

SOILS REMOVAL AGREEMENT

THIS SOILS REMOVAL AGREEMENT ("*Agreement*") is made and entered into this 20th day of May, 2009 (the "*Effective Date*"), by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("*UPRR*"), the CITY OF LAS VEGAS, NEVADA, a political subdivision of the State of Nevada ("*City*"), and CITY PARKWAY V, INC., a Nevada not-for-profit corporation, CITY PARKWAY IV A, INC., a Nevada not-for-profit corporation, and OFFICE DISTRICT PARKING I, INC., a Nevada not-for-profit corporation (collectively "*CP*", and together with City, the "*City Parties*", and together with City and UPRR, the "*Parties*");

RECITALS:

WHEREAS, UPRR conveyed certain real property consisting of an approximately 61-acre site located in downtown Las Vegas, Clark County, Nevada to Nevada Stadium Partners Limited Partnership, pursuant to a Grant, Bargain and Sale Deed (the "*Deed*"), recorded November 18, 1996, as Document 00284 of Book 961118 of the Official Records of the County Recorder of Clark County, Nevada (the "*Property*");

WHEREAS, the Deed contained certain "*Environmental Provisions*" that expressly ran to the Grantee and "each successive owner of the Property or any portion thereof";

WHEREAS, UPRR entered into a Memorandum of Rights recorded November 18, 1996, as Document 00285 of Book 961118 and re-recorded December 2, 1996, as Document 01377 in Book 961202 of the Official Records of the County Recorder of Clark County, Nevada;

WHEREAS, UPRR entered into an Amended and Restated Memorandum of Rights recorded December 29, 2000, as Document 03127 in Book 20001229 of the Official Records of the County Recorder of Clark County, Nevada;

WHEREAS, by virtue of the Memorandum of Rights and Amended and Restated Memorandum of Rights, UPRR desired to cause to run with the Property the obligation of successor owners to reimburse UPRR for certain "*Excess Remediation Costs*" incurred by UPRR as provided in Section 2.3(a)(iii) of that certain Purchase and Sale Agreement and Escrow Instructions dated October 21, 1996, between PLY Stadium Partners, Inc. and UPRR as amended by Amendment to Purchase and Sale Agreement dated October 30, 1996, as assigned by PLY Stadium Partners, Inc. to Nevada Stadium by Assignment dated November 15, 1996 ("*PLY Stadium Agreement*");

WHEREAS, City Parties acquired the Property without accepting any assignment or transfer of the PLY Stadium Agreement by Grant, Bargain, Sale Deed recorded December 29, 2000, as Document 03129 in Book 20001229 of the Official Records of the County Recorder of Clark County, Nevada;

WHEREAS, a dispute has arisen between the Parties regarding whether certain disposal costs incurred and to be incurred by UPRR are and would be properly characterized as Excess Remediation Costs, and City Parties contend such dispute has resulted in the disruption of construction schedules of various projects within the Property (the "*Dispute*");

WHEREAS, CP alleges that as a result of the Dispute it has incurred costs for, among other things, the characterization, storage, disposal, and replacement of contaminated soils, which characterization, storage, disposal, and replacement CP believes should have been performed by UPRR pursuant to the Environmental Provisions;

AND WHEREAS, the Parties desire to enter into this Agreement to ensure that contaminated soils are removed from the Property as expeditiously as is practicable, while fully and completely preserving the Parties' respective rights with respect to Excess Remediation Costs and under the Environmental Provisions for all soils disposed of (or replaced) pursuant to this Agreement;

NOW THEREFORE, in exchange for the mutual promises set forth herein, the Parties agree as follows:

1. Soil Removal and Remediation:

a. Soil Disposal. CP shall, Subject to Section 2 below, dispose of through Las Vegas Paving or another contractor agreed upon in writing by the Parties all soils stockpiled on the Property that contain total petroleum hydrocarbon levels in excess of one hundred (100) milligrams per kilogram ("*TPH Contaminated Soils*").

b. Soil Replacement. CP may, at CP's sole discretion, replace or caused to be replaced TPH Contaminated Soils disposed of under Section 1(a) above with clean soil. Furthermore, in the event TPH Contaminated Soils are replaced with clean soil, CP shall, to the extent practicable, note the location at which the clean soil is to be replaced, the quantity of soil to be replaced, and the cost of the clean soil.

c. Existing Stockpiles. Attached hereto as Exhibits 1 through 7 and incorporated herein by this reference are excavation soils reports dated May 19, 2008 (Report LVE8R143), June 19, 2008 (Report LVE8R166), June 27, 2008 (Report LVE8R173), July 15, 2008 (Report LVE8R191), August 18, 2008 (Report LVE8R213), September 12, 2008 (Report LVE8R233), and October 15, 2008 (Report LVE8R249) prepared by Kleinfelder, which detail, among other things, stockpile locations, source, sampling regimen, analytical results, and designation by Kleinfelder as "clean", "contaminated non-hazardous", or "not yet determined" (collectively the "*Soils Reports*"). UPRR represents and warrants that as of the Effective Date it has no basis upon which to contest the accuracy of the Soils Reports except as specifically set forth in the attached Schedule 1(c).

d. New Stockpiles. The Parties acknowledge that development of the Property is ongoing and that additional soil excavations, characterization, and stockpiling will occur during the Term. During the Term, CP shall cause Kleinfelder (or another qualified consultant agreed upon in writing by the Parties) to continue to document soil excavation, characterization, and stockpiling in a manner consistent with the Soils Reports. Such reports shall be included within the term Soils Reports as used herein. Additionally, for each new stockpile, the following information shall be estimated and/or recorded as appropriate:

- (i) The location, length, depth, width and purpose of the excavation from which the soil originated;

- (ii) The date of excavation, date of sampling, and visually estimated volume of each soil stockpile;
- (iii) A map or figure shall be prepared showing the approximate location from which each composite sample is taken from the stockpile together with a description thereof;
- (iv) The bill of lading and weights ticket relating to the transportation and disposal of each stockpile.

CP and UPRR shall coordinate and cooperate on the development of stockpile volumetric estimates and any agreement shall be considered final for all purposes. To the extent there is no agreement, CP and UPRR shall each prepare its own estimate and provide it to the other Party in a timely fashion.

e. Accounting. CP shall maintain accurate records reflecting the costs for disposal and/or replacement of TPH Contaminated Soil by stockpile designations within the Soils Reports. Weight tickets for each load of TPH Contaminated Soil shall be used to allocate costs. Weigh Tickets will be generated at the disposal facility for each truck load based on Non Hazardous Waste Data Forms which are completed and signed in the field. The Non Hazardous Waste Data Forms shall include the truck identification number, the number of the impacted soil stockpile, and the date of stockpile removal. If and to the extent multiple stockpiles are transferred to a single truck or other container, CP shall make a reasonable good faith estimate of the contribution (by percentage of total volume) of each stockpile to such individual truckload in accordance with the estimates developed in accordance with Section 1(d). Similar estimates shall be developed for existing stockpiles which are subject to Section 1(c). Those agreed upon volume estimates shall be deemed conclusive and accurate and the Parties waive any right to challenge such estimate either during the Term or thereafter. To the extent the Parties fail to agree on any estimate, the estimate developed by the Party incurring the cost for soil disposal or replacement shall be used for purposes of calculating any reimbursement due under Section 2 of this agreement, but shall be subject to challenge in any action or proceeding which may be brought in accordance with the Parties' reservation of rights under Section 5 of this Agreement.

2. Reimbursement and Reimbursement Allocations. CP and UPRR shall each allocate and make available Five Million and no/100 dollars (\$5,000,000.00), resulting in a total pool of Ten Million and no/100 dollars (\$10,000,000.00) to pay for costs incurred under Section 1 (Soil Removal and Remediation) above (collectively "Disposal Costs"). CP and UPRR shall each be responsible for 50% of all Disposal Costs incurred under this Agreement, whether incurred by CP or UPRR.

3. Invoicing. CP shall prepare invoices on a regular basis, not less than bi-monthly, seeking reimbursement for 50% of all Disposal Costs incurred ("*Invoices*"). Invoices shall include detail sufficient to enable the recipient to determine Disposal Costs by stockpile as designated in the Soils Reports. If and to the extent any Disposal Costs cannot be attributed to a specific stockpile, the reasons therefore should be noted on the invoice. The Party receiving any invoice for Disposal Costs hereunder shall, subject to the Reservation of Rights in Section 5, remit payment to the invoicing Party within thirty (30) days.

4. Term. This Agreement shall be in effect for a period of two (2) years from the Effective Date, but this Agreement shall terminate upon the occurrence of any of the following events, whichever is first to occur (in all cases, the "*Term*");

a. CP and UPRR incur a combined Ten Million and no/100 dollars (\$10,000,000.00) in Disposal Costs;

b. The Dispute is fully and finally resolved by agreement of the Parties or by a court of competent jurisdiction.

The Parties may agree to extend the term of this Agreement beyond the two-year term set forth above or, to avoid termination caused by reaching \$10,000,000 in Disposal Costs under subsection (a) above, by raising the Disposal Costs total to a number greater than \$10,000,000. No such agreement to extend the Term shall be valid in the absence of a writing signed by each of the Parties.

5. Reservation of Rights. This Agreement is not intended to be, does not constitute, and shall not be construed to constitute, an interpretation, waiver, release, modification, amendment, or alteration of, or admission relating to, any Environmental Provision(s) or Excess Remediation Costs provision or any other legal obligation of any Party. Each Party expressly reserves the right to be reimbursed for all or a portion of the Disposal Costs incurred or paid by such Party under this Agreement if and to the extent such costs are not properly allocable to such Party under applicable Environmental Provisions or Excess Remediation Costs provisions. In connection with the foregoing reservation, UPRR shall have the right to access the Property to conduct testing of undisturbed soils by giving CP five (5) business days written notice, provided: (i) CP currently has the authority to grant such access; (ii) UPRR provides a written workplan detailing all activities to be done on the Property; (iii) UPRR's testing effort does not disrupt ongoing development or use of the Property; (iv) UPRR conducts its testing in accordance with all applicable statutes, regulations, or ordinances of, and obtains any necessary approvals from, any governmental authority having jurisdiction over the Property or activities thereon; and (v) UPRR provides a copy of all analytical data generated as a result of such testing activities to CP within ten (10) days of receipt.

6. UPRR Indemnity. UPRR shall indemnify, hold harmless, and defend City Parties and City Parties' affiliates, council members, mayor, employees, agents, officers, successors, and assigns of and from all losses or claims relating to UPRR's testing work provided for in Section 5 above, or relating to "arranger" or "transporter" liability under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601-9675 ("CERCLA") or under any federal, state, local, or common law that imposes liability for the arrangement or transportation of TPH Contaminated Soils, soils containing lead in excess of 1400 mg/kg, or soils containing any heavy metal in excess of standards and in accordance with procedures now or in the future set by the governmental agency or agencies having jurisdiction over the establishment of such standards, arising from any actions taken by the Parties pursuant to the terms of this Agreement.

7. Miscellaneous:

7.1 Notices. All written notices, invoices, or other transmissions provided for herein shall be personally delivered or mailed by registered or certified United States mail, postage prepaid, return receipt requested, to the Parties at the below recited addresses. All notices so mailed shall be deemed delivered three (3) business days after mailing.

If to UPRR:

Gary Honeyman
Manager, Environmental Site Remediation
221 Hodgeman
Laramie, WY 82072

With a copy to:

Robert C. Bylsma, Esq.
Regional Environmental Counsel
Union Pacific Railroad Company
Law Department
10031 Foothills Boulevard, Suite 200
Roseville, CA 95747-7101

If to City Parties or Party:

Elizabeth N. Fretwell
City Manager
City of Las Vegas
400 Stewart Avenue
Eighth Floor
Las Vegas, NV 89101

with a copy to:

Santoro, Driggs, Walch, Kearney, Holley & Thompson
400 S. 4th Street, 3rd Floor
Las Vegas, Nevada 89101
Attn: Gregory J. Walch

7.2 No Partnership or Joint Venture. None of the terms or provisions of this Agreement shall be deemed to create a partnership between the Parties, nor shall the Parties be considered joint venturers or members of any joint enterprise.

7.3 Governing Law. The terms and conditions of this Agreement shall be governed and construed under the laws of the State of Nevada.

7.4 Waiver. No waiver by any Party of any default under this Agreement shall be effective or binding upon such Party unless made in writing. No waiver of any default

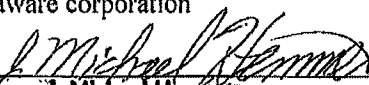
shall be deemed a waiver of any other or subsequent default hereunder.

7.5 Attorneys' Fees. In the event that any Party commences an action against any other Party or Parties in order to enforce the provisions hereof, the prevailing Party(ies) in such action shall be entitled to recover, in addition to any amounts or relief otherwise awarded, all reasonable costs incurred in connection therewith, including reasonable attorneys' fees.

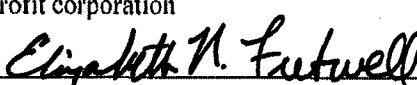
7.6 Execution in Counterparts. This Agreement may be executed and delivered in any number of counterparts each of which so constituted and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been executed on the date first written above.

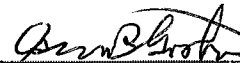
UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: 
Name: J. Michael Hemmer
Title: Senior Vice President - Law & General Counsel

CITY PARKWAY V, INC., a Nevada not-for-profit corporation

By: 
Name: Elizabeth N. Fretwell
Title: President

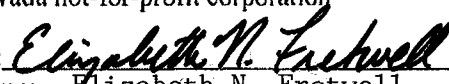
CITY OF LAS VEGAS, NEVADA, a
political subdivision of the State of Nevada

By: 
Name: Oscar B. Goodman
Title: Mayor

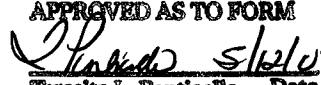
CITY PARKWAY IV A, INC., a Nevada not-for-profit corporation

By: 
Name: Elizabeth N. Fretwell
Title: President

OFFICE DISTRICT PARKING I, INC., a
Nevada not-for-profit corporation

By: 
Name: Elizabeth N. Fretwell
Title: President

APPROVED AS TO FORM

 5/12/09
Teresa L. Ponticello Date
Chief Deputy City Attorney

Attest: By 
BEVERLY K. BRIDGES, CMC, City Clerk