

**LICENSE AGREEMENT
FOR
EXCURSION RAIL OPERATIONS**

This License Agreement ("Agreement") is made effective as of [_____,] 2011, 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. The JPA is a public entity formed in 1991 for the purpose of purchasing fifty three (53) miles of the Placerville Branch railroad right-of-way from Sacramento to Placerville, California. The JPA has four (4) member agencies, namely: The County of El Dorado, the City of Folsom, the County of Sacramento, and the Sacramento Regional Transit District.
- B. The JPA purchased the Rail Corridor in 1996 and continues to own it for the purpose of preserving it for transportation uses, and coordinating usage and maintenance by the member agencies.
- C. 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.
- D. Pursuant to the RFP, on or about May 12, 2008, the JPA's Board of Directors selected P&SVRR's affiliate, the Folsom, El Dorado and Sacramento Historic Railroad Association ("**FEDSHRA**") as the entity with which to negotiate the operation of the excursion rail service.
- E. FEDSHRA representatives 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.
- F. The JPA and P&SVRR enter 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 “License Property” is defined as the portion of the Rail Corridor extending from approximately milepost 111 (Folsom Wye, Folsom, CA) to approximately milepost 144.9 (Missouri Flat Road, Diamond Springs, CA) 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.
- 1.7 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.

- 1.8 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.
- 1.9 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.
- 1.10 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.
- 1.11 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.
- 1.12 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. Prior to commencing Excursion Service operations on any Operating Segment, P&SVRR will obtain the JPA's written approval for such operations, which approval may be granted or withheld in the JPA's sole and absolute discretion. For each Operating Segment, P&SVRR will submit to the JPA for review an implementation schedule, operating plan (including general hours of operation and type of equipment to be used), improvement plans (including station plans), and evidence of financial capacity to construct the needed improvements, perform any needed deferred maintenance and operate the Excursion Service.

- 2.1.2. The initial Operating Segments approved by the JPA, together with the proposed Excursion Service plan, are set forth on **Exhibit A** attached hereto and incorporated herein.
- 2.1.3. Operating hours will be limited to weekends and holidays only. In addition, within El Dorado County, operations will be subject to the provisions of the Sacramento-Placerville Transportation Corridor Master Plan approved by the El Dorado County Board of Supervisors on February 25, 2003, and any amendments thereto.
- 2.1.4. P&SVRR may schedule special events, subject to the prior written approval of the City of Folsom, the County of Sacramento, and/or the County of El Dorado, as applicable. P&SVRR will cooperate reasonably with the JPA, the City of Folsom, the County of Sacramento, and/or the County of El Dorado, as applicable, to accommodate special events planned by any of them.
- 2.1.5. P&SVRR will not permit passengers to disembark, except at stops approved by the JPA in writing, or in the case of emergency.
- 2.1.6. 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.
- 2.1.7. 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.
- 2.1.8. 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. Prior to any such movement of equipment or supplies, P&SVRR will give such notice to the City of Folsom as the City reasonably may require.
- 2.1.9. The portion of the License Property situated between milepost 137 (South Shingle Road, Shingle Springs, CA) and milepost 144.9 (Missouri Flat Road, Diamond Springs, CA) is subject to the prior rights of the El Dorado Western Railway ("EDWR"). The rights granted to P&SVRR hereunder for such portion of the License Property are subject to, and conditioned upon, a written agreement between P&SVRR and EDWR governing the conduct and coordination of rail operations thereon.

2.1.10. P&SVRR will comply with any other operating rules deemed necessary or advisable by the JPA or its member agencies from time to time.

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 an operational service plan previously approved in writing by the JPA, (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 "material conflict" applies only to previously-approved Excursion Service operations 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, however, that the JPA may 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.

- 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 future at-grade public crossings of the License Property. In addition, the parties acknowledge specifically that the Capital Southeast Connector JPA and its member agencies intend to widen White Rock Road and improve its crossing with the Rail Corridor as part of a major regional connector parkway. 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 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.

- 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. 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, and to charge P&SVRR for the cost thereof.
- 4.1.3. Optional Maintenance outside of License Property. P&SVRR may, at its option, enter portions of the Rail Corridor outside the License Property 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.
- 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.
- 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. 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 or before the end of each calendar quarter.
- 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 JPA's written approval of P&SVRR's plans for such modifications and improvements, which approval may be granted or withheld in 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.

6. License Fees. Beginning on the commencement date of this Agreement and annually on the anniversary date of the commencement date 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 for a period of five (5) years 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 Termination for Default. If (i) P&SVRR does not substantially meet the operational expectations of any operating plan approved by the JPA for an Operating Segment, or the general operational expectations set forth in **Exhibit B** attached hereto and incorporated herein, 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.
- 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. Termination for 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.

7.3.2.1. If JPA terminates this Agreement under this Section 7.3.2 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.

7.3.2.2. The parties acknowledge that, as of the date of this Agreement, El Dorado County is contemplating the potential removal of Railroad Facilities in certain areas east of the Sacramento-El Dorado County line to facilitate construction of a public trail. Notwithstanding anything to the contrary in this Section 7.3.2, if prior to June 30, 2012, El Dorado County determines that Railroad Facilities should be removed and Excursion Service terminated over any segment of the License Property, JPA may terminate this Agreement with respect to all or a portion of the License Property by giving not less than 60 days' written notice to P&SVRR. In the event of any such termination, P&SVRR will be compensated pursuant to the provisions of Section 7.3.2.1, above.

7.3.2.3. The provisions of this Section 7.3.2 apply only to a termination for a public project and are not applicable to a termination for default.

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 \$5 million each occurrence and 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:

Philip Rose, President
Placerville and Sacramento Valley Railroad, Inc.
705 Sibley Street,
Folsom CA 95630
Telephone: 916-990-3653
E-mail: president@psvrr.org

If to JPA:

John C. Segerdell, CEO
PGH Wong Engineering
1321 Howe Ave., Suite 110
Sacramento, CA 95825
Telephone: 916-924-8800
Fax: 916-924-8886
E-mail: jsegerdell@pghwong.com

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 continue in full force and effect regardless of whether this Agreement is terminated pursuant to any other provision or the License Property and Railroad Facilities are abandoned and vacated by P&SVRR.
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 or El Dorado 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.

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: _____
Chair

By: _____
John C. Segerdell, CEO

Approved as to legal form:

By: _____
Paul J. Chrisman,
Legal Counsel

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

By: _____
President

By: _____
Secretary

EXHIBIT A

Initial Operating Segment and Excursion Service Plan

LICENSE AGREEMENT FOR EXCURSION RAIL OPERATIONS

P&SVRR Operating Plan for Start-up Phase 2011.

- Folsom. The initial operating segment will be from Iron Point Station (MP116) to the western side of the Latrobe Road crossing (MP126).
- Shingle Springs. The initial operating segment will be from the Shingle Springs Station near Mother Lode Drive (MP137) to Diamond Springs near Missouri Flat Road (MP145).
- Light equipment and Motorcars will be used for the initial segments.
- Heavy equipment will be available for operations and training starting Fall 2011.
- Revenue collection for the initial segment operating plan is based upon suggested donation
- P&SVRR will obtain necessary rights for rolling stock storage by Fall 2011.
- P&SVRR will construct basic loading facilities at Iron Point Station by Fall 2011, including ADA facilities.
- P&SVRR will continue to make track upgrades as necessary to enable movement of empty stock between Folsom Junction (MP 111) and Iron Point, and White Rock Road to a storage spur.
- Should the White Rock Road grade crossing and track rehabilitation be completed to PUC-approved standards, the initial segment approved for light or heavy equipment and motorcars from Folsom may be extended during 2011, subject to the JPA's prior written approval.

Demonstration trips using light equipment and Motorcars will commence on a monthly basis from April 2011. Trips will originate from both Iron Pointe Station and Shingle Springs during the months of April through October. The table below sets forth additional details of the P&SVRR initial year excursion services operating plan.

Definitions:

'Light Equipment' is defined as vehicles not restricted by weight from the right-of-way in its current condition. This includes the Weyerhaeuser 'Skagit'.

'Motorcars' are defined as small lightweight former maintenance-of-way vehicles with up to 6 seats, usually owned by private individuals (aka – "Speeders")

'Heavy Equipment' is defined as standard railroad equipment, including but not limited to locomotives, passenger and freight cars (either converted to passenger cars or for maintenance of way).

Abbreviations:

SS	Shingle Springs	DC	Deer Creek
ED	El Dorado Town (The Barn)	LC	Latrobe Creek

TC	Tunnel No. 1 (the Cut)	LT	Latrobe
SSD	Shingle Springs Drive	WRR	White Rock Road
OA	Oak Ave	EB	East Bidwell
IP	Iron Point	CC	Carson Creek

Initial Segment 2011 Excursion Services Operating Plan

Month	Dates	No. of Days	Coordinating Event	Expected Start & End Points (roundtrip)
April	16 th , 17 th	2		SS - ED
April	25 th , 26 th	2	Easter Celebration SS	SS – SSD, SS - TC
May	7 th	1	National Rail Day Media Event:	IP - LC
May	14 th , 15 th	2		IP – CC and LC
June	18 th , 19 th	2		SS - ED
June	25 th , 26 th	2	EDWRF Event	SS - ED
July	2 nd & 3 rd	2	Folsom Rodeo Railroad Round-up	OA - EB
July	16 th , 17 th	2		SS - ED
July	23 rd , 24 th	2		SS - ED
August	6 th , 7 th	2		IP – DC or LT
August	20 th , 21 st	2		SS - ED
August	27 th , 28 th	2		SS - ED
September	3 rd , 4 th	2		SS - ED
October	TBA	2	Launch of Heavy* Equipment	IP - WRR
November	26 th , 27 th	2	Christmas Event	SS - ED
December	3 rd , 4 th	2	Christmas Event	SS - ED
December	10 th , 11 th	2	Christmas Event*	IP - WRR
December	17 th , 18 th	2	Christmas Event*	IP - WRR
December	31 st	1	New Year Requested	SS - ED
January	1 st	1	New Year Requested	SS - ED

Other events where participation is envisioned by the P&SVRR include the following:

- April 30 and May 1, Folsom Hand-Car Derby, between Broadstone and Scholar Way, in partnership with FEDSHRA
- September 23 – 25, Folsom Rail Festival, in partnership with MOW, FEDS and REPS.

EXHIBIT B

Initial Operating Expectations

LICENSE AGREEMENT FOR EXCURSION RAIL OPERATIONS

Based on the P&SVRR Operating Plan for Start-up phase 2011 as set forth in Exhibit A, the following Excursion Service operational expectations are defined.

Operating Benchmarks

- Commence public Excursion Service in March 2011
- Perform 24 operating days for public Excursion Service for the initial operating year 2011

Revenue Benchmarks

- Achieve total ridership of 2400 public trips generated by the 24 operating days
- Receive gross revenue of \$24,000 based on average \$10 donation per public ride

Maintenance Benchmarks

- Complete White Rock Road grade crossing reactivation
- Complete track rehabilitation to FRA Class 1 to White Rock Road
- Arrange use of storage spur
- Complete washout maintenance and repair
- Complete Iron Point Station walkway, loading area and parking agreement with Hampton Inn