

REIMBURSEMENT AGREEMENT

CAPACITY ANALYSIS SERVICES

THIS REIMBURSEMENT AGREEMENT ("Agreement") is made effective _____, ____, 2021 (the "Effective Date") by and between Transportation Agency for Monterey County ("Agency") and Union Pacific Railroad Company, a Delaware corporation ("UPRR").

WHEREAS, Agency has expressed an interest in developing and establishing commuter rail operations between Gilroy, California; and Salinas, California (the "Project").

WHEREAS, some portions of Agency's Project may affect UPRR's track, right of way, and/or operations at or near the Project area.

WHEREAS, Agency and UPRR entered into that certain Public Project Reimbursement Agreement dated November 1, 2010 (the "2010 Agreement"), for UPRR to perform services in connection with the Project, including preliminary engineering services, developing cost estimates and reviewing station and associated track designs.

WHEREAS, following execution of the 2010 Agreement, Agency did not engage UPRR to perform any of the services set forth in the 2010 Agreement.

WHEREAS, Agency now desires to engage UPRR to perform services to facilitate Agency's development of the Project.

WHEREAS, the parties entered into that certain Reimbursement Agreement Preliminary Engineering Services dated December 2, 2020 (the "PE Agreement") for UPRR to perform preliminary engineering services in connection with the Project.

WHEREAS, the parties now desire to enter into this Agreement for UPRR to perform Services, as defined below, which are in addition to the services to be performed by UPRR pursuant to the PE Agreement, and to terminate the 2010 Agreement in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows:

1. Scope of Services. UPRR and/or its representatives, at Agency's sole cost and expense, agrees to perform (or shall cause a third-party consultant to perform on UPRR's behalf) the work described on Exhibit A (the "Services"). Agency and UPRR agree that the scope of Services to be performed by UPRR is limited to the activities listed on Exhibit A, unless other services related to the Project are agreed upon in writing by the parties.

2. Fees and Payments. Upon UPRR's completion of the Services and delivery of the results of the analysis described on Exhibit A to Agency, UPRR shall submit an invoice to Agency for a one-time single total payment for the Cost (defined below) of UPRR performing the

Services, including any applicable taxes and UPRR's additives, in the amount of Fifty Thousand Dollars (\$50,000). The reimbursement amount due to UPRR from Agency may only be increased with Agency's written consent. Agency agrees to reimburse UPRR within thirty (30) days of its receipt of UPRR's invoice. Any amount not paid within thirty (30) days following delivery of an invoice by UPRR shall accrue interest at a rate of one percent (1%) per month or the maximum lawful rate, whichever is less.

For purposes of this Agreement, "Cost" shall mean all costs and expenses paid to a UPRR contractor for the performance of any of the Services, and all costs and expenses of labor, travel, mileage, tolls, parking, lodging, meals, supplies, material and delivery charges incurred for or in connection with UPRR's provision of the Services, including, without limitation, UPRR's additives (includes direct and indirect labor additives and overhead) as set forth in Exhibit A. Notwithstanding the foregoing, additives are subject to periodic adjustments by UPRR in its sole discretion. Agency's obligation hereunder to reimburse UPRR (and/or its third-party consultant, as applicable) for the Services shall apply regardless if Agency declines to proceed with the Project.

3. Further Engagement. If Agency elects to move forward with the Project after the Services are performed, the parties may, but are not required to, negotiate separate agreements documenting the terms and conditions for the design, construction, maintenance and operation of the Project and other activities. No construction work on the Project affecting UPRR's property or operations shall commence until all such applicable separate agreements are executed by both parties. For purposes of clarity, this Agreement does not create any obligations or agreements whatsoever between UPRR and Agency in connection with the Project except for those that are expressly stated in this Agreement (for example, but not in any way limiting the generality of the foregoing, nothing in this Agreement shall be interpreted as either party undertaking any obligations related to the negotiation of the Project, or as an agreement between the parties to ultimately proceed with the Project), and no such additional obligations or agreements shall exist unless and until each party approves and executes, in its sole discretion, a final and definitive written agreement or agreements setting forth the same.

4. Ownership. Any and all work product, ideas, inventions, innovations, or intellectual property produced by UPRR for Agency during the provision of Services, including, but not limited to the specific items identified as deliverables on Exhibit A ("UPRR Proprietary Information") shall at all times remain solely with, and be the exclusive property of, UPRR. Subject to the terms and conditions of this Agreement, UPRR hereby grants to Agency a non-exclusive, non-transferable, limited license and right to use any UPRR Proprietary Information solely in connection with the Project. With respect to use of any UPRR Proprietary Information by Agency that is deemed a government entity, including a State or federal entity, all UPRR Proprietary Information shall be deemed confidential and propriety to the extent allowed by applicable law and any use, reproduction, release or disclosure of the UPRR Proprietary Information shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

5. Confidential and Proprietary Information ("CP&I"). Agency agrees to treat as confidential all information, in whatever form, or medium, furnished or disclosed by UPRR, or any of its agents, to Agency. C&PI excludes information already known or developed by Agency other than through a breach by Agency of any of its obligations hereunder or from a third party

known by Agency, to be breaching a confidentiality duty to UPRR. In the event Agency is requested by law, regulation or legal process to disclose any of CP&I, Agency agrees to (i) assert the CP&I is UPRR's corporate proprietary information within the meaning of Section 6254.15 of the California Public Records Act, California Government Code Section 6250 et seq., (ii) give UPRR advance notice prior to disclosure so UPRR may contest the disclosure or seek a protective order, and (iii) decline to disclose the CP&I or, if required in any event to disclose any portion of the CP&I, then to limit the disclosure to minimum amount that is legally required to be disclosed. Further, the deliverables noted on Exhibit A may be disclosed to other governmental entities that have a need-to-know in connection with the development of the Project, provided such other governmental entities have committed to maintain the confidentiality of the CP&I and not to disclose the CP&I in the same manner as Agency hereunder.

6. Warranty. THE SERVICES, INCLUDING WITHOUT LIMITATION THE INFORMATION PROVIDED TO AGENCY BY UPRR HEREUNDER, ARE PROVIDED "AS IS". UPRR MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY OR WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. UPRR DOES NOT WARRANT THE ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED TO AGENCY BY UPRR HEREUNDER.

7. Limitation of Liability. UPRR'S AGGREGATE LIABILITY UNDER THIS AGREEMENT, WHETHER FOR BREACH OR IN TORT OR OTHERWISE, IS LIMITED TO THE FEES PAID BY AGENCY FOR THE SPECIFIC SERVICE(S) DIRECTLY GIVING RISE TO SUCH LIABILITY. IN NO EVENT SHALL UPRR BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR LOST PROFITS, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR THE LIKE, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER AGENCY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS OF LIABILITY REFLECT THE ALLOCATION OF RISK BETWEEN THE PARTIES THE LIMITATIONS SPECIFIED IN THIS SECTION WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

8. Term. The term of this Agreement shall commence on the Effective Date and shall automatically terminate on the earlier to occur of: (a) completion of Services, (b) three (3) years after the Effective Date, or (c) date of termination by UPRR at any time Agency breaches any provision herein, unless earlier terminated by the parties.

9. Governing Law. The parties mutually acknowledge and agree that this Agreement shall be construed and enforced in accordance with the laws of the State of Nebraska, without regard to any conflict-of-law provisions. The parties agree that in any dispute exclusive jurisdiction and venue shall be in the state and federal courts of Nebraska. The parties mutually acknowledge and agree that they shall not raise in connection therewith, and hereby waive, any defenses based upon venue, inconvenience of forum or lack of personal jurisdiction in any action

or suit brought in accordance with the foregoing.

10. Injunctive Relief. Agency acknowledges and agrees that if it breaches any obligations hereunder, UPRR may suffer immediate and irreparable harm, for which monetary damages alone shall not be a sufficient remedy, and that, in addition to all other remedies that UPRR may have, UPRR shall be entitled to seek injunctive relief, specific performance or any other form of relief in a court of competent jurisdiction, including, but not limited to, equitable relief, to remedy a breach or threatened breach hereof by Agency and to enforce this Agreement, and Agency hereby waives any and all defenses and objections it may have on grounds of jurisdiction and venue, including, but not limited to, lack of personal jurisdiction and improper venue, and waives any requirement for the securing or posting of any bond in connection with such remedy.

11. Appropriations. Agency represents to UPRR that Agency appropriated funds sufficient to pay UPRR the amount reflected in paragraph 2 of this Agreement, and will have appropriated funds to pay UPRR for any increase subsequently approved by Agency.

12. General. Agency may not assign this Agreement or any of its respective rights or obligations hereunder, without the prior written consent of UPRR. This is the entire agreement between the parties regarding the Services. Headings are for ease of reference only, and are not part of the Agreement.

13. Termination of 2010 Agreement. The parties acknowledge that the 2010 Agreement is hereby terminated and replaced in its entirety by this Agreement and the PE Agreement.

(Signature Block on Following Page)

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives as of the Effective Date.

UNION PACIFIC RAILROAD COMPANY

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

Title: _____

TRANSPORTATION AGENCY FOR
MONTEREY COUNTY

By: _____

Title: _____

Date: _____

TAMC Counsel: _____

Date: _____

Title: _____

EXHIBIT A

SCOPE OF SERVICES

- A. Services related to UPRR's capacity analysis for the Project shall be limited to the following activities, unless otherwise agreed to by the parties pursuant to the terms of the Agreement:
- Attendance (in person, phone conference or screen share) at the following:
 - Kick-off meeting to define scope and schedule of work, provide / confirm inputs (e.g., engineering concepts, passenger service inputs), with Agency and the design team.
 - Development meeting to get update on UPRR capacity process and answer any questions.
 - Analysis results meetings (up to three (3) occurrences) to discuss infrastructure improvements identified in the capacity analysis.
 - Workshop with design team to confirm elements which need to be incorporated into the design.
 - On-site visit (hi-rail or head-end ride).
 - UPRR internal review and approval process.
 - Development of additional infrastructure requirements based on the initial parameters provided by the Agency as shown within the attached table, Exhibit A1.
 - Review of station and related track plans by others.
 - Review of proposed schedule impacts to existing service and adjustments of said schedule as appropriate to mitigate performance deterioration.
 - Preparation of capacity analysis report that includes review, recommendations and requirements to facilitate the proposed Agency service.
- B. Deliverables.

Capacity analysis identifying recommended infrastructure requirements to enable proposed passenger train operation on UPRR-owned corridor, consistent with UPRR's passenger principles.

Exhibit A1

Project Title	Description
Service between Gilroy and Salinas, CA	Two weekday roundtrip commuter rail service between Gilroy and Salinas, CA using existing Caltrain Trains; Northbound - CT215, CT219 Southbound - CT256, CT268
Salinas Layover Facility	MP 113 – New connection into new Salinas Station.
Gilroy Station Track Project	MP 77 – Connect Gilroy Station to Carnadero Double Track (1.4 miles of new CTC Double Track).
Analyze Infrastructure	Identify infrastructure required to preserve the performance of existing freight and passenger train service as well as support the new service requirements.
Analyze Schedule	Review schedule and propose alternate to avoid conflicts of the proposed schedule for the existing service and proposed service.