

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO**

Docket No. 03A-463R

IN THE MATTER OF THE APPLICATION OF THE TOWN OF CASTLE ROCK, 4175 N. CASTLETON COURT, CASTLE ROCK, COLORADO, 80109; FOR AUTHORITY TO CONSTRUCT FRONT STREET AS A GRADE SEPARATION AT THE CROSSING OF THE ROADWAY WITH THE UNION PACIFIC RAILROAD COMPANY; IN DOUGLAS COUNTY, STATE OF COLORADO

SECOND STIPULATION AND PARTIAL SETTLEMENT AGREEMENT

Applicant Town of Castle Rock ("Town" or "Castle Rock"), Intervenor Union Pacific Railroad Company ("UPRR"), Intervenor The Burlington Northern and Santa Fe Railway Company ("BNSF"), through their respective counsel, enter into this Second Stipulation and Partial Settlement Agreement ("Stipulation") and agree to all of the terms and conditions set forth below:

1. In a stipulation signed effective February 2, 2004, the Town, the UPRR, the BNSF, and the Staff of the Colorado PUC (collectively the "Parties") entered a "Stipulation and Partial Settlement Agreement" (the "Original Stipulation"). The Parties agreed in the Original Stipulation that the Commission enter an order approving the project for construction of Front Street as a grade separation at the crossing of the roadway with the UPRR tracks within the Town according to the Application submitted by the Town and the plans attached to the Application. The project is generally referred to as the "Front Street Flyover" project.

2. On February 10, 2004 the Commission issued Decision No. R04-0148-I, approving the Original Stipulation and bifurcating the Application, reserving for future determination the issue

of the appropriate allocation of cost responsibility for the grade separation between the Town and the UPRR.

3. The Town filed with the Commission its written direct testimony and exhibits on the allocation issue. The UPRR's answer testimony was scheduled to be filed on July 30, 2004, but the Parties agreed to postpone that date in the interest of attempting to resolve the remaining issues in this docket. The hearing on the issues before the Commission is scheduled for September 15-17, 2004. The Parties have agreed in the interest of settling this matter to request that the Commission vacate the September hearing dates.

4. The Staff of the Commission withdrew its intervention in this proceeding on July 20, 2004.

5. The Parties have agreed on the proper allocation of responsibility for the cost of the "theoretical structure" of the Front Street Flyover project as that term is defined in the Colorado PUC rules concerning "Applications for Railroad-Highway Grade Separations," 4 C.C.R. 723-20-4.0.

6. The stipulated allocation shall be 50% to the Town and 50% to the UPRR of the cost of the theoretical structure. It is expressly agreed that the UPRR allocation shall not exceed \$2,350,000, even if the cost of the theoretical structure exceeds \$4,700,000.

7. Construction of the Front Street Flyover began on May 10, 2004. The parties expect that construction of the Front Street Flyover shall be completed in the middle of October, 2004.

8. The Parties shall work to reach agreement on the cost of the theoretical structure that the parties have agreed to allocate 50%-50%. The Parties shall use the best information available to them to reach agreement on the cost of the theoretical structure of the Front Street

Flyover at the time of completion of the construction, including the actual costs incurred for the construction of the Front Street Flyover, actual unit prices for the construction of the Front Street Flyover, any change orders, and actual acquisition costs, as well as all applicable license fees, taking into account reasonable assumptions and projections as and if necessary and appropriate.

9. If the parties do not reach agreement on the cost of the theoretical structure by November 30, 2004, the dispute over the cost of the theoretical structure shall be presented to the Commission by motion of either Party for final determination by the Commission. In attempting to reach agreement on the cost of the theoretical structure, the Town and the UPRR shall promptly exchange all relevant documents in their respective possession, including those that are reasonably calculated to lead to documents relevant to the resolution of the cost issue.

10. The Stipulation may be enforced only by the Parties hereto or their successors.

11. The Commission shall retain jurisdiction for the purpose of enabling any of the Parties to this Stipulation to apply to the Commission for such further orders and directions that may be necessary and appropriate for the enforcement of or compliance with this Stipulation.

12. This Stipulation constitutes a settlement of disputed and compromised claims regarding the proposed grade separation and is made for settlement purposes only. It does not constitute a settlement of the issue of the cost of the theoretical structure.

13. Each Party also agrees that except as expressly provided in this Stipulation, it will take no action in any administrative or judicial proceeding which would have the effect, directly or indirectly, of contravening the provisions of this Stipulation. Except as otherwise provided herein, nothing in this Stipulation shall constitute a waiver by any Party with respect to any matter not specifically addressed in this Stipulation.

14. The Stipulation shall not become effective until the Commission issues an order approving the Stipulation, which order does not contain any modification of the terms and conditions of this Stipulation that is unacceptable to any of the Parties to the Stipulation. In the event the Commission modifies this Stipulation in a manner unacceptable to any Party hereto, that Party may withdraw from the Stipulation and shall so notify the Commission and the other Parties to the Stipulation in writing within 10 days of the date of the final Commission order. In the event a Party exercises its right to withdraw from the Stipulation, the Stipulation shall be null and void and have no effect.

15. In the event this Stipulation becomes null and void, or in the event the Commission does not approve this Stipulation, this Stipulation as well as the negotiations undertaken in conjunction with this Stipulation shall not be admissible into evidence in any proceeding.

16. The Parties state that they have reached this Stipulation by means of a negotiated process that is in the public interest and that the results reflected in this Stipulation are just, reasonable and in the public interest.

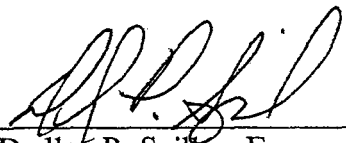
17. The Parties shall jointly move the Commission to vacate the hearings in this matter currently scheduled for September 15-17, 2004.

18. The Stipulation may be executed in separate counterparts, including facsimile. The counterparts taken together shall constitute the Stipulation.

19. The Stipulation shall be governed by and construed in accordance with Colorado law.

Dated this 12th day of August, 2004.

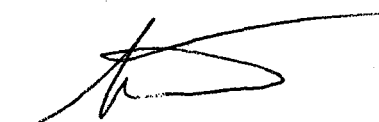
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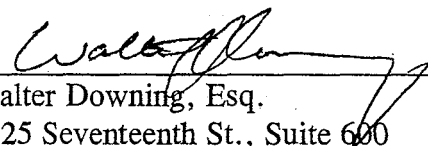
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