

NO FEE DOCUMENT
Government Code Section 27383

RECORDING REQUESTED BY AND
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

Recorded for the Benefit of
the City of Oakland
Pursuant to Government Code Section 6103

(Space Above Line for Recorder's Use Only)

APN(s): _____

FIRST AMENDMENT TO
INDENTURE DATED DECEMBER 23, 1930

THIS FIRST AMENDMENT TO INDENTURE DATED DECEMBER 23, 1930 (the “**First Amendment**”) is made and entered into this ___ day of _____, 202_, by and between the City of Oakland, a municipal corporation (“**City**”) and Union Pacific Railroad Company, a Delaware corporation (“**UPRR**”).

WHEREAS, on or about December 23, 1930, Southern Pacific Railroad Company and Southern Pacific Company, as Railroad, and City, entered into that certain indenture (the “**1930 Indenture**”), which 1930 Indenture is attached hereto as Exhibit A and incorporated herein by reference, in which Railroad granted to City certain rights in certain real property (such property, the “**1930 Grant Area**”), as more particularly described in the 1930 Indenture. The 1930 Grant Area is also described in Exhibit B attached hereto and incorporated herein by this reference; and

WHEREAS, UPRR is the successor by a combination of merger and/or name change to both Southern Pacific Railroad Company and Southern Pacific Company (and thus to Railroad under the 1930 Indenture); and

WHEREAS, pursuant to rights granted in the 1930 Indenture, the City constructed the roadway commonly known as Seventh Street, which crosses UPRR’s right of way through an underpass under Railroad’s railroad tracks; and

WHEREAS, the Alameda County Transportation Commission, a joint powers authority (the “**Alameda CTC**”), proposes to complete a project, which would result in the realignment of Seventh Street, shifting Seventh Street to the north (the “**Project**”); and

WHEREAS, the Project realigning Seventh Street would, among other things, require modifications to the existing underpass and would require UPRR and the City to grant rights to Alameda CTC in the 1930 Grant Area in order for Alameda CTC to complete the Project; and

WHEREAS, UPRR and the City desire to accommodate the Project; and

WHEREAS, UPRR and the City desire to set forth the terms and conditions under which UPRR and the City will accommodate the Project, including modifying certain terms of the 1930 Indenture.

NOW, THEREFORE, UPRR and the City agree as follows:

1. The City acknowledges UPRR has entered into that certain unrecorded Construction and Maintenance Agreement, 7th Street, DOT No. 972497A, Mile Post 4.75 – Niles Subdivision, Oakland, Alameda County, California with Alameda CTC, dated December 2, 2022, and known in UPRR’s records as part of Real Estate Folder Number 3142-52 (the “**C & M Agreement**”) in which UPRR will commit, upon satisfaction of certain conditions including payment of compensation to UPRR, to (a) to complete certain project work over the 1930 Grant Area, and (b) grant Alameda CTC certain rights in and to UPRR property, including the 1930 Grant Area (subject to Alameda CTC’s contractor obtaining the requisite permits from the City), so Alameda CTC can complete certain Project work in the 1930 Grant Area. In addition, pursuant to the C & M Agreement and upon satisfaction of certain conditions set forth in the C&M Agreement, UPRR will grant to Alameda CTC a roadway easement deed for the new alignment of Seventh Street (“**New Seventh Street Alignment**”) that will be constructed as part of the Project (the “**Roadway Easement Deed**”) and an underpass structure easement deed for the new underpass structure (“**New Underpass Structure**”) that will also be constructed as part of the Project (the “**Underpass Structure Easement Deed**”), and Alameda CTC shall have the right to assign the Roadway Easement Deed to the City and the Underpass Structure Easement Deed to the Port of Oakland (“**Port**”), together with certain rights and obligations under the C & M Agreement.
2. UPRR acknowledges the City, the Port, and Alameda CTC, have entered into that certain unrecorded Cooperative Agreement, 7th Street Grade Separation East Project, dated _____, 202_ (“**Cooperative Agreement**”) in which City will commit to allocation of maintenance obligations related to the Roadway Easement Deed to be delivered to Alameda CTC by UPRR upon satisfaction of certain conditions set forth in the C&M Agreement.
3. The City acknowledges that in accordance with the Cooperative Agreement, the Port has committed to an allocation of maintenance obligations related to the Underpass Structure Easement Deed to be delivered to Alameda CTC by UPRR upon satisfaction of certain conditions set forth in the C&M Agreement.
4. The City acknowledges that the Project plans call for the underpass structure located in the 1930 Grant Area to be modified by filling the space under the structure with grout or other fill material to support the structure, effectively blocking off the existing Seventh Street located in the underpass structure, and by installing certain drainage and pumping facilities under or near the structure to serve the New Seventh Street Alignment, including under the New Underpass Structure, within a portion of the 1930 Grant Area.
5. The City and UPRR agree that, effective upon the later of (a) completion of construction and opening for public use of the New Seventh Street Alignment and New Underpass Structure pursuant to the Project, and (b) recordation of the Roadway Easement Deed and the Underpass Structure Easement, together with their respective assignments to the City and the Port (the

“**Modification Date**”), the 1930 Indenture is modified to reduce the 1930 Grant Area as depicted and described on Exhibit C attached hereto and incorporated herein by reference, to facilitate continued use by the City for a pump and drainage system related to the New Seventh Street Alignment, including under the New Underpass Structure. Such uses shall not be deemed an abandonment or failure to use under the 1930 Indenture.

6. Effective as of the Modification Date, the City use of, and rights in, the 1930 Grant Area shall be as set forth in Section 5 above and subject to the terms and conditions of the C & M Agreement related to maintenance of the New Seventh Street Alignment and New Underpass Structure, in addition to the other terms of the 1930 Indenture as modified by the this First Amendment (the “**Indenture**”). To the extent the other terms and conditions of this First Amendment conflict with the terms and conditions of the C & M Agreement, or the Roadway Easement Deed, the terms of the C & M Agreement, then the then the Underpass Structure Easement Deed, then the Roadway Easement Deed and then the Indenture will control.
7. Capitalized terms not defined in this First Amendment shall have the meanings given them in the 1930 Indenture. To the extent the terms and conditions of this First Amendment conflict with the terms and conditions of the 1930 Indenture, the terms of this First Amendment shall control. Except as amended and changed herein, all the terms and conditions of the 1930 Indenture shall remain in full force and effect.
8. This First Amendment may be executed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date first set forth above.

CITY:

City of Oakland,
a municipal corporation

By: _____
Name: _____
Title: _____

Approved as to Form and Legality:

By: _____
JoAnne Dunec
Deputy City Attorney

[Signatures continue on following page.]

UPRR:

Union Pacific Railroad Company,
a Delaware corporation

By: _____

Name: _____

Title: _____

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

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 Public

(Notary Seal)

EXHIBIT A

Copy of 1930 Indenture

[Attached]

EXHIBIT B

Legal Description of 1930 Grant Area

[Attached]

EXHIBIT C

Depiction and Legal Description of Reduced 1930 Grant Area Upon the Modification Date

[Attached]

CERTIFICATE OF ACCEPTANCE

This is to certify that the interests in real property conveyed by that certain First Amendment to Indenture Dated December 23, 1930 (the "**First Amendment**"), dated as of _____, 202_ from Union Pacific Railroad Company, a Delaware corporation, as grantor, to the City of Oakland, a municipal corporation ("**City**"), as grantee, are hereby accepted by the City Administrator of the City pursuant to authority conferred by Ordinance No. _____ C.M.S. of the City Council adopted on _____, 202_ and the City consents to recordation of the First Amendment in the Office of the Recorder of Alameda County, California.

Date: _____

By: _____

Name: _____

Title: _____

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