

Folsom City Council Staff Report

MEETING DATE:	1/14/2025
AGENDA SECTION:	Consent Calendar
SUBJECT:	Resolution No. 11317 - A Resolution Approving a License Agreement Between the Sacramento-Placerville Transportation Corridor Joint Powers Authority and the Placerville and Sacramento Valley Railroad, Inc. for Excursion Rail Operations
FROM:	Public Works Department

RECOMMENDATION / CITY COUNCIL ACTION

The Public Works Department recommends that the City Council pass and adopt Resolution No. 11317 – A Resolution Approving a License Agreement Between the Sacramento-Placerville Transportation Corridor Joint Powers Authority and the Placerville and Sacramento Valley Railroad, Inc. for Excursion Rail Operations.

BACKGROUND / ISSUE

The Sacramento-Placerville Transportation Corridor Joint Powers Authority (SPTC-JPA) was established by its Member Agencies (County of Sacramento, Regional Transit, County of El Dorado, and City of Folsom) in 1991 to oversee the acquisition and preservation of the Placerville Branch of the Southern Pacific Railroad. In 1996, the SPTC-JPA completed the acquisition of 53 miles of railroad right-of-way extending from Sacramento to Placerville (milepost 94.3 to milepost 147.4 – see map in Attachment 2). The corridor passes through the cities of Sacramento, Rancho Cordova and Folsom, and the counties of Sacramento and El Dorado. The City of Folsom segment extends from Highway 50 at Folsom Boulevard, through the City of Folsom, to White Rock Road at Old Placerville Road (milepost 108.83 to milepost 118.0).

In 2007, the SPTC-JPA conducted public workshops in Placerville and Folsom to obtain community input on the potential uses and improvements to the Placerville Branch rail corridor. Workshop participants expressed interest in the initiation of some form of excursion rail service along the corridor. In response, SPTC-JPA recommended the solicitation of proposals for the development and operation of such a service in the corridor. In 2007, the City Council approved

the parameters for the preparation of a Request for Proposals (RFP) for excursion rail service, including the evaluation and selection of proposals submitted in response to the RFP, and authorized the SPTC-JPA to prepare and release the RFP.

The SPTC-JPA issued the RFP for excursion rail service in early 2008. On May 12, 2008, the SPTC-JPA Board of Directors directed its staff to commence discussions with the Folsom, El Dorado and Sacramento Historical Railroad Associations (FEDS) to determine the feasibility of the excursion rail proposal submitted by the FEDS, and to ultimately negotiate a 20-year lease with the FEDS for a portion of the rail line. On October 6, 2008, the SPTC-JPA Board approved a Letter of Intent (LOI) with the FEDS for excursion rail operations. The LOI included provisions that allowed for the LOI to be terminated if sufficient progress was not being made in developing the service and negotiating a lease.

On February 7, 2011, in response to the SPTC-JPA staff's assessment that the FEDS had not made sufficient progress in developing excursion rail services, the SPTC-JPA Board directed that its Excursion Rail Committee be convened to assess alternatives to the previously proposed 20-year lease for excursion rail operations. On February 22, 2011, the Committee met with SPTC-JPA staff and representatives of the FEDS and the Placerville and Sacramento Valley Railroad, Inc. (PSVRR) to consider the direction in which to proceed with the development and implementation of excursion rail services. The Committee's recommendation was to develop a five-year License Agreement with the FEDS/PSVRR, in lieu of a 20-year lease, and to set goals and benchmarks for each operating year. On May 2, 2011, the SPTC-JPA Board approved the five-year License Agreement, authorized the Chief Executive Officer to submit the License Agreement to each affected Member Agency for approval and, following ratification by each affected Member Agency, to execute and deliver the License Agreement for excursion rail operations.

The City of Folsom, Sacramento Regional Transit, and Sacramento County all approved the License Agreement; however, El Dorado County did not vote in support of the License Agreement. The License Agreement was then revised to exclude El Dorado County, thereby preventing PSVRR from operating in that jurisdiction, with the exception of special events authorized by County staff. The amended License Agreement took effect in February 2013, with PSVRR providing excursion rail services in Folsom and Sacramento County. During the term of this License Agreement, PSVRR was able to successfully work with El Dorado County to perform occasional excursions to the town of Latrobe under a specific permit.

The 2013 License Agreement expired in February 2018. In preparation for potential license renewal, PSVRR made a presentation to the SPTC-JPA Board at their August 2017 meeting, outlining PSVRR's progress over the current License Agreement, and their goals for the future if the License Agreement were renewed; part of those goals included re-establishing regular excursion operations in El Dorado County.

At the November 6, 2017, SPTC-JPA Board meeting, the Board voted unanimously to approve a License Agreement, but with the exception that the status quo was to be maintained in El Dorado County, meaning no PSVRR activities except for special events and capital improvements if approved by the County. This amended License Agreement was to take effect in February 2018, pending approval by the member agencies. However, some El Dorado County staff and PSVRR

still had significant disagreements regarding the SPTC-JPA's intent and El Dorado County's goals, so a renewed Agreement was delayed, and the existing License Agreement was extended by the SPTC-JPA Board to May 2018. El Dorado County staff advised their Board to deny the request for a new License Agreement, and effectively maintain the status quo within El Dorado County.

On April 24, 2018, the Folsom City Council unanimously approved a resolution authorizing the SPTC-JPA to execute the renewed License Agreement. El Dorado County staff initially expressed concerns about the License Agreement but were able to make revisions that were acceptable to both the agency and to PSVRR and as a result the El Dorado County Board of Supervisors approved the revised agreement in September 2018. The current License Agreement for Excursion Rail Operations between the SPTC-JPA and the PSVRR was approved as a renewable, five-year agreement that expired at the end of 2023.

POLICY / RULE

Per the Folsom Municipal Code, the City Council is the sole authority to ratify agreements on behalf of the City of Folsom.

ANALYSIS

A copy of the License Agreement between the SPTC-JPA and the PSVRR for excursion rail operations is included in Attachment 3. The License Agreement grants the PSVRR the right to operate excursion rail services along specified portions of the rail corridor, between the City of Folsom and the Sacramento/El Dorado County line and sets forth terms and conditions associated with the operations carried out by the PSVRR. The Agreement minimizes liability to the SPTC-JPA and its Member Agencies; ensures that no public subsidy from the SPTC-JPA or its Member Agencies will be provided for excursion rail services including capital, operating and maintenance costs; and reserves the SPTC-JPA's right to implement and grant licenses for other uses in the rail corridor that do not materially compete or conflict with the PSVRR excursion rail operations.

The License Agreement permits excursion rail operations on the segment of the rail corridor between Iron Point Road in Folsom (approximately milepost 116) and the El Dorado County line (approximately milepost 119.4). Sacramento County's portion of the corridor (milepost 118 to milepost 119.4) is within the operating segment. Additional operating segments will require SPTC-JPA and member agency approval. The City of Folsom has issued special event permits for other segments, such as the holiday train rides between East Bidwell Street and Oak Avenue Parkway, and the annual handcar derby between Broadstone Marketplace and Broadstone Parkway. These segments are permitted because they do not include any at-grade street crossings with passengers aboard any rail vehicles, which would trigger the need for at-grade rail crossing warning devices and would place them under the authority of the California Public Utilities Commission (CPUC), Rail Safety Division. Initial operating hours for excursion rail will be limited to weekends and holidays.

At the November 4, 2024 SPTC-JPA Board meeting, the SPTC-JPA Board voted unanimously to approve a new seven-year License Agreement. The renewed License Agreement is substantially the same as the prior agreement, with some clarifications and the following major differences:

- Section 7.2.1 (Suspension): This provision clarifies that the SPTC-JPA has the power to suspend operations immediately, if the SPCT-JPA determines in good faith that operations are being conducted in an unsafe manner.
- Section 7.3.2 (Partial Termination for White Rock Road Realignment Project): This provision allows the SPCT-JPA to terminate the license for areas south and east of the realigned White Rock Road crossing following receipt of notice from the Capital Southeast Connector Joint Powers Authority that it will require access to the property for the realignment project within six months. Any such partial termination notice from the SPTC-JPA will take effect 60 days after such notice is given.
- Finally, in view of the findings of the 2021 Inspection Reports by the Federal Railroad Administration (FRA) and the California Public Utilities Commission (CPUC), Exhibit A now includes a provision that excursion operations may not commence until the SPTC-JPA receives written confirmation that all defects identified in those reports have been corrected.

If the License Agreement is ratified by Folsom City Council, Sacramento Regional Transit Board of Directors, Sacramento County Board of Supervisors, and the El Dorado County Board of Supervisors, the SPTC-JPA and PSVRR will execute the Agreement and allow PSVRR to continue excursion rail on the approved operating segments.

Member agencies may have additional changes or requirements beyond those set forth in the License Agreement. Assuming those are minor and do not affect the City of Folsom's rights, staff recommends that any modifications be approved by the City Manager, Public Works Director, and the City Attorney.

FINANCIAL IMPACT

The recommended action will not result in any impacts to the current City budget, nor does it impose any future financial commitments by the City. The financial requirements for the excursion rail service are to be addressed by the PSVRR as set forth in the License Agreement, and no City funds will subsidize the capital or operating costs associated with the excursion rail service.

ATTACHMENTS

1. Resolution No. 11317 - A Resolution Approving a License Agreement Between the Sacramento-Placerville Transportation Corridor Joint Powers Authority and the Placerville and Sacramento Valley Railroad, Inc. For Excursion Rail Operations
2. Vicinity Map – Sacramento-Placerville Transportation Corridor Joint Powers Authority
3. License Agreement by SPTC-JPA with PSVRR for Excursion Rail Operations

Submitted,

Mark Rackovan, PUBLIC WORKS DIRECTOR

ATTACHMENT 1

RESOLUTION NO. 11317

**A RESOLUTION APPROVING A LICENSE AGREEMENT BETWEEN THE
SACRAMENTO-PLACERVILLE TRANSPORTATION CORRIDOR JOINT POWERS
AUTHORITY AND THE PLACERVILLE AND SACRAMENTO VALLEY RAILROAD,
INC. FOR EXCURSION RAIL OPERATIONS**

WHEREAS, the City of Folsom is a member of the Sacramento-Placerville Transportation Corridor Joint Powers Authority (SPTC-JPA); and

WHEREAS, the SPTC-JPA is responsible for overseeing the use of the former Placerville Branch of the Southern Pacific Railroad, part of which extends through the City of Folsom; and

WHEREAS, the SPTC-JPA seeks to enter into a License Agreement with the Placerville and Sacramento Valley Railroad, Inc. (PSVRR) for excursion rail operations along the rail corridor; and

WHEREAS, both SPTC-JPA and City staff have reviewed the License Agreement and found it acceptable; and

WHEREAS, on November 4, 2024, the SPTC-JPA Board voted to approve the new seven-year License Agreement:

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Folsom approves the License Agreement between the Sacramento-Placerville Transportation Corridor Joint Powers Authority and the Placerville and Sacramento Valley Railroad, Inc. for Excursion Rail operations.

PASSED AND ADOPTED on this 14th day of January 2025, by the following roll-call vote:

AYES: Councilmember(s):
NOES: Councilmember(s):
ABSENT: Councilmember(s):
ABSTAIN: Councilmember(s):

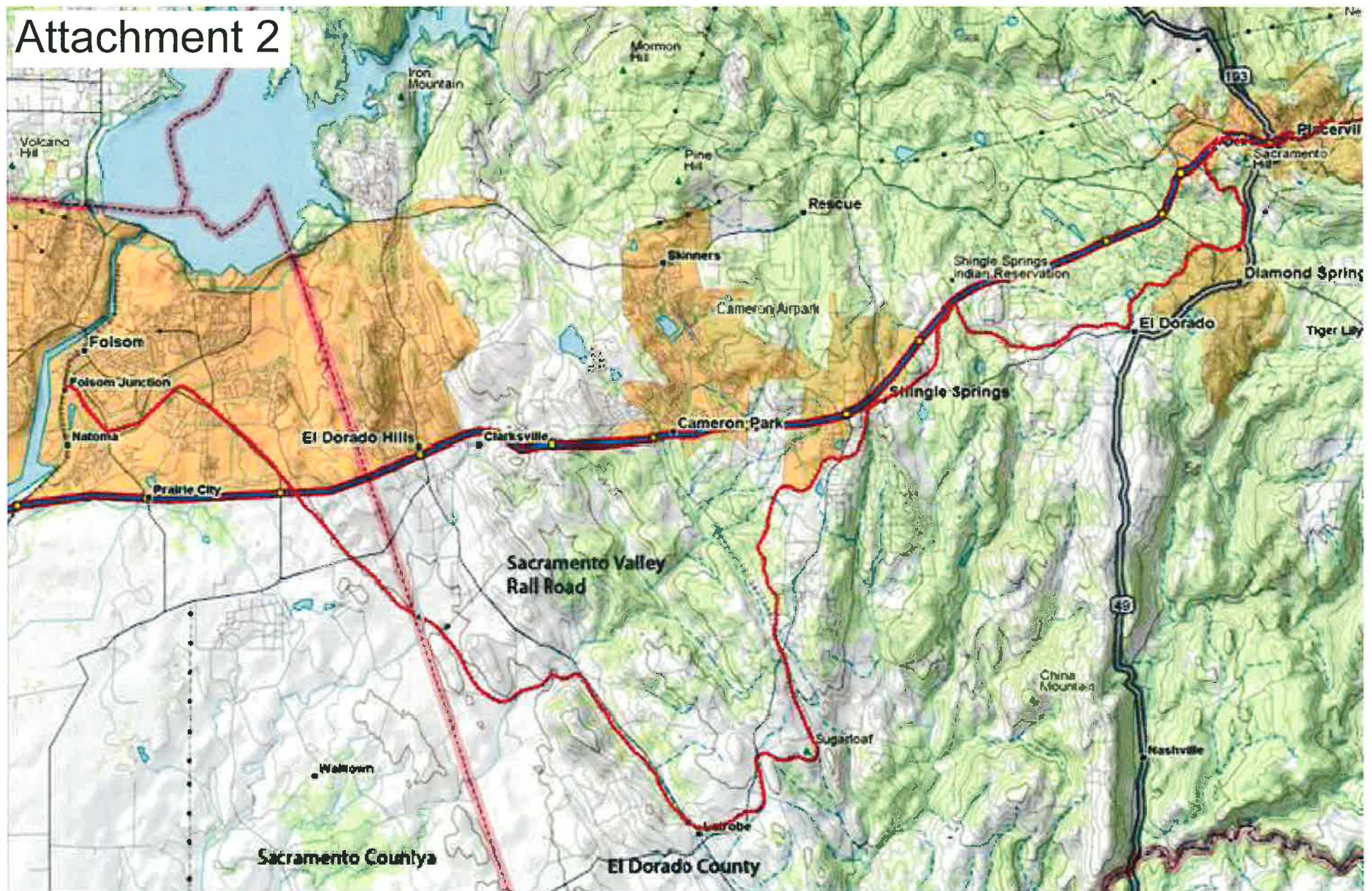
Sarah Aquino, MAYOR

ATTEST:

Christa Freemantle, CITY CLERK

ATTACHMENT 2

Attachment 2



ATTACHMENT 3

Attachment 3

LICENSE AGREEMENT FOR EXCURSION RAIL OPERATIONS

This License Agreement ("Agreement") is made effective as of December 1, 2024, by and between the **Sacramento-Placerville Transportation Corridor Joint Powers Authority**, a California joint powers agency ("**JPA**"), and the **Placerville and Sacramento Valley Railroad, Inc.**, a California nonprofit public benefit corporation ("**P&SVRR**").

Recitals

- A. On or about January 28, 2008, the JPA issued a Request for Proposal ("**RFP**") to solicit proposals from firms and individuals with experience, knowledge and qualifications necessary to operate an excursion rail service on a portion of the Rail Corridor covering approximately twenty-six (26) miles situated between the "Folsom Wye" (approximately milepost 111) and Shingle Springs Station (approximately milepost 137). The RFP required that the excursion rail service be operated without public subsidy and in such a manner as to preserve the excess width of the Rail Corridor for other potential uses, including natural trails, bicycle trails and equestrian trails.
- B. Pursuant to the RFP, on or about May 12, 2008, the JPA's Board of Directors selected the Folsom, El Dorado and Sacramento Historic Railroad Association ("**FEDSHRA**") as the entity with which to negotiate the operation of the excursion rail service.
- C. FEDSHRA representatives subsequently incorporated P&SVRR to act as the nonprofit entity responsible to develop and operate excursion rail service on the Rail Corridor and, by its signature below, the JPA hereby approves P&SVRR as the operator of excursion rail service.
- D. In January 2013, the P&SVRR and the JPA entered into a renewable license agreement for excursion rail services, with a five-year, renewable term. The operating limits of the license agreement adjusted to remove the El Dorado County section of the SPTC after the Board of Supervisors voted against the license agreement. The license agreement was renewed in 2018 and the renewed license expired in 2023.
- E. The JPA and P&SVRR desire to continue into this Agreement to set forth the terms and conditions under which excursion rail service will be operated. The parties therefore agree as follows:

Agreement

1. Definitions

- 1.1 The term "FRA" is defined as the United States Federal Railroad Administration or its regulatory successor.

- 1.2 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.
- 1.3 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.
- 1.4 The terms “include”, “includes”, and “including” are to be read as if they were followed by the phrase “without limitation.”
- 1.5 The term “JPA” is defined in the introductory paragraphs of this Agreement and includes its member agencies, and their respective directors, officers, employees, agents, and all others acting under its or their authority.
- 1.6 The term “Law” is defined as all laws, rules and regulations promulgated (or amended) by any governmental authority having jurisdiction over the License Property or activities permitted hereunder, including, without limitation, the California Public Utilities Commission and Federal Railroad Administration.
- 1.7 The term “License Property” is defined as the portion of the Rail Corridor extending from approximately milepost 111 (Folsom Wye, Folsom, CA) to approximately milepost 119.4 (Sacramento/El Dorado County Line) consisting of all real and personal property within 10 feet of the centerline of any track on the Rail Corridor except where roadways, buildings, or Rail Corridor boundary lines reduce such distance to less than 10 feet, or additional width is necessary for PUC-required clearances, or approved stations, storage/maintenance facilities, siding, or other similar railroad facilities.
- 1.8 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 JPA or P&SVRR; or (b) damage to or loss or destruction of any property, including the Rail Corridor, any adjacent property, and the roadbed, tracks, equipment, other property of the JPA or P&SVRR, and any property in the JPA’s or P&SVRR’s care or custody.

- 1.9 The term "Operating Segment" is defined as any segment of the License Property for which the JPA has given its written approval for Excursion Service operations pursuant to Section 2.1.
- 1.10 The term "Rail Corridor" is defined as the entire width of the Placerville Branch railroad right-of-way between approximately milepost 111 (Folsom Wye, Folsom, CA) and approximately milepost 144.9 (Missouri Flat Road, Diamond Springs, CA), purchased from Southern Pacific Transportation Company by the JPA, including all improvements thereto, whether now existing or hereafter constructed.
- 1.11 The term "Railroad Facilities" is defined as all tracks and other railroad property and fixtures, including rail, ties, switches, ballast, trackbeds, bridges, trestles, retaining walls, culverts, railroad signs, switch mechanisms, signals, grade crossings, active and passive grade crossing warning devices and other appurtenances located on the Rail Corridor.
- 1.12 The term "P&SVRR" 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.
- 1.13 The term "Excursion Service" is defined as the transportation of tourists by rail. Excursion Service does not include regularly-scheduled passenger transit or commuter service.

2. JPA Grants Rights

- 2.1. Excursion Service. The JPA grants P&SVRR the right to provide Excursion Service on the License Property, subject to the following conditions:
 - 2.1.1. P&SVRR shall conduct its operations in accordance with the Excursion Service Operating Plan set forth in Exhibit A, attached hereto and incorporated herein.
 - 2.1.2. Operating hours will be limited to weekends and holidays only.
 - 2.1.3. P&SVRR may schedule special events outside of the operating hours defined in Section 2.1.2 and the Operating Segments defined in Exhibit A, subject to prior written approval of the City of Folsom, County of Sacramento, or County of El Dorado, as applicable.
 - 2.1.4. P&SVRR will permit passengers to disembark only at stops approved by the JPA or a member agency in writing, or in the case of emergency.
 - 2.1.5. All Excursion Service operations and other activities permitted under this Agreement will be performed in compliance with applicable Law. Without limiting the generality of the foregoing, P&SVRR may not, in performing such Excursion 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.

- 2.1.6. P&SVRR will obtain and maintain all permits, licenses or other authorizations required from any municipal, county, state or federal authorities required in connection with the construction, maintenance, or repair of the License Property and the operation of the Excursion Service.
- 2.1.7. The portion of the License Property situated between milepost 111 (Folsom Wye, Folsom, CA) and milepost 116 (Iron Point Road Crossing, Folsom, CA) will be used only for movement of equipment and supplies and not for Excursion Service operations, except for special events authorized in writing by the City of Folsom as noted in Exhibit A attached.
- 2.1.8. P&SVRR will comply with any other operating rules deemed necessary or advisable by the JPA from time to time. In the event of any conflict between operating rules issued by the JPA and operating rules issued by a member agency, the operating rules issued by the member agency shall control.

2.2. Other Third-Party Licenses.

- 2.2.1. Third-Party Licenses. The JPA reserves the right to grant additional licenses over the License Property and the Railroad Facilities, provided that the JPA determines that any such licenses: (a) do not materially compete or conflict with P&SVRR's Excursion Service license to the extent of any regular Excursion Service operations, or special Excursion Service events, set forth in the Excursion Services Operating Plan defined in Exhibit A attached herein, (b) require the licensee to pay a reasonable share of P&SVRR's costs to provide dispatching, and to maintain and repair the portion of the License Property and Railroad Facilities used by the licensee, and (c) require the licensee to (i) provide insurance and (ii) indemnify and hold harmless P&SVRR and the JPA as to any Loss arising out of or related to licensee's operations. The JPA will consult with P&SVRR to determine the cost of dispatching services and a good faith apportionment of maintenance and repair costs for the portion of the License Property and Railroad Facilities used by the licensee.
 - 2.2.1.1. P&SVRR will provide dispatching services as necessary to facilitate the activity of any third-party licensee and to ensure the safety thereof.
 - 2.2.1.2. For purposes of Section 2.2.1(a), the term "materially compete or conflict" applies only to Excursion Service operations previously approved hereunder and not to P&SVRR's maintenance or repair activities, the scheduling of which shall be subordinate to events authorized under any third-party license granted by the JPA.

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

2.2.1.4. P&SVRR will reasonably cooperate with any third party holding rights to use the Rail Corridor.

- 2.3. Investigation. P&SVRR hereby acknowledges that (a) it has satisfied itself at the time of this Agreement with respect to the condition of the License Property and Railroad Facilities and their suitability for P&SVRR's intended use; (b) it has made such investigations as it deems necessary with respect to the License 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 the JPA nor any of the JPA's agents has made any oral or written representations or warranties with respect to the License Property or Railroad Facilities.
- 2.4. As-Is, Where-Is. P&SVRR will take the License Property in an "as-is, where-is" condition and 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 License 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 JPA's rights hereunder.
- 2.5. Release. P&SVRR, for itself, its successors and assigns, to the maximum extent permitted by Law, hereby waives, releases, remises, acquits and forever discharges the JPA, its officers, employees, agents, successors and assigns, from any Loss in any way arising out of, or connected with, the known or unknown, existing or future physical or environmental condition of the License Property and Railroad Facilities (including any Hazardous Materials contamination in, on, under, or adjacent to, the License Property, or any clearance constraints on the License Property), or any federal, state, or local Law, ordinance, rule or regulation applicable thereto.
- 2.5.1. P&SVRR hereby grants to JPA, on behalf of any insurer providing property, general liability, or automobile liability insurance to either P&SVRR or JPA with respect to the operations of P&SVRR, a waiver of any right to

subrogation which any such insurer of P&SVRR may acquire against JPA by virtue of the payment of any loss under such insurance.

- 2.6. The rights granted by the JPA under this Agreement are subject to all existing licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title that may affect the Rail Corridor and the word "grant" as used herein will not be construed as a covenant against the existence of any thereof.

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

- 3.1. JPA's Use of Rail Corridor. The foregoing granted rights are subject and subordinate to the JPA's prior and continuing right to use and maintain the Rail Corridor for any purpose that is not inconsistent with this Agreement. Without limiting the generality of the foregoing, the JPA may construct, maintain, repair, renew, use, operate, change, modify or relocate public projects of any kind, railroad tracks, signals, communication equipment, fiber optics, pipelines, or other facilities upon, along, or across any or all of the Rail Corridor and License Property, all or any of which the JPA may freely do at any time or times without liability to P&SVRR for compensation or damages, provided the JPA does not materially interfere with P&SVRR's rights and operations under this Agreement. The JPA will, to the extent possible, notify P&SVRR as soon as practicable of any such planned or actual interference and take reasonably practicable measures to minimize any such interference. P&SVRR shall reasonably cooperate with the JPA in implementing the foregoing uses of the Rail Corridor. Notwithstanding the foregoing, the JPA reserves the right to terminate this Agreement pursuant to the provisions of Section 7, below.
- 3.2. JPA's Inspection Access; Access for Maintenance. The JPA may, as reasonable and as coordinated in advance with P&SVRR, (i) inspect the License Property and the Railroad Facilities, including any rail-yard or maintenance facility used in connection with Excursion Service, and (ii) access the License Property and Railroad Facilities (including access with JPA or third party rail vehicles) as necessary to maintain areas of the Rail Corridor outside of the License Property that are not otherwise reasonably accessible.
- 3.3. Future At-Grade Crossings; Improvements to Existing Crossings. The parties acknowledge that local governments may desire to create or improve at-grade public crossings of the License Property. P&SVRR will, 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 P&SVRR shall be entitled to raise any reasonable safety concerns related to such crossings. P&SVRR will also cooperate with the construction of crossing improvements, as necessary.

4. **Maintenance and Operation of Railroad Facilities**

4.1. Maintenance of License Property and Railroad Facilities.

- 4.1.1. License Property and Railroad Facilities. P&SVRR, at its expense, will keep the License Property and Railroad Facilities in good repair and in a good and safe condition in conformity with applicable Law (including, without limitation, 49 CFR Part 213 – Track Safety Standards), any standard and permits required by the member agencies, and approved operating plans. P&SVRR is not obligated to maintain or repair the Rail Corridor outside of the License Property for other uses or purposes, including without limitation bike trails, hiking trails, or other recreational activities. P&SVRR acknowledges and agrees that areas outside of the License Property are used for other recreational activities and that use of the License Property by P&SVRR will not obstruct or interfere with such recreational use.
- 4.1.2. Crossings. In addition to the foregoing, for each crossing located within any Operating Segment, P&SVRR will maintain the surface of such crossing in accordance with CPUC General Order No. 72-B.VI (*Rail Joints in Crossing Area*), VII (*Maintenance of Crossing in Track Area*) and, to the extent reasonably within P&SVRR's control, X (*Surface of Crossings*). If unsafe conditions or disrepair are noted in any public road crossings, the JPA and its member agencies reserve the right to perform any maintenance or repair they deem necessary within the envelope of P&SVRR's maintenance responsibility set forth in the preceding sentence.
- 4.1.3. Optional Maintenance outside of License Property. P&SVRR may, at its option and only subject to a request approved by the applicable member agency, enter portions of the Rail Corridor outside the License Property that is located within the requesting member agency's jurisdiction to collect trash, maintain drainage, abate weeds or graffiti, clear fallen trees and branches, or address other conditions, as necessary to ensure the safety of P&SVRR's operations. The JPA grants P&SVRR a license to enter all portions of the Rail Corridor as necessary to perform such work; P&SVRR will repair any damage caused as the result of P&SVRR's performance of any such maintenance and shall perform the work in compliance with any standards and permits required by the member agencies.
- 4.1.4. Scope of Maintenance. For purposes of this Section 4.1, the maintenance and repairs to be performed by P&SVRR include, as required by applicable Law, (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 maintenance of track to at least Class 1 standards where required by Law, and 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) drainage management; and (d) compliance with all mandated reporting. The JPA will have no responsibility to maintain the trackage, structures, or any other Railroad Facilities. P&SVRR shall contract with a qualified track inspector reasonably acceptable to the JPA to perform an inspection of the trackage, structures and Railroad Facilities in the then-current Operating Segment at least annually. P&SVRR shall deliver the inspection reports to the JPA promptly after receipt thereof by P&SVRR. All such inspection reports shall be public information.

4.1.5. Notice of Assignment. Concurrently with the execution of this Agreement, both parties will execute and deliver to the FRA a written notice of the assignment of track inspection and maintenance responsibilities, and bridge safety management responsibilities, to P&SVRR in accordance with 49 CFR § 213.5(c) and 49 CFR § 237.3. The notice of assignment will attach a copy of this Agreement.

4.1.6. Release from Liability. P&SVRR, for itself, its successors and assigns, to the maximum extent permitted by Law, hereby waives, releases, remises, acquits and forever discharges the JPA, its officers, employees, agents, successors and assigns, from any Loss in any way arising out of, or connected with, existing or future (i) design flaws of public improvements, whether outside the License Property or within, or (ii) failure of JPA or its member agencies to maintain areas outside of the License Property. P&SVRR's exclusive remedy for any such Loss will be to abandon Excursion Operations as set forth in Section 7.4.

4.2. Ownership of Track Materials. All track materials installed by P&SVRR as part of the Railroad Facilities will be of equal or better quality than those track materials existing at the time of execution of this Agreement and will become the JPA's property. All materials removed by P&SVRR from the Railroad Facilities and replaced as part of maintenance, repairs, or capital improvements will become the property of P&SVRR, except for iron and hardware items such as rail, plates, switch signals, spikes and items of historical or archeological interest, which shall remain the property of the JPA. P&SVRR will not, without the prior written approval of JPA, remove track materials or other improvements from the Rail Corridor unless they are replaced as provided in this section. P&SVRR will keep a written record of track materials and other improvements removed from, or installed upon, the Rail Corridor and will provide an updated copy of the record to the JPA on an annual basis.

4.3. Clearing of Obstructions, Derailments, and Wrecks. P&SVRR will as soon as practicable clear any obstructions, derailments, and wrecks of railroad equipment or Railroad Facilities.

- 4.3.1. To the extent that any such obstruction, derailment, or wreck damages the Rail Corridor, P&SVRR will as soon as practicable restore the Rail Corridor to the condition it was in prior to the obstruction, derailment, or wreck.
- 4.3.2. If P&SVRR fails to comply with the provisions of this section, the JPA may perform the required action and charge P&SVRR the reasonable cost thereof.

4.4. Responsibility for Repair or Replacement.

- 4.4.1. Damage Caused by P&SVRR Operations. Except as otherwise set forth in this Agreement, P&SVRR will be responsible to repair or replace any damage to the License Property or Railroad Facilities caused by, or related to, P&SVRR's operations.
- 4.4.2. Damage Caused by Acts of God or Other Factors beyond P&SVRR's Control. If any portion of the License Property 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 P&SVRR's reasonable control, including damage or destruction caused by third parties, even if said damage or destruction originates outside of the License Property, then P&SVRR may, but will not be required to, at no cost or expense to the JPA, (a) repair, or cause to be repaired, the damaged or destroyed portion of the Railroad Facilities; (b) replace, or cause to be replaced, such portion of the License Property or the Railroad Facilities; or (c) seek to abandon its Excursion Service and rights under this Agreement over all or such portion of the Rail Corridor as P&SVRR deems appropriate, as set forth in Section 7.4.

5. **Construction, Relocation, or Removal of Railroad Facilities**

5.1. By the JPA.

- 5.1.1. The license herein granted is subject to the JPA's needs and requirements to improve and use the Rail Corridor. Subject to P&SVRR's rights under this Agreement, the JPA, at its sole cost and expense, may add to any portion of the Railroad Facilities, or change or relocate them to new locations as reasonably designated by the JPA, whenever, in the furtherance of the JPA's needs and requirements, the JPA finds such action to be necessary.
- 5.1.2. All such work performed, and any installation of Railroad Facilities, will be in conformance with all applicable Laws. If the JPA relocates any portion of the tracks, the centerline of the License Property will, upon completion of the relocation work, be deemed to have been modified to coincide with the centerline of the realigned tracks.

- 5.2. By P&SVRR. P&SVRR may, at its cost and expense, modify or improve the License Property and Railroad Facilities as needed to accommodate its Excursion Service; provided, however, that P&SVRR first obtains the written approval of both the JPA and the member agency where the License Property is located of P&SVRR's plans for such modifications and improvements, which approval may be granted or withheld in the member agency and the JPA's sole and absolute discretion. P&SVRR's modification or improvement of the License Property and Railroad Facilities may not interfere with or impede any existing or future public use of the Rail Corridor that the JPA may authorize. P&SVRR may, upon the termination of this Agreement or upon the abandonment of any applicable section of the License Property or portion of the Railroad Facilities, remove any modifications or improvements to such License Property or Railroad Facilities that were paid for by P&SVRR, that do not constitute any repair or replacement to such License Property or Railroad Facilities, and that have not become fixtures to such License Property or Railroad Facilities.
- 5.3. The terms, conditions, and stipulations expressed in this Agreement as to the License Property and Railroad Facilities will apply to the License Property and Railroad Facilities as they may at any time be expanded, added to, modified, changed, or relocated in accordance with this Section 5.
6. **License Fees.** Beginning on the commencement date of this Agreement and annually on January 1 each year thereafter, P&SVRR will pay JPA the sum of One Hundred Dollars (\$100.00) as a fee for the licenses granted hereunder.
7. **Term and Termination**
- 7.1. Term. This Agreement will become effective when fully executed and delivered by the parties and will continue in full force and effect until December 31, 2031, unless otherwise terminated as provided herein. Prior to the expiration of the term, the JPA will evaluate the Excursion Service operated by P&SVRR and consider an extension of the term hereof. Such determination will be made in the JPA's sole and absolute discretion.
- 7.2. JPA Suspension or Termination for Default.
- 7.2.1.1. Suspension. If the JPA determines in good faith that Excursion Service or other P&SVRR operations under this Agreement are being performed in an unsafe manner, the JPA may suspend all operations under this Agreement with immediate effect until all safety issues are corrected to JPA's satisfaction. JPA will have no liability or obligation to P&SVRR by reason of any such suspension.
- 7.2.1.2. Termination. If (i) P&SVRR does not substantially comply with the Operating Plan defined in Exhibit A, or the Operational Goals defined in Exhibit B, or (ii) P&SVRR remains in default in its performance of any covenant or Agreement contained herein for a period of 60 days after written

notice from the JPA to P&SVRR specifying such default, the JPA may, at its option, terminate this Agreement by written notice; provided however, that if such default cannot reasonably be cured within 60 days after such notice, the JPA may not terminate this Agreement provided that P&SVRR begins to cure the default within the 60-day notice period and proceeds diligently to complete such cure. JPA will have no liability or obligation to P&SVRR by reason of any termination for default.

7.3. JPA Termination for Other Reasons.

7.3.1. Rail Banking; Reactivation of Freight Service. The Rail Corridor was rail banked under the federal Rails to Trails concurrently with its acquisition by the JPA in 1996. Accordingly, the Rail Corridor and this Agreement are subject to potential reactivation of freight rail service. In the event an authorized freight rail operator reactivates freight service on the Rail Corridor, JPA and P&SVRR will consult and cooperate with one another in regard to the impacts and effects thereof. If this Agreement is terminated as to all or a portion of the License Property due to the reactivation of freight rail service, or if P&SVRR's rights are materially adversely affected as a result thereof, JPA will pay to P&SVRR any amounts JPA receives from freight operator on account of the unamortized cost associated with (A) any improvements made to the License Property by P&SVRR, or (B) deferred maintenance performed by P&SVRR to make the License Property operable for Excursion Service. Apart from the foregoing, JPA will have no liability or obligation to P&SVRR by reason of the reactivation of freight rail service.

7.3.2. Partial Termination for White Rock Road Realignment Project. The Capital Southeast Connector Joint Powers Authority (the "Connector Authority") and its member agencies intend to realign White Rock Road and improve its crossing with the Rail Corridor as part of a major regional connector parkway. Upon receipt of notice from the Connector Authority that it will require access to the Rail Corridor within six (6) months in connection with the White Rock Road crossing project, the JPA may, by giving sixty (60) days' written notice to P&SVRR, (a) temporarily prohibit use of the portions of the License Property as reasonably necessary to prevent conflict with the Connector Authority's White Rock Road crossing project, and (b) terminate this Agreement with respect to areas of the License Property south and east of a point that is 100 feet north of the northern edge of the realigned White Rock Road crossing. JPA will have no liability or obligation to P&SVRR by reason of any such actions in connection with the White Rock Road crossing project.

7.3.3. Termination for Other Public Project. The parties acknowledge that the Rail Corridor is a publicly-owned right-of-way that may be required for other public needs in the future and that the JPA's member agencies have certain rights to use the Rail Corridor, including the License Property, under the

Reciprocal Use and Funding Agreement among the JPA and its member agencies. Accordingly, the JPA reserves the right to terminate this Agreement with respect to all or a portion of the License Property for any public use that is incompatible with P&SVRR's continued operation (as determined by the JPA) under this Agreement. Such termination will be effective no earlier than 12 months following JPA's written notice to P&SVRR. The term "public use" does not include widening the trail or other recreational facilities that JPA's member agencies may desire to construct along the Rail Corridor.

7.3.3.1. If JPA terminates this Agreement under this Section 7.3.3 with respect to all or any portion of the License Property prior to the expiration hereof, JPA or its member agencies will compensate P&SVRR for the unamortized cost associated with (i) any improvements made to the License Property by P&SVRR, (ii) deferred maintenance performed by P&SVRR to make the License Property operable for Excursion Service and (iii) any rolling stock purchased by P&SVRR for P&SVRR's Excursion Service operations following execution of this Agreement, provided that all of the foregoing will belong to JPA upon termination of the Lease. JPA may review P&SVRR's records to substantiate such costs pursuant to Section 2.2.1.3. Apart from the foregoing, JPA will have no liability or obligation to P&SVRR by reason of such termination. In particular, the parties acknowledge and agree that this Agreement and P&SVRR's Excursion Service operations are for the public benefit and/or education, and not for personal profit. Accordingly, this Agreement and any goodwill from P&SVRR's operations will be deemed to have no value in the event of any such termination.

7.3.3.2. The provisions of this Section 7.3.3 apply only to a termination for a public project other than the White Rock Road crossing project (discussed in Section 7.3.2, above) and are not applicable to a termination for default or a partial termination in connection with the White Rock Road crossing project.

7.4. Abandonment of License Rights. P&SVRR may at any time, in its sole and absolute discretion, immediately and without any liability to the JPA, abandon its Excursion Service and terminate this Agreement upon delivery of written notice thereof to the JPA.

7.5. All obligations incurred by the parties prior to the termination of this Agreement will be preserved until satisfied.

- 7.6. Upon the effective date of termination of this Agreement, P&SVRR will, if so requested by the JPA, execute any documents reasonably necessary to evidence such termination and to effectuate the purpose and intent of this Agreement.
8. **Insurance.** P&SVRR will 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 JPA, or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in California.
- 8.1. P&SVRR Insurance: P&SVRR will, at its own cost and expense, provide and procure Commercial General Liability ("CGL") and, as applicable, Workman's Compensation or Federal Employer's Liability Act ("FELA"), insurance.
- 8.1.1. The CGL insurance policy providing bodily injury, including death, personal injury and property damage coverage will have a limit of not less than \$1 million each occurrence and \$2 million in the aggregate. The deductible or self-insured retention may not exceed \$10,000. The parties acknowledge that the prudent level of insurance required for rail operations will change throughout the term of this Agreement. The JPA reserves the right to require that P&SVRR raise its coverage limits to a level that conforms to the level of insurance commonly provided to short line and regional railroads with operations similar to those of P&SVRR on the License Property.
- 8.1.2. The CGL insurance policy must be written on a form at least as broad as ISO Occurrence Form CG 0001. This insurance will contain broad form contractual liability covering the indemnity provisions contained in this Agreement, coverage for railroad operations, and coverage for construction or demolition work on or near railroad tracks. Prior to the execution of this Agreement, P&SVRR will provide the JPA with a certificate of insurance on a standard ACORD form, or other form reasonably acceptable to the JPA, substantiating the required coverages and limits set forth herein. Upon request by the JPA, P&SVRR will 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.
- 8.1.3. The CGL insurance policy must include the JPA and each of its member agencies as "additional insureds" (using ISO Additional Insured Endorsement CG 20 26 or a substitute form reasonably acceptable to the JPA providing reasonably equivalent coverage).
- 8.1.4. Required Provisions: The CGL insurance policy will contain, or be endorsed to contain, the following provisions:
- 8.1.4.1. For any claims related to this Agreement, P&SVRR's insurance coverage will be primary insurance as respects the JPA, its member

agencies, and their respective directors, officers, employees, and agents and any insurance or self-insurance maintained by any of them will be in excess of P&SVRR's insurance and will not contribute to it.

8.1.4.2. Any failure by P&SVRR to comply with reporting or other provisions of the policies, including breaches of warranties, will not affect coverage provided to the JPA, its directors, officers, employees, or agents.

8.1.4.3. P&SVRR's insurance will 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.

8.1.4.4. Any exclusion for actions within 50 feet of a railroad shall be removed.

8.1.4.5. Each insurance policy required by this Agreement will be endorsed to state that coverage will 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 JPA.

8.1.5. Workers' Compensation or FELA insurance will cover any statutory liability as determined to be applicable by the compensation Laws of the State of California or FELA, as applicable, with a limit of at least \$1 million.

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

9. **Project Managers; Notices.** The JPA's project manager for this Agreement is its Chief Executive Officer, unless the JPA otherwise informs P&SVRR in writing. P&SVRR's project manager for this Agreement is its President, unless P&SVRR otherwise informs the JPA in writing. Each party to this Agreement may rely on the authority of the other party's designated project manager to take any action, or execute any notice or agreement, in connection with this Agreement. Any notice, report, or other communication required by this Agreement shall be mailed by first-class mail, or, if receipt thereof is acknowledged by the recipient, by facsimile or e-mail. The parties' addresses are as follows:

If to P&SVRR:

Jim Harville, President
Placerville & Sacramento Valley Railroad, Inc.
705 Sibley Street,
Folsom CA 95630
Telephone: 916-708-7368
E-mail: president@psvrr.org

If to JPA:

SPTCA-JPA Chief Executive Officer
c/o City of Folsom Public Works Department
50 Natoma Street
Folsom, CA 95630

10. **Claims and Liens for Labor and Material.** P&SVRR agrees to pay in full for all materials joined or affixed to the Rail Corridor, to pay in full all persons who perform labor upon the Rail Corridor, and not to permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the Rail Corridor, as to any work done or materials furnished thereon by P&SVRR or at P&SVRR's request. P&SVRR will indemnify, hold harmless and defend JPA (with counsel reasonably acceptable to JPA) 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.
11. **Property Taxes.** P&SVRR will 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 License Property or Railroad Facilities, including possessory interest taxes under California Revenue and Taxation Code section 107 *et seq.*, unless applicable Law otherwise excuses payment of taxes due to P&SVRR's nonprofit status or the JPA's ownership of the Rail Corridor, the License Property, or the Railroad Facilities.
12. **Indemnity.** P&SVRR will indemnify, defend and hold harmless the JPA from any Loss which is due to or arises from: (a) P&SVRR's operation, maintenance, repair, or use of the License Property, Railroad Facilities, any appurtenances thereto, or any part thereof; (b) P&SVRR's provision of Excursion Service; or (c) P&SVRR'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 sole negligence or willful misconduct of the JPA, its officers, agents, or employees. The provisions of this section will survive the termination or expiration of the term of this Agreement.
13. **Removal of P&SVRR Equipment, Personnel, and Property upon Termination of Agreement.** Prior to, or upon, the termination of this Agreement, P&SVRR will, at its sole expense, remove its equipment, personnel, and other property from the License Property and Railroad Facilities and will restore, to the JPA's reasonable satisfaction, such portions of the License Property and Railroad Facilities used by P&SVRR to as good a condition as they were in at the beginning of this Agreement, excepting normal wear and tear. If P&SVRR fails to do the foregoing, the JPA may do such work at the cost and expense of P&SVRR. P&SVRR may not remove any property, including the Railroad Facilities, that is or becomes the property of the JPA under this Agreement.
14. **Hazardous Substances and Wastes**
 - 14.1. P&SVRR will not be liable or responsible for any Hazardous Materials present on, in, or under the Rail Corridor, or other problems relating to the Rail Corridor, prior

to the effective date of this Agreement, except to the extent P&SVRR's activities exacerbate the contamination of any such pre-existing Hazardous Materials.

- 14.2. P&SVRR will comply with all applicable Laws in its occupancy, operation, and maintenance of the License Property and Railroad Facilities. Without first obtaining the JPA's written permission (which may be withheld in the JPA's sole and absolute discretion), P&SVRR will not treat or dispose of Hazardous Materials on the License Property or Railroad Facilities. P&SVRR will not release any Hazardous Materials on or at the License Property or Railroad Facilities, including through any drainage or sewer systems. P&SVRR assumes all responsibility for the investigation and cleanup of any such release or exacerbation by P&SVRR and will indemnify, defend, and hold harmless the JPA 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 P&SVRR. P&SVRR will assume all responsibility for and will indemnify, defend, and hold harmless JPA against all costs and claims associated with a release or leak of Hazardous Materials, or exacerbation of pre-existing Hazardous Materials, occurring during the term of this Agreement, and related to P&SVRR's use of the License Property or Railroad Facilities, unless such event was caused by the sole negligence or willful misconduct of the JPA, its officers, employees, or agents.
- 14.3. P&SVRR will not install any above-ground or underground storage tanks without the JPA's prior written consent, which consent may be granted or withheld in JPA's sole and absolute discretion. If such consent is granted, P&SVRR will obtain any necessary permits, notify the proper authorities, and provide the JPA with copies of any such permits and notifications. P&SVRR will assume all responsibility for and will indemnify, defend, and hold harmless the JPA against all costs and claims associated with a release or leak of the contents of any such tank occurring during the term of this Agreement, unless such event was caused by the sole negligence or willful misconduct of the JPA, its officers, employees, or agents.
- 14.4. If P&SVRR knows, or has reasonable cause to believe, that any Hazardous Materials have come to be located under or about the License Property or Railroad Facilities, other than as specifically provided herein or as previously consented to in writing by the JPA, P&SVRR will immediately give the JPA 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.
- 14.5. This Section 14 will survive the termination or expiration of the term of this Agreement.
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, will 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 will be held to be a waiver of any other or subsequent breach.

16. **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 will exercise good faith and reasonable judgment in granting or withholding such consent. No party may unreasonably withhold or delay its consent; consent will 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.
17. **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.
18. **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 will be ineffective to modify this Agreement in any respect unless in writing and signed.
19. **No Assignment Absent Consent.** P&SVRR will not assign this Agreement, in whole or in part, or any rights herein granted, without the JPA's prior written consent, which may be granted or withheld in its sole and absolute discretion.
20. **Successors and Assigns.** Subject to the provisions of Section 19, this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and assigns.
21. **Venue and Choice of Law**
 - 21.1. Any and all disputes, controversies, or claims arising out of, relating to, or in connection with this Agreement will be instituted and maintained in a competent court in Sacramento County, California and the parties hereby consent to the jurisdiction of any such court and to service of process by any means authorized under California Law.
 - 21.2. This Agreement will 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 will 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.

22. **Acts of God and Other Disruptions of Service.** Neither party will 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 strikes, insurrections, acts of God, or any other causes beyond the party's control; provided, however, that performance will only be excused for as long as the disruption persists.

23. **Miscellaneous**

23.1. 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 will remain in full force and effect and any invalid or unenforceable provisions will be enforced to the maximum extent possible so as to effect the intent of the parties and will 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 4.1.4 that P&SVRR 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 JPA, the JPA may, at its option, (i) undertake this obligation and charge P&SVRR for the cost thereof, or (ii) terminate this Agreement.

23.2. 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.

23.3. 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.

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

Signatures on the next page.

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

SACRAMENTO-PLACERVILLE
TRANSPORTATION JOINT POWERS
AUTHORITY, a joint powers agency

By: _____
Vickie Sanders, CEO

Approved as to legal form:

By: _____
Paul Chrisman,
Legal Counsel

PLACERVILLE & SACRAMENTO
VALLEY RAILROAD, INC.,
a California nonprofit public benefit corporation

By: _____
James M. Harville, President

By: _____
Marcus Ferrill, Secretary

LICENSE AGREEMENT
FOR
EXCURSION RAIL OPERATIONS

EXHIBIT A

EXCURSION SERVICE OPERATING PLAN

Useful Definitions:

‘Maintenance-of-Way (MoW)’ is the repair and maintenance of railroad infrastructure.

‘Milepost (MP)’ A wayfinding fixture on most railroads. The SPTC uses the historic Southern Pacific Railroad numbers, which denote the rail miles from One Market Street, San Francisco.

‘Motorcars’ are defined as smaller vehicles not restricted by weight from the right-of-way in its current condition. Typically former Maintenance-of-Way vehicles, these include the Weyerhaeuser ‘Skagit’ Motorcar #30 and similar pieces of equipment, and can be as small as a 2 seat inspection car.

‘Trains’ are defined as standard railroad equipment, including but not limited to locomotives, passenger coaches and freight cars (either converted to passenger service or used for Maintenance-of-Way). This equipment typically requires a slightly higher track maintenance standard for passenger service.

‘Xing’ Shorthand for an at-grade railroad crossing of a public or private road or trail.

Important Locations and their Abbreviations:

Location	Abbreviation	Milepost
Folsom Junction/Wye	FJ	111.2
East Bidwell Street Xing	EB	113.7
Willow Springs Station	WS	113.7
Oak Ave Parkway Xing	OP	114.4
Iron Point Road Xing	IP	116.0
Hampton Station	HS	116.4
White Rock Road Xing	WR	118.0
County Line	CL	119.4
Wetzel-Oviate Spur	WO	120.4
Deer Creek Xing	DC	122.5
Latrobe Road Xing	LR	126.1
Latrobe Whistestop	LW	126.4

Operating Segments:

Segment No.	From Milepost	To Milepost	Approved Operations
1	111.2 (FJ)	113.7 (EB)	Non-Revenue equipment moves/maintenance only
2	113.7 (EB)	114.4 (OA)	Revenue Operations (special events only – Sctn. 2.1.3)
3	114.4 (OA)	116.4 (HS)	Non-Revenue equipment moves/maintenance only
4	116.4 (HS)	119.4 (CL)	Revenue Operations (regularly scheduled service)
5	119.4 (CL)	126.4 (LW)	Revenue Operations (special events; light equipment/motorcars only – Sctn. 2.1.3)

Operating Schedule:

The anticipated operating tempo for this license term is between 40 and 60 days annually.

Regular revenue operations will be conducted on weekends in Segment 4, between Hampton Station (MP 116.4) and County Line (MP 119.4). These operations will be a mix of motorcar and/or train excursions, depending on the season, weather conditions, and customer demand. In addition to regular hourly excursions, Segment 4 may also be the venue for school field trips, occasional Dinner Trains, and select Holiday Trains. Hampton Station is also the site of our annual RailFest celebration.

A variety of events will also be held in Segment 2 (MP 113.7-MP 114.4), under the special events clause of the license agreement (Sctn. 2.1.3), and are approved using the City of Folsom's Special Event process. Typical of these are popular programs such as our Mother's Day Brunch, Pumpkin Patch Flyer, and Santa's Whistlestop Adventure.

Events within Segment 5 (MP 119.4-126.4) are also governed under Sctn. 2.1.3 of the license agreement, and a special event permit must be obtained for those events from the County of El Dorado. The departure point for these events might be Hampton Station, White Rock Station, or another location within El Dorado County previously approved by both the County of El Dorado and the JPA, per Sctn. 2.1.4 of the License Agreement. Excursions in this segment may include offerings such as the Deer Creek Flyer, Cothrin Comet, and Latrobe Breakfast Special.

Consistent with past approvals, P&SVRR requests the JPA and Member Agencies acknowledge and approve the following locations as established boarding points:

Willow Springs Whistlestop (MP 113.7 – Segment 2)
Oak Station (MP 114.4 – Segment 2)
Hampton Station (MP 116.4 – Segment 4)
White Rock Station (MP 118.0 – Segment 4)

Aerodrome Whistlestop (MP 119.3 – Segment 4)
Cothrin Station (MP 123.1 – Segment 5)
Latrobe Station (MP 126.1 – Segment 5)
Latrobe Whistlestop (MP 126.4 – Segment 5)

Capital Improvements:

P&SVRR has plans to complete the following capital improvement projects during this license term. The listed capital improvements may be performed by P&SVRR only with the written permission of the JPA and the respective member agencies:

- Install “run-around” sidings at Hampton Station and County Line
- Construct Hampton Station to City of Folsom standards

The following capital improvements may also be performed by P&SVRR if and only if they are authorized by the El Dorado County Board of Supervisors at any point during the term of this license agreement:

- Upgrade track and bridges to FRA Class 1 standard between County Line and Latrobe
- Repair Shingle Lime Mine Gap to allow equipment exchange with El Dorado Western RR
- Construct Latrobe Station to El Dorado County standards
- Install crossing gates, signs and markings at Latrobe Road crossing

The listed capital improvements may be performed by P&SVRR only with the written permission of the JPA, the respective member agencies, and the property owner:

- Conduct planning and design of a service/storage facility south of White Rock Road

Notwithstanding the foregoing, and due to the suspension of excursion service through the Folsom Plan Area (MP 116.5 – MP117.9), no Excursion Service of any kind shall be permitted on that portion of the License Property unless and until:

1. The JPA has received written confirmation from the Federal Railroad Administration (FRA) that the track through that portion of the License Property meets current FRA Class 1 standards, and specifically that the defects identified in the FRA Inspection Report, dated April 16, 2021, have been corrected and Excursion Service on that section is cleared to resume.
2. The JPA has received written confirmation from the California Public Utilities Commission (CPUC) that (a) the track through that portion of the License Property meets current FRA Class 1 standards, (b) the defects identified in the CPUC Railroad Safety Inspection Report, dated April 22, 2021, have been corrected and (c) all road crossings in that portion of the License Property have adequate crossing protection, or that an

alternative arrangement for the protection of said crossings has been approved by the CPUC, the JPA, and City of Folsom. The JPA and/or the City of Folsom may, but shall not be required to, seek to cause crossing arms or other protection to be installed in said crossings at no cost to the JPA or the City of Folsom.

Both parties understand that CPUC approval of any alternative arrangement for such crossings is temporary in nature and that, for excursion service to continue in that portion of the License Property, the Type 9 Crossing Protection called for in the original CPUC approval needs to be installed in a timeframe acceptable to CPUC. If for any reason that timeframe cannot be met, the JPA and/or City of Folsom may suspend this License Agreement indefinitely under the provisions of Section 7.2.1.

Copies of both inspection reports have been attached to this Exhibit A on the following pages.

FRA/CPUC INSPECTION REPORTS

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

INSPECTION REPORT

OMB Approval No.: 2130-0509

Inspector's Name Pendleton, Timothy M.		Inspector's Signature		Inspector's ID No. 68160		Report No. 33		Date yy mm dd 2021 04 16					
Railroad/Company Name & Address PLACERVILLE AND SACRAMENTO VALLEY RR, INC. 50 Natoma Street Folsom CA 95630				R/C R	Division SYSTEM	RR/Co. Representative (Receipt Acknowledged) Name Mark Rackovan Title City Of Folsom Email mrackovan@folsom.ca.us Signature _____							
				RR/Co. Code PSVR	Subdivision SYSTEM								
From: City FOLSOM		Codes 1300	Destination City & County			Codes	From Latitude						
State CA		06	City FOLSOM			1300	From Longitude						
County SACRAMENTO		C067	County SACRAMENTO			C067	To Latitude						
Mile Post: From 0116.40 To 0119.40			Inspection Point WALK AND MOTOR CAR MAIN TRACK			To Longitude							
Activity Code:	MTW	MTH											
Units:	1	2											
Sub Units:	0	0											
Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/ USC	Defect	Subrule	Speed	Class	Train #/Site	SNFR*	RCL**	# of Occ.***	Activity Code
1	0116.55	M	M	213	0121	C1	10	1		N	N	1	MTW
Description CENTER CRACKED OR BROKEN JOINT BAR (JOINTED TRACK). Next to bike crossing													
Seal Applied		Seal Removed		Hazard Class		UN/NA ID							
Violation Recommended <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				Latitude:		Longitude:							
Written Notification to FRA of Remedial Action is: <input type="checkbox"/> Required <input checked="" type="checkbox"/> Optional				Railroad Action Code <input type="text"/>		Date(mm/dd/yyyy): <input type="text"/>		Comments on back?					
Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/ USC	Defect	Subrule	Speed	Class	Train #/Site	SNFR*	RCL**	# of Occ.***	Activity Code
2	0116.70	M	M	213	0109	B2	10	1		N	N	1	MTW
Description CROSSTIES NOT EFFECTIVELY DISTRIBUTED TO SUPPORT A 39-FOOT SEGMENT OF TRACK.													
Seal Applied		Seal Removed		Hazard Class		UN/NA ID							
Violation Recommended <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				Latitude:		Longitude:							
Written Notification to FRA of Remedial Action is: <input type="checkbox"/> Required <input checked="" type="checkbox"/> Optional				Railroad Action Code <input type="text"/>		Date(mm/dd/yyyy): <input type="text"/>		Comments on back?					

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

INSPECTION REPORT
(Continuation)

OMB Approval No.: 2130-0509

Inspector's ID No. 68160	Report No. 33	Report Date 4/16/2021
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Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect	Subrule	Speed	Class	Train #/Site	SNFR*	RCL**	# of Occ.***	Activity Code
3	0116.80	M	M	213	0109	B3	10	1		N	N	1	MTW

Description

NO EFFECTIVE SUPPORT TIES WITHIN THE PRESCRIBED DISTANCE FROM A JOINT.
also a cluster of defective ties at this location.

Seal Applied	Seal Removed	Hazard Class	UN/NA ID
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Violation Recommended	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Latitude:	Longitude:
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Written Notification to FRA of Remedial Action is:	<input type="checkbox"/> Required <input checked="" type="checkbox"/> Optional	Railroad Action Code	Date(mm/dd/yyyy):	Comments on back?
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Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect	Subrule	Speed	Class	Train #/Site	SNFR*	RCL**	# of Occ.***	Activity Code
4										N	N	0	

Description - [** Comment to Railroad/Company **]

Multiple locations for long stretches are without shoulder ballast due to construction work. As the weather warms up and PSVR resumes operations it will be important to dump ballast on all empty shoulder locations.

All new grade crossings appear to be in non compliance with FRA and CPUC standards and is currently under investigation.

Seal Applied	Seal Removed	Hazard Class	UN/NA ID
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Violation Recommended	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Latitude:	Longitude:
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Written Notification to FRA of Remedial Action is:	<input type="checkbox"/> Required <input checked="" type="checkbox"/> Optional	Railroad Action Code	Date(mm/dd/yyyy):	Comments on back?
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CPUC Railroad Safety Inspection Report

California Public Utilities Commission
Railroad Operations and Safety Branch



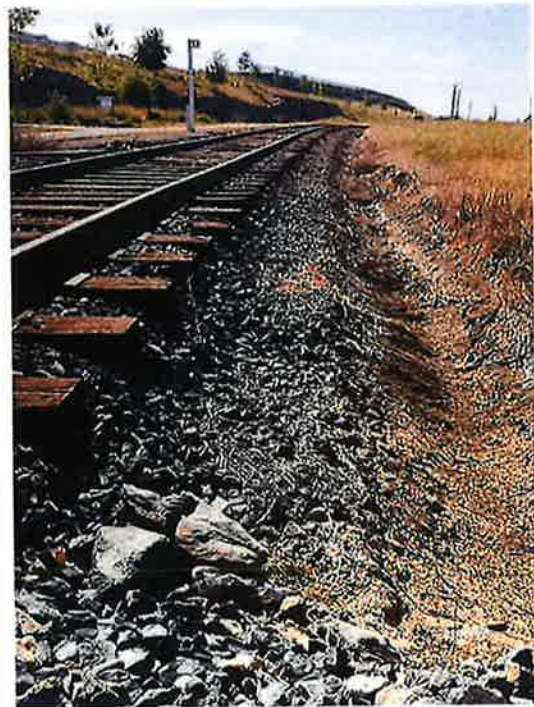
Lead Inspector	Casey Cova	Record ID	GOIN 2021040032				
Inspector Signature		Inspection Date	04/22/2021				
Railroad Information							
RR/CO Rep. Name	Mark Rackovan	Railroad ID	RRSPJX				
RR/CO Rep. Title	Chief Executive Officer, Sacramento-Placerville	Railroad Name	Sac-Placerville JPA				
RR/CO Rep. Signature		Address	9451 ATKINSON STREET ROSEVILLE, 95747				
Primary or Starting Location		Secondary or Ending Location					
City	Folsom	City	Folsom				
County	Sacramento	County	Sacramento				
Division or Line	Placerville	Division or Line	Placerville				
Subdivision or Line		Subdivision or Line					
Milepost	116.50	Milepost	117.90				
Inspection Notes							
CPUC crossing inspectors Stewart and Cova performed a walking inspection between mp 116.5 and mp 117.9							
Activity Code	118A	26D					
Activity Units	3	3					
Item	MP	Activity Code	Defect Code	Defect	# Occ.	Remedial Action	Citation Recommended
1	116.5	118A : INSPECTIONS ON WALKWAYS	104 : WALKWAY SLOPE IS EXCESSIVE, A GRADUAL SLOPE NOT TO EXCEED ONE INCH TO EIGHT INCHES	Yes	1	Yes	No
Track No. / Name / Crossing							
Bike path road crossing							
Description of Defects or Comments							

Drain installed near tracks has created an excessive slope from tracks and road crossing in the walkway.							
Item	MP	Activity Code	Defect Code	Defect	# Occ.	Remedial Action	Citation Recommended
2	117	118A : INSPECTIONS ON WALKWAYS	104 : WALKWAY SLOPE IS EXCESSIVE, A GRADUAL SLOPE NOT TO EXCEED ONE INCH TO EIGHT INCHES	Yes	1	Yes	No
Track No. / Name / Crossing							
116.5-117.5							
Description of Defects or Comments							
Drainage ditches dug along tracks create a tripping hazard in the walkway.							
Item	MP	Activity Code	Defect Code	Defect	# Occ.	Remedial Action	Citation Recommended
3		118A : INSPECTIONS ON WALKWAYS	102 : ROUGH AND UNEVEN SURFACE CREATES A TRIPPING HAZARD	Yes	1	Yes	No
Track No. / Name / Crossing							
Alder Creek road crossing							
Description of Defects or Comments							
Curb, drain,exposed utility boxes and crossing pads not filled in create a tripping hazard.							
Item	MP	Activity Code	Defect Code	Defect	# Occ.	Remedial Action	Citation Recommended
4		118A : INSPECTIONS ON WALKWAYS	102 : ROUGH AND UNEVEN SURFACE CREATES A TRIPPING HAZARD	Yes	1	Yes	No
Track No. / Name / Crossing							
Grand Prairie road crossing							
Description of Defects or Comments							
Curb, drain,exposed utility boxes and crossing pads not filled in create a tripping hazard.							

Item	MP	Activity Code	Defect Code	Defect	# Occ.	Remedial Action	Citation Recommended
5		118A : INSPECTIONS ON WALKWAYS	102 : ROUGH AND UNEVEN SURFACE CREATES A TRIPPING HAZARD	Yes	1	Yes	No
Track No. / Name / Crossing							
Mangini road crossing							
Description of Defects or Comments							
Curb, exposed utility boxes and crossing pads not filled in create a tripping hazard.							
Item	MP	Activity Code	Defect Code	Defect	# Occ.	Remedial Action	Citation Recommended
6		26D : INSPECTIONS ON CLEARANCES ISSUES	201 : STRUCTURES IMPAIR THE SIDE CLEARANCE CREATING A CONTACT HAZARD	Yes	1	Yes	No
Track No. / Name / Crossing							
Grand Prairie road crossing							
Description of Defects or Comments							
Sign post installed within 8'6" creates a contact hazard.							



Drain installed next to tracks creates an excessive slope in walkway.



Shoulders cut off ties for drainage create a tripping hazard in the walkway.



New crossings installed create multiple tripping hazards in the walkway (raised utility boxes, curb raised above sidewalks and roadway, crossing pads not filled in with ballast, and large rocks)



Sign post installed within 8' 6" of track center creates a contact hazard.

PUBLIC UTILITIES COMMISSION

180 Promenade Circle, Suite 115
Sacramento, CA 95834



April 27, 2021

File: CORS2021040001

Mark Rackovan, P.E.
Engineering Operations Manager
City of Folsom
50 Natoma Street
Folsom, CA 95630

Re: New Rail crossings over PSVRR tracks in the City of Folsom

Dear Mr. Rackovan:

On April 22, 2021, I performed an inspection of the City of Folsom (City) crossings over Placerville and Sacramento Valley Railroad (PSVRR) tracks that were approved by the California Public Utilities Commission (CPUC/Commission) in Applications (A).15-04-005, 15-04-006, and 15-04-007. A.15-04-004 was also approved by the Commission but the crossing has not been constructed.

Results and recommendations from my inspection are listed below.

- A. A.15-04-005 – Approved as “C” Street, named Grand Prairie. CPUC Crossing Number (No.) 130AH-117.40 and US Department of Transportation (DOT) No. 968335R.
 - a. Missing required Commission Standard 9 warning devices.
 - b. Missing RXR and stop bars pavement markings.
 - c. Missing Emergency Notification System (ENS) signs.
 - d. Tripping hazard in northeast and southeast quadrants.
- B. A.15-04-006 – Approved as “A” Street, named Mangini Parkway. CPUC Crossing No.130AH-117.70 and DOT No. 968334J.
 - a. Missing required Commission Standard 9 warning devices.
 - b. Missing RXR and stop bars pavement markings.
 - c. Missing ENS signs.
 - d. Tripping hazard in northeast and southeast quadrants.
 - e. Missing California Manual on Unified Traffic Control Devices (CAMUTCD) W10-3 Advanced warning signs on both approaches of Old Placerville Road.
- C. A.15-04-007 – Approved as “Easton Valley Parkway” Street, named Alder Creek. CPUC Crossing No.130AH-117.00 and DOT No. 968332V.
 - a. Missing required Commission Standard 9 warning devices.
 - b. Missing RXR and stop bars pavement markings.
 - c. Missing ENS signs.
 - d. Tripping hazard in northeast and southeast quadrants.
 - e. Missing CAMUTCD W10-1 Advanced warning signs in westbound direction.

Mark Rackovan, P.E.
CORS202104001
April 27, 2021

The unregistered trail crossing needs to be closed. Commission staff recommends that the City incorporate the trail crossing into the design of the proposed New Placerville Road crossing for both crossings Commission approval.

These crossings need to be brought into compliance with the CAMUTCD and GOs 26-D, 75-D, and 118-A as soon as possible. Please prepare a schedule to remedy these conditions and respond to the CPUC within 15 days of receipt of this letter.

If you have any questions, please feel free to contact me at (916) 928-2515.

Sincerely,

A handwritten signature in black ink, appearing to read "David Stewart", with a long horizontal flourish extending to the right.

David Stewart
Utilities Engineer
Rail Crossings & Engineering Branch
Rail Safety Division

Cc:
Tim Pendleton, FRA
Casey Cova, CPUC

LICENSE AGREEMENT
FOR
EXCURSION RAIL OPERATIONS

EXHIBIT B

Operating Goals

Based on the P&SVRR Operating Plan as set forth in Exhibit A, the following Excursion Service operational expectations are defined.

1. Annually, P&SVRR will submit a report to the SPTC JPA Board summarizing P&SVRR's target goals and actual numbers achieved for the following performance measures:
 - a. Ridership
 - b. Revenue
 - c. Capital improvement progress
 - d. Track maintenance progress
2. If the JPA chooses at any time to obtain an independent track inspection, the JPA will provide P&SVRR prior notice of the date and time of any such inspection. If that inspection results in a Corrective Action Plan to prioritize and guide track maintenance, P&SVRR agrees to incorporate any Corrective Action Plan approved by the JPA into its maintenance schedule.
3. During the term of this agreement, P&SVRR agrees to provide JPA staff current copies of all applicable P&SVRR Operating Rules, Timetables, General Orders, and Special Instructions that govern P&SVRR operations, and to also provide any applicable amendments, revisions, or changes to same as they occur. P&SVRR will also provide links to all online training and testing materials used by P&SVRR, and assist JPA staff in the navigation and understanding of same. Furthermore, P&SVRR will endeavor in good faith to keep JPA apprised of any relevant changes to the General Code of Operating Rules (GCOR), FRA/CPUC regulations, and any other Laws, regulations or guidelines that may apply to P&SVRR operations.