

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: R. Alan Shubert, P.E., Engineer-Ballpark Project

AGENDA DATE: Introduction April 2, 2013

Public Hearing April 9, 2013

CONTACT PERSON NAME AND PHONE NUMBER: R. Alan Shubert, P.E., Project Engineer for City of El Paso Ballpark (541-4428)

DISTRICT(S) AFFECTED: District 8

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A MEMORANDUM OF AGREEMENT AND ANY OTHER NECESSARY DOCUMENTS BETWEEN THE CITY OF EL PASO AND UNION PACIFIC RAILROAD COMPANY WHICH WILL ALLOW THE CITY TO CONVEY APPROXIMATELY 2 ACRES OF LAND BEING A PORTION OUT OF THE 11.87 ACRES CONVEYED TO THE CITY OF EL PASO BY EL PASO UNION PASSENGER DEPOT COMPANY, ACCORDING TO THE DEED RECORDED IN VOLUME 901, PAGE 1134, REAL PROPERTY RECORDS OF EL PASO COUNTY TEXAS, AND A STRIP OF CITY LAND ADJACENT TO SAN FRANCISCO STREET AND COLDWELL STREET AS THE STREETS ARE SHOWN ON RECORDED CAMPBELL ADDITION PLAT TO THE CITY OF EL PASO.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

The City Council is being asked to approve an ordinance which will authorize the City Manager to sign a Memorandum of Agreement (MOA) between the City and Union Pacific Railroad Company (Union Pacific). The MOA allows for an exchange of real property and the conveyance of air right easements.

Union Pacific desires to realign its main tracks in the vicinity of the Bataan Trainway and the City's Union Depot as part of its on-going velocity project, and Union Pacific has asked the City to convey approximately two (2) acres at the Union Depot which will allow this parcel to be incorporated into the velocity project design. As part of the consideration for the two (2) acre site, the City is requesting that Union Pacific convey approximately 8,684 square feet located at the former City Hall and permanent aerial easements for two (2) pedestrian crossings and two (2) stadium overhangs over the Bataan Trainway to the City so that these interests can be incorporated into the Ballpark design.

The MOA identifies the conditions of the property conveyances, and it also identifies the property value for each of the property interests. The values will be adjusted based on the amount of land identified in the finalized surveys (value of City Property at the Union Depot, \$11.10/sq.ft.; value of UP Property at the former City Hall, \$27.50/sq.ft., and value of Air Rights: \$7.00/sq.ft.).

Depending upon the finalized surveys, it is estimated that the Union Pacific will pay the City approximately \$656,000 and it will also convey the 8,684 square foot parcel of land at the former City Hall and the permanent aerial easements across the Bataan Trainway in exchange for the City's conveyance of approximately two (2) acres at the Union Depot.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

N/A

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

R. Alan Shubert, P.E., Project Engineer for City of El Paso

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A MEMORANDUM OF AGREEMENT AND ANY OTHER NECESSARY DOCUMENTS BETWEEN THE CITY OF EL PASO AND UNION PACIFIC RAILROAD COMPANY WHICH WILL ALLOW THE CITY TO CONVEY APPROXIMATELY 2 ACRES OF LAND BEING A PORTION OUT OF THE 11.87 ACRES CONVEYED TO THE CITY OF EL PASO BY EL PASO UNION PASSENGER DEPOT COMPANY, ACCORDING TO THE DEED RECORDED IN VOLUME 901, PAGE 1134, REAL PROPERTY RECORDS OF EL PASO COUNTY TEXAS, AND A STRIP OF CITY LAND ADJACENT TO SAN FRANCISCO STREET AND COLDWELL STREET AS THE STREETS ARE SHOWN ON RECORDED CAMPBELL ADDITION PLAT TO THE CITY OF EL PASO.

WHEREAS, the City of El Paso (City”) is constructing a AAA minor league baseball stadium (“Ballpark”) on the site of its former City Hall, 2 Civic Center Plaza, El Paso, Texas, which is adjacent to the Bataan Memorial Trainway (“Trainway”), and the Trainway contains the main track lines of Union Pacific Railroad Company (“Union Pacific”);

WHEREAS, Union Pacific desires to realign its main tracks in the vicinity of the Trainway and the City’s Union Depot as part of its on-going velocity project;

WHEREAS, the City owns property in the vicinity of the Union Depot and Union Pacific has asked the City to convey approximately two acres to Union Pacific to allow Union Pacific to incorporate additional property into the design of its velocity project;

WHEREAS, the City has received an independent appraisal of the market value of its interest in the identified two acre parcel;

WHEREAS, in accordance with Texas Local Government Code §272.001(b), staff has recommended that the identified site be sold to Union Pacific as the abutting property owner because the shape of the parcel does not allow it to be used independently under its current area or under applicable subdivision or other development control ordinance; and

WHEREAS, the El Paso City Council finds that it is in the public interest to convey this parcel to Union Pacific in consideration for Union Pacific’s conveyance of approximately 8,684 square foot parcel of land and additional consideration from Union Pacific, including but not limited to permanent aerial easements crossing the Trainway,

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Memorandum of Agreement between the City of El Paso and Union Pacific Railroad Company which will allow for the conveyance of the City's interest in the following property:

Two acres of land, more or less, being a portion out of the 11.87 acres conveyed to the City of El Paso by El Paso Union Passenger Depot Company, according to the Deed recorded in Volume 901, Page 1134, Real Property Records of El Paso County Texas, and a strip of City land adjacent to San Francisco Street and Coldwell Street as the streets are shown on recorded Campbell Addition Plat to the City of El Paso, as depicted on Exhibit "A" attached hereto and incorporated herein by reference, and

That the City Manager, or her designee, be authorized to sign any documents, approved by the City Attorney, to complete the conveyance of properties between the City and Union Pacific Railroad Company and any documents necessary to accomplish the intent of the Memorandum of Agreement, including any necessary budget transfers.

PASSED AND APPROVED this ____ day of _____, 2013.

THE CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

Richarda Duffy Momsen, City Clerk

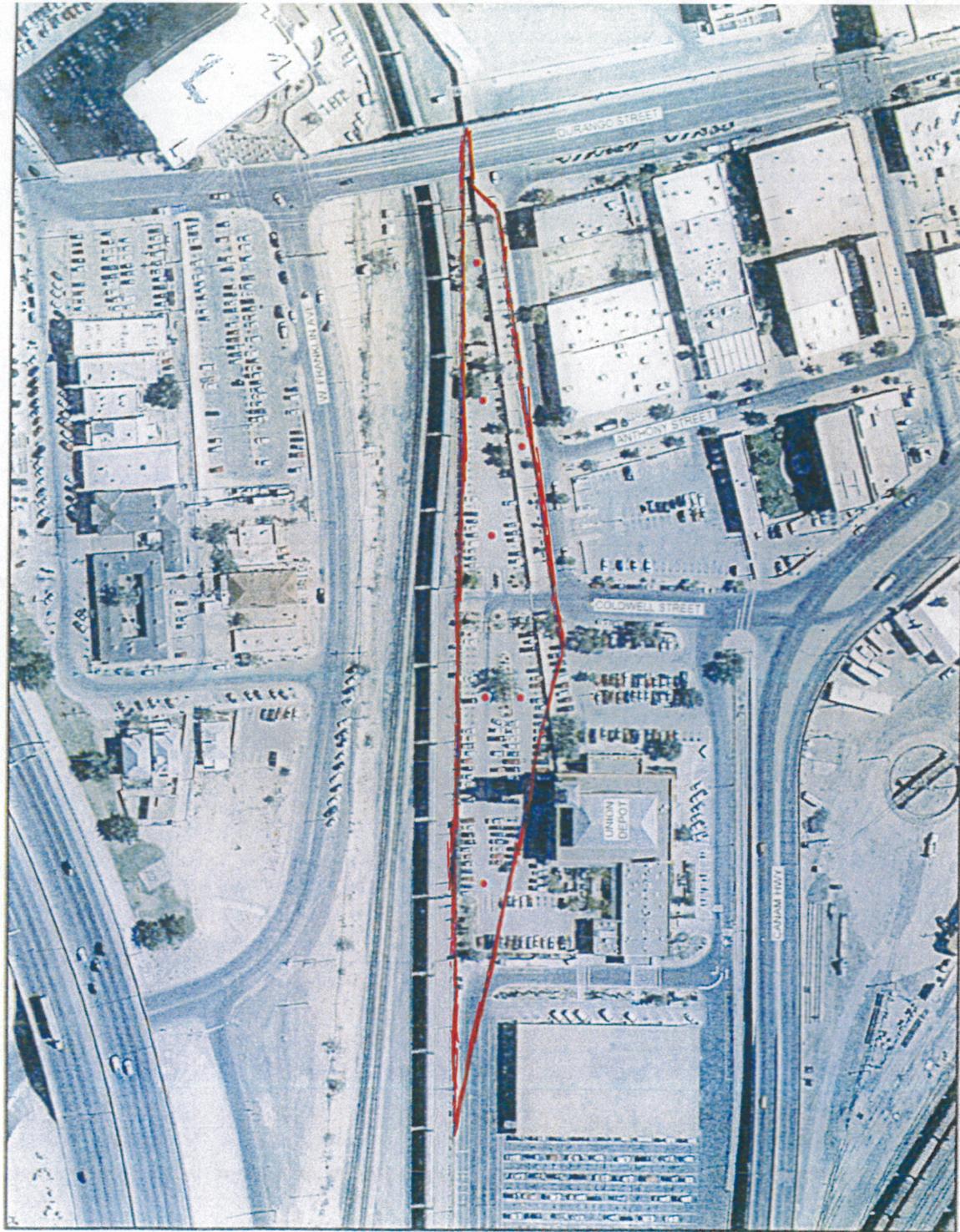
APPROVED AS TO CONTENT:

R. Alan Shubert, P.E.
Engineer-Ballpark Project

APPROVED AS TO FORM:



Theresa Cullen
Deputy City Attorney



MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT ("Agreement") is entered into April __, 2013 ("Effective Date"), between **Union Pacific Railroad Company**, a Delaware corporation, whose address is 1400 Douglas Street, Omaha, Nebraska 68179 ("Union Pacific"), and the **City of El Paso**, Texas, a Texas municipal corporation, whose address is 300 N. Campbell Street, El Paso, Texas 79901 ("City"). Union Pacific and City are sometimes collectively referred to as the "Parties" and individually as a "Party".

RECITALS

WHEREAS, the City is constructing a AAA minor league baseball stadium ("Ballpark") on the site of its former City Hall, 2 Civic Center Plaza, El Paso, Texas ("City Hall"), which is adjacent to the Bataan Memorial Trainway ("Trainway") and the Trainway contains the main track lines of Union Pacific;

WHEREAS, Union Pacific desires to realign its main tracks in the vicinity of the Trainway and the City's Union Depot as part of its on-going velocity project;

WHEREAS, Union Pacific is the owner of record of approximately 8,684 square feet of real property in the vicinity of the Ballpark as described in **Exhibit A** attached hereto and incorporated herein by reference ("UP Property");

WHEREAS, the City is the owner of approximately two (2) acres of real property at its Union Depot as depicted on **Exhibit B** ("City Property").

WHEREAS, the purpose of this Agreement is to memorialize an agreement between the City and Union Pacific to exchange the UP Property and the City Property and the commitment from the parties to work together to assist each other as identified herein.

WHEREAS, as further consideration for this Agreement, the City and Union Pacific shall enter into four (4) mutually acceptable construction and maintenance agreements outlining the terms and conditions (the "Construction and Maintenance Agreements") for the construction and maintenance of two pedestrian overpass structures, the construction of portions of the Ballpark over the Trainway, and modifications to the Trainway wall relating to the overpass structures and permanent easements regarding the same (collectively, the "Air Rights").

WHEREAS, the Parties have identified an error in the legal descriptions in prior conveyances from or to Union Pacific at or near the El Paso Convention and Performing Arts Center involving approximately 20,059 square feet and desire to correct such error as well as correct and clarify title issues related to approximately 2,857 square feet of land at City Hall, with both parcels described in **Exhibit C** attached hereto and incorporated herein by reference ("Correction Deed Property") and desire to file a deed correcting the error at no cost to either party.

NOW, THEREFORE, in consideration of the promises and conditions hereinafter set forth, and other good and valuable consideration, the sufficiency of which is hereby acknowledged the parties hereto agree as follows:

AGREEMENT

Section 1. Property Exchange.

Union Pacific and the City agree to exchange the City Property for the UP Property and the Air Rights (collectively referred to as the "Exchange Properties"). The parties agree that the City Property has more value than the combined value of the UP Property and the Air Rights. The property value for the UP Property will be referred to hereafter as the "UP Property Value". The property value for the City will be referred to hereafter as the "City Property Value". The value of the Air Rights will be referred to hereafter as the "Air Rights Value".

The property value for each of the Exchange Properties shall be the amount set forth hereafter, as adjusted based on the amount of land included pursuant to the Surveys (defined below) of the Exchange Properties.

City Property Value: \$11.10/sq.ft.

UP Property Value: \$27.50/sq.ft.

Air Rights Value: \$7.00/sq.ft.

Because the City Property is more valuable than the Union Pacific Property plus the value of the Air Rights, Union Pacific shall pay the City the value of the City Property, reduced by the UP Property Value and the Air Rights Value combined. The value paid by Union Pacific to the City is referred to herein as the "Purchase Price."

Section 2. Payment.

The Purchase Price, or any other funds exchanged by the Parties, shall be paid in cash or by certified or cashier's check drawn on a financial institution acceptable to the City and the Title Company, or by confirmed wire transfer ("Good Funds"), to be deposited with the Title Company (defined below).

Section 3. Transfer of City Property.

At Closing, the City will convey all of the City's right, title and interest in and to the City Property to Union Pacific by Deed Without Warranty in the form marked **Exhibit D** attached hereto. The City's transfer of the City Property shall be subject to all outstanding rights, easements, restrictions, reservations and conditions (whether recorded or unrecorded) and open and obvious on the ground. Union Pacific agrees it will accept the City Property subject to all rights of the National Railroad Passenger Corporation, hereinafter referred to as "AMTRAK". The City and Union Pacific agree to jointly give written notice of the pending transfer of City Property to AMTRAK.

Section 4. Transfer of UP Property.

At Closing, Union Pacific will convey all of Union Pacific's right, title and interest in and to the UP Property to the City by Deed Without Warranty in the form marked **Exhibit E** attached hereto. Union Pacific's transfer of the Union Pacific Property shall be subject to all outstanding rights, easements, restrictions, reservations and conditions (whether recorded or unrecorded) and open and obvious on the ground.

Section 5. Correction Deed.

Union Pacific and the City agree that former conveyances by or to Union Pacific in the vicinities of the El Paso Convention and Performing Arts Center (the "Convention Center") and City Hall need to be corrected and clarified. Union Pacific agrees to execute a Correction Deed to clarify and correct the City's ownership of the land at City Hall and at the Convention Center described on **Exhibit C**.

Section 6. Conditions Precedent to Exchange.

The Parties shall each commence to the following:

(a) **Title Review.** Within three (3) days after the Effective Date, Union Pacific, at its cost and expense, shall obtain from Lawyers Title of El Paso, 444 Executive Center Blvd., Suite 100, El Paso, Texas 79902 ("Title Company"), preliminary title reports on the Exchange Properties ("Title Reports"), and furnish same to City. Union Pacific and City each will have three (3) days after receipt of the Title Report to the Exchange Property being acquired in which to approve or disapprove any defects in the title or any liens, encumbrances, covenants, rights of way, easements or other outstanding rights disclosed by such Title Report. Disapproval must be by written notice given by the Party to the other party setting forth the specific item or items disapproved. If no such notice of disapproval is given by the Party within the three (3) day period, it will be conclusively presumed that the Party approves of the Title Report to the Exchange Property being acquired. If the Party disapproves of any item or items contained in or disclosed by the Title Report to the Exchange Property being acquired, the other party will have three (3) days after receipt of the Party's notice of disapproval to eliminate any disapproved items from the policy of title insurance to be issued in favor of the Party. If any such disapproved item is not eliminated within such three (3) day time period, then this Agreement will terminate unless the Party elects to waive its prior disapproval in writing at least seven (7) days before Closing; provided, however, that the other party is in all events required to cure, at or before Closing [as defined in Section 8(d)], monetary liens in a definite and ascertainable amount that may be cured by the payment of money. In the event of termination due to any such uncorrected defect in title, this Agreement will terminate and be without any further force and effect, and without further obligation of either party to the other except as described in Section (c) below.

(b) **Surveys.** The City, at its sole cost and expense, has obtained surveys and metes and bounds descriptions of the UP Property and the Correction Deed Property. The survey of UP Property has been prepared and certified by Conde, Inc. and is dated September 4, 2012, and

is identified as Job No. 812-17. The survey of the Correction Deed Property has been prepared and certified by Conde, Inc. and is dated March 18, 2013, and is identified as Job No.812-17. Within three (3) days of the Effective Date, the City will tender to Union Pacific for its review a survey of the Air Rights and Union Pacific will tender to the City for its review a survey of the City Property. Both UP and the City shall have five (5) days from receipt of all of the other's surveys to review and approve them or to send the other Party objections to the survey. If the Party disapproves of any item or items contained in or disclosed by the Survey to the Exchange Property being acquired, the other party will have three (3) days after receipt of the Party's notice of disapproval to eliminate any disapproved items from the survey. If any such disapproved item is not clarified or resolved within such three (3) day time period, then this Agreement will terminate unless the Party elects to waive its prior disapproval in writing at least seven (7) days before Closing; The cost of the survey obtained by Union Pacific of the City Property shall be divided equally between Union Pacific and the City. The surveys are sometimes collectively referred to as the "Surveys" and individually as a "Survey". The Parties shall furnish copies of the Surveys to the Title Company simultaneously with furnishing them to the other Party. The Survey of each Exchange Property, as approved by the Party acquiring such Exchange Property as set forth herein, will be used by the Parties as the basis for preparation of the metes and bounds descriptions of the Exchange Properties.

(c) Feasibility Studies. Upon execution of this Agreement, each Party, and their agents and contractors, are granted the privilege for a period until Friday, April 26, 2013, or such other date as shall be mutually agreed upon by the Parties ("Feasibility Review Period") of entering upon the Exchange Property being acquired for the purpose of performing environmental audits, soil tests, engineering and feasibility studies as the Party may deem necessary to determine the suitability of the soil conditions and other physical conditions of the Exchange Property being acquired. Prior to any intrusive testing of any nature, each Party must obtain the written consent of the other Party as to the location, nature and depth of the testing, and must give the other Party notice and opportunity for it and its environmental consultant to be present during the intrusive testing. All test results of any nature shall be kept confidential from any third party unless the Parties are required to disclose by applicable law or unless the other Party agrees to its limited release to specific third parties. Notwithstanding the foregoing, the Parties shall be permitted to share the test results with their respective agents, employees and contractors engaged in assisting with the land exchange and agree to provide each other 24 hour notice prior to the disclosure of any test results. If the results of such audits, tests or studies are unsatisfactory in the Party's opinion, the Party may, at its election, terminate this Agreement by giving the other party written notice of termination before expiration of the Feasibility Review Period. If no such written notice of termination is given by the Party to the other party before expiration of the Feasibility Review Period, the Exchange Property being acquired will be deemed suitable for the Party's purposes. In the event of such termination by a Party, then each Party shall surrender to the other party copies of all audits, soils, engineering and any other reports prepared for them pertaining to the Exchange Property being acquired and such reports will become the sole property of the other party without cost or expense of the other party, and this Agreement will terminate and be without any further force and effect and without further obligation of either party to the other. Regardless of whether this Agreement is terminated, each Party shall promptly furnish the other party with a copy of any and all reports on environmental assessments of the Exchange Property being acquired performed for the benefit of the Party.

(d) Entry on Exchange Property. Any entry on the Exchange Property under subparagraph (c) above is subject to the following terms and conditions:

(i) **EACH PARTY AGREES, TO THE EXTENT IT MAY LAWFULLY DO SO, TO RELEASE THE OTHER PARTY, THEIR OFFICERS, AGENTS, SERVANTS 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, REGARDLESS OF THE NEGLIGENCE OR FAULT, IN WHOLE OR IN PART, OF THE PARTY RELEASED AND SAVED HARMLESS, WHERE SUCH PERSONAL INJURY, DEATH, LOSS, DESTRUCTION OR DAMAGE ARISES IN CONNECTION WITH OR INCIDENT TO THE OCCUPATION OR USE OF THE EXCHANGE PROPERTY BEING ACQUIRED BY, OR THE PRESENCE THEREON OF THE PARTY, THEIR AGENTS, EMPLOYEES OR CONTRACTORS, BEFORE CLOSING AND FOR THE PURPOSE OF PERFORMING FEASIBILITY STUDIES UNDER SUBPARAGRAPH (C) OF THIS AGREEMENT;**

(ii) Each Party covenants and agrees to pay in full for all materials joined or affixed to the Exchange Property being acquired, and to pay in full all persons who perform labor upon such Exchange Property, and not to permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against such Exchange Property being acquired for any work done or materials furnished at the instance or request or on behalf of the Party; and each Party agrees, to the extent it may lawfully do so, to release the other party 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 before Closing;

(iii) If this Agreement is terminated prior to Closing, each Party shall, as soon as possible and at each Party's sole expense, restore the Exchange Property that was to be acquired to the same condition it was in immediately prior to the time the Party entered such Exchange Property, failing in which the other party may perform the work of restoration and the Party shall reimburse the other party for the cost and expense of restoration within thirty (30) days after rendition of a bill by the other party; and

(iv) Notwithstanding any provisions in this Agreement to the contrary, in the event this Agreement is terminated for any reason whatsoever, Union Pacific and City nevertheless will be obligated to comply with the provisions of this Section 6(d).

(e) Agreements Concerning Air Rights.

(i) New Pedestrian Bridge Crossing Agreements. As further consideration for this Agreement, the Parties agree as a condition to Closing to execute and deliver two mutually acceptable Pedestrian Bridge Crossing Agreements and accompanying

permanent easements (collectively, the "Crossing Agreements"). The Crossing Agreements will set forth the terms and conditions upon which Union Pacific will consent to the presence and use of two pedestrian sidewalks over the Trainway at Union Pacific Mile Post 1296.20 and Mile Post 1296.33, including but not limited to the requirement that Union Pacific review and approve the plans and specifications for the bridges prior to construction. As part of the Crossing Agreements, the City agrees to utilize the protective barrier of Union Pacific's choice in Union Pacific's sole discretion to be installed over the Trainway, provided, however, that Union Pacific shall not unreasonably object to aesthetic details to be selected by the City that do not impact the safety or operation of Union Pacific activities in the Trainway. Union Pacific agrees to review and comment on the City's plans for the Crossings within three (3) weeks of receipt from the City.

(ii) Agreement Covering Construction and Use of Stadium Overhangs. As further consideration for this Agreement, the Parties agree as a condition to Closing to execute and deliver a mutually acceptable Agreement Covering Construction and Use of Stadium Overhangs and accompanying permanent easements (collectively, the "Overhang Agreement"). The Overhang Agreement will set forth the terms and conditions upon which Union Pacific will consent to the presence of two overhangs of the Ballpark over the Trainway, including but not limited to the requirement that Union Pacific review and approve the plans and specifications for the overhangs prior to construction. As part of the Overhang Agreement, the City agrees to utilize the protective barrier of Union Pacific's choice in Union Pacific's sole discretion, provided, however, that Union Pacific shall not unreasonably object to aesthetic details to be selected by the City that do not impact the safety or operation of Union Pacific activities in the Trainway. Union Pacific agrees to review and comment on the City's plans for the Overhangs within three (3) weeks of receipt from the City. The parties agree that the Air Rights for the Crossings and for the Overhangs will total approximately 10,100 square feet in the approximate locations shown on the renderings of the City attached as **Exhibit F**.

(iii) New Trainway Wall Agreement/Amendment to Existing Trainway Wall Agreement. As further consideration for this Agreement, the Parties agree as a condition to Closing to execute and deliver a mutually acceptable new Trainway Wall Construction and Maintenance Agreement or an Amendment to any existing Trainway Wall Construction and Maintenance Agreement ("Wall Agreement"). The Wall Agreement will set forth the terms and conditions upon which Union Pacific will reasonably consent to modifications to the Trainway Wall between Union Pacific Mile Post 1296.00 and Mile Post 1296.70, including but not limited to the requirement that Union Pacific review and approve the plans and specifications for any work relating to the Trainway Wall.

(f) Lease to City. The City currently uses a portion of the City Property as a parking lot and an open pedestrian area. The Parties agree to execute and deliver a lease from Union Pacific to the City for the City Property ("Lease") at Closing. The Lease shall provide that the City may remain in possession of the City Property for a period of eighteen months following the Closing Date at no additional cost and expense to facilitate the reconfiguration of their remaining

land and parking lot. Union Pacific shall install a replacement fence along the new boundary line at its sole cost and expense. The fence shall match the design and materials of the existing fence nearest the Union Depot building, provided, however, that the fence shall be located on the City's side of the property boundary to avoid compromising Union Pacific's horizontal clearances and the design of the fence may need to be modified to satisfy Union Pacific's safety standards. The City shall provide Union Pacific with a right-of-entry to allow Union Pacific access to City land necessary for the installation of the fence. The City shall be responsible for the on-going maintenance of the fence at its sole cost and expense. To the extent the City remains in possession of the City Property beyond eighteen (18) months, the Lease shall be extended on month to month basis at the current fair market value calculated from a total land value at \$11.10/square foot. In no event shall the Lease term begin until the Deed for the City Property is filed of record.

(g) Ballpark Engineering Analysis. As further consideration for this Agreement and as a condition to Closing which already has been met, the City has completed and submitted to Union Pacific a very thorough engineering analysis and inspection of the train way at the City's sole cost and expense. This engineering analysis has included an evaluation of the existing structural competence and the ability of the Trainway wall to withstand loading from the demolition of City Hall as well as vibration from the demolition.

(h) Crossing Closure Agreement. In accordance with the May 12, 2013 Resolution approved by the City Council, as further consideration for this Agreement, the Parties agree as a condition to Closing to execute and deliver a closing agreement eliminating the railroad crossings at the following streets (the "Crossing Closure Agreement"):

- (i) Birch Street
- (ii) Cedar Street
- (iii) Elm Street
- (iv) Maple Street
- (v) Cadwallader Street
- (vi) Cebada Street
- (vii) Estrella Street
- (viii) Boone Street

Section 7. Post Closing Commitments.

(a) Delta Drive Overpass.

(i) Union Pacific has two rails that cross Delta Drive near the intersection of Delta Drive and Cypress Street in El Paso, Texas, and desires for an overpass to be constructed over these tracks (the "Overpass"). The El Paso City Council agrees that for health, safety and other traffic related reasons it supports the Overpass. The City Manager will work with City staff to begin the process to have the Overpass placed on the Metropolitan Planning Organization's (MPO) Metropolitan Transportation Plan (MTP) so that the Overpass can become a candidate project for funding. Union Pacific agrees to assist the City in seeking funds for the design and construction of the Overpass from

other sources. Union Pacific will support the City in its presentation and request to the Transportation Project Advisory Committee (TPAC) for it to recommend the Overpass to the Transportation Policy Board (TPB) and for the Overpass to become a priority project on the list of the Transportation Improvement Programs (TIP), and acknowledges that the City is not committing as of the date of this Agreement to pay the costs of the design or the construction of the Overpass. The Parties acknowledge that time is of the essence to obtain the Overpass and the City agrees that it will request that an item be placed on the next quarterly meeting agenda of the TPAC for presentation within 60 days of the completion of the final design for the Overpass.

(ii) Union Pacific will support the City in its presentation of the Overpass to the TPB, attending the meeting(s) of the TPB at which the Overpass project is presented, and agrees to support the City in its request for funds for the Overpass. It is understood that a prerequisite for placing the Overpass on the local TIP list so that it can get on the State Transportation Improvement Programs list (STIP) will be the identification of non-City funds. Union Pacific agrees to support and assist the City in obtaining these other non-City funds for the Project. If federal funds are obtained, Union Pacific will commit to fund the full amount of its percentage contribution required by the federal funding.

(b) Union Pacific Velocity Project and New Route. The City agrees to assist Union Pacific in coordinating discussions with other railroads for any additional land and other rights which may be related to Union Pacific's velocity project and new route.

(c) City's Option to buy Mills Property. Union Pacific agrees to give the City a three (3) year option from the Effective Date of this Agreement to purchase the property on Mills Street consisting of approximately 43,800 square feet currently being leased by the City from Union Pacific for parking purposes (the "Mills Property"). The purchase price of the option for the Mills Property is \$11.10 a square foot. This option is expressly conditioned upon the closure of no less than eight (8) additional railroad crossings which shall be further described by an agreement to be negotiated between the parties within 60 days after Closing that will be subject to separate City Council approval. The eight (8) crossings to be closed shall be selected from the list of 30 crossings listed on **Exhibit G** attached hereto and incorporated herein by reference. The Parties agree that Union Pacific shall pay the City a mutually agreed upon amount in exchange for the cost of closing each crossing.

(d) Utility Relocation. To the extent required by the Union Pacific redevelopment and use of the City Property, the Parties agree that Union Pacific may remove, relocate, lower or protect in place all water, sewer, electric, gas, stormwater pipes and related structures, fiber optic lines, ATT lines, Time Warner lines and other lines or cables of any sort (collectively the "Utilities"). If such utilities are governed by an agreement, the costs of relocation shall be allocated as set forth in such agreement except that any relocations costs of the City is any such agreements shall be paid by Union Pacific. Union Pacific agrees to coordinate with the City and the applicable owners of the Utilities as to the relocations. Without any monetary consideration, to the extent it is physically possible to do so, the City agrees to allow Union Pacific to relocate the Utilities located within the San Francisco portion of the right-of-way that is included in the City Property to locations under the roadway between the curbs of San Francisco Street. The

City acknowledges the presence of a 48 inch sanitary sewer line across the City Property and agrees to be responsible for the on-going maintenance of such line at its sole cost and expense regardless of whether Union Pacific elects to relocate or lower the line.

(e) Street Vacation. The parties acknowledge that part of the City Property may fall within dedicated public right of way of San Francisco Street (the "ROW"), in which event this square footage (the "ROW Portion") will need to be vacated pursuant to Section 19.15.040 of the Municipal Code of the City of El Paso (the "Code") subsequent to the Closing. Until a final determination is made by both Union Pacific and the City that the ROW Portion does not need to be vacated, or until the ROW Portion is vacated, the City agrees to place its Deed Without Warranty for all of the City Property into escrow and agrees that the Purchase Price to be paid by Union Depot will also be held in escrow with the Title Company. Within no more than 30 days from Closing, the City and Union Pacific agree to jointly submit any required application for the vacation and cooperate to comply with the requirements of the Code. In the event the application for vacation is not approved, Union Pacific shall have the option for 24 months from the Closing, at its sole discretion, to (1) require the City to join Union Pacific in resubmitting an application for approval; (2) elect not to close on the City Property and receive a refund of the Purchase Price and payment for the Air Rights Value and the City Property Value; or (3) elect to close on the portion of the City Property not within the right-of-way and receive a prorata refund of the Purchase Price based on the square footage of the land within the public right-of-way.

(f) License for Retaining Wall Footings or Tie Backs. Union Pacific anticipates that it may require retaining wall footings or tie backs under the roadway between the curbs of San Francisco Street and the City will support and assist in this regard to the extent San Francisco Street can physically accommodate the footings or tie backs. Union Pacific will submit its request in accordance with City procedures, agrees to pay all amounts for such right as required by City procedures, and agrees that it is responsible to obtain the right from the utility owners to remove any impacted utilities and pay to relocate them.

(g) Historic Markers. Subsequent to Closing, the City agrees at its expense to remove all of the Historic Markers and plaques currently located on the City Property upon 120 days notice of Union Pacific's request of removal.

(h) Construction and Operation of the Ballpark.

(i) The Parties agree that during the construction of the Ballpark project, any impact by the construction plans, schedules and phasing of the Ballpark will not interfere with or restrict train operations through the Trainway, whether by Union Pacific or any other railroad with trackage rights, except as mutually agreed to by the parties. The Parties agree that the operation of the Ballpark project will not interfere with or restrict train operations through the Trainway.

(ii) The City agrees to allow Union Pacific to review and approve the design of the ballpark improvements to be located within 50 feet of the Trainway and agrees that any structures built will not add to existing vertical or lateral loads on the Trainway. Union Pacific agrees to review the City's design and deliver any comments on it to the City within three (3) weeks of its receipt.

(iii) The City agrees to complete a preliminary environmental study (the "Study") at its sole cost and expense to establish the noise baseline and to determine potential impacts associated with the Ballpark improvements. Within five (5) days of the Effective Date of this Agreement Union Pacific agrees to tender to the City all of the information requested by the City's consultant to prepare the Study. Union Pacific agrees to review the Study within fifteen (15) working days of its receipt. The City at its sole cost and expense agrees to work with Union Pacific to generate options to mitigate any identified material impacts in the Study. The City agrees that construction within the areas identified in the Air Rights parcels will not begin until approval of the Study by Union Pacific, which approval shall not be unreasonably withheld.

Section 8. Escrow; Closing.

(a) Within 3 business days of the execution of this Agreement by both parties, an escrow account will be opened with Title Company. On or before the date of Closing, the Parties shall deposit with Title Company executed conveyance documents for the City Property and the UP Property, as well as fully executed Crossing Agreements and accompanying easements, the Overhangs Agreement and accompanying easements, the Wall Agreement, and the Civic Center corrective deed. The Title Company will be instructed that when it is in a position to issue a title insurance policy insuring the permanent easement on the Air Rights in the City and title to the UP Property and the Correction Deed Property in the City, and to issue a title insurance policy insuring title to the City Property in Union Pacific, subject only to the easements and other exceptions to title to which each Party has not objected, it shall:

- (i) record the deed for the UP Property and deliver the recorded deed to the City;
 - (ii) record the deed for the City Property to Union Pacific and deliver the recorded deed to Union Pacific;
 - (iii) record the Crossing easements and the Overhang easements for the Air Rights and deliver the recorded easements to the City;
 - (iv) record the Correction Deed Property deed and deliver the recorded deed to the City;
 - (v) issue and deliver to Union Pacific and the City the applicable title insurance policy.
- (b) At Closing, Union Pacific shall pay the following costs:
- (i) All escrow fees;
 - (ii) Union Pacific's pro rata share of real estate taxes (whether general or special) assessed against the UP Property and due and payable for the year of Closing;

- (iii) The premium for the issuance of the title insurance policy for the City Property; and
 - (iv) The cost of recording the deed for the City Property.
- (c) At Closing, the City shall pay the following costs:
- (i) The premium for the issuance of the title insurance policy for the UP Property and Correction Deed Property; and
 - (ii) The cost of recording the deed for the UP Property, the Crossing easements, the Overhang easements and the deed for the Correction Deed Property.
 - (iii) One-Half the cost of the survey of the City Property.
- (d) Closing. The exchange of the Exchange Properties and the Correction Deed Property will close (“Closing”) through escrow at the offices of the Title Company on or before May 1, 2013 (“Closing Date”), unless a Party has exercised its rights to terminate this Agreement during the Feasibility Period. Closing will be pursuant to the provisions of this Agreement, and in accordance with the general provisions of the usual form of escrow agreement used by Title Company in similar transactions (with such special provisions inserted as may be required to conform with this Agreement). At Closing, each Party shall deliver actual possession of its Exchange Property to the other party subject to subparagraphs (e) or (f) below.
- (e) Partial Closing. Notwithstanding any other provision of this Agreement, in the event that within the Feasibility Period Union Pacific elects not to purchase the City Property for any reason other than the City’s default under this Agreement, or elects to postpone the purchase of the City Property until the vacation of the portion of San Francisco Street within the City Property is completed, provided that conditions precedent to the exchange have been satisfied, the City may close by May 1, 2013 on the purchase of the UP Property, the Air Rights, and have the correction deed filed on the Correction Deed Property, so long as the City pays Union Pacific the UP Property Value and the Air Rights Value. If for any reason other than UP’s default under this Agreement the City elects not to purchase the UP Property and/or the Air Rights, Union Pacific shall have the right to close on the City Property, so long as Union Pacific pays the City Property Value.
- (f) Delayed Closing. In the event that Union Pacific elects to delay the conveyance of the City Property to Union Pacific until the vacation of the portion of San Francisco Street within the City Property is complete, for a 24 month period from the Closing, it may place the City Property Value in escrow with the Title Company pursuant to an escrow agreement among the Title Company, Union Pacific and the City with instructions that the Purchase Price for the City Property will be disbursed to the City and the Deed recorded when the vacation of the portion of San Francisco Street right of way within the City Property is completed. If Union Pacific elects under Section 7(e) above to not close on the City Property, the Title Company shall be instructed to refund the Purchase Price to Union Pacific. If Union Pacific elects under Section 7(e) to close

on the portion of the City Property not within the right-of-way, the City shall submit a modified deed for the City Property in exchange for the return of the original Deed and the Title Company shall be instructed to deliver a prorata portion of the Purchase Price to the City upon recording the modified deed and shall refund the remaining funds to Union Pacific.

Section 9. Title.

The City's title to the UP Property and Union Pacific's title to the City Property will be insurable as free and clear of all liens, encumbrances, exceptions, and reservations other than the following:

- (a) Non-delinquent real property taxes (whether general or special);
- (b) Standard printed exceptions in the title policy;
- (c) The City Property will be subject to all rights of AMTRAK; and
- (d) Except for monetary liens in a definite and ascertainable amount that may be cured by the payment of money, items disclosed in the Title Report for the Exchange Property being acquired and approved or waived by the Party under Section 6(a).

Section 10. As-Is; Release; Representations; Covenants.

(a) As Is. Except as otherwise provided in subparagraphs (d) and (e) below: (i) the UP Property, the City Property, and the Correction Deed Property are to be transferred to and accepted by the Party in an "as is" condition with all faults; (ii) Union Pacific makes no representations or warranties of any kind whatsoever, either express or implied, with respect to the UP Property, the Correction Deed Property, and Air Rights; in particular, but without limitation, Union Pacific makes no representations or warranties with respect to the use, condition, title, occupation or management of the UP Property, or compliance with applicable statutes, laws, codes, ordinances, regulations, requirements, covenants, conditions and restrictions (whether or not of record); (iii) City makes no representations or warranties of any kind whatsoever, either express or implied, with respect to City Property; in particular, but without limitation, City makes no representations or warranties with respect to the use, condition, title, occupation or management of City Property, or compliance with applicable statutes, laws, codes, ordinances, regulations, requirements, covenants, conditions and restrictions (whether or not of record); and (iv) each Party acknowledges that it is entering into this Agreement on the basis of its own investigation of the physical and environmental conditions of the Exchange Property it is acquiring, including the subsurface conditions, and each Party assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation. Each Party acknowledges that notwithstanding any prior or contemporaneous oral or written representations, statements, documents or understandings, this Agreement constitutes the entire understanding of the Parties with respect to the exchange of the Exchange Properties and supersedes any such prior or contemporaneous oral or written representations, statements, documents or understandings. Union Pacific acknowledges that the City Property was formerly used as a railroad yard until it was conveyed by the El Paso Union Passenger Depot Company to

the City in 1978. In addition, Union Pacific acknowledges that it has received a copy of the TCEQ April 6, 2009 letter to the City and a August 17, 2009 Final Site Closure Report submitted to TCEQ as related to the City's property operated by Sun Metro, which is adjacent to the City Property identified in this Agreement.

(b) Release by the City. THE CITY, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, HEREBY WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES UNION PACIFIC, AND ITS EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, OF AND FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, CAUSES OF ACTION, DEMANDS, RIGHTS, DAMAGES, COSTS, EXPENSES, PENALTIES, FINES OR COMPENSATION WHATSOEVER, DIRECT OR INDIRECT, WHICH THE CITY NOW HAS OR WHICH THE CITY MAY HAVE IN THE FUTURE ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE KNOWN OR UNKNOWN PHYSICAL OR ENVIRONMENTAL CONDITION OF THE UP PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE UP 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 APPLIES REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF UNION PACIFIC, ITS EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS, BUT DOES NOT APPLY TO ANY BREACH OF UNION PACIFIC'S REPRESENTATIONS UNDER SUBPARAGRAPH (E) BELOW.

(c) Release by Union Pacific. UNION PACIFIC, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, HEREBY WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES THE CITY, ITS EMPLOYEES, AGENTS, OFFICERS, HEIRS, SUCCESSORS AND ASSIGNS, OF AND FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, CAUSES OF ACTION, DEMANDS, RIGHTS, DAMAGES, COSTS, EXPENSES, PENALTIES, FINES OR COMPENSATION WHATSOEVER, DIRECT OR INDIRECT, WHICH UNION PACIFIC NOW HAS OR WHICH UNION PACIFIC MAY HAVE IN THE FUTURE ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE KNOWN OR UNKNOWN PHYSICAL OR ENVIRONMENTAL CONDITION OF THE CITY'S PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE CITY'S 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 APPLIES REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF THE CITY, ITS EMPLOYEES, AGENTS, OFFICERS, HEIRS, SUCCESSORS OR ASSIGNS, BUT DOES NOT APPLY TO ANY BREACH OF THE CITY'S REPRESENTATIONS UNDER SUBPARAGRAPH (D) BELOW.

(d) Representations and Warranties of the City. The City represents and warrants to Union Pacific that the following matters are true as of the Effective Date, and will also be true as of Closing, and will survive and not merge into the Closing, and notwithstanding anything to the contrary in this Agreement, the effect of such representations and warranties will not be diminished or deemed to be waived by any inspections, tests or investigations made by or on behalf of Union Pacific:

(i) The City has received no written notice from any municipal, state, federal or other governmental authority of zoning, building, fire, water, use, health, environmental or other statute, ordinance, code or regulatory violations issued in respect of the City Property that have not been corrected.

(ii) This Agreement has been (and all transfer documents to be delivered by the City to Union Pacific at Closing will be) duly authorized, executed and delivered by the City, are (or, in the case of the transfer documents, will be) legal, valid, and binding obligations of the City, enforceable in accordance with their terms, and do not and will not violate any provisions of any agreement to which the City is a party.

(iii) At Closing there will be no outstanding contracts made by the City for any improvements to the City Property which have not been fully paid for, and the City shall cause to be discharged all obligations under any such contracts and all mechanic's, materialmen's and other liens arising from any labor, materials, goods or services furnished before Closing that pertain to the City Property.

(iv) The City has received no written notice of any pending or threatened judicial, municipal or administrative proceedings affecting the City Property or in which the City is or will be a party by reason of the City's ownership of the City Property.

(e) Representations and Warranties of Union Pacific. Union Pacific represents and warrants to the City that the following matters are true as of the Effective Date, and will also be true as of Closing, and will survive and not merge into the Closing, and notwithstanding anything to the contrary in this Agreement, the effect of such representations and warranties will not be diminished or deemed to be waived by any inspections, tests or investigations made by or on behalf of the City:

(i) Union Pacific has received no written notice from any state, federal or other governmental authority of zoning, building, fire, water, use, health, environmental or other statute, ordinance, code or regulatory violations issued in respect of the UP Property that have not been corrected.

(ii) This Agreement has been (and all transfer documents to be delivered by Union Pacific to the City at Closing will be) duly authorized, executed and delivered by Union Pacific, are (or, in the case of the transfer documents, will be) legal, valid, and binding obligations of Union Pacific, enforceable in accordance with their terms, and do

not and will not violate any provisions of any agreement to which Union Pacific is a party.

(iii) At Closing there will be no outstanding contracts made by Union Pacific for any improvements to the UP Property which have not been fully paid for, and Union Pacific shall cause to be discharged all obligations under any such contracts and all mechanic's, materialmen's and other liens arising from any labor, materials, goods or services furnished to Union Pacific before Closing that pertain to the UP Property.

(iv) Union Pacific has received no written notice of any pending or threatened judicial, municipal or administrative proceedings affecting the UP Property or the Air Rights or in which Union Pacific is or will be a party by reason of Union Pacific's ownership of the UP Property or the Air Rights.

(v) Union Pacific is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1954, as amended, and Union Pacific shall furnish to the City at or before Closing a certificate in the form required by Section 1445(f)(3).

Section 11. Loss by Fire, Other Casualty or Condemnation.

(a) Notwithstanding any other provision in this Agreement, until Closing, Union Pacific is solely responsible for all risk of casualty or other loss or damage to the UP Property, and the City is solely responsible for all risk of casualty or other loss or damage to the City Property.

(b) If all or any portion of an Exchange Property is destroyed or materially damaged or if condemnation proceedings are commenced or threatened, then the Party with the right to purchase that property may elect to either (i) terminate this Agreement, in which event this Agreement will be of no further force and effect and without further obligation of either party to the other; or (ii) treat this Agreement as being in full force and effect, in which event all condemnation awards or proceeds of insurance payable to the other party will be paid or assigned to the Party. Notice of the Party's election must be given to the other party within thirty (30) days after the Party receives written notice of the destruction, damage or condemnation proceedings. Failure of a Party to make such election within said period shall be deemed an election under clause (ii) above.

Section 12. Notices.

Any notices required or desired to be given under this Agreement must be in writing and personally served, given by overnight express delivery, or given by mail. Notices given by mail must be sent, postage prepaid, by certified mail, return receipt requested. All notices must be addressed to the party to receive at the following address or at such other address as the party may from time to time direct in writing:

Union Pacific: Union Pacific Railroad Company

ATTN: Rodney Carroll, Director – Real Estate
1400 Douglas Street, Mail Stop 1690
Omaha, Nebraska 68179
Telephone: (402) 544-2221

with copy to: Union Pacific Railroad Company
ATTN: Madeline Roebke – Real Estate
1400 Douglas Street, Mail Stop 1580
Omaha, Nebraska 68179
Telephone: (402) 544-1121

City: City of El Paso
ATTN: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890
Telephone: (915)541-4844

with copy to: City of El Paso
ATTN: City Attorney
P.O. Box 1890
El Paso, Texas 79950-1890
Telephone: (915)541-4550

Express delivery notices shall be deemed to be given upon receipt. Postal notices shall be deemed to be given three (3) days after deposit with the United States Postal Service.

Section 13. No Brokers.

The negotiations relative to this Agreement and the transactions contemplated by this Agreement have been conducted by the parties without the intervention of any person that would give rise to any valid claim against either of the parties for brokerage commissions or other like payment.

Section 14. Successors and Assigns.

This Agreement is binding upon and will inure to the benefit of each party and their respective heirs, successors and assigns, except that the interests of Union Pacific and the City under this Agreement may not be assigned, encumbered or otherwise transferred, whether voluntarily, involuntarily, by operation of law or otherwise. Any assignment, encumbrance or other transfer in violation of the foregoing will be void and the party transferring any interest will be deemed in default under this Agreement.

Section 15. Time of the Essence.

Time is of the essence of this Agreement.

Section 16. Exhibits.

The contents of the exhibits and schedules attached to this Agreement are incorporated by reference.

Section 17. Entire Agreement.

This Agreement contains the entire agreement between Union Pacific and the City with respect to the transactions contemplated in this Agreement and supersedes all prior agreements between Union Pacific and the City, whether written or oral. This Agreement may not be modified or amended except by a written instrument executed by each of the Parties to this Agreement.

Section 18. Survival of Terms.

The terms, covenants, warranties and representations contained in this Agreement will not merge with the deeds to be delivered at Closing, but rather will continue and survive Closing. If there is any conflict in the terms of this Agreement and the terms of any document referenced in this Agreement, the terms of this Agreement shall control.

Section 19. Section 1031 Exchange.

Union Pacific and the City intend that the exchange of the Exchange Properties under this Agreement will qualify as an exchange within the meaning of Section 1031 of the Internal Revenue Code. Notwithstanding the foregoing, each party acknowledges it is relying solely on its own inquiry and information with respect to income tax consequences, and the parties agree that each party will bear its or his/her own risks with respect to income tax consequences and any losses either party may sustain in the event this transaction does not qualify for deferred recognition of gain under the Internal Revenue Code.

Section 20. Dates of Performance.

If any date for performance of any obligation hereunder falls on a Saturday, Sunday or nationally established holiday, the time for performance of such obligation shall be extended until the next business day following such date.

[Remainder of page intentionally left blank; signature page to follow]

Union Pacific:

**Union Pacific RAILROAD COMPANY,
a Delaware corporation**

By: _____
Print Name: _____
Title: _____

City:

**CITY OF EL PASO,
a Texas municipality**

By: _____
Print Name: _____
Title: _____

APPROVED AS TO CONTENT:

R. Alan Shubert, P.E.
Project Engineer El Paso Ballpark

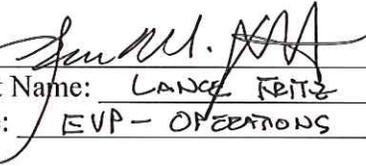
APPROVED AS TO FORM:



Theresa Cullen
Deputy City Attorney

Union Pacific:

**Union Pacific RAILROAD COMPANY,
a Delaware corporation**

By: 
Print Name: LANCE FITZ
Title: EVP - OPERATIONS

City:

**CITY OF EL PASO,
a Texas municipality**

By: _____
Print Name: _____
Title: _____

APPROVED AS TO CONTENT:

R. Alan Shubert, P.E.
Project Engineer El Paso Ballpark

APPROVED AS TO FORM:

Theresa Cullen
Deputy City Attorney

Prepared for: The City of El Paso
August 21, 2012

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of the Union Pacific Company Right of Way-out of Blocks 28 and 48, Mills Map Addition and being more particularly described by Metes and Bounds as follows:

Commencing for reference at an existing City of El Paso monument lying 10 feet north and east of the centerline intersection of Missouri Avenue and Santa Fe Street from which a found City of El Paso point of intersection monument lying 10 feet north of the centerline of Missouri Avenue bears, South 52°23'00" West a distance of 461.61 feet; Thence along the monument line of Santa Fe Street, South 37°37'00" East a distance of 461.73 feet to a point, Thence leaving said monument line, South 52°23'00" West a distance of 45.00 feet to a point on the westerly right of way line of Santa Fe for the "TRUE POINT OF BEGINNING"

Thence along the westerly right of way line of Santa Fe Street, South 37°37'00" East a distance of 2.86 feet to a point;

Thence leaving said right of way line, South 52°38'26" West a distance of 120.28 feet to a point;

Thence, South 55°22'29" West a distance of 86.26 feet to a point;

Thence, South 55°09'28" West a distance of 49.39 feet to a point;

Thence, South 57°50'20" West a distance of 100.93 feet to a point;

Thence, South 58°29'04" West a distance of 64.49 feet to a point;

Thence, South 62°30'04" West a distance of 139.33 feet to a point;

Thence, South 23°37'36" East a distance of 1.30 feet to a point;

Thence, South 49°05'38" West a distance of 1.69 feet to a point;

Thence, South 77°04'44" West a distance of 38.09 feet to a point;

Thence, North 78°10'57" West a distance of 32.97 feet to a point on the southerly line of a parcel of land described in volume 1021, page 806, Real property records of El Paso County, Texas;

Thence along said line, North 63°27'12" East a distance of 148.31 feet to a point;

Thence along said line, North 52°23'00" East a distance of 20.00 feet to a point;

EXHIBIT A

Thence along said line, North 61°49'19" East a distance of 121.65 feet to a point;

Thence along said line, South 37°37'00" East a distance of 21.78 feet to a point;

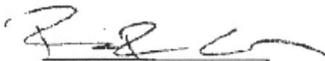
Thence along said line, North 57°33'00" East a distance of 70.29 feet to a point;

Thence along said line, North 54°14'12" East a distance of 110.06 feet to a point

Thence along said line, South 37°37'00" East a distance of 5.00 feet to a point;

Thence along said line, North 52°23'00" East a distance of 150.00 feet to the TRUE POINT OF BEGINNING" and containing 8,684 Sq. Ft. or 0.1994 acres of land more or less.

Note: A Survey drawing of even date accompanies this description.



Ron R. Conde
R.P.L.S. No. 5152



job #812-17

CONDE, INC.
ENGINEERING / LAND SURVEYING / PLANNING
6080 SURETY DRIVE SUITE 100 / EL PASO, TEXAS 79905
(915) 592-0283 FAX (915) 592-0286

EXHIBIT A

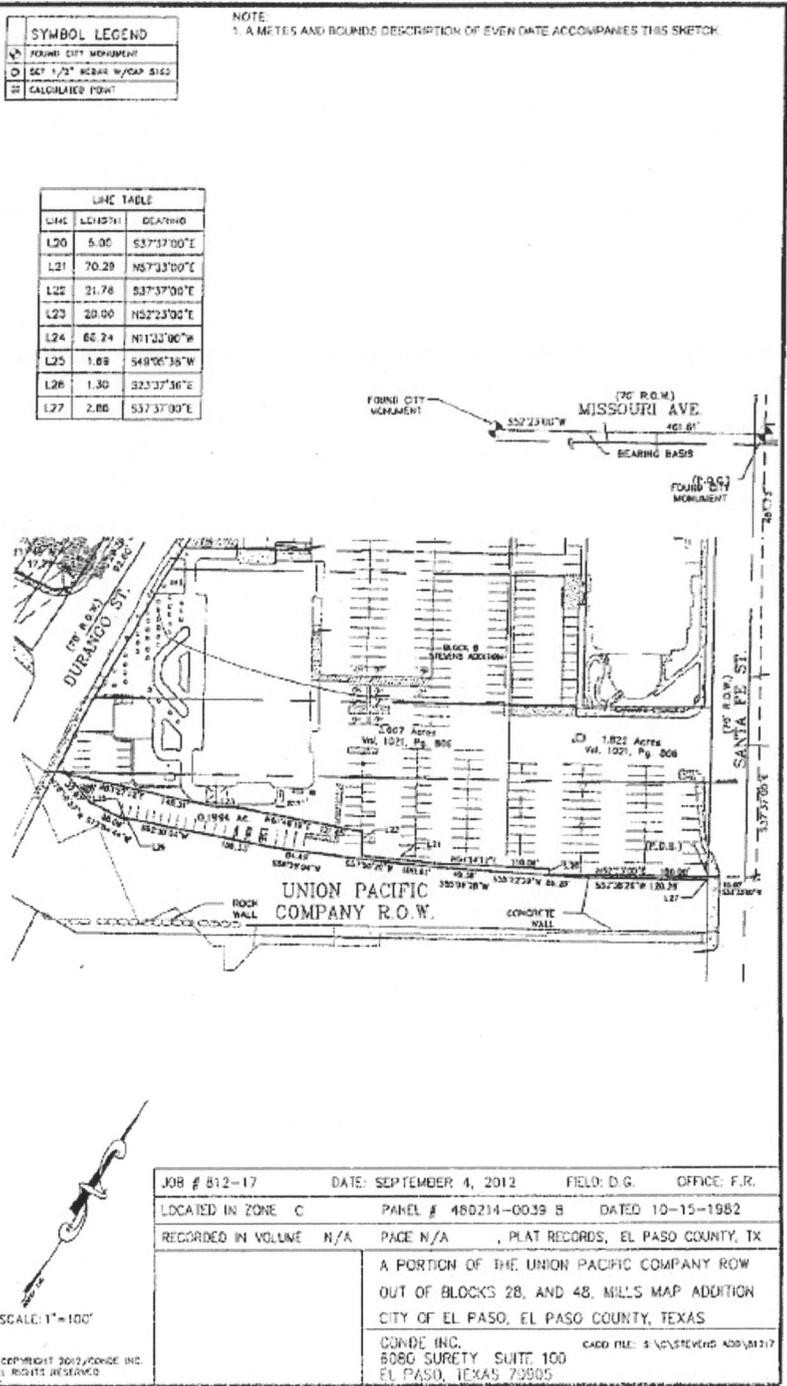


EXHIBIT A

**LEGAL DESCRIPTION
DEPOT PARCEL**

BEING A 1.991 ACRE TRACT IN THE JUAN MARIA PONCE DE LEON GRANT, REFERRED TO AS THE ATCHISON, TOPEKA, AND SANTA FE RAILROAD RESERVATION, AND BEING A PORTION OF THAT CERTAIN 11.851 ACRE TRACT AS DESCRIBED IN VOLUME 901, PAGE 1134, REAL PROPERTY RECORDS OF EL PASO COUNTY, TEXAS (RPREPCT), ALSO BEING A PORTION OF SAN FRANCISCO STREET (70 FOOT ROW), AS SHOWN ON MILLS MAP TO THE CITY OF EL PASO, EL PASO COUNTY, TEXAS AND CAMPBELL'S ADDITION, AN ADDITION TO THE CITY OF EL PASO, EL PASO COUNTY, TEXAS, RECORDED IN VOLUME 2, PAGE 68, PLAT RECORDS OF EL PASO COUNTY, TEXAS (PREPCT), ALL IN THE CITY OF EL PASO, EL PASO COUNTY, TEXAS, SAID 1.991 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, TO WIT:

COMMENCING FOR REFERENCE AT THE CITY MONUMENT AT THE INTERSECTION OF OVERLAND STREET AND DURANGO STREET, SAID MONUMENT BEING 15 FEET NORTH OF THE CENTERLINE OF OVERLAND STREET, WHENCE THE CITY MONUMENT AT THE INTERSECTION OF SAID OVERLAND STREET AND ANTHONY STREET BEARS S 78° 13' 38" W, A DISTANCE OF 329.99 FEET; THENCE ALONG THE CENTERLINE OF SAID DURANGO STREET N 11° 46' 22" W, A DISTANCE OF 279.05 FEET TO THE CALCULATED POSITION OF THE CITY REFERENCE MONUMENT (CITY MONUMENT NO LONGER EXISTS) AT THE INTERSECTION OF SAN ANTONIO STREET AND SAID DURANGO STREET; THENCE N 11° 46' 22" W, A DISTANCE OF 467.15 FEET TO THE CALCULATED CENTERLINE OF SAN FRANCISCO STREET AND SAID DURANGO STREET (ORIGINAL DURANGO STREET), FROM WHICH THE NORTHEAST CORNER OF BLOCK 51, MILLS MAP, SAME BEING THE PROPERTY DESCRIBED IN DOCUMENT NO. 20070061140 (RPREPCT), A FOUND CHISELED "X" IN CONCRETE BEARS, S 36° 10' 58" W, A DISTANCE OF 46.90 FEET; THENCE N 61° 52' 49" E, A DISTANCE OF 91.97 TO THE **POINT OF BEGINNING** OF THIS TRACT OF LAND, SAME BEING THE NORTHEASTERLY CORNER OF THAT SAID CERTAIN 11.851 ACRE TRACT AND THE NORTHERLY RIGHT OF WAY LINE OF SAN FRANCISCO STREET (70 FOOT RIGHT OF WAY);

THENCE S 84° 16' 40" W, ALONG SAID NORTHERLY RIGHT OF WAY LINE OF SAN FRANCISCO STREET (70' FOOT RIGHT OF WAY), COMMON WITH THE SOUTHERLY LINE OF SAID CERTAIN 11.851 ACRE TRACT, A DISTANCE OF 64.17 FEET;

THENCE S 60° 45' 02" W, DEPARTING SAID COMMON SOUTHERLY LINE OF SAID CERTAIN 11.851 ACRE TRACT AND OVER AND ACROSS SAID SAN FRANCISCO STREET (70 FOOT RIGHT OF WAY), A DISTANCE OF 68.36 FEET;

THENCE S 84° 21' 01" W, CONTINUING OVER AND ACROSS SAID SAN FRANCISCO STREET (70 FOOT RIGHT OF WAY), A DISTANCE OF 522.77 FEET;

THENCE N 74° 59' 54" W, AT 75.24 FEET PASS THE NORTHERLY RIGHT OF WAY LINE OF SAN FRANCISCO STREET (70 FOOT RIGHT OF WAY), IN ALL A DISTANCE OF 631.29 FEET TO THE NORTHERLY LINE OF SAID CERTAIN 11.851 ACRE TRACT;

THENCE S 86° 42' 22" E, CONTINUING ALONG SAID NORTHERLY LINE, A DISTANCE OF 1255.57 FEET TO **POINT OF BEGINNING**.

CONTAINING 1.991 ACRES (86,719 SQ. FEET), MORE OR LESS.

EXHIBIT B

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of the Union Pacific Company Right of Way-and portions out of Blocks 28 and 48, Mills Map Addition and being more particularly described by Metes and Bounds as follows:

Commencing for reference at an existing City of El Paso monument lying 10 feet north and east of the centerline intersection of Missouri Avenue and Santa Fe Street from which a found City of El Paso point of intersection monument lying 10 feet north of the centerline of Missouri Avenue bears, South 52°23'00" West a distance of 461.61 feet; Thence along the monument line of Santa Fe Street, South 37°37'00" East a distance of 513.51 feet to a point, Thence leaving said monument line, South 52°23'00" West a distance of 45.00 feet to a point on the westerly right of way line of Santa Fe for the "TRUE POINT OF BEGINNING"

Thence along the westerly right of way line of Santa Fe Street, South 37°37'00" East a distance of 9.73 feet to a point;

Thence leaving said right of way line, South 52°23'43" West a distance of 277.26 feet to a point on the easterly line of Parcel 3 described in quitclaim deed from the City of El Paso to Southern Pacific Company in Volume 266, page 1207, Real property records of El Paso County, Texas ;

Thence along said line, South 82°28'40" East (South 83°10'35" East, Vol. 266, Pg. 1207) a distance of 78.60 feet to a point the easterly line of Parcel 1 described in quitclaim deed from City of El Paso to Southern Pacific Company in Volume 266, page 1207, Real property records of El Paso County, Texas ;

Thence, along said line, South 89°58'16" East (South 89°56'49" East, Vol. 266, Pg. 1207) a distance of 81.98 feet to a point on the southerly line of said Parcel 2;

Thence along said line, South 61°44'10" West (South 61°39'15" West, Vol. 266, Pg. 1207) a distance of 87.70 feet to a point;

Thence along said line, South 53°04'55" West (South 53°00'00" West, Vol. 266, Pg. 1207) a distance of 35.00 feet to a point on the westerly line of said Parcel 2;

Thence along said line, North 36°50'51" West (North 37°00'00" West, Vol. 266, Pg. 1207) a distance of 18.68 feet to a point on the southerly line of Parcel 3, described in quitclaim deed from City of El Paso to Southern Pacific Company in Volume 266, page 1207, Real property records of El Paso County, Texas ;

Thence along said line, South 53°04'55" West (South 53°23'00" West, Vol. 266, Pg. 1207) a distance of 34.87 feet to a point;

Thence along said line, South 71°50'03" West (South 71°08'08" West, Vol. 266, Pg. 1207) a distance of 126.74 feet to a point;

Thence along said line, South 53°04'56" West (South 52°23'00" West, Vol. 266, Pg. 1207) a distance of 10.00 feet to a point on the westerly line of Parcel 3 described in quitclaim deed from City of El Paso to Southern Pacific Company in Volume 266, page 1207, Real property records of El Paso County, Texas ;

Thence along said line, North 36°54'22" West (North 37°37'00" West, Vol. 266, Pg. 1207) a distance of 29.71 feet to a point on the northerly line of Block 48 Mill Map Addition;

CONDE INC
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6080 SURETY DRIVE / SUITE 100 / EL PASO, TEXAS 79905
(915) 592-0283 FAX (915) 592-0286

Thence along said line, South 52°23'43" West a distance of 161.06 feet to a point on the northerly line of San Francisco St.;

Thence along said line, South 80°30'01" West a distance of 21.67 feet to a set ½' rebar with cap marked TX 5152 on an existing rock wall;

Thence along said rock wall, North 52°02'38" East a distance of 34.85 feet to a set nail;

Thence along said rock wall, North 52°18'43" East a distance of 97.86 feet to a set ½' rebar with cap marked TX 5152;

Thence along said rock wall, North 51°55'22" East a distance of 48.57 feet to a set nail;

Thence along said concrete wall, North 53°56'28" East a distance of 84.12 feet to a set ½' rebar with cap marked TX 5152;

Thence along said concrete wall, North 49°07'06" East a distance of 34.09 feet to a set ½' rebar with cap marked TX 5152;

Thence along said concrete wall, North 53°16'01" East a distance of 46.66 feet to a set ½' rebar with cap marked TX 5152;

Thence along said concrete wall, North 52°16'05" East a distance of 63.86 feet to a set ½' rebar with cap marked TX 5152;

Thence along said concrete wall, North 52°17'33" East a distance of 59.84 feet to a set chiseled v on concrete wall;

Thence along said concrete wall, North 52°22'40" East a distance of 51.30 feet to a set chiseled v on concrete wall;

Thence along said concrete wall, North 52°24'02" East a distance of 56.79 feet to a set chiseled v on concrete wall;

Thence along said concrete wall, North 52°59'29" East a distance of 44.53 feet to the **TRUE POINT OF BEGINNING**" and containing 20,059 Sq. Ft. or 0.4605 acres of land more or less.

Note: A Survey drawing of even date accompanies this description.



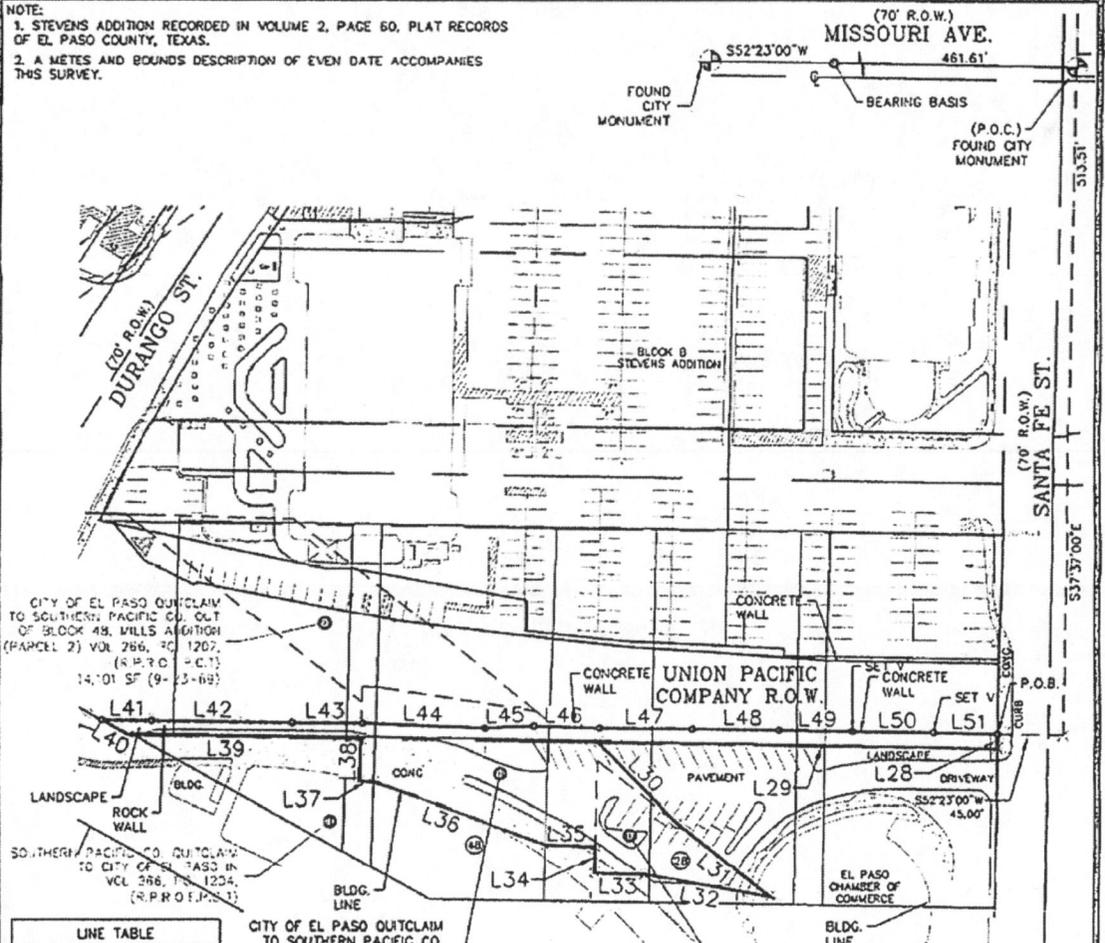
Ron R. Conde
R.P.L.S. No 5152



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EXHIBIT C

NOTE:
 1. STEVENS ADDITION RECORDED IN VOLUME 2, PAGE 60, PLAT RECORDS OF EL PASO COUNTY, TEXAS.
 2. A METES AND BOUNDS DESCRIPTION OF EVEN DATE ACCOMPANIES THIS SURVEY.



LINE	LENGTH	BEARING
L28	9.73	S37°37'00"E
L29	277.26	S52°23'43"W
L30	78.60	S82°28'40"E
L31	81.98	S89°58'16"E
L32	87.70	S61°44'10"W
L33	35.00	S53°04'55"W
L34	18.88	N36°50'51"W
L35	34.87	S53°04'55"W
L36	126.74	S71°50'03"W
L37	10.00	S53°04'55"W
L38	29.71	N36°54'22"W
L39	161.06	S52°23'43"W
L40	21.67	S80°30'01"W
L41	34.85	N52°02'38"E
L42	97.86	N52°18'43"E
L43	48.57	N51°55'22"E
L44	84.12	N53°56'28"E
L45	34.09	N49°07'06"E
L46	46.66	N53°16'01"E
L47	63.86	N52°16'05"E

CITY OF EL PASO QUITCLAIM TO SOUTHERN PACIFIC CO. OUT OF BLOCKS 28 & 48 (PARCEL 3) 268/1207 13,374 S.F. (9-23-69)

LINE	LENGTH	BEARING
L48	59.84	N52°17'33"E
L49	51.30	N52°22'40"E
L50	56.79	N52°24'02"E
L51	44.53	N52°59'29"E

CITY OF EL PASO QUITCLAIM TO SOUTHERN PACIFIC CO. OUT OF BLOCKS 28 & 48 (PARCEL 1) 266/1207 4,524 S.F. (9-23-69)

SYMBOL LEGEND	
	FOUND CITY MONUMENT
	SET 1/2" REDAR W/CAP 5152
	CALCULATED POINT
	SET NAIL

SCALE: 1"=100'

CERTIFICATION

THIS PLAT REPRESENTS A SURVEY MADE ON THE GROUND BY ME OR UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF BASED ON THE FACTS EXISTING AT TIME OF THIS SURVEY.

Ron R. Conde
 RON R. CONDE R.P.L.S #5152

JOB # 812-17 DATE: MARCH 18, 2013 FIELD: D.G. OFFICE: F.R.



A PORTION OF BLOCKS 28 & 48 AND THE UNION PACIFIC RIGHT OF WAY OUT OF MILLS MAP ADDITION CITY OF EL PASO, EL PASO COUNTY, TEXAS

CONDE INC.
 6080 SURETY SUITE 100
 EL PASO, TEXAS 79905

CADD FILE: S:\C\STEVENS ADD\81217

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Prepared for: The City of El Paso
March 18, 2013

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of the Union Pacific Company Right of Way-and a portion out of Blocks 48, Mills Map Addition and being more particularly described by Metes and Bounds as follows:

Commencing for reference at an existing City of El Paso point of intersection monument lying 10 feet north of the centerline of Missouri Avenue from which a found City of El Paso monument lying 10 feet north and east of the centerline intersection of Missouri Avenue and Santa Fe Street bears, North 52°23'00" East a distance of 461.61 feet; Thence, South 35°11'20" West a distance of 33.83 feet to a point, Thence, South 05°07'05" East a distance of 425.65 feet to a point; Thence North 53°04'55" East a distance of 70.17 feet to a point on the northerly line of Parcel 2 as described in Quitclaim deed from City of El Paso to Southern Pacific Company in volume 266, page 1207, Real property records of El Paso County, Texas for the "TRUE POINT OF BEGINNING"

Thence along said line, North 53°04'55" East (North 53°00'00" East Vol. 266, Pg. 1207) a distance of 116.46 feet to a point on the easterly line of Parcel 2 described in quitclaim deed from City of El Paso to Southern Pacific Company in Volume 266, page 1207, Real property records of El Paso County, Texas ;

Thence along said line, South 89°58'16" East (South 89°56'49" East, Vol. 266, Pg. 1207) a distance of 56.39 feet to a point;

Thence, leaving said line, South 61°49'19" West a distance of 3.71 feet to a point;

Thence, South 52°23'00" West a distance of 20.00 feet to a point;

Thence, South 63°27'12" West a distance of 125.25 feet to a point on the westerly line of said Parcel 2 described in quitclaim deed from City of El Paso to Southern Pacific Company in Volume 266, page 1207, Real property records of El Paso County, Texas ;

Thence along said line, North 89°58'17' West (North 89°56'49" a distance of 18.35 feet to the TRUE POINT OF BEGINNING" and containing 2,857 Sq. Ft. or 0.0656 acres of land more or less.

Note: A Survey drawing of even date accompanies this description.


Ron R. Conde
R.P.L.S. No 5152



CONDE INC
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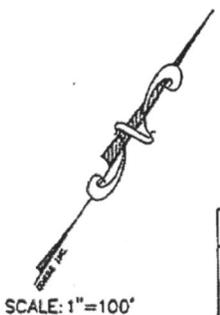
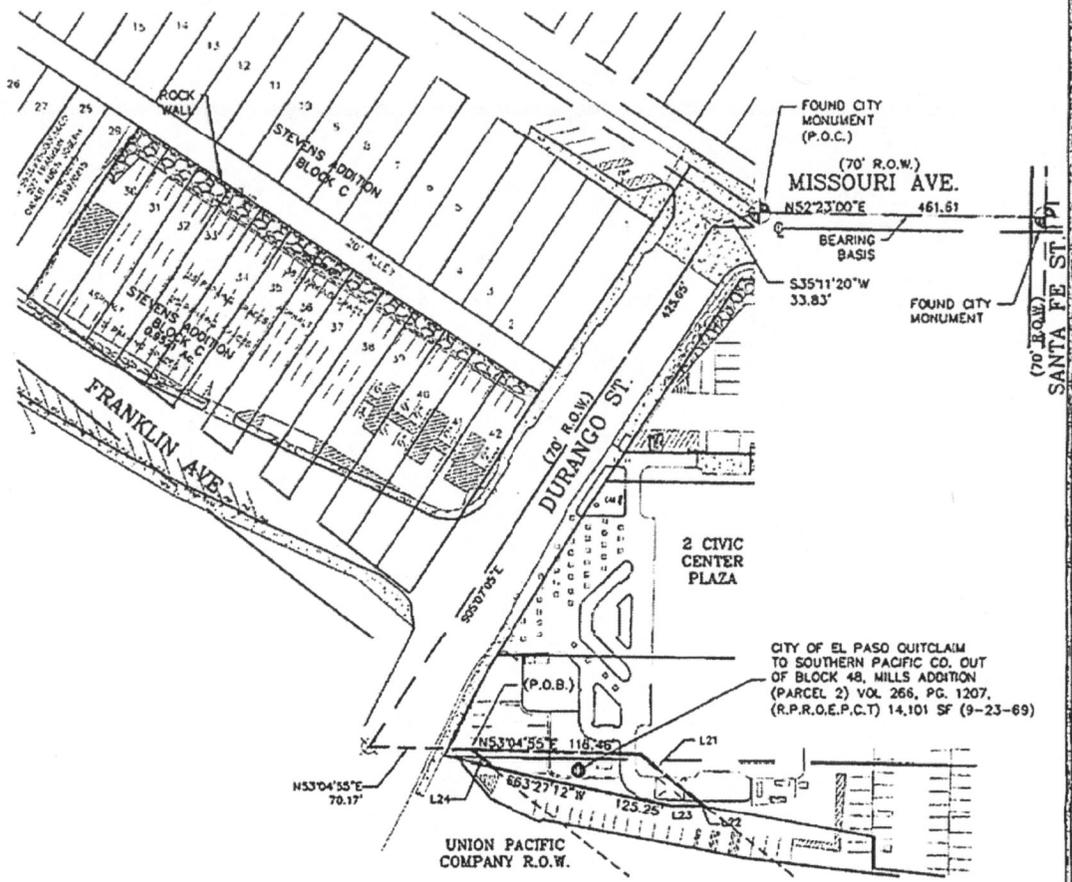
EXHIBIT C

NOTE:

1. STEVENS ADDITION RECORDED IN VOLUME 2, PAGE 60, PLAT RECORDS OF EL PASO COUNTY, TEXAS.
2. A METES AND BOUNDS DESCRIPTION OF EVEN DATE ACCOMPANIES THIS DRAWING.

SYMBOL LEGEND	
	FOUND CITY MONUMENT
	SET 1/2" REBAR W/CAP 5152
	CALCULATED POINT (NOT SET)

LINE TABLE		
LINE	LENGTH	BEARING
L20	5.00	S37°37'00"E
L21	56.39	S89°58'18"E
L22	3.71	S61°49'19"W
L23	20.00	S52°23'00"W
L24	18.35	N89°58'17"W



SCALE: 1"=100'

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CERTIFICATION
 THIS PLAT REPRESENTS A SURVEY MADE BY ME OR UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDG AND BELIEF BASED ON THE FACTS EXISTING AT TIME OF THIS SURVEY.

RON R. CONDE R.P.L.S #5152

JOB # 812-17 DATE: MARCH 18, 2013 FIELD: D.G. OFFICE: F.R.



A PORTION OF BLOCK 48,
 MILLS ADDITION
 CITY OF EL PASO, EL PASO COUNTY, TEXAS

CONDE INC.
 5080 SURETY SUITE 100
 EL PASO, TEXAS 79905
 CADD FILE: S:\C\STEVENS ADD\81217

This conveyance is intended to include any property interests obtained by after-acquired title.

IN WITNESS WHEREOF, Grantor has duly executed this instrument this _____ day of _____, 201__.

**CITY OF EL PASO, TEXAS,
a Texas municipality**

By: _____
Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS)
) ss.
COUNTY OF EL PASO)

On _____, 201__, before me, _____, Notary Public in and for said County and State, personally appeared _____ who is the _____ of the City of El Paso, Texas, a Texas municipality, and who is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to in the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity.

WITNESS my hand and official seal.

Notary Public

(Seal)

EXHIBIT A TO EXHIBIT D

Legal description to be attached

This conveyance is made without any warranty, express or implied, including, without limitation, any warranty or covenant implied under the provisions of Section 5.023 of the Texas Property Code, which provisions are hereby expressly waived by Grantee even as to the return of the purchase price.

This conveyance is intended to include any property interests obtained by after-acquired title.

IN WITNESS WHEREOF, Grantor has duly executed this instrument this _____ day of _____, 201__.

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

Attest:

Assistant Secretary

By: _____
Title: _____

(Seal)

EXHIBIT A TO EXHIBIT E

Legal description to be attached

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 EL PASO, TEXAS, 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: _____
Title: _____
Date: _____

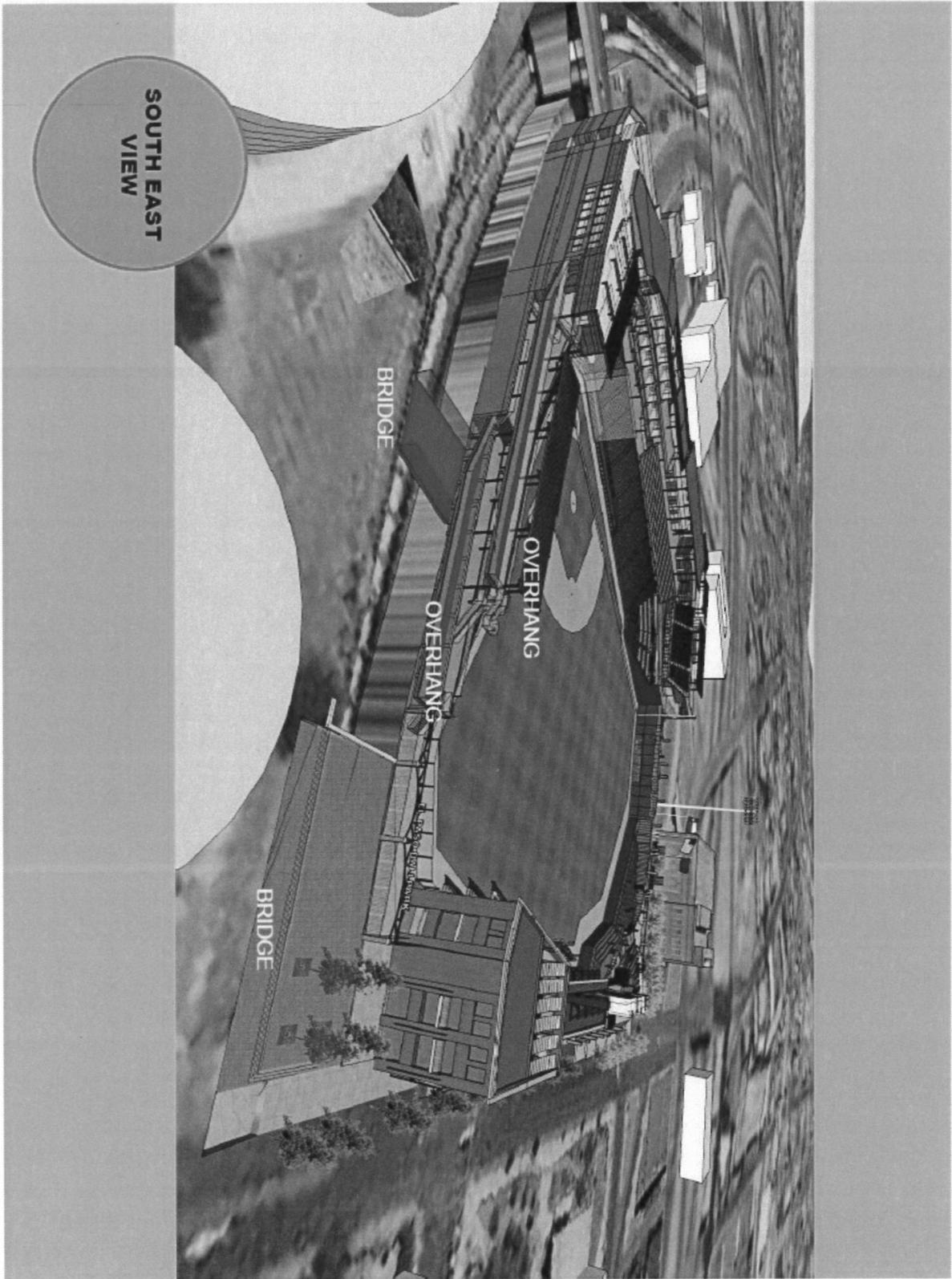


EXHIBIT F

EXHIBIT G

List of Crossings

Carrizozo Subdivision

1. East Missouri Avenue
2. East Yandell Drive
3. Montana Avenue
4. Rosewood Street
5. Piedras Street

International Industrial Lead

1. Delta Drive
2. Olive
3. Magnoffin Avenue
4. Bassett Avenue
5. Myrtle Avenue
6. Texas Avenue (Highway 20)
7. East Mills Avenue

Valentine Subdivision

1. North San Marcial Street
2. Grama Street
3. Copia Street
4. Concepcion Street
5. Chelsea Drive
6. Glenwood Drive
7. FM 1505 / Clark Road
8. Lafayette Street
9. Smith Road
10. New Haven Drive
11. Pendale Road
12. Zaragosa Road
13. CR / Inglewood
14. CR / Nevarez Road
15. CR / Moon Road
16. CR Rio Vista
17. Bufford Street
18. CR Bauman Road