

## AUTHORIZATION FOR CROSSING IMPROVEMENTS

**Effective Date:**

**Agency: CITY OF SAN JOSE, CALIFORNIA**

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

### RECITALS

In accordance with the terms and conditions of this Agreement, Agency and Railroad desire to improve the existing, at-grade crossing area ("**Project**") along, over and across Railroad's track and right of way, as such crossing area is more particularly described on Exhibit A attached hereto and made a part hereof ("**Crossing Area**").

### AGREEMENT

NOW THEREFORE, the parties hereto agree as follows:

1. Railroad agrees to perform the Project work described on Exhibit B attached hereto the ("**Railroad Work**"). Railroad's estimated cost for the Railroad Work is included on Exhibit C attached hereto ("**Estimate**") and may include without limitation costs of engineering review, construction, inspection, flagging, procurement and delivery of materials, equipment rental, manpower and all direct and indirect overhead labor/construction costs, including Railroad's standard additive rates. Such standard additive rates may be subject to upward or downward adjustment based on industry standards and practices, and the parties acknowledge and agree that any such adjustment to standard additive rates may be made retroactively.

2. Agency has appropriated sufficient funds to complete the Project and shall reimburse Railroad for costs incurred by Railroad in connection with the Railroad Work in accordance with Exhibit D attached hereto.

3. If Agency will be performing any Project work, such work is described on Exhibit B attached hereto ("**Agency Work**"). Agency shall perform the Agency Work, if any, at its sole cost, and Railroad consents to Agency (or any contractor or other agent hired by Agency) performing the Agency Work within the Crossing Area, subject to complying with the terms and conditions of this Agreement. Railroad's consent shall not be deemed to grant Agency (or any contractor or other agent hired by Agency) any property interest in the Crossing Area or other Railroad property.

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

5. No work of any kind shall be performed, and no person, equipment, machinery, tools, materials, vehicles or other items shall be located, operated, placed or stored within twenty-five (25) feet of any track at any time for any reason except as otherwise provided herein. Prior to commencing the Agency Work, and if the performance of any Agency Work requires any person

or equipment to be within twenty-five (25) feet of any track, Agency shall provide Railroad at least thirty (30) working days advance notice of the performance of such proposed work, and upon Railroad's receipt of such notice, Railroad will determine and inform Agency whether a flagman need to be present or whether Agency needs to implement any special protective or safety measures. Subject to Exhibit D, in the event that flagging or other special protection or safety measures are required to be performed in connection with the Railroad Work specifically or the Project generally, and regardless if the costs for such measures are included in the Estimate, Agency shall be responsible for all such costs incurred in connection therewith.

6. Prior to commencing any Agency Work, Agency shall telephone (or shall cause its contractor or agent to telephone) Railroad during normal business hours (7:00 a.m. to 9:00 p.m., Central time, Monday through Friday, except holidays) at 1-800-336-9193 to determine if fiber optic cable is buried anywhere on Railroad's property to be used in connection with the Agency Work. If fiber optic cable is present, Agency, at its sole cost, will coordinate (or will cause its contractor or agent to coordinate) with the applicable telecommunications companies for the relocation or other protection of the fiber optic cable prior to beginning any Agency Work.

7. Agency, for itself and for its successors and assigns, hereby waives any right of assessment against Railroad, as an adjacent property owner, for any and all improvements made under this Agreement.

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

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

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

**CITY OF SAN JOSE, CALIFORNIA**

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

Paul Rathgeber  
Printed Name

\_\_\_\_\_  
Title

Director, Industry & Public Projects  
Title

**Description of Crossing Location**

<b>Street</b>	Horning Street	<b>DOT #</b>	750117C
<b>Subdivision</b>	Warm Springs	<b>Milepost</b>	15.46
<b>City</b>	San Jose	<b>State</b>	CA
<b>County</b>	Santa Clara		

## Scope of Work

### Railroad Work:

- Remove existing 85' crossing surface
- Install new 145' precast concrete crossing surface
- Field weld rail
- Relay track at crossing with 136 lb. rail
- Renew ties
- Surface the track with new ballast
- Railroad contractor to provide traffic control, road closure during construction, and obtain City encroachment permit
- Sawcut and remove pavement
- Install pavement up to the crossing surface upon completion of crossing surface installation

### Agency Work:

- No work to be performed by Agency

**Estimate Cover Page**

(see attached)

**Material And Force Account Estimate**

Subject: Funding Agreement with Union Pacific Railroad for Work at Horning Street

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**CITY/STATE/FED**

Estimate Number: 135308 Version: 1

Standard Rates: Labor Additive = 222.97%

Estimate Good Until 08/31/22

Location: WARM SPRINGS SUB, SIMN, 15.49-15.51

Description of Work: Warm Springs Sub MP: 15.50 Horning St DOT#750117C. Remove existing road crossing and replace with 145TF of new concrete crossing uncluding ties, rail, and otm

Prepared For:

Buy America: No

COMMENTS	FACILITY	Description	QTY	UOM	UCST	LABOR	MATERIAL	TOTAL	UP %50	Agcy %50
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**ENGINEERING**

		Engineering	1	LS	23,573.80	23,574	0	23,574	11,787	11,787
		Bill Prep Fee - Track Surface RECOLLECT	1	LS	900.00	0	900	900	450	450
		Homeline Freight - Track Surface RECOLLECT	1	LS	900.00	0	900	900	450	450
		Foreign Line Freight - Track Surface RECOLLECT	1	LS	1,586.70	0	1,587	1,587	793	793
Sub-Total =						23,574	3,387	26,961	13,480	13,480

**TRACK CONSTRUCTION - COMPANY**

	RDXING	RDXING 136# CON10W 10' LOOSE PAN TIES	145	TF	825.16	68,581	51,068	119,649	59,824	59,824
	TRACK	136# CWRIS0 24-8'6" HWD N 16 TP	15	TF	535.05	5,996	2,030	8,026	4,013	4,013
	BALAST	BALAST CL1	1	CL	1,597.39	430	1,167	1,597	799	799
	COMPJT	Transition Rail - 136#	1	PR	6,650.97	3,382	3,269	6,651	3,325	3,325
Sub-Total =						78,389	57,534	135,923	67,961	67,961

**TRACK REMOVAL - COMPANY**

	RDXING	Remove road crossing - concrete	86	TF	87.34	7,512	0	7,512	3,756	3,756
	TRACK	Remove Track	74	TF	32.66	2,417	0	2,417	1,209	1,209
Sub-Total =						9,929	0	9,929	4,964	4,964

**SITE WORK - CONTRACT**

		Asphalt	1	LS	50,000.00	50,000	0	50,000	25,000	25,000
		Asphalt: Saw Cut	1	LS	4,000.00	4,000	0	4,000	2,000	2,000
Sub-Total =						54,000	0	54,000	27,000	27,000

**SIGNAL - COMPANY**

		Signal: Xing Signals	1	LS	1,500.00	1,500	0	1,500	750	750
Sub-Total =						1,500	0	1,500	750	750

**EQUIPMENT RENTAL**

		Equipment Rental	1	LS	20,000.00	0	20,000	20,000	10,000	10,000
Sub-Total =						0	20,000	20,000	10,000	10,000

Total Wgt. in Tons = 720

Totals = 167,391 80,920 248,312 124,156 124,156

Grand Total = \$248,312

Please Note: The above figures are estimates only and are subject to fluctuation. In the event of an increase or decrease in the cost or amount of material or labor required, CITY/STATE/FED will pay actual construction costs at the current rates effective thereof.

### Reimbursement Method

Agency agrees to reimburse Railroad for **FIFTY PERCENT (50%)** of actual costs incurred by Railroad in connection with the Railroad Work. During the performance of the Railroad Work, Railroad will provide progressive billing to Agency based on Railroad's actual costs. Within one hundred twenty (120) days after completion of the Project, Railroad will submit a final billing to Agency for any balance owed Railroad in connection with the Railroad Work. Agency shall pay Railroad within thirty (30) days after Agency's receipt of any progressive and final bills submitted by Railroad.