

GUARANTY OF PERFORMANCE AND INDEMNIFICATION AGREEMENT

This Guaranty of Performance and Indemnification Agreement (this “Agreement”) is made and entered into as of _____, 2022, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (“UP” or “Indemnitee”), and **COUNTY SANITATION DISTRICT NO. 2 OF LOS ANGELES COUNTY**, a county sanitation district organized and existing under the provisions of the County Sanitation District Act, California Health and Safety Code §§4700 et seq., (the “District” or “Indemnitor”). UP and the District are each sometimes referred to in this Agreement, individually, as a “Party” and, collectively, as the “Parties”.

RECITALS:

WHEREAS, UP and the District are parties to that certain Property Assembly Agreement dated as of November 17, 2020 (District Contract No. 5309) (the “PAA”), whereby the District has acquired certain Property Interests (as defined in the PAA) in order for the Parties to construct, operate, maintain, or relocate certain tracks required for UP to provide rail service to the District at the Facility (as defined in the PAA);

WHEREAS, UP’s investigation of the Property Interests pursuant to the terms of the PAA identified certain continuing obligations and liabilities binding upon the District that UP is unwilling to assume in connection with the transfer of the Property Interests from the District to UP at the Closing contemplated by the PAA (as more particularly described on Schedule A attached hereto and made a part hereof, the “Exceptions”);

WHEREAS, the PAA provides that for any Exception identified by UP as requiring cure by the District, but not required by UP to be cured by the District as a precondition to Closing, the Parties may jointly agree to proceed to Closing upon the express condition that the District shall thereafter (i) indemnify, defend and hold UP harmless from all claims, costs, demands, suits, costs of defense and judgments which arise from, in whole or in part, any Exception remaining uncured without waiver by UP pursuant to the terms of the PAA at Closing, and (ii) with respect to any Exception which imposes any ongoing obligations or liabilities (e.g., removal of graffiti, maintenance, or payment of costs) to which UP might otherwise become subject as a result of the conveyance contemplated by the PAA, retain such obligations and liabilities and indemnify, defend and hold UP harmless from the same; and

WHEREAS, the Parties desire to enter into this Agreement for the purpose of identifying the Exceptions for which the District shall retain all obligations and liabilities arising thereunder after Closing, and to memorialize the indemnification obligations of the District in connection therewith.

AGREEMENT:

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. ***Definitions.*** Any capitalized term used but otherwise not defined in this Agreement shall have the meaning assigned such term in the PAA. The “Effective Date” for purposes of this

Agreement shall be the date upon which the Property Interests are conveyed to UP by the District in accordance with the terms of the PAA.

2. ***Guaranty of Performance.*** Notwithstanding any transfer of the Property Interests from the District to UP, it is expressly understood and agreed between the Parties that the District shall retain all obligations and liabilities otherwise binding upon the District or its successors-in-interest with respect to the Property Interest encumbered thereby (the “Obligated Party”) with respect to each and every of the Exceptions as more particularly described in Schedule A attached hereto. The District covenants and agrees that the District shall, after receipt of written notice from UP to the District specifying, in detail, the obligations to be performed pursuant to the terms and conditions of this Agreement, timely perform all obligations of the Obligated Party with respect to the Exceptions, all at the sole cost and expense of the District. UP shall not be obligated to perform any of the Exceptions, nor shall UP incur any expense or liability in connection therewith. To the extent that the District requires physical access to the real property comprising the Property Interests to perform any obligations of the Obligated Party with respect to the Exceptions, and the District does not have reasonably sufficient access rights pursuant to any other existing agreement between UP and the District, then the District shall enter into UP’s then-current form of contractor’s right of entry agreement prior to accessing such real property comprising the Property Interests. The obligations of the District pursuant to this Agreement are hereby acknowledged by the Parties to comprise part of the consideration received by UP in support of its obligations under the PAA and without which UP would not have agreed to proceed to Closing or to otherwise accept any Property Interests.

3. ***Indemnification.*** If any party legally entitled to enforcement of an Exception (each, a “Benefitted Party”), shall pursue any claims, suits, demands, actions, causes of action, damages, penalties, injuries, setoffs, liens, attachments, judgments, debts, costs, expenses (including, without limitation, reasonable attorneys’ fees and expenses) or other liabilities (collectively, “Claims”) against UP or any its officers, directors, shareholders, partners, employees, legal representatives, successors or assigns (collectively, the “Indemnitee Parties”) arising directly or indirectly from the District’s failure to timely perform under any of the Exceptions after receipt of written notice from UP, then the District shall indemnify, defend and hold harmless the Indemnitee Parties, subject to Section 4 below, from and against any and all liability associated with any and all such Claims.

4. ***Defense or Settlement of Claims.***

(a) Indemnitor shall have no liability for any Claim or be obligated to indemnify any Indemnitee Party to the extent such Claim arises from the negligence or willful misconduct of an Indemnitee Party.

(b) In order to assert rights under Section 3 as a result of any Claim, an Indemnitee Party shall deliver to Indemnitor written notice of such Claim (each, a “Claim Notice”) within six (6) months following such Indemnitee Party’s review of such Claim and determination as to how such Indemnitee Party desires to proceed in accordance with the terms of this Agreement, which Claim Notice shall describe the state of facts, and the provisions of the agreement creating the Exception involved, in reasonable detail.

(c) Indemnitor shall be fully liable for its obligations under this Agreement. To the extent permitted by law, Indemnitor's liability shall not be limited by any claim of sovereign immunity or related principles of law.

(d) Counsel selected by Indemnitor to defend an Indemnitee Party shall be subject to the reasonable approval of such Indemnitee Party. However, any Indemnitee Party may elect to defend any Claim at Indemnitor's expense, as more specifically described in Section 4(g) below.

(e) Indemnitor shall not, without the prior written consent of the Indemnitee Parties named as parties to a Claim, settle or compromise the Claim if the settlement (1) results in the entry of any judgment that does not include as an unconditional term the delivery by the claimant or plaintiff of a written release of such Indemnitee Parties, reasonably satisfactory in form and substance to such Indemnitee Parties; or (2) may materially and adversely affect any Indemnitee Party, as determined by such Indemnitee Party in its reasonable discretion.

(f) Indemnitor shall, at its own cost and expense, do all of the following:

(1) pay or satisfy any judgment or decree that may be entered against any Indemnitee Party in any legal or administrative proceeding incident to any matters against which such Indemnitee Party is entitled to be indemnified under this Agreement;

(2) reimburse all Indemnitee Parties, within 90 days after receipt of a detailed, itemized invoice, for any reasonable expenses paid or incurred in connection with any matters against which such Indemnitee Parties are entitled to be indemnified under this Agreement; and

(3) reimburse all Indemnitee Parties, within 90 days after receipt of a detailed, itemized invoice, for any and all reasonable expenses, including fees and out-of-pocket expenses of attorneys and expert witnesses, paid or incurred in connection with the enforcement by such Indemnitee Parties of their rights under this Agreement, or in monitoring and participating in any legal or administrative proceeding related to a Claim.

(g) In any circumstances in which the indemnity under this Agreement applies, an Indemnitee Party may employ its own legal counsel and consultants to prosecute, defend or negotiate any Claim and such Indemnitee Party, with the prior written consent of Indemnitor (which shall not be unreasonably withheld, delayed or conditioned), may settle or compromise any such Claim. Indemnitor shall reimburse an Indemnitee Party upon demand for all reasonable costs and expenses incurred by such Indemnitee Party, including all costs of settlements entered into in good faith, and the fees and out-of-pocket expenses of such attorneys and consultants.

(h) The provisions of this Agreement shall be in addition to any and all other obligations and liabilities that Indemnitor may have under applicable law, and each Indemnitee Party shall be entitled to indemnification under this Agreement without regard to whether the

Indemnitee Party has exercised any rights against Indemnitor or any other security, pursued any rights against any guarantor, or pursued any other rights available under applicable law. If Indemnitor consists of more than one person or entity, the obligation of those persons or entities to indemnify the Indemnitee Parties under this Agreement shall be joint and several. The obligation of Indemnitor to indemnify the Indemnitee Parties under this Agreement shall survive the Closing and any delivery of a deed or other instrument of conveyance with respect to any of the Property Interests under the PAA.

5. *Miscellaneous.*

(a) Release Request. If any of the agreements underlying an Exception hereunder comes up for renewal or extension, UP will request that any Exception pertaining to such agreement be omitted for any renewal or extension term; provided, however, UP shall have no liability to the extent that the applicable Benefitted Party denies the request, and failure of any Exception to be omitted shall not prevent UP from otherwise renewing or extending such agreement upon those terms and conditions acceptable to UP in its sole discretion.

(b) Assignment. This Agreement is personal to the Parties hereto, and no Party shall have the right to assign any of its rights or obligations hereunder without the prior written consent of the other Party, which consent may be withheld in the other Party's sole and absolute discretion. Any purported assignment in violation of this Section shall be void *ab initio*.

(c) Advice of Counsel. This Agreement was negotiated between the Parties, each of whom had the opportunity to consult with legal counsel and seek all other professional advice on all matters related to the negotiation, drafting, and execution of this Agreement and each of whom has done so to the extent of its desires.

(d) Amendment. Any amendment or modification to this Agreement shall only be effective if made by an instrument in writing executed and delivered by the Parties hereto. Any purported amendment or modification made in violation of this Section shall be void *ab initio*.

(e) Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties hereto, and all prior oral or written discussions, covenants, negotiations, offers, promises, representations, statements, or undertakings by or between the Parties regarding the matters addressed herein are merged into and superseded by the express terms of this Agreement.

(f) Notices. Any notice, request, demand, communication or other paper required or permitted to be delivered pursuant to the terms of this Agreement (collectively, "Notices") shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) (i) on the business day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service), or (ii) on the second (2nd) business day following the date on which such notice or communication shall have been deposited with the U.S. postal system (first class, priority), in each instance addressed to the appropriate party at the addresses set forth below, or (iii) on the date actually received (or refused) if personally delivered. In addition to delivering Notices via the methods specified in the

immediately preceding sentence, all Notices shall be sent concurrently via email to the addresses specified below. Either UP or the District may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communications shall be sent:

UP: Union Pacific Railroad Company
1400 Douglas St., STOP 1690
Omaha, NE 68179
Attn: Kris Anderson, Manager – Acquisitions
Email: dkanders01@up.com

District: County Sanitation District No. 2 of Los Angeles County
1955 Workman Mill Road
Whittier, CA 90601
Attn: Stan Pegadiotes, Head of Planning and Property
Management Section
Email: SPegadiotes@lacs.org

(g) Governing Law; Waiver of Right To Jury Trial. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to any conflict of laws principles that would apply the laws of another jurisdiction. EACH PARTY HEREBY AGREES TO UNCONDITIONALLY AND IRREVOCABLY WAIVE ITS RIGHT TO A JURY TRIAL IN ANY LAWSUIT, ACTION, OR PROCEEDING BETWEEN THE PARTIES ARISING OUT OF OR RELATING TO THIS AGREEMENT.

(h) Forum Selection. Any legal action, suit or proceeding arising under or relating to this Agreement or the enforcement of any provision of this Agreement shall be brought or otherwise commenced in the United States District Court or any State court located in Los Angeles, California. Each Party consents to the jurisdiction of such courts and agrees not to commence any such action, suit or proceeding except in such courts. Each Party agrees not to assert (by way of motion, as a defense or otherwise), and hereby irrevocably and unconditionally waives in any such legal action, suit or proceeding commenced in such court, any objection or claim that such Party is not subject personally to the jurisdiction of such court or that such action, suit or proceeding has been brought in an inconvenient forum.

(i) Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect, and the invalid, illegal or unenforceable provision shall be reformed to the minimum extent required to render such provision valid, legal and enforceable and in a manner so as to preserve the economic and legal substance of the transactions contemplated hereby to the fullest extent permitted by applicable law. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties hereto as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

(j) No Third Party Beneficiaries. This Agreement is for the sole benefit of the Parties and nothing herein expressed or implied shall give or be construed to give to any person or entity other than the Parties any legal or equitable rights hereunder.

(k) Counterparts. This Agreement may be executed and delivered in one or more counterparts, each of which when executed and delivered shall be an original, and all of which when executed shall constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile or by electronic transmission in .pdf format shall constitute effective execution and delivery of this Agreement as to the Parties, and shall be deemed to be their original signatures for all purposes.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first above written.

UP:

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: _____

Name: _____

Title: _____

DISTRICT:

COUNTY SANITATION DISTRICT NO. 2
OF LOS ANGELES COUNTY

By: _____

Chairperson, Board of Directors

ATTEST:

Secretary to the Board

APPROVED AS TO FORM:
Lewis Brisbois Bisgaard & Smith, LLP

By: _____
District Counsel

SCHEDULE A

DESCRIPTION OF THE EXCEPTIONS

Parcel 8 as referred to in Schedule 1 of the PAA

1. That certain Joint Use Agreement, recorded as Instrument No. 20170421524 in the real property records of Los Angeles County, California, imposes certain continuing obligations and liabilities on the District, and the obligations and liabilities of the District (or any Obligated Party) set forth in those sections thereof described below shall be deemed “Exceptions” under the Agreement (reference to such Joint Use Agreement should be made for specific terms and conditions):

Section 2.1. Payment of certain flagging costs.
Section 2.2. Maintenance of certain areas.
Section 2.3. Correction of unsafe conditions upon certain areas.
Section 2.9. Obtaining consent with respect to transfers of rail infrastructure.
Section 2.10. Relocation, rearrangement or removal of rail infrastructure, or otherwise paying for changes to conflicting projects.

Parcel 10 as referred to in Schedule 1 of the PAA

1. That certain Grant of Easement, recorded as Instrument No. 20110442592 in the real property records of Los Angeles County, California, imposes certain continuing obligations and liabilities on the District, and the obligations and liabilities of the District (or any Obligated Party) set forth in the section thereof described below shall be deemed an “Exception” under the Agreement (reference to such Grant of Easement should be made for specific terms and conditions):

Section 2(d). Indemnification obligations.
2. That certain unrecorded Encroachment Agreement, dated as of October 25, 2011, by and between the County of Los Angeles and the District, imposes certain continuing obligations and liabilities on the District, and the obligations and liabilities of the District (or any Obligated Party) set forth in those sections thereof described below shall be deemed “Exceptions” under the Agreement (reference to such Encroachment Agreement should be made for specific terms and conditions):

Section 3. Removal of encroaching improvements.
Section 4. Indemnification relative to construction, maintenance or removal of improvements.

Parcel 15 as referred to in Schedule 1 of the PAA

1. That certain Aerial Easement (No. 3504), recorded as Instrument No. 20180910279 in the real property records of Los Angeles County, California, imposes certain

continuing obligations and liabilities on the District, and the obligations and liabilities of the District (or any Obligated Party) set forth in those sections thereof described below shall be deemed “Exceptions” under the Agreement (reference to such Aerial Easement (No. 3504) should be made for specific terms and conditions):

Section C. Maintenance of certain areas and improvements.

Section F. Indemnification obligations.

The agreements referenced in this Schedule A shall be applied and construed using the versions thereof as are in effect on the Effective Date. For the avoidance of doubt, the “Exceptions” shall not include any obligations or liabilities of an Obligated Party arising after the Effective Date of this Agreement due to any such agreement being amended or otherwise modified in any manner which creates new obligations and liabilities or otherwise increases any obligations and liabilities which would thereafter be binding upon an Obligated Party.