

(Execution Copy)

**AGREEMENT RELATED TO POSITIVE TRAIN CONTROL INTEROPERABILITY IN
THE SAN FRANCISCO/GILROY CORRIDOR**

This Agreement Related to Positive Train Control Interoperability in the SF/Gilroy Corridor (as hereafter defined) is made this 5th day of December, 2016 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. 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. The JPB acquired rights to operate commuter rail service between CP Lick (now identified as JPB Milepost 50.94 and UPRR Milepost 51.64) and Gilroy (now identified as Milepost 77.0) (the “**Lick/Gilroy Line**”) but did not acquire ownership of the right of way or tracks on the Lick/Gilroy Line. The Peninsula Main Line, the Santa Clara/Lick Line, and the Lick/Gilroy Line are referred to collectively as the “**SF/Gilroy Corridor.**”

B. 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.

C. UPRR became the successor-in-interest to SPTC through a merger in 1996. Since that time, UPRR has continued to operate freight rail service and the JPB has continued to operate Caltrain commuter rail service on the routes described in Recital A. The National Passenger Railroad Corporation (“**Amtrak**”), the Capitol Corridor Joint Powers Authority (“**Capitol Corridor**”), and San Joaquin Regional Railroad Commission (“**SJRRRC**”) also operate passenger service on portions of these routes.

D. Following a commuter railroad accident in Chatsworth, California on September 12, 2008, Congress passed the Rail Safety Improvement Act of 2008 (the “**2008 Act**”). Among other things, the Act requires the implementation of positive train control (“**PTC**”) on all railroad routes that meet certain criteria. PTC uses communication-based/processor-based train control technology to prevent train-to-train collisions, overspeed events, incursions into established work zone limits, and incorrect movements of a train through a switch. The 2008 Act required PTC implementation by December 31, 2015. By later legislation known as the PTC Enforcement and Implementation Act of 2015 (the “**2015 Act**”), Congress extended the deadline for PTC compliance to December 31, 2018. 49 U.S.C. 20157(a). The 2015 Act provides a path for a railroad to request up to two additional years beyond December 31, 2018 to achieve PTC implementation. 49 U.S.C. 20157(a)(2)(B).

E. The 2008 Act, the 2015 Act, and their implementing regulations require interoperability between PTC systems on host railroads and equipment operated by other railroads on host lines. UPRR has adopted a PTC system known as I-ETMS for use on its lines. Amtrak, Capitol Corridor, and SJRRRC have each also adopted I-ETMS as their PTC system. The JPB has adopted a PTC system known as CBOSS, which may not be fully interoperable with I-ETMS. As of the date of this agreement, PTC would not be required on the Lick/Gilroy Line but for Caltrain’s passenger operations.

F. The parties have negotiated and executed a term sheet for a transaction that involves the establishment or transfer of certain rights and responsibilities between the parties in connection with the SF/Gilroy Corridor, together with certain related commitments as more specifically set forth in the term sheet, dated October 21, 2016 (“**Term Sheet**”), including JPB’s commitment to the terms under which PTC interoperability will be achieved in the SF/Gilroy Corridor.

G. The parties now enter this agreement to describe the terms under which PTC interoperability will be achieved in the SF/Gilroy Corridor.

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. PTC Interoperability

2.1 JPB commits to comply with interoperability requirements of the Rail Safety Improvement Act of 2008, as amended by the Positive Train Control Enforcement and Implementation Act of 2015 as applied to the respective operations of JPB and UPRR on track owned or dispatched by JPB from San Francisco to CP Lick ("**SF/Lick Corridor**") and the UPRR-owned Lick/Gilroy Line.

2.2 Passenger Trains Operating South of CP Lick. JPB will implement, at JPB's sole cost, by December 31, 2018, or alternatively no later than December 31, 2019 if authorized by applicable law or regulation, a Wabtec I-ETMS® positive train control solution for any JPB trains operating on UPRR-owned track south of CP Lick, which PTC solution complies with applicable law and the Association of American Railroads Positive Train Control Interchange Agreement for ITC PTC systems ("**AAR-PTC Interchange Agreement**"). Notwithstanding the terms of any other agreement, if the JPB does not meet this deadline, the JPB will suspend operations on the Lick/Gilroy Line until such time that the JPB has implemented a PTC solution that meets the requirements of this paragraph. JPB will continuously comply with the AAR-PTC Interchange Agreement and AAR Positive Train Control Standards for ITC Positive Train Control Systems ("**AAR-PTC Standards**"), as updated from time to time, as well as UPRR operating rules.

2.3 Interoperability on SF/Lick Corridor. Throughout the SF/Lick Corridor, JPB will continuously comply with the AAR-PTC Interchange Agreement and AAR-PTC Standards, as updated from time to time. JPB will achieve interoperability and maintain it at all times with the trains and operations of UPRR, including UPRR's tenant railroads, without constraint on the capacity, speed or other normal operations of UPRR or UPRR's tenants ("**Unconstrained Interoperability**"). In the event JPB fails to achieve or maintain Unconstrained Interoperability at any time or in any location on JPB's network, JPB will exercise best efforts to restore such interoperability immediately; further provided that all steps by JPB to restore Unconstrained Interoperability must be acceptable to UPRR and UPRR's tenants, and approved in advance by UPRR.

Section 3. Other Agreements.

This agreement is not intended to amend the terms of any other agreement between the parties. If there are conflicts between this agreement and the terms of any prior agreement, including but not limited to the Term Sheet, the terms of this agreement will prevail.

Section 4. Miscellaneous.

4.1 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.

4.2 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.

4.3 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 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.

4.4 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.” Notwithstanding specific references to “good faith,” the duty of good faith and fair dealing applies generally with respect to this agreement, except where the context requires otherwise.

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

4.6 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.

4.7 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.

4.8 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.

4.9 Notices. Any communication, notice, or demand of any kind whatsoever 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

Agreement Related to PTC Interoperability
in the SF/Gilroy Corridor

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: Executive Director

With a copy to:

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

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

4.10 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.

4.11 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.

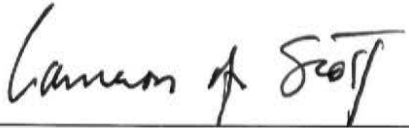
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4.12 Counterparts. This agreement may be signed in counterparts, each of which will be deemed an original but all of which will together constitute one and the same instrument.

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

UNION PACIFIC RAILROAD COMPANY


PENINSULA CORRIDOR JOINT POWERS BOARD


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

By: 
Jim Hartnett
Executive Director
Peninsula Corridor Joint Powers Board

Approved as to form:

Approved as to form:

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

By: 
Joan L. Cassman
General Counsel