



**TO:** Honorable Members of the Open Government Commission

**FROM:** Bradford B. Kuhn, Nossaman LLP, on behalf of City of Alameda

**DATE:** October 5, 2021

**RE:** City's Position Statement: Open Government Commission Complaint Re: City of Alameda v. Union Pacific (Jean Sweeney Park)

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**1. INTRODUCTION**

The City of Alameda ("City") acted lawfully when its City Council discussed and approved the settlement of an eminent domain action in a closed session meeting of the City Council. The deliberations related to pending litigation, and eventual settlement agreement approval, which necessitated a candid discussion with legal counsel, within the protections of the attorney-client privilege, in order to fully evaluate the status of the ongoing litigation and decide upon a prudent legal strategy. Such discussions are not only appropriate, but necessary, in a closed session setting of the City Council.

Exposing such discussions to public scrutiny would break the confidences of the attorney-client privilege and prejudice the City's position in ongoing eminent domain litigation involving a valuation dispute exceeding millions of dollars. The City Council's ultimate decision to reduce the size of the property acquisitions as part of the settlement agreement was made after careful deliberation with legal counsel as to the strengths, weaknesses, and risks associated with the eminent domain lawsuit. The City complied with all aspects of the Brown Act and the Sunshine Ordinance when it approved the settlement agreement in the closed session of its September 7, 2021 City Council meeting.

**2. BACKGROUND**

**A. The City's Eminent Domain Action & Approval of Settlement Agreement**

The City initiated an eminent domain proceeding against Union Pacific Railroad in 2018 to acquire portions of property necessary for the Jean Sweeney Open Space Park. On September 7, 2021, during the closed session of the City Council meeting, the City Council discussed, and ultimately approved, a settlement agreement with Union Pacific by which the scope of the City's acquisitions was reduced and Union Pacific agreed to accept approximately \$1.2 million to resolve the pending eminent domain action ("Settlement Agreement"). The City Council's meeting notice was timely posted and made available to the public, and included as Item 4-C on the closed session agenda "Conference with Legal Counsel – Existing Litigation." The agenda properly included the case name, court information, and case number. (See Exhibit 1 for the September 7, 2021 City Council meeting agenda.)

The public was given an opportunity to comment on any items on the agenda during the City Council meeting, and the City Council was permitted to review and consider any such public comment. Subsequent to the closed session, the actions taken as to the City Council's approval of the Settlement Agreement were announced orally during the open session of the September 7, 2021 meeting. A copy of the executed Settlement Agreement was subsequently made available. (See Exhibit 2 for the Settlement Agreement.)

## **B. The Complaint**

On September 21, 2021, an Open Government Commission Complaint ("Complaint") was submitted against the City. The Complaint alleges that the City's September 7, 2021 closed session approval of the Settlement Agreement pertaining to the condemnation lawsuit with Union Pacific violated Government Code section 54956.9 and Alameda Municipal Code ("AMC") section 2-91.10c because it did not satisfy the requirements of the pending litigation exemption to the open meeting requirements. Specifically, the Complaint asserts that given the prior public exposure surrounding this litigation, discussion of the Settlement Agreement in the open session would not "likely and unavoidably prejudice the position of the City in that litigation," thereby precluding the City from addressing this matter in closed session.

## **3. DISCUSSION**

Pursuant to Government Code section 54956.9 and AMC section 2-91.10c, a legislative body of a local agency may confer with legal counsel and take action in closed session on matters of pending litigation, when discussion in open session on those matters would prejudice the position of the local agency in the litigation. The Complaint asserts that the Settlement Agreement was a matter of public discussion, such that there would be no prejudice to the litigation if discussion of the Settlement Agreement was heard in open session.

As demonstrated below, (i) discussion of the Settlement Agreement is of the very kind of discussion that both the Brown Act and the Sunshine Ordinance intended to be covered by the pending litigation exception, (ii) disclosure of such discussions would have been prejudicial to the litigation, and (iii) there is no law that would prevent the City Council from relying on the closed session exceptions in the Brown Act and the Sunshine Ordinance to discuss a resolution of the pending litigation and approve the Settlement Agreement. Thus, the actions of the City Council in approving the Settlement Agreement in closed session pursuant to a properly agenda item, followed by a report out in open session, were lawful and proper.

### **A. Settlement Discussions are of the Nature Contemplated for Closed Session and Disclosure Would be Prejudicial.**

Settlement discussions are an aspect of pending litigation that are clearly contemplated to be addressed in closed session. (75 Ops.Cal.Atty.Gen. 14 (1992).) For example, in a 1992 opinion, the Attorney General determined that a local agency, such as a county board of supervisors, was permitted to use the pending litigation exception under Government Code Section 54956.9 to go into closed session to deliberate with counsel and exchange opinions regarding a lawsuit, and ultimately take action approving a settlement. (*Ibid.*) Therefore, in accordance with this Attorney General opinion, it was proper for the City Council to not only seek legal counsel regarding the pending litigation with Union Pacific, but it was also proper for the Council to "take action" in approving the Settlement Agreement to resolve that pending lawsuit.

Both the Brown Act and the Sunshine Ordinance further confirm that the City Council's approval of the Settlement Agreement in closed session was proper. Government Code section 54957.1, subd. (a)(3) requires a legislative body of any local agency to publicly report any action taken in closed session pertaining to "approval given to its legal counsel of a settlement of pending litigation." Similarly, AMC section 2-91.12, subd. (b)(2) requires disclosure of closed session discussions and actions pertaining to litigation, and subdivision (c) requires making available "settlement agreements ... related to the transaction that were finally approved or adopted in the closed session."<sup>1</sup> The City Council properly complied with both provisions through its open session disclosure. Given the explicit references to settlement agreements within both statutes, it is clear that public agencies are protected in the right to seek legal counsel in closed session on settlement discussions related to pending lawsuits, regardless of their publicity or public importance, and ultimately approve of such agreements in closed session.

The open meeting litigation exception makes perfect sense to allow local government bodies to deliberate in closed session, as the very nature of settlement discussions and agreements necessitates that they be conducted in confidence. For example, in the case of *Southern California Edison Co. v. Peevey* (2003) 31 Cal.4th 781 ("*Peevey*"), the court analyzed components of the Bagley-Keene Act, which mandates open meetings for most state boards and commissions. This act is similar in purpose and language to the Brown Act, and both permit a closed session to confer with legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the entity in litigation. In the *Peevey* case, the court noted that "settlement discussions with counsel are obviously an aspect of litigation particularly vulnerable to prejudice through public exposure," thereby highlighting the importance of the open meeting exception for settlement discussions. (*Id.* at p. 798.)

Similarly, in *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors* (1968) 263 Cal.App.2d 41 ("*Sacramento Newspaper*"), the court explained that a "**public entity's discussion with counsel about possible settlement must occur in private, for such conferences require a frank evaluation of the case's strengths and weaknesses, and '[i]f the public's 'right to know' compelled admission of an audience, the ringside seats would be occupied by the government's adversary, delighted to capitalize on every revelation of weakness.**" (*Sacramento Newspaper, supra*, 263 Cal.App.2d at p. 56, emphasis added.) Therefore, *Peevey* and *Sacramento Newspaper* emphasize the importance of ensuring confidentiality of settlement discussions with legal counsel and the need to conduct such discussions in closed session.

Additionally, another Attorney General opinion concluded that "discussion in open session concerning [settlement] matters would prejudice the position of the local agency in the litigation." The opinion specifically quoted the case of *Sacramento Newspaper* and the policy considerations that go into the importance of section 54956.9, explaining that discussions to receive advice from the city attorney and to confer with him or her regarding the pending litigation (such as discussing legal options or legal strategies in the litigation) are of the kind that are protected by section 54956.9. (69 Ops.Cal.Atty.Gen. 232 (1986).)

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<sup>1</sup> Real estate negotiations are also permitted to take place in closed session under Section 54956.8 (closed session regarding real estate negotiations and to instruct the local agency's negotiators).

The 1992 Attorney General opinion, discussed above, summarizes and emphasizes the importance of upholding Section 54956.9's pending litigation exception:

Unless section 54956.9 were given a strained and unnatural construction, the wording of the statute permits individual members of a legislative body not only to deliberate and exchange opinions with counsel but also among themselves in the presence of counsel. As we noted in 69 Ops.Cal.Atty. Gen. 232, 239, *supra*, the pending litigation exception fills the need to discuss confidentially with counsel "the strength and weakness of the" local agency's position in the litigation. And as articulated by the court in *Sacramento Newspaper Guild, Inc., supra*, with respect to both "settlement and avoidance of litigation," these are "**particularly sensitive activities, whose conduct would be grossly confounded, often made impossible, by indiscriminating insistence [sic] on open lawyer-client conferences.**" (263 Cal.App.2d at p. 56, emphasis added.)

(75 Ops.Cal.Atty.Gen. 14 (1992).) Additionally, issues such as whether to settle

are of such a nature that they should be neither discussed nor decided in public session **unless the local agency is to be required to divulge all its strategy in public.** ... Unless a local agency is to be a "second class citizen" with its opponents "filling the ringside seats," (*Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs., supra*, 263 Cal.App.2d at 56), it must be able to confer with its attorney and then decide in private such matters as the upper and lower limits with respect to settlement, **whether to accept a settlement or make a counter offer, or even whether to settle at all.** These are matters which will depend upon the strength and weakness of the individual case as developed from conferring with counsel. A local agency of necessity must be able to decide and instruct its counsel with respect to these matters in private.

(75 Ops.Cal.Atty.Gen. 14 (1992), emphasis added.)

Engaging in a frank discussion regarding settlement options would necessitate dialogue on information that could harm and be prejudicial to the party in ongoing litigation. In fact, a key consideration in contemplating settlement is evaluating the merits of a case. To do so in an open session would not only break the protections of the attorney-client privilege, but would show the agency's hand to the opposing litigant. Thus, settlement discussions and agreements are of the very nature that Section 54956.9's pending litigation exception was designed to address.

Here, the City Council sought and received advice from legal counsel in closed session on options (to settle or not and under what terms) with respect to ongoing litigation, which discussions ultimately resulted in approval of the Settlement Agreement. Those discussions involved the strengths and weaknesses of the City's position in the litigation, potential risks and exposure on a variety of acquisition options, and aspects of expert valuation opinions related to the pending litigation. These discussions could not have occurred in open session without significantly impacting the City's negotiating position or its approach to the pending eminent domain action.

Therefore, not only does the language of the Brown Act and the Sunshine Ordinance support the closed session exception for settlement discussions related to pending litigation, but public policy concurs with that interpretation and demonstrates the prejudicial impacts if settlement discussions are forced into open session.

**B. Open Discussion by Agency Staff does not Waive Subsequent Rights to Closed Session under Government Code Section 54956.9 and Alameda Municipal Code Section 2-91.10c.**

The Complaint alleges that the matter of reducing the park size was discussed at public meetings of the Recreation and Park Department on February 25, 2021 and March 11, 2021. (Complaint, ¶ 5.) The Recreation and Park Department is a subordinate department to the City Council. Thus, in part, the Complaint asserts the City is precluded from invoking section 54956.9 and AMC section 2-91.10c to address settlement discussions on the potential reduction of the acquisition size where a subordinate city department had already discussed the issue of the park reduction in public.

A similar scenario was presented and answered in 69 Ops.Cal.Atty.Gen. 232 (1986). The question presented was: "Where one city agency has discussed in open session a proposed or tentative cease and desist order issued by a regional water quality control board, may the city council discuss the same cease and desist order with its city attorney in closed session?" The Attorney General's answer was that even where one city agency had discussed in open session a particular issue, "the city council may nevertheless invoke the adjudicatory proceeding exception to the open meeting law to hold closed session meetings with its city attorney to receive his or her advice and to discuss legal options and strategies open to the city with respect to such adjudicatory proceedings." (69 Ops.Cal.Atty.Gen. 232 (1986).) As part of the analysis, the opinion distinguished that mere discussion of a matter is distinct from confidential communications between attorney and client. The Attorney General opinion concluded that any public discussion of the cease and desist letter from the Public Works Board was different from the City Council seeking legal advice in the closed session on how to handle the cease and desist letter.

Here, discussions at the Recreation and Park Department meetings about park plans showing a potential change to the park size did not waive the right of the City to seek legal advice in a closed session of the City Council related to the pending eminent domain action. This situation is even more clear than the one presented in the Attorney General Opinion, where both governmental bodies were discussing the same cease and desist letter, whereas here, the Recreation and Park Department was only discussing potential plans for the park, not the Settlement Agreement itself or terms, conditions, or strategy of the pending litigation. Mere discussions (or even media coverage) about potential plans for the park is very different from seeking legal advice on whether or not to settle ongoing litigation.

This Attorney General opinion demonstrates that not only is seeking advice on strategies and options within the purview of the closed session exemption, but having a subordinate agency discuss a similar topic in open session does not waive any rights to later seek legal counsel under Section 54956.9 and AMC Sec. 2-91.10c. Therefore, public discussion surrounding the park reduction is not grounds to eliminate the attorney-client privilege that the City Council is granted through the closed session exception.

**C. A Narrow Limitation on the Ability to Enter into Settlement Agreements in Closed Session is Inapplicable to this Situation.**

The complainant relies on the case of *Trancas Property Owners v. City of Malibu* (2006) 138 Cal.App.4th 172, which provides a narrow limitation on the ability of a governmental agency to take action on a settlement agreement in closed session. Specifically, a governmental agency may not “decide upon or accept a settlement agreement in closed session that accomplishes or provides for action for which a public hearing is required by law, without such a hearing.” (*Id.* at p. 187.) While *Trancas* provides that some settlement agreements must be approved in open session where required by law, *Trancas* makes clear that “the statutory exemption of discussions with counsel remains plenary: under section 54956.9, governing bodies may discuss with their counsel, in closed session, any settlement proposals or terms they deem worthy of consideration. And they generally may agree to such terms and settlements in closed session.” (*Ibid.*)

Here, there is no substantive law that mandates a public hearing for the City Council to agree to the reduction of a property acquisition as part of an eminent domain litigation settlement agreement. In fact, while a public hearing is required to adopt a resolution of necessity and initiate eminent domain proceedings, there is no such public hearing requirement for a partial abandonment of the property sought to be acquired, nor is there a requirement to adopt or approve a settlement of an eminent domain action in open session. (See, e.g., Code Civ. Proc., § 1268.510, subd. (a) [“At any time after the filing of the complaint and before the expiration of 30 days after final judgment, the plaintiff may wholly or partially abandon the proceeding by serving on the defendant and filing in court a written notice of such abandonment.”].) Thus, the narrow exception identified in *Trancas* is inapplicable to the present situation, and no law exists requiring the City Council to discuss and approve a settlement of eminent domain litigation in open session.

**D. Prior Experience Demonstrates the City Council Did not Violate the Brown Act or Sunshine Ordinance.**

In all of our years of handling eminent domain and other land use matters for governmental agencies, we have never had litigation settlement negotiations with a City Council take place in open session. To do so would preclude effective and ethical representation of municipal entities. Likewise, we have routinely and regularly secured approvals of settlements of eminent domain matters in closed session, including numerous cases where the acquisition area was altered as part of the proposed settlement.

In sum, the City acted lawfully under Government Code section 54956.9 and AMC section 2-91.10c in discussing and approving the Settlement Agreement during closed session because settlement discussions and agreements related to pending litigation are the proper subject of closed sessions and there is no exception that would withdraw this protection.

**4. RECOMMENDATION**

Bradford B. Kuhn, of Nossaman LLP, on behalf of the City, recommends that the OGC find the complaint to be unfounded on the following grounds: the City Council's actions of discussing pending litigation, and ultimately approving the Settlement Agreement to resolve that litigation, during closed session at the September 7, 2021 meeting complied with the Brown Act and the Sunshine Ordinance.

Exhibits:

1. September 7, 2021 City Council Meeting Agenda
2. Settlement Agreement

# **Exhibit 1**



# City of Alameda

## Meeting Agenda

### City Council

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Tuesday, September 7, 2021

7:00 PM

City Hall, 2263 Santa Clara Avenue, Council  
Chambers, 3rd Floor, Alameda CA 94501

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***Due to Governor Executive Order N-08-21, Councilmembers can attend the meeting via teleconference. The City allows public participation via Zoom.***

***For information to assist with Zoom participation, please click:***

***\*\*\*\*\*.alamedaca.gov/zoom***

***For Zoom regular meeting registration, please click:***

***\*\*\*\*\*alamedaca-gov.zoom.us/webinar/register/WN\_nwnX\_Wp8TkuKH4dfUkXFqw***

***For Telephone Participants:***

***Zoom Phone Number: 669-900-9128***

***Zoom Meeting ID: 865 6452 9898***

***Any requests for reasonable accommodations should be made by contacting the City Clerk's office: [clerk@alamedaca.gov](mailto:clerk@alamedaca.gov) or 510-747-4800.***

***City Hall will be NOT be open to the public during the meeting.***

***The Council may take action on any item listed in the agenda.***

#### **SPECIAL CITY COUNCIL MEETING - CLOSED SESSION - 5:00 P.M.**

- 1**      **Roll Call - City Council**
  
- 2**      **Consent Calendar - Items are routine and will be approved by one motion; members of the public may speak once for up to 2 minutes on the entire Consent Calendar; following public comment, the Council/SACIC can remove items and speak for up to 5 minutes on each item; recording a non-affirmative vote should be done without removal**
  
- 2-A**    **[2021-1263](#)**    Recommendation to Approve Eric Levitt, City Manager, Lisa Maxwell, Community Development Director; and Louis Liss, Base Reuse Manager, as Designated Real Property Negotiators for the West Midway Project and Site A at Alameda Point. (Community Development 29061822)

- 3 Public Comment on Closed Session Items - Anyone wishing to have comments read into record on closed session items, please email [clerk@alamedaca.gov](mailto:clerk@alamedaca.gov) within 30 minutes of the meeting commencing; comments submitted earlier will not be read**
- 4 Adjournment to Closed Session to consider:**
- 4-A [2021-1233](#) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**  
(Pursuant to Government Code § 54956.9)  
CASE NAME: Howell v. City of Alameda, et al.  
COURT: Alameda Superior Court, Hall of Justice, 1225 Fallon Street, Oakland, CA  
CASE NUMBERS: RG20061693
- 4-B [2021-1247](#) CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Pursuant to Government Code Section 54956.8)**  
PROPERTY: West Midway Parcel  
CITY NEGOTIATORS: Eric Levitt, City Manager; Lisa Maxwell, Community Development Director; and Louis Liss, Base Reuse Manager  
NEGOTIATING PARTIES: City, Catellus and Brookfield  
UNDER NEGOTIATION: Price and Terms
- 4-C [2021-1124](#) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**  
(Pursuant to Government Code § 54956.9)  
CASE NAME: City of Alameda v. Union Pacific (Sweeney)  
COURT: Superior Court of the State of California, County of Alameda  
CASE NUMBERS: RG18921261  
**Attachments:** [Correspondence](#)
- 4-D [2021-1255](#) CONFERENCE WITH LABOR NEGOTIATORS (Government Code Section 54957.6)**  
CITY NEGOTIATORS: Eric Levitt, City Manager; Gerry Beaudin, Assistant City Manager; and Nancy Bronstein, Human Resources Director  
EMPLOYEE ORGANIZATIONS: International Brotherhood of Electrical Workers, Local 1245 (IBEW), Electric Utility Professional Association of Alameda (EUPA), Alameda City Employees Association (ACEA), Alameda Police Officers Association Non-Sworn Unit (PANS), and Alameda Management and Confidential Employees Association (MCEA), International Association of Firefighter, Local 689 (IAFF) Alameda Fire Managers Association (AFMA), Alameda Police Officers Association (APOA) and Alameda Police Managers Association (APMA), Executive Management Employees (EXME) and Alameda Municipal Power Unrepresented Management Employees (AMPU)

UNDER NEGOTIATION: Salaries, Employee Benefits and Terms of Employment

- 4-E [2021-1253](#) CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Pursuant to Government Code Section 54956.8)  
PROPERTY: Grandview Pavilion  
CITY NEGOTIATORS: Eric Levitt, City Manager; Nanette Mocanu, Assistant Director of Base Reuse & Community Development; Amy Wooldridge, Recreation and Parks Director  
NEGOTIATING PARTIES: City of Alameda and Alameda County and Greenway Golf  
UNDER NEGOTIATION: Price and terms

4 **Announcement of Action Taken in Closed Session, if any**

[2021-1296](#) September 7, 2021 Closed Session Announcement

**Attachments:** [Announcement](#)

5 **Adjournment - City Council**

**SPECIAL JOINT MEETING OF THE CITY COUNCIL AND SUCCESSOR AGENCY TO THE COMMUNITY IMPROVEMENT COMMISSION (SACIC) MEETING - 6:58 P.M.**

**Pledge of Allegiance**

1 **Roll Call - City Council and SACIC**

- 2 **Consent Calendar - Items are routine and will be approved by one motion; members of the public may speak once for up to 2 minutes on the entire Consent Calendar; following public comment, the Council/SACIC can remove items and speak for up to 5 minutes on each item; recording a non-affirmative vote should be done without removal**

2-A [2021-1223](#) Minutes of the Special Joint City Council and Successor Agency to the Community Improvement Commission Meetings Held on June 15, 2021 and July 6, 2021. [City Council/SACIC] (City Clerk)

2-B [2021-1229](#) Recommendation to Accept the Investment Report for the Quarter Ending June 30, 2021. [City Council/SACIC] (Finance 10024051)

**Attachments:** [Exhibit 1 - Quarterly Investment Report](#)

3 **Adjournment - City Council and SACIC**

**CONTINUED JULY 20, 2021 CITY COUNCIL MEETING - 6:59 P.M.**

**1 Roll Call - City Council****2 Regular Agenda Items - 6 members of the public may speak for up to 3 minutes; 7 or more may speak for up to 2 minutes**

- 6-E** [2021-1101](#) Introduction of Ordinance Amending the Alameda Municipal Code, Including Article VIII (Sunshine Ordinance) of Chapter II (Administration) to Clarify Enforcement Provisions and Provide for Other Updates and Enhancements to the Sunshine Ordinance. (City Attorney 10023040) [Not heard on July 20, 2021]

**Attachments:** [Exhibit 1 - Subcommittee's Proposal](#)  
[Exhibit 2 - Newly Installed Commission Proposal Ordinance - Sunshine](#)  
[Correspondence - Updated 9/7](#)

**3 Adjournment - City Council****REGULAR CITY COUNCIL MEETING - 7:00 P.M.****1 Roll Call - City Council****2 Agenda Changes****3 Proclamations, Special Orders of the Day and Announcements - Limited to 15 minutes****4 Oral Communications, Non-Agenda (Public Comment) - Limited to 15 minutes; members of the public may speak for up to 2 minutes regarding any matter not on the agenda; any remaining speakers may comment under Section 8**

[2021-1297](#) September 7, 2021 Oral Communications

**Attachments:** [Oral Communications](#)

**5 Consent Calendar - Items are routine and will be approved by one motion; members of the public may speak once for up to 2 minutes on the entire Consent Calendar; following public comment, the Council can remove items and speak for up to 5 minutes on each item; recording a non-affirmative vote should be done without removal**

- 5-A** [2021-1224](#) Minutes of the Continued June 15, 2021 Meeting, the Special City Council Meeting and the Regular Meeting Held on July 6, 2021. (City Clerk)

- 5-B** [2021-1261](#) Bills for Ratification. (Finance)



for Federal Legislative Services for a Term of 13 Months with Two One-Year Options to Extend, and Compensation for the First Amendment Not to Exceed \$97,500 and Total Four-Year Compensation Not to Exceed \$367,500; and  
To Execute a First Amendment with Clear Advocacy, LLC, Similar in Form to Exhibit 2 Attached, for State Legislative Services for a Term of 12 Months with Two One-Year Options to Extend, and Compensation for the First Amendment Not to Exceed \$90,000 and Total Four-Year Compensation Not to Exceed \$322,500 (City Manager 10021030)

**Attachments:** [Exhibit 1 - Akerman Amendment](#)  
[Exhibit 2 - Clear Advocacy Amendment](#)  
[Exhibit 3 - Legislative Agenda](#)  
[Exhibit 4 - Akerman Agreement](#)  
[Exhibit 5 - Clear Advocacy Agreement](#)

- 5-J**     [2021-1214](#)     Recommendation to Authorize the City Manager to Remit Payment in the Amounts of \$910,525 and \$655,752 to the East Bay Municipal Utility District (EBMUD) for Alameda Point's Adaptive Reuse Areas Phase 1 and Phase 2 Water Main Extensions, Respectively. (Public Works 31041520)
- Attachments:**     [Exhibit 1 - Reuse and Development Areas](#)  
[Exhibit 2 - Water Infrastructure Agreement with EBMUD](#)  
[Exhibit 3 - Water Main Extension Agreements for Phase 1 and Phase 2](#)  
[Exhibit 4 - Balance Due Letters for Phase 1 and Phase 2](#)
- 5-K**     [2021-1215](#)     Recommendation to Accept the Work of Redgwick Construction for the Otis Drive Traffic Calming and Safety Improvement Project, No. P.W.05-20-29. (Public Works 31041520)
- 5-L**     [2021-1218](#)     Recommendation to Authorize the City Manager to Execute a Second Amendment to the Agreement with Coastland Civil Engineering for City Engineering Services, in an Amount Not to Exceed \$100,000 for an Aggregate Amount Not to Exceed \$249,500. (Public Works 31041500)
- Attachments:**     [Exhibit 1 - Original Agreement](#)  
[Exhibit 2 - First Amendment](#)  
[Exhibit 3 - Second Amendment](#)
- 5-M**     [2021-1219](#)     Recommendation to Authorize the City Manager to Execute a Five-Year Agreement with NBS for Sewer Service Charge Tax Roll Administrative Services in an Amount Not to Exceed \$278,108.44. (Public Works 50141600)
- Attachments:**     [Exhibit 1 - Agreement](#)



Community Facilities District (CFD) No. 13-1 (Alameda Landing Public Improvements) 2021 Special Tax Subordinate Bonds in an Amount Not to Exceed \$24,585,000, and Approve Related Documents and Actions. (Finance)

**Attachments:** [Exhibit 1 - Fiscal Agent Agreement](#)  
[Exhibit 2 - Bond Purchase Agreement](#)  
[Exhibit 3 - Preliminary Official Statement](#)  
[Exhibit 4 - Supplemental Agreement No 1 Resolution](#)

**5-T**     [2021-1193](#)     Final Passage of Ordinance Amending the Alameda Municipal Code by Amending Chapter 30 (Zoning Ordinance) to Modify Public Art Requirements, as Recommended by the Planning Board. (Community Development 24062814)

**6**        **Regular Agenda Items - 6 members of the public may speak for up to 3 minutes; 7 or more may speak for up to 2 minutes**

**6-A**     [2021-1195](#)     Adoption of Resolution Appointing Robert Ferguson, Jennifer Hoffecker and Peter Platzgummer as Members of the Public Art Commission.

**6-B**     [2021-1236](#)     Public Hearing to Consider a Call for Review of the Planning Board's Final Decisions at the July 26, 2021 Meeting to Approve (1) Design Review Application No. PLN21-0077 for an Approximately 29,810-square-foot Medical Respite Facility at 1245 McKay Avenue and (2) Draft Meeting Minutes from the June 14, 2021 Planning Board Meeting; and  
Adoption of Resolution Approving Design Review Application No. PLN21-0077 to Allow the Construction of an Approximately 29,810-Square-Foot Medical Respite Facility at 1245 McKay Avenue. (Planning, Building and Transportation 20962710)

**Attachments:** [Exhibit 1 - Planning Board Resolution No. PB-21-09](#)  
[Exhibit 2 - July 26, 2021 Planning Board Meeting Agenda](#)  
[Exhibit 3 - Call for Review](#)  
[Exhibit 4 - Correspondence Narrowing Call for Review](#)  
[Exhibit 5 - Correspondence from Applicant Resolution](#)  
[Correspondence - Updated 9/8](#)

**6-C**     [2021-1200](#)     Recommendation to Provide Further Direction to Staff Regarding the Allocation of \$28.68 Million of Funding from the Federal Government Through the American Rescue Plan Act of 2021 to Assist with Recovery from the Impacts of the COVID-19 Pandemic. (City Manager

10021030/Finance 10024051)

**Attachments:** [Exhibit 1 - Eligible Uses](#)  
[Exhibit 2 - ARPA Spending Plan](#)  
[Presentation](#)  
[Correspondence](#)

- 6-D**     [2021-1213](#)     Adoption of Resolution Approving a Revision to the Public Safety Retiree Medical Provision in the Executive Management Compensation Plan to Provide Up To Five Years of Service Credit for Time Served as a Chief, Assistant Chief and/or Deputy Chief in Another Agency. (Human Resources 2510)

**Attachments:** [Resolution](#)

- 6-E**     [2021-1099](#)     Introduction of Ordinance Authorizing the City Manager to Execute a Second Amendment to the Lease with Dreyfuss Capital Partners, a California Limited Liability Company to Extend the Term for Five Years for Building 29, Located at 1701 Monarch Street, at Alameda Point. (Community Development 29061822) [Not heard on July 20, 2021]

**Attachments:** [Exhibit 1 - Premises](#)  
[Exhibit 2 - Lease](#)  
[Exhibit 3 - 1st Amendment](#)  
[Exhibit 4 - 2nd Amendment](#)  
[Ordinance](#)  
[Correspondence](#)

- 6-F**     [2021-1098](#)     Introduction of Ordinance Authorizing the City Manager to Execute a Second Amendment to the Lease with Small Size Big Mind, Inc., a California Corporation, Substantially in the Form of Exhibit 4, to Extend the Term for One Year with One 12-Month Extension Option for Building 35, Located at 2450 Pan Am Way in the Main Street Neighborhood at Alameda Point. (Community Development 29061822)

**Attachments:** [Exhibit 1 - Premises](#)  
[Exhibit 2 - Lease](#)  
[Exhibit 3 - First Amendment](#)  
[Exhibit 4 - Second Amendment](#)  
[Ordinance](#)

- 6-G**     [2021-1227](#)     Recommendation to Implement Water Conservation Measures in Response to Drought and Provide Direction on Further City of Alameda Water Reduction Efforts. (Public Works 31041500)

**Attachments:** [Exhibit 1 - EBMUD's Water Use Restrictions](#)  
[Exhibit 2 - July 8, 2021 Signed Executive Order](#)  
[Presentation](#)

- 6-H**     [2021-1186](#)     Recommendation to Reconsider Award of the Contract for the Publication of Legal Notices and Consider Providing Direction for Funding Options to Assist the Alameda Sun. (City Clerk 10022020)

**Attachments:** [Exhibit 1 - Councilmember Daysog's Referral](#)  
[Exhibit 2 - Alameda Journal Contract](#)  
[Exhibit 3 - Draft Notice of Termination](#)  
[Exhibit 4 - Draft Alameda Sun Contract](#)  
[Correspondence](#)

**7**     **City Manager Communications - Communications from City Manager**

- 8**     **Oral Communications, Non-Agenda (Public Comment) - Members of the public may speak for up to 2 minutes regarding any matter not on the agenda**

- 9**     **Council Referrals - Matters placed on the agenda by Councilmembers may be scheduled as future agenda items or dispositive action may be taken on sufficiently noticed time sensitive legislative matters; presentations are limited to 5 minutes; Councilmembers can speak for up to 3 minutes; 6 members of the public may speak for up to 3 minutes; 7 or more may speak for up to 2 minutes**

- 9-A**     [2021-990](#)     Consider Adoption of Resolution Supporting the Goal of Reaching 100% Zero Emission Vehicle Sales in California by 2030. (Mayor Ezzy Ashcraft) [Not heard on June 15, July 6 or 20, 2021]

**Attachments:** [Correspondence](#)

- 9-B**     [2021-997](#)     Considering Having an Introduction and Update from the New Police Chief regarding Strategies to Address Crimes. (Councilmember Herrera Spencer) [Not heard on June 15, July 6 or 20, 2021; not completed on September 7, 2021]

- 9-C**     [2021-998](#)     Considering Directing Staff to Provide an Update on License Plate Readers. (Councilmember Herrera Spencer) [Not heard on June 15, July 6, 20 or September 7, 2021]

**Attachments:** [Correspondence](#)

- 9-D**     [2021-999](#)     Consider Directing Staff to Publicly Share Information on Parking Recreational Vehicles. (Councilmember Herrera Spencer) [Not heard on June 15, July 6, 20 or September 7, 2021]

- 9-E**     [2021-1000](#)     Consider Directing Staff to Address Representation for Below Market Rate Homeowners on Homeowner Association (HOA) Boards and with

Property Management. (Councilmember Herrera Spencer) [Not heard on June 15, July 6, 20 or September 7, 2021]

- 9-F**     [2021-1248](#)     Consider Directing Staff to Support Removal of the US Navy Constraints Limiting Housing Development at Alameda Point. (Councilmember Herrera Spencer and Councilmember Daysog) [Not heard on September 7, 2021]

**Attachments:**     [City of Alameda RHNA Appeal](#)

- 9-G**     [2021-1249](#)     Consider Directing Staff to Address Identifying New Areas at Alameda Point to Develop a Number of Housing Units Above the Originally-Agreed Upon Numbers of the 2023-2031 Regional Housing Needs Allocation (RHNA). (Councilmember Daysog)

**10     Council Communications - Councilmembers can speak for 9 minutes to address any matter not on the agenda, including reporting on conferences or meetings**

- 10-A**     [2021-1230](#)     Mayor's Nominations for Appointment to the Golf Commission, Housing Authority Board of Commissioners, and Library Board.

**11     Adjournment - City Council**

- Please contact the City Clerk at 510-747-4800 or [clerk@alamedaca.gov](mailto:clerk@alamedaca.gov) at least 48 hours prior to the meeting to any reasonable accommodation that may be necessary to participate in and enjoy the benefits of the meeting.
- Meeting Rules of Order are available at:  
\*\*\*\*\* [alamedaca.gov/Departments/City-Clerk/Key-Documents#section-2](http://alamedaca.gov/Departments/City-Clerk/Key-Documents#section-2)
- Translators and sign language interpreters will be available on request. Please contact the City Clerk at 510-747-4800 at least 72 hours prior to the meeting to request a translator or interpreter.
- Minutes of the meeting available in enlarged print.
- Documents related to this agenda are available for public inspection and copying at of the Office of the City Clerk, 2263 Santa Clara Avenue, Room 380, during normal business hours.
- The meeting will be broadcast live on the City's website:  
\*\*\*\*\* [alamedaca.gov/GOVERNMENT/Agendas-Minutes-Announcements](http://alamedaca.gov/GOVERNMENT/Agendas-Minutes-Announcements)
- Sign up to receive agendas here: <https://alameda.legistar.com/Calendar.aspx>

- **KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE:** Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City of Alameda exist to conduct the citizen of Alameda's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.
- **FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE OPEN GOVERNMENT COMMISSION:** the address is 2263 Santa Clara Avenue, Room 380, Alameda, CA, 94501; phone number is 510-747-4800; fax number is 510-865-4048, e-mail address is [lweisiger@alamedaca.gov](mailto:lweisiger@alamedaca.gov) and contact is Lara Weisiger, City Clerk.
- In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals.

# Exhibit 2

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE ("Agreement") is entered into as of the Effective Date, by and between Plaintiff CITY OF ALAMEDA, a charter city and municipal corporation ("City"), and Defendant UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("UPRR"). City and UPRR are sometimes individually referred to herein as a "Party" and collectively referred to as "Parties." This Agreement is intended by the Parties hereto to settle and extinguish the claims, disputes and differences as hereinafter set forth. This Agreement is based on the following factual recitals:

### RECITALS

A. UPRR is the fee owner of a railroad corridor adjacent southerly to Jean Sweeney Open Space Park ("Jean Sweeney Park") running between Constitution Way on the west and Sherman Street on the east (the "Corridor") in the City of Alameda, California. City is undertaking the Jean Sweeney Park Project, which will improve public access components of Jean Sweeney Park, including public pedestrian and bicycle access for the neighborhood to the south of the Corridor, and a permanent connection to the Cross Alameda Trail to the west (the "Project").

B. The Project requires the acquisition of certain fee and easement interests in the Corridor, including: (i) fee acquisitions of the property designated as Alameda County Assessor's Parcel Number 074-0906-034, a portion of Assessor's Parcel Number 074-0906-035, and the narrow northeastern corner strip of the Corridor, which is a portion of Assessor's Parcel Number 074-0906-31-6 (the "Remnant Parcel"); and (ii) easements for pedestrian, bicycle, and maintenance and emergency vehicle access and utilities on the portions of the Corridor that extend northerly across the Corridor from 8th Street and Wood Street, all of which interests are respectively more particularly described in the Quitclaim Deeds and Grants of Easements attached hereto as Exhibits "1" through "5" and incorporated herein by reference (collectively, the "Property").

C. On September 19, 2018, City filed an eminent domain action in Alameda County Superior Court against UPRR, California Packing Corporation, and Planatal Company, entitled *City of Alameda v. Union Pacific Railroad Company, et al.*, Alameda County Superior Court Case No. RG18921261 (the "Action") to acquire a larger portion of the Corridor in fee for the Project (the "Taking Property").

D. On June 3, 2019, City filed a request for entry of default in the Action against defendant California Packing Corporation, which default was entered on June 3, 2019. Also on June 3, 2019, the City filed a request for entry of default in the Action against defendant Planatal Company, which default was entered on June 3, 2019. UPRR is the sole remaining defendant in the Action.

E. On September 12, 2019, the Court in the Action entered an order granting the City's Motion for Prejudgment Possession of the Taking Property (the "Possession Order"). The Possession Order became effective on September 30, 2019 and the City has been in possession of the Taking Property since that date (the period from September 30, 2019 to the date of this Agreement is the "Possession Period"). During the Possession Period, City installed certain

fencing on a portion of the Taking Property that extends northerly from 8th Street demarking a pathway to Jean Sweeney Park ("Fencing").

F. The Parties agree and recognize that in California all agreements imply a covenant of good faith and fair dealing.

G. The Parties have been engaged in negotiations and have agreed to terms of a settlement resolving the Action, and now desire to finalize that agreement through this Agreement, as more fully set forth herein.

## AGREEMENT

NOW, THEREFORE, based upon the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, City and UPRR agree as follows:

1. **Purpose.** It is the intention and purpose of the Parties, by entering into this Agreement, to fully and finally settle and resolve any and all claims, differences, actions or causes of action, whether actual or potential, in connection with the Action, the acquisition of the Property, and the construction and use of the Project in the manner proposed by City, with the exception of: (i) Property Damage Claims, as defined below, (ii) claims against UPRR arising from the use of the property conveyed for easements, as described below and in the Grants of Easement, defined below ("Easement Claims"); and (iii) claims by or against UPRR arising from acts or omissions of the City or third parties occurring during the Possession Period ("Possession Claims") (Property Damage Claims, Easement Claims, and Possession Claims are, collectively, the "Reserved Claims").

2. **Recitals.** The Parties agree that the Recitals set forth at the beginning of this Agreement are true and accurate and are deemed to be a part of this Agreement as though set forth in full.

3. **Payment.** City has previously deposited an amount equivalent to the Settlement Amount as the probable amount of just compensation for the acquisition of the Taking Property ("Deposit"). The City shall be entitled to the return of the entirety of the Deposit and, upon the Effective Date, shall direct the California State Treasurer to release the entirety of the Deposit to the City. Within five (5) business days after the City receives its Deposit from the State Treasurer, the City shall pay to UPRR the sum of One Million One Hundred Ninety-Two Thousand Dollars (\$1,192,000.00) as monetary compensation for the City's acquisition of the Property (the "Settlement Amount"). Notwithstanding the preceding sentence, City shall, in all events, pay the Settlement Amount within thirty (30) days of the Effective Date. With the exception of Possession Claims, and future claims for any physical damage to the portions of the Property conveyed for easements, as described herein, caused by the City, its agents, invitees, or licensees ("Property Damage Claims"), all of which Possession Claims and Property Damage Claims are expressly reserved, the Deposit is the full monetary compensation for the construction and use of the Project in the manner proposed by City, as described in this Agreement. UPRR further agrees that receipt of the Settlement Amount shall serve as full and complete monetary satisfaction of the Action and that it will not seek any further consideration, other than as provided for herein, arising from or relating to the Action. City shall pay the Settlement Amount by wire transfer as follows:

Account Name: Union Pacific Railroad Company  
Account Number: 3752021457  
Bank Name: Bank of America Merrill Lynch  
Wire ABA: 026009593

4. **UPRR's Conveyances to City.** Within ten (10) days of its receipt of the Settlement Amount UPRR shall: (i) quitclaim to the City its entire interest in Assessor's Parcel No. 074-0906-034, a portion of Assessor's Parcel No. 074-0906-035, and in the Remnant Parcel; and (ii) convey to the City easements for pedestrian, bicycle, and maintenance and emergency vehicle access and utilities on, along, and under those portions of the Corridor that extend northerly across the Corridor from 8th Street and Wood Street. The conveyances shall be made respectively by executing and delivering to City the Quitclaim Deeds in the forms attached hereto as Exhibits "1," "2," and "3," and the Grants of Easement in the forms attached hereto as Exhibits "4" and "5". UPRR's conveyances to the City of the Property shall be deemed to be in lieu of, and under threat of, eminent domain.

5. **Cooperation Regarding Re-Zoning of Corridor Access.** For a period of 36 months from the Effective Date of this Agreement and/or, in the event UPRR transfers the Corridor or a portion thereof to a third party ("Buyer") within 36 months after the Effective Date of this Agreement, then for an additional period of 36 months from the date of UPRR's transfer to the Buyer (the "Cooperation Period"), City will cooperate, in good faith, to reasonably and diligently assist UPRR and/or the Buyer, as applicable, in the following:

- a. obtaining extensions of St. Charles Street and of Chapin Street – whether public or private – from the Housing Authority of the City of Alameda or, if applicable, from the then existing owners of Assessor's Parcel Number 73-425-2, which is now owned by the Housing Authority, to the Corridor to ensure access to any future development over these streets as extended;
- b. the diligent and timely processing of any proposed residential re-zoning of the Corridor, or any portion thereof developable for residential purposes, to R-2 Two-Family Residence District (Alameda Municipal Code Chap. XXX, Art. 1, §30-4.2), or to another residential zoning district or overlay allowing equal or greater residential density; and
- c. the diligent and timely processing of any development application submitted by UPRR or Buyer that is in substantial compliance with the provisions of the R-2 Two-Family Residence District – or alternative as set forth herein – and with other laws and conditions applicable to the proposed development.

Except to the extent set forth herein, if any, the Parties expressly recognize that nothing in this Agreement shall limit or purport to limit the City's exercise of its police powers, or its discretion to approve, condition, modify, or deny an application to rezone the Corridor for residential purposes, or any other discretionary application or project proposed for the Property. Although the City is not required solely by this Agreement to approve of a residential re-zoning of the Corridor, extensions of St. Charles Street and Chapin Street, or any particular development plan, the City, through the City's Planning staff, including its Director, hereby expresses: (i) general support of re-zoning of the Corridor as described above in order to expand the

availability of housing in the City; (ii) that there is no presently known legal impediment precluding re-zoning the Corridor to R-2 Two-Family Residential or to another residential zoning district or overlay with equal or greater density; (iii) that re-zoning the Corridor, as set forth herein, is consistent with the current General Plan designation for the Corridor; (iv) that the addition of new housing stock in the City is a benefit to the City; and (v) its commitment during the Cooperation Period to use all reasonable and lawful efforts to diligently schedule and notice public hearings of, and to otherwise process and act upon, re-zoning and development applications for the Corridor or for any portion thereof developable for residential purposes, subject to submittal of complete applications and payment of any fees required by the Master Fee Resolution. Without limitation, these efforts shall, to the extent permitted by law, include: (1) diligent and timely processing of such applications; (2) providing senior staffing for the processing of such applications; and (3) if requested by UPRR or Buyer, supporting the adoption of a statutory Development Agreement and a Community Financing District (with any such costs incurred by the City to be paid for pursuant to City requirements or allocated by future agreement).

During the Cooperation Period, if the City (i) downzones the Corridor (i.e., reduces the permitted density of housing and development) or (ii) imposes any new development requirements, restrictions or fees that are specific to the Corridor and not part of any City zoning, code, or plan updates generally applicable to all proposed developments or other similarly zoned properties within the City ("Restrictions"), then UPRR shall receive from the City any and all diminution in value ("DIV") caused by such downzoning and/or Restrictions. The DIV shall be measured by the difference between the fair market value of the Corridor as if zoned R-2 Two-Family Residential (or substantially similar zone if the R-2 Two-Family Residential designation is no longer in use) and having none of the Restrictions and the fair market value of the Corridor as downzoned and/or with any Restrictions. If the Parties are unable to agree on the DIV, UPRR shall submit the names of three MAI appraisers to the City which shall choose one from such list. The DIV determined by the chosen appraiser shall be paid to UPRR within sixty (60) days of the City's receipt of the appraisal.

6. **Fencing.** City may maintain the Fencing on the Taking Property, provided that UPRR or Buyer shall be entitled to remove it in its or their sole discretion, and without recourse from City, if necessary for development of the Corridor, and provided further that City shall indemnify, defend, and hold harmless UPRR, its employees, agents, officers, directors, attorneys, contractors, shareholders, heirs, predecessors, successors, assigns, beneficiaries, trustees, accountants, subsidiaries, and Board Members, from and against any claims or causes of action against UPRR, relating to the Fencing.

7. **Maintenance of Right-Of-Way.** For a period of up to 24 months from the Effective Date, or until UPRR transfers the remaining portions of the Corridor to a Buyer, whichever occurs first (the "Maintenance Period"), the City, at its own risk and expense, will reasonably maintain the Corridor in its present condition and undertake weed abatement and, as necessary, nuisance abatement including, but not limited to, removal of trespassers, homeless encampments, garbage and other debris. UPRR hereby releases the City (and the City's Released Parties, as described below) from any claims for real property damage by UPRR associated with the City's maintenance activities undertaken during the Maintenance Period, excepting claims arising from City's gross negligence or willful misconduct. UPRR is not hereby, or otherwise, releasing the City for claims by UPRR for indemnity or contribution in connection with claims by third parties for injuries to third parties or to their personal property

arising out of the City's maintenance activities, or for any claims brought by third parties under 42 U.S.C. section 1983 or other federal or state civil rights statutes.

8. **Mutual Release and Waiver of Claims.** Subject to the Parties' performance of the obligations under this Agreement, and in the Grants of Easement described herein, and except for the Reserved Claims and as otherwise provided herein and in the Grants of Easement, the City and UPRR, for themselves and on behalf of their successors and assigns (collectively, the "Releasing Parties"), hereby release and forever discharge each other and all employees, staff members, City Council members, partners, officers, officials, directors, shareholders, agents, heirs, predecessors, successors, assigns, beneficiaries, trustees, accountants, subsidiaries, and attorneys of each other ("Released Parties") from any and all claims, liabilities, demands, contracts, actions, suits, debts, controversies, agreements, claims for compensation, severance damages, pre-condemnation damages, claims for loss of or damage to improvements pertaining to the realty, personal property, loss of business goodwill, and any and all other damages, losses, rights, costs, attorney's fees, expert fees, expenses, and causes of action whatsoever or of whatever kind or nature, whether known or unknown, suspected, or unsuspected, which the Releasing Parties, or any of them or their respective successors or assigns, may possess relating to or arising out of or in connection with the Project, the Action, the acquisition of the Property, and the construction and use of the Project in the manner proposed by the City (collectively, the "Released Claims").

It is understood by the Parties that there is a risk that any of them may incur or suffer loss, damage or injuries which arise from the release contained above, but which are unknown or unanticipated at the time of the execution of this Agreement. Further, there is a risk that a claim for compensation, loss or damage presently known may be or become greater than any Party, and all of them, now expects or anticipates. Each of the Parties assume such risk that the release contained herein shall apply to all such unknown and/or unanticipated claims, losses, damages or injuries resulting from or arising from the release contained above, and EACH PARTY WAIVES AGAINST THE OTHER ALL RIGHTS UNDER CALIFORNIA CIVIL CODE SECTION 1542 (OR ANY APPLICABLE SIMILAR PROVISION OF FEDERAL, STATE, OR FOREIGN LAW), WHICH PROVIDES AS FOLLOWS:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

It is also agreed and understood that this section 8 does not constitute a release of, or otherwise affect, any rights and obligations specifically created or reserved by this Agreement.

9. **Dismissal of Action.** Within ten (10) calendar days after delivery of the Quitclaim Deeds and Grants of Easement described in Section 4 above, the City shall file with the court a request for dismissal of the Action with prejudice.

10. **No Admission of Liability.** This Agreement is entered into in the spirit of compromise to resolve a disputed claim. None of the provisions of this Agreement shall be used or construed as an admission of liability or default for any purpose.

11. **Binding Effect.** This Agreement shall be binding on and inure to the benefit of the heirs, executors, administrators, successors, assigns, agents, legal representatives, and bankruptcy trustees of the Parties.

12. **Attorney's Fees.** Each Party to this Agreement will bear its own costs, expenses, attorney's fees and other litigation expenses, and arbitrator's fees and expenses in connection with the Action, and with the negotiation, preparation, execution and performance of this Agreement and all documents contemplated herein. In the event that a proceeding or legal action is necessary to enforce this Agreement or to seek its nullification, then the prevailing party in any such proceeding or action shall be entitled to its reasonable attorney's fees and costs.

13. **No Prior Assignment.** Each Party warrants and represents to one another that none of the Released Claims has been sold, assigned, transferred, or otherwise set over, in whole or in part, to any other person or entity, and that each Party has the sole right and exclusive authority to execute this Agreement, and agrees to indemnify, defend, and hold the other harmless from and against any claims advanced in contravention of this warranty.

14. **Representation by Counsel.** Each Party to this Agreement hereby confirms that it has read and understands the Agreement, that it has been fully advised and represented by counsel with respect to this Agreement and all negotiations giving rise to this Agreement, and that it has fully discussed this Agreement and all of its terms, consequences and ramifications with its respective counsel.

15. **No Reliance On Representations Not Contained Herein.** The Parties represent and acknowledge that in executing this Agreement, they have not relied upon any representation or statement not set forth herein. The Parties also represent and agree that they have entered into this Agreement voluntarily and without coercion or duress and have been offered a reasonable time to consider the Agreement.

16. **Entire Agreement; Amendment.** This Agreement and the attachments hereto contain the entire understanding and agreement between the Parties relating to the matters contemplated hereby and supersedes all prior or contemporaneous negotiations, agreements, and representations, oral or written, in connection with the subject matter hereof. In the event of any conflict between this Agreement and the attachments hereto, the provisions of this Agreement shall govern. This Agreement may only be amended by a written instrument signed by both Parties.

17. **Additional Acts and Documents.** Each Party agrees to do all such things and take all such actions, and to make, execute, and deliver such other documents and instruments as shall be reasonably required to carry out the provisions, intent, and purposes of this Agreement.

18. **Severability.** If any term, provision, condition, or covenant of this Agreement, or the application thereof to any Party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect to the fullest extent permitted by law.

19. **Governing Law.** This Agreement shall be construed in accordance with the internal laws of the State of California, without regard to conflict of law principles, and shall be construed according to its fair meaning and as if prepared by both of the Parties.

20. **Captions.** The captions to subsections of this Agreement are solely for the convenience of the Parties, are not part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision thereof.

21. **Counterparts.** This Agreement may be executed in counterparts. All counterparts when executed shall constitute one agreement binding upon all Parties notwithstanding that all of the Parties are not signatory to the original or the same counterpart. The Parties agree that facsimile signatures and/or electronic signatures on this Agreement or any amendment thereto shall have the same force, effect, and validity as that of an original signature.

22. **Authority to Execute.** The persons executing this Agreement on behalf of the Parties hereto warrant and represent that they are duly authorized to execute and deliver this Agreement on behalf of such Party, and by so executing this Agreement, said Party is formally bound to the provisions of this Agreement.

23. **Effective Date.** This Agreement shall become effective upon the execution by all applicable parties.

24. **Interpretation.** The Parties have each agreed to the use of the particular language of this Agreement, and no question of future interpretation shall be resolved by any rule of interpretation providing for interpretation against the Party whose representatives drafted this Agreement, or any portion thereof.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Date: Sept. 9, 2021

CITY OF ALAMEDA

By: *Yibin Shen*

Name: Yibin Shen

Its: City Attorney

Date: August 4, 2021

UNION PACIFIC RAILROAD  
COMPANY

By: *Chris Doble*

Name: CHRIS D. GOBLE

Its: Assistant Vice President - Real Estate

APPROVED AS TO FORM:

NOSSAMAN LLP

By:   
Bradford B. Kuhn, Esq.  
Attorneys for CITY OF ALAMEDA

Date: September 9, 2021

WOLF WALLENSTEIN, PC

By:   
Michael H. Wallenstein, Esq.  
Attorneys for UNION PACIFIC RAILROAD COMPANY

Date: September 10, 2021

# **EXHIBIT 1**

(Quitclaim Deed Parcel 074-0906-034-Fee)

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Alameda  
2263 Santa Clara Avenue, Room 380  
Alameda, California 94501  
APN: 074-0906-034-FEE

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EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE SECTIONS 6103 AND 27383  
EXEMPT FROM DOCUMENTARY TRANSFER TAX PER REV. AND TAX CODE SECTION 11922

## QUITCLAIM DEED

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, **Union Pacific Railroad Company, a Delaware corporation** ("Grantor") does hereby REMISE, RELEASE, and forever QUITCLAIM to the **City of Alameda, a charter city and municipal corporation** ("Grantee"), and to its successors and assigns, all of Grantor's right, title, interest, and estate of, in, and to the real property and all improvements thereon, if any, located in the City of Alameda, County of Alameda, State of California, designated as a portion of Alameda County Assessor's Parcel Number 074-0906-034, more particularly described in the legal description attached as Exhibit "A", and the plat attached as Exhibit "B" both made a part hereof by reference (the "Property").

EXCEPTING FROM THIS QUITCLAIM AND RESERVING UNTO GRANTOR, its successors and assigns, forever, all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered underlying the Property, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals by any means or methods suitable to Grantor, its successors and assigns, but without entering upon or using the surface of the Property, and in such manner as not to damage the surface of the Property, or to interfere with the use thereof by Grantee, its successors or assigns.

### Restrictions on Use

Grantee, its successors and assigns, shall only use the Property for the following public uses: access, street, public utility, park, and hike and bike trail uses, which uses shall include, but not be limited to, roads, trails, sidewalks, recreational uses, dog parks, picnic tables and chairs, and similar uses of like kind and nature thereof, but for no other purposes whatsoever (collectively the "Use Restrictions"). Without limitation of the foregoing, the Property shall not be used for any of the following purposes: (i) residential, (ii) lodgings or accommodations (including, without limitation, hotels, motels, boarding houses, dormitories, hospitals, nursing homes, or retirement centers), or (iii) indoor educational, or child-care facilities (including, without limitation, schools, kindergartens, day-care centers, or gymnasiums).

Environmental Covenants:

(a) "As Is" Sale. Grantee, for itself, its successors and assigns, including any successor owner of any interest in the Property, acknowledges and agrees that the Property has been sold and quitclaimed by Grantor in an "AS IS" condition, with all faults, and Grantee acknowledges that the Property may have been used for railroad and/or industrial purposes. Grantee acknowledges and agrees that the Property has been sold and quitclaimed on the basis of Grantee's own independent investigation of the physical and environmental conditions of the Property. Grantee assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation. Grantor does not make any representations or warranties of any kind whatsoever, either express or implied, with respect to the Property; in particular, without limitation, Grantor makes no representations or warranties with respect to the use, condition, title, occupation or management of the Property, or compliance with applicable statutes, laws, codes, ordinances, regulations, requirements (collectively, "Condition of the Property").

(b) Release and Indemnity. GRANTEE, FOR ITS ITSELF, ITS SUCESSORS AND ASSIGNS, INCLUDING ANY SUCCESSOR OWNER OF ANY INTEREST IN THE PROPERTY, HEREBY RELEASES GRANTOR, AND, TO THE MAXIMUM EXTENT PERMITTED BY LAW, INDEMNIFIES, DEFENDS AND SAVES HARMLESS GRANTOR, 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 ATTORNEYS' FEES, IN ANY WAY ARISING OUT OF OR CONNECTED WITH THE KNOWN OR UNKNOWN CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), 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 WILL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF GRANTOR, ITS AFFILIATES, OR THEIR EMPLOYEES, AGENTS OR OFFICERS. WITH RESPECT TO THE FOREGOING, GRANTEE 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 that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.



**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest conveyed by Quitclaim Deed dated \_\_\_\_\_, 2021, from **UNION PACIFIC RAILROAD COMPANY, A DELAWARE CORPORATION**, to the **CITY OF ALAMEDA, A CHARTER CITY AND MUNICIPAL CORPORATION**, is hereby accepted by the undersigned officer on behalf of the **CITY OF ALAMEDA, A CHARTER CITY AND MUNICIPAL CORPORATION**, pursuant to authority conferred by the City of Alameda Charter and Grantee hereby consents to the recordation thereof by its duly authorized agent.

Dated this \_\_\_ day of \_\_\_\_\_, 2021.

CITY OF ALAMEDA, a charter city and municipal 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 Los Angeles )

On \_\_\_\_\_, 20\_\_\_, 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.

\_\_\_\_\_  
Signature

(Seal)

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

**[APN: 074-0906-034 - FEE]**

**EXHIBIT A**  
**LEGAL DESCRIPTION**  
**UPRR PROPERTY - FEE**  
**ASSESSOR'S PARCEL NO. 074-0906-034**  
**ALAMEDA, CALIFORNIA**

REAL PROPERTY SITUATE IN THE CITY OF ALAMEDA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

BEING A PORTION OF THE PARCEL OF LAND DESCRIBED IN THE INDENTURE BETWEEN THE ANGLO CALIFORNIA NATIONAL BANK OF SAN FRANCISCO AND CENTRAL PACIFIC RAILWAY COMPANY, RECORDED IN BOOK 5693 AT PAGE 348, OFFICIAL RECORDS OF ALAMEDA COUNTY AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE SOUTHEASTERLY CORNER OF PARCEL 2A, AS LAST SAID PARCEL IS DESCRIBED IN JUDGMENT NO. 22481-G, RECORDED IN BOOK 5207 AT PAGE 332, OFFICIAL RECORDS OF ALAMEDA COUNTY; THENCE ALONG THE EASTERLY LINE OF LAST SAID PARCEL NORTH 05°56'00" WEST 88.75 FEET TO THE NORTHEASTERLY LINE OF SAID CENTRAL PACIFIC RAILWAY PARCEL (5693 OR 348); THENCE SOUTHEASTERLY ALONG LAST SAID LINE ALONG A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST, WHICH A RADIAL BEARS NORTH 54°04'09" EAST TO THE RADIUS POINT, HAVING A RADIUS OF 477.68 FEET, A CENTRAL ANGLE OF 34°59'51" AND AN ARC LENGTH OF 291.78 FEET TO THE NORTHERLY LINE OF THE 0.07 ACRE PARCEL OF LAND DESCRIBED IN THE INDENTURE BETWEEN PLANATAL COMPANY AND ATLANTIC BELT LINE, RECORDED ON MAY 17, 1927 IN BOOK 1440 AT PAGE 339, OFFICIAL RECORDS OF ALAMEDA COUNTY; THENCE ALONG LAST SAID LINE NORTH 87°34'00" WEST 125.86 FEET TO THE SOUTHWESTERLY LINE OF SAID CENTRAL PACIFIC RAILWAY PARCEL (5693 OR 348); THENCE NORTHWESTERLY ALONG LAST SAID LINE ALONG A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST, WHICH A RADIAL BEARS NORTH 32°16'55" EAST TO THE RADIUS POINT, HAVING A RADIUS OF 527.68 FEET, A CENTRAL ANGLE OF 13°24'42" AND AN ARC LENGTH OF 123.52 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 10,060 SQUARE FEET OR 0.231 ACRE OF LAND, MORE OR LESS.

SEE EXHIBIT B – PLAT TO ACCOMPANY LEGAL DESCRIPTION WHICH IS ATTACHED HERETO AND MADE A PART HEREOF.

**END OF DESCRIPTION**

THIS DESCRIPTION AND ITS ACCOMPANYING PLAT WERE PREPARED BY OR UNDER THE DIRECTION OF:



SCOTT SHORTLIDGE, LS 6441

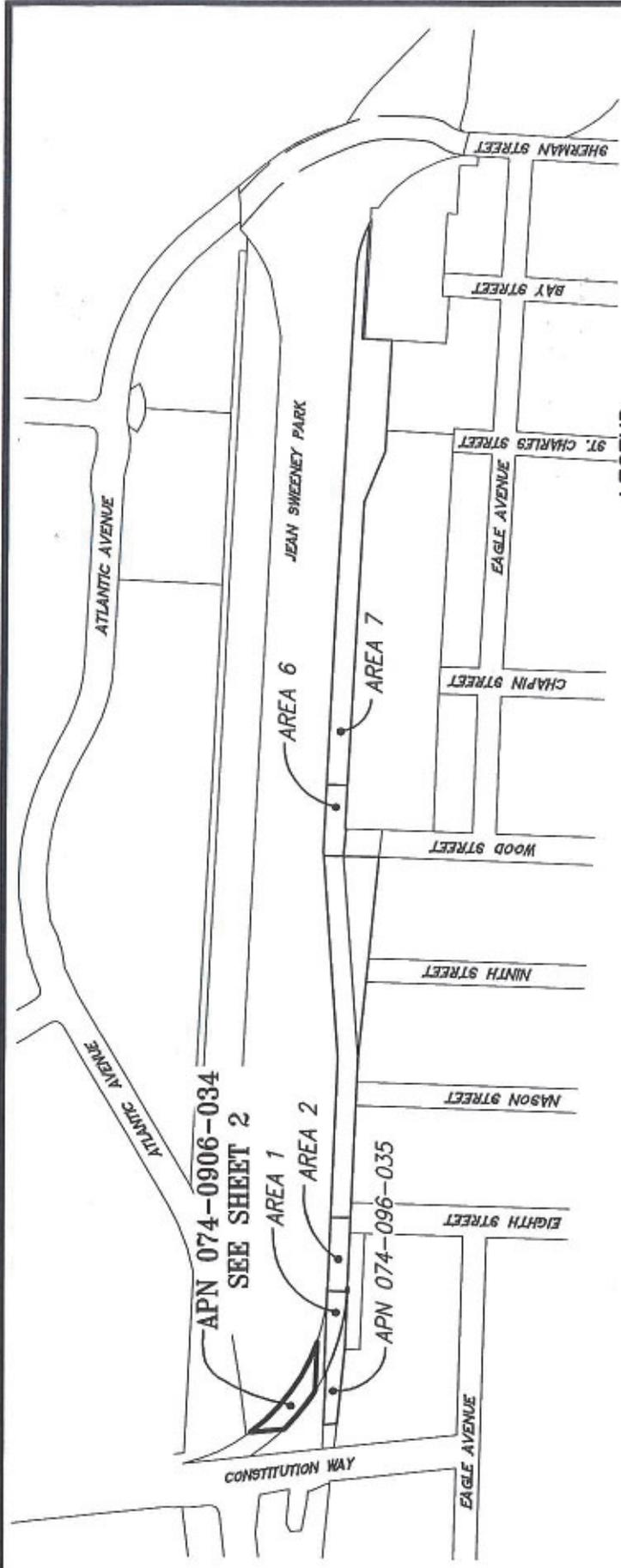


March 29, 2021  
DATE

**EXHIBIT "B"**

**MAP OF PROPERTY**

**[APN: 074-0906-034 - FEE]**



*Scott A. Shortlidge*  
 SCOTT SHORTLIDGE, LS 6441  
 MARCH 29, 2021

**LEGEND**

- BOUNDARY OF DESCRIBED AREA
- OR
- SW COR
- S'LY
- N'LY
- W'LY
- SW'LY
- STA
- PCL
- APN
- POB
- POC
- OFFICIAL RECORDS
- SOUTHWEST CORNER
- SOUTHERLY
- NORTHERLY
- WESTERLY
- SOUTHWESTERLY
- STATION
- PARCEL
- ASSESSOR'S PARCEL NUMBER
- POINT OF BEGINNING
- POINT OF COMMENCEMENT

SHEET 1 OF 2



**RUGGERI-JENSEN-AZAR**  
 ENGINEERS • PLANNERS • SURVEYORS  
 4680 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588  
 PHONE: (925) 227-9100 FAX: (925) 227-9300

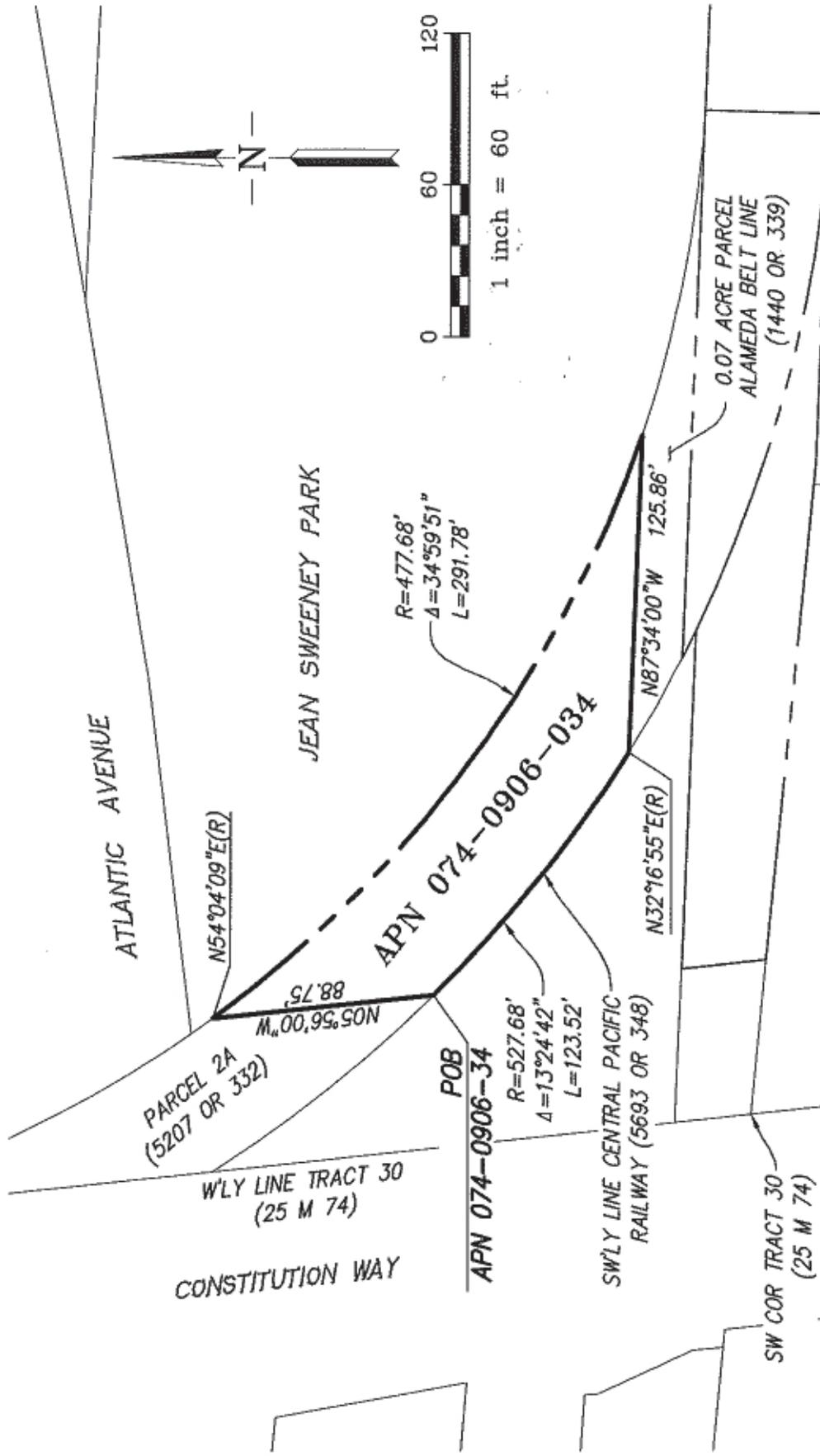
SCALE: 1" = 400'

DATE: 3/29/2021

JOB NO.: 121033-65

**EXHIBIT B**  
 PLAT TO ACCOMPANY LEGAL DESCRIPTION  
 UPRR PROPERTY  
 APN 074-0906-034-FEE

ALAMEDA CALIFORNIA



SHEET 2 OF 2



**RUGGERI-JENSEN-AZAR**  
 ENGINEERS • PLANNERS • SURVEYORS  
 4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588  
 PHONE: (925) 227-9100 FAX: (925) 227-9300

JOB NO.: 121033-65

DATE: 3/29/2021

SCALE: 1"=60'

**EXHIBIT B**  
 PLAT TO ACCOMPANY LEGAL DESCRIPTION  
 UPRR PROPERTY  
 APN 074-0906-034-FEE

ALAMEDA CALIFORNIA

## **EXHIBIT 2**

(Quitclaim Deed Parcel 074-0906-035-Fee)

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Alameda  
2263 Santa Clara Avenue, Room 380  
Alameda, California 94501  
APN: 074-0906-035-FEE

---

EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE SECTIONS 6103 AND 27383  
EXEMPT FROM DOCUMENTARY TRANSFER TAX PER REV. AND TAX CODE SECTION 11922

## QUITCLAIM DEED

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, **Union Pacific Railroad Company, a Delaware corporation ("Grantor")** does hereby REMISE, RELEASE, and forever QUITCLAIM to the **City of Alameda, a charter city and municipal corporation ("Grantee")**, and to its successors and assigns, all of Grantor's right, title, interest, and estate of, in, and to the real property and all improvements thereon, if any, located in the City of Alameda, County of Alameda, State of California, designated as a portion of Alameda County Assessor's Parcel Number 074-0906-035, more particularly described in the legal description attached hereto as Exhibit "A" and the plat attached as Exhibit "B" both made a part hereof by reference (the "Property").

EXCEPTING FROM THIS QUITCLAIM AND RESERVING UNTO GRANTOR, its successors and assigns, forever, all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered underlying the Property, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals by any means or methods suitable to Grantor, its successors and assigns, but without entering upon or using the surface of the Property, and in such manner as not to damage the surface of the Property, or to interfere with the use thereof by Grantee, its successors or assigns.

### Restrictions on Use

Grantee, its successors and assigns, shall only use the Property for the following public uses: access, street, public utility, park, and hike and bike trail uses, which uses shall include, but not be limited to, roads, trails, sidewalks, recreational uses, dog parks, picnic tables and chairs, and similar uses of like kind and nature thereof, but for no other purposes whatsoever (collectively the "Use Restrictions"). Without limitation of the foregoing, the Property shall not be used for any of the following purposes: (i) residential, (ii) lodgings or accommodations (including, without limitation, hotels, motels, boarding houses, dormitories, hospitals, nursing homes, or retirement centers), or (iii) indoor educational, or child-care facilities (including, without limitation, schools, kindergartens, day-care centers, or gymnasiums).

Environmental Covenants:

(a) "As Is" Sale. Grantee, for itself, its successors and assigns, including any successor owner of any interest in the Property, acknowledges and agrees that the Property has been sold and quitclaimed by Grantor in an "AS IS" condition, with all faults, and Grantee acknowledges that the Property may have been used for railroad and/or industrial purposes. Grantee acknowledges and agrees that the Property has been sold and quitclaimed on the basis of Grantee's own independent investigation of the physical and environmental conditions of the Property. Grantee assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation. Grantor does not make any representations or warranties of any kind whatsoever, either express or implied, with respect to the Property; in particular, without limitation, Grantor makes no representations or warranties with respect to the use, condition, title, occupation or management of the Property, or compliance with applicable statutes, laws, codes, ordinances, regulations, requirements (collectively, "Condition of the Property").

(b) Release and Indemnity. GRANTEE, FOR ITS ITSELF, ITS SUCESSORS AND ASSIGNS, INCLUDING ANY SUCCESSOR OWNER OF ANY INTEREST IN THE PROPERTY, HEREBY RELEASES GRANTOR, AND, TO THE MAXIMUM EXTENT PERMITTED BY LAW, INDEMNIFIES, DEFENDS AND SAVES HARMLESS GRANTOR, 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 ATTORNEYS' FEES, IN ANY WAY ARISING OUT OF OR CONNECTED WITH THE KNOWN OR UNKNOWN CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), 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 WILL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF GRANTOR, ITS AFFILIATES, OR THEIR EMPLOYEES, AGENTS OR OFFICERS. WITH RESPECT TO THE FOREGOING, GRANTEE 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 that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.



**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest conveyed by Quitclaim Deed dated \_\_\_\_\_, 2021, from **UNION PACIFIC RAILROAD COMPANY, A DELAWARE CORPORATION**, to the **CITY OF ALAMEDA, A CHARTER CITY AND MUNICIPAL CORPORATION**, is hereby accepted by the undersigned officer on behalf of the **CITY OF ALAMEDA, A CHARTER CITY AND MUNICIPAL CORPORATION**, pursuant to authority conferred by the City of Alameda Charter and Grantee hereby consents to the recordation thereof by its duly authorized agent.

Dated this \_\_\_ day of \_\_\_\_\_, 2021.

CITY OF ALAMEDA, a charter city and municipal 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 Los Angeles )

On \_\_\_\_\_, 20\_\_\_, 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.

\_\_\_\_\_  
Signature

(Seal)

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

[APN: 074-0906-035 - FEE]

**EXHIBIT A  
LEGAL DESCRIPTION  
UPRR PROPERTY - FEE  
ASSESSOR'S PARCEL NO. 074-0906-035  
ALAMEDA, CALIFORNIA**

REAL PROPERTY SITUATE IN THE CITY OF ALAMEDA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL NO. 2, AS SAID PARCEL IS DESCRIBED IN THE INDENTURE BETWEEN PLANATAL COMPANY AND SOUTHERN PACIFIC COMPANY, RECORDED IN BOOK 1007, PAGE 415, OFFICIAL RECORDS OF ALAMEDA COUNTY AND A PORTION OF TRACT 30 AS SHOWN ON THE MAP OF ALAMEDA MARSH LAND FILED IN BOOK 25 OF MAPS AT PAGE 74 OFFICAL RECORDS OF SAID COUNTY AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

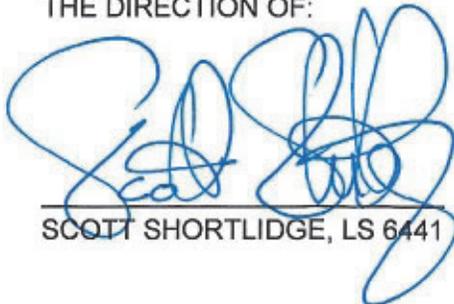
**BEGINNING** AT THE SOUTHWEST CORNER OF THE ABOVE MENTIONED TRACT 30, SAME CORNER BEING ON THE COMMON RIGHT OF WAY LINE OF CONSTITUTION WAY AND THAU WAY (60 FEET WIDE); THENCE ALONG THE WEST LINE OF TRACT 30, NORTH 05°56'00" WEST 30.67 FEET TO THE SOUTHERLY LINE OF PARCEL C, AS LAST SAID PARCEL IS DESCRIBED IN THE INDENTURE BETWEEN SOUTHERN PACIFIC COMPANY AND ALAMEDA BELT LINE, RECORDED ON JUNE 1, 1927 IN BOOK 1597, PAGE 211, OFFICIAL RECORDS OF ALAMEDA COUNTY; THENCE ALONG LAST SAID LINE SOUTH 87°34'00" EAST 194.57 FEET TO THE SOUTHWESTERLY LINE OF THE PARCEL OF LAND DESCRIBED IN THE INDENTURE BETWEEN THE ANGLO CALIFORNIA NATIONAL BANK OF SAN FRANCISO AND CENTRAL PACIFIC RAILWAY COMPANY, RECORD IN BOOK 5693, PAGE 348, OFFICIAL RECORDS OF ALAMEDA COUNTY; THENCE SOUTH 00° 00' 00" EAST 41.28 FEET TO A POINT ON THE SAID SOUTHERLY LINE OF SAID PARCEL NO. 2 TO SOUTHERN PACIFIC COMPANY (1007 OR 415); THENCE ALONG LAST SAID LINE NORTH 84°18'57" WEST 192.17 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 6,899 SQUARE FEET OR 0.182 ACRE OF LAND, MORE OR LESS.

SEE EXHIBIT B – PLAT TO ACCOMPANY LEGAL DESCRIPTION WHICH IS ATTACHED HERETO AND MADE A PART HEREOF.

**END OF DESCRIPTION**

THIS DESCRIPTION AND ITS ACCOMPANYING PLAT WERE PREPARED BY OR UNDER THE DIRECTION OF:

  
SCOTT SHORTLIDGE, LS 6441

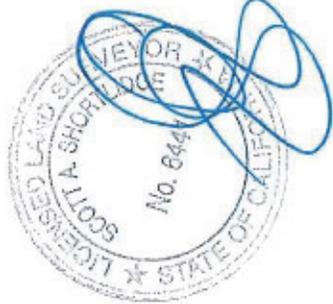
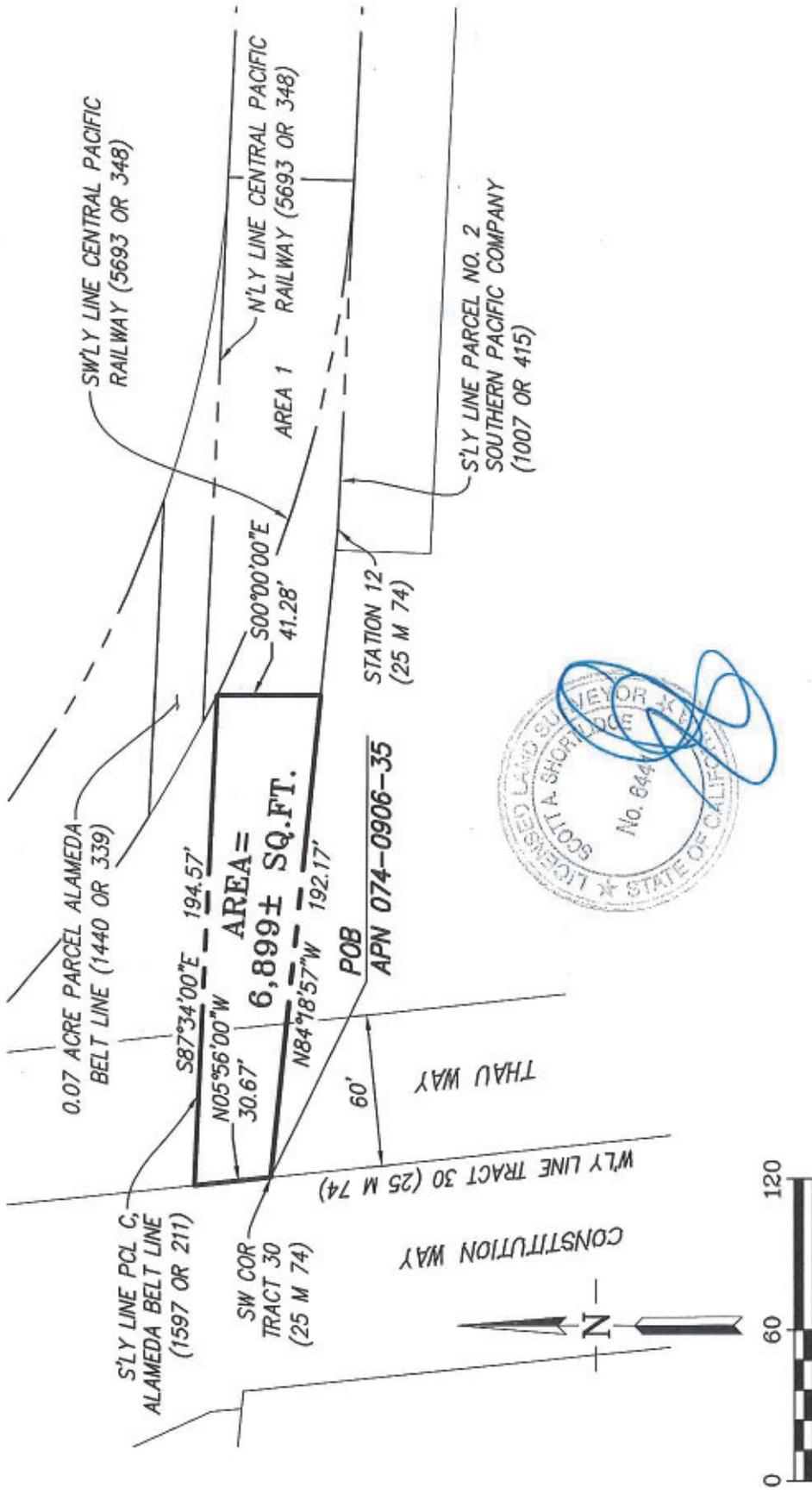


6-22-2021  
DATE

**EXHIBIT "B"**

**MAP OF PROPERTY**

**[APN: 074-0906-035-FEE]**



1 inch = 60 ft.

**EXHIBIT B**  
 PLAT TO ACCOMPANY LEGAL DESCRIPTION  
 UPRR PROPERTY  
 APN 074-0906-035 - FEE

ALAMEDA

CALIFORNIA

**RJA**  
**RUGGERI-JENSEN-AZAR**  
 ENGINEERS • PLANNERS • SURVEYORS  
 4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588  
 PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE: 1"=60'      DATE: 6/21/2021      JOB NO.: 121033-65

## **EXHIBIT 3**

(Quitclaim Deed “Sliver” Portion of Parcel 074-0906-31-6-Fee)

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Alameda  
2263 Santa Clara Avenue, Room 380  
Alameda, California 94501  
APN: 074-0906-31-6-FEE

---

EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE SECTIONS 6103 AND 27383  
EXEMPT FROM DOCUMENTARY TRANSFER TAX PER REV. AND TAX CODE SECTION 11922

## QUITCLAIM DEED

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, **Union Pacific Railroad Company, a Delaware corporation ("Grantor")** does hereby REMISE, RELEASE, and forever QUITCLAIM to the **City of Alameda, a charter city and municipal corporation ("Grantee")**, and to its successors and assigns, all of Grantor's right, title, interest, and estate of, in, and to the real property and all improvements thereon, if any, located in the City of Alameda, County of Alameda, State of California, designated as a portion of Alameda County Assessor's Parcel Number 074-0906-31-6, more particularly described in the legal description attached hereto as Exhibit "A" and the plat attached as Exhibit "B" both made a part hereof by reference (the "Property").

EXCEPTING FROM THIS QUITCLAIM AND RESERVING UNTO GRANTOR, its successors and assigns, forever, all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered underlying the Property, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals by any means or methods suitable to Grantor, its successors and assigns, but without entering upon or using the surface of the Property, and in such manner as not to damage the surface of the Property, or to interfere with the use thereof by Grantee, its successors or assigns.

### Restrictions on Use

Grantee, its successors and assigns, shall only use the Property for the following public uses: access, street, public utility, park, and hike and bike trail uses, which uses shall include, but not be limited to, roads, trails, sidewalks, recreational uses, dog parks, picnic tables and chairs, and similar uses of like kind and nature thereof, but for no other purposes whatsoever (collectively the "Use Restrictions"). Without limitation of the foregoing, the Property shall not be used for any of the following purposes: (i) residential, (ii) lodgings or accommodations (including, without limitation, hotels, motels, boarding houses, dormitories, hospitals, nursing homes, or retirement centers), or (iii) indoor educational, or child-care facilities (including, without limitation, schools, kindergartens, day-care centers, or gymnasiums).

Environmental Covenants:

(a) "As Is" Sale. Grantee, for itself, its successors and assigns, including any successor owner of any interest in the Property, acknowledges and agrees that the Property has been sold and quitclaimed by Grantor in an "AS IS" condition, with all faults, and Grantee acknowledges that the Property may have been used for railroad and/or industrial purposes. Grantee acknowledges and agrees that the Property has been sold and quitclaimed on the basis of Grantee's own independent investigation of the physical and environmental conditions of the Property. Grantee assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation. Grantor does not make any representations or warranties of any kind whatsoever, either express or implied, with respect to the Property; in particular, without limitation, Grantor makes no representations or warranties with respect to the use, condition, title, occupation or management of the Property, or compliance with applicable statutes, laws, codes, ordinances, regulations, requirements (collectively, "Condition of the Property").

(b) Release and Indemnity. GRANTEE, FOR ITS ITSELF, ITS SUCESSORS AND ASSIGNS, INCLUDING ANY SUCCESSOR OWNER OF ANY INTEREST IN THE PROPERTY, HEREBY RELEASES GRANTOR, AND, TO THE MAXIMUM EXTENT PERMITTED BY LAW, INDEMNIFIES, DEFENDS AND SAVES HARMLESS GRANTOR, 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 ATTORNEYS' FEES, IN ANY WAY ARISING OUT OF OR CONNECTED WITH THE KNOWN OR UNKNOWN CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), 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 WILL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF GRANTOR, ITS AFFILIATES, OR THEIR EMPLOYEES, AGENTS OR OFFICERS. WITH RESPECT TO THE FOREGOING, GRANTEE 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 that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.



**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest conveyed by Quitclaim Deed dated \_\_\_\_\_, 2021, from **UNION PACIFIC RAILROAD COMPANY, A DELAWARE CORPORATION**, to the **CITY OF ALAMEDA, A CHARTER CITY AND MUNICIPAL CORPORATION**, is hereby accepted by the undersigned officer on behalf of the **CITY OF ALAMEDA, A CHARTER CITY AND MUNICIPAL CORPORATION**, pursuant to authority conferred by the City of Alameda Charter and Grantee hereby consents to the recordation thereof by its duly authorized agent.

Dated this \_\_\_ day of \_\_\_\_\_, 2021.

CITY OF ALAMEDA, a charter city and municipal 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 Los Angeles )

On \_\_\_\_\_, 20\_\_\_, 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.

\_\_\_\_\_  
Signature

(Seal)

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

**[APN: 074-0906-31-6-FEE]**

EXHIBIT A  
LEGAL DESCRIPTION  
EASTERN AREA  
UPRR PROPERTY  
PORTION OF ASSESSOR'S PARCEL NO. 074-0906-031-6 - FEE  
ALAMEDA, CALIFORNIA

REAL PROPERTY SITUATE IN THE CITY OF ALAMEDA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

BEING A PORTION OF THE PARCEL OF LAND DESCRIBED IN THE INDENTURE BETWEEN THE ANGLO CALIFORNIA NATIONAL BANK OF SAN FRANCISCO AND CENTRAL PACIFIC RAILWAY COMPANY, RECORDED IN BOOK 5693, PAGE 348; ALL OF OFFICIAL RECORDS OF ALAMEDA COUNTY AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE NORTHWESTERLY CORNER OF THE PARCEL OF LAND DESCRIBED IN THE QUITCLAIM DEED TO SMITH PACIFIC MINI LLC, RECORDED IN DOCUMENT NO. 2004-000685, OFFICIAL RECORDS OF ALAMEDA COUNTY; THENCE ACROSS THE SAID CENTRAL PACIFIC RAILWAY COMPANY PARCEL (5693 OR 348) NORTH 03° 08' 00" EAST 25.88 FEET TO A POINT ON THE NORTHERLY LINE OF SAID CENTRAL PACIFIC RAILWAY COMPANY PARCEL (5693 OR 348); THENCE ALONG THE LAST SAID LINE SOUTH 86°52'00" EAST 190.28 FEET TO THE SOUTHWESTERLY LINE OF THE 0.647 ACRE PARCEL OF LAND DESCRIBED AS PARCEL NO. 2 IN THE INDENTURE BETWEEN PLANATAL COMPANY AND ALAMEDA BELT LINE, RECORDED ON MAY 17, 1927 IN BOOK 1601, PAGE 133, OFFICIAL RECORDS OF ALAMEDA COUNTY; THENCE ALONG LAST SAID LINE SOUTHEASTERLY ALONG A NON-TANGENT CURVE CONCAVE TO THE SOUTHWEST, WHICH A RADIAL BEARS SOUTH 08°11'25" WEST TO THE RADIUS POINT, HAVING A RADIUS OF 324.19 FEET, A CENTRAL ANGLE OF 18°33'13" AND AN ARC LENGTH OF 104.98 FEET TO THE NORTHERLY LINE OF THE SAID SMITH PACIFIC MINI LLC PARCEL; THENCE ALONG LAST SAID LINE NORTH 86°52'00" WEST 291.55 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 6,530 SQUARE FEET OF LAND AREA, MORE OR LESS.

SEE EXHIBIT B – PLAT TO ACCOMPANY LEGAL DESCRIPTION WHICH IS ATTACHED HERETO AND MADE A PART HEREOF.

**END OF DESCRIPTION**

THIS DESCRIPTION AND ITS ACCOMPANYING PLAT WERE PREPARED BY ME OR UNDER MY DIRECTION:

  
SCOTT SHORTLIDGE, LS 6441



MARCH 29, 2021  
DATE

**EXHIBIT "B"**

**MAP OF PROPERTY**

**[APN: 074-0906-31-6-FEE]**

SOUTHWESTERLY LINE  
0.647 ACRE PARCEL  
TO ALAMEDA BELT LINE  
(1601 OR 133)

$R=324.19'$   
 $\Delta=18^{\circ}33'13''$   
 $L=104.98'$

$N26^{\circ}44'38''E(R)$

JEAN SWEENEY PARK

$S08^{\circ}11'25''W(R)$

DESCRIBED AREA  
6,530 SQ.FT.

$S86^{\circ}52'00''E$  190.28'

$N86^{\circ}52'00''W$  291.55'

NORTHERLY LINE QUITCLAIM DEED TO  
SMITH PACIFIC MINI LLC, ET AL  
(2004-000685)

WESTERLY LINE  
GRANT DEED TO INDIO PROPERTIES, INC.  
(80-231200)

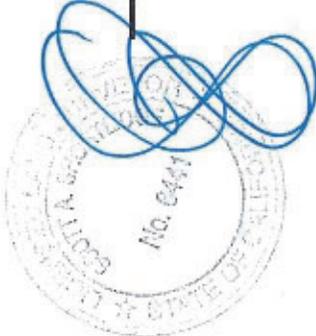
NORTHERLY LINE  
CENTRAL PACIFIC RAILWAY  
(5693 OR 348)

POB  
APN  
074-0906-031-6

POC  
NORTHERLY LINE AREA C,  
JUDGMENT NO. 24709-R  
(4683 OR 158)

**LEGEND**

- OR
- STA
- PCL
- APN
- POB
- POC



1 inch = 40 ft.



BOUNDARY OF DESCRIBED AREA  
OFFICIAL RECORDS  
STATION  
PARCEL  
ASSESSOR'S PARCEL NUMBER  
POINT OF BEGINNING  
POINT OF COMMENCEMENT



**RUGGERI-JENSEN-AZAR**  
ENGINEERS • PLANNERS • SURVEYORS  
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588  
PHONE: (925) 227-9100 FAX: (925) 227-9300

**EXHIBIT B**  
PLAT TO ACCOMPANY LEGAL DESCRIPTION

UPRR PROPERTY  
BAY STREET

ALAMEDA APN: 074-0906-31-6-FEE CALIFORNIA

SCALE:  
1"=40'

DATE:  
03/22/2021

JOB NO.:  
121033-65

## **EXHIBIT 4**

(Grant of Easement – 8th Street)

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

City of Alameda  
2263 Santa Clara Avenue, Room 380  
Alameda, California 94501

APN: 074-0906-031-6-EASEMENT

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*(Space Above For Recorder's Use Only)*  
EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE SECTIONS 6103 AND 27383  
EXEMPT FROM DOCUMENTARY TRANSFER TAX PER REV. AND TAX CODE SECTION 11922

**EASEMENT DEED AND AGREEMENT**

THIS Easement Deed and Agreement ("Deed") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2021, between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Grantor"), and the CITY OF ALAMEDA, a California Charter City and municipal corporation ("Grantee"), whose address is 2263 Santa Clara Avenue, Alameda, CA 94501.

Grantor, for and in exchange for valuable consideration, to it paid by Grantee, the receipt of which is hereby acknowledged, grants to Grantee, its successors and assigns, a NON-EXCLUSIVE EASEMENT on, along, and under that certain real property in Alameda County, State of California, more particularly described in **Exhibit A** and depicted in **Exhibit B**, both of which are attached hereto and hereby made a part hereof (the "Property"), to be used only: (i) for general pedestrian, and non-motorized bicycle access, (ii) by Grantee and its authorized agents for emergency vehicle access, (iii) by Grantee and its authorized agents for maintenance of the Property, and (iv) by Grantee and its authorized agents for the construction, maintenance, operation, repair, renewal, reconstruction and use of subsurface public utilities.

RESERVING, however, unto Grantor, its successors and assigns, the right of Grantor, its successors and assigns, to use of the Property for any purpose not inconsistent with Grantee's use of the Property for the purposes herein defined; provided, however, that Grantor's right to use the Property for public or private roadway purposes shall at all times be paramount, and that the easement granted herein is subject to such rights. Notwithstanding the foregoing, any private roadway use by Grantor shall not unreasonably interfere with the Grantee's use of the Property for the defined purposes in this Easement Deed and Agreement. Grantee agrees that in exercising the easement rights herein granted, Grantee shall not interfere with the construction, use, maintenance or repair of any roadway constructed or which may be constructed in the future (either before or after the construction or installation of any utilities or other, structures, installations or improvements by Grantee) on the Property. Before commencing construction or installation of any utilities or any other structures, installations, or

improvements, Grantee shall submit the plans and specifications therefor to Grantor for Grantor's review and approval. Such review by Grantor shall be completed and appropriate response made to Grantee with twenty (20) days after receipt of such plans by Grantor; and it is expressly understood that approval of such plans by Grantor shall not be unreasonably withheld, conditioned, or delayed; if Grantor fails to approve or request changes within ninety (90) days of submission of all information deemed necessary by Grantor to approve or disapprove of such plans, Grantor shall be deemed to have approved of such plans or specifications.

This grant of easement is made SUBJECT to all outstanding leases, licenses and other outstanding rights, including, but not limited to, those for pipe, telephone, electric and fiber optic lines and the right of renewals and extensions of the same, and subject also to all conditions, limitations, restrictions, encumbrances, reservations or interests of any person which may affect the Property, whether recorded or unrecorded.

The easement herein granted is also limited to such rights as Grantor may have in the Property and is granted without warranty, express or implied. No damages shall be recoverable from Grantor because of any dispossession of Grantee or because of failure of, or defect in, Grantor's title.

TO THE FULL EXTENT IT MAY LAWFULLY DO SO, GRANTEE AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS GRANTOR AND ITS AFFILIATES, THEIR OFFICERS, AGENTS, EMPLOYEES, SUCCESSORS OR ASSIGNS (THE "INDEMNITEES"), AGAINST AND FROM ANY AND ALL LIABILITY (INCLUDING, WITHOUT LIMITATION, STRICT LIABILITY), DAMAGES (INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL OR PUNITIVE DAMAGES), CLAIMS, DEMANDS, ACTIONS, CAUSES OF ACTION, COSTS AND EXPENSES OF WHATSOEVER NATURE (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES), WHICH MAY RESULT FROM PERSONAL INJURY TO OR DEATH OF PERSONS WHOMSOEVER, OR DAMAGE TO OR LOSS OR DESTRUCTION OF PROPERTY WHATSOEVER, WHEN SUCH PERSONAL INJURY, DEATH, LOSS, DESTRUCTION OR DAMAGE, HOWSOEVER CAUSED, GROWS OUT OF OR ARISES FROM THE EXERCISE BY GRANTEE AND/OR BY ITS, AGENTS, INVITEES AND/OR LICENSEES OF ANY OF THE EASEMENT RIGHTS HEREIN GRANTED. THE FOREGOING INDEMNITY SHALL APPLY EXCEPT TO THE EXTENT OF AN INDEMNITEE'S NEGLIGENCE OR WILLFUL MISCONDUCT. THE TERM "AFFILIATE" (OR "AFFILIATES" AS THE CASE MAY BE) AS USED HEREIN MEANS ANY CORPORATION WHICH DIRECTLY OR INDIRECTLY CONTROLS, OR IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH GRANTOR.

IN WITNESS WHEREOF, Grantor and Grantee have caused this Easement Deed and Agreement to be duly executed as of the date first herein written.

**Attest:**

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

\_\_\_\_\_  
Assistant Secretary

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

(Seal)

**Attest:**

**CITY OF ALAMEDA  
a Charter City and municipal corporation**

\_\_\_\_\_  
\_\_\_\_\_

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

(Seal)

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

On \_\_\_\_\_, 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

(Seal)

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

[CALIFORNIA NOTARIAL CERTIFICATE]

(Seal)

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

**[APN: 074-0906-031-6-EASEMENT]**

**EXHIBIT A  
LEGAL DESCRIPTION  
EIGHTH STREET EXTENSION  
UPRR PROPERTY  
PORTION OF ASSESSOR PARCEL NO. 074-0906-031-6-EASEMENT  
ALAMEDA, CALIFORNIA**

REAL PROPERTY SITUATE IN THE CITY OF ALAMEDA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

BEING A PORTION OF THE PARCEL OF LAND DESCRIBED IN THE INDENTURE BETWEEN THE ANGLO CALIFORNIA NATIONAL BANK OF SAN FRANCISCO AND CENTRAL PACIFIC RAILWAY COMPANY, RECORDED IN BOOK 5693, PAGE 348; OFFICIAL RECORDS OF ALAMEDA COUNTY AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

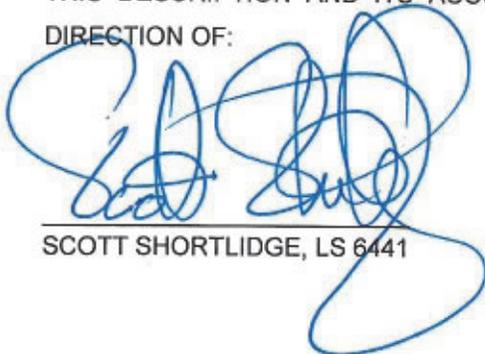
**BEGINNING** AT THE INTERSECTION OF THE SOUTHERLY LINE OF SAID PARCEL (5693 OR 348) AND THE CENTERLINE OF EIGHT STREET (77 FEET WIDE), AS SAID STREET IS SHOWN ON THE "OFFICAL RESURVEY OF PORTION OF SEGREGATION LINE AND VICINITY" FILED IN BOOK 3 OF RECORD OF SURVEYS, PAGE 16, ALAMEDA COUNTY RECORDS; THENCE ALONG SAID SOUTHERLY LINE NORTH 87°34'00" WEST 38.50 FEET; THENCE ACROSS THE SAID CENTRAL PACIFIC RAILWAY COMPANY PARCEL (5683 OR 348) NORTH 01°44'19" EAST 50.00 FEET TO A POINT ON THE NORTHERLY LINE OF SAID CENTRAL PACIFIC RAILWAY COMPANY PARCEL (5683 OR 348); THENCE ALONG LAST SAID LINE SOUTH 87°34'00" EAST 77.00 FEET; THENCE ACROSS THE CENTRAL PACIFIC RAILWAY COMPANY PARCEL (5683 OR 348) SOUTH 01° 44' 19" WEST 50.00 FEET TO A POINT ON THE SOUTHERLY LINE OF THE CENTRAL PACIFIC RAILWAY COMPANY PARCEL (5683 OR 348); THENCE ALONG LAST SAID LINE NORTH 87°34'00" WEST 38.50 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 3,850 SQUARE FEET OF LAND AREA, MORE OR LESS.

SEE EXHIBIT B – PLAT TO ACCOMPANY LEGAL DESCRIPTION WHICH IS ATTACHED HERETO AND MADE A PART HEREOF.

**END OF DESCRIPTION**

THIS DESCRIPTION AND ITS ACCOMPANYING PLAT WERE PREPARED BY OR UNDER THE DIRECTION OF:

  
SCOTT SHORTLIDGE, LS 6441



MARCH 29, 2021  
DATE

**EXHIBIT B**

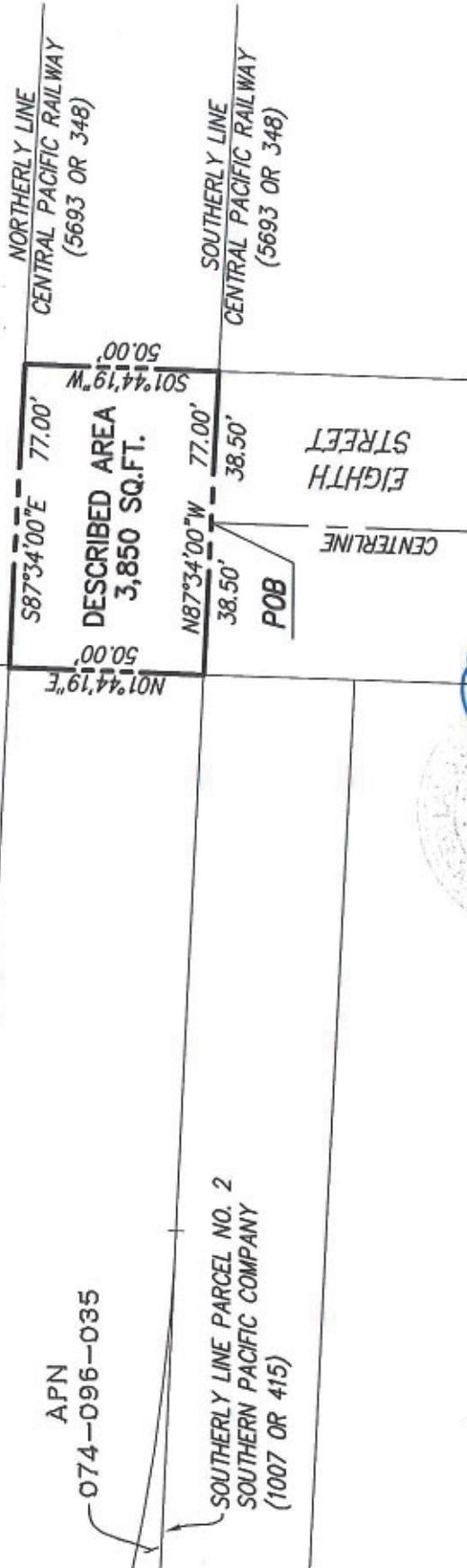
**MAP OF PROPERTY**

**[APN: 074-0906-031-6-EASEMENT]**

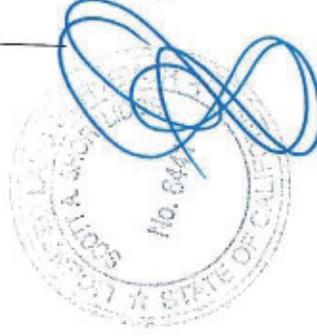
JEAN SWEENEY PARK

APN 074-0906-031-3

APN 074-0906-031-6



1 inch = 40 ft.



**LEGEND**

- BOUNDARY OF DESCRIBED AREA
- OFFICIAL RECORDS
- STATION
- PARCEL
- ASSESSOR'S PARCEL NUMBER
- POINT OF BEGINNING
- POC
- OR
- STA
- PCL
- APN
- POB
- POC

**EXHIBIT B**  
 PLAT TO ACCOMPANY LEGAL DESCRIPTION  
 UPRR PROPERTY  
 EIGHTH STREET  
 APN: 074-0906-31-6-EASEMENT  
 CALIFORNIA

**RJA**  
**RUGGERI-JENSEN-AZAR**  
 ENGINEERS • PLANNERS • SURVEYORS  
 4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588  
 PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE: 1"=40'      DATE: 03/29/2021      JOB NO.: 121033-65

## **EXHIBIT 5**

(Grant of Easement – Wood Street)

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

City of Alameda  
2263 Santa Clara Avenue, Room 380  
Alameda, California 94501

APN: 074-0906-031-6-EASEMENT

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*(Space Above For Recorder's Use Only)*

EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE SECTIONS 6103 AND 27383  
EXEMPT FROM DOCUMENTARY TRANSFER TAX PER REV. AND TAX CODE SECTION 11922

**EASEMENT DEED AND AGREEMENT**

THIS Easement Deed and Agreement ("Deed") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2021, between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Grantor"), and the CITY OF ALAMEDA, a California Charter City and municipal corporation ("Grantee"), whose address is 2263 Santa Clara Avenue, Alameda, CA 94501.

Grantor, for and in exchange for valuable consideration, to it paid by Grantee, the receipt of which is hereby acknowledged, grants to Grantee, its successors and assigns, a NON-EXCLUSIVE EASEMENT on, along, and under that certain real property in Alameda County, State of California, more particularly described in **Exhibit A** and depicted in **Exhibit B**, both of which are attached hereto and hereby made a part hereof (the "Property"), to be used only: (i) for general pedestrian, and non-motorized bicycle access, (ii) by Grantee and its authorized agents for emergency vehicle access, (iii) by Grantee and its authorized agents for maintenance of the Property, and (iv) by Grantee and its authorized agents for the construction, maintenance, operation, repair, renewal, reconstruction and use of subsurface public utilities.

RESERVING, however, unto Grantor, its successors and assigns, the right of Grantor, its successors and assigns, to use of the Property for any purpose not inconsistent with Grantee's use of the Property for the purposes herein defined; provided, however, that Grantor's right to use the Property for public or private roadway purposes shall at all times be paramount, and that the easement granted herein is subject to such rights. Notwithstanding the foregoing, any private roadway use by Grantor shall not unreasonably interfere with the Grantee's use of the Property for the defined purposes in this Easement Deed and Agreement. Grantee agrees that in exercising the easement rights herein granted, Grantee shall not interfere with the construction, use, maintenance or repair of any roadway constructed or which may be constructed in the future (either before or after the construction or installation of any utilities or other, structures, installations or improvements by Grantee) on the Property. Before commencing construction or installation of any utilities or any other structures, installations, or

improvements, Grantee shall submit the plans and specifications therefor to Grantor for Grantor's review and approval. Such review by Grantor shall be completed and appropriate response made to Grantee with twenty (20) days after receipt of such plans by Grantor; and it is expressly understood that approval of such plans by Grantor shall not be unreasonably withheld, conditioned, or delayed; if Grantor fails to approve or request changes within ninety (90) days of submission of all information deemed necessary by Grantor to approve or disapprove of such plans, Grantor shall be deemed to have approved of such plans or specifications.

This grant of easement is made SUBJECT to all outstanding leases, licenses and other outstanding rights, including, but not limited to, those for pipe, telephone, electric and fiber optic lines and the right of renewals and extensions of the same, and subject also to all conditions, limitations, restrictions, encumbrances, reservations or interests of any person which may affect the Property, whether recorded or unrecorded.

The easement herein granted is also limited to such rights as Grantor may have in the Property and is granted without warranty, express or implied. No damages shall be recoverable from Grantor because of any dispossession of Grantee or because of failure of, or defect in, Grantor's title.

TO THE FULL EXTENT IT MAY LAWFULLY DO SO, GRANTEE AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS GRANTOR AND ITS AFFILIATES, THEIR OFFICERS, AGENTS, EMPLOYEES, SUCCESSORS OR ASSIGNS (THE "INDEMNITEES"), AGAINST AND FROM ANY AND ALL LIABILITY (INCLUDING, WITHOUT LIMITATION, STRICT LIABILITY), DAMAGES (INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL OR PUNITIVE DAMAGES), CLAIMS, DEMANDS, ACTIONS, CAUSES OF ACTION, COSTS AND EXPENSES OF WHATSOEVER NATURE (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES), WHICH MAY RESULT FROM PERSONAL INJURY TO OR DEATH OF PERSONS WHOMSOEVER, OR DAMAGE TO OR LOSS OR DESTRUCTION OF PROPERTY WHATSOEVER, WHEN SUCH PERSONAL INJURY, DEATH, LOSS, DESTRUCTION OR DAMAGE, HOWSOEVER CAUSED, GROWS OUT OF OR ARISES FROM THE EXERCISE BY GRANTEE AND/OR BY ITS, AGENTS, INVITEES AND/OR LICENSEES OF ANY OF THE EASEMENT RIGHTS HEREIN GRANTED. THE FOREGOING INDEMNITY SHALL APPLY EXCEPT TO THE EXTENT OF AN INDEMNITEE'S NEGLIGENCE OR WILLFUL MISCONDUCT. THE TERM "AFFILIATE" (OR "AFFILIATES" AS THE CASE MAY BE) AS USED HEREIN MEANS ANY CORPORATION WHICH DIRECTLY OR INDIRECTLY CONTROLS, OR IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH GRANTOR.

IN WITNESS WHEREOF, Grantor and Grantee have caused this Easement Deed and Agreement to be duly executed as of the date first herein written.

Attest:

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

\_\_\_\_\_  
Assistant Secretary

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

(Seal)

Attest:

**CITY OF ALAMEDA  
a Charter City and municipal corporation**

\_\_\_\_\_  
\_\_\_\_\_

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

(Seal)

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

On \_\_\_\_\_, 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

(Seal)

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

[CALIFORNIA NOTARIAL CERTIFICATE]

(Seal)

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

**[APN: 074-0906-031-6-EASEMENT]**

**EXHIBIT A  
LEGAL DESCRIPTION  
WOOD STREET EXTENSION - EASEMENT  
UPRR PROPERTY  
PORTION OF ASSESSOR'S PARCEL NO. 074-0906-031-6  
ALAMEDA, CALIFORNIA**

REAL PROPERTY SITUATE IN THE CITY OF ALAMEDA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

BEING A PORTION OF THE PARCEL OF LAND DESCRIBED IN THE INDENTURE BETWEEN THE ANGLO CALIFORNIA NATIONAL BANK OF SAN FRANCISCO AND CENTRAL PACIFIC RAILWAY COMPANY, RECORDED IN BOOK 5693 AT PAGE 348, OFFICIAL RECORDS OF ALAMEDA COUNTY AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

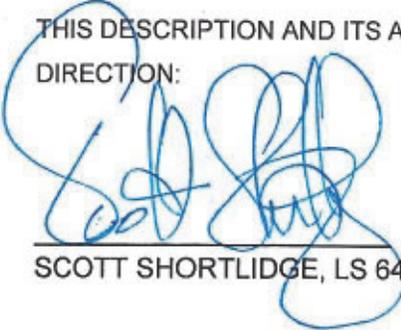
**BEGINNING** AT THE INTERSECTION OF THE SOUTHERLY LINE OF SAID PARCEL AND THE NORTHERLY EXTENSION OF THE WESTERLY LINE OF WOOD STREET (70 FEET WIDE) AS SAID STREET IS SHOWN THE "OFFICIAL RESURVEY OF PORTION OF SEGREGATION LINE AND VICINITY" FILED ON AUGUST 13, 1951 IN BOOK 3 OF RECORD OF SURVEYS AT PAGE 16, ALAMEDA COUNTY RECORDS; THENCE ALONG SAID EXTENSION NORTH 01°58'00" EAST 50.29 FEET TO THE NORTHERLY LINE OF SAID PARCEL (5693 OR 348); THENCE ALONG LAST SAID LINE NORTH 85°45'45" EAST 7.30 FEET AND SOUTH 87°14'10" EAST 62.74 FEET; THENCE ACROSS THE CENTRAL PACIFIC RAILWAY COMPANY PARCEL SOUTH 01°58'00" WEST 54.11 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID CENTRAL PACIFIC RAILWAY COMPANY PARCEL (5693 OR 348); THENCE ALONG LAST SAID LINE NORTH 84°50'45" WEST 70.11 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 3,682 SQUARE FEET OF LAND AREA, MORE OR LESS.

SEE EXHIBIT B – PLAT TO ACCOMPANY LEGAL DESCRIPTION WHICH IS ATTACHED HERETO AND MADE A PART HEREOF.

**END OF DESCRIPTION**

THIS DESCRIPTION AND ITS ACCOMPANYING PLAT WERE PREPARED BY ME OR UNDER MY DIRECTION:

  
SCOTT SHORTLIDGE, LS 6441



MARCH 29, 2021  
DATE

**EXHIBIT "B"**

**MAP OF PROPERTY**

**[APN: 074-0906-031-6-EASEMENT]**

JEAN SWEENEY PARK



**LEGEND**

- OR
  - STA
  - PCL
  - APN
  - POB
  - POC
- BOUNDARY OF DESCRIBED AREA  
 OFFICIAL RECORDS  
 STATION  
 PARCEL  
 ASSESSOR'S PARCEL NUMBER  
 POINT OF BEGINNING  
 POINT OF COMMENCEMENT



*[Signature]*  
 SCOTT SHORTLIDGE, LS 6441  
 MARCH 29, 2021



1 inch = 40 ft.

**EXHIBIT B**  
 PLAT TO ACCOMPANY LEGAL DESCRIPTION  
 UPRR PROPERTY  
 WOOD STREET - EASEMENT  
 ALAMEDA CALIFORNIA

**RJA**  
**RUGGERI-JENSEN-AZAR**  
 ENGINEERS • PLANNERS • SURVEYORS  
 4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588  
 PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE: 1"=40'  
 DATE: 03/29/2021  
 JOB NO.: 121033-65