

**SANTA PAULA BRANCH LINE RAILROAD LEASE AND OPERATIONS
AGREEMENT**

This Railroad Lease and Operations Agreement for the Santa Paula Branch Line (“**Agreement**”) is entered into by and between the Ventura County Transportation Commission (“**VCTC**”) and Sierra Northern Railway (“**Railway**”) on this ____ day of December 2021 (“**Effective Date**”). VCTC and Railway are referred to collectively herein as “Parties.”

RECITALS

WHEREAS, VCTC purchased the Santa Paula Branch Line (“**SPBL**”) from Southern Pacific Transportation Company (“**SP**”), a predecessor of Union Pacific Railroad Company (“**UP**”), in 1995 for the purpose of protecting the assembled corridor for transportation related purposes, including construction of an active transportation bicycle and pedestrian trail along the entire right-of-way and eventually providing a route for potential commuter rail service. As part of that purchase, SP and its successor, UP, retained rights to serve the existing freight customer(s) on a portion of the SPBL;

WHEREAS, the acquired SPBL corridor is 31.87 miles long extending from Mile Post (“**MP**”) 403.20 in Ventura eastward to MP 435.07 east of Piru. The acquired corridor ranges from 30 feet in width to 200 feet in width. The rail infrastructure on the SPBL extends from MP 403.20 in Ventura to MP 431.90 in Piru, a distance of 28.7 miles. The SPBL corridor is used for rail services, an active transportation public use trail, and broadband infrastructure and utilities;

WHEREAS, the SPBL Recreational Trail Master Plan (“**Master Plan**”) and Environmental Impact Statement (“**EIS**”) were approved by the VCTC in 2000. The Master Plan allows for an active transportation public use trail within the SPBL and adjacent to the existing railroad tracks. To date, portions of the SPBL Recreational Trail have been established in three sections;

WHEREAS, the VCTC desires to lease a portion of the SPBL as described and depicted in the attached Exhibit A (“**Property**”) to Railway pursuant to the terms of this Agreement in order for Railway to operate certain specified service on the Property and engage in other activities to support such service; and

WHEREAS, the foregoing recitals are true and correct and incorporated into this Agreement.

NOW THEREFORE, in exchange for the mutual promises contained herein, the Parties agree as follows:

1. Definitions

1. The term “**County Managed Property**” is defined as those portions of the SPBL in Piru and Saticoy that are managed by, and the license and lease revenue from which are payable to, the County of Ventura under a Property Management and Assignment of Rents Agreement entered into between VCTC and the County of Ventura as of July 1, 1997 (“**County**”

Management Agreement”). The County Managed Property is more fully identified on Exhibit A-1 hereto.

2. The term “**FRA**” is defined as the United States Federal Railroad Administration or its regulatory successor.

3. The term “**Freight Service**” is defined as any and all common carrier rail freight operations, rights, or obligations including freight transportation, switching, transloading freight and dispatching.

4. The term “**Hazardous Materials**” is defined as any substance: (a) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as any hazardous waste, hazardous substance, bio-hazard, medical waste, pollutant, or contaminant under any governmental statute, code, ordinance, regulation, rule, or order, or any amendment thereto, including the Hazardous Material Transportation Act 49 U.S.C. § 5101 *et seq.*, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, and the Toxic Substances Control Act or (b) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous, or otherwise hazardous, including gasoline, diesel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon, and urea formaldehyde foam insulation.

5. The term “**Hazardous Materials Laws**” means all present and future federal, state or county governmental statutes, codes, ordinances, regulations, rules, orders, permits, licenses, approvals, authorizations, and other requirements of any kind applicable to Hazardous Materials.

6. The terms “**include**”, “**includes**”, and “**including**” are to be read as if they were followed by the phrase “without limitation.”

7. The term “**Informational/Directional Signs**” is defined as signage that provides information that supports and is directly related to the use and operation of the SPBL. The term does not include any on-site or off-site commercial advertising for any person, business or entity other than Railway, Mendocino Railway, or VCTC.

8. The term “**Loss**” is defined as any loss, damage, claim, demand, action, cause of action, penalty, fine, payment, cost, liability, or expense of whatsoever nature, including court costs and reasonable attorneys' fees, resulting from or related to: (a) any injury to or death of any person, including officers, agents, and employees of the VCTC or Railway; or (b) damage to or loss or destruction of any property, including the Property, the SPBL, Railroad Facilities, any adjacent property, and the road bed, tracks, equipment, other property of VCTC or Railway, and any property in VCTC's or Railway's care or custody.

9. The term “**Permitted Uses**” is defined as the specific uses/activities that Railway may operate and/or engage in on the Property pursuant to Section 2 of this Agreement.

10. The term “**Property**” is defined as the portion of the SPBL described and depicted on Exhibit A that is leased to Railway for the Permitted Uses listed in Section 2 of this

Agreement, including the Railroad Facilities, but excluding the County Managed Property and the SPBL Recreational Trail. If the management and control of the County Managed Property reverts to VCTC during the term of this Agreement, then upon VCTC's written notice to Railway, the County Managed Property will be included under the definition of Property and shall become subject to Railway's maintenance obligations and to the VCTC's corresponding obligations to convey associated lease and license revenue to Railway.

11. The term "**PUC**" is defined as the California Public Utilities Commission.

12. The term "**Rail Car Storage**" is defined as any and all storage of third-party owned rail cars on the Property or the Railroad Facilities on behalf of third-parties.

13. The term "**Railroad Assistance Program**" is defined as railroad and crossing assistance and/or funding programs, including California Public Utilities Commission Railroad Crossing Automatic Warning Device Maintenance Funding, 45G tax credits and similar programs.

14. The term "**Railroad Facilities**" is defined as all tracks and other railroad property and fixtures, including ties, switches, trackbeds, bridges, trestles, retaining walls, culverts, railroad signs, switch mechanisms, signals, grade crossings, active and passive grade crossing warning devices and other appurtenances associated with the trackage on the SPBL.

15. The term "**Railroad Purposes**" is defined as all tourist and freight service, excluding Transit Rail Services, and includes only the following: (a) still and motion picture production; (b) filming of television productions, commercials, and other still and motion picture activities; (c) video productions and any other still or motion picture related media events; (d) Freight Service; (e) mail and express service; (f) public/tourist excursions including railbikes; (g) charter and dinner train operations; (h) placement of Informational/Directional Signs; (i) storage and transload services; (j) maintenance of way; and (k) any other purposes mutually agreed upon in writing between the Parties. Railway is not, however, permitted to enter into utility or telecommunications agreements as to the Property, which right is solely reserved to the VCTC as set forth herein.

16. The term "**Railway**" is defined in the introductory paragraphs of this Agreement and includes its directors, officers, employees, agents, parents, subsidiaries, affiliates, commonly controlled entities, any other related persons and entities, and all others acting under its or their authority. The VCTC understands and agrees that Railway may conduct certain Railroad Purposes via its related entity, Mendocino Railway, that provides tourist services.

17. The term "**SPBL Recreational Trail**" is defined as an active transportation public use trail within the SPBL and adjacent to the existing railroad tracks that was envisioned in the Master Plan and EIS.

18. The term "**STB**" is defined as the United States Surface Transportation Board or its regulatory successor.

19. The term “**Transit Rail Services**” is defined as non-entertainment passenger transit services (e.g., light rail, metro rail, or commuter rail services), which serve a public transportation, as opposed to recreational or entertainment, purpose.

20. The term “**VCTC**” is defined in the title introductory paragraph of this Agreement and includes its directors, officers, employees, agents, parents, subsidiaries, affiliates, commonly controlled entities, any other related persons and entities, and all others acting under its or their authority.

2. VCTC’s Grant of Rights/Permitted Uses

1. Possession. VCTC will provide Railway with possession of the Property on or about December 26, 2021, from which date Railway may commence operations and activities consistent with the rights granted in this Section 2.

2. Permitted Uses.

a. VCTC grants Railway the exclusive right to use the Property for all Railroad Purposes (excluding, as long as such rights are not assigned to or acquired by either the VCTC or Railway, the common carrier freight service rights currently held by UP between MP 403.20 and MP 415), subject to Railway obtaining all necessary approvals under applicable federal and state law, including any approvals required by the STB. Such uses may include the activities described in Exhibits B, C, and D.

b. Upon receipt of written request from Railway, VCTC agrees to request and to support the termination by UP of UP’s common carrier obligations and freight service over the Property and the transfer of the same to Railway, as permitted under VCTC’s October 31, 1995 agreement, as amended, with SP (now UP), subject to Railway’s reimbursement of VCTC’s actual and reasonable costs incurred in providing any support specifically requested by Railway related to such termination. VCTC also agrees, upon receipt of written request from Railway, to notify UP of, and to support, Railway’s desire to operate passenger rail service (other than Transit Rail Services) over the Property between and including MP 403.20 and approximately MP 415, and to permit Railway to negotiate, on VCTC’s behalf, a joint usage agreement with UP as to Railway’s operations, which usage agreement shall be subject to VCTC’s approval, which shall not be unreasonably withheld.

c. The Parties agree to cooperate in good faith as to the entry of any crossing agreements, rail-served customer lease agreements, or other sublease agreements as to the Property reasonably related to Railway’s permitted use of the Property; all such agreements shall be subject to VCTC’s written approval, which approval shall not be unreasonably withheld.

3. Rail Car Storage. Railway may undertake Rail Car Storage on the Property related to its own operations on the Railroad Facilities and/or temporary storage on behalf of third-parties consistent with the provisions of subsections (a)-(d) below and the payment of the Rail Car Storage Fee provided in Section 10.2 below.

a. *Hazardous Materials Rail Cars.* Absent VCTC’s prior written consent, which consent may be withheld in the VCTC’s sole discretion, Railway may not store

railcars that have been used to transport Hazardous Materials; provided, however, that this requirement does not violate Railway's obligations as a common carrier or Railway's compliance with the Federal Railroad Safety Act. For clarification, the Railway's temporary staging of Hazardous Materials rail cars for unloading or loading will not be considered Rail Car Storage hereunder.

b. *Storage Locations.* Absent prior written approval of VCTC, Rail Car Storage is prohibited on any portion of the Property located within the city boundaries of any incorporated city within Ventura County as reflected on Exhibit E attached hereto; provided, however, that Railway shall not be prohibited from Rail Car Storage on any improvement under Section 2.4 which may, in the future, come to be located within the city boundaries of any incorporated city within Ventura County, unless Railway is first reimbursed for the cost of such improvement and for the cost of any required removal of such improvement. Rail Car Storage is also prohibited within 150 feet of legal public and private railroad crossings.

c. *Non-Interference with UP SPBL Operations.* In the event that Railway has not assumed the rights to Freight Service between MP 403.20 and approximately MP 415 of the SPBL, Railway shall not use the Railroad Facilities for Rail Car Storage in a manner that affects the ability of UP to access and use the Railroad Facilities for the purpose of conducting its Freight Service operations.

d. *Conducting Maintenance and Addressing Blight.* Railway shall ensure that it conducts all Rail Car Storage in a clean and orderly fashion free of blight in conformity with all applicable laws and regulations. Pursuant to this Subsection, Railway shall engage in necessary maintenance activities associated with Rail Car Storage, including removing any garbage or refuse accumulating near stored rail cars and engaging in any other activities necessary to ensure that Rail Car Storage does not result in blighted conditions on the Property. In the event that railroad cars stored as part of Rail Car Storage have graffiti that contains obscene or offensive (e.g. discriminatory or hate speech) material, Railway shall first request that the owner of the rail car remove or cover the obscene or offensive material within fifteen calendar days. If the rail car owner fails to cover the obscene or offensive material within fifteen (15) days Railway shall within fifteen (15) days thereafter relocate the stored railcar to another authorized location within the Railroad Facilities that is out of public view. Railway's obligation to relocate railcars pursuant to this subsection shall be limited to ten (10) cars per calendar year. If VCTC observes a condition on the Property related to Rail Car Storage that requires maintenance under the above requirements or applicable law, VCTC will notify Railway through a maintenance request. Railway shall reasonably resolve maintenance requests from VCTC within 30 days. In the event Railway unreasonably fails to complete a maintenance request, VCTC has the right but not the obligation to correct or cause the correction of the deficiency, after no less than 10 days' written notice to Railway (except in an emergency, whereupon no notice is required). If Railway does not reasonably correct the deficiency within the 10 days, VCTC may correct the deficiency and bill the Railway for the actual cost of such correction and the Railway shall pay the actual cost of the correction within 30 days. If Railway fails to pay any amount pursuant to this subsection, VCTC may withhold and retain such amount from rental revenue otherwise payable to Railway pursuant to Section 7.1.

e. *Written Sublease Agreement.* Prior to storing a rail car for any third party, Railway shall enter into a written agreement with the owner of the rail car whereby the rail car owner agrees to indemnify, defend, and hold harmless the VCTC for any Losses related to Railway's storage of the rail car and to name the VCTC as an additional insured on any applicable insurance policies. In the event that Railway fails to enter into said written agreement, Railway assumes all liability associated with such Rail Car Storage and shall be solely responsible for indemnifying, defending and holding harmless VCTC for any Losses arising out of such Rail Car Storage in accordance with Section 13 below.

4. Improvements.

a. Except as otherwise set forth herein, the VCTC also grants Railway an exclusive license to use, maintain, repair, modify, and improve the Property as needed by Railway for the Permitted Uses, subject to VCTC's prior written approval, which approval shall not be unreasonably withheld. Railway may also, at its cost and expense, modify or improve the Property and Railroad Facilities as needed to accommodate its Permitted Uses and in a manner that is consistent with VCTC's retained rights; provided, however, that Railway first obtains VCTC's written approval of Railway's plans for any such modifications or improvements, which approval shall not be unreasonably withheld. For purposes of the foregoing, VCTC's rejection of any proposal by Railway to substantively alter the current rail alignment in a manner that would impact any existing or planned section of the SPBL Recreational Trail (as set forth in the Master Plan) will not constitute an unreasonable withholding of approval.

b. The Parties agree throughout the term of this Agreement to work together to seek appropriate grants, loans, or other funding to maintain, repair, or improve the Railroad Facilities; provided, however, that neither Party may render the other liable for the repayment of any grant, loan, or other funding without such other Party's express prior written consent. Nor may Railway encumber the SPBL as to any grant, loan, or other funding without VCTC's express prior written consent.

5. Grant Subject to Existing Rights. The rights granted by VCTC under Section 2 are subject to any existing licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title that may affect the Property and/or the Railroad Facilities and the word "grant" as used herein shall not be construed as a covenant against the existence of any thereof; provided, however, that any such licenses and leases, do not materially conflict with the rights granted to Railway hereunder and do not violate applicable law and regulations (including railroad right-of-way clearance requirements). To the extent any existing license or lease contains a term that does materially conflict with rights granted to Railway hereunder, VCTC's obligation hereunder shall be limited to either terminating the lease or license pursuant to the termination provisions of the respective lease or license agreement or seeking modification of any lease or license term(s) such that operation of the remainder of the lease or license does not materially conflict with the rights of Railway granted herein.

3. Investigation. Except as otherwise set forth herein, Railway hereby acknowledges that (a) it has satisfied itself at the time of this Agreement with respect to the condition of the Property and Railroad Facilities; (b) it has made such investigations as it deems necessary with respect to the Property and Railroad Facilities, as they exist at the time of this Agreement, and

assumes responsibility therefor as to its occupancy and use thereof; and (c) neither VCTC nor any of VCTC's agents has made any oral or written representations or warranties with respect to the Property, Railroad Facilities, or the SPBL.

4. No Warranties. Other than as expressly set forth herein, Railway shall take the Property and Railroad Facilities without any express or implied warranties, including any warranties of merchantability, fitness for a particular purpose or volume or quality of traffic on the Property, and subject to: (i) encroachments or other existing conditions, (ii) all existing ways, alleys, privileges, rights, appurtenances and servitudes, howsoever created, and (iii) VCTC's rights hereunder.

5. Release. Railway, for itself, its successors and assigns, to the maximum extent permitted by law, hereby waives, releases, remises, acquits and forever discharges VCTC, its officers, employees, agents, successors and assigns, from any Loss to Railway arising out of or in connection with the known or unknown, existing physical or environmental condition of the SPBL, the Property, and the Railroad Facilities (including any Hazardous Materials contamination in, on, under the SPBL) to the extent that the same exists as of the time of Railway's execution of this Agreement.

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

2. Survival. The provisions of this Section 5 shall survive the termination or expiration of this Agreement.

6. Limitation and Subordination of Rights Granted

1. VCTC's Use of Property. The rights granted in Section 2 above are subject and subordinate to VCTC's prior and continuing right to use, improve, and maintain the SPBL, the Property and the Railroad Facilities for any purpose that is not inconsistent with this Agreement. Subject to, but without limiting the generality of the foregoing, VCTC may construct, maintain, install, repair, renew, use, operate, change, modify or relocate public projects of any kind, including a trail consistent with the Santa Paula Branch Line Recreational Trail network, implementation of Transit Rail Services, railroad tracks, signals, communication equipment including cellular equipment (standard and small cell), fiber optics, pipelines, informational signage, or other utility or other similar facilities upon, along, or across any or all of the Property, all or any of which VCTC may freely do at any time or times without liability to Railway for compensation or damages; provided, however, that VCTC may not materially interfere with Railway's Freight Service rights and obligations under applicable law, unless first approved by an applicable agency or court if such approval is required by applicable law; and provided, further, that VCTC shall to the extent possible provide Railway sixty (60) days advance written notice of any such planned or actual interference and provided that VCTC takes reasonable measures to minimize any such interference. In addition, VCTC may access the Property to remove trees, vegetation, and other such conditions that may affect the safety or function of utilities located on

the Property and/or may authorize utility companies to access the Property in order to perform such work. Railway shall cooperate with the VCTC in implementing the foregoing uses of the Property. If VCTC requests Railway's assistance to transport materials or to perform other transportation or construction services for public projects, Railway will provide such assistance at reasonable rates to be determined between the Parties. In the event that VCTC's long-term plans for the SPBL or the Property require STB approval, Railway agrees to reasonably coordinate and cooperate with VCTC to obtain those approvals. Further, Railway agrees to accommodate VCTC's long-term plans for the SPBL and the Property, at no cost to VCTC, including reasonably coordinating and/or cooperating with VCTC on any necessary track and infrastructure modifications. If any of the VCTC's actions under this Section materially interfere with the rights granted to Railway pursuant to this Agreement, Railway may terminate this Agreement without any further liability to VCTC that has not accrued prior to termination of the Agreement.

2. VCTC's Inspection Access; Access for Maintenance. VCTC may, as reasonable and as coordinated in advance with Railway: (i) inspect the Property and the Railroad Facilities, including any facility used in connection with Freight Service or Permitted Uses, and (ii) access the Property and Railroad Facilities (including access with VCTC or third-party rail vehicles) in order to conduct such inspections. VCTC shall ensure that any of its officers, directors, employees, agents, invitees, and contractors involved in such inspections are trained in all safety requirements and qualified for any operations related to work conducted on or near railroad operations and the VCTC shall be solely responsible for the actions and omissions of the same.

3. Future At-Grade Crossings. The Parties acknowledge that local governments may desire to create future at-grade public crossings on the Property. Railway shall cooperate with the efforts of any applicable local governments to secure PUC approval of any such crossings; provided, however, that Railway shall be entitled to raise any reasonable safety or operational concerns related to such crossings and shall be able to seek recovery of its costs for such cooperation from the entity seeking to create the crossing. The fees and costs associated with the construction, maintenance, and repair of such crossings shall be set either by mutual agreement between Railway and the applicable local government, or by the PUC pursuant to Public Utilities Code § 1202, *et seq.* Railway may negotiate terms for such crossing agreements subject to approval by VCTC, which shall not be unreasonably withheld. VCTC shall have final approval authority as to any new third-party crossing agreements.

4. SPBL Recreational Trail. The parties acknowledge that a portion of the Branch contains a trail known as the SPBL Recreational Trail. The parties will cooperate to facilitate use of such trail, and to extend such trail further provided that:

a. In the event that VCTC determines, in its sole discretion, that Railway's operations justify modification or relocation of portions of the then existing portions of the SPBL Recreational Trail, VCTC shall coordinate appropriate relocation of the SPBL Recreational Trail and fund the costs of such relocation. Railway shall be obligated to reasonably accommodate and reasonably assist with VCTC's relocation and the modified alignment of the SPBL Recreational Trail.

b. The VCTC shall use reasonable efforts to locate and construct any new sections of the SPBL Recreational Trail away from the portion of any then-existing track used

for Railway's operations for Railroad Purposes. However, if new sections of the SPBL Recreational Trail cannot be constructed without the relocation of tracks required by Railway, and the cost to relocate the tracks is substantially less than the cost to construct the new sections of the SPBL Recreational Trail in a manner that does not require such relocation, then Railway shall perform and fund the cost of such track relocation; provided, however, that Railway shall not be required to relocate any bridges, trestles, or berms or any related tracks.

c. Except as otherwise set forth herein, the VCTC shall be solely responsible for the use, operation, construction, and maintenance of the SPBL Recreational Trail and shall, in accordance with Section 12.2, indemnify, defend, and hold harmless Railway regarding the same except to the extent that any claim or liability for any incident along the SPBL Recreational Trail arises from the negligence, gross negligence or willful misconduct of Railway, its officers, employees, contractors, or agents.

5. Third-Party Lease, License and Franchise Agreements. Except as otherwise set forth in this Agreement, VCTC shall retain the right to negotiate and enter into lease, license and franchise agreements for the Property, including agreements authorizing the installation, use, and maintenance of broadband, communication lines, cellular facilities (including small cell equipment) and private and public utility lines and equipment. VCTC will not assign existing lease, license, or franchise agreements to Railway.

6. Transit Rail Services. Nothing herein shall be construed as conferring any right or obligation on Railway to engage in or provide Transit Rail Services. Transit Rail Services are specifically excluded from any rights conferred on Railway provided herein. Except as otherwise set forth herein, the VCTC shall be solely responsible for the use, operation, construction, and maintenance of all Transit Rail Services and shall, in accordance with Section 12.2, indemnify, defend, and hold harmless Railway regarding the same except to the extent that any claim or liability for any incident relating to Transit Rail Services arises from the gross negligence or willful misconduct of Railway, its officers, employees, contractors, or agents.

7. **Maintenance and Operation of Railroad Facilities.** None of Railway's obligations pursuant to this Section shall apply to the County Managed Property unless the management and control of the County Managed Property has reverted to the VCTC during the term of this Agreement and has, following notice to Railway, been included under the definition of Property and become subject to the VCTC's obligations to convey to Railway the lease and license revenue associated with the County Managed Property. Nor shall any of Railway's obligations pursuant to this Section apply to the SPBL Trail or to any property used for Transit Rail Services.

1. Maintenance and Maintenance Subsidy. The Parties understand and agree that the SPBL, the Property, and Railroad Facilities are subject to significant deferred maintenance and that repairs to address deferred maintenance as well as ongoing maintenance of the SPBL and Railroad Facilities are necessary during the term of this Agreement. Prior to VCTC's conveyance of possession of the Property to Railway, VCTC shall ensure that the SPBL is in a reasonably clean condition, free of substantial refuse, encampments (including homeless encampments), or property or equipment of the previous lessee unless Railway acquires said property or equipment of the previous lessee or the business entity that was the previous lessee. After possession of the

Property has been transferred to Railway, and except as otherwise set forth in this Agreement in relation to SPBL Recreational Trail, and except as to any property used for Transit Rail Services, Railway shall be solely responsible for maintaining, at Railway's cost, the SPBL (including the Property but excepting the SPBL Recreational Trail) as required by applicable state and federal law and applicable regulations and in accordance with the Maintenance Standards and Schedule, attached hereto and incorporated herein as Exhibit B, provided, however, that nothing herein shall require Railway to maintain any part of the SPBL (including the Property but excepting the SPBL Recreational Trail and property used for Transit Rail Services) to a level higher than that required for Railway's Permitted Uses assuming Railway complies with the Maintenance Standards and Schedule set forth in Exhibit B.

To support Railway's maintenance obligations over the SPBL and Railroad Facilities, VCTC shall convey to Railway any and all annual revenue from third-party lease and license agreements relating to the SPBL (after payment to VCTC for any administrative costs which shall be equal to five percent (5%) of revenue from third-party lease and license agreements), provided that such annual revenue does not exceed Railway's actual annual maintenance costs for the SPBL. In the event that annual revenue exceeds Railway's actual annual maintenance costs, VCTC will convey only the portion of the revenue up to Railway's actual maintenance costs and VCTC will retain any excess amounts. VCTC shall make this payment to Railway in arrears following the end of each VCTC fiscal year (beginning as of January 1, 2022) during which this Agreement is effective. Railway shall provide to VCTC not later than July 31st of each year a report showing the maintenance activities performed by Railway, the actual costs of such actions and the actual costs of any equipment and materials necessary to perform such maintenance for the prior fiscal year with the exception of the first submission, no later than July 31, 2022, which shall only cover the time period January 1, 2022 to June 30, 2022. VCTC shall review the report not later than September 15th of each year and shall either approve the report and the payment amount or provide written notice to Railway of any deficiencies in the report in which case Railway shall correct those deficiencies within thirty (30) calendar days and resubmit the report for further review by VCTC. Once VCTC has approved the report, VCTC shall issue payment to Railway no later than thirty (30) days after approval of the report.

In addition to allocation and payment to Railway of ninety-five percent of the annual revenue from third-party lease and license agreements as set forth in the prior paragraph hereinabove for maintenance services, VCTC shall reimburse Railway for actual costs, including overhead, incurred in performance of the deferred maintenance work up to a maximum annual amount of four hundred fifty thousand (\$450,000) per VCTC fiscal year (less the annual amount paid to Railway from third-party lease and license agreements as set forth in the paragraph hereinabove for the year in which the deferred maintenance is completed) for the first five (5) years following possession of the Property by Railway for a maximum total potential amount of two million two hundred fifty thousand (\$2,250,000) over the first five (5) years of Railway's operation. The deferred maintenance categories and criteria eligible for this reimbursement are listed in Exhibit E. To receive reimbursement for qualifying deferred maintenance, Railway must provide documentation reasonably satisfactory to VCTC demonstrating completion of the deferred maintenance work being reimbursed and the actual costs thereof. Further, in order to be eligible for reimbursement, Railway must incur costs in performance of the deferred maintenance work within the fiscal year prior to which reimbursement is sought and within the first five (5) years of Railway's possession of the Property. Under the foregoing, the Parties understand and agree that

reimbursement for work conducted during the fifth (5th) full fiscal year of Railway's possession of the Property will be sought in the sixth (6th) full fiscal year after possession begins on January 1, 2022 (i.e. the payment for deferred maintenance during VCTC fiscal year 25-26 will be paid during VCTC fiscal year 26-27). The submission, review and payment timelines for the deferred maintenance payment identified and limited herein shall be same as those set forth in the prior paragraph of this Section 7.1.

VCTC may audit Railway's accounting records at all reasonable times, with prior notice to Railway. It is the intent of the Parties that the audits will ordinarily be performed not more frequently than once every 12 months during the term of the Agreement. Railway will allow VCTC's auditors to access its relevant records during normal business hours and will allow interviews of any employees who might reasonably have information related to such records. If VCTC determines that any invoiced and paid amounts exceed the actual allowable incurred costs, Railway will repay the amounts to VCTC within 30 days of request or as otherwise agreed by VCTC and Railway. VCTC will bear the cost of conducting the audit unless the audit reveals an error detrimental to VCTC that exceeds more than ten percent (10%) of: (a) the amount audited; or (b) if a royalty audit, the total royalties due in the period audited; in such case, Railway will pay the refund as specified above and will reimburse VCTC for the reasonable costs and expenses incurred by VCTC in conducting the audit.

2. *SPBL and Railroad Facilities.* Railway, at its expense, shall keep the SPBL, Property and Railroad Facilities in good repair and in a good and safe condition in conformity with applicable law and the maintenance standards and schedule set forth in Exhibit B. In the event Railway fails to meet this obligation, VCTC has the right but not the obligation to correct or cause the correction of the deficiency, after no less than 10 days' written notice to Railway (except in an emergency, whereupon no notice is required). If Railway does not correct the deficiency within the 10 days, VCTC may correct the deficiency and bill the Railway for the actual cost of such correction and the Railway shall pay the actual cost of the correction within 30 days.

3. *Trees and Other Conditions Outside of Property.* Railway may, at its option, enter portions of the SPBL outside the Property (e.g. County Managed Property) to repair slopes, clear fallen trees and branches, or address other conditions, as necessary to ensure the safety and efficiency of Railway's operations. VCTC grants Railway a license to enter all portions of the SPBL as necessary to perform such work; provided, however, that Railway shall be required to repair any damage caused as the result of Railway's performance of any such work.

4. *Scope of Maintenance.* For purposes of this Section 7, the maintenance and repairs to be performed by Railway include: (a) inspections, testing, track profiling, adjustments, lubricating, welding, re-spiking surfacing, tamping, and any other tasks constituting customary and routine maintenance of track structures; (b) repair, renewal, replacement, or other customary and routine work required to ensure the safety of Railroad Facilities, including compliance with any applicable bridge safety management program regulations that may be promulgated by the Secretary of Transportation pursuant to Public Law 110-432, § 417, including the regulations set forth in 49 CFR Part 237; (c) weed and brush control and drainage facility clearing and management on the Property as required by applicable law and as set forth in Exhibit B; and (d) reasonable efforts to address trash, graffiti, and trespassing

problems on the Property as required by applicable law and as set forth in Exhibit B. VCTC will cooperate in good faith with Railway and local authorities to help resolve problems relating to trash, graffiti, and trespassing on the Property.

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

6. *Security for Maintenance Obligations.* Railway shall at all times ensure that 2,400 railroad ties are maintained on the Property, with such ties to constitute security for Railway's performance of its maintenance obligations set forth herein. If Railway fails to perform its maintenance obligations, the VCTC may, after notice to Railway and the expiration of any applicable cure period, take possession of the railroad ties and use or sell; provided, however that any sale of such railroad ties is at a reasonable price. The VCTC's exercise of its rights under this subsection 6.2.f shall not in any way limit the rights of VCTC to terminate this Agreement or any other rights or remedies that VCTC may have pursuant to this Agreement or under applicable law.

7. Clearing Obstructions Derailments and Wrecks. Railway shall as soon as practicable and in compliance with applicable law clear any obstructions, derailments, and wrecks of railroad equipment on Railroad Facilities. In the event that such obstruction, derailment or wreck is caused by a third party other than Railway or VCTC or their contractors, Railway may, on behalf of itself and VCTC, seek recovery of the costs of removal of said obstructions, derailments, or wrecks from the third-party. To the extent that any such obstruction, derailment, or wreck damages the SPBL, Property, or Railroad Facilities, Railway shall as soon as practicable restore the Property to the condition it was in prior to the obstruction, derailment, or wreck. In the event Railway fails to clear obstructions, derailments, or wrecks within a reasonable amount of time, VCTC has the right but not the obligation to correct or cause the correction of the issue, after no less than 10 days' written notice to Railway (except in an emergency, whereupon no notice is required). If Railway does not correct the issue within the 10 days, VCTC may correct the deficiency and bill the Railway for the reasonable and actual cost of such correction and the Railway shall pay such cost within 30 days. Nothing in this section is intended to preclude legal action by Railway or VCTC against any third party causing such obstruction, derailment, or wreck. In the event any such obstruction, derailment or wreck of railroad equipment on Railroad Facilities is caused by VCTC or its contractor the actual reasonable costs of removal of said obstruction, derailment, or wreck shall be payable by VCTC to Railway.

8. Responsibility for Repair or Replacement

a. *No Capital Contribution by VCTC.* In the event that any Railroad Facilities necessitate repair, replacement, or reconstruction in order for Railway to conduct its desired operations, Railway may seek approval from VCTC, with such approval not unreasonably withheld, to complete such repair, replacement or reconstruction, but VCTC shall not provide any capital contributions for such repair, replacement, or reconstruction. In the event Railway does not elect to repair, replace, or reconstruct the applicable Railroad Facilities, Railway shall suspend or

abandon Railway's operations over such portion of the Railroad Facilities as the parties mutually agree is necessitated by the condition of the applicable Railroad Facilities, and as approved by the STB to the extent required under applicable law.

b. *Damage Caused by Rail Operations.* Except as otherwise set forth in this Agreement, Railway will be responsible to repair or replace any damage to the SPBL, Property, or Railroad Facilities caused by Railway's operations or Railway's lack of appropriate maintenance in accordance with the requirements of this Agreement.

c. *Damage Caused by Acts of God or Other Factors.* If any portion of the Property, SPBL, or the Railroad Facilities are damaged or destroyed by flood, fire, civil disturbance, earthquake, earth movement, storm, sabotage, act of God, terrorism, accident or any other event beyond Railway's reasonable control, then Railway may (but, except to the extent covered by insurance required under this Agreement, shall not be required to) at no cost or expense to VCTC, (a) repair, or cause to be repaired, the damaged or destroyed portion of the Property or Railroad Facilities; or (b) replace, or cause to be replaced, such portion of the Property or the Railroad Facilities. In the event Railway does not elect to repair or replace the damaged or destroyed portion of the Property or Railroad Facilities, Railway shall reasonably cooperate, at its own cost, with the VCTC to seek funding and cause the repair or replacement of the damaged or destroyed portion of the Property, or Railroad Facilities. If VCTC elects not to use its funds to repair or replace the damaged or destroyed portion of the Property or the Railroad Facilities, then Railway shall suspend or abandon Railway's operations over such portion of the Property as the parties may mutually agree to be necessitated by the damage or destruction, and as approved by the STB to the extent required by applicable law. Nothing herein obligates either Party to repair, replace, or commit any funds to the repair or replacement of any portion of the Property, SPBL, and/or Railroad Facilities damaged or destroyed pursuant to any acts of God or other factors contemplated in this Section 7.8(c) even if such repair or replacement is necessary for Railway to resume operations over said portion of the Property, SPBL or Railroad Facilities.

9. Survive Termination or Expiration. Any obligations incurred by the Parties under this Section 7 prior to the termination or expiration of this Agreement shall survive any termination or expiration of this Agreement.

8. **Fees/Rent.** In consideration of the rights granted under this Agreement, Railway shall pay VCTC the following rent/fees:

1. Annual Rental Payment. In exchange for the right to operate on the Property, Railway shall pay VCTC an annual rental payment of \$1,000 per mile of track included in the Property ("**Annual Rental Payment**"). This Annual Rental Payment shall be paid to VCTC in arrears on or before July 1st annually. The amount of the Annual Rental Payment shall be increased annually by the same percentage of increase as the Consumer Price Index: All Items for Oxnard-Thousand Oaks- Ventura as of July 1st of each year.

2. Rail Car Storage Fees. In the event that Railway elects to undertake Rail Car Storage on behalf of third-parties in accordance with the provisions of Section 2.3, Railway shall pay VCTC an amount equal to five percent (5%) of the gross daily storage track rents charged such third parties ("**Rail Car Storage Fee**"). The sum of such Rail Car Storage Fees shall be

payable in arrears for the prior calendar year and shall be paid to VCTC annually on or before July 1st.

3. Filming or Video Production Revenue Sharing. In the event that Railway derives any revenue from film, television, video, or commercial filming on the Property, then Railway shall pay VCTC five percent (5%) of the gross revenue generated by Railway from such filming on the Property. The sum of such Film Revenue shall be payable in arrears for the prior calendar year and shall be paid to VCTC annually on or before July 1st.

4. Quarterly Statement and Audit Rights. Railway shall, within 60 days following the end of each calendar quarter, determine the amounts due to VCTC arising from the preceding calendar quarter and shall provide VCTC with a statement describing all amounts due VCTC from the preceding quarter. Railway shall also, upon reasonable request from VCTC, make available for inspection and copying all documents and receipts upon which such fees are based. The audit rights of VCTC as specified in Section 7.1 shall also apply to Railway's payment obligation as set forth in Sections 8.1 through 8.3.

5. Survive Termination or Expiration. Any obligations incurred by the Parties under this Section 8 prior to the termination or expiration of this Agreement shall survive any termination or expiration of this Agreement.

9. Term and Termination.

1. 35-Year Term. The term of this Agreement shall commence on December 26, 2021 and shall expire thirty-five (35) years thereafter on December 25, 2056, unless otherwise terminated pursuant to this Section.

2. Options. VCTC shall provide Railway with two (2) thirty (30) year options to renew this Agreement, provided that: (a) Railway is not in default at the time of renewal, (b) the Parties mutually agree to extend the term, (c) Railway provides a minimum of 18 months' notice of its desire to extend the term in advance of the expiration of the term, and (d) the Parties mutually agree on terms for rent and maintenance obligations for the extension period(s).

3. Termination for Cause. Either Party may terminate this Agreement for material cause following at least six months written notice to the other Party of a material default and failure by the other party to commence and cure the material default within the six month notice period. In the event that a material default cannot be cured within the six month notice period through reasonable efforts of the defaulting party, neither Party may terminate this Agreement if the other Party begins to cure any material default within the applicable notice period in a manner reasonably acceptable to the notifying Party and the other Party proceeds diligently to complete such cure in a manner reasonably acceptable to the notifying Party.

4. Termination for Frustration of Purpose.

a. *Termination by VCTC for Frustration of Purpose.* One of the primary purposes of this Agreement on the part of the VCTC is to ensure that the Property is being put to active use for Railroad Purposes. In the event that the VCTC reasonably determines that the Property is no longer being put to such active use (e.g. freight, public/tourist excursion, and/or

filming and video production activity, and not solely for Rail Car Storage activities) the VCTC may determine that the Agreement is no longer serving its intended purpose and elect to terminate this Agreement upon six (6) months' prior written notice to Railway and upon the VCTC's payment of Railway's unreimbursed maintenance costs during the six months prior to termination of the Agreement.

b. *Termination by Railway for Frustration of Purpose.* One of the primary purposes of this Agreement on the part of Railway is to ensure that it can economically use the Property for Railroad Purposes. In the event that Railway reasonably determines that it can no longer use the Property for such use, Railway may determine that the Agreement is no longer serving its intended purpose and elect to terminate this Agreement upon six (6) months' prior written notice to the VCTC.

c. *Residual Liability.* If either Party terminates this Agreement for frustration of purpose, neither Party shall after such termination have any liability to the other or otherwise relating to this Agreement, the Property, the SPBL, or the Residual Property, that has not accrued prior to such termination.

5. Effectuate Termination. Upon the effective date of termination or expiration of this Agreement, Railway shall have sixty (60) days after termination or expiration of the Agreement to remove all of its equipment, personnel, and property from the Railroad Facilities, the Property, and the SPBL, including any stored rail cars. In the event that such removal causes any damage to the Railroad Facilities, Property, and/or SPBL, Railway shall repair such damage at its sole cost and expense within a reasonable amount of time after being notified of such damage. If Railway fails to repair such damage within a reasonable amount of time, VCTC has the right but not the obligation to correct or cause the correction of the issue, after no less than 10 days' written notice to Railway (except in an emergency, whereupon no notice is required). If Railway does not correct the issue within the 10 days, VCTC may correct the deficiency and bill the Railway for the actual cost of such correction and the Railway shall pay the actual cost of the correction within 30 days.

6. Return Property in Reasonable Condition. Upon termination or expiration of this Agreement, Railway shall return the Property and Railroad Facilities to VCTC in as good or better condition in all respects as the same were at the commencement of this Agreement, except for ordinary wear and tear and damage by the elements.

7. Railway Cooperation on Transfer of Freight Easement. Upon termination of this Agreement, whether through the expiration of the term or by action of either of the Parties as contemplated herein, Railway shall reasonably cooperate with VCTC to effectuate the transfer or abandonment of Freight Service and the transfer of the freight easement to either VCTC or a third party selected by VCTC. Railway shall reasonably cooperate with VCTC to effectuate the aforementioned transfer or abandonment and neither Party shall be obligated to pay or reimburse the other for any of the other Party's administrative, legal, or staff time associated with such cooperation as to such transfer and/or abandonment. Railway shall not be responsible for any filing or regulatory fees imposed by the Surface Transportation Board or its successor associated with the aforementioned transfer and/or abandonment.

10. Abandonment. If Railway determines that any portion of the Property is not required for its operations, or is not economic to operate, Railway shall so notify VCTC in writing. The Parties shall, following such notification, meet and confer in good faith to discuss the future of such portion of the Property. If the Parties cannot within 60 calendar days (or within another mutually agreeable period of time) agree as to any action to be taken as to such portion of the Property, then:

1. All rights, title, and interest to, and all income from, such portion of the Property, that have not accrued as of the time of any abandonment, shall revert to VCTC; and

2. Railway shall no longer be required to operate, or provide service over such portion of the Property, but will be required to continue to perform the maintenance activities outlined in Exhibit B (1)-(5); provided, however, that Railway shall be relieved of these maintenance obligations as well if the use of such portion of the Property is granted to any third-person or if active use of such portion of the Property is made by or on behalf of VCTC.

3. Railway shall cooperate in the transfer of the freight easement applicable to portion of the Property abandoned as required in Section 9.7.

11. Railroad Assistance Programs. The Parties agree that Railway will receive the benefit of any available railroad and crossing assistance or funding programs, including California Public Utilities Commission Railroad Crossing Automatic Warning Device Maintenance Funding and the 45G tax credit. VCTC agrees to support Railway's efforts to obtain such assistance or funding and, to the extent such assistance or funding may only be obtained via an application by the VCTC, to make such application subject to Sierra's reimbursement of the VCTC's actual and reasonable costs incurred in making any such application at Sierra's specific request.

12. Property Taxes. Railway shall assume, bear, and pay all taxes applicable to Railway's, leasehold interest, operations and assets unless applicable law excuses Railway's payment of such taxes due to VCTC's continued ownership of the real and personal property leased to Railway pursuant to this Agreement.

13. Indemnity

1. General Indemnity By Railway. Railway agrees to defend, indemnify, and hold harmless VCTC, and VCTC's commissioners, officers, employees, attorneys, agents, affiliates, and consultants from any and all claims, losses, liabilities, suits, judgments, damages, costs, charges, penalties, fines, fees, and expenses (including reasonable legal fees and costs) of whatever kind and nature ("Losses") which may arise or grow out of injury to or death of any person or loss of or damage to any tangible property caused by Railway's (i) operations pursuant to this Agreement, (ii) breach of this Agreement, or (iii) negligence, gross negligence or willful misconduct, including claims based on strict liability in tort, provided that the foregoing indemnities will not apply to the extent such Losses have resulted from the, as applicable, negligence, willful misconduct or gross negligence of VCTC.

2. Indemnity By VCTC for SPBL Recreational Trail and Transit Rail Services. VCTC agrees to defend, indemnify, and hold harmless Railway, and Railway's officers, employees, attorneys, agents, affiliates, and consultants from any and all claims, losses, liabilities,

suits, judgments, damages, costs, charges, penalties, fines, fees, and expenses (including reasonable legal fees and costs) of whatever kind and nature (“Losses”) which may arise or grow out of injury to or death of any person or loss of or damage to any tangible property caused by VCTC’s (i) operation of the SPBL Recreational Trail or Transit Rail Services, (ii) breach of its obligations under this Agreement as to the SPBL Recreational Trail and Transit Rail Services, or (iii) gross negligence or willful misconduct (as to the SPBL Recreational Trail), or negligence, gross negligence or willful misconduct (as to Transit Rail Services), including in each case claims based on strict liability in tort, provided that the foregoing indemnities will not apply to the extent such Losses have resulted from the negligence, willful misconduct or gross negligence of Railway.

3. Environmental Release and Indemnity. The Parties understand and agree that the Property is being provided to Railway for its operations in an “as-is, where-is” condition with all faults. VCTC makes no representations or warranties regarding the condition of the Property or the SPBL. Railway releases VCTC from, and VCTC is not obligated to indemnify, hold harmless, or defend Railway for Losses Railway may incur relating to Hazardous Materials on the SPBL or the Property. Railway shall defend, indemnify, and hold harmless VCTC for any Losses associated with Hazardous Materials placed on the SPBL by Railway or violations of Hazardous Materials Laws by Railway or the remediation of any such conditions on the SPBL or the Property that are caused, exacerbated, deposited, or released by Railway as part of its possession of or operations on the SPBL or the Property or its maintenance activities on the SPBL.. Railway’s defense, indemnity, and hold harmless obligations shall not apply to the extent that any Losses relating to Hazardous Materials on the SPBL or the Property are caused, exacerbated, deposited, or released by VCTC on or after December 26, 2021.

4. Environmental Remediation.

a. *Environmental Remediation Responsibility of Railway.* Railway, at Railway’s sole cost and expense, shall perform any environmental response or remediation activities on the Property required under any Environmental Law by a governmental entity with relevant jurisdiction, with respect to any Hazardous Materials, environmental conditions, or violations of environmental laws at the Property, which occurred, are exacerbated by, or are continuing to occur, as a result of activities undertaken by or on behalf of Railway, except to the extent that such activities are the result of directives from VCTC not otherwise set forth in this Agreement.

b. *Environmental Remediation Responsibility of VCTC Related to SPBL Recreational Trail and Transit Rail Service Construction, Operation, or Maintenance.* VCTC or its agent (other than Railway), at VCTC’s or its agent’s sole cost and expense, shall perform any environmental response or remediation activities on the portion of the Property used to construct, operate, or maintain the SPBL Recreational Trail or Transit Rail Services required under any Environmental Law by a governmental entity with relevant jurisdiction, with respect to any Hazardous Materials, environmental conditions, or violations of environmental laws at the Property, which occurred, are exacerbated by, or are continuing to occur, as a result of activities undertaken by or on behalf of VCTC related to construction, operation, or maintenance of the SPBL Recreational Trail or Transit Rail Service.

5. Survive Termination or Expiration. The obligations contained in this Section 13 shall survive termination or expiration of this Agreement.

14. Insurance. Railway shall obtain the following types of insurance: commercial general liability, vehicle liability, contractor pollution liability, business interruption (optional), railroad protective liability and umbrella, to be kept in force during the life of this Agreement. All insurance policies must be written by a reputable insurance company reasonably acceptable to VCTC, or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in California. All policies shall provide for coverage on an occurrence basis. The limits of insurance coverage required under this Section 14 may be increased by VCTC to commercially reasonable levels every five (5) years during the term hereof and any extended term based on any increases or decreases in the Consumer Price Index: All Items for Oxnard-Thousand Oaks- Ventura, or any successor index.

1. Railway Insurance. Railway shall provide and procure its own cost and expense Railroad Liability insurance, Commercial General Liability insurance, Vehicle Liability insurance, Pollution Liability insurance, Umbrella insurance, Business Interruption insurance (optional).

a. *Policy Limits.*

(i) **Railway Liability.** The Railway Liability insurance policy providing bodily injury, including death, personal injury and property damage coverage shall have a limit of not less than \$25 million each occurrence and an aggregate limit of not less than \$50 million.

(ii) **Commercial General Liability.** The Commercial General Liability insurance shall have a limit of not less than \$2 million each occurrence and an aggregate limit of not less than \$4 million.

(iii) **Vehicle Liability.** The Vehicle Liability insurance shall have a limit of not less than \$2 million each occurrence and an aggregate limit of not less than \$4 million.

(iv) **Contractor Pollution Liability.** The Pollution Liability insurance shall have a limit of not less than \$2 million.

(v) **Umbrella Insurance.** The Umbrella insurance shall have a limit of not less than \$10 million.

(vi) **Business Interruption.** The Business Interruption insurance is recommended, but optional, and may be obtained in any amount that the Railway deems appropriate.

(vii) **Self-Insured Retention Limit.** The self-insured retention for any policy listed above may not exceed \$250,000 (as that value is periodically adjusted by the Consumer Price Index: All Items for Oxnard-Thousand Oaks-Ventura from and after the effective date of this Agreement.) Prior to the execution of this Agreement, Railway shall provide VCTC with a certificate of insurance on a standard ACORD form, or other form reasonably acceptable to

VCTC, substantiating the required coverages and limits set forth herein. Upon request by VCTC, Railway shall immediately furnish a complete copy of any policy required hereunder, including all endorsements, with said copy certified by the insurance company to be a true and correct copy of the original policy.

b. *Additional Insureds.* The insurance policies must include VCTC as an “additional insured” and the property insurance policy shall name VCTC as a loss payee.

c. *Required Provisions.* The insurance policies shall contain, or be endorsed to contain, the following provisions:

(i) *Primary Coverage.* For any claims related to this Agreement, Railway’s insurance coverage shall be primary insurance with respect to VCTC, its directors, officers, employees, attorneys and agents and any insurance or self-insurance maintained by VCTC, its directors, officers, employees, attorneys or agents, shall be in excess of Railway’s insurance and shall not contribute to it. However, this section shall not apply to any claims that result from the sole negligence or willful misconduct of VCTC or its officers, directors, employees, attorneys, agents, or invitees; as to any such claim, VCTC’s insurance shall be primary, and any insurance or self-insurance maintained by Railway, its directors, officers, employees, or agents, shall be in excess of VCTC’s insurance.

(ii) *Maintenance of Coverage.* Railway shall comply with all reporting or other provisions of the policies, as necessary to maintain coverage required hereunder, including coverage to be provided to VCTC, its directors, officers, employees, attorneys or agents. Railway shall notify VCTC in writing of any claims submitted relating to the Property or SPBL under any policy required under this Agreement.

(iii) *Application of Insurance.* Railway’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

(iv) *Cancellation.* Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after 30 days’ prior written notice by certified mail, return receipt requested, has been given to VCTC.

2. Workers’ Compensation. The Railway represents and VCTC understands that all railroad workers are subject to FELA and are not covered by Worker’s Compensation insurance.

3. Effect on Liability. The fact that insurance is obtained by Railway will not be deemed to release or diminish Railway’s liability, including liability under the indemnity provisions of this Agreement. Damages recoverable by VCTC from Railway or any third-party will not be limited by the amount of the required insurance coverage.

4. Declaration of Retention. Any self-insured retentions must be declared to VCTC. At the option of VCTC, Railway shall provide a financial guarantee satisfactory to VCTC

guaranteeing payment of losses and related investigations, claim administration and defense expenses.

5. Self-Insured Retention. If any insurance policy includes a self-insured retention, nothing shall prevent any of the Parties to this Agreement from satisfying or paying the self-insured retention. If any insurance policy states that the self-insured retention must be paid by a named insured as a precondition of the insurer's liability (or which has the effect of providing that payments of the self-insured retention by others, including additional insureds or insurers, do not serve to satisfy the self-insured retention), such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by this Agreement.

6. VCTC Insurance. VCTC shall, at its own cost and expense, provide and procure such Commercial General Liability and Workers' Compensation insurance as it deems necessary to cover its obligations under this Agreement.

15. Financing. VCTC grants Railway the right to apply for a RRIF Express loan, or other appropriate funding, including grants, to improve the Property as needed for Railway's operations. VCTC will not unreasonably withhold any support required by applicable financing entities for Railway to secure such loans or funding. Provided that such loan or funding is acceptable to Railway, and subject to VCTC's reasonable approval of improvements on the Property, Railway shall have control over the expenditure of any resulting loan or funding amounts provided that such funds are used exclusively for the benefit of the Property. Railway will be responsible for any debt incurred to improve the Property as set forth herein and shall be responsible for any applicable loan service payments or obligations related thereto. Nothing herein shall be interpreted as obligating VCTC to be a party to any debt instrument related to the Property; under no circumstances will VCTC be a party to any debt instrument secured by Railway nor shall VCTC be a co-obligee on any instrument secured by Railway. Railway is not permitted to rely on or utilize the full faith and credit of VCTC in securing any loan or debt instrument. The Parties understand and agree that time is of the essence to obtain such loan or funding and the Parties agrees to reasonably cooperate in the application for such loan or funding.

16. Non-binding Mediation.

1. Mediation Process. If at any time a question or controversy shall arise between the Parties hereto in connection with this Agreement and upon which the Parties cannot agree, such question or controversy shall be submitted to a single mediator within twenty (20) days after written notice by one Party to the other Party of its desire for mediation. The Parties shall in good faith consult to select a mutually acceptable mediator. The mediator so selected shall be a person with at least five-years of experience with the concepts of railroad operations and maintenance.

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

3. Cost of Mediation. The compensation, cost, and expenses of the mediator shall be paid in equal shares by the Parties.

17. Acts of God or Other Disruptions of Service. Neither party shall be deemed to be in default of this Agreement if any failure to meet any condition or to perform any obligation or provision hereof is caused by, a result of, or due to, directly or indirectly, forces beyond its control, including, without limitation, acts of God, natural disasters, atmospheric disturbance, earthquake, fire, flood, tornado, typhoon, tide, tsunami, lightning, storms, soil subsidence, landslides, rock slides, volcanic activity, governmental action or inaction, change of law or regulation, nuclear or chemical contamination, pressure waves from devices travelling at supersonic speeds, strikes, boycotts or other labor disturbances, labor shortage, plague, epidemic, quarantine, riots, invasion, demonstration or other civil disturbances, sabotage, explosions, insurrections, war (declared and undeclared), terrorism, or threats of terrorism; provided, however, that performance shall only be excused for as long as the disruption persists and any delay resulting therefrom.

18. Miscellaneous.

1. Assistance Securing Licenses. In the event that Railway has any difficulty securing alcohol licenses or other permits or approvals in a timely manner, VCTC agrees to reasonably assist Railway in securing the same. Railway shall reimburse VCTC for its actual and reasonable costs associated with providing such support as may be specifically requested by Railway.

2. Assistance Securing Facilities. In the event that Railway has any difficulty securing appropriate facilities in a timely manner, including train stations or engine houses, VCTC agrees to reasonably assist Railway in securing such facilities. Such support will be limited to informal outreach and coordinating with municipal partners, but will not include any formal governmental or regulatory action by VCTC. Railway shall reimburse VCTC for its actual and reasonable costs associated with providing such support as may be specifically requested by Railway.

3. STB Approvals. The Parties understand and agree that activities contemplated under this Agreement relate to active rail lines that are subject to STB jurisdiction. Railway shall at its sole cost and expense obtain all required STB approvals or exemptions relating to the transaction contemplated by this Agreement. VCTC agrees to reasonably support and assist Railway's efforts before or relating to the STB, subject to Railway's reimbursement of VCTC's actual and reasonable costs incurred in providing support and assistance specifically requested by Railway.

4. Common Carrier Status. In the event that Railway applies to become a common carrier for Freight Service as to the Property, VCTC agrees to support such application subject to Railway's reimbursement of VCTC's actual and reasonable costs incurred in providing any support specifically requested by Railway.

5. Attorneys' Fees. Should it become necessary to enforce the terms of this Agreement, the prevailing Party shall be entitled to recover reasonable expenses, costs, and attorneys' fees from the other Party.

6. Compliance with All Applicable Laws. The Parties shall comply with all laws and regulations applicable to the performance of their obligations hereunder.

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

a. *If to Railway:*

Attn: President
1745 Enterprise Blvd
West Sacramento, CA 95691

b. *If to VCTC:*

Attn: Executive Director
751 E. Daily Dr.
STE. 420
Camarillo, CA 93010

8. Validity and Enforceability. In the event that any of the provisions of this Agreement are held by a court or other tribunal of competent jurisdiction to be invalid or unenforceable, the remaining portions hereof shall remain in full force and effect and any invalid or unenforceable provisions shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed to the extent necessary to make such provisions valid and enforceable. Without limiting the generality of the foregoing, if the requirement in Section 7.4 that Railway comply with applicable bridge safety management program regulations (under Public Law 110-432, § 417) is held to be a non-transferrable duty of VCTC, VCTC may, at its option, undertake this obligation and charge Railway for the reasonable and actual cost thereof.

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

10. Venue and Governing Law. This Agreement and all claims or causes of action (whether in contract, tort, or statute) that may be based upon, arise out of, or relate to either, or the negotiation, execution, or performance of the Agreement (including any claim or cause of action based upon, arising out of, or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), shall be governed by, and enforced in accordance with, the internal laws of the State of California, including its statutes of limitations, as if performed wholly within the state and without giving effect to the principles of conflicts of law. Exclusive jurisdiction shall be vested in the United

States Surface Transportation Board, or the state and federal courts of Los Angeles County. California and the parties hereby consent to such jurisdiction and to service of process by any means authorized under California law.

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

12. Modification to Agreement. The provisions of this Agreement may be modified at any time by agreement of the parties hereto, provided such modification is in writing and signed by all parties to this Agreement. Any agreement made after the date of this Agreement and related to the subject matter contained herein shall be ineffective to modify this Agreement in any respect unless in writing and signed by both Parties.

13. No Assignment Absent Consent. Railway shall not assign this Agreement, in whole or in part, or any rights herein granted, without VCTC's prior written consent, which consent shall not be unreasonably withheld provided that the Railway or assignee provides documentation demonstrating that the assignee has adequate financial resources and operational expertise in operating and maintaining Railway Facilities and providing the services identified as part of the Railroad Purposes sufficient to meet the obligations of this Agreement. VCTC and Railway expressly agree that any denial of an assignment that is based in part on VCTC's consideration of the ownership structure and composition of the assignee shall not constitute unreasonably withholding approval of an assignee.

14. Successors and Assigns. Subject to the provisions of Section 18.13 above, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators; successors, and assigns.

15. Waivers. The failure of either Party hereto to enforce any of the provisions of this Agreement, or to enforce any right or option which is herein provided, shall in no way be construed to be a waiver of such provision(s) as to the future, nor in any way to affect the validity of this Agreement or any part hereof, or the right of either Party to thereafter enforce each and every such provision and to exercise any such right or option. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

16. Authority. Each party acknowledges that the officer executing this Agreement has the authority to enter into this Agreement on behalf of the Party and in so doing is authorized to bind the Party on whose behalf the officer is signing, to the terms and conditions of this Agreement.

17. Counterparts. Each Party agrees that this Agreement may be executed by electronic or facsimile signature, which shall be as effective as an original signature and which may be used in lieu of the original for any purpose, and in one or more counterparts, all of which together shall constitute one Agreement binding on all the Parties.

(Signatures on following page)

5023062.1

In Witness Whereof, the Parties have caused this Agreement to be executed as of the Effective Date.

SIERRA NORTHERN RAILWAY	VENTURA COUNTY TRANSPORTATION COMMISSION
By:	By:
Kennan H. Beard III Its: President	Supervisor Kelly Long Its: Chair
Date:	Date:
APPROVED AS TO FORM:	APPROVED AS TO FORM:
By:	By:
Torgny Nilsson Its: General Counsel	Steve Mattas Its: VCTC General Counsel

ATTESTED: VENTURA COUNTY TRANSPORTATION COMMISSION
By:
Its: Clerk of Commission

EXHIBIT A
The Property

EXHIBIT B

Maintenance Standards and Schedule for Property

1. Graffiti

Railway shall abate graffiti on all railroad signs and facilities with the Property no less than once every six (6) months. In the event that VCTC or Railway becomes aware of discriminatory, obscene, or offensive (e.g. hate speech) graffiti on the Property, Railway shall use reasonable efforts to abate such graffiti within seven (7) days of notice of such graffiti. Railway shall provide a written report to VCTC not later than July 31st of each year identifying the general locations, amount, and nature of the abatement on the Property for the prior VCTC fiscal year (July 1 through June 30). .

2. Trash and Refuse

Railway shall use reasonable efforts to remove trash and refuse from the Property no less than once every six (6) months. In addition, Railway shall also, once per month, use reasonable efforts to remove trash and refuse from up to two (2) locations identified by VCTC as a recurring litter location. Railway shall provide a written report to VCTC not later than July 31st of each year identifying the general locations, amount, and nature of the abatement on the Property for the prior VCTC fiscal year.

3. Vegetation and Weed Abatement

Railway shall use reasonable efforts to abate weed and vegetation on the Property no less than every six (6) months. Railway shall provide a written report to VCTC after each abatement cycle identifying the general locations, amount, and nature of the abatement on the Property for the prior VCTC fiscal year.

4. Drainage Clearing

Railway shall use reasonable efforts to clear drainage channels and infrastructure on the Property no less than every six (6) months. In the event that VCTC or Railway becomes aware of drainage obstructions on the Property resulting in flooding or risk of flooding, Railway shall abate such obstructions promptly upon notice in the event of active flooding and within seven (7) days of notice in the event of risk of flooding. Railway shall provide a written report to VCTC not later than July 31st of each year identifying the general locations, amount, and nature of the abatement on the Property for the prior VCTC fiscal year.

5. Encampment Abatement and Removal

Railway shall use reasonable efforts to coordinate with VCTC and local law enforcement to address encampments on the Property in accordance with VCTC's Trespass Policy and applicable law. Railway shall use reasonable efforts to coordinate with VCTC and local law enforcement to engage in clean-up activities upon request (not more often once per month). Railways coordination efforts will include, amongst other actions, use of railway equipment to assist in clean-up actions.

6. Railroad Class

- a. Not later than 60 days after the effective date of this Agreement, Railway will confirm that the track between MP 403.2 (Bristol Road) and MP 415 meets the standard set forth in Section 2(b) of the First Amendment to Usage Agreement between VCTC and Southern Pacific Transportation Company dated January 21, 1997. Thereafter, Railway will maintain the track between MP 403.2 (Bristol Road) and MP 415 consistent with the standard set forth in Section 2(b) of the First Amendment to Usage Agreement between VCTC and Southern Pacific Transportation Company dated January 21, 1997.
- b. Railway shall, at minimum, maintain the Railroad Facilities upon which Railway operates at the minimum applicable state and federal standards for such operations.

7. Required Inspections by Railway

- a. The mainline will be inspected from Piru to Ventura on a weekly basis, per FRA requirements.
 - Once passenger/tourist trains and rail bikes start operating Railway will be inspect the track section they operate on twice a week.
- b. All highway-rail grade crossing inspection systems will be inspected per FRA requirements monthly. These inspections will also include quarterly, annual, four-year and ten-year inspections of each crossing system
- c. All bridges and culverts greater than 10' across will be inspected annually by a qualified railroad bridge inspection company.

8. Inspection Reports

At regular intervals during the course of the Agreement, as set forth below, Railway shall provide electronic copies of reports and documentation to VCTC as follows:

- a. Annual Bridge Inspection Reports and related correspondence, pursuant to 49 CFR Parts 213 and 237, Bridge Safety Standard Final Rule. Reports will be provided annually, within 15 days of communication with FRA or other agency.
- b. Proof of qualifications for Railway's track inspectors and Railway Worker Identification Cards will be provided annually.
- c. Any and all inspection reports and related correspondence related to track inspection, pursuant to 49 CFR Part 213, will be provided monthly, within 15 days of communication with FRA or another agency.
- d. Any and all inspection reports and related correspondence related to grade crossing warning devices, pursuant to 49 CFR Part 234, within 15 days of communication with FRA or another agency.
- e. Any and all inspection reports and related correspondence related to signals, pursuant to 49 CFR Part 236, within 15 days of communication with FRA or another agency.

- f. Any and all accident reports, unusual occurrence reports, or documents identifying an unsafe condition on or about the Property. Verbal reports shall be provided to VCTC within 24 hours. Appropriate written documentation of incident and any responding action taken or planned by Railway shall be provided within 72 hours.

EXHIBIT C
Use of the Property

Pursuant to Section 2 of this Agreement, Railway's uses may include the following :

- Developing freight and transload customers
- Installing spur lines

- Storing and switching rail cars
- Services related to the movie, film, television, commercial, or other media or entertainment purposes

- Tourism and seasonal passenger services, including:
 - Easter, Pumpkin, and Christmas-themed services;
 - Happy Hour services;
 - Wine and Beer services;
 - Mimosa Brunch service; and
 - Services featuring local agricultural destinations such as citrus and avocado themed train trips.

EXHIBIT D

Deferred Maintenance Categories

1. Work to repair or replace ties;
2. Work to repair or replace track, trestles, or bridge structures;
3. Work to repair or replace ballast; and
4. Work to repair or replace grade crossings and signal systems.

EXHIBIT E – City Boundary Map