

**REIMBURSEMENT AGREEMENT
PRELIMINARY ENGINEERING SERVICES – FRA GRANT**

Effective Date:

Estimate: \$200,000.00

THIS REIMBURSEMENT AGREEMENT (**Agreement**) is made and entered into as of the **Effective Date**, by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (**Railroad**), and COUNTY OF YOLO, a political subdivision of the State of California (**Agency**).

RECITALS

A. Agency desires to initiate the project more particularly described on Exhibit A attached hereto (**Project**).

B. The Project will affect Railroad's track and right of way at or near the Project area more particularly described on Exhibit A.

C. Railroad agrees to collaborate with Agency on the conceptualization and development of the Project in accordance with the terms and conditions of this Agreement.

D. The U.S. Department of Transportation Federal Railroad Administration (**FRA**) has grant programs (**FRA Grant**) that are subject to the requirements of 49 USC § 22905(c)(1) (**22905 Requirements**). The 22905 Requirements include certain assurances be made by written agreement between the applicant of the FRA Grant and railroad that owns rights-of-way to be used by a project funded by the FRA Grant.

E. Agency, as the "applicant" defined in the 22905 Requirements, has applied for and/or been awarded an FRA Grant subject to the 22905 Requirements.

F. Agency, at its expense, prepared and provided to Railroad certain information for its review in connection with the 22905 Requirements. Based on Railroad's review of such information provided by Agency, the parties hereby provide the assurances and additional terms and conditions identified on Exhibit D of this Agreement.

AGREEMENT

NOW THEREFORE, the parties hereto agree as follows:

1. Railroad, and/or its representatives, at Agency's sole cost and expense, agrees to perform (or shall cause a third-party consultant to perform on Railroad's behalf) the preliminary engineering services work described on Exhibit B attached hereto (**PE Work**). Agency acknowledges and agrees that: (a) Railroad's review of any Project designs, plans and/or specifications, as part of the PE Work, is limited exclusively to potential impacts on existing and future Railroad facilities and operations; (b) Railroad makes no representations or warranties as

to the validity, accuracy, legal compliance, or completeness of the PE Work; and (c) Agency's reliance on the PE Work is at Agency's own risk.

2. Notwithstanding the Estimate (**Estimate**), Agency agrees to reimburse Railroad and/or Railroad's third-party consultant, as applicable, for one hundred percent (100%) of all actual costs and expenses incurred for the PE Work. During the performance of the PE Work, Railroad will provide (and/or will cause its third-party consultant to provide) progressive billing to Agency based on actual costs in connection with the PE Work. Within sixty (60) days after completion of the PE Work, Railroad will submit (and/or will cause its third-party consultant to submit) a final billing to Agency for any balance owed for the PE Work. Agency shall pay Railroad (and/or its third-party consultant, as applicable) within thirty (30) days after Agency's receipt of any progressive and final bills submitted for the PE Work. Bills will be submitted to the Agency using the contact information provided on Exhibit C. Agency's obligation hereunder to reimburse Railroad (and/or its third-party consultant, as applicable) for the PE Work shall apply regardless whether Agency declines to proceed with the Project or Railroad elects not to approve the Project.

3. Agency acknowledges and agrees that Railroad may withhold its approval for the Project for any reason in its sole discretion, including without limitation, impacts to Railroad's safety, facilities, or operations. If Railroad approves the Project, Railroad will continue to work with Agency to develop final plans and specifications, and prepare material and force cost estimates for any Project related work performed by Railroad.

4. If the Project is approved by Railroad, Railroad shall prepare and forward to Agency a Construction and Maintenance Agreement (**C&M Agreement**) which shall provide the terms and conditions for the construction and ongoing maintenance of the Project. Unless otherwise expressly set forth in the C&M Agreement, the construction and maintenance of the Project shall be at no cost to Railroad. No construction work on the Project affecting Railroad's property or operations shall commence until the C&M Agreement is finalized and executed by Agency and Railroad.

5. Neither party shall assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned, or delayed.

6. No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties.

7. This Agreement sets forth the entire agreement between the parties regarding the Project and PE Work. To the extent that any terms or provisions of this Agreement regarding the PE Work are inconsistent with the terms or provisions set forth in any existing agreement related to the Project, such terms and provisions shall be deemed superseded by this Agreement to the extent of such inconsistency.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

COUNTY OF YOLO, a political subdivision
of the State of California

UNION PACIFIC RAILROAD COMPANY,
a Delaware Corporation

Signature

Mary Vixie Sandy

Printed Name

Chair, Board of Supervisors

Title

Signature

Amber Stoffels

Printed Name

Manager I, Engineering – Public Projects

Title

ATTEST:

Julie Dachtler, Senior Deputy Clerk
Board of Supervisors

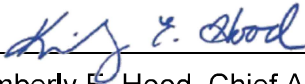
By _____

Deputy (Seal)

APPROVED AS TO FORM:

Philip J. Pogledich, County Counsel

By _____



Kimberly E. Hood, Chief Asst. County Counsel

Exhibit A

Project Description and Location

Project Description

Yolo County, California proposes design and construction of an overhead structure replacing the existing at-grade highway-railway crossing at the location referenced below.

Location

Martinez Subdivision

DOT	Crossing Type	Milepost	Street Name
751224V	Public	79.13	CR 105

Exhibit B

Scope of Project Services

Scope of work includes, but is not limited to the following

- Field diagnostic(s) and inspections
- Plan, specification, and construction review
- Project design
- Preparation of Project estimate for force account or other work performed by the Railroad
- Meetings and travel

Exhibit C
Billing Contact Information

Name	Todd N. Riddiough
Title	Director Public Works
Address	292 W Beamer Street, Woodland, CA 95695
Work Phone	(530) 666-8039
Cell Phone	
Email	todd.riddiough@yolocounty.gov
Agency Project No.	4625

Exhibit D

Assurances Pursuant to 22905 Requirements

The parties hereby provide the following assurances with respect to this Project:

A. Parties agree that the Agency, as applicant of the FRA Grant, will compensate Railroad for use of the Railroad's rights-of-way used in the Project at an amount to be determined at a later date as a part of separate but binding written agreement or agreements.

B. Agency and Railroad assure that the Project, when complete, has adequate infrastructure capacity to accommodate both existing and future freight train operations, and, if applicable, both existing and future passenger train operations (49 U.S.C. § 22905(c)(1)(B)).

C. Railroad assures that collective bargaining agreements with the Railroad's employees (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by the Railroad on the railroad transportation corridor for the construction of the proposed Project (49 U.S.C. § 22905(c)(1)(C)).

D. As appropriate, Agency, as applicant of the FRA Grant, assures that it complies with the liability requirements consistent with 49 U.S.C. § 28103.

Notwithstanding the foregoing assurances, the parties agree and provide further as follows:

E. Railroad's assurance regarding capacity in Subsection (B) above is made by Railroad in reliance upon plans and specifications provided by Agency to Railroad to date for the Project in conjunction with consideration of current conditions and presently known expectations for future capacity needs, in order to meet the grant purposes including to ensure the Project does not limit current or future rail capacity. The provision of said assurance shall in no way obligate, limit, or otherwise restrict either party's rights or obligations under this Agreement or otherwise, or the ability to make changes in and to the Project location or Railroad's right of way to accommodate future needs, including but not limited to any needs occasioned by Railroad's provision of rail services as a common carrier.

F. Nothing in this Agreement shall be construed as prohibiting, limiting, or otherwise restricting Railroad from negotiating and/or modifying (including the removal of any of) the terms (including subcontracting terms) of any applicable collective bargaining agreement now in effect as provided by or pursuant to the Railway Labor Act (45 U.S.C. § 151 et seq., as amended). Further, nothing in this Agreement shall be construed as providing any separate or additional remedy for an alleged breach of a collective bargaining agreement, which are and shall be limited to those remedies provided by such collective bargaining agreement and/or the Railway Labor Act, as applicable.

G. Further, nothing contained in this Agreement shall be construed as Railroad's acceptance of the Project nor approval of Agency's plans. These assurances are based on concept plans and are made for the purpose of Railroad's continued review of the Project plans to ensure compliance with Railroad's standards. The Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of Agency's plans and any reliance by Agency or its contractor on the Agency's plans is at the risk of Agency and its contractor.

H. For purposes of clarity, this Agreement nor making these assurances create any obligations or agreements whatsoever between Railroad and Agency in connection with the Project except for those that are expressly stated in this Agreement. For example, but not in any way limiting the generality of the foregoing, nothing in this Agreement shall be interpreted as either party undertaking any obligations related to the negotiation of the Project, or as an agreement between the parties to ultimately proceed with the Project. No such additional obligations or agreements shall exist unless and until each party approves and executes, in its sole discretion, a final and definitive written agreement or agreements setting forth the same.

I. Each party is and will at all times be and remain independent from the other party. Nothing contained herein will have the effect of creating a trust, joint venture, partnership or employment relationship between the parties. Neither of the parties has any right or power to obligate or bind another party in any manner whatsoever.

J. Agency, as the applicant of the FRA Grant, is responsible for ensuring the 22905 Requirements are met. Railroad makes no representations as to the validity, accuracy or completeness of the information provided by Agency to Railroad for purposes of the 22905 Requirements. Agency also hereby agrees that it is responsible for performing, completing and submitting all supporting documents and reporting required by the FRA Grant.

K. These assurances are made for the purposes of this Agreement only. No third-party benefits are intended or provided.