



Santa Cruz County Regional Transportation Commission Transportation Policy Workshop

AGENDA

Thursday, August 19, 2010
9:00 a.m.

NOTE LOCATION THIS MONTH
SCCRTC Conference Room
1523 Pacific Ave
Santa Cruz Ca

1. Introductions
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.

4. Approve staff recommendation authorizing out-of-state-travel

REGULAR AGENDA

5. Review of items to be discussed in closed session

CLOSED SESSION

6. Conference with Real Property Negotiator Pursuant to Government Code 54956.8 for acquisition of the Santa Cruz Branch Rail Line Property: Santa Cruz Branch Rail Line from Watsonville Junction to Davenport

Agency Negotiator: Kirk Trost, Miller Owen & Trost

Negotiation Parties: SCCRTC, Union Pacific

Under Negotiation: Price and Terms

OPEN SESSION

7. Report on closed session
8. Revised Purchase and Sale Agreement (PSA) for Santa Cruz Branch Rail Line (Branch Line) Acquisition
(Luis Mendez, Deputy Director)
 - a. Staff report
 - b. Resolution 30-10 authorizing entering into PSA with UP
 - c. Resolution authorizing entering into revised PSA with UP
9. Highway 1 Soquel/Morrissey Auxiliary Lanes project – Cooperative Agreement with Caltrans for construction management
(Kim Shultz, Senior Transportation Planner)
 - a. Staff report
 - b. Resolution authorizing execution of a Cooperative Agreement
 - c. Draft Cooperative Agreement for construction of the Highway 1 Soquel/Morrissey Auxiliary Lanes project
 - d. Benefits of local agency performing construction management
10. Next meetings

The next SCCRTC meeting is scheduled for Thursday, September 2, 2010 at 9:00 a.m. at the Capitola City Council Chambers, 420 Capitola Avenue, Capitola, CA.

The next Transportation Policy Workshop is scheduled for September 16, 2010 at 9:00 am at the SCCRTC Offices, 1523 Pacific Avenue, 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
email: info@sccrtc.org / website: www.sccrtc.org*

HOW TO STAY INFORMED ABOUT RTC MEETINGS, AGENDAS & NEWS

Broadcasts: *Many of the meetings are broadcast live. Meetings are cablecast by Community Television of Santa Cruz. Community TV's channels and schedule can be found online (www.communitytv.org) or by calling (831) 425-8848.*

Agenda packets: *Complete agenda packets are available at the RTC office, on the RTC website (www.sccrtc.org), and at the following public libraries:*

- Aptos Branch Library
- Central Branch Library
- Watsonville Library
- Branciforte Library
- Scotts Valley Library

For information regarding library locations and hours, please check online at www.santacruzpl.org or www.watsonville.lib.ca.us.

On-line viewing: *The SCCRTC encourages the reduction of paper waste and therefore makes meeting materials available online. Those receiving paper agendas may sign up to receive email notification when complete agenda packet materials are posted to our website by sending a request to info@sccrtc.org. Agendas are typically posted 5 days prior to each meeting.*

Newsletters: *To sign up for E-News updates on specific SCCRTC projects, go to www.sccrtc.org/enews.*

HOW TO REQUEST

❖ ACCOMMODATIONS FOR PEOPLE WITH DISABILITIES

The Santa Cruz County Regional Transportation Commission does not discriminate on the basis of disability and no person shall, by reason of a disability, be denied the benefits of its services, programs, or activities. This meeting location is an accessible facility. If you wish to attend this meeting and require special assistance in order to participate, please contact RTC staff at 460-3200 (CRS 800/735-2929) at least three working days in advance of this meeting to make arrangements. People with disabilities may request a copy of the agenda in an alternative format. As a courtesy to those person affected, Please attend the meeting smoke and scent-free.

❖ SERVICIOS DE TRADUCCIÓN/ TRANSLATION SERVICES

Si gusta estar presente o participar en esta junta de la Comisión Regional de Transporte del Condado de Santa Cruz y necesita información o servicios de traducción al español por favor llame por lo menos con tres días laborables de anticipo al (831) 460-3200 para hacer los arreglos necesarios. (Spanish language translation is available on an as needed basis.) Please make advance arrangements (at least three days in advance) by calling (831) 460-3200.

AGENDA: August 19, 2010

TO: Transportation Policy Workshop
FROM: George Dondero, Executive Director
RE: Out-of-State Travel

RECOMMENDATIONS

Staff recommends that the RTC:

1. Approve out-of-state travel for planner to attend the meeting of the 511 Deployment Coalition Working Group in Dallas, Texas in September 2010
-

BACKGROUND

The Santa Cruz County Regional Transportation Commission Transportation and the Transportation Agency for Monterey County jointly received a \$259,210 Caltrans Planning grant to prepare a Feasibility and Implementation Plan for a Monterey Bay Area 511 Traveler Information System. When completed in November 2011, the Plan will provide an accurate estimate of the costs of deploying a 511 system in the region and a roadmap of the steps required to implement such a system.

DISCUSSION

The 511 Deployment Coalition, a national association of organizations that have implemented or are planning to establish 511 traveler information systems, is holding a planning meeting in Dallas, Texas on September 8 and 9, 2010.

Among the topics for presentation and discussion at the meeting are: driver distraction issues, developments for a 511 system in the Dallas area, recent evolutions for 511 business approaches including new systems in Massachusetts and Georgia, links between 511 and IntelliDrive(SM) activities, next steps for the 511 Coalition, and updates from system implementers.

With a comprehensive 511 traveler information system planning study currently underway by the RTC and TAMC, there is significant value in having a planner working on our agency's 511 project attend informational sessions and develop a network of colleagues who have already deployed and operated 511 systems. The meeting in Dallas provides just such an opportunity.

AASHTO, the nonprofit, nonpartisan association representing highway and transportation officials and departments whose guides and specifications are used throughout the transportation industry, is sponsoring this meeting and will

reimburse the hotel, airfare and per diem expenses for public sector employees to attend and participate in the meeting. Given the financial assistance provided by AASHTO, the cost of attending this meeting to the RTC is estimated to be \$100. AASHTO will be covering approximately \$900. Sufficient funds for this item are included in the Commission's FY10-11 budget.

SUMMARY

A meeting of transportation professionals involved in planning and deploying 511 traveler information systems is being held on September 8 and 9 in Dallas, TX. This meeting offers excellent opportunity for a planner working on this RTC's 511 planning study to glean the latest information about challenges and issues relating to implementing and operating 511 systems. The majority of the cost to attend this meeting will be reimbursed by AASHTO. There are sufficient funds for this item in the RTC's FY10-11 budget.

Attachment:

1. Agenda for the 511 Deployment Working Group Meeting

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Attachment 1

Draft Agenda

511 Deployment Coalition Working Group Meeting September 8 - 9, 2010

**Location:
Westin City Center
650 North Pearl Street
Dallas, TX**

Wednesday, September 8

8:30 am	Welcome, Introductions, Next Steps	Jim Wright
9:00 am	AASHTO Update	Jim Wright
9:15 am	USDOT Update	Bob Rupert
9:30 am	Website Update	Kelly Pecheux or Adam Hopps
10:00 am	<i>Break</i>	
10:15 am	511 in Dallas	Koorosh Olyai, DART
10:45	Driver Distraction Topics	Jim Wright
	1) SCDOT Signage Change	Tisha Dickerson
	2) Discussion / Recommendations on logo change	All
	3) What are people doing about Driver Distraction	All
11:30 am	511 for the CVO Community	Denise Inda
12:00 pm	<i>Lunch</i>	
1:00 pm	New Business Approaches Part 1: Public	
	1) GADOT no cost model	Hugh Colton
	2) Mass 511	Sendza
2:00 pm	New Business Approaches Part 2: Private	
	3) Asset Management & Revenue Generation	Matt Hamill

Attachment 1

Draft Agenda

	4) Logo Sign Advertising / Traveler's Marketing	David Stein
	5) Los Angeles 511 / Sponsorship	Brent Eisenberg
3:00 pm	<i>Break</i>	
3:15	State Updates Round Robin	All
4:45	Adjourn for the Day	

Thursday, September 9

8:30 am	State Updates Continued	All
9:30	Dynamic Mobility Application	Bob Rupert
	IntelliDrive Update	Alex Power
10:00	<i>Break</i>	
10:15	Part 2 Discussion: Next Steps for Coalition	Jim Wright
11:15	Performance Measures	
11:45 am	Open Topics	Open
12:00 pm	Wrap-up and adjourn	

AGENDA: August 19, 2010

TO: Regional Transportation Commission (RTC)

FROM: Luis Pavel Mendez, Deputy Director

RE: Revised Purchase and Sale Agreement (PSA) for Santa Cruz Branch Rail Line (Branch Line) Acquisition

RECOMMENDATIONS

Staff and negotiating consultants recommend that the Regional Transportation Commission (RTC) approve the revised purchase and sale agreement (PSA) with Union Pacific (UP) for purchase of the Santa Cruz Branch Rail Line (Branch Line).

BACKGROUND

Since 2001, the RTC has been negotiating 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 and entering into a purchase and sale agreement with UP. On June 30, 2010, the California Transportation Commission (CTC) approved the RTC's application for purchase of the Branch Line for future multi-modal uses, subject to certain conditions. The RTC has met most of the CTC conditions, and RTC staff and consultants are working to meet the final CTC condition.

DISCUSSION

On May 6, 2010, the RTC approved a resolution (Attachment 1) authorizing the Executive Director to enter into a purchase and sale agreement (PSA) with UP. The resolution also authorized the Executive Director to negotiate additional environmental protections and other negotiating adjustments that are not substantive in nature. Some of the negotiated changes to the PSA may be considered substantive; therefore, the revised PSA (Exhibit A to Attachment 2) is included with this report for RTC consideration.

The revised PSA shows revisions using underline and ~~strikethrough~~ format for the changes made from the PSA approved by the RTC in May 2010. The negotiated revisions made to the PSA include;

1. Section 3.3 is modified to indicate that the RTC cannot definitively commit to making \$5 million in improvements to the Branch Line because the RTC must first secure the funds from the CTC. The RTC is committing to use its best efforts to secure the funds and if the funds are secured make the improvements.

2. Section 4.1.4 was added to improve environmental protections for the RTC in connection with the hazardous materials discovered on the Branch Line next to the Granite Construction facility in Watsonville. UP and Granite Construction are working to clean up the affected area but clean up will not be completed by the close of escrow. Therefore, the added section helps to minimize any potential liability by the RTC once it becomes the owner of the property.
3. Section 6.8.1 is modified to provide the short line operator the option to abandon freight service on the Branch Line, if the RTC does not complete the \$5 million in improvements to the Branch Line. This section was also modified to provide the short line operator use of the track in front of the Cemex cement plant that is not included in this purchase agreement.

Other modifications made to the PSA are to ensure consistency throughout the document to the modifications stated above and to clarify language where necessary.

The revised PSA is improved from the version approved by the RTC on May 6, 2010; therefore, **staff and negotiating consultants recommend that the RTC adopt the attached resolution (Attachment 2) authorizing the Executive Director to enter into the revised PSA (Exhibit A to Attachment 2) with UP for purchase of the Branch Line.** UP has agreed to the modifications in the revised PSA.

SUMMARY

In May 2010, the RTC approved entering into a purchase and sale agreement (PSA) with UP for purchase of the Branch Line. The PSA has been revised to provide additional environmental protections to the RTC and clarify that the RTC must secure the necessary funding to make \$5 million in improvement to the Branch Line. Staff and negotiations consultants recommend that the RTC approve entering into the revised PSA with UP.

Attachments:

1. Resolution 30-10 authorizing entering into PSA with UP
2. Resolution authorizing entering into revised PSA with UP

RESOLUTION NO. 30-10

Adopted by the Santa Cruz County Regional Transportation Commission
on the date of May 6, 2010
on the motion of Commissioner Lane
duly seconded by Commissioner Rivas

A RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO A
PURCHASE AND SALE AGREEMENT ON BEHALF OF THE SANTA CRUZ COUNTY
REGIONAL TRANSPORTATION COMMISSION WITH UNION PACIFIC FOR THE
SANTA CRUZ BRANCH RAIL LINE

WHEREAS, the Regional Transportation Commission (RTC) has been working to acquire the Santa Cruz Branch Rail Line using State Proposition 116 and State Transportation Improvement Program (STIP) funds; and

WHEREAS, the RTC plans to implement recreational passenger rail service between Santa Cruz and Davenport and preserve the rail line for future transportation purposes; and

WHEREAS, the RTC and Union Pacific (UP) have negotiated a purchase price of \$14.2 million for acquisition of the Santa Cruz Branch Rail Line (Branch Line); and

WHEREAS, the RTC agreed to make \$5 million of improvements to the Branch Line;
and

WHEREAS, all terms and conditions negotiated by the RTC and UP are included in the purchase and sale agreement; and

WHEREAS, final consummation of the purchase and sale agreement is contingent on securing State funding; and

WHEREAS, the project is exempt from environmental review;

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

1. The Executive Director is authorized to enter into the attached purchase and sale agreement (Exhibit 1) on behalf of the Santa Cruz County Regional Transportation Commission with Union Pacific for acquisition of the Santa Cruz Branch Rail Line for \$14.2 million and with a condition that the RTC make \$5 million of improvements to the Branch Line; and
2. The Executive Director is authorized to modify the purchase and sale agreement to provide additional environmental protections to the RTC, subject to the satisfaction of the RTC's legal counsel; and

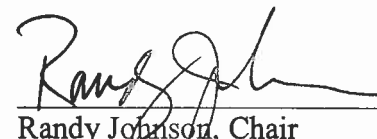
- 3. The Executive Director is authorized to make final negotiating adjustments to the purchase and sale agreement that are not substantive in nature; and
- 4. The Executive Director is authorized to file the corresponding notices of exemption from environmental review for the project with the corresponding filing agencies.

AYES: COMMISSIONERS Bustichi, Campos, Coonerty, Graves, Johnson, Lane, Leopold, Nicol, Pirie, Rivas, Stone, Tavantzis

NOES: COMMISSIONERS

ABSTAIN: COMMISSIONERS

ABSENT: COMMISSIONERS


Randy Johnson, Chair

ATTEST:

George Dondero, Secretary

Exhibit 1: Purchase and Sale Agreement with Union Pacific for the Santa Cruz Branch Rail Line

Distribution: CTC, RTC Fiscal

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RESOLUTION NO.

Adopted by the Santa Cruz County Regional Transportation Commission
on the date of August 19, 2010
on the motion of Commissioner
duly seconded by Commissioner

A RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO A
REVISED PURCHASE AND SALE AGREEMENT ON BEHALF OF THE SANTA CRUZ
COUNTY REGIONAL TRANSPORTATION COMMISSION WITH UNION PACIFIC FOR
THE SANTA CRUZ BRANCH RAIL LINE

WHEREAS, the RTC and Union Pacific (UP) have negotiated a purchase price of \$14.2 million for acquisition of the Santa Cruz Branch Rail Line (Branch Line); and

WHEREAS, on May 6, 2010 the RTC approved a purchase and sale agreement (PSA) with UP for acquisition of the Branch Line; and

WHEREAS, the PSA is revised to add environmental protections to the RTC and clarify that the RTC must secure funding to make \$5 million in improvements to the Branch Line; and

WHEREAS, all terms and conditions negotiated by the RTC and UP are included in the purchase and sale agreement; and

WHEREAS, final consummation of the purchase and sale agreement is contingent on securing State funding; and

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

1. The Executive Director is authorized to enter into the attached revised purchase and sale agreement (Exhibit 1) on behalf of the Santa Cruz County Regional Transportation Commission with Union Pacific for acquisition of the Santa Cruz Branch Rail Line for \$14.2 million; and
2. The Executive Director is authorized to make final negotiating adjustments to the purchase and sale agreement that are not substantive in nature.

AYES: COMMISSIONERS

NOES: COMMISSIONERS

ABSTAIN: COMMISSIONERS

ABSENT: COMMISSIONERS

Randy Johnson, Chair

ATTEST:

George Dondero, Secretary

Exhibit A: Purchase and Sale Agreement with Union Pacific for the Santa Cruz Branch Rail Line

Distribution: CTC, RTC Fiscal, Union Pacific

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**PURCHASE AND SALE AGREEMENT
AND ESCROW INSTRUCTIONS**

Between

**UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation**

SELLER

and

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

BUYER

First American Title Company (“Escrow Holder”)

_____, California _____

Attention: _____

Telephone: _____

Facsimile: _____

Escrow No. _____

Date of Opening of

Escrow: _____

**PURCHASE AND SALE AGREEMENT
AND ESCROW INSTRUCTIONS**

THIS PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (the “**Agreement**”) is made as of May 6, 2010 (“**Execution Date**”), by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (“**Seller**”), and SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION, a public agency created under California law (“**Buyer**”).

ARTICLE I – DEFINITIONS

The following capitalized terms are used in this Agreement with the following meanings:

“**Agreement**” is defined in the introductory paragraph above.

“**Assignment and Assumption Agreement**” is defined in Section 8.3.2.

“**Buyer**” means the Santa Cruz County Regional Transportation Commission.

“**Buyer’s Title Notice**” is defined in Section 6.1.

“**Close of Escrow**” is defined Section 8.2.1.

“**Closing**” is defined in Section 8.2.1.

“**Closing Date**” is defined in Section 8.2.1.

“**Confidentiality Agreement**” is defined in Section 12.22.

“**Condition of the Property**” is defined in Section 4.1.1.

“**Cost of Cancellation of Escrow**” is defined in Section 6.1.2.

“**Deed**” is defined in Section 5.1.

“**Disapproved Items**” is defined in Section 6.1.1.

“**Environmental Remediation**” is defined in Section 4.1.3.

“**Escrow Holder**” means First American Title Company.

“**Execution Date**” is defined in the introductory paragraph on page 1 above.

“**Feasibility Review Period**” is defined in Section 6.2.

“**Governmental Requirements**” is defined in Section 8.7.

“**Grantee**” is defined in **Exhibit D**.

“**Grantor**” is defined in **Exhibit D**.

“**Leases and Other Agreements**” means those leases, licenses and other agreements described in Schedule 2 of **Exhibit E**.

“**Line**” is defined in Section 2.1.

“**Notices**” is defined in Section 12.9.

“**Opening of Escrow**” is defined in Section 8.1.

“**Permitted Exceptions**” is defined in Section 5.1.

“**Property**” is defined in Section 2.3.

“**Property Materials**” is defined in Section 4.1.1.

“**Purchase Price**” is defined in Section 3.1.

“**Rail Improvements**” is defined in Section 2.3.

“**Retained Rights**” is defined in Section 2.1.

“**Seller**” means Union Pacific Railroad Company.

“**Seller’s Affiliates**” is defined in Section 4.1.2.

“**Seller’s Cure Period**” is defined in Section 6.1.1.

“**Short Line Operator**” means the short line railroad operator selected by Seller and approved by Buyer to provide freight rail service to customers on the Line.

“**STB**” means the Surface Transportation Board.

“**Surviving Obligations**” is defined in Section 6.1.2.

“**Title Contingency Date**” is defined in Section 6.1.1.

“**Title Company**” means First American Title Company.

“**Title Policy**” is defined in Section 5.1.

“**Title Report**” is defined in Section 6.1.1.

ARTICLE II – PROPERTY

2.1 Agreement to Sell and Purchase. Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller all of Seller’s right, title and interest in and to Seller’s railroad right-of-way in Santa Cruz and Monterey Counties, California, extending from Santa Cruz Branch Milepost 0.433 (east boundary of Salinas Road) to Milepost 31.39, located two hundred fifty feet (250’) north of the Highway 1 crossing at Davenport, all as shown on **Exhibit A** attached hereto (the “**Line**”), subject to the terms and conditions in this Agreement, any and all applicable federal, state and local laws, orders, rules and regulations, any and all outstanding rights of record or open and obvious on the ground, and all Permitted Exceptions as defined in Section 5.1, including, without limitation, the reservations described in Section 2.2 (the “**Retained Rights**”).

2.2 Retained Rights. In the Deed (as defined in Section 5.1), Seller will except and reserve to itself and its successors and assigns, forever (except as otherwise provided in the easement reserved for freight railroad purposes), the following:

2.2.1 Freight Easement. An easement for freight railroad purposes upon, over, under, and across, the Line, as more particularly set forth in the Deed;

2.2.2 Strong Agreements.

(a) The existing eight inch (8") sanitary sewer pipeline and appurtenant facilities referred to in the following sentence, whether owned by Seller or any third party, and a perpetual easement upon, over, along, under and across the portion of the Line that lies five feet (5') on each side of the centerline of such existing eight inch (8") sanitary sewer pipeline and appurtenant facilities (the "Easement Area"), for the purposes of constructing, maintaining, repairing, operating, renewing, replacing, using and/or removing the eight inch (8") sanitary sewer pipeline and appurtenant facilities (whether now or hereafter installed, and including facilities which are the technological successor to any existing or hereafter installed facilities); together with (a) the right of ingress and egress to and from the Easement Area, and (b) the right to collect the rents, issues and profits therefrom, and from any existing contracts. In addition to and not in limitation of Seller's rights under the foregoing reservation of easement, Buyer, for itself, its successors and assigns, hereby covenants and agrees that Buyer shall not interfere with the rights of Seller's Licensee under that certain License Agreement between Southern Pacific Transportation Company (predecessor in interest to Seller) and Holcomb Corporation dated July 27, 1990, identified in the records of Seller as Audit Number S211235,

and granting certain rights to said Licensee to use a portion of the Line for eight inch (8") sanitary sewer pipeline purposes. This reserved right is intended solely to permit Seller to honor its obligations under said License Agreement and does not constitute a reservation of rights for any other purpose.

(b) The existing eight inch (8") sanitary sewer pipeline and appurtenant facilities referred to in the following sentence, whether owned by Seller or any third party, and a perpetual easement upon, over, along, under and across the portion of the Line that lies five feet (5') on each side of the centerline of such existing eight inch (8") sanitary sewer pipeline and appurtenant facilities (the "Easement Area"), for the purposes of constructing, maintaining, repairing, operating, renewing, replacing, using and/or removing the eight inch (8") sanitary sewer pipeline and appurtenant facilities (whether now or hereafter installed, and including facilities which are the technological successor to any existing or hereafter installed facilities); together with (a) the right of ingress and egress to and from the Easement Area, and (b) the right to collect the rents, issues and profits therefrom, and from any existing contracts. In addition to and not in limitation of Seller's rights under the foregoing reservation of easement, Buyer, for itself, its successors and assigns, hereby covenants and agrees that Buyer shall not interfere with the rights of Seller's Licensee under that certain License Agreement between Southern Pacific Transportation Company (predecessor in interest to Seller) and Holcomb Corporation dated July 27, 1990, identified in the records of Seller as Audit Number S211236, and granting certain rights to said Licensee to use a portion of the Line for eight inch (8") sanitary sewer pipeline purposes. This reserved right is intended solely to permit Seller to honor its obligations under said License Agreement and does not constitute a reservation of rights for any other purpose.

(c) The existing four inch (4") VCP sewer and four inch (4") copper water pipelines and appurtenant facilities referred to in the following sentence, whether owned by Seller or any third party, and a perpetual easement upon, over, along, under and across the portion of the Line that lies five feet (5') on each side of the centerline of such existing four inch (4") VCP sewer and four inch (4") copper water pipeline and appurtenant facilities (the "Easement Area"), for the purposes of constructing, maintaining, repairing, operating, renewing, replacing, using and/or removing the four inch (4") VCP sewer and four inch (4") copper water pipeline and appurtenant facilities (whether now or hereafter installed, and including facilities which are the technological successor to any existing or hereafter installed facilities); together with (a) the right of ingress and egress to and from the Easement Area, and (b) the right to collect the rents, issues and profits therefrom, and from any existing contracts. In addition to and not in limitation of Seller's rights under the foregoing reservation of easement, Buyer, for itself, its successors and assigns, hereby covenants and agrees that Buyer shall not interfere with the rights of Seller's Licensee under that certain License Agreement between Southern Pacific Transportation Company (predecessor in interest to Seller) and James G. Speth dated March 19, 1980, identified in the records of Seller as Audit Number S204567, and granting certain rights to said Licensee to use a portion of the Line for four inch (4") VCP sewer and four inch (4") copper water pipeline purposes. This reserved right is intended solely to permit Seller to honor its obligations under said License Agreement and does not constitute a reservation of rights for any other purpose.

(d) The existing twenty-four inch (24") storm drain pipelines and appurtenant facilities referred to in the following sentence, whether owned by Seller or any third party, and a perpetual easement upon, over, along, under and across the portion of the Line that lies five feet (5') on each side of the centerline of such existing twenty-four inch (24") storm drain pipeline and appurtenant facilities (the "Easement Area"), for the purposes of constructing, maintaining, repairing, operating, renewing, replacing, using and/or removing the twenty-four inch (24") storm drain pipeline and appurtenant facilities (whether now or hereafter installed, and including facilities which are the technological successor to any existing or hereafter installed facilities); together with (a) the right of ingress and egress to and from the Easement Area, and (b) the right to collect the rents, issues and profits therefrom, and from any existing contracts. In addition to and not in limitation of Seller's rights under the foregoing reservation of easement, Buyer, for itself, its successors and assigns, hereby covenants and agrees that Buyer shall not interfere with the rights of Seller's Licensee under that certain License Agreement between Southern Pacific Transportation Company (predecessor in interest to Seller) and Phillips Driscopipe, Inc. dated April 20, 1995, identified in the records of Seller as Audit Number S715469, and granting certain rights to said Licensee to use a portion of the Line for twenty-four inch (24") storm drain pipeline purposes. This reserved right is intended solely to permit Seller to honor its obligations under said License Agreement and does not constitute a reservation of rights for any other purpose.

2.3 Ownership of Rail Improvements. Ownership of all rail improvements on the Line that are owned by Seller, including without limitation, rails, ties, ballast, signals, switches and trestles and other rail appurtenances to the Line, if any ("**Rail Improvements**"), will be transferred to Buyer at the Closing by Bill of Sale in the form attached to this Agreement as **Exhibit B**. The Line and the Rail Improvements are collectively called the "**Property**".

2.4 Acquisition Under Threat of Condemnation. Buyer deems that it is necessary and proper, pursuant to California law, to acquire the Property for public purposes. Buyer represents that it is authorized and empowered to initiate proceedings under its power of eminent domain if necessary to acquire the Property for public purposes. The parties agree that in lieu of such proceedings, and to avoid the cost and uncertainty of litigation, the Property will be acquired by Buyer pursuant to the terms and conditions of this Agreement.

ARTICLE III – PURCHASE PRICE

3.1 Purchase Price. The purchase price for the Property is FOURTEEN MILLION TWO HUNDRED THOUSAND DOLLARS AND NO CENTS (\$14,200,000.00) (the "**Purchase Price**").

3.2 Payment of Purchase Price. At least one business day prior to the Closing Date (as defined in Section 8.2.1), Buyer shall deliver to Escrow Holder a sum equal to the Purchase Price, together with Buyer's share of prorations and costs of Escrow as provided in Sections 8.6 through 8.8. Buyer shall pay such sum by confirmed wire transfer of U.S. funds for immediate credit.

3.3 Structural Rehabilitation Work. Prior to the Closing Date, Buyer will request its funding agencies to program and allocate, and use Buyer's best efforts to effect such programming and allocating by the funding agencies, the sum of Five Million Dollars (\$5,000,000.00) to perform the rehabilitation work listed in **Exhibit I** attached hereto and incorporated herein by reference (the "**Rehabilitation Work**"). Following the Close of Escrow, Buyer shall continue to use its best efforts to obtain such programming and allocating by its funding agencies, and shall will perform the Rehabilitation Work up to the amount programmed and allocated for such Rehabilitation Workwork by Buyer'sBuyer's funding agencies. If Buyer completes all of the Rehabilitation Work for less than the amounts programmed and allocated for such Rehabilitation Workwork, Buyer may use any remaining amounts to perform additional repair and maintenance work on the Line for the benefit of the freight work benefiting the Property and rail operations on the Line, or to purchase certain property of Seller located north of the Line, subject to Buyer and Seller reaching agreement on the terms of any such purchase and sale, at each party's sole discretion. Notwithstanding any other provision in this Agreement to the contrary, Buyer's obligations under this Section shall not be deemed satisfied or waived by the occurrence of the Close of Escrow but instead shall survive the Close of Escrow.servicee thereon. As used in this Section, the term "costs" means all hard and soft costs related to the Rehabilitation Workwork, including without limitation, the costs for Buyer's consultants and/or staff to monitor, manage, and audit the Rehabilitation Work. work. The provisions of this Section will survive the Close of Escrow.

ARTICLE IV – “AS IS” SALE; RELEASE; INSPECTION; ALLOCATION OF ENVIRONMENTAL RESPONSIBILITY

4.1 As Is Sale and Release.

4.1.1 “As Is” Sale. Buyer and its representatives, during the Feasibility Review Period, will have been afforded the opportunity to make such inspections of the Property and matters related thereto as Buyer and its representatives desire, including, without limitation, governmental laws and regulations to which the Property is subject. Buyer shall accept the Property upon the basis of its review and determination of the applicability and effect of such laws and regulations. Buyer acknowledges and agrees that, except for the Granite Construction Contamination (as defined in Section 4.1.4, below), the Property is to be sold and conveyed to and accepted by Buyer in an “as is” condition with all faults, and that the Property has been used for, among other things, railroad purposes. Buyer further acknowledges that Buyer has received and reviewed, and/or is knowledgeable of all of the matters described in Exhibit C to be attached hereto by Seller on or before August 13, 2010 and made a part hereof (collectively, the “Property Materials”). Seller makes no representation or warranty as to the accuracy or completeness of said Property Materials. Except as expressly set forth in this Agreement, Seller does not make any representations or warranties of any kind whatsoever, either express or implied, with respect to the Property or any of such related matters; in particular, but without limitation, Seller makes no representations or warranties with respect to the use, condition, title, occupation or management of the Property, compliance with applicable statutes, laws, codes, ordinances, regulations or requirements relating to leasing, zoning, subdivision, planning, building, fire, safety, health or environmental matters, compliance with covenants, conditions and restrictions (whether or not of record), other local, municipal, regional, state or federal

requirements, or other statutes, laws, codes, ordinances, regulations or requirements (collectively, "**Condition of the Property**"). Buyer acknowledges that it is entering into this Agreement on the basis of Buyer's own investigation of the physical and environmental conditions of the Property, including the subsurface conditions and Buyer assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation.

4.1.2 RELEASE. EXCEPT FOR ANY BREACH OF SELLER'S EXPRESS OBLIGATIONS UNDER SECTIONS 9.4.1, ~~AND 9.4.2,~~ ~~AND 9.4.3,~~ OR ANY BREACH OF SELLER'S EXPRESS REPRESENTATIONS AND WARRANTIES IN SECTIONS 4.3 OR 9.1, BUYER, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, HEREBY WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES SELLER, ANY CORPORATION WHICH DIRECTLY OR INDIRECTLY CONTROLS OR IS CONTROLLED BY OR IS UNDER COMMON CONTROL WITH SELLER, AND THEIR RESPECTIVE EMPLOYEES, AGENTS, OFFICERS, DIRECTORS, SHAREHOLDERS, SERVANTS, SUCCESSORS AND ASSIGNS, (COLLECTIVELY "**SELLER'S AFFILIATES**") OF AND FROM ANY CLAIMS, ACTIONS, CAUSES OF ACTION, DEMANDS, RIGHTS, DAMAGES, COSTS, EXPENSES, PENALTIES, FINES OR COMPENSATION WHATSOEVER, DIRECT OR INDIRECT, WHICH BUYER NOW HAS OR WHICH BUYER MAY HAVE IN THE FUTURE ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE KNOWN OR UNKNOWN PHYSICAL AND ENVIRONMENTAL CONDITION OF THE PROPERTY OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO.

SELLER: _____

BUYER: _____

4.1.3 General Allocation of Environmental Responsibility. From and after Closing, Buyer, at no cost to Seller, is responsible for conducting any investigation, monitoring, remediation, removal, response or other action required by any governmental agency, court order, law or regulation with respect to any existing or future environmental contamination of the Property (collectively, "**Environmental Remediation**"). The provisions of this Section shall survive the Close of Escrow.

4.1.4 Granite Construction Contamination. Provided, however, notwithstanding the provisions set forth in Sections 4.1.1 and 4.1.2 above, Seller acknowledges that Buyer has not waived, released, remised, acquitted or discharged Seller or Seller's Affiliates from claims, actions, causes of action, demands, rights, damages, costs, expenses, penalties, fines or compensation, if any, on account of or in any way arising out of or in connection with any contamination in, under and emanating from the drainage ditch west of and adjacent to the Granite Construction facility in Watsonville, California, to the extent such contamination is located on the Property on the date of Closing (the "**Granite Construction Contamination**"). Provided, further, notwithstanding the provisions of Section 4.1.3 above, Buyer shall not be responsible to Seller to complete the Environmental Remediation of the Granite Construction Contamination. If during the Feasibility Review Period, either party determines in such party's sole discretion, the costs associated with any potential Environmental Remediation of the Granite Construction Contamination are unacceptable, the party may terminate this Agreement upon written notice to the other. After Closing, Seller shall use commercially reasonable efforts to

cause Granite Construction to complete any Environmental Remediation that may be required by federal, state or local regulatory agencies of the Granite Construction Contamination and to obtain the applicable agency's written acknowledgment that the required Environmental Remediation has been completed. Provided, however, Seller's commercially reasonable efforts to cause Granite Construction to complete any such Environmental Remediation shall be limited to the Property, and Seller shall have no obligation to use any efforts to cause Granite Construction to complete any remediation on, or take any other action with respect to, any property other than the Property. Concurrently with the Closing, Buyer shall grant to Seller a license to access the Property in order for Seller or (if Seller assigns such license to such owner) the owner of such Granite Construction facility to complete any required Environmental Remediation of the Granite Construction Contamination. The license will be in a form reasonably acceptable to both parties and, among other things, will not unreasonably interfere with the use of the Property as an industrial railway corridor. If Granite Construction has not completed such Environmental Remediation by December 31, 2011, Seller shall, within a reasonable time thereafter, commence and work diligently to complete such Environmental Remediation and shall obtain the applicable regulatory agency's written acknowledgment that the required Environmental Remediation has been completed. Also, Buyer and Seller acknowledge that any Environmental Remediation of the Granite Construction Contamination on the Property by Seller shall be proposed to be based on the use of the Property as an industrial railway corridor, and Buyer shall restrict the use of, or accept a use restriction on, the applicable area of the Property accordingly in order to obtain agency approval of any such proposed remediation plan and then to obtain such written acknowledgement following cleanup to a standard acceptable for such use. If Buyer later elects to use the Property for some other purpose, which requires further remediation of the Property, then Buyer, and not Seller, shall have responsibility for such further remediation. Absent Buyer's subsequent change in use of the Property, Buyer assumes no responsibility for the Granite Construction Contamination other than accepting a restriction on the use of the subject portion of the Property, as needed to obtain the regulatory agency's written acknowledgment that the required Environmental Remediation has been completed. Provided, however, at such time as Seller or Granite Construction has obtained such written acknowledgement that the required Environmental Remediation has been completed, Seller shall be deemed to have performed all its obligations under this Section 4.1.4. Provided, however, Seller shall have no responsibility to obtain such written acknowledgment for any property other than the Property. The provisions of this Section shall survive the Close of Escrow.

4.2 Inspection.

4.2.1 Prior to the Execution Date and during the term of the Feasibility Review Period (as defined in Section 6.2), Buyer and its representatives (including architects and engineers) have had and will have the right to enter upon and inspect the Property and conduct such boundary and topographic surveys, soil and engineering tests and environmental assessments with engineers or consultants licensed in the State of California as Buyer may reasonably require; provided that such inspections and tests must not materially damage the Property in any respect; provided, further, that such tests and inspections are conducted in accordance with standards customarily employed in the industry and in compliance with all governmental laws, rules and regulations; provided, still further, that Buyer notifies Seller in

writing at least forty-eight (48) hours prior to the date that each and every of such testing or inspections are to be conducted on the Property and provides evidence, satisfactory to Seller, of the availability of adequate public liability and other insurance, which insurance must name Seller as an additional insured. Following each entry by Buyer on the Property, Buyer shall promptly restore the Property to its original condition as existed prior to any such inspections and/or tests. If Buyer, its agents, representatives or employees undertakes any boring or other disturbance of the soil, the soil so disturbed must be recompacted to the original condition of the Property. Buyer agrees to indemnify, hold harmless and defend (with counsel acceptable to Seller) Seller and Seller's affiliates ("Seller's affiliates" means any corporation which directly or indirectly controls or is controlled by or is under common control with Seller), its and their officers, agents, servants and employees against and from any and all liability, loss, cost, damage or expense (including reasonable attorneys' fees) of whatsoever nature growing out of or in connection with personal injury to or death of persons whomsoever (including, without limitation, exposure to hazardous or toxic substances), or loss or destruction of or damage to property whatsoever (including, without limitation, contamination by hazardous or toxic substances and any required testing, removal or cleanup thereof), where such personal injury, death, loss, destruction or damage arises in any way in connection with or incident to the occupation or use of the Property by, or the presence thereon of, Buyer, its officers, agents or employees and occurs from any such cause; provided, however, that this indemnity expressly excludes (i) any loss due to the diminution in value of the Property due to the discovery of any hazardous materials or conditions during the inspection of the Property by Buyer, its officers, agents or employees, and (ii) any liability arising from the exposure of any existing hazardous materials on the Property to the extent such exposure occurs in the course of inspection activities by Buyer, its officers, agents or employees, except to the extent such liability is caused by the negligence or willful misconduct of Buyer, its officers, agents or employees. If Buyer discovers any hydrocarbon substances or any other hazardous or toxic substances, asbestos or asbestos-bearing materials, waste or materials subject to legal requirements or corrective action, Buyer shall immediately notify Seller of the same. The indemnity obligations of Buyer under this Section will survive any termination of this Agreement or the ~~Closed delivery of Escrow, the Deed and the transfer of title.~~ As a material consideration for Seller entering into this Agreement, Buyer shall, upon request by Seller, promptly deliver to Seller, without charge therefor, the results and copies of any and all surveys, reports, tests, studies or assessments made by or for Buyer, development approvals and correspondence with governmental entities with respect to the Property.

4.2.2 Mechanics' Liens. Buyer agrees to pay in full for all materials joined or affixed to the Property and 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, for any work done or materials furnished thereon at the instance or request or on behalf of Buyer; and Buyer agrees to indemnify, hold harmless and defend (with counsel acceptable to Seller) Seller and Seller's affiliates, its and their officers, agents, servants and employees 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 prior to Closing.

4.3 Seller's Deliveries. Seller represents and warrants that Seller has delivered to Buyer copies of all agreements covering the Property that are disclosed by Seller's Standard Real Estate Search. Seller's Standard Real Estate Search means the following procedure: Seller's Real Estate Department (i) determines the location of the property in question and converts the information into a data base inquiry which is run against Seller's Real Estate Management System data base of over 300,000 agreements to generate a list of documents affecting the property in question as revealed by the data base, and (ii) searches for the listed documents in the Real Estate Department records in Omaha, Nebraska, which location is where documents in Seller's Real Estate Management System data base are stored and maintained in the ordinary course of Seller's business. Seller makes no representations or warranties with respect to the accuracy or completeness of the list of agreements generated by Seller's Standard Real Estate Search.

ARTICLE V – TITLE TO LINE

5.1 Closing. At the Closing (as defined in Section 8.2.1), Seller shall execute and deliver to Buyer a Quitclaim Deed (the “**Deed**”) to the Line in the form of **Exhibit D** attached hereto. Title must be evidenced by the issuance by First American Title Company (the “**Title Company**”), at Buyer’s cost, of a CLTA owner’s policy of title insurance in the full amount of the Purchase Price (the “**Title Policy**”), insuring sufficient title to the Line in Buyer to allow the use of the Line for rail operations and other transportation purposes, subject only to the following (the “**Permitted Exceptions**”):

5.1.1 a lien to secure payment of real property taxes and assessments, not delinquent;

5.1.2 matters affecting the condition of title created by, or permitted to be created by or with the written consent of, Buyer;

5.1.3 those Property Materials identified in **Exhibit C** attached hereto, except for the environmental documents listed in part I thereof;

5.1.4 standard exceptions in the Title Policy, and exceptions which are disclosed by the Title Report described in Section 6.1 or any supplementary report and which are approved or deemed approved by Buyer in accordance with Section 6.1;

5.1.5 matters which would be disclosed by a survey of the Line;

5.1.6 all of the licenses, permits, easements and agreements affecting the Property that have been disclosed in writing to Buyer pursuant to this Agreement, including without limitation, the agreements listed on **Exhibit E** attached hereto; and

5.1.7 the Retained Rights.

ARTICLE VI – BUYER’S CONDITIONS TO CLOSING

The following are conditions precedent to Buyer’s obligation to purchase the Property:

6.1 Approval of Title.

6.1.1 Buyer acknowledges receipt of a preliminary title report on the Property issued by Title Company, dated as of January 9, 2005, Order No. NCS138073-SC, as supplemented March 8, 2005, and September 1, 2009 ("**Title Report**"), together with copies of the documents underlying the exceptions contained therein. On or before forty-five (45) days prior to Closing ("**Title Contingency Date**"), Buyer shall have the right to obtain an update or supplement to the Title Report and then deliver written notice to Seller ("**Buyer's Title Notice**") of all matters of title to the Property, which are shown on the update or supplement to the Title Report and not shown on the Title Report and which are disapproved by Buyer ("**Disapproved Items**"). Buyer's failure to deliver Buyer's Title Notice by the Title Contingency Date will be deemed to be Buyer's approval of the legal description and all existing title matters as shown in all updates to the Title Report. (Buyer acknowledges its approval of the matters of Title to the Property disclosed on the Title Report, except for the right of first refusal referenced in Section 6.10, below.) If Buyer timely notifies Seller of Disapproved Items and all or some of the Disapproved Items (except for those Disapproved Items, if any, which will be removed upon the Close of Escrow in accordance with the terms of this Agreement) are not cured or deleted as exceptions to title on or before twenty (20) days prior to Closing ("**Seller's Cure Period**"), Buyer will have the option of either waiving its disapproval of such Disapproved Items and proceeding to the Close of Escrow or terminating this Agreement, in which event the provisions of Section 6.1.3 will govern. In the event Buyer elects to terminate this Agreement pursuant to this Section 6.1, Buyer shall notify Seller of its election by written notice on or before Closing. Buyer's failure to timely deliver written notice to Seller of its election will be deemed to be Buyer's election to waive its disapproval of such Disapproved Items. In no event will Seller's failure to cure or delete as exceptions to the Title Policy any Disapproved Items be deemed to be a breach of this Agreement by Seller or entitle Buyer to any offset against the Purchase Price.

6.1.2 Title Company's willingness to issue a CLTA title insurance policy in the amount of the Purchase Price, subject only to such exceptions to title as have been approved by Buyer as provided in Section 6.1.1, above, shall be a condition precedent to Buyer's obligation to purchase the Property.

6.1.3 If this Agreement is terminated pursuant to Section 6.1, Buyer shall pay one-half of the Cost of Cancellation of the Escrow, and neither party will have any further rights or obligations under this Agreement other than the obligations of and indemnity by Buyer in Section 4.2, the confidentiality provisions of Section 12.22 and the provisions of Sections 8.2.3, 9.4 and 12.21 (collectively, the "**Surviving Obligations**"). The term "**Cost of Cancellation of the Escrow**", as used herein shall be limited to the costs accrued and charged by Escrow Holder and the Title Company for the cancellation of Escrow.

6.2 Feasibility Review. Buyer will have approved on or before ~~October 15~~August 20, 2010, ("**Feasibility Review Period**"), the condition of the Property and the feasibility of Buyer's plan therefor. Buyer's feasibility review pertains to Buyer's review of and satisfaction with the following:

(i) Buyer's engineering studies, soils investigations, environmental assessments, surveys and physical inspection of the Property; and

(ii) all other matters Buyer determines necessary to evaluate the Property.

Buyer may elect, no later than the expiration of the Feasibility Review Period, to terminate this Agreement as a result of Buyer's disapproval of any of the foregoing matters; provided, however, that if Buyer fails to notify Seller and Escrow Holder of Buyer's disapproval by written notice delivered to Seller no later 5:00 p.m. Pacific Time on the date three (3) business days after expiration of the Feasibility Review Period, Buyer will be deemed to have approved its evaluation of the Property and this condition will be deemed satisfied. If this Agreement is terminated pursuant to the foregoing provisions of this Section 6.2, Buyer shall pay one-half of the Cost of Cancellation of the Escrow, and neither party will have any further rights or obligations under this Agreement (except for the Surviving Obligations). If Buyer identifies the existence of hazardous materials on or under the Property that were not previously disclosed to Buyer in writing and that have a material and adverse effect on Buyer's valuation of the Property, then Buyer shall deliver to Seller detailed information regarding such findings, but Buyer shall otherwise hold such information in confidence in accordance with the terms of the Right of Entry Agreement.

6.3 Compliance by Seller. Seller will have substantially complied with each and every condition and material covenant of this Agreement to be kept or complied with by Seller.

6.4 Approval. Buyer will have approved the condition of the Property and the feasibility of Buyer's plan therefor in accordance with Section 6.2 on or before the end of the Feasibility Review Period.

6.5 Buyer's Approval of Settlement Statement. Buyer will have approved the Buyer's settlement statement.

6.6 Financing. Buyer will have received funding from the California Transportation Commission and other funding agencies sufficient to meet its financial obligations under this Agreement.

6.7 Labor Notice. Seller, not fewer than sixty (60) days before the Closing Date, will have given to the Brotherhood of Maintenance of Way Workers notice of the sale of the Line and the transfer of Seller's freight common carrier obligations to the Short Line Operator.

6.8 Short Line Operator.

6.8.1 On or before the Closing, (a) Buyer will have entered into an Administration and Coordination Agreement with the Short Line Operator, which Administration and Coordination Agreement shall provide, notwithstanding its other provisions, that in the event that Buyer does not (i) secure funding of Five Million Dollars (\$5,000,000.00) to perform the Rehabilitation Work by February 1, 2011 or (ii) complete all Rehabilitation Work by March 1, 2013, then in either event Buyer acknowledges the Short Line Operator, or its

successors and assigns, shall have the right, but not the obligation, to request at any time from the STB authority (or an exemption therefrom) to discontinue or abandon freight common carrier obligations on the Line or any portion thereof, and further that in the event Short Line Operator makes such a request to discontinue or abandon to the STB, Buyer shall not make any objection to the STB related to Short Line Operator's request or otherwise make any filing with the STB which could delay Short Line Operator's obtaining the requested relief from the STB, and further that Short Line Operator shall be released from any obligation under the Administration and Coordination Agreement with respect to or in any way arising out of the physical condition of the Line; and (b) Seller and the Short Line Operator will have entered into (i) an Interchange Agreement covering the interchange of freight car equipment at ~~Watsonville Pajaró~~ Junction, (ii) a Cooperative Marketing Agreement covering allocation of routing, rates and tariffs for rail shipments over the Line, (iii) an agreement approved by Buyer by which Seller transfers its retained easement for freight railroad purposes to the Short Line Operator, and (iv) ~~an Industrial Track Agreement approved by Buyer by which Seller grants to the Short Line Operator a license to conduct freight rail operations over Seller's track from Milepost 31.39 to the north end of Seller's track at or near Milepost 31.90a~~ a track lease (the "**Track Lease**") on Seller's customary form of track lease covering any and all trackage owned by Seller north of the Property that Short Line Operator requires in order to provide freight rail service to the property adjacent to such trackage and served over such trackage. The Track Lease shall provide that, beginning on January 1, 2011, if Short Line Operator does not provide at least [150] rail carloads of freight rail service to or from such property in any twelve (12) month period, which provide road haul revenue, then Seller shall have the right to terminate the Track Lease. The Track Lease shall further provide that it shall be assigned to any successor Short Line Operator designated by the Buyer and approved by the STB to be the freight rail operator on the Line, provided that the Track Lease is then still in effect. The Interchange Agreement and the Cooperative Marketing Agreement between Seller and the Short Line Operator shall be confidential and shall not be assignable by the Short Line Operator or disclosed to any other person without the prior written consent of Seller, which consent could be withheld by Seller in its sole discretion.

6.8.2 Buyer shall file with the Surface Transportation Board ("**STB**") either a Petition for declaratory order that Buyer's proposed acquisition of the assets of the Property does not require STB authorization under 49 U.S.C. 10901 because the transaction comports with Maine, DOT - Acq. Exemption, ME Central R. Co., 8 I.C.C.2d 835 (1991) and its progeny or a Notice or Petition seeking an exemption for the approval of the Buyer's purchase of the Property with a Motion to Dismiss requesting that the STB confirm the Buyer will not, upon Closing, be a "**Rail Carrier**" as that term is defined in 49 U.S.C. Section 10102(5) on the Line, provided that the Short Line Operator shall file its Notice or Petition for Exemption under 49 U.S.C. 10502 with the STB seeking an exemption from 49 U.S.C. 10902 permitting the Short Line Operator to acquire and operate the permanent exclusive freight operating easement. The Closing hereunder is also to be conditioned upon the Buyer, the Short Line Operator and/or the Seller, as applicable, obtaining from the STB all decisions necessary for the Short Line Operator to acquire and operate the freight operating easement on the Line, and for Seller to be released from the satisfied that Seller has no further freight common carrier obligation on the Line ~~or and on Seller's Property~~ trackage north of the Line, whether through abandonment or change of the status of Seller's trackage north of the Line from mainline to spur trackage, and for the Buyer that consummation of the transactions contemplated by this Agreement shall not make Buyer a Rail Carrier as that term is defined in 49 U.S.C. §10102(5) on the Line. Buyer and Seller shall

cooperate with any reasonable request made by Buyer, Seller or Short Line Operator in connection with the filings to be made with the STB in connection with this transaction. If any person objects at the STB to any or all of the filings made by the parties hereto or the decisions of the STB related to such filings, Buyer and Seller shall coordinate with the Short Line Operator and undertake commercially reasonable efforts to satisfy and overcome any and all such objections of any such persons in order to obtain the above-referenced decisions sought by the parties from the STB. If applicable, Buyer shall not file a Statement of Willingness to Assume Financial Responsibility or make an Offer of Financial Assistance in connection with Seller's abandonment of, or change in status of, such trackage north of the Property, and any transaction between Buyer and Seller for Seller's property north of the Property shall be an arms length transaction outside of STB jurisdiction or proceedings.

6.8.3 In the event the STB determines prior to the Closing Date that it has jurisdiction over the transactions contemplated by this Agreement and imposes a material adverse condition (such as labor protection) on Seller, and Buyer does not agree to meet such condition or to indemnify Seller for the costs and expenses of meeting such condition (or does not reasonably demonstrate its ability to meet such condition(s) or to indemnify Seller), then Seller shall have the right to terminate this Agreement by providing written notice thereof to Buyer prior to Closing. In the event of such termination by Seller, neither party shall have any further rights or obligations under this Agreement, except for the Surviving Obligations.

6.9 No Litigation. No court or agency shall have issued a legally binding order restraining the consummation of the transactions contemplated by this Agreement, and no litigation materially affecting the Property shall have been commenced.

6.10 Satisfaction or Waiver of Right of First Refusal. Seller shall have satisfied the requirements of the right of first refusal held by Santa Cruz Big Trees & Pacific Railway Company ("**Big Trees**"), which right of first refusal is memorialized in the Memorandum of Right of First Refusal Agreement, recorded in the Official Records of Santa Cruz County in Book 3877, Page 97. Big Trees either shall have failed to exercise its right to acquire the Property, or shall have expressly waived its right of first refusal. Satisfaction or waiver of said right of first refusal shall be evidenced by the Title Company's issuance of a title insurance policy pursuant to Section 6.1.2 that does not include said right of first refusal as an exception to title.

6.11 Hazardous Materials Insurance. Buyer shall have obtained a commitment for hazardous materials insurance coverage acceptable to Buyer.

ARTICLE VII – SELLER’S CONDITIONS TO CLOSING

The following are conditions precedent to Seller’s obligation to sell the Property:

7.1 Seller’s Management Approval. The terms and conditions of this transaction will have been approved in accordance with Seller’s Management Policy Statement. Notice of approval or disapproval shall be given by Seller to Buyer on or before ten (10) business days after the execution of this Agreement by both parties and failure to give such notice within said

time period will be deemed notice of disapproval. In the event, within said time period, the terms of this Agreement are not approved in accordance with Seller's Management Policy Statement for any reason whatsoever (except for Buyer's default or a termination of this Agreement by Buyer), this Agreement will be deemed terminated forthwith. If this Agreement is terminated pursuant to the foregoing provisions of this Section 7.1, Seller will pay the Cost of Cancellation of the Escrow, and neither party will have any further rights or obligations under this Agreement (except for the Surviving Obligations).

7.2 Compliance by Buyer. Buyer will have complied with each and every condition and material covenant of this Agreement to be kept or complied with by Buyer.

7.3 Seller's Approval of Settlement Statement. Seller will have approved Seller's settlement statement.

7.4 Short Line Operator. The conditions of Section 6.8 of this Agreement shall have been satisfied.

7.5 Financing. The conditions of Section 6.6 of this Agreement shall have been satisfied.

7.6 Labor Issues. Seller will have assured itself, in its sole discretion, that the sale of the Line to Buyer will not result in a work stoppage on Seller or any of its affiliate's lines of railroad, and that there are no other labor issues which might jeopardize the anticipated benefits to Seller of the sale of the Line.

7.76 No Litigation. No court or agency shall have issued a legally binding order restraining the consummation of the transactions contemplated by this Agreement, and no litigation materially affecting the Property shall have been commenced.

7.87 Satisfaction or Waiver of Right of First Refusal. The conditions of Section 6.10 of this Agreement shall have been satisfied.

ARTICLE VIII – OPENING AND CLOSING OF ESCROW

8.1 Opening of Escrow and Escrow Instructions. Upon execution of this Agreement, the parties shall deposit one executed counterpart of this Agreement with Escrow Holder and this instrument will serve as the instructions to Escrow Holder for consummation of the purchase and sale contemplated hereby, including Escrow Holder's general provisions which are contained in **Exhibit F** attached hereto to the extent said general provisions do not conflict with the provisions contained in this Agreement. Escrow Holder shall insert the date of the Opening of Escrow on the upper right hand corner of the first page of this Agreement on each counterpart. The "**Opening of Escrow**" is the date upon which Escrow Holder has received executed counterparts of this Agreement from both Buyer and Seller. Escrow Holder is only responsible for undertaking such matters in connection with the Closing as are specifically provided for herein or in any additional or supplementary escrow instructions delivered by the parties. If the Opening of Escrow has not occurred within five (5) business days after the Execution Date, this Agreement, and the terms and conditions contained herein, will be null and void and of no further force and effect.

8.2 Closing.

8.2.1 Closing Date. The consummation of the transaction contemplated by this Agreement and recording of the Deed (the “**Closing**” or “**Close of Escrow**”) will occur and delivery of all items to be made at the Closing under the terms of this Agreement will be made on or before ~~November 12~~September 24, 2010 (the “**Closing Date**”).

8.2.2 Preclosing Conditions. Neither party will have any obligation to Close on the Property unless each and every condition set forth in Sections 8.3 and 8.4 below has occurred on or before the Closing Date. Provided that (a) Escrow Holder can comply with these instructions, (b) Escrow Holder has received the deliveries described in Sections 8.3 and 8.4 below, (c) Escrow Holder has not received prior written notice from a party that any condition to such party’s obligations has not been fulfilled, (d) ~~Buyer~~ has not elected to terminate its rights and obligations hereunder pursuant to Article ~~IV or Article~~ VI, (e) ~~Seller~~ has not elected to terminate its rights and obligations hereunder pursuant to Article ~~IV or Article~~ VII, and (f) ~~the~~ Title Company has issued or is unconditionally prepared to issue to Buyer, as of the Closing Date, the Title Policy, then Escrow Holder is authorized and instructed to: (i) record the Deed, (ii) deliver the Purchase Price to Seller, as adjusted pursuant to the approved settlement statements, (iii) deliver a conformed copy of the recorded Deed and fully executed counterparts of all other closing documents to Buyer and Seller, and (iv) deliver the settlement statements to Buyer and Seller in accordance with Section 8.2.4 below.

8.2.3 Failure to Close. If the Closing does not occur on or before the Closing Date, then either party not then in default may elect to terminate this Agreement and cancel Escrow by giving written notice of such termination and cancellation to the other party and to Escrow Holder. In the event of such termination and cancellation, neither party will have any further obligations hereunder (other than the Surviving Obligations) and all documents and other instruments must be returned to the party depositing the same into Escrow. In the event neither party is in default, then Buyer and Seller shall share equally the Cost of Cancellation of the Escrow. In the event only one of the parties hereto is in default or if this Agreement expressly so provides, then such defaulting party shall pay for the entire Cost of Cancellation of the Escrow. The termination of this Agreement and cancellation of Escrow, as provided herein, will be without prejudice to whatever legal rights, as said rights may be limited by the terms contained in this Agreement, that Buyer or Seller may have against each other arising out of this Agreement and the Escrow. If neither party so elects to terminate this Agreement and cancel Escrow, Escrow Holder shall close the Escrow as soon as possible.

8.2.4 Notification; Settlement Statements. If Escrow Holder cannot comply with the instructions herein and to be provided, Escrow Holder is not authorized to cause the recording of the Deed or close this Escrow. If Escrow Holder is unable to cause the recording of the Deed, Escrow Holder shall notify Rick Gooch at (415) 439-5345 and Luis Mendez at (831) 460-3212, without delay. If Escrow Holder is able to comply with the instructions herein and to be provided, at the Closing Escrow Holder shall deliver to Seller a true, correct and complete copy of the Seller’s settlement statement, and shall deliver to Buyer at the Closing a true, correct and complete copy of Buyer’s settlement statement.

8.3 Deliveries by Seller. Not later than one business day prior to the Closing Date, Seller shall deposit with Escrow Holder the following items:

8.3.1 Deed. The Deed in the form of **Exhibit D** duly executed and acknowledged by Seller;

8.3.2 Assignment. The Assignment and Assumption Agreement in the form of **Exhibit E** duly executed by Seller, whereby Seller assigns to Buyer, and Buyer assumes, the Leases and Other Agreements (to the extent noted in **Exhibit E**);

8.3.3 Non-Foreign Status Certificate. A Non-Foreign Status Certificate pursuant to Internal Revenue Code Section 1445 duly executed by Seller in the form of **Exhibit G**;

8.3.4 California Form 593-C. California Form 593-C duly executed by Seller in the form of **Exhibit H**;

8.3.5 Bill of Sale. The Bill of Sale duly executed by Seller in the form of **Exhibit B** attached hereto; and

8.3.6 Other Documents. Any other documents, instruments, data, records, correspondence or agreements reasonably necessary for the Closing which have not previously been delivered.

8.4 Deliveries by Buyer. Not later than one business day prior to the Closing Date, Buyer shall deposit with Escrow Holder the following items:

8.4.1 Purchase Price. Immediately available funds in an amount sufficient to satisfy Buyer's obligations under this Agreement, including payment of the Purchase Price, payment of those costs described in Sections 8.6, 8.7 and 8.8 below, and any other amounts included in Buyer's approved settlement statement;

8.4.2 Deed. An executed acceptance of the Deed;

8.4.3 Assignment. The Assignment and Assumption Agreement described in Section 8.3.2 above, duly executed by Buyer;

8.4.4 Tax Letter. A threat of condemnation letter in the form attached hereto as **Exhibit J**; and

8.4.5 Other Documents. Any other documents, instruments, data, records, correspondence or agreements reasonably necessary for the Closing which have not been previously delivered.

8.5 Other Instruments. Seller and Buyer shall each deposit such other instruments and take such other actions as are reasonably required by Escrow Holder or otherwise required to close the Escrow and consummate the purchase of the Property in accordance with the terms of this Agreement.

8.6 Prorations. All revenues and expenses of the Property, including, without limitation, real property taxes, special taxes, assessments and utility fees and/or deposits, and rentals under the Lease(s), will be prorated and apportioned between Buyer and Seller as of the Closing Date, so that Seller bears all expenses with respect to the Property and has the benefit of all income with respect to the Property through and including the Closing Date. Seller and Buyer agree that any of the aforesaid prorations which cannot be calculated accurately as of the Closing Date will be prorated on the basis of the parties' reasonable estimates.

8.7 Special Taxes, Bonds or Assessments. If, at the time of Closing, any portion of the Property is affected by an assessment or other charge, whether for taxes or bonds, or interest thereon, which is or may become payable in installments, and an installment payment of such assessment is then a lien, then such installment will be prorated as the Closing Date. All installments not then yet due whether or not the same have been prepaid will not be prorated and Buyer shall assume such bonds or assessments. Any prepaid assessments made in advance of its due date will be credited to Seller. In addition, Buyer shall assume any and all future bonds, assessments, special taxes, fees or charges applicable to the Property for liabilities now or hereafter imposed by any governmental authority (collectively referred to as "**Governmental Requirements**") including, without limitation, any such Governmental Requirements imposed by Santa Cruz County or any municipality with jurisdiction over a portion of the Property, and those for (a) common area improvements, whether or not specifically set forth in this Agreement, (b) local assessment or improvement districts, (c) any special tax assessments, (d) traffic mitigation improvements (e) park and recreation fees, and/or (f) any other public facility infrastructure or traffic mitigation required or imposed by Santa Cruz County or any municipality with jurisdiction over a portion of the Property. Buyer shall assume all such bonds or future assessments without offset or adjustment.

8.8 Costs and Expenses. Notwithstanding any other allocation of costs and expenses set forth in this Agreement that applies in the event the Closing does not occur, the costs and expenses of Escrow upon Close of Escrow will be allocated as follows: Buyer shall pay the premium for the Title Policy and the cost of any documentary or other transfer taxes applicable to the sale. Buyer shall pay all other closing costs, except that Buyer and Seller shall share equally the charges of the Escrow Holder.

8.9 Disbursement of Funds. On the Close of Escrow, Escrow Holder shall disburse the full amount due to Seller pursuant to the settlement statement in immediately available funds, and, unless otherwise instructed by Seller, Escrow Holder shall cause such funds to be sent by wire transfer as follows:

US Bank
Omaha, Nebraska 68102
ABA Routing #104000029
For Credit Union Pacific Railroad Company
Account No. 148744571164

Such funds are to be wired on or before 11:00 a.m. Central Daylight Time on such date in order that such funds may be received by Seller on the Close of Escrow; provided, however, that

if such funds cannot be wired to Seller on the Close of Escrow, Escrow Holder shall, unless otherwise directed in writing by Seller, invest the funds overnight in an interest-bearing account.

8.10 Delivery of Documents. Upon the Close of Escrow, Escrow Holder shall promptly deliver all instruments and documents to such party's attorney specified in Section 12.9. Escrow Holder shall promptly deliver to the party entitled thereto the recorded originals of such instruments or documents upon Escrow Holder's receipt of the same.

ARTICLE IX – REPRESENTATIONS, WARRANTIES AND COVENANTS

9.1 Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer as of the date of this Agreement, as follows:

9.1.1 Organization. Seller is a corporation duly organized, validly existing and in good standing under the laws of the state of Delaware and qualified to do business in California and has the authority to own and convey the Property.

9.1.2 Enforceability. This Agreement and all documents executed by Seller which are to be delivered to Buyer at the Closing are intended, provided Buyer has duly executed those documents requiring Buyer's signature, to be legal, valid, and binding obligations of Seller, and do not and at the time of Closing will not violate any provisions of any agreement or judicial order to which Seller is a party or to which Seller or the Property is subject.

9.1.3 Litigation; Condemnation. Except as disclosed on Exhibit C or noted in Section 9.1.5 below, Seller has no actual, current knowledge of receiving any written notice of any pending actions, suits, proceedings, governmental investigations (including environmental investigations) or claims, or of any judgments, orders or decrees entered in any lawsuits or governmental proceedings against or involving the Property (including, without limitation, any condemnation or eminent domain proceedings).

9.1.4 Senior Rights. To Seller's actual knowledge, no tenant or other third party has any agreement or right granted by Seller to purchase all or any part of the Property that is senior to Buyer's rights hereunder, except for the right of first refusal granted to Big Trees (as evidenced by that certain Memorandum of Right of First Refusal Agreement, recorded in the Official Records of Santa Cruz County in Book 3877, Page 97).

9.1.5 Violations of Law. Except as set forth in the following sentence or disclosed on Exhibit C, Seller has no actual knowledge that Seller has received any written notice from any governmental entity or representative thereof of any violation of any applicable law, ordinance, rule, regulation or requirement of any governmental agency relating to the Property. There is petroleum contamination on the Property originating from Granite Construction's facility located at 580 W. Beach St., Watsonville, CA. Seller has notified Granite Construction of the contamination by letter dated October 23, 2009. Buyer acknowledges its receipt of a copy of said letter.

9.1.6 Hazardous Materials. Except as stated in Sections Section [4.1 and 9.1.5] of this Agreement, Seller has no actual knowledge of (a) any material release of a Hazardous

Material, as defined below, on or beneath the Property; (b) receipt of any written governmental notice that any of the Property is in violation, in any material respect, under any law, or other governmental or judicial requirement, relating to Hazardous Materials; (c) any existing, pending or threatened investigation by any governmental authority under or in connection with any law, or other governmental or judicial requirement, relating to Hazardous Materials; or (d) environmental assessment reports concerning the Property other than those prepared by Buyer.

As used in this Section 9.1, the term "Hazardous Materials" shall mean any hazardous or toxic substance, material or waste regulated by or subject to any local governmental authority, any agency of the State of California, or any other agency of the United States Government, including, without limitation, any material or substance which is (A) defined as a "hazardous waste", "extremely hazardous waste", "restricted hazardous waste", "hazardous substance", "hazardous material", "toxic material" or "toxic substance" under any federal, state or local governmental rule, regulation, ordinance, statute or act; (B) petroleum and any petroleum by-products; (C) asbestos; (D) urea-formaldehyde foam insulation; or (E) polychlorinated biphenol.

9.1.7 No Material Noncompliance with Leases and Other Agreements. To Seller's actual knowledge, except as disclosed in the Property Materials, there is no outstanding material noncompliance with Seller's obligations under the Leases and Other Agreements.

9.1.8 Seller's Knowledge. The term "Seller's actual knowledge" as used in this Section 9.1 means and is limited to the actual (not constructive) knowledge of Richard L. Gooch, Director-Special Properties, Jerry Wilmoth, General Manager-Network Infrastructure, James Levy, Program Manager-Site Remediation of Seller, Chris Goble, General Director - Real Estate~~[insert title]~~, James Diel, Manager Environmental Site Remediation~~[insert title]~~, and Tanya Pratt, Manager – Real Estate Sales~~[insert title]~~, without any duty to make any investigation or inquiry.

9.2 Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller as of the date of this Agreement, as follows:

9.2.1 Organization. Buyer is a public agency, duly organized, validly existing and in good standing under the laws of the State of California, with full power and authority to enter into and comply with the terms of this Agreement.

9.2.2 Enforceability. This Agreement and all documents executed by Buyer which are to be delivered to Seller at the Closing are intended, provided Seller has duly executed those documents requiring Seller's signature, to be legal, valid, and binding obligations of Buyer, and do not and at the time of Closing will not violate any provisions of any agreement or judicial order to which Buyer is a party or to which it is subject.

9.3 Survival. The foregoing representations and warranties of Seller and Buyer shall survive the ~~Close~~Closing and the delivery of ~~Escrow~~the Deed.

9.4 Covenants of Seller.

9.4.1 No Compensation Claims. Seller acknowledges and agrees that it has offered to sell the Property to Buyer and that it is not entitled to any claims related to the acquisition and development of real property by a governmental agency, including without limitation, just compensation claims, takings claims, constitutional claims, nor claims for assistance under the provisions of the Uniform Relocation Assistance and Real Easement Property Acquisition Policies Act (42 U.S.C. § 4601, *et seq.*), the California Relocation Assistance Act (California Government Code § 7260, *et seq.*) or any other federal, state or local law, ordinance or regulation requiring the provision of relocation assistance to persons displaced by action of public agencies by reason of the transactions contemplated by this Agreement (collectively, “**Compensation Claims**”). Seller further acknowledges and agrees that the transaction contemplated by this Agreement is intended to settle all Compensation Claims for this transaction.

9.4.2 Leases, Licenses, and Other Agreements. Prior to the Closing Date, Seller shall not enter into any new lease, license, or other agreement affecting the Property, or modify any existing such lease, license, or other agreement, in any material way adverse to Buyer’s intended use of the Property without Buyer’s prior written consent, which consent shall not be unreasonably withheld.

9.4.3 Encumbrances. Prior to the Closing Date, Seller shall not encumber any part of the Property, or otherwise materially impair (except as otherwise contemplated by or permitted under this Agreement) the state of title to the Property.

9.4.4 Cooperative Marketing Agreement and Interchange Agreement. If requested by Buyer, Seller will enter into a Cooperative Marketing Agreement and Interchange Agreement with Buyer or Buyer's designee. The terms and conditions of such Cooperative Marketing Agreement and Interchange Agreement shall be in accordance with the then standard Seller form of such agreements and shall follow all then applicable laws, regulations and standards including, but not limited to, all applicable FRA, STB and AAR laws, regulations and standards, provided, however, that commercial terms covering division of revenues and expenses for serving shippers on the Line (“Commercial Terms”) shall be substantially equivalent to the Commercial Terms that would then be applicable to the Short Line Operator if the Short Line Operator continued to operate on the Line.

9.5 Accuracy of Representations and Warranties as of Closing. All representations and warranties by the respective parties contained herein are intended to remain true and correct as of the Closing, and are deemed to be restated at Closing except with respect to variances of which written notice are given as provided below in this Section. If a party (or Seller's Representative(s), in the case of the representations limited to the knowledge of such persons) has knowledge that a representation and warranty in this Article IX is no longer true, such party shall immediately give the other party written notice of such variance. The party benefited by the representation and warranty may elect to terminate this Agreement, or may waive the variance by giving the other party written notice of such election (i) within ten (10) days after such written notice of variance is given or (ii) prior to Closing in the event such notice is given within ten (10) days of Closing. If the benefited party does not give timely notice of termination or waiver, then the benefited party will be deemed to have waived the variance. If this Agreement is terminated

pursuant to this Section, neither party shall have any further rights or obligations under this Agreement except for the Surviving Obligations.

9.6 Mutual Representations and Covenants, Brokers and Finders. Each party is responsible for all broker's fees or other commissions payable to any broker or any other person engaged by it in connection with the transaction contemplated hereby. No broker's fee, finder's fee, commission or similar compensation will be paid to principals of Buyer or Seller in connection with this Agreement. In the event of a claim for broker's fee, finder's fee, commission or other similar compensation in connection herewith other than as set forth above, Buyer, if such claim is based upon any agreement alleged to have been made by Buyer, agrees to indemnify and hold Seller harmless against any and all liability, loss, cost, damage or expense (including reasonable attorneys' fees and costs) which Seller may sustain or incur by reason of such claim; and Seller, if such claim is based upon any agreement alleged to have been made by Seller, agrees to indemnify and hold Buyer harmless against any and all liability, loss, cost, damage or expense (including reasonable attorneys' fees and costs) which Buyer may sustain or incur by reason of such claim. The provisions of this section will survive the Close of Escrow or termination of this Agreement.

9.7 Freight Operations. At Closing, Seller will transfer the freight rail operations on the Line to the Short Line Operator.

ARTICLE X – CONDEMNATION AND CASUALTY

10.1 Condemnation. If, prior to the Close of Escrow, a governmental agency other than Buyer commences or imminently threatens in writing to commence any eminent domain proceedings to take any material portion of the Property that would adversely affect Buyer's ability to use the Property for rail operations or other transportation purposes, Buyer and Seller each will have the unilateral right, exercisable by giving notice of such decision to the other party within thirty (30) days after receiving written notice of such actual or threatened condemnation proceedings (but before the Closing Date), to terminate this Agreement, in which case Buyer and Seller each shall pay one-half of the Cost of Cancellation of the Escrow and neither party will have any further rights or obligations under this Agreement (other than the Surviving Obligations). If neither party elects to terminate pursuant to this Section 10.1, the net proceeds of condemnation awards payable to Seller by reason of such condemnation will be paid or assigned to Buyer upon the Close of Escrow.

10.2 Casualty. If, before the Close of Escrow, the Property is damaged by fire, flood, earthquake or other insured casualty to a material degree, that is, if the cost of restoration of the damaged Property exceeds One Hundred Thousand Dollars (\$100,000), Buyer will have the option either to (a) elect not to acquire the Property, in which case this Agreement will terminate, and the parties will be relieved of all further rights and obligations with respect thereto or (b) acquire the Property, subject to such casualty, without adjustment in the Purchase Price and otherwise in accordance with the terms and provisions of this Agreement, but Buyer will be entitled to all insurance proceeds paid by an insurer on account of such casualty which would otherwise accrue to Seller as compensation for losses to the Property. Buyer shall give written notice to Seller of any election pursuant to this Section 10.2 within thirty (30) business days following receipt by Buyer of any written notice of such casualty. Failure of Buyer to make such

election within said period will be deemed an election to proceed to purchase the Property pursuant to clause (b) above. If, before the Close of Escrow, the Property suffers a casualty other than to an extent entitling Buyer to elect not to acquire the Property pursuant to this Section 10.2, Buyer shall Close the transaction contemplated by this Agreement in accordance with the terms hereof as though such casualty had not occurred, except that Seller shall, at Closing, pay or assign to Buyer any net insurance proceeds paid or payable to Seller in respect thereof. Risk of physical loss to the Property on and after the Closing shall be borne by Buyer.

ARTICLE XI – LABOR PROTECTION

11.1 Seller's Responsibilities. Seller is solely responsible for all of its obligations to its employees, whether represented or not represented, including such obligations arising out of any federal or state labor law or regulation and all collective bargaining agreements between Seller and any third party. Seller is solely responsible, at its expense, for resolution of any claims or grievances asserted against it and Buyer with respect to Seller's employees, whether represented or not represented, including claims or grievances asserted pursuant to collective bargaining agreements or otherwise. Buyer does not assume any obligation to Seller's employees or any obligation arising from any collective bargaining agreements between Seller and any third party.

11.2 Buyer's Responsibilities. Buyer is solely responsible for all of its obligations to its employees, whether represented or not represented, including such obligations arising out of any federal or state labor law or regulation and all collective bargaining agreements between Buyer and any third party. Buyer is solely responsible, at its expense, for resolution of any claims or grievances asserted against it and Seller with respect to Buyer's employees, whether represented or not represented, including claims or grievances asserted pursuant to collective bargaining agreements or otherwise. Seller does not assume any obligation to Buyer's employees or any obligation arising from any collective bargaining agreements between Buyer and any third party.

11.3 Indemnity. Each party shall indemnify, defend and hold harmless the other party from and against any and all claims, losses, fines, assessments and other damages suffered by the other party arising from obligations assumed by the indemnifying party pursuant to this Article XI.

ARTICLE XII – MISCELLANEOUS

12.1 Agreement Expenses. The parties agree to bear their respective expenses, incurred or to be incurred in negotiating and preparing this Agreement and in closing and carrying out the transactions contemplated by this Agreement.

12.2 Satisfaction or Waiver of Contingencies. The consummation of the Closing will be conclusive evidence that the contingencies and conditions to Closing have been fully satisfied or waived.

12.3 Successors and Assigns. This Agreement will be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. Buyer's interest under this Agreement may not be assigned, encumbered or otherwise transferred, whether voluntarily,

involuntarily, by operation of law or otherwise. Any assignment, encumbrance or other transfer in violation of the foregoing will be void and Buyer will be deemed in default hereunder.

12.4 Parties in Interest. Except as expressly provided in this Agreement, nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor will any provision give any third persons any right to subrogation or action against any party to this Agreement.

12.5 Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior or contemporaneous oral or written agreements, representations, statements, documents, or understandings of the parties.

12.6 Amendment. No supplement, modification, or amendment of this Agreement will be binding unless executed in writing by the party to be bound.

12.7 Waiver. No waiver of any of the provisions of this Agreement will be deemed, or will constitute, a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

12.8 Timeliness. Seller and Buyer acknowledge and agree that time is of the essence with respect to each and every term, condition, obligation and provision of this Agreement.

12.9 Notices. Any notice or other communication required or permitted to be given under this Agreement (“**Notices**”) must be in writing and must be (a) personally delivered; (b) delivered by a reputable overnight courier; or (c) delivered by certified mail, return receipt requested and deposited in the U.S. Mail, postage prepaid. Telecopy notices are valid only to the extent they are (i) actually received by the individual to whom addressed and (ii) followed by delivery of actual notice in the manner described above within three business days thereafter. Notices will be deemed received at the earlier of actual receipt or (a) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (b) three business days following deposit in the U.S. Mail, as evidenced by a return receipt. Notices must be directed to the parties at their respective addresses shown below, or such other address as either party may, from time to time, specify in writing to the other in the manner described above:

If to Seller:	UNION PACIFIC RAILROAD COMPANY ATTN: Richard L. Gooch 50 California Street, Suite 1563 San Francisco, CA 94111 Telephone: 415-439-5345 Facsimile: 402-997-3014
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with copy to: UNION PACIFIC RAILROAD COMPANY
ATTN: Patrick McGill, ~~Senior Assistant General Counsel~~ Real Estate
1400 Douglas Street, Mail Stop 1580
Omaha, Nebraska 68179
Telephone: (402) 544-5761
Facsimile: (402) 997-3603

If to Buyer: SANTA CRUZ COUNTY REGIONAL TRANSPORTATION
COMMISSION
Attn: Luis Mendez
1523 Pacific Avenue
Santa Cruz, CA 95060
Telephone: (831) 460-3212
Facsimile: (831) 460-3215

with copy to: MILLER, OWEN & TROST
Attn: Kirk E. Trost
428 J Street, Suite 400
Sacramento, CA 95814
Telephone: (916) 447-7933
Facsimile: (916) 447-5195

12.10 Governing Law and Venue. This Agreement is to be construed in accordance with, and governed by, the laws of the State of California and any action or proceeding, including arbitration, brought by any party, shall be brought in Santa Cruz County, CA, or in an adjacent county.

12.11 Effect of Headings. The headings of the paragraphs of this Agreement are included for purposes of convenience only, and will not affect the construction or interpretation of any of its provisions.

12.12 Intentionally Omitted.

12.13 Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

12.14 Number and Gender. When required by the context of this Agreement, each number (singular and plural) will include all numbers, and each gender will include all genders.

12.15 Joint and Several Liability. In the event either party hereto now or hereafter consists of more than one person, firm, or corporation, then and in such event, all such persons, firms, or corporations will be jointly and severally liable as parties under this Agreement.

12.16 Recording. Neither party may record this Agreement or any memorandum thereof.

12.17 Further Assurances. Each party to this Agreement agrees to execute, acknowledge, and deliver such further instruments as may be necessary or desirable to accomplish the intent and purpose of this Agreement, provided that the party requesting such further action bears all costs and expenses related thereto.

12.18 Advice of Professionals. Each party has had the opportunity to be advised by legal counsel and other professionals in connection with this Agreement, and each party has obtained such advice as each party deems appropriate.

12.19 Negotiated Terms. The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement will not be construed in favor of or against any party by reason of the extent to which any party or its professionals participated in the preparation of this Agreement.

12.20 Recitals and Exhibits. The recitals and contents of all Exhibits to this Agreement are incorporated by reference and constitute a material part of this Agreement.

12.21 Professional Fees and Costs. If any legal or equitable action, arbitration, bankruptcy, reorganization, or other proceeding, whether on the merits, application, or motion, are brought or undertaken, or an attorney retained, to enforce this Agreement or any closing document, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement or any closing document, then the successful or prevailing party or parties in such undertaking (or the party that would prevail if an action were brought) will be entitled to recover reasonable attorneys' and other professional fees, expert witness fees, court costs and other expenses incurred in such action, proceeding, or discussions, in addition to any other relief to which such party may be entitled. The parties intend this provision to be given the most liberal construction possible and to apply to any circumstances in which such party reasonably incurs expenses. The provisions of this Section will survive the Close of Escrow or the termination of this Agreement.

12.22 Confidentiality. The Parties hereby incorporate by reference the confidentiality provisions of the following agreements between the parties: (a) Right of Entry Agreement dated January 17, 2005, as amended on January 5, 2006, as amended on December 15, 2008, as amended on February 23, 2009, and March 25, 2009; and (b) Confidentiality Agreement dated June 1, 2005.

12.23 Not an Offer. The submission of this Agreement to Buyer for review or signature does not constitute an offer to sell the Property to Buyer or the granting of an option or other rights with respect to the Property to Buyer. No agreement with respect to the purchase and sale of the Property will exist, and this writing will have no binding force or effect, until executed and delivered by both Seller and Buyer.

12.24 Severability. Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable will be invalid or unenforceable only to the extent of such determination, which will not invalidate or otherwise render ineffective any other provision of this Agreement.

12.25 Merger/Survival. Except as otherwise expressly provided herein, the covenants, representations and warranties of Buyer and Seller herein will merge into the Deed to be delivered by Seller to Buyer at Closing and will not survive the Close of Escrow. The following provisions will survive the Close of Escrow: Section 3.3, Article IV, Article IX, Article XI and 12.22.

12.26 Tax-Deferred Exchange.—Seller may arrange for the exchange upon the Closing of Escrow of one or more parcels of property for the Property in order to effect a tax-deferred exchange within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, and comparable provisions of state statutes.—Buyer agrees, at no cost to Buyer, to cooperate with Seller in connection with any such exchange.—Such cooperation by Buyer shall include, but is not limited to, executing documents as reasonably may be required by Seller.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the Execution Date.

SELLER: **UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation**

By: _____
Title: _____

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

By: _____
Title: _____

Approved as to Form:

THE UNDERSIGNED ESCROW HOLDER ACKNOWLEDGES ITS RECEIPT OF ONE EXECUTED COPY OF THIS AGREEMENT AND AGREES TO ACT IN ACCORDANCE THEREWITH.

ESCROW HOLDER: **FIRST AMERICAN TITLE COMPANY**

By: _____
_____, Escrow Officer

EXHIBIT A

**PRINT OF LINE
TO BE ATTACHED**

EXHIBIT B

BILL OF SALE

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Seller"), for and in consideration of One Dollar (\$1.00) and other valuable consideration, does hereby sell, transfer and deliver to SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION, a public agency created under California law ("Buyer"), its successors and assigns, all of Seller's right, title and interest in and to the following described personal property ("**Personal Property**"):

All rail improvements on the real property described in Schedule 1 attached hereto and hereby made a part hereof, including without limitation, rails, ties, ballast, signals, switches and trestles and other rail appurtenances.

SELLER, BY THIS INSTRUMENT, MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND FURTHER MAKES NO WARRANTY AS TO THE MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, IT BEING UNDERSTOOD THAT THE BUYER IS PURCHASING THE PERSONAL PROPERTY IN AN "AS IS" AND "WHERE IS" CONDITION WITH ALL FAULTS. BUYER AND SELLER AGREE TO SIGN **SCHEDULE 2** HERETO ATTACHED AND HEREBY MADE A PART HEREOF.

IN WITNESS WHEREOF, Seller and Buyer have each duly executed this instrument as of the _____ day of _____, 2010.

**UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation**

By _____
Title: _____

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

By _____
Title: _____

SCHEDULE 1 TO EXHIBIT B

LEGAL DESCRIPTION OF REAL PROPERTY

SCHEDULE 2 TO EXHIBIT B

1. The attached **Attachment 1** contains consumer information concerning the proper handling and distribution of creosote pressure-treated wood.

2. Buyer shall provide information on the safe and proper handling of chemically treated ties to each person or company to whom it sells or otherwise conveys ties purchased hereunder. Such information shall include, but not be limited to, delivery to each and every worker and to all persons and companies of a copy of the MSDS Data Sheet Creosote PressureTreated Wood that is attached hereto and marked Attachment 1, in such translations and along with such other information as may be necessary, to allow such workers, persons and companies to understand and employ safe and proper methods of use, handling and disposal.

3. In addition to providing information, Buyer shall dispose of (and/or store if ties are removed and stored) any and all ties purchased hereunder in a safe manner and in accordance with all applicable federal, state and local laws and regulations and the lawful requirements of responsible government agencies.

4. Buyer shall require the same commitments by contract with any person or company to which it sells ties for resale which are purchased hereunder.

Dated this _____ day of _____, 2010.

**UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation**

By: _____
Title: _____

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

By: _____
Title: _____

Attachment 1

[TO BE ATTACHED]

EXHIBIT C

PROPERTY MATERIALS

[TO BE ATTACHED]

EXHIBIT D

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION

_____, California _____

Attn: _____

MAIL TAX STATEMENTS TO:

SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION

_____, California _____

Attn: _____

THIS INSTRUMENT IS EXEMPT FROM RECORDING FEES (GOVERNMENT CODE §6103) AND FROM DOCUMENTARY TRANSFER TAX (REVENUE AND TAXATION CODE §11922).

(Space above line for Recorder’s use only)

QUITCLAIM DEED

FOR VALUE RECEIVED, UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (“**Grantor**”), REMISES, RELEASES and QUITCLAIMS to SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION, a public agency created under California law (“**Grantee**”), all of Grantor’s rights, title, and interest in and to that certain real property (the “**Property**”) in the County of [Santa Cruz/Monterey, as applicable], State of California, described on **Schedule 1** attached hereto and incorporated by reference.

EXCEPTING from this quitclaim and RESERVING unto Grantor, its successors and assigns, forever (except as otherwise provided in the easement reserved for freight railroad purposes), the following:

(a) Subject to the terms and conditions below, Grantor excepts from the Property hereby quitclaimed and reserves unto itself, its successors and assigns, forever, an easement upon, over, under and across the Property, extending ten (10) feet on either side of the center line of the existing tracks and including rights of access along the length thereof, for purposes of conducting freight rail operations and otherwise to fulfill Grantor's rights and obligations as a common carrier freight railroad under applicable federal laws and regulations, including the right to use the Property to provide freight rail service to all customers on or served from the Property, and to operate, use, construct, reconstruct, maintain, repair, relocate and/or remove existing and/or future railroad, rail and railroad-related equipment, facilities and

transportation systems necessary for and related to freight rail operations (the "**Freight Easement**");

(i) This Freight Easement is made subject to the unrecorded Administration and Coordination Agreement between Grantee and Sierra Northern Railway ("Short Line Operator"), dated as of [_____], 2010, as the same may be amended from time to time. The Administration and Coordination Agreement includes terms and conditions governing the following, without limitation: maintenance, repair and replacement of the Freight Easement and improvements thereon; allocation of liability; reasonable restrictions on rail car storage and use of lay down space; tourist rail service; future modifications and improvements to the Property, including the Freight Easement; reservations of rights by the Grantee; and expiration and termination of the Administration and Coordination Agreement.

(ii) Abandonment of all or part of the Property. ~~If~~ Grantor may at any time, for any reason, and in its sole discretion, seek STB authority (or an exemption therefrom) to abandon freight service, over all of, or any segment of, the Property. Grantee agrees to cooperate with, and not to directly or indirectly oppose, Grantor's abandonment efforts. If Grantee timely files with the STB a Statement of Willingness to Assume Financial Responsibility meeting the requirements of the STB's regulations, Grantor shall file with the STB: (A) an expression of willingness to enter into a rail banking/trail use agreement; (B) a statement that Grantee and Grantor have entered into such an agreement; and (C) a request that the STB issue a Notice of Interim Trail Use (NITU) or Certificate of Interim Trail Use -(CITU), as appropriate. Upon the effective date of each such NITU or CITU, or upon Grantor's abandonment of freight service over all of, or any segment of, the Property, (X) Grantor shall execute and deliver to Grantee an option to acquire Grantor's right to restart freight rail service on the subject segment of the Property in the form attached hereto as **Schedule 2**; and (Y) Grantor's freight easement, and the Administration and Coordination Agreement between the Short Line Operator and Grantee, shall automatically terminate with respect to such segment without any further liability thereunder to Grantee on the part of Grantor and the Short Line Operator, unless the Administration and Coordination Agreement specifically provides otherwise. After such automatic termination, upon Grantee's request and at Grantee's expense, Grantor shall execute a quitclaim of such freight easement as to such segment. Grantor may withdraw any abandonment in its sole discretion.

(iii) Offers of Financial Assistance. If Grantor seeks abandonment of any segment of the Property and Grantor receives an Offer of Financial Assistance ("OFA") with respect thereto, Grantor shall promptly notify Grantee in writing. Grantee (or its designee) may, at its option, submit its own OFA in the amount of \$1.00 and Grantor shall accept the OFA submitted by Grantee (or its designee).

(iv) Nonuse of Freight Easement Property; Default under Administration and Coordination Agreement. If any segment of the Property subject to this Freight Easement is not regularly used (as defined in the Administration and Coordination Agreement) for freight rail purposes for a period of one (1) year, or a material default occurs under the Administration and Coordination Agreement without being cured under the terms and conditions thereof, Grantor shall, at Grantee's request, enter into a rail banking/trail use

agreement and otherwise comply with the provisions of paragraph (ii), or cooperate with an application by Grantee, or its designee, to commence common carrier freight service on the Property.

(v) Successors and Permitted Assigns. All of the terms and conditions of this Freight Easement shall be binding upon, and inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns. Grantor may not assign this Freight Easement except as provided in the Administration and Coordination Agreement. Any assignment of this Freight Easement shall be conditioned upon the assignee assuming all obligations set forth herein and in the Administration and Coordination Agreement. Grantee hereby consents to the assignment of this Freight Easement to Short Line Operator. Upon Union Pacific Railroad Company's assignment of its rights and interest under this Freight Easement to Short Line Operator, Union Pacific Railroad Company shall be released and discharged from any further obligation or liability under this Freight Easement and references to "Grantor" hereunder shall then refer to Short Line Operator or any successor to Short Line Operator, as applicable.

(b) The existing eight inch (8") sanitary sewer pipeline and appurtenant facilities referred to in the following sentence, whether owned by Grantor or any third party, and a perpetual easement upon, over, along, under and across the portion of the Line that lies five feet (5') on each side of the centerline of such existing eight inch (8") sanitary sewer pipeline and appurtenant facilities (the "Easement Area"), for the purposes of constructing, maintaining, repairing, operating, renewing, replacing, using and/or removing the eight inch (8") sanitary sewer pipeline and appurtenant facilities (whether now or hereafter installed, and including facilities which are the technological successor to any existing or hereafter installed facilities); together with (a) the right of ingress and egress to and from the Easement Area, and (b) the right to collect the rents, issues and profits therefrom, and from any existing contracts. In addition to and not in limitation of Grantor's rights under the foregoing reservation of easement, Grantee, for itself, its successors and assigns, hereby covenants and agrees that Grantee shall not interfere with the rights of Grantor's Licensee under that certain License Agreement between Southern Pacific Transportation Company (predecessor in interest to Grantor) and Holcomb Corporation dated July 27, 1990, identified in the records of Grantor as Audit Number S211235, and granting certain rights to said Licensee to use a portion of the Line for eight inch (8") sanitary sewer pipeline purposes. This reserved right is intended solely to permit Grantor to honor its obligations under said License Agreement and does not constitute a reservation of rights for any other purpose.

(c) The existing eight inch (8") sanitary sewer pipelines and appurtenant facilities referred to in the following sentence, whether owned by Grantor or any third party, and a perpetual easement upon, over, along, under and across the portion of the Line that lies five feet (5') on each side of the centerline of such existing eight inch (8") sanitary sewer pipeline and appurtenant facilities (the "Easement Area"), for the purposes of constructing, maintaining, repairing, operating, renewing, replacing, using and/or removing the eight inch (8") sanitary sewer pipeline and appurtenant facilities (whether now or hereafter installed, and including facilities which are the technological successor to any existing or hereafter installed facilities); together with (a) the right of ingress and egress to and from the Easement Area, and (b) the right to collect the rents, issues and profits therefrom, and from any existing contracts. In addition to

and not in limitation of Grantor's rights under the foregoing reservation of easement, Grantee, for itself, its successors and assigns, hereby covenants and agrees that Grantee shall not interfere with the rights of Grantor's Licensee under that certain License Agreement between Southern Pacific Transportation Company (predecessor in interest to Grantor) and Holcomb Corporation dated July 27, 1990, identified in the records of Grantor as Audit Number S211236, and granting certain rights to said Licensee to use a portion of the Line for eight inch (8") sanitary sewer pipeline purposes. This reserved right is intended solely to permit Grantor to honor its obligations under said License Agreement and does not constitute a reservation of rights for any other purpose.

(d) The existing four inch (4") VCP sewer and four inch (4") copper water pipelines and appurtenant facilities referred to in the following sentence, whether owned by Grantor or any third party, and a perpetual easement upon, over, along, under and across the portion of the Line that lies five feet (5') on each side of the centerline of such existing four inch (4") VCP sewer and four inch (4") copper water pipeline and appurtenant facilities (the "Easement Area"), for the purposes of constructing, maintaining, repairing, operating, renewing, replacing, using and/or removing the four inch (4") VCP sewer and four inch (4") copper water pipeline and appurtenant facilities (whether now or hereafter installed, and including facilities which are the technological successor to any existing or hereafter installed facilities); together with (a) the right of ingress and egress to and from the Easement Area, and (b) the right to collect the rents, issues and profits therefrom, and from any existing contracts. In addition to and not in limitation of Grantor's rights under the foregoing reservation of easement, Grantee, for itself, its successors and assigns, hereby covenants and agrees that Grantee shall not interfere with the rights of Grantor's Licensee under that certain License Agreement between Southern Pacific Transportation Company (predecessor in interest to Grantor) and James G. Speth dated March 19, 1980, identified in the records of Grantor as Audit Number S204567, and granting certain rights to said Licensee to use a portion of the Line for four inch (4") VCP sewer and four inch (4") copper water pipeline purposes. This reserved right is intended solely to permit Grantor to honor its obligations under said License Agreement and does not constitute a reservation of rights for any other purpose.

(e) The existing twenty-four inch (24") storm drain pipelines and appurtenant facilities referred to in the following sentence, whether owned by Grantor or any third party, and a perpetual easement upon, over, along, under and across the portion of the Line that lies five feet (5') on each side of the centerline of such existing twenty-four inch (24") storm drain pipeline and appurtenant facilities (the "Easement Area"), for the purposes of constructing, maintaining, repairing, operating, renewing, replacing, using and/or removing the twenty-four inch (24") storm drain pipeline and appurtenant facilities (whether now or hereafter installed, and including facilities which are the technological successor to any existing or hereafter installed facilities); together with (a) the right of ingress and egress to and from the Easement Area, and (b) the right to collect the rents, issues and profits therefrom, and from any existing contracts. In addition to and not in limitation of Grantor's rights under the foregoing reservation of easement, Grantee, for itself, its successors and assigns, hereby covenants and agrees that Grantee shall not interfere with the rights of Grantor's Licensee under that certain License Agreement between Southern Pacific Transportation Company (predecessor in interest to Grantor) and Phillips Driscopipe, Inc. dated April 20, 1995, identified in the records of Grantor as Audit Number S715469, and granting certain rights to said Licensee to use a portion of the Line for twenty-four

inch (24") storm drain pipeline purposes. This reserved right is intended solely to permit Grantor to honor its obligations under said License Agreement and does not constitute a reservation of rights for any other purpose.

IN WITNESS WHEREOF, the undersigned have executed this Quitclaim Deed as of _____, ~~2010~~2005.

Attest:

**UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation**

Assistant Secretary

By: _____
Title: _____

(SEAL)

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

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

Counsel

|

|

SCHEDULE 1 TO QUITCLAIM DEED

LEGAL DESCRIPTION OF PROPERTY

SCHEDULE 2 TO QUITCLAIM DEED

**FORM OF OPTION
[To Be Executed in Recordable Form]**

1. The portion of the Property between milepost [___] and milepost [___] (the "**Railbanked Property**") is subject to the effective orders of the Surface Transportation Board ("**STB**") applying Section 8(d) of the National Trails System Act, 16 U.S.C. Section 1247(d). The Railbanked Property shall remain under the jurisdiction of the STB (or its successor agency) pursuant to applicable regulations of said agency for reactivation of freight rail service and for interim trail use. In the event Grantee shall apply to the STB (or its successor agency) to cease railbanking all or any portion of the Railbanked Property, Grantor shall not object to such application.

2. Grantor hereby grants to Grantee an option for a period of 99 years after the date of this Option to acquire Grantor's residual right to reactivate freight rail service on all or any portion of the Railbanked Property. Such option (i) shall be exercisable upon 10 days prior written notice to Grantor after Grantee has obtained regulatory authority to acquire such residual right, and upon tender of \$10 as additional consideration, or (ii) may be waived by Grantee upon written notice to Grantor.

3. If Grantor reactivates freight rail service on any portion of the Railbanked Property, Grantor (i) shall reimburse Grantee for the amount Grantee has paid for the portion of the Railbanked Property in question, including all improvements subsequently constructed thereon, or the then-current market value of the portion of the Railbanked Property in question, whichever is greater, and (ii) shall be solely responsible for the restoration of tracks, ties and other structures necessary for freight rail service.

**CERTIFICATE OF ACCEPTANCE
(Pursuant to Government Code §27281)**

This is to certify that the interest in real property transferred by Quitclaim Deed as of _____, 2010, from Union Pacific Railroad Company, a Delaware corporation, to the SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION, a public agency created under California law (“Grantee”), is hereby accepted by the undersigned officer pursuant to authority conferred by Resolution No. ____ of Grantee’s Commission, adopted _____, 2010, and Grantee consents to recordation thereof by its duly authorized representative.

**SANTA CRUZ COUNTY REGIONAL
TRANSPORTATION COMMISSION**

Date: _____, 2010

By: _____
Title: _____

APPROVED AS TO FORM:

Counsel

EXHIBIT E

ASSIGNMENT AND ASSUMPTION AGREEMENT

FOR VALUE RECEIVED, UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Assignor"), ASSIGNS AND TRANSFERS to SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION, a public agency created under California law ("Assignee"), its successors and assigns, all of Assignor's right, title and interest in and to the leases and licenses (collectively, "Licenses") to the extent the Licenses affect the real property ("Property") described on **Schedule 1**, which Licenses are listed on **Schedule 2**.

Assignee agrees to (a) perform all of the obligations of Assignor pursuant to the Licenses as they relate to the Property 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 Licenses as they relate to the Property after the date hereof, and (2) claims under the Licenses as they relate to the Property by the licensees named in the Licenses accruing after the date hereof as they relate to the Property.

This assignment is made and accepted without recourse against Assignor as to the performance by any party under such Licenses.

All Schedules attached to this Agreement are incorporated herein for all purposes.

Dated the ____ day of _____, 2010.

**UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation**

By: _____
Title: _____

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

By: _____
Title: _____

SCHEDULE 1 TO EXHIBIT E

**LEGAL DESCRIPTION OF PROPERTY
TO BE ATTACHED**

SCHEDULE 2 TO EXHIBIT E

LIST OF LEASES/LICENSES TO BE ASSIGNED

EXHIBIT F**FIRST AMERICAN TITLE INSURANCE COMPANY CONDUCTS ESCROW BUSINESS UNDER CERTIFICATE OF AUTHORITY NO. 2787 ISSUED BY THE STATE OF CALIFORNIA DEPARTMENT OF INSURANCE****ESCROW HOLDER GENERAL PROVISIONS****DEPOSIT OF FUNDS AND DISBURSEMENTS**

Escrow Holder shall deposit all funds received in this escrow in any financial institution insured by a federal agency of the United States Government, including financial institutions affiliated with Escrow Holder's company, in one or more general escrow demand accounts. Unless Escrow Holder is handed a W-9 form and specific investment instructions from the Buyer and Seller, all funds delivered to Escrow Holder pursuant to these instructions will be deposited in a non-interest bearing fiduciary account. All disbursements shall be made by Escrow Holder's check unless otherwise instructed in writing. Escrow Holder is authorized not to close escrow or disburse until collected funds have been confirmed in escrow.

GOOD FUNDS LAW

The parties understand that ALL funds to close escrow and/or to be released early must be deposited into escrow prior to the date of closing/early release to allow sufficient time for clearance of the funds prior to disbursement. In the event such funds are not in the form of a cashier's, certified or teller check drawn on a financial institution, sufficient time must be allowed for clearance to comply with any "good funds" law which is in effect. (For escrows conducted in California, the good funds law is Section 12413.1 of the California Insurance Code.) Funds may be wired directly into Escrow Holder's depository bank account to avoid waiting for clearance.

PRORATIONS AND ADJUSTMENTS

SUBJECT TO THE EXPRESS TERMS OF THE AGREEMENT, the expression "close of escrow" used in this escrow means the date on which documents referred to herein are recorded and relates only to prorations and/or adjustments unless otherwise specified.

All prorations and/or adjustments are to be made on the basis of a 30-day month unless otherwise instructed in writing.

RECORDATION OF DOCUMENTS

Escrow Holder is authorized to record any documents delivered through this escrow, the recording of which is necessary or proper in the issuance of the requested policy of title insurance.

AUTHORIZATION TO FURNISH COPIES

Escrow Holder is to furnish a copy of these instructions, amendments thereto, closing statements and/or any other documents deposited in this escrow to the lender(s), the real estate broker(s), the attorney(s) and/or the accountant(s) involved in this transaction upon request of the lenders, brokers, attorneys or accountants.

PERSONAL PROPERTY TAXES

No examination, UCC Search or insurance as to personal property and/or the amount or payment of personal property taxes is required unless otherwise instructed in writing.

RIGHT OF CANCELLATION

Any party instructing Escrow Holder to cancel this escrow shall file notice of cancellation in Escrow Holder's office, in writing. Within a reasonable time, Escrow Holder shall mail, by certified and regular mail, one copy of the notice to each of the other parties at the addresses stated in this escrow. Unless a written objection to cancellation is filed in Escrow Holder's office by a party within ten (10) days after date of mailing, Escrow Holder is authorized at its option to comply with the notice and demand payment of Escrow Holder's cancellation charges as provided in this agreement. If a written objection is filed, Escrow Holder is authorized at Escrow Holder's option to hold all the money and documents contained in this escrow and take no further action until otherwise directed, either by the parties' mutual written instructions, or final order of a court of competent jurisdiction.

ACTION IN INTERPLEADER

The parties hereto expressly agree that Escrow Holder has the absolute right at Escrow Holder's election to file an action in interpleader requiring the parties to answer and litigate their several claims and rights between themselves and Escrow Holder is authorized to deposit all documents and funds held in this escrow with the clerk of the court. In the event such an action is filed, the parties jointly and severally agree to pay Escrow Holder's cancellation charges and costs, expenses and reasonable attorneys' fees which Escrow Holder is required to expend or incur in the interpleader action, the amount thereof to be fixed and judgment therefor to be rendered by the court. Upon the filing of the action, Escrow Holder shall thereupon be fully released and discharged from all obligations to further perform any duties or obligations otherwise imposed by the terms of this escrow, provided such filing is meritorious.

TERMINATION OF AGENCY OBLIGATIONS

If there is no action taken on this escrow within six (6) months after the "time limit date" as set forth in the escrow instructions or written extension thereof, Escrow Holder's agency obligation shall terminate at Escrow Holder's option and all documents, monies or other items held by Escrow Holder shall be returned to the parties depositing the same.

In the event of termination of this escrow, whether at the request of any of the parties or otherwise, all fees and charges due in connection with this escrow including expenditures incurred and/or authorized shall be paid by the parties hereto.

CONFLICTING INSTRUCTIONS

Should Escrow Holder before or after close of escrow receive or become aware of any conflicting demands or claims with respect to this escrow or the rights of any of the parties hereto, or any money or property deposited herein or affected hereby, Escrow Holder shall have the right to discontinue any or all further acts on Escrow Holder's part until the conflict is resolved to Escrow Holder's satisfaction, and Escrow Holder shall have the further right to comments or defend any action or proceedings for the determination of the conflict as provided in the "Right of Cancellation" and "Action in Interpleader" paragraphs of these General Provisions.

USURY

Escrow Holder is not to be concerned with any question of usury in any loans or encumbrances involved in the processing of this escrow and Escrow Holder is hereby released of any responsibility or liability therefor.

INDEMNITY FOR ATTORNEYS FEES AND COSTS

In the event suit is brought by any party to this escrow, including the Escrow Holder or any other party, against each other, or others, including the Escrow Holder, claiming any right they may have against each other or against the title company, then in that event, with the exception of gross negligence by the title company, the parties hereto agree to indemnify and hold the title company harmless against any attorney's fees and costs incurred by it, unless such suit is based on a claim against the title company and the party is the "prevailing party."

AMENDMENT TO ESCROW INSTRUCTIONS

Any amendment or supplement to these escrow instructions must be in writing and signed by the parties. These escrow instructions and any written amendments, supplements or exhibits attached hereto constitute the entire escrow agreement between the Escrow Holder and the parties hereto with respect to the subject matter hereof and supersedes all prior understandings, with respect thereto.

PROPERTY TAXES SUBSEQUENT TO CLOSE OF ESCROW

Buyer and Seller herein acknowledge that there may be supplemental and/or additional taxes which may be assessed by reason of a change in ownership or completion of construction. This will be reflected in the policy of title insurance issued at the close of escrow. Escrow Holder shall not be concerned with any adjustment(s) of supplemental taxes between the parties for bills received by the parties after the close of escrow. In the event Seller has received Supplemental Tax Bill(s) prior to close of escrow, Seller will provide them to Escrow Holder with an explanation of time periods covered by the tax bill(s) for proration purposes. (In California the applicable provisions are found in California Revenue and Taxation Code Sections 75 and following.) In the event Buyer or Seller have applied, or apply for a reduced assessment, and a refund of taxes is received by Escrow Holder as Agent, Escrow Holder is to retain the funds in one or more of Escrow Holder's general escrow demand accounts until Escrow Holder has received mutual written instructions from the parties directing Escrow Holder as to the proper disposition of the tax refund.

CHANGE OF OWNERSHIP FORMS

Buyer will furnish Escrow Holder with a completed Preliminary Change of Ownership Report which Escrow Holder is instructed to submit at time of recordation pursuant to Section 480.3 of the California Revenue and Taxation Code. In the event this escrow is otherwise ready to close and Buyer has not provided the above report, Escrow Holder is instructed to close this escrow and collect from Buyer for the County Recorder any additional fee required for recordation when a Preliminary Change of Ownership Report does not accompany the documents being recorded. Buyer is aware that if the above report is not submitted at time of recordation as required, a Change of Ownership Statement must be filed by the Buyer with the County Assessor not later than 45 days after recordation and failure to do so will result in additional penalties. Buyer acknowledges that Escrow Holder shall have no responsibility and/or liability for the County Recorder's acceptance or rejection of the Preliminary Change of Ownership Report. For escrows involving property in States other than California parties will provide Escrow Holder with applicable documents as may be required by the county recorder or taxing authority to close this transaction.

INSURANCE POLICIES OTHER THAN TITLE INSURANCE

When dealing with real property and/or improvements located thereon it is advisable to obtain fire, hazard or liability insurance coverage. In all acts in this escrow relating to insurance, including adjustments, if any, Escrow Holder may assume that each policy is in force and that the necessary premium has been paid. Escrow Holder shall not be responsible for obtaining fire,

hazard or liability insurance, unless Escrow Holder has received written instruction prior to close of escrow from the parties or their respective lenders.

FACSIMILE INSTRUCTIONS

In the event the parties utilize "facsimile" transmitted signed documents, Buyer and Seller hereby agree to accept and instruct the Escrow Holder to rely upon such documents as if they bore original signatures. Buyer and Seller hereby acknowledge and agree to provide to Escrow Holder, within 72 hours of transmission, such documents bearing the original signatures. Buyer and Seller further acknowledge and agree that documents necessary for recording with other than original signatures (i.e., facsimiles) will not be accepted for recording by the County Recorder thereby delaying the close of escrow.

EXECUTE IN COUNTERPART

These escrow instructions and any subsequent amendments may be executed in one or more counterparts, each of which independently shall have the same effect as if it were the original, and all of which taken together shall constitute one and the same instruction.

IF THE TRANSACTION WHICH IS THE SUBJECT OF THIS ESCROW IS A SALE, THE PARTIES TO THIS TRANSACTION MAY HAVE CERTAIN TAX REPORTING AND WITHHOLDING OBLIGATIONS PURSUANT TO STATE LAW OR FEDERAL LAW REFERRED TO BELOW.

REPORTING TO THE INTERNAL REVENUE SERVICE

The Tax Reform Act of 1986 provides that Escrow Holder must report certain information regarding all real estate transactions to the Internal Revenue Service. This information includes, among other things, the Seller's social security number and/or tax identification number and forwarding address, and the gross sales price of the transaction. This is not a requirement generated by Escrow Holder, but rather a means of complying with the new tax law. This information must be provided to Escrow Holder upon the opening of escrow and neither can escrow be closed, nor can a deed or any other documents be recorded until the information is provided and the Seller certifies the accuracy of the information in writing. By execution of these escrow instructions, the parties acknowledge receipt of this notice.

TAX REPORTING AND WITHHOLDING OBLIGATIONS OF THE PARTIES

CALIFORNIA LAW: In accordance with Section 18662 and 18668 of the California Revenue and Taxation Code, a Buyer may be required to withhold an amount equal to three and one-third (3-1/3) percent of the sales price, in the case of a disposition of California real property interest by either: (1) A Seller who is an individual with a last known street address outside of California or when the disbursement instructions authorize the proceeds to be sent to a financial intermediary of the Seller; OR (2) A corporate Seller which has no permanent place of business in California. For failure to withhold, the Buyer may become subject to a penalty in an amount equal to the greater of 10 percent of the amount required to be withheld or five hundred dollars (\$500.00). However, notwithstanding any other provision included in the California statutes referenced herein, no Buyer will be required to withhold any amount or be subject to penalty for failure to withhold if: (a) The sales price of the California real property conveyed does not exceed one hundred thousand dollars (\$100,000.00); OR (b) The Seller executes a written certificate, under the penalty of perjury, certifying that the Seller is a resident of California, or if a corporation, has a permanent place of business in California; OR (c) The Seller, who is an individual, executes a written certificate, under the penalty of perjury, that the California real property being conveyed is the Seller's principal residence (as defined in Section 1034 of the Internal Revenue Code). The Seller is subject to penalty for knowingly filing a fraudulent certificate for the purpose of avoiding the withholding requirement. The California statutes referenced herein include provisions which authorize the Franchise Tax Board to grant reduced withholding and waivers from withholding on a case-by-case basis.

The Seller may request a reduction in withholding or waiver and the Buyer and Seller may obtain additional information by contacting the Franchise Tax Board, Withhold at Source Unit, P.O. Box 651, Sacramento, CA 95812-0651 (916-845-4900).

LAW OF STATES OTHER THAN CALIFORNIA

If the parties are required to withhold by the law of a state other than California, the parties understand that the withholding obligation is the exclusive obligation of the parties to this transaction and that Escrow Holder is not obligated to withhold or notify the parties of any withholding obligation they may have.

FEDERAL LAW

Internal Revenue Code Section 1445 places special requirements for tax reporting and withholding on the parties to a real estate transaction where the Seller (Transferor) is a non-resident alien, a non-domestic corporation or partnership, a domestic corporation or partnership controlled by non-residents or non-resident corporations or partnerships.

With respect to both the State Law and Federal Law referred to above, the parties to this transaction should seek an attorney's, accountant's, or other tax specialists' opinion concerning the effect of these laws on this transaction. The parties to this transaction should NOT act on or rely on any statements made or omitted by the Escrow Officer, Title Officer, or other closing Officer with respect to tax reporting or withholding requirements. By execution of these escrow instructions, the parties acknowledge receipt of this notice.

DISCLOSURE OF TAXPAYER IDENTIFICATION NUMBERS

Internal Revenue Code Section 6109(h) imposes requirements for furnishing, disclosing and including taxpayer identification numbers in tax returns on the parties to a residential real estate transaction involving seller-provided financing. The parties understand that the disclosure reporting requirements are exclusive obligations between the parties to this transaction and that Escrow Holder is not obligated to transmit the taxpayer identification numbers to the Internal Revenue Service or to the parties. Escrow Holder is not rendering an opinion concerning the effect of this law on this transaction, and the parties are not acting on any statements made or omitted by the Escrow or Closing Officer. By execution of these escrow instructions, the parties acknowledge receipt of this notice.

To facilitate compliance with this law, the parties to this escrow hereby authorize Escrow Holder to release any party's taxpayer identification numbers to any requesting party who is a party to this transaction. The requesting party shall deliver a written request to escrow. The parties hereto waive all rights of confidentiality regarding their respective taxpayer identification numbers and agree to hold Escrow Holder harmless against any fees, costs, or judgments incurred and/or awarded in connection with the release of taxpayer identification numbers.

TIME IS OF THE ESSENCE OF THESE INSTRUCTIONS

If this escrow is not in condition to close by the closing date referred to in the body of these instructions, and demand for cancellation is received by you from any party to this escrow after said date, you will act in accordance with the cancellation instructions contained in these general provisions. If no demand for cancellation is made, you will proceed to close this escrow when the principals have complied with the escrow instructions.

EXHIBIT G

CERTIFICATION OF NON-FOREIGN STATUS

Under Section 1445(e) of the Internal Revenue Code, a corporation, partnership, trust, or estate must withhold tax with respect to certain transfers of property if a holder of an interest in the entity is a foreign person. To inform the transferee, _____, that no withholding is required with respect to the transfer of a U.S. real property interest by UNION PACIFIC RAILROAD COMPANY, the undersigned hereby certifies the following on behalf of UNION PACIFIC RAILROAD COMPANY:

1. UNION PACIFIC RAILROAD COMPANY is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. UNION PACIFIC RAILROAD COMPANY is not a disregarded entity as defined in Section 1.445.2(b)(2)(iii) of the Internal Revenue Code;
3. UNION PACIFIC RAILROAD COMPANY'S U.S. employer identification number is 94-6001323; and
4. UNION PACIFIC RAILROAD COMPANY'S office address is 1400 Douglas Street, Omaha, Nebraska 68179, and place of incorporation is Delaware.

UNION PACIFIC RAILROAD COMPANY agrees to inform the transferee if it becomes a foreign person at any time during the three year period immediately following the date of this notice.

UNION PACIFIC RAILROAD COMPANY understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of UNION PACIFIC RAILROAD COMPANY.

**UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation**

By: _____
Title: _____
Date: _____

EXHIBIT H

CALIFORNIA FORM 593-C

EXHIBIT I

POST-CLOSING STRUCTURAL REHABILITATION WORK

EXHIBIT J

TAX LETTER

SCC RTC Letterhead

_____, 2009

Mr. Tony Love
Assistant Vice President-Real Estate
Union Pacific Railroad Company
1400 Douglas Street, Mail Stop 1690
Omaha, NE 68179

RE:

Dear Mr. Love:

The Santa Cruz County Regional Transportation Commission is negotiating with Union Pacific to acquire a portion of Union Pacific's Santa Cruz Branch Line in Santa Cruz and Monterey Counties, California, extending from Santa Cruz Branch Milepost 0.433 (east boundary of Salinas Road) to Milepost 31.39, located two hundred fifty (250) feet north of Highway 1 crossing at Davenport (the "Property").

Please be advised that if Union Pacific does not transfer its interest in the Property to the Santa Cruz County Regional Transportation Commission voluntarily, the Santa Cruz County Regional Transportation Commission is expressly authorized by California Public Utilities Code §67941 to initiate proceedings under its power of eminent domain to acquire the Property.

Sincerely,

Title: _____

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AGENDA: August 19, 2010

TO: Transportation Policy Workshop of the Regional Transportation Commission
FROM: Kim Shultz, Senior Transportation Planner
RE: Highway 1 Soquel/Morrissey Auxiliary Lanes Project -
Cooperative Agreement with Caltrans for Construction Management

RECOMMENDATIONS

Staff recommends that the Regional Transportation Commission (RTC) approve the attached Resolution ([Attachment 1](#)) authorizing the Executive Director to sign a Cooperative Agreement (draft included as [Attachment 2](#)) with the State for construction of the Highway 1 Soquel/Morrissey Auxiliary Lanes Project.

BACKGROUND

Since early 2008, the RTC has contemplated assuming construction management responsibility for the Highway 1 Soquel/Morrissey Auxiliary Lanes project. Beyond the expedited project schedule, the benefits of the RTC assuming construction management authority include:

- Direct involvement in critical decisions regarding the project
- Proactive construction management approach
- Community accountability and community relations

In June 2009, following a consultant selection process, the RTC approved assuming responsibility for administering the construction phase of the Auxiliary Lanes project and directed staff to negotiate a contract with Parsons Brinckerhoff (PB) for construction management services. The RTC also directed staff to work with Caltrans to prepare a cooperative agreement that will set the roles and responsibilities between Caltrans and the RTC (and by extension RTC's construction management consultant) for the construction phase.

In February 2010, the RTC approved a limited consultant contract with PB to assist the RTC in specified preconstruction activities, including: review and comment on the 65% level engineering design plans and specifications, and assist with the utility coordination activity. PB also participated with RTC staff and legal counsel in the review of the draft cooperative agreement with Caltrans for the construction phase of the project.

DISCUSSION

A cooperative agreement is required between Caltrans and any local agency acting as the sponsoring or implementing agency for the improvement of a state highway. The

purpose of this agreement is to specify the roles and responsibilities of the respective agencies through each phase of the project development process. The cooperative agreement identifies the scope of work and the parties responsible for individual work elements, cost and funding information, and general conditions that the respective agencies agree to in completing the assigned project tasks.

The draft cooperative agreement (Attachment 2) presented for your consideration covers the construction phase and assigns responsibility to the RTC to advertise the construction bid package, award the construction contract, and administer the construction phase of the project. These activities are conducted in partnership with Caltrans as specified in the agreement. Many of the responsibilities assigned to the RTC in the cooperative agreement will in turn be assigned to the consultant construction management team lead by Parsons Brinkerhoff (PB) to perform on behalf of the RTC.

As the current engineering design effort nears completion, staff will develop a work program with PB to lead the actual construction phase of the project. The target date for completion of design engineering, right of way certification, and receipt of environmental permits is December 2010. Once these milestones are reached, the project is determined to be "Ready To List" and eligible for construction funding through the California Transportation Commission (CTC). Work will not begin on the construction phase until the project is "Ready To List" and the RTC has reviewed and approved the work program and budget for the construction phase of the project.

Construction Management - Costs and Revenues

As reported in the Cooperative Agreement Funding Summary (Attachment 2) a total of \$18.34 million has been programmed for construction. Of this total, \$15.64 million is programmed for construction activity and \$2.7 million for construction support which funds all construction management activities, including RTC staff oversight. Construction management funding is comprised of \$550,000 in Proposition 1B – Corridor Mobility Improvement Account (CMIA) funds and \$2.15 million in State Transportation Improvement Program (STIP) funds. Per the Cooperative Agreement (Attachment 2, Article 75), an initial deposit of \$150,000 in construction support funds would be released to the RTC 30 days prior to the bid advertisement date. The initial deposit approximates 2 months of construction management activity to provide the funds necessary for the consultant team and staff to assemble, advertise, and manage the project bidding process.

The cost of administrating the construction phase of a project typically runs between 15% and 17% of the construction contract for the full range of necessary expenses. The current construction cost estimate is \$15.3 million with \$2.7 million programmed for construction management represents 17.6% of the estimated construction capital costs programmed for construction management activities.

As previously reported PB estimated the cost of construction management consultant services at \$1.625 million. This estimate includes materials testing, construction staking, and public outreach activities. The estimate is escalated over the term of the

proposed construction schedule and includes assisting RTC with the pre-construction activities already underway.

In addition to PB's construction management services, other costs through this phase of work include design support during construction, traffic control, environmental monitoring and post project analysis, RTC staff oversight and public information activities. Collectively these support activities are conservatively estimated to cost \$560,000.

The total cost of the construction management phase is therefore estimated to be \$2.185 million. This estimate provides a 20 percent contingency or approximately \$500,000 in unallocated balance of the \$2.7 million budget currently programmed for construction support, as shown below:

Construction Management Consultant Team	\$1,625,000
Construction Support Activities	\$560,000
Contingency – Unallocated Balance	\$515,000
Total Programmed Budget	\$2,700,000

Construction Capital – Costs, Revenues, and Schedule

The engineer's construction cost estimate of \$15.3 million is based on 65% design level plans. This estimate includes items outside of the construction contract including funding for the resident engineer's office, biological resource mitigation (in Watsonville at Manabe Slough II), and a 15% contingency on roadway and bridge items. All of the construction capital funding programmed for this project is provided through CMIA funds in the amount of \$15.6 million. RTC and Caltrans staff, and the consultant team feel that this cost estimate is prudent and conservative.

Over the past 18-to-24 months, construction bids have routinely come in 25 percent or more under the engineer's cost estimate, symptomatic of existing competitive economic conditions. The current aggressive bidding climate puts a premium on the project schedule and the time it takes to begin the bid advertisement process. As previously discussed, a significant advantage of the RTC's managing the construction phase is the ability to begin construction of the project 4 to 6 months earlier than if Caltrans were to manage the project. The current Ready To List schedule of December 2010, assumes RTC would manage the construction project which would allow construction to begin as early as summer 2011.

Beginning construction in early summer is considered crucial to minimize the construction impacts to the surrounding community. The preferred first phase of construction is the removal and replacement of the La Fonda Avenue overcrossing which will particularly impact vehicle access to Harbor High School and to a lesser extent De Laveaga Elementary School. In meetings with representatives of the respective schools and the Santa Cruz City Schools District, the consensus is that beginning construction in early summer would be the single most effective mitigation

measure. To employ this same mitigation strategy under Caltrans administration, the start of construction would be delayed to the summer of 2012.

Construction Management Risks

One risk associated with taking the construction management lead is securing supplemental funds from the CTC in the event that there are cost increases once construction is underway. Typically, when Caltrans is managing a construction project the CTC will use its discretion to allocate supplemental STIP funds to address cost increases, as occurred on the Highway 1/17 Merge Lanes Project. If a local agency chooses to manage the construction phase, the expectation is that any cost increases will be paid with local or other funds. The only funding source available to the RTC if this were to happen would be Regional Surface Transportation Program (RSTP) funds.

The CTC has discretion over STIP funds, and there have been exceptions to practice described above, but the general rule is that when a local agency takes the lead on implementing a project on the state highway system, the CTC sees it as that agency's responsibility to cover any cost increases.

The project team has had a series of meetings to thoroughly review and identify actions to minimize the risk of cost increases during the construction. Staff is confident that the steps taken to date, including the involvement of the construction management team in the development of the plans, specifications, and estimates will ensure a conservative approach is taken to constructing the project and incorporates the appropriate and prudent actions necessary to minimize the risk of cost increases. Moreover, moving the project forward as soon as possible in the current economic climate is favorable to securing the best contract price for the project.

Other potential risks involved with RTC assuming the construction management role include liability exposure, and managing and responding to change orders and claims in a timely manner. These items were previously reviewed with the Board, which resulted in the direction to contract with a qualified construction management firm early in the project development process. Parsons Brinkerhoff has successfully assisted other regional agencies through their first highway construction projects and has exhibited their expertise to staff in identifying and addressing potential construction issues in review of the 65% design plans.

In their role of assisting local agencies, PB has provided Nolte Associates with "boiler plate" special provisions, previously used on other Caltrans projects, for use in the project bid documents that transfer liability exposure to the contractor and away from the RTC. Staff will also be working with PB and legal counsel in development of the contractor's construction contract that requires full disclosure of claims in a specified timeframe to avoid the latent effect of unresolved claims over time.

Moving forward PB is prepared to assist the RTC in setting up procedures for processing contract change orders (CCOs) and the contractor's progress payments. The timely resolution of CCOs can be the single greatest feature in establishing a

positive working relationship between the contractor, construction management firm, and contract administrating agency, and thereby avoid cost overruns on a project.

It is important to note that the preconstruction tasks outlined above will be beneficial to the RTC in application to other construction projects in the future, such as the maintenance and repair work on the rail corridor and construction of pedestrian/bike trails. The Board and staff will gain valuable experience and expertise in the construction management process on the highway project with the added benefit of having Caltrans project oversight and guidance along the way. Other benefits accruing to the RTC and the community have been discussed in prior Commission meetings and are summarized in Attachment 3, along with a list of other transportation agencies that have taken the lead in managing construction projects on state highways.

In full consideration of all factors, roles and responsibilities involved in managing construction projects, **staff recommends that the RTC approve the attached Resolution (Attachment 1) authorizing the Executive Director to sign a Cooperative Agreement (draft included as Attachment 2) with the State for construction of the Highway 1 Soquel/Morrissey Auxiliary Lanes Project.**

Upon approval of the recommended action, staff will amend the Regional Transportation Improvement Program (RTIP) to designate the RTC as implementing agency for construction and coordinate similar action through the California Transportation Commission (CTC) to amend the CMIA Baseline Agreement and the State Transportation Improvement Program (STIP).

As part of the 2010 Regional Transportation Improvement Program (RTIP), the RTC programmed \$500,000 in additional STIP funds to the Highway 1 Soquel/Morrissey Auxiliary Lanes project to fund the legal defense of the final environmental document (\$400,000) and preconstruction activities to prepare for the RTC to manage the construction process (\$100,000). At that time the RTC approved use of Regional Surface Transportation Exchange Program (RSTPX) funds reserved for the Auxiliary Lanes project in the event the CTC did not approve the supplemental allocation of STIP funds. At this time, it is not known how much it will cost for the legal defense of the environmental document. Meanwhile, staff was able to initiate preconstruction activities with \$22,000 savings in other areas of the FY 2010 Auxiliary Lanes project budget.

Staff is currently reviewing final FY 2010 expenditures and available funding sources to complete the preconstruction activities identified above for inclusion in the Fall FY 2010-2011 budget amendment to be presented to the RTC in October 2011.

Once the final cost of defending the final environmental document is known, the RTC will again seek STIP funds from the CTC to cover those expenses. To date Caltrans legal expenses are reported to total \$30,000.

SUMMARY

Staff recommends that the RTC approve the attached Resolution ([Attachment 1](#)) authorizing the Executive Director to sign a Cooperative Agreement ([Attachment 2](#)) with the State for the construction phase of the Highway 1 Soquel/Morrissey Auxiliary Lanes project. The Cooperative Agreement is required and specifies the roles and responsibilities of the RTC in fulfilling construction management responsibilities for the project, in partnership with Caltrans who will continue to serve in a project oversight role to ensure state and federal regulations are followed and the project is completed to state standards. With approval of the Cooperative Agreement, RTC and Caltrans staff, working with the consultant team, will finalize the project plans, specifications, and estimates to qualify for allocation of construction funding from the California Transportation Commission, anticipated in spring 2011.

Attachments:

1. Resolution Authorizing Execution of a Cooperative Agreement
2. Draft Cooperative Agreement for construction of the Highway 1 Soquel/Morrissey Auxiliary Lanes Project
3. Local Agency Benefits of Construction Management Authority

RESOLUTION NO.

Adopted by the Santa Cruz County Regional Transportation Commission
on the date of August 19, 2010,
on the motion of Commissioner
duly seconded by Commissioner

A RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR
TO SIGN A COOPERATIVE AGREEMENT
FOR THE CONSTRUCTION PHASE
OF THE HIGHWAY 1 SOQUEL/MORRISSEY AUXILIARY LANES PROJECT

WHEREAS, the Santa Cruz County Regional Transportation Commission (SCCRTC) has identified the improvement of State Route (Highway) 1 with high occupancy vehicle (HOV) lanes as the highest priority in the 2001 Regional Transportation Plan; and,

WHEREAS, a proposal to construct auxiliary lanes on Highway 1 between Soquel Avenue and Morrissey Boulevard has been determined to be a project of independent utility to the Highway 1 HOV Lane Project by the SCCRTC and Caltrans; and,

WHEREAS, the SCCRTC, Caltrans District 5, and the California Transportation Commission entered into an agreement to develop and fund the construction of the Highway 1 Soquel/Morrissey Auxiliary Lanes Project using State Proposition 1B - Corridor Mobility Improvement Account (CMIA) funds as the primary funding source; and,

WHEREAS, the Final Environmental Document for the Project was approved by Caltrans and the Federal Highway Administration (FHWA) in September 2009, and work began on the final design and right-of-way phases of the Project in October 2009; and,

WHEREAS, the SCCRTC and Caltrans desire to cooperate as partners in completing the construction of the Project, with the SCCRTC responsible for advertising, awarding, and administrating the construction phase of the Project;

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

1. The Executive Director is hereby authorized to sign a Cooperative Agreement between the State of California and the Santa Cruz County Regional Transportation Commission, and to take all necessary and appropriate actions to administer the responsibilities as defined in the Cooperative Agreement for the purpose of completing the construction of the Highway 1 Soquel/Morrissey Auxiliary Lanes project.

2. The Executive Director is hereby authorized to amend the agreement as necessary to ensure completion of the construction phase of the Highway 1 Soquel/Morrissey Auxiliary Lanes project in accordance with Federal, State, and local requirements and priorities.

AYES: COMMISSIONERS

NOES: COMMISSIONERS

ABSTAIN: COMMISSIONERS

ABSENT: COMMISSIONERS

Randy Johnson, Chair

ATTEST:

George Dondero, Secretary

Distribution: Caltrans

COOPERATIVE AGREEMENT

This agreement, effective on _____, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

Santa Cruz County Regional Transportation Commission, a political subdivision of the State of California, referred to as SCCRTC.

RECITALS

1. CALTRANS and SCCRTC, collectively referred to as PARTNERS, are authorized to enter into a cooperative agreement for improvements within the SHS right of way per Streets and Highways Code sections 114 and/or 130.
2. WORK completed under this agreement contributes toward adding an auxiliary lane in each direction, replacing the La Fonda Overcrossing structure, and adding sound walls on SR 1 between Soquel Drive and Morrissey Boulevard, referred to as PROJECT.
3. PARTNERS will cooperate to complete the construction phase for PROJECT.
4. This agreement is separate from and does not modify or supersede prior Cooperative Agreement No. 0195 and 0217.
5. Prior to this agreement, SCCRTC developed the Project Report.
6. SCCRTC prepared the environmental documentation for PROJECT.
7. The estimated date for COMPLETION OF WORK is December 31, 2014.
8. PARTNERS now define in this agreement the terms and conditions under which they will accomplish WORK.

DEFINITIONS

CALTRANS STANDARDS – CALTRANS policies and procedures, including, but not limited to, the guidance provided in the *Guide to Capital Project Delivery Workplan Standards* (previously known as WBS Guide) available at <http://www.dot.ca.gov/hq/projmgmt/guidance.htm>.

CEQA – The California Environmental Quality Act (California Public Resources Code, sections 21000 et seq.) that requires State and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those significant impacts, if feasible.

COMPLETION OF WORK – All PARTNERS have met all scope, cost, and schedule commitments included in this agreement and have signed a COOPERATIVE AGREEMENT CLOSURE STATEMENT.

CONSTRUCTION – The project component that includes the activities involved in the administration, acceptance, and final documentation of a construction contract for PROJECT.

COOPERATIVE AGREEMENT CLOSURE STATEMENT – A document signed by PARTNERS that verifies the completion of all scope, cost, and schedule commitments included in this agreement.

FHWA – Federal Highway Administration.

FHWA STANDARDS – FHWA regulations, policies and procedures, including, but not limited to, the guidance provided at <http://www.fhwa.dot.gov/programs.html>.

FUNDING PARTNER – A partner who commits a defined dollar amount to WORK.

FUNDING SUMMARY - The table in which PARTNERS designate funding sources, types of funds, and the project components in which the funds are to be spent. Funds listed on the FUNDING SUMMARY are “not-to-exceed” amounts for each FUNDING PARTNER.

HM-1 – Hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law whether it is disturbed by PROJECT or not.

HM-2 – Hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law only if disturbed by PROJECT.

HM MANAGEMENT ACTIVITIES – Management activities related to either HM-1 or HM-2 including, without limitation, any necessary manifest requirements and disposal facility designations.

IMPLEMENTING AGENCY – The partner responsible for managing the scope, cost, and schedule of a project component to ensure the completion of that component.

IQA – Independent Quality Assurance – Ensuring that IMPLEMENTING AGENCY’S quality assurance activities result in WORK being developed in accordance with the applicable standards and within an established Quality Management Plan. IQA does not include any work necessary to actually develop or deliver WORK or any validation by verifying or rechecking work performed by another partner.

NEPA – The National Environmental Policy Act of 1969 that establishes a national policy for the environment and a process to disclose the adverse impacts of projects with a federal nexus.

PARTNERS – The term that collectively references all of the signatory agencies to this agreement. This term only describes the relationship between these agencies to work together to achieve a mutually beneficial goal. It is not used in the traditional legal sense in which one partner's individual actions legally bind the other partners.

PROJECT MANAGEMENT PLAN – A group of documents used to guide a project's execution and control throughout the project's lifecycle.

RESIDENT ENGINEER – A civil engineer licensed in the State of California who is responsible for construction contract administration activities. Said engineer shall be independent of the design engineering company and the construction contractor.

SAFETEA-LU – The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, signed into federal law on August 10, 2005.

SCOPE SUMMARY – The table in which PARTNERS designate their commitment to specific scope activities within each project component as outlined by the *Guide to Capital Project Delivery Workplan Standards* (previously known as WBS Guide) available at <http://www.dot.ca.gov/hq/projmgmt/guidance.htm>.

SHS – State Highway System.

SPONSOR(S) – The partner that accepts the obligation to secure financial resources to fully fund WORK. This includes any additional funds beyond those committed in this agreement necessary to complete the full scope of WORK defined in this agreement or settle claims.

SFM (State Furnished Material) – Any materials or equipment supplied by CALTRANS.

WORK – All scope and cost commitments included in this agreement.

RESPONSIBILITIES

9. SCCRTC is SPONSOR for all WORK.
10. CALTRANS and SCCRTC are FUNDING PARTNERS for this agreement. Their funding commitments are defined in the FUNDING SUMMARY.
11. CALTRANS is the CEQA lead agency for PROJECT.
12. CALTRANS is the NEPA lead agency for PROJECT.

- 13. SCCRTC is IMPLEMENTING AGENCY for CONSTRUCTION and will advertise, award, and administer the construction contract.

SCOPE

Scope: General

- 14. All WORK will be performed in accordance with federal and California laws, regulations, and standards.

All WORK will be performed in accordance with FHWA STANDARDS and CALTRANS STANDARDS.

- 15. IMPLEMENTING AGENCY for a project component will provide a Quality Management Plan for that component as part of the PROJECT MANAGEMENT PLAN.
- 16. CALTRANS will provide IQA for the portions of WORK within existing and proposed SHS right of way. CALTRANS retains the right to reject noncompliant WORK, protect public safety, preserve property rights, and ensure that all WORK is in the best interest of the SHS.
- 17. SCCRTC may provide IQA for the portions of WORK outside existing and proposed SHS right of way.
- 18. PARTNERS may, at their own expense, have a representative observe any scope, cost, or schedule commitments performed by another partner. Observation does not constitute authority over those commitments.
- 19. Each partner will ensure that all of their personnel participating in WORK are appropriately qualified to perform the tasks assigned to them.
- 20. PARTNERS will invite each other to participate in the selection and retention of any consultants who participate in WORK.
- 21. PARTNERS will conform to sections 1720 – 1815 of the California Labor Code and all applicable regulations and coverage determinations issued by the Director of Industrial Relations if PROJECT work is done under contract (not completed by a partner’s own employees) and is governed by the Labor Code’s definition of a “public work” (section 1720(a)(1)).

PARTNERS will include wage requirements in all contracts for “public work” and will require their contractors and consultants to include prevailing wage requirements in all agreement-funded subcontracts for “public work”.

22. IMPLEMENTING AGENCY for each project component included in this agreement will be available to help resolve WORK-related problems generated by that component for the entire duration of PROJECT.

23. CALTRANS will issue, upon proper application, at no cost, the encroachment permits required for WORK within SHS right of way.

Contractors and/or agents, and utility owners will not perform WORK without an encroachment permit issued in their name.

24. If unanticipated cultural, archaeological, paleontological, or other protected resources are discovered during WORK, all work in that area will stop until a qualified professional can evaluate the nature and significance of the discovery and a plan is approved for its removal or protection.

25. PARTNERS will hold all administrative draft and administrative final reports, studies, materials, and documentation relied upon, produced, created, or utilized for PROJECT in confidence to the extent permitted by law. Where applicable, the provisions of California Government Code section 6254.5(e) will govern the disclosure of such documents in the event that PARTNERS share said documents with each other.

PARTNERS will not distribute, release, or share said documents with anyone other than employees, agents, and consultants who require access to complete WORK without the written consent of the partner authorized to release them, unless required or authorized to do so by law.

26. If any partner receives a public records request, pertaining to WORK under this agreement, that partner will notify PARTNERS within five (5) working days of receipt and make PARTNERS aware of any transferred public documents.

27. If HM-1 or HM-2 is found during WORK, IMPLEMENTING AGENCY for the project component during which it is found will immediately notify PARTNERS.

28. CALTRANS, independent of PROJECT, is responsible for any HM-1 found within existing SHS right of way. CALTRANS will undertake HM-1 MANAGEMENT ACTIVITIES with minimum impact to PROJECT schedule.

29. SCCRTC, independent of PROJECT, is responsible for any HM-1 found within the Project limits outside existing SHS right of way. SCCRTC will undertake or cause to be undertaken HM-1 MANAGEMENT ACTIVITIES with minimum impacts to PROJECT schedule.

30. If HM-2 is found within PROJECT limits, SCCRTC as the public agency responsible for the advertisement, award, and administration (AAA) of the PROJECT construction contract will be responsible for HM-2 MANAGEMENT ACTIVITIES.

31. CALTRANS' acquisition or acceptance of title to any property on which any HM-1 or HM-2 is found will proceed in accordance with CALTRANS' policy on such acquisition.
32. PARTNERS will comply with all of the commitments and conditions set forth in the environmental documentation, environmental permits, approvals, and applicable agreements as those commitments and conditions apply to each partner's responsibilities in this agreement.
33. IMPLEMENTING AGENCY for each project component will furnish PARTNERS with written quarterly progress reports during the implementation of WORK in that component.
34. Upon COMPLETION OF WORK, ownership and title to all materials and equipment constructed or installed as part of WORK within SHS right of way become the property of CALTRANS.
35. IMPLEMENTING AGENCY for a project component will accept, reject, compromise, settle, or litigate claims of any non-agreement parties hired to do WORK in that component.
36. PARTNERS will confer on any claim that may affect WORK or PARTNERS' liability or responsibility under this agreement in order to retain resolution possibilities for potential future claims. No partner shall prejudice the rights of another partner until after PARTNERS confer on claim.
37. PARTNERS will maintain and make available to each other all WORK-related documents, including financial data, during the term of this agreement and retain those records for four (4) years from the date of termination or COMPLETION OF WORK, or three (3) years from the date of final federal voucher, whichever is later.
38. PARTNERS have the right to audit each other in accordance with generally accepted governmental audit standards.

CALTRANS, the State auditor, FHWA, and SCCRTC will have access to all WORK-related records of each partner for audit, examination, excerpt, or transaction.

The examination of any records will take place in the offices and locations where said records are generated and/or stored and will be accomplished during reasonable hours of operation.

The audited partner will review the preliminary audit, findings, and recommendations, and provide written comments within 60 calendar days of receipt.

Any audit dispute not resolved by PARTNERS is subject to dispute resolution. Any costs arising out of the dispute resolution process will be paid within 30 calendar days of the final audit or dispute resolution findings.

39. PARTNERS consent to service of process by mailing copies by registered or certified mail, postage prepaid. Such service becomes effective 30 calendar days after mailing. However, nothing in this agreement affects PARTNERS' rights to serve process in any other matter permitted by law.
40. PARTNERS will not incur costs beyond the funding commitments in this agreement. If IMPLEMENTING AGENCY anticipates that funding for WORK will be insufficient to complete WORK, SPONSOR(S) will seek out additional funds and PARTNERS will amend this agreement.
41. If WORK stops for any reason, IMPLEMENTING AGENCY will place all facilities impacted by WORK in a safe and operable condition acceptable to CALTRANS.
42. If WORK stops for any reason, PARTNERS are still obligated to implement all applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, or approvals that are in effect at the time that WORK stops, as they apply to each partner's responsibilities in this agreement, in order to keep PROJECT in environmental compliance until WORK resumes.
43. Each partner accepts responsibility to complete the activities that they selected on the SCOPE SUMMARY. Activities marked with "N/A" on the SCOPE SUMMARY are not included in the scope of this agreement.

Scope: CONSTRUCTION

44. SCCRTC will advertise, open bids, award, approve and administer the construction contract in accordance with the Public Contract Code and the California Labor Code.

SCCRTC will not advertise the construction contract until CALTRANS completes or accepts the final plans, specifications, and estimate package; CALTRANS approves the Right of Way Certification; and FUNDING PARTNERS fully fund WORK.
45. SCCRTC will provide a RESIDENT ENGINEER and construction support staff who are independent of the design engineering company and construction contractor.
46. SCCRTC will implement changes to the construction contract through contract change orders (CCOs). CALTRANS will review and concur on all CCOs over \$50,000. All CCOs affecting public safety or the preservation of property, all design and specification changes, and all major changes as defined in the CALTRANS *Construction Manual* will be approved by CALTRANS in advance of the CCO work to be performed.
47. If the lowest responsible construction contract bid (plus estimated contingencies, supplemental costs and State Furnished Material costs) is equal to or less than the amount shown on the FUNDING SUMMARY for CONSTRUCTION Capital, the SCCRTC may award the contract. If the lowest responsible construction contract bid is greater than the amount shown on the FUNDING SUMMARY for CONSTRUCTION Capital, all

PARTNERS must be involved in determining how to proceed. If PARTNERS do not agree in writing on a course of action within 15 working days, this agreement will terminate.

48. SCCRTC will require the construction contractor to furnish payment and performance bonds naming SCCRTC as obligee and to carry liability insurance in accordance with CALTRANS specifications.
49. SCCRTC will submit a written request to CALTRANS for any SFM identified in the PROJECT PS&E package a minimum of 45 days prior to the bid advertisement date for PROJECT construction contract. SCCRTC will submit a written request to CALTRANS for any additional SFM deemed necessary during PROJECT construction.
50. Upon receipt of both SFM and full payment of CALTRANS' invoice for estimated SFM costs, CALTRANS will make the SFM available at a CALTRANS-designated location.
51. SCCRTC will renew, extend, and/or amend all resource agency permits as necessary.
52. SCCRTC will provide maintenance for those portions of the SHS within WORK limits until COMPLETION OF WORK, after which, maintenance will be handled through an existing maintenance agreement.
53. CALTRANS will provide source inspection.

COST

Cost: General

54. SPONSOR(S) will secure funds for all WORK including any additional funds beyond the FUNDING PARTNERS' existing commitments in this agreement. Any change to the funding commitments outlined in this agreement requires an amendment to this agreement.
55. The cost of any awards, judgments, or settlements generated by WORK is a WORK cost.
56. CALTRANS, independent of PROJECT, will pay all costs for HM MANAGEMENT ACTIVITIES related to HM-1 found within existing SHS right of way.
57. SCCRTC, independent of PROJECT, will pay, or cause to be paid, all costs for HM MANAGEMENT ACTIVITIES related to any HM-1 found within PROJECT limits and outside of existing SHS right of way.
58. HM MANAGEMENT ACTIVITIES costs related to HM-2 are a PROJECT CONSTRUCTION cost.

- 59. The cost of coordinating, obtaining, complying with, implementing, and if necessary renewing and amending resource agency permits, agreements, and/or approvals is a WORK cost.
- 60. The cost to comply with and implement the commitments set forth in the environmental documentation is a WORK cost.
- 61. The cost to ensure that PROJECT remains in environmental compliance is a WORK cost.
- 62. The cost of source inspection is a WORK cost.
- 63. The cost of any legal challenges to the CEQA or NEPA environmental process or documentation is a WORK cost.
- 64. Independent of WORK costs, CALTRANS will fund the cost of its own IQA for WORK done within existing or proposed future SHS right of way.
- 65. Independent of WORK costs, SCCRTC will fund the cost of its own IQA for WORK done outside existing or proposed future SHS right of way.
- 66. Fines, interest, or penalties levied against any partner will be paid, independent of WORK costs, by the partner whose actions or lack of action caused the levy. That partner will indemnify and defend all other partners.
- 67. The cost to place PROJECT right of way in a safe and operable condition and meet all environmental commitments is a WORK cost.
- 68. Because IMPLEMENTING AGENCY is responsible for managing the scope, cost, and schedule of a project component, if there are insufficient funds available in this agreement to place the right of way in a safe and operable condition, the appropriate IMPLEMENTING AGENCY accepts responsibility to fund these activities until such time as PARTNERS amend this agreement.

That IMPLEMENTING AGENCY may request reimbursement for these costs during the amendment process.

- 69. If there are insufficient funds in this agreement to implement applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, and/or approvals that are in effect at a time that WORK stops, the partner implementing the commitments or conditions accepts responsibility to fund these activities until such time as PARTNERS amend this agreement.

That partner may request reimbursement for these costs during the amendment process.

- 70. PARTNERS will pay invoices within 30 calendar days of receipt of invoice.

- 71. FUNDING PARTNERS accept responsibility to provide the funds identified on the FUNDING SUMMARY.
- 72. SPONSOR(S) accepts responsibility to ensure full funding for the identified scope of work.

Cost: CONSTRUCTION Support

- 73. The cost to maintain the SHS within WORK limits is a WORK cost until COMPLETION OF WORK, after which, the cost of maintenance will be handled through an existing maintenance agreement.
- 74. Each PARTNER listed below may submit invoices for CONSTRUCTION Support:
 - SCCRTC may invoice CALTRANS
 - CALTRANS will draw upon CALTRANS administered funds proportionally to pay for any expenses which are a WORK cost.
- 75. PARTNERS will exchange funds for actual costs.

SCCRTC will invoice CALTRANS for a \$150,000 initial deposit 30 working days prior to the construction contract bid advertisement date. This deposit represents two (2) months' estimated support costs.

Thereafter, SCCRTC will submit to CALTRANS monthly invoices for estimated monthly costs based on the prior month's actual expenditures.

After PARTNERS agree that all WORK is complete, SCCRTC will submit a final accounting for all OBLIGATIONS COSTS. Based on the final accounting, PARTNERS will refund or invoice as necessary in order to satisfy the financial commitments of this agreement.

Cost: CONSTRUCTION Capital

- 76. The cost of all STATE FURNISHED MATERIAL is a CONSTRUCTION capital cost.

CALTRANS will invoice SCCRTC for the actual cost of any STATE-FURNISHED MATERIAL.
- 77. Each PARTNER listed below may submit invoices for CONSTRUCTION Capital:
 - SCCRTC may invoice CALTRANS
- 78. PARTNERS will exchange funds for actual costs.

SCCRTC will invoice CALTRANS for a \$700,000 initial deposit 30 working days prior to the construction contract bid advertisement date. This deposit represents one (1) months' estimated capital costs.

Thereafter, SCCRTC will submit to CALTRANS monthly invoices for estimated monthly costs based on the prior month's actual expenditures.

After PARTNERS agree that all WORK is complete, SCCRTC will submit a final accounting for all OBLIGATIONS COSTS. Based on the final accounting, PARTNERS will refund or invoice as necessary in order to satisfy the financial commitments of this agreement.

SCHEDULE

79. PARTNERS will manage the schedule for WORK through the work plan included in the PROJECT MANAGEMENT PLAN.

GENERAL CONDITIONS

80. This agreement will be understood in accordance with and governed by the Constitution and laws of the State of California. This agreement will be enforceable in the State of California. Any legal action arising from this agreement will be filed and maintained in the Superior Court of Monterey County or the county in which the CALTRANS district office signatory to this agreement resides.
81. All obligations of CALTRANS under the terms of this agreement are subject to the appropriation of resources by the Legislature, the State Budget Act authority, and the allocation of funds by the California Transportation Commission.
82. Any PARTNER who performs IQA does so for its own benefit, further, that PARTNER cannot be assigned liability due to its IQA activities.
83. PARTNERS acknowledge that they are responsible to meet the requirements of Government Code Section 8879.20 et al. (Proposition 1 legislation); the governor's Executive Order 2007-S-02-07; the California Transportation Commission (CTC) program guidelines for the applicable program (CMIA, 99, etc.); and PROJECT scope, cost, schedule, and benefit baseline data agreement (BASELINE AGREEMENT). BASELINE AGREEMENT is attached and made a part of this agreement. PROJECT bond funds as identified in this agreement will not exceed funding stated in BASELINE AGREEMENT. Changes to PROJECT funding commitments will require an amendment to BASELINE AGREEMENT and this cooperative agreement.

Right of way purchased using bond funds will become the property of CALTRANS and any revenue from the sale of excess lands originally purchased with bond funds will revert to CALTRANS.

84. Neither SCCRTC nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CALTRANS under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS under this agreement.

It is understood and agreed that CALTRANS will fully defend, indemnify, and save harmless SCCRTC and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS under this agreement.

85. Neither CALTRANS nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by SCCRTC under or in connection with any work, authority, or jurisdiction conferred upon SCCRTC under this agreement.

It is understood and agreed that SCCRTC will fully defend, indemnify, and save harmless CALTRANS and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by SCCRTC under this agreement.

86. This agreement is not intended to create a third party beneficiary or define duties, obligations, or rights in parties not signatory to this agreement. This agreement is not intended to affect the legal liability of PARTNERS by imposing any standard of care for completing WORK different from the standards imposed by law.

87. PARTNERS will not assign or attempt to assign agreement obligations to parties not signatory to this agreement.

88. Any ambiguity contained in this agreement will not be interpreted against PARTNERS. PARTNERS waive the provisions of California Civil Code section 1654.

89. A waiver of a partner's performance under this agreement will not constitute a continuous waiver of any other provision. An amendment made to any article or section of this agreement does not constitute an amendment to or negate all other articles or sections of this agreement.

90. A delay or omission to exercise a right or power due to a default does not negate the use of that right or power in the future when deemed necessary.

91. If any partner defaults in their agreement obligations, the non-defaulting partner(s) will request in writing that the default be remedied within 30 calendar days. If the defaulting partner fails to do so, the non-defaulting partner(s) may initiate dispute resolution.
92. PARTNERS will first attempt to resolve agreement disputes at the PROJECT team level. If they cannot resolve the dispute themselves, the CALTRANS district director and the executive officer of SCCRTC will attempt to negotiate a resolution. If no resolution is reached, PARTNERS' legal counsel will initiate mediation. PARTNERS agree to participate in mediation in good faith and will share equally in its costs.

Neither the dispute nor the mediation process relieves PARTNERS from full and timely performance of WORK in accordance with the terms of this agreement. However, if any partner stops WORK, the other partner(s) may seek equitable relief to ensure that WORK continues.

Except for equitable relief, no partner may file a civil complaint until after mediation, or 45 calendar days after filing the written mediation request, whichever occurs first.

Any civil complaints will be filed in the Superior Court of Monterey County or in the county which the CALTRANS district office signatory to this agreement resides. The prevailing partner will be entitled to an award of all costs, fees, and expenses, including reasonable attorney fees as a result of litigating a dispute under this agreement or to enforce the provisions of this article including equitable relief.

93. PARTNERS maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.
94. If any provisions in this agreement are deemed to be, or are in fact, illegal, inoperative, or unenforceable, those provisions do not render any or all other agreement provisions invalid, inoperative, or unenforceable, and those provisions will be automatically severed from this agreement.
95. This agreement is intended to be PARTNERS' final expression and supersedes all prior oral understanding or writings pertaining to WORK.
96. If during performance of WORK additional activities or environmental documentation is necessary to keep PROJECT in environmental compliance, PARTNERS will amend this agreement to include completion of those additional tasks.
97. PARTNERS will execute a formal written amendment if there are any changes to the commitments made in this agreement.
98. This agreement will terminate upon COMPLETION OF WORK or upon 30 calendar days' written notification to terminate and acceptance between PARTNERS, whichever occurs first.

However, all indemnification, document retention, audit, claims, environmental commitment, legal challenge, and ownership articles will remain in effect until terminated or modified in writing by mutual agreement.

- 99. The following documents are attached to, and made an express part of this agreement: SCOPE SUMMARY, FUNDING SUMMARY.
- 100. Signatories may execute this agreement through individual signature pages provided that each signature is an original. This agreement is not fully executed until all original signatures are attached.

CONTACT INFORMATION

The information provided below indicates the primary contact data for each partner to this agreement. PARTNERS will notify each other in writing of any personnel or location changes. These changes do not require an amendment to this agreement.

The primary agreement contact person for CALTRANS is:
Luis Duazo, Project Manager
50 Higuera Street
San Luis Obispo, California 93401
Office Phone: (805) 542-4678

The primary agreement contact person for SCCRTC is:
Kim Shultz, Project Manager
1523 Pacific Avenue
Santa Cruz, California 95060
Office Phone: (860) 460-3200

SIGNATURES

PARTNERS declare that:

1. Each partner is an authorized legal entity under California state law.
2. Each partner has the authority to enter into this agreement.
3. The people signing this agreement have the authority to do so on behalf of their public agencies.

STATE OF CALIFORNIA
 DEPARTMENT OF TRANSPORTATION

SANTA CRUZ COUNTY REGIONAL
 TRANSPORTATION COMMISSION

By: _____
 RICHARD KRUMHOLZ
 District Director

By: _____
 Randy Johnson
 SCCRTC Chair

CERTIFIED AS TO FUNDS:

Attest: _____
 George Dondero
 Executive Director

By: _____
 Julia Bolger
 Resource Manager

APPROVED AS TO FORM AND PROCEDURE

By: _____
 Rahn Garcia
 SCCRTC Legal Counsel

SCOPE SUMMARY

4	5	6	7	8	Description	CALTRANS	SCCRTC	N/A
5	270				Construction Engineering and General Contract Administration	X	X	
		10			Construction Staking Package and Control		X	
		15			Construction Stakes		X	
		20			Construction Engineering Work		X	
		25			Construction Contract Administration Work		X	
			05		Secured Lease for Resident Engineer Office Space or Trailer		X	
			10		Set Up Construction Project Files		X	
			15		Pre-Construction Meeting		X	
			20		Progress Pay Estimates		X	
			25		Weekly Statement of Working Days		X	
			30		Construction Project Files and General Field Office Clerical Work		X	
			35		Labor Compliance Activities		X	
			40		Approved Subcontractor Substitutions		X	
			45		Coordination		X	
			50		Civil Rights Contract Compliance		X	
			99		Other Construction Contract Administration Products		X	
		30			Contract Item Work Inspection		X	
		35			Construction Material Sampling and Testing		X	
			05		Materials Sampling and Testing for Quality Assurance		X	
			10		Plant Inspection for Quality Assurance		X	
			15		Independent Assurance Sampling and Testing		X	
			20		Source Inspection	X		
		40			Safety and Maintenance Reviews		X	
		45			Relief From Maintenance Process		X	
		55			Final Inspection and Acceptance Recommendation		X	
		60			Plant Establishment Administration		X	
		65			Transportation Management Plan Implementation During Construction		X	
		75			Resource Agency Permit Renewal and Extension Requests		X	
		80			Long-Term Environmental Mitigation/Mitigation Monitoring During Construction Contract		X	
		99			Other Construction Engineering and General Contract Administration		X	
5	285				Contract Change Order Administration		X	
5	290				Resolve Contract Claims		X	
5	295				Accept Contract, Prepare Final Construction Estimate, and Final Report		X	

FUNDING SUMMARY

Funding Source	Funding Partner	Fund Type	CON Capital	CON Support	Subtotal Support	Subtotal Capital	Subtotal Funds Type
STATE	CALTRANS	Bond - Corridor Mobility Improvement	\$15,640,000	\$550,000	\$550,000	\$15,640,000	\$16,190,000
STATE	SCCRTC	STIP/RIP	\$0	\$2,150,000	\$2,150,000	\$0	\$2,150,000
		Subtotals by Component	\$15,640,000	\$2,700,000	\$2,700,000	\$15,640,000	\$18,340,000

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Benefits of Local Agency Performing Construction Management

- a. Construction can start approximately 6 months sooner due to Caltrans Headquarters review and listing process being eliminated.
- b. In order to minimize claims, specialized contract language can be inserted into the Contract Documents if it is locally administered.
- c. Control – The local agency will maintain much more control over the project.
- d. Change Order Costs – The Local Agency (Agency) has greater control on negotiating contract change orders (CCO's). The Agency can process CCO's much faster and have more flexibility. The Agency has more control on granting unwarranted time extensions. This will be critical to keeping the projects on schedule and save significant funds for the Agency.
- e. Schedule control – If the Agency manages construction, then the Authority's priorities will be emphasized (i.e. a top priority will be to practice tight schedule and cost control).
- f. Accounting – Work will not be impacted or delayed due to limitations with Caltrans accounting procedures and process.
- g. Flexible Contracting / Contract limits – On many projects, flexible contracting options are needed (i.e. changing project limits). Local Agencies can have more flexibility on work outside of the project limits on contracts they administer.
- h. Responsiveness – The local agency will get excellent response from consultant CM staff (i.e. for project reporting, requests from Agency). Otherwise, the Agency can replace the CM staff.
- i. Staff Selection – The local agency will have complete say over CM staffing if the Agency administers the construction.
- j. Contracts & procedures – If the local agency administers construction, then a Boiler Plate Contract can be utilized that is customized to the risk tolerance and procedures of the local agency. This Boiler Plate can be loaded with procedures that limit the local agency's risk and save the Authority significant cost (i.e. CPM and Submittal Special Provisions). Moreover, certain procedures that can result in cost overruns can be eliminated: Time Related Overhead, Flagging, Asphalt Oil Index.
- k. Addenda – It is common for questions to arise during the bidding process that necessitate the agency to issue addenda immediately after the bid inquiry cut-off period (5-days prior to the bid opening date under Caltrans administration). Local agencies have greater flexibility in addressing late questions or changes to the bid documents up to a few days of bid opening. Frequently, these addenda save money and reduce risk for the agency.

- I. Other Transportation Authorities & Agencies Taking the CM Lead – Many other agencies similar to SCCRTC have taken the CM lead (i.e. advertise, hold the construction contract, administer the construction contract) for their projects within Caltrans R/W. This trend appears to be growing after the passage of Prop 35. Examples include:
- SR4 Bypass Authority – For the Segment 1 and Segment 3 Projects the work limits within Caltrans R/W covered approximately 3 miles. Improvements included: a bridge, retaining walls, storm drainage, major grading, structural section, lighting, traffic operations systems, erosion control, pavement delineation, and others. Complex staging and detours were required within Caltrans R/W.
 - CCTA has had great success in administering projects within Caltrans R/W. The most prevalent example is Segment 3 of the SR4 Gap Project which consisted of new westbound mainline construction (significant grading, roadway, bridges, retaining walls, etc.) and widening of the existing eastbound roadway which included complex staging. The project length was 4.6 miles. CCTA also administered the Harbor Overcrossing, and the Loveridge Pump Station Project.
 - San Joaquin Council of Governments – SJCOG administered a large, complex mainline project that widened and improved approximately 5 miles of SR 99 through Stockton. This \$61M project included bridges, soundwalls, retaining walls, barriers, and roadway construction.
 - Solano Transportation Authority – STA administered the I-80/Green Valley Creek Bridge Widening. They plan to administer the I-80 ramp metering project, and the I-80/Abernathy Road Interchange Improvements in the coming year.
 - Cities: Many cities take the CM lead on their projects. These typically include construction of improvements within the Caltrans R/W that will improve traffic mobility for the City. Northern California examples include, but are not limited to: Stockton, Manteca, Windsor, Livermore, Dublin, Pleasanton, Sacramento, Vacaville, Fairfield, Modesto, Roseville, Lincoln, Davis, Lathrop, Elk Grove, Millbrae, Folsom, San Jose, and many others.
 - Developers – Developers commonly construct interchanges, auxiliary lanes, soundwalls, and other improvements within Caltrans R/W. In fact, the latest SR4 /Loveridge Interchange improvements were constructed by a developer.
 - Counties – Many counties throughout the state.

Respectfully Submitted: Dale Dennis, PDM Group
SCCRTC Project Management Consultant
May 2010