



RFB No. 2607 - Addendum 1

January 23, 2026

This addendum is to modify the previously issued Request for Bids, and is hereby made a part of the document.

Attachment E, Draft Administration Coordination and License Agreement, is hereby included.

Summary:

- Section 1. Scope of Services is revised to read:

"...The contract between the two parties will be an Administration and Coordination License (**ACL**) agreement, **substantially in the form of Attachment E, Draft ACL**.

- All references to CPUC and FRA standards also include Surface Transportation Board (STB)
- Proposers will be responsible for administering Right-of-Entry permits for the Watsonville Branch Line
- Section 3. Proposal Requirements and Format, subsection 7., is revised to read

"7. A projected five-year financial plan and proposer's most recent financial statements demonstrating the proposer's financial capability and the availability of the financial resources that would be used to provide the services proposed. The financial plan must include projected capital expenditures as well as revenues and expenses, including the proposer's insurance plan, limits of liability, and deductible ~~consistent with industry standards~~ **as indicated in Attachment E, Draft ACL, Section 9, Insurance.**

Attachments

- Attachment E - Draft Administration Coordination and License Agreement (47 pages)

ADMINISTRATION, COORDINATION, AND LICENSE AGREEMENT

This administration, coordination, and license agreement (the "Agreement") is dated as of _____, 2026, and is between the Santa Cruz County Regional Transportation Commission (the "Commission"), a public agency created under California law, and _____, a _____ [limited liability company/corporation] ("Railway").

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

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

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

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

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

The prior administration, coordination and license agreement has been terminated and Commission will coordinate the transfer of the freight easement for the area between MP .4 and MP 3.0 to Railway;

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

Railway and the Commission desire to establish their respective rights

and obligations with respect to the Watsonville Branch Line Property and the Watsonville Branch Line Freight Easement by entering into this Agreement.

The parties therefore agree as follows:

1. Definitions

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

medical waste, pollutant, or contaminant under any governmental statute, code, ordinance, regulation, rule, or order, or any amendment thereto, including the Hazardous Material Transportation Act 49 U.S.C. § 5101 *et seq.*, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, and the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, or (b) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous, or otherwise hazardous, including gasoline, diesel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon, and urea formaldehyde foam insulation.

- 1.8 The term "Hazardous Materials Laws" means all present and future governmental statutes, codes, ordinances, regulations, rules, orders, permits, licenses, approvals, authorizations, and other requirements of any kind applicable to Hazardous Materials.
- 1.9 The terms "include", "includes", and "including" are to be read as if they were followed by the phrase "without limitation."
- 1.10 The term "Loss" is defined as any loss, damage, claim, demand, action, cause of action, penalty, fine, payment, cost, liability, or expense of whatsoever nature, including court costs and reasonable attorneys' fees, resulting from or related to: (a) any injury to or death of any person, including officers, agents, and employees of the Commission or Railway; or (b) damage to or loss or destruction of any property, including the Property, any adjacent property, and the roadbed, tracks, equipment, other property of the Commission or Railway, and any property in the Commission's or Railway's care or custody.
- 1.11 The term "Property" is defined as the entire Santa Cruz Branch railroad line right-of-way purchased from UP by the Commission, including all improvements thereto, whether now existing or hereafter constructed.
- 1.12 The term "PUC" is defined as the California Public Utilities

Commission.

- 1.13 The term "Railroad Facilities" is defined as all tracks and other railroad property and fixtures, including ties, switches, trackbeds, bridges, trestles, retaining walls, culverts, railroad signs, switch mechanisms, signals, grade crossings, active and passive grade crossing warning devices and other appurtenances associated with the trackage described on Exhibit A and located on the Freight Easement Property.
- 1.14 The term "Railway" is defined in the introductory paragraphs of this Agreement and includes its directors, officers, employees, agents, parents, subsidiaries, affiliates, commonly controlled entities, any other related persons and entities, and all others acting under its or their authority.
- 1.15 The term "STB" is defined as the United States Surface Transportation Board or its regulatory successor.
- 1.16 The term "UP" is defined in the introductory paragraphs of this Agreement.
- 1.17 The term "Watsonville Branch Line Property" is defined as the portion of the Santa Cruz Branch railroad line right-of-way purchased from UP by the Commission, including all improvements thereto, whether now existing or hereafter constructed, as shown on Exhibit A, to this Agreement.
- 1.18 The term "Watsonville Branch Line Freight Easement" is defined as the Freight Easement as it applies only to the Watsonville Branch Line Freight Easement Property.
- 1.19 The term "Watsonville Branch Line Freight Easement Property" is defined as the portion of the Property, as shown on Exhibit B, between approximately MP .4 and MP 3.0 subject to the Watsonville Branch Line Freight Easement consisting of any and all real and personal property within 10 feet of the centerline of any track on the Property except where roadways, buildings, or Property boundary lines reduce such distance to less than 10 feet, and except for any retained rights and personal property described herein.

2. Commission Grants Rights

- 2.1. Freight Service. Upon the later of the effective date of this Agreement or the date upon which Railway is approved as a common carrier for the Watsonville Branch Line Property, the Commission grants Railway the exclusive right and obligation to provide Freight Service on the Watsonville Branch Line Freight Easement Property. Railway's rights and obligations to provide Freight Service under this Agreement are limited to those set forth in the Watsonville Branch Line Freight Easement or in this Agreement. Railway may not, in performing such Freight Service, exceed the maximum speeds authorized by applicable law for the existing track conditions or transport rail cars exceeding the applicable track and bridge weight limits.
- 2.2. Trackage License. The Commission grants Railway an exclusive license to use, maintain, repair, and operate all of the Watsonville Branch Line Freight Easement Property and related Railroad Facilities for all Freight Service purposes. Notwithstanding their location on the Watsonville Branch Line Freight Easement Property, buildings and other fixtures which are not appurtenances associated with the tracks and related railroad property are not included as part of this license.
- 2.3. No Material Interference with Freight Service. Notwithstanding the rights retained by the Commission under this Agreement, the exercise of such rights by the Commission may not materially interfere with Railway's Freight Service rights and obligations under federal law on, or rights under the Watsonville Branch Line Freight Easement, unless first approved by the STB.
- 2.4. Third Party Licenses for Watsonville Branch Line Property.

2.4.1.

- 2.4.1.1. Third-Party Licenses. The Commission reserves the right to grant additional licenses over the Watsonville Branch Line Freight Easement Property and the Railroad Facilities (excluding licenses for temporary rail car storage or repairs on the Railroad Facilities), provided that any such

licenses: (a) do not materially conflict with, and are subject and subordinate to, Railway's right to use, maintain, repair, and operate all of the Railroad Facilities for all Watsonville Branch Line Freight Service purposes, (b) do not materially conflict with, and are subject and subordinate to, any other license granted Railway hereunder, (c) require the licensee to pay its proportionate share of Railway's prior (incurred within the preceding five years) and current costs (including labor costs, materials costs, equipment costs - using equivalent rental costs as a proxy for capital and maintenance and repair costs - travel, fuel, contract labor, and appropriate overhead) to maintain the portion of the Watsonville Branch Line Freight Easement Property and Railroad Facilities used by the licensee, and (d) require the licensee to (i) provide adequate insurance based on the scope and potential risks of operations of the licensee, as determined by the Commission and (ii) indemnify and hold harmless Railway and the Commission as to any loss arising out of or related to licensee's operations.

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

licensee to pay amounts due within 30 days following receipt of written notice from Railway and (ii) name Railway as a third-party beneficiary with rights of enforcement. As used in this Agreement, the term "capital improvement" means any improvement or repair that is subject to the capital depreciation rules of the Internal Revenue Service.

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

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

2.4.1.5. The Commission, may elect to require a lower level of liability insurance coverage for the licensee than the level of coverage then required of Railway under Section 9, provided that Railway reasonably concurs with the Commission that the level of operations of a licensee providing a lower level of liability coverage than required of Railway under Section 9 justifies the reduced coverage.

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

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

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

2.5. Temporary Rail Car Storage. Subject to the terms and conditions of this Agreement, Railway may undertake temporary rail car storage or repairs related to its own rail operations on the Railroad Facilities consistent with the provisions of Sections 2.5.1. For clarification, the staging of rail cars for unloading or loading in connection with transloading activities will not be considered rail car storage hereunder.

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

2.6. Investigation.

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

2.6.2. In the event that any public use of the Property, or illegal activities by third parties, including trespassing, cause any significant economic or operational problems for Railway, Railway may terminate this Agreement, provided Railway provides at least ninety (90) days' prior written notice to Commission of the specific problem(s) and cause thereof, cooperates in good faith with Commission throughout such period to resolve such problem(s), and complies with the provisions of Section 8.3.

2.7. Warranties on Freight Easement Property. Other than as set forth herein, Railway shall take the Watsonville Branch Line Freight Easement Property without any express or implied warranties, including, but not limited to, any warranties of merchantability, fitness for a particular purpose or volume or quality of traffic on the Watsonville Branch Line Freight Easement Property, and subject to: (i) encroachments or other existing conditions, (ii) all existing ways, alleys, privileges, rights, appurtenances and servitudes, howsoever created, and (iii) the Commission's rights hereunder.

2.8. Release. Railway, for itself, its successors and assigns, to the maximum extent permitted by law, hereby waives, releases,

remises, acquits and forever discharges the Commission, its officers, employees, agents, successors and assigns, from any Loss of Railway in any way arising out of, or connected with, the known or unknown, existing or future physical or environmental condition of the Watsonville Branch Line Freight Easement Property and related Railroad Facilities (including any Hazardous Materials contamination in, on, under, or adjacent to, the Watsonville Branch Line Freight Easement Property, or any clearance constraints on the Watsonville Branch Line Freight Easement Property), or any federal, state, or local law, ordinance, rule or regulation applicable thereto.

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

2.8.2. If any Loss described in Section 2.8 is caused by a third party under contract with the Commission, the Commission shall, at its option, (i) pursue any claim it may have against the third-party contractor, or (ii) assign to Railway any such claim, provided that Railway shall not be obligated to pursue such claim. Any amounts recovered as a result of any such claim shall, to the extent they exceed any fees and costs incurred in pursuing such claim, be used to repair or replace any of the following that are damaged or destroyed in connection with the subject Loss:

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

2.8.2.2. Then, railroad equipment.

If Railway commences abandonment proceedings for the subject portion of the Watsonville Branch Line Freight Easement Property under Section 8.3, the Commission will not assign any such claim to Railway and neither party will have any further responsibility under this

Subsection 2.8.2 as to such claim. If Railway's abandonment application is withdrawn, or not approved by the STB, the Commission may assign such claim to Railway, as provided above.

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

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

3. Limitation and Subordination of Rights Granted

3.1. Commission's Use of Property. The foregoing granted rights are subject and subordinate to the Commission's prior and continuing right to use and maintain the Property and the Watsonville Branch Line Property including the Watsonville Branch Line Freight Easement Property for any purpose that is not inconsistent with this Agreement. Without limiting the generality of the foregoing, the Commission may construct, maintain, repair, renew, use, operate, change, modify or relocate public projects of any kind (including but not limited to a trail consistent with the Monterey Bay Sanctuary Scenic Trail (MBSST) Network Final Master Plan), railroad tracks, signals, communication equipment, fiber optics, pipelines, or other facilities upon, along, or across any or all of the Property and Watsonville Branch Line Property and the Watsonville Branch Line Freight Easement Property , all or any of which the Commission may freely do at any time or times without liability to Railway for compensation or damages; provided, however, that the Commission may not materially interfere with Railway's rights and operations under this Agreement or Railway's Freight Service rights and obligations under federal law or under the Watsonville Branch Line Freight Easement, unless first approved by the STB; and provided, further, that the Commission shall to the extent possible notify Railway as soon as practicable of any

such planned or actual interference and provided that the Commission takes all practicable measures to minimize any such interference. Railway shall reasonably cooperate with the Commission in implementing the foregoing uses of the Property and the Watsonville Branch Line Property and the Watsonville Branch Line Freight Easement Property. If the Commission or its designee requests Railway's assistance to transport materials or to perform other transportation or construction services for public projects, Railway will provide such assistance at rates reasonably to be determined between the parties.

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

cooperate with the efforts of any applicable local governments to secure PUC approval of such crossings; provided, however, that Railway shall be entitled to raise any reasonable safety concerns related to such crossings. The fees and costs associated with the construction, maintenance, and repair of such crossings shall be set either by agreement between Railway and the applicable local government (which agreement shall become a Railway Agreement under Sections 4.2 and 4.3), or by the PUC pursuant to Public Utilities Code Section 1202, *et seq.*

4. Assignment of Certain Contracts and Agreements

- 4.1. Upon approval of Railway to operate the Watsonville Branch Line Freight Easement by the STB, the current operator will assign to Railway, certain agreements concerning the operation of the related Railroad Facilities, including all track agreements, grade crossing agreements, and other operating agreements set forth in Exhibit C hereto (all such agreements hereinafter referred to as the "Railway Agreements"), and (ii) to the Commission, all other agreements relating to the Property including the Watsonville Branch Line Property, including all easements, licenses, and leases (all such agreements hereinafter referred to as the "Commission Agreements"). For any assigned Railway Agreements that grant third-party rights of access to, or use of, the Watsonville Branch Line Freight Easement or related Railroad Facilities, Railway will instruct the holders of such agreements to name the Commission as an additional insured on their insurance policies.
- 4.2. Subject to the provisions of Section 2.3, which prohibit material interference with Railway's Freight Service rights and obligations under federal law or under the Watsonville Branch Line Freight Easement, unless first approved by the STB, any new Railway Agreement granting third- party rights of access to, or use of, the Watsonville Branch Line Freight Easement or related Railroad Facilities, or contemplating alterations thereto, is subject to the Commission's prior written consent. Such Railway Agreements will be documented by Railway using forms approved by the Commission, which forms shall, among other things, include

provisions indemnifying the Commission and holding it harmless from any loss in connection with the exercise of rights under such agreements, and the construction, maintenance, or operation, of any facilities constructed in connection with such agreements.

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

5. Maintenance and Operation of Railroad Facilities

- 5.1. Reserved.
- 5.2. Maintenance of Watsonville Branch Line Freight Easement Property and Railroad Facilities.
 - 5.2.1. Watsonville Branch Line Freight Easement Property and Related Railroad Facilities. Railway, at its expense, shall keep the Watsonville Branch Line Freight Easement Property and related Railroad Facilities used by Railway (including occasional use, or use for rail car storage or lay down space) in good repair and in a good and safe condition in conformity with applicable law or any Railway Agreement, and in substantially the same condition provided by the Commission. In the event Railway fails to meet this obligation, the Commission has the right but no obligation to correct or cause the correction of the

deficiency, after no less than 10 days' written notice to Railway (except in an emergency, whereupon no notice is required) and, if Railway does not correct the deficiency within 10 days, the Commission may bill the Railway and the Railway shall pay the actual cost of the correction within 30 days.

5.2.2. Weeds, Trash, Drainage and Graffiti. The parties agree that Railway shall be responsible for: (i) drainage and culvert maintenance and clearance on the entire Watsonville Branch Line Property unless a third person or entity is contractually responsible for such maintenance and clearance, and (ii) weed abatement, vegetation management, and trash collection over the Watsonville Branch Line Freight Easement Property as required by applicable law and in substantially the same condition provided by the Commission. If the Commission observes a condition that requires maintenance under these requirements or applicable law, Commission will notify Railway through a maintenance request. Railway shall resolve maintenance requests from the Commission within 30 days unless contested in good faith by the Railway. In the event Railway contests a maintenance request from the Commission, the request shall be submitted for resolution to the Coordination Committee pursuant to Section 11 and, if no resolution is met, the dispute may be submitted to mediation pursuant to Section 20. In the event Railway fails to meet an uncontested obligation, the Commission has the right but no obligation to correct or cause the correction of the deficiency, after no less than 10 days' written notice to Railway (except in an emergency, whereupon no notice is required) and, if Railway does not correct the deficiency within 10 days, the Commission may bill the Railway and the Railway shall pay the actual cost of the correction within 30 days. Railway's obligation to pay shall be secured by the security provided pursuant to Section 5.2.7. The Commission grants Railway a license to enter all portions of the Watsonville Branch Line Property as necessary to perform such

maintenance; Railway shall be required to repair any damage caused as the result of Railway's performance of any such maintenance. Except as required by applicable law, Railway shall not be responsible for the prevention, removal, or abatement of graffiti wherever it may occur. Railway shall also not be responsible for drainage maintenance, weed abatement, vegetation management, or trash collection related to any construction by the Commission (except for Railroad Facilities that Railway is entitled to use), or necessitated by the actions of any third party authorized by the Commission to be on the Watsonville Branch Line Property, or caused by any actions, omissions, or situations off or outside of the Watsonville Branch Line Property, except to the extent caused by Railway.

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

Railway may, at its option, enter portions of the Watsonville Branch Line Property outside the Watsonville Branch Line Freight Easement Property to maintain or repair slopes, clear fallen trees and branches, or address other conditions, as necessary to ensure the safety and efficiency of Railway's operations. The Commission grants Railway a license to enter all portions of the Watsonville Branch Line Property as necessary to perform such work; Railway shall be required to repair any damage caused as the result of Railway's performance of any such maintenance. The Commission shall have no liability to Railway for maintenance of portions of the Property outside of the Watsonville Branch Line Freight Easement Property and Railway's exclusive remedies for damage to the Watsonville Branch Line Freight Easement Property or related Railroad Facilities shall be limited to those set forth in Sections 5.5.3 and 8.3. However, this section shall not apply to any claims to the extent they result from the negligence or willful misconduct of the Commission or its officers, directors, employees, agents, contractors, or a third

party under contract with the Commission, in which case Railway's exclusive remedies are those set forth in Section 2.8.2, 8.3 and 14.2.

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

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

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

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

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

shall, if the decision to remove them was Railway's, become the property of Railway. Railway shall not, without the prior written approval of Commission, remove track materials or other improvements from the Property unless they are replaced as provided in this section. Railway shall keep a written record of track materials and other improvements removed from, or installed upon, the Watsonville Branch Line Property and shall provide an updated copy of the record to the Commission on or before the end of each calendar quarter.

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

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

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

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

5.5. Responsibility for Repair or Replacement.

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

5.5.2. Damage Caused by Commission. Railway will not be responsible to repair or replace any damage to the Watsonville Branch Line Freight Easement Property or Railroad Facilities caused by the Commission, its officers, directors, employees, agents, or contractors.

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

replacement of the damaged or destroyed Railroad Facilities, or otherwise to suspend or abandon (if and as permitted by the STB) Freight Service over such portion of the Property as the parties mutually agree is necessitated by the damage or destruction.

6. Construction, Relocation, or Removal of Railroad Facilities

6.1. By the Commission.

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

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

6.1.3. Railway shall in such cases provide the Commission with a fixed-price quote for performing any related work, and the Commission shall have the option of accepting Railway's quote and having Railway perform the work, performing the work itself, or having another qualified rail contractor perform such work. If the Commission selects a third-party contractor, the contractor shall execute Railway's Right of Entry Agreement (a copy of which is attached as Exhibit D)

Operator is responsible for executing and administering all Right-of-Entry permits for the Watsonville Branch Line Property.

- 6.1.4. The Commission shall have the right to salvage, stockpile, or otherwise dispose of any Railroad Facilities removed pursuant to this section; provided, however, that if the removed Railroad Facilities are reusable elsewhere on the Freight Easement Property, then Railway shall have the right to so reuse them. Any Railroad Facilities not so reused on the Watsonville Branch Line Freight Easement Property shall be disposed of or otherwise removed at the Commission's expense.
- 6.1.5. All such work performed, and any installation of Railroad Facilities, shall be in conformance with all applicable laws. If the Commission relocates any portion of the tracks used for Freight Service, the centerline of the Freight Easement Property shall, upon completion of the relocation work, be deemed to have been modified to coincide with the centerline of the realigned tracks.

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

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

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

7. License Fees

- 7.1. For consideration of the rights granted under this Agreement, Railway shall pay the Commission the following fees as calculated on a quarterly basis:

7.1.1. Freight Service:

7.1.1.1. First ____ carloads per quarter: (To be Negotiated) % of Railway's handling revenue for such carloads.

7.1.1.2. Any additional carloads per quarter: (To be Negotiated) % of Railway's handling revenue for such carloads.

7.1.1.3. Storage: (To be Negotiated) % of Railway's storage revenue in excess of \$2.00 per car per

storage day per quarter.

- 7.1.2. Temporary Use of Laydown Space. Railway may from time to time make arrangements with a temporary shipper by rail for the use of otherwise unused laydown space (open space outside of the Watsonville Branch line Freight Easement Property next to railroad track). The parties agree that Railway will need to identify such temporary laydown locations on the Watsonville Branch Line Property, which Railway may do as needed, subject to applicable law and the Commission's prior written consent. Railway shall also notify the Commission of the expected duration of each such use. If subsequently the Commission reasonably objects to any specific use of laydown space by Railway or its shipper, the Commission will make available an alternative laydown location reasonably acceptable to Railway and shipper, and Railway shall as soon as practicable discontinue that use of such laydown space and move to the alternative laydown location. Railway shall, in addition to the license fees set forth above, pay the Commission 20% of all revenue (if any) received by Railway by such shippers for such use of such laydown space.
- 7.2. Railway shall, within 60 days following the end of each calendar quarter, determine the amounts payable to the Commission arising from the preceding calendar quarter and shall provide the Commission with a statement describing all amounts due the Commission during the quarter. Railway shall also, upon reasonable request from the Commission, make available for inspection and copying all documents and receipts upon which such fees are based.
- 7.3. Subject to Section 7.4, Railway shall, within 60 days following the end of each calendar quarter, pay the Commission all amounts due the Commission for the prior calendar quarter. Railway's obligation to pay license fees is specifically acknowledged to be secured by the security required under Section 5.2.7.
- 7.4. The requirement to pay the license fees for Freight Service as set forth in Section 7.1.1 will begin upon the first day that

Railway provides Freight Service on the Watsonville Branch Line Property.

8. Term and Termination

8.1. This Agreement shall become effective when fully executed and delivered to the parties in accordance with Section 27.4 and shall continue in full force and effect for a period of _ years unless otherwise terminated as provided herein.

8.2. Termination:

8.2.1. Default.

8.2.1.1. If Railway does not provide regular Freight Service, without the Commission's prior written approval, the Commission may forthwith terminate this Agreement by written notice. As used in this Section 8.2.1.1, the term "regular Freight Service" means revenue train operations for Freight Service consisting of a minimum of (i) 50 freight cars during the first full calendar year of service (beginning January 1); (ii) 150 freight cars during the second calendar year of service; (iii) 200 freight cars during the third calendar year of service; and (iv) 250 freight cars during the fourth calendar year of service and thereafter; or

8.2.1.2. Reserved.

8.2.1.3. Railway remains in default in its performance of any other covenant or agreement contained herein for a period of 30 days after written notice from the Commission to Railway specifying such default, the Commission may, at its option, (i) cure the default and, at its option, invoice Railway for the cost thereof, withhold the cost thereof from any amount otherwise due to Railway, or call any available bond or security for the payment thereof; or (ii) forthwith terminate this Agreement by written notice; provided

however, that if such default cannot reasonably be cured within 30 days after such notice, the Commission may not terminate this Agreement provided that Railway begins to cure the default within the 30-day notice period and proceeds diligently to complete such cure.

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

8.3. Abandonment. Railway may at any time, in its sole and absolute discretion, immediately and without any liability to the Commission (except as expressly provided herein, including but not limited to Section 8.5): (a) seek STB approval to abandon Freight Service over all or such portion of the Watsonville Branch Line Property as Railway deems appropriate. In the event that Railway seeks to abandon Freight Service, Railway shall provide the Commission with 90 days advance notice of Railway's intention and shall, at its cost, cooperate with the Commission's efforts to take upon itself all Freight Service operations relating to the Watsonville Branch Line Property, to appoint another person or entity to do so, or to rail bank any portion of the Watsonville Branch Line Property as to which Railway intends to abandon Freight Service. No such abandonment, transfer of Freight Service operations, or rail banking, shall be effective unless and until the STB has issued its approval thereof.

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

8.3.2. To the extent the STB approves abandonment or transfer of Freight Service over all or any part of the Watsonville Branch Line Freight Easement Property or Railroad Facilities, this Agreement and any other rights

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

- 8.4. Upon the effective date of termination of this Agreement, Railway shall, if so requested by the Commission, (i) assign to the Commission all Railway Agreements, (ii) quitclaim the Watsonville Branch Line Freight Easement to the Commission, and (iii) execute any additional documents reasonably necessary to effectuate the purpose and intent of this Agreement.
- 8.5. LIQUIDATED DAMAGES. The parties each acknowledge that, in the event Railway exercises its right to abandon Freight Service over the entirety of the Watsonville Branch Line Freight Easement Property and the Commission is unable, despite its reasonable efforts, to obtain a new operator to which Freight Service is transferred by the STB, then determining the resulting damages would be impracticable or extremely difficult, because the Commission has undertaken a commitment to operate Freight Service on the Freight Easement Property as a condition of receipt of funds for purchase of the Property. Therefore, the parties agree that, in the event Railway exercises its right to abandon Freight Service over the entirety of the Watsonville Branch Line Freight Easement Property and the Commission is unable, despite its reasonable efforts, to obtain a new operator to which Freight Service is transferred by the STB, Railway shall be liable to the Commission in the amount of \$300,000 in liquidated damages and not as a penalty. Notwithstanding the foregoing, Railway will not be liable for any liquidated damages in abandoning Freight Service in connection

with (i) the expiration of the term of this Agreement, or (ii) the termination of this Agreement by the Commission pursuant to Section 8.2.1 or 8.2.3. In the event the Railway exercises its right to abandon Freight Service and has paid the amount due to the Commission pursuant to this Section 8.5, Commission shall not be entitled to any further damages of any kind, whether direct, special or consequential.

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

9.1. **Railway Insurance:** Railway shall, provide and procure at its own cost and expense Railroad Liability insurance and Worker's Compensation insurance (to the extent required by law).

9.1.1. The liability insurance policy providing bodily injury, including death, personal injury and property damage coverage shall have a limit of not less than \$25 million each occurrence and an aggregate limit of not less than \$50 million, or such higher amounts as required for interchange by UPRR as the connecting carrier. The self-insured retention may not exceed \$250,000 (as that value is periodically adjusted by the Consumer Price Index from and after the effective date of this Agreement). Prior to the execution of this Agreement, Railway shall provide the Commission with a certificate of insurance on a standard ACORD form, or other form reasonably acceptable to the Commission, substantiating the required coverages and limits set forth herein. Upon request by the Commission, Railway shall immediately furnish a complete copy of any policy required hereunder, including all endorsements, with said copy certified by the insurance company to be a true and correct copy of the original policy.

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

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

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

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

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

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

9.1.4. Workers' Compensation insurance shall cover any statutory liability as determined to be applicable by the compensation laws of the State of California with a limit of at least \$1 million. The Railway represents and the Commission understands that all railroad workers are subject to the FELA and are not covered by Worker's Compensation insurance.

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

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

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

If to Railway:

Attn: [TBD]
Email:

If to Commission:

Executive Director
Santa Cruz County Regional Transportation

Commission
1101 Pacific Avenue Suite 250 Santa Cruz, CA
95060 Fax: 831-460-3215

11. Coordination Committee.

- 11.1. In order to ensure the safety and efficiency of all operations on the Property, the parties shall establish a Coordination Committee. The Coordination Committee shall be composed of one representative from each party (and any other persons or entities as the parties may mutually agree) and shall (a) serve as a forum to coordinate the parties' activities and resolve questions or disputes (but only to the extent the parties' representatives have been so authorized), and (b) be responsible to make recommendations to the parties. The Coordination Committee shall meet on a regular schedule to be determined by the parties, but may be convened for special meetings by either party upon 10 days' written notice to the other party. Following each meeting, the Coordination Committee shall deliver written minutes of such meeting to Railway and the Commission.
- 11.2. Railway shall comply with all reasonable requests of the Commission for representatives of Railway to attend public meetings organized by the Commission to provide non-confidential information about Railway's operations under this Agreement.

12. Claims and Liens for Labor and Material

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

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

14. Indemnity

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

14.2. The Commission shall indemnify, defend and hold harmless Railway from any Loss to the extent caused by or arising from the negligence or willful misconduct of the Commission, its officers, agents, employees, and contractors. For purposes of this Section 14.2 only, the term "Loss" is limited to any loss, damage, claim, demand, action, cause of action, penalty, fine, payment, cost, liability, or expense of whatsoever nature, including court costs and reasonable attorneys' fees, resulting from or related to: (a) any injury to or death of any person,

including officers, agents, and employees of the Commission or Railway; or (b) damage to or loss or destruction of Railway's equipment, rolling stock and any items being transported on behalf of Railway's customers. Any Loss related to damage to or destruction of the Watsonville Branch Line Freight Easement Property or Railroad related Facilities is subject to the provisions of Section 2.8. The provisions of this section shall survive the termination or expiration of the term of this Agreement for a period of two years.

- 14.3. Each party's obligations to the other under Sections 14.1 and 14.2 respectively are subject to the following conditions: (a) the party seeking indemnification (the "Indemnified Party") shall, following Indemnified Party's discovery of a Loss for which Indemnified Party seeks indemnification, or of circumstances that may reasonably result in such a Loss, promptly deliver notice to the other party (the "Indemnifying Party") describing such Loss or circumstances, (b) the Indemnified Party shall make reasonable efforts to mitigate the effect of such Loss or circumstances, (c) the Indemnified Party shall give the Indemnifying Party the opportunity to control the defense against such Loss, and shall not compromise or settle such Loss without the Indemnifying Party's prior written consent, and (d) in no event shall either party be liable to the other for consequential, incidental, indirect or punitive damages, even if notified of the possibility of such damages, unless such damages are included in any third-party claim against the Indemnified Party.
15. **Removal of Railway Equipment, Personnel, and Property upon Termination of Agreement.** Prior to, or upon, the termination of this Agreement, Railway shall, at its sole expense, remove its equipment, personnel, and other property from the Watsonville Branch Line Property including the Watsonville Branch Line Freight Easement Property and Railroad Facilities and shall restore, to the Commission's reasonable satisfaction, such portions of the Freight Easement Property and Railroad Facilities used by Railway to as good a condition as they were after the completion of rehabilitation and repairs by the Commission, including the projects specified in Section 5.1, if completed (or, if the Commission does not complete rehabilitation and repairs, as good a condition as they were in at the beginning of this Agreement), excepting normal wear and tear. If Railway fails to do the foregoing, the Commission may do such work

at the cost and expense of Railway. Railway may not remove any property, including the Railroad Facilities, that is or becomes the property of the Commission under this Agreement.

16. Hazardous Substances and Wastes

- 16.1. Railway shall not be liable or responsible for any Hazardous Materials present on, in, or under the Watsonville Branch Line Property, or other problems relating to the Watsonville Branch Line Property, prior to the commencement date of its operations on the Freight Watsonville Branch Line Easement Property, except to the extent Railway's activities exacerbate the contamination of any such pre-existing Hazardous Materials.
- 16.2. Railway shall comply with all applicable laws in its occupancy, operation, and maintenance of the Watsonville Branch Line Freight Easement Property and Railroad Facilities. Without first obtaining the Commission's written permission (which may be withheld in the Commission's sole reasonable discretion), Railway shall not treat or dispose of Hazardous Materials on the Watsonville Branch Line Property including the Watsonville Branch Line Freight Easement Property or Railroad Facilities. Railway shall not release any Hazardous Materials on or at the Property or Freight Easement Property, including the Watsonville Branch Line Property and the Watsonville Branch Line Freight Easement Property or Railroad Facilities, including through any drainage or sewer systems. Railway assumes all responsibility for the investigation and cleanup of any such release or exacerbation by Railway and shall indemnify, defend, and hold harmless the Commission and its property, its officers, agents, and employees, for all costs, including reasonable environmental consultant and reasonable attorneys' fees, and claims resulting from or associated with any such release or exacerbation by Railway. Railway shall assume all responsibility for and shall indemnify, defend, and hold harmless Commission against all costs and claims associated with a release or leak of Hazardous Materials, or exacerbation of pre-existing Hazardous Materials, occurring between the commencement date of its operations on the Watsonville Branch Line Freight Easement Property, and the expiration or sooner termination of this Agreement, and

related to Railway's use of the Watsonville Branch Line Freight Easement Property and Railroad Facilities, unless such event was caused by the sole negligence or willful misconduct of the Commission, its officers, employees, or agents.

- 16.3. Railway shall not install any above-ground or underground storage tanks without the Commission's prior written consent, which consent may be granted or withheld in Commission's sole and absolute discretion. If such consent is granted, Railway shall obtain any necessary permits, notify the proper authorities, and provide the Commission with copies of any such permits and notifications. Railway shall assume all responsibility for and shall indemnify, defend, and hold harmless the Commission against all costs and claims associated with a release or leak of the contents of any such tank occurring between the commencement date of its operations on the Watsonville Branch Line Freight Easement Property, and the expiration or termination of this Agreement, unless such event was caused by the sole negligence or willful misconduct of the Commission, its officers, employees, or agents.
- 16.4. The Commission understands and acknowledges that the regular operation and maintenance of railroad equipment and tracks involve the storage, use, and release of *de minimus* amounts of Hazardous Materials, including petroleum products, creosote, and chromated copper arsenate. The Commission agrees that Railway shall not be liable or responsible for the *de minimus* release of any such Hazardous Materials, unless (i) such release violates applicable law, or (ii) the Commission is otherwise entitled to defense and indemnity under Section 14.1.
- 16.5. If Railway knows, or has reasonable cause to believe, that any Hazardous Materials have come to be located under or about the Watsonville Branch Line Freight Easement Property or Railroad Facilities, other than as specifically provided herein or as previously consented to in writing by the Commission, Railway shall immediately give the Commission written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to or received from any

governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Materials.

- 16.6. This Section 16 shall continue in full force and effect regardless of whether this Agreement is terminated pursuant to any other provision or the Watsonville Branch Line Freight Easement Property and Railroad Facilities are abandoned and vacated by Railway.
- 17. Trespassers and Dangerous Conditions.** Railway shall not be required to take any action or incur any expense (including posting signage or warnings, providing fencing or other security) as to or against trespassers on the Watsonville Branch Line Property, or invitees of the Commission, other than to promptly notify local law enforcement and the Commission concerning any trespassers observed on the Watsonville Branch Line Property by Railway personnel. If Railway becomes aware of any dangerous conditions on or about the Watsonville Branch Line Property, Railway shall promptly notify the Commission of such conditions.
- 18. Waivers.** The failure of either party hereto to enforce any of the provisions of this Agreement, or to enforce any right or option which is herein provided, shall in no way be construed to be a waiver of such provision(s) as to the future, nor in any way to affect the validity of this Agreement or any part hereof, or the right of either party to thereafter enforce each and every such provision and to exercise any such right or option. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.
- 19. Consent.** Unless expressly provided to the contrary elsewhere in this Agreement, whenever the consent, approval, judgment, or determination (collectively, "consent") of a party is required or permitted under this Agreement, the consenting party shall exercise good faith and reasonable judgment in granting or withholding such consent. No party may unreasonably withhold or delay its consent; except as otherwise expressly provided herein, consent shall be deemed to have been withheld if a party fails to consent to the other party within 30 days of having been given written notice of the other party's intention to take any action as to which consent is required or permitted.
- 20. Non-binding Mediation**

- 20.1. If at any time a question or controversy shall arise between the parties hereto in connection with this Agreement and upon which the parties cannot agree, such question or controversy shall be submitted to a single mediator within 20 days after written notice by one party to the other party of its desire for mediation. The parties shall in good faith consult to select a mutually acceptable mediator. The mediator selected shall be a person with at least one-year of exposure to the concepts of railroad operations and maintenance.
- 20.2. Upon selection of the mediator, said mediator shall with reasonable diligence determine the questions as disclosed in said notice of demand for mediation and shall give both parties reasonable notice of the time and place of any mediation. Until the completion of mediation, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question.
- 20.3. The compensation, cost, and expenses of the mediator shall be paid in equal shares by the parties.

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

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

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

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

25. Venue and Choice of Law

25.1. Any and all disputes, controversies, or claims arising out of, relating to, or in connection with this Agreement shall be instituted and maintained in a competent court in Santa Cruz County, California, with regard to claims arising under California law, and Santa Clara County, with regard to claims arising under Federal law, and the parties hereby consent to the jurisdiction of any such court and to service of process by any means authorized under California law.

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

26. Miscellaneous

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

- 26.2. Each party has participated in negotiating and drafting this Agreement so if an ambiguity or a question of intent or interpretation arises, this Agreement is to be construed as if the parties had drafted it jointly, as opposed to being construed against a party because it was responsible for drafting one or more provisions of this Agreement.
- 26.3. Each party acknowledges that the officer executing this Agreement has the authority to enter into this Agreement on behalf of the party and in so doing is authorized to bind the party on whose behalf he is signing, to the terms and conditions of this Agreement.
- 26.4. This Agreement may be executed in one or more counterparts and by facsimile signature, each of which shall be deemed an original, but all of which together constitute one and the same instrument.

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

_____ [RAILWAY]

SANTA CRUZ COUNTY
REGIONAL
TRANSPORTATION
COMMISSION

By:

By:

Sarah Christensen,
Executive Director

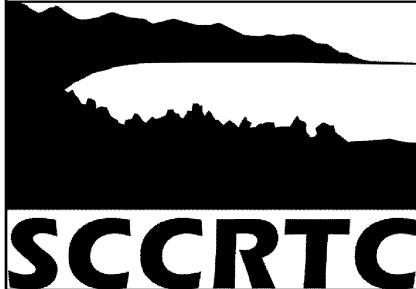
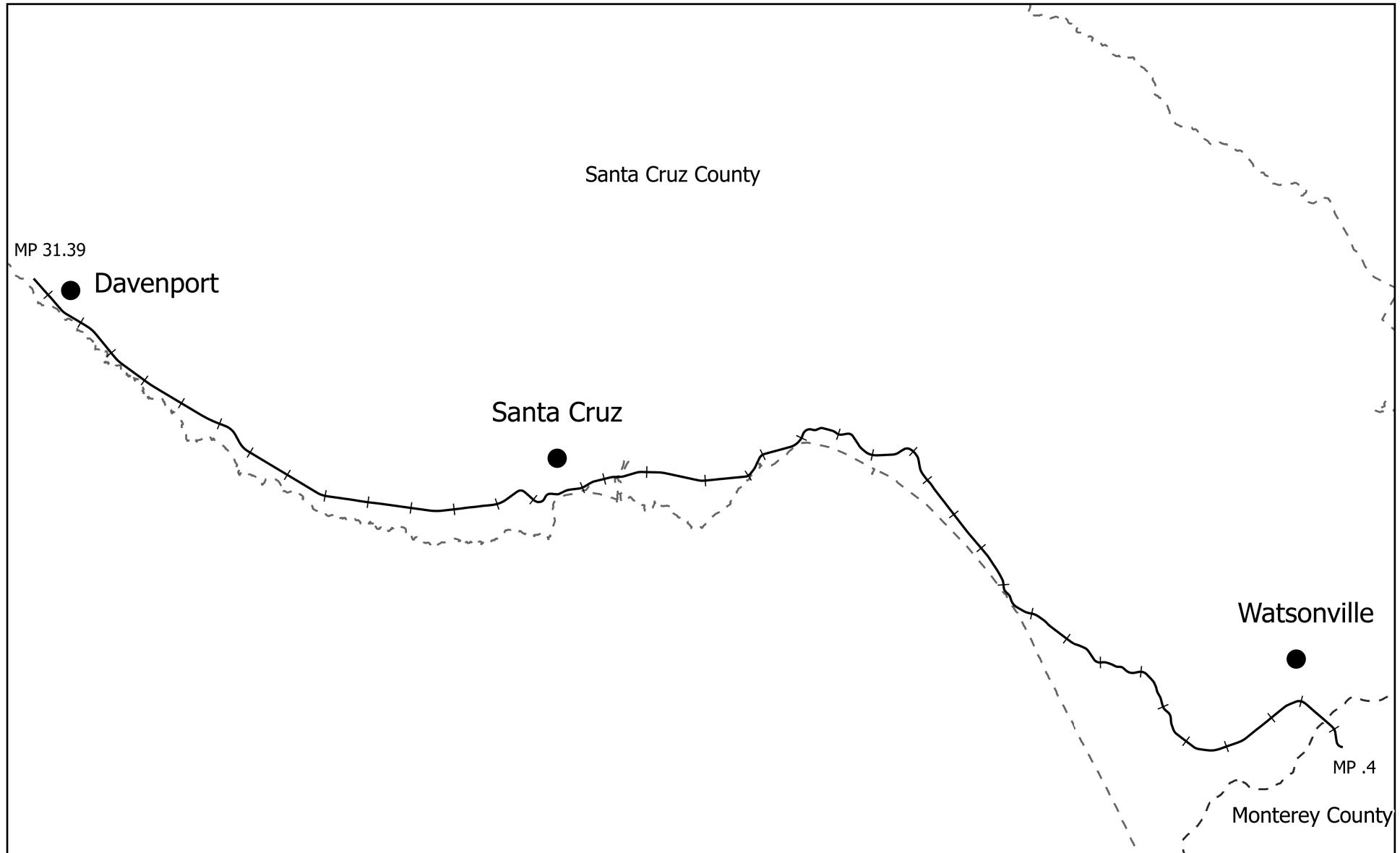
Approved as to form

By:

Steve Mattas,
RTC Legal Counsel

EXHIBIT A

Map of Watsonville Branch Line Property



Santa Cruz Branch Rail Line Property

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

NAD 1983 StatePlane California III FIPS 0403 Feet

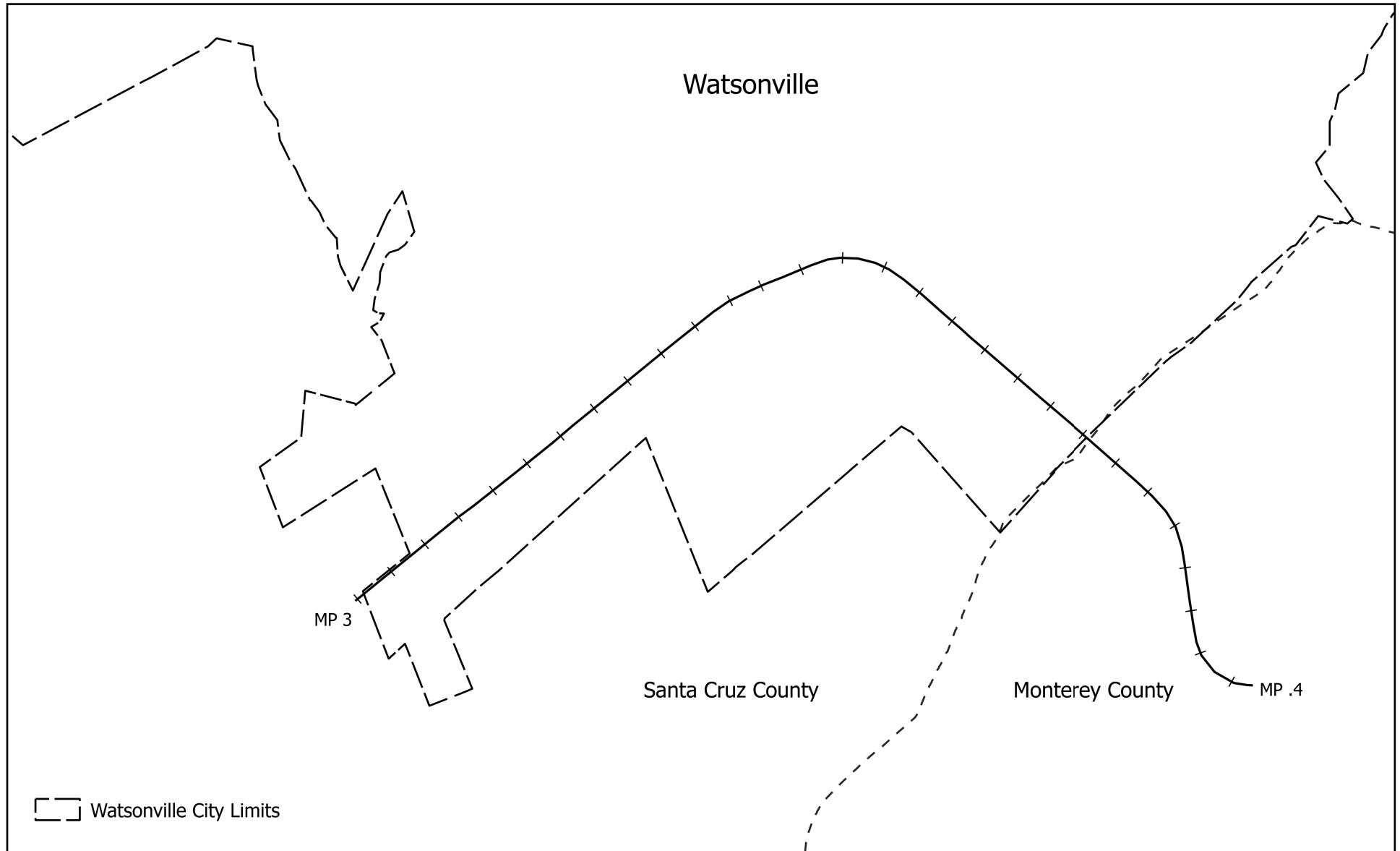
January 22, 2026



0 1.5 3 Miles

EXHIBIT B

Map of Watsonville Branch Line Freight Easement Property



Watsonville Branch Line Freight Easement Property

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

NAD 1983 StatePlane California III FIPS 0403 Feet

January 22, 2026



0 0.15 0.3 Miles

EXHIBIT C

Railway Agreements

EXHIBIT D

Form of Railway Right of Entry Agreement

[To be provided by operator]