

**CITY OF SAN ANTONIO
PUBLIC WORKS DEPARTMENT
CITY COUNCIL AGENDA MEMORANDUM**

TO: Mayor and City Council

FROM: Thomas G. Wendorf, P.E., Director of Public Works

SUBJECT: Comal Street Railroad Track Relocation Agreement with Union Pacific Railroad

DATE: June 16, 2004

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes the Interim City Manager or his designee to execute an agreement with Union Pacific Railroad (UPRR), a Delaware corporation, in connection with the Comal Street Railroad Relocation Project, located in District 5. This railroad relocation will improve railroad operations and increase traffic safety.

Staff recommends approval of this Ordinance.

BACKGROUND INFORMATION

The relocation of the railroad tracks on Comal Street will be a collaborative effort between the City and UPRR. Currently, UPRR tracks are located in the center of Comal Street from Martin to Buena Vista Streets. UPRR supports the relocation of the tracks as the current location prohibits motor vehicle and pedestrian traffic. This is an obvious safety issue and results in close interaction between rail and vehicle traffic, and trains must slow to a speed of 5 miles per hour as they move along this stretch of track. The relocation will improve railroad operations and increase traffic safety. Bexar County supports the relocation of the tracks as having the tracks and rail traffic passing between the jail properties currently on opposite sides of Comal Street presents a safety and security issue for Bexar County officials.

This agreement stipulates the responsibilities of both UPRR and the City. UPRR will provide construction design plans for City approval, obtain fee titles or quitclaim documentation to property needed, construct new track connections, and will release and quitclaim to the City all of UPRR's right, title and interest in and to the railroad track easement specified within the agreement.

The City shall provide prior review and approval of design and construction plans, coordinate the removal, relocation or adjustment of any utilities in the project area, close and vacate Morales Street, prepare a traffic control plan and provide traffic controls, provide alternative access to

adjacent properties and repair and maintain streets affected by the project that remain in the City's control.

On July 29, 2004, through Ordinance Number 99487, the relocation of the railroad tracks on Comal Street was declared a public project and funds were approved and allocated for preliminary surveying, appraisal and right-of-way acquisition in connection with the project.

On November 18, 2004, through Ordinance Number 100028, City Council authorized the parameters and outlined the terms and conditions to be included in the agreement. This ordinance authorizes the execution of the agreement between the City and UPRR.

A future ordinance will be brought forward for the closure of Morales Street, including closure of the at-grade railroad tracks along Comal Street from the intersection of Morales and San Marcos streets located at approximate UPRR Milepost 2.66 on UPRR's Kerrville Subdivision to approximate UPRR Milepost 259.80 on UPRR's Austin Subdivision.

POLICY ANALYSIS

Approval of this ordinance will be a continuation of City Council's commitment to public safety and to the collaboration with other governmental entities for mutual benefit.

FISCAL IMPACT

Funds in the amount of \$46,000 were encumbered for this project through Ordinance 99487 authorized on July 29, 2004.

This ordinance has no fiscal impact at this time. However, additional funds may be required when the Morales Street closure ordinance is brought forward.

COORDINATION

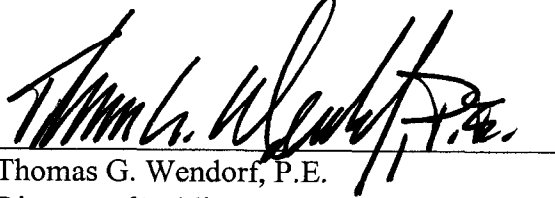
This action was coordinated with the City Attorney's Office, the Department of Asset Management, and Union Pacific Railroad.

SUPPLEMENTARY COMMENTS

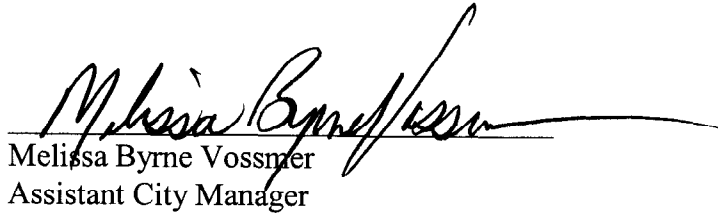
A Discretionary Contracts Disclosure Form is not required.

ATTACHMENTS

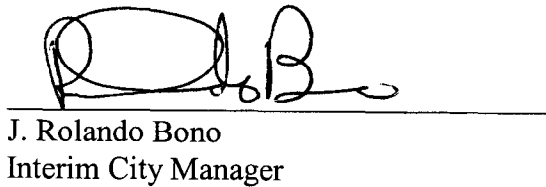
1. Project Location Map

A handwritten signature in black ink, appearing to read "Thomas G. Wendorf, P.E.", written over a horizontal line.

Thomas G. Wendorf, P.E.
Director of Public Works

A handwritten signature in black ink, appearing to read "Melissa Byrne Vossmer", written over a horizontal line.

Melissa Byrne Vossmer
Assistant City Manager

A handwritten signature in black ink, appearing to read "J. Rolando Bono", written over a horizontal line.

J. Rolando Bono
Interim City Manager

STATE OF TEXAS § **AGREEMENT FOR THE**
 § **COMAL STREET**
COUNTY OF BEXAR § **RAILROAD TRACK RELOCATION**

This Agreement for the Comal Street Railroad Track Relocation is entered into by and between the CITY OF SAN ANTONIO, a Texas home-ruled municipal corporation (hereinafter referred to as "CITY"), and UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (hereinafter referred to as "UPRR"). This Agreement is subject to approval by the City Council.

ARTICLE I
PURPOSE

The purpose of this Agreement is to memorialize an agreement regarding the relocation of the railroad tracks along Comal Street from the intersection of Morales and San Marcos streets located at approximate UPRR Milepost 2.66 on UPRR's Kerrville Subdivision to approximate UPRR Milepost 259.80 on UPRR's Austin Subdivision. The project (hereinafter "Project") is more specifically described on UPRR's Work Order print dated December 07, 2004, marked **Exhibit "A"** attached hereto and made part hereof for all purposes.

It is intended that this Project will improve railroad operations, improve vehicle and pedestrian safety, and enhance security for the Bexar County jail facility.

ARTICLE II
RESPONSIBILITIES AND DUTIES OF PARTIES

- A. UPRR's Responsibilities and Duties.** During the term of this Agreement, UPRR shall perform and/or provide the following:
1. Provide, at UPRR's expense, the design plans for the construction of the proposed connection track, including a grading plan for the track roadbed.
 2. Obtain, at UPRR's expense, fee title to or an easement interest in the property currently owned by Bexar County that is located in Original Block 80, New City Block 225, Lot 1 that is shown on **Exhibit "A"**.
 3. Obtain, at UPRR's expense, fee title to the property currently owned by Mr. Roland Rangel that is located in New City Block 221, Lots 1, 2, 3, 7, 8, 9, 10, 11 and 12 that is shown on **Exhibit "A"**.
 4. Obtain, at UPRR's expense, fee title to the property currently owned by M. Efraim Abramhoff located in Original Block 47, New City Block 197, Lots 1, 2 and 3 shown shaded in green on **Exhibit "A"**
 5. Obtain, at UPRR's expense, good and sufficient quitclaim documentation from abutting property owners for the closure of Morales Street from North San Marcos Street to the eastern boundary of UPRR's Austin Sub on Morales Street.

- a. Coordinate with City to satisfy any access concerns raised by adjacent property owners located in the vicinity of the intersection of Comal Street and Morales Street.
 - b. Obtain, at UPRR expense, consents from adjacent property owners for alternative access to effectuate the closure of any existing access.
 - c. If agreed upon by adjacent property owners as whole or partial compensation for street closure consideration, transfer ownership of residual properties to adjacent property owners.
6. Reconstruct, at UPRR's expense, the railroad crossing surface for the railroad street crossing at Martin Street at DOT No. 432537F at UPRR Milepost 259.03 on UPRR's Austin Subdivision to accommodate the additional track connection shown on **Exhibit "A"**. If necessary, UPRR shall relocate the Martin Street access drive to the Bexar County Jail to another point along Martin Street, as agreed between City, Bexar County and UPRR. UPRR and City will coordinate with the Texas Department of Transportation ("TXDOT") for the relocation of the railroad crossing signals to accommodate the additional track at Martin Street with such relocation to be in compliance with American Railway Engineering Maintenance of Way Association ("AREMA") standards.
7. Construct, at UPRR's expense, the new track connections. If it is necessary to remove the foundation of the City Public Service electrical tower for the track construction near the intersection of Comal Street and Morales Street, UPRR will do so at UPRR's expense.
8. Provide, at UPRR's expense, for City's prior review and approval, the design and construction plans for the street modifications where the newly aligned track crosses San Marcos Street and Martin Street.
9. Remove, at UPRR's expense, all rails, ties, crossing planks, signals, and other track material owned by UPRR and abandoned or to be abandoned in association with this project, including spurs, within the public right of way. Any asphalt paving disturbed during the removal of the rails, ties, crossing planks and other track material will be stockpiled on site by UPRR and thereafter shall be handled and disposed of by City at the City's expense. UPRR shall not be responsible for restoring any portion of Comal Street.
10. Release and quitclaim to City in writing and for One Dollar (\$1.00) the existing Comal Street franchise agreement dated April 6, 1885 granted by City to The San Antonio and Aransas Pass Railway Company (UPRR predecessor in interest). UPRR shall release and quitclaim such property to City in an "AS-IS" condition with all faults.
11. UPRR's obligations to perform hereunder are contingent upon UPRR being able to obtain, upon terms satisfactory to UPRR in its sole discretion, the property rights, quitclaim documentation and consents listed in items 2, 3, 4, and 5 above, including without limitation, being able to obtain title insurance, on terms satisfactory to UPRR, insuring the property rights and the easement to be granted to UPRR by City.

B. CITY's Responsibilities and Duties. During the term of this agreement, CITY shall perform and/or provide the following:

1. Coordinate and provide for UPRR's prior review and approval the design and construction plans for modification of all utilities located within the Project area. The utility companies shall bear the costs of all utility relocations or utility encasement associated with the Project with such work and materials to be performed or used in compliance with UPRR standards.
2. Obtain, at City expense, fee title to the property currently owned by J. L. Watts Company located in Original Block 1, New City Block 2212, Lots 3, 22 and 23 shown shaded in green on **Exhibit "A"**
3. Close and vacate, in accordance with City procedure, Morales Street from North San Marcos Street the eastern boundary of UPRR's Austin Sub on Morales Street after receipt from UPRR of quitclaim documents executed by abutting property owners. The City shall retain easement rights for subsurface and overhead utilities along the closed portion of Morales Street.
 - a. As part of the closure of Morales Street, the City shall permanently close the at-grade railroad crossing at DOT No. 432 536Y at UPRR Milepost 258.83 on UPRR's Austin Subdivision.
4. When closing and vacating Morales Street, the City shall prohibit all pedestrian and vehicle traffic over such portion of Morales Street, and shall also prohibit the business owners along such portion of Morales Street to have any access doors opening to such area. In the event that City cannot ensure the foregoing, City shall consult with UPRR regarding an access restriction plan acceptable to UPRR.
5. Review, at City's expense, the UPRR construction design plans consisting of the connection track including a grading plan for the track roadbed. The City shall approve construction design plans if they comply with applicable laws and regulations.
6. All traffic control in connection with any City or UPRR work shall be designed, planned and provided by City at City's expense.
7. Provide, at City's expense, for alternative access to adjacent properties to effectuate the closure of any existing access that is not consistent with UPRR's use of Morales Street for railroad purposes.
 - a. To effectuate closure of Morales adjacent to Texas Towing, the City shall agree to make improvements, at the City's expense, to Comal Street north of Morales Street and construct a driveway approach and driveway from Comal Street to the Texas Towing property.
 - b. Alternative access to the Texas Towing property or to any other adjacent property may be modified or changed if mutually agreed upon by the City and the affected property owner, providing that such modifications are consistent with UPRR's use of Morales Street for railroad purposes.

8. City shall grant to UPRR for One Dollar (\$1.00) an exclusive perpetual easement for railroad purposes in the form marked **Exhibit "B"**, on, along, over and across the property shown shaded on **Exhibit "A"**.
9. City, at its expense, shall repair all streets after UPRR or other third parties owning any spur track rail, or their respective contractors, have removed the rail, ties, crossing planks, and other track material.

ARTICLE III TEXAS LAW TO APPLY

This Agreement shall be construed in accordance with the law of the State of Texas. All obligations of the Parties created hereunder are performable in Bexar County, Texas.

ARTICLE IV LEGAL CONSTRUCTION

In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any or other provisions thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

ARTICLE V ENTIRE AGREEMENT

This Agreement supersedes any and all agreements, either oral or in writing, between the Parties, with respect to the subject matter hereof, and no other agreement, statement or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

ARTICLE VI AMENDMENT

No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof, and duly executed by the Parties.

ARTICLE VII NOTICES

For purposes of this Agreement, all official communications and notices among the Parties shall be deemed sufficient if in writing and either hand-delivered or mailed registered or certified mail, postage prepaid to the addresses set forth below:

UPRR

General Director
Real Estate – East
Union Pacific Railroad Company
Real Estate Department, Stop 1690
1400 Douglas Street
Omaha, Nebraska 68179-1690

CITY:

Director of Public Works
City of San Antonio
6th Floor Municipal Plaza Building
114 West Commerce
San Antonio, Texas 78205

and

City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

Notice of change of address by either Party shall be made in writing and delivered to the other party's last known address.

Executed in duplicate originals, each of which shall have the full force and effect of an original on this the ____ day of _____, 2005.

ATTEST:

UNION PACIFIC RAILROAD COMPANY

Assistant Secretary

By: _____
Title: _____

(SEAL)

ATTEST:

CITY OF SAN ANTONIO, a
Texas Municipal Corporation

Leticia M. Vacek
City Clerk

By: _____
Title: _____

(SEAL)

EXHIBIT "A"

Exhibit "A" will be UPRR's Work Order Print dated December 07, 2004

EXHIBIT "B"

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO

Name &
Address: Union Pacific Railroad Company
Real Estate Department, Stop 1690
1400 Douglas Street
Omaha, Nebraska 68179-1690
Attention: Steve Sand

[illegible]

EASEMENT DEED

THIS EASEMENT DEED is made this ____ day of _____, 20__, by and between THE CITY OF SAN ANTONIO, a municipal corporation of the State of Texas (“Grantor”) and UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (“Grantee”):

The Grantor, for and in consideration of the sum of One Dollar (\$1.00), and other valuable consideration, to it duly paid, the receipt of which is hereby acknowledged, does hereby grant and convey unto Grantee, its successors and assigns, an EXCLUSIVE PERPETUAL EASEMENT AND RIGHT OF WAY in, to, over, along, upon, under and across the property situated in Bexar County, Texas, as described in **Exhibit I**, hereto attached and hereby made a part hereof (the "Property") to be used by Grantee for the construction, maintenance, operation, repair, renewal, reconstruction and use of railroad trackage, signals, and other communication purposes to be located thereon, including the exclusive right and privilege to occupy and use the Property for any and all railroad and communication purposes incidental or related thereto, together with the right of ingress and egress to and from the Property for the purpose of exercising the rights herein granted, and, if and when necessary, removing any railroad trackage and appurtenances located on the Property.

TO HAVE AND TO HOLD the Easement and right of way described herein unto the Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor has duly executed this Easement as of the date first herein written.

Attest:

CITY OF SAN ANTONIO, a Municipal
corporation of the State of Texas

City Clerk

By: _____
Title: _____

(SEAL)

ACKNOWLEDGMENT

STATE OF TEXAS §
 § ss:
COUNTY OF BEXAR §

On _____, 20__, before me, _____, a
Notary Public in and for said County and State, personally appeared _____
who is the _____ of the City of San Antonio, Texas, and who is
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person
whose name is subscribed to in the within instrument, and acknowledged to me that he/she
executed the same in his/her authorized capacity, and that by his/her signature on the instrument
the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

(SEAL)

EXHIBIT I

Exhibit I will be a legal description of the Watts Property, Abramhoff Property and the property shown shaded in red on **Exhibit “A”**.