



0000139997

phone 602.957.1155
fax 602.957.2838
www.dibblecorp.com

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2012 OCT -9 P 12: 20

October 5, 2012

Arizona Corporation Commission
Attention: Docket Control
1200 West Washington Street
Phoenix, Arizona 85007

AZ CORP COMMISSION
DOCKET CONTROL

RR-03639A-12-0433

Arizona Corporation Commission
DOCKETED

OCT - 8 2012

DOCKETED BY
[Signature]

**Re: Proposed Modification to Union Pacific Railroad At-Grade Crossing
Ocotillo Road Widening Project, Arizona Ave to McQueen Rd, City of Chandler, Arizona
City Project No. ST0808-401
Federal Aid No. CM-CHN-0(218)A
TRACS No. 0000 MA CHN SS917 03D
DOT Crossing 741680T, UPRR MP 933.10, UP Chandler Industrial Lead**

To ACC Docket Control:

Please accept this memo to the Arizona Corporation Commission (ACC) as an application requesting approval to upgrade an existing Union Pacific Railroad Company (UPRR) public roadway crossing on behalf of the City of Chandler, Arizona.

i. Location of Crossing

The Ocotillo Road, Arizona Avenue to McQueen Road Improvement project includes widening Ocotillo Road from a two lane rural roadway to a four-lane urban major arterial typical section with 16-foot raised median within the UPRR right-of-way. The railroad crossing is located approximately 1280 feet east of Arizona Avenue. Representatives from the ACC, Chandler, UPRR and Dibble Engineering attended a diagnostic field meeting on June 11, 2008. The City and consultant have also met several times during the course of the project.

ii. Why is the Crossing Needed

The railroad crossing is an existing at-grade crossing. This project is a roadway widening project with a corresponding lengthening of the railroad crossing.

iii. Why the Existing Crossing Cannot be Grade Separated

With the proposed improvements to Ocotillo Road, the location of the existing at-grade crossing remains unchanged. Developing a grade separated crossing has the following undesired consequences: 1) new developments have been built adjacent to Ocotillo Road and the grade differential will directly affect their access, 2) farm roads and related irrigation systems would be displaced to the east of the tracks, 3) Ocotillo Road has significant utilities that serve the Intel

Fabrication plans and these utilities cannot be interrupted or support the additional mass of embankment, 4) adding a grade separation will create insufficient stopping sight distance for the Arizona Avenue and Ocotillo Road intersection, 5) the number of trains per week is currently three, and the new railroad marketing opportunities to the south are limited.

iv. Type of Warning Devices to be Installed

The warning devices for eastbound and westbound traffic included are as follows: gates with flashing lights will be installed in the median and outside the roadway near the sidewalk; cantilevered flashing railroad signals will be installed outside the roadway near the sidewalk; and railroad crossing warning signs will be placed per the 2009 MUTCD, Part 8 or later standards.

v. Who will maintain the Crossing Warning Devices

The UPRR will own and maintain the physical elements of the crossing (crossing surface, gates, flashing lights). The City of Chandler will own and maintain the approaching surface, signing, and markings on Ocotillo Road.

vi. Who is funding the Project

This project is seeking Federal Highway/Railroad Grade Crossing Funds (RR), federal Highway Safety Improvement Program (HSIP) funds, and the City of Chandler local match funds.

Please send the necessary Procedural Order and/or any other additional correspondence related to the hearing process directly to:

Mr. Paul Young, PE, PTOE
Senior Transportation Engineer
Transportation & Development Department
City of Chandler
Mail Stop 105
PO Box 4008
Chandler, Arizona 85244-4008

If you have any questions regarding this application, please contact me at (602) 346-5754.

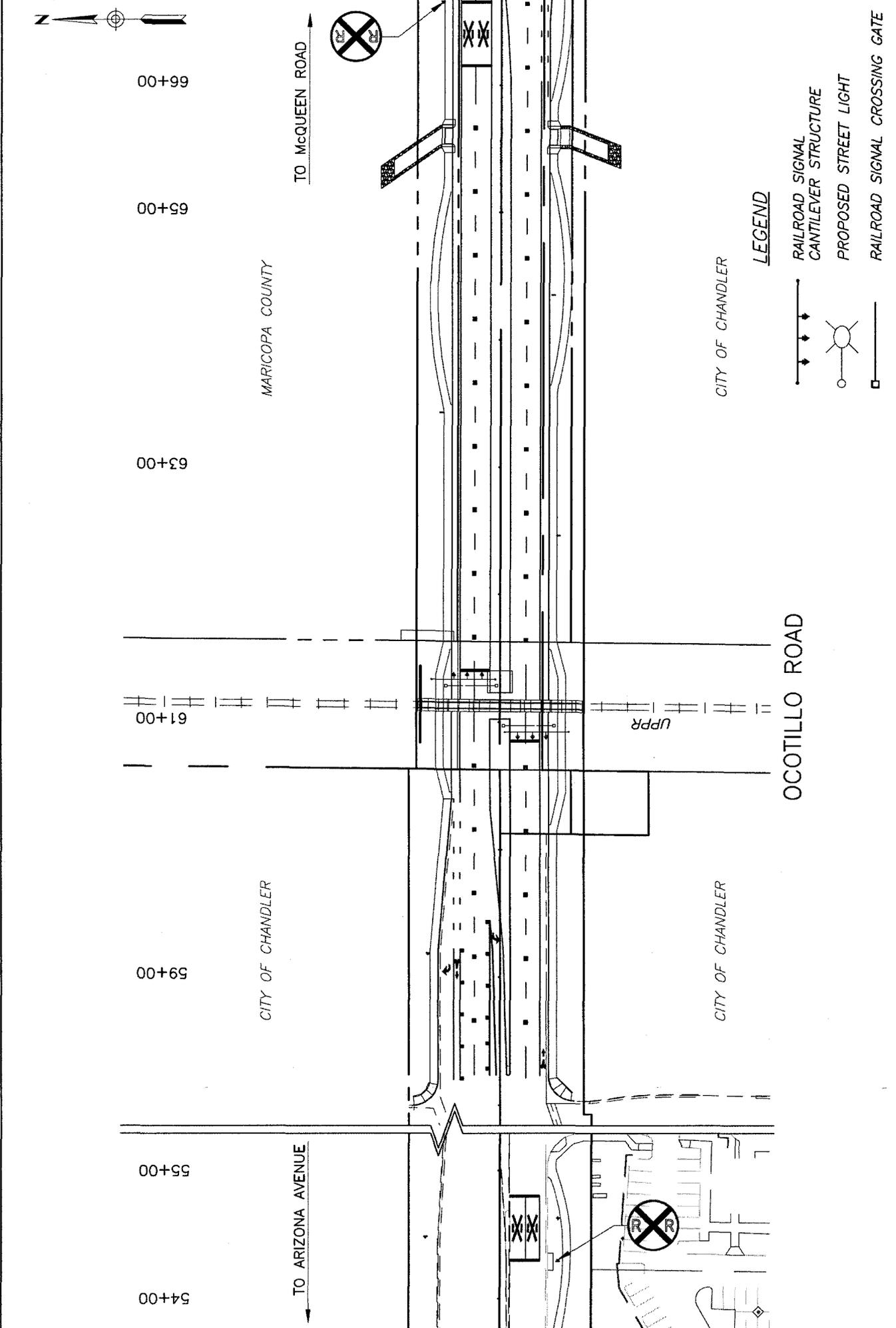
Sincerely,



Andrew J. Spear, P.E.
Project Manager
Dibble Engineering

Attachments:

1. Ocotillo Road/UPRR At-Grade Crossing Improvements, Design Exhibit
2. Signed Agreement, UPRR-City of Chandler



RAILROAD CROSSING EXHIBIT
 UNION PACIFIC RAILROAD
 CHANDLER LEAD
 DOT CROSSING NO 741680T
 SHEET 1 OF 1

OCTOBER 4, 2012
 0' 25' 50' 100'


CITY OF CHANDLER
 OCOTILLO ROAD IMPROVEMENTS
 ARIZONA AVE TO MCQUEEN RD
 ST-0808-401
 FED AID PROJ NO CM-CHN-0(218)A
 TRACS NO 0000 MA CHN5591703D

7500 N. Dreamy Draw Drive
 Suite 200
 Phoenix, AZ 85020
 P 602.957.1155
 F 602.957.2838
 www.dibblecorp.com



**PUBLIC HIGHWAY AT-GRADE
CROSSING IMPROVEMENT
AGREEMENT**

BETWEEN

UNION PACIFIC RAILROAD COMPANY

AND THE

CITY OF CHANDLER

COVERING

**THE RECONSTRUCTION AND WIDENING OF THE
EXISTING OCOTILLO ROAD AT-GRADE PUBLIC ROAD
CROSSING
(DOT NO. 741-680T)**

AT

RAILROAD MILE POST 933.10 – CHANDLER INDUSTRIAL LEAD

IN

**CHANDLER,
MARICOPA CITY,
ARIZONA**



UPRR Folder No.: 2611-72

UPRR Audit No. 255200

PUBLIC HIGHWAY AT-GRADE CROSSING IMPROVEMENT AGREEMENT

THIS AGREEMENT is made as of the 17th day of August, 2012, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, or its predecessor in interest, with a mailing address at 1400 Douglas Street, MS 1690, Omaha, Nebraska, 68179-1690 ("Railroad"), and the **CITY OF CHANDLER**, an Arizona municipal corporation with a mailing address at PO Box 4008, Chandler, Arizona 85244 ("City").

RECITALS:

Presently, the City utilizes the Railroad's property for the existing Ocotillo Road at-grade public road crossing, (DOT No. 741-680T), at Railroad's Mile Post 933.10 on it's Chandler Industrial Lead, in Chandler, Maricopa County, Arizona.

The City now desires to undertake as its project (the "Project") the reconstruction and widening of the existing Ocotillo Road at-grade public road crossing. The existing aforementioned roadway, as reconstructed and widened is hereinafter the "Roadway" and where the Roadway crosses the Railroad's property is the "Crossing Area."

The right of way presently utilized by the City for the existing at-grade public road crossing, is not sufficient to allow for the reconstruction and widening of the Roadway. Therefore, under this Agreement, the Railroad will be granting an additional right of way right to the City to facilitate the reconstruction and widening of the Roadway. The portion of Railroad's property that City needs a right to use in connection with the road crossing (including the right of way area presently utilized by the City) is shown in the location shown on the Railroad Location Print marked **Exhibit A**, specified on the Survey Print of Rights marked **Exhibit A-1**, and described in the Legal Description of Rights marked **Exhibit A-2**, each exhibit being attached hereto and hereby made a part hereof (the "Crossing Area").

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

AGREEMENT:

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

ARTICLE 1.

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

Exhibit A	Railroad Location Print
Exhibit A-1	Survey Print of Rights



Exhibit A-2	Legal Description of Rights
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

ARTICLE 2.

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

- Install automatic flashing light crossing signals with gates; and other signal materials.
- Re-lay 800-feet of rail; Install 136-feet of concrete road crossing panels; Install 274 cross ties; Install 4 carloads of ballast; and other track & surface materials.
- Engineering, and
- Flagging.

ARTICLE 3.

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

- Track & Surface Estimate dated May 25, 2012, in the amount of \$189,665.00, marked **Exhibit B**,
- Signal Material Estimate dated May 31, 2012, in the amount of \$339,186.00, marked **Exhibit B-1**, and
- Flagging & Engineering Estimate dated October 24, 2011, in the amount of \$65,000.00, marked **Exhibit B-2**,

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 (\$593,851.00).

B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the City in the event the City 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 City acknowledges that the Estimate does not include any estimate of flagging or other protective service costs that are to be paid by the City 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 City or the Contractor as determined by the Railroad and the City. If it is determined that the Railroad will be billing the Contractor directly for such costs, the City 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 City 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.

ARTICLE 4.

- A. The City, 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.

ARTICLE 5.

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

ARTICLE 6.

- A. The City, 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 City, at its expense, shall maintain and repair all portions of the Roadway approaches that are not within the track tie ends.

ARTICLE 7.

If City's contractor(s) is/are performing any work described in Section 4 above, then the City 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**. City 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 City's contractor(s) be allowed onto the Railroad's premises without first executing the Contractor's Right of Entry Agreement.



ARTICLE 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. City 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 City or its contractor(s). If it is, City 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.

ARTICLE 9.

The City, 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.

ARTICLE 10.

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

ARTICLE 11.

The City 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 City, passed and approved as by law prescribed, and duly certified, evidencing the authority of the person executing this agreement on behalf of the City 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 City.

ARTICLE 12.

The Railroad, at its sole cost and expense, shall maintain and repair the public crossing vehicular warning signals and gates; PROVIDED, HOWEVER, that such maintenance and repair shall not negate the Railroad's eligibility for any federal, state, local or other public funds that may become available for the maintenance and repair of the warning devices and gates.

ARTICLE 13.

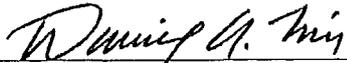
For and in consideration **TWENTY-SEVEN THOUSAND FOUR HUNDRED DOLLARS (\$27,400.00)** to be paid by the City to the Railroad upon the execution and delivery of this Agreement and in further consideration of the City's agreement to perform and abide by the terms of this Agreement including all exhibits, the Railroad hereby grants to the City the right to establish or reestablish, construct or reconstruct, maintain, repair and renew the road crossing over and across the Crossing Area.

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

If the City will be receiving American Recovery and Reinvestment Act ("ARRA") funding for the Project, the City agrees that it is responsible in performing and completing all ARRA reporting documents for the Project. The City confirms and acknowledges that Section 1512 of the ARRA provisions applies only to a "recipient" receiving ARRA funding directly from the federal government and, therefore, (i) the ARRA reporting requirements are the responsibility of the City and not of the Railroad and (ii) the City shall not delegate any ARRA reporting responsibilities to the Railroad. The City also confirms and acknowledges that (i) the Railroad shall provide to the City the Railroad's standard and customary billing for expenses incurred by the Railroad for the Project including the Railroad's standard and customary documentation to support such billing and (ii) such standard and customary billing and documentation from the Railroad provides the information needed by the City to perform and complete the ARRA reporting documents. The Railroad confirms that the City and the Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for the Project.

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

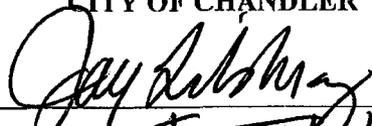
UNION PACIFIC RAILROAD COMPANY
(Federal Tax ID #94-6001323)

By: 
DANIEL A. LEIS
General Director: Contracts

WITNESS:



CITY OF CHANDLER

By: 
Printed Name: Jay Tibbbrack
Title: Mayor

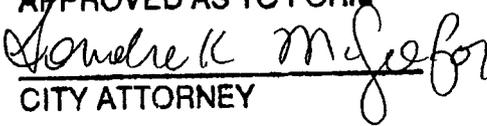
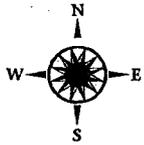
APPROVED AS TO FORM

CITY ATTORNEY

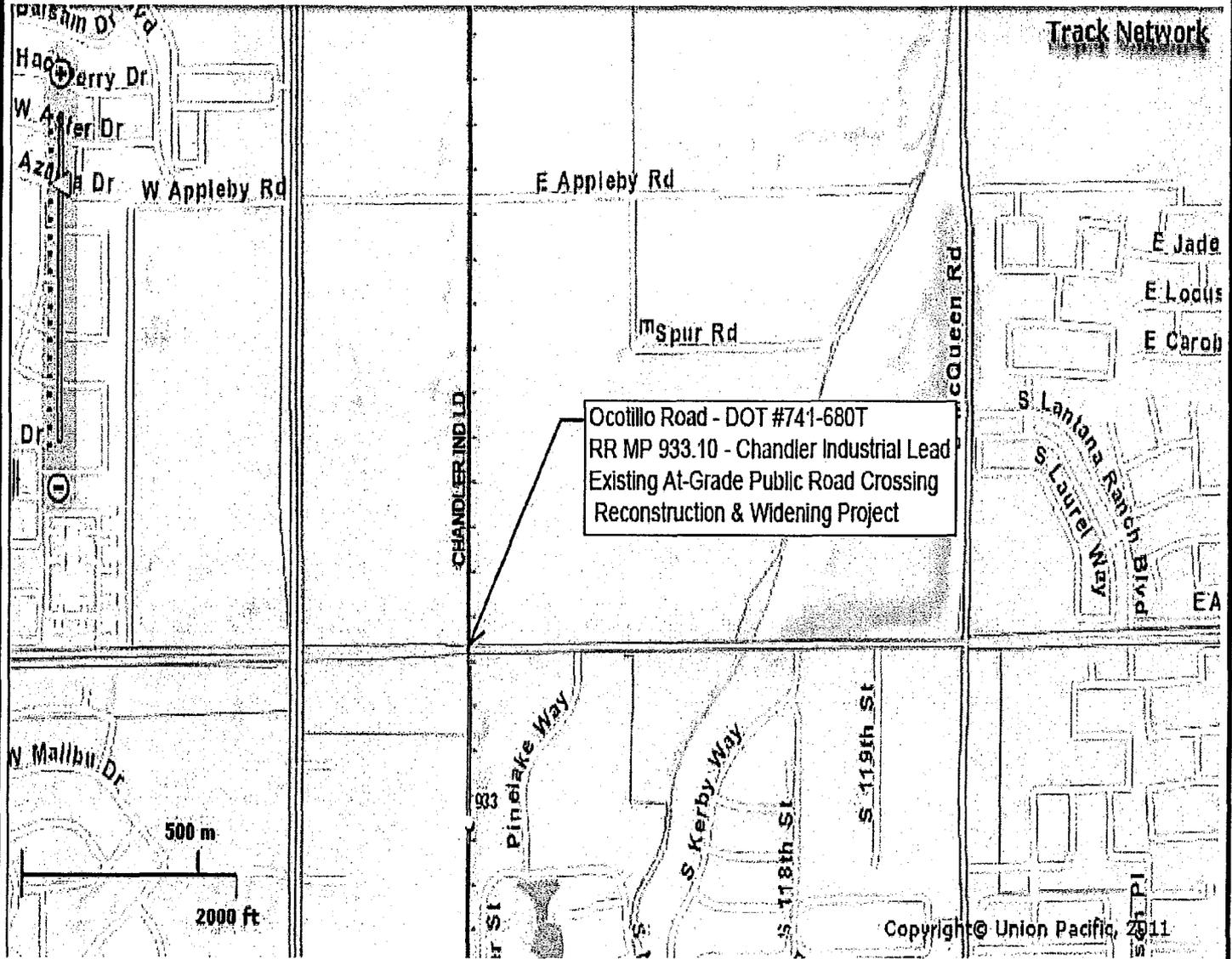
EXHIBIT A

To Public Highway At-Grade Crossing
Improvement Agreement

Cover Sheet for the
Railroad Location Print



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



RAILROAD WORK TO BE PERFORMED:

1. Install automatic flashing light crossing signals with gates; and other signal materials.
2. Re-lay 800-feet of rail; Install 136-feet of concrete road crossing panels; Install 274 cross ties; Install 4 carloads of ballast; and other track & surface materials.
3. Engineering Design Review & Flagging.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

CHANDLER INDUSTRIAL LEAD
MILE POST 933.10
GPS: N 33° 14.8577', W 111° 50.2425'
CHANDLER, MARICOPA CO., AZ.

Railroad Location Print of an existing at-grade public road crossing reconstruction and widening project with the
CITY OF CHANDLER.

Folder No. 2611-72

Date: October 24, 2011

WARNING

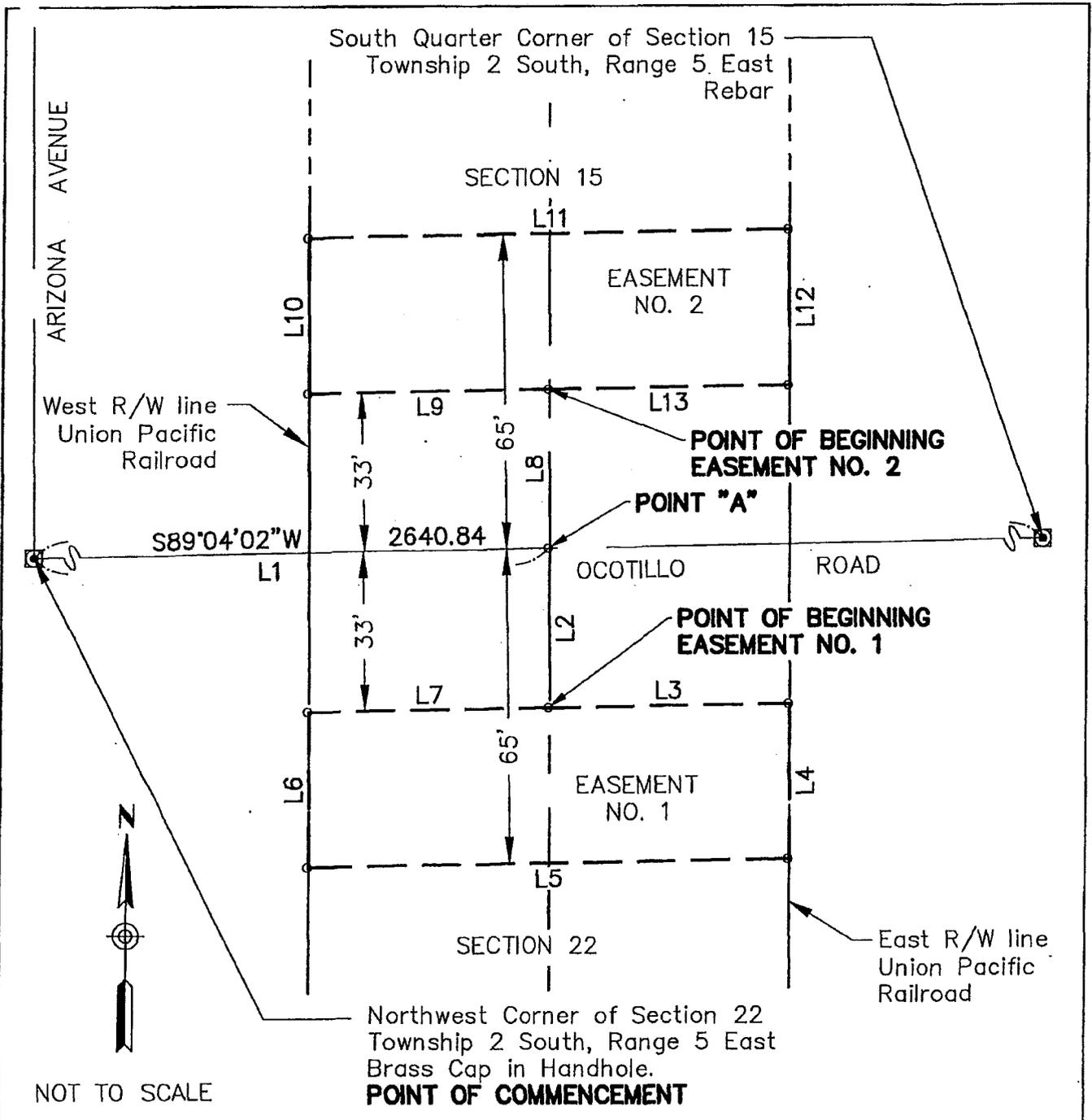
IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.
PHONE: 1-(800) 336-9193

EXHIBIT A-1

To Public Highway At-Grade Crossing
Improvement Agreement

Cover Sheet for the
Survey Print of Rights

FILE:\PROJECTS\2008\10-0808\DWGS\ACAD\0808RW-ECHB.dwg DATE: Mar, 22, 2010 TIME: 01:44 pm



SEE SHEET 4 OF 4 FOR LINE DATA TABLE
THIS IS NOT A PROPERTY BOUNDARY SURVEY.

Dibble Engineering

Dibble Engineering
Project No. 10-0808

REGISTERED PROFESSIONAL SURVEYOR
45834
RANDALL J. BILYEU
Date Signed 3-22-10
ARIZONA, U.S.A.
Expires 03/31/10

EXHIBIT "A"
OCOTILLO ROAD
RIGHT OF WAY EASEMENTS

DATE: MAR 2010
DRN: JLD
CHK: RJB

PAGE
3 OF 4

EXHIBIT A-2

To Public Highway At-Grade Crossing
Improvement Agreement

Cover Sheet for the
Legal Description of Rights

**DESCRIPTION
FOR
OCOTILLO ROAD
RIGHT OF WAY EASEMENTS**

Two easements situated in portions of Section 15 and Section 22, Township 2 South, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described as follows:

EASEMENT NO. 1

COMMENCING at the Northwest Corner of said Section 22, monumented by a Brass Cap in Handhole bearing South 89 degrees 04 minutes 02 seconds West, a distance of 2640.84 feet from the South Quarter Corner of said Section 15, monumented by a Rebar;

THENCE North 89 degrees 04 minutes 02 seconds East, along the North line of said Section 22, a distance of 1367.60 feet to a point on the centerline of the Union Pacific Railroad Right of Way, said point is herein designated as Point "A";

THENCE departing said North line, South 00 degrees 16 minutes 59 seconds East, along said centerline, a distance of 33.00 feet to the POINT OF BEGINNING of EASEMENT NO. 1;

THENCE North 89 degrees 04 minutes 02 seconds East, along a line parallel with and 33.00 feet South of said North line, a distance of 50.00 feet to a point on the East line of the Union Pacific Railroad Right of Way;

THENCE South 00 degrees 16 minutes 59 seconds East, along said East line, a distance of 32.00 feet;

THENCE departing said East line, South 89 degrees 04 minutes 02 seconds West, along a line parallel with and 65.00 feet South of the North line of said Section 22, a distance of 100.00 feet to the West line of the Union Pacific Railroad Right of Way;

THENCE North 00 degrees 16 minutes 59 seconds West, along said West line, a distance of 32.00 feet;

THENCE departing said West line, North 89 degrees 04 minutes 02 seconds East, along a line parallel with and 33.00 feet South of the North line said Section 22, a distance of 50.00 feet to the POINT OF BEGINNING of EASEMENT NO.1.

Easement No. 1 contains a computed area of 3,200 square feet or 0.0735 acres more or less.

EASEMENT NO. 2

COMMENCING at said Point "A" as described in EASEMENT NO. 1 hereinabove;

THENCE departing the South line of said Section 15, North 00 degrees 16 minutes 59 seconds West, along the centerline of the Union Pacific Railroad, a distance of 33.00 feet to the POINT OF BEGINNING of EASEMENT NO. 2;

THENCE South 89 degrees 04 minutes 02 seconds West, along a line parallel with and 33.00 feet North of said South line, a distance of 50.00 feet to the West line of the Union Pacific Railroad Right of Way;

THENCE North 00 degrees 16 minutes 59 seconds West, along said West line, a distance of 32.00 feet;

THENCE departing said West line, North 89 degrees 04 minutes 02 seconds East, along a line parallel with and 65.00 feet North of the South line of said Section 15, a distance of 100.00 feet to a point on the East line of the Union Pacific Railroad Right of Way;

THENCE South 00 degrees 16 minutes 59 seconds East, along said East line, a distance of 32.00 feet;

THENCE departing said East line, South 89 degrees 04 minutes 02 seconds West, along a line parallel with and 33.00 feet North of the South line of said Section 15, a distance of 50.00 feet to the POINT OF BEGINNING of EASEMENT NO.2.

Easement No. 2 contains a computed area of 3,200 square feet or 0.0735 acres more or less.

The attached Exhibit 'A' is to be included and made part of this description.



EXHIBIT B

To Public Highway At-Grade Crossing
Improvement Agreement

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

DATE: 2012-05-25

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

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2012-11-23

DESCRIPTION OF WORK:

2011 RECOLLECTIBLE PROJECT
CHANDLER IND LEAD / MP. 933.10
CHANDLER, AZ. / OCOTILLO ROAD / DOT #741680T
INSTALL 136 TF OF CONCRETE CROSSING SURFACE WITH 400 TF OF RAIL AND TIES
COST: 100% CITY OF CHANDLER
ESTIMATED USING FEDERAL ADDITIVES WITH INDIRECT AND OVERHEAD - 205%

PID: 68173 AWO: 04459 MP,SUBDIV: 933.10, CHANDLER
SERVICE UNIT: 16 CITY: CHANDLER STATE: AZ

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
ENGINEERING WORK							
ENGINEERING			1000		1000		1000
LABOR ADDITIVE 205%			2050		2050		2050
TOTAL ENGINEERING			3050		3050		3050
SIGNAL WORK							
LABOR ADDITIVE 205%			2176		2176		2176
SALES TAX				3	3		3
SIGNAL			1061	78	1139		1139
TOTAL SIGNAL			3237	81	3318		3318
TRACK & SURFACE WORK							
BALAST	4.00	CL	1764	3302	5066		5066
ENVIRONMENTAL PERMITS				10	10		10
EQUIPMENT RENTAL W/OPER				10000	10000		10000
FIELD WELD			1056		1056		1056
LABOR ADDITIVE 205%			32452		32452		32452
MANAGE AND COORDINATE				5000	5000		5000
MATL STORE EXPENSE				941	941		941
OTM			2378	7120	9498		9498
RAIL	800.00	LF	830	20288	21118		21118
RDXING	136.00	TF	3936	32502	36438		36438
ROADWAY APPROACH WORK				15000	15000		15000
SALES TAX				3551	3551		3551
SAW CUT STREET APPROACH				3000	3000		3000
TRK-SURF,LIN			2795		2795		2795
WELD			6575	1641	8216		8216
XTIE	274.00	EA	5205	23951	29156		29156
TOTAL TRACK & SURFACE			56991	126306	183297		183297
LABOR/MATERIAL EXPENSE							
RECOLLECTIBLE/UPRR EXPENSE			63278	126387	189665	0	189665
ESTIMATED PROJECT COST							189665
EXISTING REUSEABLE MATERIAL CREDIT					0		
SALVAGE NONUSEABLE MATERIAL CREDIT					0		
RECOLLECTIBLE LESS CREDITS							

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

EXHIBIT B-1

To Public Highway At-Grade Crossing
Improvement Agreement

Cover Sheet for the
Railroad's Signal Material Estimate

DATE: 2012-05-31

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

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS 12012-11-29

DESCRIPTION OF WORK:

INSTALL AUTOMATIC FLASHING LIGHT CROSSING SIGNALS
WITH GATES AT CHANDLER, AZ - OCOTILLO ROAD
H.P. 933.10 - CHANDLER IND. LEAD - DOT #741680T
WORK TO BE PERFORMED BY RAILROAD WITH EXPENSE AS BELOW:
SIGNAL - CITY OF CHANDLER - 100%
ESTIMATED USING FEDERAL ADDITIVES WITH INDIRECT AND
OVERHEAD CONSTRUCTION COST'S - 167.76%

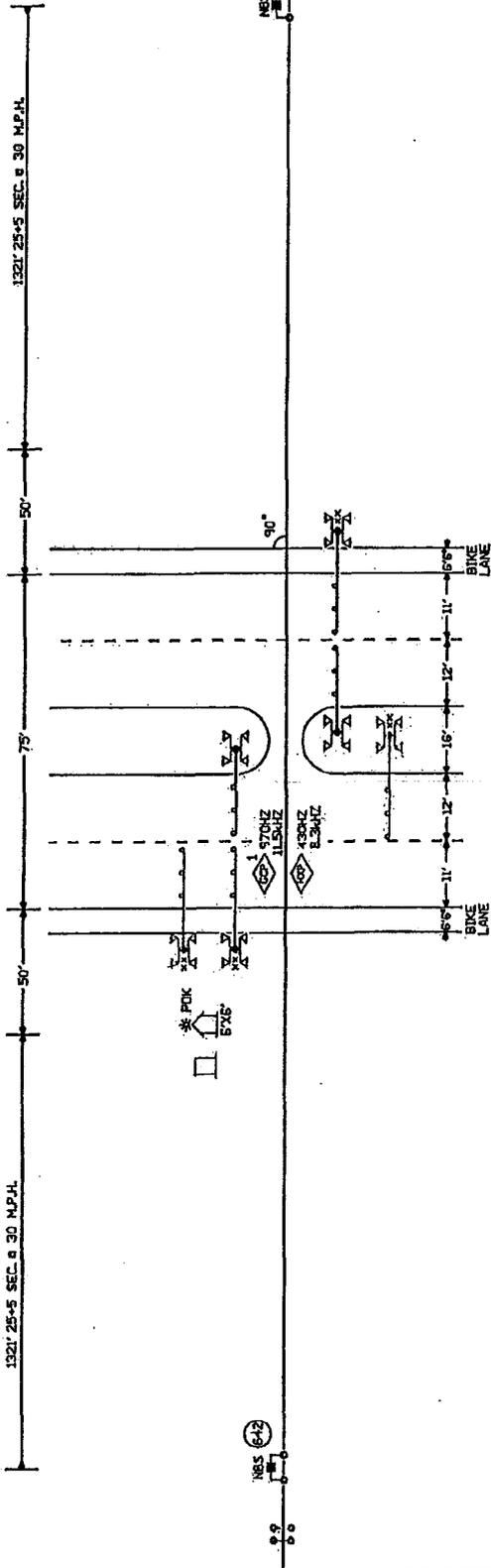
PID: 57622 AWO: 03059 HP,SUBDIV: 933.10, CHANDLER
SERVICE UNIT: 16 CITY: CHANDLER STATE: AZ

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
ENGINEERING WORK							
ENGINEERING			4787		4787		4787
LABOR ADDITIVE 167.76%			16045		16045		16045
SIG-HWY XNG			4821		4821		4821
TOTAL ENGINEERING			25653		25653		25653
SIGNAL WORK							
BILL PRSP			900		900		900
CONTRACT				7193	7193		7193
LABOR ADDITIVE 167.76%			107910		107910		107910
MATL STORE EXPENSE				7	7		7
METER SERVICE				15000	15000		15000
PERSONAL EXPENSES				32250	32250		32250
ROCK/GRAVEL/FILL				1000	1000		1000
SALES TAX				2877	2877		2877
SIGNAL			63424	71937	135361		135361
TRANSP/ID/OB/RCLM CONTR				11034	11034		11034
ENVIRONMENTAL				1	1		1
TOTAL SIGNAL			172234	141299	313533		313533
LABOR/MATERIAL EXPENSE			197987	141299			
RECOLLECTIBLE/UPRR EXPENSE					339186	0	
ESTIMATED PROJECT COST							339186

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCIUATION. 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.

PRELIMINARY SKETCH FOR ESTIMATING ONLY

TO END OF TRACK



CONSTRUCTION NOTE
1. INSTALL TEMPORARY GATES DURING CONSTRUCTION

YELLOW IN
RED OUT

NOTES

- WARNING DEVICE PLACEMENTS:
 - CROSSINGS @ 90 DEGREES OR >
 - C.L. FOUNDATION TO C.L. TRACK = 15'
 - CROSSINGS > 90 DEGREES
 - TIP OF GATE TO C.L. TRACK = 12'
 - EDGE OF ROAD TO C.L. FOUNDATIONS:
 - MIN. 4'-3" WITH CURB
 - MAX. 8'-3" WITHOUT CURB

HOUSE CLEARANCE:
25' MIN. TO NEAR RAIL
30' MIN. TO EDGE OF ROAD

- ◇ = CONSTANT WARNING BI-DIRECTIONAL
- ◇ = CONSTANT WARNING UNI-DIRECTIONAL
- ◇ = MOTION SENSOR

— = DAX

*X = CONDUIT

□ = LED LIGHTS

⊗ = BELL

⌒ = GUARD RAIL

▨ = RETAINING WALL

☆ = GCR TO OPERATE IN SEMI-BI-DIRECTIONAL MODE USE TAB 627 COUPLER

VIS ← ○ → ENO

UNION PACIFIC RAILROAD		Job No.
CHANDLER, ARIZONA	CHANDLER INDUSTRIAL LEAD	DOT 741820T
OCOTILLO ROAD		MP. 92310
CHANDLER INDUSTRIAL LEAD		10.1341
Job Ref. # 6236	Job Ref. # 6236	
PIP# 67622	PIP# 67622	
SOU'S 5	SOU'S 5	
LABOR ADD	LABOR ADD	
DATE	DATE	
BY	BY	
CHECKED	CHECKED	
APPROVED	APPROVED	

EXHIBIT B-2

To Public Highway At-Grade Crossing
Improvement Agreement

Cover Sheet for the
Railroad's Flagging & Engineering Estimate



EXHIBIT B-2

RAILROAD FLAGGING & ENGINEERING DESIGN REVIEW ESTIMATE TO PUBLIC HIGHWAY AT-GRADE CROSSING IMPROVEMENT AGREEMENT

DESCRIPTION OF WORK:

Perform flagging and engineering review services for the City of Chandler for the reconstruction and widening of the existing Ocotillo Road at-grade public road crossing, (USDOT #741-680T), at Railroad Mile Post 933.10 on the Chandler Industrial Lead in Chandler, Maricopa County, Arizona.

LOCATION: Chandler, Maricopa County, Arizona

DATE: October 24, 2011

DESCRIPTION	LABOR	MATERIAL	AUTHORITY TOTAL
FLAGGING (at \$1,000/day) X 60 days	\$60,000.00		\$60,000.00
ENGINEERING REVIEW Labor Additives (65.43%)	\$5,000.00		\$5,000.00
TOTAL PROJECT	\$65,000.00		\$65,000.00
TOTAL ESTIMATED COST OF PROJECT LESS CREDITS			\$65,000.00

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

EXHIBIT C

To Public Highway At-Grade Crossing
Improvement Agreement

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

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

CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

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

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

RECITALS:

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

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

AGREEMENT:

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

ARTICLE 1 - DEFINITION OF CONTRACTOR.

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

ARTICLE 2 - RIGHT GRANTED; PURPOSE.

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

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

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

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

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

A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.

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

MTM

MSM

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

ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.

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

ARTICLE 6 - TERM; TERMINATION.

A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until _____, unless sooner terminated as herein

(Expiration Date)

provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.

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

ARTICLE 7 - CERTIFICATE OF INSURANCE.

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

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

ARTICLE 8 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.

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

ARTICLE 9 - CROSSINGS.

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

ARTICLE 10 - EXPLOSIVES.

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

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

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

By: _____
PAUL G. FARRELL
Senior Manager Contracts

(Name of Contractor)

By: _____

Title: _____

SAMPLE

EXHIBIT A

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

EXHIBIT B

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

GENERAL TERMS & CONDITIONS

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

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

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

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

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

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

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

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

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

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

Section 4. LIENS.

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

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

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

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

Section 6. PERMITS - COMPLIANCE WITH LAWS.

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

Section 7. SAFETY.

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

B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.

C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.

D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 8. INDEMNITY.

A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees (individually an "Indemnified Party" or collectively "Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.

B. The right to indemnify under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.

C. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Indemnified Parties under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.

D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against any Indemnified Party.

E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

Section 9. RESTORATION OF PROPERTY.

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

Section 10. WAIVER OF DEFAULT.

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

Section 11. MODIFICATION - ENTIRE AGREEMENT.

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

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

Section 12. ASSIGNMENT - SUBCONTRACTING.

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

EXHIBIT C

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

INSURANCE REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OTHER REQUIREMENTS

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

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

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

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

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

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

EXHIBIT D

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

MINIMUM SAFETY REQUIREMENTS

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

I. CLOTHING

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

Specifically, Contractor's employees must wear:

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

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

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

II. PERSONAL PROTECTIVE EQUIPMENT

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

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

III. ON TRACK SAFETY

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

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

IV. EQUIPMENT

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

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

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

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

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

V. GENERAL SAFETY REQUIREMENTS

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

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

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

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

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

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

EXHIBIT D

To Public Highway At-Grade Crossing
Improvement Agreement

Cover Sheet for the Form of
General Terms & Conditions

EXHIBIT D

TO PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT

GENERAL TERMS AND CONDITIONS

SECTION 1. CONDITIONS AND COVENANTS

A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The City shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the City shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the Railroad's property by or under authority of the City for the purpose of conveying electric power or communications incidental to the City's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the City to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.

B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes. In the event the Railroad shall place additional tracks upon the Crossing Area, the City shall, at its sole cost and expense, modify the Roadway to conform with all tracks within the Crossing Area.

C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The City shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's property, unless the City at its own expense settles with and obtains releases from such nonparties.

D. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property; and the right to cross the Crossing Area with all kinds of equipment.

E. So far as it lawfully may do so, the City will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Crossing Area, excepting taxes levied upon and against the property as a component part of the Railroad's operating property.

F. If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Roadway and its appurtenances, or for the performance of any work in connection with the Project, the City will acquire all such other property and rights at its own expense and without expense to the Railroad.

SECTION 2. CONSTRUCTION OF ROADWAY

A. The City, at its expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Project, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.

B. Except as may be otherwise specifically provided herein, the City, at its expense, will furnish all necessary labor, material and equipment, and shall construct and complete the Roadway and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper highway warning devices (except those installed by the Railroad within its right of way) and all necessary drainage facilities, guard rails or barriers, and right of way fences between the Roadway and the railroad tracks. Upon completion of the Project, the City shall remove from the Railroad's property all temporary structures and false work, and will leave the Crossing Area in a condition satisfactory to the Railroad.

C. All construction work of the City upon the Railroad's property (including, but not limited to, construction of the Roadway and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President Engineering-Design of the Railroad or his authorized representative and in compliance with the Plans, and other guidelines furnished by the Railroad.

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

SECTION 3. INJURY AND DAMAGE TO PROPERTY

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

SECTION 4. RAILROAD MAY USE CONTRACTORS TO PERFORM WORK

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

SECTION 5. MAINTENANCE AND REPAIRS

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

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

SECTION 6. CHANGES IN GRADE

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

SECTION 7. REARRANGEMENT OF WARNING DEVICES

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

SECTION 8. SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS

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

A. **Definitions.** All references in this Agreement to the City shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the City shall include work both within and outside of the Railroad's property.

B. Entry on to Railroad's Property by City. If the City's employees need to enter Railroad's property in order to perform an inspection of the Roadway, minor maintenance or other activities, the City shall first provide at least ten (10) working days advance notice to the Railroad Representative. With respect to such entry on to Railroad's property, the City, to the extent permitted by law, agrees to release, defend and indemnify the Railroad from and against any loss, damage, injury, liability, claim, cost or expense incurred by any person including, without limitation, the City's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of City's employees on Railroad's property, except to the extent that any Loss is caused by the sole direct negligence of Railroad.

C. Flagging.

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

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

(iii) Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though City 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, City 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, City will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

D. Compliance With Laws. The City shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The City shall use only such methods as are consistent with safety, both as concerns the City, the City's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The City (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the City to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the City shall reimburse, and to the extent it may lawfully do so, indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The City further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

E. No Interference or Delays. The City shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal

lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.

F. **Supervision.** The City, at its own expense, shall adequately police and supervise all work to be performed by the City, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the City for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the City with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the City will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.

G. **Suspension of Work.** If at any time the City's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the City is being or is about to be done or prosecuted without due regard and precaution for safety and security, the City shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.

H. **Removal of Debris.** The City shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the City at the City's own expense or by the Railroad at the expense of the City. The City shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during snow removal from the Crossing Area.

I. **Explosives.** The City shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.

J. **Excavation.** The City shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The City shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The City, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the City in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering - Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.

K. **Drainage.** The City, at the City's own expense, shall provide and maintain suitable facilities for draining the Roadway and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The City, at the City's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the City, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The City shall not obstruct or interfere with existing ditches or drainage facilities.

L. **Notice.** Before commencing any work, the City shall provide the advance notice to the Railroad that is required under the Contractor's Right of Entry Agreement.

M. **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. City 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 City. If it is, City will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other

protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

SECTION 9. INTERIM WARNING DEVICES

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

SECTION 10. OTHER RAILROADS

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

SECTION 11. BOOKS AND RECORDS

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

SECTION 12. REMEDIES FOR BREACH OR NONUSE

A. If the City shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Roadway and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the City will reimburse the Railroad for the expenses thereof.

B. Nonuse by the City of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the City hereunder.

C. The City will surrender peaceable possession of the Crossing Area and Roadway upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

SECTION 13. MODIFICATION - ENTIRE AGREEMENT

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