



**BOARD OF SUPERVISORS AGENDA ITEM REPORT**  
**CONTRACTS / AWARDS / GRANTS**

Requested Board Meeting Date: April 19, 2016

or Procurement Director Award ☐

**Contractor/Vendor Name (DBA):** Union Pacific Railroad Company

**Project Title/Description:**

Public Highway At-Grade Crossing Agreement - Railroad Mile Post 1003.78 and 1003.81 - Lordsburg Subdivision

**Purpose:**

Construction of a new at-grade public road crossing for Colossal Cave Road at Railroad Mile Post 1003.78 and 1003.81 near Vail, Arizona.

**Procurement Method:**

Exempt

**Program Goals/Predicted Outcomes:**

Installation of automatic flashing light crossing signals with gates to improve safety.

**Public Benefit:**

Increase in safety measure by providing flashing light crossing signals with gates.

**Metrics Available to Measure Performance:**

Project constructed per Agreement.

**Retroactive:**

No

**Original Information**

Document Type: CT Department Code: TR Contract Number (i.e.,15-123): 16\*275

Effective Date: 4/19/2016 Termination Date: 12/31/2018 Prior Contract Number (Synergen/CMS): \_\_\_\_\_

☒ Expense Amount: \$ 1,146,917.00 ☐ Revenue Amount: \$ \_\_\_\_\_

Funding Source(s): Impact Fees: Southeast Area - \$1,146,917.00

Cost to Pima County General Fund: \$0

Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ No ☐ Not Applicable to Grant Awards

Were insurance or indemnity clauses modified? ☐ Yes ☒ No ☐ Not Applicable to Grant Awards

Vendor is using a Social Security Number? ☐ Yes ☒ No ☐ Not Applicable to Grant Awards

If Yes, attach the required form per Administrative Procedure 22-73.

**Amendment Information**

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Contract Number (i.e.,15-123): \_\_\_\_\_

Amendment No.: \_\_\_\_\_ AMS Version No.: \_\_\_\_\_

Effective Date: \_\_\_\_\_ New Termination Date: \_\_\_\_\_

☐ Expense ☐ Revenue ☐ Increase ☐ Decrease Amount This Amendment: \$ \_\_\_\_\_

Funding Source(s): \_\_\_\_\_

Cost to Pima County General Fund: \_\_\_\_\_

To: POB - 4-6-16 (13)  
Ver. - 1  
pgs - 49

Procure Dept 04/05/16 PM08:40

Contact: Sandi Garrick, Utility Liaison

Department: Public Works Admin. Office

Telephone: 724-6710

Department Director Signature/Date:

Anast Olivas

4/1/16

Deputy County Administrator Signature/Date:

John M. Buel

4/1/16

County Administrator Signature/Date:

(Required for Board Agenda/Addendum Items)

Erin Deibel

4/1/16

CONTRACT	
NO.	<u>CT-TR-16-275</u>
AMENDMENT NO.	_____
This number must appear on all invoices, correspondence and documents pertaining to this contract.	

UPRR Folder No.: 2286-01

# PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT

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BETWEEN

UNION PACIFIC RAILROAD COMPANY

AND THE

PIMA COUNTY

COVERING THE

WIDENING AND INSTALLATION OF SIDEWALKS AND GATES AND  
LIGHTS

(DOT NO.: 741303E and 741304L)

AT

RAILROAD MILE POST 1003.78 and 1003.81 – LORDSBURG  
SUBDIVISION

IN OR NEAR

VAIL,  
PIMA COUNTY,  
ARIZONA



UPRR Folder No.: 2286-01

UPRR Audit No.: S122115

## PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT

Colossal Cave Rd – DOT No. 741303E and 741304L  
Railroad Mile Post 1003.78 and 1003.81 – Lordsburg Subdivision  
Vail, Pima County, Arizona

THIS AGREEMENT ("Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ ("Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179 ("Railroad") and the **COUNTY OF PIMA**, a municipal corporation or political subdivision of the State of Arizona to be addressed at 201 N Stone Ave, Tucson AZ 85701 ("Public Body").

### RECITALS:

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

The Public Body desires to undertake as its project (the "Project") the construction of a new at grade- public road crossing for Colossal Cave Rd, (DOT No. 741303E and 741304L), at Railroad's Mile Post 1003.78 and 1003.81 on the Railroad's Lordsburg Subdivision at or near Vail, Pima County Arizona (the "Roadway"). The Roadway is shown on the Railroad Location Print marked **Exhibit A** and specified in the Detailed Prints collectively marked **Exhibit A-1s**, with each exhibit being attached hereto and hereby made a part hereof. The portion of the Roadway located within the Railroad's right of way is the "Crossing Area".

The right of way granted by Southern Pacific Company to the Public Body under the terms of the Original Agreement or a separate document is not sufficient to allow for the construction of the Roadway. Therefore, under this Agreement, the Railroad will be granting additional rights to the Public Body to facilitate the construction of the Roadway. The portion of Railroad's property that Public Body needs to use in connection with the Roadway (including the right of way area covered under the Original Agreement or in a separate document) is described in the Legal Description marked **Exhibit A-2s** and also shown on the Survey Print marked **Exhibit A-3s**, with each exhibit being attached hereto and hereby made a part hereof (the "Crossing Area").

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

### AGREEMENT:

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





**ARTICLE 1. EXHIBIT B**

The General Terms and Conditions marked **Exhibit B**, are attached hereto and hereby made a part hereof.

**ARTICLE 2 - GRANT OF EASEMENT**

- A. Upon completion of the execution of this Agreement and Railroad's receipt from Political Body of **NINETY EIGHT THOUSAND DOLLARS (\$98,000.00)** the right to construct, maintain, use and repair the Roadway over and across the Crossing Area as described in the Survey Print and Legal Description marked **Exhibit A-3** and **Exhibit A-2** is hereby granted.

**ARTICLE 3. DEFINITION OF CONTRACTOR**

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the Public Body to perform any Project work on any portion of the Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.

**ARTICLE 4. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE**

- A. Prior to Contractor performing any work within the Crossing Area and any subsequent maintenance and repair work, the Public Body shall require the Contractor to:
- i. execute the Railroad's then current Contractor's Right of Entry Agreement
  - ii. obtain the then current insurance required in the Contractor's Right of Entry Agreement; and
  - iii. provide such insurance policies, certificates, binders and/or endorsements to the Railroad.
- B. The Railroad's current Contractor's Right of Entry Agreement is marked **Exhibit D**, attached hereto and hereby made a part hereof. The Public Body confirms that it will inform its Contractor that it is required to execute such form of agreement and obtain the required insurance before commencing any work on any Railroad property. Under no circumstances will the Contractor be allowed on the Railroad's property without first executing the Railroad's Contractor's Right of Entry Agreement and obtaining the insurance set forth therein and also providing to the Railroad the insurance policies, binders, certificates and/or endorsements described therein.
- C. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:
- Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street, Mail Stop 1690  
Omaha, NE 68179-1690  
UPRR Folder No. 2286-01*
- D. If the Public Body's own employees will be performing any of the Project work, the Public Body may self-insure all or a portion of the insurance coverage subject to the Railroad's prior



review and approval.

**ARTICLE 5. FEDERAL AID POLICY GUIDE**

If the Public Body will be receiving any federal funding for the Project, the current rules, regulations and provisions of the Federal Aid Policy Guide as contained in 23 CFR 140, Subpart I and 23 CFR 646, Subparts A and B are incorporated into this Agreement by reference.

**ARTICLE 6. NO PROJECT EXPENSES TO BE BORNE BY RAILROAD**

The Public Body agrees that no Project costs and expenses are to be borne by the Railroad. In addition, the Railroad is not required to contribute any funding for the Project.

**ARTICLE 7. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO PUBLIC BODY; PUBLIC BODY'S PAYMENT OF BILLS**

- A. The work to be performed by the Railroad, at the Public Body's sole cost and expense, is described in the Railroad's Material and Force Account Estimates dated October 12th and 13th, 2015, marked **Exhibit Cs**, attached hereto and hereby made a part hereof (the "Estimate"). As set forth in the Estimate, the Railroad's estimated cost for the Railroad's work associated with the Project is \$1,048,917.00.
- B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the Public Body in the event the Public Body does not commence construction on the portion of the Project located on the Railroad's property within six (6) months from the date of the Estimate.
- C. The Public Body acknowledges that the Estimate does not include any estimate of flagging or other protective service costs that are to be paid by the Public Body or the Contractor in connection with flagging or other protective services provided by the Railroad in connection with the Project. All of such costs incurred by the Railroad are to be paid by the Public Body or the Contractor as determined by the Railroad and the Public Body. If it is determined that the Railroad will be billing the Contractor directly for such costs, the Public Body agrees that it will pay the Railroad for any flagging costs that have not been paid by any Contractor within thirty (30) days of the Contractor's receipt of billing.
- D. The Public Body agrees to reimburse the Railroad within thirty (30) days of its receipt of billing from the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, all actual costs of engineering review (including preliminary engineering review costs incurred by Railroad prior to the Effective Date of this Agreement), construction, inspection, flagging (unless flagging costs are to be billed directly to the Contractor), procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead labor/construction costs including Railroad's standard additive rates.

**ARTICLE 8. PLANS**

- A. The Public Body, at its expense, shall prepare, or cause to be prepared by others, the detailed



plans and specifications for the Project and submit such plans and specifications to the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, for prior review and approval. The plans and specifications shall include all Roadway layout specifications, cross sections and elevations, associated drainage, and other appurtenances.

- B. The final one hundred percent (100%) completed plans that are approved in writing by the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.
- C. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing.
- D. The Railroad's review and approval of the Plans will in no way relieve the Public Body or the Contractor from their responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that the Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by the Public Body or Contractor on the Plans is at the risk of the Public Body and Contractor.

#### ARTICLE 9. NON-RAILROAD IMPROVEMENTS

- A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocation, replacing, removing and abandoning in place all non-railroad owned facilities (the "Non Railroad Facilities") affected by the Project including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required under Section 8. The Non Railroad Facilities plans and specifications shall comply with Railroad's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines. Railroad has no obligation to supply additional land for any Non Railroad Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted Non Railroad Facilities plans and specifications comply with Railroad's standard specifications and requirements. Railroad has no obligation to permit any Non Railroad Facilities to be abandoned in place or relocated on Railroad's property.
- B. Upon Railroad's approval of submitted Non Railroad Facilities plans and specifications, Railroad will attempt to incorporate them into new agreements or supplements of existing agreements with Non Railroad Facilities owners or operators. Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for Non Railroad Facilities. Non Railroad Facilities work shall not commence before a supplement or new agreement has been fully executed by Railroad and the Non Railroad Facilities owner or operator, or before Railroad and Public Body mutually agree in writing to:
  - i. deem the approved Non Railroad Facilities plans and specifications to be Plans pursuant to Section 8B,
  - ii. deem the Non Railroad Facilities part of the Structure, and





- iii. supplement this Agreement with terms and conditions covering the Non Railroad Facilities.

**ARTICLE 10. EFFECTIVE DATE; TERM; TERMINATION**

- A. This Agreement is effective as of the Effective Date first herein written and shall continue in full force and effect for as long as the Roadway remains on the Railroad's property.
- B. The Railroad, if it so elects, may terminate this Agreement effective upon delivery of written notice to the Public Body in the event the Public Body does not commence construction on the portion of the Project located on the Railroad's property within twelve (12) months from the Effective Date.
- C. If the Agreement is terminated as provided above, or for any other reason, the Public Body shall pay to the Railroad all actual costs incurred by the Railroad in connection with the Project up to the date of termination, including, without limitation, all actual costs incurred by the Railroad in connection with reviewing any preliminary or final Project Plans.

**ARTICLE 11. CONDITIONS TO BE MET BEFORE PUBLIC BODY CAN COMMENCE WORK**

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

- i. The Railroad and Public Body have executed this Agreement.
- ii. The Railroad has provided to the Public Body the Railroad's written approval of the Plans.
- iii. Each Contractor has executed Railroad's Contractor's Right of Entry Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements required under the Contractor's Right of Entry Agreement.
- iv. Each Contractor has given the advance notice(s) required under the Contractor's Right of Entry Agreement to the Railroad Representative named in the Contractor's Right of Entry Agreement.

**ARTICLE 12. FUTURE PROJECTS**

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

**ARTICLE 13. ASSIGNMENT; SUCCESSORS AND ASSIGNS**

- A. Public Body shall not assign this Agreement without the prior written consent of Railroad.
- B. Subject to the provisions of Paragraph A above, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad and Public Body.

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





If the Public Body will be receiving American Recovery and Reinvestment Act ("ARRA") funding for the Project, the Public Body agrees that it is responsible in performing and completing all ARRA reporting documents for the Project. The Public Body confirms and acknowledges that Section 1512 of the ARRA provisions applies only to a "recipient" receiving ARRA funding directing from the federal government and, therefore,

- (i) the ARRA reporting requirements are the responsibility of the Public Body and not of the Railroad, and
- (ii) the Public Body shall not delegate any ARRA reporting responsibilities to the Railroad.

The Public Body also confirms and acknowledges that

- (i) the Railroad shall provide to the Public Body the Railroad's standard and customary billing for expenses incurred by the Railroad for the Project including the Railroad's standard and customary documentation to support such billing, and
- (ii) such standard and customary billing and documentation from the Railroad provides the information needed by the Public Body to perform and complete the ARRA reporting documents.

The Railroad confirms that the Public Body and the Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for the Project as provided in Exhibit B of this Agreement.

**ARTICLE 15. AGREEMENT AS A SUPPLEMENT**

The 1964 Original Agreement shall be supplemented by this Agreement. In the event of any conflict between the Original Agreement and this Agreement, the terms and provisions of this Agreement shall control.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date first herein written.

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

By: \_\_\_\_\_  
DANIEL A. LEIS  
General Director Real Estate

ATTEST: **PIMA COUNTY**

By \_\_\_\_\_ By \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

(SEAL)

APPROVED AS TO FORM:  
\_\_\_\_\_  
Deputy County Attorney

**ANDREW FLAGG**

Pursuant to Resolution/Order No. \_\_\_\_\_  
dated: \_\_\_\_\_, 20\_\_\_\_  
hereto attached.

# EXHIBIT A

To Public Highway At-Grade Crossing  
Agreement

Cover Sheet for the  
Railroad Location Print



# EXHIBIT "A"

## RAILROAD LOCATION PRINT FOR AN EXISTING AT-GRADE PUBLIC ROAD CROSSING AGREEMENT



### UNION PACIFIC RAILROAD COMPANY

LORDSBURG SUBDIVISION  
RAILROAD MILE POST 1003-78 AND 1003.81  
VAIL, PIMA COUNTY, AZ

To accompany an agreement with  
**PIMA COUNTY AND ITS CONTRACTOR**  
covering an At-Grade Public Road Crossing.

Folder No. 2286-01

Date: June 15, 2015

### WARNING

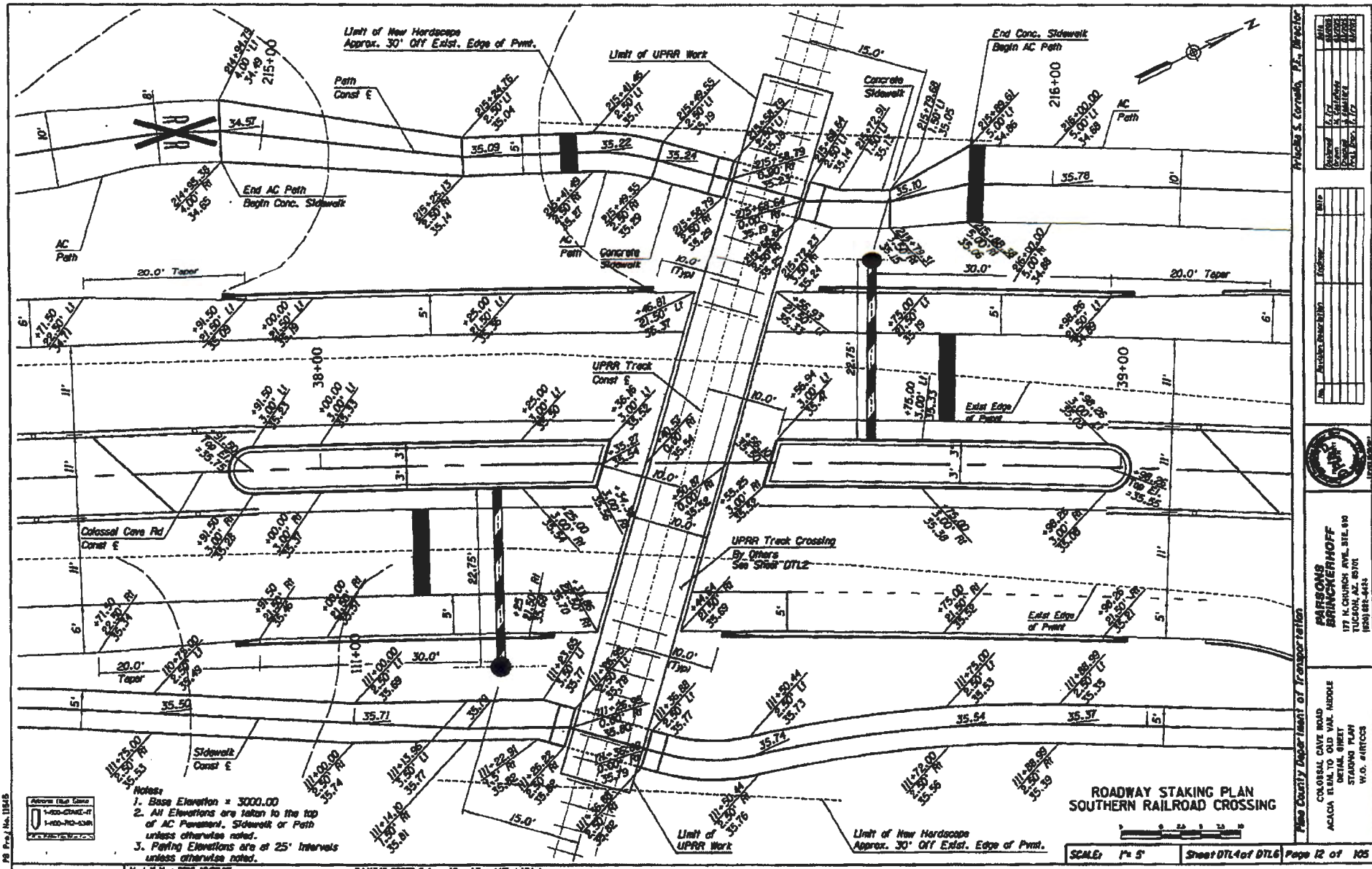
IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN  
ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.  
PHONE: 1-(800) 336-9193



# EXHIBIT A-1

To Public Highway At-Grade Crossing  
Agreement

Cover Sheet for the  
Detailed Prints

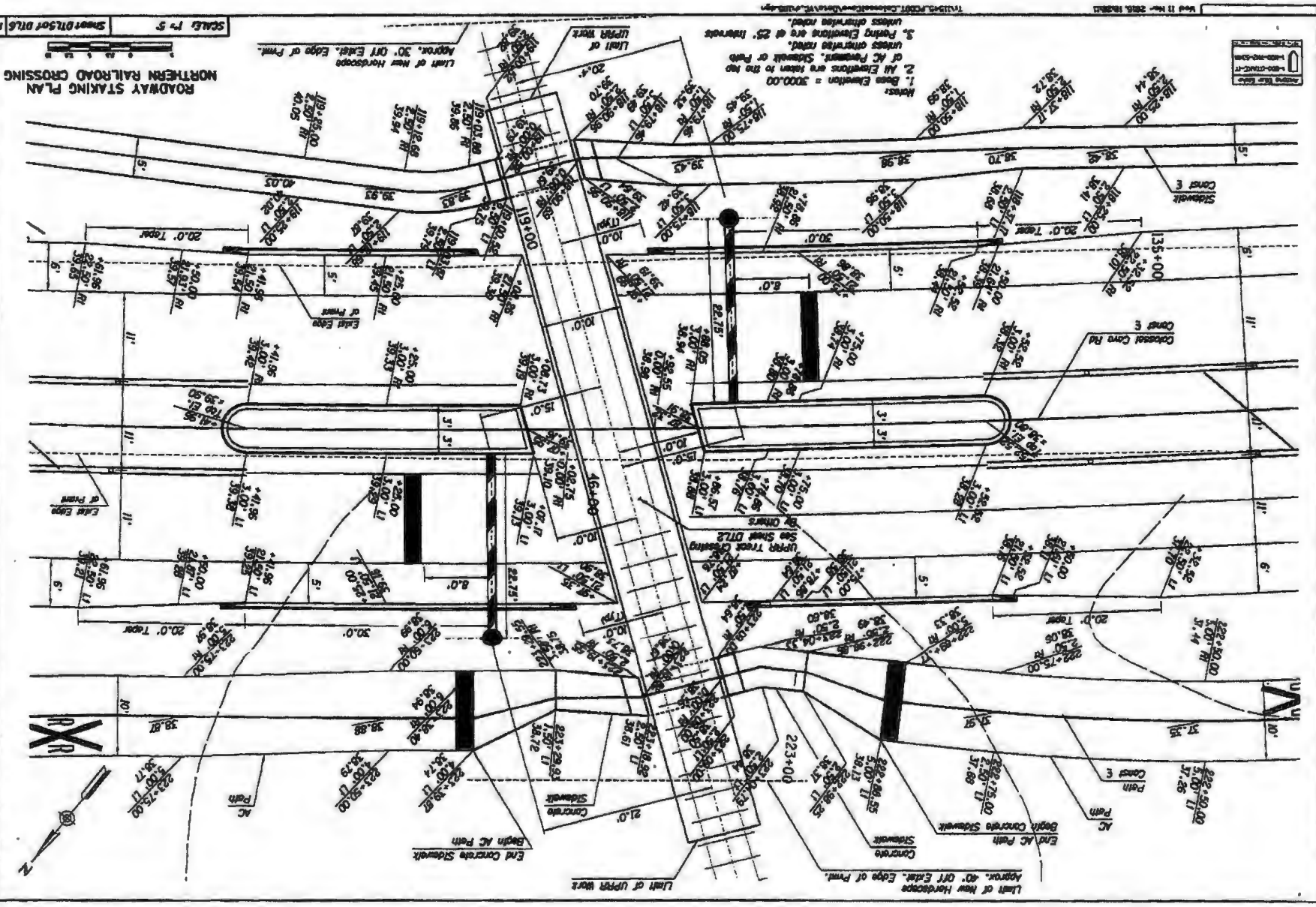


**Parsons Brinckerhoff**  
 177 N. CHURCH AVE., SUITE 400  
 TUCSON, AZ 85701  
 (520) 887-4443

**File County Department of Transportation**

**Colossal Cave Road**  
 ACACIA BLVD TO OLD VAL MIDDLE  
 DETAIL SHEET  
 STADIUM PLAN  
 W.D. #110008

Project No.	111445
Sheet No.	07L4 of 07L6
Scale	1" = 5'
Author	W.D. #110008
Checker	W.D. #110008
Engineer	W.D. #110008
Survey	W.D. #110008
Design	W.D. #110008
Construction	W.D. #110008



# EXHIBIT A-2

To Public Highway At-Grade Crossing  
Agreement

Cover Sheet for the  
Legal Description





**Urban  
Engineering**

**EXHIBIT "A"**

**LEGAL DESCRIPTION  
RIGHT-OF-WAY EASEMENT**

All that portion of the northeast quarter of Section 16 and the southeast quarter of Section 9, Township 16 South, Range 16 East, Gila and Salt River Meridian, Pima County, Arizona, being a portion of the Union Pacific Railroad (UPRR) identified as APN Nos: 305-13-0050, and 305-10-0070 with the Pima County Assessors office more particularly described as follows:

**ALL THAT PORTION** of said parcels lying 75 feet westerly of and 75 feet easterly of and parallel with the centerline of Colossal Cave Road, as recorded in Book 10 of Maps and Plats at Page 7, of record in the office of the Pima County Recorder.

**EXCLUDED THEREFROM** any existing portion of said Colossal Cave Road, as previously defined by an unrecorded right-of-way agreement between Union Pacific Railroad (UPRR) and Pima County.

Prepared by:

URBAN ENGINEERING, INC.



Expires: 09/30/17



**EXHIBIT "A"**

**LEGAL DESCRIPTION**  
**RIGHT-OF-WAY EASEMENT**

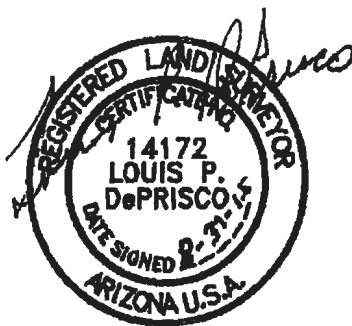
All that portion of the northeast quarter of Section 16, Township 16 South, Range 16 East, Gila and Salt River Meridian, Pima County, Arizona, being a portion of the Union Pacific Railroad (UPRR) identified as APN 305-13-0060 with the Pima County Assessors office more particularly described as follows:

**ALL THAT PORTION** of said parcel lying 75 feet westerly of and 75 feet easterly of and parallel with the centerline of Vail Station - US 80 Connection, as recorded in Book 2 of Road Maps at Page 92, of record in the office of the Pima County Recorder.

**EXCLUDED THEREFROM** any existing portion of said Vail Station - US 80 Connection, as previously defined by an unrecorded right-of-way agreement between Union Pacific Railroad (UPRR) and Pima County.

Prepared by:

URBAN ENGINEERING, INC.

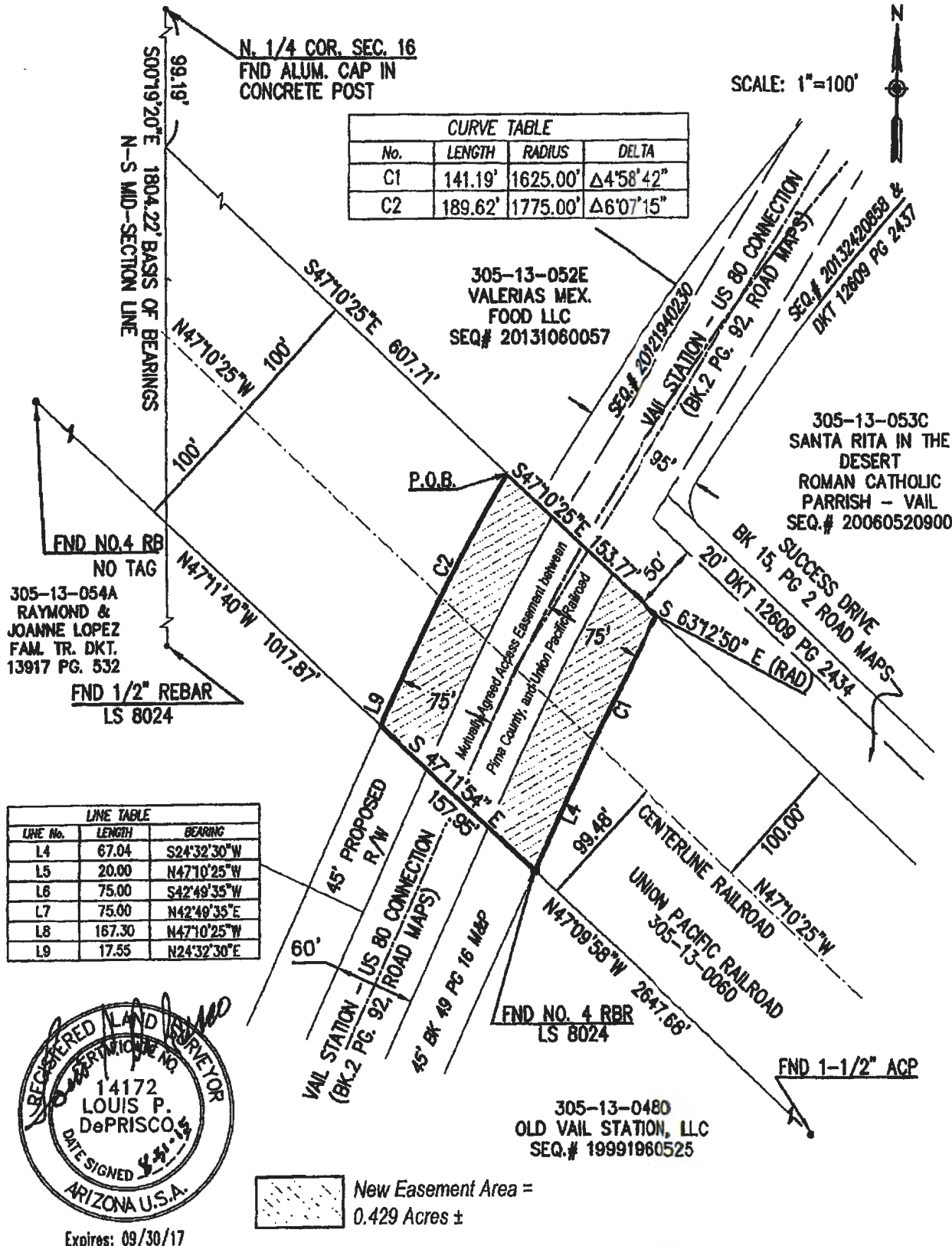


Expires: 09/30/17

# EXHIBIT A-3

To Public Highway At-Grade Crossing  
Agreement

Cover Sheet for the  
Survey Print



CURVE TABLE			
No.	LENGTH	RADIUS	DELTA
C1	141.19'	1625.00'	Δ4°58'42"
C2	189.62'	1775.00'	Δ6°07'15"

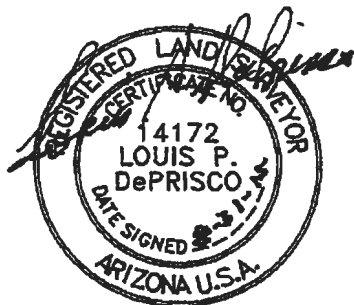
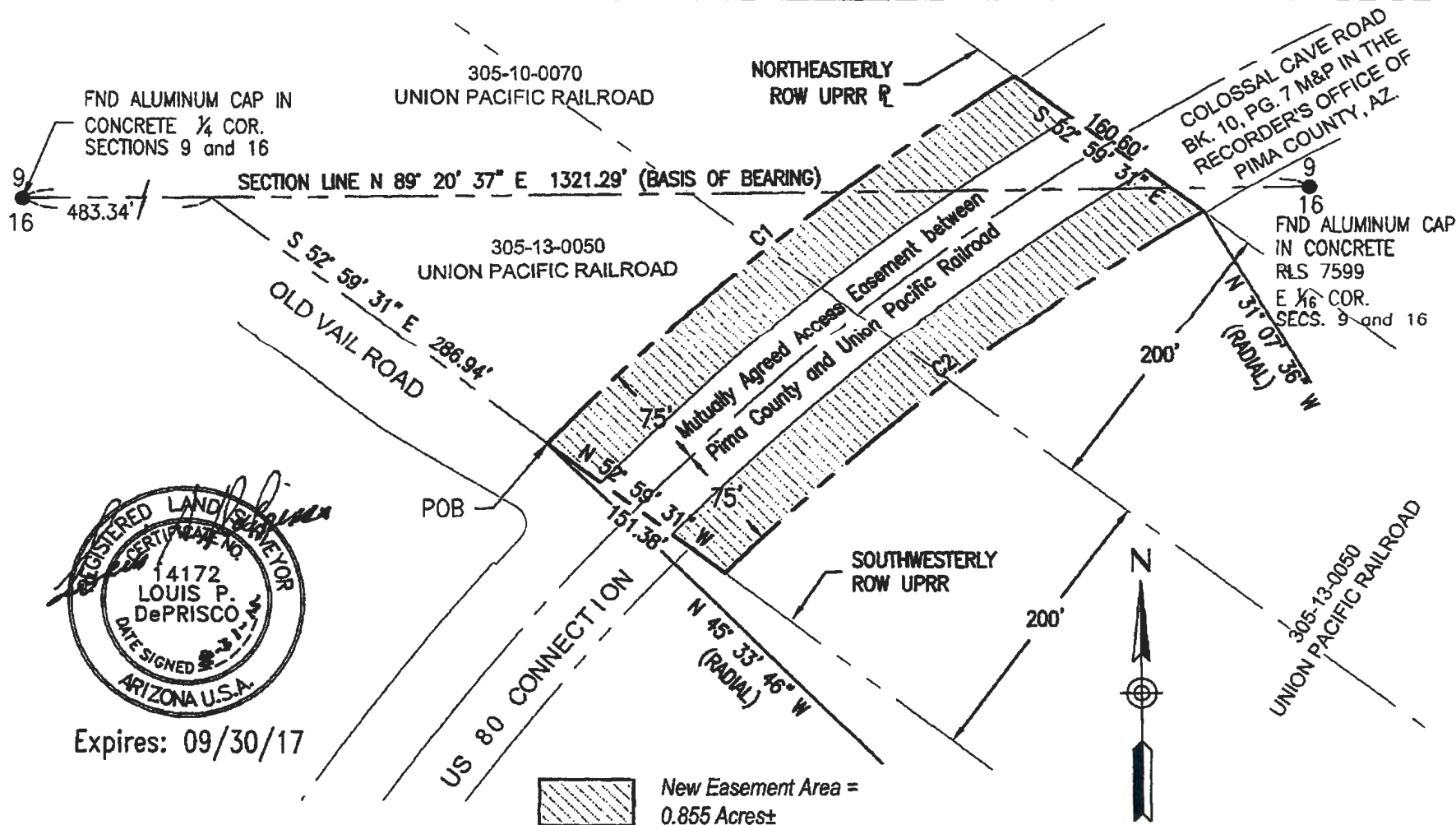
LINE TABLE		
LINE No.	LENGTH	BEARING
L4	67.04	S24°32'30"W
L5	20.00	N47°10'25"W
L6	75.00	S42°49'35"W
L7	75.00	N42°49'35"E
L8	167.30	N47°10'25"W
L9	17.55	N24°32'30"E

### DEPICTION OF EXHIBIT A-3

**Urban Engineering**  
877 S. Alvernon Way-Tucson, AZ 85711-520.318.3800 RW-2

PREPARED: LPD DRAWN: RRF CHECK: LPD  
DATE: 08/28/15 JOB No. 14030.1 SHEET 1 of 1  
FILEPATH: S:\14000\14030\DWG\EXHIBIT\305-13-0060-RW.DWG





Expires: 09/30/17

Curve Table			
Curve	Radius	Length	Central Angle
C1	1875.00'	412.60'	12°36'30"
C2	1725.00'	415.06'	13°47'10"

**Urban Engineering**

877 S. Alverton Way-Tucson, AZ 85711-520.318.3800

Revised 08/28/15  
ROW-10

PREPARED: LPD DRAWN: RRF CHECK: LPD  
DATE: 08-28-15 JOB No. 14030.1 SHEET 1 of 1

# EXHIBIT B

To Public Highway At-Grade Crossing  
Agreement

Cover Sheet for the  
General Terms and Conditions

## **EXHIBIT B**

### **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 Public Body shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the Public Body shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the Railroad's property by or under authority of the Public Body for the purpose of conveying electric power or communications incidental to the Public Body's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the Public Body to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.
- B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes. In the event the Railroad shall place additional tracks upon the Crossing Area, the Public Body shall, at its sole cost and expense, modify the Roadway to conform with all tracks within the Crossing Area.
- C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The Public Body shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's property, unless the Public Body at its own expense settles with and obtains releases from such nonparties.
- D. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property; and the right to cross the Crossing Area with all kinds of equipment.
- E. So far as it lawfully may do so, the Public Body will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Crossing Area, excepting taxes levied upon and against the property as a component part of the Railroad's operating property.
- F. If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Roadway and its appurtenances, or for the performance of any work in connection with the Project, the Public Body will acquire all such other property and rights at its own expense and without expense to the Railroad.

##### **SECTION 2. CONSTRUCTION OF ROADWAY**

- A. The Public Body, at its expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Project, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.
- B. Except as may be otherwise specifically provided herein, the Public Body, at its expense, will furnish all necessary labor, material and equipment, and shall construct and complete the Roadway and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper highway warning devices (except those installed by the Railroad within its right of way) and all necessary drainage facilities, guard rails or barriers, and right of way fences between the Roadway and the railroad tracks. Upon completion of the Project, the Public Body shall remove from the Railroad's property all temporary structures and false work, and will leave the Crossing Area in a condition satisfactory to the Railroad.
- C. All construction work of the Public Body upon the Railroad's property (including, but not limited to, construction of the Roadway and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President Engineering-Design of the Railroad or his authorized representative and in

compliance with the Plans, and other guidelines furnished by the Railroad.

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

### **SECTION 3. INJURY AND DAMAGE TO PROPERTY**

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

### **SECTION 4. RAILROAD MAY USE CONTRACTORS TO PERFORM WORK**

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

### **SECTION 5. MAINTENANCE AND REPAIRS**

- A. The Public Body shall, at its own sole expense, maintain, repair, and renew, or cause to be maintained, repaired and renewed, the entire Crossing Area and Roadway, except the portions between the track tie ends, which shall be maintained by and at the expense of the Railroad.
- B. If, in the future, the Public Body elects to have the surfacing material between the track tie ends, or between tracks if there is more than one railroad track across the Crossing Area, replaced with paving or some surfacing material other than timber planking, the Railroad, at the Public Body's expense, shall install such replacement surfacing, and in the future, to the extent repair or replacement of the surfacing is necessitated by repair or rehabilitation of the Railroad's tracks through the Crossing Area, the Public Body shall bear the expense of such repairs or replacement.

### **SECTION 6. CHANGES IN GRADE**

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

### **SECTION 7. REARRANGEMENT OF WARNING DEVICES**

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

### **SECTION 8. SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS**

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

- A. **Definitions.** All references in this Agreement to the Public Body shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work



of the Public Body shall include work both within and outside of the Railroad's property.

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

**C. Flagging.**

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

**D. Compliance With Laws.** The Public Body shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Public Body shall use only such methods as are consistent with safety, both as concerns the Public Body, the Public Body's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Public Body (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the Public Body to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Public Body shall reimburse, and to the extent it may lawfully do so,

indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The Public Body further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

- E. **No Interference or Delays.** The Public Body shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.
- F. **Supervision.** The Public Body, at its own expense, shall adequately police and supervise all work to be performed by the Public Body, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the Public Body for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the Public Body with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the Public Body will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.
- G. **Suspension of Work.** If at any time the Public Body's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the Public Body is being or is about to be done or prosecuted without due regard and precaution for safety and security, the Public Body shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.
- H. **Removal of Debris.** The Public Body shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the Public Body at the Public Body's own expense or by the Railroad at the expense of the Public Body. The Public Body shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during snow removal from the Crossing Area.
- I. **Explosives.** The Public Body shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.
- J. **Excavation.** The Public Body shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The Public Body shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The Public Body, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the Public Body in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering - Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.
- K. **Drainage.** The Public Body, at the Public Body's own expense, shall provide and maintain suitable facilities for draining the Roadway and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The Public Body, at the Public Body's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the Public Body, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The Public Body shall not obstruct or interfere with existing ditches or drainage facilities.

- L. **Notice.** Before commencing any work, the Public Body shall provide the advance notice to the Railroad that is required under the Contractor's Right of Entry Agreement.
- M. **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Public Body shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the Public Body. If it is, Public Body will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

#### **SECTION 9. INTERIM WARNING DEVICES**

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

#### **SECTION 10. OTHER RAILROADS**

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

#### **SECTION 11. BOOKS AND RECORDS**

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

#### **SECTION 12. REMEDIES FOR BREACH OR NONUSE**

- A. If the Public Body shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Roadway and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the Public Body will reimburse the Railroad for the expenses thereof.
- B. Nonuse by the Public Body of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the Public Body hereunder.
- C. The Public Body will surrender peaceable possession of the Crossing Area and Roadway upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

#### **SECTION 13. MODIFICATION - ENTIRE AGREEMENT**

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

# EXHIBIT C

To Public Highway At-Grade Crossing  
Agreement

Cover Sheet for the  
Railroad's Material & Force Account Estimate

DATE: 2015-10-13

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

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2016-04-12

## DESCRIPTION OF WORK:

2015 RECOLLECT PROGRAM

LORDSBURG SUBDIVISION

MP 1003.78 DOT # 741303E COLOSSAL CAVE ROAD

INSTALL 88 TF OF CROSSING SURFACE INCLUDING TIES, RAIL, OTM

PROJECT TO BE FUNDED 100% BY PIMA COUNTY AZ

PID: 89788 AWO: 28241 MP, SUBDIV: 1003.77, LORDSBURG  
SERVICE UNIT: 16 CITY: VAIL NORTH LINE STATE: AZ

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
<b>ENGINEERING WORK</b>							
ENGINEERING			5495		5495		5495
LABOR ADDITIVE 234%			12860		12860		12860
<b>TOTAL ENGINEERING</b>			18355		18355		18355
<b>SIGNAL WORK</b>							
LABOR ADDITIVE 234%			1889		1889		1889
SIGNAL			807	5	812		812
<b>TOTAL SIGNAL</b>			2696	5	2701		2701
<b>TRACK &amp; SURFACE WORK</b>							
BALAST	4.00	CL	7	3667	3674		3674
BILL PREP FEE				900	900		900
CONTRACT EQUIPMENT				6500	6500		6500
ENVIRONMENTAL MITIGATION				20	20		20
FIELD WELD			5		5		5
FOREIGN LINE FREIGHT				960	960		960
HOMELINE FREIGHT				900	900		900
LABOR ADDITIVE 234%			55144		55144		55144
MATL STORE EXPENSE				787	787		787
OTM			3039	9425	12464		12464
RAIL	240.00	LF	9976	4233	14209		14209
RDXING	88.00	TF	3585	20345	23930		23930
SALES TAX				1826	1826		1826
TRK-SURF, LIN			3337		3337		3337
WELD			7051	760	7811		7811
XTIE	66.00	EA	12914	7283	20197		20197
<b>TOTAL TRACK &amp; SURFACE</b>			95058	57606	152664		152664
<b>LABOR/MATERIAL EXPENSE</b>			116109	57611			
<b>RECOLLECTIBLE/UPRR EXPENSE</b>					173720	0	
<b>ESTIMATED PROJECT COST</b>							173720
<b>EXISTING REUSEABLE MATERIAL CREDIT</b>					0		
<b>SALVAGE NONUSEABLE MATERIAL CREDIT</b>					0		
<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.

Ex C



DATE: 2015-10-12

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

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2016-04-11

## DESCRIPTION OF WORK:

INSTALL AUTOMATIC FLASHING LIGHT CROSSING SIGNALS  
WITH GATES AT VAIL, AZ. COLOSSAL CAVE RD. M.P. 1003.78  
ON THE LORDSBURG SUB. TRACK #1 DOT #741303E  
WORK TO BE PERFORMED BY RAILROAD WITH EXPENSE AS BELOW:  
SIGNAL/TRACK - PIMA COUNTY - 100%  
ESTIMATED USING FEDERAL LABOR ADDITIVES WITH INDIRECT AND  
OVERHEAD CONSTRUCTION COST'S - SIGNAL 190.39% & TRACK 234.24%

PID: 89797 AWO: 28219 MP,SUBDIV: 1003.78, LORDSBURG  
SERVICE UNIT: 16 CITY: VAIL NORTH LINE STATE: AZ

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
<b>ENGINEERING WORK</b>							
ENGINEERING			7365		7365		7365
LABOR ADDITIVE 190.39%			23153		23153		23153
SIG-HWY XNG			4821		4821		4821
<b>TOTAL ENGINEERING</b>			<b>35339</b>		<b>35339</b>		<b>35339</b>
<b>SIGNAL WORK</b>							
BILL PREP			900		900		900
CONTRACT				6824	6824		6824
LABOR ADDITIVE 190.39%			89875		89875		89875
MATL STORE EXPENSE				14	14		14
METER SERVICE				20000	20000		20000
PERSONAL EXPENSES				20700	20700		20700
RCLW CONTRACT				7004	7004		7004
ROCK/GRAVEL/FILL				3000	3000		3000
SALES TAX				2729	2729		2729
SIGNAL			46305	68246	114551		114551
TELECOM				37500	37500		37500
TRANSP/IB/OB/RCLW				4961	4961		4961
<b>TOTAL SIGNAL</b>			<b>137080</b>	<b>170978</b>	<b>308058</b>		<b>308058</b>
<b>TRACK &amp; SURFACE WORK</b>							
ENVIRONMENTAL PERMIT				10	10		10
FIELD WELD			132		132		132
LABOR ADDITIVE 234.24%			3795		3795		3795
MATL STORE EXPENSE				179	179		179
OTM			2675	3093	5768		5768
SALES TAX				143	143		143
WELD			11	517	528		528
<b>TOTAL TRACK &amp; SURFACE</b>			<b>6613</b>	<b>3942</b>	<b>10555</b>		<b>10555</b>
<b>LABOR/MATERIAL EXPENSE</b>			<b>179032</b>	<b>174920</b>			
<b>RECOLLECTIBLE/UPRR EXPENSE</b>					<b>353952</b>	<b>0</b>	
<b>ESTIMATED PROJECT COST</b>							<b>353952</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.

**AREMA UNIT STATEMENT OF RAILROAD HIGHWAY GRADE CROSSING SIGNALS  
ESTIMATED MAINTENANCE COSTS**



**BUILDING AMERICA®**

FOR

**PID #89797**

**BY THE UNION PACIFIC RAILROAD**

**STREET** COLASSAL CAVE RD.  
**TOWN** VAIL, AZ.  
**MILEPOST** 1003.78  
**SUBDIVISION** LORDSBURG #1  
**AAR/DOT NO.** 741303E  
**WORK ORDER#** 28219

DESCRIPTION	UNIT VALUE	QUANTITY	UNITS
NON-CODED TRK. CIRCUIT, (Standalone APTAC or Ring 10)	2	0	0
SUPERIMPOSED CIRCUIT(APTAC) / DETECTION LOOP	2	0	0
HIGHWAY GRADE CROSSING SIGNAL (ONE PAIR OF FLASHING LIGHTS)	2	2	4
ADDITIONAL PAIR OF LIGHTS	1	2	2
GATE MECHANISM, AUTOMATIC WITH ARM UP TO 26 FT	8	2	16
GATE MECHANISM, AUTOMATIC WITH ARM OVER 26 FT	10	0	0
GCP/HXP (Constant warning device, per track circuit)	15	2	30
EXIT GATE MANAGEMENT SYSTEM RACK*	10	0	0
MOVEMENT DETECTOR (PMD)	6	0	0
MOVEMENT DETECTOR (STANDBY UNIT)	3	0	0
RADIO DATA LINK, PER UNIT	1	0	0
PREEMPTION CIRCUIT	2	0	0
DATA RECORDER	1	0	0
REMOTE MONITORING DEVICE*	2	1	2
BONDED RAIL JOINTS (per mile, each rail, single bonded)	1	0	0
BATTERY AND CHARGER (per set)	1	2	2

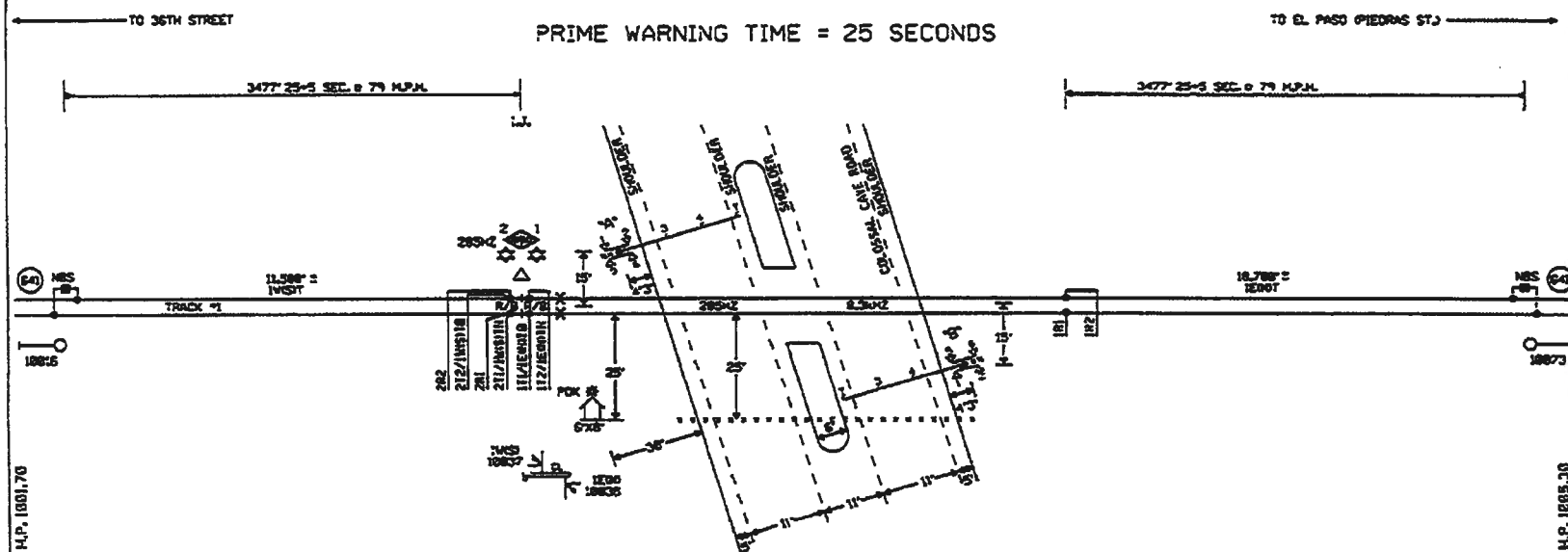
**TOTAL UNIT COUNT** **56**

**PAVEMENT RESTORATION COSTS** **(Actual)**

Annual Maintenance Cost at \$170/Unit **\$9,520**

\*UP supplied Unit Value

January 16, 2015



CONNECTS TO M.P. 1881.70

CONNECTS TO M.P. 1885.20

**NOTES:**

- ⊗ TWISTED WIRES  
INSULATED 1 TWIST PER FT.  
ALL TRACK WIRES 20. #6
- TRANSMITTER AND RECEIVER LEADS  
TO BE SEPARATED BY AT LEAST 12" IN TRACK.  
LENGTHS SHOULD NOT EXCEED MANUFACTURERS  
RECOMMENDATION.
- TOP OF FOUNDATION TO BE AT SAME ELEVATION  
AS THE SURFACE OF THE TRAVELED WAY & NO  
MORE THAN 4" ABOVE THE SURFACE OF THE GROUND.
- ALL BUNGALOW WIRING TO BE #16 AND FLEX  
UNLESS OTHERWISE SPECIFIED EXCEPT ALL GROUND  
WIRE TO BE #6 AND FLEX OR LARGER.
- ALL WIRING IN GATE MECHANISM TO BE #18 "WVG FLEX".  
REFER TO UP STANDARD DNG FOR BUNGALOW GROUNDING.
- PORTABLE GENERATOR EXTENSION CORD  
FOR 240V TO 240V IS PROVIDED AS WELL  
AS A 120V TO 240V ADAPTER.
- ALL LIGHTS TO BE 12" ROUNDCLS.
- 4" X 78" CONDUIT
- LIGHTS: LED LIGHTS
- GATE A: 22"  
GATE B: 22"
- WM = BELL
- TRK 1 ISLAND DISTANCE 147' MINIMUM 128' REQUIRED
- PREFERRED ISLAND WIRE CONNECTIONS  
ARE A MINIMUM 36" FROM EDGE OF ROAD
- ☆ = GCP TO OPERATE IN SEMI-AUTOMATIC  
DIRECTIONAL USE TAB 627  
COUPLER
- △ = ENSURE TRACK POLARITY IS  
TRANSPOSED ACROSS ALL  
INSULATED JOINTS.

OFFSET AND ISLAND DISTANCES  
TO BE VERIFIED BY FIELD

WSD ← ○ → EOW

**CONSTRUCTION NOTES**

1. ROAD TO BE WIDENED. EXISTING SIGNAL TO MOVE WITH  
EDGE OF ROADWAY AT THIS LOCATION.
2. INSTALL NEW GATES, LIGHTS, CABIN AND GCP 4888 AT THIS LOCATION.
3. EXISTING ELECTROCODE EQUIPMENT TO BE RETIRED.
4. ORDER AND INSTALL CD 136" INSULATED JOINTS 30' FROM  
EDGE OF ROADWAY AT THIS LOCATION.
5. ORDER AND INSTALL ECS UNIT UNDER 10" 18862.

X = REMOVE INSULATED JOINTS

**NEW SHEET  
TRACK #1**

				<b>REVISION LEVEL</b> S.A. LAST LEVEL CHECKED LAST LEVEL HAS THIS TYPICAL LAST LEVEL BY SIGNIFIER CHANGED FROM TYPICAL 10-30-74 10-30-74		<b>CORRECTION</b> AND TO BE MADE BY THE OFFICE OF THE SUPERVISOR		Date 12/12/14 Drawn JRL Check CES AFD 3824		<b>UNION PACIFIC RAILROAD</b> VAIL, ARIZONA COLOSSAL CAVE ROAD LORDSBURG SUBDIVISION Station of M.P. 1881.70 to 1885.20		SHEET SET NUMBER NO. 1885.20 TO 1887.30
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DATE: 2015-10-12

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

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2016-04-11

DESCRIPTION OF WORK:  
2015 RECOLLECT PROGRAM  
LORDSBURG SUBDIVISION  
MP 1003.81 DOT # 741304L COLOSSAL CAVE ROAD  
INSTALL 80 TF OF CROSSING SURFACE INCLUDING TIES, RAIL, OTM  
PROJECT TO BE FUNDED 100% BY PIMA COUNTY AZ

PID: 89805 AWO: 28242 MP, SUBDIV: 1003.80, LORDSBURG  
SERVICE UNIT: 16 CITY: VAIL NORTH LINE STATE: AZ

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
<b>ENGINEERING WORK</b>							
ENGINEERING			4594		4594		4594
LABOR ADDITIVE 234%			10751		10751		10751
<b>TOTAL ENGINEERING</b>			<b>15345</b>		<b>15345</b>		<b>15345</b>
<b>SIGNAL WORK</b>							
LABOR ADDITIVE 234%			1889		1889		1889
SIGNAL			807	5	812		812
<b>TOTAL SIGNAL</b>			<b>2696</b>	<b>5</b>	<b>2701</b>		<b>2701</b>
<b>TRACK &amp; SURFACE WORK</b>							
BALAST	1.00	CL	7	916	923		923
BILL PREP FEE				900	900		900
CONTRACT EQUIPMENT				11500	11500		11500
ENVIRONMENTAL MITIGATION				20	20		20
FIELD WELD			5		5		5
FOREIGN LINE FREIGHT				950	950		950
HOMELINE FREIGHT				900	900		900
LABOR ADDITIVE 234%			55144		55144		55144
MATL STORE EXPENSE				791	791		791
OTM			3039	9804	12843		12843
PILOT CONDUCTOR			493		493		493
RAIL	240.00	LF	9976	4275	14251		14251
RDXING	80.00	TF	3585	19235	22820		22820
SALES TAX				1677	1677		1677
TRK-SURF, LIN			3337		3337		3337
WELD			7051	768	7819		7819
XTIE	61.00	EA	12914	6993	19907		19907
<b>TOTAL TRACK &amp; SURFACE</b>			<b>95551</b>	<b>58729</b>	<b>154280</b>		<b>154280</b>
<b>LABOR/MATERIAL EXPENSE</b>							
RECOLLECTIBLE/UPRR EXPENSE			113592	58734	172326	0	172326
ESTIMATED PROJECT COST							172326
EXISTING REUSEABLE MATERIAL CREDIT					0		
SALVAGE NONUSEABLE MATERIAL CREDIT					0		
<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.

Ex-C

DATE: 2015-10-13

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

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2016-04-12

## DESCRIPTION OF WORK:

INSTALL AUTOMATIC FLASHING LIGHT CROSSING SIGNALS  
WITH GATES AT VAIL, AZ. COLOSSAL CAVE RD. M.P. 1003.81  
ON THE LORDSBURG SUB. TRACK #2 DOT #741304L  
WORK TO BE PERFORMED BY RAILROAD WITH EXPENSE AS BELOW:  
SIGNAL/TRACK - PIMA COUNTY - 100%  
ESTIMATED USING FEDERAL LABOR ADDITIVES WITH INDIRECT AND  
OVERHEAD CONSTRUCTION COST'S -SIGNAL 190.39% % TRACK 234.24%

PID: 89807 AWO: 28220 MP,SUBDIV: 1003.81, LORDSBURG  
SERVICE UNIT: 16 CITY: VAIL NORTH LINE STATE: AZ

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
<b>ENGINEERING WORK</b>							
ENGINEERING			9171		9171		9171
LABOR ADDITIVE 190.39%			26584		26584		26584
SIG-HWY XNG			4821		4821		4821
<b>TOTAL ENGINEERING</b>			<b>40576</b>		<b>40576</b>		<b>40576</b>
<b>SIGNAL WORK</b>							
BILL PREP			900		900		900
CONTRACT				7234	7234		7234
LABOR ADDITIVE 190.39%			102292		102292		102292
MATL STORE EXPENSE				14	14		14
METER SERVICE				20000	20000		20000
PERSONAL EXPENSES				23700	23700		23700
RCLW CONTRACT				7107	7107		7107
ROCK/GRAVEL/FILL				3000	3000		3000
SALES TAX				2893	2893		2893
SIGNAL			52827	72343	125170		125170
TRANSP/IB/OB/RCLW				5259	5259		5259
<b>TOTAL SIGNAL</b>			<b>156019</b>	<b>141550</b>	<b>297569</b>		<b>297569</b>
<b>TRACK &amp; SURFACE WORK</b>							
ENVIRONMENTAL PERMIT				10	10		10
FIELD WELD			132		132		132
LABOR ADDITIVE 234.24%			3795		3795		3795
MATL STORE EXPENSE				190	190		190
OTM			2675	3283	5958		5958
SALES TAX				152	152		152
WELD			11	526	537		537
<b>TOTAL TRACK &amp; SURFACE</b>			<b>6613</b>	<b>4161</b>	<b>10774</b>		<b>10774</b>
LABOR/MATERIAL EXPENSE			203208	145711			
RECOLLECTIBLE/UPRR EXPENSE					348919	0	
ESTIMATED PROJECT COST							348919
EXISTING REUSEABLE MATERIAL CREDIT					0		

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.



**AREMA UNIT STATEMENT OF RAILROAD HIGHWAY GRADE CROSSING SIGNALS  
ESTIMATED MAINTENANCE COSTS**



BUILDING AMERICA®

FOR

**PID #89807**

BY THE UNION PACIFIC RAILROAD

STREET

**COLOSSAL CAVE RD.**

TOWN

**VAH, AZ.**

MILEPOST

**1003.81**

SUBDIVISION

**LORDBURG #2**

AAR/DOT NO.

**741304L**

WORK ORDER#

**28220**

DESCRIPTION

UNIT VALUE

QUANTITY

UNITS

NON-CODED TRK. CIRCUIT, (Standalone AFTAC or Ring 10)

2

0

0

SUPERIMPOSED CIRCUIT(AFTAC) / DETECTION LOOP

2

0

0

HIGHWAY GRADE CROSSING SIGNAL  
(ONE PAIR OF FLASHING LIGHTS)

2

2

4

ADDITIONAL PAIR OF LIGHTS

1

2

2

GATE MECHANISM, AUTOMATIC  
WITH ARM UP TO 26 FT

8

2

16

GATE MECHANISM, AUTOMATIC  
WITH ARM OVER 26 FT

10

0

0

GCP/HXP (Constant warning device, per track circuit)

15

2

30

EXIT GATE MANAGEMENT SYSTEM RACK\*

10

0

0

MOVEMENT DETECTOR (PMD)

6

0

0

MOVEMENT DETECTOR (STANDBY UNIT)

3

0

0

RADIO DATA LINK, PER UNIT

1

0

0

PREEMPTION CIRCUIT

2

0

0

DATA RECORDER

1

0

0

REMOTE MONITORING DEVICE\*

2

1

2

BONDED RAIL JOINTS (per mile, each rail, single bonded)

1

0

0

BATTERY AND CHARGER (per set)

1

2

2

**TOTAL UNIT COUNT**

**56**

**PAVEMENT RESTORATION COSTS**

**(Actual)**

Annual Maintenance Cost at \$170/Unit

**\$9,520**

\*UP supplied Unit Value

October 13, 2015



# EXHIBIT D

To Public Highway At-Grade Crossing  
Agreement

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



UPRR Folder No. 2286-01  
(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

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

### RECITALS:

Contractor has been hired by \_\_\_\_\_  
(Name of Public Agency)  
("Public Agency") to perform work relating to

\_\_\_\_\_  
(Work to be Performed)  
(the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of Railroad Mile Post \_\_\_\_\_ on Railroad's \_\_\_\_\_,  
(Mile Post) (Name of Subdivision)  
DOT No. \_\_\_\_\_, located at or near \_\_\_\_\_, in \_\_\_\_\_ County,  
(DOT Number) (City) (County)  
State of \_\_\_\_\_, as such location is in the general location shown on the Railroad Location  
(State)

Print marked **Exhibit A**, and as detailed 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 Railroad and the Public Agency.  
(Date of C&M Agreement)

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

### AGREEMENT:

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

**ARTICLE 1 - DEFINITION OF CONTRACTOR.**

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

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

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4B below.

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

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

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

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

*Name & Address of MTM*

*Name & Address of 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 provided,  
(Expiration Date)  
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  
1400 Douglas Street, Mail Stop 1690  
Omaha, Nebraska 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- ADMINISTRATIVE FEE.**

Upon the execution and delivery of this Agreement, Contractor shall pay to Railroad **FIVE HUNDRED DOLLARS (\$500.00)** as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

**ARTICLE 10 - CROSSINGS; COMPLIANCE WITH MUTCD AND FRA GUIDELINES.**

- A. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.
- B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable

Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications, negligence, or any other reason arising from the Contractor's presence on the Railroad's property, the Contractor agrees to assume liability for any civil penalties imposed upon the Railroad for such noncompliance.

**ARTICLE 11 - EXPLOSIVES.**

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

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

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

Signed By: \_\_\_\_\_  
Kathy Nesser  
Manager Real Estate

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

Signed By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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



**EXHIBITS A & A-1**

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Shall be the Railroad Location Print & Detailed Prints



# EXHIBIT "A"

## RAILROAD LOCATION PRINT FOR AN EXISTING AT-GRADE PUBLIC ROAD CROSSING AGREEMENT



### UNION PACIFIC RAILROAD COMPANY

LORDSBURG SUBDIVISION  
RAILROAD MILE POST 1003-78 AND 1003.81  
VAIL, PIMA COUNTY, AZ

To accompany an agreement with  
**PIMA COUNTY AND ITS CONTRACTOR**  
covering an At-Grade Public Road Crossing.

Folder No. 2286-01

Date: June 15, 2015

### WARNING

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



## **EXHIBIT B**

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

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

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

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



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

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

- A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.
- B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

**Section 4. LIENS.**

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

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

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

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

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

**Section 7. SAFETY.**

- A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in

**Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

- B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.
- C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

#### **Section 8. INDEMNITY.**

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

#### **Section 9. RESTORATION OF PROPERTY.**

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



**Section 10. WAIVER OF DEFAULT.**

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

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

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

**Section 12. ASSIGNMENT - SUBCONTRACTING.**

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

## **EXHIBIT C**

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

#### **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.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **Other Requirements**

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



## EXHIBIT D

### TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

#### MINIMUM SAFETY REQUIREMENTS

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

#### I. CLOTHING

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

Specifically, Contractor's employees must wear:

- i. Waist-length shirts with sleeves.
  - ii. Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
  - iii. Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

#### II. PERSONAL PROTECTIVE EQUIPMENT

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

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

#### III. ON TRACK SAFETY

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

- i. Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- ii. Wear an orange, reflectorized workwear approved by the Railroad Representative.



- iii. Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

#### **IV. EQUIPMENT**

- A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
  - i. Familiar and comply with Railroad's rules on lockout/tagout of equipment.
  - ii. Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
  - iii. 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.