

**MEMORANDUM OF  
AGREEMENT**

between the

**SAN JOAQUIN VALLEY RAILROAD COMPANY**

and

its Operating Employees represented by the

**UNITED TRANSPORTATION UNION**

The Working Agreement shall be modified to incorporate the following:

## **ARTICLE 1 – Agreement Modifications**

### **1. Flex Days**

(a) Flex Days will be in lieu of the Personal Leave Day provision in Article IV of the Agreement SJVR 0004 and sick days as outlined in the RailAmerica, Inc. Employee Handbook dated January 2005. Full-time employees will be provided a maximum of six (6) flex days at the beginning of each calendar year. A newly hired employee must be working as a full-time employee prior to the start of the calendar year in order to qualify for six (6) flex days in the succeeding year. A newly hired employee who is hired prior to September 1<sup>st</sup> of the calendar year will be allowed three (3) flex days in the calendar year.

(b) Flex Days may be used by an employee to take personal days off for various reasons, provided the employee gives the company a minimum forty-eight (48) hours advance notice to the designated company officer. Employees shall receive a basic day's pay at the pro rata rate of their assignment for each Flex Day taken. Employees will be required to take an accumulated Flex Day, if any for each day an employee lays off sick.

(c) Flex Days may be accumulated from one calendar year to the next to a maximum of twelve (12) days on December 31<sup>st</sup> of any calendar year.

(d) Employees may request a buy back for any number of accumulated days. The request for a buy back must be submitted in writing by employees no later than November 15th, with payment to be made on the last payday before the Christmas holiday. An employee may also request to buy back Flex Days when the maximum number of days has been accumulated in accordance with paragraph (c) above. Such buy back shall only occur once per year. The company will buy back Flex Days at 100% of the employee's basic daily rate for the employee's assignment.

(e) Flex Days may be granted or denied consistent with the needs of service, at the discretion of the company. Employees are encouraged to schedule Flex Days with the company sufficiently in advance with the understanding not all employees can be granted the same day off, unless the company shuts down its operation on what would otherwise be a work day or a holiday.

### **2. Training Program**

**ARTICLE 7** of the Working Agreement shall be modified to include the following:

f) The Company will designate the home terminal for a new-hire employee. It is the intention of the Company to train and qualify a new-hire employee at his or her home terminal location. In the event the Company may require a new-hire employee to train at a location other than the home terminal to which assigned the Company will afford the provisions of Article 23 – Expenses Away From Home & Transportation Expense, to such new-hire employee.

g) A conductor who is required to train a new-hire nonqualified employee to work as a conductor will be allowed a separate payment of \$10.00 per tour of duty, which is in addition to the normal pay for the assignment. This training allowance is separate from the basic rate of pay and is not subject to future wage increases.

At the completion of a tour of duty the conductor performing training shall submit a Company provided form which will document the progress of the employee being trained. Only one employee assigned to a crew will be entitled to training pay. Management of the Company is vested with the authority to assess employee qualifications and will designate the crew a new-hire employee will train with. Once a new-hire employee has become qualified as a conductor no additional payment for training will be made.

### **3. Vacations**

**ARTICLE 14** of the Working Agreement shall be modified to include the following:

(c) Vacation requests for vacation allotments the following year must be submitted in writing to the Company's designated representative no later than December 1st of each year. The vacation schedule will be developed and completed by December 31<sup>st</sup> of each year. Those employees with the greater amount of operating seniority will have priority if duplicate requests for the same vacation times are received. When submitting requests, employees should include at least three (3) choices in case of duplicate requests. Those eligible employees NOT submitting vacation requests by December 1<sup>st</sup> will be assigned a vacation period by the Company, in line with the provisions of this Article.

Amended SJVR GEN-0006. When scheduling vacations employees may float up to one week of their vacation time, to be taken in single day increments. Single vacation days shall be granted subject to the needs of the service and must be requested 24 hours in advance. A lesser time may be agreed-to on a case-by-case basis. Floating single days requested and denied in a calendar year may be carried over to the following year as flex days and may be used subject to the provisions of Article 2, Flex Days, contained in this Agreement.

Employees who do not schedule a floating week may request single days from a scheduled week, however, any days of the week remaining will be taken as scheduled.

#### **4. Discipline Rule**

**Article 12** of the Working Agreement shall be eliminated and replaced with a new discipline rule, as set forth in Attachment A to this memorandum.

#### **5. Job Assignments and Bidding Rule**

**ARTICLE 22** shall be modified to include the following:

i) Employees subject to this agreement will be allowed two (2) “Sadie Hawkins” days per year during which a full exercise in seniority will be allowed. The Sadie Hawkins days will fall on the Sunday which is closest to April 1<sup>st</sup> and October 1<sup>st</sup> of the year.

f) Two weeks prior to the Sadie Hawkins days specified herein the Company will post a listing of all existing assignments. Bids will close at 5pm on the Wednesday before the Sadie Hawkins day. All employees in active service during the bidding period are required to submit a bid listing their preferences in assignment, i.e., first choice, second choice, etc, and employees will be assigned their preference in seniority order. Employees who fail to submit a bid or who remain in unassigned status after the awarding of the bids will be force assigned by the Company to any positions that remain unfilled.

In the event an engineer’s position remains open after completion of the force assignments in the preceding paragraph the junior qualified employee assigned to either an extra board or a subordinate position shall be force-assigned to the open engineer position without regard to the location of the employee or the assignment. The remaining unassigned employee, if any, shall be assigned to the vacated position.

The Local Chairman will review and approve in advance of publication the assignment of bids under the re-bulletining process.

### **ARTICLE 2 - COMPENSATION**

#### **1. Equipment, Supplies, Ice, & Water**

**ARTICLE 31** of the Working Agreement shall be modified to include the following:

(a) The Company will provide the necessary equipment and supplies required by employees during their tour of duty. The Company will provide employees with a voucher up to two times per calendar year for the purchase of a pair of work boots as needed. A voucher for the purchase of work boots will not exceed \$140.00.

## 2. Expenses Away From Home & Transportation Expense

**ARTICLE 23** of the Working Agreement shall be modified to include the following:

1. Regularly Assigned Employees
  - a) When crews are tied up for rest at points other than the designated home terminal of their assignment for four (4) hours or more, each employee so tied up shall be provided suitable lodging at the Carrier's expense.
  - b) *Amended SJVR 0003-AGR.* When an employee other than those on the extra board is tied up at other than his/her designated home terminal for a period less than twenty-four (24) hours, he/she shall receive a meal allowance of \$20.00. This employee tied up for a period exceeding twenty-four (24) hours will receive an additional \$20.00 meal allowance, and for any additional 24 hour period.
2. Extra Board Employees
  - a) *Amended SJVR GEN-0002.* When an extra board employee is tied up for rest at a point in excess of 30 miles of his/her designated home terminal for 4 hours or more, the employee shall be provided suitable lodging at the carriers expense. Exceptions to this will be if the employee so affected resides less than 30 miles from the away from home tie up point.
  - b) *Amended SJVR 0003-AGR.* When an extra board employee is tied up at a point in excess of 30 miles from his/her designated home terminal for a period less than twenty-four (24) hours, he/she shall receive a meal allowance of \$20.00. The employee shall receive an additional \$20.00 for each succeeding 24 hour period (or portion thereof) that the employee is required to remain at other than his/her home terminal. Exceptions to this will be if the employee so affected resides less than 30 miles from the away from home tie up point.
3. Transportation Expenses
  - a) *Amended SJVR 0003-AGR.* When employee's services are required at a point greater than 30 miles from his/her designated home terminal, the Carrier shall either provide transportation or authorize the use of the employee's personal vehicle. When so authorized the employee shall receive the applicable mileage rate allowed by the Internal Revenue Service between the employee's home terminal and the reporting point and return, and for work related mileage while at the other point.
4. Payment in lieu of lodging *Amended SJVR GEN-0002.*
  - a) Employees otherwise entitled to lodging under the provisions of this Agreement may, at their option, elect to receive a payment of \$45.00 in lieu

of company provided lodging. Employees will receive only one \$45.00 payment for each calendar day during which the employee is otherwise eligible for lodging.

### 3. Extra Board

ARTICLE 28 of the Working Agreement shall be modified to include the following:

Section 3.

A. Employees assigned to extra boards will be guaranteed to work not less than an average of 5 shifts per week, or be paid equivalent compensation at the rates set forth in Article 1, calculated over a 4-week period. Employees will be allowed a minimum ten shifts pay in the first pay period of the 4-week guarantee period and the Company will make adjustments, if any, to the guarantee in the second pay period. An employee who has a non-compensated layoff during a work week will forfeit any guarantee for that week.

### 4. Compensation

The Working Agreement shall be modified to include the following:

A. Employees subject to this Agreement will be compensated an hourly rate of pay as specified below. The minimum basic day will be ten (10) hours.

Effective Date	January 1, 2006	January 1, 2007	January 1, 2008	January 1, 2009	January 1, 2010
Hourly Rate	\$21.33	\$21.97	\$22.41	\$22.86	\$23.55
6th and 7th Day Rate	\$26.66	\$27.46	\$28.01	\$28.58	\$29.44

B. Work performed in excess of the 10-hour basic day in the work week will be compensated for at one and one-half times the basic hourly rate.

C. Work performed in excess of five shifts in the work week will be compensated for at the 6th and 7th Day Rate specified above, with an eight-hour minimum.

D. Employees who qualify for holiday pay for the holidays specified in this Agreement will be allowed a basic day at the hourly rate. Employees must be available the day before, the day of and the day following a holiday to qualify for holiday pay. Compensation for vacation or flex days will extend the qualification period.

E. Employees who perform service on an observed holiday will be compensated for such service at the 6<sup>th</sup> and 7<sup>th</sup> day rate with an eight-hour minimum.

F. Employees who operate remote control during a tour of duty will receive a separate payment of \$25.00, which is in addition to the normal pay for the assignment. This allowance is separate from the hourly rate of pay and is not subject to future wage increases.

## MORATORIUM AGREEMENT

This Agreement will become effective on December 1, 2006.

The parties signatory to this Agreement further agree that no notice to change this Agreement, pursuant to Section 6 of the Railway Labor Act, as amended, will be served by either party before July 1, 2010, not to be effective before January 1, 2011.

The foregoing will not prevent the parties from agreeing on items of mutual interest.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of this \_\_\_\_\_ day of \_\_\_\_\_.

FOR THE EMPLOYEES

FOR THE EMPLOYER

\_\_\_\_\_  
M. B. Futhey, Jr., VP-UTU

\_\_\_\_\_  
Jack Gauthier, General Manager

\_\_\_\_\_  
John Previsich, General Chairman

\_\_\_\_\_  
Keith Barksdale, Assistant GM

\_\_\_\_\_  
Pat Springman, Local Chairman

**Side Letter No. 1**

Mr. John Previsich  
General Chairman  
United Transportation Union  
7960 B Soquel Dr. #381  
Aptos, CA 95003

Dear Mr. Previsich:

This refers our contract discussions regarding compensation under the Agreement. The parties hereby agree that all employees who occupy a position on the seniority roster as an active employee as of the effective date of the agreement will be eligible to receive a bonus payment of \$1,800.00. This payment is in lieu of any retroactive payments under the agreement for 2006 and it will be made in two installments. The first installment will be a payment of \$1,200.00 and will be made during the first payroll period in December 2006. The second installment will be a payment of \$600.00 and will be made on July 1, 2007. It is understood employees must be in active service to receive the installment payments under this Agreement. Any employee who retires, resigns or otherwise is no longer in service prior to a payment under this Agreement will forfeit such remaining payment.

Yours truly,

**Side Letter No. 2**

Mr. John Previsich  
General Chairman  
United Transportation Union  
7960 B Soquel Dr. #381  
Aptos, CA 95003

Dear Mr. Previsich:

This refers to our contract discussions regarding Flex Days under the Agreement. Inasmuch as this Agreement is being implemented beyond mid-year it is understood the sick leave provisions in the preceding Agreement will be exhausted in 2006 and the provisions governing Flex Days will be implemented effective January 1, 2007. Any sick leave day(s) carried over to 2007 will be converted to Flex Days under the Flex Day Agreement.

Yours truly,

**Side Letter No. 3**

Mr. John Previsich  
General Chairman  
United Transportation Union  
7960 B Soquel Dr. #381  
Aptos, CA 95003

Dear Mr. Previsich:

This is to set forth our agreement that Employees' holidays, sick leave, vacation, 401k, bereavement leave and jury duty will be as outlined in the RailAmerica, Inc. Employee Handbook dated January 2005, except as specifically modified in the collective bargaining agreement between the parties.

Yours truly,

**Side Letter No. 4**

Mr. John Previsich  
General Chairman  
United Transportation Union  
7960 B Soquel Dr. #381  
Aptos, CA 95003

Dear Mr. Previsich:

This refers to our contract discussion regarding accumulated personal leave time under Article IV of SJVR-0004. Inasmuch as this Agreement is being superseded under the Flex Day provisions of the new Agreement the parties agree to allow employees with accumulated personal leave time to observe the leave time or be paid for the leave time in lieu of at the hourly rate of pay. It will be an employee's choice to actually observe any accrued leave time or be paid in lieu of. All remaining leave time actually observed shall be taken by December 31, 2006 and the granting of such leave time shall be subject to the Company's requirements of service. Employees who request personal leave time to be paid in lieu of shall submit such request prior to December 1, 2006.

Yours truly,

**Side Letter No. 5**

Mr. John Previsich  
General Chairman  
United Transportation Union  
7960 B Soquel Dr. #381  
Aptos, CA 95003

Dear Mr. Previsich:

This is to set forth the parties' agreement to modify the seniority provisions of the San Joaquin Valley Railroad Working Agreement to provide that the Engineer, Conductor and Assistant Conductor craft rosters in place as of 09/01/06 shall be closed and a new San Joaquin Valley Operating Employees Roster shall be created. The new roster shall list the employees who are eligible to be on it and designate the crafts for which each employee is qualified, and shall be updated as necessary to maintain currency with a copy to the Local and General Chairmen, UTU.

New employees and current employees who have not yet established seniority as an engineer before 09/01/06 shall be placed on the SJVR Operating Employee Roster based on the initial seniority date that the employee receive(d) in accordance with the provisions of Article 3 of the SJVR Working Agreement.

Operating employees shall be permitted to exercise seniority to any position for which they have received qualification in the craft in accordance with the employee's standing on the appropriate closed craft roster, if any, or the employee's standing on the SJVR Operating Employees roster. A position and/or assignment will be filled by the senior qualified employee making application to such position and/or assignment.

This provision is intended to provide a single roster for future employees while respecting the craft rosters that are currently in place. It is intended that new employees shall be placed on one roster only and shall be privileged to exercise seniority in all crafts to which they are entitled based on their standing on the single roster.

Employees shall enter the training program in seniority order based on their standing on the single roster. In the event that a previously qualified employee is hired, such employee may be qualified in advance of others who are waiting their turn in the promotion process, but shall receive a seniority date on the Operating Craft Roster in accordance with Article 3 of the SJVR Working Agreement, and behind all who have previously established seniority on the roster.

Yours truly,

**Side Letter No. 6**

Mr. John Previsich  
General Chairman  
United Transportation Union  
7960 B Soquel Dr. #381  
Aptos, CA 95003

Dear Mr. Previsich:

This refers to our contract discussions regarding the changes the parties have agreed to in the Collective Bargaining Agreement. It is agreed that subsequent to the ratification of the Agreement the parties will endeavor to rewrite the Agreement Schedule and consolidate all effective memorandums of understanding into a single Agreement Schedule.

Yours truly,

**Side Letter No. 7**

Mr. John Previsich  
General Chairman  
United Transportation Union  
7960 B Soquel Dr. #381  
Aptos, CA 95003

Dear Mr. Previsich:

This refers to our contract discussions regarding Article 28 Extra Boards in the Agreement. For the purpose of implementing this Agreement the 4-week period referred to in Article 28 will commence on the first week of the first complete payroll period following the effective date of this Agreement.

Yours truly,

**Side Letter No. 8**

Mr. John Previsich  
General Chairman  
United Transportation Union  
7960 B Soquel Dr. #381  
Aptos, CA 95003

Dear Mr. Previsich:

This refers to our contract discussions regarding Article 4 of the SJVR Working Agreement. The parties agreed to amend Article 4 as modified by SJVR Agreement 0006 to include that an employee who is in force assigned status may not bid to a subordinate position within the same terminal, unless a junior qualified employee is available in the terminal to assume the position being vacated.

Yours truly,

## ATTACHMENT A

### ARTICLE 12 – Hearings and Discipline

#### GENERAL

1. Employees governed by this agreement will not be disciplined without first being given a fair and impartial investigation except as provided below. An employee may be held out of service pending an investigation when it is alleged an employee has committed a serious offense or in the opinion of the Company the employee represents a safety risk to himself, his fellow employees, the Company or the public.

#### NOTICE

2. Within 10 days of the time the appropriate company officer knew or should have known of an alleged offense, the employee will be given written notice of the specific charges against him or her. The notice will be sent by certified US Mail or hand delivered to the last known address of the employee and to the UTU Local Chairman. The notice will state the time and place of the investigation and will be furnished sufficiently in advance to allow the employees the opportunity to arrange for representation by an Organization representative(s) and witnesses. A copy of the notice will be furnished to the UTU representative.

#### WAIVER

3. Prior to the investigation, the parties may agree to arrange for an informal conference to discuss the alleged offense. Such informal conference may be either in person or by telephone. If such informal conference results in the proposed discipline being dropped, no further action will be taken.

#### INVESTIGATION

4. Unless postponed for good cause, with the concurrence of the other party, the investigation will be held no later than 10 days after the date of the notice. Concurrence will not be unreasonably withheld.

5. When practicable, the investigation will be held at the employee's location of employment. When that is not practicable, the investigation will be held at a location which will minimize the travel, inconvenience and loss of time for all employees involved. When an employee is required to travel to an investigation at other than his or her place of employment, the employee will be reimbursed for actual, reasonable and necessary expenses incurred.

6. At the investigation, the employee and/or the UTU representative will be afforded the opportunity to examine or cross-examine all witnesses. Such examination will extend to all matters under investigation.

7. The investigation will be recorded and transcribed. Copies of transcript will be furnished to the employee and the UTU Local Chairman no later than the date discipline is issued. If the accuracy of the transcript is questioned and the investigation was electronically recorded, the tapes shall be examined and, if necessary, the transcript will be corrected.

## DECISION

8. A written decision will be issued no later than fifteen (15) days after completion of the hearing. The decision will be sent by certified US Mail or hand delivered to the last known address of the employee and to the UTU Local Chairman.

9. If the employee is found not at fault, the employee will be paid for all time lost and any notation of the investigation will not be placed on the employee's personal record.

## APPEALS

10. If the employee is not satisfied with the decision, the UTU General Chairman may appeal to the designated carrier officer within 60 days from the date of the decision. If not appealed within 60 days the matter will be considered closed.

11. The designated carrier officer will respond to the appeal within 60 days from the date of the UTU General Chairman's appeal. If the officer fails to respond within 60 days, the employee will be paid for any time lost and the employee's record will be cleared of the discipline at issue.

12. If the employee is dissatisfied with the decision, proceedings for final disposition of the case under the Railway Labor Act must be instituted by the employee or his or her duly authorized representative within six months of the date of that decision or the case will be considered closed and the discipline will stand as issued, unless the time limit is extended by mutual agreement.

## MISCELLANEOUS

13. If a dispute arises concerning the timeliness of a notice, decision or appeal, the postmark on the envelope containing such document or date of receipt for hand delivery shall be deemed to be the date of such notice or decision.

14. Employees attending an investigation as witnesses at the direction of the carrier will be compensated for all time lost and, in addition, will be reimbursed for actual, reasonable and necessary expenses incurred. When no time is lost, witnesses will be paid for actual time attending the investigation with a minimum of two hours.

15. Employees may be counseled by their supervisor for a variety of reasons or instances that require corrective action. A follow-up letter may be placed on the employee's personal file, which details the counseling session. Such letter of counsel is not considered formal discipline.