

Title: **Agreements with Union Pacific Railroad and Encore McKinley Village LLC for the 28th Street Railroad Crossing Improvements for McKinley Village Project (P08-086)**

Recommendation: Pass a Motion: 1) authorizing the City Manager to execute the Improvements to Existing Public Road at Grade Crossing for 28th Street Agreement with Union Pacific Railroad Company (Crossing Agreement), and 2) authorizing the City Manager to execute an agreement with Encore McKinley Village, LLC for the reimbursement of costs incurred under the Crossing Agreement.

Location: The McKinley Village Project is located in the area bounded by the Capital City Freeway and the Union Pacific Railroad, just south of Sutter's Landing Regional Park (Council District 3).

Contact: Nicholas Theocharides, Engineering Services Manager, (916) 808-5065, Department of Public Works

Presenter: None.

Department: Public Works

Attachments:

- 1-Description/Analysis
- 2-Crossing Agreement
- 3-Reimbursement Agreement.

Description/Analysis

Issue Detail: The McKinley Village Project consists of the construction of a 336-unit residential development, a neighborhood recreation center, parks, and associated infrastructure on an approximately 48.75-acre site within the East Sacramento Community Plan Area located in the City of Sacramento. The Project was approved by the Sacramento City Council on April 29, 2014, subject to conditions of approval which include the provision that the developer widen the approaches to the existing 28th Street Crossing of the Union Pacific Railroad (UPRR). As the approach widening will also require track and crossing gate work to be performed by UPRR, an agreement is needed between the City and UPRR (Exhibit A) to set forth the terms for UPRR's construction work. A separate agreement between the City and Encore McKinley Village LLC (Exhibit B) will provide full reimbursement to the City for all costs incurred for the construction work. Approval of both agreements is needed for construction to proceed.

Policy Considerations: The action requested is consistent with Title 3 of the Sacramento City Code and existing policy regarding approval of agreements.

Economic Impacts: None.

Environmental Considerations:

California Environmental Quality Act (CEQA/NEPA): On April 29, 2014, the City Council certified the Environmental Impact Report and adopted the Mitigation Monitoring Program and Findings of Fact for the McKinley Village Project.

Sustainability: This project is consistent with Sustainability Master Plan goals to promote infill development, and encourage bicycle and pedestrian trips.

Commission/Committee Action: On October 23, 2013, the City Planning and Design Commission held a public hearing in accordance with Government Code Section 65355 on the McKinley Village project, and received and considered evidence, and forwarded to the City Council for approval of the project.

Rationale for Recommendation: The recommended action is necessary in order to proceed with the construction of the 28th Street Crossing work and meet the conditions of approval for the McKinley Village project.

Financial Considerations: As a private development project, revenue and expenses will be tracked in the Private Development Fund (Fund 2018). All costs incurred by the City under the Crossing Agreement with UPRR will be borne by Encore McKinley Village, LLC per the terms of the reimbursement agreement between Encore McKinley Village, LLC and the City.

Local Business Enterprise (LBE): Not applicable.

**IMPROVEMENTS TO EXISTING PUBLIC ROAD AT GRADE CROSSING
FOR 28TH STREET, DOT 762357T
MILEPOST 90.99—MARTINEZ SUBDIVISION
SACRAMENTO, CALIFORNIA**

THIS AGREEMENT (this "Agreement"), executed in duplicate this ___ day of _____, 2016 (the "Effective Date"), by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Railroad"), and CITY OF SACRAMENTO, a municipal corporation or political subdivision of the State of California ("Political Body").

RECITALS:

Political Body desires to undertake as its project (the "Project") the widening of the approaches to the existing 28th Street at-grade public road crossing located on Railroad's Martinez Subdivision at Mile Post 90.99 (DOT 762357T) at or near Sacramento, Sacramento County, California (the "Crossing"), and in connection with the Project, Political Body has requested Railroad to make safety improvements to the Crossing, to which Railroad is agreeable, but solely upon the terms and conditions hereinafter set forth.

The location of the Crossing is generally shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof.

AGREEMENT:

NOW THEREFORE, in consideration of the premises and of the promises and conditions hereinafter set forth, the parties hereto agree as follows:

1. Railroad, at Political Body's expense, shall furnish all labor, material, equipment and supervision for the following work in connection with the Project:

- Installation of automatic, railroad warning devices at the Crossing, which include flashing lights with gates and cantilevers (the "Signal Work");
- Upgrading the crossing surface, which shall include removal of the existing crossing surface and installation of seventy-two (72) feet of new concrete crossing surface across all three tracks at the Crossing (the "Surface Work");
- Engineering; and
- Flagging (collectively, the "Railroad Work").

2. The Railroad Work to be performed by Railroad is described in Railroad's material and force account estimates: Signal Work estimate dated August 18, 2016, in the amount of Three Hundred Fifty Three Thousand Four Hundred Two Dollars and no/100 (\$353,402.00), marked **Exhibit B** (the "Signal Work Estimate") and Surface Work estimate dated June 30, 2016, in the amount of Two Hundred Sixty Six Thousand Two Hundred Seventy Five Dollars and no/100 (\$266,275.00), marked **Exhibit C** (the "Surface Work Estimate"), each attached hereto and hereby made a part hereof (collectively, the "Estimate"). As set forth in the Estimate, Railroad's combined estimated cost for the Railroad Work is Six Hundred Nineteen Thousand Six Hundred Seventy Seven Dollars and no/100 (\$619,677.00). Railroad, if it so elects, may recalculate and update the Signal Work Estimate and/or the Surface Work Estimate submitted to Political Body in the event Political Body does not commence work on the Project within six (6) months after the date of the Signal Work Estimate or Surface Work Estimate, as applicable.

Political Body agrees to reimburse Railroad for one hundred percent (100%) of Railroad's actual costs associated with the Project, including, but not limited to, actual costs of preliminary

engineering review (including preliminary engineering review costs incurred by Railroad prior to the Effective Date), inspection, the Railroad Work, flagging, procurement of materials, equipment rental, manpower and deliveries to the job site and all of Railroad's normal and customary additives (which shall include direct and indirect overhead costs) associated therewith. During the performance of the Railroad Work, Railroad, at its election, may provide progressive billing to Political Body based on Railroad's actual costs. Within One Hundred Twenty (120) days after Railroad has completed its work, Railroad will submit a final billing to Political Body for the balance owed, if any, in connection with the Railroad Work. Political Body shall pay Railroad within thirty (30) days of its receipt of progressive and final bills submitted by Railroad.

3. Political Body, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the portion of the Project affecting Railroad's facilities or operations and submit such plans and specifications to Railroad's Assistant Vice President Engineering-Design, or his authorized representative, for review and approval. The plans and specifications shall include all roadway layout specifications, cross sections and elevations, associated drainage and other appurtenances.

The final one hundred percent (100%) plans, as approved in writing by Railroad's Assistant Vice President Engineering-Design, or his authorized representative, are hereinafter referred to as the "Plans" and shall replace any previous iteration(s) of the plans. No work affecting Railroad's facilities or operations shall commence until the Plans have been approved by Railroad. The Plans are hereby made a part of this Agreement by reference. No changes in the Plans shall be made unless Railroad has consented to such changes in writing.

Railroad's review and approval of the Plans will in no way relieve Political Body or its contractor(s) from their responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by Political Body or its contractor(s) on the Plans is at the risk of Political Body and its contractor(s).

4. Railroad, at its cost, shall maintain the Crossing between the track tie ends and the area that is two (2) feet outside of the rails of the outside tracks, and subject to the paragraph below regarding Railroad's maintenance of the automatic, railroad warning devices, Political Body, at its cost, shall maintain all other portions of the Crossing.

Railroad shall maintain the automatic, railroad warning devices as long as they remain in place. Cost of maintaining said signals shall be apportioned between the parties hereto in accordance with Sections 1202.2 and 1231.1 of the California Public Utilities Code. The precise manner and method of determining applicable charges, manner and method of payment and other procedures under said sections shall be governed by any applicable decisions of the California Public Utilities Commission.

5. Political Body, at its cost, shall provide all labor, material and equipment associated with: (a) traffic control, barricades, and detour signing for the work (including the Railroad Work) in connection with the Project, (b) the installation of concrete or asphalt street approaches and highway traffic control signals, and (c) the installation of advanced warning signs and, if required, pavement markings. All such work shall be in compliance with the current Manual on Uniform Traffic Control Devices.

6. If Political Body's contractor(s) is/are performing any work in connection with the Project that may affect or impact Railroad's facilities or operations, then Political Body shall require its contractor(s) to execute Railroad's standard and current form of Contractor's Right of Entry Agreement. Political Body acknowledges receipt of a copy of the Contractor's Right of Entry Agreement and understanding of its terms, provisions, and requirements, and will inform its contractor(s) of the need to

execute the Contractor's Right of Entry Agreement and to obtain and provide to Railroad the insurance policies, binders, certificates and endorsements that are required in the Contractor's Right of Entry Agreement. Under no circumstances will Political Body's contractor(s) be allowed to perform any work that may affect or impact Railroad's facilities or operations without first executing the Contractor's Right of Entry Agreement and providing the aforesaid insurance documents. If Political Body's own employees will be performing any Project work that may affect or impact Railroad's facilities or operations, Political Body, subject to Railroad's prior review and approval, may self-insure all or a portion of the insurance coverage required under Railroad's standard and current form of Contractor's Right of Entry Agreement.

7. Fiber optic cable systems may be buried on the property where the Project work is to take place. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Political Body or its contractor(s) shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m., Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour number, 7 day number for emergency calls) to determine if fiber optic cable is buried anywhere on the premises to be used by Political Body or its contractor(s). If it is, Political Body or its contractor(s) will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the premises.

8. Political Body, for itself and for its successors and assigns, hereby waives any right of assessment against Railroad for any and all improvements made under this Agreement.

9. Covenants herein shall inure to or bind each party's successors and assigns; provided, however, that no right of Political Body shall be transferred or assigned, either voluntarily or involuntarily, except by express written agreement acceptable to Railroad.

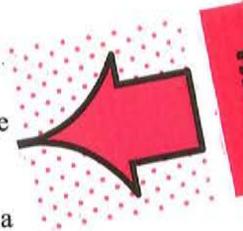
10. Political Body hereby confirms that funds have been appropriated for the work set forth in this Agreement (including the Railroad Work).

11. The person signing this Agreement on behalf of Political Body hereby confirms that he/she is authorized under Political Body policies and procedures to execute this Agreement and to bind Political Body to the obligations under this Agreement.

12. No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by Political Body and Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by Railroad of any default by the Political Body shall not affect or impair any right arising from any subsequent default. This Agreement (including the exhibits attached hereto and made a part hereof) constitute the entire understanding between Political Body and Railroad with respect to the Project and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral with respect thereto, including without limitation, that certain Agreement dated March 9, 1950 between Southern Pacific Company, a Delaware corporation, as Railroad's predecessor in interest via merger, and Political Body.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement to be effective as of the Effective Date.

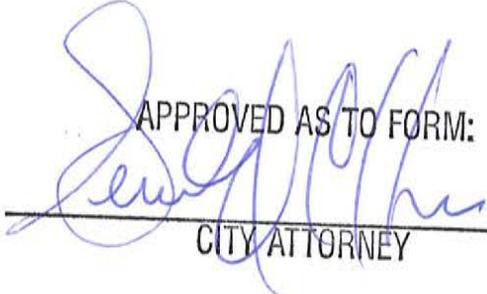


UNION PACIFIC RAILROAD COMPANY, a
Delaware corporation

By _____
Name: _____
Title: _____

CITY OF SACRAMENTO, a municipal
corporation or political subdivision of the State
of California

By _____
Name: _____
Title: _____

APPROVED AS TO FORM:


CITY ATTORNEY

Exhibit A

Railroad Location Print

(see attached)

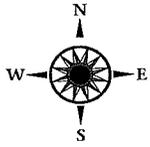


EXHIBIT "A"
RAILROAD LOCATION PRINT
ACCOMPANYING AN AGREEMENT FOR
IMPROVEMENTS TO EXISTING PUBLIC ROAD AT GRADE CROSSING



UNION PACIFIC RAILROAD COMPANY
MARTINEZ SUB
RAILROAD MILE POSTS 90.99
SACRAMENTO, SACRAMENTO COUNTY, CALIFORNIA

To accompany an agreement with the
CITY OF SACRAMENTO and/or CONTRACTORS
UPRR Folder No. 2944-95 Date: August 25, 2016

WARNING

IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.

PHONE: 1-(800) 336-9193

Exhibit B

Signal Work Estimate

(see attached)

Exhibit B

DATE: 2016-08-18

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK BY THE UNION PACIFIC RAILROAD

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2017-02-16

DESCRIPTION OF WORK:
 INSTALL AUTOMATIC FLASHING LIGHT CROSSING SIGNALS
 WITH GATES & CANTILEVERS AT SACRAMENTO, CA. 28TH STREET
 M.P. 90.99 ON THE MARTINEZ SUB. DOT #762357T
 WORK TO BE PERFORMED BY RAILROAD WITH EXPENSE AS BELOW:
 SIGNAL - CITY OF SACRAMENTO - 100%
 ESTIMATED USING FEDERAL LABOR ADDITIVES WITH INDIRECT AND
 OVERHEAD CONSTRUCTION COST'S - 190.39%

PID: 88635 AWO: 26444 MP, SUBDIV: 90.99, MARTINEZ
 SERVICE UNIT: 19 CITY: HAGGINS STATE: CA

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
ENGINEERING WORK							
ENGINEERING			3660		3660		3660
LABOR ADDITIVE 190.39%			16113		16113		16113
SIG-HWY XNG			4821		4821		4821
TOTAL ENGINEERING			24594		24594		24594
SIGNAL WORK							
BILL PREP			900		900		900
CANTILEVERS				23010	23010		23010
CONTRACT				4207	4207		4207
FOUNDATION REMOVAL				5000	5000		5000
LABOR ADDITIVE 190.39%			139742		139742		139742
MATL STORE EXPENSE				893	893		893
PERSONAL EXPENSES				32148	32148		32148
RCLW CONTRACT				1180	1180		1180
ROCK/GRAVEL/FILL				2400	2400		2400
SALES TAX				1683	1683		1683
SIGNAL			72497	42079	114576		114576
TRANSP/IB/OB/RCLW				3059	3059		3059
ENVIRONMENTAL - PERMITS				10	10		10
TOTAL SIGNAL			213139	115669	328808		328808
LABOR/MATERIAL EXPENSE			237733	115669			
RECOLLECTIBLE/UPRR EXPENSE					353402	0	
ESTIMATED PROJECT COST							353402

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.

Exhibit C

Surface Work Estimate

(see attached)

Exhibit C

DATE: 2016-06-30

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK
BY THE
UNION PACIFIC RAILROAD

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2016-12-29

DESCRIPTION OF WORK:
SACRAMENTO, CA / 28TH STREET / DOT#762357T / MARTINEZ SUB, MP 90.99
INSTALL 3 - 72 TF CROSSING SURFACES INCLUDING TIES, RAIL, OTM
PROJECT TO BE FUNDED 100% BY CITY OF SACRAMENTO
PROJECT BUILT USING FEDERAL WITH OVERHEAD AND INDIRECT OF 234.24%

PID: 89204 AWO: 27135 MP, SUBDIV: 90.99, MARTINEZ
SERVICE UNIT: 19 CITY: HAGGINS STATE: CA

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
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ENGINEERING WORK							
ENGINEERING			3993		3993		3993
FLAGGING			3991		3991		3991
TRACK SUPERVISORS			3992		3992		3992
LABOR ADDITIVE 234.24%			28024		28024		28024
			-----	-----	-----	-----	-----
TOTAL ENGINEERING			40000		40000		40000
TRACK & SURFACE WORK							
BALAST, SURFACE & LINE	3.00	CL	8193	2878	11071		11071
BILL PREP FEE				900	900		900
CONTRACT APPROACH WORK				42000	42000		42000
ENVIRONMENTAL - PERMITS				10	10		10
FIELD WELD			1601	2420	4021		4021
FOREIGN LINE FREIGHT				2296	2296		2296
HOMELINE FREIGHT				900	900		900
OTM			1433	33206	34639		34639
RAIL	840.00	LF	4708	14641	19349		19349
RDXING	216.00	TF	1692	49678	51370		51370
TIES	168.00	EA	6095	11413	17508		17508
SALES TAX				4568	4568		4568
MATL STORE EXPENSE				2202	2202		2202
LABOR ADDITIVE 234.24%			35441		35441		35441
			-----	-----	-----	-----	-----
TOTAL TRACK & SURFACE			59163	167112	226275		226275
LABOR/MATERIAL EXPENSE			99163	167112	-----	-----	-----
RECOLLECTIBLE/UPRR EXPENSE					266275	0	-----
ESTIMATED PROJECT COST							266275
EXISTING REUSEABLE MATERIAL CREDIT					0		
SALVAGE NONUSEABLE MATERIAL CREDIT					0		

RECOLLECTIBLE LESS CREDITS					\$266275		

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.

**AGREEMENT FOR REIMBURSEMENT OF
UNION PACIFIC COSTS
FOR
EXISTING 28TH STREET AT-GRADE
CROSSING
McKINLEY VILLAGE**

This Agreement is entered into this _____ day of _____ 2016 by and between **ENCORE McKINLEY VILLAGE, LLC**, a Delaware limited liability company, hereinafter "ENCORE" and the **CITY OF SACRAMENTO**, hereinafter "CITY."

BACKGROUND

1. ENCORE is the developer of the McKinley Village Project ("**Project**").
2. The Project was approved by the Sacramento City Council on April 29, 2014 subject to conditions of approval. Condition I32 generally requires ENCORE to coordinate with both the Public Utilities Commission ("**PUC**") and the CITY, through its Department of Public Works (DPW) regarding any improvements to the existing 28th Street at-grade crossing to improve/modify the existing warning devices to insure all traffic lanes are controlled by the crossing arms, and to construct median separation and pedestrian specific warning devices (extend crossing arms to proposed sidewalks) to the satisfaction of the DPW (the "**28th Street Improvement Project**").
3. Pursuant to the Condition of Approval, ENCORE and the CITY sought the commitment of Union Pacific Railroad ("**UP**" or "**Railroad**") to construct that portion of the 28th Street Improvement Project which consists of the "**Signal Work**" and the "**Surface Work**," as both terms are defined in the document entitled "Improvements to Existing Public Road at Grade Crossing for 28th Street, DOT 762357T Milepost 90.99—Martinez Subdivision Sacramento, California" (the "**UP 28th Street Agreement**"), attached as **Exhibit 1**. As further indicated in the UP 28th Street Agreement, the Signal Work and the Surface Work are collectively called the "**Railroad Work**."
4. UP has agreed to construct the Railroad Work pursuant to the UP 28th Street Agreement. ENCORE will be constructing the remainder of the 28th Street Improvement Project pursuant to the terms of the Project conditions of approval.
5. CITY is agreeable to executing the UP 28th Street Agreement for the benefit of ENCORE and the CITY, subject to full reimbursement by ENCORE for any and all costs, debts and obligations incurred by the City under the UP 28th Street Agreement excluding all costs relating to maintenance of the Railroad Work.

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

A. EFFECTIVE DATE

The obligations set forth in this Agreement only become effective when both ENCORE and the CITY have signed this Agreement.

B. REIMBURSEMENT

ENCORE shall fully reimburse the CITY for all costs, debts and obligations incurred by the CITY under the UP 28th Street Agreement, whether specified or not specified in the UP 28th Street Agreement and whether such costs, debts and obligations exceed the estimates provided or to be provided by UP under the UP 28th Street Agreement, excluding all costs related to maintenance of the Railroad Work.

The CITY shall provide invoices to ENCORE for any costs to be reimbursed to the CITY pursuant to this agreement and ENCORE shall pay such invoices within 15 days of receipt.

C. BONDS

Prior to UP's commencement of construction of the Railroad Work, and within fifteen (15) days of ENCORE's receipt of City's written request, ENCORE shall obtain and file with the CITY, a good and sufficient surety bond in the penal sum of Six Hundred Nineteen Six Hundred Seventy Seven Dollars (\$619,677.00). In the event of any default by ENCORE in reimbursing the CITY any costs incurred by CITY pursuant to the UP 28th Street Agreement (excluding costs related to maintenance), the surety for this bond shall pay to CITY of all costs incurred by the CITY pursuant to the UP 28th Street Agreement. CITY also shall be entitled to recover all costs and expenses incurred by CITY in order to collect on such bond, including costs of suit and reasonable attorney's fees. The bond shall be in a form approved by the CITY, shall be in favor of CITY, and shall be issued by a sufficient surety company duly authorized to transact surety insurance in the State of California. CITY agrees to cooperate with ENCORE to reduce the penal sum of the bond, from time to time as the Railroad Work progresses and reimbursements are made pursuant to this Agreement, to the amount which CITY estimates to be the remaining cost of the Railroad Work yet to be reimbursed pursuant to this Agreement. The bond shall be released upon the completion of the Railroad Work and reimbursement to the CITY by ENCORE of all amounts due under this Agreement.

D. WAIVER, ALTERATION OR MODIFICATION

No waiver, alteration, modification, or termination of this Agreement will be valid unless made in writing and signed by the authorized parties thereof.

E. NOTICES

All notices and other communications under this Agreement must be in writing and will be deemed to have been given (i) on the date of delivery, if delivered personally to the party to whom notice is given, or if made by telecopy or e-mail directed to the party to whom notice is to be given at the telecopy number or e-mail address listed below, or (ii) at the earlier of actual receipt or the second business day following deposit in the United States mail, postage prepaid. Notices and other communications will be directed to the parties at the addresses shown below. A party may change its person designated to receive notice, its telecopy number, or its address from time to time by giving notice to the other parties in accordance with the procedures set forth in this Article.

CITY: City of Sacramento
Nicholas Theocharides
915 I Street, 2nd Floor
Sacramento, CA 95814
Phone: (916) 808-5065
Fax: (916) 808-8281
Email: ntheocharides@cityofsacramento.org

ENCORE: Phil Angelides
Riverview Capital Investments, Inc.
3001 I Street, Suite 200
Sacramento, CA 95816
(916) 448-1998
Fax: (916)446-0966
Email: phil@riverviewci.com

Kevin Carson
The New Home Company
2220 Douglas Boulevard, Suite 240
Roseville, CA 95661
(916)771-2223
Fax: (916)771-4199
Email: kcarson@thenewhomecompany.com

F. AMBIGUITIES

The parties have each carefully reviewed this Agreement and have agreed to each term of this Agreement. No ambiguity will be presumed to be construed against either party.

G. SIGNATORIES

Each of the signatories to this Agreement represents that he/she is authorized to sign the Agreement on behalf of such party and that all approvals, resolutions and consents which must be obtained to bind such party have been obtained that no further approvals, acts or consents are required to bind such party to this Agreement.

The parties have entered into this Agreement as of the Effective Date set out above.

ENCORE

By: McKinley Village, LLC
a Delaware limited liability company
Its Managing Member

By: The New Home Company Northern California, LLC
a Delaware limited liability company
Member

By: Mark Stacy
Mark Stacy

By: RCI-McKinley Village, LLC
a Delaware limited liability company
Member

By: Riverview Capital Investments, Inc.
a California corporation
Its managing member

By: Philip Angeles
Philip Angeles

Approved as to Form for ENCORE:

By: McKinley Village, LLC
a Delaware limited liability company
Its Managing Member

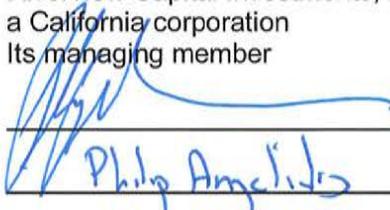
By: The New Home Company Northern California, LLC
a Delaware limited liability company
Member

By: Mark Stacy
Mark Stacy

By: RCI-McKinley Village, LLC

a Delaware limited liability company
Member

By: Riverview Capital Investments, Inc.
a California corporation
Its managing member

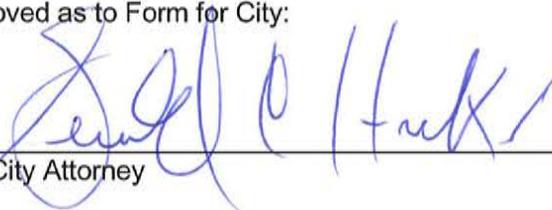
By: 

Philip Angelidis

CITY OF SACRAMENTO

By:
Title: City Manager

Approved as to Form for City:



By: City Attorney



Exhibit 1

UPRR Folder No.: 2944-95

IMPROVEMENTS TO EXISTING PUBLIC ROAD AT GRADE CROSSING FOR 28TH STREET, DOT 762357T MILEPOST 90.99—MARTINEZ SUBDIVISION SACRAMENTO, CALIFORNIA

THIS AGREEMENT (this "Agreement"), executed in duplicate this ___ day of _____, 2016 (the "Effective Date"), by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Railroad"), and CITY OF SACRAMENTO, a municipal corporation or political subdivision of the State of California ("Political Body").

RECITALS:

Political Body desires to undertake as its project (the "Project") the widening of the approaches to the existing 28th Street at-grade public road crossing located on Railroad's Martinez Subdivision at Mile Post 90.99 (DOT 762357T) at or near Sacramento, Sacramento County, California (the "Crossing"), and in connection with the Project, Political Body has requested Railroad to make safety improvements to the Crossing, to which Railroad is agreeable, but solely upon the terms and conditions hereinafter set forth.

The location of the Crossing is generally shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof.

AGREEMENT:

NOW THEREFORE, in consideration of the premises and of the promises and conditions hereinafter set forth, the parties hereto agree as follows:

1. Railroad, at Political Body's expense, shall furnish all labor, material, equipment and supervision for the following work in connection with the Project:

- Installation of automatic, railroad warning devices at the Crossing, which include flashing lights with gates and cantilevers (the "Signal Work");
- Upgrading the crossing surface, which shall include removal of the existing crossing surface and installation of seventy-two (72) feet of new concrete crossing surface across all three tracks at the Crossing (the "Surface Work");
- Engineering; and
- Flagging (collectively, the "Railroad Work").

2. The Railroad Work to be performed by Railroad is described in Railroad's material and force account estimates: Signal Work estimate dated August 18, 2016, in the amount of Three Hundred Fifty Three Thousand Four Hundred Two Dollars and no/100 (\$353,402.00), marked **Exhibit B** (the "Signal Work Estimate") and Surface Work estimate dated June 30, 2016, in the amount of Two Hundred Sixty Six Thousand Two Hundred Seventy Five Dollars and no/100 (\$266,275.00), marked **Exhibit C** (the "Surface Work Estimate"), each attached hereto and hereby made a part hereof (collectively, the "Estimate"). As set forth in the Estimate, Railroad's combined estimated cost for the Railroad Work is Six Hundred Nineteen Thousand Six Hundred Seventy Seven Dollars and no/100 (\$619,677.00). Railroad, if it so elects, may recalculate and update the Signal Work Estimate and/or the Surface Work Estimate submitted to Political Body in the event Political Body does not commence work on the Project within six (6) months after the date of the Signal Work Estimate or Surface Work Estimate, as applicable.

Political Body agrees to reimburse Railroad for one hundred percent (100%) of Railroad's actual costs associated with the Project, including, but not limited to, actual costs of preliminary

engineering review (including preliminary engineering review costs incurred by Railroad prior to the Effective Date), inspection, the Railroad Work, flagging, procurement of materials, equipment rental, manpower and deliveries to the job site and all of Railroad's normal and customary additives (which shall include direct and indirect overhead costs) associated therewith. During the performance of the Railroad Work, Railroad, at its election, may provide progressive billing to Political Body based on Railroad's actual costs. Within One Hundred Twenty (120) days after Railroad has completed its work, Railroad will submit a final billing to Political Body for the balance owed, if any, in connection with the Railroad Work. Political Body shall pay Railroad within thirty (30) days of its receipt of progressive and final bills submitted by Railroad.

3. Political Body, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the portion of the Project affecting Railroad's facilities or operations and submit such plans and specifications to Railroad's Assistant Vice President Engineering-Design, or his authorized representative, for review and approval. The plans and specifications shall include all roadway layout specifications, cross sections and elevations, associated drainage and other appurtenances.

The final one hundred percent (100%) plans, as approved in writing by Railroad's Assistant Vice President Engineering-Design, or his authorized representative, are hereinafter referred to as the "Plans" and shall replace any previous iteration(s) of the plans. No work affecting Railroad's facilities or operations shall commence until the Plans have been approved by Railroad. The Plans are hereby made a part of this Agreement by reference. No changes in the Plans shall be made unless Railroad has consented to such changes in writing.

Railroad's review and approval of the Plans will in no way relieve Political Body or its contractor(s) from their responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by Political Body or its contractor(s) on the Plans is at the risk of Political Body and its contractor(s).

4. Railroad, at its cost, shall maintain the Crossing between the track tie ends and the area that is two (2) feet outside of the rails of the outside tracks, and subject to the paragraph below regarding Railroad's maintenance of the automatic, railroad warning devices, Political Body, at its cost, shall maintain all other portions of the Crossing.

Railroad shall maintain the automatic, railroad warning devices as long as they remain in place. Cost of maintaining said signals shall be apportioned between the parties hereto in accordance with Sections 1202.2 and 1231.1 of the California Public Utilities Code. The precise manner and method of determining applicable charges, manner and method of payment and other procedures under said sections shall be governed by any applicable decisions of the California Public Utilities Commission.

5. Political Body, at its cost, shall provide all labor, material and equipment associated with: (a) traffic control, barricades, and detour signing for the work (including the Railroad Work) in connection with the Project, (b) the installation of concrete or asphalt street approaches and highway traffic control signals, and (c) the installation of advanced warning signs and, if required, pavement markings. All such work shall be in compliance with the current Manual on Uniform Traffic Control Devices.

6. If Political Body's contractor(s) is/are performing any work in connection with the Project that may affect or impact Railroad's facilities or operations, then Political Body shall require its contractor(s) to execute Railroad's standard and current form of Contractor's Right of Entry Agreement. Political Body acknowledges receipt of a copy of the Contractor's Right of Entry Agreement and understanding of its terms, provisions, and requirements, and will inform its contractor(s) of the need to

execute the Contractor's Right of Entry Agreement and to obtain and provide to Railroad the insurance policies, binders, certificates and endorsements that are required in the Contractor's Right of Entry Agreement. Under no circumstances will Political Body's contractor(s) be allowed to perform any work that may affect or impact Railroad's facilities or operations without first executing the Contractor's Right of Entry Agreement and providing the aforesaid insurance documents. If Political Body's own employees will be performing any Project work that may affect or impact Railroad's facilities or operations, Political Body, subject to Railroad's prior review and approval, may self-insure all or a portion of the insurance coverage required under Railroad's standard and current form of Contractor's Right of Entry Agreement.

7. Fiber optic cable systems may be buried on the property where the Project work is to take place. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Political Body or its contractor(s) shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m., Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour number, 7 day number for emergency calls) to determine if fiber optic cable is buried anywhere on the premises to be used by Political Body or its contractor(s). If it is, Political Body or its contractor(s) will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the premises.

8. Political Body, for itself and for its successors and assigns, hereby waives any right of assessment against Railroad for any and all improvements made under this Agreement.

9. Covenants herein shall inure to or bind each party's successors and assigns; provided, however, that no right of Political Body shall be transferred or assigned, either voluntarily or involuntarily, except by express written agreement acceptable to Railroad.

10. Political Body hereby confirms that funds have been appropriated for the work set forth in this Agreement (including the Railroad Work).

11. The person signing this Agreement on behalf of Political Body hereby confirms that he/she is authorized under Political Body policies and procedures to execute this Agreement and to bind Political Body to the obligations under this Agreement.

12. No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by Political Body and Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by Railroad of any default by the Political Body shall not affect or impair any right arising from any subsequent default. This Agreement (including the exhibits attached hereto and made a part hereof) constitute the entire understanding between Political Body and Railroad with respect to the Project and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral with respect thereto, including without limitation, that certain Agreement dated March 9, 1950 between Southern Pacific Company, a Delaware corporation, as Railroad's predecessor in interest via merger, and Political Body.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement to be effective as of the Effective Date.

UNION PACIFIC RAILROAD COMPANY, a
Delaware corporation

By _____
Name: _____
Title: _____

CITY OF SACRAMENTO, a municipal
corporation or political subdivision of the State
of California

By _____
Name: _____
Title: _____

Exhibit A

Railroad Location Print

(see attached)

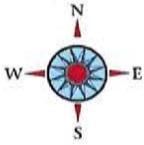
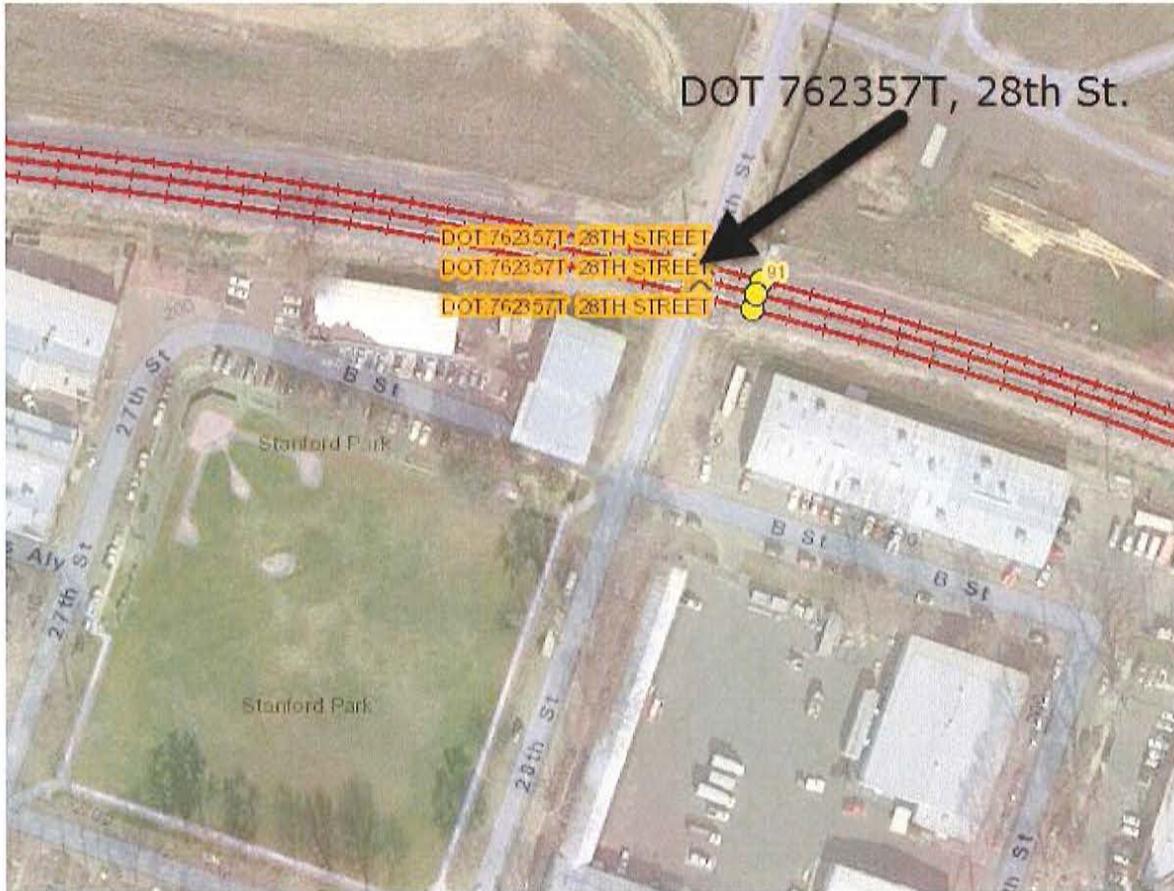


EXHIBIT "A"
RAILROAD LOCATION PRINT
ACCOMPANYING AN AGREEMENT FOR
IMPROVEMENTS TO EXISTING PUBLIC ROAD AT GRADE CROSSING



UNION PACIFIC RAILROAD COMPANY
MARTINEZ SUB
RAILROAD MILE POSTS 90.99
SACRAMENTO, SACRAMENTO COUNTY, CALIFORNIA

To accompany an agreement with the
CITY OF SACRAMENTO and/or CONTRACTORS
UPRR Folder No. 2944-95 Date: August 25, 2016

WARNING

IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.

PHONE: 1-(800) 336-9193

Exhibit B

Signal Work Estimate

(see attached)

Exhibit B

DATE: 2016-08-18

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK
BY THE
UNION PACIFIC RAILROAD

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2017-02-16

DESCRIPTION OF WORK:
INSTALL AUTOMATIC FLASHING LIGHT CROSSING SIGNALS
WITH GATES & CANTILEVERS AT SACRAMENTO, CA. 28TH STREET
M.P. 90.99 ON THE MARTINEZ SUB. DOT #762357T
WORK TO BE PERFORMED BY RAILROAD WITH EXPENSE AS BELOW:
SIGNAL - CITY OF SACRAMENTO - 100%
ESTIMATED USING FEDERAL LABOR ADDITIVES WITH INDIRECT AND
OVERHEAD CONSTRUCTION COST'S - 190.39%

PID: 88635 AWO: 26444 MP, SUBDIV: 90.99, MARTINEZ
SERVICE UNIT: 19 CITY: HAGGINS STATE: CA

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
ENGINEERING WORK							
ENGINEERING			3660		3660		3660
LABOR ADDITIVE 190.39%			16113		16113		16113
SIG-HWY XNG			4821		4821		4821
TOTAL ENGINEERING			24594		24594		24594
SIGNAL WORK							
BILL PREP			900		900		900
CANTILEVERS				23010	23010		23010
CONTRACT				4207	4207		4207
FOUNDATION REMOVAL				5000	5000		5000
LABOR ADDITIVE 190.39%			139742		139742		139742
MATL STORE EXPENSE				893	893		893
PERSONAL EXPENSES				32148	32148		32148
RCLW CONTRACT				1180	1180		1180
ROCK/GRAVEL/FILL				2400	2400		2400
SALES TAX				1683	1683		1683
SIGNAL			72497	42079	114576		114576
TRANSP/IB/OB/RCLW				3059	3059		3059
ENVIRONMENTAL - PERMITS				10	10		10
TOTAL SIGNAL			213139	115669	328808		328808
LABOR/MATERIAL EXPENSE			237733	115669			
RECOLLECTIBLE/UPRR EXPENSE					353402	0	
ESTIMATED PROJECT COST							353402

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.

Exhibit C
Surface Work Estimate
(see attached)

Exhibit C

DATE: 2016-06-30

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK
BY THE
UNION PACIFIC RAILROAD

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2016-12-29

DESCRIPTION OF WORK:

SACRAMENTO, CA / 28TH STREET / DOT#762357T / MARTINEZ SUB, MP 90.99
INSTALL 3 - 72 TF CROSSING SURFACES INCLUDING TIES, RAIL, OTM
PROJECT TO BE FUNDED 100% BY CITY OF SACRAMENTO
PROJECT BUILT USING FEDERAL WITH OVERHEAD AND INDIRECT OF 234.24%

PID: 89204 AWO: 27135 MP, SUBDIV: 90.99, MARTINEZ
SERVICE UNIT: 19 CITY: HAGGINSP STATE: CA

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
ENGINEERING WORK							
ENGINEERING			3993		3993		3993
FLAGGING			3991		3991		3991
TRACK SUPERVISORS			3992		3992		3992
LABOR ADDITIVE 234.24%			28024		28024		28024
TOTAL ENGINEERING			40000		40000		40000
TRACK & SURFACE WORK							
BALAST, SURFACE & LINE	3.00	CL	8193	2878	11071		11071
BILL PREP FEE				900	900		900
CONTRACT APPROACH WORK				42000	42000		42000
ENVIRONMENTAL - PERMITS				10	10		10
FIELD WELD			1601	2420	4021		4021
FOREIGN LINE FREIGHT				2296	2296		2296
HOMELINE FREIGHT				900	900		900
OTM			1433	33206	34639		34639
RAIL	840.00	LF	4708	14641	19349		19349
RDXING	216.00	TF	1692	49678	51370		51370
TIES	168.00	EA	6095	11413	17508		17508
SALES TAX				4568	4568		4568
MATL STORE EXPENSE				2202	2202		2202
LABOR ADDITIVE 234.24%			35441		35441		35441
TOTAL TRACK & SURFACE			59163	167112	226275		226275
LABOR/MATERIAL EXPENSE			99163	167112			
RECOLLECTIBLE/UPRR EXPENSE					266275	0	
ESTIMATED PROJECT COST							266275
EXISTING REUSEABLE MATERIAL CREDIT							0
SALVAGE NONUSEABLE MATERIAL CREDIT							0
RECOLLECTIBLE LESS CREDITS					\$266275		

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.