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FILED  
March 31, 2014  
SURFACE  
TRANSPORTATION BOARD

BEFORE THE  
SURFACE TRANSPORTATION BOARD

ENTERED  
Office of Proceedings  
March 31, 2014  
Part of  
Public Record

FD 35813  
STB Finance Docket No. ~~35810~~

FILLMORE & WESTERN FREIGHT SERVICE, LLC d/b/a  
FILLMORE & WESTERN RAILWAY, INC.,  
a California Corporation

v.

VENTURA COUNTY TRANSPORTATION COMMISSION,  
THE CITY OF SANTA PAULA, THE SANTA PAULA BRANCH LINE  
ADVISORY COMMITTEE

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EMERGENCY PETITION  
FOR  
DECLARATORY ORDER

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FEE RECEIVED  
March 31, 2014  
SURFACE  
TRANSPORTATION BOARD

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*Petitioner's General Counsel*

Dated: March 25<sup>th</sup> 2014

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FD 35813**

STB Finance Docket No. ~~35810~~

FILLMORE & WESTERN FREIGHT SERVICE, LLC d/b/a  
FILLMORE & WESTERN RAILWAY, INC.,  
a California Corporation

v.

VENTURA COUNTY TRANSPORTATION COMMISSION,  
THE CITY OF SANTA PAULA, THE SANTA PAULA BRANCH LINE  
ADVISORY COMMITTEE

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EMERGENCY PETITION FOR DECLARATORY ORDER

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**WHY THIS IS AN EMERGENCY PETITION**

**THE INTERFERENCE WITH RAILROAD OPERATIONS BY THE RESPONDENTS, NONE OF WHOM IS CAPABLE OF OPERATING A RAILROAD, HAS RESULTED IN CHAOS.**

**FURTHER, THE INTERFERENCE UNLAWFULLY CAUSED ECONOMIC HARM TO PETITIONER IN VIOLATION OF THE STATUTES OF THE UNITED STATES AND REGULATIONS OF THE BOARD. THE HARM CURRENTLY VISITED UPON PETITIONER HAS HAD THE EFFECT OF BRINGING ITS RAIL TRANSPORTATION TO A HALT AND THREATENS TO DESTROY PETITIONER'S ENTIRE BUSINESS. THE**

**ILL-CONSIDERED ACTIONS OF RESPONDENTS HAVE FURTHER DAMAGED SHIPPERS AND THE COMMUNITY BY DELAYING SHIPMENTS IN INTERSTATE COMMERCE AND INTERFERING WITH THE SAFE OPERATIONS OF THE LINE.**

**FOR THESE REASONS, THE FILLMORE & WESTERN FREIGHT SERVICE LLC, D/B/A FILLMORE AND WESTERN RAILWAY, INC. RESPECTFULLY AND URGENTLY REQUESTS THAT THIS PETITION BE GRANTED EMERGENCY STATUS.**

### **INTRODUCTION**

Under 5 U.S.C. § 554 and 49 U.S.C. § 721, the Fillmore & Western Freight Service, Inc., (“FWRR”), a rail carrier duly authorized and existing under the Interstate Commerce Commission Termination Act (49 U.S.C. §§ 10101-16106), (“ICCTA”) and by order of the U.S. Surface Transportation Board (Board) in Finance Docket Number 34173 by decision dated April 25<sup>th</sup> 2002-, petitions for an emergency declaratory order that the Ventura County Transportation Commission (“VCTC”), the City of Santa Paula, California (“SP City”) and the Santa Paula Branch Line Advisory Committee (“SPBLAC”) regulation of, interference with, and attempted regulation of FWRR’s rail transportation activities are preempted by the Act, 49 U.S.C. § 10501(b). This campaign by the Respondents, and each of them, has been based upon a skein of partial untruths and complete untruths, which denied

the existence of various contracts, and which were published to damage FWRR's reputation and business. The attempts to interfere were made with an utter paucity of concern for the safe operation of the rail road and were, in virtually every respect, misleading.

### **THE PETITIONER**

The Petitioner, the Fillmore & Western Freight Service, LLC d/b/a Fillmore & Western Railway, Inc., obtained authority to operate as a Class 3 Common Carrier from the Board by decision dated April 25, 2002 in *Fillmore & Western Freight Service, LLC – Lease and Operation-Ventura County Transportation Commission Finance Docket No.34173*. Petitioner also operates various passenger excursion trains over SPBL and has numerous major entertainment and film company customers ranging from production of railroad related motion pictures to commercials.

### **THE RESPONDENTS**

The VENTURA COUNTY TRANSPORTATION COMMISSION (“VCTC”) was and is a public sector transportation planning body for Ventura County, California, State of California. On or about March 6, 1998 VCTC became a carrier pursuant to Notice of Exemption and various amendments thereto filed with the Board in *Ventura County Transportation Commission-Acquisition Exemption-Southern Pacific Transportation Company*, Finance Docket No. 33553. VCTC has represented itself as the owner of SBPL since that time.

The SANTA PAULA BRANCH LINE ADVISORY COMMITTEE (the “SPPBLAC) is an advisory group to the VCTC.

The CITY OF SANTA PAULA (“SP City”) was and is a municipality organized under the laws of the County of Ventura, California, and the State of California.

### **THE SANTA PAULA BRANCH LINE**

The Santa Paula Branch Line (SPBL) running from Milepost 405.31 to 435.07 consists of 29.76 miles of railroad constructed and formerly owned and operated by the Southern Pacific Transportation Company (SP). As discussed further below, SP sold the SPBL retaining certain rights pertaining to operations over part of the SPBL and rights related to utility lines on the right of way and other rights. Subsequently, the assets and rights of the SP pertaining to the SPBL were acquired by the Union Pacific Railroad (UP) on September 11<sup>th</sup> 1996.

The Santa Paula Branch Line was acquired from SP by several municipal and county government agencies collectively using various forms of transportation grant funding. The acquisition was made possible by a multi-party agreement known as the Memorandum of Understanding (MOU) (Exhibit 1). The MOU was executed by the parties on various dates in 1995. Subsequently, Respondent VCTC assumed re-

sponsibility for managing the SPBL with the SPPBLAC which provided representation to the parties to the MOU in the planning and operation of the SPBL. The SP ultimately sold portions of the line to the City of Fillmore Redevelopment Agency, the City of Santa Paula and the City of Ventura and ultimately, based on a series of agreements, additional agencies joined the City of Fillmore and the Redevelopment Agency of the City of Fillmore in the full acquisition of the "SPBL". These agencies included: the Ventura County Transportation Commission ("Respondents"), the County of Ventura, The City of Ventura, The City of Santa Paula and its Redevelopment Agency, and the City of Fillmore and its Redevelopment Agency. VCTC has of late taken less direction from SPPBLAC and has made unilateral decisions and taken numerous questionable actions concerning the SPBL.

## ARGUMENT

Under the ICCTA, "remedies ... with respect to rail transportation are exclusive and preempt the remedies provided under Federal or State law." 49 U.S.C. § 10501(b). Moreover, "[t]he jurisdiction of the Board over ... transportation by rail carriers ... and ... the ... operation . . . of spur, industrial . . . switching, or side tracks, or facilities . . . is exclusive." *Id.* at § 10501 (b) (2). By their terms, and as interpreted by this Board and the courts, these statutes preempt the Respondent's attempt to take

over FWRR's operations or terminate or adjust its rights under the MOU, as amended.

**FEDERAL LAW PREEMPTS THE RESPONDENT'S ATTEMPT TO TAKE OVER OR INTERFERE WITH THE RAILROAD'S OPERATIONS.**

Under the Constitution, "the Laws of the United States shall be the supreme Law of the Land." U.S. Const. art. VI. Because federal law is supreme, "state law that conflicts with federal law is without effect." *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992) (quotation omitted). Federal preemption of state law can be express where "Congress [has] define[d] explicitly the extent to which its enactments pre-empt state law." *English v. Gen. Elec. Co.*, 496 U.S. 72, 78 (1990). Under the ICCTA, the Respondents' regulation and ban are expressly and impliedly preempted.

**THE RESPONDENTS' REGULATION AND INTERFERENCE IS CLEARLY PREEMPTED.**

Besides its express preemption provision, the ICCTA provides that "[t]he jurisdiction of the Board over ... transportation by rail carriers ... and ... the ... operation ... of spur, industrial ... switching, or side tracks, or facilities ... is exclusive." 49 U.S.C. § 10501 (b). "Section 10501 (b) of the ICCT A may preempt state regu-

lations, actions, or remedies as applied, based on the degree of interference the particular state action has on railroad operations." *New Orleans & Gulf Coast Ry. Co. v. Barrois*, 533 F.3d 321, 332 (5th Cir. 2008). *Co. v. Barrois*, 533 F.3d 321, 332 (5th Cir. 2008). Here, the "degree of interference" is 100%.

VCTC and the other Respondents failed to seek the required authority from the Board to acquire and operate the line. (See Ventura County Transportation Commission-Acquisition Exemption-Southern Pacific Transportation Company (FD No. 33553\_0 decided March 17, 1998). According to the Decision "*VCTC entered into an agreement with SP to purchase the line, and consummated the transaction on October 27, 1995 without appropriate authority from the Board*" Although categorized as a failure to file a proper exemption, this conduct was one of the earliest instances of VCTC ignoring the duly constituted authority of the Board in connection with the SPBL.

As the SPBL is part of the national system of rail transportation, the operations and maintenance on the line are controlled by the regulations promulgated by the Federal Railroad Administration ("FRA"), the U.S. Department of Transportation, Surface Transportation Board ("STB"), and the California Public Utilities Commission ("CPUC").

The relationship between Petitioner and Respondents has been fully documented in a series of mutually negotiated and executed agreements.

The parties established a *modus vivendi* governing their relations and the agreements were amended to reflect updated costs of doing business. The reviews created amendments to the agreements in 2004 and 2007. In each case the amendments were fully negotiated between the parties and executed by the parties. In 2007 Ms. Ginger Gherardi, the former Executive Director, retired and Mr. Darren Kettle, the current Executive Director of the VCTC was appointed.

Pursuant to the Agreements and at the insistence and request of Respondent VCTC, Petitioner became a duly licensed Class 3 common carrier railroad pursuant to the April 25, 2002 decision of the U.S. Department of Transportation, Surface Transportation Board, successor agency to the Interstate Commerce Commission in Finance Docket No. 34173 and is the responsible entity for rail operations on the “SPBL” including railroad dispatching and actual freight rail movements. Respondent VCTC has neither filed nor served an STB action, as of the date of filing this Complaint, seeking such authority. Petitioner is capable of accepting freight shipments as may be interchanged to it and it authorized to do so pursuant to the agreements outlined above, however, Petitioner has been prevented from accepting freight because of a purported embargo placed on the line by DARREN KETTLE, Executive Director of Ventura County Transportation.

Petitioner has been, and still is, the designated railroad Operator on the “SPBL” by virtue of the Agreement with the owners and lessors of the various leases

On November 27, 1996 the FRDA and the FWRR entered into a Sub-Lease Agreement for the Santa Paula Branch (Exhibit 2) and on November 19, 1996, FWRR began operating on the SPBL that runs from the Montalvo area of Ventura County, at milepost 405.31 through milepost 435.07, out to the Piru area of Ventura County, which is owned by Respondents, pursuant to the “MOU”. The railroad line also encompasses the “Fillmore Segment” of the line, which runs from milepost 414.15 to milepost 435.067, which had also been leased to the CITY OF FILLMORE REDEVELOPMENT AGENCY (“FRDA”) by SOUTHERN PACIFIC RAILROAD (“SPRR”) and prior to Respondent VCTC taking title and after acquisition by Respondent VCTC.

All of FWRR’s operation were initially based upon a written sub-lease agreement with the “FRDA” and FWRR dated November 19, 1996, (Exhibit No. 2), as well as an agreement made directly with Respondents, dated April 2, 1999. (Exhibit No. 3)

Prior to the direct lease of 2001 with Respondents, Petitioners had also entered into an agreement with Respondent VCTC known as the “Interim Maintenance Agreement”, dated November 14, 1997, which provided for payment to Petitioner for work performed upon the track, signal and track support structures, and inspections and maintenance services on the branch line. (See attached Exhibit No. 4).

Petitioner FWRR contends the agreements were based on the expectations of the parties that the contracts acted as a whole, and was a “Memorandum of Understanding” with the further expectation both contracts would be performed to their full term, the year 2021 by all parties.

In addition to the above agreements, other contracts are part of the chain of agreement:

1. June 6, 2001, Lease Agreement for the “Fillmore Segment of the Santa Paul Branch (Exhibit 5).
2. June 25, 2001, Lease Agreement for Rail Services on the Santa Paula Branch (Exhibit 6).
3. July 1, 2001, Sub-Lease Agreement between the FRDA and FWRR for the Santa Paula Branch (Exhibit 7).
4. August 18, 2014, Lease with Option to Purchase between FRDA and FWRR (Exhibit 8).

Respondent FWRR relied upon those expectations when FWRR entered into the agreements with VCTC and FRDA. Further, the direct lease also provided for use of the SPBL by FWRR, for Public/Tourist Train Excursion purposes.

It was always the understanding between the parties that FWRR operated their interstate commerce freight and a Public/Tourist Train Excursions on the “Fillmore Segment” of the SPBL since the inception of the agreements.

and subleases discussed above. Petitioner has been authorized to accept freight, and operate tourist trains and dinner trains on the entire line since 1996 under these Agreements.

Freight railroad operations are subject to the necessary Federal regulatory approval of the STB. Further, the common carrier obligation placed upon the common carrier registered operator on the line with the STB does not terminate Petitioner's operating rights as a common carrier railroad for the operations on the line until there has been an approval of a subsequent common carrier railroad capable of assuming operations and rail service to all customers as authorized by the STB, which has not occurred. Cancellation of a contract to operate without subsequent approval by the STB is ineffective.

On or about October 14, 2010, Respondents informed Petitioner, without negotiation or discussion, that there would be an adjustment to the monthly maintenance allowance to Petitioner based upon the lesser amount of the total of its grade crossing signal maintenance funds and the annual income derived from Respondents from its property leases, but provided no documentation to support this reduction. (Exhibit No. 9). There was no legal basis for the unilateral acts of Darren KETTLE, who subsequently informed Petitioner of an alleged overpayment of maintenance funds and made demand of FWRR for payment.

Respondent KETTLE also publicly exclaimed falsely that FWRR had received a “gift of public funds” and was suckling at the public teat. Petitioner protested and denied any overpayment occurred and further denied FWRR received “a gift of public funds”.

In subsequent statements, Respondent KETTLE also exclaimed falsely Petitioner was being subsidized by VCTC, instead of stating the truth, that the funds expended by VCTC were based on contractual obligations that had been negotiated in good faith at the time of the contract, and acted upon by the parties since inception, which VCTC has failed to perform when they deducted any amount from the maintenance allowance due FWRR, among other things.

There was no overpayment. When the true “effective date” of the Agreement is used to determine the amount of maintenance due Petitioner in the manner it had been, up until the present Executive Director changed the practices of the parties, there is an underpayment of funds by VCTC to FWRR. This was simply an attempt to unilaterally change the terms of the Agreements by Respondent VCTC and/or KETTLE without the consent of FWRR.

Respondent VCTC failed to perform its obligations under the Direct Lease by failing to pay maintenance fees due Petitioner by Respondent VCTC and deducting over \$17,000.00 per month from the maintenance fee due Petitioner under the Agreement, based on a false claim of an overpayment by VCTC and KETTLE.

Respondent VCTC is actually in arrears on the payment of the maintenance allowance to Petitioner in the amount in excess of \$300,000.00, which has caused a financial hardship for Petitioner. Petitioner has been required to terminate numerous employees as a result and the railroad is having to pay for all maintenance costs necessary to its regulatory obligations, without any contribution toward the SPBL, contrary to the agreements between the parties and has lost substantial income because of Respondents' conduct.

On or about May 14, 2013, Petitioner received a letter from Respondents terminating the Direct Lease for use of the line, with no cause stated for its termination, even though the Direct Lease required cause for termination. (Exhibit 10).

Petitioner was also notified of a claim of termination of the Sub-Lease by the City of Fillmore, rather than the City of Fillmore Redevelopment Agency to terminate the Sub-Lease FWRR had with the FRDA.

Before entering into the agreements and for years thereafter, Petitioner relied upon all of the Agreements and made acquisitions and substantial investments into property based upon the reasonable belief he had the right to operate on the entire rail line until 2021.

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**DARREN KETTLE'S ILLEGAL PUR-  
PORTED EMBARGO OF FREIGHT OP-  
ERATIONS.**

FWRR had been contacted by a substantial commercial entity contemplating the purchase of a major property, so long as freight service was available. There were subsequent inquiries from other companies and a specific request for FWRR to deliver steel and lumber.

At the point where FWRR was on the verge of the agreement, and for reasons never disclosed, the VCTC and its Executive Director terminated FWRR's ability to receive and submit freight in interchange by issuing a letter prohibiting FWRR's ability to move freight over the SPBL by purportedly embargoing traffic and causing at least one customer complaint to the Board.

VCTC presented its purported "embargo" on April 9<sup>th</sup> 2013 without following procedures for embargo utilized by the railroad industry by the Association of American Railroads through its Railinc subsidiary. Respondents issued this letter intentionally and a complete surprise (See Exhibit 11).

It has been further discovered that KETTLE has actually made agreements with these same businesses for freight and/or movie production on the line, excluding FWRR from said agreements for such services, even though FWRR holds those exclusive rights.

It was well known by the City of Santa Paula and the Commission staff that some crossings, even though still safe to use, were worn and in need of repair and replacement, which would unquestionably be items of capital improvement. The various contracts between the parties specified that capital improvement was the responsibility of the Commission. FWRR was not liable for making capital improvements.

The VCTC maintained its blatant tradition of mendacity by announcing that FWRR was in breach of its contract for not replacing those crossings. The contracts between the parties did not contain such a provision. Unimpeded by truth and honesty, the VCTC never disclosed that the contracts contained no such obligation, spread the untruth broadly, demonstrating an unending mindlessness of the possible impact of such unsupported claim.

**VCTC'S SHAM FILING OF AN UNLAWFUL DETAINER AGAINST THE FWRR.**

In its continuing attempts to put FWRR out-of-business in any way possible and with its usual disdain for the truth, on March 6<sup>th</sup> the VCTC filed an Unlawful Detainer action in the Superior Court of the State of California styled *Ventura County Transportation Commission, Plaintiff, v. Fillmore & Western Railroad, Inc.*, Case No. 56-2014-00449769-CL-UD-VTA (the "UD Case") (Exhibit No. 12, containing just the Summons and Complaint, nine pages, 89 pages of exhibits was excluded).

The VCTC couched its allegation of breach by selecting one of a series of inter-related agreements, under which the parties had been operating, and then claiming the FWRR had violated one of those agreements which authorized the operation of tourist and entertainment oriented trains. The clear meaning of the chain of contracts precluded the VCTC's pretext to set aside years of jointly negotiated and executed contracts.

### **CONCLUSION & REQUESTED RELIEF**

The Respondents are seizing the operation of a railroad in a profoundly unauthorized and unlawful manner. The Respondents' attempt at regulation and avoiding its contractual obligations should be declared preempted, post haste.

Because the Board has broad authority under 5 U.S.C. § 554 and 49 U.S.C. § 721 (a) to issue a declaratory order to eliminate a controversy or remove uncertainty, Petitioner requests that the Board promptly issue an order:

- a. Declaring that the Respondents' interference with FWRR's operation is preempted;
- b. Declaring that Respondents' interference with, and purported embargo of, interchange between Petitioner and the Union Pacific Railroad is without legal force or effect and reinstating such interchange effective immediately;

- c. That all orders and instructions issued by Respondents are suspended;
- d. All litigation pending between the Respondents and Petitioner is stayed and suspended until the Board can consider the entire matter; and
- e. Granting such further relief as the Board may deem proper.

Respectfully submitted,



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*Counsel for Petitioner Fillmore  
& Western Freight Service, LLC*

Dated: March 25<sup>th</sup> 2014

## Verification

I, David Wilkinson, declare under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Further, I state that I am the Chief Executive Officer of Fillmore & Western Freight Service, LLC and I certify that I am qualified and authorized to file this pleading.

Executed at Fillmore, California on March 25<sup>th</sup> 2014.



David Wilkinson

## STATEMENT REGARDING SERVICE

I hereby certify that on this, the 27<sup>th</sup> day of March, 2014 I have served the Defendants in this proceeding with this document by United States Mail as follows:

Ventura County Transportation Commission  
Donna Cole, Clerk of the Board  
950 County Square Drive, Suite  
Ventura, CA. 93009

Steve Mattas, Legal Counsel for  
Ventura County Transportation Commission  
633 W. Fifth St, Suite 1700  
Los Angeles, CA. 90071

City of Santa Paula  
Judy Rice, City Clerk  
970 Ventura St.  
Santa Paula, CA. 93060

Santa Paula Branch Line Advisory Committee  
Ventura County Transportation Commission  
Donna Cole, Clerk of the Board  
950 County Square Drive, Suite  
Ventura, CA. 93009



Ivan W. Halperin

*Counsel for Petitioner Fillmore &  
Western Freight Service, LLC*

## **Exhibit 1**

MEMORANDUM OF UNDERSTANDING BY AND BETWEEN  
THE VENTURA COUNTY TRANSPORTATION COMMISSION,  
THE COUNTY OF VENTURA,  
THE CITY OF FILLMORE and  
THE CITY OF FILLMORE REDEVELOPMENT AGENCY,  
THE CITY OF SANTA PAULA and  
THE CITY OF SANTA PAULA REDEVELOPMENT AGENCY, AND  
THE CITY OF SAN BUENAVENTURA  
REGARDING

- (A) THE ACQUISITION, TITLE AND RENTS OF THE VENTURA BRANCH  
AND  
(B) THE ACQUISITION, TITLE, RENTS, MANAGEMENT, USES AND  
MAINTENANCE OF THE SANTA PAULA BRANCH,  
TO BE ACQUIRED FROM  
THE SOUTHERN PACIFIC TRANSPORTATION COMPANY

This MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE VENTURA COUNTY TRANSPORTATION COMMISSION ("VCTC"), THE COUNTY OF VENTURA (the "County"), THE CITY OF FILLMORE and THE CITY OF FILLMORE REDEVELOPMENT AGENCY (collectively, hereinafter "Fillmore"), THE CITY OF SANTA PAULA and THE CITY OF SANTA PAULA REDEVELOPMENT AGENCY, (collectively, hereinafter "Santa Paula") AND THE CITY OF SAN BUENAVENTURA (hereinafter, "Ventura") <sup>1/</sup> REGARDING (A) THE ACQUISITION, TITLE AND RENTS OF THE VENTURA BRANCH AND (B) THE ACQUISITION, TITLE, RENTS, MANAGEMENT, USES AND MAINTENANCE OF THE SANTA PAULA BRANCH, TO BE ACQUIRED FROM THE SOUTHERN PACIFIC TRANSPORTATION COMPANY (the or this "MOU") is entered into as of the \_\_\_ day of \_\_\_\_\_, 1995.

IT HEREBY AGREED BY THE PARTIES HERETO, IN CONSIDERATION OF THE FOLLOWING MATERIAL FACTS, TERMS AND CONDITIONS, AND OTHER GOOD AND VALUABLE CONSIDERATION, RECEIPT OF WHICH IS ACKNOWLEDGED HEREBY, as follows:

I. MATERIAL FACTS

The following facts are material to, and are incorporated in, this MOU hereby:

- A. The parties have previously entered into a Memorandum of Understanding Regarding Funds and Services Advanced for Pre-Acquisition Costs Associated With Possible Acquisition of Property From the Southern Pacific Transportation Company, dated as of October 7, 1994 which is incorporated herein by this reference as though fully set forth (the "Funding MOU").

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<sup>1/</sup> Fillmore, Santa Paula and Ventura are hereinafter collectively referred to as the "Cities".

B. On July 7, 1995, pursuant to Resolution No. 95-06, VCTC amended its Administrative Code as adopted by Resolution No. 89-01 in October, 1989, as amended by Resolution No. 91-01 in April, 1991 and Resolution No. 91-10 in November, 1991 (the Administrative Code and all amendments thereto are hereinafter, collectively referred to as, the "Code"). Article 3, § H.1.c of the Code (the "Amendment to the Administrative Code") provides for the establishment of the Santa Paula Branch Line Advisory Committee (the "SPBLAC") as an advisory committee to the members of the body of VCTC (the "Commission"). The purpose of the SPBLAC is to recommend actions regarding management, maintenance and use of a portion of the Santa Paula Branch (as hereinafter defined) to the Commission. Pursuant to the Code, VCTC can overrule the recommendations of the advisory committee only upon the affirmative vote of six (6) of the seven voting members or voting alternates of the Commission.

C. VCTC will soon acquire the following property from the Southern Pacific Transportation Company ("SPTC")

1. Fee title to the Santa Paula Branch right-of-way for rail tracks, and tracks thereon, extending from Mile Post 403.34 near Montalvo Station to Mile Post 435.07 at the line between Ventura and Los Angeles Counties, the "Saticoy Station Property" (as described in Exhibit "A" which is attached hereto and incorporated herein by this reference), the non-operating property in Piru (as described in Exhibit "B" which is attached hereto and incorporated herein by this reference, hereinafter, the "Piru Station"), the Santa Paula Station (as described in Exhibit "C" which is attached hereto and incorporated herein by this reference, hereinafter, the "Santa Paula Station"), and non-operating properties listed below: (all of the property and rights listed in this Paragraph C.1. and subparagraphs C.1.a through C.1.d, below, are hereinafter collectively referred to as the "Santa Paula Branch"):

a. All rights and privileges acquired by VCTC from SPTC in the longitudinal pipelines identified in Exhibit "C" a true and exact copy of which is attached hereto and incorporated herein by this reference, with the right to rental income thereon from the date of the VCTC acquisition to be distributed as follows: Years 1 & 2 - VCTC will rebate 100% of the rental income to SPTC, Years 3 through 20 - VCTC will rebate 50% of the rental income to SPTC, After year 20 - All rental income will belong to VCTC; and

b. All rights and privileges acquired by VCTC from SPTC in that certain easement for a pipeline memorialized in an agreement, dated April 1, 1992,

between SPTC and Pacific Pipelines, a true and exact copy of which is attached hereto and incorporated herein by this reference, marked as Exhibit "D", with the right to potential rental income thereon from the date of the VCTC acquisition to be distributed as follows: Years 1 through 20 - VCTC will rebate 50% of the rental income to SPTC, After year 20 - All rental income will belong to VCTC; and

c. All rights and privileges acquired by VCTC from SPTC in that certain easement agreement, dated September 30, 1991, between SPTC and Southern Pacific Telecommunications Co., a true and exact copy of which is attached hereto and incorporated herein by this reference, marked as Exhibit "E", with the right to potential rental income thereon from the date of the VCTC acquisition to be distributed as follows: Years 1 through 20 - VCTC will rebate 50% of the rental income to SPTC, After year 20 - All rental income will belong to VCTC;

d. Assignment of all leases, easements, options for easements and licenses on the property hereinabove described; but

Excluding the property transferred, or soon to be transferred to the State of California at Camulos for State highway purposes, as shown on Exhibit "F" attached hereto and incorporated herein by this reference;

and

2. Title to the Ventura Branch right-of-way extending from Mile Post 397.32 in Ventura to Mile Post 402.67 near the station at Canet, as shown on Exhibit "G" which is attached hereto and incorporated herein by this reference, together with an assignment of all leases, easements, options for easements and licenses thereon without any property reservations by SPTC (hereinafter the "Ventura Branch");

and

3. Assignment to VCTC of SPTC's rights under that certain lease by and between SPTC and the City of Fillmore Redevelopment Agency (the "Fillmore Lease"), a true and exact copy of which is attached hereto and incorporated herein by this reference, marked as Exhibit "H".

## II. THE SPBLAC

A. Agreement of County and Cities to Serve on the SPBLAC.  
The County and the Cities hereby agree to serve as members of the SPBLAC, and to meet as the SPBLAC, at least quarterly, to perform those duties assigned to them in the Amendment to the Administrative Code; provided that the County or any one of the Cities may give notice pursuant to the Amendment to the Administrative Code that the County or the City no longer intends to serve as a member of SPBLAC, and upon giving such notice, the party giving such notice shall cease to be a member of SPBLAC. In the event that the County or any of the Cities gives such notice and no longer serves on the SPBLAC, the SPBLAC shall continue to function with the reduced membership.

B. Agreement for First Meeting. County and the Cities hereby agree that the first meeting of the SPBLAC shall be called by VCTC, and that such meeting shall take place no later than thirty (30) days after this MOU is fully executed. Thereafter, all meetings of the SPBLAC shall be set at the discretion of the members thereof.

## III. VCTC TO RETAIN TITLE TO THE SANTA PAULA BRANCH.

A. VCTC shall retain title to the Santa Paula Branch, together with all leases, easements, options for easements and licenses on the Santa Paula Branch. All rental income derived by VCTC from the portion of the Santa Paula Branch, except rental income for those portions leased or conveyed to the County or to Santa Paula (as hereinafter described) shall be deposited in an Enterprise Account (as hereinafter defined) to be used as hereinafter set forth.

B. Development and use of the Santa Paula Branch shall be governed by the recommendations of the SPBLAC as approved by the Commission pursuant to the terms of Article 3, § H.1.c.vi(e) which provides in relevant part: "A determination or recommendation made by SPBLAC to the Commission shall not be overruled by the Commission by less than six (6) affirmative votes to overrule such determination or recommendation cast by voting members or voting alternates of the Commission." And, subject to the foregoing:

1. VCTC shall have the right, subject to the Master Plan (as hereinafter defined), to control and operate, contract for operation or enter into a joint powers agreement for operation of commuter rail service on the track and the right-of-way underlying the track on those portions of the Santa Paula Branch retained by VCTC;

2. The County and the Cities shall each have the right to control, manage and operate that portion of any trail or other recreation facility which is not a part of the Santa Paula Branch operating right of way and within the respective jurisdictions of each (within the jurisdiction of the County or any of the Cities);

C. The parties agree to memorialize in writing any further agreements, as may from time to time be determined necessary by the parties, by and between (1) VCTC and SPBLAC, on the one hand, with Santa Paula, on the other hand, or (2) VCTC and SPBLAC, on the one hand, with the County, on the other hand, regarding the use and maintenance of, or other matters related to, the property leased or conveyed to the County and to Santa Paula. All parties agree that, subject to the provisions of Article III.B of this MOU and provisions of the Amendment to the Administrative Code, the operation of the leased or conveyed properties (not including the Ventura Branch) and the remainder of the Santa Paula Branch shall be a cooperative undertaking between the parties.

IV. LONG TERM LEASE FOR, OR CONVEYANCE OF, PORTIONS OF SANTA PAULA BRANCH AND ASSIGNMENT OF RENTAL INCOME THEREON BY VCTC TO COUNTY AND TO SANTA PAULA; TRANSFER OF TITLE TO VENTURA BRANCH TO VENTURA

A. Long Term Lease or Conveyance and Assignment of Rental Income to County. VCTC hereby agrees to enter into a long term lease with the County for, or to convey to the County the Saticoy Station Property and the Piru Station, and, to assign to the County all rental income from leases, easements, options for easements and licenses on or related to the Saticoy Station Property and the Piru Station. The terms and conditions of said lease or conveyance are yet to be determined and shall be subject to approval by the Commission, upon recommendation of the SPBLAC, and by the Ventura County Board of Supervisors. Pursuant to the lease or conveyance, the County shall be entitled to receive directly or to receive from VCTC all rental income paid for use of the Saticoy Station Property by sublessees, easement holders, optionees and licensees thereof. The choice of a lease or conveyance shall be at the option of the County.

B. Long Term Lease or Conveyance and Assignment of Rental Income to Santa Paula. VCTC hereby agrees to enter into a long term lease with Santa Paula for, or to convey to Santa Paula the Santa Paula Station and to assign to Santa Paula all rental income from leases, easements, options for easements and licenses on or related to the said property. The terms and conditions of said lease or conveyance are yet to be determined and shall be subject to approval by the Commission, upon recommendation of the SPBLAC, and by the City Council and/or Redevelopment Agency Board for Santa Paula. Pursuant to the lease or conveyance, Santa

Paula shall be entitled to receive directly or to receive from VCTC all rental income paid for use of the property so leased from sublessees, easement holders, optionees and licensees thereof. The choice of a lease or conveyance shall be at the option of Santa Paula.

C. Transfer of Title and Rental Income to Ventura. VCTC hereby agrees to arrange for transfer of the fee title to the Ventura Branch directly to Ventura by the SPTC and to arrange for simultaneous assignment by SPTC to Ventura of all leases, easements, options for easements and licenses on the Ventura Branch. Ventura shall be entitled to receive directly rental income paid for use of the Ventura Branch by lessees, easement holders, optionees and licensees thereof.

D. Easements To Be Granted To Local Agencies. If any member agency (parties to this MOU) requests one or more easements on, over, across or under either the Santa Paula Branch or the Ventura Branch lines in the future, they shall be granted so long as they do not infringer upon the use of the Branch or Branches for train operations or recreational trail purposes. In the event that such an easement or easements are granted, they shall be granted to the requesting agency at no cost except for administrative costs required to prepare and review the documents necessary to create the easements.

V. ESTABLISHMENT OF AN ENTERPRISE ACCOUNT FOR PROCEEDS RECEIVED BY VCTC FROM THE SANTA PAULA BRANCH FOR FUNDING OF RECREATION AND TRAIL USES, FUTURE RAIL OPERATIONS AND OTHER PURPOSES

A. Enterprise Account. VCTC shall deposit all rental income derived from the Santa Paula Branch not leased or conveyed to either Santa Paula or the County in an enterprise account, at interest (the "Santa Paula Branch Enterprise Account"), to be used as recommended by the SPBLAC and approved by the Commission pursuant to the provisions of the Amendment to the Administrative Code.

B. Uses for Santa Paula Branch Enterprise Account. It is the intention of VCTC, the County and the Cities that funds held in the Santa Paula Branch Enterprise Account shall be used for development of, and on, the Santa Paula Branch not leased or conveyed to either the County or Santa Paula for a variety of uses and purposes including, but not limited to, pedestrian/bicycle trails, green belts, landscaping, recreation facilities, possible future commuter rail service and facilities, excursion trains and such other uses as may be recommended by the SPBLAC and approved by the Commission pursuant to the Amendment to the Administrative Code. It is understood and agreed by the parties, however, that the proportion of the Santa Paula Branch Enterprise Account that shall be allocated for uses on the Santa

Paula Branch shall be determined by the SPBLAC consistent with an enterprise account plan and a master plan for the development of the Santa Paula Branch not leased or conveyed to either the County or Santa Paula, which enterprise account plan and master plan shall be developed by the SPBLAC and approved by the Commission as hereinafter set forth.

VI. THE PARTIES AGREE TO COOPERATE IN OPERATIONS ON THE SANTA PAULA BRANCH PURSUANT TO THE FILLMORE LEASE.

A. VCTC, as successor lessor under the Fillmore Lease, hereby agrees to cooperate with Fillmore regarding the use of, and operation over, the portion of the Santa Paula Branch governed by the Fillmore Lease (hereinafter, the "Fillmore Segment") pursuant to that certain sublease by and between Fillmore, as sublessor, and Short Line Railroad, as sublessee, or any permitted successor in interest to Short Line Railroad as sublessee, or any other rail operator as sublessee in a sublease in which Fillmore acts as sublessor (collectively, hereinafter "Short Line") for the Fillmore Segment (the "Sublease"). It is further agreed that the agreement of VCTC in this Article VI.A shall apply to any extension of the operations conducted by Short Line on the Santa Paula Branch which may be agreed to by Santa Paula, Ventura or the County for Short Line operations within their respective jurisdictions,

B. VCTC and Fillmore hereby agree to consult and cooperate with, and permit review of operations by, the County, Ventura and Santa Paula regarding use of the Santa Paula Branch by Short Line as approved by Fillmore with respect to any services provided by Short Line beyond the Fillmore Segment.

C. Ventura, Santa Paula and County hereby agree not to unreasonably withhold approval of operations and uses of the Santa Paula Branch and cooperation with Fillmore and VCTC regarding extension of Short Line service, use and operations in the unincorporated area of the County and/or the incorporated area of the City of Santa Paula so long as such operations and uses conform to the Master Plan.

D. The parties hereby agree to memorialize, in writing, any agreement by and between them regarding extension of Short Line service, use and operations in the unincorporated area of the County and/or in the incorporated area of the City of Santa Paula.

VII. DEVELOPMENT OF MASTER PLAN

A. Master Plan and Agreement To be Developed By SPBLAC. The parties to this MOU agree, as members of the SPBLAC, to

develop a master plan and agreement for the development of the Santa Paula Branch, including those portions leased or conveyed to the County and to Santa Paula (the "Master Plan"). The Master Plan shall guide and determine the purposes set forth hereinabove and any additional purposes recommended by SPBLAC and approved by the Commission. The parties further agree that the Master Plan will be the first priority of business by the SPBLAC and that SPBLAC shall make every effort to have developed and approved the Master Plan no later than one (1) year after the date upon which this MOU is fully executed. VCTC shall consider adoption of the Master Plan recommended by SPBLAC, and the use and operation of the Santa Paula Branch shall be governed by the Master Plan. The Master Plan shall be consistent with the General Plans of the parties to this MOU.

In consideration of the foregoing, but with the understanding that none of the jurisdictions are contractually bound by the following, each of the parties agrees to consider:

(a) enacting legislation, ordinances or resolutions which may be required of its jurisdiction in order to implement the master plan and agreement for development of the Santa Paula Branch; and

(b) refraining from taking actions within its jurisdiction which would conflict with or jeopardize the implementation of the master plan and agreement for development of the Santa Paula Branch.

B. Plan and Agreement For Use of Enterprise Fund to be Developed by SPBLAC. The parties to this MOU agree, as members of the SPBLAC, to develop a plan and agreement for use of the Enterprise Fund (the "Santa Paula Branch Enterprise Account Plan") to be approved by the Commission as provided in the Amendment to the Administrative Code. The Santa Paula Branch Enterprise Account Plan shall guide and determine the use of the Santa Paula Branch Enterprise Account for purposes set forth above and any additional purposes recommended by SPBLAC and approved by the Commission. The parties further agree that the Santa Paula Branch Enterprise Account Plan will be among the first priorities of business by the SPBLAC and that the SPBLAC shall make every effort to have developed and approved the Santa Paula Branch Enterprise Account Plan no later than ninety (90) days after approval of the Master Plan.

#### VIII. MISCELLANEOUS PROVISIONS

A. Complete Agreement. This MOU constitutes the complete agreement by the parties with respect to the matters contained herein except for the provisions of the Amendment to the Administrative Code and the Funding MOU, which are incorporated

herein by this reference as though fully set forth herein. With the exception of the Amendment to the Administrative Code and the Funding MOU, all prior or contemporaneous, written or oral, understandings by and between the parties are superseded by this MOU.

B. Assignment. No party shall assign its rights, duties or obligations under this MOU, or any privileges such party may have pursuant to this MOU without the prior written consent of every other party hereto; provided, however, that subject to the provision of Article III, Section B of this MOU and the Amendment to the Administrative Code and written consent of the assignee or delegate to be bound by the terms and conditions of this MOU, VCTC may assign and/or delegate its rights and obligations pursuant to Article III, Section B.1 to an operating agent such as, but not limited to, Metrolink or the Southern California Regional Rail Authority ("SCRRA"), without the prior written consent of the County and Cities; and, provided further, however, that VCTC shall give consideration and shall not unreasonably refuse the request of the County or any of the Cities with respect to the control and operation of such commuter rail service.

C. Construction. This MOU has been entered into in the State of California and shall be construed pursuant to the laws of said state. Paragraph numbers, headings and other marks indicating divisions within this MOU are for ease of reference and reading and shall not be construed to change the plain language of this MOU. Whenever in the context of the language of this MOU the use of gender or number is inconsistent with the intent of the language, the gender or number shall be construed to be consistent with the plain meaning and intent of the language. Number and gender shall also be construed to include all applicable numbers or genders as appropriate to the plain meaning and intent of this MOU.

D. Attorneys Fees and Costs. In the event of litigation, mediation or arbitration for the purpose of settling any dispute arising out of this MOU, each party shall bear the attorneys' fees and costs incurred by that party in the litigation, mediation or arbitration.

E. Signing Party. Each party represents to each other party that the person or persons signing this MOU on behalf of the representing party is the person(s) authorized to enter into this MOU upon the behalf of the representing party.

F. Counterparts. This MOU shall be executed in seven (7) original counterparts, one of which shall be delivered to each of the parties hereto, and all of which shall be deemed an original for all purposes related to this MOU.

G. Subsequent Agreements. All subsequent agreements reached by and between the parties hereto with respect to the matters herein shall incorporate the terms and conditions of this MOU, the Amendment to the Administrative Code and the Funding MOU, as each may be amended from time to time, and as each is applicable to such subsequent agreement.

H. Amendments. This MOU may be amended only in writing which has been executed by each of the parties hereto which incorporates and/or reflects any amendments to the Financing or Funding MOU as are necessary to make amendment of any of the three documents consistent with amendments to each of the other documents.

I. Effect of Withdrawal From SPBLAC. Withdrawal by any party to this MOU from SPBLAC shall not constitute automatic withdrawal or relief from the duties and rights granted by this MOU. Withdrawal or relief from the terms of this MOU shall be had by a party withdrawing from SPBLAC only upon an amendment to this MOU which complies with the requirements of Article VIII.H above.

J. Waivers. No waiver of any condition or terms of this MOU by any party shall be deemed a waiver by that or any other party of any other contemporaneous or subsequent, like or dissimilar condition or term of this MOU

K. Notices. Notices required to be given pursuant to this MOU shall be given by the noticing party either by personal delivery or by United States Mail to all other parties at the addresses set forth in Exhibit "I". If delivery is by United States Mail, the noticing party shall prepay postage. Notice given by personal delivery shall be deemed received when delivered. Notices given by United States Mail shall be deemed delivered on the fifth (5th) day after the postmark appearing on the envelope. Any change by a party in the person to whom or address to which notice is to be given on behalf of that party may be made by giving notice thereof in the same manner as provided in this Article VIII, Section K.

WHEREFORE, the parties have executed this MOU, consisting of thirteen (13) pages, which number includes the following signature pages, but is exclusive of the Exhibits referenced herein, as of the date first noted above.

SIGNATURE PAGE

Signing Entity

Signature of Authorized Signer;  
Attestation

VCTC:

By: *Ginger Gherardi*  
Ginger Gherardi, Executive Director

ATTEST:

*Donna Cole*  
Donna Cole, Clerk of the Commission

COUNTY OF VENTURA:

By: *Maggie Keldie*  
[PRINT NAME]:  
[PRINT TITLE]:



ATTEST: RICHARD D. DEAN, County Clerk  
By: *Faye Willard*  
Deputy County Clerk

[PRINT NAME]: FAYE WILLARD  
[PRINT TITLE]: DEPUTY COUNTY CLERK

CITY OF FILLMORE:

By: *Roy Payne*  
[PRINT NAME]: Roy Payne  
[PRINT TITLE]: City Manager



ATTEST:

*Noreen Withers*  
[PRINT NAME]: NOREEN WITHERS  
[PRINT TITLE]: CITY CLERK

CITY OF FILLMORE  
REDEVELOPMENT  
AGENCY

By: *Ray Payne*  
[PRINT NAME]: Ray Payne  
[PRINT TITLE]: Executive Director

ATTEST:

*Noreen Withers*  
[PRINT NAME]: NOREEN WITHERS  
[PRINT TITLE]: SECRETARY

CITY OF SAN  
BUENAVENTURA

By: *Donna Landeros*  
[PRINT NAME]: DONNA LANDEROS  
[PRINT TITLE]: CITY MANAGER

ATTEST:

*Barbara J. Kern*  
[PRINT NAME]: Barbara J. Kern  
[PRINT TITLE]: City Clerk

CITY OF SANTA PAULA:



By: *Arnold Dowdy*  
[PRINT NAME]: ARNOLD DOWDY  
[PRINT TITLE]: CITY ADMINISTRATOR

ATTEST:

*Norman S. Wilkinson*  
[PRINT NAME]: Norman S. Wilkinson  
[PRINT TITLE]: Dep. City Clerk

SIGNATURE PAGE

Signing Entity

Signature of Authorized Signer:  
Attestation

CITY OF SANTA PAULA  
REDEVELOPMENT  
AGENCY

By: *Arnold Dowdy*  
[PRINT NAME]: ARNOLD DOWDY  
[PRINT TITLE]: Executive Director

ATTEST:



  
\_\_\_\_\_  
[PRINT NAME]: Ken Cott  
[PRINT TITLE]: Secretary

Exhibit A through I to be attached by VCTC before execution.

Exhibit "J"

Ginger Gherardi, Executive Director  
VCTC  
950 County Square Drive, Suite 207  
Ventura, CA 93003

Chris Stephens  
Mgr - Planning and Highway Programs  
VCTC  
950 County Square Drive, Suite 207  
Ventura, CA 93003

Lin Koester, C.A.O.  
County of Ventura  
Government Center  
800 S. Victoria Avenue  
Ventura, CA 93009

Arthur Goulet  
Director of Public Works  
County of Ventura  
Government Center  
800 S. Victoria Avenue  
Ventura, CA 93009

Roy Payne, City Manager  
City of Fillmore  
524 Sespe Avenue  
Fillmore, CA 93015

Arnold Dowdy, City Manager  
City of Santa Paula  
P. O. Box 569  
200 S. Tenth Street  
Santa Paula, CA 93061

continued - - -

Norman S. Wilkinson  
Director of Public Works/  
City Engineer  
P. O. Box 569  
200 S. Tenth Street  
Santa Paula, CA 93061

Donna Landeros, City Manager  
City of San Buenaventura  
501 Poli Street  
P. O. Box 99  
Ventura, CA 93002-0099

Rick Raives, City Engineer  
City of San Buenaventura  
501 Poli Street, P. O. Box 99  
Ventura, CA 93002-0099

## **Exhibit 2**

SUB-LEASE AGREEMENT FOR THE SANTA PAULA BRANCH

This Agreement is made this 27 day of November, 1996, by and between the CITY OF FILLMORE REDEVELOPMENT AGENCY ("Fillmore"), a local government agency of the State of California, and FILLMORE & WESTERN RAILWAY COMPANY, a California corporation, in contemplation of the following facts:

A. The Ventura County Transportation Commission ("VCTC") owns a line of railroad subject to the Interstate Commerce Act, from milepost 403.20 at or near Montalvo, California, to milepost 431.59 at or near Piru, California ("Santa Paula Branch");

B. Fillmore has, concurrently with or shortly before entering into this Agreement, executed a certain "Lease Agreement for the Fillmore Segment of the Santa Paula Branch" with the Ventura County Transportation Commission ("VCTC") for the use of a portion of a line of railroad owned by VCTC and subject to the Interstate Commerce Act, from milepost ~~414.45~~ at or near 8th Street in Santa Paula, California, to milepost 431.59 at or near Piru, California ("Fillmore Segment");

C. ~~Fillmore~~ has leased the Fillmore Segment from VCTC for any lawful ~~Still and~~ Motion Picture Purpose, and for any lawful ~~Public/Tourist Train Excursions~~;

D. Fillmore desires to afford the use of the Fillmore Segment to Fillmore & Western Railway Co. for the same purposes and upon substantially the same terms and conditions as oblige Fillmore under the said Lease Agreement;

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants herein entered into, the parties hereby agree:

1. General Provisions:

Excepting as otherwise specifically provided in this Agreement, Fillmore & Western Railway Co. shall during the term of this Agreement warrant, agree to, perform,

observe and refrain from doing all those promises and acts to be performed by and matters prohibited to Fillmore under the terms of the said Lease Agreement dated November 13, 1996 between VCTC and Fillmore, the intent of the parties hereto being that Fillmore shall be fully and completely relieved by Fillmore & Western Railway Co. of all of the obligations of Fillmore according to that Lease Agreement. To that end, Fillmore & Western Railway Co. shall, with or without demand from Fillmore, defend and hold Fillmore harmless from and against any and all claims, liabilities, actions, and causes of action, whether or not well founded, which shall be brought or threatened against Fillmore or any of its officers, agents or employees by VCTC or any other person or entity to enforce or interpret or construe the terms of the said Lease Agreement or in any way pursuant to its provisions. A copy of said Lease Agreement is attached to this Agreement and by this reference incorporated herein in all its particulars.

2. Definitions:

"Execution Date" shall mean the date this Agreement is executed by the parties hereto.

"Fillmore Segment" shall mean that portion of the Santa Paula Branch between milepost 414.45 at or near 8th Street in Santa Paula and milepost 431.59 at or near Piru.

"Santa Paula Branch" shall mean the line of railroad from milepost 403.20 at or near Montalvo, California, to milepost 431.59 at or near Piru, California.

"Lease Property" shall mean the Track, Track Support Structures, buildings and real property which comprises land lying within 15 feet of the centerline of any Track existing on the Fillmore Segment on the Execution Date, reserving, however, for VCTC, its successors and assigns the right (consistent with the rights herein granted) to construct, reconstruct, maintain and use future fiber optic communication and pipeline facilities and appurtenances in, upon, over, under and along said property, without unreasonable or substantial interference with the operations of Fillmore or of Fillmore's sublessee and subject to the rights of existing tenants in possession.

"Lease Term" shall mean the twenty (20) year period beginning on July 1, 1996,

subject to the biennial review of rents and rates described in Section 3b.

"Maintenance" shall mean those activities required for continued basic operation of track and signal equipment. Track work under this item includes tightening track bolts, lifting and tamping joints to adjust cross level, switch adjustment and lubrication, operation of ballast regulators, replacement of worn switch components, spot replacement of worn ties, and spot replacement of worn rails. Signal work under this item includes periodic inspections and tests per FRA/PUC requirements and repair/replacement of defective components.

"Still and Motion Picture Production" shall include still and motion picture production, television filming, commercials and other still and motion television promotional activities, video productions and any other still or motion related media events.

"Public/Tourist Excursions" shall include public and private excursions, recreational and dinner train operations and any promotional activities related thereto.

"Taking" shall mean the taking or condemnation of materially all of the Lease Property by any competent authority at any time while this Agreement is in effect.

"Track" shall include all appurtenances thereof, consisting of rail and fastenings, switches and frogs complete, bumpers, ties, ballast and roadbed.

"Track Support Structures" shall mean those properties necessary for use or support of Track, including signals, bridges, culverts, or other structures, tunnels, grading, embankments, dikes, pavements, and drainage facilities.

3. Purpose and Scope of Lease:

The purpose of this lease is to permit Fillmore & Western Railway Co. to use the Lease Property for Still and Motion Picture Production purposes and for Public/ Tourist Excursion purposes, subject to reservations described in Section 11c, as part of the efforts of Fillmore to further develop the local economy. For purposes of promoting the local economy, for the term of this Lease Agreement, Fillmore & Western Railway Co. agrees to headquarter its operations and equipment in the City of Fillmore and to promote and support the City of



Fillmore and its business establishments in its business activities.

4. Demise and License:

Fillmore, for and in consideration of the rents, covenants, and conditions herein contained to be kept, performed, and observed by Fillmore & Western Railway Co., does lease and demise to Fillmore & Western Railway Co. for the Lease Term, subject to all matters of record and the reservations of VCTC under its Lease Agreement with Fillmore, and Fillmore & Western Railway Co. does rent and accept from Fillmore the Lease Property.

5. Rental Payments:

a. Effective November 1, 1996, Fillmore & Western Railway Co. shall pay as initial rental hereunder Six Hundred Dollars (\$600.00) monthly, plus Twenty-Five Cents (\$0.25) per each paid adult passenger and Fifteen Cents (\$0.15) per each paid juvenile passenger (under age sixteen [16]) ("Base Rental"). Fillmore & Western Railway Co. shall also pay as Movie Rental to Fillmore the sum of \$500 per day for each day of Still and Motion Picture Production use of the Lease Property. Fillmore & Western Railway Co. shall pay Base Rental and Movie Rental to Fillmore within fifteen (15) days of the end of each month including with payment a statement detailing the number of passengers (paid and unpaid) and the number of days of Still and Motion Picture Production during the period.

This initial rental rate shall be adjusted annually on July 1, thereafter as follows: The base for computing the adjustment is the Consumer Price Index for All Urban Consumers (1982-84 = 1000 for Los Angeles-Long Beach-Anaheim, California, published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), which is published for the month of May, 1996 ("Beginning Index").

If the Index published for the month of May prior to the adjustment date ("Extension Index") has increased over the Beginning Index, the monthly rent for the following year (until the next rent adjustment) shall be set by multiplying the initial rent by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index.



However, in no case shall the monthly rent be less than the initial rent.

If the Index is changed so that the base year differs from that used above, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued.

b. Fillmore and Fillmore & Western Railway Co. agree that the rental rate shown in Section 5a shall be reviewed, and if deemed necessary, renegotiated and revised on a biennial basis. Rental rate review may include, but is not limited to, consideration of a simple flat rate, percent of gross receipts, fee per rider, or other appropriate measures. In the event Fillmore and Fillmore & Western Railway Co. are unable to reach agreement regarding a rental rate, the matter may be submitted to mediation pursuant to the applicable provision of Section 26. If the rental rate is revised, it shall be memorialized through an amendment to this Agreement. If a rental rate cannot be agreed upon, even after mediation, this Agreement may be terminated in accordance with Section 19(b).

c. Fillmore & Western Railway Co. acknowledges and agrees that its obligation to pay Base Rental and Movie Rental hereunder and the rights of Fillmore in and to such rent shall be absolute and unconditional and shall not be subject to any abatement, reduction, set-off, defense, counterclaim or recoupment ("Abatements") for any reason whatsoever, including without limitation Abatements due to any present or future claims of Fillmore & Western Railway Co. against Fillmore under this Agreement or otherwise..

d. Fillmore & Western Railway Co. recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that Fillmore & Western Railway Co. may be subject to the payment of property taxes levied on such interest. Fillmore & Western Railway Co. shall pay all real and personal property taxes and assessments applicable to the Lease Property and to the personal property thereon.

e. It is the intention of the parties that Fillmore shall receive the Base Rental and Movie Rental free from all taxes, charges, expenses, costs, and deductions of every description, which are specified in this Agreement as being the obligation of Fillmore & Western Railway Co..

f. Fillmore shall have the right to inspect and audit the records of Fillmore & Western Railway Co. relating to the calculation of Base Rental and Movie Rental Payments.

g. Fillmore & Western Railway Co. agrees to use forms reviewed and approved by Fillmore for purposes of Calculation of Base Rental and Movie Rental.

h. With respect to the PURCHASE AND SALE AGREEMENT, SANTA PAULA AND VENTURA BRANCHES, between Southern Pacific Transportation Company as Seller and Ventura County Transportation Commission as Purchaser, Article 6: Reservations Paragraph 6.2 Income from Certain Leases and Other Agreements, the parties agree that the conditions set forth in the above referenced paragraph do not apply to this Agreement.

6. Use of Premises:

a. Fillmore & Western Railway Co. shall have the right to use the Lease Property for any lawful Still and Motion Picture Purpose and for any lawful Public/Tourist Train Excursion use defined herein, but not to remove the Track or Track Support Structures, as itemized on Exhibit "A" attached hereto, entitled "Inventory of Track and Track Support Structures" unless specifically authorized to do so in writing by Fillmore.

b. Fillmore & Western Railway Co. shall maintain at its sole expense the Track and Track Structures to such standards as required for its uses and in accordance with applicable regulations including, but not limited to, applicable regulations of the California Public Utilities Commission and Federal Regulations. Any materials used to replace defective components of the Track or the Track Support Structures shall be of the same or superior type and quality as that being replaced.

c. In the event that specific Track and Track Support Structures are determined to need extensive refurbishment or replacement, beyond Maintenance as defined in

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Section 2, VCTC shall be responsible for said refurbishment or replacement. Fillmore & Western Railway Co. acknowledges that any and all refurbishment or replacement activities beyond Maintenance shall be undertaken at the sole discretion of VCTC as funds may become available and Fillmore shall not be responsible whatsoever to undertake any refurbishment, replacement or Maintenance activities.

7. Construction:

a. Permanent Improvements.

Fillmore & Western Railway Co. shall not have the right to construct any additions or betterments of a permanent nature on the Lease Property without specific written approval in advance by Fillmore.

b. Temporary Improvements.

Fillmore & Western Railway Co. shall have the right to construct any temporary improvements necessary for the use of the Leased Property as permitted herein, provided, however, said temporary improvements shall be promptly removed upon cessation of their use.

c. Easements and Dedications.

The parties each recognize that in order to provide for the more orderly development of the Lease Property it may be necessary, desirable or required that street, water, sewer, drainage, gas, power line, and other easements and dedications, and similar rights be granted or dedicated over or within portions of the Lease Property. Fillmore will give Fillmore & Western Railway Co. timely written notice of all such requests, but VCTC under the terms of its Lease Agreement with Fillmore, may continue to consider such requests, have sole authority to approve or reject proposals and execute and deliver documents, from time to time, and throughout the term of this Agreement as may be appropriate, necessary, or required by several governmental agencies and public utility companies for the purpose of granting easements and dedications. No such easement or dedication, nor any construction in connection therewith

shall unreasonably interfere with the operations of Fillmore & Western Railway Co..

d. Title.

Any parts installed, replacements made or additions, improvements or alterations to the existing Track and Track Support Structures shall in each case be considered accessions to the Track and Track Support Structures and title thereto shall be immediately vested in VCTC without further cost or expense to VCTC or Fillmore. Any supplemental trackage (i.e. new sidings, yard or shop trackage) added to the original Track and Track Support Structures by Fillmore & Western Railway Co. shall remain the property of Fillmore & Western Railway Co. and shall not be considered accessions to the Track and Track Support Structures and title shall not be vested in VCTC unless Fillmore & Western Railway Co. receive due compensation.

However, Fillmore & Western Railway Co.'s fixtures, machinery and equipment placed on or maintained on the Lease Property or propelled on rail shall be and remain the property of Fillmore & Western Railway Co. unless the removal of same causes material damage to property of VCTC or of Fillmore, in which event Fillmore & Western Railway Co. shall pay the reasonable cost of repair.

At the termination of the Lease Term, Fillmore & Western Railway Co. shall, within One Hundred Eighty (180) days following, remove at Fillmore & Western Railway Co.'s sole expense, all of its property from the Lease Property.

8. Indemnification:

a. Fillmore & Western Railway Co. shall investigate, release, defend, indemnify and hold VCTC and Fillmore harmless from and against any and all loss, damage, liability claims, demands, detriments, costs, charges and expense (including attorney's fees) and causes of action of whatsoever character which VCTC or Fillmore, or both, may incur, sustain or be subjected to on account of loss or damage to property and loss of use thereof, or for bodily injury to or death of any persons (including, but not limited to the property, employees, subcontractors, agents and invitees of VCTC and of each party hereto) arising out of or in any

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way connected with the work to be performed or occupancy, operation, maintenance, enjoyment or use of the Lease Property under this Agreement, except such as shall have been occasioned by the negligence or other fault of VCTC or Fillmore.

9. Assignment, Subletting and Mortgaging:

a. Assignment by Fillmore & Western Railway Co..

This Agreement may not be assigned by Fillmore & Western Railway Co. without the prior written consent of Fillmore. The assignment shall not be valid unless there shall be delivered to Fillmore in due form for recording within ten (10) business days after the date of assignment (a) a duplicate original of the instrument of assignment, and (b) an instrument by the transferee expressly assuming all of Fillmore & Western Railway Co.'s obligations and defaults under this Agreement. Without limiting any of the foregoing, but in addition thereto, any assignment in contravention of the terms hereof is void, but this shall not impair any remedy of Fillmore because of Fillmore & Western Railway Co.'s having engaged in an act prohibited by the terms hereof.

b. Mortgage of Leasehold Interest.

Fillmore & Western Railway Co. shall not have the right, at any time or from time to time during the Lease Term, to encumber the leasehold estate created by this Agreement by a leasehold mortgage without the prior written consent of Fillmore, and any attempt by Fillmore & Western Railway Co. to do so without such consent shall be absolutely void and without effect.

c. Subletting by Fillmore & Western Railway Co..

Fillmore & Western Railway Co. shall not have the right, without prior written consent of Fillmore, to sublet a part of the Lease Property.

10. Limits on Use:

a. During the term of this Agreement the Lease Property shall be used by Fillmore & Western Railway Co. for the use specified in Section 6 above and for no other use or purpose. Fillmore & Western Railway Co. shall not use nor permit any other person to use the

Lease Property, or any part thereof, for any unlawful purposes. Fillmore & Western Railway Co. shall at all times during said term conform to, and cause all persons using or occupying any part of the Lease Property and Improvements by invitation of, under or by right of Fillmore & Western Railway Co. to comply with, all public laws, ordinances, rules, orders and regulations from time to time applicable thereto regardless of when they become or became effective, including without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and air and water quality, and shall furnish satisfactory evidence of such compliance upon request of Fillmore. Fillmore & Western Railway Co. shall not commit, nor allow any sublessee to commit, any waste upon the Lease Property.

b. Indemnity for Violation of Law.

(1) Fillmore & Western Railway Co. covenants and agrees to release, defend, indemnify and save Fillmore and VCTC harmless from any liability, cost, expense, fines, penalties, damages, or charges imposed for any violation of any and all laws, ordinances, rules, orders and regulations applicable to the use and occupancy of the Lease Property, or as the result of any discharge, leakage, spillage, emission or pollution whether occasioned by neglect, omission or willful act of Fillmore & Western Railway Co. or any person upon the Lease Property by license or invitation of Fillmore & Western Railway Co. or holding or occupying the same or any part thereof or by right of Fillmore & Western Railway Co., regardless of whether such liability, cost, expense, fine, penalty, damages or charge arises or is imposed during or after the expiration of this Agreement, provided the act giving rise to same occurs during the term hereof or any renewal or extension thereof.

(2) Likewise, Fillmore covenants and agrees to release, defend, indemnify and save Fillmore & Western Railway Co. harmless from any liability, cost, expense, fines, penalties, damages, or charges imposed for any violation of any and all laws, ordinances, rules, orders and regulations applicable to the use and occupancy of the Lease Property, or as the result of any discharge, leakage, spillage, emission or pollution whether occasioned by neglect, omission or willful act of any predecessor entity or any person upon the Lease Property

by license or invitation of predecessor entity or holding or occupying the same or any part thereof or by right of predecessor entity, regardless of whether such liability, cost, expense, fine, penalty, damages or charge arises or is imposed during or after the expiration of this Agreement, provided the act giving rise to same occurred prior to October 31, 1996.

(3) Fillmore & Western Railway Co. shall have the right to contest by appropriate legal proceedings, without cost or expense to Fillmore, the validity or application of any law, ordinance or regulation of the nature herein referred to. If by the terms of such law, ordinance, or regulations compliance therewith may be legally held in abeyance without subjecting Fillmore to any liability of whatsoever nature for the failure to so comply therewith, compliance therewith may be postponed until the final determination of such proceeding. Fillmore & Western Railway Co., upon commencing such contest shall furnish to Fillmore a document guaranteeing that Fillmore and Fillmore's interest and VCTC and VCTC's interest in the Lease Property shall be saved harmless from any penalty, damage, charge or claim resulting from such contest.

(4) Fillmore and VCTC shall have the right to contest by appropriate legal proceedings, without cost or expense to Fillmore & Western Railway Co., the validity or application of any law, ordinance or regulation of the nature herein referred to. If by the terms of such law, ordinance, or regulations compliance therewith may be legally held in abeyance without subjecting Fillmore & Western Railway Co. to any liability of whatsoever nature for the failure to so comply therewith, compliance therewith may be postponed until the final determination of such proceeding. Fillmore and VCTC, upon commencing such contest shall furnish to Fillmore & Western Railway Co. a document guaranteeing that Fillmore & Western Railway Co. and Fillmore & Western Railway Co.'s interest in the Lease Property shall be saved harmless from any penalty, damage, charge or claim resulting from such contest.

11. Conditions and Covenants:

All of the provisions of this Agreement and any Riders which are made a part of this Agreement shall be construed to be "conditions" as well as "covenants" as though the

words specifically expressing or imparting covenants and conditions were used in each separate provisions.

a. Qualifications on Use.

This Agreement is subject to the right of existing tenants in possession. Fillmore & Western Railway Co. accepts the Lease Property (including VCTC owned and other existing improvements) in its present condition without any representation or warranty by Fillmore as to the condition of such Lease Property or Improvements, and Fillmore shall not be responsible for any defect or change of condition in the Lease Property or such Improvements, any damage occurring thereto, or for the existence of any violation of any municipal, county, state or federal law, order, rule, regulation or ordinance.

b. Fillmore & Western Railway Co. UNDERSTANDS AND AGREES THAT FILLMORE MAKES NO WARRANTY OR REPRESENTATION CONCERNING WHAT, IF ANY, USE OF THE PREMISES MAY BE MADE UNDER THE REQUIREMENTS OF ANY GOVERNMENTAL JURISDICTION, AGENCY OR ENTITY HAVING AUTHORITY OVER THE PREMISES, INCLUDING THE CITY OF FILLMORE AND ITS ASSOCIATED AGENCIES AND DEPARTMENTS. Fillmore & Western Railway Co. SHALL BE SOLELY RESPONSIBLE FOR DETERMINING WHAT IS NECESSARY TO COMPLY WITH THE REQUIREMENT OF EACH SUCH GOVERNMENTAL ENTITY AND FOR FULL COMPLIANCE WITH SUCH REQUIREMENTS. NO EMPLOYEE, REPRESENTATIVE OR AGENT OF FILLMORE HAS ANY POWER OR AUTHORITY TO WAIVE OR MODIFY THIS PROVISION AND NO ORAL OR WRITTEN REPRESENTATION BY ANY SUCH PERSON SHALL EVER BE DEEMED TO CONSTITUTE A WAIVER OF THIS REQUIREMENT OR ANY ESTOPPEL AGAINST FILLMORE OR THE CITY OF FILLMORE.

c. VCTC Reservations.

Fillmore & Western Railway Co. acknowledges that VCTC has reserved for itself and those to whom it grants such right, the right to: 1) construct, maintain and operate any existing and new and additional communication facilities or pipeline upon, over and beneath

the Lease Property, so long as the exercise of such right does not unreasonably interfere with Fillmore's rights under its Lease Agreement with VCTC: 2) construct, maintain and operate any existing and new and additional recreational trail facilities; an 3) operate freight and regular passenger rail services on the Fillmore segment.

d. Right of Entry.

Agents, representatives or employees of Fillmore and VCTC shall have the right at reasonable times to enter the Lease Property for the purposes of inspecting, determining whether provisions of this Agreement and other Agreements applicable to the Lease Property are being complied with, and for maintaining, repairing or altering the land, or showing the Lease Property to prospective lessees, purchasers, mortgagees or beneficiaries under deed of trust.

e. Liens.

Fillmore & Western Railway Co. agrees and covenants to hold Fillmore and the Lease Property harmless from any mechanics' or materialmen's liens claimed by any person, firm or corporation employed by Fillmore & Western Railway Co.. In the event of the filing of any such lien, Fillmore & Western Railway Co. shall cause such lien to be released within five (5) business days after Fillmore's written notice to do so. Fillmore & Western Railway Co. shall indemnify and defend Fillmore and VCTC against all liability, cost and expense (including attorney fees) incurred by VCTC or Fillmore as a result of any such lien.

12. Insurance:

While this Agreement is in effect, Fillmore & Western Railway Co. shall furnish evidence satisfactory to Fillmore that both VCTC and Fillmore are named as additional insureds for third party liability claims, meeting the requirements stated below, in a form satisfactory to Fillmore. Not later than thirty (30) days prior to the expiration date of such coverage, Fillmore & Western Railway Co. shall furnish Fillmore with evidence satisfactory to Fillmore that the coverage has been or will be substituted for and will be effective immediately upon such expiration.

a. Liability:

Comprehensive general and automotive liability coverage shall:

- (1) have a combined single limit of not less than \$5,000,000 per occurrence;
- (2) name VCTC and Fillmore as additional insureds with respect to the operations of Fillmore & Western Railway Co.;
- (3) cover the contractual liability assumed by Fillmore & Western Railway Co. under this Lease;
- (4) provide that the insurer is not entitled to any contribution from insurance in effect for VCTC or Fillmore; and
- (5) provide for at least ten (10) days' notice to VCTC and Fillmore prior to any other cancellation or modification of coverage.

The insurance coverage shall also comply with the following requirements:

- (a) A "Deductible" clause is permitted subject to Fillmore & Western Railway Co. being solely responsible to be Self Insured for the amount of the deductible and to assume full responsibility for payment of any claims which fall below the deductible amount of the insurance coverage.
- (b) Provides coverage for "all operations of the insured conducted on the Lease Property" and contains a description of the work performed by the insured.
- (c) All signatures must be handwritten in ink on any policy, certificate or endorsement; rubber stamp signatures are not acceptable.
- (d) Said policy shall contain a cancellation clause reading in substance as the following approved notice:  
  
"It is agreed that this policy shall not be canceled nor the

amounts of coverage provided herein reduced until thirty (30) days after Fillmore's City Attorney shall have received written notice of such cancellation or reduction, as evidence by return receipt of registered mail."

- (e) No policy shall be acceptable unless first approved as to form by the City Attorney of Fillmore.
- (f) If Fillmore & Western Railway Co. is involved with the preparation and/or sale of food and/or drink on the concession premises, then products liability coverage shall also be required.
- (g) Insurance Binders shall not be accepted by Fillmore as proof of insurance coverage.

b. Worker's Compensation:

Federal Employer's Liability Act or Workers Compensation Insurance, as the case may be, shall cover all persons employed by Fillmore & Western Railway Co. or its agents in the conduct of its operations on the Lease Property and shall provide for a waiver of any right of subrogation against Fillmore and/or VCTC to the extent permitted by law.

13. Condemnation:

a. Total Taking.

The term "Taking" means the taking or condemnation of materiality all of the Lease Property by any competent authority at any time while this Lease is in effect. In the event of a Taking, this Agreement shall terminate on the earlier of vesting of title in, or the taking of possession by, the condemnor.

In the event of Taking, the award for the land value and interest thereon shall belong to VCTC and/or Fillmore. Under no circumstances shall Fillmore & Western Railway Co. be entitled to any "bonus value" for any remaining unexpired Term of this Lease.

If the values of the respective interests of VCTC, Fillmore and Fillmore

& Western Railway Co. have been separately determined in the proceeding for the Taking in accordance with this Section 13a., then the values so determined shall be conclusive upon VCTC, Fillmore and Fillmore & Western Railway Co.. Otherwise the values shall be determined by agreement or, if they are unable to agree, by arbitration under the terms of this Lease.

b. Temporary Taking:

(1) If all or part of the Lease Property or of Fillmore & Western Railway Co.'s interest under this Agreement is taken by any competent authority for its temporary use or occupancy ("Temporary Taking"), this Agreement shall not terminate and Fillmore & Western Railway Co. shall continue to pay rent and other charges and to perform all of its other obligations hereunder, to the extent Fillmore & Western Railway Co. is not prevented from doing so by the taking authority. In the event of a Temporary Taking, Fillmore & Western Railway Co. shall be entitled to receive from the award, up to one hundred (100%) percent reimbursement of its total forecast revenue for the period of the Taking as compensatory damages for any lost revenue resulting from the Temporary Taking.

(2) In the event all or part of Fillmore & Western Railway Co.'s interest under this lease is taken by any competent authority for its temporary use or occupancy for the full term of this lease, Short line shall receive the entire award for such interest.

14. Late Payments:

Fillmore & Western Railway Co. shall pay Fillmore an administrative charge of 1-1/2% per month or the highest amount permitted by law, whichever is lower, for any amount due hereunder which remains unpaid after thirty (30) days from the date such amount becomes payable.

15. Default:

Fillmore & Western Railway Co. shall be in default under this Agreement (1) if Fillmore & Western Railway Co. fails to pay the Base Rental and Movie Rental when due and such failure continues for a period of more than ten (10) business days, (2) if Fillmore & Western Railway Co. fails to cure the breach of any provision of this Agreement within thirty

(30) days after notice from Fillmore or to commence and diligently pursue the cure of such a breach if the breach can be cured within thirty (30) days; (3) if Short line is adjudged bankrupt or becomes insolvent or seeks general debtor relief by extrajudicial means or if any action or proceeding for debt relief of Fillmore & Western Railway Co. is commenced by Fillmore & Western Railway Co..

If Fillmore & Western Railway Co. fails to cure a default within thirty (30) days of notice from Fillmore to do so, or Fillmore & Western Railway Co. does not present a restoration plan within thirty (30) days, Fillmore shall have the right, without further notice and in addition to any other remedies Fillmore may have by law or in equity, to terminate this Agreement forthwith and to retake possession of the Lease Property.

16. ANTI-DISCRIMINATION CLAUSE:

Fillmore & Western Railway Co. herein covenants by and for itself and its assigns, and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall Fillmore & Western Railway Co. itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

17. Relocation:

Fillmore & Western Railway Co. acknowledges that it is a post acquisition tenant having entered into this Agreement and taken occupancy of the premises from Fillmore after Fillmore's acquisition of the premises. By entering into this Agreement, Fillmore & Western Railway Co. and any subtenant or successor in interest to Fillmore & Western Railway



Co. under this Agreement hereby expressly waives any claim for compensation for fixtures and equipment installed on the premises at such time as the Agreement is terminated or the term expires. Fillmore & Western Railway Co., any subtenant, and any successor in interest to Fillmore & Western Railway Co. also waive any claim against Fillmore for moving expenses, relocation assistance, and any claim for loss or damage to goodwill, as a result of being required to vacate the premises if this Agreement is terminated for any reason or due to expiration of the term of this Agreement. Fillmore & Western Railway Co. shall not be considered a "displaced person" as such term is defined in Section 7260 (b) (c) or (d) of the California Government Code as it relates to Fillmore. Fillmore & Western Railway Co. disclaims such status and hereby acknowledges its ineligibility for relocation assistance as provided in California Government Code Sections 7260 through 7277, as it now exists or may be amended.

18. Nonwaiver:

Fillmore's failure to enforce or exercise its rights under any term, condition or covenant of this Agreement shall not be construed as a waiver of such rights or such term, covenant or condition. Acceptance of rent shall not be deemed a waiver of Fillmore's rights to terminate this agreement as provided herein, regardless of when rent is accepted.

19. Termination or Expiration:

a. General:

Termination or expiration of this Agreement shall not release either party from an event which occurred prior to such termination or expiration. If Fillmore & Western Railway Co. fails to surrender possession of the Lease Property upon termination of this Agreement, Fillmore shall have the right, to the extent permitted by law, to re-enter the Lease Property and remove Fillmore & Western Railway Co. and any person or entity claiming through Fillmore & Western Railway Co. from the Lease Property.

b. Notice of termination.

Either party may terminate this Agreement, without cause, upon six (6) month written notice of termination given to the other party per Section 25 below.

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c. Surrender of Premises.

Upon the expiration or termination of the Lease Term, Fillmore & Western Railway Co., without further notice, shall deliver up to Fillmore the possession of the Lease Property. Fillmore & Western Railway Co. shall restore the Lease Property to the condition in which it existed at the time Fillmore & Western Railway Co. took possession, normal wear and tear, erosive affects of time, and improvements or alterations made with specific written approval excepted. Upon the failure or refusal of Fillmore & Western Railway Co. to remove from the Lease Property, as provided in Section 7d., all personal property owned by Fillmore & Western Railway Co., (a) said personal property shall thereupon, at the option of Fillmore, become the sole property of Fillmore, or (b) if Fillmore so elects it may remove from the Lease Property personal property owned by Fillmore & Western Railway Co., and Fillmore may also restore the Lease Property substantially to the condition in which it existed at the time Fillmore & Western Railway Co. took possession, all at the expense of Fillmore & Western Railway Co., which expense Fillmore & Western Railway Co. agrees to pay upon demand, or (c) Fillmore at its sole option may elect that this Agreement with all terms contained herein, including the payment of Rent for failure to vacate on time may remain in effect until Fillmore & Western Railway Co.'s personal property is removed and the Lease Property is restored by Fillmore. In the event of such failure or refusal of Fillmore & Western Railway Co. to surrender possession of the Lease Property, Fillmore shall have the right to re-enter upon the Lease Property and remove Fillmore & Western Railway Co., or any person, firm or corporation claiming by, through or under Fillmore & Western Railway Co., therefrom.

d. Highway Grade Separation Projects.

The parties acknowledge that in the event that any highway/railroad grade separation projects involving the Lease Property are approved by government agencies having jurisdiction, Fillmore may terminate this Agreement in order to eliminate any obligation upon Fillmore to participate in such project.

20. Fillmore Loan to Fillmore & Western Railway Co.

Fillmore shall lend to Fillmore & Western Railway Co. the sum of One Hundred Three Thousand and Eight Hundred Dollars (\$103,800.00) (the "Loan") which shall be subject to the following terms related to its use, security, and repayment:

a. The Loan shall be evidenced by a promissory note (the "Note") in substantially the form attached hereto as Exhibit "B" and incorporated herein by reference. Fillmore's Executive Director is authorized to disburse \$84,000.00 of such funds in monthly increments of \$3,500.00 over a period of twenty-four (24) months made payable jointly to Fillmore & Western Railway Company and Citizens State Bank of Santa Paula. The first such disbursement shall commence with the date of the first payment due to Citizens State Bank of Santa Paula in accordance with the Citizens State Bank of Santa Paula Credit Memorandum/Loan Proposal of October 24, 1996 and the loan documents to be executed by and between Fillmore & Western Railway Co. and Citizens State Bank of Santa Paula relating to the above referenced credit memorandum. The remaining \$19,800.00 of the funds shall be used by Fillmore as a credit against all delinquent rent owing to Fillmore by Fillmore & Western Railway Co. and shall bring rent payments owing under this Lease Agreement current to October 31, 1996.

21. Discharge of July 18, 1990 Promissory Note

Fillmore agrees to fully discharge the promissory note dated July 18, 1990, that is in the face amount of Fifty Thousand Dollars (\$50,000.00) and to fully release Fillmore & Western Railway Co. and the Borrowers on said promissory note from the indebtedness to Fillmore on the note. The full discharge of this note by Fillmore is not to be construed as a pledge of any revenues of Fillmore or the City of Fillmore.

22. Attorney's Fees:

If either party takes any steps or brings an action to compel performance of or to recover for breach of any term of this Agreement, the non-prevailing party agrees to pay all costs and expenses, including reasonable attorney's fees, which may be incurred by the prevailing party in the enforcement of this Agreement.

23. Entire Agreement:

The contents of this Agreement are the entire agreement between the parties and supersede all written or oral communications between the parties prior to its execution.

This Agreement shall not be modified except by the written agreement of the parties.

Subject to Section 8 and 9, this Agreement shall be binding upon the heirs, representatives, successors and assigns of the parties respectively.

24. Applicable Law:

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

25. Notices:

All notices or other documents under this Agreement shall be in writing and delivered personally or mailed by first class mail, postage prepaid, to the parties at their last known address.

26. Severability:

If any paragraph, sentence, clause, phrase or word shall become without full effect due to any legal interpretation, judicial decision, operation of law or otherwise, the balance of this Agreement shall remain in full force and effect.

27. Assignment, Successors:

This Agreement is intended solely for the benefit of and shall be binding upon the parties hereto, and their successors and assigns, and is not intended nor shall it be construed to be for the benefit of any other party.

28. Dispute Resolution

a. Good Faith Resolution Prerequisite to Mediation

In the event of a dispute arising out of the terms of, or pertaining to, this Agreement, the parties shall negotiate in good faith for thirty (30) days before either party may



submit the matter to mediation. VCTC and Fillmore agree that, in the event they are unable to resolve any such dispute within thirty (30) days of the parties recognition of such dispute between them, they shall submit the matter at issue to mediation and that the method and procedure for such mediation shall be as hereinafter set forth in Subsection c.

b. Mediation Prerequisite to Litigation

No party may undertake litigation with reference to any such dispute until (1) mediation of that dispute has occurred or (2) written notice of refusal by one party to the other party of the noticing party's refusal to submit to the decision of the Mediator (as hereinafter defined), whichever is earlier.

c. Methods and Procedures for Mediation

Mediation shall be subject to the following methods and procedures:

(1) A party dissatisfied with the results of negotiation between the parties may, after the conclusion of the thirty-day period described above in subsection a, give notice to the other party of its request to submit the matter to mediation.

(2) The parties hereby agree that they shall submit any matter elected for mediation to (a) a retired judge of the Superior Court of the County of Ventura agreed upon by all parties, or (b) in the event that a retired judge is not available or satisfactory to all parties, to such other mediator as all parties may agree (the "Mediator").

(3) The parties hereby agree to equally share the fees and costs incurred by the Mediator, with each party bearing its own costs of preparation and presentation of the matter to the Mediator.

(4) The Mediator shall have the authority to call such witnesses as he or she deems appropriate to the matter submitted to him or her, to take testimony from such witnesses as the parties may call and those called by the Mediator, to request and demand original and further briefing of any or all issues from the parties and to conduct the mediation pursuant to the procedures set forth in the California Rules of Court and the statutes of the State of California, including without limitation, the California Evidence Code. The Mediator shall render his decision, in writing, to all parties within forty-five (45) days of the conclusion of taking testimony and/or evidence regarding the dispute.

(5) The decision of the Mediator shall not be binding and, subject to the limitations set forth in subsection b above, either party may institute legal action de novo in the event that such party does not agree with the decision of the Mediator. The parties agree that, for the purposes of such litigation and to the extent permitted by law, the statute of limitations for filing such action shall be one hundred eighty (180) days from the date of the Mediator's written decision.

(6) The parties agree that any mediation or litigation which may

arise pursuant to this Agreement shall take place in, and in the event of litigation shall be conducted in, the appropriate court for the County of Ventura, California.

(7) In the event that litigation is undertaken by either party after mediation, the prevailing party shall be entitled to recover its costs and attorney's fees incurred in the litigation from the other party.

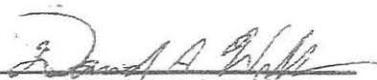
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first hereinabove mentioned.

"FILLMORE & WESTERN RAILWAY CO.:"

Fillmore & Western Railway Co. ,  
a California corporation

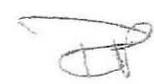
"FILLMORE:"

City of Fillmore  
Redevelopment Agency

by:   
David Wilkinson, President

by:   
Roy Payhe, Executive Director

by: \_\_\_\_\_  
Tresa Wilkinson, Secretary



## **Exhibit 3**

SANTA PAULA BRANCH  
LINE LEASE NO. 1370

LAND LEASE

This LAND LEASE ("Lease") is entered into as of the 26<sup>th</sup> day of April, 1999 (the "Effective Date"), by and between the VENTURA COUNTY TRANSPORTATION COMMISSION, a county transportation commission organized pursuant to the laws of the State of California ("Lessor") and FILLMORE & WESTERN RAILWAY, a California corporation ("Lessee"), and is based upon the following facts which are material to the terms and conditions hereinafter set forth.

MATERIAL FACTS

A. Lessor is the owner in fee of that certain real property and any improvements and facilities thereon as shown in SPBL Drawing NO. V-48(6), approximately post mile 424.8 to post mile 425.1, which is attached hereto and incorporated herein by this reference, marked as Exhibit "A" (the "Property");

B. Lessee desires to use the Property to store and maintain railroad equipment and materials;

C. Lessor wishes to lease the Property to the Lessee and Lessee wishes to lease the Property from Lessor; and

D. The parties wish to memorialize, in writing, the terms and conditions under which this lease shall be conducted;

NOW, THEREFORE, THE PARTIES AGREE, in consideration of the following terms and conditions and other good and valuable consideration, receipt of which is hereby acknowledged, as follows:

1. Lease and Acceptance of Leased Property. Lessor hereby leases the Property to Lessee for uses hereinafter set forth and Lessee hereby accepts from Lessor lease of the Property for the uses hereinafter set forth, subject only to the reservations set forth in Paragraph 6 below.

2. Term and Termination.

a. Year-to-Year Lease. This lease shall commence on the Effective Date and be for a term of one (1) year from the Effective Date and shall continue year to year until terminated as hereinafter provided (the "Term").

b. Termination Upon Notice. Except as otherwise provided hereinafter for an Early Termination or a Termination Through Eminent Domain, this Lease may be terminated without cause (a "Termination"), upon notice from the party wishing to terminate to the other party, in writing, given at least one (1) year prior to the requested Termination date ("Termination Notice").

3. Termination in the Event of Condemnation. In the event that any entity with powers of eminent domain should exercise such powers with respect to the Property, this Lease shall terminate (a "Termination Through Eminent Domain") immediately upon issuance of a writ of possession to such entity and Lessor shall have no obligation to allow Lessee use of the Property after said date (the "Date of Possession"). In such an event, the Lessee shall be responsible only for the pro rata share of Rent and any Additional Rent which has accrued prior to the Date of Possession.

4. Rent, Additional Rent. As consideration for this Lease, Lessee shall pay to Lessor the sum of One Hundred Dollars (\$100.00) each year for so long as this Lease shall continue in effect. As "Additional Rent", Lessee shall pay any property, possessory interest or other taxes or assessments which are assessed against the Property by reason of Lessee's use of the Property, and any other sums hereinafter identified as a part of Additional Rent.

5. Condition of Property. Lessee acknowledges that neither Lessor nor any agent of Lessor has made any representation or warranty with respect to the condition of the Property or with respect to the suitability of the same for the

conduct of Lessee's business or the uses permitted herein, nor has Lessor or any agent of Lessor agreed to undertake any modification, alteration, or improvement to the Property. Lessee further acknowledges that Lessee has independently investigated the Property and is satisfied that the Premises are suitable for Lessee's intended use and that the Premises meet all governmental or quasi-governmental requirements for such intended use. By taking possession of the Property, Lessee shall be deemed to have accepted the Property as being in good and sanitary condition order and repair and to have accepted the Property in their condition existing as of the Effective Date and the date of such possession, subject to all applicable laws, covenants, conditions, restrictions, easements and other matters of public record and any rules and regulations from time to time promulgated by Lessor governing the use of the Property. Lessee acknowledges that there may be subterranean facilities within the Property, notwithstanding the absence of markers, monuments or maps indicating their existence.

6. Reservations. Lessor hereby excepts and reserves to itself, without abatement of Rent, Additional Rent or any other obligation of Lessee herein, the right to be exercised by Lessor

or any other person whom Lessor may designate or permit authority to so do, to:

- a. operate, maintain, review and relocate any and all existing pipe, track (if any), power and communication, including without limitation, fiber optic lines, signs and appurtenances thereof and thereto, and other facilities of like character upon, over, or under the surface of the Property;
- b. construct, operate, maintain, review and relocate such additional facilities of the same character as shall not unreasonably interfere with Lessee's use of the Property as specified in Paragraph 8 of this Lease; and
- c. conduct environmental audits and/or remediate any Hazardous Materials/Substances problems discovered as a result thereof.

Any such construction, operation, maintenance or relocation shall not be done at Lessee's expense unless such work is requested by Lessee and done for the benefit of Lessee.

Lessee hereby waives any claim for damages for any injury or inconvenience to, or interference with, Lessee's business, use or quiet enjoyment of the Property.

7. Obligations of Lessee. Lessee and Lessor agree and Lessee hereby acknowledges that it shall be responsible during Term of this Lease for the obligations assumed by Lessee herein including, but not limited to, the following:

a. Payments. Payment of Rent and Additional Rent as set forth hereinabove and Utility Contract Costs, if any, as defined below;

b. Maintenance of Property. Lessee shall pay during the Term and prior to delinquency all charges for water, gas, light, heat, power, electricity, telephone and other communications service(s), janitorial service, trash pick-up, weed abatement, sewer and all other services supplied to, or consumed on, the Property (collectively hereinafter, "Services") and all taxes, levies, fees or surcharges therefor, including without limitation, property taxes and possessory interest taxes. Lessee shall be solely responsible for arranging for Services to be supplied to the Property and shall contract for all Services in Lessee's name prior to the Effective Date. The lack or shortage of Services due to any cause whatsoever shall not affect any obligation of Lessee under this Lease, and Lessee shall keep and observe all of the terms, conditions and covenants of

this Lease and pay all Rent and Additional Rent due hereunder without diminution, credit or deduction.

c. Utility Company Contract by Lessor. If Lessor contracts with a utility company to provide access for service to the Property for Lessee's sole use and with lessee's concurrence, Lessee shall pay to Lessor all costs and expenses incurred by Lessor in such contract including, without limitation Lessor's administrative costs, in an amount not less than Three Hundred Fifty Dollars (\$350) ("Utility Contract Costs").

d. Delivery of Possession. Delivery of possession of the Property to Lessor at a Termination, Early Termination or a Termination Through Eminent Domain in the same condition as the Property had at the time this Lease was entered, reasonable wear and tear excepted;

e. Insurance. Maintenance, at Lessee's sole cost, and provision to Lessor of a copy of the policy and a certificate, of insurance for public liability and property damage insurance on the Property in the amount hereinafter specified by the Lessor. Such insurance shall be issued by an A rated California insurance company and the policy shall (i) name the Lessor as an additional insured and (ii)

include a provision that thirty (30) days written notice shall be given to Lessor prior to any cancellation of said policy.

Amount of Insurance Required: \$2,000,000 per incident, with maximum coverage of \$1,000,000 per individual.

f. Hazardous Materials. Lessee shall not use, generate, manufacture, produce, store, release, discharge, or dispose of, on, under or about the Property, or transport to or from the Property, any Hazardous Materials as defined below, or allow its agents or any other person or entity to do so. The term Hazardous Materials shall include, without limitation, (I) those substances included within the definition of "hazardous substances", "hazardous materials", "toxic substances", or "solid wastes" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq., the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. § 6901, et seq., and the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801, et seq., and in the regulations promulgated pursuant to said laws; (II) those substances listed in the United States Department of Transportation Table, 49 C.F.R. 172.101 and amendments thereto or

designated by the Environmental Protection Agency (or any successor agency thereto) as Hazardous Substances; and, (iii) such other substances, materials and wastes which are or become regulated under applicable federal, state or local law or the United States government, or which are classified as hazardous or toxic under federal, state or local laws or regulations.

8. Permitted Uses. Lessee shall use the Property only for the storing and maintenance of railroad equipment and materials.

9. Alterations to Property.

a. In General. Lessee shall not make or permit to be made, any alterations, changes, enlargements, improvements or additions (collectively "Alteration(s)") in, on, about or to, the Property, or any part thereof, without the prior written consent of Lessor, which consent may be withheld in Lessor's absolute and sole discretion, and without acquiring and complying with the conditions of all permits required for such Alteration(s) by any governmental entity having jurisdiction thereof. As a condition to the giving of its consent for any Alteration(s), Lessor may impose such requirements as Lessor may deem necessary in its sole discretion, including without limitation, the manner in

which the work is done, the right of approval of any contractor or subcontractors by whom the Alteration(s) is to be performed, the times during which the Alteration(s) is to be accomplished, the requirement that Lessee post a completion bond in an amount and form satisfactory to Lessor, and the requirement that Lessee reimburse Lessor, as Additional Rent, for Lessor's actual costs incurred in reviewing any proposed Alteration(s), whether or not Lessor's consent is granted. In the event that Lessor consents to the Alteration(s) by Lessee, the same shall be made by Lessee at Lessee's sole cost and expense and in accordance with the plans and specifications approved by Lessor and in a manner causing Lessor and its agents the least interference and inconvenience practicable under the circumstances. Lessee shall provide Lessor with written notice ten (10) days prior to employing any laborer or contractor to perform services related to, receive materials for the use upon, the Property and prior to commencement of any Alteration(s) on the property. Any Alteration(s) to the Property by Lessee shall be made in accordance with applicable laws and a first-class, workmanlike manner. In making any Alteration(s), Lessee shall, at Lessee's sole

cost and expense, file for and secure and comply with any and all permits or approval required by any governmental departments or authorities having jurisdiction thereof and any utility company(ies) having an interest therein. In no event shall Lessee make any structural changes to the Property or improvements thereon or make any changes to the Property or improvements thereon which would weaken or impair the structural integrity of the Property or any improvements thereon.

b. Lessor may elect, in Lessor's sole and absolute discretion, to have all or a portion of the Alteration(s) removed from the Property upon Termination, Early Termination or Termination Through Eminent Domain and Lessee shall, at its sole cost and expense, remove such Alteration(s) as designated by Lessor for removal and repair all damages to the Property arising from such removal prior to Termination, or within thirty (30) days after Early Termination or Termination Through Eminent Domain. In the event Lessee fails to remove any Alteration(s) designated by Lessee for removal or to repair all damages arising from such removal as hereinabove required, Lessor may remove such Alteration(s) and make such repairs and recover from Lessee

(I) all costs and expenses incurred by Lessor in connection therewith plus (ii) an amount no less than the monthly rent (as in effect upon before the Termination, Early Termination or Termination Through Eminent Domain) for each month during which such removal is accomplished, in order to compensate Lessor for the loss of rent to Lessor resulting from the unavailability of the Property for leasing to another tenant during such time or the damages which result from the inability of a condemning party to obtain immediate possession of the Property, as the case may be. Lessee's obligation to pay all such costs, expenses and rent shall survive the Termination or Early Termination. Unless Lessor elects to have Lessee remove an Alteration(s), such Alteration(s) shall, at the sole and absolute option of Lessor, become the property of Lessor upon Termination, Early Termination or Termination Through Eminent Domain, without any payment therefor by Lessor, and shall remain upon and be surrendered with the Property at Termination, Early Termination or Termination Through Eminent Domain.

10. Obligations of Lessor. Lessor's sole obligation under this Lease is to make peaceable possession of the Property, upon the terms and conditions herein set forth, available to Lessee

during the Term so long as Lessee is in compliance with the terms and conditions of this Lease and subject to the reservations by Lessor as set forth herein.

11. Indemnity by Lessee and Lessor. Lessee shall indemnify, protect, defend and hold Lessor harmless for all claims and damages incurred by reason of injury to persons or property and arising out of, or resulting from, Lessee's use of the Property, and, if necessary, shall defend Lessor with counsel of Lessor's choice in any such claim or damage. Lessor shall indemnify, defend and hold harmless Lessee from any and all liability, claims, expenses, costs and damages arising out of or related to the condition of the Property prior to the Effective Date of this Lease or arising subsequent to this Lease provided that any such claim is not related to Lessee's use of the property.

12. Default and Remedies.

a. Lessee's Default. Lessee's failure to comply with Lessee's obligations hereinabove set forth shall constitute an event of default by Lessee (an "Event of Default") and shall be grounds for immediate termination of this Lease and vacation of the Property by Lessor within five (5) days of receipt of written notice given by Lessor to Lessee of the

grounds for such termination (an "Early Termination"). Notwithstanding the foregoing, if within five (5) days of the deemed receipt (as provided in Paragraph 13.f below) of said notice given and received as hereinafter set forth in Paragraph 13.f, Lessee undertakes and diligently proceeds to cure the Event of Default, Early Termination shall not take place. The foregoing notwithstanding, Lessor's remedies in the Event of a Default shall be cumulative and, in addition to an Early Termination, Lessor shall have all remedies available to it at law and equity.

b. Lessor's Default. Lessor shall be in default of this Lease if Lessor does not provide peaceable possession of the Property to Lessee so long as Lessee is in compliance with the terms of this Lease ("Lessor's Default"). Lessee shall be entitled to specific performance in the event of Lessor's Default.

13. Miscellaneous Provisions.

a. Construction of Lease. This Lease has been entered into in the State of California and it shall be construed pursuant to the laws of said State. The use of headings and numerals herein are for purposes of ease of reading and location of provisions and such numbers and headings shall

not be construed to alter the intent of the parties as set forth in the text of this Lease. Wherever number or gender or are used in the text of this Lease they shall be construed to be that number or gender which is appropriate in the context of the text.

b. Sole Agreement. The terms and conditions set forth herein constitute the sole agreement of the parties with respect to this Lease and no other prior or contemporaneous, written or oral agreements between the parties shall have any effect.

c. Execution by Authorized Agent of Parties. Each party represents and warrants to the other party that this Lease has been executed on behalf of the party so representing by a duly authorized agent or officer of the party so representing.

d. Waiver. No waiver of an Event of Default or Lessor's Default shall constitute a waiver of any prior, contemporaneous or subsequent, same or other, default by Lessor or Lessee, as the case may be.

e. Recording of Lease. This Lease shall not be recorded by either party without the prior written consent of the other party.

e. Notices. When any notice or communication is required to carry out the terms of this Lease, such notice shall be in a writing which shall be (i) personally delivered to the other party, or (ii) delivered to the other party by United States Mail, postage prepaid. Such notices shall be deemed received (i) on the date of personal delivery, if so delivered, or (ii) on the fifth (5th) day after the postmark appearing on the envelope in which such notice is delivered if delivered by United States Mail. Notices shall be delivered to the parties at the addresses listed below or to such other address as one party may provide to the other party by written notice given in the manner prescribed in this subparagraph f:

If to Lessor:

Ventura County Transportation Commission  
950 County Square Drive, Suite 207  
Ventura, CA 93003  
Attention: Executive Director

If to Lessee:

Fillmore & Western Railway  
351 Santa Clara Avenue  
Fillmore, CA 93015  
Attention: Dave Wilkinson

g. Jurisdiction for Litigation. In the event of litigation or other action to enforce this Lease or any portion thereof, jurisdiction shall be with the Ventura County Superior Court for all state actions and the Ninth Circuit of the United States District Court for any federal action.

h. Attorneys Fees and Costs. In the event of litigation or arbitration to enforce the terms and conditions of this Lease, the prevailing party, as determined by the Court or Arbitrators as the case may be, shall be entitled to recover from the other party, the prevailing party's reasonable attorneys' fees and costs expended in such litigation or arbitration.

i. Consent of Lessor Required for Assignment, Sublease. Lessee shall not assign this Lease or sublease its rights in the Property without the prior written consent of the Lessor.

WHEREFORE, the parties have executed this Lease consisting of sixteen (16) pages, including these signature pages, but excluding the Exhibits attached hereto, as of the date first noted above.

LESSOR: VENTURA COUNTY TRANSPORTATION COMMISSION

By:   
\_\_\_\_\_  
Ginger Gherardi, Executive Director

ATTEST:

  
\_\_\_\_\_  
Donna Cole, Clerk of the Commission

LESSEE: [NAME(S) OF LESSEE(S)]

By:   
\_\_\_\_\_  
[print name]: David Wilkinson  
[print title]: CEO

By: \_\_\_\_\_  
[print name]:  
[print title]:



(56) Ashm. Con.  
 P.C.# BE A244  
 AUTO GATES &  
 AUTO LIFTER 1975  
 10  
 300'

TAILS  
 F.U.C. SE 1/4  
 117° 13' 30" X 1320' Xing. S. 90'  
 117° 13' 30" X 26' Conc. Box (424-39)  
 117° 13' 30" X 12' X 36' Xing.  
 117° 13' 30" X 4000' Xing.  
 117° 13' 30" X 12' X 36' X 32' Conc. Box (A2444)  
 117° 13' 30" X 12' X 36' X 32'  
 117° 13' 30" X 12' X 36' X 32'  
 117° 13' 30" X 12' X 36' X 32'

87° 55' 8" 65' W.P.R.

SEE STATION MAP

FILLMORE  
 1384+61<sup>B</sup> MILE 424<sup>B</sup>

1/2" 5' Dirt Roadway  
 P.U.C. 35  
 117° 13' 30" Road Xing Sign  
 117° 13' 30" Road Xing Sign  
 117° 13' 30" Xing Sign

V-48 S-6B

EXHIBIT A

## **Exhibit 4**

## INTERIM MAINTENANCE AGREEMENT

### FOR THE "VCTC SEGMENT" OF THE SANTA PAULA BRANCH

This Agreement is made as of this 14<sup>th</sup> day of November, 1997, by and between the FILLMORE & WESTERN RAILWAY COMPANY ("Fillmore & Western"), a California corporation, and the VENTURA COUNTY TRANSPORTATION COMMISSION ("VCTC"), and is based on the following facts which are material to the Agreement of the parties.

#### MATERIAL FACTS

VCTC owns a line of railroad from milepost 403.20 at or near Montalvo, California, to milepost 431.59 at or near Piru, California ("Santa Paula Branch");

VCTC desires to have Fillmore & Western perform track, signal and track support structures inspection and maintenance services on the branch line from milepost 403.85 to milepost 414.45, referred to here as the VCTC Segment of the Santa Paula Branch Line; and

Fillmore & Western is willing, able and qualified to perform track, signal and track support structures inspection and maintenance services on the VCTC Segment of the Santa Paula Branch Line;

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants herein entered into and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereby agree:

1. Definitions:

"VCTC Segment" shall mean that portion of the Santa Paula Branch between milepost 403.85 and milepost 414.45.

"Signals" shall include all fixtures and equipment necessary to properly operate all lights, bells, gates and all other warning devices as required at all public and private roadway crossings of the VCTC Segment, and appurtenances thereto.

"Track" shall mean all rails and fastenings, switches and frogs complete, bumpers, ties, ballast and roadbed, and appurtenances thereto.

"Track Support Structures" shall mean those properties necessary for use or support of Track, including, but not limited to, signals, bridges, culverts, other structures, tunnels, grading, embankments, dikes, pavements, and drainage facilities, and appurtenances thereto.

2. Services:

The Fillmore & Western agrees to provide required inspections and maintenance for all Track, Signals and Track Support Structures on the VCTC Segment. Such work shall be carried out in a good and workman-like manner and in conformance with all applicable Federal Railroad Administration (FRA) and California Public Utilities Commission (PUC) regulations and requirements, and all VCTC General Operating Rules.

3. Payment for Services:

a. VCTC payment to Fillmore & Western for all work completed under this Agreement shall be on a time and materials basis, per the schedule of labor rates and materials costs provided in Exhibit A, attached hereto and made a part hereof. VCTC shall make payment to Fillmore & Western within thirty (30) days of receipt of invoices and appropriate supporting documentation.

b. VCTC shall have the right to inspect and audit the records of Fillmore & Western relating to any work performed under this Agreement.

4. Term:

Fillmore & Western shall commence work upon execution of this Agreement. This Agreement shall remain in effect until either (a) termination per Section 5 of this Agreement or (b) such time it has been explicitly replaced or superseded by a subsequent Agreement between VCTC and Fillmore & Western.

5. Termination:

Either party may terminate this Agreement at any time with or without cause by giving the other party thirty (30) days written notice. In the event of a termination by either party without cause, Fillmore & Western shall be compensated for work performed prior to the date of the notice of termination.

6. Indemnification:

Fillmore & Western agrees to protect, defend, indemnify and hold VCTC, its officers, employees, agents, successors and assigns harmless from and against any and all loss, damage, liability claims, demands, detriments, costs, charges and expense (including attorneys' fees) and causes of action of whatsoever character which VCTC may incur on account of loss or damage to property and loss of use thereof, or for bodily injury to, or death of, any persons including, but not limited to the property, employees, subcontractors, agents and invitees of each party hereto, arising out of or in any way connected with the work to be performed pursuant to this Agreement, except such as shall have been occasioned by the negligence or other fault of VCTC.

7. Assignment:

Fillmore & Western may not assign its right under this Agreement nor delegate the performance of its duties without VCTC's prior written consent.

8. Independent Contractor:

There is no employer/employee relationship between the parties. Fillmore & Western is and at all times shall remain as to VCTC a wholly independent contractor. Neither VCTC nor any of its agents shall have control over the conduct of Fillmore & Western or any of Fillmore & Western's employees, except as herein set forth. The Fillmore & Western shall not at any time or in any manner represent that it or any of its agents or employees are in any manner agents or employees of VCTC.

9. Non-Discrimination:

Fillmore & Western shall not discriminate in the hiring of employees or in the employment of subcontractors on the basis of sex, race, religion, age, national origin, disability or any other basis prohibited by law.

10. Insurance:

While this Agreement is in effect, Fillmore & Western shall furnish evidence satisfactory to VCTC that VCTC is named as an additional insured for any and all liability claims, meeting the requirements stated below, in a form satisfactory to VCTC. Not later than thirty (30) days prior to the expiration date of such coverage, Fillmore & Western shall furnish VCTC with evidence satisfactory to VCTC that the coverage has been or will be substituted for and will be effective immediately upon such expiration.

a. Liability:

Comprehensive general liability coverage, including but not limited to liability insurance for all vehicles operated by Fillmore & Western in carrying out its duties pursuant to this Agreement, shall:

(1) have a combined single limit of not less than \$5,000,000 per occurrence;

(2) name VCTC as an additional insured with respect to the operations of Fillmore & Western;

(3) cover the contractual liability assumed by Fillmore & Western under this Agreement;

(4) provide that the carrier is not entitled to any contribution from insurance in effect for VCTC; and

(5) provide for at least thirty (30) days' written notice to VCTC by the carrier prior to any cancellation or modification of coverage.

b. Workers Compensation:

Fillmore and Western shall provide VCTC with evidence, satisfactory to VCTC, that all employees of Fillmore & Western and its agents are covered by Federal Employer's Liability Act or Workers Compensation Insurance, as the case may be. Fillmore & Western shall provide for a waiver in such coverage of any right of subrogation against VCTC to the extent permitted by law.

11. Attorney's Fees:

If either party brings an action based on the terms or performance of this Agreement, the losing party shall pay the reasonable attorney's fees of the prevailing party, in addition to the amount of judgment and costs.

12. Construction/Entire Agreement:

This Agreement constitutes the entire agreement between the parties and supersedes all written or oral communications between the parties prior to its execution. This Agreement shall not be construed for or against either party by reason of its preparation.

13. Amendment:

This Agreement shall not be amended or modified except by the written agreement of the parties.

14. Applicable Law:

This Agreement shall be governed by and construed in accordance with the laws of the State of California. The parties agree that venue for any legal action shall be the Ventura County Superior Court for state actions and the Ninth District of the Federal County, Los Angeles Division, for federal actions.

15. Notices:

Notices under this Agreement by one party to the other shall be in writing and delivered or mailed, postage prepaid, to:

VCTC:

Executive Director  
Ventura County Transportation Commission  
950 County Square Drive, Suite 207  
Ventura, CA 93003

Fillmore & Western:

Dave Wilkinson  
Fillmore & Western Railway Company  
351 Santa Clara Avenue  
Fillmore, CA 93015

The parties may change addresses for receipts of notices by directing such changes to the other party as provided in this Section 15. Notices shall be deemed received when delivered if delivered and on the third (3rd) day after the postmark date if mailed.

16. Severability:

If any paragraph, sentence, clause, phrase or word shall be deemed void, invalid or inoperative pursuant to any legal interpretation, judicial decision, operation of law or otherwise, the balance of this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by duly authorized representatives of each party as of the date first hereinabove mentioned.

"VCTC:"  
Ventura County  
Transportation Commission

"Fillmore & Western:"  
Fillmore & Western  
Railway Company

by:   
Ginger Gherardi  
Executive Director

by:   
Dave Wilkinson  
President

EXHIBIT A

FILLMORE & WESTERN  
SCHEDULE OF RATES

LABOR

Supervisor	\$75.00/hour
Signal Maintainer/Engineer	\$75.00/hour
Track Inspector	\$75.00/hour
Foreman	\$36.27/hour
Journeyman Laborer	\$22.23/hour
Apprentice Laborer	\$15.21/hour
Backhoe Operator	\$31.12/hour
MOW Equipment Operator	\$37.44/hour

*\*\* All labor rates are fully burdened; there is no overtime rate.*

EQUIPMENT

Back Hoe	\$192.00/day
Air Compressor	\$114.00/day
Bobcat	\$168.00/day
Kodiak	\$85.20/day
Shop 1-ton truck	\$93.00/day
Track Tools	\$18.00/day
Pickup Truck	\$38.40/day
Speeder/Ballast Car	\$36.00/day
Boom Truck	\$85.20/day
Tamper	\$276.00/day
Regulator	\$276.00/day
Car Trailer	\$18.00/day
Rail Saw	\$102.00/day
Rail Drill	\$102.00/day

*\*\* All equipment is also available for ½ day and ½ the daily rate.*

EXHIBIT A - CONTINUED

MATERIAL

Ballast  
Spikes  
Track Bolts  
Tie Plates  
Ties  
Switch Ties  
Bridge Ties  
Angle Bars w/bolts  
Welding Supplies

All Material to be provided at market rate  
Plus 20% administration and shipping and  
handling costs if applicable.

## **Exhibit 5**

LEASE AGREEMENT

FOR THE "FILLMORE SEGMENT" OF THE SANTA PAULA BRANCH

Agreement made this 6 day of June, 2001, by and between the CITY OF FILLMORE REDEVELOPMENT AGENCY ("Fillmore"), a local government agency of the State of California, and the VENTURA COUNTY TRANSPORTATION COMMISSION ("VCTC"). This Agreement replaces a previous Agreement between the Fillmore and VCTC for service on the Fillmore Segment dated November 13, 1996.

WHEREAS, VCTC owns a line of railroad from milepost 403.20 at or near Montalvo, California, to milepost 435.07 at or near Rancho Camulos, California ("Santa Paula Branch");

WHEREAS, Fillmore desires to lease the segment of the line between milepost 414.45 at or near Santa Paula and milepost 435.07 at Rancho Camulos, ("Fillmore Segment") for public/tourist excursions, charter and dinner train operations, and for placement of information/directional signs; and

WHEREAS, Fillmore does not desire to be obligated to provide common carrier freight service on the Fillmore Segment;

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants herein entered into, the parties hereby agree:

1. Definitions:

"Effective Date" shall mean July 1, 2001.

"Execution Date" shall mean the date this Agreement is executed by the parties

hereto

"Fillmore Segment" shall mean that portion of the Santa Paula Branch between milepost 414.45 at or near Santa Paula and milepost 435.07 at Rancho Camulos.

"Santa Paula Branch" shall mean the line of railroad from milepost 403.20 at or near Montalvo, California, to milepost 435.07 at or near Rancho Camulos, California, all as shown on Exhibit A hereto.

"Lease Property" shall mean the Track, Track support Structures, building and the real property which comprises land lying within 15 feet of the centerline of any Track existing on the Fillmore segment, on the Effective Date, reserving, however, for VCTC, its successors and assigns the right (consistent with the rights herein granted) to construct, reconstruct, maintain and use future recreational trails, fiber optic communication and pipeline facilities and appurtenances in, upon, over, under and along said property, without unreasonable or substantial interference with the operations of Fillmore or of Fillmore's sublessee and subject to the rights of existing tenants in possession. Where the Santa Paula Branch crosses State Route 126, the "Lease Property" shall include land lying within 25 feet of centerline of Track for a distance of 100 feet from edge of pavement. Where tracks do not exist on the Effective Date, the "Lease Property" shall include land lying within 25 feet of historic centerline of Track.

"Lease Term" shall mean the twenty (20) year period commencing from the Effective Date, subject to the biennial review of rents and rates described in Section 3b.

"Maintenance" shall mean those activities required for continued basic operation of track and signal equipment. Track work under this item includes tightening track bolts, lifting and tamping joints to adjust cross level, switch adjustment and lubrication, operation of ballast regulators, replacement of worn switch components, spot replacement of worn ties, and spot replacement of worn rails. Signal work under this item includes periodic inspections and tests per FRA/PUC requirements and repair/ replacement of defective/damaged components.

"Still and Motion Picture Production" shall include still and motion picture production, television filming, commercials and other still and motion television promotional activities, video production and any other still or motion related media events.

"Public/Tourist Excursions" shall include public and private excursions.

recreational services, and charter and dinner train operations and any promotional activities related thereto.

"Taking" shall mean the taking or condemnation of materially all of the Lease Property by any competent authority at any time while this Agreement is in effect.

"Track" shall include all appurtenances thereof, consisting of rail and fastenings, switches and frogs complete bumpers, ties, ballast and roadbed.

"Track Support Structures" shall mean those properties necessary for use or support of Track, including signals, bridges, culverts, other structures, tunnels, grading, embankments, dikes, pavement, and drainage facilities.

"Gross Revenue" shall mean the total revenue collected by Fillmore or its sublessees in the form of fees, rents or any other basis of charges derived from projects using any part of the Lease Property for Still and Motion Picture Production and for Public/Tourist Excursions and shall not be reduced by any expenses incurred by Fillmore or any of its sublessees except for contract fees paid by Fillmore or any of its sublessees to a third party and reimbursement revenues received by Fillmore or its sublessees.

2. Purpose and Scope of Lease:

The purpose of the Lease is to permit Fillmore and/or its sublessees to use the Lease Property for Public/Tourist Excursion purposes, and for informational/directional signage, subject to reservations described in Section 9(c), as part of its efforts to further develop the local economy.

VCTC, for consideration of the rents, covenants, and conditions herein contained to be kept, performed, and observed by Fillmore, does lease and demise to Fillmore, subject to all matters of record and the rights of existing tenants in possession, and Fillmore does rent and accept from VCTC the Lease Property.

3. Rental Payments:

- a. Fillmore shall pay to VCTC as initial rental hereunder the sum of Six

Hundred and Seventy-Five Dollars (\$75.00) monthly, payable in advance on a quarterly basis within thirty (30) days of the beginning of each quarter. This initial rental rate shall be adjusted annually thereafter as follows: The base for computing the adjustment is the Consumer Price Index for All Urban Consumers (1982-84 = 1000 for Los Angeles – Long Beach – Anaheim, California published by the United States Department of Labor, Bureau of Labor Statistics ("index"), which is published for the month of July, 2001 ("Beginning Index").

If the Index published for the month of July prior to the adjustment date ("Extension Index") has increased over the Beginning Index, the monthly rent for the following year (until the next rent adjustment) shall be set by multiplying the initial rent by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. However, in no case shall the monthly rent be less than the initial rent.

If the Index is changed so that the base year differs from that used above, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government index computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued.

b. VCTC and Fillmore agree that the rental rate shown in Section 4(a) be reviewed, and if deemed necessary, renegotiated and revised on a biennial basis. Rental rate review may include, but is not limited to, consideration of a simple flat rate, percent of gross receipt, fee per rider, or other appropriate measures. In the event VCTC and Fillmore are unable to reach agreement regarding a rental rate, the matter may be submitted to mediation pursuant to the applicable provisions of Section 24. If the rental rate is revised, it shall be memorialized through an amendment to this Agreement. If a rental rate cannot be agreed upon, even after mediation, this Agreement may be terminated in accordance with Section 15(b).

c. Fillmore acknowledges and agrees that its obligation to pay rent hereunder and the rights of VCTC in and to such rent shall be absolute and unconditional and shall not be subject to any abatement, reduction, set-off, defense, counter-claim or recoupment.

("Abatements") for any reason whatsoever, including without limitation Abatements due to any present or future claims of Fillmore against VCTC under this Agreement or otherwise

4. Use of Premises:

a. Fillmore shall have the right to use the Lease Property for lawful Public/Tourist Train Excursion use defined herein, and any lawful placement of informational/directional signage, but not to remove the Track or Track Support Structures as defined herein.

b. Fillmore shall maintain at its sole expense the Track and Track Support Structures to such standards as required for its uses and in accordance with applicable regulations.

(1.) Fillmore shall be entitled to receive any State or Federal Funds designated for highway grade crossing signal maintenance on the Fillmore Segment.

c. In the event that specific Track and Track Support Structures are determined to need extensive refurbishment or replacement, beyond maintenance as defined in Section 1, VCTC shall be responsible for said refurbishment or replacement. Any and all refurbishment or replacement activities shall be undertaken at the sole discretion of VCTC as funds may become available. It is understood by the parties that VCTC shall seek state and/or federal funds to the greatest extent possible for such work.

5. Construction:

a. Permanent Improvements

Fillmore shall not have the right to construct any additions or betterments of a permanent nature on the Lease Property without specific written approval in advance by VCTC.

b. Temporary Improvements.

Fillmore shall have the right to construct any temporary improvements necessary to use the premises for the uses permitted herein, provided, however, said temporary improvements shall be timely removed upon cessation of their use.

c. Easements and Dedications.

The parties recognize that in order to provide for the more orderly development of the Lease Property it may be necessary, desirable or required that street, water, sewer, drainage, gas, power line, and other easement and dedications, and similar rights be granted or dedicated over or within portions of the Lease Property. VCTC will give Fillmore timely written notice of all such requests, but VCTC will continue to consider such requests, have sole authority to approve or reject proposals and execute and deliver such documents, from time to time, and throughout the term of this Agreement as may be appropriate, necessary, or required by several governmental agencies and public utility companies for the purpose of granting such easements and dedications. No such easement or dedications, nor any construction in connection therewith, shall unreasonably interfere with the operations of Fillmore or its sub-lessees hereunder.

d. Title

Any parts installed, replacements made or additions improvements or alterations to the Track and Track Support Structures shall in each case be considered accessions to the Track and Track Support Structures and title thereto shall be immediately vested in VCTC without cost or expense to VCTC.

However, Fillmore's fixtures, machinery and equipment placed or maintained on the Lease Property or propelled on rail shall be and remain the property of Fillmore. If the removal of same causes material damage to property of VCTC, Fillmore shall pay the reasonable cost of repair.

Fillmore shall, within one hundred and eighty (180) days following expiration of the Lease Term, remove all of its property from the Leased Property

6. Indemnification:

Fillmore agrees to investigate, release, defend, indemnify and hold VCTC harmless from and against any and all loss, damage, liability claims, demands, detriments, costs, charges and expense (including attorney's fees) and causes of action of whatsoever character which VCTC may incur, sustain or be subjected to on account of loss or damage to property and loss of use thereof, or for bodily injury to or death of any persons (including, but not limited to the property, employees, subcontractors, agents and invitees of each party hereto) arising out of or in any way connected with the work to be performed or occupancy operation, maintenance, enjoyment or use of the Lease Property under this Agreement, except such as shall have been occasioned by the negligence or other fault of VCTC.

7. Assignment, Subletting and Mortgaging:

a. Assignment by Fillmore

This Agreement may not be assigned by Fillmore without the prior written consent of VCTC. In any event, no such assignment shall be valid unless there shall be delivered to VCTC in due form for recording within ten (10) days after the date of the assignment (a) a duplicate original of the instrument of assignment, and (b) an instrument by the transferee expressly assuming all of Fillmore's obligations and defaults under this Agreement. Upon any assignment of this agreement conforming to the terms here-of, but not otherwise, the assignor shall be released from the performance of obligations on the part of Fillmore thereafter to be performed under this Agreement, except any obligation to hold and apply monies held by the assignor at the date of the assignment, the disposition whereof is governed by the terms of this Agreement, and except further any unperformed obligation which shall have matured prior to such assignment. Without limiting any of the foregoing, but in addition thereto, any assignment in contravention of the terms hereof is void, but this shall not impair any remedy of VCTC because of Fillmore's having engaged in an act prohibited by the terms hereof.

b. Mortgage of Leasehold Interest.

Fillmore shall not have the right, at any time or from time to time during the Lease Term, to encumber the leasehold estate created by this Agreement by a leasehold mortgage without the prior written consent of VCTC.

c. Subletting by Fillmore

Fillmore shall have the right to sublet all or any part of the Lease Property for any permitted use under the terms of this Agreement but it may not sublease to any rail operator whose operation would be subject to regulatory control of any federal or state agency without the prior written consent of VCTC.

8. Limits on Use

a. During the term of this Agreement the Lease Property shall be used by Fillmore for the use specified in Section 4 above and for no other use or purpose. Fillmore shall not use nor permit any other person to use the Lease Property, or any part thereof, for any unlawful purposes. Fillmore shall at all times during said term conform to, and cause all persons using or occupying any part of the lease Property by invitation of, under or by right of Fillmore to comply with all public laws, ordinances, rules, orders and regulations from time to time applicable thereto and regardless of when they become or became effective, including without limitations, those relating to health, safety, noise, environmental protection, waste disposal, air and water quality, and shall furnish satisfactory evidence of such compliance upon request of VCTC. Fillmore shall not commit, nor allow any sublessee to commit, any waste upon the Lease Property.

b. Indemnity for Violation of Law

(1) Fillmore covenants and agrees to release, defend, indemnify and save VCTC harmless from any liability, cost, expense, fines, penalties, damages, or surcharges imposed for any violation of any and all laws, ordinances, rules, orders and regulations applicable to the use and occupancy of the Lease Property, or as the result of any discharge, leakage, spillage, emission or pollution whether occasioned by neglect, omission or willful act of Fillmore or

any person upon the Lease Property by license or invitation of Fillmore or holding or occupying the same or any part thereof under or by right of Fillmore, regardless of whether such liability, cost, expense, fine, penalty, damages, or charge arises or is imposed during or after the expiration of this Agreement, provided the act giving rise to same occurs during the term hereof or any renewal or extension thereof.

(2) Likewise, VCTC shall release, defend, indemnify, and save Fillmore harmless from all such matters regardless of whether such liability, cost, expense, fine, penalty, damages or charge arises or is imposed during or after the expiration of this Agreement, provided the act giving rise to same is caused or occasioned by the neglect, omission or willful act of VCTC or any person (excepting Fillmore and persons upon the Lease Property by license or invitation of Fillmore) upon the Lease Property by license or invitation of VCTC.

(3) Fillmore shall have the right to contest by appropriate legal proceedings, without cost or expense to VCTC, the validity or application of any law, ordinance or regulation of the nature herein referred to. If by the terms of such law, ordinance, or regulations compliance therewith may be legally held in abeyance without subjecting VCTC to any liability of whatsoever nature for the failure to so comply therewith, compliance therewith may be postponed until the final determination of such proceeding. Fillmore, upon commencing such contest shall furnish to VCTC a document guaranteeing that VCTC and VCTC's interest in the Lease Property shall be saved harmless from any penalty, damage, charge or claim resulting from such contest.

9. Conditions and Covenants:

All the provisions of this Agreement and any Riders which are made a part of this Agreement shall be construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

a. Qualifications on Use

This Agreement is subject to the rights of existing tenants in

possession. Fillmore accepts the Lease Property (including VCTC-owned Improvements) in their present condition without any representation or warranty by VCTC as to the condition of such Lease Property or Improvements, except as may be set forth in Exhibit "A", and VCTC shall not be responsible for any defect or change of conditions in the Lease Property or such Improvements, any damage occurring thereto or for the existence of any violation of any municipal, county, state or federal law, order, rule, regulation or ordinance.

b. WARRANTIES AND REPRESENTATIONS.

FILLMORE UNDERSTANDS AND AGREES THAT VCTC MAKES NO WARRANTY NOR REPRESENTATION CONCERNING WHAT, IF ANY, USE OF THE PREMISES MAY BE MADE OF ANY GOVERNMENTAL JURISDICTION, AGENCY OR ENTITY HAVING AUTHORITY OVER THE PREMISES. FILLMORE SHALL BE SOLELY RESPONSIBLE FOR DETERMINING WHAT IS NECESSARY TO COMPLY WITH THE REQUIREMENT OF EACH SUCH GOVERNMENTAL ENTITY AND FOR FULL COMPLIANCE WITH SUCH REQUIREMENTS. NO EMPLOYEE, REPRESENTATIVE OR AGENT OF VCTC HAS ANY POWER OR AUTHORITY TO WAIVE OR MODIFY THIS PROVISION AND NO ORAL OR WRITTEN REPRESENTATION BY ANY SUCH PERSON SHALL EVER BE DEEMED TO CONSTITUTE A WAIVER OF THIS REQUIREMENT OR ANY ESTOPPEL AGAINST VCTC.

c. VCTC Reservations

VCTC reserves for itself and those to whom it grants such right, right to: 1) construct, maintain and operate any existing and new and additional communication facilities or pipeline upon, over and beneath the Lease Property, so long as the exercise of such rights under this Agreement; 2) construct, maintain and operate any existing and new additional recreational trail facilities; 3) operate freight and regular passenger rail services on the Fillmore Segment and 4) conduct still and motion picture filming, including television filming, commercials and other still and motion television promotional activities.

d. Right of Entry

VCTC or VCTC's agents, representatives or employees shall

have the right at reasonable times to enter the Lease Property for the purposes of inspecting, determining whether provisions in this Agreement are being complied with, maintaining, repairing or altering the land, or showing the Lease Property to prospective lessees, purchasers, mortgagees or beneficiaries under deed of trust.

e. Liens

Fillmore agrees and covenants to hold VCTC and the Lease Property harmless from any mechanics' or materialmen's liens claimed by any person, firm or corporation employed by Fillmore or Fillmore's subtenants. In the event of the filing of any such lien, Fillmore shall cause such lien to be released within five (5) days after VCTC's written notice to do so. Fillmore shall indemnify and defend VCTC against all liability, cost and expense (including attorney fees) incurred by VCTC as a result of any such lien.

10. Insurance:

While this Agreement is in effect, Fillmore shall furnish evidence satisfactory to VCTC that both VCTC and Fillmore are named as additional insureds for third party liability claims by Fillmore's sublessee, meeting the requirements stated below, in a form satisfactory to VCTC. Not later than thirty (30) days prior to the expiration date of such coverage, Fillmore shall furnish VCTC with evidence satisfactory to VCTC that the coverage has been or will be substituted for and will be effective immediately upon such expiration.

a. Liability:

Comprehensive general and automobile liability coverage shall:

- (1) have a combined single limit of not less than \$5,000,000 per occurrence;
- (2) name VCTC and Fillmore as additional insureds with respect to the operations of Fillmore's sublessees;
- (3) cover the contractual liability assumed by Fillmore's sublessees under this Lease.

(4) provide that the insurer is not entitled to any contribution from insurance in effect for VCTC; and

(5) provide for at least ten (10) days' notice to VCTC prior to any other cancellation or modification of coverage.

Federal Employer's Liability Act or Workers Compensation Insurance, as the case may be, shall cover all persons employed by Fillmore or its agents in the conduct of its operations on the Lease Property and shall provide for a waiver of any right of subrogation against VCTC to the extent permitted by law.

11. Condemnation:

a. Total Taking

In the event of a Taking, this Agreement shall terminate on the earlier of vesting, of title in, or the taking of possession by, the condemnor.

In the event of Taking, the award for the land value and interest thereon shall belong to VCTC. Under no circumstances shall Fillmore be entitled to any "bonus value" for any remaining unexpired Term of this Agreement.

If the values of the respective interests of VCTC and Fillmore have been separately determined in the proceeding for the Taking in accordance with this Section 11a., then the values so determined shall be conclusive upon VCTC and Fillmore. Otherwise the values shall be determined by agreement or, if they are unable to agree, by arbitration under the terms of this Agreement.

b. Temporary Taking:

If all or part of the Lease Property or of Fillmore's interest under this Agreement is taken by any competent authority for its temporary use or occupancy ("Temporary Taking"), this Agreement shall not terminate and Fillmore shall continue to pay rent and other charges and to perform all of its other obligations hereunder, to the extent Fillmore is not prevented from doing so by taking authority. In the event of a Temporary Taking, Fillmore shall receive the entire award and shall, at its sole expense, restore the Lease Property as nearly

as may be reasonably possible to their condition before taking; provided, however, that if the Temporary Taking extends beyond the expiration of the Agreement Term, the award shall be apportioned between VCTC and Fillmore as of the date of expiration, after VCTC shall have received the entire portion of the award attributable to physical damage to the Lease Property and to their condition before Temporary Taking.

12. Late Payments:

Fillmore shall pay VCTC an administrative charge of 1-1/2% per month or the highest amount permitted by law, whichever is lower, for any amount due hereunder which remains unpaid after thirty (30) days from the date such amount becomes payable.

13. Default:

Fillmore shall be in default under this Agreement (1) if Fillmore fails to pay the Base Rent when due and such failure continues for a period of more than fifteen (15) days, (2) if Fillmore fails to cure the breach of any provision of this Agreement within thirty (30) days after notice from VCTC (or to commence and diligently pursue the cure of such breach if the breach cannot be cured within thirty (30) days; (3) if Fillmore is adjudged bankrupt or becomes insolvent or seeks general debtor relief by extrajudicial means or if any action or proceeding for debtor relief of Fillmore is commenced by Fillmore.

If Fillmore fails to cure a default within thirty (30) days notice from VCTC to do so Fillmore does not present a restoration plan within forty-five (45) days. VCTC shall have the right, without further notice and in addition to any other remedies VCTC may have in law or in equity, to terminate this Agreement forthwith and to retake possession of the Lease Property.

14. Nonwaiver:

VCTC's failure to enforce or exercise its rights under any term, condition

or covenant of this Agreement shall not be construed as a waiver of such rights or such term, covenant or condition. Acceptance of rent shall be deemed a waiver of VCTC's rights to terminate this Agreement as provided herein, regardless of when accepted.

15. Termination or Expiration:

a. General:

Termination or expiration of this Agreement shall not release either party from an event which occurred prior to such termination or expiration. If Fillmore fails to surrender possession of the Lease Property upon termination of this Agreement, VCTC shall have the right, to the extent permitted by law, to re-enter the Lease Property and remove Fillmore and any person or entity claiming through Fillmore from the Lease Property.

b. Notice of Termination

Either party may terminate this Agreement, without cause, upon a six (6) month written notice of termination given to the other party per Section 21 below.

c. Surrender of Premises

Upon the expiration or termination of the Lease Term, Fillmore, without further notice, shall deliver up to VCTC the possession of the Lease Property. Upon the failure or refusal of Fillmore to remove from the Lease Property, as provided in Section 5d., all personal property owned by Fillmore, (a) said personal property shall there-upon, at the option of VCTC become the sole property of VCTC, or (b) if VCTC so elects it may remove from the Lease Property personal property owned by Fillmore, and VCTC may also restore the Lease Property substantially to the condition in which it existed at the time Fillmore took possession, all at the expense of Fillmore, which expense Fillmore agrees to pay upon demand, or (c) VCTC at its sole option may elect that this Agreement with all terms contained herein, including payment of Base Rental for failure to vacate on time may remain in effect until Fillmore's personal property is removed and the Lease Property is restored to VCTC. In the event of such failure or refusal of Fillmore to surrender possession of the Lease Property, VCTC shall have the right to re-enter

upon the Lease Property and remove Fillmore, or any person, firm or corporation claiming by through or under Fillmore, therefrom.

d. Sale to Other Parties:

If during the term of lease, or any extension or continuation thereof, VCTC should elect to sell all or any part of the Lease Property to a private party, Fillmore shall have the right of first refusal to meet any bona fide offer of sale on the same or (to VCTC) more advantageous terms and conditions as contained in such offer and, on failure to meet such bona fide offer within sixty (60) days after notice thereof from VCTC, VCTC shall be free to sell the Lease Property or portion thereof to such private party third person in accordance with the terms and conditions of this offer provided, however, Fillmore's right of first refusal shall run with the property. Both VCTC and Fillmore are required to continue to fulfill any obligations generated under this Agreement prior to the closing of any sale to Fillmore. If sale of the property by VCTC is to a public agency, then Fillmore agrees that VCTC may assign this Agreement to such public agency.

16. Attorney's Fees:

If either party takes any steps or brings an action to compel performance of or to recover for breach of any term of this Agreement, the losing party shall pay the reasonable attorney's fees of the prevailing party, in addition to the amount of judgment and costs.

17. Entire Agreement:

The contents of this Agreement are the entire agreement between the parties and supersede all written or oral communications between the parties prior to its execution.

This Agreement shall not be modified except by the written agreement of the parties.

Subject to Section 7 and 8, this Agreement shall be binding upon the heirs, representatives, successors and assigns of the parties respectively.

18. Warranties of Fillmore:

Fillmore warrants, at the Effective Date that:

- a. It is a local government agency validly existing and organized under the laws of the State of California;
- b. This Agreement will not be rendered voidable nor unenforceable by reason of any provision of, or lack of consent under, any indenture, agreement or instrument as to which Fillmore is bound as a party or bound by any ordinance of Fillmore.
- c. The signatory hereof on behalf of Fillmore has been duly and fully authorized to execute this Agreement on behalf of Fillmore.

19. Warranties of VCTC:

VCTC warrants at the Effective Date that:

- a. It has full power to lease the Lease Property to Fillmore

20. Applicable Law:

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

21. Notices:

Notices under this Agreement by one party to the other shall be in writing and delivered or mailed, postage prepaid, to:

VCTC:

Executive Director

Ventura County Transportation Commission

960 County Square Drive, Suite 207  
Ventura, CA 93003

Fillmore:

City Manager  
City of Fillmore  
250 Central Avenue  
Fillmore, CA 93015

The parties may change addresses for receipts of notices by directing such changes to the other party.

22. Severability

If any paragraph, sentence, clause, phrase or word shall become without full effect due to any legal interpretation, judicial decision, operation of law or otherwise, the balance of this Agreement shall remain in full force and effect.

23. Assignment, Successors:

This Agreement is intended solely for the benefit of and shall be binding upon the parties hereto, and their successors and assigns, and is not intended nor shall it be construed to be for the benefit of any other party.

24. Dispute Resolution:

a. Good Faith Resolution Prerequisite to Mediation

In the event of a dispute arising out of the terms of, or pertaining to, this Agreement, the parties shall negotiate in good faith for thirty (30) days before either party may submit the matter to mediation. VOTO and Fillmore agree that, in the event they are unable to resolve any such dispute within thirty (30) days of the parties recognition of such dispute

between them, they shall submit the matter at issue to mediation and that the method and procedure for such mediation shall be as hereinafter set forth in subsection c.

b. Mediation Prerequisite to Litigation

No party may undertake litigation with reference to any such dispute until after the earlier of (1) mediation of that dispute has occurred or (2) written notice of refusal by one party to the other party of the noticing party's refusal to submit to the decision of the mediator ( as hereinafter defined).

c. Methods and Procedures for Mediation

Mediation shall be subject to the following methods and procedures:

(1) A party dissatisfied with the results of negotiation between the parties may, after the conclusion of the thirty-day period described above in subsection a, give notice to the other party of its request to submit the matter to mediation.

(2) The parties hereby agree that they shall submit any matter elected for mediation to (a) a retired judge of the Superior Court of the County of Ventura agreed upon by all parties, or (b) in the event that a retired judge is not available or satisfactory to all parties, to such other mediator as all parties may agree (the "Mediator").

(3) The parties hereby agree to equally share the fees and costs incurred by the mediator, with each party bearing it's own costs of preparation and presentation of the matter to the Mediator.

(4) The Mediator shall have the authority to call such witnesses as he or she deems appropriate to the matter submitted to him or her, to take testimony from such witnesses as the parties may call and those called by the Mediator, to request and demand original and further briefing of all issues from the parties and to conduct the mediation pursuant to the procedures set forth in the California Rules of Court and the statutes of the State of California, including without limitation, the California Evidence Code. The Mediator

shall render his decision, in writing, to all parties within forty-five (45) days of conclusion of taking testimony and/or evidence regarding the dispute.

(5) The decision of the Mediator shall not be binding and, subject to the limitations set forth in subsection b above, either party may institute legal action de novo in the event that such party does not agree with the decision of the Mediator. The parties agree that, for the purposes of such litigation and to the extent permitted by law, the statute of limitations for filing such action shall be one hundred eighty (180) days from the date of the Mediator's written decision.

(6) The parties agree that any mediation or litigation which may arise pursuant to this Agreement shall take place in, and in the event of litigation shall be conducted in, the appropriate court for the County of Ventura, California.

(7) In the event that litigation is undertaken by either party after mediation, the prevailing party shall be entitled to recover its costs and attorney's fees incurred in the litigation from the other party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first hereinabove mentioned.

"VCTC:"

Ventura County

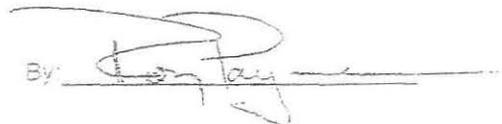
Transportation Commission

"Fillmore:"

City of Fillmore

Redevelopment Agency

By: 

By: 

## **Exhibit 1**

MEMORANDUM OF UNDERSTANDING BY AND BETWEEN  
THE VENTURA COUNTY TRANSPORTATION COMMISSION,  
THE COUNTY OF VENTURA,  
THE CITY OF FILLMORE and  
THE CITY OF FILLMORE REDEVELOPMENT AGENCY,  
THE CITY OF SANTA PAULA and  
THE CITY OF SANTA PAULA REDEVELOPMENT AGENCY, AND  
THE CITY OF SAN BUENAVENTURA  
REGARDING

- (A) THE ACQUISITION, TITLE AND RENTS OF THE VENTURA BRANCH  
AND  
(B) THE ACQUISITION, TITLE, RENTS, MANAGEMENT, USES AND  
MAINTENANCE OF THE SANTA PAULA BRANCH,  
TO BE ACQUIRED FROM  
THE SOUTHERN PACIFIC TRANSPORTATION COMPANY

This MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE VENTURA COUNTY TRANSPORTATION COMMISSION ("VCTC"), THE COUNTY OF VENTURA (the "County"), THE CITY OF FILLMORE and THE CITY OF FILLMORE REDEVELOPMENT AGENCY (collectively, hereinafter "Fillmore"), THE CITY OF SANTA PAULA and THE CITY OF SANTA PAULA REDEVELOPMENT AGENCY, (collectively, hereinafter "Santa Paula") AND THE CITY OF SAN BUENAVENTURA (hereinafter, "Ventura") <sup>1/</sup> REGARDING (A) THE ACQUISITION, TITLE AND RENTS OF THE VENTURA BRANCH AND (B) THE ACQUISITION, TITLE, RENTS, MANAGEMENT, USES AND MAINTENANCE OF THE SANTA PAULA BRANCH, TO BE ACQUIRED FROM THE SOUTHERN PACIFIC TRANSPORTATION COMPANY (the or this "MOU") is entered into as of the \_\_\_ day of \_\_\_\_\_, 1995.

IT HEREBY AGREED BY THE PARTIES HERETO, IN CONSIDERATION OF THE FOLLOWING MATERIAL FACTS, TERMS AND CONDITIONS, AND OTHER GOOD AND VALUABLE CONSIDERATION, RECEIPT OF WHICH IS ACKNOWLEDGED HEREBY, as follows:

I. MATERIAL FACTS

The following facts are material to, and are incorporated in, this MOU hereby:

- A. The parties have previously entered into a Memorandum of Understanding Regarding Funds and Services Advanced for Pre-Acquisition Costs Associated With Possible Acquisition of Property From the Southern Pacific Transportation Company, dated as of October 7, 1994 which is incorporated herein by this reference as though fully set forth (the "Funding MOU").

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<sup>1/</sup> Fillmore, Santa Paula and Ventura are hereinafter collectively referred to as the "Cities".

B. On July 7, 1995, pursuant to Resolution No. 95-06, VCTC amended its Administrative Code as adopted by Resolution No. 89-01 in October, 1989, as amended by Resolution No. 91-01 in April, 1991 and Resolution No. 91-10 in November, 1991 (the Administrative Code and all amendments thereto are hereinafter, collectively referred to as, the "Code"). Article 3, § H.1.c of the Code (the "Amendment to the Administrative Code") provides for the establishment of the Santa Paula Branch Line Advisory Committee (the "SPBLAC") as an advisory committee to the members of the body of VCTC (the "Commission"). The purpose of the SPBLAC is to recommend actions regarding management, maintenance and use of a portion of the Santa Paula Branch (as hereinafter defined) to the Commission. Pursuant to the Code, VCTC can overrule the recommendations of the advisory committee only upon the affirmative vote of six (6) of the seven voting members or voting alternates of the Commission.

C. VCTC will soon acquire the following property from the Southern Pacific Transportation Company ("SPTC")

1. Fee title to the Santa Paula Branch right-of-way for rail tracks, and tracks thereon, extending from Mile Post 403.34 near Montalvo Station to Mile Post 435.07 at the line between Ventura and Los Angeles Counties, the "Saticoy Station Property" (as described in Exhibit "A" which is attached hereto and incorporated herein by this reference), the non-operating property in Piru (as described in Exhibit "B" which is attached hereto and incorporated herein by this reference, hereinafter, the "Piru Station"), the Santa Paula Station (as described in Exhibit "C" which is attached hereto and incorporated herein by this reference, hereinafter, the "Santa Paula Station"), and non-operating properties listed below: (all of the property and rights listed in this Paragraph C.1. and subparagraphs C.1.a through C.1.d, below, are hereinafter collectively referred to as the "Santa Paula Branch"):

a. All rights and privileges acquired by VCTC from SPTC in the longitudinal pipelines identified in Exhibit "C" a true and exact copy of which is attached hereto and incorporated herein by this reference, with the right to rental income thereon from the date of the VCTC acquisition to be distributed as follows: Years 1 & 2 - VCTC will rebate 100% of the rental income to SPTC, Years 3 through 20 - VCTC will rebate 50% of the rental income to SPTC, After year 20 - All rental income will belong to VCTC; and

b. All rights and privileges acquired by VCTC from SPTC in that certain easement for a pipeline memorialized in an agreement, dated April 1, 1992,

between SPTC and Pacific Pipelines, a true and exact copy of which is attached hereto and incorporated herein by this reference, marked as Exhibit "D", with the right to potential rental income thereon from the date of the VCTC acquisition to be distributed as follows: Years 1 through 20 - VCTC will rebate 50% of the rental income to SPTC, After year 20 - All rental income will belong to VCTC; and

c. All rights and privileges acquired by VCTC from SPTC in that certain easement agreement, dated September 30, 1991, between SPTC and Southern Pacific Telecommunications Co., a true and exact copy of which is attached hereto and incorporated herein by this reference, marked as Exhibit "E", with the right to potential rental income thereon from the date of the VCTC acquisition to be distributed as follows: Years 1 through 20 - VCTC will rebate 50% of the rental income to SPTC, After year 20 - All rental income will belong to VCTC;

d. Assignment of all leases, easements, options for easements and licenses on the property hereinabove described; but

Excluding the property transferred, or soon to be transferred to the State of California at Camulos for State highway purposes, as shown on Exhibit "F" attached hereto and incorporated herein by this reference;

and

2. Title to the Ventura Branch right-of-way extending from Mile Post 397.32 in Ventura to Mile Post 402.67 near the station at Canet, as shown on Exhibit "G" which is attached hereto and incorporated herein by this reference, together with an assignment of all leases, easements, options for easements and licenses thereon without any property reservations by SPTC (hereinafter the "Ventura Branch");

and

3. Assignment to VCTC of SPTC's rights under that certain lease by and between SPTC and the City of Fillmore Redevelopment Agency (the "Fillmore Lease"), a true and exact copy of which is attached hereto and incorporated herein by this reference, marked as Exhibit "H".

## II. THE SPBLAC

A. Agreement of County and Cities to Serve on the SPBLAC.  
The County and the Cities hereby agree to serve as members of the SPBLAC, and to meet as the SPBLAC, at least quarterly, to perform those duties assigned to them in the Amendment to the Administrative Code; provided that the County or any one of the Cities may give notice pursuant to the Amendment to the Administrative Code that the County or the City no longer intends to serve as a member of SPBLAC, and upon giving such notice, the party giving such notice shall cease to be a member of SPBLAC. In the event that the County or any of the Cities gives such notice and no longer serves on the SPBLAC, the SPBLAC shall continue to function with the reduced membership.

B. Agreement for First Meeting. County and the Cities hereby agree that the first meeting of the SPBLAC shall be called by VCTC, and that such meeting shall take place no later than thirty (30) days after this MOU is fully executed. Thereafter, all meetings of the SPBLAC shall be set at the discretion of the members thereof.

## III. VCTC TO RETAIN TITLE TO THE SANTA PAULA BRANCH.

A. VCTC shall retain title to the Santa Paula Branch, together with all leases, easements, options for easements and licenses on the Santa Paula Branch. All rental income derived by VCTC from the portion of the Santa Paula Branch, except rental income for those portions leased or conveyed to the County or to Santa Paula (as hereinafter described) shall be deposited in an Enterprise Account (as hereinafter defined) to be used as hereinafter set forth.

B. Development and use of the Santa Paula Branch shall be governed by the recommendations of the SPBLAC as approved by the Commission pursuant to the terms of Article 3, § H.1.c.vi(e) which provides in relevant part: "A determination or recommendation made by SPBLAC to the Commission shall not be overruled by the Commission by less than six (6) affirmative votes to overrule such determination or recommendation cast by voting members or voting alternates of the Commission." And, subject to the foregoing:

1. VCTC shall have the right, subject to the Master Plan (as hereinafter defined), to control and operate, contract for operation or enter into a joint powers agreement for operation of commuter rail service on the track and the right-of-way underlying the track on those portions of the Santa Paula Branch retained by VCTC;

2. The County and the Cities shall each have the right to control, manage and operate that portion of any trail or other recreation facility which is not a part of the Santa Paula Branch operating right of way and within the respective jurisdictions of each (within the jurisdiction of the County or any of the Cities);

C. The parties agree to memorialize in writing any further agreements, as may from time to time be determined necessary by the parties, by and between (1) VCTC and SPBLAC, on the one hand, with Santa Paula, on the other hand, or (2) VCTC and SPBLAC, on the one hand, with the County, on the other hand, regarding the use and maintenance of, or other matters related to, the property leased or conveyed to the County and to Santa Paula. All parties agree that, subject to the provisions of Article III.B of this MOU and provisions of the Amendment to the Administrative Code, the operation of the leased or conveyed properties (not including the Ventura Branch) and the remainder of the Santa Paula Branch shall be a cooperative undertaking between the parties.

IV. LONG TERM LEASE FOR, OR CONVEYANCE OF, PORTIONS OF SANTA PAULA BRANCH AND ASSIGNMENT OF RENTAL INCOME THEREON BY VCTC TO COUNTY AND TO SANTA PAULA; TRANSFER OF TITLE TO VENTURA BRANCH TO VENTURA

A. Long Term Lease or Conveyance and Assignment of Rental Income to County. VCTC hereby agrees to enter into a long term lease with the County for, or to convey to the County the Saticoy Station Property and the Piru Station, and, to assign to the County all rental income from leases, easements, options for easements and licenses on or related to the Saticoy Station Property and the Piru Station. The terms and conditions of said lease or conveyance are yet to be determined and shall be subject to approval by the Commission, upon recommendation of the SPBLAC, and by the Ventura County Board of Supervisors. Pursuant to the lease or conveyance, the County shall be entitled to receive directly or to receive from VCTC all rental income paid for use of the Saticoy Station Property by sublessees, easement holders, optionees and licensees thereof. The choice of a lease or conveyance shall be at the option of the County.

B. Long Term Lease or Conveyance and Assignment of Rental Income to Santa Paula. VCTC hereby agrees to enter into a long term lease with Santa Paula for, or to convey to Santa Paula the Santa Paula Station and to assign to Santa Paula all rental income from leases, easements, options for easements and licenses on or related to the said property. The terms and conditions of said lease or conveyance are yet to be determined and shall be subject to approval by the Commission, upon recommendation of the SPBLAC, and by the City Council and/or Redevelopment Agency Board for Santa Paula. Pursuant to the lease or conveyance, Santa

Paula shall be entitled to receive directly or to receive from VCTC all rental income paid for use of the property so leased from sublessees, easement holders, optionees and licensees thereof. The choice of a lease or conveyance shall be at the option of Santa Paula.

C. Transfer of Title and Rental Income to Ventura. VCTC hereby agrees to arrange for transfer of the fee title to the Ventura Branch directly to Ventura by the SPTC and to arrange for simultaneous assignment by SPTC to Ventura of all leases, easements, options for easements and licenses on the Ventura Branch. Ventura shall be entitled to receive directly rental income paid for use of the Ventura Branch by lessees, easement holders, optionees and licensees thereof.

D. Easements To Be Granted To Local Agencies. If any member agency (parties to this MOU) requests one or more easements on, over, across or under either the Santa Paula Branch or the Ventura Branch lines in the future, they shall be granted so long as they do not infringer upon the use of the Branch or Branches for train operations or recreational trail purposes. In the event that such an easement or easements are granted, they shall be granted to the requesting agency at no cost except for administrative costs required to prepare and review the documents necessary to create the easements.

V. ESTABLISHMENT OF AN ENTERPRISE ACCOUNT FOR PROCEEDS RECEIVED BY VCTC FROM THE SANTA PAULA BRANCH FOR FUNDING OF RECREATION AND TRAIL USES, FUTURE RAIL OPERATIONS AND OTHER PURPOSES

A. Enterprise Account. VCTC shall deposit all rental income derived from the Santa Paula Branch not leased or conveyed to either Santa Paula or the County in an enterprise account, at interest (the "Santa Paula Branch Enterprise Account"), to be used as recommended by the SPBLAC and approved by the Commission pursuant to the provisions of the Amendment to the Administrative Code.

B. Uses for Santa Paula Branch Enterprise Account. It is the intention of VCTC, the County and the Cities that funds held in the Santa Paula Branch Enterprise Account shall be used for development of, and on, the Santa Paula Branch not leased or conveyed to either the County or Santa Paula for a variety of uses and purposes including, but not limited to, pedestrian/bicycle trails, green belts, landscaping, recreation facilities, possible future commuter rail service and facilities, excursion trains and such other uses as may be recommended by the SPBLAC and approved by the Commission pursuant to the Amendment to the Administrative Code. It is understood and agreed by the parties, however, that the proportion of the Santa Paula Branch Enterprise Account that shall be allocated for uses on the Santa

Paula Branch shall be determined by the SPBLAC consistent with an enterprise account plan and a master plan for the development of the Santa Paula Branch not leased or conveyed to either the County or Santa Paula, which enterprise account plan and master plan shall be developed by the SPBLAC and approved by the Commission as hereinafter set forth.

VI. THE PARTIES AGREE TO COOPERATE IN OPERATIONS ON THE SANTA PAULA BRANCH PURSUANT TO THE FILLMORE LEASE.

A. VCTC, as successor lessor under the Fillmore Lease, hereby agrees to cooperate with Fillmore regarding the use of, and operation over, the portion of the Santa Paula Branch governed by the Fillmore Lease (hereinafter, the "Fillmore Segment") pursuant to that certain sublease by and between Fillmore, as sublessor, and Short Line Railroad, as sublessee, or any permitted successor in interest to Short Line Railroad as sublessee, or any other rail operator as sublessee in a sublease in which Fillmore acts as sublessor (collectively, hereinafter "Short Line") for the Fillmore Segment (the "Sublease"). It is further agreed that the agreement of VCTC in this Article VI.A shall apply to any extension of the operations conducted by Short Line on the Santa Paula Branch which may be agreed to by Santa Paula, Ventura or the County for Short Line operations within their respective jurisdictions,

B. VCTC and Fillmore hereby agree to consult and cooperate with, and permit review of operations by, the County, Ventura and Santa Paula regarding use of the Santa Paula Branch by Short Line as approved by Fillmore with respect to any services provided by Short Line beyond the Fillmore Segment.

C. Ventura, Santa Paula and County hereby agree not to unreasonably withhold approval of operations and uses of the Santa Paula Branch and cooperation with Fillmore and VCTC regarding extension of Short Line service, use and operations in the unincorporated area of the County and/or the incorporated area of the City of Santa Paula so long as such operations and uses conform to the Master Plan.

D. The parties hereby agree to memorialize, in writing, any agreement by and between them regarding extension of Short Line service, use and operations in the unincorporated area of the County and/or in the incorporated area of the City of Santa Paula.

VII. DEVELOPMENT OF MASTER PLAN

A. Master Plan and Agreement To be Developed By SPBLAC. The parties to this MOU agree, as members of the SPBLAC, to

develop a master plan and agreement for the development of the Santa Paula Branch, including those portions leased or conveyed to the County and to Santa Paula (the "Master Plan"). The Master Plan shall guide and determine the purposes set forth hereinabove and any additional purposes recommended by SPBLAC and approved by the Commission. The parties further agree that the Master Plan will be the first priority of business by the SPBLAC and that SPBLAC shall make every effort to have developed and approved the Master Plan no later than one (1) year after the date upon which this MOU is fully executed. VCTC shall consider adoption of the Master Plan recommended by SPBLAC, and the use and operation of the Santa Paula Branch shall be governed by the Master Plan. The Master Plan shall be consistent with the General Plans of the parties to this MOU.

In consideration of the foregoing, but with the understanding that none of the jurisdictions are contractually bound by the following, each of the parties agrees to consider:

(a) enacting legislation, ordinances or resolutions which may be required of its jurisdiction in order to implement the master plan and agreement for development of the Santa Paula Branch; and

(b) refraining from taking actions within its jurisdiction which would conflict with or jeopardize the implementation of the master plan and agreement for development of the Santa Paula Branch.

B. Plan and Agreement For Use of Enterprise Fund to be Developed by SPBLAC. The parties to this MOU agree, as members of the SPBLAC, to develop a plan and agreement for use of the Enterprise Fund (the "Santa Paula Branch Enterprise Account Plan") to be approved by the Commission as provided in the Amendment to the Administrative Code. The Santa Paula Branch Enterprise Account Plan shall guide and determine the use of the Santa Paula Branch Enterprise Account for purposes set forth above and any additional purposes recommended by SPBLAC and approved by the Commission. The parties further agree that the Santa Paula Branch Enterprise Account Plan will be among the first priorities of business by the SPBLAC and that the SPBLAC shall make every effort to have developed and approved the Santa Paula Branch Enterprise Account Plan no later than ninety (90) days after approval of the Master Plan.

#### VIII. MISCELLANEOUS PROVISIONS

A. Complete Agreement. This MOU constitutes the complete agreement by the parties with respect to the matters contained herein except for the provisions of the Amendment to the Administrative Code and the Funding MOU, which are incorporated

herein by this reference as though fully set forth herein. With the exception of the Amendment to the Administrative Code and the Funding MOU, all prior or contemporaneous, written or oral, understandings by and between the parties are superseded by this MOU.

B. Assignment. No party shall assign its rights, duties or obligations under this MOU, or any privileges such party may have pursuant to this MOU without the prior written consent of every other party hereto; provided, however, that subject to the provision of Article III, Section B of this MOU and the Amendment to the Administrative Code and written consent of the assignee or delegate to be bound by the terms and conditions of this MOU, VCTC may assign and/or delegate its rights and obligations pursuant to Article III, Section B.1 to an operating agent such as, but not limited to, Metrolink or the Southern California Regional Rail Authority ("SCRRA"), without the prior written consent of the County and Cities; and, provided further, however, that VCTC shall give consideration and shall not unreasonably refuse the request of the County or any of the Cities with respect to the control and operation of such commuter rail service.

C. Construction. This MOU has been entered into in the State of California and shall be construed pursuant to the laws of said state. Paragraph numbers, headings and other marks indicating divisions within this MOU are for ease of reference and reading and shall not be construed to change the plain language of this MOU. Whenever in the context of the language of this MOU the use of gender or number is inconsistent with the intent of the language, the gender or number shall be construed to be consistent with the plain meaning and intent of the language. Number and gender shall also be construed to include all applicable numbers or genders as appropriate to the plain meaning and intent of this MOU.

D. Attorneys Fees and Costs. In the event of litigation, mediation or arbitration for the purpose of settling any dispute arising out of this MOU, each party shall bear the attorneys' fees and costs incurred by that party in the litigation, mediation or arbitration.

E. Signing Party. Each party represents to each other party that the person or persons signing this MOU on behalf of the representing party is the person(s) authorized to enter into this MOU upon the behalf of the representing party.

F. Counterparts. This MOU shall be executed in seven (7) original counterparts, one of which shall be delivered to each of the parties hereto, and all of which shall be deemed an original for all purposes related to this MOU.

G. Subsequent Agreements. All subsequent agreements reached by and between the parties hereto with respect to the matters herein shall incorporate the terms and conditions of this MOU, the Amendment to the Administrative Code and the Funding MOU, as each may be amended from time to time, and as each is applicable to such subsequent agreement.

H. Amendments. This MOU may be amended only in writing which has been executed by each of the parties hereto which incorporates and/or reflects any amendments to the Financing or Funding MOU as are necessary to make amendment of any of the three documents consistent with amendments to each of the other documents.

I. Effect of Withdrawal From SPBLAC. Withdrawal by any party to this MOU from SPBLAC shall not constitute automatic withdrawal or relief from the duties and rights granted by this MOU. Withdrawal or relief from the terms of this MOU shall be had by a party withdrawing from SPBLAC only upon an amendment to this MOU which complies with the requirements of Article VIII.H above.

J. Waivers. No waiver of any condition or terms of this MOU by any party shall be deemed a waiver by that or any other party of any other contemporaneous or subsequent, like or dissimilar condition or term of this MOU

K. Notices. Notices required to be given pursuant to this MOU shall be given by the noticing party either by personal delivery or by United States Mail to all other parties at the addresses set forth in Exhibit "I". If delivery is by United States Mail, the noticing party shall prepay postage. Notice given by personal delivery shall be deemed received when delivered. Notices given by United States Mail shall be deemed delivered on the fifth (5th) day after the postmark appearing on the envelope. Any change by a party in the person to whom or address to which notice is to be given on behalf of that party may be made by giving notice thereof in the same manner as provided in this Article VIII, Section K.

WHEREFORE, the parties have executed this MOU, consisting of thirteen (13) pages, which number includes the following signature pages, but is exclusive of the Exhibits referenced herein, as of the date first noted above.

SIGNATURE PAGE

Signing Entity

Signature of Authorized Signer;  
Attestation

VCTC:

By: *Ginger Gherardi*  
Ginger Gherardi, Executive Director

ATTEST:

*Donna Cole*  
Donna Cole, Clerk of the Commission

COUNTY OF VENTURA:

By: *Maggie Keldie*  
[PRINT NAME]:  
[PRINT TITLE]:



ATTEST: RICHARD D. DEAN, County Clerk  
By: *Faye Willard*  
Deputy County Clerk

[PRINT NAME]: FAYE WILLARD  
[PRINT TITLE]: DEPUTY COUNTY CLERK

CITY OF FILLMORE:

By: *Roy Payne*  
[PRINT NAME]: Roy Payne  
[PRINT TITLE]: City Manager



ATTEST:

*Noreen Withers*  
[PRINT NAME]: NOREEN WITHERS  
[PRINT TITLE]: CITY CLERK

CITY OF FILLMORE  
REDEVELOPMENT  
AGENCY

By: *Ray Payne*  
[PRINT NAME]: Ray Payne  
[PRINT TITLE]: Executive Director

ATTEST:

*Noreen Withers*  
[PRINT NAME]: NOREEN WITHERS  
[PRINT TITLE]: SECRETARY

CITY OF SAN  
BUENAVENTURA

By: *Donna Landeros*  
[PRINT NAME]: DONNA LANDEROS  
[PRINT TITLE]: CITY MANAGER

ATTEST:

*Barbara J. Kern*  
[PRINT NAME]: Barbara J. Kern  
[PRINT TITLE]: City Clerk

CITY OF SANTA PAULA:



By: *Arnold Dowdy*  
[PRINT NAME]: ARNOLD DOWDY  
[PRINT TITLE]: CITY ADMINISTRATOR

ATTEST:

*Norman S. Wilkinson*  
[PRINT NAME]: Norman S. Wilkinson  
[PRINT TITLE]: Dep. City Clerk

SIGNATURE PAGE

Signing Entity

Signature of Authorized Signer:  
Attestation

CITY OF SANTA PAULA  
REDEVELOPMENT  
AGENCY

By: *Arnold Dowdy*  
[PRINT NAME]: ARNOLD DOWDY  
[PRINT TITLE]: Executive Director

ATTEST:



  
\_\_\_\_\_  
[PRINT NAME]: Ken Cott  
[PRINT TITLE]: Secretary

Exhibit A through I to be attached by VCTC before execution.

Exhibit "J"

Ginger Gherardi, Executive Director  
VCTC  
950 County Square Drive, Suite 207  
Ventura, CA 93003

Chris Stephens  
Mgr - Planning and Highway Programs  
VCTC  
950 County Square Drive, Suite 207  
Ventura, CA 93003

Lin Koester, C.A.O.  
County of Ventura  
Government Center  
800 S. Victoria Avenue  
Ventura, CA 93009

Arthur Goulet  
Director of Public Works  
County of Ventura  
Government Center  
800 S. Victoria Avenue  
Ventura, CA 93009

Roy Payne, City Manager  
City of Fillmore  
524 Sespe Avenue  
Fillmore, CA 93015

Arnold Dowdy, City Manager  
City of Santa Paula  
P. O. Box 569  
200 S. Tenth Street  
Santa Paula, CA 93061

continued - - -

Norman S. Wilkinson  
Director of Public Works/  
City Engineer  
P. O. Box 569  
200 S. Tenth Street  
Santa Paula, CA 93061

Donna Landeros, City Manager  
City of San Buenaventura  
501 Poli Street  
P. O. Box 99  
Ventura, CA 93002-0099

Rick Raives, City Engineer  
City of San Buenaventura  
501 Poli Street, P. O. Box 99  
Ventura, CA 93002-0099

## **Exhibit 2**

SUB-LEASE AGREEMENT FOR THE SANTA PAULA BRANCH

This Agreement is made this 27 day of November, 1996, by and between the CITY OF FILLMORE REDEVELOPMENT AGENCY ("Fillmore"), a local government agency of the State of California, and FILLMORE & WESTERN RAILWAY COMPANY, a California corporation, in contemplation of the following facts:

A. The Ventura County Transportation Commission ("VCTC") owns a line of railroad subject to the Interstate Commerce Act, from milepost 403.20 at or near Montalvo, California, to milepost 431.59 at or near Piru, California ("Santa Paula Branch");

B. Fillmore has, concurrently with or shortly before entering into this Agreement, executed a certain "Lease Agreement for the Fillmore Segment of the Santa Paula Branch" with the Ventura County Transportation Commission ("VCTC") for the use of a portion of a line of railroad owned by VCTC and subject to the Interstate Commerce Act, from milepost ~~414.45~~ at or near 8th Street in Santa Paula, California, to milepost 431.59 at or near Piru, California ("Fillmore Segment");

C. ~~Fillmore~~ has leased the Fillmore Segment from VCTC for any lawful ~~Still and~~ Motion Picture Purpose, and for any lawful ~~Public/Tourist Train Excursions~~;

D. Fillmore desires to afford the use of the Fillmore Segment to Fillmore & Western Railway Co. for the same purposes and upon substantially the same terms and conditions as oblige Fillmore under the said Lease Agreement;

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants herein entered into, the parties hereby agree:

1. General Provisions:

Excepting as otherwise specifically provided in this Agreement, Fillmore & Western Railway Co. shall during the term of this Agreement warrant, agree to, perform,

observe and refrain from doing all those promises and acts to be performed by and matters prohibited to Fillmore under the terms of the said Lease Agreement dated November 13, 1996 between VCTC and Fillmore, the intent of the parties hereto being that Fillmore shall be fully and completely relieved by Fillmore & Western Railway Co. of all of the obligations of Fillmore according to that Lease Agreement. To that end, Fillmore & Western Railway Co. shall, with or without demand from Fillmore, defend and hold Fillmore harmless from and against any and all claims, liabilities, actions, and causes of action, whether or not well founded, which shall be brought or threatened against Fillmore or any of its officers, agents or employees by VCTC or any other person or entity to enforce or interpret or construe the terms of the said Lease Agreement or in any way pursuant to its provisions. A copy of said Lease Agreement is attached to this Agreement and by this reference incorporated herein in all its particulars.

2. Definitions:

"Execution Date" shall mean the date this Agreement is executed by the parties hereto.

"Fillmore Segment" shall mean that portion of the Santa Paula Branch between milepost 414.45 at or near 8th Street in Santa Paula and milepost 431.59 at or near Piru.

"Santa Paula Branch" shall mean the line of railroad from milepost 403.20 at or near Montalvo, California, to milepost 431.59 at or near Piru, California.

"Lease Property" shall mean the Track, Track Support Structures, buildings and real property which comprises land lying within 15 feet of the centerline of any Track existing on the Fillmore Segment on the Execution Date, reserving, however, for VCTC, its successors and assigns the right (consistent with the rights herein granted) to construct, reconstruct, maintain and use future fiber optic communication and pipeline facilities and appurtenances in, upon, over, under and along said property, without unreasonable or substantial interference with the operations of Fillmore or of Fillmore's sublessee and subject to the rights of existing tenants in possession.

"Lease Term" shall mean the twenty (20) year period beginning on July 1, 1996,

subject to the biennial review of rents and rates described in Section 3b.

"Maintenance" shall mean those activities required for continued basic operation of track and signal equipment. Track work under this item includes tightening track bolts, lifting and tamping joints to adjust cross level, switch adjustment and lubrication, operation of ballast regulators, replacement of worn switch components, spot replacement of worn ties, and spot replacement of worn rails. Signal work under this item includes periodic inspections and tests per FRA/PUC requirements and repair/replacement of defective components.

"Still and Motion Picture Production" shall include still and motion picture production, television filming, commercials and other still and motion television promotional activities, video productions and any other still or motion related media events.

"Public/Tourist Excursions" shall include public and private excursions, recreational and dinner train operations and any promotional activities related thereto.

"Taking" shall mean the taking or condemnation of materially all of the Lease Property by any competent authority at any time while this Agreement is in effect.

"Track" shall include all appurtenances thereof, consisting of rail and fastenings, switches and frogs complete, bumpers, ties, ballast and roadbed.

"Track Support Structures" shall mean those properties necessary for use or support of Track, including signals, bridges, culverts, or other structures, tunnels, grading, embankments, dikes, pavements, and drainage facilities.

3. Purpose and Scope of Lease:

The purpose of this lease is to permit Fillmore & Western Railway Co. to use the Lease Property for Still and Motion Picture Production purposes and for Public/ Tourist Excursion purposes, subject to reservations described in Section 11c, as part of the efforts of Fillmore to further develop the local economy. For purposes of promoting the local economy, for the term of this Lease Agreement, Fillmore & Western Railway Co. agrees to headquarter its operations and equipment in the City of Fillmore and to promote and support the City of



Fillmore and its business establishments in its business activities.

4. Demise and License:

Fillmore, for and in consideration of the rents, covenants, and conditions herein contained to be kept, performed, and observed by Fillmore & Western Railway Co., does lease and demise to Fillmore & Western Railway Co. for the Lease Term, subject to all matters of record and the reservations of VCTC under its Lease Agreement with Fillmore, and Fillmore & Western Railway Co. does rent and accept from Fillmore the Lease Property.

5. Rental Payments:

a. Effective November 1, 1996, Fillmore & Western Railway Co. shall pay as initial rental hereunder Six Hundred Dollars (\$600.00) monthly, plus Twenty-Five Cents (\$0.25) per each paid adult passenger and Fifteen Cents (\$0.15) per each paid juvenile passenger (under age sixteen [16]) ("Base Rental"). Fillmore & Western Railway Co. shall also pay as Movie Rental to Fillmore the sum of \$500 per day for each day of Still and Motion Picture Production use of the Lease Property. Fillmore & Western Railway Co. shall pay Base Rental and Movie Rental to Fillmore within fifteen (15) days of the end of each month including with payment a statement detailing the number of passengers (paid and unpaid) and the number of days of Still and Motion Picture Production during the period.

This initial rental rate shall be adjusted annually on July 1, thereafter as follows: The base for computing the adjustment is the Consumer Price Index for All Urban Consumers (1982-84 = 1000 for Los Angeles-Long Beach-Anaheim, California, published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), which is published for the month of May, 1996 ("Beginning Index").

If the Index published for the month of May prior to the adjustment date ("Extension Index") has increased over the Beginning Index, the monthly rent for the following year (until the next rent adjustment) shall be set by multiplying the initial rent by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index.



However, in no case shall the monthly rent be less than the initial rent.

If the Index is changed so that the base year differs from that used above, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued.

b. Fillmore and Fillmore & Western Railway Co. agree that the rental rate shown in Section 5a shall be reviewed, and if deemed necessary, renegotiated and revised on a biennial basis. Rental rate review may include, but is not limited to, consideration of a simple flat rate, percent of gross receipts, fee per rider, or other appropriate measures. In the event Fillmore and Fillmore & Western Railway Co. are unable to reach agreement regarding a rental rate, the matter may be submitted to mediation pursuant to the applicable provision of Section 26. If the rental rate is revised, it shall be memorialized through an amendment to this Agreement. If a rental rate cannot be agreed upon, even after mediation, this Agreement may be terminated in accordance with Section 19(b).

c. Fillmore & Western Railway Co. acknowledges and agrees that its obligation to pay Base Rental and Movie Rental hereunder and the rights of Fillmore in and to such rent shall be absolute and unconditional and shall not be subject to any abatement, reduction, set-off, defense, counterclaim or recoupment ("Abatements") for any reason whatsoever, including without limitation Abatements due to any present or future claims of Fillmore & Western Railway Co. against Fillmore under this Agreement or otherwise..

d. Fillmore & Western Railway Co. recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that Fillmore & Western Railway Co. may be subject to the payment of property taxes levied on such interest. Fillmore & Western Railway Co. shall pay all real and personal property taxes and assessments applicable to the Lease Property and to the personal property thereon.

e. It is the intention of the parties that Fillmore shall receive the Base Rental and Movie Rental free from all taxes, charges, expenses, costs, and deductions of every description, which are specified in this Agreement as being the obligation of Fillmore & Western Railway Co..

f. Fillmore shall have the right to inspect and audit the records of Fillmore & Western Railway Co. relating to the calculation of Base Rental and Movie Rental Payments.

g. Fillmore & Western Railway Co. agrees to use forms reviewed and approved by Fillmore for purposes of Calculation of Base Rental and Movie Rental.

h. With respect to the PURCHASE AND SALE AGREEMENT, SANTA PAULA AND VENTURA BRANCHES, between Southern Pacific Transportation Company as Seller and Ventura County Transportation Commission as Purchaser, Article 6: Reservations Paragraph 6.2 Income from Certain Leases and Other Agreements, the parties agree that the conditions set forth in the above referenced paragraph do not apply to this Agreement.

6. Use of Premises:

a. Fillmore & Western Railway Co. shall have the right to use the Lease Property for any lawful Still and Motion Picture Purpose and for any lawful Public/Tourist Train Excursion use defined herein, but not to remove the Track or Track Support Structures, as itemized on Exhibit "A" attached hereto, entitled "Inventory of Track and Track Support Structures" unless specifically authorized to do so in writing by Fillmore.

b. Fillmore & Western Railway Co. shall maintain at its sole expense the Track and Track Structures to such standards as required for its uses and in accordance with applicable regulations including, but not limited to, applicable regulations of the California Public Utilities Commission and Federal Regulations. Any materials used to replace defective components of the Track or the Track Support Structures shall be of the same or superior type and quality as that being replaced.

c. In the event that specific Track and Track Support Structures are determined to need extensive refurbishment or replacement, beyond Maintenance as defined in

Section 2, VCTC shall be responsible for said refurbishment or replacement. Fillmore & Western Railway Co. acknowledges that any and all refurbishment or replacement activities beyond Maintenance shall be undertaken at the sole discretion of VCTC as funds may become available and Fillmore shall not be responsible whatsoever to undertake any refurbishment, replacement or Maintenance activities.

7. Construction:

a. Permanent Improvements.

Fillmore & Western Railway Co. shall not have the right to construct any additions or betterments of a permanent nature on the Lease Property without specific written approval in advance by Fillmore.

b. Temporary Improvements.

Fillmore & Western Railway Co. shall have the right to construct any temporary improvements necessary for the use of the Leased Property as permitted herein, provided, however, said temporary improvements shall be promptly removed upon cessation of their use.

c. Easements and Dedications.

The parties each recognize that in order to provide for the more orderly development of the Lease Property it may be necessary, desirable or required that street, water, sewer, drainage, gas, power line, and other easements and dedications, and similar rights be granted or dedicated over or within portions of the Lease Property. Fillmore will give Fillmore & Western Railway Co. timely written notice of all such requests, but VCTC under the terms of its Lease Agreement with Fillmore, may continue to consider such requests, have sole authority to approve or reject proposals and execute and deliver documents, from time to time, and throughout the term of this Agreement as may be appropriate, necessary, or required by several governmental agencies and public utility companies for the purpose of granting easements and dedications. No such easement or dedication, nor any construction in connection therewith

shall unreasonably interfere with the operations of Fillmore & Western Railway Co..

d. Title.

Any parts installed, replacements made or additions, improvements or alterations to the existing Track and Track Support Structures shall in each case be considered accessions to the Track and Track Support Structures and title thereto shall be immediately vested in VCTC without further cost or expense to VCTC or Fillmore. Any supplemental trackage (i.e. new sidings, yard or shop trackage) added to the original Track and Track Support Structures by Fillmore & Western Railway Co. shall remain the property of Fillmore & Western Railway Co. and shall not be considered accessions to the Track and Track Support Structures and title shall not be vested in VCTC unless Fillmore & Western Railway Co. receive due compensation.

However, Fillmore & Western Railway Co.'s fixtures, machinery and equipment placed on or maintained on the Lease Property or propelled on rail shall be and remain the property of Fillmore & Western Railway Co. unless the removal of same causes material damage to property of VCTC or of Fillmore, in which event Fillmore & Western Railway Co. shall pay the reasonable cost of repair.

At the termination of the Lease Term, Fillmore & Western Railway Co. shall, within One Hundred Eighty (180) days following, remove at Fillmore & Western Railway Co.'s sole expense, all of its property from the Lease Property.

8. Indemnification:

a. Fillmore & Western Railway Co. shall investigate, release, defend, indemnify and hold VCTC and Fillmore harmless from and against any and all loss, damage, liability claims, demands, detriments, costs, charges and expense (including attorney's fees) and causes of action of whatsoever character which VCTC or Fillmore, or both, may incur, sustain or be subjected to on account of loss or damage to property and loss of use thereof, or for bodily injury to or death of any persons (including, but not limited to the property, employees, subcontractors, agents and invitees of VCTC and of each party hereto) arising out of or in any

RP

way connected with the work to be performed or occupancy, operation, maintenance, enjoyment or use of the Lease Property under this Agreement, except such as shall have been occasioned by the negligence or other fault of VCTC or Fillmore.

9. Assignment, Subletting and Mortgaging:

a. Assignment by Fillmore & Western Railway Co..

This Agreement may not be assigned by Fillmore & Western Railway Co. without the prior written consent of Fillmore. The assignment shall not be valid unless there shall be delivered to Fillmore in due form for recording within ten (10) business days after the date of assignment (a) a duplicate original of the instrument of assignment, and (b) an instrument by the transferee expressly assuming all of Fillmore & Western Railway Co.'s obligations and defaults under this Agreement. Without limiting any of the foregoing, but in addition thereto, any assignment in contravention of the terms hereof is void, but this shall not impair any remedy of Fillmore because of Fillmore & Western Railway Co.'s having engaged in an act prohibited by the terms hereof.

b. Mortgage of Leasehold Interest.

Fillmore & Western Railway Co. shall not have the right, at any time or from time to time during the Lease Term, to encumber the leasehold estate created by this Agreement by a leasehold mortgage without the prior written consent of Fillmore, and any attempt by Fillmore & Western Railway Co. to do so without such consent shall be absolutely void and without effect.

c. Subletting by Fillmore & Western Railway Co..

Fillmore & Western Railway Co. shall not have the right, without prior written consent of Fillmore, to sublet a part of the Lease Property.

10. Limits on Use:

a. During the term of this Agreement the Lease Property shall be used by Fillmore & Western Railway Co. for the use specified in Section 6 above and for no other use or purpose. Fillmore & Western Railway Co. shall not use nor permit any other person to use the

Lease Property, or any part thereof, for any unlawful purposes. Fillmore & Western Railway Co. shall at all times during said term conform to, and cause all persons using or occupying any part of the Lease Property and Improvements by invitation of, under or by right of Fillmore & Western Railway Co. to comply with, all public laws, ordinances, rules, orders and regulations from time to time applicable thereto regardless of when they become or became effective, including without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and air and water quality, and shall furnish satisfactory evidence of such compliance upon request of Fillmore. Fillmore & Western Railway Co. shall not commit, nor allow any sublessee to commit, any waste upon the Lease Property.

b. Indemnity for Violation of Law.

(1) Fillmore & Western Railway Co. covenants and agrees to release, defend, indemnify and save Fillmore and VCTC harmless from any liability, cost, expense, fines, penalties, damages, or charges imposed for any violation of any and all laws, ordinances, rules, orders and regulations applicable to the use and occupancy of the Lease Property, or as the result of any discharge, leakage, spillage, emission or pollution whether occasioned by neglect, omission or willful act of Fillmore & Western Railway Co. or any person upon the Lease Property by license or invitation of Fillmore & Western Railway Co. or holding or occupying the same or any part thereof or by right of Fillmore & Western Railway Co., regardless of whether such liability, cost, expense, fine, penalty, damages or charge arises or is imposed during or after the expiration of this Agreement, provided the act giving rise to same occurs during the term hereof or any renewal or extension thereof.

(2) Likewise, Fillmore covenants and agrees to release, defend, indemnify and save Fillmore & Western Railway Co. harmless from any liability, cost, expense, fines, penalties, damages, or charges imposed for any violation of any and all laws, ordinances, rules, orders and regulations applicable to the use and occupancy of the Lease Property, or as the result of any discharge, leakage, spillage, emission or pollution whether occasioned by neglect, omission or willful act of any predecessor entity or any person upon the Lease Property

by license or invitation of predecessor entity or holding or occupying the same or any part thereof or by right of predecessor entity, regardless of whether such liability, cost, expense, fine, penalty, damages or charge arises or is imposed during or after the expiration of this Agreement, provided the act giving rise to same occurred prior to October 31, 1996.

(3) Fillmore & Western Railway Co. shall have the right to contest by appropriate legal proceedings, without cost or expense to Fillmore, the validity or application of any law, ordinance or regulation of the nature herein referred to. If by the terms of such law, ordinance, or regulations compliance therewith may be legally held in abeyance without subjecting Fillmore to any liability of whatsoever nature for the failure to so comply therewith, compliance therewith may be postponed until the final determination of such proceeding. Fillmore & Western Railway Co., upon commencing such contest shall furnish to Fillmore a document guaranteeing that Fillmore and Fillmore's interest and VCTC and VCTC's interest in the Lease Property shall be saved harmless from any penalty, damage, charge or claim resulting from such contest.

(4) Fillmore and VCTC shall have the right to contest by appropriate legal proceedings, without cost or expense to Fillmore & Western Railway Co., the validity or application of any law, ordinance or regulation of the nature herein referred to. If by the terms of such law, ordinance, or regulations compliance therewith may be legally held in abeyance without subjecting Fillmore & Western Railway Co. to any liability of whatsoever nature for the failure to so comply therewith, compliance therewith may be postponed until the final determination of such proceeding. Fillmore and VCTC, upon commencing such contest shall furnish to Fillmore & Western Railway Co. a document guaranteeing that Fillmore & Western Railway Co. and Fillmore & Western Railway Co.'s interest in the Lease Property shall be saved harmless from any penalty, damage, charge or claim resulting from such contest.

11. Conditions and Covenants:

All of the provisions of this Agreement and any Riders which are made a part of this Agreement shall be construed to be "conditions" as well as "covenants" as though the

words specifically expressing or imparting covenants and conditions were used in each separate provisions.

a. Qualifications on Use.

This Agreement is subject to the right of existing tenants in possession. Fillmore & Western Railway Co. accepts the Lease Property (including VCTC owned and other existing improvements) in its present condition without any representation or warranty by Fillmore as to the condition of such Lease Property or Improvements, and Fillmore shall not be responsible for any defect or change of condition in the Lease Property or such Improvements, any damage occurring thereto, or for the existence of any violation of any municipal, county, state or federal law, order, rule, regulation or ordinance.

b. Fillmore & Western Railway Co. UNDERSTANDS AND AGREES THAT FILLMORE MAKES NO WARRANTY OR REPRESENTATION CONCERNING WHAT, IF ANY, USE OF THE PREMISES MAY BE MADE UNDER THE REQUIREMENTS OF ANY GOVERNMENTAL JURISDICTION, AGENCY OR ENTITY HAVING AUTHORITY OVER THE PREMISES, INCLUDING THE CITY OF FILLMORE AND ITS ASSOCIATED AGENCIES AND DEPARTMENTS. Fillmore & Western Railway Co. SHALL BE SOLELY RESPONSIBLE FOR DETERMINING WHAT IS NECESSARY TO COMPLY WITH THE REQUIREMENT OF EACH SUCH GOVERNMENTAL ENTITY AND FOR FULL COMPLIANCE WITH SUCH REQUIREMENTS. NO EMPLOYEE, REPRESENTATIVE OR AGENT OF FILLMORE HAS ANY POWER OR AUTHORITY TO WAIVE OR MODIFY THIS PROVISION AND NO ORAL OR WRITTEN REPRESENTATION BY ANY SUCH PERSON SHALL EVER BE DEEMED TO CONSTITUTE A WAIVER OF THIS REQUIREMENT OR ANY ESTOPPEL AGAINST FILLMORE OR THE CITY OF FILLMORE.

c. VCTC Reservations.

Fillmore & Western Railway Co. acknowledges that VCTC has reserved for itself and those to whom it grants such right, the right to: 1) construct, maintain and operate any existing and new and additional communication facilities or pipeline upon, over and beneath

the Lease Property, so long as the exercise of such right does not unreasonably interfere with Fillmore's rights under its Lease Agreement with VCTC: 2) construct, maintain and operate any existing and new and additional recreational trail facilities; an 3) operate freight and regular passenger rail services on the Fillmore segment.

d. Right of Entry.

Agents, representatives or employees of Fillmore and VCTC shall have the right at reasonable times to enter the Lease Property for the purposes of inspecting, determining whether provisions of this Agreement and other Agreements applicable to the Lease Property are being complied with, and for maintaining, repairing or altering the land, or showing the Lease Property to prospective lessees, purchasers, mortgagees or beneficiaries under deed of trust.

e. Liens.

Fillmore & Western Railway Co. agrees and covenants to hold Fillmore and the Lease Property harmless from any mechanics' or materialmen's liens claimed by any person, firm or corporation employed by Fillmore & Western Railway Co.. In the event of the filing of any such lien, Fillmore & Western Railway Co. shall cause such lien to be released within five (5) business days after Fillmore's written notice to do so. Fillmore & Western Railway Co. shall indemnify and defend Fillmore and VCTC against all liability, cost and expense (including attorney fees) incurred by VCTC or Fillmore as a result of any such lien.

12. Insurance:

While this Agreement is in effect, Fillmore & Western Railway Co. shall furnish evidence satisfactory to Fillmore that both VCTC and Fillmore are named as additional insureds for third party liability claims, meeting the requirements stated below, in a form satisfactory to Fillmore. Not later than thirty (30) days prior to the expiration date of such coverage, Fillmore & Western Railway Co. shall furnish Fillmore with evidence satisfactory to Fillmore that the coverage has been or will be substituted for and will be effective immediately upon such expiration.

a. Liability:

Comprehensive general and automotive liability coverage shall:

- (1) have a combined single limit of not less than \$5,000,000 per occurrence;
- (2) name VCTC and Fillmore as additional insureds with respect to the operations of Fillmore & Western Railway Co.;
- (3) cover the contractual liability assumed by Fillmore & Western Railway Co. under this Lease;
- (4) provide that the insurer is not entitled to any contribution from insurance in effect for VCTC or Fillmore; and
- (5) provide for at least ten (10) days' notice to VCTC and Fillmore prior to any other cancellation or modification of coverage.

The insurance coverage shall also comply with the following requirements:

- (a) A "Deductible" clause is permitted subject to Fillmore & Western Railway Co. being solely responsible to be Self Insured for the amount of the deductible and to assume full responsibility for payment of any claims which fall below the deductible amount of the insurance coverage.
- (b) Provides coverage for "all operations of the insured conducted on the Lease Property" and contains a description of the work performed by the insured.
- (c) All signatures must be handwritten in ink on any policy, certificate or endorsement; rubber stamp signatures are not acceptable.
- (d) Said policy shall contain a cancellation clause reading in substance as the following approved notice:  
  
"It is agreed that this policy shall not be canceled nor the

amounts of coverage provided herein reduced until thirty (30) days after Fillmore's City Attorney shall have received written notice of such cancellation or reduction, as evidence by return receipt of registered mail."

- (e) No policy shall be acceptable unless first approved as to form by the City Attorney of Fillmore.
- (f) If Fillmore & Western Railway Co. is involved with the preparation and/or sale of food and/or drink on the concession premises, then products liability coverage shall also be required.
- (g) Insurance Binders shall not be accepted by Fillmore as proof of insurance coverage.

b. Worker's Compensation:

Federal Employer's Liability Act or Workers Compensation Insurance, as the case may be, shall cover all persons employed by Fillmore & Western Railway Co. or its agents in the conduct of its operations on the Lease Property and shall provide for a waiver of any right of subrogation against Fillmore and/or VCTC to the extent permitted by law.

13. Condemnation:

a. Total Taking.

The term "Taking" means the taking or condemnation of materiality all of the Lease Property by any competent authority at any time while this Lease is in effect. In the event of a Taking, this Agreement shall terminate on the earlier of vesting of title in, or the taking of possession by, the condemnor.

In the event of Taking, the award for the land value and interest thereon shall belong to VCTC and/or Fillmore. Under no circumstances shall Fillmore & Western Railway Co. be entitled to any "bonus value" for any remaining unexpired Term of this Lease.

If the values of the respective interests of VCTC, Fillmore and Fillmore

& Western Railway Co. have been separately determined in the proceeding for the Taking in accordance with this Section 13a., then the values so determined shall be conclusive upon VCTC, Fillmore and Fillmore & Western Railway Co.. Otherwise the values shall be determined by agreement or, if they are unable to agree, by arbitration under the terms of this Lease.

b. Temporary Taking:

(1) If all or part of the Lease Property or of Fillmore & Western Railway Co.'s interest under this Agreement is taken by any competent authority for its temporary use or occupancy ("Temporary Taking"), this Agreement shall not terminate and Fillmore & Western Railway Co. shall continue to pay rent and other charges and to perform all of its other obligations hereunder, to the extent Fillmore & Western Railway Co. is not prevented from doing so by the taking authority. In the event of a Temporary Taking, Fillmore & Western Railway Co. shall be entitled to receive from the award, up to one hundred (100%) percent reimbursement of its total forecast revenue for the period of the Taking as compensatory damages for any lost revenue resulting from the Temporary Taking.

(2) In the event all or part of Fillmore & Western Railway Co.'s interest under this lease is taken by any competent authority for its temporary use or occupancy for the full term of this lease, Short line shall receive the entire award for such interest.

14. Late Payments:

Fillmore & Western Railway Co. shall pay Fillmore an administrative charge of 1-1/2% per month or the highest amount permitted by law, whichever is lower, for any amount due hereunder which remains unpaid after thirty (30) days from the date such amount becomes payable.

15. Default:

Fillmore & Western Railway Co. shall be in default under this Agreement (1) if Fillmore & Western Railway Co. fails to pay the Base Rental and Movie Rental when due and such failure continues for a period of more than ten (10) business days, (2) if Fillmore & Western Railway Co. fails to cure the breach of any provision of this Agreement within thirty

(30) days after notice from Fillmore or to commence and diligently pursue the cure of such a breach if the breach can be cured within thirty (30) days; (3) if Short line is adjudged bankrupt or becomes insolvent or seeks general debtor relief by extrajudicial means or if any action or proceeding for debt relief of Fillmore & Western Railway Co. is commenced by Fillmore & Western Railway Co..

If Fillmore & Western Railway Co. fails to cure a default within thirty (30) days of notice from Fillmore to do so, or Fillmore & Western Railway Co. does not present a restoration plan within thirty (30) days, Fillmore shall have the right, without further notice and in addition to any other remedies Fillmore may have by law or in equity, to terminate this Agreement forthwith and to retake possession of the Lease Property.

16. ANTI-DISCRIMINATION CLAUSE:

Fillmore & Western Railway Co. herein covenants by and for itself and its assigns, and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall Fillmore & Western Railway Co. itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

17. Relocation:

Fillmore & Western Railway Co. acknowledges that it is a post acquisition tenant having entered into this Agreement and taken occupancy of the premises from Fillmore after Fillmore's acquisition of the premises. By entering into this Agreement, Fillmore & Western Railway Co. and any subtenant or successor in interest to Fillmore & Western Railway

Co. under this Agreement hereby expressly waives any claim for compensation for fixtures and equipment installed on the premises at such time as the Agreement is terminated or the term expires. Fillmore & Western Railway Co., any subtenant, and any successor in interest to Fillmore & Western Railway Co. also waive any claim against Fillmore for moving expenses, relocation assistance, and any claim for loss or damage to goodwill, as a result of being required to vacate the premises if this Agreement is terminated for any reason or due to expiration of the term of this Agreement. Fillmore & Western Railway Co. shall not be considered a "displaced person" as such term is defined in Section 7260 (b) (c) or (d) of the California Government Code as it relates to Fillmore. Fillmore & Western Railway Co. disclaims such status and hereby acknowledges its ineligibility for relocation assistance as provided in California Government Code Sections 7260 through 7277, as it now exists or may be amended.

18. Nonwaiver:

Fillmore's failure to enforce or exercise its rights under any term, condition or covenant of this Agreement shall not be construed as a waiver of such rights or such term, covenant or condition. Acceptance of rent shall not be deemed a waiver of Fillmore's rights to terminate this agreement as provided herein, regardless of when rent is accepted.

19. Termination or Expiration:

a. General:

Termination or expiration of this Agreement shall not release either party from an event which occurred prior to such termination or expiration. If Fillmore & Western Railway Co. fails to surrender possession of the Lease Property upon termination of this Agreement, Fillmore shall have the right, to the extent permitted by law, to re-enter the Lease Property and remove Fillmore & Western Railway Co. and any person or entity claiming through Fillmore & Western Railway Co. from the Lease Property.

b. Notice of termination.

Either party may terminate this Agreement, without cause, upon six (6) month written notice of termination given to the other party per Section 25 below.

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c. Surrender of Premises.

Upon the expiration or termination of the Lease Term, Fillmore & Western Railway Co., without further notice, shall deliver up to Fillmore the possession of the Lease Property. Fillmore & Western Railway Co. shall restore the Lease Property to the condition in which it existed at the time Fillmore & Western Railway Co. took possession, normal wear and tear, erosive affects of time, and improvements or alterations made with specific written approval excepted. Upon the failure or refusal of Fillmore & Western Railway Co. to remove from the Lease Property, as provided in Section 7d., all personal property owned by Fillmore & Western Railway Co., (a) said personal property shall thereupon, at the option of Fillmore, become the sole property of Fillmore, or (b) if Fillmore so elects it may remove from the Lease Property personal property owned by Fillmore & Western Railway Co., and Fillmore may also restore the Lease Property substantially to the condition in which it existed at the time Fillmore & Western Railway Co. took possession, all at the expense of Fillmore & Western Railway Co., which expense Fillmore & Western Railway Co. agrees to pay upon demand, or (c) Fillmore at its sole option may elect that this Agreement with all terms contained herein, including the payment of Rent for failure to vacate on time may remain in effect until Fillmore & Western Railway Co.'s personal property is removed and the Lease Property is restored by Fillmore. In the event of such failure or refusal of Fillmore & Western Railway Co. to surrender possession of the Lease Property, Fillmore shall have the right to re-enter upon the Lease Property and remove Fillmore & Western Railway Co., or any person, firm or corporation claiming by, through or under Fillmore & Western Railway Co., therefrom.

d. Highway Grade Separation Projects.

The parties acknowledge that in the event that any highway/railroad grade separation projects involving the Lease Property are approved by government agencies having jurisdiction, Fillmore may terminate this Agreement in order to eliminate any obligation upon Fillmore to participate in such project.

20. Fillmore Loan to Fillmore & Western Railway Co.

Fillmore shall lend to Fillmore & Western Railway Co. the sum of One Hundred Three Thousand and Eight Hundred Dollars (\$103,800.00) (the "Loan") which shall be subject to the following terms related to its use, security, and repayment:

a. The Loan shall be evidenced by a promissory note (the "Note") in substantially the form attached hereto as Exhibit "B" and incorporated herein by reference. Fillmore's Executive Director is authorized to disburse \$84,000.00 of such funds in monthly increments of \$3,500.00 over a period of twenty-four (24) months made payable jointly to Fillmore & Western Railway Company and Citizens State Bank of Santa Paula. The first such disbursement shall commence with the date of the first payment due to Citizens State Bank of Santa Paula in accordance with the Citizens State Bank of Santa Paula Credit Memorandum/Loan Proposal of October 24, 1996 and the loan documents to be executed by and between Fillmore & Western Railway Co. and Citizens State Bank of Santa Paula relating to the above referenced credit memorandum. The remaining \$19,800.00 of the funds shall be used by Fillmore as a credit against all delinquent rent owing to Fillmore by Fillmore & Western Railway Co. and shall bring rent payments owing under this Lease Agreement current to October 31, 1996.

21. Discharge of July 18, 1990 Promissory Note

Fillmore agrees to fully discharge the promissory note dated July 18, 1990, that is in the face amount of Fifty Thousand Dollars (\$50,000.00) and to fully release Fillmore & Western Railway Co. and the Borrowers on said promissory note from the indebtedness to Fillmore on the note. The full discharge of this note by Fillmore is not to be construed as a pledge of any revenues of Fillmore or the City of Fillmore.

22. Attorney's Fees:

If either party takes any steps or brings an action to compel performance of or to recover for breach of any term of this Agreement, the non-prevailing party agrees to pay all costs and expenses, including reasonable attorney's fees, which may be incurred by the prevailing party in the enforcement of this Agreement.

23. Entire Agreement:

The contents of this Agreement are the entire agreement between the parties and supersede all written or oral communications between the parties prior to its execution.

This Agreement shall not be modified except by the written agreement of the parties.

Subject to Section 8 and 9, this Agreement shall be binding upon the heirs, representatives, successors and assigns of the parties respectively.

24. Applicable Law:

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

25. Notices:

All notices or other documents under this Agreement shall be in writing and delivered personally or mailed by first class mail, postage prepaid, to the parties at their last known address.

26. Severability:

If any paragraph, sentence, clause, phrase or word shall become without full effect due to any legal interpretation, judicial decision, operation of law or otherwise, the balance of this Agreement shall remain in full force and effect.

27. Assignment, Successors:

This Agreement is intended solely for the benefit of and shall be binding upon the parties hereto, and their successors and assigns, and is not intended nor shall it be construed to be for the benefit of any other party.

28. Dispute Resolution

a. Good Faith Resolution Prerequisite to Mediation

In the event of a dispute arising out of the terms of, or pertaining to, this Agreement, the parties shall negotiate in good faith for thirty (30) days before either party may



submit the matter to mediation. VCTC and Fillmore agree that, in the event they are unable to resolve any such dispute within thirty (30) days of the parties recognition of such dispute between them, they shall submit the matter at issue to mediation and that the method and procedure for such mediation shall be as hereinafter set forth in Subsection c.

b. Mediation Prerequisite to Litigation

No party may undertake litigation with reference to any such dispute until (1) mediation of that dispute has occurred or (2) written notice of refusal by one party to the other party of the noticing party's refusal to submit to the decision of the Mediator (as hereinafter defined), whichever is earlier.

c. Methods and Procedures for Mediation

Mediation shall be subject to the following methods and procedures:

(1) A party dissatisfied with the results of negotiation between the parties may, after the conclusion of the thirty-day period described above in subsection a, give notice to the other party of its request to submit the matter to mediation.

(2) The parties hereby agree that they shall submit any matter elected for mediation to (a) a retired judge of the Superior Court of the County of Ventura agreed upon by all parties, or (b) in the event that a retired judge is not available or satisfactory to all parties, to such other mediator as all parties may agree (the "Mediator").

(3) The parties hereby agree to equally share the fees and costs incurred by the Mediator, with each party bearing its own costs of preparation and presentation of the matter to the Mediator.

(4) The Mediator shall have the authority to call such witnesses as he or she deems appropriate to the matter submitted to him or her, to take testimony from such witnesses as the parties may call and those called by the Mediator, to request and demand original and further briefing of any or all issues from the parties and to conduct the mediation pursuant to the procedures set forth in the California Rules of Court and the statutes of the State of California, including without limitation, the California Evidence Code. The Mediator shall render his decision, in writing, to all parties within forty-five (45) days of the conclusion of taking testimony and/or evidence regarding the dispute.

(5) The decision of the Mediator shall not be binding and, subject to the limitations set forth in subsection b above, either party may institute legal action de novo in the event that such party does not agree with the decision of the Mediator. The parties agree that, for the purposes of such litigation and to the extent permitted by law, the statute of limitations for filing such action shall be one hundred eighty (180) days from the date of the Mediator's written decision.

(6) The parties agree that any mediation or litigation which may

arise pursuant to this Agreement shall take place in, and in the event of litigation shall be conducted in, the appropriate court for the County of Ventura, California.

(7) In the event that litigation is undertaken by either party after mediation, the prevailing party shall be entitled to recover its costs and attorney's fees incurred in the litigation from the other party.

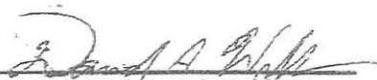
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first hereinabove mentioned.

"FILLMORE & WESTERN RAILWAY CO.:"

Fillmore & Western Railway Co. ,  
a California corporation

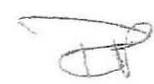
"FILLMORE:"

City of Fillmore  
Redevelopment Agency

by:   
David Wilkinson, President

by:   
Roy Payhe, Executive Director

by: \_\_\_\_\_  
Tresa Wilkinson, Secretary



## **Exhibit 3**

SANTA PAULA BRANCH  
LINE LEASE NO. 1370

LAND LEASE

This LAND LEASE ("Lease") is entered into as of the 26<sup>th</sup> day of April, 1999 (the "Effective Date"), by and between the VENTURA COUNTY TRANSPORTATION COMMISSION, a county transportation commission organized pursuant to the laws of the State of California ("Lessor") and FILLMORE & WESTERN RAILWAY, a California corporation ("Lessee"), and is based upon the following facts which are material to the terms and conditions hereinafter set forth.

MATERIAL FACTS

A. Lessor is the owner in fee of that certain real property and any improvements and facilities thereon as shown in SPBL Drawing NO. V-48(6), approximately post mile 424.8 to post mile 425.1, which is attached hereto and incorporated herein by this reference, marked as Exhibit "A" (the "Property");

B. Lessee desires to use the Property to store and maintain railroad equipment and materials;

C. Lessor wishes to lease the Property to the Lessee and Lessee wishes to lease the Property from Lessor; and

D. The parties wish to memorialize, in writing, the terms and conditions under which this lease shall be conducted;

NOW, THEREFORE, THE PARTIES AGREE, in consideration of the following terms and conditions and other good and valuable consideration, receipt of which is hereby acknowledged, as follows:

1. Lease and Acceptance of Leased Property. Lessor hereby leases the Property to Lessee for uses hereinafter set forth and Lessee hereby accepts from Lessor lease of the Property for the uses hereinafter set forth, subject only to the reservations set forth in Paragraph 6 below.

2. Term and Termination.

a. Year-to-Year Lease. This lease shall commence on the Effective Date and be for a term of one (1) year from the Effective Date and shall continue year to year until terminated as hereinafter provided (the "Term").

b. Termination Upon Notice. Except as otherwise provided hereinafter for an Early Termination or a Termination Through Eminent Domain, this Lease may be terminated without cause (a "Termination"), upon notice from the party wishing to terminate to the other party, in writing, given at least one (1) year prior to the requested Termination date ("Termination Notice").

3. Termination in the Event of Condemnation. In the event that any entity with powers of eminent domain should exercise such powers with respect to the Property, this Lease shall terminate (a "Termination Through Eminent Domain") immediately upon issuance of a writ of possession to such entity and Lessor shall have no obligation to allow Lessee use of the Property after said date (the "Date of Possession"). In such an event, the Lessee shall be responsible only for the pro rata share of Rent and any Additional Rent which has accrued prior to the Date of Possession.

4. Rent, Additional Rent. As consideration for this Lease, Lessee shall pay to Lessor the sum of One Hundred Dollars (\$100.00) each year for so long as this Lease shall continue in effect. As "Additional Rent", Lessee shall pay any property, possessory interest or other taxes or assessments which are assessed against the Property by reason of Lessee's use of the Property, and any other sums hereinafter identified as a part of Additional Rent.

5. Condition of Property. Lessee acknowledges that neither Lessor nor any agent of Lessor has made any representation or warranty with respect to the condition of the Property or with respect to the suitability of the same for the

conduct of Lessee's business or the uses permitted herein, nor has Lessor or any agent of Lessor agreed to undertake any modification, alteration, or improvement to the Property. Lessee further acknowledges that Lessee has independently investigated the Property and is satisfied that the Premises are suitable for Lessee's intended use and that the Premises meet all governmental or quasi-governmental requirements for such intended use. By taking possession of the Property, Lessee shall be deemed to have accepted the Property as being in good and sanitary condition order and repair and to have accepted the Property in their condition existing as of the Effective Date and the date of such possession, subject to all applicable laws, covenants, conditions, restrictions, easements and other matters of public record and any rules and regulations from time to time promulgated by Lessor governing the use of the Property. Lessee acknowledges that there may be subterranean facilities within the Property, notwithstanding the absence of markers, monuments or maps indicating their existence.

6. Reservations. Lessor hereby excepts and reserves to itself, without abatement of Rent, Additional Rent or any other obligation of Lessee herein, the right to be exercised by Lessor

or any other person whom Lessor may designate or permit authority to so do, to:

- a. operate, maintain, review and relocate any and all existing pipe, track (if any), power and communication, including without limitation, fiber optic lines, signs and appurtenances thereof and thereto, and other facilities of like character upon, over, or under the surface of the Property;
- b. construct, operate, maintain, review and relocate such additional facilities of the same character as shall not unreasonably interfere with Lessee's use of the Property as specified in Paragraph 8 of this Lease; and
- c. conduct environmental audits and/or remediate any Hazardous Materials/Substances problems discovered as a result thereof.

Any such construction, operation, maintenance or relocation shall not be done at Lessee's expense unless such work is requested by Lessee and done for the benefit of Lessee.

Lessee hereby waives any claim for damages for any injury or inconvenience to, or interference with, Lessee's business, use or quiet enjoyment of the Property.

7. Obligations of Lessee. Lessee and Lessor agree and Lessee hereby acknowledges that it shall be responsible during Term of this Lease for the obligations assumed by Lessee herein including, but not limited to, the following:

a. Payments. Payment of Rent and Additional Rent as set forth hereinabove and Utility Contract Costs, if any, as defined below;

b. Maintenance of Property. Lessee shall pay during the Term and prior to delinquency all charges for water, gas, light, heat, power, electricity, telephone and other communications service(s), janitorial service, trash pick-up, weed abatement, sewer and all other services supplied to, or consumed on, the Property (collectively hereinafter, "Services") and all taxes, levies, fees or surcharges therefor, including without limitation, property taxes and possessory interest taxes. Lessee shall be solely responsible for arranging for Services to be supplied to the Property and shall contract for all Services in Lessee's name prior to the Effective Date. The lack or shortage of Services due to any cause whatsoever shall not affect any obligation of Lessee under this Lease, and Lessee shall keep and observe all of the terms, conditions and covenants of

this Lease and pay all Rent and Additional Rent due hereunder without diminution, credit or deduction.

c. Utility Company Contract by Lessor. If Lessor contracts with a utility company to provide access for service to the Property for Lessee's sole use and with lessee's concurrence, Lessee shall pay to Lessor all costs and expenses incurred by Lessor in such contract including, without limitation Lessor's administrative costs, in an amount not less than Three Hundred Fifty Dollars (\$350) ("Utility Contract Costs").

d. Delivery of Possession. Delivery of possession of the Property to Lessor at a Termination, Early Termination or a Termination Through Eminent Domain in the same condition as the Property had at the time this Lease was entered, reasonable wear and tear excepted;

e. Insurance. Maintenance, at Lessee's sole cost, and provision to Lessor of a copy of the policy and a certificate, of insurance for public liability and property damage insurance on the Property in the amount hereinafter specified by the Lessor. Such insurance shall be issued by an A rated California insurance company and the policy shall (i) name the Lessor as an additional insured and (ii)

include a provision that thirty (30) days written notice shall be given to Lessor prior to any cancellation of said policy.

Amount of Insurance Required: \$2,000,000 per incident, with maximum coverage of \$1,000,000 per individual.

f. Hazardous Materials. Lessee shall not use, generate, manufacture, produce, store, release, discharge, or dispose of, on, under or about the Property, or transport to or from the Property, any Hazardous Materials as defined below, or allow its agents or any other person or entity to do so. The term Hazardous Materials shall include, without limitation, (I) those substances included within the definition of "hazardous substances", "hazardous materials", "toxic substances", or "solid wastes" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq., the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. § 6901, et seq., and the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801, et seq., and in the regulations promulgated pursuant to said laws; (II) those substances listed in the United States Department of Transportation Table, 49 C.F.R. 172.101 and amendments thereto or

designated by the Environmental Protection Agency (or any successor agency thereto) as Hazardous Substances; and, (iii) such other substances, materials and wastes which are or become regulated under applicable federal, state or local law or the United States government, or which are classified as hazardous or toxic under federal, state or local laws or regulations.

8. Permitted Uses. Lessee shall use the Property only for the storing and maintenance of railroad equipment and materials.

9. Alterations to Property.

a. In General. Lessee shall not make or permit to be made, any alterations, changes, enlargements, improvements or additions (collectively "Alteration(s)") in, on, about or to, the Property, or any part thereof, without the prior written consent of Lessor, which consent may be withheld in Lessor's absolute and sole discretion, and without acquiring and complying with the conditions of all permits required for such Alteration(s) by any governmental entity having jurisdiction thereof. As a condition to the giving of its consent for any Alteration(s), Lessor may impose such requirements as Lessor may deem necessary in its sole discretion, including without limitation, the manner in

which the work is done, the right of approval of any contractor or subcontractors by whom the Alteration(s) is to be performed, the times during which the Alteration(s) is to be accomplished, the requirement that Lessee post a completion bond in an amount and form satisfactory to Lessor, and the requirement that Lessee reimburse Lessor, as Additional Rent, for Lessor's actual costs incurred in reviewing any proposed Alteration(s), whether or not Lessor's consent is granted. In the event that Lessor consents to the Alteration(s) by Lessee, the same shall be made by Lessee at Lessee's sole cost and expense and in accordance with the plans and specifications approved by Lessor and in a manner causing Lessor and its agents the least interference and inconvenience practicable under the circumstances. Lessee shall provide Lessor with written notice ten (10) days prior to employing any laborer or contractor to perform services related to, receive materials for the use upon, the Property and prior to commencement of any Alteration(s) on the property. Any Alteration(s) to the Property by Lessee shall be made in accordance with applicable laws and a first-class, workmanlike manner. In making any Alteration(s), Lessee shall, at Lessee's sole

cost and expense, file for and secure and comply with any and all permits or approval required by any governmental departments or authorities having jurisdiction thereof and any utility company(ies) having an interest therein. In no event shall Lessee make any structural changes to the Property or improvements thereon or make any changes to the Property or improvements thereon which would weaken or impair the structural integrity of the Property or any improvements thereon.

b. Lessor may elect, in Lessor's sole and absolute discretion, to have all or a portion of the Alteration(s) removed from the Property upon Termination, Early Termination or Termination Through Eminent Domain and Lessee shall, at its sole cost and expense, remove such Alteration(s) as designated by Lessor for removal and repair all damages to the Property arising from such removal prior to Termination, or within thirty (30) days after Early Termination or Termination Through Eminent Domain. In the event Lessee fails to remove any Alteration(s) designated by Lessee for removal or to repair all damages arising from such removal as hereinabove required, Lessor may remove such Alteration(s) and make such repairs and recover from Lessee

(I) all costs and expenses incurred by Lessor in connection therewith plus (ii) an amount no less than the monthly rent (as in effect upon before the Termination, Early Termination or Termination Through Eminent Domain) for each month during which such removal is accomplished, in order to compensate Lessor for the loss of rent to Lessor resulting from the unavailability of the Property for leasing to another tenant during such time or the damages which result from the inability of a condemning party to obtain immediate possession of the Property, as the case may be. Lessee's obligation to pay all such costs, expenses and rent shall survive the Termination or Early Termination. Unless Lessor elects to have Lessee remove an Alteration(s), such Alteration(s) shall, at the sole and absolute option of Lessor, become the property of Lessor upon Termination, Early Termination or Termination Through Eminent Domain, without any payment therefor by Lessor, and shall remain upon and be surrendered with the Property at Termination, Early Termination or Termination Through Eminent Domain.

10. Obligations of Lessor. Lessor's sole obligation under this Lease is to make peaceable possession of the Property, upon the terms and conditions herein set forth, available to Lessee

during the Term so long as Lessee is in compliance with the terms and conditions of this Lease and subject to the reservations by Lessor as set forth herein.

11. Indemnity by Lessee and Lessor. Lessee shall indemnify, protect, defend and hold Lessor harmless for all claims and damages incurred by reason of injury to persons or property and arising out of, or resulting from, Lessee's use of the Property, and, if necessary, shall defend Lessor with counsel of Lessor's choice in any such claim or damage. Lessor shall indemnify, defend and hold harmless Lessee from any and all liability, claims, expenses, costs and damages arising out of or related to the condition of the Property prior to the Effective Date of this Lease or arising subsequent to this Lease provided that any such claim is not related to Lessee's use of the property.

12. Default and Remedies.

a. Lessee's Default. Lessee's failure to comply with Lessee's obligations hereinabove set forth shall constitute an event of default by Lessee (an "Event of Default") and shall be grounds for immediate termination of this Lease and vacation of the Property by Lessor within five (5) days of receipt of written notice given by Lessor to Lessee of the

grounds for such termination (an "Early Termination"). Notwithstanding the foregoing, if within five (5) days of the deemed receipt (as provided in Paragraph 13.f below) of said notice given and received as hereinafter set forth in Paragraph 13.f, Lessee undertakes and diligently proceeds to cure the Event of Default, Early Termination shall not take place. The foregoing notwithstanding, Lessor's remedies in the Event of a Default shall be cumulative and, in addition to an Early Termination, Lessor shall have all remedies available to it at law and equity.

b. Lessor's Default. Lessor shall be in default of this Lease if Lessor does not provide peaceable possession of the Property to Lessee so long as Lessee is in compliance with the terms of this Lease ("Lessor's Default"). Lessee shall be entitled to specific performance in the event of Lessor's Default.

13. Miscellaneous Provisions.

a. Construction of Lease. This Lease has been entered into in the State of California and it shall be construed pursuant to the laws of said State. The use of headings and numerals herein are for purposes of ease of reading and location of provisions and such numbers and headings shall

not be construed to alter the intent of the parties as set forth in the text of this Lease. Wherever number or gender or are used in the text of this Lease they shall be construed to be that number or gender which is appropriate in the context of the text.

b. Sole Agreement. The terms and conditions set forth herein constitute the sole agreement of the parties with respect to this Lease and no other prior or contemporaneous, written or oral agreements between the parties shall have any effect.

c. Execution by Authorized Agent of Parties. Each party represents and warrants to the other party that this Lease has been executed on behalf of the party so representing by a duly authorized agent or officer of the party so representing.

d. Waiver. No waiver of an Event of Default or Lessor's Default shall constitute a waiver of any prior, contemporaneous or subsequent, same or other, default by Lessor or Lessee, as the case may be.

e. Recording of Lease. This Lease shall not be recorded by either party without the prior written consent of the other party.

e. Notices. When any notice or communication is required to carry out the terms of this Lease, such notice shall be in a writing which shall be (i) personally delivered to the other party, or (ii) delivered to the other party by United States Mail, postage prepaid. Such notices shall be deemed received (i) on the date of personal delivery, if so delivered, or (ii) on the fifth (5th) day after the postmark appearing on the envelope in which such notice is delivered if delivered by United States Mail. Notices shall be delivered to the parties at the addresses listed below or to such other address as one party may provide to the other party by written notice given in the manner prescribed in this subparagraph f:

If to Lessor:

Ventura County Transportation Commission  
950 County Square Drive, Suite 207  
Ventura, CA 93003  
Attention: Executive Director

If to Lessee:

Fillmore & Western Railway  
351 Santa Clara Avenue  
Fillmore, CA 93015  
Attention: Dave Wilkinson

g. Jurisdiction for Litigation. In the event of litigation or other action to enforce this Lease or any portion thereof, jurisdiction shall be with the Ventura County Superior Court for all state actions and the Ninth Circuit of the United States District Court for any federal action.

h. Attorneys Fees and Costs. In the event of litigation or arbitration to enforce the terms and conditions of this Lease, the prevailing party, as determined by the Court or Arbitrators as the case may be, shall be entitled to recover from the other party, the prevailing party's reasonable attorneys' fees and costs expended in such litigation or arbitration.

i. Consent of Lessor Required for Assignment, Sublease. Lessee shall not assign this Lease or sublease its rights in the Property without the prior written consent of the Lessor.

WHEREFORE, the parties have executed this Lease consisting of sixteen (16) pages, including these signature pages, but excluding the Exhibits attached hereto, as of the date first noted above.

LESSOR: VENTURA COUNTY TRANSPORTATION COMMISSION

By:   
Ginger Ghérardi, Executive Director

ATTEST:

  
Donna Cole, Clerk of the Commission

LESSEE: [NAME(S) OF LESSEE(S)]

By:   
[print name]: David Wilkinson  
[print title]: CEO

By: \_\_\_\_\_  
[print name]:  
[print title]:



## **Exhibit 4**

## INTERIM MAINTENANCE AGREEMENT

### FOR THE "VCTC SEGMENT" OF THE SANTA PAULA BRANCH

This Agreement is made as of this 14<sup>th</sup> day of November, 1997, by and between the FILLMORE & WESTERN RAILWAY COMPANY ("Fillmore & Western"), a California corporation, and the VENTURA COUNTY TRANSPORTATION COMMISSION ("VCTC"), and is based on the following facts which are material to the Agreement of the parties.

#### MATERIAL FACTS

VCTC owns a line of railroad from milepost 403.20 at or near Montalvo, California, to milepost 431.59 at or near Piru, California ("Santa Paula Branch");

VCTC desires to have Fillmore & Western perform track, signal and track support structures inspection and maintenance services on the branch line from milepost 403.85 to milepost 414.45, referred to here as the VCTC Segment of the Santa Paula Branch Line; and

Fillmore & Western is willing, able and qualified to perform track, signal and track support structures inspection and maintenance services on the VCTC Segment of the Santa Paula Branch Line;

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants herein entered into and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereby agree:

1. Definitions:

"VCTC Segment" shall mean that portion of the Santa Paula Branch between milepost 403.85 and milepost 414.45.

"Signals" shall include all fixtures and equipment necessary to properly operate all lights, bells, gates and all other warning devices as required at all public and private roadway crossings of the VCTC Segment, and appurtenances thereto.

"Track" shall mean all rails and fastenings, switches and frogs complete, bumpers, ties, ballast and roadbed, and appurtenances thereto.

"Track Support Structures" shall mean those properties necessary for use or support of Track, including, but not limited to, signals, bridges, culverts, other structures, tunnels, grading, embankments, dikes, pavements, and drainage facilities, and appurtenances thereto.

2. Services:

The Fillmore & Western agrees to provide required inspections and maintenance for all Track, Signals and Track Support Structures on the VCTC Segment. Such work shall be carried out in a good and workman-like manner and in conformance with all applicable Federal Railroad Administration (FRA) and California Public Utilities Commission (PUC) regulations and requirements, and all VCTC General Operating Rules.

3. Payment for Services:

a. VCTC payment to Fillmore & Western for all work completed under this Agreement shall be on a time and materials basis, per the schedule of labor rates and materials costs provided in Exhibit A, attached hereto and made a part hereof. VCTC shall make payment to Fillmore & Western within thirty (30) days of receipt of invoices and appropriate supporting documentation.

b. VCTC shall have the right to inspect and audit the records of Fillmore & Western relating to any work performed under this Agreement.

4. Term:

Fillmore & Western shall commence work upon execution of this Agreement. This Agreement shall remain in effect until either (a) termination per Section 5 of this Agreement or (b) such time it has been explicitly replaced or superseded by a subsequent Agreement between VCTC and Fillmore & Western.

5. Termination:

Either party may terminate this Agreement at any time with or without cause by giving the other party thirty (30) days written notice. In the event of a termination by either party without cause, Fillmore & Western shall be compensated for work performed prior to the date of the notice of termination.

6. Indemnification:

Fillmore & Western agrees to protect, defend, indemnify and hold VCTC, its officers, employees, agents, successors and assigns harmless from and against any and all loss, damage, liability claims, demands, detriments, costs, charges and expense (including attorneys' fees) and causes of action of whatsoever character which VCTC may incur on account of loss or damage to property and loss of use thereof, or for bodily injury to, or death of, any persons including, but not limited to the property, employees, subcontractors, agents and invitees of each party hereto, arising out of or in any way connected with the work to be performed pursuant to this Agreement, except such as shall have been occasioned by the negligence or other fault of VCTC.

7. Assignment:

Fillmore & Western may not assign its right under this Agreement nor delegate the performance of its duties without VCTC's prior written consent.

8. Independent Contractor:

There is no employer/employee relationship between the parties. Fillmore & Western is and at all times shall remain as to VCTC a wholly independent contractor. Neither VCTC nor any of its agents shall have control over the conduct of Fillmore & Western or any of Fillmore & Western's employees, except as herein set forth. The Fillmore & Western shall not at any time or in any manner represent that it or any of its agents or employees are in any manner agents or employees of VCTC.

9. Non-Discrimination:

Fillmore & Western shall not discriminate in the hiring of employees or in the employment of subcontractors on the basis of sex, race, religion, age, national origin, disability or any other basis prohibited by law.

10. Insurance:

While this Agreement is in effect, Fillmore & Western shall furnish evidence satisfactory to VCTC that VCTC is named as an additional insured for any and all liability claims, meeting the requirements stated below, in a form satisfactory to VCTC. Not later than thirty (30) days prior to the expiration date of such coverage, Fillmore & Western shall furnish VCTC with evidence satisfactory to VCTC that the coverage has been or will be substituted for and will be effective immediately upon such expiration.

a. Liability:

Comprehensive general liability coverage, including but not limited to liability insurance for all vehicles operated by Fillmore & Western in carrying out its duties pursuant to this Agreement, shall:

(1) have a combined single limit of not less than \$5,000,000 per occurrence;

(2) name VCTC as an additional insured with respect to the operations of Fillmore & Western;

(3) cover the contractual liability assumed by Fillmore & Western under this Agreement;

(4) provide that the carrier is not entitled to any contribution from insurance in effect for VCTC; and

(5) provide for at least thirty (30) days' written notice to VCTC by the carrier prior to any cancellation or modification of coverage.

b. Workers Compensation:

Fillmore and Western shall provide VCTC with evidence, satisfactory to VCTC, that all employees of Fillmore & Western and its agents are covered by Federal Employer's Liability Act or Workers Compensation Insurance, as the case may be. Fillmore & Western shall provide for a waiver in such coverage of any right of subrogation against VCTC to the extent permitted by law.

11. Attorney's Fees:

If either party brings an action based on the terms or performance of this Agreement, the losing party shall pay the reasonable attorney's fees of the prevailing party, in addition to the amount of judgment and costs.

12. Construction/Entire Agreement:

This Agreement constitutes the entire agreement between the parties and supersedes all written or oral communications between the parties prior to its execution. This Agreement shall not be construed for or against either party by reason of its preparation.

13. Amendment:

This Agreement shall not be amended or modified except by the written agreement of the parties.

14. Applicable Law:

This Agreement shall be governed by and construed in accordance with the laws of the State of California. The parties agree that venue for any legal action shall be the Ventura County Superior Court for state actions and the Ninth District of the Federal County, Los Angeles Division, for federal actions.

15. Notices:

Notices under this Agreement by one party to the other shall be in writing and delivered or mailed, postage prepaid, to:

VCTC:

Executive Director  
Ventura County Transportation Commission  
950 County Square Drive, Suite 207  
Ventura, CA 93003

Fillmore & Western:

Dave Wilkinson  
Fillmore & Western Railway Company  
351 Santa Clara Avenue  
Fillmore, CA 93015

The parties may change addresses for receipts of notices by directing such changes to the other party as provided in this Section 15. Notices shall be deemed received when delivered if delivered and on the third (3rd) day after the postmark date if mailed.

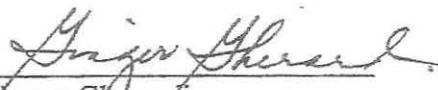
16. Severability:

If any paragraph, sentence, clause, phrase or word shall be deemed void, invalid or inoperative pursuant to any legal interpretation, judicial decision, operation of law or otherwise, the balance of this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by duly authorized representatives of each party as of the date first hereinabove mentioned.

"VCTC:"  
Ventura County  
Transportation Commission

"Fillmore & Western:"  
Fillmore & Western  
Railway Company

by:   
Ginger Gherardi  
Executive Director

by:   
Dave Wilkinson  
President

EXHIBIT A

FILLMORE & WESTERN  
SCHEDULE OF RATES

LABOR

Supervisor	\$75.00/hour
Signal Maintainer/Engineer	\$75.00/hour
Track Inspector	\$75.00/hour
Foreman	\$36.27/hour
Journeyman Laborer	\$22.23/hour
Apprentice Laborer	\$15.21/hour
Backhoe Operator	\$31.12/hour
MOW Equipment Operator	\$37.44/hour

*\*\* All labor rates are fully burdened; there is no overtime rate.*

EQUIPMENT

Back Hoe	\$192.00/day
Air Compressor	\$114.00/day
Bobcat	\$168.00/day
Kodiak	\$85.20/day
Shop 1-ton truck	\$93.00/day
Track Tools	\$18.00/day
Pickup Truck	\$38.40/day
Speeder/Ballast Car	\$36.00/day
Boom Truck	\$85.20/day
Tamper	\$276.00/day
Regulator	\$276.00/day
Car Trailer	\$18.00/day
Rail Saw	\$102.00/day
Rail Drill	\$102.00/day

*\*\* All equipment is also available for ½ day and ½ the daily rate.*

EXHIBIT A - CONTINUED

MATERIAL

Ballast  
Spikes  
Track Bolts  
Tie Plates  
Ties  
Switch Ties  
Bridge Ties  
Angle Bars w/bolts  
Welding Supplies

All Material to be provided at market rate  
Plus 20% administration and shipping and  
handling costs if applicable.

## **Exhibit 5**

LEASE AGREEMENT

FOR THE "FILLMORE SEGMENT" OF THE SANTA PAULA BRANCH

Agreement made this 6 day of June, 2001, by and between the CITY OF FILLMORE REDEVELOPMENT AGENCY ("Fillmore"), a local government agency of the State of California, and the VENTURA COUNTY TRANSPORTATION COMMISSION ("VCTC"). This Agreement replaces a previous Agreement between the Fillmore and VCTC for service on the Fillmore Segment dated November 13, 1996.

WHEREAS, VCTC owns a line of railroad from milepost 403.20 at or near Montalvo, California, to milepost 435.07 at or near Rancho Camulos, California ("Santa Paula Branch");

WHEREAS, Fillmore desires to lease the segment of the line between milepost 414.45 at or near Santa Paula and milepost 435.07 at Rancho Camulos, ("Fillmore Segment") for public/tourist excursions, charter and dinner train operations, and for placement of information/directional signs; and

WHEREAS, Fillmore does not desire to be obligated to provide common carrier freight service on the Fillmore Segment;

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants herein entered into, the parties hereby agree:

1. Definitions:

"Effective Date" shall mean July 1, 2001.

"Execution Date" shall mean the date this Agreement is executed by the parties

hereto

"Fillmore Segment" shall mean that portion of the Santa Paula Branch between milepost 414.45 at or near Santa Paula and milepost 435.07 at Rancho Camulos.

"Santa Paula Branch" shall mean the line of railroad from milepost 403.20 at or near Montalvo, California, to milepost 435.07 at or near Rancho Camulos, California, all as shown on Exhibit A hereto.

"Lease Property" shall mean the Track, Track support Structures, building and the real property which comprises land lying within 15 feet of the centerline of any Track existing on the Fillmore segment, on the Effective Date, reserving, however, for VCTC, its successors and assigns the right (consistent with the rights herein granted) to construct, reconstruct, maintain and use future recreational trails, fiber optic communication and pipeline facilities and appurtenances in, upon, over, under and along said property, without unreasonable or substantial interference with the operations of Fillmore or of Fillmore's sublessee and subject to the rights of existing tenants in possession. Where the Santa Paula Branch crosses State Route 126, the "Lease Property" shall include land lying within 25 feet of centerline of Track for a distance of 100 feet from edge of pavement. Where tracks do not exist on the Effective Date, the "Lease Property" shall include land lying within 25 feet of historic centerline of Track.

"Lease Term" shall mean the twenty (20) year period commencing from the Effective Date, subject to the biennial review of rents and rates described in Section 3b.

"Maintenance" shall mean those activities required for continued basic operation of track and signal equipment. Track work under this item includes tightening track bolts, lifting and tamping joints to adjust cross level, switch adjustment and lubrication, operation of ballast regulators, replacement of worn switch components, spot replacement of worn ties, and spot replacement of worn rails. Signal work under this item includes periodic inspections and tests per FRA/PUC requirements and repair/ replacement of defective/damaged components.

"Still and Motion Picture Production" shall include still and motion picture production, television filming, commercials and other still and motion television promotional activities, video production and any other still or motion related media events.

"Public/Tourist Excursions" shall include public and private excursions.

recreational services, and charter and dinner train operations and any promotional activities related thereto.

"Taking" shall mean the taking or condemnation of materially all of the Lease Property by any competent authority at any time while this Agreement is in effect.

"Track" shall include all appurtenances thereof, consisting of rail and fastenings, switches and frogs complete bumpers, ties, ballast and roadbed.

"Track Support Structures" shall mean those properties necessary for use or support of Track, including signals, bridges, culverts, other structures, tunnels, grading, embankments, dikes, pavement, and drainage facilities.

"Gross Revenue" shall mean the total revenue collected by Fillmore or its sublessees in the form of fees, rents or any other basis of charges derived from projects using any part of the Lease Property for Still and Motion Picture Production and for Public/Tourist Excursions and shall not be reduced by any expenses incurred by Fillmore or any of its sublessees except for contract fees paid by Fillmore or any of its sublessees to a third party and reimbursement revenues received by Fillmore or its sublessees.

2. Purpose and Scope of Lease:

The purpose of the Lease is to permit Fillmore and/or its sublessees to use the Lease Property for Public/Tourist Excursion purposes, and for informational/directional signage, subject to reservations described in Section 9(c), as part of its efforts to further develop the local economy.

VCTC, for consideration of the rents, covenants, and conditions herein contained to be kept, performed, and observed by Fillmore, does lease and demise to Fillmore, subject to all matters of record and the rights of existing tenants in possession, and Fillmore does rent and accept from VCTC the Lease Property.

3. Rental Payments:

a. Fillmore shall pay to VCTC as initial rental hereunder the sum of Six

Hundred and Seventy-Five Dollars (\$75.00) monthly, payable in advance on a quarterly basis within thirty (30) days of the beginning of each quarter. This initial rental rate shall be adjusted annually thereafter as follows: The base for computing the adjustment is the Consumer Price Index for All Urban Consumers (1982-84 = 1000 for Los Angeles – Long Beach – Anaheim, California published by the United States Department of Labor, Bureau of Labor Statistics ("index"), which is published for the month of July, 2001 ("Beginning Index").

If the Index published for the month of July prior to the adjustment date ("Extension Index") has increased over the Beginning Index, the monthly rent for the following year (until the next rent adjustment) shall be set by multiplying the initial rent by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. However, in no case shall the monthly rent be less than the initial rent.

If the Index is changed so that the base year differs from that used above, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government index computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued.

b. VCTC and Fillmore agree that the rental rate shown in Section 4(a) be reviewed, and if deemed necessary, renegotiated and revised on a biennial basis. Rental rate review may include, but is not limited to, consideration of a simple flat rate, percent of gross receipt, fee per rider, or other appropriate measures. In the event VCTC and Fillmore are unable to reach agreement regarding a rental rate, the matter may be submitted to mediation pursuant to the applicable provisions of Section 24. If the rental rate is revised, it shall be memorialized through an amendment to this Agreement. If a rental rate cannot be agreed upon, even after mediation, this Agreement may be terminated in accordance with Section 15(b).

c. Fillmore acknowledges and agrees that its obligation to pay rent hereunder and the rights of VCTC in and to such rent shall be absolute and unconditional and shall not be subject to any abatement, reduction, set-off, defense, counter-claim or recoupment.

("Abatements") for any reason whatsoever, including without limitation Abatements due to any present or future claims of Fillmore against VCTC under this Agreement or otherwise

4. Use of Premises:

a. Fillmore shall have the right to use the Lease Property for lawful Public/Tourist Train Excursion use defined herein, and any lawful placement of informational/directional signage, but not to remove the Track or Track Support Structures as defined herein.

b. Fillmore shall maintain at its sole expense the Track and Track Support Structures to such standards as required for its uses and in accordance with applicable regulations.

(1.) Fillmore shall be entitled to receive any State or Federal Funds designated for highway grade crossing signal maintenance on the Fillmore Segment.

c. In the event that specific Track and Track Support Structures are determined to need extensive refurbishment or replacement, beyond maintenance as defined in Section 1, VCTC shall be responsible for said refurbishment or replacement. Any and all refurbishment or replacement activities shall be undertaken at the sole discretion of VCTC as funds may become available. It is understood by the parties that VCTC shall seek state and/or federal funds to the greatest extent possible for such work.

5. Construction:

a. Permanent Improvements

Fillmore shall not have the right to construct any additions or betterments of a permanent nature on the Lease Property without specific written approval in advance by VCTC.



b. Temporary Improvements.

Fillmore shall have the right to construct any temporary improvements necessary to use the premises for the uses permitted herein, provided, however, said temporary improvements shall be timely removed upon cessation of their use.

c. Easements and Dedications.

The parties recognize that in order to provide for the more orderly development of the Lease Property it may be necessary, desirable or required that street, water, sewer, drainage, gas, power line, and other easement and dedications, and similar rights be granted or dedicated over or within portions of the Lease Property. VCTC will give Fillmore timely written notice of all such requests, but VCTC will continue to consider such requests, have sole authority to approve or reject proposals and execute and deliver such documents, from time to time, and throughout the term of this Agreement as may be appropriate, necessary, or required by several governmental agencies and public utility companies for the purpose of granting such easements and dedications. No such easement or dedications, nor any construction in connection therewith, shall unreasonably interfere with the operations of Fillmore or its sub-lessees hereunder.

d. Title

Any parts installed, replacements made or additions improvements or alterations to the Track and Track Support Structures shall in each case be considered accessions to the Track and Track Support Structures and title thereto shall be immediately vested in VCTC without cost or expense to VCTC.

However, Fillmore's fixtures, machinery and equipment placed or maintained on the Lease Property or propelled on rail shall be and remain the property of Fillmore. If the removal of same causes material damage to property of VCTC, Fillmore shall pay the reasonable cost of repair.

Fillmore shall, within one hundred and eighty (180) days following expiration of the Lease Term, remove all of its property from the Leased Property

6. Indemnification:

Fillmore agrees to investigate, release, defend, indemnify and hold VCTC harmless from and against any and all loss, damage, liability claims, demands, detriments, costs, charges and expense (including attorney's fees) and causes of action of whatsoever character which VCTC may incur, sustain or be subjected to on account of loss or damage to property and loss of use thereof, or for bodily injury to or death of any persons (including, but not limited to the property, employees, subcontractors, agents and invitees of each party hereto) arising out of or in any way connected with the work to be performed or occupancy operation, maintenance, enjoyment or use of the Lease Property under this Agreement, except such as shall have been occasioned by the negligence or other fault of VCTC.

7. Assignment, Subletting and Mortgaging:

a. Assignment by Fillmore

This Agreement may not be assigned by Fillmore without the prior written consent of VCTC. In any event, no such assignment shall be valid unless there shall be delivered to VCTC in due form for recording within ten (10) days after the date of the assignment (a) a duplicate original of the instrument of assignment, and (b) an instrument by the transferee expressly assuming all of Fillmore's obligations and defaults under this Agreement. Upon any assignment of this agreement conforming to the terms here-of, but not otherwise, the assignor shall be released from the performance of obligations on the part of Fillmore thereafter to be performed under this Agreement, except any obligation to hold and apply monies held by the assignor at the date of the assignment, the disposition whereof is governed by the terms of this Agreement, and except further any unperformed obligation which shall have matured prior to such assignment. Without limiting any of the foregoing, but in addition thereto, any assignment in contravention of the terms hereof is void, but this shall not impair any remedy of VCTC because of Fillmore's having engaged in an act prohibited by the terms hereof.

b. Mortgage of Leasehold Interest.

Fillmore shall not have the right, at any time or from time to time during the Lease Term, to encumber the leasehold estate created by this Agreement by a leasehold mortgage without the prior written consent of VCTC.

c. Subletting by Fillmore

Fillmore shall have the right to sublet all or any part of the Lease Property for any permitted use under the terms of this Agreement but it may not sublease to any rail operator whose operation would be subject to regulatory control of any federal or state agency without the prior written consent of VCTC.

8. Limits on Use

a. During the term of this Agreement the Lease Property shall be used by Fillmore for the use specified in Section 4 above and for no other use or purpose. Fillmore shall not use nor permit any other person to use the Lease Property, or any part thereof, for any unlawful purposes. Fillmore shall at all times during said term conform to, and cause all persons using or occupying any part of the lease Property by invitation of, under or by right of Fillmore to comply with all public laws, ordinances, rules, orders and regulations from time to time applicable thereto and regardless of when they become or became effective, including without limitations, those relating to health, safety, noise, environmental protection, waste disposal, air and water quality, and shall furnish satisfactory evidence of such compliance upon request of VCTC. Fillmore shall not commit, nor allow any sublessee to commit, any waste upon the Lease Property.

b. Indemnity for Violation of Law

(1) Fillmore covenants and agrees to release, defend, indemnify and save VCTC harmless from any liability, cost, expense, fines, penalties, damages, or surcharges imposed for any violation of any and all laws, ordinances, rules, orders and regulations applicable to the use and occupancy of the Lease Property, or as the result of any discharge, leakage, spillage, emission or pollution whether occasioned by neglect, omission or willful act of Fillmore or

any person upon the Lease Property by license or invitation of Fillmore or holding or occupying the same or any part thereof under or by right of Fillmore, regardless of whether such liability, cost, expense, fine, penalty, damages, or charge arises or is imposed during or after the expiration of this Agreement, provided the act giving rise to same occurs during the term hereof or any renewal or extension thereof.

(2) Likewise, VCTC shall release, defend, indemnify, and save Fillmore harmless from all such matters regardless of whether such liability, cost, expense, fine, penalty, damages or charge arises or is imposed during or after the expiration of this Agreement, provided the act giving rise to same is caused or occasioned by the neglect, omission or willful act of VCTC or any person (excepting Fillmore and persons upon the Lease Property by license or invitation of Fillmore) upon the Lease Property by license or invitation of VCTC.

(3) Fillmore shall have the right to contest by appropriate legal proceedings, without cost or expense to VCTC, the validity or application of any law, ordinance or regulation of the nature herein referred to. If by the terms of such law, ordinance, or regulations compliance therewith may be legally held in abeyance without subjecting VCTC to any liability of whatsoever nature for the failure to so comply therewith, compliance therewith may be postponed until the final determination of such proceeding. Fillmore, upon commencing such contest shall furnish to VCTC a document guaranteeing that VCTC and VCTC's interest in the Lease Property shall be saved harmless from any penalty, damage, charge or claim resulting from such contest.

9. Conditions and Covenants:

All the provisions of this Agreement and any Riders which are made a part of this Agreement shall be construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

a. Qualifications on Use

This Agreement is subject to the rights of existing tenants in

possession. Fillmore accepts the Lease Property (including VCTC-owned Improvements) in their present condition without any representation or warranty by VCTC as to the condition of such Lease Property or Improvements, except as may be set forth in Exhibit "A", and VCTC shall not be responsible for any defect or change of conditions in the Lease Property or such Improvements, any damage occurring thereto or for the existence of any violation of any municipal, county, state or federal law, order, rule, regulation or ordinance.

b. WARRANTIES AND REPRESENTATIONS.

FILLMORE UNDERSTANDS AND AGREES THAT VCTC MAKES NO WARRANTY NOR REPRESENTATION CONCERNING WHAT, IF ANY, USE OF THE PREMISES MAY BE MADE OF ANY GOVERNMENTAL JURISDICTION, AGENCY OR ENTITY HAVING AUTHORITY OVER THE PREMISES. FILLMORE SHALL BE SOLELY RESPONSIBLE FOR DETERMINING WHAT IS NECESSARY TO COMPLY WITH THE REQUIREMENT OF EACH SUCH GOVERNMENTAL ENTITY AND FOR FULL COMPLIANCE WITH SUCH REQUIREMENTS. NO EMPLOYEE, REPRESENTATIVE OR AGENT OF VCTC HAS ANY POWER OR AUTHORITY TO WAIVE OR MODIFY THIS PROVISION AND NO ORAL OR WRITTEN REPRESENTATION BY ANY SUCH PERSON SHALL EVER BE DEEMED TO CONSTITUTE A WAIVER OF THIS REQUIREMENT OR ANY ESTOPPEL AGAINST VCTC.

c. VCTC Reservations

VCTC reserves for itself and those to whom it grants such right, right to: 1) construct, maintain and operate any existing and new and additional communication facilities or pipeline upon, over and beneath the Lease Property, so long as the exercise of such rights under this Agreement; 2) construct, maintain and operate any existing and new additional recreational trail facilities; 3) operate freight and regular passenger rail services on the Fillmore Segment and 4) conduct still and motion picture filming, including television filming, commercials and other still and motion television promotional activities.

d. Right of Entry

VCTC or VCTC's agents, representatives or employees shall

have the right at reasonable times to enter the Lease Property for the purposes of inspecting, determining whether provisions in this Agreement are being complied with, maintaining, repairing or altering the land, or showing the Lease Property to prospective lessees, purchasers, mortgagees or beneficiaries under deed of trust.

e. Liens

Fillmore agrees and covenants to hold VCTC and the Lease Property harmless from any mechanics' or materialmen's liens claimed by any person, firm or corporation employed by Fillmore or Fillmore's subtenants. In the event of the filing of any such lien, Fillmore shall cause such lien to be released within five (5) days after VCTC's written notice to do so. Fillmore shall indemnify and defend VCTC against all liability, cost and expense (including attorney fees) incurred by VCTC as a result of any such lien.

10. Insurance:

While this Agreement is in effect, Fillmore shall furnish evidence satisfactory to VCTC that both VCTC and Fillmore are named as additional insureds for third party liability claims by Fillmore's sublessee, meeting the requirements stated below, in a form satisfactory to VCTC. Not later than thirty (30) days prior to the expiration date of such coverage, Fillmore shall furnish VCTC with evidence satisfactory to VCTC that the coverage has been or will be substituted for and will be effective immediately upon such expiration.

a. Liability:

Comprehensive general and automobile liability coverage shall:

- (1) have a combined single limit of not less than \$5,000,000 per occurrence;
- (2) name VCTC and Fillmore as additional insureds with respect to the operations of Fillmore's sublessees;
- (3) cover the contractual liability assumed by Fillmore's sublessees under this Lease.

(4) provide that the insurer is not entitled to any contribution from insurance in effect for VCTC; and

(5) provide for at least ten (10) days' notice to VCTC prior to any other cancellation or modification of coverage.

Federal Employer's Liability Act or Workers Compensation Insurance, as the case may be, shall cover all persons employed by Fillmore or its agents in the conduct of its operations on the Lease Property and shall provide for a waiver of any right of subrogation against VCTC to the extent permitted by law.

11. Condemnation:

a. Total Taking

In the event of a Taking, this Agreement shall terminate on the earlier of vesting, of title in, or the taking of possession by, the condemnor.

In the event of Taking, the award for the land value and interest thereon shall belong to VCTC. Under no circumstances shall Fillmore be entitled to any "bonus value" for any remaining unexpired Term of this Agreement.

If the values of the respective interests of VCTC and Fillmore have been separately determined in the proceeding for the Taking in accordance with this Section 11a., then the values so determined shall be conclusive upon VCTC and Fillmore. Otherwise the values shall be determined by agreement or, if they are unable to agree, by arbitration under the terms of this Agreement.

b. Temporary Taking:

If all or part of the Lease Property or of Fillmore's interest under this Agreement is taken by any competent authority for its temporary use or occupancy ("Temporary Taking"), this Agreement shall not terminate and Fillmore shall continue to pay rent and other charges and to perform all of its other obligations hereunder, to the extent Fillmore is not prevented from doing so by taking authority. In the event of a Temporary Taking, Fillmore shall receive the entire award and shall, at its sole expense, restore the Lease Property as nearly

as may be reasonably possible to their condition before taking; provided, however, that if the Temporary Taking extends beyond the expiration of the Agreement Term, the award shall be apportioned between VCTC and Fillmore as of the date of expiration, after VCTC shall have received the entire portion of the award attributable to physical damage to the Lease Property and to their condition before Temporary Taking.

12. Late Payments:

Fillmore shall pay VCTC an administrative charge of 1-1/2% per month or the highest amount permitted by law, whichever is lower, for any amount due hereunder which remains unpaid after thirty (30) days from the date such amount becomes payable.

13. Default:

Fillmore shall be in default under this Agreement (1) if Fillmore fails to pay the Base Rent when due and such failure continues for a period of more than fifteen (15) days, (2) if Fillmore fails to cure the breach of any provision of this Agreement within thirty (30) days after notice from VCTC (or to commence and diligently pursue the cure of such breach if the breach cannot be cured within thirty (30) days; (3) if Fillmore is adjudged bankrupt or becomes insolvent or seeks general debtor relief by extrajudicial means or if any action or proceeding for debtor relief of Fillmore is commenced by Fillmore.

If Fillmore fails to cure a default within thirty (30) days notice from VCTC to do so Fillmore does not present a restoration plan within forty-five (45) days. VCTC shall have the right, without further notice and in addition to any other remedies VCTC may have in law or in equity, to terminate this Agreement forthwith and to retake possession of the Lease Property.

14. Nonwaiver:

VCTC's failure to enforce or exercise its rights under any term, condition

or covenant of this Agreement shall not be construed as a waiver of such rights or such term, covenant or condition. Acceptance of rent shall be deemed a waiver of VCTC's rights to terminate this Agreement as provided herein, regardless of when accepted.

15. Termination or Expiration:

a. General:

Termination or expiration of this Agreement shall not release either party from an event which occurred prior to such termination or expiration. If Fillmore fails to surrender possession of the Lease Property upon termination of this Agreement, VCTC shall have the right, to the extent permitted by law, to re-enter the Lease Property and remove Fillmore and any person or entity claiming through Fillmore from the Lease Property.

b. Notice of Termination

Either party may terminate this Agreement, without cause, upon a six (6) month written notice of termination given to the other party per Section 21 below.

c. Surrender of Premises

Upon the expiration or termination of the Lease Term, Fillmore, without further notice, shall deliver up to VCTC the possession of the Lease Property. Upon the failure or refusal of Fillmore to remove from the Lease Property, as provided in Section 5d., all personal property owned by Fillmore, (a) said personal property shall there-upon, at the option of VCTC become the sole property of VCTC, or (b) if VCTC so elects it may remove from the Lease Property personal property owned by Fillmore, and VCTC may also restore the Lease Property substantially to the condition in which it existed at the time Fillmore took possession, all at the expense of Fillmore, which expense Fillmore agrees to pay upon demand, or (c) VCTC at its sole option may elect that this Agreement with all terms contained herein, including payment of Base Rental for failure to vacate on time may remain in effect until Fillmore's personal property is removed and the Lease Property is restored to VCTC. In the event of such failure or refusal of Fillmore to surrender possession of the Lease Property, VCTC shall have the right to re-enter

upon the Lease Property and remove Fillmore, or any person, firm or corporation claiming by through or under Fillmore, therefrom.

d. Sale to Other Parties:

If during the term of lease, or any extension or continuation thereof, VCTC should elect to sell all or any part of the Lease Property to a private party, Fillmore shall have the right of first refusal to meet any bona fide offer of sale on the same or (to VCTC) more advantageous terms and conditions as contained in such offer and, on failure to meet such bona fide offer within sixty (60) days after notice thereof from VCTC, VCTC shall be free to sell the Lease Property or portion thereof to such private party third person in accordance with the terms and conditions of this offer provided, however, Fillmore's right of first refusal shall run with the property. Both VCTC and Fillmore are required to continue to fulfill any obligations generated under this Agreement prior to the closing of any sale to Fillmore. If sale of the property by VCTC is to a public agency, then Fillmore agrees that VCTC may assign this Agreement to such public agency.

16. Attorney's Fees:

If either party takes any steps or brings an action to compel performance of or to recover for breach of any term of this Agreement, the losing party shall pay the reasonable attorney's fees of the prevailing party, in addition to the amount of judgment and costs.

17. Entire Agreement:

The contents of this Agreement are the entire agreement between the parties and supersede all written or oral communications between the parties prior to its execution.

This Agreement shall not be modified except by the written agreement of the parties.

Subject to Section 7 and 8, this Agreement shall be binding upon the heirs, representatives, successors and assigns of the parties respectively.

18. Warranties of Fillmore:

Fillmore warrants, at the Effective Date that:

- a. It is a local government agency validly existing and organized under the laws of the State of California;
- b. This Agreement will not be rendered voidable nor unenforceable by reason of any provision of, or lack of consent under, any indenture, agreement or instrument as to which Fillmore is bound as a party or bound by any ordinance of Fillmore.
- c. The signatory hereof on behalf of Fillmore has been duly and fully authorized to execute this Agreement on behalf of Fillmore.

19. Warranties of VCTC:

VCTC warrants at the Effective Date that:

- a. It has full power to lease the Lease Property to Fillmore

20. Applicable Law:

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

21. Notices:

Notices under this Agreement by one party to the other shall be in writing and delivered or mailed, postage prepaid, to:

VCTC:

Executive Director

Ventura County Transportation Commission

960 County Square Drive, Suite 207  
Ventura, CA 93003

Fillmore:

City Manager  
City of Fillmore  
250 Central Avenue  
Fillmore, CA 93015

The parties may change addresses for receipts of notices by directing such changes to the other party.

22. Severability

If any paragraph, sentence, clause, phrase or word shall become without full effect due to any legal interpretation, judicial decision, operation of law or otherwise, the balance of this Agreement shall remain in full force and effect.

23. Assignment, Successors:

This Agreement is intended solely for the benefit of and shall be binding upon the parties hereto, and their successors and assigns, and is not intended nor shall it be construed to be for the benefit of any other party.

24. Dispute Resolution:

a. Good Faith Resolution Prerequisite to Mediation

In the event of a dispute arising out of the terms of, or pertaining to, this Agreement, the parties shall negotiate in good faith for thirty (30) days before either party may submit the matter to mediation. VOTO and Fillmore agree that, in the event they are unable to resolve any such dispute within thirty (30) days of the parties recognition of such dispute

between them, they shall submit the matter at issue to mediation and that the method and procedure for such mediation shall be as hereinafter set forth in subsection c.

b. Mediation Prerequisite to Litigation

No party may undertake litigation with reference to any such dispute until after the earlier of (1) mediation of that dispute has occurred or (2) written notice of refusal by one party to the other party of the noticing party's refusal to submit to the decision of the mediator ( as hereinafter defined).

c. Methods and Procedures for Mediation

Mediation shall be subject to the following methods and procedures:

(1) A party dissatisfied with the results of negotiation between the parties may, after the conclusion of the thirty-day period described above in subsection a, give notice to the other party of its request to submit the matter to mediation.

(2) The parties hereby agree that they shall submit any matter elected for mediation to (a) a retired judge of the Superior Court of the County of Ventura agreed upon by all parties, or (b) in the event that a retired judge is not available or satisfactory to all parties, to such other mediator as all parties may agree (the "Mediator").

(3) The parties hereby agree to equally share the fees and costs incurred by the mediator, with each party bearing it's own costs of preparation and presentation of the matter to the Mediator.

(4) The Mediator shall have the authority to call such witnesses as he or she deems appropriate to the matter submitted to him or her, to take testimony from such witnesses as the parties may call and those called by the Mediator, to request and demand original and further briefing of all issues from the parties and to conduct the mediation pursuant to the procedures set forth in the California Rules of Court and the statutes of the State of California, including without limitation, the California Evidence Code. The Mediator

shall render his decision, in writing, to all parties within forty-five (45) days of conclusion of taking testimony and/or evidence regarding the dispute.

(5) The decision of the Mediator shall not be binding and, subject to the limitations set forth in subsection b above, either party may institute legal action de novo in the event that such party does not agree with the decision of the Mediator. The parties agree that, for the purposes of such litigation and to the extent permitted by law, the statute of limitations for filing such action shall be one hundred eighty (180) days from the date of the Mediator's written decision.

(6) The parties agree that any mediation or litigation which may arise pursuant to this Agreement shall take place in, and in the event of litigation shall be conducted in, the appropriate court for the County of Ventura, California.

(7) In the event that litigation is undertaken by either party after mediation, the prevailing party shall be entitled to recover its costs and attorney's fees incurred in the litigation from the other party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first hereinabove mentioned.

"VCTC:"

Ventura County

Transportation Commission

"Fillmore:"

City of Fillmore

Redevelopment Agency

By: 

By: 