

**SACRAMENTO-PLACERVILLE TRANSPORTATION CORRIDOR (SPTC)
LEASE AGREEMENT #298-L1611**

THIS LEASE is made and entered by and between **SACRAMENTO-PLACERVILLE TRANSPORTATION CORRIDOR JOINT POWERS AUTHORITY**, a California joint powers agency (hereinafter "SPTC-JPA"), the **COUNTY OF EL DORADO** (hereinafter "County"), a political subdivision of the State of California (SPTC-JPA and County collectively referred to hereinafter as "Lessor"), and **EL DORADO WESTERN RAILWAY FOUNDATION**, a Public Benefit Corporation, lawfully doing business in the State of California (hereinafter "Lessee").

RECITALS

WHEREAS, the Sacramento-Placerville Transportation Corridor Joint Powers Authority was established in 1991 by the County of El Dorado, County of Sacramento, the City of Folsom, and the Sacramento Regional Transit District ("Member Agency"), for the acquisition and preservation of the Southern Pacific Placerville Branch Railroad Right of Way ("Rail Corridor"); and

WHEREAS, the SPTC-JPA acquired title to the Rail Corridor in 1996 and has delegated the responsibility for management of the portion of the Rail Corridor located within each Member Agency's jurisdiction to said Member Agency on behalf of the SPTC-JPA pursuant to the Reciprocal Use and Funding Agreement among SPTC-JPA and its Member Agencies dated August 31, 1996; and

WHEREAS, the SPTC-JPA may, upon receipt of a written request from the affected Member Agency, grant any lease, easement, license or other permit which complies with the conditions set forth in Section 7 of the RUFA and which does not involve the conveyance of all of the STPC-JPA's interest in any portion of the Rail Corridor; and

WHEREAS, the real property referred to as APN 090-040-31 and depicted in Exhibit "A" attached hereto and incorporated herein by reference ("Property") is owned by the SPTC-JPA and managed by the County; and

WHEREAS, the Property was leased by Shingle Springs Station, LLC pursuant to Lease Agreement #231-L0511 which was approved by the County Board of Supervisors and executed on October 7, 2004, Amendment I on January 31, 2006 and Amendment II on January 27, 2015 all incorporated herein, including all attachments and exhibits thereto, and made by reference a part thereof; and

WHEREAS, Lease Agreement #231-L0511 is terminated effective December 31, 2015; and

WHEREAS, Shingle Springs Station, LLC transferred ownership of all improvements on the Property, including any buildings, to El Dorado Western Railway Foundation effective January 1, 2016; and

WHEREAS, El Dorado Western Railway Foundation is a Public Benefit Corporation whose purpose is to raise funds and purchase equipment to support the El Dorado Western Railroad Program; and

WHEREAS, El Dorado Western Railway Foundation will assume all obligations, covenants, and conditions and/or liabilities of the previously entered sublease agreement for a portion of the Property with Karen Morse, doing business as Antique Depot, (hereinafter referred to as "Sub-Tenant") to provide a sale of antique business for the community; and

WHEREAS, El Dorado Western Railway Foundation desires to lease the Property from Lessor for the purpose of continuing lawful business activities in the building, such as the business operations of Sub-Tenant; and

WHEREAS, any rent collected by El Dorado Western Railway Foundation from Sub-Tenant will be used to offset the costs associated with the El Dorado Western Railroad Program which is a public benefit to the residents of El Dorado County.

NOW, THEREFORE, the parties agree to the terms and conditions set forth below.

AGREEMENT TERMS

1. **Lease.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the Property. No rent will be charged to Lessee for lease of the Property provided any rent collected by Lessee from Sub-Tenant is used to offset the costs associated with the County's Museum Railroad Program and as such, Lessee is providing a public benefit to the residents of the County.

2. **Term of Agreement.** This Lease is effective upon the full execution of this agreement by both parties and shall cover the period of January 1, 2016 through December 31, 2020 ("Initial Term"). The term of this agreement may be extended by mutual agreement of Lessor and Lessee, subject to the other provisions of this agreement and the approval or disapproval of the SPTC-JPA CEO or Board as it deems necessary.

3. **Extension Provisions.** This Lease may be extended by mutual agreement of Lessor and Lessee for two (2) additional period(s) of five (5) years per extension. Lessee shall indicate its intent to seek an extension in writing to Lessor at least sixty (60) days prior to the expiration of the then current term.

4. **Use of Leased Property.**

A. Permitted Use. The Property is leased to Lessee for the sole purpose of conducting business and activities related to support the El Dorado Western Railroad Program and as permitted by law. This Lease shall be binding on and shall inure to the benefit of the successors and assignees of both parties. Lessee acknowledges that the Leased Property is the property of Lessor and that Lessee has only the right of possession and use thereof upon the terms, covenants and conditions set forth in this Lease. Lessee's failure to comply with these and other conditions of the use of the Property shall constitute a material breach of this Lease.

B. Compliance with Laws. Lessee will comply with all statutes, ordinances, and requirements of local, state, and federal laws now in force or which may later be in force regarding use of the Property, including, without limitation, those

relating to health, safety, noise, environmental protection, waste disposal, and water and air quality. If any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Property of any Hazardous Material introduced on or about the Property or the Rail Corridor by Lessee or any agent of Lessee, or resulting from actions of Lessee or Lessee's agents, then Lessee, at its sole expense, must clean up any such Hazardous Material or contamination to the reasonable satisfaction of Lessor and otherwise to the satisfaction of any governmental body having jurisdiction thereof. Lessee shall defend, release, indemnify and hold harmless Lessor, its officers, employees, and agents, from and against all liability, cost and expense (including without limitation any fines, penalties, judgments, litigation costs, and reasonable attorneys' fees) incurred by Lessor resulting from the discharge, leakage, spillage, emission or pollution upon or from the Property of any Hazardous Material.

As used herein, "Hazardous Material" means any chemical, substance, or material which is listed now or in the future, defined, or regulated in any manner by any federal, state or local environmental, health, and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adopted in the future which are or become applicable to Lessee, the Property or the Rail Corridor based upon, directly or indirectly, its properties or effects.

5. Prohibited Use. Lessee shall not commit or permit the commission of any acts on the Property nor permit the use of the Property in any way that will:

- (a) Violate or conflict with any law, statute, ordinance, governmental rule or regulation whether or not currently in force or hereinafter enacted, governing the leased land;
- (b) Constitute commission of a waste on the leased land;
- (c) Adversely affect the current or projected future uses of the adjacent right-of-way property not under lease to Lessee; and

(d) Violate other provisions of the agreement such as, but not limited to, Paragraph 6 of this agreement.

6. Compliance With SPTC-JPA Requirements. Lessee acknowledges and agrees that it or its successors and assignees' use of the Property shall not adversely affect or otherwise prevent other uses of the adjacent SPTC-JPA right-of-way property not under lease to Lessee that are allowed or required by federal, state or local laws or regulations or any governing land use planning documents/policies promulgated by Lessor and/or SPTC-JPA relating to Rail Corridor uses. Lessee further acknowledges and agrees that the SPTC-JPA Rail Corridor must be available for actual rail use pursuant to federal law and the terms under which SPTC-JPA acquired title to the Rail Corridor.

7. Restrictions on Use, Transfers and Encumbrances. Parties acknowledge that the Property is but one segment of a continuous Rail Corridor and that some portions of the Rail Corridor may be subject to reversionary rights in the event portions of the Rail Corridor: (a) cease to be used for transportation purposes and/or (b) are used for purposes inconsistent with any Notice of Interim Trails Use issued by the Interstate Commerce Commission or Surface Transportation Board and any amendments or extension thereof (the "NITU's"). Notwithstanding anything to the contrary in this Agreement, Lessee agrees that: (i) Lessee will not use nor permit the use of the Property in a manner which would cause any reversionary rights in the Property to vest, other than such rights of the State of California as may vest pursuant to an executed "Fund Transfer Agreement" allocating State funds for the purchase of the Rail Corridor or otherwise threaten the continuity of any portion of the Rail Corridor; (ii) use of the Property will not violate the terms of any NITU's with respect to the Rail Corridor; and (iii) Lessee will not use nor permit the use of the Property to be in conflict with the terms of any then-existing "Fund Transfer Agreement", leases, easements, licenses or other agreements affecting the Leased Property. Any attempt to sell, transfer, convey, alienate, encumber, hypothecate, pledge, or otherwise dispose of any interest in the Leased Property, or use or all or any portion of the Property in violation of this Section shall be void and confer no rights on the transferee.

8. Termination. This agreement may be terminated under the following circumstances, upon written notice being provided to Lessee by Lessor at least thirty (30) days before the termination takes effect.

(a) By mutual written agreement of both parties or their successors and assigns.

(b) If Lessee defaults in the performance of or breaches any provision, covenant or condition of this Lease and such default or breach is not cured within thirty (30) days after written notice thereof given by Lessor to Lessee.

(c) If Lessee abandons the Property prior to the expiration of the term of this Lease.

(d) If Lessor determines that the Property is needed for Rail Corridor projects incompatible with the existing leased uses, Lessor reserves the right to terminate the Lease on grounds of necessary public use as determined solely by the governing boards of County and/or SPTC-JPA. Lessor and Lessee agree that Lessee will not be owed any damages or compensation at time of termination because of the existing public ownership of the Property.

(e) If Lessor receives notice from the Federal Transit Administration, the Federal Railroad Administration, the California Transportation Commission, or the California Department of Transportation, any successor agency of any of the preceding agencies, or any other governmental agency (whether now existing or later created) with jurisdiction the Rail Corridor, or any operations therein, that Lessee's use of the Property under this Lease interferes with or is incompatible with Lessor's use of the Property and/or requires Lessor to terminate this Lease.

(f) SPTC-JPA acquired the Rail Corridor from the Southern Pacific Transportation Company ("SPTC"), subject to a rail banking order by the Surface Transportation Board pursuant to the "Rails to Trails Act" (16 U.S.C. Section 1247(d)). The Union Pacific Railroad ("UPRC") is the successor in interest to SPTC and presently holds the right to reactivate freight rail service on the portion of the Rail Corridor containing the Property. If freight rail service is reactivated,

Lessor reserves the right to terminate this Lease, or at its sole option, negotiate an amendment to this Lease that would allow Lessee to use the Property subject to any additional terms and conditions required by the entity reactivating freight rail service.

Upon the expiration or sooner termination of the Lease, all improvements upon the land, including any buildings, shall remain thereon and thereupon shall become the property of Lessor unless removed by Lessee within three (3) months of the expiration or sooner termination of the Lease at Lessee's sole expense.

9. Taxes and Assessments. Lessee shall be responsible for payment before delinquency of all taxes, assessments, license fees, and other charges, including, but not limited to, possessory interest taxes that are levied and/or assessed against Lessee's personal property or improvements installed or located in or on the Property or on Lessee's interest in the Property and that become payable during the term of this Lease. Pursuant to the provisions of Revenue and Taxation Code Section 107.6, Lessee acknowledges that Lessee's interest in the Property which is created by this Lease may be assessed a possessory interest tax.

10. Assignment Or Subleasing Property. Lessee shall not sublease, encumber, assign, or otherwise transfer its rights or interests under this Lease, without the express written consent of Lessor first had and received, provided said consent shall not be unreasonably withheld. Lessor hereby consents to a sublease to the sub-Tenant identified hereinabove conditioned upon the following: (i) the sublease to sub-Tenant shall be only for that portion of real property described in Exhibit A; (ii) sub-Tenant shall maintain insurance at sub-Tenant's own expense during the term of the sublease, and shall provide evidence of insurance to County at the time of execution of the sublease, that complies with the limits, types and requirements described in Section 11 below. Said insurance shall be in addition to and shall not replace the Lessee's insurance; (iii) Lessee and sub-Tenant shall be responsible for all permits, licenses, and approvals for the additional use of the Property by sub-Tenant; and (iv) nothing by way of this sublease shall release or extinguish any of the obligations of Lessee under this Lease.

11. INSURANCE REQUIREMENTS:

Lessee shall maintain, at Lessee's own expense during the term hereof, insurance with respect to its business, and all activities, on or about or in connection with its business, in the types and in the minimum amounts described generally as follows:

- A. Full Worker's Compensation and Employers' Liability Insurance covering all employees of the undersigned as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000.00 aggregate limit.
- C. Property insurance on real property covered by this Lease under a standard "All Risk" policy." The policy shall insure for not less than ninety percent (90%) of the replacement value of the property.
- D. Lessee shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- E. The insurance shall be issued by an insurance company acceptable to the Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to County's Risk Management Division.
- F. Lessee agrees that the insurance required herein shall be in effect at all times during the term of this Lease. In the event said insurance coverage expires at any time or times during the term of this contract, Lessee shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the event Lessee fails to keep in effect at all times insurance coverage as herein provided, Lessor may, in addition to any other remedies it may have, terminate this Lease upon the occurrence of such event. New certificates of insurance are subject to the approval of County's Risk Management Division.

G. The certificate of insurance must include the following provisions stating that:

1. The insurer will not cancel the insured's coverage without 30-day prior written notice to County; and
2. The County of El Dorado, its officers, officials, employees and volunteers and the Sacramento Placerville Transportation Corridor Joint Powers Authority are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all general and excess liability insurance policies.

H. Lessee's insurance coverage shall be primary as respects Lessor, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Lessor, its officers, officials, employees or volunteers shall be excess of Lessee's insurance and shall not contribute with it.

I. Any deductibles or self-insured retention must be declared to and approved by Lessor. At the option of Lessor, either: insurer shall reduce or eliminate such deductibles or self-insured retention as respects Lessor, its officers, officials, employees and volunteers; or Lessee shall procure a bond guaranteeing payment of losses and related investigations; claim administration and defense expenses.

J. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to Lessor, its officers, officials, employees or volunteers.

K. The insurance companies shall have no recourse against Lessor, its officers, officials and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

L. Lessee's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.

M. In the event Lessee cannot provide an occurrence policy, Lessee shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of this Agreement.

N. The Certificate of insurance shall meet additional standards as may be determined by Lessor's Risk Management Division as essential for protection of Lessor.

12. Indemnification. Lessee shall indemnify, defend, and hold harmless Lessor, its officers, agents, and employees, from and against any claims, actions, suits, costs, expenses (including reasonable attorney's fees) and other costs of defense incurred or liabilities, whether for damage to or loss of property, or injury to or death of person, which in any way arise from or are connected with the acts or omissions of Lessee or its officers, agents, employees, contractors, subcontractors, or business invitees, in connection with or related to the rights and obligations created by this Lease.

13. Maintenance and Repairs; Utilities. Lessee shall, at all times during the term of this Lease and any renewal or extension thereof, be responsible for maintaining, at Lessee's sole cost and expense, the Property and any improvements thereon in a good, clean, and safe condition, and shall on expiration or termination of this Lease surrender the Property to Lessor in as good condition and repair as the Property is on the date of this Lease, reasonable wear and tear excepted. Lessee shall solely pay for costs to repair, replace, or rebuild any portion of the Property damaged by Lessee or its officers, agents, employees, contractors, subcontractors or business invitees. It shall also be the sole responsibility of Lessee to make any modifications to the Property that are necessary to comply with the requirements of the American with Disabilities Act (ADA). Lessee shall also furnish and pay for all charges for refuse collection, water, sewer, gas, electricity, and other utilities supplied to and used in the Property.

14. Notices. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to either party hereto by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the party, Lessor or Lessee, to

whom it is directed or any managing employee of such party or, in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid, addressed to:

County of El Dorado
Chief Administrative Office
Facilities Division
3000 Fairlane Court
Placerville, CA 95667
Attn: Russell Fackrell, Facilities Manager
Telephone: (530) 621-7596

All notices will be sent to the Lessor below:

El Dorado Western Railway Foundation
c/o El Dorado County Historical Museum
104 Placerville Drive
Placerville, CA 95667
Attention: Mary Cory, Secretary
Telephone: (530) 621-5828

Either party, Lessor or Lessee, may change its address for purposes of this paragraph by giving written notice of the change to the other party in the manner provided in this paragraph.

15. Nondiscrimination. All or a portion of the subject Property and/or improvements have been all or partially funded by financial assistance from the United States Department of Transportation, Federal Transit Administration. Lessee agrees to comply with the required federal nondiscrimination clauses as set forth below:

A. Lessee covenants and agrees that facilities constructed, maintained, or otherwise operated on the Property must be maintained and operated in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Office of the Secretary, Part 21, Nondiscrimination of Federally-Assisted Programs of the Department of Transportation of Title VI of the Civil Rights Act of 1964, and as the regulations may be amended.

B. Lessee hereby covenants and agrees that: (1) no person on the grounds of sex, race, color, religion, handicap, or national origin will be excluded from

participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of the facilities, (2) that in the construction of any improvements on, over, or under such land the furnishing of services thereon, no person on the grounds of sex, race, color, religion, handicap or national origin will be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination, and that (3) Lessee must use the Property in compliance with the requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation, -- effectuation of Title VI of the Civil Rights of 1964, and as the regulations may be amended.

16. California Forum and Law. Any dispute resolution action arising out of this agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

17. Attorney's Fees. Should any litigation be commenced between Lessor and Lessee concerning the leased property, this Lease, or the rights and duties of either Lessor or Lessee in relation thereto, the party, Lessor or Lessee, prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for its attorney's fees in the litigation which shall be determined by the court in such litigation or in a separate action brought for that purpose.

18. Entire Agreement. This Lease contains the entire agreement of the parties with respect to the matters covered by this Lease, and no other agreement, statement or promises made by any party to any employee, officer or agent of any party, which is not contained in this Lease, will be binding or valid. No waiver, alteration, modification, termination or cancellation of this Lease is valid unless made in writing and signed by the authorized parties hereof.

19. Severability. If any provision, clause or part of the agreement, or the application thereof under certain circumstances, is held invalid, the remainder of this agreement or

the application of such provisions, clauses, or parts under other circumstances shall not be affected thereby.

20. Waiver. The waiver of any breach of any of the provisions of this Lease by Lessor shall not constitute a continuing waiver or a waiver of any subsequent breach by Lessee either of the same or of another provision of this Lease.

21. No Third Party Beneficiary. Nothing in this Lease is intended, nor will be deemed to confer rights or remedies upon any person or legal entity not a party to this Lease.

22. Lease Administration. The County officer or employee with responsibility for administering this Lease is Russell Frackrell, Facilities Manager, Chief Administrative Office, or successor.

DEPARTMENT HEAD CONCURRENCE:

Dated: 6/9/2016 Signed: 
Jeanne Amos, Library Director

DEPARTMENT HEAD CONCURRENCE:

Dated: 6/10/2016 Signed: 
Vickie Sanders, Parks Manager

LEASE ADMINISTRATOR:

Dated: 6/22/16 Signed: 
Russell Frackrell, Facilities Manager

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement 298-L1611 on the dates indicated below.

LESSEE: EL DORADO WESTERN RAILWAY FOUNDATION

Dated: 7-26-16 Signed: 
Edward W. Cuna
President

Dated: 7/26/2016 Signed: 
Mary Cory
Corporate Secretary

LESSOR: COUNTY OF EL DORADO

Dated: 8/2/16 Signed: 
Ron Mikulasec, Chair
Board of Supervisors

ATTEST:

James S. Mitrusin, Clerk of the Board of Supervisors

By: 
Deputy Clerk

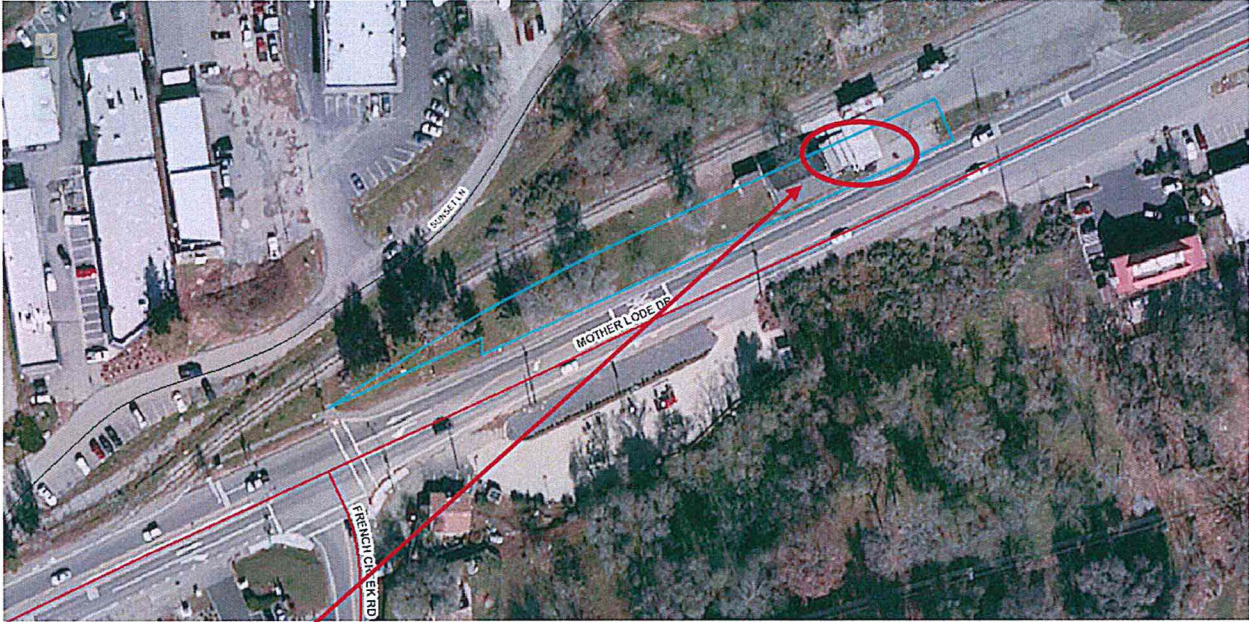
Dated: 8/2/16

EL DORADO COUNTY
C.A.O.
2016 JUL 28 AM 8:07

**SACRAMENTO-PLACERVILLE TRANSPORTATION CORRIDOR
JOINT POWERS AUTHORITY**

Dated: 7/20/16 Signed: 
John C. Segerdell
Chief Executive Officer

Exhibit "A"



Sub-Tenant