

**PROPERTY INSPECTION AND CLEAN-UP
MEMORANDUM OF UNDERSTANDING
Between
CITY OF OAKLAND
and
UNION PACIFIC RAILROAD COMPANY**

This Memorandum of Understanding (hereinafter referred to as "MOU") is entered into as of November 12, 2003, by and between the City of Oakland, a municipal corporation organized pursuant to Charter under the laws of the State of California, and Union Pacific Railroad Company, a Delaware corporation, which provides rail transportation service in twenty-three states, including the State of California. The aforementioned entities are referred to in this MOU collectively as the Parties.

RECITALS

WHEREAS the City of Oakland seeks to abate urban and property blight throughout the City caused by illegal dumping on City and private property pursuant to a number of measures intended to reduce and eliminate this problem.

WHEREAS the City of Oakland seeks to remedy blighted conditions on private property, which create a public nuisance, endanger the public health and safety, and interfere with the enjoyment of life and property of Oakland residents, by making those persons and entities responsible for their actions and the maintenance of their property.

WHEREAS Union Pacific Railroad Company owns, possesses and/or controls a number of rights of way, yards and other property within the City of Oakland, which, periodically accumulate blight, debris and garbage despite Union Pacific's efforts to protect against these conditions.

WHEREAS Union Pacific Railroad Company believes that, to the extent the City of Oakland's laws, regulations and ordinances addressing or related to nuisance abatement purport to regulate rail transportation, or provide remedies with respect to its classifications, rules, practices, services, or facilities, they do not apply to Union Pacific Railroad Company; however, without waiving its rights to test the applicability of such laws, regulations, and ordinances in any separate action in the future, Union Pacific Railroad Company seeks to work cooperatively with the City of Oakland to address the problem of illegal dumping on its railroad right-of-way.

WHEREAS the Parties desire to enter into this MOU to work cooperatively to reduce and eliminate blight, debris and other public nuisance conditions from Union Pacific property, as those are defined by state law and local regulations; now therefore,

It is agreed by and between the City of Oakland ("City") and Union Pacific Railroad Company ("UP") as follows:

SECTION I

UNION PACIFIC agrees:

1. **Inspection and Maintenance Plan** – Within 30 days from the signing of this MOU by both Parties, to implement an inspection and maintenance plan, which shall include the following measures.
2. **Locations** –Furnish the City a complete map of rail lines owned and operated by UP and located in the City. Also furnish the City information respecting UP railroad yards and other railroad property owned by UP and located in the City. It is understood that, to the extent that UP leases track and right-of-way to customers or to others, as a condition of that lease UP shall in the future require lessees to comply with all applicable City laws, regulations and/or ordinances regarding abatement of blighted conditions. Imposing this requirement on lessees shall not relieve UP of its obligations under this MOU. UP shall annually update the City about any changes to its facilities and operations within the City that are subject to this MOU.
3. **Inspections** – Conduct periodic inspections of the UP properties located in the City and record the location of any blighted conditions found in such inspections. The information concerning location of sites inspected and conditions found will be made available for review by the City upon reasonable request.
4. **Clean-up** – Abate all blighted conditions on UP properties located in the City, by removing all garbage, rubbish, trash, debris, and other conditions constituting blight within 15 days of either the date the condition is identified by UP in an inspection or the date UP receives a notice of abatement from the City identifying the blighted conditions except that in those situations where the blighted conditions/locations do not have high visibility and do not constitute a threat to public safety or health, UP, in consultation with City, shall be permitted up to 30 days in order to allow UP to efficiently coordinate the clean-up with other abatement activities. It is understood that UP and City representatives will meet to determine an acceptable approach for UP to temporarily store track materials and supplies or salvage material required for maintenance of the railroad on the railroad right of way while preventing the creation of blighted and public nuisance conditions. UP will provide the City with documentation of clean-up activities upon written request. The City retains the right to inspect the cleaned-up property.
5. **Hazardous Materials and Hazardous Waste** –Clean up of hazardous materials and hazardous wastes shall be pursuant to federal and state laws and regulations, including, among others, the Hazardous Materials Transportation Authorization Act, Hazardous Materials Transportation Uniform Safety Act, Resource Conservation and Recovery Act, California Health & Safety Code, and California Public Utilities Code, and all applicable rules, regulations, and general orders pursuant thereto, including applicable testing and permitting requirements.
6. **Disposal** – Legally dispose of or cause to be disposed all garbage, rubbish, debris and hazardous materials removed from UP sites.

7. **Warning Signs** – Install "No Trespassing" and "No Dumping" signs at designated UP locations abutting City property to be determined in consultation with City representatives. These signs shall provide contact information for UP and the City to report illegal dumping and shall be printed in English, Chinese, and Spanish. The City will grant UP any permits required for installation.

8. **Fences and Barriers** – Install fences or adequate barriers at specified UP properties to be determined in consultation with City representatives. The fences or barriers must be of a type, design, and material acceptable to UP. In addition, UP may install and maintain physical barriers to deter illegal access to its property as needed to protect railroad employees, transportation materials, equipment, facilities, and rail operations.

9. **Mitigation of Specified Priority Locations** – In consultation with the City, identify priority locations and adopt remedial measures for those specific priority locations. Such mitigation measures must be of a type, design and material acceptable to both the City and UP.

SECTION II

The CITY agrees:

10. **Cooperation** – Cooperate with UP in its inspections, surveillance, mitigation and abatement efforts by sharing relevant information, coordinating clean-ups, and complying with all reasonable requests necessary for the performance of UP's duties under this MOU.

11. **Notice** – Provide UP adequate notice of general locations where illegal dumping activities are known to occur and of the specific locations where illegal dumping occurs regularly and which the City wishes to designate as priority locations. This provision shall not be interpreted to exempt UP from its duties to conduct its own investigations and surveillance of its properties, as required under this MOU, but rather shall be interpreted solely as evidence of good faith cooperation on the part of the City.

12. **Time of Performance** – Provide UP sufficient and adequate time to abate blighted properties, in accordance with the terms of this MOU, including extension of time limits established herein for good cause.

13. **Enforcement** – Work cooperatively with UP, UP police, local law enforcement, and the Alameda County District Attorneys' Office in developing and implementing programs to discourage illegal dumping activities occurring on UP and City properties.

14. **Right of Entry** - Prior to entering UP properties to perform inspections or work of any kind, execute a right of entry agreement with UP. In addition, the City will not cause any equipment, materials, or vehicles to be located or operated within 25 feet of any UP track unless a railroad flagman has been provided by UP to keep a lookout for trains. For purposes of this provision, UP shall work with the City to identify the areas associated with its rail facilities that are subject to this requirement for flag protection.

SECTION III

It is mutually agreed by the PARTIES as follows:

15. This MOU becomes effective once executed by both Parties.
16. The parties agree that UP's compliance with all material terms of this MOU shall be deemed to constitute a good faith effort by UP to comply with the City's laws and regulations regarding abatement of blighted conditions. However, this MOU shall not constitute a waiver on the part of UP of any claim or defense UP may have based on local state and federal laws and regulations, including without limitation the ICC Termination Act, Hazardous Materials Transportation Uniform Safety Act, Resource Conservation and Recovery Act, and Public Utilities Code.
17. The Parties acknowledge and agree that the expenditures that UP may be required to make for clean-up and disposal of accumulated blight debris and garbage on its properties must be reasonable and that the City will make a good faith effort to work with UP to implement this MOU in a manner that does not expose UP to unnecessary or unreasonable expense.
18. This MOU shall be in effect for a period of ten years. UP's performance under this MOU shall be subject to three 4-month reviews the first year, followed by periodic reviews every two years, calculated from the date it becomes effective, at which time the Parties shall determine whether changes to the terms of this MOU are necessary.
19. In the event of a dispute concerning any of the terms of this MOU or its application to particular conditions or locations, the parties shall first endeavor in good faith to promptly resolve the dispute, and, if that fails, the parties shall agree on a neutral mediator to resolve the dispute through an informal mediation process before resorting to litigation.
20. City may terminate this MOU unilaterally upon UP's failure to substantially comply with its terms and may seek all remedies available to it in law and equity, including but not limited to damages, nuisance abatement, injunction, breach of contract, attorney's fees and costs, etc. Not less than 30 days prior to exercising its right to terminate hereunder, the City shall provide written notice to UP setting forth its grounds for terminating the MOU. Upon receipt of such written notice from City, UP shall make a good faith effort within the following 30 days to:
 - (a) satisfy the City that this MOU has not been breached;
 - (b) otherwise reach a mutually satisfactory resolution of the matters which form the basis of City's notice of termination, in which event the notice shall be deemed withdrawn.
21. UP may terminate this MOU unilaterally upon City's failure to substantially comply with its terms and may seek all remedies available to it in law and equity, including but not limited to damages, breach of contract, injunction, and attorney's fees and costs. Not less than 30 days prior to exercising its right to terminate hereunder, UP shall provide written notice to the City setting forth its grounds for terminating the MOU. Upon receipt

of such written notice from UP, City shall make a good faith effort within the following 30 days to:

- (a) satisfy UP that this MOU has not been breached; or
- (b) otherwise reach a mutually satisfactory resolution of the matters which form the basis of UP's notice, in which event the notice shall be deemed withdrawn.

22. The Parties acknowledge and agree that they execute this MOU in good faith and in an attempt to resolve a legitimate dispute. The Parties agree that this MOU shall not be considered an admission of liability or fault and no past or present wrongdoing on the part of either Party shall be implied by this MOU.

23. This MOU shall be interpreted in accordance with the laws of the State of California.

24. If any provision or any part of any provision of this MOU is for any reason held to be invalid, unenforceable or contrary to any public policy, law, statute and/or ordinance, then the remainder of this MOU shall not be affected thereby and shall remain valid and fully enforceable.

25. This MOU may be executed in counterparts and each Party represents and warrants that its signatory has the authority to bind the governing body, shareholders or members of said entity.

26. This MOU, including all signature pages attached hereto, constitutes the entire understanding between and among the Parties with regard to the contents of this MOU. There are no representations, warranties, agreements, arrangements, undertaking, oral or written, between or among the Parties hereto relating to the subject matter of this MOU which are not fully expressed.

27. The Parties agree that time of performance, maintenance and production of records required under this MOU are of the essence.

28. Unless otherwise expressly agreed by the Parties, all notices, documents and writings required under this MOU shall be transmitted to the other party electronically, by fax and by regular mail to the persons and the addresses stated below. Each party may change its designee by providing notice of that change to the other party in writing.

TO CITY OF OAKLAND

Drew Winsor
Operations Manager
Street Cleaning and Graffiti Abatement
750 50th Avenue, Oakland, CA 94601
Telephone (510) 434-5111
Fax (510) 434-5132
E-Mail: dwinsor@oaklandnet.com

TO UNION PACIFIC RAILROAD

Tony F. Galinis
Manager
Transportation – Western Region
10031 Foothills Boulevard
Roseville, CA 95747
Telephone (916) 789-6355
Fax (916) 780-6333
E-Mail: tgalinis@up.com

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

CITY OF OAKLAND, a California Municipal Corporation

Deborah Edgerly, City Manager

Approved for Form & Legality:

John A. Russo, City Attorney

Assigned Attorney:

Office of the City Attorney

UNION PACIFIC RAILROAD COMPANY, a Delaware Corporation

David T. Wickersham, Chief Engineer, Maintenance of Way, Western Region

Approved for Form & Legality

Carol A. Harris, General Commerce Counsel

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D.T. Wickersham

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Carol A. Harris, General Commerce Counsel