

ATTACHMENT D 2

When Recorded Mail To:

City of Oakland
Real Property Asset Management Division
250 Frank H. Ogawa Plaza, Suite 4314
Oakland, CA 94612
Attn: Real Property Asset Manager

Location: City/Oakland
Documentary Transfer Tax \$ EXEMPT
Alameda County Transportation
Commission

By: _____

Recording Fee \$00.00 Gov. Code 27383

SPACE ABOVE FOR RECORDER'S USE

ROADWAY EASEMENT DEED
(7th Street Crossing)

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (hereinafter, "**GRANTOR**"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants to the ALAMEDA COUNTY TRANSPORTATION COMMISSION, a joint powers authority, its successors and assigns (hereinafter, "**GRANTEE**") (subject to the reservations, covenants, terms and conditions hereof), a nonexclusive easement (hereinafter "**Roadway Easement**") for the purpose of constructing, owning, reconstructing, upgrading, replacing, removing, inspecting, maintaining, repairing and operating the undercrossing for a roadway, namely the public crossing for Seventh Street, along with all necessary and related sidewalks, roadway drainage systems, drainage pump systems, roadway and underpass lighting (including conduits and electrical connections) and landscaping (including irrigation and irrigation conduits), hardscape, multi-use path and railing or fencing, any superstructure soffit, any retaining walls (including wall railing and waterproofing), retaining wall or other cosmetic or aesthetic elements, including roadway and path lighting (including conduits and electrical connections), structure footings, seal-slab piles, other improvements comprising the roadway, and any other roadway appurtenances thereon (hereinafter collectively, the "**Roadway**"), in the City of Oakland in Alameda County, California, over, under and across that certain real property described in **Exhibit A** and as depicted in **Exhibit B**, attached hereto and hereby made a part hereof (hereinafter the "**Property**"), at GRANTOR's milepost _____ (DOT _____) on GRANTOR's _____ Subdivision.

GRANTOR shall retain ownership and, subject to certain provisions in the C & M Agreement (defined below), maintenance responsibility for the railroad and railroad-related facilities on the Structure (as defined in the Underpass Structure Easement Deed described below) consisting of the tracks, ties, ballast, signal and any other railroad facilities installed pursuant to the C & M Agreement, as provided in more detail in the C & M Agreement and as depicted in **Exhibit C**, attached hereto and hereby made a part hereof.

GRANTOR acknowledges that the Roadway and its use as a public crossing for Seventh Street in accordance with this Roadway Easement Deed and the C & M Agreement (as defined below) are compatible with railroad operations, within the meaning of California Code of Civil Procedure section 1240.510, so long as the Roadway and its use do not impede railroad operations, create an undue safety risk, or interfere with GRANTOR's common carrier obligations as regulated by the Surface Transportation Board or by any successor agency.

GRANTOR and GRANTEE agree that the terms and conditions of that certain Construction and Maintenance Agreement, between GRANTOR and GRANTEE, dated December 2, 2022, and as thereafter may be amended by mutual agreement, and known in GRANTOR's records as part of Real Estate Folder Number 3142-52 (the "**C & M Agreement**") are incorporated into this Roadway Easement Deed as though fully set forth herein, and any use of the Property by GRANTEE or its successors or assigns, is subject to the terms and conditions of the C & M Agreement in addition to the terms and conditions set forth in this Roadway Easement Deed. Without limiting the general application of the preceding sentence, GRANTOR and GRANTEE acknowledge the C & M Agreement provides that GRANTEE or its successors and assigns, not GRANTOR, shall own the Roadway, and GRANTEE or its successors and assigns, not GRANTOR, shall be responsible for all maintenance and repair of the Roadway, including all costs for maintenance and repair, as provided in more detail in the C & M Agreement and with respect to the portions owned by GRANTEE pursuant to Section 17 of the C & M Agreement and as depicted in **Exhibit C** attached hereto.

GRANTOR and GRANTEE acknowledge that GRANTOR and GRANTEE have also entered into that certain nonexclusive Underpass Structure Easement Deed of even date herewith, which is for the purpose of constructing, owning, reconstructing, upgrading, replacing, removing, inspecting, maintaining, repairing and operating the Structure (as defined in the Underpass Structure Easement Deed) on and across the Property, crossing above the Roadway. GRANTOR understands that GRANTEE intends to assign the Roadway Easement Deed to the City of Oakland, in the same manner in which GRANTOR understands GRANTEE intends to assign the Underpass Structure Easement Deed to the Port of Oakland as provided in the following paragraph.

If GRANTEE elects, GRANTEE may notify GRANTOR in writing that GRANTEE has, in exchange for the written assumption by the City of Oakland of all obligations of GRANTEE under this Roadway Easement Deed and certain specified provisions of the C & M Agreement, excluding only those limited obligations related to the Structure assigned to the City of Oakland, all of GRANTEE's rights under this Roadway Easement Deed and the C & M Agreement other than those limited rights GRANTEE has in the Property pursuant to the Underpass Structure Easement Deed and the C & M Agreement from GRANTOR to GRANTEE, such assignment and assumption to be according to the form attached hereto as **Exhibit D**, attached hereto and made a part hereof.

RESERVING unto GRANTOR, its successors and assigns, in addition to the rights of GRANTOR set forth in the C & M Agreement, all other rights in, and to the Property, and all uses of the Property that are not inconsistent with GRANTEE's use and enjoyment of the Roadway Easement as contemplated in the C & M Agreement and this Roadway Easement Deed (including any and all rights consistent with GRANTEE's use of the Roadway as a public street to the extent provided in this Roadway Easement Deed), including, but not limited to the following:

- (1) All rights in and to airspace at an elevation above a plane parallel with the top of the Structure.
- (2) The right of GRANTOR upon reasonable prior notice to GRANTEE, the City, and the Port of Oakland, temporarily to close or require the City to close the Roadway or a portion of the

Roadway under the Structure to pedestrian and vehicular traffic, at the City's expense, to allow GRANTOR to inspect the Structure, and, in the event that the GRANTEE or its successor or assignee fails to maintain or repair the Structure as necessary or required under the C & M Agreement, to close or require the City to close the Roadway or a portion of the Roadway, at the City's expense, to allow GRANTOR, at GRANTOR's election, to repair or maintain the Structure and recover its costs as set forth in the Underpass Structure Easement Deed and/or C & M Agreement. GRANTEE acknowledges that closing the Roadway for purposes of inspection, maintenance, repair, reconstruction, replacement, or modification of the Structure shall not be conditioned on anything other than up to two (2) weeks' notice to the GRANTEE and the City. Notwithstanding anything in the foregoing to the contrary, the costs to be borne by the City shall be solely related to closure of the Roadway and obligations of the City related to the portions of the Structure owned and maintained by the City.

- (3) The right to construct, reconstruct, upgrade, place, replace, remove, inspect, maintain, repair, alter, renew, improve and operate pipelines, utility lines, track, railroad facilities and communication lines above, below, and on the surface of the Property. GRANTOR reserves and shall have the exclusive right to grant such rights to third parties. Communication lines shall include, without limitation, transmission by conduit, fiber optics, cable, wire or other means of electricity, voice data, video, digitized information, or other materials or information, provided, except to the extent provided and allowed in the C & M Agreement, such right does not interfere with GRANTEE's right to utilize the Roadway pursuant to this Roadway Easement Deed or result in damage to the Roadway or the Structure or interference with the purposes of this Roadway Easement Deed.
- (4) All rights as may be required to investigate and remediate environmental contamination and hazards affecting the Property consistent with the rights set forth in this Roadway Easement Deed.
- (5) All oil, oil rights, minerals, mineral rights, natural gas, natural gas rights, and other hydrocarbons by whatsoever name known that may be within the Property together with the perpetual right of drilling, mining, exploring and operating therefor and removing the same from the Property, including the right to whipstock or directionally drill and mine from lands other than the Property hereinbefore described, oil or gas wells, tunnels and shafts into, through or across the subsurface of the Property, and to bottom such whipstocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof, and to redrill, retunnel, equip, maintain, repair, deepen and operate any such wells, or mines, without, however, the right to drill, mine, explore and operate through the surface or the upper one hundred (100) feet of the subsurface of the Property or otherwise in such manner as to endanger the safety of any structure that may be constructed on the Property, including the Structure, or to interfere in any way with the use of the Roadway consistent with the rights set forth in this Roadway Easement Deed.

This Roadway Easement Deed is SUBJECT and SUBORDINATE to the following:

- (1) All prior and outstanding licenses, leases, easements, restrictions, conditions, covenants, liens and claims of title which may affect the Property, whether recorded or unrecorded and whether known or unknown by GRANTOR, including, but not limited to, all easements for petroleum and/or hydrocarbon pipelines (including, but not limited to, those owned by SFPP, L.P., and/or

its successors or assigns, and easements and licenses for telephone, electric and fiber optic lines (collectively “**Prior Rights**”), and, if applicable, further subject to the provisions in **Exhibit E**, attached hereto and hereby made a part hereof. The word “grant” as used in this Roadway Easement Deed shall not be construed as a covenant against the existence of any Prior Rights affecting the Property; and

- (2) The continuing right and obligation of GRANTOR, its successors and assigns, to use the Property in the performance of its duties as a common carrier, including, but not limited to, the right to construct, reconstruct, maintain and operate existing or any additional railroad tracks, facilities and appurtenances thereto in, upon, over, along and across the Property in any manner desired by GRANTOR provided GRANTOR’S construction and operation of any such new track on or across the Property may not damage the structural integrity of the Structure or damage the Roadway with GRANTEE acknowledging, for the avoidance of doubt, that nothing in this Roadway Easement Deed restricts in any way GRANTOR’S use of any of GRANTOR’S property other than the Property, and provided further that such right does not interfere with GRANTEE’S right to utilize the Roadway pursuant to this Roadway Easement Deed.

Commented [DJ1]: If the roadway easement is to match the underpass easement, we do not understand why this was deleted.

Without limiting the general application of the foregoing sections, notwithstanding any language in this Roadway Easement Deed to the contrary, GRANTEE acknowledges GRANTEE shall not have any right to enter upon the PCC Lease Area (as defined in the C & M Agreement) prior to December 31, 2023.

In WITNESS WHEREOF, GRANTOR has caused its corporate name to be hereunder subscribed and its corporate seal to be affixed hereto, this ____ day of _____, 202__.

Attest: _____
Assistant Secretary

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By _____
Printed Name: _____
Title: _____

ACKNOWLEDGMENT

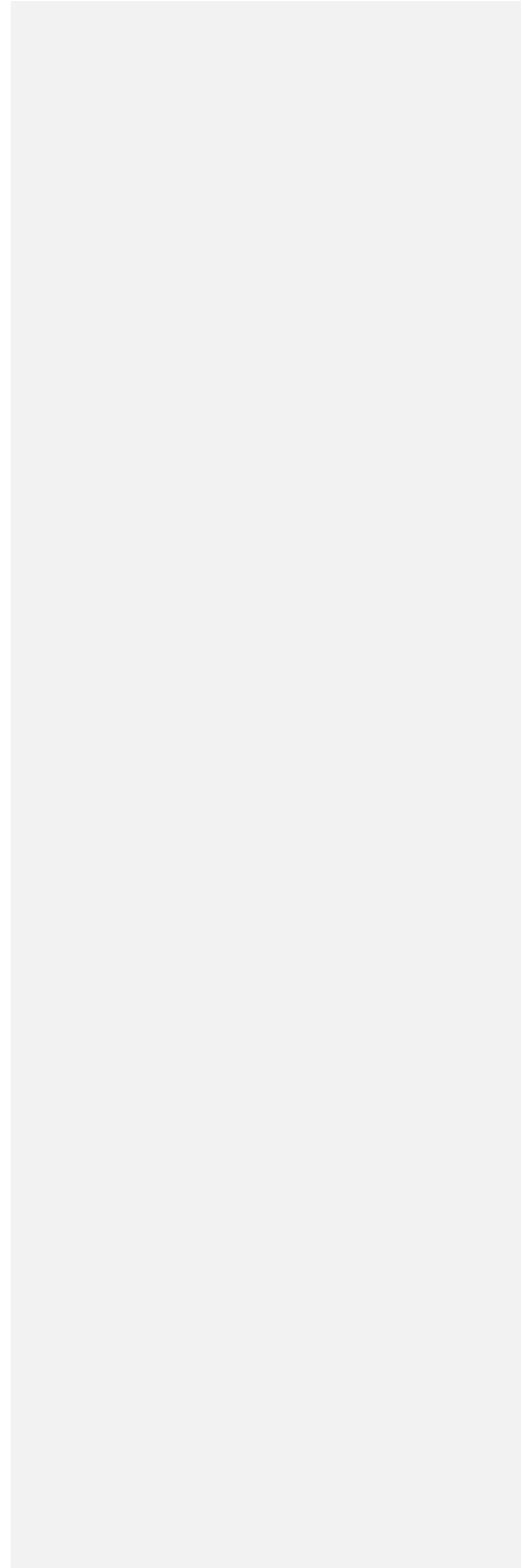
STATE OF NEBRASKA)
) ss
COUNTY OF DOUGLAS)

On this ____ day of _____, 20____, before me, a Notary Public in and for said County and State, personally appeared _____ and _____ who are the _____ and the Assistant Secretary, respectively, of Union Pacific Railroad Company, a Delaware corporation, and who are personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to in the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

(Notary Seal)

Notary Public



Certificate of Acceptance – Alameda CTC

(Pursuant to Government Code §27281)

This is to certify that the interest in real property conveyed herein from Union Pacific Railroad Company, to the **Alameda County Transportation Commission**, a joint powers authority (“**Alameda CTC**”), is hereby accepted by the undersigned officer on behalf of Alameda CTC pursuant to authority conferred by the Alameda CTC Administrative Code, as adopted by the Board of the Alameda CTC on July 22, 2010, and Alameda CTC consents to recordation thereof by its duly authorized officer.

Dated: _____, 20__

By: _____

Tess Lengyel
Executive Director, Alameda CTC

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

)

COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name: _____

Notary Public

Exhibit A

Property Description

[Attached]

Exhibit B

Depiction of Real Property

[Attached]

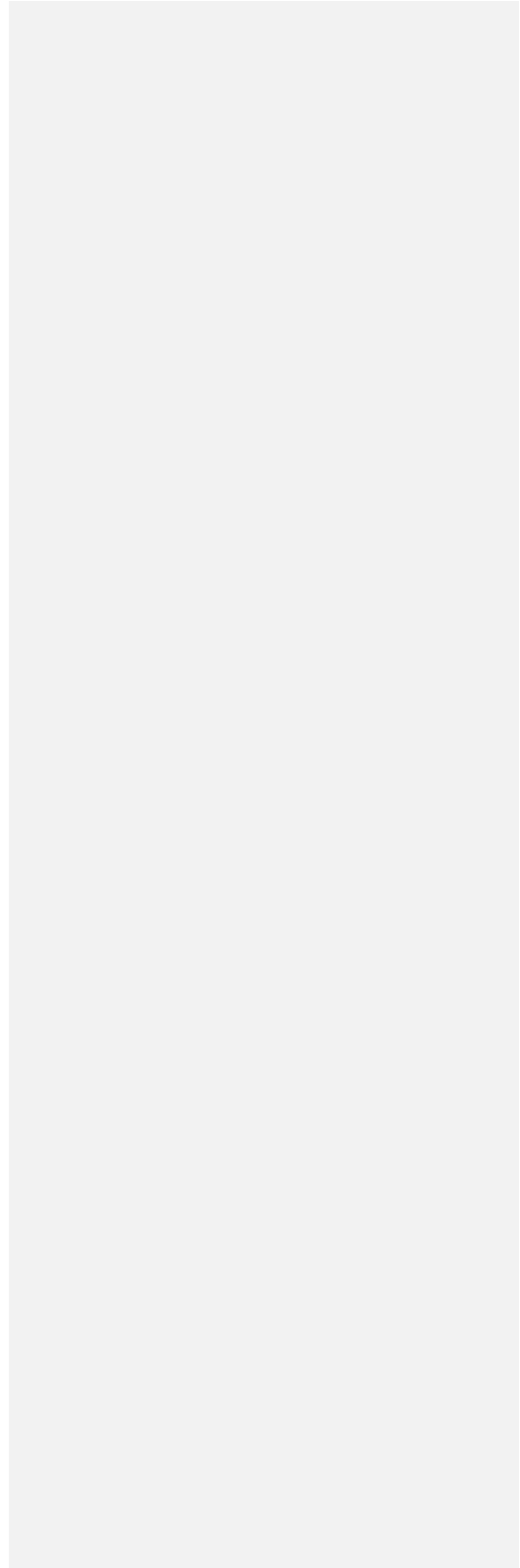


Exhibit C

Depiction of Allocation of Ownership of Improvements Constructed as Part of the Project

[Attached]

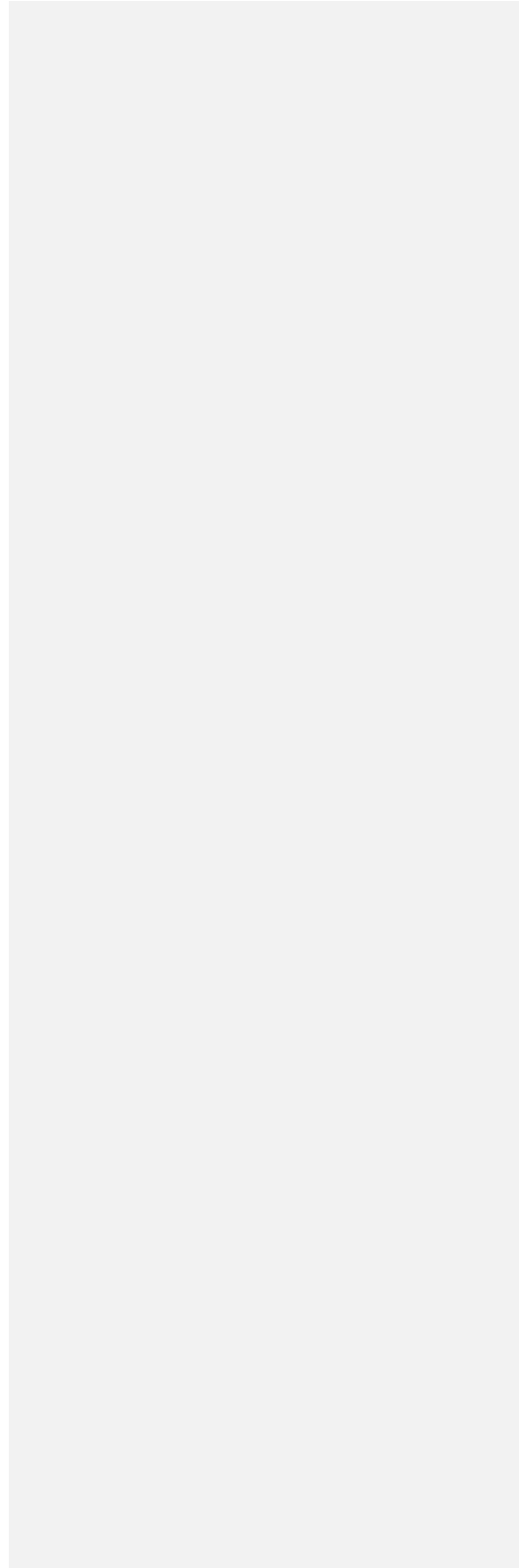


Exhibit D

Form of Assignment and Assumption Agreement

[Attached]

Exhibit E

Provisions of Prior Rights

GRANTEE or its successors and assigns, shall be responsible to GRANTOR and to SFPP, L.P., and/or its successors and assigns, or any other lawful holder of any of the Prior Rights (as defined hereinbefore) for (1) damages caused by any interference with an existing facility maintained pursuant to such Prior Rights and, (2) when conducting excavation, installation or construction activities within ten (10) feet of such an existing facility, for the reasonable cost of any reasonably necessary protection measures taken by SFPP, L.P., and/or its successors and assigns, as a result of, or arising out of, GRANTEE'S use of the Roadway Easement granted pursuant to the Roadway Easement Deed (including, without limitation, inspection and monitoring of GRANTEE'S activities).

Notwithstanding anything to the contrary in the foregoing, GRANTEE shall not be responsible to SFPP, L.P., and/or its successors and assigns, and any other lawful holder of any of the Prior Rights relating to initially locating its facility(ies). In addition, GRANTEE shall not be responsible to SFPP, L.P., and/or its successors and assigns, or to any other lawful holder of any of the Prior Rights for costs otherwise relating to locating or potholing the holder's facility, or for the cost of protection measures (including, without limitation, inspection and monitoring of GRANTEE'S activities), except where GRANTEE is conducting excavation, installation or construction activities within ten (10) feet of a facility owned by SFPP, L.P., and/or its successors and assigns. SFPP, L.P., and/or its successors or assigns and any other lawful holder of any of the Prior Rights, shall be an express third-party beneficiary of this provision in any location where SFPP, L.P., and/or its successors or assigns, owns or operates pipeline or other facilities pursuant to Prior Rights that are subject to this provision and, accordingly, may enforce this provision directly against GRANTEE.