

**MINUTES OF THE MEETING OF THE
BOARD OF DIRECTORS OF
UNION SANITARY DISTRICT
April 10, 2017**

CALL TO ORDER

President Handley called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENT: Tom Handley, President
Pat Kite, Vice President
Anjali Lathi, Secretary
Manny Fernandez, Director
Jennifer Toy, Director

STAFF: Paul Eldredge, General Manager
Karen Murphy, District Counsel
Sami Ghossain, Technical Services Manager
James Schofield, Collection Services Manager
Pamela Arends-King, Business Services Manager/CFO
Armando Lopez, Treatment & Disposal Services Manager
Robert Simonich, Fabrication, Maintenance, and Construction Manager
Michael Dunning, Environmental Compliance Team Coach
Laurie Brenner, Finance and Acquisition Services Team Coach
Michelle Powell, Communications and Intergovernmental Relations Coordinator
Regina McEvoy, Executive Assistant to the General Manager/Board Clerk

APPROVAL OF THE MINUTES OF THE MEETING OF MARCH 27, 2017

It was moved by Vice President Kite, seconded by Director Toy, to approve the Minutes of the Meeting of March 27, 2017. Motion carried unanimously.

WRITTEN COMMUNICATIONS

There were no written communications.

ORAL COMMUNICATIONS

There were no oral communications.

CONSIDER A RESOLUTION TO AUTHORIZE THE GENERAL MANAGER TO EXECUTE A PIPELINE CROSSING AGREEMENT WITH THE UNION PACIFIC RAILROAD COMPANY AND A PIPELINE CROSSING COSTS FUNDING AND REIMBURSEMENT AGREEMENT WITH KB HOME SOUTH BAY AND THE PATTERSON RANCH OWNERS' ASSOCIATION, REGARDING THE PATTERSON RANCH DEVELOPMENT IN THE CITY OF FREMONT

This item was reviewed by the Legal/Community Affairs Committee. Technical Services Manager Ghossain stated KB Home South Bay Inc. will construct sixty-six single family residential units for Phase 3 of the Patterson Ranch development. A 10-inch sewer main will be installed across property owned by the Union Pacific Railroad Company (UPRR) to allow District service to the development. A pipeline crossing agreement was prepared to enable the District to maintain and operate the sewer main while allowing UPRR the ability to require future relocation of the main if necessary for the safe operation of its railroad and property. The separate Pipeline Crossings Costs Funding and Reimbursement Agreement states costs of the license agreement are the responsibility of KB Home and Patterson Ranch Owners' Association. Should the UPRR require the sewer to be relocated within 22 years from the date of execution of the agreement, KB Home will be responsible for the relocation cost. The Patterson Ranch Owners' Association will be responsible in perpetuity, and the Agreement requires KB Home to notify all homebuyers at Patterson Ranch of the obligations under this agreement by close of escrow. District Staff recommended the Board consider a resolution to authorize the General Manager to execute a Pipeline Crossing Agreement with the UPRR and a Pipeline Crossing Costs Funding and Reimbursement Agreement, with KB Home South Bay Inc and the Patterson Ranch Owners' Association, regarding the Patterson Ranch Development in the City of Fremont.

It was moved by Vice President Kite, seconded by Secretary Lathi, to Adopt Resolution No. 2805, Approving and Authorizing Execution of a Pipeline Crossing Agreement with the Union Pacific Railroad Company and a Pipeline Crossing Costs Funding and Reimbursement Agreement with KB Home South Bay Inc. and Patterson Ranch Owners' Association. Motion carried unanimously.

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RESOLUTION NO. 2805

A RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A PIPELINE CROSSING AGREEMENT WITH THE UNION PACIFIC RAILROAD COMPANY AND A PIPELINE CROSSING COSTS FUNDING AND REIMBURSEMENT AGREEMENT WITH KB HOME SOUTH BAY INC. AND PATTERSON RANCH OWNERS' ASSOCIATION

WHEREAS, KB Home South Bay Inc. ("KB") is developing certain real property in the City of Fremont located near the intersection of Ardenwood Boulevard and Paseo Padre Parkway, known as the Patterson Ranch subdivision; and

WHEREAS, in order for the District to provide service to the new development, a sewer main is required to be installed across property owned by the Union Pacific Railroad Company ("UPRR"); and

WHEREAS, UPRR requires the District to enter into a form Pipeline Crossing Agreement in order to cross its property; and

WHEREAS, the Pipeline Crossing Agreement provides that UPRR has the discretion to require the relocation of the pipeline in the future at the District's cost; and

WHEREAS, in order to mitigate the potential risk and cost to the District, the District has requested KB to fund those potential costs in the future and KB has agreed to fund those costs for a period of 22 years, with the obligation to then be assumed by the Patterson Ranch Owners' Association, the homeowners' association for the subdivision (the "HOA"); and

WHEREAS, KB and the HOA have agreed to enter into a Pipeline Crossing Costs Funding and Reimbursement Agreement in the form attached hereto.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE UNION SANITARY DISTRICT, AS FOLLOWS:

1. The Board hereby approves the (a) Pipeline Crossing Agreement; and (b) Pipeline Crossing Costs Funding and Reimbursement Agreement.
2. The General Manager/District Engineer, or his designee, is hereby authorized to execute the Pipeline Crossing Agreement and Pipeline Crossing Costs Funding Agreement, in the forms attached hereto, with minor or technical revisions approved by the General Manager/District Engineer in consultation with the General Counsel.


The foregoing Resolution was duly and regularly adopted and passed by the Board of Directors of Union Sanitary District, Alameda County, California, at a meeting held on the 10th day of April, 2017.

AYES: Fernandez, Handley, Kite, Lathi, Toy

NOES: None

ABSENT: None

ABSTAIN: None



TOM HANDLEY
President, Board of Directors
Union Sanitary District

Attest:



ANJALI LATHI
Secretary, Board of Directors
Union Sanitary District

PIPELINE CROSSING AGREEMENT

Mile Post: 27.27, Coast Subdivision
Location: Fremont, Alameda County, California

THIS AGREEMENT ("Agreement") is made and entered into as of April 10, 2017, ("Effective Date") by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, ("Licensor") and **UNION SANITARY DISTRICT**, to be addressed at 5072 Benson Road, Union City, California 94587 ("Licensee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article 1. LICENSOR GRANTS RIGHT.

In consideration of the license fee to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate

one 8 inch encased pipeline for transporting and conveying sewage only

across Licensor's track(s) and property (the "Pipeline") in the location shown and in conformity with the dimensions and specifications indicated on the print dated November 15, 2016 and marked **Exhibit A**, attached hereto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than transporting and conveying sewage, and the Pipeline shall not be used to convey any other substance, any fiber optic cable, or for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

For the purposes of Exhibit A, Licensee acknowledges that if it or its contractor provides to Railroad digital imagery depicting the Pipeline crossing, Licensee authorizes Railroad to use the Digital Imagery in preparing the print attached as an exhibit hereto. Licensee represents and warrants that through a license or otherwise, it has the right to use the Digital Imagery and to permit Railroad to use the Digital Imagery in said manner.

Article 2. LICENSE FEE.

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of **Thirty Five Thousand Five Hundred Dollars (\$35,500.00)**.

Article 3. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in **Exhibit B**, attached hereto and hereby made a part hereof.

Article 4. DEFINITION OF LICENSEE.

For purposes of this Agreement, all references in this Agreement to the Licensee shall include the Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. If a contractor is hired by the Licensee for any work performed on the Pipeline (including initial construction and subsequent relocation or maintenance and repair work), then the Licensee shall provide a copy of this Agreement to its contractor and require its contractor to comply with all the terms and provisions hereof relating to the work to be performed. Any contractor or subcontractor shall be deemed an agent of Licensee for the purpose of this Agreement, and Licensee shall require such contractor or subcontractor to release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

Article 5. INSURANCE.

A. During the life of the License, Licensee shall fully comply with the insurance requirements described in **Exhibit C**.

B. Failure to maintain insurance as required shall entitle, but not require, Licensor to terminate this License immediately.

C. If the Licensee is subject to statute(s) limiting its insurance liability and/or limiting its ability to obtain insurance in compliance with **Exhibit C** of this license, those statutes shall apply.

D. Licensee hereby acknowledges that it has reviewed the requirements of **Exhibit C**, including without limitation the requirement for Railroad Protective Liability Insurance during construction, maintenance, installation, repair or removal of the pipeline which is the subject of this Agreement.

Article 6. TERM.


This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as herein provided.

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

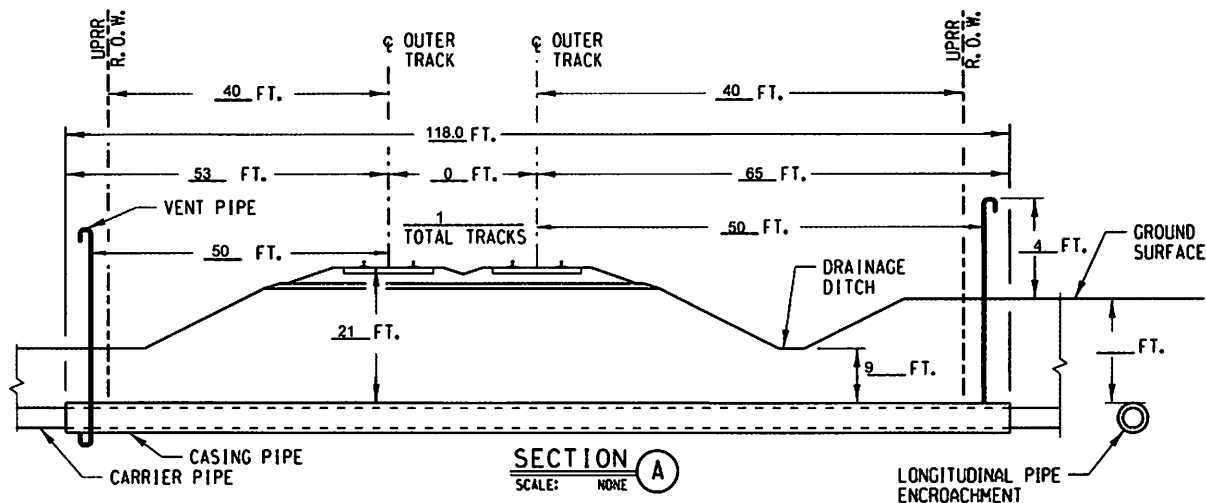
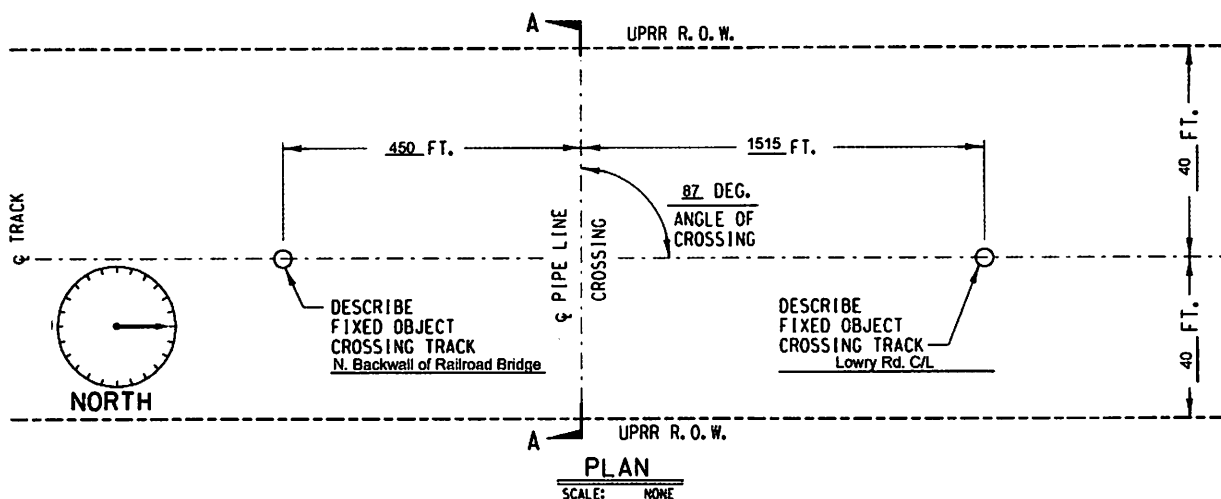
UNION PACIFIC RAILROAD COMPANY

By: 
Renay J. Robison
Director - Real Estate

UNION SANITARY DISTRICT

By: 
Name Printed: Paul R. Eldredge
Title: General Manager

☒ CROSSING
☐ ENCROACHMENT
☐ BOTH



SECTION A
SCALE: NONE

NOTES:

- 1) ALL DIMENSIONS MEASURED PERPENDICULAR TO THE CENTERLINE OF TRACK
2) REFER TO AREMA VOLUME 1. CHAPTER 1. PART 5. SECTION 5.1

- A) METHOD OF INSTALLATION BORED AND JACKED
- B) DIST. FROM CENTERLINE OF TRACK TO PIPE ENCROACHMENT _____
- C) SIGNS PROVIDED? AT MINIMUM SIGNS WILL BE PROVIDED AS STATED ABOVE
- D) CARRIER MATERIAL PLASTIC. IF RCP, CLASS V? NA.
COMMODITY TO BE CONVEYED SEWER FLOW.
OPERATIONAL PRESSURE 0 PSI. MAOP 0 PSI.
WALL THICKNESS (INCH)/ SCHEDULE 26. DIAMETER 8 IN.
CATHODIC/COATING PROTECTION YES
- E) CASING MATERIAL STEEL PIPE. IF RCP, CLASS V? NA.
TOTAL LENGTH CASING PIPE: 118.0 FT.
WALL THICKNESS 0.5 IN. DIAMETER 30 IN.
CATHODIC/COATING PROTECTION YES
CASING PIPE IS SEALED AT THE ENDS.
- F) DISTANCE FROM CENTERLINE OF TRACK TO NEAR FACE OF
BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES
60 AND 70.



BUILDING AMERICA®

EXHIBIT "A"

SUBDIVISION: Coast Sub.

TRACK TYPE: MAINLINE TRACK

M.P.: 27.27

LAT.: 37.57083333

E.S.M.: 1378+70

LONG.: -122.05972222

NEAREST CITY:

COUNTY: STATE:

STATE:

FREMONT

ALAMEDA

CA

APPLICANT: UNION SANITARY DISTRICT

FILE NO.: 0302216

DATE: 11/15/2016

EXHIBIT B

Section 1. 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 Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, 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 the Licensor without liability to the Licensee 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 the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

- A. The Pipeline shall be designed, constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with (i) Licensor's current standards and specifications ("UP Specifications"), except for variances approved in advance in writing by the Licensor's Assistant Vice President Engineering – Design, or his authorized representative; (ii) such other additional safety standards as the Licensor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"), and (iii) all applicable laws, rules and regulations ("Laws"). If there is any conflict between the requirements of any Law and the UP Specifications or the UP Additional Requirements, the most restrictive will apply.
- B. All work performed on property of the Licensor in connection with the design, construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Licensor.
- C. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline from Licensor's property, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Licensor's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Licensor's Assistant Vice President Engineering Design or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Licensor provides such support,

the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by the Licensor in connection therewith, which expenses shall include all assignable costs.

- D. The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.
- E. In the prosecution of any work covered by this Agreement, Licensee 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 3. NOTICE OF COMMENCEMENT OF WORK / LICENSOR REPRESENTATIVE / SUPERVISION / FLAGGING / SAFETY.

- A. If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensor before commencing any work. In all other situations, the Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion. The Licensee will coordinate its initial, and any subsequent work with the following employee of Licensor or his or her duly authorized representative (hereinafter "Licensor Representative" or "Railroad Representative"):

CHRISTOPHER SHIELS
Work/Cell Phone: 402-250-2774
Email address: cshiels@up.com

ROBERT MENDOZA
MGR SIGNAL MNTCE
1851 B, 5th Street
Oakland, CA 94607
Work phone: 916-789-6023
Cell phone: 530-632-9620
Email: rmendoz1@up.com

- B. Licensee, at its own expense, shall adequately police and supervise all work to be performed. The responsibility of Licensee for safe conduct and adequate policing and supervision of work shall not be lessened or otherwise affected by Licensor's approval of plans and specifications involving the work, or by Licensor's collaboration in performance of any work, or by the presence at the work site of a Licensor Representative, or by compliance by Licensee with any requests or recommendations made by the Licensor Representative.
- C. At the request of Licensor, Licensee shall remove from Licensor's property any employee who fails to conform to the instructions of the Licensor Representative in connection with the work on Licensor's property. Licensee shall indemnify Licensor against any claims arising from the removal of any such employee from Licensor's property.
- D. Licensee shall notify the Licensor Representative at least ten (10) working days in advance of proposed performance of any work 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 Licensor'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 Licensor Representative will determine and inform Licensee whether a flagman need be present and whether any special protective or safety measures need to be implemented. If flagging or other special protective or safety measures are performed by Licensor, Licensor will bill Licensee for such expenses incurred by Licensor, unless Licensor and a federal, state or local governmental entity have agreed that Licensor is to bill such expenses to the federal, state or local governmental entity. If Licensor will be sending the bills to Licensee, Licensee shall pay such bills within thirty (30) days of receipt of billing. If Licensor performs any flagging, or other special protective or safety measures are performed by Licensor, Licensee agrees that Licensee is not relieved of any of responsibilities or liabilities set forth in this Agreement.

- E. 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 Licensor 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, Licensee (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- F. Reimbursement to Licensor 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 Licensor is required to pay the flagman and which could not reasonably be avoided by Licensor by assignment of such flagman to other work, even though Licensee may not be working during such time. When it becomes necessary for Licensor to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Licensee must provide Licensor 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, Licensee 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 Licensor if flagging services are needed again after such five day cessation notice has been given to Licensor.
- G. 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 safety standards listed in **Exhibit D**, hereto attached, 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 **Exhibit D** to each of its employees before they enter the job site.

- H. Without limitation of the provisions of paragraph G above, Licensee shall keep the job site free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the job.
- I. Licensee 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. Prompt notification shall be given to Licensor of any U.S. Occupational Safety and Health Administration reportable injuries. Licensee shall have a non-delegable duty to control its employees while they are on the job site or any other property of Licensor, 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.
- J. If and when requested by Licensor, Licensee shall deliver to Licensor a copy of its safety plan for conducting the work (the "Safety Plan"). Licensor shall have the right, but not the obligation, to require Licensee 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 4. LICENSEE TO BEAR ENTIRE EXPENSE.

The Licensee shall bear the entire cost and expense incurred in connection with the design, construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by the Licensor in connection therewith for supervision, inspection, flagging, or otherwise.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE.

- A. The license herein granted is subject to the needs and requirements of the Licensor in the safe and efficient operation of its railroad and in the improvement and use of its property. The Licensee shall, at the sole expense of the Licensee, reinforce or otherwise modify the Pipeline, or move all or any portion of the Pipeline to such new location, or remove the Pipeline from the Licensor's property, as the Licensor may designate, whenever, in the furtherance of its needs and requirements, the Licensor, at its sole election, finds such action necessary or desirable.
- B. All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of the Licensor in the location hereinbefore described shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.

- A. The Pipeline and all parts thereof within and outside of the limits of the property of the Licensor shall be designed, constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.

- B. Explosives or other highly flammable substances shall not be stored on Licensor's property without the prior written approval of Licensor.
- C. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Licensor's trackage shall be installed or used by Licensee or its contractors without the prior written permission of Licensor.
- D. When not in use, any machinery and materials of Licensee or its contractors shall be kept at least fifty (50) feet from the centerline of Licensor's nearest track.
- E. Operations of Licensor and work performed by Licensor's personnel may cause delays in the work to be performed by Licensee. Licensee accepts this risk and agrees that Licensor shall have no liability to Licensee or any other person or entity for any such delays. Licensee shall coordinate its activities with those of Licensor and third parties so as to avoid interference with railroad operations. The safe operation of Licensor's train movements and other activities by Licensor take precedence over any work to be performed by Licensee.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

- A. Fiber optic cable systems may be buried on the Licensor'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. Licensee shall telephone the Licensor during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the Licensor's property until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.
- B. IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD THE LICENSOR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF THE LICENSEE, ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON LICENSOR'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 LICENSOR'S PROPERTY, EXCEPT IF SUCH COSTS, LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF THE LICENSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RECOURSE AGAINST LICENSOR 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 LICENSOR'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON**

LICENSOR'S PROPERTY.

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

- A. The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.
- B. The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licensor as compared with the entire value of such property.

Section 9. RESTORATION OF LICENSOR'S PROPERTY.

In the event the Licensee in any manner moves or disturbs any of the property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such property to the same condition as the same were before such property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the moving or disturbance of any other property of the Licensor.

Section 10. INDEMNITY.

- A. As used in this Section, "Licensor" includes other railroad companies using the Licensor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licensor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licensor, or property in its care or custody).
- B. AS A MAJOR INDUCEMENT AND IN CONSIDERATION OF THE LICENSE AND

PERMISSION HEREIN GRANTED, TO THE FULLEST EXTENT PERMITTED BY LAW, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR FROM ANY LOSS OF ANY KIND, NATURE OR DESCRIPTION ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE PIPELINE OR ANY PART THEREOF;

2. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE;

3. THE PRESENCE, OPERATION, OR USE OF THE PIPELINE OR CONTENTS ESCAPING THEREFROM;

4. THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR CONTRIBUTED TO BY LICENSEE;

5. ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER; OR

6. LICENSEE'S BREACH OF THIS AGREEMENT,

EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT AND ACTIVE NEGLIGENCE OF THE LICENSOR, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, LICENSOR'S NEGLIGENCE.

C. Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit of proceeding brought against any indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any indemnitee. Licensee shall pay all costs incident to such defense, including, but not limited to, reasonable attorney's fees, investigators' fees, litigation and appeal expenses, settlement payments and amounts paid in satisfaction of judgments.

Section 11. REMOVAL OF PIPELINE UPON TERMINATION OF AGREEMENT.

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If the Licensee fails to do the foregoing, the Licensor may, but is not obligated, to perform such work of removal and restoration at the cost and expense of the Licensee. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the

Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

Section 12. WAIVER OF BREACH.

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

Section 13. TERMINATION.

- A. If the Licensee does not use the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.
- B. In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.
- C. Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Section 14. AGREEMENT NOT TO BE ASSIGNED.

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

Section 15. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

Section 16. SEVERABILITY.

Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

Approved: Insurance Group
Created: 9/23/05
Last Modified: 03/29/10
Form Approved, AVP-Law

EXHIBIT C
Union Pacific Railroad Company
Contract Insurance Requirements

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) 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 10 01 (or a substitute form providing equivalent liability coverage) with a limit of not less \$2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

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 a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.

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

Licensee'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 Licensee is self-insured, evidence of state approval and excess 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.

D. Railroad Protective Liability insurance. Licensee 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 only as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000.

The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement

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

Other Requirements

F. 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 Licensee's liability under the indemnity provisions of this Agreement.

G. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.

H. Licensee 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 for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Licensee required in this agreement, where permitted by law This waiver must be stated on the certificate of insurance.

I. 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.

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

EXHIBIT D
SAFETY STANDARDS

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Licensee or its contractors, subcontractors, or agents, as well as any subcontractor or agent of any Licensee.

I. Clothing

- A. All employees of Licensee will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Licensee's employees must wear:

- (i) Waist-length shirts with sleeves.
- (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
- (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.

- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.

- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Licensee shall require its employee to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Licensee's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers

- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Licensee and its contractor are responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a minimum distance of at least twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized work wear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Licensee must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Licensee will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

- A. It is the responsibility of Licensee to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Licensee's equipment is unsafe for use, Licensee shall remove such equipment from Railroad's property. In addition, Licensee must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
 - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other rail bound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

- A. Licensee shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Licensee shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Licensee meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
 - (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
 - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
 - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
 - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
 - (v) Before stepping over or crossing tracks, look in both directions first.
 - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)
)
Union Sanitary District)
5072 Benson Road)
Union City, CA 94587-2508)
Attention: District Secretary)
)

*The document is exempt from the payment of a recording fee
pursuant to Government Code § 27383*

PIPELINE CROSSING COSTS FUNDING AND REIMBURSEMENT AGREEMENT

This Pipeline Crossing Costs Funding and Reimbursement Agreement (“**Agreement**”) is made by and between UNION SANITARY DISTRICT (“**USD**”), KB HOME SOUTH BAY INC., a California corporation (“**KB**”), and the PATTERSON RANCH OWNERS’ ASSOCIATION, a California nonprofit mutual benefit corporation (“**HOA**”). USD, KB, and HOA may be collectively referred to in this Agreement as the “**Parties**.”

RECITALS

- A. KB is developing that certain real property, known as Tract 8035, Tract 8288, and Tract 8288 (collectively, “**Patterson Ranch**”), a portion of which is described in Exhibit A, attached hereto and incorporated herein by reference, representing common areas that are or will be owned by the HOA (“**Property**”). The HOA has been formed to govern, manage, and operate Patterson Ranch. In order to develop Patterson Ranch, KB is required to install sanitary sewer lines (“**Sewer Line**”) adjacent to and east of Patterson Ranch, in rights-of-way that benefit both USD and the Union Pacific Railroad Company (“**UPRC**”) in whole or in part.
- B. In order to accomplish the installation of the underground Sewer Line extensions for benefit of the development of Patterson Ranch, UPRC has required USD to enter into a Pipeline Crossing Agreement. UPRC and USD entered into a Pipeline Crossing Agreement dated April 10, 2017 (“**Pipeline Agreement**”), which allows the construction and installation of the Sewer Line under portions of the existing UPRC railroad track easement area, and grants USD a License therefor.

- C. As the Pipeline Agreement is being required to allow the development of Patterson Ranch, KB and HOA have agreed to accept certain liabilities and costs associated with the Pipeline Agreement.

WHEREFORE, in consideration of the mutual promises and covenants of the Parties, together with other valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, and specifically incorporating the above "Recitals" into this Agreement, the Parties agree as follows:

TERMS

1. Incorporation of Recitals.

Recitals A through C, above, are incorporated by this reference as though set forth in full herein.

2. Pipeline Crossing Funding and Reimbursement.

2.1 License Fee. Concurrently with execution of this Agreement, KB has deposited the License Fee required by Pipeline Agreement with USD. USD agrees to pay the License Fee to UPRC in accordance with the Pipeline Agreement.

2.2 Removal or Relocation of Pipeline. If, in the future, the Sewer Line must be relocated or removed, for whatever reason(s), pursuant to the terms of the Pipeline Agreement, KB and then subsequently the HOA, pursuant to the terms discussed below, shall be liable and responsible for all costs associated with such relocation or removal. From and after the date that is 22 years from the execution of this Agreement by all Parties, all obligations of KB under this section 2.2 shall extinguish automatically, with no further action necessary by the parties hereto, and the HOA shall be solely obligated under this section. Prior to such date, KB shall be obligated under this section 2.2 and USD shall pursue compliance with KB. Within 15 days of USD's request, KB or the HOA, as applicable, shall deposit with USD, USD's estimated actual costs for such relocation or removal. Failure to fund such relocation or removal costs shall constitute a default under this Agreement. Upon default, USD may take action to recover such costs, including but not limited to, placing on the lien on the Property. It is the Parties' understanding that UPRC does not currently have any plans to require the relocation of the Sewer Line.

2.3 Notices to Homebuyers. KB represents and warrants that they shall provide notice to all homebuyers at Patterson Ranch of the obligations under this Agreement in writing, at or before the time of close of escrow.

3. Pipeline Agreement Termination; Waiver and Release; Indemnity. HOA and KB acknowledge and understand that the Pipeline Agreement may be terminated at any time by UPRC. Both KB and HOA hereby waive and release USD from any and all losses, damages,

claims, demands, actions, causes of action, penalties, costs and expenses, including attorney fees, related to or regarding the termination of the Pipeline Agreement by UPRC ("Claims"), except to the extent of USD's gross negligence or willful misconduct. Further, KB and HOA hereby agree to indemnify and hold harmless USD against any and all Claims, except to the extent of USD's gross negligence or willful misconduct. The obligations under this Section 3 shall be joint and several.

4. Runs with the Land; Successors, Heirs, and Assigns.

This Agreement runs with the Property and shall inure to the benefit of and be binding upon the successors, assigns, executors, and heirs of HOA. Further, this Agreement shall inure to the benefit of and be binding upon the successors, assigns, executors, and heirs of KB and USD.

5. Counterparts and Signatures.

This Agreement may be executed in counterparts and by photocopy, facsimile and/or electronic mail PDF signature, each of which shall be deemed an original, equally admissible into evidence, and all such counterparts shall together constitute one and the same instrument.

6. Severability and Interpretation.

The illegality, unenforceability, or invalidity of any one or more covenants, phrases, clauses, sentences, exhibits, portions or paragraphs of this Agreement, as determined by a court of competent jurisdiction, shall not affect the remaining portions of this Agreement or any part thereof, and, in case of any such illegality, unenforceability, or invalidity, this Agreement shall be construed as if such covenants, phrases, clauses, sentences, or paragraphs, to the extent and only to the extent determined to be illegal, unenforceable, or invalid, had not been inserted. The heading and numbering of the different paragraphs of this Agreement are inserted for convenient reference only and are not to be taken as part of the Agreement to control or affect the meaning, construction or effect of the same.

7. Amendment or Waiver.

This Agreement cannot be waived, altered, amended or modified, in whole or in part, except by a writing signed by the Parties. The waiver by either party of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any other or subsequent breach of any provision of this Agreement.

8. Applicable Law.

This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of California. Any dispute or controversy arising out of or relating to this Agreement shall also be governed by the laws of the State of California.

9. Entire Agreement.

This writing is intended by the Parties as a final expression of their agreement concerning the matters contained herein, and is also intended as a complete and exclusive statement of the terms of their agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection.

The Parties have executed this Agreement as of 03-31-2017, 2017.

USD:

UNION SANITARY DISTRICT

By: Paul R. Eldredge
Name: Paul R. Eldredge
Title: General Manager

KB:

KB HOME SOUTH BAY INC.,

a California corporation

By: Ray Panek
Name: RAY PANEK
Title: SVP

HOA:

PATTERSON RANCH OWNERS' ASSOCIATION,

a California nonprofit mutual benefit corporation

By: Paul Lopez PRESIDENT
Name: PAUL LOPEZ

EXHIBIT A

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF FREMONT, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCELS A THROUGH K AS SHOWN ON THAT CERTAIN MAP ENTITLED "TRACT 8035", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, ON DECEMBER 22, 2014, IN BOOK 329 OF MAPS AT PAGES 64 THROUGH 79, PARCELS A THROUGH E AS SHOWN ON THAT CERTAIN MAP ENTITLED "TRACT 8228", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, ON MARCH 22, 2016, IN BOOK 339 OF MAPS AT PAGES 10 THROUGH 21 AND PARCELS A THROUGH E ON THAT CERTAIN MAP ENTITLED "TRACT 8288", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, ON _____, 201_, IN BOOK ____ OF MAPS AT PAGES ____ THROUGH ____.

END OF DESCRIPTION

PREPARED BY:



KENNETH E. COOPER
LICENSED LAND SURVEYOR NO. 8292
(EXP. 12/31/17)
STATE OF CALIFORNIA



31 MAR 17
DATE

Mackay & Somps
CIVIL ENGINEERING • LAND PLANNING • LAND SURVEYING
5142 Franklin Drive Suite B, Pleasanton, CA. 94588-3355
(925) 225-0690

"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)SS
COUNTY OF Contra Costa)

On March 31, 2017, before me, Dee S. Bumanlag, Notary Public, personally appeared Ray Panek and Paul Lopez, 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

Dee S. Bumanlag

My Commission Expires: 10/6/2018

Notary Name: Dee S. Bumanlag

Notary Registration Number: 2085167



This area for official notarial seal

Notary Phone: 925-983-4528

County of Principal Place of Business: Contra Costa

ACKNOWLEDGMENT

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 Alameda)

On April 12, 2017 before me, Regina Dyan McEvoy, Notary Public
(insert name and title of the officer)

personally appeared Paul R. Eldredge
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 Regina McEvoy (Seal)

**CONSIDER A RESOLUTION TO UPDATE AND APPROVE A NEW CALPERS
DELEGATION OF AUTHORITY TO REQUEST DISBURSEMENTS FORM**

This item was reviewed by the Budget & Finance Committee. Business Services Manager/CFO Arends-King stated the District maintains a payment schedule in conjunction with CalPERS related to "Other Post Employment Pre-Funding," which includes a reimbursement (disbursement) component. Disbursement requests are achieved based upon Board approval granting authority for the action to specific District staff via Resolution kept on file with CalPERS. Staff prepared an updated "CalPERS Delegation of Authority to Request Disbursements" Resolution to be signed by the Board President and filed with CalPERS. Staff requested the Board consider approval of an updated "CalPERS Delegation of Authority to Request Disbursements" Resolution.

It was moved by Secretary Lathi, seconded by Director Fernandez, to Adopt Resolution No. 2806, Delegating Authority to the Positions of Chief Financial Officer, Business Services Coach, and Accounting and Financial Analyst 1 and/or Senior Accounting and Financial Analyst to Request on Behalf of Union Sanitary District Disbursement from the Other Post Employment Prefunding Plan and to Certify as to the Purpose for Which the Disbursed Funds will be used. Motion carried unanimously.

####



**DELEGATION OF AUTHORITY
TO REQUEST DISBURSEMENTS**

**RESOLUTION
OF THE**

Board of Directors

(GOVERNING BODY)

OF THE

Union Sanitary District

(NAME OF EMPLOYER)

The _____ Board of Directors _____ delegates to the incumbents
(GOVERNING BODY)

in the positions of _____ Chief Financial Officer, Business Services Coach _____ and
(TITLE)

_____ Accounting and Financial Analyst 1 _____ and/or
(TITLE)

_____ Senior Accounting and Financial Analyst _____ authority to request on
(TITLE)

behalf of the Employer disbursements from the Other Post Employment Prefunding
Plan and to certify as to the purpose for which the disbursed funds will be used.

By

A handwritten signature in blue ink, appearing to read "James Hardy", written over a horizontal line.

Title _____ President, Board of Directors _____

Witness

A handwritten signature in blue ink, appearing to read "Presin McEay", written over a horizontal line.

Date

_____ April 10, 2017 _____

CONSIDER APPROVAL OF DESIGN FOR THE DISTRICT'S AUTUMN 2017 NEWSLETTER AND DISCUSS POTENTIAL CONTENT SUBJECTS

Communications and Intergovernmental Relations Coordinator Powell stated that during previous Board workshops, the Board agreed to a new layout and design for its newsletter to be mailed in Autumn 2017. Staff recommended the Board select one of four cover page layout designs, consider a multi-year contract for printing services, and provide direction regarding content to be included in the newsletter.

It was moved by Secretary Lathi, seconded by Director Toy, to select the #2 cover page layout, proceed with a request for a three-year contract for printing services, and directed staff to develop the content topics included in the staff report. Motion carried unanimously.

APPROVE PROPOSED UPDATES TO DISTRICT VISION/MISSION STATEMENT

Finance and Acquisition Services Team Coach Brenner stated the Executive Team reviews the District's Vision and Mission Statement as part of annual strategic planning. During the Fiscal Year 2016 review, the team proposed the addition of language reflecting the District's desire to increase beneficial resource recovery and reuse activities to minimize our impacts on the environment. Internal stakeholders collaborated via multiple sessions and workshops to develop the proposed Vision and Mission Statement for adoption at the District. Staff recommended the Board review and consider approval of proposed changes to the District Vision and Mission Statement.

It was moved by Secretary Lathi, seconded by Vice President Kite, to Approve Proposed Updates to the District Vision and Mission Statement. Motion carried unanimously.

FY 2017 VEHICLE AND EQUIPMENT EXPENDITURE ADJUSTMENT

This item was reviewed by the Budget & Finance Committee. Collection Services Manager Schofield stated funds for the acquisition of a truck mounted mini-jetter were included in the FY 17 operating budget for an estimated cost of \$160,700. The truck mounted mini-jetter is one of two pieces of equipment that will replace a hydro-jet vacuum unit that has exceeded its useful life. After re-evaluating the capabilities of the hydro-jet vacuum unit, staff concluded the truck mounted mini-jetter and hydro jet will increase productivity by operating at higher pressures using less water. The vehicle will be purchased under the competitively-bid contract administered by the National Joint Powers Alliance (NJPA). The NJPA price for the vehicle is \$186,935, which exceeds the approved budget by more than 15%. The estimated cost of the vehicle used for the budget did not include upgrades that were added to the vehicle specifications. Staff recommended the Board consider approving an equipment expenditure adjustment and approve the purchase of the truck-mounted mini-jetter in the amount of \$186,935.

It was moved by Secretary Lathi, seconded by Director Fernandez, to Authorize Staff to Purchase a Truck-mounted Mini-jetter in the Amount of \$186,935. Motion carried unanimously.

INFORMATION ITEMS:

Hydro-jetter Purchase

This item was reviewed by the Budget & Finance Committee. Collection Services Manager Schofield stated the District is scheduled to purchase a Hydro Jetter for \$273,918, which is \$51,161 less than the budgeted amount.

Certificates of Merit to Union Sanitary District's Class I Permitted Industries

This item was reviewed by the Legal/Community Affairs Committee. Environmental Compliance Team Coach Dunning stated the Certificates of Merit presentation is an annual event held to recognize industries that have exceeded the requirements of their wastewater discharge permits during the prior calendar year. The District has invited representatives from 28 Significant Industrial Users with Class I Wastewater Discharge Permits to receive Certificates of Merit at 3:00 p.m. on Thursday, May 4, 2017.

Earth Day 2017

This item was reviewed by the Legal/Community Affairs Committee. Environmental Compliance Team Coach Dunning stated the District's Environmental Compliance team will participate in the Earth Day event to be hosted by the City of Fremont and Washington Hospital at Washington Hospital's Auditorium on Saturday, April 22, 2017. Environmental Compliance staff will share information with the public related to pollution prevention and proper disposal of mercury containing devices and unused medications.

Review and Provide Input on Draft Presentation to City Councils

General Manager Eldredge stated it has been the District's practice to provide periodic updates regarding current and upcoming District activities to the City Councils of Fremont, Newark, and Union City. General Manager Eldredge presented a hard copy of the draft PowerPoint slideshow to be presented to the three cities for Board review. The Board provided feedback regarding the draft presentation, and directed staff to incorporate said feedback.

Check Register

All questions were answered to the Board's satisfaction.

COMMITTEE MEETING REPORTS:

The Budget & Finance Committee and Legal/Community Affairs Committees met.

GENERAL MANAGER'S REPORT:

General Manager Eldredge reported the following:

- The Newark State of the City Luncheon will be held Thursday, April 13, 2017.
- The East Bay Dischargers Authority Managers Advisory Committee strategic planning session was held at the District on April 7, 2017.

OTHER BUSINESS

There was no other business.

ADJOURNMENT:

The meeting was adjourned at 7:40 p.m. to the next Regular Board Meeting in the Boardroom on Monday, April 24, 2017, at 7:00 p.m.


SUBMITTED:


REGINA McEVOY
BOARD CLERK

ATTEST:


ANJALI LATHI
SECRETARY

APPROVED:


TOM HANDLEY
PRESIDENT

Adopted this 24th day of April, 2017