RESOLUTION NO. R-2017-29

RESOLUTION APPROVING
THE REIMBURSEMENT AGREEMENT BETWEEN
THE VILLAGE OF MAYWOOD AND THE UNION PACIFIC RAILROAD COMPANY
FOR THE WATER MAIN REPLACEMENT AND EXTENSION PROJECT
AT THE UNION PACIFIC RAILROAD TRACKS

WHEREAS, the President and Board of Trustees of the Village of Maywood
desire to enter into an agreement titled "REIMBURSEMENT AGREEMENT BETWEEN
THE VILLAGE OF MAYWOOD AND THE UNION PACIFIC RAILROAD COMPANY
FOR THE WATER MAIN REPLACEMENT AND EXTENSION PROJECT AT THE
UNION PACIFIC RAILROAD TRACKS" (the "Reimbursement Agreement"), a copy of
which is attached hereto as Exhibit "1" and made a part hereof; and

WHEREAS, the enclosed Reimbursement Agreement relates to certain Village
water main infrastructure work (i.e., replacement and/or extension of water main lines
and casings that the water main lines sit inside) that needs to be completed as part of
the Union Pacific Railroad’s construction of the “Third Rail” Project (the “UPRR
Project”). The Village is obligated to pay for this infrastructure work because of the cost
shifting provisions contained in one or more right-of-way license agreement(s) that it
has entered into with the UPRR. Due to the significant potential cost of this work, the
Village’s funding limitations and the timing of the UPRR Project, the UPRR has offered
to pay for the Village’s infrastructure work under the terms of the enclosed
Reimbursement Agreement, which provides the Village with a five (5) year repayment
plan for the actual incurred construction costs associated with the Village’s
infrastructure work that needs to be performed during the UPRR Project. The costs of
the Village’s infrastructure work will have to be paid from the General Fund or other
available funds, but cannot be paid with TIF District Funds because the area of the
Village’s infrastructure work is located outside the Village’s existing TIF Districts; and

WHEREAS, the estimated construction costs of the Village infrastructure work to
be performed in conjunction with the UPRR Project are estimated to be One Million
Dollars ($1,000,000.00); and

WHEREAS, the President and Board of Trustees of the Village of Maywood have
already approved an engineering services agreement with Edwin Hancock Engineering
Company, the Village Engineer, to perform design engineering and construction
services for the Village’s infrastructure work; and

WHEREAS, at the February 21, 2017, Village Board Meeting, the President and
Board of Trustees approved an earlier version of the Agreement that has now been
updated at the request of the UPRR. The version of the Agreement attached to this
Resolution as Exhibit “1”, which is substantially the same document as the prior version,
is the final version that has been authorized for approval by the UPRR; and
WHEREAS, the Village of Maywood, a home rule Illinois municipal corporation, has the authority to approve and enter into the attached Reimbursement Agreement (Exhibit “1”) and to approve the expenditure of its General Funds and/or such other available, lawful funds to pay for the Village’s reimbursement obligations to the UPRR under the Reimbursement Agreement pursuant to its home rule powers and contracting authority provided by Article VII, Sections 6 and 10(a) of the Illinois Constitution of 1970, as well as the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.) and finds that entering into this Agreement is in the best interests of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF MAYWOOD, COOK COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: Each Whereas paragraph above is incorporated by reference into this Section 1 and made a part hereof as material and operative provisions of this Resolution.

SECTION 2: The President and Board of Trustees of the Village Maywood approve of the Agreement entitled “REIMBURSEMENT AGREEMENT BETWEEN THE VILLAGE OF MAYWOOD AND THE UNION PACIFIC RAILROAD COMPANY FOR THE WATER MAIN REPLACEMENT AND EXTENSION PROJECT AT THE UNION PACIFIC RAILROAD TRACKS,” a copy of which is attached hereto as Exhibit “1” and made a part hereof, for the purposes of entering into a five (5) year repayment plan with the UPRR to repay the UPRR for the actual, incurred construction costs associated with the Village’s infrastructure work that needs to be performed during the UPRR Project.

SECTION 3: The President and Board of Trustees of the Village of Maywood also agree to appropriate and authorize the expenditure of the necessary sums from the Village’s General Funds and/or such other available, lawful funds for the purpose of paying the Village’s annual payment obligations under the Reimbursement Agreement. Further, the President and Board of Trustees authorize and direct the Village President and Clerk, or their designees, to execute the final version of the attached Agreement, which may contain certain non-substantive and non-financial modifications that are approved by the Village Attorney, and to execute and deliver all other instruments and documents that are necessary to fulfill the Village’s obligations under the Agreement.

ADOPTED this 16th day of May, 2017, pursuant to a roll call vote as follows:

AYES: Mayor Edwenna Perkins, Trustee(s) H. Yarbrough, Sr., I. Brandon, A. Dorris, M. Rogers, M. Lightford and R. Rivers.

NAYS: None

ABSENT: None
APPROVED this 18th day of May, 2017, by the Village President of the Village of Maywood, and attested by the Village Clerk on the same day.

[Signature]
Village President

ATTEST:

[Signature]
Village Clerk
Exhibit “1”

REIMBURSEMENT AGREEMENT BETWEEN
THE VILLAGE OF MAYWOOD AND THE UNION PACIFIC RAILROAD COMPANY
FOR THE WATER MAIN REPLACEMENT AND EXTENSION PROJECT
AT THE UNION PACIFIC RAILROAD TRACKS

(attached)
REIMBURSEMENT AGREEMENT

This REIMBURSEMENT AGREEMENT ("Agreement") is dated this ___ day of __________, 2017 ("Effective Date"), by and between VILLAGE OF MAYWOOD, an Illinois home rule municipal corporation ("Utility"), having a mailing address at 40 Madison Street, Maywood, Illinois 60153, and UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("UPRR"), having a mailing address at 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179.

RECITALS:

A. Six (6) underground water pipelines owned by Utility (individually, a "Pipeline" or collectively, "Pipelines") located at various locations on UPRR property in the Village of Maywood on UPRR’s Geneva Subdivision in Cook County, State of Illinois, must be protected or, if necessary, removed or abandoned in place and a new line installed ("Work") to accommodate a project by UPRR to expand the capacity of its freight railroad. The size and approximate location of each of the Pipelines are described below:

<table>
<thead>
<tr>
<th>Pipeline Size</th>
<th>Crossing Location</th>
<th>Nearest UPRR Milepost</th>
</tr>
</thead>
<tbody>
<tr>
<td>10&quot;</td>
<td>1st Avenue</td>
<td>10.20</td>
</tr>
<tr>
<td>10&quot;</td>
<td>1st Avenue</td>
<td>10.20</td>
</tr>
<tr>
<td>12&quot;</td>
<td>5th Avenue</td>
<td>10.57</td>
</tr>
<tr>
<td>12&quot;</td>
<td>6th Avenue</td>
<td>10.63</td>
</tr>
<tr>
<td>6&quot;</td>
<td>9th Avenue</td>
<td>10.76</td>
</tr>
<tr>
<td>20&quot;</td>
<td>9th Avenue</td>
<td>10.76</td>
</tr>
</tbody>
</table>

B. Utility and UPRR agree that none of the Pipelines are documented by agreements between Utility and UPRR that govern Utility’s operation, maintenance, modification, protection, relocation, repair or removal of the Pipelines at the Site, and Utility agrees it is responsible for the cost and expenses related to the Work.

C. In order to ensure expedited completion of the Work, UPRR has agreed to fund and perform, or have UPRR contractor(s) perform the Work, subject to reimbursement by Utility pursuant to the terms and conditions of this Agreement. Following UPRR’s completion of the Work, Utility agrees to execute a separate license agreement for each of the modified Pipelines.

AGREEMENT:

NOW THEREFORE, in consideration of the promises and mutual covenants herein contained, the Parties hereto agree as follows.

1. Project. Utility shall provide its plans and specifications for the Work on the Pipelines ("Plans") to UPRR by no later than February 28, 2017. If deemed necessary, in UPRR’s sole discretion, Utility shall revise the Plans as needed to respond to any comments by UPRR on such Plans. UPRR shall then perform a physical inspection of the Pipelines, and Utility grants UPRR the right to perform
such physical inspection, to determine the scope of the modification(s) (e.g., protection, relocation or complete replacement) to be performed on each of the Pipelines to bring the Pipelines into compliance with UPRR's standards, specifications, and guidelines for pipelines located on UPRR's property ("Pre-Work Diligence"). UPRR will then communicate the results of the Pre-Work Diligence to Utility, which will be the basis for UPRR's performance of the Work in compliance with the Plans. Utility grants UPRR the right to perform the Work on the Pipelines. For purposes of clarity, Utility agrees that the Plans will not include any increase to the existing capacity or design of the Pipelines, unless agreed to in writing by UPRR. For purposes of this Agreement, UPRR's (i) performance of the Pre-Work Diligence, (ii) review and edit, if necessary, of the Plans, and (iii) performance and completion of the Work, will be collectively referred to as the "Project". Utility may, upon request and at Utility's expense, inspect the Work performed by UPRR on the Project; PROVIDED, HOWEVER, that Utility acknowledges that the necessity of any adjustments or modifications suggested by Utility will be determined in the sole discretion of UPRR. Notwithstanding anything to the contrary contained herein, UPRR's performance of the Work in accordance with the Plans is not intended and shall not be deemed to constitute a representation, warranty or assurance of any kind that the Plans comply with any applicable codes or requirements or that the Pipelines are adequate for the purpose for which they were designed or installed. Further, UPRR makes no warranty whatsoever with respect to the Work performed on the Pipelines. Upon written request to UPRR's contractor, with copy to UPRR, such UPRR contractor shall (i) provide to Utility its standard warranties with respect to the Work performed on the Pipelines, and (ii) deliver to Utility all manufacturers' warranties for all installed pipes and related components, and the Work shall be performed by such contractor(s) in accordance with all applicable laws, codes and regulations and manufacturers' specifications. Immediately upon UPRR's completion of the Work, Utility shall be fully responsible for any and all further maintenance, repair, renewal, relocation, or removal of the Pipelines. UPRR's performance of the Work on the Pipelines shall constitute completion of UPRR's responsibilities with respect to the Pipelines, and Utility, its successors and assigns, hereby releases, acquits and forever discharge UPRR, its successors and assigns, from any and all claims, demands, causes of action, losses, liabilities, expenses, obligations, and rights of action (direct or derivative) of whatever kind or nature liquidated or unliquidated, known or unknown, whether fixed or contingent, which have accrued or may ever accrue, whether in law or in equity whether presently existing or hereinafter arising, in connection with or arising out of the Project.

2. **Project Costs.** Upon completion of the Project or upon UPRR's termination of this Agreement, Utility shall reimburse UPRR for all Project Costs actually incurred and documented by UPRR for the Project. For purposes of this Agreement, "Project Costs" are defined as costs of design review, flagging or special protective or safety measures, labor, materials, surveys, permits, equipment and machinery employed on the Project. Separate, detailed records shall be maintained by UPRR on all items and accounts which shall constitute the basis of information from which one or more invoices will be prepared that reflect the total amount of the Project Costs. UPRR shall provide the Utility with true and accurate copies of the invoice(s) and supporting records as they are finalized. The total cost of the Project is estimated to be One Million Dollars ($1,000,000.00) ("Estimated Cost"). UPRR agrees to provide written notice to Utility when UPRR becomes aware that Project Costs may or will exceed the estimate by more than ten percent (10%) of the Estimated Cost.

3. **Reimbursement; Payment Schedule.** Utility shall reimburse UPRR for all Project Costs, as set forth in this Agreement.
a. **Payment Schedule.** Upon substantial completion of the Project or the earlier termination of this Agreement, as applicable, UPRR shall have ninety (90) days to prepare a final invoice covering all Project Costs incurred by UPRR for the Project and submit the same to Utility. Within one (1) year of the Effective Date of this Agreement, Utility shall make its initial payment ("Initial Payment") in an amount equal to at least twenty percent (20%) of the final Project Costs (if final Project Costs are not then available, such payment shall be equal to 20% of the Estimated Cost, or $200,000.00). Thereafter, each successive payment will be on an annual basis, due by the anniversary of the date of the Initial Payment for each year for the next four (4) calendar years, and be equal to twenty percent (20%) of the final Project Costs. Notwithstanding anything to the contrary contained in the foregoing, the entire unpaid balance of Project Costs shall be included in the final annual installment payment by Utility. For example purposes only, if the Effective Date of this Agreement is February 1, 2017 and the Project Costs equal the Estimated Cost, then Utility's Initial Payment of $200,000.00 will be due by February 1, 2018. Utility would then be required to make payments of $200,000.00 by February 1, 2019, February 1, 2020, February 1, 2021, and February 1, 2022, respectively.

b. **Prepayment.** Utility shall have the right to prepay all or any part of the unpaid balance due to UPRR at any time without penalty.

4. **Agreement Modification.** This Agreement is the only understanding by and between Utility and UPRR pertaining to the Project, and stand independent of any other agreements between the Parties and/or their affiliates. This Agreement may only be modified in writing executed by both Utility and UPRR.

5. **Termination.** UPRR may terminate this Agreement upon thirty (30) days prior written notice to Utility. In the event of such termination, Utility shall pay UPRR for all Project Costs incurred by UPRR as of the date of termination, subject to the requirements and limitations set forth in Section 2 and Section 3.

6. **Applicable Law.** This Agreement shall governed and controlled as to the validity, enforceability, interpretation, construction, effect in all other respects, including but not limited to, the legality of interest charged hereunder, by the statutory, laws and decisions of State of Nebraska. The laws of the State of Nebraska shall apply in all respects to matters related to the enforcement of this Agreement.

7. **Execution of License Agreements; Quitclaim of Interest.** Upon UPRR's completion of the Work, Utility and UPRR shall execute a separate Pipeline Crossing Agreement ("License Agreement") for each modified Pipeline, which will be done on UPRR's then-current form of License Agreement in effect at the time the Work is completed. The current form of License Agreement as of the Effective Date of this Agreement is attached hereto as Exhibit A and made a part hereof. Following UPRR's performance and completion of the Work, and to the extent UPRR's modification work requires any of the Pipelines to be moved to a location different than that Pipeline's location as set forth on the Plans ("Original Pipeline Location"), then Utility shall quitclaim to UPRR any and all interest in and to any real property outside of the Original Pipeline Location required for the modified Pipelines. UPRR and Utility agree to execute any and all documents required to effectuate such quitclaim of interest.
8. **Severability.** Every provision of this Agreement is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the validity or enforceability of the remaining terms and provisions hereinafter set forth.

9. **Force Majeure.** If either Party shall be prevented or delayed from punctually performing any obligations or satisfying any conditions under this Agreement by reason of any act of God, enemy action, strikes, lockouts, insurrection, sabotage, fire or other casualty, then the time to perform such obligation or satisfy such condition shall, upon notice given by the affected Party as set forth below, be extended on a day-to-day basis for the period of the delay caused by such event. The Party affected by the force majeure event shall promptly give written notice of the event or circumstance to the other Party, but in no event later than five (5) business days after the affected Party has knowledge of the event or circumstance, specifying the nature of the delay, and the probable extent of the delay, if determinable. If such notice is duly given, the time for performance hereunder shall be extended for such period of delay as may be both reasonable and necessary due to said event, unless the other Party disputes the claim of force majeure. This paragraph shall not apply to the inability to pay any sum of money due hereunder or the failure to perform any other obligation due to the lack of money or inability to raise capital or borrow for any purpose.

10. **Waivers.** Utility waives presentment for payment, demand, protest, notice of non-payment, protest of non-payment and consent to any and all renewals, extensions or modifications which might be made by UPRR as to the time of payment under this Agreement, from time to time.

11. **Binding Agreement.** The terms of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and assigns.

12. **No Third Party Beneficiary.** This Agreement is made and acquired solely for the benefit of UPRR and Utility, and their respective successors and permitted assigns, and no other person or entity will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

13. **Authority.** Each Party warrants that it has the full right and authority to enter into this Agreement. All necessary approvals and authority to enter into this Agreement have been obtained and the person executing this Agreement on behalf of each Party has the express authority to do so and in so doing, to bind such Party hereto.

14. **Waiver of Jury Trial.** THE PARTIES HERETO, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED ON OR ARISING OUT OF THIS AGREEMENT OR ANY INSTRUMENT, OR ANY OTHER RELATED INSTRUMENT OR AGREEMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS, WHETHER ORAL OR WRITTEN, OR ACTION OF ANY PARTY HERETO. NO PARTY SHALL SEEK TO CONSOLIDATE BY COUNTERCLAIM OR OTHERWISE, ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY
RESPECT OR RELINQUISHED BY ANY PARTY HERETO, EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY ALL PARTIES.

15. **Records: Audit.** UPRR shall maintain records relative to all of the Work performed in regard to the Utility's Pipelines and records in regard to the payment to contractor(s) and supplier(s) for such Work, and shall permit Utility to inspect and audit all such records upon written request. The records shall include all invoices, billable charges and costs, descriptions and time entries by personnel (in minutes/hours increments) incurred in performing the Work in accordance with generally accepted accounting practices, consistently applied, and in such manner as to permit verification of all entries. Upon written request by Utility, the records shall promptly be made available to Utility or its auditors during normal business hours during the term of this Agreement, and for three (3) consecutive calendar years after the termination of this Agreement. Copies of such records shall be promptly furnished by the UPRR to Utility at a reasonable per page photocopy expense or in an electronic or digital format at no charge.

16. **Illinois Freedom of Information Act.** The definition of a public record in the Freedom of Information Act (5 ILCS 140/1 et seq.) ("FOIA") includes a "public record that is not in the possession of a public body but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the public body and that directly relates to the governmental function and is not otherwise exempt under this Act." (5 ILCS 140/7(b). Consequently, the Parties must maintain and make available to the other parties, upon request, their records relating to the performance of this Agreement in compliance with the requirements of the Local Records Act (50 ILCS 205/1 et seq.) and FOIA. To facilitate a response by Utility to any FOIA request, UPRR agrees to provide all requested records within five (5) business days of a request being made by Utility. In regard to any FOIA request for records, Utility and UPRR agree to cooperate in asserting any proper exemptions available under FOIA.

17. **Compliance with Laws.** UPRR, and its employees, contractor(s) and sub-contractors, shall comply with any and all applicable laws, regulations and rules promulgated by any Federal, State, County, local, or other governmental authority or regulatory body pertaining to all aspects of the Work, now in effect, or which may become in effect during the performance of the Work. The scope of the laws, regulations and rules referred to in this paragraph includes, but is in no way limited to, the Occupational Safety and Health Act standards, the Illinois Human Rights Act, the Illinois Equal Pay Act of 2003, along with the standards and regulations promulgated pursuant thereto (including but not limited to those safety requirements involving work on elevated platforms), all forms of traffic regulations, public utility, Interstate and Intrastate Commerce Commission regulations, Workers' Compensation Laws, the Substance Abuse Prevention on Public Works Projects Act, Prevailing Wage Laws, the Smoke Free Illinois Act, the USA Security Act, the Federal Social Security Act (and any of its titles), and any other law, rule or regulation of the Illinois Department of Labor, Illinois Department of Transportation, Illinois Environmental Protection Act, Illinois Department of Human Rights, Human Rights Commission, EEOC, Metropolitan Water Reclamation District of Greater Chicago, the Village of Maywood. In the event that UPRR, or its employees, contractor(s) and sub-contractors, in performing the Work are found to have not complied with any of the applicable laws and regulations as required by this Agreement, then UPRR shall indemnify and hold Utility harmless, and pay all amounts determined to be due from Utility from such non-compliance by the UPRR, including, but not limited to fines, costs, attorneys’ fees and penalties.
18. **Employment of Illinois Workers on Public Works Act Compliance.** To the extent required by law, UPRR agrees to comply with the provisions of the Employment of Illinois Workers on Public Works Act (30 ILCS 570/0.01 et seq.).

19. **Preference To Veterans Act Compliance.** UPRR will comply with the Preference to Veterans Act (330 ILCS 55).

20. **Patriot Act Compliance.** To the best of its knowledge, UPRR represents and warrants to Utility that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specially Designated National and Blocked Person. To the best of its knowledge, UPRR further represents and warrants to Utility that UPRR and its principals, shareholders, members, partners, or affiliates, as applicable, are not, directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person. UPRR agrees to defend, indemnify and hold harmless Utility, its corporate authorities, and all elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from and against any and all claims, damages, losses, risks, liabilities, and expenses (including reasonable attorneys' fees and costs) arising from or related to any breach of the representations and warranties in this subsection.

21. The Parties to this Agreement shall further comply with all applicable federal, state and local laws, rules and regulations in carrying out the terms and conditions of this Agreement, including the following:

   a. **Certification.** Each Party and its officers, corporate authorities, employees and agents certify that they are not barred from entering into this Agreement as a result of a violation of either 720 ILCS 5/33E-3 or 5/33E-4 (bid rigging or bid rotating) or 5/33E-6 (interference with contract submission and award by public official) or as a result of a violation of 820 ILCS 130/1 et seq. (the Illinois Prevailing Wage Act) or as a result of: (1) a delinquency in the payment of any tax administered by the Illinois Department of Revenue or any fee required by any unit of local government or the State, unless the Party is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of the tax or the fee, as set forth in Section 11-42.1-1 et seq. of the Illinois Municipal Code, 65 ILCS 5/11-42.1-1 et seq. Each Party and its officers, corporate authorities, employees and agents further certify by signing this Agreement that the Party and its officers, corporate authorities, employees and agents have not been convicted of, or are not barred for attempting to rig bids, price-fixing or attempting to fix prices as defined in the Sherman Anti-Trust Act and Clayton Act, 15 U.S.C. § 1 et seq.; and has not been convicted of or barred for bribery or attempting to bribe an officer or employee of a unit of state or local government or school district in the State of Illinois in that officer’s or employee’s official capacity. Nor has any of the Parties and their officers, corporate authorities, employees and agents made admission of guilt of such conduct which is a matter of record, nor has any official, officer, agent or employee of the Parties been so convicted nor made such an admission.

   b. **Non-Discrimination.** Each Party and its officers, corporate authorities, employees and agents agree not to commit unlawful discrimination and agree to comply with all applicable provisions of the Illinois Human Rights Act, Title VII of the Civil Rights Act of 1964, as

c. No Collusion. UPRR represents and certifies that UPRR is not barred from contracting with a unit of State or local government as a result of: (1) a delinquency in the payment of any tax administered by the Illinois Department of Revenue or any fee required by Utility, unless UPRR is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of the tax or the fee, as set forth in Section 11-42.1-1 et seq. of the Illinois Municipal Code, 65 ILCS 5/11-42.1-1 et seq.; or (2) a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 1961, 720 ILCS 5/33E-1 et seq. UPRR represents that the only persons, firms or corporations interested in this Agreement as principals are those disclosed to Utility prior to the execution of this Agreement, and that this Agreement is made without collusion with any other person, firm or corporation. If at any time it shall be found that UPRR has, in procuring this Agreement, colluded with any other person, firm or corporation, then UPRR shall be liable to Utility for any loss or damage that Utility may suffer, and this Agreement shall, at Utility's option, be null and void.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the last signatory below, which date shall be inserted on page 1 of this Agreement.

VILLAGE OF MAYWOOD, an Illinois home rule municipal corporation

By: ________________________________
Printed Name: ________________________________
Title: ________________________________
Date: ________________________________

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation

By: ________________________________
Printed Name: ________________________________
Title: ________________________________
Date: ________________________________
EXHIBIT A

UPRR'S FORM OF PIPELINE CROSSING AGREEMENT
CURRENT AS OF ____________

(TO BE ATTACHED)
PIPELINE CROSSING AGREEMENT

Mile Post: _____, Geneva Subdivision
Location: Maywood, Cook County, Illinois

THIS AGREEMENT ("Agreement") is made and entered into as of ________________, 2017, ("Effective Date") by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, ("Licensor") and VILLAGE OF MAYWOOD, an Illinois home rule municipal corporation to be addressed at 40 Madison Street, Maywood, Illinois 60153 ("Licensee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article 1. LICENSOR GRANTS RIGHT.

In consideration of the license fee to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate

One _____ inch diameter pipeline for transporting and conveying water only

across Licensor's track(s) and property (the "Pipeline") in the location shown and in conformity with the dimensions and specifications indicated on the print dated __________ and marked Exhibit A, attached hereeto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than transporting and conveying water, and the Pipeline shall not be used to convey any other substance, any fiber optic cable, or for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

For the purposes of Exhibit A, Licensee acknowledges that if it or its contractor provides to Railroad digital imagery depicting the Pipeline crossing, Licensee authorizes Railroad to use the Digital Imagery in preparing the print attached as an exhibit hereto. Licensee represents and warrants that through a license or otherwise, it has the right to use the Digital Imagery and to permit Railroad to use the Digital Imagery in said manner.

Article 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in Exhibit B, attached hereto and hereby made a part hereof.

Article 3. DEFINITION OF LICENSEE.

For purposes of this Agreement, all references in this Agreement to the Licensee shall include the Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. If a contractor is hired by the Licensee for any work performed on the Pipeline (including...
initial construction and subsequent relocation or maintenance and repair work), then the Licensee shall provide a copy of this Agreement to its contractor and require its contractor to comply with all the terms and provisions hereof relating to the work to be performed. Any contractor or subcontractor shall be deemed an agent of Licensee for the purpose of this Agreement, and Licensee shall require such contractor or subcontractor to release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

Article 4. **INSURANCE.**

A. During the life of the License, Licensee shall fully comply with the insurance requirements described in Exhibit C.

B. Failure to maintain insurance as required shall entitle, but not require, Licensor to terminate this License immediately.

C. If the Licensee is subject to statute(s) limiting its insurance liability and/or limiting its ability to obtain insurance in compliance with Exhibit C of this license, those statutes shall apply.

D. Licensee hereby acknowledges that it has reviewed the requirements of Exhibit C, including without limitation the requirement for Railroad Protective Liability Insurance during construction, maintenance, installation, repair or removal of the pipeline which is the subject of this Agreement.

Article 5. **TERM.**

This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as herein provided.

**IN WITNESS WHEREOF,** the parties hereto have caused this Agreement to be executed as of the date first herein written.

**UNION PACIFIC RAILROAD COMPANY**

By: __________________________

Manager – Real Estate

**VILLAGE OF MAYWOOD**

By: __________________________

Name Printed: __________________

Title: _________________________
EXHIBIT B

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor’s property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

A. The Pipeline shall be designed, constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with (i) Licensor’s current standards and specifications (“UP Specifications”), except for variances approved in advance in writing by the Licensor’s Assistant Vice President Engineering – Design, or his authorized representative; (ii) such other additional safety standards as the Licensor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association (“AREMA”) standards and guidelines (collectively, “UP Additional Requirements”), and (iii) all applicable laws, rules and regulations (“Laws”). If there is any conflict between the requirements of any Law and the UP Specifications or the UP Additional Requirements, the most restrictive will apply.

B. All work performed on property of the Licensor in connection with the design, construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Licensor.

C. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline from Licensor’s property, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor’s operations, and shall not proceed with the work until such plans have been approved by the Licensor’s Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Licensor’s Assistant Vice President Engineering Design or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Licensor provides such support, the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by the Licensor in connection therewith, which expenses shall
include all assignable costs.

D. The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.

E. In the prosecution of any work covered by this Agreement, Licensee shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 3. NOTICE OF COMMENCEMENT OF WORK / LICENSOR REPRESENTATIVE / SUPERVISION / FLAGGING / SAFETY.

A. If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensor before commencing any work by calling the Response Management Communication Center (RMCC) at 888-877-7267. In all other situations, the Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion. The Licensee will coordinate its initial, and any subsequent work with the following employee of Licensor or his or her duly authorized representative (hereinafter "Licensor Representative" or "Railroad Representative"): 

Eric Schierholz  
Manager Track Maintenance  
Phone: (708) 649-5374  
Email: ejscheir@up.com

B. Licensee, at its own expense, shall adequately police and supervise all work to be performed. The responsibility of Licensee for safe conduct and adequate policing and supervision of work shall not be lessened or otherwise affected by Licensor's approval of plans and specifications involving the work, or by Licensor's collaboration in performance of any work, or by the presence at the work site of a Licensor Representative, or by compliance by Licensee with any requests or recommendations made by the Licensor Representative.

C. At the request of Licensor, Licensee shall remove from Licensor's property any employee who fails to conform to the instructions of the Licensor Representative in connection with the work on Licensor's property. Licensee shall indemnify Licensor against any claims arising from the removal of any such employee from Licensor's property.

D. Licensee shall notify the Licensor Representative at least ten (10) working days in advance of proposed performance of any work in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Licensor's track(s) at any time, for any reason, unless and until a railroad flagman is provided to watch for trains. Upon receipt of such ten (10) day notice, the Licensor Representative will determine and inform Licensee whether a flagman need be present and whether any special protective or safety measures need to be implemented. If flagging or other
special protective or safety measures are performed by Licensor, Licensor will bill Licensee for such expenses incurred by Licensor, unless Licensor and a federal, state or local governmental entity have agreed that Licensor is to bill such expenses to the federal, state or local governmental entity. If Licensor will be sending the bills to Licensee, Licensor shall pay such bills within thirty (30) days of receipt of billing. If Licensor performs any flagging, or other special protective or safety measures are performed by Licensor, Licensee agrees that Licensee is not relieved of any of responsibilities or liabilities set forth in this Agreement.

E. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagman used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Licensor and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Licensee (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

F. Reimbursement to Licensor will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Licensor is required to pay the flagman and which could not reasonably be avoided by Licensor by assignment of such flagman to other work, even though Licensor may not be working during such time. When it becomes necessary for Licensor to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Licensee must provide Licensor a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Licensee shall still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Licensor if flagging services are needed again after such five day cessation notice has been given to Licensor.

G. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Licensee or its contractor. Licensee shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Licensee and its contractor shall at a minimum comply with Licensor's safety standards listed in Exhibit D, hereto attached, to ensure uniformity with the safety standards followed by Licensor's own forces. As a part of Licensee's safety responsibilities, Licensee shall notify Licensor if it determines that any of Licensor's safety standards are contrary to good safety practices. Licensee and its contractor shall furnish copies of Exhibit D to each of its employees before they enter the job site.
II. Without limitation of the provisions of paragraph G above, Licensee shall keep the job site free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the job.

I. Licensee shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Prompt notification shall be given to Licensor of any U.S. Occupational Safety and Health Administration reportable injuries. Licensee shall have a non-delegable duty to control its employees while they are on the job site or any other property of Licensor, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.

J. If and when requested by Licensor, Licensee shall deliver to Licensor a copy of its safety plan for conducting the work (the "Safety Plan"). Licensor shall have the right, but not the obligation, to require Licensee to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.

The Licensee shall bear the entire cost and expense incurred in connection with the design, construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by the Licensor in connection therewith for supervision, inspection, flagging, or otherwise.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE.

A. The license herein granted is subject to the needs and requirements of the Licensor in the safe and efficient operation of its railroad and in the improvement and use of its property. The Licensee shall, at the sole expense of the Licensee, reinforce or otherwise modify the Pipeline, or move all or any portion of the Pipeline to such new location, or remove the Pipeline from the Licensor’s property, as the Licensor may designate, whenever, in the furtherance of its needs and requirements, the Licensor, at its sole election, finds such action necessary or desirable.

B. All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of the Licensor in the location hereinafore described shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LICENSOR’S OPERATION.

A. The Pipeline and all parts thereof within and outside of the limits of the property of the Licensor shall be designed, constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.

B. Explosives or other highly flammable substances shall not be stored on Licensor’s property without the prior written approval of Licensor.
C. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Licensor's trackage shall be installed or used by Licensee or its contractors without the prior written permission of Licensor.

D. When not in use, any machinery and materials of Licensee or its contractors shall be kept at least fifty (50) feet from the centerline of Licensor's nearest track.

E. Operations of Licensor and work performed by Licensor's personnel may cause delays in the work to be performed by Licensee. Licensee accepts this risk and agrees that Licensor shall have no liability to Licensee or any other person or entity for any such delays. Licensee shall coordinate its activities with those of Licensor and third parties so as to avoid interference with railroad operations. The safe operation of Licensor's train movements and other activities by Licensor take precedence over any work to be performed by Licensee.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

A. Fiber optic cable systems may be buried on the Licensor's property. Protection of the 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. Licensee shall telephone the Licensor during normal business hours (7:00 a.m. to 5:00 p.m., Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the Licensor's property until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.

B. IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD THE LICENSOR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF THE LICENSEE, ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON LICENSOR'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON LICENSOR'S PROPERTY, EXCEPT IF SUCH COSTS, LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF THE LICENSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RECOUSE AGAINST LICENSOR FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE TO A TELECOMMUNICATION COMPANY USING LICENSOR'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON LICENSOR'S PROPERTY.
Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

A. The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Licensor 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.

B. The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensor's property upon property of the Licensor as compared with the entire value of such property.

Section 9. RESTORATION OF LICENSOR'S PROPERTY.

In the event the Licensee in any manner moves or disturbs any of the property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such property to the same condition as the same were before such property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the moving or disturbance of any other property of the Licensor.

Section 10. INDEMNITY.

A. As used in this Section, "Licensor" includes other railroad companies using the Licensor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licensor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licensor, or property in its care or custody).

B. AS A MAJOR INDUCEMENT AND IN CONSIDERATION OF THE LICENSE AND PERMISSION HEREIN GRANTED, TO THE FULLEST EXTENT PERMITTED BY LAW, THE LICENSOR SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR FROM
ANY LOSS OF ANY KIND, NATURE OR DESCRIPTION ARISING OUT OF,
RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT
INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR,
RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL
OF THE PIPELINE OR ANY PART THEREOF;

2. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE;

3. THE PRESENCE, OPERATION, OR USE OF THE PIPELINE OR CONTENTS
ESCAPING THEREFROM;

4. THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR
CONTRIBUTED TO BY LICENSEE;

5. ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS,
INVITEES, EMPLOYEES, OR CONTRACTORS OR ANYONE DIRECTLY OR
INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR
EXERCISE CONTROL OVER; OR

6. LICENSEE'S BREACH OF THIS AGREEMENT,

EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT AND ACTIVE
NEGligence OF THE LICENSOR, AS DETERMINED IN A FINAL JUDGMENT BY A
COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE
PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES
CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, LICENSOR'S
NEGligence.

C. Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit of
proceeding brought against any indemnitee by any entity, relating to any matter covered by this
License for which Licensor has an obligation to assume liability for and/or save and hold
harmless any indemnitee. Licensee shall pay all costs incident to such defense, including, but not
limited to, reasonable attorney's fees, investigators' fees, litigation and appeal expenses,
settlement payments and amounts paid in satisfaction of judgments.

Section 11. REMOVAL OF PIPELINE UPON TERMINATION OF AGREEMENT

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole
expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track
or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such
property to as good a condition as they were in at the time of the construction of the Pipeline. If the
Licensee fails to do the foregoing, the Licensor may, but is not obligated, to perform such work of
removal and restoration at the cost and expense of the Licensee. In the event of the removal by the
Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein
provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the
Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or
impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.
Section 12. **WAIVER OF BREACH.**

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

Section 13. **TERMINATION.**

A. If the Licensee does not use the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.

B. In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.

C. Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Section 14. **AGREEMENT NOT TO BE ASSIGNED.**

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

Section 15. **SUCCESSORS AND ASSIGNS.**

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

Section 16. **SEVERABILITY.**

Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.
Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

A. **Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than $2,000,000 each occurrence and an aggregate limit of not less than $4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: “Contractual Liability Railroads" ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing “Union Pacific Railroad Company Property” as the Designated Job Site.

B. **Business Automobile Coverage** insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a limit of not less $2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: “Coverage For Certain Operations In Connection With Railroads” ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing “Union Pacific Property” as the Designated Job Site.

C. **Workers Compensation and Employers Liability** insurance. Coverage must include but not be limited to:

Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.

Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 disease policy limit $500,000 each employee.

If Licensee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

D. **Railroad Protective Liability** insurance. Licensee must maintain “Railroad Protective Liability” insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad only as named insured, with a limit of not less than $2,000,000 per occurrence and an aggregate of $6,000,000.

The definition of “JOB LOCATION” and “WORK” on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement.
E. **Umbrella or Excess** insurance. If Licensee utilizes umbrella or excess policies, and these policies must “follow form” and afford no less coverage than the primary policy.

Other Requirements

F. All policy(ies) required above (except worker’s compensation and employers liability) must include Railroad as “Additional Insured” using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad’s negligence whether sole or partial, active or passive, and shall not be limited by Licensee’s liability under the indemnity provisions of this Agreement.

G. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.

H. Licensee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Licensee required in this agreement, where permitted by law. This waiver must be stated on the certificate of insurance.

I. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best’s Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

J. The fact that insurance is obtained by Licensee or by Railroad on behalf of Licensee will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Licensee or any third party will not be limited by the amount of the required insurance coverage.
EXHIBIT D

SAFETY STANDARDS

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Licensee or its contractors, subcontractors, or agents, as well as any subcontractor or agent of any Licensee.

I. Clothing

A. All employees of Licensee will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Licensee’s employees must wear:

(i) Waist-length shirts with sleeves.
(ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
(iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.

B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.

C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Licensee shall require its employee to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

(i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Licensee’s company logo or name.
(ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
(iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:

- 100 feet of a locomotive or roadway/work equipment
- 15 feet of power operated tools
- 150 feet of jet blowers or pile drivers
- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
(iv) Other types of personal protective equipment such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Licensee and its contractor are responsible for compliance with the Federal Railroad Administration’s Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad’s On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

(i) Maintain a minimum distance of at least twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
(ii) Wear an orange, reflectorized work wear approved by the Railroad Representative.
(iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Licensee must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Licensee will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

A. It is the responsibility of Licensee to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Licensee’s equipment is unsafe for use, Licensee shall remove such equipment from Railroad’s property. In addition, Licensee must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:

- Familiar and comply with Railroad’s rules on lockout/tagout of equipment.
- Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
- Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other rail bound equipment.

B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.

C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.

D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

A. Licensee shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
B. Licensee shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.

C. All track work performed by Licensee meets the minimum safety requirements established by the Federal Railroad Administration’s Track Safety Standards 49CFR213.

D. All employees comply with the following safety procedures when working around any railroad track:

(i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
(ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
(iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
(iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
(v) Before stepping over or crossing tracks, look in both directions first.
(vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.

E. All employees must comply with all federal and state regulations concerning workplace safety.
STATE OF ILLINOIS )
   ) SS
COUNTY OF COOK )

CLERK’S CERTIFICATE

I, Viola Mims, Clerk of the Village of Maywood, in the County of Cook and State of Illinois, certify that the annexed and foregoing is a true and correct copy of that certain Resolution now on file in my Office, entitled:

RESOLUTION NO. R-2017-29

RESOLUTION APPROVING
THE REIMBURSEMENT AGREEMENT BETWEEN
THE VILLAGE OF MAYWOOD AND THE UNION PACIFIC RAILROAD COMPANY
FOR THE WATER MAIN REPLACEMENT AND EXTENSION PROJECT
AT THE UNION PACIFIC RAILROAD TRACKS

which Resolution was passed by the Board of Trustees of the Village of Maywood at a Regular Village Board Meeting on the 16th day of May, 2017, at which meeting a quorum was present, and approved by the President of the Village of Maywood on the 18th day of May, 2017.

I further certify that the vote on the question of the passage of said Resolution by the Board of Trustees of the Village of Maywood was taken by Ayes and Nays and recorded in the minutes of the Board of Trustees of the Village of Maywood, and that the result of said vote was as follows, to-wit:

AYES: Mayor Edwenna Perkins, Trustee(s) H. Yarbrough, Sr., I. Brandon, A. Dorris, M. Rogers, M. Lightford and R. Rivers.

NAYS: None

ABSENT: None

I do further certify that the original Resolution, of which the foregoing is a true copy, is entrusted to my care for safekeeping, and that I am the lawful keeper of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Village of Maywood, this 18th day of May, 2017.

[SEAL]

Village Clerk