

THIS AGREEMENT, made the 15th day of December, 1924, by and between THE WESTERN PACIFIC RAILROAD COMPANY, and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, railroad corporations doing business in the State of California, parties of the first part, and the CITY OF ALAMEDA, a municipal corporation of said state, party of the second part, hereinafter called the "City",

W I T N E S S E T H:

FIRST: Said parties of the first part, subject always to authorization by the Interstate Commerce Commission of the United States and the Railroad Commission of the State of California, in so far as any such authorization is essential in any matter covered by this agreement, will at once organize a corporation to be known as ALAMEDA BELT LINE, for the acquisition, construction and operation of a belt line railroad to serve the industrial area and water front of said City, by steam or other lawful motive power, over, along and upon the line of the existing railroad belonging to the City of Alameda, on Clement Avenue between Broadway and Grand Streets in said City, and, in addition thereto, over, along and upon those certain streets in said City particularly described as follows, to-wit:

(a). Beginning at a point in the existing track on Clement Avenue in said City at or near the western line of Broadway, thence by a single track westerly, parallel and operating in conjunction with the City's existing track thereon to a point near the eastern line of Park Street;

(b). Beginning at a point in the existing track on Clement Avenue near Minburn Street thence by a single track on an "S" curve over and along private rights of way and intervening streets southerly and westerly to Buena Vista Avenue near Hibbard Street; thence by a single track over and along the sidewalk area on the northern side of Buena Vista Avenue westerly from Hibbard Street to a point between Benton Street and Bay Street; thence by a single or double track curving northerly and westerly over private rights of way and intervening streets to a point north of Eagle Avenue and continuing westerly over other private rights of way and crossing all intervening streets to the western side of Webster Street at or near the so-called "segregation line" in said city;

(c). And also such other streets and rights of way in said City, the right to use which shall have been lawfully granted to said ALAMEDA BELT LINE.

Said parties of the first part and each of them agree to use all reasonable diligence and effort to obtain all necessary authorizations from all official bodies and officers having jurisdiction over the matter and said city agrees to give them all reasonable assistance in connection therewith.

SECOND: Said ALAMEDA BELT LINE will be organized as a corporation of the State of California and its general policies and management will be directed and controlled by a board of five directors, consisting of two members to be chosen by The Western Pacific Railroad Company, two by The Atchison, Topeka and Santa Fe Railway Company, and one who shall be the City Manager of the City or other person designated by the council of the City. In case one or more connecting rail-carriers should hereafter acquire an interest in said ALAMEDA BELT LINE as hereinafter provided, the number of directors shall be changed so that each carrier stockholder shall have an equal number of directors not exceeding two. Each carrier party to this contract, as well as each connecting rail carrier acquiring an interest in said belt line, shall cause one share of the stock of said belt line to be issued or transferred to said City Manager or such other designated person, so that he may be qualified to act as such director and as occasion arises the said qualifying shares shall be, on the City's demand, transferred on the books of the belt line to the City's representative on said Board of Directors for the time being, but the carriers shall pay all assessments on said stock and receive the dividends on said stock.

The words "connecting rail-carriers" as used in this contract shall be deemed to mean only such connecting railroads, respectively, as shall have a main line of not less than two hundred and fifty miles in length.

THIRD: Said The Western Pacific Railroad Company and said The Atchison, Topeka and Santa Fe Railway Company, their

successors or assigns, will each contribute an equal sum of money for, and will at all times own and retain, an equal number of shares of the capital stock of said ALAMEDA BELT LINE; provided, however, that should the Southern Pacific Company, or any other one or more connecting rail-carriers operating in the vicinity of Alameda, hereafter desire to join and participate in the ownership, management and operation of said belt line railroad, and secure an equal interest therein, it or they may do so by acquiring a stock interest therein equal in amount of shares to that of each of the then existing carrier owners of stock therein (to the end that the stock interest of each carrier owner in said ALAMEDA BELT LINE shall be the same in amount), paying for such stock a sum of money equal to its proper prorata of the cost to the then carrier owners to the date of such acquisition of the organization of said ALAMEDA BELT LINE, and the acquisition, extension, and construction of all property owned then by it, including all additions and betterments, together with interest thereon at the rate of six per cent per annum from time of investment. And the parties of the first part hereby agree that in such event they will do all things necessary to invest such connecting rail-carrier so desiring to join in the ownership, management and operation of said belt line railroad, with ownership of said amount of stock upon the terms hereinbefore stated, it being distinctly understood, however, that such connecting rail-carrier shall make itself subject to and a party to all of the terms and provisions of this agreement relative to said ALAMEDA BELT LINE, as well as to all obligations of the existing carrier owners therein with regard to the conduct and management of the affairs of said ALAMEDA BELT LINE.

FOURTH: Said City hereby agrees to sell and convey to said ALAMEDA BELT LINE, to be used and operated in connection with said Belt Line Railroad, said City's existing railroad in

Clement Avenue, between Broadway and Grand Streets in said City for the sum of THIRTY THOUSAND DOLLARS (\$30,000.00), and upon the written acceptance of this contract by said ALAMEDA BELT LINE, and upon the payment of said sum to said City, with interest thereon at the rate of six (6) per cent per annum from and after May 1, 1925, in the event that the consummation of said purchase be delayed beyond such date by any fault or neglect on the part of either of the parties of the first part, or said ALAMEDA BELT LINE, to execute and deliver to said ALAMEDA BELT LINE a good and sufficient conveyance of all said existing railroad.

FIFTH: Said ALAMEDA BELT LINE will, as soon as possible after its organization, construct the additional track on Clement Avenue, as aforementioned, in the two blocks immediately east of Park Street, and will move the existing track now owned by said City so that when the other track is constructed both tracks will be an equal distance on either side of the center line of said Avenue. Said additional track shall be used as an interchange track. In the event that Southern Pacific Company becomes a co-owner in said ALAMEDA BELT LINE as hereinbefore provided, and it is then found that said interchange track is no longer necessary to the operations of the parties of the first part or either of them, said interchange track will be taken up and abandoned.

SIXTH: Said ALAMEDA BELT LINE will, as soon as possible after its organization, construct the proposed extension to said City's existing railroad westerly to Webster Street, and it will construct the extension westerly therefrom as rapidly thereafter as industrial expansion warrants.

SEVENTH: Said City, through its City Council, will grant said ALAMEDA BELT LINE all the necessary franchises over, across and along all the streets of said City which are necessary and convenient for the proper construction and operation of said belt line, including all necessary franchises for the maintenance and operation of the existing railroad now owned by said City;

provided that on Buena Vista Avenue in said City, from Hibbard Street to a point between Benton and Bay Streets, the railroad of said ALAMEDA BELT LINE shall run on a single main track along the sidewalk area on the northerly side of said avenue, with the necessary industry spurs leading northerly therefrom.

EIGHTH: In addition to the construction and operation of a belt line railroad as aforesaid, said parties of the first part, or either of them, may, at their option, within two years from the date of this agreement, construct a railroad track for their own use and benefit, to be operated by steam or other lawful motive power, over, along and upon those certain streets in said City of Alameda particularly described as follows:

Beginning at a convenient point in the existing track on Clement Avenue at or near Minturn Street, thence westerly and northerly on a single or double track over and along private rights of way to Grand Street, and thence northerly along Grand Street to the proposed freight ferry slip referred to in the next paragraph.

Said parties of the first part, or either of them, may, at their option, within two years from the date of this agreement, construct a freight ferry slip on the property now owned by the City at the north end of Grand Street in accordance with the plans shown on the plat annexed hereto marked Exhibit "A" and made a part hereof, and said City agrees that in case said option is exercised it will lease said property to said parties of the first part, or either of them, as the case may be, for a term of twenty-five (25) years with option of renewal to said parties or party, for a further term of twenty-five (25) years, said ferry slip to have rail connection with the railroad track on Grand Street connecting with the belt line railroad on Clement Avenue.

NINTH: As rental for the use of the necessary land of said City at the north end of Grand Street, in the event of the exercise of their optional right to such lease, said parties of the first part, or either of them, as the case may be, will pay said City a yearly rental or sum of Twelve Hundred Dollars

(\$1,200.00), payable annually in advance commencing with the date possession is taken of the land, provided that said yearly rental shall be equitably adjusted at the end of each ten year period thereafter according to the then value of said property in an unimproved condition, as compared with its present value, and if said parties, or party, and said City are unable to agree, such question of then value as compared with present value shall be submitted to arbitration, said parties or party, as the case may be, to designate one arbitrator, and the City to designate a second arbitrator, and said two arbitrators to designate a third arbitrator, and the parties hereto will accept the decision of a majority of the arbitrators so designated as finally determining the question.

TENTH: If the option to locate a freight ferry slip at foot of Grand Street is exercised by said party or parties the party or parties exercising such option will construct a standard pile wharf for the exclusive use of said City at the north end of said Grand Street, said wharf to be the full width of said Grand Street and to extend into the San Antonio Estuary as far as the pierhead line, all according to plat hereto annexed marked Exhibit "B" showing the plan of said wharf. Said wharf, when constructed, shall be the sole property of the City.

ELEVENTH: If said option beforementioned is exercised, said party or parties exercising the option will construct a spur track line from Grand Street into the corporation yard of the street department of the City, and pay all the expenses incidental to moving the present buildings on said corporation yard resulting from the construction of said freight ferry slip and tracks leading thereto.

TWELFTH: Said railroad track running from Clement Avenue northerly along Grand Street, if constructed, and also the spur tracks and freight ferry slip at the northerly termination of said Grand Street shall not be deemed a part of the aforesaid

belt line railroad, or be included as part of the property of said ALAMEDA BELT LINE, but said railroad track, spur tracks and freight ferry slip shall be and remain the exclusive property of the party or parties exercising the option, and in case the Southern Pacific Company, or any other connecting rail-carrier or carriers, shall hereafter purchase an interest in said ALAMEDA BELT LINE, it or they shall not be charged for any part of the cost of said railroad track, spur tracks and freight ferry slip. However, if the belt line railroad should be repurchased by the City as hereinafter provided, it is understood and agreed that the City, as a part of the same transaction, will acquire by purchase from said parties of the first part, or either of them, as the case may be, all said railroad track and spur tracks up to, but not including, the freight ferry slip, for a sum equal to the original cost thereof plus the cost of all additions and betterments.

THIRTEENTH: (a) It is agreed that any carrier participating in the ownership, management and operation of said ALAMEDA BELT LINE will absorb the switching charges of the belt line railroad on any carload freight which may be transported by such carrier on line haul transportation, in all cases where the revenue accruing for such line haul transportation amounts to such minimum revenue as may from time to time be provided in the tariffs of such carrier as the minimum revenue which it shall receive in making absorptions of switching charges at San Francisco or Oakland, California.

(b) The carriers will cause the ALAMEDA BELT LINE to join them in the publication of rates for movements of less than car load freight between industries located on its line and the freight houses or concentration sheds of the owning carriers on such freight received or delivered in connection with a line haul movement of the owning carrier, such rates and regulations to conform, as nearly as may be, to those concurrently in effect in the City of Oakland.

FOURTEENTH: Said City shall have the right at any time hereafter to purchase said belt line railroad including all extensions thereof, for a sum equal to the original cost, together with the cost of any and all additional investments and extensions made therein by said ALAMEDA BELT LINE, provided, that said City shall give at least one year's previous notice of its intention so to do by ordinance to that effect; and provided that at the same time it purchases from the parties of the first part, or either of them, as the case may be, the branch railroad, extensions and spur tracks referred to in the twelfth section hereof.

It is agreed that said ALAMEDA BELT LINE will keep an accurate account of the cost of additional investments and extensions, and file a verified report thereof annually with the City Clerk of said City, similar to the report filed with the Railroad Commission. It is further agreed and understood that the term "investments" as herein used shall not include the cost of upkeep and repairs.

FIFTEENTH: It is fully understood that the carrying into effect of this agreement by the parties of the first part is dependent upon the approval and authorization of the Interstate Commerce Commission of the United States and the Railroad Commission of the State of California, as well as upon said parties obtaining the franchises and rights (including rights of way) essential to full performance by them; provided, that if the purchase of the existing railroad of the City by said ALAMEDA BELT LINE shall not have been consummated within eighteen (18) months from the date of this agreement, this agreement, at the option of either of the parties of the first part or the City, may be declared and become null and void.

IN WITNESS WHEREOF, said parties have hereunto caused these presents to be signed, sealed and executed by their proper



respective officials, first duly authorized.

THE WESTERN PACIFIC RAILROAD COMPANY,

By [Signature] President,

Attest: [Signature] Secretary.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

By [Signature] President,

Attest: [Signature] Secretary.

parties of the first part.

CITY OF ALAMEDA,

By [Signature] Mayor,

Attest: [Signature] City Clerk,

Party of the second part.

[Signature]  
City Attorney

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I am a resident of the state of California and over the age of eighteen years, and not a party to the within action; my business address is Hill, Farrer & Burrill LLP, One California Plaza, 37th Floor, Los Angeles, California 90071-3147. On November 14, 2008, I served the within documents:

**APPELLANT'S REPLY BRIEF**

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

  by placing the document(s) listed above in a sealed **Federal Express** envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.

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