

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



ITEM
3.14
(ID # 6004)

MEETING DATE:

Tuesday, February 6, 2018

FROM : ECONOMIC DEVELOPMENT AGENCY (EDA) AND TRANSPORTATION LAND
MANAGEMENT AGENCY -TRANSPORTATION DEPARTMENT :

SUBJECT: ECONOMIC DEVELOPMENT AGENCY (EDA) AND TRANSPORTATION LAND
MANAGEMENT AGENCY -TRANSPORTATION DEPARTMENT: Approval of
Public Highway At-Grade Crossing Agreement, Wireline Crossing Agreement and
Easement Deed for a Portion of Assessor's Parcel Number 749-050-021 for the
Grapefruit Boulevard and 62nd Avenue Traffic Signal Project in the Mecca Area,
CEQA Exempt, District 4; [Total Cost - \$18,505; E County DIF Fund -100%] (Clerk to
File Notice of Exemption)

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that the proposed project is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301(c); and
2. Approve the attached Public Highway At-Grade Crossing Agreement between the County of Riverside and Union Pacific Railroad Company, a Delaware corporation, located at Railroad's Milepost 621.65 in the Mecca area and authorize the Chairman of the Board to execute the agreement on behalf of the County; and
3. Approve the attached Wireline Crossing Agreement between the County of Riverside and Union Pacific Railroad Company, a Delaware corporation, located at Railroad's Milepost 621.65 in the Mecca area and authorize the Chairman of the Board to execute the agreement on behalf of the County; and

ACTION: Policy

Robert Field, Assistant County Executive Officer/EDA

12/20/2017

Patricia Romo, Director of Transportation

1/24/2018

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Tavaglione, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington, Perez and Ashley
Nays: None
Absent: None
Date: February 6, 2018
xc: EDA, Transp., Recorder

Kecia Harper-Ihem
Clerk of the Board

By:

Deputy

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

RECOMMENDED MOTION: That the Board of Supervisors:

4. Approve the Non-Exclusive Easement Deed between Union Pacific Railroad Company, a Delaware corporation and the County of Riverside located at Railroad's Milepost 621.66 in the Mecca area and authorize the Chairman of the Board to execute the deed on behalf of the County; and
5. Authorize the Assistant County Executive Officer/Economic Development Agency (EDA) or his designee to execute any other documents and administer all actions necessary to complete the transaction; and
6. Authorize and allocate the amount of \$10,500 for the non-exclusive easement to Parcel 0084-001A located within a portion of Assessor's Parcel Number 749-050-021; and
7. Authorize and allocate the amounts of \$2,800 for a one-time license fee and \$505 for administrative handling charge for the Wireline Crossing Agreement; and
8. Ratify and authorize reimbursement to EDA-Real Estate (RE) in the amount not-to-exceed \$4,700 for due diligence and staff expenses; and
9. Direct the Clerk of the Board to file the Notice of Exemption with the County Clerk within five days of the approval by the Board.

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$18,505	\$ 0	\$18,505	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: East County DIF Fund-100%			Budget Adjustment:	No
			For Fiscal Year:	2017/18

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The County of Riverside Transportation Department, as the lead agency under CEQA, is proposing to install a traffic signal to improve the safety at the intersection of Grapefruit Boulevard and 62nd Avenue and the adjacent Union Pacific Railroad at-grade crossing in the Mecca area (Project). The Vicinity Map of the Project is identified in Exhibit A attached.

Pursuant to CEQA, Transportation staff conducted a review of the proposed project and determined that the project, including the temporary construction access, is categorically exempt from the provisions of CEQA pursuant to CEQA Guidelines Section 15301(c).

The Economic Development Agency-Real Estate Division (EDA-RE) has settled with Union Pacific Railroad for the non-exclusive easement for the price of \$10,500. The Public Highway At-Grade Crossing Agreement is for the County to widen and improve 62nd Avenue within the railroad right-of-way and pay Union Pacific Railroad to upgrade both at-grade crossing and track detection facilities.

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

In addition, there is a one time license fee of \$2,800 and an administrative handling charge of \$505 to process the Wireline Crossing Agreement between the County and Union Pacific. The Wireline Agreement is to allow the County to install underground conduit across the railroad track. Finally, there are costs of \$4,700 associated with this transaction which includes Preliminary Title Report, county appraisal, and EDA Real Property staff time.

Impact on Citizens and Businesses

Installation of the traffic signal will reduce the potential for vehicle and pedestrian conflicts, thus improving public safety in the area.

SUPPLEMENTAL:

Additional Fiscal Information

The following summarizes the funding necessary for the Public Highway At-Grade Crossing Agreement, which includes the Easement Deed as well as the Wireline Crossing Agreement located at the Railroad's Mile Post 621.65, more fully described in the table below:

Public Highway At-Grade Crossing Agreement located at Railroad's Mile Post 621.65 (Non-Exclusive Easement Deed for Parcel 0084-001A)	\$10,500
Wireline Crossing Agreement (One-Time License Fee)	2,800
Administrative Handling Charge	505
Preliminary Title Report	450
County Appraisal Costs	2,250
EDA Real Property Staff Time	2,000
Total Estimated Acquisition Costs (Not-to-Exceed)	\$18,505

The transaction costs in the amount of \$4,700 included staff time to allow for the negotiation process as well as coordination and preparation of necessary documents to complete the transaction.

All costs associated with the Public Highway At-Grade Crossing Agreement and Wireline Crossing Agreement are fully funded by the DIF Fund 30502 100%. No net County costs will be incurred as a result of this transaction. These charges are estimated and only actual amounts will be charged to the Project.


Attachments:

- Exhibit A - Vicinity Map
- Notice of Exemption
- (3) Public Highway At-Grade Crossing Agreement
- (3) Wireline Crossing Agreement

RF:HM:PR::VC:VY:SV:ra 459TR 19.330 13732
Transportation Work Order No. C3-0084
MinuteTrak:6004

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


Nehini Basua, Principal Management Analyst 1/29/2018


Gregory F. Priamos, Director County Counsel 12/21/2017

COUNTY OF RIVERSIDE
TRANSPORTATION DEPARTMENT

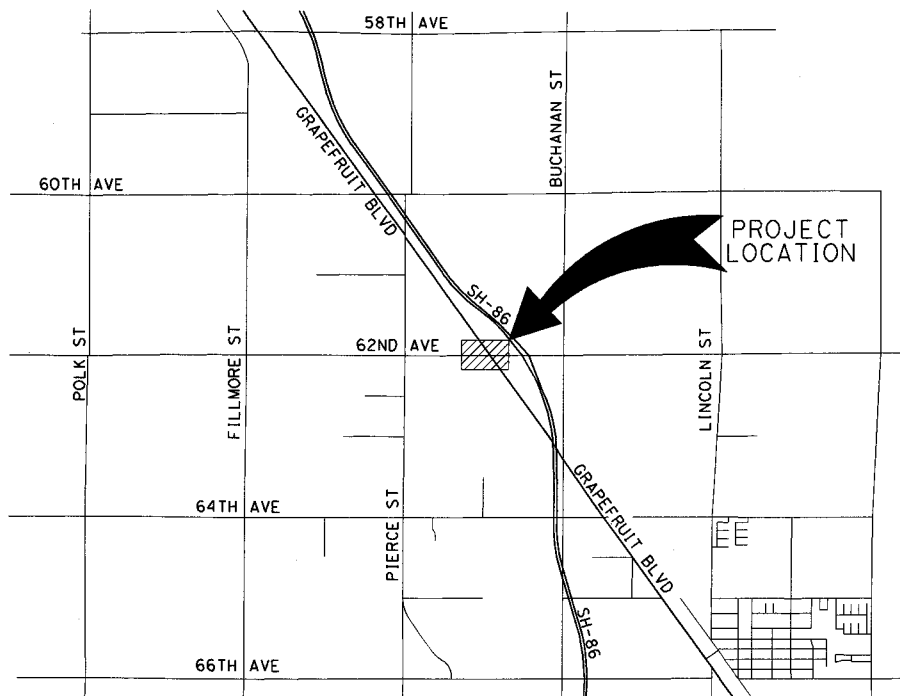
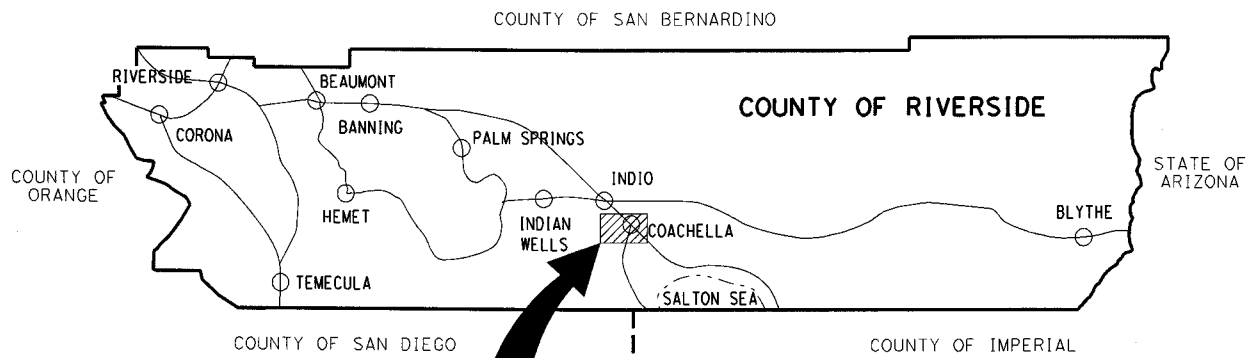
GRAPEFRUIT BOULEVARD & 62ND AVENUE

TRAFFIC SIGNAL PROJECT

MECCA AREA

PROJECT No. C3-0084

FEDERAL AID No. HSIP-5956 (236)

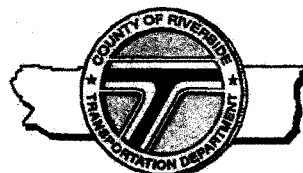


VICINITY MAP

TOWNSHIP 7S RANGE 8E SECTION 1
COUNTY ROAD BOOK PAGE No. 230



COUNTY OF RIVERSIDE
TRANSPORTATION AND
LAND MANAGEMENT AGENCY



Juan C. Perez, P.E., T.E.
 Director of Transportation and
 Land Management

Transportation Department

Patricia Romo, P.E.
 Assistant Director of Transportation

Original Negative Declaration/Notice of
 Determination was routed to County
 Clerks for posting on.

NOTICE OF EXEMPTION

2/7/18
 Date

bb
 Initial

July 31, 2017

PROJECT TITLE: Grapefruit Blvd & 62 Avenue Traffic Signal Project
 (W.O. # ZC30084C, Task Code #Z1530)

PROJECT SPONSOR: Riverside County Transportation Department

PROJECT LOCATION: Unincorporated Community of Mecca, California, Riverside County

SUPERVISORIAL DISTRICT: Supervisorial District 4

PROJECT DESCRIPTION: **Project Background:** Grapefruit Boulevard is a two lane road that travels in the north-south directions with 12' wide through lanes and 230' of right-of-way. 62nd Avenue is a two lane road that travels in the east- west directions with 12' wide lanes and 60' right-of-way. The area in the immediate vicinity is undeveloped. Construction improvements will take place 850' (North, South, East, and West), from the intersection of Grapefruit Boulevard & 62nd Avenue.

The traffic signal installation will assign vehicle and pedestrian right of way to improve intersection safety for roadway users. Addition of left-turn lanes on 62nd Avenue for both eastbound and westbound directions will improve safety and capacity for roadway users. Addition of right-turn lane on Grapefruit Boulevard for northbound direction will allow the traffic signal to run under limited service during railroad preemption. The proposed improvements will improve the operation and safety of the intersection and the adjacent UPRR at-grade crossing.

Scope of Work: Construction activities and improvements will include installing a new traffic signal, associated intersection improvements, at-grade railroad crossing improvements, new curb/gutter, installation of a new storm drain pipe to lengthen existing storm drain system to accommodate pavement widening, as well as installation of new handicap ramps, and other incidental work including signs and markings. The traffic signal installation will assign vehicle and pedestrian right-of-way to improve intersection safety for roadway users. The addition of left-turn lanes on 62nd Avenue for both eastbound and westbound directions will improve safety

and capacity for roadway users. The addition of a right-turn lane on Grapefruit Boulevard for the northbound direction will allow the traffic signal to run under limited service during railroad preemption. The proposed improvements will improve the operation and safety of the intersection and the adjacent railroad at-grade crossing. Special Provisions will include restrictions on construction parking, protection for working adjacent to existing trees, vegetation and power poles, as well as water quality measures (if needed).

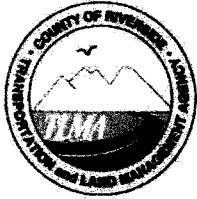
The Riverside County Transportation Department Staff conducted a review of the above referenced project and has determined that the proposal qualifies for a Class 1 Categorical Exemption per the California Environmental Quality Act (CEQA) Guidelines, Section 15301 (c), Article 19, commencing with Section 15300.

Per Section 15301 (c) of the CEQA Guidelines, Class 1 projects consist of the operation, repair and maintenance of existing public facilities, such as highways, streets, sidewalks, gutters, bicycle and pedestrian trails and similar facilities. Thus, the project proposal is a Class 1 operation and maintenance project which will involve the installation of: 1) a new traffic signal; 2) associated intersection improvements; 3) at-grade railroad crossing improvements; 4) new curb/gutter; 5) a new storm drain pipe to lengthen the existing storm drain system to accommodate pavement widening; 6) new handicap ramps and other incidental work including signs and markings.

The Riverside County Transportation Department has found that the above-described project is exempt from the provisions of the California Environmental Quality Act (CEQA), based on the following: California Environmental Quality Act Guidelines, Section 15301 (c)

By: Marcia Frances Rose, Senior Transportation Planner

Signed: *Russell Williams*
Russell Williams, Environmental Division Manager



COUNTY OF RIVERSIDE
TRANSPORTATION AND
LAND MANAGEMENT AGENCY



Juan C. Perez, P.E., T.E.
*Director of Transportation and
 Land Management*

Transportation Department

Patricia Romo, P.E.
Assistant Director of Transportation

RIVERSIDE COUNTY CLERK & RECORDER
AUTHORIZATION
TO BILL
BY JOURNAL VOUCHER

-TO BE FILLED IN BY SUBMITTING AGENCY-

AUTHORIZATION NUMBER: W.O.# ZC30084C Task Code Z1530

AMOUNT: \$50.00

DATE: July 31, 2017

AGENCY: Riverside County Transportation Department

THIS AUTHORIZES THE COUNTY CLERK & RECORDER TO ISSUE A VOUCHER FOR PAYMENT OF ALL FILING AND HANDLING FEES FOR THE ACCOMPANYING DOCUMENT(S).

NUMBER OF DOCUMENTS INCLUDED: One (1)

AUTHORIZED BY: Russell Williams, Environmental Division Manager

Signature: *Russell Williams*

PRESENTED BY: Marcia Frances Rose, Senior Transportation Planner

-TO BE FILLED IN BY COUNTY CLERK-

ACCEPTED BY: -

DATE: -

RECEIPT # (S) -

After Recording, Mail To:
ECONOMIC DEVELOPMENT AGENCY/
FACILITIES MANAGEMENT
ON BEHALF OF TRANSPORTATION DEPT
3403 10TH STREET, SUITE 400
RIVERSIDE, CA 92501

(Space Above Reserved for County Recorder's Use)

UPRR Folder No. 3041-24

EASEMENT DEED

THIS Easement Deed is made this 7th day of February, 2018 between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Grantor"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California ("Grantee"), whose address is 2950 Washington St., Riverside, CA 92504.

Grantor for and in consideration of the sum of **TEN THOUSAND FIVE HUNDRED DOLLARS (\$10,500.00)** and other valuable consideration, to it paid by Grantee, the receipt whereof is hereby confessed and acknowledged, grants to Grantee, its successors and assigns, a **NONEXCLUSIVE EASEMENT** ("Easement") on, along and/or over the property described in **Exhibit A**, attached and by reference made a part of this Easement Deed (the "Easement Area"), for the sole purpose of constructing, operating, maintaining and repairing an at-grade public road crossing at or near Grantor's Mile Post 621.65 (DOT No. 760731C), on Grantor's Yuma Subdivision in Coachella, Riverside County, California.

The Easement is granted for the purpose described above only. Without limitation of the foregoing, this grant does not include the right to install utilities of any nature, including, without limitation, fiber optic, cable television, electrical, gas or liquid distribution, or telephone lines.

Grantor, its successors and assigns, reserves the right to construct at any and all times and to maintain railroad tracks and appurtenances, fiber optic or signal lines and facilities, pipe, telephone, and electric pole and wire lines, over, under and across the Easement Area, but in such a way as to not interfere with Grantee's use of the Easement; it being understood that the rights so reserved by Grantor, its successors and assigns, are retained along with the general right of Grantor, its successors and assigns, to use of the Easement Area for any purpose not inconsistent with Grantee's use of the Easement, including, but not limited to any and all general railroad purposes.

The Easement is granted subject to the terms and conditions contained in the separate Public Highway At-Grade Crossing Agreement dated _____ 20__, as signed by Grantor and the County of Riverside, and all outstanding leases, licenses and other outstanding rights, including, without limitation, those for pipe, telephone, electric and fiber optic lines and the right of renewals and extensions of the same, and subject also to all conditions, limitations, restrictions, encumbrances, reservations or interests of any person that may affect the Easement Area, whether recorded or unrecorded.

The Easement is also limited to such rights as Grantor may have in the Easement Area and is granted without warranty, express or implied. No damages shall be recoverable from Grantor because of any dispossession of Grantee or because of failure of, or defect in, Grantor's title.

If Grantee, its successors or assigns, abandons the Easement Area or any portion of the Easement Area, for the purposes of the Easement, the Easement will cease and terminate with respect to the portion of the Easement Area so abandoned, and the title to the Easement Area will be freed from the burden of the Easement. Nonuse of the Easement Area or any portion thereof, for the purposes of the Easement for the period of one (1) year will be deemed an abandonment of the Easement Area or portion thereof not used.

Grantor and Grantee have caused this Easement Deed to be executed as of the date first herein written.

ATTEST:

UNION PACIFIC RAILROAD COMPANY
(Federal Tax ID No. 94-6001323)

By _____
BEVERLY J. KUBAT
Assistant Secretary

By _____
DANIEL A. LEIS
General Director Real Estate

(Seal)

COUNTY OF RIVERSIDE

APPROVED AS TO FORM:
Gregory P. Priamos, County Counsel

By: Synthia M. Gunzel
SYNTHIA M. GUNZEL
Deputy County Counsel

By: Chuck Washington
Printed Name: Chuck Washington
Title: Chairman
Board of Supervisors

ATTEST:
KECIA HARPER-IHEM, Clerk
By: Kezia Harper-Ihem
DEPUTY

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

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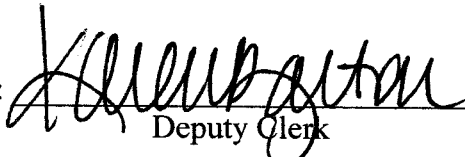
On February 6, 2018, before me, Karen Barton, Board Assistant, personally appeared Chuck Washington, Chairman of the Board of Supervisors, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument; and that a copy of this paper, document or instrument has been delivered to the chairperson.

I certify under the penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Kecia Harper-Ihem
Clerk of the Board of Supervisors

By:


Deputy Clerk

(SEAL)

ACKNOWLEDGMENT

STATE OF NEBRASKA)
) ss:
COUNTY OF DOUGLAS)

On this ____ day of _____, 20__, before me, _____, a Notary Public in and for said County and State, personally appeared **Daniel A. Leis** and **Beverly J. Kubat** who are the *General Director Real Estate* 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.

Notary Public for and in said State

↑ (Affix Notary Seal Here) ↑

My commission expires:

EXHIBIT A

Legal Description of Easement Area

EXHIBIT "A"
LEGAL DESCRIPTION
0084-001A

BEING A PORTION OF NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 7 SOUTH, RANGE 8 EAST, SAN BERNARDINO MERIDIAN ALSO BEING A PORTION OF SOUTHERN PACIFIC RAILROAD RIGHT-OF-WAY ACQUIRED UNDER THE ACT OF CONGRESS DATED MARCH 3, 1871, SAID PORTION MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTHEASTERLY RIGHT-OF-WAY LINE (100 FEET WIDE) OF SOUTHERN PACIFIC RAILROAD RIGHT-OF-WAY ACQUIRED UNDER THE ACT OF CONGRESS DATED MAY 20, 1861, AND THE NORTH LINE OF SAID SECTION 1 ALSO BEING THE CENTERLINE OF 62ND AVENUE (30 FOOT WIDE SOUTHERLY HALF WIDTH) AS SHOWN ON THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP NUMBER 917550-4, ON FILE AT CALTRANS DISTRICT 8 RIGHT-OF-WAY ENGINEERING DEPARTMENT;

THENCE NORTH 89°47'43" EAST ALONG SAID NORTH LINE OF SECTION 1 AND SAID CENTERLINE OF 62ND AVENUE, A DISTANCE OF 83.50 FEET;

THENCE LEAVING SAID SECTION LINE AND SAID CENTERLINE, AT RIGHT ANGLES THERETO, SOUTH 00°12'17" EAST, A DISTANCE OF 30.00 FEET TO THE SOUTHEASTERLY CORNER OF THE RIGHT-OF-WAY CONVEYED TO THE COUNTY OF RIVERSIDE RECORDED JANUARY 19, 1962, IN BOOK 3060, PAGES 371 THROUGH 373, INCLUSIVE, OFFICIAL RECORDS OF THE RECORDER OF RIVERSIDE COUNTY, CALIFORNIA ALSO BEING THE **TRUE POINT OF BEGINNING.**

THENCE SOUTH 36°08'31" EAST ALONG THE NORTHEASTERLY LINE OF THE SOUTHERN PACIFIC RAILROAD COMPANY'S RIGHT-OF-WAY (200 FEET WIDE) ACQUIRED UNDER THE ACT OF CONGRESS DATED MARCH 3, 1871, A DISTANCE OF 4.94 FEET TO A POINT ON A LINE PARALLEL WITH AND DISTANT 4.00 FEET SOUTHERLY OF, AS MEASURED AT RIGHT ANGLES TO, THE SOUTHERLY RIGHT-OF-WAY LINE OF 62ND AVENUE AS DESCRIBED IN SAID RIGHT-OF-WAY DEED RECORDED JANUARY 19, 1962, IN BOOK 3060, PAGES 371 THROUGH 373;

EXHIBIT "A"
LEGAL DESCRIPTION
0084-001A

THENCE SOUTH 89°47'43" WEST ALONG SAID PARALLEL LINE A DISTANCE OF 247.02 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF SAID SOUTHERN PACIFIC RAILROAD COMPANY'S RIGHT-OF-WAY (200 FEET WIDE);

THENCE NORTH 36°08'31" WEST ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE A DISTANCE OF 4.94 FEET TO THE SOUTHWESTERLY CORNER OF SAID RIGHT-OF-WAY CONVEYED TO THE COUNTY OF RIVERSIDE RECORDED JANUARY 19, 1962, IN BOOK 3060, PAGES 371 THROUGH 373;

THENCE NORTH 89°47'43" EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF 62ND AVENUE, A DISTANCE OF 247.02 FEET TO THE TRUE POINT OF BEGINNING;

PARCEL CONTAINS 988 SQUARE FEET OR 0.023 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 1.000022359 TO OBTAIN GROUND DISTANCE.

11-RIV-86-PM-12.82-0084-001A

PREPARED UNDER MY SUPERVISION:

Edward D. Hunt
EDWARD D. HUNT P.L.S. 7530

2-19-2016
DATED:



WHEN DOCUMENT IS FULLY EXECUTED RETURN

CLERK'S COPY

to Riverside County Clerk of the Board, Stop 1010

Post Office Box 1147, Riverside, Ca 92502-1147

Thank you.

UP Real Estate Folder No.: 3041-24

Agreement Number _____

PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT

62ND AVE.

DOT NUMBER 760731C

MILE POST 621.65- YUMA SUB

COACHELLA, RIVERSIDE COUNTY, CALIFORNIA

THIS AGREEMENT ("Agreement") is made and entered into as of the 5th day of March, 2018 ("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 **COUNTY OF RIVERSIDE**, a political subdivision of the State of California to be addressed at 2950 Washington St., Riverside, CA 92504 ("Political Body").

RECITALS:

By instrument dated November 20, 1961, the Southern Pacific Company and the Political Body entered into an agreement (the "Original Agreement") covering the construction, use, maintenance and repair of an at grade public road crossing over 62ND Ave., DOT Number 760731C at Railroad's Milepost 621.65 on Railroad's Yuma Sub at or near Coachella, Riverside County, California (the "Existing Crossing").

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

The Political Body now desires to undertake as its project (the "Project") certain improvements at the Existing Crossing, including widening of the roadway, installation of new signal equipment, advance preemption and new crossing surface. The right of way granted by Southern Pacific Company to the Political Body for the Existing Crossing is not sufficient for the Project. Therefore, under this Agreement, the Railroad will be granting additional rights to the Political Body ("Additional Crossing Area"). The Existing Crossing and Additional Crossing Area are shown on the print marked **Exhibit A** and the Additional Crossing Area is described in the legal description marked **Exhibit A-1**, with each exhibit being attached hereto and hereby made a part hereof. The Existing Crossing and Additional Crossing Area, as reconstructed and widened through the Project, are hereinafter collectively referred to as the "Roadway" and the portion of the Railroad's property where the Roadway crosses the Railroad's property is the "Crossing Area."

In support of its Project, the Political Body has requested the Railroad's

FEB 06 2018 3.14

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2018-6-139904

cooperation in connection with installing or upgrading grade crossing protection devices, installing highway traffic control signals and installing the necessary relays and other materials required to interconnect and coordinate the operation of said railroad grade crossing protection devices with the operation of said highway traffic control signals. Said work is to be performed at the sole expense of Political Body.

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

AGREEMENT:

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

Section 1. EXHIBIT B

The general terms and conditions marked **Exhibit B**, are attached hereto and hereby made a part hereof.

Section 2. RAILROAD GRANTS RIGHT

A. Upon completion of the execution of this Agreement and Railroad's receipt from the Political Body of **TEN THOUSAND FIVE HUNDRED DOLLARS(\$10,500)**, the Railroad shall execute and deliver to Political Body a limited non-exclusive easement for the Additional Crossing Area in the form of Easement Deed marked **Exhibit F**, attached hereto and hereby made a part hereof, for the property described on **Exhibit A-1**.

B. For purposes of advanced signal preemption, Railroad hereby grants permission and authority to Political Body and/or its Contractor (as defined below) to install the conduit with the necessary wiring on Railroad right of way on the condition that prior to performing any work on Railroad's property, Political Body shall, or shall require its Contractor to, notify the Railroad and/or enter into a right of entry agreement with Railroad, as applicable pursuant to the terms and conditions of this Agreement.

Section 3. DEFINITION OF CONTRACTOR

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the Political Body 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.

Section 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 Political Body 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 D**, attached hereto and hereby made a part hereof. The Political Body 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
UP File Folder No. 3041-24

D. If the Political Body's own employees will be performing any of the Project work, the Political Body may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

Section 5. FEDERAL AID POLICY GUIDE

If the Political Body 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.

Section 6. NO PROJECT EXPENSES TO BE BORNE BY RAILROAD

The Political Body 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.

Section 7. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO POLITICAL BODY; POLITICAL BODY'S PAYMENT OF BILLS

A. The work to be performed by the Railroad, at the Political Body's sole cost and expense, is described in the Railroad's Material and Force Account Estimate for surface work dated September 5, 2017, Railroad's Material Force Account Estimate for signal work dated June 22, 2017, and Railroad's Summary of Material and Force Account Work dated May 2, 2016, collectively marked **Exhibit C**, attached hereto and hereby made a part hereof (the "Estimate"). As set forth in the Estimate, the Railroad's total estimated cost for the Railroad's work associated with the Project is One Million Sixty Five Thousand Four Hundred Thirty Six Dollars (\$1,065,436).

B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the Political Body in the event the Political Body 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 Political Body acknowledges that the Estimate includes an estimate of flagging or other protective service costs that are to be paid by the Political Body or the Contractor in connection with flagging or other protective services provided by the Railroad in connection with the Project. All of such costs incurred by the Railroad are to be paid by the Political Body or the Contractor as determined by the Railroad and the Political Body. If it is determined that the Railroad will be billing the Contractor directly for such costs, the Political Body agrees that it will pay the Railroad for any flagging costs that have not been paid by any Contractor within thirty (30) days of the Contractor's receipt of billing.

D. The Railroad shall send progressive billing to the Political Body during the Project and final billing to the Political Body within one hundred eighty (180) days after receiving written notice from the Political Body that all Project work affecting the Railroad's property has been completed.

E. The Political Body 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.

Section 8. PLANS

A. The Political Body, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Project and the Structure 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 are hereby made a part of this Agreement by reference.

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 Political Body 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 Political Body or Contractor on the Plans is at the risk of the Political Body and Contractor.

Section 9. 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 8. 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 Political Body mutually agree in writing to (i) deem the approved Non Railroad Facilities plans and specifications to be Plans pursuant to Section 8B, (ii) deem the Non Railroad Facilities

part of the Structure, and (iii) supplement this Agreement with terms and conditions covering the Non Railroad Facilities.

Section 10. 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 Roadway 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 Political Body in the event the Political Body 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 Political Body 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.

Section 11. CONDITIONS TO BE MET BEFORE POLITICAL BODY CAN COMMENCE WORK

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

- (i) The Railroad and Political Body have executed this Agreement.
- (ii) The Railroad has provided to the Political Body 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.

Section 12. FUTURE PROJECTS

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

Section 13. ASSIGNMENT; SUCCESSORS AND ASSIGNS

A. Political Body 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 Political Body.

Section 14. SPECIAL PROVISIONS PERTAINING TO AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

If the Political Body will be receiving American Recovery and Reinvestment Act ("ARRA") funding for the Project, the Political Body agrees that it is responsible in performing and completing all ARRA reporting documents for the Project. The Political Body 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 Political Body and not of the Railroad, and (ii) the Political Body shall not delegate any ARRA reporting responsibilities to the Railroad. The Political Body also confirms and acknowledges that (i) the Railroad shall provide to the Political Body 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 Political Body to perform and complete the ARRA reporting documents. The Railroad confirms that the Political Body and the Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for the Project as provided in Section 11 of **Exhibit B** of this Agreement.

Section 15. AGREEMENT AS A SUPPLEMENT

The Original Agreement shall be supplemented by this Agreement. In the event of any conflict between the Original Agreement and this Agreement, the terms and provisions of this Agreement shall control.

Section 16. SIGNAL PREEMPTION

A. Political Body and Railroad, severally and collectively, agree to interconnect and coordinate the operation of the railroad grade crossing protection devices with the operation of the highway traffic control signals at the Crossing Area, in accordance with the design schematic marked **Exhibit E**, hereto attached and hereby made a part hereof (the "Designs").

B. Political Body, at its expense, shall furnish all material, labor, equipment and supervision for the installation and maintenance of highway traffic

control signals at the Crossing Area, as applicable in accordance with the Designs.

C. Railroad, at Political Body's expense, shall furnish all material, labor, equipment and supervision for the work described in the Estimate(s) and in accordance with the Designs, including, as applicable, installation of signals and/or appurtenances and installation of the necessary relays and other materials required to interconnect and coordinate the operation of the highway traffic control signals to be installed by the Political Body.

D. Each party shall take all suitable precautions to prevent any interference (by induction, leakage of electricity or otherwise) with the operation of the other party's signals or communications lines, or those of its tenants; and if, at any time, the operation or maintenance of its signals results in any electrostatic effects, the party whose signals are causing the interference shall, at its expense, immediately take such action as may be necessary to eliminate such interference.

E. Except as set forth in this Section, Political Body shall not be liable to Railroad on account of any failure of Railroad's warning devices to operate properly, nor shall Railroad have or be entitled to maintain any action against Political Body arising from any failure from Railroad's warning devices to operate properly. Similarly, Railroad shall not be liable to Political Body on account of any failure of Political Body's traffic signal to operate properly, nor shall Political Body have or be entitled to maintain any action against Railroad arising from any failure of Political Body's traffic signal to operate properly.

F. Political Body shall provide the traffic signal timing and wiring diagram for the traffic controller unit to Railroad at least two months prior to the traffic signal controller bench testing and/or four months prior to the proposed cutover with Railroad.

Section 17. SIGNAL MAINTENANCE COSTS

Railroad shall maintain, in compliance with applicable laws or regulations as determined by the Railroad, the crossing signals as long as they remain in place. Cost of maintaining said signals shall be apportioned between the parties hereto in accordance with Sections 1202.2 and 1231.1 of the California Public Utilities Code. The precise manner and method of determining applicable charges, manner and method of payment and other procedures under said sections shall be governed by the statutes as supplemented by any applicable decisions of the statutes in the California Public Utilities Commission.


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)

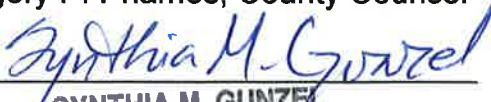
By: 
Printed Name: D.A. Leis
Title: Senior Director - Real Estate

COUNTY OF RIVERSIDE

By: 
Printed Name: Chuck Washington
Title: Chairman
Board of Supervisors

APPROVED AS TO FORM:

Gregory P. Priamos, County Counsel

By: 
SYNTHIA M. GUNZEL
Deputy County Counsel

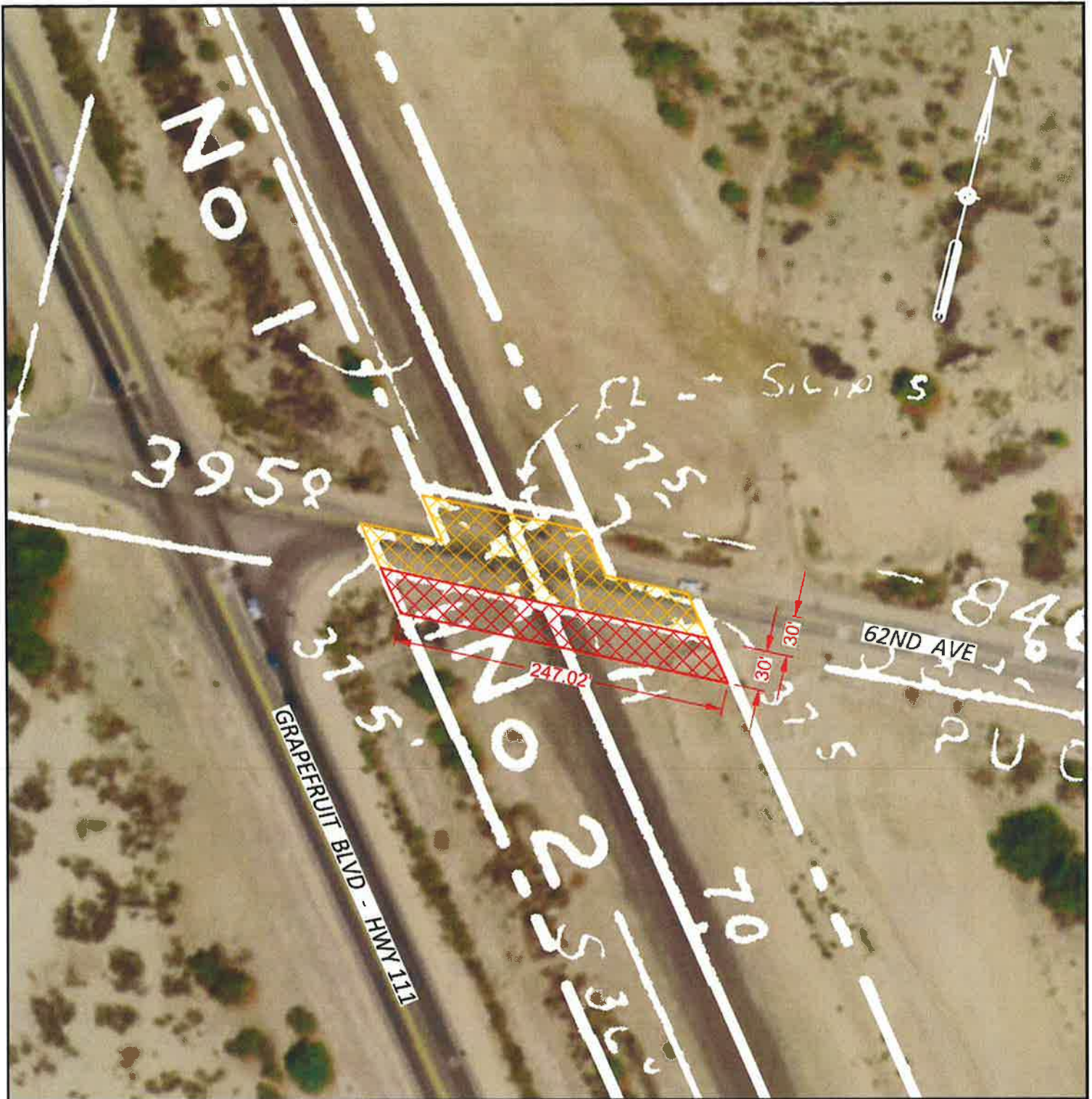
ATTEST:

KECIA HARPER-IHEM, Clerk




By: 
DEPUTY

**EXHIBIT A
TO
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

Exhibit A will be a print showing the Crossing Area (see Recitals)



LEGEND:

- NEW CROSSING AREA 
- NEW CROSSING AREA = 7,410 SQ. FT. +/-
- EXISTING CROSSING AREA 
- EXISTING CROSSING AREA = 11,115 SQ. FT. +/-
- UPRRCO. R/W OUTLINED 

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

COACHELLA, RIVERSIDE COUNTY, CALIFORNIA

M.P. 621.65 - YUMA SUB.

TO ACCOMPANY AGREEMENT WITH
COUNTY OF RIVERSIDE

MAP SP V-31 / 16

SCALE: 1" = 100'

OFFICE OF REAL ESTATE
OMAHA, NEBRASKA DATE: 7-24-2017

PJB FILE: 0304124

CADD FILENAME	0304124
SCAN FILENAME	CA3116-304124.TIF

**EXHIBIT A-1
TO
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

Exhibit A-1 will be the legal description of the Crossing Area (see Recitals)

EXHIBIT "A"
LEGAL DESCRIPTION
0084-001A

BEING A PORTION OF NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 7 SOUTH, RANGE 8 EAST, SAN BERNARDINO MERIDIAN ALSO BEING A PORTION OF SOUTHERN PACIFIC RAILROAD RIGHT-OF-WAY ACQUIRED UNDER THE ACT OF CONGRESS DATED MARCH 3, 1871, SAID PORTION MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTHEASTERLY RIGHT-OF-WAY LINE (100 FEET WIDE) OF SOUTHERN PACIFIC RAILROAD RIGHT-OF-WAY ACQUIRED UNDER THE ACT OF CONGRESS DATED MAY 20, 1861, AND THE NORTH LINE OF SAID SECTION 1 ALSO BEING THE CENTERLINE OF 62ND AVENUE (30 FOOT WIDE SOUTHERLY HALF WIDTH) AS SHOWN ON THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP NUMBER 917550-4, ON FILE AT CALTRANS DISTRICT 8 RIGHT-OF-WAY ENGINEERING DEPARTMENT;

THENCE NORTH 89°47'43" EAST ALONG SAID NORTH LINE OF SECTION 1 AND SAID CENTERLINE OF 62ND AVENUE, A DISTANCE OF 83.50 FEET;

THENCE LEAVING SAID SECTION LINE AND SAID CENTERLINE, AT RIGHT ANGLES THERETO, SOUTH 00°12'17" EAST, A DISTANCE OF 30.00 FEET TO THE SOUTHEASTERLY CORNER OF THE RIGHT-OF-WAY CONVEYED TO THE COUNTY OF RIVERSIDE RECORDED JANUARY 19, 1962, IN BOOK 3060, PAGES 371 THROUGH 373, INCLUSIVE, OFFICIAL RECORDS OF THE RECORDER OF RIVERSIDE COUNTY, CALIFORNIA ALSO BEING THE **TRUE POINT OF BEGINNING**.

THENCE SOUTH 36°08'31" EAST ALONG THE NORTHEASTERLY LINE OF THE SOUTHERN PACIFIC RAILROAD COMPANY'S RIGHT-OF-WAY (200 FEET WIDE) ACQUIRED UNDER THE ACT OF CONGRESS DATED MARCH 3, 1871, A DISTANCE OF 4.94 FEET TO A POINT ON A LINE PARALLEL WITH AND DISTANT 4.00 FEET SOUTHERLY OF, AS MEASURED AT RIGHT ANGLES TO, THE SOUTHERLY RIGHT-OF-WAY LINE OF 62ND AVENUE AS DESCRIBED IN SAID RIGHT-OF-WAY DEED RECORDED JANUARY 19, 1962, IN BOOK 3060, PAGES 371 THROUGH 373;

EXHIBIT "A"
LEGAL DESCRIPTION
0084-001A

THENCE SOUTH 89°47'43" WEST ALONG SAID PARALLEL LINE A DISTANCE OF 247.02 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF SAID SOUTHERN PACIFIC RAILROAD COMPANY'S RIGHT-OF-WAY (200 FEET WIDE);

THENCE NORTH 36°08'31" WEST ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE A DISTANCE OF 4.94 FEET TO THE SOUTHWESTERLY CORNER OF SAID RIGHT-OF-WAY CONVEYED TO THE COUNTY OF RIVERSIDE RECORDED JANUARY 19, 1962, IN BOOK 3060, PAGES 371 THROUGH 373;

THENCE NORTH 89°47'43" EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF 62ND AVENUE, A DISTANCE OF 247.02 FEET TO THE **TRUE POINT OF BEGINNING**;

PARCEL CONTAINS 988 SQUARE FEET OR 0.023 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 1.000022359 TO OBTAIN GROUND DISTANCE.

11-RIV-86-PM-12.82-0084-001A

PREPARED UNDER MY SUPERVISION:


EDWARD D. HUNT P.L.S. 7530

2-19-2016
DATED:



**EXHIBIT B
TO
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

SECTION 1. CONDITIONS AND COVENANTS

A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The Political Body 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 Political Body 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 Political Body for the purpose of conveying electric power or communications incidental to the Political Body'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 Political Body 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. In the event the Railroad shall place additional tracks upon the Crossing Area, the Political Body shall, at its sole cost and expense, modify the Roadway to conform with all tracks within the Crossing Area.

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 Political Body shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's property, unless the Political Body 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.

E. So far as it lawfully may do so, the Political Body 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 Roadway and its appurtenances, or for the performance of any work in connection with the Project, the Political Body will acquire all such other property and rights at its own expense and without expense to the Railroad.

SECTION 2. CONSTRUCTION OF ROADWAY

A. The Political Body, 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 Political Body, at its expense, will furnish all necessary labor, material and equipment, and shall construct and complete the Roadway and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper highway warning devices (except those installed by the Railroad within its right of way) and all necessary drainage facilities, guard rails or barriers, and right of way fences between the Roadway and the railroad tracks. Upon completion of the Project, the Political Body 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 Political Body upon the Railroad's property (including, but not limited to, construction of the Roadway 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, and other guidelines furnished by the Railroad.

D. All construction work of the Political Body 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 Political Body. The Political Body 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 State and/or the Contractor.

SECTION 3. INJURY AND DAMAGE TO PROPERTY

If the Political Body, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the Political Body 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 Political Body at the Political Body's own expense, or by the Railroad at the expense of the Political Body, 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 the Railroad forces. The Railroad shall notify the Political Body 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 Political Body shall reimburse the Railroad for the amount of the contract.

SECTION 5. MAINTENANCE AND REPAIRS

A. The Political Body shall, at its own sole expense, maintain, repair, and renew, or cause to be maintained, repaired and renewed, the entire Crossing Area and Roadway, except the portions between the track tie ends, which shall be maintained by and at the expense of the Railroad.

B. If, in the future, the Political Body elects to have the surfacing material between the track tie ends, or between tracks if there is more than one railroad track across the Crossing Area, replaced with paving or some surfacing material other than timber planking, the Railroad, at the Political Body's expense, shall install such replacement surfacing, and in the future, to the extent repair or replacement of the surfacing is necessitated by repair or rehabilitation of the Railroad's tracks through the Crossing Area, the Political Body shall bear the expense of such repairs or replacement.

SECTION 6. CHANGES IN GRADE

If at any time the Railroad shall elect, or be required by competent authority to, raise or lower the grade of all or any portion of the track(s) located within the Crossing Area, the Political Body shall, at its own expense, conform the Roadway to conform with the change of grade of the trackage.

SECTION 7. REARRANGEMENT OF WARNING DEVICES

If the change or rearrangement of any warning device installed hereunder is necessitated for public or Railroad convenience or on account of improvements for either the Railroad, highway or both, the parties will apportion the expense incidental thereto between themselves by negotiation, agreement or by the order of a competent authority before the change or rearrangement is undertaken.

SECTION 8. 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 Political Body 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 Political Body 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 Political Body shall include work both within and outside of the Railroad's property.

B. **Entry on to Railroad's Property by Political Body.** If the Political Body's employees need to enter Railroad's property in order to perform an inspection of the Roadway, minor maintenance or other activities, the Political Body 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 Political Body, 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 Political Body's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of Political Body'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 Political Body's employees need to enter Railroad's property as provided in Paragraph B above, the Political Body agrees to notify the Railroad Representative at least thirty (30) working days in advance of proposed performance of any work by Political Body 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 Political Body whether a flagman need be present and whether Political Body 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 Political Body for such expenses incurred by Railroad. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad,

Political Body agrees that Political Body 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, Political Body 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 Political Body 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, Political Body 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, Political Body 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 Political Body shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Political Body shall use only such methods as are consistent with safety, both as concerns the Political Body, the Political Body's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Political Body (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 Political Body 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 Political Body 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 Political Body 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 Political Body 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 Political Body, at its own expense, shall adequately police and supervise all work to be performed by the Political Body, 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 Political Body 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 Political Body with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the Political Body 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 Political Body'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 Political Body is being or is about to be done or prosecuted without due regard and precaution for safety and security, the Political Body shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.

H. **Removal of Debris.** The Political Body 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 Political Body at the Political Body's own expense or by the Railroad at the expense of the Political Body. The Political Body 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 Political Body 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 Political Body 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 Political Body 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 Political Body, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the Political Body 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 Political Body, at the Political Body's own expense, shall provide and maintain suitable facilities for draining the Roadway and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The Political Body, at the Political Body'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 Political Body, 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 Political Body shall not obstruct or interfere with existing ditches or drainage facilities.

L. **Notice**. Before commencing any work, the Political Body shall provide the advance notice to the Railroad 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. Political Body 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 Political Body. If it is, Political Body 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 9. INTERIM WARNING DEVICES

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

SECTION 10. 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 11. 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 Political Body for a period of three (3) years following the date of Railroad's last billing sent to Political Body.

SECTION 12. REMEDIES FOR BREACH OR NONUSE

A. If the Political Body 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 Roadway 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 Political Body will reimburse the Railroad for the expenses thereof.

B. Nonuse by the Political Body 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 Political Body hereunder.

C. The Political Body will surrender peaceable possession of the Crossing Area

and Roadway 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 13. 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 Political Body 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 Political Body 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 Political Body 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 AT GRADE CROSSING AGREEMENT

Exhibit C (if applicable) will be Railroad's Material and Force Account Estimate.

Material And Force Account Estimate Riverside County

Estimate Creation Date: 06/22/2017 Number: 112405 Version: 1

Standard Rates: 190.39%

Estimate Good Until 03/22/18

Location: YUMA SUB, SIMN, 620.21-636.93
Buy America: No

Description of Work: Coachella, CA 62nd Ave. MP. 621.65 Yuma Sub. DOT# 760731C WO 32644 PID 94504
100% Recollectable (100% Riverside County)

COMMENTS	Description	SubDivision	QTY	UOM	Unit Cost	LABOR	MATERIAL	TOTAL	UP 00%	Agency 100%
SIGNAL										
	King - 1 Trk Remote CWB and house.	YUMA SUB	2	EA	54,337.00	28,800	79,874	108,674	0	108,674
	King - Roring		1	LS	10,000.00	0	10,000	10,000	0	10,000
	King - Dax Cable, 1000'		8	EA	6,440.00	32,000	19,520	51,520	0	51,520
	King - EC5 PTC Enabled Trac k-Circuit		2	EA	5,495.00	0	10,990	10,990	0	10,990
	King - JJ		2	PR	9,000.00	8,996	9,001	18,000	0	18,000
	King - Intermediate Signal		1	EA	13,165.00	5,536	7,629	13,165	0	13,165
	King - Labor Additive		1	LS	292,873.00	292,873	0	292,873	0	292,873
	King - Misc.		1	LS	1.00	0	1	1	0	1
	King - Track Card (Main and Stand-by) Misc Cable.		1	EA	12,889.00	6,000	6,889	12,889	0	12,889
Re-use, I existing entic.	King - 1 Trk CWB w/Gates		1	EA	116,548.00	41,200	75,348	116,548	0	116,548
	King - Engineering Design		1	LS	31,295.00	31,295	0	31,295	0	31,295
	King - Bill/Rock/Gravel		1	LS	4,000.00	0	4,000	4,000	0	4,000
	King - Meter Service		1	LS	15,000.00	0	15,000	15,000	0	15,000
	Sub-Total =				446,700	238,255	684,955	684,955	0	684,955

Totals = 446,700 238,255 684,955 0 684,955

Grand Total = \$684,955

Please Note: The above figures are estimates only and are subject to fluctuation. In the event of an increase or decrease in the cost or amount of material or labor required, Riverside County will pay actual construction costs at the current rates effective thereof.

DATE: 2017-09-05

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

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2018-03-06

DESCRIPTION OF WORK:
 COACHELLA, CA / 62ND AVE / DOT#760731C-1 / YUMA SUB MP 621.65
 REMOVE EXISTING 40' CROSSING SURFACE, INSTALL NEW 70' CROSSING SURFACE
 INCLUDING TIES, RAIL, AND OTM
 FEDERAL LABOR ADDITIVE W/ OVERHEAD & INDIRECT COSTS 234%.
 100% RECOLLECTABLE FROM CITY/STATE/FEDERAL FUNDS.

PID: 101529 AWO: MP,SUBDIV: 621.65, YUMA
 SERVICE UNIT: 20 CITY: COACHELLA STATE: CA

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
ENGINEERING WORK							
ENGINEERING			2555		2555		2555
FLAGGING			1555		1555		1555
LABOR ADDITIVE 234%			13263		13263		13263
TRACK			1555		1555		1555
TOTAL ENGINEERING			18928		18928		18928
SIGNAL WORK							
LABOR ADDITIVE 234%			1259		1259		1259
SIGNAL			640	5	645		645
TOTAL SIGNAL			1899	5	1904		1904
TRACK & SURFACE WORK							
ADDITIONAL CONTRACT				15000	15000		15000
ASPHALT WORK CONTRACT				20000	20000		20000
BALAST	3.00	CL	3146	2753	5899		5899
BILL PREP FEE				900	900		900
CONTIE	70.00	EA		6770	6770		6770
ENVIRONMENTAL PERMIT				10	10		10
EQUIPMENT RNTL CONTRACT				10000	10000		10000
FOREIGN LINE FREIGHT				1980	1980		1980
HOMELINE FREIGHT				900	900		900
LABOR ADDITIVE 234%			31512		31512		31512
MATL STORE EXPENSE				39	39		39
OTM			2780	2	2782		2782
RAIL	280.00	LF	2996	5336	8332		8332
RDXING	70.00	TF	1021	10897	11918		11918
SALES TAX				1043	1043		1043
TRAFFIC CNTRL CONTRACT				25000	25000		25000
TRK-SURF,LIN			1950		1950		1950
WELD			2454	378	2832		2832
XTIES -UNLD			5782		5782		5782
TOTAL TRACK & SURFACE			51641	101008	152649		152649
LABOR/MATERIAL EXPENSE			72468	101013			
RECOLLECTIBLE/UPRR EXPENSE					173481	0	
ESTIMATED PROJECT COST							173481

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.

SUMMARY OF MATERIAL AND FORCE ACCOUNT WORK
BY THE
UNION PACIFIC RAILROAD COMPANY
FOR THE
62nd AVE, MECCA, CA

DESCRIPTION OF WORK: At grade crossing MP 621.65 Yuma Subdivision, 62nd Avenue, Mecca, CA. Includes UPRR flagging.

Riverside County
PUC Crossing Number 001B-621.60
62nd Avenue

LOCATION: Los Angeles Service Unit STATE: California DATE: 05/02/2016

<u>DESCRIPTION</u>	<u>LABOR</u>	<u>TOTAL</u>
<u>COUNTY OF RIVERSIDE</u>		
Flagging (120 days x \$1,600.00)*	192,000	192,000
Engineering	15,000	15,000
TOTAL PROJECT	207,000	207,000

TOTAL ESTIMATED COST OF PROJECT \$207,000.00

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 COUNTY WILL BE BILLED FOR THE ACTUAL COST AT THE CURRENT RATES EFFECTIVE THEROF.

EXHIBIT

EXHIBIT D
TO
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT

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 _____, a _____ corporation ("Contractor").

RECITALS:

Contractor has been hired by _____ to perform work relating to _____

(the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of Railroad's Milepost _____ on Railroad's _____ [Subdivision] [Branch] [at or near DOT No. _____] located at or near _____, in _____ County, State of _____, as such location is in the general location shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof, which work is the subject of a contract dated _____ between Railroad and _____.

Railroad is willing to permit 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 AND D.

The terms and conditions contained in **Exhibit B, Exhibit C and Exhibit D**, 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"):

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 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

[Insert mailing address] _____

Attn: _____

Folder No. _____

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- ADMINISTRATIVE FEE.

Upon the execution and delivery of this Agreement, Contractor shall pay to Railroad _____ Dollars (\$_____) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

ARTICLE 10 - CROSSINGS: COMPLIANCE WITH MUTCD AND FRA GUIDELINES.

A. 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.

B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications, negligence, or any other reason arising from the Contractor's presence on the Railroad's property, the Contractor agrees to assume liability for any civil penalties imposed upon the Railroad for such noncompliance.

ARTICLE 11.- 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

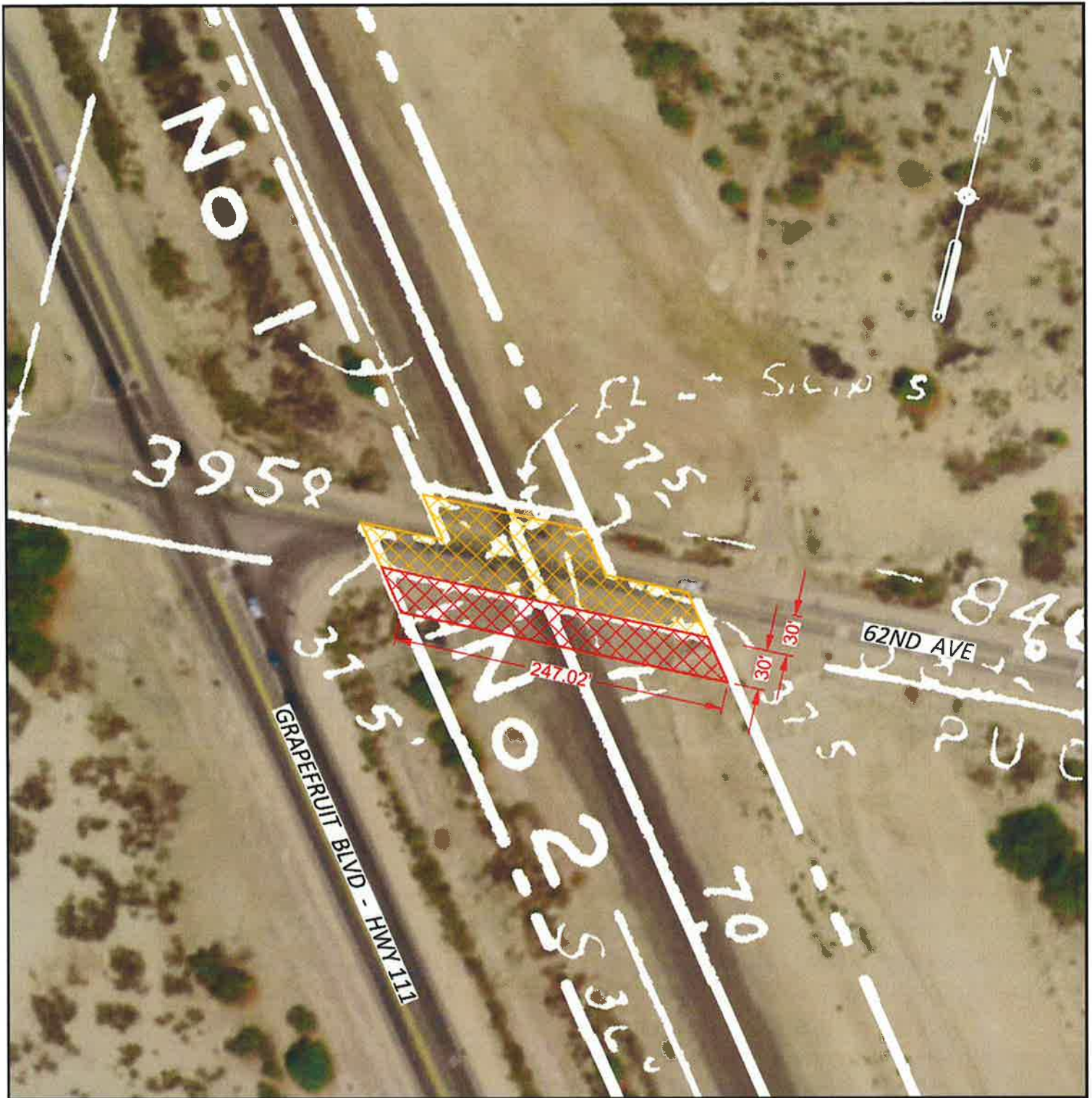
By: _____
Title: _____

(Name of Contractor)




By: _____
Title: _____

EXHIBIT A

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



LEGEND:

- NEW CROSSING AREA 
- NEW CROSSING AREA = 7,410 SQ. FT. +/-
- EXISTING CROSSING AREA 
- EXISTING CROSSING AREA = 11,115 SQ. FT. +/-
- UPRRCO. R/W OUTLINED 

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

COACHELLA, RIVERSIDE COUNTY, CALIFORNIA

M.P. 621.65 - YUMA SUB.

TO ACCOMPANY AGREEMENT WITH
COUNTY OF RIVERSIDE

MAP SP V-31 / 16

SCALE: 1" = 100'

OFFICE OF REAL ESTATE
OMAHA, NEBRASKA DATE: 7-24-2017

PJB FILE: 0304124

CADD FILENAME	0304124
SCAN FILENAME	CA3116-304124.TIF

EXHIBIT B
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

A. Contractor agrees to notify the Railroad Representative at least ten (10) 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

Union Pacific Railroad Company
Insurance Provisions For
Contractor's Right of Entry Agreement

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. 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

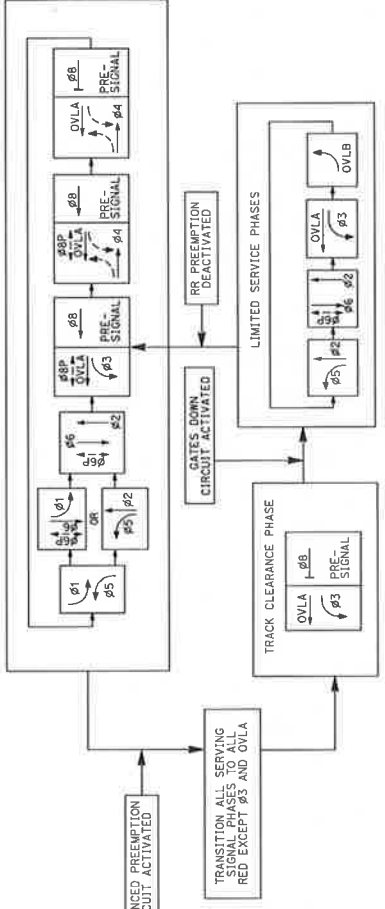
- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, 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.

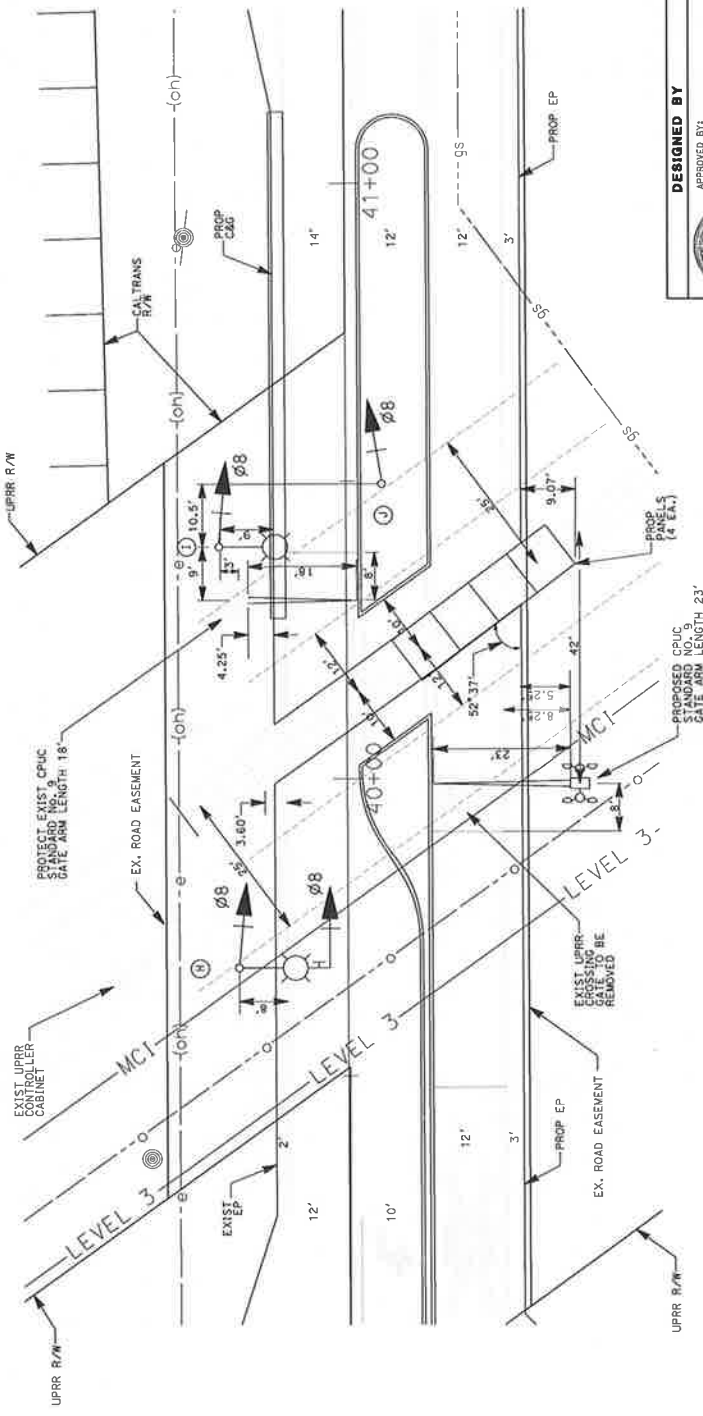
**EXHIBIT E
TO
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

Exhibit E will be signal design schematic

TRAFFIC SIGNAL PHASE SEQUENCE



62ND AVENUE



CALTRANS PERMIT NO. 08-16-N-MC-0368

SIGNAL AND LIGHTING SHEET No.

E-2

SCALE: 1"=10'

SHEET 10 OF 10

DESIGNED BY

APPROVED BY:

DATE

DOUGLAS T. SALAS
COUNTY OF RIVERSIDE



NO. C3-0084 COUNTY FILE No.

USERNAME: 22/02/08 11:02:01
BOOK FILE: C3-0084

RELATIVE BORDER SCALE
15 IN INCHES

BORDER REVISED 08/01/2013

**EXHIBIT F
TO
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

Exhibit F will be the Easement Deed

After Recording, Mail To:
ECONOMIC DEVELOPMENT AGENCY/
FACILITIES MANAGEMENT
ON BEHALF OF TRANSPORTATION DEPT
3403 10TH STREET, SUITE 400
RIVERSIDE, CA 92501

(Space Above Reserved for County Recorder's Use)

UPRR Folder No. 3041-24

EASEMENT DEED

THIS Easement Deed is made this _____ day of _____, between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Grantor"), and the **COUNTY OF RIVERSIDE**, a political subdivision of the State of California ("Grantee"), whose address is 2950 Washington St., Riverside, CA 92504.

Grantor for and in consideration of the sum of **TEN THOUSAND FIVE HUNDRED DOLLARS (\$10,500.00)** and other valuable consideration, to it paid by Grantee, the receipt whereof is hereby confessed and acknowledged, grants to Grantee, its successors and assigns, a **NONEXCLUSIVE EASEMENT** ("Easement") on, along and/or over the property described in **Exhibit A**, attached and by reference made a part of this Easement Deed (the "Easement Area"), for the sole purpose of constructing, operating, maintaining and repairing an at-grade public road crossing at or near Grantor's Mile Post 621.65 (DOT No. 760731C), on Grantor's Yuma Subdivision in Coachella, Riverside County, California.

The Easement is granted for the purpose described above only. Without limitation of the foregoing, this grant does not include the right to install utilities of any nature, including, without limitation, fiber optic, cable television, electrical, gas or liquid distribution, or telephone lines.

Grantor, its successors and assigns, reserves the right to construct at any and all times and to maintain railroad tracks and appurtenances, fiber optic or signal lines and facilities, pipe, telephone, and electric pole and wire lines, over, under and across the Easement Area, but in such a way as to not interfere with Grantee's use of the Easement; it being understood that the rights so reserved by Grantor, its successors and assigns, are retained along with the general right of Grantor, its successors and assigns, to use of the Easement Area for any purpose not inconsistent with Grantee's use of the Easement, including, but not limited to any and all general railroad purposes.

The Easement is granted subject to the terms and conditions contained in the separate Public Highway At-Grade Crossing Agreement dated _____ 20__, as signed by Grantor and the County of Riverside, and all outstanding leases, licenses and other outstanding rights, including, without limitation, those for pipe, telephone, electric and fiber optic lines and the right of renewals and extensions of the same, and subject also to all conditions, limitations, restrictions, encumbrances, reservations or interests of any person that may affect the Easement Area, whether recorded or unrecorded.

The Easement is also limited to such rights as Grantor may have in the Easement Area and is granted without warranty, express or implied. No damages shall be recoverable from Grantor because of any dispossession of Grantee or because of failure of, or defect in, Grantor's title.

If Grantee, its successors or assigns, abandons the Easement Area or any portion of the Easement Area, for the purposes of the Easement, the Easement will cease and terminate with respect to the portion of the Easement Area so abandoned, and the title to the Easement Area will be freed from the burden of the Easement. Nonuse of the Easement Area or any portion thereof, for the purposes of the Easement for the period of one (1) year will be deemed an abandonment of the Easement Area or portion thereof not used.

Grantor and Grantee have caused this Easement Deed to be executed as of the date first herein written.

ATTEST:

UNION PACIFIC RAILROAD COMPANY
(Federal Tax ID No. 94-6001323)

By _____
BEVERLY J. KUBAT
Assistant Secretary

By _____
DANIEL A. LEIS
General Director Real Estate

(Seal)

COUNTY OF RIVERSIDE

APPROVED AS TO FORM:
Gregory P. Priamos, County Counsel

By: *Synthia M. Gunzel*
SYNTHIA M. GUNZEL
Deputy County Counsel

By _____
Printed Name: _____
Title: Chairman
Board of Supervisors

ACKNOWLEDGMENT

STATE OF NEBRASKA)
) ss:
COUNTY OF DOUGLAS)

On this ____ day of _____, 20 __, before me, _____, a Notary Public in and for said County and State, personally appeared **Daniel A. Leis** and **Beverly J. Kubat** who are the *General Director Real Estate* 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.

Notary Public for and in said State

↑ (Affix Notary Seal Here) ↑

My commission expires:

ACKNOWLEDGMENT

STATE OF _____

) ss:

COUNTY OF _____)

On this ____ day of _____, 20__, before me, a Notary Public in and for said County and State, personally appeared

(Name of Individual Executing Agreement on Behalf of the Political Body)

who is the _____

(Title of Individual Executing Agreement on Behalf of the Political Body)

of the _____, and who is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to in the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public for and in said State

My commission expires: _____
(Expiration Date)

↑ (Affix Notary Seal Here) ↑

EXHIBIT "A"
LEGAL DESCRIPTION
0084-001A

BEING A PORTION OF NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 7 SOUTH, RANGE 8 EAST, SAN BERNARDINO MERIDIAN ALSO BEING A PORTION OF SOUTHERN PACIFIC RAILROAD RIGHT-OF-WAY ACQUIRED UNDER THE ACT OF CONGRESS DATED MARCH 3, 1871, SAID PORTION MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTHEASTERLY RIGHT-OF-WAY LINE (100 FEET WIDE) OF SOUTHERN PACIFIC RAILROAD RIGHT-OF-WAY ACQUIRED UNDER THE ACT OF CONGRESS DATED MAY 20, 1861, AND THE NORTH LINE OF SAID SECTION 1 ALSO BEING THE CENTERLINE OF 62ND AVENUE (30 FOOT WIDE SOUTHERLY HALF WIDTH) AS SHOWN ON THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP NUMBER 917550-4, ON FILE AT CALTRANS DISTRICT 8 RIGHT-OF-WAY ENGINEERING DEPARTMENT;

THENCE NORTH 89°47'43" EAST ALONG SAID NORTH LINE OF SECTION 1 AND SAID CENTERLINE OF 62ND AVENUE, A DISTANCE OF 83.50 FEET;

THENCE LEAVING SAID SECTION LINE AND SAID CENTERLINE, AT RIGHT ANGLES THERETO, SOUTH 00°12'17" EAST, A DISTANCE OF 30.00 FEET TO THE SOUTHEASTERLY CORNER OF THE RIGHT-OF-WAY CONVEYED TO THE COUNTY OF RIVERSIDE RECORDED JANUARY 19, 1962, IN BOOK 3060, PAGES 371 THROUGH 373, INCLUSIVE, OFFICIAL RECORDS OF THE RECORDER OF RIVERSIDE COUNTY, CALIFORNIA ALSO BEING THE **TRUE POINT OF BEGINNING**.

THENCE SOUTH 36°08'31" EAST ALONG THE NORTHEASTERLY LINE OF THE SOUTHERN PACIFIC RAILROAD COMPANY'S RIGHT-OF-WAY (200 FEET WIDE) ACQUIRED UNDER THE ACT OF CONGRESS DATED MARCH 3, 1871, A DISTANCE OF 4.94 FEET TO A POINT ON A LINE PARALLEL WITH AND DISTANT 4.00 FEET SOUTHERLY OF, AS MEASURED AT RIGHT ANGLES TO, THE SOUTHERLY RIGHT-OF-WAY LINE OF 62ND AVENUE AS DESCRIBED IN SAID RIGHT-OF-WAY DEED RECORDED JANUARY 19, 1962, IN BOOK 3060, PAGES 371 THROUGH 373;

EXHIBIT "A"
LEGAL DESCRIPTION
0084-001A

THENCE SOUTH 89°47'43" WEST ALONG SAID PARALLEL LINE A DISTANCE OF 247.02 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF SAID SOUTHERN PACIFIC RAILROAD COMPANY'S RIGHT-OF-WAY (200 FEET WIDE);

THENCE NORTH 36°08'31" WEST ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE A DISTANCE OF 4.94 FEET TO THE SOUTHWESTERLY CORNER OF SAID RIGHT-OF-WAY CONVEYED TO THE COUNTY OF RIVERSIDE RECORDED JANUARY 19, 1962, IN BOOK 3060, PAGES 371 THROUGH 373;

THENCE NORTH 89°47'43" EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF 62ND AVENUE, A DISTANCE OF 247.02 FEET TO THE **TRUE POINT OF BEGINNING**;

PARCEL CONTAINS 988 SQUARE FEET OR 0.023 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 1.000022359 TO OBTAIN GROUND DISTANCE.

11-RIV-86-PM-12.82-0084-001A

PREPARED UNDER MY SUPERVISION:


EDWARD D. HUNT P.L.S. 7530

2-19-2016
DATED:





March 15, 2018

UPRR Folder No. 3041-24

**Tsai Dowling
Riverside County
2950 Washington St.
Riverside, CA 92504**

RE: Public Highway At-Grade Crossing Agreement

Dear Mr. Dowling:

Enclosed are two fully executed original Public Highway At-Grade Crossing Agreement. It has been a pleasure working with you on this project.

If you have any questions, please contact me at (402) 544-8020 or danielleallen@up.com.

Sincerely,

A handwritten signature in blue ink, appearing to be "DA" followed by a long horizontal stroke.

Danielle Allen
Manager - Real Estate

Real Estate Department
UNION PACIFIC RAILROAD COMPANY
1400 Douglas Street, MS 1690
Omaha, Nebraska 68179-1690
fax: 402.501.0340

AUDIT 288183

Wireline Crossing 080808
Last Modified: 03/29/10
Form Approved, AVP-Law

WHEN DOCUMENT IS FULLY EXECUTED RETURN
CLERK'S COPY
to River County Clerk of the Board, Stop 1010
Post Office Box 1147, Riverside, Ca 92502-1147
Thank you

Folder No. 02960-82

WIRELINE CROSSING AGREEMENT

Mile Post: 621.65, Yuma Subdivision/Branch
Location: Indio, Riverside County, California

THIS AGREEMENT ("Agreement") is made and entered into as of August 29, 2017, ("Effective Date") by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, ("Licensor") and **COUNTY OF RIVERSIDE**, addressed at 3525 14th Street, Riverside, California 92501 ("Licensee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article 1. LICENSOR GRANTS RIGHT.

In consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate

one underground 120 volt wireline

across Licensor's track(s) and property (the "Wireline") in the location shown and in conformity with the dimensions and specifications indicated on the attached print dated November 17, 2015, marked Exhibit "A" attached hereto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Wireline for a purpose other than for the purpose set forth in this Article I, and the Wireline shall not be used for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

For the purposes of Exhibit A, Licensee acknowledges that if it or its contractor provides to Railroad digital imagery depicting the Wireline crossing, Licensee authorizes Railroad to use the Digital Imagery in preparing the print attached as an exhibit hereto. Licensee represents and warrants that through a license or otherwise, it has the right to use the Digital Imagery and to permit Railroad to use the Digital Imagery in said manner.

Article 2. LICENSE FEE.

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of **Two Thousand Eight Hundred Dollars (\$2,800.00)**.

Article 3. ADMINISTRATIVE HANDLING CHARGE.

Upon execution and delivery of this Agreement, the Licensee shall pay to the Licensor an License Fee of **Five Hundred Five DOLLARS (\$505.00)** for clerical, administrative and handling expense in connection with processing this Agreement.

FEB 06 2018 3.14

2018-3-138972

Article 4. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in **Exhibit B**, attached hereto and hereby made a part hereof.

Article 5. DEFINITION OF LICENSEE.

For purposes of this Agreement, all references in this Agreement to the Licensee shall include the Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. If a contractor is hired by the Licensee for any work performed on the Wireline (including initial construction and subsequent relocation or maintenance and repair work), then the Licensee shall provide a copy of this Agreement to its contractor and require its contractor to comply with all the terms and provisions hereof relating to the work to be performed. Any contractor or subcontractor shall be deemed an agent of Licensee for the purpose of this Agreement, and Licensee shall require such contractor or subcontractor to release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

Article 6. INSURANCE.

A. During the life of this Agreement, Licensee shall fully comply with insurance requirements described in **Exhibit C**.

B. Failure to maintain insurance as required shall entitle, but not require, Licensor to terminate this License immediately.

C. If the Licensee is subject to statute(s) limiting its insurance liability and/or limiting its ability to obtain insurance in compliance with **Exhibit C** of this license, those statutes shall apply.

D. Licensee hereby acknowledges that it has reviewed the requirements of **Exhibit C**, including without limitation the requirement for Railroad Protective Liability Insurance during construction, maintenance, installation, repair or removal of the wireline which is the subject of this Agreement.

Article 7. TERM.


This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as herein provided.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By: 
Jason Murray
Asst. Manager - Real Estate

COUNTY OF RIVERSIDE

By: 
Name Printed: Chuck Washington
Title: Chairman
Board of Supervisors

APPROVED AS TO FORM:
Gregory P. Priamos, County Counsel

By: 
CYNTHIA M. GUNZEL
Deputy County Counsel

ATTEST:
KECIA HARPER-IHEM, Clerk
By:  DEPUTY

PLACE ARROW INDICATING NORTH DIRECTION RELATIVE TO CROSSING



UNDERGROUND WIRELINE CROSSING

750 VOLTS OR LESS

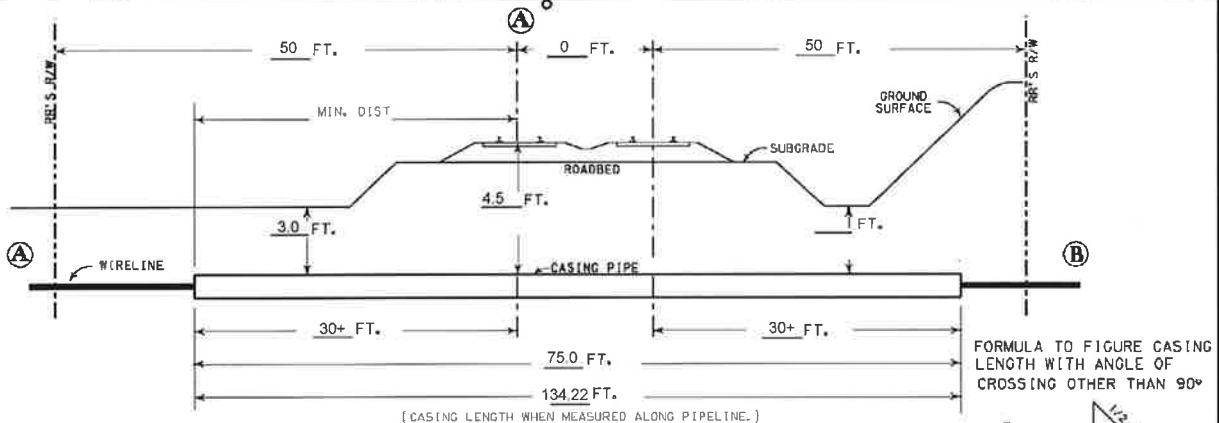
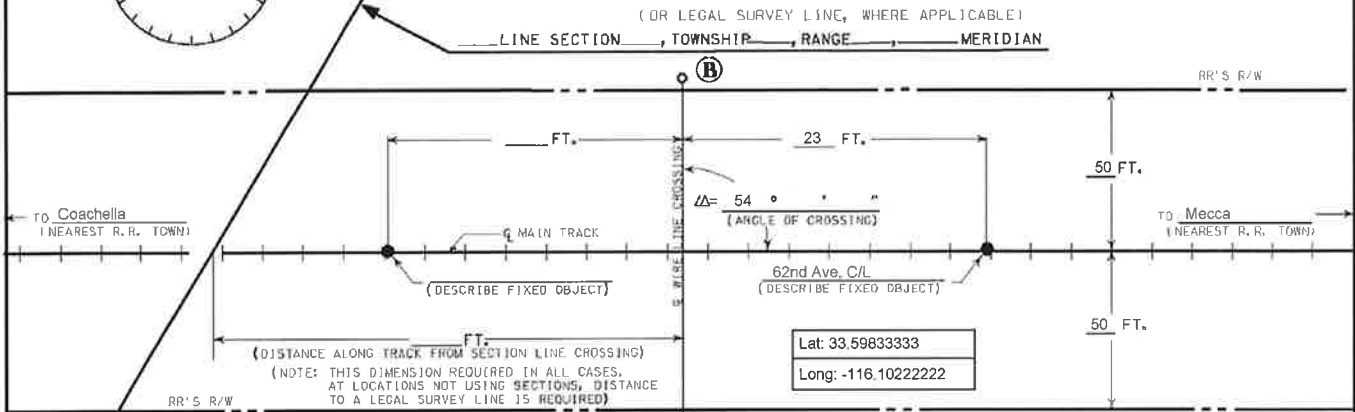
NOTE: ALL AVAILABLE DIMENSIONS MUST BE FILLED IN TO PROCESS THIS APPLICATION.

FORM DR-0404-F

REV 10-26-2007

www.uprr.com

NO SCALE



NOTES :

- A) TYPE WIRELINE CROSSING: Electric
- B) VOLTAGE TO BE CARRIED UNDER TRACK 120 NO. OF WIRES 4
- C) CASING TYPE TO BE INSTALLED Metallic Conduit
- D) METHOD OF INSTALLING CASING PIPE UNDER TRACK(S): (WET BORE NOT PERMITTED); Dry Bore and Jack
- E) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES TO TRACK 30.0 (30' MIN.)
- F) DISTANCE TO NEAREST ROAD CROSSING WITH SIGNAL LIGHTS OR GATES (IF LESS THAN ONE MILE) 23.0
- G) APPLICANT HAS CONTACTED 1-800-336-9193, U. P. COMMUNICATION DEPARTMENT, AND HAS DETERMINED FIBER OPTIC CABLE does EXIST IN VICINITY OF WORK TO BE PERFORMED. TICKET NO. 20151116053

EXHIBIT "A"

(FOR RAILROAD USE ONLY - DO NOT WRITE IN THIS BOX)

UNION PACIFIC RAILROAD CO.

Yuma Sub.

(SUBDIVISION)

M. P. 621.65 E. S. 8466+75

UNDERGROUND WIRELINE CROSSING

INDIO Riverside CA
(NEAREST RR STATION) (COUNTY) (STATE)

FOR COUNTY OF RIVERSIDE (APPLICANT)

RR FILE NO. 0298082 DATE 11/17/2015

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 B

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, 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 the Licensor without liability to the Licensee or to any other party for compensation or damages.

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

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

A. The Wireline shall be designed, constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with (i) Licensor's current standards and specifications ("UP Specifications"), except for variances approved in advance in writing by the Licensor's Assistant Vice President Engineering – Design, or his authorized representative; (ii) such other additional safety standards as the Licensor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"), and (iii) all applicable laws, rules and regulations ("Laws"). If there is any conflict between the requirements of any Law and the UP Specifications or the UP Additional Requirements, the most restrictive will apply.

All work performed on property of the Licensor in connection with the design, construction, maintenance, repair, renewal, modification or reconstruction of the Wireline shall be done to the satisfaction of the Licensor.

B. If the Wireline is an existing one not conforming in its construction to the above provisions of this Section 2, the Licensee shall, within ninety (90) days after the date hereof, reconstruct it so as to conform therewith.

C. The Wireline shall be designed, constructed, maintained and operated by the Licensee in such manner as not to be or constitute a hazard to aviation. With respect to the Wireline the Licensee, without expense to the Licensor, will comply with all requirements of law and of public authority, whether federal, state or local, including but not limited to aviation authorities.

D. In the operation of the Wireline, the Licensee shall not transmit electric current at a difference of potential in excess of the voltage indicated on **Exhibit A**. If the voltage indicated is in excess of seven hundred fifty (750) volts, and the Wireline is, or is to be, buried at any location on the property of the Licensor outside track ballast sections or roadbed, the Licensee shall install metallic conduit, or non-metallic conduit encased in a minimum of three (3) inches of concrete with a minimum of four (4) feet of ground cover the entire length of the Wireline on the property of the Licensor. A Wireline buried by removal of the soil shall have, at a depth of one (1) foot beneath the surface of the ground

directly above the Wireline, a six (6) inch wide warning tape bearing the warning, "Danger-High Voltage", or equivalent wording. A Wireline encased in conduit, jacked or bored under the property of the Licensor, must be identified by placing warning signs, to be installed and properly maintained at the expense of the Licensee, at each edge of the Licensor's property. The Licensee shall not utilize the signs in lieu of the warning tape where portions of the casing are installed by direct burial.

E. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Wireline, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Licensor's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Licensor's Assistant Vice President Engineering Design or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Wireline, and, in the event the Licensor provides such support, the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by the Licensor in connection therewith, which expenses shall include all assignable costs.

F. The Licensee shall keep and maintain the soil over the Wireline thoroughly compacted and the grade even with the adjacent surface of the ground.

G. In the prosecution of any work covered by this Agreement, Licensee 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 3. NOTICE OF COMMENCEMENT OF WORK / LICENSOR REPRESENTATIVE / SUPERVISION / FLAGGING / SAFETY.

A. If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensor before commencing any work. In all other situations, the Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Wireline. All such work shall be prosecuted diligently to completion. The Licensee will coordinate its initial, and any subsequent work with the following employee of Licensor or his or her duly authorized representative (hereinafter "Licensor Representative" or "Railroad Representative"):

SMITH, Charlie J.
MANAGER OF TRACK MAINTENANCE
909/ 685-2154
cjsmith@up.com
PO BOX ZZ45-050 PACIFIC
INDIO, CA 92202

CHAVEZ, Marc A.
MANAGER OF SIGNAL MAINTENANCE
909/ 685-2269
machavez@up.com
235 Luis Estrada St
Beaumont, CA 92223

B. Licensee, at its own expense, shall adequately police and supervise all work to be performed. The responsibility of Licensee for safe conduct and adequate policing and supervision of work shall not be lessened or otherwise affected by Licensor's approval of plans and specifications involving the work, or by Licensor's collaboration in performance of any work, or by the presence at the work site

of a Licensor Representative, or by compliance by Licensee with any requests or recommendations made by the Licensor Representative.

C. At the request of Licensor, Licensee shall remove from Licensor's property any employee who fails to conform to the instructions of the Licensor Representative in connection with the work on Licensor's property. Licensee shall indemnify Licensor against any claims arising from the removal of any such employee from Licensor's property.

D. Licensee shall notify the Licensor Representative at least ten (10) working days in advance of proposed performance of any work 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 Licensor'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 ten (10) day notice, the Licensor Representative will determine and inform Licensee whether a flagman need be present and whether any special protective or safety measures need to be implemented. If flagging or other special protective or safety measures are performed by Licensor, Licensor will bill Licensee for such expenses incurred by Licensor, unless Licensor and a federal, state or local governmental entity have agreed that Licensor is to bill such expenses to the federal, state or local governmental entity. If Licensor will be sending the bills to Licensee, Licensee shall pay such bills within thirty (30) days of receipt of billing. If Licensor performs any flagging, or other special protective or safety measures are performed by Licensor, Licensee agrees that Licensee is not relieved of any of responsibilities or liabilities set forth in this Agreement.

E. 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 Licensor 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, Licensee (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

F. Reimbursement to Licensor 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 Licensor is required to pay the flagman and which could not reasonably be avoided by Licensor by assignment of such flagman to other work, even though Licensee may not be working during such time. When it becomes necessary for Licensor to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Licensee must provide Licensor 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, Licensee 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 ten (10) days notice must then be given to Licensor if flagging services are needed again after such five day cessation notice has been given to Licensor.

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

H. Without limitation of the provisions of paragraph G above, Licensee shall keep the job site free from safety and health hazards and ensure that their employees and contractors and subcontractors are competent and adequately trained in all safety and health aspects of the job.

I. Licensee 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. Prompt notification shall be given to Licensor of any U.S. Occupational Safety and Health Administration reportable injuries. Licensee shall have a non-delegable duty to control its employees while they are on the job site or any other property of Licensor, 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.

J. If and when requested by Licensor, Licensee shall deliver to Licensor a copy of its safety plan for conducting the work (the "Safety Plan"). Licensor shall have the right, but not the obligation, to require Licensee 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 4. LICENSEE TO BEAR ENTIRE EXPENSE.

The Licensee shall bear the entire cost and expense incurred in connection with the design, construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Wireline, including any and all expense which may be incurred by the Licensor in connection therewith for supervision, inspection, flagging, or otherwise.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF WIRELINE.

A. The license herein granted is subject to the needs and requirements of the Licensor in the safe and efficient operation of its railroad and in the improvement and use of its property. The Licensee shall, at the sole expense of the Licensee, reinforce or otherwise modify the Wireline, or move all or any portion of the Wireline to such new location, or remove the Wireline from the Licensor's property, as the Licensor may designate, whenever, in the furtherance of its needs and requirements, the Licensor, at its sole election, finds such action necessary or desirable.

B. All the terms, conditions and stipulations herein expressed with reference to the Wireline on property of the Licensor in the location hereinbefore described shall, so far as the Wireline remains on the property, apply to the Wireline as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.

A. The Wireline and all parts thereof within and outside of the limits of the property of the Licensor shall be designed, constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor (including without limitation, its tracks, pole lines, communication lines, radio equipment, wayside and/or cab based train signal systems, advanced train control systems, positive train separation systems, and grade crossing systems), and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.

B. In the operation and maintenance of the Wireline the Licensee shall take all suitable precaution to prevent any interference (by induction, leakage of electricity, or otherwise) with the operation of the signal, communication lines or other installations or facilities of the Licensor or of its tenants; and if, at any time, the operation or maintenance of the Wireline results in any electrostatic effects which the Licensor deems undesirable or harmful, or causes interference with the operation of the signal, communication lines or other installations or facilities, as now existing or which may hereafter be provided by the Licensor and/or its tenants, the Licensee shall, at the sole expense of the Licensee, immediately make such modifications or take such action as may be necessary to eliminate such interference. Licensee agrees to pay for any reasonable modifications, design changes, or increased costs that may be necessary now or in the future to ensure safe and reliable maintenance and operation of the facilities of Licensor and/or its tenants because of interference from the Wireline.

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

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

E. When not in use, any machinery and materials of Licensee or its contractors shall be kept at least fifty (50) feet from the centerline of Licensor's nearest track.

F. Operations of Licensor and work performed by Licensor's personnel may cause delays in the work to be performed by Licensee. Licensee accepts this risk and agrees that Licensor shall have no liability to Licensee or any other person or entity for any such delays. Licensee shall coordinate its activities with those of Licensor and third parties so as to avoid interference with railroad operations. The safe operation of Licensor's train movements and other activities by Licensor take precedence over any work to be performed by Licensee.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

A. Fiber optic cable systems may be buried on the Licensor'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. Licensee shall telephone the Licensor during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for 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 Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the Licensor's property until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense

whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.

B. IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD THE LICENSOR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF THE LICENSEE, ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON LICENSOR'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 LICENSOR'S PROPERTY, EXCEPT IF SUCH COSTS, LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF THE LICENSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RECOURSE AGAINST LICENSOR 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 LICENSOR'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON LICENSOR'S PROPERTY.

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

A. The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Wireline, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

B. The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Wireline, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Wireline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licensor as compared with the entire value of such property.

Section 9. RESTORATION OF LICENSOR'S PROPERTY.

In the event the Licensee in any manner moves or disturbs any of the property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Wireline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore property to the same condition as the same were in before such property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of

whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the moving or disturbance of any property of the Licensor.

Section 10. INDEMNITY.

A. As used in this Section, "Licensor" includes other railroad companies using the Licensor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licensor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licensor, or property in its care or custody).

B. AS A MAJOR INDUCEMENT AND IN CONSIDERATION OF THE LICENSE AND PERMISSION HEREIN GRANTED, TO THE FULLEST EXTENT PERMITTED BY LAW, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR FROM ANY LOSS OF ANY KIND, NATURE OR DESCRIPTION ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

- 1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE WIRELINE OR ANY PART THEREOF;**
- 2. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE;**
- 3. THE PRESENCE, OPERATION, OR USE OF THE WIRELINE OR ELECTRICAL INTERFERENCE OR OTHER TYPES OF INTERFERENCE CREATED OR CAUSED BY THE WIRELINE OR ESCAPING FROM THE WIRELINE;**
- 4. THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR CONTRIBUTED BY LICENSEE;**
- 5. ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER; OR**
- 6. LICENSEE'S BREACH OF THIS AGREEMENT,**

EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT AND ACTIVE NEGLIGENCE OF THE LICENSOR, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY

WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, LICENSOR'S NEGLIGENCE.

C. Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit of proceeding brought against any indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any indemnitee. Licensee shall pay all costs incident to such defense, including, but not limited to, reasonable attorney's fees, investigators' fees, litigation and appeal expenses, settlement payments and amounts paid in satisfaction of judgments.

Section 11. REMOVAL OF WIRELINE UPON TERMINATION OF AGREEMENT.

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Wireline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Wireline. If the Licensee fails to do the foregoing, the Licensor may, but is not obligated, perform such work of removal and restoration at the cost and expense of the Licensee. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

Section 12. WAIVER OF BREACH.

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

Section 13. TERMINATION.

A. If the Licensee does not use the right herein granted or the Wireline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.

B. In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.

C. Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Section 14. AGREEMENT NOT TO BE ASSIGNED.

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option

of the Licensor, shall terminate this Agreement.

Section 15. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

Section 16. SEVERABILITY.

Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

EXHIBIT C

Union Pacific Railroad Company Contract Insurance Requirements

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

- A. Commercial General Liability insurance.** Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. 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.

- 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 limit of not less than \$2,000,000 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.

- C. Workers Compensation and Employers Liability insurance.** Coverage must include but not be limited to:

Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.

Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Licensee 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.

- D. Railroad Protective Liability insurance.** Licensee must maintain "Railroad Protective Liability" insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad only 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

- E. Umbrella or Excess insurance.** If Licensee utilizes umbrella or excess policies, and these policies must “follow form” and afford no less coverage than the primary policy.

Other Requirements

- F.** 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 Licensee’s liability under the indemnity provisions of this Agreement.
- G.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.
- H.** Licensee 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 for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Licensee required in this agreement, where permitted by law This waiver must be stated on the certificate of insurance.
- I.** 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(s) in which the work is to be performed.
- J.** The fact that insurance is obtained by Licensee or by Railroad on behalf of Licensee will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Licensee or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D
SAFETY STANDARDS

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Licensee or its contractors, subcontractors, or agent of Licensee.

I. Clothing

- A. All employees of Licensee 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, Licensee'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

Licensee shall require its employee 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 Licensee'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)

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

Licensee and its contractor are 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 minimum distance of at least twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized work wear 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. Licensee must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Licensee 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 Licensee to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Licensee's equipment is unsafe for use, Licensee shall remove such equipment from Railroad's property. In addition, Licensee 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 rail bound 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. Licensee shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Licensee 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 Licensee 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.