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0000027553

From: Brian Buchanan
Valley Metro Rail

NO. MIU4373

Date: 10/17/2005

To: Document Control
Arizona Corporate Commission
1200 W. Washington Street

Phoenix, AZ 85007

Subject: AZ Corporation Hearing for Light Rail

File(s):

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ITEM NO.	COPIES	DATE	ITEM	NUMBER	REV. NO.	DESCRIPTION	STATUS
1	13	10/12/2005				AZ Corporation Hearing for Light Rail	FYI

Remarks: Please see attached Procedural Order by the Arizona Corporation Commission regarding construction at the 1st Street and Rio Salado grade crossing. If you have any questions, please contact me at (602) 744-5589.

Distribution:
Document Control

Signed:
Brian Buchanan





TRANSMITTAL

From: Brian Buchanan
Valley Metro Rail

No. MT04554

Date: 10/12/2005

To: Jim Smith
Union Pacific Railroad Company
10031 Foothills Blvd.

Roseville, CA 95747

Subject: AZ Corporation Hearing for Light Rail

File(s):

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<input type="checkbox"/> Change Order	<input type="checkbox"/> Review and Comment	<input type="checkbox"/> Resubmit
<input type="checkbox"/> Plans		<input type="checkbox"/> Submit
<input type="checkbox"/> Samples	SENT VIA:	<input type="checkbox"/> Returned
<input type="checkbox"/> Specifications	<input checked="" type="checkbox"/> Attached	<input type="checkbox"/> Returned for Corrections
<input checked="" type="checkbox"/> Other: Procedural Order	<input type="checkbox"/> Separate Cover Via:	<input type="checkbox"/> Due Date:

ITEM NO.	COPIES	DATE	ITEM NUMBER	REV. NO.	DESCRIPTION	STATUS
1	1				AZ Corporation Hearing for Light Rail	FYI

Remarks: Please see attache Procedural Order by the Arizona Corporation Commission regarding Construction at the 1st St. and Rio Salado grade crossing.

If you have any questions, please contact me at 602-744-5589

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Brian Buchanan

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TRANSMITTAL

From: Brian Buchanan
Valley Metro Rail

No. MT04552

Date: 10/12/2005

To: Will Manley
City of Tempe
31 E. 5th Street

Tempe, AZ 85281

Subject: AZ Corporation Hearing for Light Rail

File(s):

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<input type="checkbox"/> Plans		<input type="checkbox"/> Submit
<input type="checkbox"/> Samples	SENT VIA:	<input type="checkbox"/> Returned
<input type="checkbox"/> Specifications	<input checked="" type="checkbox"/> Attached	<input type="checkbox"/> Returned for Corrections
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Remarks: Please see attached Procedural Order by the Arizona Corporation Commission regarding Construction at the 1st St. and Rio Salado grade crossing.

If you have any questions, please contact me at 602-744-5589

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Signed:
Brian Buchanan

Sent To: Will Manley - City of Tempe
Street, Apt. No., or PO Box No.: 31 E. 5th Street
City, State, ZIP+4: Tempe, AZ 85281

ents)



7002 0510 0002 6057 5743



TRANSMITTAL

From: Brian Buchanan
Valley Metro Rail

No. MT04553

Date: 10/12/2005

To: Jyme Sue McLaren
City of Tempe
31 East Fifth Street

Tempe, AZ 85281

Subject: AZ Corporation Hearing for Light Rail

File(s):

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Remarks: Please see attached Procedural Order by the Arizona Corporation Commission regarding Construction at the 1st St. and Rio Salado grade crossing.

If you have any questions, please contact me at 602-744-5589.

Distribution:

DC*, Will Manley*, James H. Smith*, Vicki Barron*,
Brian Buchanan*, Joe Marie*

Signed: _____

Brian Buchanan





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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

2005 SEP 29 P 1:54

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION OF
VALLEY METRO RAIL TO UPGRADE A
CROSSING OF THE UNION PACIFIC
RAILROAD AT FIRST STREET AND RIO
SALADO PARKWAY IN TEMPE, ARIZONA,
AAR/DOT NO. 741 547N.

DOCKET NO. RR-03639A-05-0404

PROCEDURAL ORDER

BY THE COMMISSION:

On June 3, 2005, Valley Metro Rail ("VMR") filed with the Arizona Corporation Commission ("Commission") a request for approval for the Union Pacific Railroad ("Railroad") to upgrade a crossing at First Street and Rio Salado Parkway in Tempe, Arizona at AAR/DOT No. 741 547N.

IT IS THEREFORE ORDERED that the request of the Valley Metro Rail shall be considered an application for the Railroad to upgrade a public railroad crossing pursuant to A.R.S. § 40-337, et seq.

IT IS FURTHER ORDERED that the Railroad shall be considered as the Respondent in this proceeding.

IT IS FURTHER ORDERED that a hearing on the application shall be held on **October 26, 2005 at 9:30 a.m.**, or as soon thereafter as is practical, at the Commission's offices, 1200 West Washington Street, Phoenix, Arizona.

IT IS FURTHER ORDERED that within five business days of receipt of this Procedural Order, Valley Metro Rail shall provide the Railroad and Tempe and any other municipality or interested party that may be affected by the application with a copy of the application and this Procedural Order by certified mail.

...

...



411 North Central Avenue
Suite 200
Phoenix, AZ 85004

May 26, 2005

MS02580

Don Thompson
RR Safety Supervisor
Arizona Corporate Commission
1200 W. Washington Street
Phoenix, AZ 85007

05-31-05P02:40 RCVD

**RE: CENTRAL PHOENIX/EAST VALLEY LIGHT RAIL TRANSIT PROJECT
UNION PACIFIC RAILROAD INTERFACE AT 1ST STREET IN
TEMPE, ARIZONA**

Dear Mr. Thompson:

Valley Metro Rail is a non-profit corporation formed by the cities of Phoenix, Tempe, Mesa and Glendale tasked with the construction, operation, and maintenance of the METRO light rail system for the valley. As part of this construction, we interface with the Union Pacific Railroad (UPRR) at 1st Street in Tempe, AZ. The METRO light rail system will be constructing two new tracks through the grade crossing along with moving an existing cantilever signal and providing inner-connect between the two signal systems to operate the crossing equipment jointly with the passing of a freight train and/or a light rail vehicle.

Valley Metro Rail has negotiated with the UPRR and will be paying costs associated with the construction of light rail at this location.

We have included with this letter a copy of a plan sheet showing the proposed construction and a copy of our UPRR Operation and Maintenance Agreement. We ask the Arizona Corporation Commission to authorize the additional construction of two tracks through the 1st Street public grade crossing.

Should you have any questions, please feel free to contact Brian Buchanan, Project Engineer for Line Section 5, by phone at (602) 744-5589 or by email at Bbuchanan@valleymetro.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Vicki Barron', with a long horizontal line extending to the right.

Vicki Barron, P.E.
Director of Design and Construction

Enclosures

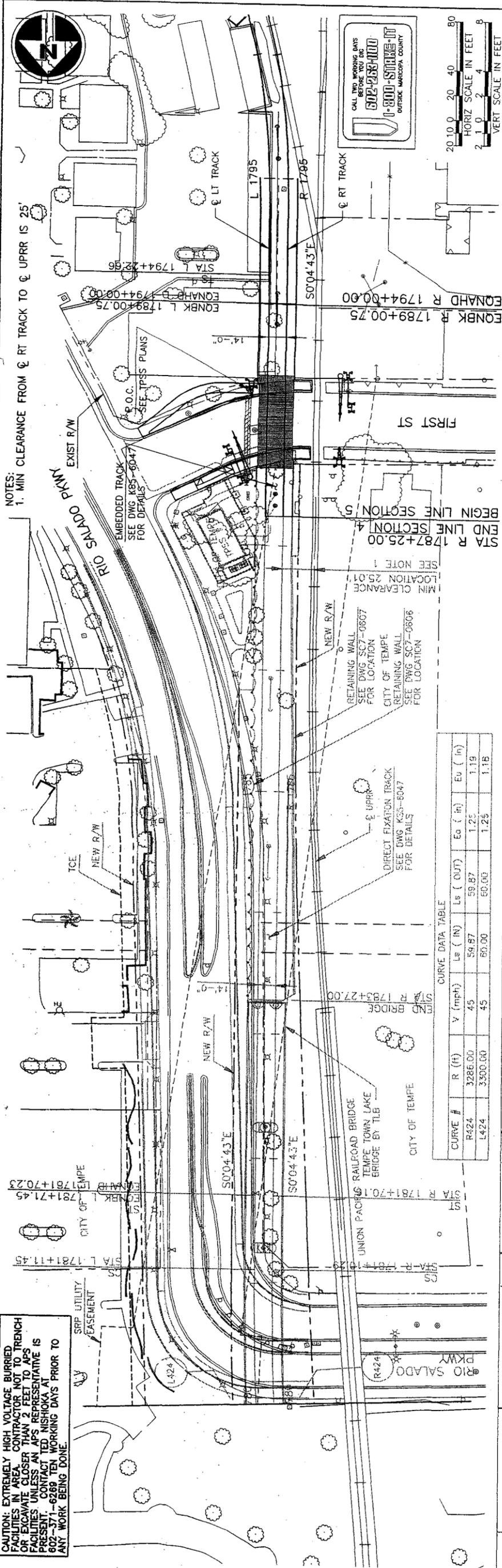
cc: Document Control File, Wulf Grote, Jim Starz, John Farry, Jyme Sue McLaren,
Gregg Kent



MS02580

File Number: E1 - FACILITIES - 3.1.5 - Line Segment 5 - Union Pacific Railroad Interface

CAUTION: EXTREMELY HIGH VOLTAGE BURIED FACILITIES IN AREA. CONTRACTOR NOT TO TRENCH OR EXCAVATE CLOSER THAN 2 FEET TO APS FACILITIES UNLESS AN APS REPRESENTATIVE IS PRESENT. CONTACT TED NISHIOKA AT 602-371-6289 TEN WORKING DAYS PRIOR TO ANY WORK BEING DONE.



NOTES:
1. MIN CLEARANCE FROM ϕ RT TRACK TO ϕ UPRR IS 25'

END LINE SECTION 4
STA R 1787+25.00
BEGIN LINE SECTION 5

MIN CLEARANCE LOCATION 25.01'
SEE NOTE 1

RETAINING WALL SEE DWG SC7-0607 FOR LOCATION
CITY OF TEMPE
RETAINING WALL SEE DWG SC7-0606 FOR LOCATION

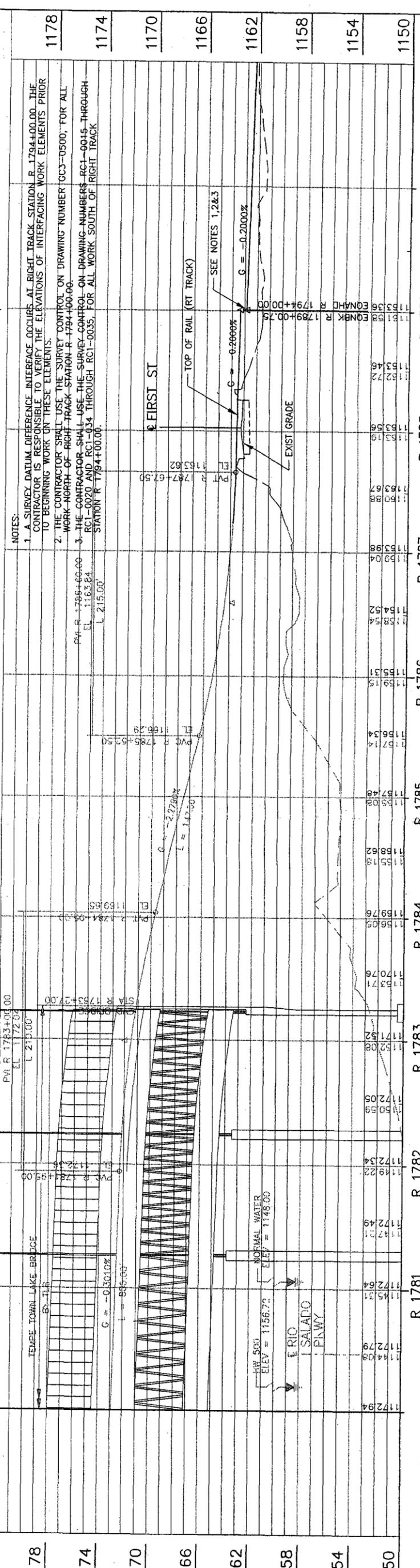
DIRECT FIXATION TRACK SEE DWG K35-6047 FOR DETAILS

UNION PACIFIC RAILROAD BRIDGE TEMPE TOWN LAKE BRIDGE BY TLB
CITY OF TEMPE

SRP UTILITY EASEMENT
CITY OF TEMPE

CURVE DATA TABLE

CURVE #	R (ft)	Δ (deg)	Ls (ft)	Ls (OUT)	Ea (ft)	Eu (ft)
R424	3286.00	45	54.87	59.87	1.25	1.19
L424	3500.00	45	50.00	50.00	1.25	1.18



NOTES:
1. A SURVEY DATUM DIFFERENCE INTERFACE OCCURS AT EIGHT TRACK STATION R 1794+00.00. THE CONTRACTOR IS RESPONSIBLE TO VERIFY THE ELEVATIONS OF INTERFACING WORK ELEMENTS PRIOR TO BEGINNING WORK ON THESE ELEMENTS.
2. THE CONTRACTOR SHALL USE THE SURVEY CONTROL ON DRAWING NUMBER CC3-0500, FOR ALL WORK NORTH OF RIGHT TRACK STATION R 1794+00.00.
3. THE CONTRACTOR SHALL USE THE SURVEY CONTROL ON DRAWING NUMBERS RC1-0015 THROUGH RC1-0020 AND RC1-0034 THROUGH RC1-0035, FOR ALL WORK SOUTH OF RIGHT TRACK STATION R 1794+00.00.

SEE NOTES 1, 2 & 3
 $G = -0.2000\%$

SEE NOTES 1, 2 & 3
 $G = -0.2000\%$

SEE NOTES 1, 2 & 3
 $G = -0.2000\%$

SEE NOTES 1, 2 & 3
 $G = -0.2000\%$

SEE NOTES 1, 2 & 3
 $G = -0.2000\%$

REV	DATE	BY	DESCRIPTION
0	15DEC04	SD	ISSUED FOR BID

1178	1174	1170	1166	1162	1158	1154	1150
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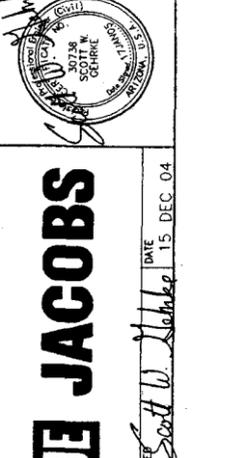
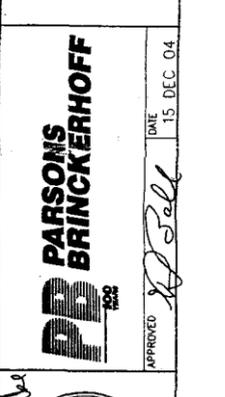
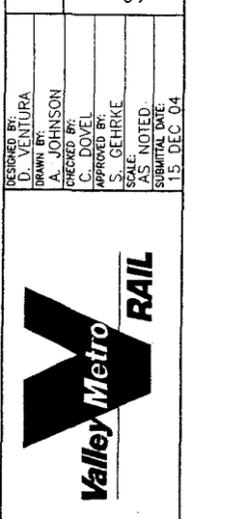
DESIGNED BY:	BRUNN VENTURA
DRAWN BY:	A. JOHNSON
CHECKED BY:	C. DOVEL
APPROVED BY:	S. GEHRKE
SCALE:	AS NOTED
SUBMITTAL DATE:	15 DEC 04

DATE	15 DEC 04
SUBMITTED	Scott W. Habbe
DATE	15 DEC 04

REVISIONS	DESCRIPTION

DRAWING NO.	KCA-0429
REVISION	0
CONTRACT NO.	LRT-04-022-LS5
SHEET NO.	101

CENTRAL PHOENIX / EAST VALLEY LRT
LINE SECTION 5
TRACK ALIGNMENT PLAN & PROFILE
STA R 1787+25.00 TO STA R 1794+00.00



DATE MODIFIED: 01/17/05, BY: S. RIVERA

**CONSTRUCTION,
OPERATIONS AND MAINTENANCE AGREEMENT
BETWEEN
VALLEY METRO RAIL, INC.,
AND
UNION PACIFIC RAILROAD COMPANY**

Folder 2215-24

This Construction, Operations and Maintenance Agreement (the "Agreement") is entered into as of the 19th day of December, 2003, by and between **VALLEY METRO RAIL, INC.**, a nonprofit corporation formed pursuant to A.R.S. Section 11-952 ("Valley Metro Rail"), and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("UP").

Recitals

A. **WHEREAS**, UP owns and operates a railroad right-of-way in Tempe, Arizona, commonly known as the Phoenix Subdivision; and

B. **WHEREAS**, the City of Tempe ("Tempe") has acquired certain real property adjacent to UP's Phoenix Subdivision right-of-way (the "LRT Property"), including real property purchased from UP, as shown in Exhibit A, and described on Exhibit B, attached hereto and incorporated herein; and

C. **WHEREAS**, Tempe, along with the Cities of Phoenix, Mesa, and Glendale, have formed Valley Metro Rail, as an independent public entity, to construct and operate a light rail transit system connecting the Cities of Glendale, Phoenix, Tempe, and Mesa; and

D. **WHEREAS**, Tempe will transfer to Valley Metro Rail the right to use the LRT Property to construct and operate a portion of said light rail transit system parallel to UP's continued freight operations on the Phoenix Subdivision; and

E. **WHEREAS**, the parties desire to set forth their respective rights and obligations with respect to the construction of the Project and their respective operations and maintenance in and adjacent to the Parallel Corridor Segment (as defined below), except that the parties' rights and obligations with respect to hazardous materials contamination of the real property purchased from UP, if any, shall be governed by the terms and conditions of the Purchase and Sale Agreement between UP and Tempe and not by this Agreement.

facilities, Automatic Warning Devices, and any and all structures and facilities required by lawful authority in connection with the construction, renewal, maintenance, and operation of any of the foregoing.

"FRA" shall mean the Federal Railroad Administration.

"Freight Rail Service" shall mean the common carrier freight rail operations conducted by UP or UP's tenants on the UP Property.

"FTA" shall mean the Federal Transit Administration.

"Invoice" is defined in Section 19.2.

"Losses" shall mean all losses, damages, claims, demands, costs, liabilities, judgments, fines, fees (including, without limitation, reasonable attorneys fees) and expenses (including, without limitation, costs of investigation, defense expenses at arbitration, trial or appeal and without institution of arbitration or suit, and, with respect to damage or destruction of property, cleanup, repair, and replacement expenses) of any nature arising from or in connection with death of or injury to persons, or damage to or destruction of property.

"LRT Property" is defined in Recital B; provided, that if Tempe or Valley Metro Rail shall transfer individual parcel(s) to third parties not affiliated with Tempe or Valley Metro Rail, and the transferred parcel(s) do not constitute a continuous corridor that is usable for transportation or recreation, such individual parcel(s) shall not be deemed "LRT Property" and shall not be subject to the provisions of this Agreement subsequent to any such transfer. Nothing in this Agreement shall prohibit Tempe or Valley Metro Rail from transferring any or all of the LRT Property to a third party affiliated with Tempe or Valley Metro Rail; provided, however, that such affiliated third party assignee shall consent in writing to be bound by the terms and conditions of this Agreement.

"Mutual Interest Additions and Alterations" shall mean Additions and Alterations constructed by, or on behalf of, one party, adjacent to the other party's property in the Parallel Corridor Segment and the design of which is likely to have a material effect on the safety of the other party's operations.

"Mutual Interest Improvements" shall mean (i) improvements located on, under, or over, the UP Property, or (ii) improvements located adjacent to the UP Property for which the design is likely to have a material effect on the safety of UP's operations.

"Operations and Maintenance Effective Date" shall mean the date of the written notice from Valley Metro Rail to UP, given pursuant to Section 8.3 hereof, stating that the Project Work is complete.

"Parallel Corridor Segment" shall mean the entire width of the parallel rail corridors shown on Exhibit C, exclusive of any individual parcel(s) transferred by UP,

Tempe, or Valley Metro Rail, to third parties not affiliated with UP, Tempe, or Valley Metro Rail, which transferred parcel(s) do not constitute a continuous corridor that is usable for transportation or recreation.

"Plans and Specifications" shall have the meaning set forth in Section 3.1, below.

"Project" shall mean the construction of the Central Phoenix/East Valley LRT Facilities on or about the Parallel Corridor Segment.

"Project Work" shall mean all work (including, without limitation, utility relocations) that comprises the Project. Valley Metro Rail or the Valley Metro Rail Contractor shall perform Project Work, except for certain utility relocations that may be performed by the applicable utility company.

"Purchase and Sale Agreement" means that certain Purchase and Sale Agreement for the LRT Property made by and between Tempe and UP, of even date herewith.

"Related Agreements" shall mean the Purchase and Sale Agreement and all of the agreements defined in the Purchase and Sale Agreement as "Related Agreements."

"Tempe" shall mean the City of Tempe, a municipal corporation created under the provisions of Title 9, Arizona Revised Statutes. The Charter of the City of Tempe was adopted in October 1964.

"UP" shall mean Union Pacific Railroad Company, a Delaware corporation.

"UP Property" shall mean all areas of the Parallel Corridor Segment which are (i) not designated as LRT Property, and (ii) retained under the ownership of UP or UP's successors or assigns; provided, that if UP shall transfer individual parcel(s) to third parties not affiliated with UP, and the transferred parcel(s) do not constitute a continuous corridor that is usable for transportation or recreation, such individual parcel(s) shall not be deemed "UP Property" and shall not be subject to the provisions of this Agreement subsequent to any such transfer.

"Valley Metro Rail Contractor" shall mean the general contractor who performs Project Work for Valley Metro Rail. "Valley Metro Rail Contractor" shall also refer to subcontractors and suppliers, regardless of tier, provided that such subcontractors and suppliers shall not individually be required to execute a Contractor's Right of Entry Agreement nor provide insurance to UP.

ARTICLE 2: CONSTRUCTION OF PROJECT

2. Article 2 Effective Dates. This Article 2 shall be effective on the date first above written and shall expire on the Operations and Maintenance Effective Date, unless sooner terminated as provided herein.

3. **Work To Be Completed.**

3.1 **Items to Be Constructed.** Valley Metro Rail will design and construct its light rail Facilities in the Parallel Corridor Segment in accordance with plans and specifications to be prepared by Valley Metro Rail and, to the extent set forth below, approved by UP (the "Plans and Specifications"). The parties agree that the Plans and Specifications shall (i) comply with all applicable laws, rules, and regulations, and (ii) include installation of a fence, or other barrier, on the property line separating the UP Property and the LRT Property in the Parallel Corridor Segment south of the Salt River. In addition, the Plans and Specifications shall conform to UP's current published design standards, but only for Mutual Interest Improvements. UP has the right to review and approve the Plans and Specifications with respect to their consistency with the design standards set forth above.

3.2 **Work to be Performed by Valley Metro Rail and UP.**

3.2.1 The Valley Metro Rail Contractor shall be responsible for accomplishing all Project Work, at the sole cost and expense of Valley Metro Rail. Mutual Interest Improvements shall be accomplished to the reasonable satisfaction of UP, and UP's approval of such Mutual Interest Improvements shall not be unreasonably withheld, conditioned, or delayed.

3.2.2 UP shall be responsible for (a) relocating its signal box, currently located on the northeast side of the First Street crossing, to a location west of UP's freight tracks, and (b) installing a new Automatic Warning Device, and removing the existing Automatic Warning Device, on the east side of the First Street grade crossing in accordance with the Plans and Specifications. Valley Metro Rail will reimburse UP for the actual cost of performing such work.

3.2.3 UP will continue to be responsible for maintaining the Automatic Warning Devices on both sides of the First Street grade crossing until the Operations and Maintenance Effective Date, at which time the provisions of Section 13.2 will control.

3.3 **Construction Schedule; Rail Traffic Coordinators.** All work to be performed by UP hereunder shall be subject to a reasonable construction schedule to be agreed upon by UP and Valley Metro Rail. UP and Valley Metro Rail shall also reasonably determine the necessity for, and number of, rail traffic coordinators to accomplish Project Work.

4. **Access Rights.**

4.1 **Access to UP Property and LRT Property for Project Work and UP Signal Box Relocation.** Contemporaneously with the execution of this Agreement the parties shall execute the Joint Right of Entry License set forth in Exhibit E.

4.2 **Insurance.** Neither Valley Metro Rail nor any Valley Metro Rail Contractor shall begin any Project Work on Mutual Interest Improvements, and no contractor, subcontractor or supplier shall be permitted to enter upon property owned, controlled, or leased by UP, in connection with this Agreement, until certificates or policies of insurance in the amounts required by Subsection 7.2.3 and Section 7.5 of this Agreement have been delivered to UP. UP may reject any certificates or policies of insurance that do not comply with the requirements of Section 7.5.

5. **Construction and Supervision.**

5.1 **Plans and Specifications.** All Project Work on Mutual Interest Improvements shall be performed strictly in accordance with the Plans and Specifications, except that Valley Metro Rail shall have the right to make any changes to the Plans and Specifications that do not affect Mutual-Interest Improvements. Changes to the Plans and Specifications affecting Mutual Interest Improvements shall be subject to UP's approval which approval shall not be unreasonably withheld, conditioned, or delayed. Project Work on Mutual Interest Improvements not contemplated by the Plans and Specifications shall be performed only with the prior written consent of UP and Valley Metro Rail.

5.2 **Utilities.** Valley Metro Rail and UP agree that this Agreement shall not affect or authorize any change, modification, or relocation of existing utilities, including fiber optic lines. It shall be Valley Metro Rail's responsibility to coordinate the modification and/or relocation, as necessary, of all existing utilities, at its sole cost and expense. Utility relocation will be subject to UP's review and approval (which review and approval shall not be unreasonably withheld, conditioned, or delayed) according to published UP standards. UP's right of review and approval shall extend only to changes, modifications, or relocations of utilities that are located on (or relocated to) the UP Property or that materially affect UP operations. UP shall cooperate with any such utility relocations but shall not be required to take legal action against any utility company or otherwise enforce any agreements it may have with any utility company. Valley Metro Rail shall pay any and all expenses in connection with such utility relocations necessitated as a result of its Project, including without limitation, pipeline or fiber optic relocations.

6. **Methods and Procedures; Falsework/Shoring Plans and Calculations.** No later than thirty (30) calendar days prior to performing Project Work on Mutual Interest Improvements, the Valley Metro Rail Contractor shall submit proposed methods and procedures of performing such Project Work on Mutual Interest Improvements through Valley Metro Rail to UP for approval. The Valley Metro Rail Contractor shall also submit through Valley Metro Rail to UP for approval, prior to construction, plans and calculations certified by a professional engineer licensed by the State of Arizona for any falsework or shoring, if any, that provides lateral or subjacent support to the UP Property or UP's Facilities. UP shall have the right to approve whether the Valley Metro Rail Contractor's proposed methods and procedures, and falsework/shoring plans and

calculations, are acceptable for the performance of such Project Work on Mutual Interest Improvements, which approval shall not be unreasonably withheld, conditioned, or delayed. Within thirty (30) calendar days after receipt of such methods and procedures, and falsework/shoring plans and calculations, UP shall advise Valley Metro Rail whether the same are satisfactory. In the event UP does not approve any of the foregoing, UP shall, within the same time period, provide written comments to Valley Metro Rail to assist the Valley Metro Rail Contractor in obtaining the approval of UP. Valley Metro Rail shall not allow the Valley Metro Rail Contractor to commence any Project Work on Mutual Interest Improvements until UP has approved all of the foregoing. All approvals referred to in this Section shall be in writing.

7. Contractor Obligations and Activities.

7.1 Specifications for Construction. Valley Metro Rail and UP agree that any contract awarded to the Valley Metro Rail Contractor shall include the following general information in the applicable Plans and Specifications:

7.1.1 The following provisions or Exhibits of this Agreement apply to the Valley Metro Rail Contractor and set forth the Valley Metro Rail Contractor's duties toward UP:

7.1.1.1 Sections 4.2, 6, 7.2, 7.3, 7.4, 7.6, 7.7; and

7.1.1.2 Exhibits F and G.

7.1.2 With respect to Mutual Interest Improvements only, the Valley Metro Rail Contractor's methods and procedures shall be provided to UP for review and approval pursuant to the provisions of Section 6. Prior to the commencement of Project Work on Mutual Interest Improvements, the Valley Metro Rail Contractor shall also submit through Valley Metro Rail to UP for review and approval pursuant to the provisions of Section 6, plans and calculations certified by a professional engineer licensed by the State of Arizona for falsework or shoring, if any, that provides lateral or subjacent support to the UP Property or UP's Facilities. None of the foregoing work on Mutual Interest Improvements shall be started until written approval (which shall not unreasonably be withheld, conditioned, or delayed) is obtained from UP. The Valley Metro Rail Contractor shall at all times keep covered all pits or openings near or under UP's trackage, except during the time required for actual operations in making such pits or openings and performing work therein. The provisions of this subsection shall not be construed as relieving the Valley Metro Rail Contractor of, or subjecting UP or Valley Metro Rail to, any responsibility or liability for any of Valley Metro Rail Contractor's operations, methods and procedures, or as constituting the Valley Metro Rail Contractor as a third-party beneficiary of this Agreement.

7.2 Contractor's Covenants. In addition to those provisions specified in Section 7.1 of this Agreement, any agreement entered into with the Valley Metro Rail

Contractor to perform Project Work on Mutual Interest Improvements shall require such contractor to keep and perform the following covenants, conditions, and stipulations:

7.2.1 **Right of Entry.** Before entering on the UP Property to perform Project Work on Mutual Interest Improvements, the Valley Metro Rail Contractor shall be required to execute a Contractor's Right of Entry Agreement in substantially the same form as Exhibit F.

7.2.2 **Notice for Rail Traffic Coordination.** The Valley Metro Rail Contractor shall notify UP at least seven (7) calendar days in advance of commencing or discontinuing any operations that require rail traffic coordination services. Such notices shall be governed by the specific Contractor's Right of Entry Agreement entered into by the Valley Metro Rail Contractor with UP.

7.2.3 **Contractor's Insurance.** Valley Metro Rail shall obtain or cause the Valley Metro Rail Contractor to obtain, insurance of the kinds and amounts described in Contractor Insurance Requirements set forth in Schedule B-1 (attached to the Contractor's Right of Entry Agreement) during the times any work is being performed on UP's property or within 50 feet of the centerline of UP's tracks.

7.2.4 **Crossings and Roadways.** The Valley Metro Rail Contractor shall not establish or use any new at-grade crossings of the Parallel Corridor Segment, without UP's prior written approval.

7.2.5 **Utilities.** The Valley Metro Rail Contractor shall observe all the requirements concerning utilities as described in the Plans and Specifications.

7.2.6 **Subcontractors.** The Valley Metro Rail Contractor shall require all of its subcontractors performing Project Work on Mutual Interest Improvements to be bound by the limitations and obligations of this Agreement. Only those subcontractors who obtain the insurance required in Subsection 7.2.3 above shall be authorized to perform Project Work on Mutual Interest Improvements, unless Valley Metro Rail or the Valley Metro Rail Contractor provides insurance covering the subcontractor.

7.3 **Advance Warning Devices.** Valley Metro Rail shall furnish, install, and maintain, at its sole cost and expense, all advance warning signs or barricades which may be necessary during the course of construction of the Project Work.

7.4 **Contractor's Defaults and Omissions.** Valley Metro Rail shall be responsible for the correction of defaults or omissions of the Valley Metro Rail Contractor for all Project Work on Mutual Interest Improvements. UP shall have the right to request that any employee of Valley Metro Rail, employee of the Valley Metro Rail Contractor, or any subcontractor, be removed from the Project for incompetence, neglect of duty, unsafe conduct, or misconduct if, in UP's reasonable judgment, the incompetence, neglect of duty, unsafe conduct, or misconduct may materially impair the safety of UP's operations, Facilities, or the UP Property. Concurrently with making any

such request, UP shall provide Valley Metro Rail with documentary evidence, if available, of the allegations against such employee or subcontractor.

7.5 Insurance.

7.5.1 Valley Metro Rail Insurance.

7.5.1.1 Throughout the construction of the Project, Valley Metro Rail shall obtain and maintain, from an insurance company licensed to do business in Arizona, and possessing an A.M. Best's rating of B, or better, general liability insurance in the amount of Five Million Dollars (\$5,000,000.00) per occurrence, and Twenty Five Million Dollars (\$25,000,000.00) in the aggregate, with UP named as additional insured. The insurance may include a self-insured retention not to exceed Five Hundred Thousand Dollars (\$500,000.00). The insurance shall also include an endorsement deleting the exclusion for bodily injury or property damage arising out of construction or demolition operations within fifty (50) feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass, or crossing. Valley Metro Rail shall provide UP evidence of Valley Metro Rail's liability insurance coverage at least ten (10) working days prior to the date of commencement of such construction and shall provide evidence of its continued insurance coverage at each subsequent renewal. Valley Metro Rail's failure to provide such evidence within twenty (20) working days after receipt of written notice from UP, shall entitle UP, at its sole discretion (but not a requirement), to purchase such liability insurance, and Valley Metro Rail shall reimburse UP the cost of such liability insurance within thirty (30) working days of its receipt of a bill therefor.

7.5.1.2 Provided Valley Metro Rail maintains the insurance above-described, in the event of any loss or damage to any persons or property suffered by any party to this Agreement or for which any party to this Agreement may be liable, that party shall first proceed directly against available insurance coverage, and shall make no claim against any other party to this Agreement for such loss or damage unless it is determined that insurance coverage has been exhausted or is not available.

7.5.1.3 The insurance policies described in this Section 7.5 shall be primary and not contributory, and shall release UP as to payments of any earned premium. All insurance certificates provided by Valley Metro Rail must demonstrate compliance with this Section 7.5 and must provide that such insurance may not be canceled, amended or allowed to lapse until the expiration of at least thirty (30) calendar days' advance written notice to UP. Prior to any entry upon UP's Property, Valley Metro Rail shall furnish to UP for approval a Certificate of Insurance, or other reasonably satisfactory evidence that all the insurance which Valley Metro Rail is obligated to furnish under the foregoing provisions has been obtained and is being maintained.

7.5.1.4 During the construction period only, the insurance obligations set forth in Subsection 7.2.3 and this Section 7.5 may be satisfied by any combination of insurance policies provided by Valley Metro Rail and/or the Valley Metro Rail Contractor as long as the aggregate policy limits of the combined policies meet the

requirements set forth in Subsection 7.5.1.1 and Subsection 7.2.3, above, and the policies name both Valley Metro Rail and UP as additional insureds. In addition, Valley Metro Rail's Contractor shall provide all of the insurance required by the insurance provisions of the Contractor's Right of Entry Agreement, except that Valley Metro Rail may, at its option, provide the Railroad Protective Liability Insurance required thereunder and, in that event, the Valley Metro Rail Contractor shall not be required to provide Railroad Protective Liability Insurance.

7.5.2 UP Insurance.

7.5.2.1 UP maintains, and shall continue to maintain, a catastrophic risk management program, allowing for its diverse risk exposures and financial condition, and in keeping with risks assumed by corporations of established size and reputation and consistent with programs of other Class I railroads. UP shall maintain at all times this Agreement is in effect, and at its own cost and expense, insurance coverage as is customary under its established risk management program. UP warrants and agrees that said insurance (or self insurance) coverage is, and shall be, at least as comprehensive in scope and amount as the insurance required to be carried by Valley Metro Rail under this Agreement.

7.5.2.2 Within ten (10) working days prior to the Operations and Maintenance Effective Date, UP shall provide Valley Metro Rail with certificates of insurance (or its standard self insurance letter) evidencing the insurance required by Subsection 7.5.2.1.

7.6 **Clearances.** Valley Metro Rail shall comply with the clearances contained in the Plans and Specifications, which clearances shall be in accordance with all applicable State and Federal Railroad Administration regulations.

7.7 **Contractor Contracts.** Upon receipt of UP's written request therefor, Valley Metro Rail shall submit to UP copies of all agreements entered into with a contractor to perform Project Work on Mutual Interest Improvements.

8. Termination.

8.1 **Termination upon Abandonment of Project.** In the event Valley Metro Rail elects to abandon construction of the Project, Valley Metro Rail may terminate this Agreement upon giving written notice of termination to UP. If Valley Metro Rail terminates this Agreement pursuant to this Section, Valley Metro Rail shall reimburse UP for (i) any cost reasonably incurred by UP in connection with the Project prior to such termination, or (ii) if UP's facilities have been damaged in connection with the Project, any cost reasonably required to restore UP facilities to its functional condition prior to such damage.

8.2 **Restoration of UP Property.** In the event this Agreement is terminated prior to the completion of the Project Work, or the Project Work is suspended for more

than twelve (12) months, Valley Metro Rail at its sole cost and expense, shall ensure that the UP Property is restored to its condition prior to the commencement of construction of the Project.

8.3 Completion of Project Work. After substantial completion of the Project Work, Valley Metro Rail shall promptly give written notice thereof to UP. UP and Valley Metro Rail shall meet to walk through and inspect the Project improvements within ten (10) calendar days after such notice is given. Following such inspection of the Project improvements, Valley Metro Rail shall give UP final notice of the completion of the Project Work and the commencement of the Operations and Maintenance Effective Date. Unless sooner terminated as provided herein, this Article 2 shall expire on the date such notice is given.

9. Representatives. Valley Metro Rail's Deputy Executive Director of Design and Construction or his or her designee(s), shall be the principal representative of Valley Metro Rail in all matters relating to this Article 2. UP's Construction Engineer, or his or her designee(s), shall be the principal representative of UP in all matters relating to this Article 2.

10. Testing During Construction Period. Valley Metro Rail may test its Facilities during construction of the Project, including operating light rail vehicles on its tracks, carrying employees of Valley Metro Rail, the Valley Metro Rail Contractor and any subcontractors. However, Valley Metro Rail shall not operate light rail vehicles carrying any other persons in the Parallel Corridor Segment prior to the Operations and Maintenance Effective Date.

ARTICLE 3: OPERATIONS AND MAINTENANCE FOLLOWING CONSTRUCTION OF PROJECT

11. Operations and Maintenance Effective Date. This Article 3 shall become effective only on and after the Operations and Maintenance Effective Date.

12. Freight Rail Service; Transit Service.

12.1 UP's Rights and Obligations. UP shall continue to have the exclusive right and obligation to provide, by itself or through UP's designee, Freight Rail Service on and over the UP Property.

12.2 UP shall have the right to construct, maintain, replace, remove, use and operate new industry tracks across the LRT Property as may be required to fulfill UP's common carrier obligation to shippers and receivers of freight on the Phoenix Subdivision, but only on the following terms and conditions:

12.2.1 In the event UP desires to construct any new industry tracks on the Phoenix Subdivision that would cross the LRT Property, UP shall obtain Valley Metro Rail's prior written consent to the design of the proposed improvement, which shall not

be unreasonably withheld, conditioned or delayed; provided that Valley Metro Rail may require in its sole discretion, as a condition to its consent, the design and construction of a grade-separated crossing of the light rail tracks to minimize interference with light rail operations, at the sole cost of entities other than Valley Metro Rail.

12.2.2 In the event the construction of any new industry tracks across, under, or over, the LRT Property reasonably necessitates the construction of new facilities, or modifications to, or relocations of Valley Metro Rail's existing facilities, such construction, modifications and/or relocations shall be at the expense of entities other than Valley Metro Rail.

12.2.3 If any new industry tracks are permitted to cross the light rail tracks at-grade, the operation thereof shall only take place in accordance with such standard operating procedures as Valley Metro Rail may adopt from time to time to minimize interference with light rail operations.

12.2.4 UP shall, at Valley Metro Rail's request and at the expense of entities other than Valley Metro Rail, relocate or grade-separate any new industry tracks crossing the LRT Property as reasonably necessary for Valley Metro Rail's light rail operations and restore Valley Metro Rail's facilities and transit system to their pre-existing condition.

12.3 Valley Metro Rail's Rights and Obligations. Valley Metro Rail shall have the exclusive right to provide, by itself or through Valley Metro Rail's designee, transit service on and over the LRT Property. Nothing in this Agreement shall prevent or prohibit UP from operating or from permitting other qualified entities to operate passenger service on and over the UP Property or the Phoenix Subdivision.

13. Maintenance, Repair, and Replacement Obligations.

13.1 General Maintenance, Repair, and Replacement Obligations. The parties shall maintain, repair, and replace (as necessary) their respective properties and improvements located thereon in accordance with all applicable laws, rules, and regulations, and in a condition reasonably suitable for the parties' intended uses of the Parallel Corridor Segment.

13.2 Maintenance and Repair of Automatic Warning Devices. UP shall maintain, repair, and replace as necessary, Automatic Warning Devices on the UP Property and Valley Metro Rail shall maintain, repair, and replace as necessary, Automatic Warning Devices on the LRT Property at the First Street grade crossing of the Parallel Corridor Segment. Highway Traffic Signals and active advance warning devices interconnected with the Automatic Warning Devices at the First Street crossing shall be maintained, repaired, and replaced as necessary by Valley Metro Rail at its sole cost and expense. If the track of either party is removed, relocated, or grade-separated, so that only the track of the other party remains within the First Street grade crossing, the

ownership and responsibility for maintenance of Automatic Warning Devices on both sides of the grade crossing will be transferred to the party whose track remains within the grade crossing. The track circuits and control apparatus that were connected to the removed/relocated track shall be removed and retained by the owner of the removed/relocated track.

13.3 Remedies.

13.3.1 In the event the party responsible for the maintenance of any item (the "Maintaining Party") fails to perform its maintenance obligations under this Agreement, and such failure results in a material danger to human health or safety, or to property, the other party hereto may perform such obligations immediately upon notifying the Maintaining Party by telephone at the number set forth below, and shall be entitled to full reimbursement for costs and expenses reasonably incurred from the Maintaining Party within thirty (30) calendar days after submission of a written Invoice therefor.

13.3.2 In the event the Maintaining Party discovers any malfunction of, or damage to, Automatic Warning Devices, the Maintaining Party shall promptly notify the other party by telephone at the telephone number set forth below. The parties shall follow their respective usual response practices in the event of any malfunction of, or damage to, Automatic Warning Devices.

Valley Metro Rail Contact: Jay Harper, Operations Manager
(602) 495-8216

UP Telephone Contact: _____

14. Construction of Additions and Alterations. The design and construction of any Additions and Alterations on the parties' respective properties in the Parallel Corridor Segment shall comply with all applicable laws, rules, and regulations. The parties agree to reasonably notify and consult with one another concerning the design and construction of any Mutual Interest Additions and Alterations.

15. Operations.

15.1 UP's Operations. UP shall have exclusive authority to manage, direct, and control all activities on the UP Property, including, without limitation, the operations of all trains, locomotives, rail cars, and rail equipment, and the movement and speed of the same on the UP Property. Valley Metro Rail shall not have any right to enter upon or use the UP Property, except as expressly set forth in this Agreement.

15.2 Valley Metro Rail's Operations. Valley Metro Rail shall have exclusive authority to manage, direct, and control all activities on the LRT Property, including, without limitation, the operations and maintenance of all trains, rail cars, and rail equipment, and the movement and speed of the same on the LRT Property. UP shall not

have any right to enter upon or use the LRT Property, except as expressly set forth in this Agreement.

16. Reciprocal Access and Notice Rights.

16.1 Permitted Reasons for Access. Each party hereto (the "Accessing Party") shall have the right to enter upon the property of the other in the Parallel Corridor Segment for the following reasons only:

16.1.1 Each party may enter upon the property of the other party for the purpose of performing maintenance, repair, or replacement, of Automatic Warning Devices, and associated equipment, at, and on each side of the First Street crossing of the Parallel Corridor Segment.

16.1.2 Valley Metro Rail may enter the UP Property if necessary to make emergency repairs to LRT equipment. Each Accessing Party may enter upon the other party's property for purposes of performing any emergency maintenance, repair, or rail traffic coordination pursuant to Section 13.3. Entry under this subsection does not require any prior notice.

16.1.3 In the event of an emergency of any kind, the Accessing Party may enter upon the other party's property (i) to warn the other party's trains by any reasonable means, including, without limitation, use of rail traffic coordinators or (ii) in the event of a wreck or derailment of the Accessing Party's train or equipment, to clear the train, equipment, or other debris from the other party's property. Entry under this subsection does not require any prior notice, however the Accessing Party shall notify the other party by telephone as soon as possible.

16.1.4 Security personnel of either party in pursuit of a criminal suspect may enter upon the other party's property for the purpose of apprehending the suspect. Entry under this subsection does not require any prior notice.

16.2 First Street Crossing Signals. Each party hereto grants to the other an irrevocable license upon, over, under and across those portions of their respective properties located at the First Street crossing for the construction, operation, maintenance, repair, renewal and replacement of their respective railroad/light rail crossing signal connection cables, together with the right to connect such cables into their respective crossing signal control housings.

16.3 Compliance with Regulations. When accessing the other party's property, or approaching the other party's tracks, each party shall comply with all applicable rules and regulations of the FRA and/or State Safety Oversight Agency (Arizona Department of Transportation).

17. Liability.

17.1 Assumption of Responsibility.

17.1.1 Each of the parties hereto shall assume, bear, and pay any and all Losses allocated to it as the responsible party under the terms of this Section 17; provided, that this Section 17 pertains only to Losses proximately caused by incidents occurring on, or adjacent to, the Parallel Corridor Segment, and arising out of the parties' operations on the Parallel Corridor Segment. Except as otherwise expressly provided in Subsections 17.2.3.1 and 17.2.5, and Section 17.3, the responsibility for Losses allocated to each party under this Section 17 is without respect to fault, failure, negligence, misconduct, malfeasance, or misfeasance of any party or its employees, agents, or servants.

17.1.2 All costs and expenses incurred in connection with the investigation, adjustment, and defense of any claim or suit shall be included as part of the Loss for which responsibility is assumed under the terms of this Section 17, including salaries or wages and associated benefits of, and out-of-pocket expenses incurred by or with respect to, employees of either party engaged directly in such work and a reasonable amount of allocated salaries and wages of employees providing support services to the employees so engaged directly in such work.

17.2 Allocation of Responsibilities.

17.2.1 Invitee of Either Party. Losses arising out of personal injury (including bodily injury and death) to, or property damage suffered by, an invitee of either party shall be the responsibility of and borne and paid solely by that party regardless of the cause of such Loss or the fault of either party or whose train or equipment was involved, except as provided in Section 17.3 below. Consultants and contractors of a party, and any person who is on a train or equipment operated by or for the account of a party (other than an employee of a party engaged in performing duties for that party), shall rebuttably be presumed to be an invitee of that party. All persons at or adjacent to an Valley Metro Rail passenger station or Valley Metro Rail loading platform shall rebuttably be presumed to be invitees of Valley Metro Rail (other than employees, contractors and consultants, including employees of such contractors, of UP or UP's tenant, engaged in performing duties for UP or UP's tenant).

17.2.2 Employees in Course of Employment. Losses arising out of personal injury (including bodily injury and death) to, or property damage suffered by, any employee of either party which occurs during the course of employment or while traveling to or from employment (an "employee") shall be the responsibility of and borne solely by the party employing such employee, except as provided in Section 17.3.

17.2.3 Persons Other Than Invitees or Employees. Except as provided in Section 17.3, Losses arising out of personal injury (including bodily injury and death) to, or property damage suffered by, (i) any person who is not an invitee or employee of

Valley Metro Rail or UP (including, without limitation, persons using vehicular and pedestrian crossings and trespassers), or (ii) any person who is an employee of Valley Metro Rail or UP but is not acting in the course of his or her employment at the time of injury or damage, shall be the responsibility of and borne and paid by the parties as follows:

17.2.3.1 When trains or equipment of both Valley Metro Rail and UP are involved in the incident giving rise to the injury or damage, by both parties in proportion to their relative degrees of fault.

17.2.3.2 When trains or equipment of only one party are involved in the incident giving rise to the injury or damage, by that party alone.

17.2.3.3 When no train or equipment of either party is involved in the incident giving rise to the injury or damage, by the party on whose property the incident occurred.

17.2.4 Property of the Parties. Losses arising out of casualty losses to property owned by either party shall be the responsibility of and paid by the parties as follows regardless of the cause of such Loss or the fault of either party, except as provided in Subsection 17.2.5, and Section 17.3, below:

17.2.4.1 Loss to trains, equipment, and other property owned by Valley Metro Rail shall be the responsibility of Valley Metro Rail and borne by it.

17.2.4.2 Loss to trains, equipment and other property owned by, and freight transported by, UP shall be the responsibility of UP and borne by it.

17.2.4.3 Loss to property jointly owned and/or used by both parties shall be the responsibility of and borne and paid by the parties as follows:

17.2.4.3.1 When trains or equipment of both parties were involved in the incident giving rise to the Loss, by both parties equally.

17.2.4.3.2 When trains or equipment of only one party were involved in the incident giving rise to the Loss, by that party alone.

17.2.4.3.3 When no train or equipment of either party was involved in the incident giving rise to the Loss: (i) by the party which owns the property involved, if the property is owned by only one party but used by both, or (ii) by both parties equally, if the property is jointly owned.

17.2.5 Hazardous Materials. Except as provided in Section 17.3, Losses arising out of the release of hazardous materials shall be the responsibility of and borne by the party who transported the hazardous materials unless trains and equipment of both

parties were involved, in which case the parties shall bear the Loss in proportion to their relative degrees of fault.

17.3 Limitations on Indemnification. The provisions of this Section 17.3 shall apply notwithstanding the provisions of Section 18 below. If any of the provisions of Section 17.2 would otherwise be prohibited by or unenforceable under the laws of the State of Arizona (including a determination that indemnification under the circumstances involved is against the public policy of the state), the indemnity provided by such provision shall be deemed to be limited to and operative only to the maximum extent permitted by law. Without limitation, if it is determined that any law or public policy of the State of Arizona prohibits the indemnification of a party for its own sole negligence in any instance covered by the provisions of Section 17.2, those provisions shall be deemed to exclude indemnification for such party's sole negligence but to permit full indemnification, as specified in Section 17.2, if both parties were negligent. In the case of any Loss for which the provisions of this Section 17.3 would prevent the indemnification of a party, such party shall be responsible for and bear such Loss.

17.4 Scope of Indemnification. In any case where a party is required under the provisions of this Section 17 to bear a Loss, it shall pay, satisfy, and discharge such Loss and all judgments that may be rendered by reason thereof and all costs, charges, and expenses incident thereto, and such party shall forever indemnify, defend, and hold harmless the other party and its commissioners, directors, officers, agents, employees, shareholders, parent corporations and affiliated companies, or governmental entities from, against, and with respect to any and all Losses which arise out of or result from the incident giving rise thereto. It is the intent of the parties that the indemnification provisions of this Section 17 shall apply to both the passive negligence and the active negligence of an indemnified party.

17.5 Procedure.

17.5.1 If any claim or demand (short of a lawsuit) shall be asserted by any person against an indemnified party under this Section 17, the indemnified party shall, within thirty (30) calendar days after notice of such claim or demand, cause written notice thereof to be given to the indemnifying party, provided that failure to notify the indemnifying party shall not relieve the indemnifying party from any liability which it may have to the indemnified party under this Section 17, except to the extent that the rights of the indemnifying party are in fact prejudiced by such failure. If any such claim or demand shall be brought against the indemnified party and it shall have given notice thereof to the indemnifying party, the indemnifying party shall have the right, at its sole cost and expense, to control (including the selection of counsel reasonably satisfactory to the indemnified party) or to participate in the defense of, negotiate or settle, any such claim or demand, and the parties hereto agree to cooperate fully with each other in connection with any such defense, negotiation, or settlement. In any event, the indemnified party shall not make any settlement of any claims or demands which might give rise to liability on the part of the indemnifying party under this Section 17 without the prior written consent of the indemnifying party, which consent shall not be

unreasonably withheld, conditioned, or delayed. If any claim or demand relates to a matter for which the parties, under the terms of Section 17.2, are to share a Loss equally or in proportion to their relative degrees of fault, each party shall be entitled to select its own counsel and defend itself against the claim or demand at its sole cost and expense, and neither party shall make any settlement of any such claim or demand without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned, or delayed.

17.5.2 In the event any lawsuit is commenced against either party hereto for or on account of any Loss for which the other party may be solely or jointly liable under this Agreement, the party thus sued shall give the other party timely written notice of the pendency of such action, and thereupon the party so notified may assume or join in the defense thereof, and if the party so notified is liable therefor under this Agreement, to the extent of such liability, such party shall defend, indemnify, and hold harmless the party so sued from all Loss in accordance with the liability allocations set forth in this Agreement. Neither party shall be bound by any judgment against the other party unless it shall have been so notified and shall have had reasonable opportunity to assume or join in the defense of the action. When so notified and the opportunity to assume or join in the defense of the action has been afforded, the party so notified shall, to the extent of its liability under this Agreement, be bound by the final judgment of the court in such action.

17.5.3 Subject to the provisions of Subsection 17.5.1, on each occasion that the indemnified party shall be entitled to indemnification or reimbursement under this Section 17, the indemnifying party shall, at each such time, promptly pay the amount of such indemnification or reimbursement. If the indemnified party shall be entitled to indemnification under this Section 17 and the indemnifying party shall not elect to control any legal proceeding in connection therewith, the indemnifying party shall pay to the indemnified party an amount equal to the indemnified party's reasonable legal fees and other costs and expenses arising as a result of such proceeding.

17.6 **Compliance With Laws.** Both parties shall comply with all applicable federal, state, and local laws and regulations, and all applicable rules, regulations, or orders promulgated by any court, agency, municipality, board, or commission. If any failure of either party to comply with such laws, regulations, rules, or orders in respect to that party's use of the Parallel Corridor Segment results in any fine, penalty, cost, or charge being assessed against the other party, or any Loss, the party which failed to comply agrees to reimburse promptly and indemnify, protect, defend (with counsel reasonably acceptable to the indemnified party), and hold harmless the other party for such amount.

17.7 **Delay/Interruption of Service.** Valley Metro Rail and UP shall not be held liable for any delay or interruption to the trains, locomotives, or vehicles of the other party.

18. Insurance.

18.1 Valley Metro Rail Insurance.

18.1.1 Valley Metro Rail shall obtain and maintain, or cause to be obtained and maintained, general liability insurance for the liability assumed under this Agreement, as further specified in Subsection 18.1.2, with minimum limits of One Hundred Million Dollars (\$100,000,000.00) per occurrence and in the aggregate. Insurance shall be placed with a company having an A.M. Best's rating of at least B, or equivalent, and which is licensed to write insurance coverage in the State of Arizona. Valley Metro Rail may self-insure to an amount not to exceed Five Million Dollars (\$5,000,000.00), provided that the total coverage limits (self insurance plus excess liability insurance) are at least One Hundred Million Dollars (\$100,000,000.00) per occurrence. The foregoing policy limits may be adjusted by the parties to reflect industry standards, liability claim trends and market conditions, but in no event shall the total coverage ever be less than One Hundred Million Dollars (\$100,000,000.00).

18.1.2 Valley Metro Rail's insurance must be at least as broad as the current ISO Commercial General Liability Policy (CG 00 01) protecting insured parties against claims for bodily injury, death, property damage, explosion, collapse and underground, personal and advertising injury, and products-completed operations, with respect to all operations of Valley Metro Rail. The insurance shall include blanket contractual coverage. The insurance shall also include an endorsement deleting the exclusion for bodily injury or property damage arising out of construction or demolition operations within fifty (50) feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass, or crossing. The insurance will also include coverage for punitive damages, but only to the extent permitted under Arizona law. Each policy obtained by Valley Metro Rail shall be endorsed to include UP as an additional insured.

18.1.3 Valley Metro Rail's insurance shall be primary with respect to its obligation under this Agreement and with respect to the interest of UP as an additional insured. Any other insurance maintained by UP shall be excess of the coverage herein defined as primary and shall not contribute with it.

18.1.4 Unless otherwise agreed by Valley Metro Rail and UP, Valley Metro Rail's insurance shall be maintained for the full term of this Agreement and shall not be permitted to expire or be canceled or materially changed.

18.1.5 Within ten (10) calendar days prior to the Operations and Maintenance Effective Date, Valley Metro Rail shall provide UP with certificates of insurance evidencing the insurance required by this Section. Certificates of insurance shall be issued on the ACORD or equivalent form.

18.2 UP Insurance.

18.2.1 UP maintains, and shall continue to maintain, a catastrophic risk management program, allowing for its diverse risk exposures and financial condition, and in keeping with risks assumed by corporations of established size and reputation and consistent with programs of other Class I railroads. UP shall maintain at all times this Agreement is in effect, and at its own cost and expense, insurance coverage (or self insurance) as is customary under its established risk management program. UP warrants and agrees that said insurance coverage (or self insurance) is, and shall be, at least as comprehensive in scope and amount as the insurance required to be carried by Valley Metro Rail under this Agreement.

18.2.2 Within ten (10) calendar days prior to the Operations and Maintenance Effective Date, UP shall provide Valley Metro Rail with its standard self insurance letter, or certificates of insurance evidencing the insurance required by this Subsection.

18.3 **Failure to Maintain Insurance.** A failure of either party to maintain the insurance required by this Section 18 shall not relieve such party of any of its liabilities or obligations under this Agreement. No provision with respect to insurance shall limit the extent of the liability provisions of this Agreement.

ARTICLE 4: MISCELLANEOUS PROVISIONS

19. Compensation and Billing.

19.1 Except as otherwise specifically provided in this Agreement, UP and Valley Metro Rail shall have no obligation to pay or otherwise compensate each other in connection with this Agreement.

19.2 Invoices submitted to the parties hereunder ("Invoices") must be itemized with a detailed description of the work performed, the date of such work, the person performing such work, the time expended and the associated hourly billing rate or charge for such work, any reimbursable expenses (including, without limitation, the cost of materials used) incurred in the performance of the work, and customary additives. Invoices shall also include any other clarifying information reasonably requested by the other party. The party requesting reimbursement shall certify that it has actually incurred the expenses set out in its Invoice. Invoices for reimbursable expenses may not exceed the out-of-pocket expense for such items. Invoices shall be paid within thirty (30) calendar days after receipt thereof by the payor. If a party disputes any items on an Invoice, that party may deduct the disputed item from the payment, but shall not delay payment for the undisputed portions. The amounts and reasons for such deductions, if any, shall be documented to the other party within thirty (30) calendar days after receipt of the Invoice. Once documentation is given for the disputed amounts, and accepted by the paying party, the paying party shall pay the disputed amounts within fifteen (15)

calendar days after receipt of the documentation. No Invoice shall be submitted later than one hundred twenty (120) calendar days after the last day of the calendar month in which the reimbursable expense or cost covered thereby is incurred.

19.3 Upon request, a party disputing the accuracy of any Invoice shall be entitled to receive from the invoicing party copies of such supporting documentation and/or records as are kept in the ordinary course of the invoicing party's business and which are reasonably necessary to verify the accuracy of the Invoice as rendered.

20. **Force Majeure.** Each party shall be excused from the performance of any of its obligations hereunder, except obligations involving the payment of money to the other party, during the time when such nonperformance is caused by fire, earthquake, flood, explosion, wreck, casualty, labor strike, unavoidable accident, riot, insurrection, civil disturbance, act of public enemy, embargo, war, acts of terrorism, extreme and violent weather conditions, inability to obtain labor, materials or supplies, acts or omissions of the other party, or any other similar cause, all of which must be beyond the non-performing party's reasonable control, provided the non-performing party gives notice to the other party within ten (10) calendar days following the non-performing party's knowledge of such event, setting forth the facts giving rise to such non-performance and the number of days of delay expected to be caused thereby.

21. **Notices.** Except as otherwise expressly provided in this Agreement, all notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of delivery, if delivered personally to the party to whom notice is given, or if made by telecopy directed to the party to whom notice is to be given at the telecopy number listed below, or (ii) at the earlier of actual receipt or the second business day following deposit in the United States mail, postage prepaid. Notices and other communications shall be directed to the parties at the addresses shown below. A party may change its person designated to receive notice, its telecopy number, or its address from time to time by giving notice to the other party in accordance with the procedures set forth in this Section.

Valley Metro Rail: Wulf Grote, Executive Director
411 North Central Avenue, Suite 200
Phoenix, AZ 85004

With a copy to: Valley Metro Rail Attorney
Michael Ladino
Shughart, Thomson & Kilroy
One Columbus Plaza, Suite 1200
3636 North Central Avenue
Phoenix, AZ 85012
(602) 650-2055
(602) 264-7033 (fax)

UP: Vice President - Engineering
1416 Dodge Street, Room 1030
Omaha, NE 68179
Telecopy:(402) 271-6674

With a copy to: Vice President - Law
1416 Dodge Street, Room 830
Omaha, NE 68179
Telecopy:(402) 271-7107

22. **Headings.** The section and subsection headings in this Agreement are for convenience only and shall not be used in its interpretation or considered part of this Agreement.
23. **Integration, Amendment and Waiver.** This Agreement is the entire agreement, and supersedes all prior and contemporaneous agreements, representations, and understandings, of the parties concerning the subject matter hereof. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by both of the parties. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
24. **Counterparts.** This Agreement may be executed in any number of counterparts, and by different parties in separate counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.
25. **Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Arizona.
26. **Time of Essence.** Time is of the essence of each and every provision of this Agreement.
27. **Not for the Benefit of Others.** This Agreement and each and every provision herein is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein shall be construed to create or increase any right in any third party to recover by way of damages or otherwise against either of the parties hereto.
28. **Attorney's Fees.** If any legal action or any arbitration or other proceeding is brought for the enforcement or interpretation of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs in connection with that action or proceeding, in addition to any other relief to which it or they may be entitled.

29. **FTA Requirements.** Valley Metro Rail may, at its option, use funds granted by the FTA to pay various financial obligations arising under this Agreement. If FTA requires any change to this Agreement, both parties agree to negotiate reasonably an amendment to this Agreement that shall satisfy the requirements of the FTA. If such changes cause an increase or decrease in expenses incurred by UP, then any compensation or reimbursement to be paid to UP shall be equitably adjusted.

30. **Exhibits.** Exhibits A-G attached hereto are incorporated herein by this reference.

31. **Regulatory Requirements.** Both parties shall reasonably cooperate to ensure compliance with all governmental requirements.

32. **Termination.** This Agreement is subject to termination pursuant to A.R.S. Section 38-511.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written.

VALLEY METRO RAIL, INC.

Valley Metro Rail, Inc.,
an Arizona Non-Profit Corporation

By: Wulf Grote
Wulf Grote, Executive Director

Date: 12/16/03

APPROVED AS TO FORM:

By: Michael Ladino
Name: MICHAEL LADINO
Title: Valley Metro Rail Attorney

Date: 12/16/03

UNION PACIFIC RAILROAD COMPANY

By: Tony K. Love
Name: Tony K. Love
Title: General Manager - Real Estate

Date: 12-9-03

EXHIBIT A

DEPICTION OF LRT PROPERTY

Exhibit for Tempe Town Lake LRT Alignment

A PORTION OF LAND LOCATED
IN SE ¼ SEC 9, W ¼ SEC 15 & NE ¼ SEC 16
T1N, R4E, G&SRBM

EXHIBIT A

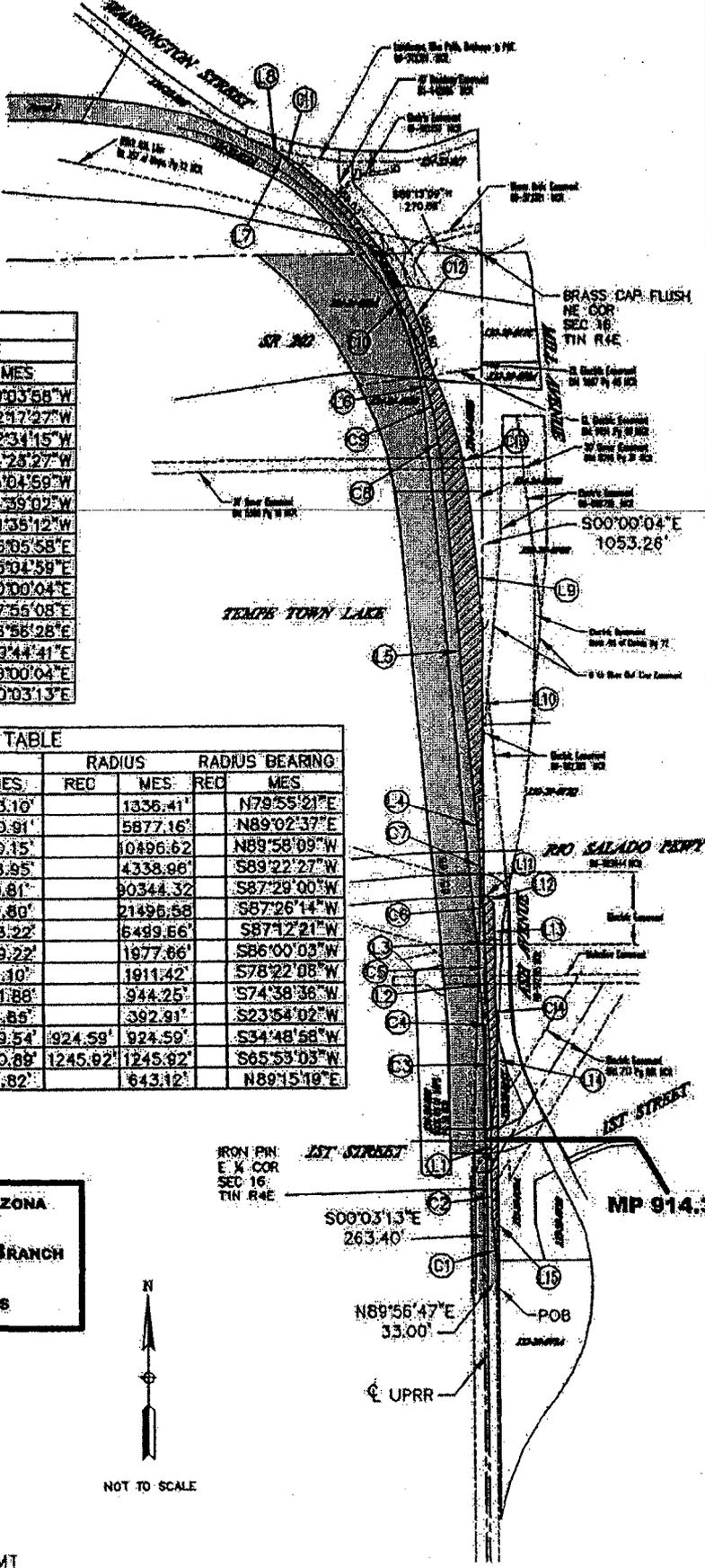
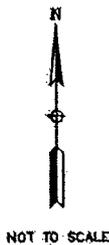
LINE TABLE				
LINE	DISTANCE		BEARING	
	REC	MES	REC	MES
L1		253.67'		N00°03'58"W
L2		99.29'		N02°17'27"W
L3		131.98'		N02°34'15"W
L4		145.59'		N04°25'27"W
L5		646.24'		N05°04'59"W
L6		123.21'		N14°39'02"W
L7		61.41'		N51°35'12"W
L8		8.79'		S66°05'58"E
L9		305.36'		S05°04'59"E
L10		759.01'		S00°00'04"E
L11		7.10'		N87°55'08"E
L12		27.76'		S48°56'28"E
L13		286.72'		S08°44'41"E
L14		477.94'		S00°00'04"E
L15		275.35'		S00°03'13"E

CURVE TABLE								
CURVE	DELTA		LENGTH		RADIUS		RADIUS BEARING	
	REC	MES	REC	MES	REC	MES	REC	MES
C1		8°16'44"		193.10'		1336.41'		N79°55'21"E
C2		15°04'3"		120.91'		5677.16'		N89°02'37"E
C3		0°36'04"		110.15'		10496.62'		N89°58'09"W
C4		1°34'14"		118.95'		4338.96'		S89°22'27"W
C5		0°00'25"		10.81'		90344.32'		S87°29'00"W
C6		0°09'34"		59.80'		21496.58'		S87°26'14"W
C7		1°10'28"		133.22'		6499.66'		S87°12'21"W
C8		7°13'13"		249.22'		1977.66'		S86°00'03"W
C9		1°31'55"		51.10'		1911.42'		S78°22'08"W
C10		38°58'54"		641.88'		944.25'		S74°38'36"W
C11		10°54'55"		74.85'		392.91'		S23°54'02"W
C12		42°43'47"		689.54'		924.59'		S34°48'58"W
C13		20°16'31"		440.86'		1245.92'		S65°53'03"W
C14		3°43'31"		41.82'		643.12'		N89°15'19"E

TEMPE, MARICOPA COUNTY ARIZONA
FOLDER 2114-07
MP 913.75 - 914.3 PHOENIX BRANCH
V-21 / S13
SALE AREA = 2.468 ACRES

LEGEND

- (C) CALCULATED
- (R) RECORDED
- (M) MEASURED
- R.O.W. TO BE ACQUIRED
AREA = 107,246 SQ.FT. ±
- EXISTING UNION PACIFIC ESMT



IRON PIN
E X COR
SEC 16
T1N R4E

S00°03'13"E
263.40'

N89°56'47"E
33.00'

MP 914.3

POB

UPRR

EXHIBIT B

DESCRIPTION OF LRT PROPERTY

UNION PACIFIC RAILROAD COMPANY
Tempe, Maricopa County, Arizona
EXHIBIT "B"

A portion of land located the Southeast Quarter (SE ¼) of Section 9, West Half (W ½) of Section 15 and the Northeast Quarter (NE ¼) of Section 16, Township 1 North, Range 4 East of the Gila and Salt River Base Meridian, Maricopa County, Arizona. More particularly described as follows:

Commencing at the East Quarter Corner of said Section 16;

- Thence, South 00°03'13" East, along the East line of said Section 16, a distance of 263.40 feet;**
-
- Thence, North 89°56'47" East, a distance of 33.00 feet to a point and the Point of Beginning, being 33.00 feet North 89°56'47" East from the center of the Union Pacific Railroad tracks, the beginning of a on a non-tangent curve whose 1336.41 foot radius bears North 79°55'21" East and is concave Northeasterly;**
- Thence, Northerly, along said curve, through a central angle of 8°16'44", a distance of 193.10 feet to the beginning of a compound curve whose 5877.16 foot radius bears North 89°02'37" East, concave Northeasterly and is 13.22 feet North 89°56'47" East from the center of the Union Pacific Railroad tracks;**
- Thence, Northerly, along said curve, through a central angle of 1°10'43", a distance of 120.91 feet, said point is 12.56 feet North 89°56'47" East from the center of the Union Pacific Railroad tracks;**
- Thence, North 00°03'58" West, a distance of 253.67 feet to a point being 12.50 feet North 89°56'47" East from the center of the Union Pacific Railroad tracks, the beginning of a non-tangent curve whose 10496.62 foot radius bears North 89°58'09" West and is concave Northwesterly;**
- Thence, Northwesterly, along said curve, through a central angle of 0°36'04", a distance of 110.15 feet to a point being 12.86 feet North 88°44'21" East from the center of the Union Pacific Railroad tracks, the beginning of a non-tangent curve whose 4338.96 foot radius bears South 89°22'27" West and is concave Southwesterly;**
- Thence, Northwesterly, along said curve, through a central angle of 1°34'14", a distance of 118.95 feet to a point being 15.60 feet North 85°59'15" East from the center of the Union Pacific Railroad tracks;**
- Thence, North 02°17'27" West, a distance of 99.29 feet to the beginning of a non-tangent curve whose 90344.32 foot radius bears South 87°29'00" West, is concave Northwest and is 19.40 feet North 85°03'12" East from the center of the Union Pacific Railroad tracks;**

- Thence,** Northwestery, along said curve, through a central angle of $0^{\circ}00'25''$, a distance of 10.81 feet to a point being 19.85 feet North $85^{\circ}02'20''$ East from the center of the Union Pacific Railroad tracks;
- Thence,** North $02^{\circ}34'15''$ West, a distance of 131.98 feet to a point being 25.57 feet North $84^{\circ}54'27''$ East from the center of the Union Pacific Railroad tracks and is the beginning of a non-tangent curve whose 21496.58 foot radius bears South $87^{\circ}26'14''$ West and is concave Southwesterly;
- Thence,** Northwestery, along said curve, through a central angle of $0^{\circ}09'34''$, a distance of 59.80 feet to a point being 28.13 feet North $84^{\circ}54'27''$ East from the center of the Union Pacific Railroad tracks and is the beginning of a compound curve whose 6499.66 foot radius bears South $87^{\circ}12'21''$ West, is concave Southwesterly;
- Thence,** Northwestery, along said curve, through a central angle of $1^{\circ}10'28''$, a distance of 133.22 feet to a point being 32.09 feet North $84^{\circ}58'06''$ East from the center of the Union Pacific Railroad tracks;
- Thence,** North $04^{\circ}23'27''$ West, a distance of 145.59 feet, said point being 33.66 feet North $84^{\circ}53'59''$ East from the center of the Union Pacific Railroad tracks;
- Thence,** North $05^{\circ}04'59''$ West, a distance of 846.24 feet to the beginning of a non-tangent curve whose 1977.66 foot radius bears South $86^{\circ}00'03''$ West, is concave Southwesterly and is 33.80 feet North $84^{\circ}54'47''$ East from the center of the Union Pacific Railroad tracks;
- Thence,** Northwestery, along said curve, through a central angle of $7^{\circ}13'13''$, a distance of 249.22 feet to the beginning of a compound curve whose 1911.42 foot radius bears South $78^{\circ}22'08''$ West, is concave Northwestery and is 23.13 feet North $84^{\circ}39'09''$ East from the center of the Union Pacific Railroad tracks;
- Thence,** Northwestery, along said curve, through a central angle of $1^{\circ}31'55''$, a distance of 51.10 feet, said point is 18.29 feet North $82^{\circ}45'27''$ East from the center of the Union Pacific Railroad tracks;
- Thence,** North $14^{\circ}39'02''$ West, a distance of 123.21 feet to a point being 12.71 feet North $74^{\circ}22'04''$ East from the center of the Union Pacific Railroad tracks and is the beginning of a non-tangent curve whose 944.25 foot radius bears South $74^{\circ}38'36''$ West and is concave Southwesterly;
- Thence,** Northwestery, along said curve, through a central angle of $38^{\circ}56'54''$, a distance of 641.88 feet and is 29.82 feet North $33^{\circ}20'41''$ East from the center of the Union Pacific Railroad tracks;
- Thence,** North $51^{\circ}35'12''$ West, a distance of 61.41 feet, said point being 37.41 feet North $29^{\circ}45'01''$ East from the center of the Union Pacific Railroad tracks;

Thence, South 66°05'58" East, a distance of 8.79 feet to the beginning of a tangent curve, having a 392.91 foot radius and is concave Southwesterly;

Thence, Southeasterly, along said curve, through a central angle of 10°54'55", a distance of 74.85 feet to the beginning of a non-tangent curve whose 924.59 foot radius bears South 34°48'58" West and is concave Southwesterly;

Thence, Southeasterly, along said curve, through a central angle of 42°43'47", a distance of 689.54 feet to the beginning of a non-tangent curve, whose 1245.92 foot radius bears South 65° 53'03" West and is concave Southwesterly;

Thence, Southeasterly, along said curve, through a central angle of 20°16'31", a distance of 440.89 feet;

Thence, South 05°04'59" East, a distance of 305.36 feet to a point being South 00°00'04" East, a distance of 1053.26 feet from the Northeast corner of said Section 16;

Thence, South 00°00'04" East, a distance of 759.01 feet;

Thence, North 87°55'08" East, a distance of 7.10 feet;

Thence, South 46°56'28" East, a distance of 27.76 feet;

Thence, South 00°44'41" East, a distance of 286.72 feet to the beginning of a tangent curve, having a 643.12 foot radius and is concave Southwesterly;

Thence, Southeasterly, along said curve, through a central angle of 3°43'31", a distance of 41.82 feet;

Thence, South 00°00'04" East, a distance of 477.94 feet;

Thence, South 00°03'13" East, a distance of 275.35 feet to the Point of Beginning.

This tract contains 107,246.0 Square Feet or 2.468 Acres, more or less.

**OFFICE OF REAL ESTATE
OMAHA, NEBRASKA
JCO
October 29, 2003
211407.leg**

EXHIBIT C

DEPICTION OF PARALLEL CORRIDOR SEGMENT

11/13/03

pjc/c/data/phoenix/construction-om agt

Exhibit C for Tempe Town Lake LRT Alignment Parallel Corridor Segment

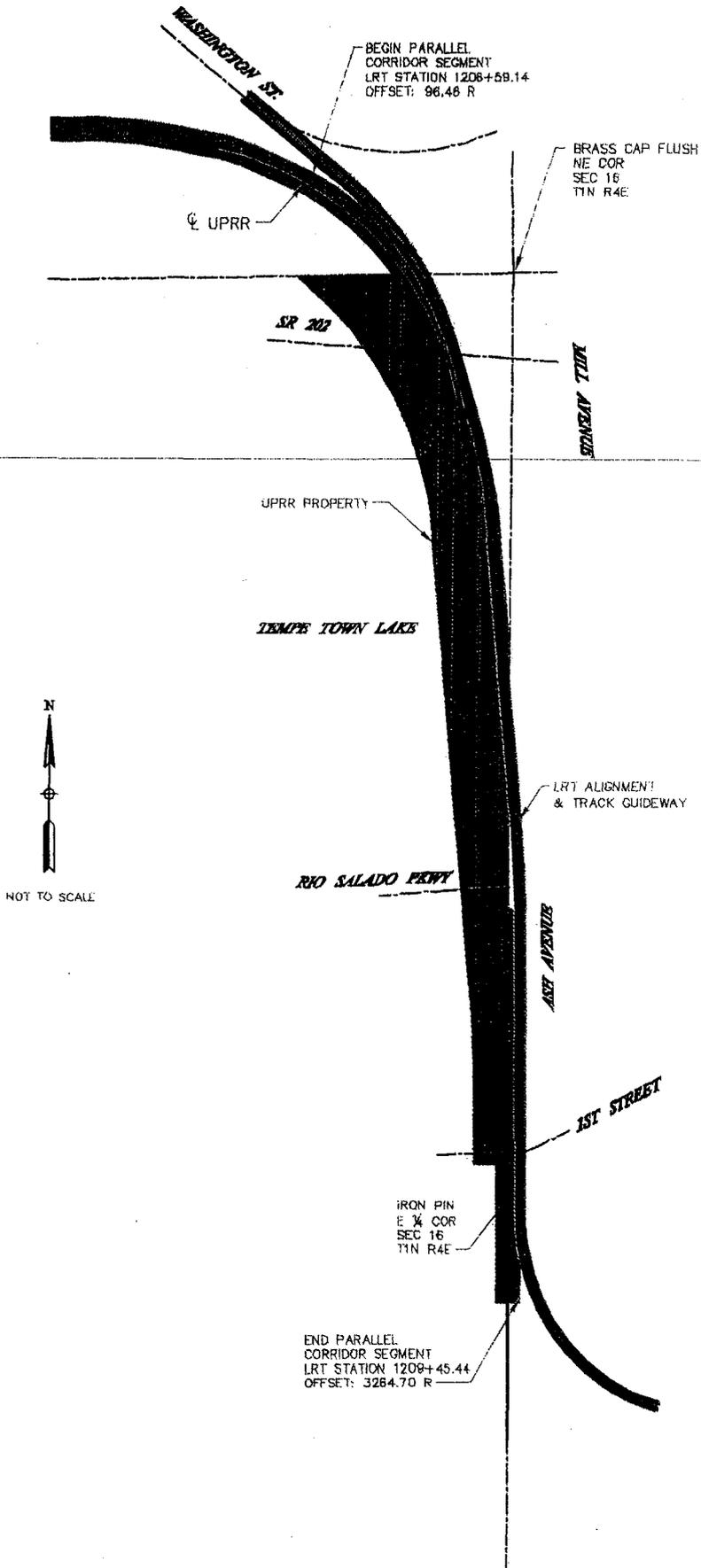


EXHIBIT D

INTENTIONALLY DELETED

EXHIBIT E

JOINT RIGHT OF ENTRY LICENSE

**CENTRAL PHOENIX/EAST VALLEY
LIGHT RAIL CONSTRUCTION PROJECT**

UP/Valley Metro Rail Joint Right of Entry License

Folder 2222-00

THIS AGREEMENT, is made effective as of December 19, 2003, by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, ("UP"), and VALLEY METRO RAIL, INC., a nonprofit corporation formed pursuant to A.R.S. Section 11-952 ("Valley Metro Rail").

WITNESSETH:

1. Each party hereby permits the other to enter upon its property as may be necessary or appropriate in connection with work to be performed under the Construction, Operations and Maintenance Agreement, dated of even date herewith (the "Construction Agreement"), and for no other purpose.

(a) The parties agree to perform their work in such a manner and at such times as shall not endanger or, to the extent reasonably practicable, interfere with one another's operations.

(b) Each party (the "Flagging Party") agrees to maintain competent traffic coordinators, if necessary, to direct and control the movement of its vehicles and equipment on its own property while the other party is on the premises of the Flagging Party.

(c) Each party shall notify the other in writing at least ten (10) working days before commencing work on the other's premises and within five (5) working days after such work is completed.

(d) Each party agrees to keep all equipment, tools, and materials stored at least twenty-five feet (25') from the centerline of any operable trackage. Neither party may store explosives or other highly inflammable substances on the other party's premises without the prior written approval of such party.

(e) Each party agrees to remove all of its tools, equipment, and materials from the other's premises promptly upon completion of work, and to restore the other's premises to the same state and condition as when it entered thereon.

(f) Each party agrees to promptly remove any lien against the other's property arising from performance of work hereunder by such party.

(g) Each party agrees to comply with the insurance requirements of Section 7.5 of the Construction Agreement prior to exercising any entry hereunder

(h) In the event of a conflict between the terms of this Right of Entry and the Construction Agreement, the Construction Agreement shall govern.

2. The permission herein given is limited to employees, consultants, and other agents of the parties and shall not be assigned by either party without the prior written consent of the other party; PROVIDED, HOWEVER, that it is the intent of the parties hereto that Valley Metro Rail's general contractor must obtain and execute a separate Contractor's Right of Entry Agreement pursuant to the Construction Agreement before entering UP's property.

3. No vehicular or pedestrian crossing over either party's trackage shall be installed or used by the other party without a separate written agreement between the using party and the party owning the trackage.

4. The parties shall comply with all local ordinances governing days and times during which work may be performed under the Construction Agreement.

5. Each party shall have the right to request that any employee of the other party, or of the other party's contractors or subcontractors, be removed from the requesting party's premises for incompetence, neglect of duty, unsafe conduct, or misconduct if, in the requesting party's reasonable judgment, the incompetence, neglect of duty, unsafe conduct, or misconduct may materially impair the safety of the requesting party's operations, facilities, or property. Concurrently with making any such request, the requesting party shall provide the other party with documentary evidence of the allegations against such employee or subcontractor.

6. Fiber optic cable systems may be buried on UP'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. Valley Metro Rail shall telephone UP at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on UP's premises to be used by Valley Metro Rail. If it is, Valley Metro Rail shall, at its sole cost and expense, telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, and shall not commence work on the premises until all such protection or relocation has been accomplished.

7. This Agreement shall terminate upon the termination of Article 2 of the Construction Agreement.

8. Unless otherwise defined in this Agreement, capitalized terms used in this Agreement shall have the meanings respectively assigned to them in the Construction Agreement.

9. This Agreement may be executed in one or more counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall together constitute and be one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate the day and year first above written.

**Valley Metro Rail, Inc.,
an Arizona Non-Profit Corporation**

By: Wulf Grote
Wulf Grote, Executive Director

APPROVED AS TO FORM:

By: Michael Ladino
Name: MICHAEL LADINO
Title: Valley Metro Rail Attorney

Date: 12/16/03

**UNION PACIFIC
RAILROAD COMPANY**

By: Tony K. Love
Name: Tony K. Love
Title: General Manager - Real Estate

Date: 12-9-03

EXHIBIT F

CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

EXHIBIT F

**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 (the "Railroad"); and _____
_____, a _____ corporation (the "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

_____, which work is the subject of a contract dated _____
between
Railroad and _____].

Contractor has requested Railroad to permit it to perform the work on the portion of Railroad's property shown on
the print dated _____, marked **Exhibit A**, attached hereto and hereby made a part hereof, and Railroad is
agreeable thereto, subject to the following terms and conditions.

AGREEMENT:

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

ARTICLE 1 - DEFINITION OF CONTRACTOR.

For purposes of this agreement, all references in this agreement to the Contractor shall include the Contractor'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 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 any 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 A, B, C AND D.

The terms and conditions contained in Exhibit A, 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. The Contractor shall bear any and all costs and expenses associated with any work performed by the Contractor, or any costs or expenses incurred by the Railroad relating to this agreement.

B. The Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

C. The Contractor, at its own expense, shall adequately police and supervise all work to be performed by the 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 the Contractor for safe conduct and adequate policing and supervision of the Contractor's work shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications involving the work, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad Representative, or by compliance by the Contractor with any requests or recommendations made by the Railroad Representative.

ARTICLE 5 - 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 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, Contractor will provide Railroad with the insurance binders, policies, certificates and/or endorsements set forth in Exhibit C of this agreement.

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

Union Pacific Railroad Company

[Insert mailing address]

Attn: _____

ARTICLE 7 - DISMISSAL OF CONTRACTOR/SUBCONTRACTOR EMPLOYEE.

At the request of Railroad, Contractor shall remove from Railroad property any employee of Contractor or any subcontractor 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 property.

ARTICLE 8 - ADMINISTRATIVE FEE.

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

ARTICLE 9 - CROSSINGS.

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

ARTICLE 10.- EXPLOSIVES.

Explosives or other highly flammable substances shall not be stored on Railroad property without the prior written approval of the 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 B TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

A. The Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least ten (10) working days in advance of proposed performance of any work by the 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 ten (10)-day notice, the Railroad Representative will determine and inform the Contractor whether a flagman need be present and whether the Contractor need implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by the Railroad, such services will be provided at Contractor's expense with the understanding that if the Railroad provides any flagging or other services, the Contractor shall not be relieved of any of its responsibilities or liabilities set forth herein. Contractor shall promptly pay to Railroad all charges connected with such services within thirty (30) days after presentation of a bill.

B. The rate of pay per hour for each man will be the prevailing hourly rate in effect for an eight hour day for the class of men 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 on the day of execution of this agreement. 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. 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 Contractor shall pay on the basis of the new rates and charges.

C. 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 Railroad 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 by assignment of such flagman to other work, even though the Contractor may not be working during such time. When it becomes necessary for the Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, the Contractor must provide the 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, the 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 ten (10) days notice must then be given to the Railroad if flagging service are needed again after such five day cessation notice has been given 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 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 Contractor 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 UNREASONABLE INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.

A. The Contractor shall conduct its operations so as not to unreasonably interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of the Railroad, including without limitation, the operations of the 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 the Contractor at any time that would in any manner unreasonably 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 the Railroad's nearest track, and there shall be no vehicular crossings of Railroad's tracks except at existing open public crossings.

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

Section 4. LIENS.

The Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. The 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 the Railroad for any such work performed. The Contractor 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. If the Contractor fails to promptly cause any lien to be released of record, the 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 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. Contractor 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 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. The 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, the Contractor shall indemnify, defend 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 Contractor, 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/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, the 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 the Contractor. The Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. The Contractor shall at a minimum comply with the Railroad's safety standards listed in Exhibit D, hereto attached, to ensure uniformity with the safety standards followed by the Railroad's own forces. As a part of the Contractor's safety responsibilities, the Contractor shall notify the Railroad if the Contractor determines that any of the Railroad's safety standards are contrary to good safety practices. The Contractor shall furnish copies of Exhibit D to each of its employees before they enter on the job site.

B. Without limitation of the provisions of paragraph A above, the 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. The 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. The Contractor shall promptly notify the Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. The Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of the 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 the Railroad, the Contractor shall deliver to the Railroad a copy of the Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require the 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, the Contractor shall indemnify, defend and hold harmless the Railroad, its affiliates, and its and their officers, agents and employees ("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, the Contractor, or any employee of the Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by the Contractor, or (ii) any act or omission of the Contractor, its officers, agents or employees, or (iii) any breach of this agreement by the 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 active negligence or willful misconduct of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The active negligence or willful misconduct of any Indemnified Party shall not bar the recovery of any other Indemnified Party.

C. The Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by the Contractor's own employees. The Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Railroad 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 the Contractor in any attempt to assert liability against the Railroad.

E. The provisions of this Section 8 shall survive the completion of any work performed by the 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 the Contractor may have to any Indemnified Party by statute or under common law.

Section 9. RESTORATION OF PROPERTY.

In the event the Railroad authorizes the Contractor 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 Contractor, then in that event the 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. The 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 the Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by the Contractor shall in no way impair the right of the 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 the Contractor and the Railroad. This agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between the Contractor and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by the Contractor.

Section 12. ASSIGNMENT - SUBCONTRACTING.

The Contractor shall not assign this agreement, or any interest therein, without the written consent of the Railroad. This Section shall not be construed to require Railroad's consent to subcontractors hired by the Contractor to perform work on or about Railroad's property. The Contractor shall be responsible for the acts and omissions of all subcontractors, and shall require all subcontractors to maintain the insurance coverage required to be maintained by the Contractor as provided in this agreement, and to indemnify the Contractor and the Railroad to the same extent as the Railroad is indemnified by the Contractor under this agreement. Notwithstanding the foregoing, subcontractors shall not be required to maintain insurance coverage if the insurance obtained by the Contractor hereunder covers all acts and omissions of such subcontractors, as well as the acts and omissions of the Contractor.

**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 life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a single limit of at least \$5,000,000 each occurrence or claim and an aggregate limit of at least \$10,000,000. Coverage must include, but not be limited to, coverage for the following:

- Bodily injury including death and personal injury
- Property damage
- Fire legal liability
- Products and completed operations

The policy shall also contain the following endorsements which shall be indicated on the certificate of insurance:

- The exclusions for railroads (except where the Job site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.
- The employee and workers compensation related exclusions in the above policy apply only to Contractor's employees, if such endorsement is commercially available
- Waiver of subrogation

B. Business Automobile Coverage insurance. This insurance shall contain a combined single limit of at least \$2,000,000 per occurrence or claim, including but not limited to coverage for the following:

- Bodily injury and property damage
- Any and all motor vehicles including owned, hired and non-owned, used in performance of the work

The policy shall also contain the following endorsements which shall be indicated on the certificate of insurance:

- The exclusions for railroads (except where the Job site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.
- Motor Carrier Act Endorsement- Hazardous materials clean up (MCS-90) if required by law.

C. Workers Compensation and Employers Liability insurance including but not limited to:

- Contractor'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 Workers Compensation insurance will not cover the liability of Contractor in states that require participation in state workers' compensation fund, Contractor shall comply with the laws of such states. If Contractor is self-insured, evidence of state approval must be provided along with evidence of excess workers compensation

coverage. Coverage shall 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 shall also contain the following endorsement which shall be indicated on the certificate of insurance:

- Alternate Employer Endorsement, but only if such endorsement is available from Contractor's workers' compensation carrier.

D. Umbrella or Excess Policies In the event Contractor utilizes Umbrella or excess policies to meet the insurance limits provided herein, these policies shall afford no less coverage than the primary policy.

E. Railroad Protective Liability insurance naming only the Railroad as the insured with a combined single limit of \$2,000,000 per occurrence with a \$4,000,000 aggregate. The policy shall be broad form coverage for "Physical Damage to Property" (ISO Form CG 00 35 07 98 or equivalent). A binder stating the policy is in place must be submitted to the Railroad until the original policy is forwarded to the Railroad. Contractor shall not be required to provide the Railroad Protective Liability policy required by this paragraph if Valley Metro Rail provides the same.

Other Requirements

- F.** Punitive damage exclusion must be deleted, but only to the extent permitted under Arizona law, which deletion shall be indicated on the certificate of insurance.
- G.** Contractor agrees to waive its right of recovery, and its insurers, through policy endorsement, agree to waive their right of subrogation against Railroad. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under its care, custody and control. Contractor's insurance shall be primary with respect to any insurance carried by Railroad. All waivers of subrogation shall be indicated on the certificate of insurance.
- H.** All policy(ies) required above (excluding Workers Compensation) shall provide severability of interests and shall name Railroad as an additional insured. **Severability of interest and naming Railroad as additional insured shall be indicated on the certificate of insurance.**
- I.** Prior to commencing the Work, Contractor shall furnish to Railroad original certificate(s) of insurance evidencing the required coverage, endorsements, and amendments. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing of any cancellation or material alteration. **Upon request from Railroad, a certified duplicate original of any required policy shall be furnished.**
- J.** Any insurance policy shall be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of B or better, and authorized to do business in the state(s) in which the service is to be provided.
- K.** Contractor **WARRANTS** that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement and acknowledges that Contractor's insurance coverage will be primary.
- L.** The fact that insurance is obtained by Contractor or Railroad on behalf of Contractor shall 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 shall not be limited by the amount of the required insurance coverage.

- M.** Contractor's subcontractors shall not be required to provide the insurance required under this Agreement if Contractor provides insurance covering the subcontractors.

EXHIBIT G

STANDARD TERMS AND CONDITIONS

1. ACCOUNTING RECORDS

UP shall maintain all books, documents, papers, accounting records and other evidence pertaining to the performance and costs of this Agreement. UP's accounting systems shall conform to generally accepted accounting principles, and all records shall provide a breakdown of total costs charged to this Agreement, including properly executed payrolls, time records, invoices and vouchers. UP shall establish and maintain an accounting system and records that properly accumulate and segregate incurred costs by project line item. UP's accounting system shall conform to generally accepted accounting principles, enable the determination of incurred costs at interim points of completion, and provide support for invoices. All accounting records and other supporting papers shall be maintained for a minimum of three years from the date of final payment, and shall be open to inspection and audit by representatives from Valley Metro Rail, the State of Arizona, Federal Transit Administration, or any duly authorized representative of the state or federal government. UP shall make such records and materials available at its office at all reasonable times and copies thereof shall be furnished upon request.

2. ALLOWABLE COSTS

UP agrees to comply with federal procedures in accordance with the following: Office of Management and Budget Circular A-87, Cost Principles for State and Local Governments; Office of Management and Budget Circular A-102, Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments. Reimbursable costs for travel expenses shall comply with UP's internal rules, regulations and policies as are applicable to work funded by UP.

3. EMPLOYMENT BENEFITS

Responsibility for payment due by Valley Metro Rail shall be limited to the compensation set forth in the Agreement. Valley Metro Rail shall not be responsible for providing any protective insurance coverage or employment benefit payable to employees of UP that is based upon the relationship of employer and employee.

4. INDEPENDENT CONTRACTOR

In providing the services as set forth in this Agreement, UP shall act as an independent contractor and not as an employee of Valley Metro Rail. In accordance with that relationship, UP shall assume all responsibility for federal and state income tax withholding, FICA, and any other deductions from income that UP is properly required to make as an independent contractor. UP shall assume all responsibility for payment of wages to its employees and for federal and state income tax withholding.

5. AUTHORITY

Each of the signatories to the Agreement represent that he or she is authorized to sign the Agreement on behalf of such party and that all approvals, resolutions and consents which must be obtained to bind such party have been obtained and that no further approvals, acts or consents are required to bind such party to the Agreement.