1	BEFORE THE BOARD OF DIRECTORS,
2	PLACER COUNTY AIR POLLUTION CONTROL DISTRICT,
3	STATE OF CALIFORNIA
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5	RESOLUTION NO. 04-21
6	
7	In the matter of: Approve resolution #04-21 endorsing an Agreement between Union
8	Pacific Rail Road Company (UPRR) and the District pertaining to
9	mitigation measures and monitoring for the Roseville Rail Yard and
10	authorizing the Chairman and APCO to sign.
11	
12	The following RESOLUTION was duly passed by the Board of Directors, Placer
13	County Air Pollution Control District, at a regular meeting held December 9, 2004 by
14	the following vote on roll call:
15	
16	Ayes: Hineline, Rockholm, Hill, Nakata, Weygandt, Holmes
17	Blackmun
18	Noes: None
19	
20	Signed and approved by me after its passage.
21	r poil i
22	Chairperson
23	
24	Attest:
25	(Trustent Ampson)
26	Clerk of said Board
27	

1 WHEREAS, the California Air Resources Board (CARB) designated diesel exhaust 2 particulate matter as a Toxic Air Contaminant in August 1998; and 3 4 WHEREAS, in 1999 and early 2000 the District was concerned about the diesel emissions 5 from locomotives at Union Pacific's Roseville Rail Yard and their impact upon public 6 health and requested that CARB conduct a risk assessment; and 7 8 WHEREAS, the risk assessment was undertaken to determine the level of risk to the public from 9 the emissions at the rail yard, to define what the risk meant in comparable terms to other sources 10 of diesel emissions and to ascertain what could be done to reduce the emissions; and 11 12 WHEREAS, the District received the risk assessment from CARB on October 14, 2004 in a 13 report titled Roseville Rail Yard Study which indicated that the diesel particulate matter 14 emissions from the rail yard are widely dispersed over a large area at levels that pose a cancer risk 15 concern; and 16 17 WHEREAS, both Union Pacific Rail Road Company and the District are desirous of reducing 18 those risks 19 IT IS THEREFORE RESOLVED that the Placer County Air Pollution Control District 20 21 Board does approve the Agreement (Exhibit #1) between Union Pacific Rail Road Company 22 (UPRR) and the District pertaining to mitigation measures and monitoring for the Roseville Rail Yard and authorizes the Chairman and APCO to sign. 23 24 25 Exhibit #1: Mitigation and Monitoring Agreement, UPRR and PCAPCD 26 27 28

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WHEREAS

The District, UP and the California Air Resources Board cooperated in preparing an analysis of diesel particulate matter ("DPM") emissions from the J.R. Davis Rail Yard (the "Yard") in Roseville, California;

During the three-year period it took to complete the analysis of DPM emissions from the Yard, UP made substantial efforts to reduce DPM emissions from the Yard, which UP estimates to have resulted in a 15 percent reduction in such emissions;

The results of this study are set forth in a report entitled Roseville Rail Yard Study (dated October 14, 2004) (the "Report"); and

The District and UP have agreed that further reducing DPM emissions from the Yard will lead to an improvement in air quality.

NOW THEREFORE

In consideration of their mutual promises, covenants, and conditions, the parties hereby agree as follows:

1. TIME FOR AGREEMENT

This Agreement shall be in effect for a period of three years from the date entered into, unless earlier terminated pursuant to paragraph 5 hereof.

2. SCOPE OF WORK

A. The Mitigation Plan

UP and the District shall work cooperatively to develop and implement a Mitigation Plan that reflects the following:

- i. UP is committed to the goal of reducing diesel particulate matter ("DPM") emissions from its Roseville operations by at least an additional 10% over the next three years, for a total reduction of at least 25% from the baseline period when data for the Report was collected (1999-2000);
- ii. Specific mitigation measures will be evaluated by UP, working with the District, over the next six months;
- iii. The results of the mitigation measures evaluation will be presented to the District Board and community in April 2005;
- iv. Progress reports towards achieving the emissions reductions specified in section A(i) shall be presented to the District Board and community by the end of calendar years 2005, 2006 and 2007; and
- v. The District will work cooperatively with UP to assist the railroad in obtaining available grants and funding for mitigating emissions.

B. The Grant Program

During the period 2005, 2006 and 2007, UP, in cooperation with the District, shall make grants totaling no less than \$150,000 (\$50,000 per calendar year) to achieve a one-ton DPM emission reduction in the Roseville area. In the event that one or more opportunities to achieve DPM emission reductions is identified in 2005 or 2006, UP may, in its sole discretion, elect not to make the grants at a rate of \$50,000 per year, but instead to grant a greater proportion of the \$150,000 total in such year(s). Grants for each year shall be made no later than the end of the calendar year.

C.

The Monitoring Plan

UP and the District shall work cooperatively to develop and implement a Monitoring Plan that reflects the following:

- i. The District shall work cooperatively with UP to identify the goals of a monitoring program for diesel exhaust from the Yard;
- ii. UP and the District shall work cooperatively to arrange for necessary access to UP property to facilitate implementation of a monitoring program for diesel exhaust from the Yard;
- iii. UP shall provide technical assistance to the District in the design and implementation of a monitoring program for diesel exhaust from the Yard; and
- iv. UP shall provide financial assistance to the District in the design and implementation of a monitoring program for DPM from the Yard; the amount of this assistance will be not less than \$100,000, and may, in UP's sole discretion, be more depending on the cost of such a program.

Design of the Monitoring Plan shall commence no later than December 31, 2004, with an implementation date and monitoring timeframe to be determined as elements of that Plan.

3. CONFIDENTIAL BUSINESS INFORMATION

UP may, from time to time, provide the District with confidential business information in performing its obligations under this Agreement, and the District may from time to time comment upon or analyze such submissions. This exchange of information is not intended to be, nor shall it be construed as, a waiver of any properly asserted claim of trade secret or confidential business information, which claims shall be governed by the California Public Records Act, Government Code section 6250 et seq.

4. AUTHORITY NOT AFFECTED

Each of the parties recognizes that Union Pacific Railroad is federally regulated and that some or all of the District's authority to regulate the railroad may

be preempted. Nothing in this Agreement is intended to affect the scope of such preemption or the District's residual regulatory authority.

5. TERMINATION

- A. Breach of Agreement: Either the District or UP may immediately suspend or terminate this Agreement, in whole or in part, where in the determination of one of the parties there is:
 - i. An illegal or improper use of funds;
 - ii. A failure to comply with any material term of this Agreement;
 - iii. A substantially incorrect or incomplete report submitted by UP to the District; or
 - iv. Improperly performed services.

In the event either UP or the District determines that one or more of the above conditions exists, the other party shall be allowed reasonable time to cure.

UP and the District each waive any claims they may have against each other, and their respective officers, agents, employees or volunteers from damage or loss caused by any suit or proceeding directly or indirectly attacking the validity of this Agreement, or any part of this Agreement and any judgment or award declaring this Agreement either void or voidable, or delaying the performance of any part of this Agreement.

Waiver by any party of any default, breach or condition precedent will not be constructed as waiver of any other default, breach or condition precedent or any other right under this Agreement.

B. Without Cause: Either party may terminate this Agreement at any time without cause upon giving the other party at least thirty (30) days' advance written notice of intention to terminate.

6. MODIFICATION

No alteration, variations or modifications of the terms of this Agreement is valid unless made in writing and signed by all of the parties.

7. NON-ASSIGNMENT

No party shall assign, transfer, or subcontract this Agreement, nor its respective rights or duties under this Agreement, without the prior express, written consent of the other party. Each party may employ consultants to assist it in performing hereunder, and the use of such consultants shall not be considered an assignment.

8. NOTICES

The persons and their addresses having authority to give and receive notices under this Agreement are as follows:

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UNION PACIFIC

Union Pacific Railroad Company

c/o David P. Young, Esq.

808 Travis Street, Suite 620

15 Houston, TX 77002

16 With a copy to

17 | Michael J. Steel

18 | Pillsbury Winthrop LLP

19 P.O. Box 7880

San Francisco, CA 94120

Any and all notices between the District and UP provided for or permitted under this Agreement or by law shall be in writing and shall be deemed duly served when personally delivered to one of the parties, or in lieu of such personal service, when deposited in the United States mail, postage prepared, addressed to such party.

9. CONFLICT OF INTEREST

No officer, employee, or agent of the District who exercises any function or responsibility for planning and carrying out the services provided under this

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DISTRICT

Thomas J. Christofk

Placer County Air Pollution Control

District

11464 B Avenue

Auburn, CA 95603

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Agreement shall have any direct or indirect personal financial interest in this Agreement. UP shall comply with all federal and state conflict of interest laws, statutes, and regulations, which shall be applicable to all parties and beneficiaries under this Agreement and any officer, agent, or employee of the District.

10. GOVERNING LAW

This Agreement shall be governed in all respects by the laws of the State of California. Venue for any action arising out of this Agreement shall only be in Placer County, California.

11. BINDING ON SUCCESSORS

This Agreement, including all covenants and conditions contained herein, shall be binding upon and inure to the benefit of the parties, including their respective successors-in-interest, approved assigns, and legal representatives.

12. NO THIRD-PARTY BENEFICIARIES

Notwithstanding anything else stated to the contrary herein, it is understood that UP's obligations under this Agreement are being rendered only for the benefit of the District, and no other person, firm, corporation, or entity shall be deemed an intended third-party beneficiary of this Agreement. No person other than the District or UP may seek to enforce the terms of this Agreement either directly or indirectly.

13. SEVERABILITY

In the event that any one or more of the provisions contained in this

Agreement shall for any reason be held to be unenforceable in any respect by a court
of competent jurisdiction, such holding shall not affect any other provisions of this

Agreement, and the Agreement shall then be construed as if such unenforceable
provisions are not a part hereof.

14. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between UP and the District with respect to the subject matter hereof and supersedes all previous

1		advanticements publications and				
1	negotiations, proposals, commitments, writings, advertisements, publications, and					
2	understandings of any nature whatsoever u	nless expressly included in this				
3	Agreement.					
4	IN WITNESS WHEREOF, the	parties hereto have caused this Agreement				
5	to be executed as of the day and year first I	nereinabove written.				
6						
7	UNION PACIFIC	DISTRICT				
8	Union Pacific Railroad Company, Inc.	Placer County Air Pollution Control				
9		District				
10						
11	·	Challe				
12	By RM Coninaila	By Chronical By				
13	By RM Coninaila [title] SR.AVP Safety + Environment	Kent Nakata, Chair				
14	·	Governing Board				
15						
15 16	Approved as to legal form:	Approved as to legal form:				
	Approved as to legal form: Pillsbury Winthrop LLP	Approved as to legal form: Placer County Air Pollution Control				
16						
16 17		Placer County Air Pollution Control District				
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16 17 18 19 20	Pillsbury Winthrop LLP	Placer County Air Pollution Control District Jaluatood				
16 17 18 19 20 21	Pillsbury Winthrop LLP	Placer County Air Pollution Control District District Counsel				
16 17 18 19 20 21 22	Pillsbury Winthrop LLP	Placer County Air Pollution Control District District Counsel Recommended for approval:				
16 17 18 19 20 21 22 23	Pillsbury Winthrop LLP	Placer County Air Pollution Control District District Counsel Recommended for approval: Placer County Air Pollution Control				
16 17 18 19 20 21 22 23 24	Pillsbury Winthrop LLP	Placer County Air Pollution Control District District Counsel Recommended for approval: Placer County Air Pollution Control				
16 17 18 19 20 21 22 23 24 25	Pillsbury Winthrop LLP	Placer County Air Pollution Control District District Counsel Recommended for approval: Placer County Air Pollution Control				