

ATTACHMENT A

Settlement Agreement

This Settlement Agreement ("Settlement Agreement") dated September 10, 2007, is entered into, by and between Big Bird Partnership, a California general partnership ("BBP") and Union Pacific Railroad Company, a Delaware corporation, which provides rail transportation service in twenty-three states, including the State of California ("UP"). The aforementioned entities are referred to collectively as the "Parties".

RECITALS

WHEREAS, BBP has filed a complaint with the California Public Utilities Commission ("CPUC"), designated Docket No. C06-10-012 (the "Complaint") seeking an order requiring UP to reestablish a private at-grade crossing of UP's line on the Santa Barbara Subdivision, identified as DOT 745371U, to connect property owned by BBP with other adjacent property of BBP at or near Pismo Beach, San Luis Obispo County, California at milepost 258.89 (the "Private Crossing") pursuant to Public Utilities Code Section 7537;

WHEREAS, the Private Crossing is reasonably necessary or convenient for ingress to or egress from properties owned by BBP and in order to connect such lands with other adjacent lands of BBP and is situated in a manner that will provide optimal site distances for vehicular traffic;

WHEREAS, UP has agreed to reestablish the Private Crossing, as requested by BBP, and UP has, at its own expense, reconstructed, widened, and upgraded the surfaces of the Private Crossing by installing 20-foot wide concrete panels in the portion of the Private Crossing lying between the rails of the tracks and for one (1) foot on the outside of each rail and has furnished and installed private crossing signs at the Private Crossing;

WHEREAS, BBP has, at its own expense, reconstructed and performed grading and fill and basing work to restore and improve the approach and remaining portion of the roadway connecting to the Private Crossing. Additionally, BBP has removed vegetation to clear the sight distances from the Private Crossing and has installed locked gates to secure the roadway approaches from Price Canyon Road;

WHEREAS, UP desires to have a written agreement to cover the maintenance and use of the Private Crossing, and BBP wants assurance that neither UP nor any other railroad or successor in interest will attempt to substantially modify or close the Private Crossing at any future time, without first securing the consent of BBP or BBP's successors or, failing that, without providing sufficient advance notice to BBP or BBP's successors to allow BBP or BBP's successors to pursue all remedies that are available to BBP or BBP's successor in accordance with all applicable laws;

WHEREAS, the Parties desire to work cooperatively to achieve their mutual objectives to improve and promote railroad crossing safety at the Private Crossing and to settle their differences in a manner that would permit the Private Crossing to be reestablished in accordance with the terms set forth in the this Settlement Agreement and subject to the continuing jurisdiction of the CPUC.

NOW THEREFORE, in consideration of the foregoing recitals, the Parties to this Settlement Agreement hereby agree as follows:

1. The Parties agree to settle the Complaint pursuant to the terms and conditions set forth in the Settlement Agreement regarding the Private Crossing, subject to the conditions set forth below:

- a) UP agrees to reestablish the Private Crossing identified as DOT 745371U at Mile Post 258.89 and to recognize BBP's right to pass over and across the rail line of UP via the Private Crossing and associated approaches at the location shown on Exhibit A pursuant to Public Utilities Code Section 7537. UP further agrees to grant BBP a right of entry to remove vegetation and debris from UP's right of way that interferes with BBP's use of the Private Crossing.
- b) BBP agrees that the Private Crossing is to be strictly private and is not intended for use by the general public.
- c) UP shall furnish and install private crossing signs at the Private Crossing in accordance with applicable federal and state requirements, including General Order 75-D. UP shall maintain the private crossing signs in good condition and replace them as needed.
- d) BBP shall construct and maintain and replace as needed the roadway approaches to the Private Crossing and all appurtenant roadway drainage facilities and pavement markings and shall secure the roadway approaches between Price Canyon Road and the Private Crossing with at least one locked gate at such location as BBP may choose;
- e) BBP agrees to notify UP's representative at least 48 hours in advance of commencing any work that is related to the Private Crossing in which any person or equipment will be within 25 feet of any track. Following notification, UP agrees to coordinate with BBP and promptly make all arrangements to provide a Railroad flagman, as necessary, at no cost to BBP. When flagging is requested by BBP for BBP's account unrelated to the Private Crossing, BBP shall reimburse UP for its actual and reasonable hourly charges for the Railroad flagman.

- f) UP, at its own expense, shall maintain the portion of the Private Crossing lying between the rails of the tracks and for one (1) foot on the outside of each rail; BBP, at its own expense, shall maintain the remaining portion of the Private Crossing.
- g) BBP shall, at its own expense, maintain, repair, and replace any of its gates and drainage facilities. BBP shall control vegetation on BBP's property along the right of way on each side of the Private Crossing so that BBP's line of sight to approaching trains is not unreasonably impaired or obstructed by such vegetation.
- h) BBP agrees that it shall promptly notify UP of any change in the character of the Private Crossing or in its use for BBP's residential, recreational, agricultural, farm, and other related purposes, including any plans to subdivide its adjacent property or to develop it in a manner that would significantly increase or affect the use of the crossing; provided, however, that BBP may change or increase its use of the Private Crossing as permitted by law. The parties stipulate that the CPUC shall have continuing jurisdiction over the Private Crossing.
- i) BBP shall maintain road markings on the Private Crossing to notify all vehicles approaching the Private Crossing to stop a safe distance from the tracks before crossing the tracks.
- j) It is understood that UP and other railroads are operating trains over UP's rail line through BBP's property and over the Private Crossing and that UP will be required from time to time to perform maintenance on its railroad and track facilities and to respond to railroad emergencies. UP shall have access over BBP's property from Price Canyon Road over the roadway to the Private Crossing to perform these functions. Both parties shall make reasonable efforts to keep any gates affording access to the Road Crossing closed and locked at all times.

- k) UP agrees that it will not undertake any substantial modification to the Private Crossing, including any relocation of the Private Crossing, unless and until UP has provided at least sixty (60) days advance written notice to BBP, posted a notice on the property, and notified public safety officials, and negotiated in good faith with BBP and obtained BBP's consent concerning the terms and conditions of such modification. UP further agrees that it will negotiate in good faith with BBP concerning the terms and conditions of any modification to the Private Crossing, including any improvements, expansion, or relocation of the Private Crossing, proposed by BBP. In the event the Parties are unable to agree on any proposed modification to the Private Crossing, the Private Crossing will not be modified unless and until the Party proposing the modification applies to the CPUC for authority to modify the Private Crossing and the CPUC issues its order approving the modification.
- l) It is understood that the Private Crossing is not intended to be a temporary crossing. UP agrees that it will not remove the Private Crossing at any future time unless and until UP has provided at least ninety (90) days advance written notice to BBP, posted a notice on the property, and notified public safety officials, and negotiated in good faith with BBP concerning the terms and conditions of such removal and obtained BBP's consent. In the event UP fails to obtain the advance written approval of BBP, the Private Crossing may not be removed by UP except pursuant to a lawful order of the CPUC or other regulatory agency with jurisdiction over the Private Crossing authorizing its removal. BBP does not waive any rights under the deed or by law.
- m) In the event that UP moves, removes, closes or renders impassable the Private Crossing in violation of the terms of this Settlement Agreement, UP shall immediately replace, restore or open the Private Crossing including the approaches at its own expense in a manner that

complies with applicable federal, state and local requirements and is at least equal to in quality and dimension to the existing improvements.

2. UP agrees to pay to BBP the sum of Forty-Five Thousand and no/100 dollars with the understanding that a portion of this sum will be applied to further improvement of the roadway and approaches, including paving, to further reduce the slope of the roadway approaches and improve the sight distances for persons and vehicles passing over the Private Crossing. These monies will be paid immediately upon approval by the CPUC of this Settlement Agreement in a final order, subject to the continuing jurisdiction of the CPUC regarding the Complaint proceeding. For and in consideration of said payment by UP to BBP and conditioned upon performance by UP of consideration set forth in Section 1 herein, the Parties on behalf of themselves, their affiliated companies, successors, assigns, employees, and attorneys agree to fully release the other of and from any and all claims, demands, causes of action, liens, damages and liabilities of any nature whatsoever arising in any way out of the involved Complaint and/or removal of the Private Crossing, as of the time this Settlement Agreement is executed.

3. The Parties acknowledge and agree that they execute this Settlement Agreement in good faith pursuant to Public Utilities Code Section 7537 and that this Settlement Agreement does not constitute surrender of any property rights or relieve either Party of its obligations under other applicable laws or pursuant to deed or conveyance or waiver of any rights or obligations of either party under P. U. Code 7537. Notwithstanding any provision of this Settlement Agreement to the contrary, the Parties hereto stipulate that the CPUC shall have continuing jurisdiction over the Private Crossing to the extent that the laws of the State of California so provide.

4. If any provision or any part of any provision of this Settlement Agreement is for any reason

held to be invalid, unenforceable or contrary to any public policy, law, statute and/or ordinance, the Parties agree to negotiate in good faith to resolve the matter and the remainder of this Settlement Agreement shall not be affected thereby and shall remain valid and fully enforceable.

5. This Settlement Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, successors and assigns. BBP shall not assign this Settlement Agreement, or any interest therein to any purchaser, lessee or other holder of the property served by the Private Crossing, or to any other person, without giving prior written notice to UP, provided however, that BBP may remedy any failure to provide such notice by providing notice to UP as soon as is practicable, and this Settlement Agreement shall not be affected thereby and shall remain valid and fully enforceable.

6. Notices should be sent in writing to the following persons, or to such persons as the Parties may subsequently designate by written notice:

TO BIG BIRD PARTNERSHIP

Big Bird Partnership; Attn: Darren Shetler
445 Green Gate Road
San Luis Obispo, CA 93401
Telephone (805) 549-8100

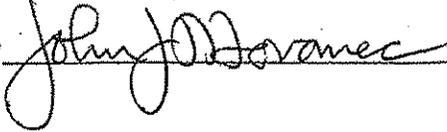
TO UNION PACIFIC RAILROAD

Terrel Anderson
Manager of Industry and Public Projects
Transportation – Western Region
10031 Foothills Boulevard
Roseville, CA 95747
Telephone (916) 789-6334
Fax (916) 780-6333
E-Mail tanderson@up.com

7. This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the undersigned Parties have executed this Settlement Agreement.

UNION PACIFIC RAILROAD COMPANY

By 

BIG BIRD PARTNERSHIP

By _____

Taos Holding Corp.

By Darren Shetler, President

Title: Partner

By _____

Timothy Lewy

Title: Partner

Big Bird Partnership

445 Green Gate Road

San Luis Obispo, CA 93401

IN WITNESS WHEREOF, the undersigned Parties have executed this Settlement Agreement.

UNION PACIFIC RAILROAD COMPANY

By _____

BIG BIRD PARTNERSHIP

By 

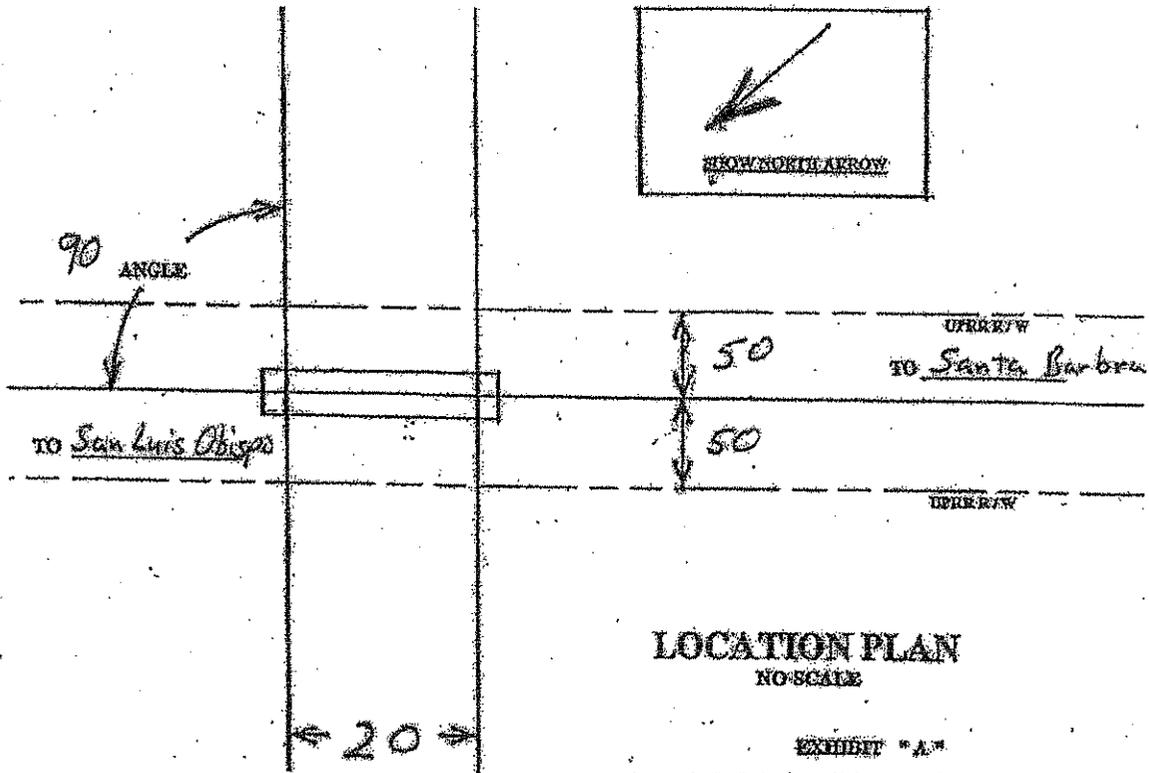
Taos Holding Corp.
By Darren Shetler, President
Title: Partner

By 

Timothy Lewy

Title: Partner
Big Bird Partnership
445 Green Gate Road
San Luis Obispo, CA 93401

EXHIBIT A



LOCATION PLAN
NO SCALE

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY MP 258.89 DOT # 745371U Santa Barbara Sub.
PROPOSED CROSSING FOR Big Bird Partnership Private Crossing
LEGEND RAILROAD OWNED TRACAGE _____ RAILROAD RIGHT OF WAY - - - - -



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