

FORM APPROVED COUNTY COUNSEL
 BY: MS Victor 3/13/13
 DATE: 3/13/13

**SUBMITTAL TO THE BOARD OF SUPERVISORS
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

814A



FROM: TLMA - Transportation Department


SUBMITTAL DATE:
 March 14, 2013

SUBJECT: Construction and Maintenance Agreement between the Union Pacific Railroad Company and the County of Riverside for the proposed Avenue 56 (Airport Boulevard) Railroad Grade Separation Project

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached Construction and Maintenance Agreement between the Union Pacific Railroad Company and the County of Riverside for the proposed Avenue 56 (Airport Boulevard) Railroad Grade Separation Project;
2. and Authorize the Chairman of the Board to execute the same.

BACKGROUND: Avenue 56 is designated in the Riverside County General Plan as a six lane




 Juan C. Perez
 Director of Transportation

CSS:css

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 404,875	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2013/2014

SOURCE OF FUNDS: TUMF (CVAG 100%)	Project No. A6-0241	Positions To Be Deleted Per A-30	<input type="checkbox"/>
There are no General Funds used in this project.		Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE
 BY: 
 Tina Grande

County Executive Office Signature

Dept's Recomm.: Policy Consent
 Per Exec. Ofc.: Policy Consent

Prev. Agn. Ref. 02/01/11 Item 3.5 | District: 4/4 | Agenda Number:

3-22

The Honorable Board of Supervisors

RE: Construction and Maintenance Agreement between the Union Pacific Railroad Company and the County of Riverside for the proposed Avenue 56 (Airport Boulevard) Railroad Grade Separation Project

March 14, 2013

Page 2 of 2

urban arterial highway that serves the Thermal Community of eastern Riverside County, City of Coachella and City of La Quinta while providing direct access from SH-86S and Grapefruit Boulevard (SH-111) to the Jacqueline Cochran Regional Airport. A Union Pacific Railroad (UPRR) at-grade crossing currently exists on Avenue 56 just south of the City of Coachella paralleling State Route 86S. The UPRR and State Highway 86S are both designated NAFTA freight corridors. The above referenced project will grade separate Avenue 56 from the UPRR mainline tracks. The Riverside County Transportation Department has been designated as the lead agency to implement the proposed improvements and is working cooperatively with the Union Pacific Railroad.

Currently 71 freight trains pass through Riverside County on this line on a daily basis with the number projected to increase to 107 by the year 2030. The proposed grade separated rail crossing will separate surface street traffic from rail lines with the following benefits:

- Increased public safety due to elimination of train/vehicle conflicts.
- Reduced delay of freight movement on SH-86S and UPRR NAFTA corridors.
- Automobile and truck traffic will be unaffected by the increasing frequency of freight trains.
- Emergency response vehicle delays will be reduced at the crossing.
- Substantially reduce particulate matter from idling vehicles causing a reduction in greenhouse gas emissions.
- Reduce train noise.

This project has been identified to receive \$10 million from the State's Prop 1B Bonds Goods Movement Program administered through Transportation Corridor Improvement Funds (TCIF). A Project Baseline Agreement with the California Transportation Commission (CTC) identifying the scope and cost of the project was approved by the Riverside County Board of Supervisors on July 29, 2008. The County is required to execute a construction contract for the improvements by December 31, 2013 under the terms of the Baseline Agreement.

On August 31, 2010 (item 3.82), the Board of Supervisors approved a Cooperative Funding Agreement with the Coachella Valley Association of Governments (CVAG) that authorized \$10 million in CVAG project funding.

On February 1, 2011 (item 3.5), the Board of Supervisors approved a funding agreement with the Economic Development Agency (EDA) that authorized \$4 million in Redevelopment Agency (RDA) project funding.

The project has been environmentally cleared, final plans, specifications and estimates have been prepared and right-of-way acquisition efforts are in progress.

This agreement provides the terms and conditions under which the County will construct and maintain the proposed improvements. The terms also require the County to reimburse the railroad for the following anticipated items to be provided by UPRR.

Easement	\$61,450.00
Flagging & Inspection	\$290,000.00
Materials & Force Account Work	<u>\$53,425.00</u>
	\$404,875.00

NEW PUBLIC HIGHWAY OVERPASS CROSSING AGREEMENT

BETWEEN

UNION PACIFIC RAILROAD COMPANY

AND THE

COUNTY OF RIVERSIDE,

COVERING THE

CONSTRUCTION, MAINTENANCE AND USE OF THE NEW AIRPORT
BOULEVARD OVERPASS GRADE SEPARATED PUBLIC ROAD CROSSING
(DOT NO.: 440-735W)

AT

RAILROAD MILE POST 617.94 – YUMA SUBDIVISION

NEAR

THERMAL,
IN RIVERSIDE COUNTY,
CALIFORNIA

UPRR Folder No.: 2780-63

UPRR Audit No.: _____

PUBLIC HIGHWAY OVERPASS CROSSING AGREEMENT

Airport Boulevard Overpass – DOT No. 440-735W
Railroad Mile Post 617.94 – Yuma Subdivision
near Thermal, in Riverside County, California

THIS AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 20____ ("Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179 ("Railroad") and the **COUNTY OF RIVERSIDE**, a political subdivision of the State of California to be addressed at Transportation Department, 3525 14th Street, Riverside, California 92501 ("County").

RECITALS:

By instrument dated February 6, 1956, the Southern Pacific Company and the County entered into an agreement (the "Original Agreement"), identified in the records of the Railroad as Audit No. S102116 covering the construction, maintenance, use and repair of the Airport Boulevard at-grade public road crossing, (DOT No. 760-727M), at Railroad's Mile Post 617.94 on the Railroad's Yuma Subdivision near Thermal, in Riverside County, California.

The Railroad named herein is successor in interest to the Southern Pacific Company.

The County desires to undertake as its project (the "Project") the construction of a new grade-separated public road crossing for Airport Boulevard, (DOT No. 440-735W), at Railroad's Mile Post 617.94 on the Railroad's Yuma Subdivision near Thermal, in Riverside County, California (the "Roadway"). The Roadway is shown on the Railroad Location Print marked **Exhibit A** and specified in the 95% approved Detailed Prints collectively marked **Exhibit A-1**, with each exhibit being attached hereto and hereby made a part hereof. The portion of the Roadway located within the Railroad's right of way is the "Crossing Area".

The right of way granted by Southern Pacific Company to the County under the terms of the Original Agreement or a separate document is not sufficient to allow for the construction of the Roadway. Therefore, under this Agreement, the Railroad will be granting additional rights to the County to facilitate the construction of the Roadway. The portion of Railroad's property that County needs to use in connection with the Roadway (including the right of way area covered under the Original Agreement or in a separate document) is described in the Legal Description marked **Exhibit A-2** and also shown on the Survey Print marked **Exhibit A-3**, with each exhibit being attached hereto and hereby made a part hereof (the "Crossing Area").

The Railroad and the County are entering into this Agreement to cover the above.

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

ARTICLE 1. EXHIBIT B

The General Terms and Conditions marked **Exhibit B**, are attached hereto and hereby made a part hereof.

ARTICLE 2. RAILROAD GRANTS RIGHT

Upon completion of the execution of this Agreement and Railroad's receipt from the County of **SIXTY-ONE THOUSAND FOUR HUNDRED FIFTY DOLLARS (\$61,450.00)**, the Railroad shall execute and deliver to the County an Easement Deed in the form marked **Exhibit F**, attached hereto and hereby made a part hereof, for the property described and shown on **Exhibits A-2 and A-3**.

ARTICLE 3. DEFINITION OF CONTRACTOR

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the County to perform any Project work on any portion of the Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.

ARTICLE 4. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE

A. Prior to Contractor performing any work within the Crossing Area and any subsequent maintenance and repair work, the County shall require the Contractor to:

- execute the Railroad's then current Contractor's Right of Entry Agreement
- obtain the then current insurance required in the Contractor's Right of Entry Agreement; and
- provide such insurance policies, certificates, binders and/or endorsements to the Railroad.

B. The Railroad's current Contractor's Right of Entry Agreement is marked **Exhibit E**, attached hereto and hereby made a part hereof. The County confirms that it will inform its Contractor that it is required to execute such form of agreement and obtain the required insurance before commencing any work on any Railroad property. Under no circumstances will the Contractor be allowed on the Railroad's property without first executing the Railroad's Contractor's Right of Entry Agreement and obtaining the insurance set forth therein and also providing to the Railroad the insurance policies, binders, certificates and/or endorsements described therein.

C. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

*Senior Manager - Contracts
Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, Mail Stop 1690
Omaha, NE 68179-1690
UPRR Folder No. 2780-63*

D. If the County's own employees will be performing any of the Project work, the County may self-

insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

ARTICLE 5. FEDERAL AID POLICY GUIDE

If the County will be receiving any federal funding for the Project, the current rules, regulations and provisions of the Federal Aid Policy Guide as contained in 23 CFR 140, Subpart I and 23 CFR 646, Subparts A and B are incorporated into this Agreement by reference.

ARTICLE 6. NO PROJECT EXPENSES TO BE BORNE BY RAILROAD

The County agrees that no Project costs and expenses are to be borne by the Railroad. In addition, the Railroad is not required to contribute any funding for the Project.

ARTICLE 7. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO COUNTY; COUNTY'S PAYMENT OF BILLS

A. The work to be performed by the Railroad, at the County's sole cost and expense, is described in:

- the Railroad's Flagging & Inspection Estimate dated February 15, 2013, marked **Exhibit C**, in the amount of \$290,000.00, and
- the Railroad's Material and Force Account Estimate dated February 12, 2013, marked **Exhibit C-1**, in the amount of \$53,245.00,

each attached hereto and hereby made a part hereof (collectively the "Estimate"). As set forth in the Estimate, the Railroad's total estimated cost for the Railroad's work associated with the Project is \$343,425.00.

B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the County in the event the County does not commence construction on the portion of the Project located on the Railroad's property within six (6) months from the date of the Estimate.

C. The County agrees to reimburse the Railroad within thirty (30) days of its receipt of billing from the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, all actual costs of engineering review (including preliminary engineering review costs incurred by Railroad prior to the Effective Date of this Agreement), construction, inspection, flagging (unless flagging costs are to be billed directly to the Contractor), procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead labor/construction costs including Railroad's standard additive rates.

ARTICLE 8. SPECIAL PROVISIONS PERTAINING TO AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

If the County will be receiving American Recovery and Reinvestment Act ("ARRA") funding for the Project, the County agrees that it is responsible in performing and completing all ARRA reporting documents for the Project. The County confirms and acknowledges that Section 1512 of the ARRA provisions applies only to a "recipient" receiving ARRA funding directing from the federal government and, therefore, (i) the ARRA reporting requirements are the responsibility of the County and not of the Railroad, and (ii) the County shall not delegate any ARRA reporting responsibilities to the Railroad. The County also confirms and acknowledges that (i) the Railroad shall provide to the County the Railroad's standard and customary billing for expenses incurred by

the Railroad for the Project including the Railroad's standard and customary documentation to support such billing, and (ii) such standard and customary billing and documentation from the Railroad provides the information needed by the County to perform and complete the ARRA reporting documents. The Railroad confirms that the County and the Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for the Project as provided in **Exhibit B** of this Agreement.

ARTICLE 9. PLANS

- A. The County, at its expense, shall prepare, or cause to be prepared by others, the 100% approved detailed plans and specifications for the Project and submit such plans and specifications to the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, for prior review and approval. The plans and specifications shall include all Roadway layout specifications, cross sections and elevations, associated drainage, and other appurtenances.
- B. The final one hundred percent (100%) completed plans that are approved in writing by the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans, when prepared and approved, will replace the Detailed Prints attached to this agreement as **Exhibit A-1**, and will be used in the construction of the Roadway.
- C. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing.
- D. The Railroad's review and approval of the Plans will in no way relieve the County or the Contractor from their responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that the Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by the County or Contractor on the Plans is at the risk of the County and Contractor.

ARTICLE 10. NON-RAILROAD IMPROVEMENTS

- A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocation, replacing, removing and abandoning in place all non-railroad owned facilities (the "Non Railroad Facilities") affected by the Project including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required under Section 9. The Non Railroad Facilities plans and specifications shall comply with Railroad's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines. Railroad has no obligation to supply additional land for any Non Railroad Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted Non Railroad Facilities plans and specifications comply with Railroad's standard specifications and requirements. Railroad has no obligation to permit any Non Railroad Facilities to be abandoned in place or relocated on Railroad's property.
- B. Upon Railroad's approval of submitted Non Railroad Facilities plans and specifications, Railroad will attempt to incorporate them into new agreements or supplements of existing agreements with Non Railroad Facilities owners or operators. Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for Non Railroad Facilities. Non Railroad

Facilities work shall not commence before a supplement or new agreement has been fully executed by Railroad and the Non Railroad Facilities owner or operator, or before Railroad and County mutually agree in writing to (i) deem the approved Non Railroad Facilities plans and specifications to be Plans pursuant to Section 9B, (ii) deem the Non Railroad Facilities part of the Structure, and (iii) supplement this Agreement with terms and conditions covering the Non Railroad Facilities.

ARTICLE 11. RAILROAD'S COORDINATION REQUIREMENTS

The County, at its expense, shall ensure that the Contractor complies with all of the terms and conditions contained in the Railroad's Coordination Requirements that are described in **Exhibit D**, attached hereto and hereby made a part hereof, and other special guidelines and/or requirements that the Railroad may provide to the County for this Project.

ARTICLE 12. EFFECTIVE DATE; TERM; TERMINATION

- A. This Agreement is effective as of the Effective Date first herein written and shall continue in full force and effect for as long as the Structure remains on the Railroad's property.
- B. The Railroad, if it so elects, may terminate this Agreement effective upon delivery of written notice to the County in the event the County does not commence construction on the portion of the Project located on the Railroad's property within twelve (12) months from the Effective Date.
- C. If the Agreement is terminated as provided above, or for any other reason, the County shall pay to the Railroad all actual costs incurred by the Railroad in connection with the Project up to the date of termination, including, without limitation, all actual costs incurred by the Railroad in connection with reviewing any preliminary or final Project Plans.

ARTICLE 13. CONDITIONS TO BE MET BEFORE COUNTY CAN COMMENCE WORK

Neither the County nor the Contractor may commence any work within the Crossing Area or on any other Railroad property until:

- (i) The Railroad and the County have executed this Agreement.
- (ii) The Railroad has provided to the County the Railroad's written approval of the Plans.
- (iii) Each Contractor has executed Railroad's Contractor's Right of Entry Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements required under the Contractor's Right of Entry Agreement.
- (iv) Each Contractor has given the advance notice(s) required under the Contractor's Right of Entry Agreement to the Railroad Representative named in the Contractor's Right of Entry Agreement.

ARTICLE 14. FUTURE PROJECTS

Future projects involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the Structure shall not commence until Railroad and County agree on the plans for such future projects, cost allocations, right of entry terms and conditions and temporary construction rights, terms and conditions.

ARTICLE 15. ASSIGNMENT; SUCCESSORS AND ASSIGNS

A. County shall not assign this Agreement without the prior written consent of Railroad.

B. Subject to the provisions of Paragraph A above, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad and County.

ARTICLE 16. GOVERNING LAW

Unless otherwise preempted by applicable Federal laws, rules or regulations, this Agreement shall be construed in accordance with the laws of the State of California.

ARTICLE 17. AUTHORITY TO ENTER INTO AGREEMENT

The Railroad, the City and the County confirm that the individuals signing on behalf of the Railroad, the City and the County, as applicable, have the authority to sign this Agreement and to bind such party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date first herein written.

UNION PACIFIC RAILROAD COMPANY
(Federal Tax ID #94-6001323)

By: _____
DANIEL A. LEIS
General Director Real Estate

ATTEST:

COUNTY OF RIVERSIDE

By _____

By _____

(SEAL)

Printed Name: _____

Title: _____

Pursuant to Resolution/Order No. _____
dated: _____, 20____
hereto attached.

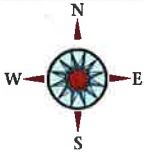
FORM APPROVED COUNTY COUNSEL
BY: MS Victor 3/13/13
MARSHAL L. VICTOR DATE

EXHIBIT A

To Public Highway Overpass Crossing
Agreement

Cover Sheet for the
Railroad Location Print

RAILROAD LOCATION PRINT OF A NEW GRADE SEPARATED PUBLIC ROAD CROSSING CONSTRUCTION PROJECT



RAILROAD WORK TO BE PERFORMED:

1. Flagging & Inspection.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

YUMA SUBDIVISION
RAILROAD MILE POST 617.94
GPS: N 33° 38.5250', W 116° 08.4132'
THERMAL, RIVERSIDE CO., CA.

To accompany an agreement with the
COUNTY OF RIVERSIDE
covering a new grade separated public road
crossing construction project.

Folder No. 2780-63

Date: January 10, 2013

WARNING

IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE
OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.
PHONE: 1-(800) 336-9193

EXHIBIT A-1

To Public Highway Overpass Crossing
Agreement

Cover Sheet for the
Detailed Prints

- NOTES**
- ① Point "Airport Boulevard Oc"
 - ② Point "Bridge No. XX-XXXX"
 - ③ Structure Approach Type N(30s)
 - ⑤ Chain Link Railing Type 7

- LEGEND**
- ⊕ Indicates Minimum Vertical Clearance (Roadway)
 - ⊗ Indicates Minimum Vertical Clearance (Railroad)
 - Indicates Retaining Wall, see "Road Plane"
 - ⇨ Indicates Direction of Traffic

PROFILE GRADE
No Scale

RC = -3.14% Per Station

BVC 57+45.00
Elev 414.82

BVC 53+95.00
Elev 416.57

BVC 50+90.00
Elev 394.12

418'-8 3/4" Measured Along Airport Blvd

210'-0"

208'-8 3/4"

43'-0"

37'-5 3/4"

8'-0" Lane

12'-0" Lane

14'-0" Lane

4'-0" Lane

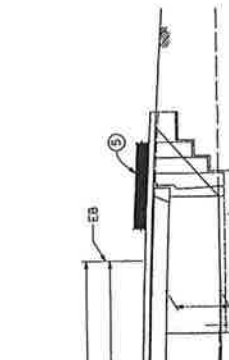
14'-0" Lane

12'-0" Lane

8'-0" Lane

5'-0" Lane

1'-0"



ELEVATION
1" = 30'

Date of Estimate = 11/19/10

Structure Depth = 8'-6"

Width = 418'-8 3/4"

Area = 33699 SF

Cost/SF = 6242

Total Cost = \$8,150,000

UTILITIES

Notes:
① All Piles Not Shown

Notes:
① Specific Will Pass Through Construction Site, 15'-0" Minimum Clearance Required Under Falsework.

TYPICAL SECTION
1" = 10'

CURVE DATA ①

R = 700.00'
A = 10°03'15"
L = 122.84'
T = 61.58'

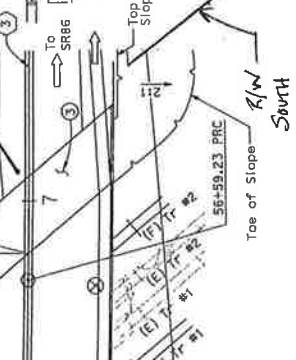
CURVE DATA ②

R = 7000.00'
A = 8°47'29"
L = 1074.08'
T = 538.09'

CURVE DATA ③

R = 7000.00'
A = 5°42'27"
L = 697.29'
T = 348.93'

Note:
All Piles Not Shown



REVISIONS

NO.	BY	DATE	DESCRIPTION

PLAN
1" = 30'

41°26'11" Skew

40°02'50" Skew

418'-8 3/4" Measured Along Airport Blvd

210'-0"

208'-8 3/4"

43'-0"

37'-5 3/4"

8'-0" Lane

12'-0" Lane

14'-0" Lane

4'-0" Lane

14'-0" Lane

12'-0" Lane

8'-0" Lane

5'-0" Lane

1'-0"

BB 52+54.31
Elev 405.43

Top of Slope

To Park St

38°14'06" Skew

40°02'50" Skew

41°26'11" Skew

EB 56+33.04
Elev 418.32

CIP P/S Conc Box Girder

Top of Slope

55+59.23 PRC

Toe of Slope

To SR86

8'-0" Column, Typ

EG Approx OG

Concrete Barrier Type 736

Concrete Barrier Type 26 (RCS)

PROJECT

COUNTY OF RIVERSIDE
AIRPORT BLVD

URBAN ARTERIAL HIGHWAY

REFERENCE

K.A. No.	DATE	DESCRIPTION
BXXXXX	XXXXXX	XXXXXX
SXXXXX	XXXXXX	XXXXXX
F. B. No.	XXXXXX	XXXXXX
CR FILE NO.	XXXXXX	XXXXXX

PARSONS TRANSPORTATION GROUP

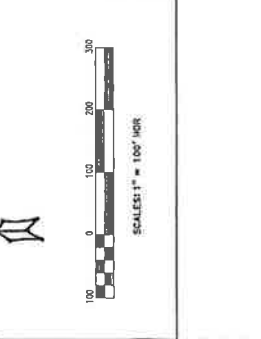
PLANS PROVIDED BY
PARSONS
2201 BLYTHE DRIVE, SUITE 200
IRVINE, CA 92614
parsons.com/transportation

PREPARED BY: IRVING DING

DATE: _____

SOFT COPY
REVISIONS BY: _____
TRANSMIT PROJECT MANAGER

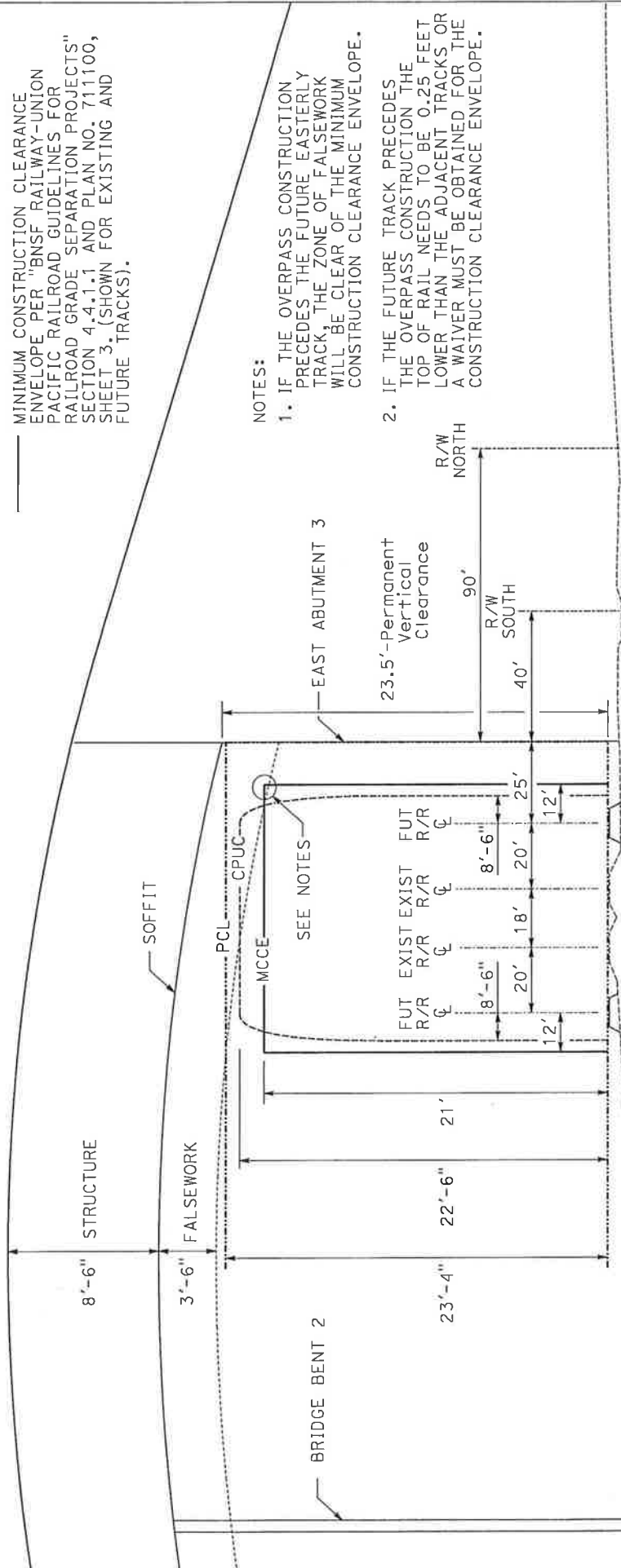
DATE: _____



- PERMANENT CLEARANCE LINE PER "BNSF RAILWAY-UNION PACIFIC RAILROAD GUIDELINES FOR RAILROAD GRADE SEPARATION PROJECTS" PLAN NO. 711100, SHEET 1.
- PERMANENT CPUC CLEARANCE LINE PER GENERAL ORDER NO. 26-D (SHOWN FOR EXISTING AND FUTURE TRACKS).
- MINIMUM CONSTRUCTION CLEARANCE ENVELOPE PER "BNSF RAILWAY-UNION PACIFIC RAILROAD GUIDELINES FOR RAILROAD GRADE SEPARATION PROJECTS" SECTION 4.4.1.1 AND PLAN NO. 711100, SHEET 3. (SHOWN FOR EXISTING AND FUTURE TRACKS).

NOTES:

1. IF THE OVERPASS CONSTRUCTION PRECEDES THE FUTURE EASTERLY TRACK, THE ZONE OF FALSEWORK WILL BE CLEAR OF THE MINIMUM CONSTRUCTION CLEARANCE ENVELOPE.
2. IF THE FUTURE TRACK PRECEDES THE OVERPASS CONSTRUCTION THE TOP OF RAIL NEEDS TO BE 0.25 FEET LOWER THAN THE ADJACENT TRACKS OR A WAIVER MUST BE OBTAINED FOR THE CONSTRUCTION CLEARANCE ENVELOPE.



AIRPORT BLVD STRUCTURE CLEARANCES

SECTION A-A AT SOUTHEASTERLY SOFFIT

NO SCALE

EXHIBIT A-2

To Public Highway Overpass Crossing
Agreement

Cover Sheet for the
Legal Description

EXHIBIT "A"
LEGAL DESCRIPTION
PARCEL 0241-027

AN EASEMENT FOR SLOPE AND MAINTENANCE PURPOSES, TOGETHER WITH PUBLIC UTILITY PURPOSES, BEING A PORTION OF THE SOUTHERN PACIFIC RAILROAD RIGHT-OF-WAY AS DESCRIBED IN DEED BOOK 1100, PAGE 130, RECORDED AUGUST 1949, RECORDS OF THE RECORDER OF RIVERSIDE COUNTY, CALIFORNIA, LYING WITHIN THE SOUTHWEST ONE-QUARTER OF SECTION 15, TOWNSHIP 6 SOUTH, RANGE 8 EAST, SAN BERNARDINO MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF AIRPORT BOULEVARD (30.00 FOOT SOUTHERLY HALF-WIDTH) (FORMERLY CALIFORNIA STREET) AND THE CENTERLINE OF ORANGE STREET (30.00 FOOT WESTERLY HALF-WIDTH) AS SHOWN ON MAP OF THERMAL TOWNSITE ON FILE IN BOOK 4, OF PAGE 78, RECORDS OF SAID RECORDER;

THENCE S 89°49'04" W ALONG THE CENTERLINE OF SAID AIRPORT BOULEVARD, A DISTANCE OF 579.76 FEET;

THENCE N 00°10'56" W, A DISTANCE OF 40.00 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF SAID AIRPORT BOULEVARD AS DESCRIBED IN THE RESOLUTION ACCEPTING DEED, IN BOOK 1890, PAGES 461 THROUGH 469, RECORDED APRIL 4, 1956 OFFICIAL RECORDS OF SAID RECORDER, SAID POINT BEING THE **TRUE POINT OF BEGINNING**;

THENCE S 89°49'04" W ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF SAID AIRPORT BOULEVARD, A DISTANCE 312.03 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF GRAPEFRUIT BOULEVARD (FORMERLY HIGHWAY 111), AS SHOWN ON CAL-TRANS RIGHT-OF-WAY RELINQUISHMENT MAP, IN STATE HIGHWAY MAP BOOK 11, PAGES 91 THROUGH 100, RECORDS OF SAID RECORDER;

THENCE N 46°12'53" W ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 95.23 FEET;

THENCE S 85°31'09" E, A DISTANCE OF 354.69 FEET TO A POINT ON SAID NORTHEASTERLY RIGHT-OF-WAY LINE OF THE SOUTHERN PACIFIC RAILROAD;

THENCE S 36°09'38" E ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE OF THE SOUTHERN PACIFIC RAILROAD, A DISTANCE OF 46.07 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING: 16,514 SQUARE FEET, OR 0.379 ACRES, MORE OR LESS.

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6. MULTIPLY DISTANCES SHOWN BY 1.000020640 TO OBTAIN GROUND DISTANCE.

SEE ATTACHED EXHIBIT "B"

APPROVED BY: Timothy F. Rayburn

DATE: 8/29/2012



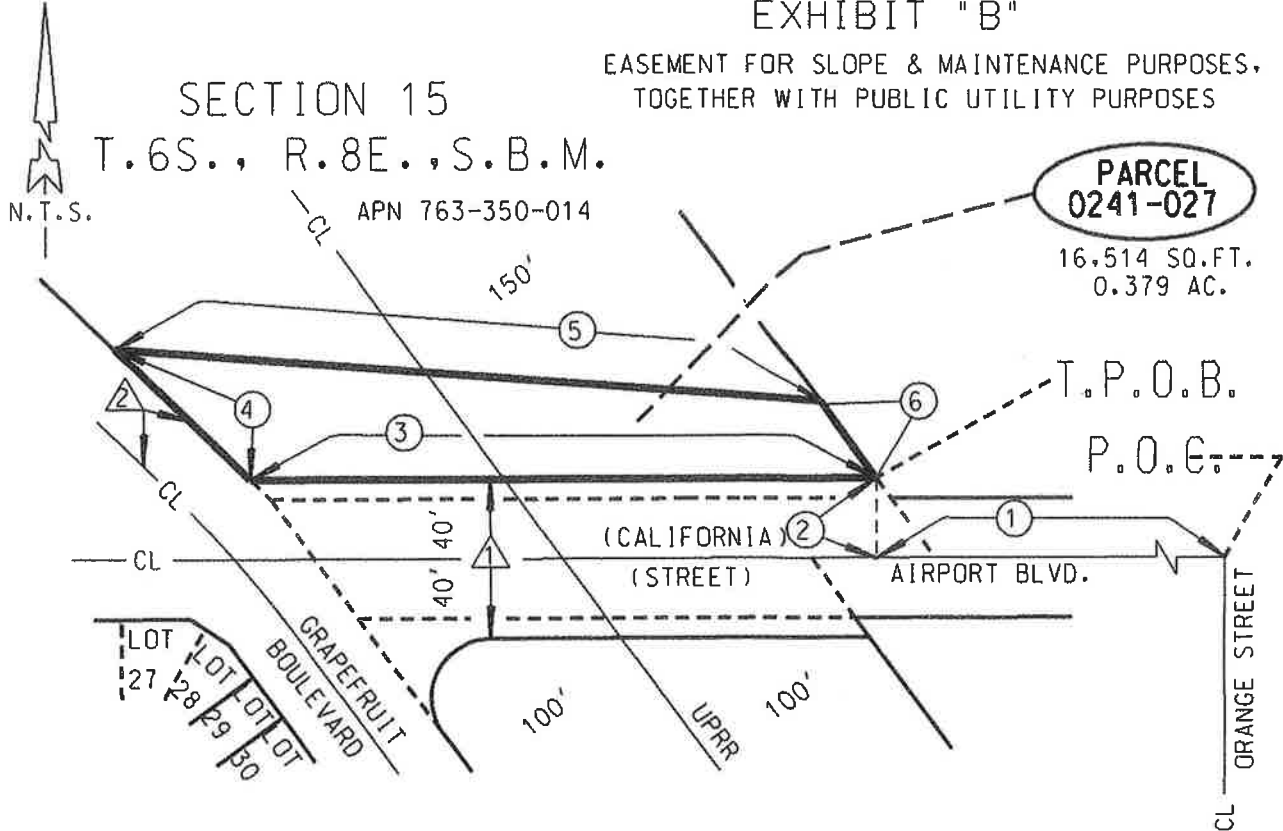
EXHIBIT A-3

To Public Highway Overpass Crossing
Agreement

Cover Sheet for the
Survey Print

EXHIBIT "B"

EASEMENT FOR SLOPE & MAINTENANCE PURPOSES,
TOGETHER WITH PUBLIC UTILITY PURPOSES



MB 4/78

RS 11/30-31

SECTION 22
T.6S., R.8E., S.B.M.

LINE TABLE

①	S 89° 49' 04" W	579.76'
②	N 00° 10' 56" W	40.00'
③	S 89° 49' 04" W	312.03'
④	N 46° 12' 53" W	95.23'
⑤	S 85° 31' 09" E	354.69'
⑥	S 36° 09' 38" E	46.07'

SURVEY NOTES

- ① R/W PER O.R. BK.
1890 PG. 461-469
REC. 04/04/1956
- ② R/W PER CT R/W RELINO.
IN STATE HWY MAP BK. 11
PGS. 91-100
- () REC. PER MB 4/78



ALL DISTANCES SHOWN ARE GRID DISTANCES.
GROUND DISTANCES MAY ABE OBTAINED BY
MULTIPLYING THE GRID DIST. BY A COMBINATION
FACTOR OF 1.000020640

COUNTY OF RIVERSIDE TRANSPORTATION DEPT., SURVEY DIV.
PROJECT: AIRPORT BLVD. / 56TH AVE.

THIS PLAT IS AN AID IN LOCATING THE PARCEL(S) DESCRIBED IN THE PRECEDING
DOCUMENT. ALL PRIMARY CALLS ARE LOCATED IN THE WRITTEN DESCRIPTION.

APPROVED BY: *Timothy F. Rayburn* DATE: 8/29/2012

PAR. NO.:	0241-027
PREPARED BY:	D.G.O.
SCALE:	N.T.S.
DATE:	AUGUST, 2012
W.O. NO.:	A6-0241
SHEET 1 OF 1	

EXHIBIT B

To Public Highway Overpass Crossing
Agreement

Cover Sheet for the
General Terms and Conditions

EXHIBIT B

TO PUBLIC HIGHWAY OVERPASS CROSSING AGREEMENT

GENERAL TERMS AND CONDITIONS

SECTION 1 - CONDITIONS AND COVENANTS

- A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The County shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the County shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the Railroad's property by or under authority of the County for the purpose of conveying electric power or communications incidental to the County's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the County to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.
- B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes.
- C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The County shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's property, unless the County at its own expense settles with and obtains releases from such nonparties.
- D. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property and the right to cross the Crossing Area with all kinds of equipment. The Railroad further reserves the right to attach signal, communication or power lines to the Structure, provided that such attachments shall comply with County's specifications and will not interfere with the County's use of the Crossing Area.
- E. So far as it lawfully may do so, the County will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Crossing Area, excepting taxes levied upon and against the property as a component part of the Railroad's operating property.
- F. If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Structure and its appurtenances, or for the performance of any work in connection with the Project, the County will acquire all such other property and rights at its own expense and without expense to the Railroad.

SECTION 2 - CONSTRUCTION OF STRUCTURE

- A. The County, at its expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Project, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.
- B. Except as may be otherwise specifically provided herein, the County, at its expense, will furnish all necessary labor, material and equipment, and shall construct and complete the Structure and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper drainage facilities, guard rails or barriers, and right of way fences between the Structure and the railroad tracks. Upon completion of the Project, the County shall remove from the Railroad's property all temporary structures and false work, and will leave the Crossing Area in a condition satisfactory to the Railroad.
- C. All construction work of the County upon the Railroad's property (including, but not limited to, construction of the Structure and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President Engineering-Design of the Railroad or his authorized representative and in compliance with the Plans, the Railroad's Coordination Requirements set forth in **Exhibit D** and other guidelines furnished by the Railroad.

- D. All construction work of the County shall be performed diligently and completed within a reasonable time. No part of the Project shall be suspended, discontinued or unduly delayed without the Railroad's written consent, and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of the County. The County hereby assumes the risk of any such delays and agrees that no claims for damages on account of any delay shall be made against the Railroad by the County and/or the Contractor.

SECTION 3 - INJURY AND DAMAGE TO PROPERTY

If the County, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the County is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the County at the County's own expense, or by the Railroad at the expense of the County, and to the satisfaction of the Railroad's Assistant Vice President Engineering-Design.

SECTION 4 - RAILROAD MAY USE CONTRACTORS TO PERFORM WORK

The Railroad may contract for the performance of any of its work by other than railroad forces. The Railroad shall notify the County of the contract price within ninety (90) days after it is awarded. Unless the Railroad's work is to be performed on a fixed price basis, the County shall reimburse the Railroad for the amount of the contract.

SECTION 5 - MAINTENANCE AND REPAIRS

- A. The County, at its expense, shall maintain, repair and renew, or cause to be maintained, repaired and renewed, the entire Structure, including, but not limited to, the superstructure, substructure, piers, abutments, walls, approaches and all backfill, grading and drainage required by reason of the Structure, as well as all graffiti removal or overpainting involving the Structure.
- B. The Railroad, at its expense, will maintain, repair and renew, or cause to be maintained, repaired and renewed, the rails, ties, ballast and communication and signal facilities owned by the Railroad beneath the Structure.

SECTION 6 - SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the County that the work will be performed in a safe manner and in conformity with the following standards:

- A. **Definitions.** All references in this Agreement to the County shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the County shall include work both within and outside of the Railroad's property.
- B. **Entry on to Railroad's Property by County.** If the County's employees need to enter Railroad's property in order to perform an inspection of the Structure, minor maintenance or other activities, the County shall first provide at least ten (10) working days advance notice to the Railroad Representative. With respect to such entry on to Railroad's property, the County, to the extent permitted by law, agrees to release, defend and indemnify the Railroad from and against any loss, damage, injury, liability, claim, cost or expense incurred by any person including, without limitation, the County's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of County's employees on Railroad's property, except to the extent that any Loss is caused by the sole direct negligence of Railroad.
- C. **Flagging.**
- (i) If the County's employees need to enter Railroad's property as provided in Paragraph B above, the County agrees to notify the Railroad Representative at least thirty (30) working days in advance of proposed performance of any work by County in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's

track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30) day notice, the Railroad Representative will determine and inform County whether a flagman need be present and whether County needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill County for such expenses incurred by Railroad. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, County agrees that County is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

- (ii) The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, County shall pay on the basis of the new rates and charges.
 - (iii) Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though County may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, County must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, County will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.
- D. **Compliance With Laws.** The County shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The County shall use only such methods as are consistent with safety, both as concerns the County, the County's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The County (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the County to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the County shall reimburse and, to the extent it may lawfully do so, indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The County further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.
- E. **No Interference or Delays.** The County shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.
- F. **Supervision.** The County, at its own expense, shall adequately police and supervise all work to be performed by the County, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the County for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the County with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the County will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.

- G. **Suspension of Work.** If at any time the County's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the County is being or is about to be done or prosecuted without due regard and precaution for safety and security, the County shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.
- H. **Removal of Debris.** The County shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the County at the County's own expense or by the Railroad at the expense of the County. The County shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during snow removal from the Crossing Area.
- I. **Explosives.** The County shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.
- J. **Excavation.** The County shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The County shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The County, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the County in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering-Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.
- K. **Drainage.** The County, at the County's own expense, shall provide and maintain suitable facilities for draining the Structure and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The County, at the County's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the County, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The County shall not obstruct or interfere with existing ditches or drainage facilities.
- L. **Notice.** Before commencing any work, the County shall provide the advance notice that is required under the Contractor's Right of Entry Agreement.
- M. **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the 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. County shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the County. If it is, County will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

SECTION 7 - INTERIM WARNING DEVICES

If at anytime it is determined by a competent authority, by the County, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the County shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the construction or reconstruction of the Structure has been completed.

SECTION 8 - OTHER RAILROADS

All protective and indemnifying provisions of this Agreement shall inure to the benefit of the Railroad and any other railroad company lawfully using the Railroad's property or facilities.

SECTION 9 - BOOKS AND RECORDS

The books, papers, records and accounts of Railroad, so far as they relate to the items of expense for the materials to be provided by Railroad under this Project, or are associated with the work to be performed by Railroad under this Project, shall be open to inspection and audit at Railroad's offices in Omaha, Nebraska, during normal business hours by the agents and authorized representatives of County for a period of three (3) years following the date of Railroad's last billing sent to County.

SECTION 10 - REMEDIES FOR BREACH OR NONUSE

- A. If the County shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Structure and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the County will reimburse the Railroad for the expenses thereof.
- B. Nonuse by the County of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the County hereunder.
- C. The County will surrender peaceable possession of the Crossing Area and Structure upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

SECTION 11 - MODIFICATION - ENTIRE AGREEMENT

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the County and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the County shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof constitute the entire understanding between the County and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.

EXHIBIT C

To Public Highway Overpass Crossing
Agreement

Railroad's Flagging & Inspection Estimate

EXHIBIT C

RAILROAD FLAGGING & INSPECTION ESTIMATE

TO PUBLIC ROAD CROSSING GRADE SEPARATION AGREEMENT

DESCRIPTION OF WORK: Perform flagging and inspection services for the County of Riverside, for the construction of the Airport Avenue Grade Separation project. (USDOT#440735W), at Railroad Mile Post 617.94 on the Yuma Subdivision in County of Riverside, California.

LOCATION: Thermal, California

DATE: December 03, 2012

DESCRIPTION	LABOR	MATERIAL	AUTHORITY TOTAL
FLAGGING (@ \$1,200/day) 200 days	\$240,000		\$240,000
INSPECTION	\$50,000		\$50,000
TOTAL PROJECT	\$290,000		\$290,000
TOTAL ESTIMATED COST OF PROJECT LESS CREDITS			\$290,000

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OF AMOUNT OF MATERIAL OR LABOR REQUIRED, THE AUTHORITY WILL BE BILLED FOR ACTUAL COST AT THE CURRENT RATES EFFECTIVE THEREOF.

EXHIBIT C-1

To Public Highway Overpass Crossing
Agreement

Railroad's Material & Force Account Estimate

DATE: 2013-02-12

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK
 BY THE
 UNION PACIFIC RAILROAD

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2013-08-13

DESCRIPTION OF WORK:
 2013 RECOLLECTIBLE PROGRAM
 YUMA SUBDIVISION
 MP 617.94
 REMOVE 2-50 TF OF CROSSING SURFACE INCLUDING SIGNAL
 PROJECT FUNDED 100% CITY, STATE, FEDERAL

PID: 82411 AWO: MP, SUBDIV: 617.94, YUMA
 SERVICE UNIT: 20 CITY: THERMAL STATE: CA

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
ENGINEERING WORK							
ENGINEERING			1400		1400		1400
TOTAL ENGINEERING			1400		1400		1400
SIGNAL WORK							
LABOR ADDITIVE 176.51%			13444		13444		13444
PERSONAL EXPENSE				4800	4800		4800
SIGNAL			7616		7616		7616
TOTAL SIGNAL			21060	4800	25860		25860
TRACK & SURFACE WORK							
ENVIROMENTAL PERMIT				10	10		10
LABOR ADDITIVE 211%			16415		16415		16415
RDXING			9740		9740		9740
TOTAL TRACK & SURFACE			26155	10	26165		26165
LABOR/MATERIAL EXPENSE			48615	4810			
RECOLLECTIBLE/UPRR EXPENSE					53425	0	
ESTIMATED PROJECT COST							53425
EXISTING REUSEABLE MATERIAL CREDIT					0		
SALVAGE NONUSEABLE MATERIAL CREDIT					0		
RECOLLECTIBLE LESS CREDITS							

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.

EXHIBIT D

To Public Highway Overpass Crossing
Agreement

Railroad's Coordination Requirements

EXHIBIT D

TO PUBLIC HIGHWAY OVERPASS CROSSING AGREEMENT

RAILROAD COORDINATION REQUIREMENTS

1.01 DEFINITIONS

Agreement:	Agreement that has been signed, or will be signed, between Railroad and Agency covering the construction and maintenance of the Project.
Agency:	County of Riverside County
AREMA:	American Railway Engineering and Maintenance-of-way Association
Contractor:	The contractor or contractors hired by the Agency to perform any project work on any portion of Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.
MUTCD:	Manual on Uniform Traffic Control Devices
Project:	Proposed construction of the new Airport Boulevard Overpass grade separated public road crossing
Railroad:	Union Pacific Railroad Company
Railroad Project Representative:	Railroad's Manager of Industry and Public Projects for this Project (see Section 1.03)
Railroad MTM Representative:	Railroad's Manager of Track Maintenance for this Project (see Section 1.03)
Requirements:	The Railroad Coordination Requirements set forth in this Exhibit.

1.02 DESCRIPTION

This Project includes construction work within Railroad's right-of-way. These Requirements describe coordination with the Railroad when work by the Contractor will be performed upon, over or under the Railroad right-of-way or may impact current or future Railroad operations. The Contractor will coordinate with the Railroad while performing the work outlined in this Agreement and shall afford the same cooperation with the Railroad as it does with the Agency. All submittals and work shall be completed in compliance with these Requirements, Railroad guidelines and requirements, AREMA recommendations and/or as directed by the Railroad Local Representative and/or the Railroad MTM Representative.

1.03 UPRR CONTACTS

The Railroad Project Representative for this project is:

*Kenneth Tom
Manager Industry & Public Projects
Union Pacific Railroad Company
2015 South Willow Avenue
Bloomington, CA 92316
phone: 909-685-2288
fax: 909-879-6289
cell: 909-213-3239*

For Railroad flagging services and track work, contact the following Railroad MTM Representative:

*Denny Gallegos
Manager Track Maintenance
Union Pacific Railroad Company
235 Luis Estrada Street
Beaumont, CA 92223
phone: 909-685-2154
cell: 909-213-7161
fax: 909-685-2165*

1.04 PLANS / SPECIFICATIONS

The plans and specifications for this Project, affecting the Railroad, are subject to the written approval by the Railroad. Changes in the plans made after the execution of the Agreement and/or the awarding of the Project to the Contractor are subject to the prior review and written approval of the Agency and the Railroad. No construction work shall commence until final stamped plans and/or changes to final stamped plans have been reviewed and approved by the Railroad in writing. The Railroad's review and approval of the Agency's and/or Contractor's plans in no way relieves the Agency and Contractor from their responsibilities, obligations and/or liabilities under this Agreement, Agency's agreement with the Contractor for the Project and/or in the separate Contractor's Right of Entry Agreement referenced in Section 1.08. Railroad's approval will be given with the understanding that the Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of Agency's and/or Contractor's plans and that any reliance by the Agency or the Contractor with respect to such plans is at the risk of the Agency and the Contractor.

1.05 UTILITIES AND FIBER OPTICS

- A. All installations shall be constructed in accordance with current AREMA recommendations and Railroad specifications and requirements. Railroad general guidelines and the required application forms for utility installations can be found on the Railroad website at <http://www.uprr.com/reus/pipeline/install.shtml>.
- B. It shall be the responsibility of the Contractor, at its expense, to make arrangements directly with utility companies involving the protection, encasement, reinforcement, relocation, replacement, removing or abandonment in place of non-railroad facilities affected by the Project. Railroad has no obligation to supply additional Railroad property for non-railroad facilities affected by this Project, nor does the Railroad have any obligation to permit non railroad facilities to be abandoned in place or relocated on Railroad's property. Any facility and/or utility that crosses Railroad right of way must be covered under an agreement with the Railroad including, without limitation, any relocations of an existing facility and/or utility.
- C. Any longitudinal fiber optic lines on Railroad right of way shall be treated as Railroad facilities. Project design may need to be altered to accommodate such facilities.
- D. Any fiber optic relocations or protections that are required due to this Project will be at the Agency's expense.

1.06 GENERAL

- A. It is essential that the proposed construction shall be performed without interference to Railroad operations and in compliance with all applicable Railroad and Federal Railroad Administration rules and regulations. The Railroad shall be reimbursed by the Contractor or Agency for train delay costs and lost revenue claims due to any delays or interruption of train operations resulting from the Contractor's construction or other activities.
- B. Track protection is required for all work equipment (including rubber tired equipment) operating within 25 feet from nearest rail. All work shall be designed and executed outside the temporary construction clearance envelope defined in Section 1.12.
- C. The Contractor is also advised that new facilities within the Project may be scheduled to be built by the Railroad and that certain Contractor's activities cannot proceed until that work is complete. The Contractor shall be aware of the limits of responsibilities, allow sufficient time in the schedule for that work to be accomplished and shall coordinate its efforts with the Railroad.

1.07 RAILROAD OPERATIONS

- A. The Contractor shall be advised that trains and/or equipment should be expected on any track, at any time, and in either direction. The Contractor shall communicate with the Railroad MTM Representative to improve the Contractor's understanding of Railroad traffic volume and operation at the Project site. The Contractor's bid shall be structured assuming intermittent track windows as defined in Section 1.07 C
- B. All Railroad tracks within and adjacent to the Project site are to be assumed as active and rail traffic over these facilities shall be maintained throughout the Project. Activities may include both through moves and switching moves to local customers. Railroad traffic and operations can occur continuously throughout the day and night on these tracks and shall be maintained at all times as defined herein. The Contractor shall coordinate and schedule the work so that construction activities do not interfere with Railroad's operations.

C. Work windows for this Project shall be coordinated with the Agency or Contractor and the Railroad Project Representative and the Railroad MTM Representative. Types of work windows include Conditional Work Windows and Absolute Work Windows, as defined below:

1. **Conditional Work Window:** A period of time in which Railroad's operations have priority over construction activities. When construction activities may occur on and adjacent to the railroad tracks within 25-feet of the nearest track, a Railroad flag person will be required. At the direction of the flag person, upon approach of a train and when trains are present on the tracks, the tracks must be cleared (i.e., no construction equipment, materials or personnel within 25-feet from the nearest active track or as directed by the Railroad MTM Representative). Conditional Work Windows are available for the project subject to Railroad's local operating unit review and approval.
2. **Absolute Work Window:** A period of time in which construction activities are given priority over Railroad's operations. During this time the designated Railroad track(s) will be inactive for train movements and may be fouled by the Contractor. Before the end of an Absolute Work Window, all Railroad tracks and signals must be completely operational for normal train operations. Also, all Railroad, Public Utilities Commission and Federal Railroad Administration requirements, codes and regulations for operational tracks must be complied with. Should the operating tracks and/or signals be affected, the Railroad will perform inspections of the work prior to placing the affected track back into service. Railroad flag persons will be required for construction activities requiring an Absolute Work Window. **Absolute Work Windows will generally not be granted. Any request will require a detailed written explanation for Railroad review and approval.**

1.08 RIGHT OF ENTRY, ADVANCE NOTICE AND WORK STOPPAGES

- A. Prior to beginning any work within the Railroad right-of-way, the Contractor shall enter into an agreement with the Railroad in the form of the Contractor's Right of Entry Agreement, attached as **Exhibit E**, or latest version thereof provided by the Railroad. There is a fee for processing of the agreement which shall be borne by the Contractor. The right of entry agreement shall specify working time frames, flagging, inspection and insurance requirements and any other items specified by the Railroad.
- B. The Contractor shall give advance notice to the Railroad as required in the Contractor's Right of Entry Agreement before commencing work in connection with construction upon or over Railroad's right-of-way and shall observe the Railroad rules and regulations with respect thereto.
- C. All work upon the Railroad right-of-way shall be done at such times and in such a manner as not to interfere with or endanger the operations of the Railroad. Whenever work may affect the operations or safety of trains, the method of doing such work shall first be submitted to the Railroad MTM Representative for approval, but such approval shall not relieve the Contractor from liability. Any work to be performed by the Contractor, which requires flagging service or inspection service, shall be deferred until the flagging protection required by the Railroad is available at the job site. See Section 1.21 for railroad flagging requirements.
- D. The Contractor shall make requests in writing to both the Railroad Project Representative and the Railroad MTM Representative for both Absolute and Conditional Work Windows, at least two weeks in advance of any work. The written request must include:
 1. Description of work to be done.
 2. The days and hours that work will be performed.
 3. The exact location of the work and proximity to the tracks.
 4. The type of window and amount of time requested.
 5. The designated contact person for the Contractor.

The Contractor shall provide a written confirmation notice to the Railroad MTM Representative at least fifteen (15) days prior to commencing work in connection with the approved work windows when work will be performed within **25 feet of any track center line**. All work shall be performed in accordance with previously approved work plans.

- E. Should a condition arise from, or in connection with, the work which requires immediate and unusual actions to be made to protect operations and property of the Railroad, the Contractor shall undertake such actions. If, in the judgment of the Railroad MTM Representative, such actions are insufficient, the Railroad MTM Representative may require or provide such actions as deemed necessary. In any event, such actions shall be at the Contractor's expense and without cost to the Railroad. The Railroad or Agency have the right to order the Contractor to temporarily cease operations in the event of an emergency or if, in the opinion of the Railroad MTM Representative, the Contractor's operations may inhibit the

Railroads operations. In the event such an order is given, the Contractor shall immediately notify the Agency of the order.

1.09 INSURANCE

The Contractor shall not begin work within the Railroad's right-of-way until the Railroad has been furnished the insurance policies, binders, certificates and endorsements required by the Contractor's Right-of-Entry Agreement, and the Railroad Project Representative has advised the Agency that such insurance is in accordance with such Agreement. The required insurance shall be kept in full force and effect during the performance of work and thereafter until the Contractor removes all tools, equipment, and material from Railroad property and cleans the premises in a manner reasonably satisfactory to the Railroad.

1.10 RAILROAD SAFETY ORIENTATION

All personnel employed by the Agency, Contractor and all subcontractors must complete the Railroad's course "Orientation for Contractor's Safety" and be registered prior to working on Railroad property. This orientation is available at www.contractororientation.com. This course is required to be completed annually. The preceding training does not apply for longitudinal fiber optic installations.

1.11 COOPERATION

The Railroad shall cooperate with the Contractor in the scheduling of Project work with the understanding that Railroad's train operations at the job site shall have priority over the Contractor's activities.

1.12 CONSTRUCTION CLEARANCES

The Contractor shall abide by the twenty-one (21) foot temporary vertical construction clearance defined in section 4.4.1.1 and twelve (12) foot temporary horizontal construction clearance defined in section 4.4.1.2 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects. It shall be the Contractor's responsibility to obtain such guidelines from the Agency or Railroad.

Reduced temporary construction clearances, which are less than construction clearances defined above, will require special review and approval by the Railroad.

Any proposed variance on the specified minimum clearances due to the Contractor's operations shall be submitted to the Railroad Project Representative through the Agency at least thirty (30) days in advance of the work. No work shall be undertaken until the variance is approved in writing by the Railroad Project Representative.

1.13 SUBMITTALS

- A. Construction submittals and Requests for Information (RFI) shall be submitted per Section 3.5 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects.
- B. The minimum review times, as indicated in tables 3-1 and 3-2 of Section 3.5 of the BNSF and UPRR Guidelines for Railroad Grade Separation Projects, should be anticipated for review of all submittals. Guidelines for Railroad Grade Separation Projects, should be anticipated for review of all submittals. The details of the construction affecting the Railroad tracks and property, not already included in the contract plans, shall be submitted by the Agency to the Railroad Project Representative for the Railroad's review and written approval before such construction is undertaken. The Railroad shall not be liable to Agency, Contractor, and or any other person or entity if the Railroad's review exceeds a four-week review time.
- C. As Built Submittals shall be submitted per Section 3.6 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects.

1.14 MAINTENANCE OF PROPER DRAINAGE AND DAMAGE TO RAILROAD FACILITIES

- A. The Contractor, at its expense, shall be required to maintain all ditches and drainage structures free of silt or other obstructions which may result from the Contractor's operations and to repair and restore any Railroad property, tracks and facilities of Railroad and/or its tenants.
- B. The Contractor must submit a proposed method of erosion control and have the method reviewed and approved by the Railroad prior to beginning any grading on the project site. Erosion control methods must comply with all applicable local,

state and federal regulations.

**1.15 SITE INSPECTIONS BY RAILROAD PROJECT REPRESENTATIVE,
RAILROAD MTM REPRESENTATIVE OR RAILROAD'S CONTRACTOR**

- A. In addition to the office reviews of construction submittals, site observations will be performed by the Railroad Project Representative, Railroad MTM Representative or Railroad's Contractor at significant points during construction per Section 4.11 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects.
- B. Site inspections are not limited to the milestone events listed in the guidelines. Site visits to check the progress of work may be performed at any time throughout the construction process as deemed necessary by the Railroad.
- C. A detailed construction schedule, including the proposed temporary horizontal and vertical clearances and construction sequence for all work to be performed, shall be provided by the Contractor to the Agency for submittal to the Railroad's Project Representative for review and approval prior to commencement of work. This schedule shall also include the anticipated dates on which the above listed events will occur. This schedule shall be updated for all critical listed events as necessary but at least monthly so that site visits may be scheduled.

1.16 RAILROAD REPRESENTATIVES

- A. Railroad representatives, conductors, flag persons or watch persons will be provided by the Railroad at the expense of the Agency or Contractor (as stated elsewhere in these bid documents) to protect Railroad facilities, property and movements of its trains and engines. In general, the Railroad will furnish such personnel or other protective services as follows:
 - 1. When any part of any equipment or object, such as erection or construction activities, is standing or being operated within 25-feet, measured horizontally from centerline, of any track on which trains may operate.
 - 2. For any excavation below the elevation of track subgrade when, in the opinion of the Railroad MTM Representative, the track or other Railroad facilities may be subject to settlement or movement.
 - 3. During any clearing, grubbing, excavation or grading in proximity to Railroad facilities which, in the opinion of the Railroad MTM Representative, may affect Railroad facilities or inhibit operations.
 - 4. During any Contractor's operations when, in the opinion of the Railroad MTM Representative, the Railroad facilities, including, but not limited to, tracks, buildings, signals, wire lines or pipe lines, may be endangered.
- B. The Contractor shall arrange with the Railroad Local Representative to provide the adequate number of flag persons to accomplish the work.

1.17 WALKWAYS REQUIRED

Parallel to the outer side of each exterior track of multiple operated track and on each side of single operated track, an unobstructed continuous space suitable for trainman's use in walking along trains, extending in width not less than twelve feet (12') perpendicular from centerline of track, shall be maintained. Any temporary impediments to walkways and track drainage encroachments or obstructions allowed during working hours must be covered, guarded and/or protected as soon as practical. Walkways with railings shall be constructed by the Contractor over open excavation areas when in close proximity of track, and railings shall not be closer than 9' perpendicular from the center line of tangent track or 9' - 6" horizontal from curved track.

1.18 COMMUNICATIONS AND SIGNAL LINES

If required, the Railroad, at Agency's expense, will rearrange its communications and signal lines, grade crossing warning devices, train signals, tracks and facilities that are in use and maintained by Railroad forces in connection with its operation. This work by the Railroad will be done by its own forces or by contractors under a continuing contract and may or may not be a part of the work under this contract.

1.19 TRAFFIC CONTROL

The Contractor's operations which control traffic across or around Railroad facilities shall be coordinated with and approved by the Railroad MTM Representative and shall be in compliance with the MUTCD.

1.20 CONSTRUCTION EXCAVATIONS; CALL BEFORE YOU DIG NUMBER

- A. The Contractor shall be required to take special precautions and care in connection with excavating and shoring. Excavations for construction of footings, piers, columns, walls or other facilities that require shoring shall comply with requirements of OSHA, AREMA and Railroad "Guidelines for Temporary Shoring".
- B. In addition to calling the "811" number and/or the local "one call center", the Contractor shall call the Railroad's "Call Before Your Dig" number at least 48 hours prior to commencing work at 1-800-336-9193 during normal business hours (6:30 a.m. to 8:00 p.m. Central Standard Time, Monday through Friday, except holidays - also a 24 hour, 7 day a week number for emergency calls) to determine location of fiber optics. If a telecommunications system is buried anywhere on or near Railroad property, the Contractor will co-ordinate with the Railroad and the Telecommunication Company(ies) to arrange for relocation or other protection of the system prior to beginning any work on or near Railroad property. The determination of whether fiber optics will be affected by the Project shall be made during the initial design phase of the Project.
- C. The Railroad does not allow temporary at grade crossings unless absolutely necessary and there is no alternative route available to contractor to access the project site. Alternative plans should be considered to avoid crossing Railroad tracks at grade.

1.21 RAILROAD FLAGGING

Performance of any work by the Contractor in which person(s) or equipment will be within twenty-five (25) feet of any track, or that any object or equipment extension (such as, but not limited to, a crane boom) will reach within twenty-five (25) feet of any track, require railroad flagging services or other protective measures. The Contractor shall give an advance notice to the Railroad as required in the Contractor's Right of Entry Agreement before commencing any such work, allowing the Railroad to determine the need for flagging or other protective measures which ensure the safety of Railroad's operations, employees and equipment. Contractor shall comply with all other requirements regarding flagging services covered by the Contractor's Right of Entry Agreement. Any costs associated with failure to abide by these requirements will be borne by the Contractor.

The estimated pay rate for each flag person is \$1,200.00 per day for a(n) 8-hour work day with time and one-half for overtime, Saturdays, Sundays; double time and one-half for holidays. Flagging rates are set by the Railroad and are subject to change due to, but not limited to, travel time, setup plus, per diem and rest time (if work is required at night).

1.22 CLEANING OF RIGHT-OF-WAY

The Contractor shall, upon completion of the work to be performed within the right-of-way and/or properties of the Railroad and adjacent to its tracks, wire lines and other facilities, promptly remove from the Railroad right-of-way all Contractor's tools, implements and other materials whether brought upon the right-of-way by the Contractor or any subcontractors employee or agent of Contractor or of any subcontractor, and leave the right-of-way in a clean and presentable condition to the satisfaction of the Railroad.

1.23 CONTRACTOR'S RESPONSIBILITY OF SUPERVISION

The Contractor, at its expense, shall adequately supervise all work to be performed by the Contractor. Such responsibility shall not be lessened or otherwise affected by Railroad's approval of plans and specifications, or by the presence at the work site of the Railroad Project Representative, Railroad MTM Representative or any other Railroad representative or Railroad contractor providing inspection services, or by the compliance by the Contractor with any requests or recommendations made by such representatives. The Contractor will give due consideration to suggestions and recommendations made by such representatives for the safety and protection of the Railroad's property and operations.

1.24 USE OF EXPLOSIVES AT PROJECT SITE PROHIBITED

The Contractor's use of explosives at the Project site is expressly prohibited unless authorized in advance in writing by the Railroad Project Representative.

EXHIBIT E

To Public Highway Overpass Crossing
Agreement

Cover Sheet for the
Contractor's Right of Entry Agreement

UPRR Folder No.: Folder Number
UPRR Audit No.: Audit Number

CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ day of _____, 20____, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and

(NAME OF CONTRACTOR)
a _____ corporation ("Contractor").
(State of Corporation)

RECITALS:

Contractor has been hired by the *Name of Public Body* ("X") to perform work relating to the Purpose (the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of the Railroad's Mile Post Mile Post on the Railroad's Name of Subdivision in or near City, County & State, as such location is in the general location shown on the Railroad Location Print marked **Exhibit A**, and as specified on the Detailed Prints collectively marked **Exhibit A-1**, each attached hereto and hereby made a part hereof, which work is the subject of a contract dated _____ between the Railroad and the X.

(Date of Contract)

The Railroad is willing to permit the Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this Agreement.

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between Railroad and Contractor, as follows:

ARTICLE 1 - DEFINITION OF CONTRACTOR.

For purposes of this Agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

ARTICLE 2 - RIGHT GRANTED; PURPOSE.

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of

performing the work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C & D.

The General Terms and Conditions contained in **Exhibit B**, the Insurance Requirements contained in **Exhibit C**, and the Minimum Safety Requirements contained in **Exhibit D**, each attached hereto, are hereby made a part of this Agreement.

ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.

- A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.
- B. Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):
MTM *MSM*
- C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.

The Contractor, at its expense, shall provide on a monthly basis a detailed schedule of work to the Railroad Representative named in Article 4B above. The reports shall start at the execution of this Agreement and continue until this Agreement is terminated as provided in this Agreement or until the Contractor has completed all work on Railroad's property.

ARTICLE 6 - TERM; TERMINATION.

- A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until _____, unless sooner terminated as herein
(Expiration Date)
provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.
- B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

ARTICLE 7 - CERTIFICATE OF INSURANCE.

- A. Before commencing any work, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement, and (ii) the insurance endorsements obtained by each subcontractor as required under Section 12 of **Exhibit B** of this Agreement.
- B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

*Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, MS 1690
Omaha, NE 68179-1690
UPRR Folder No.: Folder Number*

ARTICLE 8 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

ARTICLE 9 - CROSSINGS.

No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

ARTICLE 10 - EXPLOSIVES.

Explosives or other highly flammable substances shall not be stored or used on Railroad's property without the prior written approval of Railroad.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY
(Federal Tax ID #94-6001323)

By: _____
PAUL G. FARRELL
Senior Manager Contracts

(Name of Contractor)

By _____
Printed Name: _____
Title: _____

SAMPLE

EXHIBIT A

Exhibit A will be a print showing the general location of the work site.

EXHIBIT B

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

GENERAL TERMS & CONDITIONS

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

A. Contractor agrees to notify the Railroad Representative at least thirty (30) working days in advance of Contractor commencing its work and at least thirty (30) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (whether recorded or unrecorded and including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.

A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.

B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

Section 4. LIENS.

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

A. Fiber optic cable systems may be buried on Railroad's property. Protection of the 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. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.

B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 6. PERMITS - COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 7. SAFETY.

A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

- B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.
- C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 8. INDEMNITY.

- A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees (individually an "Indemnified Party" or collectively "Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.
- B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.
- C. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Indemnified Parties under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.
- D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against any Indemnified Party.
- E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

Section 9. RESTORATION OF PROPERTY.

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

Section 10. WAIVER OF DEFAULT.

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

Section 11. MODIFICATION - ENTIRE AGREEMENT.

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor

and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

Section 12. ASSIGNMENT - SUBCONTRACTING.

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage; (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

EXHIBIT C

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

INSURANCE REQUIREMENTS

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

A. COMMERCIAL GENERAL LIABILITY INSURANCE. Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

B. BUSINESS AUTOMOBILE COVERAGE INSURANCE. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE. Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state where the work is being performed.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

D. RAILROAD PROTECTIVE LIABILITY INSURANCE. Contractor must maintain "Railroad Protective Liability" (RPL) insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement. Contractor shall provide this Agreement to Contractor's insurance agent(s) and/or broker(s) and Contractor shall instruct such agent(s) and/or broker(s) to procure the insurance coverage required by this Agreement. A BINDER STATING THE POLICY IS IN PLACE MUST BE SUBMITTED TO RAILROAD BEFORE THE WORK MAY COMMENCE AND UNTIL THE ORIGINAL POLICY IS FORWARDED TO UNION PACIFIC RAILROAD.

E. UMBRELLA OR EXCESS INSURANCE. If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

F. POLLUTION LIABILITY INSURANCE. Pollution liability coverage must be included when the scope of the work as defined in the Agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

If required, coverage may be provided in separate policy form or by endorsement to Contractors CGL or RPL. In any form coverage must be equivalent to that provided in ISO form CG 24 15 "Limited Pollution Liability Extension Endorsement" or CG 28 31 "Pollution Exclusion Amendment" with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

OTHER REQUIREMENTS

G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.

H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.

I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.

J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.

L. The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

I. CLOTHING

A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Contractor's employees must wear:

- (i) Waist-length shirts with sleeves.
- (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
- (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.

B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.

C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. PERSONAL PROTECTIVE EQUIPMENT

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers
 - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. ON TRACK SAFETY

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized workwear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. EQUIPMENT

A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:

- Familiar and comply with Railroad's rules on lockout/tagout of equipment.
- Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
- Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.

B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.

C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.

D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. GENERAL SAFETY REQUIREMENTS

A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.

B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.

C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.

D. All employees comply with the following safety procedures when working around any railroad track:

- (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
- (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
- (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
- (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
- (v) Before stepping over or crossing tracks, look in both directions first.
- (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.

E. All employees must comply with all federal and state regulations concerning workplace safety.

EXHIBIT F

To Public Highway Overpass Crossing
Agreement

Cover Sheet for the
Form of Easement Deed

RECORDING REQUESTED BY:
STATE OF CALIFORNIA

When Recorded, Mail To:

Department of Transportation
District
Mailing Address
Attn: Right of Way Dept.

**EASEMENT
DEED**

District	County	Route	Postmile	Number

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, (hereinafter, "GRANTOR"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants to the STATE OF CALIFORNIA, Department of Transportation, a public agency, its successors and assigns (hereinafter, "STATE"), a non-exclusive easement (hereinafter "Easement") for the purpose of constructing, reconstructing, upgrading, replacing, removing, inspecting, maintaining, repairing and operating an overhead bridge and highway only for use as a public crossing (hereinafter "Structure"), in the County of County, State of California over and across GRANTOR's railroad tracks and that certain real property described in **Exhibit A**, attached hereto and hereby made a part hereof (hereinafter the "Property"), at GRANTOR's Mile Post Mile Post, DOT No. DOT Number on GRANTOR's Subdivision.

This conveyance is made for the purpose of a highway grade separation and GRANTOR hereby releases and relinquishes to the STATE any and all rights of access directly to and from the Structure from and to GRANTOR's property.

GRANTOR acknowledges that the Easement and its use as a public crossing are compatible with railroad operations, within the meaning of California Code of Civil Procedure section 1240.510, so long as they do not impede railroad operations, create an undue safety risk, or interfere with GRANTOR's common carrier obligations as regulated by the Surface Transportation Board or by any successor agency.

GRANTOR further grants to STATE the non-exclusive right of ingress to and egress from the Property over and across GRANTOR's other property, subject to advance notification and coordination with GRANTOR to ensure safety and the compatibility of GRANTOR's other property for such ingress and egress (which coordination by GRANTOR shall not be unreasonably withheld), and provided further that such right of ingress and egress shall be in accordance with the terms and provisions of the parties' separate Construction and Maintenance Agreement dated C&M Date, and as thereafter amended by mutual agreement, and known in GRANTOR's records as Real Estate Folder Folder Number (the "C & M Agreement").

RESERVING unto GRANTOR, its successors and assigns all rights in and to the Property and all uses of the Property that are not inconsistent with STATE's use and enjoyment of the Easement, including, but not limited to the following:

- (1) All rights in and to airspace at an elevation higher than a plane parallel with and thirty (30) feet above the roadway surface of the Structure as originally constructed.

Number

- (2) The right to construct, reconstruct, upgrade, place, replace, remove, inspect, maintain, repair, alter, renew, improve and operate pipelines, utility lines, track, railroad facilities and communication lines above, below and on the surface of the Property. Communication lines shall include, without limitation, transmission by conduit, fiber optics, cable, wire or other means of electricity, voice data, video, digitized information, or other materials or information.
- (3) All rights as may be required to investigate and remediate environmental contamination and hazards affecting the Property.
- (4) All oil, oil rights, minerals, mineral rights, natural gas, natural gas rights, and other hydrocarbons by whatsoever name known that may be within the Property together with the perpetual right of drilling, mining, exploring and operating therefore and removing the same from the Property, including the right to whip-stock or directionally drill and mine from lands other than the Property hereinbefore described, oil or gas wells, tunnels and shafts into, through or across the subsurface of the Property, and to bottom such whip-stocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof, and to re-drill, re-tunnel, equip, maintain, repair, deepen and operate any such wells, or mines, without, however, the right to drill, mine, explore and operate through the surface or the upper one hundred (100) feet of the subsurface of the Property or otherwise in such manner as to endanger the safety of any Structure that may be constructed on the Property.

This Easement is SUBJECT and SUBORDINATE to the following:

- (1) The terms and conditions of the C & M Agreement.
- (2) All prior and outstanding licenses, leases, easements, restrictions, conditions, covenants, liens and claims of title which may affect the Property, whether recorded or both unrecorded and known by Grantor, including, but not limited to, all easements for petroleum and/or hydrocarbon pipelines (including, but not limited to, those owned by SFPP, L.P., and/or its successors or assigns), and easements and licenses for telephone, electric and fiber optic lines (collectively "Prior Rights"), and, if applicable, further subject to the provisions in **Exhibit B**, attached hereto and hereby made a part hereof. The word "grant" as used in this Easement shall not be construed as a covenant against the existence of any Prior Rights affecting the Property.
- (3) The continuing right and obligation of GRANTOR, its successors and assigns, to use the Property in the performance of its duties as a common carrier, including, but not limited to, the right to construct, reconstruct, maintain and operate existing or any additional railroad tracks, facilities and appurtenances thereto in, upon, over, along and across the Property in such manner as may be consistent with STATE's use and enjoyment of the easement herein granted; **provided, further that in the event the Property is transferred to a non-transportation entity, such transferee's use of the Property shall be subject to the following limitations and conditions:**
 - (a) No use may be made of the Property which would impair the full use and safety of the Structure, or would otherwise interfere with the free flow of traffic thereon or would unreasonably impair the maintenance thereof.
 - (b) No use may be made of the Property for the manufacture or storage of flammable, volatile, explosive or corrosive substances, and such substances shall not be brought onto said land except in such quantities as are normally required for the maintenance operations of occupants of said land and except as may be transported by rail or pipelines. Installation of any pipelines by a non-railroad or other non-transportation entity, or pipelines not otherwise subject to Federal and/or State regulations and safety standards, carrying volatile substances shall have the written approval of the STATE as to the safety and compatibility with the Easement and such discretion shall not be exercised in a capricious or arbitrary manner. The use of any such substances shall be in conformance with all applicable code requirements.

Number

- (c) No hazardous or unreasonably objectionable smoke, fumes, vapors, dust or odors shall be permitted, which would adversely affect the use or maintenance of said Structure or the traveling public thereon.
- (d) No building of combustible construction shall hereafter be constructed on the Property. The STATE shall be given the opportunity to review and approve plans for any construction within the Property sixty (60) days prior to said construction. No buildings, no permanent structures, and no advertising displays, may be constructed within eight (8) feet of the undersides nor within fifteen (15) feet (measured horizontally) of the sides of the Structure without the express written approval of the STATE. The STATE shall have the discretion to determine whether such proposed construction will be inimical to or incompatible with the full enjoyment of the public rights in the Easement or against the public interest, but such discretion shall not be exercised in a capricious or arbitrary manner.

If the Easement, or any portion thereof, shall cease to be needed for public crossing purposes, then the STATE shall vacate such portion(s) of the Easement in accordance with any and all applicable State and Federal laws. In addition, STATE, at STATE's sole expense, shall demolish and remove the Structure in accordance with the then current standards of GRANTOR, including, but not limited to engineering, land use and railroad operating standards, and with the terms and provisions of the C & M Agreement.

Consideration for this grant includes compensation for damages to the value of the remainder of GRANTOR's property, if any, caused by the existence of the Easement herein granted and/or by the construction or maintenance of the Structure. GRANTOR hereby waives any additional claim for such damages to the value of the remainder, if any. This waiver shall not apply to compensation for any physical damages to GRANTOR's remaining property, if any, caused by STATE.

In WITNESS WHEREOF, GRANTOR has caused its corporate name to be hereunder subscribed and its corporate seal to be affixed hereto, this ____ day of _____, 20____.

ATTEST:

UNION PACIFIC RAILROAD COMPANY
A Delaware Corporation

By _____
BEVERLY J. KUBAT
Assistant Secretary

By _____
JAMES P. GADE
General Director Contracts

ACKNOWLEDGMENT

STATE OF NEBRASKA)
) ss
COUNTY OF DOUGLAS)

On this _____ day of _____, 20____, before me, Paul G. Farrell, a Notary Public in and for said County and State, personally appeared James P. Gade and Beverly J. Kubat who are the General Director Contracts and the Assistant Secretary, respectively, of Union Pacific Railroad Company, a Delaware corporation, and who are personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to in the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Paul G. Farrell
Notary Public in and for
the State of Nebraska

↑ (Affix Seal Here) ↑

My Commission Expires: January 29, 2014

THIS IS TO CERTIFY, That the State of California, acting by and through the Department of Transportation (pursuant to Government Code Section 27281), hereby accepts for public purposes the real property described in the within deed and consents to the recordation thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 20____.

Director of Transportation

By: _____
Attorney in Fact

EXHIBIT A

TO EASEMENT DEED

LEGAL DESCRIPTION

EXHIBIT B

TO EASEMENT DEED

PROVISIONS OF PRIOR RIGHTS

STATE shall be responsible to GRANTOR and to SFPP, L.P., and/or its successors and assigns as the lawful holder of Prior Rights (as defined hereinbefore) for (1) damages caused by any interference with an existing facility maintained pursuant to such Prior Rights and, (2) when conducting excavation, installation or construction activities within ten (10) feet of such an existing facility, for the reasonable cost of any reasonably necessary protection measures taken by SFPP, L.P., and/or its successors and assigns, as a result of or arising out of STATE's use of the easement granted herein (including, without limitation, inspection and monitoring of STATE's activities).

Notwithstanding anything to the contrary in the foregoing, STATE shall not be responsible to SFPP, L.P., and/or its successors and assigns relating to initially locating its facility(ies). In addition, STATE shall not be responsible to SFPP, L.P., and/or its successors and assigns for costs otherwise relating to locating or potholing the holder's facility, or for the cost of protection measures (including, without limitation, inspection and monitoring of STATE's activities), except where STATE is conducting excavation, installation or construction activities within ten (10) feet of a facility owned by SFPP, L.P., and/or its successors and assigns. SFPP, L.P., and/or its successors or assigns, shall be an express third-party beneficiary of this provision in any location where SFPP, L.P., and/or its successors or assigns, owns or operates pipeline facilities pursuant to Prior Rights that are subject to this provision and, accordingly, may enforce this provision directly against STATE.