

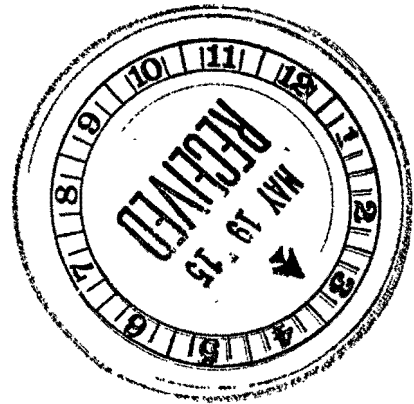


KAPLAN KIRSCH ROCKWELL

238417

May 19, 2015

ENTERED
Office of Proceedings
May 19, 2015
Part of
Public Record



Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: *Peninsula Corridor Joint Powers Board – Petition for Declaratory Order*,
Finance Docket No. 35929
EXPEDITED CONSIDERATION REQUESTED

Dear Ms. Brown:

I am enclosing an original and ten copies of Peninsula Corridor Joint Powers Board ("JPB") Petition for Declaratory Order and associated exhibits in the above-captioned proceeding. Please date-stamp the extra copy provided and return it to our messenger. We have also enclosed a CD with a copy of the enclosed filing in electronic format.

Enclosed is a check in the amount of \$1,400.00 for the filing fee. However, JPB is hereby requesting waiver of the associated filing fee pursuant to 49 C.F.R. §1002.2. See 49 C.F.R. §1002.2(e); STB Ex Parte No. 542 (Sub-No. 6) – *Regulations Governing Fees For Services Performed In Connection With Licensing And Related Services-Policy Statement* (Served December 6, 2000). JPB is a state government agency filing the request on behalf of the general public. Accordingly, JPB requests that the filing fee submitted with the Petition for Declaratory Order to be waived.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Charles A. Spitulnik

Counsel for Peninsula Corridor Joint
Powers Board

Enclosures

cc: All Parties of Record

FEE RECEIVED

May 19, 2015

SURFACE

TRANSPORTATION BOARD

FILED

May 19, 2015

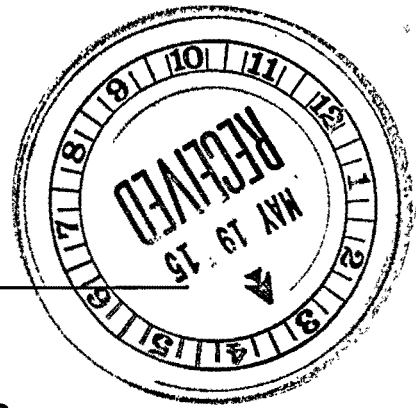
SURFACE

TRANSPORTATION BOARD

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**



FINANCE DOCKET NO. 35929

PENINSULA CORRIDOR JOINT POWERS BOARD

VERIFIED PETITION FOR A DECLARATORY ORDER

VOLUME I OF II

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35929

PENINSULA CORRIDOR JOINT POWERS BOARD

VERIFIED PETITION FOR A DECLARATORY ORDER

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35929

PENINSULA CORRIDOR JOINT POWERS BOARD

VERIFIED PETITION FOR A DECLARATORY ORDER

EXPEDITED CONSIDERATION REQUESTED

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Counsel for Peninsula Corridor Joint
Powers Board

Dated: May 19, 2015

EXPEDITED CONSIDERATION REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**FINANCE DOCKET NO. 35929
PENINSULA CORRIDOR JOINT POWERS BOARD**

VERIFIED PETITION FOR A DECLARATORY ORDER

Petitioner, the Peninsula Corridor Joint Powers Board ("Petitioner" or "Caltrain"), operator of the Caltrain commuter rail service in northern California, respectfully petitions the Surface Transportation Board ("Board"), pursuant to 5 USC §554 and 49 USC §721, for a declaratory order confirming that, because Petitioner is a rail carrier subject to the Board's jurisdiction, the application of the California Environmental Quality Act (Cal. Public Resources Code §21000 et seq.) ("CEQA") to Petitioner is fully preempted by virtue of 49 USC § 10501(b) of the ICC Termination Act ("ICCTA"). Petitioner seeks to make improvements to its rail line and facilities but has been sued in state court in an action seeking enforcement of CEQA. Consistent with this Board's analysis in F.D. No. 35861, *California High Speed Rail Authority—Petition for a Declaratory Order*, (Service Date Dec. 12, 2014) ("*CHSRA*"), Petitioner respectfully requests this Board to issue an order confirming that the requirements of CEQA, as applied to Petitioner, are fully preempted and that state court enforcement of CEQA is contrary to federal law.

BACKGROUND AND PROJECT HISTORY

The rail line between San Jose and San Francisco, California, came into public ownership in 1991, when it was acquired from Southern Pacific Transportation Company ("Southern Pacific") by Petitioner and its managing agency, the San Mateo County Transit District.¹ The acquisition of the line from Southern Pacific reflected a significant investment of state and local funds intended to preserve and improve commuter rail service on the line connecting Silicon Valley with San Francisco. As part of the 1991 transaction, Petitioner made two filings with the Interstate Commerce Commission ("ICC"). The Notice of Exempt Acquisition filed in Finance Docket No. 31980² pertained to the transfer of the ownership of the line, while the filing in Finance Docket No. 31983³ related to the trackage rights held by Southern Pacific for freight operations on the San Francisco to San Jose segment.⁴ The Trackage Rights

¹ The 1991 purchase was made by the two cooperating public agencies, The Peninsula Corridor Joint Powers Board or "JPB" (a contractually-created public agency formed under Cal. Government Code §6500 et seq., by the transit operators of the three affected counties: the City and County of San Francisco, the Santa Clara County Transit District (now the Santa Clara Valley Transportation Authority) and the San Mateo County Transit District or "SamTrans") and SamTrans, which provided a significant portion of the local funding for the purchase, took an ownership interest in the real estate in San Mateo County and acts as the administrative operating agency for Petitioner

² ICC Finance Docket No. 31980, *Peninsula Corridor Joint Powers Board and The San Mateo County Transit District*, Notice of Exempt Acquisition (filed December 20, 1981) ("**Exhibit 1**").

³ ICC Finance Docket No. 31983, *Southern Pacific Transp. Co. -- Trackage Rights -- Peninsula Corridor Joint Powers Board and The San Mateo County Transit District* (filed December 20, 1981) ("**Exhibit 2**").

⁴ Copies of these filings are attached as **Exhibits 1 and 2**. Another rail segment, from San Jose (Lick) south to Gilroy (which continues to be owned by SP's successor, Union Pacific, but over which Petitioner operates limited commuter service), was also involved in the 1991 transaction, but is not relevant to this petition. (See ICC Finance

Agreement, which was filed as an exhibit in FD 31983, outlines the terms of the joint operating relationship between the freight and passenger operators on the line. By virtue of these filings, Petitioner became a rail carrier providing transportation subject to the jurisdiction of the ICC.

Since the 1991 purchase, Southern Pacific and its successor by merger, the Union Pacific Railroad Company ("Union Pacific" or "UP"), have continued to operate freight service on the line. In general terms, Petitioner and Union Pacific share the two mainline tracks from San Francisco south to Santa Clara. Between Santa Clara and San Jose, UP has its own track (the "New Coast Main") which is used primarily for its freight operations. UP also hosts Amtrak intercity rail passenger service trains and the regional Capitol Corridor and Altamont Commuter Express passenger services on this track. Many of these trains originate in the East Bay and join the Caltrain line at Santa Clara, which is at the southern end of San Francisco Bay, continuing south to San Jose. Through two "paired track" arrangements, all of the tracks between Santa Clara and points south of San Jose are currently shared to facilitate optimal bi-directional operations for all parties, with Caltrain trains occasionally operating on the New Coast Main and some of the non-Caltrain passenger trains using Caltrain-owned tracks.

This petition is prompted by litigation that has been filed by a local city and two interest groups challenging the environmental clearance under CEQA for a project to electrify the Caltrain line. Among other remedies, the litigation seeks injunctive relief that could

ICC Finance Docket No. 31985, *Peninsula Corridor Joint Powers Board—Trackage Rights—Southern Pacific Transportation Company* (filed December 20, 1991) ("**Exhibit 3**").)

halt this project. (A copy of the Petition for Writ of Mandate is attached as **Exhibit 4.**)

The project that is the subject of this legal challenge is known as the Peninsula Corridor Electrification Project (the "Project"), which proposes to install 25kv electrical lines over the line and utilize Electrical Multi-Units (EMUs) in providing passenger service. By electrifying the service, Petitioner will be able to operate more efficiently, for the benefit of all users of the line. With implementation of the Project, not only would more frequent and more efficient service be implemented, but the improvements on the line will be compatible with future implementation of the proposed California High Speed Rail project.

Although recent decisions by this Board and in the courts have confirmed that the 49 U.S.C. § 10501 preempts the application of CEQA with respect to rail carriers providing transportation that is subject to the jurisdiction of this Board, Petitioner has proceeded to demonstrate its good faith by preparing and circulating an Environmental Impact Report ("EIR") for the Project. In view of those decisions, Petitioner also stated clearly in the Final EIR that it was reserving its rights to assert federal preemption should legal actions be filed to block the Project.⁵ Petitioner's governing board adopted the Project and conditionally certified the EIR on January 8, 2015, while specifically reserving its rights to assert preemption of CEQA.⁶ Nevertheless, Petitioner has pledged (and confirms its intent to honor that pledge) to fulfill all of the mitigation measures listed in

⁵ See FEIR, Section 1.5.1.3 ("**Exhibit 5**").

⁶ The Board's resolution specifically reserved the agency's rights to claim preemption. (See Resolutions 2015-3 and 2015-4 ("**Exhibit 6**").)

the EIR, regardless of the status of any claim of preemption. The legal challenge was filed on February 9, 2015.

ARGUMENT

I. Petitioner is a rail carrier subject to the jurisdiction of the Board.

As a result of filing the two Notices of Exemption in 1991, Petitioner became a rail carrier providing transportation subject to the jurisdiction of the ICC. At the time of the purchase in 1991, Petitioners were well aware of the *State of Maine* series of ICC decisions (*Maine DOT—Acquisition Exemption—Maine Central Railroad Company* (8 ICC 2d 385 (1991))), involving the acquisitions of rail rights-of-way by public agencies who avoided taking on carrier status by limiting the scope of their control over the lines they acquired. Petitioner felt at the time, and continues to believe, that the level of control that it has (and strongly desires to continue to have) over freight and other passenger operations on the Caltrain line is important in allowing it to control and expand passenger rail service in fulfillment of goals behind the significant public investment in acquiring the line. The terms of Section 4 of the Trackage Rights Agreement, particularly §§4.1 and 4.3, give the Peninsula Corridor Joint Powers Board, as the “Owner,” control over all maintenance and dispatching on the line and contain rules that allow Petitioner to confine freight service to certain operating “windows” to facilitate passenger operations. Section 8.3 even contemplates a potential scenario in which the needs of passenger rail service might require the abandonment of freight service. Many of these restrictions track the terms that caused concern in the 1993 decision of the ICC regarding the Los Angeles County Transportation Commission

(LACTC). (*Southern Pacific Transportation Company—Abandonment Exemption—Los Angeles County, CA*, 9 ICC 2d 386 (1993).)

A. This Board has exclusive and plenary jurisdiction over the line owned by Caltrain and used in interstate freight operations by UPRR, and the ICCTA preempts the application of CEQA.

Petitioner is a carrier providing transportation that is subject to the exclusive jurisdiction of the Board pursuant to 49 USC §10501(b):

The jurisdiction of the Board over--

(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,

is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

The statute, 49 U.S.C. § 10102(9), defines transportation to include:

... a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use;....

Since Petitioner owns and provides trackage for use in interstate rail service, it is providing transportation that is subject to the jurisdiction of this Board. As a result, under 49 USC §10501(b), the improvement and operation of the line remain under the Board's exclusive jurisdiction. As the Board has noted, in enacting the ICCTA,

Congress “vested exclusively” in the STB “[t]he power to authorize construction of rail lines and the power to authorize railroads to operate them.” (*Kings County, WA—Petition for a Declaratory Order—Burlington Northern R.R.—Stampede Pass Line*, 1 STB 731, 734) However, the Project involves only the construction of improvements to the line and not an extension of it, so no specific project approval is required from the Board. (See *City Of Detroit v. Canadian National Railway Company, et al.*, 9 I.C.C.2d 1208 (1993), *aff’d sub nom. Detroit/Wayne Co. Port Authority v. I.C.C.*, 59 F.3d 1314 (D.C.Cir. 1995).⁷)

Recently, this Board has confirmed, with regard to the development of the DesertXpress and California High Speed Rail projects, that the application of CEQA is preempted by the ICCTA with regard to projects undertaken by rail carriers providing transportation subject to the jurisdiction of the Board.⁸ The decision in *CHSRA* held that the application of injunctive remedies under CEQA is pre-empted by the ICCTA. (*CHSRA*, Slip Opinion at 10-11.) In addition, the Board and a federal court have reached a similar conclusion with regard to the attempt to apply CEQA to rail projects being undertaken by commuter rail operators in California.⁹

⁷ Petitioner had previously obtained NEPA clearance from the Federal Transit Administration, which completed an Environmental Assessment and issued a Finding of No Significant Impact for the Project in 2009.

⁸ STB Finance Docket No. 34914, *DesertXpress Enterprises, LLC – Petition for a Declaratory Order* (Served June 27, 2007); STB Finance Docket No. 34914, *California High-Speed Rail Authority – Petition for a Declaratory Order* (Served October 17, 2014, (“CHSRA”).

⁹ STB Finance Docket No. 34111, *North San Diego County Transit Development Board – Petition for Declaratory Order* (Service Date August 21, 2002); *City of Encinitas v. North San Diego County Transit Development Board* 2002 U.S. Dist. Lexis 28531, (S.D. Cal. 2002).

B. The injunctive remedies sought by the challengers in the state court action would directly interfere with the improvement and operation of Petitioner's rail line.

The two interest groups that are parties to the litigation against Petitioner are the Community Coalition on High-Speed Rail and Transportation Solutions Defense and Education Fund.¹⁰ Their demands on Petitioner prior to filing their suit asked Petitioner to undertake additional environmental studies, including a full study of the as-yet undefined operation by which CHSRA would share a portion of Petitioner's tracks. It appears that a major motivation for the litigation involves the relationship between Petitioner and CHSRA. Indeed, the actions of these two interest groups, as well as the third litigant, the Town of Atherton, appear to target the Project precisely because of its potential relationship to the CHSRA project. Although the electrification of the line has been the subject of planning efforts that date back almost two decades (and preceded the legislation that authorized the CHSRA's bond funding), in their CEQA petition the litigants claim that the Project is inextricably linked to the CHSRA project, such that the fact that the EIR for the Project did not examine the CHSRA project as a part of the Project is a fatal flaw in the environmental process. The state court litigants' actions are surprising at best, since despite the fact that the Caltrain EIR fully examined the future cumulative impacts of the CHSRA project (along with other major projects planned by other entities), the litigants seek to halt the Project until additional studies can be

¹⁰ These two groups have also challenged the Board's ruling with regard to CHSRA in FD 35861. (See *Kings County et al v. Surface Transportation Board*, Case No. 15-70386, 9th Cir.)

conducted to determine the impacts of the shared use with CHSRA, even though the planning schedule for that project calls for service to begin in 2028.¹¹

The plaintiffs' actions in the state court proceeding appear to be an attempt to do precisely what this Board, like the ICC before it, has ruled is an impermissible activity – that is, to use state and local environmental and other permitting requirements to block the implementation of projects that will benefit rail carriers that are subject to the Board's jurisdiction. For example, the Town of Atherton demanded that Petitioner fund the construction of a grade crossing signalization project within its borders and discuss providing an increased level of rail service to a station located in the Town as a condition of the Town not bringing a lawsuit. (See letters attached as Exhibit 7.) This is precisely the type of economic regulation that was found, in the *City of Auburn* case, to contravene the Board's jurisdiction: "For if local authorities have the ability to impose environmental permitting regulations on the railroad, such power will in fact amount to economic regulation if the carrier is prevented from constructing, acquiring, operating, abandoning, or discontinuing a line." *City of Auburn v. U.S.*, 154 F.3d. 1025, 1031 (9th Cir. 1998). (See also, *Staten Island Rapid Transit Operating Authority v. ICC* 718 F.2d 531 (1983).) Thus, far from being a mere attempt to elicit additional information regarding the Project, this litigation seems aimed at exerting control over the design of

¹¹ California High Speed Rail Authority, *2014 Business Plan*, page 16, Ex. 1.1. To the extent the challenger's strategy is to delay or block the high speed rail project, it is clearly using the state court action to indirectly attack a party that has been found by the Board to be a carrier. Rather than using CEQA as an informational process, for which the statute was intended, the strategy of these groups is to use the judicial process to delay projects and increase their costs as a means of furthering an alternative transportation policy agenda. Indeed, one litigant's claims include the failure of Petitioner to adopt the particular type of rail vehicle championed by this particular group.

the rail improvements, the nature of accompanying improvements, and even the details of the day-to-day operation of rail service.

Plaintiffs' avowed purpose in the state court litigation runs counter to the proper scope of state and local regulation of railroads: "[T]he Termination Act does not preempt only explicit economic regulation. Rather it preempts all 'state laws that may reasonably be said to have the effect of managing or governing rail transportation, while permitting the continued application of laws having a more remote or incidental effect on rail transportation.' [Citation omitted.] What matters is the degree to which the challenged regulation burdens rail transportation, not whether it is styled as 'economic' or 'environmental.'" (*New York Susquehanna and Western Rwy. Corp. v Jackson* 500 F.3d 238, 252 (3d Cir. 2007).) Moreover, "[t]he regulation must not be so draconian that it prevents the railroad from carrying out its business in a sensible fashion. . . . [R]egulations must be settled and definite enough to avoid open-ended delays." *Id.* at 254.

C. The Board's action in this proceeding is of importance to resolve an issue

The Board is likely aware that the issue of the preemption of CEQA by the ICCTA has been the subject of litigation in California courts. (*Town of Atherton et al. v. California High-Speed Rail Authority*, (2014) 228 Cal.App.4th 314 ("*Atherton*").)¹² In a case

¹² The *Atherton* decision ended a six-year court challenge, brought by two of the challengers in the new litigation, to the CEQA documents prepared by CHSRA for the segment of the CHSRA system that connects with the Caltrain line in San Jose. Having achieved its goal in obtaining judicial approval of its environmental document, CHSRA

involving CHSRA, an appellate-level court found that preemption was not available to protect the high speed rail project from a CEQA challenge (which involved two of the parties to the action challenging the Project), holding that the "market participant exception" prevented preemption from operating with regard to a state agency. However, and significantly for this proceeding, that court noted in its decision that there had been no decision by this Board with regard to its jurisdiction over the line in question. (*Id.* at 332, fn 4.)¹³ Another appellate panel of a different district than the *Atherton* court found that the "market participant exception" should not apply to a CEQA challenge to a proposal by a private rail operator to improve a publicly-owned rail line for freight service.¹⁴ However, that case has been accepted for review by the California Supreme Court in late December, and it will likely be many months, and perhaps more than a year, before a final decision is expected in that case. Nevertheless, the challengers can be expected to argue that the *Atherton* court held that CEQA is not preempted by the ICCTA and to ask the Board to hold off any action until the California courts can rule on this issue of federal jurisdiction. As even the *Atherton* court has

chose not to seek review of the *Atherton* decision, which found no preemption of CEQA in the absence of a declaratory order from the Board.

¹³ Footnote 4 in the *Atherton* decision reads: "The STB, as the agency authorized by Congress to administer the ICCTA, has been called 'uniquely qualified' to determine if state law is preempted. [Citations omitted.] A request to the STB for a declaratory order of preemption would be the remedy for the Authority's claim of federal preemption, just as it was in *City of Auburn*. The Authority has not informed this court of any request for a formal declaratory order from the STB that the ICCTA preempts CEQA as to the HST system. In the STB June Decision the STB made no such determination; it did not even mention preemption. As we discussed ante, it merely found it had jurisdiction."

¹⁴ *Friends of the Eel River v. North Coast Rail Authority*, Cal. Supreme Court Case No S222472. It should be noted that, under California Rules of Court, Rule 8.1105(e), once an appellate decision that has been accepted for review by the California Supreme Court it is no longer a "published case" and may not be relied upon as precedent in California courts.

acknowledged that the Board is "uniquely qualified" to determine the issue of preemption, there is no reason for the Board to wait for a state court to issue a ruling involving the scope of the Board's authority. (*Atherton*, 228 Cal.App.4th at 332, fn 4.)

REQUEST FOR EXPEDITED CONSIDERATION

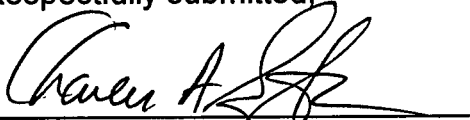
Petitioner respectfully requests that the Board issue an order regarding the preemption of CEQA for the Project as soon as possible. Under CEQA, cases are entitled to judicial calendaring priority and are expected to be prosecuted and heard quickly. Currently, the petitioners are preparing the administrative record, as they elected to do under the CEQA statute. We anticipate that task could be completed within 60 days (early June), at which time a roughly 90-day briefing schedule would normally commence, with a hearing on the merits of the petition to be held shortly thereafter. In total, the CEQA case could proceed to a resolution within 160-180 days from now. In order to avoid incurring the bulk of that potentially unnecessary effort and expense, the JPB requests that the STB issue a ruling by June 30. An order from the STB regarding preemption of CEQA with regard to the Project, if issued prior to that date, would eliminate controversy in advance of the initial court appearance in the matter.

To facilitate expedited consideration, Petitioner has served a copy of this Petition for a Declaratory Order on the counsel of record for the challengers in the CEQA lawsuit.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Board issue an order regarding the preemption of CEQA with regard to the Project.

Respectfully submitted,


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Washington, DC 20036

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Michael N. Conneran
Hanson Bridgett LLP
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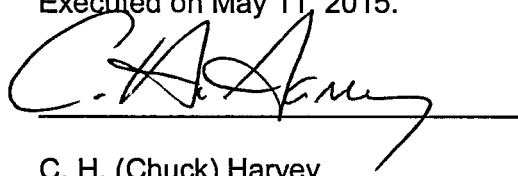
Dated: May 19, 2015

VERIFICATION

I, C.H. (Chuck) Harvey, verify under penalty of perjury that the factual statements made in the foregoing Petition for Declaratory Order are true and correct, to the best of my knowledge, information and belief.

Further, I certify that I am qualified and authorized to file this verification.

Executed on May 11, 2015.

A handwritten signature in black ink, appearing to read 'C. H. Harvey', is written over a horizontal line.

C. H. (Chuck) Harvey
Deputy CEO – Operations, Engineering & Construction
Peninsula Corridor Joint Powers Board

**Before the
Surface Transportation Board
Washington, D.C.**

Finance Docket No. 35929

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of May 2015, I have caused a copy of the foregoing Verified Petition for a Declaratory Order to be served upon the following individuals via first class mail, postage prepaid:

Stuart Flashman
Law Offices of Stuart Flashman
5626 Ocean View Drive
Oakland, CA 94618-1533

Sabrina Teller
Remy Moose Manley, LLP
555 Capitol Mall, Suite 800
Sacramento, CA 95814



Charles A. Spitulnik
Kaplan Kirsch & Rockwell LLP
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(202) 955-5600
cspitulnik@kaplankirsch.com

Dated: May 19, 2015

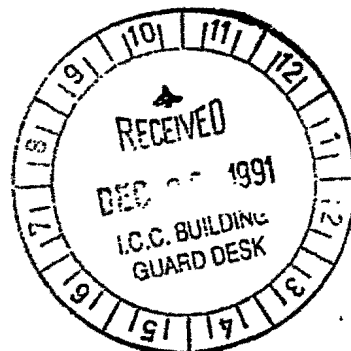
EXHIBIT 1

BEFORE THE
INTERSTATE COMMERCE COMMISSION

PENINSULA CORRIDOR JOINT POWERS
BOARD AND THE SAN MATEO
COUNTY TRANSIT DISTRICT,
Applicants

Docket No. FD 31980

Notice by Peninsula Corridor
Joint Powers Board (Owner) and San
Mateo County Transit District
(Owner and Manager) - Exemption to
Acquire Rail Line -
51.3 miles of Peninsula Main
Line and Santa Clara/Lick Line -
and Santa Clara Counties,
California



NOTICE OF EXEMPT ACQUISITION

HANSON, BRIDGETT, MARCUS, VLAHOS
& RUDY
DAVID J. MILLER
Attorney for Applicants

PENINSULA CORRIDOR
JOINT POWERS BOARD

SAN MATEO COUNTY TRANSIT DISTRICT

DATED: December 20, 1991

BEFORE THE
INTERSTATE COMMERCE COMMISSION

PENINSULA CORRIDOR JOINT POWERS
BOARD AND THE SAN MATEO
COUNTY TRANSIT DISTRICT,
Applicants

Docket No. FD 31980

Notice by Peninsula Corridor
Joint Powers Board (Owner) and San
Mateo County Transit District
(Owner and Manager) - Exemption to
Acquire Rail Line -
51.3 miles of Peninsula Main
Line and Santa Clara/Lick Line -
San Francisco, San Mateo
and Santa Clara Counties,
California

NOTICE OF EXEMPT ACQUISITION

The Peninsula Corridor Joint Powers Board and the San Mateo
County Transit District provide the following as their Verified
Notice of Exempt Acquisition and in response to 49 C.F.R.

§1150.33:

1. Full name and address of the applicants:

Peninsula Corridor Joint Powers Board
San Mateo County Transit District
1250 San Carlos Avenue
P. O. Box 3006
San Carlos, CA 94070-1306

2. The name, address and telephone number of representative of Applicants to whom correspondence should be sent:

David J. Miller, Esq.
Attorney for the Peninsula Corridor Joint
Powers Board
Attorney for the San Mateo County Transit District
Hanson, Bridgett, Marcus, Vlahos & Rudy
333 Market Street, Suite 2300
San Francisco, CA 94105
(415) 777-3200

3. Statement that an agreement has been reached or details of when the agreement shall be reached: A Purchase, Sale and Option Agreement among the Southern Pacific Transportation Company ("Seller" or "Southern Pacific") and Peninsula Corridor Joint Powers Board ("JPB") and the San Mateo County Transit District ("Samtrans") (referred to collectively herein as "Buyers") was executed on November 22, 1991.

4. The operator of the property:

This transaction involves the acquisition by two public agencies of real estate and rail facilities owned by Southern Pacific Transportation Company which will be used to operate existing passenger commute rail transportation on the San Francisco, California, peninsula. In the process, one of the public agencies, which will serve as Manager, will take over and continue the existing rail commute service which is now operated by Southern Pacific under a contract with the California Department of Transportation. The public agencies, through their Manager, will be operating a service as a common carrier by

railroad, the revenues for which will classify it as a Class III carrier.

The common carrier services to be operated by the public authorities during the first year following acquisition will consist of passenger commute rail service. The structure of the transaction is as follows:

Between San Francisco, Milepost 0.147, and Santa Clara Junction, MP 44.0, Southern Pacific is selling its Peninsula Corridor including trackage, track structure, and land. It is retaining all freight and intercity passenger service rights, under a reservation being confirmed by a trackage rights grant to Southern Pacific in F.D. 31983 submitted to the Commission contemporaneous herewith. Rail freight customers will continue to be served by Southern Pacific. Southern Pacific will also retain intercity rail passenger service rights. (There are no intercity passenger services operated at present on this line segment.) The Buyers will take over the existing rail commute passenger services which are operated between San Francisco and San Jose, MP 46.9. (See Southern Pacific's Tariff ICC SP-P-9001.)

Between Santa Clara, MP 44.0, and Lick, MP 51.4, Southern Pacific will operate its rail freight and intercity passenger service on its single main line

track (of which it has retained ownership) located on the JPB right of way. Southern Pacific will dispatch its own track independent of JPB's passenger commute rail service. However, Southern Pacific has granted bridge trackage rights to JPB from the south end of San Jose (Cahill Yard - MP 47.1) to Lick (MP 51.4) to allow an extension of future passenger commute rail service operations over Southern Pacific's line south of San Jose to Gilroy. From Santa Clara (MP 44.0) to San Jose's Cahill Yard (MP 46.9), there will be at least 3 main tracks, one of which will be owned by Southern Pacific. Multiple tracks are available in San Jose's Cahill Yard between MP 46.9 and MP 47.4.

From MP 47.4, Auzerai Street, south of San Jose's Cahill Yard, to Lick (MP 51.4), Southern Pacific will retain ownership of the existing main track and JPB will own a new, second main track (now under construction between MP 47.4, Auzerai Street, and a new station called Tamien (MP 48.8, near Alma Street). JPB plans to extend that second main track to Lick (MP 51.4). Thus, both SP and the JPB will continue to provide and offer their respective services between Santa Clara and Lick on their separately owned track.

The manager of the rail passenger commute service on the lines being acquired by Buyers will be Samtrans. Operations will be conducted either directly by Samtrans or by a contract operator. Samtrans is in the process of interview and selection for its long-term contract operator, and Southern Pacific has agreed to serve as an interim short-term operator under the terms and conditions under which it currently provides service.

As part of the Purchase, Sale and Option Agreement among the parties, certain ancillary trackage rights will be granted to the JPB. They shall be subject to separate and distinct Commission filing as follows: (1) FD 31984, trackage rights for JPB over Southern Pacific's 1-mile branch at Lick, which JPB will use from time to time to turn trains or for other operating purposes; (2) FD 31985, trackage rights for JPB over Southern Pacific's line from Lick, MP 51.4, to Gilroy, MP 80.7, to allow an extension of rail passenger commute operations over Southern Pacific's line south of San Jose to Gilroy and bridge trackage rights over Southern Pacific's retained track between San Jose's Cahill Yard, at approximately MP 46.9, and Lick MP 51.4, to allow JPB use of Southern Pacific's track between the San Jose passenger station and Lick.

The ownership of the rail lines and facilities being acquired by Buyers will be held as follows: within San Mateo County (i.e., between MP 5.2 and MP 29.7), ownership shall be held jointly by Samtrans and the JPB; in San Francisco County (MP 0.147 to 5.2) and Santa Clara County (MP 29.7 to MP 51.4),

ownership shall be in the name of the Joint Powers Board. The manager of the service being operated by Buyers, responsible to the public, is Samtrans.

5. Brief summary of the proposed transaction, including:

a. Name and address of railroad transferring the subject property:

Southern Pacific Transportation Company
Southern Pacific Building
One Market Plaza
San Francisco, CA 94105

b. Proposed time schedule for the consummation of the transaction:

Southern Pacific and the Buyers have concluded an agreement. The transaction is expected to close on or about December 27, 1991.

c. Mileposts of the subject property:

The line is between milepost 0.147 in San Francisco, California and milepost 51.4 at Lick, California.

d. Total route miles being acquired: approximately 51.3 miles.

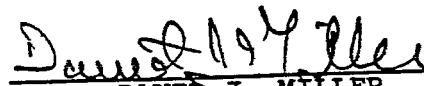
6. A map indicating the area to be served, including origins, termini, stations, cities, counties and States is attached as Exhibit A.

7. A certificate that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier is attached as Exhibit B.

8. The required verification is attached as Exhibit C.

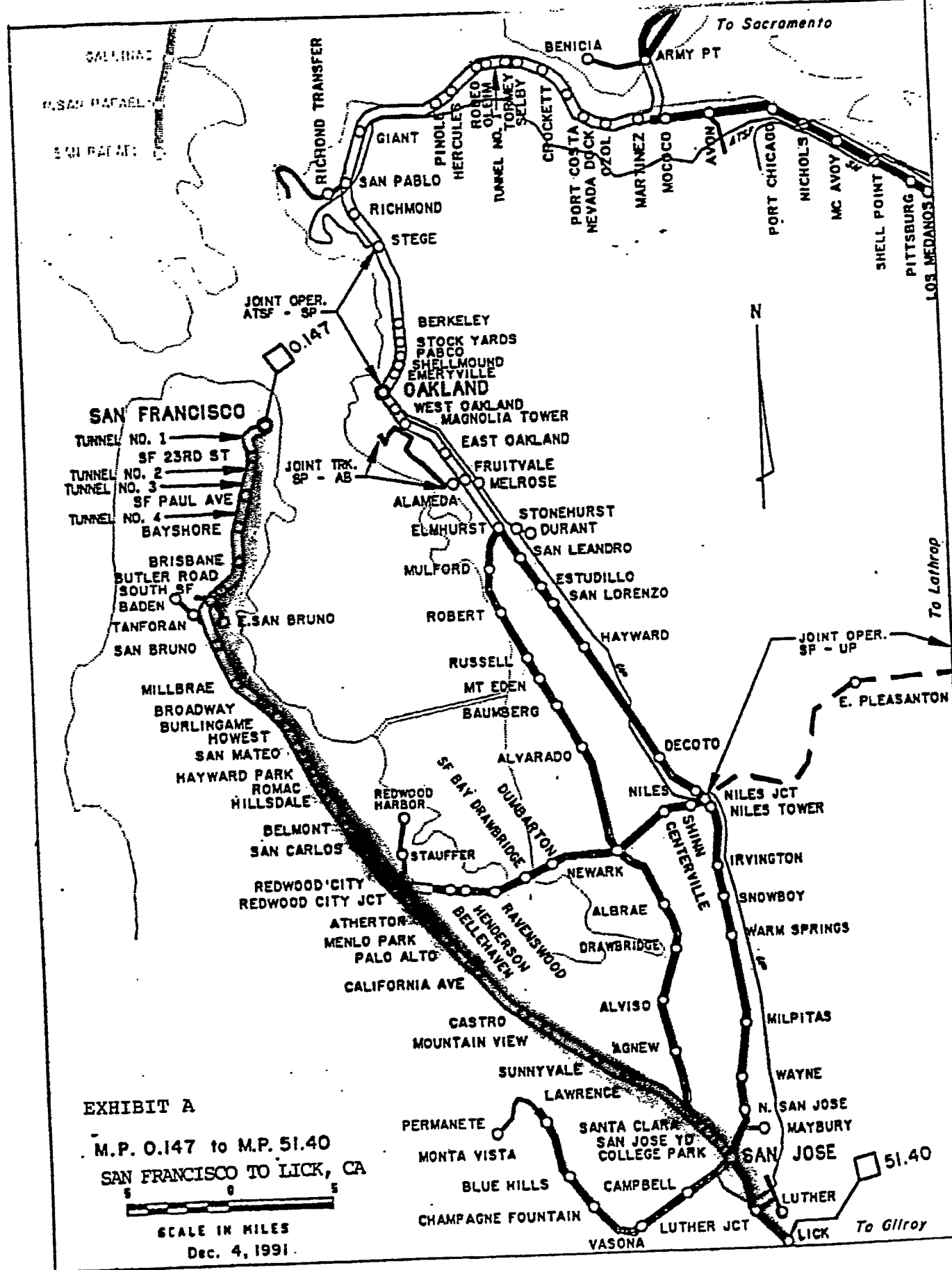
Respectfully submitted,

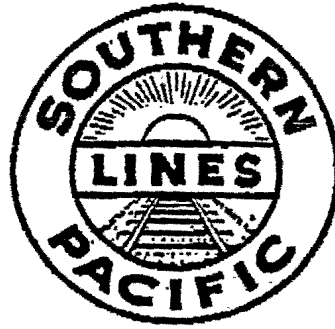
HANSON, BRIDGETT, MARCUS,
VLAHOS & RUDY
DAVID J. MILLER, Esq.



DAVID J. MILLER
Attorney for Applicants
PENINSULA CORRIDOR
JOINT POWERS BOARD

SAN MATEO COUNTY TRANSIT DISTRICT





WESTERN REGION TIMETABLE

4

EFFECTIVE SATURDAY, NOVEMBER 24, 1990
AT 12:01 A.M.

K. A. MOORE

Vice President - Operations

L. L. PHIPPS

General Manager

M. L. WELLS

G. R. FETTY

Asst's General Managers

E. L. HORD

Asst's Vice President - Transportation Services

A. C. FOX

Superintendents - Transportation

Superintendents

G. A. GREBLO

Oregon Division

R. A. BAKER

Tehachapi Division

W. M. KESSINGER

Shasta Division

L. J. JENKINS JR.

Los Angeles Division

M. L. IRVINE

Sacramento Division

R. N. PETERSON

West Colton Division

H. C. BALLANCE

Stockton Division

H. L. McDOWELL

Tucson Division

H. R. KAVENY

Western Division

J. H. HIGHT

El Paso Division

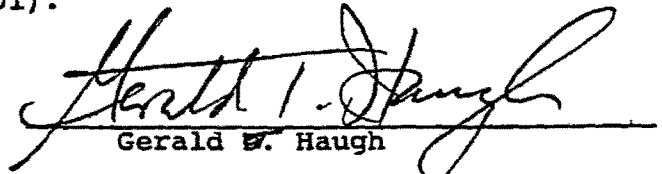
EXHIBIT A, PAGE 3

COAST DISTRICT

WESTWARD ↓		STATIONS		↑ EASTWARD	
Station Number	Siding Feet	Coast Line			Mile Post
13200		WATSONVILLE JCT	QT	ABS DT	100.4
13175		LOGAN		CTC	93.2
13165		CORPORAL		ABS	88.4
13138		CARNADERO		DT	83.2
13135		GILROY		DT	80.7
13128		RUCKER		CTC	77.0
13114	8125	PERRY		ABS	68.3
13110		COYOTE		ABS DT	63.1
13085		LICK		DT	55.3
...		UP CROSSING	A	CTC	49.1
13025		SAN JOSE	QT		45.9
13020		COLLEGE PARK	MQ		45.7
13000		SAN JOSE YARD	Q		45.2
12982		SANTA CLARA	MQ		44.3
12978		LAWRENCE			40.8
12974		SUNNYVALE			38.8
12970		MOUNTAIN VIEW			36.1
12968		CASTRO			34.8
12962		CALIFORNIA AVE			31.8
12958		PALO ALTO		A	30.1
12954		MENLO PARK		B	28.9
12950		ATHERTON		S	27.8
12935		REDWOOD JCT			25.2
12890		REDWOOD CITY		D	25.4
12884	JW2105	SAN CARLOS		T	23.2
12882		BELMONT			21.9
12878		HILSDALE			20.3
12870		HAYWARD PARK			18.9
12866		SAN MATEO			17.9
12864		BURLINGAME			16.3
12850		BROADWAY			15.2
12840	M1825	MILLERAE			13.7
12824		SAN BRUNO			11.8
12800		ED SAN FRANCISCO			9.3
12790		BUTLER ROAD			8.8
12780		BAYSHORE	M		5.2
12775		PAUL AVE			4.1
...		22nd STREET			1.9
12710		SAN FRANCISCO	MQT		0.0
(95.5)					

EXHIBIT B

I, Gerald ^T~~B~~. Haugh, Executive Director of the Peninsula Corridor Joint Powers Board and the General Manager of the San Mateo County Transit District ("Applicants"), certify that the Applicants projected annual carrier operating revenues will not exceed those of a Class III carrier (annual carrier operating revenues of \$10 million or less, as adjusted by the railroad revenue deflator formula described in Note A to Title 49, Code of Federal Regulations, part 1201).



Gerald ~~B~~. Haugh

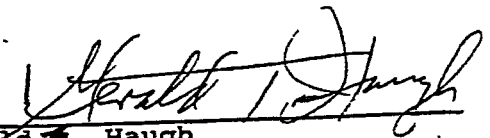
Executive Director
PENINSULA CORRIDOR
JOINT POWERS BOARD

General Manager
SAN MATEO COUNTY TRANSIT
DISTRICT

EXHIBIT C

VERIFICATION

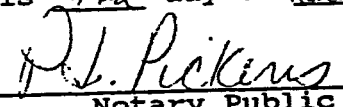
Gerald D. Haugh being duly sworn, deposes and says that he is the Executive Director of the Peninsula Corridor Joint Powers Board and the General Manager of the San Mateo County Transit District, that he has read the foregoing verified Notice of Exemption, knows the contents thereof and that the factual statements contained therein are true.


Gerald D. Haugh

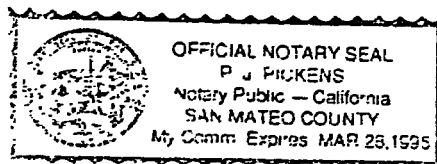
Executive Director
PENINSULA CORRIDOR
JOINT POWERS BOARD

General Manager
SAN MATEO COUNTY TRANSIT
DISTRICT

Subscribed and sworn to before me
this 4th day of Dec., 1991.


Notary Public

My commission expires 3/28/95.



(Summary Caption)

INTERSTATE COMMERCE COMMISSION

NOTICE OF EXEMPTION

Finance Docket No. 31980

Peninsula Corridor Joint Powers Board
San Mateo County Transit District
Exemption to Acquire Peninsula Mainline and Santa Clara/Lick Line
from Southern Pacific Transportation Company

The Peninsula Corridor Joint Powers Board and the San Mateo County Transit District have filed a notice of exemption to acquire the line owned by Southern Pacific Transportation Company located between milepost 0.147 in San Francisco County, and milepost 54.1 in Santa Clara County, California, a distance of 54 miles. Comments must be filed with the Interstate Commerce Commission and served upon David J. Miller, Attorney for the Peninsula Corridor Joint Powers Board and the San Mateo County Transit District, c/o Hanson, Bridgett, Marcus, Vlahos & Rudy, 333 Market Street, San Francisco, CA 94105, telephone (415) 777-3200. This transaction is also the subject of Finance Dockets Nos. 31983, 31984, 31985.

The notice is filed under § 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated:

By the Commission:

Sidney L. Strickland, Jr.
Secretary

CERTIFICATE OF SERVICE

I, Michael N. Conneran, certify that I have this day caused copies to be served of the foregoing document upon all parties of record in this proceeding, by first class mail, postage prepaid:

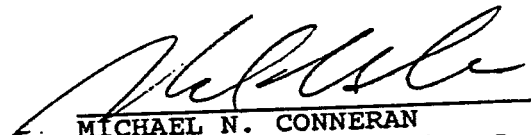
Mr. Gary A. Laakso
Southern Pacific Building
One Market Plaza
San Francisco, CA 94105

California State Historical
Preservation Office
P. O. Box 942896
Sacramento, CA 94296-0001

California Public
Utilities Commission
Rail Operating & Safety Branch
505 Van Ness Avenue
San Francisco, CA 94102

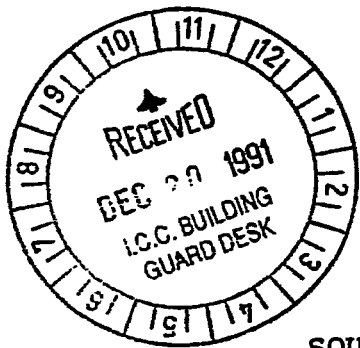
The Hon. Pete Wilson
State of California
State Capitol
Sacramento, CA 94514

Dated: 12/20/1991


MICHAEL N. CONNERAN
Attorney for Notifying Carrier
PENINSULA CORRIDOR JOINT
POWERS BOARD and SAN MATEO
COUNTY TRANSIT DISTRICT

HANSON, BRIDGETT, MARCUS,
VLAHOS & RUDY
333 Market Street
Suite 2300
San Francisco, CA 94105-2173
Telephone: (415) 777-3200

EXHIBIT 2



BEFORE THE
INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 31983

SOUTHERN PACIFIC TRANSPORTATION COMPANY
-- TRACKAGE RIGHTS --
PENINSULA CORRIDOR JOINT POWERS BOARD
AND
SAN MATEO COUNTY TRANSIT DISTRICT

NOTICE OF EXEMPTION

Louis P. Warchot
John MacDonald Smith
Gary A. Laakso
Southern Pacific
Transportation Company
Southern Pacific Building
One Market Plaza
San Francisco, CA 94105
(415)541-1785

Attorneys for Notifying Carrier,
Southern Pacific
Transportation Company

Date Filed: December 20, 1991

BEFORE THE
INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 31983

SOUTHERN PACIFIC TRANSPORTATION COMPANY
-- TRACKAGE RIGHTS --
PENINSULA CORRIDOR JOINT POWERS BOARD
AND
SAN MATEO COUNTY TRANSIT DISTRICT

NOTICE OF EXEMPTION

Southern Pacific Transportation Company ("SP") submits this Notice of Exemption pursuant to the class exemption of 49 CFR § 1180.2(d)(7) for trackage rights over the lines of the Peninsula Corridor Joint Powers Board ("JPB") and the San Mateo County Transit District ("Samtrans") as further described below. The parties have agreed on the terms of the written agreement for trackage rights which are not sought as a responsive application in a rail consolidation proceeding. The signed agreement is attached as Exhibit 2. The Commission has found that its prior review and approval of this type of transaction is not necessary to carry out the rail transportation policy of 49 USC § 10101a and that such transactions are of limited scope and regulation is not necessary to protect shippers from an abuse of market power.

Pursuant to the Commission's regulations at 49 CFR § 1180.4(g), the Notice of Exemption contains the information set forth next below, and also states the level of labor protection to be imposed. Responsive to these requirements, SP states:

Section 1180.6 Supporting Information

(a)(1)(i) Description of Proposed Transaction:

The trackage rights covered by this Notice of Exemption are a part of a multi-part transaction intended to enable JPB and Samtrans to acquire the facilities necessary for a heavy-rail commuter passenger transportation program on the San Francisco, CA, peninsula, while preserving SP's ability to provide freight and intercity passenger service to the same points. Nevertheless, the trackage rights sought herein are distinct and separate rights which may be operated without the authorization for or exemption of any other part of the total transaction by the Commission (other than the sale of SP's line to JPB and Samtrans described in paragraph (1) below) which is subject to Finance Docket No. 31980 and for which a Notice of Exemption is being concurrently filed by the JPB and Samtrans. The various parts of the transaction are described below as additional information.

(1) Pursuant to an agreement dated November 22, 1991 and being lodged with the Office of Proceedings concurrently herewith, SP has agreed to sell to JPB and Samtrans portions of its main line trackage between San Francisco (MP 0.147) and Lick (MP 51.4) and all of the real property underlying such main line. This sale is the subject of the Notice of Exemption being filed concurrently herewith by the JPB and Samtrans in F.D. No. 31980. Between San Francisco (MP 0.147) and Santa Clara Junction (MP 44.0), SP is selling all of its main line trackage and the real property underlying such trackage while

reserving trackage rights for its freight and intercity passenger operations as described in paragraph (2) below. Between Santa Clara Junction and Lick, SP is retaining ownership of trackage and the ability to provide continued freight and intercity passenger service on its own trackage as further described in paragraph (3) and (4) below.

(2) In connection with SP reservation of trackage rights in the sale, JPB and Samtrans is confirming to SP such trackage rights for freight and intercity passenger operations between San Francisco (MP 0.147) and Santa Clara Junction (MP 44.0). These are the trackage rights covered by this Notice of Exemption and are described in detail in Exhibit 2 hereof.

(3) Between Santa Clara Junction (MP 44.0) and Cahill (MP 47.1) (a point just beyond San Jose station, which is MP 46.9) on the real property sold to JPB (subject to F.D. No. 31980), there are three continuous tracks, two of which are being sold to JPB under the sale covered in F.D. No. 31980, and one of which is being retained by SP for its exclusive ownership and use. The track retained by SP is designated as SP's New Coast Main. Between the above points SP and JPB will both separately operate, each on its own track or tracks, within a right-of-way owned by JPB. SP is preserving direct access to all stations and industries and will continue to serve all existing freight customers. SP will also have the ability to operate intercity rail passenger services, including those subject to its contract with Amtrak. JPB's tracks will be used for the provision of commuter passenger service,

including a continuation of the present rail commute service between San Francisco and San Jose.

(4) Between Cahill (MP 47.1) and Auzerais Street (MP 47.5), there are two continuous main tracks on the underlying right-of-way being sold to JPB in F.D. No. 31980. One of those tracks will also be sold to JPB in F.D. No. 31980, and the ownership of the other shall be retained by SP, so that SP and JPB will each have separate, dedicated tracks within the right-of-way owned by JPB. Each party will continue to provide or offer its respective services as described above in connection with the Santa Clara Junction-Cahill segment (except to the extent of the bridge trackage rights described in paragraph (8) below operated over SP's track).

(5) Between Auzerais Street (MP 47.5) and Lick (MP 51.4), there is presently a single track. The underlying right-of-way is being sold to JPB (in F.D. No. 31980), but SP will retain ownership, control and use of the track. JPB will have bridge trackage rights described in paragraph (8) below over SP's track.

(6) SP will grant JPB trackage rights over SP's short branch line (the Lick Branch) which joins SP's main line at Lick. This line will be used by JPB from time to time to turn its trains and equipment. The parties intend to file a subsequent Notice of Exemption for these trackage rights in Finance Docket No. 31984.

(7) SP will grant JPB trackage rights over SP's line from Lick (MP 51.4) to Gilroy (MP 80.7) to enable JPB to extend its commuter passenger service to Gilroy. A Notice of Exemption will be filed for these trackage rights in Finance Docket No. 31985.

(8) SP will grant JPB bridge trackage rights over the tracks retained by SP between Cahill (MP 47.1) and Lick (MP 51.4), to facilitate operations for JPB's commuter service to Gilroy. A Notice of Exemption for the trackage rights will be filed in Finance Docket No. 31985 in connection with JPB's request for trackage rights between Lick and Gilroy as described in paragraph (7) above.

The complete route for JPB and Samtrans commuter service will be after all Notices of Exemption become effective: Over JPB's and, in part, Samtrans' double-track main from San Francisco (MP 0.147) to Santa Clara Junction (MP 44.0), then over JPB's double-track from Santa Clara Junction (MP 44.0) to Cahill (MP 47.1), then over SP's track pursuant to bridge trackage rights from Cahill (MP 47.1) to Lick (MP 51.4), then over SP's line pursuant to trackage rights from Lick (MP 51.4) to Gilroy (MP 80.7).

However, as one result of the transaction, SP will now be the tenant on trackage owned by a separate and unrelated Class III rail carrier over the segment from San Francisco (milepost 0.147) to Santa Clara Junction (milepost 44.0) (paragraph (2) listed above). This Notice of Exemption is accordingly filed to memorialize SP's

new status as a tenant, and the level of labor protection to be accorded affected SP employees.

SP's exact name and address are given below:

Southern Pacific Transportation Company
Southern Pacific Building
One Market Plaza
San Francisco, CA 94105
(415) 541-1785

JPB's and Samtran's exact name and address are given below:

Peninsula Corridor Study Joint Powers Board
1250 San Carlos Avenue
San Carlos, CA 94070-1306
(415) 508-6200

San Mateo County Transit District
1250 San Carlos Avenue
P.O. Box 3006
San Carlos, CA 94080

Questions regarding this transaction are to be addressed to counsel for SP named below:

Gary Laakso, General Attorney
Southern Pacific Transportation Company
Southern Pacific Building
One Market Plaza, Room 846
San Francisco, CA 94105

(a)(1)(ii) Consummation Date

The transaction will be consummated on or after December 27, 1991.

(a)(1)(iii) Purpose Sought To Be Accomplished

The purpose to be accomplished by the trackage rights from JPB and Samtrans to SP is for SP to continue to have the ability to provide rail freight and intercity passenger service between San Francisco and Santa Clara Junction and intermediate points, thereby preserving the continuity of pre-existing available services.

(a)(5) List of States In Which The Parties Property is Situated

JPB and Samtrans operate in the State of California. SP operates in the States of Oregon, California, Nevada, Utah, Arizona, New Mexico, Texas, and Louisiana. The trackage rights transaction is located solely in the State of California.

(a)(6) Map

A map showing the trackage rights grant is attached as Exhibit 1.

(a)(7)(ii) Agreement

The trackage rights agreement is attached hereto as Exhibit 2. As noted above, the agreement also extends to bridge trackage rights between Cahill and Lick which are covered by separate a Notice of Exemption and which are not intended to be effective until filed with and exempted by the Commission pursuant to such Notice.

Labor Protection

SP is agreeable to the labor protection conditions generally imposed in trackage rights proceedings as set forth in Norfolk and Western Ry. Co. -- Trackage Rights -- BN, 354 ICC 605 (1978) as modified by Mendocino Coast Ry., Inc. -- Lease and Operation -- California Western Railroad, 360 ICC 653 (1980).

Respectfully submitted,

Louis P. Warchot
John MacDonald Smith
Gary A. Laakso

By 
Louis P. Warchot

Attorneys for Applicant,
Southern Pacific
Transportation Company

Southern Pacific Building
One Market Plaza
San Francisco, CA 94105
(415)541-1754

VERIFICATION

State of California)
) ss.
City and County of San Francisco)

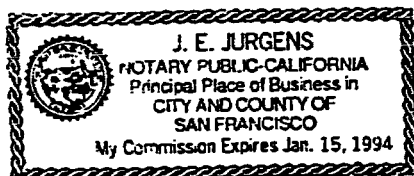
W. J. Holtman, Executive Vice President-Operations, on behalf of Southern Pacific Transportation Company, states that he has read the foregoing document, knows the contents thereof, and that the factual statements contained therein are true as stated.

Dated at San Francisco, California this 12th day of December,
1991.

W. J. Holtman
W. J. HOLTMAN

Subscribed and sworn to before me by W. J. HOLTMAN this 12th day of December, 1991.

Witness my hand and official seal.




NOTARY PUBLIC

INTERSTATE COMMERCE COMMISSION

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 31983

SOUTHERN PACIFIC TRANSPORTATION COMPANY
TRACKAGE RIGHTS
PENINSULA CORRIDOR JOINT POWERS BOARD
AND
SAN MATEO COUNTY TRANSIT DISTRICT

Peninsula Corridor Joint Powers Board ("JPB") and the Santa Mateo County Transit District ("Samtrans") have agreed to confirm exclusive freight and intercity passenger trackage rights to Southern Pacific Transportation Company over the trackage of JPB and Samtrans located between the points known as:

San Francisco at or near milepost 0.147 and Santa Clara Junction, at or near milepost 44.0

The trackage rights will be effective on or after December 27, 1991.

This Notice is filed under 49 C.F.R. 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Commission,

Sidney L. Strickland, Jr.
Secretary

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy by first class mail, postage prepaid, of the foregoing NOTICE OF EXEMPTION on the following counsel for the Peninsula Corridor Study Joint Powers Board and the San Mateo County Transit District:

David J. Miller
Hanson, Bridgett, Marcus, Vlahos & Rudy
333 Market Street, Suite 2300
San Francisco, California 94105-2173

I further certify that I have on this date served a copy, by first class mail, postage prepaid, of the foregoing NOTICE OF EXEMPTION, attached to the form letter of Environmental Notice pursuant to 49 C.F.R. 1105.11, on the designated State Agency named below:

Chief
Railroad Operations & Safety Branch
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102


James M. Guinivan

Dated: December 20, 1991

TRACKAGE RIGHTS AGREEMENT --- PENINSULA MAIN LINE AND SANTA CLARA/LICK LINE

This AGREEMENT dated as of December 20, 1991, is by and between the PENINSULA CORRIDOR JOINT POWERS BOARD, a joint powers agency created under California law, (hereinafter referred to as "Owner") and SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation, (hereinafter referred to as "User");

RECITALS:

A. Owner and User have entered into a Purchase, Sale and Option Agreement dated as of November 22, 1991 ("Sale Agreement") providing, in part, for the purchase by Owner from User of certain properties in San Francisco, San Mateo and Santa Clara Counties, California including the Peninsula Main Line and the Santa Clara/Lick Line (both as defined in Section 1 hereof and as more fully described in Exhibit A hereto);

B. Pursuant to the Sale Agreement, Owner acquired the Peninsula Main Line and the Santa Clara/Lick Line for the purpose, in part, of providing Commuter Service (as defined in Section 1 hereof) and for any purpose other than those reserved exclusively to User in the Sale Agreement and User retained for itself and its successors and assigns a perpetual and exclusive easement (as set forth in the deeds and assignments conveying said properties) in and trackage rights over such properties acquired by Owner for User's present and future Freight Service and Intercity Passenger Service (both as defined in Section 1 hereof).

C. Owner and User desire to set forth the terms of the reservation by User of the trackage rights retained for User's exclusive present and future Freight Service and Intercity Passenger Service on the Peninsula Main Line and the Santa Clara/Lick Line.

D. Owner and User also desire to set forth the terms of Owner's Bridge Trackage Rights over User's Cahill/Lick Line for Gilroy Commuter Service (all as defined in Section 1 hereof).

NOW THEREFORE, it is mutually agreed by and between the parties hereto as follows:

(C:\g\p)

(Main14.TPA)

Section 1. DEFINITIONS

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

1.1 "AAR" shall mean the Association of American Railroads.

1.2 "Bridge Trackage Rights" shall mean exclusive Gilroy Commuter Service trackage rights for Gilroy Commuter Service Trains only over User's Cahill/Lick Line, over which segment there shall be no intermediate Gilroy Commuter Service station stops; however, Owner's Trains may enter or leave the segment at any point. These Bridge Trackage Rights are to be used only in conjunction with the trackage rights granted (pursuant to the Lick/Gilroy Trackage Rights Agreement) by User to Owner from Lick (at or near Milepost 51.4) to Gilroy (at or near milepost 80.7), for Trains in Gilroy Commuter Service.

1.3 "Cahill Yard" shall mean the yard in front of the San Jose passenger station at San Jose, California, as more fully described in Exhibit A hereto.

1.4 "Changes and/or Additions" shall mean any capitalized improvements including, without limitation, the additions, betterments, construction, reconstruction, modifications and renewals thereof and additional facilities, regardless of book treatment as an expense or capital item, but excluding capitalized maintenance provided for in Section 9.

1.5 "Commuter Service" shall mean the operation by Owner (or an Operator for Owner) of Trains that provide commute passenger service on the Joint Facilities (excluding User's Cahill/Lick Line) between San Francisco (at or near Milepost 0.147) and Lick (at or near Milepost 51.4), California in San Francisco, San Mateo and Santa Clara Counties, and frequently characterized by reduced fare, multiple-ride and monthly commutation tickets. Commuter Service as so defined shall not include Intercity Passenger Service. The term "Commuter Service" shall also include Owner's Trains and Equipment operated for the purpose of Equipment review, schedule checks, personnel training, Changes and/or Additions and maintenance of way activities.

1.6 "Customary Additives" shall mean elements of cost added to billings of either party to the other that generally are calculated as a percentage of direct labor costs and are intended to compensate for, without limitation, paid holidays, vacation and personal leave days, health and welfare benefits, payroll taxes and administrative and supervisory expenses that include direct and general overhead, inclusive of a customary one percent (1%) additive for special administrative costs related to billing

preparation, and are subject to periodic changes depending upon industry practices and the provisions of Section 11.3. As an example of such additives, Exhibit B sets forth 1990 amounts as represented by SPT to JPB.

1.7 "Designated Freight Trackage" shall mean Trackage which is part of the Joint Facilities (excluding User's Cahill/Lick Line), which is located on real property owned by Owner (as described on Exhibit A hereto), which is used now or in the future solely for Freight or Intercity Passenger Service and which shall be maintained at the sole cost and expense of User (unless the parties have agreed in writing to use also by the Owner, in which case sharing of maintenance costs shall be as agreed to in writing by the parties notwithstanding the provisions of Section 9.1 hereof) including, without limitation, (i) the present yard Trackage at South San Francisco, (ii) the proposed gauntlet Track Structure between Milepost 3.18 and Milepost 5.26, (iii) storage Track Structure (for two tracks) between Bayshore at Milepost 4.9 and Brisbane at Milepost 7.1, and (iv) upon the approval of Owner (which shall not be unreasonably withheld), such additional Freight Service support Trackage and other facilities to meet User's Freight Service needs.

1.8 "Effective Date" shall have the meaning set forth in Section 11.12.

1.9 "Equipment" shall mean locomotives, cars, cabooses, hi-rail vehicles, other vehicles, and machinery which are capable of being operated on Joint Facilities.

1.10 "Exclusive Commute Trackage" shall mean that part of the Joint Facilities, excluding User's Cahill/Lick Line, (which is described by the designated line symbols on Exhibit A), including yard or other side Trackage used solely by Owner, and including but not limited to the double main Trackage from Santa Clara Junction to Cahill Yard, the passenger Trackage at Cahill Yard, the magnetic westerly main Trackage from Cahill Yard to Auzerais Street at Milepost 47.5 and all new Trackage which Owner may construct between Auzerais Street and Lick at Milepost 51.4, which Owner shall maintain at its sole cost and expense (unless the parties have agreed in writing to use also by User, in which case sharing of maintenance costs shall be as agreed to in writing by the parties notwithstanding the provisions of Section 9.1 hereof).

1.11 "Fiscal Year" shall mean the period beginning July 1 of any calendar year and ending June 30 of the following calendar year.

1.12 "Freight Service" shall mean User's railroad operations contemplated hereunder in furtherance of transporting freight commodities of all types and description in Trains whether loaded

or empty, including personnel training, and the use of all Equipment and Non-Revenue Equipment for such operations.

1.13 "Gilroy Commuter Service" shall have the meaning set forth in Section 1.13 of the Lick/Gilroy Trackage Rights Agreement.

1.14 "ICC" shall mean the Interstate Commerce Commission.

1.15 "Intercity Passenger Service" shall mean intercity railroad passenger service (other than Commuter Service) provided by NRPC or any other Operator with whom User contracts to provide Intercity Passenger Service over the Joint Facilities in accordance with this Agreement.

1.16 "Joint Facilities" shall mean the Peninsula Main Line and the Santa Clara/Lick Line, Designated Freight Trackage, Exclusive Commute Trackage, and only that portion of the New Coast Main consisting of User's Cahill/Lick Line, and all Changes and/or Additions thereto now or in the future.

1.17 "Lick/Gilroy Trackage Rights Agreement" shall mean that agreement between User and Owner dated as of the date hereof which grants Owner trackage rights over the rail lines of User from milepost 51.4 at or near Lick to milepost 80.7 at or near Gilroy.

1.18 "Materials Additives" shall mean elements of cost customarily charged by railroads to one another and which are to be added to any and all materials cost billings of either party to the other and that generally are calculated as a percentage of direct costs, are intended to compensate for store, purchasing and handling expenses, sales or use taxes, foreign line freight, and on-line freight and are subject to periodic changes depending upon industry practices and the provisions of Section 11.3. As an example of such additives, Exhibit B sets forth 1989 amounts as represented by SPT to JPB.

1.19 "New Coast Main" shall mean Track Structure of (i) the No. 1 Track, (ii) User's Cahill/Lick Line, and (iii) all Track Structure located on property of Owner magnetic east of the Track Structure described in (i) and (ii) above, all as more fully described in Exhibit A hereto.

1.20 "Non-Revenue Equipment" shall mean Equipment which is maintenance of way equipment and freight cars that are either empty or loaded only with maintenance of way equipment or material and equipment transported for the internal use of either party including, without limitation, rails, ties, ballast, and other track materials, and signal and bridge materials and supplies.

1.21 "No. 1 Track" shall mean the existing yard Track Structure designated as User's "No. 1 Track" on the easterly side of the double main Track Structure between Milepost 44.0 at or near

Santa Clara Junction and the southern end of Cahill Yard at or near Milepost 47.1.

1.22 "NRPC" shall mean the National Railroad Passenger Corporation, or Amtrak, in all circumstances other than in a capacity as Operator for Owner.

1.23 "NRPC Agreement" shall mean the Agreement between NRPC and User dated April 16, 1971, as amended from time to time.

1.24 "Operator" shall mean the person, firm, corporation or other legal entity utilized by Owner or User to conduct, on its behalf and for its account, operations on the Joint Facilities in accordance with this Agreement.

1.25 "Peninsula Main Line" shall mean the Trackage and the right-of-way and real estate underlying said Trackage between Milepost 0.147 at or near 4th and Townsend Streets in San Francisco County, California and Milepost 44.0 at or near Santa Clara Junction in Santa Clara County, California, all as more fully described in the Sale Agreement and in Exhibit A hereto.

1.26 "Sale Agreement" shall have the meaning set forth in Paragraph A of the recitals to this Agreement.

1.27 "Santa Clara/Lick Line" shall mean the Trackage and the right-of-way and real estate underlying said Trackage between Milepost 44.0 at or near Santa Clara Junction and Milepost 51.4 at or near Lick, all in Santa Clara County (including the fee ownership, easements (but excluding User's easements)), and franchises of the real estate and right-of-way underlying the Trackage) but excluding the New Coast Main, all as more fully described in the Sale Agreement and in Exhibit A hereto.

1.28 "Service(s)" shall mean Commuter Service, Freight Service and Intercity Passenger Service collectively or any of them individually, as applicable.

1.29 "SFGTF" shall have the meaning set forth in Section 9.2 and Exhibit D or as it may be amended by written agreement of the parties.

1.30 "Track Structure" shall mean rail and fastenings, switches and frogs complete, ties, ballast, and signals.

1.31 "Trackage" shall mean Track Structure and all appurtenances thereto, including without limitation, bumpers, roadbed, embankment, bridges, trestles, tunnels, culverts or any other structures or things necessary for support of and entering into construction thereof, and, if any portion thereof is located in a thoroughfare, the term shall include pavement, crossing planks and other similar materials or facilities used in lieu of pavement

or other street surfacing material at vehicular crossings of tracks, culverts, drainage facilities, crossing warning devices, and any and all work required by lawful authority in connection with construction, renewal, maintenance and operation of said Track Structure and all appurtenances thereof and Changes and/or Additions thereto now or in the future.

1.32 "Train(s)" shall mean a locomotive unit, or more than one such unit, coupled, with or without cars or caboose.

1.33 "User's Cahill/Lick Line" shall mean the existing single main Track Structure between Cahill Yard at or near Milepost 47.1 and Lick at or near Milepost 51.4.

Section 2. RIGHTS OF OWNER AND USER

2.1 User's Reservation: Subject to the terms of this Agreement, User reserves the perpetual and exclusive right to conduct Freight and Intercity Passenger Service over the Joint Facilities (excluding User's Cahill/Lick Line which User retains ownership of, and excluding Exclusive Commute Trackage except to the extent provided in Sections 1.10 and 2.4 hereof). Owner confirms User's reservation of said right in the Sale Agreement.

2.2 Authority: Owner represents that it has the right and authority to confirm User's reservation of perpetual and exclusive trackage rights (which rights do not include Exclusive Commute Trackage except as provided in Sections 1.10 and 2.4 hereof) over the Joint Facilities (excluding User's Cahill/Lick Line) as contemplated herein without the concurrence or approval of any other person or entity, except for regulatory approvals or exemptions contemplated by Section 8.1 hereof.

2.3 Ownership:

(a) Owner shall own all of the Peninsula Main Line and the Santa Clara/Lick Line, including Designated Freight Trackage, existing at the date of execution of this Agreement.

(b) User shall own the New Coast Main, but Owner shall own the real property underlying the New Coast Main.

(c) Owner shall own those Changes and/or Additions and capitalized maintenance to the New Coast Main made at its sole cost and expense. User shall own such Changes and/or Additions and capitalized maintenance to the New Coast Main made at its sole cost and expense. Owner and User shall jointly own such Changes and/or Additions and capitalized maintenance to the New Coast Main made at their shared cost and expense in the same proportion as the respective shares of the cost and expense bears to the total cost

and expense. Owner shall not remove any Changes and/or Additions or capitalized maintenance items to the New Coast Main without the written consent of User as long as User holds itself out to provide Freight or Intercity Passenger Service over the applicable portion of the New Coast Main or such Services have not been abandoned; provided, however, in the event that Owner has permanently ceased to provide Commuter Service over all or substantially all of the Santa Clara/Lick Line, User shall pay Owner for the unamortized value of such Changes and/or Additions made by Owner on the New Coast Main. At the time that User no longer holds itself out to provide Freight and Intercity Passenger Service and such Services have been abandoned, Changes and/or Additions or capitalized maintenance items shall be returned to Owner to the extent of Owner's interest in such Changes and/or Additions and capitalized maintenance items.

(d) Owner shall own all Changes and/or Additions to the Joint Facilities (other than User's Cahill/Lick Line) and all capitalized maintenance provided for in Section 9 hereof.

2.4 User's Rights: For the purpose of conducting Freight and Intercity Passenger Service, User has the perpetual right of access to and from and use of the Joint Facilities, except for the Exclusive Commute Trackage unless otherwise agreed to in writing by the parties. User shall also have perpetual rights, subject to the terms of this Agreement including the restrictions concerning the Exclusive Commute Trackage, solely to serve all existing and future industries, team or house tracks or branches located on or served off any existing or future turnouts or leads from or to the Joint Facilities or No. 1 Track. User shall have use of the Exclusive Commute Trackage for the sole purpose of obtaining necessary access to provide Freight Service to existing or future industries and branch lines served from the Joint Facilities or No. 1 Track. User's rights of use under this section, for the purposes specified in this section, shall be exclusive, and no other person or entity shall be entitled to or be granted any rights to such use for such purposes.

2.5 Owner's Rights: Subject to the limitations otherwise set forth in the Sale Agreement and in this Agreement, Owner (or any Operator designated by Owner) shall have the right to use existing and future Joint Facilities (excluding User's Cahill/Lick Line) for any purpose other than rail Freight and Intercity Passenger Service.

2.6 Freight Trackage: Except as may be otherwise agreed in writing by the parties, User retains the exclusive and perpetual ownership of and right to use and control the New Coast Main and User retains the exclusive and perpetual right to use and control the Designated Freight Trackage; however, User may allow Owner to use such portions of the South San Francisco Yard and other Designated Freight Trackage as User decides, from time to time, are

not needed by User to support its operations. User shall not unreasonably withhold, condition, or delay its permission for such use; provided, however, that during such use, User's operations shall have priority over Owner's use. In such case, maintenance and capital expenses will be apportioned on a basis agreed by the parties in writing notwithstanding the provisions of Sections 9.1 and 10.2 hereof.

2.7 Intercity Passenger Service Agreement: Intercity Passenger Service on the Joint Facilities (except for User's Cahill/Lick Line) shall be subject to the following provisions:

(a) Owner shall permit User to allow NRPC Intercity Passenger Service Trains to be operated over the Joint Facilities (except for User's Cahill/Lick Line) in accordance with the terms of the NRPC Agreement in effect as of the date of this Agreement with the understanding that any change subsequent to the date of this Agreement in Intercity Passenger Service, including but not limited to the number or schedule of Trains, shall be subject to Owner's consent under Section 2.7(b) hereof.

(b) User may amend its present or any subsequent NRPC Agreement and enter into any new agreements and amendments thereto with NRPC or with any other party for the provision of Intercity Passenger Service over the Joint Facilities (except User's Cahill/Lick Line) with the consent of Owner, which shall not be unreasonably withheld, subject to the provisions of Section 4.3 when Owner dispatches and controls the operations and provided that costs due to any such Intercity Passenger Service agreement, or amendment thereto or to Intercity Passenger Service operations pursuant thereto over the Joint Facilities (except for User's Cahill/Lick Line) and costs of changes necessitated by such agreements affecting line capacity, yard capacity, or the signal system shall be borne by User. The parties agree to negotiate in good faith with regard to any additional parties that may be engaged or User proposes to have engaged in Intercity Passenger Service.

(c) Notwithstanding the provisions of Section 2.7(b) above, no Intercity Passenger Service Trains shall operate on Exclusive Commute Trackage without a written agreement between Owner and User.

2.8 Operator: Either party may use an Operator or Operators to provide applicable Services pursuant to this Agreement.

2.9 Owner's Bridge Trackage Rights: User shall grant to Owner exclusive Bridge Trackage Rights, as defined in Section 1.2, over User's Cahill/Lick Line. User shall not enter into any agreement with or permit any additional Operator of Freight or Intercity Passenger Service Trains on User's Cahill/Lick Line which would materially impair or interfere with Owner's rights or use

pursuant to Section 4.5 hereof or under the Lick/Gilroy Trackage Rights Agreement. Upon completion of Owner's construction of its Trackage on the Joint Facilities between Auzerais Street at or near milepost 47.5 and Lick at or near milepost 51.4 and the commencement of Gilroy Commuter Service operations thereover, the Bridge Trackage Rights shall continue in effect only if User is granted access to and use of such newly constructed Owner's Trackage upon terms and conditions substantially similar to Owner's rights under the Bridge Trackage Rights and only so long as such access and use are made available to User (whether or not used by User).

2.10 Physical Clearances: Owner represents that the Joint Facilities (excluding User's Cahill/Lick Line) shall continue to have not less than existing clearances (as shown in User's records attached as Exhibit E) for the operation of Freight and Intercity Passenger Service. If User's Trains or Equipment require additional clearance, Owner agrees to provide said additional clearance in a timely manner at User's sole cost provided that such additional clearance would not materially impair or interfere with the usefulness or utility of the Joint Facilities (excluding User's Cahill/Lick Line) to Owner or Owner's operation or use of such Joint Facilities (excluding User's Cahill/Lick Line) or frustrate the purposes of this Agreement. In the event any work to be performed by Owner on the Joint Facilities (excluding User's Cahill/Lick Line) may affect the horizontal and vertical line clearances, Owner shall notify User and Owner shall cooperate with User to provide any such additional horizontal and vertical line clearances needed by User, provided that such additional clearances would not materially impair or interfere with the usefulness or utility of the Joint Facilities (excluding User's Cahill/Lick Line) to Owner or Owner's operation or use of such Joint Facilities (excluding User's Cahill/Lick Line) or frustrate the purposes of this Agreement and User shall pay the incremental costs required for such additional clearance requirements.

2.11 Retention of Rights for Changes and/or Additions: User retains the perpetual and exclusive right, for Freight and Intercity Passenger Service, to construct or reconstruct, with the consent of Owner (which shall not be unreasonably withheld, conditioned or delayed) Changes and/or Additions to the Joint Facilities (excluding User's Cahill/Lick Line and Exclusive Commute Trackage) consisting of railroad and railroad-related facilities necessary for and related to User's Freight and Intercity Passenger Service operations. Failure to reach agreement as to cost sharing for Changes and/or Additions subject to Section 10.3 shall constitute a reasonable basis for refusal of consent. Owner's consent will be given if such construction, reconstruction, or use shall not unreasonably interfere with Owner's existing or planned Commuter Service or with Owner's other planned or existing use of such portion of the Joint Facilities (excluding User's Cahill/Lick Line) and if the provisions of Section 8.3 are not otherwise

invoked by Owner. Changes and/or Additions consisting of Track Structure crossing other Track Structure at grade shall be treated as any other Changes and/or Additions under this Section; provided, however, that such Changes and/or Additions consisting of at grade crossings which do not result in a decrease in average Train speeds over the applicable Trackage shall not, absent other construction or reconstruction, be considered an unreasonable interference with Owner's use or planned use of the Joint Facilities (excluding User's Cahill/Lick Line). Notwithstanding the above, User may construct Changes and/or Additions which Owner has advised may unreasonably interfere with its planned use of the Joint Facilities (excluding User's Cahill/Lick Line), at User's sole risk. Such risk shall include the costs of removal of such newly constructed Changes and/or Additions at the time of actual use by Owner. User also retains the perpetual right to use, construct, reconstruct, or reimburse Owner for the construction or reconstruction of Changes and/or Additions to User's Cahill/Lick Line without the consent of Owner as long as the provisions of Section 9.3 would not be violated. All other Changes and/or Additions to User's Cahill/Lick Line shall be subject to Section 10.6 hereof. User also retains the perpetual and exclusive right to use, construct or reconstruct Changes and/or Additions to the New Coast Main (excluding User's Cahill/Lick Line) without the consent of Owner, except to the extent any such Trackage may be subject to Section 10.6 hereof. User retains the perpetual and exclusive right to use all such Changes and/or Additions to the Joint Facilities referred to in this Section 2.11 for Freight and Intercity Passenger Service, subject to Owner's rights of use thereof in accordance with the terms of this Agreement.

2.12 Emergencies and Detours: Either party may, at its sole discretion, allow the other party to use the Trackage of said first party in the Joint Facilities or No. 1 Track in emergency and detour situations. Any such use shall be subject to the prior written consent and upon the terms and conditions of the party granting such use.

2.13 Interim Operation Detour: Notwithstanding the provisions of Section 2.12, unless the parties otherwise agree in writing, during the period from the Effective Date until Owner completes the Changes and/or Additions to No. 1 Track pursuant to Section 10.1(a) and (b) hereof, Owner grants its consent to allow User to use Owner's tracks consisting of Exclusive Commute Trackage between Santa Clara Jct. at or near Milepost 44.0 and the magnetic south end of Cahill Yard at or near Milepost 47.45. Such use shall be subject to the terms and conditions of this Agreement in the same manner and to the same extent as if User were operating over the Peninsula Main Line; provided, however, that, in lieu of Section 4.3, Owner shall establish reasonable terms and conditions for dispatching User's Trains in conjunction with Owner's Trains, which shall minimize delays to both Owner's and User's operations; and further provided that notwithstanding the provisions of Section

9.2, the costs of ordinary and capitalized maintenance of the Trackage over which User will operate pursuant to this Section 2.13 for the first two years after the Effective Date shall be solely the responsibility of Owner and, thereafter, such costs shall be apportioned between the parties in accordance with Section 9.2(a) hereof.

2.14 Authority and Enforceability: Each party hereto respectively represents and warrants that it has the full power and authority to enter into this Agreement and to carry out the obligations contemplated hereby. Upon execution and delivery, this Agreement, including but not limited to the indemnification terms of Section 6 hereof, are enforceable against such party in accordance with its terms (except to the extent such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to creditor's rights generally and the availability of equitable remedies may be limited by equitable principles of general applicability).

2.15 Retirement Limitations: Subject to Section 8.3 hereof, neither Owner nor User shall make any retirement, withdrawal, elimination or disposal of any part of the Joint Facilities without the prior written consent of the other party which shall not be unreasonably withheld. The affected party will grant its consent under this Section if such retirement, withdrawal, elimination or disposal would not materially impair the usefulness of the Joint Facilities to such party or frustrate the purposes of this Agreement.

2.16 Taxes: Owner shall be responsible for all taxes assessed against it (or its Operators or other entities acting on its behalf or for its account), if any, as owner of the real and personal property which are part of the Joint Facilities (excluding User's Cahill/Lick Line) and of the real property underlying the New Coast Main and as holder of the Bridge Trackage Rights; provided, however, that User shall be responsible for any possessory interest tax assessed against it (or its Operators or other entities acting on its behalf or for its account), if any, as holder of the easement retained by User hereunder and under the Sale Agreement and as owner of the Track Structure and personal property which are part of the New Coast Main. Nothing contained in this Agreement shall be construed to make Owner liable to taxing authorities for any taxes which Owner, as a public entity, would not otherwise be liable; provided, however, that, for purposes of this Agreement, Owner shall indemnify User for all taxes assessed against any Operator for Owner or any other entity acting on Owner's behalf.

2.17 Non-Use of Designated Freight Trackage: In the event that all or any portion of the Designated Freight Trackage has not been used by User after the Effective Date for any continuous period of at least thirty-six (36) months, Owner may, during the

period of continuous non-use in excess of thirty-six (36) months, request in writing that User make application for and diligently pursue all necessary approvals or other actions to remove such unused Trackage, if such approvals or other actions are necessary, and if Owner so requests, (upon receipt of any necessary authority) to remove at its cost any and all such Trackage and Equipment and property of User thereon. Within ninety (90) days of such request, User shall make application for such approvals or other actions or, if no approvals or other actions are necessary, shall commence, at its cost, removal of such Trackage, Equipment and property and shall diligently progress completion of such removal. If approvals or applications are necessary, User shall commence removal of such Trackage, Equipment and property within ninety (90) days after receipt of such authorization and shall diligently progress completion of such removal. User shall not progress the above actions if it demonstrates justification for such non-use, which justification shall be provided to Owner in writing within ninety (90) days of the written request of Owner referred to above. Within ninety (90) days of receipt by Owner of such written justification, Owner shall notify User in writing as to whether it concurs in or disputes such justification. If Owner disputes such justification, the dispute shall be resolved by arbitration in accordance with Section 7 of this Agreement. If, however, such non-use continues so that such Trackage has not been used by User for a continuous period of five (5) years, then User, promptly upon notice from Owner shall apply for and diligently prosecute all governmental approvals or other actions necessary, if any, to remove said Trackage and (after receipt of such approvals or other actions), shall promptly at its cost remove said Trackage and Equipment and property of User thereon, if requested by Owner.

Section 3. ASSIGNMENT

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns, provided, however, that:

(a) The rights and obligations of Owner hereunder may be assigned or sold in whole or in part without User's consent only to (i) Owner's successor agency; (ii) any one or more of Owner's member agencies or counties; (iii) the Peninsula Rail Transit District; (iv) the State of California Department of Transportation; or (v) an existing or to be formed public, quasi-public or nonprofit entity formed or authorized to own Owner's interest in the Joint Facilities (excluding User's Cahill/Lick Line), but only if such successors or assigns have the legal power and authority to undertake all of the rights and obligations of Owner hereunder including, but not limited to, the obligation to indemnify User pursuant to Section 6 hereof;

(b) User may assign or sell all or any part of its trackage rights hereunder without the consent of Owner only to: (i) any successor or affiliate of User, (ii) any other Class I railroad, or (iii) in connection with its trackage rights over the Santa Clara/Lick Line, to any Operator who is financially responsible and has a management team with a demonstrated record of reliable and safe railroad maintenance and operating experience; provided that such successors or assigns have the legal power and authority to undertake all of the rights and obligations of User hereunder including, but not limited to, the obligation to indemnify Owner pursuant to Section 6 hereof.

(c) User may assign or sell all or any part of its trackage rights hereunder to any person with the consent of Owner (which consent shall not be unreasonably withheld, conditioned or delayed) to any person and, in connection with its trackage rights over properties other than the Santa Clara/Lick Line, to any Operator who is financially responsible and has a management team with a demonstrated record of reliable and safe railroad maintenance and operating experience; provided that such party has the legal power and authority to undertake all of the rights and obligations of User hereunder including, but not limited to, the obligation to indemnify Owner pursuant to Section 6 hereof.

(d) Within ten (10) days after any assignment, the assignee shall execute and deliver to Owner and User a written instrument assuming all of the assignor's obligations hereunder, and an opinion of such assignee's counsel stating that such assignee is entitled to perform all of the assignor's obligations hereunder.

Section 4. OPERATIONS

4.1 **Management and Control:** Subject to Sections 4.2, 4.3, and 4.14 below, the management and operation (including dispatching) of the Joint Facilities (except for User's Cahill/Lick Line) shall be under the exclusive direction and control of Owner. User, at its sole cost and election may monitor dispatching operations over the Joint Facilities (excluding User's Cahill/Lick Line) on a reasonable basis. Owner, at its sole cost and election, may monitor dispatching operations over User's Cahill/Lick Line on a reasonable basis.

4.2 **Optional User Dispatching:** At Owner's option, User may continue to dispatch the Joint Facilities (excluding User's Cahill/Lick Line) in a manner that minimizes conflicts and is consistent with dispatching conditions existing prior to the Sale Agreement until Owner obtains dispatching capability; but, in no event later than December 31, 1993. Owner may, at its sole option, assume control and dispatching of the Joint Facilities (excluding User's Cahill/Lick Line) prior to December 31, 1993 by providing

thirty (30) days advance notice to User. Owner shall pay User a monthly rate of Eleven Thousand Five Hundred Dollars (\$11,500) for each full month or pro rata for partial months that User provides such dispatching services. Such monthly payment shall be made not later than 45 days following the end of the month in which dispatching services were provided.

4.3 User's Operating Windows: Owner will provide User the ability to operate Freight Service on the Peninsula Main Line whenever there exists a period of at least thirty (30) minutes headway between passenger Trains including Owner's Commuter Service and/or User's Intercity Passenger Service. During the hours between 10 A.M. and 3 P.M., at least one thirty (30) minute headway "window" on each of the northbound and southbound main tracks of the Peninsula Main Line will be provided in Owner's scheduling for Trains in Freight Service that are capable of operating at Commuter Service Train speeds and will operate at such speeds when directed by Owner. Between midnight and 5 A.M., at least one main track of the Peninsula Main Line shall always be in service for Freight and Intercity Passenger Service, and User will be provided during that time an adequate number of thirty (30) minute headway windows for User to serve its Freight Service customers. Owner and User recognize that Intercity Passenger Service may also be conducted during other than times between midnight and 5 A.M. and that such Intercity Passenger Service may operate within less than a thirty (30) minute headway. Such headway shall be established by mutual agreement between the parties, their Operators and NRPC, as applicable. Neither party hereto shall unreasonably withhold its consent to such agreement. Owner's dispatching and operations on lines other than the Peninsula Main Line shall provide User with reasonable windows for operations to serve customers during non-peak hours based upon a schedule subject to mutual agreement. Neither party hereto shall unreasonably withhold its consent to such agreement.

4.4 Use of Exclusive Commute Trackage: Owner shall have the exclusive use and control of its Exclusive Commute Trackage unless otherwise agreed in writing by Owner and User and subject to Section 2.4 hereof.

4.5 Use of New Coast Main: Except to the extent of Owner's Bridge Trackage Rights, User shall have the exclusive use and control for Freight and Intercity Passenger Service operations of the New Coast Main provided, however, that Owner shall retain the control over that portion of the New Coast Main to the extent and at the location such Track Structure connects to or diverges from the Joint Facilities (excluding User's Cahill/Lick Line). To facilitate such control, User shall physically provide Owner with the capability to connect User's dispatching system with Owner's dispatching system, and User and Owner shall share equally in the costs thereof. User shall have exclusive authority to dispatch and control its Freight and Intercity Passenger Service Trains on the

New Coast Main and Gilroy Commuter Service Trains (which are operated over User's Cahill/Lick Line pursuant to Owner's Bridge Trackage Rights hereunder in conjunction with the Lick/Gilroy Trackage Rights Agreement). User shall dispatch all such Trains on User's Cahill/Lick Line on a "first-come, first served" basis, provided, however, that if User and Owner can reach agreement on a mutually satisfactory schedule for Gilroy Commuter Service Trains, pursuant to the Lick/Gilroy Trackage Rights Agreement, (and the parties expect to reach such agreement) User shall dispatch User's Cahill/Lick Line giving priority to those scheduled Gilroy Commuter Service Trains.

4.6 Limitations on Liability: Except as otherwise may be provided in Section 6, if the use of the Joint Facilities shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, neither party shall have or make any claim against the other for loss, damage, or expense of any kind, caused by or resulting from such interruption or delay.

4.7 Furnishing of Fuel, Train Supplies, Etc.: Each party shall be responsible for furnishing, at its sole cost and expense, all labor, fuel, and Train supplies necessary for the operation of its own Trains over the Joint Facilities. In the event a party does furnish such labor, fuel, or supplies to another party hereto, the party receiving same shall promptly, upon receipt of billing therefor, reimburse the party furnishing same for its reasonable costs thereof, including Customary and Materials Additives.

4.8 Operating Rules: The operation by User on the Joint Facilities (excluding User's Cahill/Lick Line) shall at all times be in accordance with the rules, instructions, and restrictions of Owner. Except as otherwise provided herein, such rules, instructions, and restrictions shall be reasonable, just, and fair between the parties using the Joint Facilities and shall not unjustly discriminate against any of them.

4.9 Communications: The party using Trackage or Track Structure dispatched or controlled by the other party shall, at such using party's sole cost and expense, obtain, install and maintain in all Trains and Equipment used by it on such Trackage or Track Structure, such communication equipment as is necessary to allow the using party to communicate with dispatching and signaling facilities in the same manner as the dispatching party. The party in control of dispatching under the terms of this Agreement shall consult with the other party prior to adoption of new communication systems or signal systems for use on the Joint Facilities which theretofore have not been adopted generally in the railroad industry.

4.10 Clearing Trains and Equipment: If, by any reason of mechanical failure or for any other cause, the Trains or Equipment of Owner or User or their respective Operators become stalled or

disabled on the Joint Facilities and are unable to proceed, or fail to maintain the speed required of Trains or Equipment to meet normal schedules, or if in emergencies crippled or otherwise defective Equipment is set out from any such Trains on the Joint Facilities, then the party whose Trains or Equipment are involved in the incident shall be responsible for furnishing locomotive units or such other assistance as may be necessary to haul, help or push such Equipment or Trains, or to properly move the disabled Trains or Equipment. By mutual agreement of the parties or upon receipt of reasonable notice from the other party that the response of the party whose Trains or Equipment are involved in the incident has not been adequate relative to the scheduled uses of Joint Facilities, such other party may render such assistance as may reasonably be required in light of such scheduled uses, and the party whose Trains or Equipment are involved in the incident shall reimburse the other party, within forty-five (45) days after receipt of the bill therefor, for the reasonable cost and expense, including Customary and Materials Additives, of rendering any such assistance. The costs and expense of services referenced above in this Section 4.11, including without limitation liability (as that term is defined in Section 6) shall be treated in accordance with Section 6 hereof. If it becomes necessary to make repairs to crippled or defective Trains or Equipment of the Owner or User or their respective Operators in order to move Trains or Equipment from the Joint Facilities, such work shall be the responsibility of the party whose Trains or Equipment are involved in the incident. By mutual agreement of the parties or upon receipt of reasonable notice from the other party that the efforts of the party whose Trains or Equipment are involved in the incident to make the repairs are not adequate in light of the scheduled uses of Joint Facilities, such other party may take control of the repairs. If the repairs are performed by the other party, then the party whose Trains or Equipment are involved in the incident shall reimburse the other party for the cost thereof, within forty-five (45) days after receipt of the bill therefor, at the then current AAR dollar rate for labor charges found in the Office Manual of the AAR Interchange Rules.

4.11 Clearing Wrecks: Except as otherwise provided in Section 6, whenever the Owner's or User's Trains or Equipment on the Joint Facilities require rerailing, wrecking service or wrecking Train service, the party whose Train is involved shall be responsible for performing such service. Upon mutual agreement of the parties or upon receipt of reasonable notice from the other party that the response of the party whose Train is involved in the incident is not adequate in light of the scheduled uses of the applicable Trackage, the other party may take control of such rerailing, wrecking service or wrecking Train service as may be required. Whichever party has responsibility for maintenance and repair of the affected Trackage under the terms of Section 9 shall make such repairs to and restoration of the applicable Trackage as may be required. The cost and expense of services referenced above

in this Section, including without limitation, liability (as that term is defined in Section 6) shall be treated in accordance with Section 6 hereof. All Equipment and salvage shall be promptly picked up by the party whose Train is involved in the incident or such party's Operator or delivered to the party whose Train is involved in the incident or such party's Operator by the other party, and all costs and expenses, including Customary and Material Additives therefor, incurred by the other party shall likewise be paid to the other party by the party whose Train is involved in the incident. All costs and expenses to be borne under this Section by the party whose Train is involved in the incident shall be paid within forty-five (45) days after receipt of the bills therefor.

4.12 Furnishing Power: For the purposes of this Section 4.12 only, the term "stopped party" shall mean whichever of the following described entities whose Trains are stopped in the circumstances described in this Section: Owner, User, the Operator(s) of either Owner or User, NRPC, or any other entity permitted in accordance with the terms of this Agreement to operate Trains on the Joint Facilities. In the event Trains of a stopped party shall be forced to stop on the Joint Facilities for any reason including but not limited to, stoppage due to insufficient hours of service remaining among the stopped party's employees, and such Trains are unable to proceed, any entity referred to in this Section shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew stopped party's Trains) as may be necessary to haul, help or push such Trains, or to properly move Trains off the Joint Facilities. All cost and expense, including Customary and Materials Additives, to be borne by the stopped party under this Section shall be paid within forty-five (45) days to the party rendering motive power or other assistance after receipt of the bills therefor. Owner shall be responsible to the party rendering motive power for stoppage caused by its Operator(s) or other entities operating on its behalf and User shall be responsible to the party rendering motive power for stoppage caused by its Operator(s) or other entities operating on its behalf.

4.13 Compliance with Laws: Operations by Owner and User hereunder shall be in compliance in all material respects with all applicable laws and regulations including those relating to discharge of hazardous waste materials.

4.14 Assumption of Dispatching: In the event Owner becomes incapable of adequately performing dispatching functions on the Joint Facilities (excluding User's Cahill/Lick Line) for Freight and Intercity Passenger Service hereunder, arrangements will be made for the prompt and orderly transfer of such functions to User. In the event User becomes incapable of adequately performing dispatching functions on User's Cahill/Lick Line for Gilroy Commuter Service hereunder, arrangements will be made for the prompt and orderly transfer of such functions to Owner.

Section 5. EMPLOYEES

5.1 Owner's Employees: Owner shall employ all persons necessary to construct, maintain, repair, renew, and perform dispatching functions for the Joint Facilities excluding User's Cahill/Lick Line (but including signal system maintenance on the New Coast Main as provided in Section 9.1). Owner shall be bound to use reasonable and customary care, skill and diligence in the construction, maintenance, repair renewal, and dispatching functions respecting said Trackage and in managing same and User shall not (except as otherwise provided in Section 6 hereof), by reason of Owner's performing or failing or neglecting to perform any construction, maintenance, repair, renewal, dispatching functions, or management of said Trackage, have or make against Owner any claim or demand for any loss, damage, destruction, injury, or death whatsoever resulting therefrom.

5.2 User's Employees: User shall employ or cause to be employed all persons necessary to construct, maintain, repair, renew, and perform dispatching functions for the New Coast Main. User shall be bound to use reasonable and customary care, skill, and diligence in the construction, maintenance, repair, renewal, and dispatching functions respecting the New Coast Main and in managing same; and Owner shall not (except as otherwise provided in Section 6 hereof), by reason of User's performing or failing or neglecting to perform any construction, maintenance, repair, renewal, dispatching functions, or management of said Track Structure, have or make against User any claim or demand for any loss, damage, destruction, injury, or death whatsoever resulting therefrom.

5.3 Fair Treatment: All officers, agents, and employees of Owner and of User engaged in the management, operation, and maintenance of the Joint Facilities or any portion thereof shall perform their duties in a fair, impartial, and just manner with respect to the rights and obligations between the parties as provided in this Agreement.

5.4 Examinations: User, or User's Operator, and Owner, or Owner's Operator, shall require their respective employees to pass periodic examinations on the General Code of Operating Rules effective October 29, 1989, (or any successor publication), timetables, General Orders and Track Bulletins (all as amended from time to time) which shall be applicable to the operations on or along the Joint Facilities.

5.5 Rules Violations:

(a) Owner, or Owner's Operator, shall notify User in writing specifying the circumstances in the event User, User's employees, or User's Operator or any other entity with which User contracts to provide Intercity Passenger Service fails to abide by the rules, instructions and restrictions of the Owner, or Owner's Operator, governing the operation on or along the Joint Facilities (other than User's Cahill/Lick Line). User, User's Operator, or any other entity with which User contracts to provide Intercity Passenger Service shall take prompt action to correct the failure to abide by the rules, instructions, and restrictions of the Owner, or the Owner's Operator, governing the operation on or along the Joint Facilities (excluding User's Cahill/Lick Line). In the event User, User's Operator, or any other entity with which User contracts to provide Intercity Passenger Service must hold a formal investigation pursuant to a collective bargaining agreement relating to the neglect, refusal or failure of User, User's employees, User's Operators or any other entity with which User contracts to provide Intercity Passenger Service to abide by the rules, instructions, and restrictions of the Owner, or Owner's Operator, governing the operation on or along the Joint Facilities, (excluding User's Cahill/Lick Line) Owner, or Owner's Operator, shall cooperate with User, User's Operator, or any other entity with which User contracts to provide Intercity Passenger Service and make available personnel of Owner, or Owner's Operator, as witnesses for User, or User's Operator, in such formal investigation at the cost and expense of User.

(b) For operations over User's Cahill/Lick Line, the provisions of Subsection (a) of this Section 5.5 shall apply with Owner subject to the obligations of User and User subject to the obligations of Owner.

Section 6. LIABILITY

6.1 Assumption of Responsibility:

(a) Except as otherwise provided in Section 4.11 each of the parties hereto shall assume, bear and pay all the liabilities allocated to it as the responsible party under the terms of this Section 6. For purposes of this Section 6, the term "liability" shall include all loss, damage, cost, expense (including costs of investigation and attorney's fees and expenses at arbitration, trial or appeal and without institution of arbitration or suit), liability, claims and demands of whatever kind or nature arising out of an incident described in the applicable provision of this Section 6. Except as otherwise expressly provided in Sections 6.2(b), 6.2(d), 6.2(e), and 6.4, the responsibility for liabilities undertaken by each party under this Section 6 is without respect to fault, failure, negligence, misconduct, malfeasance or misfeasance of any party or its employees, agents or servants.

(b) All costs and expenses incurred in connection with the investigation, adjustment and defense of any claim or suit shall be included as part of the liability for which responsibility is assumed under the terms of this Section 6, including salaries or wages and associated benefits of, and out-of-pocket expenses incurred by or with respect to, employees of either party engaged directly in such work and a reasonable amount of allocated salaries and wages of employees providing support services to the employees so engaged directly in such work.

6.2 Allocation of Responsibilities:

(a) Liability for personal injury (including bodily injury and death) to, or property damage suffered by, an invitee of either party shall be the responsibility of and borne and paid solely by that party regardless of the cause of such loss or the fault of either party or whose Train or Equipment was involved, except as specifically provided in Section 6.2(b) and Section 6.4 below. For purposes of this paragraph, and without limitation, consultants and contractors of a party and any person who is on a Train or Equipment operated by or for the account of a party (other than an employee of a party engaged in performing duties for that party) shall be deemed to be an invitee of that party. All persons at or adjacent to a passenger station or loading platform shall be deemed to be invitees of Owner (other than employees, contractors and consultants, including employees of such contractors, of User or Operator of User engaged in performing duties for User or for any such Operator of User).

(b) After Owner shall have incurred aggregate liability under this Agreement and the Lick/Gilroy Trackage Rights Agreement in an amount equal to \$25.0 million for injury to or damage suffered by its invitees for incidents occurring in any one calendar year, User shall bear a share of that portion of the aggregate liability to the Owner's invitees for that year that is in excess of \$25.0 million in proportion to the User's relative degree of fault, if any; provided, that the User shall not bear liability to Owner's invitees in an amount in excess of \$125.0 million for incidents occurring under this Agreement and the Lick/Gilroy Trackage Rights Agreement in such calendar year. In computing the \$25.0 million base amount payable by Owner prior to any participation by the User, there shall be excluded any liabilities incurred due to the Excluded Conduct (defined below in Section 6.4) of Owner. After User shall have incurred aggregate liability under this Agreement and the Lick/Gilroy Trackage Rights Agreement in an amount equal to the \$25.0 million for injury to or damage suffered by its invitees for incidents occurring in any one calendar year, Owner shall bear a share of that portion of the aggregate liability to User's invitees for that year that is in excess of \$25.0 million in proportion to Owner's relative degree of fault, if any; provided, that Owner shall not bear liability to

User's invitees in an amount in excess of \$125.0 million for incidents occurring under this Agreement and the Lick/Gilroy Trackage Rights Agreement in such calendar year. In computing the \$25.0 million base amount payable by User prior to any participation by Owner, there shall be excluded any liabilities incurred due to the Excluded Conduct of User. Liability shall be deemed incurred on the date of the incident giving rise to such liability regardless of the date on which liability is paid or established. The determination of the relative fault of the parties in any proceeding establishing the liability shall be binding on the parties.

(c) Liability for personal injury (including bodily injury and death) to, or property damage suffered by, persons other than invitees of either Owner or User and casualty losses to property owned by the Owner and/or User shall be the responsibility of and borne and paid by the parties as follows regardless of the cause of such loss or the fault of either party except as provided in paragraphs (d) and (e) of this Section 6.2 and Section 6.4 below:

- (i) Loss to Trains, Equipment and other property owned by Owner shall be the responsibility of the Owner and borne by it.
- (ii) Loss to Trains, Equipment and other property owned by and freight transported by the User shall be the responsibility of the User and borne by it.
- (iii) Loss to property jointly used by both parties and property jointly owned by Owner and User shall be the responsibility of and borne (A) totally by the single party whose Train or Equipment was involved in the incident giving rise to the loss, (B) equally by the parties if the Trains or Equipment of both parties were involved in the incident, and (C) by the party or parties responsible for costs of maintenance of the property pursuant to the cost allocation principles of Section 9 hereof if no party's Train or Equipment was involved in the incident.
- (iv) Liability for personal injury (including bodily injury and death) to, or property damage suffered by, any employee of either party which occurs during the course of employment or while traveling to or from employment (an "employee") shall be the responsibility of and borne solely by the party employing such employee.

(v) Liability for personal injury (including bodily injury and death) to, or property damage suffered by, any person who is not an employee or invitee of either party (including without limitation persons using vehicular and pedestrian crossings and trespassers) shall be the responsibility of and borne (A) totally by the party whose Train or Equipment was involved in such loss if the Train or Equipment of only one party was involved, and (B) by the Owner if no Train or Equipment was involved in the incident; provided, however, that if no Train or Equipment was involved and the incident occurred on User's Cahill/Lick Line, User shall be responsible.

(d) Liability for personal injury (including bodily injury and death) to, or property damage suffered by, a person who is not an employee or invitee of either party shall be the responsibility of and borne by both parties in proportion to their relative degrees of fault if Trains or Equipment of both parties were involved in the incident giving rise to such injury or damage.

(e) Except to the extent of any contrary provision in the Sale Agreement, each party shall indemnify and hold harmless the other party, and that party's directors, officers, employees, agents, successors and assigns, and defend them with counsel reasonably satisfactory to the indemnitee, from and against any and all Environmental Claims, Environmental Expenses, and any damages or liabilities arising out of the discharge or release of any Hazardous Materials in, on or about the Joint Facilities by such party, or its employees, contractors, lessees, invitees, representatives, agents, Operators (including, but not limited to, NRPC), successors, or assigns. User shall further indemnify and hold Owner harmless, and defend Owner with counsel reasonably satisfactory to Owner, against any damages or liability caused by or arising out of a release or discharge of Hazardous Materials in, on or about the Joint Facilities occurring prior to the Effective Date of this Agreement. For purposes of this Subsection, the capitalized terms not otherwise defined in this Agreement shall have the meaning as the definition given to these terms in that certain Environmental Indemnity Agreement between the parties which is part of the Sale Agreement. Nothing herein is intended to, nor shall abrogate the rights and responsibilities of the parties contained in the aforesaid Environmental Indemnity Agreement.

6.3 Insurance:

(a) Owner and User shall each maintain general liability insurance in the amount of at least \$100,000,000 per occurrence and shall either include all of their respective Operators (other than NRPC) as insureds under their respective policies or furnish

evidence of separate insurance of the same amount and type for each Operator (other than NRPC). Insurance shall be placed with a company or companies authorized to conduct business in California. Owner and User (and any Operator of either party if such Operator demonstrates to the reasonable satisfaction of the Owner and User sufficient financial capacity) may self insure to a level not to exceed \$10.0 million.

(b) The general liability insurance required by Section 6.3(a) shall provide coverage for personal injury, bodily injury, death and property damage with respect to all operations of the Owner, User, and Operators, respectively. Such insurance shall include blanket contractual coverage, including coverage for written, oral and implied contracts and specific coverage for the indemnity provisions set forth in this Section 6. Each policy of general liability insurance obtained by the Owner and User shall name the other as an additional insured with respect to any liability to be borne by the party obtaining such insurance pursuant to the provisions of this Section 6.

(c) For any claims arising out of activities, products or operations resulting from or related to this Agreement, the insurance obtained pursuant to Section 6.3(a) shall be primary with respect to the obligation under this Agreement of the party obtaining the insurance and with respect to the interests of all parties added as additional insureds. Any other insurance maintained by an additional insured shall be excess of this coverage herein defined as primary and shall not contribute with it.

(d) Unless otherwise agreed by the Owner and User, the insurance required by Section 6.3(a) shall be maintained by each of the parties specified therein for the full term of this Agreement and shall not be permitted to expire or be canceled or materially changed except upon sixty (60) days' written notice to the other parties. Each insurance policy required by Section 6.3(a) shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or limits except after sixty (60) days' prior written notice has been given to all insureds.

(e) Each of Owner and User shall cause its and/or its Operator's (other than NRPC's) insurers to provide the other with certificates of insurance and endorsements evidencing the provisions specified above in this Section 6.3 prior to commencement of operations under this Agreement.

(f) A failure of any party to maintain the insurance required by this Section 6.3 shall not relieve such party of any of its liabilities or obligations under this Agreement.

6.4 Limitations on Indemnification:

(a) The provisions of this Section 6.4 shall apply notwithstanding the provisions of Section 6.2 above. "Excluded Conduct" shall mean (i) an entire failure of care or the exercise of so slight a degree of care as to raise a presumption that there was a conscious indifference to the things and welfare of others, (ii) conduct constituting a reckless or wanton disregard of the probable results of such conduct, (iii) wilful misconduct, or (iv) conduct which would permit the award of exemplary or punitive damages. Neither party shall be indemnified for any loss or liability resulting from its own Excluded Conduct, and in any such case such party shall be responsible for and bear loss or liability in proportion to its relative degree of fault and such party shall be responsible for and bear all exemplary or punitive damages, if any, resulting from its Excluded Conduct. If any of the provisions of Section 6.2 would otherwise indemnify a party against liability, loss or damage that would be prohibited by or unenforceable under the laws of the State of California (including a determination that indemnification under the circumstances involved is against the public policy of the state), the indemnity provided by such provision shall be deemed to be limited to and operative only to the maximum extent permitted by law. Without limitation, if it is determined that any law or public policy of the State of California prohibits the indemnification of a party for its own sole negligence in any instance covered by the provisions of Section 6.2, those provisions shall be deemed to exclude indemnification for such party's sole negligence but to permit full indemnification, as specified in Section 6.2, if both parties were negligent. In the case of any liability, loss or damage for which the provisions of this Section 6.4 would prevent the indemnification of a party, such party shall be responsible for and bear such liability, loss or damage.

(b) Notwithstanding Section 6.2 above, Owner and User shall bear liability in proportion to their relative degrees of fault if, but only if, the liability arises solely out of a collision between a Train of Owner and a Train of User that occurs on User's Cahill/Lick Line during a "peak commuter period", as hereinafter defined, on a day during which Owner operates scheduled Gilroy Commuter Service Trains. This Subsection 6.4(b) shall cease to apply upon completion of Owner's construction of its Trackage on the Joint Facilities between Azurais Street at or near Milepost 47.5 and Lick at or near Milepost 51.4 and the commencement of the Gilroy Commuter Service operations thereafter. As used in this Section 6.4(b), the term "peak commuter period" shall mean a single uninterrupted period in the morning and a single uninterrupted period in the afternoon to be designated by Owner from time to time upon not less than 90 days written notice from Owner to User; provided, however, that neither of such periods shall exceed five (5) hours and the two periods together shall not exceed nine (9) hours in the aggregate.

6.5 Scope of Indemnification:

In any case where a party is required under the provisions of this Section 6 to bear a loss or liability, it shall pay, satisfy and discharge such liability and all judgments that may be rendered by reason thereof and all costs, charges and expenses incident thereto, and such party shall forever indemnify, defend and hold harmless the other party and its commissioners, directors, officers, agents, employees, shareholders, parent corporation and affiliated companies or governmental entities from, against and with respect to any and all liabilities which arise out of or result from the incident giving rise thereto. If a party asserts that the other was guilty of Excluded Conduct and denies liability for indemnification of the other party based thereon, the party asserting such Excluded Conduct shall have the burden of proof in establishing such conduct. It is the intent of the parties that the indemnification provisions of this Section 6 shall apply to both the passive negligence and the active negligence of an indemnified party.

6.6 Procedure:

(a) If any claim demand shall be asserted by any person against an indemnified party under this Section 6, the indemnified party shall, within 30 days after notice of such claim or demand, cause written notice thereof to be given to the indemnifying party, provided that failure to notify the indemnifying party shall not relieve the indemnifying party from any liability which it may have to the indemnified party under this Section 6, except to the extent that the rights of the indemnifying party are in fact prejudiced by such failure. If any such claim or demand shall be brought against the indemnified party and it shall have given notice thereof to the indemnifying party, the indemnifying party shall have the right, at its own expense, to control (including the selection of counsel reasonably satisfactory to the indemnified party) or to participate in the defense of, negotiate or settle, any such claim or demand, and the parties hereto agree to cooperate fully with each other in connection with any such defense, negotiation or settlement. In any event, the indemnified party shall not make any settlement of any claims which might give rise to liability on the part of the indemnifying party under this Section 6 without the prior written consent of the indemnifying party, which consent shall not be unreasonably withheld, conditioned or delayed. If any claim or demand relates to a matter for which the parties, under the terms of Section 6.2, are to share liability equally or in proportion to their relative degrees of fault, each party shall be entitled to select its own counsel and defend itself against the claim at its own expense, and neither party shall make any settlement of any such claims without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

(b) Subject to the provisions of Section 6.6(a), on each occasion that the indemnified party shall be entitled to indemnification or reimbursement under this Section 6, the indemnifying party shall, at each such time, promptly pay the amount of such indemnification or reimbursement. If the indemnified party shall be entitled to indemnification under this Section 6 and the indemnifying party shall not elect to control any legal proceeding in connection therewith, the indemnifying party shall pay to the indemnified party an amount equal to the indemnified party's reasonable legal fees and other costs and expenses arising as a result of such proceeding.

(c) Any dispute between the parties as to the right to indemnification or the amount to which it is entitled pursuant to such right with respect to any matter shall be submitted to arbitration pursuant to Section 7.

6.7 Operators:

Any Operator other than NRPC shall agree to be bound by the provisions of this section 6 unless otherwise agreed in writing by Owner and User. The parties will use reasonable efforts to extend the benefits of existing NRPC indemnities to Owner. For purposes of this Section 6, as between Owner and User, the Trains, Equipment, and actions of any Operator (including NRPC) or any other entity acting on behalf of and for the account of a party hereto shall be deemed to be the Trains, Equipment, and actions of such party. Nothing contained herein shall be construed to limit or waive the rights of a party hereto to seek indemnification or damages from its Operator(s) or other entities acting on its behalf, for actions of said Operator(s) or said entities.

6.8 Dollar Amount Adjustments:

Each of the dollar amounts set forth in Section 6.3(a) above shall be adjusted annually and every three years, respectively, for changes in the Consumer Price Index, but shall not be reduced below their initial levels. As used in this Section 6.8, the term "Consumer Price Index" shall mean the United States Department of Labor's Bureau of Labor Statistics' Consumer Price Index, All Urban Wage Earners and Clerical Workers, All Items, for the San Francisco area (1967=100). If the base year for the Consumer Price Index is changed from 1967, the Consumer Price Index shall be converted in accordance with the conversion factor published by the United States Department of Labor's Bureau of Labor Statistics. If the Consumer Price Index is discontinued or revised, such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Consumer Price Index had not been discontinued or revised.

6.9 Not For Benefit Of Third Parties:

The provisions of this Section 6 are not intended to confer any right, benefit, or cause of action upon any third party and are intended solely to deal with the allocation of liability, if any, as between the parties to this Agreement.

7. DISPUTE RESOLUTION AND BINDING ARBITRATION

7.1 Settlement of Disputes: Both of the parties hereto shall make every reasonable effort to settle any disputes arising out of their respective rights and obligations under this Agreement by prompt and diligent negotiations.

7.2 Controversies Subject to Arbitration: Any and all claims, disputes or controversies between Owner and User arising out of or concerning the interpretation, application or implementation of this Agreement, which cannot be resolved by the parties by negotiations, shall be submitted to binding arbitration as hereinafter provided.

7.3 Arbitration Procedure: The procedure for arbitration shall be as follows:

(a) In the event a claim, dispute or controversy subject to arbitration hereunder arises, either party may serve a written demand for arbitration in accordance with Section 7.3 of this Agreement upon the other party. If the claim, dispute or controversy is not resolved by the parties within thirty (30) calendar days after the service of the demand, the matter will be deemed submitted to arbitration.

(b) Within fifty (50) calendar days of service of a demand for arbitration, each party shall designate an arbitrator in writing and serve its designation upon the other party ("Noticed Party") in accordance with Section 7.3 of this Agreement. If the Noticed Party fails to timely designate the arbitrator to be designated by it, such arbitrator shall be appointed by the Presiding Judge (or Acting Presiding Judge) of the Superior Court of the County of Sacramento, State of California upon application of either party after ten (10) days' written notice to the other party. If each party has timely designated its arbitrator, or the Presiding Judge or Acting Presiding Judge has appointed an Arbitrator for one of the parties pursuant to the previous sentence, the two designated arbitrators shall, within seventy (70) calendar days of service of the demand for arbitration, designate a neutral third party arbitrator. The third party arbitrator shall be a qualified disinterested person, knowledgeable and experienced in rail operational matters and in the type of services contemplated by this Agreement. If the two arbitrators designated

by the parties fail to timely select a neutral third party arbitrator, either party may apply to the Presiding Judge (or Acting Presiding Judge) of the Superior Court of the County of Sacramento, State of California to select the neutral third party arbitrator.

(c) At any time, the parties may agree in writing on a sole arbitrator to decide the controversy.

7.4 Rules of Arbitration: The arbitration is to be conducted pursuant to Part 3, Title 9, of the Code of Civil Procedure, commencing with Section 1280, or to any successor or replacement provisions of said Code, and the arbitrators shall have all the powers and duties specified therein.

7.5 Arbitration Schedule: (a). The arbitration hearing shall commence no later than four months after service of the demand and shall be concluded no later than forty (40) calendar days after the hearing commencement date. The arbitration decision and award shall be rendered by the arbitrators within thirty (30) calendar days after conclusion of the arbitration hearing.

(b) The parties may extend any of the deadlines or time periods set forth above by mutual written stipulation. The arbitrators may extend the time for commencement of the arbitration hearings, conclusion of the arbitration hearings and/or the time for rendition of the arbitrators' decision and the award (but, with respect to rendition of the arbitration award, by no longer than an additional 30 calendar days), upon motion of either party or upon the arbitrator's own motion, upon a showing of good cause therefor.

7.6 Pending Resolution: During the pendency of such arbitration proceedings, the business, the operations to be conducted, physical plant to be used, and compensation for service under this Agreement, to the extent that they are the subject of such controversy, shall continue to be transacted, used, and paid in the manner and form existing prior to the arising of such controversy, unless the arbitrator shall make a preliminary ruling to the contrary. In the case of monetary disputes relating to amounts billed for the payment of operating, maintenance or capital costs and expenses under the terms of this Agreement, the party from whom a payment is allegedly owing shall make such payment notwithstanding such dispute and may submit the dispute to arbitration under this Section 7 only by seeking a refund through such arbitration.

7.7 Cost of Arbitration: Each party hereto shall bear the costs and expenses incurred by it in connection with such arbitration, including the cost of the arbitrator appointed by it, and both parties shall share equally the costs and expenses attributable to the services of the third arbitrator.

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7.8 Compliance: For all purposes of this Agreement, each party is responsible for the compliance with all provisions of this Agreement by its Operator or Operators and User shall be responsible for compliance by NRPC.

Section 8. GOVERNMENTAL APPROVAL, TERM, AND ABANDONMENT

8.1 Applications: User shall, at its own cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute any necessary proceedings for the procurement of consent, approval, or authority from any governmental agency for the sanction of this Agreement and the operations to be carried on by User hereunder. Owner, at its expense, shall assist and support said application or petition and will furnish such information and execute, deliver, and file such instrument or instruments in writing as may be necessary or appropriate to obtain such governmental consent, approval, or authority. User and Owner agree to cooperate fully to procure all such necessary consent, approval, or authority.

8.2 Term: Except as otherwise provided in Section 8.3 hereof, the term of the Agreement and the trackage rights provided for hereunder shall be perpetual.

8.3 Abandonment or Discontinuance:

(a) In the event that Owner contracts to sell all or substantially all of the Joint Facilities (other than User's Cahill/Lick Line) to a third party (other than those parties described in Section 3(a)), Owner may, at its sole cost and expense, file for permission from the ICC to abandon any Freight Service over the portion of the Joint Facilities (other than User's Cahill/Lick Line) that is to be sold. While User shall not object to such a filing, it shall be allowed to participate in the abandonment proceedings.

(b) In the event that Owner intends with reasonable certainty to commence construction of facilities on all or substantially all of the length of the Joint Facilities (other than User's Cahill/Lick Line) that are incompatible with the double mainline Freight Service, User shall consent to such diminished rights, provided that Owner shall have completed, at its sole cost and expense, the modification (whose plans and specifications have been approved by User) of the remaining single track (together with side track passing tracks and spur tracks) to be reasonably suitable for the volume and speed of the then existing Freight Service. Upon completion of such construction, User shall execute such documents as are reasonably necessary to extinguish the portion of the operating rights retained hereunder no longer required for Freight Service.

(c) In the event that Owner demonstrates a reasonably certain need to commence construction on all or substantially all of the length of the Joint Facilities (including User's Cahill/Lick Line) of a transportation system that is a significant change in the method of delivery of Commuter Service which would be incompatible with Freight Service on the Joint Facilities (other than User's Cahill/Lick Line), Owner may, at its sole cost and expense, file no sooner than nine months prior to the commencement of such construction for permission from the ICC to abandon the Freight Service over the portion of the Joint Facilities (excluding User's Cahill/Lick Line) upon which the construction is to occur. User shall not object to or oppose such a filing; however, it shall be allowed to participate in the abandonment proceedings.

(d) In the event that (1) Owner notifies User in writing that it has permanently ceased to provide Commuter Service on all or substantially all of the Joint Facilities (other than User's Cahill/Lick Line) and within six months after such notice, no other public or private entity has evidenced a willingness to provide such Commute Service, and (2) if Owner has not filed an ICC application to abandon under subsection (a) above, and (3) User desires to continue to provide Freight Service over such portion, then, within one year after Owner's notice, User shall purchase, and Owner shall sell, all of the applicable Joint Facilities at Net Liquidation Value including Owner's interest in the underlying real property at the mileage pro rata share of the purchase price in the Sale Agreement attributable to the portion of the Joint Facilities being purchased. Should the parties be unable to agree on the sale price within sixty days after Owner has advised User of its proposed sale price, either party may submit the matter to binding arbitration under this Agreement. If neither party submits the matter to arbitration by the thirtieth day after such sixty-day period, Owner's contractual right to require User to purchase hereunder shall lapse.

8.4 Release: Upon termination of this Agreement, or any part thereof, each party shall forever release and discharge the other party of and from any and all manner of obligations, claims, demands, causes of action, or suits which it might have, or which might subsequently accrue to it growing out of or in any manner connected with, directly or indirectly, the contractual obligations under this Agreement in the involved Trackage, provided, however, the aforesaid relinquishment, abandonment, surrender, renunciation, release, and discharge of the parties shall not in any case affect any of the rights and obligations of either party which may have accrued, or liabilities accrued or otherwise, which may have arisen prior to such termination or partial termination. Upon any partial termination of the Agreement, however the same may occur, the terms and conditions hereof shall continue and remain in full force and effect for the balance of the Joint Facilities.

8.5 **Employees:** In the event of sale or of termination by abandonment pursuant to Section 8.3 hereof, Owner and User shall each be responsible for and shall bear labor claims of, and employee protection payable to, its own respective employees including any amounts that either Owner or User may be required to pay to its own respective employees pursuant to labor protective conditions imposed by the ICC.

8.6 **Limitation on Obligations:** Neither shall Owner have obligation to provide Freight or Intercity Passenger Service nor shall User have any obligation to provide Commuter Service. The abandonment of Freight or Intercity Passenger Service by User shall not create any obligation upon Owner to provide such Services, and the abandonment of Commuter Service by Owner shall not create any obligation upon User to provide such Service.

Section 9. MAINTENANCE

9.1 **Responsibility for Performance and Costs:** Owner shall physically perform the ordinary and capitalized maintenance on the Joint Facilities, (excluding User's Cahill/Lick Line) with the cost of such maintenance (other than for Exclusive Commute Trackage and Designated Freight Trackage) apportioned as described in Section 9.2 below. Owner shall physically perform the signal system maintenance on the New Coast Main. User shall pay the cost thereof with respect to the No. 1 Track, and the cost thereof with respect to User's Cahill/Lick Line shall be apportioned as provided in Section 9.2(b) below. Owner shall be responsible for all costs and expenses of the maintenance on Exclusive Commute Trackage except as provided in Sections 1.10 and 2.4 hereof. Owner shall perform the maintenance on Designated Freight Trackage, and all costs and expenses associated with such maintenance on Designated Freight Trackage shall be the responsibility of User except as provided in Sections 1.7 and 2.6 hereof. User shall either physically perform the maintenance on the New Coast Main (excluding signal system maintenance) or, upon written agreement of the parties, contract with Owner to perform such maintenance. All costs and expenses associated with such maintenance shall be apportioned pursuant to Section 9.2(b) hereof. No later than March 31 of each year, the party responsible for performing maintenance on any portion of the Joint Facilities (excluding User's Cahill/Lick Line) and the New Coast Main for which the other party has an obligation to pay or share the costs of hereunder will present such other party with a written estimated budget for costs and expenses for the applicable maintenance for the next-succeeding Fiscal Year. The party performing such maintenance may submit to the other party written proposed amendments, supplements or adjustments to said budget from time to time after submission of the initial estimated budget. Such initial estimated budget, and any amendments, supplements and adjustments shall be subject to the written consent of the

receiving party which shall not be unreasonably withheld, conditioned or delayed. The party performing such maintenance, during such next succeeding Fiscal Year shall bill the other party monthly on an estimated actual cost basis (including Customary and Materials Additives) for the other party's share of such maintenance costs. If it appears to the billed party that the monthly billing deviates substantially from that projected in the estimated budget, the billed party may request a written explanation from the party performing maintenance as to the reason for such deviation and such party shall provide such written explanation within fifteen (15) days after receipt of the request. If the parties are in disagreement as to any such monthly billings or the amounts claimed for such maintenance, such disputes shall be resolved in accordance with Section 7 of this Agreement. At the end of each Fiscal Year there shall be an adjustment if billed costs deviate from actual costs. To the extent possible, the parties shall negotiate appropriate flat rates for such maintenance costs within twelve months of the Effective Date unless extended in writing by the parties.

9.2 Apportionment of Costs: Costs of ordinary and capitalized maintenance (but not the costs of Changes and/or Additions themselves) of the Peninsula Main Line (other than Exclusive Commute Trackage and Designated Freight Trackage) for the first four (4) years after the Effective Date shall be solely the responsibility of Owner. Otherwise, Owner and User will share ordinary maintenance costs and capitalized maintenance costs for the Joint Facilities (excluding Exclusive Commute Trackage and Designated Freight Trackage) on the basis of the SFGTF, for which purpose User shall provide Owner with required data regarding User's Freight and Intercity Passenger Service operated on the Joint Facilities within ninety (90) days after the end of each Fiscal Year of this Agreement. Owner and User shall each respectively bear responsibility for the costs attributable to its respective Operator(s) and other entities acting on its behalf and for its account. The SFGTF shall be applied to the traffic on said Joint Facilities as follows:

(a) On the Peninsula Main Line. The SFGTF will be applied with Owner as the "dominant user." However, capital expenditures which are unique for Commuter Service only (e.g., electrification or station platforms) will be paid solely by Owner and not included in the SFGTF. Similarly, capital expenditures which are unique for Freight and Intercity Passenger Service (e.g., a gauntlet track in tunnels for oversized intermodal traffic) will be paid solely by User and not included in the SFGTF.

(b) On User's Cahill/Lick Line. The SFGTF will be applied with User as the "dominant user" until the total number of Owner's Trains in Gilroy Commuter Service in any Fiscal Year exceeds the number of User's Trains in Freight and Intercity Passenger Service in that Fiscal Year, in which case Owner will

become the "dominant user" as defined in the SFGTF for that Fiscal Year. Thereafter, the determination as to who is the "dominant user" shall be made for each Fiscal Year, with the party having the greater number of Trains designated as the "dominant user" for the applicable Fiscal Year. The same provisions prevail for applying capital expenditures which are unique to Gilroy Commuter Service or unique to Freight and Intercity Passenger Service to the SFGTF as stated in Section 9.2(a).

(c) On the main track portion of Exclusive Commute Trackage between Cahill Yard and Lick. During any period that User is provided access to and use of such Trackage pursuant to Section 2.9 hereof the SFGTF will be applied in the same manner as provided in Subsection 9.2(b) hereof, except that Owner shall be the initial "dominant user" instead of User, and the same conditions will prevail for applying capital expenditures which are unique to Commuter Service or unique to Freight and Intercity Passenger Service to the SFGTF as stated in Section 9.2(a).

9.3 **Level of Maintenance:** The Joint Facilities (other than Exclusive Commute Trackage) shall be maintained at the levels necessary to accommodate User's present and future Freight and Intercity Passenger Train operations, to allow User to maintain competitive service levels. The maintenance of Designated Freight Trackage shall be pursuant to an annual maintenance program mutually agreed by the parties. User shall maintain User's Cahill/Lick Line to a minimum of the existing condition as reflected in train speeds shown in User's Timetables, General Orders and Track Bulletins in effect as of the date of this Agreement, as attached hereto as Exhibit F. If Owner makes Changes and/or Additions to the User's Cahill/Lick Line in accordance with Section 10.8 below, User shall maintain User's Cahill/Lick Line as provided in Section 10.8 below.

9.4 **Protection of Operations:** Owner further agrees that maintenance and Changes and/or Additions activities affecting the Joint Facilities (excluding User's Cahill/Lick Line) shall not be scheduled to unreasonably delay or impair User's rights under Section 4.3 to provide Freight or Intercity Passenger Service on the Joint Facilities (excluding User's Cahill/Lick Line). User shall be given the same advance notice of maintenance plans and schedules as is provided to Owner's personnel. User further agrees that maintenance and Changes and/or Additions activities affecting User's Cahill/Lick Line shall not be scheduled to unreasonably delay or impair Owner's rights under Section 4.5 to provide Gilroy Commuter Service on User's Cahill/Lick Line. Owner shall be given the same advance notice of maintenance plans as is provided to User's personnel.

9.5 **Assumption of Maintenance:** In the event Owner becomes incapable of adequately performing maintenance functions hereunder for Freight and Intercity Passenger Service, arrangements will be

made for the prompt and orderly transfer of such functions to User. In the event User is physically performing maintenance on User's Cahill/Lick Line and becomes incapable of adequately performing maintenance functions hereunder for Gilroy Commuter Service, arrangements will be made for the prompt and orderly transfer of such functions to Owner.

Section 10. CAPITAL IMPROVEMENTS

10.1 **Owner Responsibility:** Owner shall provide, at its sole cost and expense, or reimburse User for the following Changes and/or Additions: (a) upgrading the present No. 1 Track to main line standards to not less than current Federal Railroad Administration Class 4 for the segment from Santa Clara Jct. at or near Milepost 44.0 to the magnetic north end of Cahill Yard at or near Milepost 46.75; (b) installation of a bidirectional centralized traffic control system for the No. 1 Track; and (c) all Changes and/or Additions on the Joint Facilities, excluding User's Cahill/Lick Line, (including but not limited to grade separations on the Peninsula Main Line) other than those Changes and/or Additions subject to Section 10.2 or Section 10.3. The Changes and/or Additions described in (a) and (b) above, which shall be owned by Owner, are set forth in Exhibit G and shall be completed within twenty-four (24) months of the Effective Date subject to the provisions of Section 2.13 hereof. The costs payable by Owner to User for the Changes and/or Additions described in (a) and (b) above shall be \$1,980,000. Payment shall be due and payable by Owner upon the later of: (1) the ninetieth (90th) day after completion of such Changes and/or Additions; or (2) the second anniversary of the Effective Date. If payment is not made by Owner within the period above specified, Owner will pay to User interest on the amounts due at a rate equal to the interest rate paid by User during the then current applicable period to its major bank lenders under its principal financing facility. Such interest shall be payable monthly in arrears and shall be due on the first day of each calendar month with the final interest payment due on the day that the remaining principal balance is paid in full. Notwithstanding anything to the contrary above, the full amount of principal and interest due and payable by Owner hereunder shall be paid not later than forty-eight (48) months after the Effective Date.

10.2 **User Responsibility:** User shall bear the costs of Changes and/or Additions on Joint Facilities (excluding User's Cahill/Lick Line), including Designated Freight Trackage, which User has requested to be effected and which are not used in connection with Commuter Service.

10.3 **Shared Responsibility:** The cost of Changes and/or Additions on the Joint Facilities (excluding User's Cahill/Lick

Line) which User has requested and, based thereon, which Owner has agreed to undertake and has actually undertaken and which are used for both User's and Owner's operations shall be shared on a basis to be agreed by the parties.

10.4 Grade Separations and Crossing: Notwithstanding any other provisions of Section 10 of this Agreement (other than Section 10.9), the cost of new and upgraded grade separations and new or upgraded pedestrian or vehicular road crossings at grade on the Santa Clara/Lick Line and the New Coast Main (but not including the cost of maintenance or capitalized maintenance of any of the foregoing) shall be borne by the parties as follows:

(a) **Owner Responsibility:** Owner shall be solely responsible for the cost and expense of those separations and crossings covered hereunder which (i) it has instituted and undertaken for its benefit and which were not requested by User, (ii) Owner has requested, and based thereon, User has actually undertaken, or (iii) were requested, required or funded by any other party and which Owner has instigated, induced, actively and substantially supported, or solely caused.

(b) **User Responsibility:** User shall be solely responsible for the cost and expense of those separations and crossings covered hereunder which (i) it has instituted and undertaken for its benefit and which were not requested by Owner, (ii) User has requested, and based thereon, Owner has actually undertaken, or (iii) were requested, required or funded by any other party and which User has instigated, induced, actively and substantially supported, or solely caused.

(c) **Shared Responsibility:** Owner and User shall share the costs and expenses for all other grade separations and crossings not subject to Subsections (a) and (b) above on the basis of the number of Trains of each party operated over the applicable grade separation or crossing during the twelve calendar month period immediately preceding the approval of the final plans for construction of such grade separation or crossing.

(d) **Identity of Parties:** For purposes of this Section 10.4, Owner shall include any one or more of Owner's member agencies, its Operator(s) or other entities acting on Owner's behalf or for its account, and its respective successors or assigns; and User shall include User's Operator(s) or other entities acting on User's behalf and for its account and its respective successors and assigns.

10.5 User's Improvements: Changes and/or Additions which are User's responsibility pursuant to Section 10.2 (if it decides to make such improvements) shall include, but are not limited to, the following: (i) two storage tracks and turnouts between Bayshore at Milepost 4.9 and Brisbane at Milepost 7.1, on the

westerly side of and no less than twenty (20) feet from Owner's eastward main track and trackage necessary to construct the wye and tail tracks at Brisbane and Bayshore (however, the twenty (20) foot space shall not be used for motor vehicles); (ii) a gauntlet track from the north end of Tunnel No. 3 (at Milepost 3.1) to the south end of Tunnel No. 4 (at Milepost 5.3) along with an interlocking signal protection system; (iii) four (4) new power operated crossovers between Owner's main tracks in connection with the construction of (i) and (ii) above; and, (iv) upon the approval of Owner (which shall not be unreasonably withheld), such additional support trackage and other facilities to meet User's Freight Service needs. Such construction, reconstruction, or use shall not unreasonably interfere with Owner's Commuter Service and the completion of the above projects shall not result in the degradation of the track and signal system of the Joint Facilities.

10.6 User Requests: Engineering and design plans for the construction of any Changes and/or Additions requested by User on Joint Facilities (other than User's Cahill/Lick Line) and on the New Coast Main (but only to the extent and at the location diverging from or connecting to those portions of the Joint Facilities other than User's Cahill/Lick Line) must be submitted to and approved by Owner prior to any construction. Owner's approval for such construction shall not be unreasonably withheld, conditioned or delayed.

10.7 Caltrans Improvements: Owner will arrange for Caltrans to waive any and all rights to receive payment for unamortized capital improvements on the Joint Facilities which Owner has funded and Owner shall continue the State of California's current participation in capital improvement programs without User's participation.

10.8 Changes and/or Additions to User's Cahill/Lick Line: Owner shall have the right to request Changes and/or Additions to User's Cahill/Lick Line. Any such Changes and/or Additions requested by Owner shall be subject to the approval of User (which shall not be unreasonably withheld, conditioned or delayed), and shall be at Owner's sole cost and expense. If Owner and User agree to the Changes and/or Additions, they shall further agree in writing as to the nature of such Changes and/or Additions, as to the level of utility to the line effected by the Changes and/or Additions, and the consequent level of maintenance required under Section 9.3, above, by reason of such Changes and/or Additions. Any Changes and/or Additions to User's Cahill/Lick Line effected by User pursuant to its rights under this Agreement shall be at User's sole cost and expense. The parties may, but are not required to, agree on a cost sharing for Changes and/or Additions to User's Cahill/Lick Line that are mutually beneficial.

10.9 Necessary Changes and/or Additions: Notwithstanding any other provisions of Section 10 of this

Agreement, if Changes and/or Additions are determined to be necessary to reinstate Service or are then currently necessary to maintain the integrity of the Trackage or Track Structure for its then current utility to both parties on User's Cahill/Lick Line, on the Trackage over which User's Cahill/Lick Line is situated, or, during any period that User is provided access to and use of such Trackage pursuant to Section 2.9 hereof, the main Trackage portion of Exclusive Commuter Trackage between Cahill Yard and Lick, the party owning the element of the affected Trackage or Track Structure ("responsible party") shall be responsible for undertaking the necessary Changes and/or Additions and Owner and User shall share the costs of such Changes and/or Additions on a mutually agreeable basis taking into account the benefits to each party derived from the continued use of the Trackage or Track Structure. (Notwithstanding use of the SFGTF elsewhere in this Agreement, there shall be no presumption that the SFGTF is the appropriate basis for allocating costs under this Section 10.9 in any given situation.) Changes and/or Additions effected pursuant to this Section shall be subject to the procedures set forth in Subsections (a) through (e) below.

(a) In the event of an occurrence (other than that for which a party is liable under Section 6) resulting in (i) cessation or interruption of Service and damage to the Trackage or Track Structure, and the costs of Changes and/or Additions to reinstate Service and to bring the Trackage and Track Structure to the then current level of utility is in excess of \$15,000,000, or (ii) significant disruption of Service and damage to the Trackage or Track Structure, and the costs of Changes and/or Additions to reinstate Service and to bring the Trackage and Track Structure to the then current level of utility is in excess of \$5,000,000 for the first twenty (20) years after the Effective Date and \$10,000,000 thereafter, the responsible party will elect whether to make the necessary Changes and/or Additions to reinstate Service and to bring the line to its then current level of utility. If the responsible party elects to abandon Service in lieu thereof, it will notify the other party, in which case the notified party will have the option to acquire the applicable Trackage or Track Structure at a value to be agreed upon; and, if the parties cannot agree on the value, the issue of the value will be submitted to arbitration pursuant to Section 7 hereof. If the responsible party elects to effect the Changes and/or Additions, it will so notify the other party, and the notified party will have the option of agreeing to share the costs of such Changes and/or Additions on the basis described above or to abandon its Service on the affected Trackage or Track Structure. If either party elects to abandon Service pursuant to this Subsection and is prevented from such abandonment by regulatory authority, it will share the costs of Changes and/or Additions with the party making any Changes and/or Additions under this Subsection on the basis described above.

(b) In the event of an occurrence (other than that for which a party is liable under Section 6) resulting in (i) cessation or interruption of Service and damage to the Trackage or Track Structure, and the costs of Changes and/or Additions to reinstate Service and to bring the Trackage and Track Structure to the then current level of utility does not exceed \$15,000,000, or (ii) significant disruption in service and damage to the Trackage or Track Structure, and the costs of Changes and/or Additions to reinstate Service and bring the Trackage and Track Structure to the then current level of utility does not exceed \$5,000,000 for the first twenty (20) years after the Effective Date and \$10,000,000 thereafter, the responsible party shall notify the other party and shall immediately undertake such Changes and/or Additions. The cost of such Changes and/or Additions shall be shared on the basis described above.

(c) In the event that either party determines that Changes and/or Additions are then currently necessary to maintain the integrity of the Trackage or Track Structure at its then current level of utility and Service thereover, such party shall notify the other party of its decision. If the notified party agrees with said decision, the responsible party shall undertake the necessary Changes and/or Additions and the costs of such Changes and/or Additions shall be shared on the basis described above. If the notified party does not agree with the notifying party's decision, the issue of whether the Changes and/or Additions are then currently necessary to maintain the integrity of the Trackage or Track Structure and Service thereover shall be arbitrated pursuant to Section 7 hereof. If it is determined that such Changes and/or Additions are then currently necessary, the costs of such Changes and/or Additions shall be shared on the basis described above.

(d) If the Changes and/or Additions subject to Subsections (a), (b) or (c) above result in Trackage or Track Structure of greater utility than that in place prior to such Changes and/or Additions, the incremental costs thereof, if any, attributable to such greater utility shall be borne as follows:

(i) If the increased utility results from the fact that the particular Change and/or Addition resulting in such increased utility was required by then current standards imposed by law, regulations or applicable codes in order to restore the Track or Track Structure to the level of utility existing prior to effecting the Change and/or Addition, the incremental costs shall be borne in the manner provided in Subsections (a), (b) or (c) above, whichever is applicable.

(ii) If the increased utility was requested by one of the parties, or effected by the party for its benefit, but otherwise would not have been required by then current standards to restore the Track Structure or Trackage to the level of utility

existing prior to the Change and/or Addition, then the incremental cost shall be borne by the party requesting or effecting the increased utility.

(e) In the event that the parties cannot agree on their respective share of costs for Changes and/or Additions described in (a), (b), and (c) above, the matter will be submitted to arbitration pursuant to Section 7 hereof. A decision from the arbitrator must be rendered prior to the commencement of any Changes and/or Additions effected pursuant to Subsection (c) hereof.

Section 11. MISCELLANEOUS

11.1 Other Costs: Costs of operations and administration will be borne by the party incurring such costs (unless one party's duty to perform the operations and to bear the costs thereof under the terms of this Agreement was undertaken by the other party pursuant to this Agreement because of the first party's failure to perform its obligations hereunder in which event the failing party shall reimburse the other party for such costs) and any costs which cannot be identified as a cost solely applicable to one party will be apportioned between the parties on the basis of the SFGTF applied in the same manner as in Section 9.2.

11.2 Force Majeure: Neither party shall be liable to the other in damages nor shall a default be deemed to have occurred, and each party shall be excused from performance of any of its obligations hereunder, except obligations involving the payment hereunder of money to the other party or to a third party, during the time when such non-performance is occasioned by fire, earthquake, flood, explosion, wreck, casualty, strike, unavoidable accident, riot, insurrection, civil disturbance, act of public enemy, embargo, war, act of God, inability to obtain labor, materials or supplies, or any other similar cause beyond the party's reasonable control; provided, that if either party suffers a work stoppage due to a labor dispute, such party shall make such reasonable efforts, if practicable, to staff its operations so as to minimize disruptions to the Service provided by the other party on the Joint Facilities.

11.3 Billing: Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing forms shall contain sufficient detail to permit computation of payments to be made hereunder. Unless otherwise specifically provided herein, billing shall be prepared in accordance with the schedules of the rules, Customary Additives, Materials Additives, material prices and equipment rental rates as agreed upon by the chief accounting officers of the parties hereto (or their designees) from time to time. User shall pay to Owner at

the office of the Treasurer of Owner, or at such other location as Owner may from time to time designate, all the compensation and charges of every name and nature which, in and by this Agreement User is required to pay in lawful money of the United States, within forty-five (45) days after the rendering of bills therefor by the Owner. Bills shall contain a statement of the amount due on account of the expenses incurred and services rendered during the billing period.

Errors or disputed items in any bill (including disputes arising under Section 9.1 but excluding disputes arising under Section 10.9) shall not be deemed a valid excuse for delaying payment, but shall be paid subject to subsequent adjustment; provided, no exception to any bill shall be honored, recognized or considered if filed after the expiration of three years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) if in connection with a project for which a Roadway Completion Report (as that term is presently understood by the railroad industry) is required, three years after the last day of the calendar month in which the Roadway Completion Report is made covering such project, or (iii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability is established. This provision shall not limit the retroactive adjustment of billing made pursuant to: (a) exception taken to original accounting by or under authority of the ICC or (b) retroactive adjustment of wage rates and settlement of wage claims.

So much of the books, accounts and records of each party hereto as are related to the subject matter of this Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto and by the Auditor General of the State of California pursuant to Government Code Section 10532. If work relating to this Agreement is funded in whole or in part by a federal grant, the Comptroller General of the United States and authorized representatives of the federal agency furnishing the grant shall have the right to examine and audit such books, accounts and records in accordance with applicable federal laws and regulations.

Should any payment become payable by Owner to User under this Agreement, the above provisions of this Section shall apply with User as the billing party and Owner as the paying party.

In the event that either party fails to make any payment required to be made to the other party in accordance with the provisions of this Agreement by the date upon which it is due, interest shall accrue from the due date until payment is made, at the Federal Discount Rate in effect on the due date plus three (3) percent; provided, however, that no interest shall be due and

payable on any amounts in dispute which are determined, either by subsequent review or by arbitration, to be not validly due hereunder.

11.4 Notices: All notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of delivery, if delivered personally to the party to whom notice is given, or if made by telecopy directed to the party to whom notice is to be given at the telecopy number listed below, or (ii) on receipt, if mailed to the party to whom notice is to be given by registered or certified mail, return receipt requested, postage prepaid and properly addressed as follows:

If intended for Owner:

Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
San Carlos, CA 94070-1306
Attention: Gerald T. Haugh
Phone No.: 415-508-6221
Telecopy No.: 415-508-0281

With a copy to:

Hanson, Bridgett, Marcus, Vlahos & Rudy
333 Market Street, Suite 2300
San Francisco, CA 94105
Attention: David J. Miller
Phone No.: 415-777-3200
Telecopy No.: 415-541-9474

If intended for User:

Executive Vice President-Operations
Southern Pacific Transportation Company
One Market Plaza
San Francisco, CA 94105
Phone No.: 415-541-2125
Telecopy No. 415-541-1829

With a copy to:

Director-Contracts & Joint Facilities
Southern Pacific Transportation Company
One Market Plaza, Room 1004-P
San Francisco, CA 94105
Phone No.: 415-541-2772
Telecopy No. 415-541-1802

And to:

Vice President & General Counsel
Southern Pacific Transportation Company
One Market Plaza
San Francisco, CA 94105
Phone No.: 415-541-1781
Telecopy No. 415-495-5436

A party may change its person designated to receive notice, its telecopy number, or its address from time to time by giving notice to the other party in accordance with the procedures set forth in this Section 11.4.

11.5 Preferences: Except as hereafter determined by the mutual agreement of the parties, neither of them shall seek in any administrative, legislative or judicial proceeding or otherwise to obtain rights in the use of the properties subject to this Agreement in excess of those provided to it, or seek to diminish such rights provided to the other. Notwithstanding the provisions of Section 7, the parties shall have recourse to the courts or any governmental agency having jurisdiction in the event of a violation of this Section 11.5, and, in addition to any available remedies for damages, the remedy of specific enforcement shall be available with respect thereto.

11.6 Headings: The section and subsection headings in this Agreement are for convenience only and shall not be used in its interpretation or considered part of this Agreement.

11.7 Recording: Either party may, at its sole election and expense, record this Agreement with the appropriate governmental authorities. The parties agree that, should it be necessary to modify or amend any property description for such recording purposes, they shall cooperate in making said modifications or amendments.

11.8 Entire Agreement: This Agreement and its Exhibits together with the Sale Agreement represent the entire Agreement between Owner and User concerning the terms of the trackage rights retained and confirmed hereby.

11.9 Amendments: No modification, addition or amendment to this Agreement shall be effective unless and until such modification, addition or amendment is reduced to a writing executed by authorized officers or agents of each party and delivered to the other party.

11.10 Not For The Benefit Of Others: This Agreement and each and every provision herein is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein shall be construed to create or increase any right in any

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third person to recover by way of damages or otherwise against any of the parties hereto.

11.11 Access: Each party, its employees, agents, and designees, shall have access to the Joint Facilities and to the operating and maintenance records of the other concerning the movement of Trains or Equipment on and maintenance of the Joint Facilities for the purpose of monitoring conformance to the principles and standards expressed in this Agreement.

11.12 Effective Date: The Effective Date of this Agreement shall be contingent upon receipt of all necessary regulatory approvals or exemptions and, assuming such receipt, shall be the earlier of (i) the date that an Operator commences Commuter Service for Owner or (ii) June 30, 1992; provided, however, that portion of this Agreement involving Bridge Trackage Rights, Gilroy Commuter Service and the use by Owner of User's Cahill/Lick Line in connection therewith (including any rights of User pursuant to Section 2.9 hereof), shall be effective only as of the "Effective Date" of the Lick/Gilroy Trackage Rights Agreement (as said term is defined in such Agreement). Any necessary regulatory approvals or exemptions for such Bridge Trackage Rights, Gilroy Commuter Service, and the use of User's Cahill/Lick Line shall be sought concurrent with any necessary approvals or exemptions of the Lick/Gilroy Trackage Rights Agreement. During that period between receipt of necessary regulatory approvals or exemptions and the Effective Date, User shall have the right to conduct Freight and Intercity Passenger Service and operations in support thereof over the Joint Facilities (excluding User's Cahill/Lick Line) but only in the same manner and to the same extent as provided as of the date hereof. User agrees during such period to indemnify and defend Owner against all liability in connection with User's Freight and Intercity Passenger Service except to the extent caused by Owner's willful or negligent acts or omissions. During the interim period, User shall provide Commuter Service for Owner as interim Operator pursuant to its service contract with the State of California Department of Transportation.

11.13 Track Agreements. As a condition precedent to the effectiveness of this Agreement, User shall deliver to Owner documentation satisfactory to Owner, assigning to Owner as an additional beneficiary, User's rights and benefits of the indemnity provisions contained in the track agreements identified in Exhibit H. User will cooperate with Owner to jointly call on parties with whom User has track agreements to have such parties assign the indemnity provisions of such agreements directly to Owner.

11.14 Sale Agreement Controlling. This Agreement is entered into by the parties pursuant to and in furtherance of the Sale Agreement. In the event that there are terms in this Agreement which are inconsistent with the terms of the Sale Agreement, the terms of the Sale Agreement shall govern. Except as may be

otherwise specifically stated herein, nothing contained in this Agreement shall be construed to limit or otherwise modify the rights and obligations of the parties under the Sale Agreement.

11.15 Survival of Rights. The rights of a party under this Agreement shall survive the bankruptcy or other insolvency of the other party to the maximum extent permitted by law.

11.16 Quitclaim of User's Easement. From time to time, Owner may desire to develop portions of the Joint Facilities (excluding the New Coast Main) which are not being used by User for Freight or Intercity Passenger Service. In connection with such developments, Owner may desire User to release its easement with respect to specified portions of the Joint Facilities (excluding the New Coast Main) in order to permit such development. Any such quitclaim shall be subject to the procedures set forth below and shall be further subject to any necessary regulatory approvals or exemptions:

(a) At any time after the Effective Date, and from time to time thereafter, Owner may request User to release a portion of its railroad easement. User shall release such easement upon the following terms and conditions:

Each request (a "Request") shall be in writing and shall contain (i) a legal description of the portion of the Joint Facilities (excluding the New Coast Main) to be released (the "Requested Portion"); (ii) a survey of the Requested Portion prepared by an engineer licensed by the State of California and showing the location of all railroad lines within 25 feet of the Requested Portion; (iii) a reasonably detailed description of the improvements to be constructed by Owner on the Requested Portion; (iv) to the extent available, the latest plans and specifications, conceptual drawings, renderings or similar graphic material regarding the proposed development; (v) an estimate of the costs of the development and the manner in which funds therefor will be provided; and (vi) the proposed times for commencement and completion of the development.

(b) Within 60 days after the receipt of the information requested by Subsection (a) above, User will, except as set forth in Subsection (c) below, execute and deliver to Owner a quitclaim deed in form and substance reasonably satisfactory to Owner releasing the Requested Portion from User's easement. Such quitclaim deed shall reserve to User any fiber optic easement executed pursuant to Section 7.1(a) of the Sale Agreement.

(c) User shall not be required to execute or deliver such quitclaim deed if (i) any part of the Requested Portion lies within 25 feet of any property (A) then used by User for its Freight or Intercity Passenger Service operations, or (B) for which User has a reasonable certainty of using for such purposes, as

further described below, or (ii) Owner's proposed development will not be commenced within twelve (12) months of the Request. The provisions of Subsection (c)(i)(B) hereof shall not apply to Trackage which has not been used for a continuous five-year period and is thereby subject to the provisions of Section 2.17.

(d) If within 60 days after receiving a Request User determines that under Subsection (c) it is not required to execute and deliver a quitclaim deed for a Requested Parcel, User shall, within such period, notify Owner of such fact in writing stating the reason therefor (a "Refusal Notice"). If User's reason for refusing to execute and deliver a quitclaim deed is based upon the fact that User has a reasonable certainty that all or a portion of the Requested Parcel will be used for its Freight or Intercity Passenger Service operations, it shall provide Owner with (i) a reasonably detailed statement of such planned use, (ii) the most recent plans or specifications, conceptual drawings or other graphic materials with respect to such planned use, (iii) an estimate of the cost of constructing any improvements needed for such planned use, (iv) a statement of the source of funds for such planned use, and (e) the proposed time for commencement of the planned use. The provisions of the preceding sentence shall not apply to Trackage which has not been used for a continuous five-year period and is thereby subject to the provisions of Section 2.17. Any planned use of the property by User for its Freight or Intercity Passenger Service operations will not be considered a reasonably certain planned use, if it is unlikely that construction of the improvements therefor will not commence within twelve (12) months after the Refusal Notice.

(e) If Owner disagrees with User's determination that it is not required to deliver a quitclaim deed with respect to any request, Owner may submit such matter to arbitration pursuant to Section 7 hereof within 60 days after receiving a Refusal Notice.

11.17 Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be and shall be taken to be an original, and all such counterparts shall together constitute one and the same instrument.

11.18 User's Separate Property: Trackage and/or other facilities owned by User that are located on real property owned by User shall not be part of the Designated Freight Trackage, Joint Facilities, or Exclusive Commute Trackage.

GAC *Owner* *User* *GAC*
IN WITNESS WHEREOF, ~~SPT~~ and ~~SPT~~ have executed this Agreement
as of the day and year first written above.

PENINSULA CORRIDOR STUDY
JOINT POWERS BOARD

SOUTHERN PACIFIC
TRANSPORTATION COMPANY

By: _____
Name:
Title:

By: *[Signature]*
Name: Robert F. Starzel
Title: Vice Chairman

Approved as to Form:

Approved as to Form:

[Signature]

IN WITNESS WHEREOF, Owner and User have executed this Agreement as of the day and year first written above.

PENINSULA CORRIDOR STUDY
JOINT POWERS BOARD

SOUTHERN PACIFIC
TRANSPORTATION COMPANY

By: Tom Nelson
Name:
Title:

By: _____
Name:
Title:

Approved as to Form:
Hanson, Budgett, Marcus, Blake and Rudy
by John J. Nelson

Approved as to Form:

EXHIBITS TO THE MAIN LINE TRACKAGE RIGHTS AGREEMENT --

PENINSULA MAIN LINE AND SANTA CLARA/LICK LINE

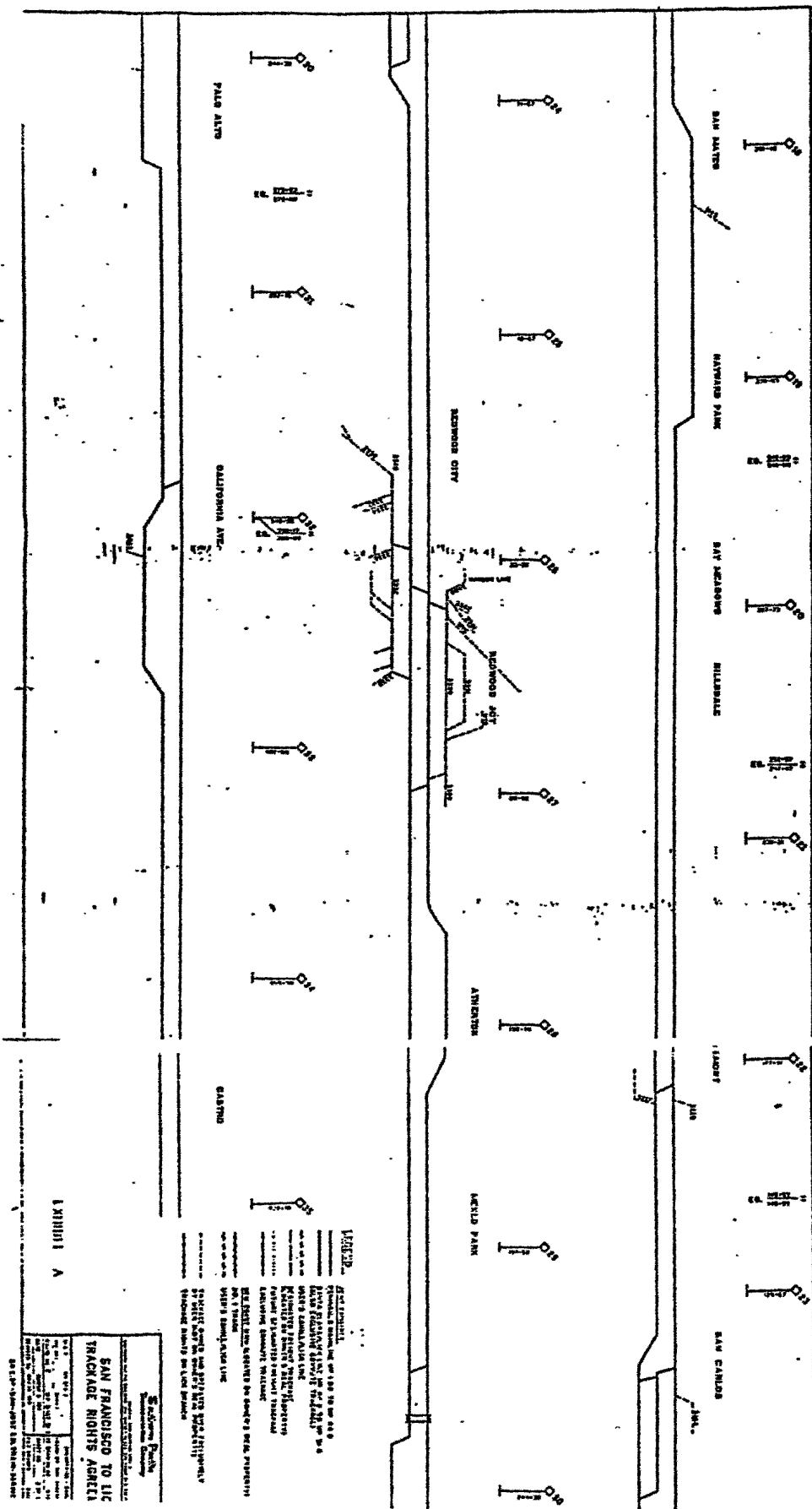
[illegible]

EXHIBIT B**CUSTOMARY ADDITIVES FOR THE YEAR 1990**

	<u>Percentage</u>
Actual Labor (Straight Time & Overtime)	
Vacation	7.60
Paid Holidays	4.49
Personal Leave Days	0.74
Compensation Insurance, Personal Liability & Property Damage	8.00
Payroll Taxes	34.91
Health and Welfare	20.66
Supervision, Administration & Use of Tools	<u>44.13</u>
TOTAL	<u>120.53</u>

EXHIBIT C

MATERIALS ADDITIVES FOR THE YEAR 1989

	<u>Percentage</u>
Store Expense	13.00
Foreign Line Freight	6.00
On-Line Freight	\$.0375 / net ton miles
Material Handling Expense	
* Federal Highway Administration	5.00
* All Others	1.00
Sales and Use Tax	(as governed by specific city and state)

EXHIBIT D

EXHIBIT D

**FORMULA FOR DETERMINING ALLOCATION OF
ROADWAY MAINTENANCE EXPENSES AND CAPITAL IMPROVEMENTS**

$$SEC = Y(.570 + .910M) + X [1.340 + .870\sqrt{C} + .058 CC + .029 CC^2 + .048 J \\ \sqrt{C} (2 + \frac{VP}{500} - \frac{(VP)^2}{6000}) + CC (1 + \frac{VP}{750} + \frac{(VP)^2}{5375})]$$

or in cases where freight speeds are equal to or greater than 50 percent of passenger speeds, the freight and passenger terms may be combined as shown below.

$$SEC = Y(.570 + .910 M) + X [1.340 + .870\sqrt{C} + .058 CC + .029 CC^2 + .048 J \\ \sqrt{C} (2 + \frac{V}{600} + \frac{V^2}{6000})]$$

where:

SEC = Speed Expenditures per mile

C = Total gross tons of traffic (in millions) per track mile per year

CC = Freight traffic gross tons (in millions) per track mile per year

CP = Passenger traffic gross tons (in millions) per track mile per year

M = Number of miles per route mile

V = Speed factor (the higher of freight speed or 0.8 times passenger speed)

VP = Freight speed

VP = Passenger speed

J = 1 for veiled rail
1.5 for double rail

Y = as shown below

FRA. CLASS OF TRUCKS AND TYPE OF OPERATION	Value of Y		
	min time	average line	max switch
Class 1, 2, 3: freight only up to 10 MGT per mile per year	1.00	0.56	0.14
Class 1, 2: passenger, or Class 1, 2, 3: freight more than 10 MGT per mile per year	1.12	0.66	-
Class 3: passenger, or Class 4, 5, 6: all traffic	1.15	0.69	-

The speed factors used shall be governed by the highest authorized speed in the designated area for the respective types of service.

Special studies may be conducted from time to time to update the constants used in the formula.

EXHIBIT E

(Page 1 of 11)

**EXISTING COMMUTER STATION PLATFORMS WITH CLEARANCES
LESS THAN AAR PLATE H¹**

<u>MP LOCATION</u>	<u>STATION</u>	<u>CLEARANCE FROM C (in.)</u>	<u>HEIGHT ABOVE RAIL (in.)</u>
4.1	Paul Ave.	57 1/4	4
5.2	Bayshore	56 1/2	4 1/2
9.3	S. San Francisco	56	4
11.6	San Bruno	57 1/4	4
13.7	Millbrae	55 1/2	5 1/2
15.2	Broadway	56 1/4	5 1/2
16.3	Burlingame	55 1/4	5 3/4
17.9	San Mateo	55 1/4	4 1/2
18.9	Hayward Park	56 1/4	4
20.0	Bay Meadows	55	4
20.3	Hillsdale	55	6
21.9	Belmont	54 1/2	3
23.2	San Carlos	55 1/4	6
25.4	Redwood City	55 3/4	5
27.8	Atherton	56 3/4	4 1/2
28.9	Menlo Park	55 1/4	4 1/2
30.1	Palo Alto	55 3/4	5
31.8	California Avenue	57	7
34.8	Castro	57	4
36.1	Mountain View	57	5
38.8	Sunnyvale	57	4 1/2
40.8	Lawrence	58	4 1/2

¹AAR Plate H attached as page 5 hereto

EXHIBIT E

(Page 2 of 11)

**EXISTING COMMUTER STATION PLATFORMS WITH CLEARANCES
LESS THAN AAR PLATE H¹**

<u>MP LOCATION</u>	<u>STATION</u>	<u>CLEARANCE FROM C (in.)</u>	<u>HEIGHT ABOVE RAIN (in.)</u>
44.3	Santa Clara	58	4 1/2
45.7	College Park	58	4 1/2
46.9	San Jose (Track #5)	58	8
48.7	Tamien	60	8

¹AAR Plate H attached as page 5 hereto

EXHIBIT E

(Page 3 of 11)

**EXISTING STRUCTURES WITH CLEARANCES LESS THAN AAR
PLATE H¹ AND/OR CALIFORNIA PUBLIC UTILITIES COMMISSION
GENERAL ORDER NO. 26-D²**

<u>MP LOCATION</u>	<u>DESCRIPTION</u>	<u>MINIMUM OVERHEAD CLEARANCE</u>
1.29	Mariposa St. O.H.	21' 3"
1.29	AT & SF O.H.	21' 5"
1.31 (W. Portal)	Tunnel No. 1	*
1.73	22nd St. O.H.	20' 6"
1.90	23rd St. O.H.	21' 0"
1.93 (W. Portal)	Tunnel No. 2	*
3.14	Oakdale Ave. O.H.	20' 6"
3.19 (W. Portal)	Tunnel No. 3	*
4.15	Paul Ave. O.H.	19' 10"
4.26 (W. Portal)	Tunnel No. 4	*
9.07	Signal Bridge	22' 4"
25.58	Signal Bridge	22' 1"
26.35	Signal Bridge	21' 8"
29.68	San Francisco Crk. Br.	21' 9"
45.63	Signal Bridge	22' 5"
45.99	Signal Bridge	21' 10"
46.45	Signal Bridge	21' 8"
47.0	Cahill Sta.-Trk. 5 Canopy	15' 8"
47.32	San Carlos St.	22' 2"

* See attached sheet for tunnel clearance profiles

¹See attached sheet

²General Order No. 26-D is attached hereto as pages 6 thru 11

TUNNEL CLEARANCE PROFILE

EXHIBIT E

(Page 4 of 11)

TUNNEL #1- EAST BOUND

mile post	height above rail	north wall	south wall
1.31	0'00"		8'01"
	18'06"		4'02"
	21'06"		* 1

TUNNEL #1- WEST BOUND

mile post	height above rail	north wall	south wall
1.31	0'00"	7'11"	
	18'06"	4'05"	
	21'11"	*1	

TUNNEL #2- EAST BOUND

mile post	height above rail	north wall	south wall
1.93	0'00"		8'06"
	18'06"		4'06"
	21'04"		* 1

TUNNEL #2- WEST BOUND

mile post	height above rail	north wall	south wall
1.93	0'00"	8'04"	
	18'06"	4'07"	
	21'09"	*1	

TUNNEL #3- EAST BOUND

mile post	height above rail	north wall	south wall
3.19	0'00"		8'00"
	18'06"		4'07"
	21'02"		* 1

TUNNEL #3- WEST BOUND

mile post	height above rail	north wall	south wall
3.19	0'00"	8'04"	
	18'06"	4'05"	
	21'04"	*1	

TUNNEL #4- EAST BOUND

mile post	height above rail	north wall	south wall
4.26	0'00"		7'00"
	18'06"		3'03"
	21'01"		* 1

TUNNEL #4- WEST BOUND

mile post	height above rail	north wall	south wall
4.26	0'00"	7'06"	
	18'06"	3'10"	
	21'01"	* 1	

• REPRESENTS MAXIMUM HEIGHT OF TUNNEL FROM CENTER LINE OF TRACK

EXHIBIT E

(Page 5 of 11)

ASSOCIATION OF AMERICAN RAILROADS (AAR)

PLATE B

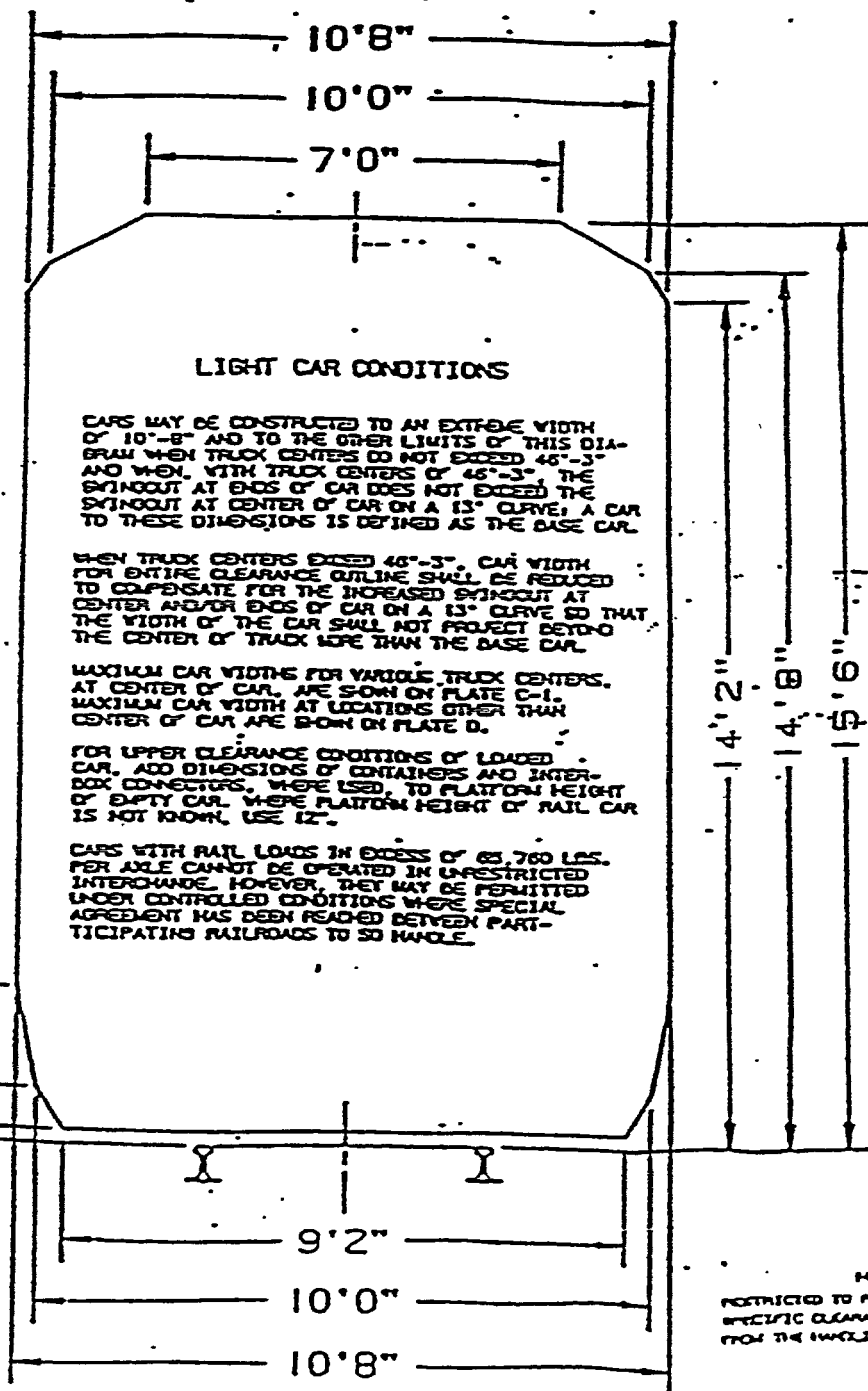
EQUIPMENT DIAGRAM

FOR DOUBLE -STACK CONTAINER CARS
FOR LIMITED INTERCHANGE SERVICE

Standard

S-2040-91

Adopted, 1991



NOTE:
RESTRICTED TO ROAD ONLY FROM WHICH
SPECIFIC CLEARANCE HAS BEEN OBTAINED
FROM THE INVOICING UNCLE.

2-3/4" ABOVE TOP OF RAIL IS ABSOLUTE MINIMUM
OVER ANY AND ALL CONDITIONS OF LOADING OPERATION
AND MAINTENANCE

**GENERAL ORDER
No. 28-D**

(Superseding General Order No. 20-O)

**Public Utilities Commission of the State
of California**

**REGULATIONS GOVERNING CLEARANCES ON RAILROADS AND STREET
RAILROADS WITH REFERENCE TO SIDE AND OVERHEAD STRUCTURES,
PARALLEL TRACKS, CROSSINGS OF PUBLIC ROADS, HIGHWAYS AND STREETS.**

Adopted January 19, 1948. Effective February 1, 1948

It Is Hereby Ordered by the Public Utilities Commission of the State of California that the minimum clearance requirements for railroads and street railroads hereinafter prescribed shall hereafter be observed in this state in all construction or reconstruction of tracks or structures adjacent to tracks.

It Is Hereby Further Ordered that no railroad or street railroad corporation shall operate any cars, trains, motors, engines, or other rolling equipment over its own or other tracks, except as hereinafter provided, on which overhead or side clearances, or clearances between tracks, are less than the minimum herein prescribed, if such tracks or structures adjacent to such tracks are constructed or reconstructed subsequent to the effective date hereof.

DEFINITIONS

Section 1

For the purposes of these regulations definitions as hereinafter prescribed will govern.

1. 1 *Height of a Freight Car* is the distance between the top of rail and the top of the running board.
1. 2 *Sides of a Freight Car* is that part or appurtenance of a car at the maximum distance measured at right angles from the center line of the car.
1. 3 *Width of a Freight Car* is twice the distance from the center line to the side of a car as defined herein.
1. 4 *Overhead Clearance* is the vertical distance from the level of the top of the highest rail to a structure or obstruction above.
1. 5 *Side Clearance* is the shortest distance from the center line of track to a structure or obstruction at the side of track.

STANDARD GAUGE RAILROADS AND STREET RAILROADS:
TRANSPORTING FREIGHT CARS

Section 2—Overhead Clearances

2. 1 The minimum overhead clearance above railroad and street railroad tracks, which are used or proposed to be used for transporting freight cars, shall be twenty-two (22) feet six (6) inches. Structures constructed prior to the effective date of this order may be maintained at such clearances as was lawful at the time of construction.
2. 2 The overhead clearance above top of rail of such tracks located inside of buildings may be reduced to eighteen (18) feet, provided that this clearance shall apply only to tracks terminating within the building, and further provided, that when an overhead clearance of less than twenty-two (22) feet exists on tracks inside such building, all cars, trains, motors, engines or other equipment shall be brought to a stop before entering such building, the conditions provided to require such stop to be approved by the Commission.
2. 3 Unless otherwise provided herein, overhead clearances authorized in this section are applicable only to tracks on which freight cars having a height not exceeding fifteen (15) feet six (6) inches are transported. Freight cars of a height exceeding fifteen (15) feet four (4) inches, but not greater than fifteen (15) feet six (6) inches shall be permanently marked, stenciled, or placarded as hereinafter required, and such markings maintained in a legible condition reading as follows:

"This Car
Excess Height."

The markings required in this subsection shall be made permanent on owned cars as soon as practicable with a $\frac{3}{4}$ " stripe outlining an area not less than seven (7) inches by ten (10) inches, such stripes and lettering to be of a color contrasting with the car body color. All such required markings and placarding shall be placed on the side adjacent to the ladder or hand-holds near the floor line of the car at each of the four corners.

2. 1 Freight cars not exceeding a height of fifteen (15) feet six (6) inches may be transported without compliance with the requirements of subsection 2.3 of this order provided that the tracks over which such operations are conducted exhibit throughout the route an overhead clearance of twenty-two (22) feet six (6) inches as required in subsection 2.1 of this order.

2. 5 If freight cars of a height greater than fifteen (15) feet six (6) inches are transported or proposed to be transported, minimum overhead clearances shall be increased by an amount not less than such additional height.

Section 3—Side Clearances

3. 1 Minimum side clearances from center line of tangent standard gauge railroad and street railroad tracks, which are used or proposed to be used for transporting freight cars, except as hereinafter prescribed, shall be as shown below.

Description	Minimum Side Clearance
3. 2 All structures and obstructions above the top of the rail except those hereinafter specifically mentioned.....	8' 6"
NOTE: Posts, pipes, warning signs and similar obstructions should, where practicable, have a side clearance of ten (10) feet.	
3. 3 Platforms eight (8) inches or less above top of rail.....	4' 8"
3. 4 Platforms four (4) feet or less above top of rail.....	7' 6"
3. 5 Platforms four (4) feet six (6) inches or less above top of rail when used principally for loading or unloading refrigerator cars	8' 0"
3. 6 Platforms previously constructed at clearance not less than seven (7) feet three (3) inches may be extended at such clearance unless such extension is in connection with the reconstruction of the original platform.	
NOTE: Combinations of platforms under subsections 3.4 and 3.5 will not be permitted. Combinations of platforms under subsection 3.3 with either of those under subsections 3.4 or 3.5 is permitted provided that the platform under subsection 3.3 presents a level surface from a point not more than four (4) feet eight (8) inches from center line of track to the face or wall of the platform with which it is combined.	
3. 7 Poles supporting trolley contact conductors supplying motive power to track affected, if of bracket construction, on either single or double main track.....	8' 3"
NOTE: In order to bring switch stand targets into clear vision where pole lines are or have been constructed at legal clearance on railroads operated by overhead trolley contact the clearance as applied to switch stands may be reduced to seven (7) feet six (6) inches.	
3. 8 Switch boxes, switch-operating mechanisms and accessories necessary for the control and operation of signals and interlockers projecting four (4) inches or less above the top of rail.....	3' 0"
3. 9 Signals and switch stands three (3) feet or less above top of rail and located between tracks where not practicable to provide clearances otherwise prescribed in this order.....	6' 0"

Description	Minimum Side Clearance
3.10 Through bridges supporting track affected, tunnels, water columns and oil columns	8' 0"
3.11 The clearances for (a) through bridges supporting track affected, (b) water barrel platforms and refuge platforms on bridges and trestles not provided with walkways, (c) handrails, (d) water barrels, (e) water columns, (f) oil columns, (g) block signals, (h) cattle guards, and (i) stock chutes, when all or portions thereof are four (4) feet or less above top of rail, may be decreased to the extent defined by a line extending diagonally upward from a point level with top of rail and five (5) feet distant laterally from center line of track to a point four (4) feet above top of rail and eight (8) feet distant laterally from center line of track; provided, however, that the minimum clearance for handrails and water barrels on bridges with walkways shall be seven (7) feet nine (9) inches, and, provided further, the minimum clearance for fences of cattle guards shall be six (6) feet nine (9) inches.	
NOTE: Unless previously approved by the Commission, the clearances authorized in subsection 3.11 of this order, except as provided for handrails and water barrels, are not permitted on through bridges where the work of trainmen or yardmen requires them to be upon the decks of such bridges for the purpose of coupling and uncoupling cars in the performance of switching service on a switching lead.	
3.12 The side clearances specified herein shall not apply to mail cranes during such times as the arms of such mail cranes are supporting a mail sack for delivery, provided that the top arm is not then higher than ten (10) feet eight (8) inches above top of rail and neither arm extends within six (6) feet five (5) inches from the center line of track.	
3.13 Icing Platforms and Supports	7' 8"
3.14 Operations over portions of track adjacent to icing platforms heretofore constructed with a side clearance of less than seven (7) feet eight (8) inches shall be restricted to the movement or switching of trains containing refrigerator cars to be iced, and the necessary use of such tracks for the unloading of supplies required for the operation of the icing dock.	
3.15 Proposed extension of existing icing platforms at less than seven (7) feet eight (8) inches shall be referred to the Commission for approval before proceeding with such project.	
3.16 All minimum side clearances prescribed in this section are for tangent track. In general, all structures adjacent to curved track,	

shall have a minimum side clearance one (1) foot greater than the minimum side clearance otherwise required for tangent track. Where the Commission has determined that space is limited, the minimum side clearances for structures adjacent to tracks of not over twelve (12) degree curvature may be the same as for tangent track, but where track curvature exceeds twelve (12) degrees, one-half (½) inch for each degree of the curve shall be added to the minimum side clearance required for tangent track.

- 3.17 The center line of any track constructed in and along a public street shall be at least ten (10) feet from the property line of said street, or if the street has a lawfully established curb line, such track shall be at least ten (10) feet from such line.
- 3.18 When tracks are operated exclusively for logging purposes, log rollways which serve them may be erected at less than the minimum side clearances herein prescribed.
- 3.19 Minimum side clearances authorized in this section are applicable to tracks on which freight cars having a width not greater than ten (10) feet ten (10) inches are transported. Freight cars of a width exceeding ten (10) feet ten (10) inches but not greater than eleven (11) feet one (1) inch may be transported for a period of not more than one (1) year after the effective date of this order, provided they shall be permanently marked, stenciled, or placarded, and such markings maintained in a legible condition reading

"This Car
EXCESS WIDTH."

All such required markings and placarding shall be placed on the side adjacent to the ladder or handholds near the floor line of the car at each of the four corners.

- 3.20 Except as provided in subsection 3.19 of this order, if freight cars of a width greater than ten (10) feet ten (10) inches are transported or proposed to be transported, minimum side clearances shall be increased by an amount equal to one-half such additional width, and the distance between parallel tracks as provided in subsection 5.4 of this order shall be increased by the amount of such additional width.

Section 4—Overhead and Side Clearances

Minimum overhead and side clearances as prescribed in Sections 2 and 3 of this order may be decreased to the extent defined by the half circumference of a circle having a radius of eight (8) feet six (6) inches and tangent to a horizontal line twenty-two (22) feet six (6) inches above the top of rail.

top of rail at a point directly over the center line of track; provided, however, that for tunnels and through bridges such radius may be eight (8) feet, and provided further, that subsections 2.3 and 3.19 of this order shall apply hereto.

Section 5—Clearance Between Parallel Tracks

5. 1 The minimum distance between the center lines of parallel standard gauge tracks shall be fourteen (14) feet except as hereinafter provided.
5. 2 The center line of any standard gauge track, except a main track or a passing track, parallel and adjacent to a main track or a passing track, shall be at least fifteen (15) feet from the center line of such main track or passing track; provided, however, that where a passing track is adjacent to and at least fifteen (15) feet distant from the main track, any other track may be constructed adjacent to such passing track with clearance prescribed in subsection 5.1 of this order.
5. 3 The center line of any standard gauge ladder track, constructed parallel to any other adjacent track, shall have a clearance of not less than twenty (20) feet from the center line of such other track.
5. 4 The minimum distance between the center lines of parallel team, house and industry tracks shall be thirteen (13) feet.
5. 5 Main, siding and yard tracks constructed prior to the effective date of this order with distance of not less than thirteen (13) feet between track centers may be extended without increasing such distances.

Section 6—Other Conditions and Obstructions Adjacent to Tracks

6. 1 No merchandise, material or other articles shall be placed or permitted to remain either on the ground or on platforms adjacent to any track at a distance less than eight (8) feet six (6) inches from the center line of track.
6. 2 A suitable line or other marker should be maintained at a distance of eight (8) feet six (6) inches from the center line of track, on all platforms, excluding passenger platforms, to indicate the space along edge of the platform which must be kept clear of merchandise, material or other articles.

Section 7—Lading on Open Top Cars

7. 1 No movements shall be made of open top cars containing lading extending in excess of fifteen (15) feet six (6) inches in height above top of rail or extending laterally in excess of five (5)

feet five (5) inches from center line of car, except as hereinafter prescribed.

7. 2 The operation of cars, the lading of which extends laterally in excess of five (5) feet five (5) inches from center line of car, shall be restricted to lading the size or dimensions of which cannot be reduced.
7. 3 All open top cars with lading extending laterally in excess of five (5) feet five (5) inches from center line of car or in excess of fifteen (15) feet six (6) inches in height above top of rail, shall be placarded on the load itself in a conspicuous place when practicable, and the car shall be marked, stenciled, or placarded at locations specified in subsection 3.19 of this order.
7. 4 On any train, the consist of which includes cars loaded as described in subsection 7.3 of this order, such cars shall be blocked together in one place in the train and if its length permits, they shall be trained at least five (5) cars distant from both the caboose and the engine.
7. 5 A train order shall be delivered to every train containing any car the lading on which extends laterally in excess of five (5) feet five and one-half (5½) inches from center line of car or in excess of fifteen (15) feet six (6) inches in height above top of rail, informing the crew of the train that the train includes such car or cars, stating the total number thereof, and advising that no member of the train crew is required to ride on any such cars.
7. 6 A train order shall be delivered to every train the operation of which may be affected by the presence or movement of a train containing such wide loads, described in subsection 7.5 of this order, informing the crew of the train of that fact.
7. 7 Yard supervisors shall be given notifications sufficiently in advance of the arrival of cars, the lading on which extends laterally in excess of five (5) feet five and one-half (5½) inches from center line of car, to enable them to take necessary precautions to safeguard employees in yard.
7. 8 Cars on which the lading exceeds fifteen (15) feet six (6) inches in height above top of rail, if otherwise in compliance with these requirements as to width of lading, and the nature of which precludes the probability of employees getting on top of or passing over them, are exempt from the conditions of this section with the exception of subsection 7.4 of this order.

NARROW GAUGE RAILROADS TRANSPORTING FREIGHT CARS

Section 8—Overhead and Side Clearances

8. 1 For the operation of equipment on narrow gauge tracks, the minimum overhead clearance shall provide a distance above the top of the highest car operated not less than that provided in this order for cars fifteen (15) feet six (6) inches in height operated on standard gauge tracks; the side clearances and distances between center lines of tracks shall provide a distance from the sides of, or between the widest cars operated, not less than those distances herein provided for cars ten (10) feet ten (10) inches in width operated on standard gauge tracks.
8. 2 All other requirements of this order where applicable shall be observed by narrow gauge railroads.

RAILROADS AND STREET RAILROADS NOT TRANSPORTING FREIGHT CARS

Section 9—Overhead and Side Clearances

9. 1 The minimum overhead clearance above railroad and street railroad tracks which are not used or proposed to be used for transporting freight cars shall be fourteen (14) feet.
9. 2 Minimum side clearances of railroad and street railroad tracks which are not used or proposed to be used for transporting freight cars shall be thirty (30) inches from the side of the widest equipment operated, except that for poles supporting trolley contact conductors between main line double tracks such distance may be decreased to twenty-four (24) inches.
9. 3 Minimum overhead and side clearances as prescribed in this section may be decreased to the extent defined by a line extending diagonally downward from a point fourteen (14) feet above the top of rail and four (4) feet distant laterally from the center line of track to a point eight (8) feet above the top of rail and distant laterally thirty (30) inches from the side of the widest equipment operated.
9. 4 Minimum side clearances as prescribed in this section may be decreased in bridges, tunnels or subways to the extent defined by a line extending diagonally upward from a point level with the top of rail and five (5) feet distant laterally from the center line of track to a point four (4) feet above the top of rail and distant laterally thirty (30) inches from the side of the widest equipment operated.

Section 10—Clearance Between Parallel Tangent Tracks

The minimum distance between the center lines of parallel tangent tracks shall be not less than the width of the widest car operated plus twenty-four (24) inches.

Section 11—Exceptions

11. 1 Minimum clearances prescribed in Sections 9 and 10 of this order may be reduced along passenger platforms subject to approval by the Commission.
11. 2 Minimum clearances prescribed in Sections 9 and 10 of this order may be reduced for trackage located in subways and tunnels or compartments thereof, which are used exclusively for railroad passenger traffic; provided that the passenger equipment operated thereon shall have all windows and other openings effectively barred.

PUBLIC ROADS, HIGHWAYS, AND STREETS CROSSING UNDER OR OVER RAILROADS AND STREET RAILROADS

Section 12—Public Roads, Highways, and Streets Crossing Under Tracks

12. 1 Where a railroad or street railroad crosses above any public road, highway, or street, a minimum overhead clearance of fourteen (14) feet shall be provided above the surface of such road, highway or street.
12. 2 Where a railroad or street railroad crosses above any public road, highway, or street on a single supporting span, a minimum width of twenty-four (24) feet shall be provided for the opening for such public road, highway or street. Where two or more supporting spans are used over the public road, highway or street, a minimum width of twelve (12) feet shall be provided for each opening.
12. 3 When the public road, highway or street is occupied by one or more tracks, minimum clearance dimensions shall be determined by this Commission for the case under consideration.

Section 13—Public Roads, Highways, and Streets Crossing Over Tracks

13. 1 Where a public road, highway, or street crosses above any railroad or street railroad track used or proposed to be used for transporting freight cars, the minimum clearances prescribed in this order for such tracks must be observed.
13. 2 Where a public road, highway, or street crosses over a railroad or street railroad track which is not used or proposed to be used for transporting freight cars, minimum clearances as prescribed in this order shall be observed.

in this order must be provided, except that a minimum overhead clearance of nineteen (19) feet above top of rail shall be provided unless otherwise ordered by the Commission.

GENERAL REQUIREMENTS

Section 14—Electrical Construction

All clearances of electrical construction over, above, adjacent to, along or across railroads and street railroads shall conform to the requirements specified in General Order No. 95, or such other and further general orders covering similar requirements as may be currently effective.

Section 15—Lesser Clearances Lawfully Created Prior to the Effective Date of This Order

Where the overhead or side clearances between a track and any building, structure or facility are less than the minimum prescribed in this order, but were lawfully created prior to the effective date thereof, the minimum clearances prescribed herein shall be provided whenever the building, structure or facility is relocated or reconstructed; however, the Commission will consider specific requests for the future continuance of heretofore lawful clearances at such reconstructed building, structure or facility when application therefor has been made as provided in subsection 16.2 of this order.

Section 16—Exemptions

16. 1 Nothing herein shall be construed as preventing the movement of material over tracks when such material is necessary in the construction or maintenance of such tracks, nor in the movement of special work equipment used in the construction, maintenance or operation of the railroad, provided such movements shall be carried on under such conditions as are necessary to provide for the safety of all concerned.
16. 2 If in any particular case, exemption from any of the requirements herein is deemed necessary by the carrier concerned, the Commission will consider the application of such carrier for such exemption when accompanied by a full statement of the conditions existing and the reason why such exemption is asked. Any exemption so granted will be limited to the particular case covered by the application.
16. 3 The Commission reserves the right to modify any of the provisions of these regulations in specific cases when, in the Commis-

sion's opinion, public safety, convenience or necessity would be served by so doing.

Section 17—Prior Orders, Decisions, and Exemptions

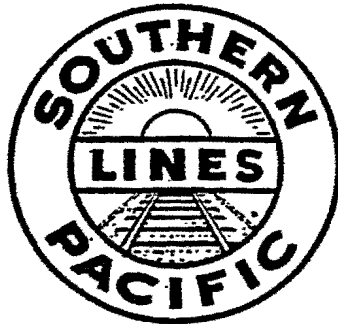
This order supersedes all regulations governing clearances between tracks of railroads or street railroads and structures or obstructions adjacent to such tracks heretofore promulgated under General Order No. 26, General Order No. 26-A, General Order No. 26-B, General Order No. 26-C, and Decisions Nos. 36007 and 39472 in Case No. 2290, provided however, that any exemption or deviation heretofore granted and now in force and effect shall not be affected by this order and shall remain in force and effect until the further order of this Commission.

This order shall be effective February 1, 1948.

Approved and dated at San Francisco, California, this 19th day of January, 1948.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

R. J. PAJALION, Secretary



WESTERN REGION TIMETABLE 4

EFFECTIVE SATURDAY, NOVEMBER 24, 1990
AT 12:01 A.M.

K. A. MOORE
Vice President - Operations

L. L. PHIPPS
General Manager

M. L. WELLS **G. R. FETTY**
Ass't General Managers

E. L. HORD
Ass't Vice President - Transportation Services

A. C. FOX
Superintendent - Transportation

Superintendents

G. A. GREBLO
Oregon Division

R. A. BAKER
Tehachapi Division

W. M. KESSINGER
Shasta Division

L. J. JENKINS JR.
Los Angeles Division

M. L. IRVINE
Sacramento Division

R. N. PETERSON
West Colton Division

H. C. BALLANCE
Stockton Division

H. L. McDOWELL
Tucson Division

H. R. KAVENY
Western Division

J. H. HIGHT
El Paso Division

EXHIBIT F
(Page 2 of 7)

COAST DISTRICT

MAXIMUM AUTHORIZED SPEED FOR TRAINS

BETWEEN		PSGR	FRT		
SAN FRANCISCO and WATSONVILLE JCT		70	60		
EASTWARD		WESTWARD			
Exceptions:	Pagr	Frt	Exceptions	Pagr	Frt
0.5 and 0.6	20	20	100.4 and 100.0	25	25
0.6 and 1.8	25	25	100.0 and 98.0	45	45
1.8 and 3.1	50	40	98.0 and 93.0	55	55
3.1 and 11.0	60	40	93.0 and 87.9	35	35
24.5 and 26.4	45	45	87.9 and 86.5	50	50
44.0 and 45.9	60	40	86.5 and 82.0	60	60
45.9 and 47.3	10	10	82.0 and 80.5	35	35
47.3 and 47.5	30	30	80.5 and 80.4	25	25
47.5 and 49.1	35	35	80.4 and 79.5	35	35
49.1 and 51.8 (55.7)	50	50	79.5 and 78.6	50	50
63.2 Spring Switch	35	35	74.0 and 73.8	60	55
73.8 and 74.0	60	55	63.0 and 56.0	60	40
78.6 and 79.5	50	50	51.8 (55.7) and 51.3	35	35
79.5 and 82.0	35	35	51.3 and 49.1	50	50
82.0 and 86.5	60	60	49.1 and 47.5	35	35
86.5 Spring Switch	25	25	47.5 and 47.3	30	30
86.5 and 93.0	35	35	47.3 and 45.9	10	10
93.0 Spring Switch	25	25	45.9 and 44.0	60	40
93.0 and 98.0	55	55	26.4 and 24.5	45	45
98.0 and 100.0	45	45	11.0 and 3.1	60	40
100.0 and 100.4	25	25	3.1 and 1.8	50	40
			1.8 and 0.6	25	25
			0.6 and 0.5	20	20

MOVEMENTS AGAINST THE CURRENT OF TRAFFIC

SAN FRANCISCO and WATSONVILLE JCT				E9		49	
EASTWARD				WESTWARD			
Exceptions:		Pagr	Frt	Exceptions:		Pagr	Frt
(San Francisco to San Jose)				(Watsonville Jct. to Logan)			
1.8 and 3.1	50	40		100.7 and 100.0	25	25	
3.1 and 7.5	59	40		100.0 and 98.0	45	45	
7.5 and 8.7*	30	30		98.0 and 93.0*	55	49	
8.7 and 10.7	50	40		(Corporal to Gairoy)			
10.7 and 11.4*	20	20		82.0 and 81.7	35	35	
11.4 and 15.0	50	49		81.7 and 80.5*	25	25	
15.0 and 17.1*	15	15		(Coyote to Lick)			
17.1 and 18.3*	20	20		61.4 and 60.6*	25	25	
18.3 and 21.7*	50	49		60.6 and 51.4	45	45	
22.3 and 26.2	25	25		(San Jose to San Francisco)			
26.2 and 29.0*	20	20		45.9 and 44.4	35	35	
29.0 and 33.0	30	30		39.2 and 34.7*	25	25	
33.0 and 38.9*	20	20		34.7 and 33.0*	40	40	
44.0 and 44.4	59	40		30.0 and 26.2*	15	15	
44.4 and 45.9*	25	25		26.2 and 23.1*	20	20	
(Lick to Coyote)				23.1 and 22.0*	35	35	
51.3 and 51.8*	35	35		18.5 and 16.0*	15	15	
57.9 and 63.1*	55	49		13.1 and 10.3*	30	30	
(Gairoy to Corporal)				10.3 and 8.9*	59	40	
80.5 and 80.6*	5	5		8.9 and 8.7*	20	20	
80.6 and 81.7*	20	20		8.7 and 3.1	59	40	
81.7 and 82.0	35	35					
(Logan to Watsonville Jct)							
93.0 and 93.6	55	49					
93.6 and 95.7	50	49					
95.7 and 98.0	55	49					
98.0 and 100.0	45	45					
100.0 and 100.4	25	25					
100.4 and 100.7	15	15					

* Rule 10(E). Speed may be increased when lead engine passes MP location.

"Key" trains must not exceed 30 MPH between the following Mile Post locations:

Camadero MP 83.2 and San Francisco MP 0.0

EXHIBIT F
(Page 3 of 7)

COAST DISTRICT

WESTWARD ↓		STATIONS		↑ EASTWARD	
Station Number	Siding Feet	Coast Line			Mile Post
13200		WATSONVILLE JCT	OT	ABS DT	100.4
		7.2			
13175		LOGAN		CTC	93.2
		6.8			
13165		CORPORAL		ABS	86.4
		3.2			
13138		CARNADERO		DT	83.2
		2.5			
13135		GILROY		D	80.7
		3.7		T	
13126		RUCKER		C	77.0
		10.7		A	
13114	6125	PERRY		B	66.3
		3.2		S	
13110		COYOTE		ABS	63.1
		7.8		DT	55.3
13085		LICK			51.4
		2.3			
...		UP CROSSING	A	CTC	49.1
		2.2			
13025		SAN JOSE	OT		46.9
		1.2			
13020		COLLEGE PARK	MO		45.7
		0.5			
13000		SAN JOSE YARD	O		45.2
		0.9			
12982		SANTA CLARA	MO		44.3
		3.5			
12978		LAWRENCE			40.8
		2.0			
12974		SUNNYVALE			38.8
		2.7			
12970		MOUNTAIN VIEW			36.1
		1.3			
12966		CASTRO			34.8
		3.0			
12962		CALIFORNIA AVE			31.8
		1.7			
12958		PALO ALTO		A	30.1
		1.2			
12954		MENLO PARK		B	28.9
		1.1			
12950		ATHERTON		S	27.8
		1.6			
12895		REDWOOD JCT			26.2
		0.8			
12890		REDWOOD CITY		D	25.4
		2.2			
12884	MJ2105	SAN CARLOS		T	23.2
		1.3			
12882		BELMONT			21.9
		1.6			
12878		HILLSDALE			20.3
		1.4			
12870		HAYWARD PARK			18.9
		1.0			
12866		SAN MATEO			17.9
		1.6			
12854		BURLINGAME			16.3
		1.1			
12850		BROADWAY			15.2
		1.5			
12840	M1825	MILLBRAE			13.7
		2.1			
12824		SAN BRUNO			11.6
		2.3			
12800		SO SAN FRANCISCO			9.3
		0.7			
12790		BUTLER ROAD			8.6
		3.4			
12780		BAYSHORE	M		5.2
		1.1			
12775		PAUL AVE			4.1
		2.2			
...		22nd STREET			1.9
		1.9			
12710		SAN FRANCISCO	MOJ		0.0
(96.5)					

SOUTHERN PACIFIC LINES

EXHIBIT F
(Page 4 of 7)

July 26, 1991

COAST DISTRICT General Order No. 6

ITEM 1. CANCELLATION OF GENERAL ORDERS 1 THROUGH 5:

General Orders 1 through 5 are cancelled. (Applicable contents of those General Orders are included in this General Order.)

ITEM 2. DELETION TO TIMETABLE, PAGE 57:

Delete the letters QY following San Luis Obispo in the station column.

ITEM 3. REVISION TO TIMETABLE, PAGE 60:

Revise MAXIMUM AUTHORIZED SPEED FOR TRAINS, Coast Line that part reading:

Westward	Psg	Frt
~~63.0 and 56.0.....~~	~~60~~	~~40~~

To read:

63.0 and 56.0.....	70	60
--------------------	----	----

ITEM 4. ADDITION TO TIMETABLE, PAGE 64:

Following is added:

RULE 82(A). Magnolia Tower: Switching movement from 50 and 70 leads that have entered interlocking limits on restricting aspect may make reverse and forward movements within interlocking limits without further authority from interlocking operator.

ITEM 5. REVISION TO TIMETABLE, PAGE 64:

Revise RULE 93 Location of Yard Limits that part reading:

~~34.2 Warm Springs.....~~~~40.1~~

To read:

34.2 Warm Springs.....38.1

ITEM 6. REVISION TO TIMETABLE, PAGE 66:

Revise RULE 109(C) Trackside Detectors that part reading:

~~139.6~~ ~~E1~~

To read:

139.6 E1, E2

COAST DISTRICT (Cont.)
General Order No. 6

ITEM 7. REVISION TO TIMETABLE, PAGE 66:
Revise RULE 241 San Jose to read:

Between the hours of 6:15 AM and 10:15 PM daily when signals 463, 463.5, 464, 465, 466 or 467 display red aspect, trains and engines must not pass signal until proceed signal is received from switchman at the Alameda.

ITEM 8. DELETION TO TIMETABLE, PAGE 66:
Delete from RULE 251 that portion of the first paragraph reading "LICK and Coyote".

ITEM 9. REVISION TO TIMETABLE PAGE 66:
Revise RULE 251 Definition. Cal Trans Commute Fleet Operations part (2) to read:
(2) Applies Monday through Friday except holidays on the eastward main track during a time period commencing 15 minutes before Train No.52 is due to leave the last preceding station where time is shown and ending with the arrival of No.72 at that station.

ITEM 10. ADDITION TO TIMETABLE, PAGE 69:
Following is added:

RULE 312(4) Coyote: When non-controlled absolute signal displays Stop indication, crew member must operate push button located near signal on eastward main track to clear signal. Push button has a 5 minute 40 second delay. If signal fails to clear, comply with Rule 317.

ITEM 11. ADDITION TO TIMETABLE, PAGE 69:
Add to RULE 314(A) the following:

Eastward	Protection	Westward
898.....	Slide Detector MP 90.4.....	925

ITEM 12. REVISION TO TIMETABLE PAGE 70:
Revise RULE 480 that portion under Milpitas Line reading:

40.1*.....Milpitas.....46.6

To read:

38.1*.....Milpitas.....46.6

COAST DISTRICT (Cont.)
General Order No. 6

ITEM 13. ADDITION TO TIMETABLE, PAGE 70:
Add the following to RULE 480:

<u>WEST MP</u>	<u>BLOCK NAME</u>	<u>EAST MP</u>
	Coast Line	
	Eastward Track	
51.4.....	Lick.....	63.1
	Westward Track	
51.4.....	Coyote.....	63.1

ITEM 14. REVISION TO TIMETABLE, PAGE 70:
Revise RULE 650 San Jose to read:

San Jose: Between the hours of 6:15 AM and 10:15 PM daily, when Signal 464 or lower unit of Signal 466 displays yellow aspect, movement into Track No. 1, 2, 3, or 4 must not be made until proceed signal is received from switchman at the Alameda.

Between the hours of 6:15 AM and 10:15 PM daily, starting indicators for westward trains on station Track Nos. 1, 2, 3 are controlled by switchman at the Alameda, and when displaying red aspect must not be passed unless proceed signal is received from switchman. When indicator displays yellow aspect, it permits movement to Signal 465.

ITEM 15. REVISION TO TIMETABLE, PAGE 70:
Reference to AIR BRAKE RULE 933, RULE 966 and RULE 967 are revised to read RULE 919, RULE 928 and RULE 947 respectively.

L. L. PHIPPS
General Manager

Posted by:

Date:

Time:

EXHIBIT F
(Page 7 of 7)

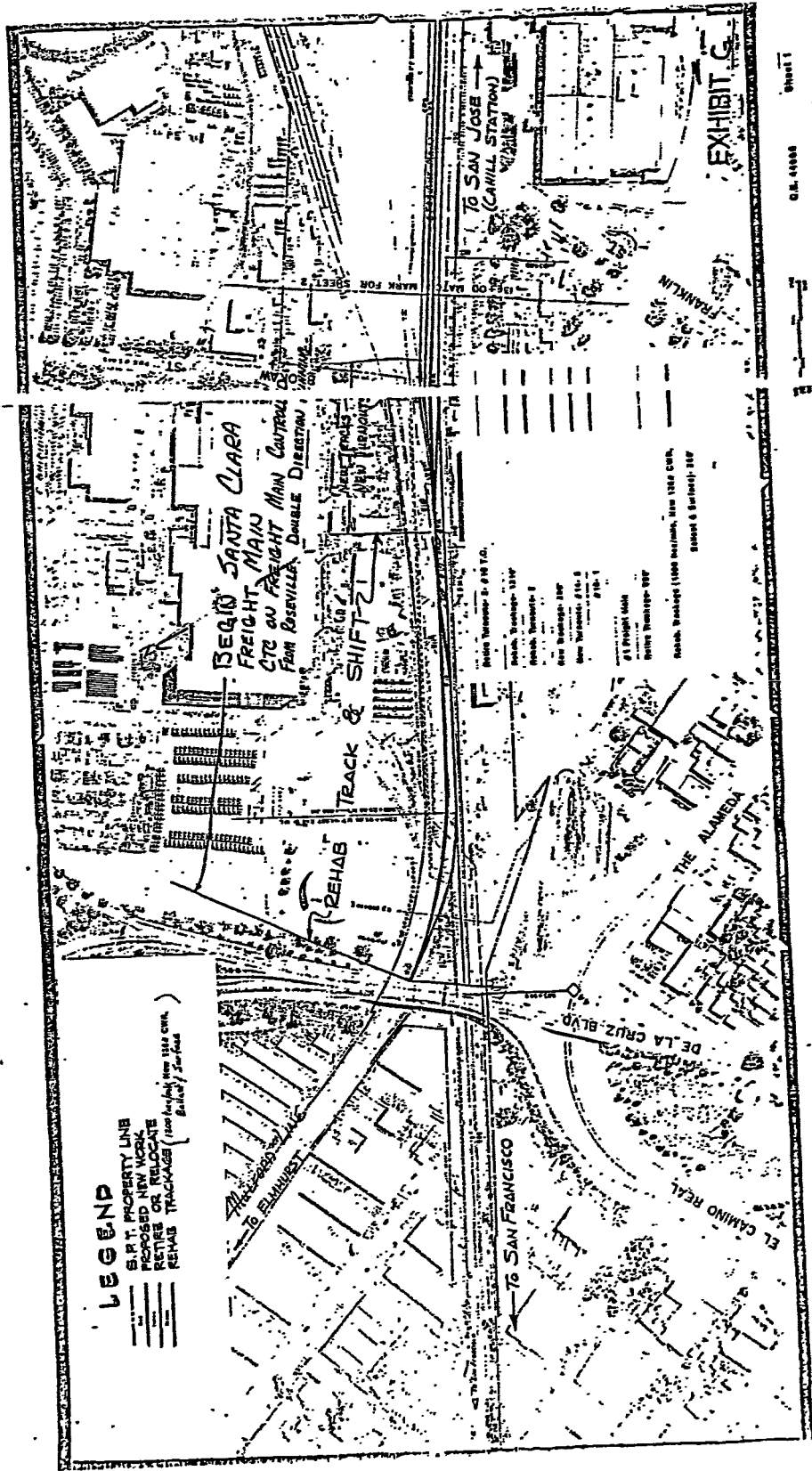
TRACK BULLETIN 5916 IN EFFECT BETWEEN SD AND NA DEC 05 1991

=====

DO NOT EXCEED SPEED INDICATED BELOW BETWEEN
SAN JOSE AND SALINAS

AT THE FOLLOWING LOCATIONS

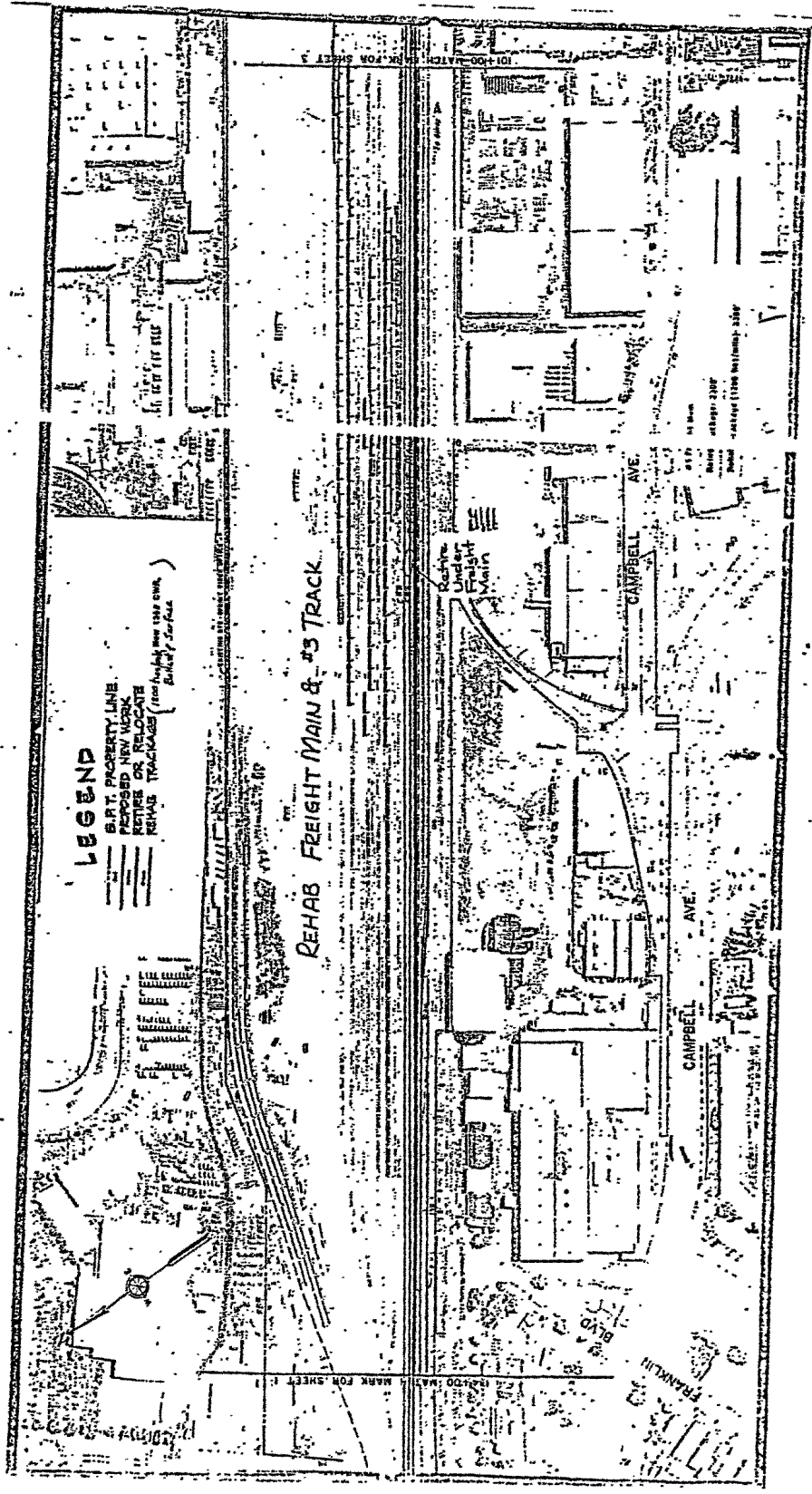
TRAIN	MPH	RESTRICTION LIMIT
01 ALL	10	MP 47.6 TO MP 49.1
		YELLOW FLAG AT MP 47.5 FOR EASTWARD TRAINS
		YELLOW FLAG AT MP 50.9 FOR WESTWARD TRAINS
02 ALL	30	MP 106.5 TO MP 106.7

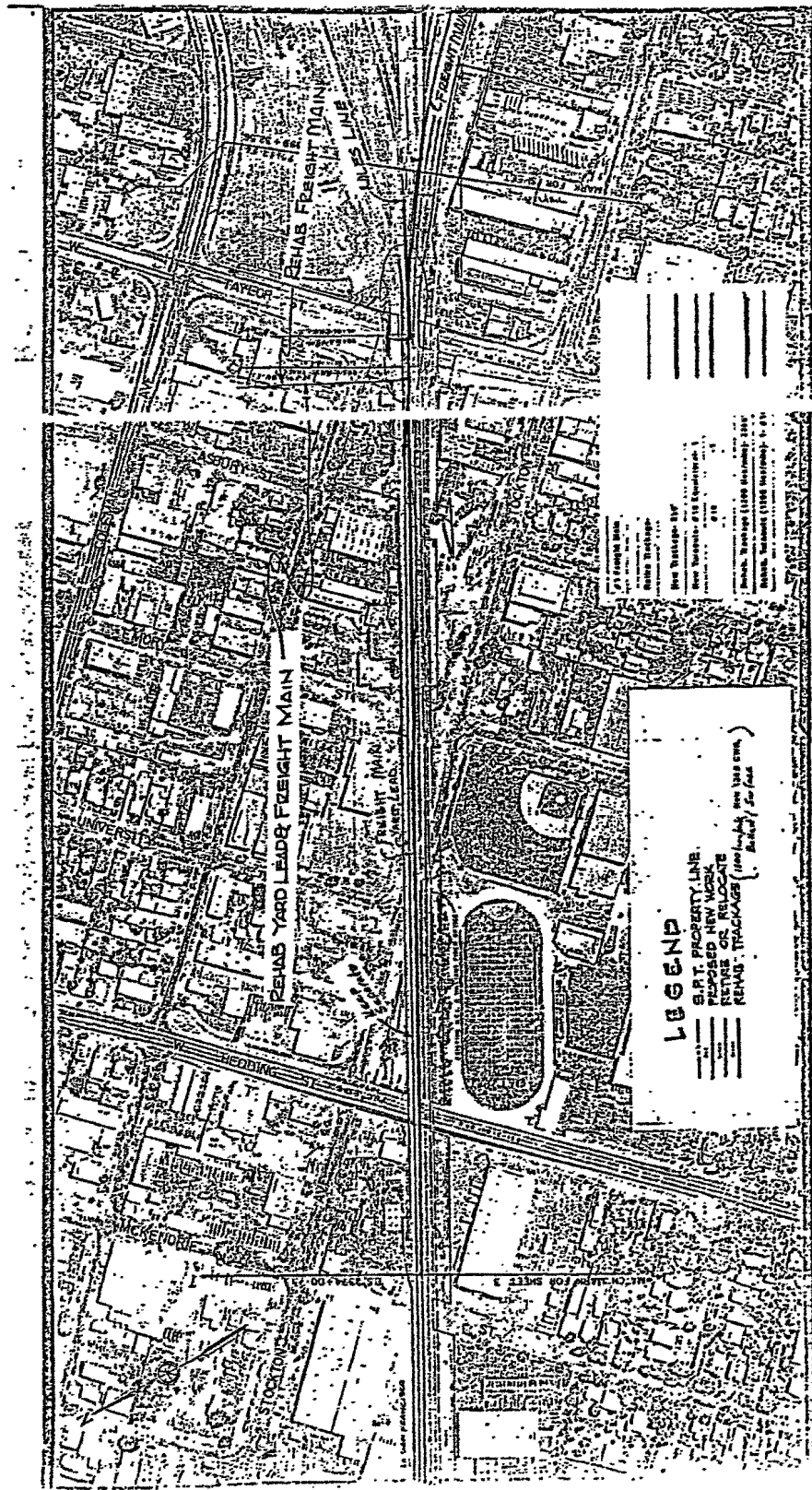


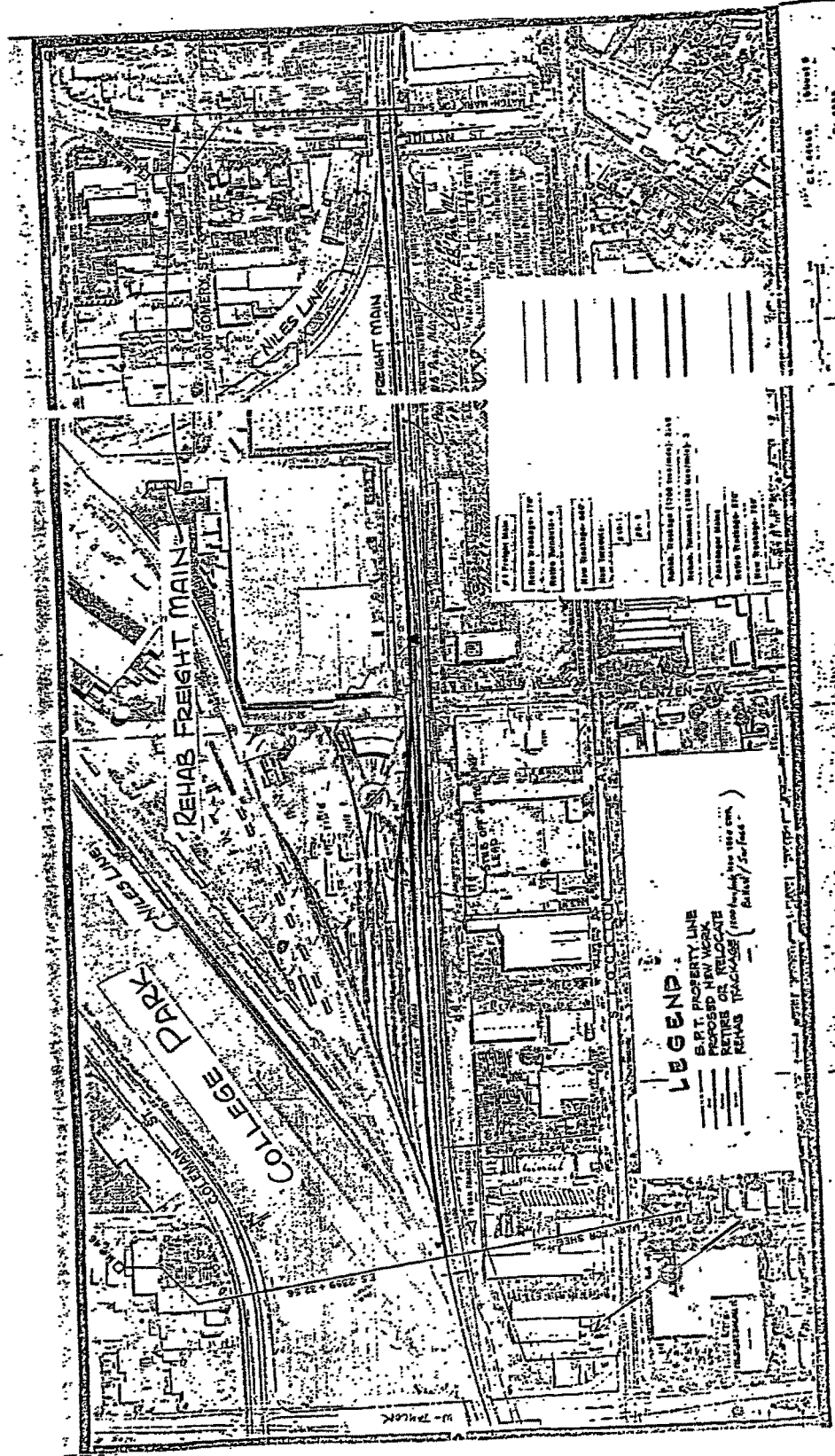
LEGEND

- S.P.T. PROPERTY LINE
- PROPOSED NEW WORK
- RETIRED OR RELOCATE
- REHAB TRACKS (1000' long)

REHAB FREIGHT MAIN & #3 TRACK







page 1 of 12

REHABILITATE FREIGHT MAIN
SANTA CLARA TO JULIEN STREET

NEW CONSTRUCTION	\$360,059
REHABILITATE	\$1,050,705
SIGNAL	<u>\$569,369</u>
GRAND TOTAL	\$1,980,133

Exhibit G

page 2 of 12

3-NOV-83

REHABILITATION OF THE FREIGHT MAIN
SANTA CLARA TO JULIEN ST.

EIN	DESCRIPTION	UNIT	QUANTITY	LABOR	MATERIAL	OTHER	A-CASH	TOTAL EIN
NEW CONSTRUCTION RELAY								
621	CONSTRUCT TRACK	TF	1370	5753	0	2934	977	8697
621	CROSSSTIES 7X9X9	EA	843	0	20257	0	0	20257
624	INSTALL RAIL	TF	1370	3596	0	1934	611	5430
624	NEW RAIL - SPT	NT	61.65	0	30927	0	0	30927
629	FIELD WELDS	EA	8	888	552	453	151	1893
632	SURFACE & INSTALL BALLAST	TF	1370	2677	0	1467	489	4344
632	BALLAST	NT	1521	0	7985	0	0	7985
634	INSTALL OTM	TF	1370	2157	0	1100	356	3257
634	NEW 132-136# TIE PLATES 14"	EA	1686	0	5913	0	0	5913
634	NEW ANTI CREEPERS 5.5/6"	EA	3372	0	3035	0	0	3035
634	NEW TRACK SPIKES	EA	6946	0	1369	0	0	1369
TOTAL NEW CONSTRUCTION RELAY				15271	71658	7786	2593	34117

page 3 of 12

13-NOV-55

REHABILITATION OF THE FREIGHT MAIN
SANTA CLARA TO JULIEN ST.

EIN	DESCRIPTION	UNIT	QUANTITY	LABOR	MATERIAL	OTHER	N-CASH	TOTAL EIN
NEW CONSTRUCTION TURNOUTS								
524	NEW RAIL - SPT - TURNOUTS	NT	41.95	0	20394	0	0	20394
527	SWITCH TIES #16	ST	1	0	4237	0	0	4237
527	SWITCH TIES #14	ST	2	0	5554	0	0	5554
527	SWITCH TIES #10	ST	3	0	5261	0	0	5261
527	SWITCH TIES #9	ST	1	0	1548	0	0	1548
532	BALLAST	NT	1529	0	5027	0	0	5027
529	FIELD WELDS	EA	95	3545	5934	4568	1521	20346
530	NEW 136# SWITCH INS 24'	EA	3	0	15937	0	0	15937
530	NEW 136# SWITCH R-INS 16-5'	EA	4	0	14750	0	0	14750
530	NEW SWITCH STAND WITH RODS	EA	7	0	3558	0	0	3558
530	NEW 136# FROGS WITH PLATES RB #16	EA	1	0	5519	0	0	5519
530	NEW 136# FROGS WITH PLATES RB #14	EA	2	0	9360	0	0	9360
530	NEW 136# FROGS WITH PLATES RB #10	EA	3	0	9123	0	0	9123
530	NEW 136# FROGS WITH PLATES SG #9	EA	1	0	2473	0	0	2473
530	NEW 136# GUARD RAIL 15'	EA	14	0	3772	0	0	3772
530	NEW 136# SWITCH POINT PROTECTORS	EA	7	0	5298	0	0	5298
534	NEW 112-136# TRACK BOLTS	EA	159	0	495	0	0	495
534	NEW 132-136# TIE PLATES 14"	EA	3156	0	12981	0	0	12981
534	NEW ANTI CREEPERS 5.5/6"	EA	5114	0	5503	0	0	5503
534	NEW TRACK SPIKES	EA	9539	0	1708	0	0	1738
524	INSTALL RAIL ON T.O. #16	EA	1	333	0	476	158	1409
524	INSTALL RAIL ON T.O. #14	EA	2	1783	0	509	303	2592
524	INSTALL RAIL ON T.O. #10	EA	3	1383	0	1001	333	2954
524	INSTALL RAIL ON T.O. #9	EA	1	510	0	311	104	921
527	INSTALL SWITCH TIES #16 SET	EA	1	747	0	381	127	1128
527	INSTALL SWITCH TIES #14 SET	EA	2	1426	0	727	242	2153
527	INSTALL SWITCH TIES #10 SET	EA	3	1570	0	801	267	2371
527	INSTALL SWITCH TIES #9 SET	EA	1	489	0	249	83	737
530	INSTALL SWITCH POINT & #16 FROG	EA	1	533	0	476	158	1409
530	INSTALL SWITCH POINT & #14 FROG	EA	2	1723	0	509	303	2632
530	INSTALL SWITCH POINT & #10 FROG	EA	3	1983	0	1001	333	2954
530	INSTALL SWITCH POINT & #9 FROG	EA	1	510	0	311	104	921
532	SURFACE TURNOUT #16	EA	1	747	0	381	127	1128
532	SURFACE TURNOUT #14	EA	2	1426	0	727	242	2153
532	SURFACE TURNOUT #10	EA	3	1570	0	801	267	2371
532	SURFACE TURNOUT #9	EA	1	489	0	249	83	737
534	INSTALL OTM ON #16 T.O.	EA	1	373	0	190	53	553
534	INSTALL OTM ON #14 T.O.	EA	2	713	0	364	121	1077
534	INSTALL OTM ON #10 T.O.	EA	3	725	0	400	133	1135
534	INSTALL OTM ON #9 T.O.	EA	1	244	0	124	41	369
TOTAL NEW CONSTRUCTION TURNOUTS				30701	149310	15558	5214	195569
GRADING								
	CRUSHED ROCK BASE	LT	1	0	0	3000	0	3000
		LT	1	0	0	10000	0	10000
TOTAL GRADING				0	0	13000	0	13000

11-Nov-57

REHABILITATION OF THE FREIGHT MAIN
SANTA CLARA TO JULIEN ST.

EIN	DESCRIPTION	UNIT	QUANTITY	LABOR	MATERIAL	OTHER	H-CASH	TOTAL EIN
	TOTAL RAIL RELAY, TURNOUTS & GRADING			45972	220368	36446	7897	302786
	ENGINEERING			1379	0	703	234	2983
	ADDITIVES 105.25%			0	0	48390	0	48390
	MATERIAL 1%			0	0	2204	0	2204
	CONTINGENCIES			0	0	4597	0	4597
	TOTAL NEW CONSTRUCTION			47351	220368	92340	8042	360059

REHABILITATION OF THE FREIGHT MAIN
SANTA CLARA TO JULIEN ST.

FIN	DESCRIPTION	UNIT	QUANTITY	LABOR	MATERIAL	OTHER	N-CASH	TOTAL FIN
REHABILITATE TRACK								
621	CROSSTIES 7X9X9	EA	2537	0	50963	0	0	60363
621	CONSTRUCT TRACK	TF	11162	23603	0	12038	4008	35541
624	NEW RAIL - SPT -	NT	506	0	253734	0	0	253734
625	INSTALL RAIL	TF	11162	29505	0	15048	5011	44553
629	FIELD WELDS	EA	18	9546	1242	4958	1521	15556
632	BALLAST	NT	5972	0	30828	0	0	30828
632	SURFACE & INSTAL. BALLAST	TF	11162	23604	0	12038	4009	35542
634	NEW 132-135# TIE PLATES 14"	EA	12250	0	50266	0	0	50266
634	NEW ANTI CREEPERS 5.5/6"	EA	24520	0	22058	0	0	22058
634	NEW TRACK SPIKES	EA	60942	0	10198	0	0	10198
634	INSTALL OTM	TF	11240	17702	0	9028	3006	25730
660	REMOVE TRACKAGE & TIES	TF	17230	30497	0	18553	5179	46050
660	REMOVE TIES (RAIL IN)	EA	414	993	0	506	159	1499
660	REMOVE TIES (RAIL CUT)	EA	7170	11113	0	5568	1987	16781
TOTAL REHABILITATE TRACK				145552	423299	74747	24391	650509

Nov-31

REHABILITATION OF THE FREIGHT MAIN
SANTA CLARA TO JULIEN ST.

IN	DESCRIPTION	UNIT	QUANTITY	LABOR	MATERIAL	OTHER	N-CASH	TOTAL EIN
REHABILITATE TURNOUTS								
324	NEW RAIL - SPT - TURNOUTS	NT	33	0	15592	0	0	15592
324	INSTALL RAIL ON T.O. #14	EA	2	1783	0	909	303	2692
324	INSTALL RAIL ON T.O. #10	EA	3	1963	0	1001	333	2964
324	INSTALL RAIL ON T.O. #9	EA	1	610	0	311	104	921
327	SWITCH TIES #14	ST	2	0	5554	0	0	5554
327	SWITCH TIES #10	ST	5	0	10435	0	0	10435
327	SWITCH TIES #9	ST	1	0	1548	0	0	1548
27	INSTALL SWITCH TIES #14 SET	EA	2	1426	0	727	242	2153
27	INSTALL SWITCH TIES #10 SET	EA	5	2618	0	1335	445	3953
27	INSTALL SWITCH TIES #9 SET	EA	1	488	0	249	83	737
29	FIELD WELDS	EA	68	9546	4692	4868	1521	19106
30	NEW 136# SWITCH INS 24'	EA	2	0	10658	0	0	10658
30	NEW 136# SWITCH R-INS 16-5'	EA	4	0	14760	0	0	14760
30	NEW SWITCH STAND WITH RODS	EA	6	0	3144	0	0	3144
30	NEW 136# FROGS WITH PLATES RB #14	EA	2	0	9360	0	0	9360
30	NEW 136# FROGS WITH PLATES RB #10	EA	3	0	9123	0	0	9123
30	NEW 136# FROGS WITH PLATES SG #9	EA	1	0	2473	0	0	2473
30	NEW 136# GUARD RAIL 15'	EA	12	0	8376	0	0	8376
30	NEW 136# SWITCH POINT PROTECTORS	EA	6	0	4464	0	0	4464
0	INSTALL SWITCH POINT & #14 FROG	EA	2	1783	0	909	303	2692
0	INSTALL SWITCH POINT & #10 FROG	EA	3	1963	0	1001	333	2964
0	INSTALL SWITCH POINT & #9 FROG	EA	1	610	0	311	104	921
2	BALLAST	NT	1304	0	5846	0	0	5846
2	SURFACE TURNOUT #14	EA	2	1426	0	727	242	2153
2	SURFACE TURNOUT #10	EA	5	2618	0	1335	445	3953
2	SURFACE TURNOUT #9	EA	1	488	0	249	83	737
4	NEW 112-136# TRACK BOLTS	EA	104	0	306	0	0	306
1	NEW 132-136# TIE PLATES 14"	EA	1624	0	6658	0	0	6658
1	NEW ANTI CREEPERS 5.5/6"	EA	1892	0	1021	0	0	1021
1	NEW TRACK SPIKES	EA	7768	0	1554	0	0	1554
1	INSTALL OTM ON #14 T.O.	EA	2	713	0	364	121	1077
1	INSTALL OTM ON #10 T.O.	EA	3	785	0	400	133	1185
1	INSTALL OTM ON #9 T.O.	EA	1	244	0	124	41	368
1	REMOVE #14 TURNOUT 145'	EA	2	1176	0	600	200	1776
1	REMOVE #10 TURNOUT 115'	EA	4	2164	0	1104	368	3268
1	REMOVE #9 TURNOUT 100'	EA	10	5040	0	2570	856	7610
TOTAL REHABILITATE TURNOUTS				37444	117664	19096	6359	174204
TOTAL REHABILITATE TRACK & TURNOUTS				184007	546963	93844	31250	824813
ENGINEERING				5520	0	2815	937	8336
ADDITIVES 105.26%				0	0	193686	0	193686
MATERIAL 1%				0	0	5470	0	5470
CONTINGENCIES				0	0	18401	0	18401
TOTAL REHABILITATION				189527	546963	314215	32187	1050705

DETAIL OF ESTIMATE
SUMMARY BY LINE NUMBERS

PAGE 7 OF 12

FORM 30 NUMBER:

GMO MO YR

04/02/91

C.S. F-30

MKK

FILE # 925165/564

DIVN. SACRAMENTO

STATION: COLLEGE PARK

SUBJECT: INSTALL FOUR ELECIC LOCKS AND THREE SELECTORED WIRED
SWITCHES

ADDITIVES

EIN	DESCRIPTION	LABOR	MATERIAL	OTHER
	SUB TOTAL	23550	76355	935
	EQUIPMENT RENTAL			8245 NC 2060
	PRELIMINARY ENGINEERING	2000		
	ADDITIVES <i>labor 105,267.0</i>			~~11100~~ 24789
	CONTINGENCIES <i>170</i>	2555	7635	2045 .764
360	SIGNAL WORK	28105	83990	~~2245~~ 36778

~~134580~~
148873

OPERATING EXPENSES

EIN	DESCRIPTION	LABOR	MATERIAL	OTHER
60	SIGNAL WORK OPERATING	0	5000	
	DEBIT OPERATING CASH 5000			5000

SUMMARY BY LINE NUMBERS

Page 9 OF 12

FORM 30 NUMBER:

GMO MO YR

04/02/91

C.S. F-30

MKK

FILE = 925165/564

DIVN. SACRAMENTO

STATION: COLLEGE PARK

SUBJECT: INSTALL FOUR ELECRIK LOCKS AND THREE SELECTORED WIRED SWITCHES

MATERIAL

SURGE SUPPRESSORS	LT	1	\$	320.00
BATT. NICAD (160 AMP HOUR CELLS)	EA	9	\$	770.00
AUTOMATIC RECTIFIER (10 AMP)	EA	1	\$	370.00
POWER PANEL W/BREAKER & GFI	EA	1	\$	50.00
DAYTON FAN AND THERMOSTAT	EA	1	\$	55.00
RELAY HOUSING (41")	EA	1	\$	950.00
RLY HOUSING FOUNDATION PIERS FOR CASE	EA	2	\$	130.00
PLUG-IN LINE RELAY (RLT)	EA	24	\$	5930.00
PLUG-IN TIME RELAY (RUK)	EA	4	\$	4860.00
INSULATED BONDSTRAND	FT	1600	\$	510.00
UNDERGROUND CABLE 5C # 14	FT	100	\$	80.00
UNDERGROUND CABLE 10C # 14	FT	220	\$	195.00
SHOP MATERIAL	LT	1	\$	250.00
INSULATED JOINTS	EA	16	\$	4400.00
ELECTRO CODE	EA	6	\$	29330.00
EPIC III	EA	4	\$	1660.00
SWITCH TIE	EA	7	\$	245.00
ELECTRIC LOCK (UN248296-001) 221021640	EA	4	\$	13755.00
JCT BOX (091313207X SAFE) 221255950)	EA	7	\$	950.00
LUG (UM346589) 221033940	EA	7	\$	330.00
BALL STUD (UN211687) 220068860	EA	7	\$	155.00
LOCK ROD (UN435538) 221034930	EA	4	\$	860.00
FRONT ROD (UN237118) 221031700	EA	7	\$	695.00
U-5 CIRCUIT CONT. W/LUG STRP & ROD SET	EA	7	\$	6530.00
AC SERVICE MATERIAL	LT	1	\$	750.00
MISC SIGNAL MATERIAL	LT	1	\$	2225.00

TOTAL AMOUNT FOR MATERIALS \$ 76355.00

LABOR COSTS

ELECTRICAL LABOR	\$ 750.00
TRACK LABOR	\$ 3200.00
SIGNAL LABOR	\$ 16330.00
SIGNAL SHOP LABOR	\$ 935.00
TRAVEL EXPENSE	\$ 2335.00

TOTAL LABOR \$ 23550.00

PERSONAL EXPENSES \$ 935.00

DETAIL OF ESTIMATE
SUMMARY BY LINE NUMBERS

Page 9 of 12

FORM 30 NUMBER:

GMO MO YR

12/12/90

C.S. F-30

MKK

FILE #

DIVN. SACRAMENTO

MILEPOST E-45.9

VAL SEC CAL-73

STATION: COLLEGE PARK

SUBJECT: INSTALL TWO SINGLE POWER TURNOUTS

LABOR COSTS

ELECTRICAL LABOR	\$	750.00
TRACK LABOR	\$	2400.00
SIGNAL LABOR	\$	17495.00
SIGNAL SHOP LABOR	\$	5830.00
TRAVEL EXPENSE	\$	2500.00

TOTAL LABOR \$ 28975.00

PERSONAL EXPENSES

\$ 1000.00

ADDITIVES

EIN	DESCRIPTION	LABOR	MATERIAL	OTHER
---	-----	-----	-----	-----
	SUB TOTAL	28975	146935	1000
	EQUIPMENT RENTAL			10140 NC 253
	PRELIMINARY ENGINEERING	5000		
	ADDITIVES <i>labor 103.22%</i>			~~14975~~ 30499
	CONTINGENCIES <i>MKK 1%</i>	3400	14695	2610 1469
360	SIGNAL WORK	37375	161630	~~28725~~ 45718

24470

OPERATING EXPENSES

EIN	DESCRIPTION	LABOR	MATERIAL	OTHER
---	-----	-----	-----	-----
460	SIGNAL WORK OPERATING	0	10000	0

DEBIT OPERATING CASH 10000

10000

NOTE: ESTIMATE IS BASED ON CALTRANS REBUILDING & RELOCATING CONTROL OF INTERLOCKINGS. NEW POWER SWITCHES CANNOT BE ADDED TO EXISTING MECHANICAL INTERLOCKINGS.

SUMMARY BY LINE NUMBERS

Page 10 OF 12

FORM 30 NUMBER:

GMO MO YR

12/12/90

C.S. F-30

MKK

FILE #

DIVN. SACRAMENTO

MILEPOST E-45.9

STATION: COLLEGE PARK

SUBJECT: INSTALL TWO SINGLE POWER TURNOUTS

MATERIAL

1TC DC/DC CONVERTER	EA	3	\$	825.00
2TC DC/DC CONVERTER	EA	1	\$	305.00
SURGE SUPPRESSORS	LT	1	\$	1240.00
BATT. NICAD (240 AMP HOUR CELLS)	EA	27	\$	3255.00
AUTOMATIC RECTIFIER (40 AMP)	EA	3	\$	1695.00
FLASHER REGULATORS	EA	4	\$	1130.00
POWER PANEL W/BREAKER & GFI	EA	1	\$	50.00
POR TRANSFORMER	EA	1	\$	5.00
POR RELAY	EA	1	\$	25.00
RELAY HOUSING (10 X 12)	EA	1	\$	12000.00
RLY HOUSING FOUNDATION PIERS FOR HOUSE	EA	6	\$	480.00
PLUG-IN LINE RELAY (RLT)	EA	90	\$	22230.00
PLUG-IN TRACK RELAY (RTM)	EA	6	\$	1950.00
PLUG-IN POLARITY CHECK RELAY (RBM)	EA	1	\$	500.00
PLUG-IN LIGHT OUT RELAY (RXS)	EA	16	\$	6000.00
PLUG-IN SWITCH CONTROL RELAY (RWN)	EA	4	\$	1900.00
PLUG-IN SWITCH OVERLOAD RLY. (RWO)	EA	2	\$	610.00
PLUG-IN LINE SERIES RELAY (RLY)	EA	4	\$	1360.00
PLUG-IN TIME RELAY (RUK)	EA	4	\$	4860.00
INSULATED BONDSTRAND	FT	2500	\$	2500.00
UNDERGROUND CABLE 2C # 6	FT	2000	\$	1480.00
UNDERGROUND CABLE 5C # 14	FT	500	\$	405.00
UNDERGROUND CABLE 10C # 8	FT	2000	\$	3520.00
UNDERGROUND CABLE 16C COMBO. (8#8, 8#14)	FT	600	\$	1270.00
SHOP MATERIAL	LT	1	\$	1500.00
INSULATED JOINTS	EA	12	\$	3300.00
M-23A SWITCH MACHINE	EA	2	\$	22650.00
SET GAUGE PLATES	EA	2	\$	4430.00
RODS SW. PT. ROLLERS, & TIES	EA	2	\$	2920.00
HELPER ROD SET UP	EA	2	\$	4400.00
TWO UNIT COLORLIGHT SIGNAL	EA	4	\$	11880.00
SIGNAL FOUNDATIONS	EA	4	\$	455.00
RECORDER 64 INPUT	LT	1	\$	6000.00
FIELD CODE UNIT & EMERGENCY PANEL	LT	1	\$	5000.00
ELECTROCODE 4H	EA	2	\$	9775.00
LC SERVICE MATERIAL	LT	1	\$	750.00
WISC SIGNAL MATERIAL	LT	1	\$	4280.00

TOTAL AMOUNT FOR MATERIALS \$ 146935.00

DETAIL OF ESTIMATE
SUMMARY BY LINE NUMBERS

Page 11 of 12

FORM 30 NUMBER:

GMO MO YR

07/30/91
C.S. F-30
MKK
FILE = E-44.3
DIVN. SACRAMENTO
MILEPOST E-44.3
VAL SEC CAL-73

STATION: SANTA CLARA
SUBJECT: INSTALL SINGLE POWER TURNOUT

ADDITIVES

EIN	DESCRIPTION	LABOR	MATERIAL	OTHER
	SUB TOTAL	20710	90860	665
	EQUIPMENT RENTAL			7250 NC 1815
	PRELIMINARY ENGINEERING	5000		
	ADDITIVES { Labor 115,267	2570	9085	11330 21,799
	CONTINGENCIES { Mat 170			1925 909
360	SIGNAL WORK	28280	99945	21170 32548

149295
160773

NOTE: ESTIMATE IS BASED ON CALTRANS REBUILDING & RELOCATING CONTROL OF INTERLOCKING. NEW POWER SWITCHES CANNOT BE ADDED TO EXISTING MECHANICAL INTERLOCKING.

FORM 30 NUMBER:

Page 12 OF 12

07/30/91

C.S. F-30

MKK

FILE = E-44.3

DIVN. SACRAMENTO

MILEPOST E-44.3

STATION: SANTA CLARA

SUBJECT: INSTALL SINGLE POWER TURNOUT

MATERIAL

1TC DC/DC CONVERTER	EA	2	\$	550.00
2TC DC/DC CONVERTER	EA	1	\$	305.00
SURGE SUPPRESSORS	LT	1	\$	1240.00
BATT. NICAD (240 AMP HOUR CELLS)	EA	27	\$	3255.00
AUTOMATIC RECTIFIER (40 AMP)	EA	3	\$	1695.00
FLASHER REGULATORS	EA	1	\$	280.00
POWER PANEL W/BREAKER & GFI	EA	1	\$	50.00
POR TRANSFORMER	EA	1	\$	5.00
POR RELAY	EA	1	\$	25.00
RELAY HOUSING (10 X 8)	EA	1	\$	12000.00
RLY HOUSING FOUNDATION PIERS FOR HOUSE	EA	6	\$	480.00
PLUG-IN LINE RELAY (RLT)	EA	50	\$	12350.00
PLUG-IN TRACK RELAY (RTM)	EA	3	\$	975.00
PLUG-IN POLARITY CHECK RELAY (RBM)	EA	1	\$	500.00
PLUG-IN LIGHT OUT RELAY (RXS)	EA	2	\$	750.00
PLUG-IN SWITCH CONTROL RELAY (RWN)	EA	2	\$	950.00
PLUG-IN SWITCH OVERLOAD RLY. (RWO)	EA	1	\$	305.00
PLUG-IN LINE SERIES RELAY (RLY)	EA	4	\$	1360.00
PLUG-IN TIME RELAY (RUK)	EA	2	\$	2430.00
INSULATED BONDSTRAND	FT	1500	\$	1500.00
UNDERGROUND CABLE 2C # 6	FT	1000	\$	740.00
UNDERGROUND CABLE 10C # 8	FT	2000	\$	3520.00
UNDERGROUND CABLE 16C COMBO. (8#8, 8#14)	FT	700	\$	1485.00
SHOP MATERIAL	LT	1	\$	1500.00
INSULATED JOINTS	EA	4	\$	1100.00
M-23A SWITCH MACHINE	EA	1	\$	11325.00
SET GAUGE PLATES	EA	1	\$	2215.00
RODS SW. PT. ROLLERS, & TIES	EA	1	\$	1460.00
HELPER ROD SET UP	EA	1	\$	2200.00
THREE UNIT COLORLIGHT SIGNAL	EA	1	\$	3910.00
SIGNAL FOUNDATIONS	EA	1	\$	115.00
RECORDER 64 INPUT	LT	1	\$	6000.00
FIELD CODE UNIT & EMERGENCY PANEL	LT	1	\$	6000.00
ELECTROCODE 4H	EA	1	\$	4890.00
AC SERVICE MATERIAL	LT	1	\$	750.00
MISC SIGNAL MATERIAL	LT	1	\$	2645.00

TOTAL AMOUNT FOR MATERIALS \$ 90860.00

LABOR COSTS

ELECTRICAL LABOR	\$	750.00
TRACK LABOR	\$	800.00
SIGNAL LABOR	\$	11665.00
SIGNAL SHOP LABOR	\$	5830.00
TRAVEL EXPENSE	\$	1665.00

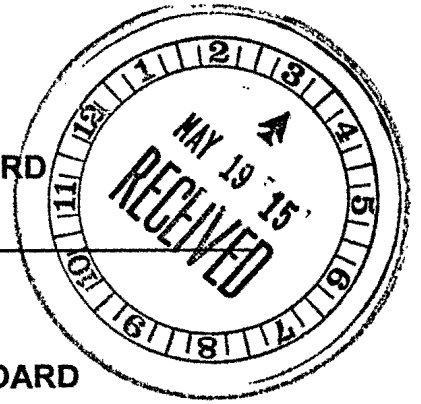
TOTAL LABOR \$ 20710.00

PERSONAL EXPENSES \$ 665.00

EXHIBIT H

<u>Location</u>	<u>Description</u>
1. San Francisco	Rent 2 tracks at 7th and Townsend
2. So. San Francisco	Spur track north of passenger station and parking lot serving User's customer
3. So. San Francisco	At MP 10, 1,000 ft. long storage track for User's customer
4. San Bruno	Spur track serving User's customer
5. Redwood City	Near 8th St. and Dumbarton Way spur track for User's customer
6. Castro (Mt. View)	Spur track, MP 35.45 near Higdon Ave. for User's customer
7. Sunnyvale	Spur track for User's customer (to the extent on Owner's property)
8. Santa Clara	Spur track near Scott Blvd., MP 42.9, serving User's customer (to the extent on Owner's property)
9. Santa Clara	A small portion of spur track at MP 45, Newhall St. for User's customer

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 35929

PENINSULA CORRIDOR JOINT POWERS BOARD

VERIFIED PETITION FOR A DECLARATORY ORDER

VOLUME II OF II

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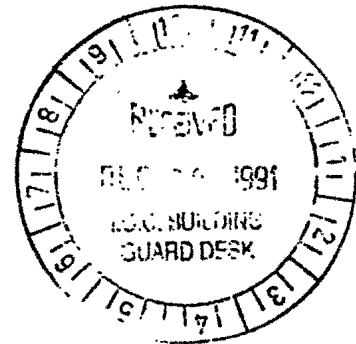
EXHIBIT 3

**BEFORE THE
INTERSTATE COMMERCE COMMISSION**

FINANCE DOCKET NO. 31985

**PENINSULA CORRIDOR JOINT POWERS BOARD
- TRACKAGE RIGHTS -
SOUTHERN PACIFIC TRANSPORTATION COMPANY**

NOTICE OF EXEMPTION



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**Attorney for Applicant,
PENINSULA CORRIDOR JOINT POWERS
BOARD**

Date Filed: December 20, 1991

**BEFORE THE
INTERSTATE COMMERCE COMMISSION**

FINANCE DOCKET NO. 31985

**PENINSULA CORRIDOR JOINT POWERS BOARD
- TRACKAGE RIGHTS -
SOUTHERN PACIFIC TRANSPORTATION COMPANY**

NOTICE OF EXEMPTION

Peninsula Corridor Joint Powers Board ("JPB") submits this Notice of Exemption pursuant to the class exemption of 49 CFR §1180.2(d)(7) for trackage rights. This Notice involves the JPB's acquisition of trackage rights from the Southern Pacific Transportation Company ("SP") between Lick, California (MP 51.4) and Gilroy, California (at or near MP 80.7) and bridge trackage rights between Cahill Yard (at or near MP 47.1) and Lick (MP 51.4). The parties have agreed on the terms of the written agreement for trackage rights which is not sought as a responsive application in a rail consolidation proceeding. The signed agreement is attached as Exhibit B. The Commission has found that its prior review and approval of this type of transaction is not necessary to carry out the rail transportation policy of 49

USC §10101a and that such transactions are of limited scope and regulation is not necessary to protect shippers from an abuse of market power.

Pursuant to the Commission's regulations at 49 CFR §1180.4(g), the Notice of Exemption contains the information set forth next below, and also states the level of labor protection to be imposed. Responsive to these requirements, JPB states:

Section 1180.6 Supporting Information

(a)(1)(i) Description of Proposed Transaction:

The trackage rights covered by this Notice of Exemption are part of a multi-part transaction aimed at enabling JPB to acquire the facilities necessary for the continuation of passenger commute rail service between San Francisco, CA, and San Jose, California, while preserving SP's ability to provide freight service to the same points. This filing, FD 31985, is intended to convey trackage rights to JPB to enable it to offer new passenger commute rail service between Gilroy and San Jose. Nevertheless, the trackage rights sought herein are distinct and separate rights which may be operated without the authorization of or exemption by the Commission of any other part of the total transaction (other than the sale of SP's line to JPB described in paragraph (1) below which is subject to Finance Docket No.

31980). The various parts of the transaction are described below as additional information.

(1) Pursuant to the Purchase, Sale and Option Agreement among SP, JPB and the San Mateo County Transit District ("Samtrans"), dated November 22, 1991, SP has agreed to sell to JPB portions of its main line trackage between San Francisco (MP 0.147) and Lick (MP 51.4) and all of the real property underlying its main line. (Samtrans will hold title to the real property within San Mateo County jointly with JPB.) This sale is the subject of a Notice of Exemption being filed concurrently herewith by the JPB in Finance Docket No. 31980. The Purchase, Sale and Option Agreement is to be lodged with the Office of Proceedings in connection with Finance Docket No. 31983. Under that agreement, SP is selling all of its rail lines, tracks, and facilities between San Francisco (MP 0.147) and Santa Clara Junction (MP 44.0) while reserving certain rights for freight and intercity passenger operations.

(2) In connection with SP's reservation of certain rights in the sale, JPB is confirming to SP trackage rights for freight and intercity passenger operations between San Francisco (MP 0.147) and Santa Clara Junction (MP 44.0). The trackage rights are covered by SP's filing in Finance Docket No. 31983.

31980).. The various parts of the transaction are described below as additional information.

(1) Pursuant to the Purchase, Sale and Option Agreement among SP, JPB and the San Mateo County Transit District ("Samtrans"), dated November 22, 1991, SP has agreed to sell to JPB portions of its main line trackage between San Francisco (MP 0.147) and Lick (MP 51.4) and all of the real property underlying its main line. (Samtrans will hold title to the real property within San Mateo County jointly with JPB.) This sale is the subject of a Notice of Exemption being filed concurrently herewith by the JPB in Finance Docket No. 31980. The Purchase, Sale and Option Agreement is to be attached as Exhibit 3 to the SP filing in Finance Docket No. 31983. Under that agreement, SP is selling all of its rail lines, tracks, and facilities between San Francisco (MP 0.147) and Santa Clara Junction (MP 44.0) while reserving certain rights for freight and intercity passenger operations.

(2) In connection with SP's reservation of certain rights in the sale, JPB is confirming to SP trackage rights for freight and intercity passenger operations between San Francisco (MP 0.147) and Santa Clara Junction (MP 44.0). The trackage rights are covered by SP's filing in Finance Docket No. 31983.

(3) Between Santa Clara Junction (MP 44.0) and San Jose's Cahill Yard (MP 47.1) (a point just south of San Jose station, which is MP 46.9) on the real property sold to JPB subject to Finance Docket No. 31980, there are three continuous tracks, two of which are being sold to JPB under the sale covered in Finance Docket No. 31980, and one of which will be retained by SP for its exclusive ownership and use and is designated as SP's New Coast Main. Between those points SP and JPB will both separately operate, each on its own track or tracks, within the common right-of-way. SP is preserving direct access to all stations and industries and will continue to serve all existing freight customers; SP will also have the ability to operate intercity rail passenger services, including those subject to its contract with Amtrak. JPB's tracks will be used for the provision of passenger commute rail service. This segment of the line, together with the San Francisco to Santa Clara segment, forms the continuous corridor of the passenger commute rail service currently operating between San Francisco and San Jose.

(4) Between Cahill (MP 47.1) and Auzerais Street (MP 47.5), the underlying right-of-way will be sold to JPB in Finance Docket No. 31980. One track will also be sold to JPB in Finance Docket No. 31980, and the ownership of the other retained by SP, so that SP and JPB will each have separate, dedicated tracks within the common right-of-way owned by JPB. Each party will continue to provide or offer its respective services as described

above in connection with the Santa Clara Junction-Cahill segment (except to the extent of the bridge trackage rights described in paragraph (8) below over SP's track).

(5) Between Auzerais Street (MP 47.5) and Lick (MP 51.4), there is presently a single track. The underlying right-of-way is being sold to JPB (in Finance Docket No. 31980), but SP will retain ownership, control and use of the track. JPB will have bridge trackage rights described in paragraph (8), below, over SP's track.

(6) SP will grant JPB trackage rights over SP's short branch line (the Lick Branch) which joins SP's main line at Lick. This line will be used by JPB from time to time to turn its trains and equipment and for other service functions. These rights are the subject of FD 31984.

(7) SP will grant JPB trackage rights over SP's line from Lick (MP 51.4) to Gilroy (MP 80.7) to enable JPB to eventually extend its commute passenger rail service beyond its present service territory (i.e. south of San Jose's Cahill Yard). These are the trackage rights covered by this Notice of Exemption which are shown in detail in Exhibit A hereof.

(8) SP will grant JPB bridge trackage rights over the tracks retained by SP between the south end of San Jose's Cahill

Yard (MP 47.1) and Lick (MP 51.4), to facilitate the eventual operation of JPB's commute service to Gilroy. These are the trackage rights covered by this Notice of Exemption and are described in detail in Exhibit B hereof.

The complete route for JPB commute service after all Notice of Exemptions become effective will be: JPB's double-track main from San Francisco (MP 0.147) to Santa Clara Junction (MP 44.0), JPB's double-track from Santa Clara Junction (MP 44.0) to San Jose station (MP 46.9), SP's track, pursuant to bridge trackage rights, from San Jose station (MP 46.9) to Lick (MP 51.4), then SP's line, pursuant to trackage rights, from Lick (MP 51.4) to Gilroy (MP 80.7).

JPB's exact name and address are given below:

Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
San Carlos, CA 94070-1306
(415) 508-6200

SP's exact name and address are given below:

Southern Pacific Transportation Company
Southern Pacific Building
One Market Plaza
San Francisco, CA 94105
(415) 541-1785

Questions regarding this transaction are to be addressed to counsel for JPB named below:

Michael N. Conneran
Hanson, Bridgett, Marcus, Vlahos & Rudy
333 Market Street, Suite 2300
San Francisco, CA 94105
(415) 777-3200

(a)(1)(ii) Consummation Date

The transaction will be consummated on or after December 27, 1991.

(a)(1)(iii) Purpose Sought To Be Accomplished

The purpose to be accomplished by the trackage rights from SP to JPB is to provide greater flexibility for JPB's commute service.

(a)(5) List of States In Which The Parties Property Is Situated

JPB will operate only interstate service within the State of California. SP operates in and among the States of Oregon, California, Nevada, Utah, Arizona, New Mexico, Texas, and Louisiana. The trackage rights transaction is located solely in the State of California.

(a)(6) Map

A map showing the trackage rights grant is attached as Exhibit A.

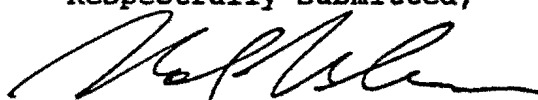
(a)(7)(ii) Agreement

The trackage rights agreement is attached hereto as Exhibit B.

Labor Protection

JPB is a class III start-up carrier. The segments affected by this filing currently offer no existing passenger commute rail service. Labor protections are not imposed in this type of transaction absent special circumstances not present here.

Respectfully submitted,



MICHAEL N. CONNERAN
Attorney for Applicant,
PENINSULA CORRIDOR JOINT POWERS
BOARD

HANSON, BRIDGETT, MARCUS,
VLAHOS & RUDY
333 Market Street, Suite 2300
San Francisco, CA 94105
(415) 777-3200

INTERSTATE COMMERCE COMMISSION

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 31985

**PENINSULA CORRIDOR JOINT POWERS BOARD
TRACKAGE RIGHTS
SOUTHERN PACIFIC TRANSPORTATION COMPANY**

Southern Pacific Transportation Company ("SP") has agreed to grant commute service trackage rights to Peninsula Corridor Joint Powers Board ("JPB") over the trackage of SP located between the points known as:

Lick, California at milepost 51.4 to Gilroy,
CA at or near milepost 80.7 and bridge
commute service trackage rights between
Cahill, CA at or near milepost 47.1 and Lick,
CA at or near milepost 51.4

The trackage rights will be effective on or after December 27, 1991.

This Notice is filed under 49 C.F.R. 1180.2(d)(7).
Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

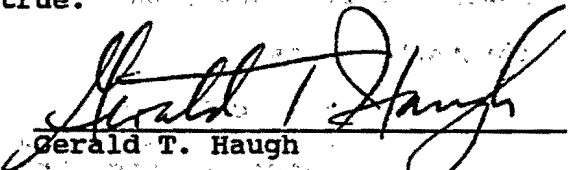
Dated:

By the Commission,

Sidney L. Strickland, Jr.
Secretary

VERIFICATION

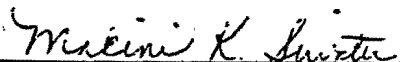
Gerald T. Haugh being duly sworn, deposes and says that he is the Executive Director of the Peninsula Corridor Joint Powers Board and the General Manager of the San Mateo County Transit District, that he has read the foregoing verified Notice of Exemption, knows the contents thereof and that the factual statements contained therein are true.


Gerald T. Haugh

Executive Director
PENINSULA CORRIDOR
JOINT POWERS BOARD

General Manager
SAN MATEO COUNTY TRANSIT
DISTRICT

Subscribed and sworn to before me
this 16th day of DECEMBER, 1991.


Notary Public

My commission expires 9/20/94.



CERTIFICATE OF SERVICE

I, MICHAEL N. CONNERAN, hereby certify that I have this date, December 20, 1991, forwarded a copy of the foregoing NOTICE OF EXEMPTION to Southern Pacific Transportation Company.

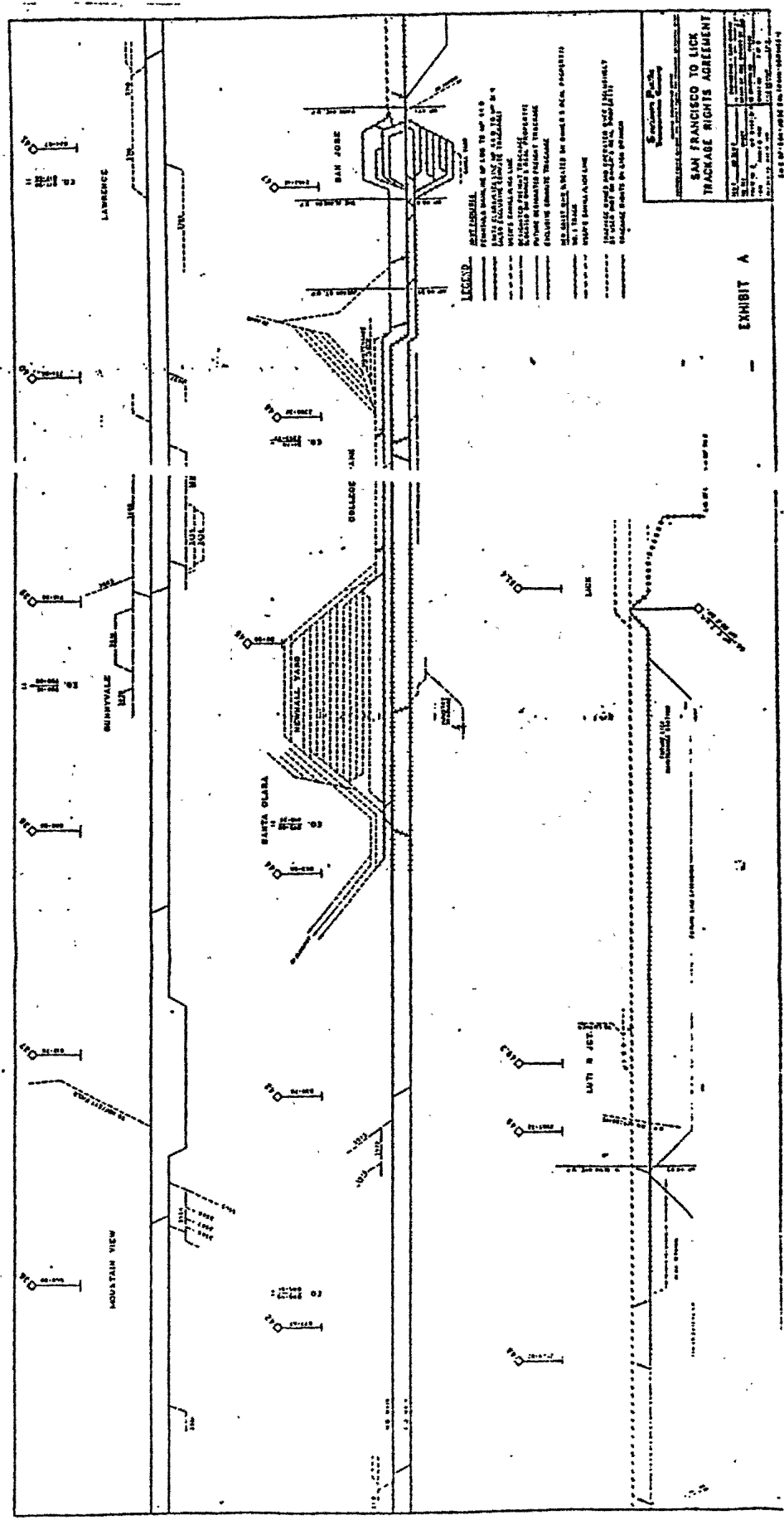
I further certify that I have on this date served copies, by first class mail, postage prepaid, of the foregoing NOTICE OF EXEMPTION, on the designated State Agency named below:

Chief
Railroad Operations & Safety Branch
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102



MICHAEL N. CONNERAN

7



TRACKAGE RIGHTS AGREEMENT - LICK/GILROY LINE

This AGREEMENT dated as of December 20, 1991, is by and between the PENINSULA CORRIDOR JOINT POWERS BOARD, a joint powers agency created under California law, (hereinafter referred to as "JPB") and SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation, (hereinafter referred to as "SPT");

RECITALS:

A. JPB and SPT have entered into a Purchase, Sale and Option Agreement dated as of November 22, 1991 ("Sale Agreement") providing, in part, for the purchase by JPB from SPT of certain properties in Santa Clara County, California, including the Santa Clara/Lick Line (as defined in Section 1 hereof and as more fully described in the Trackage Rights Agreement referred to in Recital B below), and of perpetual trackage rights over the Lick/Gilroy Line (as defined in Section 1 hereof and as more fully described in Exhibit A hereto) between Lick at Milepost 51.4 and Gilroy at Milepost 80.7;

B. Pursuant to the Sale Agreement, JPB and SPT have entered into a Trackage Rights Agreement-Peninsula Main Line and Santa Clara/Lick Line ("Trackage Rights Agreement") which provides, in part, for SPT's reservation of exclusive and perpetual trackage rights for Freight and Intercity Passenger Service over the properties acquired by JPB and the grant by SPT to JPB of exclusive Bridge Trackage Rights (over SPT's Cahill/Lick Line) for Gilroy Commuter Service (as defined in Section 1 hereof and as more fully described in the Trackage Rights Agreement);

C. JPB and SPT desire to set forth the terms of the agreement providing for the perpetual and exclusive trackage rights for JPB's Gilroy Commuter Service as defined in Section 1 hereof on the Lick/Gilroy Line upon the execution of which agreement JPB shall pay to SPT the sum of \$8,000,000 in accordance with the Sale Agreement.

NOW THEREFORE, it is mutually agreed by and between the parties hereto as follows:

Section 1. DEFINITIONS

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

1.1 "AAR" shall mean the Association of American Railroads.

1.2 "Bridge Trackage Rights" shall mean exclusive trackage rights between Cahill Yard at or near Milepost 47.1 and Lick at or near Milepost 51.4 over SPT's Cahill/Lick Line for Gilroy Commuter Service Trains only and for only such Trains which originate or terminate in Gilroy over which segment there shall be no intermediate Gilroy Commuter Service station stops; however, JPB's Trains may enter or leave the segment at any point. These Bridge Trackage Rights are to be used only in conjunction with the trackage rights granted (pursuant to this Agreement) by SPT to JPB from Lick (at or near Milepost 51.4) to Gilroy (at or near milepost 80.7), for Trains in Gilroy Commuter Service.

1.3 "Cahill Yard" shall mean the yard in front of the San Jose passenger station at San Jose, California, as more fully described in Exhibit A hereto.

1.4 "Changes and/or Additions" shall mean any capitalized improvements including, without limitation, the additions, betterments, construction, reconstruction, modifications and renewals thereof and additional facilities, regardless of book treatment as an expense or capital item, but excluding capitalized maintenance provided for in Section 9.

1.5 "Commute Support Facilities" shall mean that part of the Gilroy Joint Facilities, including but not limited to Trackage, passenger stations, platforms, ancillary facilities, and existing or future yard or other side Trackage used solely by JPB (including but not limited to a 1,500-foot house track leased by SPT to JPB and as described in Section 4.2(a)) hereof and any Changes and/or Additions thereto), all of which shall be maintained by JPB at its sole cost and expense (unless used also by SPT, in which case sharing of maintenance costs shall be as agreed to in writing by the parties notwithstanding the provisions of Section 9.1 hereof).

1.6 "Commuter Service" shall mean the operation by JPB (or an Operator for JPB) of Trains that provide commute passenger service on the Joint Facilities between San Francisco (at or near Milepost 0.147) and Lick (at or near Milepost 51.4), California in San Francisco, San Mateo and Santa Clara Counties, and frequently characterized by reduced fare, multiple-ride and monthly commutation tickets. "Commuter Service" as so defined shall not include Intercity Passenger Service. The term "Commuter Service" shall also include JPB's Trains and Equipment operated on the Joint Facilities for the purpose of Equipment review, schedule checks,

personnel training, Changes and/or Additions and maintenance of way activities.

1.7 "Customary Additives" shall mean elements of cost added to billings of either party to the other that generally are calculated as a percentage of direct labor costs and are intended to compensate for, without limitation, paid holidays, vacation and personal leave days, health and welfare benefits, payroll taxes and administrative and supervisory expenses that include direct and general overhead, inclusive of a customary one percent (1%) additive for special administrative costs related to billing preparation, and are subject to periodic changes depending upon industry practices and the provisions of Section 11.3. As an example of such additives, Exhibit B sets forth 1990 amounts as represented by SPT to JPB.

1.8 "Effective Date" shall have the meaning set forth in Section 11.12.

1.9 "Equipment" shall mean locomotives, cars, cabooses, hi-rail vehicles, other vehicles, and machinery which are capable of being operated on Gilroy Joint Facilities.

1.10 "Exclusive Freight Trackage" shall mean Trackage (as described on Exhibit A hereto) which is not part of the Gilroy Joint Facilities which is used now or in the future solely for Freight or Intercity Passenger Service, and which shall be maintained at the sole cost and expense of SPT.

1.11 "Fiscal Year" shall mean the period beginning July 1 of any calendar year and ending June 30 of the following calendar year.

1.12 "Freight Service" shall mean SPT's railroad operations contemplated hereunder in furtherance of transporting freight commodities of all types and description in Trains whether loaded or empty, including personnel training and the use of all Equipment and Non-Revenue Equipment for such operations.

1.13 "Gilroy Commuter Service" shall mean the operation by JPB (or an Operator for JPB) of Trains as provided in Section 4.2 that provide commute passenger service on the Gilroy Joint Facilities between Lick (at or near Milepost 51.4) and Gilroy (at or near Milepost 80.7), in Santa Clara County, California, and frequently characterized by reduced fare, multiple-ride and monthly commutation tickets; and shall also include JPB's commuter passenger Trains originating or terminating at Gilroy which terminate or originate respectively, at Cahill Yard (or, alternatively, any stations north of Cahill Yard) while operating on SPT's Cahill/Lick Line pursuant to Bridge Trackage Rights as set forth in the Trackage Rights Agreement on that portion of the Santa Clara/Lick Line from Cahill Yard to Lick (which shall be governed

by the provisions of the Trackage Rights Agreement and not by this Agreement). "Gilroy Commuter Service" as so defined shall not include Intercity Passenger Service. The term "Gilroy Commuter Service" shall also include JPB's Trains and Equipment operated for the purpose of Equipment review, schedule checks, personnel training, Changes and/or Additions and maintenance of way activities.

1.14 "Gilroy Joint Facilities" shall mean the main line Trackage and passing sidings on the Lick/Gilroy Line (including Commute Support Facilities and excluding Exclusive Freight Trackage), and all Changes and/or Additions thereto now or in the future.

1.15 "ICC" shall mean the Interstate Commerce Commission.

1.16 "Intercity Passenger Service" shall mean intercity railroad passenger service (other than Gilroy Commuter Service) provided by NRPC or any other entity with whom SPT contracts on its behalf and for its account to provide Intercity Passenger Service over the Gilroy Joint Facilities in accordance with this Agreement.

1.17 "Joint Facilities" shall mean the Peninsula Main Line and the Santa Clara/Lick Line (as those terms are defined in the Sale Agreement and in this Agreement, respectively), and all Changes and/or Additions thereto now or in the future.

1.18 "Lick/Gilroy Line" shall mean the Trackage and the right-of-way and real estate underlying said Trackage between Lick at or near Milepost 51.4 and Gilroy at or near Milepost 80.7 in Santa Clara County, California, all as more fully described in Exhibit A hereto.

1.19 "Lick/Gilroy Line Purchase Option" shall have the meaning set forth in Section 2.10.

1.20 "Materials Additives" shall mean elements of cost customarily charged by railroads to one another and which are to be added to any and all materials cost billings of either party to the other and that generally are calculated as a percentage of direct costs, are intended to compensate for store, purchasing and handling expenses, sales or use taxes, foreign-line freight, and on-line freight and are subject to periodic changes depending upon industry practices and the provisions of Section 11.3. As an example of such additives, Exhibit C sets forth 1989 amounts as represented by SPT to JPB.

1.21 "New Coast Main" shall mean Track Structure of (i) the No. 1 Track, (ii) SPT's Cahill/Lick Line, and (iii) all Track Structure located on property of JPB magnetic east of the Track Structure described in (i) and (ii) above, all as more fully described in the Trackage Rights Agreement.

1.22 "Non-Revenue Equipment" shall mean Equipment which is maintenance of way equipment and freight cars that are either empty or loaded only with maintenance of way equipment or material and equipment transported for the internal use of either party including, without limitation, rails, ties, ballast, and other track materials and signal and bridge materials and supplies.

1.23 "No. 1 Track" shall mean the existing yard Track Structure designated as SPT's "No. 1 Track" on the easterly side of the double main Track Structure between Milepost 44.0 at or near Santa Clara Junction and the southern end of Cahill Yard at or near Milepost 47.1.

1.24 "NRPC" shall mean the National Rail Passenger Corporation, or Amtrak, in all circumstances other than in a capacity as Operator for JPB.

1.25 "NRPC Agreement" shall mean the Agreement between NRPC and SPT dated April 16, 1971, as amended from time to time.

1.26 "Operator" shall mean the person, firm, corporation or other legal entity utilized by JPB or SPT to conduct, on its behalf and for its account, operations provided for in this Agreement on the Gilroy Joint Facilities.

1.27 "Sale Agreement" shall have the meaning set forth in Paragraph A. of the recitals to this Agreement.

1.28 "Santa Clara/Lick Line" shall mean the Trackage and the right-of-way and real estate underlying said Trackage between Milepost 44.0 at or near Santa Clara Junction and Milepost 51.4 at or near Lick, all in Santa Clara County (including the fee ownership, easements (but excluding SPT's easements) and franchises, all owned by JPB, of the real estate and right-of-way underlying the Trackage) but excluding the New Coast Main, all as more fully described in the Sale Agreement and in the Trackage Rights Agreement.

1.29 "Service(s)" shall mean Gilroy Commuter Service, Freight Service and Intercity Passenger Service collectively or any of them individually, as applicable.

1.30 "SFGTF" shall have the meaning set forth in Section 9.2 and Exhibit D or as it may be amended by written agreement of the parties.

1.31 "SPT's Cahill/Lick Line" shall mean the existing single main Track Structure between Cahill Yard (at or near Milepost 47.1) and Lick (at or near Milepost 51.4).

1.32 "Track Structure" shall mean rail and fastenings, switches and frogs complete, ties, ballast, and signals.

1.33 "Trackage" shall mean Track Structure and all appurtenances thereto, including without limitation, bumpers, roadbed, embankment, bridges, trestles, tunnels, culverts or any other structures or things necessary for support of and entering into construction thereof, and, if any portion thereof is located in a thoroughfare, the term shall include pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing material at vehicular crossings of tracks, culverts, drainage facilities, crossing warning devices, and any and all work required by lawful authority in connection with construction, renewal, maintenance and operation of said Track Structure and all appurtenances thereof and Changes and/or Additions thereto now or in the future.

1.34 "Trackage Rights Agreement" shall have the meaning set forth in paragraph B of the recitals to this Agreement.

1.35 "Train(s)" shall mean a locomotive unit, or more than one such unit, coupled, with or without cars or caboose.

Section 2. RIGHTS OF JPB AND OF SPT

2.1 Grant:

Subject to the terms of this Agreement, SPT grants to JPB the perpetual and exclusive right to conduct Gilroy Commuter Service over the Gilroy Joint Facilities.

2.2 Authority: SPT represents that it has the right and power to confirm and grant perpetual and exclusive trackage rights over the Gilroy Joint Facilities to JPB as contemplated herein without the concurrence or approval of any other person or entity except for regulatory approvals or exemptions contemplated by Section 8.1 hereof.

2.3 Ownership:

(a) SPT shall own all of the Lick/Gilroy Line, including Commute Support Facilities, existing at the date of execution of this Agreement.

(b) JPB shall own the Changes and/or Additions to the Gilroy Joint Facilities and all capitalized maintenance provided for in Section 9 made at its sole cost and expense. SPT shall own the Changes and/or Additions to the Gilroy Joint Facilities and all capitalized maintenance provided for in Section 9 made at its sole cost and expense. JPB and SPT shall jointly own such Changes and/or Additions to the Gilroy Joint Facilities and all capitalized maintenance provided for in Section 9 made at their shared cost and expense in the same proportion as the respective

shares of the cost and expense bears to the total cost and expense.

(c) Neither party shall remove any Changes and/or Additions or capitalized maintenance items to the Gilroy Joint Facilities without the prior written consent of the other party in accordance with Section 2.13 hereof; provided, however, in the event that either party shall have permanently ceased to provide Services over all or substantially all of the Gilroy Joint Facilities ("terminating party"), the other party ("remaining party") shall have the option to acquire the terminating party's ownership interest in Changes and/or Additions or capitalized maintenance necessary for the remaining party to provide continued Services and the remaining party shall pay to the terminating party the unamortized value of such Changes and/or Additions or capitalized maintenance. If the remaining party does not elect to acquire the terminating party's ownership interest in any or all of the terminating party's Changes and/or Additions or capitalized maintenance, the terminating party shall retain the right to remove such Changes and/or Additions or capitalized maintenance not acquired by the remaining party.

2.4 JPB's Rights: For the purpose of conducting Gilroy Commuter Service, JPB has the perpetual right of access to and from and use of the Gilroy Joint Facilities (including but not limited to passenger stations constructed pursuant to Sections 2.11 and 4.4), except for the Exclusive Freight Trackage unless otherwise agreed to in writing by the parties.

2.5 Freight Trackage: Except as may be otherwise agreed in writing by the parties, SPT retains the exclusive and perpetual ownership of and right to use the Exclusive Freight Trackage.

2.6 Intercity Passenger Service Agreement: NRPC may also operate Intercity Passenger Trains, in accordance with the current NRPC Agreement, over the Gilroy Joint Facilities (excluding Commute Support Facilities other than as provided in Section 4.6 hereof). SPT may enter into subsequent agreements with the NRPC or any other Operator with whom SPT contracts to provide Intercity Passenger Service, or amend its present NRPC Agreements relating to schedules, frequency of Trains or station stops for Intercity Passenger Service over the Gilroy Joint Facilities (excluding Commute Support Facilities other than as provided in Section 4.6 hereof) with the consent of JPB, which shall not be unreasonably withheld; provided that costs resulting from any new or additional operations by NRPC or any other entity providing Intercity Passenger Service over the Gilroy Joint Facilities affecting line capacity, yard capacity or the signal system shall be borne by SPT; and further provided that nothing contained herein shall abrogate or limit any duty, contractual or otherwise, of NRPC or any other entity providing Intercity Passenger Service to pay for or to reimburse SPT for such costs. All Changes and/or Additions paid for by SPT (or, for purposes of this Agreement, by NRPC or any

other entity providing Intercity Passenger Service) pursuant to this Section 2.6 shall be the sole property of SPT.

2.7 Operator: Either party may use an Operator or Operators to provide applicable Services pursuant to this Agreement.

2.8 Bridge Trackage Rights: In connection with SPT's grant to JPB of trackage rights over the Gilroy Joint Facilities in accordance with Section 2.1, SPT has also granted to JPB Bridge Trackage Rights over SPT's Cahill/Lick Line in accordance with the Trackage Rights Agreement and subject to limitations set forth herein and in the Trackage Rights Agreement. Upon completion of JPB's construction of its Trackage on the Joint Facilities between Auzerais Street at or near milepost 47.5 and Lick at or near milepost 51.4 and the commencement of Gilroy Commuter Service operations thereover, the Bridge Trackage Rights shall continue in effect only if SPT is granted access to and use of such newly constructed JPB's Trackage upon terms and conditions substantially similar to JPB's rights under the Bridge Trackage Rights and only so long as such access and use are made available to SPT (whether or not used by SPT).

2.9 Physical Clearances: SPT represents that the Gilroy Joint Facilities shall continue to have not less than existing clearances (as shown in SPT's records attached as Exhibit E) for the operation of Commuter Service. If JPB's Trains or Equipment require additional clearance, SPT agrees to provide said additional clearance in a timely manner at JPB's sole cost provided that such additional clearance would not materially impair or interfere with the usefulness or utility of the Gilroy Joint Facilities to SPT or SPT's operation or use of such Gilroy Joint Facilities or frustrate the purposes of this Agreement. In the event any work to be performed by SPT on the Gilroy Joint Facilities may affect the horizontal and vertical line clearances, SPT shall notify JPB and SPT shall cooperate with JPB to provide any such additional horizontal and vertical line clearances needed by JPB; provided that such additional clearances would not materially impair or interfere with the usefulness or utility of the Gilroy Joint Facilities to SPT or SPT's operation or use of such Gilroy Joint Facilities or frustrate the purposes of this Agreement and JPB shall pay the incremental costs required for such additional clearance requirements.

2.10 Lick/Gilroy Line Purchase Option:

SPT, pursuant to the Sale Agreement, has granted JPB the Lick/Gilroy Line Purchase Option. A description of the terms of such option are set forth in Appendix A hereof.

2.11 Rights for Changes and/or Additions: JPB shall have the perpetual and exclusive right for Gilroy Commuter Service to construct or reconstruct, with the consent of SPT (which shall not

be unreasonably withheld, conditioned or delayed) Changes and/or Additions to the Gilroy Joint Facilities, excluding the Exclusive Freight Trackage, consisting of railroad and railroad-related facilities, necessary for and related to Gilroy Commuter Service operations. Failure to reach agreement as to any cost sharing for Changes and/or Additions subject to Section 10.1(b) shall constitute a reasonable basis for refusal of consent. SPT's written consent will be given if such construction, reconstruction, or use shall not unreasonably interfere with SPT's existing or planned Freight or Intercity Passenger Service or with SPT's other planned or existing use of such portion of the Gilroy Joint Facilities. Changes and/or Additions consisting of Track Structure crossing other Track Structure at grade shall be treated as any other Changes and/or Additions under this Section; provided, however, that such Changes and/or Additions consisting of at grade crossings which do not result in a decrease in average Train speeds over the applicable Trackage shall not, absent other construction or reconstruction, be considered an unreasonable interference with SPT's use or planned use of the Gilroy Joint Facilities. Notwithstanding the above, JPB may construct Changes and/or Additions which SPT has advised may unreasonably interfere with its planned use of the Gilroy Joint Facilities, at JPB's sole risk. Such risk shall include the costs of removal of such newly constructed Changes and/or Additions at the time of actual use by SPT. JPB retains the perpetual and exclusive rights to use all such Changes and/or Additions to the Gilroy Joint Facilities referred to in this Section 2.11 for Gilroy Commuter Service, subject to SPT's rights of use thereof in accordance with the terms of this Agreement.

2.12 Authority and Enforceability: Each party hereto respectively represents and warrants that it has the full power and authority to enter into this Agreement and to carry out the obligations contemplated hereby. Upon execution and delivery, this Agreement, including but not limited to the indemnification terms of Section 6 hereof, are enforceable against such party in accordance with its terms (except to the extent such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to creditor's rights generally and the availability of equitable remedies may be limited by equitable principles of general applicability).

2.13 Retirement Limitations: Subject to Section 8.3 hereof, neither SPT nor JPB shall make any retirement, withdrawal, elimination or disposal of any part of the Gilroy Joint Facilities without the prior written consent of the other party which shall not be unreasonably withheld. The affected party will grant its consent under this Section if such retirement, withdrawal, elimination or disposal would not materially impair the usefulness of the Gilroy Joint Facilities to such party or frustrate the purposes of this Agreement.

2.14 Emergencies and Detours: Either party may, at its sole discretion, allow the other party to use the Trackage of said first party in the Gilroy Joint Facilities in emergency and detour situations. Any such use shall be subject to the prior written consent and upon the terms and conditions of the party granting such use.

2.15 Taxes: SPT shall be responsible for all taxes assessed against it (or its Operators or other entities acting on its behalf or for its account), if any, as owner of the real and personal property which are part of the Gilroy Joint Facilities; provided, however, that JPB shall be responsible for any possessory interest tax assessed against it (or its Operators or other entities acting on its behalf or for its account) as holder of the rights granted hereunder and under the Sale Agreement and as owner of property described in Section 2.3(b) hereof. Nothing contained in this Agreement shall be construed to make JPB liable to taxing authorities for any taxes which JPB, as a public entity, would not otherwise be liable; provided, however, that, for purposes of this Agreement, JPB shall indemnify SPT for all taxes assessed against any Operator for JPB or any other entity acting on JPB's behalf.

2.16 Non-Use of Commute Support Facilities: In the event that all or any portion of the Commute Support Facilities has not been used by JPB after the Effective Date for any continuous period of at least thirty-six (36) months, SPT may, during the period of continuous non-use in excess of thirty-six (36) months, request in writing that JPB make application for and diligently pursue all necessary approvals or other actions to remove such unused Facilities, if such approvals or other actions are necessary, and if SPT so requests, (upon receipt of any necessary authority) to remove at its cost any and all such Facilities and Equipment and property of JPB thereon. Within ninety (90) days of such request, JPB shall make application for such approvals or other actions or, if no approvals or other actions are necessary, shall commence, at its cost, removal of such Facilities and Equipment and property of JPB thereon and shall diligently progress completion of such removal. If approvals or applications are necessary, JPB shall commence removal of such Facilities and Equipment and property of JPB thereon within ninety (90) days after receipt of such authorization and shall diligently progress completion of such removal. JPB shall not progress the above actions if it demonstrates justification for such non-use, which justification shall be provided to SPT in writing within ninety (90) days of the written request of SPT referred to above. Within ninety (90) days of receipt by SPT of such written justification, SPT shall notify JPB in writing as to whether it concurs in or disputes such justification. If SPT disputes such justification, the dispute shall be resolved by arbitration in accordance with section 7 of this Agreement. If, however, such non-use continues so that such Facilities and Equipment and property of JPB thereon has not been used by JPB for a continuous period of five years, then JPB,

promptly upon notice from SPT shall apply for and diligently prosecute all governmental approvals or other actions necessary, if any, to remove said Facilities and Equipment and property of JPB thereon and (after receipt of such approvals or other actions), shall promptly at its cost remove said Facilities and Equipment and property of JPB thereon, if requested by SPT.

Section 3. ASSIGNMENT

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns, provided, however, that:

(a) The rights and obligations of JPB hereunder may be assigned or sold in whole or in part without SPT's consent only to: (i) JPB's successor agency; (ii) any one of JPB's member agencies or counties; (iii) the Peninsula Rail Transit District; (iv) the State of California Department of Transportation; or (v) an existing or to be formed public, quasi-public or nonprofit entity formed or authorized to own JPB's interest in the Gilroy Joint Facilities, but only if such successors or assigns have the legal power and authority to undertake all of the rights and obligations of JPB hereunder including, but not limited to, the obligation to indemnify SPT pursuant to Section 6 hereof;

(b) SPT may assign or sell all or any part of its rights hereunder without the consent of JPB only to: (i) any successor or affiliate of SPT, (ii) any other Class I railroad, or (iii) to any Operator who is financially responsible and has a management team with a demonstrated record of reliable and safe railroad maintenance and operating experience; provided that such party has the legal power and authority to undertake all of the rights and obligations of SPT hereunder including, but not limited to, the obligation to indemnify JPB pursuant to Section 6 hereof.

(c) SPT may assign or sell all or any part of its rights hereunder to any entity with the consent of JPB (which consent shall not be unreasonably withheld, conditioned or delayed).

(d) Within ten days after any assignment, the assignee shall execute and deliver to SPT and JPB a written instrument assuming all of the assignor's obligations hereunder, and an opinion of such assignee's counsel stating that such assignee is entitled to perform all of the assignor's obligations hereunder.

Section 4. OPERATIONS

4.1 Management and Control: Subject to Sections 4.2 and 4.3 below, the management and operation (including dispatching) of the Gilroy Joint Facilities shall be under the exclusive direction and control of SPT. JPB, at its sole cost and election may monitor dispatching operations over the Gilroy Joint Facilities on a reasonable basis.

4.2 Phased Operations: JPB's Gilroy Commuter Service hereunder on the Gilroy Joint Facilities shall proceed in two phases, as described below, with the first phase being the start-up of Gilroy Commuter Service during the construction of track facilities necessary for the second phase (during which operating delays can be expected). The start of the second phase of Gilroy Commuter Service operations is subject to the completion of construction (estimated to be one year following the Effective Date) of the Changes and/or Additions set forth in Section 10.1(a).

(a) Phase I: During the first phase, JPB may operate only one (1) dead-head non-scheduled Gilroy Commuter Service Train (two push-pull Trains combined) from San Jose to Gilroy and two (2) scheduled Gilroy Commuter Service Trains from Gilroy to San Jose in the morning (a.m.) hours, and JPB may operate only two (2) scheduled Gilroy Commuter Service Trains from San Jose to Gilroy and one (1) non-scheduled, dead-head Gilroy Commuter Service Train (two push-pull Trains combined) in the evening (p.m.) hours. In addition, JPB may, to the extent reasonably related to the level of operations described above, operate Trains and Equipment for the purposes of equipment review, schedule checks, personnel training and Changes and/or Additions and maintenance of way activities. During this phase, the parties shall enter into a mutually acceptable written lease by JPB of SPT's 1500-foot house track at SPT's Gilroy station for the purpose of loading and unloading Gilroy Commuter Service passengers and storing Gilroy Commuter Service Trains during periods between the arrival of the above-referenced non-scheduled, dead-head Gilroy Commuter Service Train from San Jose and the departure of the two scheduled Gilroy Commuter Service Trains in the morning hours and the period between the arrival of the two scheduled Gilroy Commuter Service Trains from San Jose and the departure of the one non-scheduled dead-head Gilroy Commuter Service Train in the evening hours. In addition, during this phase, JPB crews must "hand-throw" switches. SPT shall dispatch all Trains on a "first-come, first-served" basis, provided, however, that if SPT and JPB can reach agreement on a mutually satisfactory schedule for Gilroy Commuter Service operations (and the parties expect to reach such agreement), SPT shall dispatch giving priority to those scheduled Gilroy Commuter Service Trains. Neither party hereto shall unreasonably withhold its consent to such agreement.

(b) Phase II: Upon completion of construction work set forth in Section 10.1(a) and thereafter during the term of this Agreement, JPB may operate not more than a total of eight (8)

scheduled Commuter Service Trains between San Jose and Gilroy (four (4) in each direction) which shall be dispatched by SPT on a "first-come, first-served" basis, provided, however, that if SPT and JPB can reach agreement on a mutually satisfactory schedule for Gilroy Commuter Service operations (and the parties expect to reach such agreement), SPT shall dispatch giving priority to those scheduled Gilroy Commuter Service Trains. In addition, JPB may, to the extent reasonably related to the level of operations described above, operate Trains and Equipment for the purposes of equipment review, schedule checks, personnel training and Changes and/or Additions and maintenance of way activities. Neither party hereto shall unreasonably withhold its consent to such agreement.

4.3 Assumption of Dispatching: In the event SPT becomes incapable of adequately performing dispatching functions hereunder for Gilroy Commuter Service, arrangements will be made for the prompt and orderly transfer of such functions to JPB.

4.4 Commuter Service Passenger Facilities: The construction and maintenance of station facilities, platforms, other accommodations for Gilroy Commuter Service passengers, related facilities, and necessary physical changes in Trackage including Commute Support Facilities Trackage will be at the sole cost and the sole responsibility of the JPB. However, the location of such Gilroy Commuter Service passenger facilities on the Gilroy Joint Facilities will be subject to mutual agreement of the parties. Neither party shall unreasonably withhold, condition or delay its consent.

4.5 Limitations on Liability: Except as otherwise may be provided in Section 6, if the use of the Gilroy Joint Facilities shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, neither party shall have or make any claim against the other for loss, damage, or expense of any kind, caused by or resulting from such interruption or delay.

4.6 Use of Commute Support Facilities: JPB shall have the perpetual and exclusive use and control of its Commute Support Facilities unless otherwise agreed to in writing by JPB and SPT.

4.7 Furnishing of Fuel, Train Supplies, Etc.: Each party shall be responsible for furnishing, at its sole cost and expense, all labor, fuel, and Train supplies necessary for the operation of its own Trains over the Gilroy Joint Facilities. In the event a party does furnish such labor, fuel, or supplies to another party hereto, the party receiving same shall promptly, upon receipt of billing therefor, reimburse the party furnishing same for its reasonable costs thereof, including Customary and Materials Additives.

4.8 Operating Rules: The operation by JPB on the Gilroy Joint Facilities shall at all times be in accordance with the

rules, instructions, and restrictions of SPT. Except as otherwise provided herein, such rules, instructions, and restrictions shall be reasonable, just, and fair between the parties using the Gilroy Joint Facilities and shall not unjustly discriminate against any of them.

4.9 Communications: JPB shall, at its sole cost and expense, obtain, install and maintain in all Trains and Equipment used by it on such Trackage, such communication equipment as is necessary to allow JPB to communicate with dispatching and signaling facilities in the same manner as the SPT. SPT, under the terms of this Agreement, shall consult with JPB prior to adoption of new communication systems or signal systems for use on the Gilroy Joint Facilities which theretofore have not been adopted generally in the railroad industry.

4.10 Clearing Trains and Equipment: If, by any reason of mechanical failure or for any other cause, the Trains or Equipment of JPB or SPT or their respective Operators become stalled or disabled on the Gilroy Joint Facilities and are unable to proceed, or fail to maintain the speed required of Trains or Equipment to meet normal schedules, or if in emergencies crippled or otherwise defective Equipment is set out from any such Trains on the Gilroy Joint Facilities, then the party whose Trains or Equipment are involved in the incident shall be responsible for furnishing locomotive units or such other assistance as may be necessary to haul, help or push such Equipment or Trains, or to properly move the disabled Trains or Equipment. By mutual agreement of the parties or upon receipt of reasonable notice from the other party that the response of the party whose Trains or Equipment are involved in the incident has not been adequate relative to the scheduled uses of Gilroy Joint Facilities, such other party may render such assistance as may reasonably be required in light of such scheduled uses, and the party whose Trains or Equipment are involved in the incident shall reimburse the other party, within forty-five (45) days after receipt of the bill therefor, for the reasonable cost and expense, including Customary and Materials Additives, of rendering any such assistance. The costs and expense of services referenced above in this Section 4.10, including without limitation liability (as that term is defined in Section 6) shall be treated in accordance with Section 6 hereof. If it becomes necessary to make repairs to crippled or defective Trains or Equipment of the JPB or SPT or their respective Operators in order to move Trains or Equipment from the Gilroy Joint Facilities, such work shall be the responsibility of the party whose Trains or Equipment are involved in the incident. By mutual agreement of the parties or upon receipt of reasonable notice from the other party that the efforts of the party whose Trains or Equipment are involved in the incident to make the repairs are not adequate in light of the scheduled uses of Gilroy Joint Facilities, such other party may take control of the repairs. If the repairs are performed by the other party, then the party whose Trains or

Equipment are involved in the incident shall reimburse the other party for the cost thereof, within forty-five (45) days after receipt of the bill therefor, at the then current AAR dollar rate for labor charges found in the Office Manual of the AAR Interchange Rules.

4.11 Clearing Wrecks: Except as otherwise provided in Section 6, whenever the JPB's or SPT's Trains or Equipment on the Gilroy Joint Facilities require rerailling, wrecking service or wrecking Train service, the party whose Train is involved shall be responsible for performing such service. Upon mutual agreement of the parties or upon receipt of reasonable notice from the other party that the response of the party whose Train is involved in the incident is not adequate in light of the scheduled uses of the applicable Trackage, the other party may take control of such rerailling, wrecking service or wrecking Train service as may be required. SPT shall make such repairs to and restoration of the applicable Trackage as may be required. The cost and expense of services referenced above in this Section, including without limitation, liability (as that term is defined in Section 6) shall be treated in accordance with Section 6 hereof. All Equipment and salvage shall be promptly picked up by the party whose Train is involved in the incident or such party's Operator or delivered to the party whose Train is involved in the incident or such party's Operator by the other party, and all costs and expenses, including Customary and Materials Additives therefor, incurred by the other party shall likewise be paid to the other party by the party whose Train is involved in the incident. All costs and expenses to be borne under this Section by the party whose Train is involved in the incident shall be paid within forty-five (45) days after receipt of the bills therefor.

4.12 Furnishing Power: For the purposes of this Section 4.12 only, the term "stopped party" shall mean whichever of the following described entities whose Trains are stopped in the circumstances described in this Section: SPT, JPB, the Operator(s) of either SPT or JPB, NRPC, or any other entity permitted in accordance with the terms of this Agreement to operate Trains on the Gilroy Joint Facilities. In the event Trains of a stopped party shall be forced to stop on the Gilroy Joint Facilities for any reason including but not limited to, stoppage due to insufficient hours of service remaining among the stopped party's employees, and such Trains are unable to proceed, any entity referred to in this Section shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew the stopped party's Trains) as may be necessary to haul, help or push such Trains, or to properly move Trains off the Gilroy Joint Facilities. All cost and expense, including Customary and Materials Additives, to be borne by the stopped party under this Section, shall be paid within forty-five (45) days to the party rendering motive power or other assistance after receipt of the bills therefor. SPT shall be responsible to the party

rendering motive power for stoppage caused by its Operator(s) or other entities operating on its behalf and JPB shall be responsible to the party rendering motive power for stoppage caused by its Operator(s) or other entities operating on its behalf.

Section 5. EMPLOYEES

5.1 SPT's Employees: SPT shall employ or cause to be employed all persons necessary to construct, maintain, repair, renew, and perform dispatching functions for the Gilroy Joint Facilities (excluding, for all purposes other than performance of dispatching functions, Commute Support Facilities unless activities for such other purposes are requested by JPB and agreed to in writing by SPT). SPT shall be bound to use reasonable and customary care, skill and diligence in the construction, maintenance, repair, renewal, and dispatching functions respecting said Facilities and in managing same and JPB shall not (except as otherwise provided in Section 6 hereof), by reason of SPT's performing or failing or neglecting to perform any construction, maintenance, repair, renewal, dispatching functions, or management of said Facilities, have or make against SPT any claim or demand for any loss, damage, destruction, injury, or death whatsoever resulting therefrom.

5.2 JPB's Employees: JPB shall employ or cause to be employed all persons necessary to construct, maintain, repair, and renew Commute Support Facilities. JPB shall be bound to use reasonable and customary care, skill, and diligence in the construction, maintenance, repair, and renewal of said Facilities and in managing same; and SPT shall not (except as otherwise provided in Section 6 hereof), by reason of JPB's performing or failing or neglecting to perform any construction, maintenance, repair, renewal, or management of said Facilities, have or make against JPB any claim or demand for any loss, damage, destruction, injury, or death whatsoever resulting therefrom.

5.3 Fair Treatment: All officers, agents, and employees of JPB and of SPT engaged in the management, operation, and maintenance of the Gilroy Joint Facilities or any portion thereof shall perform their duties in a fair, impartial, and just manner with respect to the rights and obligations between the parties as provided in this Agreement.

5.4 Examinations: JPB, or JPB's Operator and SPT, or SPT's Operator, shall require their respective employees to pass periodic examinations on the General Code of Operating Rules effective October 29, 1989 (or any successor publication), timetables, General Orders and Track Bulletins (all as amended from time to time) which shall be applicable to the operations on or along the Gilroy Joint Facilities.

5.5 Rules Violations:

SPT, or SPT's Operator, shall notify JPB in writing specifying the circumstances in the event JPB, JPB's employees, or JPB's Operator or any other entity with which JPB contracts to provide Gilroy Commuter Service fails to abide by the rules, instructions and restrictions of the SPT, or SPT's Operator, governing the operation on or along the Gilroy Joint Facilities. JPB, JPB's Operator, or any other entity with which JPB contracts to provide Gilroy Commuter Service shall take prompt action to correct the failure to abide by the rules, instructions, and restrictions of the SPT, or the SPT's Operator, governing the operation on or along the Gilroy Joint Facilities. In the event JPB, JPB's Operator, or any other entity with which JPB contracts to provide Gilroy Commuter Service must hold a formal investigation pursuant to a collective bargaining agreement relating to the neglect, refusal or failure of JPB, JPB's employees, JPB's Operators or any other entity with which JPB contracts to provide Gilroy Commuter Service to abide by the rules, instructions, and restrictions of the SPT, or SPT's Operator, governing the operation on or along the Gilroy Joint Facilities, SPT, or SPT's Operator, shall cooperate with JPB, JPB's Operator, or any other entity with which JPB contracts to provide Gilroy Commuter Service and make available personnel of SPT, or SPT's Operator, as witnesses for JPB, or JPB's Operator, in such formal investigation at the cost and expense of JPB.

Section 6. LIABILITY

6.1 Assumption of Responsibility:

(a) Except as otherwise provided in Section 4.11 each of the parties hereto shall assume, bear and pay all the liabilities allocated to its as the responsible party under the terms of this Section 6. For purposes of this Section 6, the term "liability" shall include all loss, damage, cost, expense (including costs of investigation and attorney's fees and expenses at arbitration, trial or appeal and without institution of arbitration or suit), liability, claims and demands of whatever kind or nature arising out of an incident described in the applicable provision of this Section 6. Except as otherwise expressly provided in Sections 6.2(b), 6.2(d), 6.2(e), and 6.4, the responsibility for liabilities undertaken by each party under this Section 6 is without respect to fault, failure, negligence, misconduct, malfeasance or misfeasance of any party or its employees, agents or servants.

(b) All costs and expenses incurred in connection with the investigation, adjustment and defense of any claim or suit shall be included as part of the liability for which responsibility

is assumed under the terms of this Section 6, including salaries or wages and associated benefits of, and out-of-pocket expenses incurred by or with respect to, employees of either party engaged directly in such work and a reasonable amount of allocated salaries and wages of employees providing support services to the employees so engaged directly in such work.

6.2 Allocation of Responsibilities:

(a) Liability for personal injury (including bodily injury and death) to, or property damage suffered by, an invitee of either party shall be the responsibility of and borne and paid solely by that party regardless of the cause of such loss or the fault of either party or whose Train or Equipment was involved, except as specifically provided in Section 6.2(b) and Section 6.4 below. For purposes of this paragraph, and without limitation, consultants and contractors of a party and any person who is on a Train or Equipment operated by or for the account of a party (other than an employee of a party engaged in performing duties for that party) shall be deemed to be an invitee of that party. All persons at or adjacent to a passenger station or loading platform shall be deemed to be invitees of JPB (other than employees, contractors and consultants, including employees of such contractors, of SPT or Operator of SPT engaged in performing duties for SPT or for any such Operator of SPT).

(b) After SPT shall have incurred aggregate liability under both this Agreement and the Trackage Rights Agreement in an amount equal to \$25.0 million for injury to or damage suffered by its invitees for incidents occurring in any one calendar year, JPB shall bear a share of that portion of the aggregate liability to SPT's invitees for that year that is in excess of \$25.0 million in proportion to JPB's relative degree of fault, if any; provided, that JPB shall not bear liability to SPT's invitees in an amount in excess of \$125.0 million for incidents occurring under both this Agreement and the Trackage Rights Agreement in such calendar year. In computing the \$25.0 million base amount payable by SPT prior to any participation by JPB, there shall be excluded any liabilities incurred due to the Excluded Conduct (defined below in Section 6.4) of SPT. After JPB shall have incurred aggregate liability under both this Agreement and the Trackage Rights Agreement in an amount equal to \$25.0 million for injury to or damage suffered by its invitees for incidents occurring in any one calendar year, SPT shall bear a share of that portion of the aggregate liability to JPB's invitees for that year that is in excess of \$25.0 million in proportion to SPT's relative degree of fault, if any; provided, that SPT shall not bear liability to JPB's invitees in an amount in excess of \$125.0 million for incidents occurring under both this Agreement and the Trackage Rights Agreement in such calendar year. In computing the \$25.0 million base amount payable by JPB prior to any participation by SPT, there shall be excluded any liabilities incurred due to the Excluded Conduct of JPB. Liability shall be

deemed incurred on the date of the incident giving rise to such liability regardless of the date on which liability is paid or established. The determination of the relative fault of the parties in any proceeding establishing the liability shall be binding on the parties.

(c) Liability for personal injury (including bodily injury and death) to, or property damage suffered by, persons other than invitees of either SPT or JPB and casualty losses to property owned by the SPT and/or JPB shall be the responsibility of and borne and paid by the parties as follows regardless of the cause of such loss or the fault of either party except as provided in paragraphs (d) and (e) of this Section 6.2 and Section 6.4 below:

- (i) Loss to Trains, Equipment and other property owned by JPB shall be the responsibility of the JPB and borne by it.
- (ii) Loss to Trains, Equipment and other property owned by and freight transported by SPT shall be the responsibility of SPT and borne by it.
- (iii) Loss to property used by both parties and property jointly owned by SPT and JPB shall be the responsibility of and borne (A) totally by the single party whose Train or Equipment was involved in the incident, (B) equally by the parties if the Trains or Equipment of both parties were involved in the incident, and (C) by the party or parties responsible for costs of maintenance of the property pursuant to the cost allocation principles of Section 9 hereof if no party's Train or Equipment was involved in the incident.
- (iv) Liability for personal injury (including bodily injury and death) to, or property damage suffered by, any employee of either party which occurs during the course of employment or while traveling to or from employment (an "employee") shall be the responsibility of and borne solely by the party employing such employee.
- (v) Liability for personal injury (including bodily injury and death) to, or property damage suffered by, any person who is not an employee or invitee of either party (including without limitation persons using vehicular and pedestrian crossings and trespassers) shall be the responsibility of and borne (A) totally by

the party whose Train or Equipment was involved in such loss if the Train or Equipment of only one party was involved, and (B) by the SPT if no Train or Equipment was involved in the incident.

(d) Liability for personal injury (including bodily injury and death) to, or property damage suffered by, a person who is not an employee or invitee of either party shall be the responsibility of and borne by both parties in proportion to their relative degrees of fault if Trains or Equipment of both parties were involved in the incident giving rise to such injury or damage.

(e) Each party shall indemnify the other party and hold the other party harmless from and against any Environmental Expenses incurred in connection with the discharge or release of any Hazardous Materials on or about the Gilroy Joint Facilities by such party, or its employees, contractors, lessees, invitees, representatives, agents, Operators (including, but not limited to, NRPC), successors, or assigns. SPT shall further indemnify and hold JPB harmless, and defend JPB with counsel reasonably satisfactory to JPB against any damages or liability caused by or arising out of a release or discharge of Hazardous Materials, in, on, or about the Gilroy Joint Facilities occurring prior to the date hereof. For purposes of this Section 6.2, the terms "Environmental Expenses" and "Hazardous Materials" shall have the meaning set forth in that certain Environmental Indemnity Agreement between the parties which is part of the Sale Agreement. Nothing herein is intended to, nor shall abrogate the rights and responsibilities of the parties contained in the aforesaid Environmental Indemnity Agreement.

6.3 Insurance:

(a) SPT and JPB shall each maintain general liability insurance in the amount of at least \$100,000,000 per occurrence and shall either include all of their respective Operators (other than NRPC) as insureds under their respective policies or furnish evidence of separate insurance of the same amount and type for each Operator (other than NRPC). Insurance shall be placed with a company or companies authorized to conduct business in California. SPT and JPB (and any Operator of either party if such Operator demonstrates to the reasonable satisfaction of the SPT and JPB sufficient financial capacity) may self insure to a level not to exceed \$10.0 million.

(b) The general liability insurance required by Section 6.3(a) shall provide coverage for personal injury, bodily injury, death and property damage with respect to all operations of the SPT, JPB and Operators, respectively. Such insurance shall include blanket contractual coverage, including coverage for written, oral and implied contracts and specific coverage for the indemnity

provisions set forth in this Section 6. Each policy of general liability insurance obtained by the SPT and JPB shall name the other as an additional insured with respect to any liability to be borne by the party obtaining such insurance pursuant to the provisions of this Section 6.

(c) For any claims arising out of activities, products or operations resulting from or related to this Agreement, the insurance obtained pursuant to Section 6.3(a) shall be primary with respect to the obligation under this Agreement of the party obtaining the insurance and with respect to the interests of all parties added as additional insureds. Any other insurance maintained by an additional insured shall be excess of this coverage herein defined as primary and shall not contribute with it.

(d) Unless otherwise agreed by SPT and JPB, the insurance required by Section 6.3(a) shall be maintained by each of the parties specified therein for the full term of this Agreement and shall not be permitted to expire or be canceled or materially changed except upon sixty (60) days' written notice to the other parties. Each insurance policy required by Section 6.3(a) shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or limits except after sixty (60) days' prior written notice has been given to all insureds.

(e) Each of SPT and JPB shall cause its and/or its Operator's (other than NRPC's) insurers to provide the other with certificates of insurance and endorsements evidencing the provisions specified above in this Section 6.3 prior to commencement of operations under this Agreement.

(f) A failure of any party to maintain the insurance required by this Section 6.3 shall not relieve such party of any of its liabilities or obligations under this Agreement.

6.4 Limitations on Indemnification:

(a) The provisions of this Section 6.4 shall apply notwithstanding the provisions of Section 6.2 above. "Excluded Conduct" shall mean (i) an entire failure of care or the exercise of so slight a degree of care as to raise a presumption that there was a conscious indifference to the things and welfare of others, (ii) conduct constituting a reckless or wanton disregard of the probable results of such conduct, (iii) wilful misconduct, or (iv) conduct which would permit the award of exemplary or punitive damages. Neither party shall be indemnified for any loss or liability resulting from its own Excluded Conduct, and in any such case such party shall be responsible for and bear loss or liability in proportion to its relative degree of fault and such party shall be responsible for and bear all exemplary or punitive damages, if

any, resulting from its Excluded Conduct. If any of the provisions of Section 6.2 would otherwise indemnify a party against liability, loss or damage that would be prohibited by or unenforceable under the laws of the State of California (including a determination that indemnification under the circumstances involved is against the public policy of the state), the indemnity provided by such provision shall be deemed to be limited to and operative only to the maximum extent permitted by law. Without limitation, if it is determined that any law or public policy of the State of California prohibits the indemnification of a party for its own sole negligence in any instance covered by the provisions of Section 6.2, those provisions shall be deemed to exclude indemnification for such party's sole negligence but to permit full indemnification, as specified in Section 6.2, if both parties were negligent. In the case of any liability, loss or damage for which the provisions of this Section 6.4 would prevent the indemnification of a party, such party shall be responsible for and bear such liability, loss or damage.

(b) Notwithstanding Section 6.2 above, SPT and JPB shall bear liability in proportion to their relative degrees of fault if, but only if, the liability arises solely out of a collision between a Train of SPT and a Train of JPB that occurs on the Gilroy Joint Facilities during a "peak commuter period", as hereinafter defined, on a day during which JPB operates scheduled Gilroy Commuter Service Trains. This Subsection 6.4(b) shall cease to apply on any segment of the Gilroy Joint Facilities upon which there are double track operations. As used in this Section 6.4(b), the term "peak commuter period" shall mean a single uninterrupted period in the morning and a single uninterrupted period in the afternoon to be designated by JPB from time to time upon not less than 90 days written notice from JPB to SPT; provided, however, that neither of such periods shall exceed five (5) hours and the two periods together shall not exceed nine (9) hours in the aggregate.

6.5 Scope of Indemnification: In any case where a party is required under the provisions of this Section 6 to bear a loss or liability, it shall pay, satisfy and discharge such liability and all judgments that may be rendered by reason thereof and all costs, charges and expenses incident thereto, and such party shall forever indemnify, defend and hold harmless the other party and its commissioners, directors, officers, agents, employees, shareholders, parent corporation and affiliated companies or governmental entities from, against and with respect to any and all liabilities which arise out of or result from the incident giving rise thereto. If a party asserts that the other was guilty of Exclusive Conduct and denies liability for indemnification of the other party based thereon, the party asserting such Excluded Conduct shall have the burden of proof in establishing such conduct. It is the intent of the parties that the indemnification provisions of this Section 6 shall apply to both the passive negligence and the active negligence of an indemnified party.

6.6 Procedure:

(a) If any claim demand shall be asserted by any person against an indemnified party under this Section 6, the indemnified party shall, within 30 days after notice of such claim or demand, cause written notice thereof to be given to the indemnifying party, provided that failure to notify the indemnifying party shall not relieve the indemnifying party from any liability which it may have to the indemnified party under this Section 6, except to the extent that the rights of the indemnifying party are in fact prejudiced by such failure. If any such claim or demand shall be brought against the indemnified party and it shall have given notice thereof to the indemnifying party, the indemnifying party shall have the right, at its own expense, to control (including the selection of counsel reasonably satisfactory to the indemnified party) or to participate in the defense of, negotiate or settle, any such claim or demand, and the parties hereto agree to cooperate fully with each other in connection with any such defense, negotiation or settlement. In any event, the indemnified party shall not make any settlement of any claims which might give rise to liability on the part of the indemnifying party under this Section 6 without the prior written consent of the indemnifying party, which consent shall not be unreasonably withheld, conditioned or delayed. If any claim or demand relates to a matter for which the parties, under the terms of Section 6.2, are to share liability equally or in proportion to their relative degrees of fault, each party shall be entitled to select its own counsel and defend itself against the claim at its own expense, and neither party shall make any settlement of any such claims without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

(b) Subject to the provisions of Section 6.6(a), on each occasion that the indemnified party shall be entitled to indemnification or reimbursement under this Section 6, the indemnifying party shall, at each such time, promptly pay the amount of such indemnification or reimbursement. If the indemnified party shall be entitled to indemnification under this Section 6 and the indemnifying party shall not elect to control any legal proceeding in connection therewith, the indemnifying party shall pay to the indemnified party an amount equal to the indemnified party's reasonable legal fees and other costs and expenses arising as a result of such proceeding.

(c) Any dispute between the parties as to the right to indemnification or the amount to which it is entitled pursuant to such right with respect to any matter shall be submitted to arbitration pursuant to Section 7.

6.7 Operators: Any Operator other than NRPC shall agree to be bound by the provisions of this section 6 unless otherwise agreed in writing by SPT and JPB. The parties will use reasonable

efforts to extend the benefits of existing NRPC indemnities to SPT. For purposes of this Section 6, as between SPT and JPB, the Trains, Equipment, and actions of any Operator (including NRPC) or any other entity acting on behalf of and for the account of a party hereto shall be deemed to be the Trains, Equipment and actions of such party. Nothing contained herein shall be construed to limit or waive the rights of a party hereto to seek indemnification or damages from its Operator(s) or other entities acting on its behalf, for actions of said Operator(s) or said entities.

6.8 Dollar Amount Adjustments: Each of the dollar amounts set forth in Section 6.3(a) above shall be adjusted annually and every three years, respectively, for changes in the Consumer Price Index, but shall not be reduced below their initial levels. As used in this Section 6.8, the term "Consumer Price Index" shall mean the United States Department of Labor's Bureau of Labor Statistics' Consumer Price Index, All Urban Wage Earners and Clerical Workers, All Items, for the San Francisco area (1967=100). If the base year for the Consumer Price Index is changed from 1967, the Consumer Price Index shall be converted in accordance with the conversion factor published by the United States Department of Labor's Bureau of Labor Statistics. If the Consumer Price Index is discontinued or revised, such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Consumer Price Index had not been discontinued or revised.

6.9 Not For Benefit of Third Parties: The provisions of this Section 6 are not intended to confer any right, benefit, or cause of action upon any third party and are intended solely to deal with the allocation of liability, if any, as between the parties to this Agreement.

Section 7. DISPUTE RESOLUTION AND BINDING ARBITRATION

7.1 Settlement of Disputes: Both of the parties hereto shall make every reasonable effort to settle any disputes arising out of their respective rights and obligations under this Agreement by prompt and diligent negotiations.

7.2 Controversies Subject to Arbitration: Any and all claims, disputes or controversies between JPB and SPT arising out of or concerning the interpretation, application or implementation of this Agreement, which cannot be resolved by the parties by negotiations, shall be submitted to binding arbitration as hereinafter provided.

7.3 Arbitration Procedure: The procedure for arbitration shall be as follows:

(a) In the event a claim, dispute or controversy subject to arbitration hereunder arises, either party may serve a written demand for arbitration in accordance with Section 7.3 of this Agreement upon the other party. If the claim, dispute or controversy is not resolved by the parties within thirty (30) calendar days after the service of the demand, the matter will be deemed submitted to arbitration.

(b) Within fifty (50) calendar days of service of a demand for arbitration, each party shall designate an arbitrator in writing and serve its designation upon the other party ("Noticed Party") in accordance with Section 7.3 of this Agreement. If the Noticed Party fails to timely designate the arbitrator to be designated by it, such arbitrator shall be appointed by the Presiding Judge (or Acting Presiding Judge) of the Superior Court of the County of Sacramento, State of California upon application of either party after ten (10) days' written notice to the other party. If each party has timely designated its arbitrator, or the Presiding Judge or Acting Presiding Judge has appointed an Arbitrator for one of the parties pursuant to the previous sentence, the two designated arbitrators shall, within seventy (70) calendar days of service of the demand for arbitration, designate a neutral third party arbitrator. The third party arbitrator shall be a qualified disinterested person, knowledgeable and experienced in rail operational matters and in the type of services contemplated by this Agreement. If the two arbitrators designated by the parties fail to timely select a neutral third party arbitrator, either party may apply to the Presiding Judge (or Acting Presiding Judge) of the Superior Court of the County of Sacramento, State of California to select the neutral third party arbitrator.

(c) At any time, the parties may agree in writing on a sole arbitrator to decide the controversy.

7.4 Rules of Arbitration: The arbitration is to be conducted pursuant to Part 3, Title 9, of the Code of Civil Procedure, commencing with Section 1280, or to any successor or replacement provisions of said Code, and the arbitrators shall have all the powers and duties specified therein.

7.5 Arbitration Schedule:

(a) The arbitration hearing shall commence no later than four months after service of the demand and shall be concluded no later than forty (40) calendar days after the hearing commencement date. The arbitration decision and award shall be rendered by the arbitrators within thirty (30) calendar days after conclusion of the arbitration hearing.

(b) The parties may extend any of the deadlines or time periods set forth above by mutual written stipulation. The

arbitrators may extend the time for commencement of the arbitration hearings, conclusion of the arbitration hearings and/or the time for rendition of the arbitrators' decision and the award (but, with respect to rendition of the arbitration award, by no longer than an additional 30 calendar days), upon motion of either party or upon the arbitrator's own motion, upon a showing of good cause therefor.

7.6 Pending Resolution: During the pendency of such arbitration proceedings, the business, the operations to be conducted, physical plant to be used, and compensation for service under this Agreement, to the extent that they are the subject of such controversy, shall continue to be transacted, used, and paid in the manner and form existing prior to the arising of such controversy, unless the arbitrator shall make a preliminary ruling to the contrary. In the case of monetary disputes relating to amounts billed for the payment of operating, maintenance or capital costs and expenses under the terms of this Agreement, the party from whom a payment is allegedly owing shall make such payment notwithstanding such dispute and may submit the dispute to arbitration under this Section 7 only by seeking a refund through such arbitration.

7.7 Cost of Arbitration: Each party hereto shall bear the costs and expenses incurred by it in connection with such arbitration, including the cost of the arbitrator appointed by it, and both parties shall share equally the costs and expenses attributable to the services of the third arbitrator.

7.8 Compliance: For all purposes of this Agreement, each party is responsible for the compliance with all provisions of this Agreement by its Operator or Operators and SPT shall be responsible for compliance by NRPC.

Section 8. GOVERNMENTAL APPROVAL, TERM, AND ABANDONMENT

8.1 Applications: JPB shall, at its own cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute any necessary proceedings for the procurement of consent, approval, or authority from any governmental agency for the sanction of this Agreement and the operations to be carried on by JPB hereunder. SPT, at its expense, shall assist and support said application or petition and will furnish such information and execute, deliver, and file such instrument or instruments in writing as may be necessary or appropriate to obtain such governmental consent, approval, or authority. JPB and SPT agree to cooperate fully to procure all such necessary consent, approval, or authority.

8.2 Term: Except as otherwise provided in Section 8.3 hereof, the term of the Agreement and the trackage rights provided for hereunder shall be perpetual.

8.3 Abandonment or Discontinuance: In the event that SPT receives necessary governmental approval or exemption to abandon or discontinue Freight and Intercity Passenger Service over all or substantially all of the Lick/Gilroy Line and SPT decides to exercise its right to abandon said operations, JPB may purchase, and SPT shall sell, all of SPT's interest in the Trackage and the right-of-way and real estate underlying such Trackage applicable to that portion of the Lick/Gilroy Line being purchased. For such purposes, the parties agree that, during the period described in Section 2.10 hereof, the value of one-half of the real property and right-of-way underlying said Trackage shall be \$20,000,000 and that JPB shall receive a credit of \$8,000,000 for that amount during such period. The abandonment or discontinuance, purchase, and sale by the parties pursuant to this Section 8.3 shall be governed by ICC statutes, rules, regulations, and procedures governing abandonments or discontinuances or those of any successor body to the ICC. If the ICC should cease to exist and there is no successor body or procedures, the value of SPT's interest in the Trackage, right-of-way, and underlying real estate will be determined by arbitration pursuant to Section 7 if the parties cannot agree; provided, however, that JPB shall have the right not to purchase same upon giving written notice to SPT of such election within 90 days of the rendition of an arbitration award.

8.4 Release: Upon termination of this Agreement, or any part thereof, each party shall forever release and discharge the other party of and from any and all manner of obligations, claims, demands, causes of action, or suits which it might have, or which might subsequently accrue to it growing out of or in any manner connected with, directly or indirectly, the contractual obligations of under this Agreement in the involved Trackage, provided, however, the aforesaid relinquishment, abandonment, surrender, renunciation, release, and discharge of the parties shall not in any case affect any of the rights and obligations of either party which may have accrued, or liabilities accrued or otherwise, which may have arisen prior to such termination or partial termination. Upon any partial termination of the Agreement, however the same may occur, the terms and conditions hereof shall continue and remain in full force and effect for the balance of the Gilroy Joint Facilities.

8.5 Employees: In the event of sale or of termination by abandonment pursuant to Section 8.3 hereof, JPB and SPT shall each be responsible for and shall bear labor claims of, and employee protection payable to, its own respective employees including any amounts that either JPB or SPT may be required to pay to its own respective employees pursuant to labor protective conditions imposed by the ICC.

Section 9. MAINTENANCE

9.1 Responsibility for Performance and Costs: SPT shall physically perform the ordinary and capitalized maintenance on the Gilroy Joint Facilities (excluding Commute Support Facilities) with the cost of such maintenance (other than for Commute Support Facilities) apportioned as described in Section 9.2 below. SPT shall perform and be responsible for all costs and expenses of the maintenance on Exclusive Freight Trackage. JPB, or SPT at JPB's request and with SPT's concurrence, shall perform the maintenance on Commute Support Facilities and all costs and expenses associated with such maintenance on Commute Support Facilities shall be the responsibility of JPB. No later than March 31 of each year SPT will present JPB with a written estimated budget for costs and expenses for maintenance of the Gilroy Joint Facilities (and for maintenance of the Commute Support Facilities if JPB has requested SPT to perform such maintenance) for the next-succeeding Fiscal Year. SPT may submit to JPB written proposed amendments, supplements or adjustments to said budget from time to time after submission of the initial estimated budget. Such initial estimated budget, and any amendments, supplements and adjustments shall be subject to the written consent of JPB which shall not be unreasonably withheld, conditioned or delayed. SPT, during such next succeeding Fiscal Year shall bill JPB monthly on an estimated actual cost basis (including Customary and Materials Additives) for JPB's share of such maintenance costs. If it appears to JPB that the monthly billing deviates substantially from that projected in the estimated budget, JPB may request a written explanation from SPT as to the reason for such deviation and SPT shall provide such written explanation within 15 days after receipt of the request. If the parties are in disagreement as to any such monthly billings or the amounts claimed for such maintenance, such disputes shall be resolved in accordance with section 7 of this Agreement. At the end of each Fiscal Year, there shall be an adjustment if billed costs deviate from actual costs. To the extent possible, the parties shall negotiate appropriate flat rates for such maintenance costs within twelve months of the Effective Date unless extended in writing by the parties.

9.2 Apportionment of Costs: JPB and SPT will share ordinary maintenance costs and capital maintenance costs for the Gilroy Joint Facilities (excluding Commute Support Facilities) on the basis of the SFGTF applied to the traffic on said Gilroy Joint Facilities as follows: The SFGTF will be applied with SPT as the "dominant user" until the total number of JPB's Trains in Gilroy Commuter Service Trains exceeds the number of SPT's Trains in Freight and Intercity Passenger Service, in which case JPB will become the "dominant user" as defined in the SFGTF for that Fiscal Year. Thereafter, the determination as to who is the "dominant user" shall be made for each Fiscal Year with the party having the

greater number of Trains designated as the "dominant user" for the applicable Fiscal Year. However, capital expenditures which are unique for Gilroy Commuter Service only will be paid solely by JPB and not included in the SFGTF. Similarly, capital expenditures which are unique for Freight Service and/or Intercity Passenger Service will be paid solely by SPT and not included in the SFGTF.

9.3 Level of Maintenance: The Gilroy Joint Facilities (other than Commute Support Facilities and Exclusive Freight Trackage) shall be maintained by SPT to a minimum of the existing condition as reflected in SPT's Timetable, General Orders, and Track Bulletins applicable to the Gilroy Joint Facilities and which are in effect as of the date hereof as attached hereto as Exhibit F. If JPB makes Changes and/or Additions to the Gilroy Joint Facilities in accordance with Section 10.6 below, SPT shall maintain the Gilroy Joint Facilities as provided in Section 10.6 below.

9.4 Protection of Operations: SPT further agrees that maintenance and Changes and/or Additions activities affecting the Gilroy Joint Facilities shall not be scheduled to unreasonably delay or impair JPB's rights under Section 4.2 to provide Gilroy Commuter Service on the Gilroy Joint Facilities. JPB shall be given the same advance notice of maintenance plans and schedules as is provided to SPT's personnel.

9.5 Assumption of Maintenance: In the event SPT becomes incapable of adequately performing maintenance functions hereunder for the Gilroy Commuter Service, arrangements will be made for the prompt and orderly transfer of such functions to JPB.

SECTION 10. CAPITAL IMPROVEMENTS

10.1 JPB Responsibility: JPB shall pay for or reimburse SPT for the following Changes and/or Additions to the Gilroy Joint Facilities:

(a) Construction during the first phase of operations (which is estimated to be completed within one year of the Effective Date pursuant to a schedule mutually agreed by the parties), which includes the following (with the understanding of the parties that these listed Changes and/or Additions and the time for their completion may be changed or superseded by written agreement between SPT and either JPB or the Santa Clara County Transit District (acting for and on behalf of JPB) and that the parties may agree in writing to further Changes and/or Additions and the time for such completion):

(i) Conversion of the spring switches at the stations of Lick, Coyote, and Gilroy to power-operated switches, controlled by SPT's dispatcher;

(ii) Construction of a 10,000-foot high-speed (40 mph) siding at the station of San Martin, which is between the end of the double track at Coyote and the beginning of the double track at Gilroy, which will be hand-operated; and

(iii) Any required improvements to the 1,500-foot house track at the Gilroy passenger station to be leased by SPT to JPB for the purpose of loading and unloading passengers or storing passenger equipment.

(b) Any Changes and/or Additions to the Gilroy Joint Facilities requested by JPB (even if both SPT and JPB benefit from such Changes and/or Additions). The parties may, but are not required to, agree on a cost sharing for Changes and/or Additions to the Gilroy Joint Facilities that are mutually beneficial.

10.2 SPT Responsibility: SPT shall be solely responsible for the cost and expense of Changes and/or Additions on the Gilroy Joint Facilities which SPT has requested (even if both SPT and JPB benefit from such Changes and/or Additions). The parties may, but are not required to, agree on a cost sharing for Changes and/or Additions to the Gilroy Joint Facilities that are mutually beneficial.

10.3 Shared Responsibility: The costs of any other Changes and/or Additions shall be shared on a basis to be agreed by the parties.

10.4 Grade Separations and Crossing: Notwithstanding any other provisions of Section 10 of this Agreement (other than Section 10.9), the cost of new and upgraded grade separations and new or upgraded pedestrian or vehicular road crossings at grade on the Gilroy Joint Facilities (but not including the cost of maintenance or capitalized maintenance of any of the foregoing) shall be borne by the parties as follows:

(a) **SPT Responsibility:** SPT shall be solely responsible for the cost and expense of those separations and crossings covered hereunder which (i) it has instituted and undertaken for its benefit and which were not requested by JPB, (ii) SPT has requested, and based thereon, JPB has actually undertaken, or (iii) were requested, required or funded by any other party and which SPT has instigated, induced, actively and substantially supported, or solely caused.

(b) **JPB Responsibility:** JPB shall be solely responsible for the cost and expense of those separations and crossings covered

hereunder which (i) it has instituted and undertaken for its benefit and which were not requested by SPT, (ii) JPB has requested, and based thereon, SPT has actually undertaken, or (iii) were requested, required or funded by any other party and which JPB has instigated, induced, actively and substantially supported, or solely caused.

(c) **Shared Responsibility:** SPT and JPB shall share the costs and expenses for all other grade separations and crossings not subject to Subsections (a) and (b) above on the basis of the number of Trains of each party operated over the applicable grade separation or crossing during the twelve calendar month period immediately preceding the approval of the final plans for construction of such grade separation or crossing.

(d) **Identity of Parties:** For purposes of this Section 10.4, JPB shall include any one or more of JPB's member agencies, its Operator(s) or other entities acting on JPB's behalf or for its account, and its respective successors or assigns; and SPT shall include SPT's Operator(s) or other entities acting on SPT's behalf and for its account and its respective successors and assigns.

(e) **Prior Grade Separation Projects:** Notwithstanding any other provision of this Section 10.4, the costs for the grade separation project under consideration as of the date hereof at Bailey Avenue in Santa Clara County (Milepost 64.0) shall not be subject to this Agreement, and neither JPB nor any of its members shall be responsible for any portion of the costs thereof by virtue of having entered into this Agreement or by having instituted the Service contemplated hereunder. The costs of that project shall be borne by those entities which would have borne the same as if this Agreement had not been entered into and as if the Service contemplated hereunder had not been instituted. SPT and JPB represent and warrant to each other that, other than the above-described Bailey Avenue project, to the best of each party's respective knowledge, there are no grade separation projects on the Gilroy Joint Facilities currently planned, requested or required by any local agency, special district, city, county, state or federal governmental agency, bureau or department. Nothing contained in this Subsection shall affect, limit, or modify any cost sharing or allocation arrangements, agreements, or requirements, if any exist, between JPB or its member agencies and any other public entities concerning grade separations nor shall SPT be liable to JPB or its member agencies for any of their obligations under any such arrangements, agreements, or requirements, if any exist.

10.5 Design Plans: Engineering and design plans for the construction of any Changes and/or Additions requested by JPB on Gilroy Joint Facilities must be submitted to and approved by SPT prior to any construction. SPT's approval for such construction shall not be unreasonably withheld, conditioned or delayed.

10.6 Changes and/or Additions to Gilroy Joint Facilities: JPB shall have the right to request Changes and/or Additions to the Gilroy Joint Facilities. Any such Changes and/or Additions shall be subject to the approval of SPT (which shall not be unreasonably withheld, conditioned, or delayed), and shall be at JPB's sole cost and expense. If JPB and SPT agree to the Changes and/or Additions, they shall further agree in writing as to the nature of such Changes and/or Additions, as to the level of utility to the line affected by the Changes and/or Additions, and the consequent level of maintenance required under Section 9.3, above, by reason of such Changes and/or Additions.

10.7 Additional JPB Rights: JPB shall have the right to enter, construct, reconstruct, maintain, repair, operate, use, relocate, and/or remove station facilities, platforms, other accommodations for Gilroy Commuter Service passengers, and related facilities including Commute Support Facilities in accordance with Section 4.4 and 10.5 hereof.

10.8 JPB's Improvements: Construction, reconstruction or use of Changes and/or Additions which are JPB's responsibility pursuant to Section 10.1 shall not unreasonably interfere with SPT's Freight or Intercity Passenger Service and the completion of such Changes and/or Additions shall not result in the degradation of the Trackage and signal system of the Gilroy Joint Facilities; provided, however, that nothing in this Section shall be construed to limit or otherwise abrogate JPB's rights pursuant to Section 4.2 hereof.

10.9 Necessary Changes and/or Additions: Notwithstanding any other provisions of Section 10 of this Agreement, if Changes and/or Additions are determined to be necessary to reinstate Service or are then currently necessary to maintain the integrity of the Trackage or Track Structure for its then current utility to both parties on the Gilroy Joint Facilities, the party owning the element of the affected Trackage or Track Structure ("responsible party") shall be responsible for undertaking the necessary Changes and/or Additions and SPT and JPB shall share the costs of such Changes and/or Additions on a mutually agreeable basis taking into account the benefits to each party derived from the continued use of the Trackage or Track Structure. (Notwithstanding use of the SFGTF elsewhere in this Agreement, there shall be no presumption that the SFGTF is the appropriate basis for allocating costs under this Section 10.9 in any given situation.) Changes and/or Additions effected pursuant to this Section shall be subject to the procedures set forth in Subsections (a) through (e) below.

(a) In the event of an occurrence (other than that for which a party is liable under Section 6) resulting in (i) cessation or interruption of Service and damage to the Trackage or Track Structure, and the costs of Changes and/or Additions to

reinstate Service and to bring the Trackage and Track Structure to the then current level of utility is in excess of \$15,000,000, or (ii) significant disruption of Service and damage to the Trackage or Track Structure, and the costs of Changes and/or Additions to reinstate Service and to bring the Trackage and Track Structure to the then current level of utility is in excess of \$5,000,000 for the first twenty (20) years after the Effective Date and \$10,000,000 thereafter, the responsible party will elect whether to make the necessary Changes and/or Additions to reinstate Service and to bring the line to its then current level of utility. If the responsible party elects to abandon Service in lieu thereof, it will notify the other party, in which case the notified party will have the option to acquire the applicable Trackage or Track Structure at a value to be agreed upon; and, if the parties cannot agree on the value, the issue of the value will be submitted to arbitration pursuant to Section 7 hereof. If the responsible party elects to effect the Changes and/or Additions, it will so notify the other party, and the notified party will have the option of agreeing to share the costs of such Changes and/or Additions on the basis described above or to abandon its Service on the affected Trackage or Track Structure. If either party elects to abandon Service pursuant to this Subsection and is prevented from such abandonment by regulatory authority, it will share the costs of Changes and/or Additions with the party making any Changes and/or Additions under this Subsection on the basis described above.

(b) In the event of an occurrence (other than that for which a party is liable under Section 6) resulting in (i) cessation or interruption of Service and damage to the Trackage or Track Structure, and the costs of Changes and/or Additions to reinstate Service and to bring the Trackage and Track Structure to the then current level of utility does not exceed \$15,000,000, or (ii) significant disruption in service and damage to the Trackage or Track Structure, and the costs of Changes and/or Additions to reinstate Service and bring the Trackage and Track Structure to the then current level of utility does not exceed \$5,000,000 for the first twenty (20) years after the Effective Date and \$10,000,000 thereafter, the responsible party shall notify the other party and shall immediately undertake such Changes and/or Additions. The cost of such Changes and/or Additions shall be shared on the basis described above.

(c) In the event that either party determines that Changes and/or Additions are then currently necessary to maintain the integrity of the Trackage or Track Structure at its then current level of utility and Service thereover, such party shall notify the other party of its decision. If the notified party agrees with said decision, the responsible party shall undertake the necessary Changes and/or Additions and the costs of such Changes and/or Additions shall be shared on the basis described above. If the notified party does not agree with the notifying party's decision, the issue of whether the Changes and/or Additions

are then currently necessary to maintain the integrity of the Trackage or Track Structure and Service thereover shall be arbitrated pursuant to Section 7 hereof. If it is determined that such Changes and/or Additions are then currently necessary, the costs of such Changes and/or Additions shall be shared on the basis described above.

(d) If the Changes and/or Additions subject to Subsections (a), (b) or (c) above result in Trackage or Track Structure of greater utility than that in place prior to such Changes and/or Additions, the incremental costs thereof, if any, attributable to such greater utility shall be borne as follows:

(i) If the increased utility results from the fact that the particular Change and/or Addition resulting in such increased utility was required by then current standards imposed by law, regulations or applicable codes in order to restore the Track or Track Structure to the level of utility existing prior to effecting the Change and/or Addition, the incremental costs shall be borne in the manner provided in Subsections (a), (b) or (c) above, whichever is applicable.

(ii) If the increased utility was requested by one of the parties, or effected by the party for its benefit, but otherwise would not have been required by then current standards to restore the Track Structure or Trackage to the level of utility existing prior to the Change and/or Addition, then the incremental cost shall be borne by the party requesting or effecting the increased utility.

(e) In the event that the parties cannot agree on their respective share of costs for Changes and/or Additions described in (a), (b), and (c) above, the matter will be submitted to arbitration pursuant to Section 7 hereof. A decision from the arbitrator must be rendered prior to the commencement of any Changes and/or Additions effected pursuant to Subsection (c) hereof.

SECTION 11. MISCELLANEOUS

11.1 Other Costs: Costs of operations and administration will be borne by the party incurring such costs (unless one party's duty to perform the operations and to bear the costs thereof under the terms of this Agreement was undertaken by the other party pursuant to this Agreement because of the first party's failure to perform its obligations hereunder, in which event the failing party shall reimburse the other party for such costs) and any costs which cannot be identified as a cost solely applicable to one party will be apportioned between the parties on the basis of the SFGTF applied in the same manner as in Section 9.2.

11.2 Force Majeure: Neither party shall be liable to the other in damages nor shall a default be deemed to have occurred, and each party shall be excused from performance of any of its obligations hereunder, except obligations involving the payment hereunder of money to the other party or to a third party, during the time when such non-performance is occasioned by fire, earthquake, flood, explosion, wreck, casualty, strike, unavoidable accident, riot, insurrection, civil disturbance, act of public enemy, embargo, war, act of God, inability to obtain labor, materials or supplies, or any other similar cause beyond the party's reasonable control; provided, that if either party suffers a work stoppage due to a labor dispute, such party shall make such reasonable efforts, if practicable, to staff its operations so as to minimize disruptions to the Service provided by the other party on the Gilroy Joint Facilities.

11.3 Billing: Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing forms shall contain sufficient detail to permit computation of payments to be made hereunder. Unless otherwise specifically provided herein, billing shall be prepared in accordance with the schedules of the rules, Customary Additives, Materials Additives, material prices and equipment rental rates as agreed upon by the chief accounting officers of the parties (or their designees) hereto from time to time. JPB shall pay to SPT at the office of the Treasurer of SPT, or at such other location as SPT may from time to time designate, all the compensation and charges of every name and nature which, in and by this Agreement SPT may from time to time designate, all the compensation and charges of every name and nature which, in and by this Agreement SPT is required to pay in lawful money of the United States, within forty-five (45) days after the rendering of bills therefor to the SPT. Bills shall contain a statement of the amount due on account of the expenses incurred and services rendered during the billing period.

Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, but shall be paid subject to subsequent adjustment; provided, no exception to any bill shall be honored, recognized or considered if filed after the expiration of three years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) if in connection with a project for which a Roadway Completion Report (as that term is presently understood by the railroad industry) is required, three years after the last day of the calendar month in which the Roadway Completion Report is made covering such project, or (iii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability is established. This provision shall not limit the retroactive adjustment of billing made pursuant to: (a) exception taken to original accounting by or under

authority of the ICC or (b) retroactive adjustment of wage rates and settlement of wage claims.

So much of the books, accounts and records of each party hereto as are related to the subject matter of this Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto and by the Auditor General of the State of California pursuant to Government Code Section 10532. If work relating to this Agreement is funded in whole or in part by a federal grant, the Comptroller General of the United States and authorized representatives of the federal agency furnishing the grant shall have the right to examine and audit such books, accounts and records in accordance with applicable federal laws and regulations.

Should any payment become payable by SPT to JPB under this Agreement, the above provisions of this Section shall apply with JPB as the billing party and SPT as the paying party.

In the event that either party fails to make any payment required to be made to the other party in accordance with the provisions of this Agreement by the date upon which it is due, interest shall accrue from the due date until payment is made, at the Federal Discount Rate in effect on the due date plus 3 percent; provided, however, that no interest shall be due and payable on any amounts in dispute which are determined, either by subsequent review or by arbitration, to be not validly due hereunder.

11.4 Notices: All notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of delivery, if delivered personally to the party to whom notice is given, or if made by telecopy directed to the party to whom notice is to be given at the telecopy number listed below, or (ii) on receipt, if mailed to the party to whom notice is to be given by registered or certified mail, return receipt requested, postage prepaid and properly addressed as follows:

If intended for JPB:

Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
San Carlos, CA 94070-1306
Attention: Gerald T. Haugh
Phone No.: 415-508-6221
Telecopy No.: 415-508-0281

With a copy to:

Hanson, Bridgett, Marcus, Vlahos & Rudy
333 Market Street, Suite 2300
San Francisco, CA 94105
Attention: David J. Miller
Phone No.: 415-777-3200
Telecopy No.: 415-541-9474

And to:

Assistant Executive Officer
Santa Clara County Transit District
1555 Berger Drive
San Jose, CA 95112
Phone No.: 408-299-2884
Telecopy No.: 408-275-6836

If intended for SPT:

Executive Vice President-Operations
Southern Pacific Transportation Company
One Market Plaza
San Francisco, CA 94105
Phone No.: 415-541-2125
Telecopy No. 415-541-1829

With a copy to:

Director-Contracts & Joint Facilities
Southern Pacific Transportation Company
One Market Plaza, Room 1004-P
San Francisco, CA 94105
Phone No.: 415-541-2772
Telecopy No. 415-541-1802

And to:

Vice President & General Counsel
Southern Pacific Transportation Company
One Market Plaza
San Francisco, CA 94105
Phone No.: 415-541-1781
Telecopy No. 415-495-5436

A party may change its person designated to receive notices, its telecopy number, or its address from time to time by giving notice to the other party in accordance with the procedures set forth in this Section 11.4.

11.5 Preferences: Except as hereafter determined by the mutual agreement of the parties, neither of them shall seek in any

administrative, legislative or judicial proceeding or otherwise to obtain rights in the use of the properties subject to this Agreement in excess of those provided to it, or seek to diminish such rights provided to the other. Notwithstanding the provisions of Section 7, the parties shall have recourse to the courts or any governmental agency having jurisdiction in the event of a violation of this Section 11.5, and, in addition to any available remedies for damages, the remedy of specific enforcement shall be available with respect thereto.

11.6 Headings: The section and subsection headings in this Agreement are for convenience only and shall not be used in its interpretation or considered part of this Agreement.

11.7 Recording: Either party may, at its sole election and expense, record this Agreement with the appropriate governmental authorities. The parties agree that, should it be necessary to modify or amend any property description for such recording purposes, they shall cooperate in making said modifications or amendments.

11.8 Entire Agreement: This Agreement and its Exhibits together with the Sale Agreement and the Trackage Rights Agreement represent the entire Agreement between JPB and SPT concerning the terms of the trackage rights granted and confirmed hereby.

11.9 Amendments: No modification, addition or amendment to this Agreement shall be effective unless and until such modification, addition or amendment is reduced to a writing executed by authorized officers or agents of each party and delivered to the other party.

11.10 Not For The Benefit Of Others: This Agreement and each and every provision herein is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein shall be construed to create or increase any right in any third person to recover by way of damages or otherwise against any of the parties hereto.

11.11 Access: Each party, its employees, agents, and designees, shall have access to the Gilroy Joint Facilities and to the operating and maintenance records of the other concerning the movement of Trains or Equipment on and maintenance of the Gilroy Joint Facilities for the purpose of monitoring conformance to the principles and standards expressed in this Agreement.

11.12 Effective Date: The Effective Date of this Agreement shall be the date that SPT receives from the JPB all monies due to it under the Sale Agreement for the Property (as such term is defined in the Sale Agreement) and rights to be acquired by JPB under the Sale Agreement, including but not limited to the

\$8,000,000 referenced in Paragraph C. of the recitals to this Agreement.

11.13 **Sale Agreement Controlling:** This Agreement is entered into by the parties pursuant to and in furtherance of the Sale Agreement. In the event that there are terms in this Agreement which are inconsistent with the terms of the Sale Agreement, the terms of the Sale Agreement shall govern. Except as may be otherwise specifically stated herein, nothing contained in this Agreement shall be construed to limit or otherwise modify the rights and obligations of the parties under the Sale Agreement.

11.14 **Survival of Rights:** The rights of a party under this Agreement shall survive the bankruptcy or other insolvency of the other party to the maximum extent permitted by law.

11.15 **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be and shall be taken to be an original, and all such counterparts shall together constitute one and the same instrument.

11.16 **JPB Separate Property:** Trackage and/or other facilities owned by JPB or its member agencies that are located on real property owned by JPB or its member agencies shall not be part of the Commute Support Facilities, the Gilroy Joint Facilities, or Exclusive Freight Trackage.

IN WITNESS WHEREOF, ^{JPT *JPT*} ~~Owner~~ and ^{SPT *SPT*} ~~less~~ have executed this Agreement as of the day and year first written above.

PENINSULA CORRIDOR STUDY
JOINT POWERS BOARD

SOUTHERN PACIFIC
TRANSPORTATION COMPANY

By: *Tom Nelson*
Name:
Title:

By: _____
Name:
Title:

Approved as to Form:
Hanson, Bridgett, Marcus, Valerie and Rudy
by John J. Nelson

Approved as to Form:

IN WITNESS WHEREOF, JPB and SPT have executed this Agreement as of the day and year first written above.

PENINSULA CORRIDOR STUDY
JOINT POWERS BOARD

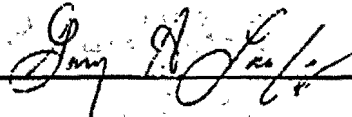
By: _____
Name: _____
Title: _____

SOUTHERN PACIFIC
TRANSPORTATION COMPANY

By: 
Name: Robert F. Starzel
Title: Vice Chairman

Approved as to Form:

Approved as to Form:



ADDENDUM TO TRACKAGE RIGHTS AGREEMENT

LICK/GILROY LINE

This Addendum, dated as of December 20, 1991, is by and between the Peninsula Corridor Joint Powers Board, a joint powers agency created under California Law (hereinafter referred to as "JPB"), Southern Pacific Transportation Company, a Delaware corporation (hereinafter referred to as "SPT") and Santa Clara County Transit District (hereinafter referred to as "SCCTD").

RECITALS

A. JPB and SPT, concurrently with the execution of this Addendum are executing a Trackage Rights Agreement - Lick/Gilroy Line of even date (the "Agreement").

B. Pursuant to Section 10.1(a) of said Agreement, SPT, JPB and/or SCCTD (acting on behalf of JPB) may mutually agree upon changes in those certain Changes and/or Additions listed in Section 10.1 and their time for completion, and may make further agreements as to other Changes and/or Additions and the time for their completion.

C. The parties hereto desire to enter into this Addendum to effect certain changes with respect to said Changes and/or Additions and the time for their completion and concerning temporary operations of the Gilroy Commuter Service referred to in the Agreement, as hereinafter provided.

NOW, THEREFORE, it is hereby mutually agreed as follows:

1. The terms of Appendix A attached hereto and made a part hereof shall be the agreement of the parties hereto.

2. Notwithstanding the Effective Date specified in Section 11.12 of the Agreement, JPB and/or SCCTD may, prior to said Effective Date, enter upon the Gilroy Joint Facilities (including the underlying real property and the right of way upon which such facilities are located) for the purpose of surveying, planning, designing, constructing and/or assisting in, preparing for or coordinating the surveying, planning, designing and construction of the Changes and/or Additions contemplated by this Addendum, and SPT will undertake all of its obligations under the terms of this Addendum prior to said Effective Date to the extent required under the terms of this Addendum.

3. This Addendum shall be deemed to be part of the Agreement.

4. As between JPB and SCCTD, pursuant to the authority granted under Section 10.1(a) of the Agreement, SCCTD may, by separate written agreement with SPT, change, delete, or add to the scope of work, schedules and other details of the projects referred to in this Addendum.

5. This Addendum may be executed in any number of counterparts, each of which shall be and shall be taken together to be an original, and all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, JPB, SCCTD, and SPT have executed this Addendum as of the date and year first written above.

PENINSULA CORRIDOR JOINT
POWERS BOARD

SOUTHERN PACIFIC TRANSPORTATION
COMPANY

W. D. Ingert

SANTA CLARA COUNTY TRANSIT
DISTRICT

APPENDIX A

GILROY FACILITIES

PHASE I IMPROVEMENTS AND OPERATIONS

1. House Track

SPT shall design and reconstruct, at the sole cost and expense of JPB, SPT's house track at Gilroy, California. The house track shall be relocated to and reconstructed upon a site in accordance with the Santa Clara County Transit District ("SCCTD") design forwarded to SPT by SCCTD letter dated September 10, 1991. (SPT may recommend modifications to the design which JPB may accept.) This work shall be completed by SPT on or before March 15, 1992. SPT will provide draft agreement(s) for this work and for the lease of SPT's house track to JPB by December 27, 1991.

2. Temporary Stations

SPT shall provide to JPB by December 27, 1991, a draft agreement permitting the construction, reconstruction, inspection, flagging, maintenance and removal by JPB of temporary station platforms for the Gilroy Commuter Service in the locations and according to the designs furnished to SPT (and agreed to by SPT and JPB) by the SCCTD in the letter from SCCTD dated September 23, 1991.

3. Gilroy Commuter Service Operations

After SPT and JPB have reached an agreement on the terms and conditions of SPT's temporary provision for JPB of Phase I Gilroy Commuter Service (between San Jose and Gilroy) as defined in Section 4.2(a) of the Agreement, SPT, upon sixty (60) days' notice from JPB, shall commence such temporary Gilroy Commuter Service for JPB. SPT's provision of such temporary Gilroy Commuter Service for JPB shall terminate upon the earlier of: (a) the date that an Operator commences Commuter Service (between San Francisco and San Jose) for JPB; (b) June 30, 1992; or (c) the expiration of a thirty (30) day notice by JPB to SPT to terminate the above-described agreement between SPT and JPB covering SPT's temporary provision of Gilroy Commuter Service for JPB. SPT shall assume labor protection responsibility for the above-described temporary Gilroy Commuter Service provided by SPT arising under federal or state law or pursuant to contracts to which SPT is bound, and shall provide appropriate indemnity protection to JPB. SPT and JPB will cooperate generally to minimize labor protection costs and specifically to utilize existing SPT personnel insofar as feasible to provide the above-described temporary Gilroy Commuter Service for JPB.

JPB shall reimburse SPT for all of its operating expenses for the above-described temporary Phase I Gilroy Commuter Service, including SPT's actual labor cost of labor and materials plus Customary Additives and Materials Additives. In addition, SCCTD shall indemnify and reimburse SPT for the labor protection responsibility described above which is attributable to SPT's temporary provision of Gilroy Commuter Service for JPB.

No later than January 14, 1992, SPT shall provide JPB a firm quotation for the month-to-month costs of operation of the temporary Gilroy Commuter Service for JPB as set forth above, provided the parties have agreed on schedules by January 7, 1992.

PHASE II IMPROVEMENTS

1. Passing Siding

Subject to SPT and JPB reaching agreement upon the terms and conditions for the Phase II improvements, the following work shall be performed at the sole cost and expense of JPB:

As part of the Phase II improvements, a high-speed (40 mph) passing siding shall be installed in the vicinity of the San Martin Station. The passing siding shall be situated with the east switch of the siding located approximately three hundred and forty (340) feet east of Middle Avenue and the west with approximately one hundred (100) feet east of San Pedro Avenue to provide a siding with a usable track approximately nine thousand five hundred (9,500) feet. Upon JPB's request, SPT shall design and construct the passing siding Track Structure at the sole cost and expense of JPB. JPB will design and construct the passing siding roadbed at the sole cost and expense of JPB. At JPB's option the passing siding switches may either be manual or powered.

2. Signal System

At JPB's option and upon JPB's request, SPT shall design and construct Centralized Traffic Control (CTC) for the Lick/Gilroy Line at the sole cost and expense of JPB. The design of the CTC shall be limited to the minimum improvements needed for the Gilroy Commuter Service defined in Section 4.2(b) of the Agreement and shall reflect best efforts by SPT to contain costs.

The CTC system will be designed so as to accommodate single platform stations at Blossom Hill (Ford Road), Capitol Expressway (Fehren Drive) and Bernal Road Station locations, with the platforms located outside of the current westbound track. The CTC shall permit operating both westbound and eastbound Gilroy Commuter Service operations defined in Section 4.2(b) of the Agreement.

3. Gilroy Station

SPT approves the Gilroy station layout concept furnished by SCCTD on September 10, 1991. Upon JPB's request, SPT shall design and construct, at the sole cost and expense of JPB, the Track Structure for the new main track including the track connections near Luchessa Avenue. JPB, at its sole cost and expense, shall design and construct the track roadbed, including drainage facilities.

JPB, at its sole cost and expense, shall design and construct all remaining Gilroy Station Trackage improvements which are intended to become Exclusive Commute Facilities.

4. Gilroy Station Storage Yard Option

SPT shall grant, at no additional charge to JPB, a 24-month option to purchase the land underlying the Gilroy Station Train storage yard. This area adjoins the future Gilroy Station park-and-ride lot. The area is roughly delineated by Old Gilroy Street, Ninth Street, the westerly line of the current railroad operating right-of-way and westerly of an existing drill track. The option shall include all existing Trackage, including the improved SPT house track and portions of the main line tracks which lie on the option property. (It is intended that the main line tracks shall be relocated as provided in paragraph 3 above.) The precise delineation of the option parcel boundary shall be subject to mutual agreement based upon the final design of the Gilroy Station. The purchase price shall be Seven Dollars and Fifty Cents (\$7.50) per square foot. SPT at its own expense shall remove and clean-up any hazardous waste contamination and shall remain financially responsible for any hazardous waste on this parcel to the same extent provided for in the Sale Agreement.

5. Station Platforms

JPB, at its sole cost and expense, shall design and construct permanent station platforms in accordance with Section 4.4 and 10.7 of the Agreement. Any necessary review by SPT of the locations and design shall be made without any unreasonable conditions or delays. SPT, at the sole cost and expense of JPB, shall assist the JPB in securing any necessary California Public Utilities Commission design approvals.

6. Fiber Optics

SPT, at the sole cost and expense of JPB, shall be responsible for facilitating the resolution of all issues related to the fiber optics cables which are within the limits of the construction. To the extent feasible, SPT shall accord JPB, all benefits related to construction above or around fiber optic cables which are provided in its contracts with fiber optics carriers.

The construction design for the stations, passing siding and Gilroy station shall be done in a fashion which avoids or protects the existing fiber optics cables and, to the extent practicable, avoids their protection or relocation. Such designs may include accommodations for future splicing and relocation by the fiber optics operators. If protection or relocation of fiber optic facilities within the limits of the construction is required, the expense of such protection shall be borne by JPB to the extent not reimbursed or obligated to be reimbursed by the fiber optic carrier or a government entity.

7. Schedule

Notwithstanding the Effective Date of the Agreement the parties shall use their best efforts to have the Gilroy facilities Phase II improvements follow the SCCTD Critical Path Method schedule dated December 2, 1991.

SPT DESIGN AND CONSTRUCTION WORK

Subject to SPT and JPB reaching agreement upon the terms and conditions for the Phase II improvements, the following guidelines shall be utilized in such agreements:

Where SPT is authorized by the provisions of this Appendix A to design and/or construct improvements at JPB's sole cost and expense, JPB shall reimburse SPT for SPT's actual costs and labor and materials, plus Customary Additives and Materials Additives, and the actual invoiced charges of its subcontractors, if any. [All such work requested of SPT by JPB shall be ordered by a service agreement substantially in the form of the design agreement sent to Mr. C. J. Burroughs, SPT Chief Engineer, from Don Bachman, SCCTD Project Manager, by letter dated October 7, 1991.] The parties shall use their best efforts to promptly agree upon the form and content of such agreements so as to avoid any delay in the work schedule.

EXHIBIT B**CUSTOMARY ADDITIVES FOR THE YEAR 1990**

	<u>Percentage</u>
Actual Labor (Straight Time & Overtime)	
Vacation	7.60
Paid Holidays	4.49
Personal Leave Days	0.74
Compensation Insurance, Personal Liability & Property Damage	8.00
Payroll Taxes	34.91
Health and Welfare	20.66
Supervision, Administration & Use of Tools	<u>44.13</u>
TOTAL	<u>120.53</u>

EXHIBIT C

MATERIALS ADDITIVES FOR THE YEAR 1989

	<u>Percentage</u>
Store Expense	13.00
Foreign Line Freight	6.00
On-Line Freight	\$.0375 / net ton miles
Material Handling Expense	
* Federal Highway Administration	5.00
* All Others	1.00
Sales and Use Tax	(as governed by specific city and state)

FORMULA FOR DETERMINING ALLOCATION OF
ROADWAY MAINTENANCE EXPENSES AND CAPITAL IMPROVEMENTS

$$SFG = Y(.570 + .910X) + X \left[1.340 + .870 \sqrt{GT} + .053 GTF + .029 GTP + .042 J \right. \\ \left. \left[GT \left(1 + \frac{VF}{600} + \frac{(VF)^2}{6000} \right) + GTP \left(1 + \frac{VP}{750} + \frac{(VP)^2}{9375} \right) \right] \right]$$

or in cases where freight speeds are equal to or greater than 80 percent of passenger speeds, the freight and passengers terms may be combined as shown below.

$$SFG = Y(.570 + .910X) + X \left[1.340 + .870 \sqrt{GT} + .053 GTF + .029 GTP + .042 J \right. \\ \left. \left[GT \left(1 + \frac{V}{600} + \frac{V^2}{6000} \right) \right] \right]$$

where:

SFG = Speed factor/gross ton factor

GT = Total gross tons of traffic (in millions) per track mile per year

GTF = Freight traffic gross tons (in millions) per track mile per year

GTP = Passenger traffic gross tons (in millions) per track mile per year

X = Number of tracks per route mile

V = Speed factor (the larger of freight speed or 0.8 times passenger speed)

VF = Freight speed

VP = Passenger speed

J = 1 for welded rail
1.5 for bolted rail

Y = As shown below

FRA Class of Tracks and Type of Operation	Value of Y		
	Main Line	Branch Line	Loop & Switch
Class 1, 2, 3; freight only up to 10 MGT per mile per year	1.00	0.56	0.14
Class 1, 2; passenger, or Class 1, 2, 3; freight more than 10 MGT per mile per year	1.12	0.66	-
Class 3; passenger, or Class 4, 5, 6; all traffic	1.15	0.69	-

The speed factors used shall be governed by the highest authorized speed in the designated area for the respective types of service.

Special studies may be conducted from time to time to update the constants used in the formula.

EXHIBIT E

(Page 1 of 8)

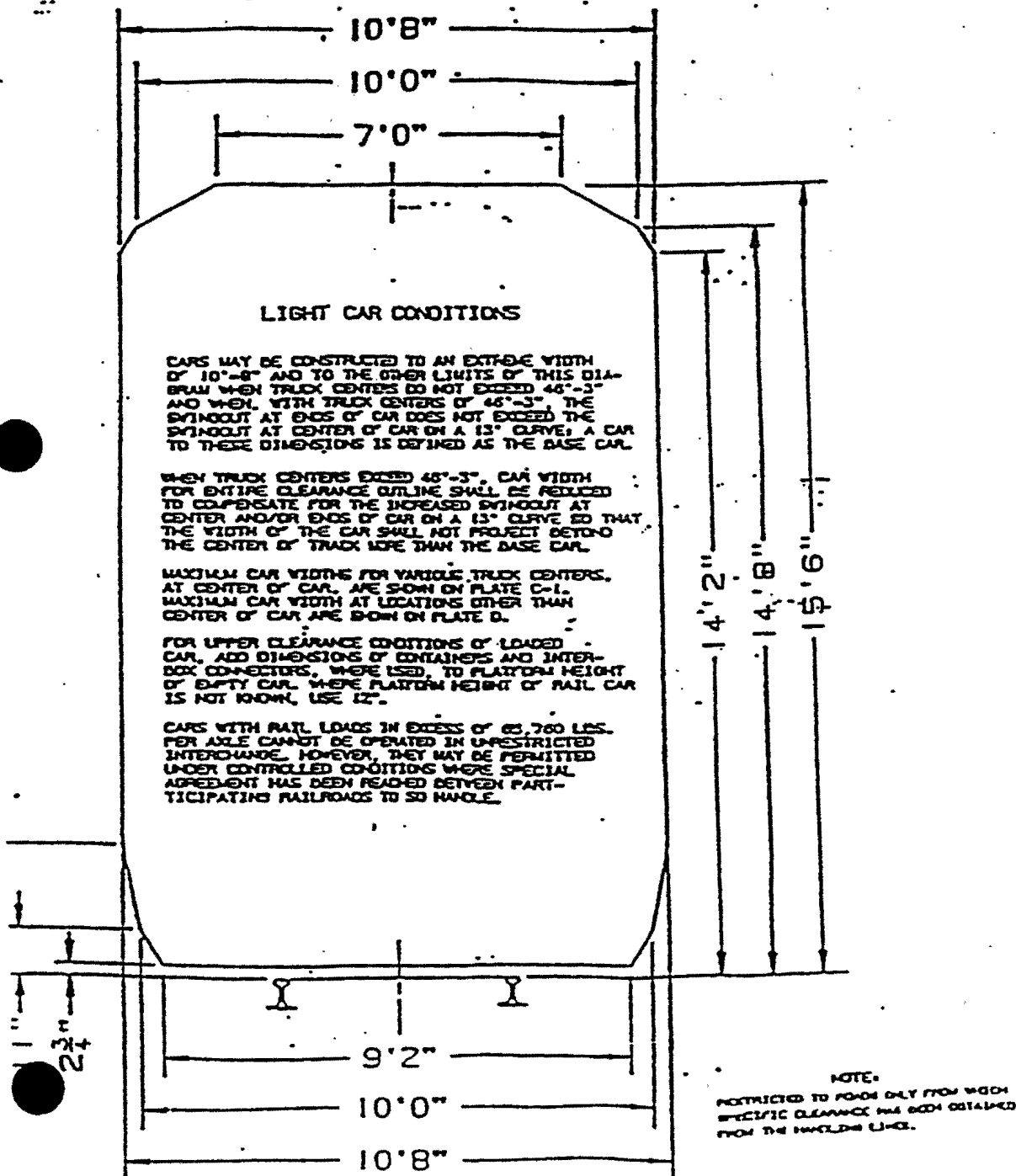
1. THERE ARE NO EXISTING COMMUTER STATION PLATFORMS WITH CLEARANCES LESS THAN AAR PLATE H¹
2. THERE ARE NO EXISTING STRUCTURES WITH CLEARANCES LESS THAN AAR PLATE H AND/OR CALIFORNIA PUBLIC UTILITIES COMMISSION GENERAL ORDER NO. 26-D²

¹AAR Plate H attached as page 2 hereto

²General Order No. 26-D is attached hereto as pages 3 through 8

ASSOCIATION OF AMERICAN RAILROADS (AAR)
PLATE B
EQUIPMENT DIAGRAM
FOR DOUBLE -STACK CONTAINER CARS
FOR LIMITED INTERCHANGE SERVICE

Standard
S-2040-91
Adopted, 1991



2-3/4" ABOVE TOP OF RAIL IS ABSOLUTE MINIMUM
UNDER ANY AND ALL CONDITIONS OF LADING, OPERATION,
AND MAINTENANCE

**GENERAL ORDER
No. 26-D**

(Superseding General Order No. 20-O)

**Public Utilities Commission of the State
of California**

**REGULATIONS GOVERNING CLEARANCES ON RAILROADS AND STREET
RAILROADS WITH REFERENCE TO SIDE AND OVERHEAD STRUC-
TURES, PARALLEL TRACKS, CROSSINGS OF PUBLIC ROADS, HIGH-
WAYS AND STREETS.**

Adopted January 19, 1948. Effective February 1, 1948

It Is Hereby Ordered by the Public Utilities Commission of the State of California that the minimum clearance requirements for railroads and street railroads hereinafter prescribed shall hereafter be observed in this state in all construction or reconstruction of tracks or structures adjacent to tracks.

It Is Hereby Further Ordered that no railroad or street railroad corporation shall operate any cars, trains, motors, engines, or other rolling equipment over its own or other tracks, except as hereinafter provided, on which overhead or side clearances, or clearances between tracks, are less than the minimum herein prescribed, if such tracks or structures adjacent to such tracks are constructed or reconstructed subsequent to the effective date hereof.

DEFINITIONS

Section 1

For the purposes of these regulations definitions as hereinafter prescribed will govern.

1. 1 *Height of a Freight Car* is the distance between the top of rail and the top of the running board.
1. 2 *Side of a Freight Car* is that part or appurtenance of a car at the maximum distance measured at right angles from the center line of the car.
1. 3 *Width of a Freight Car* is twice the distance from the center line to the side of a car as defined herein.
1. 4 *Overhead Clearance* is the vertical distance from the level of the top of the highest rail to a structure or obstruction above.
1. 5 *Side Clearance* is the shortest distance from the center line of track to a structure or obstruction at the side of track.

Section 2—Overhead Clearances

2. 1 The minimum overhead clearance above railroad and street railroad tracks, which are used or proposed to be used for transporting freight cars, shall be twenty-two (22) feet six (6) inches. Structures constructed prior to the effective date of this order may be maintained at such clearances as was lawful at the time of construction.

2. 2 The overhead clearance above top of rail of such tracks located inside of buildings may be reduced to eighteen (18) feet, provided that this clearance shall apply only to tracks terminating within the building, and further provided, that when an overhead clearance of less than twenty-two (22) feet exists on tracks inside such building, all cars, trains, motors, engines or other equipment shall be brought to a stop before entering such building, the conditions provided to require such stop to be approved by the Commission.

2. 3 Unless otherwise provided herein, overhead clearances authorized in this section are applicable only to tracks on which freight cars having a height not exceeding fifteen (15) feet six (6) inches are transported. Freight cars of a height exceeding fifteen (15) feet four (4) inches, but not greater than fifteen (15) feet six (6) inches shall be permanently marked, stenciled, or placarded as hereinafter required, and such markings maintained in a legible condition reading as follows:

"This Car
 Excess Height."

The markings required in this subsection shall be made permanent on owned cars as soon as practicable with a $\frac{1}{2}$ " stripe outlining an area not less than seven (7) inches by ten (10) inches, such stripes and lettering to be of a color contrasting with the car body color. All such required markings and placarding shall be placed on the side adjacent to the ladder or hand-holds near the floor line of the car at each of the four corners.

2. 4 Freight cars not exceeding a height of fifteen (15) feet six (6) inches may be transported without compliance with the requirements of subsection 2.3 of this order provided that the tracks over which such operations are conducted exhibit throughout the route an overhead clearance of twenty-two (22) feet six (6) inches as required in subsection 2.1 of this order.

inches are transported or proposed to be transported, minimum overhead clearances shall be increased by an amount not less than such additional height.

Section 3—Side Clearances

3. 1 Minimum side clearances from center line of tangent standard gauge railroad and street railroad tracks, which are used or proposed to be used for transporting freight cars, except as hereinafter prescribed, shall be as shown below.

Description	Minimum Side Clearance
3. 2 All structures and obstructions above the top of the rail except those hereinafter specifically mentioned.....	8' 6"
NOTE: Posts, pipes, warning signs and similar obstructions should, where practicable, have a side clearance of ten (10) feet.	
3. 3 Platforms eight (8) inches or less above top of rail.....	4' 8"
3. 4 Platforms four (4) feet or less above top of rail.....	7' 6"
3. 5 Platforms four (4) feet six (6) inches or less above top of rail when used principally for loading or unloading refrigerator cars	8' 0"
3. 6 Platforms previously constructed at clearance not less than seven (7) feet three (3) inches may be extended at such clearance unless such extension is in connection with the reconstruction of the original platform.	
NOTE: Combinations of platforms under subsections 3.4 and 3.5 will not be permitted. Combinations of platforms under subsection 3.3 with either of those under subsections 3.4 or 3.5 is permitted provided that the platform under subsection 3.3 presents a level surface from a point not more than four (4) feet eight (8) inches from center line of track to the face or wall of the platform with which it is combined.	
3. 7 Poles supporting trolley contact conductors supplying motive power to track affected, if of bracket construction, on either single or double main track.....	8' 3"
NOTE: In order to bring switch stand targets into clear vision where pole lines are or have been constructed at legal clearance on railroads operated by overhead trolley contact the clearance as applied to switch stands may be reduced to seven (7) feet six (6) inches.	
3. 8 Switch boxes, switch-operating mechanisms and accessories necessary for the control and operation of signals and interlockers projecting four (4) inches or less above the top of rail.....	3' 0"
3. 9 Signals and switch stands three (3) feet or less above top of rail and located between tracks where not practicable to provide clearances otherwise prescribed in this order.....	6' 0"

Description	Minimum Side Clearance
3.10 Through bridges supporting track affected, tunnels, water columns and oil columns -----	8' 0"
3.11 The clearances for (a) through bridges supporting track affected, (b) water barrel platforms and refuge platforms on bridges and trestles not provided with walkways, (c) handrails, (d) water barrels, (e) water columns, (f) oil columns, (g) block signals, (h) cattle guards, and (i) stock chutes, when all or portions thereof are four (4) feet or less above top of rail, may be decreased to the extent defined by a line extending diagonally upward from a point level with top of rail and five (5) feet distant laterally from center line of track to a point four (4) feet above top of rail and eight (8) feet distant laterally from center line of track; provided, however, that the minimum clearance for handrails and water barrels on bridges with walkways shall be seven (7) feet nine (9) inches, and, provided further, the minimum clearance for fences of cattle guards shall be six (6) feet nine (9) inches.	
NOTE: Unless previously approved by the Commission, the clearances authorized in subsection 3.11 of this order, except as provided for handrails and water barrels, are not permitted on through bridges where the work of trainmen or yardmen requires them to be upon the decks of such bridges for the purpose of coupling and uncoupling cars in the performance of switching service on a switching lead.	
3.12 The side clearances specified herein shall not apply to mail cranes during such times as the arms of such mail cranes are supporting a mail sack for delivery, provided that the top arm is not then higher than ten (10) feet eight (8) inches above top of rail and neither arm extends within six (6) feet five (5) inches from the center line of track.	
3.13 Icing Platforms and Supports -----	7' 8"
3.14 Operations over portions of track adjacent to icing platforms heretofore constructed with a side clearance of less than seven (7) feet eight (8) inches shall be restricted to the movement or switching of trains containing refrigerator cars to be loaded, and the necessary use of such tracks for the unloading of supplies required for the operation of the icing dock.	
3.15 Proposed extension of existing icing platforms at less than seven (7) feet eight (8) inches shall be referred to the Commission for approval before proceeding with such project.	
3.16 All minimum side clearances prescribed in this section are for tangent track. In general, all structures adjacent to curved	

shall have a minimum side clearance one (1) foot greater than the minimum side clearance otherwise required for tangent track. Where the Commission has determined that space is limited, the minimum side clearances for structures adjacent to tracks of not over twelve (12) degrees curvature may be the same as for tangent track, but where track curvature exceeds twelve (12) degrees, one-half (½) inch for each degree of the curve shall be added to the minimum side clearance required for tangent track.

- 3.17 The center line of any track constructed in and along a public street shall be at least ten (10) feet from the property line of said street, or if the street has a lawfully established curb line, such track shall be at least ten (10) feet from such line.
- 3.18 When tracks are operated exclusively for logging purposes, log rollways which serve them may be erected at less than the minimum side clearances herein prescribed.
- 3.19 Minimum side clearances authorized in this section are applicable to tracks on which freight cars having a width not greater than ten (10) feet ten (10) inches are transported. Freight cars of a width exceeding ten (10) feet ten (10) inches but not greater than eleven (11) feet one (1) inch may be transported for a period of not more than one (1) year after the effective date of this order, provided they shall be permanently marked, stenciled, or placarded, and such markings maintained in a legible condition reading

"This Car
Excess Width."

All such required markings and placarding shall be placed on the side adjacent to the ladder or handholds near the floor line of the car at each of the four corners.

- 3.20 Except as provided in subsection 3.19 of this order, if freight cars of a width greater than ten (10) feet ten (10) inches are transported or proposed to be transported, minimum side clearances shall be increased by an amount equal to one-half such additional width, and the distance between parallel tracks as provided in subsection 5.4 of this order shall be increased by the amount of such additional width.

Section 4—Overhead and Side Clearances

Minimum overhead and side clearances as prescribed in Sections 2 and 3 of this order may be decreased to the extent defined by the half circumference of a circle having a radius of eight (8) feet six (6) inches and tangent to a horizontal line twenty-two (22) feet six (6) inches above

top of rail at a point directly over the center line of track; provided, however, that for tunnels and through bridges such radius may be eight (8) feet, and provided further, that subsections 2.3 and 3.19 of this order shall apply hereto.

Section 5—Clearance Between Parallel Tracks

5. 1 The minimum distance between the center lines of parallel standard gauge tracks shall be fourteen (14) feet except as hereinafter provided.
5. 2 The center line of any standard gauge track, except a main track or a passing track, parallel and adjacent to a main track or a passing track, shall be at least fifteen (15) feet from the center line of such main track or passing track; provided, however, that where a passing track is adjacent to and at least fifteen (15) feet distant from the main track, any other track may be constructed adjacent to such passing track with clearance prescribed in subsection 5.1 of this order.
5. 3 The center line of any standard gauge ladder track, constructed parallel to any other adjacent track, shall have a clearance of not less than twenty (20) feet from the center line of such other track.
5. 4 The minimum distance between the center lines of parallel team, house and industry tracks shall be thirteen (13) feet.
5. 5 Main, siding and yard tracks constructed prior to the effective date of this order with distance of not less than thirteen (13) feet between track centers may be extended without increasing such distances.

Section 6—Other Conditions and Obstructions Adjacent to Tracks

6. 1 No merchandise, material or other articles shall be placed or permitted to remain either on the ground or on platforms adjacent to any track at a distance less than eight (8) feet six (6) inches from the center line of track.
6. 2 A suitable line or other marker should be maintained at a distance of eight (8) feet six (6) inches from the center line of track, on all platforms, excluding passenger platforms, to indicate the space along edge of the platform which must be kept clear of merchandise, material or other articles.

Section 7—Lading on Open Top Cars

7. 1 No movements shall be made of open top cars containing lading extending in excess of fifteen (15) feet six (6) inches in height above top of rail or extending laterally in excess of five (5)

— 7 —

five (5) inches from center line of car, except as hereinafter prescribed.

7. 2 The operation of cars, the lading of which extends laterally in excess of five (5) feet five (5) inches from center line of car, shall be restricted to lading the size or dimensions of which cannot be reduced.
7. 3 All open top cars with lading extending laterally in excess of five (5) feet five (5) inches from center line of car or in excess of fifteen (15) feet six (6) inches in height above top of rail, shall be placarded on the load itself in a conspicuous place when practicable, and the car shall be marked, stenciled, or placarded at locations specified in subsection 3.19 of this order.
7. 4 On any train, the consist of which includes cars loaded as described in subsection 7.3 of this order, such cars shall be blocked together in one place in the train and if its length permits, they shall be trained at least five (5) cars distant from both the caboose and the engine.
7. 5 A train order shall be delivered to every train containing any car the lading on which extends laterally in excess of five (5) feet five and one-half (5½) inches from center line of car or in excess of fifteen (15) feet six (6) inches in height above top of rail, informing the crew of the train that the train includes such car or cars, stating the total number thereof, and advising that no member of the train crew is required to ride on any such cars.
7. 6 A train order shall be delivered to every train the operation of which may be affected by the presence or movement of a train containing such wide loads, described in subsection 7.5 of this order, informing the crew of the train of that fact.
7. 7 Yard supervisors shall be given notifications sufficiently in advance of the arrival of cars, the lading on which extends laterally in excess of five (5) feet five and one-half (5½) inches from center line of car, to enable them to take necessary precautions to safeguard employees in yard.
7. 8 Cars on which the lading exceeds fifteen (15) feet six (6) inches in height above top of rail, if otherwise in compliance with these requirements as to width of lading, and the nature of which precludes the probability of employees getting on top of or passing over them, are exempt from the conditions of this section with the exception of subsection 7.4 of this order.

NARROW GAUGE RAILROADS TRANSPORTING FREIGHT CARS**Section 8—Overhead and Side Clearances**

8. 1 For the operation of equipment on narrow gauge tracks, the minimum overhead clearance shall provide a distance above the top of the highest car operated not less than that provided in this order for cars fifteen (15) feet six (6) inches in height operated on standard gauge tracks; the side clearances and distances between center lines of tracks shall provide a distance from the sides of, or between the widest cars operated, not less than those distances herein provided for cars ten (10) feet ten (10) inches in width operated on standard gauge tracks.
8. 2 All other requirements of this order where applicable shall be observed by narrow gauge railroads.

RAILROADS AND STREET RAILROADS NOT TRANSPORTING FREIGHT CARS**Section 9—Overhead and Side Clearances**

9. 1 The minimum overhead clearance above railroad and street railroad tracks which are not used or proposed to be used for transporting freight cars shall be fourteen (14) feet.
9. 2 Minimum side clearances of railroad and street railroad tracks which are not used or proposed to be used for transporting freight cars shall be thirty (30) inches from the side of the widest equipment operated, except that for poles supporting trolley contact conductors between main line double tracks such distance may be decreased to twenty-four (24) inches.
9. 3 Minimum overhead and side clearances as prescribed in this section may be decreased to the extent defined by a line extending diagonally downward from a point fourteen (14) feet above the top of rail and four (4) feet distant laterally from the center line of track to a point eight (8) feet above the top of rail and distant laterally thirty (30) inches from the side of the widest equipment operated.
9. 4 Minimum side clearances as prescribed in this section may be decreased in bridges, tunnels or subways to the extent defined by a line extending diagonally upward from a point level with the top of rail and five (5) feet distant laterally from the center line of track to a point four (4) feet above the top of rail and distant laterally thirty (30) inches from the side of the widest equipment operated.

Section 10—Clearance Between Parallel Tangent Tracks

The minimum distance between the center lines of parallel tangent tracks shall be not less than the width of the widest car operated plus twenty-four (24) inches.

Section 11—Exceptions

11. 1 Minimum clearances prescribed in Sections 9 and 10 of this order may be reduced along passenger platforms subject to approval by the Commission.
11. 2 Minimum clearances prescribed in Sections 9 and 10 of this order may be reduced for trackage located in subways and tunnels or compartments thereof, which are used exclusively for railroad passenger traffic; provided that the passenger equipment operated thereon shall have all windows and other openings effectively barred.

PUBLIC ROADS, HIGHWAYS, AND STREETS CROSSING UNDER OR OVER RAILROADS AND STREET RAILROADS**Section 12—Public Roads, Highways, and Streets Crossing Under Tracks**

12. 1 Where a railroad or street railroad crosses above any public road, highway, or street, a minimum overhead clearance of fourteen (14) feet shall be provided above the surface of such road, highway or street.
12. 2 Where a railroad or street railroad crosses above any public road, highway, or street on a single supporting span, a minimum width of twenty-four (24) feet shall be provided for the opening for such public road, highway or street. Where two or more supporting spans are used over the public road, highway or street, a minimum width of twelve (12) feet shall be provided for each opening.
12. 3 When the public road, highway or street is occupied by one or more tracks, minimum clearance dimensions shall be determined by this Commission for the case under consideration.

Section 13—Public Roads, Highways, and Streets Crossing Over Tracks

13. 1 Where a public road, highway, or street crosses above any railroad or street railroad track used or proposed to be used for transporting freight cars, the minimum clearances prescribed in this order for such tracks must be observed.
13. 2 Where a public road, highway, or street crosses over a railroad or street railroad track which is not used or proposed to be used for transporting freight cars, minimum clearances prescribed

clearance of nineteen (19) feet above top of rail shall be provided unless otherwise ordered by the Commission.

GENERAL REQUIREMENTS

Section 14—Electrical Construction

All clearances of electrical construction over, above, adjacent to, along or across railroads and street railroads shall conform to the requirements specified in General Order No. 95, or such other and further general orders covering similar requirements as may be currently effective.

Section 15—Lesser Clearances Lawfully Created Prior to the Effective Date of This Order

Where the overhead or side clearances between a track and any building, structure or facility are less than the minimum prescribed in this order, but were lawfully created prior to the effective date thereof, the minimum clearances prescribed herein shall be provided whenever the building, structure or facility is relocated or reconstructed; however, the Commission will consider specific requests for the future continuance of heretofore lawful clearances at such reconstructed building, structure or facility when application therefor has been made as provided in subsection 16.2 of this order.

Section 16—Exemptions

16. 1 Nothing herein shall be construed as preventing the movement of material over tracks when such material is necessary in the construction or maintenance of such tracks, nor in the movement of special work equipment used in the construction, maintenance or operation of the railroad, provided such movements shall be carried on under such conditions as are necessary to provide for the safety of all concerned.
16. 2 If in any particular case, exemption from any of the requirements herein is deemed necessary by the carrier concerned, the Commission will consider the application of such carrier for such exemption when accompanied by a full statement of the conditions existing and the reason why such exemption is asked. Any exemption so granted will be limited to the particular case covered by the application.
16. 3 The Commission reserves the right to modify any of the provisions of these regulations in specific cases when, in the Commis-

...served by so doing.

Section 17—Prior Orders, Decisions, and Exemptions

This order supersedes all regulations governing clearances between tracks of railroads or street railroads and structures or obstructions adjacent to such tracks heretofore promulgated under General Order No. 26, General Order No. 26-A, General Order No. 26-B, General Order No. 26-C, and Decisions Nos. 86007 and 89472 in Case No. 2290, provided however, that any exemption or deviation heretofore granted and now in force and effect shall not be affected by this order and shall remain in force and effect until the further order of this Commission.

This order shall be effective February 1, 1948.

Approved and dated at San Francisco, California, this 19th day of January, 1948.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

R. J. PAJALICH, Secretary



WESTERN REGION TIMETABLE 4

EFFECTIVE SATURDAY, NOVEMBER 24, 1990
AT 12:01 A.M.

K. A. MOORE

Vice President - Operations

L. L. PHIPPS

General Manager

M. L. WELLS

G. R. FETTY

Ass't General Managers

E. L. HORD

Ass't Vice President - Transportation Services

A. C. FOX

Superintendent - Transportation

Superintendents

G. A. GREBLO

Oregon Division

W. M. KESSINGER

Shasta Division

M. L. IRVINE

Sacramento Division

H. C. BALLANCE

Stockton Division

H. R. KAVENY

Western Division

R. A. BAKER

Tehachapi Division

L. J. JENKINS JR.

Los Angeles Division

R. N. PETERSON

West Colton Division

H. L. McDOWELL

Tucson Division

J. H. HIGHT

El Paso Division

EXHIBIT F

(Page 2 of 7)

COAST DISTRICT

MAXIMUM AUTHORIZED SPEED FOR TRAINS

BETWEEN			PSGR		FRT	
SAN FRANCISCO and WATSONVILLE JCT			70		60	
EASTWARD			WESTWARD			
Exceptions:	Pagr	Frt	Exceptions:	Pagr	Frt	
0.5 and 0.6	20	20	100.4 and 100.0	25	25	
0.6 and 1.8	25	25	100.0 and 98.0	45	45	
1.8 and 3.1	50	40	98.0 and 93.0	55	55	
3.1 and 11.0	60	40	93.0 and 87.9	35	35	
24.5 and 26.4	45	45	87.9 and 86.5	50	50	
44.0 and 45.9	60	40	86.5 and 82.0	60	60	
45.9 and 47.3	10	10	82.0 and 80.5	35	35	
47.3 and 47.5	30	30	80.5 and 80.4	25	25	
47.5 and 49.1	35	35	80.4 and 79.5	35	35	
49.1 and 51.8 (55.7)	50	50	79.5 and 78.6	50	50	
63.2 Spring Switch	35	35	74.0 and 73.8	60	55	
73.8 and 74.0	60	55	63.0 and 56.0	60	40	
78.6 and 79.5	50	50	51.8 (55.7) and 51.3	35	35	
79.5 and 82.0	35	35	51.3 and 49.1	50	50	
82.0 and 86.5	60	60	49.1 and 47.5	35	35	
86.5 Spring Switch	25	25	47.5 and 47.3	30	30	
86.5 and 93.0	35	35	47.3 and 45.9	10	10	
93.0 Spring Switch	25	25	45.9 and 44.0	60	40	
93.0 and 98.0	55	55	26.4 and 24.5	45	45	
98.0 and 100.0	45	45	11.0 and 3.1	60	40	
100.0 and 100.4	25	25	3.1 and 1.8	50	40	
			1.8 and 0.6	25	25	
			0.6 and 0.5	20	20	

MOVEMENTS AGAINST THE CURRENT OF TRAFFIC

SAN FRANCISCO and WATSONVILLE JCT			59			49		
EASTWARD			WESTWARD					
Exceptions:	Pagr	Frt	Exceptions:	Pagr	Frt			
(San Francisco to San Jose)			(Watsonville Jct. to Logan)					
1.8 and 3.1	50	40	100.7 and 100.0	25	25			
3.1 and 7.5	59	40	100.0 and 98.0	45	45			
7.5 and 8.7*	30	30	98.0 and 93.0*	55	49			
8.7 and 10.7	50	40	(Corporal to Gilroy)					
10.7 and 11.4*	20	20	82.0 and 81.7	35	35			
11.4 and 15.0	50	49	81.7 and 80.5*	25	25			
15.0 and 17.1*	15	15	(Coyote to Lick)					
17.1 and 18.3*	20	20	61.4 and 60.6*	25	25			
18.3 and 21.7*	50	49	60.6 and 51.4	45	45			
22.3 and 26.2	25	25	(San Jose to San Francisco)					
26.2 and 29.0*	20	20	45.9 and 44.4	35	35			
29.0 and 33.0	30	30	39.2 and 34.7*	25	25			
33.0 and 38.9*	20	20	34.7 and 33.0*	40	40			
44.0 and 44.4	59	40	30.0 and 26.2*	15	15			
44.4 and 45.9*	25	25	26.2 and 23.1*	20	20			
(Lick to Coyote)			23.1 and 22.0*	35	35			
51.3 and 51.8*	35	35	18.5 and 16.0*	15	15			
57.9 and 63.1*	55	49	13.1 and 10.3*	30	30			
(Gilroy to Corporal)			10.3 and 8.9*	59	40			
80.5 and 80.6*	5	5	8.9 and 8.7*	20	20			
80.6 and 81.7*	20	20	8.7 and 3.1	59	40			
81.7 and 82.0	35	35						
(Logan to Watsonville Jct)								
93.0 and 93.6	55	49						
93.6 and 95.7	50	49						
95.7 and 98.0	55	49						
98.0 and 100.0	45	45						
100.0 and 100.4	25	25						
100.4 and 100.7	15	15						

* Rule 10(E). Speed may be increased when lead engine passes MP location.

"Key" trains must not exceed 30 MPH between the following Mile Post locations:

Camadero MP 83.2 and San Francisco MP 0.0

EXHIBIT F
(Page 3 of 7)

COAST DISTRICT

WESTWARD ↓		STATIONS		↑ EASTWARD	
Station Number	Siding Feet	Coast Line			Mile Post
13200		WATSONVILLE JCT	OT	ABS DT	100.4
13175		7.2 LOGAN		CTC	93.2
13165		6.8 CORPORAL		ABS	86.4
13138		3.2 CARNADERO		DT	83.2
13135		2.5 GILROY		D	80.7
13128		3.7 RUCKER		T	77.0
13114	6125	10.7 PERRY		C	66.3
13110		3.2 COYOTE		A	63.1
13085		7.8 LICK		B	55.3
...		2.3 UP CROSSING	A	S	51.4
13025		2.2 SAN JOSE	OT	CTC	49.1
13020		1.2 COLLEGE PARK	MO		46.9
13000		0.5 SAN JOSE YARD	Q		45.7
12982		0.9 SANTA CLARA	MO		45.2
12978		3.5 LAWRENCE			44.3
12974		2.0 SUNNYVALE			40.8
12970		2.7 MOUNTAIN VIEW			38.8
12966		1.3 CASTRO			36.1
12962		3.0 CALIFORNIA AVE			34.8
12958		1.7 PALO ALTO		A	31.8
12954		1.2 MENLO PARK		B	30.1
12950		1.1 ATHERTON		S	28.9
12895		1.6 REDWOOD JCT			27.8
12890		0.8 REDWOOD CITY		D	26.2
12884	M2105	2.2 SAN CARLOS		T	25.4
12882		1.3 BELMONT			23.2
12878		1.6 HILLSDALE			21.9
12870		1.4 HAYWARD PARK			20.3
12866		1.0 SAN MATEO			18.9
12854		1.6 BURLINGAME			17.9
12850		1.1 BROADWAY			16.3
12840	M1825	1.5 MILLBRAE			15.2
12824		2.1 SAN BRUNO			13.7
12800		2.3 SO SAN FRANCISCO			11.6
12790		0.7 BUTLER ROAD			9.3
12780		3.4 BAYSHORE	M		8.6
12775		1.1 PAUL AVE			5.2
...		2.2 22nd STREET			4.1
12710		1.9 SAN FRANCISCO	MOT		1.9
(96.5)					
0.0					

SOUTHERN PACIFIC LINES

EXHIBIT F

(Page 4 of 7)

July 26, 1991

COAST DISTRICT General Order No. 6

ITEM 1. CANCELLATION OF GENERAL ORDERS 1 THROUGH 5:

General Orders 1 through 5 are cancelled. (Applicable contents of those General Orders are included in this General Order.)

ITEM 2. DELETION TO TIMETABLE, PAGE 57:

Delete the letters QY following San Luis Obispo in the station column.

ITEM 3. REVISION TO TIMETABLE, PAGE 60:

Revise MAXIMUM AUTHORIZED SPEED FOR TRAINS, Coast Line that part reading:

Westward	Psgr	Frt
~~63.0 and 56.0.....~~	~~60~~	~~40~~

To read:

63.0 and 56.0.....	70	60
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ITEM 4. ADDITION TO TIMETABLE, PAGE 64:

Following is added:

RULE 82(A). Magnolia Tower: Switching movement from 50 and 70 leads that have entered interlocking limits on restricting aspect may make reverse and forward movements within interlocking limits without further authority from interlocking operator.

ITEM 5. REVISION TO TIMETABLE, PAGE 64:

Revise RULE 93 Location of Yard Limits that part reading:

~~34.2 Warm Springs.....~~	~~40.1~~
-----------------------------------	-----------------

To read:

34.2 Warm Springs.....	38.1
------------------------	------

ITEM 6. REVISION TO TIMETABLE, PAGE 66:

Revise RULE 109(C) Trackside Detectors that part reading:

~~139.6~~	~~E1~~
------------------	---------------

To read:

139.6	E1, E2
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COAST DISTRICT (Cont.)
General Order No. 6

ITEM 7. REVISION TO TIMETABLE, PAGE 66:

Revise RULE 241 San Jose to read:

Between the hours of 6:15 AM and 10:15 PM daily when signals 463, 463.5, 464, 465, 466 or 467 display red aspect, trains and engines must not pass signal until proceed signal is received from switchman at the Alemeda.

ITEM 8. DELETION TO TIMETABLE, PAGE 66:

Delete from RULE 251 that portion of the first paragraph reading "LICK and Coyote".

ITEM 9. REVISION TO TIMETABLE PAGE 66:

Revise RULE 251 Definition. Cal Trans Commute Fleet Operations part (2) to read:

(2) Applies Monday through Friday except holidays on the eastward main track during a time period commencing 15 minutes before Train No.52 is due to leave the last preceding station where time is shown and ending with the arrival of No.72 at that station.

ITEM 10. ADDITION TO TIMETABLE, PAGE 69:

Following is added:

RULE 312(4) Coyote: When non-controlled absolute signal displays Stop indication, crew member must operate push button located near signal on eastward main track to clear signal. Push button has a 5 minute 40 second delay. If signal fails to clear, comply with Rule 317.

ITEM 11. ADDITION TO TIMETABLE, PAGE 69:

Add to RULE 314(A) the following:

<u>Eastward</u>	<u>Protection</u>	<u>Westward</u>
898.....	Slide Detector MP 90.4.....	925

ITEM 12. REVISION TO TIMETABLE PAGE 70:

Revise RULE 480 that portion under Milpitas Line reading:

~~40.1*.....Milpitas.....46.6~~

To read:

38.1*.....Milpitas.....46.6

COAST DISTRICT (Cont.)
General Order No. 6

ITEM 13. ADDITION TO TIMETABLE, PAGE 70:
Add the following to RULE 480:

<u>WEST MP</u>	<u>BLOCK NAME</u>	<u>EAST MP</u>
	Coast Line	
	Eastward Track	
51.4.....	Lick.....	63.1
	Westward Track	
51.4.....	Coyote.....	63.1

ITEM 14. REVISION TO TIMETABLE, PAGE 70:
Revise RULE 650 San Jose to read:

San Jose: Between the hours of 6:15 AM and 10:15 PM daily, when Signal 464 or lower unit of Signal 466 displays yellow aspect, movement into Track No. 1, 2, 3, or 4 must not be made until proceed signal is received from switchman at the Alameda.

Between the hours of 6:15 AM and 10:15 PM daily, starting indicators for westward trains on station Track Nos. 1, 2, 3 are controlled by switchman at the Alameda, and when displaying red aspect must not be passed unless proceed signal is received from switchman. When indicator displays yellow aspect, it permits movement to Signal 465.

ITEM 15. REVISION TO TIMETABLE, PAGE 70:
Reference to AIR BRAKE RULE 933, RULE 966 and RULE 967 are revised to read RULE 919, RULE 928 and RULE 947 respectively.

L. L. PHIPPS
General Manager

Posted by:

Date:

Time:

EXHIBIT F
(Page 7 of 7)

TRACK BULLETIN 5916 IN EFFECT BETWEEN SD AND NA DEC 05 1991
=====

DO NOT EXCEED SPEED INDICATED BELOW BETWEEN
SAN JOSE AND SALINAS

AT THE FOLLOWING LOCATIONS

TRAIN	MPH	RESTRICTION LIMIT
01 ALL	10	MP 47.6 TO MP 49.1 YELLOW FLAG AT MP 47.5 FOR EASTWARD TRAINS YELLOW FLAG AT MP 50.9 FOR WESTWARD TRAINS
02 ALL	30	MP 106.5 TO MP 106.7

APPENDIX A

TERMS OF LICK/GILROY LINE PURCHASE OPTION

(a) The Lick/Gilroy Line Purchase Option is exercisable by JPB only within five (5) years of the date on which JPB acquires the Santa Clara/Lick Line, provided, however, that such Lick/Gilroy Line Purchase Option must be exercised by JPB if Gilroy Commuter Service exceeds eight one-way Gilroy Commuter Service Trains per day. The Option allows JPB to acquire one-half of the Lick/Gilroy Line in accordance with the terms of the Sale Agreement. Upon the exercise of the Lick/Gilroy Line Purchase Option, JPB and SPT shall enter into another agreement related to the time and frequency of service and necessary capital improvements, and such agreement shall permit operation by JPB of up to sixteen Gilroy Commuter Service Trains (eight in each direction) per day, provided that the following Changes and/or Additions are made and paid for at JPB's sole cost and expense prior to such operations:

(i) Completion of the centralized traffic control system between Lick and Gilroy by: powering the switches at the 10,000-foot siding at San Martin and the siding at Perry; placing electric locks on all non-powered switches; and signaling the entire territory for centralized traffic control.

(ii) Improvement of the existing crossover at Oak Grove in the present double track between Lick and Coyote by creating double, power-operated crossovers, thus providing bidirectional, flexible centralized traffic control for eight miles.

(b) Upon completion of the Changes and/or Additions described in (a) above, SPT will continue to dispatch Trains on the Gilroy Joint Facilities on a "first-come, first-served" basis, provided, however, that if SPT and JPB can reach agreement on a mutually satisfactory schedule for Gilroy Commuter Service operations (and the parties expect to reach such agreement), SPT will dispatch giving priority to those scheduled Gilroy Commuter Service Trains.

(c) Upon completion of the Changes and/or Additions described in (a) above, JPB may operate in excess of sixteen Gilroy Commuter Service Trains per day, provided that JPB and SPT agree that the mix of Trains in Commuter, Freight, and Intercity Passenger Service will permit such operations and provided that the parties reach an agreement on a schedule consistent with the then current mix of such Trains.

(d) If, at any time following completion of the Changes and/or Additions described in (a) above, the parties are unable to agree that the mix of Trains in Commuter, Freight, and Intercity Passenger Service would permit operation by JPB of in excess of

sixteen Gilroy Commuter Service Trains per day, the institution or continuation of such operation by JPB would be subject to a subsequent mutual agreement of the parties regarding the number of Trains, scheduling, and any necessary Changes and/or Additions to be made at JPB's expense (e.g., connecting up San Martin and Perry sidings with Gilroy and Coyote to form a bidirectional centralized traffic control double track between Lick and Gilroy to be controlled by SPT).

**TRACKAGE RIGHTS AGREEMENT --
PENINSULA MAIN LINE AND SANTA CLARA/LICK LINE**

This AGREEMENT dated as of December 20, 1991, is by and between the PENINSULA CORRIDOR JOINT POWERS BOARD, a joint powers agency created under California law, (hereinafter referred to as "Owner") and SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation, (hereinafter referred to as "User");

RECITALS:

A. Owner and User have entered into a Purchase, Sale and Option Agreement dated as of November 22, 1991 ("Sale Agreement") providing, in part, for the purchase by Owner from User of certain properties in San Francisco, San Mateo and Santa Clara Counties, California including the Peninsula Main Line and the Santa Clara/Lick Line (both as defined in Section 1 hereof and as more fully described in Exhibit A hereto);

B. Pursuant to the Sale Agreement, Owner acquired the Peninsula Main Line and the Santa Clara/Lick Line for the purpose, in part, of providing Commuter Service (as defined in Section 1 hereof) and for any purpose other than those reserved exclusively to User in the Sale Agreement and User retained for itself and its successors and assigns a perpetual and exclusive easement (as set forth in the deeds and assignments conveying said properties) in and trackage rights over such properties acquired by Owner for User's present and future Freight Service and Intercity Passenger Service (both as defined in Section 1 hereof).

C. Owner and User desire to set forth the terms of the reservation by User of the trackage rights retained for User's exclusive present and future Freight Service and Intercity Passenger Service on the Peninsula Main Line and the Santa Clara/Lick Line.

D. Owner and User also desire to set forth the terms of Owner's Bridge Trackage Rights over User's Cahill/Lick Line for Gilroy Commuter Service (all as defined in Section 1 hereof).

NOW THEREFORE, it is mutually agreed by and between the parties hereto as follows:

(C:\lg\lppb)

(Main14.TPA)

Section 1. DEFINITIONS

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

1.1 "AAR" shall mean the Association of American Railroads.

1.2 "Bridge Trackage Rights" shall mean exclusive Gilroy Commuter Service trackage rights for Gilroy Commuter Service Trains only over User's Cahill/Lick Line, over which segment there shall be no intermediate Gilroy Commuter Service station stops; however, Owner's Trains may enter or leave the segment at any point. These Bridge Trackage Rights are to be used only in conjunction with the trackage rights granted (pursuant to the Lick/Gilroy Trackage Rights Agreement) by User to Owner from Lick (at or near Milepost 51.4) to Gilroy (at or near milepost 80.7), for Trains in Gilroy Commuter Service.

1.3 "Cahill Yard" shall mean the yard in front of the San Jose passenger station at San Jose, California, as more fully described in Exhibit A hereto.

1.4 "Changes and/or Additions" shall mean any capitalized improvements including, without limitation, the additions, betterments, construction, reconstruction, modifications and renewals thereof and additional facilities, regardless of book treatment as an expense or capital item, but excluding capitalized maintenance provided for in Section 9.

1.5 "Commuter Service" shall mean the operation by Owner (or an Operator for Owner) of Trains that provide commute passenger service on the Joint Facilities (excluding User's Cahill/Lick Line) between San Francisco (at or near Milepost 0.147) and Lick (at or near Milepost 51.4), California in San Francisco, San Mateo and Santa Clara Counties, and frequently characterized by reduced fare, multiple-ride and monthly commutation tickets. Commuter Service as so defined shall not include Intercity Passenger Service. The term "Commuter Service" shall also include Owner's Trains and Equipment operated for the purpose of Equipment review, schedule checks, personnel training, Changes and/or Additions and maintenance of way activities.

1.6 "Customary Additives" shall mean elements of cost added to billings of either party to the other that generally are calculated as a percentage of direct labor costs and are intended to compensate for, without limitation, paid holidays, vacation and personal leave days, health and welfare benefits, payroll taxes and administrative and supervisory expenses that include direct and general overhead, inclusive of a customary one percent (1%) additive for special administrative costs related to billing

preparation, and are subject to periodic changes depending upon industry practices and the provisions of Section 11.3. As an example of such additives, Exhibit B sets forth 1990 amounts as represented by SPT to JPB.

1.7 "Designated Freight Trackage" shall mean Trackage which is part of the Joint Facilities (excluding User's Cahill/Lick Line), which is located on real property owned by Owner (as described on Exhibit A hereto), which is used now or in the future solely for Freight or Intercity Passenger Service and which shall be maintained at the sole cost and expense of User (unless the parties have agreed in writing to use also by the Owner, in which case sharing of maintenance costs shall be as agreed to in writing by the parties notwithstanding the provisions of Section 9.1 hereof) including, without limitation, (i) the present yard Trackage at South San Francisco, (ii) the proposed gauntlet Track Structure between Milepost 3.18 and Milepost 5.26, (iii) storage Track Structure (for two tracks) between Bayshore at Milepost 4.9 and Brisbane at Milepost 7.1, and (iv) upon the approval of Owner (which shall not be unreasonably withheld), such additional Freight Service support Trackage and other facilities to meet User's Freight Service needs.

1.8 "Effective Date" shall have the meaning set forth in Section 11.12.

1.9 "Equipment" shall mean locomotives, cars, cabooses, hi-rail vehicles, other vehicles, and machinery which are capable of being operated on Joint Facilities.

1.10 "Exclusive Commute Trackage" shall mean that part of the Joint Facilities, excluding User's Cahill/Lick Line, (which is described by the designated line symbols on Exhibit A), including yard or other side Trackage used solely by Owner, and including but not limited to the double main Trackage from Santa Clara Junction to Cahill Yard, the passenger Trackage at Cahill Yard, the magnetic westerly main Trackage from Cahill Yard to Auzerais Street at Milepost 47.5 and all new Trackage which Owner may construct between Auzerais Street and Lick at Milepost 51.4, which Owner shall maintain at its sole cost and expense (unless the parties have agreed in writing to use also by User, in which case sharing of maintenance costs shall be as agreed to in writing by the parties notwithstanding the provisions of Section 9.1 hereof).

1.11 "Fiscal Year" shall mean the period beginning July 1 of any calendar year and ending June 30 of the following calendar year.

1.12 "Freight Service" shall mean User's railroad operations contemplated hereunder in furtherance of transporting freight commodities of all types and description in Trains whether loaded

or empty, including personnel training, and the use of all Equipment and Non-Revenue Equipment for such operations.

1.13 "Gilroy Commuter Service" shall have the meaning set forth in Section 1.13 of the Lick/Gilroy Trackage Rights Agreement.

1.14 "ICC" shall mean the Interstate Commerce Commission.

1.15 "Intercity Passenger Service" shall mean intercity railroad passenger service (other than Commuter Service) provided by NRPC or any other Operator with whom User contracts to provide Intercity Passenger Service over the Joint Facilities in accordance with this Agreement.

1.16 "Joint Facilities" shall mean the Peninsula Main Line and the Santa Clara/Lick Line, Designated Freight Trackage, Exclusive Commute Trackage, and only that portion of the New Coast Main consisting of User's Cahill/Lick Line, and all Changes and/or Additions thereto now or in the future.

1.17 "Lick/Gilroy Trackage Rights Agreement" shall mean that agreement between User and Owner dated as of the date hereof which grants Owner trackage rights over the rail lines of User from milepost 51.4 at or near Lick to milepost 80.7 at or near Gilroy.

1.18 "Materials Additives" shall mean elements of cost customarily charged by railroads to one another and which are to be added to any and all materials cost billings of either party to the other and that generally are calculated as a percentage of direct costs, are intended to compensate for store, purchasing and handling expenses, sales or use taxes, foreign line freight, and on-line freight and are subject to periodic changes depending upon industry practices and the provisions of Section 11.3. As an example of such additives, Exhibit B sets forth 1989 amounts as represented by SPT to JPB.

1.19 "New Coast Main" shall mean Track Structure of (i) the No. 1 Track, (ii) User's Cahill/Lick Line, and (iii) all Track Structure located on property of Owner magnetic east of the Track Structure described in (i) and (ii) above, all as more fully described in Exhibit A hereto.

1.20 "Non-Revenue Equipment" shall mean Equipment which is maintenance of way equipment and freight cars that are either empty or loaded only with maintenance of way equipment or material and equipment transported for the internal use of either party including, without limitation, rails, ties, ballast, and other track materials, and signal and bridge materials and supplies.

1.21 "No. 1 Track" shall mean the existing yard Track Structure designated as User's "No. 1 Track" on the easterly side of the double main Track Structure between Milepost 44.0 at or near

Santa Clara Junction and the southern end of Cahill Yard at or near Milepost 47.1.

1.22 "NRPC" shall mean the National Railroad Passenger Corporation, or Amtrak, in all circumstances other than in a capacity as Operator for Owner.

1.23 "NRPC Agreement" shall mean the Agreement between NRPC and User dated April 16, 1971, as amended from time to time.

1.24 "Operator" shall mean the person, firm, corporation or other legal entity utilized by Owner or User to conduct, on its behalf and for its account, operations on the Joint Facilities in accordance with this Agreement.

1.25 "Peninsula Main Line" shall mean the Trackage and the right-of-way and real estate underlying said Trackage between Milepost 0.147 at or near 4th and Townsend Streets in San Francisco County, California and Milepost 44.0 at or near Santa Clara Junction in Santa Clara County, California, all as more fully described in the Sale Agreement and in Exhibit A hereto.

1.26 "Sale Agreement" shall have the meaning set forth in Paragraph A of the recitals to this Agreement.

1.27 "Santa Clara/Lick Line" shall mean the Trackage and the right-of-way and real estate underlying said Trackage between Milepost 44.0 at or near Santa Clara Junction and Milepost 51.4 at or near Lick, all in Santa Clara County (including the fee ownership, easements (but excluding User's easements)), and franchises of the real estate and right-of-way underlying the Trackage) but excluding the New Coast Main, all as more fully described in the Sale Agreement and in Exhibit A hereto.

1.28 "Service(s)" shall mean Commuter Service, Freight Service and Intercity Passenger Service collectively or any of them individually, as applicable.

1.29 "SFGTF" shall have the meaning set forth in Section 9.2 and Exhibit D or as it may be amended by written agreement of the parties.

1.30 "Track Structure" shall mean rail and fastenings, switches and frogs complete, ties, ballast, and signals.

1.31 "Trackage" shall mean Track Structure and all appurtenances thereto, including without limitation, bumpers, roadbed, embankment, bridges, trestles, tunnels, culverts or any other structures or things necessary for support of and entering into construction thereof, and, if any portion thereof is located in a thoroughfare, the term shall include pavement, crossing planks and other similar materials or facilities used in lieu of pavement

or other street surfacing material at vehicular crossings of tracks, culverts, drainage facilities, crossing warning devices, and any and all work required by lawful authority in connection with construction, renewal, maintenance and operation of said Track Structure and all appurtenances thereof and Changes and/or Additions thereto now or in the future.

1.32 "Train(s)" shall mean a locomotive unit, or more than one such unit, coupled, with or without cars or caboose.

1.33 "User's Cahill/Lick Line" shall mean the existing single main Track Structure between Cahill Yard at or near Milepost 47.1 and Lick at or near Milepost 51.4.

Section 2. RIGHTS OF OWNER AND USER

2.1 **User's Reservation:** Subject to the terms of this Agreement, User reserves the perpetual and exclusive right to conduct Freight and Intercity Passenger Service over the Joint Facilities (excluding User's Cahill/Lick Line which User retains ownership of, and excluding Exclusive Commute Trackage except to the extent provided in Sections 1.10 and 2.4 hereof). Owner confirms User's reservation of said right in the Sale Agreement.

2.2 **Authority:** Owner represents that it has the right and authority to confirm User's reservation of perpetual and exclusive trackage rights (which rights do not include Exclusive Commute Trackage except as provided in Sections 1.10 and 2.4 hereof) over the Joint Facilities (excluding User's Cahill/Lick Line) as contemplated herein without the concurrence or approval of any other person or entity, except for regulatory approvals or exemptions contemplated by Section 8.1 hereof.

2.3 **Ownership:**

(a) Owner shall own all of the Peninsula Main Line and the Santa Clara/Lick Line, including Designated Freight Trackage, existing at the date of execution of this Agreement.

(b) User shall own the New Coast Main, but Owner shall own the real property underlying the New Coast Main.

(c) Owner shall own those Changes and/or Additions and capitalized maintenance to the New Coast Main made at its sole cost and expense. User shall own such Changes and/or Additions and capitalized maintenance to the New Coast Main made at its sole cost and expense. Owner and User shall jointly own such Changes and/or Additions and capitalized maintenance to the New Coast Main made at their shared cost and expense in the same proportion as the respective shares of the cost and expense bears to the total cost

and expense. Owner shall not remove any Changes and/or Additions or capitalized maintenance items to the New Coast Main without the written consent of User as long as User holds itself out to provide Freight or Intercity Passenger Service over the applicable portion of the New Coast Main or such Services have not been abandoned; provided, however, in the event that Owner has permanently ceased to provide Commuter Service over all or substantially all of the Santa Clara/Lick Line, User shall pay Owner for the unamortized value of such Changes and/or Additions made by Owner on the New Coast Main. At the time that User no longer holds itself out to provide Freight and Intercity Passenger Service and such Services have been abandoned, Changes and/or Additions or capitalized maintenance items shall be returned to Owner to the extent of Owner's interest in such Changes and/or Additions and capitalized maintenance items.

(d) Owner shall own all Changes and/or Additions to the Joint Facilities (other than User's Cahill/Lick Line) and all capitalized maintenance provided for in Section 9 hereof.

2.4 User's Rights: For the purpose of conducting Freight and Intercity Passenger Service, User has the perpetual right of access to and from and use of the Joint Facilities, except for the Exclusive Commute Trackage unless otherwise agreed to in writing by the parties. User shall also have perpetual rights, subject to the terms of this Agreement including the restrictions concerning the Exclusive Commute Trackage, solely to serve all existing and future industries, team or house tracks or branches located on or served off any existing or future turnouts or leads from or to the Joint Facilities or No. 1 Track. User shall have use of the Exclusive Commute Trackage for the sole purpose of obtaining necessary access to provide Freight Service to existing or future industries and branch lines served from the Joint Facilities or No. 1 Track. User's rights of use under this section, for the purposes specified in this section, shall be exclusive, and no other person or entity shall be entitled to or be granted any rights to such use for such purposes.

2.5 Owner's Rights: Subject to the limitations otherwise set forth in the Sale Agreement and in this Agreement, Owner (or any Operator designated by Owner) shall have the right to use existing and future Joint Facilities (excluding User's Cahill/Lick Line) for any purpose other than rail Freight and Intercity Passenger Service.

2.6 Freight Trackage: Except as may be otherwise agreed in writing by the parties, User retains the exclusive and perpetual ownership of and right to use and control the New Coast Main and User retains the exclusive and perpetual right to use and control the Designated Freight Trackage; however, User may allow Owner to use such portions of the South San Francisco Yard and other Designated Freight Trackage as User decides, from time to time, are

not needed by User to support its operations. User shall not unreasonably withhold, condition, or delay its permission for such use; provided, however, that during such use, User's operations shall have priority over Owner's use. In such case, maintenance and capital expenses will be apportioned on a basis agreed by the parties in writing notwithstanding the provisions of Sections 9.1 and 10.2 hereof.

2.7 Intercity Passenger Service Agreement: Intercity Passenger Service on the Joint Facilities (except for User's Cahill/Lick Line) shall be subject to the following provisions:

(a) Owner shall permit User to allow NRPC Intercity Passenger Service Trains to be operated over the Joint Facilities (except for User's Cahill/Lick Line) in accordance with the terms of the NRPC Agreement in effect as of the date of this Agreement with the understanding that any change subsequent to the date of this Agreement in Intercity Passenger Service, including but not limited to the number or schedule of Trains, shall be subject to Owner's consent under Section 2.7(b) hereof.

(b) User may amend its present or any subsequent NRPC Agreement and enter into any new agreements and amendments thereto with NRPC or with any other party for the provision of Intercity Passenger Service over the Joint Facilities (except User's Cahill/Lick Line) with the consent of Owner, which shall not be unreasonably withheld, subject to the provisions of Section 4.3 when Owner dispatches and controls the operations and provided that costs due to any such Intercity Passenger Service agreement, or amendment thereto or to Intercity Passenger Service operations pursuant thereto over the Joint Facilities (except for User's Cahill/Lick Line) and costs of changes necessitated by such agreements affecting line capacity, yard capacity, or the signal system shall be borne by User. The parties agree to negotiate in good faith with regard to any additional parties that may be engaged or User proposes to have engaged in Intercity Passenger Service.

(c) Notwithstanding the provisions of Section 2.7(b) above, no Intercity Passenger Service Trains shall operate on Exclusive Commute Trackage without a written agreement between Owner and User.

2.8 Operator: Either party may use an Operator or Operators to provide applicable Services pursuant to this Agreement.

2.9 Owner's Bridge Trackage Rights: User shall grant to Owner exclusive Bridge Trackage Rights, as defined in Section 1.2, over User's Cahill/Lick Line. User shall not enter into any agreement with or permit any additional Operator of Freight or Intercity Passenger Service Trains on User's Cahill/Lick Line which would materially impair or interfere with Owner's rights or use

pursuant to Section 4.5 hereof or under the Lick/Gilroy Trackage Rights Agreement. Upon completion of Owner's construction of its Trackage on the Joint Facilities between Auzerais Street at or near milepost 47.5 and Lick at or near milepost 51.4 and the commencement of Gilroy Commuter Service operations thereover, the Bridge Trackage Rights shall continue in effect only if User is granted access to and use of such newly constructed Owner's Trackage upon terms and conditions substantially similar to Owner's rights under the Bridge Trackage Rights and only so long as such access and use are made available to User (whether or not used by User).

2.10 Physical Clearances: Owner represents that the Joint Facilities (excluding User's Cahill/Lick Line) shall continue to have not less than existing clearances (as shown in User's records attached as Exhibit E) for the operation of Freight and Intercity Passenger Service. If User's Trains or Equipment require additional clearance, Owner agrees to provide said additional clearance in a timely manner at User's sole cost provided that such additional clearance would not materially impair or interfere with the usefulness or utility of the Joint Facilities (excluding User's Cahill/Lick Line) to Owner or Owner's operation or use of such Joint Facilities (excluding User's Cahill/Lick Line) or frustrate the purposes of this Agreement. In the event any work to be performed by Owner on the Joint Facilities (excluding User's Cahill/Lick Line) may affect the horizontal and vertical line clearances, Owner shall notify User and Owner shall cooperate with User to provide any such additional horizontal and vertical line clearances needed by User, provided that such additional clearances would not materially impair or interfere with the usefulness or utility of the Joint Facilities (excluding User's Cahill/Lick Line) to Owner or Owner's operation or use of such Joint Facilities (excluding User's Cahill/Lick Line) or frustrate the purposes of this Agreement and User shall pay the incremental costs required for such additional clearance requirements.

2.11 Retention of Rights for Changes and/or Additions: User retains the perpetual and exclusive right, for Freight and Intercity Passenger Service, to construct or reconstruct, with the consent of Owner (which shall not be unreasonably withheld, conditioned or delayed) Changes and/or Additions to the Joint Facilities (excluding User's Cahill/Lick Line and Exclusive Commute Trackage) consisting of railroad and railroad-related facilities necessary for and related to User's Freight and Intercity Passenger Service operations. Failure to reach agreement as to cost sharing for Changes and/or Additions subject to Section 10.3 shall constitute a reasonable basis for refusal of consent. Owner's consent will be given if such construction, reconstruction, or use shall not unreasonably interfere with Owner's existing or planned Commuter Service or with Owner's other planned or existing use of such portion of the Joint Facilities (excluding User's Cahill/Lick Line) and if the provisions of Section 8.3 are not otherwise

invoked by Owner. Changes and/or Additions consisting of Track Structure crossing other Track Structure at grade shall be treated as any other Changes and/or Additions under this Section; provided, however, that such Changes and/or Additions consisting of at grade crossings which do not result in a decrease in average Train speeds over the applicable Trackage shall not, absent other construction or reconstruction, be considered an unreasonable interference with Owner's use or planned use of the Joint Facilities (excluding User's Cahill/Lick Line). Notwithstanding the above, User may construct Changes and/or Additions which Owner has advised may unreasonably interfere with its planned use of the Joint Facilities (excluding User's Cahill/Lick Line), at User's sole risk. Such risk shall include the costs of removal of such newly constructed Changes and/or Additions at the time of actual use by Owner. User also retains the perpetual right to use, construct, reconstruct, or reimburse Owner for the construction or reconstruction of Changes and/or Additions to User's Cahill/Lick Line without the consent of Owner as long as the provisions of Section 9.3 would not be violated. All other Changes and/or Additions to User's Cahill/Lick Line shall be subject to Section 10.6 hereof. User also retains the perpetual and exclusive right to use, construct or reconstruct Changes and/or Additions to the New Coast Main (excluding User's Cahill/Lick Line) without the consent of Owner, except to the extent any such Trackage may be subject to Section 10.6 hereof. User retains the perpetual and exclusive right to use all such Changes and/or Additions to the Joint Facilities referred to in this Section 2.11 for Freight and Intercity Passenger Service, subject to Owner's rights of use thereof in accordance with the terms of this Agreement.

2.12 Emergencies and Detours: Either party may, at its sole discretion, allow the other party to use the Trackage of said first party in the Joint Facilities or No. 1 Track in emergency and detour situations. Any such use shall be subject to the prior written consent and upon the terms and conditions of the party granting such use.

2.13 Interim Operation Detour: Notwithstanding the provisions of Section 2.12, unless the parties otherwise agree in writing, during the period from the Effective Date until Owner completes the Changes and/or Additions to No. 1 Track pursuant to Section 10.1(a) and (b) hereof, Owner grants its consent to allow User to use Owner's tracks consisting of Exclusive Commute Trackage between Santa Clara Jct. at or near Milepost 44.0 and the magnetic south end of Cahill Yard at or near Milepost 47.45. Such use shall be subject to the terms and conditions of this Agreement in the same manner and to the same extent as if User were operating over the Peninsula Main Line; provided, however, that, in lieu of Section 4.3, Owner shall establish reasonable terms and conditions for dispatching User's Trains in conjunction with Owner's Trains which shall minimize delays to both Owner's and User's operations; and further provided that notwithstanding the provisions of Section

9.2, the costs of ordinary and capitalized maintenance of the Trackage over which User will operate pursuant to this Section 2.13 for the first two years after the Effective Date shall be solely the responsibility of Owner and, thereafter, such costs shall be apportioned between the parties in accordance with Section 9.2(a) hereof.

2.14 Authority and Enforceability: Each party hereto respectively represents and warrants that it has the full power and authority to enter into this Agreement and to carry out the obligations contemplated hereby. Upon execution and delivery, this Agreement, including but not limited to the indemnification terms of Section 6 hereof, are enforceable against such party in accordance with its terms (except to the extent such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to creditor's rights generally and the availability of equitable remedies may be limited by equitable principles of general applicability).

2.15 Retirement Limitations: Subject to Section 8.3 hereof, neither Owner nor User shall make any retirement, withdrawal, elimination or disposal of any part of the Joint Facilities without the prior written consent of the other party which shall not be unreasonably withheld. The affected party will grant its consent under this Section if such retirement, withdrawal, elimination or disposal would not materially impair the usefulness of the Joint Facilities to such party or frustrate the purposes of this Agreement.

2.16 Taxes: Owner shall be responsible for all taxes assessed against it (or its Operators or other entities acting on its behalf or for its account), if any, as owner of the real and personal property which are part of the Joint Facilities (excluding User's Cahill/Lick Line) and of the real property underlying the New Coast Main and as holder of the Bridge Trackage Rights; provided, however, that User shall be responsible for any possessory interest tax assessed against it (or its Operators or other entities acting on its behalf or for its account), if any, as holder of the easement retained by User hereunder and under the Sale Agreement and as owner of the Track Structure and personal property which are part of the New Coast Main. Nothing contained in this Agreement shall be construed to make Owner liable to taxing authorities for any taxes which Owner, as a public entity, would not otherwise be liable; provided, however, that, for purposes of this Agreement, Owner shall indemnify User for all taxes assessed against any Operator for Owner or any other entity acting on Owner's behalf.

2.17 Non-Use of Designated Freight Trackage: In the event that all or any portion of the Designated Freight Trackage has not been used by User after the Effective Date for any continuous period of at least thirty-six (36) months, Owner may, during the

period of continuous non-use in excess of thirty-six (36) months, request in writing that User make application for and diligently pursue all necessary approvals or other actions to remove such unused Trackage, if such approvals or other actions are necessary, and if Owner so requests, (upon receipt of any necessary authority) to remove at its cost any and all such Trackage and Equipment and property of User thereon. Within ninety (90) days of such request, User shall make application for such approvals or other actions or, if no approvals or other actions are necessary, shall commence, at its cost, removal of such Trackage, Equipment and property and shall diligently progress completion of such removal. If approvals or applications are necessary, User shall commence removal of such Trackage, Equipment and property within ninety (90) days after receipt of such authorization and shall diligently progress completion of such removal. User shall not progress the above actions if it demonstrates justification for such non-use, which justification shall be provided to Owner in writing within ninety (90) days of the written request of Owner referred to above. Within ninety (90) days of receipt by Owner of such written justification, Owner shall notify User in writing as to whether it concurs in or disputes such justification. If Owner disputes such justification, the dispute shall be resolved by arbitration in accordance with Section 7 of this Agreement. If, however, such non-use continues so that such Trackage has not been used by User for a continuous period of five (5) years, then User, promptly upon notice from Owner shall apply for and diligently prosecute all governmental approvals or other actions necessary, if any, to remove said Trackage and (after receipt of such approvals or other actions), shall promptly at its cost remove said Trackage and Equipment and property of User thereon, if requested by Owner.

Section 3. ASSIGNMENT

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns, provided, however, that:

(a) The rights and obligations of Owner hereunder may be assigned or sold in whole or in part without User's consent only to (i) Owner's successor agency; (ii) any one or more of Owner's member agencies or counties; (iii) the Peninsula Rail Transit District; (iv) the State of California Department of Transportation; or (v) an existing or to be formed public, quasi-public or nonprofit entity formed or authorized to own Owner's interest in the Joint Facilities (excluding User's Cahill/Lick Line), but only if such successors or assigns have the legal power and authority to undertake all of the rights and obligations of Owner hereunder including, but not limited to, the obligation to indemnify User pursuant to Section 6 hereof;

(b) User may assign or sell all or any part of its trackage rights hereunder without the consent of Owner only to: (i) any successor or affiliate of User, (ii) any other Class I railroad, or (iii) in connection with its trackage rights over the Santa Clara/Lick Line, to any Operator who is financially responsible and has a management team with a demonstrated record of reliable and safe railroad maintenance and operating experience; provided that such successors or assigns have the legal power and authority to undertake all of the rights and obligations of User hereunder including, but not limited to, the obligation to indemnify Owner pursuant to Section 6 hereof.

(c) User may assign or sell all or any part of its trackage rights hereunder to any person with the consent of Owner (which consent shall not be unreasonably withheld, conditioned or delayed) to any person and, in connection with its trackage rights over properties other than the Santa Clara/Lick Line, to any Operator who is financially responsible and has a management team with a demonstrated record of reliable and safe railroad maintenance and operating experience; provided that such party has the legal power and authority to undertake all of the rights and obligations of User hereunder including, but not limited to, the obligation to indemnify Owner pursuant to Section 6 hereof.

(d) Within ten (10) days after any assignment, the assignee shall execute and deliver to Owner and User a written instrument assuming all of the assignor's obligations hereunder, and an opinion of such assignee's counsel stating that such assignee is entitled to perform all of the assignor's obligations hereunder.

Section 4. OPERATIONS

4.1 **Management and Control:** Subject to Sections 4.2, 4.3, and 4.14 below, the management and operation (including dispatching) of the Joint Facilities (except for User's Cahill/Lick Line) shall be under the exclusive direction and control of Owner. User, at its sole cost and election may monitor dispatching operations over the Joint Facilities (excluding User's Cahill/Lick Line) on a reasonable basis. Owner, at its sole cost and election, may monitor dispatching operations over User's Cahill/Lick Line on a reasonable basis.

4.2 **Optional User Dispatching:** At Owner's option, User may continue to dispatch the Joint Facilities (excluding User's Cahill/Lick Line) in a manner that minimizes conflicts and is consistent with dispatching conditions existing prior to the Sale Agreement until Owner obtains dispatching capability; but, in no event later than December 31, 1993. Owner may, at its sole option, assume control and dispatching of the Joint Facilities (excluding User's Cahill/Lick Line) prior to December 31, 1993 by providing

thirty (30) days advance notice to User. Owner shall pay User a monthly rate of Eleven Thousand Five Hundred Dollars (\$11,500) for each full month or pro rata for partial months that User provides such dispatching services. Such monthly payment shall be made not later than 45 days following the end of the month in which dispatching services were provided.

4.3 **User's Operating Windows:** Owner will provide User the ability to operate Freight Service on the Peninsula Main Line whenever there exists a period of at least thirty (30) minutes headway between passenger Trains including Owner's Commuter Service and/or User's Intercity Passenger Service. During the hours between 10 A.M. and 3 P.M., at least one thirty (30) minute headway "window" on each of the northbound and southbound main tracks of the Peninsula Main Line will be provided in Owner's scheduling for Trains in Freight Service that are capable of operating at Commuter Service Train speeds and will operate at such speeds when directed by Owner. Between midnight and 5 A.M., at least one main track of the Peninsula Main Line shall always be in service for Freight and Intercity Passenger Service, and User will be provided during that time an adequate number of thirty (30) minute headway windows for User to serve its Freight Service customers. Owner and User recognize that Intercity Passenger Service may also be conducted during other than times between midnight and 5 A.M. and that such Intercity Passenger Service may operate within less than a thirty (30) minute headway. Such headway shall be established by mutual agreement between the parties, their Operators and NRPC, as applicable. Neither party hereto shall unreasonably withhold its consent to such agreement. Owner's dispatching and operations on lines other than the Peninsula Main Line shall provide User with reasonable windows for operations to serve customers during non-peak hours based upon a schedule subject to mutual agreement. Neither party hereto shall unreasonably withhold its consent to such agreement.

4.4 **Use of Exclusive Commute Trackage:** Owner shall have the exclusive use and control of its Exclusive Commute Trackage unless otherwise agreed in writing by Owner and User and subject to Section 2.4 hereof.

4.5 **Use of New Coast Main:** Except to the extent of Owner's Bridge Trackage Rights, User shall have the exclusive use and control for Freight and Intercity Passenger Service operations of the New Coast Main provided, however, that Owner shall retain the control over that portion of the New Coast Main to the extent and at the location such Track Structure connects to or diverges from the Joint Facilities (excluding User's Cahill/Lick Line). To facilitate such control, User shall physically provide Owner with the capability to connect User's dispatching system with Owner's dispatching system, and User and Owner shall share equally in the costs thereof. User shall have exclusive authority to dispatch and control its Freight and Intercity Passenger Service Trains on the

New Coast Main and Gilroy Commuter Service Trains (which are operated over User's Cahill/Lick Line pursuant to Owner's Bridge Trackage Rights hereunder in conjunction with the Lick/Gilroy Trackage Rights Agreement). User shall dispatch all such Trains on User's Cahill/Lick Line on a "first-come, first served" basis, provided, however, that if User and Owner can reach agreement on a mutually satisfactory schedule for Gilroy Commuter Service Trains, pursuant to the Lick/Gilroy Trackage Rights Agreement, (and the parties expect to reach such agreement) User shall dispatch User's Cahill/Lick Line giving priority to those scheduled Gilroy Commuter Service Trains.

4.6 Limitations on Liability: Except as otherwise may be provided in Section 6, if the use of the Joint Facilities shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, neither party shall have or make any claim against the other for loss, damage, or expense of any kind, caused by or resulting from such interruption or delay.

4.7 Furnishing of Fuel, Train Supplies, Etc.: Each party shall be responsible for furnishing, at its sole cost and expense, all labor, fuel, and Train supplies necessary for the operation of its own Trains over the Joint Facilities. In the event a party does furnish such labor, fuel, or supplies to another party hereto, the party receiving same shall promptly, upon receipt of billing therefor, reimburse the party furnishing same for its reasonable costs thereof, including Customary and Materials Additives.

4.8 Operating Rules: The operation by User on the Joint Facilities (excluding User's Cahill/Lick Line) shall at all times be in accordance with the rules, instructions, and restrictions of Owner. Except as otherwise provided herein, such rules, instructions, and restrictions shall be reasonable, just, and fair between the parties using the Joint Facilities and shall not unjustly discriminate against any of them.

4.9 Communications: The party using Trackage or Track Structure dispatched or controlled by the other party shall, at such using party's sole cost and expense, obtain, install and maintain in all Trains and Equipment used by it on such Trackage or Track Structure, such communication equipment as is necessary to allow the using party to communicate with dispatching and signaling facilities in the same manner as the dispatching party. The party in control of dispatching under the terms of this Agreement shall consult with the other party prior to adoption of new communication systems or signal systems for use on the Joint Facilities which theretofore have not been adopted generally in the railroad industry.

4.10 Clearing Trains and Equipment: If, by any reason of mechanical failure or for any other cause, the Trains or Equipment of Owner or User or their respective Operators become stalled or

disabled on the Joint Facilities and are unable to proceed, or fail to maintain the speed required of Trains or Equipment to meet normal schedules, or if in emergencies crippled or otherwise defective Equipment is set out from any such Trains on the Joint Facilities, then the party whose Trains or Equipment are involved in the incident shall be responsible for furnishing locomotive units or such other assistance as may be necessary to haul, help or push such Equipment or Trains, or to properly move the disabled Trains or Equipment. By mutual agreement of the parties or upon receipt of reasonable notice from the other party that the response of the party whose Trains or Equipment are involved in the incident has not been adequate relative to the scheduled uses of Joint Facilities, such other party may render such assistance as may reasonably be required in light of such scheduled uses, and the party whose Trains or Equipment are involved in the incident shall reimburse the other party, within forty-five (45) days after receipt of the bill therefor, for the reasonable cost and expense, including Customary and Materials Additives, of rendering any such assistance. The costs and expense of services referenced above in this Section 4.11, including without limitation liability (as that term is defined in Section 6) shall be treated in accordance with Section 6 hereof. If it becomes necessary to make repairs to crippled or defective Trains or Equipment of the Owner or User or their respective Operators in order to move Trains or Equipment from the Joint Facilities, such work shall be the responsibility of the party whose Trains or Equipment are involved in the incident. By mutual agreement of the parties or upon receipt of reasonable notice from the other party that the efforts of the party whose Trains or Equipment are involved in the incident to make the repairs are not adequate in light of the scheduled uses of Joint Facilities, such other party may take control of the repairs. If the repairs are performed by the other party, then the party whose Trains or Equipment are involved in the incident shall reimburse the other party for the cost thereof, within forty-five (45) days after receipt of the bill therefor, at the then current AAR dollar rate for labor charges found in the Office Manual of the AAR Interchange Rules.

4.11 Clearing Wrecks: Except as otherwise provided in Section 6, whenever the Owner's or User's Trains or Equipment on the Joint Facilities require rerailling, wrecking service or wrecking Train service, the party whose Train is involved shall be responsible for performing such service. Upon mutual agreement of the parties or upon receipt of reasonable notice from the other party that the response of the party whose Train is involved in the incident is not adequate in light of the scheduled uses of the applicable Trackage, the other party may take control of such rerailling, wrecking service or wrecking Train service as may be required. Whichever party has responsibility for maintenance and repair of the affected Trackage under the terms of Section 9 shall make such repairs to and restoration of the applicable Trackage as may be required. The cost and expense of services referenced above

in this Section, including without limitation, liability (as that term is defined in Section 6) shall be treated in accordance with Section 6 hereof. All Equipment and salvage shall be promptly picked up by the party whose Train is involved in the incident or such party's Operator or delivered to the party whose Train is involved in the incident or such party's Operator by the other party, and all costs and expenses, including Customary and Material Additives therefor, incurred by the other party shall likewise be paid to the other party by the party whose Train is involved in the incident. All costs and expenses to be borne under this Section by the party whose Train is involved in the incident shall be paid within forty-five (45) days after receipt of the bills therefor.

4.12 Furnishing Power: For the purposes of this Section 4.12 only, the term "stopped party" shall mean whichever of the following described entities whose Trains are stopped in the circumstances described in this Section: Owner, User, the Operator(s) of either Owner or User, NRPC, or any other entity permitted in accordance with the terms of this Agreement to operate Trains on the Joint Facilities. In the event Trains of a stopped party shall be forced to stop on the Joint Facilities for any reason including but not limited to, stoppage due to insufficient hours of service remaining among the stopped party's employees, and such Trains are unable to proceed, any entity referred to in this Section shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew stopped party's Trains) as may be necessary to haul, help or push such Trains, or to properly move Trains off the Joint Facilities. All cost and expense, including Customary and Materials Additives, to be borne by the stopped party under this Section shall be paid within forty-five (45) days to the party rendering motive power or other assistance after receipt of the bills therefor. Owner shall be responsible to the party rendering motive power for stoppage caused by its Operator(s) or other entities operating on its behalf and User shall be responsible to the party rendering motive power for stoppage caused by its Operator(s) or other entities operating on its behalf.

4.13 Compliance with Laws: Operations by Owner and User hereunder shall be in compliance in all material respects with all applicable laws and regulations including those relating to discharge of hazardous waste materials.

4.14 Assumption of Dispatching: In the event Owner becomes incapable of adequately performing dispatching functions on the Joint Facilities (excluding User's Cahill/Lick Line) for Freight and Intercity Passenger Service hereunder, arrangements will be made for the prompt and orderly transfer of such functions to User. In the event User becomes incapable of adequately performing dispatching functions on User's Cahill/Lick Line for Gilroy Commuter Service hereunder, arrangements will be made for the prompt and orderly transfer of such functions to Owner.

Section 5. EMPLOYEES

5.1 **Owner's Employees:** Owner shall employ all persons necessary to construct, maintain, repair, renew, and perform dispatching functions for the Joint Facilities excluding User's Cahill/Lick Line (but including signal system maintenance on the New Coast Main as provided in Section 9.1). Owner shall be bound to use reasonable and customary care, skill and diligence in the construction, maintenance, repair renewal, and dispatching functions respecting said Trackage and in managing same and User shall not (except as otherwise provided in Section 6 hereof), by reason of Owner's performing or failing or neglecting to perform any construction, maintenance, repair, renewal, dispatching functions, or management of said Trackage, have or make against Owner any claim or demand for any loss, damage, destruction, injury, or death whatsoever resulting therefrom.

5.2 **User's Employees:** User shall employ or cause to be employed all persons necessary to construct, maintain, repair, renew, and perform dispatching functions for the New Coast Main. User shall be bound to use reasonable and customary care, skill, and diligence in the construction, maintenance, repair, renewal, and dispatching functions respecting the New Coast Main and in managing same; and Owner shall not (except as otherwise provided in Section 6 hereof), by reason of User's performing or failing or neglecting to perform any construction, maintenance, repair, renewal, dispatching functions, or management of said Track Structure, have or make against User any claim or demand for any loss, damage, destruction, injury, or death whatsoever resulting therefrom.

5.3 **Fair Treatment:** All officers, agents, and employees of Owner and of User engaged in the management, operation, and maintenance of the Joint Facilities or any portion thereof shall perform their duties in a fair, impartial, and just manner with respect to the rights and obligations between the parties as provided in this Agreement.

5.4 **Examinations:** User, or User's Operator, and Owner, or Owner's Operator, shall require their respective employees to pass periodic examinations on the General Code of Operating Rules effective October 29, 1989, (or any successor publication), timetables, General Orders and Track Bulletins (all as amended from time to time) which shall be applicable to the operations on or along the Joint Facilities.

5.5 **Rules Violations:**

(a) Owner, or Owner's Operator, shall notify User in writing specifying the circumstances in the event User, User's employees, or User's Operator or any other entity with which User contracts to provide Intercity Passenger Service fails to abide by the rules, instructions and restrictions of the Owner, or Owner's Operator, governing the operation on or along the Joint Facilities (other than User's Cahill/Lick Line). User, User's Operator, or any other entity with which User contracts to provide Intercity Passenger Service shall take prompt action to correct the failure to abide by the rules, instructions, and restrictions of the Owner, or the Owner's Operator, governing the operation on or along the Joint Facilities (excluding User's Cahill/Lick Line). In the event User, User's Operator, or any other entity with which User contracts to provide Intercity Passenger Service must hold a formal investigation pursuant to a collective bargaining agreement relating to the neglect, refusal or failure of User, User's employees, User's Operators or any other entity with which User contracts to provide Intercity Passenger Service to abide by the rules, instructions, and restrictions of the Owner, or Owner's Operator, governing the operation on or along the Joint Facilities, (excluding User's Cahill/Lick Line) Owner, or Owner's Operator, shall cooperate with User, User's Operator, or any other entity with which User contracts to provide Intercity Passenger Service and make available personnel of Owner, or Owner's Operator, as witnesses for User, or User's Operator, in such formal investigation at the cost and expense of User.

(b) For operations over User's Cahill/Lick Line, the provisions of Subsection (a) of this Section 5.5 shall apply with Owner subject to the obligations of User and User subject to the obligations of Owner.

Section 6. LIABILITY

6.1 Assumption of Responsibility:

(a) Except as otherwise provided in Section 4.11 each of the parties hereto shall assume, bear and pay all the liabilities allocated to it as the responsible party under the terms of this Section 6. For purposes of this Section 6, the term "liability" shall include all loss, damage, cost, expense (including costs of investigation and attorney's fees and expenses at arbitration, trial or appeal and without institution of arbitration or suit), liability, claims and demands of whatever kind or nature arising out of an incident described in the applicable provision of this Section 6. Except as otherwise expressly provided in Sections 6.2(b), 6.2(d), 6.2(e), and 6.4, the responsibility for liabilities undertaken by each party under this Section 6 is without respect to fault, failure, negligence, misconduct, malfeasance or misfeasance of any party or its employees, agents or servants.

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(b) All costs and expenses incurred in connection with the investigation, adjustment and defense of any claim or suit shall be included as part of the liability for which responsibility is assumed under the terms of this Section 6, including salaries or wages and associated benefits of, and out-of-pocket expenses incurred by or with respect to, employees of either party engaged directly in such work and a reasonable amount of allocated salaries and wages of employees providing support services to the employees so engaged directly in such work.

6.2 Allocation of Responsibilities:

(a) Liability for personal injury (including bodily injury and death) to, or property damage suffered by, an invitee of either party shall be the responsibility of and borne and paid solely by that party regardless of the cause of such loss or the fault of either party or whose Train or Equipment was involved, except as specifically provided in Section 6.2(b) and Section 6.4 below. For purposes of this paragraph, and without limitation, consultants and contractors of a party and any person who is on a Train or Equipment operated by or for the account of a party (other than an employee of a party engaged in performing duties for that party) shall be deemed to be an invitee of that party. All persons at or adjacent to a passenger station or loading platform shall be deemed to be invitees of Owner (other than employees, contractors and consultants, including employees of such contractors, of User or Operator of User engaged in performing duties for User or for any such Operator of User).

(b) After Owner shall have incurred aggregate liability under this Agreement and the Lick/Gilroy Trackage Rights Agreement in an amount equal to \$25.0 million for injury to or damage suffered by its invitees for incidents occurring in any one calendar year, User shall bear a share of that portion of the aggregate liability to the Owner's invitees for that year that is in excess of \$25.0 million in proportion to the User's relative degree of fault, if any; provided, that the User shall not bear liability to Owner's invitees in an amount in excess of \$125.0 million for incidents occurring under this Agreement and the Lick/Gilroy Trackage Rights Agreement in such calendar year. In computing the \$25.0 million base amount payable by Owner prior to any participation by the User, there shall be excluded any liabilities incurred due to the Excluded Conduct (defined below in Section 6.4) of Owner. After User shall have incurred aggregate liability under this Agreement and the Lick/Gilroy Trackage Rights Agreement in an amount equal to the \$25.0 million for injury to or damage suffered by its invitees for incidents occurring in any one calendar year, Owner shall bear a share of that portion of the aggregate liability to User's invitees for that year that is in excess of \$25.0 million in proportion to Owner's relative degree of fault, if any; provided, that Owner shall not bear liability to

User's invitees in an amount in excess of \$125.0 million for incidents occurring under this Agreement and the Lick/Gilroy Trackage Rights Agreement in such calendar year. In computing the \$25.0 million base amount payable by User prior to any participation by Owner, there shall be excluded any liabilities incurred due to the Excluded Conduct of User. Liability shall be deemed incurred on the date of the incident giving rise to such liability regardless of the date on which liability is paid or established. The determination of the relative fault of the parties in any proceeding establishing the liability shall be binding on the parties.

(c) Liability for personal injury (including bodily injury and death) to, or property damage suffered by, persons other than invitees of either Owner or User and casualty losses to property owned by the Owner and/or User shall be the responsibility of and borne and paid by the parties as follows regardless of the cause of such loss or the fault of either party except as provided in paragraphs (d) and (e) of this Section 6.2 and Section 6.4 below:

- (i) Loss to Trains, Equipment and other property owned by Owner shall be the responsibility of the Owner and borne by it.
- (ii) Loss to Trains, Equipment and other property owned by and freight transported by the User shall be the responsibility of the User and borne by it.
- (iii) Loss to property jointly used by both parties and property jointly owned by Owner and User shall be the responsibility of and borne (A) totally by the single party whose Train or Equipment was involved in the incident giving rise to the loss, (B) equally by the parties if the Trains or Equipment of both parties were involved in the incident, and (C) by the party or parties responsible for costs of maintenance of the property pursuant to the cost allocation principles of Section 9 hereof if no party's Train or Equipment was involved in the incident.
- (iv) Liability for personal injury (including bodily injury and death) to, or property damage suffered by, any employee of either party which occurs during the course of employment or while traveling to or from employment (an "employee") shall be the responsibility of and borne solely by the party employing such employee.

(v) Liability for personal injury (including bodily injury and death) to, or property damage suffered by, any person who is not an employee or invitee of either party (including without limitation persons using vehicular and pedestrian crossings and trespassers) shall be the responsibility of and borne (A) totally by the party whose Train or Equipment was involved in such loss if the Train or Equipment of only one party was involved, and (B) by the Owner if no Train or Equipment was involved in the incident; provided, however, that if no Train or Equipment was involved and the incident occurred on User's Cahill/Lick Line, User shall be responsible.

(d) Liability for personal injury (including bodily injury and death) to, or property damage suffered by, a person who is not an employee or invitee of either party shall be the responsibility of and borne by both parties in proportion to their relative degrees of fault if Trains or Equipment of both parties were involved in the incident giving rise to such injury or damage.

(e) Except to the extent of any contrary provision in the Sale Agreement, each party shall indemnify and hold harmless the other party, and that party's directors, officers, employees, agents, successors and assigns, and defend them with counsel reasonably satisfactory to the indemnitee, from and against any and all Environmental Claims, Environmental Expenses, and any damages or liabilities arising out of the discharge or release of any Hazardous Materials in, on or about the Joint Facilities by such party, or its employees, contractors, lessees, invitees, representatives, agents, Operators (including, but not limited to, NRPC), successors, or assigns. User shall further indemnify and hold Owner harmless, and defend Owner with counsel reasonably satisfactory to Owner, against any damages or liability caused by or arising out of a release or discharge of Hazardous Materials in, on or about the Joint Facilities occurring prior to the Effective Date of this Agreement. For purposes of this Subsection, the capitalized terms not otherwise defined in this Agreement shall have the meaning as the definition given to these terms in that certain Environmental Indemnity Agreement between the parties which is part of the Sale Agreement. Nothing herein is intended to, nor shall abrogate the rights and responsibilities of the parties contained in the aforesaid Environmental Indemnity Agreement.

6.3 Insurance:

(a) Owner and User shall each maintain general liability insurance in the amount of at least \$100,000,000 per occurrence and shall either include all of their respective Operators (other than NRPC) as insureds under their respective policies or furnish

evidence of separate insurance of the same amount and type for each Operator (other than NRPC). Insurance shall be placed with a company or companies authorized to conduct business in California. Owner and User (and any Operator of either party if such Operator demonstrates to the reasonable satisfaction of the Owner and User sufficient financial capacity) may self insure to a level not to exceed \$10.0 million.

(b) The general liability insurance required by Section 6.3(a) shall provide coverage for personal injury, bodily injury, death and property damage with respect to all operations of the Owner, User, and Operators, respectively. Such insurance shall include blanket contractual coverage, including coverage for written, oral and implied contracts and specific coverage for the indemnity provisions set forth in this Section 6. Each policy of general liability insurance obtained by the Owner and User shall name the other as an additional insured with respect to any liability to be borne by the party obtaining such insurance pursuant to the provisions of this Section 6.

(c) For any claims arising out of activities, products or operations resulting from or related to this Agreement, the insurance obtained pursuant to Section 6.3(a) shall be primary with respect to the obligation under this Agreement of the party obtaining the insurance and with respect to the interests of all parties added as additional insureds. Any other insurance maintained by an additional insured shall be excess of this coverage herein defined as primary and shall not contribute with it.

(d) Unless otherwise agreed by the Owner and User, the insurance required by Section 6.3(a) shall be maintained by each of the parties specified therein for the full term of this Agreement and shall not be permitted to expire or be canceled or materially changed except upon sixty (60) days' written notice to the other parties. Each insurance policy required by Section 6.3(a) shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or limits except after sixty (60) days' prior written notice has been given to all insureds.

(e) Each of Owner and User shall cause its and/or its Operator's (other than NRPC's) insurers to provide the other with certificates of insurance and endorsements evidencing the provisions specified above in this Section 6.3 prior to commencement of operations under this Agreement.

(f) A failure of any party to maintain the insurance required by this Section 6.3 shall not relieve such party of any of its liabilities or obligations under this Agreement.

6.4 Limitations on Indemnification:

(a) The provisions of this Section 6.4 shall apply notwithstanding the provisions of Section 6.2 above. "Excluded Conduct" shall mean (i) an entire failure of care or the exercise of so slight a degree of care as to raise a presumption that there was a conscious indifference to the things and welfare of others, (ii) conduct constituting a reckless or wanton disregard of the probable results of such conduct, (iii) wilful misconduct, or (iv) conduct which would permit the award of exemplary or punitive damages. Neither party shall be indemnified for any loss or liability resulting from its own Excluded Conduct, and in any such case such party shall be responsible for and bear loss or liability in proportion to its relative degree of fault and such party shall be responsible for and bear all exemplary or punitive damages, if any, resulting from its Excluded Conduct. If any of the provisions of Section 6.2 would otherwise indemnify a party against liability, loss or damage that would be prohibited by or unenforceable under the laws of the State of California (including a determination that indemnification under the circumstances involved is against the public policy of the state), the indemnity provided by such provision shall be deemed to be limited to and operative only to the maximum extent permitted by law. Without limitation, if it is determined that any law or public policy of the State of California prohibits the indemnification of a party for its own sole negligence in any instance covered by the provisions of Section 6.2, those provisions shall be deemed to exclude indemnification for such party's sole negligence but to permit full indemnification, as specified in Section 6.2, if both parties were negligent. In the case of any liability, loss or damage for which the provisions of this Section 6.4 would prevent the indemnification of a party, such party shall be responsible for and bear such liability, loss or damage.

(b) Notwithstanding Section 6.2 above, Owner and User shall bear liability in proportion to their relative degrees of fault if, but only if, the liability arises solely out of a collision between a Train of Owner and a Train of User that occurs on User's Cahill/Lick Line during a "peak commuter period", as hereinafter defined, on a day during which Owner operates scheduled Gilroy Commuter Service Trains. This Subsection 6.4(b) shall cease to apply upon completion of Owner's construction of its Trackage on the Joint Facilities between Azurais Street at or near Milepost 47.5 and Lick at or near Milepost 51.4 and the commencement of the Gilroy Commuter Service operations thereover. As used in this Section 6.4(b), the term "peak commuter period" shall mean a single uninterrupted period in the morning and a single uninterrupted period in the afternoon to be designated by Owner from time to time upon not less than 90 days written notice from Owner to User; provided, however, that neither of such periods shall exceed five (5) hours and the two periods together shall not exceed nine (9) hours in the aggregate.

6.5 Scope of Indemnification:

In any case where a party is required under the provisions of this Section 6 to bear a loss or liability, it shall pay, satisfy and discharge such liability and all judgments that may be rendered by reason thereof and all costs, charges and expenses incident thereto, and such party shall forever indemnify, defend and hold harmless the other party and its commissioners, directors, officers, agents, employees, shareholders, parent corporation and affiliated companies or governmental entities from, against and with respect to any and all liabilities which arise out of or result from the incident giving rise thereto. If a party asserts that the other was guilty of Excluded Conduct and denies liability for indemnification of the other party based thereon, the party asserting such Excluded Conduct shall have the burden of proof in establishing such conduct. It is the intent of the parties that the indemnification provisions of this Section 6 shall apply to both the passive negligence and the active negligence of an indemnified party.

6.6 Procedure:

(a) If any claim demand shall be asserted by any person against an indemnified party under this Section 6, the indemnified party shall, within 30 days after notice of such claim or demand, cause written notice thereof to be given to the indemnifying party, provided that failure to notify the indemnifying party shall not relieve the indemnifying party from any liability which it may have to the indemnified party under this Section 6, except to the extent that the rights of the indemnifying party are in fact prejudiced by such failure. If any such claim or demand shall be brought against the indemnified party and it shall have given notice thereof to the indemnifying party, the indemnifying party shall have the right, at its own expense, to control (including the selection of counsel reasonably satisfactory to the indemnified party) or to participate in the defense of, negotiate or settle, any such claim or demand, and the parties hereto agree to cooperate fully with each other in connection with any such defense, negotiation or settlement. In any event, the indemnified party shall not make any settlement of any claims which might give rise to liability on the part of the indemnifying party under this Section 6 without the prior written consent of the indemnifying party, which consent shall not be unreasonably withheld, conditioned or delayed. If any claim or demand relates to a matter for which the parties, under the terms of Section 6.2, are to share liability equally or in proportion to their relative degrees of fault, each party shall be entitled to select its own counsel and defend itself against the claim at its own expense, and neither party shall make any settlement of any such claims without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

(b) Subject to the provisions of Section 6.6(a), on each occasion that the indemnified party shall be entitled to indemnification or reimbursement under this Section 6, the indemnifying party shall, at each such time, promptly pay the amount of such indemnification or reimbursement. If the indemnified party shall be entitled to indemnification under this Section 6 and the indemnifying party shall not elect to control any legal proceeding in connection therewith, the indemnifying party shall pay to the indemnified party an amount equal to the indemnified party's reasonable legal fees and other costs and expenses arising as a result of such proceeding.

(c) Any dispute between the parties as to the right to indemnification or the amount to which it is entitled pursuant to such right with respect to any matter shall be submitted to arbitration pursuant to Section 7.

6.7 Operators:

Any Operator other than NRPC shall agree to be bound by the provisions of this section 6 unless otherwise agreed in writing by Owner and User. The parties will use reasonable efforts to extend the benefits of existing NRPC indemnities to Owner. For purposes of this Section 6, as between Owner and User, the Trains, Equipment, and actions of any Operator (including NRPC) or any other entity acting on behalf of and for the account of a party hereto shall be deemed to be the Trains, Equipment, and actions of such party. Nothing contained herein shall be construed to limit or waive the rights of a party hereto to seek indemnification or damages from its Operator(s) or other entities acting on its behalf, for actions of said Operator(s) or said entities.

6.8 Dollar Amount Adjustments:

Each of the dollar amounts set forth in Section 6.3(a) above shall be adjusted annually and every three years, respectively, for changes in the Consumer Price Index, but shall not be reduced below their initial levels. As used in this Section 6.8, the term "Consumer Price Index" shall mean the United States Department of Labor's Bureau of Labor Statistics' Consumer Price Index, All Urban Wage Earners and Clerical Workers, All Items, for the San Francisco area (1967=100). If the base year for the Consumer Price Index is changed from 1967, the Consumer Price Index shall be converted in accordance with the conversion factor published by the United States Department of Labor's Bureau of Labor Statistics. If the Consumer Price Index is discontinued or revised, such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Consumer Price Index had not been discontinued or revised.

6.9 Not For Benefit Of Third Parties:

The provisions of this Section 6 are not intended to confer any right, benefit, or cause of action upon any third party and are intended solely to deal with the allocation of liability, if any, as between the parties to this Agreement.

7. DISPUTE RESOLUTION AND BINDING ARBITRATION

7.1 Settlement of Disputes: Both of the parties hereto shall make every reasonable effort to settle any disputes arising out of their respective rights and obligations under this Agreement by prompt and diligent negotiations.

7.2 Controversies Subject to Arbitration: Any and all claims, disputes or controversies between Owner and User arising out of or concerning the interpretation, application or implementation of this Agreement, which cannot be resolved by the parties by negotiations, shall be submitted to binding arbitration as hereinafter provided.

7.3 Arbitration Procedure: The procedure for arbitration shall be as follows:

(a) In the event a claim, dispute or controversy subject to arbitration hereunder arises, either party may serve a written demand for arbitration in accordance with Section 7.3 of this Agreement upon the other party. If the claim, dispute or controversy is not resolved by the parties within thirty (30) calendar days after the service of the demand, the matter will be deemed submitted to arbitration.

(b) Within fifty (50) calendar days of service of a demand for arbitration, each party shall designate an arbitrator in writing and serve its designation upon the other party ("Noticed Party") in accordance with Section 7.3 of this Agreement. If the Noticed Party fails to timely designate the arbitrator to be designated by it, such arbitrator shall be appointed by the Presiding Judge (or Acting Presiding Judge) of the Superior Court of the County of Sacramento, State of California upon application of either party after ten (10) days' written notice to the other party. If each party has timely designated its arbitrator, or the Presiding Judge or Acting Presiding Judge has appointed an Arbitrator for one of the parties pursuant to the previous sentence, the two designated arbitrators shall, within seventy (70) calendar days of service of the demand for arbitration, designate a neutral third party arbitrator. The third party arbitrator shall be a qualified disinterested person, knowledgeable and experienced in rail operational matters and in the type of services contemplated by this Agreement. If the two arbitrators designated

by the parties fail to timely select a neutral third party arbitrator, either party may apply to the Presiding Judge (or Acting Presiding Judge) of the Superior Court of the County of Sacramento, State of California to select the neutral third party arbitrator.

(c) At any time, the parties may agree in writing on a sole arbitrator to decide the controversy.

7.4 Rules of Arbitration: The arbitration is to be conducted pursuant to Part 3, Title 9, of the Code of Civil Procedure, commencing with Section 1280, or to any successor or replacement provisions of said Code, and the arbitrators shall have all the powers and duties specified therein.

7.5 Arbitration Schedule: (a). The arbitration hearing shall commence no later than four months after service of the demand and shall be concluded no later than forty (40) calendar days after the hearing commencement date. The arbitration decision and award shall be rendered by the arbitrators within thirty (30) calendar days after conclusion of the arbitration hearing.

(b) The parties may extend any of the deadlines or time periods set forth above by mutual written stipulation. The arbitrators may extend the time for commencement of the arbitration hearings, conclusion of the arbitration hearings and/or the time for rendition of the arbitrators' decision and the award (but, with respect to rendition of the arbitration award, by no longer than an additional 30 calendar days), upon motion of either party or upon the arbitrator's own motion, upon a showing of good cause therefor.

7.6 Pending Resolution: During the pendency of such arbitration proceedings, the business, the operations to be conducted, physical plant to be used, and compensation for service under this Agreement, to the extent that they are the subject of such controversy, shall continue to be transacted, used, and paid in the manner and form existing prior to the arising of such controversy, unless the arbitrator shall make a preliminary ruling to the contrary. In the case of monetary disputes relating to amounts billed for the payment of operating, maintenance or capital costs and expenses under the terms of this Agreement, the party from whom a payment is allegedly owing shall make such payment notwithstanding such dispute and may submit the dispute to arbitration under this Section 7 only by seeking a refund through such arbitration.

7.7 Cost of Arbitration: Each party hereto shall bear the costs and expenses incurred by it in connection with such arbitration, including the cost of the arbitrator appointed by it, and both parties shall share equally the costs and expenses attributable to the services of the third arbitrator.

7.8 Compliance: For all purposes of this Agreement, each party is responsible for the compliance with all provisions of this Agreement by its Operator or Operators and User shall be responsible for compliance by NRPC.

Section 8. GOVERNMENTAL APPROVAL, TERM, AND ABANDONMENT

8.1 Applications: User shall, at its own cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute any necessary proceedings for the procurement of consent, approval, or authority from any governmental agency for the sanction of this Agreement and the operations to be carried on by User hereunder. Owner, at its expense, shall assist and support said application or petition and will furnish such information and execute, deliver, and file such instrument or instruments in writing as may be necessary or appropriate to obtain such governmental consent, approval, or authority. User and Owner agree to cooperate fully to procure all such necessary consent, approval, or authority.

8.2 Term: Except as otherwise provided in Section 8.3 hereof, the term of the Agreement and the trackage rights provided for hereunder shall be perpetual.

8.3 Abandonment or Discontinuance:

(a) In the event that Owner contracts to sell all or substantially all of the Joint Facilities (other than User's Cahill/Lick Line) to a third party (other than those parties described in Section 3(a)), Owner may, at its sole cost and expense, file for permission from the ICC to abandon any Freight Service over the portion of the Joint Facilities (other than User's Cahill/Lick Line) that is to be sold. While User shall not object to such a filing, it shall be allowed to participate in the abandonment proceedings.

(b) In the event that Owner intends with reasonable certainty to commence construction of facilities on all or substantially all of the length of the Joint Facilities (other than User's Cahill/Lick Line) that are incompatible with the double mainline Freight Service, User shall consent to such diminished rights, provided that Owner shall have completed, at its sole cost and expense, the modification (whose plans and specifications have been approved by User) of the remaining single track (together with side track passing tracks and spur tracks) to be reasonably suitable for the volume and speed of the then existing Freight Service. Upon completion of such construction, User shall execute such documents as are reasonably necessary to extinguish the portion of the operating rights retained hereunder no longer required for Freight Service.

(c) In the event that Owner demonstrates a reasonably certain need to commence construction on all or substantially all of the length of the Joint Facilities (including User's Cahill/Lick Line) of a transportation system that is a significant change in the method of delivery of Commuter Service which would be incompatible with Freight Service on the Joint Facilities (other than User's Cahill/Lick Line), Owner may, at its sole cost and expense, file no sooner than nine months prior to the commencement of such construction for permission from the ICC to abandon the Freight Service over the portion of the Joint Facilities (excluding User's Cahill/Lick Line) upon which the construction is to occur. User shall not object to or oppose such a filing; however, it shall be allowed to participate in the abandonment proceedings.

(d) In the event that (1) Owner notifies User in writing that it has permanently ceased to provide Commuter Service on all or substantially all of the Joint Facilities (other than User's Cahill/Lick Line) and within six months after such notice, no other public or private entity has evidenced a willingness to provide such Commute Service, and (2) if Owner has not filed an ICC application to abandon under subsection (a) above, and (3) User desires to continue to provide Freight Service over such portion, then, within one year after Owner's notice, User shall purchase, and Owner shall sell, all of the applicable Joint Facilities at Net Liquidation Value including Owner's interest in the underlying real property at the mileage pro rata share of the purchase price in the Sale Agreement attributable to the portion of the Joint Facilities being purchased. Should the parties be unable to agree on the sale price within sixty days after Owner has advised User of its proposed sale price, either party may submit the matter to binding arbitration under this Agreement. If neither party submits the matter to arbitration by the thirtieth day after such sixty-day period, Owner's contractual right to require User to purchase hereunder shall lapse.

8.4 Release: Upon termination of this Agreement, or any part thereof, each party shall forever release and discharge the other party of and from any and all manner of obligations, claims, demands, causes of action, or suits which it might have, or which might subsequently accrue to it growing out of or in any manner connected with, directly or indirectly, the contractual obligations under this Agreement in the involved Trackage, provided, however, the aforesaid relinquishment, abandonment, surrender, renunciation, release, and discharge of the parties shall not in any case affect any of the rights and obligations of either party which may have accrued, or liabilities accrued or otherwise, which may have arisen prior to such termination or partial termination. Upon any partial termination of the Agreement, however the same may occur, the terms and conditions hereof shall continue and remain in full force and effect for the balance of the Joint Facilities.

8.5 Employees: In the event of sale or of termination by abandonment pursuant to Section 8.3 hereof, Owner and User shall each be responsible for and shall bear labor claims of, and employee protection payable to, its own respective employees including any amounts that either Owner or User may be required to pay to its own respective employees pursuant to labor protective conditions imposed by the ICC.

8.6 Limitation on Obligations: Neither shall Owner have obligation to provide Freight or Intercity Passenger Service nor shall User have any obligation to provide Commuter Service. The abandonment of Freight or Intercity Passenger Service by User shall not create any obligation upon Owner to provide such Services, and the abandonment of Commuter Service by Owner shall not create any obligation upon User to provide such Service.

Section 9. MAINTENANCE

9.1 Responsibility for Performance and Costs: Owner shall physically perform the ordinary and capitalized maintenance on the Joint Facilities, (excluding User's Cahill/Lick Line) with the cost of such maintenance (other than for Exclusive Commute Trackage and Designated Freight Trackage) apportioned as described in Section 9.2 below. Owner shall physically perform the signal system maintenance on the New Coast Main. User shall pay the cost thereof with respect to the No. 1 Track, and the cost thereof with respect to User's Cahill/Lick Line shall be apportioned as provided in Section 9.2(b) below. Owner shall be responsible for all costs and expenses of the maintenance on Exclusive Commute Trackage except as provided in Sections 1.10 and 2.4 hereof. Owner shall perform the maintenance on Designated Freight Trackage, and all costs and expenses associated with such maintenance on Designated Freight Trackage shall be the responsibility of User except as provided in Sections 1.7 and 2.6 hereof. User shall either physically perform the maintenance on the New Coast Main (excluding signal system maintenance) or, upon written agreement of the parties, contract with Owner to perform such maintenance. All costs and expenses associated with such maintenance shall be apportioned pursuant to Section 9.2(b) hereof. No later than March 31 of each year, the party responsible for performing maintenance on any portion of the Joint Facilities (excluding User's Cahill/Lick Line) and the New Coast Main for which the other party has an obligation to pay or share the costs of hereunder will present such other party with a written estimated budget for costs and expenses for the applicable maintenance for the next-succeeding Fiscal Year. The party performing such maintenance may submit to the other party written proposed amendments, supplements or adjustments to said budget from time to time after submission of the initial estimated budget. Such initial estimated budget, and any amendments, supplements and adjustments shall be subject to the written consent of the

receiving party which shall not be unreasonably withheld, conditioned or delayed. The party performing such maintenance, during such next succeeding Fiscal Year shall bill the other party monthly on an estimated actual cost basis (including Customary and Materials Additives) for the other party's share of such maintenance costs. If it appears to the billed party that the monthly billing deviates substantially from that projected in the estimated budget, the billed party may request a written explanation from the party performing maintenance as to the reason for such deviation and such party shall provide such written explanation within fifteen (15) days after receipt of the request. If the parties are in disagreement as to any such monthly billings or the amounts claimed for such maintenance, such disputes shall be resolved in accordance with Section 7 of this Agreement. At the end of each Fiscal Year there shall be an adjustment if billed costs deviate from actual costs. To the extent possible, the parties shall negotiate appropriate flat rates for such maintenance costs within twelve months of the Effective Date unless extended in writing by the parties.

9.2 Apportionment of Costs: Costs of ordinary and capitalized maintenance (but not the costs of Changes and/or Additions themselves) of the Peninsula Main Line (other than Exclusive Commute Trackage and Designated Freight Trackage) for the first four (4) years after the Effective Date shall be solely the responsibility of Owner. Otherwise, Owner and User will share ordinary maintenance costs and capitalized maintenance costs for the Joint Facilities (excluding Exclusive Commute Trackage and Designated Freight Trackage) on the basis of the SFGTF, for which purpose User shall provide Owner with required data regarding User's Freight and Intercity Passenger Service operated on the Joint Facilities within ninety (90) days after the end of each Fiscal Year of this Agreement. Owner and User shall each respectively bear responsibility for the costs attributable to its respective Operator(s) and other entities acting on its behalf and for its account. The SFGTF shall be applied to the traffic on said Joint Facilities as follows:

(a) On the Peninsula Main Line. The SFGTF will be applied with Owner as the "dominant user." However, capital expenditures which are unique for Commuter Service only (e.g., electrification or station platforms) will be paid solely by Owner and not included in the SFGTF. Similarly, capital expenditures which are unique for Freight and Intercity Passenger Service (e.g., a gauntlet track in tunnels for oversized intermodal traffic) will be paid solely by User and not included in the SFGTF.

(b) On User's Cahill/Lick Line. The SFGTF will be applied with User as the "dominant user" until the total number of Owner's Trains in Gilroy Commuter Service in any Fiscal Year exceeds the number of User's Trains in Freight and Intercity Passenger Service in that Fiscal Year, in which case Owner will

become the "dominant user" as defined in the SFGTF for that Fiscal Year. Thereafter, the determination as to who is the "dominant user" shall be made for each Fiscal Year, with the party having the greater number of Trains designated as the "dominant user" for the applicable Fiscal Year. The same provisions prevail for applying capital expenditures which are unique to Gilroy Commuter Service or unique to Freight and Intercity Passenger Service to the SFGTF as stated in Section 9.2(a).

(c) On the main track portion of Exclusive Commute Trackage between Cahill Yard and Lick. During any period that User is provided access to and use of such Trackage pursuant to Section 2.9 hereof the SFGTF will be applied in the same manner as provided in Subsection 9.2(b) hereof, except that Owner shall be the initial "dominant user" instead of User, and the same conditions will prevail for applying capital expenditures which are unique to Commuter Service or unique to Freight and Intercity Passenger Service to the SFGTF as stated in Section 9.2(a).

9.3 **Level of Maintenance:** The Joint Facilities (other than Exclusive Commute Trackage) shall be maintained at the levels necessary to accommodate User's present and future Freight and Intercity Passenger Train operations, to allow User to maintain competitive service levels. The maintenance of Designated Freight Trackage shall be pursuant to an annual maintenance program mutually agreed by the parties. User shall maintain User's Cahill/Lick Line to a minimum of the existing condition as reflected in train speeds shown in User's Timetables, General Orders and Track Bulletins in effect as of the date of this Agreement, as attached hereto as Exhibit F. If Owner makes Changes and/or Additions to the User's Cahill/Lick Line in accordance with Section 10.8 below, User shall maintain User's Cahill/Lick Line as provided in Section 10.8 below.

9.4 **Protection of Operations:** Owner further agrees that maintenance and Changes and/or Additions activities affecting the Joint Facilities (excluding User's Cahill/Lick Line) shall not be scheduled to unreasonably delay or impair User's rights under Section 4.3 to provide Freight or Intercity Passenger Service on the Joint Facilities (excluding User's Cahill/Lick Line). User shall be given the same advance notice of maintenance plans and schedules as is provided to Owner's personnel. User further agrees that maintenance and Changes and/or Additions activities affecting User's Cahill/Lick Line shall not be scheduled to unreasonably delay or impair Owner's rights under Section 4.5 to provide Gilroy Commuter Service on User's Cahill/Lick Line. Owner shall be given the same advance notice of maintenance plans as is provided to User's personnel.

9.5 **Assumption of Maintenance:** In the event Owner becomes incapable of adequately performing maintenance functions hereunder for Freight and Intercity Passenger Service, arrangements will be

made for the prompt and orderly transfer of such functions to User. In the event User is physically performing maintenance on User's Cahill/Lick Line and becomes incapable of adequately performing maintenance functions hereunder for Gilroy Commuter Service, arrangements will be made for the prompt and orderly transfer of such functions to Owner.

Section 10. CAPITAL IMPROVEMENTS

10.1 **Owner Responsibility:** Owner shall provide, at its sole cost and expense, or reimburse User for the following Changes and/or Additions: (a) upgrading the present No. 1 Track to main line standards to not less than current Federal Railroad Administration Class 4 for the segment from Santa Clara Jct. at or near Milepost 44.0 to the magnetic north end of Cahill Yard at or near Milepost 46.75; (b) installation of a bidirectional centralized traffic control system for the No. 1 Track; and (c) all Changes and/or Additions on the Joint Facilities, excluding User's Cahill/Lick Line, (including but not limited to grade separations on the Peninsula Main Line) other than those Changes and/or Additions subject to Section 10.2 or Section 10.3. The Changes and/or Additions described in (a) and (b) above, which shall be owned by Owner, are set forth in Exhibit G and shall be completed within twenty-four (24) months of the Effective Date subject to the provisions of Section 2.13 hereof. The costs payable by Owner to User for the Changes and/or Additions described in (a) and (b) above shall be \$1,980,000. Payment shall be due and payable by Owner upon the later of: (1) the ninetieth (90th) day after completion of such Changes and/or Additions; or (2) the second anniversary of the Effective Date. If payment is not made by Owner within the period above specified, Owner will pay to User interest on the amounts due at a rate equal to the interest rate paid by User during the then current applicable period to its major bank lenders under its principal financing facility. Such interest shall be payable monthly in arrears and shall be due on the first day of each calendar month with the final interest payment due on the day that the remaining principal balance is paid in full. Notwithstanding anything to the contrary above, the full amount of principal and interest due and payable by Owner hereunder shall be paid not later than forty-eight (48) months after the Effective Date.

10.2 **User Responsibility:** User shall bear the costs of Changes and/or Additions on Joint Facilities (excluding User's Cahill/Lick Line), including Designated Freight Trackage, which User has requested to be effected and which are not used in connection with Commuter Service.

10.3 **Shared Responsibility:** The cost of Changes and/or Additions on the Joint Facilities (excluding User's Cahill/Lick

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Line) which User has requested and, based thereon, which Owner has agreed to undertake and has actually undertaken and which are used for both User's and Owner's operations shall be shared on a basis to be agreed by the parties.

10.4 Grade Separations and Crossing: Notwithstanding any other provisions of Section 10 of this Agreement (other than Section 10.9), the cost of new and upgraded grade separations and new or upgraded pedestrian or vehicular road crossings at grade on the Santa Clara/Lick Line and the New Coast Main (but not including the cost of maintenance or capitalized maintenance of any of the foregoing) shall be borne by the parties as follows:

(a) **Owner Responsibility:** Owner shall be solely responsible for the cost and expense of those separations and crossings covered hereunder which (i) it has instituted and undertaken for its benefit and which were not requested by User, (ii) Owner has requested, and based thereon, User has actually undertaken, or (iii) were requested, required or funded by any other party and which Owner has instigated, induced, actively and substantially supported, or solely caused.

(b) **User Responsibility:** User shall be solely responsible for the cost and expense of those separations and crossings covered hereunder which (i) it has instituted and undertaken for its benefit and which were not requested by Owner, (ii) User has requested, and based thereon, Owner has actually undertaken, or (iii) were requested, required or funded by any other party and which User has instigated, induced, actively and substantially supported, or solely caused.

(c) **Shared Responsibility:** Owner and User shall share the costs and expenses for all other grade separations and crossings not subject to Subsections (a) and (b) above on the basis of the number of Trains of each party operated over the applicable grade separation or crossing during the twelve calendar month period immediately preceding the approval of the final plans for construction of such grade separation or crossing.

(d) **Identity of Parties:** For purposes of this Section 10.4, Owner shall include any one or more of Owner's member agencies, its Operator(s) or other entities acting on Owner's behalf or for its account, and its respective successors or assigns; and User shall include User's Operator(s) or other entities acting on User's behalf and for its account and its respective successors and assigns.

10.5 User's Improvements: Changes and/or Additions which are User's responsibility pursuant to Section 10.2 (if it decides to make such improvements) shall include, but are not limited to, the following: (i) two storage tracks and turnouts between Bayshore at Milepost 4.9 and Brisbane at Milepost 7.1, on the

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westerly side of and no less than twenty (20) feet from Owner's eastward main track and trackage necessary to construct the wye and tail tracks at Brisbane and Bayshore (however, the twenty (20) foot space shall not be used for motor vehicles); (ii) a gauntlet track from the north end of Tunnel No. 3 (at Milepost 3.1) to the south end of Tunnel No. 4 (at Milepost 5.3) along with an interlocking signal protection system; (iii) four (4) new power operated crossovers between Owner's main tracks in connection with the construction of (i) and (ii) above; and, (iv) upon the approval of Owner (which shall not be unreasonably withheld), such additional support trackage and other facilities to meet User's Freight Service needs. Such construction, reconstruction, or use shall not unreasonably interfere with Owner's Commuter Service and the completion of the above projects shall not result in the degradation of the track and signal system of the Joint Facilities.

10.6 **User Requests:** Engineering and design plans for the construction of any Changes and/or Additions requested by User on Joint Facilities (other than User's Cahill/Lick Line) and on the New Coast Main (but only to the extent and at the location diverging from or connecting to those portions of the Joint Facilities other than User's Cahill/Lick Line) must be submitted to and approved by Owner prior to any construction. Owner's approval for such construction shall not be unreasonably withheld, conditioned or delayed.

10.7 **Caltrans Improvements:** Owner will arrange for Caltrans to waive any and all rights to receive payment for unamortized capital improvements on the Joint Facilities which Owner has funded and Owner shall continue the State of California's current participation in capital improvement programs without User's participation.

10.8 **Changes and/or Additions to User's Cahill/Lick Line:** Owner shall have the right to request Changes and/or Additions to User's Cahill/Lick Line. Any such Changes and/or Additions requested by Owner shall be subject to the approval of User (which shall not be unreasonably withheld, conditioned or delayed), and shall be at Owner's sole cost and expense. If Owner and User agree to the Changes and/or Additions, they shall further agree in writing as to the nature of such Changes and/or Additions, as to the level of utility to the line effected by the Changes and/or Additions, and the consequent level of maintenance required under Section 9.3, above, by reason of such Changes and/or Additions. Any Changes and/or Additions to User's Cahill/Lick Line effected by User pursuant to its rights under this Agreement shall be at User's sole cost and expense. The parties may, but are not required to, agree on a cost sharing for Changes and/or Additions to User's Cahill/Lick Line that are mutually beneficial.

10.9 **Necessary Changes and/or Additions:** Notwithstanding any other provisions of Section 10 of this

Agreement, if Changes and/or Additions are determined to be necessary to reinstate Service or are then currently necessary to maintain the integrity of the Trackage or Track Structure for its then current utility to both parties on User's Cahill/Lick Line, on the Trackage over which User's Cahill/Lick Line is situated, or, during any period that User is provided access to and use of such Trackage pursuant to Section 2.9 hereof, the main Trackage portion of Exclusive Commuter Trackage between Cahill Yard and Lick, the party owning the element of the affected Trackage or Track Structure ("responsible party") shall be responsible for undertaking the necessary Changes and/or Additions and Owner and User shall share the costs of such Changes and/or Additions on a mutually agreeable basis taking into account the benefits to each party derived from the continued use of the Trackage or Track Structure. (Notwithstanding use of the SFGTF elsewhere in this Agreement, there shall be no presumption that the SFGTF is the appropriate basis for allocating costs under this Section 10.9 in any given situation.) Changes and/or Additions effected pursuant to this Section shall be subject to the procedures set forth in Subsections (a) through (e) below.

(a) In the event of an occurrence (other than that for which a party is liable under Section 6) resulting in (i) cessation or interruption of Service and damage to the Trackage or Track Structure, and the costs of Changes and/or Additions to reinstate Service and to bring the Trackage and Track Structure to the then current level of utility is in excess of \$15,000,000, or (ii) significant disruption of Service and damage to the Trackage or Track Structure, and the costs of Changes and/or Additions to reinstate Service and to bring the Trackage and Track Structure to the then current level of utility is in excess of \$5,000,000 for the first twenty (20) years after the Effective Date and \$10,000,000 thereafter, the responsible party will elect whether to make the necessary Changes and/or Additions to reinstate Service and to bring the line to its then current level of utility. If the responsible party elects to abandon Service in lieu thereof, it will notify the other party, in which case the notified party will have the option to acquire the applicable Trackage or Track Structure at a value to be agreed upon; and, if the parties cannot agree on the value, the issue of the value will be submitted to arbitration pursuant to Section 7 hereof. If the responsible party elects to effect the Changes and/or Additions, it will so notify the other party, and the notified party will have the option of agreeing to share the costs of such Changes and/or Additions on the basis described above or to abandon its Service on the affected Trackage or Track Structure. If either party elects to abandon Service pursuant to this Subsection and is prevented from such abandonment by regulatory authority, it will share the costs of Changes and/or Additions with the party making any Changes and/or Additions under this Subsection on the basis described above.

(b) In the event of an occurrence (other than that for which a party is liable under Section 6) resulting in (i) cessation or interruption of Service and damage to the Trackage or Track Structure, and the costs of Changes and/or Additions to reinstate Service and to bring the Trackage and Track Structure to the then current level of utility does not exceed \$15,000,000, or (ii) significant disruption in service and damage to the Trackage or Track Structure, and the costs of Changes and/or Additions to reinstate Service and bring the Trackage and Track Structure to the then current level of utility does not exceed \$5,000,000 for the first twenty (20) years after the Effective Date and \$10,000,000 thereafter, the responsible party shall notify the other party and shall immediately undertake such Changes and/or Additions. The cost of such Changes and/or Additions shall be shared on the basis described above.

(c) In the event that either party determines that Changes and/or Additions are then currently necessary to maintain the integrity of the Trackage or Track Structure at its then current level of utility and Service thereover, such party shall notify the other party of its decision. If the notified party agrees with said decision, the responsible party shall undertake the necessary Changes and/or Additions and the costs of such Changes and/or Additions shall be shared on the basis described above. If the notified party does not agree with the notifying party's decision, the issue of whether the Changes and/or Additions are then currently necessary to maintain the integrity of the Trackage or Track Structure and Service thereover shall be arbitrated pursuant to Section 7 hereof. If it is determined that such Changes and/or Additions are then currently necessary, the costs of such Changes and/or Additions shall be shared on the basis described above.

(d) If the Changes and/or Additions subject to Subsections (a), (b) or (c) above result in Trackage or Track Structure of greater utility than that in place prior to such Changes and/or Additions, the incremental costs thereof, if any, attributable to such greater utility shall be borne as follows:

(i) If the increased utility results from the fact that the particular Change and/or Addition resulting in such increased utility was required by then current standards imposed by law, regulations or applicable codes in order to restore the Track or Track Structure to the level of utility existing prior to effecting the Change and/or Addition, the incremental costs shall be borne in the manner provided in Subsections (a), (b) or (c) above, whichever is applicable.

(ii) If the increased utility was requested by one of the parties, or effected by the party for its benefit, but otherwise would not have been required by then current standards to restore the Track Structure or Trackage to the level of utility

existing prior to the Change and/or Addition, then the incremental cost shall be borne by the party requesting or effecting the increased utility.

(e) In the event that the parties cannot agree on their respective share of costs for Changes and/or Additions described in (a), (b), and (c) above, the matter will be submitted to arbitration pursuant to Section 7 hereof. A decision from the arbitrator must be rendered prior to the commencement of any Changes and/or Additions effected pursuant to Subsection (c) hereof.

Section 11. MISCELLANEOUS

11.1 Other Costs: Costs of operations and administration will be borne by the party incurring such costs (unless one party's duty to perform the operations and to bear the costs thereof under the terms of this Agreement was undertaken by the other party pursuant to this Agreement because of the first party's failure to perform its obligations hereunder in which event the failing party shall reimburse the other party for such costs) and any costs which cannot be identified as a cost solely applicable to one party will be apportioned between the parties on the basis of the SFGTF applied in the same manner as in Section 9.2.

11.2 Force Majeure: Neither party shall be liable to the other in damages nor shall a default be deemed to have occurred, and each party shall be excused from performance of any of its obligations hereunder, except obligations involving the payment hereunder of money to the other party or to a third party, during the time when such non-performance is occasioned by fire, earthquake, flood, explosion, wreck, casualty, strike, unavoidable accident, riot, insurrection, civil disturbance, act of public enemy, embargo, war, act of God, inability to obtain labor, materials or supplies, or any other similar cause beyond the party's reasonable control; provided, that if either party suffers a work stoppage due to a labor dispute, such party shall make such reasonable efforts, if practicable, to staff its operations so as to minimize disruptions to the Service provided by the other party on the Joint Facilities.

11.3 Billing: Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing forms shall contain sufficient detail to permit computation of payments to be made hereunder. Unless otherwise specifically provided herein, billing shall be prepared in accordance with the schedules of the rules, Customary Additives, Materials Additives, material prices and equipment rental rates as agreed upon by the chief accounting officers of the parties hereto (or their designees) from time to time. User shall pay to Owner at

the office of the Treasurer of Owner, or at such other location as Owner may from time to time designate, all the compensation and charges of every name and nature which, in and by this Agreement User is required to pay in lawful money of the United States, within forty-five (45) days after the rendering of bills therefor by the Owner. Bills shall contain a statement of the amount due on account of the expenses incurred and services rendered during the billing period.

Errors or disputed items in any bill (including disputes arising under Section 9.1 but excluding disputes arising under Section 10.9) shall not be deemed a valid excuse for delaying payment, but shall be paid subject to subsequent adjustment; provided, no exception to any bill shall be honored, recognized or considered if filed after the expiration of three years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) if in connection with a project for which a Roadway Completion Report (as that term is presently understood by the railroad industry) is required, three years after the last day of the calendar month in which the Roadway Completion Report is made covering such project, or (iii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability is established. This provision shall not limit the retroactive adjustment of billing made pursuant to: (a) exception taken to original accounting by or under authority of the ICC or (b) retroactive adjustment of wage rates and settlement of wage claims.

So much of the books, accounts and records of each party hereto as are related to the subject matter of this Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto and by the Auditor General of the State of California pursuant to Government Code Section 10532. If work relating to this Agreement is funded in whole or in part by a federal grant, the Comptroller General of the United States and authorized representatives of the federal agency furnishing the grant shall have the right to examine and audit such books, accounts and records in accordance with applicable federal laws and regulations.

Should any payment become payable by Owner to User under this Agreement, the above provisions of this Section shall apply with User as the billing party and Owner as the paying party.

In the event that either party fails to make any payment required to be made to the other party in accordance with the provisions of this Agreement by the date upon which it is due, interest shall accrue from the due date until payment is made, at the Federal Discount Rate in effect on the due date plus three (3) percent; provided, however, that no interest shall be due and

payable on any amounts in dispute which are determined, either by subsequent review or by arbitration, to be not validly due hereunder.

11.4 Notices: All notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of delivery, if delivered personally to the party to whom notice is given, or if made by telecopy directed to the party to whom notice is to be given at the telecopy number listed below, or (ii) on receipt, if mailed to the party to whom notice is to be given by registered or certified mail, return receipt requested, postage prepaid and properly addressed as follows:

If intended for Owner:

Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
San Carlos, CA 94070-1306
Attention: Gerald T. Haugh
Phone No.: 415-508-6221
Telecopy No.: 415-508-0281

With a copy to:

Hanson, Bridgett, Marcus, Vlahos & Rudy
333 Market Street, Suite 2300
San Francisco, CA 94105
Attention: David J. Miller
Phone No.: 415-777-3200
Telecopy No.: 415-541-9474

If intended for User:

Executive Vice President-Operations
Southern Pacific Transportation Company
One Market Plaza
San Francisco, CA 94105
Phone No.: 415-541-2125
Telecopy No. 415-541-1829

With a copy to:

Director-Contracts & Joint Facilities
Southern Pacific Transportation Company
One Market Plaza, Room 1004-P
San Francisco, CA 94105
Phone No.: 415-541-2772
Telecopy No. 415-541-1802

And to:

Vice President & General Counsel
Southern Pacific Transportation Company
One Market Plaza
San Francisco, CA 94105
Phone No.: 415-541-1781
Telecopy No. 415-495-5436

A party may change its person designated to receive notice, its telecopy number, or its address from time to time by giving notice to the other party in accordance with the procedures set forth in this Section 11.4.

11.5 Preferences: Except as hereafter determined by the mutual agreement of the parties, neither of them shall seek in any administrative, legislative or judicial proceeding or otherwise to obtain rights in the use of the properties subject to this Agreement in excess of those provided to it, or seek to diminish such rights provided to the other. Notwithstanding the provisions of Section 7, the parties shall have recourse to the courts or any governmental agency having jurisdiction in the event of a violation of this Section 11.5, and, in addition to any available remedies for damages, the remedy of specific enforcement shall be available with respect thereto.

11.6 Headings: The section and subsection headings in this Agreement are for convenience only and shall not be used in its interpretation or considered part of this Agreement.

11.7 Recording: Either party may, at its sole election and expense, record this Agreement with the appropriate governmental authorities. The parties agree that, should it be necessary to modify or amend any property description for such recording purposes, they shall cooperate in making said modifications or amendments.

11.8 Entire Agreement: This Agreement and its Exhibits together with the Sale Agreement represent the entire Agreement between Owner and User concerning the terms of the trackage rights retained and confirmed hereby.

11.9 Amendments: No modification, addition or amendment to this Agreement shall be effective unless and until such modification, addition or amendment is reduced to a writing executed by authorized officers or agents of each party and delivered to the other party.

11.10 Not For The Benefit Of Others: This Agreement and each and every provision herein is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein shall be construed to create or increase any right in any

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third person to recover by way of damages or otherwise against any of the parties hereto.

11.11 Access: Each party, its employees, agents, and designees, shall have access to the Joint Facilities and to the operating and maintenance records of the other concerning the movement of Trains or Equipment on and maintenance of the Joint Facilities for the purpose of monitoring conformance to the principles and standards expressed in this Agreement.

11.12 Effective Date: The Effective Date of this Agreement shall be contingent upon receipt of all necessary regulatory approvals or exemptions and, assuming such receipt, shall be the earlier of (i) the date that an Operator commences Commuter Service for Owner or (ii) June 30, 1992; provided, however, that portion of this Agreement involving Bridge Trackage Rights, Gilroy Commuter Service and the use by Owner of User's Cahill/Lick Line in connection therewith (including any rights of User pursuant to Section 2.9 hereof), shall be effective only as of the "Effective Date" of the Lick/Gilroy Trackage Rights Agreement (as said term is defined in such Agreement). Any necessary regulatory approvals or exemptions for such Bridge Trackage Rights, Gilroy Commuter Service, and the use of User's Cahill/Lick Line shall be sought concurrent with any necessary approvals or exemptions of the Lick/Gilroy Trackage Rights Agreement. During that period between receipt of necessary regulatory approvals or exemptions and the Effective Date, User shall have the right to conduct Freight and Intercity Passenger Service and operations in support thereof over the Joint Facilities (excluding User's Cahill/Lick Line) but only in the same manner and to the same extent as provided as of the date hereof. User agrees during such period to indemnify and defend Owner against all liability in connection with User's Freight and Intercity Passenger Service except to the extent caused by Owner's willful or negligent acts or omissions. During the interim period, User shall provide Commuter Service for Owner as interim Operator pursuant to its service contract with the State of California Department of Transportation.

11.13 Track Agreements. As a condition precedent to the effectiveness of this Agreement, User shall deliver to Owner documentation satisfactory to Owner, assigning to Owner as an additional beneficiary, User's rights and benefits of the indemnity provisions contained in the track agreements identified in Exhibit H. User will cooperate with Owner to jointly call on parties with whom User has track agreements to have such parties assign the indemnity provisions of such agreements directly to Owner.

11.14 Sale Agreement Controlling. This Agreement is entered into by the parties pursuant to and in furtherance of the Sale Agreement. In the event that there are terms in this Agreement which are inconsistent with the terms of the Sale Agreement, the terms of the Sale Agreement shall govern. Except as may be

otherwise specifically stated herein, nothing contained in this Agreement shall be construed to limit or otherwise modify the rights and obligations of the parties under the Sale Agreement.

11.15 Survival of Rights. The rights of a party under this Agreement shall survive the bankruptcy or other insolvency of the other party to the maximum extent permitted by law.

11.16 Quitclaim of User's Easement. From time to time, Owner may desire to develop portions of the Joint Facilities (excluding the New Coast Main) which are not being used by User for Freight or Intercity Passenger Service. In connection with such developments, Owner may desire User to release its easement with respect to specified portions of the Joint Facilities (excluding the New Coast Main) in order to permit such development. Any such quitclaim shall be subject to the procedures set forth below and shall be further subject to any necessary regulatory approvals or exemptions:

(a) At any time after the Effective Date, and from time to time thereafter, Owner may request User to release a portion of its railroad easement. User shall release such easement upon the following terms and conditions:

Each request (a "Request") shall be in writing and shall contain (i) a legal description of the portion of the Joint Facilities (excluding the New Coast Main) to be released (the "Requested Portion"); (ii) a survey of the Requested Portion prepared by an engineer licensed by the State of California and showing the location of all railroad lines within 25 feet of the Requested Portion; (iii) a reasonably detailed description of the improvements to be constructed by Owner on the Requested Portion; (iv) to the extent available, the latest plans and specifications, conceptual drawings, renderings or similar graphic material regarding the proposed development; (v) an estimate of the costs of the development and the manner in which funds therefor will be provided; and (vi) the proposed times for commencement and completion of the development.

(b) Within 60 days after the receipt of the information requested by Subsection (a) above, User will, except as set forth in Subsection (c) below, execute and deliver to Owner a quitclaim deed in form and substance reasonably satisfactory to Owner releasing the Requested Portion from User's easement. Such quitclaim deed shall reserve to User any fiber optic easement executed pursuant to Section 7.1(a) of the Sale Agreement.

(c) User shall not be required to execute or deliver such quitclaim deed if (i) any part of the Requested Portion lies within 25 feet of any property (A) then used by User for its Freight or Intercity Passenger Service operations, or (B) for which User has a reasonable certainty of using for such purposes, as

further described below, or (ii) Owner's proposed development will not be commenced within twelve (12) months of the Request. The provisions of Subsection (c)(i)(B) hereof shall not apply to Trackage which has not been used for a continuous five-year period and is thereby subject to the provisions of Section 2.17.

(d) If within 60 days after receiving a Request User determines that under Subsection (c) it is not required to execute and deliver a quitclaim deed for a Requested Parcel, User shall, within such period, notify Owner of such fact in writing stating the reason therefor (a "Refusal Notice"). If User's reason for refusing to execute and deliver a quitclaim deed is based upon the fact that User has a reasonable certainty that all or a portion of the Requested Parcel will be used for its Freight or Intercity Passenger Service operations, it shall provide Owner with (i) a reasonably detailed statement of such planned use, (ii) the most recent plans or specifications, conceptual drawings or other graphic materials with respect to such planned use, (iii) an estimate of the cost of constructing any improvements needed for such planned use, (iv) a statement of the source of funds for such planned use, and (e) the proposed time for commencement of the planned use. The provisions of the preceding sentence shall not apply to Trackage which has not been used for a continuous five-year period and is thereby subject to the provisions of Section 2.17. Any planned use of the property by User for its Freight or Intercity Passenger Service operations will not be considered a reasonably certain planned use, if it is unlikely that construction of the improvements therefor will not commence within twelve (12) months after the Refusal Notice.

(e) If Owner disagrees with User's determination that it is not required to deliver a quitclaim deed with respect to any request, Owner may submit such matter to arbitration pursuant to Section 7 hereof within 60 days after receiving a Refusal Notice.

11.17 Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be and shall be taken to be an original, and all such counterparts shall together constitute one and the same instrument.

11.18 User's Separate Property: Trackage and/or other facilities owned by User that are located on real property owned by User shall not be part of the Designated Freight Trackage, Joint Facilities, or Exclusive Commute Trackage.

IN WITNESS WHEREOF, ^{OWNER} JPB and ^{USER} SPT have executed this Agreement as of the day and year first written above.

PENINSULA CORRIDOR STUDY
JOINT POWERS BOARD

SOUTHERN PACIFIC
TRANSPORTATION COMPANY

By: _____
Name:
Title:

By: [Signature]
Name: Robert F. Starzel
Title: Vice Chairman

Approved as to Form:

Approved as to Form:

[Signature]

IN WITNESS WHEREOF, Owner and User have executed this Agreement as of the day and year first written above.

PENINSULA CORRIDOR STUDY
JOINT POWERS BOARD

SOUTHERN PACIFIC
TRANSPORTATION COMPANY

By: Tom Nelson
Name:
Title:

By: _____
Name:
Title:

Approved as to Form:
Hanson, Budgett, Marcus, Blake
and Rudy
by John J. Nelson

Approved as to Form:

EXHIBITS A THROUGH G IDENTICAL WITH
CORRESPONDING EXHIBITS IN
TRACKAGE RIGHTS AGREEMENT - LICK/GILROY LINE

EXHIBIT 4

ENDORSED FILED
SAN MATEO COUNTY

FEB - 9 2015

Clerk of the Superior Court
By S. YAMING
DEPUTY CLERK

LAW OFFICES OF STUART M. FLASHMAN
STUART M. FLASHMAN (SBN 148396)
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Attorneys for Petitioners Town of Atherton *et al.*
(Exempt from filing fees - Gov. Code §6103)

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

TOWN OF ATHERTON, a Municipal
Corporation; TRANSPORTATION SOLUTIONS
DEFENSE AND EDUCATION FUND, a
California nonprofit corporation, and
COMMUNITY COALITION ON HIGH-SPEED
RAIL, a California nonprofit corporation,
Petitioners

v.

PENINSULA CORRIDOR JOINT POWERS
BOARD, a public entity, and DOES 1-20,
Respondents

No.

CIV 588457

PETITION FOR PEREMPTORY WRIT OF
MANDATE

[Public Resources Code §§21168/21168.5]

ACTION UNDER THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT

BY FAX

As causes of action against Respondent Peninsula Corridor Joint Powers Board
("RESPONDENT"), Petitioners TOWN OF ATHERTON ("ATHERTON"),
TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND ("TRANSEDEF")
AND COMMUNITY COALITION ON HIGH-SPEED-RAIL ("CC-HSR" and the foregoing,
collectively, "PETITIONERS") allege as follows:

INTRODUCTION

1. This action challenges the certification by RESPONDENT of a Final Environmental Impact Report ("FEIR") for its Peninsula Corridor Electrification Project ("Project") and the approval of said Project.
2. PETITIONERS allege that RESPONDENT's actions in certifying the FEIR and approving the Project were in violation of provisions of the California Environmental Quality Act ("CEQA") and the CEQA Guidelines (California Code of Regulations, Title 14, §15000 et seq.), and an abuse of RESPONDENT's discretion.

PETITION FOR PEREMPTORY WRIT OF MANDATE

PAGE 1

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1 3. PETITIONERS allege that RESPONDENT approved the Project based on a FEIR that did
2 not have an adequate project description, did not give adequate consideration to the Project's
3 impacts on the environment, including specifically cumulative impacts, failed to propose
4 adequate mitigation measures to address the Project's significant impacts, failed to provide a fair
5 and adequate consideration of feasible alternatives to the approved Project, and failed to provide
6 adequate responses to comments on the Draft Environmental Impact Report ("DEIR") submitted
7 by other public agencies, as well as by concerned organizations and individuals. PETITIONERS
8 further allege that RESPONDENT violated CEQA's requirements 1) for recirculation of a DEIR
9 after addition of significant new information, and 2) for mandatory findings, in that the findings
10 did not support approval of the Project and were not supported by substantial evidence in the
11 record.

12 4. PETITIONERS seek this Court's peremptory writ of mandate ordering RESPONDENT to
13 rescind its approvals, as well as the Court's Permanent Injunction prohibiting RESPONDENT
14 from moving forward to consider re-approving the Project until and unless it has first fully and
15 properly complied with CEQA. PETITIONERS also seek this Court's preliminary relief by way
16 of its Temporary Restraining Order and Preliminary Injunction to prevent RESPONDENT from
17 moving forward with implementing the PROJECT pending this Court's final determination on
18 the merits. Finally PETITIONERS, acting in the public interest, seek an award of costs and of
19 attorneys' fees under Code of Civil Procedure §1021.5 or other applicable authority.

20 PARTIES

21 5. Petitioner TOWN OF ATHERTON is a municipal corporation, formed and existing under
22 the general laws of the State of California. ATHERTON lies directly astride the Project and will
23 be both directly and cumulatively impacted by the PROJECT. ATHERTON and many of its
24 citizens submitted comments on the Project and its environmental impacts, which comments
25 were not adequately responded to. ATHERTON files this action on behalf of itself and its
26 citizens, who will be directly and adversely affected by RESPONDENT's decisions to certify the
27 FEIR for the Project and approve the Project.

28 6. Petitioner TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND is a
29 California nonprofit public benefit corporation, headquartered in the Bay Area, established and

1 existing under the laws of the State of California as a regional advocate to promote transportation
2 solutions favoring transit over new highway capacity, development around transit stops rather
3 than sprawl into the Bay Area's open spaces, and more market-oriented pricing of private motor
4 vehicle travel. TRANSDEF advocates on behalf of its members and the public at large for
5 effective regional planning, smart growth, improved transit service, and cleaner air. TRANSDEF
6 has participated in the development of Bay Area Regional Transportation Plans and
7 Transportation Improvement Programs for more than twenty years. TRANSDEF has actively
8 engaged in numerous public agency proceedings involving transportation and air quality issues,
9 including specifically the administrative proceedings around the Project and its environmental
10 review under CEQA. TRANSDEF submitted comments on the Project and its environmental
11 impacts, which comments were not adequately responded to. The Project, as approved, will be
12 counter to TRANSDEF's interest in promoting efficient, cost-effective, and environmentally
13 sound public transportation projects and will therefore injure TRANSDEF's interests.

14 7. Petitioner COMMUNITY COALITION ON HIGH-SPEED RAIL is a California nonprofit
15 public benefit corporation, established and existing under the laws of the State of California.
16 CC-HSR seeks to inform the public about the benefits and potential pitfalls of high-speed rail,
17 and particularly its effects on residents of the San Francisco Peninsula, and to advocate for a rail
18 system that respects the rights and values of residents of the San Francisco Peninsula. CC-HSR
19 files this action on behalf of itself and its members who are citizens, residents, property owners,
20 and taxpayers within the State of California, and more specifically within the San Francisco
21 Peninsula in the general area through which RESPONDENT proposes to run the Project. CC-
22 HSR and its member will be directly injured by the Project and its direct and cumulative impacts.
23 CC-HSR and its members submitted comments on the Project and its environmental impacts,
24 which comments were not adequately responded to.

25 8. PETITIONERS and their members/citizens have a direct and beneficial interest in the
26 approval and implementation of a well-planned, cost-effective, efficient, and environmentally
27 sound rail system within the San Francisco Bay area, and more specifically in the fully-informed,
28 fair, and proper decision on the Project, in full compliance with CEQA and the CEQA
29 Guidelines.

1 9. Respondent PENINSULA CORRIDOR JOINT POWERS BOARD is a joint powers agency
2 established and operating under the laws of the State of California. Respondent was established
3 by agreement between the Santa Clara County Transit District, the San Mateo County Transit
4 District, and the City and County of San Francisco in 1996 for the purpose of owning and
5 operating a public commuter rail service ("Caltrain") along the San Francisco Peninsula between
6 San Francisco and San Jose, with extended service to Gilroy. RESPONDENT, its staff, and
7 contractors and consultants working under its control and direction, prepared the FEIR for the
8 Project, and RESPONDENT's governing board certified the FEIR for the Project and gave final
9 approval to the Project.

10 10. PETITIONERS are unaware of the true names and capacities of Respondents DOES 1
11 through 20, inclusive, and therefore sue those Respondents under fictitious names.

12 PETITIONERS will amend their Petition to show their true names and capacities when the
13 Respondents have been identified and their capacities ascertained. Each of the Respondents is
14 the agent, employee, or both of every other Respondent or is otherwise directly involved in the
15 Project and/or its approval, and each performed acts on which this action is based within the
16 course and scope of such Respondent's agency, employment, or both, or has a direct and
17 immediate interest in the Project. PETITIONERS are informed and believe, and therefore allege,
18 that each Respondent is legally responsible in some manner for the events and happenings
19 referred to herein.

20 PROJECT BACKGROUND

21 11. RESPONDENT owns and operates the Caltrain commuter rail line, running between a
22 northern terminus in San Francisco and a southern terminus in Gilroy, with its major service
23 between San Francisco on the north and San Jose on the south. Caltrain operates on a right of
24 way and trackage which it purchased from the predecessor in interest of the Union Pacific
25 Railroad Company ("UP"), and in which UP continues to hold vested rights under the purchase
26 agreement by which RESPONDENT acquired the right of way and trackage, including the right
27 to continue to operate freight service on RESPONDENT's trackage between San Jose and San
28 Francisco without interference by Caltrain operations. In addition, UP retains a right to approve

1 or disapprove any proposed intercity passenger rail operation along RESPONDENT's right-of-
2 way or trackage.

3 12. At the current time, RESPONDENT operates, at peak weekday commute hours, six trains
4 per hour, and during those hours many of the trains are already filled to or near their standing-
5 room capacity.

6 13. RESPONDENT has studied the expected future ridership for Caltrain. Those studies
7 indicate that Caltrain ridership will exceed Caltrain's rider capacity, especially during peak
8 weekday commute hours, in the near future. RESPONDENT therefore seeks to expand
9 Caltrain's passenger capacity.

10 14. The California High-Speed Rail Authority ("CHSRA"), a state agency under the State
11 Transportation Agency, plans to run high-speed rail service along the Caltrain corridor between
12 San Jose and San Francisco. In 2012, CHSRA certified a program-level FEIR for high-speed rail
13 service between San Francisco and Merced. That FEIR identified a preferred alignment through
14 Pacheco Pass south of Gilroy and then north through San Jose. CHSRA's April 2012 project
15 approval based on that EIR called for CHSRA to share RESPONDENT's corridor between San
16 Jose and San Francisco in what it called "blended" high-speed rail service, i.e., running both
17 Caltrain and high-speed rail trains on the same tracks with compatible supporting infrastructure,
18 and directed that the Project-level EIR for that segment focus solely on the blended system
19 approach.

20 15. Also in 2012, the California Legislature, at the request of CHSRA, appropriated 1.1 billion
21 dollars of bond funds authorized under the 2008 Proposition 1A state general obligation high-
22 speed rail bond measure towards construction of improvements in the "bookend" segments of
23 CHSRA's proposed Los Angeles - San Francisco high-speed rail line, specifically including
24 improvements to accommodate blended high-speed rail service on the San Francisco Peninsula.
25 ("Bookends HSR Appropriation")

26 16. In 2013, RESPONDENT and CHSRA entered into a Memorandum of Understanding
27 ("MOU") governing the proposed blended service under which RESPONDENT promised to
28 cooperate with CHSRA to achieve blended high-speed rail service between San Jose and San
29 Francisco.

1 17. The Caltrain HSR Appropriation is a major source of funding for the Project.

2 18. The estimated cost of the Project, as approved is approximately \$1.5 billion.

3 19. Under an agreement with CHSRA, RESPONDENT would receive approximately \$600
4 million of Proposition 1A high-speed rail construction bond funds from the Bookends HSR
5 Appropriation for use in the Project.

6 20. Without the funding being provided to the Project by CHSRA, RESPONDENT would not
7 have sufficient funds available to make the Project, as approved, a feasible project.

8 PROJECT HISTORY

9 21. In or about April 2004, RESPONDENT issued an Environmental Assessment ("EA") under
10 the National Environmental Policy Act ("NEPA") and a DEIR for the Project. A revised EA and
11 FEIR were issued on or about July 2009. Based on the revised EA, the Federal Transit
12 Administration issued a Finding of No Significant Impact ("FONSI") for the Project and
13 approved the Project in or about that same year; however RESPONDENT took no action on the
14 FEIR, pending resolution of issues around shared use of the Caltrain right of way from San
15 Francisco to San Jose between Caltrain and future high-speed rail service.

16 22. On or about January 31, 2013, RESPONDENT issued a Notice of Preparation ("NOP") for a
17 new EIR for the Project, which had been revised to reflect agreements with CHSRA on use of
18 RESPONDENT's right of way and trackage for blended high-speed rail service. A scoping
19 process for that EIR followed, ending on or about March 18, 2013.

20 23. On or about February 28, 2014, RESPONDENT issued its DEIR for the Project for a sixty-
21 day public review period, which closed on or about April 29, 2014.

22 24. PETITIONERS, their members and citizens, and other governmental agencies,
23 organizations, and members of the public submitted oral and written comments on the DEIR to
24 RESPONDENT prior to the close of the public comment period.

25 25. On or about December 4, 2014, RESPONDENT issued its FEIR for the Project. The FEIR
26 purported to provide responses to all comments received during the comment period on the
27 DEIR. PETITIONERS and other governmental agencies, organizations, and individuals
28 submitted oral and written comments on the FEIR prior to the close of RESPONDENT's public
29 hearing to consider approving the Project.

1 26. On or about January 8, 2015, RESPONDENT voted to certify the FEIR and approve the
2 Project. A Notice of Determination was filed that same day.

3 GENERAL ALLEGATIONS

4 27. PETITIONERS have fully exhausted their administrative remedies to the extent required by
5 law. More specifically, PETITIONERS have fully satisfied the requirements of Public
6 Resources Code §21177. PETITIONERS and their members/citizens/elected officials submitted
7 oral and/or written comments to RESPONDENT, prior to the close of the public hearing before
8 the approval of the Project, objecting to the approval of the Project. PETITIONERS, their
9 members/citizens/elected officials, other public agencies, other organizations, and members of
10 the public raised each of the claims presented in this petition prior to the close of the public
11 hearing on the approval of the Project.

12 28. PETITIONERS have complied with the requirements of Public Resources Code section
13 21167.5 by mailing written notice of the commencement of this action to RESPONDENT before
14 filing this Petition and Complaint. A copy of that notice, with proof of service, is attached hereto
15 as Exhibit A.

16 29. Pursuant to Public Resources Code Section 21167.7, PETITIONERS have provided a copy
17 of this Petition and Complaint to the California Attorney General. A copy of the accompanying
18 notice and proof of service are attached hereto as Exhibit B.

19 30. PETITIONERS have no plain, speedy or adequate remedy in the ordinary course of law.
20 Unless this Court grants the requested writ of mandate to require RESPONDENT to rescind its
21 approval of the Project and certification of the FEIR, RESPONDENT's actions in violation of
22 CEQA will remain in effect.

23 31. If RESPONDENT is not enjoined from moving forward to implement the Project and from
24 undertaking acts in furtherance thereof, PETITIONERS will suffer irreparable harm for which
25 there is no adequate remedy at law in that RESPONDENT will move forward on implementing
26 the Project, with attendant significant environmental impacts, without having first conducted
27 adequate environmental review, which might have avoided or mitigated some or all of those
28 impacts.

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CHARGING ALLEGATIONS

FIRST CAUSE OF ACTION

Violation of CEQA and CEQA Guidelines – Certification of Legally Inadequate Environmental Impact Report.

32. PETITIONERS hereby reallege and incorporate by reference the preceding paragraphs 1 through 31 as though fully set forth herein.

33. The Project required discretionary approval by RESPONDENT and was therefore a project under CEQA.

34. The Project did not qualify for any CEQA exemption and therefore required environmental review under CEQA.

35. The Project, as a local commuter rail project that is located entirely within the State of California, is owned and operated by a local public transit agency and does not connect in any significant way with the national interstate rail network, is exempt from the jurisdiction of the Surface Transportation Board ("STB"). Based on this, RESPONDENT applied for and received a written exemption from the STB. That exemption was never challenged or rescinded.

36. RESPONDENT was the lead agency for environmental review of the Project under CEQA.

37. RESPONDENT determined that the Project had potential to cause significant adverse environmental impacts, and therefore determined to prepare an EIR for the Project.

38. RESPONDENT had a duty under CEQA to certify that the FEIR for the Project satisfied all requirements under CEQA. RESPONDENT violated this duty by certifying the FEIR for the Project where the FEIR was deficient in the following respects:

Count One: Inadequate Project Description

39. An EIR is required to include an adequate and stable description of the Project being considered. The description must be accurate and must contain sufficient detail to allow the reader of the EIR to understand the nature of the Project and its salient characteristics.

40. The project description in the FEIR was inadequate because it failed to accurately describe the relationship between the Project and the blended system proposed by CHSRA. Further, the project description varied between the DEIR and the FEIR.

1 41. In the DEIR, Caltrain and high-speed rail operations were proposed to diverge in the
2 northern direction south of the 4th and King Caltrain station, with Caltrain trains continuing north
3 and east to stop at the 4th and King station, with some then continuing further north to the new
4 Transbay Transit Center ("TTC"). All high-speed rail trains, by contrast, would continue
5 directly to the TTC without stopping at the 4th and King station. However, in the FEIR the
6 project description was revised to indicate that the 4th and King station would be the northern
7 terminal for all Caltrain trains and all high-speed rail trains for an indefinite future period of time
8 because funding for a Downtown Tunnel Extension ("DTX") connecting to the TTC was not
9 available. This change in the Project also required a redesign of the 4th and King station.
10 Accordingly, the inaccurate and unstable project description requires that the approval of the
11 Project and the certification of the FEIR be set aside.

12 42. More fundamentally, the project description is inadequate and misleading in that it describes
13 the Project as a "stand-alone" project independent of CHSRA's "blended system." Yet the
14 Project Purpose places front and center the need for the project to "Provide electrical
15 infrastructure compatible with high-speed rail." In fact, this criterion is used as a basis, and in
16 the DEIR, the primary basis, for rejecting as "infeasible" all of the project alternatives identified
17 in the EIR except for the Project.

18 43. If the project is truly a "stand-alone" project – independent of serving as a precursor to the
19 blended system – it is hard to understand why providing electrical infrastructure compatible with
20 the blended system should be a major project purpose. On the other hand, given that this is one
21 of, and perhaps the main purposes of the Project, and given that CHSRA is providing close to
22 half of the funding for the Project with Proposition 1A funds, which are specifically restricted to
23 planning and construction of a state high-speed rail system, RESPONDENT's position that the
24 Project is unconnected to construction of the blended system is untenable.

25 44. PETITIONERS therefore allege that the Project is not an independent stand-alone project,
26 but is, in fact, a significant and necessary component of CHSRA's blended high-speed rail
27 project.

1 45. As such, PETITIONERS allege that the EIR's project description is defective and
2 misleading in failing to describe the entirety of the project as including the construction of the
3 full blended system extending at least from San Jose to San Francisco.

4 **Count Two: Failure to Fully Disclose and Adequately Analyze the Project's**
5 **Significant Environmental Impacts.**

6 46. The FEIR fails to fully disclose or adequately analyze the Project's significant impacts.
7 These include, more specifically, the following:

8 47. The significant safety impact from expanding service to or through center platform Caltrain
9 stations whose safety for station patrons is already deficient and will be made more so by the
10 increase in service;

11 48. The significant safety impact of expanding service through grade crossings, such as that at
12 Watkins Avenue in Atherton, which are already unsafe and whose safety will be significantly
13 and adversely affected by the increase in service.

14 49. The significant cumulative impacts of the Project combined with the extension of CHSRA's
15 high-speed rail line along the Caltrain corridor (and other projects), and particularly the
16 following:

- 17 a. Impacts, including but not limited to both construction and operational noise, tree
18 removal/pruning, displacement, visual/aesthetic, and property impacts from having to
19 straighten curved portions of the Caltrain trackage so that high-speed rail trains can
20 run at the expected 110 miles per hour, including, but not limited to, the Caltrain track
21 sections: 1) at Visitation Point in Brisbane; 2) adjacent to Sierra Point; 3) northwest
22 of the San Francisco International Airport (Colma Creek to South Linden Ave. and at
23 San Bruno Ave.); 4) just south of that same airport at Trousdale Drive; and 5) just
24 north of Highway 92 in San Mateo. All of these curvatures are too extreme to meet
25 the well-defined minimum curvature radius standards for 110 mph trains and are
26 readily identified from standard US Geological Survey maps of the route area.
27 b. Other impacts from the "Core Capacity Projects" agreed to in the MOU between
28 RESPONDENT and CHSRA and required to be implemented to allow blended

1 system high-speed rail trains to use the Caltrain system, including upgrades to
2 stations, grade crossings, tracks, bridges, and tunnels and the addition of passing
3 tracks.

- 4 c. Impacts from construction and operation of "interim" high-speed rail station facilities
5 at the 4th & King Caltrain station as the "interim" northern terminus of the high-speed
6 train line in San Francisco, due to there being insufficient funding to complete the
7 Downtown Tunnel Extension ("DTX") between the 4th & King Caltrain station of the
8 TTC. These impacts would include increased traffic in the areas surrounding the 4th
9 & King Station, with resultant congestion, decreased pedestrian and bicycle safety,
10 and local air quality impacts, none of which were addressed in the FEIR;
- 11 d. Failure to consider the potential impacts if UP's unwillingness to agree to allow
12 blended service, or a court decision declaring that blended service violates the
13 requirements of Streets & Highways Code §2704.04 or §2704.09, requires CHSRA to
14 pursue a dedicated four-track system up the Peninsula within or outside of the
15 Caltrain right of way;
- 16 e. Failure to consider the cumulative traffic impacts of the Project in conjunction with
17 the blended high-speed rail system; more specifically, the EIR fails to identify and
18 analyze the cumulatively significant traffic impact on roadways crossing the Caltrain
19 alignment at grade crossings from the disruptions caused by safety gate closings at
20 grade crossings for Caltrain trains combined with gate closings at those same grade
21 crossings for blended system high-speed rail trains, and even more specifically for
22 gate closings at grade crossings when high-speed rail trains are using passing tracks
23 to overtake and pass one or more Caltrain trains;
- 24 f. Failure to consider impacts associated with Caltrain stations, and particularly to
25 Caltrain stations that will not also be high-speed rail stations, having to accommodate
26 high-speed rail trains and especially high-speed rail passing tracks, particularly
27 impacts, including noise and safety impacts on patrons at those stations waiting for
28 Caltrain trains;

- 1 g. Failure to consider the impact of limitations on expansion of future Caltrain service
2 because of the schedule space occupied by blended system HSR trains, with the
3 consequent limitation on ridership and resort of would-be Caltrain riders to private
4 automobile use, with consequent secondary impacts, including increased freeway
5 congestion, increased petroleum and energy consumption, and increased air pollution;
6 h. Failure to consider the impact of increased electrical power use from the combination
7 of Caltrain electrical demand plus blended system high-speed rail electrical demand,
8 coupled to other reasonably foreseeable increases in electrical demand, particularly in
9 terms of placing stress on the electric power generation and transmission system on
10 the Peninsula. More specifically, given that summer peak evening commute hours,
11 which will involve maximum power draw for both Caltrain and HSR service, are also
12 within the peak summer electrical load hours for other energy-intensive uses
13 including commercial and industrial uses and air conditioning uses, the cumulative
14 increase in electrical power use can be expected to exceed available renewable energy
15 power sources and require the construction and/or operation of additional natural gas-
16 powered "peaker" power generation plants, which will significantly increase the
17 cumulative GHG production and air quality impacts, a potentially significant impact
that was not properly discussed;

18 50. All of the impacts from blended system high-speed rail identified in paragraph 49 would
19 result from, and would not occur but for RESPONDENT's approval of the Project, making them,
20 in addition, secondary impacts of the Project's approval.

21 **Count Three: Failure to Adequately Mitigate Project Impacts**

22 51. Under CEQA, an EIR must identify all feasible mitigation measures with the potential to
23 significantly reduce a potentially significant project impact, and specifically must identify any
24 and all feasible mitigation measures that would reduce the potential impact to a less than
25 significant level.

26 52. The FEIR asserts that tree removal and pruning impacts could be partially mitigated by
27 repositioning the installation locations for some catenary support poles to a center position and

1 planting replacement trees, but asserts that the impacts would remain significant and
2 unavoidable. However, while the FEIR considered and rejected as proposed mitigation
3 separating the tracks over the entire project length to allow for a global repositioning of the
4 installation locations of all catenary support poles to a center position, and rejected moving
5 tracks further apart when it would result in increased noise and vibration impacts on sensitive
6 receptors, it did not consider or analyze the potential for selective track movement and center
7 pole positioning where tree removal/pruning impacts would be particularly severe, could be
8 mitigated by repositioning the installation locations of catenary support poles to a center
9 position, and where sensitive receptors would not be impacted by the change. The failure to
10 consider this mitigation, which could have reduced an impact identified as significant and
11 unavoidable without causing a significant secondary impact, violated CEQA's mandate and was
12 an abuse of discretion

13 53. As noted above, the EIR does not identify numerous potentially significant impacts –
14 particularly impacts associated with changes to the EIR after the DEIR had been circulated for
15 public comment. Because these potentially significant impacts were not identified or analyzed,
16 feasible mitigation measures were not proposed to mitigate these impacts. This represents a
17 violation of CEQA requiring that the EIR be revised to identify and discuss feasible mitigation
18 measures for the additional new or increased impacts and then recirculated for public comment.

19 **Count Four: The FEIR Failed to Include an Adequate Analysis of Project
20 Alternatives.**

21 54. Under CEQA, an EIR must identify and discuss a reasonable range of feasible alternatives
22 to the proposed project. What constitutes a feasible range of alternatives depends on the specific
23 fact of the project under consideration and surrounding circumstances.

24 55. If a project's feasibility is less than certain, the range of feasible alternatives that must be
25 considered increases.

26 56. The Project is not part of the high-speed rail system described in Proposition 1A and for
27 which Proposition 1A bond funds were approved by California voters. It does not meet the
28 intent of the Legislature in writing Proposition 1A and of the voters in approving it because it is
29 not consistent with the EIRs for the high-speed rail system that were certified in 2005 and 2008.

1 (Streets & Highways Code §2704.04 subd. (a).) Further, it cannot be part of the high-speed rail
2 system described in Proposition 1A because the blended system cannot meet the maximum five-
3 minute headway capability required by Streets and Highways Code §2704.09 subd. (c).

4 57. The \$600 million contribution from CHSRA towards the Project's funding is subject to legal
5 challenge because it was not authorized by California voters as a permissible use of those
6 Proposition 1A bond funds.

7 58. Under the terms of Streets & Highways Code §2704.08 subd. (d) and of SB 1029, the 2012
8 legislative appropriation that appropriated Proposition 1A bond funding for the high-speed rail
9 system, including the \$600 million proposed to be used in the Project, the \$600 million
10 contribution of Proposition 1A bond funds for the Project from CHSRA may not be expended
11 towards construction of the Project until and unless CHSRA has approved and submitted and the
12 California Director of Finance has approved a final Funding Plan for the Project.

13 59. The final Funding Plan for the Project submitted to the Director of Finance must be
14 accompanied by a report prepared by an independent consultant that indicates that specific
15 requirements of §2704.08 subd. (d) have been met. Among the requirements that the
16 consultant's report must address is that the Project, upon completion, would be suitable and
17 ready for high-speed train operation. Based on the nature of the Project as approved, the
18 consultant's report would be unable to indicate that this requirement would be met because the
19 Project would not meet the maximum curvature, positive train control, headway, and other
20 requirements for high-speed train operation on the Project.

21 60. Because the independent consultant's report would not be able to support the requirements
22 of §2704.08 subd. (d), the final Funding Plan for the Project, even if approved, would be subject
23 to legal challenge.

24 61. For all of the above reasons, because the availability of the \$600 million in funding from
25 CHSRA is highly questionable, the feasibility of the Project as approved is open to question.

26 62. Because of the nature of the Project, it would not be possible to implement the Project on an
27 incremental or reduced scale basis if full funding for the Project was not available. This was
28 improperly not taken into account by RESPONDENT in evaluating the feasibility of different
29 alternatives.

1 63. Other project alternatives identified as feasible in the EIR for the Project could be
2 implemented on an incremental basis (i.e., they are scalable projects whose scope and timing can
3 be adjusted to available funding). In particular, the Dual-Mode Multiple Unit ("DMMU")
4 alternative is acknowledged in the FEIR to meet many of the Project's objectives, while it would
5 have lower overall cost and could be implemented on an incremental basis. Further, while the
6 FEIR presumed that ridership for the DMMU alternative would be less than ridership for the
7 Project, there is no evidence or analysis in the record to support this presumption.

8 64. An additional alternative that would achieve even more of the Project objectives would be a
9 DMMU alternative with partial electrification. This would provide for electrification for
10 portions of the route, while on other portions of the route, the units would use diesel power.
11 Because the electrified portion would be shorter, costs would be less and this alternative, unlike
12 the Project, could be incrementally implemented, allowing its completion even if the \$600
13 million of CHSRA funding was unavailable. While this alternative was mentioned in the FEIR,
14 and would achieve almost all of the project purposes identified in the EIR other than providing
15 an electric power source compatible with use by high-speed rail, it was not fully analyzed and
16 was rejected by RESPONDENT as infeasible, even though it would have fewer significant
17 impacts, would achieve almost of the identified project purposes, would have a far lower cost
18 than the Project, and, unlike the PROJECT, would be scalable and could be implemented
19 incrementally – an important criterion that RESPONDENT refused to consider.

20 65. The FEIR's inaccurate and incomplete analysis of project alternatives violated CEQA's
21 requirements that an EIR include analysis of a reasonable range of feasible project alternatives
22 that might avoid one or more of the project's significant impacts and that the discussion of
23 project alternatives provide the decision makers and the public the information needed to make
24 an informed decision. Accordingly, the approval of the Project and the certification of the FEIR
25 must be set aside.

26 **Count Five: Failure to Adequately Respond to Comments on the DEIR**

27 66. An EIR must include adequate written responses to all comments, both oral and written,
28 received by the lead agency during the public comment period. The FEIR was inadequate
29 because the responses to many of the comments received by the lead agency during the public

comment period were inadequate. In many cases, the responses were perfunctory or conclusory, and in other cases the responses were not supported by substantial evidence. Specific comments not adequately responded to included comments on mitigation of tree removal/pruning impacts, comments on the failure to adequately address the impacts of the blended high-speed rail service and its connection to and facilitation by the Project, comments on the cumulative impacts of the Project in conjunction with implementing the blended high-speed rail system, comments on feasible alternatives, comments on safety impacts of the project at grade crossings, and other comments on issues identified in this petition. Accordingly, the approval of the Project and the certification of the FEIR must be set aside.

SECOND CAUSE OF ACTION

Violation of CEQA and CEQA Guidelines – Failure to recirculate DEIR in response to new information and/or changed circumstances

67. PETITIONERS hereby reallege and incorporate by reference the allegations in the preceding paragraphs 1 through 66 inclusive as though fully set forth herein.

68. CEQA requires that a draft EIR be recirculated for an additional round of public comment if changes to the document after the close of the previous comment period result in the addition of significant new information. In addition, recirculation is required if new circumstances have arisen after the close of the previous public comment period that would require substantial revision to the EIR.

69. RESPONDENT violated its duty under CEQA by not recirculating the DEIR for public comment after changes to the EIR resulted in addition of significant new information. This new information included:

- a. A new alternative proposal (DMMU with partial electrification) that could substantially reduce Project impacts, but which RESPONDENT chose not to adopt.
- b. Identification of the need to provide interim high-speed rail terminal facilities at the 4th & King Street Caltrain station, with associated significantly increased construction, noise, and traffic impacts.

1 70. RESPONDENT violated its duty under CEQA by failing to recirculate the DEIR for public
2 comment after this new information was made available. Accordingly, the approval of the
3 Project and the certification of the FEIR must be set aside.

4 **THIRD CAUSE OF ACTION**

5 **Violation of CEQA and CEQA Guidelines – CEQA Findings did not support Project approval**
6 **and were not supported by substantial evidence.**

7 71. PETITIONERS hereby reallege and incorporate by reference the preceding paragraphs 1
8 through 70 inclusive as though fully set forth herein.

9 72. CEQA requires that an agency approving a Project for which an EIR was prepared and
10 significant impacts were identified adopt findings explaining and justifying its actions. (Public
11 Resources Code §21081.) Those findings must be supported by substantial evidence in the
12 record.

13 73. RESPONDENT violated this duty to prepare and approve adequate CEQA findings in
14 support of its decision to approve the Project in the following ways:

15 74. The findings did not support the Project approval. More specifically:

- 16 a. The findings on rejection of alternatives were inadequate in that they failed to
17 consider the significant risk that the \$600 million in Proposition 1A bond funds
18 being provided by CHSRA might not, for legal reasons, be available. As a result,
19 the findings improperly assumed that full funding would be available to complete
20 the Project as approved and that the Project was therefore fully feasible as
21 approved;
- 22 b. The findings on rejection of alternatives failed to consider that, if the \$600 million
23 of Proposition 1A bond funding was not available, less money would be available
24 to implement a project, and therefore the analysis and findings should have
25 considered the benefit of adopting a project that either had a lower total cost,
26 could be implemented incrementally, or was scalable.
- 27 c. Because did not properly consider factors influencing a proper decision, the
28 findings did not support the decision made by RESPONDENT and were therefor
29 an abuse of discretion.

1 75. The findings were not supported by substantial evidence. In particular:

- 2 a. The findings rejected various project alternatives as infeasible when the evidence
3 in the record did not support that conclusion and, to the contrary, indicated that
4 the Project was less feasible than the rejected alternatives;
- 5 b. The findings determined that the Project's tree removal/pruning impacts were
6 significant and unavoidable when mitigation measures that RESPONDENT
7 refused to adopt might have reduced the impact to a less than significant level;
- 8 c. The findings improperly found that numerous cumulative impacts from the
9 Project in conjunction with the blended high-speed rail project were either
10 insignificant or potentially significant but capable of mitigation when the
11 evidence in the record did not support these conclusions

12 76. Accordingly, the approval of the Project must be set aside.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, PETITIONERS pray for relief as follows:

15 1. For this Court's peremptory writ of mandate ordering CHSRA to:

- 16 (a) vacate and set aside its determinations approving the Project;
- 17 (b) vacate and set aside its certification of the FEIR for the Project; remanding the
18 Project and its environmental review under CEQA to RESPONDENT for
19 reconsideration in accordance with this Court's determination and final judgment.

20 2. For this Court's temporary restraining order and preliminary injunction restraining
21 RESPONDENT, its agents, servants and employees, and all others acting in concert with it or in
22 its behalf, from taking any action to move forward on implementing the Project pending a final
23 decision on the merits by this Court.

24 3. For this Court's permanent injunction restraining RESPONDENT, its agents, servants and
25 employees, and all others acting in concert with it or in its behalf, from undertaking any activity
26 or activities in furtherance of the Project until RESPONDENT has fully complied with this
27 Court's writ of mandate and judgment and taken all required actions that may be necessary to
28 bring the FEIR and all project approvals into compliance with CEQA.

29 4. For costs of suit;

- 1 5. For an award of attorneys' fees under C.C.P. §1021.5 or other applicable basis; and
2 6. For such other equitable and/or legal relief as the Court considers just and proper.

3 DATE: February 9, 2015

4 LAW OFFICES OF STUART M. FLASHMAN
5 STUART M. FLASHMAN

6
7 Attorneys for Petitioners

8
9 by: Stuart M. Flashman
10 STUART M. FLASHMAN
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VERIFICATION

I, David Schonbrunn, am the President of the Transportation Solutions Defense and Education Fund, which is a petitioner in the above petition, and I make this verification on its behalf and with its authorization. I have read the foregoing Petition and am familiar with the matters alleged therein. All facts alleged in this complaint are true of my own personal knowledge except as to facts that are alleged on information and belief, and as to them I am informed and believe they are true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Verification was executed on February 8, 2015 at Sausalito, California.


David Schonbrunn

Exhibit A

Law Offices of
Stuart M. Flashman
5626 Ocean View Drive
Oakland, CA 94618-1533
(510) 652-5373 (voice and FAX)
e-mail: stu@stuflash.com

February 5, 2015

Ms. Martha Martinez, District
Secretary
Peninsula Corridor Joint
Powers Board
P.O. Box 3006
1250 San Carlos Ave.
San Carlos, CA 94070-1306

RE: Notice of Intent to Initiate Litigation (Peninsula Corridor
Electrification Project).

Dear Ms. Martinez,

Please take notice that the Town of Atherton, the Transportation Solutions Defense and Education Fund, and the Community Coalition on High-Speed Rail (the foregoing, collectively, "Petitioners") intend to file suit against the Peninsula Corridor Joint Powers Authority ("PCJPB") challenging its approvals for the above-referenced project and its associated environmental review. The lawsuit will allege violations of the California Environmental Quality Act in connection with those approvals.

Petitioners would be willing to engage in negotiations with PCJPB to attempt to address their concerns without the need for litigation if PCJPB would be willing to enter into an agreement with Petitioners to toll the statute of limitations for filing legal action. Please contact the undersigned immediately if you wish to enter into such an agreement.

Most sincerely,

Stuart M. Flashman
Law Offices of Stuart M. Flashman

Attorneys for the Town of
Atherton, the Transportation
Solutions Defense and Education
Fund, and Community Coalition on
High-Speed Rail

By: Stuart M. Flashman
Stuart M. Flashman

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of Alameda County. I am over the age of eighteen years and not a party to the within above titled action. My business address is 5626 Ocean View Drive, Oakland, CA 94618-1533.

On February 5, 2015, I served the within NOTICE OF INTENT TO INITIATE LITIGATION on the party listed below by placing a true copy thereof enclosed in a sealed envelope with first class postage thereon fully prepaid, in a United States Postal Service mailbox at Oakland, California, addressed as follows:

Ms. Martha Martinez, District Secretary
Peninsula Corridor Joint Powers Board
P.O. Box 3006
1250 San Carlos Ave.
San Carlos, CA 94070-1306

On the above-same day, at 1:50 PM, I also served the above-same document on the above-same party via electronic mail as a pdf-formatted electronic document at the address MartinezM@Samtrans.com. I received an e-mail receipt that same day at 1:52 PM indicating that the e-mail had been received and read.

I, Stuart M. Flashman, hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California on February 8, 2015.



Stuart M. Flashman

Exhibit B

1 LAW OFFICES OF STUART M. FLASHMAN
2 STUART M. FLASHMAN (SBN 148396)
3 5626 Ocean View Drive
4 Oakland, CA 94618-1533
5 TEL/FAX (510) 652-5373
6 e-mail: stu@stuflash.com

7 Attorneys for Petitioners Town of Atherton *et al.*
8 (Exempt from filing fees – Gov. Code §6103)

9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF SAN MATEO**

11 TOWN OF ATHERTON, a Municipal
12 Corporation; TRANSPORTATION SOLUTIONS
13 DEFENSE AND EDUCATION FUND, a
14 California nonprofit corporation, AND
15 COMMUNITY COALITION ON HIGH-SPEED
16 RAIL, a California nonprofit corporation,
17 Petitioners

18 v.

19 PENINSULA CORRIDOR JOINT POWERS
20 BOARD, a public entity, and DOES 1-20,
21 Respondents

No.

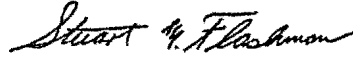
NOTICE TO ATTORNEY GENERAL
[Public Resources Code § 21167.7; CCP
§388]

22 TO THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA:

23 PLEASE TAKE NOTICE under Public Resources Code §21167.7 and Code of Civil
24 Procedure section 388 that, on February 9, 2015, Petitioners TOWN OF ATHERTON,
25 COMMUNITY COALITION ON HIGH-SPEED RAIL and TRANSPORTATION
26 SOLUTIONS DEFENSE AND EDUCATION FUND are filing a petition for peremptory writ of
27 mandate against Respondent PENINSULA CORRIDOR JOINT POWERS BOARD
28 (“Respondent”) in San Mateo County Superior Court. The petition alleges that Respondent
29 violated provisions of the California Environmental Quality Act (CEQA in granting approval to
30 the Peninsula Corridor Electrification Project and its associated Environmental Impact Report.
A copy of the petition is enclosed herewith for your reference.

1 Please provide a letter acknowledging receipt of this notice.

2 DATE: February 8, 2015

3 

4 STUART M. FLASHMAN
Attorneys for Petitioner and Plaintiff

PROOF OF SERVICE BY MAIL

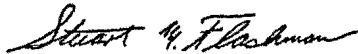
I am a citizen of the United States and a resident of Alameda County. I am over the age of eighteen years and not a party to the action involved herein. My business address is 5626 Ocean View Drive, Oakland, CA 94618-1533.

On February 9, 2015, I served the within NOTICE OF FILING OF LEGAL ACTION on the party listed below by placing a true copy thereof enclosed in a sealed envelope with first class postage thereon fully prepaid, in a United States Postal Service mailbox at Oakland, California, addressed as follows:

Office of the Attorney General
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550

I, Stuart M. Flashman, hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California on February 9, 2015.



Stuart M. Flashman

1 LAW OFFICES OF STUART M. FLASHMAN
2 STUART M. FLASHMAN (SBN 148396)
3 5626 Ocean View Drive
4 Oakland, CA 94618-1533
5 TEL/FAX (510) 652-5373
6 e-mail: stu@stufash.com

ENDORSED FILED
SAN MATEO COUNTY

FEB 10 2015

Clerk of the Superior Court
By JENNA BLACK
DEPUTY CLERK

7 Attorneys for Petitioners Town of Atherton *et al.*
8 (Exempt from filing fees – Gov. Code §6103)

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF SAN MATEO

11 TOWN OF ATHERTON, a Municipal
12 Corporation; TRANSPORTATION SOLUTIONS
13 DEFENSE AND EDUCATION FUND, a
14 California nonprofit corporation, AND
15 COMMUNITY COALITION ON HIGH-SPEED
16 RAIL, a California nonprofit corporation,
17 Petitioners

18 v.

19 PENINSULA CORRIDOR JOINT POWERS
20 BOARD, a public entity, and DOES 1-20,
21 Respondents

No. CIV 533457 Filed 2/9/2015
Case filed under CEQA

REQUEST TO PREPARE THE
ADMINISTRATIVE RECORD

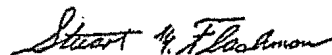
[Public Resources Code § 21167.6]

BY FAX

22 To Respondent PENINSULA CORRIDOR JOINT POWERS BOARD:

23 PLEASE TAKE NOTICE that, pursuant to Public Resources Code §21167.6(a),
24 Petitioners herein request preparation of the entire record of proceedings before Respondent
25 concerning the approval of the Peninsula Corridor Electrification Project. Pursuant to Public
26 Resources Code §21167.6(b)(2), Petitioners elect to prepare the record of proceedings, or to
27 implement such other method for preparing the record as the parties may agree upon. Please
28 contact the undersigned to discuss the scope of the record and possible alternative methods for
29 preparing the record of proceedings.

30 DATE: February 9, 2015



Stuart M. Flashman
Attorney for Petitioners

NOTICE OF CASE MANAGEMENT CONFERENCE

ENDORSED FILED
SAN MATEO COUNTY

Town of Atherton; et al.

FEB 9 2015

Case No:

CIV 532457

JUN 17 2015

vs.
Peninsula Corridor Joint Powers Board;
et al.

CLERK of the Superior Court
BY S. YAMRING

Date:

Time 9:00 a.m.

Dept.

-on Tuesday & Thursday

Dept. 7

-on Wednesday & Friday

You are hereby given notice of your Case Management Conference. The date, time and department have been written above.

1. In accordance with applicable California Rules of the Court and local Rules 2.3(d)1-4 and 2.3(m), you are hereby ordered to:
 - a) Serve all named defendants and file proofs of service on those defendants with the court within 60-days of filing the complaint (CRC 201.7).
 - b) Serve a copy of this notice, Case Management Statement and ADR Information Sheet on all named parties in this action.
 - c) File and serve a completed Case Management Statement at least 15-days before the Case Management Conference (CRC 212(g)). Failure to do so may result in monetary sanctions.
 - d) Meet and confer, in person or by telephone, to consider each of the issues identified in CRC 212(f) no later than 30-days before the date set for the Case Management Conference.
2. If you fail to follow the orders above, you are ordered to show cause why you should not be sanctioned. The Order to Show Cause hearing will be at the same time as the Case Management Conference hearing. Sanctions may include monetary, evidentiary or issue sanctions as well as striking pleadings and/or dismissal.
3. Continuances of Case Management Conferences are highly disfavored unless good cause is shown.
4. Parties may proceed to an appropriate dispute resolution process ("ADR") by filing a Stipulation to ADR and Proposed Order (see attached form). If plaintiff files a Stipulation to ADR and Proposed Order electing to proceed to judicial arbitration, the Case Management Conference will be taken off the court calendar and the case will be referred to the Arbitration Administrator. If plaintiffs and defendants file a completed stipulation to another ADR process (e.g., mediation) 10-days prior to the first scheduled Case Management Conference, the Case Management Conference will be continued for 90-days to allow parties time to complete their ADR session. The court will notify parties of their new Case Management Conference date.
5. If you have filed a default or a judgment has been entered, your case is not automatically taken off Case Management Conference Calendar. If "Does", "Roes," etc. are named in your complaint, they must be dismissed in order to close the case. If any party is in bankruptcy, the case is stayed only as to that named party.
6. You are further ordered to appear in person* (or through your attorney of record) at the Case Management Conference noticed above. You must be thoroughly familiar with the case and fully authorized to proceed.
7. The Case Management Judge will issue orders at the conclusion of the conference that may include:
 - a) Referring parties to voluntary ADR and setting an ADR completion date;
 - b) Dismissing or severing claims or parties;
 - c) Setting a trial date.
8. The Case Management Judge may be the trial judge in this case.

For further information regarding case management policies and procedures, see the court's website at: www.sanmateocourt.org

*Telephonic appearances at case management conferences are available by contacting CourtCall, LLC, an independent vendor, at least five business days prior to the scheduled conference (see attached CourtCall information).

APPROPRIATE DISPUTE RESOLUTION INFORMATION SHEET

SUPERIOR COURT OF CALIFORNIA, SAN MATEO COUNTY

In addition to the court provided voluntary and mandatory settlement conferences, this court has established, in partnership with the community and Bar Association, the Multi-Option ADR Project. Recognizing that many civil disputes can be resolved without the time and expense of traditional civil litigation, the San Mateo County Superior Court encourages the parties in civil cases to explore and pursue the use of Appropriate Dispute Resolution.

WHAT IS APPROPRIATE DISPUTE RESOLUTION?

Appropriate Dispute Resolution (ADR) is the general term applied to a wide variety of dispute resolution processes which are alternatives to lawsuits. Types of ADR processes include arbitration, mediation, neutral evaluation, mini-trials, settlement conferences, private judging, negotiation, and hybrids of these processes. All ADR processes offer a partial or complete alternative to traditional court litigation for resolving disputes.

WHAT ARE THE ADVANTAGES OF USING ADR?

ADR can have a number of advantages over traditional court litigation.

- **ADR can save time.** Even in a complex case, a dispute can be resolved through ADR in a matter of months or weeks, while a lawsuit can take years.
- **ADR can save money.** By producing earlier settlements, ADR can save parties and courts money that might otherwise be spent on litigation costs (attorney's fees and court expenses).
- **ADR provides more participation.** Parties have more opportunity with ADR to express their own interests and concerns, while litigation focuses exclusively on the parties' legal rights and responsibilities.
- **ADR provides more control and flexibility.** Parties can choose the ADR process most appropriate for their particular situation and that will best serve their particular needs.
- **ADR can reduce stress and provide greater satisfaction.** ADR encourages cooperation and communication, while discouraging the adversarial atmosphere found in litigation. Surveys of disputants who have gone through ADR have found that satisfaction with ADR is generally high, especially among those with extensive ADR experience.

Arbitration, Mediation, and Neutral Evaluation

Although there are many different types of ADR processes, the forms most commonly used to resolve disputes in California State courts are Arbitration, Mediation and Neutral Evaluation. The Multi-Option ADR Project a partnership of the Court, Bar and Community offers pre-screened panelists with specialized experience and training in each of these areas.

Arbitration: An arbitrator hears evidence presented by the parties, makes legal rulings, determines facts and makes an arbitration award. Arbitration awards may be entered as

judgments in accordance with the agreement of the parties or, where there is no agreement, in accordance with California statutes. Arbitrations can be binding or non-binding, as agreed by the parties in writing.

Mediation: Mediation is a voluntary, informal, confidential process in which the mediator, a neutral third party, facilitates settlement negotiations. The mediator improves communication by and among the parties, helps parties clarify facts, identify legal issues, explore options and arrive at a mutually acceptable resolution of the dispute.

Neutral Evaluation: Involves presentations to a neutral third party with subject matter expertise who may render an opinion about the case the strengths and weaknesses of the positions, the potential verdict regarding liability, and a possible range for damages.

CIVIL ADR PROCEDURES FOR THE SAN MATEO COUNTY SUPERIOR COURT

- Upon filing a Complaint, the Plaintiff will receive this **information sheet** from the Superior Court Clerk. Plaintiff is expected to include this information sheet when he or she **serves the Complaint** on the Defendant.
- All parties to the dispute may voluntarily agree to take the matter to an ADR process. A stipulation is provided here. Parties chose and contact their own ADR provider. A Panelist List is available online.
- If the parties have not agreed to use an ADR process, an initial Case Management Conference ("CMC") will be scheduled within 120 days of the filing of the Complaint. **An original and copy of the Case Management Conference Statement must be completed and provided to the court clerk no later than 15 days prior to the scheduled conference.** The San Mateo County Superior Court Case Management Judges will strongly encourage all parties and their counsel to consider and utilize ADR procedures and/or to meet with the ADR director and staff where appropriate.
- If the parties voluntarily agree to ADR, the parties will be required to sign and file a **Stipulation and Order to ADR.**
- A timely filing of a stipulation (at least 10 days prior to the CMC) will cause a notice to vacate the CMC. ADR stipulated cases (other than judicial arbitration) will be continued for further ADR/Case Management status review in 90 days. If the case is resolved through ADR, the status review date may be vacated if the court receives a dismissal or judgment. The court may upon review of case information suggest to parties an ADR referral to discuss matters related to case management, discovery and ADR.
- Any ADR Services shall be paid for by the parties pursuant to a separate ADR fee agreement. The ADR Director may screen appropriate cases for financial aid where a party is indigent.
- Local Court Rules require your cooperation in evaluating the ADR Project and will expect a brief evaluation form to be completed and submitted **within 10 days of completion of the process.**

You can find ADR forms on the ADR webpage: www.sanmateocourt.org/adr. For more information contact the Multi-Option ADR Project at (650) 261-5075 or 261-5076.

EXHIBIT 5

Attached is an excerpt of the full Environmental Impact Report.

"The complete Final Environmental Impact Report can be found at:

[http://www.caltrain.com/projectsplans/CaltrainModernization/Modernization/PeninsulaCorridor
ElectrificationProject/PCEP FEIR 2014.html](http://www.caltrain.com/projectsplans/CaltrainModernization/Modernization/PeninsulaCorridorElectrificationProject/PCEP_FEIR_2014.html)

Caltrain electrification also has independent utility from HSR. Caltrain electrification is planned to be in operation starting in 2020, which can then immediately start to provide project benefits in terms of improved service, lower fuel costs, improved air quality, lower greenhouse gases, and lower operational subsidy for Caltrain compared to that of a diesel system. Current plans for HSR in the 2014 Business Plan envision the earliest date for HSR service on the Caltrain Corridor would be 2027, thus the PCEP would provide project benefits for a minimum of 8 years before HSR service occurs on the corridor. More critically, HSR is designed to provide intercity rail services between Northern California, the Central Valley, and Southern California with only a few stops on the Caltrain corridor - in San Jose, Millbrae (and possibly Redwood City) and San Francisco whereas the PCEP is intended to provide electrified commuter rail services between San Jose and San Francisco with stops at numerous locations along the statewide route. In order for Caltrain to start providing electrified service in 2020, it is necessary to complete the environmental process now to allow for the approximately four years it will take to complete the PCEP final design, construct the system, and complete testing and commission by 2020. Since it will take a number of years of a planning process to figure out a specific design for the blended system, as well as the time to complete environmental analysis of the blended system, delaying the environmental process for both the PCEP and the HSR together would delay the ability to derive project benefits from the PCEP as soon as possible.

Thus, it is completely appropriate and fully in compliance with CEQA requirements and precedent to analyze the PCEP in the current EIR, disclosing the potential future cumulative impacts with high-speed rail in the cumulative section of the current EIR based on the current conceptual understanding of that future project, and completing separate environmental review of high-speed rail service in a separate future document.

1.5.1.3 Pre-Emption of CEQA by Federal Law

The IPB is a federally-regulated rail carrier, pursuant to proceedings before the Interstate Commerce Commission (predecessor to the Surface Transportation Board) related to the acquisition of the Peninsula rail corridor in 1991. A number of court and regulatory decisions have held that the construction, improvement and operation of federally-regulated railroads are exempt from state environmental regulatory laws, including CEQA. (See *Friends of the Eel River v. North Coast Railroad Authority*, (October 17, 2014, A139222) Cal.App.4th; *City of Auburn v. U.S. Government* (9th Cir. 1998) 154 F.3d 1025, 1027-1031); the City of Encinitas, CA ((North San Diego County Transit Development Board Petition for Declaratory Order, No. FD 34111, 2002 WL 1924265 (August 19, 2002); and *City of Encinitas v. North San Diego County Transit Development Board* (2002 US Dist. LEXIS 28531, 2002 WL 34681621). These decisions have all held that state and local environmental regulation of railroad construction and operations are pre-empted by federal law.

Despite the absence of a legal obligation on the part of the IPB to prepare and certify an EIR for the Peninsula Corridor Electrification Project, the IPB has decided to complete this document and make the findings that CEQA otherwise would require when applicable. By taking this action, the IPB desires to fulfill the fundamental policies and objectives of CEQA in terms of providing the public and decision makers with detailed information about the potential effects that the project is likely to have upon the environment. By having voluntarily adhered to the strictures of CEQA, however, the IPB does not intend to waive its ability to assert that CEQA is preempted by federal law. In short, the IPB expressly preserves its ability to assert preemption if legal challenges to the EIR are initiated. Notwithstanding any position the IPB may take regarding the preemption of CEQA, the IPB will

remain fully committed to implementing the mitigation measures that will be adopted as conditions for any approval of the project.

1.5.2 Purpose of this EIR

The purpose of the EIR is to provide the information necessary for the JPB to make an informed decision about the Proposed Project, and to supply the information necessary to support related permit applications and review processes.

This Draft EIR has been prepared in compliance with CEQA to achieve the following goals.

- Identify potential direct, indirect, and cumulative environmental impacts associated with the Proposed Project.
- Describe feasible mitigation measures intended to avoid or reduce potentially significant impacts to a less-than-significant level.
- Disclose the environmental analysis, including the potential project impacts and proposed mitigation measures, for public and agency review and comment.
- Discuss potential alternatives to the Proposed Project that meet the purpose and need, are feasible, and would avoid or reduce identified significant project impacts.

One of the purposes of CEQA is to establish opportunities for the public and relevant agencies to review and comment on projects that might affect the environment. Scoping activities are discussed below. The JPB will provide a public review period for this Draft EIR of 60 days from release of the Draft EIR for comment. The JPB will also conduct public meetings to receive comment during the comment period. Once the public review period is complete, the JPB will prepare a Final EIR that includes all the comments received on the Draft EIR, responses to all comments, and any necessary revisions to the Draft EIR. CEQA requires the JPB decision-making body, the Board, to review and consider the information in the EIR before making a decision on the Proposed Project.

1.5.3 Scope and Content of the EIR

Scoping refers to the process used to assist the lead agency (for the Proposed Project, the JPB) in determining the focus and content of an EIR. Scoping solicits input on the potential topics to be addressed in an EIR, the range of project alternatives, and possible mitigation measures. Scoping is also helpful in establishing methods of assessment and in selecting the environmental effects to be considered in detail.

1.5.3.1 Notice of Preparation and Scoping Meeting

The scoping process for this EIR was formally initiated on January 31, 2013, when the JPB submitted the Notice of Preparation (NOP) to the California State Clearinghouse for distribution to state agencies and to the San Francisco, San Mateo, and Santa Clara County Clerks for public posting. The purpose of the NOP is to solicit participation from relevant agencies and from the public in determining the scope of an EIR. The scoping period ended on March 18, 2013.

Public scoping meetings were held on February 27, 2013 at the Caltrain Office, February 28, 2013, at Palo Alto City Hall, March 5, 2013 at VTA Headquarters, and March 7, 2013 at San Francisco City Hall to provide an opportunity for attendees to comment on environmental issues of concern.

EXHIBIT 6

RESOLUTION NO. 2015 - 04

**BOARD OF DIRECTORS, PENINSULA CORRIDOR JOINT POWERS BOARD
STATE OF CALIFORNIA**

**ADOPTING CEQA FINDINGS OF FACT, STATEMENT OF OVERRIDING CONSIDERATIONS AND
MITIGATION MONITORING AND REPORTING PLAN AND APPROVAL OF
THE PENINSULA CORRIDOR ELECTRIFICATION PROJECT**

WHEREAS, pursuant to Resolution No. 2015-03, the Peninsula Corridor Joint Powers Board (JPB) has certified, in conformance with the California Environmental Quality Act (CEQA), the Final Environmental Impact Report (FEIR) for the Peninsula Corridor Electrification Project (Project) and hereby incorporates by reference the defined terms and statements contained in that Resolution.

NOW THEREFORE BE IT RESOLVED, that the Board of Directors of the Peninsula Corridor Joint Powers Board hereby takes the following actions:

1. The JPB Board has reviewed and considered the information contained in the FEIR and in the CEQA Findings of Fact attached hereto as Exhibit "A" and supporting documentation. The JPB determines that the CEQA Findings of Fact document identifies the significant environmental impacts and mitigation measures associated with the Project. The JPB further finds that the CEQA Findings of Fact have been completed in compliance with CEQA and the State CEQA Guidelines. The JPB hereby approves and adopts the CEQA Findings of Fact attached hereto as Exhibit "A."
2. The JPB hereby finds that the Statement of Overriding Considerations was completed in accordance with Public Resources Code section 21081 and State CEQA Guidelines Section 15093, subdivision (a), which state that CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. The Statement of Overriding Considerations is included in the Findings of Fact attached hereto as Exhibit "A" and sets forth significant environmental effects that are found to be unavoidable but are acceptable due to the overriding considerations and benefits expected to result from implementing the Project. The JPB hereby approves and adopts the Statement of Overriding Considerations included in the Findings of Fact attached hereto as Exhibit "A."

3. Pursuant to Public Resources Code section 21081.6, and State CEQA Guidelines Section 15091, subdivision (d), the JPB hereby adopts the Mitigation Monitoring and Reporting Program attached hereto as Exhibit "B," which ensures that required mitigation is implemented for the Project.
4. Based on and in consideration of all of the foregoing, the JPB hereby approves the Project as described in more detail in the FEIR (incorporated herein), along with the project design features which have been incorporated into the project and the mitigation measures described in the Findings of Fact attached hereto as Exhibit A and reflected in the Mitigation Monitoring and Reporting Program (MMRP) attached hereto as Exhibit B, and which MMRP shall be a condition of the approved project.
5. By making the findings and taking the actions in this resolution, the Board does not waive its rights regarding application of the Interstate Commerce Commission Termination Act of 1995 (ICCTA) (for the reasons explained in Resolution No. 2015- 3), including the defense that ICCTA and the Surface Transportation Board's jurisdiction preempt CEQA's application to the Project. Regardless of potential jurisdictional pre-emption of CEQA's application to the Project, the mitigation measures included in the MMRP shall be a condition of the approved project.
6. The Board hereby directs staff to file a CEQA Notice of Determination with the State Clearinghouse and appropriate County Clerks and to take any other necessary steps to obtain all additional permits, approvals and rights that would allow construction and operation of the Project.

Regularly passed and adopted this 8th day of January, 2015 by the following

vote:

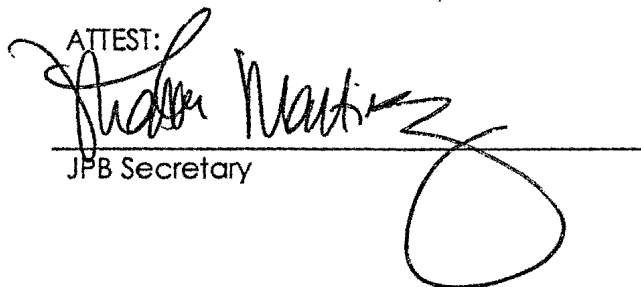
AYES: CISNEROS, GEE, GUILBAULT, NOLAN
WOODWARD, YEAGER, TISSIER

NOES: NONE

ABSENT: COHEN, KALRA



Chair, Peninsula Corridor Joint Powers Board

ATTEST:

JPB Secretary

RESOLUTION NO. 2015 – 03

BOARD OF DIRECTORS, PENINSULA CORRIDOR JOINT POWERS BOARD
STATE OF CALIFORNIA

**CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT
FOR THE PENINSULA CORRIDOR ELECTRIFICATION PROJECT**

WHEREAS, in 2009, the Peninsula Corridor Joint Powers Board (JPB) completed a Final Environmental Assessment/Environmental Impact Report (EA/EIR) for the Peninsula Corridor Electrification Project (Project); and

WHEREAS, based upon that document, the Federal Transit Administration issued a Finding of No Significant Impact (FONSI), which completed the federal environmental review for the Project in accordance with the National Environmental Policy Act (NEPA); and

WHEREAS, the JPB deferred finalizing the 2009 EA/EIR under the California Environmental Quality Act (CEQA), in part due to concerns regarding the proper consideration of the impacts of the California High Speed Rail Project, which had proposed to construct high speed rail facilities on the JPB's right of way; and

WHEREAS, the JPB has since entered into an agreement with the California High Speed Rail Authority (Authority), dated May 1, 2013, which clarifies the roles of the JPB as the lead agency for the Project, with the Authority continuing to serve as the lead agency for the statewide high speed rail project; and

WHEREAS, the JPB has prepared, in conformance with CEQA, a new Environmental Impact Report (EIR) for the Project; and

WHEREAS, the Project analyzed in the EIR consists of converting Caltrain from diesel-hauled to electrically-powered trains for service between the 4th and King Street

Station in San Francisco and the Tamien Station in San Jose, with the future impacts of the Authority's project being treated as cumulative impacts; and

WHEREAS, a Notice of Preparation for the Peninsula Corridor Electrification Project EIR was issued on January 31, 2013; and

WHEREAS, the Draft EIR was released on February 28, 2014 for a 60-day public review and comment period; and

WHEREAS, the JPB received comments from interested individuals, organizations and agencies on the Draft EIR, both in writing and at four duly-noticed public meetings; and

WHEREAS, responses to comments on the Draft EIR, as well as the revised EIR were prepared and released to the public on December 4, 2014 and minor errata to the EIR were prepared prior to January 8, 2014; and

WHEREAS, the Draft EIR, as revised, together with the responses to comments, and the errata, constitute the Final EIR on the Project; and

WHEREAS, the JPB has reviewed and considered the Final EIR for the Project and desires to certify the FEIR for the Project in conformance with CEQA law and Guidelines; and

WHEREAS, the JPB is a federally regulated rail carrier, subject to the jurisdiction of the Surface Transportation Board (STB) of the U.S. Department of Transportation; and

WHEREAS, the STB's jurisdiction derives from the provisions of the Interstate Commerce Commission Termination Act of 1995 (ICCTA). Under Section 10501(b) of that Act, the STB's jurisdiction is exclusive for all transportation by rail carriers, including the facilities and structures that are an integral part of that transportation. Section 10501(b) also expressly states that "the remedies provided under this part with respect

to regulation of rail transportation are exclusive and preempt the remedies provided under Federal and State law." The scope of that preemption as relates to CEQA and passenger rail projects in California is currently under court review. The JPB makes this certification without waiving the JPB's rights regarding the application of the ICCTA, including the defense that ICCTA and the STB's jurisdiction preempt CEQA's application to the Project and the JPB's decision(s) regarding it.

NOW THEREFORE BE IT RESOLVED, that the Board of Directors of the Peninsula Corridor Joint Powers Board hereby certifies the Final Environmental Impact Report for the Peninsula Corridor Electrification Project (hereinafter "Project") based upon the following findings:

1. To the extent it is applicable to the Project, the Peninsula Corridor Joint Powers Board has complied with the requirements of the California Environmental Quality Act (Cal. Pub. Res. Code Sections 21000 et seq., hereinafter "CEQA") and the State CEQA Guidelines (Cal. Admin. Code Title 14, Sections 15000 et. seq., (hereinafter "CEQA Guidelines")).
2. Four duly-noticed public meetings were held on said Draft EIR in March and April, 2014, at which time opportunity for public comment was given, and public comment was received on the DEIR. The period for acceptance of written comments ended on April 29, 2014.
3. The JPB prepared responses to comments on environmental issues received at the public meetings and in writing during the 60-day public review period for the DEIR, prepared revisions to the text of the DEIR in response to comments received or based on additional information, and corrected errors in the DEIR. This material was presented in a Final EIR document, published on December 4, 2014, which was distributed to the Board and to all parties who commented on the DEIR, and was made available to others upon request at the JPB's offices. Minor errata to the EIR were prepared prior to January 8, 2014 and were also reviewed by the JPB.
4. The Final Environmental Impact Report, has been prepared by the JPB, as the lead agency, and consists of the DEIR, any comments received during the review process, any additional information that became available, and the responses to comments, all as required by law.

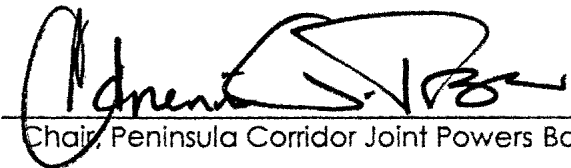
5. Project environmental files have been made available for review by the Board and the public. These files are available for public review at the Caltrain Headquarters in San Carlos, at 1250 San Carlos Avenue, and are part of the record before the Board.
6. At its meeting of January 8, 2015, the Board has reviewed and considered the Final EIR and hereby finds that the contents of said report and the procedures through which the Final EIR was prepared, publicized and reviewed are consistent with the provisions of CEQA and the CEQA Guidelines.
7. The Board has reviewed and considered the contents of the FEIR and hereby does find that the Final EIR reflects the independent judgment and analysis of the Peninsula Corridor Joint Powers Board, is adequate, accurate and objective, and that the Final EIR documents contain no significant new information to the DEIR that would require recirculation under CEQA Guideline Section 15088.5, and hereby does certify the completion of said Final Environmental Impact Report in compliance with CEQA and the CEQA Guidelines.
8. By this certification action, the Board does not waive the JPB's rights to the application of the ICCTA and does not waive any available defenses associated with the ICCTA and STB's jurisdiction, as discussed above.

Regularly passed and adopted this 8th day of January, 2015 by the following vote:

AYES: CISNEROS, GEE, GUILBAULT, NOLAN
WOODWARD, YEAGER, TISSIER

NOES: NONE

ABSENT: COHEN, KALRA


Chair, Peninsula Corridor Joint Powers Board

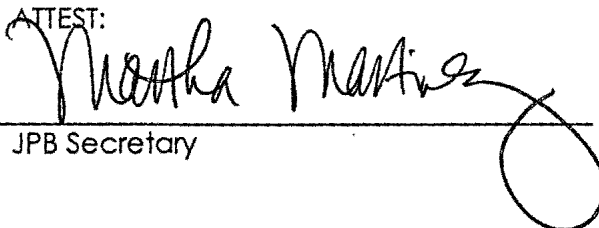
ATTEST:

JPB Secretary

EXHIBIT 7



Town of Atherton

91 Ashfield Road • Atherton, California 94027
(650) 752-0500 • Fax (650) 688-6528
www.ci.atherton.ca.us

January 21, 2015

Caltrain
Attn: Stacy Cocke
1250 San Carlos Avenue
San Carlos, CA 94070

Subject: Peninsula Corridor Electrification Project – Response to Comment on Draft Environmental Impact Report

Dear Ms. Cocke:

The Town of Atherton reviewed the Response to Comments on the Draft Environmental Impact Report for the Peninsula Corridor Electrification Project. The Town continues to have concerns related to noise, project timing, tree removal and pruning, locations of wires and poles and the Atherton station and gate mechanisms.

Quad Gates at Watkins

The Town requests Caltrain formally commit to being a fiscal partner to the installation of quad gates at the Watkins Avenue intersection. The Town believes that in the absence of a grade separation along the entirety of the Atherton corridor, quad gates represents the best safety mitigation measure for the continuing increase in rail traffic along the corridor.

Electrification to High Speed Rail

The Town strongly disagrees that the electrification project is separate from the High Speed Rail project and remains concerned with the legality of moving forward with the electrification project without fully evaluating the environmental impacts associated with the high speed rail project. The Town recognizes that certification of the EIR is a big step in Caltrain's electrification project but believes that it puts high speed rail one step closer to reality in Atherton. The impacts of high speed rail in Atherton will be significant and the Town will continue to oppose the project.

Wires and Trees

The Town continues to have concerns with the aesthetic impact of the catenary wires and the OCS poles as a part of the electrification project. As discussed in Caltrain's Master Response 6 – Visual Aesthetics (Including Tree Removal), OCS center pole alignment would minimize tree

pruning and removal. The EIR identified Mitigation Measure BIO-5; to complete an evaluation of alignment and pole design options. *The Town requests Caltrain commit to implement the center pole alignment along the corridor within the Atherton town limits to reduce the significant impact of tree removal and tree pruning and relating aesthetic impact. The Town requests that Caltrain meet formally with staff to address these concerns moving forward.*

Alternative Analysis

The Town continues to have concerns with the lack of analysis contained within the Alternatives section of the EIR. Modern diesel options were not studied adequately.

Minimum Service Level

The EIR mentions restoring service to the Atherton train station with the implementation of electrification. We understand this service level to include one stop in the morning and one stop in the evening. The minimum service level offered by Caltrain is completely inadequate. The Town would like to continue conversations with Caltrain on how service to Atherton can be expanded in a meaningful way.

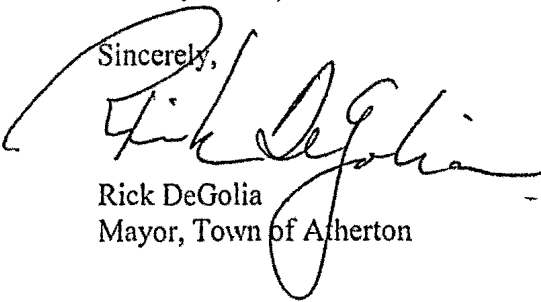
Atherton Station

The Town requests Caltrain's careful consideration of the Atherton Station. In an effort to facilitate that careful consideration, the Town requests that Caltrain work closely with the Town during the Civic Center Project design to ensure that the anticipated needs of the Station are feasible in the design. If the anticipated needs are not achievable, the Town requests that Caltrain work closely with the Town to evaluate the pros and cons of reopening the Atherton Station before such action is taken.

In summary, the Town continues to have concerns with the electrification project and its impact on Atherton residents relating to construction, noise, tree removal and aesthetics. The City Council requests close coordination and continuous dialog between Caltrain staff and Town staff during project design and construction to address potential issues and reduce impacts to the maximum extent feasible.

Thank you for your consideration of our comments.

Sincerely,



Rick DeGolia
Mayor, Town of Atherton



Town of Atherton

91 Ashfield Road • Atherton, California 94027
(650) 752-0500 • Fax (650) 688-6528
www.ci.atherton.ca.us

January 26, 2015

Marian Lee
Executive Officer Caltrain Modernization Program
1250 San Carlos Avenue
San Carlos, CA 94070

**Subject: Peninsula Corridor Electrification Project – Request to Extend the Time
Period to File a CEQA Challenge on the Final Environmental Impact Report**

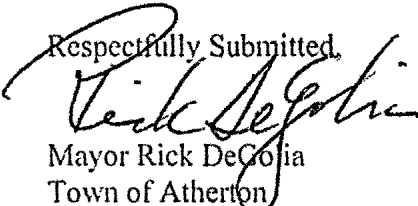
Dear Ms. Lee,

At the January 21, 2015 meeting of the Atherton City Council, we discussed the Final Environmental Impact Report (FEIR) for the Peninsula Corridor Electrification Project certified by the Peninsula Corridor Joint Powers Board on January 8, 2015. The Town of Atherton still has significant concerns and would like the opportunity to explore solutions which avoids potential litigation. However, the current 30 day statute of limitations to file a CEQA challenge does not provide adequate time to engage meaningful and thoughtful negotiations.

Accordingly, the Town of Atherton respectfully requests a tolling agreement extending the statute of limitations for an additional 30 days. We believe this provides a more reasonable period of time to thoroughly review the tremendous volume of written comments and Caltrain responses contained in the FEIR. It also provides the Town additional time necessary to critically assess and determine the legitimacy and viability of potential legal claims we may have against the project FEIR. The additional time will provide great public benefit if it helps avoid unnecessary legal costs for both the Town of Atherton and Peninsula Corridor JPB resulting from a legal challenge to the Peninsula Corridor Electrification Project EIR.

Thank you for your consideration of this important request.

Respectfully Submitted,


Mayor Rick DeGolia
Town of Atherton

Cc: Menlo Park City Council
Palo Alto City Council
Atherton City Council