



September 4, 2024
Project: 0785727

RETURN RECEIPT REQUESTED

CITY OF ROSEVILLE
ATTN: STEFANIE KEMEN, PE
311 VERNON STREET
ROSEVILLE, CA 95678

Dear Ms. Kemen,:

This letter ("Agreement") confirms our understandings covering the possible sale by Union Pacific Railroad Company ("Seller") to CITY OF ROSEVILLE ("Buyer") of Seller's interest in certain real property in Roseville, 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 1.64 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.
- B. Before finalizing the 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 satingle@up.com, with a subject line referencing the UPRR Project Number 0785727 assigned to this document. Buyer shall deliver a certified copy of the completed survey to Seller within ninety (90) 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 8).

Article 2. Sale Price:

The sale price ("Sale Price") for the Property shall be Eight Hundred Thousand Dollars (\$800,000.00).

Article 3. Feasibility Review/Right of Entry:

- A. For one hundred twenty (120) 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. Buyer shall have the right to extend the Feasibility Review Period by an additional ninety (90) days to conduct title review in the event that a title report is not completed during the initial one hundred twenty (120) day Feasibility Review Period. Buyer shall deliver written

notice to Seller of its election to extend the Feasibility Review Period within ten (10) days prior to Closing. 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, except as required by law. 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 shall visit www.up.com/CBUD to complete and submit the required form to determine if 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. **"As Is" Sale.** Buyer and its representatives, prior to the Closing Date, will have been afforded the opportunity to make such inspections of the Property and matters related thereto as Buyer and its representatives desire, including, without limitation, governmental laws and regulations to which the Property is subject. Buyer shall accept the Property upon the basis of its review and determination of the applicability and effect of such laws and regulations. Buyer, 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 Buyer in an "as is" condition with all faults, and that the Property was used for railroad, commercial and industrial purposes. Seller does not make any representations or warranties of any kind whatsoever, either express or implied, with respect to the Property or any of such related matters; in particular, but without limitation, Seller makes no representations or warranties with respect to the use, condition, title, occupation or management of the Property, compliance with applicable statutes, laws, codes, ordinances, regulations or requirements relating to leasing, zoning, subdivision, planning, building, fire, safety, health or environmental matters (including but not limited to the existence of Hazardous Materials in, on, under, or emanating to or from the Property), compliance with covenants, conditions and restrictions (whether or not of record), other local, municipal, regional, state or federal requirements, or other statutes, laws, codes, ordinances, regulations or requirements (collectively, "Condition of the Property"). Buyer acknowledges that it is entering into this Agreement on the basis of Buyer's own investigation of the physical and environmental conditions of the Property, including the subsurface conditions and Buyer assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation. For purposes of this Agreement, "Hazardous Materials" means any flammable or explosive materials, petroleum or petroleum products, oil, crude oil, natural gas or synthetic gas usable for fuel, radioactive materials, asbestos, hazardous waste or substances or toxic waste or substances, including, without limitation, any substances now or hereafter defined as or included in the definition of "hazardous substances", "hazardous waste", "hazardous materials", "toxic materials" or "toxic substances" under any applicable federal, state or local law or regulation now or hereafter in effect.
- B. **Release.** BUYER, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, INCLUDING ANY SUCCESSOR OWNER OF ANY INTEREST IN THE PROPERTY, HEREBY WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES SELLER, SELLER'S EMPLOYEES, AGENTS, OR ANY OTHER PERSON ACTING ON BEHALF OF SELLER, OF AND FROM ANY CLAIMS, LIABILITIES, ACTIONS, CAUSES OF ACTION, DEMANDS, RIGHTS, DAMAGES, COSTS, EXPENSES, PENALTIES, FINES OR COMPENSATION WHATSOEVER, DIRECT OR INDIRECT, WHICH BUYER NOW HAS OR WHICH BUYER MAY HAVE IN THE FUTURE ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE KNOWN OR UNKNOWN PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER, ADJACENT OR EMANATING

FROM OR TO THE PROPERTY BY ANY HAZARDOUS MATERIALS), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE, REQUIREMENT, DIRECTIVE, ORDER 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 SELLER, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS. WITH RESPECT TO THE FOREGOING RELEASE, 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 BY PLACING ITS SIGNATURE OR INITIALS BELOW.

Buyer's Initials

- C. Indemnity. FROM AND AFTER CLOSING, BUYER SHALL, 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 ATTORNEY'S FEES, IN ANY WAY ARISING OUT OF OR CONNECTED WITH THE CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE KNOWN OR UNKNOWN PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER, ADJACENT OR EMANATING FROM OR TO THE PROPERTY BY ANY HAZARDOUS MATERIALS), 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 SELLER, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS.
- D. General Allocation of Environmental Responsibility. With respect to any existing or future presence of Hazardous Materials in, under or emanating to or from the Property, Buyer, for itself, its successors and assigns, including any successor owner of any interest in the Property, at no cost to Seller, agrees to be solely responsible for conducting any investigation, monitoring, remediation, removal, response or other action required by any governmental agency, court order, law or regulation or which may otherwise be necessary to make the Property suitable for Buyer's use of the Property.
- E. Survival. The provisions of this Article will survive the delivery of the Deed (as defined in Article 6.A. below) and will bind and inure to the benefit of the parties hereto, their heirs, successors and assigns.

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; Post-Closing Covenants:

- A. At Closing, Seller will transfer Seller's interest in the Property to Buyer by Quitclaim Deed ("Deed"), subject to all outstanding rights, whether or not of record.
- B. Seller will reserve from the transfer all minerals and mineral rights without right of surface entry.
- C. Post-Closing Covenants:

The Property will be quitclaimed by Seller at Closing subject to the following covenants, conditions and restrictions which Buyer, by the acceptance of the Deed, shall covenant for itself, its successors and assigns, faithfully to keep, observe and perform:

- 1. 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).
- 2. Fence. Buyer, at its sole cost and expense, shall install, and thereafter maintain fencing or other barriers to prevent access to or encroachment on the railroad right-of-way of Seller adjacent to the trackside boundary of the Property as a first order of work prior to occupying the property for purposes of construction and use. The fencing or barrier must be of a design and type satisfactory to Seller, and in compliance with applicable building codes. Seller agrees a standard 6' tall chain link fence will be acceptable. Buyer shall submit the plans for the fencing or barrier construction to:

Union Pacific Railroad Company
Attn: Real Estate Sales (Project No. 0785727)
1400 Douglas Street, Mail Stop 1690
Omaha, Nebraska 68179

for review and approval. Seller shall complete such review and make appropriate response to Buyer within twenty (20) days after receipt of such plans by Seller. Seller shall not unreasonably withhold its approval of such plans. Such approval does not constitute a guarantee or warranty that such plans comply with applicable governmental laws, rules, regulations or ordinances, or that the fence as constructed will be structurally sound.

3. Railroad Proximity.

(a) Buyer acknowledges that the property abutting the east boundary line of the Property is dedicated and used for railroad purposes, that railroad operations may create noise, vibrations, emissions, fumes and odors twenty-four (24) hours a day, and that the amount, nature and intensity of railroad operations may increase or change (collectively, the "Permitted Effects"). Buyer accepts the Property subject to the existence of the Permitted Effects. By acceptance of the Property, Buyer agrees that, at Buyer's sole cost and expense, as part of the development of the Property, Buyer shall design and install and/or construct and thereafter maintain improvements to reduce or limit the Permitted Effects and to comply with all governmental requirements, if any, which may be imposed as a condition to the development and use of the Property because of the Permitted Effects.

(b) Buyer shall not, and hereby waives all rights to, (i) institute legal proceedings against Seller to reduce or lessen the Permitted Effects, and (ii) directly or indirectly participate in petition drives, lobbying efforts or other activities seeking the enactment of federal, state or local laws or ordinances to reduce or lessen the Permitted Effects. Any party breaching such covenant shall reimburse Seller for all costs incurred by Seller to comply with any such orders, laws or ordinances, including, without limitation, attorney fees and court costs.

(c) If Buyer sells or leases all or any portion of the Property, Buyer shall require all purchasers and tenants to acknowledge the location of the railroad operations abutting the Property and the existence of the Permitted Effects, and to agree in writing, for the benefit of Seller, to comply with the above covenants.

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

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 of the transaction described in this Agreement ("Closing") will occur on or before December 31, 2024 ("Closing Date"), subject to Buyer's right to extend the Feasibility Review Period pursuant to Article 3-A, in which case Closing shall occur on or before March 31, 2025. The Closing will be deemed to occur upon payment of the Sale Price by wire transfer or 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. Exemption from Subdivision/Platting Compliance:

Buyer acknowledges and represents to Seller that this transaction is exempt from the California Subdivision Map Act because it constitutes a conveyance to a governmental agency or public agency and no showing has been made under Section 66428 of such Act that public policy necessitates that a parcel map be filed in connection with this transaction.

Article 11. 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 12. 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 BY SELLER'S MANAGEMENT. IF SUCH APPROVAL IS NOT GIVEN AND COMMUNICATED BY SELLER TO BUYER BY THE EXPIRATION OF THE FEASIBILITY REVIEW PERIOD, THIS AGREEMENT WILL TERMINATE AND NEITHER PARTY WILL HAVE ANY FURTHER OBLIGATION.

Article 13. 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.

(Remainder of page intentionally left blank. Signatures on following page.)

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 Stephanie A Tingley at the address listed on the bottom of the first page of this letter or by electronic mail at satingle@up.com, in order that it is received by Seller no later than September 13, 2024. Please also indicate below how you wish to take title. If you should have any questions, please call Stephanie A Tingley at (402) 544-5453.

Sincerely,

General Director - Real Estate

ACCEPTED AND AGREED THIS ____ DAY OF _____, 2024

CITY OF ROSEVILLE

By: _____

Print Name: Dominick Casey

Title: City Manager

Title to the Property will be taken as follows:

City of Roseville, a municipal corporation