



STAFF REPORT

DATE: November 15, 2022

CONSENT

AGENDA ITEM: Union Pacific Railroad Reimbursement Agreement

SUBMITTED BY: Kristina Handt, City Administrator

BACKGROUND:

The city has been working on completing a railroad crossing so that Village Parkway can be extended over the UPRR railroad tracks to the north. The city received a MNDOT ruling that they can get a crossing in the area. The next step is to work on the design details and have them reviewed by UPRR.

ISSUE BEFORE COUNCIL:

Should Council approve the Reimbursement Agreement with Union Pacific Railroad?

PROPOSAL:

Included in your packet is a reimbursement agreement with UPRR for them to complete engineering review of the crossing and signal. The proposed cost is not to exceed \$15,000.

FISCAL IMPACT:

Funding will come from the general fund as budgeted.

OPTION:

- 1) Approve the reimbursement agreement with UPRR
- 2) Amend and then approve the agreement
- 3) Do not approve the reimbursement agreement

RECOMMENDATION:

“Motion to approve the Reimbursement Agreement for Preliminary Engineering Services with UPRR.”

ATTACHMENTS:

- Reimbursement Agreement

**REIMBURSEMENT AGREEMENT
PRELIMINARY ENGINEERING SERVICES**

Effective Date:

Estimate: \$15,000.00

THIS REIMBURSEMENT AGREEMENT (**Agreement**) is made and entered into as of the **Effective Date**, by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (**Railroad**), and CITY OF LAKE ELMO, MINNESOTA (**Agency**).

RECITALS

A. Agency desires to initiate the project more particularly described on Exhibit A attached hereto (**Project**).

B. The Project will affect Railroad's track and right of way at or near the Project area more particularly described on Exhibit A.

C. Railroad agrees to collaborate with Agency on the conceptualization and development of the Project in accordance with the terms and conditions of this Agreement.

AGREEMENT

NOW THEREFORE, the parties hereto agree as follows:

1. Railroad, and/or its representatives, at Agency's sole cost and expense, agrees to perform (or shall cause a third-party consultant to perform on Railroad's behalf) the preliminary engineering services work described on Exhibit B attached hereto (**PE Work**). Agency acknowledges and agrees that: (a) Railroad's review of any Project designs, plans and/or specifications, as part of the PE Work, is limited exclusively to potential impacts on existing and future Railroad facilities and operations; (b) Railroad makes no representations or warranties as to the validity, accuracy, legal compliance, or completeness of the PE Work; and (c) Agency's reliance on the PE Work is at Agency's own risk.

2. Notwithstanding the Estimate (**Estimate**), Agency agrees to reimburse Railroad and/or Railroad's third-party consultant, as applicable, for one hundred percent (100%) of all actual costs and expenses incurred for the PE Work. During the performance of the PE Work, Railroad will provide (and/or will cause its third-party consultant to provide) progressive billing to Agency based on actual costs in connection with the PE Work. Within sixty (60) days after completion of the PE Work, Railroad will submit (and/or will cause its third-party consultant to submit) a final billing to Agency for any balance owed for the PE Work. Agency shall pay Railroad (and/or its third-party consultant, as applicable) within thirty (30) days after Agency's receipt of any progressive and final bills submitted for the PE Work. Bills will be submitted to the Agency using the contact information provided on Exhibit C. Agency's obligation hereunder to reimburse Railroad (and/or its third-party consultant, as applicable) for the PE Work shall apply regardless whether Agency declines to proceed with the Project or Railroad elects not to approve the Project.

3. Agency acknowledges and agrees that Railroad may withhold its approval for the Project for any reason in its sole discretion, including without limitation, impacts to Railroad's safety, facilities, or operations. If Railroad approves the Project, Railroad will continue to work with Agency to develop final plans and specifications, and prepare material and force cost estimates for any Project related work performed by Railroad.

4. If the Project is approved by Railroad, Railroad shall prepare and forward to Agency a Construction and Maintenance Agreement (**C&M Agreement**) which shall provide the terms and conditions for the construction and ongoing maintenance of the Project. Unless otherwise expressly set forth in the C&M Agreement, the construction and maintenance of the Project shall be at no cost to Railroad. No construction work on the Project affecting Railroad's property or operations shall commence until the C&M Agreement is finalized and executed by Agency and Railroad.

5. Neither party shall assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned, or delayed.

6. No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties.

7. This Agreement sets forth the entire agreement between the parties regarding the Project and PE Work. To the extent that any terms or provisions of this Agreement regarding the PE Work are inconsistent with the terms or provisions set forth in any existing agreement related to the Project, such terms and provisions shall be deemed superseded by this Agreement to the extent of such inconsistency.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

CITY OF LAKE ELMO, MINNESOTA

UNION PACIFIC RAILROAD COMPANY,
a Delaware Corporation

Signature

Signature

Charles Cadenhead

Printed Name

Chris Keckeisen

Printed Name

Mayor

Title

Manager I, Engineering – Public Projects

Title

Julie Johnson
City Clerk

Exhibit A

Project Description and Location

Project Description

City of Lake Elmo, MN proposes installation of a new public highway-rail grade crossing including sidewalks, across Railroad's track at the location referred to below.

Location

Altoona Subdivision

DOT	Crossing Type	Milepost	Street Name
980280H	Public	12.28	Village Parkway North

Exhibit B

Scope of Project Services

Scope of work includes, but is not limited to the following

- Field diagnostic(s) and inspections
- Plan, specification, and construction review
- Project design
- Preparation of Project estimate for force account or other work performed by the Railroad
- Meetings and travel

Exhibit C
Billing Contact Information

Name	Jack Griffin
Title	City Engineer
Address	3800 Laverne Avenue North, Lake Elmo, MN, 55042
Work Phone	(651) 300-4264
Cell Phone	
Email	jack.griffin@focusengineeringinc.com
Agency Project No.	