



October 26, 2022
Folder: 03211-54

VIA UPS Overnight
RETURN RECEIPT REQUESTED

LOS ANGELES DEPARTMENT OF WATER AND POWER
300 MANDICH ST
BISHOP CA 93514

Dear LADWP:

This letter ("Agreement") confirms our understandings covering the possible sale by Union Pacific Railroad Company ("Seller") to the CITY OF LOS ANGELES, a municipal corporation, acting by and through its DEPARTMENT OF WATER AND POWER ("Buyer"), of Seller's interest in certain real property near Big Pine, California.

The undersigned will recommend to Seller's Management a sale of the Property on the following terms and conditions:

Article 1. Description of Property:

- A. The Property is approximately 167.476 acres as shown on the print attached hereto as Exhibit A and made a part hereof. The legal description of the Property will be determined by Seller. Survey will be at the sole cost and expense of Buyer. Survey will depict all facilities affecting the property.
- B. Before finalizing any survey, Buyer shall submit the draft survey to Seller for review and approval. Computer files of the survey and legal descriptions shall be sent via e-mail to DBPARKER@UP.COM, with a subject line referencing the UPRR Folder Number 03211-54 assigned to this document. Buyer shall deliver a certified copy of the completed survey to Seller within (180) days after Buyer's execution of this Agreement ("Survey Period"). Delay in obtaining or furnishing the survey to Seller shall in no event give Buyer the right to extend the Closing Date (as defined in the 'Closing - Default:' Article).

Article 2. Sale Price:

- A. The sale price ("Sale Price") for the Property shall be Two Hundred Thirteen Thousand Five Hundred Thirty-One Dollars and Ninety Cents (\$213,531.90).

- B. The Sale Price is computed as follows:

167.476 acres x \$1,275.00 per acre = \$213,531.90

- C. The Sale Price will be adjusted on the basis set forth in Article 2-B if the area of the Property, as determined by Seller or as determined by survey pursuant to Article 1-B, differs from the area set forth in Article 1-A.

Article 3. Feasibility Review/Right of Entry:

- A. For (180) days from the date of execution of this Agreement by Buyer ("Feasibility Review Period"), Buyer and its agents and contractors may enter upon the Property to perform environmental audits, soil tests, engineering and feasibility studies of the Property. If the results of such audits, tests or studies, or Buyer's review of title or any other matters relating to the Property are unsatisfactory, Buyer may terminate this Agreement by giving Seller written notice before the end of the Feasibility Review Period. If no such written notice of termination is given before the end of the Feasibility Review Period, the Property will be deemed suitable for Buyer's purposes. In the event of such termination by Buyer, then Buyer shall surrender to Seller copies of all audits, soils, engineering and any other reports prepared for Buyer pertaining to the Property without cost or expense of Seller and this Agreement will terminate without any further force and effect, and without further obligation of either party to the other.
- B. Buyer's right to enter upon the Property pursuant to Article 3-A is subject to the following:
1. Buyer will indemnify, defend and save harmless Seller and/or Seller's affiliates (Seller's affiliates means any corporation which directly or indirectly controls or is controlled by or is under common control with Seller), their officers, agents and employees, against and from any and all liability, loss, costs and expense of whatsoever nature growing out of personal injury to or death of persons whomsoever, or loss or destruction of or damage to property whatsoever, where such personal injury, death, loss, destruction or damage arises in connection with the entry upon the Property by Buyer, its agents or contractors prior to Closing.
 2. Buyer and Buyer's agents and contractors (collectively "Contractors") will maintain in confidence all information, reports, and evaluations generated in connection with any environmental assessments and will not make disclosure without the prior written consent of Seller, such consent not to be unreasonably withheld, and in the event such consent is given, subject to Buyer's disclosure obligations as a public entity, any such investigations and/or findings relating to a change to any matters relating to the Property and such matters shall remain confidential and not be disclosed to any person or entity other than those necessary to close this transaction or as required by law. If Buyer discovers hazardous or toxic substances or materials, Buyer will immediately notify Seller.
 3. Buyer will promptly deliver to Seller the results and copies of any and all reports, evaluations, tests and studies generated in connection with any environmental assessments. Prior to the issuance of any final environmental report, Seller will have the opportunity to make comments, pose questions and offer recommendations to the Contractor preparing the report.

4. Buyer agrees to indemnify, defend and hold harmless Seller against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of any work done, labor performed or materials furnished at the Property on behalf of Buyer prior to Closing.

5. If the sale of the Property does not close, Buyer will, as soon as possible and at Buyer's sole expense, restore any work performed by Buyer or its Contractors and will restore the Property to the same condition it was in immediately prior to the time Buyer entered the Property, failing in which Seller may perform the work of restoration and Buyer will reimburse Seller within thirty (30) days after rendition of bill by Seller.

C. Absence of markers is not a warranty by Seller of no subsurface installations. Fiber optic systems, pipelines, and other structures may be buried on the Property. Before any digging/drilling/excavation, the following procedures will be followed by Buyer and Buyer's Contractors:

1. Protection of any fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Buyer will telephone 1-800-336-9193 (a 24-hour, 7-day number for emergency calls) during normal business hours (7 A.M. to 9 P.M., CT, Monday-Friday, except holidays) to determine if any fiber optic cable is buried on the Property. If it is determined that fiber optic cable is buried on the Property, Buyer shall promptly inform Seller, at the address at the bottom of the first page of this Agreement, of the results of its investigation.

2. Before drilling or excavating with mechanized equipment, Buyer will explore with hand tools to a depth of at least eight (8) feet below the surface or will use suitable detection equipment.

D. Notwithstanding any provisions in this Agreement to the contrary, if this Agreement is terminated for any reason whatsoever, Buyer will remain obligated to comply with the provisions of Article 3-A and 3-B and Seller will retain all of its remedies for Buyer's default under Article 3-A and 3-B.

Article 4. As Is Sale - Release - Indemnity:

A. Prior to the Closing Date, Buyer will have the opportunity to make such inspections of the Property and matters related thereto as Buyer desires, including, without limitation, governmental laws and regulations to which the Property is subject, the title to the Property, and the suitability or fitness of the Property for Buyer's proposed use. Buyer acknowledges and agrees that the Property is to be sold and accepted by Buyer in an "AS IS" condition, with all faults, and Buyer acknowledges that the Property may have been used for railroad and/or industrial purposes, among other uses. Buyer agrees that any information Buyer may receive from Seller or its agents concerning the Property (including, but not limited to, any lease or other document, engineering study or environmental assessment) is furnished on the condition that Buyer will make an independent verification of the accuracy of the information. Seller does not make any representations or warranties of any kind whatsoever, either express or implied, with respect to the Property; in particular, without limitation, Seller makes no representations or warranties with respect to the use, condition, title, occupation or management of the

Property, or compliance with applicable statutes, laws, codes, ordinances, regulations, requirements (collectively "Condition of the Property"). Buyer acknowledges that it is entering into this Agreement on the basis of Buyer's own independent investigation of the physical and environmental conditions of the Property. Buyer assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation.

- B. **FROM AND AFTER CLOSING, BUYER WILL RELEASE SELLER, AND, TO THE MAXIMUM EXTENT PERMITTED BY LAW, INDEMNIFY, DEFEND AND SAVE HARMLESS SELLER, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, FINES, PUNITIVE DAMAGES, LOSSES, COSTS, LIABILITIES AND EXPENSES, INCLUDING ATTORNEYS' FEES, IN ANY WAY ARISING OUT OF OR CONNECTED WITH THE KNOWN OR UNKNOWN CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT. THE FOREGOING WILL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF SELLER, ITS AFFILIATES, OR THEIR EMPLOYEES, AGENTS OR OFFICERS. WITH RESPECT TO THE FOREGOING, BUYER EXPRESSLY WAIVES THE BENEFITS AND PROTECTIONS OF SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA, WHICH READS AS FOLLOWS:**

1542. Certain Claims Not Affected by General Release. A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

BUYER HEREBY EVIDENCES ITS SPECIFIC AGREEMENT TO THE TERMS OF THIS RELEASE AND INDEMNITY BY PLACING ITS SIGNATURE OR INITIALS IN THE PLACE PROVIDED HEREINAFTER.

Buyer's Initials

Article 5. Escrow, Title Insurance and Abstract of Title:

- A. Seller will not furnish title insurance or an abstract of title to the Property. Buyer may, at its sole option and expense, obtain a preliminary title report ("PTR") in order to review the status of title to the Property during the Feasibility Review Period. If Buyer obtains a PTR, a copy will be delivered to Seller. Seller has no obligation to cure any title defects or to assist Buyer in obtaining title insurance.

- B. If Buyer desires title insurance, Buyer shall pay the cost of any title insurance and any endorsements or changes to the title policy desired by Buyer. If an escrow is used, Buyer shall pay any and all fees relating to the escrow, including, but not limited to, any City and/or County Transfer Taxes and recording fees.

Article 6. Form of Deed; Reservations:

- A. Seller represents that Seller has performed a search and has no record of outstanding rights to the Property. At Closing, Seller will transfer Seller's interest in the Property to Buyer by Quitclaim Deed, subject to all outstanding rights, if any, not of record.
- B. Seller will reserve from the transfer all minerals and mineral rights, pursuant to the following reservation, wherein Seller is referred to as "Grantor", and Buyer is referred to as "Grantee":

EXCEPTING FROM THIS QUITCLAIM AND RESERVING UNTO GRANTOR, its successors and assigns, forever, all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered underlying the Property, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals by any means or methods suitable to Grantor, its successors and assigns, but without entering upon or using the surface of the Property, and in such manner as not to damage the surface of the Property, or to interfere with the use thereof by Grantee, its successors or assigns. PROVIDED, HOWEVER, that Grantor, its successors or assigns, without the prior written permission of Grantee, its successors or assigns, shall not conduct any mining activities of whatsoever nature above a plane five hundred feet (500') below the surface of the Property.

- C. Restriction On Use.

The Property is quitclaimed by Seller subject to the following covenant, condition and restriction which Buyer by the acceptance of this Deed covenant for itself, its heirs and assigns, faithfully to keep, observe and perform:

Restriction on Use. The Property must not be used for (i) residential, (ii) lodgings or accommodations (including, without limitation, hotels, motels, boarding houses, dormitories, hospitals, nursing homes, or retirement centers), or (iii) educational or child-care facilities (including, without limitation, schools, kindergartens or day-care centers).

The foregoing covenant, condition and restriction shall run with the Property, and a breach of the foregoing covenant, condition and restriction, or the continuance thereof, may, at the option of Seller, its successors or assigns, be enjoined, abated or remedied by appropriate proceedings.

Article 7. Existing Agreements:

- A. Seller represents that Seller has performed a search and has no record of any lease or "Use Rights" (license or other rights to use the Property) affecting the Property. If any lease or Use Rights affects the Property (whether identified by Seller before or after

execution of this Agreement), Seller's rights and obligations under any such identified lease or Use Right will be assigned to and assumed by Buyer at Closing.

- B. Buyer acknowledges that the Property may be subject to unidentified Use Rights. It is the responsibility of Buyer to determine if any of these unidentified Use Rights exist.

Article 8. Closing - Default:

- A. Closing will occur on or before March 31, 2024 ("Closing Date"). The Closing will be deemed to occur upon payment of the Sale Price by wire transfer or a cashier's or certified check, and delivery of the deed. All Closing costs, including transfer taxes and excise taxes, will be paid by Buyer.
- B. If Closing fails to occur due to default by Seller, Buyer may terminate this Agreement as Buyer's sole remedy against Seller. In the event of such termination, neither Seller nor Buyer will have any further liability hereunder.
- C. If Closing fails to occur due to default by Buyer, Seller may terminate this Agreement and neither Seller nor Buyer shall have any further obligations or liability hereunder except for any of Buyer's surviving obligations pursuant to Article 3 (B) hereof. In no event shall Seller have any obligation whatsoever to extend the Closing Date for any reason if Buyer fails to perform.

Article 9. Prorations:

Local property taxes, if any, and other assessments due and payable in the year of Closing, as well as rental under any leases or Use Rights that are being assigned, will be prorated as of the date of Closing. Buyer will assume any installments of assessments not yet due and payable.

Article 10. Negotiations – Brokers and Finders:

Negotiations relative to this transaction have been carried on by both parties without the intervention of any person which will give rise to any valid claim against either of the parties hereto, for brokerage commission or other like payment. Each party hereto shall indemnify and hold harmless the other party against and from any and all claims for brokerage commission or other like payments arising out of the transaction contemplated by this Agreement and occasioned by the indemnifying party.

Article 11. Subdivision/Platting Compliance:

- A. This Agreement is expressly conditioned upon compliance with the California Subdivision Map Act ("Compliance"). If the Property is not already in Compliance, Buyer shall undertake and use commercially reasonable efforts to comply with local or state subdivision or platting laws or regulations prior to Closing. All necessary applications, maps and other requirements to comply with this requirement will be completed by Buyer at Buyer's sole cost and expense. If Buyer fails to effect Compliance prior to the Closing Date, then this Agreement shall terminate and neither party shall have any further obligation to the other. Seller is not obligated to extend the Closing Date due to Buyer's failure to effect Compliance prior to the Closing Date.

- B. In connection with Buyer pursuing Compliance, Seller shall cooperate by reviewing and executing necessary documents, provided, however, that Seller shall not be required to incur any cost or expense in connection therewith and that any action Buyer desires Seller to take shall be acceptable to Seller as to substance and legal form. If any proposed subdivision plat or parcel map contains conditions affecting Seller, the Property prior to Closing, or other real property owned by Seller which are unacceptable to Seller, then Seller, in its sole and absolute discretion, may terminate this Agreement. If this Agreement is terminated pursuant to this Section B., any deposit paid by Buyer will be returned to Buyer, and neither party shall have any further obligations (except for surviving obligations).

Article 12. Mortgage Release:

If the Property is subject to a blanket mortgage granted by Seller or a corporate predecessor of Seller, Seller will obtain a release within approximately six (6) months after Closing.

Article 13. Seller's Management Approval:

BUYER ACKNOWLEDGES THAT NEITHER THIS AGREEMENT NOR THE NEGOTIATIONS LEADING TO THIS AGREEMENT CREATE ANY OBLIGATION ON THE PART OF SELLER TO SELL THE PROPERTY TO BUYER UNLESS THIS AGREEMENT IS APPROVED IN ACCORDANCE WITH SELLER'S MANAGEMENT POLICY STATEMENT. IF SUCH APPROVAL IS NOT GIVEN AND COMMUNICATED TO BUYER BY THE CLOSING DATE, THIS AGREEMENT WILL TERMINATE AND NEITHER PARTY WILL HAVE ANY FURTHER OBLIGATION. SELLER ACKNOWLEDGES THAT NEITHER THIS AGREEMENT NOR THE NEGOTIATIONS LEADING TO THIS AGREEMENT CREATE ANY OBLIGATION ON THE PART OF BUYER TO PURCHASE THE PROPERTY FROM SELLER UNLESS THIS AGREEMENT IS APPROVED BY THE BOARD OF WATER AND POWER COMMISSIONERS OF THE DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES AND POSSIBLE SUBSEQUENT ACTION AND REVIEW BY THE LOS ANGELES CITY COUNCIL PURSUANT TO CHARTER. PURSUANT TO FSPP V. CITY OF LOS ANGELES (1998) 65 CAL. APP. 4TH 650, 651 AND THE LAWS OF THE STATE OF CALIFORNIA, SELLER ACKNOWLEDGES THAT IT CANNOT RELY UPON THE REPRESENTATION OF ANYONE ACTING ON BEHALF OF, OR CLAIMING TO ACT ON BEHALF OF BUYER OR AS BUYER'S AGENT RELATING TO THE PROBABILITY OF THE AGREEMENT BEING APPROVED AND THAT THIS TRANSACTION MAY OR MAY NOT BE CONSUMMATED. IF SUCH APPROVAL IS NOT GIVEN AND COMMUNICATED TO SELLER BY BUYER BY THE CLOSING DATE, THIS AGREEMENT WILL TERMINATE AND NEITHER PARTY WILL HAVE ANY FURTHER OBLIGATION.

Article 14. Condemnation:

If, prior to Closing, a governmental agency commences or imminently threatens in writing to commence any eminent domain proceedings to take any material portion of the Property, Buyer and Seller shall each have the unilateral right, exercisable by giving notice of such decision to the other party within thirty (30) days after receiving written notice of such actual or threatened condemnation proceedings, to terminate this Agreement. In the event of such termination, this Agreement will be without any further force and effect and without further obligation of either party to the other. If neither party elects to terminate pursuant to this Article - Condemnation, the

Sale Price will be determined as though such condemnation had not occurred, and the net proceeds of condemnation awards paid or payable to Seller by reason of such condemnation of the Property shall be paid or assigned to Buyer at Closing.

If you agree with the foregoing terms and conditions with respect to the possible purchase of the Property, please indicate your acceptance of these terms and conditions by signing in the acceptance space provided below and returning one copy to Daniel B. Parker at the address listed on the bottom of the first page of this letter, in order that it is received by Seller no later than September 1, 2023. Please also indicate below how you wish to take title. If you should have any questions, please call Daniel B. Parker at (402) 544-8624.

Sincerely,

General Director - Real Estate Sales

ACCEPTED AND AGREED THIS ____ DAY OF _____, 20____

**DEPARTMENT OF WATER AND POWER
OF THE CITY OF LOS ANGELES BY
BOARD OF WATER AND POWER COMMISSIONERS**

By: _____
MARTIN L. ADAMS
General Manager and Chief Engineer

And: _____
CHANTE L. MITCHELL
Board Secretary

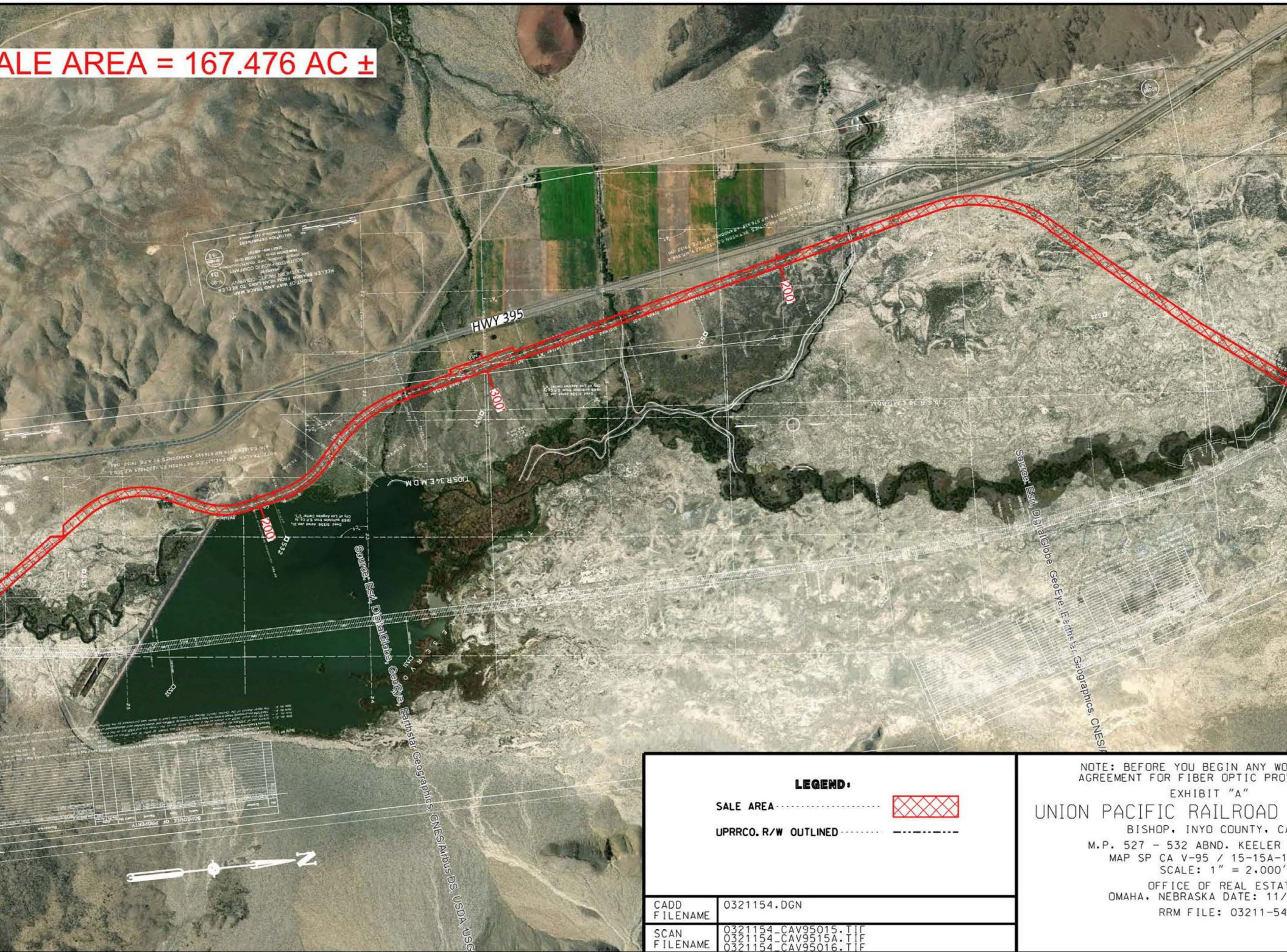
APPROVED AS TO FORM AND LEGALITY
HYDEE FELDSTEIN SOTO, CITY ATTORNEY

MAR 06 2023
BY John B.
JOHN BEANUM
DEPUTY CITY ATTORNEY



AUTHORIZED BY:

Resolution No.
Adopted.....
Approved by Council on.....
Council File No.....

SALE AREA = 167.476 AC ±



LEGEND:

SALE AREA 
UPRRCO, R/W OUTLINED 

CADD
FILENAME 0321154.DGN

SCAN
FILENAME 0321154-CAV95015.TIF
0321154-CAV95015A.TIF
0321154-CAV95016.TIF

NOTE: BEFORE YOU BEGIN ANY WORK
AGREEMENT FOR FIBER OPTIC PROJECT

EXHIBIT "A"

UNION PACIFIC RAILROAD

BISHOP, INYO COUNTY, CA

M.P. 527 - 532 ABND. KEELER

MAP SP CA V-95 / 15-15A-1

SCALE: 1" = 2,000'

OFFICE OF REAL ESTATE
OMAHA, NEBRASKA DATE: 11/

RRM FILE: 03211-54