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304121
ENTERED
Office of Proceedings
March 16, 2022
Part of
Public Record

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March 16, 2022

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20006

Re: **FD 36589**
Merced County Central Valley Railroad, L.L.C. —
Lease and Operation Exemption — Track in Merced County, Cal.

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding are public and confidential versions of a **Verified Notice of Exemption** and a **Motion for Protective Order**, filed pursuant to 49 C.F.R. § 1150.31 and § 1104.14, respectively. Payment of the applicable filing fee has been tendered electronically with this filing via Pay.gov.

If you have any questions regarding this filing, please contact me at either bsmith@fletcher-sippel.com or (312) 252-1516. Thank you for your assistance on this matter.
Kind regards.

Respectfully submitted,



Bradon J. Smith
Attorney for Merced County Central Valley
Railroad, L.L.C.

Attachments

FEE RECEIVED
March 16, 2022
SURFACE
TRANSPORTATION BOARD

FILED
March 16, 2022
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36589

MERCED COUNTY CENTRAL VALLEY RAILROAD, LLC
— LEASE AND OPERATION EXEMPTION —
TRACK IN MERCED COUNTY, CAL.

**VERIFIED NOTICE OF EXEMPTION OF
MERCED COUNTY CENTRAL VALLEY RAILROAD, LLC
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

Robert A. Wimbish
Audrey L. Brodrick
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29 North Wacker Drive
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**ATTORNEYS FOR MERCED COUNTY
CENTRAL VALLEY RAILROAD, LLC**

Dated: March 16, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36589

MERCED COUNTY CENTRAL VALLEY RAILROAD, LLC
— LEASE AND OPERATION EXEMPTION —
TRACK IN MERCED COUNTY, CAL.

**VERIFIED NOTICE OF EXEMPTION OF
MERCED COUNTY CENTRAL VALLEY RAILROAD, LLC
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

Pursuant to 49 C.F.R. Part 1150, Subpart D, Merced County Central Railroad, LLC (“MCCVR”), currently a noncarrier, hereby files this Verified Notice of Exemption (the “Notice”) to lease from Merced County, California (the “County”) and to commence common carrier operations on approximately 0.3 miles of currently-private railroad track (the “Line”) located at the Castle Commerce Center at Atwater in Merced County. In accordance with the requirements of 49 C.F.R. § 1150.33, MCCVR submits the following information:

This Notice is related to FD 36590, *Patriot Rail Company LLC, SteelRiver Transport Ventures LLC, First State Infrastructure Managers (International) Limited, Global Diversified Infrastructure Fund (North America) LP, and Mitsubishi UFJ Financial Group, Inc. – Continuance in Control Exemption – Merced County Central Railroad, LLC*, in which Patriot Rail Company LLC, SteelRiver Transport Ventures LLC, First State Infrastructure Managers (International) Limited, Global Diversified Infrastructure Fund (North America) LP, and Mitsubishi UFJ Financial Group, Inc. are concurrently filing a notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(2) to continue in control of MCCVR once MCCVR commences operations on the Line and becomes a carrier.

Name and Address of Applicant: 49 C.F.R. § 1150.33(a)

The full name and address of the applicant is:

Merced County Central Valley Railroad, LLC
10752 Deerwood Park Blvd., Suite 300
Jacksonville, Fla. 32256

Applicant's Representative: 49 C.F.R. § 1150.33(b)

MCCVR's representative to whom correspondence regarding this transaction should be sent is as follows:

Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Ill. 60606
bsmith@fletcher-sippel.com
(312) 252-1500

Statement Concerning Agreement: 49 C.F.R. § 1150.33(c)

The County and MCCVR have agreed to enter into a "Lease of County Property" (the "Lease") to govern the subject transaction, pursuant to which MCCVR will provide railroad common carrier rail service on the Line.¹ The Lease (Exhibit C) is offered in accordance with *Anthony Macrie – Continuance in Control Exemption – New Jersey Seashore Lines, Inc.* FD 35296 (STB served Aug. 31, 2010), 3, in both public (redacted) and confidential (unredacted) form, subject to a concurrently-filed Motion for Protective Order pursuant to 49 C.F.R. § 1140.14.

¹ As is reflected in the copy of the Lease accompanying this Notice, Foster Townsend Rail Logistics ("FTRL"), a non-carrier affiliate of MCCVR, originally negotiated terms with the County. FTRL has, in turn, assigned its leasehold interests to MCCVR.

Operator of the Property: 49 C.F.R. § 1150.33(d)

MCCVR will operate the Line and provide all rail common carrier service to customers located on it.

Background and Summary of the Transaction: 49 C.F.R. § 1150.33(e)

The Line is currently unregulated track owned by the County. The Line begins approximately 300 feet southeast of the point of switch to the northwest-southeast-running BNSF Railway Company (“BNSF”) mainline at BNSF milepost 1062.56 at Atwater, and extends southeasterly for approximately 0.3 miles to a point parallel to a point on West Industrial Road that is 95 feet west of that road’s terminus (not including County-owned ancillary track appurtenant to the Line). The Line has no mileposts. MCCVR will provide common carrier service on the Line, which is the entirety of its rail property. *See Effingham Railroad Company – Petition for Declaratory Order – Construction at Effingham, Ill., FD 41986, 2 STB 606, 607 (1997) and Effingham Railroad Company – Operation Exemption – Line Owned by Agracel Corporation, FD 33468 (STB served Sep. 24, 1997), aff’d United Transp. Union v. United States, 183 F.3d 606, 614 (7th Cir. 1999).*

The name and address of the entity leasing the Line to MCCVR is:

Merced County
222 M Street
Merced, Cal. 95340

The parties intend the Lease transaction to be effective on receipt of all necessary regulatory approvals, at which point MCCVR expects to commence common carrier service.

Maps: 49 C.F.R. § 1150.33(f)

Attached as Exhibit A.

Certificate of Compliance: 49 C.F.R. § 1150.33(g)

The projected revenues will not result in MCCVR becoming a Class I or II rail carrier. A certification to this effect is made with the verification of this Notice.

Interchange Commitments: 49 C.F.R. § 1150.33(h)

The Lease does not include an interchange commitment. See the attached Certification and Verification.

Advance Notice: 49 C.F.R. § 1150.32(e)

MCCVR does not anticipate that its annual revenues will exceed \$5 million. See the attached Certification and Verification. In any event, there are no affected railroad employees to whom advance notice might otherwise be required under 49 C.F.R. § 1150.32(e). *See Acquisition of Rail Lines under 49 U.S.C. 10901 and 10902 — Advance Notice of Proposed Transactions*, 2 STB 592, 602 (1997).

Environmental and Historic Preservation Data: 49 C.F.R. § 1105

Under 49 C.F.R. § 1105.6(c)(2), this transaction is exempt from environmental reporting requirements because it will not exceed the thresholds of 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1) the transaction—which is intended for the purpose of rail operations—is exempt from historic preservation reporting requirements. MCCVR would require separate Surface Transportation Board approval to discontinue service over the Line, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

Caption Summary: 49 C.F.R. § 1150.32(a)

Attached as Exhibit B.

Respectfully submitted,



By: _____

Robert A. Wimbish

Audrey L. Brodrick

Bradon J. Smith

Fletcher & Sippel LLC

29 North Wacker Drive

Suite 800

Chicago, Illinois 60606-3208

(312) 252-1500

**ATTORNEYS FOR MERCED COUNTY
CENTRAL VALLEY RAILROAD, LLC**

Dated: March 16, 2022

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36589

**MERCED COUNTY CENTRAL VALLEY RAILROAD, LLC
— LEASE AND OPERATION EXEMPTION —
TRACK IN MERCED COUNTY, CAL.**

EXHIBIT A

MAP

FD 36589
MCCVR



Source: Esri, USDA FSA, Esri Community Development Corporation, Merced County Dept. PWB, Merced County Association of Gov, California State Parks, © OpenStreetMap, Microstrm, Esri, HERE, Garmin, SafeStrap, GeoTechnology, Inc., MSTV/NAES, USGS, Bureau of Land Management, Esri, FSA, NPS, US Census Bureau, USDA

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36589

**MERCED COUNTY CENTRAL VALLEY RAILROAD, LLC
— LEASE AND OPERATION EXEMPTION —
TRACK IN MERCED COUNTY, CAL.**

EXHIBIT B

DRAFT FEDERAL REGISTER NOTICE

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FD 36589

MERCED COUNTY CENTRAL VALLEY RAILROAD, LLC
— LEASE AND OPERATION EXEMPTION —
TRACK IN MERCED COUNTY, CAL.

Merced County Central Valley Railroad, LLC, a noncarrier, has filed a verified notice of exemption (the “Notice”) to lease from the Merced County, California (also a noncarrier), and to commence common carrier operations over, certain track extending from a point approximately 300 feet southeast of the point of switch to the northwest-southeast-running BNSF Railway Company (“BNSF”) mainline at BNSF milepost 1062.56 at Atwater, Cal. and extending southeasterly for approximately 0.3 miles to a point parallel to a point on West Industrial Road that is 95 feet west of that road’s terminus.

Comments must be filed with the Board and served on:

Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606
(312) 252-1500

The Notice is filed under 49 C.F.R. § 1150.31. If the Notice contains false or misleading information, the exemption is void *ab initio*. Filing a petition to revoke will not automatically stay the transaction.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36589

**MERCED COUNTY CENTRAL VALLEY RAILROAD, LLC
— LEASE AND OPERATION EXEMPTION —
TRACK IN MERCED COUNTY, CAL.**

EXHIBIT C

LEASE AGREEMENT

LEASE OF COUNTY PROPERTY

**MERCED COUNTY
CONTRACT NO. _____**

THIS AGREEMENT (the “Agreement”), dated as of the Effective Date set forth below, is made and entered into by and between the **County of Merced**, a political subdivision of the State of California, (hereinafter referred to as “County”), and **Foster Townsend Rail Logistics LLC**, a Delaware limited liability company (hereinafter referred to as “FTRL”).

WHEREAS, County owns and controls the Mid-California International Trade District (“MCITD”), an industrial environment located at the Castle Commerce Center in Atwater California consisting of approximately 2000 acres, of which the County has designated approximately 200 acres for further development of rail and rail-related services (the “Rail District”); and

WHEREAS, the Rail District contains certain rail facilities (the “Rail Facilities”) including approximately $\pm 6,500$ feet of trackage depicted in red on Exhibit A attached hereto (the “Track”); and

WHEREAS, County desires to lease to FTRL the Track, and those additional areas necessary to operate the Track and FTRL’s planned track optimization activity, including the construction of future interchange tracks (collectively, the “Premises”) for FTRL to provide and further develop common carrier rail and rail-related services on the Premises; for FTRL to assume responsibility for the maintenance and repair of the Premises, and for FTRL to market and attract new rail-served customers to the Rail District; and

WHEREAS, FTRL wishes to lease the Premises, to operate the Track within the Premises, to potentially invest substantial capital in the Rail District by constructing new interchange tracks and/or rail facilities to increase rail traffic capacity and fluidity in the event certain customer commitments materialize, and to have the option to purchase some or all of the real property in the Rail District on mutually agreeable terms to be negotiated in a definitive purchase agreement; and

WHEREAS, the parties desire to set forth herein the terms and conditions of the lease of the Premises and operation of the Rail Facilities located thereon.

The Recitals set forth above are incorporated herein and into the Agreement by reference. Capitalized terms shall have their meanings set forth in the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereby agree as follows:

1. THE AGREEMENT

1.1 Contract Documents

This Agreement shall consist of this document and any specifically referenced attachments hereto. The following exhibits are specifically incorporated by reference, attached hereto, and made a part hereof, except when in conflict with this Agreement or modified herein:

- Exhibit A - Site Map
- Exhibit B - Proposed Track Optimizations
- Exhibit C - Bi-Annual Strategic Rail Plan Template
- Exhibit D - Lead Paint Acknowledgment

2. FACILITY LOCATION AND SITE DESCRIPTION

2.1 Location Description

The Premises is located within the MCTID at the Castle Commerce Center complex in Atwater, California, as more specifically described in Exhibits A and B.

2.2 Lease

In consideration of the Rents (as hereinafter defined), covenants and agreements set forth herein, County hereby demises and leases to FTRL for FTRL's exclusive use, and FTRL hereby takes and hires from County, the Premises, all improvements located on the Premises, including the Track and other Railroad Facilities, and those additional areas that may be necessary for FTRL's construction of the proposed track optimizations, including the interchange tracks identified in green in Exhibit A, for FTRL's Approved Use (as hereinafter defined) plus the nonexclusive right to access the Premises through existing roadways. The Premises and this Agreement shall be subject to all matters of record (provided that County represents that it has no actual knowledge of any matters that would unreasonably interfere with FTRL's use or enjoyment of the Premises), and County hereby reserves for itself and its successors and assigns, all right, title and interest in and to all oil, gas and minerals located beneath the surface of the Premises; provided, however, that County, unless otherwise agreed to by the parties, which agreement shall not be unreasonably withheld, shall have no right to interfere with FTRL's use, possession or enjoyment of the Premises by virtue of said reservation or any action taken pursuant thereto. County shall provide FTRL with any easements and rights of way relating to MCITD and any adjoining property under County's control as may be reasonably necessary for FTRL to use the Premises for the Approved Use.

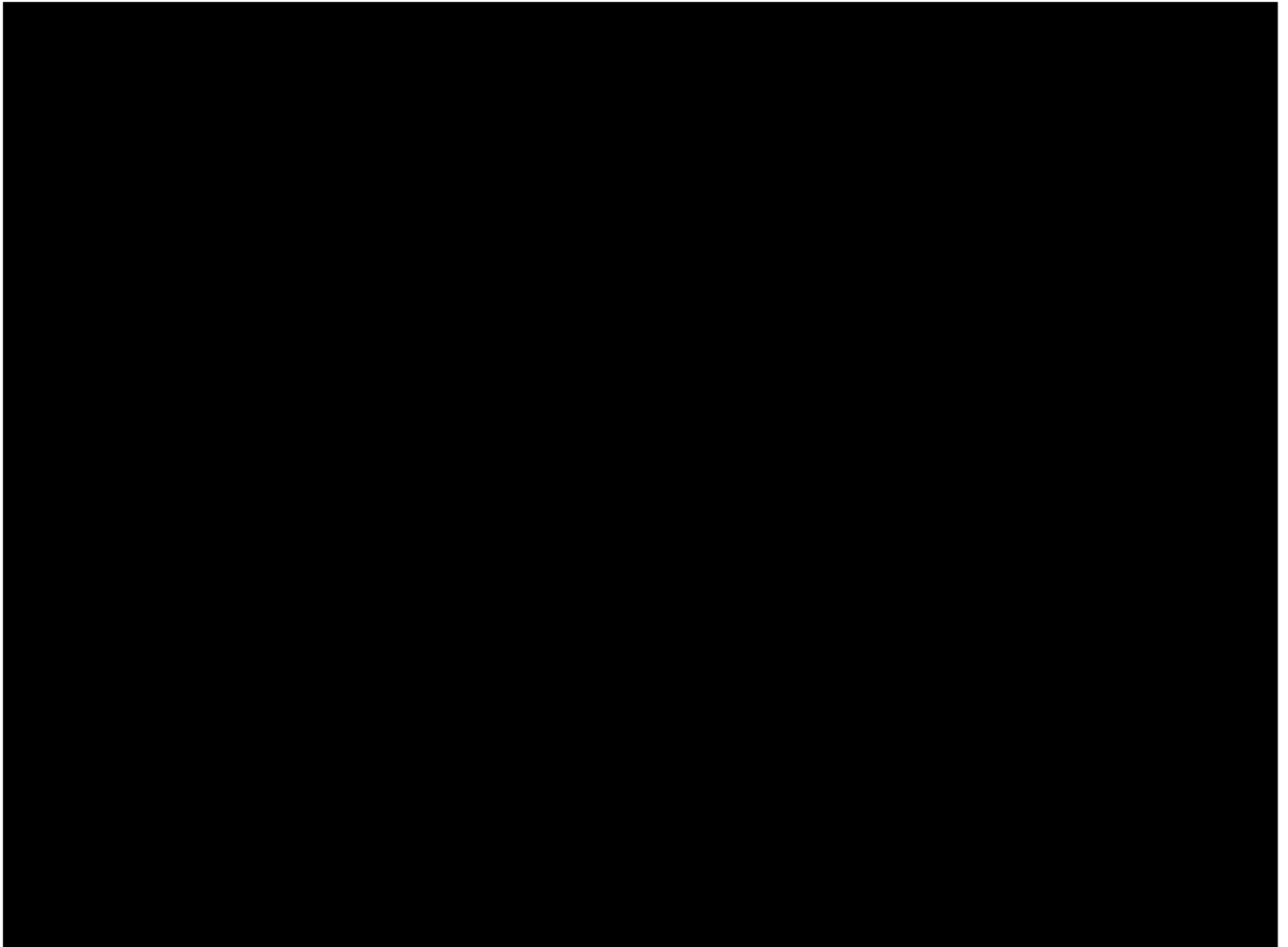
2.3 Approved Use

FTRL shall use the Premises for the purposes of providing railroad services and related activities consistent with its anticipated forthcoming status as a common carrier railroad subject to the jurisdiction of the federal Surface Transportation Board ("STB") (the "Approved Use") and shall do so in a careful, safe and proper manner consistent with Federal Railroad Administration ("FRA") rules and regulations. Related activities include, but are not limited to: railcar switching, railcar storage, railcar repair, transloading, and any other activity to which the Parties agree. Related activities shall further include: (i) marketing and attracting new rail-served customers to the Rail District with input from its business partners and associates, (ii) expanding the existing Track and/or constructing additional rail tracks, rail yards, and/or rail facilities; and (iii) any uses related to the operations of any new rail-served customers on the Premises.

Except as provided otherwise by this Agreement, FTRL shall be free to generate and retain all revenue associated with use of the Premises.

3. TERM

3.1 Term



hundred and twenty (120) days of the Effective Date, this Agreement may terminate at either party's discretion.

3.2 Amendments

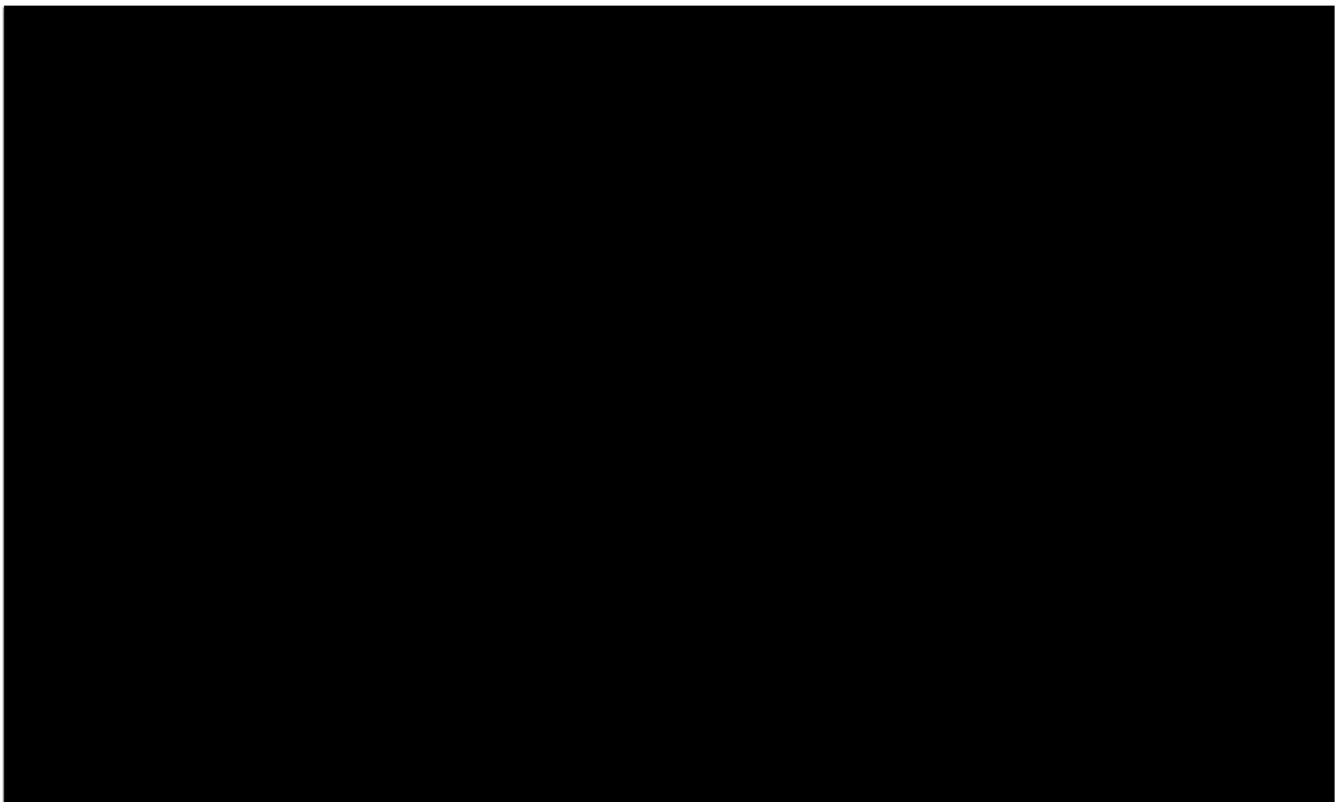
The Parties shall meet one (1) year prior to the end date of the Term to discuss whether to begin negotiations to amend and extend the Agreement. The timing and details of any such discussions shall be determined by mutual agreement of the Parties.

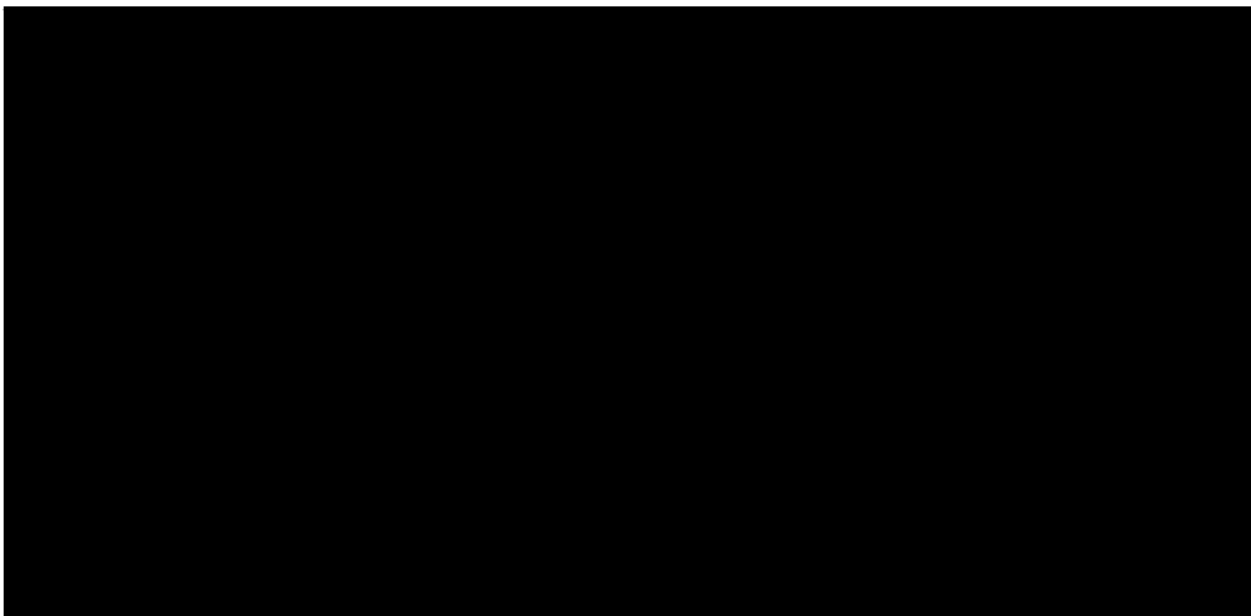
This Agreement may be amended in other respects at any time if mutually agreed upon by both Parties in writing.

3.3 Holding Over

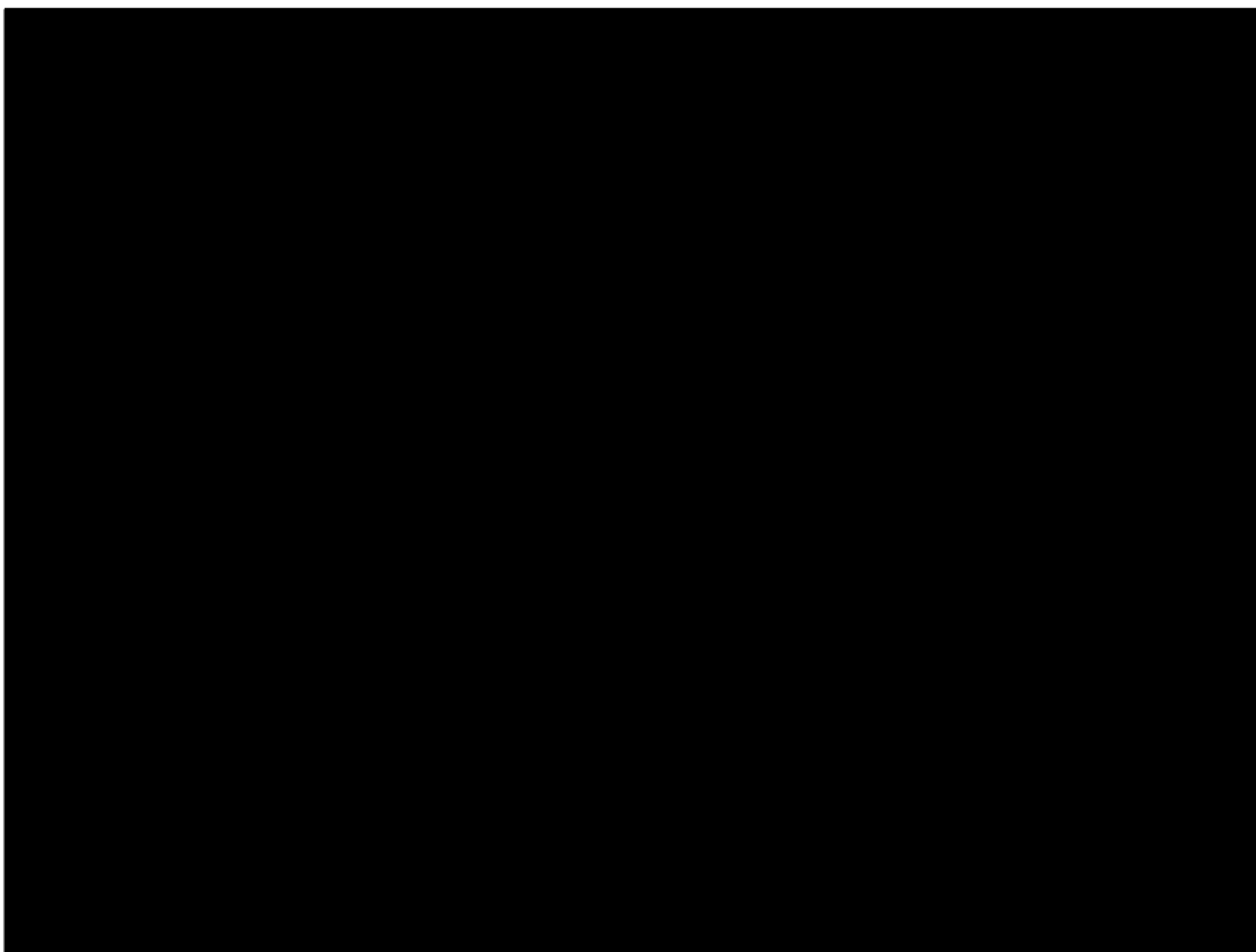
At the end of the Term, or any extension, if FTRL holds over for any reason, it is hereby agreed that in the absence of a written agreement to the contrary that tenancy shall be from month-to-month only and not a renewal of this Agreement, nor an extension for any further term. In that case, FTRL shall pay Rent in an amount equal to one hundred twenty five percent (125%) of the Rent payable prior to the end of the Term or any extension, and the month-to-month tenancy shall be subject to every other term, covenant, and condition contained in this Agreement that is consistent with and not contrary to a month-to-month tenancy.

4. RENT





4.2 Security Deposit



5. **Stone Ridge Leased Parcel**

Subject to final confirmation via an applicable real estate survey and finalization of FTRL's preliminary engineering plans, the parties acknowledge that FTRL's planned track optimization activity, as shown in Exhibits A and B, does not currently implicate the property currently leased by the County to Stone Ridge Christian School for athletic fields ("**Stone Ridge Leased Parcel**"). To the extent FTRL's future planned track optimization activity requires the acquisition of or otherwise implicates property rights and/or interests to the Stone Ridge Leased Parcel, the parties agree to amend this Agreement to address the property rights and/or interests in the Stone Ridge Leased Parcel.

6. **MAINTENANCE AND REPAIR**

7. **RAIL-RELATED OBLIGATIONS**

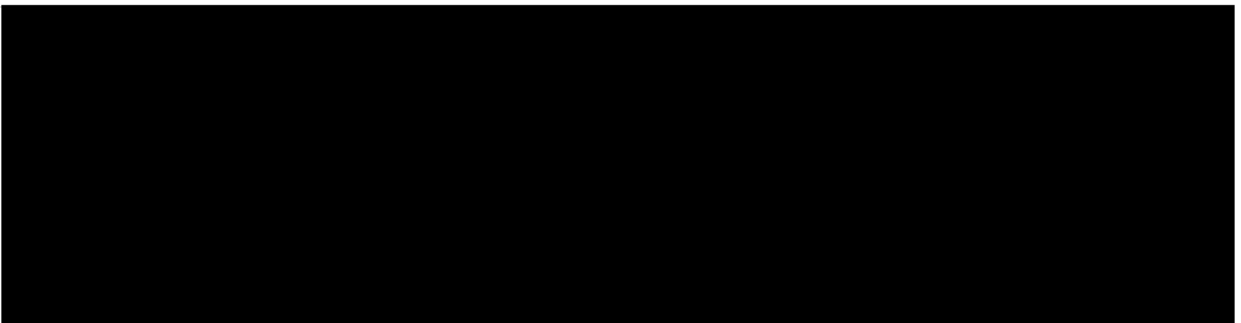
During the term of this Agreement, FTRL agrees to perform the following:

Provide safe, consistent and reliable common carrier rail services to existing and future Track users, which shall be consistent with providing quality common carrier rail services as recognized in the rail industry; and

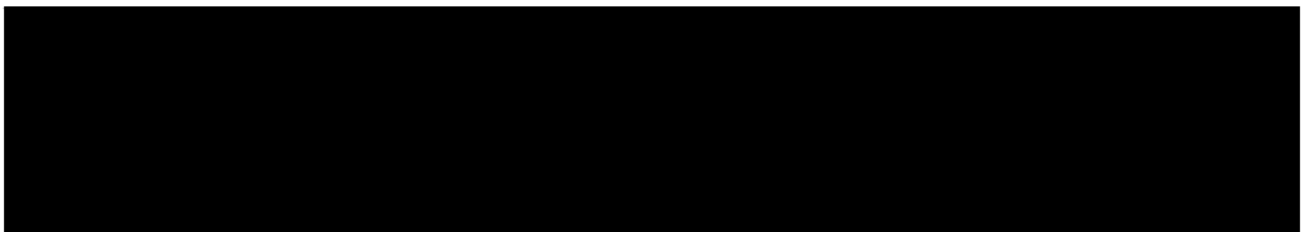
Provide safe, consistent and reliable rail-related services, including, but not limited to, railcar switching, railcar storage, railcar repair, transloading, and any other activity to which the Parties agree, all of which shall be consistent with providing quality rail-related services as recognized in the rail-related services industry; and

Charge fees to Premises users for rail and rail-related services in amounts reasonably competitive with similar services offered by rail providers in the industry; and

Work closely with County to develop a bi-annual strategic rail plan in the form attached as Exhibit C for the future development and operation of the Premises, including increasing rail usage and attracting new rail-served Rail District users to the Rail District, capital improvements, and any other area identified by County (hereinafter "Bi-Annual Strategic Rail Plan"); and



Provide reasonable assistance to County and participate and partner in, as requested by County, any efforts to obtain federal, state or municipal funding, credit support, or other assistance to advance rail and related services at the Premises, including the construction of additional tracks at the Rail District; and



8. RECORDS, INFORMATION AND REPORTS

8.1 General The County shall use reports, periodic inspections, and regular contact with FTRL to monitor FTRL's performance and compliance with the terms and conditions of this Agreement, including, but not limited to, verifying that performance requirements set forth in this Agreement have been met, and

that the objectives of this Agreement are being achieved by FTRL. All periodic inspections shall occur during FTRL's normal business hours and after reasonable notice to FTRL so as not to disrupt FTRL's rail operations and to ensure compliance with FTRL's safety requirements consistent with federal laws, rules and regulations.

FTRL shall be responsible for maintaining complete and accurate records of all operation and maintenance activities, revenues and expenses, and all other activities relating to this Agreement.

8.2 Quarterly Report At the end of each quarter after the Commencement Date, FTRL shall submit to the County, a report detailing:

- Premises use gross revenue
- Premises utilization
- Maintenance and repair costs

8.3 County's Right to Audit Records FTRL shall, at all times during the Agreement term, maintain complete and accurate books and records of all Gross Revenue and expenditures (labor and expenses) from its operations carried out at or in association with the Premises.

FTRL shall keep the books, records and accounts of its operations under this Agreement separate and apart from all other operations carried out by FTRL. FTRL's books and records shall be maintained in sufficient detail to allow the County or its representatives to audit FTRL's Gross Revenue and expenditures (labor and expenses) and all work conducted under the scope of this Agreement. Any such audit shall be conducted upon not less than thirty (30) days' prior written notice to FTRL, at the expense of the County.

FTRL shall account for all revenues of any nature related to or in connection with this Agreement in a manner which segregates in detail the Gross Revenues of FTRL and which supports the amounts reported to the County.

FTRL shall maintain full and accurate records with respect to all matters covered under this Agreement. To the extent permitted by law, upon reasonable prior written notice, the County shall have reasonable access during normal business hours, or until the expiration of three (3) years after the furnishing of services to such records, and the right to examine and audit the same and to make transcripts therefrom, and to inspect all data, documents, proceedings, and activities pertaining to this Agreement.

To the extent permitted by law, FTRL shall furnish County such periodic reports as County may reasonably request pertaining to the work or services undertaken pursuant to this Agreement. The costs and obligations incurred or to be incurred in connection therewith shall be borne by FTRL.

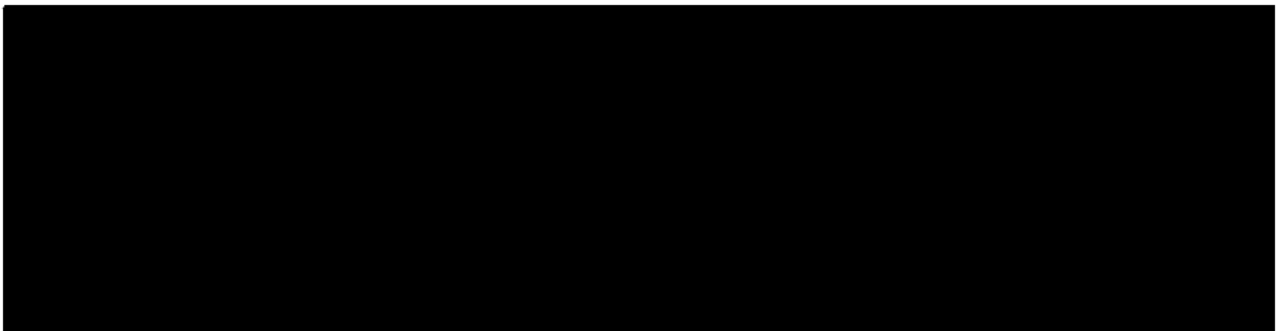
9. OWNERSHIP OF DOCUMENTS

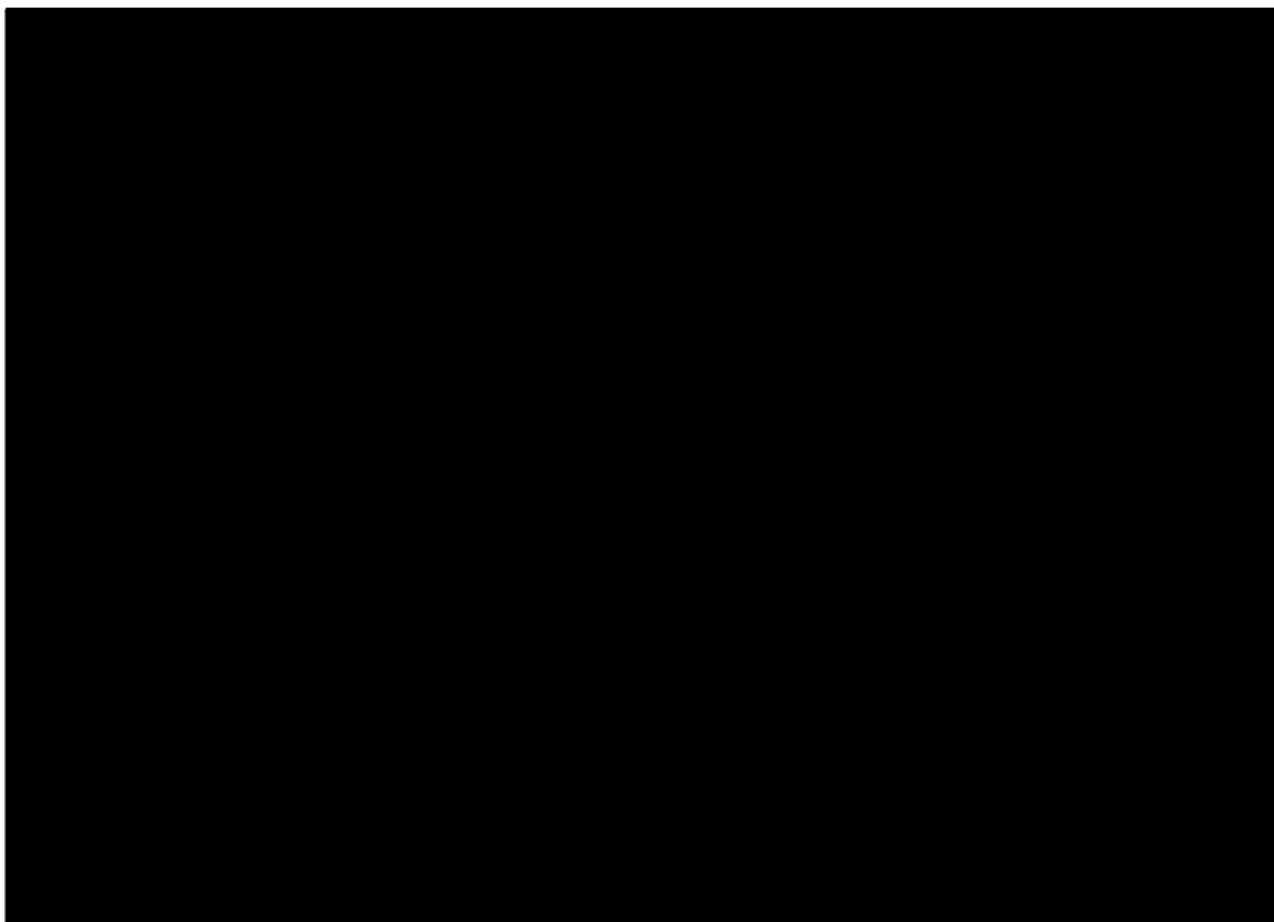
Each party shall retain ownership of their own Intellectual Property (IP) and documents. Any Intellectual Property or documents generated by FTRL in the course of operating the Premises (other than documentation received from or prepared for FTRL's clients, which documentation shall be the property of its clients) shall be owned and retained by FTRL. Prior written consent is required before use of the other Party's IP or documents. Intellectual Property includes, but is not limited to, policies and procedures, operating guidelines, photos, videos, brands, logos, equipment designs and software. Neither party will own or acquire any right, title or interest to the other Party's Intellectual Property under this Agreement. No licenses are to be implied from any term of this Agreement, and no Party will have any license to any Intellectual Property Rights of another Party except to the extent expressly granted in this Agreement.

The Parties may, by separate agreement, grant ownership or license to use certain Intellectual Property Rights of the other party. FTRL agrees that its Intellectual Property does not include the Bi-Annual Strategic Rail Plan or any other Intellectual Property relating to the Premises that was produced at the direction of the County and funded with County funds, which shall include funds sourced directly from the County or from funds the County secures through grants.

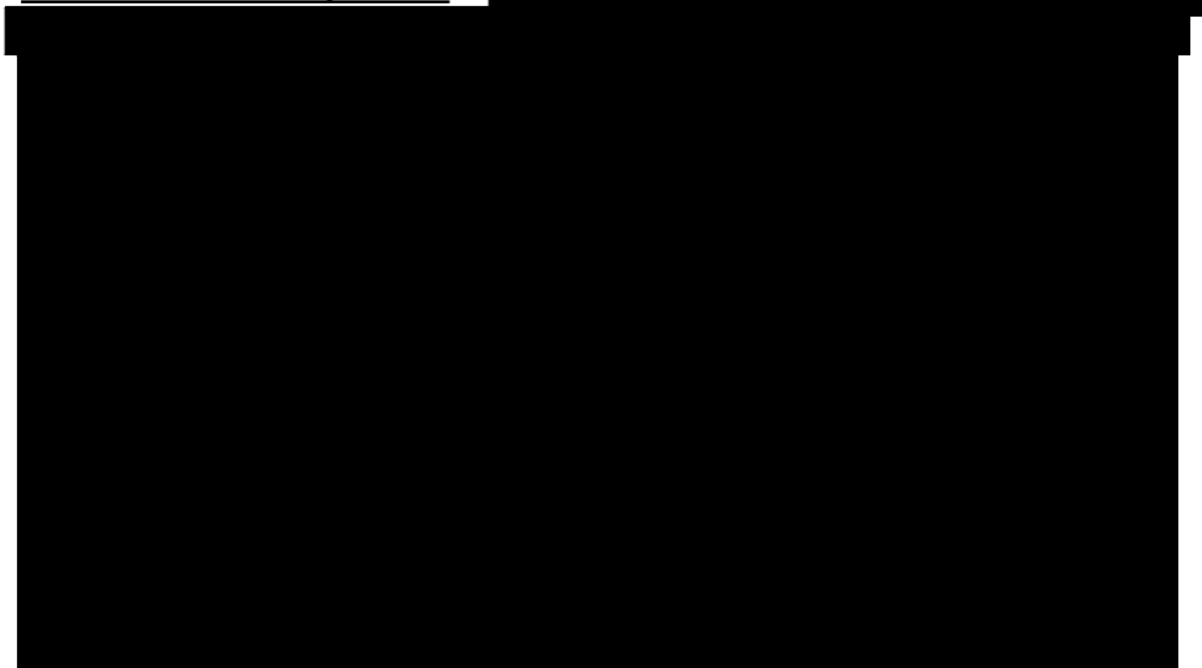
The Parties agree and acknowledge that all information and documents related to this Agreement may be subject to disclosure pursuant to Government Code section 6250 et seq. of the California Public Records Act. County shall provide notice to FTRL if any aspect of information marked proprietary or confidential is sought under the Public Records Act and shall take reasonable steps to ensure that materials appropriately marked or identified as proprietary or confidential are not disclosed to others without notice to FTRL. Upon such notice, FTRL may pursue protections against disclosure at its own cost. County assumes no obligation to defend the confidentiality of any aspect of information marked as proprietary or confidential, and agrees to cooperate in the defense of any such matter on the condition that FTRL provides County with a legally sound basis for nondisclosure and full defense and indemnification as to any such dispute.

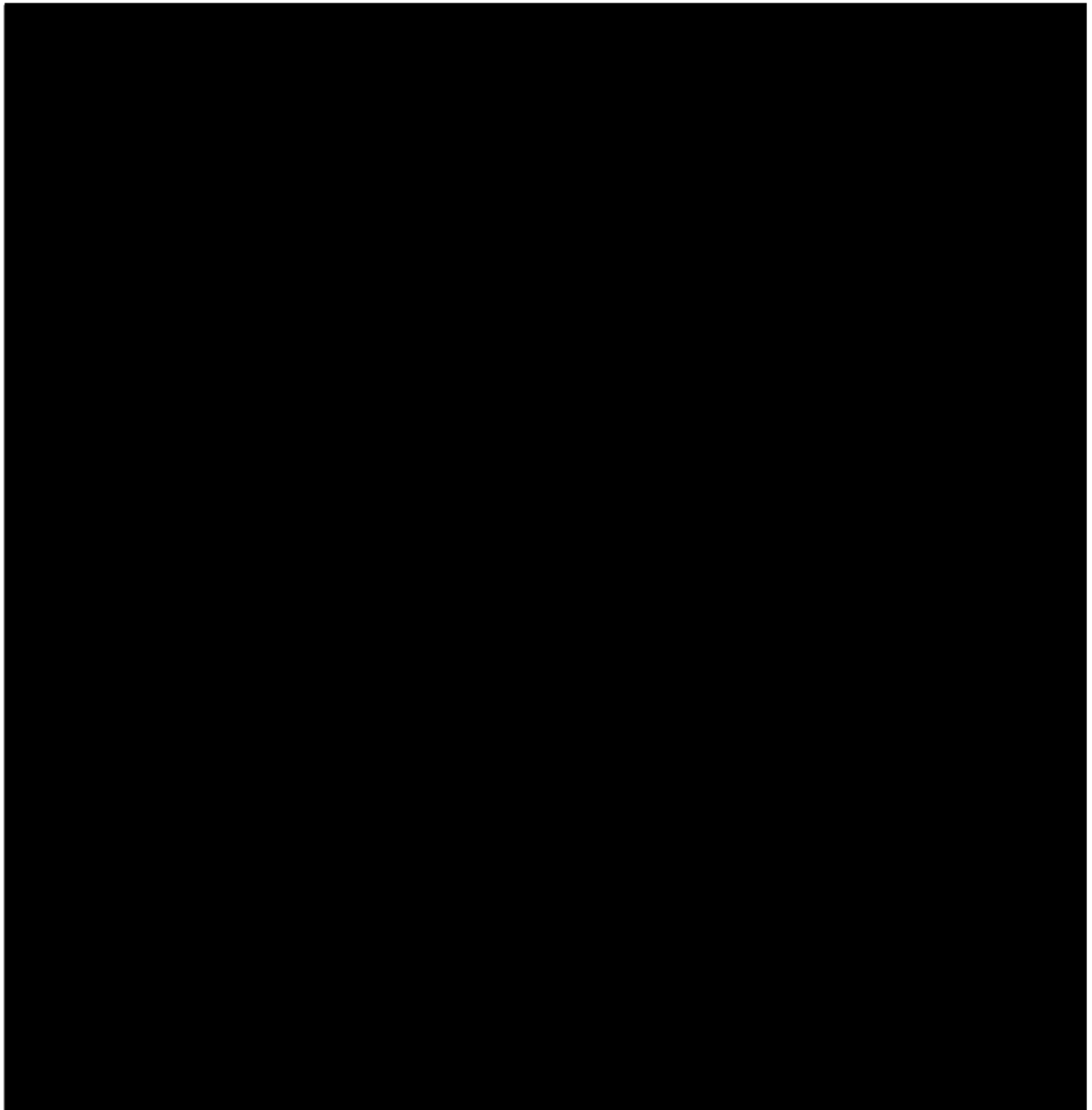
10. ALTERATION OF PREMISES





10.2 Alteration Disposition

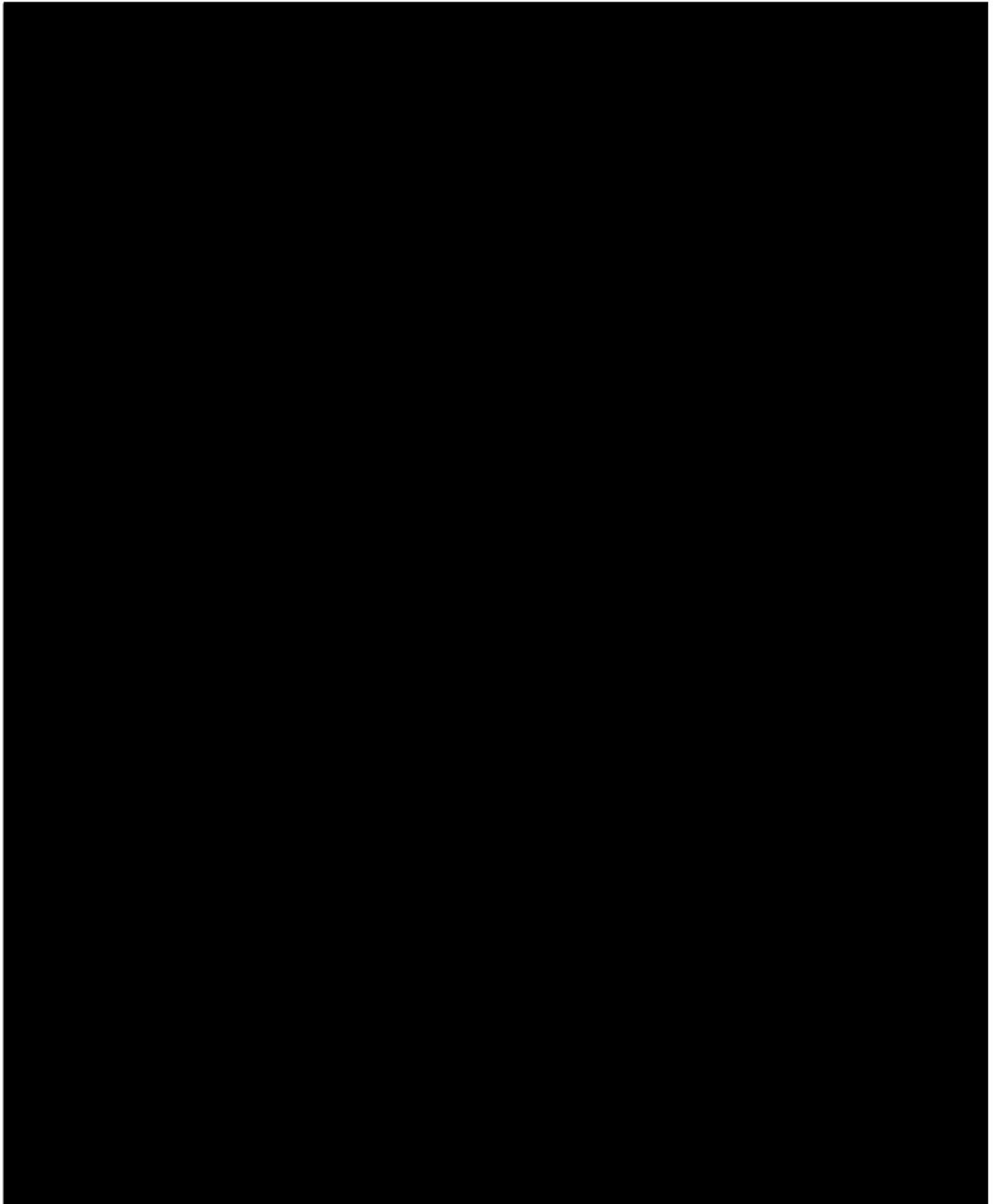




10.3 Required Alterations FTRL shall make any alteration, addition, or change of any sort to the Premises that is required by any law because of:

1. FTRL's particular use or change of use of the Premises;
2. FTRL's application for any permit or governmental approval; or
3. FTRL's construction or installation of any Alterations.

11. DAMAGE OR DESTRUCTION



12. INTENTIONALLY OMITTED**13. LIENS AND CLAIMS**

Both County and FTRL shall at all times keep the Premises free and clear from all claims, liens and encumbrances caused by or through County or FTRL, or by or through the occupancy of the Premises by FTRL or its subtenants, agents, licensees or invitees, or occurring as a result of any construction work, repairs, alterations, additions and restoration work required or permitted to be done by FTRL or done by County, and each party shall indemnify and hold the other entity harmless of, from and against any and all losses, costs, expenses, liabilities and damages, including reasonable attorney's fees, incurred or expended in connection with any such claim, lien or encumbrance or the prosecution or defense of any suit, action or proceeding relating to the same.

14. CONDITION OF THE PREMISES; REPRESENTATIONS OF COUNTY; QUIET ENJOYMENT

County shall deliver the Premises to FTRL in an "As is" condition. The County represents and warrants that: (a) County has the authority to enter into this Agreement and to lease the Premises to FTRL, free and clear of any adverse claims; (b) this Agreement has been duly authorized, executed and delivered by the County and constitutes a valid and legally binding obligation of the County, enforceable against the County in accordance with the terms hereof; (c) no consent is required to be obtained by the County from, and no notice or filing is required to be given by the County to or made by the County with, any person (including any governmental authority) in connection with the execution, delivery and performance by County of this Agreement.

County covenants with FTRL that if FTRL makes the payments of Rent and all other payments required to be made by it and performs the other duties and obligations imposed upon it pursuant to the provisions of this Agreement, FTRL shall at all times during the Term peaceably and quietly have, hold, occupy, and enjoy the Premises, the Improvements, and the appurtenances thereto without hindrance or molestation by County, its successors and assigns.

15. SUBORDINATION, NON-DISTURBANCE, ATTORNMENT, ESTOPPEL

15.1 Subordination. This Agreement and all of the rights of FTRL hereunder are and shall be subject and subordinate to the lien of deed of trust now or hereafter created by County affecting the Premises or any part thereof, and any and all renewals, modifications, consolidations, replacements, extensions or substitutions (collectively referred to as "mortgages" and individually as "mortgage"). Such subordination shall be automatic but conditioned upon the non-disturbance of FTRL and FTRL's railroad operations by the mortgagee under

such mortgage so long as FTRL is not in default hereunder, without requirement of the execution of any further subordination agreement by FTRL; provided, however, in the event the holder or proposed holder of a mortgage (a "mortgagee") requires a written subordination agreement, FTRL agrees to execute, acknowledge and deliver the same on such mortgagee's reasonable form (so long as such form contains reasonable non-disturbance language) promptly on written request to do so but in no event later than fifteen (15) days subsequent to receipt of such request. In the event of FTRL's failure so to do, County may, in addition to any other remedies for breach hereunder, execute, acknowledge and deliver the same as the agent or attorney-in-fact of FTRL. In the event, in connection with obtaining a mortgage, a mortgagee shall request reasonable modifications in this Agreement as a condition of such mortgage, FTRL will not unreasonably withhold, delay or defer its consent thereto, provided that such modifications do not materially and adversely affect the leasehold interest created hereby or the use and enjoyment of the Premises by FTRL or otherwise interfere with the safety or efficiency of FTRL's railroad operations.

15.2 Election by Mortgage Holder. Notwithstanding anything set out in the Subordination section above to the contrary, in the event any mortgagee elects to have this Agreement be superior to its mortgage, then upon FTRL's being notified to that effect by such encumbrance holder, this Agreement shall be deemed prior to the lien of such mortgage, whether this Agreement is dated prior or subsequent to the date of such mortgage. FTRL shall execute, acknowledge and deliver an instrument, in the form customarily used by such mortgagee, effecting such priority.

15.3 Attornment. In the event proceedings are brought for the foreclosure of or in the event of the exercise of the power of sale under any mortgage, or in the event of delivery of a deed in lieu of foreclosure under a mortgage, FTRL will attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as County under this Agreement. Upon the request of the purchaser, FTRL shall execute, acknowledge and deliver an instrument, in form and substance reasonable satisfactory to such party, evidencing such attornment.

15.4 Estoppel Certificate. FTRL agrees to, within ten (10) days after written request by County, execute, acknowledge and deliver to and in favor of any mortgagee or purchaser of the Premises, an estoppel certificate, in the form customarily used by such mortgagee or purchaser, stating, among other things (i) whether this Agreement is in full force and effect, (ii) whether this Agreement has been modified or amended and, if so identifying and describing any such modification or amendment, (iii) the date to which Rent and other charges have been paid, (iv) whether the party furnishing such certificate knows of any default on the part of the other party or has any claim against such party and, if so, specifying the nature of such default or claims and (v) any other information reasonably requested by such mortgagee or purchaser.

15.5 Notice to Encumbrance Holder. Upon written demand by any mortgagee covering the Premises, FTRL shall forthwith execute, acknowledge and deliver an agreement in favor of and in form customarily used by such mortgagee, by the terms of which FTRL will agree to give prompt written notice to such mortgagee in the event of any casualty damage to the Premises or in the event of any default on the part of County under this Agreement, and will agree to allow such mortgagee a reasonable length of time (not to exceed 60 days) after notice to cure or cause the cure of such default before exercising FTRL's rights under this Agreement or declaring a default under this Agreement.

15.6 Notwithstanding anything set out in Sections 15.1-15.5 to the contrary, in the event the real estate in the Rail District is leased, sold, or transferred to a third party during the Term: (i) the Railroad Facilities shall remain in the Rail District; (ii) FTRL and/or any subsequent rail operator shall retain the right to expand and/or modify the Railroad Facilities consistent with the terms of this Agreement; and (iii) the real estate in the Rail District shall remain devoted to rail-served purposes. Any existing non rail use tenants with leases that began before the effective date of this Agreement are exempt from these requirements.

15.7 Excluding existing non rail use tenants as described above in subsection 15.6, in the event the County devotes the Rail District to primarily non-rail uses, County shall pay FTRL the net book value, as computed in accordance with rail industry standard useful life of assets, for Alterations to the Premises.

GENERAL TERMS

16. NOTICES

16.1 Form

All notices, requests, demands or other communications under this Agreement shall be in writing. Notice shall be sufficiently given for all purposes as follows:

- A. Personal Delivery. When personally delivered to the recipient, notice is effective upon delivery.
- B. First Class Mail. When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three mail delivery days after deposit in a United States Postal Service office or mailbox.
- C. Certified Mail. When mailed by certified mail, return receipt requested, notice is effective upon receipt, if delivery is confirmed by a return receipt.
- D. Overnight Delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account, notice is effective on

delivery, if delivery is confirmed by the delivery service.

Any correctly addressed notice that is refused, unclaimed or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messengers or overnight delivery service.

16.2 Addresses

Information for notice to the parties to this Agreement at the time of execution of this Agreement is as follows:

County of Merced:

Attn: Community and Economic Development
222 M Street
Merced, CA 95340

FTRL:

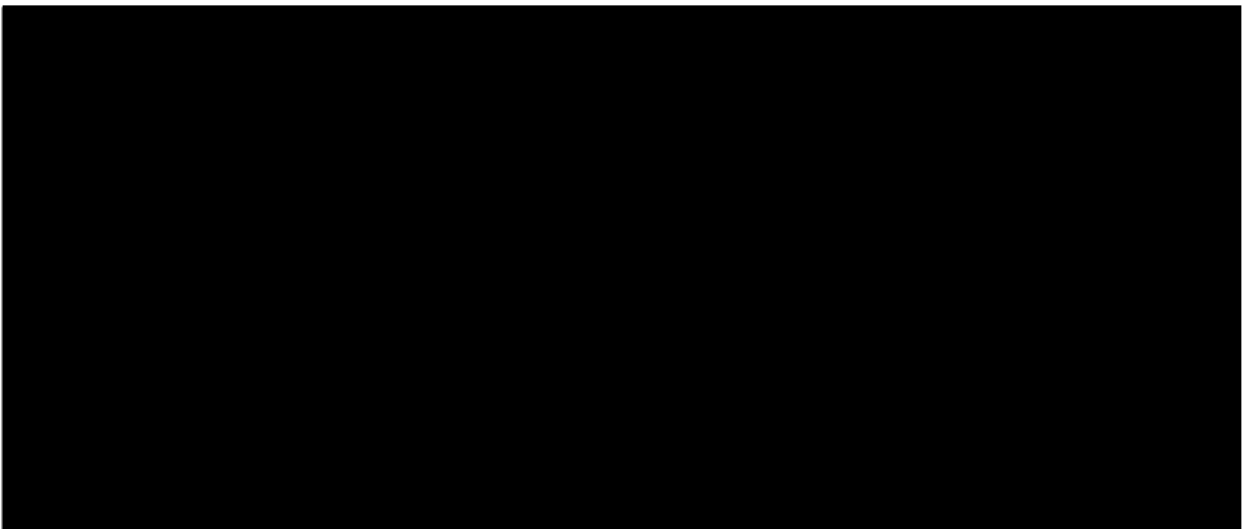
Attn: President
Cc: Legal Department
10752 Deerwood Park Blvd
Suite 300
Jacksonville, FL 32256

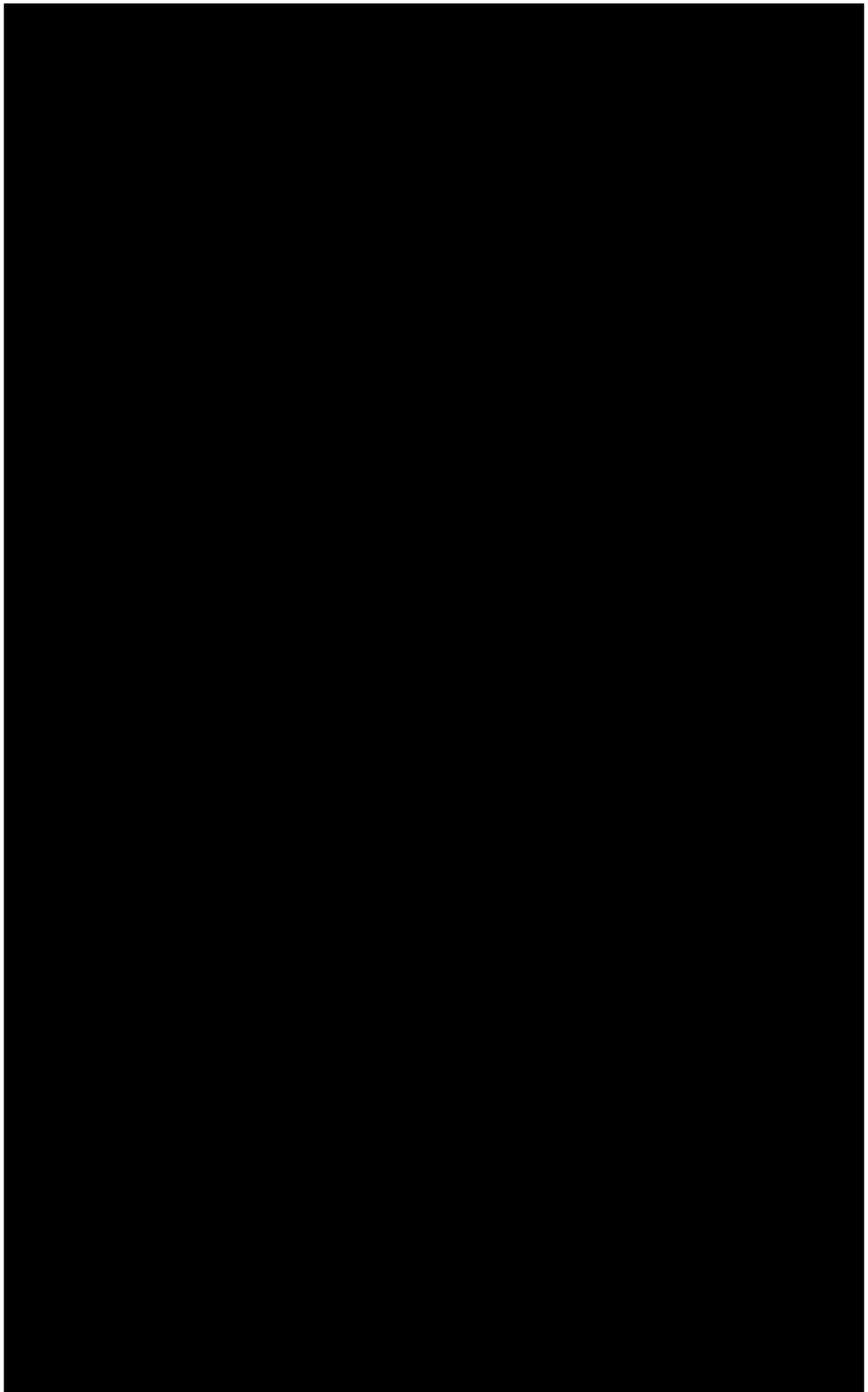
Any party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

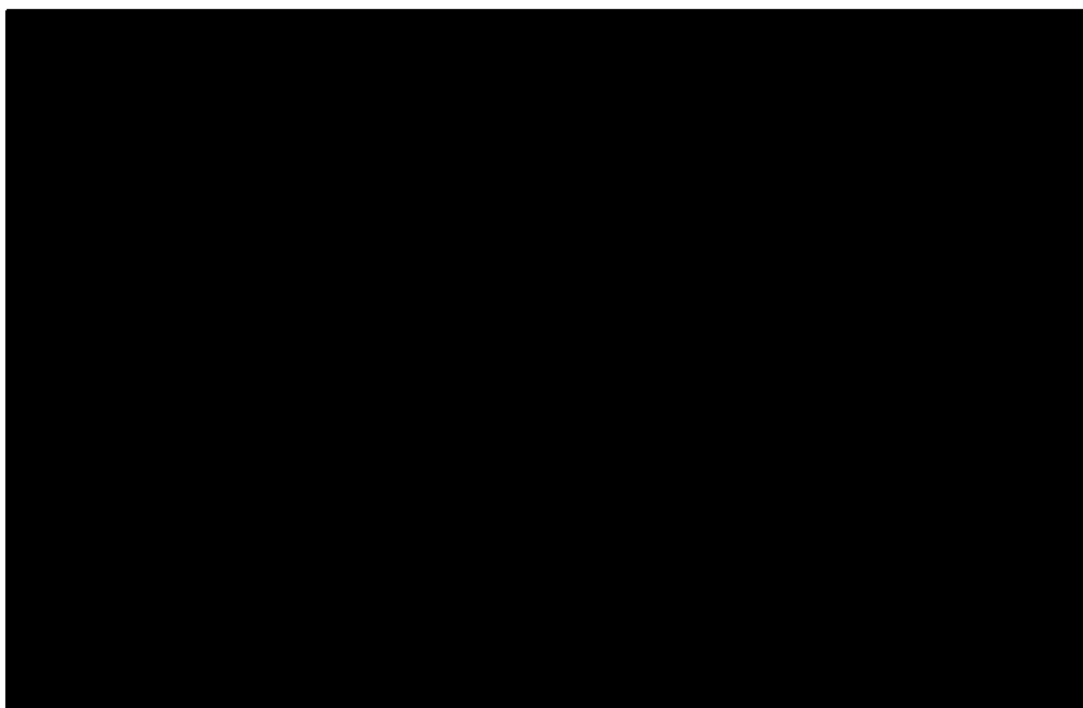
17. MODIFICATION OF THE AGREEMENT

Notwithstanding any of the provisions of this Agreement, the parties may agree to amend this Agreement. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto. No oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto

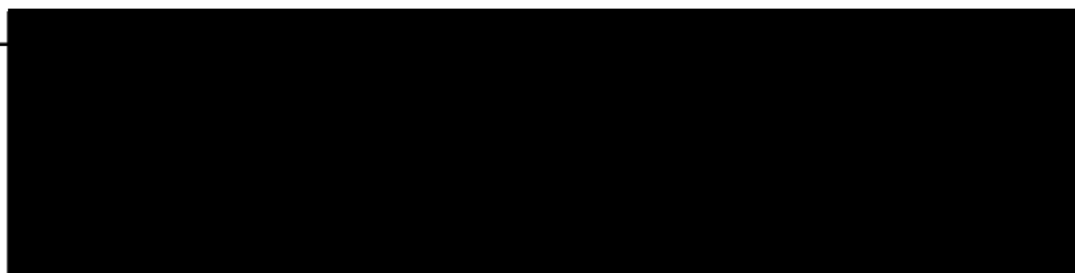
18. INSURANCE



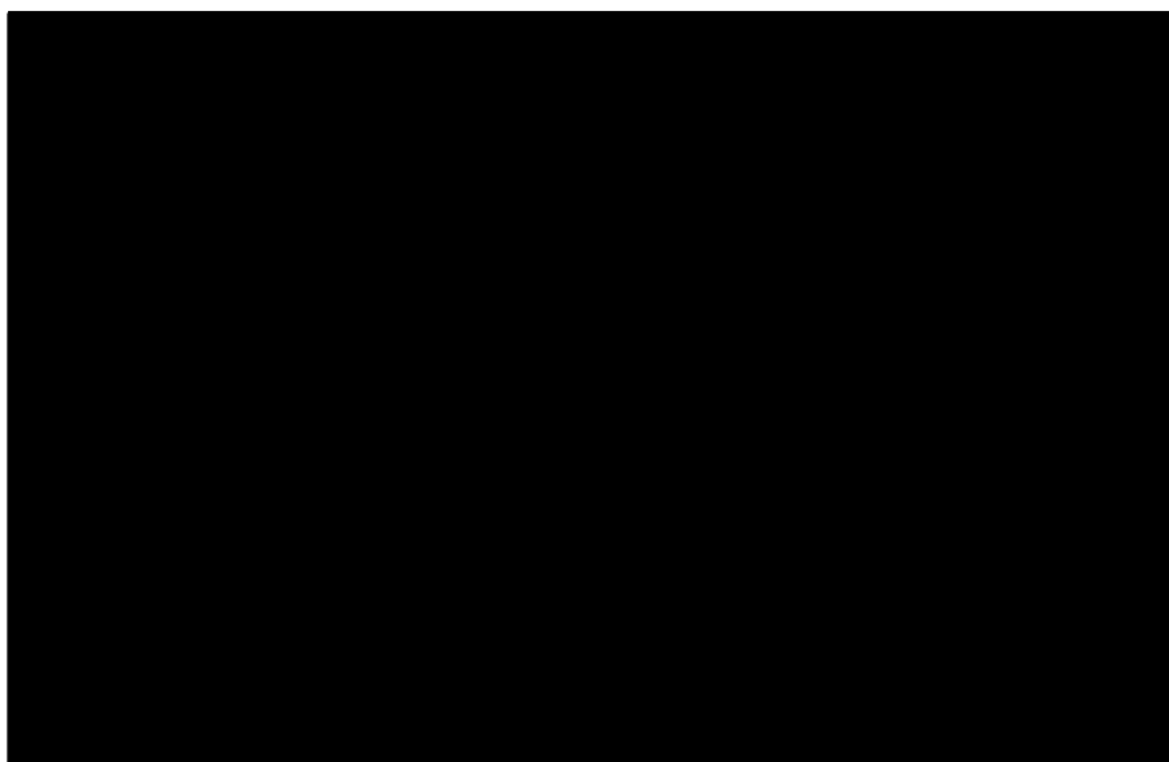


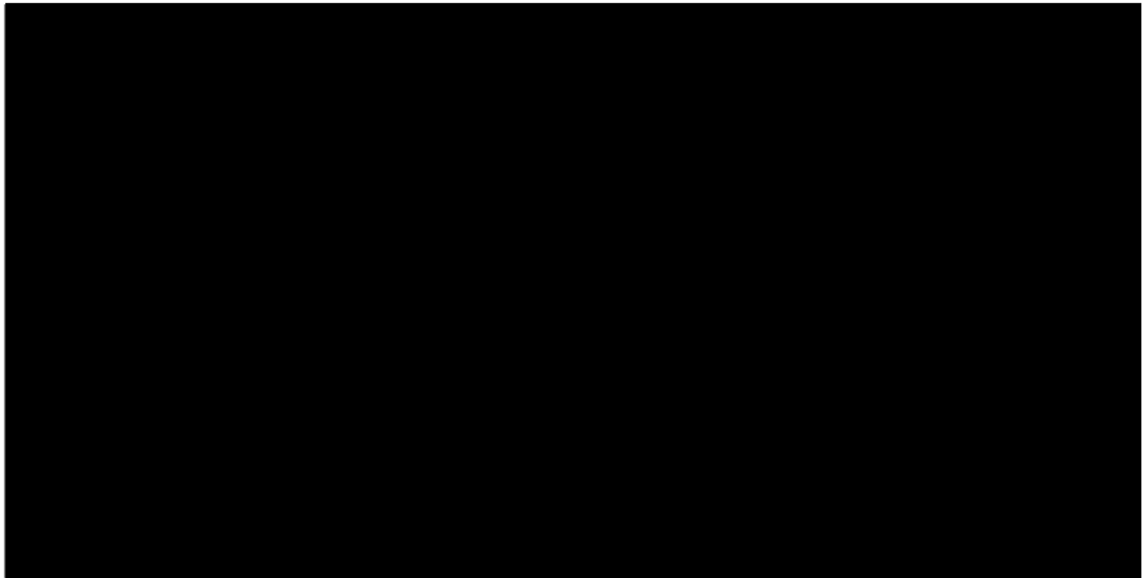


18.2

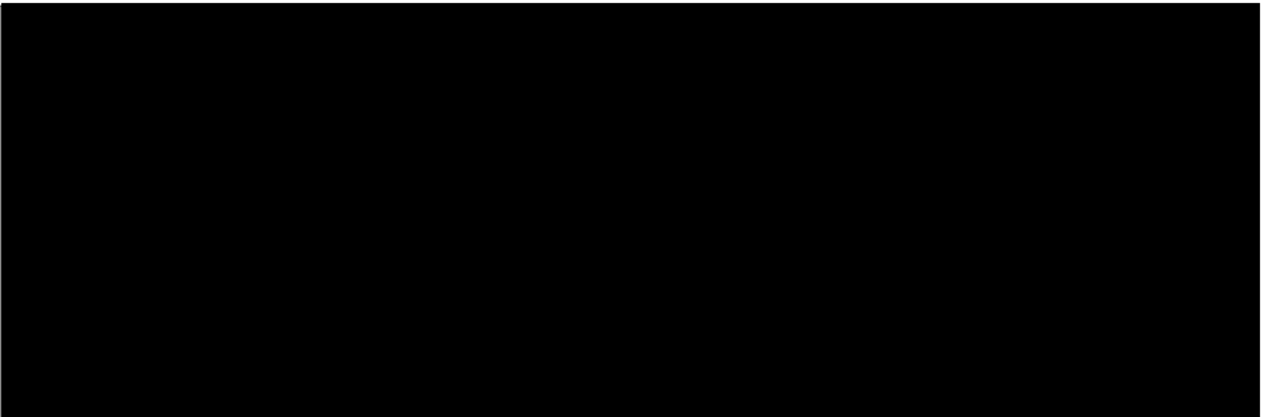


18.3

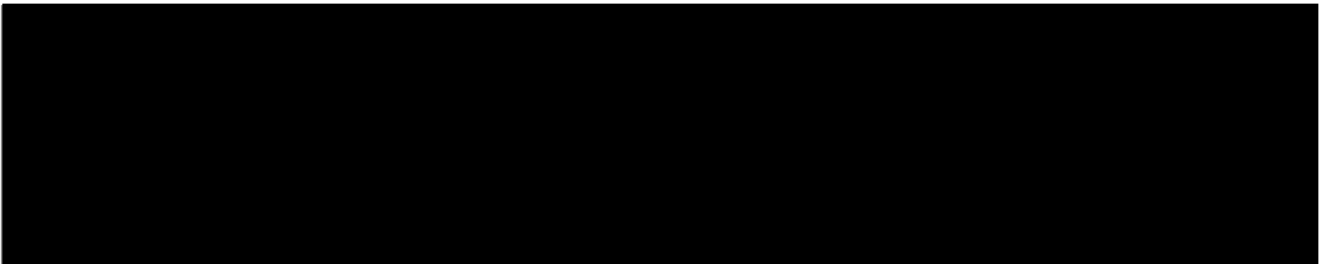




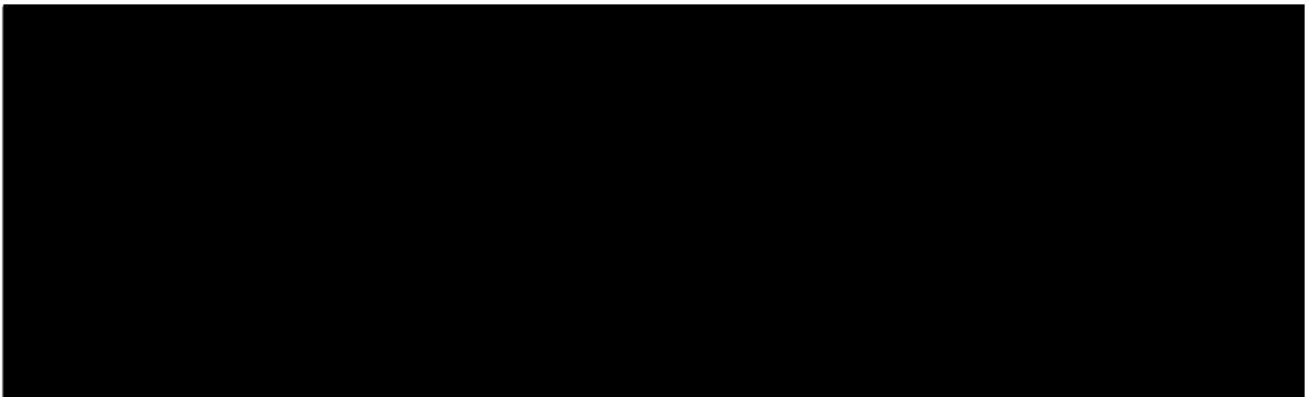
18.4 Limitation of Liability



18.5 Mutual Waiver of Subrogation



19. INDEMNIFICATION



20. INDEPENDENT OPERATOR

20.1 Methods of Service Delivery It is mutually understood and agreed that FTRL is an independent contractor in the performance of the work duties and obligations devolving upon FTRL under this Agreement. County shall neither have, nor exercise any control or direction over the methods by which FTRL shall perform the assigned work and functions.

20.2 Taxes and Benefits It is agreed that no employer-employee relationship is created by this Agreement, and FTRL shall hold County harmless and be solely responsible for withholding, reporting and payment of any federal, state or local taxes for FTRL's employees; any contributions or premiums imposed or required by workers' compensation; any unemployment insurance; any social security income tax; and any other obligations from statutes or codes applying to FTRL, if any.

It is mutually agreed and understood that FTRL, its subcontractors and employees, if any, shall have no claim under this Agreement or otherwise against the County for vacation pay, sick leave, retirement or social security benefits, occupational or non-occupational injury, disability or illness, or loss of life or income, by whatever cause.

FTRL shall insure that all its personnel and employees, subcontractors and their employees, and any other individuals used to perform the contracted services are aware and expressly agree that County is not responsible for any benefits, coverage or payment for their efforts.

21. TERMINATION FOR CAUSE

Subject to the process below, either Party may terminate this Agreement and be relieved of making any payments, and performing all duties, should the other Party breach or default this Agreement by failing to perform any material duty or obligation of the Agreement. Both Parties shall determine compliance with this

Agreement in good faith as a reasonable person would under the circumstances. If either Party believes the other is not in compliance with this Agreement, they shall provide reasonable written notice detailing such non-compliance. The receiving party shall have thirty (30) days after receipt of such notice to provide a formal response. If the response is not deemed satisfactory, the non-compliant Party shall have an additional one hundred and sixty (160) days to remedy the non-compliance; provided, however, that if such breach is not capable of being cured within the one hundred and sixty (160) day period, and if either party shall commence the performance of such affirmative acts to effect such cure within one hundred and sixty (160) days from the receipt of said notice and thereafter in good faith diligently shall prosecute such acts to completion, the non-compliant party shall be deemed to have cured the breach. If the non-compliance is not remedied or cured after such one hundred and sixty (160) days, the Parties shall have the option to 1) negotiate a mutually-agreeable resolution of the default or breach, or 2) terminate the Agreement in its entirety. Both Parties shall be liable for any outstanding financial obligations accrued prior to the termination.

Subject to the above cure provisions, FTRL's failure to perform any of the obligations stated in sections 6 and 7 of this Agreement shall constitute a material breach for purposes of section 21 of this Agreement. Notwithstanding any provision in this Agreement to the contrary, in the event County terminates this Agreement under this section due to FTRL's failure to perform its obligations under this Agreement, County shall not be liable to FTRL for damages or costs of any kind. For clarity, if County terminates this Agreement in accordance with sections 21 and 22 of this Agreement, it shall not be required to reimburse FTRL in any amount for Alterations FTRL has made to the Premises prior to such termination.

22. BREACH OF AGREEMENT

Upon breach of this Agreement by either Party, the Parties shall have all remedies available both in equity and/or at law, excluding consequential, exemplary, or punitive damages.

Prior to pursuing available legal or equitable remedies, the Parties agree to first attempt to resolve conflicts under the Agreement as follows. The County and FTRL shall each designate primary points of contact (the "Primary" level) for communications related to the Agreement, as well as two additional levels of conflict resolution. All conflict resolution shall be initially attempted at the Primary level. Representatives from FTRL and County must agree to escalate the conflict before it moves to the next level of the chart.

Level	FTRL	County
Primary	General Counsel	Office of County Counsel
1 st Resolution	President	Director of CED
2 nd Resolution	Chief Executive Officer	Chief Executive Office

23. INTENTIONALLY OMITTED**24. QUALITY OF SERVICE**

FTRL shall perform its services with care, skill, and diligence, in accordance with the applicable standards currently recognized by such industry, and shall be responsible for the quality, technical accuracy, completeness, and coordination of all reports, designs, drawings, plans, information, specifications, and/or other items and services furnished under this Agreement.

FTRL shall, without additional compensation, correct or revise any errors or deficiencies immediately upon discovery in its reports, drawings, specifications, designs, and/or other related items or services provided to the County. FTRL shall be liable for all acts or omissions relating to its operation of the Premises as described in this Agreement.

25. ENTIRE AGREEMENT

This Agreement and any additional or supplementary document or documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other contracts, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the parties hereto.

26. COUNTY NOT OBLIGATED TO THIRD PARTIES

County shall not be obligated or liable hereunder to any party other than FTRL.

27. LIMITED AFFECT OF WAIVER OR PAYMENT

No waiver by either party of any default, breach or condition precedent shall be valid unless made in writing and signed by the parties hereto. No oral waiver of any default, breach or condition precedent shall be binding on any of the parties hereto. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder.

28. PERSONNEL

FTRL represents that it has, or shall secure at its own expense, all personnel required in performing the services under this Agreement. All of the services required hereunder shall be performed by FTRL or under its supervision, and all personnel engaged in the work shall be qualified to perform such services.

29. APPLICABLE LAW; VENUE

29.1 Applicable Laws All parties agree that this Agreement and all documents issued or executed pursuant to this Agreement, as well as the rights and obligations of the parties hereunder, are subject to and governed by federal law governing rail transportation (including but not limited to the Interstate Commerce Commission Termination Act of 1995, 49 U.S.C. § 10101, *et seq.* and the Federal Railroad Safety Act, 49 U.S.C. § 20101, *et seq.*) and the laws of the State of California in all respects as to interpretation, construction, operation, effect and performance. No interpretation of any provision of this Agreement shall be binding upon County unless agreed in writing by County and counsel for County.

29.2 Venue Notwithstanding any other provision of this Agreement, any disputes concerning any question of fact or law arising under this Agreement or any litigation or arbitration arising out of this Agreement, shall be tried in Merced County, unless the parties agree otherwise or are otherwise required by law.

29.3 Attorneys Fees and Costs In the event either Party hereto shall file an action to enforce any provision contained in this Agreement or for breach of any covenant or condition hereof, then each Party shall bear its own attorney's fees, together with any and all costs of such action.

30. SUCCESSORS IN INTEREST

All the terms, covenant, and conditions of this Agreement shall be binding and in full force and effect upon any successors in interest and assigns of the parties hereto. This paragraph shall not be deemed as a waiver of any of the conditions against assignment set forth herein.

31. CONFLICT OF INTEREST

31.1 Conflicting Interest FTRL covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this Agreement. FTRL shall ensure that no conflict of interest exists between its officers, employees, or subcontractors, and the County.

31.2 Conflicting County Interest FTRL covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this Agreement. FTRL shall require that its officers and employees working on the project and that the officers and employees of its subcontractors on the project confirm that each has no conflict of interest with the County. FTRL shall ensure that no FTRL employee in a position that enables them to influence this Agreement shall have any direct or indirect financial interest resulting from this Agreement.

32. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES

32.1 Anti-Discrimination FTRL and any of FTRL's subcontractors shall comply with all applicable federal, state, and local Anti-discrimination laws, regulations, and ordinances and shall not unlawfully discriminate, deny family care leave, harass, or allow harassment against any employee, applicant for employment, employee or agent of County, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. FTRL shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of County employees and agents, and recipients of services are free from such discrimination and harassment.

32.2 ADA, FEHA and Workplace FTRL represents that it is in compliance with and agrees that it shall continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code §§ 12900 et seq.) and ensure a workplace free of sexual harassment pursuant to Government Code 12950; and regulations and guidelines issued pursuant thereto. The Parties acknowledge that (a) the Premises has not undergone inspection by a Certified Access Specialist (CAsp); (b) a CAsp can inspect the Premises and determine whether the Premises complies with all of the applicable construction-related accessibility standards under state law; (c) although state law does not require a CAsp inspection of the Premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CAsp inspection of the Premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant; and (d) the Parties shall mutually agree on the arrangements for the time and manner of the CAsp inspection, the payment of the fee for the CAsp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

32.3 Recordkeeping and Subcontracts FTRL agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable antidiscrimination laws and this provision.

FTRL shall include this nondiscrimination provision in all subcontracts related to this Agreement and when applicable give notice of these obligations to labor organizations with which they have agreements.

33. CAPTIONS

The captions of each paragraph in this Agreement are inserted as a matter of convenience and reference only, and in no way define, limit, or describe the scope or intent of this Agreement or in any way affect it.

34. SUBCONTRACTS - ASSIGNMENT

34.1 Ability to Subcontract or Assign FTRL shall have the right to sublease, subcontract or assign this Agreement, or any part thereof, or interest therein, including its leasehold, directly or indirectly, voluntarily or involuntarily, to any person upon obtaining the prior written consent by County. Notwithstanding the foregoing, FTRL shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this Agreement to FTRL's parent companies, affiliates, or subsidiaries without obtaining County's written consent. FTRL remains legally responsible for the performance of all Agreement terms including work performed by third parties under subcontracts. Any subcontracting shall be subject to all applicable provisions of this Agreement. FTRL shall be held responsible by County for the performance of any subcontractor whether approved by County or not.

34.2 Consent Subject to Section 34.1 above, FTRL shall not subcontract, assign or transfer any work under this Agreement without prior written consent from the County, which shall not be unreasonable withheld. FTRL acknowledges that its qualifications were an important inducement to the County for entering into this Agreement. The subcontracting, assignment, or transfer of any work under this Agreement, even with the County's consent, shall not relieve FTRL of its obligations and liabilities under this Agreement.

34.3 Liability for Subcontracts FTRL shall continue to be liable as a principal and not as a guarantor or surety, to the same extent as though no subcontract, assignment or transfer had been made or occurred, and as though all conduct of the subcontractor, assignee, transferee, or such other person was FTRL's conduct. All subcontractors shall be licensed, certified and/or otherwise qualified, in accordance with applicable laws, rules, and/or regulations, in the work they intend to perform hereunder, and shall comply with all equipment and materials requirements when performing such work, pursuant to the terms of this Agreement.

34.4 Garnishment Neither this Agreement nor any interest therein or right granted thereby shall be assignable or transferable in proceedings in attachment, garnishment or execution against FTRL, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against FTRL or by any process of law, and possession of the whole or any part of the Premises shall not be divested from FTRL in such proceedings or by any

process of law, without the prior written consent of the County.

35. SEVERABILITY

If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable or invalid, in whole or in part, for any reason, the validity and enforceability of the remaining provisions, or portion of them, shall not be affected.

36. DUPLICATE COUNTERPARTS

This Agreement may be executed in duplicate counterparts, each of which shall be deemed a duplicate original. The Agreement shall be deemed executed when it has been signed by both parties.

37. SUCCESSION AND TRANSITION

FTRL shall, in the event a successor operator or temporary operator assumes or is to assume responsibility for the operation of the Premises before the expiration date of this Agreement, or upon the earlier termination of this Agreement, reasonably cooperate with the County and the County's selected successor operator or temporary operator to achieve an orderly transition without interruption of service at the Premises. This cooperation shall include granting the succeeding operator reasonable access to the Premises, making certain operational records, and systems available; making provisions for the transfer of agreements, licenses, or permits executed in connection with this Agreement, and making all necessary provisions for the transfer of keys, security codes, and other Premises access information or devices.

Upon expiration or earlier termination of this Agreement, FTRL shall have ninety (90) days to remove all of its portable personal property from the Premises and repair any damage caused by said removal. If FTRL does not remove its portable personal property, County shall have the right to remove said portable personal property at FTRL's sole cost and expense, without any liability to FTRL for any alleged damage to or conversion of property, and FTRL shall, within ninety (90) days after receipt from County of an invoice therefor, reimburse County for all reasonable costs related to the proper removal, including reasonable legal costs. FTRL's obligations under this Section shall survive the expiration or earlier termination of this Agreement.

38. REPRESENTATIONS

FTRL warrants, represents and covenants that:

- a. FTRL is a Delaware limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization.

- b. FTRL has full power and authority to enter into this Agreement and to comply with the provisions of this Agreement.
- c. This Agreement has been duly authorized, executed and delivered by FTRL and constitutes a valid and legally binding obligation of FTRL, enforceable against FTRL in accordance with the terms hereof
- d. No consent is required to be obtained by FTRL from, and no notice or filing is required to be given by FTRL to or made by FTRL with, any person (including any Governmental Authority) in connection with the execution, delivery and performance by FTRL of this Agreement. The foregoing does not apply to the necessary licenses, permits, and other approvals to be applied for by FTRL in connection with the Premises.
- e. FTRL currently is not the subject of bankruptcy, insolvency, or reorganization proceedings and is not in material default of, or otherwise subject to, any agreement or any law, administrative regulation, judgment, decree, note, resolution, charter or ordinance which would currently restrain or enjoin it from entering into, or complying with, this Agreement, in any material respect.
- f. There is no material action, suit, proceeding, inquiry or investigation, at law or in equity, before any court or public body, pending or, to the best of the FTRL's knowledge, threatened, which seeks to restrain or enjoin FTRL from entering into or complying with this Agreement.
- g. That the execution, delivery, and performance of this Agreement shall not conflict with, be inconsistent with, or result in any breach or default of any of the terms, covenants, conditions, or provisions of any indenture, bank loan, credit agreement, or other agreement or Agreement of any kind or nature to which FTRL is a party or by which FTRL may be bound.

39. FURTHER ASSURANCES

FTRL agrees to perform such further acts and execute and deliver any documents as may be reasonably required by any provision of this Agreement.

40. PUBLIC ANNOUNCEMENTS

Except for public announcements the subject matter of which is limited solely to one Party, each Party shall not, without the other Party's prior written consent, publish, or cause to be published, in any manner whatsoever (including, without limitation, in any marketing or promotional materials, news report [including, without limitation, television, film, radio or webcast, or any reasonable equivalent existing in the future], newspaper article, magazine article, press release, brochure, annual report, or on any website or other electronic media [including,

without limitation, Social Media or anything similar existing now or at any time in the future]], any name, brand, data or information concerning the other Party. All requests for approval of any proposed publication which requires the other Party's prior written consent shall be submitted in writing at least 30 days prior to the proposed publication date. If the other Party fails to approve or disapprove the proposed publication, in writing at least 30 days prior to the proposed publication date, the Party shall be deemed to have approved the proposed publication. If the proposed publication is approved, the approved publication shall not be altered before publication without re-submission to the Party for approval as provided herein. Upon publication, each Party shall be provided a copy. Parties shall take prompt action to correct any third party misquotations or misrepresentations.

Notwithstanding the above, FTRL may publicly disclose the existence of its rail operations in the MCITD and/or Rail District without obtaining the County's prior written consent.

LAWS/STANDARDS

41. FEDERAL, STATE, AND LOCAL TAXES

FTRL shall pay all taxes lawfully imposed upon it by applicable laws with respect to any product delivered with respect to the Agreement. The County makes no representation whatsoever as to the exemption from liability to any tax imposed by any government entity on FTRL.

In accordance with Revenue and Taxation Code section 107.6, FTRL is hereby notified that this Agreement may create a possessory interest subject to property taxation and that, if such an interest is created, FTRL will be subject to, and is responsible for, payment of the property taxes levied on that possessory interest.

FTRL shall pay (A) all taxes levied against its personal property; (B) all taxes and other charges levied against Operator; and (C) all taxes and other charges levied against FTRL's use of the Premises and FTRL's business operation. FTRL, after written notice to County, may by appropriate proceedings conducted promptly at its own expense, in its name or (where necessary) on behalf of County, contest in good faith any tax, assessment, or other governmental charge on the Premises or Improvements, or the validity, applicability, or enforcement of any law, ordinance, rule, regulation, requirement, or order of any governmental authority having jurisdiction over the Premises, and may defer compliance therewith provided that (a) such noncompliance shall not constitute a violation of law on the part of County; and (b) FTRL shall diligently prosecute such contest to final determination by a court or governmental authority having final jurisdiction over the subject matter. County shall cooperate reasonably with FTRL and execute such documents as may be reasonably requested in connection with such contest.

42. LAWS, LICENSES, PERMITS AND REGULATIONS

42.1 Laws To the extent not preempted by federal law, FTRL and County agree to comply with all federal and state laws and regulations that pertain to construction, health and safety, labor, minimum wage, fair employment practice, equal opportunity, and all other matters applicable to FTRL and County, their sub-grantees, contractors, or subcontractor, and their work.

42.2 Licenses and Permits FTRL shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Merced and all other appropriate governmental agencies, including any certification and credentials required by County. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by County. The County itself does not hold any permits specifically relating to the operations of the Premises.

42.3 Non-Waiver Notwithstanding any other provision in this Agreement to the contrary, FTRL expressly reserves and does not waive any rights it may have under the Interstate Commerce Commission Termination Act of 1995, 49 U.S.C. § 10101, *et seq.*, the Federal Railroad Safety Act, 49 U.S.C. § 20101, *et seq.*, and/or any other federal law governing rail operations.

43. FAA STANDARDS

The Premises falls under the jurisdiction of Merced County. Due to its current location adjacent to the Airport, the Premises must comply with all applicable Federal Aviation Administration ("FAA") rules and regulations in addition to all applicable State and Federal laws and regulations. All work performed by FTRL under this Agreement shall be performed in accordance with all applicable Federal, State and County laws, rules and regulations. Without limiting the foregoing, FTRL shall comply with all applicable Castle Airport and FAA rules and regulations, including, but not limited to those relating to communications equipment and existing access easements. If, in County's communications with the FAA, it is informed or discovers that the Approved Use, or any aspect thereof, is not in compliance with FAA rules and regulations, County shall promptly inform FTRL and cooperate with FTRL to regain compliance and contribute to any cost, which shall be limited to the County's proportionate percentage of fault, incurred by FTRL in connection with such compliance.

44. OSHA REQUIREMENTS

All material, equipment, or labor submitted by the FTRL shall meet the required standards of OSHA 1970 and CA-OSHA 1973. FTRL warrants that the described material, equipment or labor meets all appropriate OSHA safety and health requirements. Further, it warrants that the said material or equipment shall not

produce or discharge in any manner or form, directly or indirectly, chemicals or toxic substance that could pose a hazard to the health or safety of anyone who may use the material or equipment or come into contact with the material or equipment.

45. ENVIRONMENTAL CONDITION

45.1 Notice of Existing Groundwater Contamination. FTRL is hereby notified that groundwater contamination originating from numerous sources across the former base may be located beneath the Premises. The Air Force is conducting a remedial action to remove contaminated groundwater in coordination with the United States Environmental Protection Agency, the Department of Toxic Substances Control, and the Regional Water Quality Control Board, Central Valley Region. Groundwater remediation is being achieved through a groundwater extraction and treatment program. The Air Force is fully responsible for completing these remediation actions.

45.2 Property Subject to Air Force Environmental Remediation Monitoring Wells and Land Use Covenants. FTRL is aware that the Premises is subject to on-going environmental remediation and that there are monitoring wells located on the Premises. Lessee recognizes and agrees the Premises is subject to ground water and solid waste covenants recorded as part of the EDC transfer. FTRL agrees to cooperate with the County in its compliance with such covenants; provided, however, that in the event any costs are incurred by FTRL in connection with its compliance with this Section of the Agreement, the County shall cooperate with FTRL and permit FTRL to offset any such costs against any Rent payable hereunder.

45.3 Environmental Responsibility. All parties recognize that under the terms of the EDC transfer, the United States Air Force retains responsibility for clean-up of the existing contamination under CERCLA and Section 330 of the National Defense Authority Act of 1993. FTRL further recognizes the County is not responsible for any existing contamination. The County makes no representations or warranties as to the environmental condition of the Premises. It is understood and agreed that, with respect to such environmental conditions, FTRL is leasing the Premises in "as-is, where-is" condition. In the event contamination is discovered on the Premises, FTRL will immediately notify the County. The County will then notify the United States Air Force and will rigorously pursue all remedies under the EDC transfer including causing the timely performance of any investigation, remediation removal action, or detoxification of the Premises required due to the Existing Contamination.

45.4 Condition of the Premises. FTRL agrees that it has received information from the County concerning the condition and state of repair of the Premises, except for the condition of underground utilities and other underground conditions not known to the County, which such knowledge for the condition of underground

utilities and other underground conditions if any is fully disclosed herein. It is understood and agreed that the Premises is being leased in an "as is" condition, without any representation or warranty by the County concerning its condition, and without obligation on the part of the County to make any alterations, repairs, or additions. The County is not and shall not be liable for any latent or patent defects in the Premises. FTRL acknowledges that the County has made no representation or warranty concerning the condition and state of repair of the Premises, nor any agreement or promise to alter, improve, adapt, or repair that has not been fully set forth in this Agreement. FTRL warrants and acknowledges that it has entered into this Agreement on the basis of its own investigation of all known facts and conditions underlying or relating to the Premises, as disclosed to it by the County, and the development and use of the Premises, including without limitation, environmental conditions. Given FTRL's herein expressed, admitted and deemed knowledge of the facts and conditions affecting the Premises, FTRL shall exercise the appropriate level of care when conducting any ground disturbing activities to ensure that such activities do not result in the release of any hazardous substances, materials or waste of any kind, including but not limited to pesticides, asbestos, and lead-based paint. FTRL shall also be responsible for exercising the appropriate level of care as described in this paragraph with respect to any underground pipes and related infrastructure that may exist within the Premises. To the extent it may lawfully do so under applicable law, FTRL waives any claim or cause of action it may have against the County under any federal, state, or local law, ordinance, rule or regulation now existing or hereafter enacted or promulgated, relating to environmental matters or conditions, in, on, under, about or migrating from or onto the Premises, or by virtue of any common law right related to environmental conditions or matters in, on, under, about or migrating from or onto the Premises except for:

- (a) pre-existing environmental conditions requiring CERCLA remedial action or RCRA corrective action that are attributable to the Air Force and which are not exacerbated by FTRL; and
- (b) Hazardous Substance releases caused by the Air Force that migrate onto the Premises and which are not exacerbated by FTRL.

45.5 Notice of the Presence of Asbestos-Warning! FTRL is expressly warned that the Premises may contain asbestos containing materials (ACM).

Unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, and building construction workplaces have been associated with asbestos-related diseases. Both the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.

(a) The Premises is improved with buildings, facilities and equipment that may contain ACM. Additionally, ACM may be found in or on utility pipelines, both above and below ground, and debris containing ACM may be found in the soil from past demolition of buildings or structures formerly located on the Castle property. The Environmental Baseline Survey, a copy of which is available for review at 2222 M Street, Merced, California 95340, discloses the condition and known locations of any ACM.

(b) ACM in Structures or Buildings: Based on a January 2006 inspection of the Castle property and a review of the Base wide Environmental Baseline Survey, as supplemented by the Final Consolidated Parcels Supplement to the Base wide Environmental Baseline Survey, dated September 2004, the ACM located in structures on the Premises is currently in good condition and not damaged or deteriorated to the extent that it creates a potential source of airborne fibers. The results of these inspections and reports will be provided to FTRL to confirm the general condition of asbestos located in structures on the Premises.

(c) ACM in Demolition Debris: ACM, which was commonly used in building materials, may be located at building demolition locations. Based upon an inspection of the property and a review of the environmental baseline survey reports, no such locations are specifically known at this base. No CERCLA remedial action for ACM is required at this time; however, it is possible that there are undiscovered locations where demolition debris may be found by the County or FTRL during ground disturbance activities. The County and/or FTRL will warn subsequent transferees by notice in leases or deeds to exercise care during ground disturbing activities. The County, FTRL and subsequent transferees will notify the Air Force promptly of any demolition debris containing friable asbestos and believed to be associated with Air Force activities. The County, FTRL and subsequent transferees will allow the Air Force a reasonable opportunity to investigate and, if a CERCLA remedial action is necessary, to accomplish it.

The County assumes no liability for damages for personal injury, illness, disability or death, to FTRL, or to the successors, assigns, employees, invitees, or any other person subject to FTRL's control or direction, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Premises, whether FTRL, its successors or assigns has or have properly warned or failed properly to warn the individual(s) injured.

FTRL further agrees that in its use and occupancy of the Premises. it will comply with all Federal, State, and local laws relating to asbestos.

45.6 Presence of Lead-Based Paint. FTRL hereby acknowledges the disclosure of the possibility of the presence of lead-based paint and/or lead-based paint hazards in target buildings constructed prior to 1978; available records and reports, if applicable, are available for inspection.

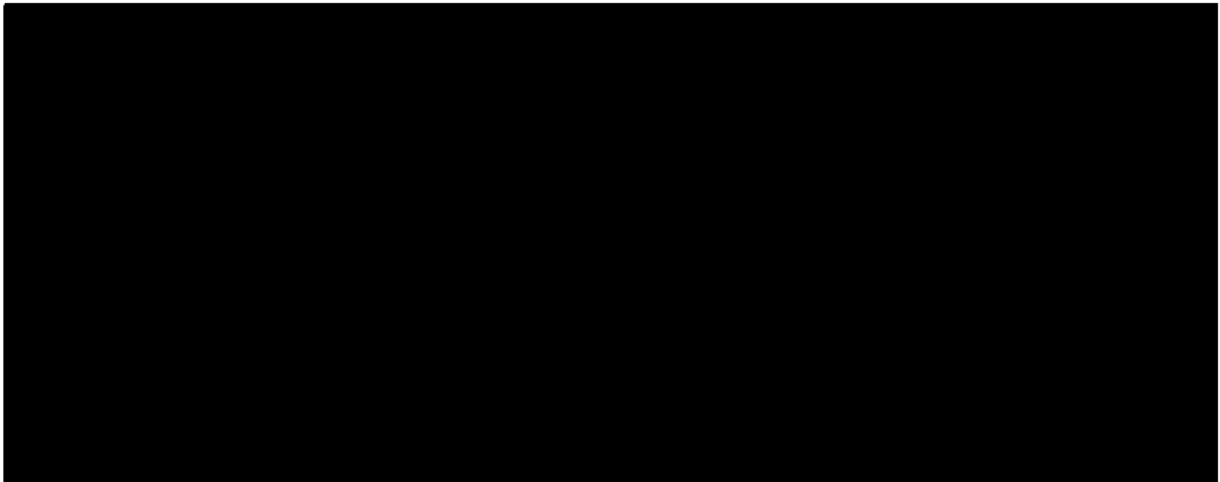
FTRL will sign the attached Title X Lead-Based Paint Disclosure Statement attached as Exhibit D prior to the possession of the Premises.

FTRL further agrees that in its use and occupancy of the Premises, it will comply with Title X and all applicable Federal, State, and local laws relating to lead-based paint; and that the County assumes no liability for damages for personal injury, illness, disability, or death, to FTRL, its successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with lead-based paint on the Premises, whether FTRL, its successors or assigns have properly warned or failed to properly warn the individual(s) injured.

With respect to all portions of the Premises that are not subject to Title X, FTRL acknowledges that lead-based paint may be present in and on facilities and equipment within such areas of the Premises. Furthermore, LBP may have come to be in the soils because of deterioration, maintenance activities, and demolition. Based upon its evaluation of available records, the Air Force has concluded that remedial action under CERCLA is not necessary.

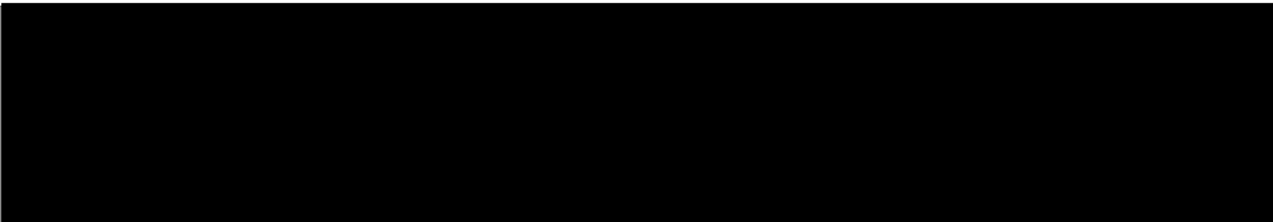
45.7 National Pollutant Discharge Elimination System. FTRL shall comply with all federal and state regulations governing the National Pollutant Discharge Elimination System (NPDES) and applicable sections of the Storm Water NPDES Permit, Groundwater Covenants, FAA Assurances held by the County of Merced including all future amendments of said regulations, procedures and permit as may be adopted or made by federal, state or local agencies.

46. HAZARDOUS WASTE



manufactured, generated, blended, handled, recycled, treated, disposed or used on, under or about the Premises except in compliance with applicable Environmental Laws. As used herein, "Environmental Laws" means any and all federal, state or local environmental, health and safety-related laws, regulations, standards, decisions of courts, ordinances, rules, codes, orders, decrees, directives, guidelines, permits or permit conditions, currently existing and as amended, enacted, issued, or adopted in the future which are or become applicable to FTRL or the Premises.

46.2 Definition of Hazardous Materials. For purposes of this Agreement, the term "Hazardous Materials" means, without limitation, gasoline, petroleum products, explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, polychlorinated biphenyls or related or similar materials, asbestos or any other substance or material as may now or hereafter be defined as a hazardous or toxic substance by any federal, state or local environmental law, ordinance, rule or regulation, including, without limitation, (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act (42 U.S.C. Section 9601, et seq.), (ii) the Federal Water Pollution Control Act (33 U.S.C. Section 1251, et seq.), (iii) the Clean Air Act (42 U.S.C. Section 7401, et seq.), (iv) the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. Section 6902, et seq.), (v) the Toxic Substances Control Act (15 U.S.C. Sections 2601-2629), (vi) the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.), (vii) the Carpenter-Presley-Tanner Hazardous Substance Account Act (CA Health & Safety Code Section 25300, et seq.), (viii) the Hazardous Waste Control Law (CA Health & Safety Code Section 25100, et seq.), (ix) the Porter-Cologne Water Quality Control Act (CA Water Code Section 13000, et seq.), (x) the Safe Drinking Water and Toxic Enforcement Act of 1986, (xi) the Hazardous Materials Release Response Plans and Inventory (CA Health & Safety Code Section 25500, et seq.), (xii) the Air Resources Law (CA Health & Safety Code Section 39000, et seq.), or (xiii) any of the regulations adopted and publications promulgated pursuant to the foregoing.



47. SUBJECT TO AVIGATION EASEMENT

Regardless of any provision in this Agreement, FTRL shall do nothing that in any way interferes with air traffic or air safety on, over, or in the vicinity of the Premises.

County hereby reserves unto itself and its successors and assigns, a perpetual easement in gross for aircraft operation, aircraft sound and noise, aircraft navigation and flight, hazard and air space, (referred to hereinafter collectively as a perpetual, nonexclusive avigation easement) in, to, over and through all air space above the Premises, as particularly described hereinbefore, and on and to the surface of the Premises and on, to and through all structures now existing or hereafter constructed on the Premises, or any portion of the Premises. The County, its administrators, executors, successors and assigns, retain this avigation easement for the use and benefit of the public for the passage of all aircraft ("aircraft" being defined for the purposes of this instrument as any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air) by whomsoever owned and operated, together with the rights to cause in all air space above, and on and to, the surface of FTRL's interest in the Premises (including all structures) such noise, vibrations, fumes, dust, fuel particles and all other effects that may be caused by the operation of aircraft landing at, or taking off from, or operating at or on the Castle Airport; and FTRL, for themselves, and all purchasers, administrators, executors, successors and assigns to the Premises at any time, and in perpetuity, do hereby fully waive, remise and release any right or cause of action which they may now have or which they may otherwise accrue in the future against the County, its successors and assigns, due to such noise, vibrations, fumes, dust, fuel particles and all other effects that may be caused or may have been caused by the operation of aircraft landing, at or taking off from, or operating at or on said Castle Airport. To have and to hold said Avigation Easement and all rights appertaining thereto unto the County, its successors and assigns, it being understood and agreed that these covenants and agreements shall run with the land. This avigation easement is retained for any use by any aircraft, present or future, from or to Castle Airport, including any future change or increase in the boundaries of the airport or air facility, the type or models of aircraft using any such airport or air facility, the volume or nature of operation of the airport or air facility, or the aircraft using such facility or air space in the vicinity of the airport or air facility, or noise or pattern of air traffic thereof. In the event the avigation easement impairs FTRL's planned, current, and/or future use of the Premises for railroad purposes as described in Section 7, or otherwise interferes with the safety of FTRL's railroad operations, FTRL may terminate the Agreement for cause as set forth in Section 21 and County shall pay FTRL the net book value, as computed in

accordance with rail industry standard useful life of assets, for Alterations to the Premises, excluding those Alterations for which construction begins at any time during the final ten (10) years of the Term of this Agreement. Reimbursement for Alterations for which construction begins at any time during the final ten (10) years of the Term of this Agreement shall be as provided for in section 10.2 of this Agreement.

48. FORCE MAJEURE

Neither party shall incur any liability for breach of this Agreement or delay in performance due to circumstances beyond their reasonable control including, but not limited to, the following events (collectively, "Force Majeure Events"): (i) acts of God; (ii) flood, fire, earthquake, explosion, meteor strike, tornados, epidemics, pandemics, or quarantines; (iii) war, invasion, hostilities, terrorist threats or acts, riot or other civil unrest, or cyber-attacks; (iv) government order, law, actions, or restrictions, whether valid or invalid, or embargoes or blockades in effect; (v) national or regional emergency; (vi) shortage of materials, infrastructure, or transportation; (vii) strikes, labor difficulties, slowdowns, unforeseeable shortage of raw or component materials, or other industrial disturbances; and (viii) failure or delay of FTRL's clients, suppliers, or subcontractors due to the above mentioned events. The parties recognize that if any Force Majeure Events occur, the parties may incur additional costs to perform hereunder, including without limitation any costs of financing performance hereunder. In the event that either party incurs additional costs as a result of any Force Majeure Event, it shall provide to the other party reasonable notice of the Force Majeure Event(s) and any requested cost change, and the parties will thereafter negotiate in good faith concerning such requested change. If the parties are unable to reach agreement on any change within thirty (30) days after the notice of a Force Majeure Event, the Conflict Resolution section shall apply.

49. DRUG FREE WORKPLACE

FTRL must certify that it shall provide a drug-free workplace as set forth by the Federal Drug-Free Workplace Act of 1988.

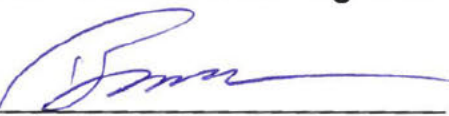
[SIGNATURES ON FOLLOWING PAGE]

County of Merced

Foster Townsend Rail Logistics LLC

By _____

Name

By  _____

Title of Individual

INTERIM PRESIDENT

Title of Individual

Dated

2-1-2022

Dated

APPROVED AS TO LEGAL FORM
MERCED COUNTY COUNSEL

By _____

Dated

EXHIBIT A
Site Map



Exhibit B
Proposed Track Optimizations



Castle Commerce Center
Preliminary Plan for Yard Tracks

Atwater, CA

Exhibit C
Bi-Annual Strategic Rail Plan Template

- Service Standards
 - Operational Safety Goals
 - Injuries - FRA injury frequency ratio per 200,000 man hours at or below American Short Line Railroad Association (ASLRRA) average.
 - Human Factor Train Accidents -- Train accidents per million yard train miles at or below the ASLRRA average.
 - If NPE fails to achieve these safety goals for more than two (2) consecutive years, NPE will be in default.
 - Transportation Service Plans (TSP)
 - Will be reviewed to ensure customer service requirements are being met, e.g., scheduling, days and hours of operation.
 - Bi-Annual Customer Surveys
 - NPE will conduct bi-annual customer surveys—a score of “meets or exceeds all expectations” is expected.
- Asset Standards
 - Track Maintenance
 - NPE will provide Merced with copies of the applicable FRA monthly track inspection records and/or reports.
 - Capital and Operating Maintenance Plan
 - NPE will work with Merced to develop a capital and maintenance plan, which will be updated as needed, and shall be subject to the approval of NPE and Merced.

- Marketing Initiative Standards
 - Bi-Annual Opportunity Report
 - NPE will provide Merced with a volume growth and loss report showing carload changes by customer as well as new customers who began shipments in the previous year.
 - NPE will provide Merced with a confidential list of open and current opportunities that are being pursued for new business growth in the Rail District.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36589

**MERCED COUNTY CENTRAL VALLEY RAILROAD, LLC
— LEASE AND OPERATION EXEMPTION —
TRACK IN MERCED COUNTY, CAL.**

CERTIFICATION AND VERIFICATION

CERTIFICATION AND VERIFICATION

I, John E. Fenton, being duly sworn, state as follows:

1. I am the CEO of Merced County Central Valley Railroad, LLC ("MCCVR"), and I am authorized to make this certification and verification on behalf of MCCVR;
2. I certify that the anticipated annual revenues of MCCVR will not exceed \$5 million annually, and, by extension, will not cause MCCVR to become a Class I or Class II railroad carrier;
3. I also certify that the lease agreement governing the proposed transaction contains no restrictions on interchange with third-party connecting railroads; and
4. I hereby verify that I have read the foregoing notice of exemption, know the contents thereof, and that the same are true as stated to the best of my knowledge, information and belief.

John E Fenton [Signature]
Name (Printed):

Dated: March 14, 2022