

**MEMORANDUM OF
UNDERSTANDING BY AND
BETWEEN
THE CITY OF NEW BRAUNFELS AND UNION PACIFIC RAILROAD
COMPANY REGARDING
THE PROPOSED LAND SALE AND OFFICE
RELOCATION IN NEW BRAUNFELS, COMAL
COUNTY, TEXAS**

This Memorandum of Understanding ("MOU") is entered into on this ___ day of _____, 2022 by and between the CITY OF NEW BRAUNFELS, a _____ of the State of Texas ("City"), and UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("UPRR"). The City and UPRR are sometimes referred to collectively herein as the "Parties".

WHEREAS, the City desires to purchase and UPRR desires to sell certain property in downtown (the "Downtown Property") in New Braunfels, Comal County, Texas as shown on **Exhibit A** (the Downtown Property shall be referred to as the "**Property**") attached hereto and incorporated herein by reference.

WHEREAS, in order to facilitate the purchase and sale of the Downtown Property, the City has agreed to fund certain work, including but not limited to, design and construction of a new office building and other facilities ("**Facilities**") on UPRR owned land at Corbyn Yard in New Braunfels, Comal County, Texas as shown on **Exhibit B** ("**Corbyn Yard**") attached hereto and incorporated herein by reference.

NOW THEREFORE,

The Parties enter into this MOU regarding the Project in order to document their preliminary understandings as follows:

1. **Recitals.** The Recitals are incorporated herein by reference.
2. **Predevelopment/Preliminary Engineering Agreement and Legal Expense Reimbursement Agreement.** UPRR's obligation to sell the Downtown Property will be contingent upon the City constructing a new office building and other facilities at Corbyn Yard. In order to determine the feasibility and cost of such work, UPRR must first develop and evaluate the conceptual design for the Facilities and to evaluate access options to the Facilities. On or about the date of this MOU, the City and UPRR shall enter into a Predevelopment/ Preliminary Engineering Agreement to provide UPRR with a mechanism for reimbursement of its predevelopment, preliminary engineering review, utility location and design review and due diligence (including without limitation real estate review) costs. The work to be performed by UPRR is described in the Railroad's Project Design Schedule and Project Cost Estimate shown on

Exhibit C attached hereto and incorporated herein by reference (the "Estimate"). As set forth in the Estimate, the Railroad's estimated cost for the Railroad's work associated with the Project is Four Hundred Nine Thousand Three Hundred Fifteen and 50/100 Dollars (\$409,315.50). Upon completion of the evaluations, the UPRR will provide the City a summary of the findings along with its required access option. The City and UPRR shall also enter into a Legal Expense Reimbursement Agreement to provide UPRR with a mechanism for reimbursement for its legal expenses related to the Project Work and the preparation of the accompanying definitive documents. The maximum amount of legal expenses that the City will reimburse will not exceed \$25,000.00. The parties shall maintain their respective rights to terminate these Agreements upon either party's determination that the project at Corbyn Yard is no longer feasible, but all such work done prior to termination would be entitled to reasonable reimbursement as set forth in these Agreements.

3. **Property Sale and Purchase Price.** Once the Parties have reviewed and agreed to conceptual design for the Facilities, the Parties will enter into a separate Purchase and Sale Agreement for the sale and purchase of the Downtown Property. The Purchase and Sale Agreement will be in the form attached hereto as **Exhibit D**, subject to mutually agreed upon changes and customization based on this MOU. Provided that the closing occurs within five (5) years of the date of this MOU, the purchase price for the Downtown Property shall be One Million Five Hundred Thousand Dollars (\$1,500,000.00). UPRR shall have the right, but not the obligation, to salvage track infrastructure and other facilities from the Downtown Property. The Parties agree that the value of the Property shall include the value of all appurtenances and related agreements affecting the Property to the extent permitted by law. At closing of the Downtown Property, UPRR will reserve an exclusive railroad operating easement over the Downtown Property which will enable UPRR to continue to operate on the Downtown Property until the construction of the Facilities is complete. This easement shall be perpetual and exclusive across, in, on, under, over and through all of the Property, for the purpose of conducting freight rail crew operations, including, but not limited to, using and occupying Seller's existing office facilities located on the Property, and for motor vehicle transportation and crew changing activities necessary for Seller's freight rail crew operations (collectively, "Railroad Easement"). Seller, its successors and assigns, shall have the right to use the Railroad Easement until a new office building and appurtenant facilities (collectively, "Facilities") have been constructed and are operational inside Seller's Corbyn Yard, located between Milepost 234 and Milepost 235 on Seller's Austin Subdivision, Comal County, State of Texas. Upon completion of the Facilities and acceptance of the same by UPRR, UPRR will terminate, abandon and release the easement.

4. **Construction of the Facilities.** If the Parties agree to the conceptual design and proposed access for the Facilities and agree to enter into a Purchase and Sale Agreement for the Downtown Property, as a condition to the closing on the Downtown Property, UPRR shall prepare (or caused to be prepared), at the City's sole cost and expense, the designs, plans and specifications for all work necessary to construct the Facilities (the "**Project Work**"). The Project Work shall be governed by definitive agreements, such as a Funding Agreement and a Construction Agreement, to be entered into between the Parties at closing. The Project Work shall include, but not limited to, grading, access improvements, permitting, zoning, utility installations and relocations, facility construction, track relocation and drainage. Pursuant to the Construction Agreement, following closing, UPRR shall construct (or cause to be constructed), at the City's

sole cost and expense, the Project Work in accordance with such designs, plans and specifications; however, the City reserves the right to terminate the Purchase and Sale Agreement and not close on the Downtown Property as well as cease commitments to construct the Project Work in the event the costs of construction of the Facilities is cost prohibitive, in the City's sole discretion.

5. **Traffic Study Related to City Development of the Downtown Property.** The City intends to construct facilities on the Downtown Property and UPRR is concerned that the design of the facilities could result in vehicle queuing on the UPRR track at the intersection of UPRR and West Coll Street (DOT Crossing Number 436043A). Prior to design and construction of the facilities, the City agrees to conduct a traffic study including a review of vehicular and pedestrian traffic patterns entering and exiting the proposed facilities and how such traffic and queuing impacts the railroad crossing. The City agrees that the facilities and related traffic infrastructure will be designed and constructed in a manner to prevent adverse impacts to the railroad crossing.

6. **At-Grade Crossing Improvements.** The Buyer will assist and cooperate with Seller, TxDOT, Comal County and/or the Alamo Area MPO to determine the feasibility of grade separation, improvement, and/or potential closure of railroad crossings in and around the New Braunfels area such as:

- i. Conrads Road
- ii. Orion Road
- iii. Rock Road
- iv. FM 1102
- v. Hunter Road

7. **Acquisition of New UPRR Property.** In the event it is determined that additional property or property rights are required for the Project Work, the City shall be responsible for acquiring any property rights necessary for the Project Work in accordance with UPRR's then current land acquisition standards. Notwithstanding the foregoing, the acquisition shall be subject to the City's prior approval which will not be unreasonably withheld. Further, UPRR shall provide the City with a copy of UPRR's then current land acquisition standards.

8. **Confidentiality.** Only to the extent allowed by the Texas Public Information Act, the Parties agree to maintain proprietary information prepared in connection with the development and implementation of the Project Work confidential. In connection therewith, the Parties agree that while the public will be informed of the general progress of the project, proprietary information will, subject to the disclosure exceptions noted below, be maintained in confidence by the Parties.

For the purposes of this Section, "Confidential Information" means all information not generally known to third parties and which is proprietary, privileged, or confidential in delivered to either party (the "Receiving Party") by or on behalf of the other party (the "Providing Party"). All information of the Providing Party that is disclosed to the Receiving Party or to which the Receiving Party obtains access shall be presumed to be Confidential Information until affirmatively known to the Receiving Party to be other than Confidential Information. Confidential Information does not include information that (a) was publicly known or otherwise known to the Receiving Party prior to the time of such disclosure, (b) subsequently becomes

publicly known through no act or omission by the Receiving Party or any person acting on the Receiving Party's behalf or (c) constitutes financial statements that are otherwise publicly available. The Receiving Party shall maintain the confidentiality of such Confidential Information in accordance with procedures adopted by the Receiving Party in good faith to protect confidential information of third parties delivered to it, provided that the Receiving Party may deliver or disclose Confidential Information to (i) its directors, officers, employees, agents, attorneys and affiliates (to the extent such disclosure reasonably relates to the administration of the transactions contemplated by this MOU), (ii) its financial advisors and other professional advisors who agree to hold confidential the Confidential Information substantially in accordance with the terms of this Section 4, (iii) any federal or state regulatory authority having jurisdiction over the Receiving Party, (iv) The Receiving Party may disclose Confidential Information that the Receiving Party determines it is legally required to disclose following receipt of a valid subpoena or order issued by a court, regulatory agency, or other governmental authority. The Receiving Party must provide the Providing Party with prompt notice of such subpoena or order so the Providing Party may seek an appropriate protective order or other assurance the Confidential Information will not be disclosed or disseminated further. Upon the Providing Party's request, the Receiving Party shall cooperate with the Providing Party to seek and obtain such a protective order or other assurance. In the event the Receiving Party incurs any costs or expenses in resisting or limiting disclosure of the Confidential Information under this Agreement, the Providing Party shall reimburse the Receiving Party for all such costs or expenses reasonably incurred by the Receiving Party, including reasonable attorneys' fees, and (v) to the extent that the Receiving Party believes disclosure of Confidential Information is necessary for litigation or other reasons, it will seek the Disclosing Party's written permission for such disclosure, which may not be unreasonably withheld.

9. **Definitive Agreements.** The Parties will work together to negotiate further definitive agreements to implement this MOU. The definitive agreements will be subject to the review and approval of the Parties in all respects.

10. **Term.** It is the intention of the Parties for the understandings in this MOU to expire five (5) years after the date of execution of the MOU if the parties have not closed on the Downtown Property by such deadline.

11. **Nonbinding.** This MOU is not a binding agreement or offer. This MOU will not give rise to any right or obligation based on any legal or equitable theory (including any right to continue negotiations or to negotiate in good faith). Only the definitive agreements, once executed, will be binding on the Parties.

(remainder of page left intentionally blank)

IN WITNESS WHEREOF, the Parties hereto have executed this MOU as of the date first above written.

UPRR:

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

By: _____

Name: Chris Goble_____

Title: Assistant Vice President – Real Estate_____

Date: _____

CITY:

**CITY OF NEW BRAUNFELS, a municipal
corporation in the State of Texas**

By: _____

Name: Robert Camareno

Title: City Manager

Date: _____

Exhibit A

Downtown Property

(See attached)

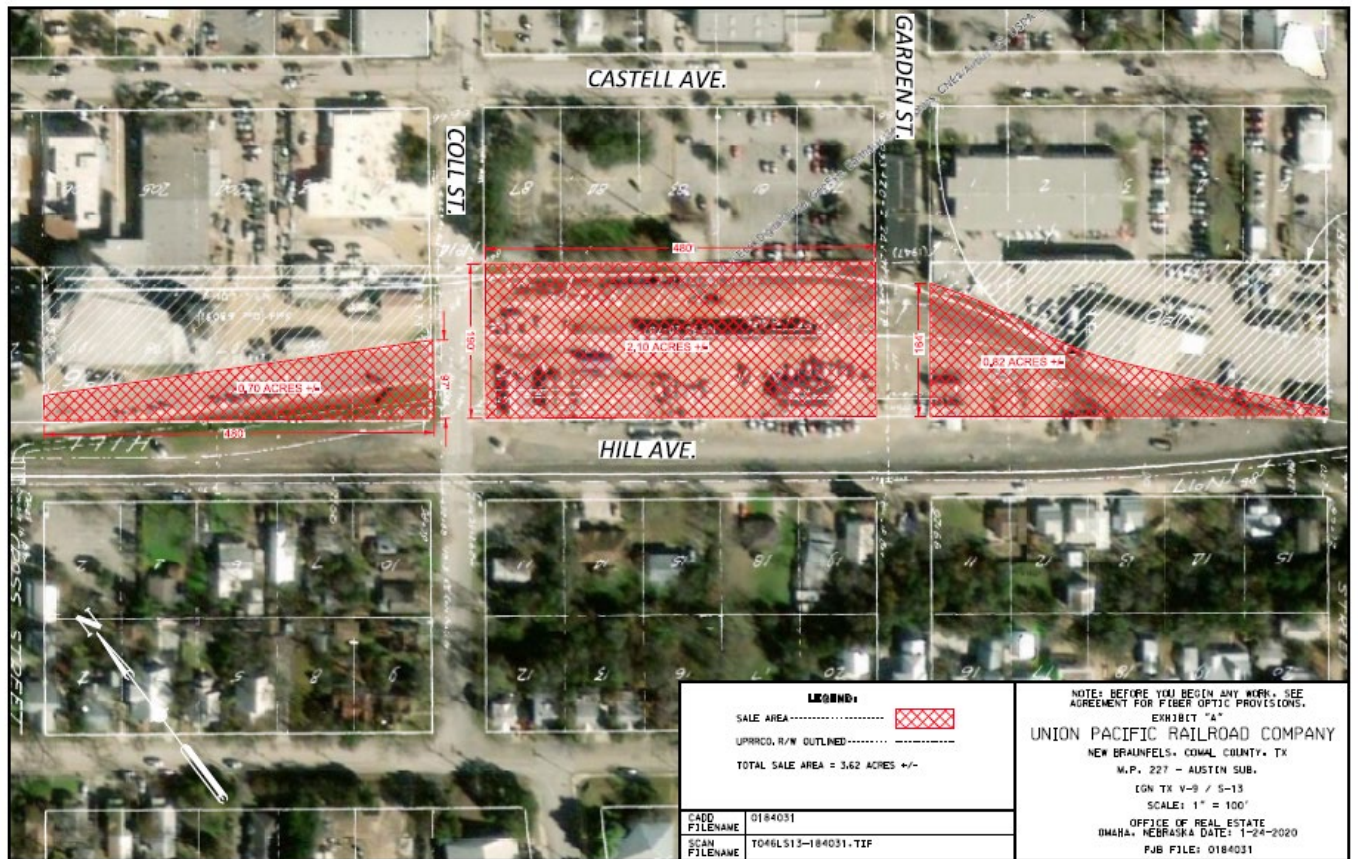


Exhibit B



Exhibit C

Railroad's Project Design Schedule and Project Cost Estimate

(See attached)

UPRR - Corbin Yard Office - New Braunfels, TX											
Project Design Schedule											
Legend: X denotes meeting  denotes TS task  denotes milestone denotes UPRR Review  denotes task duration											
Transystems 2020											
		February			March			April		May	
		3	10	17	24	2	9	16	23	30	6
								13	20	27	4
											11
											18
											25
											1
											8
											15
											22
											29
											6
											13
											20
											27
											3
											10
											17
											24
											31
											7
											14
											21
											28
											5
											12
											19
											26
											2
											9
											16
											23
											30
NOTICE TO PROCEED - Assume by February 17											
KICK OFF MEETING											
Part One - Access Road											
CONCEPT DESIGN											
ISSUE CONTRACTS TO ALL SUBS											
COMPLETE TOPOGRAPHIC SITE SURVEY											
HYDROLOGY STUDY											
ENVIRONMENTAL STUDY											
CONCEPT PLAN DEVELOPMENT											
UPRR REVIEW											
COMMENT RESPONSE & PREPARE COST ESTIMATE											
UPRR SUBMIT TO CITY OF NEW BRAUNFELS											
CITY RESPONSE & REVISIONS											
UPRR & CITY REVIEW - AGREE TO PROCEED											
Part Two - Yard Office/Site											
10% CONCEPT DESIGN											
PREPARE 10% CONCEPT BUILDINGSITE PLANS											
10% SUBMITTAL TO UPRR											
UPRR REVIEW OF 10% CONCEPT DESIGN											
UPRR APPROVAL OF CONCEPT DESIGN											
30% PRELIMINARY DESIGN											
PREPARE 30% PRELIMINARY BUILDINGSITE PLANS											
SUBMIT PRELIM SITE AND BLDG PLAN TO UPRR											
UPRR REVIEW OF PRELIM BLDG PLAN											
60% DESIGN DEVELOPMENT											
PREPARE 60% PLANS, AND SPECIFICATIONS											
60% SUBMITTAL TO UPRR											
UPRR REVIEW OF 60% PACKAGE											
90% CONSTRUCTION DOCUMENTS											
PREPARE FINAL PLANS AND SPECIFICATIONS											
FINAL SUBMITTAL TO UPRR											
UPRR REVIEW OF FINAL PACKAGE											
MAKE FINAL CORRECTIONS											
PERMIT & UTILITY APPROVAL PHASE											
SUBMIT PLANS FOR REVIEW											
FIRST REVIEW											
RESPOND TO REVIEW COMMENTS											
SECOND REVIEW											
APPROVALS COMPLETED											
BID PHASE											
BID PREPARATION											
PRE-BID CONFERENCE											
UPRR BID REVIEW AND AWARD											
CONTRACT AWARD											
PRE-CONSTRUCTION MEETING											



BUILDING AMERICA®

Project Cost Estimate			
Project:	New Braunfels Relocated Yard Office	Type:	Building / Site Work
Location:	New Braunfels, TX - Corbyn Yard	Dept.:	Engineering
Description:	Yard Office Building w/ site work included		
Project Mgr:	Jerad Harmsen	W.O.:	TBD
Date Received	Description	Vendor	Estimate
1/3/2022	Facility Design Management Cost	UPRR	\$15,000.00
8/19/2021	Consultant Design Cost <i>Transystems Part 1 - Access Road Evaluation</i> <i>Transystems Part 2 - Building, Site, Access Road Design</i>	Transystems Transystems	\$104,585.00 \$252,520.00
1/3/2022	Contingency	10%	\$37,210.50
Totals:			\$409,315.50
Date: 1/3/2022 Estimated By: Jerad Harmsen			
Project Update:			