

2017-002954

03/10/2017 03:54 PM Page 1 of 23

Total Fee: \$0.00 TTax: \$0.00

Recorded in Official Records  
County of Yuba State of CA  
Terry A. Hansen  
County Clerk and Recorder



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

City of Marysville  
526 "C" Street  
Marysville, California 95901

**MAIL TAX STATEMENTS TO:**

City of Marysville  
526 "C" Street  
Marysville, California 95901

No Fee G.C. 6103

(Space Above Line for Recorder's Use Only)

463-80

APN: 010-156-008  
010-156-009

23  
✓

**DOCUMENTARY TRANSFER TAX \$**

- Computed on the full value of the property conveyed
- Computed on the full value less liens and encumbrances remaining at the time of sale
- Not a sale ( Rev. & Tax. Code Section 11927(a) ) ; R & T Code 11922 Conveyance to a Government Agency

Signature of Declarant or Agent Determining Tax

**QUITCLAIM DEED**

**UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (formerly known as Southern Pacific Transportation Company, a Delaware corporation, successor in interest through merger with Union Pacific Railroad Company, a Utah corporation, successor in interest through merger with Pacific Subsidiary, Inc., a Delaware corporation, successor in interest through merger with The Western Pacific Railroad Company, a Delaware corporation, formerly known as Newrail Company, Inc., a Delaware corporation, successor in interest through merger with The Western Pacific Railroad Company, a Delaware corporation, successor in interest through merger with Western Pacific Railway, a California corporation) ("Grantor"), in consideration of the sum of Ten Dollars (\$10.00), and other valuable consideration to it duly paid, the receipt whereof is hereby acknowledged, does hereby REMISE, RELEASE and forever QUITCLAIM unto **CITY OF MARYSVILLE**, a California municipal corporation ("Grantee"), whose address is 526 "C" Street, Marysville, California 95901, and unto its successors and assigns forever, all of Grantor's right, title, interest, estate, claim and demand, both at law and in equity, of, in, and to the real estate ("Property") situated in Yuba County, State of California, as more particularly described in **Exhibit A**, attached hereto and made a part hereof.

EXCEPTING FROM THIS QUITCLAIM AND RESERVING UNTO GRANTOR, its successors and assigns, forever, the following:

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

(b) A PERPETUAL EASEMENT upon, over, under and across the Property, extending ten feet (10') on either side of the center line of the existing tracks and including rights of access along the length thereof, for purposes of conducting freight rail operations and otherwise to fulfill Grantor's rights and obligations as a common carrier freight railroad under applicable federal laws and regulations, including the right to use the Property to provide freight rail service to all customers on or served from the Property, and operate, use, construct, reconstruct, maintain, repair, relocate and/or remove existing and/or future railroad, rail and railroad-related equipment, facilities and transportation systems, together with the right of access to and from the Property as necessary to utilize the rights contained herein.

The Property is quitclaimed by Grantor subject to the following covenants, conditions and restrictions which Grantee, by the acceptance of this Quitclaim Deed, covenants for itself, its successors and assigns, faithfully to keep, observe and perform:

(a) Restriction on Use. The Property must not be used for (i) residential, (ii) lodgings or accommodations (including, without limitation, hotels, motels, boarding houses, dormitories, hospitals, nursing homes, or retirement centers), or (iii) educational or child-care facilities (including, without limitation, schools, kindergartens or day-care centers).

(b) Environmental.

(i) "As Is" Sale. Grantee, for itself, its successors and assigns, including any successor owner of any interest in the Property, acknowledges and agrees that the Property is to be sold and accepted by Grantee in an "AS IS" condition, with all faults, and Grantee acknowledges that the Property may have been used for railroad and/or industrial purposes, among other uses. Grantee agrees that any information Grantee may receive from Grantor or its agents concerning the Property (including, but not limited to, any lease or other document, engineering study or environmental assessment) is furnished on the condition that Grantee will make an independent verification of the accuracy of the information. Grantor does not make any representations or warranties of any kind whatsoever, either express or implied, with respect to the Property; in particular, without limitation, Grantor makes no

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representations or warranties with respect to the use, condition, title, occupation or management of the Property, or compliance with applicable statutes, laws, codes, ordinances, regulations, requirements (collectively, "Condition of the Property"). Grantee acknowledges that it is entering into this Agreement on the basis of Grantee's own independent investigation of the physical and environmental conditions of the Property. Grantee assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation.

(ii) Release and Indemnity. GRANTEE, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, INCLUDING ANY SUCCESSOR OWNER OF ANY INTEREST IN THE PROPERTY, HEREBY RELEASES GRANTOR, AND, TO THE MAXIMUM EXTENT PERMITTED BY LAW, INDEMNIFIES, DEFENDS AND SAVES HARMLESS GRANTOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, FINES, PUNITIVE DAMAGES, LOSSES, COSTS, LIABILITIES AND EXPENSES, INCLUDING ATTORNEYS' FEES, IN ANY WAY ARISING OUT OF OR CONNECTED WITH THE KNOWN OR UNKNOWN CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT. THE FOREGOING WILL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF GRANTOR, ITS AFFILIATES, OR THEIR EMPLOYEES, AGENTS OR OFFICERS. WITH RESPECT TO THE FOREGOING, GRANTEE EXPRESSLY WAIVES THE BENEFITS AND PROTECTIONS OF SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA, WHICH READS AS FOLLOWS:

1542. Certain Claims Not Affected by General Release. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

(c) Covenants to Run with Land. The foregoing covenants, conditions, and restrictions shall run with the Property, the burdens of which will be binding on the successors and assigns of Grantee and the benefits of which will inure to the successors and assigns of Grantor. A breach of the foregoing covenants, conditions, and restrictions, or the continuance thereof, may, at the option of Grantor, its successors or assigns, be enjoined, abated, or remedied by appropriate proceedings.

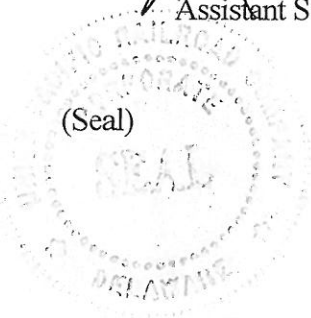
IN WITNESS WHEREOF, Grantor has caused this Quitclaim Deed to be duly executed as of the 20<sup>th</sup> day of December, 2016.

UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation

Attest:

  
Assistant Secretary

By:   
Title: Assistant Vice President - Real Estate

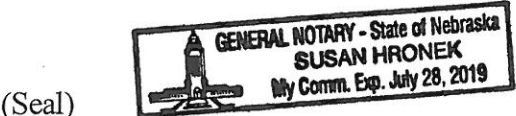


STATE OF NEBRASKA    )  
                                      ) ss.  
COUNTY OF DOUGLAS    )

On December 20, 2016, before me, Susan Hronek,  
Notary Public in and for said County and State, personally appeared  
Tony K Love and BJ Kubat, who are the  
Assistant Vice President - Real Estate and the Assistant Secretary, respectively, of UNION  
PACIFIC RAILROAD COMPANY, a Delaware corporation, and who are personally known to me (or  
proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to in  
the within instrument, and acknowledged to me that they executed the same in their authorized  
capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which  
the persons acted, executed the instrument.

WITNESS my hand and official seal.

  
Notary Public



Grantee hereby accepts this Quitclaim Deed and agrees for itself, its successors and assigns, to be bound by the covenants set forth herein.

Dated this 17<sup>th</sup> day of January, 2017.

**CITY OF MARYSVILLE,**  
**a California municipal corporation**

By: *Aaron W. Easton*  
Its: Acting City Manager  
Aaron W. Easton

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 YUBA        )

On this 17<sup>th</sup> day of January, 2017, before me, Billie J. Fangman, Notary Public, personally appeared Aaron Easton of CITY OF MARYSVILLE, a California municipal corporation, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/~~she~~ executed the same in his/~~her~~ authorized capacity, and that by his/~~her~~ signature on the instrument the person, or the entity upon behalf of which the person 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.

*Billie J. Fangman*  
Notary Public

(Seal)



EXHIBIT "A"

UPRR RIGHT OF WAY ACQUISITION

All that real property situate in the City of Marysville, County of Yuba, State of California being a portion of Lots 3 and 4 in Block 2, Range "K" as shown on the official map of the City of Marysville, approved March 22, 1856, and now on file in the office of the County Recorder of the County of Yuba, State of California more particularly described as follows:

Commencing at the Northeast corner of Lot 5, Block 2, Range "K" of said official map of the City of Marysville; thence, along the northerly line of said Lot 5 and its westerly projection, South 83°43'50" West, 176.16 feet to the northeast corner of Lot 4, Block 2, Range "K" of said official map of the City of Marysville and **TRUE POINT OF BEGINNING** of the herein described parcel of land; thence along the easterly line of said Lot 4, South 06°36'15" East, 25.85 feet; thence, leaving said easterly line, South 83°52'46" West, 11.30 feet to the beginning of a curve, concave to the northeast, having radius of 84.71 feet and central angle of 23°01'32"; thence along the arc of said curve, 34.04 feet; thence North 73°05'42" West, 15.54 feet to the beginning of a curve, concave to the southwest, having a radius of 55.29 feet and central angle of 19°48'31"; thence along the arc of said curve, 19.12 feet; thence, South 87°05'47" West, 33.99 feet; thence North 06°16'10" West, 6.50 feet to the northerly line of said Lot 4; thence, along said northerly line, North 83°43'50" East, 111.00 feet to the point of beginning.

The property described hereinabove contains 1,740 square feet more or less which is approximately 0.04 acres.

See Exhibit "B" attached hereto and made a part of this description.

The basis of bearings for the above described parcel of land are referenced to the California Coordinate System, Zone 2 originating from found monuments KS1971 and KS1813 established by the National Geodetic Survey and part of the national readjustment of 2007. All distances are ground measurement.

END OF DESCRIPTION



Prepared by MHM, Inc: Roger K. Hanlin, PLS

**CERTIFICATION OF NON-FOREIGN STATUS**

Under Section 1445(e) of the Internal Revenue Code, a corporation, partnership, trust, or estate must withhold tax with respect to certain transfers of property if a holder of an interest in the entity is a foreign person. To inform the transferee, CITY OF MARYSVILLE, that no withholding is required with respect to the transfer of a U.S. real property interest by UNION PACIFIC RAILROAD COMPANY, the undersigned hereby certifies the following on behalf of UNION PACIFIC RAILROAD COMPANY:

1. UNION PACIFIC RAILROAD COMPANY is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. UNION PACIFIC RAILROAD COMPANY is not a disregarded entity as defined in Section 1.445.2(b)(2)(iii) of the Internal Revenue Code;
3. UNION PACIFIC RAILROAD COMPANY'S U.S. employer identification number is 94-6001323; and
4. UNION PACIFIC RAILROAD COMPANY'S office address is 1400 Douglas Street, Omaha, Nebraska 68179, and place of incorporation is Delaware.

UNION PACIFIC RAILROAD COMPANY agrees to inform the transferee if it becomes a foreign person at any time during the three year period immediately following the date of this notice.

UNION PACIFIC RAILROAD COMPANY understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of UNION PACIFIC RAILROAD COMPANY.

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

By: *Tonyk Love*  
Title: Assistant Vice President - Real Estate  
Date: December 20, 2016

Certificate of Acceptance

This is to certify that the interest in real property conveyed by the quitclaim deed dated December 20, 2016, from Union Pacific Railroad to City of Marysville, a governmental agency, is hereby accepted by order of the City Manager on behalf of the City of Marysville City Council pursuant to authority conferred by Resolution No. 2016-67 of the City Council of the City of Marysville adopted on December 6, 2016, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: March 1, 2017

By   
Walter K. Munchheimer, City Manager



**RESOLUTION NO. 2016 - 67**

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MARYSVILLE, STATE OF CALIFORNIA,  
APPROVING THE PURCHASE OF REAL PROPERTY FROM  
UNION PACIFIC RAILROAD FOR THE FIFTH STREET BRIDGE PROJECT**

At a regular meeting of the City Council of the City of Marysville, State of California held on the 6th day of December, 2016.

**WHEREAS**, the new 5th Street Bridge project includes work inside the city limits of Marysville up to and including the intersection of 5th Street and J Street; and

**WHEREAS**, the City has a collaborative agreement with Yuba City to facilitate the construction of the new 5th Street Bridge; and

**WHEREAS**, the new 5th Street Bridge project includes four travel lanes; and

**WHEREAS**, the new 5th Street Bridge project will require additional roadway width on the Marysville side of the levees; and

**WHEREAS**, a portion of a property owned by UPRR is required for new lane construction; and

**WHEREAS**, it is necessary for the project to obtain a construction easement for work to be done under the railroad overpass; and

**WHEREAS**, the City of Yuba City will pay all costs associated with the acquisition of this property and construction easement.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Marysville does hereby approve the agreement for purchase of real property from the Union Pacific Railroad Company required for the 5th Street Bridge Project and the temporary construction easement agreement for the construction of the 5th Street Bridge, both as attached as Attachment A hereto and by this reference incorporated herein as if fully set forth herein, and authorizes the City Manager to execute all necessary documents on behalf of the City.

**I HEREBY CERTIFY** that the foregoing resolution was duly and regularly introduced and adopted by the City Council of the City of Marysville, County of Yuba, State of California, on the 6th day of December, 2016, by the following vote:

//  
//  
//

AYES: Bill Simmons, Dale Whitmore, Stephanie McKenzie, Christopher Pedigo,  
and Ricky Samayoa  
 NOES: None  
 ABSENT: None  
 ABSTAIN: None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said  
 City this 6th day of December, 2016.

By: Billie J. Fangman  
 Billie J. Fangman, City Clerk

CITY OF MARYSVILLE, CALIFORNIA  
 BY ITS CITY COUNCIL

By: Ricky A. Samayoa  
 Ricky A. Samayoa, Mayor

*The foregoing instrument is a correct copy of  
 the original on file in this office.*

ATTEST: Billie J. Fangman  
 City Clerk of the City of Marysville, California

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DEPUTY CLERK

# ATTACHMENT A



November 14, 2016  
Folder: 00463-80

**VIA UPS Overnight**  
**RETURN RECEIPT REQUESTED**

MIKE LAHODNY  
CITY OF MARYSVILLE  
4400 AUBURN BLVD  
SUITE 102  
SACRAMENTO CA 95841

Dear Mr. Lahodny:

This letter ("Agreement") confirms our understandings covering the possible sale by Union Pacific Railroad Company ("Seller") to CITY OF MARYSVILLE ("Buyer") of Seller's interest in certain real property in Marysville, California.

The undersigned will recommend to Seller's Management a sale of the Property on the following terms and conditions:

**Article 1. Description of Property:**

- A. The Property is approximately 0.04 acres as shown on the print attached hereto as Exhibit A and made a part hereof. The legal description of the Property will be determined by Seller. Survey will be at the sole cost and expense of Buyer. Survey will depict all facilities affecting the property.
- B. Before finalizing any survey, Buyer shall submit the draft survey to Seller for review and approval. Computer files of the survey and legal descriptions shall be sent via e-mail to DBPARKER@UP.COM, with a subject line referencing the UPRR Folder Number 00463-80 assigned to this document. Buyer shall deliver a certified copy of the completed survey to Seller within (30) days after Buyer's execution of this Agreement ("Survey Period"). Delay in obtaining or furnishing the survey to Seller shall in no event give Buyer the right to extend the Closing Date (as defined in the 'Closing - Default' Article).

**Article 2. Sale Price:**

- A. The sale price ("Sale Price") for the Property shall be Thirteen Thousand Five Hundred Dollars (\$13,500.00).

**Article 3. Feasibility Review/Right of Entry:**

- A. For (15) days from the date of execution of this Agreement by Buyer ("Feasibility Review Period"), Buyer and its agents and contractors may enter upon the Property to perform environmental audits, soil tests, engineering and feasibility studies of the Property. If the results of such audits, tests or studies, or Buyer's review of title or any other matters relating to the Property are unsatisfactory, Buyer may terminate this Agreement by giving Seller written notice before the end of the Feasibility Review Period. If no such written notice of termination is given before the end of the Feasibility Review Period, the Property will be deemed suitable for Buyer's purposes. In the event of such termination by Buyer, then Buyer shall surrender to Seller copies of all audits, soils, engineering and any other reports prepared for Buyer pertaining to the Property and such reports will become the sole property of Seller without cost or expense of Seller and this Agreement will terminate without any further force and effect, and without further obligation of either party to the other.
  
- B. Buyer's right to enter upon the Property pursuant to Article 3-A is subject to the following:
  - 1. Buyer will indemnify, defend and save harmless Seller and/or Seller's affiliates (Seller's affiliates means any corporation which directly or indirectly controls or is controlled by or is under common control with Seller), their officers, agents and employees, against and from any and all liability, loss, costs and expense of whatsoever nature growing out of personal injury to or death of persons whomsoever, or loss or destruction of or damage to property whatsoever, where such personal injury, death, loss, destruction or damage arises in connection with the entry upon the Property by Buyer, its agents or contractors prior to Closing.
  
  - 2. Buyer and Buyer's agents and contractors (collectively "Contractors") will maintain in confidence all information, reports, and evaluations generated in connection with any environmental assessments and will not make disclosure without the prior written consent of Seller. If Buyer discovers hazardous or toxic substances or materials, Buyer will immediately notify Seller.
  
  - 3. Buyer will promptly deliver to Seller the results and copies of any and all reports, evaluations, tests and studies generated in connection with any environmental assessments. Prior to the issuance of any final environmental report, Seller will have the opportunity to make comments, pose questions and offer recommendations to the Contractor preparing the report.
  
  - 4. Buyer agrees to indemnify, defend and hold harmless Seller against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of any work done, labor performed or materials furnished at the Property on behalf of Buyer prior to Closing.
  
  - 5. If the sale of the Property does not close, Buyer will, as soon as possible and at Buyer's sole expense, restore the Property to the same condition it was in immediately prior to the time Buyer entered the Property, failing in which Seller may perform the work of restoration and Buyer will reimburse Seller within thirty (30) days after rendition of bill by Seller.

C. Absence of markers is not a warranty by Seller of no subsurface installations. Fiber optic systems, pipelines, and other structures may be buried on the Property. Before any digging/drilling/excavation, the following procedures will be followed by Buyer and Buyer's Contractors:

1. Protection of any 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. Buyer will telephone 1-800-336-9193 (a 24-hour, 7-day number for emergency calls) during normal business hours (7 A.M. to 9 P.M., CT, Monday-Friday, except holidays) to determine if any fiber optic cable is buried on the Property. If it is determined that fiber optic cable is buried on the Property, Buyer shall promptly inform Seller, at the address at the bottom of the first page of this Agreement, of the results of its investigation.

2. Before drilling or excavating with mechanized equipment, Buyer will explore with hand tools to a depth of at least eight (8) feet below the surface or will use suitable detection equipment.

D. Notwithstanding any provisions in this Agreement to the contrary, if this Agreement is terminated for any reason whatsoever, Buyer will remain obligated to comply with the provisions of Article 3-A and 3-B and Seller will retain all of its remedies for Buyer's default under Article 3-A and 3-B.

**Article 4. As Is Sale - Release - Indemnity:**

A. Prior to the Closing Date, Buyer will have the opportunity to make such inspections of the Property and matters related thereto as Buyer desires, including, without limitation, governmental laws and regulations to which the Property is subject, the title to the Property, and the suitability or fitness of the Property for Buyer's proposed use. Buyer acknowledges and agrees that the Property is to be sold and accepted by Buyer in an "AS IS" condition, with all faults, and Buyer acknowledges that the Property may have been used for railroad and/or industrial purposes, among other uses. Buyer agrees that any information Buyer may receive from Seller or its agents concerning the Property (including, but not limited to, any lease or other document, engineering study or environmental assessment) is furnished on the condition that Buyer will make an independent verification of the accuracy of the information. Seller does not make any representations or warranties of any kind whatsoever, either express or implied, with respect to the Property; in particular, without limitation, Seller makes no representations or warranties with respect to the use, condition, title, occupation or management of the Property, or compliance with applicable statutes, laws, codes, ordinances, regulations, requirements (collectively "Condition of the Property"). Buyer acknowledges that it is entering into this Agreement on the basis of Buyer's own independent investigation of the physical and environmental conditions of the Property. Buyer assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation.

**B. FROM AND AFTER CLOSING, BUYER WILL RELEASE SELLER, AND, TO THE MAXIMUM EXTENT PERMITTED BY LAW, INDEMNIFY, DEFEND AND SAVE HARMLESS SELLER, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST**

ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, FINES, PUNITIVE DAMAGES, LOSSES, COSTS, LIABILITIES AND EXPENSES, INCLUDING ATTORNEYS' FEES, IN ANY WAY ARISING OUT OF OR CONNECTED WITH THE KNOWN OR UNKNOWN CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT. THE FOREGOING WILL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF SELLER, ITS AFFILIATES, OR THEIR EMPLOYEES, AGENTS OR OFFICERS. WITH RESPECT TO THE FOREGOING, BUYER EXPRESSLY WAIVES THE BENEFITS AND PROTECTIONS OF SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA, WHICH READS AS FOLLOWS:

1542. Certain Claims Not Affected by General Release. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

BUYER HEREBY EVIDENCES ITS SPECIFIC AGREEMENT TO THE TERMS OF THIS RELEASE AND INDEMNITY BY PLACING ITS SIGNATURE OR INITIALS IN THE PLACE PROVIDED HEREINAFTER.

\_\_\_\_\_  
Buyer's Initials

**Article 5. Escrow, Title Insurance and Abstract of Title:**

- A. Seller will not furnish title insurance or an abstract of title to the Property. Buyer may, at its sole option and expense, obtain a preliminary title report ("PTR") in order to review the status of title to the Property during the Feasibility Review Period. If Buyer obtains a PTR, a copy will be delivered to Seller. Seller has no obligation to cure any title defects or to assist Buyer in obtaining title insurance.
- B. If Buyer desires title insurance, Buyer shall pay the cost of any title insurance and any endorsements or changes to the title policy desired by Buyer. If an escrow is used, Buyer shall pay any and all fees relating to the escrow, including, but not limited to, any City and/or County Transfer Taxes and recording fees.

**Article 6. Form of Deed; Reservations:**

- A. At Closing, Seller will transfer Seller's interest in the Property to Buyer by Quitclaim Deed, subject to all outstanding rights, whether or not of record.

- B. Seller will reserve from the transfer
  - (1) all minerals and mineral rights without right of surface entry.

C. Restriction On Use.

The Property is quitclaimed by Seller subject to the following covenant, condition and restriction which buyer by the acceptance of this Deed covenant for himself, his heirs and assigns, faithfully to keep, observe and perform:

Restriction on Use. The Property must not be used for (i) residential, (ii) lodgings or accommodations (including, without limitation, hotels, motels, boarding houses, dormitories, hospitals, nursing homes, or retirement centers), or (iii) educational or child-care facilities (including, without limitation, schools, kindergartens or day-care centers).

The foregoing covenant, condition and restriction shall run with the Property, and a breach of the foregoing covenant, condition and restriction, or the continuance thereof, may, at the option of seller, its successors or assigns, be enjoined, abated or remedied by appropriate proceedings.

D. Easement Reservation.

Seller shall reserve to itself, its successors and assigns a perpetual easement upon, over, under and across the Property for purposes of conducting freight rail operations and otherwise to fulfill Seller's rights and obligations as a common carrier freight railroad under applicable federal laws and regulations, including the right to use the Property or any portion thereof to provide freight rail service to all customers, and to operate, use, construct, reconstruct, maintain, repair, relocate and/or remove existing and/or future railroad, rail and railroad-related equipment, facilities and transportation systems, together with the right of access to and from the Property as necessary to utilize the rights contained within this reservation.

**Article 7. Existing Agreements:**

- A. If any lease or "Use Rights" (license or other rights to use the Property) affects only the Property (whether identified by Seller before or after execution of this Agreement), Seller's rights and obligations under any such identified lease or Use Right will be assigned to and assumed by Buyer at or after Closing.
- B. Buyer acknowledges that the Property may be subject to unidentified Use Rights. It is the responsibility of Buyer to determine if any of these unidentified Use Rights exist.

**Article 8. Closing - Default:**

- A. Closing will occur on or before December 30, 2016 ("Closing Date"). The Closing will be deemed to occur upon payment of the Sale Price by a cashier's or certified check, and delivery of the deed. All Closing costs, including transfer taxes and excise taxes, will be paid by Buyer.

- B. If Closing fails to occur due to default by Seller, Buyer may terminate this Agreement as Buyer's sole remedy against Seller. In the event of such termination, neither Seller nor Buyer will have any further liability hereunder.
- C. If Closing fails to occur due to default by Buyer, Seller may terminate this Agreement and neither Seller nor Buyer shall have any further obligations or liability hereunder except for any of Buyer's surviving obligations pursuant to Article 3 (B) hereof. In no event shall Seller have any obligation whatsoever to extend the Closing Date for any reason if Buyer fails to perform.

**Article 9. Prorations:**

Local property taxes, if any, and other assessments due and payable in the year of Closing, as well as rental under any leases or Use Rights that are being assigned, will be prorated as of the date of Closing. Buyer will assume any installments of assessments not yet due and payable.

**Article 10. Negotiations – Brokers and Finders:**

Negotiations relative to this transaction have been carried on by both parties without the intervention of any person which will give rise to any valid claim against either of the parties hereto, for brokerage commission or other like payment. Each party hereto shall indemnify and hold harmless the other party against and from any and all claims for brokerage commission or other like payments arising out of the transaction contemplated by this Agreement and occasioned by the indemnifying party.

**Article 11. Subdivision/Platting Compliance:**

- A. This Agreement is expressly conditioned upon compliance with the California Subdivision Map Act ("Compliance"). If the Property is not already in Compliance, Buyer shall undertake and use commercially reasonable efforts to comply with local or state subdivision or platting laws or regulations prior to Closing. All necessary applications, maps and other requirements to comply with this requirement will be completed by Buyer at Buyer's sole cost and expense. If Buyer fails to effect Compliance prior to the Closing Date, then this Agreement shall terminate and neither party shall have any further obligation to the other. Seller is not obligated to extend the Closing Date due to Buyer's failure to effect Compliance prior to the Closing Date.
- B. In connection with Buyer pursuing Compliance, Seller shall cooperate by reviewing and executing necessary documents, provided, however, that Seller shall not be required to incur any cost or expense in connection therewith and that any action Buyer desires Seller to take shall be acceptable to Seller as to substance and legal form. If any proposed subdivision plat or parcel map contains conditions affecting Seller, the Property prior to Closing, or other real property owned by Seller which are unacceptable to Seller, then Seller, in its sole and absolute discretion, may terminate this Agreement. If this Agreement is terminated pursuant to this Section B, any deposit paid by Buyer will be returned to Buyer, and neither party shall have any further obligations (except for surviving obligations).

**Article 12. Mortgage Release:**



If the Property is subject to a blanket mortgage granted by Seller or a corporate predecessor of Seller, Seller will obtain a release within approximately six (6) months after Closing.

**Article 13. Seller's Management Approval:**

**BUYER ACKNOWLEDGES THAT NEITHER THIS AGREEMENT NOR THE NEGOTIATIONS LEADING TO THIS AGREEMENT CREATE ANY OBLIGATION ON THE PART OF SELLER TO SELL THE PROPERTY TO BUYER UNLESS THIS AGREEMENT IS APPROVED IN ACCORDANCE WITH SELLER'S MANAGEMENT POLICY STATEMENT. IF SUCH APPROVAL IS NOT GIVEN AND COMMUNICATED TO BUYER BY THE CLOSING DATE, THIS AGREEMENT WILL TERMINATE AND NEITHER PARTY WILL HAVE ANY FURTHER OBLIGATION.**

**Article 14. Condemnation:**


If, prior to Closing, a governmental agency commences or imminently threatens in writing to commence any eminent domain proceedings to take any material portion of the Property, Buyer and Seller shall each have the unilateral right, exercisable by giving notice of such decision to the other party within thirty (30) days after receiving written notice of such actual or threatened condemnation proceedings, to terminate this Agreement. In the event of such termination, this Agreement will be without any further force and effect and without further obligation of either party to the other. If neither party elects to terminate pursuant to this Article - Condemnation, the Sale Price will be determined as though such condemnation had not occurred, and the net proceeds of condemnation awards paid or payable to Seller by reason of such condemnation of the Property shall be paid or assigned to Buyer at Closing.

**Article 15. Temporary Construction Easement:**

At Closing, Seller agrees to grant to Buyer a temporary construction easement in the form attached hereto as Exhibit B (the "Easement") for the sole purpose of constructing improvements on the Property, as more particularly described in the Easement.

If you agree with the foregoing terms and conditions with respect to the possible purchase of the Property, please indicate your acceptance of these terms and conditions by signing in the acceptance space provided below and returning one copy to Daniel B. Parker at the address listed on the bottom of the first page of this letter, in order that it is received by Seller no later than December 10, 2016. Please also indicate below how you wish to take title. If you should have any questions, please call Daniel B. Parker at (402) 544-8624.

Sincerely,

  
\_\_\_\_\_  
Director - Real Estate

ACCEPTED AND AGREED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20 \_\_\_\_

CITY OF MARYSVILLE

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Title to the Property will be taken as follows:

\_\_\_\_\_

If Corporation, State of incorporation:

\_\_\_\_\_

If Husband and Wife, indicate how title will be taken:

\_\_\_\_\_ Joint Tenants with rights of survivorship

\_\_\_\_\_ Tenants in Common

\_\_\_\_\_ Community Property

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**EXHIBIT A**

Depiction of Temporary Easement Area

**“EXHIBIT B”**

**TEMPORARY CONSTRUCTION EASEMENT AGREEMENT**

**THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT** (this "Agreement") is entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Grantor"), and **CITY OF MARYSVILLE**, a California municipal corporation ("Grantee").

1. Grant of Temporary Easement / Term.

(a) Grantor hereby grants unto Grantee, its successors and assigns a temporary easement ("Temporary Easement") upon, over, and across that certain real property in the City of Marysville, County of Yuba, State of California, depicted on **Exhibit A** attached hereto and made a part hereof (hereinafter the "Property" or "Temporary Easement Area") for the s (the "Project").

(b) Grantor retains all of its rights to the use and occupation of the Temporary Easement Area not inconsistent with the use by Grantee, its successors or assigns.

(c) This Temporary Easement shall commence on the Effective Date and shall automatically terminate on the two (2) year anniversary of the Effective Date.

2. Maintenance of Temporary Easement Area. Grantee, at its sole cost and expense and without any contribution whatsoever from Grantor, shall at all times during the term of this Agreement repair and maintain the Temporary Easement Area and any of Grantee's facilities thereon in good and clean condition and repair. Grantee shall restore any of Grantor's Property which is damaged by Grantee's use to the same condition as existed immediately before such damage occurred. Grantor is not responsible for the removal/disposal of existing debris/rubble currently located within the temporary easement area.

3. Indemnification by Grantee. To the extent permitted at law, in exercising its rights and obligations under this Agreement, Grantee shall indemnify, hold harmless and defend Grantor, its officers, directors and employees (collectively, the "Grantor Indemnified Parties") from and against any and all loss, cost, damage, liability and expense (including reasonable attorneys' fees and expenses) for bodily injury to or death of persons, or damage to property caused by, arising out of or in connection with Grantee's or its agents', employees' or contractors' use of the temporary easement rights granted pursuant to this Agreement. In addition, Grantee covenants and agrees to indemnify, hold harmless and defend the Grantor Indemnified Parties and the Property from and against any and all loss, cost, damage, liability and expense (including reasonable attorneys' fees and expenses), on account of claims of lien of laborers, materialmen, or others, arising from or as a result of work performed or supplies furnished in connection with Grantee's use or occupancy of the Temporary Easement Area.

4. Contractor's Right Of Entry Agreement - Insurance

(a) If Grantee will be hiring a contractor or contractors to perform any work involving the Project, Grantee shall require its contractor(s) and their subcontractors to (i) execute the Railroad's Contractor's Right of Entry Agreement (which provides for flagging), and obtain the insurance coverage described therein; and (ii) provide the insurance policies, certificates, binders and/or endorsements to Grantor before allowing any of its contractor(s) and their respective subcontractors to commence any work in the Temporary Easement Area or on any other Grantor property.

(b) All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street, MS 1690  
Omaha, NE 68179  
ATTN: Dan Parker  
UP File Folder No. 463-80

(c) If Grantee's own employees will be performing any of the Project work, Grantee shall provide the Grantor defense and indemnification at least equal to the defense and indemnification to which the Grantor would be entitled as an additional insured had Grantee purchased General Liability Insurance and Automobile Liability Insurance each in an amount of not less than TWO MILLION DOLLARS (\$2,000,000) combined single limit per occurrence or claim and an aggregate limit of at least SIX MILLION DOLLARS (\$6,000,000) for Bodily Injury and Property Damage. Nothing herein shall be deemed to insure Grantor against its sole negligence or willful misconduct. Grantee may self-insure, as customary under its risk management programs; provided its self-insurance retention is in keeping with its net worth and cash flows and is consistent with that of other grantees of its size and operation.

5. Mechanics' Liens. Grantee shall not permit any mechanics' or materialmen's liens of any kind or nature to be enforced against the Property for any work done or materials furnished thereon at Grantee's request.

6. No Warranty / Matters of Record. This Temporary Easement is limited to such rights as the Grantor may have in the Temporary Easement Area and is granted without warranty, express or implied. This Temporary Easement is also made SUBJECT TO all outstanding leases, licenses and other outstanding rights of record, including, but not limited to, those for pipelines, wirelines and roadways and the right of renewals and extensions of the same.

7. Compliance with Law. Grantee shall, at its expense, comply with all applicable laws, regulations, rules and orders regardless of when they become or became effective, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality in the construction, operation and maintenance of its facilities on Grantor's Property. Should any discharge, leakage, spillage, emission or pollution of

any type occur upon or arise from the Property as a result of Grantee's use, presence, operations or exercise of the rights granted hereunder, Grantee shall, at its expense, be obligated to clean all property affected thereby, to the satisfaction of Grantor and any governmental body having jurisdiction in the matter.

8. Notices. All notices, demands and other communications hereunder shall be in writing and delivered personally or by a nationally recognized overnight courier service or mailed (by registered or certified mail, return receipt requested, postage prepaid) or telecopied with a confirming notice, addressed to the respective parties, as follows:

If to Grantee:

If to Grantor: Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street, MS 1690  
Omaha, Nebraska 68179

or such additional parties or other address as such party may hereafter designate. Any notice permitted or required to be given shall be deemed to have been given, and any item permitted or required to be delivered or furnished shall be deemed to have been furnished, when personally delivered or furnished, or one (1) business day after delivery to a nationally recognized and reputable courier guaranteeing next-day delivery with delivery charges prepaid, or after delivery or first attempted delivery by the United States Post Office, after being properly addressed and with postage prepaid for delivery by United States registered or certified mail.

9. Binding Effect. All covenants contained herein shall be deemed to be covenants that run with the land, and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. All references to Grantor, Grantee or parties shall be deemed to include the respective party's employees, invitees, agents, successors, and assigns.

10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement.

11. Captions. The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define or limit the scope of any section.

12. Modifications. Any modifications or amendments to this Agreement shall be made in writing and be executed by all parties.

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13. Waiver. The failure by any party to enforce any provision of this Agreement in a timely manner shall not be deemed a waiver of the right to enforce that provision, and any express waiver by any party of any breach of any provision of this Agreement shall not be deemed a waiver of any subsequent breach of that provision.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

GRANTOR:

UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

The undersigned Grantee hereby accepts this Temporary Easement, and agrees for itself, its successors and assigns to be bound by the covenants and conditions set forth herein and to perform all obligations of Grantee set forth herein.

GRANTEE:

CITY OF MARYSVILLE, a California municipal  
corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

The foregoing instrument is a correct copy of  
the original on file in this office.

ATTEST: *Billee J. Ingman*  
City Clerk of the City of Marysville, California

DEPUTY CLERK