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June 24, 2026  
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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FD 36944

CHICAGO ROCK ISLAND & PACIFIC RAILROAD, LLC  
— CHANGE OF OPERATOR EXEMPTION —  
RAILROAD LINE IN MONTEREY AND SANTA CRUZ COUNTIES, CAL.

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**VERIFIED NOTICE OF EXEMPTION OF  
CHICAGO ROCK ISLAND & PACIFIC RAILROAD, LLC  
PURSUANT TO 49 C.F.R. PART 1150, SUBPART E**

Robert J. Riley, Duly Authorized As Owner and CEO  
Chicago Rock Island & Pacific Railroad, LLC  
2747 Pass Road  
Biloxi, MS 39531  
robert.riley@rockislandrail.com  
855-663-7625 ext 701

**FOR CHICAGO ROCK ISLAND & PACIFIC  
RAILROAD, LLC**

Dated: June 22, 2026

**FILED**  
June 24, 2026  
SURFACE TRANSPORTATION BOARD

**FEE RECEIVED**  
June 24, 2026  
SURFACE  
TRANSPORTATION BOARD

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CHICAGO ROCK ISLAND & PACIFIC RAILROAD, LLC  
PURSUANT TO 49 C.F.R. PART 1150, SUBPART E**

Chicago Rock Island & Pacific Railroad, LLC (“Rock Island”), an existing Class III railroad carrier hereby files this notice of exemption (the “Notice”) under 49 C.F.R. part 1150, subpart E to assume common carrier operations over a certain roughly 2.567-mile railroad line (the “Line”) located in Monterey and Santa Cruz Counties, California, as detailed below. A map of the Line is attached hereto as Exhibit A. At such time as Rock Island consummates the transaction that is the subject of this proceeding, it will replace St. Paul & Pacific Railroad Company, LLC (“SPPR”) as the common carrier service provider on the Line, thereby terminating SPPR’s common carrier status.

In accordance with the requirements of 49 C.F.R. § 1150.43, Rock Island submits the following information:

**Name and Address of Applicant: 49 C.F.R. § 1150.43(a)**

The full name and address of the applicant herein is as follows:

Chicago Rock Island & Pacific Railroad, LLC  
2747 Pass Road  
Biloxi, MS 39531

**Applicant's Representative: 49 C.F.R. § 1150.43(b)**

Rock Island's authorized representative to whom correspondence regarding this transaction should be sent is as follows:

Robert J. Riley, Duly Authorized As Owner and CEO  
Chicago Rock Island & Pacific Railroad, LLC  
2747 Pass Road  
Biloxi, MS 39531  
robert.riley@rockislandrail.com  
855-663-7625 ext 701

**Statement Concerning Agreement: 49 C.F.R. § 1150.43(c)**

SPPR, an existing Class III railroad common carrier currently holds an exclusive freight common carrier easement (the "Easement") over railroad track assets owned by the Santa Cruz County Regional Transportation Commission ("RTC") extending from milepost 0.433 at Watsonville Junction, California, Monterey County, California to milepost 31.39 at the end of the line at Davenport, Santa Cruz County, California. *See St. Paul & Pacific Railroad Company, LLC – Change in Operators Exemption – Santa Cruz and Monterey Bay Railway Company*, FD 36207 (STB served Aug. 1, 2018), and *Santa Cruz County Regional Transportation Commission – Petition for Declaratory Order*, FD 36213 (STB served Oct. 24, 2018). Of the entire scope of the Easement, Rock Island understands that all but roughly 2.567 miles of it between Watsonville Junction (milepost 0.433) and a point west of Watsonville Junction (milepost 3.0) – the portion that constitutes the present Line – is currently inactive. Furthermore, Rock Island has been advised that SPPR will be seeking Board authority to formally discontinue common carrier service over the portion of the Easement from milepost 3.0 to the end of the line at milepost 31.39.

Rock Island has recently entered into an agreement (the Revised Administration, Coordination, and License Agreement) under which RTC will arrange for the voluntary transfer of the portion of the Easement between milepost 0.433 at Watsonville Junction and milepost 3.0 west

of Watsonville Junction from SPPR to Rock Island, and pursuant to which, Rock Island will secure exclusive freight easement rights in the Line in place of SPPR, whose common carrier status on the Line will cease upon consummation of the present transaction. A copy of the Revised Administration, Coordination and License Agreement for the Line is attached hereto as Exhibit B. The Revised Administration, Coordination and License Agreement is similar to the agreement between SPPR and RTC albeit for only the approximately 2.5-mile Line.<sup>1</sup>

**Operation of the Property: 49 C.F.R. § 1150.43(d)**

Rock Island will offer common carrier service over the Line in place of SPPR on or after the effective date of the present exemption (expected to be July 21, 2026) and, in turn, upon consummation of the transaction encompassed by this notice on a date as agreed upon between Rock Island and SPPR to allow for a seamless transition.

**Summary of the Transaction: 49 C.F.R. § 1150.43(e)**

Rock Island will acquire an exclusive freight common carrier easement interest in the Line (extending between milepost 0.433 at Watsonville Junction and milepost 3.0 west of Watsonville Junction) – roughly 2.567 route miles in length – and will thereby succeed SPPR as the common carrier service provider over the Line. Upon consummation of the proposed transaction, Rock Island will replace SPPR as the exclusive provider of common carrier service over the Line, resulting in the concurrent termination of SPPR's common carrier status over it.

**Map: 49 C.F.R. § 1150.43(f)**

A map showing the Line and area served is attached as Exhibit A.

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<sup>1</sup> The Revised Administration, Coordination and License Agreement, provides Rock Island with a sufficient interest in and control over the Line to carry out its common carrier obligation without undue interference from RTC. As such, RTC will maintain its noncarrier title-ownership status with respect to the Line.

**Certification: 49 C.F.R. § 1150.43(g)**

A Certificate of Compliance with the provisions of 49 C.F.R. § 1150.43(g) is supplied. See Certifications and Verification, attached as Exhibit D.

**Interchange Commitments: 49 C.F.R. § 1150.43(h)**

Rock Island will not be contractually limited in its ability to interchange traffic with any third-party connecting carrier. See Certifications and Verification, attached as Exhibit D. As matters currently stand, Rock Island's only interline connection would be UP.

**Shipper Notice: 49 C.F.R. § 1150.42(b)**

Rock Island hereby certifies through the undersigned authorized representative that it has provided a copy of the present Notice to all customers on the Line in accordance with the Board's above-referenced change of operator rules. A list of the customers served with a copy of the Notice is attached hereto as Exhibit C.

**Advance Notice: 49 C.F.R. § 1150.42(e)**

Rock Island's projected annual revenue does not exceed \$5 million and is not expected by virtue of the proposed transaction to exceed \$5 million. Accordingly, the advance notice requirements of 49 C.F.R. § 1150.42(e) are not applicable to this transaction. See Certifications and Verification.

**Environmental and Historic Preservation Data: 49 C.F.R. § 1105**

Under 49 C.F.R. § 1105.6(c)(1)(i), the proposed operation of the Line is exempt from environmental reporting requirements. Rock Island's proposed common carrier operations will not result in significant changes in carrier operations, *i.e.*, changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), Rock Island's proposed operation of the Line also is exempt from historic preservation reporting requirements, as the proposed transaction is not expected to impact historic structures along the Line that are 50 years old or older.

**Caption Summary: 49 C.F.R. § 1150.44**

A caption summary in appropriate form is attached as Exhibit E.

Respectfully submitted,

By: /s/ Robert J. Riley, Duly Authorized As Owner and CEO  
Chicago Rock Island & Pacific Railroad, LLC  
2747 Pass Road  
Biloxi, MS 39531  
robert.riley@rockislandrail.com  
855-663-7625 ext 701



Dated: June 22, 2026

**FOR CHICAGO ROCK ISLAND & PACIFIC  
RAILROAD, LLC**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FD 36944**

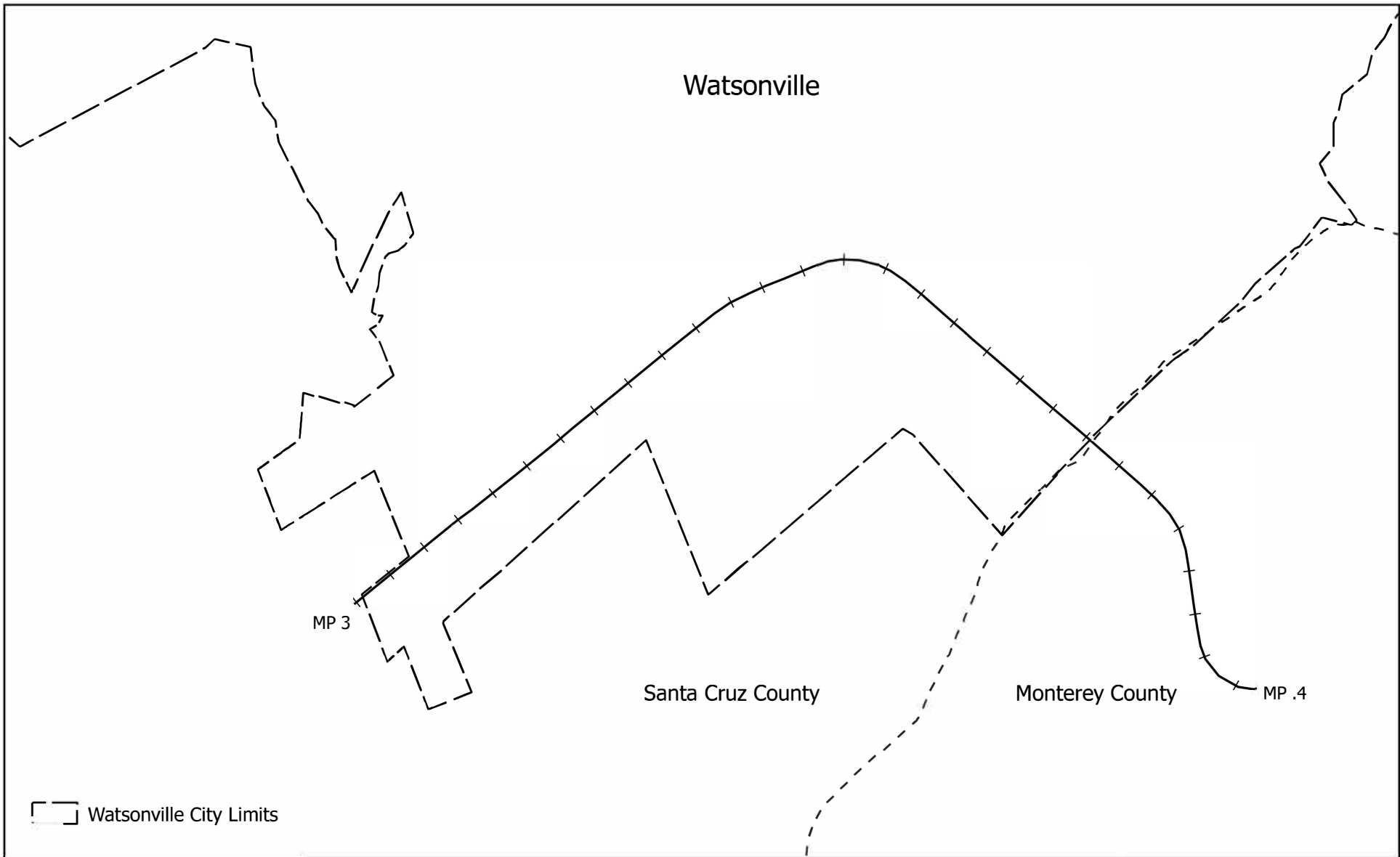
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— CHANGE OF OPERATOR EXEMPTION —  
RAILROAD LINE IN MONTEREY AND SANTA CRUZ COUNTIES, CAL.**

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**EXHIBIT A**

**MAP**



 Watsonville City Limits

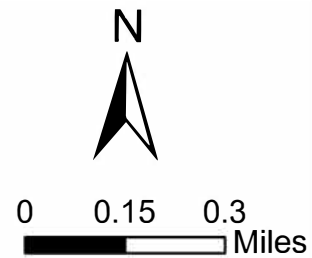


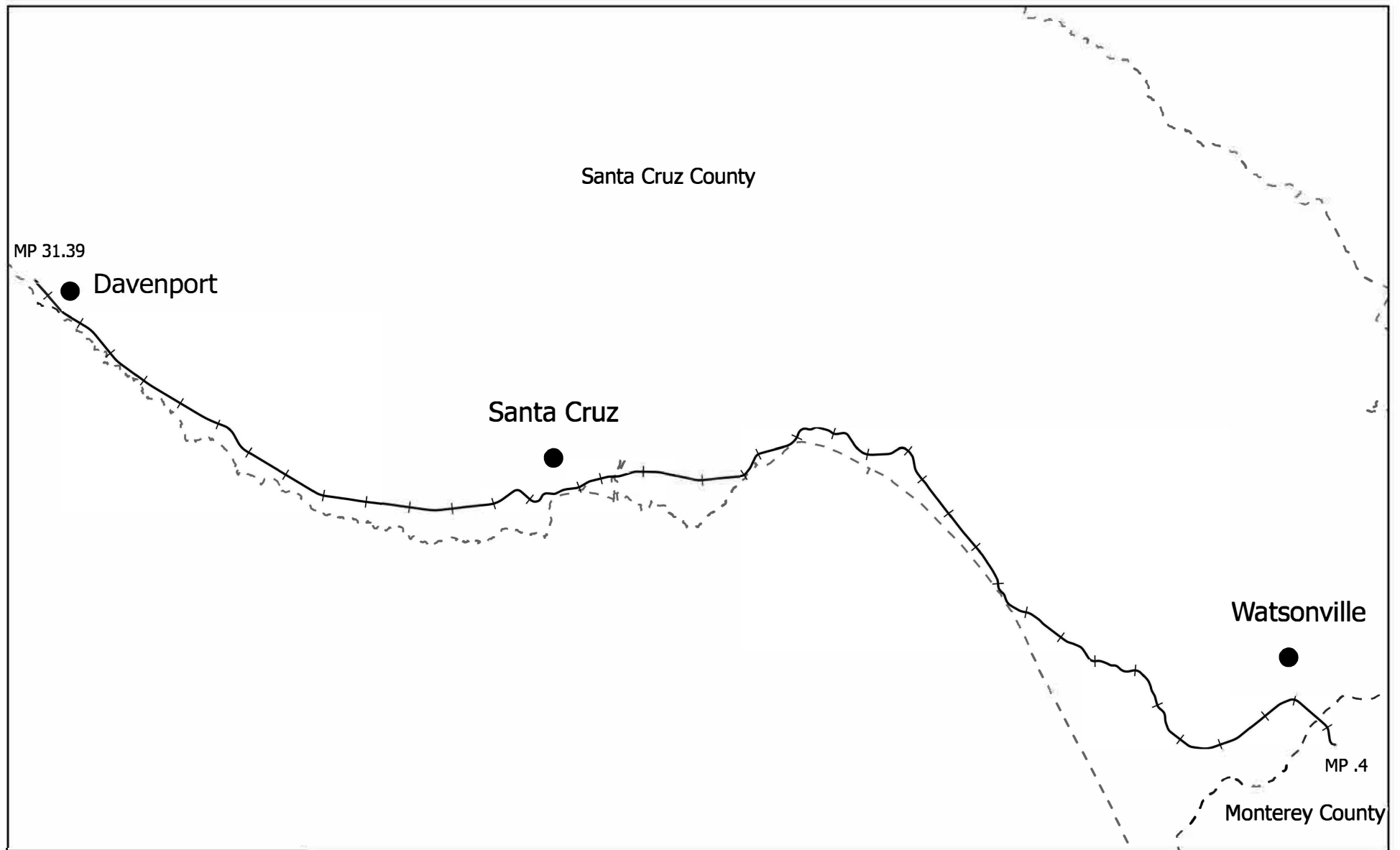
## Watsonville Branch Line Freight Easement Property

EXHIBIT B: Shows the Watsonville Branch Line Freight Easement Property between approximately MP .4 and MP 3

NAD 1983 StatePlane California III FIPS 0403 Feet

January 22, 2026



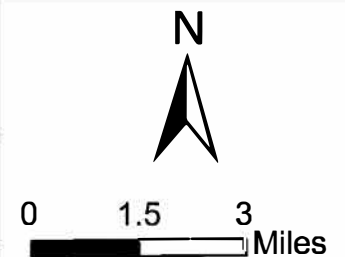


## Santa Cruz Branch Rail Line Property

EXHIBIT A: Shows the Santa Cruz Branch Rail Line Right of Way between approximately MP .4 and MP 31.39.

NAD 1983 StatePlane California III FIPS 0403 Feet

January 22, 2026



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**EXHIBIT B**

**REVISED ADMINISTRATION,  
COORDINATION AND LICENSE  
AGREEMENT**

## **ADMINISTRATION, COORDINATION, AND LICENSE AGREEMENT**

This administration, coordination, and license agreement (the "Agreement") is dated as of \_\_\_\_\_, and is between the Santa Cruz County Regional Transportation Commission (the "Commission"), a public agency created under California law, and Chicago Rock Island and Pacific Railroad, LLC, a limited liability company ("Railway"). The term "Party" or "party" shall mean either Commission or Railway, individually; and the term "Parties" or "parties" shall mean both Railway and Commission, collectively.

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

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

UP quitclaimed all its right, title, and interest in and to the Freight Easement to a previous operator to act as the sole freight rail operator on the Freight Easement;

For the last seven years, a previous operator operated on the Property pursuant to an agreement with the Commission;

The Freight Easement requires that any assignment of the Freight Easement shall be conditioned upon the assignee assuming all of the obligations set forth in the Freight Easement, and entering into an administration, coordination and license agreement with the Commission;

The prior administration, coordination and license agreement has been terminated and Commission will coordinate the transfer of the freight easement for the area between MP 0.4 and MP 3.0 to Railway;

Railway needs a long-term agreement of at least ten (10) years, covering all facets of railroad operations, to justify its investment of time and money needed to conduct railroad operations; and Railway and the

Commission desire to establish their respective rights and obligations with respect to the Watsonville Branch Line Property and the Watsonville Branch Line Freight Easement by entering into this Agreement.

As soon as reasonably practicable following the execution of this Agreement, Railway and its strategic partner in California will form a new California entity to assume Railway's, rights, duties, and obligations under this agreement.

The parties therefore agree as follows:

## **1. Definitions**

- 1.1 The term "Commission" is defined in the introductory paragraphs of this Agreement and includes its directors, officers, employees, agents, parents, subsidiaries, affiliates, commonly controlled entities, and all others acting under its or their authority.
- 1.2 The term "Coordination Committee" is defined as the committee established by the parties pursuant to Section 11.
- 1.3 The term "FRA" is defined as the United States Federal Railroad Administration or its regulatory successor.
- 1.4 The term "Freight Easement" is defined in the introductory paragraphs of this Agreement.
- 1.5 The term "Freight Easement Property" is defined as the portion of the Property subject to the Freight Easement consisting of any and all real and personal property within ten (10) feet of the centerline of any track on the Property except where roadways, buildings, or Property boundary lines reduce such distance to less than ten (10) feet, and except for any retained rights and personal property described herein.
- 1.6 The term "Freight Service" is defined as any and all common carrier rail freight operations, rights, or obligations as to the Freight Easement Property including freight transportation, switching, temporary rail car storage (subject to the conditions of Section 2.5), transloading freight and dispatching.

- 1.7 The term "Hazardous Materials" is defined as any substance:  
(a) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as any hazardous waste, hazardous substance, bio-hazard, medical waste, pollutant, or contaminant under any governmental statute, code, ordinance, regulation, rule, or order, or any amendment thereto, including the Hazardous Material Transportation Act 49 U.S.C. § 5101 *et seq.*, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, and the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, or  
(b) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous, or otherwise hazardous, including gasoline, diesel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon, and urea formaldehyde foam insulation.
- 1.8 The term "Hazardous Materials Laws" means all present and future governmental statutes, codes, ordinances, regulations, rules, orders, permits, licenses, approvals, authorizations, and other requirements of any kind applicable to Hazardous Materials.
- 1.9 The terms "include", "includes", and "including" are to be read as if they were followed by the phrase "without limitation."
- 1.10 The term "Loss" is defined as any loss, damage, claim, demand, action, cause of action, penalty, fine, payment, cost, liability, or expense of whatsoever nature, including court costs and reasonable attorneys' fees, resulting from or related to: (a) any injury to or death of any person, including officers, agents, and employees of the Commission or Railway; or (b) damage to or loss or destruction of any property, including the Property, any adjacent property, and the roadbed, tracks, equipment, other property of the Commission or Railway, and any property in the Commission's or Railway's care or custody.
- 1.11 The term "Property" is defined as the entire Santa Cruz

Branch railroad line right-of-way purchased from UP by the Commission, including all improvements thereto, whether now existing or hereafter constructed.

- 1.12 The term "PUC" is defined as the California Public Utilities Commission.
- 1.13 The term "Railroad Facilities" is defined as all tracks and other railroad property and fixtures, including ties, switches, trackbeds, bridges, trestles, retaining walls, culverts, railroad signs, switch mechanisms, signals, grade crossings, active and passive grade crossing warning devices and other appurtenances associated with the trackage described on Exhibit A and located on the Freight Easement Property.
- 1.14 The term "Railway" is defined in the introductory paragraphs of this Agreement and includes its directors, officers, employees, agents, parents, subsidiaries, affiliates, commonly controlled entities, any other related persons and entities, and all others acting under its or their authority.
- 1.15 The term "STB" is defined as the United States Surface Transportation Board or its regulatory successor.
- 1.16 The term "UP" is defined in the introductory paragraphs of this Agreement.
- 1.17 The term "Watsonville Branch Line Property" is defined as the portion of the Santa Cruz Branch railroad line right-of-way purchased from UP by the Commission, including all improvements thereto, whether now existing or hereafter constructed, as shown on Exhibit B, to this Agreement.
- 1.18 The term "Watsonville Branch Line Freight Easement" is defined as the Freight Easement as it applies only to the Watsonville Branch Line Freight Easement Property.
- 1.19 The term "Watsonville Branch Line Freight Easement Property" is defined as the portion of the Property, as shown on Exhibit B, between approximately MP 0.4 and MP 3.0 subject to the Watsonville Branch Line Freight Easement consisting of any and all real and personal property within ten (10) feet of the

centerline of any track on the Property except where roadways, buildings, or Property boundary lines reduce such distance to less than ten (10) feet, and except for any retained rights and personal property described herein.

## **2. Commission Grants Rights**

- 2.1. Freight Service. Upon the later of the effective date of this Agreement or the date upon which Railway is approved as a common carrier for the Watsonville Branch Line Property, the Commission grants Railway the exclusive right and obligation to provide Freight Service on the Watsonville Branch Line Freight Easement Property. Railway's rights and obligations to provide Freight Service under this Agreement are limited to those set forth in the Watsonville Branch Line Freight Easement or in this Agreement. Railway may not, in performing such Freight Service, exceed the maximum speeds authorized by applicable law for the existing track conditions or transport rail cars exceeding the applicable track and bridge weight limits. Railway shall take and complete all reasonable actions necessary to file within ten (10) business days of the Effective Date of this Agreement all STB regulatory filings and complete all publication requirements to acquire and operate the Watsonville Branch Line Freight Easement as a Railway Operator/Common Carrier on the Watsonville Branch Line Freight Easement. Before filing with the STB, Railway shall provide the Commission's counsel and the current operator's designated regulatory counsel with drafts of all STB filings and shall afford the Commission's counsel and the former operator's counsel a reasonable opportunity to provide input. Railway shall incorporate any reasonable edits proposed by the Commission's counsel or the former operator's regulatory counsel into the STB filings, provided such comments are consistent with the intent of the terms set forth in the Separation Agreement and Mutual Release Agreement between the former operator and the Commission.
- 2.2. Trackage License. The Commission grants Railway an exclusive license to use, maintain, repair, and operate all of the Watsonville Branch Line Freight Easement Property and related Railroad Facilities for all Freight Service purposes.

Notwithstanding their location on the Watsonville Branch Line Freight Easement Property, buildings and other fixtures which are not appurtenances associated with the tracks and related railroad property are not included as part of this license. Subject to the terms of Section 7 below regarding License Fees, all revenues and profits generated from rail operations, maintenance activities, and other sources of railroad-specific capital on or related to the Watsonville Branch Line Property and the Watsonville Branch Line Freight Easement Property and related Railroad Facilities shall be received directly by and accrue to the benefit of Railway for the life of this Agreement.

2.3. No Material Interference with Freight Service. Notwithstanding the rights retained by the Commission under this Agreement, the exercise of such rights by the Commission may not materially interfere with Railway's Freight Service rights and obligations under federal law on, or rights under the Watsonville Branch Line Freight Easement, unless first approved by the STB.

2.4. Third Party Licenses for Watsonville Branch Line Property.

2.4.1. Third Party Licenses.

2.4.1.1. Third-Party Licenses. The Commission reserves the right to grant additional licenses over the Watsonville Branch Line Freight Easement Property and the Railroad Facilities (excluding licenses for temporary rail car storage or repairs on the Railroad Facilities), provided that any such licenses: (a) do not materially conflict with, and are subject and subordinate to, Railway's core business, freight rail, or right to use, maintain, repair, and operate all of the Railroad Facilities for all Watsonville Branch Line Freight Service purposes, (b) do not materially conflict with, and are subject and subordinate to, any other license granted Railway hereunder, (c) require the licensee to pay its proportionate share of Railway's prior (incurred within the preceding five years) and current costs (including labor costs, materials costs, equipment costs - using equivalent rental costs as a proxy for capital and

maintenance and repair costs - travel, fuel, contract labor, and appropriate overhead) to maintain the portion of the Watsonville Branch Line Freight Easement Property and Railroad Facilities used by the licensee, (d) require the licensee to (i) provide adequate insurance based on the scope and potential risks of operations of the licensee, as determined by the Commission and (ii) indemnify and hold harmless Railway and the Commission as to any Loss arising out of or related to licensee's operations, (e) do not violate any FRA or STB rules or regulations, and (f) require the licensee to comply with all of Railway's permitting and safety protocols and procedures. The Commission will ensure that any third-party licensees under this section have obtained all necessary licensure and certification, not limited to FRA safety compliance certifications, to be present on railroad property and perform any work or other function or job scope that the licensee desires to perform thereupon.

2.4.1.2. If Railway constructs capital improvements to the portion of the Watsonville Branch Line Freight Easement Property and Railroad Facilities used by a third party licensee, the Commission shall promptly and reasonably determine (i) (a) the benefit of such improvements to such licensee or (b) the diminution of value to such improvements for Railway, (ii) the apportionment of benefit or loss for such improvements between Railway and such licensee, and (iii) the appropriate amortization period for such improvements (for capital improvements the Commission shall make such determination concurrently with its approval of such capital improvements pursuant to Section 6.2). The Commission's contract with such licensee will (i) require the licensee to pay amounts due within 30 calendar days following receipt of written notice from

Railway and (ii) name Railway as a third-party beneficiary with rights of enforcement. As used in this Agreement, the term "capital improvement" means any improvement or repair that is subject to the capital depreciation rules of the Internal Revenue Service.

2.4.1.3. Each third-party licensee's proportionate share of Railway's costs shall be calculated in advance by Railway (based on the prior year's maintenance and repair costs plus any reasonably anticipated extraordinary maintenance and repair costs, and the parties' relative need or usage during the licensee's operating season) on a car-mile basis as to the portion of the Watsonville Branch Line Freight Easement Property and Railroad Facilities used by such licensee. (As used in this subsection, "repair costs" refers to the cost of repairs that maintain property in good operating condition and not to repairs that are "capital improvements," which are dealt with in Subsection 2.4.1.5.) Such licensee shall pay its proportionate share of costs monthly in advance during the months of the licensee's operations. Railway shall at the end of each calendar month reconcile the amounts paid to the actual costs incurred, and the licensee shall pay to Railway any outstanding dollar amount of cost over and above the amount paid to Railway. The Commission's contract with such licensee will (i) provide that if the actual costs exceed the amount charged to such licensee, such licensee will, within ten (10) calendar days following receipt of written notice of such reconciliation from Railway pay the additional amount to Railway and (ii) name Railway as a third-party beneficiary with rights of enforcement. If the actual costs are less than the amount charged to such licensee, Railway will within 30 calendar days following such reconciliation refund the balance to such licensee.

Railway shall have the right to review any proposed investment or expenditure to be funded by Railway, not limited to capital improvements that accrue, in sum or in part, to any third-party licensee and/or such licensee's use of or presence on the Watsonville Branch Line Freight Easement Property and the Railroad Facilities and determine whether such improvement is consistent with Railway's continuing financial health and business operation before being required to expend or invest any funds, materials, labor, or other resource toward the same.

- 2.4.1.4. The Commission or its designee shall have the right to review, obtain, and copy all books, records, computer records, accounts, documentation and any other materials (collectively "Records") pertaining to Railway's costs that are subject to apportionment under this section, including any Records in the possession of any subcontractors, for monitoring, auditing, or otherwise verifying said costs. Railway agrees to provide the Commission or its designees with any Records requested for this purpose and shall permit the Commission or its designees access to its premises, upon reasonable notice, during normal business hours, for the purpose of inspecting and copying such Records. Railway further agrees to maintain such Records for a period of three years. The Commission acknowledges and agrees that these Records constitute Railway's confidential information and shall not be disclosed to any third-party without Railway's prior written approval, except as otherwise required by applicable law.
- 2.4.1.5. The Commission, may elect to require a lower level of liability insurance coverage for the licensee than the level of coverage then required of Railway under Section 9, provided that Railway

reasonably concurs with the Commission that the level of operations of a licensee providing a lower level of liability coverage than required of Railway under Section 9 justifies the reduced coverage.

2.4.1.6. Railway will reasonably cooperate with any third party holding rights to use the Property, including, without limitation, any third-party licensee seeking to secure the necessary certification or qualification required by applicable law to operate on the Railroad Facilities, provided such cooperation does not require any expense for or create any Loss to Railway.

2.4.1.7. In addition to all other rights of Commission under this Agreement, and notwithstanding anything to the contrary in this Agreement, the Commission reserves the right to use the Watsonville Branch Line Freight Easement Property and Railroad Facilities for special events. Such special events shall be subject to the provisions of Sections 6 and 7, provided that such special events will only be deemed to materially conflict with Freight Service if they operate during the same days and times of day, as Railway operations for Freight Service. The Commission will consult with Railway regarding Railway's willingness and ability to operate such special events.

Nothing in this paragraph shall preclude the Commission and Railway from negotiating arrangements for special events.

2.5. Temporary Rail Car Storage. Subject to the terms and conditions of this Agreement, Railway may undertake temporary rail car storage or repairs related to its own rail operations on the Railroad Facilities consistent with the provisions of Sections 2.5.1. For clarification, neither the staging of rail cars for unloading or loading in connection with transloading activities nor the staging of cars to provide service for businesses that have property abutting the Watsonville

Branch Line Property and/or the Railroad Facilities will be considered rail car storage hereunder. Similarly, Railway may store up to two locomotives from the outgoing operator in Santa Cruz County until such time as those locomotives are conveyed to another owner or are able to be transported to the other operating railroad in Santa Cruz County.

2.5.1. Unless otherwise expressly agreed by the Commission in writing, Railway will not (i) store more than 25 rail cars, or (ii) store rail cars in locations other than those approved by the Commission, (iii) store any rail car for more than two (2) months, or (iv) store any rail cars in locations that would interfere with Railway's obligations to provide Freight Service. Absent the Commission's prior written consent, which consent may be withheld in the Commission's sole discretion, Railway may not store railcars that have been used to transport Hazardous Materials unless such railcars are empty or contain only residual amounts of Hazardous Materials.

## 2.6. Investigation.

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

2.6.2. In the event that any public use of the Property, or illegal activities by third parties, including trespassing, cause any significant economic or operational problems for Railway, Railway may terminate this Agreement, provided Railway provides at least ninety (90) calendar

days' prior written notice to Commission of the specific problem(s) and cause thereof, cooperates in good faith with Commission throughout such period to resolve such problem(s), and complies with the provisions of Section 8.3.

- 2.7. Warranties on Freight Easement Property. Other than as set forth herein, Railway shall take the Watsonville Branch Line Freight Easement Property without any express or implied warranties, including, but not limited to, any warranties of merchantability, fitness for a particular purpose or volume or quality of traffic on the Watsonville Branch Line Freight Easement Property, and subject to: (i) encroachments or other existing conditions, (ii) all existing ways, alleys, privileges, rights, appurtenances and servitudes, howsoever created, and (iii) the Commission's rights hereunder.
- 2.8. Release. Railway, for itself, its successors and assigns, to the maximum extent permitted by law, hereby waives, releases, remises, acquits and forever discharges the Commission, its officers, employees, agents, successors and assigns, from any Loss of Railway in any way arising out of, or connected with, the known or unknown, or existing physical or environmental condition of the Watsonville Branch Line Freight Easement Property and related Railroad Facilities), or any federal, state, or local law, ordinance, rule or regulation applicable thereto. This release does not obligate Railway to remediate any known or unknown existing hazardous material on the Property. Railway's liability for such existing physical and environmental conditions shall be as set forth in Sections 14 and 16 hereof.
- 2.8.1. Each Party hereby grants to the other Party, on behalf of any insurer providing property, general liability, or automobile liability insurance to either Railway or Commission with respect to the operations under this Agreement, a waiver of any right to subrogation which any such insurer of a Party may acquire against the other Party by virtue of the payment of any loss under such insurance.
- 2.8.2. If any Loss described in Section 2.8 is caused by a third

party under contract with the Commission, the Commission shall, at its option, (i) pursue any claim it may have against the third-party contractor, or (ii) assign to Railway any such claim, provided that Railway shall not be obligated to pursue such claim. However, Railway shall not be restricted from pursuing any claim of its own against any third-party person or entity causing Loss, harm, or damage to Railway or its employees, owners, contractors, property, or equipment. Any amounts recovered as a result of any claim brought by the Commission or assigned by the Commission to Railway shall, to the extent they exceed any fees and costs incurred in pursuing such claim, be used to repair or replace any of the following that are damaged or destroyed in connection with the subject Loss:

2.8.2.1. First, Watsonville Branch Line Freight Easement Property and related Railroad Facilities;

2.8.2.2. Then, railroad equipment.

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

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

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

### **3. Limitation and Subordination of Rights Granted**

3.1. Commission's Use of Property. The foregoing granted rights are subject and subordinate to the Commission's prior and continuing right to use and maintain the Property and the Watsonville Branch Line Property including the Watsonville Branch Line Freight Easement Property for any purpose that is not inconsistent with this Agreement. Without limiting the generality of the foregoing, the Commission may construct, maintain, repair, renew, use, operate, change, modify or relocate public projects of any kind (including but not limited to a trail consistent with the Monterey Bay Sanctuary Scenic Trail (MBSST) Network Final Master Plan), railroad tracks, signals, communication equipment, fiber optics, pipelines, or other facilities upon, along, or across any or all of the Property and Watsonville Branch Line Property and the Watsonville Branch Line Freight Easement Property, all or any of which the Commission may freely do at any time or times without liability to Railway for compensation or damages; provided, however, that the Commission may not materially interfere with Railway's rights and operations under this Agreement or Railway's Freight Service rights and obligations under federal law or under the Watsonville Branch Line Freight Easement, unless first approved by the STB; and provided, further, that the Commission shall to the extent possible notify Railway as soon as practicable of any such planned or actual interference and provided that the Commission takes all practicable measures to minimize any such interference. Railway shall reasonably cooperate with the Commission in implementing the foregoing uses of the Property and the Watsonville Branch Line Property and the Watsonville Branch Line Freight Easement Property. If the Commission or its designee requests Railway's reasonable assistance to transport materials or to perform other transportation or construction services for public projects, Railway will provide such assistance at rates reasonably to be determined between the parties. Any subcontractors of the Commission or other third-parties granted entry by the Commission onto the Watsonville Branch Line Property and / or the Watsonville Branch Line Freight Easement Property ("visitors") shall be required to comply with Railway's FRA safety plans and standard

permitting protocols and procedures. Railway will reasonably cooperate with such visitors to assist in the visitors' understanding of the same.

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

shall become a Railway Agreement under Sections 4.2 and 4.3), or by the PUC pursuant to Public Utilities Code Section 1202, *et seq.* The Commission understands and agrees that Railway's skills and abilities are related to rail construction, maintenance, and repair, and not to asphalt paving, concrete, or other traditional roadway construction, maintenance, or repair. Given this, if any at-grade public crossing project requires repair, maintenance, construction, or modification of the roadway itself, Railway, at no cost or expense to itself, will reasonably cooperate with the Commission and other interested government entities to select a contractor or subcontractor operating in California to perform roadway, asphalt, or concrete functions.

#### **4. Assignment of Certain Contracts and Agreements**

4.1. Upon approval of Railway to operate the Watsonville Branch Line Freight Easement by the STB, the current operator will assign to Railway, certain agreements concerning the operation of the related Railroad Facilities, including all track agreements, grade crossing agreements, and other operating agreements set forth in Exhibit C hereto (all such agreements hereinafter referred to as the "Railway Agreements"), and (ii) to the Commission, all other agreements relating to the Property including the Watsonville Branch Line Property, including all easements, licenses, and leases (all such agreements hereinafter referred to as the "Commission Agreements"). For any assigned Railway Agreements that grant third-party rights of access to, or use of, the Watsonville Branch Line Freight Easement or related Railroad Facilities, Railway will instruct the holders of such agreements to name the Commission as an additional insured on their insurance policies and provide copies of such agreements to the Commission.

4.2. Subject to the provisions of Section 2.3, which prohibit material interference with Railway's Freight Service rights and obligations under federal law or under the Watsonville Branch Line Freight Easement, unless first approved by the STB, any new Railway Agreement granting third-party rights of access to, or use of, the Watsonville Branch Line Freight Easement or related Railroad Facilities, or contemplating alterations thereto, is subject to the Commission's prior

written consent. Such Railway Agreements will be documented by Railway using forms approved by the Commission, which forms shall, among other things, include provisions indemnifying the Commission and holding it harmless from any Loss in connection with the exercise of rights under such agreements, and the construction, maintenance, or operation, of any facilities constructed in connection with such agreements to the extent that such agreements are reviewed and edited by Railway, name Railway as a party, and are executed by Railway's signature.

- 4.3. Railway is not, without the Commission's prior written consent (subject to the provisions of Section 2.3, which prohibit material interference with Railway's Freight Service rights and obligations under federal law or under the Watsonville Branch Line Freight Easement, unless first approved by the STB), to execute any new Railway Agreements affecting the Watsonville Branch Line Freight Easement Property or related Railroad Facilities for a term exceeding the term of this Agreement.

Railway is not, without the Commission's prior written consent, to terminate or modify any Railway Agreement granting third-party rights of access to, or use of, the Watsonville Branch Line Freight Easement or related Railroad Facilities, or contemplating alterations thereto.

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

### **5.1. Reserved.**

### **5.2. Maintenance of Watsonville Branch Line Freight Easement Property and Railroad Facilities.**

5.2.1. Watsonville Branch Line Freight Easement Property and Related Railroad Facilities. Railway, at its expense, shall keep the Watsonville Branch Line Freight Easement Property and related Railroad Facilities used by Railway (including occasional use, or use for rail car storage or lay down space) in good repair and in a good and safe condition in conformity

with applicable law or any Railway Agreement, and in substantially the same condition provided by the Commission. In the event Railway fails to meet this obligation, the Commission has the right but no obligation to correct or cause the correction of the deficiency, after no less than ten (10) calendar days' written notice to Railway (except in an emergency, whereupon no notice is required) and, if Railway does not correct the deficiency within ten (10) calendar days, the Commission may bill the Railway and the Railway shall pay the actual cost of the correction within 30 calendar days.

5.2.2. Weeds, Trash, Drainage and Graffiti. The parties agree that Railway shall be responsible for: (i) drainage and culvert maintenance and clearance on the entire Watsonville Branch Line Property unless a third person or entity is contractually responsible for such maintenance and clearance, and (ii) weed abatement, vegetation management, and trash collection over the Watsonville Branch Line Freight Easement Property as required by applicable law and in substantially the same condition provided by the Commission. If the Commission observes a condition that requires maintenance under these requirements or applicable law, Commission will notify Railway through a maintenance request. Railway shall resolve maintenance requests from the Commission within 30 calendar days unless contested in good faith by the Railway. In the event Railway contests a maintenance request from the Commission, the request shall be submitted for resolution to the Coordination Committee pursuant to Section 11 and, if no resolution is met, the dispute may be submitted to mediation pursuant to Section 20. In the event Railway fails to meet an uncontested obligation, the Commission has the right but no obligation to correct or cause the correction of the deficiency, after no less than ten (10) calendar days' written notice to Railway (except in an emergency, whereupon no notice is required) and, if Railway does not correct the deficiency within ten (10) calendar days, the Commission may bill the Railway and the Railway shall

pay the actual cost of the correction within 30 calendar days. Railway's obligation to pay shall be secured by the security provided pursuant to Section 5.2.7. The Commission grants Railway a license to enter all portions of the Watsonville Branch Line Property as necessary to perform such maintenance; Railway shall be required to repair any damage caused as the result of Railway's performance of any such maintenance. Except as required by applicable law, Railway shall not be responsible for the prevention, removal, or abatement of graffiti wherever it may occur. Railway shall also not be responsible for drainage maintenance, weed abatement, vegetation management, or trash collection related to any construction by the Commission (except for Railroad Facilities that Railway is entitled to use), or necessitated by the actions of any third party authorized by the Commission to be on the Watsonville Branch Line Property, or caused by any actions, omissions, or situations off or outside of the Watsonville Branch Line Property, except to the extent caused by Railway.

5.2.3. Slopes, Trees and Other Conditions outside of Watsonville Branch Line Freight Easement Property.

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

However, this section shall not apply to any claims to the extent they result from the negligence or willful misconduct of the Commission or its officers, directors, employees, agents, contractors, or a third party under contract with the Commission, in which case Railway's exclusive remedies are those set forth in Section 2.8.2, 8.3, and 14.2.

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

5.2.5. Concurrently with the execution of this Agreement, the required parties shall execute and deliver to the FRA a written notice of the assignment of track inspection and maintenance responsibilities, and bridge safety management responsibilities, to Railway in accordance with 49 CFR § 213.5(c) and 49 CFR § 237.3. The notice

of assignment shall attach a copy of this Agreement.

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

5.2.7. Security. Railway shall provide a performance bond or alternative security acceptable to the Commission guaranteeing its financial responsibility for the performance of its obligations to provide maintenance of the Watsonville Branch Line Freight Easement Property and related Railroad Facilities under Section 5.2 and pay all License Fees due under Section 7, in an amount no less than \$160,000, granting the Commission rights as an obligee under the bond or alternative security to cause the performance of these obligations in the event of Railway's failure to do so, after any applicable notice and cure period under the express terms of this Agreement. The exercise of its rights under the bond or alternative security shall not in any way limit the rights of the Commission to terminate this Agreement or any other rights or remedies hereunder or under applicable law.

5.3. Ownership of Track Materials. All track materials installed by Railway as part of the Railroad Facilities shall be of equal or better quality than those track materials existing at the time of execution of this Agreement, or after completion of rehabilitation and repair projects by the Commission, and shall become the Commission's property. All materials removed by Railway from the Railroad Facilities and replaced

as part of maintenance, repairs, or capital improvements shall, if removed and replaced at Railway's expense, become the property of Railway. Railway shall not, without the prior written approval of Commission, remove track materials or other improvements from the Property unless (i) they are replaced as provided in this section; or (ii) their removal is required by law, ordinance, or government regulation and any law, ordinance, or government regulation prohibits their replacement. Railway shall keep a written record of track materials and other improvements removed from, or installed upon, the Watsonville Branch Line Property and shall provide an updated copy of the record to the Commission on or before the end of each calendar quarter.

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

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

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

specific agreement with the Commission.

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

5.5. Responsibility for Repair or Replacement.

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

5.5.2. Damage Caused by Commission. Railway will not be responsible to repair or replace any damage to the Watsonville Branch Line Freight Easement Property or Railroad Facilities caused by the Commission, its officers, directors, employees, agents, or contractors, or any other person or entity acting on the Commission's behalf or at the Commission's instruction.

5.5.3. Damage Caused by Acts of God or Other Factors beyond Railway's Control. If any portion of the Watsonville Branch Line Freight Easement Property or the related Railroad Facilities are damaged or destroyed by flood, fire, civil disturbance, earthquake, earth movement, storm, sabotage, act of God, terrorism, accident or any other event beyond Railway's reasonable control, including damage or destruction caused by third parties, even if said damage or destruction originates outside of the Freight Easement Property, then Railway may (but, except to the extent covered by insurance required under this Agreement, shall not be required to) at no cost or expense to the Commission, (a) repair, or cause to be repaired, the damaged or destroyed portion of the Watsonville Branch Line Freight Easement Property or related Railroad Facilities; or (b) replace, or cause to be replaced, such portion of the Watsonville Branch Line Freight Easement Property or the Railroad Facilities. In the event Railway does not elect to repair or replace the damaged or destroyed portion of the Watsonville Branch

Line Freight Easement Property or Railroad Facilities, Railway shall reasonably cooperate with the Commission to seek funding and cause the repair or replacement of the damaged or destroyed Railroad Facilities, or otherwise to suspend or abandon (if and as permitted by the STB) Freight Service over such portion of the Property as the parties mutually agree is necessitated by the damage or destruction.

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

### **6.1. By the Commission.**

6.1.1. The license herein granted is subject to the Commission's needs and requirements to improve and use the Watsonville Branch Line Property. Subject to Railway's rights under this Agreement, the Commission, at its sole cost and expense, may add to or remove any portion of the Railroad Facilities, or change or relocate them to new locations as reasonably designated by the Commission, whenever, in the furtherance of the Commission's needs and requirements, the Commission finds such action to be necessary.

6.1.2. In the course of performing such work, the Commission may not materially reduce, or otherwise materially interfere with, Railway's rights and operations under this Agreement or Railway's Freight Service rights and obligations under federal law or rights under the Watsonville Branch Line Freight Easement, unless first approved by the STB. The Commission shall to the extent possible notify Railway as soon as practicable of any such planned or actual interference and take all practicable measures to minimize any such interference.

6.1.3. Railway shall, in such cases, have the first right to provide the Commission with a fixed-price quote for performing any related work, and the Commission shall have the option of accepting Railway's quote and having Railway perform the work, performing the work itself, or having another qualified contractor perform

such work. If the Commission selects a third-party contractor, the contractor shall execute Railway's Right of Entry Agreement (a copy of which is attached as Exhibit D) Operator is responsible for executing and administering all Right-of-Entry permits for the Watsonville Branch Line Property.

6.1.4. The Commission shall have the right to salvage, stockpile, or otherwise dispose of any Railroad Facilities removed pursuant to this section; provided, however, that if the removed Railroad Facilities are reusable elsewhere on the Freight Easement Property, then Railway shall have the right to so reuse them. Any Railroad Facilities not so reused on the Watsonville Branch Line Freight Easement Property shall be disposed of or otherwise removed at the Commission's expense.

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

6.2. By Railway. Railway may, at its cost and expense, modify or improve the Watsonville Branch Line Freight Easement Property and Railroad Facilities as needed to accommodate its Freight Service; provided, however, that Railway first obtains the Commission's written approval of Railway's plans for such modifications and improvements. Subject to the provisions of Section 2.3, which prohibit material interference with Railway's Freight Service rights and obligations under federal law, or rights under the Watsonville Branch Line Freight Easement, unless first approved by the STB, Railway's modification or improvement of the Watsonville Branch Line Freight Easement Property and Railroad Facilities will be coordinated with existing or future legal public uses of the Watsonville Branch Line Property that the Commission may authorize. Railway may, upon the termination of this Agreement or upon the abandonment of any applicable section of the Watsonville

Branch Line Freight Easement Property or portion of the Railroad Facilities, remove any modifications or improvements to such Watsonville Branch Line Freight Easement Property or Railroad Facilities that were paid for by Railway, that do not constitute any repair or replacement to such Watsonville Branch Line Freight Easement Property or related Railroad Facilities, and that have not become fixtures to such Watsonville Branch Line Freight Easement Property or related Railroad Facilities.

- 6.3. The Commission understands that Railway may require locations outside of the Watsonville Branch Line Freight Easement Property at which to store and maintain equipment and materials necessary for Railway's Freight Operations. The parties agree that Railway will need to identify and construct such additional maintenance and storage locations on the Watsonville Branch Line Property, which Railway may do as needed, subject to applicable law and the Commission's prior written consent (subject to the provisions of Section 2.3, which prohibit material interference with Railway's Freight Service rights and obligations under federal law, unless first approved by the STB).
- 6.4. The terms, conditions, and stipulations expressed in this Agreement as to the Freight Easement Property and Railroad Facilities shall apply to the Watsonville Branch Line Freight Easement Property and Railroad Facilities as they may at any time be expanded, added to, modified, changed, or relocated.

## **7. License Fees**

- 7.1. For consideration of the rights granted under this Agreement, Railway shall pay the Commission the following fees as calculated on a quarterly basis: Railway shall pay to Commission a quarterly revenue share ("Revenue Share") of Ten Percent (10%) of all revenue received by Railway from Freight and Car Storage activities allowed pursuant to this Agreement and performed on the Watsonville Branch Line by Railway in excess of the first One Hundred Thousand Dollars (\$100,000.00) of revenue received by Railway from such activities each calendar year. Such Revenue Share shall be due and payable by Railway to Commission on the 28<sup>th</sup> day of the calendar month immediately following each calendar quarter for the revenue received by Railway in the previous

calendar quarter, beginning on the first quarter that Railway is operating at a profit in light of its expenditures as required under this agreement.

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

7.2. Railway shall, within 28 calendar days following the end of each calendar quarter, determine the amounts payable to the Commission arising from the preceding calendar quarter and shall provide the Commission with a statement describing all amounts due the Commission during the quarter. Railway shall also, upon reasonable request from the Commission, make available for inspection and copying all documents and receipts upon which such fees are based.

7.3. Subject to Section 7.1, Railway shall, within 28 calendar days following the end of each calendar quarter, pay the Commission all amounts due the Commission for the prior calendar quarter. Railway's obligation to pay license fees is specifically acknowledged to be secured by the security required under Section 5.2.7.

## **8. Term and Termination**

8.1. This Agreement shall become effective when fully executed and delivered to the parties in accordance with Section 26.4 and shall continue in full force and effect for a period of ten (10) years unless otherwise terminated as provided herein.

### **8.2. Termination:**

8.2.1. Default. If either Party fails to comply with the terms of this Agreement and such failure continues uncured for a period of 30 calendar days from receipt of written notice from the non-defaulting Party, the non-defaulting Party may forthwith terminate this Agreement by written notice without obligation to the defaulting Party.

Notwithstanding the foregoing, if such default cannot reasonably be cured within 30 calendar days after such notice, the non-defaulting Party may not terminate this Agreement provided that the defaulting Party begins to cure the default within the 30-day notice period and proceeds diligently to complete such cure.

8.2.2. Termination for Convenience. Either party may terminate this Agreement without cause upon one-hundred and eighty (180) calendar days' notice and such termination shall not take effect until the freight easement has been conveyed to the Commission or its designee common carrier approved by the STB. Railway shall have no continuing obligation to operate the Watsonville Branch Line Property and provide common carrier rail service after the expiration of the 180-day notice period. Upon such termination for convenience by either Party, all amounts then due and payable by one party to the other Party shall continue to be paid according to the payment terms in this Agreement. The Commission's right to terminate this Agreement for convenience shall be contingent upon and shall not accrue until such time as Railway has recovered its entire investment related to the Watsonville Branch Line

Property, based upon total actual costs and expenses incurred in furtherance of the purpose of this Agreement on a total cost of ownership and net present value basis ("Investment"). In the event that Railway responds to a proffered notice of termination for convenience from the Commission with a claim or assertion that Railway has not recovered its total Investment (and thus, that the Commission's right to terminate for convenience has not yet accrued), the Commission may reasonably request, and Railway will deliver within a reasonable time, a then-current financial statement from Railway showing Railway's total expenses incurred and revenue generated in furtherance of the purpose of this Agreement for the period from the Effective Date through the date of the Commission's proffered notice of termination for convenience. The time for Railway to recover its Investment shall not exceed the term of this Agreement.

8.2.3. In the event of a termination for convenience by the Commission, except as set forth in Section 8.2.3, Railway shall have no liability for expenses, costs, or fees related to the Commission's selection of a new operator, not limited to the triggering of any bond provisions under this Agreement, unless by its action, inaction, or omission, Railway deliberately impedes the transition of operations to such new operator.

8.2.4. Upon termination of this Agreement, whether through the expiration of the term or by the Parties as contemplated herein, in Section 8.2, Railway shall cooperate, at its expense, with the transfer or abandonment of Freight Service and the Watsonville Branch Line Freight Easement as requested by the Commission; provided, that no termination shall be effective unless and until the STB has approved such transfer or abandonment.

8.3. Abandonment. Railway may at any time, in its sole and absolute discretion, immediately and without any liability to the Commission (except as expressly provided herein, including but not limited to Section 8.5): (a) seek STB approval to abandon Freight Service over all or such portion of the Watsonville

Branch Line Property as Railway deems appropriate. In the event that Railway seeks to abandon Freight Service, Railway shall provide the Commission with 90 calendar days' advance notice of Railway's intention and shall, at its cost, cooperate with the Commission's efforts to take upon itself all Freight Service operations relating to the Watsonville Branch Line Property, to appoint another person or entity to do so, or to rail bank any portion of the Watsonville Branch Line Property as to which Railway intends to abandon Freight Service. No such abandonment, transfer of Freight Service operations, or rail banking, shall be effective unless and until the STB has issued its approval thereof.

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

8.3.2. To the extent the STB approves abandonment or transfer of Freight Service over all or any part of the Watsonville Branch Line Freight Easement Property or Railroad Facilities, this Agreement and any other rights and obligations of Railway to the Commission, shall, at the time of consummation of such abandonment or transfer, terminate with respect to any abandoned or transferred portions of the Watsonville Branch Line Freight Easement Property and Railroad Facilities. Upon the effective date of such abandonment, Railway shall (i) assign to the Commission or new operator, as applicable, any Railway Agreements affecting the abandoned or transferred portions of the Watsonville Branch Line Freight Easement Property and Railroad Facilities, (ii) quitclaim the abandoned portion of the Watsonville Branch Line Freight Easement to the Commission or new operator, as applicable, and (iii) execute any additional documents reasonably necessary to effectuate the purpose and intent of this Agreement.

8.4. Upon the effective date of termination of this Agreement, Railway shall, if so requested by the Commission, (i) assign to the Commission all Railway Agreements, (ii) quitclaim the Watsonville Branch Line Freight Easement to the Commission, and (iii) execute any additional documents reasonably

necessary to effectuate the purpose and intent of this Agreement.

8.5. LIQUIDATED DAMAGES. The parties each acknowledge that, in the event Railway exercises its right to abandon Freight Service over the entirety of the Watsonville Branch Line Freight Easement Property and the Commission is unable, despite its reasonable efforts, to obtain a new operator to which Freight Service is transferred by the STB, then determining the resulting damages would be impracticable or extremely difficult, because the Commission has undertaken a commitment to operate Freight Service on the Freight Easement Property as a condition of receipt of funds for purchase of the Property. Therefore, the parties agree that, in the event Railway exercises its right to abandon Freight Service over the entirety of the Watsonville Branch Line Freight Easement Property without reasonably facilitating the location of and transition to a new operator, and the Commission is unable, despite its reasonable efforts, to obtain a new operator to which Freight Service is transferred by the STB, this shall be included as a failure to perform condition to trigger the Commission's rights under the performance bond described in Section 5.2.7 hereinabove. Notwithstanding the foregoing, Railway will not be liable for any liquidated damages in abandoning Freight Service in connection with (i) the expiration of the term of this Agreement, or (ii) the termination of this Agreement by the Commission pursuant to Section 8.2.1 or 8.2.3. In the event the Railway exercises its right to abandon Freight Service and has paid the amount due to the Commission pursuant to this Section 8.5, Commission shall not be entitled to any further damages of any kind, whether direct, special or consequential.

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

9.1. Railway Insurance: Railway shall, provide and procure at its own

cost and expense Railroad Liability insurance and Worker's Compensation insurance (to the extent required by law).

9.1.1. The liability insurance policy providing bodily injury, including death, personal injury and property damage coverage shall have a limit of not less than those amounts required for interchange by UP as the connecting carrier. The self-insured retention may not exceed \$250,000 (as that value is periodically adjusted by the Consumer Price Index from and after the effective date of this Agreement). Prior to the execution of this Agreement, Railway shall provide the Commission with a certificate of insurance on a standard ACORD form, or other form reasonably acceptable to the Commission, substantiating the required coverages and limits set forth herein. Upon request by the Commission, Railway shall immediately furnish a complete copy of any policy required hereunder, including all endorsements, with said copy certified by the insurance company to be a true and correct copy of the original policy.

9.1.2. The liability insurance policy must include the Commission as an "additional insured" and the property insurance policy shall name the Commission as a loss payee.

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

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

primary, and any insurance or self-insurance maintained by Railway, its directors, officers, employees, or agents, shall be in excess of Commission's insurance and shall not contribute to it.

9.1.3.2. Railway shall comply with all reporting or other provisions of the policies, as necessary to maintain coverage required hereunder, including coverage to be provided to the Commission, its directors, officers, employees, or agents. Railway shall notify Commission in writing of any claims submitted relating to the Property under any policy required under this Agreement.

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

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

9.1.4. Workers' Compensation The Railway represents and the Commission understands that all certified railroad operators and railroad workers are exempt by federal preemption from state workers' compensation laws, are subject to the Federal Employers Liability Act ("FELA"), and are not covered by Worker's Compensation insurance.

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

the required insurance coverage.

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

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

If to Railway:

Attn: Robert J. Riley, CEO  
2747 Pass Road  
Biloxi, MS 39531

Email: Robert.Riley@rockislandrail.com

If to Commission:

Executive Director  
Santa Cruz County Regional Transportation  
Commission  
1101 Pacific Avenue Suite 250  
Santa Cruz, CA 95060  
Fax: 831-460-3215  
Email: info@sccrtc.org

**11. Coordination Committee.**

11.1. In order to ensure the safety and efficiency of all operations on the Property, the parties shall establish a Coordination Committee. The Coordination Committee shall be composed of one representative from each party (and any other persons or entities as the parties may mutually agree) and shall (a) serve as a forum to coordinate the parties' activities and resolve questions or disputes (but only to the extent the parties' representatives have been so authorized), and (b) be responsible to make recommendations to the parties. The Coordination Committee shall meet on a regular schedule to be determined by the parties, but may be convened for special

meetings by either party upon ten (10) calendar days' written notice to the other party. Following each meeting, the Coordination Committee shall deliver written minutes of such meeting to Railway and the Commission.

11.2. Railway shall comply with all reasonable requests of the Commission for representatives of Railway to attend public meetings organized by the Commission to provide non-confidential information about Railway's operations under this Agreement. Such requests by the Commission must be made to Railway with reasonable lead time for Railway to arrange for travel and to hand off the job duties of its employees on the Coordination Committee to stand-in employees for the duration of travel to and attendance at such meetings.

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

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

Watsonville Branch Line Property, the Watsonville Branch Line Freight Easement Property, or the Railroad Facilities.

#### **14. Indemnity**

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

14.2. The Commission shall indemnify, defend and hold harmless Railway from any Loss to the extent caused by or arising from the negligence or willful misconduct of the Commission, its officers, agents, employees, contractors, invitees, visitors, and third-party licensees. For purposes of this Section 14.2 only, the term "Loss" is limited to any loss, damage, claim, demand, action, cause of action, penalty, fine, payment, cost, liability, or expense of whatsoever nature, including court costs and reasonable attorneys' fees, resulting from or related to: (a) any injury to or death of any person, including officers, agents, and employees of the Commission or Railway; or (b) damage to or loss or destruction of Railway's equipment, rolling stock and any items being transported on behalf of Railway's customers. Any Loss related to damage to or destruction of the Watsonville Branch Line Freight Easement Property or Railroad related Facilities is subject to the provisions of Section 2.8. The provisions of this section shall survive the termination or expiration of the term of this Agreement for a period of two years.

14.3. Each party's obligations to the other under Sections 14.1 and 14.2 respectively are subject to the following conditions: (a) the party seeking indemnification (the "Indemnified Party")

shall, following Indemnified Party's discovery of a Loss for which Indemnified Party seeks indemnification, or of circumstances that may reasonably result in such a Loss, promptly deliver notice to the other party (the "Indemnifying Party") describing such Loss or circumstances, (b) the Indemnified Party shall make reasonable efforts to mitigate the effect of such Loss or circumstances, (c) the Indemnified Party shall give the Indemnifying Party the opportunity to control the defense against such Loss, and shall not compromise or settle such Loss without the Indemnifying Party's prior written consent, and (d) in no event shall either party be liable to the other for consequential, incidental, indirect or punitive damages, even if notified of the possibility of such damages, unless such damages are included in any third-party claim against the Indemnified Party.

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

**16. Hazardous Substances and Wastes**

- 16.1. Railway shall not be liable or responsible for any Hazardous Materials present on, in, or under the Watsonville Branch Line Property, or other problems relating to the Watsonville Branch Line Property, prior to the commencement date of its operations on the Freight Watsonville Branch Line Easement Property. Notwithstanding anything to the contrary, Railway's liability and indemnification, release, waiver, remission,

acquittal, and discharge of the Commission under this Agreement for Hazardous Materials and/or Environmental liability are strictly limited to the extent that any such condition(s): (i) are initiated by; (ii) arise directly from; and (iii) are proximately caused by the acts or omissions of Railway.

- 16.2. Railway shall comply with all applicable laws in its occupancy, operation, and maintenance of the Watsonville Branch Line Freight Easement Property and Railroad Facilities. Without first obtaining the Commission's written permission (which may be withheld in the Commission's sole reasonable discretion), Railway shall not treat or dispose of Hazardous Materials on the Watsonville Branch Line Property including the Watsonville Branch Line Freight Easement Property or Railroad Facilities. Railway shall not release any Hazardous Materials on or at the Property or Freight Easement Property, including the Watsonville Branch Line Property and the Watsonville Branch Line Freight Easement Property or Railroad Facilities, including through any drainage or sewer systems. To the extent that Railway is liable under Section 16.1 hereinabove, Railway assumes all responsibility for the investigation and cleanup of any such release or exacerbation by Railway and shall indemnify, defend, and hold harmless the Commission and its property, its officers, agents, and employees, for all costs, including reasonable environmental consultant and reasonable attorneys' fees, and claims resulting from or associated with any such release or exacerbation by Railway. Railway shall assume all responsibility for and shall indemnify, defend, and hold harmless Commission against all costs and claims associated with a release or leak of Hazardous Materials, or exacerbation of pre-existing Hazardous Materials, occurring between the commencement date of its operations on the Watsonville Branch Line Freight Easement Property, and the expiration or sooner termination of this Agreement, and related to Railway's use of the Watsonville Branch Line Freight Easement Property and Railroad Facilities, unless to the extent caused by the negligence or misconduct of the Commission, its officers, employees, agents, contractors, invitees, visitors, or third-party licensees.
- 16.3. Railway shall not install any above-ground or underground storage tanks without the Commission's prior written consent,

which consent may be granted or withheld in Commission's sole and absolute discretion. If such consent is granted, Railway shall obtain any necessary permits, notify the proper authorities, and provide the Commission with copies of any such permits and notifications. Railway shall assume all responsibility for and shall indemnify, defend, and hold harmless the Commission against all costs and claims associated with a release or leak of the contents of any such tank occurring between the commencement date of its operations on the Watsonville Branch Line Freight Easement Property, and the expiration or termination of this Agreement, unless such event was caused by the sole negligence or willful misconduct of the Commission, its officers, employees, or agents.

- 16.4. The Commission understands and acknowledges that the regular operation and maintenance of railroad equipment and tracks involve the storage, use, and release of *de minimus* amounts of Hazardous Materials, including petroleum products, creosote, and chromated copper arsenate. The Commission agrees that Railway shall not be liable or responsible for the *de minimus* release of any such Hazardous Materials, unless (i) such release violates applicable law, or (ii) the Commission is otherwise entitled to defense and indemnity under Section 14.1.
- 16.5. If Railway knows that any Hazardous Materials have come to be located under or about the Watsonville Branch Line Freight Easement Property or Railroad Facilities, other than as specifically provided herein or as previously consented to in writing by the Commission, Railway shall immediately give the Commission written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to or received from any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Materials.
- 16.6. This Section 16 shall continue in full force and effect regardless of whether this Agreement is terminated pursuant to any other provision or the Watsonville Branch Line Freight Easement Property and Railroad Facilities are abandoned and vacated by

Railway.

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

a person with at least one-year of exposure to the concepts of railroad operations and maintenance.

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

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

20.4. If any dispute between the Parties hereunder cannot be resolved through non-binding mediation, the dispute shall be referred to binding arbitration in Santa Cruz County, California, to be presided over by a single neutral and detached arbitrator. Each Party shall initially bear one-half of the arbitration costs. If the Parties cannot agree on an arbitrator, the Parties shall refer the case to the state courts located in Santa Cruz County, California to appoint an arbitrator. For any disputes resolved by binding arbitration hereunder, the prevailing party shall recover from the non-prevailing Party its reasonable costs and fees, not limited to attorneys' fees, arbitration costs, mediation costs, court fees, and other similar administrative costs and fees in addition to any award of damages or otherwise at law and/or in equity.

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

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

and related to the subject matter contained herein shall be ineffective to modify this Agreement in any respect unless in writing and signed.

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

As soon as reasonably practicable following the execution of this Agreement, Railway and its strategic partner in California will form a new California entity to assume Railway's rights, duties, and obligations under this agreement. Upon approval of the entity formation by the State of California, such new entity will execute an agreement with Commission that is exactly the same in the form and substance of this Agreement. Railway and Commission agree that: (i) neither Party has any substantial interest in having Railway directly perform any duties or obligations under this Agreement in the event such assignment occurs; (ii) any such entity formation and assignment by Railway will not change, alter, impede, impair, decrease the value of, or otherwise affect, whether materially or otherwise, the risk upon Commission or any right, duty, benefit, obligation, or burden of either Party or owed by either Party to the other Party under or created by this Agreement; and (iii) no purported unique skills or knowledge of Railway is/are so integral to the rights, duties, benefits, or obligations hereunder that this assignment by Railway would affect the value or performance thereof or otherwise disadvantage either Party in any way; and (iv) no relationship of trust between the Parties will be changed, altered, impeded, impaired, decreased in value, or otherwise affected in any way by such assignment.

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

**25. Venue and Choice of Law**

25.1. Any and all disputes, controversies, or claims arising out of, relating to, or in connection with this Agreement shall be instituted and maintained in a competent court in Santa Cruz County, California, with regard to claims arising under

California law, and Santa Clara County, with regard to claims arising under Federal law, and the parties hereby consent to the jurisdiction of any such court and to service of process by any means authorized under California law.

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

## **26. Miscellaneous**

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

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

26.3. Each party acknowledges that the officer executing this Agreement has the authority to enter into this Agreement on behalf of the party and in so doing is authorized to bind the

party on whose behalf he is signing, to the terms and conditions of this Agreement.

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

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

CHICAGO ROCK ISLAND AND PACIFIC RAILROAD, LLC



Robert Riley (May 22, 2026 14:09:52 CDT)

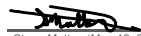
By: Robert J. Riley, CEO

SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION



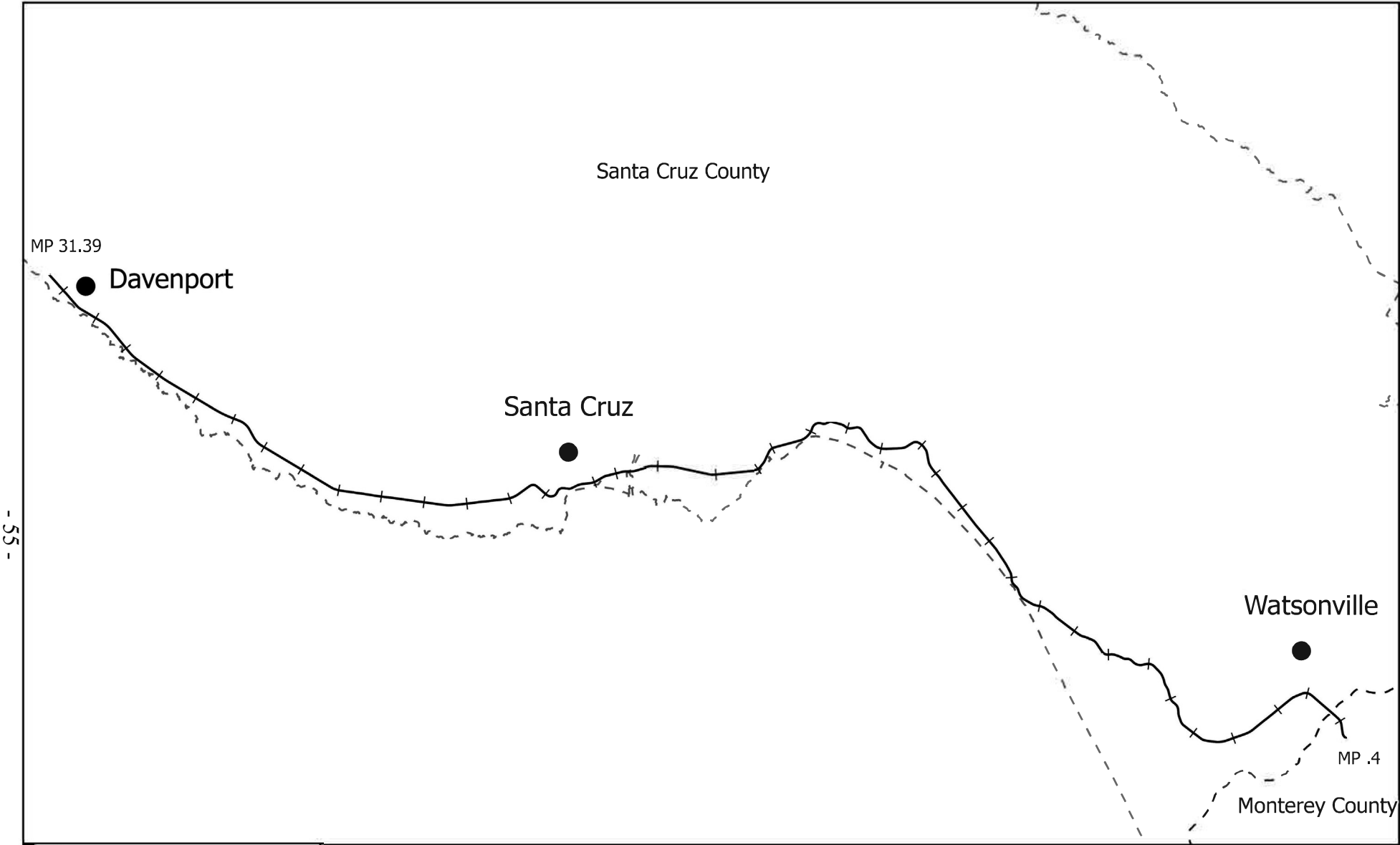
By: Sarah Christensen, Executive Director

Approved as to form



Steve Mattas (May 19, 2026 14:52:59 PDT)

By: Steve Mattas, RTC Legal Counsel

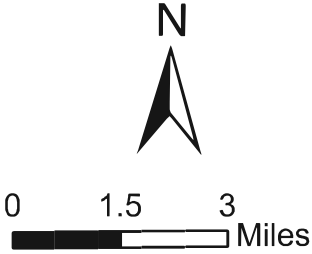


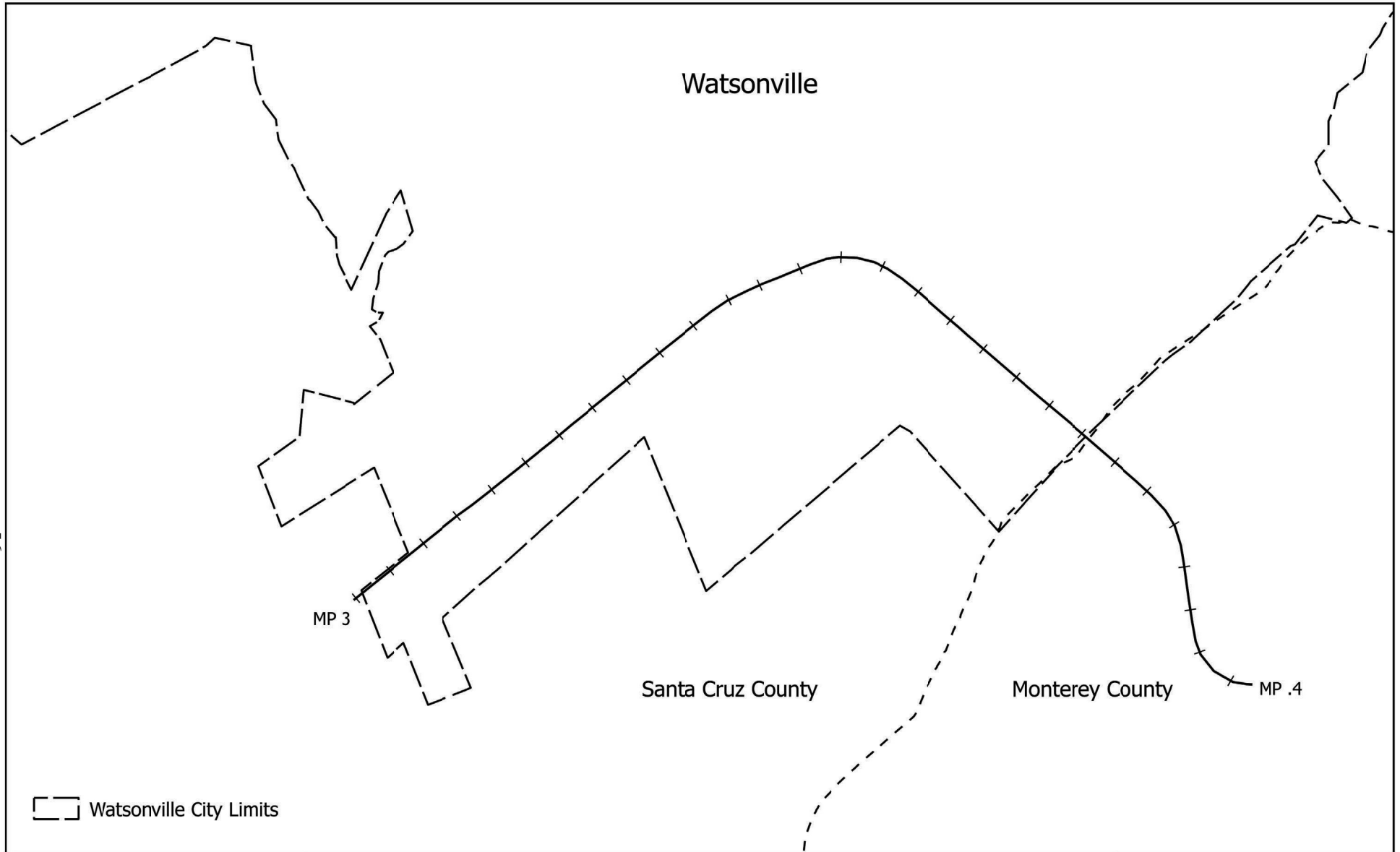
# Santa Cruz Branch Rail Line Property

EXHIBIT A: Shows the Santa Cruz Branch Rail Line Right of Way between approximately MP .4 and MP 31.39.

NAD 1983 StatePlane California III FIPS 0403 Feet

January 22, 2026





 Watsonville City Limits

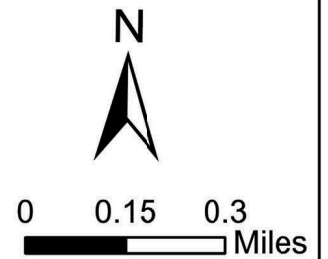


## Watsonville Branch Line Freight Easement Property

EXHIBIT B: Shows the Watsonville Branch Line Freight Easement Property between approximately MP .4 and MP 3

NAD 1983 StatePlane California III FIPS 0403 Feet

January 22, 2026



# EXHIBIT C

## RAILWAY AGREEMENTS

| PROJECT | AUDIT   | LEG STAT | PARTY NAME                                 | PURPOSE                          | COUNTY     | CITY            | ST | MP START | ANNUAL AMT | DISPOSITIO |
|---------|---------|----------|--------------------------------------------|----------------------------------|------------|-----------------|----|----------|------------|------------|
| 186878  | 207416  | Active   | CITY OF WATSONVILLE                        | Crossing - Public Roadway        | Santa Cruz | WATSONVILLE     | CA | 102.62   | \$0        | Assigned   |
| 231292  | 5194780 | Active   | RESEAR, ANTHONY P / PILO, MARY             | Crossing - Private Roadway       | Santa Cruz | WATSONVILLE     | CA | 102      | \$0        | Assigned   |
| 367101  | 207254  | Active   | MARTINELLI & COMPANY                       | Crossing - Private Roadway       |            | SYSTEM          | CA | 0        | \$119.41   | Assigned   |
| 666949  | 231783  | Active   | MONTEREY COUNTY                            | Warning Devices - Public Roadway | Monterey   | WATSONVILLE JCT | CA | 1.12     | \$         | Assigned   |
| 411066  | S002819 | Active   | BORCOVICH & DRAGOVICH COMPANY              | Track                            | Santa Cruz | WATSONVILLE     | CA |          | \$         | Assigned   |
| 411500  | S002518 | Active   | PAJARO VALLEY COLD STORAGE                 | Track                            | Santa Cruz | WATSONVILLE     | CA |          | \$         | Assigned   |
| 412474  | SPX7967 | Active   | ASSOCIATED OIL COMPANY                     | Track                            | Santa Cruz | WATSONVILLE     | CA |          | \$         | Assigned   |
| 412823  | S000771 | Active   | B PISTA                                    | Track                            | Santa Cruz | WATSONVILLE     | CA |          | \$         | Assigned   |
| 438233  | SPZ1662 | Active   | APPLE GROWERS COLD STORAGE CO              | Track                            | Santa Cruz | WATSONVILLE     | CA |          | \$         | Assigned   |
| 206269  | S032513 | Active   | COUCH DISTRIBUTING CO INC                  | Track: Industry Track Agreement  | Santa Cruz | WATSONVILLE     | CA | 103.1    | \$0        |            |
| 410634  | S015548 | Active   | DEL MAR FOOD PRODUCTS CORPORATION          | Track: Industry Track Agreement  | Santa Cruz | WATSONVILLE     | CA | 103.1    | \$         | Assigned   |
| 260304  | S708852 | Active   | CASCADE REFRIGERATED NORTHERN CALIF., INC. | Track: Track Lease (Non-Haz)     | Santa Cruz | WATSONVILLE     | CA | 102.01   | \$2,160    | Assigned   |

Railway Agreements List includes original Railway Agreements from Union Pacific acquisition that are applicable to the Watsonville Branch Line Freight Easement Property, and is subject to change based on additional information provided by current operator.

**EXHIBIT D**

**RAILWAYS RIGHT OF ENTRY AGREEMENT**

## EXHIBIT D

### **WAIVER AND RELEASE FROM LIABILITY**

Chicago Rock Island & Pacific Railroad LLC and / or one or more of its subsidiaries ("Railroad") has agreed to allow \_\_\_\_\_ ("Permittee") to temporarily enter upon certain real property, easement(s) and / or rights-of-way ("Premises") which are owned, operated, managed, and / or leased by Railroad, during daylight hours, between 7:00 AM and 7:00 PM CST, as provided in the Permit to be issued pursuant hereto. Permittee's privilege of entry or presence on the Premises is subject to Permittee doing so in accordance with the terms and conditions of this Waiver, said Permit, Railroad's Right of entry Insurance Requirements, all applicable Boring, Digging, and Drilling Riders, Agreement(s), and Railroad's Utility Accommodation Policy (collectively, the "Railroad Documents"). Such entry shall be solely for the purpose of the following:

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Permittee shall be permitted to walk upon the Premises, but he/she shall not place any vehicles or equipment upon the tracks, ties, ballast, or roadbed of Railroad. Permittee is further responsible for the entire cost of all repairs and remediation performed by Railroad or one of its contractors due to damages resulting from digging, drilling, and / or boring under the track(s) including but not limited to track undermining, washouts or other track damage and/or stability issues that may arise subsequent to Permittee's entry onto the Premises. For and in consideration of said privilege being extended to Permittee, which Permittee stipulates to be fair and adequate consideration for its compliance with the terms in the Railroad Documents, Permittee hereby agrees and warrants as follows:

1. Permittee hereby agrees, for itself, its heirs, administrators, executors, personal representatives, insurers, officers, directors, employees, agents, parents, subsidiaries, affiliated companies, contractors, subcontractors, successors and assigns (hereinafter collectively "Permittee"), to WAIVE, RELEASE, INDEMNIFY, HOLD HARMLESS, DEFEND, AND FOREVER DISCHARGE RAILROAD AND THE OWNER OF THE PREMISES, IF NOT RAILROAD, and their respective officers, directors, employees, agents, attorneys, insurers, parents, governing entities, subsidiaries, affiliates, lessors, lessees, contractors, subcontractors, successors and assigns (hereinafter collectively the "Railroad") of and from all claims, demands, liabilities, actions, causes of action, damages, suits, judgments, fines, charges, penalties, assessments, costs and expenses, of every kind and nature, including, but not limited to: costs related to environmental remediation, liability for death or injury to any and all persons, loss or damage to any and all property, contractual damages court costs, and reasonable attorney fees (hereinafter "Losses"), that arise in connection with Permittee's entry or presence on, in, or near the tracks, Premises, property, structures, equipment or facilities of Railroad, or while Permittee is otherwise engaged in the activity described hereinabove, regardless how remote or attenuated such connection may be, except to the extent such Loss is proximately caused by the gross negligence of Railroad. Permittee further waives any other right or claim he may have against Railroad arising out of or resulting from any accident; delay; derailment; collision; failure of any equipment, structure or facility; including, but not limited to, any rights arising under any theory of tort, strict liability, or otherwise. Permittee further agrees that the above and immediately foregoing WAIVER of claims against Railroad and the owner of the Premises shall apply regardless of whether such Loss is due in whole or in part to the negligence of Railroad or the owner of the Premises.
2. Permittee agrees that while on or in the vicinity of the Premises or Railroad's tracks or equipment, Permittee will not sell, distribute, possess or consume any alcoholic beverage, illegal or controlled substance, firearm, explosive, or other dangerous article. Permittee agrees to fully indemnify and hold harmless Railroad and the owner of the Premises against any and all Losses, including court costs and attorney fees, sustained by

## EXHIBIT D

Railroad or any crew member, passenger, spectator, or any other person or entity whatsoever, arising out of or resulting directly or indirectly from any activity by Permittee, or any negligent, intentional, or illegal act or omission Permittee commits while on or around Railroad's or the owner's tracks, property, Premises or equipment. Nothing in this Waiver shall be construed as creating establishing any relationship of buyer / seller; employer / employee; agent / fiduciary; contractor / client; or contractor / subcontractor between Railroad and Permittee.

3. In executing this Waiver, Permittee acknowledges that there are risks involved with railroad operation and the activity to be performed by Permittee, including, but not limited to: accidents, derailments, collisions, failure of equipment, fire, human negligence and other incidents which may or may not be foreseeable. Permittee acknowledges that there are risks associated with railroad rights-of-way, such as the Premises, including, but not limited to: splintered ties, sharp metal objects, uneven surfaces, noxious plants, biting and stinging insects, snakes, spiders, and other wildlife, trash, buried track material, etc. Permittee accepts the premises "AS IS, WHERE IS," and with all risks. Permittee expressly waives all right to assert any claim against Railroad and the owner of the Premises based on the condition of the Premises, other premises liability theory, and / or failure to warn Permittee of any danger. Permittee agrees that Railroad is affording Permittee this privilege purely as an accommodation of convenience to Permittee's business pursuits with third-party(ies), and not for any value, benefit or compensation for or from Railroad, and Permittee assumes all risk of Losses to Permittee, including but not limited to injury, death, and loss, damage or destruction of Permittee's property, while Permittee is on the Premises. Permittee understands and agrees that that Railroad nor the owner of the Premises receives any value or benefit of any kind, type, or nature whatsoever, whether direct or indirect, from Permittee's entry or presence on the Premises, and that Permittee's entry and presence on the Premises impose upon Railroad and the owner of the Premises a significant level of risk, and corresponding potential harm, Loss, liability, environmental impact, and other damages which arises directly from Railroad's agreement to grant Permittee the privilege of entry onto the Premises.
4. Permittee shall, at all times while on the Premises or the property of Railroad, have a current "Permit to be on Railroad Property," and Permittee acknowledges that failure to comply with the terms and conditions contained therein shall be grounds to terminate Permittee's right to be on the Premises or Railroad property, with or without notice or opportunity to correct or cure. Railroad reserves the right to revoke any permit issued in accordance herewith at Railroad's sole discretion, at any time, for any reason whatsoever, or for no reason at all, without providing justification or explanation of its reasoning to Permittee. Upon revocation of any permit issued hereunder, or at the direction of Railroad, Permittee shall immediately exit the Premises, and shall cause all of its personnel, contractors, subcontractors, vehicles, tools, and equipment to be exit the Premises. Permittee shall solely bear the full cost and risk of Losses associated with any partial work performed for and / or contractual liability to any third-party(ies) arising in connection with its exit from the premises, including but not limited to materials and consumables expended by Permittee.
5. Permittee agrees, warrants, represents, and covenants that its respective signatory(ies) hereto possess the full, actual, and absolute authority to legally bind Permittee to the terms of this Waiver. Any subsequent claim or assertion by Permittee that its signatory(ies) hereto lacked the authority to bind Permittee to the terms hereof shall be considered a material breach hereof, and such claim or assertion shall be understood to be: baseless, made in bad faith, null and void, and of no legal effect whatsoever. Moreover, if Permittee claims or asserts that its signatory(ies) hereto lack the authority to execute this Waiver and / or to bind Permittee to the terms hereof, Permittee shall be deemed to have admitted to all allegations asserted in any subsequent legal action or proceeding by Railroad or the owner of the Premises under this Waiver and to have admitted its liability for all damages, including punitive damages alleged therein, and shall waive its right to contest or deny the same in any proceeding arising from or in connection with such legal action or proceeding or this Waiver.

## EXHIBIT D

The terms and provisions of this Waiver shall survive the completion of the project described herein, and shall indefinitely remain in full force and effect. Permittee acknowledges that it has READ and fully understands this WAIVER and is executing it voluntarily for the purposes stated therein.

Dated: \_\_\_\_\_

“PERMITTEE”

“RAILROAD”

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Company: \_\_\_\_\_

Company: Chicago Rock Island & Pacific Railroad, LLC  
dba Rock Island Rail

## EXHIBIT D

### RIGHT OF ENTRY INSURANCE REQUIREMENTS

**Third party client entering property:** \_\_\_\_\_ (**"Visitor/Client"**) and **Chicago Rock Island & Pacific Railroad LLC and Its Subsidiaries ("Railroad")** hereby agree and covenant as follows: The Visitor/Client entering the property, and each and every Sub-contractor of the Visitor/Client, shall, at its sole expense, maintain the following insurance with insurance companies lawfully authorized to do business in the jurisdiction in which the property is located and furnish to Railroad Certificates of Insurance evidencing same. In addition, Visitor/Client is required to forward these Right of Entry Insurance Requirements ("Requirements") to the Visitor/Client's Insurance Agent/Broker for their review and approval.

**VISITOR/CLIENT UNDERSTANDS AND AGREES THAT THE SPECIFIED MINIMUM INSURANCE COVERAGE LEVELS BELOW ARE APPLICABLE ONLY TO SINGLE-POINT-OF-ENTRY ACCESS TO RAILROAD PROPERTY WHERE SURFACE-LEVEL ACTIVITIES OTHER THAN STRUCTURAL OR EARTH MOVING WORK ARE CONDUCTED BY THE VISITOR/CLIENT, AND PRESENCE BY THE VISITOR/CLIENT UPON RAILROAD PROPERTY WILL OCCUR NOT MORE THAN ONE HUNDRED FEET (100 FT.) FROM THE INITIAL POINT OF ENTRY. RAILROAD RESERVES THE RIGHT TO INCREASE OR DECREASE REQUIRED COVERAGE LEVELS ON A PER-ENTRY AND/OR PER-PROJECT BASIS TO MITIGATE PARTICULAR LEVEL(S) OF RISK ASSOCIATED WITH ANY ENTRY ONTO RAILROAD PROPERTY AND/OR ACTIVITIES CONDUCTED OR PROPOSED TO BE CONDUCTED THEREUPON. RISK-LEVEL AND THE CORRESPONDING REQUIRED INSURANCE COVERAGE AMOUNT(S) FOR OBTAINING RIGHT OF ENTRY PERMITTING ARE SUBJECT TO CHANGE, AND SHALL BE DETERMINED AT THE SOLE JUDGMENT AND DISCRETION OF RAILROAD. ANY CHANGE IN SCOPE OF WORK OR DATE / TIME OF ENTRY, HOWEVER SLIGHT, IS GROUNDS FOR REVIEW, REEVALUATION, ACCEPTANCE, REJECTION, AND / OR MODIFICATION OF INSURANCE REQUIREMENTS BY RAILROAD. VISITOR/CLIENT IS RESPONSIBLE FOR CONFIRMING INSURANCE REQUIREMENTS FOR EACH ENTRY BEFORE RETURNING THIS FORM AS PART OF THE RIGHT-OF-ENTRY PROCESS. THESE REQUIREMENTS ARE IN ADDITION TO, AND NOTHING HEREIN SHALL BE CONSTRUED AS AN EXCEPTION TO OR EXEMPTION FROM, ANY REQUIREMENT(S) OR TERM(S) CONTAINED IN ANY RIGHT OF ENTRY WAIVER & RELEASE FORM, CONTRACT, AGREEMENT, OR UTILITY ACCOMMODATION POLICY. RAILROAD RESERVES THE EXCLUSIVE RIGHT TO REFUSE TO ACCEPT INSURANCE COVERAGE FROM ANY CARRIER OR PROVIDER AT RAILROAD'S SOLE JUDGMENT AND DISCRETION.**

1. **Workers' Compensation and Employers Liability:** in the State in which each entry is to occur and elsewhere as may be required.

- |                                                      |                        |
|------------------------------------------------------|------------------------|
| a) <u>Workers' Compensation Coverage:</u>            | Statutory Requirements |
| b) <u>Employers Liability Limits, Not Less Than:</u> |                        |
| Bodily Injury by Accident Per Accident:              | \$100,000              |
| Bodily Injury by Disease Per Employee:               | \$100,000              |
| Bodily Injury by Disease Policy Limit:               | \$500,000              |

2. **Commercial General Liability:**

- |                                                      |                             |
|------------------------------------------------------|-----------------------------|
| a) <u>Occurrence Form with the Following Limits:</u> |                             |
| (1) General Aggregate:                               | \$2,000,000                 |
| (2) Products/Completed Operations:                   | Aggregate: \$2,000,000      |
|                                                      | Per Occurrence: \$1,000,000 |
| (3) Personal and Advertising Injury:                 | \$1,000,000                 |

3. **Excess/Umbrella Liability:**

- |                                                      |             |
|------------------------------------------------------|-------------|
| a) <u>Occurrence Form with the Following Limits:</u> |             |
| (1) Occurrence Limit:                                | \$1,000,000 |
| (2) Aggregate:                                       | \$1,000,000 |

4. **Automobile Liability:**

- |                                               |             |
|-----------------------------------------------|-------------|
| a) <u>Per Accident Combined Single Limit:</u> | \$1,000,000 |
|-----------------------------------------------|-------------|

## EXHIBIT D

The Visitor/Client shall bear all costs and expenses with regard to said work and services, and furnish all tools and equipment so required. Visitor/Client shall bring or keep property upon the premises solely at its own risk, and Visitor/Client, at its sole cost and expense, will keep all personal property, and stock, now or hereafter located on the Premises, insured against "All Risk" of Loss. Railroad and any other party to whom Railroad is required to provide Additional Insured Coverage (including their agents, employees, representatives, officers, directors, stockholders, members and managers) shall be included/added as ADDITIONAL INSUREDS on all liability policies (with the exception of Workers' Compensation), even for claims caused in part by their negligence. The coverage offered to the ADDITIONAL INSUREDS on Visitor/Client's liability policies shall be primary coverage to any other coverage maintained by the ADDITIONAL INSUREDS and shall not permit or require such other coverage to contribute to the payment of any loss. In addition, the ADDITIONAL INSUREDS shall also be provided the same Completed Operations Coverage detailed under the Commercial General Liability Coverage Requirements. Visitor/Client agrees, for the purpose of additional insured coverage only, that this Agreement is an agreement between Visitor/Client and all ADDITIONAL INSUREDS to provide additional insured coverage.

**Waiver of Recovery/Subrogation:** The Visitor/Client waives all rights of recovery and shall cause its Insurers to waive their rights of subrogation against Railroad and any of their agents, officers, and employees for loss or damage covered by any of the insurance maintained by the Visitor/Client pursuant to this Agreement.

**Indemnification:** Visitor/Client agrees to waive any claim against, indemnify, hold harmless and defend Railroad from and against any and all liability for loss, damage or expense which Railroad may suffer or which Railroad may be held liable arising out of or in any manner connected with the work to be performed for Railroad, regardless how remote or attenuated such connection may be, even for and if caused in part by any act, omission, negligence or strict liability of Railroad or any of its representatives, employees, sub-contractors or third parties, whether known or unknown to Railroad or Visitor/Client. The parties agree and understand that the Visitor/Client is an independent and not an employee of Railroad and, therefore, the Visitor/Client is not entitled to the benefits conferred by Railroad upon its employees, including, but not limited to, liability insurance, Workers' Compensation insurance, Unemployment Compensation, health benefits, FICA and FUTA contributions and federal and state withholding with respect to taxes, vacation or sick pay. The Visitor/Client is solely responsible to pay all federal, state and local taxes. The Visitor/Client understands that Railroad will not supply any training to the Visitor/Client. The Visitor/Client will engage in work methods as the Visitor/Client deems appropriate in order to accomplish their work.

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties hereto have set their hands on the date and year first written herein.

[RAILROAD]

[VISITOR/CLIENT]

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

## EXHIBIT D

### **Boring, Digging, and Drilling Rider**

\_\_\_\_\_ (hereinafter, "Permittee") and Chicago Rock Island & Pacific Railroad, LLC and its subsidiaries (hereinafter, "Railroad") hereby warrant, agree, and covenant as follows:

All boring, drilling, digging, and other earth-moving activities, work, structural and infrastructural construction and alteration, other similar activity(ies) of any and every type and nature, and entry onto property (hereinafter, the "Premises") for the purpose(s) of conducting or facilitating the same (hereinafter, "Activities") are subject to the following terms, conditions, safety standards, protocols and accommodation policy items contained in this Rider. Permittee understands and agrees that Railroad and the owner of the Premises onto which Permittee may enter, if not Railroad, incurs extreme risk by allowing third-parties such as Permittee entry to conduct such Activities on the Premises or any other property owned, operated, occupied, managed, or leased by Railroad. Permittee further understands and agrees that the level of risk, and the corresponding potential: harm, expenses, claims, losses, liability, environmental impact, and damages (collectively the "Risk") which may arise from permitting entry for such Activities are incalculable and that the Risk continues to burden Railroad's operations and the owner of the Premises indefinitely after such Activities are conducted. Considering the foregoing, Permittee agrees to indefinitely indemnify, defend, and hold harmless Railroad and the owner of the Premises from all claims, judgments, liability and losses of every kind arising in connection with any Activities, regardless how remote or attenuated such connection(s) may be, including, but not limited to: (i) environmental liability, damages, fines, fees, assessments and remediation costs for all environmental conditions existing, which may arise in the future, and which are known or unknown, for a radius of FIFTY (50) MILES from each point of entry onto Railroad property; (ii) claims, suits, other fines or fees, and judgments of every kind, type, or nature whatsoever, including attorney's fees; (iii) property taxes, value-added taxes and all other government taxes and assessments of every kind; (iv) survey and geological study costs of every kind, type and nature; and (v) additional utilities expenses incurred by Railroad. Permittee also agrees and understands that significant and substantial increases in insurance coverage levels beyond those ordinarily required by Railroad for surface-level work not consisting of or including the Activities described hereinabove are appropriate and necessary for Railroad to mitigate the Risk. All plans, equipment and personnel used in conducting any Activities are subject to Railroad review, inspection, and approval prior to initiation of any Activities and at any time thereafter. Permittee understands and agrees that Railroad receives no benefit of any nature whatsoever from Permittee's presence on Railroad property, and that the sole consideration required from Railroad is allowing Permittee access to Railroad property for the purpose of conducted Activities, subject to Railroad approval, and such access may be denied at any time at Railroad's sole discretion. Denial of access prior or subsequent to initiation of any Activities shall not relieve Permittee of any of its responsibilities hereunder. Railroad reserves the exclusive right to refuse to accept coverage from any insurance carrier or provider, and to deny entry to any Railroad, contractor, subcontractor or individual at Railroad's sole judgment and discretion. The terms of this Rider are in addition to, and are incorporated by reference in, any WAIVER AND RELEASE FROM LIABILITY or other agreement that may have been or may be executed by Permittee and Railroad. In the event of a conflict between the terms of the documents, the more stringent requirements on Permittee shall apply.

Permittee agrees, warrants, represents, and covenants that its respective signatory(ies) hereto possess the full, actual, and absolute authority to legally bind Permittee to the terms of this Rider. Any subsequent claim or assertion by Permittee that its signatory(ies) hereto lacked the authority to bind Permittee to the terms hereof shall be considered a material breach hereof, and such claim or assertion shall be understood to be: baseless, made in bad faith, null and void, and of no legal effect whatsoever. Moreover, if Permittee claims or asserts that its signatory(ies) hereto lack the authority to execute this Rider and / or to bind Permittee to the terms hereof, Permittee shall be deemed to have admitted to all allegations asserted in any subsequent legal action or proceeding by Railroad or the owner of the Premises under this Rider and to have admitted its liability for all damages, including punitive damages alleged therein, and shall waive its right to contest or deny the same in any proceeding arising from or in connection with such legal action or proceeding or this Rider.

EXHIBIT D

The terms and provisions of this Rider shall survive the completion of the project described herein, and shall indefinitely remain in full force and effect. Permittee acknowledges that it has READ and fully understands this WAIVER and is executing it voluntarily for the purposes stated therein.

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties hereto have set their hands on the date and year first written herein.

[RAILROAD]

[PERMITTEE]

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

# SCCRTC-CRIP-ACL.agreementWithAttachment

## S

Final Audit Report

2026-05-22

|                 |                                                        |
|-----------------|--------------------------------------------------------|
| Created:        | 2026-05-19                                             |
| By:             | Melanie Meneses (melanie.meneses@redwoodpubliclaw.com) |
| Status:         | Signed                                                 |
| Transaction ID: | CBJCHBCAABAseXWRdPmduQv4CxXrVR2VUUUnJZodeeR1           |

## "SCCRTC-CRIP-ACL.agreementWithAttachments" History

-  Document created by Melanie Meneses (melanie.meneses@redwoodpubliclaw.com)  
2026-05-19 - 9:29:46 PM GMT
-  Document emailed to Steve Mattas (steve.mattas@redwoodpubliclaw.com) for signature  
2026-05-19 - 9:30:02 PM GMT
-  Email viewed by Steve Mattas (steve.mattas@redwoodpubliclaw.com)  
2026-05-19 - 9:52:08 PM GMT
-  Document e-signed by Steve Mattas (steve.mattas@redwoodpubliclaw.com)  
Signature Date: 2026-05-19 - 9:52:59 PM GMT - Time Source: server - Signature Appearance Selected: DRAW
-  Document emailed to Robert Riley (robert.riley@rockislandrail.com) for signature  
2026-05-19 - 9:53:04 PM GMT
-  Email viewed by Robert Riley (robert.riley@rockislandrail.com)  
2026-05-22 - 1:24:21 PM GMT
-  Document e-signed by Robert Riley (robert.riley@rockislandrail.com)  
Signature Date: 2026-05-22 - 7:09:52 PM GMT - Time Source: server - Signature Appearance Selected: DRAW
-  Document emailed to Sarah Christensen (schristensen@sccrtc.org) for signature  
2026-05-22 - 7:09:55 PM GMT
-  Email viewed by Sarah Christensen (schristensen@sccrtc.org)  
2026-05-22 - 7:10:54 PM GMT
-  Document e-signed by Sarah Christensen (schristensen@sccrtc.org)  
Signature Date: 2026-05-22 - 7:11:46 PM GMT - Time Source: server - Signature Appearance Selected: IMAGE

✓ Agreement completed.  
2026-05-22 - 7:11:46 PM GMT

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FD 36944**

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**CHICAGO ROCK ISLAND & PACIFIC RAILROAD, LLC  
— CHANGE OF OPERATOR EXEMPTION —  
RAILROAD LINE IN MONTEREY AND SANTA CRUZ COUNTIES, CAL.**

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**EXHIBIT C**

**LIST OF CUSTOMERS ON THE LINE**

A true and correct copy of this Notice has been sent to the following list of customers on the Line, as provided to Rock Island by RTC:

1. Big Creek Lumber  
1400 West Beach Street  
Watsonville, CA 95076  
bobb@big-creek.com
2. S. Martinelli & Company  
35 West Beach Street, PO Box 1868  
Watsonville, CA 95007  
asaldana@martinellis.com
3. Lineage Logistics  
400 Cascade Way  
Watsonville, CA 95076  
LRocha@LineageLogistics.com

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FD 36944**

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**CHICAGO ROCK ISLAND & PACIFIC RAILROAD, LLC  
— CHANGE OF OPERATOR EXEMPTION —  
RAILROAD LINE IN MONTEREY AND SANTA CRUZ COUNTIES, CAL.**

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**EXHIBIT D**

**CERTIFICATION AND VERIFICATION**

**CERTIFICATION AND VERIFICATION**

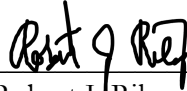
I, Robert J. Riley, am the Chief Executive Officer of Chicago Rock Island & Pacific Railroad, LLC (“Rock Island”). I hereby certify as follows:

1. The annual operating revenue of Rock Island (following consummation of the transaction that is the subject of this class exemption proceeding) is not projected to exceed \$5 million, and, in turn, will not result in the creation of a Class II or Class I rail carrier under the provisions of 49 C.F.R. § 1201 (1-1).
2. Rock Island would not be contractually limited in its ability to interchange of traffic with any third-party connecting carrier.

In addition, I hereby verify under penalty of perjury as follows:

1. I have read the foregoing Notice of Exemption, know the facts asserted therein, and that the same are true as stated to the best of my knowledge, information, and belief.

2. I am authorized by Rock Island to represent the corporation in this proceeding and to make this verification on its behalf.



---

Robert J. Riley, Duly Authorized As:  
Chief Executive Officer of Chicago Rock Island &  
Pacific Railroad, LLC

Dated: June 22, 2026

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FD 36944**

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**CHICAGO ROCK ISLAND & PACIFIC RAILROAD, LLC  
— CHANGE OF OPERATOR EXEMPTION —  
RAILROAD LINE IN MONTEREY AND SANTA CRUZ COUNTIES, CAL.**

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**EXHIBIT E**

**CAPTION SUMMARY**

SURFACE TRANSPORTATION BOARD  
NOTICE OF EXEMPTION

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FD 36944

CHICAGO ROCK ISLAND & PACIFIC RAILROAD, LLC  
— CHANGE OF OPERATOR EXEMPTION —  
RAILROAD LINE IN MONTEREY AND SANTA CRUZ COUNTIES, CAL.

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Chicago Rock Island & Pacific Railroad, LLC (“Rock Island”), an existing Class III railroad carrier, has filed a verified notice of exemption under 49 C.F.R. § 1150.41 to assume common carrier operations over a roughly 2.567-mile railroad line (the “Line”) located in Monterey and Santa Cruz Counties, California. Specifically, Rock Island will acquire an exclusive freight common carrier easement over track assets owned by the Santa Cruz County Regional Transportation Commission extending between milepost 0.433 at Watsonville Junction, California, and milepost 3.0 west of Watsonville Junction, California. Upon consummation of the proposed transaction, Rock Island will replace St. Paul & Pacific Railroad Company, LLC (“SPPR”) as the exclusive common carrier service provider on the Line, thereby terminating SPPR’s common carrier status over the Line.

Rock Island expects to commence common carrier operations over the Line on or after the effective date of this exemption.

Comments must be filed with the Board and served on:

Robert J. Riley, Duly Authorized As Owner and CEO  
Chicago Rock Island & Pacific Railroad, LLC  
2747 Pass Road  
Biloxi, MS 39531  
robert.riley@rockislandrail.com  
855-663-7625 ext 701

This Notice is filed under 49 C.F.R. § 1150.41. If this Notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: June \_\_\_\_\_, 2026

By the Board