

**SUBMITTAL TO THE FLOOD CONTROL AND
WATER CONSERVATION DISTRICT
BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM: 11.3
(ID # 22889)

MEETING DATE:

Tuesday, September 12, 2023

FROM : FLOOD CONTROL DISTRICT:

SUBJECT: FLOOD CONTROL DISTRICT: Approval of the Cooperative Agreement Between the Riverside County Flood Control and Water Conservation District, the City of Jurupa Valley and Highpointe Emerald Ridge, LLC for Belltown 30th Street Storm Drain, Stage 2 and Belltown Line D, Stage 2, Tract Map No. 36947, Project Nos. 1-0-00158 and 1-0-00155, CEQA Exempt (CEQA Guidelines Section 15061(b)(3)), District 2. [\$0]

COMMENDED MOTION: That the Board of Supervisors:

1. Find that execution of the Cooperative Agreement ("Agreement") is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3), the "Common Sense" exemption;
2. Approve the Agreement between the Riverside County Flood Control and Water Conservation District ("District"), the City of Jurupa Valley ("City") and Highpointe Emerald Ridge, LLC ("Developer");

Continued on Page 2

ACTION:Policy

Jason Uhley, GENERAL MGR-CHF FLD CNTRL ENG 8/30/2023

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Washington, seconded by Supervisor Spiegel and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Gutierrez
Nays: None
Absent: None
Date: September 12, 2023
xc: Flood

Kimberly A. Rector
Clerk of the Board

By: 
Deputy

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD
OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

COMMENDED MOTION: That the Board of Supervisors:

3. Authorize the Chair of the District's Board of Supervisors to execute the Agreement documents on behalf of the District;
4. Authorize the General Manager-Chief Engineer or designee to take all necessary steps to implement the Agreement, including, but not limited to, negotiating, approving and executing any non-substantive amendments and any assignment and assumption associated with change of ownership of the property, subject to approval by County Counsel; and
5. Direct the Clerk of the Board to return four (4) copies of the executed Agreement to the District.

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 0	\$ 0	\$ 0	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: The Developer is funding all construction and construction inspection costs (100%)			Budget Adjustment: No	
			For Fiscal Year: N/A	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Agreement sets forth the terms and conditions by which certain flood control facilities required as a condition of approval for Tract Map No. 36947 are to be constructed by the Developer and inspected, operated and maintained by the District and City.

The Agreement is necessary to formalize the transfer of necessary rights of way and to provide for District construction inspection and subsequent operation and maintenance of the Belltown 30th Street Storm Drain, Stage 2 and Belltown Line D, Stage 2 facilities ("Project").

Upon construction completion of the Project, the District will assume ownership, operation and maintenance of the mainline storm drain system greater than 36 inches in diameter and safety devices.

The City will assume ownership and responsibility for the operation and maintenance of the Project's associated curbs and gutters, inlets, outlets and certain lateral connector pipes that are 36 inches or less in diameter located within City right of way.

County Counsel has approved the Agreement as to legal form, and the City and Developer have executed the Agreement.

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD
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Environmental Findings

The Agreement is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) (Common Sense exemption), which provides, "The activity is covered by the common-sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." The Agreement does not authorize actual physical development of the underlining property to any extent whatsoever. The Agreement merely establishes the terms and conditions under which the District will accept future Operation and Maintenance responsibilities of the facilities identified in the Agreement if and when they are constructed. Such development, if it occurs at all, is subject to separate CEQA review by the Lead Agency with land use authority over the development prior to construction. As such, execution of this Agreement is a separate and distinct project under CEQA from the development of the site therefore it can be seen with certainty that there is no possibility that executing this Agreement will have a significant effect on the environment.

Impact on Residents and Businesses

As noted above, construction of these drainage improvements will facilitate the development of Tract Map No. 36947. The principal beneficiaries are the future residents of the tract. Ancillary benefits will accrue to the public who will utilize the tract's roadways.

SUPPLEMENTAL:


Additional Fiscal Information

The Developer is funding all construction and construction inspection costs. Future operation and maintenance costs of the District maintained storm drain facilities will be accrued by the District.

ATTACHMENTS:

1. Vicinity Map
2. Cooperative Agreement

SK:blm
P8/252503



Jason Farin, Principal Management Analyst 9/5/2023

COOPERATIVE AGREEMENT
Belltown 30th Street Storm Drain, Stage 2
Belltown Line D, Stage 2
Project Nos. 1-0-00158 and 1-0-00155
Tract Map No. 36947

This Cooperative Agreement ("Agreement"), dated as of September 12, 2023 is entered into by and between the Riverside County Flood Control and Water Conservation District, a body politic ("DISTRICT"), the City of Jurupa Valley, a municipal corporation of the State of California ("CITY"), and Highpointe Emerald Ridge, LLC, a California limited liability company ("DEVELOPER"). DISTRICT, CITY and DEVELOPER are individually referred to herein as "Party" and collectively referred to herein as the "Parties". The Parties hereby agree as follows:

RECITALS

A. DEVELOPER is the legal owner of record of certain real property located within the city of Jurupa Valley and has submitted for approval Tract Map No. 36947 related to the property. Pursuant to the conditions of approval for Tract Map No. 36947, DEVELOPER must construct certain flood control facilities in order to provide flood protection and drainage for DEVELOPER's planned development; and

B. The legal description of the property related to Tract Map No. 36947 is provided in Exhibit "A", attached hereto and made a part hereof; and

C. The required flood control facilities and drainage improvements related to Tract Map No. 36947 are shown on DISTRICT Drawing No. 1-0758 and shown in concept on Exhibit "B", attached hereto and made a part hereof, and include the construction of:

- (i). Belltown 30th Street Storm Drain, Stage 2 ("30TH STREET STAGE 2"), which is comprised of approximately 165 lineal feet of 48-inch diameter reinforced concrete pipe ("RCP"), as shown in concept in

green on Exhibit "B". At its downstream terminus, 30TH STREET STAGE 2 will connect to DISTRICT's proposed Belltown 30th Street Storm Drain, Stage 1 facility, as shown on DISTRICT's Drawing No. 1-0737; and

- (ii). Belltown Line D, Stage 2 ("LINE D STAGE 2"), which is comprised of approximately 135 lineal feet of 72-inch and 48-inch diameter RCP, as shown in concept in blue on Exhibit "B". At the downstream terminus, LINE D STAGE 2 will connect to DISTRICT's existing Belltown Line D, Stage 1 facility, as shown on DISTRICT's Drawing No. 1-0590; and
- (iii). All safety devices requested by DISTRICT staff during the course of project construction and during any final field inspections, including, but not limited to, concrete pads, slope protection barriers, signage and fencing ("SAFETY DEVICES"). SAFETY DEVICES shall be purchased and installed by DEVELOPER's contractor and are subject to DISTRICT's inspection and approval.
- (iv). Together, 30TH STREET STAGE 2, LINE D STAGE 2 and SAFETY DEVICES are hereinafter called "DISTRICT FACILITIES"; and

D. Associated with the construction of DISTRICT FACILITIES is the construction of various curbs and gutters, inlets, outlets and certain lateral connector pipes that are 36 inches or less in diameter within CITY's right of way are hereinafter called "CITY FACILITIES".

E. Together, DISTRICT FACILITIES and CITY FACILITIES are hereinafter called "PROJECT"; and

F. All Parties recognize and acknowledge that if the downstream storm drain connection for the proposed Belltown 30th Street Storm Drain, Stage 1 facility is not completed prior to the construction of 30TH STREET STAGE 2, DEVELOPER will be responsible for constructing the downstream storm drain connection to the Rubidoux Basin, as shown on Sheets 2-4 on DISTRICT's Drawing No. 1-0737, to serve as an outlet for its planned development; and

G. Due to mutual interests in PROJECT, DEVELOPER and Century Communities of California, LLC, a Delaware limited liability company, have entered into a certain Easement Agreement and Agreement Regarding Constructing Improvements Affecting Real Property, Document No. 2022-0273906 in the Official Records of the County of Riverside, setting forth the terms and conditions by which each Party would contribute funding for the construction of PROJECT. Therefore, Century Communities of California consent is not required for the purposes of this Agreement as it pertains to the obligations of DEVELOPER; and

H. A portion of LINE D STAGE 2 is located within Union Pacific Railroad ("UPRR") held rights of way or easements. Therefore, prior to the commencement of PROJECT construction, DEVELOPER or DEVELOPER's construction contractor(s) must execute a separate Contractor's Right of Entry Agreement with UPRR, in the form attached hereto as Exhibit "C" and made a part hereof, setting forth the provisions under which DEVELOPER or DEVELOPER's construction contractor(s) will perform any work on the real property within UPRR's right of way; and

I. DISTRICT has entered into a certain Pipeline Crossing Agreement, Project No. 0784635 ("PIPELINE AGREEMENT"), with UPRR dated January 25, 2023 to operate and maintain a portion of 30TH STREET STAGE 2 within UPRR held rights of way. Subsequent to

the execution of PIPELINE AGREEMENT, CITY has agreed to accept responsibility of the operation and maintenance of said portion of 30TH STREET STAGE 2, therefore, DISTRICT intends to obtain UPRR's consent to assign its rights, interests and responsibilities under the PIPELINE AGREEMENT to CITY; and

J. DEVELOPER or DEVELOPER's construction contractor(s) must comply with the provisions of PIPELINE AGREEMENT. A true and correct copy of PIPELINE AGREEMENT has been provided to DEVELOPER. PIPELINE AGREEMENT describes the terms and conditions by which the portion of the LINE D STAGE 2 facility required in connection with the development of Tract Map No. 36947 is to be constructed by DEVELOPER and inspected and accepted for operation and maintenance by CITY; and

K. DEVELOPER and CITY desire DISTRICT to accept ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES; and

L. DEVELOPER and DISTRICT desire CITY to accept ownership and the responsibility for the operation and maintenance of CITY FACILITIES; and

M. DISTRICT is willing to accept ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES provided DEVELOPER (i) complies with this Agreement; (ii) constructs PROJECT in accordance with DISTRICT and CITY approved plans and specifications and (iii) accepts ownership and responsibility for the operation and maintenance of PROJECT following completion of PROJECT construction, until such time as DISTRICT accepts ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES and CITY accepts ownership and responsibility for the operation and maintenance of CITY FACILITIES as set forth herein; and

N. CITY is willing to (i) accept and hold faithful performance and payment bonds submitted by DEVELOPER on behalf of DISTRICT for DISTRICT FACILITIES; (ii)

review and approve DEVELOPER's plans and specifications for PROJECT; (iii) inspect the construction of PROJECT; (iv) grant DISTRICT the right to inspect, operate and maintain DISTRICT FACILITIES within CITY rights of way; (v) consent to the acceptance of PIPELINE AGREEMENT and (vi) accept ownership and responsibility for the operation and maintenance of CITY FACILITIES, provided PROJECT is constructed in accordance with plans and specifications approved by DISTRICT and CITY.

NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants hereinafter contained, the Parties hereto mutually agree that the above recitals are true and correct and incorporated into the terms of this Agreement and as follows:

SECTION I

DEVELOPER shall:

1. Prepare PROJECT plans and specifications, hereinafter called "IMPROVEMENT PLANS", in accordance with applicable DISTRICT and CITY standards, and submit to DISTRICT and CITY for their respective review and approval.
2. Continue to pay DISTRICT, within thirty (30) calendar days after receipt of periodic billings from DISTRICT, any and all such amounts as are deemed reasonably necessary by DISTRICT to cover DISTRICT's costs associated with (i) the review and approval of IMPROVEMENT PLANS; (ii) the processing and administration of this Agreement and (iii) construction inspection costs. Additionally, DEVELOPER shall pay CITY, within thirty (30) calendar days after receipt of periodic billings from CITY, any and all such amounts as are deemed reasonably necessary by CITY to cover CITY's costs associated with (i) the review and approval of IMPROVEMENT PLANS; (ii) the processing and administration of this Agreement and (iii) construction inspection costs.

3. By execution of this Agreement, grant DISTRICT and CITY the right to enter upon DEVELOPER's property where necessary and convenient for the purpose of gaining access to and performing inspection services for the construction of PROJECT as set forth herein.

4. Upon execution of this Agreement or not less than twenty (20) calendar days prior to recordation of the final map for Tract Map No. 36947 or any phase thereof, whichever occurs first, provide CITY with faithful performance and payment bonds in accordance with CITY's municipal code or ordinance, including any amendments thereto, for the estimated cost for construction of (i) DISTRICT FACILITIES as determined by DISTRICT and (ii) CITY FACILITIES as determined by CITY. The surety, amount and form of the bonds shall be subject to approval of DISTRICT (Attention: Contract Services Section) and CITY. The bonds shall remain in full force and effect until DISTRICT FACILITIES are accepted by DISTRICT and CITY FACILITIES are accepted by CITY as complete. Both bonds shall be subscribed by an Admitted Surety Insurer, which is authorized to transact surety insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or larger. Should any bond or surety become insufficient, DEVELOPER shall furnish a new bond within ten (10) calendar days after receiving notice from CITY.

5. Upon DISTRICT's and CITY's approval of IMPROVEMENT PLANS, deposit with DISTRICT (Attention: Business Office – Accounts Receivable) and notify Contract Services Section the estimated cost of providing construction inspection for DISTRICT FACILITIES, in an amount as determined and approved by DISTRICT in accordance with Ordinance Nos. 671 and 749 of the County of Riverside, including any amendments thereto, based upon the bonded value of DISTRICT FACILITIES.

6. Upon DISTRICT's and CITY's approval of IMPROVEMENT PLANS, furnish DISTRICT (Attention: Contract Services Section) with a complete list of all contractors

and subcontractors to be performing work on PROJECT, including the corresponding license number and license classification of each. At such time, DEVELOPER shall further identify in writing its designated superintendent for PROJECT construction.

7. Upon DISTRICT's and CITY's approval of IMPROVEMENT PLANS, furnish DISTRICT (Attention: Contract Services Section) with a construction schedule which shall show the order and dates in which DEVELOPER or DEVELOPER's contractor proposes to carry out the various parts of work, including estimated start and completion dates. As construction of PROJECT progresses, DEVELOPER shall update said construction schedule as requested by DISTRICT.

8. Upon DISTRICT's and CITY's approval of IMPROVEMENT PLANS, furnish DISTRICT (Attention: Contract Services Section) with a confined space entry procedure specific to PROJECT. The procedure shall comply with requirements contained in California Code of Regulations, Title 8, Section 5158, Other Confined Space Operations; Section 5157, Permit Required Confined Space; and District Confined Space Procedures, SOM-18. The procedure shall be reviewed and approved by DISTRICT prior to the issuance of a Notice to Proceed, which shall be given by DISTRICT to DEVELOPER upon DISTRICT's and CITY's approval.

9. Upon DISTRICT's and CITY's approval of IMPROVEMENT PLANS, an original certificate of insurance evidencing the required insurance coverage shall be provided to DISTRICT (Attention: Contract Services Section) and CITY. At minimum, the procured insurance coverages should adhere to DISTRICT's required insurance provided in Exhibit "D", attached hereto and made a part hereof. DEVELOPER shall not commence construction until DISTRICT (Attention: Contract Services Section) and CITY have been furnished with original certificate(s) of insurance and original certified copies of endorsements and, if requested, certified

original policies of insurance including all endorsements and any and all other attachments. Failure to maintain the insurance required by this paragraph shall be deemed a material breach of this Agreement and shall authorize and constitute authority for DISTRICT, at its sole discretion, to provide written notice to DEVELOPER that DISTRICT is unable to perform its obligations hereunder, nor to accept responsibility for ownership, operation and maintenance of DISTRICT FACILITIES due, either in whole or in part, to said breach of this Agreement.

10. Upon DISTRICT and CITY approval of IMPROVEMENT PLANS or not less than twenty (20) calendar days prior to recordation of the final map for Tract Map No. 36947 or any phase thereof, whichever occurs first, furnish DISTRICT (Attention: Plan Check Section) and CITY with sufficient evidence of DEVELOPER securing the necessary licenses, agreements, permits, approvals, rights of way, rights of entry and temporary construction easements as may be needed for the construction, inspection, operation and maintenance of PROJECT as determined and approved by DISTRICT and CITY.

11. [INTENTIONALLY DELETED]

12. [INTENTIONALLY DELETED]

13. Prior to the start on any portion of PROJECT construction, furnish DISTRICT (Attention: Plan Check Section) and CITY each with a set of final mylar plans PROJECT plans and assign their ownership to DISTRICT and CITY respectively.

14. Prior to the start on any portion of PROJECT construction, furnish DISTRICT (Attention: Plan Check Section) with an executed copy of the Contractor's Right of Entry Agreement with UPRR.

15. After receiving DISTRICT's plan check and administrative clearance for PROJECT construction as set forth in Sections I.1 through I.14, notify DISTRICT (Attention: Construction Management Section) and CITY with twenty (20) calendar days written notice of

intent to start of construction of PROJECT, and include PROJECT's geotechnical firm, concrete lab/test firm, D-Load test forms, trench shoring/false work calculations and concrete mix designs for DISTRICT's review and approval. Construction shall not begin on any element of PROJECT, for any reason whatsoever, until DISTRICT has issued to DEVELOPER a written Notice to Proceed authorizing DEVELOPER to commence construction of PROJECT. DISTRICT reserves the right to withhold issuance of the Notice to Proceed in accordance with Section IV.4.

16. Prior to commencing construction, obtain, at its sole cost and expense, and furnish DISTRICT (Attention: Plan Check Section) and CITY with copies of all permits, approvals or agreements required by any federal, state or local resource and/or regulatory agency for the construction, operation and maintenance of PROJECT. Such documents may include, but are not limited to, those issued by the U.S. Army Corps of Engineers, California Regional Water Quality Control Board, California State Department of Fish and Wildlife, State Water Resources Control Board and Western Riverside County Regional Conservation Authority ("REGULATORY PERMITS").

17. Not permit any change to or modification of DISTRICT and CITY approved IMPROVEMENT PLANS without the prior written permission and consent of DISTRICT and CITY.

18. Comply with all Cal/OSHA safety regulations, including, but not limited to, regulations concerning confined space and maintain a safe working environment for DEVELOPER, DISTRICT and CITY employees on the site.

19. Comply with all provisions of PIPELINE AGREEMENT.

20. Upon receipt of DISTRICT's written Notice to Proceed, construct or cause to be constructed PROJECT at DEVELOPER's sole cost and expense in accordance with DISTRICT and CITY approved IMPROVEMENT PLANS.

21. If construction has not commenced for the proposed Belltown 30th Street Storm Drain, Stage 1 facility, construct or cause to be constructed the downstream connection to the Rubidoux Basin as shown on Sheets 2-4 on DISTRICT's Drawing No. 1-0737.

22. Within two (2) weeks of completing PROJECT construction, provide DISTRICT (Attention: Construction Management Section) and CITY with written notice that PROJECT construction is substantially complete, and request (i) DISTRICT conduct a final inspection of DISTRICT FACILITIES and (ii) CITY conduct a final inspection of CITY FACILITIES.

23. [INTENTIONALLY DELETED]

24. [INTENTIONALLY DELETED]

25. Upon completion of PROJECT construction, accept ownership, sole responsibility and all liability whatsoever for the operation and maintenance of PROJECT until such time as (i) DISTRICT accepts ownership and responsibility for operation and maintenance of DISTRICT FACILITIES and (ii) COUNTY accepts ownership and responsibility for operation and maintenance of COUNTY FACILITIES.

26. Upon completion of PROJECT construction but prior to DISTRICT acceptance of DISTRICT FACILITIES for ownership, operation and maintenance, provide or cause its civil engineer of record or construction civil engineer of record, duly registered in the State of California, to provide DISTRICT (Attention: Construction Management Section) with (i) soil compaction report(s) – stamped and wet signed by the geotechnical engineer; (ii) concrete testing report(s) – stamped and wet signed by the civil engineer of record and (iii) a redlined "record drawings" copy of IMPROVEMENT PLANS. After DISTRICT approval of the redlined "record drawings," DEVELOPER's engineer shall schedule with DISTRICT a time to transfer the redlined changes onto DISTRICT's original mylars at DISTRICT's office; after which, the

engineer shall review, stamp and sign the original IMPROVEMENT PLANS as "record drawings."

27. Ensure that all work performed pursuant to this Agreement by DEVELOPER, its agents or contractors is done in accordance with all applicable local, state and federal laws and regulations, including, but not limited to, all applicable provisions of the Labor Code, Business and Professions Code, and Water Code. DEVELOPER shall be solely responsible for all costs associated with compliance with applicable laws and regulations.

28. Pay, if suit is brought upon this Agreement or any bond guaranteeing the completion of PROJECT, all costs and reasonable expenses and fees, including reasonable attorneys' fees, and acknowledge that, upon entry of judgment, all such costs, expenses and fees shall be computed as costs and included in any judgment rendered.

SECTION II

DISTRICT shall:

1. Review IMPROVEMENT PLANS and approve when DISTRICT has determined that such plans meet DISTRICT standards and are found acceptable to DISTRICT prior to the start of PROJECT construction.
2. Provide CITY an opportunity to review and approve IMPROVEMENT PLANS prior to DISTRICT's final approval.
3. Upon execution of this Agreement, record or cause to be recorded a copy of this Agreement in the Official Records of the Riverside County Recorder.
4. [INTENTIONALLY DELETE]
5. Endeavor to issue DEVELOPER a Notice to Proceed within twenty (20) calendar days of receipt of DEVELOPER's complete written notice as set forth in Section I.15.;

however, DISTRICT's construction inspection staff is limited and, therefore, the issuance of a Notice to Proceed is subject to DISTRICT's staff availability.

6. Reserves the right to withhold issuance of the Notice to Proceed pursuant to Section IV.4.

7. Upon issuance of the Notice to Proceed, provide written notice to UPRR in accordance with Article 9 of PIPELINE AGREEMENT of its intent to assign its rights, interests and responsibilities under PIPELINE AGREEMENT to CITY. PIPELINE AGREEMENT shall be assigned to CITY upon receipt of UPRR's written consent.

8. Inspect construction of DISTRICT FACILITIES.

9. Keep an accurate accounting and submit periodic invoices to DEVELOPER of all DISTRICT costs associated with the (i) review and approval of IMPROVEMENT PLANS and (ii) processing and administration of this Agreement.

10. Keep an accurate accounting of all DISTRICT construction inspection costs and, within forty-five (45) calendar days after DISTRICT acceptance of DISTRICT FACILITIES as being complete, submit a final cost statement to DEVELOPER. If the deposit as set forth in Section I.5. exceeds such inspection costs, DISTRICT shall reimburse DEVELOPER the excess amount within sixty (60) calendar days after DISTRICT's acceptance of DISTRICT FACILITIES as being complete.

11. Upon (i) DISTRICT acceptance of PROJECT construction as being complete and (ii) DISTRICT receipt of stamped and signed "record drawing" of IMPROVEMENT PLAN as set forth in Section I.26., provide DEVELOPER with a reproducible duplicate copy of "record drawings" of IMPROVEMENT PLANS.

12. Prior to DISTRICT acceptance of ownership and responsibility for the operation and maintenance of DISTRICT FACILITIES, DISTRICT FACILITIES shall be in a

satisfactorily maintained condition as solely determined by DISTRICT. If, subsequent to any inspection and in the sole discretion of DISTRICT, DISTRICT FACILITIES are not in an acceptable condition, corrections shall be made at sole expense of DEVELOPER.

13. [INTENTIONALLY DELETED]

14. Accept ownership and sole responsibility for the operation and maintenance of DISTRICT FACILITIES upon (i) DISTRICT inspection of DISTRICT FACILITIES in accordance with Section I.22.; (ii) DISTRICT acceptance of PROJECT construction as being complete; (iii) DISTRICT receipt of stamped and signed "record drawings" of IMPROVEMENT PLANS as set forth in Section I.26.; (iv) DISTRICT FACILITIES are fully functioning as a flood control drainage system as solely determined by DISTRICT and (v) DISTRICT's sole determination that DISTRICT FACILITIES are in a satisfactorily maintained condition.

15. Upon both of the following: DISTRICT acceptance of DISTRICT FACILITIES and DISTRICT receipt of stamped and signed "record drawings" of IMPROVEMENT PLANS as set forth in Section I.26., provide CITY with (i) a reproducible duplicate copy of "record drawings" of constructed DISTRICT FACILITIES; (ii) a written notice that PROJECT is complete and (iii) request CITY to release bonds held for DISTRICT FACILITIES and CITY FACILITIES.

SECTION III

CITY shall:

1. Review and approve IMPROVEMENT PLANS prior to the start of PROJECT construction when CITY has determined that such plans meet CITY standards.
2. Accept CITY and DISTRICT approved faithful performance and payment bonds submitted by DEVELOPER, which meet the requirements of CITY municipal code or

ordinances, including any amendments thereto, as set forth in Section I.4., for the estimated cost for construction of DISTRICT FACILITIES as determined by DISTRICT and CITY FACILITIES as determined by CITY and hold said bonds as provided in this Agreement. The bonds shall list CITY as obligee and be subject to the approval of DISTRICT (Attention: Contract Services Section) and CITY. The bonds shall remain in full force and effect until DISTRICT FACILITIES are accepted by DISTRICT and CITY FACILITIES are accepted by CITY as complete. Both bonds shall be subscribed by an Admitted Surety Insurer, which is authorized to transact surety insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or larger. Should any bond or surety become insufficient, DEVELOPER shall furnish a new bond within ten (10) calendar days after receiving notice from CITY. CITY shall not release said bonds until DISTRICT provides CITY with a reproducible duplicate copy of "record drawings" and written notification that PROJECT is complete as set forth in Section II.15.

3. Request DEVELOPER update the construction schedule as deemed necessary.
4. By execution of this Agreement, grant DISTRICT the right to inspect, operate and maintain DISTRICT FACILITIES within CITY rights of way.
5. [INTENTIONALLY DELETED]
6. [INTENTIONALLY DELETED]
7. Inspect PROJECT construction.
8. [INTENTIONALLY DELETED]
9. Prior to acceptance of CITY FACILITIES, consent to the assignment of PIPELINE AGREEMENT.

10. Accept ownership and sole responsibility for the operation and maintenance of CITY's FACILITIES upon (i) DISTRICT acceptance of DISTRICT FACILITIES for ownership, operation and maintenance; (ii) CITY's final inspection of CITY FACILITIES and (iii) CITY's sole determination that CITY FACILITIES are in a satisfactorily maintained condition.

11. Release occupancy permits in accordance with the approved conditions of approval for Tract Map No. 36947.

12. Upon DISTRICT and CITY acceptance of PROJECT construction as being complete, accept sole responsibility for the adjustment of all PROJECT manhole rings and covers located within CITY rights of way, which must be performed at such time(s) that the finished grade along and above the underground portions of DISTRICT FACILITIES are improved, repaired, replaced or changed. It being further understood and agreed that any such adjustments shall be performed at no cost to DISTRICT.

SECTION IV

It is further mutually agreed:

1. DISTRICT may withhold acceptance for ownership and sole responsibility for the operation and maintenance of DISTRICT FACILITIES unless and until DEVELOPER performs all obligations under this Agreement.

2. All construction work involved with PROJECT shall be inspected by DISTRICT and CITY but shall not be deemed complete until DISTRICT and CITY mutually agree in writing that construction of PROJECT is completed in accordance with DISTRICT and CITY approved IMPROVEMENT PLANS.

3. DISTRICT and CITY personnel may observe and inspect all work being done on DISTRICT FACILITIES but shall provide any comments to DISTRICT personnel who

shall be solely responsible for all quality control communications with DEVELOPER's contractor(s) during the construction of PROJECT.

4. If DEVELOPER fails to commence construction of PROJECT within twenty-four (24) consecutive months after execution of this Agreement, then DISTRICT reserves the right to withhold issuance of the Notice to Proceed after this period of time pending a review of the existing site conditions as they exist at the time DEVELOPER provides written notification to DISTRICT of the start of construction as set forth in Section I.15. In the event of a change in the existing site conditions that materially affects PROJECT function or DISTRICT's ability to operate and maintain DISTRICT FACILITIES, DISTRICT may require DEVELOPER to modify IMPROVEMENT PLANS as deemed necessary by DISTRICT. In the event of a change in the existing site conditions that materially affects PROJECT function or CITY's ability to operate and maintain CITY FACILITIES, CITY may require DEVELOPER to modify IMPROVEMENT PLANS as deemed necessary by CITY.

5. DEVELOPER shall complete construction of PROJECT within twelve (12) months after commencement of construction of PROJECT, unless CITY and DISTRICT agree to extend the time to complete construction. Failure of DEVELOPER to perform the work within the agreed upon time shall constitute authority for (i) DISTRICT to terminate the Agreement and (ii) CITY to perform the remaining work on PROJECT and require DEVELOPER's surety to pay to CITY the penal sum of any and all bonds. Should CITY perform the remaining work on PROJECT under this section, DEVELOPER grants to CITY and CITY's officers, deputies, employees, agents, representatives, contractors and other designees the irrevocable permission to enter upon the Tract Map No. 36947 to complete construction and remaining work on PROJECT. This right of entry shall terminate when such construction and

remaining work is complete. CITY shall subsequently reimburse DISTRICT from the funds paid by DEVELOPER's surety for any DISTRICT costs incurred.

6. In the event DEVELOPER wishes to expedite issuance of a Notice to Proceed, DEVELOPER may elect to furnish an independent qualified construction inspector at DEVELOPER's sole cost and expense. DEVELOPER shall furnish appropriate documentation of the individual's credentials and experience to DISTRICT for review and, if appropriate, approval. DISTRICT shall review the individual's qualifications and experience, and upon approval thereof, said individual, hereinafter called "DEPUTY INSPECTOR", shall be authorized to act on DISTRICT's behalf on all DISTRICT FACILITIES construction and quality control matters. If DEVELOPER's initial construction inspection deposit furnished pursuant to Section I.5. exceeds Ten Thousand Dollars (\$10,000), DISTRICT shall refund to DEVELOPER up to eighty percent (80%) of DEVELOPER's initial inspection deposit within forty-five (45) calendar days of DISTRICT's approval of DEPUTY INSPECTOR; however, a minimum balance of Ten Thousand Dollars (\$10,000) shall be retained on account.

7. PROJECT construction work shall be on a five (5) day, forty (40) hour work week with no work on Saturdays, Sundays or DISTRICT designated legal holidays, unless otherwise approved in writing by DISTRICT and CITY. If DEVELOPER feels it is necessary to work more than the normal forty (40) hour work week or on DISTRICT or CITY designated legal holidays, DEVELOPER shall make a written request for permission from DISTRICT and CITY to work the additional hours. The request shall be submitted to DISTRICT and CITY at least seventy-two (72) hours prior to the requested additional work hours and state the reasons for the overtime and the specific time frames required. The decision of granting permission for overtime work shall be made by DISTRICT and CITY at their sole discretion and shall be final. If permission is granted by DISTRICT and CITY, DEVELOPER will be charged the cost incurred

at the overtime rates for additional inspection time required in connection with the overtime work in accordance with County of Riverside Ordinance Nos. 671 and 749, including any amendments thereto.

8. DEVELOPER shall indemnify and hold harmless DISTRICT, the County of Riverside, CITY (including each of their Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, City Council, elected and appointed officials, employees, contractors, agents and representatives) (individually and collectively referred to as "Indemnitees") from any liability whatsoever, based or asserted upon any services of DEVELOPER and/or DEVELOPER's construction contractor(s), (including their respective officers, employees, subcontractors, agents or representatives) arising out of or in any way relating to this Agreement, including, but not limited to, property damage, bodily injury or death, or any other element of any kind or nature whatsoever. DEVELOPER or DEVELOPER's construction contractor(s) shall defend, at its sole expense, including all costs and fees, including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards, the Indemnitees in any claim or action based upon such alleged acts or omissions.

9. With respect to any action or claim subject to indemnification herein by DEVELOPER, DEVELOPER shall, at its sole cost, have the right to use counsel of their own choice and may adjust, settle or compromise any such action or claim only with the prior consent of DISTRICT, the County of Riverside and CITY. Any such adjustment, settlement or compromise shall not in any manner whatsoever limit or circumscribe DEVELOPER's indemnification to Indemnitees as set forth herein. No settlement on behalf of CITY that would impose construction, maintenance or other obligations on CITY beyond those described in this Agreement shall be effective unless and until the settlement agreement is agreed to in writing by the City Manager on behalf of CITY.

10. DEVELOPER's and DEVELOPER's construction contractor(s) obligation hereunder shall be satisfied when DEVELOPER or DEVELOPER's construction contractor(s) has provided to DISTRICT, the County of Riverside and CITY the appropriate form of dismissal relieving DISTRICT, the County of Riverside or CITY from any liability for the action or claim involved.

11. The specified insurance limits required in this Agreement shall in no way limit or circumscribe DEVELOPER's or DEVELOPER's construction contractor(s) obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

12. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with California Civil Code Section 2782. Such interpretation shall not relieve DEVELOPER or DEVELOPER's construction contractor(s) from indemnifying the Indemnitees to the fullest extent allowed by law.

13. DEVELOPER for itself, its successors and assigns hereby releases DISTRICT, the County of Riverside and CITY (including each of their Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, City Council, elected and appointed officials, employees, agents and representatives) from any and all claims, demands, actions or suits of any kind arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution or any other law or ordinance which seeks to impose any other liability or damage whatsoever for damage caused by the discharge of drainage within or from PROJECT. Nothing contained herein shall constitute a release by DISTRICT, County of Riverside or CITY (including their Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives) of

DEVELOPER from any and all claims, demands, actions or suits of any kind arising out of any liability, known or unknown, present or future, for the negligent maintenance of PROJECT by DEVELOPER after the acceptance of PROJECT by DISTRICT or CITY.

14. Any waiver by any Party hereto of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term hereof. Failure on the part of any Party hereto to require exact, full and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms hereof or estopping such Party from enforcement hereof.

15. Any and all notices sent or required to be sent to the Parties of this Agreement will be mailed by first class mail, postage prepaid, to the following addresses:

To DISTRICT: RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
1995 Market Street
Riverside, CA 92501
Attn: Contract Services Section

To CITY: CITY OF JURUPA VALLEY
8930 Limonite Avenue
Jurupa Valley, CA 92509
Attn: Octavio Duran Jr.

To DEVELOPER: HIGHPOINTE EMERALD RIDGE, LLC
16501 Scientific Way
Irvine, CA 92618
Attn: Ross Yamaguchi

16. This Agreement is to be construed in accordance with the laws of the State of California. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way.

17. Any action at law or in equity brought by any of the Parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in a court of

competent jurisdiction in the County of Riverside, State of California, and the Parties hereto waive all provisions of law providing for a change of venue in such proceedings to any other County.

18. This Agreement is the result of negotiations between the Parties hereto and the advice and assistance of their respective counsel. The fact that this Agreement was prepared as a matter of convenience by DISTRICT shall have no importance or significance. Any uncertainty or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT prepared this Agreement in its final form.

19. The provisions of this Agreement are solely for the benefit of the Parties and not for the benefit of any third party. Accordingly, no third party shall have any right or action based on the provisions of this Agreement.

20. The rights and obligations of DEVELOPER shall inure to and be binding upon all heirs, successors and assignees.

21. No Party shall assign this Agreement without the written consent of all other Parties. Any attempt to delegate or assign any interest herein without written consent of all other Parties shall be deemed void and of no effect.

22. In the event DEVELOPER sells Tract Map No. 36947, DEVELOPER shall notify DISTRICT and CITY of any such transfer or assignment in writing no later than thirty (30) calendar days from the date of the sale. DEVELOPER expressly understands and agrees that it shall remain liable with respect to any and all of the obligations and duties in this Agreement until DISTRICT, CITY, DEVELOPER and the new owner(s) of Tract Map No. 36947 fully execute an assignment and assumption agreement that transfers all DEVELOPER's rights, duties or obligations hereunder to the new owner(s) of Tract Map No. 36947.

23. The individual(s) executing this Agreement on behalf of DEVELOPER certify that they have the authority within their respective company(ies) to enter into and execute

this Agreement and have been authorized to do so by all boards of directors, legal counsel and/or any other board, committee or other entity within their respective company(ies) which have the authority to authorize or deny entering into this Agreement.

24. This Agreement is intended by the Parties hereto as a final expression of their understanding with respect to the subject matter hereof and as a complete and exclusive statement of the terms and conditions thereof and supersedes any and all prior and contemporaneous agreements and understandings, oral or written, in connection therewith. This Agreement may be changed or modified only upon the written consent of the Parties hereto.

25. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

//

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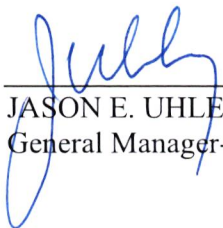
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on


9/12/23

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By 
JASON E. UHLEY
General Manager-Chief Engineer

By 
KAREN SPIEGEL, Chair
Riverside County Flood Control and Water Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

MINH C. TRAN
County Counsel

KIMBERLY RECTOR
Clerk of the Board

By 
CAROLINE K. MONROY
Deputy County Counsel

By 
Deputy

(SEAL)

[Signed in Counterpart]

Cooperative Agreement
Belltown 30th Street Storm Drain, Stage 2
Belltown Line D, Stage 2
Project Nos. 1-0-00158 and 1-0-00155
Tract Map No. 36947
AMR:blm
06/28/23

RECOMMENDED FOR APPROVAL:

CITY OF JURUPA VALLEY

By Rod B. Butler
ROD BUTLER
City Manager

By [Signature]
CHRIS BARAJAS
Mayor

APPROVED AS TO FORM:

ATTEST:

By [Signature]
PETER M. THORSON
City Attorney

By [Signature], Deputy City Clerk
for VICTORIA WASKO
City Clerk

(SEAL)

Cooperative Agreement
Belltown 30th Street Storm Drain, Stage 2
Belltown Line D, Stage 2
Project Nos. 1-0-00158 and 1-0-00155
Tract Map No. 36947
AMR:blm
06/28/23

HIGHPOINTE EMERALD RIDGE, LLC,
a California limited liability company

By HP-SA ER, LLC,
a California limited liability company,
its Manager

By: Highpointe Investments LLC,
a California limited liability company,
Its Manager

By 
TIMOTHY D. ENGLAND
Managing Member

By: Shakoory Investments, LLC,
a California limited liability company,
Its Manager

By 
BABAK SHAKOORY
Manager

(ATTACH NOTARY WITH CAPACITY
STATEMENT)

Cooperative Agreement
Belltown 30th Street Storm Drain, Stage 2
Belltown Line D, Stage 2
Project Nos. 1-0-00158 and 1-0-00155
Tract Map No. 36947
AMR:blm
06/28/23

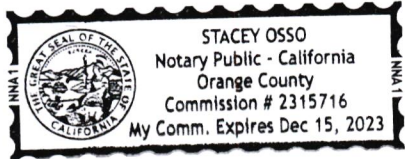
CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

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 ORANGE }
On July 6, 2023 before me, Stacey Osso, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Timothy D. England and
Name(s) of Signer(s)
Babak Shakoori

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 [Handwritten Signature]
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document Cooperative Agreement HP Emerald Ridge
Title or Type of Document:
Document Date: Number of Pages: #3
Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)
Signer's Name:
Signer's Name:
Corporate Officer - Title(s):
Partner - Limited General
Individual Attorney in Fact
Trustee Guardian or Conservator
Other:
Signer is Representing:

EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Jurupa Valley, County of Riverside, State of California, described as follows:

PARCEL 1: (APN: 178-070-007)

THAT CERTAIN REAL PROPERTY AS SHOWN BY MAP ON FILE IN BOOK 9 PAGE 34 OF MAPS, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A STAKE AT THE INTERSECTION OF THE NORTH RIVERSIDE AND JURUPA CANAL AND THE SOUTHWESTERLY SIDE OF SECOND STREET, PRODUCED NORTHWESTERLY ACROSS SAID CANAL AS SHOWN BY MAP OF WEST RIVERSIDE ABOVE DESCRIBED;
THENCE NORTH 53 DEGREES 15' WEST ALONG THE SOUTHWESTERLY LINE OF SAID SECOND STREET, PRODUCED NORTHWESTERLY 1040.35 FEET TO THE POINT OF BEGINNING;
THENCE SOUTH 7 DEGREES 5' WEST, 752.02 FEET;
THENCE NORTH 29 DEGREES 51' WEST, 90 FEET;
THENCE NORTH 0 DEGREES 27' WEST, 229.2 FEET;
I THENCE NORTH 16 DEGREES 14' WEST, 134 FEET;
THENCE NORTH 4 DEGREES 6' EAST, 238.35 FEET;
THENCE NORTH 31 DEGREES 29' EAST, 122.1 FEET TO THE NORTHEASTERLY LINE OF SAID SECOND STREET, PRODUCED NORTHWESTERLY, SAID POINT BEING SOUTHWESTERLY CORNER OF SAID LOT 16 OF LA RANCHERIA ESPLENDIDA, AS SHOWN BY MAP ON FILE IN BOOK 4 PAGE 77 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;
THENCE SOUTHEASTERLY ALONG THE SOUTHWESTERLY LINE OF SAID LOT 16 TO THE SOUTHEASTERLY CORNER THEREOF;
THENCE ACROSS SECOND STREET, PRODUCED TO THE POINT OF BEGINNING;

EXCEPTING THEREFROM THAT PORTION THEREOF INCLUDED IN SECOND STREET. SAID PARCEL OF LAND IS SHOWN BY MAP ON FILE IN BOOK 6 PAGE 8 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 2: (APN: 178-070-006)

THAT CERTAIN REAL PROPERTY SHOWN ON MAP OF WEST RIVERSIDE, IN THE CITY OF JURUPA VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ON FILE IN BOOK 9, PAGE 34 OF MAPS, RECORDS OF SAN BERNARDINO COUNTY, AND ALSO MAP OF BLOCK 1 LOMA ALTA TRACT ON FILE IN BOOK 6, PAGE 8 OF MAPS, RECORDS OF RIVERSIDE COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A STAKE AT THE INTERSECTION OF THE NORTH RIVERSIDE AND JURUPA CANAL AND THE SOUTHWESTERLY LINE OF SECOND STREET, PRODUCED NORTHWESTERLY ACROSS SAID CANAL, AS SHOWN ON SAID MAP; THENCE SOUTH 46° 11' WEST, 662.3 FEET ALONG SAID CANAL; THENCE NORTH 53° 15' WEST, 559.65 FEET; THENCE NORTH 7° 5' EAST, 752.02 FEET; THENCE SOUTH 53° 15' EAST, 1040.35 FEET THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION THEREOF, IF ANY, INCLUDED IN THE RIGHT OF WAY OF THE SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD FROM "BLY QUARRY SPUR" TO THE PLANT OF THE RIVERSIDE PORTLAND CEMENT COMPANY.

PARCEL 2A:

A RIGHT OF WAY FOR PIPE LINES OVER THAT PORTION BEGINNING AT THE INTERSECTION OF THE

WESTERLY LINE OF THE RIGHT OF WAY OF THE NORTH RIVERSIDE AND JURUPA CANAL AND THE LOT LINE BETWEEN LOTS 3 AND 4 IN BLOCK 23 OF MAP OF WEST RIVERSIDE, AS SHOWN BY MAP ON FILE IN BOOK 9, PAGE 34 OF MAPS, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA, PRODUCED NORTHWESTERLY, ACROSS SAID CANAL; THENCE SOUTH 35° 2' WEST, 327.1 FEET; THENCE SOUTH 36° 45' WEST, 181.5 FEET; THENCE SOUTH 35° 20' WEST, 292.4 FEET, THE LAST THREE COURSES FOLLOW AND ARE PARALLEL WITH AND 16-1/2 FEET DISTANT FROM THE CENTER LINE OF SAID CANAL; THENCE NORTH 53° 15' WEST, 432.9 FEET; THENCE NORTH 19° 17' EAST, 395 FEET; THENCE NORTH 36° 30' EAST, 150 FEET; THENCE NORTH 24° 34' EAST, 160 FEET; THENCE NORTH 13° 14' EAST, 127.1 FEET; THENCE NORTH 21° 47' EAST, 160 FEET; THENCE NORTH 39° 48' EAST, 100 FEET; THENCE NORTH 65° 8' EAST, 100 FEET; THENCE NORTH 46° 41' EAST, 150 FEET; THENCE NORTH 72° 9' EAST, 329.7 FEET; THENCE SOUTH 53° 17' EAST, 547.2 FEET, MORE OR LESS, TO A POINT 16-1/2 FEET FROM THE CENTER LINE OF SAID CANAL; THENCE SOUTHWESTERLY PARALLEL WITH AND 16-1/2 FEET FROM THE CENTER LINE OF SAID CANAL AND FOLLOWING THE CURVATURES THEREOF TO THE POINT OF BEGINNING.

PARCEL 3: (APN: 178-120-001)

THAT CERTAIN REAL PROPERTY SHOWN ON MAP OF WEST RIVERSIDE, IN THE CITY OF JURUPA VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ON FILE IN BOOK 9, PAGE 34 OF MAPS, RECORDS OF SAN BERNARDINO COUNTY, AND ALSO MAP OF BLOCK 1 LOMA ALTA TRACT ON FILE IN BOOK 6, PAGE 8 OF MAPS, RECORDS OF RIVERSIDE COUNTY, AND MAP OF PORTION OF THE RUBIDOUX RANCHO ON FILE IN BOOK 5, PAGE 169 OF MAPS, RECORDS OF RIVERSIDE COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT A STAKE AT THE INTERSECTION OF THE WESTERLY LINE OF THE RIGHT OF WAY OF THE NORTH RIVERSIDE AND JURUPA CANAL WITH THE CENTER LINE OF SECOND STREET, EXTENDED WESTERLY, SAID SECOND STREET BEING LOCATED BETWEEN BLOCKS 23 AND 24 OF MAP OF WEST RIVERSIDE, IN THE CITY OF JURUPA VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ON FILE IN BOOK 9, PAGE 34 OF MAPS, RECORDS OF SAN BERNARDINO COUNTY; THENCE FROM SAID INTERSECTION SOUTH 36° 45' WEST, 33 FEET; THENCE SOUTH 46° 11' WEST, 662.3 FEET, TO THE TRUE POINT OF BEGINNING; THE LAST TWO COURSES FOLLOWING THE WESTERLY LINE OF SAID RIGHT OF WAY OF SAID CANAL; THENCE FROM SAID BEGINNING POINT NORTH 53° 15' WEST 559.65 FEET; THENCE NORTH 29° 51' WEST 90 FEET; THENCE SOUTH 16° 59' WEST 339 FEET; THENCE SOUTH 37° 01' WEST 192.8 FEET; THENCE SOUTH 47° 05' WEST 493.8 FEET; THENCE SOUTH 31° 24' WEST 387.7 FEET; THENCE SOUTH 24° 15' WEST 262.9 FEET; THENCE SOUTH 15° 14' WEST 110.6 FEET; THENCE SOUTH 59° 11' EAST 416.62 FEET, TO THE WESTERLY LINE OF THE RIGHT OF WAY OF SAID CANAL; THENCE NORTH 34° 48' EAST 199.5 FEET; THENCE NORTH 45° 45' EAST, 380.8 FEET; THENCE NORTH 37° 40' EAST 179.2 FEET; THENCE NORTH 30° 16' EAST, 547.4 FEET; THENCE 47° 59' EAST 376.8 FEET TO THE POINT OF BEGINNING; THE LAST 5 COURSES FOLLOWING ALONG THE WESTERLY LINE OF THE RIGHT OF WAY OF SAID CANAL.

EXCEPTING THEREFROM THE PORTION THEREOF INCLUDED IN ALTA AVENUE.

SAID PROPERTY IS ALSO SHOWN ON LICENSED LAND SURVEYOR'S MAP ON FILE IN BOOK 7, PAGE 3 OF RECORDS OF SURVEY, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 4: (APN: 179-060-002)

THAT PORTION OF LOT 7 OF ARTHUR PARK'S TRACT, AS SHOWN BY MAP ON FILE IN BOOK 1, PAGES 21 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT THE NORTHERLY CORNER OF SAID LOT 7;

THENCE SOUTHEASTERLY ALONG THE NORTHEASTERLY LINE OF SAID LOT 7, SOUTH 58°40'44" EAST, 450.00 FEET;

THENCE LEAVING SAID NORTHEASTERLY LINE OF LOT 7, SOUTH 46°53'47" WEST, 277.44 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 1462.68 FEET;

THENCE SOUTHWESTERLY 115.77 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 04°32'06";

THENCE SOUTH 42°21'41" WEST, 191.80 FEET;

THENCE NORTH 47°38'19" WEST, 20.00 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 428.34 FEET;

THENCE SOUTHWESTERLY 456.87 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 61°06'43";

THENCE NORTH 76°31'36" WEST, 135.56 FEET TO THE NORTHWESTERLY LINE OF SAID LOT 7;

THENCE NORTHEASTERLY ALONG SAID NORTHWESTERLY LINE, NORTH 39°00'14" EAST, 939.99 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING FROM THE HEREINABOVE DESCRIBED PROPERTY ANY PORTION THEREOF INCLUDED IN PUBLIC ROADS.

PARCEL 5: (APN: 178-070-004 AND 178-120-002)

THAT CERTAIN IRRIGATION DITCH OR CANAL COMMONLY KNOWN AS THE NORTH RIVERSIDE AND JURUPA CANAL, A PLAT OF THAT PORTION OF SAID CANAL LYING WITHIN THE BOUNDARY OF MAP OF A PORTION OF THE NORTH RIVERSIDE AND JURUPA CANAL, IN THE CITY OF JURUPA VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, BEING ON FILE IN BOOK 8, PAGE 43 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

EXCEPTING ANY PORTION THEREOF LYING NORTH OF THE LOT LINE BETWEEN LOTS 3 AND 4 IN BLOCK 23, PROJECTED WESTERLY ACROSS SAID CANAL, OF MAP OF WEST RIVERSIDE, AS SHOWN BY MAP RECORDED IN BOOK 9, PAGE 34 OF MAPS, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA.

ALSO EXCEPTING ANY PORTION LYING SOUTHWESTERLY OF THE NORTHEAST LINE OF ARTHUR PARKS TRACT RECORDED IN BOOK 1, PAGE 21 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

EXHIBIT B



Cooperative Agreement
Belltown 30th Street Storm Drain, Stage 2
Belltown Line D, Stage 2
Project Nos. 1-0-00158 and 1-0-00155
Tract Map No. 36947

EXHIBIT C
TO
SUPPLEMENTAL AGREEMENT

Folder No. 01854-69

Form Approved, AVP-Law
09/01/2018

CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, ("Railroad") and _____, a _____ corporation ("Contractor"), to be addressed at _____.

RECITALS:

The Contractor has been hired by **Riverside County Flood Control And Water Conservation District** to replace the existing CMP pipe with a new RCP pipe for the existing underground pipeline crossing (the "work"), with all or a portion of such work to be performed on property of Railroad at Mile Post 5.43, on the Crestmore (CE007) Subdivision at or near RIVERSIDE, Riverside County, California, pursuant to a Supplemental Agreement between Railroad and Riverside County Flood Control And Water Conservation District with an effective date of 3/17/2000 at such location as shown on the print marked **Exhibit A** attached hereto and hereby made a part hereof.

Railroad is willing to permit Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this Agreement.

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between the Railroad and Contractor, as follows:

Article I. DEFINITION OF CONTRACTOR.

For purposes of this Agreement, all references in this Agreement to the Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

Article II. RIGHT GRANTED; PURPOSE.

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing any work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article IV, and is strictly limited to the scope of work identified to the Railroad, as determined by the Railroad in its sole discretion, and for no other purpose.

Article III. TERMS AND CONDITIONS CONTAINED IN EXHIBITS B AND C.

The terms and conditions contained in **Exhibit B** and **C**, attached hereto, are hereby made a part of this Agreement.

Article IV. ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.

A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.

B. Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

www.up.com/real_estate/third-party-flagging/index.htm	Manager Signal Maintenance Jose D. Garcia 323 312-9382 jdgarcia@up.com
--	--

C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

Article V. TERM; TERMINATION.

A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue for one (1) year from 3/17/2000, unless sooner terminated as herein provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.

B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

Article VI. CERTIFICATE OF INSURANCE.

A. Only upon request, Contractor will provide Railroad with the insurance binders, policies, certificates and/or endorsements set forth in **Exhibit C** of this Agreement.

B. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

Folder No: 01854-69
Union Pacific Railroad Company
1400 Douglas Street STOP 1690
Omaha, Nebraska 68179-1690

Article VII. CHOICE OF FORUM.

Litigation arising out of or connected with this Agreement may be instituted and maintained in the courts of the State of California only, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation, in these courts, and consent to service of process issued by such courts.

Article VIII. DISMISSAL OF CONTRACTOR'S EMPLOYEE.

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

Article IX. ADMINISTRATIVE FEE.

Upon the execution and delivery of this Agreement, Contractor shall pay to Railroad **One Thousand Dollars (\$1,000.00)** as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

Article X. CROSSINGS.

No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

Article XI. EXPLOSIVES.

Explosives or other highly flammable substances shall not be stored on Railroad's property without the prior written approval of Railroad.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By: _____
Thomas Leddy
Manager II - Real Estate

(Contractor Name)

By _____

Name: _____

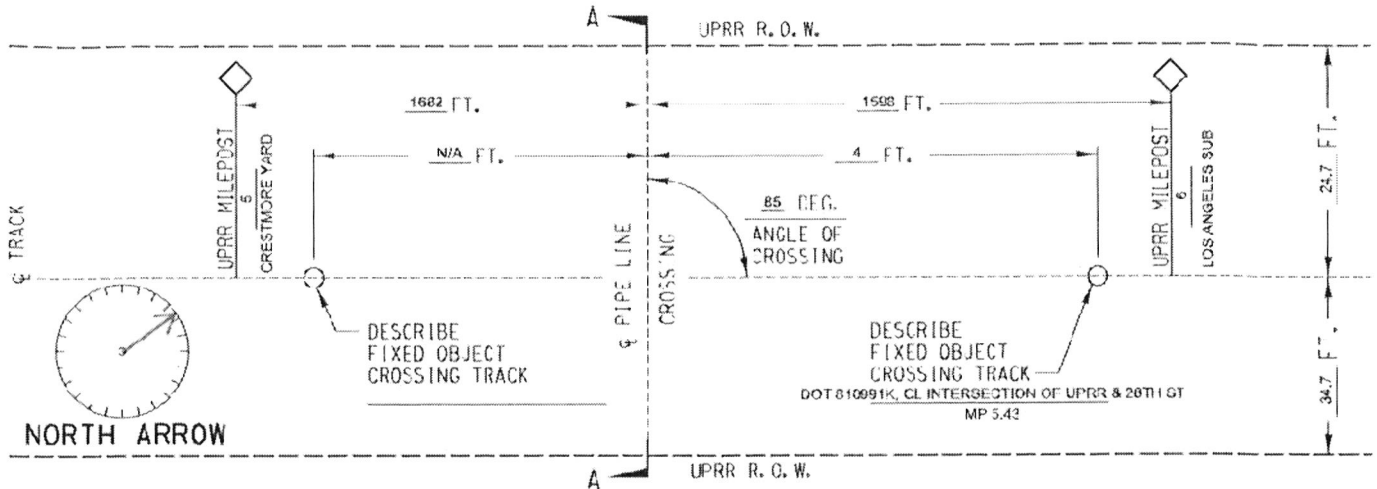
Title: _____

Telephone: _____

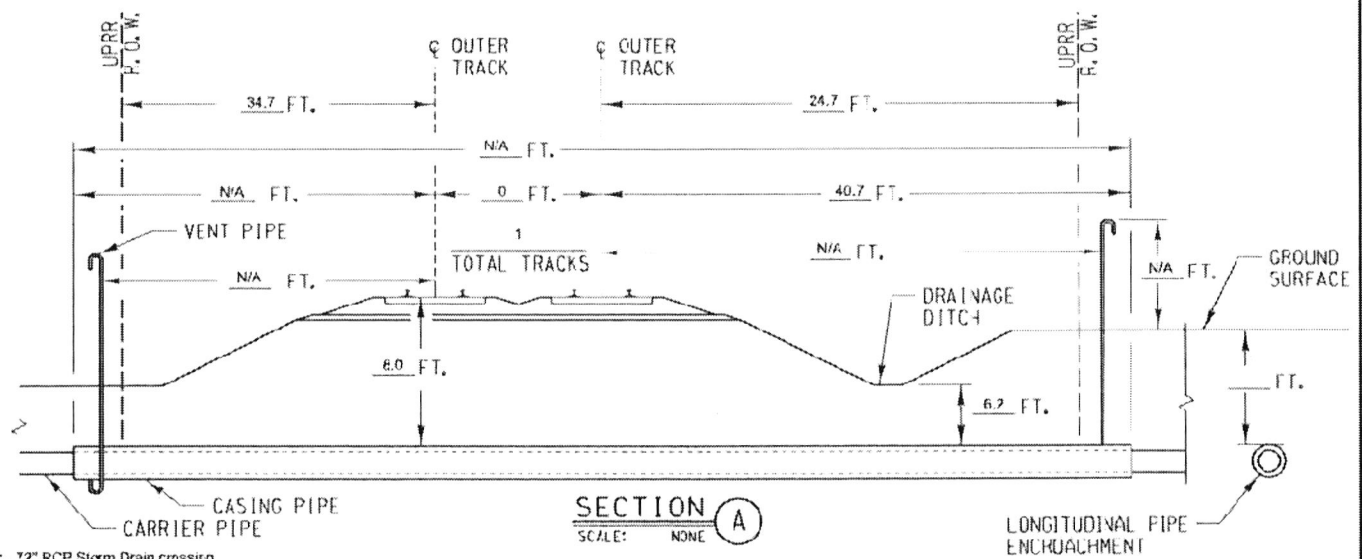
Email: _____

NON-FLAMMABLE LIQUID PIPELINE

- CROSSING
- ENCROACHMENT
- BOTH



PLAN
SCALE: NONE



SECTION A
SCALE: NONE

NOTES: 72" RCP Storm Drain crossing
 1) ALL DIMENSIONS MEASURED PERPENDICULAR TO THE CENTERLINE OF TRACK.
 2) REFER TO AREMA VOLUME 1, CHAPTER 1, PART 5, SECTION 5.3.

A) METHOD OF INSTALLATION OPEN TRENCH
 B) DIST. FROM CENTERLINE OF TRACK TO PIPE ENCROACHMENT 40.7 FT.
 C) SIGNS PROVIDED? YES
 D) CARRIER MATERIAL RCP, IF RCP, CLASS V7
 COMMODITY TO BE CONVEYED STORM WATER
 OPERATIONAL PRESSURE N/A PSI, MAOP N/A PSI.
 WALL THICKNESS (INCH)/ SCHEDULE 7.75 IN, DIAMETER 72 IN.
 CATHODIC/COATING PROTECTION NO
 E) CASING MATERIAL N/A, IF RCP, CLASS V7 N/A
 TOTAL LENGTH CASING PIPE: N/A FT.
 WALL THICKNESS N/A IN. DIAMETER N/A IN.
 CATHODIC/COATING PROTECTION N/A
 CASING PIPE IS N/A AT THE ENDS.
 F) DISTANCE FROM CENTERLINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES
N/A AND N/A



BUILDING AMERICA®

ATTACHMENT A

SUBDIVISION: <u>CRESTMORE CE037</u>	
TRACK TYPE: _____ OR SPUR TRACK	
M.P.: <u>5.43</u>	LAT.: <u>34.0111406</u>
E.S.M.: <u>160</u>	LONG.: <u>-117.4001902</u>
NEAREST CITY: <u>CRESTMORE</u>	COUNTY: <u>RIVERSIDE COUNTY</u> STATE: <u>CA</u>
APPLICANT: <u>RSCFC</u>	
FILE NO.:	DATE: <u>5 / 16 / 2022</u>

ATTACHMENT B
To
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least ten (10) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such ten (10)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time.

When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.

A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.

B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

Section 4. LIENS.

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall visit up.com/CBUD to complete and submit the required form to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.

B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 6. PERMITS - COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 7. SAFETY.

A. A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Licensee or its contractor. Licensee shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Licensee and its contractor shall at a minimum comply with Licensor's then current safety standards located at www.up.com/cs/groups/public/@uprr/@suppliers/documents/up_pdf_nativedocs/pdf_up_supplier_safety_req.pdf

B. to ensure uniformity with the safety standards followed by Licensor's own forces. As a part of Licensee's safety responsibilities, Licensee shall notify Licensor if it determines that any of Licensor's safety standards are contrary to good safety practices. Licensee and its contractor shall furnish copies of each of its employees before they enter the job site.

B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.

C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.

D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 8. INDEMNITY.

A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees ("Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this agreement by Contractor.

B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.

C. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify Railroad under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.

D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against Railroad.

E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

Section 9. RESTORATION OF PROPERTY.

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

Section 10. WAIVER OF DEFAULT.

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

Section 11. MODIFICATION - ENTIRE AGREEMENT.

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

Section 12. ASSIGNMENT - SUBCONTRACTING.

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors, and shall require all subcontractors to maintain the insurance coverage required to be maintained by Contractor as provided in this Agreement, and to indemnify Contractor and Railroad to the same extent as Railroad is indemnified by Contractor under this Agreement.

Form Approved, AVP-Law
09/01/2018

ATTACHMENT C

Union Pacific Railroad Company Insurance Provisions For Contractor's Right of Entry Agreement

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from the Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

A. Commercial General Liability insurance. Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. Business Automobile Coverage insurance. Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less than \$2,000,000 for each accident.

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement – Hazardous materials clean up (MCS 90) if required by law.

C. Workers Compensation and Employers Liability insurance. Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excel workers compensation coverage must be provided. Coverage must include liability arising out of the U.S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

D. Railroad Protective Liability Insurance. Contractor must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.

E. Umbrella or Excess insurance. If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

F. Pollution Liability insurance. Pollution Liability coverage must be included when the scope of the work as defined in the Agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

Other Requirements

G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.

H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.

I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.

J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

L. The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

Exhibit D

DISTRICT's Insurance Requirements is as follows:

Without limiting or diminishing DEVELOPER's obligation to indemnify or hold DISTRICT harmless, DEVELOPER shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the DISTRICT herein refers to the Riverside County Flood Control and Water Conservation District, the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.

A. Workers' Compensation:

If DEVELOPER has employees as defined by the State of California, DEVELOPER shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. Policy shall be endorsed to waive subrogation in favor of DISTRICT.

B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of DEVELOPER's performance of its obligations hereunder. Policy shall name the DISTRICT as Additional Insured. Policy's limit of liability shall not be less than \$2,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.

C. Vehicle Liability:

If DEVELOPER's vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then DEVELOPER shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit. Policy shall name the DISTRICT as Additional Insureds.

Exhibit D

D. Professional Liability:

DEVELOPER shall cause any architect or engineer retained by DEVELOPER in connection with the performance of DEVELOPER's obligations under this Agreement to maintain Professional Liability Insurance providing coverage for the performance of their work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. DEVELOPER shall require that, if such Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and that such architect or engineer shall purchase at such architect or engineer's sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from a new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that such architect or engineer has maintained continuous coverage with the same or original insurer. Coverage provided under items: 1), 2) or 3) shall continue for the term specified in the insurance policy as long as the law allows.

E. General Insurance Provisions – All Lines:

- a. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating of not less than an A: VIII (A: 8) unless such requirements are waived, in writing, by the DISTRICT Risk Manager. If the DISTRICT's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.
- b. The DEVELOPER must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the DISTRICT Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention deemed unacceptable to the DISTRICT, and at the election of the DISTRICT's Risk Manager, DEVELOPER's carriers shall either: 1) reduce or eliminate such self-insured retention with respect to this Agreement with DISTRICT, or 2) procure a bond which guarantees payment of losses and

Exhibit D

related investigations, claims administration, and defense costs and expenses.

- c. DEVELOPER shall cause their insurance carrier(s) or its contractor's insurance carrier(s), to furnish DISTRICT with 1) a properly executed original certificate(s) of insurance and certified original copies of endorsements effecting coverage as required herein; and 2) if requested to do so orally or in writing by the DISTRICT Risk Manager, provide original certified copies of policies including all endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that a minimum of thirty (30) days written notice shall be given to the DISTRICT prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. If DEVELOPER insurance carrier(s) policies does not meet the minimum notice requirement found herein, DEVELOPER shall cause DEVELOPER's insurance carrier(s) to furnish a 30 day Notice of Cancellation Endorsement.
- d. In the event of a material modification, cancellation, expiration or reduction in coverage, this Agreement shall terminate forthwith, unless DISTRICT receives, prior to such effective date, another properly executed original certificate of insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto, evidencing coverages set forth herein and the insurance required herein is in full force and effect. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the certificate of insurance.
- e. It is understood and agreed by the parties hereto that DEVELOPER's insurance shall be construed as primary insurance, and DISTRICT's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
- f. If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services or there is a material change in the equipment to be used in the performance of the scope of work which will add additional exposures (such as the use of aircraft, watercraft, cranes,

Exhibit D

etc.); or the term of this Agreement, including any extensions thereof, exceeds five (5) years, DISTRICT reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverages currently required herein, if, in the DISTRICT Risk Manager's reasonable judgment, the amount or type of insurance carried by DEVELOPER has become inadequate.

- g. DEVELOPER shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- h. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to DISTRICT.
- i. DEVELOPER agrees to notify DISTRICT of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.