



# AGENDA REPORT

**TO:** G. Harold Duffey  
Interim City Administrator

**FROM:** Fred Kelley  
Oakland Department of  
Transportation Director

**SUBJECT:** Agreement With UPRR For The 29<sup>th</sup>  
Avenue Median Safety Improvements

**DATE:** February 3, 2023

City Administrator Approval

Date: Feb 15, 2023

## **RECOMMENDATION**

**Staff Recommends That The City Council Approve A Resolution Authorizing The City Administrator To Negotiate And Execute An Agreement With Union Pacific Railroad Company (UPRR), In Accordance With California Public Utility Commission (CPUC) Regulations, For The Review Of The 29<sup>th</sup> Avenue Median Safety Improvements**

## **EXECUTIVE SUMMARY**

In August of 2021, the City of Oakland Planning Commission approved the Education for Change's (Project Sponsor) application to convert existing and underutilized industrial buildings to a school use (Project) at the intersection of 29<sup>th</sup> Avenue, East 12<sup>th</sup> Street, Derby Avenue, and Union Pacific Railroad Company (UPRR) right-of-way. One of the Project's required Conditions of Approval (COA) is the prohibition of left turns at the 29<sup>th</sup> Avenue driveway by installing the 29<sup>th</sup> Avenue Median Safety Improvements (**Attachment A**). Due to the close proximity of the 29<sup>th</sup> Avenue Median Safety Improvements to the existing railroad crossing, California Public Utility Commission (CPUC) authorization and UPRR approval are required before the Project Sponsor can install the 29<sup>th</sup> Avenue Median Safety Improvements, in accordance with CPUC regulations.

Under section 504 (l) of the Oakland City Charter, the City Administrator may negotiate contracts for joint governmental actions, subject to Council approval. The proposed Resolution will allow the City of Oakland (City) to execute an agreement to establish responsibilities for the construction and maintenance of the improvements, require UPRR to review the proposed improvements, and require the Project Sponsor, as an agent of the City, to reimburse UPRR a total of approximately \$10,000 for the improvement review (Agreement).

## **BACKGROUND / LEGISLATIVE HISTORY**

On August 4, 2021, the City of Oakland Planning Commission approved the Project Sponsor's application to convert existing and underutilized industrial buildings to a school use, install playing fields, and a build new multi-purpose building to serve 400 students (Project). The

Project site is located in the Fruitvale neighborhood and is bounded by East 12<sup>th</sup> Street, 29<sup>th</sup> Avenue, Derby Avenue, and UPRR right-of-way. Vehicles enter the new school site via Derby Avenue and exit the site onto 29<sup>th</sup> Avenue.

To minimize the potential for vehicle queues, to maintain better vehicle and freight operations, and to promote pedestrian safety at the 29<sup>th</sup> Avenue driveway, the Project Sponsor is required to prohibit left turns at the 29<sup>th</sup> Avenue driveway. To ensure compliance with the left-turn restriction, the Project Sponsor is required to install signage and vertical separation elements, for example plastic posts, along the centerline of 29<sup>th</sup> Avenue (29<sup>th</sup> Avenue Median Safety Improvements). The currently proposed 29<sup>th</sup> Avenue Median Safety Improvements are shown in **Attachment B**.

Due to the close proximity of the 29<sup>th</sup> Avenue Median Safety Improvements and the railroad crossing, CPUC authorization and UPRR approval are required before the Project Sponsor can install the 29<sup>th</sup> Avenue Median Safety Improvements, in accordance with CPUC regulations. UPRR requires an agreement for reimbursement for them to review the improvements, monitor construction, and assign maintenance responsibilities.

## **ANALYSIS AND POLICY ALTERNATIVES**

The Agreement (**Attachment C**) delineates each agency's roles and responsibilities for the review, construction, maintenance, and operation of the 29<sup>th</sup> Avenue Median Safety Improvements. The Agreement notes that the City (via the Project Sponsor) shall reimburse to UPRR 100 percent of UPRR actual costs associated with the review of the 29<sup>th</sup> Avenue Median Safety Improvements. UPRR estimates such cost to total \$10,000. The Agreement includes the following key topics:

- Field diagnostic(s) and inspections,
- Plan, specification, and construction review of the 29<sup>th</sup> Avenue Median Safety Improvements, and
- Meetings and travel.

Upon completion and acceptance of the 29<sup>th</sup> Avenue Median Safety Improvements, the City will maintain and operate the new improvements as part of its inventory.

Entering into the Agreement with UPRR will meet the Citywide goals of vibrant, sustainable infrastructure by facilitating the installation of street infrastructure that provides safety and transportation benefits to people traveling on City streets, while meeting the railroad's operational needs.

## **FISCAL IMPACT**

There is no net cost to the City in entering into the Agreement. The cost to review the 29<sup>th</sup> Avenue Median Safety Improvements will be borne by the Project Sponsor as an agent of City.

The UPRR Agreement is required for UPRR to grant the construction contractor a Right of Entry permit to complete construction of the 29<sup>th</sup> Avenue Median Safety Improvements, as well as clarifying ongoing maintenance and operation responsibilities after the improvements have been completed.

The responsibilities of both the City and UPRR are regulated by state law, as administered by the CPUC, absent an agreement. The Agreement serves to clarify roles and responsibilities at this specific railroad crossing location to the benefit of all parties. Long term maintenance costs for the vertical separation elements along the 29<sup>th</sup> Avenue centerline are anticipated to be zero, as the City has secured grant funding to build more permanent, concrete improvements in this location. On June 16, 2020, the Oakland City Council adopted a resolution directing the City Administrator to accept \$456,227.00 in transportation funds from the State of California to improve the 29<sup>th</sup> Avenue at-grade railroad crossing and install a concrete median along 29<sup>th</sup> Avenue. These grant-funded improvements will replace the vertical separation elements installed by the Project Sponsor and are anticipated to be installed in 2025.

### **PUBLIC OUTREACH / INTEREST**

There is no public outreach specific to the Agreement that is the subject of this report. In advance of installing the 29<sup>th</sup> Avenue Median Safety Improvements, the City and Project Sponsor will coordinate on notification to residents and businesses who may be temporarily impacted by the construction of the 29<sup>th</sup> Avenue Median Safety Improvements. The Project Sponsor conducted community outreach before converting the industrial buildings to a school use located at 1045 Derby Avenue, consistent with the standards of the Oakland Department of Planning and Building and Oakland Planning Commission.

### **COORDINATION**

The Oakland Department of Transportation consulted and coordinated with the Department of Planning and Building, City Attorney's Office, and Budget Office in the writing of this report and the content.

### **SUSTAINABLE OPPORTUNITIES**

***Economic:*** The 29<sup>th</sup> Avenue Median Safety Improvements will result in improved transportation operations for freight operations, vehicles, bicycles, and pedestrians near the railroad crossing thus improving economic vitality.

***Environmental:*** The 29<sup>th</sup> Avenue Median Safety Improvements improve safety at the 29<sup>th</sup> Avenue driveway and minimize vehicle queues and associated idling during pick-up and drop-off times at the Project. Vehicle emissions produce harmful greenhouse gases and negatively impact air quality. Reducing vehicle idling by promoting vehicle circulation can reduce adverse environmental impacts.

**Race & Equity:** The 29<sup>th</sup> Avenue Median Safety Improvements support safety and access for existing community members at this location—86% of whom identify as Black, Indigenous, and people of color—and the 400 new students, staff, and visitors associated with the Project. Installing vertical separation elements, e.g. posts or bollards, along the 29<sup>th</sup> Avenue centerline reinforces safe and legal driving behavior and prohibits left-turns from the 29<sup>th</sup> Avenue driveway. Oaklanders are killed or severely injured by left-turning vehicles at over four times the rate of right-turning vehicles. Furthermore, Black, Indigenous, and people of color in Oakland are disproportionately represented among the victims of traffic violence.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

A CEQA analysis, per CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan or Zoning) which provides for a streamlined review of projects where a previous programmatic Environmental Impact Report (EIR) was certified and the potential impacts of development can be addressed by Standard Conditions of Approval, was prepared for the Project. The CEQA Checklist was published on July 23, 2021 and included an analysis of the Project's transportation impacts. The analysis included a recommended measure that prohibited left turns out of the Project's driveway by installing the 29th Avenue Median Safety Improvements in order to improve vehicular, pedestrian, and bicycle safety. The Checklist concluded that implementation of the Project would not substantially increase the severity of significant impacts identified in the Land Use and Transportation Element (LUTE) EIR nor would it result in a new significant impact that was not identified in that EIR.

The City of Oakland Planning Commission adopted the CEQA Checklist and approved the City's environmental determination with the recommended measure as a Condition of Approval at the [August 4, 2021, meeting](#). This Agreement with UPRR facilitates implementation of the recommended measure and Condition of Approval, and as such, no further CEQA review is required.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That The City Council Approve A Resolution Authorizing The City Administrator To Negotiate And Execute An Agreement With Union Pacific Railroad Company (UPRR), In Accordance With California Public Utility Commission (CPUC) Regulations, For The Review Of The 29<sup>th</sup> Avenue Median Safety Improvements.

For questions regarding this report, please contact Emily Ehlers, Transportation Manager, Oakland Department of Transportation, at 510-238-2259.

Respectfully submitted,

*Fred Kelley*  
Fred Kelley (Feb 14, 2023 12:43 PST)

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Reviewed by:  
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Prepared by:  
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Attachments (3):  
Attachment A: Conditions of Approval  
Attachment B: Site Plan  
Attachment C: UPRR Agreement