

**MEMORANDUM OF UNDERSTANDING**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made this \_\_\_\_ day of \_\_\_\_\_ 2014, by and between Union Pacific Railroad Company (“UPRR”), a Delaware corporation, and the City of San Leandro (“City”).

**RECITALS**

1. UPRR mainline tracks in the City at the Hudson Lane (Polar Way) at-grade railroad crossing, DOT: 834260X, on the Oakland Subdivision, Milepost 15.69 (“Crossing”) is scheduled to have improvements in phases to benefit City and UPRR;
2. The tracks at the Crossing have not had train operations in many years. UPRR tracks at this location may be purchased by Alameda County. A ballot measure in Alameda County to acquire funding for UPRR tracks and underlying right of way (ROW), will be voted on in November 2014;
3. To progress the project at Crossing and to reduce any monetary contribution for project in the event the tracks at the Crossing are sold, UPRR and the City have agreed to cooperate in a phased installation of signals and track panel/crossing surface at the Crossing;
4. City bears all responsibility for its own and all UPRR actual costs associated with the Crossing project. City will reimburse UPRR within 30 days of receipt of an invoice for such costs;
5. In the event the Alameda ballot measure passes and the ROW is sold by UPRR, the railroad crossing improvements described under Phase 3 shall not be undertaken;

**AGREEMENT**

Now, the parties agree as follows:

**Section 1: Phased Construction:**

The Crossing project will proceed in a phased construction schedule in three phases as follows:

**1.1 First Phase:**

Phase 1 work by UP: Temporary removal of two Standard #9 (flashing light signal assembly with automatic gate) warning devices at Crossing. Installation of crossbuck/stop sign assembly one on each approach to the crossing. Phase 1 work will not exceed \$23,999.00

Phase 1 work by City: Installation of asphalt to widen approach at crossing over railroad tracks supervised by UPRR flagman at City expense. Installation of 4” conduits for future signalization of Crossing. Installation of paving, sidewalk and curb areas. Prior to commencing any work which involves any portion of the ROW, the City and any contractor, as appropriate, will sign

## UPRR/CITY OF SAN LEANDRO MOU REGARDING HUDSON LANE (POLAR WAY) STREET IMPROVEMENTS

and deliver to UPRR a Right of Entry Agreement (ROE), on a form to be supplied by UPRR. Absent delivery of the signed ROE, no such work shall take place.

### **1.2 Second Phase:**

Phase 2 work by UP: None.

Phase 2 work by City: Complete traffic signal improvements and modification of San Leandro Median and Existing Hudson Lane (Polar Way) roadway. Prior to commencing any work which involves any portion of the ROW, the City and any contractor, as appropriate, will sign and deliver to UPRR a Right of Entry Agreement (ROE), on a form to be supplied by UPRR. Absent delivery of the signed ROE, no such work shall take place.

### **1.3 Third Phase:**

Phase 3 work by UP: Installation of Four CPUC Standard 9 (flashing light signal assembly with automatic gate arm) warning devices, two on north side of Crossing and two on south side of Crossing. Installation of signal circuitry and signal cabin for all new devices, including signal circuitry for traffic light preemption. Installation of new track panel and new concrete crossing surface.

Phase 3 work by City: Provide all necessary vehicular traffic control. Asphalt approaches to new crossing surface. Signal interconnection with railroad crossing signals. Produce all design documents and legal description for Crossing. Prior to commencing any work which involves any portion of the ROW, the City and any contractor, as appropriate, will sign and deliver to UPRR a Right of Entry Agreement (ROE), on a form to be supplied by UPRR. Absent delivery of the signed ROE, no such work shall take place.

Phase 3 work by City and UPRR: Enter into a Construction and Maintenance Agreement for the Crossing. As to costs incurred by the City and UPRR subsequent to execution of the Construction and Maintenance Agreement, paragraph 4 of the Recitals section of this MOU shall control.

## **Section 2. Miscellaneous Provisions:**

**2.1. Timing.** UPRR and the City anticipate and shall use best efforts to complete the phased work on the following schedule: Phase 1, completion by September 31, 2014. Phase 2, completion by December 2, 2014. Phase 3, City and UPRR will enter into Construction and Maintenance Agreement by August 2015.

**2.2. Entire Agreement.** This MOU constitutes the entire agreement between the parties with respect to the subject matter described herein, with the exception of the Construction and Maintenance Agreement described in section 1.3 and any ROE entered into by the City or its contractors.

**2.3. Amendments.** No modification or alteration of the terms hereof shall be binding unless such modification or alteration is in writing and executed by both parties.

**2.4. Termination.** This MOU shall terminate on July 9, 2017, unless the parties otherwise agree in writing.

**2.5. Counterparts.** This agreement may be executed in one or more counterparts, each of which when so executed will be deemed an original, but all of which taken together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this MOU to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CITY OF SAN LEANDRO

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_