

SACRAMENTO-PLACERVILLE TRANSPORTATION CORRIDOR

LEASE AGREEMENT #251-L0911

AMENDMENT I

THIS AMENDMENT I to Lease Agreement #251-L0911 dated October 10, 2009 (the "Lease"), by and between **COUNTY OF EL DORADO**, a political subdivision of the State of California, (herein "Lessor") and **DIAMOND SPRINGS HOLDING COMPANY, LLC**, a California Limited Liability Company, lawfully doing business in the State of California and Lessor's jurisdiction (herein "Lessee"), is hereby amended a first time as follows:

WHEREAS, on October 10, 2009 a lease agreement ("Lease") was entered into between the **COUNTY OF EL DORADO**, a political subdivision of the State of California ("Lessor"), and **DIAMOND SPRINGS HOLDING COMPANY**, a California Limited Liability Company ("Lessee"); and

WHEREAS, on July 24, 2014 (First Exercise of Option to Renew) Lessee notified Lessor of the intent to extend the aforementioned Lease Agreement 251-L0911 for an additional five (5) year term.

NOW, THEREFORE, it is mutually agreed that Lease Agreement #251-L0911 shall be amended a first time as follows:

- A. Paragraph 3, Lessee Payments, is amended in its entirety to read as follows:**

Effective October 20, 2014, Lessee agrees to pay Lessor **One Thousand Three Hundred Ninety-Two Dollars and Thirty Cents (\$1,392.30)** per annum during the first extension of the lease. The lease payment for the second extension period, if exercised, shall be adjusted at the rate of five (5%) percent. Payments shall be mailed to:

County of El Dorado
 Chief Administrative Office
 330 Fair Lane
 Placerville, CA 95667
 Ref: SPTC Lease #251-L0911

B. Paragraph 10, Insurance Notices, Section E is amended in its entirety to read as follows:

The certificate of insurance must include the following provisions stating that both the LESSOR and SPTCA JPA, officers, officials, and employees and volunteers are included as additional insured, but only insofar as the operations under this Lease are concerned. This provision shall apply to all liability policies except worker's compensation and professional liability insurance.

C. Paragraph 11, Notices.

All notices will be sent to the Lessor below:

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 Lessee below:

Diamond Springs Holding Company, LLC
P. O. Box 1006
Shingle Springs, CA 95672
Attention: Michael or Johanna Kay
Telephone: (530) 676-0440
Cell Phone: (916) 765-8473
Email: mikekay@jps.net

D. Paragraph 16, Lease Administration is amended in its entirety to read as follows:

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

E. New Paragraph 18, Restrictions on Use, Transfers and Encumbrances. Parties acknowledge that the Leased 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 Leased Property in a manner which would cause any reversionary rights in the Leased 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 Leased 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 Leased 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 Leased Property in violation of this Section shall be void and confer no rights on the transferee.

F. New Paragraph 19, Indemnification. Lessee does hereby assume liability for, and agrees to defend, indemnify, protect, and hold harmless Lessor and SPTCA JPA and their directors, officers, employees and their successor and assigns from and against any and all liabilities, obligations, losses, damages, penalties, fines, claims, actions, suits, costs and expenses and disbursements including reasonable attorneys' fees and expenses for any kind and nature imposed in, asserted against, incurred or suffered by Lessor or SPTCA JPA or their directors, officers or employees by reason of damage, loss or injury (including death) of any kind or nature whatsoever to persons or property in any way relating to or arising out of any (i) willful or negligent act or action, or any neglect, omission or failure to act when under

a duty to act on the part of Lessee or any of its officers, agents, employees, contractors, subcontractors in its or their performance except for the active or sole negligence of Lessor or SPTCA JPA; (ii) a release by Lessee or any of its officers, agents, employees, contractors or subcontractors in its or their performance hereunder of any substance or material defined or designated as a hazardous or toxic substance, material or waste by any federal, state or local law or environment statute, regulation or in effect when the release occurs, or as amended or promulgated in the future.

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IN WITNESS WHEREOF, the parties hereto have executed this Amendment I to Agreement 251-L0911 on the dates indicated below.

LESSEE: DIAMOND SPRINGS HOLDING COMPANY, LLC

Dated: 7/18/14 Signed: 
Michael Kay, President

Dated: 11/5/14 Signed: 
Johanna Kay, Secretary

LESSOR: COUNTY OF EL DORADO

Dated: _____ Signed: See next page
Norma Santiago, Chair
Board of Supervisors

ATTEST:
James S. Mitrising, Clerk of the Board of Supervisors

By: _____ Dated: _____
Deputy Clerk

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

Dated: _____ Signed: _____
John C. Segerdell
Chief Executive Officer

IN WITNESS WHEREOF, the parties hereto have executed this Amendment I to Agreement 251-L0911 on the dates indicated below.

LESSEE: DIAMOND SPRINGS HOLDING COMPANY, LLC

Dated: _____ Signed: _____
Michael Kay, President

Dated: _____ Signed: _____
Johanna Kay, Secretary

LESSOR: COUNTY OF EL DORADO

Dated: 11-17-14 Signed: 
Norma Santiago, Chair
Board of Supervisors

ATTEST:
James S. Mitrison, Clerk of the Board of Supervisors

By:  Dated: 11-17-14
Deputy Clerk

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

Dated: 10/10/14 Signed: 
John C. Segerdell
Chief Executive Officer