

Deal Terms Sheet
Re: Transfer of Rights and Responsibilities on Peninsula Corridor,
And Issues Associated with Corridor Electrification Project

UPRR Audit No. _____
UPRR Folder No. _____

(Execution Copy)

**DEAL TERMS SHEET RELATED TO
TRANSFER OF RIGHTS AND RESPONSIBILITIES ON PENINSULA CORRIDOR AND
ISSUES ASSOCIATED WITH THE PENINSULA CORRIDOR ELECTRIFICATION PROJECT**

The Peninsula Corridor Joint Powers Board ("JPB") proposes to Union Pacific Railroad Company ("UP"; collectively with JPB, "the parties") that the parties sign this binding Deal Terms Sheet, dated December 5, 2016, by which the parties make certain initial commitments to each other during Phase 1, and establish the terms of a process (Phase 2 through 3) to proceed with a transaction transferring rights and responsibilities on the peninsula corridor between San Francisco (MP 0.147 under the parties' 1991 Trackage Rights Agreement ("1991 TRA"); now known as JPB MP 0.00) and CP Coast (MP 44.0 under the parties' 1991 TRA; now known as JPB MP 44.7) ("Right of Way"), together with certain related commitments as more specifically set forth below (collectively, "the Transaction").

In the interest of expediting final closing of the entire, multi-phase Transaction, upon full execution of the Deal Terms Sheet, (a) the selection process to obtain a short line operator for the Right of Way may proceed, and (b) the documents necessary to formalize the entire, multi-phase Transaction will be prepared.

1. Phase 1 Process and Terms: Initiation of selection process for third-party short line railroad operator, drafting Transaction documents, and initial commitments.

Upon approval by both parties of the Deal Terms Sheet, the below process will be initiated and followed:

- 1.1 UP will initiate a process for selecting a third-party short line railroad operator ("Short Line") to operate freight rail service on the Right of Way.
- 1.2 Concurrent with that process, the parties will commence drafting the following documents for purposes of formalizing the anticipated global Transaction:
 - 1.2.1 Form of UP approval for JPB's proposed reconfiguration of South San Francisco passenger station, including JPB's commitment to pay UP (a) for replacement interchange trackage at Newhall, and (b) for UP's loss of the existing team track and loading dock at South San Francisco Yard ("South San Francisco Agreement").
 - 1.2.2 Settlement agreement for disputes arising under 1991 TRA regarding capitalized maintenance charges, as well as operation and maintenance charges ("Settlement Agreement").

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- 1.2.3 Transfer agreement to transfer UP's common carrier rights and responsibilities in the Right of Way to JPB ("Transfer Agreement").
- 1.2.4 New trackage rights agreement between the parties to govern from CP Coast to CP Lick ("South Terminal Area").
- 1.3 As a result of approval by both parties of the Deal Terms Sheet, the following commitments will become operative immediately:
 - 1.3.1 As set forth in an Agreement Related to Positive Train Control Interoperability in the San Francisco/Gilroy Corridor ("PTC Agreement") to be executed concurrently with this Deal Terms Sheet, 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 UP from San Francisco to CP Lick and on the UP-owned Lick-Gilroy Line. 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 UP-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.
 - 1.3.2 As further set forth in the PTC Agreement, throughout the rail network owned or dispatched by JPB between San Francisco and CP Lick, 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 UP, including UP's tenant railroads, without constraint on the capacity, speed or other normal operations of UP or UP's tenants ("Unconstrained Interoperability"). In the event JPB fails to achieve or maintain Unconstrained Interoperability at any time or in any location on the rail network dispatched by JPB between San Francisco and CP Lick, 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 UP and UP's tenants, and approved in advance by UP.
 - 1.3.3 JPB commits not to electrify Main Track ("MT") 1 and, except in case of Emergency or as necessary for Track Work Requiring Outages (as that term and phrase are defined herein), JPB will cease use of MT 1 between CP Coast and CP Lick by diesel-powered JPB trains. Notwithstanding

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the foregoing, JPB will be allowed to use that portion of MT 1 situated between the Diridon Station and CP Lick to accommodate passenger revenue and non-revenue moves by diesel-powered trains, provided such use does not unreasonably interfere with UP's freight and UP's tenant operations. For purposes of this Transaction, the term "Emergency" will mean accidents, train breakdowns, unplanned rail infrastructure repairs or replacements that are urgently needed to maintain or restore rail service, and similar events beyond the control of the parties that cause a main track to be temporarily out of service, and the phrase "Track Work Requiring Outages" will mean rail infrastructure work such as rail replacement, undercutting, mechanized tie replacement and similar projects that have work durations longer than can be reasonably achieved in one or more overnight work windows.

- 1.3.4 As set forth in an Agreement on Electrification ("Electrification Agreement") to be executed concurrently with this Deal Terms Sheet, JPB commits to prevent or mitigate the impacts of the Caltrain Electrification project on UP, as well as to defend, indemnify and hold harmless UP from adverse impacts arising from the Caltrain Electrification project. UP will not file an opposition in response to the Caltrain Electrification Requirements attached to CPUC Resolution SED-2, dated November 10, 2016. Except as expressly stated herein, UP does not waive or limit its ability to participate in any formal or informal proceedings before the CPUC related to the Caltrain Electrification project.
- 1.3.5 The tolling agreement between the parties, originally dated January 27, 2015, as amended from time to time thereafter ("Tolling Agreement"), will remain in place as it pertains to the Caltrain Electrification project and will be extended through completion of Phase 3 below.
- 1.4 The parties intend that, by November 30, 2016, they will enter into a South San Francisco Agreement on the following basis and terms:
 - 1.4.1 The plan for reconfiguration of JPB's South San Francisco ("SSF") passenger station and the adjacent freight rail facilities, as reflected on Attachment A, will be deemed approved by UP, effective upon execution of the South San Francisco Agreement, thereby enabling the JPB to proceed with construction of the reconfiguration project, subject to the following requirements.
 - 1.4.2 At JPB's sole cost, approximately forty-two hundred (4200) linear feet of designated freight trackage included in the reconfiguration project will be designed and constructed on property at Newhall, as reflected on Attachment B ("Interchange Track"), instead of at the SSF Yard. Design and construction of the Interchange Track will be performed by UP, at JPB's sole cost. Representatives of the parties will meet to review UP's design for the Interchange Track at the 30%, 60% and 90% design thresholds, and JPB will have the opportunity to comment on the design at such times. If construction of the Interchange Track requires coordination with, or approval from, adjacent property owners, the parties

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will jointly approach those entities and seek their concurrence with the Interchange Track construction.

1.4.3 In addition, as part of JPB's reconfiguration of SSF station, JPB will remove the existing team track and associated loading dock, and JPB will pay \$2,000,000.00 to UP to compensate for the loss of the existing team track and loading dock, which are UP assets, and for the cost of temporary access to freight by those shippers affected by the loss of the existing team track and loading dock (collectively, "Loss Compensation"). JPB will provide at least 90 days written notice to UP prior to JPB's taking any of the existing freight trackage out of service in the SSF Yard, and, concurrent with providing such notice, JPB will pay UP, by check or electronic transfer, the Loss Compensation. Once JPB has paid the foregoing amounts to UP, JPB will be relieved of any further obligation to compensate UP for relocation of the team track and loading dock, and UP will have no obligation to pay back to JPB any portion of such amounts in any circumstance.

1.5 The parties intend that, by November 30, 2016, they will enter into a Settlement Agreement concerning their respective monetary claims regarding capitalized maintenance or any other charges or compensation due under the 1991 TRA, on the following basis and terms:

1.5.1 Each party will withdraw its respective monetary claims regarding capitalized maintenance or any other charges or compensation due under the 1991 TRA, provided however that UP will pay \$707,947 for designated freight trackage maintenance for FY 2014, FY 2015 and FY 2016 ("Settlement Amount"). These payment amounts for FY 2014, FY 2015 and FY 2016 will be considered final settlements, with JPB waiving and releasing all claims against UP for payment of designated freight trackage maintenance in FY 2014, FY 2015 and FY 2016.

1.5.2 Effective as of July 1, 2015, UP's payment obligations under the 1991 TRA will be 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 for FY 2017 and later. On or before the effective date of the TROMA (as defined hereafter in Section 2.2), JPB and UP will enter into a new trackage rights agreement that will address issues pertaining to the ongoing relationship of the parties, as more particularly addressed in Section 4 hereof, including (i) a reduction in the Annual Fee for ordinary maintenance and dispatching services (because such services would thereafter be provided by JPB to UP in the South Terminal Area only), and (ii) allocation of costs between the parties attributable to future infrastructure replacements in the South Terminal Area.

1.5.3 JPB will invoice the Settlement Amount, which amount will be paid by UP within 30 days of invoicing. JPB will invoice the Annual Fee in monthly installments, which will be paid by UP within 30 days of invoicing.

2. Phase 2 Process: Selection of short line operator, attainment of STB approvals.

- 2.1 UP will conduct a process to identify a Short Line to provide freight service on the Right of Way, pursuant to a commercial marketing agreement and interchange agreement in form and substance acceptable to UP. Assuming UP identifies a Short Line acceptable to it, UP will recommend a Short Line to JPB and ask that JPB concur in UP's recommendation.
- 2.2 If JPB concurs with UP's recommendation, which concurrence will not be unreasonably withheld, (i) JPB and the selected Short Line will sign a Trackage Rights and Operations and Maintenance Agreement ("TROMA") to be effective upon approval or exemption by the Surface Transportation Board ("STB"), and (ii) UP will enter into a commercial marketing agreement and interchange agreement with the Short Line.
- 2.3 JPB will obtain all necessary approvals, or exemptions if appropriate, from the STB (1) for the TROMA and (2) for UP to be relieved of all of its common carrier rights and obligations in the Right of Way, with the understanding UP will provide support and file appropriate documents as may be necessary to obtain such STB approvals.

3. Phase 3 Process: UP transfer of rights and obligations in the Right of Way to JPB, and removal of objections to Caltrain Electrification project on the Right of Way.

The following elements of the global Transaction will be implemented after and on the condition that Phases 1 and 2 have been completed, and concurrent with the Short Line commencing freight service on the Right of Way pursuant to the TROMA, as fully authorized by the STB:

- 3.1 Upon execution and effectiveness of the Transfer Agreement, and subject to approval by the STB of transaction(s) in which (i) UP's common carrier obligation on the Right of Way is transferred to JPB, and (ii) any common carrier obligation of UP that may exist on the industry, lead or switching tracks that connect to the Right of Way is transferred to JPB and/or the Short Line, UP will be relieved of all of its common carrier rights and obligations in the Right of Way, including any freight service rights or obligations UP may hold over industry, lead or switching tracks between San Francisco and CP Coast.
- 3.2 Upon execution and effectiveness of the Transfer Agreement and following approval by the STB of the transaction(s) described in Section 3.1, UP will transfer to JPB the intercity rail passenger rights and obligations in the Right of Way it currently possesses, with the understanding that UP will retain said rights and obligations in the rail corridor south of CP Coast, as more fully set forth in the Transfer Agreement.
- 3.3 In connection with the transfer of UP's common carrier rights and obligations and intercity rail passenger rights and obligations in the Right of Way, the parties acknowledge the Transfer Agreement may include the transfer to JPB of all UP's rights and obligation relating to fiber optics easements in the Right of Way. Prior to Phase 3, the parties will analyze the economic value of such rights and obligations, including rights and obligations of UP under existing agreements

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relating to relocation of fiber optics improvements. Informed by that analysis, the parties will use best efforts to negotiate the terms for transfer of such fiber optics rights and obligations as part of the Transfer Agreement.

- 3.4 Upon execution and effectiveness of the Transfer Agreement, UP will remove any objections to the Caltrain Electrification project and UP will agree to forego pursuing any legal challenges to JPB's assertion of its right to construct and to implement the project, provided however that UP retains the right to participate in any future proceeding at the CPUC relating to the Caltrain Electrification project, including in the General Order 88-B process with respect to grade crossings in connection with the project and any third-party-initiated proceeding at the CPUC relating to the Caltrain Electrification project; and further provided that nothing in this Deal Terms Sheet or the Transfer Agreement is intended to or will have the effect of limiting or abrogating the duties and obligations of JPB to comply with the Electrification Agreement or any other agreement between the parties as such agreement pertains to the Caltrain Electrification project or the rights of UP relative to that project.

4. Parties' ongoing relationship in South Terminal Area and related issues.

The parties intend that, on or before the effective date of the TROMA, the parties will negotiate and enter into a new trackage rights agreement that will address, among other issues, the allocation of South Terminal capacity among the various rail service providers that currently operate in or through that area ("South Terminal TRA"). The parties have reached certain understandings regarding South Terminal Area capacity allocations, which understandings are set forth below and will be incorporated into the South Terminal TRA:

- 4.1 Dispatching Protocols, Monitoring and Reporting. Beginning upon full execution of this Deal Terms Sheet, the dispatching protocols attached hereto as Exhibit C ("Protocols") will apply to the South Terminal Area. JPB will provide UP access to JPB's dispatching system for monitoring purposes. JPB also will generate monthly reports delineating track usage and other information contemplated by the Protocols.
- 4.2 JPB's South Terminal Projects. UP acknowledges that construction of the "Phase II" and "Phase III" South Terminal projects in all likelihood may require a realignment of MT 1 in order to accommodate the additional trackage envisioned by the South Terminal projects. UP will have an opportunity to review design plans for any changes to MT 1, and such plans will be subject to UP's approval before any construction begins. JPB agrees that once the Phase II and Phase III South Terminal projects have been completed, the MT 2 and MT 3 tracks will be available to absorb 8 additional Capitol Corridor one-way train trips per day and 4 additional Altamont Corridor Express one-way train trips per day, in each case as described in Section 2.D of the Memorandum of Understanding and Implementing Agreement Related to High-Speed Rail Development in California, dated July 11, 2012 ("MOU").

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- 4.3 Further Modeling in the Event of a New Stand-Alone Freight Track. In the event a new stand-alone freight track is proposed for construction for UP from CP Coast to CP Lick ("New South Terminal Main Line"), then 12 months prior to the anticipated completion of construction, or such other timeframe as the parties mutually agree on, the parties will commence modeling to determine the number of trains that can reasonably be shifted back from MT 2 and MT 3 to the existing MT 1 without unreasonably compromising freight fluidity or UP-contracted passenger train on-time performance, and a new dispatching protocol will be negotiated for the South Terminal Area informed by the modeling results. The parties currently contemplate that in such event the new dispatching protocols will provide for a return of an agreed upon level of UP-contracted passenger service trains from MT-2 and MT-3 to MT-1.
- 4.4 Availability of MT 2 and MT 3 for UP Trains. During any Emergency or Track Work Requiring Outages that render MT 1 temporarily inoperable, UP freight trains and UP-contracted passenger service trains will be provided access to JPB's MT 2 or MT 3 tracks.
- 4.5 Non-Waiver of UP Rights Under Other Agreements. Nothing herein is intended to or will be deemed to have the effect of a waiver of UP's rights under the MOU. Additionally, nothing herein will in any way limit, restrict or impair JPB's ability to increase Caltrain passenger service levels above current levels.
- 4.6 Dispatch, Control and Maintenance in South Terminal Area. JPB will continue to dispatch, control and maintain all rail operations within the South Terminal Area, provided however that JPB will have no such control over any New South Terminal Main Line. Any New South Terminal Main Line that is not constructed on JPB property will be dispatched, controlled and maintained solely by UP.
- 4.7 South Terminal TRA. Implementation of the understandings delineated above will be documented in the South Terminal TRA which, among other issues, will address the allocation of South Terminal capacity as set forth above, will allocate responsibilities for maintenance, repair and replacements of South Terminal area tracks and structures, and will address liability risks.

5. Priority of Documents.

To the extent that approval of any of the terms of this Deal Terms Sheet requires STB approval, the parties will seek such approval promptly upon execution of the Transfer Agreement and any other agreement contemplated by this Deal Terms Sheet. In the event of any conflict between the terms of this Deal Terms Sheet and the 1991 TRA, this Deal Terms Sheet will control over the 1991 TRA.

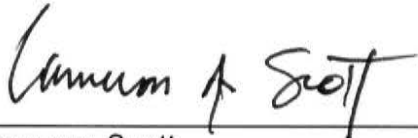
[Signatures on next page.]

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6. 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 Deal Terms Sheet and, through his or her execution, bind the party on whose behalf he or she is executing this Deal Terms Sheet. This Deal Terms Sheet will be effective when fully executed by the parties and counsel below.

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

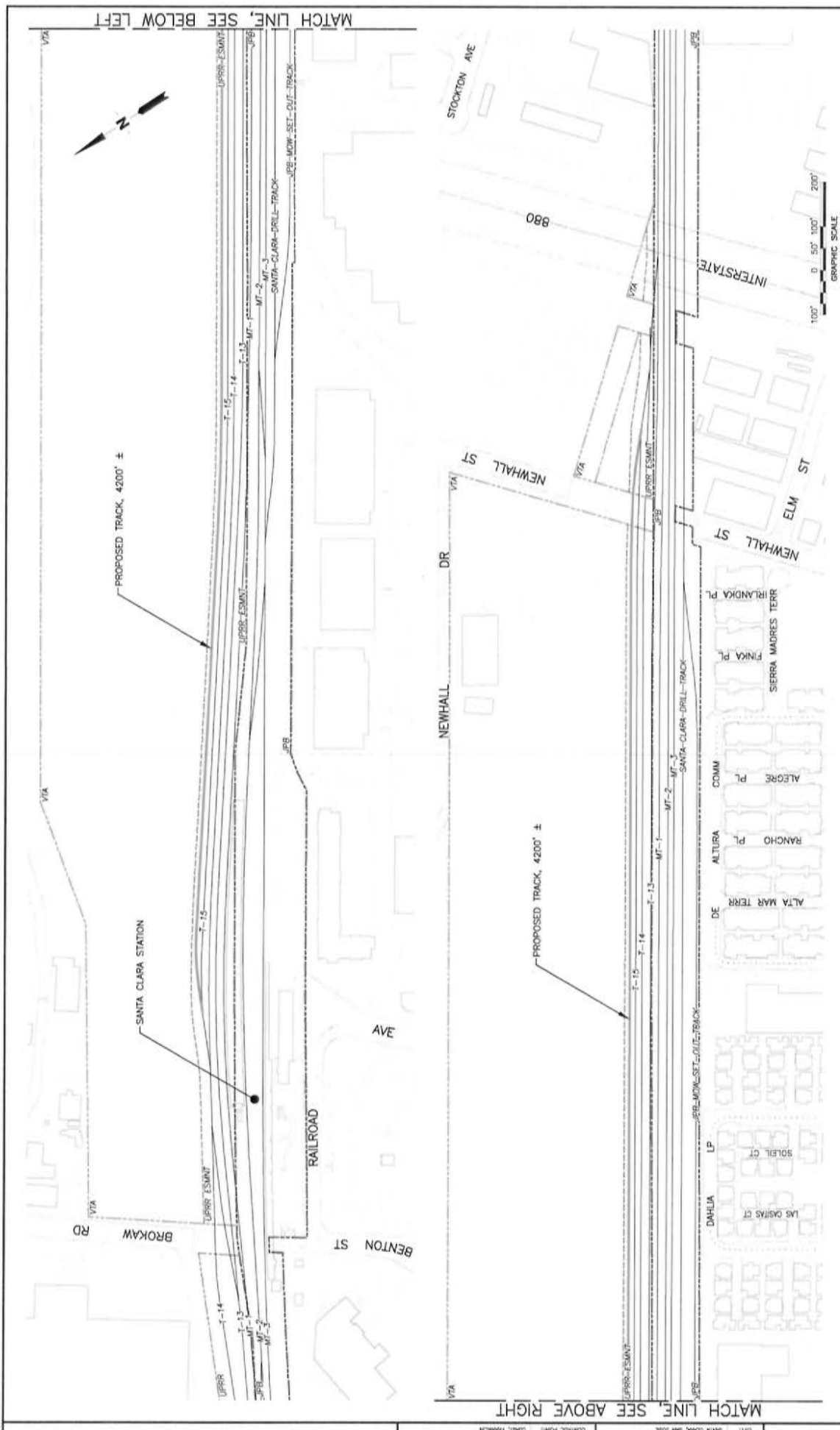
By: 
Jim Hartnett
Executive Director
Peninsula Corridor Joint Powers Board

Approved as to form:

By: 
Joan L. Cassman
General Counsel

**ATTACHMENT A
TO DEAL TERMS SHEET
RELATED TO
TRANSFER OF RIGHTS AND RESPONSIBILITIES ON PENINSULA CORRIDOR AND
ISSUES ASSOCIATED WITH THE PENINSULA CORRIDOR ELECTRIFICATION PROJECT**

**ATTACHMENT B
TO DEAL TERMS SHEET
RELATED TO
TRANSFER OF RIGHTS AND RESPONSIBILITIES ON PENINSULA CORRIDOR AND
ISSUES ASSOCIATED WITH THE PENINSULA CORRIDOR ELECTRIFICATION PROJECT**



COUNTY SANTA CLARA CITY SANTA CLARA CONTROL POINT COMPT. FURNISH		SHEET NUMBER 02252016 AS SHOWN CONTRACT NO. 45.6 SHEET NO. 1101 REV. PAGE NO.	
PROJECT MANAGER PROJECTS TRACKS		PENINSULA CORRIDOR JOINT POWERS BOARD PROPOSED UPRR TRACK AT NEWHALL YARD	
DRAWN C. WILLIAM CHECKED IN CHARGE DATE		APPROVED	
REV	DATE	BY	DESCRIPTION



**ATTACHMENT C
TO DEAL TERMS SHEET
RELATED TO
TRANSFER OF RIGHTS AND RESPONSIBILITIES ON PENINSULA CORRIDOR AND
ISSUES ASSOCIATED WITH THE PENINSULA CORRIDOR ELECTRIFICATION PROJECT**

Dispatch Protocols for South Terminal Train Movement – Dated 11/2/16

DEFINITIONS

1. "Emergency" will mean accidents, train breakdowns, unplanned rail infrastructure repairs or replacements that are urgently needed to maintain or restore rail service, and similar events beyond the control of the parties that cause a main track to be temporarily out of service.
2. "Freight Train Trip" will mean a one-way movement of locomotive(s) and freight car(s) (loaded and/or unloaded) of UP or any other common carrier within any portion of JPB-dispatched South Terminal (CP Coast to CP Lick), excluding train trips consisting solely of locomotives and excluding train trips which are exclusively yard manipulation (back and forth "drill" or run-around) movements.
3. "Freight Train Growth" will mean that the average number of Freight Train Trips has exceeded 13 per day during 30 or more days of any three-month period.
4. "Track Work Requiring Outages" means rail infrastructure work such as rail replacement, undercutting, mechanized tie replacement and similar projects that have work durations longer than can be reasonably achieved in one or more overnight work windows.

PROTOCOLS

1. JPB passenger trains will have dispatching priority over UP-contracted Capitol Corridor, Amtrak Coast Starlight, and Altamont Corridor Express ("ACE") passenger trains and UP freight trains on JPB's northbound (MT 2) and southbound (MT 3) main tracks from CP Coast to CP Alameda, on Station Tracks 2 through 9 at the San Jose Diridon Station, and on MT 2 from CP Bird to CP Lick.
2. Capitol Corridor and ACE trains will operate at the discretion of the dispatcher, subject to section 6 below, to select the best route to maintain South Terminal fluidity and to maximize passenger train on-time performance, but will generally be limited to 11 trains per day touching the UP MT 1 between the south end of Santa Clara Station at CP Coast and San Jose Diridon Station.
3. UP freight trains will operate at the discretion of the dispatcher to select the best route, but will generally operate on the UP MT 1 and UP's Coast Siding (Track 13). UP freight trains may also use Station Track 5 for movement through the San Jose Diridon Station at the discretion of the dispatcher or in the event that Station Track 1 is out of service or occupied by another freight or passenger train.
4. Except in an Emergency or when necessary for Track Work Requiring Outages as those terms are defined herein:
 - a) Amtrak Coast Starlight will generally operate on MT 1.
 - b) JPB trains will not use UP MT 1 from CP Coast to CP Alameda or Station Track 1 at the San Jose Diridon Station.
5. In the event of Track Work Requiring Outages, as a norm, JPB and UP will confer at least six (6) weeks in advance of the work to develop temporary modifications to the dispatch protocols.

6. Prior to the completion of JPB Phase II & III improvements, in the event that Freight Train Growth occurs, or freight train delay or non-JPB passenger train delay exceeds a threshold or thresholds to be defined ("Delay Threshold(s)," as discussed below in this section), JPB will make every reasonable effort to transfer any Capitol Corridor or ACE trains in excess of 11 trains per day from MT 1 on to MT 2 or MT 3 unless doing so would unreasonably compromise JPB's existing scheduled operations. The identification of specific train trips for consideration and estimated service impact of such potential reroutes will be determined at the first quarterly meeting following the occurrence of Freight Train Growth or the surpassing of Delay Threshold(s). After JPB Phase II & III improvements are implemented, in the event that Freight Train Growth occurs, or freight train delay or non-JPB passenger train delay exceeds Delay Threshold(s), JPB will at UP's request transfer any Capitol Corridor or ACE trains in excess of 11 trains per day from MT 1 on to MT 2 or MT 3. JPB and UP will continue to work with each other to define the Delay Threshold(s), including at the next quarterly meeting, and the parties will update these Protocols to incorporate the agreed-upon Delay Threshold(s) by no later than the first quarter of 2017. The agreed-upon Delay Threshold will be incorporated into the updated Protocols and memorialized in the new trackage rights agreement the parties will be developing for CP Coast to CP Lick.
7. In the event that Amtrak increases the frequency of existing long-distance trains or adds new intercity passenger service other than Capitol Corridor trains between CP Coast and CP Lick, UP and JPB will convene to review and modify dispatching protocols to accommodate the addition of those frequencies.
8. JPB and UP will convene on a quarterly basis to discuss among other issues, performance against the dispatch protocol and areas for improvement, temporary dispatch protocol changes in advance of planned Track Work Requiring Outages, UP-contracted passenger train on-time performance, determination of the level of freight train volume based on JPB dispatch records, and the level of UP dispatch efficiency through JPB territory to the extent that the level of efficiency can be quantified through JPB dispatch records.
9. In the event UP's mainline tracks in another area of its system within the State of California are unavailable for service due to a cause beyond UP's control, UP reserves the right to request that JPB consent to allow UP-contracted passenger and freight trains to use MT 2 and MT 3 on a temporary basis, which consent will not be unreasonably withheld as long as it would not unreasonably compromise JPB's existing scheduled operations.