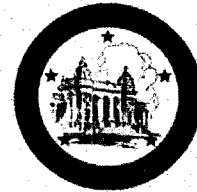


SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



ITEM  
3.5  
(ID # 6046)

MEETING DATE:

Tuesday, March 20, 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  
the Right of Entry Agreement with Union Pacific Railroad Company for the  
Grapefruit Boulevard and 62nd Avenue Traffic Signal Project in the Mecca Area,  
CEQA Exempt, District 4; [Total Cost - \$4,500 DIF Fund 30502-100%] (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 State CEQA Guidelines Section 15301(c);
2. Approve the attached Right of Entry Agreement between the County of Riverside and Union Pacific Railroad Company and authorize the Chairman of the Board to execute the agreement on behalf of the County;

Continued on page 2

ACTION: Policy

Robert Field, Assistant County Executive Officer/EDA

1/4/2018

Patricia Romo, Director of Transportation

3/6/2018

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MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Tavaglione, seconded by Supervisor Perez 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: March 20, 2018  
xc: EDA

Kecia Harper-Ihem  
Clerk of the Board

By:   
Deputy

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

3. 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 transactions;
4. Ratify and authorize reimbursement to EDA-Real Estate (RE) in the amount not-to-exceed \$1,000 for due diligence and staff expenses;
5. Authorize and allocate the amount of \$3,500 for the License Fee for Union Pacific Railroad Company's cost to prepare and administer the attached Right of Entry Agreement; and
6. 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.

<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost:</b>	<b>POLICY/CONSENT (per Exec. Office)</b>
<b>COST</b>	\$ 4,500	\$ 0	\$ 4,500	\$ 0	Consent <input type="checkbox"/> Policy <input type="checkbox"/>
<b>NET COUNTY COST</b>	\$ 0	\$ 0	\$ 0	\$ 0	
<b>SOURCE OF FUNDS: DIF Fund 30502 - 100%</b>				<b>Budget Adjustment: No</b>	
				<b>For Fiscal Year: 2017/18</b>	

**C.E.O. RECOMMENDATION:** Approve

**BACKGROUND:**

**Summary**

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

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 State CEQA Guidelines Section 15301(c).

On September 26, 2017 (Item 3.13), the Board approved a Right of Entry Agreement between the County and Union Pacific for the Grapefruit Boulevard and 62nd Avenue Traffic Signal Project in the Mecca area. That Right of Entry Agreement has expired and the County and its consultants require additional time to complete the scope of work.

The purpose of the attached Right of Entry Agreement (Agreement) is to allow the County to pothole utilities prior to construction. The Agreement requires payment in the amount of \$3,500 to Union Pacific for the License Fee to cover Union Pacific's cost to prepare and administer the

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

Agreement. There are costs of \$1,000 associated with this transaction.

Construction is expected to begin in late 2018.

**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 administrative/processing fees for the Agreement, more fully described in the table below:

Right of Entry Agreement License Fee	\$3,500
Preliminary Title Report	0
County Appraisal Costs	0
EDA Real Property Staff Time	\$1,000
Total Estimated Acquisition Costs (Not-to-Exceed)	\$4,500

**SUPPLEMENTAL:**

**Additional Fiscal Information**

The transaction costs in the amount of \$1,000 included staff time to allow for the coordination and preparation of necessary documents to complete the transaction.

All costs associated with the Agreement are fully funded by DIF Fund 30502 - 100%. No net County costs will be incurred as a result of this transaction. This charge is estimated only and only actual amounts will be charged to the Project.

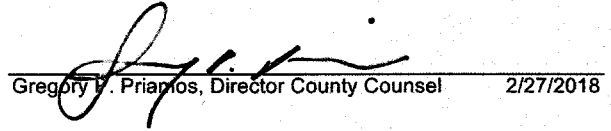
**Attachments:**

- Exhibit A - Vicinity Map
- Notice of Exemption
- Right of Entry Agreement

RF:HM:PR:VC:VY:SV:DD:ra 459TR 19.569 13748  
Transportation Work Order No. C3-0084  
Minute Traq ID

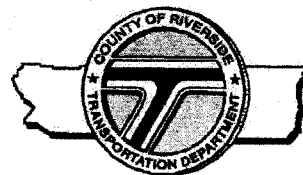
SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,  
STATE OF CALIFORNIA

  
Robin Masuda, Principal Management Analyst 3/13/2018

  
Gregory V. Priamos, Director County Counsel 2/27/2018



**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.

3/21/18  
 Date

KR  
 Initial

**NOTICE OF EXEMPTION**

**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).

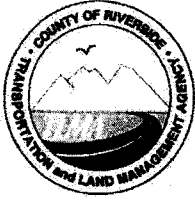
The Riverside County Transportation Department Staff conducted a review of the above referenced project and has determined that the proposal qualifies for a Class 1 Categorical Exemption per the California Environmental Quality Act (CEQA) Guidelines, Section 15301 (c), Article 19, commencing with Section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

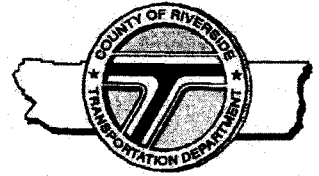
**The Riverside County Transportation Department has found that the above-described project is exempt from the provisions of the California Environmental Quality Act (CEQA), based on the following: California Environmental Quality Act Guidelines, Section 15301 (c)**

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) -

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.

Exhibit BROE 880702

Form Approved, AVP-Law

Folder No. 02991-62

**RIGHT OF ENTRY AGREEMENT**

**THIS AGREEMENT** is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2018, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (hereinafter the "Railroad"), and **COUNTY OF RIVERSIDE**, a California political subdivision, to be addressed at 3525 14th Street, Riverside, CA 92501 (hereinafter the "Licensee").

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

**Article 1. 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.

**Article 2. RIGHT GRANTED; PURPOSE.**

The Railroad hereby grants to the Licensee 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 portion of Railroad's property in the vicinity of Mile Post 621.65, Yuma Subdivision, at or near Thermal, California, only for the purpose of entry and exiting (See Ex. A, Yellow) from West side of track, within 62nd Avenue, to pothole at three (3) locations, at 45', 36', and 25' (See Ex. A, Red) from nearest centerline of track. The right herein granted to Licensee is limited to those portions of the Railroad's property specifically described herein in the location shown on the print marked Exhibit A, attached hereto and hereby made a part hereof, or designated by the Railroad Representative named in Article 4.

For the purposes of Exhibit A, Licensee acknowledges that if it or its contractor provides to Railroad digital imagery, 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 3. TERMS AND CONDITIONS CONTAINED IN EXHIBITS B AND C.**

The terms and conditions contained in Exhibits B and C, hereto attached, are hereby made a part of this Agreement.

**Article 4. ALL EXPENSES TO BE BORNE BY LICENSEE; RAILROAD REPRESENTATIVE.**

The Licensee shall bear any and all costs and expenses associated with any work performed by the Licensee, or any costs or expenses incurred by the Railroad relating to this Agreement. All work performed by Licensee on Railroad's property shall be performed in a manner satisfactory to the representative local Manager of Track Maintenance of the Railroad or his authorized representative (hereinafter the Railroad Representative):

5010 253 38 64 1:13

Folder No. 02991-62

MAR 20 2018

3.5



MARC A. CHAVEZ  
MGR SIGNAL MNTCE  
235 Luis Estrada St  
Beaumont, CA 92223  
Work Phone: 909/8 685-2269  
Cell Phone: 909 222-9523

CHARLIE J. SMITH  
MGR TRACK MNTCE  
PO BOX ZZ45-050 PACIFIC  
INDIO, CA 92202  
Cell Phone: 402 594-3964  
[cjsmith@up.com](mailto:cjsmith@up.com)

**Article 5. TERM; TERMINATION.**

A. The grant of right herein made to Licensee shall commence on the date of this Agreement, and continue for sixty (60) days unless sooner terminated as herein provided, or at such time as Licensee has completed its work on Railroad's property, whichever is earlier. Licensee agrees to notify the Railroad Representative in writing when it has completed its work on Railroad property.

B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

**Article 6. CERTIFICATE OF INSURANCE.**

A. Before commencing any work, the Licensee will provide the Railroad with a Certificate issued by its insurance carrier providing the insurance coverage required pursuant to Exhibit C of this Agreement.

B. Union Pacific should be listed as certificate holder and all insurance correspondence shall be directed to: Union Pacific Railroad Company, Director (Attn.: Sarah Brower - Folder No.02991-62), 1400 Douglas Street STOP 1690, Omaha, Nebraska 68179-1690.

**Article 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.**

Fiber optic cable systems may be buried on 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. Prior to beginning any work, the Licensee shall telephone the Railroad at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the property set forth herein. If it is, the Licensee shall also comply with and be subject to the provisions contained in Section 6 of Exhibit B.

**Article 8. ENFORCEABILITY; CHOICE OF LAW; CHOICE OF FORUM.**

This Agreement shall be governed, construed, and enforced in accordance with the laws of the state of Nebraska. Litigation arising out of or connected with this Agreement may be instituted and maintained in the courts of the state of Nebraska and California only, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation, in those courts, and consent to service of process issued by such courts.

**Article 9. LICENSE FEE.**

Licensee shall pay, and Railroad shall accept, upon the execution and return of this instrument, the nonrefundable sum of **Three Thousand Five Hundred Dollars (\$3,500.00)** to cover Railroad's cost to prepare and administer this Agreement.

Flagging charges are not included in the sum recited in the preceding paragraph, and will be billed separately, if incurred.

**Article 10. SPECIAL PROVISION – RAILROAD FLAGMAN; WHEN REQUIRED; FLAGGING CHARGES.**

A. 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 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, pursuant to the terms of the attached Exhibit 'B'. All expenses connected with the furnishing of said flagman shall be at the sole cost and expense of the Licensee, who shall promptly pay to Railroad all charges connected therewith, within 30 days after presentation of a bill therefore.

B. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays; two and one-half times current hourly rate for holidays.

C. Wage rates are subject to change, at any time, by law or by agreement between the 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, the Licensee shall pay on the basis of the new rates and charges.

D. Reimbursement to the Railroad will be required covering the full eight hour day during which any flagman is furnished, unless he 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 work. Reimbursement will also be required for any day not actually worked by said flagman following his assignment to work on the project for which the Railroad is required to pay the flagman and which could not reasonably be avoided by the Railroad Company by assignment of such flagman to other work, even though the Licensee may not be working during such time.


E. Arrangements for flagging are to be made at least Thirty (30) days in advance of commencing work, with the Railroad Manager of Track Maintenance.


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

**UNION PACIFIC RAILROAD COMPANY**  
Federal Taxpayer I.D. #94-6001323


**COUNTY OF RIVERSIDE**

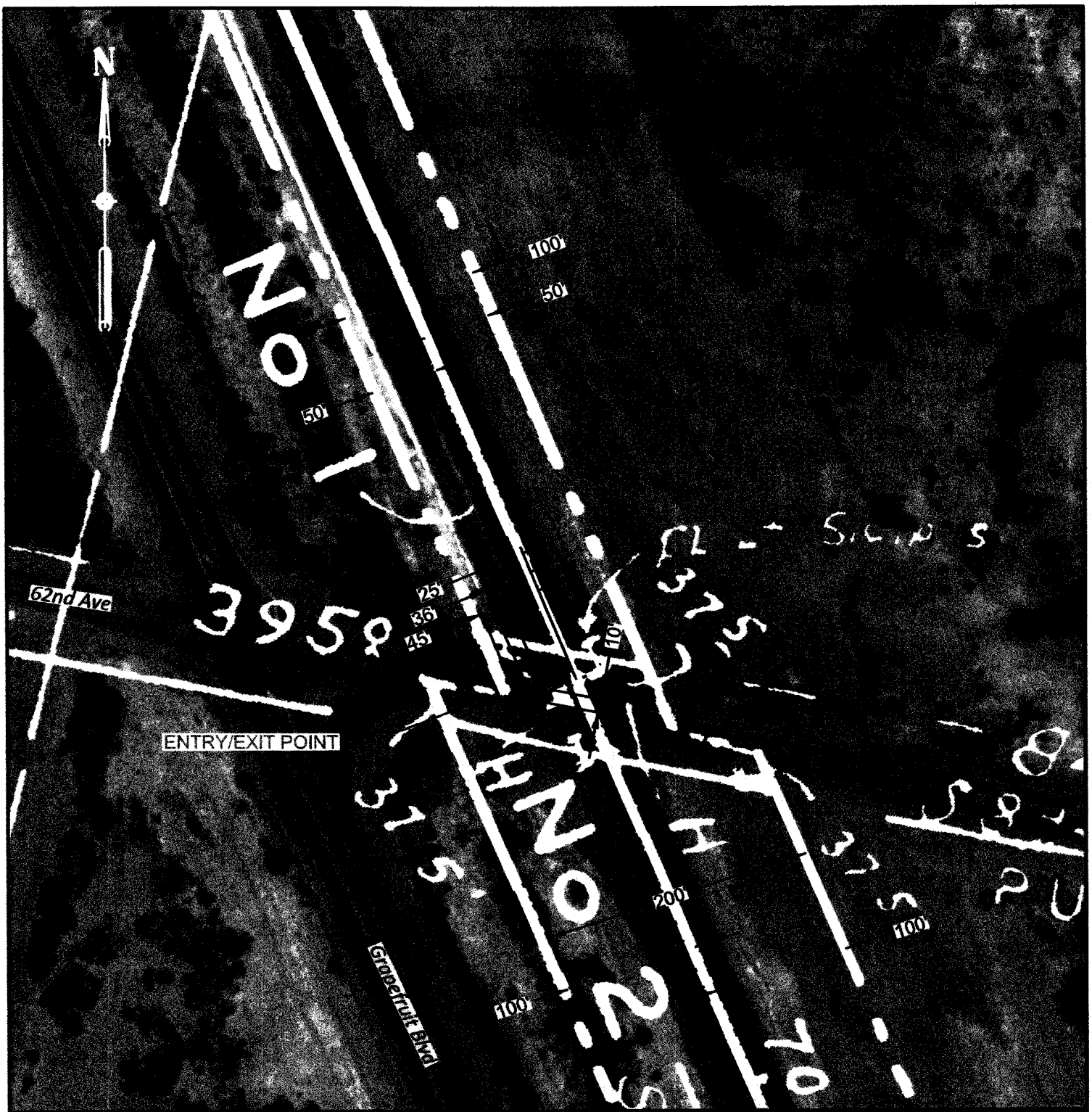
By: \_\_\_\_\_  
Valerie Harrill – Real Estate Contracts

By:   
Title: **CHAIRMAN, BOARD OF SUPERVISORS**  
**CHUCK WASHINGTON**

ATTEST:  
KECIA HARPER-IHEM, Clerk  
By:   
DEPUTY

*(Pursuant to ordinance, resolution, or other evidence of proper authority to execute this instrument, a copy of which shall be attached to the Railroad's original counterpart of this document.)*

FORM APPROVED COUNTY COUNSEL  
BY:  2/26/18  
THOMAS OH DATE



**LEGEND:**

- POTHOLES ..... ●
- UPRRCO. R/W OUTLINED ..... - - - - -

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

EXHIBIT "A"  
**UNION PACIFIC RAILROAD COMPANY**

THERMAL, RIVERSIDE COUNTY, CA  
 M.P. 621.65 - YUMA SUB

TO ACCOMPANY AGREEMENT WITH  
 COUNTY OF RIVERSIDE  
 SP CA V-31 / 16  
 SCALE: 1" = 100'

OFFICE OF REAL ESTATE  
 OMAHA, NEBRASKA DATE: 5/18/2016  
 AJM FILE: 2991-62

CADD FILENAME	0299162.dgn
SCAN FILENAME	0299162_CA3116.tif

**EXHIBIT B**

**Section 1 - NOTICE OF COMMENCEMENT OF WORK - FLAGGING.**

The Licensee agrees to notify the Railroad Representative at least Ten (10) days in advance of Licensee commencing its work and at least 24 hours in advance of proposed performance of any work by the Licensee in which any person or equipment will be within 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 25 feet of any track. Upon receipt of such notice, the Railroad Representative will determine and inform the Licensee whether a flagman need be present and whether the Licensee need implement any special protective or safety measures. If any flagmen or other special protective or safety measures are performed by the Railroad, such services will be provided at Licensee's expense with the understanding that if the Railroad provides any flagging or other services, the Licensee shall not be relieved of any of its responsibilities or liabilities set forth herein.

**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 the 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 the Railroad without liability to the Licensee or to any other party for compensation or damages.

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

**Section 3 - NO INTERFERENCE WITH RAILROAD'S OPERATION.**

No work performed by Licensee shall cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Railroad, its lessees, licensees or others, unless specifically permitted under this Agreement, or specifically authorized in advance by the Railroad Representative. Nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof. When not in use, Licensee's machinery and materials shall be kept at least 50 feet from the centerline of Railroad's nearest track, and there shall be no crossings of Railroad's tracks except at existing open public crossings.

**Section 4 - PERMITS.**

Prior to beginning any work, the Licensee, at its sole expense, shall obtain all necessary permits to perform any work contemplated by this Agreement.

**Section 5 - MECHANIC'S LIENS.**

The Licensee shall pay in full all persons who perform labor or provide materials for the work to be performed by Licensee. The Licensee shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be enforced against any property of the Railroad for any such work performed. The Licensee shall indemnify and hold harmless the 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.

**Section 6 - FIBER OPTIC CABLE SYSTEMS.**

In addition to other indemnity provisions in this Agreement, the Licensee shall indemnify and hold the 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 the Licensee, its contractor, agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and (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. Licensee 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 7 - COMPLIANCE WITH LAWS.**

In the prosecution of the work covered by this Agreement, the Licensee shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Licensee shall use only such methods as are consistent with safety, both as concerns the Licensee, the Licensee's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Licensee (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 property. If any failure by the Licensee 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 Licensee shall reimburse and indemnify the Railroad for any such fine, penalty, cost or charge, including without limitation attorneys' fees, court costs and expenses. The Licensee 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.

**Section 8 - SAFETY INSTRUCTIONS.**

Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work pursuant to this Agreement. As reinforcement and in furtherance of overall safety measures to be observed by the Licensee (and not by way of limitation), the following special safety rules shall be followed:

a. The Licensee 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. The Licensee shall have proper first aid supplies available on the job site so that prompt first aid services can be provided to any person that may be injured on the job site. The Licensee shall promptly notify the Railroad of any U.S. Occupational Safety and Health Administration reportable injuries occurring to any person that may arise during the work performed on the job site. The Licensee shall have a non-delegable

duty to control its employees, while they are on the job site or any other property of the Railroad to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage or illegally obtained drug, narcotic or other substance that may inhibit the safe performance of work by an employee.

b. The employees of the Licensee shall 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. Only waist length shirts with sleeves and trousers that cover the entire leg are to be worn. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching. The employees should wear sturdy and protective footwear. 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. In addition, the Licensee shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations or Railroad officials overlooking the work at the job site. In particular, the protective equipment to be worn shall be:

(1) Protective head gear that meets American National Standard-Z89.1-latest revision. It is suggested that all hardhats be affixed with Licensee's or subcontractor's company logo or name.

(2) Eye protection that meets American National Standard 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, burning, etc.; and

(3) Hearing protection which affords enough attenuation to give protection from noise levels that will be occurring on the job site.

c. All heavy equipment provided or leased by the Licensee shall be equipped with audible back-up warning devices. If in the opinion of the Railroad Representative any of Licensee's or any of its subcontractors' equipment is unsafe for use on the Railroad's right-of-way, the Licensee, at the request of the Railroad Representative, shall remove such equipment from the Railroad's right-of-way.

#### **Section 9 - INDEMNITY.**

a. As used in this Section, "Railroad" includes other railroad companies using the Railroad'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: (i) injury to or death of persons whomsoever (including the Railroad's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and (ii) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Railroad, or property in its care or custody).

b. As a major inducement and in consideration of the license and permission herein granted, the Licensee agrees to indemnify and hold harmless the Railroad from any Loss which is due to or arises from any cause and is associated in whole or in part with the work performed under this Agreement, a breach of the Agreement or the failure to observe the health and safety provisions herein, or any activity or omission arising out of performance or nonperformance of this Agreement; regardless of whether caused solely or contributed to in part by the negligence or fault of the Railroad.

c. Any liability of either party hereunder to one of its employees under any Workers' Compensation Act or the Federal Employers' Liability Act shall not be questioned or in any way challenged by the other party, nor shall any jury or court findings, resulting from any employee's suit against either party pursuant to any such Act(s), be relied upon or used by either party in any attempt to assert common law liability against the other.

**Section 10 - RESTORATION OF PROPERTY.**

In the event the Railroad authorizes the Licensee to take down any fence of the Railroad or in any manner move or disturb any of the other property of the Railroad in connection with the work to be performed by Licensee, then in that event the Licensee shall, as soon as possible and at Licensee'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, and the Licensee shall indemnify and hold harmless the Railroad, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, arising from the taking down of any fence or the moving or disturbance of any other property of the Railroad.

**Section 11 - WAIVER OF BREACH.**

The waiver by the Railroad 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 Railroad to avail itself of any remedy for any subsequent breach thereof.

**Section 12 - ASSIGNMENT - SUBCONTRACTING.**

The Licensee shall not assign, sublet or subcontract this Agreement, or any interest therein, without the written consent of the Railroad and any attempt to so assign, sublet or subcontract without the written consent of the Railroad shall be void. If the Railroad gives the Licensee permission to subcontract all or any portion of the work herein described, the Licensee is and shall remain responsible for all work of subcontractors and all work of subcontractors shall be governed by the terms of this Agreement.

## **EXHIBIT C**

### **Union Pacific Railroad Contract Insurance Requirements Right of Entry Agreement**

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 \$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.

**B. Business Automobile Coverage insurance.** Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less than \$2,000,000 for each accident.

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 Railroad Company 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:

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 as named insured, with a limit of not less than \$2,000,000 per occurrence



and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.

**E. Umbrella or Excess insurance.** If Licensee 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.

Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), 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, Licensee 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 business automobile, worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsement CG 20 26, (or substitute form(s) providing equivalent coverage). The coverage provided to Railroad as additional insured shall not be limited by Licensee's liability under the indemnity provisions of this Agreement. BOTH LICENSEE AND RAILROAD EXPECT THAT UNION PACIFIC RAILROAD COMPANY WILL BE PROVIDED WITH THE BROADEST POSSIBLE COVERAGE AVAILABLE BY OPERATION OF LAW UNDER ISO ADDITIONAL INSURED FORM CG 20 26.

**H.** 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..

**I.** Licensee waives all rights against Railroad and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers liability or commercial umbrella or excess liability insurance obtained by Licensee required by this agreement.

**J.** Prior to commencing the work, Licensee 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(s) in which the work is to be performed.

ROE 880702  
Form Approved, AVP-Law

**L.** The fact that insurance is obtained by 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.

ROE 920316  
Form Approved, AVP-Law

## CONTRACTOR'S ENDORSEMENT

Folder No. 02991-62

A. As a condition to entering upon Licensor's right-of-way to perform work pursuant to this Agreement, Licensee's contractor (*Fill in*):

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(hereinafter "Contractor") agrees to comply with all the terms and provisions of this Agreement relating to the work to be performed and the insurance requirements set forth in Exhibit C.

B. Before the Contractor commences any work, the Contractor will pay the Licensor a nonrefundable payment of \$500 upon execution and return of this Contractor's Endorsement, and will provide the Licensor with a certificate issued by its insurance carrier providing the insurance coverage required pursuant to Exhibit C in a policy which contains the following type endorsement:

UNION PACIFIC RAILROAD COMPANY is named as an additional insured with respect to all liabilities arising out of Insured's performance of work on behalf of the Licensee.

All insurance correspondence shall be directed to: Sarah Brower - Folder No. 02991-62, Union Pacific Railroad Company, 1400 Douglas Street STOP 1690, Omaha, Nebraska 68179-1690.

\_\_\_\_\_  
(Please print Contractor's Name above)

X \_\_\_\_\_  
Title: \_\_\_\_\_