

NEW APPLICATION  
ORIGINAL



0000085939



RECEIVED

1501 W. Fountainhead Parkway, Ste 400  
Tempe, Arizona 85282

To: Arizona Corporation Commission Office of P 4: 43 Date: June 16, 2008  
 Railroad Safety  
 Attn: Chris Watson  
 2200 N. Central Avenue, Ste 300  
 Phoenix, Arizona 85004

Subject: Arizona Corporation Commission RR-03639A-08-0311  
 Application for Union Pacific Railroad  
 at Grade Crossing Improvements at Sarival Avenue

Project: MC 85, Cotton Lane to Estrella Parkway Project: MCDOT On-Call Contract 2006- 069  
 Task E  
 Number: MCDOT Project Number TT-083

From: Doug LaMont, P.E. *Douglas LaMont*

This memo is submitted to the Arizona Corporation Commission (ACC) as an application to request and upgrade to an existing Union Pacific Railroad (UPRR) crossing on behalf of the Maricopa Department of Transportation (MCDOT).

**i. Location of Crossing**

The MC 85, Estrella Parkway to Cotton Lane project includes the improvements of MC 85 to a six lane roadway including traffic signalization of the MC 85 and Sarival Avenue intersection, improvements along Sarival Avenue to a four lane roadway and a 10.5-ft wide raised median across the UPRR right-of-way. The UPRR and Sarival Avenue crossing is located approximately 200-ft north of MC 85 and 2,400-ft south of West Elwood Street. The UPRR and MCDOT have a signed agreement (May 2008) to widen the existing an at-grade crossing.

**ii. Why the Crossing is Needed**

The railroad crossing along Sarival Avenue is an existing at grade public road crossing. The project is a roadway widening of the existing roadway which necessitates the widening of the existing crossing.

**iii. Why the Existing Crossing Cannot be Grade Separated**

With the proposed improvements to the intersection of MC 85 and Sarival Avenue and the close proximity of the railroad crossing from the proposed intersection (approximately 200-ft north of MC 85) the location of the at-grade crossing remains unchanged. A grade separation would have the following undesirable consequences.1) Access to existing businesses along Sarival Avenue would be severed for approximately 2,300-ft north of the railroad tracks; 2) Access to existing farm fields along MC 85 would be severed for approximately 4,600-ft along MC 85 (2,300-ft east and west of Sarival Avenue); 3) There are several existing utilities in Sarival Avenue that cannot support 30-ft of additional embankment needed for a grade-separated crossing; and 4) There is insufficient right-of-way to accommodate 30-ft high embankment slopes along Sarival Avenue and MC 85.

**iv. Type of Warning Devices to be Installed**

The warning devices for northbound and southbound traffic included in the design are as follows: gates with flashing lights will be installed in the median and outside the roadway near the sidewalk; cantilever flashing railroad signals will be installed outside the roadway near the sidewalk; signal preemption devices will be installed by the UPRR to and timed with the traffic signal to allow the intersection to clear prior to the train passing; and railroad crossing warning signs will be placed per MUTCD, Part 8 Standards.

**v. Who will maintain the Crossing Warning Devices**

UPRR will own and maintain the physical elements of the crossing (crossing surface, gates, flashing lights). MCDOT will own and maintain the approaching surface, signing and movement markings on Sarival Avenue and MC 85.

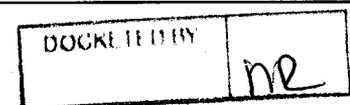
**vi. Who is Funding the Project**

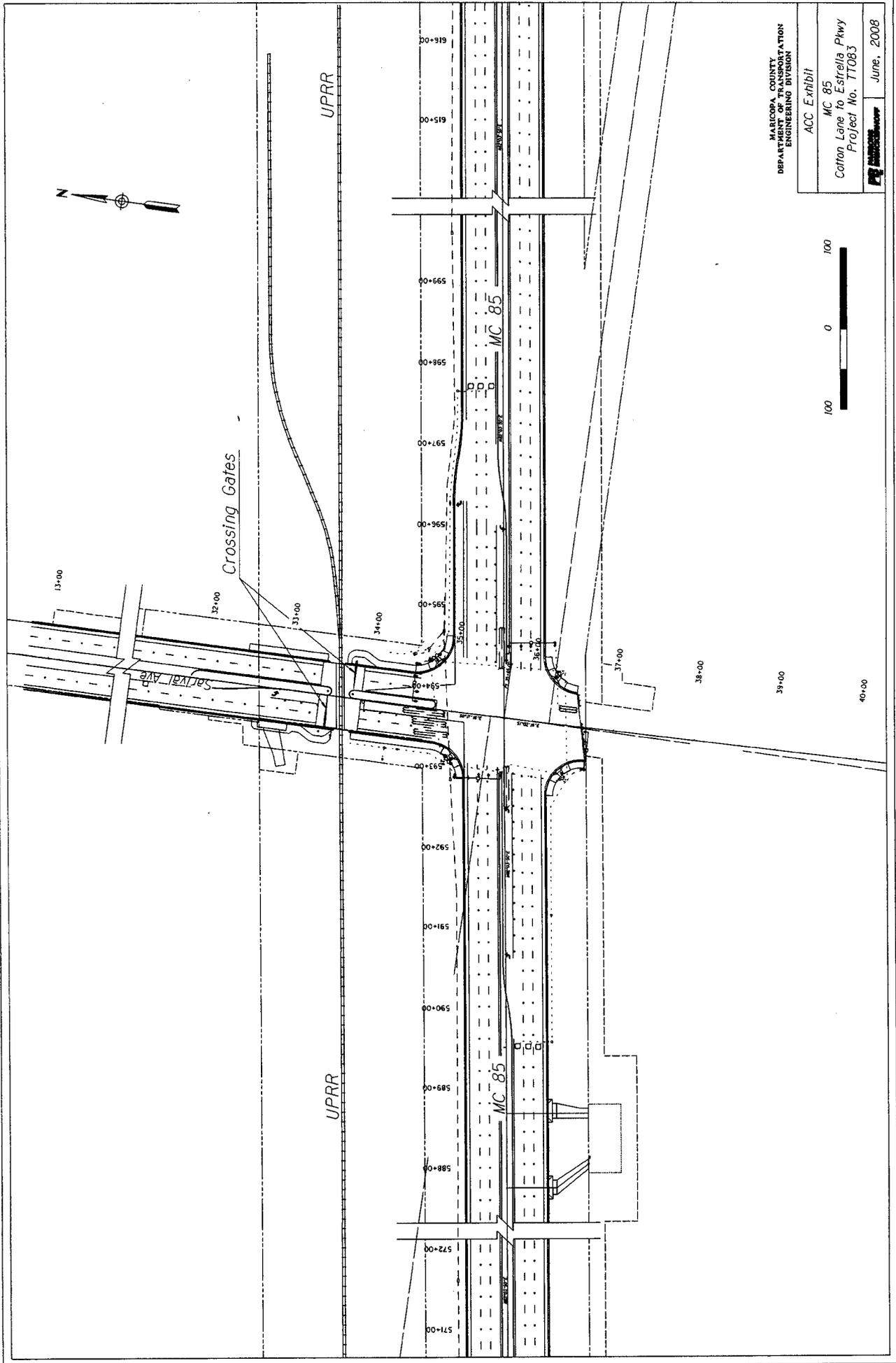
MCDOT and the City of Goodyear are funding the project.

CC: Kelly Roy/MCDOT

Arizona Corporation Commission  
DOCKETED

JUN 19 2008





MARICOPA COUNTY  
DEPARTMENT OF TRANSPORTATION  
ENGINEERING DIVISION

ACC Exhibit  
MC 85  
Cotton Lane to Estrella Pkwy  
Project No. 11083



June, 2008



May 8, 2008

UPRR Folder No. 2453-87

**MR. KELLY ROY  
DEPT OF TRANSPORTATION  
MARICOPA COUNTY  
2901 W DURANGO ST  
PHOENIX AZ 85009-6357**

Dear Mr. Roy:

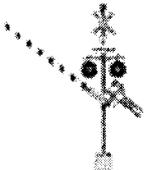
RE: Proposed reconstruction and widening of the existing Sarival Road at-grade public road crossing near Goodyear, Arizona.

Attached for your file is your original copy of a Supplemental Agreement, fully executed on behalf of the Railroad Company. Please furnish payment in the amount of **\$41,898.00**. To ensure proper application of your check, please indicate the folder number listed above on your check. This agreement will not be accepted by the Railroad Company until the initial payment is received. If you require formal billing, you may consider this letter as a formal bill.

In compliance with the Internal Revenue Services' new policy regarding their Form 1099, I certify that 94-6001323 is the Railroad Company's correct Federal Taxpayer Identification Number and that Union Pacific Railroad Company is doing business as a corporation.

You are hereby authorized to proceed with the work upon proper notification to the Railroad Company's Manager of Public Projects. In accordance with the terms of the above agreement, 10 days advance notification upon entering the Railroad Company's right of way shall be given to the following office:

*Jim Smith  
Manager Industry & Public Projects  
Union Pacific Railroad Company  
10031 Foothills Boulevard  
Roseville, CA 95747  
Phone: 916-789-6352  
FAX: 916-789-6333  
Cell: 530-368-6400*



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

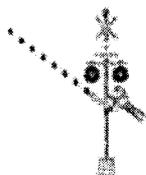


When you or your representative enter the Railroad Company's property, a copy of this fully executed document must be available at the site to be shown on request to any Railroad employee or official. Should you have any questions, please contact me.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Paul G. Farrell", written over a circular stamp.

PAUL G. FARRELL  
Senior Manager Contracts  
Phone: (402) 544-8620  
e-mail: [pgfarrell@up.com](mailto:pgfarrell@up.com)



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

SUPPLEMENTAL AGREEMENT  
EXTENDING COLLECTIVE BARGAINING AGREEMENT

ENTERED INTO

UNION OF TELEPHONE WORKERS OF AMERICA

COMPANY

THE REGISTRATION AND RECORDS OF THE EXISTING  
SARIN (B) AT (RA) (PUT) (R) (D) (C) (S) (N) (E)

UPRR Folder No.: 2453-87

UPRR Audit No. 244513

**SUPPLEMENTAL AGREEMENT**  
(EXISTING PUBLIC ROAD CROSSING IMPROVEMENT)

---

THIS SUPPLEMENTAL AGREEMENT is made as of the 8<sup>th</sup> day of May, 2008, by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, or its predecessor in interest, ("Railroad") and MARICOPA COUNTY, ARIZONA, a political subdivision of the State of Arizona with a mailing address at 2901 West Durnago Street, Phoenix, AZ 85009-6357 ("County").

**RECITALS:**

By instrument dated February 20, 1929, the parties hereto, or their predecessors in interest (if any), entered into a *Public Road Crossing Agreement* (herein the "Original Agreement") identified as Railroad's Folder No. 2453-87, Audit No. 244513, covering the construction, maintenance and use of the Sarvial Road at-grade public road crossing, (DOT #741-782L), located at Railroad Mile Post 886.06 on its Phoenix Subdivision near Goodyear, Maricopa County, Arizona (the "Roadway").

The County now desires to undertake as its project (the "Project") the reconstruction and widening of the Roadway that was constructed under the Original Agreement. The reconstructed and widened Roadway is located on the Railroad Location Print marked **Exhibit A** and as illustrated on the Detailed Print marked **Exhibit A-1**, each attached hereto and made a part hereof, and where the Roadway crosses the Railroad's property is the "Crossing Area."

The right of way granted by the Railroad to the County under the terms of the Original Agreement is not sufficient to allow for the reconstruction and widening of the road crossing constructed under the Original Agreement. Therefore, under this Agreement, the Railroad will be granting an additional right of way right to the County to facilitate the reconstruction and widening of the road crossing. The portion of Railroad's property that County needs a right to use in connection with the road crossing is described in the Permanent Rights Legal Description marked **Exhibit A-2**, the Temporary Rights Legal Description marked **Exhibit A-3**, and shown on the Illustrative Print of the Legal Descriptions marked **Exhibit A-4**, with each exhibit being attached hereto and hereby made a part hereof (collectively the "Crossing Area").

The Railroad is agreeable to the reconstruction and widening of the Roadway, but solely upon terms and conditions hereinafter set forth.

**AGREEMENT:**

NOW THEREFORE, in consideration of the premises and of the promises and conditions hereinafter set forth, the parties hereto agree as follows:

**SECTION 1.**

The exhibits below are attached hereto and hereby made a part hereof.

Exhibit A	Railroad's Location Print
Exhibit A-1	Detailed Print
Exhibit A-2	Permanent Rights Legal Description
Exhibit A-3	Temporary Rights Legal Description
Exhibit A-4	Illustrative Print of Legal Descriptions
Exhibit B	Railroad's Track & Surface Material Estimate
Exhibit B-1	Railroad's Signal Material Estimate
Exhibit C	Railroad Form of Contractor's Right of Entry Agreement

**SECTION 2.**

The Railroad, at County's expense, shall furnish all labor, material, equipment and supervision for the Roadway improvements:

- Relay 320-feet of track, install 128-feet of concrete road crossing panels, install 90 cross ties, install 2 carloads of ballast, and other track and surface materials;
- Install automatic flashing light crossing signals, and other signal materials;
- Engineering, and
- Flagging.

**SECTION 3.**

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

- Track & Surface Material Estimate dated February 29, 2008, in the amount of \$181,200.00, marked **Exhibit B**, and
- Signal Material Estimate dated November 20, 2007, in the amount of \$393,857.00, marked **Exhibit B-1**,

each attached hereto and hereby made a part hereof (collectively the "Estimate"). As set forth in the Estimate, the Railroad's combined estimated cost for the Railroad's work associated with the Project is (\$575,057.00).

- B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the County in the event the County does not commence construction on the portion of the Project located on the Railroad's property within six (6) months from the date of the Estimate.
- C. The County acknowledges that the Estimate does not include any estimate of flagging or other protective service costs that are to be paid by the County or the Contractor in connection with flagging or other protective services provided by the Railroad in connection with the Project. All of such costs incurred by the Railroad are to be paid by the County or the Contractor as determined by the Railroad and the County. If it is determined that the Railroad will be billing the Contractor directly for such costs, the County agrees that it will pay the Railroad for any flagging costs that have not been paid by any Contractor within thirty (30) days of the Contractor's receipt of billing.
- D. The County agrees to reimburse the Railroad for one hundred percent (100%) of all actual

costs incurred by the Railroad in connection with the Project including, but not limited to, actual costs of preliminary engineering review, construction inspection, procurement of materials, equipment rental, manpower and deliveries to the job site and all of the Railroad's normal and customary additives (which shall include direct and indirect overhead costs) associated therewith.

#### SECTION 4.

- A. The County, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications and submit such plans and specifications to the Railroad's Assistant Vice President Engineering – Design, or his authorized representative, for review and approval. The plans and specifications shall include all Roadway layout specifications, cross sections and elevations, associated drainage, and other appurtenances.
- B. The final one hundred percent (100%) completed plans that are approved in writing by the Railroad's Assistant Vice President Engineering–Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.
- C. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing.
- D. Notwithstanding the Railroad's approval of the Plans, the Railroad shall not be responsible for the permitting, design, details or construction of the Roadway.

#### SECTION 5.

The Railroad, at its expense, shall maintain the crossing between the track tie ends. If, in the future, the County elects to have the surfacing material between the track tie ends replaced with paving or some surfacing material other than timber planking, the Railroad, at County's expense, shall install such replacement surfacing.

#### SECTION 6.

- A. The County, at its sole cost and expense, shall provide traffic control, barricades, and all detour signing for the crossing work, provide all labor, material and equipment to install concrete or asphalt street approaches, and if required, will install advanced warning signs, and pavement markings in compliance and conformance with the Manual on Uniform Traffic Control Devices.
- B. The County, at its expense, shall maintain and repair all portions of the Roadway approaches that are not within the track tie ends.

#### SECTION 7.

If County's contractor(s) is/are performing any work described in Section 4 above, then the County shall require its contractor(s) to execute the Railroad's standard and current form of Contractor's Right of Entry Agreement attached hereto as **Exhibit C**. County acknowledges receipt of a copy of the Contractor's Right of Entry Agreement and understanding of its terms, provisions, and requirements, and will inform its contractor(s) of the need to execute the Agreement. Under no

circumstances will the County's contractor(s) be allowed onto the Railroad's premises without first executing the Contractor's Right of Entry Agreement.

#### **SECTION 8.**

Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. County or its contractor(s) 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 number, 7 day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the County or its contractor(s). If it is, County or its contractor(s) will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

#### **SECTION 9.**

The County, for itself and for its successors and assigns, hereby waives any right of assessment against the Railroad, as an adjacent property owner, for any and all improvements made under this agreement.

#### **SECTION 10.**

Covenants herein shall inure to or bind each party's successors and assigns; provided, no right of the County shall be transferred or assigned, either voluntarily or involuntarily, except by express prior written consent of the Railroad.

#### **SECTION 11.**

The County shall, when returning this agreement to the Railroad (signed), cause same to be accompanied by such Order, Resolution, or Ordinance of the governing body of the County, passed and approved as by law prescribed, and duly certified, evidencing the authority of the person executing this agreement on behalf of the County with the power so to do, and which also will certify that funds have been appropriated and are available for the payment of any sums herein agreed to be paid by County.

#### **SECTION 12.**

For and in consideration **FORTY-ONE THOUSAND TWO HUNDRED FIFTY-NINE DOLLARS (\$41,259.00)** to be paid by the County to the Railroad upon the execution and delivery of this Agreement and in further consideration of the County's agreement to perform and abide by the terms of this Agreement including all exhibits, the Railroad hereby grants to the County the right to establish or reestablish, construct or reconstruct, maintain, repair and renew the road crossing over and across the Crossing Area as described in Exhibit A-2 and as shown on Exhibit A-4.

For and in consideration of **SIX HUNDRED THIRTY-NINE DOLLARS (\$639.00)**, the Railroad hereby grants to the County temporary construction rights to use the portion of Railroad's property shown and described on Exhibit A-3. The County's use of such property shall be subject to



the terms and conditions of this Agreement and the obligation of the County and its contractors to comply with such provisions. The temporary rights granted herein shall commence as of the effective date of this Agreement and continue for twelve (12) months, or until the project has been completed, whichever occurs earlier.

**SECTION 13.**

The County agrees to reimburse the Railroad the cost of future maintenance of the automatic grade-crossing protection within thirty (30) days of the County's receipt of billing.

**SECTION 14.**

This agreement is supplemental to the Original Agreement, as herein amended, and nothing herein contained shall be construed as amending or modifying the same except as herein specifically provided.

**IN WITNESS WHEREOF**, the parties hereto have caused this Supplemental Agreement to be executed as of the day and year first hereinabove written.

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

By: Beverly Q. Kubat, Asst Dir for  
GREGORY L. PINKER  
Director Contracts

WITNESS:

**MARICOPA COUNTY, ARIZONA**

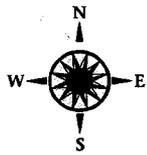
Jerry D. [Signature]

X [Signature] 5-2-08  
Title: DIRECTOR OF TRANS.

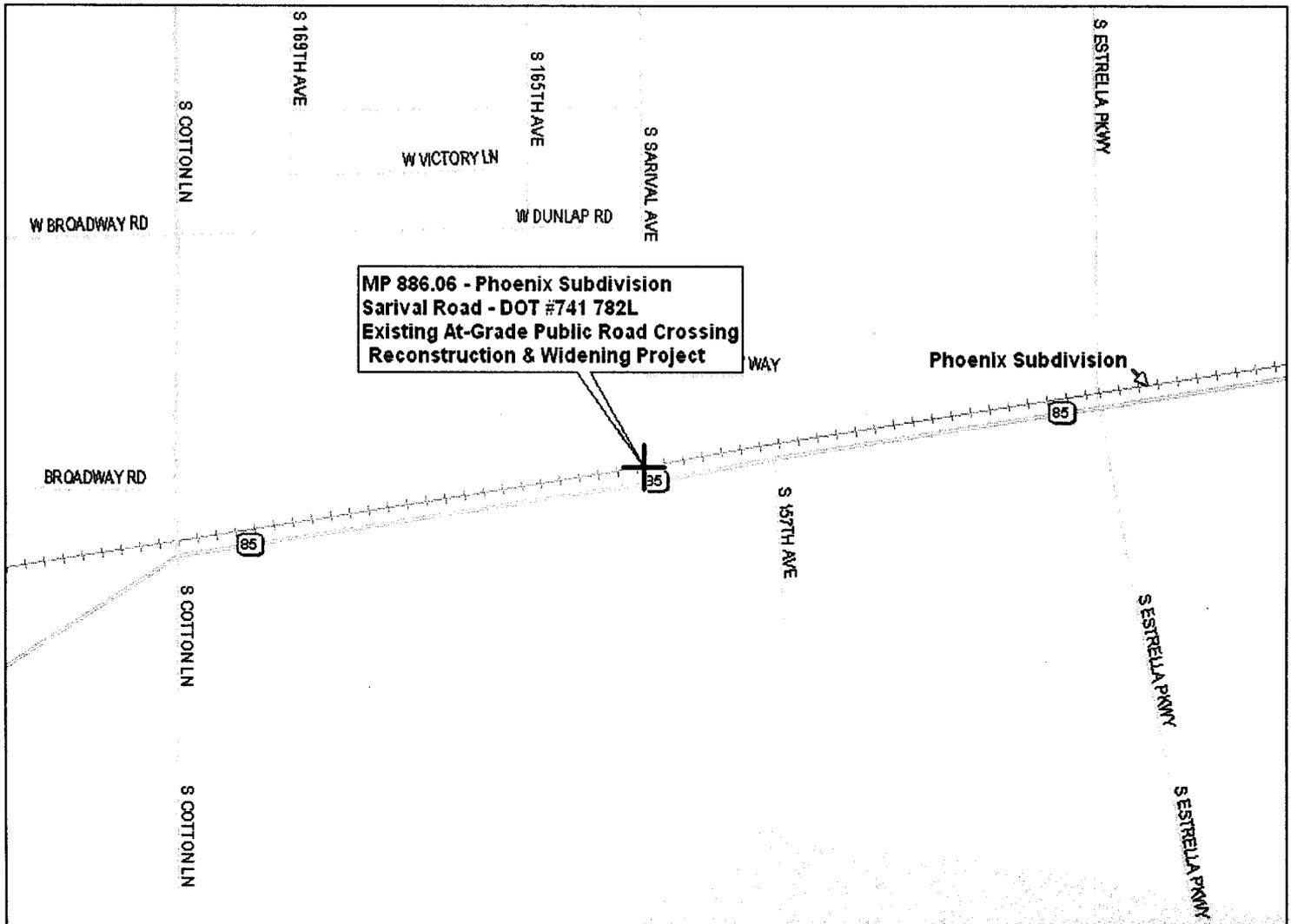
# EXHIBIT A

To Supplemental Agreement  
(Existing Public Road Crossing Improvement)

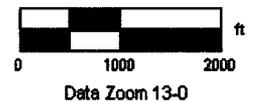
Cover Sheet for the  
Railroad Location Print



# RAILROAD LOCATION PRINT OF AN EXISTING AT-GRADE PUBLIC ROAD CROSSING RECONSTRUCTION & WIDENING PROJECT



Data use subject to license.  
© 2004 DeLorme. Street Atlas USA © 2005.  
www.delorme.com



## RAILROAD WORK TO BE PERFORMED:

1. Relay 320-feet of track, install 128-feet of concrete road crossing panels, install 90 cross ties, install 2 carloads of ballast, and other track and surface materials;
2. Install automatic flashing light crossing signals, and other signal materials;
3. Engineering & Flagging.

## EXHIBIT "A"

### UNION PACIFIC RAILROAD COMPANY

PHOENIX SUBDIVISION

MILE POST 886.06

GPS: N 33° 24.4161', W 112° 24.5590'  
near GOODYEAR, MARICOPA CO., AZ.

Location print of an existing at-grade public road crossing reconstruction and widening project with **MARICOPA COUNTY**.

Folder No. 2453-87

Date: March 26, 2008

### WARNING

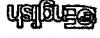
IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.  
PHONE: 1-(800) 336-9193

Exhibit A  
Railroad Location Print  
To Supplemental Agreement

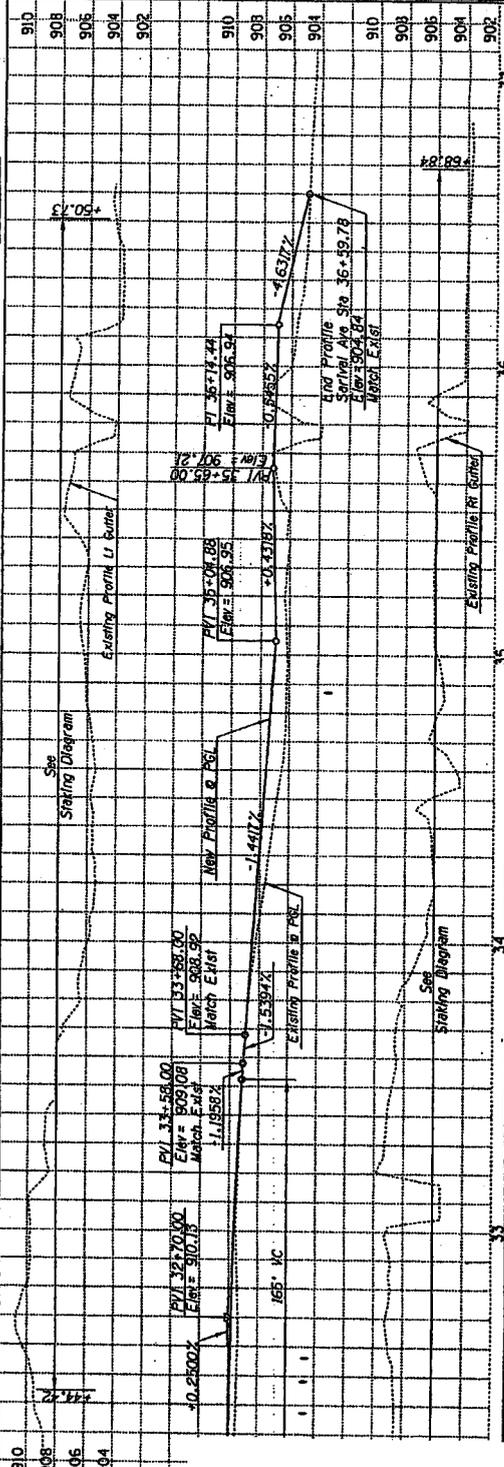
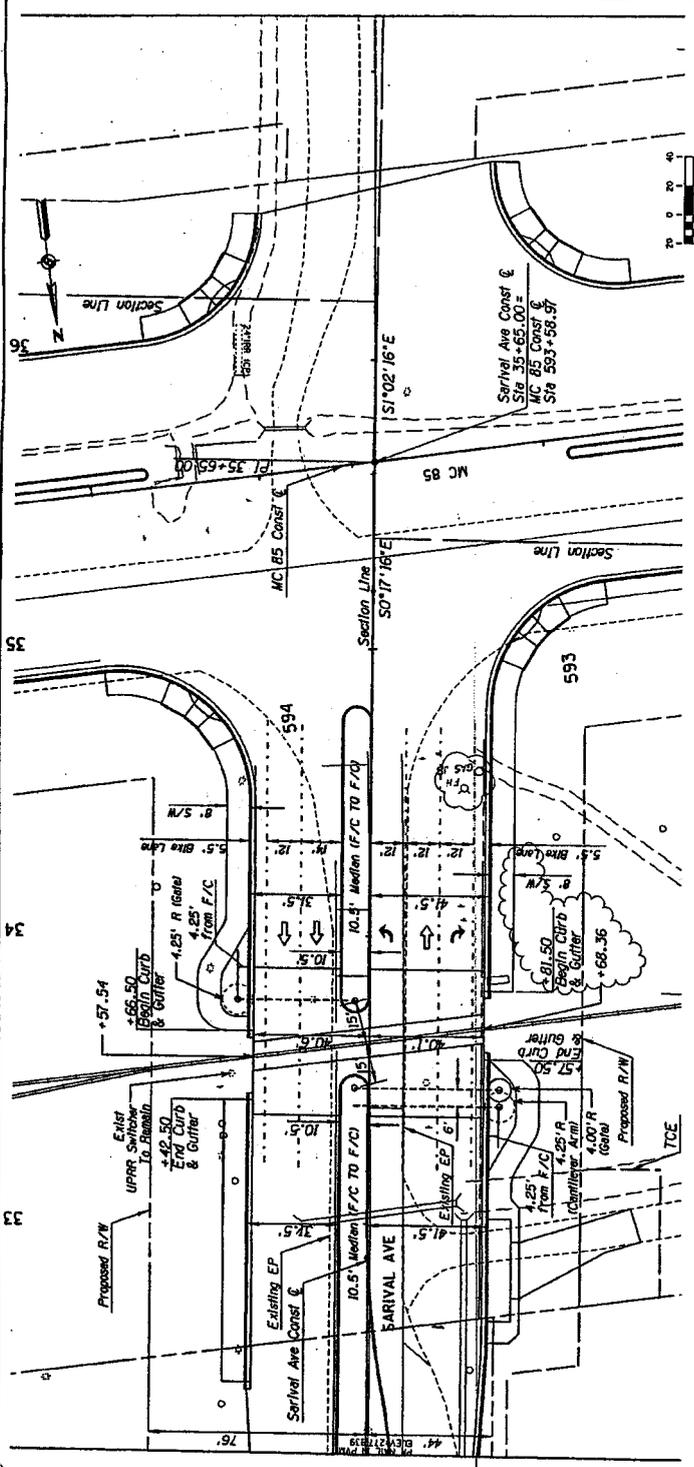
# EXHIBIT A-1

To Supplemental Agreement  
(Existing Public Road Crossing Improvement)

Cover Sheet for the  
Detailed Print



FLORIDA STATE PROJECT NO. 11-136	SHEET TOTAL SHEETS 11	RECORD DRAWING
REGION 3	NO. 42	
		REMOVAL/RELOCATE <input type="checkbox"/>



REVISION	BY	DATE
MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION		
ENGINEER	BY	DATE
CHECKED	DATE	
PROJECT NO. 11-136		
COTTON LAKE MC B5 TRELLE PKWY		
70% FINISHED		
PREPARED BY	DATE	
DRAWN	DATE	
CHECKED	DATE	
<b>PB PARSONS BRINCKERHOFF</b>		
UPRR CROSSING AT SARIVAL AVE		
EXHIBIT	SHEET	OF

Exhibit A-1  
Detailed Print  
To Supplemental Agreement

# EXHIBIT A-2

To Supplemental Agreement  
(Existing Public Road Crossing Improvement)

Cover Sheet for the  
Permanent Rights Legal Description

**PARCEL NO. 500-06-00 (a portion of)**  
**PROJECT NO. 68960**  
M.C. 85 - Cotton Lane to Estrella Pkwy.  
**Item No. X-0000**

**LEGAL DESCRIPTION FOR FEE SIMPLE RIGHT-OF-WAY**

That part of the Union Pacific Railroad right-of-way lying within the West 35 feet of the East 75 feet of the Southeast quarter of Section 24, Township 1 North, Range 2 West and that part of the Union Pacific Railroad right-of-way lying within the East 35 feet of the West 75 feet of the Southwest quarter of Section 19, Township 1 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

The above described parcel contains 14,126 square feet or 0.32 acres.

MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION		
Prelim. 8-7-2000	Chk.	Appr. <i>KWJ</i> 8-13-02
Rev.		Final
Maricopa County Public Works Land & R/W Division		Titles & Right-of-Way

GRANTOR \_\_\_\_\_ DATE \_\_\_\_\_  
EXHIBIT 'A'

# EXHIBIT A-3

To Supplemental Agreement  
(Existing Public Road Crossing Improvement)

Cover Sheet for the  
Temporary Rights Legal Description

**PARCEL NO. 500-06-00 (a portion of)**  
**PROJECT NO. 68960**  
M.C. 85 - Cotton Lane to Estrella Pkwy.  
**Item No. X-0000-1**

**LEGAL DESCRIPTION FOR FEE TEMPORARY CONSTRUCTION EASEMENT**

That portion of the Union Pacific Railroad right-of-way lying within the West 28 feet of the East 103 feet of the Southeast quarter of Section 24, Township 1 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

**EXCEPT** any portion lying within the South 227 feet of said Section 24.

The above described parcel contains 1,294 square feet or 0.0297 acres.



MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION		
Prelim. 8-15-2006	Chk.	Appr.
Rev.		Final
Maricopa County Public Works Land & R/W Division		Titles & Right-of-Way

GRANTOR \_\_\_\_\_ DATE \_\_\_\_\_  
EXHIBIT 'A'

# EXHIBIT A-4

To Supplemental Agreement  
(Existing Public Road Crossing Improvement)

Cover Sheet for the  
Illustrative Print of the Legal Descriptions



# EXHIBIT B

To Supplemental Agreement  
(Existing Public Road Crossing Improvement)

Cover Sheet for the  
Railroad's Track & Surface Material Estimate

DATE: 2008-02-29

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

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2008-08-29

DESCRIPTION OF WORK:

RECOLLECT ROAD CROSSING / PHOENIX SUB / MP 886.06 - SARIVAL RD  
 RENEW OR REPLACE (128) TRK FT OF ROAD CROSSING, UNLOAD (2) CARS OF  
 BALLAST, SURFACE AND LINE TRACK(S), AS NOTED IN SCOPE OF WORK.  
 MISC SIGNAL WORK.

PID: 58152 AWO: 82581 MP, SUBDIV: 886.06, PHOENIX  
 SERVICE UNIT: 16 CITY: GOODYEAR STATE: AZ

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
<b>ENGINEERING WORK</b>							
ENGINEERING			10000		10000		10000
FLAGGING			5000		5000		5000
LABOR ADDITIVE 236%			35400		35400		35400
<b>TOTAL ENGINEERING</b>			<b>50400</b>		<b>50400</b>		<b>50400</b>
<b>SIGNAL WORK</b>							
SIGNAL			97	2	99		99
<b>TOTAL SIGNAL</b>			<b>97</b>	<b>2</b>	<b>99</b>		<b>99</b>
<b>TRACK &amp; SURFACE WORK</b>							
BALAST	2.00	CL	2139	1504	3643		3643
BILL PREP				900	900		900
FIELD WELD			162		162		162
HOMELINE FREIGHT				900	900		900
LABOR ADDITIVE 236%			49608		49608		49608
MATL STORE EXPENSE				808	808		808
OTM			1269	2656	3925		3925
PERMITTING				100	100		100
RAIL	320.00	LF	1717	5862	7579		7579
RDXING	128.00	TF	8112	20471	28583		28583
SALES TAX				1502	1502		1502
SAW CUT STREET APPROACH				2000	2000		2000
SCRAP TIE CONTRACTOR				100	100		100
TRK-SURF, LIN			6335		6335		6335
WELD			5260	267	5527		5527
XTIE	90.00	EA	10766	8263	19029		19029
<b>TOTAL TRACK &amp; SURFACE</b>			<b>85368</b>	<b>45333</b>	<b>130701</b>		<b>130701</b>
<b>LABOR/MATERIAL EXPENSE</b>			<b>135865</b>	<b>45335</b>			
<b>RECOLLECTIBLE/UPRR EXPENSE</b>					<b>181200</b>	<b>0</b>	
<b>ESTIMATED PROJECT COST</b>							<b>181200</b>
<b>EXISTING REUSABLE MATERIAL CREDIT</b>					<b>0</b>		
<b>SALVAGE NONUSEABLE MATERIAL CREDIT</b>					<b>0</b>		
<b>RECOLLECTIBLE LESS CREDITS</b>							

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

Exhibit B  
 Railroad's Track & Surface Material Estimate  
 To Supplemental Agreement

# EXHIBIT B-1

To Supplemental Agreement  
(Existing Public Road Crossing Improvement)

Cover Sheet for the  
Railroad's Signal Material Estimate

DATE: 2007-11-20

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

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2008-05-20

DESCRIPTION OF WORK:

INSTALL AUTOMATIC FLASHING LIGHT CROSSING SIGNALS  
 TO INCLUDE GATES AND CANTILEVER AT  
 GOODYEAR, AZ. SARIVAL RD. M.P. 886.06  
 ON THE PHOENIX SUB.

WORK TO BE PERFORMED BY RAILROAD WITH EXPENSE AS BELOW  
 SIGNAL MARICOPA COUNTY 100%

PID: 58150 AWO: 82580 MP, SUBDIV: 886.06, PHOENIX  
 SERVICE UNIT: 16 CITY: GOODYEAR STATE: AZ

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
<b>ENGINEERING WORK</b>							
ENGINEERING			6945		6945		6945
LABOR ADDITIVE 188%			22120		22120		22120
SIG-HWY XNG			4821		4821		4821
<b>TOTAL ENGINEERING</b>			<b>33886</b>		<b>33886</b>		<b>33886</b>
<b>SIGNAL WORK</b>							
CANTILEVER				10800	10800		10800
CONTRACT				8854	8854		8854
FILL/ROCK/GRAVEL				17500	17500		17500
FLAGGING				5000	5000		5000
LABOR ADDITIVE 188%			112282		112282		112282
MATL STORE EXPENSE				210	210		210
METER SERVICE				12000	12000		12000
PERSONAL EXPENSES				36000	36000		36000
SALES TAX				3241	3241		3241
SIGNAL			59725	81039	140764		140764
TRANSP.RCLW CONTRACT				13320	13320		13320
<b>TOTAL SIGNAL</b>			<b>172007</b>	<b>187964</b>	<b>359971</b>		<b>359971</b>
<b>LABOR/MATERIAL EXPENSE</b>			<b>205893</b>	<b>187964</b>			
<b>RECOLLECTIBLE/UPRR EXPENSE</b>					<b>393857</b>		
<b>ESTIMATED PROJECT COST</b>							<b>393857</b>

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

# EXHIBIT C

To Supplemental Agreement  
(Existing Public Road Crossing Improvement)

Cover Sheet for the Form of  
Contractor's Right of Entry Agreement



March 26, 2008

UPRR Folder No.: 2453-87

**To the Contractor:**

Before Union Pacific Railroad Company can permit you to perform work on its property for the reconstruction and widening of the existing Sarival Road at-grade public road crossing, it will be necessary for you to complete and execute two originals of the enclosed Contractor's Right of Entry Agreement. Please:

1. Fill in the complete legal name of the contractor in the space provided on Page 1 of the Contractor's Right of Entry Agreement. If a corporation, give the state of incorporation. If a partnership, give the names of all partners.
2. Fill in the date construction will begin and be completed in Article 5, Paragraph A.
3. Fill in the name of the contractor in the space provided in the signature block at the end of the Contractor's Right of Entry Agreement. If the contractor is a corporation, the person signing on its behalf must be an elected corporate officer.
4. Execute and return all copies of the Contractor's Right of Entry Agreement together with your Certificate of Insurance as required in Exhibit B, in the attached, self-addressed envelope.
5. Include a check made payable to the Union Pacific Railroad Company in the amount of **\$500.00**. If you require formal billing, you may consider this letter as a formal bill. In compliance with the Internal Revenue Services' new policy regarding their Form 1099, I certify that 94-6001323 is the Railroad Company's correct Federal Taxpayer Identification Number and that Union Pacific Railroad Company is doing business as a corporation.

Under Exhibit B of the enclosed Contractor's Right of Entry Agreement, you are required to procure Railroad Protective Liability Insurance (RPLI) for the duration of this project. As a service to you, Union Pacific is making this coverage available to you. If you decide that acquiring this coverage from the Railroad is of benefit to you, please contact Mr. Mike McGrade of Marsh USA @ 800-729-7001, e-mail: [william.j.smith@marsh.com](mailto:william.j.smith@marsh.com).

This agreement will not be accepted by the Railroad Company until you have returned all of the following to the undersigned at Union Pacific Railroad Company:

1. Executed, unaltered duplicate original counterparts of the Contractor's Right of Entry Agreement;
2. Your check in the amount of \$500.00 to pay the required balance due of the required Contractor's Right of Entry fee. (The Folder Number and the name "Paul G. Farrell" should be written on the check to insure proper credit). If you require formal billing, you may consider this letter as a formal bill;
3. Copies of all of your up-to-date General Liability, Auto Liability & Workman's Compensation Insurance Certificates (*yours and all contractors*'), naming Union Pacific Railroad Company as additional insured;



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



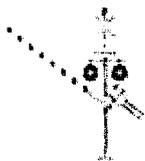
4. Copy of your **up-to-date** Railroad Protective Liability Insurance Certificate (*yours and all contractors*'), naming Union Pacific Railroad Company as additional insured.

**RETURN ALL OF THESE REQUIRED ITEMS TOGETHER IN ONE ENVELOPE.  
DO NOT MAIL ANY ITEM SEPARATELY.**

If you have any questions concerning this agreement, please contact me as noted below. Have a safe day!

*Paul G. Farrell*

Senior Manager Contracts  
Phone: (402) 544-8620  
e-mail: [pgfarrell@up.com](mailto:pgfarrell@up.com)



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



UPRR Folder No.: 2453-87

UPRR Audit No.: 244513

## CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

**THIS AGREEMENT** is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and

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

### RECITALS:

Contractor has been hired by *Maricopa County* to perform work relating to the reconstruction and widening of the existing Sarival Road at-grade public road crossing (the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of the Railroad's Mile Post 886.06 on the Railroad's Phoenix Subdivision near Goodyear, Maricopa County, Arizona, as such location is in the general location shown on the Railroad Location Print marked **Exhibit A**, attached hereto and hereby made a part hereof, which work is the subject of a Supplemental

Agreement dated \_\_\_\_\_ between the Railroad and Maricopa County.  
(Date of Agreement)

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

### AGREEMENT:

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

#### **ARTICLE 1 - DEFINITION OF CONTRACTOR.**

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

#### **ARTICLE 2 - RIGHT GRANTED; PURPOSE.**

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the work described in the Recitals above. The right herein granted to Contractor is limited to those

portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

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

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

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

- A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.
- B. Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

*Mike Battista*  
*Manager Track Maintenance*  
*Union Pacific Railroad Company*  
*1255 South Campbell Avenue*  
*Tucson, AZ 85713*  
*Phone: 602-322-2506*  
*Fax: 602-322-2515*

*John Clark*  
*Manager Signal Maintenance*  
*Union Pacific Railroad Company*  
*301 Gila Street*  
*Yuma, AZ 85364*  
*Phone: 925-343-4563*  
*Fax: 928-343-4558*

- C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

**ARTICLE 5 - 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  
*(Expiration Date)*  
at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.
- B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

**ARTICLE 6 - CERTIFICATE OF INSURANCE.**

- A. Before commencing any work, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement, and (ii) the

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

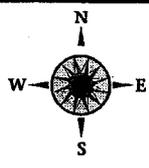
**UNION PACIFIC RAILROAD COMPANY**  
*(Federal Tax ID #94-6001323)*

By: \_\_\_\_\_  
PAUL G. FARRELL  
Senior Manager Contracts

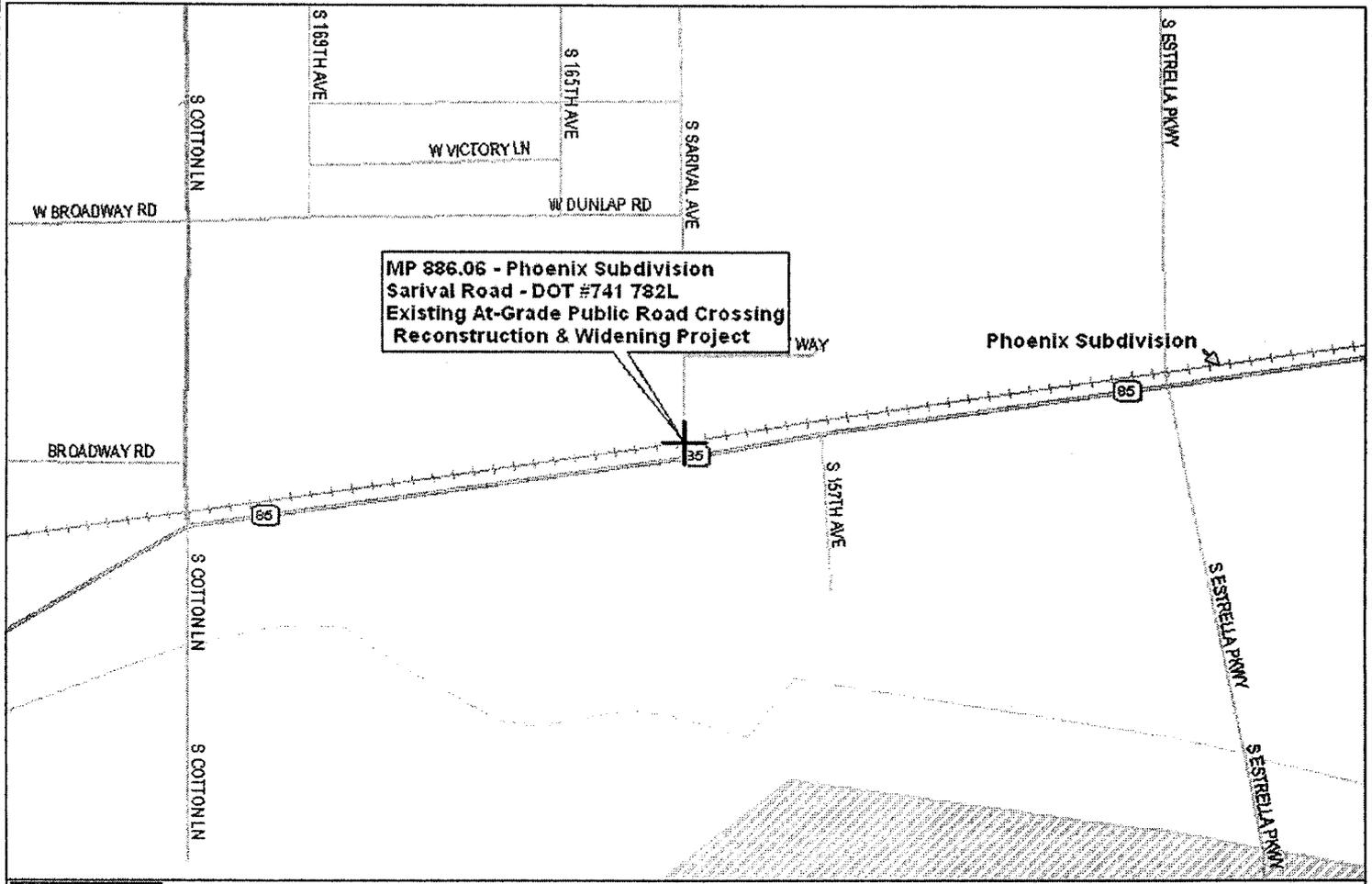
\_\_\_\_\_  
*(Name of Contractor)*

By \_\_\_\_\_

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



# RAILROAD LOCATION PRINT ACCOMPANYING A CONTRACTOR'S RIGHT OF ENTRY AGREEMENT



**DELORME**  
Data use subject to license.  
© 2004 DeLorme. Street Atlas USA® 2005.  
www.delorme.com

★  
MN (11.4° E)

0 1000 2000 ft  
Data Zoom 13-0

- RAILROAD WORK TO BE PERFORMED:**
1. Relay 320-feet of track, install 128-feet of concrete road crossing panels, install 90 cross ties, install 2 carloads of ballast, and other track and surface materials;
  2. Install automatic flashing light crossing signals, and other signal materials;
  3. Engineering & Flagging.

**EXHIBIT "A"**

**UNION PACIFIC RAILROAD COMPANY**

PHOENIX SUBDIVISION  
MILE POST 886.06  
GPS: N 33° 24.4161', W 112° 24.5590'  
near GOODYEAR, MARICOPA CO., AZ.

To accompany Contractor's Right of Entry Agreement with

---

*(Name of Contractor)*

for an existing at-grade public road crossing  
reconstruction and widening project.

Folder No. 2453-87                      Date: March 26, 2008

**WARNING**

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



## **EXHIBIT B**

### **TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

#### **TERMS AND CONDITIONS**

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

- A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least ten (10) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such ten (10)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.
- B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

##### **Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED**

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.
- B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

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

- A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery

and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroad's tracks except at existing open public crossings.

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

#### Section 4. LIENS.

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

#### Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

- A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.
- B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

#### Section 6. PERMITS - COMPLIANCE WITH LAWS.

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

#### Section 7. SAFETY.

- A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in **Exhibit C**, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit C** to each of its employees before they enter the job site.
- B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.
- C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.



**Section 8. INDEMNITY.**

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

**Section 9. RESTORATION OF PROPERTY.**

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

**Section 10. WAIVER OF DEFAULT.**

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

**Section 11. MODIFICATION - ENTIRE AGREEMENT.**

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

**Section 12. ASSIGNMENT - SUBCONTRACTING.**

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

## EXHIBIT C

### TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

#### INSURANCE PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

- D. Railroad Protective Liability Insurance.** Contractor must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.

- E. Umbrella or Excess Insurance.** If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

- F. Pollution Liability Insurance.** Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

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

#### Other Requirements

- G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.
- L. The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

## EXHIBIT D

### TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

#### MINIMUM SAFETY REQUIREMENTS

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

#### **I. Clothing**

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

Specifically, Contractor's employees must wear:

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

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

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

#### **II. Personal Protective Equipment**

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

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

#### **III. On Track Safety**

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

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

#### **IV. Equipment**

A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's

property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:

- Familiar and comply with Railroad's rules on lockout/tagout of equipment.
  - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
    - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

**V. General Safety Requirements**

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
- (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
  - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
  - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment of the opening is less than one car length (50 feet).
  - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
  - (v) Before stepping over or crossing tracks, look in both directions first.
  - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

