

AUTHORIZATION FOR CROSSING IMPROVEMENTS

Effective Date: 3/1/2022
Agency: CITY OF SAN JOSE, CALIFORNIA

THIS AUTHORIZATION FOR CROSSING IMPROVEMENTS ("**Agreement**") is made and entered into as of the **Effective Date** above, by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("**Railroad**"), and AGENCY ("**Agency**").

RECITALS

Agency has requested the Railroad's cooperation in connection with upgrading the existing, at-grade crossing devices ("**Project**"), at least in part, in furtherance of the Agency's creation of a "Quiet Zone" in accordance with Part 222 of Title 49 of the Code of Federal Regulations (49 CFR s.222.1 et seq.), including certain surface and signal work along, over and across Railroad's track and operating property, as such crossing area is more particularly described on Exhibit A attached hereto and made a part hereof ("**Crossing Area**").

Agency and Railroad are entering into this Agreement as an interim plan in connection with furtherance of the Agency's desire to create a Quiet Zone at or near the Crossing Area. Agency and Railroad will enter into a separate agreement setting forth the terms and conditions for any final plans in connection with the Quiet Zone.

AGREEMENT

NOW THEREFORE, the parties hereto agree as follows:

1. Railroad agrees to perform the Project work described on Exhibit B attached hereto the ("**Railroad Work**"). Railroad's estimated cost for the Railroad Work is included on Exhibit C attached hereto ("**Estimate**") and may include without limitation costs of engineering review, construction, inspection, flagging, procurement and delivery of materials, equipment rental, manpower and all direct and indirect overhead labor/construction costs, including Railroad's standard additive rates. Such standard additive rates may be subject to upward or downward adjustment based on industry standards and practices, and the parties acknowledge and agree that any such adjustment to standard additive rates may be made retroactively.
2. Agency has appropriated sufficient funds to complete the Project and shall reimburse Railroad for costs incurred by Railroad in connection with the Railroad Work in accordance with Exhibit D attached hereto.
3. If Agency will be performing any Project work, such work is described on Exhibit B attached hereto ("**Agency Work**"). Agency shall perform the Agency Work, if any, at its sole cost, and Railroad consents to Agency (or any contractor or other agent hired by Agency) performing the Agency Work within the Crossing Area, subject to complying with the terms and conditions of this Agreement. Railroad's consent shall not be deemed to grant Agency (or any contractor or other agent hired by Agency) any other interest in the Crossing Area or other Railroad tracks or operations.

4. If Agency hires a contractor or other agent to perform the Agency Work, Agency shall require such contractor or agent to execute Railroad's then current form of Contractor's Right of Entry Agreement and to comply with the requirements set forth therein.

5. No work of any kind shall be performed, and no person, equipment, machinery, tools, materials, vehicles or other items shall be located, operated, placed or stored within twenty-five (25) feet of any track at any time for any reason except as otherwise provided herein. Prior to commencing the Agency Work, and if the performance of any Agency Work requires any person or equipment to be within twenty-five (25) feet of any track, Agency shall provide Railroad at least thirty (30) working days advance notice of the performance of such proposed work, and upon Railroad's receipt of such notice, Railroad will determine and inform Agency whether a flagman need to be present or whether Agency needs to implement any special protective or safety measures. Subject to Exhibit D, in the event that flagging or other special protection or safety measures are required to be performed in connection with the Railroad Work specifically or the Project generally, and regardless if the costs for such measures are included in the Estimate, Agency shall be responsible for all such costs incurred in connection therewith.

6. Prior to commencing any Agency Work, Agency shall telephone (or shall cause its contractor or agent to 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 to determine if fiber optic cable is buried anywhere on Railroad's operating property to be used in connection with the Agency Work. If fiber optic cable is present, Agency, at its sole cost, will coordinate (or will cause its contractor or agent to coordinate) with the applicable telecommunications companies for the relocation or other protection of the fiber optic cable prior to beginning any Agency Work.

7. Agency, 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.

8. Neither party shall assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

9. The Railroad's rights and duties regarding the sounding of the locomotive horns at the Crossing Area shall be as set out in 49 CFR Part 222, and by other applicable law. Nothing contained in this Agreement shall be construed to alter such rights and duties.

10. Agency shall comply with all applicable laws with respect to the Project and Crossing Area, including, but not limited to, 49 CFR Part 222 and all applicable Federal Railroad Administration requirements and regulations.

11. A. Cooperation in Defense. Agency and Railroad agree to cooperate, as necessary, in defense of any claim, demand, investigation or litigation arising out of or related to this Agreement or the Project.

12. B. Definition of Losses. The term "Losses" shall include all damages, costs, expenses, attorneys' fees, other fees, or liabilities of any nature whatsoever, in any way related to or arising out of, any actual or alleged violation of law, order, or regulation; damage to any property, the environment or to natural resources; bodily injury or death of any person; or the breach of any contract.

13. C. **INDEMNITY OBLIGATIONS OF AGENCY.**

(i) **TO THE EXTENT PERMITTED BY LAW, AND SUBJECT TO SECTION 13C(ii) BELOW, THE AGENCY SHALL FULLY INDEMNIFY AND HOLD**

THE RAILROAD HARMLESS, AND DEFEND THE RAILROAD AGAINST ANY AND ALL LIABILITY, CLAIMS, SUITS, DEMANDS, AND LOSSES ARISING FROM THE POLITICAL BODY'S ACTS OR OMISSIONS OR FAULT RELATING TO OR ARISING OUT OF THIS AGREEMENT OR THE PROJECT.

- (ii) **NOTHING CONTAINED IN THIS SECTION OR ANY OTHER PART OF THIS AGREEMENT SHALL BE CONSTRUED TO CONSTITUTE AN AGREEMENT OR OBLIGATION OF THE AGENCY TO INDEMNIFY THE RAILROAD AGAINST LIABILITY OR LOSSES TO THE EXTENT ARISING FROM THE RAILROAD'S OWN ACTS OR OMISSIONS OR FAULT.**

D. If the Railroad notifies the Agency of a claim for indemnification, the Agency shall respond in writing within thirty (30) days after notification by the Railroad, unequivocally accepting the Railroad's demand and undertaking to indemnify the Railroad, or, if the Agency rejects the demand, the Agency shall state specifically the grounds for rejection.

13. Notwithstanding any other provision in this Agreement or other agreements between the parties, Agency agrees to assess and monitor the public's use of the Crossing Area in accordance with the terms of this Agreement. Agency hereby acknowledges its obligation to monitor road user compliance and perform adequate maintenance of traffic control devices, at Agency's expense. Agency shall reasonably cooperate to address any safety concerns posed by use of the Crossing Area by the public, including without limitation, mitigating, deterring, and correcting the conditions. Agency shall implement such mitigation, deterrence and/or corrective action(s) identified by Agency or Railroad, and all associated costs shall be at the sole cost and expense of Agency pursuant to the terms and conditions of this Agreement, a written amendment to this Agreement or other agreements between the parties, or as may be otherwise agreed to by the parties.

14. This Agreement sets forth the entire agreement between the parties regarding the Project and the installation and maintenance of the Project improvements within the Crossing Area. To the extent that any terms or provisions of this Agreement regarding the installation and maintenance of such Project improvements are inconsistent with the terms or provisions set forth in any existing agreement affecting the Crossing Area, such terms and provisions shall be deemed superseded by this Agreement to the extent of such inconsistency.

Remainder of page intentionally left blank.

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

CITY OF SAN JOSE, CALIFORNIA

UNION PACIFIC RAILROAD COMPANY,
a Delaware Corporation

Sarah zarate

DocuSigned by:
Peggy Ygbuhay
Signature

Signature

Signature

Sarah Zarate

Peggy Ygbuhay

Printed Name

Printed Name

Director

Manager I, Engineering - Public Projects

Title

Title

Approved as to form:

Aaron Yu

Please text here

Aaron Yu
Deputy City Attorney

Description of Crossing Location

Street	Jackson Street	DOT #	750128P
Subdivision	Warm Springs	Milepost	16.17
City	San Jose	State	CA
County	Santa Clara		

Scope of Work

Railroad Work:

- Removal of 3 Railroad warning devices no longer needed at this location.

Agency Work:

- Reconfigure two-way roadway into one-way roadway within existing footprint

Estimate Cover Page

(see attached)

EXHIBIT C**ESTIMATE OF FORCE ACCOUNT WORK
BY THE
UNION PACIFIC RAILROAD COMPANY**

DESCRIPTION OF WORK: Engineering and other related services for work to be performed within railroad right of way. This includes project and construction management during construction activities in railroad right of way. All necessary railroad services will be billed at actual cost.

DATE:**2/9/2022****LOCATION:****City of San Jose****DOT: 750128P****SUBDIVISION****Warm Springs****STATE:****CA**

DESCRIPTION	LABOR	MATERIAL	UP %0	Agency % 100	TOTAL
ENGINEERING					
Project Management	\$ 2,500	\$ -	\$ -	\$ 2,500	\$ 2,500
Construction Management	\$ 2,500	\$ -	\$ -	\$ 2,500	\$ 2,500
Final Inspection	\$ 2,500	\$ -	\$ -	\$ 2,500	\$ 2,500
Railroad Signal Removal Costs	\$ 30,000	\$ -	\$ -	\$ 30,000	\$ 30,000
TOTAL PROJECT:	\$ 37,500	\$ -	\$ -	\$ 37,500.00	\$37,500

TOTAL ESTIMATED COST:**\$37,500**

**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, THE RAILROAD WILL BILL FOR ACTUAL
COSTS AT THE CURRENT RATES EFFECTIVE THEREOF.**

Flagging may be performed by a third-party contractor. Any flagging performed by a third-party contractor will be billed at said third-party contractor rate not included in the above estimate. The Agency will enter into a separate agreement with third-party contractor and will be responsible for all actual costs incurred.

Reimbursement Method

Agency agrees to reimburse Railroad for **ONE HUNDRED PERCENT (100%)** of actual costs incurred by Railroad in connection with the Railroad Work. During the performance of the Railroad Work, Railroad will provide progressive billing to Agency based on Railroad's actual costs. Within one hundred twenty (120) days after completion of the Project, Railroad will submit a final billing to Agency for any balance owed Railroad in connection with the Railroad Work. Agency shall pay Railroad within thirty (30) days after Agency's receipt of any progressive and final bills submitted by Railroad.

City of San José Contract/Agreement Transmittal Form

Route Order

Attached / Completed

Electronically Signed

- TO: City Attorney
 City Manager
 City Clerk **OR** Return to
Dept. (circle one)

- Insurance Certificates / Waivers Electronically Signed:
 Business Tax Certificate Audit Trail Attached (if applicable)
 Contacted Clerk re: Form 700 Scanned Signature Authorization
 Supplemental Memorandums (if applicable):

Type of Document: _____

Type of Contract: _____

REQUIRED INFORMATION FOR ALL CONTRACTS:

Existing GILES # 667516-000

Contractor: _____

Address: _____

Phone: _____ Email: _____

Contract Description: _____

Term Start Date: _____ Term End Date: _____ Extension: _____

Method of Procurement: _____ RFB, RFP or RFQ No.: _____ Date Conducted: _____

Agenda Date (if applicable): _____ Agenda Item No.: _____

Resolution No.: _____ Ordinance No.: _____

Original Contract Amount: _____ Amount of Increase/Decrease: _____

Option #: ___ of ___ Option Amount: _____ Updated Contract Amount: _____

Fund/Appropriation: _____

Form 700 Required: _____ Revenue Agreement: _____

Business Tax Certificate No.: _____ Expiration Date: _____

Department: _____

Department Contact Name/Phone: _____

Notes: _____

Department Director Signature: Jessica Zenk _____

Date

Office of the City Manager Signature: _____

Date