

UPRR Audit No. _____
UPRR Folder No. _____

(Execution Copy)

**SETTLEMENT AGREEMENT
RELATED TO MAINTENANCE AND OPERATION CHARGES
ARISING UNDER THE TRACKAGE RIGHTS AGREEMENT**

This Settlement Agreement Related to Maintenance and Operation Charges Arising Under the Trackage Rights Agreement is made this 6th day of January, 2017, between Union Pacific Railroad Company, a Delaware corporation (“UPRR”), and the Peninsula Corridor Joint Powers Board, a joint powers agency (“JPB”), with respect to the following recitals:

RECITALS

A. UPRR owns, operates, maintains, and dispatches a significant network of critical freight rail routes in California that also host both intercity and commuter passenger rail service. UPRR operates on its own rights of way and under agreement on rights of way owned by other entities.

B. The JPB is a joint powers agency consisting of agencies from San Francisco County, San Mateo County, and Santa Clara County. The JPB operates a commuter railroad service known as Caltrain between San Francisco and Gilroy, California. The JPB acquired the rights to operate Caltrain service on this route through a series of agreements with Southern Pacific Transportation Company (“SPTC”) beginning in 1991. Under those agreements, the JPB owns the railroad rights of way commonly known as the Peninsula Main Line and Santa Clara/Lick Line, collectively extending from San Francisco (Milepost 0.147 under the Trackage Rights Agreement between JPB and SPTC, now identified by JPB as Milepost 0.00) south to CP Lick (now identified as JPB Milepost 50.94 and UPRR Milepost 51.64). SPTC retained a freight operating easement and intercity passenger rights on the Peninsula Main Line and Santa Clara/Lick Line, as well as the ownership of one mainline track on the Santa Clara/Lick Line between CP Coast (now identified as JPB Milepost 43.93 and UPRR Milepost 44.7) and CP Lick.

C. UPRR became the successor-in-interest to SPTC through a merger in 1996. The respective rights and obligations of JPB and UPRR (as successor-in-interest to SPTC) with respect to the Peninsula Main Line and Santa Clara/Lick Line are governed by and

memorialized in that certain Trackage Rights Agreement – Peninsula Main Line and Santa Clara/Lick Line, dated December 20, 1991 ("**1991 TRA**").

D. The 1991 TRA assigns certain rights and obligations to the parties with respect to the performance of ordinary maintenance, capitalized maintenance, dispatching and operations on the Peninsula Main Line and Santa Clara/Lick Line ("**M&O Activities**"), as well as with respect to payment for such activities. A dispute has arisen between the parties regarding the amount of payment due from UP to JPB for the M&O Activities. Specifically, UPRR claims that JPB has substantially over-charged for M&O Activities and, as a result, that UPRR has paid more to JPB than properly due under the 1991 TRA. JPB disputes UPRR's claims, and JPB contends that UPRR has underpaid the charges due to JPB under the 1991 TRA. The respective claims of UPRR and JPB referenced in this Recital are collectively referred to in this agreement as "**the M&O Dispute.**"

E. The parties have recently approved the initiation of a selection process for a third-party short line operator ("**Short Line**") to operate freight rail service between San Francisco and CP Coast ("**Short-Lined Corridor**"), pursuant to an anticipated transaction whereby UPRR would transfer to JPB the common carrier rights and responsibilities on the Short-Line Corridor, subject to approval of the Surface Transportation Board, and the JPB would enter into a Trackage Rights and Operations and Maintenance Agreement ("**TROMA**") with the Short Line for operation of freight rail service on the Short-Lined Corridor. The anticipated transaction is described more fully in the Deal Terms Sheet Related to Transfer of Rights and Responsibilities on Peninsula Corridor and Issues Associated with the Peninsula Corridor Electrification Project, dated December 5, 2016 ("**Deal Terms Sheet**"). UPRR will continue as the exclusive operator of freight service between CP Coast and CP Lick ("**South Terminal Area**").

F. UPRR and JPB desire to resolve the M&O Dispute by agreeing to withdraw and release their monetary claims with respect to M&O Activities under the 1991 TRA, in consideration of (i) a lump-sum payment by UPRR to JPB for M&O Activities performed through the end of Fiscal Year 2016, and (ii) the parties' agreement to a flat fee payable by UPRR to JPB for such activities from Fiscal Year 2017 onward. in each case as more specifically described hereafter.

AGREEMENT

Now, therefore, the parties agree as follows:

Section 1. Incorporation of Recitals.

The recitals set forth above are hereby incorporated into the terms of this agreement.

Section 2. Payment for M&O Activities Through End of Fiscal Year 2016.

By no later than January 6, 2017, JPB will invoice UPRR, and within 30 days thereafter UPRR will pay to JPB, (i) \$707,947.00 for maintenance of Designated Freight Trackage (as defined under the 1991 TRA) through the end of Fiscal Year 2016 (June 30, 2016), and (ii) \$350,000 as the Annual Fee (as defined in Section 3 below) for Fiscal Year 2016, which amounts JPB will accept as payment in full for all M&O Activities performed by JPB through the end of Fiscal Year 2016.

Section 3. Payment for M&O Activities for Fiscal Year 2017 Onward.

3.1 The parties agree that, effective as of July 1, 2015, UPRR's payment obligations for M&O Activities under the 1991 TRA are modified to consist of a flat fee of \$350,000 per year ("**Annual Fee**"), plus 100% of the cost of JPB's maintenance of Designated Freight Trackage (as defined under the 1991 TRA) for Fiscal Year 2017 (starting July 1, 2016) and later. The Annual Fee for Fiscal Year 2016 will be paid by UP to JPB as set forth in Section 2 above. For Fiscal Year 2017, JPB will invoice the installments due for July 2016 through January 2017 in a single invoice issued by no later than January 6, 2017, and JPB will invoice subsequent installments on a monthly basis. For subsequent fiscal years, JPB will invoice the Annual Fee in equal monthly installments. UP will issue payments to JPB within 30 days of receipt of JPB invoices of the Annual Fee.

3.2 As respects costs and expenses for the maintenance of Designated Freight Trackage during Fiscal Year 2017, JPB will provide evidence of freight trackage work completed during the period from July 1, 2016 through November 30, 2016 together with a single invoice covering that period by no later than January 31, 2017. Billings for the remainder of Fiscal Year 2017 will be submitted to UP by JPB on a monthly basis. UP will issue payment for all undisputed items within 45 days following receipt of said

invoices. If UP disagrees as to any amounts contained therein, the dispute will be resolved pursuant to the provisions contained in Section 7 of the 1991 TRA.

3.3 As respects Designated Freight Trackage maintenance to be performed by JPB during Fiscal Year 2018 and subsequent fiscal years, the following process will apply: No later than March 31 of each year, JPB will provide UPRR with a written estimated budget for costs and expenses for the maintenance of Designated Freight Trackage for the next-succeeding Fiscal Year ("**Budget**"). JPB may also submit to UPRR written proposed amendments, supplements or adjustments from time to time after submission of the initial estimated Budget. Such initial estimated Budget, and any amendments, supplements and adjustments will be subject to the written consent of UPRR which will not be unreasonably withheld, conditioned or delayed. JPB, during the next succeeding Fiscal Year, will bill UPRR monthly the actual costs for maintenance of Designated Freight Trackage pursuant to Section 11.3 of the 1991 TRA. If the parties are in disagreement as to any amounts claimed for maintenance, the dispute will be resolved pursuant to the provisions contained in Section 7 of the 1991 TRA.

3.4 As respects invoices from JPB for any other items of cost or expense for which UPRR is responsible, UPRR will issue payment for all undisputed items within 45 days following receipt of an invoice.

Section 4. Anticipated Future Reduction of Charges for M&O Activities.

On or before the effective date of the TROMA by which a Short Line contracts to provide freight service in the Short-Lined Corridor, JPB and UP will enter into a new trackage rights agreement that, on a basis to be negotiated by the parties, reduces the Annual Fee due from UPRR for M&O Activities because, once the TROMA goes into effect, such activities would thereafter be provided by JPB to UPRR in the South Terminal Area only. Upon effectiveness of the TROMA, UPRR will no longer have responsibility to JPB for payment of any costs and expenses associated with maintenance on Designated Freight Trackage in the Short-Lined Corridor.

Section 5. Mutual Release of Claims.

Subject to the parties' agreement to and performance of their respective obligations under Section 2 and Section 3 of this agreement, the parties hereby fully release and hold harmless each other, including any of their respective officers, employees, directors, shareholders, agents, representatives, affiliates, subsidiaries, successors and assigns, from any and all claims of any kind that were or could have

been asserted by or against the other party pertaining to the M&O Activities performed, or to be performed, through the end of Fiscal Year 2016.

Section 6. Waiver of Civil Code Section 1542 Rights.

The parties, and each of them, hereby warrant, represent and agree that each of them is fully aware of the provisions of California Civil Code Section 1542, and the parties acknowledge and agree that they give up their rights, if any, under the provisions of Section 1542 of the California Civil Code, which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor." The parties understand, and their attorneys have explained, the importance, meaning and legal effect of this code section and this entire settlement agreement. The parties, and each of them, hereby expressly waive to the fullest extent permissible under the law the foregoing provisions of Section 1542 of the California Civil Code, and any and all rights which they, or any of them, may have under those provisions, either now or in the future.

Section 7. Other Agreements.

If there are conflicts between this agreement and the terms of any prior agreement, including but not limited to the Deal Terms Sheet or the 1991 TRA, the terms of this agreement will prevail.

Section 8. Miscellaneous.

8.1 Governing Law. Except on subjects preempted by federal law, this agreement will be governed by and construed in accordance with the laws of the State of California. Nothing herein is meant to be or will be interpreted to be a waiver of principles of legal preemption or preclusion that may apply to UPRR or JPB because of their status as common carriers regulated by the federal government.

8.2 Attorneys' Fees. In the event of any litigation involving the parties to enforce any provision of this agreement, to enforce any remedy available upon default under this agreement, or to seek a declaration of the rights of either party under this agreement, the prevailing party will be entitled to recover from the other party such attorneys' fees and costs (including the costs of experts and consultants) as may be reasonably incurred. The provisions of this Section will survive the entry of any judgment, and will not merge, or be deemed to have merged, into any judgment.

8.3 Severability. If any provision of this agreement, or the application of a provision to any person, place, or circumstance, is held by a court of competent jurisdiction to be

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invalid, void, or otherwise unenforceable, such provision will be enforced to the maximum extent possible so as to effect the intent of the parties; or, if incapable of such enforcement or unable to achieve the intent of the parties, will be deemed to be deleted, and the remainder of this agreement and such provisions as applied to other persons, places, and circumstances will remain in full force and effect. In such an event, the parties agree to negotiate an amendment to replace or modify any invalid or illegal or unenforceable provision and related provisions with valid, legal, and enforceable provisions that most closely and reasonably approximate the intent and economic effect of the invalid, illegal, or unenforceable provision.

8.4 Interpretation. The section and paragraph headings in this agreement are for convenience only and will not be used for any purpose in the interpretation of this agreement. When the context requires, the plural will include the singular and the singular the plural. References to agreements or contracts are to such agreement or contract as may be amended, restated, or otherwise modified from time to time. The words "include," "includes," and "including" are used without limitation and are deemed to be followed by the phrase "without limitation."

8.5 Amendments. This agreement may only be modified or changed by written amendment signed by authorized representatives of the parties.

8.6 Relationship of the Parties. Each party is and will at all times be and remain independent from the other party and will not be deemed an agent, fiduciary, partner, joint-venturer, employee, or employer of the other party. Nothing contained herein will have the effect of creating a trust, joint venture, partnership, or employment relationship between the parties. Neither party has any right or power to obligate or bind the other party in any manner whatsoever.

8.7 Assignment. Except as provided in this Section, this agreement and any rights and obligations created by it may not be assigned in whole or in part by either party without the prior written consent of the other party. This agreement may be assigned by a party without the prior written consent of the other party only (a) as a result of a merger or corporate reorganization, consolidation, change of control, or sale of substantially all of its assets; (b) to an affiliate of the assigning party, where the term "affiliate" means a corporation, partnership, or other entity controlled, controlling, or under common control with the assigning party; or (c) with respect to any public entity, the transfer of the responsibilities, duties, authority, rights, and obligations of such public entity to another public entity to which such responsibilities, duties, authority, rights, and obligations have been transferred by operation of law. In the event of an assignment, this agreement will be binding upon and inure to the benefit of each of the transferees, successors, and assigns.

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8.8 Waivers. Any waiver, modification, consent, or acquiescence with respect to any provision of this agreement must be set forth in writing and duly executed by or on behalf of the party to be bound by it. No waiver by either party of any breach will be deemed a waiver of any other or subsequent breach.

8.9 Notices and Transmittal of Invoices. Except for the transmittal of invoices referenced in Section 3, any communication, notice, or demand of any kind which either party may be required or may desire to give to or serve upon the other must be in writing and delivered by personal service (including express or courier service) or by registered or certified mail, postage prepaid, return receipt requested, or by a nationally recognized overnight delivery service, in each case addressed as follows:

UPRR: Union Pacific Railroad Company
Attn: Clint Schelbitzki
General Director Business & Network Development
10031 Foothills Blvd.
Roseville, CA 95747
Telephone: (916) 789-6360

With a copy to:

David M. Pickett
Law Department
Union Pacific Railroad Company
10031 Foothills Blvd.
Roseville, CA 95747
Telephone: (916) 789-6400

JPB: Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
P.O. Box 3006
San Carlos, CA 94070-1306
Attn: Chief Executive Officer

With a copy to:

Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, CA 94105
Attn.: Joan L. Cassman

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Any such communication, notice, or demand will be deemed to have been duly given or served on the date personally served, if by personal service; three (3) days after being placed in the U.S. Mail, if mailed; or one (1) day after being delivered to an overnight delivery service, if sent by overnight delivery.

As to the transmittal of invoices referenced in Section 3, such invoices must be in writing and delivered by email to jointfacility@up.com, with a copy sent to Michelle Martinson at mmartinson@up.com.

Without requiring an amendment to this agreement, either party may change its address for notice (or transmittal of invoices) by written notice given to the other party in the manner provided in this Section.

8.10 No Third-Party Beneficiaries. This agreement is for the exclusive benefit of the parties to it and not for the benefit of any third party.

8.11 Authority and Binding Effect. Each individual executing this agreement affirms that he or she has the capacity set forth on the signature pages and has full power and authority to execute this agreement and, through his or her execution, bind the party on whose behalf he or she is executing the agreement.

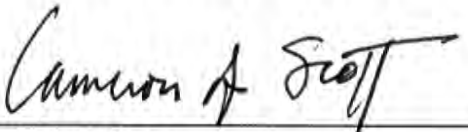
8.12 Counterparts. This agreement may be signed in counterparts, each of which will be deemed an original but all of which will together constitute one and the same instrument.

[Signatures on next page]


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The parties have executed this agreement effective on the date first written above.

UNION PACIFIC RAILROAD COMPANY

By: 
Cameron Scott
Executive Vice President and
Chief Operating Officer
Union Pacific Railroad Company


Approved as to form:

By: 
David M. Pickett
Senior General Attorney
Union Pacific Railroad Company

PENINSULA CORRIDOR JOINT POWERS BOARD

By: 
Jim Hartnett
Chief Executive Officer
Peninsula Corridor Joint Powers Board

Approved as to form:

By: 
Joan L. Cassman
General Counsel