



Invitation to Submit Proposals

Operator of Freight and Recreational Passenger Rail Service On the Santa Cruz Branch Rail Line

February 23, 2012

Dear Rail Service Operator:

The Santa Cruz County Regional Transportation Commission (SCCRTC) invites you to submit a proposal for operation of freight and recreational passenger rail service on the Santa Cruz Branch Rail Line. This letter, along with its enclosures, comprises the Request for Proposal (RFP) for this project. The SCCRTC reserves the right to amend the RFP by addendum before the final proposal submittal date. This RFP and any addenda will be posted on the SCCRTC Consulting Opportunities website (<http://sccrtc.org/about/opportunities/rfp/>). Responses should be submitted in accordance with the instructions set forth in this RFP.

Proposal Due Date

Interested rail service operators must submit one (1) unbound reproducible original and six (6) paper copies, as well as one electronic (PDF or Word/Excel) version of their proposal **no later than 5:00 pm, Pacific Daylight Savings Time, Friday, April 6, 2012**. Proposals received after the date and time specified above will not be considered.

Proposals shall be considered firm offers to enter into an agreement for rail services, as described in this RFP for a period of ninety (120) days from the time of submittal.

RTC Point of Contact

Proposals and inquiries relating to this RFP, including requests for hirail inspections of the Santa Cruz Branch Rail Line shall be submitted to:

Luis Pavel Mendez, Deputy Director
Santa Cruz County Regional Transportation Commission
1523 Pacific Ave., Santa Cruz, CA 95060
831-460-3200 ~ lmendez@sccrtc.org

Email inquiries relating to this RFP should include "Operator of Rail Service" in the subject header. Luis Pavel Mendez will coordinate hirail inspection requests with the appropriate individuals at Union Pacific.

Background Information

The SCCRTC and Union Pacific negotiated for more than ten years to arrive at a purchase and sale agreement. During that time the SCCRTC conducted a number of due diligence investigations. Information on the work to purchase the Santa Cruz Branch Rail Line including due environmental documents, inspection reports, appraisals and agreements are available on the SCCRTC website at <http://sccrtc.org/projects/rail/rail-line-purchase/>.

Pre-Proposal Conference & Addenda

A pre-proposal conference will be held on Wednesday, March 14, 2012 at 2:00 p.m. Pacific Daylight Savings Time in the RTC Conference Room, 1523 Pacific Ave., Santa Cruz, CA. To ensure that sufficient resources are available for this meeting, RSVPs to (831) 460-3200 are requested by Wednesday, March 7, 2012 at 5:00 p. m. Pacific Standard Time. Please indicate your attendance and the number of participants.

A written response to all questions receive by March 1, 2012 will be available at the pre-proposal conference. Written responses to questions posed at the pre-proposal conference will also be prepared. SCCRTC reserves the right to issue a revised request for proposal or addenda as a result of comments and questions from prospective proposers. This RFP, any addenda and questions from prospective proposers along with the responses will be posted on the RTC's Consultant Opportunities website (<http://sccrtc.org/about/opportunities/rfp/>). **All prospective bidders are responsible for checking the website for any addenda to the RFP and additional information.**

Thank you for your interest. If you need assistance or have any questions, please call the SCCRTC Deputy Director Luis Pavel Mendez at (831) 460-3200 or lmendez@sccrtc.org.

Sincerely,

George Dondero
Executive Director

Enclosed with this Invitation to Submit Proposals:

- Request for Proposals for An Operator of Freight and Recreational Passenger Rail Service on the Santa Cruz Branch Rail Line along with all attachments
- Fact Sheet for Santa Cruz Branch Rail Line Acquisition project

**Request for Proposals for
An Operator of Freight and Recreational Passenger Rail Service
on the Santa Cruz Branch Rail Line**

I. Introduction

The Santa Cruz County Regional Transportation Commission (SCCRTC) is the designated Regional Transportation Planning Agency (RTPA) for Santa Cruz County. The agency consists of twelve members, representing the County of Santa Cruz, the Cities of Capitola, Santa Cruz, Scotts Valley and Watsonville, and the Santa Cruz Metropolitan Transit District. Caltrans serves as an ex-officio member. SCCRTC has the authority to develop and oversee projects on public rail line rights-of-way in Santa Cruz County.

SCCRTC has negotiated a price for the acquisition of the Santa Cruz Branch Rail Line (Branch Line) from Watsonville to Davenport, which line is also known as the Union Pacific Railroad Company's (UPRR) "Santa Cruz Subdivision (Subdivision)." SCCRTC is currently working to be established as the new owner of the Subdivision. SCCRTC's vision for the Subdivision includes providing freight service to rail served customers on the Subdivision, as well as implementing recreational passenger rail service over the Subdivision. SCCRTC may, in the future, consider establishing a bicycle and pedestrian path along some or all of the Santa Cruz Subdivision (Rail Trail).

SCCRTC has negotiated a price of \$14.2 million to purchase the Santa Cruz Subdivision, which includes approximately 31 route miles of right-of-way and standard gauge railroad line between Watsonville Junction and Davenport, California. SCCRTC and UPRR have signed an agreement setting forth the terms under which SCCRTC will purchase UPRR's right-of-way and improvements thereon, and the parties are now working to close the transaction. Under the terms of the agreement, the SCCRTC will assume ownership, care and control of the Subdivision and invest \$5 million to improve

the structures on the Subdivision. The SCCRTC anticipates that the UPRR's property will be acquired on or about June 1, 2012 and that responsibility for rail operations will be transferred to a rail operator designated by SCCRTC at that time.

The purpose of this Request for Proposals (RFP) is to solicit proposals from operationally and financially qualified firms which will be evaluated by SCCRTC to select a proposer to provide rail service for the Santa Cruz Subdivision. SCCRTC will accept proposals from all prospective proposers and encourages all prospective proposers to submit proposals including those with an organized labor force. All proposers will be considered by the SCCRTC. SCCRTC encourages prospective proposers to be creative in their response to this request for proposals. SCCRTC will consider all proposals.

SCCRTC will provide the right-of-way, trackage, bridges, trestles and culverts, signage and grade crossing warning systems to the selected proposer, in their current condition. The contract between the two parties will be an administration and coordination agreement generally in the same form as an agreement previously negotiated between SCCRTC and Sierra Northern Railroad, and attached to this RFP (as Attachment E) as reference.

The selected proposer will assume an exclusive railroad freight operating easement on the Subdivision from UPRR. Like Sierra Northern Railroad, the selected proposer must obtain authority from the Surface Transportation Board to be the exclusive common carrier by railroad to fulfill said operating easement. Through an administration and coordination agreement (as in Attachment E), the selected proposer will obtain from SCCRTC the right to operate recreational passenger rail service on the Subdivision. The selected proposer will be expected to maintain the right of way and infrastructure, and to operate the rail services in accordance with applicable Federal Railroad Administration (FRA) and California Public Utilities Commission (CPUC) regulations. The selected proposer will furnish qualified employees for train and engine crews, as well as

supervisory employees and support personnel. In addition, the selected proposer will furnish property and liability insurance, an environmental protection program designed to prevent and control environmental accidents, a safety program, an employee certification program, and a substance abuse program. The selected proposer will be required to cooperate with other SCCRTC-approved projects on the Santa Cruz Subdivision, including, but not limited to the Rail Trail.

In addition to an administration and coordination agreement, for continuity and continuation of rail service the selected proposer will be required to enter into a railroad interchange agreement with UPRR and accept and assume assignment of industry track agreements and contract rate agreements as relate to freight customers on the Subdivision. Additionally, the selected proposer will assume from UPRR assignment of certain agreements which impact and dictate aspects of the operation of the line.

II. Proposal Contents, Process and Requirements

A. Proposal Submissions

A Pre-Proposal Conference for prospective proposers will be held at 2:00 P.M., on March 14, 2012 at SCCRTC's offices at 1523 Pacific Avenue, Santa Cruz, California. Please call the Commission offices at (831) 460-3200 by March 7, 2012 to indicate your attendance and the number of participants at the Pre-Proposal Conference. Notes on the Pre-Proposal Conference, written responses to all questions received from proposers, and any subsequent amendments to the RFP will be distributed to the proposers attending the Pre-Proposal Conference.

All questions in regard to this RFP must be submitted in writing and addressed to Luis Pavel Mendez, Deputy Director of SCCRTC. A written response to all questions received by March 1, 2012 will be made to prospective RFP proposers at the Pre-

Proposal Conference. SCCRTC reserves the right to issue a revised RFP or addenda as a result of comments and questions from prospective proposers.

The original and six (6) hard copies and one electronic copy of a proposal submitted pursuant to this RFP must be received by SCCRTC no later than 5:00 P.M. on April 6, 2012 at the following address:

Luis Pavel Mendez, Deputy Director
Santa Cruz County Regional Transportation Commission
1523 Pacific Avenue
Santa Cruz, CA 95060-3911

SCCRTC is not responsible for delays due to the U.S. Postal Service, courier services or any other mail delivery service. Proposals received after the 5:00 P.M. deadline on April 6, 2012 will not be considered.

All proposals submitted in response to this request will be screened by SCCRTC staff and other SCCRTC-designated representatives. The screening will determine which proposers will be invited to interview, and any selected proposer must make the key personnel identified in its proposal available to the SCCRTC interview committee. SCCRTC reserves the right to make a final selection without an interview, or to choose not to negotiate or execute a contract with any proposer.

B. Proposal Requirements

Submitted proposals must be clearly labeled as “**Proposal for Operator of Rail Service,**” and must include the following:

1. A Transmittal Letter, which must include the following information:

- The name and signature of the person authorized to obligate the company or joint venture, and the location of the principal office. If activities are to be shared among companies and offices at different locations, indicate where each office is located and what activities are to be performed in each office.
- A summary description of the work to be performed by each subcontracting company proposed for the project, if any.
- An e-mail address for the company representative to which correspondence can be sent. If e-mail is not available, so indicate in the transmittal letter. Also provide telephone and fax numbers or so indicate if they are not available.

2. An organization chart including all participants in the proposal, showing the proposed relationships between the key personnel and support staff, showing which work function each company will be responsible for performing.

3. Proposer's demonstrated ability, including its safety compliance record, to comply with the requirements of CPUC, FRA, and all other regulatory agencies that would govern the proposer's business of operating rail service on the Santa Cruz Subdivision.

4. A mobilization plan and a schedule for the start-up of rail service upon issuance of a notice to proceed by SCCRTC to the proposer.

5. A Service Plan that:

- includes detailed information concerning the rolling stock and other equipment proposed to be used on the Santa Cruz Subdivision,
- is sensitive to the needs of the communities traversed,

- provides optimal service to freight customers, and addresses the proposers' ability to ensure consistency of freight rail service, and return service to the Santa Cruz Subdivision after unplanned outages such as derailments,
- complies with the provisions of UPRR's Trackage Rights Agreement with the Santa Cruz, Big Trees & Pacific Railway Co., and
- describes the proposer's ability to operate passenger train service, and confirms the proposer's willingness to (i) cooperate with any other operator of passenger train service that may use the Santa Cruz Subdivision, and (ii) cooperate with the construction and operation of a Rail Trail.

6. A maintenance plan for the Santa Cruz Subdivision rail properties, at not less than FRA Class 1 standards, and for the proposer's rolling stock, both of which must include an environmental protection program. The maintenance plan shall include the location of the proposer's maintenance facility, as well as storage facilities for the proposer's rolling stock.

7. A projected five-year financial plan and proposer's most recent financial statements demonstrating the proposer's financial capability and the availability of the financial resources that would be used to provide the services proposed. The financial plan must include projected capital expenditures as well as revenues and expenses, including the proposer's insurance plan, limits of liability, and deductible consistent with minimum requirements in **Attachment E**.

8. A proposal for revenue sharing between the proposer and SCCRTC on revenues (beyond certain thresholds) generated on the Subdivision

. 9. References for similar rail operations experience should be provided by the proposer; SCCRTC prefers to receive at least three such references, but proposers submitting fewer than three references will not be disqualified from consideration. Each reference should include the contact's name, title, address and phone numbers, and include an explanation of the services provided, in addition to the years in which they were provided.

SCCRTC reserves the right to reject any proposals that do not contain all nine (9) sections listed above, do not contain the required number of copies, do not have correct labeling, are submitted after the deadline or are submitted to the wrong location.

C. Proposal Process Schedule

RFP's Available and Mailed	February 23, 2012
Pre-Proposal Conference	March 14, 2012
Proposal Submission	April 6, 2012
Short-List Selection	April 13, 2012
Notification of Short Listed Firms	April 13, 2012
Interview Short List Firms	Week of April 23, 2012
RTC Selection of Firm	May 3, 2012
Complete Negotiations with Selected Firm	May 21, 2012
RTC Approves Contract with Firm	June 7, 2012
Commence Operations	July 1, 2012

SCCRTC reserves the right to alter the foregoing schedule for any reason.

D. Modification or Withdrawal of Submittals

Any proposal received prior to the date and time specified above for receipt may be withdrawn or modified by written request of the proposer. To be considered, however, the modified proposal must be received by the time and date specified above.

E. Property Rights

Any proposal received within the prescribed deadline becomes the property of the SCCRTC and all rights to the contents therein become those of SCCRTC.

F. Confidentiality

After the deadline to submit proposals has passed, all proposals will be regarded as public records and will be subject to review by the public. Except as expressly provided below, any language purporting to render all or portions of the proposals confidential will be regarded as non-effective and will be disregarded. If any proposal is based on (i) information constituting a trade secret, as that term is defined in Evidence Code section 1060, or (ii) information that is subject to a confidentiality agreement, the proposer may submit such information separately from the proposal, clearly marked as confidential. The proposer shall state in writing whether any such confidential information is a trade secret or is subject to a confidentiality agreement. Such information will be designated confidential, but only to the extent permitted by the California Public Records Act. In the event of a legal challenge to the confidentiality of any such information submitted by a proposer, SCCRTC will give the proposer notice of such legal challenge and the opportunity to defend the confidentiality of such information, but such defense will not be the responsibility of SCCRTC.

G. Amendments to Request for Proposals

SCCRTC reserves the right to amend the Request for Proposals by addenda before the final proposal submittal dates.

H. Non-Commitment of SCCRTC

This Request for Proposals does not commit the SCCRTC to award a contract, to pay any costs incurred in the preparation of a proposal for this request, or to procure or contract for any services. All products used or developed in the execution of any contract resulting from this Request for Proposals will remain in the public domain at the completion of the contract.

I. Conflict of Interest

The proposer shall disclose any financial interest, or any business or other relationship, that may have an impact upon the proposal or any services rendered to SCCRTC. The proposer shall also list current clients who may have a financial interest in the outcome of this contract. A proposer has a "financial interest" if it is reasonably foreseeable that the proposer may gain a material financial advantage as a result of proposer's relationship with any person or entity connected with, or directly affected by, the services provided or work performed. As used throughout this Section, the term "proposer" includes every owner and employee of the proposer, including their immediate families. If requested by SCCRTC, the proposer, its owners and employees will be required to file a completed "Fair Political Practices Commission (FPPC) Form 700, Statement of Economic Interests" with SCCRTC in accordance with SCCRTC's Conflict of Interest Code.

J. Nondiscrimination

The contract awarded as a result of this Request for Proposals (RFP) will be awarded without discrimination based on race, color, religion, age, sex, sexual preference, or national origin.

K. Inquiries and Requests for Additional Copies

Inquiries concerning this Request for Proposals and requests for additional copies of this document should be directed to George Dondero, Executive Director of SCCRTC.

III. Operator Selection and Contract Negotiations

The selection of a proposer to provide rail services on the Santa Cruz Subdivision shall be made by SCCRTC in accordance with the selection criteria that are contained in **Attachment A**, and in accordance with the time schedule detailed above.

At the conclusion of the proposal ranking process, SCCRTC may offer a contract to the highest-ranked proposer and negotiate final contract terms with that firm. If agreement cannot be reached with the highest-ranked proposer, SCCRTC may terminate negotiations with that proposer and commence negotiations with the next highest-ranked proposer. If necessary, SCCRTC may repeat this process until a final contract has been negotiated.

IV. Description of the Santa Cruz Subdivision

Attachment B is a map showing the location of the Santa Cruz Subdivision and **Attachment C** is a copy of UPRR's timetable and special instructions as they pertain to the Subdivision. The SCCRTC ownership of right-of-way and improvements begins near

Salinas Road at about MP 0.4 at Watsonville Junction and extends to a turnout at about MP 31.4 at Davenport, California. The interchange with UPRR will be made on a track to be designated in an interchange agreement between the operator and UPRR. The yard tracks at Davenport (north of the Route 1 highway-rail grade crossing) will not be available to the Operator for storing, switching, or holding cars.

The Santa Cruz, Big Trees and Pacific Railway's (SCBT&P) has a combination of ownership, and access rights in and around the line. SCBT&P ownership is on the Felton Branch, and begins at about MP 20.5, on the wye track near Maple Street in Santa Cruz., The SCBT&P interchanges freight cars on the Santa Cruz wye track and has operating rights to move excursion passenger trains to the Santa Cruz Boardwalk (i.e., Casino) along the beach in Santa Cruz. Note that for this purpose, UPRR maintains the track between MP 19.3 and MP 20.8, as FRA Class 1, as shown in **Attachment C**.

As indicated in **Attachment C**, the UPRR operates the Santa Cruz Subdivision as "Excepted Track" with a maximum authorized train speed of 10 mph. There are no train control signals on the Subdivision and the GCOR rules concerning Track Warrant Control (TWC) and Yard Limits (YL) are in place. Six (6) axle locomotives are prohibited. UPRR "SI-12, Tonnage Restrictions-None," indicates that a maximum load of 268,000 lb. per 4-axle rail car is permitted.

Currently UPRR operates freight service between Watsonville Junction and Davenport on an as needed basis, and at this point has designated the line north of Milepost 3.3 as out of service (OOS) as result of limited customer requirements and track condition.

The right-of-way maps for the Santa Cruz Subdivision are not attached to this RFP but can be viewed at the pre-proposal meeting. The right-of-way width is generally 50 ft.

to 80 ft. wide between Watsonville and Santa Cruz and generally 100 ft. to 350 ft. wide between Santa Cruz and Davenport.

The UPRR Track Chart in **Attachment D** shows the gradient, curvature, mileposts, sidings, spur tracks, yard limits, drainage structures, highway grade separations, at-grade crossings and type of rail in track by weight of rail, jointed or continuous welded rail (CWR), and the year that the rail was laid. There are approximately 47 private at-grade crossings, mostly farm type. Some main track runs longitudinally in city streets, including about 0.5 track miles in Watsonville and about 0.5 track miles along Beach Street at “Casino,” the Boardwalk, at Santa Cruz Beach. There are approximately 16 turnouts on the Santa Cruz Subdivision and about 31.0 track miles of Main Track along with about 1.4 track miles of spur tracks and runaround tracks or sidings.

For the most part, highway overpasses are maintained by the State Department of Transportation (Caltrans). However, historical records suggest that two highway overpasses (sometimes known as above grade bridges) may have resulted from deed conditions which require railroad maintenance. One such overpass is West Cliff Drive in Santa Cruz for which SCCRTC has been advised that the City of Santa Cruz has assumed the maintenance responsibility. The other structure is at MP 12.03, Rio Del Mar highway overpass for which SCCRTC has been advised that the Santa Cruz County Public Works Department has assumed the maintenance responsibility.

SCCRTC is aware of the following maintenance problems that UPRR has encountered on the Santa Cruz Subdivision:

1. Agricultural irrigation water running on the roadbed in the vicinity of MP 9.6 and generally between Natural Bridges (MP 22.10) and Davenport (MP 31.9);

2. Soft subgrade, side hill slides and drainage problems in the vicinity of MP 5.0;
3. Storm damage from large trees falling on the right-of-way and on adjacent property, generally in the territory from MP 10 to MP 16; and
4. Potential slide damage at or near MP 14.

In 2003, the UPRR reportedly rehabilitated the Santa Cruz Subdivision by installing approximately 37,000 new treated timber crossties and surfaced and lined the Subdivision with a reported 550 carloads of crushed rock ballast. In the same period, several at-grade crossings were improved by the installation of concrete panels.

Specific information concerning freight traffic on the Santa Cruz Subdivision, including inbound and outbound carload information for each shipper, will be provided only after the proposer signs a confidentiality agreement obligating the proposer to maintain the confidentiality of all such information.

V. Attachments to the Request for Proposals

- A. Criteria for Selection of the Operator of the Santa Cruz Subdivision
- B. Map of the Santa Cruz Subdivision
- C. Current Union Pacific Railroad Company Timetable
- D. Current Union Pacific Track Chart showing profile, degrees of curvature and weight of rail
- E. Administration, Coordination and License agreement between the SCCRTC and Sierra Northern Railroad

Attachment A

**Criteria for Selection of Operator of Rail Service
Santa Cruz Subdivision**

Proposer Name: _____

<u>Criteria</u>	<u>Maximum Points</u>	<u>Rating</u>
1. Ability to operate rail service as evidenced by experience in providing similar service.	15	_____
2. Experience and competence of key personnel.	15	_____
3. Comprehensiveness and validity of the proposed Service Plan	15	_____
4. Comprehensiveness and validity of the proposed Maintenance Plans.	15	_____
5. Viability of proposer’s Financial Plan and evidence of financial capability to provide the services proposed.	15	_____
6. Ability and willingness to respond to SCCRTC requirements and accessibility to SCCRTC Staff and Board.	15	_____
7. Experience in working with FRA, CPUC, and other regulatory agencies.	10	_____
Total	100	_____

Rater: _____ Date: _____

ATTACHMENT B

Over the past few years, the RTC has been conducting pre-acquisition activities including appraisals, structures assessments, title reviews, hazardous materials assessments and negotiations with the property owner and shortline operator. Due diligence documents are available on the RTC website:

<http://sccrtc.org/projects/rail/rail-line-purchase/#acquire>. In addition, a list of frequently asked questions regarding the project and due diligence work has been posted to the RTC website and can be found at <http://sccrtc.org/wp-content/uploads/2011/06/100504-RailLinePur-FAQ.pdf>.

For more information: Please visit the RTC web site: www.sccrtc.org or call (831) 460-3200



ATTACHMENT C

COAST SUBDIVISION (0950)

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Radio Display: North Elmhurst to Coast- 4242 (*58) Coast to Lick (Caltrain Dispatcher)- 4747 Lick to North Salinas- 4242 (*58) North Salinas to North SLO- 5151 (*58)						
Mile Post	Track Layout	Rule 6.3	CP #s	SOUTH STATIONS ▼	NORTH STATIONS ▲	Sta. #s Siding Feet
13.5		CTC	NI012	NORTH ELMHURST (2.2)		PX940
15.7		TWC ABS		MULFORD (9.2)		CO010
24.9				ALVARADO (5.7)		CO020 3248
30.6		CTC	CO030	CARTER (1.6)		
31.0		2MT	CO031	NEWARK (2.0)	T	CO025
33.0			CO033	CP MOWRY (1.8)	(11-3)	
33.9		CTC	CO034	ALBRAE (8.8)	!	CO029 3980
34.8			CO035			
43.6			CO044	EXPRESSWAY (1.1)	!	5300
44.7		CTC	CO045	COAST Trk.1 (1.8)	!	9310
46.4		3MT		CP STOCKTON (0.7)		
47.1				CP JULIAN (0.6)	T	
47.7		CTC		CP CAHILL (0.8)		
48.5		2MT		CP DELMAS (0.5)		
49.0				CP MACK (0.5)		
49.5				CP MICHAEL (2.1)	X	
51.6			CO052	LICK (8.3)	X	CO047
59.9		CTC	CO060	COYOTE (10.2)		CO055
68.1			CO068	MORGAN HILL (6.9)	!	CO064 10529
70.1			CO070			
77.0			CO077	GILROY (1.4)		CO072
78.4			CO078	HOLD SIGNAL 078 (1.3)		
79.7		DT ABS		CARNADERO (3.3)		CO075
83.0				CORPORAL (6.7)		CO078
89.7		CTC	CO083	LOGAN (7.6)		CO085
97.3		DT ABS	CO097	WATSONVILLE JCT. (9.5)	BT	CO092
106.8		CTC	CO107	CASTROVILLE (6.3)		CO102 6300
108.1			CO108			
113.1			CO113	NORTH SALINAS (1.8)		
114.9		TWC ABS		SALINAS (16.3)	B	CO110 9895
131.2				GONZALES (9.0)		CO127 7475
140.2				SOLEDAD (20.1)		CO135 7450
160.3				KING CITY (19.2)		CO155 6300
179.5				SAN ARDO (13.0)		CO174 5780
192.5				BRADLEY (9.8)		CO187 5150
200.5				MCKAY (10.6)		CO195 E5000 W3770
202.3						
212.9				PASO ROBLES (5.5)		CO208

218.4		TWC ABS		TEMPLETON (11.2)		CO213 4700
229.6				SANTA MARGARITA (3.5)		CO225 19015
233.1		CTC	CO233	SOUTH SANTA MARGARITA (6.9)		
238.8			CO239	SERRANO (3.8)	!	CO233 5750
240.0			CO240			
242.7			CO243	CHORRO (4.7)	!	CO236 5100
243.8			CO244			
248.4		CTC	CO248	NORTH SAN LUIS OBISPO		
248.5		2MT	CO249			

(236.2)

SI-01 MAIN TRACK AUTHORITY

CTC between:
 MP 13.5 and MP 13.6;
 MP 30.7 and MP 78.4;
 MP 83.0 and MP 89.7;
 MP 97.3 and MP 113.1;
 MP 233.1 and MP 248.5.

ABS Rule 9.14 / 9.15 between:
 MP 78.4 and MP 83.0;
 MP 89.7 and MP 97.3.

ABS / TWC between:
 MP 13.6 and MP 30.7;
 MP 113.1 and MP 233.1.

Coast and Lick: Main tracks between Coast and Lick are controlled by San Jose Caltrain Train Dispatcher, and are under control and supervision of Peninsula Corridor Joint Powers Board (PCJPB) and Caltrain. Trains and engines using main tracks between Coast and Lick are governed by current UPRR Timetable/Special Instructions and the General Code of Operating Rules. The term Control Operator or Train Dispatcher will apply to Supervisors of Commuter Operations.

SI-02 MAXIMUM SPEED TABLE

Maximum Speed	MPH	
Between Mileposts	PSGR	FRT
13.5 and 248.5		
(Except as Below).....	79	60
13.5 and 13.7.....	15	15
13.7 and 17.1.....	50	40
17.1 and 26.1.....	70	60
26.1 and 26.4.....	60	60
26.4 and 29.2.....	70	60
29.2 and 31.0.....	35	35
31.0 and 31.4 Trk.1.....	15	10
31.0 and 31.4 Trk.2.....	70	60
31.4 and 35.2.....	70	60
35.2 and 35.8.....	65	55
35.8 and 38.2.....	70	60
38.2 and 38.7.....	50	40
38.7 and 39.4.....	70	60
39.4 and 40.0.....	45	40
40.0 and 43.0.....	60	50
43.0 and 43.8.....	50	50
43.8 and 44.6.....	30	25
44.6 and 46.7.....	40	40
46.7 and 47.8.....	15	15
47.8 and 49.4.....	35	35
44.6 and 46.3 Trks.2 & 3.....	60	40
46.3 and 46.7 Trks.2 & 3.....	45	25
46.7 and 47.1 Trks.2 & 3.....	35	25
47.1 and 47.8 Trks.2 & 3.....	20	10
47.8 and 49.4 Trk.2.....	35	35
70.2 and 70.5.....	55	50
76.2 and 78.6.....	35	35

COAST SUBDIVISION (0950)

Between Mileposts	PSGR	FRT
13.5 and 248.5		
(Except as Below).....	79	60
78.6 and 79.6.....	60	40
78.6 and 79.6 N Trk.1 & S Trk.2....	59	40
79.6 and 80.2.....	55	40
80.2 and 82.5.....	70	60
80.2 and 82.5 N Trk.1 & S Trk.2....	59	40
82.5 and 83.1.....	60	40
82.5 and 83.1 N Trk.1 & S Trk.2....	59	40
83.0 and 84.5.....	50	40
84.5 and 85.2.....	35	35
85.2 and 88.6.....	35	30
88.6 and 89.6.....	30	25
89.6 and 91.2.....	50	40
91.2 and 94.6.....	60	40
91.2 and 94.6 N Trk.1 & S Trk.2....	59	40
94.6 and 96.6.....	60	40
96.6 and 97.4.....	25	25
97.4 and 98.1.....	45	35
98.1 and 104.9.....	50	40
104.9 and 114.6.....	70	60
114.6 and 115.6.....	60	40
115.6 and 144.3.....	70	60
144.3 and 146.0.....	40	35
146.0 and 149.5.....	45	40
149.5 and 150.7.....	40	35
150.7 and 152.2.....	50	40
152.2 and 154.5.....	65	55
154.5 and 159.7.....	70	60
159.7 and 160.6.....	60	60
160.6 and 164.0.....	70	60
164.0 and 165.4.....	45	40
165.4 and 182.1.....	70	60
182.1 and 182.8.....	50	40
182.8 and 184.8.....	60	40
184.8 and 185.0.....	45	40
185.0 and 190.3.....	55	40
190.3 and 190.5.....	20	20
190.5 and 191.0.....	30	25
191.0 and 205.6.....	55	40
205.6 and 208.5.....	50	40
208.5 and 208.8.....	45	40
208.8 and 213.7.....	55	40
213.7 and 216.6.....	40	35
216.6 and 223.8.....	50	40
228.0 and 231.7.....	55	40
223.8 and 228.0.....	40	35
231.7 and 233.4.....	35	35
233.4 and 236.6.....	30	25
236.6 and 244.6.....	25	20
244.6 and 246.0.....	30	25
246.0 and 248.1.....	40	40
248.1 and 248.5.....	25	25

SI-03 OTHER SPEED RESTRICTIONS	
Maximum Speed	MPH
1. Thru Sidings & Turnouts	
Siding Morgan Hill.....	35
Siding Albrae, Chorro, Serrano, Bradley, Santa Margarita, Soledad, Salinas.....	20
Siding Gonzales.....	10
Turnouts: Castroville, Soledad (S), Salinas (S), King City, San Ardo, Bradley (S), Chorro (N), McKay (N/S), Templeton, Santa Margarita (S).....	15
2. Dual Control Switch Turnouts	
CP CO030, CP CO031.....	15
CP CO033.....	60
CP CO060.....	35
CP CO052: crossovers.....	40
CP CO045: crossovers.....	30
CP Stockton	
Passenger.....	20
Freight.....	15
3. Misc. Speed Restrictions	
Spring Switches (trailing):	
MP 83.1, MP 89.6, MP 97.3.....	25
Manual crossovers: MP 79.5, MP 230.8...	10
San Jose Caltrain station Trk.2.....	15
San Jose Caltrain station Trks. 3-5:	
Passenger.....	15
Freight.....	10

SI-04 MAIN TRACK DESIGNATIONS
Three main tracks between: MP 44.6 and MP 47.7.
Two main tracks between: MP 31.0 and MP 33.0; MP 47.7 and MP 59.9.
Double track between: MP 78.4 and MP 83.0; MP 89.7 and MP 97.3.
Between Coast and Lick the easternmost track is designated track No. 1.

SI-05 MILEPOST EQUATIONS - None.

SI-06 RCL OPERATIONS
Remote Control Areas:
Watsonville Limits: MP 95.0 and MP 115.0. All main track, industrial leads and yard tracks.
San Jose Limits: MP 38.0 and MP 52.0. All industrial leads and yard tracks.

COAST SUBDIVISION (0950)

SI-07 ITEM 13 TRAIN DEFECT DETECTORS

% 23.6	% 137.5	% 188.3
(#)hw29.2 *	% 139.6	% 191.5
% 33.6	% 141.2	(#) 192.8
% 40.7	% 143.1	(#) 210.7
% 42.3	% 144.9	% 214.6
(#)hw52.6 *	% 146.9	% 217.4
(#) 66.2	% 148.6	% 218.6
(#) 83.3	% 150.4	% 220.7
% 86.5	% 153.0	% 222.6
(#) 99.1	(#) 155.5	% 224.4
(#) 111.9	% 157.6	% 226.0
% 115.2	% 159.3	(#) 226.9
% 116.9	% 160.6	% 227.4
% 118.7	% 162.7	% 229.5
% 120.8	% 164.5	% 233.3
% 122.6	% 167.3	% 241.5
(#) 123.7	% 169.1	(#) 244.8
% 124.7	% 171.9	
% 126.7	% 174.3	
% 128.4	(#) 175.4	
% 131.7	% 178.4	
% 134.0	% 179.6	
% 136.0	% 181.7	
(#) 136.3	% 183.4	

* hw (Hot Wheel/Sliding Wheel) detector at MP 29.2 and MP 52.6 are a separate function from the Hot Box/Dragger (#) portion of the detector. Trains activating the Hot Wheel detector portion must stop immediately consistent with proper train handling techniques. If necessary, train must be secured before making inspection. After inspection, if flat spots are found exceeding measurements in Rule 1.34, crew member must notify Train Dispatcher who will notify district MTO/MOP. Train must not be moved without authority from district MTO/MOP.

SI-08 RULES ITEMS

Rule 1.3.2: Employees whose duties require, must have copies of the current Caltrain Timetable available for reference.

Rule 5.11; Rule 15.7.1: Caltrain commuter trains may be addressed by schedule number shown in Public Schedule/Timetable on track warrants and track bulletins.

Rule 6.2: When track bulletin has been received listing current Caltrain instructions and crew has in possession those general orders listed, train may enter Caltrain trackage by controlled signal indication or verbal authority from Supervisor of Commuter Operations without obtaining a Caltrain track warrant.

Rule 6.30: Caltrain, College Park and Santa Clara stations: When passenger trains are stopped on Trk.2 or Trk.3, trains moving on Trk.1 must ring bell continuously and sound whistle signal 5.8.2(7) when approaching station until headend has cleared passenger train.

Rule 6.32.6. King City:

Do not block public crossings between MP 163.5 and MP 164.5 between 0745 hrs and 0801 hrs.

Rule 8.20: Wunpost Derail on south end of track 725 protecting main track may be left in the non-derailing position when train departs southward and NO cars are left in yard. When any car(s) remain in yard, derail MUST be left lined in derailing position.

Rule 9.12.1: When the following letter-type indicators are illuminated, after stopping, trains are authorized to pass signal displaying STOP indication and proceed as specified below.
Castroville: Letter "S" on southward Absolute signal at the north end Castroville requires trains via Ord to enter Seaside Industrial Lead and trains via Salinas to enter siding. Letter "S" on northward Absolute signal at the south end Castroville requires trains to enter siding.
North Salinas: Letter "S" on southward Absolute signal requires trains to enter siding.

Rule 10.3: Between Coast and Lick, Track and Time must be granted by San Jose Control Operator. Telephone: 408-271-4987.

AB Rule 30.13.1: Passenger trains must make Running Air Brake test before passing MP 236.2.

Rule 32.1: Do not tie up and leave a train unattended on heavy grade unless track has derail protection between Santa Margarita MP 232.2 and San Luis Obispo MP 247.3, and the Vasona Industrial Lead.

COAST SUBDIVISION (0950)

SI-09 FRA EXCEPTED TRACKS

Mulford: Trk 125 portion that is further than 30 feet from the main track; also trks 721, 746, 756, 770, 775, 777, 788, 793, 794 and 800;

Alvarado: Trks 925-928.

Newark: Trks 100, 112, 711-725;

Newark Yard: yard trk 6;

San Jose: yard trks 15, 16, 21, 4.

Gilroy: Trks 745, 747, 749;

Logan: Trk 706.

Watsonville Yard: Yard Trks 2-16 including all lead trks and other trks more than 30 feet from main track.

Salinas: Trk 118 and all connecting tracks except trks 115 and 117; trks 733-734, 740 and all connecting tracks.

Luther: all lead and business trks;

Spreckels Industrial Lead: Trk 106 and all connecting tracks.

Robert: Trk 810;

Russell: Trks 822, 824;

SI-10 BUSINESS TRACKS

Track Name	MP	STA. #'S
Mt. Eden	21.5	CO016
Baumberg	23.0	CO018
Alviso	38.5	CO034
Santa Clara	44.9	CO039
San Jose	45.7	CO040
College Park	46.2	CO041
Perry	64.5	CO058
San Martin	71.2	CO066
Rucker	74.0	CO068
Moss Landing	104.0	CO099
Cooper	110.8	CO105
Firestone	116.8	CO112
Spence	122.1	CO117
Molus	135.5	CO130
Camphora	137.4	CO132
San Lucas	169.1	CO164
Wunpost	185.7	CO181
Atascadero	223.0	CO218
Cuesta	234.0	CO229

SI-11 INDUSTRIAL LEADS

Newark Industrial Lead:(0923) 2.5 miles westward from Newark manual interlocking to Dumbarton (end of track).

Vasona Industrial Lead:(0956) 15.7 miles westward between CP Cahill and Permanente. SSI Item (9) applies at and between the following locations:
 MP 0.1 (West San Carlos Street) and
 MP 2.5 (Bascom Avenue);
 and
 MP 6.8 (Civic Center Drive) and
 MP 7.2 (Kennedy Avenue).
 All track is FRA Excepted Track. Cars must not be shoved ahead of engine on descending grade Permanente to Monta Vista. On descending grade between Permanente and Monta Vista, train exceeding 250 TPAD must have retaining valves set on all cars. At Permanente sufficient time must be allowed to charge air brake system on cars before making any switching movement or air brake test. Upon completion of proper air brake test, wait not less than five minutes to recharge air brake system before releasing hand brakes and commencing any movement.

Hollister Industrial Lead:(0954) From Carnadero 12.5 miles south to Hollister; end of track MP 12.5. Maximum speed 10 MPH except 5 MPH on Fat City spur and track #3282 at Hollister. All track is FRA Excepted Track.

Business Tracks

	MP	Sta.#'s
Bolsa	9.1	CB002

Santa Cruz Industrial Lead:(0955) from Watsonville Jct. 31.9 miles west to Davenport; Maximum speed 10 MPH;
 All track is FRA Excepted Track except between MP 19.3 and MP 20.9. 6-axle locomotives are prohibited from operation on entire lead. Derail on both tracks MP 31.5.

Remote Control Area Limits between:
 MP 0.0 and MP 21.0.

Maximum train tonnage permitted (excluding locomotives).....3000 tons
 Maximum train length permitted (excluding locomotives).....2000 feet

Business Tracks

	MP	Sta.#'s
Capitola	15.7	CB115
Seabright	19.2	CB118
Santa Cruz	20.4	CB120
Eblis	21.6	CB121
Davenport	31.9	CB131

Spreckels Industrial Lead:(0952) 1.1 miles westward from Spreckels Jct. MP 116.9.

COAST SUBDIVISION (0950)

SI-12 TONNAGE RESTRICTIONS/TPOB

Maximum Gross Weight: 158 tons.

On descending grade between:
 Santa Margarita MP 232.2 and
 North San Luis Obispo MP 247.3, the following
 table must be used to determine maximum speed:

Tons Per Operative Brake:	Tons Per Dynamic Brake Axle:	Maximum Speed:
Below 80	300 or Less	35 MPH
	300+ to 400	30 MPH
	400+ to 450	25 MPH
80 thru 100	300 or Less	25 MPH
	300+ to 400	20 MPH
100+	300 or Less	20 MPH

A train that exceeds the table, one that experiences dynamic brake failure, or if the use of full dynamic brakes and an 18-pound brake pipe reduction will not control the train at the allowable speed, the train must be STOPPED and sufficient hand brakes set to prevent movement. The train must not proceed until additional dynamic braking is obtained, tonnage reduced, or retainers on all cars are placed in operative position. The train must not proceed except as instructed by the district Manager of Operating Practices.

SI-13 TRAIN MAKE-UP RESTRICTIONS

In addition to the following, see System Special Instructions Item 5 for train make-up restrictions.

Use the following table to determine maximum EPA/EDBA permitted within the following restricted areas:

LEAD CONSIST EPA/EDBA TABLE Santa Margarita and SLO		
Train Type	Max EPA	Max EDBA
Loaded Bulk-Commodity Unit Train	38	31
All Other Trains	34	27

Cars in excess of 19 feet 4 inches above top of rail are prohibited from Watsonville South. Restriction includes double stack container loads in excess of 19'-4". Also series TTQX multilevel cars (type M3X and M3Y), BNSF 306000-306153 and GVSR 89000-89058.

"EXCEPTION: Any High/Wide load that has a Protection Notice covering the movement through the area may be moved as cleared by the notice."

SI-14 MISC. INSTRUCTIONS

Restricted tracks: Unless specifically authorized by MofW manager, 6-axle units are prohibited from operating on any work lead or any yard or industry track between MP 13.7 and MP 246.3. **Exceptions:** Within above limits, 6-axle units are permitted to operate on the following tracks:

- Newark: Tracks 1-8, 10 and 120;
- Watsonville: Tracks 1, 2, 501 and 110;
- Logan: Track 705 and 706;
- Granite Rock Co. - all tracks;
- Wunpost: all tracks;
- East Garrison: MP 196.3 all tracks;
- Camp Roberts: all tracks;
- Newhall: Tracks 13, 14 and 15.

Templeton: When meeting trains, stay clear of 2nd Avenue MP 217.9 until movement may proceed and not block crossing. This is only access to residential area.

Santa Margarita: Whenever practicable, southward trains and engines stopped at Santa Margarita must remain north of MP 231.5 unless otherwise instructed. Purpose is to mitigate locomotive noise at this location.

Adding helpers:

South trains with tonnage exceeding Coupler Limits in SSI Item 5C must add helper at location north of MP 232.2.

Derails (Rule 8.20) in service at following locations:

- Watsonville: derail installed MP 97.1 on industry track Short #1 (Short One).
- McKay Sidings - north and south ends;
- Salinas - north end;
- Firestone - south end;
- Paso Robles track 135 @ MP 213.1;
- Gonzales - north and south end;
- MP 213.1: Big Creek Lumber industrial track;
- Santa Margarita - north end.

Other Amtrak/Caltrain Stations	MP
Great America.....	40.7
Santa Clara.....	44.8
College Park.....	46.3
San Jose.....	47.5
Tamien.....	49.2
Capitol.....	52.4
Blossom Hill.....	55.7
Morgan Hill.....	67.5
San Martin.....	71.2
Gilroy.....	77.3

San Jose Yard: Contact UPRR Dispatcher 58 for authority to enter controlled siding between CP Coast and CP Expressway. Contact Caltrain Dispatcher for authority to enter controlled siding between CP Coast and CP Stockton.

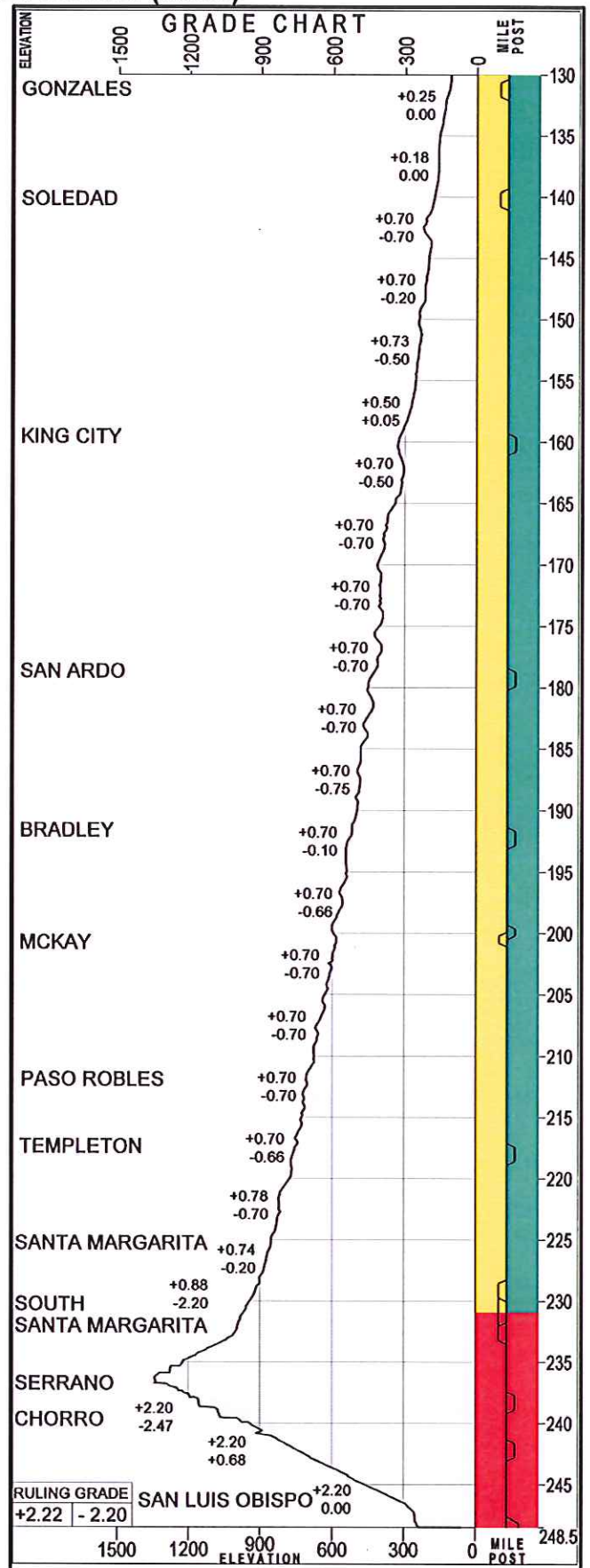
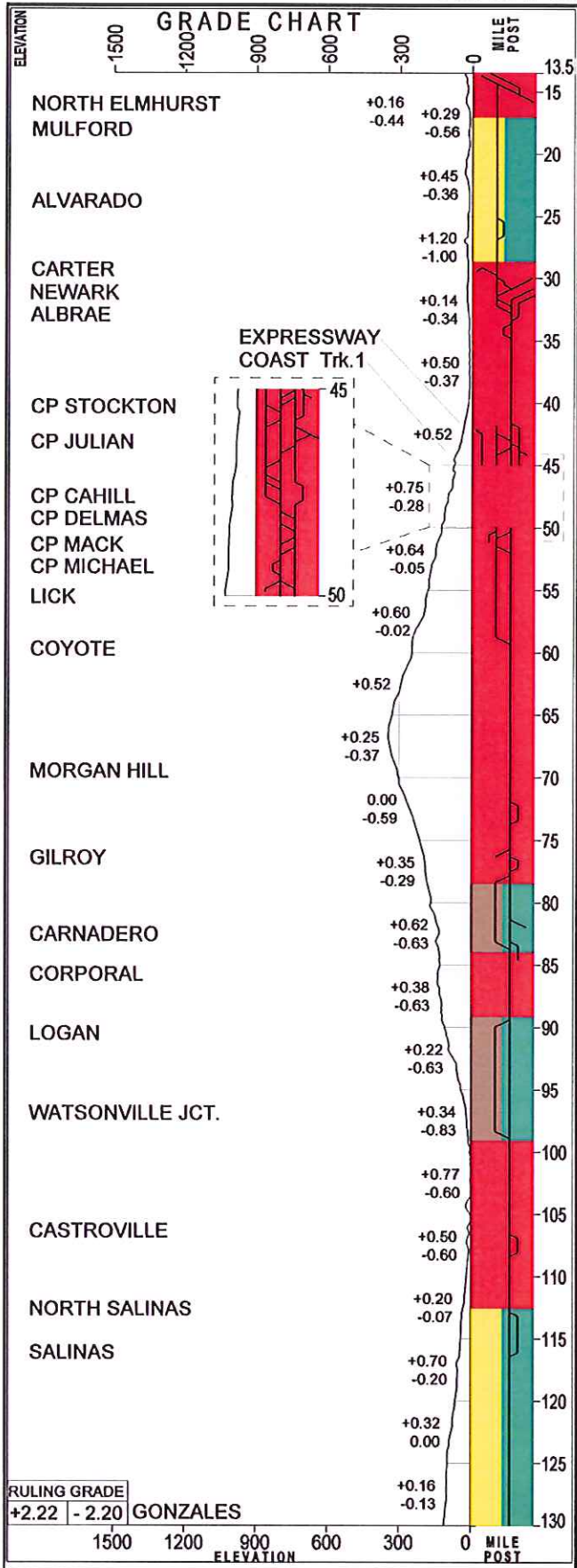
Do not leave locomotives on tracks 13, 14 or 15. When unattended, locomotives should be left at the north end of the yard on the work lead.

Derails installed at north end of yard (on work lead) and south end of yard (off switching lead). Before lining either derail to occupy the main track or controlled siding, authority must be obtained from train dispatcher.

Main Track Designations:

Between CP Expressway and CP Lick, main track No. 1, No. 2, and No. 3 are numbered from east to west respectively. Main track No. 3 extends only from CP Coast to CP Julian. At the north limit of CP Lick, main track designation reverts to Union Pacific standards for north / south movements where the westernmost track is main track No. 1 and the easternmost track is main track No. 2.

COAST SUBDIVISION (0950)



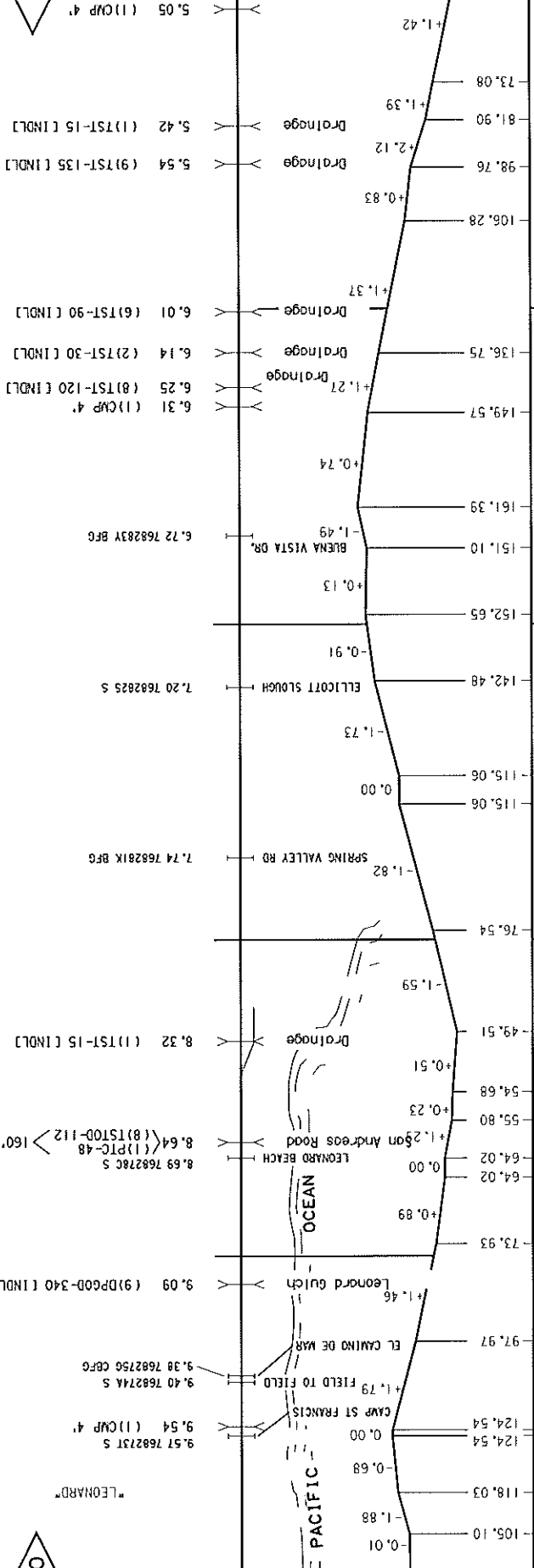
SANTA CRUZ IND LD - COAST SUB

71

SOUTHERN PACIFIC RAILROAD ACQUIRED BY SANTA CRUZ RR - 1877
 CONSTRUCTED BY SANTA CRUZ RR - 1877
 EFFECTIVE SEPTEMBER 11, 1996
 FINANCE DOC #32760

10

5

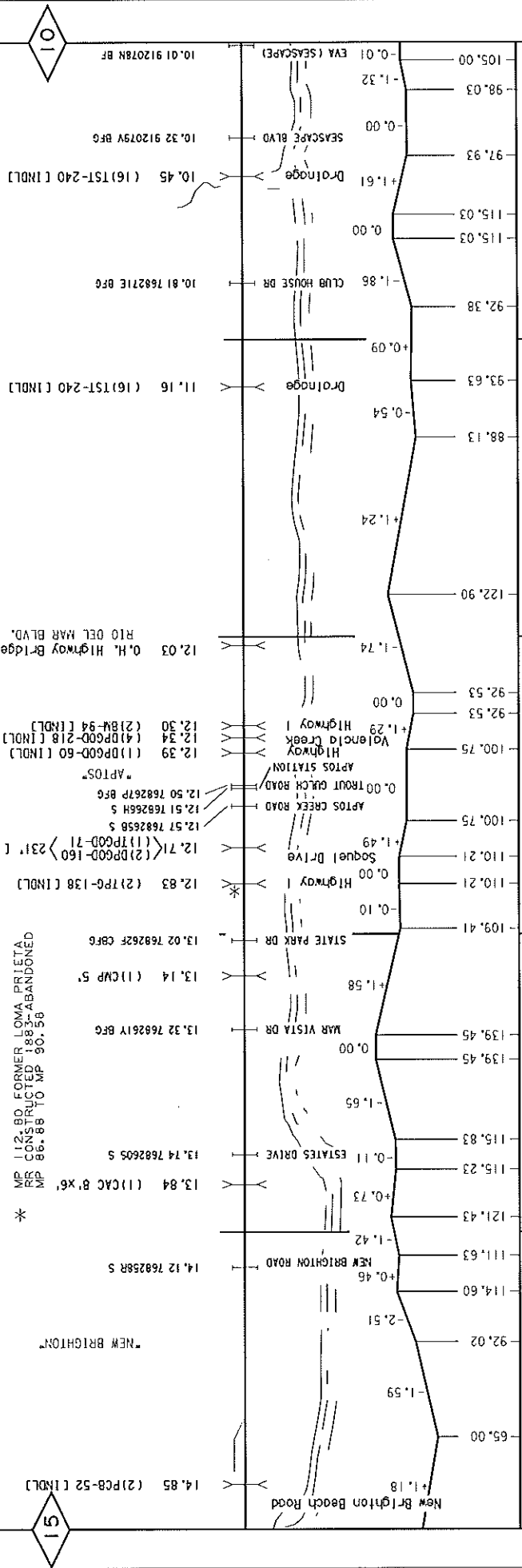


STATION	ELEVATION	DRAINAGE	ROAD	CURVE	RAIL	INDL	TIES	SURF/LINE
105+10	-0.01			4° 0' 0" / 7° 5' 50"		90	2003	
105+03	-1.88			2° 30' 0" / 4° 32' 0"		90	2003	
124+54	0.00		CAMP ST FRANCIS	5° 0' 0" / 21° 36' 0"		90	2003	
124+54	0.00		FIELD TO FIELD	5° 0' 0" / 21° 36' 0"		90	2003	
97+97	+1.79		EL CAMINO DE MAR	7° 12' 0" / 45° 1' 3" 50"		90	2003	
97+97	+1.46		Leonard Gulch	18° 0' 0" / 34° 30' 0"		90	2003	
73+93	+0.89			0° 0' 0" / 0° 0' 0"		90	2003	
64+02	0.00		LEONARD BEACH	6° 0' 0" / 0° 0' 0"		90	2003	
64+02	+1.25		San Andreas Road	3° 15' 0" / 1° 52' 50"		90	2003	
55+80	+0.23			0° 0' 0" / 0° 0' 0"		90	2003	
54+68	+0.51			5° 0' 0" / 0° 0' 0"		90	2003	
49+51	-1.59		Drainage	5° 0' 0" / 13° 42' 0"		90	2003	
76+54	-1.82		SPRING VALLEY RD	0° 0' 0" / 0° 0' 0"		90	2003	
115+06	0.00			0° 0' 0" / 0° 0' 0"		90	2003	
115+06	-1.73			4° 30' 0" / 20° 0' 0"		90	2003	
142+48	-0.91		ELLCOTT SLOUGH	4° 30' 0" / 8° 0' 0"		90	2003	
152+65	+0.13			0° 0' 0" / 0° 0' 0"		90	2003	
151+10	-1.49		BUENA VISTA DR	3° 0' 0" / 23° 45' 0"		90	2003	
161+39	+0.74			8° 0' 0" / 2° 0' 0"		90	2003	
149+57	+1.27		Drainage	8° 30' 0" / 43° 48' 0"		90	2003	
63+31	(1) CWP 4'			10° 0' 0" / 26° 2' 30"		90	2003	
62+25	(8) TST-120 [INDL]			16° 0' 0" / 5° 39' 50"		90	2003	
63+14	(2) TST-30 [INDL]			0° 0' 0" / 0° 0' 0"		90	2003	
63+14	(2) TST-90 [INDL]			0° 0' 0" / 0° 0' 0"		90	2003	
63+01	(6) TST-90 [INDL]			6° 21' 0" / 0° 0' 0"		90	2003	
106+28	+0.83			6° 21' 0" / 0° 0' 0"		90	2003	
98+76	+2.12		Drainage	55° 2' 0" / 55° 2' 0"		90	2003	
81+90	+1.39		Drainage	4° 30' 0" / 17° 0' 0"		90	2003	
73+08	+1.42			18° 32' 0" / 34° 36' 0"		90	2003	

SANTA CRUZ IND LD - COAST SUB

CONSTRUCTED BY SANTA CRUZ RR - 1876
 SOUTHERN PACIFIC RAILROAD ACQUIRED BY UNION PACIFIC-STB FINANCE DOC #32760 EFFECTIVE SEPTEMBER 11, 1996

L. C. 1945



STATION	ELEVATION	RAIL	INDL	TIES	SURF/LINE
65.00	65.00				
92.02	92.02				
114.60	114.60				
111.63	111.63				
121.43	121.43			2003	
115.23	115.23				
115.83	115.83				
139.45	139.45				
139.45	139.45				
109.41	109.41				
110.21	110.21				
110.21	110.21				
100.75	100.75				
100.75	100.75				
92.53	92.53			1994	2003
92.53	92.53				
122.90	122.90				
88.13	88.13				
93.63	93.63			2003	
92.38	92.38				
115.03	115.03				
115.03	115.03				
97.93	97.93				
98.03	98.03				
105.00	105.00				

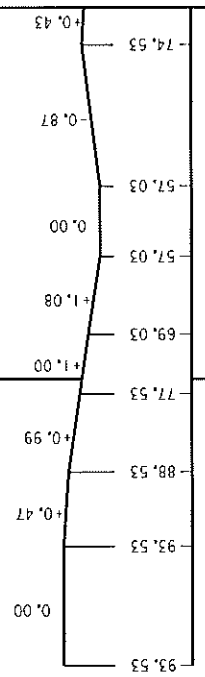
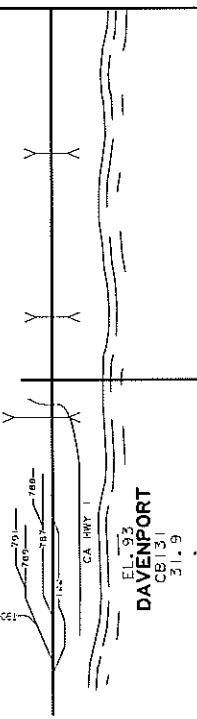
SANTA CRUZ IND LD -

65

CONSTRUCTED BY COAST LINE RY - 1906
 SOUTHERN PACIFIC RAILROAD CONTROLLED BY UNION PACIFIC
 STB FINANCE DOC # 32760 EFFECTIVE SEPTEMBER 1, 1996

DAVENPORT
 BLOCK

- 31.90 END OF BRANCH
- 31.80 DERAIL
- 31.78 PRT # 9 HITO
- 31.64 PS # 9 HITO
- CEMENT PLANT
- RVC LONE STAR
- 31.37 PS # 10 HITO
- 31.10 I-CAC-6' X 8'
- 30.83 I-SAC-14' X 12'
- 30.39 OVERHEAD VIADUCT



SPEED	CURVE	RAIL	INDL	TIES	SURF/ LINE
10	$3^{\circ} 45' 00''$ $0^{\circ} 0' 00''$ $0^{\circ} 0' 00''$		SH 113 1978	2000	2000
	$19^{\circ} 30' 00''$ $0^{\circ} 0' 00''$		SH 113 1978	2003	2003

ATTACHMENT E

ADMINISTRATION, COORDINATION, AND LICENSE AGREEMENT

This administration, coordination, and license agreement is dated _____, 2011, and is between the Santa Cruz County Regional Transportation Commission (the “Commission”), a public agency created under California law, and Sierra Northern Railway, a California Corporation (“Sierra”).

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

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

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

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

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

The parties therefore agree as follows:

1. **Definitions**

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

- 1.5 The term “Freight Easement Property” is defined as the portion of the Property subject to the Freight Easement consisting of all real and personal property within 10 feet of the centerline of any track on the Property except where roadways, buildings, or Property boundary lines reduce such distance to less than 10 feet, and except for any retained rights and personal property described herein.
- 1.6 The term “Freight Service” is defined as any and all common carrier rail freight operations, rights, or obligations as to the Freight Easement Property including freight transportation, switching, temporary rail car storage (subject to the conditions of Section 2.5), transloading freight and dispatching.
- 1.7 The term “Hazardous Materials” is defined as any substance: (a) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as any hazardous waste, hazardous substance, bio-hazard, medical waste, pollutant, or contaminant under any governmental statute, code, ordinance, regulation, rule, or order, or any amendment thereto, including the Hazardous Material Transportation Act 49 U.S.C. § 5101 *et seq.*, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, and the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, or (b) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous, or otherwise hazardous, including gasoline, diesel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon, and urea formaldehyde foam insulation.
- 1.8 The term “Hazardous Materials Laws” means all present and future governmental statutes, codes, ordinances, regulations, rules, orders, permits, licenses, approvals, authorizations, and other requirements of any kind applicable to Hazardous Materials.
- 1.9 The terms “include”, “includes”, and “including” are to be read as if they were followed by the phrase “without limitation.”
- 1.10 The term “Loss” is defined as any loss, damage, claim, demand, action, cause of action, penalty, fine, payment, cost, liability, or expense of whatsoever nature, including court costs and reasonable attorneys’ fees, resulting from or related to: (a) any injury to or death of any person, including officers, agents, and employees of the Commission or Sierra; or (b) damage to or loss or destruction of any property, including the Property, any adjacent property, and the roadbed, tracks, equipment, other property of the Commission or Sierra, and any property in the Commission’s or Sierra’s care or custody.

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

2. **Commission Grants Rights**

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

2.3. No Material Interference with Freight Service. Notwithstanding the rights retained by the Commission under this agreement, the exercise of such rights by the Commission may not materially interfere with Sierra's Freight Service rights and obligations under federal law, unless first approved by the STB.

2.4. Tourist Service and Other Third-Party Licenses.

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

2.4.2. Third-Party Licenses. The Commission reserves the right to grant additional licenses over the Freight Easement Property and the Railroad Facilities provided that any such licenses: (a) do not materially conflict with, and are subject and subordinate to, Sierra's right to use, maintain, repair, and operate all of the Railroad Facilities for all Freight Service purposes, (b) do not materially conflict with any other license with a plan previously approved in writing by the Commission, (c) require the licensee to pay its proportionate share of Sierra's costs (including labor costs, materials costs, equipment costs — using equivalent rental costs as a proxy for capital and maintenance and repair

costs — travel, fuel, contract labor, and appropriate overhead) to maintain and repair the portion of the Freight Easement Property and Railroad Facilities used by the licensee, and (d) require the licensee to (i) provide insurance equal to or better than that required of Sierra in Section 9 and (ii) indemnify and hold harmless Sierra and the Commission as to any Loss arising out of or related to licensee's operations.

2.4.2.1. For a period of three years after the effective date of this agreement, any third-party license for Tourist Service between Milepost 20.9 and Milepost 31.39 will be deemed to materially conflict with Sierra's Tourist Service license, except in the case of special Tourist Service events as described in Section 2.4.2.9. The provisions of this Section 2.4.2.1 are conditioned on the following (all dates are measured following the effective date of this agreement):

- a. Within 6 months: Sierra shall submit its plan for its initial Tourist Service to the Commission pursuant to Section 2.4.1.
- b. Within 3 months after Commission approval of initial plan: Sierra shall ensure that the Railroad Facilities for its initial Tourist Service meet and are maintained to Class 1 track standards and obtain appropriate FRA and PUC inspections to verify the same.
- c. Within 5 months after Commission approval of initial plan: Sierra shall secure all permits and agreements required to operate its initial Tourist Service.
- d. Within 6 months after Commission approval of initial plan: Sierra shall initiate its initial Tourist Service.
- e. Levels of Service: Sierra's Tourist Service shall carry the following numbers of revenue passengers:
 - I. First Year of Service: 5,000 passengers.
 - II. Second Year of Service: 10,000 passengers.
 - III. Third Year of Service: 15,000 passengers.

2.4.2.2. Following the date that is three years after the effective date of this agreement, a third-party license will be deemed to materially conflict with another license with a plan previously approved in writing by the Commission if the third party (a) operates on a substantially similar portion of the Freight Easement Property and Railroad Facilities covered by the previously-approved license/plan, (b) permits an activity that is substantially similar to the previously-approved license/plan and (c) operates during substantially similar seasons, and on substantially similar days and times of day, as the previously-approved license/plan.

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

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

2.4.2.5. The licensee's proportionate share of Sierra's costs shall be calculated in advance by Sierra (based on the prior year's maintenance and repair costs plus any reasonably anticipated extraordinary maintenance and repair costs, and the parties'

relative need or usage during the licensee's operating season) on a car-mile basis as to the portion of the Freight Easement Property and Railroad Facilities used by any licensee. (As used in this subsection, "repair costs" refers to the cost of repairs that maintain property in good operating condition and not to repairs that are "capital improvements," which are dealt with in Subsection 2.4.2.4.) The licensee shall pay its proportionate share of costs monthly in advance during the months of the licensee's operations. Sierra shall at the end of each calendar year reconcile the amounts paid to the actual costs incurred. If the actual costs exceed the amount charged to the licensee, the licensee will within 30 days following receipt of written notice of such reconciliation pay the additional amount to Sierra. If the actual costs are less than the amount charged to the licensee, Sierra will within 30 days following such reconciliation refund the balance to the licensee.

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

2.4.2.7. The Commission or its designee shall have the right to review, obtain, and copy all books, records, computer records, accounts, documentation and any other materials (collectively "Records") pertaining to Sierra's costs that are subject to apportionment under this section, including any Records in the possession of any subcontractors, for the purpose of monitoring, auditing, or otherwise verifying said costs. Sierra agrees to provide the Commission or its designees with any Records requested for this purpose and shall permit the Commission or its designees access to its premises, upon reasonable notice, during normal business hours, for the purpose of inspecting and copying such Records. Sierra further agrees to maintain such Records for a period of three years. The Commission

acknowledges and agrees that these Records constitute Sierra's confidential information and shall not be disclosed to any third-party without Sierra's prior written approval, except as otherwise required by applicable law.

2.4.2.8. Sierra will reasonably cooperate with any third party holding rights to use the Property, including, without limitation, any third-party Tourist Service operator seeking to secure the necessary certification or qualification required by applicable law to operate on the Railroad Facilities.

2.4.2.9. In addition to all other rights of Commission under this agreement, and notwithstanding anything to the contrary in this agreement, the Commission reserves the right to use the Freight Easement Property and Railroad Facilities for special events. Such special events shall be subject to the provisions of Sections 2.4.2.(a) and (b), provided that such special events will only be deemed to materially conflict with another license with a plan previously approved in writing by the Commission if they operate during the same season, and on the same days and times of day, as the previously-approved license/plan. The Commission will consult with Sierra regarding Sierra's willingness and ability to operate such special events.

If the Commission elects to have Sierra operate the special event, Sierra will operate the special event for an all-inclusive fee (for locomotive, crew, fuel, trainset, and trackage rights) (the "Special Event Fee") in the amount of \$4,500 per day. If the Commission elects to have another operator operate the special event, the Special Event Fee paid to Sierra will be \$2,500 per day, which fee shall cover all services to be provided by Sierra to support an event operated by a third party including, but not limited to, dispatching, inspections, and maintenance (but excluding Sierra's provision of any locomotive, trainset, crew, and fuel). The Special Event Fee shall be adjusted annually as of July 1st of each year to an amount calculated by multiplying the Special Event Fee specified above by a fraction, the numerator of which shall be the United States Department of Labor's Bureau of

Labor Statistics Consumer Price Index, All Urban Consumers, All Items, San Francisco-Oakland-San Jose, CA (1982-84=100), or the successor of such index (the "CPI"), for the month immediately preceding such adjustment, and the denominator of which shall be the CPI for June 2010. Nothing in this paragraph shall preclude the Commission and Sierra from negotiating other arrangements for special events (e.g., special events for which there is a different operational or fee structure, including events for which Sierra is both the operator and receives all or a portion of the fare revenue).

- 2.5. Temporary Rail Car Storage. Subject to the terms and conditions of this agreement, Sierra may enter into agreements with any party for temporary rail car storage or repairs. However, Sierra shall not enter into any agreements pursuant to this section without obtaining the Commission's prior written consent.
 - 2.5.1. Unless otherwise expressly agreed by the Commission in writing, Sierra will not (i) store more than 100 rail cars, (ii) store rail cars in locations other than those marked on Exhibit B (which locations are intended to substantially avoid visibility from Highway 1 and blocking designated public beach access), or (iii) store any rail car for more than six months. Absent the Commission's prior written consent, which consent may be withheld in the Commission's sole discretion, Sierra may not store railcars that have been used to transport Hazardous Materials unless such railcars are empty or contain only residual amounts of Hazardous Materials.
 - 2.5.2. Following the earlier of (i) Sierra's institution of Tourist Service pursuant to Subsection 2.4.1, or (ii) three years after the effective date of this agreement, Sierra shall not exercise its right to use the Freight Easement Property or Railroad Facilities for temporary rail car storage or repair in a manner that materially affects the ability of any third-party Tourist Service licensee to access the Railroad Facilities for the purpose of exercising its licensed rights. A reciprocal provision will be placed in any third-party license for Tourist Service granted by the Commission.
 - 2.5.3. The provisions of Subsections 2.5.1 and 2.5.2 apply to future storage agreements as well as storage agreements existing as of the effective date of this agreement.

2.6. Investigation.

2.6.1. Sierra hereby acknowledges that (a) it has satisfied itself at the time of this agreement with respect to the condition of the Freight Easement Property and Railroad Facilities and their suitability for Sierra's intended use; (b) it has made such investigations as it deems necessary with respect to the Freight Easement Property and Railroad Facilities, as they exist at the time of this agreement, and assumes responsibility therefor as to its occupancy and use thereof; and (c) neither the Commission nor any of the Commission's agents has made any oral or written representations or warranties with respect to the Freight Easement Property or Railroad Facilities.

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

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

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

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

2.8.2. If any Loss described in Section 2.8 is caused by a third party under contract with the Commission, the Commission may, at its option, (i) pursue any claim it may have against the third party contractor, or (ii) assign to Sierra any such claim, provided that Sierra shall not be obligated to pursue such claim. Any amounts recovered as a result of any such claim shall, to the extent they exceed any fees and costs incurred in pursuing such claim, be used to repair or replace any of the following that are damaged or destroyed in connection with the subject Loss:

2.8.2.1. First, Freight Easement Property and Railroad Facilities;

2.8.2.2. Then, railroad equipment.

If Sierra commences abandonment proceedings for the subject portion of the Property under Section 8.3, the Commission will not assign any such claim to Sierra and neither party will have any further responsibility under this Subsection 2.8.2 as to such claim. If Sierra's abandonment application is withdrawn, or not approved by the STB, the Commission may assign such claim to Sierra, as provided above.

2.8.3. The provisions of this Section 2.8 shall survive the termination or expiration of this agreement.

2.9. The rights granted by the Commission under Sections 2.1 - 2.5 are subject to all existing licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title that may affect the Property and the word "grant" as used herein shall not be construed as a covenant against the existence of any thereof.

3. Limitation and Subordination of Rights Granted

3.1. Commission's Use of Property. The foregoing granted rights are subject and subordinate to the Commission's prior and continuing right to use and maintain the Property for any purpose that is not inconsistent with this agreement. Without limiting the generality of

the foregoing, the Commission may construct, maintain, repair, renew, use, operate, change, modify or relocate public projects of any kind, railroad tracks, signals, communication equipment, fiber optics, pipelines, or other facilities upon, along, or across any or all of the Property, all or any of which the Commission may freely do at any time or times without liability to Sierra for compensation or damages; provided, however, that the Commission may not materially interfere with Sierra's rights and operations under this agreement or Sierra's Freight Service rights and obligations under federal law (unless first approved by the STB); and provided, further, that the Commission shall to the extent possible notify Sierra as soon as practicable of any such planned or actual interference and provided that the Commission takes all practicable measures to minimize any such interference. Sierra shall reasonably cooperate with the Commission in implementing the foregoing uses of the Property. If the Commission or its designee requests Sierra's assistance to transport materials or to perform other transportation or construction services for public projects, Sierra will provide such assistance at rates reasonably to be determined between the parties.

- 3.2. Commission's Inspection Access; Access for Maintenance. The Commission may, as reasonable and as coordinated in advance with Sierra, (i) inspect the Freight Easement Property and the Railroad Facilities, including any rail-yard or maintenance facility used in connection with Freight Service or Tourist Service, and (ii) access the Freight Easement Property and Railroad Facilities (including access with Commission or third party rail vehicles) as necessary to maintain areas of the Property outside of the Freight Easement Property that are not otherwise reasonably accessible. The Commission shall defend, indemnify and hold Sierra, its officers, directors, employees, and agents, harmless from and against Loss arising from injuries to or death of the Commission's officers, directors, employees, agents, invitees, and contractors relating to such inspections, regardless of the cause of such injuries, death, or damage and regardless of the negligence of any person, except to the extent caused by the willful misconduct or gross negligence of Sierra, its employees, or agents. The Commission shall ensure that any of its officers, directors, employees, agents, invitees, and contractors involved in such inspections are trained in all safety requirements and qualified for any operations related to work conducted on or near railroad operations.
- 3.3. Future At-Grade Crossings. The parties acknowledge that (i) local governments may desire to create future at-grade public crossings of the Freight Easement Property, and (ii) the Aptos Village Plan,

dated February 23, 2010, specifically includes a future at-grade roadway crossing of the Freight Easement Property at approximately Milepost 12.55. Sierra shall, at no cost or expense to itself, cooperate with the efforts of any applicable local governments to secure PUC approval of such crossings; provided, however, that Sierra shall be entitled to raise any reasonable safety concerns related to such crossings. The fees and costs associated with the construction, maintenance, and repair of such crossings shall be set either by agreement between Sierra and the applicable local government (which agreement shall become a Sierra Agreement under Sections 4.2 and 4.3), or by the PUC pursuant to Public Utilities Code Section 1202, *et seq.*

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

- 4.1. Pursuant to the Assignment and Assumption Agreement dated as of December 18, 2009, Union Pacific assigned to Sierra certain agreements concerning the operation of the Railroad Facilities, including all track agreements, grade crossing agreements, and other operating agreements set forth in Exhibit C hereto (all such agreements hereinafter referred to as the “Sierra Agreements”). Upon close of escrow under the Purchase and Sale Agreement, Union Pacific will assign to the Commission all other agreements relating to the Property, including all easements, licenses, and leases (all such agreements hereinafter referred to as the “Commission Agreements”).
- 4.2. Subject to the provisions of Section 2.3, which prohibit material interference with Sierra’s Freight Service rights and obligations under federal law, unless first approved by the STB, any new Sierra Agreement is subject to the Commission’s prior written consent and is to be documented by Sierra using forms approved by the Commission, which forms shall, among other things, include provisions indemnifying the Commission and holding it harmless from any Loss in connection with the exercise of rights under such agreements, and the construction, maintenance, or operation, of any facilities constructed in connection with such agreements.
- 4.3. In addition to the general consent requirement of Section 4.2, Sierra is not, without the Commission’s prior written consent (subject to the provisions of Section 2.3, which prohibit material interference with Sierra’s Freight Service rights and obligations under federal law, unless first approved by the STB), to execute any new Sierra Agreements affecting the Freight Easement Property or Railroad Facilities for a term exceeding the term of this agreement.

- 4.4. Sierra is not, without the Commission's prior written consent, to terminate or modify any Sierra Agreement.

5. Maintenance and Operation of Railroad Facilities

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

5.2. Maintenance of Freight Easement Property and Railroad Facilities.

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

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

- 5.2.3. Slopes, Trees and Other Conditions outside of Freight Easement Property. Sierra may, at its option, enter portions of the Property outside the Freight Easement Property to

maintain or repair slopes, clear fallen trees and branches, or address other conditions, as necessary to ensure the safety of Sierra's operations. The Commission grants Sierra a license to enter all portions of the Property as necessary to perform such work; Sierra shall be required to repair any damage caused as the result of Sierra's performance of any such maintenance. The Commission shall have no liability to Sierra for maintenance of portions of the Property outside of the Freight Easement Property and Sierra's exclusive remedies for damage to the Freight Easement Property or Railroad Facilities shall be limited to those set forth in Sections 5.5.3 and 8.3. However, this section shall not apply to any claims that result from the sole active negligence or willful misconduct of the Commission or its officers, directors, employees, agents, contractors, or a third party under contract with the Commission, in which case Sierra's exclusive remedies are those set forth in Section 2.8.2, 8.3 and 14.2.

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

inspection and maintenance responsibilities, and bridge safety management responsibilities, to Sierra in accordance with 49 CFR § 213.5(c) and 49 CFR § 237.3. The notice of assignment shall attach a copy of this agreement.

5.2.6. Limits of Commission Liability. Notwithstanding the limitations on the Commission's maintenance responsibilities set forth in Section 5.2, the Commission shall be responsible for the maintenance of any improvement it constructs on any portion of the Property. As used in this subsection, the term "improvement" excludes improvements made to the Railroad Facilities, unless such improvement is made at the request of a third-party, in which case such third-party shall be responsible for the incremental increase in the maintenance cost thereof. Notwithstanding the foregoing, maintenance responsibility for improvements to public crossings shall be governed by the provisions of Section 3.3.

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

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

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

5.4.2. If Sierra fails to comply with the provisions of this section, the Commission may perform the required action and

charge Sierra the reasonable cost thereof. Notwithstanding the foregoing, the Commission shall not charge Sierra for the restoration of any damage caused by any third party to any bridge or if in the Commission's reasonable judgment, such damage does not expose the Commission to potential liability to the FRA, PUC, or any other third party, and either (A) such damage does not obstruct or interfere with any roadway or other property or facility used by the Commission or another third party, or (B) Sierra abandons the subject portion of the Property under Section 8.3. In addition, the Commission shall not charge Sierra for the restoration of any damage caused by the Commission's contractors, or any third party granted access to the Property by specific agreement with the Commission.

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

5.5. Responsibility for Repair or Replacement.

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

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

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

Service or Freight Service over all or such portion of the Property as Sierra deems appropriate as set forth in Section 8.3.

6. **Construction, Relocation, or Removal of Railroad Facilities**

6.1. By the Commission.

- 6.1.1. The license herein granted is subject to the Commission's needs and requirements to improve and use the Property. Subject to Sierra's rights under this agreement, the Commission, at its sole cost and expense, may add to or remove any portion of the Railroad Facilities, or change or relocate them to new locations as reasonably designated by the Commission, whenever, in the furtherance of the Commission's needs and requirements, the Commission finds such action to be necessary.
- 6.1.2. In the course of performing such work, the Commission may not materially reduce, or otherwise materially interfere with, Sierra's rights and operations under this agreement or Sierra's Freight Service rights and obligations under federal law (unless first approved by the STB). The Commission shall to the extent possible notify Sierra as soon as practicable of any such planned or actual interference and take all practicable measures to minimize any such interference.
- 6.1.3. Sierra shall in such cases provide the Commission with a fixed-price quote for performing any related work, and the Commission shall have the option of accepting Sierra's quote and having Sierra perform the work, performing the work itself, or having another qualified rail contractor perform such work. If the Commission selects a third-party contractor, the contractor shall execute Sierra's Right of Entry Agreement (a copy of which is attached as Exhibit D).
- 6.1.4. The Commission shall have the right to salvage, stockpile, or otherwise dispose of any Railroad Facilities removed pursuant to this section; provided, however, that if the removed Railroad Facilities are reusable elsewhere on the Freight Easement Property, then Sierra shall have the right to so reuse them. Any Railroad Facilities not so reused on the Freight Easement Property shall be returned to the Commission upon expiration or termination of this

agreement and may not be sold to third parties or used elsewhere.

6.1.5. All such work performed, and any installation of Railroad Facilities, shall be in conformance with all applicable laws. If the Commission relocates any portion of the tracks used for Freight Service, the centerline of the Freight Easement Property shall, upon completion of the relocation work, be deemed to have been modified to coincide with the centerline of the realigned tracks.

6.2. By Sierra. Sierra may, at its cost and expense, modify or improve the Freight Easement Property and Railroad Facilities as needed to accommodate its Freight Service or Tourist Service; provided, however, that Sierra first obtains the Commission's written approval of Sierra's plans for such modifications and improvements, subject to the provisions of Section 2.3, which prohibit material interference with Sierra's Freight Service rights and obligations under federal law, unless first approved by the STB. Subject to the provisions of Section 2.3, which prohibit material interference with Sierra's Freight Service rights and obligations under federal law, unless first approved by the STB, Sierra's modification or improvement of the Freight Easement Property and Railroad Facilities will be coordinated with existing or future legal public uses of the Property that the Commission may authorize. Sierra may, upon the termination of this agreement or upon the abandonment of any applicable section of the Freight Easement Property or portion of the Railroad Facilities, remove any modifications or improvements to such Freight Easement Property or Railroad Facilities that were paid for by Sierra, that do not constitute any repair or replacement to such Freight Easement Property or Railroad Facilities, and that have not become fixtures to such Freight Easement Property or Railroad Facilities.

6.3. The Commission understands that Sierra requires locations outside of the Freight Easement Property at which to store and maintain equipment and materials necessary for Sierra's Freight Operations including a locomotive pit. The parties agree that Sierra may store equipment and materials at the location known as Wrigley's, located between Swift Street and Natural Bridges Drive at or about Milepost 21.5. The parties agree that Sierra will need to identify and construct additional maintenance and storage locations on the Property, which Sierra may do as needed, subject to applicable law and the Commission's prior written consent (subject to the provisions of Section 2.3, which prohibit material interference with Sierra's Freight Service rights and obligations under federal law, unless first approved by the STB).

- 6.4. The terms, conditions, and stipulations expressed in this agreement as to the Freight Easement Property and Railroad Facilities shall apply to the Freight Easement Property and Railroad Facilities as they may at any time be expanded, added to, modified, changed, or relocated.

7. License Fees

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

7.1.1. Freight Service:

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

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

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

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

7.1.3. Tourist Service: \$1.00 per passenger.

- 7.2. Sierra shall, on or before the last day of the month following the end of each calendar quarter, determine the amounts payable to the Commission arising from the preceding calendar quarter and shall provide the Commission with a statement describing all amounts due the Commission during the quarter. Sierra shall also, upon

reasonable request from the Commission, make available for inspection and copying all documents and receipts upon which such fees are based.

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

8. **Term and Termination**

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

- 8.2. If (i) Sierra does not regularly use the Freight Service or Tourist Service rights in accordance with the plan approved by the Commission (other than railcar storage rights) herein granted over any segment of the Freight Easement Property, or the Railroad Facilities on such segment, for a period of one year without the Commission's prior written approval, or (ii) Sierra remains in default in its performance of any covenant or agreement contained herein for a period of 30 days after written notice from the Commission to Sierra specifying such default, the Commission may, at its option, forthwith terminate this agreement by written notice; provided however, that if such default cannot reasonably be cured within 30 days after such notice, the Commission may not terminate this agreement provided that Sierra begins to cure the default within the 30-day notice period and proceeds diligently to complete such cure. Upon expiration or termination of this agreement by either party, Sierra shall proceed to abandon Freight Service in accordance with section 8.3; provided, that no expiration or termination of this agreement shall be effective unless and until the STB has approved such abandonment. As used in this Section 8.2, the term "regularly use" means revenue train operations for either Freight Service or Tourist Service consisting of a minimum of 40 freight cars per year, or 15,000 passengers per year (beginning with the third year following the effective date of this agreement), as applicable.

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

operations for a period of three years from the effective date of this agreement.

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

8.3. Abandonment.

8.3.1. Sierra may at any time, in its sole and absolute discretion, immediately and without any liability to the Commission: (a) abandon Tourist Service over all or such portion of the Property as Sierra deems appropriate, and (b) seek STB approval to abandon Freight Service over all or such portion of the Property as Sierra deems appropriate. In the event that Sierra seeks to abandon Freight Service, Sierra shall provide the Commission with 90 days advance notice of Sierra's intention and shall, at no cost to Sierra, cooperate with the Commission's efforts to take upon itself all Freight Service operations relating to the Property, to appoint another person or entity to do so, or to rail bank any portion of the Property as to which Sierra intends to abandon Freight Service. Nothing in this agreement is intended by the parties to limit these rights on the part of Sierra and the Commission agrees that it will cooperate with Sierra in Sierra's efforts to so abandon any Tourist Service or Freight Service. No such abandonment, transfer of Freight Service operations, or rail banking, shall be effective unless and until the STB has issued its approval thereof. In addition, this agreement shall not terminate with respect to all or any portion of the Property unless and until the STB has issued such approval.

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

8.3.3. To the extent the STB approves abandonment of Freight Service over all or any part of the Freight Easement Property or Railroad Facilities, this agreement and any other rights and obligations of Sierra to the Commission, shall, at the time of consummation of such abandonment,

terminate with respect to any abandoned portions of the Freight Easement Property and Railroad Facilities. Upon the effective date of such abandonment, Sierra shall, if so requested by the Commission, (i) assign to the Commission any Sierra Agreements affecting the abandoned portions of the Freight Easement Property and Railroad Facilities, (ii) quitclaim the abandoned portion of the Freight Easement to the Commission, and (iii) execute any additional documents reasonably necessary to effectuate the purpose and intent of this agreement.

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

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

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

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

9.1.1. The CGL insurance policy providing bodily injury, including death, personal injury and property damage coverage shall have a limit of not less than \$25 million each occurrence and an aggregate limit of not less than \$50 million. The self-insured retention may not exceed

\$100,000 (as that value is periodically adjusted by the Consumer Price Index from and after the effective date of this agreement).) The CGL insurance policy must be written on ISO occurrence form CG 00 01 12 04 or a substitute form providing reasonably equivalent coverage. This insurance shall contain broad form contractual liability covering the indemnity provisions contained in this agreement, coverage for railroad operations, and coverage for construction or demolition work on or near railroad tracks. Prior to the execution of this agreement, Sierra shall provide the Commission with a certificate of insurance on a standard ACORD form, or other form reasonably acceptable to the Commission, substantiating the required coverages and limits set forth herein. Upon request by the Commission, Sierra shall immediately furnish a complete copy of any policy required hereunder, including all endorsements, with said copy certified by the insurance company to be a true and correct copy of the original policy.

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

9.1.3. Required Provisions: The CGL insurance policy shall contain, or be endorsed to contain, the following provisions:

9.1.3.1. For any claims related to this agreement, Sierra’s insurance coverage shall be primary insurance as respects the Commission, its directors, officers, employees, and agents and any insurance or self-insurance maintained by the Commission, its directors, officers, employees, or agents, shall be in excess of Sierra’s insurance and shall not contribute to it. However, this section shall not apply to any claims that result from the sole negligence or willful misconduct of the Commission or its officers, directors, employees, agents, or invitees; as to any such claim, the Commission’s insurance shall be primary and any insurance or self-insurance maintained by Sierra, its directors, officers, employees, or agents, shall be in excess of Commission’s insurance and shall not contribute to it.

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

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

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

9.1.4. Workers' Compensation or FELA insurance shall cover any statutory liability as determined to be applicable by the compensation laws of the State of California or FELA, as applicable, with a limit of at least \$1 million.

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

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

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

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

If to Commission: Executive Director

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

11. Coordination Committee

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

12. Claims and Liens for Labor and Material

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

13. Property Taxes

13.1. So far as it lawfully may do so, the Commission shall assume, bear, and pay all property and other taxes and assessments of whatsoever nature or kind (whether general, local, or special) levied or assessed upon or against the Property, excepting taxes levied upon and against any Freight Easement Property or Railroad Facilities. Sierra shall assume, bear, and pay all property and other taxes and assessments of whatsoever nature or kind (whether general, local, or special) levied or assessed upon or against any Freight Easement Property or Railroad Facilities, including

possessory interest taxes under California Revenue and Taxation Code section 107 *et seq.*, unless applicable law otherwise excuses payment of taxes due to the Commission's ownership of the Property, the Freight Easement Property, or the Railroad Facilities.

14. **Indemnity**

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

14.2. The Commission shall indemnify, defend and hold harmless Sierra from any Loss which is due to or arises from the sole negligence or willful misconduct of the Commission, its officers, agents, employees, and contractors. For purposes of this Section 14.2 only, the term "Loss" is limited to any loss, damage, claim, demand, action, cause of action, penalty, fine, payment, cost, liability, or expense of whatsoever nature, including court costs and reasonable attorneys' fees, resulting from or related to: (a) any injury to or death of any person, including officers, agents, and employees of the Commission or Sierra; or (b) damage to or loss or destruction of Sierra's equipment, rolling stock and any items being transported on behalf of Sierra's customers. Any Loss related to damage to or destruction of the Freight Easement Property or Railroad Facilities is subject to the provisions of Section 2.8. The provisions of this section shall survive the termination or expiration of the term of this agreement.

15. **Removal of Sierra Equipment, Personnel, and Property upon Termination of Agreement.** Prior to, or upon, the termination of this agreement, Sierra shall, at its sole expense, remove its equipment, personnel, and other property from the Freight Easement Property and Railroad Facilities and shall restore, to the Commission's reasonable satisfaction, such portions of the Freight Easement Property and Railroad Facilities used by Sierra to as good a condition as they were in at the beginning of this agreement or after the completion of rehabilitation and repairs by the Commission, including the projects specified in Section 5.1, excepting normal wear and tear. If Sierra fails to do the foregoing, the

Commission may do such work at the cost and expense of Sierra. Sierra may not remove any property, including the Railroad Facilities, that is or becomes the property of the Commission under this agreement.

16. Hazardous Substances and Wastes

16.1. Sierra shall not be liable or responsible for any Hazardous Materials present on, in, or under the Property, or other problems relating to the Property, prior to December 31, 2009, which is the commencement date of its operations under its lease agreement with Union Pacific Railroad, except to the extent Sierra's activities exacerbate the contamination of any such pre-existing Hazardous Materials.

16.2. Sierra shall comply with all applicable laws in its occupancy, operation, and maintenance of the Freight Easement Property and Railroad Facilities. Without first obtaining the Commission's written permission (which may be withheld in the Commission's sole reasonable discretion), Sierra shall not treat or dispose of Hazardous Materials on the Freight Easement Property or Railroad Facilities. Sierra shall not release any Hazardous Materials on or at the Freight Easement Property or Railroad Facilities, including through any drainage or sewer systems. Sierra assumes all responsibility for the investigation and cleanup of any such release or exacerbation by Sierra and shall indemnify, defend, and hold harmless the Commission and its property, its officers, agents, and employees, for all costs, including reasonable environmental consultant and reasonable attorneys' fees, and claims resulting from or associated with any such release or exacerbation by Sierra. Sierra shall assume all responsibility for and shall indemnify, defend, and hold harmless Commission against all costs and claims associated with a release or leak of Hazardous Materials, or exacerbation of pre-existing Hazardous Materials, occurring between December 31, 2009, and the expiration or sooner termination of this agreement, and related to Sierra's use of the Freight Easement Property and Railroad Facilities, unless such event was caused by the sole negligence or willful misconduct of the Commission, its officers, employees, or agents.

16.3. Sierra shall not install any above-ground or underground storage tanks without the Commission's prior written consent, which consent may be granted or withheld in Commission's sole and absolute discretion. If such consent is granted, Sierra shall obtain any necessary permits, notify the proper authorities, and provide the Commission with copies of any such permits and notifications. Sierra shall assume all responsibility for and shall indemnify, defend, and hold harmless the Commission against all costs and

claims associated with a release or leak of the contents of any such tank occurring between December 31, 2009, and the expiration or termination of this agreement, unless such event was caused by the sole negligence or willful misconduct of the Commission, its officers, employees, or agents.

- 16.4. The Commission understands and acknowledges that the regular operation and maintenance of railroad equipment and tracks involve the storage, use, and release of *de minimus* amounts of Hazardous Materials, including petroleum products, creosote, and chromated copper arsenate. The Commission agrees that Sierra shall not be liable or responsible for the *de minimus* release of any such Hazardous Materials, unless (i) such release violates applicable law, or (ii) the Commission is otherwise entitled to defense and indemnity under Section 14.1.
- 16.5. If Sierra knows, or has reasonable cause to believe, that any Hazardous Materials have come to be located under or about the Freight Easement Property or Railroad Facilities, other than as specifically provided herein or as previously consented to in writing by the Commission, Sierra shall immediately give the Commission written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to or received from any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Materials.
- 16.6. This Section 16 shall continue in full force and effect regardless of whether this agreement is terminated pursuant to any other provision or the Freight Easement Property and Railroad Facilities are abandoned and vacated by Sierra.
17. **Trespassers and Dangerous Conditions.** Sierra shall not be required to take any action or incur any expense (including posting signage or warnings, providing fencing or other security) as to or against trespassers on the Property, or invitees of the Commission, other than to promptly notify local law enforcement and the Commission concerning any trespassers observed on the Property by Sierra personnel. If Sierra becomes aware of any dangerous conditions on or about the Property, Sierra shall promptly notify the Commission of such conditions.
18. **Waivers.** The failure of either party hereto to enforce any of the provisions of this agreement, or to enforce any right or option which is herein provided, shall in no way be construed to be a waiver of such provision(s) as to the future, nor in any way to affect the validity of this agreement or any part hereof, or the right of either party to thereafter

enforce each and every such provision and to exercise any such right or option. No waiver of any breach of this agreement shall be held to be a waiver of any other or subsequent breach.

19. **Consent.** Unless expressly provided to the contrary elsewhere in this agreement, whenever the consent, approval, judgment, or determination (collectively, “consent”) of a party is required or permitted under this agreement, the consenting party shall exercise good faith and reasonable judgment in granting or withholding such consent. No party may unreasonably withhold or delay its consent; consent shall be deemed to have been withheld if a party fails to consent to the other party’s intention to take any action as to which consent is required or permitted.

20. **Non-binding Mediation**

20.1. If at any time a question or controversy shall arise between the parties hereto in connection with this agreement and upon which the parties cannot agree, such question or controversy shall be submitted to a single mediator within 20 days after written notice by one party to the other party of its desire for mediation. The parties shall in good faith consult to select a mutually acceptable mediator. The mediator so selected shall be a person with at least one-year of exposure to the concepts of railroad operations and maintenance.

20.2. Upon selection of the mediator, said mediator shall with reasonable diligence determine the questions as disclosed in said notice of demand for mediation and shall give both parties reasonable notice of the time and place of any mediation. Until the completion of mediation, performance under the agreement shall continue in the manner and form existing prior to the rise of such question.

20.3. The compensation, cost, and expenses of the mediator shall be paid in equal shares by the parties.

21. **Entire Agreement.** This document, and the exhibits attached hereto, constitute the entire agreement between the parties, all oral agreements being merged herein, and supersedes all prior representations, agreements, arrangements, understandings, or undertakings, whether oral or written, between or among the parties relating to the subject matter of this agreement that are not fully expressed herein.

22. **Modification to Agreement.** The provisions of this agreement may be modified at any time by agreement of the parties hereto, provided such modification is in writing and signed by all parties to this agreement. Any agreement made after the date of this agreement and related to the subject

matter contained herein shall be ineffective to modify this agreement in any respect unless in writing and signed.

23. **No Assignment Absent Consent.** Except as specifically provided in this agreement, Sierra shall not assign this agreement, in whole or in part, or any rights herein granted, without the Commission's prior written consent.

24. **Successors and Assigns.** Subject to the provisions of Section 23, this agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and assigns.

25. **Venue and Choice of Law**

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

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

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

27. **Miscellaneous**

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

held to be a non-delegable duty of the Commission, the Commission may, at its option, (i) undertake this obligation and charge Sierra for the cost thereof, or (ii) terminate this agreement.

- 27.2. Each party has participated in negotiating and drafting this agreement so if an ambiguity or a question of intent or interpretation arises, this agreement is to be construed as if the parties had drafted it jointly, as opposed to being construed against a party because it was responsible for drafting one or more provisions of this agreement.
- 27.3. Each party acknowledges that the officer executing this agreement has the authority to enter into this agreement on behalf of the party and in so doing is authorized to bind the party on whose behalf he is signing, to the terms and conditions of this agreement.
- 27.4. This agreement may be executed in one or more counterparts and by facsimile signature, each of which shall be deemed an original, but all of which together constitute one and the same instrument. Each party shall deposit the executed agreement into escrow with instructions to deliver the agreement upon close of escrow under the Purchase and Sale Agreement.

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

SIERRA NORTHERN RAILWAY

**SANTA CRUZ COUNTY REGIONAL
TRANSPORTATION COMMISSION**

By: _____
David Magaw
President

By: _____
George A. Dondero
Executive Director

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

SIERRA RAILROAD COMPANY

By: _____
Mike Hart, President

Exhibit A
Map of Railroad Facilities

Exhibit B

Permitted Rail Car Storage Locations

Exhibit C
Sierra Agreements

Exhibit D

Form of Sierra Right of Entry Agreement



Santa Cruz County Regional Transportation Commission

Santa Cruz Branch Rail Line Acquisition

Fact Sheet *February 2012*

On May 6, 2010, the Santa Cruz County Regional Transportation Commission (RTC) unanimously agreed to acquire the Santa Cruz Branch Rail Line (Branch Line) right-of-way for recreational rail, preservation and future transportation uses. Future transportation uses could include passenger rail service, transit, bicycle and pedestrian facilities, and freight rail service. In October 2010 the RTC completed negotiations with Sierra Northern Railway to provide freight service, initiate recreational rail service and maintain the Branch Line. On January 19, 2011, the California Transportation Commission (CTC) approved the funding to purchase the Santa Cruz Branch Rail Line. The CTC determined that the RTC met all of the requirements for use of the voter-approved Proposition 116 funds and cleared the way for the RTC to close the purchase of the 32-mile corridor with the current property owner, Union Pacific Railroad.

In December 2011, the RTC received approval from the Surface Transportation Board (STB) to complete the purchase and on the same day Sierra Northern Railway decided that it did not want to operate on the Branch Line. In February 2012, the RTC approved releasing a request for proposals to secure a new operator for the Branch Line.

Right-of Way Description

The 135-year old transportation corridor parallels Highway 1 extending almost 32 miles from the town of Pajaro in Monterey County, to Davenport in Santa Cruz County (map on reverse). The right-of-way is generally 50 to 60 feet wide with 37 bridges and trestles, including major crossings of the Pajaro River, Highway 1, Soquel Creek, the Santa Cruz Yacht Harbor and the San Lorenzo River. Adjacent land uses include residential, commercial, industrial, agricultural and park land/open space. The corridor links major tourism and activity centers as it traverses downtown Watsonville, Aptos Village, Capitola Village and the Santa Cruz Beach area near downtown Santa Cruz. Also adjacent to the corridor are many parks and recreational facilities, including: Manresa State Beach, Seacliff State Beach, New Brighton State Park, Simpkins Swim Center, Santa Cruz Yacht Harbor, Natural Bridges State Park and Wilder Ranch State Park. The rail line provides access to the Monterey Bay National Marine Sanctuary at several key locations.

Cost of Project and Funding

After completing due diligence work to assess the condition, value and business potential of the rail corridor, the RTC and UP agreed on a purchase price of \$14.2 million with a requirement that the RTC make \$5 million in improvements to the rail line. The CTC was able to reduce the costs to the RTC by \$400,000 by getting UP to provide funds for closing and other costs. The RTC plans to use \$10 million in State Transportation Improvement Program (STIP) funds and \$11 million in Proposition 116 funds for pre-acquisition activities, the purchase, and improvements to the rail right-of-way. Proposition 116 was approved by California voters in 1990 with a 53% majority statewide and 60% majority in Santa Cruz County. The funds may only be used for rail projects. Congressman Sam Farr obtained a \$1.5 million federal earmark for the project in 2003 and the RTC has been using local funds for pre-acquisition work. In addition, Sierra Railway plans to spend up to \$2 million to implement recreational rail service from Santa Cruz to Davenport.

Due Diligence

Over the past few years, the RTC has been conducting pre-acquisition activities including appraisals, structures assessments, title reviews, hazardous materials assessments and negotiations with the property owner and shortline operator. Due diligence documents are available on the RTC website: <http://sccrtc.org/projects/rail/rail-line-purchase/#acquire>. In addition, a list of frequently asked questions regarding the project and due diligence work has been posted to the RTC website and can be found at <http://sccrtc.org/wp-content/uploads/2011/06/100504-RailLinePur-FAQ.pdf>.

For more information: Please visit the RTC web site: www.sccrtc.org or call (831) 460-3200

