

Contract Number: CT-PR-13 X 810
 Effective Date: 6-18-13
 Term Date: 6-17-14
 Cost: \$2,500.-
 Revenue: _____
 Total: _____ NTE: _____
 Action: _____
 Renewal By: _____
 Term: 6-17-14
 Reviewed by: JK

BOARD OF SUPERVISORS AGENDA ITEM SUMMARY

Requested Board Meeting Date: June 18, 2013

ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:

Construction, maintenance and use of the new Cienega Creek Trail Under Bridge Pedestrian Crossing.

CONTRACT NUMBER (If applicable): CT 13*810

STAFF RECOMMENDATION(S):

Staff respectfully recommends approval of the New Pedestrian Under Bridge Crossing Agreement.

Procure Dept 05/05/13 PM 02:35

CORPORATE HEADQUARTERS: Natural Resources, Parks and Recreation Department

To: CHH. 6-6-13
 COB - 6-13-13
 Addendum (2) Agenda 6-18-13

CLERK OF BOARD USE ONLY: BOS MTG. June 18, 2013

ITEM NO. _____

PIMA COUNTY COST: \$2,500.00 ___ and/or REVENUE TO PIMA COUNTY:\$

FUNDING SOURCE(S): CPR.PRT 231 – Trail Acquisition & Development

(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)

Advertised Public Hearing:

	X	YES		NO
--	---	-----	--	----

Board of Supervisors District:

1		2		3		4		5		All	xxx
---	--	---	--	---	--	---	--	---	--	-----	-----

IMPACT:

IF APPROVED:

The Construction, maintenance and use of the new Cienega Creek Trail Under Bridge Pedestrian Crossing will take place.

IF DENIED:

The Construction, maintenance and use of the new Cienega Creek Trail Under Bridge Pedestrian Crossing will not take place.

DEPARTMENT NAME: Natural Resources, Parks and Recreation Department

CONTACT PERSON: Evelyne R. Thorpe TELEPHONE NO.: 877-6230

CONTRACT
NOCT. PR-13 00000 00000 00000 810
AMENDMENT NO. _____
<small>This number must appear on all invoices, correspondence and documents pertaining to this contract.</small>

UPRR Folder No.: 2734-36

NEW PEDESTRIAN UNDER BRIDGE CROSSING AGREEMENT

BETWEEN

UNION PACIFIC RAILROAD COMPANY

AND THE

COUNTY OF PIMA

COVERING

CONSTRUCTION, MAINTENANCE AND USE OF THE NEW CIENEGA
CREEK TRAIL UNDERBRIDGE PEDESTRIAN CROSSING
(DOT NO.: 440-759K)

AT

RAILROAD MILE POST 1008.49 – LORDSBURG SUBDIVISION

NEAR

VAIL,
IN PIMA COUNTY,
ARIZONA

Railroad Original



UPRR Folder No.: 2734-36

UPRR Audit No.: _____

NEW PEDESTRIAN UNDER BRIDGE CROSSING AGREEMENT

Cienega Creek Trail – DOT No.: 440-759K
Railroad Mile Post 1008.49 – Lordsburg Subdivision
near Vail, in Pima County, Arizona

THIS AGREEMENT is made this _____ day of _____, 20____, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware Corporation ("Railroad") and the **COUNTY OF PIMA**, an Arizona political subdivision ("County").

IT IS AGREED as follows:

Section 1. **RIGHT GRANTED.**

- A. In consideration of a one-time fee in the sum of **TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00)** to be paid by the County to the Railroad, upon the execution and delivery of this Agreement, the payment of the costs and expenses to be incurred by Railroad and/or County pursuant to this Agreement, and subject to the terms and conditions of this Agreement, Railroad hereby grants to County, its successors and assigns, a license to construct, maintain, use, repair, renew and reconstruct a public pedestrian, bicycle and equestrian trail on, along and under Railroad's right-of-way, tracks and bridge at Railroad Mile Post 1008.49 on the Railroad's Lordsburg Subdivision near Vail, in Pima County, Arizona, in the location shown on the Railroad Location 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 (hereinafter the "Trail" or the "Property"). The Trail shall also consist of a protective canopy over the Trail as the Trail traverses under Railroad's bridge as illustrated in **Exhibit A-1**.
- B. County, at its sole cost and expense, will construct, maintain, repair, renew and reconstruct the Trail and all other necessary facilities, structures, appurtenances, warning signs, stop signs, fencing and concrete encasement protection covers on the Property, and/or on adjacent Railroad right-of-way or County's adjacent property, in compliance with all design and construction specifications and plans that have been reviewed and approved by Railroad.
- C. County, at its sole expense, agrees to patrol, or cause the Trail to be patrolled by police officers with lawful citation authority, and to vigorously enforce the prohibition against trespass of Railroad's adjacent right-of-way.
- D. County, at its sole expense, shall promptly remove any graffiti that the Trail users may paint or place on Railroad's bridge structure or other property.
- E. County will comply with all federal, state and local laws, ordinances, rules and regulations which are applicable to the use, management and maintenance of the Trail.



- F. The rights granted herein are made subject to and subordinate to the prior and continuing right and obligation of Railroad, its successors and assigns, to use all of the tracks and property underlying and above the Trail in the performance of its duty as a common carrier, and there is reserved unto Railroad, and its successors and assigns, the right (consistent with the rights granted herein to County) to construct, reconstruct, maintain, repair, use and operate existing or future additional railroad tracks, track appurtenances, fiber optic or signal lines and facilities, pipe, and wire lines over, under and across the Property.
- G. The rights granted herein are granted only insofar as Railroad may lawfully grant the same and Railroad makes no covenant or warranty of title, or for quiet possession or against encumbrances. No damages shall be recoverable from Railroad because of any dispossession of County or because of failure of, or defect, in Railroad's title to the Property. The rights granted herein are also subject to any and all outstanding or existing licenses, leases, easements, restrictions, conditions, covenants, claims of title and other rights (whether public or private and whether recorded or unrecorded) including, but not limited to, those for communication, pipeline and wire line facilities and also to any and all extensions and renewals thereof. The County shall not damage, destroy or interfere with the property or right of nonparties in, upon or relating to the Property, unless County at its sole expense, settles with and obtains a release from such nonparties on mutually satisfactory terms.
- H. County, by virtue of this grant, shall not encroach upon, or occupy or use any other property of Railroad, except as required for the construction of the Trail, and emplacement and maintenance of the fencing, concrete protective covers and other items as herein required.
- I. Railroad grants to County only the right for the purposes aforesaid and County shall not use or permit use of the Property for any other purpose.
- J. To enable Railroad to perform construction, operation or maintenance work on its tracks, track appurtenances, right of way, bridge, embankments, or other improvements on the Property, from time to time as Railroad, in its sole discretion may deem necessary or convenient, Railroad may temporarily close the Trail after reasonable notice to County, unless such work is an emergency nature in which event Railroad may close the Trail without prior notice to County. In the event of such an emergency, Railroad will immediately notify County.
- K. If the right granted herein shall result in a substantial operational or safety problem for Railroad, then the parties shall negotiate in good faith to resolve such problem to the mutual satisfaction of the parties.
- L. Fiber optic cable systems may be buried on Railroad's right-of-way. Protection of the fiber optic cable system is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. County, or its contractors, shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m., Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour seven day number for emergency calls) to determine if fiber optic cable is buried anywhere on the right-of-way to be used by County. If it is, County, or its contractors, 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 right-of-way.



Section 2. **CONTRACTOR'S RIGHT OF ENTRY AGREEMENT; FLAGGING.**

- A. The County confirms that all work described herein, will be performed by a contractor or contractors hired by the County. The County agrees to require each of its contractors, (and their respective subcontractors), to execute Railroad's form of Contractor's Right of Entry Agreement that is marked **Exhibit B**, hereto attached and hereby made a part hereof, and to provide Railroad the insurance binders or certificates set forth in Exhibit B of the Contractor's Right of Entry Agreement before commencing any work on any Railroad property.
- B. The County shall also require its contractors/subcontractors to perform their construction work in such a manner so as not to endanger or delay the movement of trains, engines or cars of Railroad, and so as not to injure or endanger Railroad's officers, agents, employees or damage their property. The County shall also require its contractors/subcontractors to give precedence to the movement of trains, engines and cars of Railroad, over the movement of vehicles or equipment or construction activities of the County's contractors/subcontractors.
- C. If at any time during the construction of the Trail, Railroad deems it necessary that flagging protection is necessary, such flagging shall be provided by Railroad at no cost to Railroad as set forth in the Contractor's Right of Entry Agreement described in Section 2A above.

Section 3. **FEDERAL AID POLICY GUIDE**

If the County 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.

Section 4. **NO PROJECT EXPENSES TO BE BORNE BY RAILROAD**

The County 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.

Section 5. **WORK TO BE PERFORMED BY THE RAILROAD.**

The County 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 the 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.

Section 6. **LIABILITY.**

To the extent permitted by Arizona law, County shall save, protect, defend, indemnify and hold harmless Railroad, and its respective affiliates, and their respective officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses, fines and penalties of whatsoever nature, including court costs and attorney's fees, arising from and growing out of any injury or death of persons whomsoever (including officers, agents and employees of Railroad or the County and of any contractor as well as other persons)

or loss of or damage to property whatsoever (including property of or in the custody of Railroad, the County or any contractor as well as other property). County's obligation to indemnify shall accrue when such injury, death, loss or damage occurs or arises from County's or the general public's use of the Property and Trail, or a breach of this Agreement, or any use or misuse of the Property and Trail, including situations when individuals used such Property and Trail to obtain access to any other right-of-way or property of Railroad.

Section 7. **TERMINATION; WAIVER OF BREACH; TERM.**

- A. Railroad may terminate this Agreement by giving County notice of termination if County defaults under any obligation of County under this license and, if after written notice is given by Railroad to County specifying the default, County fails either to immediately begin to cure the default, or to complete the cure expeditiously but in any event within thirty (30) days after the default notice is given. A waiver by Railroad of a breach of County of any covenant or condition of this Agreement shall not impair the right of Railroad to avail itself of any subsequent breach thereof.
- B. Railroad may also terminate this Agreement by giving written notice to County if safety and operational needs of Railroad are materially affected or impaired by County's use of the Property, and Railroad and County cannot come to any mutual agreement or understanding as to how County, at County's sole cost and expense, will eliminate such material effect or impairment.
- C. This Agreement and the license and permission herein granted shall be effective as of the date first herein written, and shall remain in full force and effect until terminated as herein provided, or until the Property and Trail are abandoned as set forth in Section 5 below.

Section 8. **ABANDONMENT.**

If County, its successors and assigns, shall abandon the Trail and Property, or any portion thereof, for the purpose set forth herein for a continuous period of twelve (12) months, then this Agreement and the rights granted herein shall cease automatically and terminate with respect to the portion of the Property so abandoned.

Section 9. **REMOVAL OF TRAIL UPON TERMINATION OR ABANDONMENT.**

Within ninety (90) days after termination of this Agreement or County's abandonment of the Trail and/or Property, the County, at its sole cost and expense, shall remove all of the Trail improvements from the Property or adjacent Railroad right-of-way and restore the Property and such right-of-way to its original condition, failing in which Railroad may perform such activities at the expense of County.

Section 10. **PLANS**

- A. The County, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications and submit such plans and specifications to the Railroad's Assistant Vice President Engineering – Design, or his authorized representative, for review and approval. The plans and specifications shall include all Structure layout specifications, cross sections and elevations, associated drainage, and other appurtenances.
- B. The final one hundred percent (100%) completed plans that are approved in writing by the

Railroad's Assistant Vice President Engineering–Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.

- C. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing.
- D. Notwithstanding the Railroad's approval of the Plans, the Railroad shall not be responsible for the permitting, design, details or construction of the Structure.

Section 11. **NOTICES.**

Any notices required or desired to be given under this Agreement shall be in writing and personally served, given by overnight express delivery, or given by mail. Telecopy notices shall be deemed valid only to the extent they are (a) actually received by the individual to whom addressed, and (b) followed by delivery of actual notice in the manner described above within three (3) business days thereafter. Any notice given by mail shall be sent, postage prepaid, by certified mail, return receipt requested, addressed to the party to receive at the following address or at such other address as the party may from time to time direct in writing:

RAILROAD: *Union Pacific Railroad Company
ATTN: Senior Manager Contracts
Real Estate Department
1400 Douglas Street MS1690
Omaha, Nebraska 68179-1690
Facsimile: (402) 501-0340*

COUNTY: *Pima County
ATTN: Natural Resources, Parks & Recreation Department
3500 West River Road
Tucson, Arizona 85741
Facsimile: (520) 838-7430*

Express delivery notices shall be deemed to be given upon receipt. Postal notices shall be deemed to be given three (3) days after deposit with the United States Postal Service.

Section 12. **GRAFFITI REMOVAL.**

Notwithstanding the provisions of this agreement, the parties specifically agree that graffiti removal or over-painting from all component surfaces of the overall project, and including without limitation the Underpass substructure and superstructure (above and below the bridge seats), shall be the responsibility of the County in their sole and exclusive discretion, and Railroad shall have no obligations whatsoever with regard to graffiti removal. Before entering upon the track area of the Underpass superstructure to perform graffiti removal or over-painting, the County shall notify Railroad sufficiently in advance and Railroad shall provide a flagman at the County sole expense as reasonably required for the safety of workers and trains.

Section 13. **COUNTY'S CONTINUING RESPONSIBILITIES.**

The County is responsible to maintain, repair and replace all components associated with the trail including, but not limited to, the overhead canopy protection, the proposed culverts, fencing and trail surface.

The County must also clean all debris that collects on the trail, fencing, canopy protection and surrounding area.

In the event that the Railroad requires access to the underside of the bridge and access is restricted due to the canopy, the County will remove and reinstall the canopy to support the Railroad's work including, but not limited to, inspections, maintenance and replacement of the bridge.

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

If the County will be receiving American Recovery and Reinvestment Act ("ARRA") funding for the Project, the County agrees that it is responsible in performing and completing all ARRA reporting documents for the Project. The County 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 County and not of the Railroad, and (ii) the County shall not delegate any ARRA reporting responsibilities to the Railroad. The County also confirms and acknowledges that (i) the Railroad shall provide to the County 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 County to perform and complete the ARRA reporting documents. The Railroad confirms that the County and the Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for the Project as provided in this Agreement.

Section 15. **SUCCESSORS AND ASSIGNS.**

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns, but County shall not assign this Agreement or any rights herein to any party without the prior written consent of Railroad.

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

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

By _____
PAUL G. FARRELL
Real Estate Manager - Contracts

WITNESS:

COUNTY OF PIMA

By _____

By _____

Printed Name: _____

Title: _____

(Seal)

Pursuant to Authority Provided in County:

Resolution No. _____

dated _____.

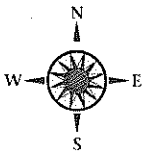
APPROVED AS TO FORM


TOBIN ROSEN
DEPUTY COUNTY ATTORNEY

EXHIBIT A

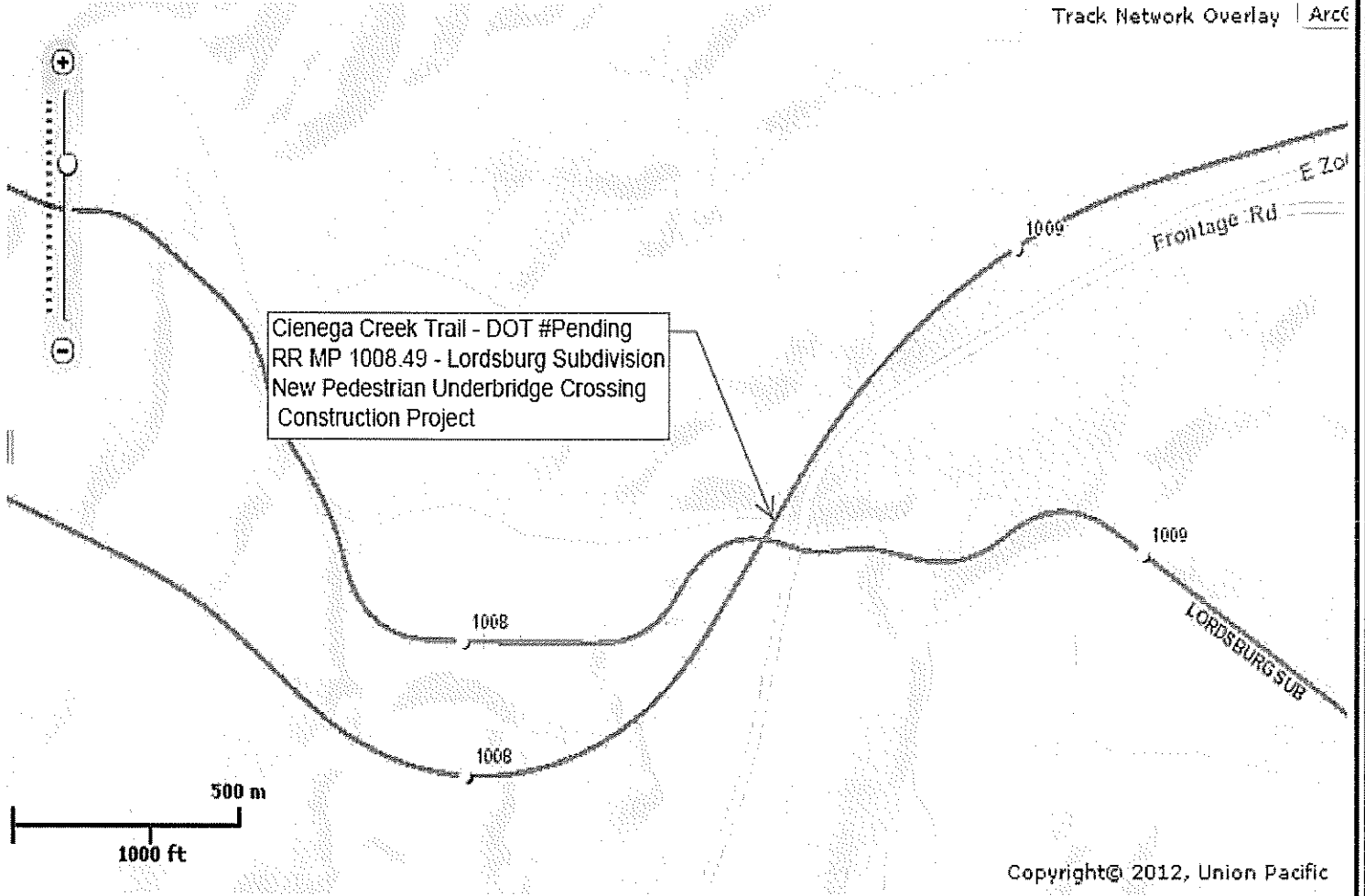
To New Pedestrian Under Bridge Crossing
Agreement

Cover Sheet for the
Railroad Location Print



RAILROAD LOCATION PRINT OF A NEW PEDESTRIAN CROSSING CONSTRUCTION PROJECT

Track Network Overlay | ArcGIS



RAILROAD WORK TO BE PERFORMED:

1. Engineering Design Review & Flagging.

NOTICE:

The County and/or its Contractor(s) are responsible for ensuring that the under-bridge pedestrian trail crossing doesn't adversely impact Railroad operations.

EXHIBIT "A" UNION PACIFIC RAILROAD COMPANY

LORDSBURG SUBDIVISION
RAILROAD MILE POST 1008.49
GPS: N 32° 01.1847', W 110° 38.7953'
near VAIL, in PIMA CO., AZ.

To accompany an agreement with the
COUNTY OF PIMA
covering an underbridge pedestrian, bicycle
and equestrian trail construction project.

Folder No. 2734-36

Date: August 28, 2012

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

EXHIBIT A-1

To New Pedestrian Under Bridge Crossing
Agreement

Cover Sheet for the
Detail Prints

McGann & Associates Inc.
Landscape Architects and Planners

6814 North Oracle Road, Suite 210 Tucson, Arizona 85704
 Telephone: (520) 297-9540 Fax: (520) 297-9545

Structural Engineers
 Turner Structural Engineering Co.
 3026 N. Country Club Road
 Tucson, AZ 85719
 Telephone: (520) 297-9540 Fax: (520) 223-5418

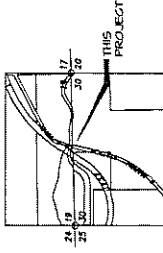
PIMA COUNTY NATURAL RESOURCES, PARKS AND RECREATION



**ARIZONA TRAIL IMPROVEMENTS
 AT GRADE-SEPARATED CROSSING
 OF UNION PACIFIC RAILROAD**
 CIENEGA CREEK, PIMA COUNTY, ARIZONA



LOCATION MAP



A PORTION OF SECTION 11
 T18S18E04N, PIMA COUNTY, ARIZONA
 NOT TO SCALE

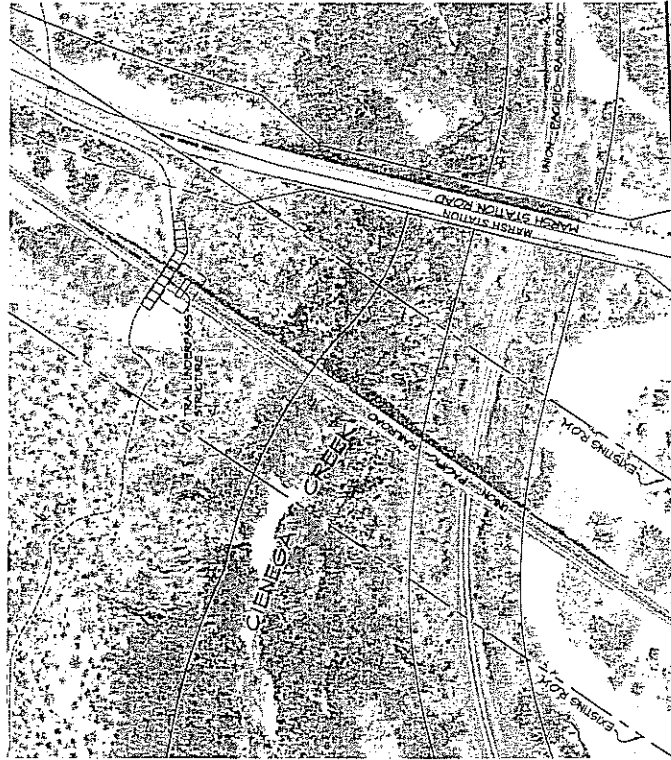


INDEX TO DRAWINGS

- 6-1 COVER SHEET
- 6-2 SITE PLAN AND DETAILS
- 5-1 TRAIL CANOPY FRAMING PLAN AND DETAILS

GENERAL NOTES:

1. THIS PROJECT INVOLVES THE CONSTRUCTION OF SAFETY IMPROVEMENTS AT A GRADE SEPARATED CROSSING OF THE ARIZONA TRAIL BELCH TRAIL I AND II CROSSINGS, TRAIL CROSSINGS I & II, TOWNSHIP 18, RANGE 11, GRASSY PIMA COUNTY, ARIZONA.
2. THE EXISTING RAILROAD BRIDGE IS LOCATED AT HILEPOST LOOK-AR, THE PROJECT SITE IS LOCATED WITHIN THE UNION PACIFIC RAILROAD'S LORDBERG SUBDIVISION.
3. THE PROPOSED SAFETY IMPROVEMENTS INVOLVE THE CONSTRUCTION OF A CANOPY ABOVE THE TRAIL AND GRADING THE TRAIL ABOVE THE CANOPY. THE CANOPY WILL BE CONSTRUCTED AS DETAILED HEREIN.
4. THE PROPOSED INTRO-CANOPY HAVE BEEN DESIGNED AND WILL BE CONSTRUCTED IN ACCORDANCE WITH THE REQUIREMENTS OF CHAPTER 18.02, PIMA COUNTY ZONING ORDINANCE AND RAILROAD GUIDELINES FOR RAILROAD GRADE SEPARATION PROJECTS, (DATED JANUARY 24, 2007).
5. THE PROJECT IMPROVEMENTS HAVE BEEN DESIGNED AND WILL BE CONSTRUCTED IN ACCORDANCE WITH THE REQUIREMENTS OF THE AMERICAN RAILWAY ENGINEERING AND MAINTENANCE OF RIGHT OF-WAY ASSOCIATION (AREMA) GUIDELINES.



PROJECT AREA
 SCALE: 1" = 50'-0"



McGann & Associates
 Landscape Architects and Planners
 6814 North Oracle Road, Suite 210
 Tucson, Arizona 85704
 Telephone: (520) 297-9540 Fax: (520) 297-9545

PIMA COUNTY NATURAL RESOURCES, PARKS AND RECREATION
 ARIZONA TRAIL IMPROVEMENTS AT CROSSING OF UNION PACIFIC RAILROAD
 COVER SHEET

DATE: 06/20/08
 REVISIONS:
 DRAWN BY: JRM
 CHECKED BY: JRM
 SHEET NO: 11-452
 SHEET NO: G-1
 1 OF 3



APPROVALS:	DATE
UNION PACIFIC RAILROAD	DATE
PIMA COUNTY REGIONAL FLOOD CONTROL DISTRICT	DATE
PIMA COUNTY NATURAL RESOURCES PARKS AND RECREATION DEPARTMENT	DATE
ARIZONA TRAIL ASSOCIATION	DATE

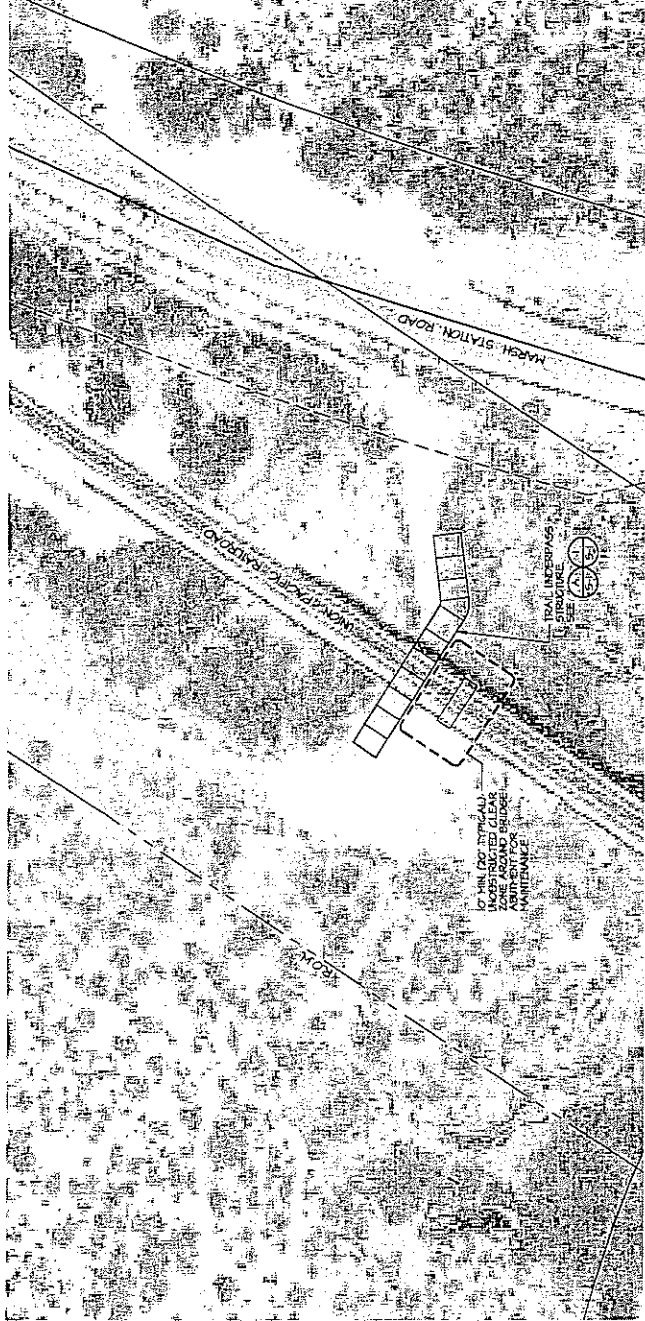


McGinn & Associates
 Landscape Architects and Planners
 6814 North Oracle Road, Suite 210
 Tucson, Arizona 85704
 Telephone: (520) 297-9545 Fax: (520) 297-9545

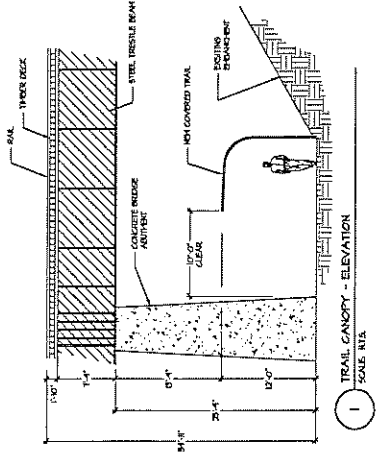
PIMA COUNTY NATURAL RESOURCES, PARKS AND RECREATION
 ARIZONA TRAIL IMPROVEMENTS AT CROSSING OF UNION PACIFIC RAILROAD
 SITE PLAN AND DETAILS

DATE: 6/27/2012
 REVISIONS:
 DRAWN BY: JRM
 CHECKED BY: CCM
 JOB NO.: 11-1007
 SHEET NO.: G-2

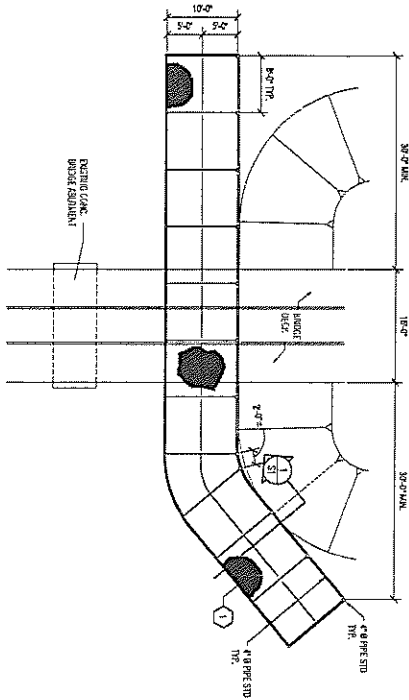
2 OF 3



SITE PLAN
 SCALE: 1" = 20'-0"

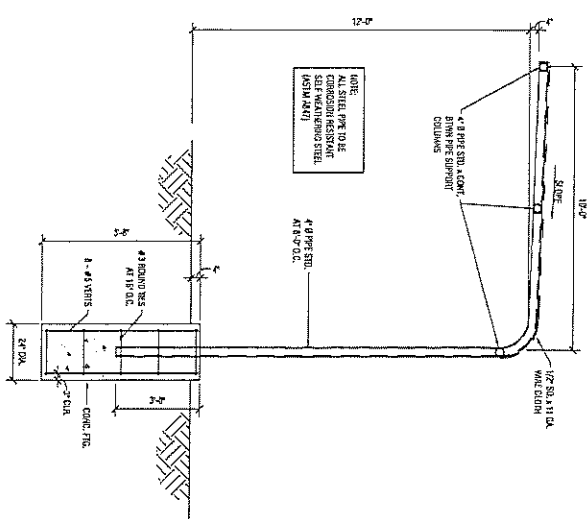


1 TRAIL CANOPY - ELEVATION
 SCALE: 1" = 8'-0"



A TRAIL CANOPY FRAMING PLAN
SCALE: 1/4" = 1'-0"

- NOTES**
1. USE 2" X 12" X 11/16" WIDE CLUMP TYPICAL WINGERS BRD. JOISTERS IN P.O.C. AND SUPPORT BORDERS.



1 CANOPY SECTION
SCALE: 1/4" = 1'-0"



EXHIBIT B

To New Pedestrian Under Bridge Crossing
Agreement

Cover Sheet for the
Contractor's Right of Entry Agreement

UPRR Folder No. _____
(Folder Number)

UPRR Audit No.: _____
(Audit Number)

CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

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

(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

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 4.

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)

By _____
PAUL G. FARRELL
Real Estate Manager - Contracts

(NAME OF CONTRACTOR)

By _____
Printed Name: _____
Title: _____

EXHIBITS A & A-1

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Shall be the Railroad Location Print & Detailed Prints

SAMPLE

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.

SAMPLE

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 if the opening is less than one car length (50 feet).
 - iv. Avoid walking or standing on a track unless so authorized by the employee in charge.
 - v. Before stepping over or crossing tracks, look in both directions first.
 - vi. Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.