1.14 The term “STB” is defined as the United States Surface Transportation Board or its regulatory successor.
- 1.15 The term “Tourist Service” is defined as the transportation of tourists by rail. Tourist Service does not include regularly-scheduled passenger transit or commuter service.
- 1.16 The term “UP” is defined in the introductory paragraphs of this agreement.

2. **Commission Grants Rights**

- 2.1. Freight Service. The Commission grants Sierra the exclusive right and obligation to provide Freight Service on the Freight Easement Property. Sierra's rights and obligations to provide Freight Service under this agreement are limited to those set forth in the Freight Easement or in this agreement. Sierra may not, in performing such Freight Service, exceed the maximum speeds authorized by applicable law for the existing track conditions or transport rail cars exceeding the applicable track and bridge weight limits.
- 2.2. Trackage License. The Commission grants Sierra an exclusive license to use, maintain, repair, and operate all of the Railroad Facilities for all Freight Service purposes. Notwithstanding their location on the Freight Easement Property, buildings and other fixtures which are not appurtenances associated with the tracks and related railroad property are not included as part of this license.

2.3. Tourist Service and Other Third-Party Licenses.

2.3.1. Sierra Tourist Service. The Commission grants Sierra a non-exclusive license to use the Freight Easement Property and Railroad Facilities to provide Tourist Service between Milepost 18.74 in Santa Cruz and Milepost 31.39 in Davenport; provided that prior to the commencement of operations (a) the Commission has approved in writing a detailed plan from Sierra describing such Tourist Service, (b) the Tourist Service will not materially conflict with, and will be subject and subordinate to Freight Service, and (c) Sierra has obtained any governmental authorizations required under applicable law for such Tourist Service. Sierra's Tourist Service plan shall include, at a minimum, the proposed seasons, dates and times of operation (including a proposed train schedule), a financial plan and a marketing plan. The parties understand and agree that Sierra may assign this Tourist Service license to Mendocino Railway by written assignment approved in writing by the Commission. The assignment shall require Mendocino Railway to be bound by the terms and conditions of this agreement relating to this Tourist Service license and to attorn to the Commission as the licensor. No such assignment shall relieve Sierra of its obligations under this agreement, including obligations related to this Tourist Service license.

2.3.2. Third-Party Licenses. The Commission reserves the right to grant additional licenses over the Freight Easement Property and the Railroad Facilities provided that any such licenses: (a) do not materially conflict with, and are subject and subordinate to, Sierra's right to use, maintain, repair, and operate all of the Railroad Facilities for all Freight Service purposes, (b) do not materially conflict with any other license with a plan previously approved in writing by the Commission, (c) require the licensee to pay its proportionate share of Sierra's costs (including labor costs, materials costs, equipment costs — using equivalent rental costs as a proxy for capital and maintenance and repair costs — travel, fuel, contract labor, and appropriate overhead) to maintain and repair the portion of the Freight Easement Property and Railroad Facilities used by the licensee, and (d) require the licensee to (i) provide insurance equal to or better than that required of Sierra in Section 9 and (ii) indemnify and hold harmless Sierra and the Commission as to any Loss arising out of or related to licensee's operations.

2.3.2.1. For a period of three years after the effective date of this agreement, any third-party license for Tourist Service between Milepost 20.9 and Milepost 31.39 will be deemed to materially conflict with Sierra's Tourist Service license, except in the case of special Tourist Service events as described in Section 2.3.2.9. The provisions of this Section 2.3.2.1 are conditioned on the following (all dates are measured following the effective date of this agreement):

- a. Within 6 months: Sierra shall submit its plan for its initial Tourist Service to the Commission pursuant to Section 2.3.1.
- b. Within 3 months after Commission approval of initial plan: Sierra shall ensure that the Railroad Facilities for its initial Tourist Service meet and are maintained to Class 1 track standards and obtain appropriate FRA and PUC inspections to verify the same.
- c. Within 5 months after Commission approval of initial plan: Sierra shall secure all permits and agreements required to operate its initial Tourist Service.
- d. Within 6 months after Commission approval of initial plan: Sierra shall initiate its initial Tourist Service.
- e. Levels of Service: Sierra's Tourist Service shall carry the following numbers of revenue passengers:
 - I. First Year of Service: 5,000 passengers.
 - II. Second Year of Service: 10,000 passengers.
 - III. Third Year of Service: 15,000 passengers.

2.3.2.2. Following the date that is three years after the effective date of this agreement, a third-party license will be deemed to materially conflict with another license with a plan previously approved in writing by the Commission if the third party (a) operates on a substantially similar portion of the Freight Easement Property and Railroad Facilities covered by the previously-approved license/plan,

(b) permits an activity that is substantially similar to the previously-approved license/plan and (c) operates during substantially similar seasons, and on substantially similar days and times of day, as the previously-approved license/plan.

2.3.2.3. If Sierra or any third-party licensee ("Tourist Operator") fails to initiate and continue to operate Tourist Service substantially in accordance with the plan approved by the Commission, then the applicable Tourist Operator's operations may, at the Commission's option, lose priority over any other operations, but only to the extent of such failure to operate.

2.3.2.4. If Sierra constructs capital improvements to the portion of the Freight Easement Property and Railroad Facilities used by the licensee, the Commission shall promptly and reasonably determine (i) the benefit of such improvements to the licensee, (ii) the cost apportionment of such improvements between Sierra and the licensee, and (iii) the appropriate amortization period for such improvements (for capital improvements the Commission shall make such determination concurrently with its approval of such capital improvements pursuant to Section 6.2). The licensee will, within 30 days following receipt of written notice, pay amounts due. As used in this agreement, the term "capital improvement" means any improvement or repair that is subject to the capital depreciation rules of the Internal Revenue Service.

2.3.2.5. The licensee's proportionate share of Sierra's costs shall be calculated in advance by Sierra (based on the prior year's maintenance and repair costs plus any reasonably anticipated extraordinary maintenance and repair costs, and the parties' relative need or usage during the licensee's operating season) on a car-mile basis as to the portion of the Freight Easement Property and Railroad Facilities used by any licensee. (As used in this subsection, "repair costs" refers to the cost of repairs that maintain property in good operating condition and not to repairs that are "capital improvements," which are dealt with in Subsection

2.3.2.4.) The licensee shall pay its proportionate share of costs monthly in advance during the months of the licensee's operations. Sierra shall at the end of each calendar year reconcile the amounts paid to the actual costs incurred. If the actual costs exceed the amount charged to the licensee, the licensee will within 30 days following receipt of written notice of such reconciliation pay the additional amount to Sierra. If the actual costs are less than the amount charged to the licensee, Sierra will within 30 days following such reconciliation refund the balance to the licensee.

2.3.2.6. If the Commission, in its discretion, elects to require a lower level of insurance coverage for the licensee than the level of coverage then required of Sierra under Section 9, the Commission shall correspondingly lower the limits of coverage required of Sierra under Section 9, provided that if Sierra elects to reduce the levels of its insurance, it shall also reduce the self-insured retention to the level required of the third-party licensee.

2.3.2.7. The Commission or its designee shall have the right to review, obtain, and copy all books, records, computer records, accounts, documentation and any other materials (collectively "Records") pertaining to Sierra's costs that are subject to apportionment under this section, including any Records in the possession of any subcontractors, for the purpose of monitoring, auditing, or otherwise verifying said costs. Sierra agrees to provide the Commission or its designees with any Records requested for this purpose and shall permit the Commission or its designees access to its premises, upon reasonable notice, during normal business hours, for the purpose of inspecting and copying such Records. Sierra further agrees to maintain such Records for a period of three years. The Commission acknowledges and agrees that these Records constitute Sierra's confidential information and shall not be disclosed to any third-party without Sierra's prior written approval, except as otherwise required by applicable law.

2.3.2.8. Sierra will reasonably cooperate with any third party holding rights to use the Property, including,

without limitation, any third-party Tourist Service operator seeking to secure the necessary certification or qualification required by applicable law to operate on the Railroad Facilities.

2.3.2.9. In addition to all other rights of Commission under this agreement, and notwithstanding anything to the contrary in this agreement, the Commission reserves the right to use the Freight Easement Property and Railroad Facilities for special events. Such special events shall be subject to the provisions of Sections 2.3.2.(a) and (b), provided that such special events will only be deemed to materially conflict with another license with a plan previously approved in writing by the Commission if they operate during the same season, and on the same days and times of day, as the previously-approved license/plan. The Commission will consult with Sierra regarding Sierra's willingness and ability to operate such special events.

If the Commission elects to have Sierra operate the special event, Sierra will operate the special event for an all-inclusive fee (for locomotive, crew, fuel, trainset, and trackage rights) (the "Special Event Fee") in the amount of \$4,500 per day. If the Commission elects to have another operator operate the special event, the Special Event Fee paid to Sierra will be \$2,500 per day, which fee shall cover all services to be provided by Sierra to support an event operated by a third party including, but not limited to, dispatching, inspections, and maintenance (but excluding Sierra's provision of any locomotive, trainset, crew, and fuel). The Special Event Fee shall be adjusted annually as of July 1st of each year to an amount calculated by multiplying the Special Event Fee specified above by a fraction, the numerator of which shall be the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index, All Urban Consumers, All Items, San Francisco-Oakland-San Jose, CA (1982-84=100), or the successor of such index (the "CPI"), for the month immediately preceding such adjustment, and the denominator of which shall be the CPI for June 2010. Nothing in this paragraph shall preclude the Commission and Sierra from negotiating other arrangements for

special events (e.g., special events for which there is a different operational or fee structure, including events for which Sierra is both the operator and receives all or a portion of the fare revenue).

2.4. Temporary Rail Car Storage. Subject to the terms and conditions of this agreement, Sierra may enter into agreements with any party for temporary rail car storage or repairs. However, Sierra shall not enter into any agreements pursuant to this section without obtaining the Commission's prior written consent.

2.4.1. Unless otherwise expressly agreed by the Commission in writing, Sierra will not (i) store more than 100 rail cars, (ii) store rail cars in locations other than those marked on Exhibit B (which locations are intended to substantially avoid visibility from Highway 1 and blocking designated public beach access), or (iii) store any rail car for more than six months. Absent the Commission's prior written consent, which consent may be withheld in the Commission's sole discretion, Sierra may not store railcars that have been used to transport Hazardous Materials unless such railcars are empty or contain only residual amounts of Hazardous Materials.

2.4.2. Following the earlier of (i) Sierra's institution of Tourist Service pursuant to Subsection 2.3.1, or (ii) three years after the effective date of this agreement, Sierra shall not exercise its right to use the Freight Easement Property or Railroad Facilities for temporary rail car storage or repair in a manner that materially affects the ability of any third-party Tourist Service licensee to access the Railroad Facilities for the purpose of exercising its licensed rights. A reciprocal provision will be placed in any third-party license for Tourist Service granted by the Commission.

2.4.3. The provisions of Subsections 2.4.1 and 2.4.2 apply to future storage agreements as well as storage agreements existing as of the effective date of this agreement.

2.5. Investigation.

2.5.1. Sierra hereby acknowledges that (a) it has satisfied itself at the time of this agreement with respect to the condition of the Freight Easement Property and Railroad Facilities and their suitability for Sierra's intended use; (b) it has made such investigations as it deems necessary with respect to the Freight Easement Property and Railroad Facilities, as

they exist at the time of this agreement, and assumes responsibility therefor as to its occupancy and use thereof; and (c) neither the Commission nor any of the Commission's agents has made any oral or written representations or warranties with respect to the Freight Easement Property or Railroad Facilities.

2.5.2. The Commission acknowledges that Sierra cannot make any investigation, or satisfy itself, with respect to how the Property or the public's use of the Property may change following the Commission's purchase of the Property from UP. In the event that any public use of the Property, or illegal activities by third parties including trespassing, cause any significant economic or operational problems for Sierra, Sierra may terminate this agreement, provided Sierra complies with the provisions of Section 8.3.

2.6. As-Is, Where-Is. Sierra shall take the Freight Easement Property in an "as-is, where-is" condition and without any express or implied warranties, including, but not limited to, any warranties of merchantability, fitness for a particular purpose or volume or quality of traffic on the Freight Easement Property, and subject to: (i) encroachments or other existing conditions, (ii) all existing ways, alleys, privileges, rights, appurtenances and servitudes, howsoever created, and (iii) the Commission's rights hereunder.

2.7. Release. Sierra, for itself, its successors and assigns, to the maximum extent permitted by law, hereby waives, releases, remises, acquits and forever discharges the Commission, its officers, employees, agents, successors and assigns, from any Loss in any way arising out of, or connected with, the known or unknown, existing or future physical or environmental condition of the Freight Easement Property and Railroad Facilities (including any Hazardous Materials contamination in, on, under, or adjacent to, the Freight Easement Property, or any clearance constraints on the Freight Easement Property), or any federal, state, or local law, ordinance, rule or regulation applicable thereto.

2.7.1. Sierra hereby grants to Commission, on behalf of any insurer providing property, general liability, or automobile liability insurance to either Sierra or Commission with respect to the operations of Sierra, a waiver of any right to subrogation which any such insurer of Sierra may acquire against Commission by virtue of the payment of any loss under such insurance.

2.7.2. If any Loss described in Section 2.7 is caused by a third party under contract with the Commission, the Commission may, at its option, (i) pursue any claim it may have against the third party contractor, or (ii) assign to Sierra any such claim, provided that Sierra shall not be obligated to pursue such claim. Any amounts recovered as a result of any such claim shall, to the extent they exceed any fees and costs incurred in pursuing such claim, be used to repair or replace any of the following that are damaged or destroyed in connection with the subject Loss:

2.7.2.1. First, Freight Easement Property and Railroad Facilities;

2.7.2.2. Then, railroad equipment.

If Sierra commences abandonment proceedings for the subject portion of the Property under Section 8.3, the Commission will not assign any such claim to Sierra and neither party will have any further responsibility under this Subsection 2.7.2 as to such claim. If Sierra's abandonment application is withdrawn, or not approved by the STB, the Commission may assign such claim to Sierra, as provided above.

2.7.3. The provisions of this Section 2.7 shall survive the termination or expiration of this agreement.

2.8. The rights granted by the Commission under Sections 2.1 - 2.4 are subject to all existing licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title that may affect the Property and the word "grant" as used herein shall not be construed as a covenant against the existence of any thereof.

3. Limitation and Subordination of Rights Granted

3.1. Commission's Use of Property. The foregoing granted rights are subject and subordinate to the Commission's prior and continuing right to use and maintain the Property for any purpose that is not inconsistent with this agreement. Without limiting the generality of the foregoing, the Commission may construct, maintain, repair, renew, use, operate, change, modify or relocate public projects of any kind, railroad tracks, signals, communication equipment, fiber optics, pipelines, or other facilities upon, along, or across any or all of the Property, all or any of which the Commission may freely do at any time or times without liability to Sierra for compensation or damages; provided, however, that the Commission may not

materially interfere with Sierra's rights and operations under this agreement or Sierra's Freight Service rights and obligations under federal law (unless first approved by the STB); and provided, further, that the Commission shall to the extent possible notify Sierra as soon as practicable of any such planned or actual interference and provided that the Commission takes all practicable measures to minimize any such interference. Sierra shall reasonably cooperate with the Commission in implementing the foregoing uses of the Property. If the Commission or its designee requests Sierra's assistance to transport materials or to perform other transportation or construction services for public projects, Sierra will provide such assistance at rates reasonably to be determined between the parties.

- 3.2. Commission's Inspection Access; Access for Maintenance. The Commission may, as reasonable and as coordinated in advance with Sierra, (i) inspect the Freight Easement Property and the Railroad Facilities, including any rail-yard or maintenance facility used in connection with Freight Service or Tourist Service, and (ii) access the Freight Easement Property and Railroad Facilities (including access with Commission or third party rail vehicles) as necessary to maintain areas of the Property outside of the Freight Easement Property that are not otherwise reasonably accessible. The Commission shall defend, indemnify and hold Sierra, its officers, directors, employees, and agents, harmless from and against Loss arising from injuries to or death of the Commission's officers, directors, employees, agents, invitees, and contractors relating to such inspections, regardless of the cause of such injuries, death, or damage and regardless of the negligence of any person, except to the extent caused by the willful misconduct or gross negligence of Sierra, its employees, or agents. The Commission shall ensure that any of its officers, directors, employees, agents, invitees, and contractors involved in such inspections are trained in all safety requirements and qualified for any operations related to work conducted on or near railroad operations.
- 3.3. Future At-Grade Crossings. The parties acknowledge that (i) local governments may desire to create future at-grade public crossings of the Freight Easement Property, and (ii) the Aptos Village Plan, dated February 23, 2010, specifically includes a future at-grade roadway crossing of the Freight Easement Property at approximately Milepost 12.55. Sierra shall, at no cost or expense to itself, cooperate with the efforts of any applicable local governments to secure PUC approval of such crossings; provided, however, that Sierra shall be entitled to raise any reasonable safety concerns related to such crossings. The fees and costs associated

with the construction, maintenance, and repair of such crossings shall be set either by agreement between Sierra and the applicable local government (which agreement shall become a Sierra Agreement under Sections 4.2 and 4.3), or by the PUC pursuant to Public Utilities Code Section 1202, *et seq.*

4. **Assignment of certain Contracts and Agreements**

- 4.1. Pursuant to the Assignment and Assumption Agreement dated as of December 18, 2009, Union Pacific assigned to Sierra certain agreements concerning the operation of the Railroad Facilities, including all track agreements, grade crossing agreements, and other operating agreements set forth in Exhibit C hereto (all such agreements hereinafter referred to as the “Sierra Agreements”). Upon close of escrow under the Purchase and Sale Agreement, Union Pacific will assign to the Commission all other agreements relating to the Property, including all easements, licenses, and leases (all such agreements hereinafter referred to as the “Commission Agreements”).
- 4.2. Any new Sierra Agreement is subject to the Commission’s prior written consent and is to be documented by Sierra using forms approved by the Commission, which forms shall, among other things, include provisions indemnifying the Commission and holding it harmless from any Loss in connection with the exercise of rights under such agreements, and the construction, maintenance, or operation, of any facilities constructed in connection with such agreements.
- 4.3. In addition to the general consent requirement of Section 4.2, Sierra is not, without the Commission’s prior written consent, to execute any new Sierra Agreements affecting the Freight Easement Property or Railroad Facilities for a term exceeding the term of this agreement.
- 4.4. Sierra is not, without the Commission’s prior written consent, to terminate or modify any Sierra Agreement.

5. **Maintenance and Operation of Railroad Facilities**

- 5.1. Initial Rehabilitation and Repair Projects. The Commission may, subject to the Commission’s contracting policies, rules, and procedures and to the terms of this agreement, including Section 6.1, perform any rehabilitation of, or repairs to, the Railroad Facilities required to be performed under the terms of the Purchase and Sale Agreement.

5.2. Maintenance of Freight Easement Property and Railroad Facilities.

5.2.1. Freight Easement Property and Railroad Facilities. Sierra, at its expense, shall keep the Freight Easement Property and Railroad Facilities used by Sierra (including occasional use, or use for rail car storage or lay down space) in good repair and in a good and safe condition in conformity with applicable law or any Sierra Agreement.

5.2.2. Weeds, Trash, Drainage and Graffiti. The parties agree that Sierra shall be responsible for: (i) drainage and culvert maintenance and clearance on the Property unless a third person or entity is contractually responsible for such maintenance and clearance, and (ii) weed abatement, vegetation management, and trash collection over the Freight Easement Property as required by applicable law. The Commission grants Sierra a license to enter all portions of the Property as necessary to perform such maintenance; Sierra shall be required to repair any damage caused as the result of Sierra's performance of any such maintenance. Except as required by applicable law, Sierra shall not be responsible for the prevention, removal, or abatement of graffiti wheresoever it may occur. Sierra shall also not be responsible for drainage maintenance, weed abatement, vegetation management, or trash collection related to any construction by the Commission (except for Railroad Facilities that Sierra is entitled to use), or necessitated by the actions of any third party authorized by the Commission to be on the Property, or related to any actions, omissions, or situations off or outside of the Property.

5.2.3. Slopes, Trees and Other Conditions outside of Freight Easement Property. Sierra may, at its option, enter portions of the Property outside the Freight Easement Property to maintain or repair slopes, clear fallen trees and branches, or address other conditions, as necessary to ensure the safety of Sierra's operations. The Commission grants Sierra a license to enter all portions of the Property as necessary to perform such work; Sierra shall be required to repair any damage caused as the result of Sierra's performance of any such maintenance. The Commission shall have no liability to Sierra for maintenance of portions of the Property outside of the Freight Easement Property and Sierra's exclusive remedies for damage to the Freight Easement Property or Railroad Facilities shall be limited to those set forth in Sections 5.5.3 and 8.3. However, this section shall

not apply to any claims that result from the sole active negligence or willful misconduct of the Commission or its officers, directors, employees, agents, contractors, or a third party under contract with the Commission, in which case Sierra's exclusive remedies are those set forth in Section 2.7.2, 8.3 and 14.2.

- 5.2.4. Scope of Maintenance. For purposes of this section 5.2, the maintenance and repairs to be performed by Sierra include, as required by applicable law, (a) inspections, testing, track profiling, adjustments, lubricating, welding, re-spiking surfacing, tamping, and any other tasks constituting customary and routine maintenance of track structures; (b) repair, renewal, replacement, or other customary and routine work required to ensure the safety of Railroad Facilities, including compliance with any applicable bridge safety management program regulations that may be promulgated by the Secretary of Transportation pursuant to Public Law 110-432, Section 417, including the regulations set forth in 49 CFR Part 237; (c) weed and brush control and drainage management; and (d) compliance with all mandated reporting. Sierra shall not be in default under this agreement if it does not perform tie replacement programs or upgrades of rail, switches, bridges, or other track material provided that (e) Sierra's failure to perform such replacement programs or upgrades does not violate applicable law or Sierra's specific maintenance obligations under this agreement, and (f) Sierra uses reasonable diligence to seek outside funding sources for such work. The Commission shall have no responsibility to maintain the trackage, structures, or any other Railroad Facilities.
- 5.2.5. Concurrently with the execution of this agreement and deposit into escrow, both parties shall execute and deliver to the FRA a written notice of the assignment of track inspection and maintenance responsibilities, and bridge safety management responsibilities, to Sierra in accordance with 49 CFR § 213.5(c) and 49 CFR § 237.3. The notice of assignment shall attach a copy of this agreement.
- 5.2.6. Limits of Commission Liability. Notwithstanding the limitations on the Commission's maintenance responsibilities set forth in Section 5.2, the Commission shall be responsible for the maintenance of any improvement it constructs on any portion of the Property. As used in this subsection, the term "improvement" excludes improvements made to the Railroad Facilities,

unless such improvement is made at the request of a third-party, in which case such third-party shall be responsible for the incremental increase in the maintenance thereof. Notwithstanding the foregoing, maintenance responsibility for improvements to public crossings shall be governed by the provisions of Section 3.3.

5.3. Ownership of Track Materials. All track materials installed by Sierra as part of the Railroad Facilities shall be of equal or better quality than those track materials existing at the time of execution of this agreement, or after completion of rehabilitation and repair projects by the Commission, including the projects described in Section 5.1, and shall become the Commission's property. All materials removed by Sierra from the Railroad Facilities and replaced as part of maintenance, repairs, or capital improvements shall, if the decision to remove them was Sierra's, become the property of Sierra. Sierra shall not, without the prior written approval of Commission, remove track materials or other improvements from the Property unless they are replaced as provided in this section. Sierra shall keep a written record of track materials and other improvements removed from, or installed upon, the Property and shall provide an updated copy of the record to the Commission on or before the end of each calendar quarter.

5.4. Clearing of Obstructions, Derailments, and Wrecks. Sierra shall as soon as practicable clear any obstructions, derailments, and wrecks of railroad equipment or Railroad Facilities.

5.4.1. To the extent that any such obstruction, derailment, or wreck damages the Property, Sierra shall as soon as practicable restore the Property to the condition it was in prior to the obstruction, derailment, or wreck.

5.4.2. If Sierra fails to comply with the provisions of this section, the Commission may perform the required action and charge Sierra the reasonable cost thereof. Notwithstanding the foregoing, the Commission shall not charge Sierra for the restoration of any damage caused by any third party (i) to any bridge, if Sierra abandons the subject portion of the Property under Section 8.3, or (ii) to Property other than bridges, if in the Commission's reasonable judgment, such damage does not expose the Commission to potential liability to the FRA, PUC, or any other third party, and either (A) such damage does not obstruct or interfere with any roadway or other property or facility used by the Commission or another third party, or (B) Sierra abandons the subject portion of the Property under Section 8.3. In

addition, the Commission shall not charge Sierra for the restoration of any damage caused by the Commission's contractors, or any third party granted access to the Property by specific agreement with the Commission.

5.4.3. Nothing in this section is intended to preclude legal action by Sierra or the Commission against any third party causing such obstruction, derailment, or wreck.

5.5. Responsibility for Repair or Replacement.

5.5.1. Damage Caused by Freight Operations. Except as otherwise set forth in this agreement, Sierra will be responsible to repair or replace any damage to the Freight Easement Property or Railroad Facilities caused by, or related to, Sierra's operations.

5.5.2. Damage Caused by Commission. Sierra will not be responsible to repair or replace any damage to the Freight Easement Property or Railroad Facilities caused by the Commission, its officers, directors, employees, agents, or contractors.

5.5.3. Damage Caused by Acts of God or Other Factors beyond Sierra's Control. If any portion of the Freight Easement Property or the Railroad Facilities are damaged or destroyed by flood, fire, civil disturbance, earthquake, earth movement, storm, sabotage, act of God, terrorism, accident or any other event beyond Sierra's reasonable control, including damage or destruction caused by third parties, even if said damage or destruction originates outside of the Freight Easement Property, then Sierra may, but shall not be required to, at no cost or expense to the Commission, (a) repair, or cause to be repaired, the damaged or destroyed portion of the Railroad Facilities; (b) replace, or cause to be replaced, such portion of the Freight Easement Property or the Railroad Facilities; or (c) seek to abandon Tourist Service or Freight Service over all or such portion of the Property as Sierra deems appropriate as set forth in Section 8.3.

6. Construction, Relocation, or Removal of Railroad Facilities

6.1. By the Commission.

6.1.1. The license herein granted is subject to the Commission's needs and requirements to improve and use the Property. Subject to Sierra's rights under this agreement, the

Commission, at its sole cost and expense, may add to or remove any portion of the Railroad Facilities, or change or relocate them to new locations as reasonably designated by the Commission, whenever, in the furtherance of the Commission's needs and requirements, the Commission finds such action to be necessary.

- 6.1.2. In the course of performing such work, the Commission may not materially reduce, or otherwise materially interfere with, Sierra's rights and operations under this agreement or Sierra's Freight Service rights and obligations under federal law (unless first approved by the STB). The Commission shall to the extent possible notify Sierra as soon as practicable of any such planned or actual interference and take all practicable measures to minimize any such interference.
- 6.1.3. Sierra shall in such cases provide the Commission with a fixed-price quote for performing any related work, and the Commission shall have the option of accepting Sierra's quote and having Sierra perform the work, performing the work itself, or having another qualified rail contractor perform such work. If the Commission selects a third-party contractor, the contractor shall execute Sierra's Right of Entry Agreement (a copy of which is attached as Exhibit D).
- 6.1.4. The Commission shall have the right to salvage, stockpile, or otherwise dispose of any Railroad Facilities removed pursuant to this section; provided, however, that if the removed Railroad Facilities are reusable elsewhere on the Freight Easement Property, then Sierra shall have the right to so reuse them. Any Railroad Facilities not so reused on the Freight Easement Property shall be returned to the Commission upon expiration or termination of this agreement and may not be sold to third parties or used elsewhere.
- 6.1.5. All such work performed, and any installation of Railroad Facilities, shall be in conformance with all applicable laws. If the Commission relocates any portion of the tracks used for Freight Service, the centerline of the Freight Easement Property shall, upon completion of the relocation work, be deemed to have been modified to coincide with the centerline of the realigned tracks.

- 6.2. By Sierra. Sierra may, at its cost and expense, modify or improve the Freight Easement Property and Railroad Facilities as needed to accommodate its Freight Service or Tourist Service; provided, however, that Sierra first obtains the Commission's written approval of Sierra's plans for such modifications and improvements, which approval may be granted or withheld in the Commission's sole and absolute discretion. Sierra's modification or improvement of the Freight Easement Property and Railroad Facilities may not interfere with or impede any existing or future legal public use of the Property that the Commission may authorize. Sierra may, upon the termination of this agreement or upon the abandonment of any applicable section of the Freight Easement Property or portion of the Railroad Facilities, remove any modifications or improvements to such Freight Easement Property or Railroad Facilities that were paid for by Sierra, that do not constitute any repair or replacement to such Freight Easement Property or Railroad Facilities, and that have not become fixtures to such Freight Easement Property or Railroad Facilities.
- 6.3. The Commission understands that Sierra requires locations at which to store and maintain equipment and materials necessary for Sierra's Freight Operations including a locomotive pit. The parties agree that Sierra may store equipment and materials at the location known as Wrigley's, located between Swift Street and Natural Bridges Drive at or about Milepost 21.5. The parties agree that Sierra will need to identify and construct additional maintenance and storage locations on the Property, which Sierra may do as needed, subject to applicable law and the Commission's prior written consent, which consent may be granted or withheld in the Commission's sole and absolute discretion.
- 6.4. The terms, conditions, and stipulations expressed in this agreement as to the Freight Easement Property and Railroad Facilities shall apply to the Freight Easement Property and Railroad Facilities as they may at any time be expanded, added to, modified, changed, or relocated.

7. **License Fees**

- 7.1. For consideration of the rights granted under this agreement, Sierra shall pay the Commission the following fees as calculated on a quarterly basis:

7.1.1. Freight Service:

7.1.1.1. First 500 carloads per quarter: \$0.00;

7.1.1.2. Any additional carloads per quarter: 5% of Sierra's handling revenue for such carloads.

7.1.1.3. Storage: \$1.00 per day per car in storage.

7.1.2. Temporary Use of Laydown Space. Sierra may from time to time make arrangements with a temporary shipper by rail for the use of otherwise unused laydown space (open space next to railroad track). The parties agree that Sierra will need to identify such temporary laydown locations on the Property, which Sierra may do as needed, subject to applicable law and the Commission's prior written consent. Sierra shall also notify the Commission of the expected duration of each such use. If subsequently the Commission reasonably objects to any specific use of laydown space by Sierra or its shipper, Sierra shall as soon as practicable discontinue that use of such laydown space. Sierra shall, in addition to the license fees set forth above, pay the Commission 20% of all revenue (if any) received by Sierra by such shippers for such use of such laydown space.

7.1.3. Tourist Service: \$1.00 per passenger.

7.2. Sierra shall, on or before the last day of the month following the end of each calendar quarter, determine the amounts payable to the Commission arising from the preceding calendar quarter and shall provide the Commission with a statement describing all amounts due the Commission during the quarter. Sierra shall also, upon reasonable request from the Commission, make available for inspection and copying all documents and receipts upon which such fees are based.

7.3. Sierra shall, on or before January 31 of each calendar year, pay the Commission all amounts due the Commission for the prior four calendar quarters.

8. **Term and Termination**

8.1. This agreement shall become effective when fully executed and delivered to the parties in accordance with Section 27.4, and shall continue in full force and effect for a period of 10 years unless otherwise terminated as provided herein.

8.2. If (i) Sierra does not regularly use the Freight Service or Tourist Service rights in accordance with the plan approved by the Commission (other than railcar storage rights) herein granted over any segment of the Freight Easement Property, or the Railroad Facilities on such segment, for a period of one year without the

Commission's prior written approval, or (ii) Sierra remains in default in its performance of any covenant or agreement contained herein for a period of 30 days after written notice from the Commission to Sierra specifying such default, the Commission may, at its option, forthwith terminate this agreement by written notice; provided however, that if such default cannot reasonably be cured within 30 days after such notice, the Commission may not terminate this agreement provided that Sierra begins to cure the default within the 30-day notice period and proceeds diligently to complete such cure. Upon expiration or termination of this agreement by either party, Sierra shall proceed to abandon Freight Service in accordance with section 8.3. As used in this Section 8.2, the term "regularly use" means revenue train operations for either Freight Service or Tourist Service consisting of a minimum of 40 freight cars per year, or 15,000 passengers per year (beginning with the third year following the effective date of this agreement), as applicable.

8.2.1. The parties recognize that there are currently little or no revenue train operations on the Freight Easement Property or Railroad Facilities and that it may take time for Sierra to develop such operations, if they can be developed. The Commission thus agrees that it shall not terminate this agreement due to the lack of any such revenue train operations for a period of three years from the effective date of this agreement.

8.2.2. The Commission also agrees that it shall not terminate this agreement due to Sierra's failure to use the rights herein granted with respect to any segment of the Freight Easement Property or Railroad Facilities that is necessary to support any Freight Service or Tourist Service over any regularly-used portion of the Freight Easement Property north of any unused segment.

8.3. Abandonment.

8.3.1. Sierra may at any time, in its sole and absolute discretion, immediately and without any liability to the Commission: (a) abandon Tourist Service over all or such portion of the Property as Sierra deems appropriate, and (b) seek STB approval to abandon Freight Service over all or such portion of the Property as Sierra deems appropriate. In the event that Sierra seeks to abandon Freight Service, Sierra shall provide the Commission with 90 days advance notice of Sierra's intention and shall, at no cost to Sierra, cooperate with the Commission's efforts to take upon itself

all Freight Service operations relating to the Property, to appoint another person or entity to do so, or to rail bank any portion of the Property as to which Sierra intends to abandon Freight Service. Nothing in this agreement is intended by the parties to limit these rights on the part of Sierra and the Commission agrees that it will cooperate with Sierra in Sierra's efforts to so abandon any Tourist Service or Freight Service.

8.3.2. Any abandonment proceedings instituted by Sierra shall comply with the abandonment provisions set forth in the Freight Easement, including the railbanking/OFA provisions thereof.

8.3.3. To the extent that Sierra abandons Freight Service over all or any part of the Freight Easement Property or Railroad Facilities, this agreement and any other rights and obligations of Sierra to the Commission, shall, at the time of consummation of such abandonment, terminate with respect to any abandoned portions of the Freight Easement Property and Railroad Facilities. Upon the effective date of such abandonment, Sierra shall, if so requested by the Commission, (i) assign to the Commission any Sierra Agreements affecting the abandoned portions of the Freight Easement Property and Railroad Facilities, (ii) quitclaim the abandoned portion of the Freight Easement to the Commission, and (iii) execute any additional documents reasonably necessary to effectuate the purpose and intent of this agreement.

8.4. All obligations incurred by the parties prior to the termination of this agreement shall be preserved until satisfied. Notwithstanding the foregoing, if Sierra terminates this agreement as to any portion of the Freight Easement Property or Railroad Facilities after damage to the same by any third party, or because the cost to maintain, repair, or replace the same is not economical, Sierra shall thereafter have no liability to the Commission for the cost to perform any related obligations.

8.5. Upon the effective date of termination of this agreement, Sierra shall, if so requested by the Commission, (i) assign to the Commission all Sierra Agreements, (ii) quitclaim the Freight Easement to the Commission, and (iii) execute any additional documents reasonably necessary to effectuate the purpose and intent of this agreement.

9. **Insurance.** Sierra and the Commission shall obtain the insurance set forth below, to be kept in force during the life of this agreement. All insurance policies must be written by a reputable insurance company reasonably acceptable to the Commission, or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in California. The limits of insurance coverage required under this section shall be increased every five years during the term hereof and any extended term based on any increases or decreases in the Producer Price Index, or any successor index.

9.1. Sierra Insurance: Sierra shall, at its own cost and expense, provide and procure Commercial General Liability ("CGL") and, as applicable, Workman's Compensation or Federal Employer's Liability Act ("FELA"), insurance.

9.1.1. The CGL insurance policy providing bodily injury, including death, personal injury and property damage coverage shall have a limit of not less than \$25 million each occurrence and an aggregate limit of not less than \$50 million. The self-insured retention may not exceed \$100,000 (as that value is periodically adjusted by the Consumer Price Index from and after the effective date of this agreement.) The CGL insurance policy must be written on ISO occurrence form CG 00 01 12 04 or a substitute form providing reasonably equivalent coverage. This insurance shall contain broad form contractual liability covering the indemnity provisions contained in this agreement, coverage for railroad operations, and coverage for construction or demolition work on or near railroad tracks. Prior to the execution of this agreement, Sierra shall provide the Commission with a certificate of insurance on a standard ACORD form, or other form reasonably acceptable to the Commission, substantiating the required coverages and limits set forth herein. Upon request by the Commission, Sierra shall immediately furnish a complete copy of any policy required hereunder, including all endorsements, with said copy certified by the insurance company to be a true and correct copy of the original policy.

9.1.2. The CGL insurance policy must include the Commission as an "additional insured" (using ISO Additional Insured Endorsement CG 20 26 or a substitute form reasonably acceptable to the Commission providing reasonably equivalent coverage).

- 9.1.3. Required Provisions: The CGL insurance policy shall contain, or be endorsed to contain, the following provisions:
- 9.1.3.1. For any claims related to this agreement, Sierra's insurance coverage shall be primary insurance as respects the Commission, its directors, officers, employees, and agents and any insurance or self-insurance maintained by the Commission, its directors, officers, employees, or agents, shall be in excess of Sierra's insurance and shall not contribute to it. However, this section shall not apply to any claims that result from the sole negligence or willful misconduct of the Commission or its officers, directors, employees, agents, or invitees; as to any such claim, the Commission's insurance shall be primary and any insurance or self-insurance maintained by Sierra, its directors, officers, employees, or agents, shall be in excess of Commission's insurance and shall not contribute to it.
 - 9.1.3.2. Any failure by Sierra to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Commission, its directors, officers, employees, or agents.
 - 9.1.3.3. Sierra's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - 9.1.3.4. Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the Commission.
- 9.1.4. Workers' Compensation or FELA insurance shall cover any statutory liability as determined to be applicable by the compensation laws of the State of California or FELA, as applicable, with a limit of at least \$1 million.
- 9.1.5. The fact that insurance is obtained by Sierra or by the Commission on behalf of Sierra will not be deemed to

release or diminish Sierra's liability, including liability under the indemnity provisions of this agreement. Damages recoverable by the Commission from Sierra or any third party will not be limited by the amount of the required insurance coverage.

9.2. Commission Insurance: The Commission shall, at its own cost and expense, provide and procure such Commercial General Liability ("CGL") and Workman's Compensation insurance as it deems necessary to cover its obligations under this agreement.

10. **Notices**. All correspondence, notices, and other papers shall be delivered either in person or by certified or registered mail, postage prepaid, to the parties hereto at the following addresses:

If to Sierra: President
Sierra Northern Railway
341 Industrial Way
Woodland, CA 95616
Fax: 530-666-2919

If to Commission: Executive Director
Santa Cruz County Regional Transportation
Commission
1523 Pacific Avenue
Santa Cruz, CA 95060
Fax: 831-460-3215

11. **Coordination Committee**

11.1. In order to ensure the safety and efficiency of all operations on the Property, the parties shall establish a Coordination Committee. The Coordination Committee shall be composed of two representatives from each party (and any other persons or entities as the parties may mutually agree) and shall (a) serve as a forum to coordinate the parties' activities and resolve questions or disputes (but only to the extent the parties' representatives have been so authorized), and (b) be responsible to make recommendations to the parties. The Coordination Committee shall meet on a regular schedule to be determined by the parties, but may be convened for special meetings by either party upon 10 days written notice to the other party. Following each meeting, the Coordination Committee shall deliver written minutes of such meeting to Sierra and the Commission.

12. **Claims and Liens for Labor and Material**

- 12.1. Sierra agrees to pay in full for all materials joined or affixed to the Property, to pay in full all persons who perform labor upon the Property, and not to permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the Property, as to any work done or materials furnished thereon by Sierra or at Sierra's request. Sierra shall indemnify, hold harmless and defend Commission (with counsel reasonably acceptable to Commission) against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed or materials furnished.

13. **Property Taxes**

- 13.1. So far as it lawfully may do so, the Commission shall assume, bear, and pay all property and other taxes and assessments of whatsoever nature or kind (whether general, local, or special) levied or assessed upon or against the Property, excepting taxes levied upon and against any Freight Easement Property or Railroad Facilities. Sierra shall assume, bear, and pay all property and other taxes and assessments of whatsoever nature or kind (whether general, local, or special) levied or assessed upon or against any Freight Easement Property or Railroad Facilities, including possessory interest taxes under California Revenue and Taxation Code section 107 *et seq.*, unless applicable law otherwise excuses payment of taxes due to the Commission's ownership of the Property, the Freight Easement Property, or the Railroad Facilities.

14. **Indemnity**

- 14.1. Sierra shall indemnify, defend and hold harmless the Commission from any Loss which is due to or arises from: (a) Sierra's operation, maintenance, repair, or use of the Freight Easement Property, Railroad Facilities, any appurtenances thereto, or any part thereof; (b) Sierra's provision of Freight Service or Tourist Service; or (c) Sierra's failure to comply with or perform any of the terms and conditions set forth in this agreement; except to the extent that the Loss is caused by the sole negligence or willful misconduct of the Commission, its officers, agents, or employees, or a breach of an express material warranty of the Commission. The provisions of this section shall survive the termination or expiration of the term of this agreement.
- 14.2. The Commission shall indemnify, defend and hold harmless Sierra from any Loss which is due to or arises from the sole negligence or willful misconduct of the Commission, its officers, agents, employees, and contractors. For purposes of this Section 14.2 only,

the term "Loss" is limited to any loss, damage, claim, demand, action, cause of action, penalty, fine, payment, cost, liability, or expense of whatsoever nature, including court costs and reasonable attorneys' fees, resulting from or related to: (a) any injury to or death of any person, including officers, agents, and employees of the Commission or Sierra; or (b) damage to or loss or destruction of Sierra's equipment, rolling stock and any items being transported on behalf of Sierra's customers. Any Loss related to damage to or destruction of the Freight Easement Property or Railroad Facilities is subject to the provisions of Section 2.7. The provisions of this section shall survive the termination or expiration of the term of this agreement.

15. **Removal of Sierra Equipment, Personnel, and Property upon Termination of Agreement.** Prior to, or upon, the termination of this agreement, Sierra shall, at its sole expense, remove its equipment, personnel, and other property from the Freight Easement Property and Railroad Facilities and shall restore, to the Commission's reasonable satisfaction, such portions of the Freight Easement Property and Railroad Facilities used by Sierra to as good a condition as they were in at the beginning of this agreement or after the completion of rehabilitation and repairs by the Commission, including the projects specified in Section 5.1, excepting normal wear and tear. If Sierra fails to do the foregoing, the Commission may do such work at the cost and expense of Sierra. Sierra may not remove any property, including the Railroad Facilities, that is or becomes the property of the Commission under this agreement.

16. **Hazardous Substances and Wastes**

- 16.1. Sierra shall not be liable or responsible for any Hazardous Materials present on, in, or under the Property, or other problems relating to the Property, prior to December 31, 2009, which is the commencement date of its operations under its lease agreement with Union Pacific Railroad, except to the extent Sierra's activities exacerbate the contamination of any such pre-existing Hazardous Materials.
- 16.2. Sierra shall comply with all applicable laws in its occupancy, operation, and maintenance of the Freight Easement Property and Railroad Facilities. Without first obtaining the Commission's written permission (which may be withheld in the Commission's sole reasonable discretion), Sierra shall not treat or dispose of Hazardous Materials on the Freight Easement Property or Railroad Facilities. Sierra shall not release any Hazardous Materials on or at the Freight Easement Property or Railroad Facilities, including through any drainage or sewer systems. Sierra assumes all responsibility for the investigation and cleanup of any such release

or exacerbation by Sierra and shall indemnify, defend, and hold harmless the Commission and its property, its officers, agents, and employees, for all costs, including reasonable environmental consultant and reasonable attorneys' fees, and claims resulting from or associated with any such release or exacerbation by Sierra. Sierra shall assume all responsibility for and shall indemnify, defend, and hold harmless Commission against all costs and claims associated with a release or leak of Hazardous Materials, or exacerbation of pre-existing Hazardous Materials, occurring between December 31, 2009, and the expiration or sooner termination of this agreement, and related to Sierra's use of the Freight Easement Property and Railroad Facilities, unless such event was caused by the sole negligence or willful misconduct of the Commission, its officers, employees, or agents.

- 16.3. Sierra shall not install any above-ground or underground storage tanks without the Commission's prior written consent, which consent may be granted or withheld in Commission's sole and absolute discretion. If such consent is granted, Sierra shall obtain any necessary permits, notify the proper authorities, and provide the Commission with copies of any such permits and notifications. Sierra shall assume all responsibility for and shall indemnify, defend, and hold harmless the Commission against all costs and claims associated with a release or leak of the contents of any such tank occurring between December 31, 2009, and the expiration or termination of this agreement, unless such event was caused by the sole negligence or willful misconduct of the Commission, its officers, employees, or agents.
- 16.4. The Commission understands and acknowledges that the regular operation and maintenance of railroad equipment and tracks involve the storage, use, and release of *de minimus* amounts of Hazardous Materials, including petroleum products, creosote, and chromated copper arsenate. The Commission agrees that Sierra shall not be liable or responsible for the *de minimus* release of any such Hazardous Materials, unless (i) such release violates applicable law, or (ii) the Commission is otherwise entitled to defense and indemnity under Section 14.1.
- 16.5. If Sierra knows, or has reasonable cause to believe, that any Hazardous Materials have come to be located under or about the Freight Easement Property or Railroad Facilities, other than as specifically provided herein or as previously consented to in writing by the Commission, Sierra shall immediately give the Commission written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to or received

from any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Materials.

- 16.6. This Section 16 shall continue in full force and effect regardless of whether this agreement is terminated pursuant to any other provision or the Freight Easement Property and Railroad Facilities are abandoned and vacated by Sierra.
17. **Trespassers and Dangerous Conditions.** Sierra shall not be required to take any action or incur any expense (including posting signage or warnings, providing fencing or other security) as to or against trespassers on the Property, or invitees of the Commission, other than to promptly notify local law enforcement and the Commission concerning any trespassers observed on the Property by Sierra personnel. If Sierra becomes aware of any dangerous conditions on or about the Property, Sierra shall promptly notify the Commission of such conditions.
18. **Waivers.** The failure of either party hereto to enforce any of the provisions of this agreement, or to enforce any right or option which is herein provided, shall in no way be construed to be a waiver of such provision(s) as to the future, nor in any way to affect the validity of this agreement or any part hereof, or the right of either party to thereafter enforce each and every such provision and to exercise any such right or option. No waiver of any breach of this agreement shall be held to be a waiver of any other or subsequent breach.
19. **Consent.** Unless expressly provided to the contrary elsewhere in this agreement, whenever the consent, approval, judgment, or determination (collectively, "consent") of a party is required or permitted under this agreement, the consenting party shall exercise good faith and reasonable judgment in granting or withholding such consent. No party may unreasonably withhold or delay its consent; consent shall be deemed to have been withheld if a party fails to consent to the other party within 30 days of having been given written notice of the other party's intention to take any action as to which consent is required or permitted.
20. **Non-binding Mediation**
- 20.1. If at any time a question or controversy shall arise between the parties hereto in connection with this agreement and upon which the parties cannot agree, such question or controversy shall be submitted to a single mediator within 20 days after written notice by one party to the other party of its desire for mediation. The parties shall in good faith consult to select a mutually acceptable mediator. The mediator so selected shall be a person with at least

one-year of exposure to the concepts of railroad operations and maintenance.

- 20.2. Upon selection of the mediator, said mediator shall with reasonable diligence determine the questions as disclosed in said notice of demand for mediation and shall give both parties reasonable notice of the time and place of any mediation. Until the completion of mediation, performance under the agreement shall continue in the manner and form existing prior to the rise of such question.
- 20.3. The compensation, cost, and expenses of the mediator shall be paid in equal shares by the parties.
21. **Entire Agreement.** This document, and the exhibits attached hereto, constitute the entire agreement between the parties, all oral agreements being merged herein, and supersedes all prior representations, agreements, arrangements, understandings, or undertakings, whether oral or written, between or among the parties relating to the subject matter of this agreement that are not fully expressed herein.
22. **Modification to Agreement.** The provisions of this agreement may be modified at any time by agreement of the parties hereto, provided such modification is in writing and signed by all parties to this agreement. Any agreement made after the date of this agreement and related to the subject matter contained herein shall be ineffective to modify this agreement in any respect unless in writing and signed.
23. **No Assignment Absent Consent.** Except as specifically provided in this agreement, Sierra shall not assign this agreement, in whole or in part, or any rights herein granted, without the Commission's prior written consent.
24. **Successors and Assigns.** Subject to the provisions of Section 23, this agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and assigns.
25. **Venue and Choice of Law**
 - 25.1. Any and all disputes, controversies, or claims arising out of, relating to, or in connection with this agreement shall be instituted and maintained in a competent court in San Francisco County, California and the parties hereby consent to the jurisdiction of any such court and to service of process by any means authorized under California law.
 - 25.2. This agreement shall be governed, construed, and enforced in accordance with the laws of the State of California, without reference to its conflicts of laws provisions. The prevailing party in

any claim or action arising out of or connected with this agreement shall be entitled to recover all reasonable attorneys' fees and related costs, in addition to any other relief that may be awarded by any court or other tribunal of competent jurisdiction.

26. **Acts of God and Other Disruptions of Service.** Neither party shall be deemed to be in default of this agreement if any failure to meet any condition or to perform any obligation or provision hereof is caused by, a result of, or due to strikes, insurrections, acts of God, or any other causes beyond the party's control; provided, however, that performance shall only be excused for as long as the disruption persists.

27. **Miscellaneous**

27.1. In the event that any of the provisions of this agreement are held by a court or other tribunal of competent jurisdiction to be invalid or unenforceable, the remaining portions hereof shall remain in full force and effect and any invalid or unenforceable provisions shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary to make such provisions valid and enforceable. Without limiting the generality of the foregoing, if the requirement in Section 5.2 that Sierra comply with applicable bridge safety management program regulations (under Public Law 110-432, Section 417) is held to be a non-delegable duty of the Commission, the Commission may, at its option, (i) undertake this obligation and charge Sierra for the cost thereof, or (ii) terminate this agreement.

27.2. Each party has participated in negotiating and drafting this agreement so if an ambiguity or a question of intent or interpretation arises, this agreement is to be construed as if the parties had drafted it jointly, as opposed to being construed against a party because it was responsible for drafting one or more provisions of this agreement.

27.3. Each party acknowledges that the officer executing this agreement has the authority to enter into this agreement on behalf of the party and in so doing is authorized to bind the party on whose behalf he is signing, to the terms and conditions of this agreement.

27.4. This agreement may be executed in one or more counterparts and by facsimile signature, each of which shall be deemed an original, but all of which together constitute one and the same instrument. Each party shall deposit the executed agreement into escrow with instructions to deliver the agreement upon close of escrow under the Purchase and Sale Agreement.

In witness whereof, the parties hereto have caused this agreement to be executed as of the date first herein written.

SIERRA NORTHERN RAILWAY

**SANTA CRUZ COUNTY REGIONAL
TRANSPORTATION COMMISSION**

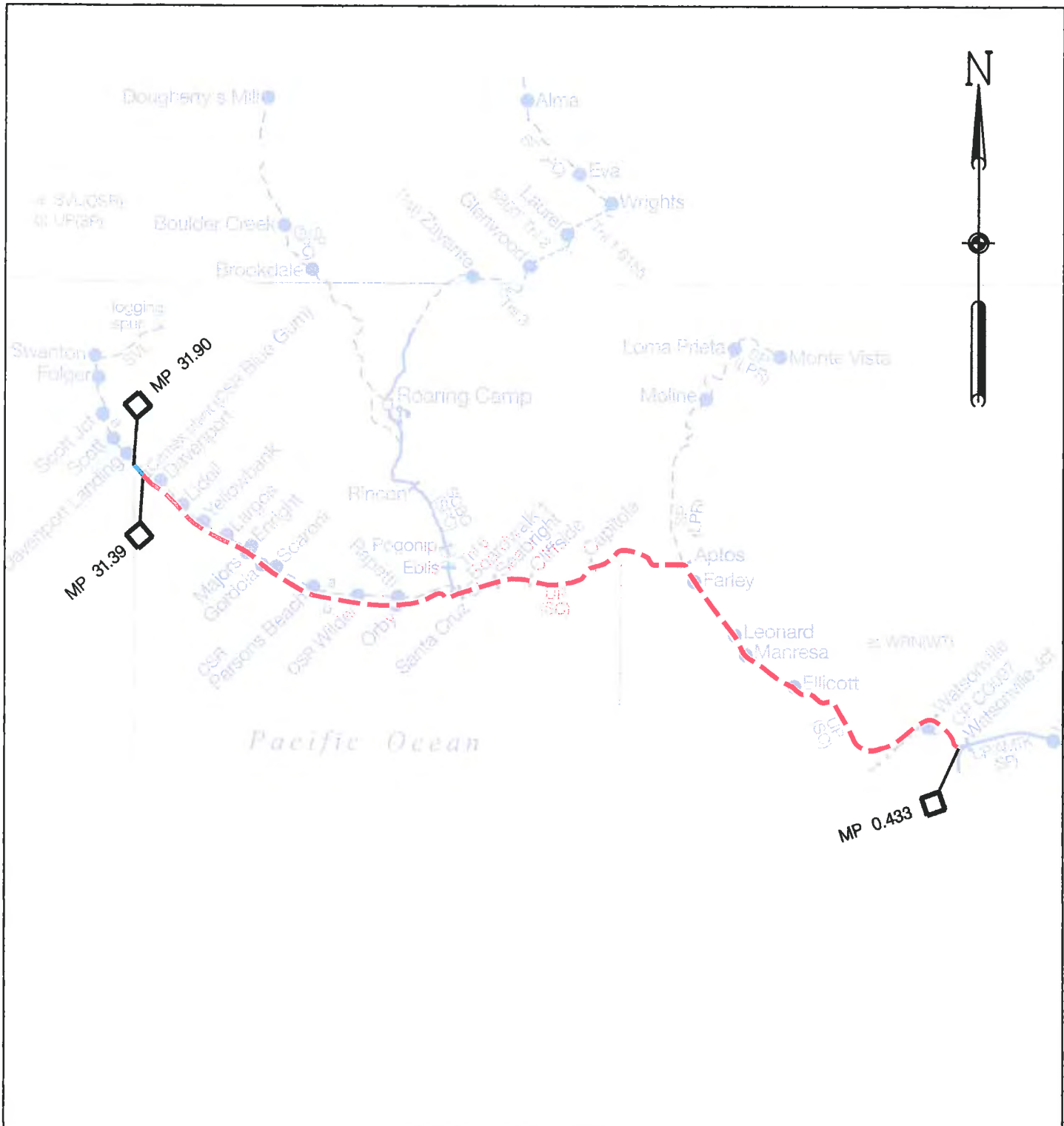
By: _____
David Magaw
President

By: _____
George A. Dondero
Executive Director

By its signature below, Sierra Railroad Company, a California corporation, acknowledges that it is the parent company of Sierra Northern Railway and agrees to be bound by the terms and conditions of this agreement as if it were a party, except for such terms and conditions that relate to Sierra Northern Railway's obligations to provide common carrier freight rail service.

SIERRA RAILROAD COMPANY

By: _____
Mike Hart, President



NOT TO SCALE

LEGEND

LINE SALE SHOWN
MP 0.433 - 31.39



RIGHT OF WAY LICENSE
MP 31.39 - 31.90



EXHIBIT "A"
UNION PACIFIC RAILROAD CO.

TO ACCOMPANY AGREEMENT WITH

WATSONVILLE JCT - DAVENPORT, CA.
M.P. 0.433 - 31.90+- SANTA CRUZ SUB.
SP CA V72 /1-6 & V89 /1-7

REAL ESTATE DEPARTMENT OMAHA NE.
FILE #1728-03 DATE: 11-2-2009 T.D.A.

Santa Cruz Branch Rail Line Rail Car Storage (Map A)



Santa Cruz Branch Rail Line Rail Car Storage (Map B)



Legend

- Rail Car Storage
- 10ft Elevation Contours



PROJECT	AUDIT	FOLDER	FILENET	LEG STAT	PARTY NAME	PURPOSE	MANAGER	COUNTY	CITY	ST	SUBDV	MP START	ANNUAL AMT
186878	207416	158035	85264492	Active	CITY OF WATSONVILLE	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	WATSONVILLE	CA	MoJave	102.62	\$0
190837	202098	161195	81633173	Active	SANTA CRUZ CITY OF	Warning Devices - Public Roadway	Paul G. Farrell	Santa Cruz	SANTA CRUZ	CA	SANTA CRUZ BRANCH	119.4	\$0
200142	5155932		138504731	Active	APTOS SEASCAPE CORP	Crossing - Private Roadway	Joan M. Preble	Santa Cruz	APTOS	CA	SP Route Code EC	111.04	\$0
200154	5157723		138597466	Active	SANTA CLARA COUNTY OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	APTOS	CA	SP Route Code EC	111	\$0
200156	5156717		138597266	Active	SANTA CRUZ COUNTY OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	APTOS	CA	SP Route Code EC	113.7	\$0
200157	5157786		138597471	Active	SANTA CRUZ COUNTY OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	APTOS	CA	SP Route Code EC	108	\$0
203028	5158150		138596753	Active	SANTA CRUZ CITY OF	Crossing - Private Roadway	Paul G. Farrell	Santa Cruz	ORBY	CA	SP Route Code EL	81.4	\$0
203789	5163007		138596941	Active	SANTA CRUZ PORT DISTRI	Crossing - Private Roadway	Joan M. Preble	Santa Cruz	SEABRIGHT	CA	SP Route Code EC	119.09	\$0
206269	5032513	250763	72879530	Active	COUCH DISTRIBUTING CO INC	Track: Industry Track Agreement	Dan L. Zack	Santa Cruz	WATSONVILLE	CA	SP Route Code EC	103.1	\$0
208017	5027248	155176	73553975	Active	JOSEPH GEORGE DIST	Track	Dan L. Zack	Santa Cruz	SANTA CRUZ	CA	SP Route Code EC	118.1	\$0
208855	5PX0329		74806317	Active	MONDO BROS INC	Track	Dan L. Zack	Santa Cruz	SANTA CRUZ	CA	SP Route Code EL	80.6	\$0
210400	5PX0507		74584532	Active	SANTA CRUZ ARTICHOKE & SPROUT GRWRS ASSN	Track	Dan L. Zack	Santa Cruz	SANTA CRUZ	CA	SP Route Code EL	80.7	\$0
210408	5189267		138608562	Active	SANTA CRUZ COUNTY OF	Crossing - Private Roadway	Joan M. Preble	Santa Cruz	CLIFFSIDE	CA	SP Route Code EC	118.1	\$0
211518	5012360			Active	TOBEYS RASP SERVICE INC	Track	Dan L. Zack	Santa Cruz	SANTA CRUZ	CA	SP Route Code EL	80.7	\$0
231292	5194780		88201370	Active	RESETAR, ANTHONY P / PILO, MARY	Crossing - Private Roadway	Joan M. Preble	Santa Cruz	WATSONVILLE	CA	SP Route Code EC	102	\$0
233023	5018043	155201	74205556	Active	MOCEO, JM (MRS)	Track	Dan L. Zack	Santa Cruz	SANTA CRUZ	CA	SP Route Code EL	80.7	\$0
235323	5191872		138609734	Active	TRESTLE BEACH ASSOCIATES	Crossing - Private Roadway	Joan M. Preble	Santa Cruz	APTOS	CA	SP Route Code EC	109.6	\$0
238757	5182045		89052655	Active	CALIFORNIA UNIVERSITY REGENTS	Crossing - Private Roadway	Joan M. Preble	Santa Cruz	ORBY	CA	SP Route Code EL	81.8	\$10
239770	5161499		90183973	Active	SULLIVAN, R. & A.	Crossing - Private Roadway	Joan M. Preble	Santa Cruz	APTOS	CA	SP Route Code EC	109.07	\$10
245617	5171658		89674339	Active	GARCIA, R.L.	Crossing - Private Roadway	Joan M. Preble	Santa Cruz	CAPITOLA	CA	SP Route Code EC	115.6	\$10
245622	5212398	206085	86922350	Active	HOLCOMB CORPORATION	Crossing - Private Roadway	Joan M. Preble	Santa Cruz	APTOS	CA	SP Route Code EC	110.54	\$128.09
246802	5014667	149487	74522703	Active	WRIGLEY W M JR CO	Track	Dan L. Zack	Santa Cruz	SANTA CRUZ	CA	SP Route Code EL	81.15	\$0
252817	5157272		90435574	Active	LORENZI, G,B,LO & ZEIHNER, K	Crossing - Private Roadway	Joan M. Preble	Santa Cruz	MAJORS	CA	SP Route Code EL	86.51	\$10
256900	5181065		138596191	Active	SANTA CRUZ COUNTY CA	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	CLIFFSIDE	CA	SP Route Code EC	117.1	\$0
256902	5192311		88282628	Active	SANTA CRUZ COUNTY CA	Crossing - Private Roadway	Joan M. Preble	Santa Cruz	APTOS	CA	SP Route Code EC	112.81	\$0
257860	5211909	181663	138598594	Active	SANTA CRUZ CITY OF	Crossing - Private Roadway	Joan M. Preble	Santa Cruz	SANTA CRUZ	CA	SP Route Code EC	120.41	\$80
260304	5708852	195115	72001973	Active	CASCADE REFRIGERATED NORTHERN CALIF., INC.	Track: Track Lease (Non-Haz)	Dan L. Zack	Santa Cruz	WATSONVILLE	CA	SP Route Code EC	102.01	\$2,160
367101	207254	58589	83992413	Active	MARTINELLI & COMPANY	Crossing - Private Roadway	Joan M. Preble	Santa Cruz	SYSTEM	CA		0	\$119.41
408724	5006275		74992691	Active	HOMER T HAYWARD LUMBER COMPANY	Track	Dan L. Zack	Santa Cruz	SANTA CRUZ	CA			\$
409395	5PX7232		75095156	Active	SANTA CRUZ CITY OF	Track	Dan L. Zack	Santa Cruz	SANTA CRUZ	CA			\$
410634	5015548	250762	74461604	Active	DEL MAR FOOD PRODUCTS CORPORATION	Track: Industry Track Agreement	Dan L. Zack	Santa Cruz	WATSONVILLE	CA		103.1	\$
410859	5003303		75283601	Active	THE UNION ICE COMPANY	Track	Dan L. Zack	Santa Cruz	SANTA CRUZ	CA			\$
411066	5002819		75291400	Active	BORCOVICH & DRAGOVICH COMPANY	Track	Dan L. Zack	Santa Cruz	WATSONVILLE	CA			\$
411500	5002518	233844	75335962	Active	PAJARO VALLEY COLD STORAGE COMPANY	Track	Dan L. Zack	Santa Cruz	WATSONVILLE	CA			\$
412157	5PX7852		75400986	Active	ASSOCIATED OIL COMPANY	Track	Dan L. Zack	Santa Cruz	DAVENPORT	CA			\$
412474	5PX7967		75485582	Active	B PISTA	Track	Dan L. Zack	Santa Cruz	WATSONVILLE	CA			\$
412823	5000771		75513451	Active	HIHN, FRED D.	Track	Dan L. Zack	Santa Cruz	WATSONVILLE	CA			\$
437887	5076726		74997348	Active	APPLE GROWERS COLD STORAGE CO PACIFIC TELEPHONE & TELEGRAPH CO	Track	Dan L. Zack	Santa Cruz	WATSONVILLE	CA			\$
438233	5P71662		78219062	Active	CALIFORNIA, STATE OF	Track	Dan L. Zack	Santa Cruz	SANTA CRUZ	CA			\$
442068	5P25134		78964216	Active	COUNTY OF SANTA CRUZ	Track	Dan L. Zack	Santa Cruz	SANTA CRUZ	CA			\$
455330	5PA3997		83085683	Active	CAPITOLA, CITY OF	Crossing - Public Roadway	Paul G. Farrell	Monterey	APTOS	CA			\$
455863	5080717		83171718	Active	CAPITOLA, CITY OF	Crossing - Public Roadway	Paul G. Farrell	Monterey	APTOS	CA			\$
457023	5087624		83333021	Active	CAPITOLA, CITY OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	CAPITOLA	CA			\$

PROJECT	AUDIT	FOLDER	FILENET	LEG STAT	PARTY NAME	PURPOSE	MANAGER	COUNTY	CITY	ST	SUBDV	MP START	ANNUAL AMT
57497	S091557		83409248	Active	CAPITOLA, CITY OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	CAPITOLA	CA			\$
57879	S095809		83507962	Active	CAPITOLA, CITY OF	Easement - Roadway	Paul G. Farrell	Santa Cruz	CAPITOLA	CA			\$
59511	S108176		83747796	Active	COAST DAIRIE & LAND CO.	Crossing - Private Roadway	Joan M. Preble	Santa Cruz	DAVENPORT	CA			\$
65104	SPA7491		85337230	Active	SANTA CRUZ COUNTY OF	Warning Devices - Public Roadway	Paul G. Farrell	Monterey	APTOS	CA		112.8	\$
14595	211721	76287	138604735	Active	SANTA CRUZ, CITY OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	SANTA CRUZ	CA			\$
155249	227449	211468	114039215	Active	SANTA CRUZ, CITY OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	SANTA CRUZ	CA	Santa Cruz Sub.	20.78	\$
155250	227485	211469	114212611	Active	SANTA CRUZ, CITY OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	SANTA CRUZ	CA	Santa Cruz Sub.	20.75	\$0
155251	228377	211470	114675818	Active	SANTA CRUZ, CITY OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	SANTA CRUZ	CA	Santa Cruz Sub.	19.02	\$
166949	231783	223078	117905095	Active	MONTEREY COUNTY	Warning Devices - Public Roadway	Paul G. Farrell	Monterey	WATSONVILLE JCT	CA	Santa Cruz Sub.	1.12	\$
167395	231857	223367	117989761	Active	RMC PACIFIC MATERIALS	Track	Dan L. Zack	Santa Cruz	DAVENPORT	CA			\$
189438	244025	207714	154264038	Active	CEMEX	Industrial Track Agreement w/o Maint Chg	Dan L. Zack	Santa Cruz	DAVENPORT	CA	Santa Cruz Ind Lead	31.8	\$
190096	242123	232126	152672800	Active	SANTA CRUZ, CITY OF	Crossing - Public Roadway	Paul G. Farrell	Santa Cruz	SANTA CRUZ	CA	Santa Cruz Lead	22.09	\$

446570 S017462 79955856 Santa Cruz County of Crossing – public roadway Paul G. Garrell Monterey Aptos CA

CONTRACTOR'S RIGHT OF ENTRY AND INDEMNITY AGREEMENT

This contractor's right of entry and indemnity agreement is dated _____ 2010 and is between **Sierra Northern Railway**, a California Corporation ("Railroad") and _____ ("Contractor").

Contractor has requested that Railroad permit Contractor to enter upon property used by Railroad in order to permit Contractor to conduct certain work on, under, adjacent to, or related to such property. Railroad is agreeable thereto subject to the terms and conditions set forth in this agreement.

The parties therefore agree as follows:

1. Definitions

- 1.1 The term "Applicable Law" is defined as the applicable rules and regulations of the Federal Railroad Administration, the California Public Utilities Commission, and any other statewide or federal governmental agency with general jurisdiction over railroad operations or operations on, under, or adjacent to railroad property.
- 1.2 The term "Contractor" is defined as Contractor and includes its directors, officers, employees, agents, parents, subsidiaries, affiliates, commonly controlled entities, subcontractors, any other related persons and entities, and all others acting under its or their authority.
- 1.3 The terms "include", "includes", and "including" are to be read as if they were followed by the phrase "without limitation."
- 1.4 The term "Railroad" is defined in the introductory paragraphs of this agreement and includes its directors, officers, employees, agents, parents, subsidiaries, affiliates, commonly controlled entities, any other related persons and entities, and all others acting under its or their authority.
- 1.5 The term "Railroad Representative" is defined as Railroad's General Manager or Track and Maintenance Manager, as appropriate.
- 1.6 The term "Railroad's Right-of-Way" is defined as all real and personal property within 10 feet of the centerline of any track on the portion of the Santa Cruz Branch railroad line right-of-way, including all improvements thereto, purchased from the Union Pacific Railroad Company by the Santa Cruz County Regional Transportation Commission (the "Commission"), except where roadways, buildings, or property boundary lines reduce such

Contract No. _____

distance to less than 10 feet and except for any retained rights and personal property described in the _____, 2010 Administration, Coordination, and License agreement between Sierra and the Commission. Railroad's Right-of-Way is depicted on Exhibit A attached hereto.

1.7 The term “Work” is defined as all work, activities, and services to be performed by Contractor on, under, adjacent to, or relating to the _____ Property including the following:

_____.

2. **Right Granted; Purpose.** Railroad hereby grants Contractor the right, upon the terms, provisions, and conditions set forth in this agreement, to enter upon, have ingress to, and egress from, the Railroad’s Right-of-Way for the purpose of performing the Work described herein.
3. **Terms and Conditions contained in Exhibits B and B-1.** The terms and conditions contained in Exhibits B and B-1 hereto are hereby made a part of this agreement.
4. **All Expenses to be Borne by Contractor; Railroad Representative.** Contractor shall bear any and all costs and expenses associated with Contractor’s Work and any and all costs and expenses incurred by Railroad caused by or related to Contractor’s Work. Contractor shall perform all Work on the Railroad’s Right-of-Way in a manner that is reasonably satisfactory to the Railroad Representative.
5. **Term, Termination.** The grant of right herein made to Contractor shall commence on the date first set forth above and shall continue until _____, unless sooner terminated as herein provided, or until such time as Contractor has completed its Work on the Railroad’s Right-of-Way, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its Work on the Railroad’s Right-of-Way.
6. **License and other fees.** As compensation to Railroad for the rights herein granted and for Railroad’s administrative and other costs, Contractor agrees to pay Railroad the amount of \$2,500 as a license fee. The license fee shall be payable upon execution of this agreement and the effectiveness of this agreement is contingent upon Contractor’s payment of such license fee. Such license fee shall be in addition to any flagging,

Contract No. _____

switching, or other costs or expenses payable by Contractor under the terms of this agreement.

7. Certificate of Insurance

7.1 Before commencing any Work, Contractor will provide Railroad with a certificate issued by its insurance carrier providing the insurance coverage required pursuant to Exhibit B-1 of this agreement.

7.2 Contractor warrants that this agreement has been thoroughly reviewed by its insurance agents and brokers and that such agents and brokers have been instructed to procure insurance coverage and an endorsement as required herein.

7.3 All insurance correspondence shall be directed to: President, Sierra Northern Railway, 341 Industrial Way, Woodland, California 95776; telephone number (530) 666-9646.

8. Enforceability; Choice of Law; Choice of Forum

8.1 Any and all disputes, controversies, or claims arising out of, relating to, or in connection with this agreement shall be instituted and maintained in a competent court in the City and County of San Francisco, California and the parties hereby consent to the jurisdiction of any such court and to service of process by any means authorized under California law.

8.2 This agreement shall be governed, construed, and enforced in accordance with the laws of the State of California, without reference to its conflicts of laws provisions. The prevailing party in any claim or action arising out of or connected with this agreement shall be entitled to recover all reasonable attorneys' fees and related costs, in addition to any other relief that may be awarded by any court or other tribunal of competent jurisdiction.

9. Payment of Fees, Bills: Construction Contracts Only. Contractor agrees to pay to Railroad, at the time of Contractor's signing of this agreement, an advance against fees and costs to be incurred by Contractor for Railroad's services in accordance with this agreement in an amount equal to 1% of (i) the total amount of the contract between Contractor and the Commission (if the contract is payable on a lump sum basis), or (ii) the Commission's budgeted amount (if the contract is payable on a time and materials basis). Contractor authorizes Railroad to use such funds from time to time to pay for Railroad's services in accordance with this agreement. Any funds remaining after the completion of all Work and of all of Railroad's services rendered in accordance with this agreement shall

Contract No. _____

be returned to Contractor. Contractor shall not be entitled to any interest on such funds while held by Railroad. If the reasonable cost of Railroad's services exceeds the 1% advance paid under this section, Contractor shall pay Railroad's invoices for such services in arrears on a monthly basis. This Section 9 applies to rights of entry issued for construction purposes only.

- 10. **Notices.** Each notice given pursuant to this agreement shall be effective when delivered by hand or upon mailing by certified or registered mail, postage prepaid, to the party for whom it is intended at the address set forth below or such other address as may be specified from time to time in writing by one party to the other.

To Railroad:

Sierra Northern Railway
Attn: President
341 Industrial Way
Woodland, CA 95776-6012
Telephone 530-666-9646
Facimile 530-666-2919

To Contractor:

11. **Miscellaneous.**

11.1 In the event that any of the provisions of this agreement are held by a court or other tribunal of competent jurisdiction to be invalid or unenforceable, the remaining portions hereof shall remain in full force and effect and any invalid or unenforceable provisions shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary to make such provisions valid and enforceable.

11.2 Each party acknowledges that the officer executing this agreement has the authority to enter into this agreement on behalf of the party and in so doing is authorized to bind the party on whose behalf he is signing, to the terms and conditions of this agreement.

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11.3 This agreement may be executed in one or more counterparts and by facsimile signature, each of which shall be deemed an original, but all of which together constitute one and the same instrument.

In witness whereof, the parties hereto have caused this agreement to be executed as of the date first herein written.

Sierra Northern Railway

By: _____
President

Contractor

By: _____

EXHIBIT B

GENERAL PROVISIONS FOR CONTRACTOR'S RIGHT OF ENTRY AND INDEMNITY AGREEMENT

1. Notice of Commencement of Work; Flagging.

- 1.1** Contractor agrees to notify the Railroad Representative at least 48 hours in advance of Contractor commencing its Work and at least 24 hours in advance of the proposed performance of any Work in which any person or equipment will be on Railroad's Right-of-Way, or will be near enough to any railroad track that any equipment extension (including a crane boom) will encroach on Railroad's Right-of-Way. If an emergency should arise requiring immediate attention, Contractor shall provide as much notice as practicable to Railroad before commencing any Work.
- 1.2** Upon receipt of such notice, the Railroad Representative will determine in its reasonable discretion, and will inform Contractor, whether one or more flagmen will need to be present and whether Contractor will need to implement any special protective or safety measures. Any flagman or other special protective or safety measures shall, at Railroad's reasonable discretion, be performed by Railroad at Contractor's sole cost and expense with the understanding that Railroad's provision of any such flagging or other services shall not relieve Contractor of any of its responsibilities or liabilities set forth in this agreement. Flagging costs are billed in hourly increments at \$75 per hour per flagman for regular working hours, and \$112.50 per hour, per flagman, for overtime hours, holidays, and weekends, or such higher rate as may be in effect at the time of the flagging; provided that rate increases from the date of the Administration and Coordination Agreement shall not exceed increases in the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index, All Urban Consumers, All Items, San Francisco-Oakland-San Jose, CA.
- 1.3** The flagging requirements of this agreement shall apply only on days when Railroad has scheduled train movements and then only to those areas of the Railroad's Right-of-Way on which the train movements are scheduled to occur. Otherwise, Contractor may establish working limits for its construction activities pursuant to any means permissible under the provisions of 49 CFR 214.319.

2. Limitation and Subordination of Rights Granted

- 2.1** The foregoing grant of right is subject and subordinate to any prior and continuing right and obligation of Railroad to use and maintain all or some portion of the Railroad's Right-of-Way, including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify, or relocate railroad tracks, signals, communications equipment and lines, and other railroad facilities upon, along, or across any or all parts of Railroad's Right-of-Way, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.
- 2.2** The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Railroad's Right-of-Way, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

3. No Interference with Railroad's Operations. Subject to the terms and conditions of the Administration and Coordination Agreement, no Work performed by Contractor shall cause any material interference with Railroad's ability to fulfill its rights and obligations under the Administration and Coordination Agreement and federal law, unless specifically permitted under this agreement, or the Administration and Coordination Agreement, or specifically authorized in writing, in advance, by the Railroad Representative. Nothing shall be done or suffered to be done by Contractor at any time that would in any manner impair the safety thereof. When not in use, Contractor's machinery and materials shall be kept clear of Railroad's Right-of-Way.

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4. **Permits.** Prior to beginning any Work, Contractor, at its sole cost and expense, shall obtain all necessary permits to perform any Work contemplated by this agreement.
5. **Mechanic's Liens.** Contractor shall pay in full all persons who perform labor or provide materials for the Work to be performed by Contractor. Contractor shall not permit or suffer any mechanic's or materialman's liens of any kind or nature to be enforced against the Railroad's Right-of-Way or against any property of Railroad. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs, and expenses of whatsoever nature in any way connected with, or growing out of, such Work done, labor performed, or materials furnished.
6. **Compliance with Laws.** In the prosecution of the Work covered by this agreement, Contractor shall comply with all applicable federal, state, and local laws, regulations, and enactments affecting the Work. Contractor shall use only such methods as are consistent with safety, both as concerns Contractor, Contractor's agents and employees, the Railroad's Right-of-Way, the officers, agents, employees, and property of Railroad, and the public in general. Contractor (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupation safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when Work is performed on the Railroad's Right-of-Way. If any failure by Contractor to comply with any such laws, regulations, and enactments results in any fine, penalty, cost, or charge being assessed, imposed, or charged against Railroad, Contractor shall reimburse and indemnify Railroad for any such fine, penalty, cost, or charge, including attorney's fees and court costs and expenses. Contractor further agrees, in the event of any such action and upon notice thereof being provided by Railroad, to defend such action free of cost, charge, or expense to Railroad.
7. **Safety Instructions.** Safety of personnel, property, rail operations, and the public is of paramount importance in the prosecution of the Work pursuant to this agreement. As reinforcement and in furtherance of overall safety measures to be observed by Contractor (and not by way of limitation), the following special safety rules shall be followed:
 - 7.1 Contractor shall keep the job site free from safety and health hazards and ensure that any person working on its behalf is competent and adequately trained in all safety and health aspects of the job. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services can be provided to any person that may be injured on the job site. Contractor shall promptly notify Railroad of any any hidden dangers discovered by Contractor and of U.S. Occupational Safety and Health Administration reportable injuries occurring to any person that may arise during the Work performed on the job site. Contractor shall have a non-delegable duty to control its employees while they are on the job site, on the Railroad's Right-of-Way, or on any property of Railroad to be certain they do not use, are not under the influence of, and do not have in their possession any alcoholic beverage or illegally obtained drug, narcotic, or other similar or illegal substance.
 - 7.2 Contractor's employees and agents shall be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision and hearing or their free use of their hands and feet. Only waist length shirts with sleeves and trousers that cover the entire leg are to be worn. If flare-legged trouser are worn, the trouser bottoms must be tied to prevent catching. Contractor's employees and agents should wear sturdy and protective footwear. Such employees and agents shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal. In addition, Contractor shall require its employees and agents to wear personal protective equipment as specified by Railroad rules, regulations or by any Railroad officials overlooking the Work at the job site. In particular, the protective equipment to be worn shall be:
 - 7.2.1 Protective head gear that meets American National Standard Z89.1, latest revision. It is suggested that all hard-hats be affixed with Contractor's or subcontractor's company logo or name.
 - 7.2.2 Eye protection that meets American National Standard for occupational and educational eye and face protection, Z87.1, latest revision. Additional eye

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protection must be provided to meet specific job situations such as welding, grinding, burning, etc.; and

7.2.3 Hearing protection which affords enough attenuation to give protection from noise levels that will be occurring on the job site.

7.3 All heavy equipment provided or leased by Contractor shall be equipped with audible back-up warning devices. If in the opinion of the Railroad Representative any of Contractor's or any of Contractor's subcontractor's equipment is unsafe for use on the Railroad's right-of-way, Contractor, at the request of the Railroad Representative, shall remove such equipment from Railroad's right-of-way.

7.4 If Contractor will or does have persons or equipment on Railroad's Right-of-Way, then Contractor's employees who will be or are within such zone shall be trained in safety as prescribed by the Federal Roadway Worker Protection clauses of the Code of Federal Regulations (49 CFR 214 *et seq.*) prior to working within such limits and shall at all times follow Railroad's reasonable trackworker safety rules and procedures. If Contractor's employees have been trained by another common carrier railroad within one year prior to their working on the Railroad's Right-of-Way, only a refresher training will be required on Railroad's trackworker safety program and rules. Strict compliance with Railroad's trackworker safety program shall be required at all times and Contractor agrees to indemnify and hold Railroad harmless from any fines or fees caused by Contractor's failure to comply at all times with Railroad's trackworker safety program.

7.5 Contractor shall not cross the railroad tracks of Railroad with any vehicles except at existing, open public or private crossings.

7.6 Contractor's employees must be familiar with procedures to clear men and equipment from any railroad track area for approaching trains. In addition, all applicable safety procedures, including the following, shall be adhered to by all of Contractor's employees:

Always be on the alert for moving equipment while working near any railroad tracks or facilities.

Do not step or walk on the top of the rail, frogs, switches, guard rails, or other track components.

In passing around ends of standing railroad cars, engines, railroad machinery, and other on-track equipment, leave at least one rail car length (50 feet) between yourself and the end of the equipment.

Avoid walking or standing on railroad track at any time.

When it is necessary to walk or work on railroad track, always keep a sharp lookout in both directions for approaching trains.

Before stepping or crossing railroad tracks, look in both directions first. The same is true when walking around machinery and equipment on and about the railroad tracks.

Do not sit on, lie under, or cross between railroad cars except as required in performance of your duty, and only when railroad track and equipment are under proper protection.

In multiple railroad track territory, do not stand on one railroad track while a train is passing on another.

8. Warranty of Work

8.1 Contractor warrants to Railroad for a period of one (1) year, or until Railroad no longer conducts any railroad operations on the Railroad's Right-of-Way, whichever is less, that its Work (including all materials and workmanship) is new, of good quality, suitable for its intended purpose, free from any faults and defects, and in accordance with any and all applicable laws, rules, and regulations. Contractor shall promptly either repair or replace, at Railroad's option and to Railroad's reasonable satisfaction, all Work that Railroad determines, in its reasonable discretion, to be defective in workmanship or materials within the warranty period, ordinary wear and tear, and unusual abuse or neglect, excepted, together with all other work or property which may be damaged or displaced in so doing. All repairs or replacements shall have a warranty period equal to the original warranty period as herein stated, dated from Railroad's final acceptance of such repairs or replacements.

8.2 This section 8 shall continue in full force and effect regardless of whether this agreement is terminated pursuant to any other provision of this agreement.

9. Indemnity

9.1 As used in this section, the term "Railroad" is defined to include both Railroad and any other railroad companies (including passenger or tourist railroads) using Railroad's Right-of-Way at or near the location of Contractor's Work and their respective officers, agents, employees, and customers.

9.2 As used in this section, "Loss" is defined as any and all losses, damages, claims, demands, actions, causes of action, penalties, fines, costs, and expenses of whatsoever nature (including court costs and reasonable attorney's fees) resulting from or related to (a) Contractor's Work; (b) any injury to or death of any person whomsoever (including Railroad's officers, agents, employees, customers, and passengers, Contractor's officers, agents, and employees, and any other persons or entities); and (c) any damage to or loss or destruction of any property whatsoever (including Railroad's Right-of-Way, any adjacent property, Contractor's property, Railroad's property, the property of any customers of Railroad, and any property in Railroad's care or custody).

9.3 As a major inducement, and in consideration of the license and permission herein granted, Contractor agrees to indemnify and hold harmless Railroad from any Loss which is due to or arises from any cause associated either in whole or part, directly or indirectly, with the Work performed under this agreement, with any breach of this agreement, with any failure to observe the health and safety provisions herein, or with any activity or omission arising out of the performance or nonperformance of this agreement. However, Contractor shall not be required to indemnify Railroad when the Loss is caused by the sole negligence or willful misconduct of Railroad.

9.4 Contractor accepts Railroad's Right-of-Way and all of Railroad's property in its present condition and hereby assumes the risk of any injury to or death of persons, and any damage to or destruction of property, resulting from the condition of, or defects anywhere in or upon, Railroad's Right-of-Way or any of Railroad's property regardless of whether such condition or defects are known or unknown, apparent or latent, and regardless of whether such condition or defects exist at the commencement of this agreement or at some later time.

9.5 This section 9 shall continue in full force and effect regardless of whether this agreement is terminated pursuant to any other provision.

10. Restoration of Railroad's Property. In the event Railroad or the Commission authorizes Contractor to take down any fence or structure on Railroad's Right-of-Way or of Railroad, or in any manner move or disturb any of Railroad's Right-of-Way or other property of Railroad in connection with the Work, Contractor shall, as soon as possible and at Contractor's sole cost and expense, restore such fence or structure or other property to the same condition as it was in before it was taken down, moved, or disturbed and Contractor shall indemnify and hold harmless Railroad, its officers, agents, and employees against and from any and all liability, loss, damages, claims, demands, costs, and expenses of whatsoever nature, including court costs and reasonable

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attorney's fees, which may result from any injury to or death of any persons whomsoever, or any damage to or loss or destruction of any property whatsoever, when such injury, death, damage, loss, or destruction grows out of or arises from the taking down of any fence or the moving or disturbance of any property. Railroad will not pay Contractor for any betterments or improvements by Contractor of such fence or other property.

11. Hazardous Materials.

11.1 Contractor shall comply with all federal, state and local environmental laws and regulations in its Work. Without first obtaining Railroad's written permission (which may be withheld in Railroad's sole reasonable discretion), Contractor shall not treat or dispose of Hazardous Materials on Railroad's Right-of-Way. Contractor shall not release any Hazardous Materials on or at Railroad's Right-of-Way, including through any drainage or sewer systems. Contractor assumes all responsibility for the investigation and cleanup of any such release by Contractor and shall indemnify, defend, and hold harmless Railroad and its property, its officers, agents, and employees for all costs, including reasonable environmental consultant and reasonable attorneys' fees, and claims resulting from or associated with any such release by Contractor. Commencing upon the effective date of this agreement and until Contractor has provided Railroad with the required notice concerning Contractor's completion of its Work, Contractor shall assume all responsibility for and shall indemnify, defend, and hold harmless Railroad against all costs and claims associated with a release or leak of Hazardous Materials related to Contractor's Work, unless such event was caused by the sole negligence or willful misconduct of Railroad.

11.2 If Contractor knows, or has reasonable cause to believe, that any Hazardous Materials have come to be located under or about the Railroad's Right-of-Way, other than as specifically provided herein or as previously consented to by Railroad, Contractor shall immediately give Railroad written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to or received from any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Materials.

11.3 This section 11 shall continue in full force and effect regardless of whether this agreement is terminated pursuant to any other provision of this agreement.

12. Waiver of Breach. The waiver by Railroad of the breach of any condition, covenant, or agreement herein contained to be kept, observed, and performed by Contractor shall in no way impair the right of Railroad to avail itself of any subsequent breach thereof.

13. Assignment – Subcontracting. Contractor shall not assign, sublet, or subcontract this agreement or any interest therein without Railroad's or Commission's prior written consent and any attempt to so assign, sublet, or subcontract without such prior written consent shall be void. If Contractor obtains such permission to subcontract all or any portion of the Work, Contractor is and shall remain responsible for all Work of any such subcontractors and all Work of any such subcontractors shall be governed by the terms of this agreement.

EXHIBIT B-1

**CONTRACTOR'S RIGHT OF ENTRY AND INDEMNITY AGREEMENT
INSURANCE REQUIREMENTS**

1. Contractor shall, at its own cost and expense, provide and procure Commercial General Liability ("CGL") insurance, Automobile Public Liability insurance, and, as applicable, Workman's Compensation or Federal Employers Liability Act ("FELA") insurance.

1.1. The CGL insurance policy providing bodily injury, including death, personal injury and property damage coverage shall have a limit of not less than \$5 million each occurrence and an aggregate limit of not less than \$5 million. If the Commission requires higher insurance limits from the licensee, such insurance limits shall apply to this agreement as well. The CGL insurance policy must be written on ISO occurrence form CG 00 01 12 04 or a substitute form providing reasonably equivalent coverage. This insurance shall contain broad form contractual liability covering the indemnity provisions contained in this agreement, and coverage for construction or demolition work on or near railroad tracks. Contractor shall provide Railroad with a certificate of such insurance prior to the execution of this agreement. Upon request by Railroad, Contractor shall immediately furnish a complete copy of any policy required hereunder, including all endorsements, with said copy certified by the insurance company to be a true and correct copy of the original policy.

1.2. The CGL insurance policy must include Railroad and any other railroad users, including any tourist or passenger railroads and their customers and passengers, as an "additional insured" (using ISO Additional Insured Endorsement CG 20 26 or a substitute form providing reasonably equivalent coverage).

1.3. The CGL insurance policy shall contain, or be endorsed to contain, the following additional provisions:

1.3.1. For any claims that result from the misconduct or negligence of Contractor or its officers, directors, employees, agents, or invitees, Contractor's insurance shall be primary and any insurance or self-insurance maintained by Railroad, its directors, officers, employees, or agents, shall be in excess of Contractor's insurance and shall not contribute to it.

1.3.2. Any failure by Contractor to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to Railroad, its directors, officers, employees, or agents.

1.3.3. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

1.3.4. Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after 30 days' prior written notice by certified mail, return receipt requested, has been given to Railroad.

1.4. Automobile Public Liability insurance providing bodily injury and property damage coverage with a combined single limit of at least \$1,000,000 each occurrence or claim. This insurance shall provide contractual liability covering all motor vehicles including hired and non-owned and mobile equipment to the extent it may be excluded from the general liability insurance.

1.5. Workers' Compensation insurance covering any statutory liability determined to be applicable under the compensation laws of the State of California.

1.6. FELA insurance, if applicable, as required by federal law.

2. All insurance policies must be written by a reputable insurance company reasonably acceptable to Railroad, or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in California, and must be kept in force during the life of this agreement.

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3. The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish Contractor's liability, including liability under the indemnity provisions of this agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

ASSIGNMENT AND ASSUMPTION AGREEMENT

(Trackage Rights and Interchange Agreement with Santa Cruz, Big Trees and Pacific Railway Company)

FOR VALUE RECEIVED, SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION, a public agency created under California law ("**Assignor**"), ASSIGNS AND TRANSFERS to SIERRA NORTHERN RAILWAY, a California corporation ("**Assignee**"), its successors and assigns, all of Assignor's right, title and interest in and to the attached February 1, 1985 Trackage Rights and Interchange Agreement made by and between Southern Pacific Transportation Company and Santa Cruz, Big Trees and Pacific Railway Company ("**Big Trees**"), as amended on August 21, 1986, (the "**Trackage Agreement**"), subject to the following terms, conditions and exceptions:

1. This assignment shall take effect upon the close of escrow on Assignor's purchase of the Santa Cruz Branch railroad line from Union Pacific Railroad Company via an August 20, 2010 Purchase and Sale Agreement.
2. Assignee agrees to (a) perform all of the obligations of Assignor pursuant to the Trackage Agreement accruing after the date hereof, and (b) indemnify, defend and hold Assignor harmless from and against any and all claims, causes of actions and expenses (including reasonable attorney's fees) incurred by Assignor and arising out of (1) Assignee's failure to comply with terms of the Trackage Agreement after the date hereof, and (2) claims under the Trackage Agreement by Big Trees accruing after the date hereof.
3. The Trackage Agreement shall become a "Sierra Agreement" under the terms and conditions of the September 28, 2010 Administration, Coordination and License Agreement between Assignor and Assignee (the "**Administration Agreement**") and shall be subject to the terms and conditions set forth therein.
4. Assignee acknowledges Big Trees' rights to operate under the terms of the Trackage Agreement. Any agreement to expand Big Trees' operations beyond those permitted under the Trackage Agreement shall be subject to the terms and conditions of the Administration Agreement (including Section 2.3.2 *et seq.*).
5. With respect to Article VII of the Trackage Agreement, Assignor assigns to Assignee only the right to collect payments for maintenance, repair and capital improvements, as set forth in Section 2.3.2 *et seq.* of the Administration Agreement, provided that such payments shall not exceed the amount otherwise collectible under Article VII. Assignor retains all other rights under Article VII of the Trackage Agreement.
6. With respect to Article IX of the Trackage Agreement, Assignee shall instruct Big Trees to name Assignor as an additional insured under the insurance policy required by that Article.

7. Assignor retains the right to enforce all terms and conditions of the Trackage Agreement as a third-party beneficiary thereof.
8. Section 2.3.2.8 of the Administration Agreement is incorporated by reference into this assignment, as if set forth in full.
9. This assignment is made and accepted without recourse against Assignor as to the performance by any party under the Trackage Agreement.

Dated the ____ day of _____, 2010.

**SANTA CRUZ COUNTY REGIONAL
TRANSPORTATION COMMISSION, a public
agency created under California law**

By: _____

Title: _____

**SIERRA NORTHERN RAILWAY,
a California corporation**

By: _____

Title: _____

DRAFT 340-301/925 ck21opKED 7-14

TRACKAGE RIGHTS AND INTERCHANGE AGREEMENT

THIS AGREEMENT, made and entered into this 14th day of February, 1985, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY ("SP") and SANTA CRUZ, BIG TREES & PACIFIC RAILWAY COMPANY ("SCR"):

WHEREAS, SP presently owns a line of railroad extending through the City of Santa Cruz, California;

WHEREAS, SCR proposes to acquire from SP under a separate agreement of even date SP's Santa Cruz Branch north of Mile Post 120.96 in the City of Santa Cruz;

WHEREAS, SCR desires to use certain of SP's tracks at Santa Cruz for the purpose of turning locomotives and railroad equipment, interchanging cars with SP and operating passenger trains to and from trackage between SP's Mile Post 120 and 120.418;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I. DEFINITION OF CERTAIN TERMS

- A. The term "track" or plural thereof and the term "trackage" shall mean track structure and all appurtenances thereof, including but not necessarily limited to rail and fastenings, switches and frogs complete, bumpers, ties, ballast, roadbed, embankment, signals, bridges, trestles, culverts or any other structures or things necessary for support of and entering into construction thereof, and if any portion thereof is located in a thoroughfare the terms shall include pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing material at vehicular crossings of tracks, culverts, drainage facilities, crossing warning devices, and any and all work required by lawful authority in connection with construction, renewal, maintenance and operation of said track structures and all appurtenances thereof.

- B. The term "Joint Track", as herein used shall mean trackage, including underlying property, shown by red line on Exhibit "A", attached hereto and hereby made a part hereof, over which SCR is granted joint operating rights.
- C. The Term "Interchange Track" or plural thereof, as herein used, shall mean any SP tracks shown by blue line on Exhibit "A" which SP may from time to time designate for the interchange of cars between SP and SCR.

ARTICLE II. GRANT OF RIGHTS

SP hereby grants to SCR for the term of this agreement, and subject to limitations herein set forth, the right to operate its trains, engines and cars with its own employees, over the Joint Track and on the Interchange Track, as defined herein, in common with SP and such other parties as SP may hereafter admit to the use of the Joint Track and Interchange Track.

ARTICLE III. LIMITATION ON USE BY SCR

The Joint Track shall be used by SCR only for the purpose of turning locomotives and other railroad equipment, operating passenger trains to and from trackage between Mile Post 120 and 120.418, and interchanging railway traffic with SP, it being distinctly understood that SCR is not granted the right to use for any other purpose any industrial, team, loading, unloading or other track or other facility now or hereafter located along the Joint Track. SCR, at its expense, shall provide fuel and any other necessary supplies for its operations on the Joint Track.

ARTICLE IV. ADMINISTRATION, OPERATION AND MAINTENANCE OF JOINT TRACK

- A. SP shall have exclusive control with respect to management, maintenance and operation of the Joint Track and shall maintain and keep same in reasonable repair and reasonably suitable for the combined requirements of the parties hereto, but it is expressly understood and agreed that SCR shall not by reason of any defect in the Joint Track or Interchange Track or in any track, structure or appliance appurtenant thereto, or by reason of failure or neglect of SP to repair any such defect, have or make against SP any claim or demand for any

loss, damage, or injury whatsoever arising from such defect, failure or neglect.

- B. SCR shall assume the entire cost of any changes, additions or betterments to the Joint Track that may be required for its operations, including but not limited to any changes or improvements for the handling of passengers and passenger trains, or as the result of entering into this agreement.
- C. SP shall order and direct the movement of trains and cars on the Joint Track under such reasonable rules and regulations as SP from time to time may adopt. All interpretations and application of the rules shall be by SP.
- D. SCR shall, at the request of SP, bar from service upon the Joint Track any SCR employees who shall be found by SP to be responsible for violation of SP rules and regulations. SCR shall bear and assume all expenses which it and SP may incur as a result of any such barring from service. If such disciplinary action is appealed by an SCR employee to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on the Joint Track by reason of such occurrence.
- E. SCR's operations shall be scheduled so as not to interfere with SP's normal operations. SCR shall not operate on any portion of the Joint Track or Interchange Track when SP is operating or about to operate thereon.
- F. Each party agrees to comply with all lawful requirements for operation of the Joint Track and Interchange Track, and if failure to comply therewith shall result in any fine, penalty, cost or charge being suffered or incurred by either party, the party so failing agrees promptly and fully to reimburse and indemnify the other party for and on account thereof. Any locomotive, train or car used or operated by either party over or upon said trackage covered by this agreement shall be deemed to be the locomotive, train or car of such party, whether owned by it or not.

- G. SCR shall secure such additional permits from public bodies for its train operations above and beyond those covered by the currently outstanding franchises and/or permits of SP, including those franchises and/or permits for the loading and unloading of passengers.
- H. SCR, at its expense, shall install and maintain upon its engines and cars such equipment or devices as may now or in the future be necessary or appropriate, in the reasonable judgment of SP and as installed and maintained by SP, on its own engines and cars, or as required by rules and regulations of public agencies having jurisdiction, for operation of trains upon the Joint Track.
- I. In the event any SCR engine or car shall be wrecked or derailed on the Joint Track or Interchange Track, said wreck or derailment shall be picked up or rerailed by SP, unless otherwise agreed by the parties, and SP shall repair the damage to said tracks. The cost incurred shall be borne in accordance with Article VIII hereof.

ARTICLE V. INTERCHANGE

- A. SCR shall deliver and receive cars to be interchanged between the parties hereto on Interchange Tracks designated from time to time by SP.
- B. Cars that are interchanged between the parties shall be placed on said Interchange Tracks by the delivering party and billing therefor delivered to the receiving party. Such placing and delivering of billing shall constitute delivery, and such cars shall be considered in the custody of the receiving party from the time of such delivery.
- C. Subject to the provisions of Paragraph B of this Article V, the interchange of cars between the parties shall be in accordance with the Code of Rules of the Association of American Railroads then in effect.

ARTICLE VI. EMPLOYEE CLAIMS

SCR shall reimburse Southern Pacific in full for any and all costs incurred by SP in satisfying and complying with any conditions prescribed by the Interstate Commerce Commission pursuant to the provisions of 49 U.S.C. Section 11347 of the

Interstate Commerce Act for protection of interests of railroad employes affected by this agreement.

ARTICLE VII. PAYMENTS

SCR shall pay SP the sum of \$1.00 per annum, the receipt of which is hereby acknowledged, for the rights granted herein; provided, however, that SCR shall pay SP the additional sum of \$1,000 for each month it receives and discharges passengers on that portion of the Joint Track between Mile Post 120 and 120.418. Said additional amount of \$1,000 shall be increased, but not decreased, commencing July 1, 1985 and on July 1 of each subsequent year, in accordance with percentage changes in the AAR Railroad Cost Recovery Index, Series RCR (1977=100) of Railroad Material Prices and Wage Rates, Railroads of Class I, Western District, Material Prices Wage Rates and Supplements Combined (excluding fuel), from the year 1983 which shall be used as the base year, to the calendar year immediately prior to the year in which the change is to be made. Thus, the percentage change from the year 1983 to the year 1984 shall be used to adjust the rate effective July 1, 1985.

ARTICLE VIII. LIABILITY

- A. Determination, as among the parties hereto, of liability for "Loss and Damage" as defined in this Article shall be governed by the following provisions:
- B. The term "Loss and Damage" shall mean all loss of or damage to any property and injury to or death of any person, including amounts paid or payable under all applicable laws, and shall also embrace all cost and expense incident to any such injury, death, loss or damage (including without limitation expense of rerailing the equipment and clearing wrecks) arising in connection with operations on or adjacent to the Joint Tracks and Interchange Tracks under this agreement.
- C. SP shall be bound to use only reasonable and customary care, skill and diligence in the maintenance, repair and renewal of its trackage used hereunder, and SCR shall not, be reason of any

defect in said trackage or by reason of the failure or neglect of SP to repair any such defect, have or make against SP any claim or demand for any loss, damage or injury whatsoever, arising from such defect, failure or neglect.

D.. Except as provided in subparagraph C of this Article VII, liability for Loss and Damage shall be fixed among the parties as follows:

- (1) When caused solely by the acts or omissions of the employees of one party or the defective property of one party (other than said trackage), such loss and damage shall be borne solely by such party.
- (2) When caused by the acts or omissions of the employees of one party or defective property (other than said trackage) of one party in combination with the acts or omissions of the employees of the other party or the defective property (other than trackage) of the other party, then, whether or not the acts or omissions of the employees of a third party or the defective property of a third party is involved, all such Loss and Damage which occurs shall be borne solely by each party hereto as to its own passengers, employees and property (other than said trackage, and equally as to Loss and Damage to said trackage and to third persons and their property.
- (3) Loss and Damage due to any other cause shall be borne solely by each party as to its own passengers, employees and property in its custody, and equally as to damage to trackage and as to loss or damage suffered by third parties and their property.

The foregoing notwithstanding, if such Loss and Damage involves the trains, engines or cars of only one party, that party shall bear all Loss and Damage.

Anything hereinbefore in this Article VIII to the contrary notwithstanding, none of the parties shall have any claim against any other party for Loss and Damage caused by or resulting from interruption of or delay to such party's business.

Each of the parties hereto covenants and agrees that it will forever indemnify and save harmless the other party, its successors and assigns, from and against any and all liability or claims for damages, costs and expenses herein assumed by it; PROVIDED, HOWEVER, that the party liable, in whole or in part, as to any claim or suit filed against the other party, shall be given prompt notice thereof and an opportunity to join in or take over, as may be appropriate, the defense and settlement of such claim or suit. All releases taken pursuant to the settlement of claims or suits involving joint liability shall include each of the parties hereto involved, and copies thereof shall be furnished each of them.

ARTICLE IX. INSURANCE

SCR, at its expense, shall procure and keep in effect during the term of this Agreement, a Comprehensive General Liability Insurance policy issued in the name of SCR, covering any liability arising out of or in any way connected with operations on the Joint Track and Interchange Tracks. Said policy shall provide coverage in the amount of not less than Seven Million Dollars (\$7,000,000 .00) combined single limit for all damages arising out of bodily injury to or death of persons and for loss of or damage to property; shall name SP as an additional insured, with a cross liability endorsement; cover all of SCR's contractual liability hereunder; and shall provide 30 days' prior written notice to SP in case of cancellation or material reduction. SCR shall furnish SP a certified copy of such policy prior to commencing the operations herein involved. The form, substance and limits of said policy shall be subject to the approval of SP.

ARTICLE X. ARBITRATION

Any dispute over the terms of this agreement shall be settled by a board of three arbitrators experienced in railroad operations, one to be named by each party and the third by the two so named. If one party fails to name an arbitrator (or the two chosen do not name the third) within sixty days (60) after notice to do so, such arbitrator shall be named upon application by either party hereto to any judge of the U.S. District Court whose jurisdiction includes the Joint Track. The decision of the arbitrators shall be final and binding upon the parties. The expenses of arbitration shall be apportioned by the arbitrators. The parties may agree upon a single arbitrator.

ARTICLE XI. DEFAULT

If SCR fails to cure its breach of any term or condition of this agreement within 60 days after notice from SP to do so, SP may, at its option, terminate this agreement forthwith.

ARTICLE XII. SUCCESSORS AND ASSIGNS

This agreement shall be binding upon the successors and assigns of SP and SCR, except that SCR may not assign this agreement without the prior written approval of SP.

ARTICLE XIII. EFFECTIVE DATE AND TERM

This agreement is conditioned upon its approval by the Interstate Commerce Commission and any other prerequisite legal authority. It shall be effective for an initial period of ten (10) years from the date hereof and shall continue thereafter until terminated by either party on one (1) year's written notice.

ARTICLE XIV. OBLIGATION TO PROVIDE TRACKAGE

If at any time during the term of this agreement SP elects to abandon its own operations on the Joint Track, or any portion thereof, it shall no longer have an obligation to provide or maintain it for SCR. Thereupon the Joint Track shall be subject to the applicable portions of the Right of First Refusal given to SCR by SP in the Purchase Agreement of even date between the parties.

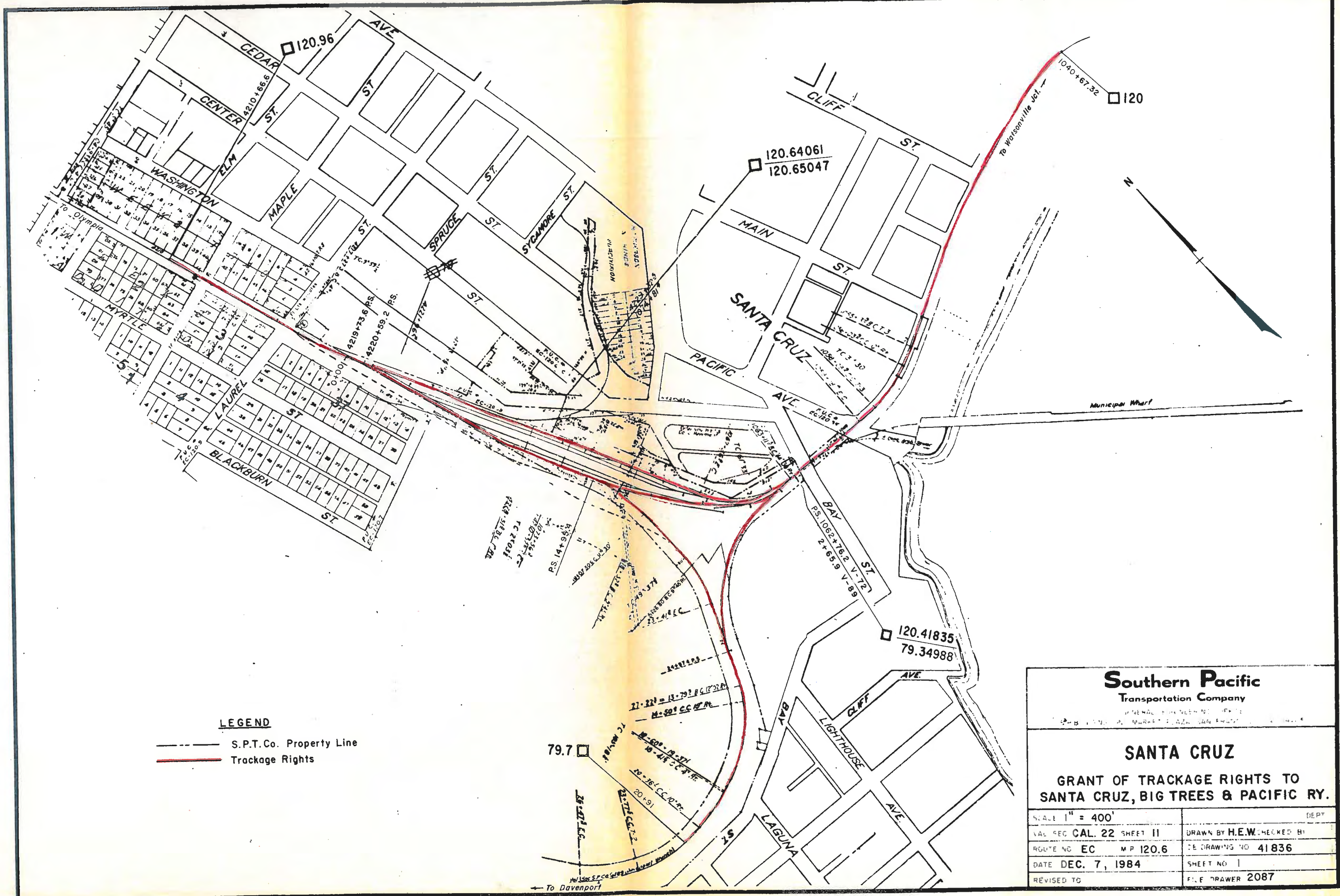
IN WITNESS, the parties hereto have executed this agreement in duplicate as of the date and year first above written.

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By Z. L. Johnson
(Title) Vice President - Finance

SANTA CRUZ, BIG TREES & PACIFIC
RAILWAY COMPANY

By Norman Clark
(Title)



LEGEND

- S.P.T.Co. Property Line
- Trackage Rights

Southern Pacific Transportation Company <small>GENERAL OFFICES: 222 CALIFORNIA STREET, SAN FRANCISCO, CALIF. 94102</small>	
SANTA CRUZ GRANT OF TRACKAGE RIGHTS TO SANTA CRUZ, BIG TREES & PACIFIC RY.	
SCALE 1" = 400'	DEPT
VAL SEC CAL. 22 SHEET 11	DRAWN BY H.E.W. CHECKED BY
ROUTE NO EC M.P. 120.6	DE DRAWING NO 41836
DATE DEC. 7, 1984	SHEET NO 1
REVISED TO	FILE DRAWER 2087

← To Davenport

To Watsonville Jct. →

Municipal Wharf

N

120.96

120.64061
120.65047

120

120.41835
79.34988

79.7

To Olympia

← To Davenport

TRACKAGE REVISION

THIS SUPPLEMENTAL AGREEMENT, made this 21st day of August, 1986, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY ("SP"), Delaware corporation, and SANTA CRUZ, BIG TREES & PACIFIC RAILWAY COMPANY ("SCR"), a California corporation;

RECITALS:

The parties entered into an agreement dated February 1, 1985 (SP's Document Audit No. 166136), providing for use by SCR of certain trackage owned by SP at Santa Cruz, California, for the purposes of turning locomotives and railroad equipment, interchanging cars with SP and operating passenger trains. The parties now desire to amend said agreement in the manner herein set forth.

AGREEMENT:

NOW, THEREFORE, it is mutually agreed as follows:

1. The combined single limit of \$7,000,000.00 of insurance liability coverage called for in Article IX of said agreement dated February 1, 1985, is hereby reduced to a combined single limit of Five Million Dollars (\$5,000,000.00); provided, however, that this reduced limit shall be effective only through the end of this current year.

2. Article III (Limitation on Use by SCR) of said agreement dated February 1, 1985, is hereby amended to read as follows:

The Joint Track shall be used by SCR only for the purpose of turning locomotives and other railroad equipment, operating passenger trains to and from trackage between Mile Posts 120 and 120.418, and between Mile Posts 120.418 and 120.96, and interchanging railway traffic with SP, it being distinctly understood that SCR is not granted the right to use for any other purpose any industrial, team, loading, unloading or other track or other facility now or hereafter located along the Joint Track. SCR, at its expense, shall provide fuel and any other necessary supplies for its operations on the Joint Track.

3. Notwithstanding the provisions of Article II and III (as herein amended) of said agreement dated February 1, 1985, SCR shall hereafter operate its passenger trains over the Joint Track only to a point 300 feet south of the existing station building, until such time as the \$5,000,000 of insurance liability coverage is provided by SCR. *WES*

4. Except as herein otherwise provided, all the terms, covenants and conditions of said agreement dated February 1, 1985, shall remain in full force and effect, subject to termination as therein provided.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate as of the day and year first herein written.

SOUTHERN PACIFIC TRANSPORTATION
COMPANY,

By W. E. Fowler
(Title) Manager - Joint Facilities

SANTA CRUZ, BIG-TREES & PACIFIC RAILWAY
COMPANY,

By Michael J. Donato V.P.
(Title)