



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Nanci Klein

**SUBJECT:** ACQUISITION AND MOVE OF  
THE HISTORIC COYOTE DEPOT

**DATE:** September 25, 2023

Approved

Date

10/2/23

**COUNCIL DISTRICT: 7**

## **RECOMMENDATION**

Approve the acquisition and move of the historic Coyote Depot, from Union Pacific property to the City-owned History Park.

## **SUMMARY AND OUTCOME**

Hidden from public view, the Coyote Depot was built in 1869 by the San José and Pajaro Valley Railroad, the original line of the Southern Pacific before the completion of the transcontinental railroad. Although expanded over its lifetime and abandoned over the past several years, the structure retains its nineteenth-century architectural features. At risk of vandalism or fire, its current owner, Union Pacific, sought to have it demolished or otherwise removed from its property. The Coyote Depot is compact and conducive to the historic structures at History Park, including the Coyote Post Office. A site has been identified for the Coyote Depot at History Park, adjacent to an existing static steam locomotive and the historic Orchard Supply Hardware boxcar display alongside Senter Road (**Exhibit A:** Map of Coyote Depot Location at History Park). The Coyote Depot would help complete a narrative at History Park, contributing to the History of Transportation section of the park. The Coyote Depot would contain an exhibit of smaller artifacts and displays to facilitate storytelling regarding the historic relationship between railroads and the San José community.

The benefits of moving the Coyote Depot to History Park:

- Ensures Coyote Depot's preservation for future generations and completes the History San José's railroad narrative.

- The historic Coyote Depot would become San José's local railroad museum for public enjoyment.

## **BACKGROUND**

History San José's (HSJ) activities began in 1949 following the centennial celebration of the California Gold Rush and statehood. Known initially as the San José Historical Museum and managed by the City of San José, HSJ was incorporated with its current name as an independent 501(c)(3) nonprofit organization in 1998. Over the decades, HSJ has grown to operate and maintain three City-owned sites: History Park, the Gonzalez/Peralta Adobe-Fallon House Historic Site, and the Collection Center/Research Library and Archives. HSJ is the designated operator contracted by the City to manage these City-owned cultural and historical assets.

History Park, in Kelley Park, is a 14-acre town-like assemblage of 32 original and reconstructed homes, businesses, and landmarks highlighting the culture and history of San José and Santa Clara Valley. History Park is also home to community partner organizations that provide exhibits and programming to showcase their constituencies and contributions to the valley.

HSJ manages one of the largest collections of regional history artifacts in California, housed at the Collection Center, a state-of-the-art facility near History Park. HSJ continues to collect contemporary history documenting the social and political happenings in the Santa Clara Valley. The research collection includes photographs, personal papers, manuscripts, maps, films, oral histories, and published works, as well as the City of San José and Santa Clara County historical records. The collection is made available to researchers worldwide, promoting the importance of San José and the Santa Clara Valley.

## **ANALYSIS**

On June 27, 2022, in response to Union Pacific's plans to demolish the structure, HSJ signed an agreement with Union Pacific giving the museum formal access to the Coyote Depot and permission to relocate the structure from its present location on Monterey Highway to History Park (**Exhibit B: Agreement Between Union Pacific and History San José**). HSJ is currently preparing to move the Coyote Depot from the Union Pacific property to the City-owned History Park. If the Coyote Depot is not moved, Union Pacific has the right to demolish the structure and has indicated that it will proceed with the demolition.

HSJ submitted a work plan for the move to the City (**Exhibit C: Coyote Depot Project Work Plan**), including a survey of the Coyote Depot's future location, which was reviewed by the Department of Public Works survey group (**Exhibit D: Site Survey Report of History Park**). The Coyote Depot will be relocated by Scott Heavy Movers, with oversight by a historically minded general contractor, Garden City Construction.

Rehabilitation work will return the Coyote Depot to its original appearance, both inside and out. A slab-on-grade foundation will be constructed before restoration work is performed and the structure will be seismically retrofitted. Electrical and plumbing services will provide for lighting, power, and a sink. Doors and windows will be repaired or replaced, wall surfaces refinished, and a new roof will be installed. The Coyote Depot will be expanded with an addition in the rear of the building to provide display space for HSJ's historic resources currently in storage, including a large model train collection. Site work will consist of utility services, site lighting, signage, and concrete.

The Environmental Services Department reviewed the hazardous materials assessment report provided by HSJ and inferred that the structure contains lead paint, which has been mitigated by a licensed contractor via stabilization and encapsulation. Environmental Services recommends that the depot be inspected post-move by a licensed contractor to determine whether the encapsulation remained intact and to perform any additional mitigations, if necessary. A long-term monitoring and maintenance plan will be implemented to ensure the lead paint in the structure continues to remain stabilized and/or encapsulated to protect public health and the environment.

The Coyote Depot will play an important part in the History of Transportation section of History Park. Currently, History Park is the home of the Dashaway Stables and the 1215 Steam Locomotive, the Orchard Supply Hardware Boxcar, and the Southern Pacific Caboose. The Coyote Depot will be located between the stables and the train and will help showcase the history of transportation in the Santa Clara Valley, from the horse and buggy to the horseless carriage to the iron horse.

Working in partnership with HSJ, the California Trolley and Railroad Corporation received a grant from the County of Santa Clara in the amount of \$295,000 to relocate the Coyote Depot. These funds will cover the cost to relocate, install, and renovate the Coyote Depot in the new location, ensuring that neither HSJ nor the City incurs increased operating costs due to accepting the Coyote Depot.

### **EVALUATION AND FOLLOW-UP**

HSJ will submit a progress report to the City on the ongoing renovations made to the historic Coyote Depot structure.

### **COST SUMMARY/IMPLICATIONS**

The cost for moving, installing, and rehabilitating the Coyote Depot will be paid by funding provided by the County of Santa Clara to the California Trolley and Railroad Corporation, an affiliate of HSJ.

**COORDINATION**

This memorandum was coordinated with the City Attorney’s Office, the City Manager’s Budget Office, the Department of Environmental Services, and the Department of Planning, Building, and Code Enforcement.

**PUBLIC OUTREACH**

This memorandum will be posted on the City’s Council Agenda website for the October 17, 2023 City Council meeting.

**COMMISSION RECOMMENDATION AND INPUT**

Presently there is no input or recommendation from the City’s Historical Preservation Commission which has been informed of the Coyote Depot’s move.

**CEQA**

Categorically Exempt, File No. ER23-223, CEQA Guidelines Section 15331, Historical Resource Restoration/Rehabilitation

**PUBLIC SUBSIDY REPORTING**

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City’s Open Government Resolution.

/s/  
NANCI KLEIN  
Director of Economic Development and  
Cultural Affairs

For questions, please contact Kerry Adams Hapner, Director, Office of Economic Development and Cultural Affairs, at [kerry.adams-hapner@sanjoseca.gov](mailto:kerry.adams-hapner@sanjoseca.gov) or (408) 793-4333.

**ATTACHMENTS:**

- Exhibit A: Map of Coyote Depot Location at History Park
- Exhibit B: Agreement Between Union Pacific and History San José
- Exhibit C: Coyote Depot Project Work Plan
- Exhibit D: Site Survey Report of History Park

# Exhibit A: Coyote Depot Location at History Park

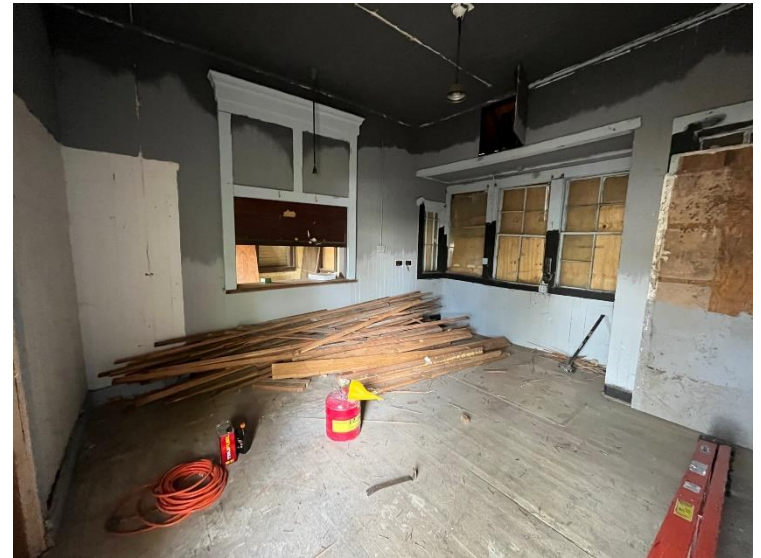




# Coyote Depot – originally built in 1869



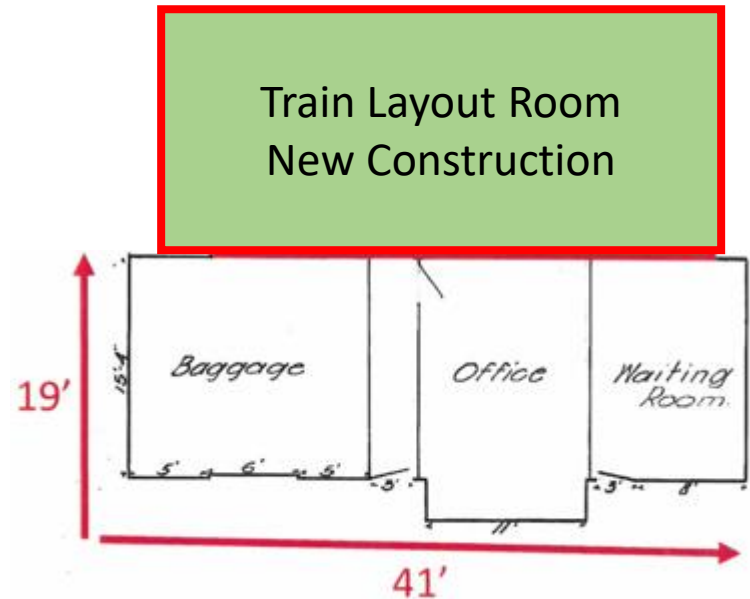
Present Condition



Office Interior



1949 appearance



# Exhibit B

## DONATION AGREEMENT

Between

**UNION PACIFIC RAILROAD COMPANY,**  
a Delaware corporation

And

**HISTORY SAN JOSE,**  
a California non-profit organization

DATED: June 9, 2022

**EXHIBITS:**

- EXHIBIT A - PRINT DATED APRIL 16, 2021
- EXHIBIT B - FORM OF QUITCLAIM BILL OF SALE
- EXHIBIT C - CONTRACTORS RIGHT OF ENTRY



## DONATION AGREEMENT

This DONATION AGREEMENT ("Agreement") is made as of the \_\_\_\_\_ of \_\_\_\_\_, 2022 ("Execution Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("UPRR"), and **HISTORY SAN JOSE**, a California non-profit organization ("Donee").

### ARTICLE 1 PERSONAL PROPERTY; QUITCLAIM BILL OF SALE

1.1 **Personal Property.** UPRR agrees to donate to Donee and Donee agrees to accept from UPRR one (1) building commonly referred to as the "Depot Building" ("Building"), including any and all appurtenances related thereto, and any other personal property associated with the Building (collectively, "Personal Property"), which is located on certain UPRR-owned real property located in the City of Coyote, Santa Clara County, State of California ("Land"). For reference, the location of the Building is generally depicted by an orange/yellow bolded line, and identified as "DEPOT SHOWN" on the print dated April 16, 2021, attached hereto as **Exhibit A** and made a part hereof. The boundary of the Land is generally depicted by a red bolded line, and identified as "TCE AREA" on **Exhibit A**. For the purposes of this Agreement, the Land may also be referred to in this Agreement as the "TCE Area", where applicable.

1.2 **Quitclaim Bill of Sale.** All of UPRR's right, title, and interest in and to the Personal Property will be transferred by UPRR to Donee at Closing (as defined in Section 5.1.1 below) by Quitclaim Bill of Sale ("Quitclaim Bill of Sale") in the form attached hereto as **Exhibit B** and made a part hereof.

### ARTICLE 2 AS IS DONATION; RELEASE AND INDEMNITY; INSPECTION; WAIVER OF RIGHT TO RECORD LIS PENDENS

#### 2.1 **As Is Donation: Release and Indemnity.**

2.1.1 **"As Is" Donation.** Donee and its representatives, prior to the Closing Date (as defined in Section 5.1.1 below), will have been afforded the opportunity to make such inspections of the Personal Property and matters related thereto as Donee and its representatives desire, including, without limitation, governmental laws and regulations to which the Personal Property is subject. Donee shall accept the Personal Property upon the basis of its review and determination of the applicability and effect of such laws and regulations. Donee, for itself, its successors and assigns, including any successor owner of any interest in the Personal Property, acknowledges and agrees that the Personal Property is to be donated to and accepted by Donee in an "as is" condition with all faults, and that the Personal Property has been used for, among other things, railroad and commercial purposes. UPRR does not make any representations or warranties of any kind whatsoever, either express or implied, with respect to the Personal Property or any of such related matters; in particular, but without limitation, UPRR makes no representations or warranties with respect to the use, condition, title, occupation or management

of the Personal Property, compliance with applicable statutes, laws, codes, ordinances, regulations or requirements relating to leasing, zoning, subdivision, planning, building, fire, safety, health or environmental matters (including but not limited to the existence of Hazardous Materials (as later defined in this Paragraph) in, on, or emanating to or from the Personal Property), compliance with covenants, conditions and restrictions (whether or not of record), other local, municipal, regional, state or federal requirements, or other statutes, laws, codes, ordinances, regulations or requirements (collectively, "Condition of the Personal Property"). Donee acknowledges that it is entering into this Agreement on the basis of Donee's own investigation of the physical and environmental conditions of the Personal Property, including the subsurface conditions and Donee assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation. For purposes of this Agreement, "Hazardous Materials" means any flammable or explosive materials, petroleum or petroleum products, oil, crude oil, natural gas or synthetic gas usable for fuel, radioactive materials, asbestos, hazardous waste or substances or toxic waste or substances, including, without limitation, any substances now or hereafter defined as or included in the definition of "hazardous substances", "hazardous waste", "hazardous materials", "toxic materials" or "toxic substances" under any applicable federal, state or local law or regulation now or hereafter in effect.

2.1.2 **Release.** DONEE, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, INCLUDING ANY SUCCESSOR OWNER OF ANY INTEREST IN THE PROPERTY, HEREBY WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES UPRR, UPRR'S EMPLOYEES, AGENTS, OR ANY OTHER PERSON ACTING ON BEHALF OF UPRR, OF AND FROM ANY CLAIMS, LIABILITIES, ACTIONS, CAUSES OF ACTION, DEMANDS, RIGHTS, DAMAGES, COSTS, EXPENSES, PENALTIES, FINES OR COMPENSATION WHATSOEVER, DIRECT OR INDIRECT, WHICH DONEE NOW HAS OR WHICH DONEE MAY HAVE IN THE FUTURE ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE CONDITION OF THE PERSONAL PROPERTY, INCLUDING, WITHOUT LIMITATION, THE KNOWN OR UNKNOWN PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PERSONAL PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, OR EMANATING FROM OR TO THE PERSONAL PROPERTY BY ANY HAZARDOUS MATERIALS), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE, REQUIREMENT, DIRECTIVE, ORDER OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT. THE FOREGOING APPLIES REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF UPRR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS. WITH RESPECT TO THE FOREGOING RELEASE, DONEE EXPRESSLY WAIVES THE BENEFITS AND PROTECTIONS OF SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA, WHICH READS AS FOLLOWS:

**1542. Certain Claims Not Affected by General Release.** A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

DONEE HEREBY EVIDENCES ITS SPECIFIC AGREEMENT TO THE TERMS OF THIS RELEASE BY PLACING ITS SIGNATURE OR INITIALS BELOW.

WPS

Donee's Initials

2.1.3 Indemnity. FROM AND AFTER CLOSING, DONEE SHALL, TO THE MAXIMUM EXTENT PERMITTED BY LAW, INDEMNIFY, DEFEND AND SAVE HARMLESS UPRR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, FINES, PUNITIVE DAMAGES, LOSSES, COSTS, LIABILITIES AND EXPENSES, INCLUDING ATTORNEY'S FEES, IN ANY WAY ARISING OUT OF OR CONNECTED WITH THE CONDITION OF THE PERSONAL PROPERTY, INCLUDING, WITHOUT LIMITATION, THE KNOWN OR UNKNOWN PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PERSONAL PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER, ADJACENT OR EMANATING FROM OR TO THE PERSONAL PROPERTY BY ANY HAZARDOUS MATERIALS), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT. THE FOREGOING APPLIES REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF UPRR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS.

2.1.4 General Allocation of Environmental Responsibility. With respect to any existing or future presence of Hazardous Materials in or emanating to or from the Personal Property, Donee, for itself, its successors and assigns, including any successor owner of any interest in the Personal Property, at no cost to UPRR, agrees to be solely responsible for conducting any investigation, monitoring, remediation, removal, response or other action required by any governmental agency, court order, law or regulation or which may otherwise be necessary to make the Personal Property suitable for Donee's use of the Personal Property.

2.1.5 Survival. The provisions of this Section 2.1 will survive the Closing and the delivery of the Quitclaim Bill of Sale.

2.1.6 Independent Consideration. The release, indemnity and general allocation of environmental responsibility by Donee under this Section 2.1 are independent consideration to UPRR for the donation of the Personal Property, without which UPRR would not donate the Personal Property to Donee.

## 2.2 Inspection.

2.2.1 For a period of thirty (30) days following the Execution Date, Donee and its representatives (including architects and engineers) have the right to enter upon and inspect the Personal Property and conduct such engineering tests and environmental assessments with engineers or consultants licensed in the State of California as Donee may reasonably require. Such inspections and tests must not materially damage the Personal Property or the Land in any respect, and must be conducted in accordance with standards customarily employed in the industry and in compliance with all governmental laws, rules and regulations. Donee shall notify UPRR in writing at least forty-eight (48) hours prior to the date that each and every of such testing or inspections are to be conducted on the Personal Property, and provide evidence, satisfactory to UPRR, of the availability of adequate public liability and other insurance, which insurance must name UPRR as an additional insured. If Donee wishes to perform any environmental sampling, then Donee shall (a) before conducting any sampling, provide UPRR with Donee's work plan for sampling and shall modify the work plan as reasonably requested by UPRR, (b) give UPRR reasonable advance notice of the dates when sampling will be conducted so that UPRR and/or its consultants have the opportunity to be present, (c) conduct any sampling in accordance with the work plan referred to under (a) above and with generally accepted environmental engineering standards, and (d) provide UPRR with the draft report on such sampling for UPRR's review and comments prior to the report being placed in final form, and give reasonable consideration to such comments. Donee and its agents and contractors will maintain in confidence all information, reports, and evaluations generated in connection with any environmental assessments and will not make disclosure without the prior written consent of UPRR.

2.2.2 Following each entry by Donee on the Personal Property, Donee shall promptly restore the Personal Property and, if applicable, the Land, to its original condition as existed prior to any such inspections and/or tests. If Donee, its agents, representatives or employees undertake any boring or other disturbance of the soil on the Land, the soil so disturbed must be recompacted to the original condition of the Land, and Donee shall obtain at its own expense a certificate from a soils engineer that certifies that such soil so disturbed has been recompacted to the original condition of the Land.

2.2.3 Donee shall indemnify, hold harmless and defend (with counsel acceptable to UPRR) UPRR and UPRR's affiliates ("UPRR's affiliates" means any corporation which directly or indirectly controls or is controlled by or is under common control with UPRR), its and their officers, agents servants and employees against and from any and all liability, loss, cost, damage or expense (including, without limitation, attorney's fees) of whatsoever nature growing out of or in connection with personal injury to or death of persons whomsoever (including, without limitation, exposure to Hazardous Materials), or loss or destruction of or damage to property whatsoever (including, without limitation, contamination by Hazardous Materials and any required testing, removal or cleanup thereof), where such personal injury, death, loss, destruction or damage arises in any way in connection with or incident to the occupation or use of the Personal Property or the Land by, or the presence thereon of, Donee, its officers, agents or employees before Closing and occurs from any such cause.

2.2.4 If Donee discovers any Hazardous Materials or other materials subject to legal requirements or corrective action, Donee shall immediately notify UPRR of the same, and Donee will be subject to the confidentiality provisions of Section 2.2.1 above and Section 8.21 below. As a material consideration for UPRR entering into this Agreement, Donee shall, upon request by UPRR, promptly deliver to UPRR, without charge therefor, the results and copies of any and all surveys, reports, tests, studies or assessments made by or for Donee, development approvals and correspondence with governmental entities with respect to the Personal Property.

2.2.5 Donee shall pay in full for all materials joined or affixed to the Personal Property and for all persons who perform labor upon the Personal Property, and must not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the Personal Property for any work done or materials furnished thereon at the instance or request or on behalf of Donee. Donee shall indemnify, hold harmless and defend (with counsel acceptable to UPRR) UPRR and UPRR's affiliates, its and their officers, agents, servants and employees against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed or materials furnished before Closing.

2.2.6 The indemnity obligations of Donee under this Section will survive any termination of this Agreement or the delivery of the Quitclaim Bill of Sale.

2.3 Waiver of Right to Record Lis Pendens. AS A MATERIAL CONSIDERATION FOR UPRR ENTERING INTO THIS AGREEMENT, DONEE EXPRESSLY WAIVES (A) ANY RIGHT UNDER CALIFORNIA CODE OF CIVIL PROCEDURE, PART II, TITLE 4.5 (SECTION 405 – 405.61) OR AT COMMON LAW OR OTHERWISE TO RECORD OR FILE A LIS PENDENS OR A NOTICE OF PENDENCY OF ACTION OR SIMILAR NOTICE AGAINST ALL OR ANY PORTION OF THE PERSONAL PROPERTY, (B) ITS RIGHT TO SPECIFIC PERFORMANCE IN CONNECTION WITH ANY ALLEGED DEFAULT BY UPRR HEREUNDER AND (C) ITS RIGHT TO BRING ANY ACTION THAT WOULD IN ANY WAY AFFECT TITLE TO OR THE RIGHT OF POSSESSION OF ALL OR ANY PORTION OF THE PERSONAL PROPERTY. DONEE HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389. DONEE ACKNOWLEDGES AND AGREES THAT PRIOR TO THE ACTUAL CLOSING, DONEE DOES NOT AND WILL NOT HAVE ANY RIGHT, TITLE AND/OR INTEREST IN THE PERSONAL PROPERTY OR ANY PORTION THEREOF. DONEE AND UPRR HEREBY EVIDENCE THEIR SPECIFIC AGREEMENT TO THE TERMS OF THIS WAIVER BY PLACING THEIR SIGNATURES OR INITIALS IN THE PLACE PROVIDED BELOW.

UPRR: \_\_\_\_\_ DONEE: WPS

### ARTICLE 3 DONEE'S CONDITIONS TO CLOSING

The following are conditions precedent to Donee's obligation to accept the Personal Property:



### 3.1 Donee's Removal of the Personal Property.

3.1.1 Temporary Construction Easement. UPRR acknowledges that Donee intends to remove and relocate the Personal Property to a new location off of the Land. Donee acknowledges that the Westerly boundary of the Personal Property is currently located adjacent to UPRR's active railroad right-of-way ("UPRR's Adjacent Property"). To facilitate Donee's removal of the Personal Property from the Land, UPRR hereby grants unto Donee, its successors and assigns, a temporary construction easement ("Temporary Construction Easement") across, over, on, and upon the TCE Area shown on **Exhibit A**, for the sole purpose of Donee's removal of the Personal Property and complete restoration of the TCE Area, including (i) restoration of the Land under the Personal Property (e.g., removal of all foundational structures or other appurtenances associated with the Personal Property, clearing of trash or any other remaining debris located on the TCE Area, smoothing of the surface of the Land), and (ii) removal of the Construction Fencing (as defined in Section 3.1.2(d) below) (collectively, "Removal and Restoration Work").

3.1.2 Terms. Donee's use of the Temporary Construction Easement is subject to the following terms and conditions:

(a) UPRR retains all of its rights to the use and occupation of the TCE Area not inconsistent with the use by Donee, its successors or assigns.

(b) The Temporary Construction Easement will commence on the Closing Date and will automatically terminate within one (1) year from the Closing Date ("TCE Term").

(c) Donee, at its sole cost and expense and without any contribution whatsoever from UPRR, shall at all times during the TCE Term, repair and maintain the TCE Area and any of Donee's personal property thereon in good and clean condition and repair. Donee shall restore or repair any of the TCE Area which is damaged by Donee's use to the same condition as existed immediately before such damage occurred. UPRR is not responsible for the removal/disposal of existing debris/rubble currently located within the TCE Area.

(d) Due to the proximity of UPRR's Adjacent Property to the TCE Area, Donee, at its sole cost and expense, shall install and maintain, a four foot (4)' high standard chain link constructing fence ("Construction Fencing") along the Westerly boundary of the TCE Area to prevent access to or encroachment on UPRR's Adjacent Property. Donee shall submit all plans or construction drawings for the Construction Fencing to:

Union Pacific Railroad Company  
Attn: Real Estate Sales (Folder No. 3270-50)  
1400 Douglas Street, MS 1690  
Omaha, Nebraska 68179

UPRR shall either approve or disapprove the plans submitted within twenty (20) days after receipt, such approval not to be unreasonably withheld. UPRR's review and approval of the plans shall in no way relieve Donee from its responsibilities, obligations, and/or liabilities under this Agreement.

(e) If Donee will be hiring a contractor or contractors to perform any of the Removal and Restoration Work, Donee shall require its contractor(s) and their subcontractors to (i) execute UPRR's then-current form of Contractor's Right of Entry Agreement Exhibit C (which provides for flagging), and obtain the insurance coverage described therein; and (ii) provide the insurance policies, certificates, binders and/or endorsements to UPRR before allowing any of its contractor(s) and their respective subcontractors to commence any Removal and Restoration Work in the TCE Area or on any other UPRR property. Donee shall submit all insurance correspondence, binders, policies, certificates and/or endorsements to:

Union Pacific Railroad Company  
Attn: Real Estate Sales (Folder No. 3270-50)  
1400 Douglas Street, MS 1690  
Omaha, Nebraska 68179

If Donee's own employees will be performing any of the Removal and Restoration Work, Donee shall provide UPRR defense and indemnification at least equal to the defense and indemnification to which UPRR would be entitled as an additional insured had Donee purchased General Liability Insurance and Automobile Liability Insurance each in an amount of not less than FIVE MILLION AND NO/100<sup>TH</sup> DOLLARS (\$5,000,000.00) combined single limit per occurrence or claim and an aggregate limit of at least FIVE MILLION AND NO/100<sup>TH</sup> DOLLARS (\$5,000,000.00) for Bodily Injury and Property Damage. Nothing herein shall be deemed to insure UPRR against its sole negligence or willful misconduct. Donee may self-insure, as customary under its risk management programs; provided its self-insurance retention is in keeping with its net worth and cash flows and is consistent with that of other grantees of its size and operation.

(f) Donee shall not permit any mechanics' or materialmen's liens of any kind or nature to be enforced against the TCE Area for any work done or materials furnished thereon at Donee's request.

(g) This Temporary Construction Easement is limited to such rights as UPRR may have in the TCE Area and is granted without warranty, express or implied. This Temporary Construction Easement is also made SUBJECT TO all outstanding leases, licenses and other outstanding rights of record, including, but not limited to, those for pipelines, wirelines and roadways and the right of renewals and extensions of the same.

(h) Donee shall, at its expense, comply with all applicable laws, regulations, rules and orders regardless of when they become or became effective, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality in Donee's performance of the Removal and Restoration Work on the TCE Area. Should any discharge, leakage, spillage, emission or pollution of any type occur upon or arise on the TCE Area as a result of Donee's use, presence, operations or exercise of the rights granted hereunder, Donee shall, at its expense, be obligated to clean all property affected thereby, to the satisfaction of UPRR and any governmental body having jurisdiction in the matter.

(i) UPRR, in its sole and absolute discretion, shall determine whether a flagman or other special protective or safety measures are required in connection with Donee's performance of the Removal and Restoration Work ("Flagging Services"). For purposes of clarity, UPRR and Donee each acknowledge that UPRR or Donee may contract a contractor-in-charge ("CIC") for the performance of any Flagging Services. If Donee elects to hire a CIC as a contractor to perform the Flagging Services, subject to prior approval by UPRR and any and all other applicable terms and conditions required by UPRR in connection therewith. If any Flagging Services are to be performed in connection with the Removal and Restoration Work, then, after consultation with Donee, UPRR shall determine, in UPRR's sole and absolute discretion, whether UPRR or the CIC will bill Donee or, alternatively, the contractor directly, for the costs of such Flagging Services. If UPRR determines the contractor will be billed directly pursuant to the foregoing sentence, Donee agrees that it will pay UPRR or the CIC, as applicable, on demand for any such costs that have not been paid by any contractor within thirty (30) days of the contractor's receipt of billing. Donee acknowledges that costs for Flagging Services performed by UPRR or a CIC, as applicable, such costs shall be at no expense to UPRR.

(j) Donee acknowledges that the Removal and Restoration Work must be completed during the TCE Term. Donee shall notify UPRR's authorized notice recipient and business representative listed in Section 8.9 below ("UPRR's Authorized Representative") of Donee's completion of the Removal and Restoration Work. UPRR's Authorized Representative shall thereafter certify that Donee's performance of the Removal and Restoration Work is acceptable to UPRR. Should Donee fail to complete the Removal and Restoration Work during the TCE Term or fail to perform the work in a manner acceptable to UPRR's Authorized Representative, UPRR reserves the right, in its sole and absolute discretion, to either (i) perform the Removal and Restoration Work then submit an invoice to Donee for all costs associated with UPRR's performance of the Removal and Restoration Work, which invoiced amount must be paid to UPRR by Donee within thirty (30) business days following the date of UPRR's issuance of the invoice, or (ii) elect for Donee to re-convey ownership of the Personal Property to UPRR. Any such re-conveyance shall occur within thirty (30)

business days following the date of UPRR's written notice to Donee advising Donee of UPRR's election.

**3.2 Government Approvals.** Donee, at its sole cost and expense, shall use commercially reasonable efforts to obtain all necessary governmental approvals, exemptions and permits ("Government Approvals") for Donee's intended use of the Personal Property. UPRR shall cooperate in good faith by executing necessary documents, provided, however, that UPRR shall not be required to incur any cost or expense in connection therewith and that any action Donee desires UPRR to take shall be reasonably acceptable to UPRR as to substance and legal form. In no event shall Donee take any action (nor shall UPRR be required to take any action) in connection with such Government Approvals which would (i) affect in any manner whatsoever UPRR's Adjacent Property, (ii) encumber the Personal Property or the Land prior to Closing, (iii) obligate UPRR as owner of the Personal Property or otherwise to pay money, construct improvements or dedicate any interest in real property, or (iv) detrimentally affect the value or use of the Personal Property or UPRR's use or development of the Land or UPRR's Adjacent Property. If Donee fails to obtain such Government Approvals within thirty (30) days of the Execution Date ("Government Approval Period"), or if the City of Coyote or other governmental entity having jurisdiction attaches conditions thereto which are unacceptable to Donee or UPRR, Donee may terminate this Agreement by giving UPRR written notice of termination before the end of the Government Approval Period. In the event of termination pursuant to the foregoing provisions of this Section 3.2, neither party will have any further rights or obligations under this Agreement (except for the Surviving Obligations).

**3.3 Compliance by UPRR.** UPRR will have complied with each and every condition and material covenant of this Agreement to be kept or complied with by UPRR.

#### **ARTICLE 4 UPRR'S CONDITIONS TO CLOSING**

The following are conditions precedent to UPRR's obligation to donate the Personal Property.

**4.1 UPRR's Management Approval.** The terms and conditions of this transaction are subject to approval in accordance with UPRR's Management Policy Statement. UPRR shall give Donee notice of approval or disapproval within sixty (60) days after the Execution Date, and failure to give such notice within said time period will be deemed notice of disapproval. If, within such 60-day time period the terms of this Agreement are not approved for any reason in accordance with UPRR's Management Policy Statement, then this Agreement will be deemed terminated forthwith. If this Agreement is terminated pursuant to the foregoing provisions of this Section 4.1, neither party will have any further rights or obligations under this Agreement (except for the Surviving Obligations).

**4.2 No Conveyance of the Land.** Except for the Temporary Construction Easement across, over, on, and upon the TCE Area, UPRR does not convey or intend to convey to Donee any other right, title, estate or interest whatsoever in or to the Land on which the Personal Property is situated.

4.3 Compliance by Donee. Donee will have complied with each and every condition and material covenant of this Agreement to be kept or complied with by Donee.

## **ARTICLE 5 CLOSING**

### **5.1 Closing.**

5.1.1 Closing Date. The consummation of the transaction contemplated by this Agreement and transfer of the Personal Property by Quitclaim Bill of Sale ("Closing") will occur and delivery of all items to be made at Closing under the terms of this Agreement will occur on July 31, 2022 ("Closing Date").

5.1.2 Preclosing Conditions. Provided that Donee has not elected to terminate its rights and obligations under this Agreement pursuant to Article 3 or UPRR has not elected to terminate its rights and obligations under this Agreement pursuant to Article 4, then the parties shall proceed to Closing.

5.1.3 Failure to Close. If the Closing does not occur on or before the Closing Date, then either party not then in default may elect to terminate this Agreement and cancel Escrow by giving written notice of such termination and cancellation to the other party. In the event of such termination and cancellation, neither party will have any further obligations hereunder (other than the Surviving Obligations). The termination of this Agreement will be without prejudice to whatever legal rights, as such rights may be limited by the terms of this Agreement, that Donee or UPRR may have against each other arising out of this Agreement.

5.2 Deliveries by UPRR. Not later than three (3) business days prior to the Closing Date, UPRR shall deliver to Donee the following items:

5.2.1 Quitclaim Bill of Sale. The Quitclaim Bill of Sale duly executed by UPRR.

5.2.2 Certificate of Non-Foreign Status. A Certificate of Non-Foreign Status pursuant to Internal Revenue Code Section 1445 duly executed by UPRR.

5.2.3 Other Documents. Any other documents, instruments, data, records, correspondence or agreements called for under this Agreement that have not previously been delivered.

5.3 Deliveries by Donee. Not later than one (1) business day prior to the Closing Date, Donee shall deliver to UPRR the following items:

5.3.1 Quitclaim Bill of Sale. A copy of the Quitclaim Bill of Sale duly executed and by Donee and UPRR.



**5.3.2 Other Documents.** Any other documents, instruments, data, records, correspondence or agreements called for under this Agreement that have not been previously delivered.

**5.4 Other Instruments.** UPRR and Donee shall each deliver to each other such other instruments and take such other actions as are reasonably required to consummate the donation of the Personal Property in accordance with the terms of this Agreement.

**5.5 Prorations.** All revenues and expenses of the Personal Property, including, without limitation, real property taxes, special taxes, assessments and utility fees and/or deposits, will be prorated and apportioned between Donee and UPRR as of 12:01 AM on the Closing Date, so that UPRR bears all expenses with respect to the Personal Property and has the benefit of all income with respect to the Personal Property through and including the date immediately preceding the Closing Date. UPRR and Donee agree that any of the aforesaid prorations that cannot be calculated accurately as of the Closing Date will be prorated on the basis of the parties' reasonable estimates, and will be recomputed between UPRR and Donee when actual tax statements for the year of Closing are received, and either party owing the other party a sum of money based on such subsequent proration adjustment will promptly pay said sum to the other party, and, if payment is not made within ten (10) days after delivery of a bill therefor, will pay interest thereon at the lesser of the rate of ten percent (10%) per annum or the highest rate permitted by law, from the Closing Date to the date of payment.

If the real property taxes on the Personal Property are assessed as part of UPRR's State Board of Equalization ("SBE") assessment in Santa Clara County, California, then UPRR may collect from Donee at Closing Donee's share of such real property taxes from the Closing Date through the period ending on June 30 after the January 1 following the Closing Date, and UPRR shall then pay when due UPRR's SBE assessment. For example, if Closing occurs on July 15, 2022, then UPRR may collect real property taxes from July 15, 2022 to and including June 30, 2023, or if Closing occurs on January 30, 2023, then UPRR may collect such taxes from January 30, 2023 through and including June 30, 2024.

**5.6 Special Taxes, Bonds or Assessments.** If, at the time of Closing, any portion of the Personal Property is affected by an assessment or other charge, whether for taxes or bonds, or interest thereon, which is or may become payable in installments, and an installment payment of such assessment is then a lien, then such installment will be prorated as of midnight at the end of the day preceding the Closing Date. All installments not then yet due whether or not the same have been prepaid will not be prorated and Donee shall assume such bonds or assessments. Any prepaid assessments made in advance of its due date will be credited to UPRR. In addition, Donee shall assume any and all future bonds, assessments, special taxes, fees or charges applicable to the Personal Property for liabilities now or hereafter imposed by any governmental authority (collectively referred to as "Governmental Requirements") including, without limitation, any such Governmental Requirements imposed by the City of Coyote, and those for (a) common area improvements, whether or not specifically set forth in this Agreement, (b) local assessment or improvement districts, (c) any special tax assessments, (d) traffic mitigation improvements, (e) park and recreation fees, and/or (f) any other public facility infrastructure or

traffic mitigation required or imposed by the City of Coyote. Donee shall assume all such bonds or future assessments without offset or adjustment.

5.7 Costs and Expenses. Donee shall pay the cost of any documentary or other transfer taxes applicable to this transaction.

5.8 Supplemental Taxes. UPRR and Donee acknowledge that the Personal Property may be subject to supplemental taxes due as a result of change of ownership taking place pursuant to this Agreement. Any necessary adjustment due to either party on receipt of a supplemental tax bill will be made by the parties outside of this Agreement.

## **ARTICLE 6 REPRESENTATIONS, WARRANTIES AND COVENANTS**

6.1 Representations, Warranties and Covenants of UPRR. UPRR hereby represents, warrants and covenants to Donee as of the Execution Date of this Agreement, as follows:

6.1.1 Organization. UPRR is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and qualified to do business in California.

6.1.2 Enforceability. This Agreement and all documents executed by UPRR which are to be delivered to Donee at Closing are intended, provided Donee has duly executed those documents requiring Donee's signature, to be legal, valid, and binding obligations of UPRR, and do not and at the time of Closing will not violate any provisions of any agreement or judicial order to which UPRR is a party or to which UPRR or the Personal Property is subject.

6.2 Representations, Warranties and Covenants of Donee. Donee hereby represents, warrants and covenants to UPRR as of the date of this Agreement, as follows:

6.2.1 Organization. Donee is a non-profit organization, duly organized, validly existing and in good standing under the laws of the State of California and qualified to do business in California, with full power and authority to enter into and comply with the terms of this Agreement.

6.2.2 Enforceability. This Agreement and all documents executed by Donee which are to be delivered to UPRR at Closing are intended, provided UPRR has duly executed those documents requiring UPRR's signature, to be legal, valid, and binding obligations of Donee, and do not and at the time of Closing will not violate any provisions of any agreement or judicial order to which Donee is a party or to which it is subject.

6.2.3 Bankruptcy. No petition in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors, or petition seeking reorganization or arrangement or other action under federal or state bankruptcy or insolvency laws is pending against or contemplated by Donee.

**ARTICLE 7  
POSSESSION**

Possession of the Personal Property will be delivered to Donee at Closing.

**ARTICLE 8  
MISCELLANEOUS**

8.1 Agreement Expenses. The parties agree to bear their respective expenses, incurred or to be incurred in negotiating and preparing this Agreement and in Closing and carrying out the transactions contemplated by this Agreement.

8.2 Satisfaction or Waiver of Contingencies. The consummation of the Closing will be conclusive evidence that the contingencies and conditions to Closing have been fully satisfied or waived.

8.3 Successors and Assigns.

(a) This Agreement will be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns, except that Donee's interest under this Agreement may not be assigned, encumbered or otherwise transferred, whether voluntarily, involuntarily, by operation of law or otherwise, except as provided below. Any assignment, encumbrance or other transfer in violation of the foregoing will be void and Donee will be deemed in default hereunder.

(b) Notwithstanding the foregoing, Donee may assign this Agreement, without UPRR's prior written consent, to a partnership, limited liability company or corporation in which Donee owns at least a fifty percent (50%) general partnership interest, fifty percent (50%) of the membership interest, or fifty percent (50%) of the voting stock, respectively; provided that such partnership, limited liability company or corporation assumes the provisions of this Agreement, in writing for the benefit of UPRR, in form and substance satisfactory to UPRR, and that at least ten (10) days prior to the Closing Date, Donee shall give UPRR written notice of the assignment together with a fully executed original of the assignment and assumption agreement. No assignment by Donee will relieve Donee of its obligations under this Agreement.

8.4 Parties in Interest. Except as expressly provided in this Agreement, nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor will any provision give any third persons any right to subrogation or action over or against any party to this Agreement.

8.5 Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior or contemporaneous

oral or written agreements, representations, statements, documents, or understandings of the parties.

**8.6 Amendment.** No supplement, modification, or amendment of this Agreement will be binding unless executed in writing by the party to be bound.

**8.7 Waiver.** No waiver of any of the provisions of this Agreement will be deemed, or will constitute, a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

**8.8 Timeliness.** UPRR and Donee acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision of this Agreement and that failure to timely perform any of the material terms, conditions, obligations or provisions of this Agreement by either party is a material breach of and a non-curable (but waivable) default under this Agreement by the party so failing to perform.

**8.9 Notices.** Any notice or other communication required or permitted to be given under this Agreement ("Notices") must be in writing and must be: (a) personally delivered; (b) delivered by a reputable overnight courier; (c) delivered by certified mail, return receipt requested and deposited in the U.S. Mail, postage prepaid; or (d) by e-mail. Notices will be deemed received at the earlier of (a) actual receipt, or (b) one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit, or (c) five (5) business days following deposit in the U.S. Mail, as evidenced by a return receipt. Notices must be directed to the parties at their respective addresses shown below, or such other address as either party may, from time to time, specify in writing to the other in the manner described above:

If to UPRR:                    UNION PACIFIC RAILROAD COMPANY  
   ATTN: Peter Kenney, Senior Manager – Real Estate Sales  
   1400 Douglas Street, Mail Stop 1690  
   Omaha, Nebraska 68179  
   Telephone: (402) 544-8581  
   E-mail: [pkenney@up.com](mailto:pkenney@up.com)

With copy to:                 UNION PACIFIC RAILROAD COMPANY  
   ATTN: Pat McGill, Senior Counsel - Transactional  
   1400 Douglas Street, Mail Stop 1580  
   Omaha, Nebraska 68179  
   Telephone: (402) 544-5761  
   E-mail: [prmcgill@up.com](mailto:prmcgill@up.com)

If to Donee: HISTORY SAN JOSE  
 ATTN: Ken Middlebrook  
 1650 Senter Road  
 San Jose, California 95112  
 Telephone: (408) 375-4069  
 E-mail: kmiddlebrook@historysanjose.org

Notices given by e-mail (followed with "hard copy" sent by one of the other methods as aforesaid) shall be deemed given and received when the e-mail is received, provided such receipt occurs before 5:00 PM Omaha, Nebraska time on a business day (and if not received by 5:00 PM on a business day or if not received on a business day, then such receipt shall be deemed to have occurred at 8:00 AM on the next business day).

8.10 Governing Law and Venue. This Agreement is to be construed in accordance with, and governed by, the laws of the State of California, and any action or proceeding, including arbitration, brought by any party in which this Agreement is subject, will be brought in the county in which the Personal Property is located.

8.11 Effect of Headings. The headings of the paragraphs of this Agreement are included for purposes of convenience only, and will not affect the construction or interpretation of any of its provisions.

8.12 Invalidity. Any provision of this Agreement which is invalid, void, or illegal, will not affect, impair, or invalidate any other provision of this Agreement, and such other provisions of this Agreement will remain in full force and effect.

8.13 Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

8.14 Number and Gender. When required by the context of this Agreement, each number (singular and plural) will include all numbers, and each gender will include all genders.

8.15 Joint and Several Liability. In the event either party hereto now or hereafter consists of more than one person, firm, or corporation, then and in such event, all such persons, firms, or corporations will be jointly and severally liable as parties under this Agreement.

8.16 Recording. Neither party may record this Agreement or any memorandum thereof.

8.17 Advice of Professionals. Each party has had the opportunity to be advised by legal counsel and other professionals in connection with this Agreement, and each party has obtained such advice as each party deems appropriate.

8.18 Negotiated Terms. The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement will not be



construed in favor of or against any party by reason of the extent to which any party or its professionals participated in the preparation of this Agreement.

8.19 Recitals and Exhibits. The recitals and contents of all Exhibits to this Agreement are incorporated by reference and constitute a material part of this Agreement.

8.20 Professional Fees and Costs. If any legal or equitable action, arbitration, bankruptcy, reorganization, or other proceeding, whether on the merits, application, or motion, are brought or undertaken, or an attorney retained, to enforce this Agreement or any closing document, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement or any closing document, then the successful or prevailing party or parties in such undertaking (or the party that would prevail if an action were brought) will be entitled to recover attorney's and other professional fees, expert witness fees, court costs and other expenses incurred in such action, proceeding, or discussions, in addition to any other relief to which such party may be entitled. The parties intend this provision to be given the most liberal construction possible and to apply to any circumstances in which such party reasonably incurs expenses. The provisions of this Section will survive Closing or the termination of this Agreement.

8.21 Confidentiality. All information, studies and reports relating to the Personal Property obtained by Donee, either by the observations and examinations of its agents and representatives or as disclosed to it by UPRR, must remain confidential and Donee shall not disclose any such matters to any person or governmental agency except as unconditionally required by law. If the transaction contemplated herein fails to close for any reason, Donee shall deliver and return to UPRR, at no cost to UPRR, all such information, reports and studies, and Donee shall make no further distributions or disclosures of any such information, reports and studies. Donee agrees that, except for its lender, accountants, attorneys or a permitted assignee of Donee, Donee shall keep the contents of this Agreement confidential and that no publicity or press release to the general public with respect to this transaction shall be made by Donee without the prior written consent of UPRR. The provisions of this Section will survive the termination of this Agreement.

8.22 Not an Offer. The submission of this Agreement to Donee for review or signature does not constitute an offer to donate the Personal Property to Donee or the granting of an option or other rights with respect to the Personal Property to Donee. No agreement with respect to the donation of the Personal Property will exist, and this writing will have no binding force or effect, until executed and delivered by both UPRR and Donee.

8.23 Back-Up Offers. Until Closing, UPRR will have the right to continue to present the Personal Property for sale and accept "back-up" offers contingent on Donee's failure to perform under the terms of this Agreement.

8.24 Severability. Any provision of this Agreement that is determined by a court of competent jurisdiction to be invalid or unenforceable will be invalid or unenforceable only to the extent of such determination, which will not invalidate or otherwise render ineffective any other provision of this Agreement.

8.25 Merger. Except as otherwise expressly provided in this Agreement, the covenants, representations and warranties of Donee and UPRR in this Agreement will merge into the Quitclaim Bill of Sale to be delivered by UPRR to Donee at Closing and will not survive Closing.

**UPRR:** **UNION PACIFIC RAILROAD COMPANY,**  
**a Delaware corporation**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DONEE:** **HISTORY SAN JOSE,**  
**a California non-profit organization**

By: Bill Schreh, Jr.  
Printed Name: Bill Schreh, Jr.  
Title: President & CEO

**EXHIBIT A**

**PRINT DATED APRIL 16, 2021  
(TO BE ATTACHED)**

**EXHIBIT B****FORM OF QUITCLAIM BILL OF SALE**

**UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("UPRR"), for and in consideration of One Dollar (\$1.00) and other valuable consideration does hereby REMISE, RELEASE, and forever QUITCLAIM to **HISTORY SAN JOSE**, a California non-profit organization ("Donee"), all of UPRR's right, title and interest in and to one (1) building commonly referred to as the "Depot Building" ("Building"), including any and all appurtenances related thereto, and any other personal property associated with the Building (collectively, "Personal Property"), which is located on certain real property located in the City of Coyote, Santa Clara County, State of California, legally described in **Exhibit A**, attached hereto and made a part hereof ("Land").

DONEE UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT DONEE HAS CONDUCTED ITS OWN DUE DILIGENCE OF AND IS ACQUIRING THE PERSONAL PROPERTY "AS IS" "WHERE IS" AND "WITH ALL FAULTS", AND THAT SELLER MAKES NO WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, WRITTEN OR ORAL, AND SPECIFICALLY THERE IS NO WARRANTY (I) OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, (II) OF TITLE TO THE PERSONAL PROPERTY, AND (III) REGARDING THE CONDITION, QUALITY, OR MANAGEMENT OF ANY OR ALL OF THE PERSONAL PROPERTY, ALL WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE OR OTHERWISE. DONEE IS ACQUIRING THE PERSONAL PROPERTY BASED SOELY ON ITS OWN INDEPENDENT INVESTIGATION AND INSPECTION OF THE PERSONAL PROPERTY AND NOT IN RELIANCE ON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER.

UPRR does not convey or intend to convey by this instrument any right, title, estate or interest whatsoever in or to the Land on which the Personal Property is situated.

*(Remainder of page intentionally left blank.)*

IN WITNESS WHEREOF, UPRR and Donee have each duly executed this instrument as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

UPRR:

**UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation**

By: \_\_\_\_\_  
Printed Name: Chris D. Goble  
Title: Assistant Vice President – Real Estate

Donee:

**HISTORY SAN JOSE,  
a California non-profit organization**

By: Bill Schuch, Jr.  
Printed Name: Bill Schuch, Jr.  
Title: President & CEO

1



**EXHIBIT A**  
**TO FORM OF QUITCLAIM BILL OF SALE**

**LEGAL DESCRIPTION OF THE LAND  
(TO BE ATTACHED)**



**LEGEND:**

- DEPOT SHOWN.....
- TCE AREA.....
- TCE AREA = 9,150 SQ. FT. +/-
- UPRRCO. R/W OUTLINED..... - - - - -

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"

**UNION PACIFIC RAILROAD COMPANY**

COYOTE, SANTA CLARA COUNTY, CALIFORNIA

M.P. 59.8 - COAST SUB.

MAP SP V-70 / S-2

SCALE: 1" = 100'

OFFICE OF REAL ESTATE  
OMAHA, NEBRASKA DATE: 4-16-2021

PJB FILE: 0327050

CADD FILENAME	0327050
SCAN FILENAME	X

**EXHIBIT C**  
**TO**  
**DONATION AGREEMENT**

PL X&B ROE 940201  
Form Approved, AVP-Law  
08/25/2006

Folder No. 3270-50

**CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

THIS AGREEMENT is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ 20\_\_ by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, ("Railroad") and \_\_\_\_\_ ("Contractor"), to be addressed at \_\_\_\_\_.

**RECITALS:**

The Contractor has been hired by \_\_\_\_\_ to \_\_\_\_\_ (the "work"), with all or a portion of such work to be performed on property of Railroad at Mile Post 59.8, on the Coast Subdivision, at or near Coyote, CA pursuant to a Donation Agreement between Railroad and History San Jose, a California non-profit organization, dated \_\_\_\_\_ at such location as shown on the print marked **Exhibit A** attached hereto and hereby made a part hereof.

Railroad is willing to permit Contractor to perform the work described above at the location describe above subject to the terms and conditions contained in this Agreement.

**AGREEMENT:**

NOW, THEREFORE, it is mutually agreed by and between the Railroad and Contractor, as follows:

**Article I. DEFINITION OF CONTRACTOR.**

For purposes of this Agreement, all references in this Agreement to the Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

**Article II. RIGHT GRANTED: PURPOSE.**

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing any work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article IV, and is strictly limited to the scope of work identified to the Railroad, as determined by the Railroad in its sole discretion, and for no other purpose.

**Article III. TERMS AND CONDITIONS CONTAINED IN EXHIBITS B AND C.**

The terms and conditions contained in **Exhibit B** and **C**, attached hereto, are hereby made a part of this Agreement.

**Article IV. ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.**

A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.

B. Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

[www.up.com/real\\_estate/third-party-flagging/index.htm](http://www.up.com/real_estate/third-party-flagging/index.htm)

**Contractor**  
**Cell Phone:** \_\_\_\_\_  
**Email:** \_\_\_\_\_

C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

**Article V. TERM: TERMINATION.**

A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue for one (1) year from \_\_\_\_\_, unless sooner terminated as herein provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.

B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

**Article VI. CERTIFICATE OF INSURANCE.**

A. Before commencing any work, Contractor will provide Railroad with the insurance binders, policies, certificates and/or endorsements set forth in **Exhibit C** of this Agreement.

B. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

Folder No: 3270-50  
Union Pacific Railroad Company  
1400 Douglas Street STOP 1690  
Omaha, Nebraska 68179-1690

**Article VII. CHOICE OF FORUM.**

Litigation arising out of or connected with this Agreement may be instituted and maintained in the courts of the State of California only, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation, in those courts, and consent to service of process issued by such courts.

**Article VIII. DISMISSAL OF CONTRACTOR'S EMPLOYEE.**

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

**Article IX. CROSSINGS.**

No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

**Article X. EXPLOSIVES.**

Explosives or other highly flammable substances shall not be stored on Railroad's property without the prior written approval of Railroad.

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

**UNION PACIFIC RAILROAD COMPANY**

By: \_\_\_\_\_  
Peter T. Kenney, Sr. Manager – Real Estate

\_\_\_\_\_  
(Contractor Name)

By \_\_\_\_\_

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

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

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

**EXHIBIT B**  
**To**  
**CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

**Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.**

A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least ten (10) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such ten (10)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will

still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

**Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED**

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

**Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.**

A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.

B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

**Section 4. LIENS.**

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

**Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.**

A. Fiber optic cable systems may be buried on Railroad's property. 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. Contractor 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, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.

B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

**Section 6. PERMITS - COMPLIANCE WITH LAWS.**

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

**Section 7. SAFETY.**

A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Licensee or its contractor. Licensee shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Licensee and its contractor shall at a minimum comply with Licensor's then current safety standards located at <http://TRASH> to ensure uniformity with the safety standards followed by Licensor's own forces. As a part of Licensee's safety responsibilities, Licensee shall notify Licensor if it determines that any of Licensor's safety standards are contrary to good safety practices. Licensee and its contractor shall furnish copies of each of its employees before they enter the job site.

B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.

C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.



D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

**Section 8. INDEMNITY.**

A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees ("Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this agreement by Contractor.

B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.

C. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify Railroad under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.

D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against Railroad.

E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

**Section 9. RESTORATION OF PROPERTY.**

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

**Section 10. WAIVER OF DEFAULT.**

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

**Section 11. MODIFICATION - ENTIRE AGREEMENT.**

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

**Section 12. ASSIGNMENT - SUBCONTRACTING.**

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors, and shall require all subcontractors to maintain the insurance coverage required to be maintained by Contractor as provided in this Agreement, and to indemnify Contractor and Railroad to the same extent as Railroad is indemnified by Contractor under this Agreement.

**EXHIBIT C**  
**CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

**Union Pacific Railroad Company**  
**Insurance Provisions For**  
**Contractor's Right of Entry Agreement**

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from the Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

- A. Commercial General Liability insurance.** Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

- B. Business Automobile Coverage insurance.** Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$2,000,000 for each accident.

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.  
Motor Carrier Act Endorsement – Hazardous materials clean up (MCS-90) if required by law.

- C. Workers Compensation and Employers Liability insurance.** Coverage must include but not be limited to:

Contractor's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.

Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excel workers compensation coverage must be provided. Coverage must include liability arising out of the U.S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

- D. **Railroad Protective Liability** insurance. Contractor must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.
- E. **Umbrella or Excess insurance**. If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.
- F. **Pollution Liability** insurance. Pollution Liability coverage must be included when the scope of the work as defined in the Agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

#### **Other Requirements**

- G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

- K.** All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.
  
- L.** The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

# Exhibit C

7 September 2023  
2210

Bill Schroh CEO  
History San Jose  
1650 Senter Road  
San Jose, CA 95112

Dear Bill,

My statement regarding the scope of work for the on-site work of the COYOTE DEPOT is as follows:

## COYOTE DEPOT MOVE-ON & REHABILITATION

The existing historical depot is of wood frame construction in the railroad vernacular of the 19<sup>th</sup> century. It is single-story totaling approximately 736 sf. .

A slab-on-grade foundation will be constructed to accept the historic building when it is brought to the site. The building will be anchored to the new concrete foundation and appropriate holddowns installed to anchor the shear walls that will be added to the building.

The intent with this rehabilitation is to return the depot to its original appearance both inside and out. Seismic retrofit must occur, including load path distribution of lateral forces. Electrical and plumbing services will be brought to the site for lighting, power and a sink. There will be no toilets installed in the building. Doors and windows will be repaired or replaced, and the wall surfaces refinished. A new roof will be installed also.

To house the model railroad display, a low-roofed addition will be added in the rear of the building. It will total approximately 630 sf.

Site work will consist of utility services, site lighting, signage and concrete walks sloped per ADA standards. It is likely that a tree will have to be removed. Provision for the future extension of the boardwalk to the existing train siding will be done. That train must be pushed north along Senter Road to allow room for the depot; trackage extension is required. No roadwork or landscaping is contemplated.

Very truly yours,



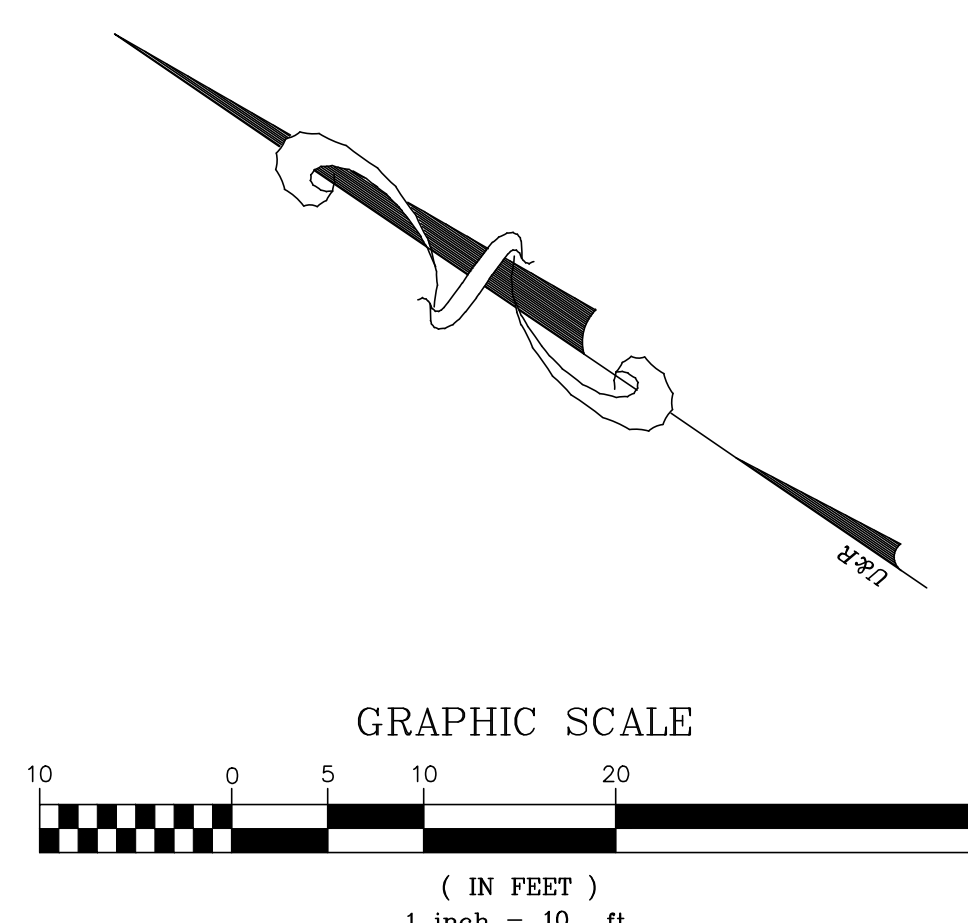
Marvin Bamberg, AIA  
President

**ARCHITECTS**

**MBA**  
WWW.MBA-ARCHITECTS.NET



Exhibit D



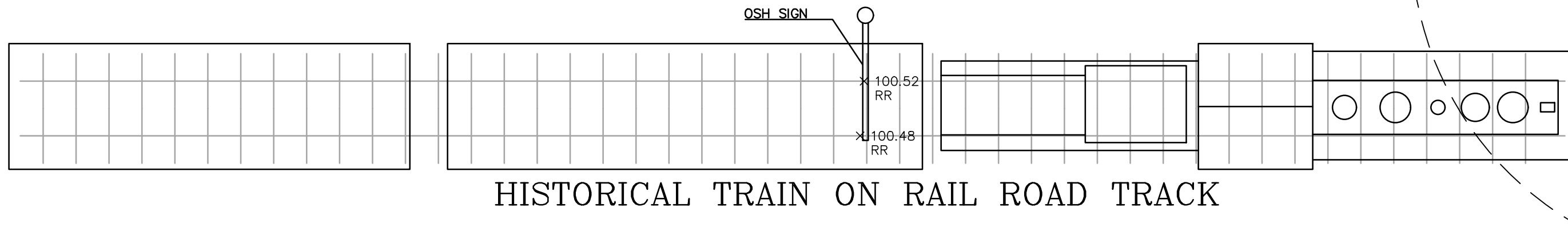
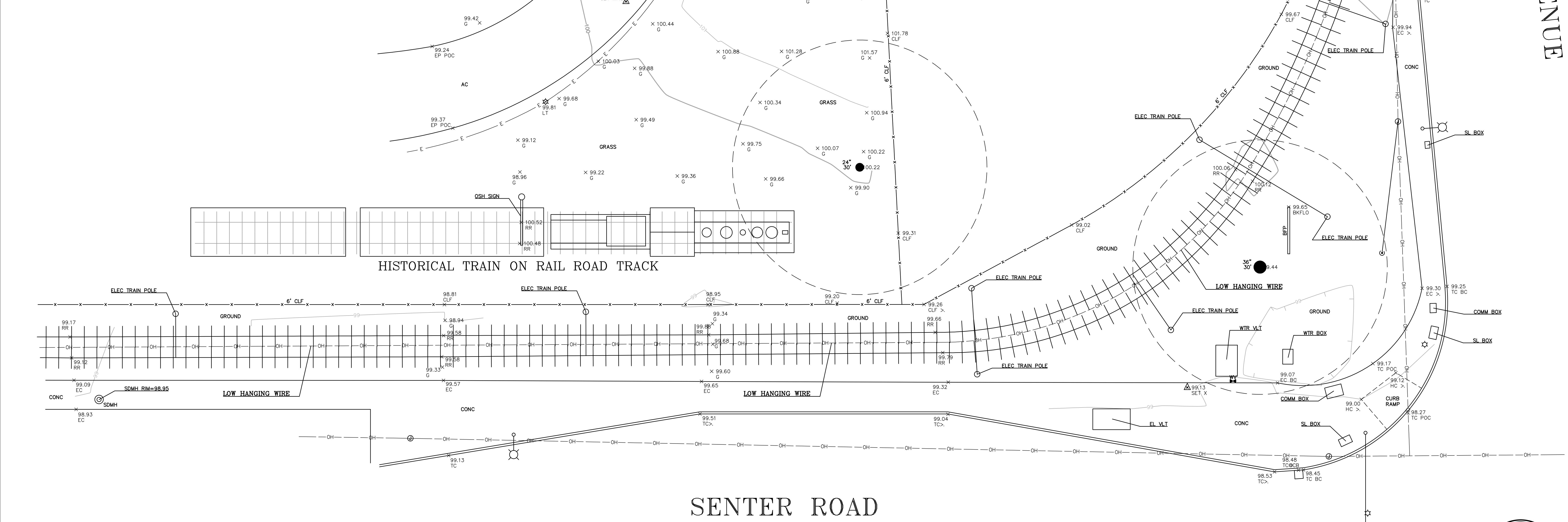
LEGEND			
AC	ASPHALT CONCRETE	SD	STORM DRAIN LINE
AD	AREA DRAIN	SS	SANITARY SEWER LINE
BC	BEGON CURVE	E	UNDERGROUND ELECTRIC
BLDG COR	BUILDING CORNER	OH	OVERHEAD UTILITIES
C/CONC	CONCRETE	---	GRADE BREAK
CB	CATCH BASIN	-X-X-	FENCE LINE
CLF	CHAIN LINK FENCE	---	ROOF OVERHANG
CMU	CONCRETE MASONRY WALL	---	BUILDING LINE
EC	EDGE OF CONCRETE		
EL	ELECTRIC		
EP	EDGE OF PAVEMENT		
FF	FINISH FLOOR		
FL	FLOW LINE		
FNC	FENCE		
FOO	FULL OF DEBRIS		
G	GROUND		
GB	GRADE BREAK		
HDBD	HEADERBOARD		
INV	INVERT ELEVATION		
IEI	INVERT ELEVATION IN		
IEO	INVERT ELEVATION OUT		
IEI	INVERT ELEVATION THRU		
IP	IRON PIPE		
LG	LIP OF GUTTER		
LS	LANDSCAPING		
MH	MAINTENANCE HOLE		
MON	MONUMENT		
POC	POINT ON CURVE		
RTWL	RETAINING WALL		
TC	TOP OF CURB		
TEL	TELEPHONE		
TOE	BOTTOM OF SLOPE		
TOP	TOP OF SLOPE		
TYP	TYPICAL		
WD	WOOD		
WR	WROUGHT IRON		
AD	AREA DRAIN	AD	AREA DRAIN
CB	CATCH BASIN	CB	CATCH BASIN
RWL	RAIN WATER LEADER	RWL	RAIN WATER LEADER
RWLS	RAIN WATER LEADER UNDERGROUND	RWLS	RAIN WATER LEADER UNDERGROUND
RWLS	RAIN WATER LEADER SPLASH	RWLS	RAIN WATER LEADER SPLASH
ELB	ELECTRICAL BOX	ELB	ELECTRICAL BOX
SDMH	STORM DRAIN MAINTENANCE HOLE	SDMH	STORM DRAIN MAINTENANCE HOLE
SSMH	SANITARY SEWER MAINTENANCE HOLE	SSMH	SANITARY SEWER MAINTENANCE HOLE
CO	CLEAN OUT	CO	CLEAN OUT
HOSE BB	HOSE BIB	HOSE BB	HOSE BIB
ICV	IRRIGATION CONTROL VALVE	ICV	IRRIGATION CONTROL VALVE
WM	WATER METER	WM	WATER METER
WV	WATER VALVE	WV	WATER VALVE
SPK	SPRINKLER	SPK	SPRINKLER
FH	FIRE HYDRANT	FH	FIRE HYDRANT
BFP	BACK FLOW PREVENTER	BFP	BACK FLOW PREVENTER
FDC	FIRE DEPARTMENT CONNECTION	FDC	FIRE DEPARTMENT CONNECTION
PIV	POST INDICATOR VALVE	PIV	POST INDICATOR VALVE
GV	GAS VALVE	GV	GAS VALVE
MW	MONITORING WELL	MW	MONITORING WELL
30"	TREE WITH TRUNK DIAMETER AND DRIP LINE RADIUS	30"	TREE WITH TRUNK DIAMETER AND DRIP LINE RADIUS
TL	TREE LINE	TL	TREE LINE
SL	STREET LIGHT	SL	STREET LIGHT
LP	LIGHT POLE	LP	LIGHT POLE
S	SIGN	S	SIGN
B-P	BOLLARD/POLE	B-P	BOLLARD/POLE
J	JOINT POLE	J	JOINT POLE
G	GUY POLE	G	GUY POLE
A	ANCHOR	A	ANCHOR
SCP	SURVEY CONTROL POINT	SCP	SURVEY CONTROL POINT
IPF	IRON PIPE FOUND	IPF	IRON PIPE FOUND
M	MONUMENT FOUND	M	MONUMENT FOUND
B	BENCHMARK	B	BENCHMARK
100.00	SPOT ELEVATION WITH DESCRIPTION	100.00	SPOT ELEVATION WITH DESCRIPTION
100	INDEX ELEVATION CONTOUR	100	INDEX ELEVATION CONTOUR
99	INTERMEDIATE ELEVATION CONTOUR	99	INTERMEDIATE ELEVATION CONTOUR

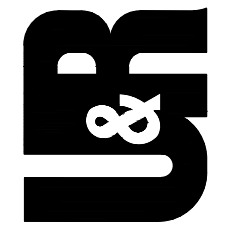
**SURVEY NOTE:** THIS SURVEY MAP WAS COMPILED FROM A TOPOGRAPHIC AND BOUNDARY SURVEY DONE IN JUNE 2023. ANY CHANGES OR IMPROVEMENTS MADE TO THE PROPERTY AFTER THESE DATES MAY NOT BE SHOWN ON THIS SURVEY.

**UTILITY NOTE:** THE UNDERGROUND UTILITY INFORMATION SHOWN ON THIS MAP WAS OBTAINED BY THE USE OF ELECTRONIC LOCATING EQUIPMENT, VISUAL INSPECTION AND RECORD INFORMATION. UNDERGROUND UTILITIES ARE SOMETIMES NOT DETECTED OR INACCURATELY MAPPED BY OTHERS. POTHOLING IS REQUIRED TO VERIFY THE LOCATION OR EXISTENCE OF AN UNDERGROUND UTILITY.

**BENCHMARK:** TOPOGRAPHIC SURVEY WAS PERFORMED AT AN ASSUMED ELEVATION OF 100 FEET.

**CONTOUR INTERVAL:** 1 FOOT.



DATE	
REVISIONS	
#	
DESC.	
<b>UNDERWOOD &amp; ROSENBLUM, INC.</b> CIVIL ENGINEERS AND SURVEYORS 1539 Hamilton Road, Suite 1115, San Jose, CA 95131 (408) 452-1222 	
<b>HISTORY SAN JOSE</b> 1650 SENTER ROAD SAN JOSE CALIFORNIA	
<b>TOPOGRAPHIC SURVEY</b>	
Date 07-10-2023	Scale 1"=10'
Dwn by: RAB	Checked: FR
Job J23054	Sheet
<span style="font-size: 2em;">1</span>	

DISCLOSURE: THESE DRAWINGS AND DOCUMENTS ARE THE PROPERTY OF UNDERWOOD & ROSENBLUM, INC. AND CAN NOT BE COPIED OR DISCLOSED IN WHOLE OR IN PART WITHOUT THE EXPRESS WRITTEN CONSENT OF UNDERWOOD & ROSENBLUM, INC. CIVIL ENGINEERS AND LAND SURVEYORS