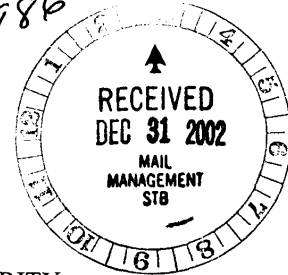


206986

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34292



ENTERED
Office of Proceedings

JAN 02 2003

Part of
Public Record

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
--ACQUISITION EXEMPTION--
CERTAIN ASSETS OF UNION PACIFIC RAILROAD COMPANY

VERIFIED STATEMENT OF PETER M. CIPOLLA

1. I am Peter M. Cipolla, the General Manager of the Santa Clara Valley Transportation Authority ("VTA"). I have held this position for eight years.
2. I am completely familiar with the transaction in which VTA is acquiring 14.88 miles of the WP Milpitas Line from the Union Pacific Railroad Company ("UPRR").
3. VTA is acquiring this line for corridor preservation purposes, and currently plans to develop and build over the next several years a public transportation project, the precise parameters of which have yet to be defined. In the transaction documents, UP agreed that it has already concluded that it would be able to abandon, discontinue or relocate the freight service it provides along the Line VTA is acquiring, subject to any required regulatory approvals of course and to the completion of various construction projects which will enable it to satisfy its common carrier obligations.
4. In negotiating this transaction, VTA had two major objectives, which are reflected in the transaction documents. These are:
 - (1) to enable UP to preserve its ability to fully conduct its freight operations and to provide services to its existing customers until UP determines that it has made arrangements that address each customer's needs and will allow for

relocation, abandonment or discontinuance of its freight service obligation on a portion of the line VTA is acquiring; and

(2) to enable VTA to develop over a course of years a public transportation corridor that will serve the needs of the area's commuting public.

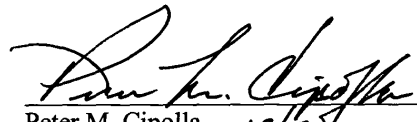
5. In my opinion, the transaction documents reflect a successful accomplishment of those goals. The three documents that address these issues are attached to this Verified Statement.

They are:

- (1) The Purchase and Sale Agreement, to which is attached a copy of the Grant Deed (Exhibit 1).
 - (2) The Trackage Rights Agreement – WP Milpitas Line (Exhibit 2).
 - (3) The Engineering and Construction Agreement – WP Milpitas Line (Exhibit 3).
6. Section 9.1 of the Trackage Rights Agreement (Exhibit 2) confirms that "UP has already concluded that it would be able to abandon, discontinue or relocate its Freight Rail Service provided along the Freight Trackage, subject to the approval of any such abandonment or discontinuance by the STB, and the performance of the Freight Project Work and Third Party Work, which is necessary to allow UP to maintain the Functionality of UP's Freight Rail Service and to satisfy its statutory obligations as a common carrier."
7. The Engineering and Construction Agreement divides the Line into a series of segments on which various projects, described in Exhibit B to that Agreement, will be completed. According to section 9.1.1 of the Trackage Rights Agreement, VTA will give notice to UP at least one year in advance of its intent to commence construction, and UP and VTA will then implement the construction projects that are required to accomplish the freight

transportation solutions envisioned in the Engineering and Construction Contract. UP has already agreed that this will provide sufficient time to complete arrangements with shippers either to relocate the transportation service that shipper now receives, or to seek abandonment or discontinuance authority from the STB.

8. Then, after that arrangement is complete, the construction work required to allow VTA to develop its public transportation project will commence. At no time will VTA assume any responsibility for any aspect of freight service on the Line and VTA will not at any time hold itself out to be a freight carrier on this Line. We will not be performing ongoing maintenance or dispatching UP's freight trains. We have no plans to have UP's freight service operating on the same track as any of the public passenger transportation solutions we may implement. UP will remain at all times in complete control of its freight operations on this Line until its obligation to provide that service is extinguished or until it relocates that service to the nearby line.
9. I verify under penalty of perjury that the facts stated in this Verified Statement are true and correct.


Peter M. Cipolla
General Manager 12/30/02

**PURCHASE, SALE AND OPTION AGREEMENT
AND ESCROW INSTRUCTIONS**

WP MILPITAS LINE

Between

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

SELLER

and

**SANTA CLARA VALLEY TRANSPORTATION AUTHORITY,
a public agency created under California law**

BUYER

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First American Title Company
("Escrow Holder")
135 Main Street, 12th Floor
San Francisco, California 94105
Attention: Kimberleigh Toci
Telephone: 415-989-1300
Facsimile: 415-398-1750

Escrow No. SP-313499

Date of Opening of
Escrow: December 10, 2002

**PURCHASE, SALE AND OPTION AGREEMENT
AND ESCROW INSTRUCTIONS
WP Milpitas Line**

THIS PURCHASE, SALE AND OPTION AGREEMENT AND ESCROW INSTRUCTIONS (the "Agreement") is made as of December 10, 2002 ("Execution Date"), by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Seller") and SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, a public agency created under California law ("Buyer").

RECITALS

Seller owns a certain line of railroad known as the WP Milpitas Line, located in Alameda County and Santa Clara County, California. Seller desires to sell such property and Buyer desires to purchase some of such property (defined below as the "Property") and to obtain an option to purchase the remainder of such property (defined below as the "Option Property"), on the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, Seller and Buyer hereby agree as follows:

ARTICLE I - DEFINITIONS

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

"Addendum to Trackage Rights Agreement" shall have the meaning set forth in Section 8.3.6 below.

"Agreement" shall have the meaning set forth in the introductory paragraph above.

"Agreement Regarding the Chevron Pipeline" shall have the meaning set forth in Section 8.3.7 below.

"Assignment, Assumption and Management Agreement" shall have the meaning set forth in Section 8.3.3 below.

"BART" shall mean the San Francisco Bay Area Rapid Transit District.

"Bills of Sale" shall have the meaning set forth in Section 8.3.2 below.

"Buyer" shall mean the Santa Clara Valley Transportation Authority, a public agency created under California law.

"Buyer's Closing Statement" shall have the meaning set forth in Section 8.2.4 below.

"Buyer's Title Notice" shall have the meaning set forth in Section 6.1.1 below.

"Close of Escrow" shall have the meaning set forth in Section 8.2.1 below.

"Closing" shall have the meaning set forth in Section 8.2.1 below.

"Closing Date" shall have the meaning set forth in Section 8.2.1 below.

"Communication Easement" shall have the meaning set forth in Section 2.1 below.

"Communication Easement Property" shall have the meaning set forth in **Exhibit 3** below.

"Communication Improvements" shall have the meaning set forth in **Exhibit 3** below.

"Condition of the Property and the Option Property" shall have the meaning set forth in Section 4.1.1 below.

"Construction Contract" shall have the meaning set forth in Section 8.3.4 below.

"Cost of cancellation of the Escrow" shall have the meaning set forth in Section 6.1.2 below.

"Deeds" shall have the meaning set forth in Section 8.3.1 below.

"Deposit" shall have the meaning set forth in Sections 2.3.1 and 2.4 below.

"Disapproved Items" shall have the meaning set forth in Section 6.1.1 below.

"Easement Agreement" shall have the meaning set forth in Section 8.3.10 below.

"Easement Users" shall have the meaning set forth in **Exhibit 3** below.

"Escrow" shall have the meaning set forth in Section 2.3.1 below.

"Escrow Holder" shall mean First American Title Company.

"Execution Date" shall have the meaning set forth in the introductory paragraph on page 1 above.

"Feasibility Review Period" shall have the meaning set forth in Section 6.2 below.

"Functionality" shall have the meaning set forth in the Construction Contract.

"Grantee" shall have the meaning set forth in **Exhibit 3** below.

"Grantor" shall have the meaning set forth in **Exhibit 3** below.

"Lease Management Agreement" shall have the meaning set forth in Section 8.3.8 below.

"Lick-Gilroy Letter" shall have the meaning set forth in Section 8.3.6 below.

"Losses" shall have the meaning set forth in Section 9.5.2 below.

"Notices" shall have the meaning set forth in Section 13.9 below.

"Opening of Escrow" shall have the meaning set forth in Section 8.1 below.

"Option" shall have the meaning set forth in Section 3.1 below.

"Option Property" shall have the meaning set forth in Section 3.1 below.

"Permitted Exceptions" shall have the meaning set forth in Section 5.1 below.

"Project Segment" shall have the meaning set forth in the Construction Contract.

"Property" shall have the meaning set forth in Section 2.1 below.

"Property Materials" shall have the meaning set forth in Section 4.1.1 below.

"Property Segment" shall have the meaning set forth in the Construction Contract.

"Proposed Project" shall have the meaning set forth in Section 9.4.1 below.

"Purchase Price" for the Property shall have the meaning set forth in Section 2.3 below, and the purchase price for the Option Property shall be as set forth in Section 3.2 below.

"Rail Improvements" shall have the meaning set forth in Section 2.2 below.

"Railroad Easement" shall have the meaning set forth in Section 2.1 below.

"Railroad Easement Property" shall have the meaning set forth in **Exhibit 3** below.

"Railroad Facilities" shall have the meaning set forth in **Exhibit 3** below.

"Remediation Agreement" shall have the meaning set forth in Section 8.3.9 below.

"Retained Rights" shall have the meaning set forth in Section 2.1 below.

"Right of Entry" shall mean the Right of Entry agreement between Seller and Buyer, dated November 9, 2001, as amended from time to time.

"Seller" shall mean Union Pacific Railroad Company.

"Seller's affiliates" shall have the meaning set forth in Section 4.2.1 below.

"Seller's Closing Statement" shall have the meaning set forth in Section 8.2.4 below.

"Surviving Obligations" shall have the meaning set forth in Section 2.5 below.

"TRH Remnant Site" shall mean that certain property that is currently under lease to Truck Rail Handling, Inc., pursuant to the (i) Lease Agreement dated March 27, 1987, as supplemented by that certain Supplemental Agreement dated February 28, 1994, (ii) Track Lease Agreement dated October 17, 2000, and (iii) License for Private Road Crossing dated December 14, 1982; and that is NOT included within the Property.

"Title Contingency Date" shall have the meaning set forth in Section 6.1.1 below.

"Title Company" shall mean First American Title Company.

"Title Policy" shall have the meaning set forth in Section 5.1 below.

"Title Report" shall have the meaning set forth in Section 6.1.1 below.

"Trackage Rights Agreement" shall have the meaning set forth in Section 8.3.5 below.

ARTICLE II - PURCHASE AND SALE

2.1 Agreement to Sell and Purchase.

Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller that certain real property and all appurtenances thereto, located in Alameda County and Santa Clara County, California, as generally described in **Exhibit 1** attached hereto (the "Property"). Such sale and purchase shall be subject to the terms and conditions set forth herein and in the documents to be executed at the Closing (as detailed in Sections 8.3 and 8.4 below), any and all outstanding rights of record or open and obvious on the ground, and all Permitted Exceptions, including, without limitation, the following reservations (collectively, the "Retained Rights"):

Mineral Reservation:

EXCEPTING from this sale and RESERVING unto Seller, its successors and assigns, forever, all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered 500 feet or more below the surface including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals by any means or methods suitable to Seller, its successors and assigns, but without entering upon or using the surface of the Property or the Option Property, and in such manner as not to damage the surface of said lands or to interfere with the use thereof by Buyer, its successors or assigns.

Communication Easement Reservation:

EXCEPTING from this sale and RESERVING unto Seller, its successors and assigns, forever, a perpetual, nonexclusive easement on, through, across, under and over the Communication Easement Property, on the terms and conditions specified in the Deeds ("Communication Easement").

Railroad Easement Reservation:

EXCEPTING from this sale and RESERVING unto Seller, its successors and assigns, an exclusive railroad easement on, through, across, under and over the Property and the Option Property, on the terms and conditions specified in the Deeds ("Railroad Easement").

2.2 Appurtenances.

Ownership of all rail improvements (including without limitation, rails, ties, ballast, signals, switches and trestles) ("Rail Improvements") and other appurtenances to the Property and the Option Property, if any, shall be conveyed to Buyer at the applicable Closing by the Bills of Sale.

2.3 Purchase Price.

The purchase price for the Property is EIGHTY MILLION DOLLARS AND NO CENTS (\$80,000,000.00) (the "Purchase Price"). The Purchase Price shall be paid as follows:

2.3.1 **Deposit.** Concurrently with Buyer's execution and delivery of this Agreement to Seller, Buyer shall deliver to Escrow Holder, for deposit into the above-referenced numbered escrow account (the "Escrow"), the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) as a deposit toward the Purchase Price (the "Deposit"). The Deposit shall be paid by cashier's or certified check drawn upon a California financial institution, or by cash deposit or a wire transfer of U.S. funds for immediate credit. The Deposit shall be applied towards the Purchase Price of the Property at the Closing and shall become nonrefundable upon the expiration of the Feasibility Review Period, except in the event of a material default by Seller or the failure of a condition precedent to Buyer's obligations hereunder, or termination of this Agreement pursuant to Article X.

2.3.2 Balance. At least one business day prior to the applicable Closing Date, Buyer shall deliver a sum equal to the applicable purchase price together with Buyer's share of prorations and costs of Escrow as provided in Sections 8.6 and 8.7, less (if applicable) the amount of the Deposit delivered to Escrow Holder, such sum to be paid by cash deposit, or confirmed wire transfer of U.S. funds for immediate credit.

2.4 Investment of Deposit.

The Deposit, upon receipt by Escrow Holder, shall be invested by Escrow Holder in an interest-bearing money market or a savings account with a national banking association or federally chartered savings and loan association. Interest earned on the Deposit shall accrue to the benefit of Buyer; provided, however, that in the event of any default by Buyer under this Agreement, all interest on the Deposit shall accrue to the benefit of Seller. All references to the Deposit hereafter shall include any interest accrued on the Deposit from Escrow Holder's investment thereof. Escrow Holder shall use Buyer's tax identification number which is 94-2186907 to report any interest which may accrue on the Deposit.

2.5 Deposit as Liquidated Damages.

IN THE EVENT THE SALE OF THE PROPERTY OR, AS APPLICABLE, THE OPTION PROPERTY, IS NOT CONSUMMATED BECAUSE OF A DEFAULT UNDER THIS AGREEMENT ON THE PART OF BUYER, ESCROW HOLDER MAY BE INSTRUCTED BY SELLER TO CANCEL THE ESCROW AND SELLER SHALL THEREUPON BE RELEASED FROM ITS OBLIGATIONS HEREUNDER, AND AS LIQUIDATED DAMAGES HEREUNDER, THE DEPOSIT SHALL BE RETAINED BY SELLER, AND BUYER SHALL DELIVER TO SELLER ALL OF THE MATERIALS REQUIRED TO BE DELIVERED TO SELLER PURSUANT TO SECTIONS 4.2 AND 13.22 HEREOF. ESCROW HOLDER IS HEREBY AUTHORIZED AND INSTRUCTED TO RELEASE THE DEPOSIT TO SELLER. ESCROW HOLDER IS HEREBY RELIEVED OF LIABILITY FOR SO RELEASING THE DEPOSIT TO SELLER. IF BUYER ATTEMPTS TO INTERFERE WITH THE RELEASE OF THE DEPOSIT BY ESCROW HOLDER TO SELLER, THEN SELLER SHALL NOT BE LIMITED IN THE AMOUNT OF DAMAGES IT MAY RECOVER FROM BUYER. IN THE EVENT OF A DEFAULT BY BUYER AS AFORESAID, BUYER SHALL PAY ALL TITLE, SURVEY AND ESCROW CANCELLATION CHARGES. THE PARTIES ACKNOWLEDGE THAT SELLER'S ACTUAL DAMAGES IN THE EVENT OF A DEFAULT BY BUYER WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR SIGNATURES OR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE DEPOSIT, THE ACTUAL TITLE, SURVEY AND ESCROW CANCELLATION CHARGES AND BUYER'S DELIVERY OF THE MATERIALS DESCRIBED IN SECTIONS 4.2 AND 13.22 HEREOF HAVE BEEN AGREED UPON, AFTER NEGOTIATION, AS REASONABLE LIQUIDATED DAMAGES PURSUANT TO THE TERMS HEREOF AND CALIFORNIA CIVIL CODE SECTIONS 1671 AND 1677 AND SHALL CONSTITUTE SELLER'S EXCLUSIVE REMEDY AGAINST BUYER IN THE EVENT OF A DEFAULT ON THE PART OF BUYER PROVIDED THE DEPOSIT IS RELEASED TO SELLER AS AFORESAID. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF

CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN CONTAINED, BUYER AND SELLER ACKNOWLEDGE AND AGREE THAT IN THE EVENT OF A DEFAULT BY BUYER, THE OBLIGATIONS OF AND INDEMNITY BY BUYER IN SECTIONS 4.2 AND 13.22 HEREOF, THE CONFIDENTIALITY PROVISIONS OF SECTION 13.22 AND THE PROVISIONS OF SECTIONS 8.2.3, 9.3 AND 13.21 HEREOF (COLLECTIVELY, THE "SURVIVING OBLIGATIONS") SHALL NOT BE LIMITED, IMPAIRED OR OTHERWISE AFFECTED BY ANY TERMINATION OF THIS AGREEMENT OR ANY LIQUIDATED DAMAGES RECEIVED BY SELLER PURSUANT TO THIS PARAGRAPH AS A RESULT OF SUCH DEFAULT.

SELLER: Tony K. Love

BUYER: Don H. Cipolla

2.6 Waiver of Right to Record Lis Pendens.

AS A MATERIAL CONSIDERATION FOR SELLER'S ENTERING INTO THIS AGREEMENT, BUYER EXPRESSLY WAIVES ANY RIGHT UNDER CALIFORNIA CODE OF CIVIL PROCEDURE, PART II, TITLE 4.5 (SECTIONS 405 - 405.61) OR AT COMMON LAW OR OTHERWISE TO RECORD OR FILE A LIS PENDENS OR A NOTICE OF PENDENCY OF ACTION OR SIMILAR NOTICE AGAINST ALL OR ANY PORTION OF THE PROPERTY OR OPTION PROPERTY. BUYER HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389. BUYER ACKNOWLEDGES AND AGREES THAT PRIOR TO THE ACTUAL CLOSE OF ESCROW, BUYER DOES NOT AND SHALL NOT HAVE ANY RIGHT, TITLE AND/OR INTEREST IN THE PROPERTY, THE OPTION PROPERTY, OR ANY PORTION THEREOF. BUYER AND SELLER HEREBY EVIDENCE THEIR SPECIFIC AGREEMENT TO THE TERMS OF THIS WAIVER BY PLACING THEIR SIGNATURES OR INITIALS IN THE PLACE PROVIDED HEREINAFTER.

SELLER: Tony K. Love

BUYER: Don H. Cipolla

2.7 Eminent Domain.

Buyer deems it proper and necessary, pursuant to California law, to acquire the Property and the Option Property for public purposes, and represents that it has been authorized, empowered and directed to negotiate with Seller to acquire the Property and the Option Property for such public purposes. The parties agree that, in lieu of Buyer's initiating eminent domain proceedings to acquire the Property and the Option Property for public purposes, and to avoid the cost and uncertainty of such litigation, the Property and the Option Property will be acquired by Buyer pursuant to the terms of this Agreement, and if Closing occurs, all relocation costs, attorneys' fees, and other costs arising out of such proceedings shall be waived by Seller, except as specifically set forth in this Agreement.

ARTICLE III - OPTION TO PURCHASE

3.1 Grant of Option.

Seller hereby grants to Buyer an Option (the "Option") to purchase that certain real property and all appurtenances thereto described on **Exhibit 2** attached hereto (the "Option Property"), except that Seller shall sell to Buyer only a surface easement for passenger rail service in the Valbrick Lead area. Such Option shall be subject to the terms and conditions set forth in this Agreement, any and all outstanding rights of record or open and obvious on the ground, and all Permitted Exceptions, including without limitation, the Retained Rights. Notwithstanding the foregoing, Seller reserves the right to create additional encumbrances to title prior to the Closing Date for the Option Property on condition that Seller shall obtain Buyer's written consent prior to creating any such encumbrance, which consent shall not be unreasonably withheld, conditioned or delayed and shall be based upon whether such encumbrance would materially affect Buyer's intended use of the Option Property for surface rail transit use. If Buyer has not responded to Seller's request to create an encumbrance within 60 days after receipt of such request, Buyer shall be deemed to have consented to such encumbrance.

3.2 Exercise of Option.

The Option must be exercised, if at all, between the Closing Date for the Property and the first anniversary thereof. If the Option is not exercised by such date, the Option shall lapse. The Option shall be exercised by Buyer's delivery of written notice to Title Company and Seller given in the manner provided in Section 13.9 below. The purchase price for the Option Property shall be SIX MILLION DOLLARS AND NO CENTS (\$6,000,000.00), which shall be paid as provided in Section 2.3.2. The Closing for the Option Property shall be held within 30 calendar days after the date on which Seller receives Buyer's notice of exercise, and shall occur substantially in accordance with Article VIII hereof, as applicable.

ARTICLE IV - "AS IS" SALE; RELEASE; INSPECTION

4.1 As-Is Sale; Release.

4.1.1 "As Is" Sale. Buyer and its representatives, during the applicable Feasibility Review Period, will have been afforded the opportunity to make such inspections of the Property and the Option Property, and matters related thereto as Buyer and its representatives desire, including without limitation, governmental laws and regulations to which such property is subject, and Buyer shall accept the Property and the Option Property upon the basis of its review and determination of the applicability and effect of such laws and regulations. Subject to Section 9.5 below, Buyer acknowledges and agrees that the Property and the Option Property are to be sold and conveyed to and accepted by Buyer in an "as is" condition with all faults, and that the Property and the Option Property have been used as, among other things, a railroad right-of-way. Buyer further acknowledges that Buyer has received and reviewed, and/or is knowledgeable of all of the matters described in **Exhibit 4** attached hereto and made a part hereof (collectively, the "Property Materials"). Seller makes no representation or warranty as to the accuracy or completeness of said Property Materials. Seller does not make any representations or warranties of any kind whatsoever, either express or implied, with respect to the Property or the Option

Property, or any of such related matters; in particular, but without limitation, Seller makes no representations or warranties with respect to the use, condition, title, occupation or management of the Property or the Option Property, compliance with applicable statutes, laws, codes, ordinances, regulations or requirements relating to leasing, zoning, subdivision, planning, building, fire, safety, health or environmental matters, compliance with covenants, conditions and restrictions (whether or not of record), other local, municipal, regional, state or federal requirements, or other statutes, laws, codes, ordinances, regulations or requirements (collectively, "Condition of the Property and/or the Option Property"). Buyer acknowledges that it is entering into this Agreement on the basis of Buyer's own investigation of the physical and environmental conditions of the Property and the Option Property, including the subsurface conditions and Buyer assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation.

4.1.2 RELEASE. BUYER, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, HEREBY WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES SELLER, SELLER'S AFFILIATES, ITS AND THEIR OFFICERS, EMPLOYEES, SERVANTS, AGENTS, OR ANY OTHER PERSON ACTING ON BEHALF OF SELLER, OF AND FROM ANY CLAIMS, ACTIONS, CAUSES OF ACTION, DEMANDS, RIGHTS, DAMAGES, COSTS, EXPENSES (INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES AND DISBURSEMENTS), PENALTIES, FINES OR COMPENSATION WHATSOEVER, DIRECT OR INDIRECT, WHICH BUYER NOW HAS OR WHICH BUYER MAY HAVE IN THE FUTURE ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE CONDITION OF THE PROPERTY OR THE OPTION PROPERTY, INCLUDING, WITHOUT LIMITATION, THE KNOWN OR UNKNOWN PHYSICAL CONDITION OF SUCH PROPERTY OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO. NOTWITHSTANDING THE FOREGOING, BUYER'S RELEASE CONTAINED IN THIS SECTION 4.1.2 SHALL NOT INCLUDE THE ENVIRONMENTAL CONDITION OF SUCH PROPERTY, BECAUSE THAT RELEASE IS SET FORTH IN SECTION 9.5 BELOW.

4.1.3 Survival. The provisions of this Section 4.1 shall survive the Closing and the delivery of the Deeds.

4.2 Inspection.

4.2.1 Inspection of Property and Option Property. During the term of the Right of Entry agreement and during the Feasibility Review Period, Buyer and its representatives (including architects, environmental consultants and engineers) shall have the right to enter upon and inspect the Property and the Option Property and conduct such boundary and topographic surveys, soil and engineering tests and environmental assessments with engineers or consultants licensed in the state of California as Buyer may reasonably require; provided that such inspections and tests shall not materially damage the Property or the Option Property in any respect; provided, further, that such tests and inspections are conducted in accordance with standards customarily employed in the industry and in compliance with all governmental laws, rules and regulations; provided, still further, that Buyer notifies Seller in writing at least 48 hours prior to the date that each and every of such testing or inspections are to be conducted on the

Property, by contacting Rick Gooch at 415-541-7050, and provides evidence, satisfactory to Seller, of the availability of adequate commercial liability and other insurance, which insurance shall name Seller as an additional insured. Following each entry by Buyer onto the Property or the Option Property, Buyer shall promptly restore the Property or the Option Property to substantially its original condition as existed prior to any such inspections and/or tests. If Buyer, its agents, representatives or employees undertakes any boring or other disturbance of the soil, the soil so disturbed shall be recompacted to substantially the original condition of the Property or the Option Property and Buyer shall obtain at its own expense a certificate from a soils engineer which certifies that such soil so disturbed has been recompacted to the substantially original condition of such property. Buyer agrees to indemnify, hold harmless and defend (with counsel acceptable to Seller) Seller and Seller's affiliates ("Seller's affiliates" means any corporation which directly or indirectly controls or is controlled by or is under common control with Seller), its and their officers, agents, servants and employees against and from any and all liability, loss, cost, damage or expense (including attorneys' fees) of whatsoever nature growing out of or in connection with personal injury to or death of persons whomsoever (including, without limitation, exposure to hazardous or toxic substances), or loss or destruction of or damage to property whatsoever (including, without limitation, contamination by hazardous or toxic substances and any required testing, removal or cleanup thereof), where such personal injury, death, loss, destruction or damage arises in any way in connection with or incident to the occupation or use of the Property or the Option Property by, or the presence thereon of, Buyer, its officers, agents or employees and occurs from any such cause; provided, however, that this indemnity shall expressly exclude (i) any loss due to the diminution in value of the Property or the Option Property due to Buyer's discovery of any hazardous materials during its inspection of the Property or the Option Property (nothing herein shall limit the obligation of Buyer to fully perform its obligations under Section 13.22 below and under the Right of Entry agreement, nor limit Seller's right or remedies in the event such obligations are breached) and (ii) liability arising from Buyer's exposure of any existing hazardous materials on such property to the extent such exposure occurs in the course of Buyer's inspection activities, except to the extent such liability is caused by the negligence or willful misconduct of Buyer (nothing herein shall limit the obligation of Buyer to fully perform its obligations under Section 13.22 below and under the Right of Entry agreement, nor limit Seller's right or remedies in the event such obligations are breached). If Buyer should discover any hydrocarbon substances or any other hazardous or toxic substances, asbestos or asbestos-bearing materials, waste or materials subject to legal requirements or corrective action, Buyer shall immediately notify Seller of the same. The indemnity obligations of Buyer under this section shall survive any termination of this Agreement or the delivery of the Deeds and the transfer of title. As a material consideration for Seller entering into this Agreement, Buyer covenants and agrees, upon request by Seller, to promptly deliver to Seller, without charge therefor, the results and copies of any and all surveys, reports, tests, studies or assessments made by or for Buyer, development approvals and correspondence with governmental entities with respect to the Property and the Option Property.

4.2.2 Mechanics' Liens. Buyer covenants and agrees to pay in full for all materials joined or affixed to the Property and the Option Property and to pay in full all persons who perform labor upon the Property and the Option Property, and not to permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against such property for any work done or materials furnished thereon at the instance or request or on behalf of Buyer; and Buyer agrees to indemnify, hold harmless and defend (with counsel acceptable to Seller)

Seller and Seller's affiliates, its and their officers, agents, servants and employees against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed or materials furnished prior to Closing.

ARTICLE V - TITLE TO PROPERTY AND OPTION PROPERTY

5.1 Title Policy.

At the Closing, Seller shall execute and deliver to Buyer the Deeds to the Property or Option Property, as applicable, in the form of **Exhibit 3** attached hereto. Title shall be evidenced by the issuance by the Title Company of a CLTA Standard Coverage Owner's Policy of Title Insurance in the full amount of the applicable purchase price (the "Title Policy"), insuring title to the Property or the Option Property in Buyer (except that such insurance shall insure only an easement in those parcels where Seller's interest is held in easement, and such insurance shall exclude areas included in the quit claim deed described in Section 8.3.1 below), subject only to the following matters (collectively, the "Permitted Exceptions"):

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

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

5.1.3 those Property Materials identified in **Exhibit 4** attached hereto;

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

5.1.5 matters which would be disclosed by a survey of the Property or the Option Property;

5.1.6 the Retained Rights; and

5.1.7 any other exceptions or reservations set forth in the Deeds.

ARTICLE VI - BUYER'S CONDITIONS TO CLOSING

Buyer's obligation to purchase the Property or Option Property from Seller shall be subject to satisfaction of each of the following conditions precedent, provided Buyer may in its sole discretion waive any or all of such conditions:

6.1 Approval of Title.

6.1.1 The parties have been working together cooperatively for several months to obtain the title report on the Property and Option Property from the Title Company. Within ten days after Opening of Escrow, Buyer, at its sole cost and expense, shall obtain such

preliminary title report on the Property and Option Property ("Title Report"), together with copies of the documents underlying the exceptions contained therein, and furnish a copy of same to Seller. Within 30 days after receipt by Buyer of the Title Report ("Title Contingency Date"), Buyer shall deliver written notice to Seller ("Buyer's Title Notice") of all matters of title to the Property and Option Property disapproved by Buyer ("Disapproved Items"). Buyer's failure to deliver Buyer's Title Notice by the Title Contingency Date shall be deemed to be Buyer's approval of the legal description and all existing title matters. If Buyer timely notifies Seller of Disapproved Items and all or some of the Disapproved Items (except for those Disapproved Items, if any, which will be removed upon the Close of Escrow in accordance with the terms of this Agreement) are not cured or deleted as exceptions to title upon expiration of the Feasibility Review Period, Buyer shall have the option of either waiving its disapproval of such Disapproved Items and proceeding to the Close of Escrow or terminating this Agreement, in which event the provisions of Section 6.1.2 shall govern. The procurement by Seller of a commitment for the issuance of the Title Policy, or an endorsement thereto, insuring Buyer against any Disapproved Item set forth in Buyer's Title Notice, shall be deemed a cure by Seller of such Disapproved Item. In the event Buyer elects to terminate this Agreement pursuant to this Section 6.1.1, Buyer shall notify Seller of its election by written notice no later than three days after expiration of the Feasibility Review Period. Buyer's failure to timely deliver written notice to Seller of its election shall be deemed to be Buyer's election to proceed to the Close of Escrow and to waive its disapproval of such Disapproved Items. In no event shall Seller's failure to cure or delete as exceptions to the Title Policy any Disapproved Items be deemed to be a breach of this Agreement by Seller or entitle Buyer to any offset against the applicable purchase price.

6.1.2 If this Agreement is terminated pursuant to Section 6.1.1, the Deposit less an amount equal to one-half of the cost of cancellation of the Escrow shall be returned to Buyer and neither party shall have any further rights or obligations under this Agreement (other than the Surviving Obligations). The term "cost of cancellation of the Escrow", as used herein shall be the costs accrued and charged by Escrow Holder and the Title Company for the cancellation of Escrow only.

6.2 Feasibility Review.

Buyer shall have approved, on or before the date three days prior to the applicable Closing Date ("Feasibility Review Period"), the Condition of the Property or the Option Property, as applicable, and the feasibility of Buyer's development plan therefor. Buyer's feasibility review shall pertain to Buyer's review of and satisfaction with the following:

- (i) the availability of financing for Buyer's acquisition of the Property and the Option Property; and
- (ii) Buyer's engineering studies, soils investigations, environmental assessments, surveys and physical inspection of the Property and the Option Property.

Buyer may elect, at any time prior to expiration of the Feasibility Review Period, to terminate this Agreement as a result of Buyer's disapproval of any of the foregoing matters; provided, however, that if Buyer fails to notify Seller and Escrow Holder of Buyer's disapproval

by written notice delivered to Seller no later than the date of expiration of the Feasibility Review Period, Buyer shall be deemed to have approved the Condition of the Property or the Option Property, as applicable, and the feasibility, and this condition shall be deemed satisfied. If this Agreement is terminated pursuant to the foregoing provisions of this Section 6.2, the Deposit less an amount equal to the cost of cancellation of the Escrow, shall be returned to Buyer and neither party shall have any further rights or obligations under this Agreement (other than the Surviving Obligations).

6.3 Compliance by Seller.

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

6.4 Approval.

Buyer's board shall have approved this transaction on or before the end of the Feasibility Review Period.

6.5 Approval of Documents.

Buyer shall have approved the forms of the Bills of Sale, the Agreement Regarding the Chevron Pipeline, the Remediation Agreement, the Addendum to Trackage Rights Agreement, the Lease Management Agreement, the memorandum agreement and quitclaim deed described in Section 8.4.12 below, and Buyer's Closing Statement and, for the closing of the Option Property, the form of Easement Agreement.

6.6 Filing.

Buyer shall have obtained, at its expense, any necessary approvals or exemptions to any aspects of the transaction from the Surface Transportation Board, and any conditions (including without limitation, labor protection) to such approvals or exemptions shall be subject to Seller's approval.

ARTICLE VII - SELLER'S CONDITIONS TO CLOSING

Seller's obligation to sell the Property or the Option Property to Buyer shall be subject to satisfaction of each of the following conditions precedent, provided that Seller may in its sole discretion waive any or all of such conditions:

7.1 Management Approval.

The terms and conditions of this transaction shall have been approved in accordance with Seller's Management Policy Statement. Notice of approval or disapproval shall be given by Seller to Buyer on or before the date that is three business days after the end of the Feasibility Review Period, and failure to give such notice within said time period shall be deemed notice of approval. In the event, within said time period, the terms of this Agreement are not approved in accordance with Seller's Management Policy Statement for any reason whatsoever (except for

Buyer's default or a termination of this Agreement by Buyer), this Agreement shall be deemed terminated forthwith. If this Agreement is terminated pursuant to the foregoing provisions of this Section 7.1, the Deposit, less an amount equal to the cost of cancellation of the Escrow, shall be returned to Buyer and neither party shall have any further rights or obligations under this Agreement (other than the Surviving Obligations).

7.2 Compliance by Buyer.

Buyer shall have substantially complied with each and every condition and material covenant of this Agreement to be kept or complied with by Buyer.

7.3 Approval of Documents.

Seller shall have approved the forms of the Bills of Sale, the Agreement Regarding the Chevron Pipeline, the Remediation Agreement, the Addendum to Trackage Rights Agreement, the Lease Management Agreement, the memorandum agreement and quitclaim deed described in Section 8.4.12 below, and Seller's Closing Statement and, for the closing of the Option Property, the form of Easement Agreement.

7.4 Withdrawal from Clear Channel Signboard Agreement.

Buyer shall have deposited with Escrow Agent on or before the applicable Closing Date the total sum of \$169,714.00 for the Property (a portion of which may be paid to Seller prior to the Closing) and \$219,717.00 for the Option Property, in immediately available funds, for credit to Seller's account on the Closing Statements, as the amount due to Seller to fully pay the withdrawal fees under Seller's master signboard agreement for all of the existing Clear Channel signboard sites on the Property and the Option Property. Upon the applicable Closing, Seller will send or cause to be sent to Clear Channel notice of withdrawal of such signboard sites from the master signboard agreement, and the withdrawal will be effective not less than 90 days after the notice of withdrawal is sent. Seller will cooperate with Buyer to enforce any obligations of the signboard users with respect to withdrawal of the signboard sites, including without limitation, any obligation of the signboard users to remove the signboards and appurtenances after the withdrawal. Seller will, upon request from Buyer, assign to Buyer any of Seller's rights to enforce any such obligations of the signboard users. Buyer agrees that the signboard users will have up to 30 days after the effective date of the withdrawal to perform the signboard users' removal obligations, if any.

7.5 Filing.

Buyer shall have obtained any necessary approvals or exemptions to any aspect of the transaction from the Surface Transportation Board, in accordance with Section 6.6 above.

ARTICLE VIII - OPENING AND CLOSING OF ESCROW

8.1 Opening of Escrow and Escrow Instructions.

Upon execution of this Agreement, the parties shall deposit three or more executed counterparts of this Agreement (and Buyer shall deposit the Deposit) with Escrow Holder and this instrument shall serve as the instructions to Escrow Holder for consummation of the purchase and sale contemplated hereby. Escrow Holder shall insert the date of the Opening of Escrow on the upper right hand corner of the first page of this Agreement on each counterpart. The "Opening of Escrow" shall be the date upon which Escrow Holder has received executed counterparts of this Agreement from both Buyer and Seller and has received the Deposit from Buyer. Escrow Holder shall deliver to both Buyer and Seller one or more originals of this Agreement executed by Buyer, Seller and Escrow Holder and shall retain one original in Escrow. Escrow Holder shall only be responsible for undertaking such matters in connection with the Closing as are specifically provided for herein or in any additional or supplementary escrow instructions delivered by the parties. In the event the Opening of Escrow has not occurred within five business days after the Execution Date, this Agreement, and the terms and conditions contained herein, shall be null and void and of no further force and effect (other than the Surviving Obligations).

8.2 Closing.

8.2.1 Closing Date. The consummation of the transactions contemplated by this Agreement and recording of the Deeds (each, a "Closing" or "Close of Escrow") shall occur, and delivery of all items to be made at the Closing under the terms of this Agreement shall be made within three days after expiration of the Feasibility Review Period or at such earlier date as the parties may agree upon (the "Closing Date"). In no event shall the Closing for the Property occur later than December 17, 2002. The Closing for the Option Property shall occur in accordance with this Article VIII, as applicable, within 30 calendar days after the date on which Seller receives Buyer's notice of exercise described in Article III above.

8.2.2 Preclosing Conditions. Neither party shall have any obligation to close on the Property or Option Property unless each and every condition set forth in Articles VI and VII and Sections 8.3 and 8.4 below has occurred on or before the Closing Date. Provided that (i) Escrow Holder can comply with these instructions, (ii) Escrow Holder has received the deliveries described in Sections 8.3 and 8.4 below, (iii) Escrow Holder has not received prior written notice from a party that any condition to such party's obligations has not been fulfilled, or that Buyer has elected to terminate its rights and obligations hereunder pursuant to Article VI or that Seller has elected to terminate its rights and obligations hereunder pursuant to Article VII, and (iv) the Title Company has issued or is unconditionally prepared to issue to Buyer, as of the Closing Date, the Title Policy, then Escrow Holder is authorized and instructed to: (a) record the Deeds and (for the Property Closing, the memorandum agreement) (for the Option Property Closing, the Easement Agreement), (b) deliver the applicable purchase price to Seller, as adjusted pursuant to the approved Closing Statements, the amounts due to Seller pursuant to Section 7.4 above, and the amounts due to Seller for title, engineering and survey work, (c) deliver a conformed copy of the recorded Deeds (and, for the Option Property Closing, the Easement Agreement) and fully executed counterparts of all the other closing documents to Buyer and

Seller, and (d) deliver the Closing Statements to Buyer and Seller in accordance with Section 8.2.4 below.

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

8.2.4 Notification; Closing Statements. If Escrow Holder cannot comply with the instructions herein and to be provided, Escrow Holder is not authorized to cause the recording of the Deeds or, for the Option Property Closing, the Easement Agreement, or to close this Escrow. If Escrow Holder is unable to cause the recording of the Deeds (and, as applicable, the Easement Agreement), Escrow Holder shall notify Rick Gooch at (415) 541-7050 and Scott Buhrer at (408) 321-5630, without delay. If Escrow Holder is able to comply with the instructions herein and those recording and wiring instructions to be provided, at the Closing Escrow Holder shall deliver to Seller a true, correct and complete copy of Seller's closing statement ("Seller's Closing Statement"), and shall deliver to Buyer at the Closing a true, correct and complete copy of Buyer's closing statement ("Buyer's Closing Statement").

8.3 Deliveries by Seller.

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

8.3.1 Deeds. The deeds for each county as follows: (i) a grant deed conveying to Buyer title to the portion of the Property or Option Property currently held by Seller in fee simple (except for the Valbrick Lead area within the Option Property), and (ii) a grant deed conveying to Buyer Seller's rights and interests to the portion of the Property or Option Property currently held by right of easement, and (iii) the quit claim deed, quitclaiming to Buyer all of Seller's right, title and interest to other portions of the Property or Option Property (collectively, the "Deeds") in the form of **Exhibit 3**, duly executed and acknowledged by Seller;

8.3.2 Bills of Sale. The bill of sale for each county, conveying to Buyer title to the Rail Improvements (the "Bills of Sale"), but reserving to Seller the rights to the Rail

Improvements contemplated by the Trackage Rights Agreement and the Railroad Easement, duly executed by Seller;

8.3.3 Assignment, Assumption and Management Agreement. The Assignment, Assumption and Management Agreement in the form of **Exhibit 5** (the "Assignment, Assumption and Management Agreement") regarding the assignment and assumption of the leases and other agreements, duly executed by Seller;

8.3.4 Construction Contract. For the Closing of the Property, the Engineering and Construction Contract – WP Milpitas Line (the "Construction Contract"), in the form of **Exhibit 6**, and for the Closing of the Option Property, an amendment thereto to incorporate the Option Property, duly executed by Seller;

8.3.5 Trackage Rights Agreement. For the Closing of the Property, the Trackage Rights Agreement – WP Milpitas Line (the "Trackage Rights Agreement"), in the form of **Exhibit 7**, and for the Closing of the Option Property, an amendment thereto to incorporate the Option Property, duly executed by Seller;

8.3.6 Lick-Gilroy Documents. For the Closing of the Property, the letter of understanding regarding the Lick-Gilroy segment of Seller's Coast Main Line (the "Lick-Gilroy Letter"), in the form of **Exhibit 8**, and the Addendum to Trackage Rights Agreement – Lick/Gilroy Line ("Addendum to Trackage Rights Agreement"), both duly executed by Seller;

8.3.7 Agreement Regarding the Chevron Pipeline. For the Closing of the Property, the Agreement Regarding the Chevron Pipeline, describing the parties' rights and obligations with respect to the Chevron pipeline, duly executed by Seller;

8.3.8 Lease Management Agreement. For the Closing of the Property, the Lease Management Agreement, describing the post-closing management of the leases with Truck Rail Handling, Inc., duly executed by Seller;

8.3.9 Remediation Agreement. For the Closing of the Property, the Environmental Remediation Agreement – WP Milpitas Line (the "Remediation Agreement"), duly executed by Seller;

8.3.10 Easement Agreement. For the Closing of the Option Property, the Surface Easement Agreement (Santa Clara County) – Valbrick Lead area, as such area is more particularly described on **Exhibit 2** (the "Easement Agreement");

8.3.11 Memorandum Agreement. A memorandum agreement in form suitable for recording, evidencing Buyer's interest in the Option Property, duly executed by Seller;

8.3.12 Non-Foreign Status Certificate. A Certification of Non-Foreign Status pursuant to Internal Revenue Code Section 1445, in the form of **Exhibit 9**, duly executed by Seller;

8.3.13 California Form 597. California Form 597-W, in the form of **Exhibit 10**, duly executed by Seller; and

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

8.4 Deliveries by Buyer.

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

8.4.1 Purchase Price. Immediately available funds, including the Deposit, in an amount equal to the applicable purchase price, as adjusted pursuant to the approved closing statements;

8.4.2 Deed Acceptances. Executed acceptances of the Deeds;

8.4.3 Bills of Sale. The Bills of Sale, duly executed by Buyer;

8.4.4 Assignment, Assumption and Management Agreement. The Assignment, Assumption and Management Agreement, duly executed by Buyer;

8.4.5 Construction Contract. For the Closing of the Property, the Construction Contract, and for the Closing of the Option Property, the amendment thereto, duly executed by Buyer;

8.4.6 Trackage Rights Agreement. For the Closing of the Property, the Trackage Rights Agreement, and for the Closing of the Option Property, the amendment thereto, duly executed by Buyer;

8.4.7 Lick-Gilroy Documents. For the Closing of the Property, the Addendum to Trackage Rights Agreement duly executed by the Peninsula Corridor Joint Powers Board;

8.4.8 Agreement Regarding the Chevron Pipeline. For the Closing of the Property, the Agreement Regarding the Chevron Pipeline, duly executed by Buyer;

8.4.9 Lease Management Agreement. For the Closing of the Property, the Lease Management Agreement, duly executed by Buyer;

8.4.10 The Remediation Agreement. For the Closing of the Property, the Remediation Agreement, duly executed by Buyer;

8.4.11 Easement Agreement. For the Closing of the Option Property, the Easement Agreement, duly executed by Buyer;

8.4.12 Memorandum Agreement and Quitclaim Deed. The memorandum agreement described in Section 8.3.11 above, together with a quitclaim deed to quitclaim all of Buyer's interest in the Option Property, both duly executed by Buyer. The quitclaim deed shall be recorded on the next business day after expiration of the Option unless Seller has timely received a copy of Buyer's notice to exercise the Option;

8.4.13 Tax Letter. Unless delivered prior to the applicable Closing, such letter as Seller may reasonably request from Buyer to support Seller's filings with appropriate taxing authorities;

8.4.14 Other Sums. Immediately available funds in the amounts and for the purpose described in Section 7.4 above; and

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

8.5 Other Instruments.

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

8.6 Prorations.

8.6.1 Revenues and Expenses. All revenues and expenses of the Property or Option Property, including, without limitation, real property taxes, special taxes, assessments, and rentals under the leases and/or other agreements that are being assigned to Buyer, shall be prorated and apportioned between Buyer and Seller as of 12:01 a.m. on the applicable Closing Date, so that Seller bears all expenses with respect to the Property or Option Property and has the benefit of all income with respect to the Property or Option Property through and including the date immediately preceding the applicable Closing Date.

8.6.2 Special Taxes, Bonds or Assessments. If, at the time of the applicable Closing, any portion of the Property or Option Property is affected by an assessment or other charge, whether for taxes or bonds, or interest thereon, which is or may become payable in installments, and an installment payment of such assessment is then a lien, then such installment shall be prorated as of 12:01 a.m. on the applicable Closing Date. All installments not yet then due whether or not the same have been prepaid shall not be prorated and Buyer shall assume such bonds or assessments. Any prepaid assessments made in advance of its due date shall be credited to Seller. In addition, Buyer shall assume any and all future bonds, assessments, special taxes, fees or charges applicable to the Property or Option Property, as applicable, for liabilities now or hereafter imposed by any governmental authority including, without limitation, (i) local assessment or improvement districts, (ii) any special tax assessments, (iii) traffic mitigation improvements (iv) park and recreation fees, and/or (v) any other public facility infrastructure or traffic mitigation. Buyer shall assume all such bonds or future assessments without offset or adjustment.

8.7 Costs and Expenses.

Notwithstanding any other allocation of costs and expenses set forth in this Agreement that applies in the event the Closing does not occur, the costs and expenses of Escrow upon Close of Escrow shall be allocated as follows: Buyer shall pay the premium for the Title Policy

and the cost of any sales, use, documentary or other transfer taxes applicable to the sale, as well as all recording costs and other miscellaneous costs of Closing. Buyer shall also pay all other standard costs and charges of the Escrow.

8.8 Disbursement of Funds.

On the Close of Escrow, Escrow Holder shall disburse the full amount due to Seller pursuant to the Seller's Closing Statement in immediately available funds, and, unless otherwise instructed by Seller, Escrow Holder shall cause such funds to be sent by wire transfer as follows:

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

Such funds are to be wired on or before 11:00 a.m. Central Time or Central Daylight Time, as applicable, on such date in order that such funds may be received by Seller on the Close of Escrow; provided, however, that if such funds cannot be wired to Seller on the Close of Escrow, Escrow Holder shall, unless otherwise directed in writing by Seller, invest the funds overnight in an interest-bearing account for Seller's benefit.

8.9 Delivery of Documents.

Upon the Close of Escrow all instruments and documents shall be delivered forthwith to such party's attorney specified in Section 13.9. Escrow Holder shall forthwith deliver to the party entitled thereto the recorded originals of such instruments or documents upon Escrow Holder's receipt of the same.

ARTICLE IX - REPRESENTATIONS, WARRANTIES AND COVENANTS

9.1 Representations and Warranties of Seller.

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

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

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

9.1.3 Clear Channel Signboards. The signboard agreements noted as "Clear Channel" agreements on **Exhibit 4** comprise all of the existing signboard sites covered by the Clear Channel master agreement on the Property and the Option Property, and the amounts paid by Buyer pursuant to Section 7.4 above are sufficient to fully pay the withdrawal fees for such sites under the Clear Channel master signboard agreement. Seller makes no representation or warranty as to the rights, if any, of signboard users to additional amounts or damages.

9.2 Representations and Warranties of Buyer.

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

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

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

9.2.3 Bankruptcy. No petition in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors, or petition seeking reorganization or arrangement or other action under federal or state bankruptcy or insolvency laws is pending against or contemplated by Buyer.

9.2.4 Map Act. This transaction is exempt from the provisions of the Subdivision Map Act division of the California Government Code because it constitutes a conveyance to a governmental agency, and no showing has been made under the Act that public policy necessitates that a parcel map be filed in connection with this transaction.

9.3 Mutual Representations and Covenants, Brokers and Finders.

No broker's fee, finder's fee, commission or similar compensation is owed by Buyer or Seller in connection with this Agreement. In the event of a claim for broker's fee, finder's fee, commission or other similar compensation in connection herewith other than as set forth above, Buyer, if such claim is based upon any agreement alleged to have been made by Buyer, hereby agrees to indemnify and hold Seller harmless against any and all liability, loss, cost, damage or expense (including reasonable attorneys' fees and costs) which Seller may sustain or incur by reason of such claim; and Seller, if such claim is based upon any agreement alleged to have been made by Seller, hereby agrees to indemnify and hold Buyer harmless against any and all liability, loss, cost, damage or expense (including reasonable attorneys' fees and costs) which Buyer may sustain or incur by reason of such claim. The provisions of this section shall survive the Close of Escrow or termination of this Agreement.

9.4 Post-Closing Covenants.

9.4.1 Notification Regarding Adjacent Properties. Buyer plans to construct a public transportation system on, along and under the Property (the "Proposed Project"). The parties acknowledge that the final design of the Proposed Project may contemplate the leasing or purchasing of additional real property from Seller. Seller will use best efforts to notify Buyer if Seller makes available for sale or long-term lease any parcels of land contiguous to the Property, until the earlier of (i) for any Property Segment, substantial completion of the related Project Segment pursuant to Section 8.2.1 of the Construction Contract, or (ii) the date five years after the Closing Date for the Property. In the event that Buyer notifies Seller in writing, within ten days after receipt of Seller's notice of availability, that Buyer desires to lease or purchase the parcel(s) described in Seller's notice, then the parties shall enter into good faith negotiations regarding such lease or acquisition. If Seller does not receive a timely response from Buyer, Buyer shall be deemed to have disclaimed any interest in such parcel(s). Nothing contained in this Section 9.4.1 shall be deemed to waive or limit Buyer's rights, if any, to condemn any additional property owned by Seller through the exercise of the power of eminent domain.

The parties agree that this Section 9.4.1 shall not be deemed to create a real property interest in Buyer, and that Seller has and will continue to have the full and exclusive right and power to encumber, lease, sell, use or otherwise manage the contiguous parcels. Any recording of this Section 9.4.1 will automatically cause this Subsection 9.4.1 to become null and void.

9.4.2 Mistakes in Legal Descriptions. From time to time after each Closing, as - necessary, Seller and Buyer shall work cooperatively to correct any mistakes in the legal descriptions of the Property and/or the Option Property.

9.5 Environmental Matters.

9.5.1 Property and Option Property. Seller and Buyer agree to perform, from and after each applicable Closing, their respective obligations under the Remediation Agreement, which shall be executed by the parties at the Closing of the Property. Buyer shall also perform, post-closing, all other testing, remediation, special handling or other management of any Hazardous Materials (as defined in the Remediation Agreement) on or under the Property and the Option Property, as required by any federal, state or local laws, ordinances, rules or regulations applicable thereto, subject only to the terms of the Remediation Agreement and Section 6.2.5 of the Trackage Rights Agreement.

9.5.2 Buyer's Waiver and Release. EXCEPT FOR ANY BREACH OF SELLER'S OBLIGATIONS UNDER SECTION 9.5.1, BUYER, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, HEREBY WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES SELLER, SELLER'S EMPLOYEES, SELLER'S AFFILIATES, AGENTS, SUCCESSORS AND ASSIGNS, OR ANY OTHER PERSONS ACTING ON BEHALF OF SELLER, OF AND FROM ANY CLAIMS, ACTIONS, CAUSES OF ACTION, DEMANDS, RIGHTS, DAMAGES, COSTS, EXPENSES (INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND DISBURSEMENTS), PENALTIES, FINES OR COMPENSATION WHATSOEVER (COLLECTIVELY, "LOSSES"), DIRECT OR INDIRECT, THAT BUYER MAY HAVE, NOW OR IN THE FUTURE, ON ACCOUNT OF

OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH (i) THE KNOWN OR UNKNOWN ENVIRONMENTAL CONDITION OF THE PROPERTY AND/OR THE OPTION PROPERTY ON THE CLOSING DATE FOR THE PROPERTY OR OPTION PROPERTY, AS APPLICABLE (INCLUDING WITHOUT LIMITATION, ANY CONTAMINATION IN, ON OR UNDER THE PROPERTY AND/OR THE OPTION PROPERTY BY ANY HAZARDOUS MATERIALS ON SUCH CLOSING DATE) OR (ii) THE FOLLOWING LAWS APPLICABLE THERETO INCLUDING: (A) THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS THE SAME MAY HAVE BEEN OR MAY BE AMENDED FROM TIME TO TIME, AND SIMILAR STATUTES, AND ANY REGULATIONS PROMULGATED THEREUNDER AND/OR (B) ANY OTHER FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION NOW OR HEREINAFTER IN EFFECT THAT DEALS WITH OR OTHERWISE IN ANY MATTER RELATES TO, ENVIRONMENTAL MATTERS OF ANY KIND, INCLUDING BUT NOT LIMITED TO THOSE THAT RELATE TO HAZARDOUS MATERIALS. BUYER HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 WITH RESPECT TO THE PROVISIONS OF THIS SECTION 9.5.2. BUYER AND SELLER HEREBY EVIDENCE THEIR SPECIFIC AGREEMENT TO THE TERMS OF THIS WAIVER BY PLACING THEIR SIGNATURES OR INITIALS IN THE PLACE PROVIDED HEREINAFTER.

SELLER: Tony K. Fore

BUYER: Dan M. Cipolla

9.5.3 Seller's Waiver and Release. SELLER, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, HEREBY WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES BUYER, BUYER'S EMPLOYEES, BUYER'S AFFILIATES, AGENTS, SUCCESSORS AND ASSIGNS, OR ANY OTHER PERSONS ACTING ON BEHALF OF BUYER, OF AND FROM ANY LOSSES, DIRECT OR INDIRECT, THAT SELLER MAY HAVE, NOW OR IN THE FUTURE, ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE KNOWN OR UNKNOWN ENVIRONMENTAL CONDITION OF THE TRH REMNANT SITE ON THE CLOSING DATE FOR THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON OR UNDER SUCH SITE BY ANY HAZARDOUS MATERIALS ON SUCH CLOSING DATE) OR ENVIRONMENTAL LAWS APPLICABLE THERETO. SELLER HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 WITH RESPECT TO THE PROVISIONS OF THIS SECTION 9.5.3. BUYER AND SELLER HEREBY EVIDENCE THEIR SPECIFIC AGREEMENT TO THE TERMS OF THIS WAIVER BY PLACING THEIR SIGNATURES OR INITIALS IN THE PLACE PROVIDED HEREINAFTER.

SELLER: Tony K. Fore

BUYER: Dan M. Cipolla

ARTICLE X - CONDEMNATION AND CASUALTY

10.1 Condemnation.

If, prior to the applicable Close of Escrow, a governmental agency other than Buyer or BART commences or imminently threatens in writing to commence any eminent domain proceedings to take any portion of the Property or Option Property that would adversely affect Buyer's ability to use the corridor for rail transit, Buyer and Seller shall each have the unilateral right, exercisable by giving notice of such decision to the other party within 15 days after receiving written notice of such actual or threatened condemnation proceedings, to terminate this Agreement, in which case the Deposit shall be returned to Buyer, and Buyer and Seller shall each pay one-half of the cost of cancellation of the Escrow and neither party shall have any further rights or obligations under this Agreement (other than the Surviving Obligations). If neither party elects to terminate pursuant to this Section 10.1, the net proceeds of condemnation awards payable to Seller by reason of such condemnation shall be paid or assigned to Buyer upon the Close of Escrow.

10.2 Casualty.

If, prior to the Close of Escrow, the Property or Option Property shall be damaged by fire, flood, earthquake or other insured casualty to a material degree, that is, if the cost of restoration of the damaged property exceeds 20 percent of the applicable purchase price, Buyer shall have the option either to (i) elect not to acquire the Property or Option Property, as applicable, in which case this Agreement shall terminate with respect to the Property and/or Option Property, as applicable, and the parties shall be relieved of all further rights and obligations with respect thereto (other than the Surviving Obligations) or (ii) acquire the Property or Option Property, subject to such casualty, without adjustment in the applicable purchase price and otherwise in accordance with the terms and provisions of this Agreement, but Buyer shall be entitled to all insurance proceeds paid by an insurer on account of such casualty which would otherwise accrue to Seller as compensation for losses to the Property or Option Property. Buyer shall give written notice to Seller of any election pursuant to this Section 10.2 within 30 business days following receipt by Buyer of any written notice of such casualty. Failure of Buyer to make such election within said period shall be deemed an election to proceed to purchase the Property or Option Property pursuant to clause (ii) above. If prior to the Close of Escrow, the Property or Option Property suffers a casualty other than to an extent entitling Buyer to elect not to acquire the Property or Option Property pursuant to this Section 10.2, Buyer shall close the transaction contemplated by this Agreement in accordance with the terms hereof as though such casualty had not occurred, except that Seller shall, at Closing, pay or assign to Buyer any net insurance proceeds paid or payable to Seller in respect thereof. Risk of physical loss to the Property and the Option Property on and after the applicable Closing shall be borne by Buyer.

ARTICLE XI - POSSESSION

Possession of the Property or Option Property held in fee title, as applicable, shall be delivered to Buyer on the Close of Escrow, subject to the Permitted Exceptions and other terms and conditions of this Agreement.

ARTICLE XII - LABOR PROTECTIONS

Seller shall be solely responsible for all of its obligations to its employees, whether represented or unrepresented, including such obligations arising out of any federal or state labor law or regulation and all collective bargaining agreements, by and between Seller and any third party. Seller shall be solely responsible, at its expense, for resolution of any claims or grievances asserted against it and Buyer with respect to Seller's employees, whether represented or unrepresented, including claims or grievances asserted pursuant to collective bargaining agreements or otherwise. Buyer does not assume any obligation to Seller's employees or any obligation arising from any collective bargaining agreements by and between Seller and any third party. Seller's responsibilities under this Article XII shall be deemed to include any obligations, claims or grievances arising in connection with Seller's performance of its obligations under the Trackage Rights Agreement (including those arising from cessation of freight rail service) and the Construction Contract. Seller does not assume any obligation to Buyer's employees or any obligation arising from any collective bargaining agreements between Buyer and any third party.

ARTICLE XIII - MISCELLANEOUS

13.1 Agreement on Expenses.

Except as otherwise provided herein, the parties agree to bear their respective expenses, incurred or to be incurred in negotiating and preparing this Agreement and in closing and carrying out the transactions contemplated by this Agreement.

13.2 Satisfaction or Waiver of Contingencies.

The consummation of the Closing shall be conclusive evidence that the contingencies and conditions to Closing have been fully satisfied or waived.

13.3 Successors and Assigns.

This Agreement and the terms, covenants and conditions hereof shall be binding upon, and inure to the benefit of, the parties and their respective successors and assigns. The parties acknowledge and agree that, effective in the event of a post-closing transfer of certain portions of the Property to BART and the execution of an assignment and assumption agreement between BART and Santa Clara Valley Transportation Authority, covering all of Buyer's rights and obligations under this Agreement with respect to such portions of the Property, BART shall become the successor to Buyer's rights and obligations under this Agreement solely to the extent applicable to such portions of the Property, on condition that BART shall have given Seller a minimum of ten days' prior written notice of such assignment, which notice shall contain a copy

of the assignment and assumption document. In the event of such assignment, Santa Clara Valley Transportation Authority and UP shall have no further rights and/or obligations against each other under this Agreement with respect to such portions of the Property except for those that accrued on or before the date of such assignment. No such assignment shall be construed to alter (other than by substituting assignee for assignor) any obligation of UP or the assignee under this Agreement or under any other agreement between the parties of even date herewith, including without limitation, any payment obligation, indemnity obligation, or obligation to perform work. Excepting any such transfer to BART, Buyer's interest under this Agreement, or any right or obligation hereunder, may not be assigned, encumbered or otherwise transferred, whether voluntarily, involuntarily, by operation of law or otherwise (and any attempt to do so shall be void).

13.4 Parties in Interest.

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

13.5 Entire Agreement.

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

13.6 Amendment.

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

13.7 Waiver.

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

13.8 Timeliness.

Seller and Buyer hereby acknowledge and agree that time is of the essence with respect to each and every term, condition, obligation and provision hereof.

13.9 Notices.

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

If to Seller:	UNION PACIFIC RAILROAD COMPANY ATTN: Rick Gooch 49 Stevenson Street, 15th Floor San Francisco, CA 94105 Telephone: 415-541-7050 Facsimile: 415-541-7060
with copy to:	UNION PACIFIC RAILROAD COMPANY ATTN: Christine M. Smith, Esq. 1416 Dodge Street, Room 830 Omaha, Nebraska 68179 Telephone: (402) 271-5761 Facsimile: (402) 271-7107
If to Buyer:	SANTA CLARA VALLEY TRANSPORTATION AUTHORITY ATTN: Scott Buhner 3331 North First Street San Jose, CA 95134-1906 Telephone: 408-321-5630 Facsimile: 408-955-9750
with copy to:	HANSON, BRIDGETT, MARCUS, VLAHOS & RUDY, LLP ATTN: David Miller, Esq. 333 Market Street, Suite 2300 San Francisco, CA 94105-2173 Telephone: 415-777-3200 Facsimile: 415-541-9366
If to Title Company:	First American Title Company ATTN: Kimberleigh Toci 135 Main Street, 12th Floor San Francisco, California 94105 Telephone: 415-989-1300 Facsimile: 415-398-1750

13.10 Governing Law and Venue.

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California, and any action or proceeding, including arbitration, brought by any party in which this Agreement is subject, shall be brought in the county in which the Property or Option Property, as applicable, is located.

13.11 Effect of Headings.

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

13.12 Invalidity.

Any provision of this Agreement which is invalid, void, or illegal, shall not affect, impair, or invalidate any other provision of this Agreement, and such other provisions of this Agreement shall remain in full force and effect.

13.13 Counterparts.

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

13.14 Number and Gender.

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

13.15 Joint and Several Liability.

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

13.16 Recording.

This Agreement or any memorandum thereof shall not be recorded by the parties.

13.17 Further Assurances.

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

13.18 Advice of Professionals.

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

13.19 Negotiated Terms.

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

13.20 Recitals and Exhibits.

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

13.21 Professional Fees and Costs.

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

13.22 Confidentiality.

To the extent permitted by law, all information, studies and reports relating to the Property or the Option Property obtained by Buyer, either by the observations and examinations of its agents and representatives or as disclosed to it by Seller, shall remain confidential and Buyer shall not disclose any such matters to any person or governmental agency except as permitted under the Right of Entry Agreement and the Confidentiality Agreement between the parties dated and/or effective November 9, 2001 and October 24, 2001, respectively, and the Confidentiality Agreement between the parties dated July 1, 2002. If the transaction contemplated herein fails to close for any reason, Buyer shall deliver and return to Seller, at no cost to Seller, all such information, reports and studies, and Buyer shall make no further distributions or disclosures of any such information, reports and studies. The provisions of this Section shall survive the termination of this Agreement.

13.23 Not an Offer.

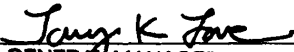
The submission of this Agreement to Buyer for review or signature does not constitute an offer to sell the Property or Option Property to Buyer or the granting of an option or other rights with respect to the Property or Option Property to Buyer. No agreement with respect to the purchase and sale of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

13.24 Merger/Survival.

Except as otherwise expressly provided herein, the covenants, representations and warranties of Buyer and Seller herein shall merge into the Deeds to be delivered by Seller to Buyer at Closing and shall not survive the Close of Escrow for the Property or the Option Property, as applicable. The following provisions shall survive the Close of Escrow for the Property or the Option Property, as applicable: Article III, Article IV, Sections 7.4, 9.3, 9.4, 9.5, Article XII, Sections 13.3, 13.21, 13.22 and 13.24.

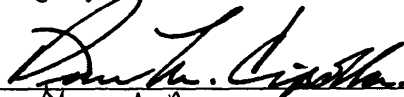
SELLER:

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: 
Title: GENERAL MANAGER-REAL ESTATE

BUYER:

SANTA CLARA VALLEY TRANSPORTATION
AUTHORITY,
a public agency created under California law

By: 
Title: General Manager

Approved as to Form:


Counsel

THE UNDERSIGNED ESCROW HOLDER ACKNOWLEDGES ITS RECEIPT
OF THE DEPOSIT AND A MINIMUM OF THREE EXECUTED COPIES OF THIS
AGREEMENT AND AGREES TO ACT IN ACCORDANCE THEREWITH.

ESCROW HOLDER:

FIRST AMERICAN TITLE COMPANY

By: Pete Hill
Vice President, Escrow Officer
First American Title

EXHIBIT 1

**(Legal Description
and Track Charts Omitted)**

EXHIBIT 1

THE PROPERTY

(Approximately 14.88 $\pm$ miles)

The WP Milpitas Line, located in Alameda County and Santa Clara County, California,

Beginning north of Paseo Padre Parkway, at Seller's Milepost 2.61 $\pm$
(aka former Western Pacific Railroad San Jose Branch Milepost 33.14 $\pm$)

Ending at the north boundary of William Street,
at Seller's Milepost 17.49 $\pm$
(aka former Western Pacific Railroad San Jose Branch Milepost 48.02 $\pm$)

portions of which are more particularly described in the attached legal descriptions and shown on the attached plats:

1. North of Paseo Padre Parkway (V-11/1, No. 21)
2. Grimmer Boulevard to Warren Avenue (V-11/2, No. 10 through 15)
3. Warren Avenue to Caitlin Way (V-11/2, No. 16 through 22)
4. Milpitas Yard (V-11/3, No. 6, 7, 10, 12 and 13)

EXHIBIT 2

**(Legal Description
and Track Charts Omitted)**

EXHIBIT 2

THE OPTION PROPERTY

(Approximately 2.92 $\pm$ miles)

The WP Milpitas Line, located in Santa Clara County, California,

Beginning at the north boundary of William Street,

at Seller's Milepost 17.49 $\pm$

(aka former Western Pacific Railroad San Jose Branch Milepost 48.02 $\pm$)

Ending at Seller's "CP Michael" on the Coast Main Line

at Seller's Milepost 20.41 $\pm$

(aka former Western Pacific Railroad San Jose Branch Milepost 50.94 $\pm$)

portions which are more particularly described in the attached legal descriptions and shown on the attached plats:

1. William Street Yard (V-11/S-5B, No. 67 and 71)
2. William Street Yard – Lot Line Adjustment
3. 5th Street Yard – San Jose (V-11/5, No. 76)
4. "CP" Michael – Coast Main Line Connection (V-11/S-6A, No. 4)

But including an EASEMENT ONLY over that portion of the Option Property known as the Valbrick Lead area, more particularly described in the attached legal description and shown on the attached plat: V-11/S-5C, No. 77.

EXHIBIT 3A

EXHIBIT 3-A

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

Santa Clara Valley Transportation Authority
3331 North First Street
San Jose, CA 95134-1906
Attn: Ms. Juanita Villemaire

MAIL TAX STATEMENTS TO:

Santa Clara Valley Transportation Authority
3331 North First Street
San Jose, CA 95134-1906
Attn: Ms. Juanita Villemaire

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

(Space above line for Recorder's use only)

GRANT DEED
[Alameda County/Santa Clara County]

FOR VALUE RECEIVED, UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Grantor") grants to SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, a public agency created under California law ("Grantee"), all of Grantor's **[rights, title, and interest / easement interests]** in and to that certain real property (the "Property") situated in **[Alameda County/the County of Santa Clara]**, State of California, described on **Exhibit A** attached hereto and incorporated by reference.

EXCEPTING from this grant and RESERVING unto Grantor, its successors and assigns (including, without limitation, lessees, sublessees, easement owners and licensees of Grantor) forever, all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered 500 feet or more below the surface, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals by any means or methods suitable to Grantor, its successors and assigns, but without entering upon or using the surface of the Property, and in such manner as not to damage the surface of said lands or to interfere with the use thereof by Grantee, its successors or assigns.

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Exhibit 3-A-1

ALSO EXCEPTING from this grant and RESERVING unto Grantor, its successors and assigns (including, without limitation, lessees, sublessees, easement owners and licensees of Grantor) forever, a perpetual, non-exclusive easement (the "Communication Easement") in, on, over, through and across a portion of the Property described below (the "Communication Easement Property"), together with necessary rights of access for the easement purposes authorized hereunder in, on, over, through and across the Property. Grantor and its lessees, sublessees, licensees, successors and assigns shall have the right in, on, under, over, through and across the Communication Easement Property to own, construct, reconstruct, maintain, repair, operate, use, relocate and/or remove existing and future fiber optic and other communication systems, lines and facilities and all rights related thereto (collectively, the "Communication Improvements"). Grantee covenants that it shall not construct any structures or improvements under, over, in, on, through or across the Communication Easement Property, except in accordance with the terms of Grantor's existing agreements for Communication Improvements. The general location of the Communication Easement Property constitutes a continuous ten-foot wide strip of land, located (i) five feet on either side of the existing Communication Improvements and covering such additional widths and areas as are included in the terms of Grantor's existing agreements for Communication Improvements, and (ii) along the western-most boundary of the Property.

The parties contemplate that some portions of the existing Communication Improvements may need to be relocated to accommodate Grantee's proposed public transportation project on the Property. The parties will cooperate to ensure that such project is performed in accordance with the terms of Grantor's existing agreements for Communication Improvements. Such relocation project shall be (i) constructed at the sole cost and expense of parties other than Grantor, in a manner that will provide Grantor and the owners of the Communication Improvements the ability to maintain continuous communications and utility connections and service at existing service levels, (ii) closely coordinated with and reasonably approved by Grantor, and (iii) coordinated with and approved by the owners of the Communication Improvements. After the Communication Improvements relocation project is completed, and on the conditions that (y) the relocated Communication Easement Property (including without limitation any relocated easement area that is not located within the Property) has been described in a manner acceptable to Grantor and has been insured to Grantor's reasonable satisfaction by a title company reasonably acceptable to Grantor, at Grantee's expense, and (z) Grantee shall have executed and delivered a bill of sale either to Grantor or the owners of the Communication Improvements, as appropriate, for all of the Communication Improvements on the relocated Communication Easement Property, then Grantor shall quitclaim (subject to a reservation of Grantor's other remaining easement interests in the area) its existing Communication Easement in that portion of the Property described in clause (i) in the last sentence of the immediately preceding paragraph herein from which such relocated Communication Improvements have been relocated.

Notwithstanding any other provision of this Grant Deed, Grantor's grant to Grantee hereunder is subject to, and the easement reserved herein shall allow Grantor to honor its grant and fulfill its other obligations and exercise its rights under, all existing agreements for Communication Improvements, and this Grant Deed shall not impair, restrict or limit the rights of any communications company under any existing agreement. All Communication Improvements presently existing on or hereafter constructed on the

Communication Easement Property shall remain the personal property of the Grantor or the communications company to which they belong. Grantor shall be entitled to all revenues and consideration derived from all current and future agreements, to which Grantor is a party affecting the Communication Easement Property. Grantee and each subsequent owner of the Property shall, promptly following any sale or lease of the Property, deliver or cause to be delivered to MCI/WorldCom Communications, Inc., Attn: Senior Manager – Dept. 1238, 400 International Parkway, Richardson, Texas 75081, and to MCI/WorldCom Communications, Inc., Attn: Assistant General Counsel – Dept. 0598, 1133 19th Street N.W., Washington, D.C. 20036, the name and address of the grantee or lessee. As used herein, “lease” shall mean a commercial or industrial lease which provides for a fixed initial term of at least one year and which requires ninety (90) days or more notice for termination.

ALSO EXCEPTING from this grant and RESERVING unto Grantor, its successors and assigns (including, without limitation, lessees, sublessees, easement owners and licensees of Grantor) forever, a perpetual, exclusive easement (the "Railroad Easement") in, on, under, over and through the Property as set forth more fully below (for purposes of this Railroad Easement, the Property shall be hereinafter referred to as the "Railroad Easement Property"), in which areas Grantor and its lessees, sublessees, easement owners, licensees, successors and assigns (collectively, the "Easement Users") shall have the right to own, use, construct, reconstruct, maintain, repair, operate, relocate, upgrade, renew and/or remove existing and/or future railroad, tracks and railroad-related equipment, facilities and transportation systems (the "Railroad Facilities") related to Easement Users' rail operations. Grantee shall be prohibited from (i) using all or any portion of the Property for rail freight operations, (ii) without Grantor's prior written consent, removing or modifying the Railroad Facilities related to Easement Users' rail operations, or (iii) without Grantor's prior written consent, enlarging, amending or modifying any existing agreement (including but not limited to any relocation of or other alteration to any improvement permitted thereby), or entering into any new agreement, that permits or allows any improvement within the Railroad Easement Property.

The parties contemplate that this Railroad Easement may terminate in part due to Grantee's proposed public transportation project on the Property. Such project will likely require that some portions of the Railroad Facilities will need to be relocated to accommodate Grantee's public transportation project. The Railroad Facilities relocation project shall be constructed in accordance with the Engineering and Construction Contract – WP Milpitas Line, of even date herewith between the parties (the "Construction Contract"), in a manner that will provide Grantor the ability to maintain continuous rail operations and service, and shall be performed in a manner that meets Grantor's, the CPUC's and the FRA's applicable standards and regulations. After each Project Segment (as that term is defined in the Construction Contract) is completed in accordance with Section 8.1.2 of the Construction Contract, and after Grantor's exercise of abandonment authority received from the Surface Transportation Board in accordance with the Trackage Rights Agreement – WP Milpitas Line, of even date herewith between the parties (the "Trackage Rights Agreement") for the related Property Segment (as that term is defined in the Construction Contract), and on the conditions that (y) the relocated Railroad Easement Property (as determined by the parties based upon the final plans and specifications for each Project Segment, including without limitation any relocated easement area that is not located within the

Property) has been described in a manner acceptable to Grantor, and has been conveyed to Grantor by recorded instrument(s) in form and substance satisfactory to both parties, and Grantor's continuing easement rights in the related Property Segment have been insured to Grantor's reasonable satisfaction by a title company reasonably acceptable to Grantor, at Grantee's expense, and (z) Grantee shall have executed and delivered a bill of sale to Grantor for all of the Railroad Facilities on the relocated Railroad Easement Property, then (A) this Railroad Easement shall terminate as to the Railroad Easement Property that is part of the related Property Segment except as to any portion of such Property Segment that is incorporated within the instrument(s) recorded pursuant to clause (y) of this paragraph, and (B) Grantor shall quitclaim (subject to a reservation of Grantor's other remaining easement interests in the area) its existing Railroad Easement on that Property Segment from which such Railroad Facilities were relocated, without additional compensation from Grantee to Grantor. Any such modification and/or termination of this Railroad Easement as to any Property Segment shall not affect in any manner whatsoever the Railroad Easement encumbering the remaining Railroad Easement Property.

Grantor may assign the Railroad Easement, in whole or in part, without the consent of Grantee, to any successor or affiliate of Grantor, or to any other Class I railroad; provided that such assignee, successor or affiliate shall take subject to the Trackage Rights Agreement and/or the Construction Contract, to the extent such agreements are still in effect and applicable to the assigned easement. Grantor may also assign the Railroad Easement, in whole or in part, with the consent of Grantee (which shall not be unreasonably withheld), to any other person; provided that such assignee shall take subject to the Trackage Rights Agreement and/or the Construction Contract, to the extent such agreements are still in effect and applicable to the assigned easement. Grantor shall be entitled to all revenues derived from all current and future agreements to which Grantor is a party affecting the Railroad Easement Property.

In the event that Grantor abandons this Railroad Easement over all or a segment of the Property pursuant to Section 9.1.3 of the Trackage Rights Agreement, this paragraph will apply. For purposes of this Grant Deed, Grantor's abandonment of all or any segment of the Railroad Easement Property shall be deemed to occur on the date on which Grantor's trackage rights for such segment of the Railroad Easement Property have been terminated pursuant to Section 9.1.3 of the Trackage Rights Agreement. In such event, the Railroad Easement shall terminate automatically with respect to such segment of the Railroad Easement Property only, without additional compensation from Grantee to Grantor. At Grantee's request, Grantor shall quitclaim (subject to a reservation of Grantor's remaining easement interests in the area) its existing Railroad Easement in that segment of the Railroad Easement Property that has been abandoned.

Without limiting the foregoing, Grantee and its successors and assigns shall have the right to use the Property in any manner not inconsistent with Grantor's rights reserved in this Grant Deed, and to the extent such agreements are still in effect, with Grantor's rights under the Construction Contract and Trackage Rights Agreement, and consistent with applicable laws. At Grantee's request, as the Construction Contract and/or the Trackage Rights Agreement terminate with respect to any Property Segment, the parties agree to record a memorandum of such termination(s).

Except with respect to the income generated by any existing or future agreements relating to the reserved mineral rights, the Communication Easement and/or the Railroad Easement (which income is expressly reserved by Grantor), Grantee shall be entitled to all income (including, without limitation, rentals and license fees) from any use rights granted by Grantor or Grantor's predecessors in interest. Grantee agrees that if Grantee receives any income that relates to any of Grantor's reservations in this Grant Deed, Grantee will promptly forward the income to Grantor, but Grantee shall have no obligation to collect such income.

THE PROPERTY IS CONVEYED TO GRANTEE SUBJECT TO all Permitted Exceptions, as defined on **Exhibit B** attached hereto and incorporated by reference.

IN WITNESS WHEREOF, the undersigned have executed this Grant Deed as of December ____, 2002.

Attest: UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: _____
Title: _____

Secretary

(SEAL)

SANTA CLARA VALLEY TRANSPORTATION
AUTHORITY, a public agency created under
California law

By: _____
Name: _____
Title: General Manager

APPROVED AS TO FORM:

Counsel

STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS)

On December ___, 2002, before me, a Notary Public in and for said County and State, personally appeared _____ and _____, who are the _____ and the _____ Secretary, respectively, of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

(SEAL)

STATE OF _____)
) ss.
COUNTY OF _____)

On December __, 2002 before me, _____, a Notary Public in
and for said County and State, personally appeared _____
and _____ who are the _____ and
the _____, respectively, of SANTA CLARA VALLEY
TRANSPORTATION AUTHORITY, a public agency created under California law, and who are
personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons
whose names are subscribed to in the within instrument, and acknowledged to me that they
executed the same in their authorized capacities, and that by their signatures on the instrument
the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

My commission expires: _____

(SEAL)

EXHIBIT A TO GRANT DEED

LEGAL DESCRIPTION OF PROPERTY

{00100361.DOC 21}

EXHIBIT A TO GRANT DEED

EXHIBIT B TO GRANT DEED

PERMITTED EXCEPTIONS

1. A lien to secure payment of real property taxes and assessments, not delinquent;
2. Matters affecting the condition of the title created by, or permitted to be created by or with the written consent of Grantee;
3. The Property Materials, as defined in the Purchase, Sale and Option Agreement and Escrow Instructions, between Grantor and Grantee, dated of even date herewith;
4. The standard and listed exceptions shown in the title policy insuring Grantee as owner of the Property;
5. Matters that would be disclosed by a survey of the Property; and
6. All of the licenses, permits, easements and agreements affecting the Property that have been disclosed to Grantee.

CERTIFICATE OF ACCEPTANCE
(Pursuant to Government Code §27281)

This is to certify that the interest in real property conveyed by Grant Deed as of December __, 2002, from Union Pacific Railroad Company, a Delaware corporation, to the Santa Clara Valley Transportation Authority, a public agency created under California law ("Grantee"), is hereby accepted by virtue of the authority granted to the General Manager pursuant to authority conferred by Section 5-3 of the Santa Clara Valley Transportation Authority Administrative Code, adopted December 20, 1994, and Grantee consents to recordation thereof by its duly authorized representative.

**SANTA CLARA VALLEY
TRANSPORTATION AUTHORITY**

Date: December __, 2002

By: _____
Title: General Manager

APPROVED AS TO FORM:

Counsel

EXHIBIT 3B

EXHIBIT 3-B

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

Santa Clara Valley Transportation Authority
3331 North First Street
San Jose, CA 95134-1906
Attn: Ms. Juanita Villemaire

MAIL TAX STATEMENTS TO:

Santa Clara Valley Transportation Authority
3331 North First Street
San Jose, CA 95134-1906
Attn: Ms. Juanita Villemaire

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

(Space above line for Recorder's use only)

QUITCLAIM DEED

 County, California

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Union Pacific Railroad Company, a Delaware corporation ("Grantor") remises, releases and quitclaims to Santa Clara Valley Transportation Authority, a public agency created under California law ("Grantee"), all right, title, interest, claim and demand which Grantor has in and to that portion of property, located in the County of _____, State of California, as more particularly described in Exhibit A attached hereto and by this reference made a part hereof, together with improvements, if any, located thereon and other appurtenances thereto, including without limitation, all strips, gaps and gores (collectively, the "Property"), subject to the reservations set forth below.

EXCEPTING from this quitclaim and RESERVING unto Grantor, its successors and assigns (including, without limitation, lessees, sublessees, easement owners and licensees of Grantor) forever, all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered 500 feet or more below the surface, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals by any means or methods suitable to Grantor, its successors and assigns, but without entering upon or using the surface of the Property, and in such manner as not to damage the surface of said lands or to interfere with the use thereof by Grantee, its successors or assigns.

ALSO EXCEPTING from this quitclaim and RESERVING unto Grantor, its successors and assigns (including, without limitation, lessees, sublessees, easement owners and licensees of Grantor) forever, a perpetual, non-exclusive easement (the "Communication Easement") in, on, over, through and across a portion of the Property described below (the "Communication Easement Property"), together with necessary rights of access for the easement purposes authorized hereunder in, on, over, through and across the Property. Grantor and its lessees, sublessees, licensees, successors and assigns shall have the right in, on, under, over, through and across the Communication Easement Property to own, construct, reconstruct, maintain, repair, operate, use, relocate and/or remove existing and future fiber optic and other communication systems, lines and facilities and all rights related thereto (collectively, the "Communication Improvements"). Grantee covenants that it shall not construct any structures or improvements under, over, in, on, through or across the Communication Easement Property, except in accordance with the terms of Grantor's existing agreements for Communication Improvements. The general location of the Communication Easement Property constitutes a continuous ten-foot wide strip of land, located (i) five feet on either side of the existing Communication Improvements and covering such additional widths and areas as are included in the terms of Grantor's existing agreements for Communication Improvements, and (ii) along the western-most boundary of the Property.

The parties contemplate that some portions of the existing Communication Improvements may need to be relocated to accommodate Grantee's proposed public transportation project on the Property. The parties will cooperate to ensure that such project is performed in accordance with the terms of Grantor's existing agreements for Communication Improvements. Such relocation project shall be (i) constructed at the sole cost and expense of parties other than Grantor, in a manner that will provide Grantor and the owners of the Communication Improvements the ability to maintain continuous communications and utility connections and service at existing service levels, (ii) closely coordinated with and reasonably approved by Grantor, and (iii) coordinated with and approved by the owners of the Communication Improvements. After the Communication Improvements relocation project is completed, and on the conditions that (y) the relocated Communication Easement Property (including without limitation any relocated easement area that is not located within the Property) has been described in a manner acceptable to Grantor and has been insured to Grantor's reasonable satisfaction by a title company reasonably acceptable to Grantor, at Grantee's expense, and (z) Grantee shall have executed and delivered a bill of sale either to Grantor or the owners of the Communication Improvements, as appropriate, for all of the Communication Improvements on the relocated Communication Easement Property, then Grantor shall quitclaim (subject to a reservation of Grantor's other remaining easement interests in the area) its existing Communication Easement in that portion of the Property described in clause (i) in the last sentence of the immediately preceding paragraph herein from which such relocated Communication Improvements have been relocated.

Notwithstanding any other provision of this Quitclaim Deed, Grantor's quitclaim in favor of Grantee hereunder is subject to, and the easement reserved herein shall allow Grantor to honor its grant and fulfill its other obligations and exercise its rights under, all existing agreements for Communication Improvements, and this Quitclaim Deed shall not impair,

restrict or limit the rights of any communications company under any existing agreement. All Communication Improvements presently existing on or hereafter constructed on the Communication Easement Property shall remain the personal property of the Grantor or the communications company to which they belong. Grantor shall be entitled to all revenues and consideration derived from all current and future agreements, to which Grantor is a party affecting the Communication Easement Property. Grantee and each subsequent owner of the Property shall, promptly following any sale or lease of the Property, deliver or cause to be delivered to MCI/WorldCom Communications, Inc., Attn: Senior Manager – Dept. 1238, 400 International Parkway, Richardson, Texas 75081, and to MCI/WorldCom Communications, Inc., Attn: Assistant General Counsel – Dept. 0598, 1133 19th Street N.W., Washington, D.C. 20036, the name and address of the grantee or lessee. As used herein, "lease" shall mean a commercial or industrial lease which provides for a fixed initial term of at least one year and which requires ninety (90) days or more notice for termination.

ALSO EXCEPTING from this quitclaim and RESERVING unto Grantor, its successors and assigns (including, without limitation, lessees, sublessees, easement owners and licensees of Grantor) forever, a perpetual, exclusive easement (the "Railroad Easement") in, on, under, over and through the Property as set forth more fully below (for purposes of this Railroad Easement, the Property shall be hereinafter referred to as the "Railroad Easement Property"), in which areas Grantor and its lessees, sublessees, easement owners, licensees, successors and assigns (collectively, the "Easement Users") shall have the right to own, use, construct, reconstruct, maintain, repair, operate, relocate, upgrade, renew and/or remove existing and/or future railroad, tracks and railroad-related equipment, facilities and transportation systems (the "Railroad Facilities") related to Easement Users' rail operations. Grantee shall be prohibited from (i) using all or any portion of the Property for rail freight operations, (ii) without Grantor's prior written consent, removing or modifying the Railroad Facilities related to Easement Users' rail operations, or (iii) without Grantor's prior written consent, enlarging, amending or modifying any existing agreement (including but not limited to any relocation of or other alteration to any improvement permitted thereby), or entering into any new agreement, that permits or allows any improvement within the Railroad Easement Property.

The parties contemplate that this Railroad Easement may terminate in part due to Grantee's proposed public transportation project on the Property. Such project will likely require that some portions of the Railroad Facilities will need to be relocated to accommodate Grantee's public transportation project. The Railroad Facilities relocation project shall be constructed in accordance with the Engineering and Construction Contract – WP Milpitas Line, of even date herewith between the parties (the "Construction Contract"), in a manner that will provide Grantor the ability to maintain continuous rail operations and service, and shall be performed in a manner that meets Grantor's, the CPUC's and the FRA's applicable standards and regulations. After each Project Segment (as that term is defined in the Construction Contract) is completed in accordance with Section 8.1.2 of the Construction Contract, and after Grantor's exercise of abandonment authority received from the Surface Transportation Board in accordance with the Trackage Rights Agreement – WP Milpitas Line, of even date herewith between the parties (the

"Trackage Rights Agreement") for the related Property Segment (as that term is defined in the Construction Contract), and on the conditions that (y) the relocated Railroad Easement Property (as determined by the parties based upon the final plans and specifications for each Project Segment, including without limitation any relocated easement area that is not located within the Property) has been described in a manner acceptable to Grantor, and has been conveyed to Grantor by recorded instrument(s) in form and substance satisfactory to both parties, and Grantor's continuing easement rights in the related Property Segment have been insured to Grantor's reasonable satisfaction by a title company reasonably acceptable to Grantor, at Grantee's expense, and (z) Grantee shall have executed and delivered a bill of sale to Grantor for all of the Railroad Facilities on the relocated Railroad Easement Property, then (A) this Railroad Easement shall terminate as to the Railroad Easement Property that is part of the related Property Segment except as to any portion of such Property Segment that is incorporated within the instrument(s) recorded pursuant to clause (y) of this paragraph, and (B) Grantor shall quitclaim (subject to a reservation of Grantor's other remaining easement interests in the area) its existing Railroad Easement on that Property Segment from which such Railroad Facilities were relocated. Any such modification and/or termination of this Railroad Easement as to any Property Segment shall not affect in any manner whatsoever the Railroad Easement encumbering the remaining Railroad Easement Property.

Grantor may assign the Railroad Easement, in whole or in part, without the consent of Grantee, to any successor or affiliate of Grantor, or to any other Class I railroad; provided that such assignee, successor or affiliate shall take subject to the Trackage Rights Agreement and/or the Construction Contract, to the extent such agreements are still in effect and applicable to the assigned easement. Grantor may also assign the Railroad Easement, in whole or in part, with the consent of Grantee (which shall not be unreasonably withheld), to any other person; provided that such assignee shall take subject to the Trackage Rights Agreement and/or the Construction Contract, to the extent such agreements are still in effect and applicable to the assigned easement. Grantor shall be entitled to all revenues derived from all current and future agreements to which Grantor is a party affecting the Railroad Easement Property.

In the event that Grantor abandons this Railroad Easement over all or a segment of the Property pursuant to Section 9.1.3 of the Trackage Rights Agreement, this paragraph will apply. For purposes of this Quitclaim deed, Grantor's abandonment of all or any segment of the Railroad Easement Property shall be deemed to occur on the date on which Grantor's trackage rights for such segment of the Railroad Easement Property have been terminated pursuant to Section 9.1.3 of the Trackage Rights Agreement. In such event, the Railroad Easement shall terminate automatically with respect to such segment of the Railroad Easement Property only, without additional compensation from Grantee to Grantor. At Grantee's request, Grantor shall quitclaim (subject to a reservation of Grantor's remaining easement interests in the area) its existing Railroad Easement in that segment of the Railroad Easement Property that has been abandoned.

Without limiting the foregoing, Grantee and its successors and assigns shall have the right to use the Property in any manner not inconsistent with Grantor's rights reserved in this Quitclaim Deed, and to the extent such agreements are still in effect, with Grantor's rights under

the Construction Contract and Trackage Rights Agreement, and consistent with applicable laws. At Grantee's request, as the Construction Contract and/or the Trackage Rights Agreement terminate with respect to any Property Segment, the parties agree to record a memorandum of such termination(s).

Except with respect to the income generated by any existing or future agreements relating to the reserved mineral rights, the Communication Easement and/or the Railroad Easement (which income is expressly reserved by Grantor), Grantee shall be entitled to all income (including, without limitation, rentals and license fees) from any use rights granted by Grantor or Grantor's predecessors in interest. Grantee agrees that if Grantee receives any income that relates to any of Grantor's reservations in this Quitclaim Deed, Grantee will promptly forward the income to Grantor, but Grantee shall have no obligation to collect such income.

IN WITNESS WHEREOF, Grantor has set its hand and seal as of December __, 2002.

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: _____
Its: _____

ATTEST:

By: _____

Secretary

(SEAL)

SANTA CLARA VALLEY TRANSPORTATION
AUTHORITY, a public agency created under
California law

By: _____
Name: _____
Title: General Manager

APPROVED AS TO FORM:

Counsel

STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS)

On December ___, 2002, before me, a Notary Public in and for said County and State, personally appeared _____ and _____, who are the _____ and the _____ Secretary, respectively, of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

(SEAL)

STATE OF _____)
) ss.
COUNTY OF _____)

On December __, 2002 before me, _____, a Notary Public in
and for said County and State, personally appeared _____
and _____ who are the _____ and
the _____, respectively, of SANTA CLARA VALLEY
TRANSPORTATION AUTHORITY, a public agency created under California law, and who are
personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons
whose names are subscribed to in the within instrument, and acknowledged to me that they
executed the same in their authorized capacities, and that by their signatures on the instrument
the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

My commission expires: _____

(SEAL)

EXHIBIT A

(Attached to and made a part of the
Quitclaim Deed dated December __, 2002,
from Union Pacific Railroad Company
to Santa Clara Valley Transportation Authority)

THE PROPERTY

(see attached legal description)

CERTIFICATE OF ACCEPTANCE
(Pursuant to Government Code §27281)

This is to certify that the interest in real property conveyed by Quitclaim Deed as of December __, 2002, from Union Pacific Railroad Company, a Delaware corporation to the Santa Clara Valley Transportation Authority, a public agency created under California law, is hereby accepted by virtue of the authority granted to the General Manager pursuant to authority conferred by Section 5-3 of the Santa Clara Valley Transportation Authority Administrative Code, adopted December 20, 1994, and Grantee consents to recordation thereof by its duly authorized representative.

SANTA CLARA VALLEY TRANSPORTATION
AUTHORITY

Date: December __, 2002

By: _____
Title: General Manager

APPROVED AS TO FORM:

Counsel

EXHIBIT 4

EXHIBIT 4
PROPERTY MATERIALS
FOR PROPERTY
(Attached)

{00100361.DOC 21}

Exhibit 4

PROPERTY MATERIALS FOR PROPERTY

WP MILPITAS LINE

All agreements listed herein are deemed to include all amendments, assumptions, assignments and supplements to date.

#	AUDIT No	DESCRIPTION	PARTY NAME	CITY	DATE
---	----------	-------------	------------	------	------

PROPERTY - FREIGHT RAIL AGREEMENTS - NOT TO BE ASSIGNED

1	WP1865	APPLICATION FOR INDUSTRY TRACK	GLENWOOD LUMBER COMPANY	SAN JOSE	12/10/25
2	WP2776	APPLICATION FOR INDUSTRY TRACK	GILMORE OIL COMPANY	SAN JOSE	5/9/30
3	WP8948	APPLICATION FOR INDUSTRY TRACK	WILMARS, INC.	SAN JOSE	4/22/53
4	WP9500	APPLICATION FOR INDUSTRY TRACK	AL DE FRANCO, MARY DE FRANCO AND MAX D. STEARNS D/B/A A.D.S FOOD PRODUCTS COMPANY	SAN JOSE	9/19/56
5	WP10028	AGREEMENT RE INDUSTRIAL TRACK	INLAND STEEL PRODUCTS COMPANY	FREMONT	2/25/60
6	WP11103	AGREEMENT RE INDUSTRIAL TRACK	THE HEIL COMPANY	FREMONT	10/6/66
7	WP11111	AGREEMENT RE INDUSTRIAL TRACK	WESTAB, INC.	SAN JOSE	10/14/66
8	WP11206	AGREEMENT RE INDUSTRIAL TRACK	EUGENE COX AND JACK COX D/B/A MODERN DRYWALL	MILPITAS	4/17/67
9	WP12355	AGREEMENT RE INDUSTRIAL TRACK AND THIRD PARTY USE	LENFEST INVESTMENT, AS INDUSTRY, RATHJEN BROS. INC., AS THIRD PARTY	SAN JOSE	3/13/73
10	WP12973	AGREEMENT RE INDUSTRIAL TRACK	A. SCHULMAN, INCORPORATED	MILPITAS	7/18/77
11	WP13655	AGREEMENT RE INDUSTRIAL TRACK	LINCOLN SAN JOSE V ASSOCIATES	SAN JOSE	7/28/82
12	WP14411	INDUSTRY TRACK CONTRACT	LINCOLN PROPERTY COMPANY	MILPITAS	7/1/86
13	WP1301	APPLICATION FOR INDUSTRY TRACK	GLENWOOD LUMBER CO.	SAN JOSE	6/20/23
14	WP1396	APPLICATION FOR INDUSTRY TRACK	GEORGE W. DOBSON WHITESIDE BROS. (THIRD PARTY LESSEE)	SAN JOSE	10/25/23
15	WP7107	APPLICATION FOR INDUSTRY TRACK	SHAMROCK INDUSTRIES, INC.	WARM SPRINGS	7/3/46
16	WP7174	APPLICATION FOR INDUSTRY TRACK	R.A. FOLSOM	SAN JOSE	9/24/46
17	WP7196	APPLICATION FOR INDUSTRY TRACK	SAN JOSE STEEL COMPANY	SAN JOSE	10/19/46
18	WP8277	APPLICATION FOR INDUSTRY TRACK	LACLEDE-CHRISTY COMPANY	SAN JOSE	6/1/50
19	WP8359	APPLICATION FOR INDUSTRY TRACK	CARL N. SWENSON AND ANNA M. SWENSON WITH JEWEL TEA COMPANY AS THIRD PARTY	SAN JOSE	10/10/50
20	WP8484	APPLICATION FOR INDUSTRY TRACK	IRA E. BRINK	SAN JOSE	3/21/51
21	WP9135	INDUSTRIAL TRACK AGREEMENT	GLOBE-UNION, INC.	SAN JOSE	6/2/54
22	WP9210	AGREEMENT FOR USE OF INDUSTRY TRACK BY A THIRD PARTY	FRED D. BARTON AND ETHEL ANN BARTON AS INDUSTRY AND BAR'S PRODUCTS, INC., AS THIRD PARTY	SAN JOSE	8/25/54
23	WP9211	INDUSTRIAL TRACK AGREEMENT	FRED D. BARTON AND ETHEL ANN BARTON	SAN JOSE	8/25/54
24	WP9728	INDUSTRIAL TRACK AGREEMENT	HOLLAND PACIFIC HITCH COMPANY	MILPITAS	3/14/58
25	WP10239	INDUSTRIAL TRACK AGREEMENT	IRVINGTON PACKING COMPANY, INC.	IRVINGTON	8/18/61
26	WP12060	INDUSTRIAL TRACK AGREEMENT	ALPHA BETA ACME MARKETS, INC.	MILPITAS	8/3/71
27	WP12735	INDUSTRIAL TRACK AGREEMENT	CROCKER LAND COMPANY	FREMONT	3/18/75
28	WP12754	INDUSTRIAL TRACK AGREEMENT	UNITED GROCERS, LTD.	FREMONT	7/17/75
29	A14163	INDUSTRY TRACK AGREEMENT	LINCOLN MILPITAS III LIMITED PARTNERSHIP	MILPITAS	1/3/85
30	WP12027	INDUSTRIAL TRACK AGREEMENT	HUSSMANN-CALIFORNIA CO.	CURTNER	6/11/71
31	WP12026	INDUSTRIAL TRACK AGREEMENT	BUILDERAMA, INC.	SAN JOSE	6/8/71
32	WP10499	INDUSTRIAL TRACK AGREEMENT	ESSEX WIRE CORPORATION	SAN JOSE	3/29/63
33	WP11327	INDUSTRIAL TRACK AGREEMENT	COOK PAINT AND VARNISH COMPANY	MILPITAS	10/26/67
34	216240	INDUSTRY TRACK CONTRACT	THE RED WING COMPANY, INC. (UP)	SAN JOSE	1/20/00
35	WP11474	APPLICATION FOR INDUSTRY TRACK	ELVALSONS	MILPITAS	10/16/69
36	14268	INDUSTRY TRACK AGREEMENT	LINCOLN SAN JOSE VI ASSOCIATES, LTD.	BERRYESSA	8/26/85
37	WP11209	INDUSTRY TRACK AGREEMENT	FEDERAL PACIFIC ELECTRIC COMPANY	MILPITAS	4/25/67

PROPERTY - NON-FREIGHT RAIL AGREEMENTS - NOT TO BE ASSIGNED

1	156978	SIGNBOARD LEASE*	PATRICK MEDIA GROUP, INC.	SAN JOSE	10/16/91
2	156979	SIGNBOARD LEASE*	PATRICK MEDIA GROUP, INC.	SAN JOSE	10/16/91
3	156982	SIGNBOARD LEASE*	PATRICK MEDIA GROUP, INC.	SAN JOSE	10/15/91

PROPERTY MATERIALS FOR PROPERTY

WP MILPITAS LINE

All agreements listed herein are deemed to include all amendments, assumptions, assignments and supplements to date.

#	AUDIT No.	DESCRIPTION	PARTY NAME	CITY	DATE
4	157140	SIGNBOARD LEASE*	PATRICK MEDIA GROUP, INC.	SAN JOSE	10/15/91
5	158279	SIGNBOARD LEASE*	PATRICK MEDIA GROUP, INC.	SAN JOSE	1/16/92
6	158285	SIGNBOARD LEASE*	PATRICK MEDIA GROUP, INC.	SAN JOSE	1/16/92
7	158290	SIGNBOARD LEASE*	PATRICK MEDIA GROUP, INC.	SAN JOSE	1/16/92
8	158291	SIGNBOARD LEASE*	PATRICK MEDIA GROUP, INC.	SAN JOSE	1/16/92
9	158649	SIGNBOARD LEASE*	OUTDOOR SYSTEMS, INC.	SAN JOSE	1/8/92
10	WP14202	FIBER OPTIC AGREEMENT - REDACTED DUE TO CONFIDENTIALITY PROVISIONS	MCI TELECOMMUNICATIONS CORPORATION		3/11/85
11	NA	MASTER SIGNBOARD SITE LICENSE (CLEAR CHANNEL MASTER AGREEMENT) - REDACTED WITH RESPECT TO MONETARY CONSIDERATION, SIGN SITES NOT ON PROPERTY, AND SIGN SITES ADDED AFTER 10/1/97.	ELLER MEDIA COMPANY		9/30/97

PROPERTY - FREIGHT RAIL AGREEMENT - TO BE PARTIALLY ASSIGNED

1	221180	TRACK LEASE AGREEMENT	TRUCK RAIL HANDLING, INC.	SAN JOSE	10/17/00
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PROPERTY - NON-FREIGHT RAIL AGREEMENTS - TO BE PARTIALLY ASSIGNED

1	WP14028	STORM DRAIN	LINCOLN SAN JOSE VI ASSOCIATES	SAN JOSE	10/26/63
2	WP2360	OVERHEAD WIRELINE CROSSING	PACIFIC GAS AND ELECTRIC COMPANY	MILPITAS	6/20/28
3	WP5791	CROSSING WATER PIPELINE	STEPHEN D'ARRIGO	SAN JOSE	6/23/41
4	WP11281	OVERPASS CROSSING - CONSTRUCTION AND MAINTENANCE	CITY OF MILPITAS AND SPC	MILPITAS	8/2/67
5	WP11372	TRANSFER OF TITLE OF WATER MAINS AND REIMBURSEMENT OF COSTS	CITY OF MILPITAS	MILPITAS	11/13/67
6	WP12756	WARNING DEVICES - PUBLIC ROADWAY	CITY OF FREMONT AND SPTC	FREMONT	9/10/75
7	WP13008	AGREEMENT RE CONSTRUCTION AND MAINTENANCE OF OVERPASS AND UNDERPASS	CITY OF FREMONT AND SPTC	FREMONT	9/27/77
8	WP11174	PERMITEE DEDICATION AND IMPROVEMENT AGREEMENT (DEDICATES STREET, WATER EASEMENT AND STORM EASEMENT) (RR TO DEED TO CITY) (RUNS WITH THE LAND)	CITY OF MILPITAS	MILPITAS	12/8/66
9	156698	CONSENT TO UNDERGROUND WIRE CROSSING	CITY OF MILPITAS (UP)	MILPITAS	10/3/91
10	WP1957	OVERHEAD WIRELINE CROSSING	THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY	MILPITAS	6/28/26
11	WP2768	OVERHEAD WIRELINE CROSSING	PACIFIC GAS AND ELECTRIC COMPANY	IRVINGTON	5/27/30
12	WP2859	OVERHEAD WIRELINE CROSSING	PACIFIC GAS AND ELECTRIC COMPANY	IRVINGTON	8/27/30
13	WP2949	OVERHEAD WIRELINE CROSSING	PACIFIC GAS AND ELECTRIC COMPANY	WARM SPRINGS	12/17/30
14	WP3559	OVERHEAD WIRELINE CROSSING	PACIFIC GAS AND ELECTRIC COMPANY	SAN JOSE (WARM SPRINGS)	5/14/34
15	WP8068	UNDERGROUND GAS PIPELINE	PACIFIC GAS AND ELECTRIC COMPANY	MILPITAS	6/15/49
16	WP11114	WARNING DEVICES - PUBLIC ROADWAY	WP, SPC AND CITY OF MILPITAS	MILPITAS	10/10/66
17	WP11120	WARNING DEVICES - PUBLIC ROADWAY	CITY OF MILPITAS	MILPITAS	11/14/66
18	WP12338	WARNING DEVICES - PUBLIC ROADWAY	COUNTY OF SANTA CLARA	SAN JOSE	2/13/73
19	WP12827	AGREEMENT RE RELOCATION OF CHANNEL OF BERRYESSA CREEK AND ABANDONMENT OF EXISTING CROSSING	SANTA CLARA VALLEY WATER DISTRICT	MILPITAS	3/31/76
20	WP12831	WARNING DEVICES - PUBLIC ROADWAY	STATE OF CALIFORNIA - DEPT. OF TRANSPORTATION	FREMONT	3/19/76
21	WPL230	WATER PIPELINE	J.C. LOPES	WARM SPRINGS	10/31/55
22	WPL239	SEWERLINE CROSSING	IRVINGTON SANITARY DISTRICT	IRVINGTON	11/7/55
23	WPL1153	WATER PIPELINE	CITY OF SAN JOSE	SAN JOSE	2/6/69
24	WPL1164	OVERHEAD WIRELINE CROSSING	PACIFIC GAS AND ELECTRIC COMPANY	MILPITAS	6/6/69
25	WPL1342	OVERHEAD WIRELINE CROSSING	PACIFIC GAS AND ELECTRIC COMPANY	SAN JOSE	4/21/72
26	WPL1384	CASING CROSSING	THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY	MILPITAS	3/5/73

PROPERTY MATERIALS FOR PROPERTY

WP MILPITAS LINE

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#	AUDIT No.	DESCRIPTION	PARTY NAME	CITY	DATE
27	WPL1392	OVERHEAD WIRELINE CROSSING	PACIFIC GAS AND ELECTRIC COMPANY	MILPITAS	3/28/73
28	204285	CONSENT TO WIRE CROSSING	PACIFIC GAS AND ELECTRIC COMPANY (UP)	MILPITAS	3/25/98
29	204313	CONSENT TO WIRE CROSSING	PACIFIC GAS AND ELECTRIC COMPANY	MILPITAS	3/25/98
30	WP12404	AGREEMENT RE CONSTRUCTION AND MAINTENANCE OF ABEL STREET OVERHEAD AND GRADE CROSSINGS	SPTC, WP AND CITY OF MILPITAS	MILPITAS	5/31/73
31	WP1684	OVERHEAD WIRELINE CROSSING	ANTONE J. SANTOS	SAN JOSE	5/1/25
32	WP1237	OVERHEAD WIRELINE CROSSING	J. TWOHIG	WARM SPRINGS	3/13/23
33	WP2288	OVERHEAD WIRELINE CROSSING	PACIFIC GAS AND ELECTRIC COMPANY	WARM SPRINGS	1/17/28
34	WP2539	IRRIGATION PIPELINE	D.A. ROBINSON	WARM SPRINGS	5/15/29
35	WP8426	OVERHEAD TELEPHONE WIRELINE	THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY	WARM SPRINGS	1/15/51
36	WP10511	WARNING DEVICES - PUBLIC ROADWAY	CITY OF FREMONT AND SPTC	FREMONT	3/27/63
37	WP10861	WARNING DEVICES - PUBLIC ROADWAY	CITY OF MILPITAS	MILPITAS	4/28/65
38	WP12793	WARNING DEVICES - PUBLIC ROADWAY	STATE OF CALIFORNIA - DEPT. OF TRANSPORTATION	MILPITAS	9/24/75
39	WP13100	WARNING DEVICES - PUBLIC ROADWAY	STATE OF CALIFORNIA - DEPT. OF TRANSPORTATION	FREMONT	8/25/77
40	WPL66	GAS MAIN	PACIFIC GAS AND ELECTRIC COMPANY	MILPITAS	9/12/52
41	WPL135	OVERHEAD WIRELINE CROSSING	PACIFIC GAS AND ELECTRIC COMPANY	MILPITAS	4/29/54
42	WPL577	LICENSE RE SANITARY SEWER	MILPITAS SANITARY DISTRICT	MILPITAS	12/29/60
43	WPL954	UNDERGROUND PIPES AND CONDUIT	THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY	FREMONT	11/9/65
44	WPL1286	SANITARY SEWER	UNION SANITARY DISTRICT	WARM SPRINGS	6/17/71
45	WPL1287	SANITARY SEWER	UNION SANITARY DISTRICT	WARM SPRINGS	6/17/71
46	WPL1327	OVERHEAD WIRELINE CROSSING	PACIFIC GAS AND ELECTRIC COMPANY	IRVINGTON	1/24/72
47	WPL1652	GRAVITY SEWER	UNION SANITARY DISTRICT	FREMONT	9/19/79
48	WPL1816	LICENSE FOR PRIVATE ROAD CROSSING	TRUCK RAIL HANDLING, INC.	WARM SPRINGS	12/14/82
49	WPL1828	SANITARY SEWER	MARTIN D. MURPHY AND HAROLD B. MURPHY D/B/A MURCO DEVELOPMENT, INC.	WARM SPRINGS	3/1/83
50	42801	LEASE OF LAND FOR OFFICE SPACE, SCALE AND RAMP, WASH RACKS AND PARKING	TRUCK RAIL HANDLING, INC.	WARM SPRINGS	3/27/87
51	143713	2 WATER PIPELINES	CITY OF MILPITAS	MILPITAS	5/18/88
52	145509	CONSENT TO OVERHEAD WIRELINE	PACIFIC GAS AND ELECTRIC COMPANY	FREMONT	10/25/88
53	146859	CONSENT TO OVERHEAD WIRELINE	PACIFIC GAS AND ELECTRIC COMPANY	MILPITAS	3/15/89
54	148042	CONSENT TO MAINTENANCE AND EXTENSION OF OVERHEAD WIRELINE	PACIFIC GAS AND ELECTRIC COMPANY	MILPITAS	7/7/89
55	148683	UNDERGROUND NITROGEN GAS PIPELINE	AIR PRODUCTS MANUFACTURING CORP.	MILPITAS	8/31/89
56	152463	CONSENT TO WATER PIPELINE CROSSING UNDER SPUR AND PUBLIC ROW	SANTA CLARA VALLEY WATER DISTR	MILPITAS	8/3/90
57	153690	UNDERGROUND WATER PIPELINE	CITY OF MILPITAS	MILPITAS	12/14/90
58	167731	CROSSING - WARREN AVENUE WIDENING	CITY OF FREMONT	FREMONT	4/19/93
59	169441	UNDERGROUND WATER PIPELINE	JONES CHEMICALS INCORPORATED	MILPITAS	11/3/93
60	169600	UNDERGROUND WIRELINE	JONES CHEMICALS INCORPORATED	MILPITAS	11/5/93
61	172900	WIDENING OF MONTAGUE EXPWY - CROSSING IMPROVEMENTS	THE GREAT MALL OF THE BAY AREA PRTNESH.	MILPITAS	8/10/94
62	184313	UNDERGROUND SANITARY SEWER PIPELINE	UNION SANITARY DISTRICT	WARM SPRINGS	3/19/66
63	185098	UNDERGROUND RECYCLED WATER PIPELINE	SANTA CLARA VALLEY WATER DISTRICT	MILPITAS	5/14/96
64	190120	UNDERGROUND TRAFFIC SIGNAL	CITY OF FREMONT	FREMONT	12/13/96
65	190629	CONSENT TO OVERHEAD WIRELINE UPGRADE	PACIFIC GAS AND ELECTRIC COMPANY	MILPITAS	1/21/97
66	14109	HIGHWAY GRANT - WARREN AVENUE	CITY OF FREMONT	FREMONT	6/8/84
67	190960	CONSENT TO UNDERGROUND WATER PIPELINE	ALAMEDA COUNTY WATER DISTRICT	FREMONT	2/19/97
68	200330	NON-EXCLUSIVE WIRELINE EASEMENT	PACIFIC GAS AND ELECTRIC COMPANY	MILPITAS	5/13/97

PROPERTY MATERIALS FOR PROPERTY

WP MILPITAS LINE

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#	AUDIT No.	DESCRIPTION	PARTY NAME	CITY	DATE
69	210403	UNDERGROUND FIBER OPTIC CABLE CROSSING AGREEMENT	GST TELECOM CALIFORNIA, INC	MILPITAS	5/12/99
70	211087	CONSENT TO OVERHEAD WIRELINE	PACIFIC GAS AND ELECTRIC COMPANY	MILPITAS	7/28/99
71	213643	NON-EXCLUSIVE PIPELINE EASEMENT - U/G	PACIFIC GAS AND ELECTRIC COMPANY	MILPITAS	1/14/00
72	213682	NON-EXCLUSIVE PIPELINE EASEMENT - U/G	PACIFIC GAS AND ELECTRIC COMPANY	MILPITAS	1/14/00
73	214761	UNDERGROUND FIBER OPTIC WIRELINE AGMT.	METROPOLITAN FIBER SYSTEMS OF CALIFORNIA, INC.	FREMONT	3/16/00
74	218654	UNDERGROUND FIBER OPTIC WIRELINE AGMT.	WILLIAMS COMMUNICATIONS, INC.	MILPITAS	10/26/00
75	219701	UNDERGROUND FIBER OPTIC WIRELINE AGMT.	360NETWORKS (USA) INC	MILPITAS	10/26/00
76	221087	CALTRANS RIGHT OF ENTRY AGREEMENT RE ENVIRONMENTAL PHASE II INVESTIGATION	STATE OF CALIFORNIA - DEPT. OF TRANSP.	WARM SPRINGS	3/28/01
77	222392	RIGHT OF ENTRY AGREEMENT RE ENVIRONMENTAL INVESTIGATION	CITY OF FREMONT	FREMONT	3/30/01
78	WP8639	AGREEMENT RE FENCE REMOVAL	GLADDING COMPANY	SAN JOSE	10/31/51
79	202709	CROSSING AGREEMENT - UNDERGROUND FIBER OPTIC	NEXTLINK CALIFORNIA, L.L.C.	FREMONT	12/12/97
80	207480	CROSSING AGREEMENT - UNDERGROUND FIBER OPTIC	NEXTLINK CALIFORNIA, INC.	FREMONT	9/28/98
81	208312	WIRELINE CROSSING AGREEMENT - OVERHEAD TELEVISION AND FIBER OPTIC	TCI OF CALIFORNIA	MILPITAS	12/14/98
82	224429	OVERHEAD FIBER OPTIC WIRELINE	PACIFIC GAS AND ELECTRIC COMPANY	MILPITAS	3/27/02
84	215171	UNDERGROUND FIBER OPTIC WIRELINE	ICG TELECOM GROUP, INC.	MILPITAS	3/23/00

PROPERTY - NON-FREIGHT RAIL AGREEMENTS - TO BE ASSIGNED

1	WP1847	IRRIGATION PIPELINE	CLARENCE SIMONS	SAN JOSE	11/7/25
2	WP2785	GAS PIPELINE	PACIFIC GAS AND ELECTRIC COMPANY	WARM SPRINGS	6/20/30
3	WP2928	OVERHEAD WIRELINE CROSSING	PACIFIC GAS AND ELECTRIC COMPANY	IRVINGTON	11/26/30
4	WP5521	PRIVATE ROADWAY CROSSING	EMILIE STOCKLIN AND ELSIE M. STOCKLIN	SAN JOSE	1/25/40
5	WP6456	OVERHEAD WIRELINE CROSSING	PACIFIC GAS AND ELECTRIC COMPANY	IRVINGTON	3/15/44
6	WP6530	GAS PIPELINE	PACIFIC GAS AND ELECTRIC COMPANY	IRVINGTON	7/10/44
7	WP10692	WARNING DEVICES - PUBLIC ROADWAY	CITY OF SAN JOSE AND COUNTY OF SANTA CLARA	SAN JOSE	3/16/64
8	WP11100	WARNING DEVICES - PUBLIC ROADWAY	CITY OF FREMONT	FREMONT	8/15/66
9	WP11207	WARNING DEVICES - PUBLIC ROADWAY	COUNTY OF SANTA CLARA	SAN JOSE	5/8/67
10	WP12121	WARNING DEVICES - PUBLIC ROADWAY	COUNTY OF SANTA CLARA	SAN JOSE	11/9/71
11	WP12823	WARNING DEVICES - PUBLIC ROADWAY	STATE OF CALIFORNIA - DEPT. OF TRANSPORTATION	SAN JOSE	10/28/75
12	WP12950	WARNING DEVICES - PUBLIC ROADWAY	STATE OF CALIFORNIA - DEPT. OF TRANSPORTATION	SAN JOSE	1/28/77
13	WP12976	WARNING DEVICES - PUBLIC ROADWAY	STATE OF CALIFORNIA - DEPT. OF TRANSPORTATION	SAN JOSE	1/27/77
14	WP13181	WARNING DEVICES - PUBLIC ROADWAY	STATE OF CALIFORNIA - DEPT. OF TRANSPORTATION	SAN JOSE	7/14/78
15	WP13182	WARNING DEVICES - PUBLIC ROADWAY	STATE OF CALIFORNIA - DEPT. OF TRANSPORTATION	SAN JOSE	7/14/78
16	WP13232	AGREEMENT RE WIDENING OF BLVD. AND RELOCATION OF WARNING DEVICES	CITY OF FREMONT	FREMONT	7/24/79
17	WP14037	GAS PIPELINE	PACIFIC GAS AND ELECTRIC COMPANY	FREMONT	6/7/83
18	WP14071	AGREEMENT RE WIDENING OF BLVD. AND RELOCATION OF WARNING DEVICES	CITY OF SAN JOSE	SAN JOSE	6/8/83
19	WP14084	WATER PIPELINE	SAN JOSE WATER COMPANY	SAN JOSE	5/25/84
20	WP14223	NITROGEN GAS PIPELINE	AIR PRODUCTS & CHEMICALS, INC.	BERRYESSA	6/7/85
21	WP14462	AGREEMENT RE CROSSING WIDENING AND WARNING DEVICES	CITY OF SAN JOSE	SAN JOSE	3/17/87
22	WPL216	UNDERGROUND COMMUNICATION LINE	THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY	MILPITAS	3/25/55
23	WPL245	GUY ANCHOR	THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY	SAN JOSE	12/14/55
24	WPL442	GASLINE	EGGO FOOD PRODUCTS, INC.	SAN JOSE	12/31/58
25	WPL453	BUILDING ENCROACHMENT; LICENSE TO CONSTRUCT AN OFFICE BUILDING	TEASDALE PACKING CO., INC.	SAN JOSE	8/29/58

PROPERTY MATERIALS FOR PROPERTY

WP MILPITAS LINE

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#	AUDIT No.	DESCRIPTION	PARTY NAME	CITY	DATE
26	WPL809	AERIAL CROSSING - CABLE	THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY	MILPITAS	7/3/64
27	WPL1162	WATER MAIN	SAN JOSE WATER WORKS	SAN JOSE	6/6/69
28	WPL1330	UNDERGROUND GAS PIPELINE	PACIFIC GAS AND ELECTRIC COMPANY	NILES	2/24/72
29	WPL1368	UNDERGROUND GAS PIPELINE	PACIFIC GAS AND ELECTRIC COMPANY	MILPITAS	9/28/72
30	WPL1369	UNDERGROUND CABLE CROSSING	PACIFIC GAS AND ELECTRIC COMPANY	MILPITAS	9/27/72
31	WPL1512	OVERHEAD WIRELINE CROSSING	PACIFIC GAS AND ELECTRIC COMPANY	MILPITAS	6/22/76
32	WP14466	AGREEMENT RE CROSSING WARNING DEVICES	CITY OF SAN JOSE	SAN JOSE	4/24/87
33	WP9380	EASEMENTS FOR UNDERPASS CROSSING AND GRADE CROSSING	STATE OF CALIFORNIA - DEPT. OF PUBLIC WORKS	SAN JOSE	12/14/55
34	WP921	OVERHEAD WIRELINE CROSSING	PACIFIC GAS AND ELECTRIC COMPANY	SAN JOSE	11/30/21
35	WP1171	IRRIGATION PIPELINE	A.G. COL	SAN JOSE	12/6/22
36	WP3155	OVERHEAD TELEPHONE WIRELINE	SIERRA AND SAN FRANCISCO POWER COMPANY	IRVINGTON	11/6/31
37	WP3230	GUY ANCHORS	SIERRA AND SAN FRANCISCO POWER COMPANY	IRVINGTON	2/29/32
38	WP3359	IRRIGATION PIPELINE	F.D. FREITAS	IRVINGTON	3/24/32
39	WP5819	OVERHEAD WIRELINE CROSSING	PACIFIC GAS AND ELECTRIC COMPANY	SAN JOSE	8/13/41
40	WP6924	CROSSING WATER PIPELINE	GENE NICORA AND VICTOR NICORA D/B/A NICORA BROTHERS	SAN JOSE	11/10/45
41	WP8144	LICENSE FOR PRIVATE ROAD CROSSING	ROBERT SANTO AND ROLAND SANTO	SAN JOSE	10/19/49
42	WP9316	LICENSE RE DRAINAGE DITCH	COUNTY OF ALAMEDA	IRVINGTON	6/7/55
43	WP9576	LICENSE FOR TEMPORARY ROAD CROSSING (PRIVATE)	SANTA CLARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT	SAN JOSE	3/4/57
44	WP10200	WARNING DEVICES - PUBLIC ROADWAY	CITY OF FREMONT	FREMONT	5/31/61
45	WP11507	WARNING DEVICES - PUBLIC ROADWAY	CITY OF SAN JOSE AND COUNTY OF SANTA CLARA	SAN JOSE	7/1/68
46	WP11584	AGREEMENT RE GRADE CROSSING AND SIGNALS	COUNTY OF SANTA CLARA	SAN JOSE	12/9/68
47	WPL22	OVERHEAD WIRELINE CROSSING	PACIFIC GAS AND ELECTRIC COMPANY	SAN JOSE	12/12/51
48	WPL91	GAS MAIN	PACIFIC GAS AND ELECTRIC COMPANY	MILPITAS	3/27/53
49	WPL128	LICENSE RE PRIVATE ROADWAY	CALIFORNIA PACKING CORPORATION	BERRYESSA	12/7/53
50	WPL141	GAS MAIN	PACIFIC GAS AND ELECTRIC COMPANY	WARM SPRINGS	6/14/54
51	WPL253	WATER PIPELINE	A. ANDREUCCETTI	BERRYESSA	4/19/56
52	WPL285	GAS MAIN	PACIFIC GAS AND ELECTRIC COMPANY	MILPITAS	9/20/56
53	WPL531	WATER MAIN	MILPITAS COUNTY WATER DISTRICT	MILPITAS	6/20/60
54	WPL536	AERIAL COMMUNICATION CROSSING	THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY	SAN JOSE	7/25/60
55	WPL549	LICENSE RE WATER TANK	NICORA BROS.	SAN JOSE	6/1/60
56	WPL656	GAS MAIN LICENSE FOR PRIVATE ROAD	PACIFIC GAS AND ELECTRIC COMPANY HOOD CORPORATION	IRVINGTON	3/28/62 9/4/63
57	WPL671	OVERHEAD WIRELINE CROSSING	PACIFIC GAS AND ELECTRIC COMPANY	SAN JOSE	7/5/62
58	WPL702	OVERHEAD WIRELINE CROSSING	PACIFIC GAS AND ELECTRIC COMPANY	FREMONT	12/18/62
59	WPL927	OVERHEAD WIRELINE CROSSING	PACIFIC GAS AND ELECTRIC COMPANY	FREMONT	8/25/65
60	WPL1021	OVERHEAD WIRELINE CROSSING	PACIFIC GAS AND ELECTRIC COMPANY	SAN JOSE	12/1/66
61	WPL969	PIPES - COMMUNICATION	THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY	MILPITAS	3/9/66
62	WPL1045	CABLE CROSSING	THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY	FREMONT	3/7/67
63	WPL1117	UNDERGROUND TRUNK SEWER	UNION SANITARY DISTRICT	SAN JOSE	7/9/68
64	WPL1246	UNDERGROUND WATER PIPELINE	ALAMEDA COUNTY WATER DISTRICT	FREMONT	9/22/70
65	WPL1265	WATERLINE BENEATH BRIDGE	FREEMAN-SONDGROTH CONSTRUCTION COMPANY	SAN JOSE	1/26/71
66	WPL1267	UNDERGROUND STEEL CASING	BAR'S LEAKS WESTERN, INC.	SAN JOSE	2/9/71
67	WPL1292	LICENSE RE TEMPORARY DRAINAGE DITCH	HUSSMANN CALIFORNIA CO.	SAN JOSE	5/4/71
68	WPL1296	SANITARY SEWER	UNION SANITARY DISTRICT	WARM SPRINGS	6/17/71

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69	WPL1306	LICENSE RE DRAINAGE DITCH	CITY OF MILPITAS	MILPITAS	9/21/71
70	WPL1316	LICENSE FOR OVERHEAD WIRE CROSSING	FREMONT CABLE TV, INC.	FREMONT	11/16/71
71	WPL1319	SEWER	WM. LYON DEVELOPMENT CO., INC.	SAN JOSE	12/2/71
72	WPL1321	OVERHEAD WIRELINE CROSSING	PACIFIC GAS AND ELECTRIC COMPANY	FREMONT	9/14/71
73	WPL1322	OVERHEAD WIRELINE CROSSING	PACIFIC GAS AND ELECTRIC COMPANY	FREMONT	9/14/71
74	WPL1463	OVERHEAD WIRELINE CROSSING	PACIFIC GAS AND ELECTRIC COMPANY	SAN JOSE	5/15/75
75	WPL1476 A&B	WATERLINES (2 AGREEMENTS)	SAN JOSE WATER WORKS	SAN JOSE	8/29/75
76	WPL1508	SANITARY SEWERLINE	MILPITAS SANITARY DISTRICT	SAN JOSE	4/5/76
77	WPL1577	SEWER PIPE	UNION SANITARY DISTRICT	FREMONT	7/14/77
78	WPL1582	STEEL CASING	THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY	FREMONT	11/18/77
79	WPL1610	SANITARY SEWER	CITY OF SAN JOSE	SAN JOSE	10/12/78
80	WPL1653	LICENSE RE UNDERGROUND CONDUITS AND PREFABRICATED BUILDING	WESTERN UNION	FREMONT	10/22/79
81	WPL1731	OVERHEAD SPAN GUY	PACIFIC GAS AND ELECTRIC COMPANY	FREMONT	6/30/81
82	WPL1788	UNDERGROUND STEEL CASING	THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY	FREMONT	3/25/82
83	154591	CONSENT TO UNDERGROUND WIRE CROSSING	PACIFIC GAS AND ELECTRIC COMPANY (UP)	FREMONT	3/22/91
84	41303	UNDERGROUND SANITARY SEWER PIPELINE	CITY OF SAN JOSE	BERRYESSA	4/15/87
85	41377	LEASE OF LAND FOR LUMBER STORAGE	JAMES-BURCH INVESTMENT CO.	SAN JOSE	5/18/87
86	41443	UNDERGROUND STORM SEWER	CITY OF SAN JOSE	BERRYESSA	4/9/87
87	142436	UNDERGROUND POWERLINE	PACIFIC GAS AND ELECTRIC COMPANY	BERRYESSA	6/14/87
88	144049	CONSENT TO UNDERGROUND WIRELINE	PACIFIC GAS AND ELECTRIC COMPANY	SAN JOSE	6/9/88
89	144558	WARNING DEVICES - PUBLIC ROW	STATE OF CALIFORNIA - DEPT. OF TRANS.	FREMONT	1/28/88
90	147896	UNDERGROUND NITROGEN GAS PIPELINE	AIR PRODUCTS MANUFACTURING CORP.	MILPITAS	6/13/89
91	150694	CONSENT TO WATER PIPELINE CROSSING	SANTA CLARA VALLEY WATER DISTRICT	MILPITAS	2/5/90
92	152580	CONSENT TO OVERHEAD WIRELINE	PACIFIC GAS AND ELECTRIC COMPANY	SAN JOSE	8/15/90
93	154211	CONSTRUCTION, MAINTENANCE AND OPERATION OF TEMP. SIGNAL AND GUY WIRELINE	STATE OF CALIFORNIA - DEPT. OF TRANSP.	SAN JOSE	2/15/91
94	157303	DRAINAGE AND WATERWAYS AGREEMENT	SANTA CLARA VALLEY WATER DISTRICT	SAN JOSE	11/1/91
95	162145	CONSENT TO UNDERGROUND COMM. WIRE	CITY OF SAN JOSE	SAN JOSE	6/1/92
96	164994	LEASE OF LAND FOR PARKING	MONARCH LEASING, INC.	SAN JOSE	8/7/96
97	167875	NON-EXCLUSIVE WIRELINE EASEMENT	PACIFIC GAS AND ELECTRIC COMPANY	CURTNER	6/28/93
98	169966	CONSENT TO UNDERGROUND SEWER PIPELINE	UNION SANITARY DISTRICT	WARM SPRINGS	1/4/94
99	171102	LEASE OF LAND FOR PARKING	MONARCH LEASING, INC.	SAN JOSE	11/5/96
100	173261	CONSENT TO OVERHEAD TELEVISION CABLE	TCI CABLEVISION OF CALIFORNIA	FREMONT	8/2/94
101	174323	CONSENT TO OVERHEAD TELEVISION CABLE	TCI CABLEVISION OF CALIFORNIA	SAN JOSE	12/3/94
102	174324	CONSENT TO OVERHEAD TELEVISION CABLE	TCI CABLEVISION OF CALIFORNIA	SAN JOSE	12/4/94
103	174325	CONSENT TO OVERHEAD TELEVISION CABLE	TCI CABLEVISION OF CALIFORNIA	SAN JOSE	12/3/94
104	174326	CONSENT TO OVERHEAD TELEVISION CABLE	TCI CABLEVISION OF CALIFORNIA	SAN JOSE	12/4/94
105	174330	CONSENT TO OVERHEAD TELEVISION CABLE	TCI CABLEVISION OF CALIFORNIA	SAN JOSE	12/3/94
106	174331	CONSENT TO OVERHEAD TELEVISION CABLE	TCI CABLEVISION OF CALIFORNIA	SAN JOSE	12/4/94
107	174332	CONSENT TO OVERHEAD TELEVISION CABLE	TCI CABLEVISION OF CALIFORNIA	SAN JOSE	12/4/94
108	174444	CONSENT TO OVERHEAD TELEVISION CABLE	TCI CABLEVISION OF CALIFORNIA	SAN JOSE	12/4/94
109	175903	UNDERGROUND FIBER OPTIC CABLE CROSSING	ADESTA COMMUNICATIONS, INC.	FREMONT	2/14/95
110	179515	WASHINGTON BLVD. CROSSING IMPROVEMENT	CITY OF FREMONT	FREMONT	10/10/95
111	179516	KATO ROAD CROSSING IMPROVEMENT	CITY OF FREMONT	FREMONT	10/10/95

PROPERTY MATERIALS FOR PROPERTY

WP MILPITAS LINE

All agreements listed herein are deemed to include all amendments, assumptions, assignments and supplements to date.

#	AUDIT No	DESCRIPTION	PARTY NAME	CITY	DATE
112	180789	CONSENT TO SEWER PIPELINES	CITY OF SAN JOSE	SAN JOSE	11/29/95
113	180912	LEASE OF LAND FOR PARKING AND STORAGE	SECURITY CONTRACTOR SERVICES INC. (F/K/A SAN JOSE STEEL COMPANY, INC.)	SAN JOSE	11/30/95
114	182557	CONSENT TO UNDERGROUND WATER PIPELINE	SAN JOSE WATER COMPANY	SAN JOSE	1/24/96
115	188666	UNDERGROUND NITROGEN GAS PIPELINE	AIR PRODUCTS MANUFACTURING CORPORATION	FREMONT	9/26/96
116	169302	UNDERGROUND SANITARY SEWER PIPELINE	RAY L. HELLWIG PLUMBING & HEAT, INC.	SAN JOSE	10/25/93
117	174010	OVERHEAD TELEVISION CABLE WIRELINE	TCI CABLEVISION OF CALIFORNIA, INC.	FREMONT	10/26/94
118	191176	CONSENT TO UNDERGROUND POWER WIRELINE	PACIFIC GAS AND ELECTRIC COMPANY	MILPITAS	3/12/97
119	191749	CONSENT TO UNDERGROUND TRAFFIC SIGNAL WIRELINE	CITY OF SAN JOSE	SAN JOSE	4/16/97
120	207646	NEW PUBLIC HIGHWAY CROSSING AGREEMENT	CITY OF SAN JOSE	SAN JOSE	10/29/98
121	208633	CONSENT TO SEWER PIPELINES	CITY OF SAN JOSE	SAN JOSE	2/2/99
122	210976	CONSENT TO UNDERGROUND TELEPHONE WIRE	PACIFIC BELL	MILPITAS	7/23/99
123	211079	CONSENT TO OVERHEAD WIRELINE	PACIFIC GAS AND ELECTRIC COMPANY	MILPITAS	7/28/99
124	216694	NON-EXCLUSIVE WIRELINE EASEMENT	PACIFIC GAS AND ELECTRIC COMPANY	MILPITAS	8/7/00
125	217661	UNDERGROUND FIBER OPTIC WIRELINE	PACIFIC BELL TELEPHONE	SAN JOSE	9/5/00
126	WP14196	UNDERGROUND GASEOUS NITROGEN PIPELINE	AIR PRODUCTS & CHEMICALS, INC	MILPITAS	4/25/85
127	WP14476	AGREEMENT RE WIDENING OF DIXON LANDING RD.	CITY OF MILPITAS	MILPITAS	6/11/87
128	WPL851	LICENSE RE PIPELINE	SOUTHERN PACIFIC PIPELINE PARTNERSHIP L.P.	FREMONT	12/16/64
129	WP9006	LEASE FOR PARKING	SAN JOSE STEEL COMPANY	SAN JOSE	8/18/53
130	WP6415	REAL PROPERTY LEASE - PASTURAGE	M. SILVA	SAN JOSE	1/6/44
131	A14323	LEASE OF LAND FOR STORAGE	JOHN A. DA PONTE D/B/A CENTRAL FENCE COMPANY	SAN JOSE	5/28/97
132	WP7595	GUY WIRE ANCHORS	PACIFIC GAS AND ELECTRIC COMPANY	IRVINGTON	1/23/48
133	190120	UNDERGROUND TRAFFIC SIGNAL	CITY OF FREMONT	FREMONT	12/13/96
136	WPL975	WATER MAIN	ALAMEDA COUNTY WATER DISTRICT	FREMONT	3/18/68
137	WPL1378	WATER METER	ALAMEDA COUNTY WATER DISTRICT	FREMONT	2/2/73
138	WPL973	SANITARY SEWERLINE	UNION SANITARY DISTRICT	FREMONT	3/16/66
139	209014	UNDERGROUND FIBER OPTIC WIRELINE	NEXLINK CALIFORNIA, INC.	FREMONT	3/4/99
140	179517	PUBLIC ROADWAY CROSSING IMPROVEMENT	CITY OF FREMONT	FREMONT	10/10/95
141	A159011	PIPELINE EASEMENT	CHEVRON, USA INC.	FREMONT	11/4/95
142	176772	HIGHWAY EASEMENT AGREEMENT	SANTA CLARA COUNTY	MILPITAS	5/8/95
143	212668	LEASE OF PROPERTY	CITY OF SAN JOSE	SAN JOSE	11/2/99

PROPERTY MATERIALS FOR OPTION PROPERTY

WP MILPITAS LINE

All agreements listed herein are deemed to include all amendments, assumptions, assignments and supplements to date.

#	AUDIT No.	DESCRIPTION	PARTY NAME	CITY	DATE
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OPTION PROPERTY - FREIGHT RAIL AGREEMENTS - NOT TO BE ASSIGNED

1	WP9534	AGREEMENT RE INDUSTRIAL TRACK	JAMES PUSATERI AND ALICE PUSATERI D/B/A COTTAGE GROVE NUT COMPANY	SAN JOSE	11/8/56
2	WP9978	APPLICATION FOR INDUSTRY TRACK	W.L. BATTAGLIA, TRUSTEE FOR RICHARD L. DINAPOLI, SHIRLEY M. DINAPOLI AND JOHN PHILIP DINAPOLI	SAN JOSE	8/6/59
3	WP12887	AGREEMENT RE INDUSTRIAL TRACK AND INDUSTRY USE THEREOF	DANNA & DANNA, INC., DOMINIC F. DANNA, ANTHONY E. DANNA, PETER A. DANNA, FRANK A. DANNA AND ANGELO R. DANNA, AS OWNER AND NCC FOOD CORPORATION, INC., AS INDUSTRY	SAN JOSE	7/16/76
4	WP1283	APPLICATION FOR INDUSTRY TRACK	BISCEGLIA BROS.	SAN JOSE	5/31/23
5	WP7198	APPLICATION FOR INDUSTRY TRACK	PEART PLANING MILLS, INC.	SAN JOSE	10/24/46
6	WP9560	INDUSTRIAL TRACK AGREEMENT	KIECKHEFER CONTAINER COMPANY	SAN JOSE	1/31/57

OPTION PROPERTY - NON-FREIGHT RAIL AGREEMENTS - NOT TO BE ASSIGNED

1	157336	SIGNBOARD LEASE*	OUTDOOR SYSTEMS, INC.	SAN JOSE	11/7/91
2	158277	SIGNBOARD LEASE (2 SIGNS)*	PATRICK MEDIA GROUP, INC.	SAN JOSE	1/16/92
3	158280	SIGNBOARD LEASE (2 SIGNS)*	PATRICK MEDIA GROUP, INC.	SAN JOSE	1/16/92
4	158292	SIGNBOARD LEASE (2 SIGNS)*	PATRICK MEDIA GROUP, INC.	SAN JOSE	1/16/92
5	158410	SIGNBOARD LEASE*	PATRICK MEDIA GROUP, INC.	SAN JOSE	1/20/92
6	155756	SIGNBOARD LEASE*	GANNETT OUTDOOR COMPANY OF NORTHERN CALIFORNIA, INC.	SAN JOSE	9/1/91
7	158288	SIGNBOARD LEASE*	PATRICK MEDIA GROUP, INC.	SAN JOSE	1/16/92
8	WP3834	JOINT FACILITY AGREEMENT - VALBRICK	RRS	SAN JOSE	12/11/35

OPTION PROPERTY - NON-FREIGHT RAIL AGREEMENTS - TO BE PARTIALLY ASSIGNED

1	WP6362	IRRIGATION PIPELINE AND DITCHES	STEPHEN D'ARRIGO	SAN JOSE	11/3/43
2	WP6431	SEWER PIPELINE	STEPHEN D'ARRIGO	SAN JOSE	2/9/44
3	WPL1307	UNDERGROUND CONCRETE PIPE FOR STORM DRAINAGE	CITY OF SAN JOSE	SAN JOSE	5/28/71
4	WP5073	IRRIGATION DITCH	STEPHEN D'ARRIGO	SAN JOSE	9/25/37
5	WP3086	IRRIGATION PIPELINE	ANDREW D'ARRIGO AND STEVEN D'ARRIGO D/B/A D'ARRIGO BROTHERS FRUIT COMPANY	SAN JOSE	8/14/31
6	175422	WATER PIPELINE	CITY OF SAN JOSE	SAN JOSE	2/16/95
7	153055	UNDERGROUND SEWER LINE	CITY OF SAN JOSE	SAN JOSE	10/4/90
8	223695	UNDERGROUND WIRELINE	CITY OF SAN JOSE	SAN JOSE	1/29/02
9	73818	UNDERGROUND WATER PIPELINE	SAN JOSE WATER COMPANY	SAN JOSE	6/13/87

OPTION PROPERTY - NON-FREIGHT RAIL AGREEMENTS - TO BE ASSIGNED

1	WP1675	LICENSE FOR FENCE AND GATE	BRUNO F. BISCEGLIA	SAN JOSE	4/22/25
2	WP2375	CERTIFIED COPY OF ORDER RE WP INSTALLATION OF POLES AND CABLES	COUNTY OF SANTA CLARA	SAN JOSE	7/16/28
3	WP3424	SAND AND GRAVEL UNLOADING PIT	VICTOR A. THOENY AND CLARENCE J. THOENY D/B/A THOENY BROTHERS	SAN JOSE	7/19/33
4	WP3842	CONCRETE PIT	GRANITE ROCK COMPANY	SAN JOSE	1/29/36
5	WP6665	LICENSE TO BUILD A FENCE	J. HILLS WYTHE, WILLIAM G. WAHL AND R.E. HOERLER D/B/A SECURITY TRUCK LINE	SAN JOSE	12/12/44
6	WP7112	LICENSE RE SANITARY SEWER	COUNTY OF SANTA CLARA	SAN JOSE	6/20/46
7	WP10487	WARNING DEVICES - PUBLIC ROADWAY	CITY OF SAN JOSE	SAN JOSE	2/25/63
8	WP11014	WARNING DEVICES - PUBLIC ROADWAY	CITY OF SAN JOSE	SAN JOSE	3/9/66
9	WP11039	WARNING DEVICES - PUBLIC ROADWAY	STATE OF CALIFORNIA - DIVISION OF HIGHWAYS	SAN JOSE	4/21/66
10	WP11481	WARNING DEVICES - PUBLIC ROADWAY	CITY OF SAN JOSE	SAN JOSE	6/21/68
11	WP11634	OVERHEAD CROSSING - PUBLIC ROADWAY	STATE OF CALIFORNIA - DEPT. OF PUBLIC WORKS	SAN JOSE	4/11/69
12	WP11845	WARNING DEVICES - PUBLIC ROADWAY	STATE OF CALIFORNIA - DIVISION OF HIGHWAYS	SAN JOSE	4/30/70
13	WP11899	WARNING DEVICES - PUBLIC ROADWAY	CITY OF SAN JOSE	SAN JOSE	8/20/70

PROPERTY MATERIALS FOR OPTION PROPERTY

WP MILPITAS LINE

All agreements listed herein are deemed to include all amendments, assumptions, assignments and supplements to date.

#	AUDIT No.	DESCRIPTION	PARTY NAME	CITY	DATE
14	WPL694	ANCHOR AND ELECTRICAL FACILITIES	PACIFIC GAS AND ELECTRIC COMPANY	SAN JOSE	10/23/62
15	WPL953	GAS LINE	PACIFIC GAS AND ELECTRIC COMPANY	SAN JOSE	1/3/66
16	WPL961	STORM DRAIN	CITY OF SAN JOSE	SAN JOSE	8/30/65
17	WPL1052	SANITARY SEWER PIPE	CITY OF SAN JOSE	SAN JOSE	4/4/67
18	WPL1107	OVERHEAD WIRELINE CROSSING	PACIFIC GAS AND ELECTRIC COMPANY	SAN JOSE	5/9/68
19	WPL1209	SANITARY SEWER	CITY OF SAN JOSE	SAN JOSE	4/28/70
20	WPL1239	POLE ANCHOR	PACIFIC GAS AND ELECTRIC COMPANY	SAN JOSE	8/26/70
21	WPL1747	SANITARY SEWER	CITY OF SAN JOSE	SAN JOSE	9/9/81
22	WPL1795	METER POLE ANCHOR AND LINE	PACIFIC GAS AND ELECTRIC COMPANY	SAN JOSE	5/12/82
23	143596	CROSSING - WARNING DEVICES - PUBLIC ROW	CITY OF SAN JOSE	SAN JOSE	5/10/88
24	143597	CROSSING - WARNING DEVICES - PUBLIC ROW	CITY OF SAN JOSE	SAN JOSE	5/10/88
25	143946	OVERHEAD GUY WIRE ENCROACHMENT	PACIFIC GAS AND ELECTRIC COMPANY	SAN JOSE	5/23/88
26	144048	CONSENT TO OVERHEAD WIRELINE	PACIFIC GAS AND ELECTRIC COMPANY	SAN JOSE	6/9/88
27	144050	CONSENT TO UNDERGROUND GAS PIPELINE (Audit No. on face of document appears to read 144650)	PACIFIC GAS AND ELECTRIC COMPANY	SAN JOSE	6/9/88
28	146282	2 LEASES OF LAND FOR TRANSLOADING NON-HAZARDOUS MATERIALS (COVERS SAME LOCATION)	TRUCK-RAIL TRANSFER SVC.	SAN JOSE	12/1/88 1/2/96
29	153065	CONSENT TO UNDERGROUND SANITARY SEWER	CITY OF SAN JOSE	SAN JOSE	10/4/90
30	153066	CONSENT TO UNDERGROUND SANITARY SEWER	CITY OF SAN JOSE	SAN JOSE	10/4/90
31	153067	CONSENT TO UNDERGROUND SANITARY SEWER	CITY OF SAN JOSE	SAN JOSE	10/4/90
32	153069	CONSENT TO UNDERGROUND SANITARY SEWER	CITY OF SAN JOSE	SAN JOSE	10/4/90
33	154035	LEASE OF INDUSTRIAL PROPERTY FOR PARKING AND ROADWAY	AN-JAN FEED & PET SUPPLY	SAN JOSE	9/14/90
34	166861	CONSENT TO UNDERGROUND SEWER PIPELINE	CITY OF SAN JOSE	SAN JOSE	3/24/93
35	168619	CONSENT TO UNDERGROUND COMM. WIRELINE	CITY OF SAN JOSE	SAN JOSE	9/1/93
36	169494	CONSENT TO UNDERGROUND CABLE WIRELINE	CITY OF SAN JOSE	SAN JOSE	11/9/93
37	186611	CONSENT TO UNDERGROUND WATER PIPELINE	CITY OF SAN JOSE	SAN JOSE	7/15/96
38	214062	CONSENT TO UNDERGROUND FIBER OPTIC WIRELINE	MFS OF CALIFORNIA, INC.	SAN JOSE	2/16/00

EXHIBIT 5

EXHIBIT 5

ASSIGNMENT, ASSUMPTION AND MANAGEMENT AGREEMENT

FOR VALUE RECEIVED, UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Assignor"), acting by and through its duly authorized officers, has ASSIGNED AND TRANSFERRED, and by these presents does (except as otherwise provided) ASSIGN AND TRANSFER unto SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, a public agency created under California law ("Assignee"), all of Assignor's right, title and interest in and to the leases and other agreements ("Assigned Agreements") and all amendments thereto, that are described on **Exhibit A**, together with all security deposits and other deposits held by Assignor under the terms of said Assigned Agreements.

TO HAVE AND TO HOLD the Assigned Agreements unto Assignee, its successors and assigns. This Assignment is made and accepted without recourse against Assignor as to the performance by any party under such Assigned Agreements.

Assignee agrees to (a) perform all of the obligations of Assignor pursuant to the Assigned Agreements accruing on or after the date hereof, and (b) indemnify and hold Assignor harmless from and against any and all claims, causes of actions and expenses (including reasonable attorneys' fees) incurred by Assignor and arising out of (1) Assignee's failure to comply with terms of the Assigned Agreements on or after the date hereof, and (2) claims under the Assigned Agreements by the tenant or other party named in the Assigned Agreements accruing on or after the date hereof.

Assignor agrees to indemnify and hold Assignee harmless from and against any and all claims, causes of action and expenses (including reasonable attorneys' fees) incurred by Assignee and arising out of claims under the Assigned Agreements by the tenant or other party named in the Assigned Agreements, accruing prior to the date hereof, subject to the terms of Section 4.4.1 of the Engineering and Construction Contract – WP Milpitas Line dated of even date herewith between the parties, and excluding any and all claims, causes of action, expenses and fees arising out of or relating to any public transportation project or proposal therefor.

Exhibit A attached to this Agreement is incorporated herein for all purposes.

During the term of the Trackage Rights Agreement dated of even date herewith between the parties, and subject to the Lease Management Agreement of even date herewith between the parties, Assignee agrees to manage the Assigned Agreements, and to enter into any new agreements with third parties, only in a manner that does not interfere with Assignor's Railroad Easement (as described in the Deeds recorded in connection with this transaction) or Assignor's rights under the Trackage Rights Agreement.

This Assignment, Assumption and Management Agreement shall inure to and be binding upon the parties, their successors and assigns.

Dated the ____ day of December, 2002.

ASSIGNOR:

ASSIGNEE:

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

SANTA CLARA VALLEY
TRANSPORTATION AUTHORITY,
a public agency created under California law

By: _____

By: _____

Title: _____

Title: _____

APPROVED AS TO FORM:

Counsel

EXHIBIT A TO EXHIBIT 5
LIST OF PROPERTY AGREEMENTS TO BE ASSIGNED

{00100361.DOC 21}

EXHIBIT A TO EXHIBIT 5

LIST OF OPTION PROPERTY AGREEMENTS TO BE ASSIGNED

{00100361.DOC 21}

EXHIBIT A TO EXHIBIT 5

EXHIBIT 6

**(Omitted –
Signed Original Attached at Tab 3)**

EXHIBIT 7

**(Omitted –
Signed Original Attached at Tab 2)**

EXHIBIT 8

EXHIBIT 8
LICK-GILROY LETTER
(attached)

{00100361.DOC 21}

Exhibit 8

[UP Letterhead]

December __, 2002

Peninsula Corridor Joint Powers Board
Michael J. Scanlon, Executive Director
1250 San Carlos Avenue
Post Office Box 3006
San Carlos, CA 94070-1306

Santa Clara Valley Transportation Authority
Scott Buhner, Executive Director
3331 North First Street
San Jose, CA 95134-1906

Re: Expansion of rail passenger operations in the Lick/Gilroy corridor

Dear Messrs. Scanlon and Buhner:

This letter is to confirm that Union Pacific Railroad Company ("UP") recognizes the ongoing and serious interest of Santa Clara Valley Transportation Authority ("VTA") and Peninsula Corridor Joint Powers Board ("JPB") to expand further rail passenger operations in the Lick/Gilroy corridor.

UP hereby reiterates its pledge to cooperate with VTA and JPB toward the realization of that goal. Toward that end, UP agrees to negotiate in good faith with VTA and JPB, when so requested from time to time, to facilitate the expansion of rail passenger service to accommodate up to 10 round trips per day subject to the understanding that any expansion of passenger service beyond the 5 round trips per day previously committed to by UP necessarily will take into account the capacity of the Lick/Gilroy rail corridor both to preserve the existing capacity for UP's freight service operations and to meet passenger service demands.

Very truly yours,

Jerry Wilmoth

EXHIBIT 9

EXHIBIT 9

CERTIFICATION OF NON-FOREIGN STATUS

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

1. UNION PACIFIC RAILROAD COMPANY is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. UNION PACIFIC RAILROAD COMPANY'S U.S. employer identification number is 94-6001323; and
3. UNION PACIFIC RAILROAD COMPANY'S office address is 1416 Dodge Street, Omaha, Nebraska 68179, and place of incorporation is Delaware.

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

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

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

UNION PACIFIC RAILROAD COMPANY,
a Delaware Corporation

By: _____
Title: _____
Date: _____

EXHIBIT 10

EXHIBIT 10
CALIFORNIA FORM 597-W

{00100361.DOC 21}

Exhibit 10

YEAR
2002

**Withholding Exemption Certificate and
Nonresident Waiver Request for Real Estate Sales**

CALIFORNIA FORM

597-W

Part I Withholding Exemption Certificate

SELLER'S INFORMATION

Name Union Pacific Railroad Company		☐ Social Security No. ☐ CA corp. no. ☒ FEIN ☐ SOS file no. 94-6001323	
1416 Dodge Street, Room 738		Street Address	PMB no.
Omaha, NE 68179	City, State, ZIP Code	Phone number (402) 271-4864	Ownership Percentage 100%
Property address (if no street address, provide parcel number and county) WP Milpitas Line, Seller's Milepost 2.61 +/- to Seller's Milepost 17.49 +/-, Counties of Alameda and Santa Clara			

Read the following and check the boxes as they apply (see General Information C, Exemptions from Withholding (Part I) in the instructions for definitions):

- | | YES | NO |
|--|-------------------------------------|-------------------------------------|
| 1. Is the total sale price of this property \$100,000 or less? | ☐ | ☒ |
| 2. Are you a resident of California and living at the address shown above? | ☐ | ☒ |
| 3. Does the property being sold qualify as your principal residence within the meaning of Internal Revenue Code (IRC) Section 121? | ☐ | ☒ |
| 4. Is the seller a corporation that is qualified through the California Secretary of State or that has a permanent place of business in California? | ☒ | ☐ |
| 5. Is the seller a partnership or limited liability company (LLC) with recorded title to the property in the name of the partnership or LLC and will the partnership or LLC file a California tax return to report the sale and withhold on foreign and domestic nonresident partners as required? (Get FTB Pub. 1017, Nonresident Withholding Partnership Guidelines, for withholding information.) | ☐ | ☒ |
| 6. Is the seller a tax-exempt entity under either California or federal law? | ☐ | ☒ |
| 7. Is the seller an irrevocable trust with at least one trustee who is a California resident and will the trust file a California tax return to report the sale and withhold when distributing California source taxable income to nonresident beneficiaries as required? | ☐ | ☒ |
| 8. Is the seller an estate where the decedent was a California resident at the time of death and will the estate file a California fiduciary tax return to report the sale and withhold when distributing California source taxable income to nonresident beneficiaries as required? | ☐ | ☒ |
| 9. Is the seller a bank or a bank acting as a fiduciary for trust? | ☐ | ☒ |
| 10. Is the seller an insurance company, individual Retirement Account (IRA), or qualified pension/profit sharing plan? | ☐ | ☒ |

Under penalties of perjury, I hereby certify that the information provided above is, to the best of my knowledge, true and correct. If conditions change, I will promptly inform the withholding agent. I understand that completing this form does not exempt me from filing a California income tax return to report this sale.

Seller's name (or seller's agent if seller is not an individual) and title (type or print) Name: _____ Title: _____

Seller's Signature _____ Date: _____

If you answered "Yes" to any of the above questions, STOP HERE. You are exempt from the nonresident withholding requirements. Provide this form to your escrow company or the buyer (withholding agent).

If you answered "NO" to all of the above questions, you are subject to the nonresident withholding requirements. The required withholding is 3 1/3% of the total sale price. Do you expect your tax liability from the sale of this property to be less than that amount?

☐ Yes. Complete the *Nonresident Withholding Waiver Request* (Part II) and send this from to the Franchise Tax Board (FTB).
☐ No. STOP HERE. Your escrow officer will withhold 3 1/3% of the total sale price and send it to FTB on your behalf. Obtain the seller's copy of Form 597, *Nonresident Withholding Tax Statement for Real Estate Sales*, from the escrow officer to attach to your California income tax return when you file and claim the amount withheld.

Escrow Officer: If withholding is required, complete Form 597, *Nonresident Withholding Tax Statement for Real Estate Sales*, and send one copy to the FTB with the payment of withholding and give 2 copies to the seller. The seller needs a copy of Form 597 to claim the withholding credit on the California tax return filed to report the sale.

TRACKAGE RIGHTS AGREEMENT

WP MILPITAS LINE

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TRACKAGE RIGHTS AGREEMENT

WP Milpitas Line

THIS TRACKAGE RIGHTS AGREEMENT ("Agreement"), made as of this 10th day of December, 2002, is by and between SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, a California public agency ("Owner") and UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("UP").

RECITALS

A. Pursuant to the Purchase, Sale and Option Agreement and Escrow Instructions, dated of even date herewith, between Owner and UP ("Sale Agreement"), and the deeds from UP to Owner dated of even date herewith (collectively, the "Deed"), Owner acquired the "Property" (as defined in the Sale Agreement) underlying that certain line of railroad known generally as the WP Milpitas Line, extending between Fremont, California, in the vicinity of UP's Milepost 2.61 and San Jose, California, in the vicinity of UP's Milepost 17.49, a distance of approximately 15 miles (the railroad line, including all tracks, appurtenances, track support structures, signals, communication equipment, related facilities, and Additions and Alterations (as defined below) thereto, whether now existing or constructed in the future, shall be hereinafter referred to as the "Freight Trackage"), and UP retained an exclusive freight rail easement over the Freight Trackage and the Property.

B. Because the parties contemplate relocating UP's freight rail operations on the Freight Trackage to other rail lines in the general vicinity of the WP Milpitas Line to enable UP to serve its customers, the parties have entered into that certain Engineering and Construction Contract - WP Milpitas Line, dated of even date herewith (the "Construction Contract"), governing the construction of rail connections for new and existing freight customers, relocation of certain existing freight rail customers, and the relocation and construction of other facilities (such as utilities and pipelines) in connection with UP's operations in the vicinity of the Property.

C. Owner and UP now desire to set forth their respective rights and obligations with respect to operations and maintenance of the Freight Trackage and the Property during the term of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

SECTION 1 Definitions.

"Additions and Alterations" shall mean any improvement constructed by or on behalf of UP after the date hereof on the Property for the purpose of providing Freight Rail Service, including without limitation, additions and betterments, new industry tracks, and any construction, reconstruction, modifications and renewals thereof and additional facilities, but excluding maintenance items.

"After-Acquired Parcels" shall mean all additional real property required for the Freight Project to be acquired by Owner, at Owner's sole cost, from third parties.

"Agreement" is defined in the preamble.

"BART" shall mean the San Francisco Bay Area Rapid Transit District.

"Code" shall have the meaning set forth in Section 8.4 below.

"Construction Contract" shall have the meaning set forth in Recital B above.

"Customary Additives" shall mean elements of cost added to billings that generally are calculated as a percentage of direct labor costs and are intended to compensate for, without limitation, paid holidays, vacation and personal leave days, health and welfare benefits, payroll taxes and administrative and supervisory expenses that include direct and general overhead, inclusive of a customary one percent additive for special administrative costs related to billing preparation, and are subject to periodic changes depending upon industry practices.

"Deed" shall have the meaning set forth in Recital A above.

"Employee" shall have the meaning set forth in Section 6.2.2 below, for purposes of Section 6.

"Excluded Conduct" shall have the meaning set forth in Section 6.3 below.

"Facilities" shall mean all rails, fastenings, switches, switch mechanisms and frogs complete, ties, ballast, signals, bumpers, roadbed, embankments, bridges, trestles, culverts, or any other structures or things necessary for the support thereof and, if any portion thereof is located in a thoroughfare, the term shall include pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing materials at vehicular and pedestrian crossings of tracks, culverts, drainage facilities, automatic warning devices, and any and all structures and facilities required by lawful authority in connection with the construction, renewal, maintenance, and operation of any of the foregoing.

"Freight Project" shall mean the project to construct a new alignment for UP's freight rail line and all related Facilities, on and in the general vicinity of the Property and

the UP Property, to ensure that the Functionality of UP's Freight Rail Service is maintained at its current level, as shown and described in the Concept Designs and Project Segment Tasks Description that are attached as an exhibit to the Construction Contract, as such exhibit may be amended from time to time.

"Freight Rail Service" shall mean the common carrier freight rail operations on the Freight Trackage and the Property, including without limitation operations in furtherance of transporting freight commodities of all types and description in trains, personnel training and the use of equipment for such operations.

"Freight Trackage" shall have the meaning set forth in Recital A above.

"Functionality" shall mean, as determined by UP in its reasonable discretion, that level of Freight Rail Service equivalent to the level of Freight Rail Service provided by UP within the immediate vicinity of the Property as of the date of this Agreement, with respect to safety and to UP's current levels of time efficiency and cost effectiveness in providing such service.

"Hazardous Materials" shall mean (i) any substances defined, regulated or listed (directly or by reference) as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic wastes," "pollutants" or "toxic substances," or similarly identified as hazardous to human health or the environment, as of the Closing Date, as that term is defined in the Sale Agreement, in or pursuant to the Environmental Laws, as that term is defined in the Remediation Agreement, and (ii) any hazardous or toxic substance, material, chemical, waste or pollutant identified as such or regulated under any other applicable federal, state or local environmental laws, including without limitation, friable asbestos, polychlorinated biphenyls, petroleum, natural gas and synthetic fuel products and by-products.

"Invitee" shall have the meaning set forth in Section 6.2.1 below.

"Loss (es)" shall mean all losses, damages, claims, demands, costs, liabilities, judgments, fines, fees (including without limitation reasonable attorneys' fees) and expenses (including without limitation, costs of investigation, defense expenses at arbitrations, trial or appeal and, without institution of arbitration or suit, damage or destruction of property, cleanup, repair and replacement expenses) of any nature arising from or in connection with death of or injury to persons, including without limitation, employees or tenants of the parties or damage to or destruction of property, in connection with Freight Rail Service on the Property.

"Notice of Intent to Construct" shall have the meaning set forth in Section 9.1 below.

"Noticed Party" shall have the meaning set forth in Section 8.3 below.

"Owner" shall mean Santa Clara Valley Transportation Authority, a California public agency, and its successors and assigns.

"Project" shall mean the construction of a public transportation project by Owner, on, along and under portions of the former WP Milpitas Line right-of-way in Alameda County and Santa Clara County, California.

"Project Segment" shall mean a portion of the Freight Project Work and Third Party Work, as jointly determined by UP and Owner.

"Property" shall have the meaning set forth in Recital A above.

"Property Segment" shall mean each separate segment of the Property, as generally described in Exhibit A to the Construction Contract, and as more specifically described in each Notice of Intent to Construct.

"Railroad Work" shall mean that portion of the Freight Project Work that is designed and constructed by UP.

"Remediation Agreement" shall mean the Environmental Remediation Agreement - WP Milpitas Line between the parties hereto, dated as of the date hereof.

"STB" means the Surface Transportation Board of the United States Department of Transportation or any successor agency.

"Sale Agreement" shall have the meaning set forth in Recital A above.

"Third Party Work" shall mean all Work done by or on behalf of third parties, in connection with, caused by, or being coordinated with, the Project and/or the Freight Project, and affecting the Property and/or the UP Property.

"UP" shall mean Union Pacific Railroad Company, a Delaware corporation, and its lessees, licensees, successors and assigns.

"UP Property" shall mean property owned by UP in the general vicinity of the Property, or to be conveyed to UP in connection with the Freight Project, as that term is defined hereinabove.

"Work" shall mean all or any portion of the combined work that is part of, or is caused by, the Project and/or the Freight Project.

SECTION 2 Grant of Trackage Rights.

2.1 Freight Trackage.

Owner hereby grants to UP the exclusive right, and UP shall have the exclusive right and obligation, to provide Freight Rail Service on and over the Freight Trackage and the Property, by itself or through its designees. Subject to the terms and conditions of this Agreement, UP shall also have the exclusive right to use and control the Freight Trackage for Freight Rail Service; provided, however, that Owner may use the Freight Trackage for rail passenger service subject to the parties' first having entered into (i) a mutually acceptable operating agreement, the terms of which will assure the continued functionality of the Freight Rail Service, (ii) a mutually acceptable amendment to this Agreement contemplating the impacts of shared track operations on the terms hereof, and (iii) such other third party agreement(s), if any, as may be required.

Without UP's prior written consent, Owner shall not enlarge, amend, or modify any existing agreement (including, but not limited to any relocation of or other alteration to any improvement permitted thereby), or enter into any new agreement, that permits or allows any improvement within the area located within 12.5 feet of the centerline of each track.

2.2 Common Carrier Obligation.

Subject to the terms of this Agreement, UP shall have the exclusive right to construct, maintain, replace, remove, use, abandon and operate the Freight Trackage, including without limitation both existing and new industry tracks on the Property, in order to fulfill the common carrier obligation to shippers and receivers of freight.

SECTION 3 Retention of Rights for Additions and Alterations.

3.1 Design and Construction.

Subject to the terms of this Agreement and the terms of the Construction Contract, UP retains the exclusive right to construct or reconstruct Additions or Alterations to the Freight Trackage as necessary for and related to Freight Rail Service, including without limitation, taking certain portions of the Freight Trackage out of service from time to time at UP's sole discretion. Except for Additions and/or Alterations to take track out of service (for which no consent shall be required), such construction or reconstruction (but not removal) shall be subject to Owner's prior consent to the design thereof and, to the extent such Additions or Alterations will become part of the Freight Project Work, the cost estimate therefor, which consent shall not be unreasonably withheld, conditioned or delayed; provided that Owner may require in its sole discretion, as a condition to Owner's consent with respect to any Additions or Alterations that will remain in place after completion of the Project, the design and construction of a grade-separated rail over rail crossing of Owner tracks to minimize interference with passenger rail operations. Owner's consent may also be based upon, among other things, design coordination with

the future alignment of Owner's passenger rail tracks, including without limitation the BART rapid transit lines, and UP's freight rail tracks constructed or planned pursuant to the Construction Contract.

3.2 Cost Allocation.

3.2.1 The cost of construction and maintenance of the Additions and Alterations done at the instance of UP or any of its shippers shall be paid by UP or its shippers, and not by Owner, except that, to the extent any Addition or Alteration (or portion thereof) is to become part of the Freight Project, then UP shall be entitled to a reimbursement from Owner of an amount equal to UP's actual costs plus Customary Additives, after UP receives a Notice of Intent to Construct for the Property Segment in which the Addition or Alteration is to be located.

3.2.2 If any Addition or Alteration (or portion thereof) is requested or required by a party other than UP or its shippers, then UP shall have the right to approve such Addition or Alteration, which approval shall not be unreasonably withheld or delayed. UP shall not be obligated to pay for any such Addition or Alteration, except to the extent it is required to bring the Freight Trackage into compliance with laws or regulations applicable to UP's freight rail operations as generally conducted on the Property as of the date that such Addition or Alteration is constructed. Without limiting the generality of the foregoing, in no event shall UP be obligated to pay for any Addition or Alteration, whether required to bring the Freight Trackage into compliance with laws or otherwise, that is proximately caused by the Project.

3.2.3 Notwithstanding the provisions of 3.2.2, any portion of the cost of any highway-rail grade separation project undertaken by any party or entity on the Property that is allocated to UP by law or by order of the CPUC, and any additional costs incurred by UP in conjunction with such project (such as design review and rail traffic coordination) shall be the responsibility of and paid by the project sponsor, and Owner shall cooperate fully with UP to effect any cost recovery due to UP hereunder. To the extent that UP has not obtained full cost recovery under this Section 3.2.3 for any grade separation project, upon delivery of any Notice of Intent to Construct with respect to the Property Segment impacted by such grade separation project, UP shall deliver to Owner an itemization of any such unrecovered costs and Owner shall thereupon reimburse UP for all such unrecovered costs, together with interest at the rate of 8.5% per annum accruing from the date that such costs were paid or incurred by UP. The parties further acknowledge that any grade separation projects involving UP rail lines other than the rail line on the Property shall not be governed by this Agreement.

3.2.4 Any amounts to be reimbursed to UP by Owner pursuant to this Section 3.2 shall be due and payable within 30 days after Owner's receipt from UP of an invoice for the Addition or Alteration together with supporting documentation as is kept in the ordinary course of UP's business and which is reasonably necessary to verify the accuracy of the invoice as rendered. In the event that Owner does not pay any invoice in a timely manner, UP may submit such invoices to the Freight Project Escrow established

under the Construction Contract, in accordance with Section 7.2.3 thereof, and interest shall accrue on such invoiced items at the rate of 8.5 percent per annum, commencing on the 31st day after receipt of UP's invoice, and continuing until payment is received by UP.

3.3 Removal.

Owner shall own all Additions and Alterations on the Property that are not owned or funded by third parties (such as the state, county or municipality), but may elect, upon the termination of this Agreement as to any Property Segment, to require UP to remove the Additions and Alterations constructed thereon, except for those Additions or Alterations that are to remain on the Property as part of the Freight Project. Such election shall be made by written notice delivered to UP within 10 days after such termination, and Owner shall simultaneously grant UP (and/or the third party owner) a right of entry to perform such removal. In the event of such election by Owner, UP (and/or the third party owner) shall arrange for such removal at no cost to Owner, and all Owner's right, title and interest in and to the Additions and Alterations being removed shall thereupon vest in UP. In no event shall UP be required to repair any damage to the Property caused by removal of any Additions or Alterations, except to the extent that any such damage adds incremental Project costs. This Section 3.3 is subject to the terms of Section 8.4 of the Construction Contract, relating to the bills of sale to be delivered by Owner after completion of any Project Segment.

SECTION 4 Maintenance; No Compensation.

4.1 UP Maintenance.

The portions of the Freight Trackage that UP is currently obligated to maintain, and the portions of the Property located within 12.5 feet of the centerline of each track, shall be maintained by UP at the maintenance level that UP may from time to time deem appropriate in its sole discretion, at its sole cost and expense. UP shall have no other obligation whatsoever to remove any graffiti or to otherwise maintain the Property. No charges, fees or compensation whatsoever shall be due to Owner by UP under this Agreement for operations or maintenance. At no time during the term of this Agreement or the freight rail easement reserved in the Deed shall UP be obligated to pay to Owner or any other party, nor shall Owner make any charge for any rental of any nature, including without limitation interest rental, for the use by UP of the Property or the Freight Trackage. UP's maintenance obligations hereunder shall expire as to any Property Segment when UP's work on such Property Segment has been substantially completed pursuant to Section 8.2.1 of the Construction Contract.

4.2 Owner Maintenance.

4.2.1 General Property Maintenance. Owner, as owner of the Property, shall maintain the Property in all other respects (excluding the Freight Trackage and the portions of the Property maintained by UP pursuant to Section 4.1 above), including

without limitation, weed abatement, drainage, and removal of debris, graffiti and litter, at the maintenance level that Owner may from time to time deem appropriate in its sole discretion. Notwithstanding the foregoing, Owner shall perform such maintenance activities as are necessary to correct any condition that, in UP's reasonable judgment, interferes with freight rail operations. Such condition shall be corrected as soon as practicable after Owner has actual notice of the interference. If Owner does not promptly correct any such condition, or in the event of an emergency condition, UP may take steps to correct the condition. Except in case of an emergency, UP shall notify Owner prior to taking such corrective action.

4.2.2 Maintenance Involving Hazardous Materials. Subject to Section 6.2.5 below, Section 9.5 of the Sale Agreement, and the Remediation Agreement, Owner shall promptly remove or remediate, at Owner's sole cost and expense, all Hazardous Materials deposited on the Property, in accordance with federal and state laws and regulations. UP shall promptly remove or remediate, at UP's sole cost and expense, in accordance with federal and state laws and regulations, any release of Hazardous Materials that is proximately caused by UP's Freight Rail Service and/or UP's maintenance operations hereunder. UP shall not be deemed an owner or operator with respect to any Hazardous Materials deposited on the Property after the date of this Agreement except as expressly provided in Subsection 6.2.5 below.

4.2.3 Costs of Property Maintenance. Subject to Sections 4.2.2 and 6.2.5 of this Agreement, Section 9.5 of the Sale Agreement, and the Remediation Agreement, the costs incurred by either party under this Section 4.2 shall be Owner's sole responsibility and obligation. If Owner does not reimburse UP within 30 days after Owner's receipt from UP of an invoice (together with supporting documentation as is kept in the ordinary course of UP's business and which is reasonably necessary to verify the accuracy of the invoice as rendered) for any action taken by UP in accordance with Section 4.2.1, interest shall accrue on such invoiced items at the rate of 8.5 percent per annum until payment is received by UP.

SECTION 5 Dispatching.

UP shall have exclusive authority to dispatch and control the Freight Rail Service. UP shall employ or cause to be employed all persons necessary to construct, maintain, repair, renew and perform dispatching functions for the Freight Trackage.

SECTION 6 Liability.

6.1 Assumption of Responsibility.

Each of the parties hereto shall assume, bear, and pay any and all Loss allocated to it as the responsible party under the terms of this Section 6; provided, that this Section 6 pertains only to Loss proximately caused by incidents occurring on the Property and arising out of the Freight Rail Service. All losses and incidents arising out of activities or conditions covered by the Construction Contract shall be governed by that agreement,

and not by this Section 6. Except as otherwise expressly provided in Sections 6.2.1, 6.2.5 and 6.3, the responsibility for Loss allocated to each party under this Section 6 is without respect to fault, failure, negligence, misconduct, malfeasance, or misfeasance, of any party or its employees, agents, or servants.

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

6.2 Allocation of Responsibilities.

6.2.1 Invitee of Either Party. Loss arising out of personal injury (including bodily injury and death) to, or property damage suffered by, an Invitee of either party shall be the responsibility of and borne and paid solely by that party regardless of the cause of such Loss or the fault of either party or whose train or equipment was involved, except as provided in Section 6.3 below. Consultants, lessees and contractors of a party, and any person who is on a train or equipment operated by or for the account of a party (other than an employee of a party engaged in performing duties for that party) shall rebuttably be presumed to be an "Invitee" of that party.

6.2.2 Employees in the Course of Employment. Losses arising out of personal injury (including bodily injury and death) to, or property damage suffered by, any employee of either party which occurs during the course of employment or while traveling to or from employment (for purpose of this Section 6, an "employee") shall be the responsibility of and borne solely by the party employing such employee, except as provided in Section 6.3.

6.2.3 Persons Other than Invitees or Employees. Except as provided in Section 6.3, Losses arising out of personal injury (including bodily injury and death) to, or property damage suffered by either:

(a) any person who is not an Invitee or employee of Owner or UP (including, without limitation, persons using vehicular and pedestrian crossings and trespassers); or

(b) any person who would otherwise be deemed to be an employee of Owner or UP but for the fact that he/she is not injured or damaged during the course of employment or while traveling to or from employment, shall be the responsibility of and borne and paid by the parties as follows:

(i) when a train or freight rail equipment of UP was involved in the incident giving rise to the injury or damage, by UP alone; or

(ii) when no train or freight rail equipment of UP was involved in the incident giving rise to the injury or damage, by Owner.

6.2.4 Property of the Parties. Losses arising out of casualty losses to property owned by either party shall be the responsibility of and paid by the parties as follows regardless of the cause of such Loss or the fault of either party, except as provided in Subsection 6.2.5 and Section 6.3 below:

(a) Loss to equipment and other property owned by Owner or its Invitee shall be the responsibility of Owner and borne by it; and/or

(b) Loss to trains, freight rail equipment and other property owned by, and freight transported by, UP or its Invitee shall be the responsibility of UP and borne by it.

6.2.5 Hazardous Materials. Except as provided in Section 6.3, Losses arising out of the release of Hazardous Materials during the term of this Agreement shall be the responsibility of and borne by UP only if such release was proximately caused by UP's Freight Rail Service or UP's maintenance operations hereunder.

6.3 Limitations on Indemnification.

The provisions of this Section 6.3 shall apply notwithstanding the provisions of Section 6.2 above and Section 8 below; provided however, that in no event shall UP ever be deemed to have committed Excluded Conduct unless a UP freight train, UP facilities and equipment, and/or UP employees or contractors were present during the incident in question. "Excluded Conduct" shall mean conduct by an employee of one of the parties, which such conduct is alleged in a properly filed complaint by a plaintiff or plaintiffs as the basis for an award of exemplary or punitive damages under California law, and which such conduct actually results (i) in an award of exemplary or punitive damages against UP or an employee of UP, or (ii) in an award of exemplary or punitive damages against an employee of Owner. Such award against UP or an employee of UP or against an employee of Owner shall be determinative as to Excluded Conduct only after judgment at a trial of the issues and, if any issue in addition to the Excluded Conduct issue is being appealed, after exhaustion of judicial appeals. If no issue except Excluded Conduct is being appealed, the party accused of the Excluded Conduct shall handle the appeal. During any appeal of the Excluded Conduct issue, neither party shall assert a position adverse to the position of the party defending against the claim of Excluded Conduct. Neither party shall be indemnified for any Loss resulting from its own Excluded Conduct, and in any such case such party shall be responsible for and bear the Loss in proportion to its relative degree of fault and such party shall be responsible for and bear all exemplary or punitive damages, if any, resulting from its Excluded Conduct. If any of the

provisions of Section 6.2 would otherwise be prohibited by or unenforceable under the laws of the State of California (including a determination that indemnification under the circumstances involved is against the public policy of the state), the indemnity provided by such provision shall be deemed to be limited to and operative only to the maximum extent permitted by law. Without limitation, if it is determined that any law or public policy of the State of California prohibits the indemnification of a party for its own sole negligence in any instance covered by the provisions of Section 6.2, those provisions shall be deemed to exclude indemnification for such party's sole negligence but to permit full indemnification as specified in Section 6.2, if both parties were negligent. In the case of any Loss for which the provisions of this Section 6.3 would prevent the indemnification of a party, such party shall be responsible for and bear such Loss.

6.4 Scope of Indemnification.

In any case where a party is required under the provisions of this Section 6 to bear a Loss, it shall pay, satisfy, and discharge such Loss and all judgments (after exhaustion of appeals) that may be rendered by reason thereof and all costs, charges, and expenses incident thereto, and such party shall forever indemnify, defend, and hold harmless the other party and its commissioners, directors, officers, agents, employees, shareholders, parent corporations and affiliated companies, or governmental entities from, against, and with respect to any and all Losses which arise out of or result from the incident giving rise thereto. If a party asserts that the other was guilty of Excluded Conduct and denies liability for indemnification of the other party based thereon, the party asserting such Excluded Conduct shall have the burden of proof in establishing such conduct, and shall continue to perform its obligations hereunder until and unless such alleged Excluded Conduct is established as provided in Section 6.3 above. It is the intent of the parties that the indemnification provisions of this Section 6 shall apply to both the passive negligence and the active negligence of an indemnified party.

6.5 Procedure.

6.5.1 If any claim or demand (other than as part of a lawsuit) shall be asserted by any person against an indemnified party under this Section 6, the indemnified party shall, within 30 days after notice of such claim or demand, cause written notice thereof to be given to the indemnifying party, provided that failure to notify the indemnifying party shall not relieve the indemnifying party from any liability which it may have to the indemnified party under this Section 6, except to the extent that the rights of the indemnifying party are in fact prejudiced by such failure. If any such claim or demand shall be brought against the indemnified party and it shall have given notice thereof to the indemnifying party, the indemnifying party shall have the right, as its sole cost and expense, to control (including the selection of counsel reasonably satisfactory to the indemnified party) or to participate in the defense of, negotiate or settle any such claim or demand, and the parties hereto agree to cooperate fully with each other in connection with any such defense, negotiation, or settlement. In any event, the indemnified party shall not make any settlement of any claims or demands which might give rise to liability on the part of the indemnifying party under this Section 6 without the

prior written consent of the indemnifying party, which consent shall not be unreasonably withheld, conditioned, or delayed. If any claim or demand relates to a matter for which the parties, under the terms of Section 6.2, are to share a Loss equally or in proportion to their relative degrees of fault, each party shall be entitled to select its own counsel and defend itself against the claim or demand at its sole cost and expense, and neither party shall make any settlement of any such claim or demand without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned, or delayed.

6.5.2 In the event any lawsuit is commenced against either party hereto for or on account of any Loss for which the other party may be solely or jointly liable under this Agreement, the party thus sued shall give the other party timely written notice of the pendency of such action, and thereupon the party so notified may assume or join in the defense thereof, and if the party so notified is liable therefor under this Agreement, to the extent of such liability, such party shall defend, indemnify, and save harmless the party so sued from all Loss in accordance with the liability allocations set forth in this Agreement. Neither party shall be bound by any judgment against the other party unless it shall have been so notified and shall have had reasonable opportunity to assume or join in the defense of the action. When so notified and the opportunity to assume or join in the defense of the action has been afforded, the party so notified shall, to the extent of its liability under this Agreement, be bound by the final judgment of the court in such action.

6.5.3 Subject to the provisions of Subsection 6.5.1, on each occasion that the indemnified party shall be entitled to indemnification or reimbursement under this Section 6, the indemnifying party shall, at each such time, promptly pay the amount of such indemnification or reimbursement. Any dispute between the parties as to the right to indemnification or the amount to which it is entitled pursuant to such right with respect to any matter shall be submitted to arbitration pursuant to Section 8 of this Agreement, subject to Subsection 6.4 above.

6.6 Delay/Interruption of Service.

Subject to the provisions of Section 6.2 and Section 7, Owner shall not be held liable for any delay or interruption to the trains, locomotives, or cars of UP.

6.7 No Waiver.

Nothing in this Section shall be construed as a waiver by Owner of any provisions of California Government Code Sections 810 through 996.6, as amended from time to time, or applied so as to effectively constitute such a waiver.

SECTION 7 Insurance.

7.1 Owner Insurance.

7.1.1 Owner shall obtain and maintain general liability insurance, as further specified in Subsection 7.1.2, written on an "occurrence" basis, with minimum limits of Ten Million Dollars (\$10,000,000) per occurrence. Coverage for punitive damages shall be included, to the extent such coverage is permitted under California law. Insurance shall be placed with a company having a current Best's Insurance Guide Rating of at least A, or equivalent, and which is a carrier admitted as an insurer by and licensed to write in the State of California, Department of Insurance, or Owner may self-insure; provided, however, that this sentence shall not inure to the benefit of Owner's successors or assigns absent the written consent of UP, which shall not be unreasonably withheld. In the event UP does not reasonably consent to self-insurance by a successor or assign of Owner, the self-insured amount for such successor or assign shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000). The foregoing policy limits may be adjusted by the parties every three years to reflect industry standards, liability claim trends and market conditions. In any event, however, the total coverage (self-insurance plus excess liability) shall not be less than Ten Million Dollars (\$10,000,000).

7.1.2 Owner's insurance must be at least as broad as the current ISO Commercial General Liability Policy (CG 00 01) protecting insured parties against claims for, including without limitation, bodily injury including death, personal and advertising injury, products and completed operations and property damage. The policy shall also include an endorsement that removes the exclusion for railroads (except where the job site is more than 50 feet from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazards. The insurance shall also include blanket contractual coverage, including without limitation, coverage for written, oral and implied contracts and specific coverage for the indemnity provisions set forth in this Agreement. Each policy obtained by Owner shall be endorsed to include UP as an additional insured, utilizing ISO Form CG 20 26 ("Additional Insured-Designated Person or Organization") or equivalent endorsement satisfactory to UP.

7.1.3 Owner's insurance shall be primary with respect to its obligation under this Agreement and with respect to the interest of UP as an additional insured. Any other insurance maintained by an additional insured shall be excess of the coverage herein defined as primary and shall not contribute with it.

7.1.4 Unless otherwise agreed by Owner and UP, Owner's insurance shall be maintained for the full term of this Agreement and shall not be permitted to expire or be canceled or materially changed. Each such insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or limits except after 30 days' prior written notice has been given to each insured and additional insured.

7.1.5 Within ten days prior to the date of this Agreement, Owner shall provide UP with certified copies of its policies, as well as certificates of insurance and endorsements evidencing the insurance required by this Section 7.1. Certificates of insurance shall be issued on the ACORD or equivalent form.

7.2 UP Insurance.

7.2.1 UP maintains, and shall continue to maintain, a catastrophic risk management program, allowing for its diverse risk exposures and financial condition, and in keeping with risks assumed by corporations of established size and reputation and consistent with programs of other Class I railroads. UP shall maintain at all times this Agreement is in effect, and at its own cost and expense, insurance coverage as is customary under its established risk management program. UP warrants and agrees that said insurance (or self-insurance) coverage is, and shall be, at least as comprehensive in scope and amount as the insurance required to be carried by Owner under this Agreement. UP shall provide Owner with a letter evidencing such insurance (or self-insurance) as of the date of this Agreement.

7.2.2 The self-insurance rights under this Section 7.2 shall not inure to the benefit of UP's successors or assigns, absent the written consent of Owner, which shall not be unreasonably withheld, unless the successor or assign is a Class 1 Railroad, as defined in 49 CFR 1201, Subpart A, General Instruction 1-1(a). In the event Owner does not reasonably consent to self-insurance by a successor or assign of UP that is not a Class 1 Railroad, said successor or assign shall obtain and maintain insurance of the type and amount, and upon the terms and conditions, specified in Section 7.1; provided, however, that the self-insured amount for said successor or assign shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000).

7.3 Failure to Maintain Insurance.

A failure of either party to maintain the insurance required by this Section 7 shall not relieve such party of any of its liabilities or obligations under this Agreement.

SECTION 8 Dispute Resolution and Binding Arbitration.

8.1 Settlement of Disputes.

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

8.2 Controversies Subject to Arbitration.

Any and all claims, disputes, or controversies between Owner and UP arising out of or concerning the interpretation, application, or implementation of this Agreement that

cannot be resolved by the parties by negotiations shall be submitted to binding arbitration as hereinafter provided.

8.3 Arbitration Procedure.

The procedure for arbitration shall be as follows:

(a) In the event a claim, dispute, or controversy subject to arbitration hereunder arises, either party may serve a written demand for arbitration in accordance with this Section 8.3 upon the other party. If the claim, dispute, or controversy is not resolved by the parties within 25 calendar days after the service of the demand, the matter shall be deemed submitted to arbitration.

(b) Within 30 calendar days after service of a demand for arbitration, each party shall designate an arbitrator in writing and serve its designation upon the party (the "Noticed Party") in accordance with Section 11.1 of this Agreement. The arbitrators designated by the parties pursuant to the preceding sentence are not required to be neutral and may be employees of the parties. If the Noticed Party fails to timely designate the arbitrator to be designated by it, such arbitrator shall be appointed by the Presiding Judge (or Acting Presiding Judge) of the Superior Court for the County of Santa Clara, upon application of either party after ten days' written notice to the other party. If each party has timely designated its arbitrator, or the Presiding Judge (or Acting Presiding Judge) has appointed an arbitrator for one of the parties pursuant to the previous sentence, the two designated arbitrators shall, within 40 calendar days after service of the demand for arbitration, designate a neutral third party arbitrator. The neutral third party arbitrator shall be a qualified disinterested person, knowledgeable and experienced in the type of rail operations and maintenance services contemplated by this Agreement. If the two arbitrators designated by the parties fail to timely select a neutral third party arbitrator, either party may apply to the Presiding Judge (or Acting Presiding Judge) of the Superior Court of the County of Santa Clara to select the neutral third party arbitrator. At any time, the parties may agree in writing on a sole arbitrator to decide the controversy.

8.4 Rules of Arbitration.

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

8.5 Arbitration Schedule.

8.5.1 The arbitration hearing shall commence no later than four months after service of the demand and shall be concluded no later than 40 calendar days after the hearing commencement date. The arbitration decision and award shall be rendered by

the arbitrators in writing within 30 calendar days after conclusion of the arbitration hearing.

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

8.6 Expedited Arbitration Schedule.

8.6.1 In the event either party hereto reasonably finds that the issues of any claim, dispute, or controversy are likely to directly, imminently, materially, and adversely affect human health or safety, either party may request, in the arbitration demand delivered pursuant to Section 8.3, an expedited arbitration procedure as set forth in this Section solely for the purpose of obtaining a provisional remedy that by law or in equity could be imposed in a court proceeding against a rail carrier subject to the jurisdiction of the Surface Transportation Board (e.g., temporary restraining order, preliminary injunction, or injunction).

8.6.2 Within five calendar days after service of a demand for expedited arbitration, each party shall designate an arbitrator in writing and serve its designation upon the Noticed Party. The arbitrators designated by the parties pursuant to the preceding sentence are not required to be neutral and may be employees of the parties. If the Noticed Party fails to timely designate the arbitrator to be designated by it, such arbitrator shall be appointed by the Presiding Judge (or Acting Presiding Judge) of the Superior Court for County of Santa Clara, upon application of either party after 24 hours' written notice to the other party. If each party has timely designated its arbitrator, or the Presiding Judge or Acting Presiding Judge has appointed an arbitrator for one of the parties pursuant to the previous sentence, the two designated arbitrators shall, within seven calendar days after service of the demand for expedited arbitration, designate a neutral third party arbitrator. The neutral third party arbitrator shall be a qualified disinterested person, knowledgeable and experienced in the type of services contemplated by this Agreement. If the two arbitrators designated by the parties fail to timely select a neutral third party arbitrator, either party may apply to the Presiding Judge (or Acting Presiding Judge) of the Superior Court for the County of Santa Clara to select the neutral third party arbitrator.

8.6.3 The expedited arbitration hearing shall commence no later than ten calendar days after service of a demand for expedited arbitration and shall be concluded on the same day. The arbitration decision shall be rendered by the arbitrator(s) in writing on or before the calendar day following the arbitration hearing.

8.6.4 Prior to rendering any decision, the arbitrator(s) must find that the issues of the claim, dispute, or controversy are likely to directly, imminently, materially, and adversely affect human health or safety. In the event the arbitrator(s) find that the foregoing criteria have not been met, the proceeding shall be dismissed without prejudice and the parties shall proceed with the arbitration procedure and schedule set forth in Section 8.3 and 8.5; provided, however, that no new demand for arbitration need be served by the party demanding arbitration. In the event only one or two arbitrator(s) is/are present at the hearing, the hearing shall proceed, and a provisional remedy may be granted without the absent arbitrator(s); provided, that in the event only two arbitrators are present at the hearing, any decision granting a provisional remedy must be made by both arbitrators.

8.7 Pending Resolution.

During the pendency of such arbitration proceedings, the business and the operations to be conducted, physical plan to be used, and compensation for service under this Agreement, to the extent that they are the subject of such controversy, shall continue to be transacted, used, and paid in the manner and form existing prior to the arising of such controversy, unless the arbitrator shall make a preliminary ruling to the contrary.

8.8 Cost of Arbitration.

Each party hereto shall solely bear the attorneys' fees, costs and expenses incurred by it in connection with such arbitration, including the cost of the arbitrator appointed by it, and both parties shall share equally the costs and expenses attributable to the services of the third arbitrator. Notwithstanding the foregoing, the arbitrators shall have the power to award attorneys' fees and costs to either party if the arbitrators determine in their reasonable discretion that the position of the other party to the arbitration was frivolous.

SECTION 9 Relocation of Freight Rail Service; Termination; Release.

9.1 Notice of Intent to Construct; Termination.

9.1.1 Notice of Intent to Construct. UP and Owner have entered into discussions to determine if it is feasible for Owner to utilize the Property for passenger rail service. UP has concluded that it would be able to abandon, discontinue or relocate its Freight Rail Service provided along the Freight Trackage, subject to the approval of any such abandonment or discontinuance by the STB, and performance of the Freight Project Work and Third Party Work, which is necessary to allow UP to maintain the Functionality of UP's Freight Rail Service and to satisfy its statutory obligations as a common carrier. The parties shall cooperate fully to expeditiously relocate UP's freight rail operations off the Freight Trackage and the Property pursuant to the terms of the Construction Contract. Accordingly, Owner covenants to deliver to UP one or more written notices of intent to construct (each, a "Notice of Intent to Construct") prior to the date on which Owner estimates that it will begin any construction activities for the

Project or other activities on any Property Segment subject to such notice, which Notice of Intent to Construct shall specifically describe the boundaries of the Property Segment. The Notice of Intent to Construct (a) for Property Segment 1A shall be delivered at least one year prior, (b) for Property Segment 1B, shall be delivered at least 18 months prior, and (c) for all other Property Segments, shall be delivered at least two years prior, to the date on which Owner estimates that it will begin construction activities on such Property Segment. Upon UP's receipt of any such Notice of Intent to Construct (i) Owner and UP shall promptly commence to implement, and thereafter diligently prosecute, the freight transportation solutions provided for in the Construction Contract with respect to the Property Segment impacted and/or covered by such Notice of Intent to Construct, and (ii) UP shall promptly initiate and thereafter diligently prosecute proceedings (to the extent required by law) to procure all necessary consent, approval or authority from the STB for the abandonment or discontinuance of Freight Rail Service on the Freight Trackage, or the Property Segment covered by such Notice of Intent to Construct. Owner shall cooperate fully with UP in all such proceedings.

9.1.2 Termination Under Notice of Intent to Construct. This Agreement shall terminate, in whole or in part, only as to any portion of the Freight Trackage within a Property Segment covered by a duly delivered Notice of Intent to Construct, as of the date on which all of the following have occurred: (a) the STB has issued the necessary consent, approval or authority for abandonment or discontinuance of the Freight Rail Service over such portion of the Freight Trackage and the Property Segment covered by such Notice of Intent to Construct, (b) all requirements relating to protection of shippers have been met, whether as part of an agreement with UP or imposed by STB, (c) UP has exercised such authority by consummating the abandonment or discontinuance, and notifying the STB and Owner thereof, and (d) Owner has "completed" all of its obligations under the Construction Contract with respect to the Property Segment and the Project Segment covered by the Notice of Intent to Construct pursuant to Section 8.1.2 of the Construction Contract. Provided that the conditions of Subsections (a), (b) and (d) hereof have been satisfied, UP shall, promptly upon Owner's written request, exercise UP's authority to consummate the abandonment or discontinuance, and to notify the STB thereof. Owner may commence pre-construction and construction activities, including without limitation, utility relocation work, on any Property Segment prior to the termination of this Agreement as to such Property Segment, on the conditions that: (i) with respect to any Property Segment for which substantial completion of the Railroad Work has NOT occurred (as described in Section 8.2.1 of the Construction Contract): (A) Owner shall obtain UP's prior written consent, which consent shall not be unreasonably withheld or delayed, (B) Owner's contractors shall have executed UP's then standard form of Contractor's Right of Entry Agreement (or Owner has otherwise complied with Section 3.3 of the Construction Contract), and (C) such activities shall not interfere with UP's Freight Rail Service; and/or (ii) with respect to any Property Segment for which such substantial completion of the Railroad Work has occurred, Owner shall comply with all laws and regulations governing freight rail abandonments. UP shall have no liability or obligation whatsoever to Owner for any delay in terminating this Agreement except to the extent of any breach by UP of its

express covenants hereunder. Such termination shall be evidenced by delivery of written notice from UP to Owner, stating the date of such termination.

9.1.3 Termination Without Notice of Intent to Construct. As to any portion of the Freight Trackage for which a Notice of Intent to Construct has not been duly delivered, this Agreement shall terminate, in whole or in part, only as to any portion of the Freight Trackage within a Property Segment, as of the date on which all of the following have occurred: (a) UP has applied to the STB for the necessary consent, approval or authority for abandonment or discontinuance of the Freight Rail Service over such portion of the Freight Trackage and the Property Segment, (b) the STB has issued the requested consent, approval or authority for such abandonment or discontinuance, (c) all requirements relating to protection of shippers have been met, and (d) UP has exercised such authority by consummating the abandonment or discontinuance and notifying the STB thereof. Such termination shall be evidenced by delivery of written notice from UP to Owner, stating the date of such termination.

9.2 Release.

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

SECTION 10 Default.

10.1 Notice of Demand.

Either party claiming default of any of the provisions of this Agreement shall furnish notice of demand to the other party for performance or compliance with the covenant or condition of the Agreement claimed to be in default, which notice shall specify in what respect such default is claimed to exist and shall specify the particular section or sections of the Agreement under which such claim of default is made.

10.2 Continuing Default.

If the default shall continue for an additional period of 30 days after receipt of such notice of demand, and such default has not been remedied within said 30-day period, or reasonable steps have not been nor continue to be taken to remedy a failure or default which cannot reasonably be remedied within said 30-day period, either party shall

resort to arbitration under the provisions of Section 8 above; provided, however, that the arbitrator shall not have the authority to amend, modify or terminate this Agreement.

10.3 No Waiver.

Failure of a party to claim a default shall not constitute a waiver of such default. Either party entitled to claim default may waive any such default, but no action by such party in waiving such default shall extend to or be taken to effect any subsequent defaults or impair the rights of either party hereto resulting therefrom.

SECTION 11 Miscellaneous Provisions.

11.1 Notices.

Except as otherwise expressly provided in this Agreement, all notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (a) on the date of delivery, if delivered personally to the party to whom notice is given, or if made by telecopy directed to the party to whom notice is to be given at the telecopy number listed below, or (b) at the earlier of actual receipt or the second business day following deposit in the United States mail, postage prepaid. Notices and other communications shall be directed to the parties at the addresses shown below. A party may change its person designated to receive notice, its telecopy number, or its address from time to time by giving notice to the other party in accordance with the procedure set forth in this Section.

Owner: Santa Clara Valley Transportation Authority
Attn: Scott Buhner, Building C-2
3331 North First Street
San Jose, CA 95134-1906
Telephone: (408) 321-5630
Facsimile: (408) 955-9750

with a copy to: Hanson, Bridgett, Marcus Vlahos & Rudy
Attn: David J. Miller
333 Market Street, Suite 2300
San Francisco, CA 94105
Telephone: (415) 777-3200
Facsimile: (415) 541-9366

UP: Union Pacific Railroad Company
Attn: Executive Vice President - Operations
1416 Dodge Street, Room 1200
Omaha, Nebraska 68179
Telephone: (402) 271-6663
Facsimile: (402) 271-3619

11.2 Headings.

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

11.3 Integration, Amendment and Waiver.

This Agreement is the entire agreement, and supersedes all prior and contemporaneous agreements, representations, and understandings, of the parties concerning the subject matter hereof except for the Sale Agreement, the Construction Contract and the Deed. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by both of the parties. No waiver of any provisions of this Agreement shall be deemed, or shall constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

11.4 Counterparts.

This Agreement may be executed in any number of counterparts, and by different parties in separate counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

11.5 Compliance with Laws.

Both parties shall comply with all applicable federal, state, and local laws and regulations, and all applicable rules, regulations, or orders promulgated by any court, agency, municipality, board, or commission. If any failure of either party to comply with such laws, regulations, rules, or orders in respect to that party's use of the Property results in any fine, penalty, cost, or charge being assessed against the other party, or any Loss, the party which failed to comply agrees to reimburse promptly and indemnify, protect, defend (with counsel reasonably acceptable to the indemnified party), and hold harmless the other party for such amount. Notwithstanding anything to the contrary contained herein, the parties hereby reserve the right to contest such fines, penalties, costs and charges.

11.6 Governing Law.

This Agreement shall be construed and interpreted in accordance with the laws of the State of California without regard to California conflict-of-law provisions.

11.7 Time of Essence.

Time is of the essence of each and every provision of this Agreement.

11.8 Agreement Runs with Land; Successors and Assigns.

This Agreement is made for the mutual benefit of the parties and shall run with the Property. This Agreement and the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the parties and their respective successors-in-interest in the Property or in any Property Segment. The parties acknowledge and agree that, effective in the event of a post-closing transfer of certain portions of the Property to BART and the execution of an assignment and assumption agreement between BART and Santa Clara Valley Transportation Authority, covering all of Owner's rights and obligations under this Agreement with respect to such portions of the Property, BART shall become the successor to Owner's rights and obligations under this Agreement solely to the extent applicable to such portions of the Property, on condition that BART shall have given UP a minimum of ten days' prior written notice of such assignment which notice shall contain a copy of the assignment and assumption document. In the event of such transfer, Santa Clara Valley Transportation Authority and UP shall have no further rights and/or obligations against each other under this Agreement with respect to such portions of the Property, except for those that accrued on or before the date of such assignment. No such assignment shall be construed to alter (other than by substituting assignee for assignor) any obligation of UP or the assignee under this Agreement or under any other agreement between the parties of even date herewith, including without limitation, any payment obligation, indemnity obligation, or obligation to perform work. Excepting any such transfer to BART, Owner's interest under this Agreement may not be assigned, encumbered or otherwise transferred, whether voluntarily, involuntarily by operation of law or otherwise, except in connection with transfer of fee title in the Property. UP's interest in this Agreement may be assigned in whole or in part, subject to the terms of the "Railroad Easement" reserved in the Deed, and to the terms of the Construction Contract.

11.9 Not for the Benefit of Others.

This Agreement and each and every provision herein is for the exclusive benefit of the parties hereto and not for the benefit of any third party (except permitted successors and assigns). Nothing herein shall be construed to create or increase any right in any third party to recover by way of damages or otherwise against either of the parties hereto.

11.10 Attorneys' Fees.

Subject to the provisions of Section 8.8, if any legal action or any arbitration or other proceeding is brought for the enforcement or interpretation of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs in connection with that action or proceeding, in addition to any other relief to which it or they may be entitled.

11.11 Construction.

The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the parties hereto.

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

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

By: Tony K. Love
Name: TONY K. LOVE
Title: GENERAL MANAGER-REAL ESTATE

**SANTA CLARA VALLEY
TRANSPORTATION AUTHORITY,**
a public agency created under California law

By: Peter M. Cipolla
Name: Peter M. Cipolla
Title: General manager

APPROVED AS TO FORM:

Kenneth P. [Signature]
Counsel

ENGINEERING AND CONSTRUCTION CONTRACT

WP MILPITAS LINE

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ENGINEERING AND CONSTRUCTION CONTRACT

WP MILPITAS LINE

THIS ENGINEERING AND CONSTRUCTION CONTRACT - WP MILPITAS LINE ("Contract") is made as of the 10th day of December, 2002, by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("UP") and SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, a public agency created under California law ("Public Agency").

RECITALS

A. Public Agency plans to construct a public transportation project on, along and under portions of the former WP Milpitas Line right-of-way (the "Project") in Alameda County and Santa Clara County, California, extending generally between Fremont, California, in the vicinity of UP's MP 2.61 and San Jose, California, in the vicinity of UP's MP 17.49. Such right-of-way (the "Property") is more particularly described in the Purchase, Sale and Option Agreement and Escrow Instructions, dated as of the date hereof, between the parties (the "Sale Agreement").

B. Construction of the Project will require relocating UP's freight rail operations in a manner that enables UP to serve its customers from other rail lines in the general vicinity of the WP Milpitas Line.

C. Both the Project and the relocation of UP's freight rail operations may be designed and constructed over a period of time, in phases linked to separate segments of the Property that are generally described on **Exhibit A** attached hereto and incorporated herein by reference (the "Property Segment(s)"). The boundaries of such Property Segments may be revised, by agreement of the parties, prior to issuance of any Notice to Relocate pursuant to the Trackage Rights Agreement.

D. The parties now desire to set forth their understanding and agreement with respect to the design and construction of the Project, the Freight Project and the Third Party Work, on the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I - DEFINED TERMS

"AREMA Standards" shall have the meaning set forth in Section 4.1.4 below.

"After-Acquired Parcels" shall have the meaning set forth in Section 2.5 below.

"BART" shall mean the San Francisco Bay Area Rapid Transit District.

"CPUC" shall mean the California Public Utilities Commission.

"Code" shall have the meaning set forth in Section 10.4 below.

"Concept Designs" shall mean UP's drawing identified as "CE Number CAO2047, Milpitas Sub-Sale of R/W and Track" last revised December 6, 2002, of the Freight Project, that is part of **Exhibit B** attached hereto and incorporated herein by reference, as such designs may be amended from time to time in accordance with Section 2.2 below.

"Construction Schedule" shall have the meaning set forth in Section 3.5.2 below.

"Contract" shall mean this Engineering and Construction Contract – WP Milpitas Line, between UP and Public Agency.

"Contractor" shall mean any contractor who performs Work, whether engaged by or on behalf of Public Agency, UP, or a third party for the Third Party Work, including subcontractors and suppliers, regardless of tier, provided that such subcontractors and suppliers shall not individually be required to execute a Contractor's Right of Entry Agreement nor to provide insurance to UP or Public Agency.

"Customary Additives" shall mean elements of cost added to billings that generally are calculated as a percentage of direct labor costs and are intended to compensate for, without limitation, paid holidays, vacation and personal leave days, health and welfare benefits, payroll taxes and administrative and supervisory expenses that include direct and general overhead, inclusive of a customary one percent additive for special administrative costs related to billing preparation, and are subject to periodic changes depending upon industry practices.

"Deadline" shall have the meaning set forth in Section 3.5.2 below, and for purposes of Section 8.2, in Section 8.2.1 below.

"Designs" shall have the meaning set forth in Section 2.1.5 below.

"Escrow Agent" shall have the meaning set forth in Section 7.2 below.

"FRA" shall mean the Federal Railroad Administration.

"Facilities" shall mean all rails, fastenings, switches, switch mechanisms and frogs complete, ties, ballast, signals, bumpers, roadbed, embankments, bridges, trestles, culverts, or any other structures or things necessary for the support thereof and, if any portion thereof is located in a thoroughfare, the term shall include pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing materials at vehicular and pedestrian crossings of tracks, culverts, drainage facilities, automatic warning devices, and any and all structures and facilities required by lawful authority in connection with the construction, renewal, maintenance, and operation of any of the foregoing.

"Force Majeure Event" shall mean any occurrence beyond a party's reasonable control and/or beyond the reasonable control of its vendors and Contractors, including but not limited to a riot, insurrection, act of terrorism or war, strikes or lockouts, derailments, wrecks, freight embargoes, inability to procure critical materials, fire, earthquake, flood, cloudburst, tornado or other phenomena of nature beyond the power of a party to foresee, accidents, or other unforeseeable circumstances (such as encountering historical artifacts or burial grounds). A rain, windstorm or other natural phenomenon of normal intensity, based on U.S. Weather Bureau reports for a particular locality and for the particular season of the year during which the Work is being prosecuted, shall not be deemed a Force Majeure Event.

"Freight Project" shall mean the project to construct a new alignment for UP's freight rail line and all related Facilities, on and in the general vicinity of the Property and the UP Property, to ensure that the Functionality of UP's Freight Rail Service is maintained at its current level, as shown and described in **Exhibit B** to this Contract, as such exhibit may be amended from time to time in accordance with Section 2.2 below.

"Freight Project Escrow(s)" shall have the meaning set forth in Section 7.2 below.

"Freight Project Work" shall mean all Work performed on and in the general vicinity of the Property and the UP Property relating to the Freight Project, including but not limited to, the furnishing of all materials and the doing of all Work contemplated by the Concept Designs and the Project Segment Tasks Description, and generally including the following activities to be performed by UP and/or Public Agency:

- (i) constructing temporary trackage, removing and relocating existing trackage, and constructing new trackage and signal and crossing warning systems;
- (ii) constructing temporary or permanent communication facilities and making signal line adjustments;
- (iii) rail traffic coordination in connection with the Freight Project Work;
- (iv) constructing permanent trackage for UP's Freight Rail Service on permanent alignments, in conjunction with constructing retaining walls, fences and drainage structures and removing existing trackage;

(v) constructing, changing or modifying Facilities as required to complete the Freight Project, whether such changes are temporary or permanent in nature;

(vi) performing engineering, surveying and design review;

(vii) performing any and all other Work that the parties mutually agree to be necessary for the completion of the Freight Project, including without limitation, inspections and all Work necessary to comply with any conditions of an STB abandonment or relocation authority; and

(viii) constructing buffer walls and/or fences as needed on the Property, the After-Acquired Parcels and/or the UP Property.

"Freight Rail Service" shall mean the common carrier freight rail operations on and in the vicinity of the Property and the UP Property, including without limitation, operations in furtherance of transporting freight commodities of all types and descriptions in trains, personnel training and the use of equipment for such operations.

"Functionality" shall mean, as determined by UP in its reasonable discretion, that level of Freight Rail Service equivalent to the level of Freight Rail Service provided by UP within the immediate vicinity of the Property as of the date of this Contract, with respect to safety and to UP's current levels of time efficiency and cost effectiveness in providing such service.

"Loss" shall mean any and all loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of any person(s) and/or damage to or loss or destruction of property that may arise or result from Public Agency's relocation and/or protection of utility improvements on or adjacent to the Property or the UP Property.

"Noticed Party" shall have the meaning set forth in Section 10.3 below.

"Other UP Work" shall mean any work performed by UP, in its sole discretion, other than the Railroad Work, whether for the Freight Project, the Project and/or the Third Party Work (for example, rail traffic coordination, reviewing Public Agency's designs or performing inspections of Third Party Work).

"Plans and Specifications" shall have the meaning set forth in Section 2.1.5 below.

"Project" shall have the meaning set forth in Recital A above.

"Project Segment" shall mean a portion of the Freight Project Work and the Third Party Work that comprise all the Work necessary to maintain the Functionality of UP's Freight Rail Service, as jointly determined by UP and Public Agency prior to issuance of any Work Order Authorization.

"Project Segment Tasks Description" shall mean the written section of **Exhibit B** that provides a general description of the Work to be performed both on and off the Property in connection with the Freight Project, as such general description may be amended from time to time in accordance with Section 2.2 below.

"Property" shall have the meaning set forth in Recital A above.

"Property Segment(s)" shall have the meaning set forth in Recital C above.

"Public Agency" shall mean Santa Clara Valley Transportation Authority, a public agency created under California law, and its successors and assigns.

"Public Agency Freight Work" shall mean that portion of the Freight Project Work that is designed and constructed by Public Agency, both on and off the Property, as determined in accordance with Section 3.2 below.

"Public Agency Project Work" shall mean the work for the Project, performed by or on behalf of Public Agency, and shall not be deemed to include the Freight Project Work or the Third Party Work.

"Punch list" shall have the meaning set forth in Section 8.1.2 below.

"Railroad Work" shall mean that portion of the Freight Project Work that is designed and constructed by UP, both on and off the Property, as determined in accordance with Section 3.2 below.

"Review Standards" shall have the meaning set forth in Section 2.1.4 below.

"STB" shall mean the Surface Transportation Board of the United States Department of Transportation or any successor agency.

"Sale Agreement" shall have the meaning set forth in Recital A above.

"Substantially complete(d)", for purposes of Section 8.2 only, shall have the meaning set forth in Section 8.2.1 below.

"Sufficient Funds" shall have the meaning set forth in Section 7.2.1 below.

"Third Party Work" shall mean all Work done by or on behalf of third parties, in connection with, caused by, or being coordinated with, the Project and/or the Freight Project, and affecting the Property and/or the UP Property, including without limitation, utility protective measures and/or relocations, grade separation projects, and any implementation of an alternative freight transportation solution for any UP freight rail customer (such as relocating the shipper or establishing transload arrangements).

"Tolling Conditions" shall have the meaning set forth in Section 3.5.3 below.

"Trackage Rights Agreement" shall mean the Trackage Rights Agreement - WP Milpitas Line, dated of even date herewith, between UP and Public Agency.

"UP" shall mean Union Pacific Railroad Company, a Delaware corporation, and its lessees, licensees, successors and assigns.

"UP Property" shall mean property owned by UP in the general vicinity of the Property, or to be conveyed to UP in connection with the Freight Project.

"UP Related Project Work" shall mean only those portions of the Public Agency Project Work that may impact UP's Freight Rail Service or UP Property or UP's continuing rights and interests in the Property and/or After-Acquired Parcels, including without limitation, drainage work, falsework and shoring connected with the Project.

"Work" shall have the meaning set forth in Section 3.1 below.

"Work Order Authorization" shall have the meaning set forth in Section 3.5.2 below.

"Work Order Prerequisites" shall have the meaning set forth in Section 3.5.2 below.

ARTICLE II - DESIGN; AFTER-ACQUIRED PARCELS

2.1 Design Work.

2.1.1 Because Public Agency has not yet completed its design work for the Project, and because the Project's final configuration will impact UP's Freight Rail Service in the vicinity of the WP Milpitas Line, the parties agree to work cooperatively throughout the design process for the Project, the Freight Project and the Third Party Work.

2.1.2 UP and/or its Contractors shall prepare the designs, cost estimates and plans and specifications for the Railroad Work; Public Agency and/or its Contractors shall prepare all designs, cost estimates and plans and specifications for the Public Agency Freight Work pursuant to the Review Standards.

2.1.3 Public Agency and/or its Contractors shall prepare the designs, cost estimates and plans and specifications for the Project, and shall coordinate with third parties the designs, cost estimates and plans and specifications for the Third Party Work. As Public Agency prepares and coordinates such designs, it shall keep UP's engineering group well-informed about matters that may impact, in any manner, UP Property, UP's Freight Rail Service, or UP's continuing rights and interests in the Property and/or the After-Acquired Parcels.

2.1.4 UP shall have the right to (a) review and approve or disapprove, with respect to compliance with the Review Standards, all designs and plans and specifications

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(preliminary and final) for the Public Agency Freight Work, the Third Party Work, and the UP Related Project Work, and all changes thereto, and (b) review and comment on, with respect to compliance with the Review Standards, all designs and plans and specifications (preliminary and final) for the Project. UP shall use its best efforts to complete its review within two weeks after receipt, but UP may take up to 30 days to review such items, based upon UP's scheduling constraints and the complexity of the items under review. In addition to those review principles set forth in Section 2.2 below, UP's scope of review shall be limited to determining whether (i) the designs, plans and specifications (preliminary and final) and/or changes meet all applicable then-current CPUC, FRA and UP standards and regulations governing structures and trackage, clearances, utilities, drainage, buffer walls or fences, safety matters, and similar matters, with respect to the UP Property, UP's Freight Rail Service, or its continuing rights and interests in the Property and/or the After-Acquired Parcels; (ii) the designs, plans and specifications (preliminary and final) and/or changes meet the terms and conditions of UP's existing agreements with third parties affecting the Property or the UP Property, as applicable, and do not otherwise adversely impact the use or condition of the UP Property or any improvements thereon; (iii) there will be any interference with or danger to the UP Property, UP's Freight Rail Service, or its continuing rights and interests in the Property and/or the After-Acquired Parcels, during or after construction; and (iv) the freight rail trackage is completely separate from the Project's passenger rail trackage, without connections, so that neither party may operate its trains over the trackage of the other party, subject, however, to Public Agency's right to cross over or under the UP freight rail trackage as necessary (collectively, the "Review Standards"). Notwithstanding anything contained in this Contract to the contrary, UP's review will be performed solely for its own purposes and benefit, and UP shall not be deemed to be liable to Public Agency or any other party for defects in the Designs and Plans and Specifications for the Project, the Public Agency Freight Work or the Third Party Work.

2.1.5 The final designs (a) for the Freight Project Work and UP Related Project Work, as approved by Public Agency and UP, and (b) for the Third Party Work, as approved by Public Agency, UP and the appropriate third party, or any portion of such designs, and as supplemented and/or modified from time to time in accordance with Section 2.2 below, shall be referred to herein collectively as the "Designs." The final, detailed construction plans and specifications (a) for the Freight Project Work and UP Related Project Work, as approved by Public Agency and UP, and (b) for the Third Party Work, as approved by Public Agency, UP and the appropriate third party, or any portion of such plans and specifications, and as supplemented and/or modified from time to time in accordance with Section 2.2 below, shall be referred to collectively as the "Plans and Specifications."

2.1.6 If UP determines that any proposed UP Facilities should be materially enhanced beyond that which is necessary to fulfill the requirements of the Freight Project, for UP's sole benefit, then UP shall credit Public Agency for the value of any such enhancement paid for by Public Agency. The credit shall be shown as UP makes its withdrawals from the Freight Project Escrow for the related Work. Public Agency and UP shall agree on the nature and extent of any such enhancement, including any plans or specifications, and on the amount of credit due to Public Agency, if any, prior to commencement of construction of any such enhancement.

2.2 Covenant to Cooperate.

The parties acknowledge and agree that the Concept Designs and Project Segment Tasks Description will provide Functionality, if performed (1) sequentially (commencing with Project Segment 1A and continuing in order through Project Segment 5), (2) in conjunction with Third Party Work, as necessary, and (3) in accordance with all of the terms of this Contract. Nothing herein shall be construed to require that the Freight Project be performed sequentially, but any proposed changes to the sequence shall be reviewed by the parties in accordance with this Section 2.2. The parties further acknowledge and agree, however, that the Concept Designs and Project Segment Tasks Description, and the designs and plans and specifications (proposed, preliminary and/or final) for the Freight Project Work and the Third Party Work based on them, as well as the designs, plans and specifications (proposed, preliminary and/or final) for the UP Related Project Work, may need to be prepared, supplemented, re-ordered and/or revised from time to time, both prior to construction and (through the use of construction change orders) during construction. Either Party (or a third party, with respect to Third Party Work) may request a design modification, a Project Segment Tasks Description revision, a plans and specifications change, and/or a construction change order by notifying the other party (in accordance with Section 13.1 below) of such requested modification and the details thereof (for construction change orders, the request shall also include the estimated cost thereof). Accordingly, the parties agree to cooperate with respect to all proposed modifications. Each request shall be subject to the consent of the other party(ies), which shall not be unreasonably withheld, conditioned or delayed. Consideration of any proposed modification, whether proposed by Public Agency, UP or a third party, shall be based upon all of the following principles:

- (a) The Functionality of UP's Freight Rail Service will be maintained. For any relocation of UP's wye track, UP must also specifically approve the proposed location and design thereof, which shall be south of UP's Milpitas Yard.
- (b) The parties will give due consideration to (i) the needs and requests of UP's freight rail customers (and to any party desiring freight rail service), (ii) any change in the circumstances of such customers that has an impact on their freight service needs, and (iii) any conditions imposed by the STB, which consideration may include without limitation, relocating certain connections, leads and spurs; exploring comparable alternative freight solutions such as indirect access to rail service through transloading; and exploring comparable business relocation opportunities; where such solutions could be beneficial to the Project and are acceptable to both UP and its freight customer.
- (c) UP's Review Standards shall be met.
- (d) The parties will give due consideration to modifications to the designs and plans and specifications (preliminary or final) that

could lower the costs of the Project, the Freight Project and/or the Third Party Work.

Each party shall use its best efforts to complete its review within two weeks after receipt, but such party may take up to 30 days to review such items, based upon its scheduling constraints and the complexity of the items under review.

2.3 Engineering Data.

2.3.1 All diagrams, plans, drawings (including but not limited to the Designs), models, prototype devices, specifications (including but not limited to the Plans and Specifications), magnetic tapes, computer discs, data and notes, memoranda and other writings of a technical or economic nature which are furnished to Public Agency by UP or its Contractors in connection with the Project or the Freight Project shall be and remain the property of UP, provided that Public Agency is hereby granted a permanent, irrevocable right to use all such materials in connection with the Project.

2.3.2 All diagrams, plans, drawings (including but not limited to the Designs), models, prototype devices, specifications (including but not limited to the Plans and Specifications), magnetic tapes, computer discs, data and notes and other writings of a technical or economic nature which are prepared by Public Agency or its Contractors, shall be and remain the property of Public Agency, provided that UP is hereby granted a permanent, irrevocable right to use all such materials pertaining to the Facilities, UP Property, or property to be owned by UP or any utility company.

2.4 No Disruption.

No disruption of Freight Rail Service through the Property shall be permitted at any time during the design and construction of the Project or the Freight Project, with the exception of the time required to execute the necessary tie-ins (including signal cut-overs). The Project, the Freight Project and the Third Party Work shall also be constructed in a manner that (i) will provide UP the ability to maintain continuous Freight Rail Service at existing service levels, and (ii) will provide the owners of the communications and pipeline facilities the ability to maintain continuous communications and utility connections and service at existing service levels, except as may be otherwise agreed between Public Agency and such owners.

2.5 After-Acquired Parcels.

Public Agency shall timely acquire from third parties, at Public Agency's sole cost, good and marketable fee or easement title to all additional real property required for the Freight Project ("After-Acquired Parcels"). Immediately upon each such acquisition, (i) Public Agency shall ensure that such After-Acquired Parcels are zoned to permit railroad uses, (ii) Public Agency shall encumber such After-Acquired Parcels, at no cost to UP, with the applicable railroad and/or communications easements in favor of UP as contemplated by the deeds from UP to Public Agency of even date herewith, by executing and recording easement deeds in favor of UP, in form and substance satisfactory to UP, and (iii) such After-Acquired Parcels shall automatically

be included under this Contract and the Trackage Rights Agreement. Public Agency shall obtain satisfactory title insurance for UP, insuring the full value of UP's easement interests in the After-Acquired Parcels. Notwithstanding anything to the contrary contained in this Contract, until the After-Acquired Parcels for a Project Segment are acquired by Public Agency and encumbered by UP's easements, this Contract and the Trackage Rights Agreement, UP shall have no obligation whatsoever to commence any construction of Railroad Work within the boundaries of the subject After-Acquired Parcel (s).

ARTICLE III - THE WORK; PROJECT REPRESENTATIVES; SCHEDULE

3.1 Work Defined.

The "Work" shall consist of all or any portion of the combined work that is part of, or is caused by, the Project and/or the Freight Project, and is comprised of Freight Project Work, Third Party Work and UP Related Project Work. Work shall include, without limitation, the preparation and review of the Designs and Plans and Specifications, and all engineering, and construction and inspection work for the Freight Project, the Third Party Work and UP Related Project Work.

3.2 Performance of Work; Public Agency's Cost.

The parties shall jointly determine which portions of the Freight Project Work for each Project Segment are Railroad Work, and which portions are Public Agency Freight Work; provided that (i) Railroad Work shall include, at a minimum, all Work required to be completed by UP forces under labor contracts, and (ii) Public Agency Freight Work shall include (a) at UP's option with respect to the UP Property, the drainage work and related improvements, and the grading work to the top of the subgrade, and (b) with respect to the Property and After-Acquired Parcels, all or substantially all of the Freight Project Work except for tie-ins to UP's Facilities. Public Agency shall perform and complete all Public Agency Freight Work and UP Related Project Work in strict accordance with the Plans and Specifications, at its sole cost and expense. UP shall perform and complete all the Railroad Work and any Other UP Work, whether done in-house or by UP Contractors or consultants, in strict accordance with the Plans and Specifications, at Public Agency's sole cost and expense. Each party shall provide and furnish, as part of the Work to be completed by it hereunder, all personnel and services and all required materials, equipment and other items required for performance of such Work.

3.2.1 UP reserves the right to enter into contracts with Contractors for all or any portion of the Railroad Work or Other UP Work. Public Agency agrees at all times to cooperate fully with such Contractors and to give them reasonable opportunity for the introduction and storage of their materials and equipment and for the performance of their Work, so long as such storage does not interfere with Public Agency's ability to perform its Work. Public Agency shall properly connect and coordinate its Work with the Work of such Contractors.

3.2.2 Should either party cause damage to the Work of any other party or its Contractor, the party that caused the damage agrees to repair, or to remove from the Property, the

UP Property and/or the After-Acquired Parcels and to replace such Work or to cause such Work to be repaired, or to be removed and replaced, all at the damaging party's sole expense.

3.2.3 While the Work is in progress, the parties shall not allow waste materials or rubbish to accumulate on or about the Property, the UP Property or the After-Acquired Parcels and shall comply with all housekeeping standards in effect at the Property, the UP Property and/or the After-Acquired Parcels.

3.2.4 Except as otherwise provided in the Sale Agreement or the Trackage Rights Agreement, Public Agency shall remove from the Property and the After-Acquired Parcels and (for any Third Party Work or Public Agency Freight Work performed on UP Property) from the UP Property, all hazardous substances, waste materials and rubbish generated in the course of, or in connection with, the Work and shall handle, transport and lawfully dispose of such waste materials and rubbish.

3.3 Rights of Entry.

Public Agency (with respect to UP Property only) and each Public Agency Contractor and/or Contractor for Third Party Work shall execute UP's then standard Contractor's Right of Entry Agreement prior to commencing any Work on the Property or the UP Property; provided that (i) if any Public Agency Contractor does not execute the UP Contractor's Right of Entry Agreement, then Public Agency hereby ensures that such Public Agency Contractor shall abide by the terms of the UP Contractor's Right of Entry Agreement; and (ii) Public Agency, its Contractors and any Contractors for Third Party Work shall comply with any system interface and/or other construction procedures and protocols adopted by UP pertaining to the prosecution of the Work on the UP Property or the Property. Public Agency shall also notify UP prior to any entry by Public Agency onto any portion of the Property that is within 25 feet of any UP Facilities (whether on or adjacent to the Property). Public Agency hereby grants to UP a right to enter upon the Property to perform the Railroad Work and Other UP Work pursuant to this Contract, which right shall expire as to each Property Segment only upon completion of such Work for the Project Segment (in accordance with Section 8.1 below) relating to such Property Segment and delivery of UP's quitclaim deed to Public Agency in accordance with Section 8.5 below; provided that UP shall comply with any system interface and/or other construction-related procedures and protocols adopted by Public Agency pertaining to the prosecution of the Work on the Property. Any UP Contractor that will enter onto the Property to perform any of the Railroad Work shall execute Public Agency's then standard Contractor's Right of Entry Agreement prior to commencing any Railroad Work on the Property.

3.4 Project Representatives.

3.4.1 Each party will keep the other party's project representative informed on all relevant Project, Freight Project and Third Party Work matters, such as (i) providing a minimum of 10 days' prior notice of the dates of any entry onto the Property or UP Property, to perform any Work that is on UP Property or is within 25 feet of any UP Facilities (whether on or adjacent to the Property), or that otherwise may impact UP's Freight Rail Service, (ii) any changes in the Construction Schedule, and/or (iii) any changes or modifications to the Project,

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the Freight Project and/or the Third Party Work. The project representatives will provide observation and coordination with the parties during construction. The parties' project representatives may be contacted as follows:

UP:

Director-Construction-West (or designee)
Union Pacific Railroad Company
1416 Dodge Street, Room 1000
Omaha, NE 68179

Public Agency:

Chief Construction Officer
Santa Clara Valley Transportation Authority
3331 North First Street
San Jose, California 95134-1906

Each party reserves the right to change the designation of its representative from time to time by written notice to the other party.

3.4.2 UP's project representative is hereby given authority, on behalf of UP, to give approvals and to take action to the extent necessary for the orderly and expeditious prosecution of the Work, but the project representative shall not have authority to amend, modify or terminate this Contract. UP's project representative shall have the right, by giving written notice to Public Agency from time to time, to delegate his/her responsibilities to other UP representatives in connection with specific portions of the Work. Upon request, Public Agency shall provide on the Property a suitable private office facility with electric, HVAC, drinking water and sanitation facilities for use by UP's project representative. The parties contemplate that such office may be within a building or trailer used by Public Agency for its on-site offices.

3.5 Construction Schedule.

3.5.1 It is the intent of the parties, and each party shall use all reasonable efforts, to complete the STB approval process and the Freight Project Work and Third Party Work for the applicable Project Segment within the time frame set forth in the applicable Notice to Relocate (delivered pursuant to the Trackage Rights Agreement). Accordingly, as soon as practicable after jointly determining the scope of a Project Segment, and after both parties (and any affected third parties) have completed the Designs and Plans and Specifications for such Project Segment, the parties shall jointly prepare and agree upon a preliminary construction schedule for such Project Segment.

3.5.2 The parties recognize that commencement of Freight Project Work and Third Party Work under the preliminary construction schedule for any Project Segment will be influenced by many factors beyond the control of one or both parties. These factors (the "Work

Order Prerequisites") include, without limitation: the timing of the Third Party Work and the Public Agency Freight Work for such Project Segment, acquiring and encumbering the necessary After-Acquired Parcels for such Project Segment, obtaining all necessary permits for such Work, completing all necessary environmental reviews, estimating and approving Work costs, funding the applicable Freight Project Escrow, obtaining funding approval for any other Project Segments that are impacted by the construction of the current Project Segment, labor force availability (particularly if more than one Project Segment is under construction at the same time), and seasonal weather changes that can increase the time required for certain construction activities. When the preliminary construction schedule has been agreed to for a Project Segment and all of the Work Order Prerequisites have been met to the reasonable satisfaction of both parties, the parties shall jointly prepare and agree upon the final construction schedule (each a "Construction Schedule") for such Project Segment, which shall include one deadline for the Railroad Work to be performed as part of each Project Segment (a "Deadline"). A Construction Schedule may be changed from time to time as circumstances dictate, with consent of both parties, which shall not be unreasonably withheld, conditioned or delayed, or as otherwise contemplated by Section 3.5.3. After agreement upon the Construction Schedule, Public Agency may deliver to UP a "Work Order Authorization," in the form attached hereto as **Exhibit C** and incorporated herein by reference, for the Railroad Work for such Project Segment. UP shall then commence construction activities for such Railroad Work in accordance with the Construction Schedule. Public Agency shall then also commence (or continue with) its Public Agency Freight Work (and may at its option commence or continue with any related Public Agency Project Work) for such Project Segment, and shall cause any remaining Third Party Work to proceed, in a manner consistent with the Construction Schedule.

3.5.3 As the Work for any Project Segment proceeds, the applicable Construction Schedule may be impacted by Force Majeure Events or by other factors (collectively, the Force Majeure Events and other factors are hereinafter referred to as the "Tolling Conditions") beyond the control of one or both parties. Neither party shall be liable for default or delay in performance actually caused by a Force Majeure Event or other Tolling Condition that is not within the control of such party. These Tolling Conditions may include, without limitation: delays in the Third Party Work for such Project Segment; permitting issues; scheduling or supply problems due to working on more than one Project Segment at the same time; delays in the Work being performed by the other party for such Project Segment; any Work stoppage under Article VI; claims by any freight rail customer (or party desiring freight rail service) related to the Project, the Freight Project or the Third Party Work; conditions imposed by the STB on the abandonment or relocation authority applicable to the Project Segment; delays in approval of change orders, including without limitation delays in approval of changes orders for revised cost estimates as provided for in any Work Order Authorization; lack of Sufficient Funds in the applicable Freight Project Escrow; expiration or termination of required insurance coverage; testing, special handling and/or remediation requirements for any soils or groundwater in the construction area; demobilization/mobilization scheduling impacts due to other Construction Schedule delays; delays caused by any Work Order Prerequisites that were not completed prior to commencement of construction; and/or a material default by the other party under this Contract. In the event of any Tolling Condition, the party whose performance is delayed or stopped shall notify the other party thereof in writing promptly after the

commencement of such occurrence, setting forth the full particulars in connection therewith, and shall promptly give written notice to the other party of the cessation of such occurrence. In the event of any Tolling Condition that actually causes UP to delay completion of Railroad Work in accordance with any Construction Schedule, the applicable Deadline for the Railroad Work shall be extended by the period of the Tolling Condition.

3.5.4 In the event that any Work by either party, or any Third Party Work for any Project Segment, has fallen behind the Construction Schedule, the parties shall cooperate and use all reasonable efforts to bring such Work back into compliance with the Construction Schedule in a reasonable manner that best suits the needs of the Project. Such cooperation shall include, without limitation:

- (a) In the event that Railroad Work has fallen behind schedule due to a Tolling Condition and Public Agency desires to expedite such Work, then Public Agency shall agree to increase the estimated and approved costs for any portion of the Railroad Work as necessary to mobilize additional labor forces, or to work existing forces overtime, to bring Railroad Work into compliance with the Construction Schedule.
- (b) In the event that any Work has fallen behind schedule due to any reason other than a Tolling Condition and Public Agency desires to expedite such Work, then the party responsible for such delay (either UP or, for Public Agency Freight Work or Third Party Work, Public Agency) shall be responsible for all costs associated with such delay, including the costs incurred to bring such Railroad Work into compliance with the Construction Schedule.

3.5.5 Regardless of the Deadline contained in the Construction Schedule for the Railroad Work, in the event of a Force Majeure Event causing an unforeseen catastrophic railroad emergency within UP's Western Region, UP reserves the right to reallocate those of its labor forces assigned to perform the Railroad Work when UP believes in good faith that such reallocation is necessary to provide for the immediate restoration of the railroad operations of UP or its affiliates or to protect persons or property on or near any property owned by UP or any related railroad. UP shall reassign such labor forces to again perform Railroad Work when, in its good faith opinion, such emergency condition no longer exists. Notwithstanding Section 3.5.4(b) above, UP shall not be liable for any additional costs or expenses of the Project or the Freight Project resulting from any such reallocation of its labor forces.

3.6 Conflicts.

The Work shall be performed and completed in compliance with the terms and conditions of this Contract and the Plans and Specifications, and in compliance with (a) the terms of the existing agreements for communications and pipeline facilities, and (b) the terms of the "Communications Easement" and "Railroad Easement" reserved in the deeds from UP to Public Agency of even date herewith, and the terms of the Sale Agreement. The order of precedence

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shall be as follows in resolving any conflict: (i) the easements reserved to UP in the deeds; (ii) the existing communications and pipeline agreements between UP and communications companies or pipeline companies; (iii) this Contract and the Plans and Specifications, and (iv) the Sale Agreement. In resolving any conflict between the Concept Designs and the Project Segment Tasks Description, the Concept Designs shall take precedence.

3.7 Public Agency Insurance.

3.7.1 Throughout the construction of the Project and the Freight Project, Public Agency shall obtain and maintain, from an insurance company licensed to do business in California, and possessing a current Best's Insurance Guide Rating of A and Class X, or better, Railroad Protective Liability Insurance in the amount of Ten Million Dollars (\$10,000,000.00) per occurrence with UP as the only insured party and covering the entire Project and Freight Project area, and commercial general liability insurance in the amount of Ten Million Dollars (\$10,000,000.00) per occurrence, with UP named as additional insured. Public Agency may request to self insure the commercial general liability insurance required by this Section 3.7.1, and UP shall not unreasonably withhold, condition or delay its consent to this request, on condition that Public Agency demonstrates to UP in UP's reasonable discretion that Public Agency is financially able to maintain a program of self insurance (with appropriate retentions) in the amount of the coverage limit. Public Agency shall provide UP the original Railroad Protective Liability Insurance Policy as well as evidence of Public Agency's liability insurance coverage (or self insurance, as applicable) on the date of commencement of such construction, together with copies of its insurance policies and any amendments as soon as they are available. Public Agency's failure to provide such evidence within ten days after such dates shall entitle (but not obligate) UP to purchase such liability insurance, and Public Agency shall reimburse UP the cost of such liability insurance plus an additional 50 percent of such cost as an administrative fee, within 30 days after its receipt of a bill therefor. In addition to the activities of Public Agency, the Railroad Protective Liability Insurance provided for herein shall cover the activities of all Public Agency Contractors working on the Project and/or the Freight Project.

3.7.2 UP shall be named as an additional insured on all policies. Public Agency shall provide UP certificates evidencing such coverage, together with copies of such insurance policies and any amendments as soon as they are available. The fact that insurance is obtained by Public Agency or any Contractor shall not be deemed to release or diminish the liability of Public Agency or such Contractor, including without limitation, liability under the indemnity provisions of this Contract. Damages recoverable by UP shall not be limited by the amount of the required insurance coverage.

3.7.3 The insurance policies described in this Section 3.7 shall be primary and not contributory, and shall release UP as to payments of any earned premium. All insurance certificates provided by Public Agency must demonstrate compliance with this Section 3.7 and must provide that such insurance may not be canceled, amended or allowed to lapse until the expiration of at least 30 days' advance written notice to UP. Prior to the first entry upon the Property or the UP Property and thereafter from time to time upon UP's request, Public Agency shall furnish to UP for approval the original certificate of insurance, the original policy, or other

satisfactory evidence that all the insurance which Public Agency is obligated to furnish under the foregoing provisions has been obtained and is being maintained.

3.8 UP Insurance.

3.8.1 Throughout the construction of the Freight Project, UP shall maintain a catastrophic risk management program, allowing for its diverse risk exposures and financial condition, and in keeping with risks assumed by Class I railroads of established size and reputation and consistent with programs of other Class I railroads. UP shall maintain at all times this Contract is in effect, and at its own cost and expense, insurance coverage as is customary under its established risk management program. UP warrants and agrees that said insurance (or self-insurance) coverage is, and shall be, at least as comprehensive in scope and amount as the insurance required to be carried by Public Agency under this Contract.

3.8.2 The self-insurance rights of this Section 3.8 shall not inure to the benefit of UP's successors and assigns, absent the written consent of Public Agency, which consent shall not be unreasonably withheld, unless the successor or assign is a Class I Railroad, as defined in 49 CFR 1201, Subpart A, General Instructions 1-1(a). In the event Public Agency does not reasonably consent to self-insurance by a successor or assign of UP that is not a Class I Railroad, said successor or assign shall obtain and maintain insurance of the type and amount, and upon the terms and conditions specified in this Section 3.8; provided, however, that the self-insured amount for said successor or assign shall not exceed \$250,000.

ARTICLE IV – CONSTRUCTION; UTILITIES

4.1 Contractors.

Each party shall supervise the operations of its Contractors, who shall be competent and qualified field personnel, to ensure their compliance with the terms of this Contract.

4.1.1 Each party shall comply with, and shall cause its employees and all its vendors and Contractors to abide by, all health, safety, environmental, security and work rules, regulations and requirements in force on the Project and the Freight Project, including but not limited to the provisions of the latest applicable Occupational Safety and Health Administration requirements, including but not limited to 29 CFR Parts 1910 and 1926, as applicable.

4.1.2 When employees, vendors and/or Contractors are performing any Work on the Property or UP Property within 25 feet of any active freight rail trackage, they must abide by applicable FRA On Track Safety Rules and Regulations, 49 CFR, Part 214, Subpart C, and UP's On-Track Safety Program which was implemented in compliance with the FRA Rules. Copies of the UP program will be available from the UP engineering department. If either party or its Contractors provide rail traffic coordinators for railroad operations, that party will assure that all such rail traffic coordinators are fully qualified under UP and FRA rules and regulations for such service, and UP and Public Agency shall cooperate to provide such rail traffic coordinators with radios, equipped with appropriate channels, to communicate with UP train crews and dispatchers.

4.1.3 Prior to starting any Work within 25 feet of any active freight rail trackage, each party will adopt an appropriate safety training plan meeting the minimum standard UP safety requirements. Emergency phone numbers shall be posted in a conspicuous place in all field offices. For those persons who will be performing Work, each party or its Contractor(s) shall conduct a weekly safety meeting. UP's project representative will attend these meetings as may be required. No red clothing will be worn within 25 feet of any freight rail tracks.

4.1.4 Public Agency's primary Contractor shall have a copy of the American Railway Engineering and Maintenance of Way Association Manual for Railway Engineering (hereinafter "AREMA Standards") on the Property and the UP Property and available for reference at all times.

4.2 Permits and Licenses; Laws, Ordinances, Governmental Rules and Regulations.

4.2.1 All necessary permits and licenses necessary for the Work shall be obtained by Public Agency, including permits and licenses which are required from and are to be obtained by UP, with the exception of permits and licenses which are required to be in UP's name, in which case UP shall obtain the same all at Public Agency's sole cost and expense.

4.2.2 Public Agency shall give all necessary notices and shall pay all fees which are required by such laws, ordinances, and governmental rules and regulations as are applicable to the Work and/or to labor employed to perform the Work.

4.2.3 If Public Agency's or any third party's performance of any portion of the Work, or if the result of such portion of the Work, is not in compliance with the aforementioned permits and licenses, and with all applicable laws, ordinances, and governmental rules and regulations, Public Agency shall correct such portion of the Work and such result, to the extent necessary to be in compliance therewith, at Public Agency's sole expense; provided, however, if Public Agency believes that such noncompliance is caused solely by conformance to any of the Plans and Specifications, Public Agency shall notify UP in writing of the variance between the Plans and Specifications and such permits, licenses, laws, ordinances, rules and regulations which in its opinion would cause such noncompliance, before Public Agency or such third party performs such portion of the Work, and Public Agency or the third party shall not proceed with any portion of the Work affected by such variance until UP notifies it to proceed. UP shall use reasonable efforts to notify Public Agency in writing, within six business days after receipt of Public Agency's written notice of such variance, to proceed with the Work in accordance with a change notice to be issued by UP to correct such variance.

4.2.4 Each party and its Contractors and the Contractors for the Third Party Work shall comply with all laws, ordinances, and governmental rules and regulations applicable to the performance and/or results of the Work, including but not limited to labor employed on the Work, and to the preservation of safety and health.

4.3 Emergency Work.

4.3.1 Public Agency agrees to reimburse UP for Other UP Work of an emergency nature caused by any act or omission of Public Agency or a third party in connection with the Project, the Freight Project or the Third Party Work that UP reasonably deems necessary for the immediate restoration of railroad operations, or for the protection of persons, or property owned, controlled or leased by UP within or in the vicinity of the construction area. Such Other UP Work may be performed by UP without the prior approval of Public Agency if prior notice and approval are not practicable under the emergency circumstances. Public Agency agrees to fully reimburse UP, through the Freight Project Escrow, for all such emergency Other UP Work associated with the Project, the Freight Project or the Third Party Work. Public Agency shall be responsible for paying or reimbursing UP for the cost and expense of all services (including rail traffic coordination and/or warning services) and materials supplied (including Customary Additives) for any such emergency Other UP Work, performed for any Public Agency Contractor or any Contractor for Third Party Work, by UP or any UP Contractor, unless paid for by Public Agency Contractors. UP shall provide invoices to the Freight Project Escrow for any cost and expenses not paid for by Public Agency Contractors.

4.3.2 UP agrees to reimburse Public Agency for Work of an emergency nature, to the extent caused by any negligence or willful misconduct of UP in connection with the Project, the Freight Project or the Third Party Work, that Public Agency reasonably deems necessary for the protection of persons, or property owned, controlled or leased by Public Agency within or in the vicinity of the construction area; provided however, that in no event shall UP be liable hereunder for any delays to the Construction Schedule. Such Work may be performed by Public Agency without the prior approval of UP if prior notice and approval are not practicable under the emergency circumstances. Public Agency shall provide invoices to UP including all the details described in Section 7.2.3 below as a condition to reimbursement.

4.4 Utilities.

4.4.1 Public Agency and UP agree that this Contract shall not affect or authorize any change, disruption to, modification, or relocation of existing utilities. It shall be Public Agency's sole responsibility to coordinate the protection, modification and/or relocation, as necessary, of all existing utilities as required for either the Project or the Freight Project or for any other purpose, both on and off the Property and the UP Property, including fiber optic lines and pipelines, at the sole cost and expense of parties or entities other than UP, subject to UP's review and approval according to UP's Review Standards, to UP's standards for aerial utilities and to AREMA Standards for all other utilities. Public Agency shall prepare all transmittals to the utility companies in connection therewith. Public Agency shall indemnify, defend and hold harmless UP and its agents, directors, officers and employees from and against any and all Loss arising from Public Agency's relocation and/or protection of utility improvements pursuant to this Contract; however, Public Agency shall not indemnify UP for any Loss to the extent such Loss is caused either by the sole negligence of UP or by UP's breach of this Contract.

4.4.2 In the event that the pipeline known as the Kinder Morgan pipeline is located on a portion of the Property and needs to be relocated for the Project off the Property, the

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parties shall cooperate in good faith to relocate such portion of the pipeline onto UP Property at no additional property purchase cost to Public Agency, and Public Agency shall prepare all transmittals in connection therewith. Public Agency shall indemnify, defend and hold harmless UP and its agents, directors, officers and employees from and against any and all Loss arising from Public Agency's relocation and/or protection of the Kinder Morgan pipeline pursuant to this Contract; however, Public Agency shall not indemnify UP for any Loss to the extent such Loss is caused either by the sole negligence of UP or by UP's breach of this Contract.

4.4.3 Fiber optic cable systems are buried on the Property and may be buried on the UP Property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Public Agency shall telephone UP at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the UP Property. Public Agency shall telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, and will commence no Work on the Property or the UP Property until all such protection or relocation has been accomplished.

ARTICLE V - PUBLIC AGENCY AND THIRD PARTY OBLIGATIONS

5.1 Falsework and Shoring.

Public Agency Contractors or Contractors for Third Party Work shall submit through Public Agency to UP for approval or directly to UP, prior to construction, plans and calculations certified by a licensed professional engineer of California for falsework or shoring used in connection with the Public Agency Freight Work, the Public Agency Project Work and/or the Third Party Work (but only with respect to any Public Agency Project Work or Third Party Work that is on UP Property or within 25 feet of any UP Property or Facilities (whether on or adjacent to the Property)), or that may otherwise impact UP's Freight Rail Service. None of the foregoing Work shall be started until written approval is obtained from UP. UP shall use best efforts to complete its review within two weeks after receipt of such plans from Public Agency or such Contractors, but UP may take up to 30 days to review such plans, based upon UP's scheduling constraints and the complexity of the plans under review. The Public Agency Contractor and/or the Contractor for the Third Party Work shall at all times keep covered all pits or openings near or under trackage, except during the time required for actual operations in making such pits or openings and performing work therein. The provisions of this Section 5.1 shall not be construed as relieving the Public Agency Contractor or the Contractor for Third Party Work from, or subjecting UP or Public Agency to, any responsibility or liability for any of such Contractor's operations, methods and procedures, or as constituting any such Contractor as a third-party beneficiary of this Contract.

5.2 UP Reimbursement for Rail Traffic Coordination Services.

Public Agency shall cause each Public Agency Contractor and Contractor for Third Party Work to reimburse UP directly for all rail traffic coordination and other services performed by UP for such Contractor. UP will submit progress billings of incurred costs, including Customary Additives, in amounts not less than One Thousand Dollars (\$1,000.00) per billing to such

Contractor (except that the final billing may be less than such amount). Such Contractor shall pay UP for any such progress billing within 30 days after receipt thereof. Interest will be paid at the rate of 8.5 percent per annum if any such progress billing has not been paid by such Contractor within 30 days after receipt. If such Contractor has not made payment within 60 days after receipt, UP may collect such sums through the Freight Project Escrow. Public Agency shall remain liable for all unpaid billings.

5.3 Patents, Trademarks and Know-How.

Public Agency shall defend or settle, at its sole expense, any and all suits and proceedings against UP for infringement of any patent arising out of the performance of the Public Agency Freight Work solely by reason of Public Agency's and/or its Contractor(s)' use of a particular process, or of materials or equipment of a particular manufacturer, and Public Agency shall defend, indemnify and hold harmless UP from and against all claims, damages, loss and expenses on account of such infringement; provided, however, that if said use of a particular process, or of materials or equipment of a particular manufacturer, is solely in accordance with UP's written instructions, then UP shall defend or settle, at its sole expense, any and all suits and proceedings against Public Agency for such alleged infringement, and shall defend, indemnify and hold harmless Public Agency from and against all claims, damages, loss and expense on account of such infringement.

ARTICLE VI - RIGHT TO STOP WORK

6.1 Work Stoppage.

If (i) any Public Agency Contractor or Contractor for Third Party Work shall perform any portion of the Work contrary to the Plans and Specifications, or in a manner UP deems to be hazardous to its employees, property or operations (whether owned, controlled, or leased by UP), Facilities, or the safe and expeditious movement of its trains, locomotives and railroad cars, or (ii) the insurance described in Article III above or in the UP Contractor's Right of Entry Agreement signed by such Contractor shall be canceled during the course of any portion of the Work, then Public Agency or such Contractor shall, upon notice received from UP pursuant to Section 13.1 of this Contract, stop that portion of the Work until the acts or omissions of Public Agency or such Contractor have been fully rectified to UP's reasonable satisfaction or, as the case may be, additional insurance has been delivered to and accepted by UP. Notwithstanding Section 3.5.4(b) above, such Work stoppage shall not give rise to or impose upon UP any liability to Public Agency or to any such Contractor. The right of UP to stop a portion of the Work shall be in addition to any other rights UP may have which include, but are not limited to, actions for damages or lost profits. In the event that UP shall desire to stop a portion of the Work, UP agrees to give immediate notice thereof to:

Chief Construction Officer
Santa Clara Valley Transportation Authority
3331 North First Street
San Jose, California 95134-1906
Telephone No.: (408) 321-5930
Telecopy No.: (408) 955-0950

UP shall have the right to request that any employee or Contractor of Public Agency or a third party, or any employee of any such Contractor, be removed from the Project, the Freight Project, and/or the Third Party Work, and from the Property, the UP Property and/or the After-Acquired Parcels, for incompetence, neglect of duty, unsafe conduct or misconduct, and UP shall state the cause for such removal in its request. If Public Agency or such Contractor elects not to honor such request for removal from the Property, the UP Property and/or the After-Acquired Parcels, UP may stop that portion of the Work until the matter has been fully rectified to UP's reasonable satisfaction. After the offending person(s) has(ve) been removed from the Freight Project and/or the Third Party Work, and the Property, the UP Property and/or the After-Acquired Parcels, and the situation has been otherwise rectified to UP's reasonable satisfaction, the Work may be re-commenced upon notice to UP's project representative.

6.2 Extended Work Stoppage.

In the event that the Work has been stopped pursuant to this Article VI for a period of 30 consecutive days or more, Public Agency, at its sole cost and expense, shall take all necessary actions, including without limitation construction, to insure that UP is provided a rail route on and in the vicinity of the Property with the equivalent Functionality that existed as of the date of this Contract, taking into consideration, inter alia, UP's existing maintenance costs and requirements, the speed of train operations and condition of the track, accessibility to customers, the type of drainage, and the type of warning devices at grade crossings.

ARTICLE VII – COSTS AND PAYMENTS; ESCROW

7.1 Estimates.

Public Agency agrees to reimburse UP for all of UP's actual costs for the Work performed by UP pursuant to this Contract, including without limitation all Customary Additives. Within 60 days after the final Plans and Specifications have been approved for any Project Segment, UP will estimate the costs of the related Railroad Work and deliver such estimate to Public Agency in writing. Public Agency will have the right to review and approve each cost estimate, which approval shall not be unreasonably withheld, conditioned or delayed. Any and all payments by Public Agency to UP for any of the Work are subject to appropriation; the parties agree that nothing in this Contract shall be construed as a multi-year fiscal obligation by Public Agency.

The project representatives shall meet monthly to discuss both the progress of Work and the cost estimates for the Railroad Work. As needed, the project representatives shall confer on ways to mitigate any projected cost overruns. If Public Agency anticipates any cost overruns, it shall issue a change order to the Work Order Authorization to authorize additional funding in a timely manner to assure construction is not interrupted or delayed.

7.2 Freight Project Escrow(s).

Public Agency and UP shall establish an escrow account with an escrow agent to be agreed upon by the parties in their reasonable discretion ("Escrow Agent"), by executing and delivering a Freight Project Escrow agreement in form and substance to be agreed upon by the parties in their reasonable discretion, prior to the opening of such escrow account. Public Agency shall deposit Sufficient Funds into the Freight Project Escrow prior to issuing the first Work Order Authorization for any Project Segment. In the event that title to one or more of the Property Segments is transferred to a successor of Santa Clara Valley Transportation Authority, then a separate escrow account with Escrow Agent shall be established and funded with Sufficient Funds prior to the issuance of the first Work Order Authorization relating to such transferred Property Segment(s). Collectively, such escrow(s) shall be hereinafter referred to as the "Freight Project Escrow(s)." Public Agency shall be entitled to all interest earned on such escrow funds, but UP shall be the only party entitled to make withdrawals from any Freight Project Escrow account until such account is closed after completion of the Work (in accordance with Section 8.1 below) for all applicable Project Segments, at which time Public Agency and UP shall issue joint instructions to Escrow Agent regarding the disbursement of the final amounts. The Freight Project Escrow(s) shall be funded and operated as set forth in the Freight Project Escrow agreement and this Section 7.2.

7.2.1 Funding. Notwithstanding anything to the contrary in this Contract, UP shall have no obligation whatsoever to perform any Railroad Work, or to pay or incur any additional costs, fees or expenses, unless and until the applicable Freight Project Escrow has funds sufficient to pay (i) all costs, fees and expenses incurred by UP and unpaid to date for the Railroad Work and Other UP Work (pertaining to the Project Segment(s) funded by such

escrow); and (ii) all estimated costs, fees and expenses for the Railroad Work and Other UP Work (pertaining to the Project Segment(s) funded by such escrow) during the next three-month period, together with an additional 25 percent of such estimated costs, including without limitation, costs related to Third Party Work that would otherwise be assessed against UP pursuant to existing agreements or state law (collectively, "Sufficient Funds"). Notwithstanding the foregoing, the parties hereby agree that a balance of \$3,000,000.00 or more in the applicable Freight Project Escrow shall be deemed to meet the Sufficient Funds requirements. UP shall receive copies of all Freight Project Escrow account statements, and may assess the sufficiency of the escrow funding on an on-going basis. UP's assessments are for its own purposes and benefit and shall not be relied upon by Public Agency; Public Agency bears the sole responsibility for funding, and replenishing on an on-going basis, the Freight Project Escrow(s) to meet the Sufficient Funds requirements stated herein.

7.2.2 Lack of Funding. Pursuant to Article III above, if Sufficient Funds are not on deposit at any given time, the Work on a Project Segment may be delayed. If UP delays or stops its Work due to lack of Sufficient Funds, Public Agency shall be liable for, among other costs, all demobilization and mobilization costs incurred for such stoppage. In the alternative, if UP decides to continue its Railroad Work and/or Other UP Work despite the lack of Sufficient Funds, Public Agency shall remain liable for all costs associated with such Work, and interest shall accrue to UP's benefit at the rate of 8.5 percent per annum for all costs not reimbursed to UP through the Freight Project Escrow(s) in a timely manner. At any time that Sufficient Funds are not on deposit in the applicable Freight Project Escrow, Public Agency shall remain liable for all costs shown on UP's invoices, and interest shall accrue to UP's benefit at the rate of 8.5 percent per annum for all costs not reimbursed to UP through the Freight Project Escrow(s) in a timely manner.

7.2.3 Submittals; Disputes. Following the close of each calendar month, UP shall submit invoices to Public Agency for the actual Work expenditures for such calendar month and any expenditures for prior months not previously billed and/or reimbursed. The invoices must be itemized with a detailed description of the Railroad Work and/or Other UP Work performed, the date of such Work, the time expended and the associated hourly billing rate or charge for such Work, and any reimbursable expenses (including, without limitation, the cost of materials used) incurred in the performance of the Work. UP shall certify that it has actually incurred the expenses set out in its invoice, which will include any in-house costs and expenses for such Work and Customary Additives. For any such invoice, and for any invoice payable by Public Agency pursuant to the Trackage Rights Agreement, if Public Agency has not reimbursed UP in full within 30 days after the date of such invoice, UP may immediately notify Escrow Agent of such fact, by delivery of written notice thereof and a copy of the original (unpaid) invoice, whereupon Escrow Agent shall immediately reimburse UP for the invoiced amounts. If Public Agency disputes any item on an invoice, Public Agency may notify UP of the amounts and reasons for any such disputed items within 20 days after Public Agency's receipt of the invoice. In such event, Public Agency may request from UP copies of such supporting documentation and/or records as are kept in the ordinary course of UP's business and which are reasonably necessary to verify the accuracy of the invoice as rendered.

7.2.4 So much of the books, accounts and records of UP as is related to the Railroad Work and/or Other UP Work shall, during business hours, be open to inspection by the authorized representatives and agents of Public Agency and by the Auditor General of the State of California. All accounting records and other supporting papers shall be maintained for a minimum of three years from the date thereof.

7.3 Costs of Third Party Work.

UP shall not be liable for any costs, fees or expenses related to any Third Party Work, including without limitation, the utility work described in Section 4.4 above, any grade separation projects affecting a Property Segment or Project Segment, and/or any implementation of an alternative freight transportation solution for any UP freight shipper. Any costs related to Third Party Work that are not paid by the third party shall be paid by Public Agency. In the event that UP and any of its freight shipper(s) agree to establish an alternative freight transportation solution, such as relocating the shipper's business or entering into a transload arrangement, pursuant to Sections 2.1 and 2.2 above, then Public Agency shall reimburse UP through the Freight Project Escrow, and/or make direct payments to the shipper, as UP shall determine, for all costs, fees and expenses reasonably incurred by the shipper and/or UP to accommodate such relocation, transload or other alternate freight arrangement. Such costs may include, for example, the costs of constructing new facilities, environmental cleanup, obtaining permits, addressing zoning requirements, remodeling existing facilities, and/or new transportation and transloading expenses. UP may require that Public Agency enter into a reimbursement agreement with the affected shipper.

7.4 Change Order Costs.

Public Agency shall pay (through the Freight Project Escrow) all of UP's costs, fees and expenses related to construction change orders or modifications to Railroad Work that are approved by the parties in accordance with Sections 2.1.2 and 2.2 above.

**ARTICLE VIII – INSPECTION; COMPLETION; POST-COMPLETION
OBLIGATIONS**

8.1 Inspection; Completion of Work.

8.1.1 Public Agency shall provide and maintain safe access for the inspection by UP of all portions of the Freight Project Work, Third Party Work and the UP Related Project Work, including access to the shops in which any portion of such Work is in preparation. If laws, ordinances, or governmental rules or regulations require any portion of Work for the Project to be inspected and/or tested, Public Agency shall perform, as part of Work, the inspection and/or tests so required.

8.1.2 Each party shall provide at least ten business days' prior written notice to the other party's project representative of projected completion of its Work for any Project Segment. For all Public Agency Freight Work, and for any Public Agency Project Work or Third Party Work that is on UP Property or within 25 feet of any UP Property or Facilities (whether on

or adjacent to the Property), or that may otherwise impact UP's Freight Rail Service, the parties shall thereafter meet on site at a mutually agreeable time to review the Work for that Project Segment and to prepare a "punch list" of items that must be completed or repaired prior to acceptance by UP. Upon satisfactory completion of the items on the punch list, UP shall notify Public Agency in writing that it accepts the Freight Project Work and Third Party Work for that Project Segment. Completion of the Work for any Project Segment shall be deemed to occur only after the Railroad Work, the Public Agency Freight Work and the Third Party Work have all been completed and (as applicable) accepted, and after UP has been fully paid by Public Agency in accordance with Article VII above.

8.2 Deadlines.

8.2.1 In the event that UP does not "substantially complete" (as such term is defined below) its Railroad Work for a particular Project Segment by the Deadline set forth in the applicable Construction Schedule, as such Deadline may have been extended pursuant to Section 3.5.3 above, UP may obtain one three-month extension of any such Deadline, provided that UP delivers to Public Agency written notice of such extension at least two weeks' prior to the applicable Deadline along with payment of an extension fee of \$25,000.00. In the event that a Deadline has been extended pursuant to Section 3.5.3 above, or that UP extends any such Deadline pursuant to this Section 8.2, the term "Deadline" as used in this Section 8.2 shall be deemed to include such extensions. For purposes of this Section 8.2 only, "substantially completed" shall mean that the Railroad Work on the Property for a particular Project Segment has been finished to the point that, with respect to the unfinished portions thereof, either:

- (a) The remaining unfinished Railroad Work will not be performed on the Property and UP has provided notice to Public Agency of such status; or
- (b) The remaining unfinished Railroad Work to be performed on the Property consists only of punch list items (as determined in UP's reasonable discretion) and UP has provided notice to Public Agency of such status; or
- (c) UP has notified Public Agency of the status of its remaining unfinished Railroad Work to be performed on the Property and Public Agency has determined, in its reasonable judgment after consultation with UP, that such remaining unfinished Railroad Work will not materially interfere with the Public Agency Project Work. Public Agency's determination under this Subsection (c) shall be made within 48 hours after receipt of UP's notice.

In the event that UP has not substantially completed such Railroad Work on or before the applicable Deadline (including any extensions), the following terms shall apply, at Public Agency's option:

- (i) UP shall continue its Railroad Work for such Project Segment, shall treat it as a top-priority construction project, and shall pay Public Agency, on a monthly basis, the sum of \$1,000.00 per day as liquidated damages for every day beyond the Deadline

until such Railroad Work is substantially completed, up to a maximum amount of \$50,000.00 for each Deadline; or

(ii) Public Agency may elect to seek specific performance of this Contract and recover such damages as may be proper because of UP's default.

THE PARTIES ACKNOWLEDGE THAT PUBLIC AGENCY'S ACTUAL DAMAGES IN THE EVENT OF A DEFAULT BY UP WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR SIGNATURES OR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE SUMS DUE TO PUBLIC AGENCY IN SECTION 8.2.1(i) ABOVE HAVE BEEN AGREED UPON, AFTER NEGOTIATION, AS REASONABLE LIQUIDATED DAMAGES PURSUANT TO THE TERMS HEREOF AND CALIFORNIA CIVIL CODE SECTIONS 1671 AND 1677 AND, IF SUCH ELECTION IS MADE, SHALL CONSTITUTE PUBLIC AGENCY'S EXCLUSIVE REMEDY AGAINST UP IN THE EVENT THAT UP FAILS TO MEET A DEADLINE PROVIDED UP PAYS SUCH SUMS AS AND WHEN DUE TO PUBLIC AGENCY. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO PUBLIC AGENCY PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN CONTAINED, PUBLIC AGENCY AND UP ACKNOWLEDGE AND AGREE THAT IN THE EVENT OF A DEFAULT BY UP IN FAILING TO MEET A DEADLINE, THE OTHER COVENANTS AND OBLIGATIONS OF UP IN THIS CONTRACT SHALL NOT BE LIMITED, IMPAIRED OR OTHERWISE AFFECTED BY ANY LIQUIDATED DAMAGES RECEIVED BY PUBLIC AGENCY PURSUANT TO THIS SECTION 8.2.1 AS A RESULT OF SUCH DEFAULT.

UP: 

PUBLIC AGENCY:  .

8.2.2 In the event that UP substantially completes its Railroad Work for a particular Project Segment prior to the Deadline set forth in the applicable Construction Schedule, as such Deadline may have been extended pursuant to Section 3.5.3 above, Public Agency shall pay UP, through the Freight Project Escrow, the sum of \$1,000.00 per day as a performance bonus for every day in advance of the Deadline that such Railroad Work was substantially completed, up to a maximum amount of \$50,000.00 for each Deadline.

8.3 As-Builts.

For each Project Segment, upon completion of any Third Party Work or Public Agency Freight Work that is on UP Property or within 25 feet of any UP Property or Facilities (whether on or adjacent to the Property), or that may otherwise impact UP's Freight Rail Service, Public Agency will furnish UP one set of "as-built plans" at no cost to UP, prepared in U.S. Customary Units, and one set of computer diskettes, containing as-built CAD drawings of such Work, in

Micro Station software. The "as-built plans" will depict all information in UP engineering stationing and milepost pluses. The "as-built plans" will also include plan and profile, structural bridge drawings and specifications, and drainage plans. All improvements and Facilities will be shown. All right-of-way boundaries will be distinguished by ownership and dimensioned with appropriate distances and bearings and will have dimensioned references from right-of-way corners, angle points, and curve points to the centerline of adjacent tracks.

8.4 Bills of Sale.

Upon completion of any Project Segment, Public Agency shall execute and deliver to UP a bill of sale for all tracks, track structures, crossing arms and related Facilities and equipment, and shall deliver to UP or the communications or pipeline company, as appropriate, a bill of sale for all communications and pipeline facilities in the Project Segment (including without limitation, all areas covered by UP's perpetual easement rights).

8.5 Quitclaims.

After (i) receipt and exercise of the STB abandonment or relocation authority for the related Property Segment and satisfaction of all shipper protection requirements, (ii) completion of the Work for the applicable Project Segment (in accordance with Section 8.1 above), and (iii) UP's perpetual easement rights over the related Property Segment have been insured by a title company to UP's reasonable satisfaction at Public Agency's expense, then UP shall quitclaim (subject to a reservation of UP's perpetual easement interests in the area) its original railroad easement in such Property Segment.

8.6 Settling.

For a period of two (2) years after the date of completion of the Work for any Project Segment (in accordance with Section 8.1 above), Public Agency shall reimburse UP in a timely manner for UP's actual costs to correct settling, and other conditions associated with settling, of the Freight Project Facilities for such Project Segment.

ARTICLE IX - COORDINATION WITH TRACKAGE RIGHTS AGREEMENT

The parties have entered into the Trackage Rights Agreement which shall govern the rights and obligations of the parties with respect to continuing maintenance of the Property and operation of freight rail trains. It is the intention of the parties that this Contract shall govern all pre-construction and construction activities, and that the Trackage Rights Agreement shall govern operations of trains and routine maintenance of trackage both before and during construction. Notwithstanding the foregoing, any and all liability or damages arising from the activities or responsibilities in connection with the Freight Project, the Project or the Third Party Work shall be governed by the terms of this Contract and not by Section 6 of the Trackage Rights Agreement.

ARTICLE X - DISPUTE RESOLUTION AND BINDING ARBITRATION

10.1 Settlement of Disputes.

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

10.2 Controversies Subject to Arbitration.

Any and all claims, disputes, or controversies between Public Agency and UP arising out of or concerning the interpretation, application, or implementation of this Contract that cannot be resolved by the parties by negotiations shall be submitted to binding arbitration as hereinafter provided.

10.3 Arbitration Procedure.

The procedure for arbitration shall be as follows:

In the event a claim, dispute, or controversy subject to arbitration hereunder arises, either party may serve a written demand for arbitration in accordance with Section 13.1 of this Contract upon the other party. If the claim, dispute, or controversy is not resolved by the parties within 25 calendar days after the service of the demand, the matter shall be deemed submitted to arbitration.

Within 30 calendar days of service of a demand for arbitration, each party shall designate an arbitrator in writing and serve its designation upon the party (the "Noticed Party") in accordance with Section 13.1 of this Contract. The arbitrators designated by the parties pursuant to the preceding sentence are not required to be neutral and may be employees of the parties. If the Noticed Party fails to timely designate the arbitrator to be designated by it, such arbitrator shall be appointed by the Presiding Judge (or Acting Presiding Judge) of the Superior Court for the County of Santa Clara, upon application of either party after ten days' written notice to the other party. If each party has timely designated its arbitrator, or the Presiding Judge (or Acting Presiding Judge) has appointed an arbitrator for one of the parties pursuant to the previous sentence, the two designated arbitrators shall, within 40 calendar days of service of the demand for arbitration, designate a neutral third party arbitrator. The neutral third party arbitrator shall be a qualified disinterested person, knowledgeable and experienced in the type of rail operations and maintenance services contemplated by this Contract. If the two arbitrators designated by the parties fail to timely select a neutral third party arbitrator, either party may apply to the Presiding Judge (or Acting Presiding Judge) of the Superior Court of the County of Santa Clara to select the neutral third party arbitrator.

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

10.4 Rules of Arbitration.

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

10.5 Arbitration Schedule.

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

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

10.6 Expedited Arbitration Schedule.

In the event either party hereto reasonably finds that the issues of any claim, dispute, or controversy are likely to directly, imminently, materially, and adversely affect human health or safety, either party may request, in the arbitration demand delivered pursuant to Section 10.3, an expedited arbitration procedure as set forth in this Section solely for the purpose of obtaining a provisional remedy that by law or in equity could be imposed in a court proceeding against a rail carrier subject to the jurisdiction of the STB (e.g., temporary restraining order, preliminary injunction, or injunction).

Within five calendar days after service of a demand for expedited arbitration, each party shall designate an arbitrator in writing and serve its designation upon the Noticed Party. The arbitrators designated by the parties pursuant to the preceding sentence are not required to be neutral and may be employees of the parties. If the Noticed Party fails to timely designate the arbitrator to be designated by it, such arbitrator shall be appointed by the Presiding Judge (or Acting Presiding Judge) of the Superior Court for County of Santa Clara, upon application of either party after 24 hours' written notice to the other party. If each party has timely designated its arbitrator, or the Presiding Judge or Acting Presiding Judge has appointed an arbitrator for one of the parties pursuant to the previous sentence, the two designated arbitrators shall, within seven calendar days after service of the demand for expedited arbitration, designate a neutral third party arbitrator. The neutral third party arbitrator shall be a qualified disinterested person, knowledgeable and experienced in the type of services contemplated by this Contract. If the two arbitrators designated by the parties fail to timely select a neutral third party arbitrator, either party may apply to the Presiding Judge (or Acting Presiding Judge) of the Superior Court for the County of Santa Clara to select the neutral third party arbitrator.

The expedited arbitration hearing shall commence no later than ten calendar days after service of a demand for expedited arbitration and shall be concluded on the same day. The arbitration decision shall be rendered by the arbitrator(s) in writing on or before the calendar day following the arbitration hearing.

Prior to rendering any decision, the arbitrator(s) must find that the issues of the claim, dispute, or controversy are likely to directly, imminently, materially, and adversely affect human health or safety. In the event the arbitrators find that the foregoing criteria have not been met, the proceeding shall be dismissed without prejudice and the parties shall proceed with the arbitration procedure and schedule set forth in Section 10.3 and 10.5; provided, however, that no new demand for arbitration need be served by the party demanding arbitration. In the event only one or two arbitrator(s) is/are present at the hearing, the hearing shall proceed, and a provisional remedy may be granted, without the absent arbitrator(s); provided, that in the event only two arbitrators are present at the hearing, any decision granting a provisional remedy must be made by both arbitrators.

10.7 Pending Resolution.

During the pendency of such arbitration proceedings, the business and the operations to be conducted, physical plan to be used, and compensation for service under this Contract, to the extent that they are the subject of such controversy, shall continue to be transacted, used, and paid in the manner and form existing prior to the arising of such controversy, unless the arbitrator shall make a preliminary ruling to the contrary.

10.8 Cost of Arbitration.

Each party hereto shall solely bear the attorneys' fees, costs and expenses incurred by it in connection with such arbitration, including the cost of the arbitrator appointed by it, and both parties shall share equally the costs and expenses attributable to the services of the third arbitrator. Notwithstanding the foregoing, the arbitrators shall have the power to award attorneys' fees and costs to either party if the arbitrators determine in their reasonable discretion that the position of the other party to the arbitration was frivolous.

ARTICLE XI - LIABILITY AND INDEMNITY

This Article XI shall govern all claims and liabilities arising during the term of this Contract that are related to the Project, the Freight Project, and/or the Third Party Work, notwithstanding anything to the contrary contained in Section 6 of the Trackage Rights Agreement.

11.1 Public Agency Indemnities.

11.1.1 With respect to the Project, the Freight Project and the Third Party Work, Public Agency shall indemnify, defend and save harmless UP, its agents, directors, officers and

employees against all liability, claims, demands, damages or costs for (a) death of or bodily injury to persons including, without limitation, the agents, directors, officers, employees and invitees of the parties hereto, (b) damage to or loss of property including, without limitation, the property of the parties hereto, their agents, directors, officers, employees and invitees, or (c) any other loss, damage or expense and all fines or penalties imposed upon or assessed against UP, and all expenses of investigating and defending against the same, arising in any manner out of (i) the use, occupancy or presence of Public Agency, its Contractors, employees, representatives, invitees or agents, and/or any Third Party Contractors, in, on or in the vicinity of the Property, the UP Property and/or the After-Acquired Parcels, and/or (ii) the performance, or failure to perform, by Public Agency, its Contractors, employees, agents or representatives and/or any Third Party Contractors, of the Work, or any other obligation under this Contract, and/or (iii) the sole or contributing acts or omissions of Public Agency, its Contractors, employees, representatives, invitees or agents, and/or any Third Party Contractors, in, on or in the vicinity of the Property, the UP Property and/or the After-Acquired Parcels. The above indemnity shall apply even if it is alleged by a complainant that such loss was caused by, or contributed to by, the negligence or alleged negligence, active or passive or otherwise, of the indemnified party, its officers, agents, directors or employees. Nothing contained in this Article XI is intended to, nor shall be deemed or construed to, indemnify UP from and against its sole negligence or from its willful misconduct that leads to an award of punitive damages against UP. The indemnity herein is in addition to the obligations of Public Agency and its Contractors set forth herein concerning insurance coverage.

11.1.2 With respect to the Project, the Freight Project and the Third Party Work, Public Agency shall also indemnify, defend and save harmless UP, its agents, directors, officers and employees against all liability, claims, demands, damages or costs for any loss, damage, fines and/or penalties imposed upon or assessed against UP, and all expenses of investigating and defending against the same, arising in any manner out of or incurred in connection with, any and all claims or demands by third parties (including without limitation, freight rail customers, parties desiring freight rail service, and/or the STB) that are based upon (i) a change or reduction in, or termination of, UP's Freight Rail Service due to the Project, the Freight Project and/or the terms of this Contract, the Trackage Rights Agreement and/or the Sale Agreement, and/or (ii) any act or omission by Public Agency or its agents, directors, officers or employees, affecting a freight rail customer, or party desiring freight rail service, in the vicinity of the Property.

11.2 UP Indemnity.

With respect to the Project, the Freight Project, and the Third Party Work, UP shall indemnify, defend and save harmless Public Agency, its agents, directors, officers and employees against all liability, claims, demands, damages or costs for (a) death of or bodily injury to persons including, without limitation, the agents, directors, officers, employees and invitees of the parties hereto, (b) damage to or loss of property including, without limitation, the property of the parties hereto, their agents, directors, officers, employees and invitees, or (c) any other loss, damage or expense and all fines or penalties imposed upon or assessed against Public Agency, and all expenses of investigating and defending against the same, arising in any manner out of (i) the use, occupancy or presence of UP, its Contractors, employees, representative, invitees or agents in, on or in the vicinity of the Property, the UP Property and/or the After-Acquired Parcels; (ii)

the performance or failure to perform of UP, its Contractors, employees, agents or representatives, of any obligation under this Contract; and/or (iii) the sole negligence or willful misconduct, of UP, its Contractors, employees, representatives, invitees or agents in, on or in the vicinity of the Property, the UP Property and/or the After-Acquired Parcels. The above indemnity shall apply even if it is alleged by a complainant that such loss was caused by, or contributed to by, the negligence or alleged negligence, active or passive or otherwise, of the indemnified party, its officers, agents, directors or employees. Nothing contained in this Article XI is intended to, nor shall be deemed or construed to, indemnify Public Agency from and against its sole negligence or from its willful misconduct.

ARTICLE XII - TERMINATION

12.1 Termination Date.

This Contract shall terminate as to each Project Segment, upon (a) completion of the Freight Project, Third Party Work and UP Related Project Work for such Project Segment, as provided in Section 8.1 above, and (b) delivery of UP's quitclaim deed to Public Agency for the related Property Segment as provided in Section 8.5 above. The parties shall memorialize the termination dates in writing as appropriate. All accrued liabilities shall continue to be fully enforceable in accordance with the terms thereof notwithstanding termination of all or a portion of this Contract.

12.2 Early Termination or Discontinuance.

In the event the Project or the Freight Project will be terminated, or discontinued for a period of 30 consecutive days or more after commencement of construction, by Public Agency for any reason whatsoever, Public Agency shall deliver 30 days' prior written notice of such termination or discontinuance to UP. In the event of any such termination or discontinuance, in addition to other applicable provisions of this Contract, Public Agency, at its sole cost and expense, shall take all necessary actions, including without limitation construction, to insure that UP is provided a rail route on and in the vicinity of the Property with the equivalent Functionality that existed as of the date of this Contract, taking into consideration, inter alia, UP's existing maintenance costs and requirements, the speed of train operations and condition of the track, accessibility to customers, the type of drainage, and the type of warning devices at grade crossings. Public Agency shall reimburse UP for all Work costs which have been incurred by UP as of the effective date of such termination or discontinuance.

12.3 New Contract.

If, after termination of this Contract, Public Agency determines to resurrect the Project or the Freight Project, a variant thereof, or any transit project, on the Property, Public Agency shall so notify UP in writing, and UP shall have the right to review and approve the designs and plans and specifications for the resurrected project or transit project to the same extent as set forth in this Contract. The parties shall thereafter enter into a new engineering and construction contract

containing substantially the same terms and conditions as set forth herein, subject to modification to reflect then-current UP operating and engineering standards.

ARTICLE XIII - ADDITIONAL PROVISIONS

13.1 Notices.

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

To UP:

Vice President - Engineering
Union Pacific Railroad Company
1416 Dodge Street, Room 1030
Omaha, Nebraska 68179-1000
Telephone No.: (402) 271-4345
Telecopy No.: (402) 271-6674

with a copy to:

Vice President-Law
Union Pacific Railroad Company
1416 Dodge Street, Room 830
Omaha, Nebraska 68179-0800
Telephone No.: (402) 271-5357
Telecopy No.: (402) 271-7107

To Public Agency:

Chief Construction Officer
Santa Clara Valley Transportation Authority
3331 North First Street
San Jose, California 95134-1906
Telephone No.: (408) 321-5930
Telecopy No.: (408) 955-9750

with a copy to:

Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP
David Miller, Esq.
333 Market Street, 23rd Floor
San Francisco, California 94105
Telephone No.: (415) 777-3200
Telecopy No.: (415) 541-9366

13.2 Prohibited Interests.

No officer, member or employee of Public Agency, no members of Public Agency's governing body and no other public official or employee of the governing body of any locality included within Public Agency's geographic area, during his or her tenure or for one year thereafter, shall have any interest, direct or indirect, in this Contract, any related agreement, or other agreement referenced herein, or the proceeds thereof.

13.3 No Third Party Rights.

Except as expressly set forth herein, the representations, warranties, terms and provisions of this Contract are for the exclusive benefit of the parties hereto and no other person or entity shall have any right or claim against either party by reason of any of these terms and provisions or be entitled to enforce any of those terms and provisions against either party.

13.4 Severability.

If any part, term or provision of this Contract is judicially determined to be illegal or in conflict with any applicable law, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Contract did not contain the particular part, term or provision held to be invalid or illegal.

13.5 Whole Agreement.

This Contract, including all exhibits hereto and all related agreements and agreements referenced herein, is intended as the complete integration of all understandings with respect to the subject matter hereof, between the parties, in addition to the Sale Agreement, the deeds from UP to Public Agency of even date herewith and the Trackage Rights Agreement. No prior or contemporaneous addition, deletion or other amendment shall have any force or effect unless embodied in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written amendment or other agreement executed by the authorized representatives of the parties.

13.6 Captions and Headings.

The captions and headings set forth herein are for convenience of reference only and shall not be construed so as to define or limit the terms and provisions hereof.

13.7 Successors and Assigns.

This Contract and the terms, covenants and conditions hereof shall be binding upon, and inure to the benefit of, the parties and their respective successors and assigns. The parties acknowledge and agree that effective in the event of a post-closing transfer of certain portions of the Property to BART and the execution of an assignment and assumption agreement between BART and Santa Clara Valley Transportation Authority, covering all of Public Agency's rights and obligations under this Contract with respect to such portions of the Property, BART shall become the successor to Public Agency's rights and obligations under this Contract solely to the extent applicable to such portions of the Property, on condition that BART shall have given Seller a minimum of ten days' prior written notice of such assignment, which notice shall contain a copy of the assignment and assumption document. In the event of such assignment, Santa Clara Valley Transportation Authority and UP shall have no further rights and/or obligations against each other under this Contract with respect to such portions of the Property except for those that accrued on or before the date of such assignment. No such assignment shall be construed to alter (other than by substituting assignee for assignor) any obligation of UP or the assignee under this Contract or under any other agreement between the parties of even date herewith, including without limitation, any payment obligation, indemnity obligation, or obligation to perform work. Excepting any such transfer to BART, Public Agency's interest under this Contract, or any right or obligation hereunder, may not be assigned, encumbered or otherwise transferred, whether voluntarily, involuntarily, by operation of law or otherwise (and any attempt to do so shall be void).

13.8 Survivability.

The parties agree that their respective rights, duties and obligations existing under Sections 2.3, 4.2, 4.4, 5.3, 8.2, 8.3, 8.6 Articles VI, VII, X, XI and XII, and Section 13.8, and any other provision which by its terms imposes an obligation on Public Agency or UP that is continuing in nature shall survive the termination of this Contract, regardless of whether such termination is effected through mutual agreement or default or breach of this Contract.

13.9 Separate Counterparts.

This Contract may be executed in one or more counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall together constitute and be one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Contract as of the day and year first above written.

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: Tony K. Love
Name: TONY K. LOVE
Title: GENERAL MANAGER-REAL ESTATE

**SANTA CLARA VALLEY
TRANSPORTATION AUTHORITY,**
a public agency created under California law

By: Peter M. Cipolla
Name: Peter M. Cipolla
Title: General Manager

APPROVED AS TO FORM:

Kenneth D. Allen
Counsel

EXHIBIT A

EXHIBIT A
PROPERTY SEGMENTS

SEGMENT	SEGMENT LIMITS
1A	MP 2.61 to MP 5.38 – (ES 140+03 to ES 287+00)
1B	MP 5.38 to MP 6.51 – (ES 287+00 to ES 347+00)
2	MP 6.51 to MP 7.35 – (ES 347+00 to ES 390+90)
3	MP 7.35 to MP 9.94 – (ES 390+90 to ES 526+00)
4	MP 9.94 to MP 12.39 – (ES 526+00 to ES 655+00)
5	MP 12.39 to MP 17.49 – (ES 655+00 to ES 924+00)

MP = Railroad Mile Post
ES = Railroad Engineering Station

EXHIBIT B

EXHIBIT B

CONCEPT DESIGNS AND PROJECT SEGMENT TASKS DESCRIPTION

{00107174.DOC 15}

Exhibit B

EXHIBIT "B"

Date: _____

PROJECT SEGMENT DESCRIPTION

List of Freight Project Work Tasks by Segment

Segment 1A MP 2.61 to MP 5.38 – (ES 140+03 to ES 287+00)

- No Freight Project Work.

Segment 1B MP 5.38 to MP 6.51 – (ES 287+00 to ES 347+00)

- 1B-1 Rehabilitate Tracks 60, 62, & 63 in Warm Springs Lower Yard. 7,800 TF +/-.
- 1B-2 Reconfigure and Extend 3 Tracks in Warm Springs High Yard. MP 5.65 to MP 6.51.
 - Extend Track 601 – 3,436 TF.
 - Extend Track 602 – 3,265 TF including 1 No.9 Turnout.
 - Extend Track 603 – 3,153 TF including 1 No.9 Turnout.
- 1B-3 Construct Temporary No.11 Crossover between MP 9.78 and MP 9.94 (ES 517+70 to ES 526+00).
- 1B-4 Relocate and Replace Existing Truck Transfer Facility from MP 7.00 to the vicinity of MP 5.00.
- 1B-5 Retire and Construct 1 No.11 X-Crossover MP 5.21 to MP 5.26 (ES 278+00 to ES 280+50).

Segment 2 MP 6.51 to MP 7.35 – (ES 347+00 to ES 390+90).

- 2-1 Extend Track 129 - 4,390 TF including 3 No.9 Turnouts.
- 2-2 Construct Universal No.9 Crossovers between MP 6.60 and MP 6.68 (ES 351+75 to ES 355+90).

Segment 3 MP 7.35 to MP 9.94 – (ES 390+90 to ES 526+00).

- 3-1 Extend Track 128 - 7,307 TF including 1 No.11 Turnout.
- 3-2 Construct No.11 Crossover between MP 8.98 and MP 9.03 (ES 477+00 to ES 479+40).
- 3-3 Relocate No.11 Turnout from MP 9.94 to MP 9.83 and Rearrange Connection to Milpitas Subdivision.

Segment 4 MP 9.94 to MP 12.39 – (ES 526+00 to ES 655+00)

- 4-1 Construct and Extend 3 Tracks through the Milpitas Yard. MP 9.94 to MP 12.39, including acquisition of After Acquired Parcels.
 - Construct Track 102 - 12,714 TF.
 - Extend Track 791 – 417 TF including 1 No.9 Turnout.
 - Extend Track 792 – 395 TF including 1 No.9 Turnout

Date: _____

- 4-2 Construct Track 003 - 7,713 TF including 2 No.11 Turnouts, and acquisition of After Acquired Parcels.
- 4-3 Construct Universal No. 9 Crossovers between MP 10.40 and MP 10.52 (ES 550+15 to ES 556+70).
- 4-4 Extend Track 011 - 632 TF including 1 No.9 Turnout.
- 4-5 Extend Track 005 - 612 TF including 1 No.9 Turnout.
- 4-6 Extend Track 006 - 425 TF including 1 No.9 Turnout.
- 4-7 Extend Track 008 - 281 TF including 1 No.9 Turnout.
- 4-8 Extend Track 016 - 200 TF including 1 No.9 Turnout
- 4-9 Extend Track 104 - 433 TF including 1 No.9 Turnout.
- 4-10 Extend Track 103 - 206 TF including 1 No.9 Turnout.
- 4-11 Wye Track – To be determined in accordance with the Contract

Segment 5 MP 12.39 to MP 17.49 – (ES 655+00 to ES 924+00).

- No Freight Project Work.

MAPS

EXHIBIT C

EXHIBIT C
WORK ORDER AUTHORIZATION

{00107174.DOC 15}

Exhibit C

WORK ORDER AUTHORIZATION
NO. _____

This Work Order Authorization is issued pursuant to the Engineering and Construction Contract – WP Milpitas Line, dated December 10, 2002, between the Union Pacific Railroad Company and the Santa Clara Valley Transportation Authority (“Engineering and Construction Contract”) for Railroad Work for the Project Segment identified below. The following items describe in detail the scope of work, schedule of performance and estimated costs. All capitalized terms used herein shall have the meanings ascribed to them in the Engineering and Construction Contract.

PROJECT SEGMENT NO. _____

1. Scope of Railroad Work

- A.
- B.
- C.

2. Schedule of Performance

Railroad Work shall commence on _____, 20____, and end on _____, 20____ (the Deadline), per the attached Construction Schedule.

3. Estimated Cost by Project Segment

The mutually agreed upon Cost Estimate for this Project Segment is attached as Exhibit A to this Work Order Authorization.

4. Compensation

The total compensation paid under this Work Order Authorization is not estimated to exceed _____ Dollars per the attached cost estimate. Any additional funding required to complete this Project Segment will be authorized by change order to this Work Order Authorization pursuant to Section 7.1 of the Engineering and Construction Contract.

This Work Order Authorization is released as authorization for Railroad Work to commence. Any expenditures or reimbursements resulting from this Work Order Authorization are subject to the terms set forth in the Engineering and Construction Contract. It is stipulated between the parties that the amounts set forth in this Work Order Authorization are estimates only of the costs associated with the Railroad Work. Actual costs shall be determined by, and paid in accordance with, the terms of the Engineering and Construction Contract.

In WITNESS WHEREOF, the parties hereto have executed this Work Order Authorization under the terms of the Engineering and Construction Contract.

UNION PACIFIC RAILROAD COMPANY

SANTA CLARA VALLEY TRANSPORTATION
AUTHORITY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____