

**AGENDA:** January 14, 2021

**TO:** Santa Cruz County Regional Transportation Commission

**FROM:** Luis Mendez, Deputy Director, and Tommy Travers, Transportation Planner

**RE:** Contract award for vegetation control along the Santa Cruz Branch Rail Corridor

---

**RECOMMENDATIONS**

Staff recommends that the Regional Transportation Commission (RTC) adopt a resolution ([Attachment 1](#)) authorizing the Executive Director to enter into an agreement with DBI Services ([Attachment 2](#)) for a total amount not to exceed \$145,777 for vegetation control along the Santa Cruz Branch Rail corridor.

---

**BACKGROUND**

Significant progress was made in 2020 to address the majority of the deferred vegetation, drainage, storm damage, and erosion control maintenance along the Santa Cruz Branch Rail Line (SCBRL). Currently, there remain certain areas with vegetation overgrowth preventing visibility and maintenance vehicle access within 8 feet of the railroad tracks. Although most of the line is out of service, it remains important to keep access open so that maintenance vehicles and law enforcement can more efficiently and safely reach challenging portions of the corridor, and to allow for proper operation of drainage systems such that any potential adverse impacts to RTC's property and neighboring properties are minimized. The RTC is responsible for maintaining the track north of milepost 3.0 and for maintaining the corridor along the SCBRL per the current phase of the Administration, Coordination, and License (ACL) Agreement with St. Paul & Pacific Railroad (SPPR) and therefore is required to maintain all vegetation.

In 2019, by resolution, the RTC elected to become subject to the procedures of the California Uniform Public Construction Cost Accounting Act (CUPCCAA), which allows the RTC to procure construction contractors for public projects up to \$200,000 through an informal bidding process.

**DISCUSSION**

As part of the RTC's preventative maintenance program for the SCBRL, staff inspects the infrastructure a minimum of twice annually and procures construction contractors as needed to perform maintenance activities. As part of recent preventative maintenance inspections as well as concerns from local police and fire departments for encampment and fire risk, staff identified several areas requiring vegetation control. In addition, there have been several drainage ditches cleared in 2020 to allow for proper drainage to avoid landslides, flooding of neighboring properties, and damage to infrastructure. Staff's experience is that after clearing

existing vegetation, many areas will re-vegetate with invasive woody species including scotch broom, acacia, and eucalyptus. Therefore, there is a need for ongoing control of invasive regrowth on a regular basis throughout the corridor.

Staff developed a plan with two potential approaches to controlling weeds and invasive regrowth for the areas that need this work between milepost 3 and milepost 23. Work was done in August 2020 to clear mature vegetation by mowing and application of a foliar herbicide on about 12 miles of the rail line right-of-way. The following potential approaches include that area to prevent regrowth as well as additional areas that require vegetation control. Currently, the RTC cannot go beyond milepost 23 due to a variety of repair and maintenance needs beyond that point which cannot yet be addressed due to required permits. Staff is working to secure those permits.

**Potential Approach 1:** To ensure that the vegetation is adequately controlled for the entire 2021 calendar year, this approach would consist of the clearing of vegetation on about 18.1 miles of right-of-way to include removal of fallen trees, tree saplings, encroaching branches and shrubs along with mowing of weeds followed by the application of a pre-emergent herbicide on one day. This work should be done in early February, as the pre-emergent herbicide is season critical. As the RTC is always concerned with properly maintaining and protecting RTC assets and infrastructure as well as protecting the health of workers and the public, staff researched products that effectively control emerging vegetation while minimizing any potential risks to the community. Through that research staff identified a mixture of three products for potential use: Milestone, Method 240SL, and Esplanade 200SC. The first two are not hazardous under the criteria of the Federal OSHA Hazard Communication Standard 29 CFR 1910.1200. The third has a single hazard statement, "May cause damage to organs (Nervous System) through prolonged or repeated exposure." To avoid any of the potential hazards, the contractor must follow all of the product's best management practices and avoid areas where water is present, bridges, crossings, and areas where the ROW is too narrow, apply the product directly to the ground from a low level when there is no wind or chance of rain, and must follow any other rules as required for the application and specified by staff. Although it is against the law for the public to enter the railroad corridor, and although the herbicide does not pose a health risk in the manner being used (even if someone were to illegally walk in the corridor immediately after application), notices will be posted in advance at grade crossings as a courtesy. The area of application will be wherever needed on the track bed, except all those excluded areas listed above, for a width of up to 8 feet from track. In specific locations where there are certain dry ditches needing invasive plant control and if the right-of-way is much wider, the width may be up to 18 feet on one side. The herbicide is "pre-emergent," meaning it is done in cleared areas to prevent new weeds and invasive species from sprouting. If this approach is used, mowing of the track bed and certain ditches will be significantly minimized.

**Potential Approach 2:** This approach includes the clearing of vegetation listed under Potential Approach 1 consisting of the clearing of vegetation on about 18.1 miles of right-of-way to include removal of fallen trees, tree saplings, encroaching branches and shrubs along with mowing of weeds to be completed in early

February. This would be followed by mowing of all new growth in May and again in August, which would also include mowing and raking of drainage ditches that were cleared of vegetation in 2020. This approach is designed as an alternative to applying the pre-emergent herbicide specified under Potential Approach 1 on one day each year, and to try to be as closely effective as possible as Potential Approach 1 to control vegetation and reduce fire risk. There could be some increased fire risk associated with weed growth and mowing, since maintenance vehicles would need to operate over areas of dry vegetation in summer and fall. This alternative is expected to result in degradation of the track bed and drainage infrastructure because the roots of the weeds cling to sediment, and the plants and clippings deteriorate over time, leading to more sediment buildup and moisture.

Staff released a Request for Bids (RFB) seeking qualified contractors to bid on mowing the remaining areas of need along the tracks and on the two potential approaches to control vegetation. Valid bids from three contractors were received. The lowest bid received for Potential Approach 1 (clearing of vegetation followed by pre-emergent herbicide on one day) was \$124,092 for clearing of vegetation and \$21,685 for herbicide application for a total of \$145,777. The lowest qualified bid received for Potential Approach 2 (clearing of vegetation followed by two rounds of mowing later in the year) was \$194,763 for clearing of vegetation and \$250,954 for the following two rounds of moving for a total of \$445,717.

Looking forward to 2022, after vegetation is under control, the ongoing cost for Potential Approach 1 is estimated to be \$40,000-\$100,000 per year while the cost for Potential Approach 2 is estimated to be \$250,000-\$450,000 per year. The actual cost will depend on the amount of encroaching vegetation such as branches, fallen trees, etc. and the level of regrowth as well as the bids received.

Due to the notable cost savings (about \$300,000 in 2021 and about \$200,000 to \$350,000 per year on-going), the superior effectiveness at controlling vegetation and protecting infrastructure, and the low hazard risk of the proposed pre-emergent herbicide mixture, Potential Approach 1 is recommended. **Therefore, staff recommends that the RTC approve a resolution (Attachment 1) authorizing the Executive Director to negotiate and execute a contract (Attachment 2) for the vegetation control along the SCBRL for a total contract value not to exceed \$145,777 and a term ending on December 31, 2021.**

Bids for this work were solicited using the informal bidding process allowed by CUPCCAA for contracts up to \$200,000. Therefore, if the RTC chose not to approve a contract for Potential Approach 1, it would not be possible to enter into a contract for Potential Approach 2 at this time because bids for Potential Approach 2 came in higher than \$200,000. There would need to be a formal bidding process for Potential Approach 2 prior to entering into a contract for that work or the RTC may approve a contract only for the first part of Potential Approach 2 (clearing of vegetation) and the follow up mowing would need to be part of a follow up formal bidding process prior to contracting for that work.

## **FISCAL IMPACT**

The RTC's budget for the Santa Cruz Branch Rail Line provides funds for corridor encroachments and preventative maintenance activities. The FY 20/21 budget includes \$1,313,709 for corridor property management and maintenance. There is enough capacity remaining in this fiscal year's budget, therefore there are no new fiscal impacts associated with the proposed contract to maintain vegetation along the SCBRL.

## **SUMMARY**

Staff procured contractors to maintain vegetation along the Santa Cruz Branch Rail corridor through the RTC's informal bidding process. Three valid bids were received for all or part of the two project options, with the contract recommended for award to the lowest bidder. Staff recommends entering into a contract with DBI Services for the needed vegetation control along the SCBRL corridor.

## **ATTACHMENTS:**

1. Resolution
2. Draft Contract and Attachments

**RESOLUTION NO.**

Adopted by the Santa Cruz County Regional Transportation Commission  
on the date of January 14, 2021  
on the motion of Commissioner  
duly seconded by Commissioner

A RESOLUTION ACCEPTING THE LOWEST RESPONSIVE BID AND AUTHORIZING THE  
EXECUTIVE DIRECTOR TO EXECUTE A CONSTRUCTION CONTRACT WITH DBI SERVICES  
IN THE AMOUNT OF \$145,777 FOR VEGETATION CONTROL ALONG THE SANTA CRUZ  
BRANCH RAIL LINE

WHEREAS, the Santa Cruz County Regional Transportation Commission (RTC)  
purchased the Santa Cruz Branch Rail Line (SCBRL) in October 2012;

WHEREAS, the agreement with the rail operator obligates the RTC to maintain the  
Santa Cruz Branch Rail corridor, until certain repairs are completed;

WHEREAS, vegetation has not been fully maintained within the Santa Cruz Branch Rail  
line corridor since the previous rail operator ceased maintaining the corridor;

WHEREAS; staff solicited bids for two project options, one including pre-emergent  
herbicide and one including additional mowing; and

WHEREAS; 3 valid bids were received for the first option and 2 for the second  
option, with DBI Services submitting the lowest responsive bid of either option in the  
amount of \$145,777;

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

1. The RTC accepts the lowest responsive bid in the amount of \$145,777;
2. The Executive Director is authorized to enter into an agreement with DBI Services  
for vegetation control along the Santa Cruz Branch Rail corridor with a bid amount  
of \$145,777;

AYES: COMMISSIONERS

NOES: COMMISSIONERS

ABSTAIN: COMMISSIONERS

---

Aurelio Gonzalez, Chair

ATTEST:

---

Guy Preston, Secretary

Distribution: RTC Project Manager, RTC Fiscal, Construction Contractor

## ATTACHMENT 2

### Draft Independent Contractor Agreement for Construction by Informal Bidding

This contract for independent contractor services (the “Contract”) is entered into this (enter day of month) day of (enter month), 20\_\_, by and between the SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION, hereinafter called COMMISSION, and (enter contractor name), hereinafter called CONTRACTOR. The parties agree as follows:

1. **SERVICES.** In accordance with the terms and conditions set forth in this Contract, CONTRACTOR agrees to perform all services described in the Scope of Work, attached as Exhibit A, which is incorporated herein for the benefit of the COMMISSION (hereinafter “the project”). In the event of a conflict in or inconsistency between the terms of this Contract and Exhibit A, this Contract shall prevail.

2. **COMPENSATION.** In consideration for performing the Scope of Work in a manner acceptable to the Commission, the Commission shall pay the Contractor for such services on a lump sum basis. The total lump sum price paid to CONTRACTOR will include compensation for all work and incidentals, including travel and equipment described in Exhibit A Scope of Work of this contract. No additional compensation will be paid to CONTRACTOR, unless there is a change in the scope of the work. In the instance of a change in the scope of work, adjustment to the total lump sum compensation will be negotiated between CONTRACTOR and COMMISSION based on the unit costs provided in the Fee Schedule included as Exhibit B. The total amount payable by COMMISSION shall not exceed \$145,777.

A. **Invoices.** CONTRACTOR shall submit invoices once a month, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. CONTRACTOR shall have ninety (90) days after the completion of work to invoice COMMISSION for all amounts due and outstanding as governed by this Contract. In the event CONTRACTOR fails to invoice COMMISSION for all amounts due within such ninety (90) day period, CONTRACTOR shall waive its right to collect payment from COMMISSION.

B. **Payment.** COMMISSION shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred.

C. **Reimbursable Expenses.** No expenses, costs, or liabilities of CONTRACTOR shall be reimbursable unless the obligation and manner of reimbursement is expressly set forth in the Scope of Work (Exhibit A) and in the Fee Schedule (Exhibit B).

D. **Payment of Taxes.** CONTRACTOR is solely responsible for the payment of employment taxes incurred under this Contract and any similar federal or state taxes.

E. **Retention.** If this Contract is for the creation, construction, alteration, repair or improvement of any public structure, building, road or other improvement of any kind and the total compensation payable under this Contract will exceed \$5000, five percent (5%) retention shall be withheld from progress payments and released as provided by Public Contract Code sections 9203 and 7107.

3. **TERM.** The term of this Contract shall be through December 31, 2021. If this Contract is placed on the RTC's Continuing Agreement List before the Contract term expires, the parties agree to extend the terms and conditions of the Contract as set forth herein, and as reflected in any executed amendment hereto, until the Contract is thereafter terminated.

4. **EARLY TERMINATION.** COMMISSION may terminate this Contract at any time by giving thirty (30) days' written notice to the CONTRACTOR. CONTRACTOR may terminate this Contract for cause, after providing COMMISSION thirty (30) days' written notice and opportunity to cure, specifying in detail the cause for termination.

5. **INDEMNIFICATION FOR DAMAGES, TAXES AND CONTRIBUTIONS.** To the fullest extent permitted by applicable law, CONTRACTOR shall exonerate, indemnify, defend, and hold harmless COMMISSION (which for the purpose of paragraphs 5 and 6 shall include, without limitation, its officers, agents, employees and volunteers) from and against:

A. Any and all claims, demands, losses, damages, defense costs, or liability of any kind or nature which COMMISSION may sustain or incur or which may be imposed upon it as a result of, arising out of, or in any manner connected with the CONTRACTOR'S performance under the terms of this Contract, excepting any liability arising out of the sole negligence of the COMMISSION. Such indemnification includes any damage to the person(s), or property(ies) of CONTRACTOR and third persons. Such obligations to defend, hold harmless and indemnify the COMMISSION shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of the COMMISSION.

B. Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to CONTRACTOR and CONTRACTOR'S officers, employees and agents engaged in the performance of this Contract (including, without limitation, unemployment insurance, social security and payroll tax withholding). COMMISSION shall provide timely notice to CONTRACTOR of third party claims relating to this Contract, as required by applicable law.

6. **INSURANCE.** CONTRACTOR, at its sole cost and expense, for the full term of this Contract (and any extensions thereof), shall obtain and maintain, at minimum, compliance with all of the following insurance coverage(s) and requirements. Such insurance coverage shall be primary coverage as respects COMMISSION and any insurance or self-insurance maintained by COMMISSION shall be considered in excess of CONTRACTOR'S insurance coverage and shall not contribute to it. If CONTRACTOR normally carries insurance in an amount greater than the minimum amount required by the COMMISSION for this Contract, that greater amount shall become the minimum required amount of insurance for purposes of this Contract. Therefore, CONTRACTOR hereby acknowledges and agrees that any and all insurances carried by it shall be deemed liability coverage for any and all actions it performs in connection with this Contract. Insurance is to be obtained from insurers reasonably acceptable to the COMMISSION.

If CONTRACTOR utilizes one or more subcontractors in the performance of this Contract, CONTRACTOR shall obtain and maintain Contractor's Protective Liability Insurance as to each subcontractor or otherwise provide evidence of insurance coverage from each subcontractor

equivalent to that required of CONTRACTOR in this contract, unless CONTRACTOR and COMMISSION both initial here: \_\_\_\_ / \_\_\_\_.

**A. Types of Insurance and Minimum Limits**

(1) Worker's Compensation in the minimum statutorily required coverage amounts. This insurance coverage shall be required unless the CONTRACTOR has no employees and certifies to this fact by initialing here: \_\_\_\_\_.

(2) Automobile Liability Insurance for each of CONTRACTOR'S vehicles used in the performance of this Contract, including owned, non-owned (e.g. owned by CONTRACTOR'S employees), leased or hired vehicles, in the minimum amount of \$1,000,000 combined single limit per occurrence for bodily injury and property damage. This insurance coverage is required unless the CONTRACTOR does not drive a vehicle in conjunction with any part of the performance of this Contract and CONTRACTOR and COMMISSION both certify to this fact by initialing here \_\_\_\_ / \_\_\_\_.

(3) Comprehensive or Commercial General Liability Insurance coverage at least as broad as the most recent ISO form CG 00 01, with a minimum limit of \$2,000,000 per occurrence and \$4,000,000 aggregate, including coverage for: (a) products and completed operations; (b) bodily and personal injury, (c) broad form property damage, (d) contractual liability, and (e) cross-liability.

(4) Railroad Protective Liability insurance, or equivalent Commercial General Liability Insurance that does not exclude work on railroads, naming only SCCRTC and St. Paul & Pacific Railway as the insured with a combined single limit of \$2,000,000 per occurrence with a \$4,000,000 aggregate. A binder stating the policy is in place must be submitted to the SCCRTC until the original policy is forwarded to the SCCRTC.

(5) Professional Liability Insurance in the minimum amount of \$\_\_\_\_\_ combined single limit, if, and only if, this Subparagraph is initialed by CONTRACTOR and COMMISSION \_\_\_\_ / \_\_\_\_.

**B. Other Insurance Provisions**

(1) If any insurance coverage required in this Contract is provided on a "Claims Made" rather than "Occurrence" form, CONTRACTOR agrees that the retroactive date thereof shall be no later than the date first written above (in the first paragraph on page 1), and that it shall maintain the required coverage for a period of three (3) years after the expiration of this Contract (hereinafter "post Contract coverage") and any extensions thereof. CONTRACTOR may maintain the required post Contract coverage by renewal or purchase of prior acts or tail coverage. This provision is contingent upon post Contract coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Contract. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Contract in order to purchase prior acts or tail coverage for post Contract coverage shall be deemed to be reasonable.

(2) All policies of Comprehensive or Commercial General Liability Insurance shall be endorsed to cover the Santa Cruz County Regional Transportation Commission, its officials, employees, agents and volunteers as additional insureds with respect to liability arising out of the work or operations and activities performed by or on behalf of CONTRACTOR, including materials, parts or equipment furnished in connection with such work or operations. Endorsements shall be at least as broad as ISO Form CG 20 10 11 85, or both CG 20 10 10 01 and CG 20 37 10 01, covering both ongoing operations and products and completed operations.

(3) All required insurance policies shall be endorsed to contain the following clause:

“This insurance shall not be canceled until after thirty (30) days’ prior written notice (10 days for nonpayment of premium) has been given to:

**Santa Cruz County Regional Transportation Commission  
Attn: Risk Manager  
1523 Pacific Avenue  
Santa Cruz, CA 95060**

Should CONTRACTOR fail to obtain such an endorsement to any policy required hereunder, CONTRACTOR shall be responsible to provide at least thirty (30) days’ notice (10 days for nonpayment of premium) of cancellation of such policy to the COMMISSION as a material term of this Contract.

(4) CONTRACTOR agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide COMMISSION on or before the effective date of this Contract with Certificates of Insurance and endorsements for all required coverages. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR’s obligation to provide them. All Certificates of Insurance and endorsements shall be delivered or sent to:

**Santa Cruz County Regional Transportation Commission  
Attn: Risk Manager  
1523 Pacific Avenue  
Santa Cruz, CA 95060**

(5) CONTRACTOR hereby grants to COMMISSION a waiver of any right of subrogation which any insurer of said CONTRACTOR may acquire against the COMMISSION by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the COMMISSION has received a waiver of subrogation endorsement from the insurer.

(6) **Deductibles and Self-Insured Retentions.** CONTRACTOR shall disclose to and obtain the approval of COMMISSION for the self-insured retentions and

deductibles before beginning any of the services or work called for by any term of this Agreement. Further, if the CONTRACTOR'S insurance policy includes a self-insured retention that must be paid by a named insured as a precondition of the insurer's liability, or which has the effect of providing that payments of the self-insured retention by others, including additional insureds or insurers do not serve to satisfy the self-insured retention, such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by this agreement so as to not prevent any of the parties to this agreement from satisfying or paying the self-insured retention required to be paid as a precondition to the insurer's liability. Additionally, the certificates of insurance must note whether the policy does or does not include any self-insured retention and also must disclose the deductible.

7. **EQUAL EMPLOYMENT OPPORTUNITY.** During and in relation to the performance of this Contract, CONTRACTOR agrees as follows:

A. The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, ancestry, physical or mental disability, medical condition (including cancer-related and genetic characteristics), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy, or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

B. If this Contract provides compensation in excess of \$50,000 to CONTRACTOR and if CONTRACTOR employees fifteen (15) or more employees, the following requirements shall apply:

(1) The CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, national origin, ancestry, physical or mental disability, medical condition (including cancer-related and genetic characteristics), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy, or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: recruitment; advertising, layoff or termination, rates of pay or other forms of compensation, selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. In addition, the CONTRACTOR shall make a good faith effort to consider Minority/Women/Disabled Owned Business Enterprises in CONTRACTOR'S solicitation of goods and services.

(2) In the event of the CONTRACTOR'S non-compliance with the non-discrimination clauses of this Contract or with any of the said rules, regulations, or orders said CONTRACTOR may be declared ineligible for further contracts with the COMMISSION.

(3) The CONTRACTOR shall cause the foregoing provisions of subparagraphs 7B(1) and 7B(2) to be inserted in all subcontracts for any work covered under this Contract by a subcontractor compensated more than \$50,000 and employing more than fifteen (15) employees, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

**8. INDEPENDENT CONTRACTOR STATUS.** CONTRACTOR and COMMISSION have reviewed and considered the principal test and secondary factors below and agree that CONTRACTOR is an independent contractor and not an employee of COMMISSION. CONTRACTOR is responsible for all insurance (workers compensation, unemployment, etc.) and all payroll related taxes. CONTRACTOR is not entitled to any employee benefits. COMMISSION agrees that CONTRACTOR shall have the right to control the manner and means of accomplishing the result contracted for herein.

PRINCIPAL TEST: The CONTRACTOR rather than COMMISSION has the right to control the manner and means of accomplishing the result contracted for.

SECONDARY FACTORS: (a) The extent of control which, by agreement, COMMISSION may exercise over the details of the work is slight rather than substantial; (b) CONTRACTOR is engaged in a distinct occupation or business; (c) In the locality, the work to be done by CONTRACTOR is usually done by a specialist without supervision, rather than under the direction of an employer; (d) The skill required in the particular occupation is substantial rather than slight; (e) The CONTRACTOR rather than the COMMISSION supplies the instrumentalities, tools and work place; (f) The length of time for which CONTRACTOR is engaged is of limited duration rather than indefinite; (g) The method of payment of CONTRACTOR is by the job rather than by the time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of COMMISSION; (i) CONTRACTOR and COMMISSION believe they are creating an independent contractor relationship rather than an employer-employee relationship; and (j) The COMMISSION conducts public business.

It is recognized that it is not necessary that all secondary factors support creation of an independent contractor relationship, but rather that overall there are significant secondary factors that indicate that CONTRACTOR is an independent contractor.

By their signatures on this Contract, each of the undersigned certifies that it is his or her considered judgment that the CONTRACTOR engaged under this Contract is in fact an independent contractor.

**9. SUBCONTRACTING.** CONTRACTOR shall not subcontract any portion of the performance contemplated and provided for herein without prior written approval of the COMMISSION. Where written approval is granted by the COMMISSION, CONTRACTOR shall supervise all work subcontracted by CONTRACTOR in performing the Services; shall be responsible for all work performed by a subcontractor as if CONTRACTOR itself had performed such work; the subcontracting of any work to subcontractors shall not relieve CONTRACTOR from any of its obligations under this Contract with respect to the Services; and CONTRACTOR

is obligated to ensure that any and all subcontractors performing any Services shall be fully insured in all respects and to the same extent as set forth under Section 6, to COMMISSION's satisfaction.

**10. RIGHT OF ENTRY AGREEMENT.** CONTRACTOR shall obtain a right of entry agreement with St. Paul & Pacific Railway (SPPR) in which 30-45 days are needed for SPPR to process this request. SPPR guidelines for obtaining a right of entry agreement are included as Exhibit C. CONTRACTOR will contact St. Paul & Pacific Railway representative to provide notice of the date, time, location, duration and nature of activity to be done.

**11. SAFETY TRAINING.** CONTRACTOR agrees to abide by all safety laws, regulations and requirements associated with working on and in the vicinity of a railroad track, and all conditions of entry that may be required by St. Paul & Pacific Railway to avoid interference with its rights, including but not limited to all terms and conditions set forth in the attached Exhibit C, incorporated herein. CONTRACTOR, subcontractors, and/or authorized agents shall be required to complete the paid railroad safety training prior to commencing work within the right of way.

**12. NONASSIGNMENT.** CONTRACTOR shall not assign the Contract without the prior written consent of the COMMISSION.

**13. ACKNOWLEDGMENT.** CONTRACTOR shall acknowledge in all reports and literature that the Santa Cruz County Regional Transportation Commission has provided funding to the CONTRACTOR.

**14. RETENTION AND AUDIT OF RECORDS.** CONTRACTOR shall retain records pertinent to this Contract for a period of not less than five (5) years after final payment under this Contract or until a final audit report is accepted by COMMISSION, whichever occurs first. CONTRACTOR hereby agrees to be subject to the examination and audit by the Santa Cruz County Regional Transportation Commission, the Auditor General of the State of California, or the designee of either for a period of five (5) years after final payment under this Contract.

All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that CONTRACTOR prepares or obtains in accordance with this Agreement and that relate to the matters covered under the terms of this Contract shall be the property of the COMMISSION.

During the term of this Agreement, either party (the "Disclosing Party") may disclose confidential, proprietary or trade secret information (the "Information"), to the other party (the "Receiving Party"). The Receiving Party shall hold the Disclosing Party's Information in confidence and shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Information. CONTRACTOR understands that COMMISSION is a public agency and is subject to the laws that may compel it to disclose information about CONTRACTOR's business.

**15. PRESENTATION OF CLAIMS.** Presentation and processing of any or all claims arising out of or related to this Contract shall be made in accordance with the provisions

contained in Chapter 1.05 of the Santa Cruz County Code, which by this reference is incorporated herein.

**16. ATTORNEY'S FEE.** If a Party to this Contract brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Contract, the prevailing Party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that Party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

**17. VENUE.** In the event that either Party brings any action against the other under this Contract, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Cruz or in the United States District Court for the Northern District of California.

**18. ATTACHMENTS.** This Contract includes the following attachments:

(enter attachments here)

**19. PREVAILING WAGE.** This agreement is covered under Prevailing Wage provisions if this section is initialed by COMMISSION \_\_\_\_\_.

This agreement is subject to the Prevailing Wage provisions and provisions relating to certified payroll records and apprenticeship of the Labor Code of California and Department of Industrial Relations regulations. There shall be paid to each worker of the CONTRACTOR, or any of his subcontractors engaged in work on the project, not less than the prevailing wage rate regardless of any contractual relationship that may be alleged to exist between the Contractor or subcontractor of such worker. Holiday and overtime work, when permitted by law, shall be paid at a rate of at least one and one-half (1 ½) times the above specified rate of per diem wages, unless otherwise specified. Non-compliance during the term of the contract will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies. To the fullest extent permitted by law, CONTRACTOR shall indemnify and hold COMMISSION harmless against any claims, or demands, or liability arising from failure to comply with all applicable requirements under the Prevailing Wage and related requirements.

**20. LICENSE, REGISTRATION, AND CLSB NOTICE.** CONTRACTOR shall maintain all required licenses throughout the term of this Contract. CONTRACTOR shall be registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. **NOTICE:** Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

**21. NON-BINDING UNTIL APPROVED.** Regardless of whether this Contract has been signed by all parties, if the total compensation identified in Paragraph 2 of this Contract is greater than \$60,000, this Contract is not binding on any party until the Contract has been approved by the Santa Cruz County Regional Transportation Commission.

**22. WARRANTY.** In addition to any and all warranties provided or implied by law or public policy, CONTRACTOR warrants that all Services (including but not limited to all equipment and materials supplied in connection therewith) shall be free from defects in design and workmanship, and that CONTRACTOR shall perform all Services in accordance with all applicable engineering, construction and other codes and standards, and with the degree of high professional skill normally exercised by or expected from recognized professional firms engaged in the practice of supplying services of a nature similar to the Services in question. CONTRACTOR further warrants that, in addition to furnishing all tools, equipment and supplies customarily required for performance of work, CONTRACTOR shall furnish personnel with the training, experience and physical ability, as well as adequate supervision, required to perform the Services in accordance with the preceding standards and the other requirements of this Contract. In addition to all other rights and remedies which COMMISSION may have, COMMISSION shall have the right to require, and CONTRACTOR shall be obligated at its own expense to perform, all further services which may be required to correct any deficiencies which result from Contractor's failure to perform any Services in accordance with the standards required by this Contract. Moreover, if, during the term of this Contract (or during the one (1) year period following the term hereof), any equipment, goods or other materials or Services used or provided by CONTRACTOR under this Contract fail due to defects in material and/or workmanship or other breach of this Contract, CONTRACTOR shall, upon any reasonable notice from COMMISSION, replace or repair the same to COMMISSION's satisfaction. Unless otherwise expressly permitted, all materials and supplies to be used by CONTRACTOR in the performance of the Services shall be new and best of kind. Contractor hereby assigns to City all additional warranties, extended warranties, or benefits like warranties, such as insurance, provided by or reasonably obtainable from suppliers of equipment and material used in the Services.

**23. INTEGRATION; INCORPORATION.** This Contract, including all the exhibits attached hereto, represents the entire and integrated agreement between COMMISSION and CONTRACTOR and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.

**24. SEVERABILITY.** If a court of competent jurisdiction finds or rules that any provision of this Contract is invalid, void, or unenforceable, the provisions of this Contract not so adjudged shall remain in full force and effect.

**25. MISCELLANEOUS.** This written Contract, along with any attachments, is the full and complete integration of the parties' agreement forming the basis for this Contract. The parties agree that this written Contract supersedes any previous written or oral agreements between the parties, and any modifications to this Contract must be made in a written document signed by all parties. The unenforceability, invalidity or illegality of any provision(s) of this Contract shall not render the other provisions unenforceable, invalid or illegal. Waiver by any part of any portion of this Contract shall not constitute a waiver of any other portion thereof. Any arbitration,

mediation, or litigation arising out of this Contract shall occur only in the County of Santa Cruz, notwithstanding the fact that one of the contracting parties may reside outside of the County of Santa Cruz. This Contract shall be governed by, and interpreted in accordance with, California law.

**26. COUNTERPARTS.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The Parties have executed this Contract as of the date signed by the COMMISSION.

## Exhibit A

### Scope of Work

All vegetation shall be cleared at least 8 feet back from outer edge of each rail as well as between the two rails, to less than 4 inches from ground. Clearance shall extend vertically at least 10 feet above level of rails. Total length is up to 18.1 miles. Mowed clippings may be left on site. Within MP 6.0-6.4 and 22.7-23.0, significant branch or small fallen tree clearing may be left on site only on level ground clear of the track bed and ditches.

Subsequent to the mowing and clearing, pre-emergent herbicide shall be applied to the track bed to a distance of up to 8 feet from the outer edge of each rail as well as between the two rails. In specified dry ditches, which in total run approximately 4.43 single-side miles, application shall reach 10 to as much as 18 feet from rail. Products that must be used are Esplanade 200SC, Method 240SL, and Milestone. Two of which are not hazardous under the criteria of the Federal OSHA Hazard Communication Standard 29 CFR 1910.1200. The third has only hazard statement which says, "May cause damage to organs (Nervous System) through prolonged or repeated exposure." Contractor must follow all of the best management practices as listed by the product manufacturer and avoid areas where water is present, bridges, crossings, areas where the ROW is too narrow, during wind, and during rain, as required for the application and specified by the contract manager to avoid any potential hazards. Products must not contain arsenic. Any proposed changes to products used must have equivalent or less hazard statements than the above and be approved by the contract manager. The contract price paid shall include full compensation for furnishing all labor, materials, tools, equipment and incidentals, and for doing all the work, complete in place, and no additional compensation will be allowed therefor. Contractor must post two 8.5x11" paper notices at each of 47 grade crossings in the project area 3-7 days prior to herbicide application and remove them afterwards.

Work must be completed by February 12, 2021

#### Location

Maps will be provided prior to work.

Between milepost 3.0 (800' west of Lee Road, Watsonville) and 19.3 (Pilkington Ave, Santa Cruz), and between 20.2 (W Cliff Drive, Santa Cruz) and 23.0 (500' west of road crossing 768164P, Santa Cruz). Total: up to 18.1 miles

Ditches for additional herbicide width 10-18': MP 4.6-6.6, 8.09-8.37, 9.53-9.59, 11.22-12.12, 12.05-12.1, 13.18-13.48, 15.49-15.66 (both sides), 18.59-18.69 (both sides), 20.3-20.6. Total: 4.43 miles

**Exhibit B**  
Fee Schedule

<b>Task</b>	<b>Bid Price</b>
Mow all vegetation between rails and 8' to each side to less than 4" from ground and to 10' vertically	\$ 124,092
Apply preemergent herbicide between rails and 8' to each side as well as in specified dry ditches. Post notices at 47 grade crossings.	\$ 21,685
<b>TOTAL</b>	<b>\$ 145,777</b>

**Exhibit C**

St. Paul & Pacific Railway Guidelines

Current document to be attached