

Anikka T. Hoidal (#16489)  
GREENBERG TRAURIG, LLP  
222 South Main Street, 5<sup>th</sup> Floor  
Salt Lake City, UT 84101  
(801) 478-6900  
[hoidala@gtlaw.com](mailto:hoidala@gtlaw.com)

*Attorneys for Respondent*

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**BEFORE THE PUBLIC SERVICE COMMISSION**

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**IN THE MATTER OF LOGAN CITY'S  
PETITION REQUESTING  
INVESTIGATION INTO UNION  
PACIFIC RAILROAD COMPANY'S  
ADMINISTRATION OF AGREEMENTS  
AND MAINTENANCE PROVISIONS**

**UNION PACIFIC RAILROAD  
COMPANY'S RESPONSE TO LOGAN  
CITY'S PETITION AND REQUEST FOR  
AGENCY ACTION AND MOTION TO  
DISMISS**

Docket No. 21-888-01

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Union Pacific Railroad Company (“Union Pacific”) respectfully submits this Response to Petition and Request for Agency Action and Motion to Dismiss (the “Response”) to the Petition and Request for Agency Action (the “Petition”) filed by Logan City (the “City”) in this docket on October 4, 2021. The Utah Public Service Commission (the “Commission”) should decline to take agency action involving the amended Administrative Rule R930-5-8 (the “Amended Rule”). The Amended Rule is central to the action requested in the City’s Petition. Additionally, it violates state statutory law as well as federal statutory and constitutional law. Further, it is the subject of pending litigation in the Third District Court of the State of Utah and so it would be premature for the Commission to take agency action until the outcome of the pending litigation is known. Accordingly, the Commission should dismiss the City’s Petition.

## **BACKGROUND**<sup>1</sup>

### *Statutory Framework: Title 5 – Public Utilities*

1. Under Title 54 of the Utah Code, setting forth provisions applicable to public utilities, the Utah Department of Transportation (“UDOT”) may “determine and prescribe the manner, including . . . the terms of installation, operation, maintenance, use and protection of . . . each crossing of a public road or highway by a railroad or street railroad. . . .” Utah Code § 54-4-15(1).

2. Section 54-4-15.1 requires UDOT to “provide for the installing, maintaining, reconstructing, and improving of automatic and other safety appliances, signals or devices at grade crossings on public highways or roads over the tracks of any railroad or street railroad corporation in the state.” *Id.* § 54-4-15.1.

3. The State of Utah (the “State”) provides funds to be used, in conjunction with other available funds, “to pay all or part of the cost of the installation, maintenance, reconstruction or improvement of any signals described in Section 54-4-15.1 at any grade crossing of a public highway or any road over the tracks of any railroad or street railroad corporation in this state.” *Id.* § 54-4-15.2.

4. Section 54-4-15.3 requires UDOT to “apportion the cost of the installation, maintenance, reconstruction or improvement of any signals or devices described in Section 54-4-15.1 between the railroad or street railroad and the public agency involved,” “in accordance with the provisions of Section 54-4-15.” *Id.* § 54-4-15.3.

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<sup>1</sup> Union Pacific provides this background information for purposes of this Response. Union Pacific specifically denies those allegations contained in the City’s Petition that are inconsistent with this background statement. Should the Commission opt to commence formal adjudicative proceedings in this matter, Union Pacific reserves the right to respond to each and every allegation separately.

*History of Utah Administrative Code Rule 930-5 and Prior Rule 930-5-8*

5. UDOT promulgated Administrative Rule 930-5 more than a decade ago to satisfy its obligations arising under the Utah Code.

6. Rule R930-5-8 governs the maintenance of at-grade railroad crossings. The preamendment version of this rule provided:

(1) Responsibility for maintenance is as described in this section unless a separate agreement applies.

(a) The Railroad is responsible for the maintenance of all Railroad Passive Warning Devices and Active Warning Devices within the Railroad right-of-way.

(b) If the Railroad has a property interest in the right-of-way, the Railroad is responsible for the maintenance of Crossing material within the Railroad right-of-way and two feet beyond each outside rail for Crossings without concrete crossing panels or edge of concrete crossing panel.

Utah Admin. Code R930-5-8(1) (2020)

*The Amended Utah Administrative Code Rule 930-5-8*

7. On or around July 29, 2020, UDOT effected an emergency rule amending R930-5-8(1) (the “Emergency Rule”) changing Union Pacific’s obligation to perform and pay for the maintenance of traffic signals at railroad crossings. Notice of Emergency (120-Day) Rule, a true and correct copy of which is attached as **Exhibit 1**.

8. UDOT subsequently proposed the following amendment to R930-5-8, essentially proposing making the Emergency Rule permanent:

(1) Responsibility for maintenance is as described in this section unless a ~~separate~~ prior signed written agreement applies. Responsibility means the obligation to perform and pay for the maintenance.

...

(i) If the Highway Authority owns the right-of-way in fee title, the Railroad is responsible for the maintenance of the entire structure unless a ~~separate~~ prior signed written agreement applies.

Utah Admin. Code R930-5-8(1). A true and correct copy of the September 18, 2020 Notice of Proposed Rule (the “Notice”) is attached as **Exhibit 2**.

9. In the Notice, UDOT stated that the proposed amendment was designed “to clarify the Department’s intent when it originally promulgated this rule in 2008.” *Id.* at 1, ¶ 3. “The change to Section R930-5-8 adds text to make it clear that Section R930-5-8 requires Railroads to maintain their railroad crossings through state owned right of way and to pay maintenance of their railroad crossing through state owned right of way. The Department’s original intent was that the meaning of the phrase ‘responsibility for maintenance’ includes the obligation to perform and pay for the maintenance of railroad crossings.” *Id.* at 1, ¶ 4. The Notice also stated that “[t]his proposed rule change will not lead to compliance costs for persons affected by this proposed rule change that they do not already experience.” *Id.* at 2, ¶ 5(F).

10. On November 5, 2020, UDOT authorized an amended filing of the Notice in response to informal comments received because “the Department realize[d] parts of the analysis may be confusing misleading, or inaccurate.” Nov. 5. 2020, Notice of Proposed Rule (the “Amended Notice”) at 1, ¶ 3, a true and correct copy of which is attached as **Exhibit 3**.

11. The Amended Notice stated that the “Department proposed changing Subsection R930-5-8(1) to clarify the Railroads’ and Highway Authorities’ allocated responsibility for performing and paying the costs of maintenance described in Subsection R930-5-8(1) and the exception to the allocation, which is a prior signed written agreement that changes the

responsibilities.” *Id.* at 1, ¶ 4. The “proposed change,” UDOT again stated, “only clarifies existing requirements.” *Id.* at 2, ¶ 5(F).

12. The Amended Notice also stated that “the proposed rule change will not lead to [new costs or expenses] to railroad companies. . . . Historically, railroad companies have paid the costs to maintain their crossings that affect highway authorities.” *Id.* at 2, ¶¶ (C), (D). It further stated that “[t]his proposed rule will not lead to compliance costs for persons affected by this proposed rule change that they do not already experience.” *Id.* at 2, ¶ 5(F).

13. The Public Comment Period started on September 21, 2020 and ended on December 31, 2020. *Id.* at 3, ¶ 9(A).

14. On November 16, 2020, during the Public Comment Period, Union Pacific submitted a comment to UDOT regarding the proposed amendments to R930-5-8. A true and correct copy of Union Pacific’s written comment (“Union Pacific’s Written Comment”) is attached as **Exhibit 4**.

15. In Union Pacific’s Written Comment it expressed its opposition to the proposed amendments to R930-5-8.

16. The proposed amendments were adopted, and the Amended Rule was enacted on March 25, 2021.

*Union Pacific’s Interactions with the City*

17. Union Pacific has a long and successful history of working cooperatively and in good faith with UDOT and local road authorities. *See, e.g.,* Public Road At-Grade Crossing Agreement between Union Pacific and the City, a true and correct copy of which is attached as

**Exhibit 5**; Public Highway At-Grade Crossing Agreement between Union Pacific and the City of West Jordan, a true and correct copy of which is attached as **Exhibit 6**.

18. On March 19, 2020 Union Pacific sent the City a Public Highway At-Grade Crossing Agreement (“March 2020 Agreement”), a true and correct copy of which is attached as **Exhibit 7**, setting forth a proposed agreement for apportioning the costs of maintaining the traffic control signals for railroad crossings (the “Maintenance Apportionment Costs”).

19. Since sending the March 2020 Agreement, Union Pacific and the City have been in negotiations over the Maintenance Apportionment Costs.

20. In the spirit of collaboration, Union Pacific has presented the City with several proposals regarding the Maintenance Apportionment Costs.

21. Union Pacific and the City engaged in good-faith negotiations over a period of time, exchanging various proposals and counterproposals in an effort to resolve differences, as illustrated in the City’s May 27, 2020 letter, a true and correct copy of which is attached as **Exhibit 8**.

22. The City rejected Union Pacific’s proposals and, ultimately, Union Pacific and the City were unable to reach an agreement regarding the Maintenance Apportionment Costs.

23. As stated more fully above, on July 31, 2020, UDOT effected the “Emergency Rule,” changing Union Pacific’s obligation to perform and pay for the maintenance of traffic signals at railroad crossings. *See* Exhibit 1.

24. Following the Emergency Rule going into effect, Union Pacific and the City continued to negotiate the Maintenance Apportionment Costs.

25. As stated above, the rulemaking process continued, and the Amended Rule was enacted on March 25, 2021

26. To date, Union Pacific and the City have been unable to reach an agreement.

27. Based, in part, on this inability to reach an agreement, Union Pacific filed suit in the Third Judicial District Court of the State of Utah on September 24, 2021 (the “State Court Action”), seeking relief based on the invalidity of R930-5-8(1), as amended.

28. On the heels of Union Pacific’s State Court Action, the City filed its Petition with the Commission seeking agency action on October 4, 2021.

### **ARGUMENT**

The Commission should dismiss the City’s Petition because the Amended Rule that is central to the City’s Petition (1) violates Utah statutory law, (2) violates federal statutory and constitutional law, and (3) is at issue in the State Court Action.

#### **A. The Amended Rule Violates State Statutory Law.**

The amendment to Rule R930-5-8 violates the Public Utilities Act by seeking to impose upon railroads the entire cost of maintaining devices and equipment at all grade crossings in Utah. That imposition cannot be squared with the statutory requirement that UDOT “shall *apportion* the cost of the installation, maintenance, reconstruction or improvement of any signals or devices . . . *between* the railroad . . . and the public agency involved.” Utah Code § 54-4-15.3 (emphasis added). To apportion means to “divide and distribute proportionately” or to “divide and assign in just proportion.” *Fulcrum Fin. V. Meridian Leas. Corp.*, 230 F.3d 1004, 1009 (7th Cir. 2000); *Excise Bd. of Tulsa Cty. v. City of Tulsa*, 68 P.2d 823, 825 (Okla. 1937).

In addition, the amended rule violates the Public Utilities Act in that it exempts UDOT from the statutory requirement to use State and other funds “to *pay all or part of* the cost of the installation, *maintenance*, reconstruction or improvement of any signals described in Section 54-4-15.1 at any grade crossing of a public highway or any road over the tracks of any railroad or street railroad corporation in this state.” Utah Code § 54-4-15.2 (emphasis added). By requiring Union Pacific to pay for all maintenance costs regardless of circumstance, UDOT has violated the statute by refusing to *apportion* the maintenance costs *between* Union Pacific and the public agency involved.

Moreover, the Amended Rule effects a drastic change from the past course of dealing between Union Pacific and Utah municipalities. As a result, Union Pacific entered into the discussions with the City under the same mindset it would have if that same understanding was still in place.

Based on these violations and the inherent inconsistency with the stated purpose of the rule, the Commission should dismiss the Petition with prejudice.

**B. The Amended Rule Violates Federal Constitutional and Statutory Law.**

UDOT’s amendment to R930-5-8(1), making railroads fully responsible for crossing-maintenance costs, violates (a) the Commerce Clause of the U.S. Constitution and (b) the federal ICC Termination Act, or ICCTA, 49 U.S.C. § 10101 *et seq.*

*1. The Amended Rule Violated the Commerce Clause of the U.S. Constitution.*

Rail transportation is an inherently interstate activity. Thus, “the courts long have recognized a need to regulate railroad operations at the federal level.” *City of Auburn v. United States*, 154 F.3d 1025, 1029 (9th Cir. 1998); *see Friberg v. Kansas City S. Ry.*, 267 F.3d 439, 442

(5th Cir. 2001) (“The regulation of railroad operations has long been a traditionally federal endeavor, to better establish uniformity in such operations and expediency in commerce.”); S. REP. NO. 104-176, at 6 (1995) (emphasizing the need for a “nationally uniform system of economic regulation” of railroads). Indeed, railroads are subject to one of “the most pervasive and comprehensive of federal regulatory schemes.” *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 318 (1981).

Even so, states have often tried to regulate certain aspects of railroad transportation. The Supreme Court has “frequently invalidated” such efforts. *Id.* For example, the Court struck down an Arizona law that imposed a maximum train length of fourteen passenger cars or seventy freight cars. This state regulation violated the Commerce Clause. *S. Pac. Co. v. State of Ariz. ex rel. Sullivan*, 325 U.S. 761, 769 (1945). In striking down the Arizona law, the Court observed that national uniformity in such regulation “is practically indispensable to the operation of an efficient and economic railway system.” *Id.* at 772. The Court has since emphasized that the Commerce Clause is “a self-executing limitation on the power of the States to enact laws imposing substantial burdens on such commerce.” *South-Cent. Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82, 87 (1984); *see Pike v. Bruce Church, Inc.* 397 U.S. 137 (1970).

It is a “long-standing constitutional principle” that when a state allocates costs between a railroad and local authority for crossings, such an “allocation of costs must be fair and reasonable.” *Iowa, Chicago & E. R.R. v. Washington Cnty., Iowa*, 384 F.3d 557, 562 (8th Cir. 2004).

Union Pacific contributes to the maintenance of 547 at-grade public crossings throughout the state of Utah, which exist for the benefit of local communities through which Union Pacific

operates. Union Pacific's operation across these crossings consists primarily of the interstate shipment of cargo. The Amended Rule imposes upon Union Pacific responsibility for all future maintenance at all of these crossings, across the entire state of Utah. UDOT's across-the-board imposition of 100% of the cost to maintain these crossings imposes a substantial burden on the flow of interstate commerce and is not fair or reasonable.

The burden imposed by R930-5-8(1)'s cost imposition on Union Pacific's maintenance of crossings to facilitate interstate transportation is excessive in relation to any local benefit it confers, and therefore violates the Commerce Clause. Accordingly, the Commission should dismiss the Petition because it centers around the Amended Rule, which violates the Commerce Clause.

2. *The Amended Rule Violates 49 U.S.C. § 10501.*

Congress enacted the ICCTA in 1995 to abolish the Interstate Commerce Commission and empower its successor, the Surface Transportation Board (STB), to regulate rail transportation in the United States. 49 U.S.C. § 10501. "Congress's purpose in passing the ICCTA was to establish an exclusive Federal scheme of economic regulation and deregulation for railroad transportation." *Emerson v. Kansas City S. Ry.*, 503 F.3d 1126, 1132 (10th Cir. 2007); H.R. REP. NO. 104-311, 96 (1995), *reprinted in* 1995 U.S.C.C.A.N. 793, 808 (ICCTA sought "to implement a [f]ederal scheme of minimal regulation for this intrinsically interstate form of transportation"). Through the ICCTA, "Congress intended to preempt a wide range of state and local regulation of rail activity." *Ass'n of Am. R.R. v. S. Coast Air Quality Mgmt. Dist.*, 622 F.3d 1094, 1097 (9th Cir. 2010).

To that end, Congress gave the STB exclusive jurisdiction over “transportation by rail carriers . . . with respect to rates, classifications, rules . . . , practices, routes, services, and facilities of such carriers” and over “the construction, acquisition, operation, abandonment, or discontinuance of [tracks] or facilities.” 49 U.S.C. § 10501(b). Apart from certain narrow exceptions, ICCTA’s remedies are “exclusive and preempt the remedies provided under Federal or State law.” *Id.* “It is difficult to imagine a broader statement of Congress’s intent to preempt state regulatory authority over railroad operations.” *City of Auburn*, 154 F.3d at 1030 (citation omitted).

The ICCTA thus expressly preempts state and local laws that intrude on the STB’s exclusive jurisdiction, “regardless of the context or rationale.” *Emerson*, 503 F.3d at 1130 (citation omitted). There are “two broad categories of state and local actions” that are expressly preempted by the ICCTA: (1) “any form of state or local permitting or preclearance that, by its nature, could be used to deny a railroad the ability to conduct part of its operations or to proceed with activities that the Board has authorized”; and (2) “state or local regulation of matters directly regulated by the Board—such as the construction, operation, and abandonment of rail lines[.]” *Id.* (citation omitted). In other words, state or local laws that intrude on the STB’s exclusive jurisdiction “have the effect of managing or governing rail transportation” and are thus preempted. *Oregon Coast Scenic R.R. v. Oregon Dep’t of State Lands*, 841 F.3d 1069, 1077 (9th Cir. 2016) (quoting *Ass’n of Am. R.R.*, 622 F.3d at 1097).

A state or local regulation is also “impliedly” preempted, or preempted “as applied,” if it “would have the effect of preventing or unreasonably interfering with railroad transportation.” *Emerson*, 503 F.3d at 1133 (citation omitted).

UDOT's R930-5-8(1) requires railroads to bear 100% of the maintenance costs associated with highway-rail crossings, despite the substantial benefits that the state and localities receive from those crossings.

This statewide imposition of all crossing maintenance costs on railroads like Union Pacific constitutes economic regulation of rail transportation and thus intrudes on the exclusive jurisdiction of the STB in this area. UDOT's amendment to R930-5-8(1) has the effect of managing and governing Union Pacific's maintenance of crossings.

The Amended Rule also imposes an unreasonable burden on railroad operations and interstate commerce. If every state or locality were able to impose a similar requirement on each railroad operating within its jurisdiction, the resulting burden on interstate rail operations would be substantial. States cannot intrude on the uniform federal regulatory regime in this way.

Accordingly, the Commission should dismiss the Petition with prejudice because it centers around the Amended Rule, which is invalid because it is preempted by 49 U.S.C. § 10501(b).

**C. The Commission Should Decline to Take Agency Action Because the Legality of the Amended Rule is in Current Litigation in Utah State Court.**

The Commission should decline to Take agency action because the legality of the Amended Rule under Utah Code is currently being addressed in the Third District Court of the State of Utah. Taking agency action now would unnecessarily complicate and confuse the litigation. "It is a long-standing principle of administrative law that an agency's rules must be consistent with its governing statutes." *Sanders Brine Shrimp v. Audit Div. of Utah State Tax Comm'n*, 846 P.2d 1304, 1306 (Utah 1993). Here, whether the Amended Rule is consistent with Utah's governing statutes is an issue currently being adjudicated in the Third District Court. It

would be futile to take agency action at this time because the future of the Amended Rule is uncertain, and therefore, any agency action taken pursuant to the Amended Rule runs the risk of being inconsistent with Utah's governing statutes. *See id.*

To ensure consistency between agency administrative law and the Utah Code, the Commission should dismiss the Petition without prejudice at this time.

### **CONCLUSION**

The Commission should dismiss the Petition with prejudice based on the Amended Rule violating state statutory law as well as federal statutory and constitutional law. Alternatively, the Commission should dismiss the Petition without prejudice pending the outcome of the current litigation.

Respectfully submitted this 3rd day of November, 2021.

GREENBERG TRAUIG, LLP

*/s/ Anikka T. Hoidal*

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Anikka T. Hoidal

*Attorneys for Respondent Union Pacific  
Railroad Company*

**CERTIFICATE OF SERVICE**

I certify that on this 3rd day of November, 2021, I served via email a true and correct copy of **UNION PACIFIC RAILROAD COMPANY'S RESPONSE TO LOGAN CITY'S PETITION AND REQUEST FOR AGENCY ACTION** upon the parties listed below:

Kymerly Housley  
Craig J. Carlston  
Logan City Attorney  
290 North 100 West  
Logan, UT 84321  
[Kimber.housely@loganutah.org](mailto:Kimber.housely@loganutah.org)  
[Craig.carlston@loganutah.org](mailto:Craig.carlston@loganutah.org)

ROBERT C. KELLER (4861)  
DANI CEPERNICH (14051)  
SNOW CHRISTENSEN & MARTINEAU  
10 Exchange Place, 11<sup>th</sup> Floor  
Salt Lake City, Utah 84145  
Telephone: (801) 521-9000  
[rck@scmlaw.com](mailto:rck@scmlaw.com)  
[dnc@scmlaw.com](mailto:dnc@scmlaw.com)

/s/ Anikka T. Hoidal  
Anikka T. Hoidal

# **EXHIBIT 1**

**State of Utah**  
**Administrative Rule Analysis**  
Revised December 2019

NOTICE OF EMERGENCY (120-DAY) RULE		
	Title No. - Rule No. - Section No.	
Utah Admin. Code Ref (R no.):	R930-5-8	Filing No. (Office Use Only)

**Agency Information**

<b>1. Department:</b>	Executive	
<b>Agency:</b>	Transportation	
<b>Room no.:</b>	Administrative Suite, 1 <sup>st</sup> Floor	
<b>Building:</b>	Calvin Rampton	
<b>Street address:</b>	4501 South 2700 West	
<b>City, state, zip:</b>	Taylorsville, Utah 84129	
<b>Mailing address:</b>	P.O. Box 148455	
<b>City, state, zip:</b>	Salt Lake City, Utah 84114-8455	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Linda Hull	(801) 965-4253	lhull@utah.gov
James Palmer	(801) 965-4197	jimpalmer@agutah.gov
Lori Edwards	(801) 965-4048	loriedwards@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>	Maintenance.	
<b>3. Effective Date (mm/dd/yyyy):</b>	July 29, 2020	
<b>4. Purpose of the new rule or reason for the change:</b>	This emergency rule change is needed to clarify the Department's intent when it originally promulgated the rule.	
<b>5. Summary of the new rule or change:</b>	Subsection R930-5-8(1) is changing to clarify that the purpose of rule R930-5-8 is to assign responsibility for maintenance of railroad crossings through state owned right of way as described in R930-5-8, unless a prior signed written agreement to the contrary applies. This change also clarifies the Department's original intent was that "responsibility" includes the obligation to perform and pay for the maintenance.	
<b>6. Regular rulemaking would:</b>	<input checked="" type="checkbox"/> cause an imminent peril to the public health, safety, or welfare; <input type="checkbox"/> cause an imminent budget reduction because of budget restraints or federal requirements; or <input type="checkbox"/> place the agency in violation of federal or state law.	
<b>Specific reason and justification:</b>	A dispute exists over interpretation of this rule that will lead to delay in a planned construction project. The project in question is for the purpose of improving safety at an intersection on a state road and a railroad crossing. A delay in the project will create an imminent peril to the public health, safety, or welfare at the intersection according to the Logan City Safety Manager.	

**Fiscal Information**

<b>7. Aggregate anticipated cost or savings to:</b>		
<b>A) State budget:</b>	The Department anticipates this rule change will lead to a savings to the state budget because it will avoid a costly legal dispute.	
<b>B) Local governments:</b>	This change may lead to savings to the budgets of local governments by avoiding current and possible future disputes over maintenance costs at railroad crossings.	

**C) Small businesses** ("small business" means a business employing 1-49 persons):

This change may lead to savings to the budgets of small businesses by avoiding unnecessary delays in maintenance and construction projects related to railroad crossings through state owned right of way.

**D) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

The Department does not anticipate any costs or savings to the budgets of persons other than small businesses, non-small businesses, state, or local government entities because it does not apply to persons other than railroads that own tracks that cross through highway right of way.

**8. Compliance costs for affected persons:**

This rule will not lead to costs or savings to affected persons because it clarifies the Departments intent and does not change anything.

**9. A) Comments by the department head on the fiscal impact this rule may have on businesses:**

This rule change will not have a fiscal impact on businesses in general.

**B) Name and title of department head commenting on the fiscal impacts:**

Carlos M. Braceras, Executive Director

**Citation Information**

**10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 54-4-15	Section 41-6a-1205	
Section 54-4-14		
Section 72-1-201		

**Incorporations by Reference Information**

(If this rule incorporates more than two items by reference, please include additional tables)

**11. A) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	First Incorporation
<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Date Issued</b>	
<b>Issue, or version</b>	

**B) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	Second Incorporation
<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Date Issued</b>	
<b>Issue, or version</b>	

**Agency Authorization Information**

**To the agency:** Information requested on this form is required by Sections 63G-3-301, 304, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date and publication in the *Utah State Bulletin*.

<b>Agency head or designee, and title:</b>	Carlos M. Braceras Executive Director 	<b>Date</b> (mm/dd/yyyy):	7/29/2020
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**R930-5-8. Maintenance.**

(1) Responsibility for maintenance is as described in this section unless a [~~separate~~] prior signed written agreement applies. Responsibility means the obligation to perform and pay for the maintenance.

(a) The Railroad is responsible for the maintenance of all Railroad Passive Warning Devices and Active Warning Devices within the Railroad right-of-way.

(b) If the Railroad has a property interest in the right-of-way, the Railroad is responsible for the maintenance of Crossing material within the Railroad right-of-way and two feet beyond each outside rail for Crossings without concrete crossing panels or edge of concrete crossing panel.

(c) On a temporary Highway Detour Crossing, the Railroad shall be responsible for the maintenance of pavement, Active Warning Devices, and Passive Warning Devices within the Railroad right-of-way at expense of the Highway Authority.

(d) When the Railroad alters the railway due to track and ballast maintenance, the Railroad shall coordinate their work with the Highway Authority so the pavement approaches can be adjusted to provide a smooth and level Crossing surface.

(e) When the Highway Authority changes the Highway profile, through construction or maintenance activities, the Highway Authority shall coordinate their work with the Railroad so the tracks can be adjusted to provide as smooth and level a Crossing surface as possible.

(f) Where a Highway structure overpasses a Railroad, the Highway Authority is responsible for the maintenance of the entire structure and its approaches.

(g) Where a Highway underpasses a Railroad and the Railroad owns the right-of-way in fee title, the Highway Authority is responsible for the maintenance of the Highway and the entire structure below and including the deck plate, girders, handrail, and parapets. The Railroad is responsible for the maintenance of the ballast, ties, rails and any portion of the supporting structure above the top of the ballast deck plate between parapets.

(i) If the Highway Authority owns the right-of-way in fee title, the Railroad is responsible for the maintenance of the entire structure unless a [~~separate~~] prior signed written agreement applies.

(ii) Cost of repairing damages to a Highway or a Highway structure, occasioned by collision, equipment failure, or derailment of the Railroad's equipment shall be borne by the Railroad.

(h) Responsibility for maintenance of private industrial trackage not owned by a Railroad that crosses a Highway shall be as follows:

(i) When a facility, plant, or property owner receives goods and services from a Railroad over private industrial trackage that crosses a Highway, maintenance of the Crossing shall be the responsibility of the industry owning the trackage, or as agreed to by the parties.

(ii) When the Crossing becomes a safety hazard to vehicles and is not maintained, the Department and/or the Railroad shipping the goods and services shall notify the industry owning the trackage in writing to maintain or replace the Crossing material.

(iii) If the industry owning the trackage does not maintain or replace the Crossing material by a specified date, the Department shall order the Railroad to cease and desist operations across the Crossing.

(iv) If the industry owning the trackage does not respond to the order to maintain or replace the Crossing material the Department shall arrange to have the Crossing material replaced and bill the industry owning the trackage for the expenses to repair the trackage.

# **EXHIBIT 2**

**NOTICE OF PROPOSED RULE**

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):

R930-5-8

Filing No. 53084

**Agency Information**

<b>1. Department:</b>	Transportation	
<b>Agency:</b>	Preconstruction	
<b>Room no.:</b>	Administrative Suite, First floor	
<b>Building:</b>	Calvin Rampton	
<b>Street address:</b>	4501 S 2700 W	
<b>City, state:</b>	Taylorsville, UT	
<b>Mailing address:</b>	PO Box 148455	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-8455	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Linda Hull	801-965-4253	lhull@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	ledwards@agutah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R930-5-8. Maintenance
<b>3. Purpose of the new rule or reason for the change</b> (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):
The Department of Transportation (Department) proposes this change to Section R930-5-8 to clarify the Department's intent when it originally promulgated this rule in 2008.
<b>4. Summary of the new rule or change:</b>
The change to Section R930-5-8 adds text to make it clear that Section R930-5-8 requires Railroads to maintain their railroad crossings through state owned right of way and to pay for maintenance of their railroad crossings through state owned right of way. The Department's original intent was that meaning of the phrase "responsibility for maintenance" includes the obligation to perform and pay for the maintenance of railroad crossings.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This proposed rule change will not lead to additional costs or savings to the state's budget because it only updates regulations the state is already responsible for enforcing.
<b>B) Local governments:</b>
This proposed rule change will not lead to additional costs or savings to local governments because it does not apply to them.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
This proposed rule change will not lead to additional costs or savings to small businesses because it does not apply to them, generally.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
This proposed rule change will not lead to additional costs or savings to non-small businesses because it does not apply to

them, generally.

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

This proposed rule change will not lead to additional costs or savings to persons other than small businesses, non-small businesses, state, or local government entities because it does not apply to them.

**F) Compliance costs for affected persons:**

This proposed rule change will not lead to compliance costs for persons affected by this proposed rule change that they do not already experience. This proposed change only updates existing requirements.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

Carlos M. Braceras, PE, Executive Director of the Department of Transportation, approves this regulatory impact analysis.

**6. A) Comments by the department head on the fiscal impact this rule may have on businesses:**

This proposed rule change will not have a fiscal impact on businesses, generally.

**B) Name and title of department head commenting on the fiscal impacts:**

Carlos M. Braceras, PE, Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 41-6a-1205	Section 54-4-14	Section 54-4-15
Section 72-1-201		

**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until (mm/dd/yyyy):** 11/16/2020

<b>10. This rule change MAY become effective on (mm/dd/yyyy):</b>	11/23/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Carlos M. Braceras, PE, Executive Director	<b>Date (mm/dd/yyyy):</b>	09/18/2020
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**R930. Transportation, Preconstruction.**

**R930-5. Establishment and Regulation of At-Grade Railroad Crossings.**

**R930-5-8. Maintenance.**

(1) Responsibility for maintenance is as described in this section unless a ~~separate~~ prior signed written agreement applies. Responsibility means the obligation to perform and pay for the maintenance.

(a) The Railroad is responsible for the maintenance of all Railroad Passive Warning Devices and Active Warning Devices within the Railroad right-of-way.

(b) If the Railroad has a property interest in the right-of-way, the Railroad is responsible for the maintenance of Crossing material within the Railroad right-of-way and two feet beyond each outside rail for Crossings without concrete crossing panels or edge of concrete crossing panel.

(c) On a temporary Highway Detour Crossing, the Railroad shall be responsible for the maintenance of pavement, Active Warning Devices, and Passive Warning Devices within the Railroad right-of-way at expense of the Highway Authority.

(d) When the Railroad alters the railway due to track and ballast maintenance, the Railroad shall coordinate their work with the Highway Authority so the pavement approaches can be adjusted to provide a smooth and level Crossing surface.

(e) When the Highway Authority changes the Highway profile, through construction or maintenance activities, the Highway Authority shall coordinate their work with the Railroad so the tracks can be adjusted to provide as smooth and level a Crossing surface as possible.

(f) Where a Highway structure overpasses a Railroad, the Highway Authority is responsible for the maintenance of the entire structure and its approaches.

(g) Where a Highway underpasses a Railroad and the Railroad owns the right-of-way in fee title, the Highway Authority is responsible for the maintenance of the Highway and the entire structure below and including the deck plate, girders, handrail, and parapets. The Railroad is responsible for the maintenance of the ballast, ties, rails and any portion of the supporting structure above the top of the ballast deck plate between parapets.

(i) If the Highway Authority owns the right-of-way in fee title, the Railroad is responsible for the maintenance of the entire structure unless a ~~separate~~ prior signed written agreement applies.

(ii) Cost of repairing damages to a Highway or a Highway structure, occasioned by collision, equipment failure, or derailment of the Railroad's equipment shall be borne by the Railroad.

(h) Responsibility for maintenance of private industrial trackage not owned by a Railroad that crosses a Highway shall be as follows:

(i) When a facility, plant, or property owner receives goods and services from a Railroad over private industrial trackage that crosses a Highway, maintenance of the Crossing shall be the responsibility of the industry owning the trackage, or as agreed to by the parties.

(ii) When the Crossing becomes a safety hazard to vehicles and is not maintained, the Department ~~and~~ or the Railroad shipping the goods and services shall notify the industry owning the trackage in writing to maintain or replace the Crossing material.

(iii) If the industry owning the trackage does not maintain or replace the Crossing material by a specified date, the Department shall order the Railroad to cease and desist operations across the Crossing.

(iv) If the industry owning the trackage does not respond to the order to maintain or replace the Crossing material the Department shall arrange to have the Crossing material replaced and bill the industry owning the trackage for the expenses to repair the trackage.

**KEY: railroad, crossing, transportation, safety**

**Date of Enactment or Last Substantive Amendment: ~~April 21, 2011~~2020**

**Notice of Continuation: November 2, 2016**

**Authorizing, and Implemented or Interpreted Law: 41-6a-1205; 54-4-14; 54-4-15; 72-1-201**

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# **EXHIBIT 3**

**NOTICE OF PROPOSED RULE**

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):

R930-5-8

Filing No. 53184

**Agency Information**

<b>1. Department:</b>	Transportation	
<b>Agency:</b>	Preconstruction	
<b>Room no.:</b>	Administrative Suite, First Floor	
<b>Building:</b>	Calvin Rampton	
<b>Street address:</b>	4501 S 2700 W	
<b>City, state:</b>	Taylorsville, UT	
<b>Mailing address:</b>	PO Box 148455	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-8455	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Linda Hull	801-965-4253	lhull@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	ledwards@agutah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R930-5-8. Maintenance
<b>3. Purpose of the new rule or reason for the change</b> (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):
The Department of Transportation (Department) proposes this change to Section R930-5-8 to clarify the Department's intent when it originally promulgated this rule.  The Department filed proposed changes to this rule as Filing No. 53084 on September 23, 2020. The Office of Administrative Rules published the proposed changes in the October 15, 2020, Utah State Bulletin (2020-20). The Department subsequently received informal comments on the analysis that made the Department realize parts of the analysis may be confusing, misleading, or inaccurate. The Department is filing this amendment with a rewritten analysis that removes confusing, misleading, or inaccurate statements, and will let Filing No. 53084 lapse.
<b>4. Summary of the new rule or change:</b>
The Department proposes changing Subsection R930-5-8(1) to clarify the Railroads' and Highway Authorities' allocated responsibility for performing and paying the costs of maintenance described in Subsection R930-5-8(1) and the exception to the allocation, which is a prior signed written agreement that changes the responsibilities.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This proposed rule change will not lead to additional costs or savings to the state's budget because it only clarifies regulations the state is already responsible for enforcing.
<b>B) Local governments:</b>
This proposed rule change will not lead to additional costs to local governments. However, the proposed change may save local governments from incurring new costs to maintain railroad crossings that affect local governments' highways.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):

This proposed rule change will not lead to additional costs or savings to small businesses because it only applies to railroad companies. The proposed rule change will not lead to new expenses to railroads that are small businesses. Historically, railroad companies have paid the costs to maintain their crossings that affect highway authorities.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

This proposed rule change will not lead to additional costs or savings to non-small businesses because it only applies to railroad companies. The proposed rule change will not lead to new costs to large business railroads. Historically, railroad companies have paid the costs to maintain their crossings that affect highway authorities.

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

This proposed rule change will not lead to additional costs or savings to persons other than small businesses, non-small businesses, state, or local government entities because it only applies to railroads and government entities.

**F) Compliance costs for affected persons:**

This proposed rule change will not lead to compliance costs for persons affected by this proposed rule change that they do not already experience. This proposed change only clarifies existing requirements.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

Carlos M. Bracerias, PE, Executive Director of the Department of Transportation, approves this regulatory impact analysis.

**6. A) Comments by the department head on the fiscal impact this rule may have on businesses:**

This proposed rule change will not have a fiscal impact on businesses, generally.

**B) Name and title of department head commenting on the fiscal impacts:**

Carlos M. Bracerias, PE, Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 41-6a-1205	Section 54-4-14	Section 54-4-15
Section 72-1-201		

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until (mm/dd/yyyy):** 12/31/2020

**10. This rule change MAY become effective on (mm/dd/yyyy):** 01/07/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Carlos M. Braceras, PE, Executive Director	<b>Date (mm/dd/yyyy):</b>	11/05/2020
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**R930. Transportation, Preconstruction.**

**R930-5. Establishment and Regulation of At-Grade Railroad Crossings.**

**R930-5-8. Maintenance.**

(1) Responsibility for maintenance is as described in this section unless a [separate]prior signed written agreement applies. Responsibility means the obligation to perform and pay for the maintenance.

(a) The Railroad is responsible for the maintenance of all Railroad Passive Warning Devices and Active Warning Devices within the Railroad right-of-way.

(b) If the Railroad has a property interest in the right-of-way, the Railroad is responsible for the maintenance of Crossing material within the Railroad right-of-way and two feet beyond each outside rail for Crossings without concrete crossing panels or edge of concrete crossing panel.

(c) On a temporary Highway Detour Crossing, the Railroad shall be responsible for the maintenance of pavement, Active Warning Devices, and Passive Warning Devices within the Railroad right-of-way at expense of the Highway Authority.

(d) When the Railroad alters the railway due to track and ballast maintenance, the Railroad shall coordinate their work with the Highway Authority so the pavement approaches can be adjusted to provide a smooth and level Crossing surface.

(e) When the Highway Authority changes the Highway profile, through construction or maintenance activities, the Highway Authority shall coordinate their work with the Railroad so the tracks can be adjusted to provide as smooth and level a Crossing surface as possible.

(f) Where a Highway structure overpasses a Railroad, the Highway Authority is responsible for the maintenance of the entire structure and its approaches.

(g) Where a Highway underpasses a Railroad and the Railroad owns the right-of-way in fee title, the Highway Authority is responsible for the maintenance of the Highway and the entire structure below and including the deck plate, girders, handrail, and parapets. The Railroad is responsible for the maintenance of the ballast, ties, rails and any portion of the supporting structure above the top of the ballast deck plate between parapets.

(i) If the Highway Authority owns the right-of-way in fee title, the Railroad is responsible for the maintenance of the entire structure unless a [separate]prior signed written agreement applies.

(ii) Cost of repairing damages to a Highway or a Highway structure, occasioned by collision, equipment failure, or derailment of the Railroad's equipment shall be borne by the Railroad.

(h) Responsibility for maintenance of private industrial trackage not owned by a Railroad that crosses a Highway shall be as follows:

(i) When a facility, plant, or property owner receives goods and services from a Railroad over private industrial trackage that crosses a Highway, maintenance of the Crossing shall be the responsibility of the industry owning the trackage, or as agreed to by the parties.

(ii) When the Crossing becomes a safety hazard to vehicles and is not maintained, the [D]department [and/or] the Railroad shipping the goods and services shall notify the industry owning the trackage in writing to maintain or replace the Crossing material.

(iii) If the industry owning the trackage does not maintain or replace the Crossing material by a specified date, the [D]department shall order the Railroad to cease and desist operations across the Crossing.

(iv) If the industry owning the trackage does not respond to the order to maintain or replace the Crossing material the [D]department shall arrange to have the Crossing material replaced and bill the industry owning the trackage for the expenses to repair the trackage.

**KEY: railroad, crossing, transportation, safety**

**Date of Enactment or Last Substantive Amendment:** [April 21, 2011]2021

**Notice of Continuation:** November 2, 2016

**Authorizing, and Implemented or Interpreted Law: 41-6a-1205; 54-4-14; 54-4-15; 72-1-201**

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# **EXHIBIT 4**

Sarah Goldberg  
Tel 801.478.6912  
goldbergsa@gtlaw.com

November 16, 2020

**VIA HAND DELIVERY**

Carlos M Braceras  
Executive Director  
Utah Department of Transportation  
4501 South 2700 West  
Administrative Suite, First Floor  
Taylorsville, UT 84129

**VIA EMAIL**

Linda Hull  
[lhull@utah.gov](mailto:lhull@utah.gov)

James Palmer  
[jimpalmer@agutah.gov](mailto:jimpalmer@agutah.gov)

Lori Edwards  
[ledwards@agutah.gov](mailto:ledwards@agutah.gov)

Re: Union Pacific Railroad's Comments on Proposed Amendment to Utah Admin. Code R930-5-8; Hearing Requested

Dear Mr. Braceras:

Union Pacific Railroad respectfully submits the following comments to the Utah Department of Transportation's ("UDOT") proposed amendments (the "Amendments") to Utah Admin. Code R930-5-8 (the "Rule"). Union Pacific submitted a separate request for a hearing on the Amendments on October 30, 2020.

Union Pacific is a "Railroad," as defined in Utah Admin. Code R930-5-3(16). There are approximately 547 Union Pacific at-grade public crossings in the state of Utah, including 267 active crossings and 280 passive crossings. The safety of the public, its rail users, and its employees is Union Pacific's highest priority. As such, Union Pacific understands the importance of maintaining these crossings and is and always has been committed to working with state and local road authorities to coordinate such maintenance and to ensure that the crossings are safe and well maintained.

The Rule assigns the “responsibility for maintenance” of at-grade rail crossings to certain stakeholders in various circumstances. The Amendments amend the Rule to state that such “responsibility” means “the obligation to perform and pay for the maintenance” unless “a prior signed written agreement applies.” While Union Pacific appreciates UDOT’s efforts to clarify the Rule, the Amendments effectively prohibit cooperative agreements between a railroad and state and local road authorities and impermissibly categorically imposes 100% of maintenance costs on the railroad in certain instances. Union Pacific thus urges UDOT not to adopt the Amendments.

**A. The Amendments Would Effectively End Maintenance Agreements with State and Local Road Authorities.**

Much goes into ensuring that at-grade crossings are properly maintained, including project conception, diagnostic work, preliminary engineering, design, and actual construction. Furthermore, maintenance often requires the disturbance or alteration of the road surface outside of the railroad’s right-of-way. These issues necessitate coordination with state and local road authorities and are typically handled through agreements between the railroad and the road authority.

Union Pacific has a long history of working cooperatively and in good faith with UDOT and other local road authorities in maintaining crossings within the state of Utah. Typically, Union Pacific enters into agreements that set forth the terms and conditions of such maintenance, including the allocation of costs. Specifically, Union Pacific has entered into agreements with the City of West Jordan and the City of Logan whereby those cities agreed to reimburse Union Pacific for 100% of Union Pacific’s costs incurred relating to the relevant crossings. *See* March 9, 2018 Public Highway At-Grade Crossing Agreement between Union Pacific, Utah Transit Authority, Savage Bingham & Garfield Railroad, and the City of West Jordan § 7 (Attached as Exhibit A); August 11, 2010 Public Road At-Grade Crossing Agreement between Union Pacific and City of Logan, Arts. 7 & 11 (Attached as Exhibit B). Union Pacific also understands that other Railroads, such as the Utah Transit Authority, utilize such agreements to allocate all costs for at-grade crossing improvements to the local road authority. *See, e.g.*, August 16, 2013 Grade Crossing Improvement Agreement between Utah Transit Authority and Spanish Fork City Corporation, Art. VI (Attached as Exhibit C). Utah Admin. Code R930-5-10 explicitly permits such agreements.

The Rule currently acknowledges this practice, excepting its maintenance allocations in instances where “a separate agreement applies.” Rule §§ (1) & (1)(g)(i). The Amendments strike this exception by removing the “unless a separate agreement” language and replace it with “unless a prior signed written agreement applies.” Amendments §§ (1) & (1)(g)(i). This change effectively prohibits, not just Union Pacific, but any Railroad from entering into such agreements with the state or local road authority relating to the maintenance of a crossing.

Such agreements, however, are imperative to effectively maintain crossings. The U.S. Department of Transportation’s *Highway-Rail Crossing Handbook* (3d Ed.) (the “Handbook”),<sup>1</sup>

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<sup>1</sup> The Handbook is available at [https://safety.fhwa.dot.gov/hsip/xings/com\\_roaduser/fhwasa18040/](https://safety.fhwa.dot.gov/hsip/xings/com_roaduser/fhwasa18040/)

which provides current practices and requirements for at-grade crossings, sets forth the relationship between the railroad and the state and local road authorities when it comes to crossing projects and the attendant need for construction and maintenance agreements. The Handbook explains that such projects necessarily involve multiple parties, including the state, the railroad, and oftentimes a local road authority and that the “[c]urrent practice is to define project responsibilities of the highway authority and the railroad in construction and maintenance . . . agreements developed prior to initiation of final design and construction improvements.” Handbook at 143. It also explains that such agreements should establish such details as the project location, scope of work, standards to be applied, basis of payment, and billing procedures. *Id.*

Other provisions of the Rule (which are left unchanged by the Amendments) also highlight the importance and necessity for agreements between the Railroad and the state and local road authorities. Certain provisions of the Rule require that the Railroad coordinate maintenance with the “Highway Authority.” Section (1)(d) requires the Railroad to coordinate with the Highway Authority when it alters the railway when conducting maintenance so that pavement may be adjusted to provide a smooth and level crossing surface. Furthermore, the Rule only provides that the Railroad is responsible for maintenance within its right-of-way and two feet beyond each outside rail or edge. Rule § (1)(b). Oftentimes, to adequately maintain the crossing, work must be done on the area outside of the Railroad’s right-of-way or the two-foot boundary in which the Railroad has no property interest or right to disturb. The only way to safely and effectively perform such maintenance is to do so through coordination and agreement with the Highway Authority.

Accordingly, the Amendments’ effective prohibition on future maintenance agreements would hinder maintenance going forward for both the Railroad and the Highway Authority.

**B. Categorical Allocation of 100% of the Costs of Maintenance to the Railroad is Impermissible.**

Union Pacific also disagrees with the Amendments in that they seek to categorically impose 100% of the costs of maintenance on the Railroad in certain circumstances. Such an allocation is impliedly preempted by the Interstate Commerce Commission Termination Act (“ICCTA”), is not fair and reasonable, and is inconsistent with other provisions of the Rule.

Union Pacific also notes that federal authorities expressly prohibit states from allocating maintenance costs to the Railroad when federal funds are involved. In the case where the Highway Authority receives federal funds for an at-grade crossing improvement, 23 C.F.R. § 646.210(a) expressly prohibits states from “requiring railroads to share in the cost of work for the elimination of hazards at [federally funded] railroad-highway crossings.”

**1. The Amendments are Subject to Implied Preemption.**

Congress enacted the ICCTA in 1995, which eliminated the role of local and state regulation over rail operations. Specifically, the ICCTA vests the Surface Transportation Board—an independent federal agency—with exclusive jurisdiction over transportation by rail

carriers. 49 U.S.C. § 10501(b). The ICCTA includes an express preemption provision: “the remedies provided under this part with respect to the regulation of transportation are exclusive and preempt the remedies provided under Federal or state law.” *Id.*

Such categorical and disproportionate allocations are both unconstitutional and subject to as-applied ICCTA preemption. “The purpose of the ICCTA is to prevent the development of a patchwork of local and state regulations affecting the railroad industry, as the enactment of differing standards and requirements would inevitably be detrimental to the orderly functioning of the industry as a whole.” *City of Cayce v. Norfolk S. Ry. Co.*, 706 S.E.2d 6, 11 (S.C. 2011). In applying the as-applied ICCTA preemption, the apportionment must be fair and reasonable.

## **2. The Categorical Allocation Set Forth in the Amendments is Not Fair and Reasonable.**

Imposing 100% of the cost of maintenance on the Railroad is not fair and reasonable and violates the Railroad’s due process rights. Utah courts have recognized that the responsibility for the safety of rail crossings is *shared* with the Railroad. *See Duncan v. Union Pacific R. Co.*, 790 P.2d 595, 599 & n.11 (Utah 1990). Determining how the responsibility should be shared must be done on a case-by-case basis rather than a categorical 100% allocation to one side. Such a categorical allocation to the Railroad violates its due process rights. In other jurisdictions, courts have routinely refused to accept such carte blanche allocations without consideration of other factors. *See, e.g., Chi., Burlington & Quincy R.R. v. Ill. Commerce Comm’n*, 410 Ill. 60, 66 (Ill. 1951) (explaining that “[t]he shifting of the financial burden entirely upon the railroad corporation, without sufficient basis in the testimony, constitutes an infringement upon the constitutional rights of appellant”); *Se Pa. Transp. Auth. (SEPTA) v. Pa. Pub. Util. Comm’n*, 592 A.2d 797 (Pa. Cmwlth. 1991) (requiring consideration of relevant factors and that the order be just and reasonable); *Consol. Rail. Corp. v. Pub. Utilities Comm’n of Ohio*, 547 N.E.2d 1176, 1180 (Ohio 1989) (explaining that the apportionment must be supported by “sufficient probative evidence” and that the Court would not automatically accept any allocation suggested); *Atchison, Topeka & Santa Fe Railway Co. v. Public Utilities Commission*, 190 Colo. 378, 382 (1976) (explaining that “[t]he fundamental rule . . . is that allocation of costs to a railroad does not abridge due process rights if it is fair based on the facts of each particular case.”).

The Amendment would impose 100% of maintenance costs on the Railroad in certain scenarios regardless of any consideration of other circumstances. This is true even though, in many cases, the Railroad receives no ascertainable benefit from the required maintenance. *See* 23 C.F.R. § 646.210(b)(1) (“Projects for grade crossing improvements are deemed to be of no ascertainable net benefit to the railroads . . .”). Indeed, in many instances, but for the presence of the road crossing, which benefits the public rather than the Railroad, the Railroad’s maintenance costs would be significantly less. Allocating 100% of the cost of maintenance to the Railroad without considering any other factors is not fair and reasonable and violates the Railroad’s due process rights.

**3. The Language of the Amendments is Inconsistent with Other Sections of the Rule.**

Equating “responsibility” with “the obligation to perform and pay for the maintenance” is also inconsistent with other sections of the Rule that explicitly split such obligations. Specifically, section (1)(c) of the Rule provides that “[o]n a temporary Highway Detour Crossing, the Railroad shall be responsible for the maintenance of pavement, Active Warning Devices, and Passive Warning Devices within the Railroad right-of-way at expense of the Highway Authority.” The Amendments equating responsibility with the obligation to pay makes no sense in that section.

**C. The Notice of Proposed Rulemaking Incorrectly States that the Amendments Would Have No Compliance Costs for Affected Persons.**

Finally, Union Pacific notes that the statement in Section 5.F of the Notice of Proposed Rule that the Amendments “will not lead to compliance costs for persons affected by this proposed rule change that they do not already experience” because the Amendment “only updates existing requirements” is incorrect. As discussed above, Union Pacific routinely enters into cost-sharing agreements with state and local road authorities regarding the maintenance of its crossings. Allocating 100% of the maintenance costs of certain types of crossings to Union Pacific would be a significant change and would impose a significant financial burden on Union Pacific.

Union Pacific appreciates UDOT’s consideration of its comments and is happy to discuss any of these issues with UDOT.

Respectfully,



Sarah Goldberg

SG:

# Exhibit A

**PUBLIC HIGHWAY AT-GRADE CROSSING**

7000 SOUTH  
DOT NUMBER 254962R  
MILE POST 7.45 – GARFIELD SUBDIVISION (LEASED TO SBG)  
KEARNS, SALT LAKE COUNTY, UTAH

THIS AGREEMENT ("Agreement") is made and entered into as of the 9<sup>th</sup> day of March, 2018 ("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 ("**UPRR**"); **UTAH TRANSIT AUTHORITY**, a public transit district organized under Title 17B, Chapter 2a, Part 8, Utah Code Annotated 1953, as amended ("**UTA**"); **SAVAGE BINGHAM & GARFIELD RAILROAD** a Utah corporation ("**SBGR**") and **THE CITY OF WEST JORDAN** a municipal corporation or political subdivision of the State of Utah to be addressed at 8000 South, 2<sup>nd</sup> Floor, Redwood Road, West Jordan UT 84088 ("**Public Authority**"). UPRR, UTA and SBGR are hereinafter sometimes collectively referred to as the "Railroad".

**RECITALS:**

UPRR owns the Garfield Subdivision, which it leases under separate agreements for different purposes to UTA and SBGR.

The Public Authority desires to undertake as its project (the "Project") the conversion of a closed private road crossing to a new at grade public road crossing over 7000 South DOT Number 254962R at Railroad's Milepost 7.45 on Railroad's Garfield Subdivision at or near Kearns, Salt Lake County, Utah (the "Roadway"). The portion of the Road within the Railroad's property is hereinafter referred to as the "Crossing Area". The Crossing Area which is generally shown on the print marked **Exhibit A** and more specifically shown on the print marked **Exhibit A-1** and the new area is described in the legal description marked **Exhibit A-2** with each exhibit being attached hereto and hereby made a part hereof.

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

**AGREEMENT:**

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

**Section 1. EXHIBIT B**

The general terms and conditions marked **Exhibit B**, are attached hereto and hereby made a part hereof.

**Section 2. RAILROAD GRANTS RIGHT**

For and in consideration of the sum of **SIXTY THREE THOUSAND FIVE HUNDRED DOLLARS (\$63,500.00)** to be paid by the Public Authority to UPRR upon the execution and delivery of this Agreement and in further consideration of the Public Authority's agreement to perform and comply with the terms of this Agreement, the Railroad hereby grants to the Public Authority the right to construct, maintain and repair the Roadway on and across the Crossing Area.

**Section 3. DEFINITION OF CONTRACTOR**

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the Public Authority 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.

**Section 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 Authority shall require the Contractor to:

- execute UPRR and UTA's then current Contractor's Right of Entry Agreement
- obtain the then current insurance required in the Contractor's Right of Entry Agreements; and
- provide such insurance policies, certificates, binders and/or endorsements to UPRR and UTA.

B. UPRR's current Contractor's Right of Entry Agreement is marked **Exhibit C**, attached hereto and hereby made a part hereof. The Public Authority 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:

UPRR:           Manager - Contracts  
                  Union Pacific Railroad Company  
                  Real Estate Department  
                  1400 Douglas Street, Mail Stop 1690  
                  Omaha, NE 68179-1690  
                  UP File Folder No. 3009-17

D. If the Public Authority's own employees will be performing any of the Project work, the Public Authority may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

**Section 5. FEDERAL AID POLICY GUIDE**

If the Public Authority 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 6. NO PROJECT EXPENSES TO BE BORNE BY RAILROAD**

The Public Authority 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 7. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO PUBLIC AUTHORITY; PUBLIC AUTHORITY'S PAYMENT OF BILLS**

The Public Authority agrees to reimburse any work performed by Railroad, and shall pay UPRR, SBGR and/or UTA, as applicable, within thirty (30) days of its receipt of billing from the UPRR, SBGR and/or UTA, as applicable, for one hundred percent (100%) of all actual costs incurred by UPRR, SBGR and/or UTA, as applicable, 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, maintenance, 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 8. PLANS**

A. The Public Authority, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Project and the

Roadway and submit such plans and specifications to UPRR, SBGR and UTA 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 each of the Railroad's Assistant Vice President Engineering-Design, or their authorized representatives, 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 Authority 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 Authority or Contractor on the Plans is at the risk of the Public Authority and Contractor.

#### **Section 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 Authority 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.

**Section 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 Authority in the event the Public Authority 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 Authority 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.

**Section 11. CONDITIONS TO BE MET BEFORE PUBLIC AUTHORITY CAN COMMENCE WORK**

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

- (i) UPRR, SBGR and UTA have executed this Agreement.
- (ii) The Railroad has provided to the Public Authority 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.

**Section 12. FUTURE PROJECTS**

Future projects involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the Roadway shall not commence until Railroad and Public

Authority agree on the plans for such future projects, cost allocations, right of entry terms and conditions and temporary construction rights, terms and conditions.

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

A. Public Authority 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 Authority.

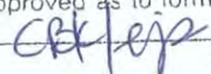
**Section 14. SPECIAL PROVISIONS PERTAINING TO AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

If the Public Authority will be receiving American Recovery and Reinvestment Act ("ARRA") funding for the Project, the Public Authority agrees that it is responsible in performing and completing all ARRA reporting documents for the Project. The Public Authority 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 Authority and not of the Railroad, and (ii) the Public Authority shall not delegate any ARRA reporting responsibilities to the Railroad. The Public Authority also confirms and acknowledges that (i) the Railroad shall provide to the Public Authority 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 Authority to perform and complete the ARRA reporting documents. The Railroad confirms that the Public Authority and the Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for the Project as provided in Section 11 of **Exhibit B** of this Agreement.

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

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

Approved as to form.

  
Attorney

By:   
Printed Name: DANIEL A. LEIS  
Title: D.A. Leis

**Senior Director - Real Estate**

**SAVAGE BINGHAM & GARFIELD  
RAILROAD**

By: *Donald W. Alexander*  
Printed Name: Donald W. Alexander  
Title: CVP

**THE CITY OF WEST JORDAN**



By: *[Signature]*  
Printed Name: Kim V. Zolfe  
Title: Mayor

Pursuant to Resolution/Order No. 17-240  
dated: Dec 20, 2017 hereto attached

**UTAH TRANSIT AUTHORITY**

By: *Paul Drake*  
Printed Name: PAUL B. DRAKE  
Title: SR MANAGER REAL ESTATE & TOD

Approved As To Form  
*[Signature]*  
UTA Legal Counsel

By: *Mailia Lauto'o*  
Mailia Lauto'o  
Manager of Property Admin.  
Utah Transit Authority

**EXHIBIT A  
TO  
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

**Exhibit A** will be a print showing the Crossing Area (see Recitals)



**EXHIBIT "A"**  
**RAILROAD LOCATION PRINT**  
**FOR AN NEW AT GRADE**  
**PUBLIC ROAD CROSSING AGREEMENT**



DOT No. 254962R  
M.P. 7.45 Garfield (SBG) Subdivision  
Kearns, Salt Lake County, Utah  
At Grade Public Road Crossing.

**UNION PACIFIC RAILROAD COMPANY**

GARFIELD (SBG) SUBDIVISION  
RAILROAD MILE POST 7.45  
KEARNS, SALT LAKE COUNTY, UTAH

To accompany an agreement with  
**THE CITY OF WEST JORDAN AND ITS CONTRACTOR**  
covering an At Grade Public Road Crossing.

Folder No. 3009-17

Date: August 23, 2016

**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**

**Exhibit A-1** will be a detailed print showing the Crossing Area (see Recitals)



**LEGEND:**

CROSSING AREA

TOTAL CROSSING AREA = 9,910 SQ. FT. +/-

UPRRCO. R/W OUTLINED

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A-1"

**UNION PACIFIC RAILROAD COMPANY**

WEST JORDAN, SALT LAKE COUNTY, UTAH

M.P. 7.45 - GARFIELD SUB. (LEASED TO SBG)

TO ACCOMPANY AGREEMENT WITH

CITY OF WEST JORDAN

MAP DRGW V-7B / 1

SCALE: 1" = 100'

OFFICE OF REAL ESTATE

OMAHA, NEBRASKA DATE: 10-23-2016

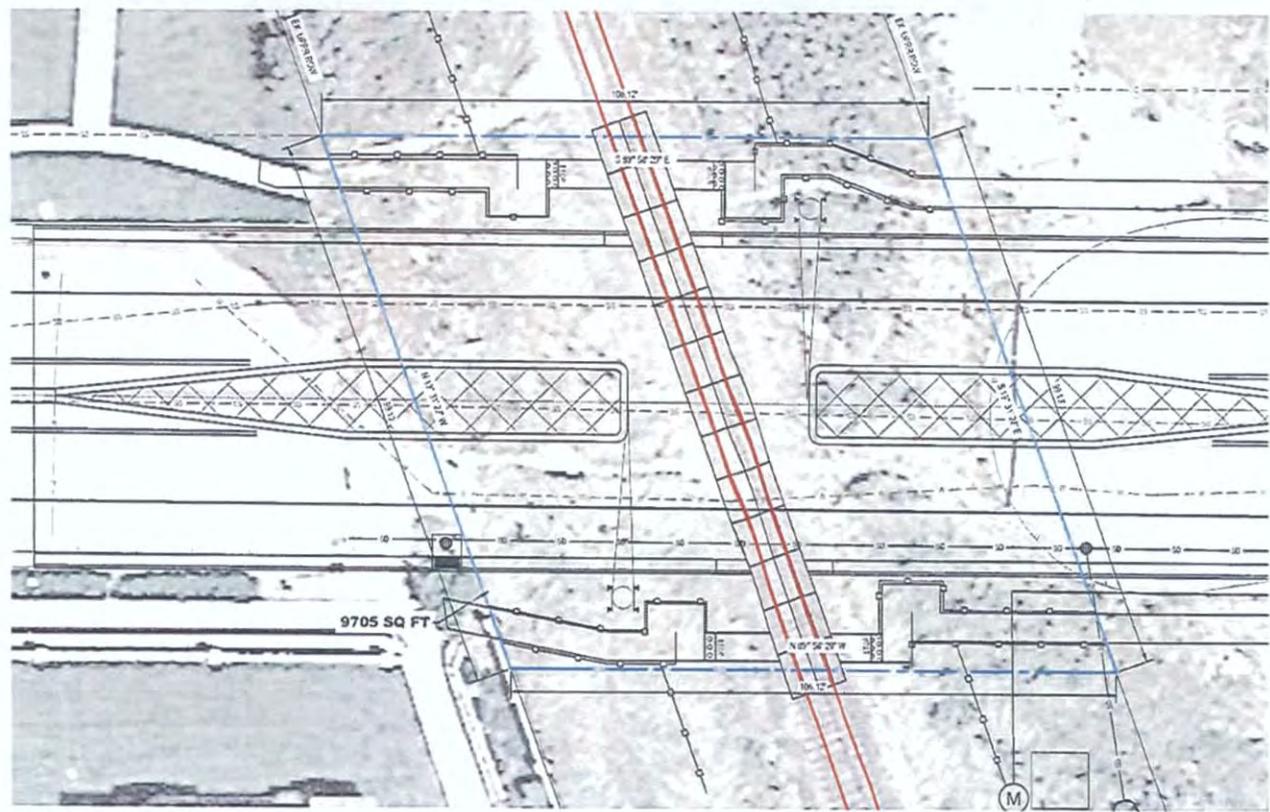
PJB FILE: 0300917

CADD FILENAME	0300917
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SCAN FILENAME	UTV7B001-300917.TIF
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**EXHIBIT A-2  
TO  
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

**Exhibit A-2** will be the legal description of the Crossing Area (see Recitals)



WEST SIDE OF CROSSING VIEWING EAST



EAST SIDE OF CROSSING VIEWING WEST

**RIGHT OF WAY DESCRIPTION**

A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 2 SOUTH, RANGE 1 WEST, AND THE NORTHWEST QUARTER OF SECTION 36 OF SAID TOWNSHIP AND RANGE, SALT LAKE GAGE 5 MERIDIAN, LOCATED IN WEST JORDAN, UTAH AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT THAT IS 33.89 FEET NORTH 89° 56' 29" EAST ALONG THE NORTH-SOUTH LINE OF SAID SECTION 15 AND 88.52 FEET EAST OF THE SOUTH CORNER OF SAID SECTION 15; AND RUNNING THENCE SOUTH 89° 56' 29" EAST 104.12 FEET; THENCE SOUTH 19° 31' 22" EAST 85.06 FEET; THENCE NORTH 89° 56' 29" WEST 104.12 FEET; NORTH 19° 31' 22" WEST 85.02 FEET TO THE POINT OF BEGINNING. SQUARE FEET = 1705

**SURVEY CONTROL TABLE**

NORTHING	EASTING	ELEVATION
72646.07	15015.32	4673.29

ALL BEARINGS AND DISTANCES ARE BASED ON THE FOUND SECTION CORNER AT THE COORDINATE ORIGIN. COORDINATES ARE BASED IN THE STATE PLANE SYSTEM (UT STATE PLANE, CENTRAL - FOOT, NAD 83 DATUM).




IF THE NEXT CASE SERVICE WILL REQUIRE UNDER OR OVER 50 HOURS OF THE SERVICE FOR SUCH PURPOSES, THE SERVICE WILL BE PROVIDED BY THE SERVICE PROVIDER. THE SERVICE PROVIDER SHALL BE RESPONSIBLE FOR THE PROVISION OF THE SERVICE AND SHALL BE RESPONSIBLE FOR THE PROVISION OF THE SERVICE. THE SERVICE PROVIDER SHALL BE RESPONSIBLE FOR THE PROVISION OF THE SERVICE. THE SERVICE PROVIDER SHALL BE RESPONSIBLE FOR THE PROVISION OF THE SERVICE.

**CRS CALDWELL RICHARDS SORENSEN**  
ANSWERS TO INFRASTRUCTURE

FAIRMONTEN OFFICE:  
PO BOX 210  
160 S. MAIN ST. 2ND FLOOR  
FAIRMONTEN, UT 84403  
Tel: 435.226.4200  
Fax: 435.226.4201  
www.crsurvey.com

WEST JORDAN CITY  
7000 SOUTH RAILROAD CROSSING  
RIGHT OF WAY EXHIBIT  
MP 7.48, GARFIELD INDUSTRIAL LEAD

	13076F
1	1
EXHIBIT	

**EXHIBIT B  
TO  
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

**SECTION 1. CONDITIONS AND COVENANTS**

A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The Public Authority 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 Authority 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 Authority for the purpose of conveying electric power or communications incidental to the Public Authority'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 Authority 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 Authority 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 Authority 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 Authority 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 Authority 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 Authority 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 Authority, 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 Authority, 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 Authority 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 Authority 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 Railroad and in compliance with the Plans, and other guidelines furnished by the Railroad.

D. All construction work of the Public Authority 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 Authority. The Public Authority 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 Authority, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the Public Authority 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 Authority at the Public Authority's own expense, or by the Railroad at the expense of the Public Authority, and to the satisfaction of the Railroad.

#### **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 Authority 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 Authority shall reimburse the Railroad for the amount of the contract.

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

A. The Public Authority 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 **UTA** and at the expense of the **Public Authority**.

B. If, in the future, the Public Authority 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 Authority'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 Authority 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 Authority 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 Authority 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 Authority 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 Authority shall include work both within and outside of the Railroad's property.
- B. **Entry on to Railroad's Property by Public Authority.** If the Public Authority's employees need to enter Railroad's property in order to perform an inspection of the Roadway, minor maintenance or other activities, the Public Authority 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 Authority, 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 Authority's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of Public Authority's employees on Railroad's property, except to the extent that any Loss is caused by the sole direct negligence of Railroad.
- C. **Flagging.** If the Public Authority's employees need to enter Railroad's property as provided in Paragraph B above, the Public Authority agrees to notify the Railroad at least thirty (30) working days in advance of proposed performance of any work by Public Authority 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 will determine and inform Public Authority whether a flagman need be present and whether Public Authority needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, the Railroad will bill Public Authority for such expenses incurred by Railroad. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Public Authority agrees that Public Authority is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

D. **Compliance With Laws.** The Public Authority shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Public Authority shall use only such methods as are consistent with safety, both as concerns the Public Authority, the Public Authority's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Public Authority (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 Authority 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 Authority 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 Authority 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 Authority 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 Authority, at its own expense, shall adequately police and supervise all work to be performed by the Public Authority, 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 Authority 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 a Railroad representative, or by compliance by the Public Authority with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the Public Authority 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 Authority's engineers or the Railroad shall be of the opinion that any work of the Public Authority is being or is about to be done or prosecuted without due regard and precaution for safety and security, the Public Authority shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.

H. **Removal of Debris.** The Public Authority 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 Authority at the Public Authority's own expense or by the Railroad at the expense of the Public Authority. The Public Authority 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 Authority shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad, which shall not be given if, in the sole discretion of the Railroad, 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 Authority 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 Authority 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 Authority, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the Public Authority 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 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 Authority, at the Public Authority'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 Authority, at the Public Authority'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 Authority, 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 Authority shall not obstruct or interfere with existing ditches or drainage facilities.

L. **Notice**. Before commencing any work, the Public Authority 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 Authority shall telephone UPRR 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 Authority. If it is, Public Authority 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 Authority, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the Public Authority 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 during normal business hours by the agents and authorized representatives of Public Authority for a period of three (3) years following the date of Railroad's last billing sent to Public Authority.

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

A. If the Public Authority 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 Authority will reimburse the Railroad for the expenses thereof.

B. Nonuse by the Public Authority 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 Authority hereunder.

C. The Public Authority 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 Authority 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 Authority 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 Authority 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**

**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 ("UPRR"); \_\_\_[Insert Name of Branch Line Lessee]\_\_\_, a \_\_\_\_\_ corporation ("Lessee") and \_\_\_\_\_, a \_\_\_\_\_ corporation ("Contractor"). UPRR and Lessee are hereinafter sometimes collectively referred to as the "Railroad".

**RECITALS:**

Contractor has been hired by \_\_\_\_\_ to perform work relating \_\_\_\_\_ to \_\_\_\_\_

\_\_\_\_\_ (the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of Railroad's Milepost \_\_\_\_\_ on Railroad's \_\_\_\_\_ [Branch] [at or near DOT No. \_\_\_\_\_] located at or near \_\_\_\_\_, in \_\_\_\_\_ County, State of \_\_\_\_\_, as such location is in the general location shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof. [which work is the subject of a contract dated \_\_\_\_\_ between Railroad and \_\_\_\_\_].

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 representatives or their duly authorized representative (the "Railroad Representatives"):

Lessee: \_\_\_\_\_ [Insert Name]  
\_\_\_\_\_ [Insert Name and Address of Lessee]\_\_\_\_\_  
\_\_\_\_\_ [Insert Phone No of Lessee Representative]\_\_\_\_\_

UPRR: \_\_\_\_\_ [Insert Name]\_\_\_\_\_  
Union Pacific Railroad Company  
\_\_\_\_\_ [Insert Address]\_\_\_\_\_  
\_\_\_\_\_ [Insert Phone Number]\_\_\_\_\_

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 Representatives 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, 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:

Lessee: \_\_\_\_\_ [Insert Name or Title]  
\_\_\_\_\_ [Insert Name and  
Address of Short Line]\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

UPRR: Union Pacific Railroad Company

\_\_\_\_\_  
[Insert mailing address]

\_\_\_\_\_  
Attn: \_\_\_\_\_

Folder No. \_\_\_\_\_

**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 Representatives 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 **[Insert either UPRR or Lessee]** \_\_\_\_\_ Dollars (\$\_\_\_\_\_) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

**ARTICLE 10 - CROSSINGS.**

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

**ARTICLE 11 - EXPLOSIVES.**

Explosives or other highly flammable substances shall not be stored 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**

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

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

**[Insert Name of Branch Line Lessee]**

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

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

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

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

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

**EXHIBIT B**  
**TO**  
**CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

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

Contractor agrees to notify the Lessee 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 flagman assigned by the Lessee is provided to watch for trains. Upon receipt of such thirty (30)-day notice, the Lessee 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 Lessee, Lessee will bill Contractor for such expenses incurred by Lessee, unless Lessee and a federal, state or local governmental entity have agreed that Lessee is to bill such expenses to the federal, state or local governmental entity. If Lessee will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Lessee performs any flagging, or other special protective or safety measures are performed by Lessee, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

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

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

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

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

A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad. 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 UPRR 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 UPRR and Lessee, jointly and severally, 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 UPRR and Lessee, jointly and severally, and their respective affiliates and 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 For**  
**Contractor's Right of Entry Agreement**

For purposes of this Exhibit C, Union Pacific Railroad Company, is referred to as "UPRR" and **Insert Name of Short Line Railroad** is referred to as "Lessee". UPRR and Lessee are hereinafter sometimes collectively referred to as the "Railroad". 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" and **Insert Name of Short Line Railroad** 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 Railroad Company Property and **Insert Name of Short Line Railroad** 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 obtain and maintain two separate "Railroad Protective Liability" (RPL) insurance policies written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage). The first RPL policy shall name Union Pacific Railroad Company as the named insured. The second RPL policy shall name **[Insert name of Lessee]** as the named insured. Both RPL policies shall provide for 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 instruction such agent(s) and/or broker(s) to procure the insurance coverage required by this Agreement. A BINDER OF INSURANCE STATING THE POLICY IS IN PLACE MUST BE SUBMITTED TO UPRR AND LESSEE BEFORE WORK MAY COMMENCE AND UNTIL THE ORIGINAL POLICY IS FORWARDED TO UPRR AND LESSEE.
- 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 a separate policy form or by endorsement to Contractors CGL or RPL. In an 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 the RPL policies and the worker's compensation and employers liability policies) must include both UPRR and Lessee as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.

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

**EXHIBIT D**  
**TO**  
**CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

**MINIMUM SAFETY REQUIREMENTS**

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

**I. Clothing**

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

Specifically, Contractor's employees must wear:

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

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

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

**II. Personal Protective Equipment**

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

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

**III. On Track Safety**

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

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

#### **IV. Equipment**

- A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
  - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
  - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
  - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

#### **V. General Safety Requirements**

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
  - (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.

- (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
  - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
  - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
  - (v) Before stepping over or crossing tracks, look in both directions first.
  - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

# Exhibit B

# PUBLIC ROAD AT-GRADE CROSSING AGREEMENT

---

BETWEEN

UNION PACIFIC RAILROAD COMPANY

AND THE

CITY OF LOGAN

COVERING THE

RECONSTRUCTION AND WIDENING OF THE EXISTING 1700  
SOUTH STREET AT-GRADE PUBLIC ROAD CROSSING

AT

RAILROAD MILE POST 22.10 – CACHE VALLEY SUBDIVISION  
DOT NO.: 806-311F

AT OR NEAR

LOGAN,  
CACHE COUNTY,  
UTAH



UPRR Folder No.: 2548-02

UPRR Audit No.: 255624

## PUBLIC ROAD AT-GRADE CROSSING AGREEMENT

1700 South Street – DOT No.: 806-311F  
UPRR Mile Post 22.10 – Cache Valley Subdivision  
Logan, Cache County, Utah

THIS AGREEMENT is made and entered into as of the 11<sup>th</sup> day of August, 2010, 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 (the "Railroad") and the **CITY OF LOGAN**, a municipal corporation of the State of Utah, to be addressed at 950 West 600 North, Logan, UT 84321 (the "City"),

### RECITALS:

Presently, the City utilizes the Railroad's property for the existing 1700 South Street at-grade public road crossing, DOT No. 806-311F, at Railroad's Mile Post 22.10 on it's Cache Valley Subdivision, in Logan, Cache County, Utah.

The City now desires to undertake as its project (the "Project") the reconstruction and widening of the existing 700 South Street at-grade public road crossing as shown on the Railroad Location Print marked **Exhibit A**, and as specified on the Detail Prints collectively marked **Exhibit A-1**, with each exhibit being attached hereto and hereby made a part hereof. The existing aforementioned roadway, as reconstructed and widened is hereinafter the "Roadway" and where the Roadway crosses the Railroad's property is the "Crossing Area."

The right of way presently utilized by the City for the Roadway is not sufficient to allow for the reconstruction and widening of the road crossing. Therefore, under this Agreement, the Railroad will be granting an additional right of way right to the City to facilitate the reconstruction and widening of the road crossing.

The Railroad and the City 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 - LIST OF EXHIBITS

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

Exhibit A	Railroad Location Print
Exhibit A-1	Detailed Prints
Exhibit B	General Terms and Conditions



Exhibit B-1	Contractor's Insurance Requirements
Exhibit C	Railroad's Summary Estimate
Exhibit C-1	Railroad's Track & Surface Material Estimate
Exhibit C-2	Railroad's Signal Material Estimate
Exhibit D	Railroad Form of Contractor's Right of Entry Agreement

## **ARTICLE 2 - EXHIBITS B AND B-1.**

The General Terms and Conditions marked **Exhibit B**, and the Contractor's Insurance Requirements marked **Exhibit B-1**, are attached hereto and hereby made a part hereof.

## **ARTICLE 3 - RAILROAD GRANTS RIGHT.**

For and in consideration **THIRTEEN THOUSAND THREE HUNDRED SEVENTY-FIVE DOLLARS (\$13,375.00)** to be paid by the City to the Railroad upon the execution and delivery of this Agreement and in further consideration of the City's agreement to perform and abide by the terms of this Agreement including all exhibits, the Railroad hereby grants to the City the right to establish or reestablish, construct or reconstruct, maintain, repair and renew the road crossing over and across the Crossing Area.

## **ARTICLE 4 - DEFINITION OF CONTRACTOR**

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the City 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.

## **ARTICLE 5 - CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE**

- A. If the City will be hiring a Contractor to perform any work involving the Project (including initial construction and any subsequent relocation or maintenance and repair work), the City shall require the Contractor to:
- execute the Railroad's then current Contractor's Right of Entry Agreement
  - obtain the then current insurance required in the Contractor's Right of Entry Agreement; and
  - provide such insurance policies, certificates, binders and/or endorsements to the Railroad before allowing any Contractor to commence any work in the Crossing Area or on any other Railroad property. The Railroad's current insurance requirements are described in **Exhibit B-1**, attached hereto and hereby made a part hereof.
- B. The Railroad's current Contractor's Right of Entry Agreement is marked **Exhibit D**, attached hereto and hereby made a part hereof. The City 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:

*Senior Manager - Contracts  
Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street, Mail Stop 1690  
Omaha, NE 68179-1690  
UPRR Folder No.: 2548-02*

- D. If the City's own employees will be performing any of the Project work, the City may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

#### **ARTICLE 6 - FEDERAL AID POLICY GUIDE**

- A. If the City 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, and
  - construction work by the City and Contractor shall be performed, and any reimbursement to the Railroad for work it performs, shall be made in accordance with the Federal Aid Policy Guide.
- B. If federal funding is involved, as provided in 23 CFR 646.210(b)(2), the Project is of no ascertainable benefit to the Railroad and the Railroad shall not be obligated to pay or contribute to any Project costs.

#### **ARTICLE 7 - WORK TO BE PERFORMED BY THE RAILROAD**

- A. The work to be performed by the Railroad, at the City's sole cost and expense, is described in the Railroad's Material and Force Account Estimates:
- Railroad's Summary Estimate dated May 18, 2010, in the amount of \$315,241.00, marked **Exhibit C**, the
  - Railroad's Track & Surface Material Estimate dated April 7, 2010, in the amount of \$95,993.00, marked **Exhibit C-1**, and the
  - Railroad's Signal Material Estimate dated April 6, 2010, in the amount of \$219,248.00, marked **Exhibit C-2**,
- each attached hereto and hereby made a part hereof (collectively the "Estimate"). As set forth in the Estimate, the Railroad's combined estimated cost for the Railroad's work associated with the Project is (\$315,241.00).
- B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the City in the event the City does not commence construction on the portion of the Project located on the Railroad's property within six (6) months from the date of the Estimate.
- C. The City agrees to reimburse the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, actual costs of preliminary engineering review, construction inspection, procurement of materials, equipment rental, manpower and deliveries to the job site and all of the Railroad's normal



and customary additives (which shall include direct and indirect overhead costs) associated therewith.

#### **ARTICLE 8 - PLANS**

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

#### **ARTICLE 9 - EFFECTIVE DATE; TERM; TERMINATION.**

- A. This Agreement shall become effective as of the date first herein written, or the date work commences on the Project, whichever is earlier, and shall continue in full force and effect for as long as the Road Crossing 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 City in the event the City does not commence construction on the portion of the Project located on the Railroad's property within twelve (12) months from the date of this Agreement, or from the date that the Railroad has executed this Agreement and returned it to the City for its execution, whichever is applicable.
- C. If the Agreement is terminated as provided above, or for any other reason, the City 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 10 - CONDITIONS TO BE MET BEFORE CITY CAN COMMENCE WORK.**

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

- The Railroad and City have executed this Agreement.
- The Railroad has provided to the City the Railroad's written approval of the Plans.
- 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 set forth in the Contractor's Right of Entry Agreement.



**ARTICLE 11 - SIGNAL MAINTENANCE.**

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

**ARTICLE 12 - TERMINATION OF ORIGINAL AGREEMENT.**

Upon the completion of the Roadway, the Original Agreement (if any existing public road crossing agreement exists for this location) shall terminate and the terms and conditions of this Agreement shall govern the use, maintenance, repair and reconstruction of the Roadway.

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

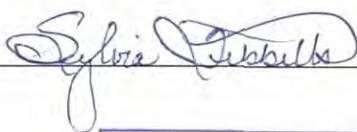
**UNION PACIFIC RAILROAD COMPANY**

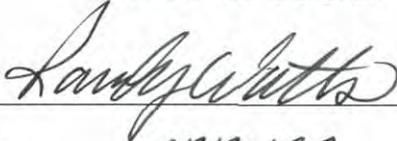
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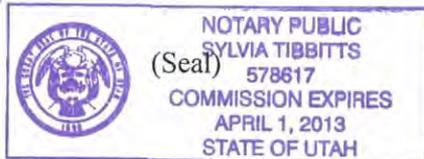
By  \_\_\_\_\_  
JAMES P. GADE  
Director Contracts

WITNESS:

**CITY OF LOGAN**

 \_\_\_\_\_

By  \_\_\_\_\_  
Title MAYOR



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

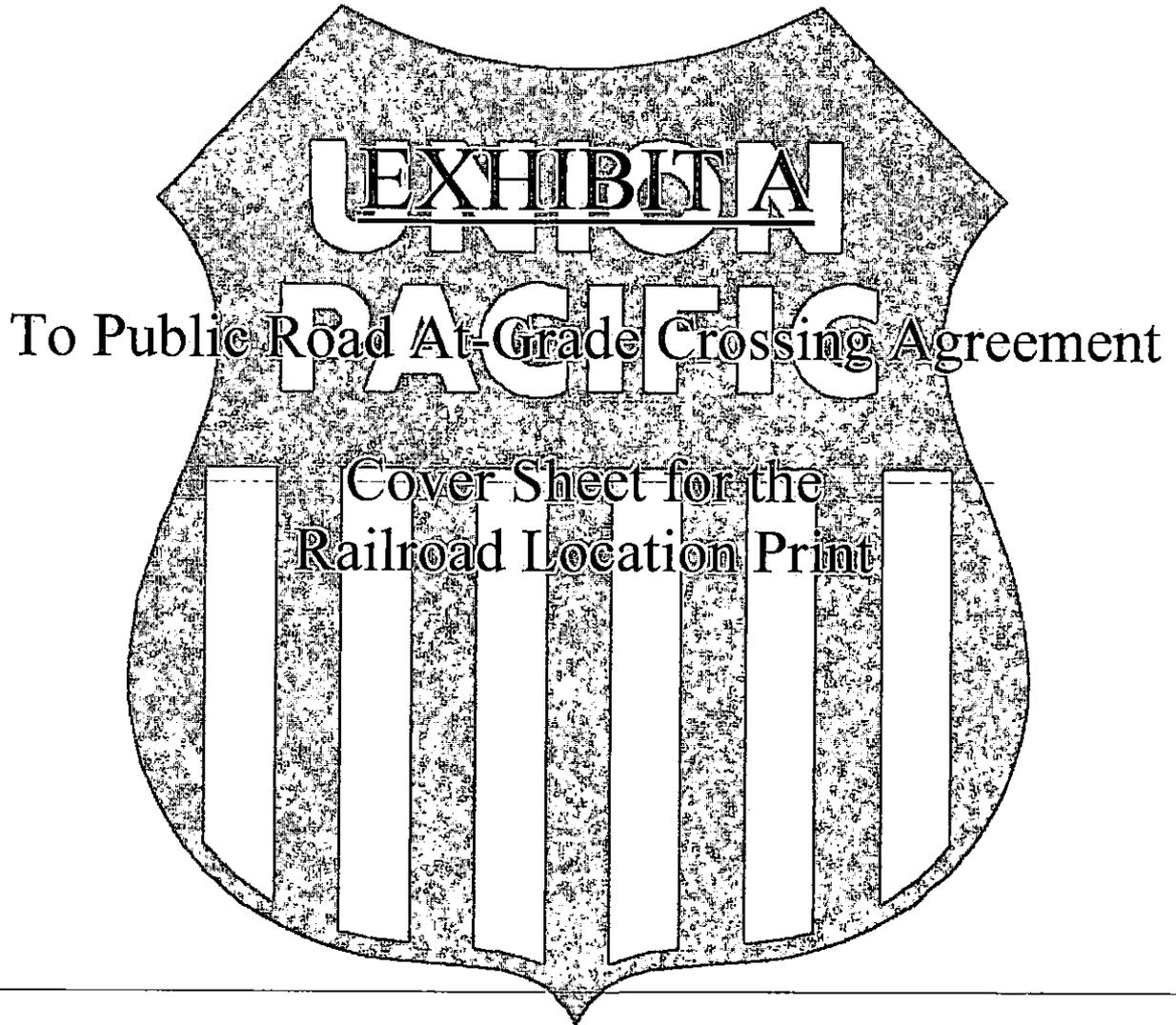


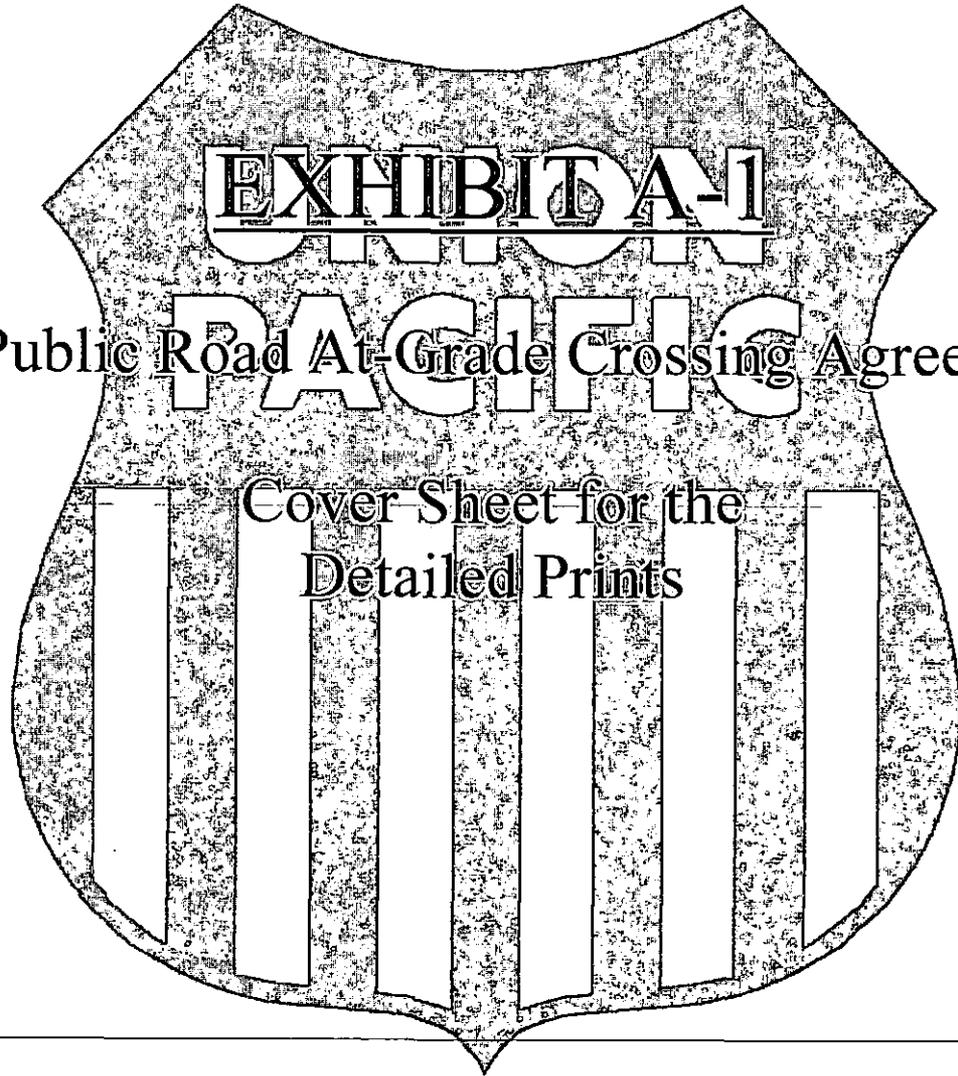
EXHIBIT A

To Public Road At-Grade Crossing Agreement

UNION PACIFIC

Cover Sheet for the  
Railroad Location Print



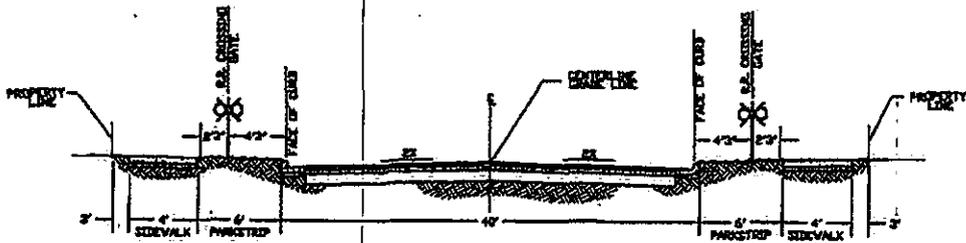


**EXHIBIT A-1**

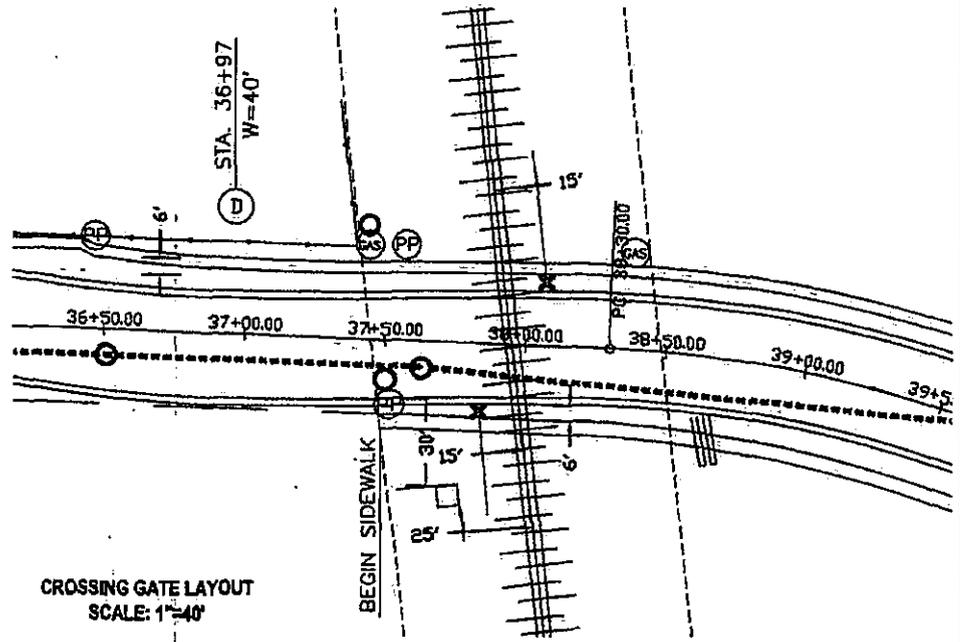
To Public Road At-Grade Crossing Agreement

**PACIFIC**

Cover Sheet for the  
Detailed Prints



TYPICAL ROADWAY SECTION  
NO MARK  
STA 36+25 TO STA 38+50



CROSSING GATE LAYOUT  
SCALE: 1"=40'

LOGAN CITY ENGINEERING  
255 NORTH MAIN  
LOGAN, UTAH 84321

1700 SOUTH - HIGHWAY 89/91 TO 400 W.  
ROAD RECONSTRUCTION

RAILROAD CROSSING DETAILS

DESIGNED	CRJ	DATE	08/02/07
DRAFTED	RLW	PROJECT	807-016
CHECKED	CRJ		

NO SCALE

SHEET NO.

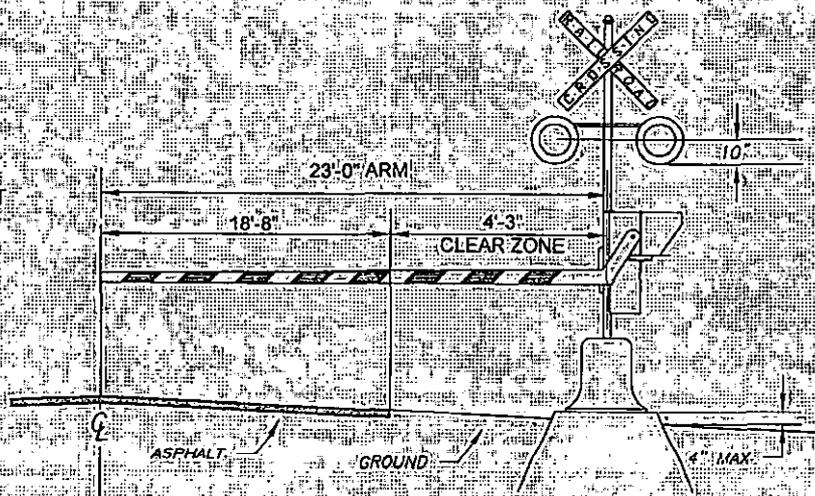
6/7

# SCOPE OF WORK

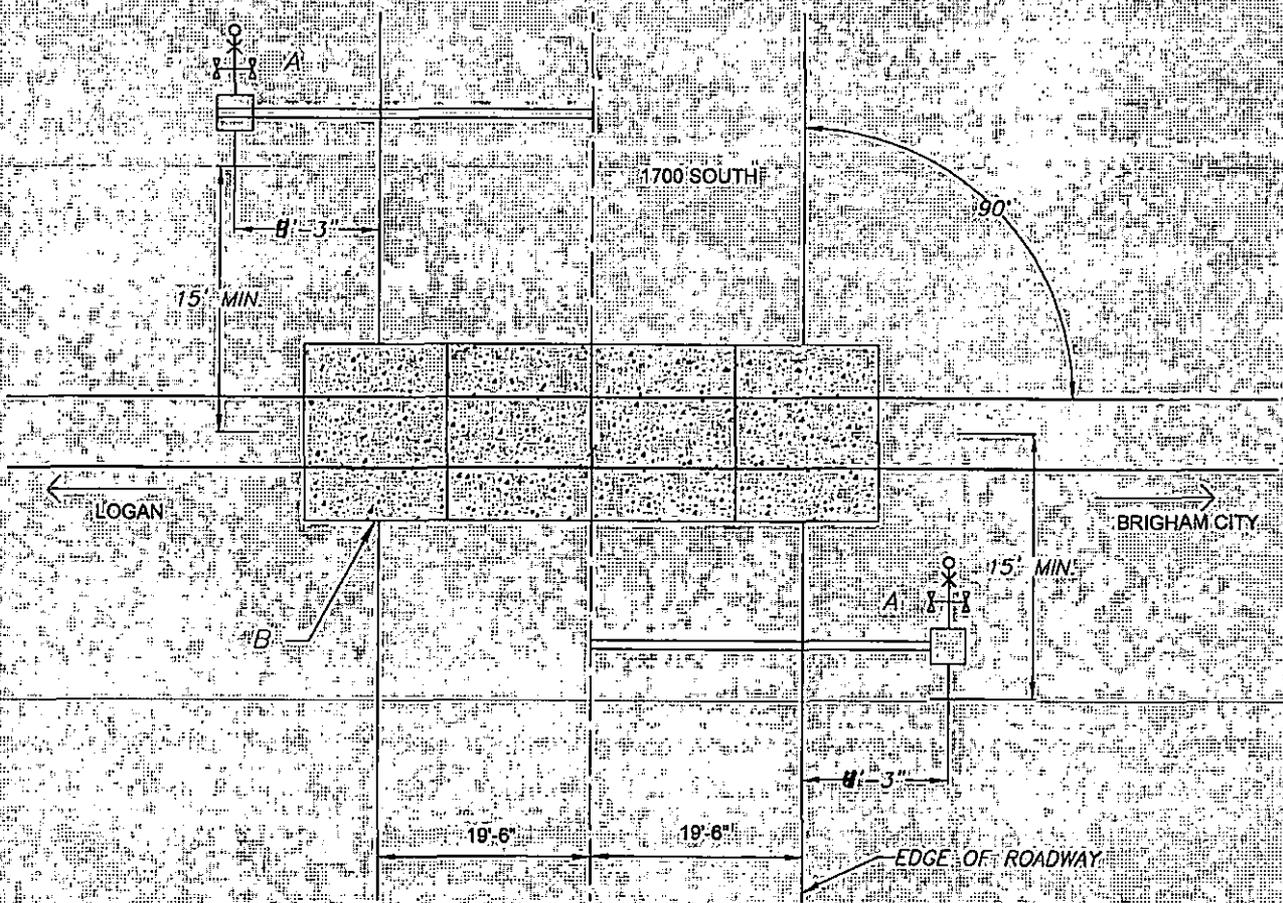
A: UPRR TO INSTALL LED LIGHTS, GATES AND CONSTANT WARNING

B: UPRR TO INSTALL 64" INSULATED CONCRETE PANELS

C: LOGAN CITY TO INSTALL ALL PAVEMENT MARKINGS AND ADVANCED WARNING SIGNS AS PER MUTCD



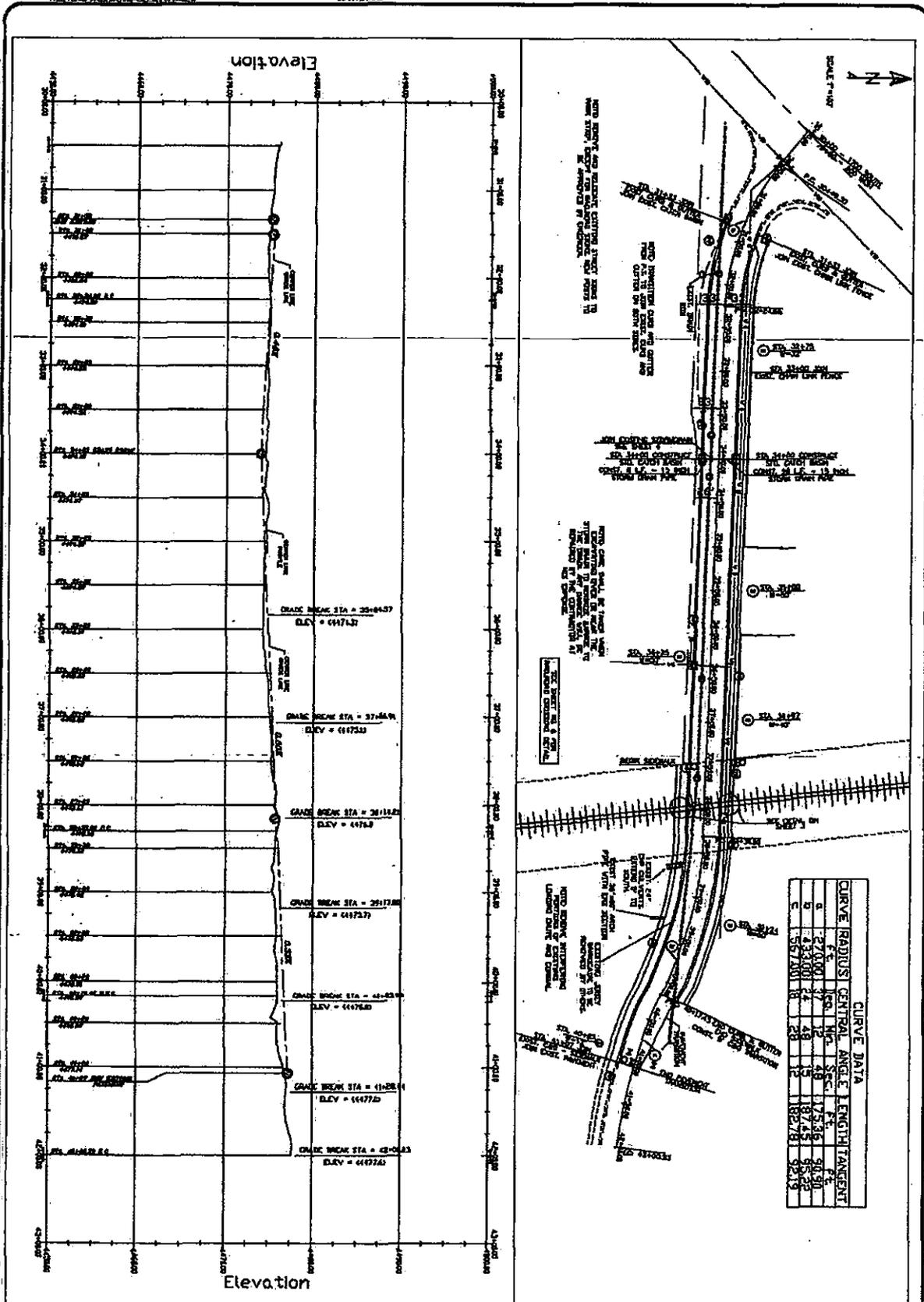
TYPICAL CLEARANCE FOR FLASHING LIGHT SIGNALS AND AUTOMATIC GATES  
(NO SCALE)



FIBER OPTIC CABLE CALL BEFORE YOU DIG 1-800-336-9193



UNION PACIFIC RAILROAD  
MILEPOST 22.10  
CACHE VALLEY SUBDIVISION  
POCATELLO SERVICE UNIT  
DOT # 806311F



CURVE DATA

STATION	RADIUS	CENTRAL ANGLE	LENGTH	TANGENT
20+00	150	120°	150	150
22+00	150	120°	150	150
24+00	150	120°	150	150
26+00	150	120°	150	150
28+00	150	120°	150	150
30+00	150	120°	150	150
32+00	150	120°	150	150
34+00	150	120°	150	150
36+00	150	120°	150	150
38+00	150	120°	150	150
40+00	150	120°	150	150
42+00	150	120°	150	150

**LOGAN CITY ENGINEERING**  
255 NORTH MAIN  
LOGAN, UTAH 84321

**1700 SOUTH ROAD RECONSTRUCTION**  
**HWY. 89/91 TO 400 W.**

DESIGNED: CRJ  
DATE: 08-02-07  
CHECKED: CRJ  
PROJECT: #07-016

SCALE: HORIZONTAL 1" = 40 FT  
VERTICAL 1" = 10 FT

SHEET NO. 5/5

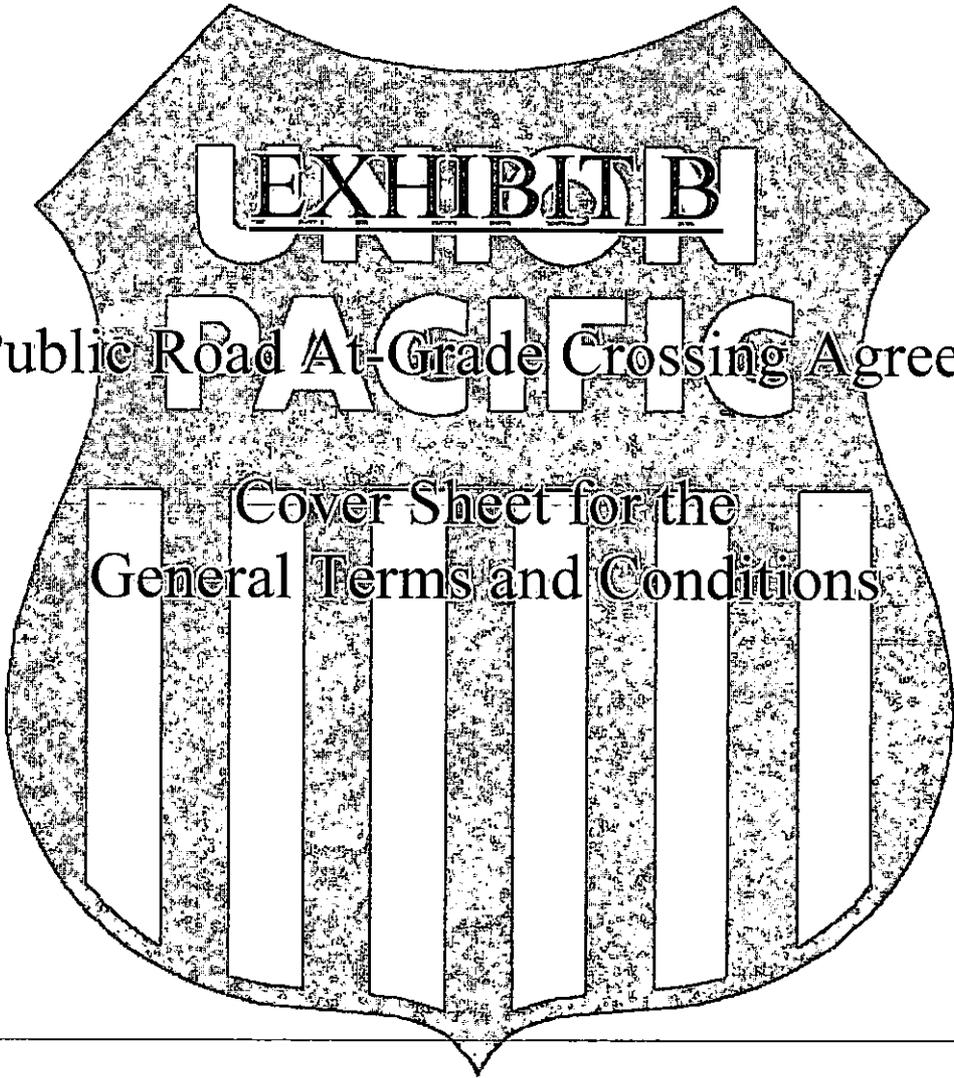


EXHIBIT B

To Public Road At-Grade Crossing Agreement

UNION PACIFIC

Cover Sheet for the  
General Terms and Conditions

## EXHIBIT B

### TO PUBLIC ROAD AT GRADE CROSSING AGREEMENT

#### GENERAL TERMS AND CONDITIONS

##### **SECTION 1. CONDITIONS AND COVENANTS**

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

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

- a) The City, at its expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Project, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.
- b) Except as may be otherwise specifically provided herein, the City, at its expense, will furnish all necessary labor, material and equipment, and shall construct and complete the Roadway and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper highway warning devices (except those installed by the Railroad within its right of way) and all necessary drainage facilities, guard rails or barriers, and right of way fences between the Roadway and the railroad tracks. Upon completion of the Project, the City shall remove from the Railroad's property all temporary structures and false work, and will leave the Crossing Area in a condition satisfactory to the Railroad.
- c) All construction work of the City upon the Railroad's property (including, but not limited to, construction of the Roadway and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President Engineering - Design of the Railroad or his authorized representative and in accordance with the Plans, and other guidelines furnished by the Railroad.
- d) All construction work of the City shall be performed diligently and completed within a reasonable time, and in any event within three (3) years from the effective date of this Agreement, or within such further period of time as may be specified in writing by the Railroad's Assistant Vice President Engineering - Design. No part of the Project shall be suspended, discontinued or unduly delayed without the Railroad's written consent, and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of the City. The City hereby assumes the risk of any such delays and agrees that no claims for damage on account of any delay shall be made against the Railroad.

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

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

### **SECTION 4. PAYMENT FOR WORK BY THE RAILROAD**

- a) Bills for work and materials shall be paid by the City within thirty (30) days of its receipt thereof. The Railroad will submit to the City current bills for all work performed by the Railroad and all flagging and other protective services and devices during progress of the Project (unless flagging is to be billed directly to the Contractor). The Railroad will submit final billing within one hundred and twenty (120) days after completion of the Project, provided the City advises the Railroad of the commencement of the 120-day period by giving the Railroad written notification of completion of the Project.
- b) The Railroad may contract for the performance of any of its work by other than railroad forces. The Railroad shall notify the City of the contract price within ninety (90) days after it is awarded. Unless the Railroad's work is to be performed on a fixed price basis, the City shall reimburse the Railroad for the amount of the contract.

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

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

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

If at any time the Railroad shall elect, or be required by competent authority to, raise or lower the grade of all or any portion of the tracks located on the crossing Area, the City shall, at its own expense, conform the public highway in the Crossing Area 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 railroad, highway or both, the parties will apportion the expense incidental thereto between themselves by negotiation, agreement or by the order of a competent authority before the change or rearrangement is undertaken.

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

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

- a) **Definitions.** All references in this Agreement to the City shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the City shall include work both within and outside of the Railroad's property.
- b) **Compliance With Laws.** The City shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The City shall use only such methods as are consistent with safety, both as concerns the City, the City's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The City (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the City to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the City shall reimburse and indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The City further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.
- c) **No Interference or Delays.** The City shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations

- or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.
- d) **Supervision.** The City, at its own expense, shall adequately police and supervise all work to be performed by the City, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the City for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the City with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the City will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.
  - e) **Suspension of Work.** If at any time the City's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the City is being or is about to be done or prosecuted without due regard and precaution for safety and security, the City shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.
  - f) **Removal of Debris.** The City shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the City at the City's own expense or by the Railroad at the expense of the City. The City shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during snow removal from the Crossing Area.
  - g) **Explosives.** The City shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.
  - h) **Excavation.** The City shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The City shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The City, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the City in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering - Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.
  - i) **Drainage.** The City, at the City's own expense, shall provide and maintain suitable facilities for draining the Road Crossing and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The City, at the City's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the City, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The City shall not obstruct or interfere with existing ditches or drainage facilities.
  - j) **Notice.** Before commencing any work, the City shall provide at least ten (10) days prior notice (excluding weekends and holidays) to the Railroad's Manager-Track Maintenance.
  - k) **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. City shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the City. If it is, City will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

## SECTION 9. INTERIM WARNING DEVICES

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

## SECTION 10. OTHER RAILROADS

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

**SECTION 11. REMEDIES FOR BREACH OR NONUSE**

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

**SECTION 12. MODIFICATION - ENTIRE AGREEMENT**

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

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

This Agreement shall not be assigned without the written consent of the Railroad. Subject hereto, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

**EXHIBIT B-1**

To Public Road At-Grade Crossing Agreement

**PACIFIC**

Cover Sheet for the  
Contractor's Insurance Requirements



## EXHIBIT B-1

### TO PUBLIC ROAD AT-GRADE CROSSING AGREEMENT

#### CONTRACTOR'S INSURANCE REQUIREMENTS

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) 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.

- B. **Business Automobile Coverage Insurance.** Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident.

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(s) affected by this Agreement.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If 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.

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

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

#### **Other Requirements**

- F. 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.

- G. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless:

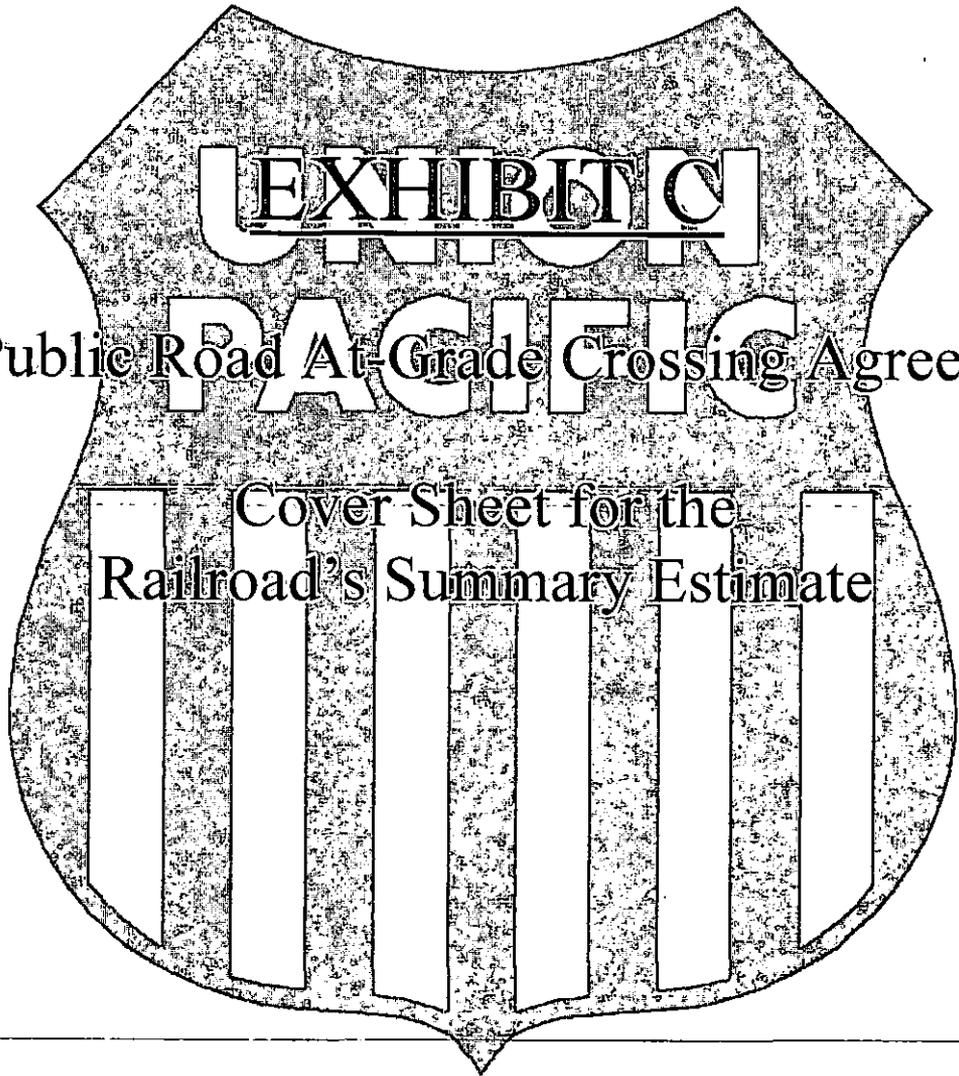
- insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or
- all punitive damages are prohibited by all states in which this agreement will be performed.

- H. Contractor waives all rights against Railroad and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers liability or commercial umbrella or excess liability insurance obtained by Contractor required by this agreement.

- I. 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.



- J. 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(s) in which the work is to be performed.
- K. 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.



To Public Road At-Grade Crossing Agreement

Cover Sheet for the  
Railroad's Summary Estimate

## EXHIBIT C

**SUMMARY OF MATERIAL AND FORCE ACCOUNT WORK  
BY THE UNION PACIFIC RAILROAD COMPANY  
FOR THE  
1700 SOUTH - LOGAN, UTAH PROJECT**

**DESCRIPTION OF WORK:** Widening of existing at-grade Public Crossing at MP 22.10 on the Cache Valley Subdivision, 1700 South, in Logan, Cache County, Utah. Includes UPRR work detailed in material and force account estimates, surface and signal.

Cache County  
Project No.: 07-016  
1700 South

LOCATION: Pocatello Service Unit - 21 STATE: Utah DATE: May 18, 2010

<u>DESCRIPTION</u>	<u>LABOR</u>	<u>MATERIAL</u>	<u>TOTAL</u>
Recollectable Railroad Work	64,124 116,324	31,869 102,924	95,993 219,248
<b>TOTAL PROJECT</b>	<b>180,448</b>	<b>134,793</b>	<b>315,241</b>
<b>EXISTING REUSABLE MATERIAL</b>			<b>0</b>
<b>SALVAGE NONUSABLE MATERIAL</b>			<b>0</b>

**TOTAL ESTIMATED COST OF PROJECT LESS CREDITS \$315,241.00**

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

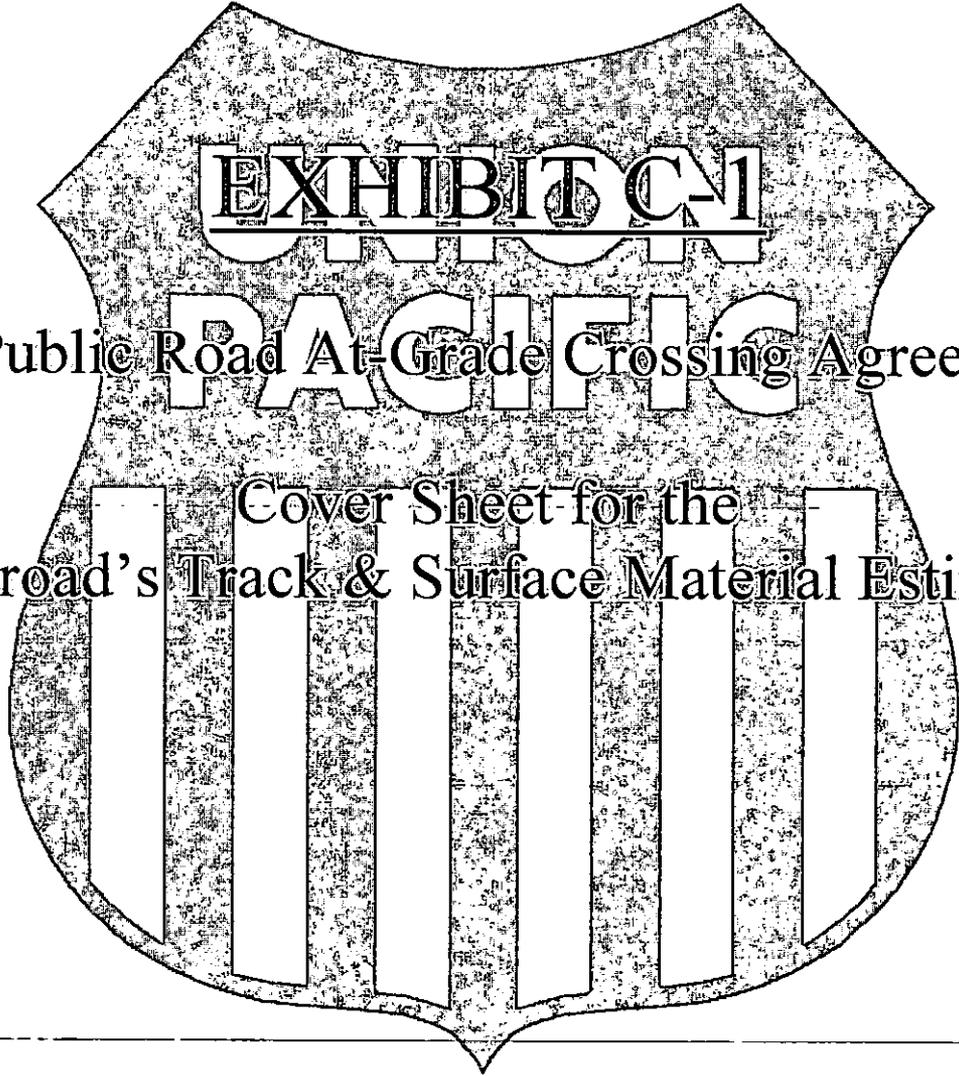


EXHIBIT C-1

PACIFIC

To Public Road At-Grade Crossing Agreement

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

DATE: 2010-04-07

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

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2010-10-06

DESCRIPTION OF WORK:

2009 RECOLLECT ROAD CROSSING - CACHE VALLEY SUB - MP 22.10 - 1700 SOUTH.  
100% RECOLLECT FROM CITY OF LOGAN UT, - ACTUAL COST - STD RATE.  
1 KING LOCATION = 64 TF OF CONCRETE KING.  
ESTIMATED USING FEDERAL ADDITIVES WITH INDIRECT AND OVERHEAD - 205%

PID: 61555 AWO: MP, SUBDIV: 22.10, CACHEVALLEY  
SERVICE UNIT: 17 CITY: CACHE JCT STATE: UT

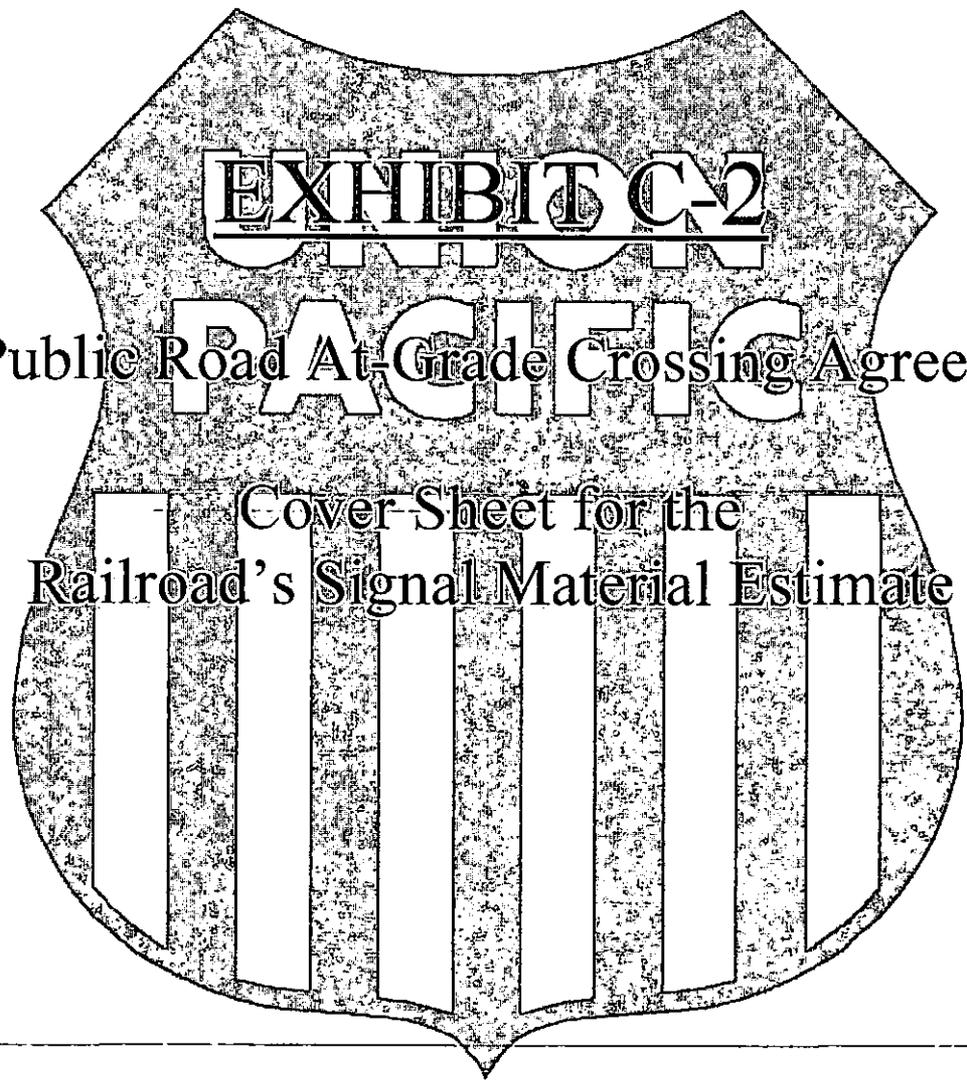
DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
<b>ENGINEERING WORK</b>							
ENGINEERING			1456		1456		1456
<b>TOTAL ENGINEERING</b>			<b>1456</b>		<b>1456</b>		<b>1456</b>
<b>SIGNAL WORK</b>							
LABOR ADDITIVE 205%			2252		2252		2252
SALES TAX				2	2		2
SIGNAL			1098	70	1168		1168
<b>TOTAL SIGNAL</b>			<b>3350</b>	<b>72</b>	<b>3422</b>		<b>3422</b>
<b>TRACK &amp; SURFACE WORK</b>							
BALAST	1.00	CL	793	812	1605		1605
BILL PREP				900	900		900
ENVIRONMENTAL PERMITS				1	1		1
FIELD WELD			114		114		114
HOME LINE FREIGHT				900	900		900
LABOR ADDITIVE 205%			34739		34739		34739
MATL STORE EXPENSE				308	308		308
OTM			2040	5647	7687		7687
RAIL	240.00	LF	1201	3453	4654		4654
ROCKING	64.00	TF	5591	13277	18868		18868
SALES TAX				1063	1063		1063
SAW CUT STREET APPROACH				2000	2000		2000
TRK-SURF, LIN			3604		3604		3604
WELD			3706	254	3960		3960
XTIE	50.00	EA	7530	3182	10712		10712
<b>TOTAL TRACK &amp; SURFACE</b>			<b>59318</b>	<b>31797</b>	<b>91115</b>		<b>91115</b>

LABOR/MATERIAL EXPENSE	64124	31869		
RECOLLECTIBLE/UPRR EXPENSE			95993	0
ESTIMATED PROJECT COST				95993
EXISTING REUSEABLE MATERIAL CREDIT				0
SALVAGE NONUSEABLE MATERIAL CREDIT				0

RECOLLECTIBLE LESS CREDITS

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

□



**EXHIBIT C-2**

To Public Road At-Grade Crossing Agreement

Cover Sheet for the  
Railroad's Signal Material Estimate

DATE: 2010-04-06

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

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS : 2010-10-05

DESCRIPTION OF WORK:

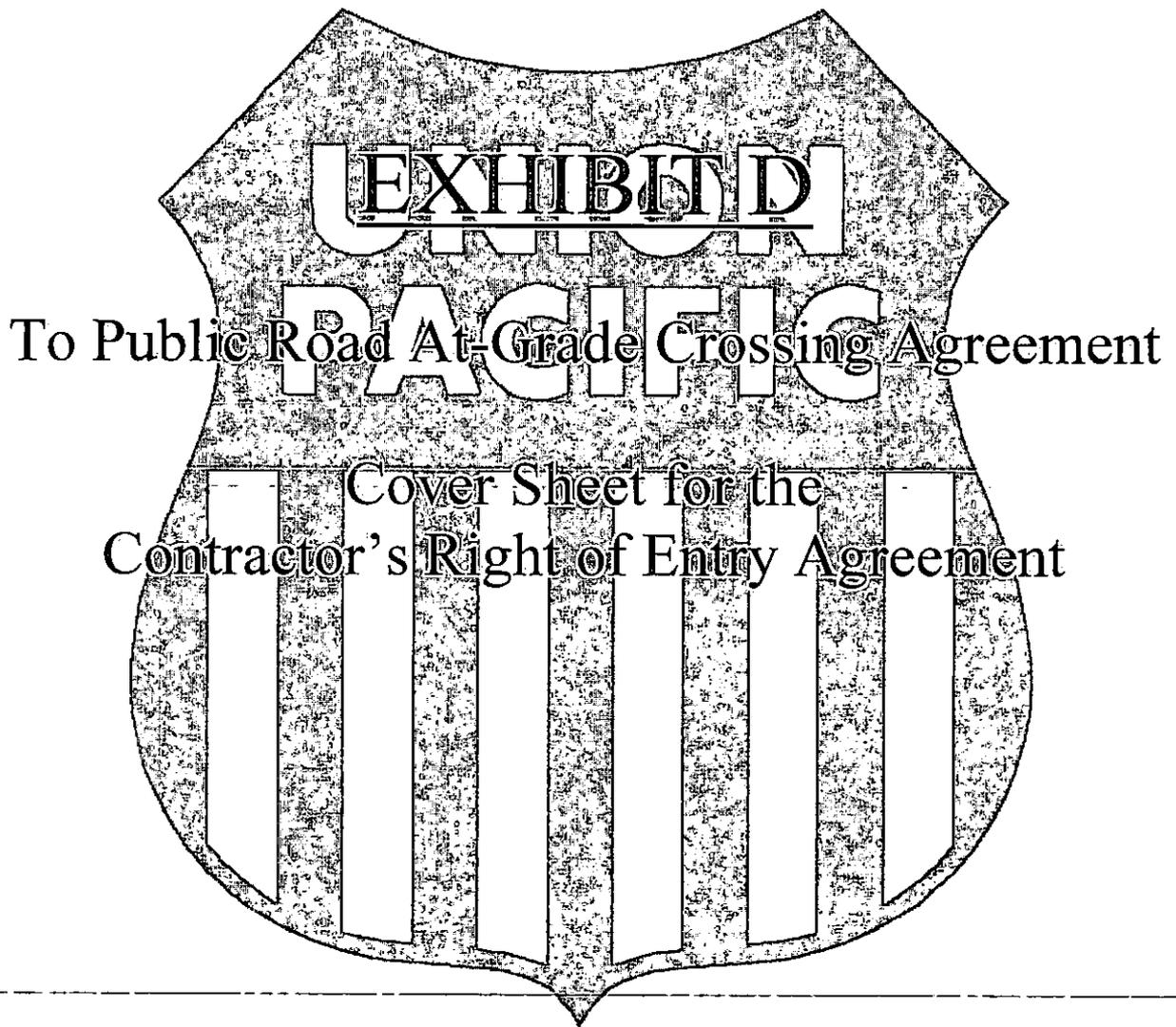
INSTALL AUTOMATIC FLASHING LIGHT CROSSING SIGNALS  
WITH GATES AT LOGAN, UT. 1700 SOUTH M.P. 22.10  
ON THE CACHE VALLEY SUB. DOT 806 311F  
WORK TO BE PERFORMED BY RAILROAD WITH EXPENSE AS BELOW:  
SIGNAL - CITY OF LOGAN, UT. - 100%  
ESTIMATED USING FEDERAL ADDITIVES WITH INDIRECT  
AND OVERHEAD COST'S - 167.76%

PID: 61431 ANO: 87597 MP,SUBDIV: 22.10, CACHEVALLEY  
SERVICE UNIT: 17 CITY: LOGAN STATE: UT

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
<b>ENGINEERING WORK</b>							
ENGINEERING			3304		3304		3304
LABOR ADDITIVE 167.76%			13568		13568		13568
SIG-HWY XNG			4821		4821		4821
<b>TOTAL ENGINEERING</b>			<b>21693</b>		<b>21693</b>		<b>21693</b>
<b>SIGNAL WORK</b>							
BILL PREP			900		900		900
CONTRACT				5407	5407		5407
LABOR ADDITIVE 167.67%			59290		59290		59290
MATL STORE EXPENSE				4	4		4
METER SERVICE				5000	5000		5000
PERSONAL EXPENSES				18750	18750		18750
ROCK/GRAVEL/FILL				3000	3000		3000
SALES TAX				2163	2163		2163
SIGNAL			34441	54075	88516		88516
TRANSP/IB/OB/RCLM CONTR				10306	10306		10306
WZT CONTROL				4218	4218		4218
ENVIRONMENTAL-PERMITS				1	1		1
<b>TOTAL SIGNAL</b>			<b>94631</b>	<b>102924</b>	<b>197555</b>		<b>197555</b>
<b>LABOR/MATERIAL EXPENSE</b>			<b>116324</b>	<b>102924</b>			
<b>RECOLLECTIBLE/UPRR EXPENSE</b>					<b>219248</b>	<b>0</b>	
<b>ESTIMATED PROJECT COST</b>							<b>219248</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.





To Public Road At-Grade Crossing Agreement

Cover Sheet for the  
Contractor's Right of Entry Agreement



April 29, 2009

UPRR Folder No.: 2548-02

**To the Contractor:**

Before Union Pacific Railroad Company can permit you to perform work on its property for the reconstruction and widening of the existing 1700 South Street at-grade public road crossing, it will be necessary for you to complete and execute two originals of the enclosed Contractor's Right of Entry Agreement. Please:

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

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

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

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

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



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

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

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

*Paul G. Farrell*

Senior Manager Contracts

Phone: (402) 544-8620

e-mail: [pgfarrell@up.com](mailto:pgfarrell@up.com)



UPRR Folder No.: 2548-02

UPRR Audit No.: \_\_\_\_\_

## CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

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

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

**RECITALS:**

Contractor has been hired by the *City of Logan* to perform work relating to the reconstruction and widening of the existing 1700 South Street at-grade public road crossing (the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of the Railroad's Mile Post 22.10' on the Railroad's Cache Valley Subdivision in Logan, Cache County, Utah, as such location is in the general location shown on the Railroad Location Print marked **Exhibit A**, and as specified on the Detailed Prints collectively marked **Exhibit A-1**, each attached hereto and hereby made a part hereof, which work is the subject of a contract dated \_\_\_\_\_ between Railroad and the City of Logan. (Date of Contract)

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

**AGREEMENT:**

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

**ARTICLE 1 - DEFINITION OF CONTRACTOR.**

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

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

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

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

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

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

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

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

*Jeff Gale*  
*Manager Track Maintenance*  
*Union Pacific Railroad Company*  
*2101 Pacific Avenue*  
*Ogden, UT 84401*  
*Phone: 801-212-4005*  
*Facsimile: 801-212-4049*  
*Cell: 801-557-4410*

*Andre Williams*  
*Manager Signal Maintenance*  
*Union Pacific Railroad Company*  
*2101 Pacific Avenue*  
*Ogden, UT 84401*  
*Phone: 801-626-8207*  
*Fax: 402-997-3616*  
*Cell: 801-388-4504*

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

**ARTICLE 5 - TERM; TERMINATION.**

- A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until \_\_\_\_\_, unless sooner terminated as herein provided, or  
-----(*Expiration-Date*)-----

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

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

**ARTICLE 6 - CERTIFICATE OF INSURANCE.**

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

*Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street, MS 1690  
Omaha, NE 68179-1690  
UPRR Folder No.: 2548-02*

**ARTICLE 7 - 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 8 - 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 9 - CROSSINGS.**

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

**ARTICLE 10 - EXPLOSIVES.**

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

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

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

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

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

By \_\_\_\_\_

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





LOGAN CITY ENGINEERING  
 255 NORTH MAIN  
 LOGAN, UTAH 84321

**1700 SOUTH ROAD RECONSTRUCTION**  
**HWY. 89/81 TO 400 W.**

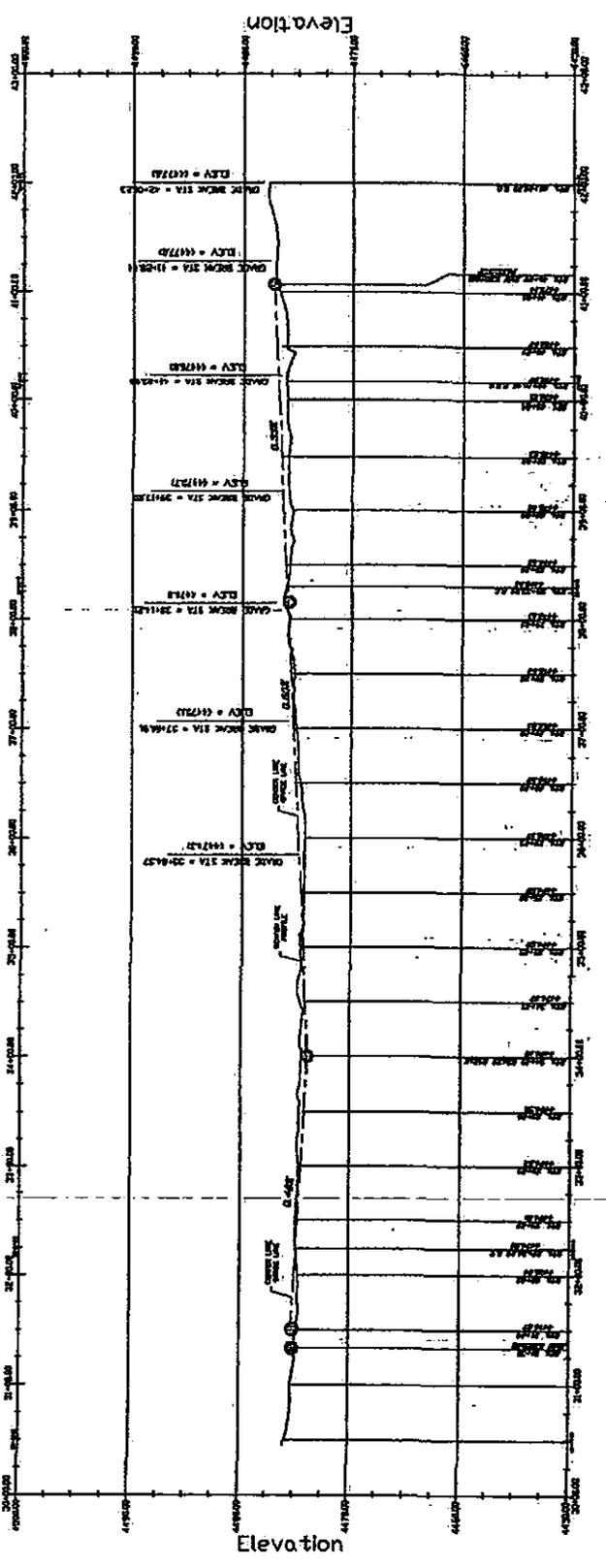
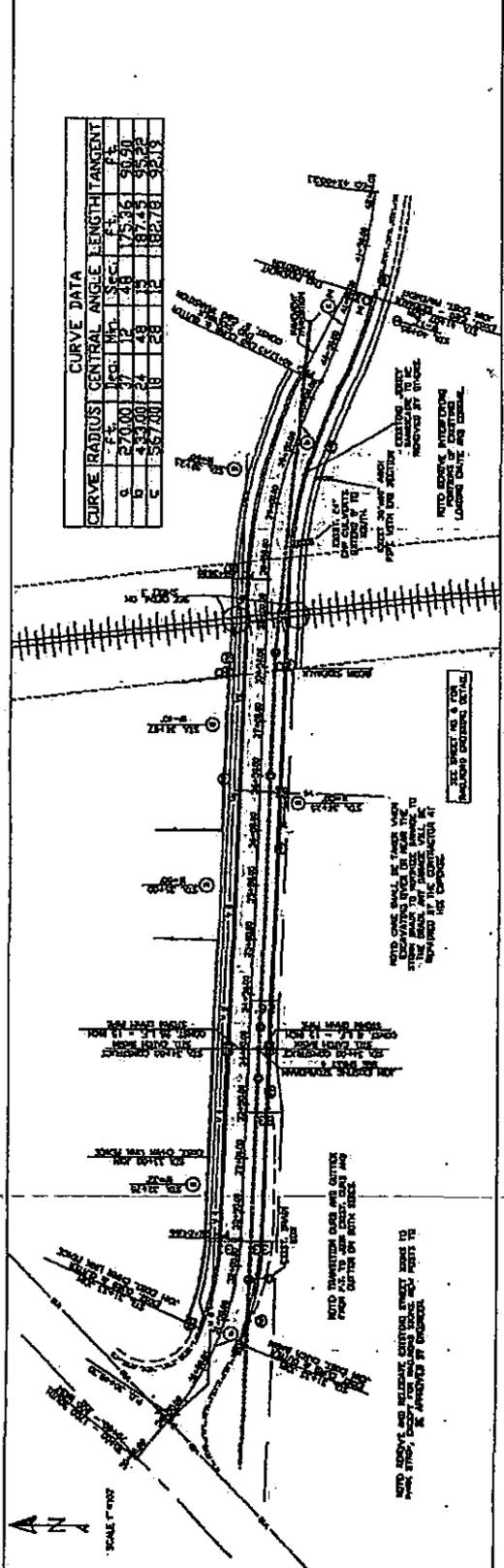
DATE	DESCRIPTION	BY
08-22-07	PROJECT	CRJ
08-22-07	REVISION	RW
08-22-07	REVISION	CRJ

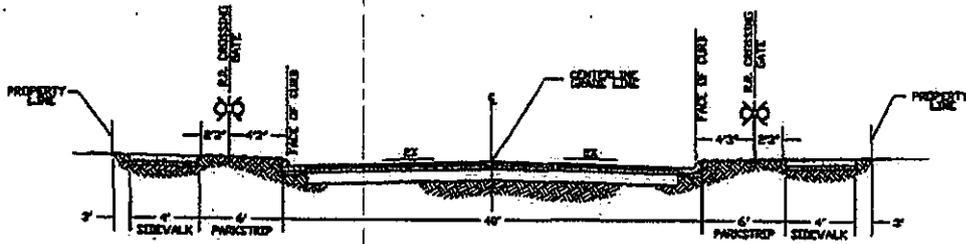
SCALE: 1" = 40'

SHEET NO. 5/5

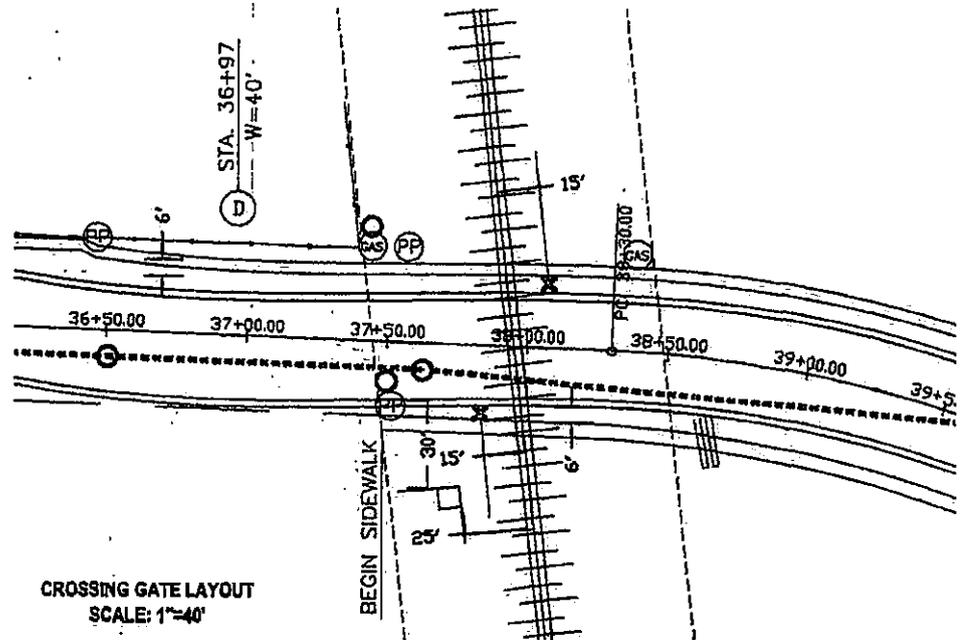
**CURVE DATA**

CURVE NO.	RADIUS	CENTRAL ANGLE	LENGTH	TANGENT
1	1000.00	18.43	172.16	31.15
2	1000.00	18.43	172.16	31.15
3	1000.00	18.43	172.16	31.15
4	1000.00	18.43	172.16	31.15
5	1000.00	18.43	172.16	31.15
6	1000.00	18.43	172.16	31.15
7	1000.00	18.43	172.16	31.15
8	1000.00	18.43	172.16	31.15
9	1000.00	18.43	172.16	31.15
10	1000.00	18.43	172.16	31.15





TYPICAL ROADWAY SECTION  
NO SCALE  
STA 36+25 TO STA 38+50



CROSSING GATE LAYOUT  
SCALE: 1"=40'

LOGAN CITY ENGINEERING  
255 NORTH MAIN  
LOGAN, UTAH 84321

1700 SOUTH - HIGHWAY 89/91 TO 400 W.  
ROAD RECONSTRUCTION.

RAILROAD CROSSING DETAILS

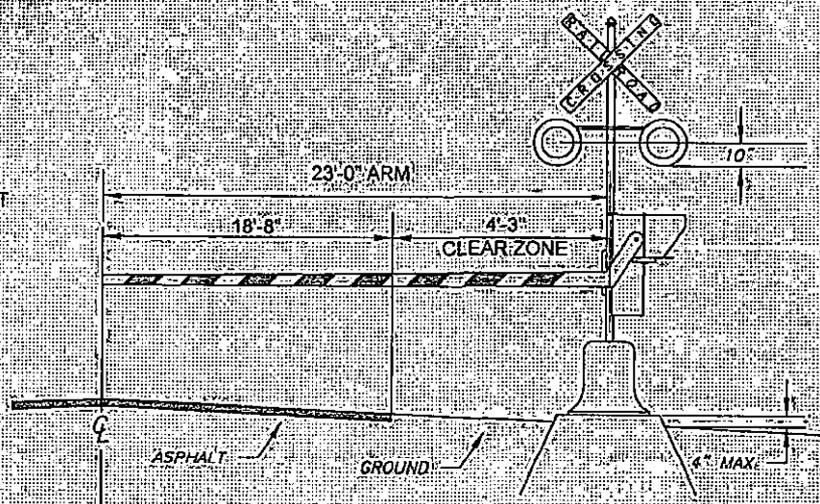
DESIGNED	CRJ	DATE	08/02/07
DRAFTED	RLW	PROJECT	807-016
CHECKED	CRJ		

NO SCALE

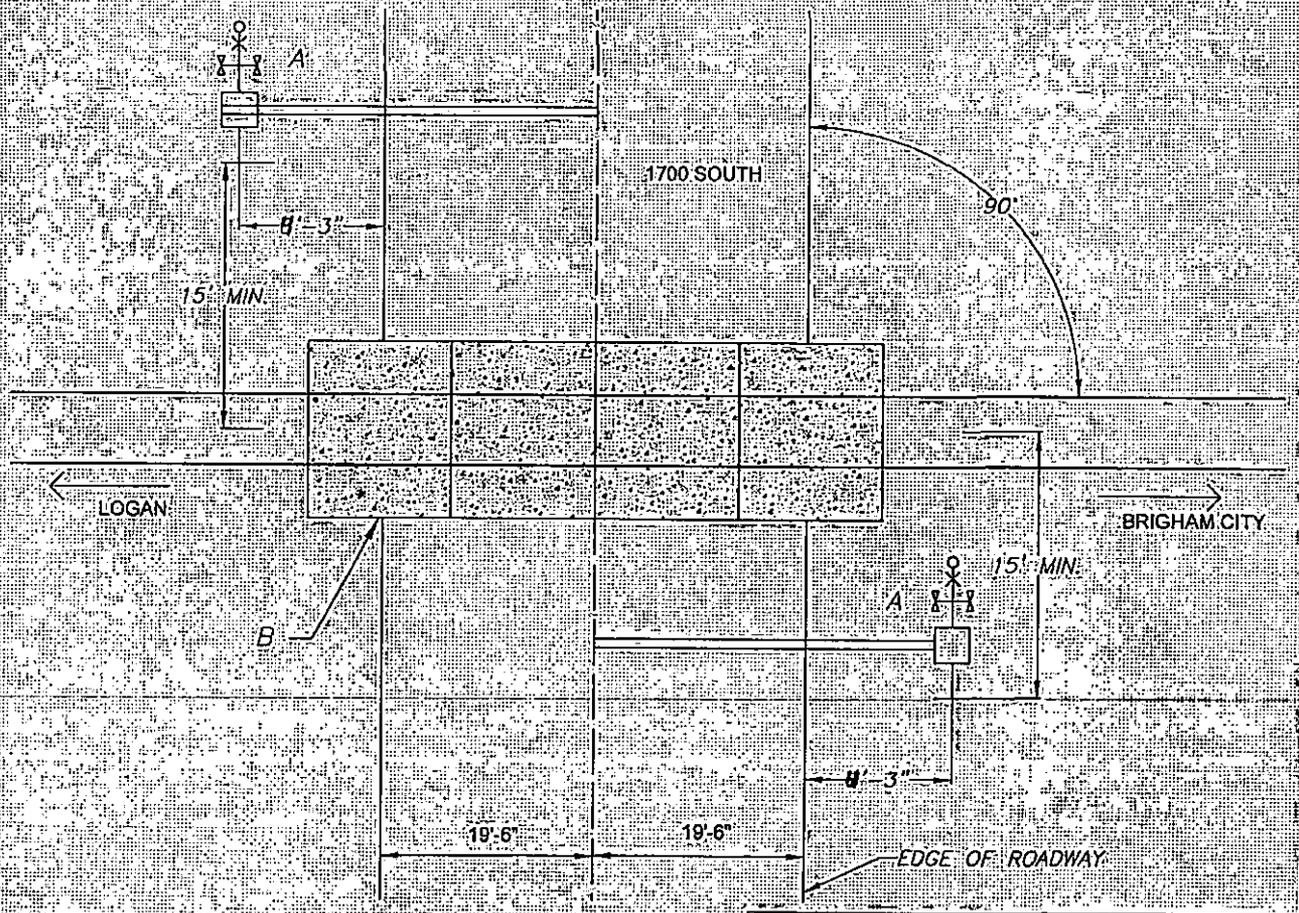
SHEET NO.  
6/7

# SCOPE OF WORK

- A. UPRR TO INSTALL LED LIGHTS, GATES AND CONSTANT WARNING
- B. UPRR TO INSTALL 64' INSULATED CONCRETE PANELS
- C. LOGAN CITY TO INSTALL ALL PAVEMENT MARKINGS AND ADVANCED WARNING SIGNS AS PER MUTCD



TYPICAL CLEARANCE FOR FLASHING LIGHT SIGNALS AND AUTOMATIC GATES  
(NO SCALE)



FIBER OPTIC CABLE! CALL BEFORE YOU DIG 1-800-338-9193



UNION PACIFIC RAILROAD  
MILEPOST 22.10  
CACHE VALLEY SUBDIVISION  
FOCATELLO SERVICE UNIT  
DOT # 806311F

## EXHIBIT B

### TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

#### TERMS AND CONDITIONS

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

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

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

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

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

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

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

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

#### Section 4. LIENS.

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

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

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

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

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

#### Section 7. SAFETY.

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

**Section 8. INDEMNITY.**

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

**Section 9. RESTORATION OF PROPERTY.**

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

**Section 10. WAIVER OF DEFAULT.**

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

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

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

**Section 12. ASSIGNMENT - SUBCONTRACTING.**

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



## EXHIBIT C

### TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

#### INSURANCE PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Other Requirements

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

## EXHIBIT D

### TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

#### MINIMUM SAFETY REQUIREMENTS

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

#### I. Clothing

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

Specifically, Contractor's employees must wear:

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

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

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

#### II. Personal Protective Equipment

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

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

#### III. On Track Safety

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

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

#### IV. Equipment

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

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

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

- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

**V. General Safety Requirements**

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

# Exhibit C

## AMENDMENT #1 TO GRADE CROSSING IMPROVEMENT AGREEMENT

UTA Contract # TI/U/2376/G  
Latitude: 40.140233  
Longitude: -111.63749  
Spanish Fork, Utah

THIS AMENDMENT #1 TO GRADE CROSSING IMPROVEMENT AGREEMENT (the "Amendment") is made and entered into as of the 7<sup>th</sup> day of August, 2018 (to be dated after the final executing signature by UTA), by and between Utah Transit Authority, a large public transit district organized pursuant to the laws of the State of Utah (hereinafter "UTA"), and Spanish Fork City Corporation, an agency of the State of Utah, with a principal address of 40 South Main Street Spanish Fork, Utah 84660 (hereinafter "Licensee").

### RECITALS

WHEREAS, a certain roadway, now known as Canyon Creek Parkway, was built crossing the Right of Way (the "New Crossing") located at approximately Latitude 40.140233 and Longitude -111.63749;

WHEREAS, Licensee did not construct and install the roadway according to the UTA approved Design Plans through the TI/U/2376/G Grade Crossing Improvement executed on August 16, 2013 ("License"); and

WHEREAS, UTA has received the as-built and has approved the Grade Crossing improvement as it exists.

### AMENDMENT

NOW THEREFORE, on the stated Recitals, which are incorporated herein by reference, and for and in consideration of the mutual covenants and agreements hereinafter set forth, the mutual benefits to the Parties to be derived herefrom, and for other valuable consideration, the receipt and sufficiency of which the Parties acknowledge, it is hereby agreed as follows:

### ARTICLE I INCORPORATED TERMS AND DEFINITIONS

Rights Modified; Purpose. UTA hereby amends the License to conform with the dimensions and specifications indicated on the attached print dated May 11, 2018 and marked Exhibit "A" (Exhibit "A" is attached hereto and hereby incorporated into and made a part of this Amendment by reference).. No changes shall be made to the trees and shrubs without the express written consent of UTA.

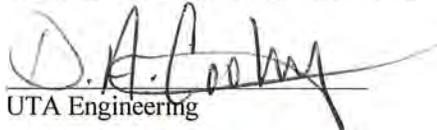
1. Control. In the event of any inconsistency between the terms of this Amendment and the License, the terms of this Amendment shall govern and control.
2. Terms. Any capitalized term used in the License, unless otherwise defined herein, shall have the same meaning as is given to it in the License.
3. Counterparts. This Amendment may be executed in one or more counterparts and delivered by email, facsimile or other electronic means, each of which shall be deemed

to be an original and all of which, taken together, shall constitute one agreement.

4. Continuation. Except as provided herein, no other amendments or adjustments to the License are affected under this Amendment, and the License and all of its terms and conditions shall continue in full force and effect.
5. UTA Name Change. Enacted in 2018, Section 17B-2a-803.1 of the Utah Code changes the name of UTA to Transit District of Utah, but provides that UTA shall implement the change over time and as resources permit. Notwithstanding the timing or manner of this change, the Parties acknowledge that any such name change, or lack thereof, will only pertain to UTA's name, and will not affect the duties and obligations of the Parties set forth in this Agreement or otherwise.
6. Special Provisions Special provisions, if any, are included in the attached Exhibit "D" (Exhibit "D" is attached hereto and hereby incorporated into and made a part of this Amendment by reference).

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate as of the date first herein written.

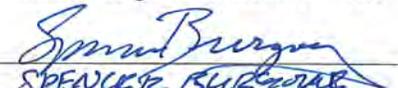
Reviewed and Approved as to Form for UTA

  
\_\_\_\_\_  
UTA Engineering

  
\_\_\_\_\_  
UTA Legal

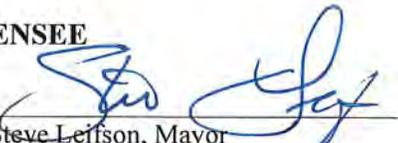
**UTAH TRANSIT AUTHORITY**

By:   
\_\_\_\_\_  
Paul Drake  
Senior Manager Real Estate & TOD

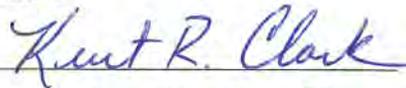
By:   
\_\_\_\_\_  
SPENCER BURROUGHS  
Manager, Property Administration

By:   
\_\_\_\_\_  
Bonnie Ward  
Property Administrator

**LICENSEE**

By:   
\_\_\_\_\_  
Steve Leifson, Mayor  
Spanish Fork City Corporation

**ATTEST:**

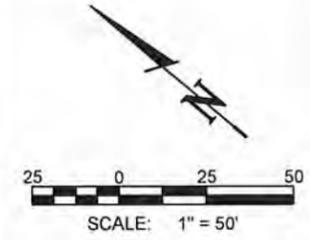
By:   
\_\_\_\_\_  
Kent R. Clark  
City Recorder



**EXHIBIT "A"**  
**DESIGN PLANS**

[Attach As-Built]

# TIV/2376/G GRADE CROSSING

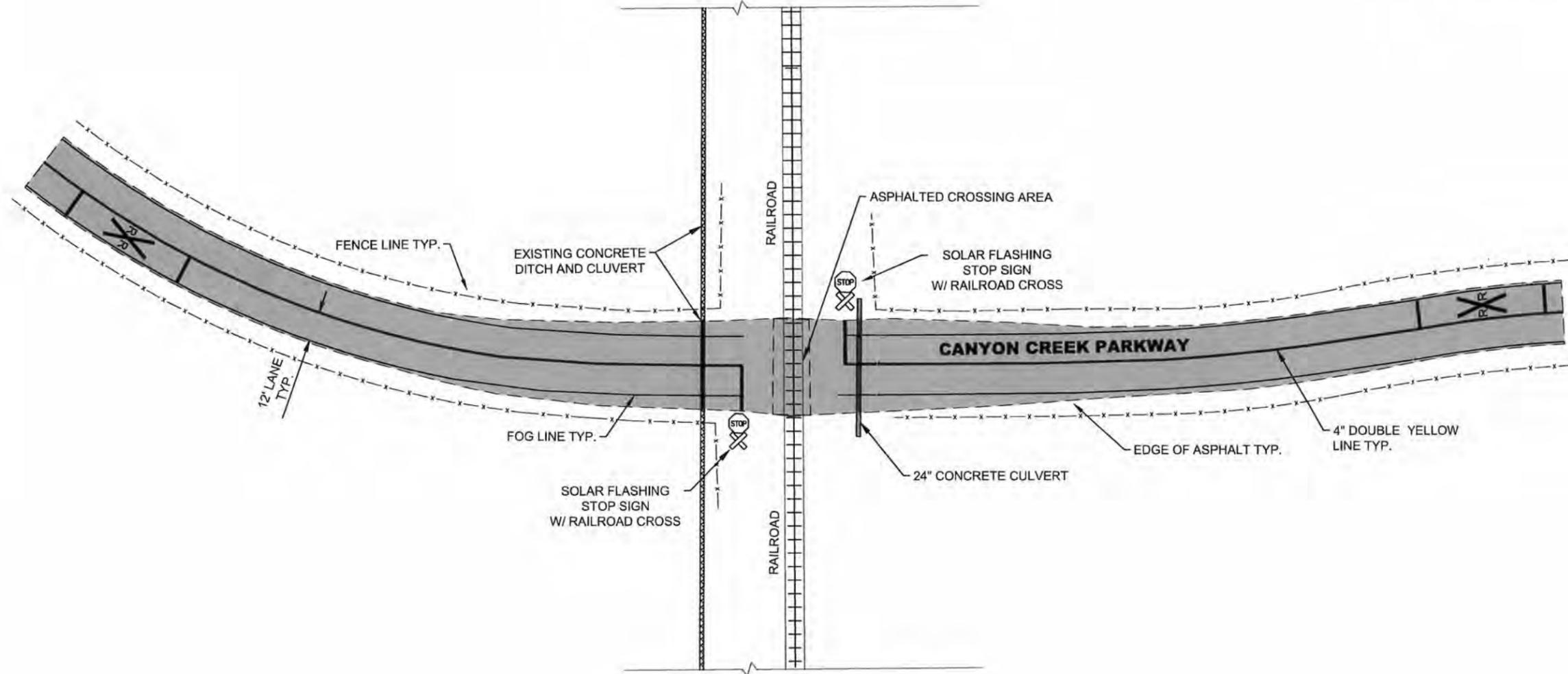


SPANISH FORK CITY  
ENGINEERING & SURVEYING  
40 SOUTH MAIN STREET  
SPANISH FORK, UTAH 84660  
(801) 804-4550



## RAIL ROAD CROSSING ASBUILT

TIV/2376/G GRADE CROSSING



Q:\Engineering\Surveying\SURVEY DATA-Download\1-SURVEY DATA- CAD Project\Canyon Creek RR Crossing\CanyonCreek\_RR2.dwg

SCALE:	1" = 50"		
DRAWN: TRW	REVISION	BY	DATE
DESIGN: TRW			
CHECK: JHJ			
DATE: 5/11/2018			

DRAWING #:

**EXHIBIT "B"**  
**GRADE CROSSING IMPROVEMENT AGREEMENT**

[Attach copy of Grade Crossing Improvement Agreement]

## GRADE CROSSING IMPROVEMENT AGREEMENT

UTA Contract # TI/U/2376/G  
Mile Post Location: 2.0  
Spanish Fork, Utah

THIS GRADE CROSSING IMPROVEMENT AGREEMENT (the "Agreement") is made and entered into as of the 16 day of August, 2013 (to be dated after the final executing signature by UTA), by and between UTAH TRANSIT AUTHORITY, a public transit district organized pursuant to the laws of the State of Utah (hereinafter "UTA"), and Spanish Fork City Corporation, a Utah Corporation, with a principal address of 40 South Main Street Spanish Fork, UT 84660 (hereinafter "Licensee").

### RECITALS

WHEREAS, UTA is the owner of the entirety of a certain railroad corridor (the "Right of Way") acquired by UTA for the development and expansion of its public transportation system; and

WHEREAS, Licensee would like to close a private farm crossing and replace it in another location with a quiet zone compliant at-grade new public roadway approximately 350 feet south of the current private crossing; and

WHEREAS, Licensee intends to make crossing improvements to that new at-grade crossing located on the Right of Way at approximately 1100 E 2300 N Spanish Fork, Utah (approximate Mile Post 2.0) which will consist of installing concrete panels, crossing arms, curb, gutter, sidewalk, and asphalt (the "Crossing Improvements") which will cross the Right of Way; and

WHEREAS, Union Pacific Railroad ("UP") operates and maintains a portion of this railroad corridor and Licensee must obtain permission from UP before any Crossing Improvements are constructed; and

WHEREAS, Licensee desires a license for the construction, operation and maintenance of the Crossing Improvements.

### ROADWAY AGREEMENT

NOW THEREFORE, on the stated Recitals, which are incorporated herein by reference, and for and in consideration of the mutual covenants and agreements hereinafter set forth, the mutual benefits to the Parties to be derived herefrom, and for other valuable consideration, the receipt and sufficiency of which the Parties acknowledge, it is hereby agreed as follows:

### ARTICLE I INCORPORATED TERMS AND DEFINITIONS

For purposes of this Agreement, the following definitions shall apply:

1.1 "Construct" and "Construction" mean the initial installation of the Crossing Improvements in or otherwise materially affecting the Right of Way, as well as any subsequent

reconstruction, relocation, restoration or rehabilitation of the Crossing Improvements in or otherwise materially affecting the Right of Way.

1.2 “Crossing Improvements” means the installation of concrete panels, crossing arms, curb, gutter, sidewalk, and asphalt to be performed by Licensee pursuant to this Agreement and located on the surface of the Right of Way at Milepost Number 2.0 (Latitude 40.170233, Longitude -111.63749) of the Tintic Line in Spanish Fork City, Utah. The term “Crossing Improvements” shall also apply to any and all rearrangements, modifications, reconstruction, relocations, removals and extensions or additions concerning the Crossing Improvements that are authorized and approved by UTA pursuant to this Agreement (unless they are the subject of a separate agreement that does not incorporate the terms hereof).

1.3 “Emergency Access Manager” means the person or office responsible for controlling Construction and Maintenance access to the Right of Way. The Emergency Access Manager as of the execution of this Agreement is at **1-888-UPRR-COP (888-877-7267)**. UTA may change the designated Emergency Access Manager from time to time by delivery of notice in accordance with Article XVI of this Agreement.

1.4 “Freight Operator” means any entity using the Right of Way, or any portion thereof, to provide common carrier freight operations.

1.5 “Governmental Authority” means any federal, state, municipal, local or other division of government, or any agency thereof, having or asserting jurisdiction with respect to any matter related to this Agreement.

1.6 “Hazardous Materials” mean any materials or substances: (i) which are present in quantities and in forms which require investigation, removal, cleanup, transportation, disposal, response or remedial action (as the terms “response” and “remedial action” are defined in Section 101 of the Comprehensive Environmental Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601 (23) and (24)) under any applicable federal, state or local environmental law, regulation, ordinance, rule or bylaw, as such are amended from time to time, whether existing as of the date hereof, previously enforced or subsequently amended (each hereafter an “Environmental Law”); or (ii) which are defined as “hazardous wastes,” “hazardous substances,” “pollutants” or “contaminants” under any Environmental Law.

1.7 “Losses” mean any losses, damages, claims, demands, actions, causes of action, penalties, expenses, litigation costs, attorneys’ fees, expert witness fees, court costs, amounts paid in settlement, judgments, interest or other costs resulting from: (i) loss of or damage to the property of any Party or Third Person; (ii) death or personal injury to the agents of any Party or to any Third Person; or (iii) the cleanup or other requirements regarding any incident involving Hazardous Materials.

1.8 “Maintain” and “Maintenance” mean the performance of any repair, restoration, rehabilitation, refurbishment, retrofitting, inspection, monitoring, observation, testing, or similar work with respect to the Crossing Improvements in or otherwise materially affecting the Right of Way.

1.9 “Master Interlocal Agreement” means that certain Master Interlocal Agreement Regarding Fixed Guideway Systems Located Within Railroad Corridors, effective February 13, 2004, entered by and among UTA and the various municipalities and counties within which UTA’s rights of way are situated.

1.10 “Party” and “Parties” mean UTA or Licensee, and UTA and Licensee, respectively.

1.11 “Third Person” means any individual, corporation or legal entity other than UTA and Licensee.

1.12 “Track Improvements” mean any and all tracks, rails, ties, switches, frogs, end of track barricades or bumpers and other barricades or bumpers, derail devices, tie plates, spikes, wires, fastenings and any other appurtenances related thereto, drainage structures, grading, ballast, subgrade stabilization, crossings, tunnels, bridges, trestles, culverts, structures, facilities, leads, spurs, turnouts, tails, sidings, signals, crossing protection devices, communications systems or facilities, catenary systems and wires, poles and all other operating and non-operating appurtenances located within the Right of Way.

1.13 “Utility” and “Utilities” mean and include all properties, facilities, utilities, crossings, encroachments, lines and similar appurtenances located within the Right of Way by permissive or prescriptive authority including, but not limited to, pipelines, tubelines, water and gas lines or mains, electrical conduits, ditches and other drainage facilities, wires, fiber optics, communication lines, sewer pipes, overhead wiring and supporting structures and appurtenances, and all similar installations.

1.14 “Work Window” means the time period designated by UTA during which Construction, Maintenance and any other work with respect to the Crossing Improvements within the Right of Way is permissible. UTA may, at any time and at UTA’s sole discretion, determine that the Work Window shall not be concurrent with any passenger operations within the Right of Way.

## **ARTICLE II GRANT OF LICENSE AND REAL ESTATE USAGE CHARGE**

2.1 UTA customarily assesses a standard administrative fee reflecting the clerical, administrative and handling expense incurred in connection with the processing of this Agreement. The standard administrative fee has been waived consistent with the provisions of the Master Interlocal Agreement.

2.2 In consideration of the covenants and agreements to be kept, observed and performed by Licensee hereunder, UTA hereby grants Licensee a license to Construct and Maintain the Crossing Improvements in the location shown and in conformity with the dimensions and specifications indicated on the attached print dated 12/06/2012, approval date 12/11/2012, and marked Exhibit “A” (Exhibit “A” is attached hereto and hereby incorporated into and made a part of this Agreement by reference).

2.3 Licensee agrees to remove the private farm crossing at Licensee’s expense.

2.4 This Agreement is conditioned on the provision that Licensee shall obtain all necessary permission from and comply with all the requirements of the Union Pacific Railroad Company.

### ARTICLE III ACCESS TO THE RIGHT OF WAY

3.1 Except in the event of an emergency (as provided in Section 3.2 below), Licensee shall request permission from UTA at least ten days (or such shorter period as may be approved by UTA) prior to performing any Construction or Maintenance in or otherwise materially affecting the Right of Way. Licensee's request to access the Right of Way shall be specific as to the time, date and activities for which Licensee seeks permission. The request shall also include a summary of the method and manner in which the Construction or Maintenance will be performed. As part of the application process, UTA may require Licensee (and its contractors or other agents seeking access to the Right of Way) to attend any track access coordination meetings, safety training or other instruction as may be deemed necessary by UTA. Once granted, UTA's permission to enter the Right of Way shall be formalized in writing and delivered to Licensee. After permission has been granted, Licensee shall comply with all conditions, instructions and requirements of such permit and with all instructions or directions given by UTA including, if required, daily telephone notification to the applicable rail dispatch center prior to each entry into the Right of Way. All contact with UTA shall be coordinated through the person designated by UTA from time to time as set forth in Article XVI of this Agreement. Provided that Licensee complies with the provisions of this Section, UTA agrees not to unreasonably withhold, condition, or delay its approval of Licensee's request.

3.2 Licensee shall have the right to enter the Right of Way in the event of an emergency to make repairs necessary to protect against imminent and serious injury or damage to persons or property. Licensee shall take all precautions necessary to ensure that such emergency entry does not compromise the safety of any operations conducted in the Right of Way by UTA or Freight Operator. **Licensee must notify the Emergency Access Manager and Union Pacific Railroad of the emergency access and the work being performed prior to entering the Right of Way.**

### ARTICLE IV CONSTRUCTION AND MAINTENANCE OF THE CROSSING IMPROVEMENTS

4.1 All Construction and Maintenance with respect to the Crossing Improvements shall be performed to the satisfaction of UTA and in accordance with the conceptual, engineering and/or design plans ("Design Plans") previously approved by UTA and attached hereto as Exhibit "A." All Construction and Maintenance with respect to the Crossing Improvements shall be performed in a workmanlike manner, in compliance with all applicable industry standards and in compliance with the requirements of any applicable Governmental Authority. **The initial Construction of the Crossing Improvements shall not be performed by the Licensee.** UTA may impose requirements in addition to or more stringent than industry or legal standards if UTA deems such requirements necessary for the safety of operations conducted in the Right of Way. UTA may also require additional fabrication methods, staging requirements or other precautions. All Construction and Maintenance with respect to the Crossing Improvements shall be performed during the designated Work Window. UTA shall have the right, but not the obligation, to observe any and all work performed in or otherwise materially affecting the Right of Way in connection with the Crossing Improvements to ensure that such work is performed in accordance with the requirements set forth in this Agreement. In its Construction or Maintenance of the Crossing Improvements, Licensee shall not make any material deviation from the Design Plans without UTA's prior written approval. Licensee shall submit to UTA plans setting out the method and manner of handling all work to be performed under the Track Improvements including, without limitation, the shoring and cribbing, if any, required to protect the operations of UTA, the Freight

Operator or the owner of any adjacent tracks. Licensee shall not proceed with any such work until Licensee's proposed methods have been approved by UTA.

4.2 Various Utilities exist on, over and under the surface of the Right of Way. Prior to commencing any Construction or Maintenance with respect to the Crossing Improvements, Licensee shall properly investigate and determine the location of all such Utilities. In addition to the required investigation, Licensee shall have all Utilities in the area of the Crossing Improvements "blue-staked" and clearly marked prior to any excavation. Licensee shall make arrangements for the protection of all Utilities and shall commence no excavation, boring or other penetration in the Right of Way until all such protection has been accomplished.

4.3 Fiber optic cable systems may be buried in the Right of Way. 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. Licensee shall telephone UNION PACIFIC RAILROAD COMPANY 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 near the location of the Crossing Improvements. If so, Licensee will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, make arrangements for relocation or other protection of the fiber optic cable. Licensee shall not commence any work until all such protection and/or relocation (if applicable) have been accomplished. In addition to other indemnity provisions in this Agreement, Licensee shall indemnify, defend and hold the UTA Indemnitees (as defined in Section 8.1 of this Agreement) harmless from and against all Losses arising out of any act or omission of Licensee, its contractors, agents and/or employees, that causes or contributes to: (a) any damage to or destruction of any telecommunications system in the Right of Way; and/or (b) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractors, agents and/or employees in the Right of Way. Licensee shall not have or seek recourse against UTA 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 UTA's property or a customer or user of services of the fiber optic cable on UTA's property.

4.4 Licensee shall be solely responsible for obtaining any property rights, easements, rights of way or other permission from Third Persons (collectively "Third Person Property Rights") as may be necessary to Construct or Maintain the Crossing Improvements including, without limitation, any needed permission from the owner of any adjacent railroad corridor. Licensee shall also be solely responsible for obtaining any necessary franchises, permits or other necessary approvals from Governmental Authorities (collectively "Approvals"). Licensee agrees to pay any and all costs and expenses that may be asserted against UTA relating to such Third Person Property Rights or Approvals, and to assume any and all liability therefore.

4.5 Except as authorized in this Agreement or as may be immediately required for (and only at the actual time of) performance of any Construction or Maintenance contemplated under this Agreement, and then only in full compliance with all clearance standards and other safety requirements, Licensee shall not place, permit to be placed, erect, pile, store, stack, park, suffer or permit any line, building, platform, fence, gate, vehicle, car, pole, or other structure, obstruction, or material of any kind within the Right of Way.

4.6 Licensee shall Construct and Maintain the Crossing Improvements in compliance with all requirements imposed by any Governmental Authority including, without limitation, the requirements of the Federal Railroad Administration, the Occupational Safety and Health

Administration and the Utah Department of Transportation. Licensee shall also Construct and Maintain the Crossing Improvements in compliance with all applicable environmental laws. Licensee shall take all suitable precautions to prevent any interference with the operation of the Track Improvements or any other UTA or Third Person installations or facilities. If the Crossing Improvements for any reason causes interference with the operation of Track Improvements or any other UTA or Third Person installations or facilities, Licensee shall, upon notification by UTA and at Licensee's sole cost and expense, take such action as may be necessary to eliminate the interference including, without limitation, the removal of the Crossing Improvements.

4.7 Upon completion of any Construction or Maintenance relating to the Crossing Improvements, Licensee shall restore the surface of the Right of Way to its prior condition including, but not limited to, replacing any soil that was removed and thoroughly compacting it level with the adjacent surface of the ground and restoring any fences or other property that Licensee disturbed or removed from the Right of Way.

4.8 If a contractor is to perform any Construction or Maintenance contemplated in this Agreement, then the Licensee shall cause its contractor to comply with all applicable provisions of this Agreement. Additionally, Licensee shall require its contractor to execute UTA's form Contractor's Right of Entry Agreement (the "Contractor Agreement"). Licensee acknowledges receipt of a copy of the Contractor Agreement and will inform its contractor of the need to execute the Contractor Agreement. Any and all contractors used by Licensee in the Construction or Maintenance of the Crossing Improvements are subject to the approval of UTA, which approval shall not be unreasonably withheld, conditioned or delayed.

#### **ARTICLE V**

##### **CONSTRUCTION OBSERVATION BY UTA – LICENSEE TO BEAR ALL COSTS**

In the event that UTA, in its sole discretion, determines that any inspectors (technical or special), monitors, observers, safety personnel, flaggers or other persons are required given the nature of the Construction or Maintenance to be performed, UTA may, at its sole discretion, provide such personnel and Licensee shall, within 30 days, reimburse UTA for the reasonable costs thereby incurred.

#### **ARTICLE VI**

##### **LICENSEE TO BEAR ALL COSTS RELATED TO CROSSING IMPROVEMENTS**

Licensee shall be solely responsible for any and all costs incurred with respect to any Construction, Maintenance or other work related to the Crossing Improvements. Such costs shall include, without limitation, the cost of any modifications to UTA's Track Improvements and other facilities that may be necessary to accommodate or facilitate the Crossing Improvements.

#### **ARTICLE VII**

##### **SUBORDINATION OF RIGHTS GRANTED - RELOCATION OF CROSSING IMPROVEMENTS**

7.1 The rights granted pursuant to this Agreement shall be subject and subordinate to the prior and continuing right and obligation of UTA to fully use the Right of Way, including the right and power of UTA to construct, maintain, repair, renew, use, operate, modify, or relocate new or existing Track Improvements upon, along, above, or across any or all parts of the Right of Way and other UTA property, all or any of which may be freely done at any time or times by UTA without liability to Licensee for compensation or damages. The grant of license for the

Crossing Improvements is made without covenants of title or quiet enjoyment. UTA makes no warranties, either express or implied, regarding the nature, extent or status of its title to the Right of Way or regarding the existence or nonexistence of Third Person rights which may be superior to the license granted pursuant to this Agreement.

7.2 Licensee shall, at its sole cost and expense and within 30 days after receipt of written notice from UTA, modify the Crossing Improvements, relocate all or any portion of the Crossing Improvements to such new location in the Right of Way as UTA may designate, or (if neither modification nor relocation is practicable) remove the Crossing Improvements entirely from the Right of Way whenever, in furtherance of its needs and requirements, UTA shall find such action necessary or desirable. All the terms, conditions and stipulations herein expressed with reference to the Crossing Improvements on UTA's property in the location described herein shall, so far as the Crossing Improvements remains on UTA property, apply to the Crossing Improvements as modified or relocated pursuant to this Section. Licensee shall not be entitled to any damages or other compensation as the result of UTA's exercise of its rights under this paragraph. UTA agrees to exercise its rights under this Section in good faith.

7.3 The foregoing grant is also subject to the outstanding superior rights previously conveyed or granted to Third Parties by UTA, or its predecessors in interest, and the right of UTA to renew and extend the same.

#### **ARTICLE VIII INDEMNITY AND RELEASE**

8.1 As additional consideration for this Agreement, Licensee agrees to protect, defend, release, indemnify and hold harmless UTA, and any affiliates, successors, contractors, officers, directors, agents and employees of UTA (the "UTA Indemnitees") from and against any and all Losses proximately caused by: (a) the prosecution of any work contemplated by this Agreement by Licensee, or any employees, principals, contractors or agents of Licensee, including, without limitation, the Construction or Maintenance of the Crossing Improvements, or any portion thereof; (b) the presence, operation or use of the Crossing Improvements or any portion thereof; or (c) Licensee's breach of any provision of this Agreement.

8.2 Licensee acknowledges that the Right of Way may be subject to prospective purchaser agreements and covenants not to sue that UTA has entered with the Utah Department of Environmental Quality and the United States Environmental Protection Agency. Pursuant to such agreements, UTA is required to characterize any excavated soil that appears to contain (or has the potential to contain) Hazardous Materials and to handle and dispose of any such soil in compliance with applicable state and federal laws. Under these agreements, UTA is not required to excavate any soil except as required for its rail construction activities within its Right of Way. Accordingly, any excavation contemplated in this Agreement exposes UTA to potential environmental liability that would not otherwise be present. As consideration for the rights granted to Licensee hereunder, Licensee agrees to assume all potential liability and responsibility for, and to indemnify and hold UTA harmless with respect to, any Losses related to the characterization and removal of any Hazardous Materials discovered during the performance of any Construction or Maintenance. Licensee agrees to perform any such characterization and removal in full compliance with all applicable state and federal environmental laws.

8.3 Licensee hereby releases UTA from, and agrees not to seek recourse against UTA with respect to, any claims, damages, fees, expenses or other losses proximately caused by

Third Persons including, without limitation, Third Persons having licenses or other interests in the Right of Way.

8.4 The provisions of this Article shall survive the termination of this Agreement.

#### **ARTICLE IX CLAIMS AND LIENS FOR LABOR AND MATERIALS; TAXES**

9.1 Licensee shall fully pay for all materials joined or affixed to the Right of Way in connection with the Crossing Improvements, and for all labor performed with respect to the Crossing Improvements. Licensee shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of Licensee.

9.2 Licensee shall promptly pay or discharge all taxes, charges and assessments assessed or levied upon, in respect to, or on account of the Crossing Improvements to prevent the same from becoming a charge or lien upon the Right of Way and so that any taxes, charges and assessments levied upon or with respect to such property shall not be increased because of the Crossing Improvements, appliances, or fixtures connected therewith.

#### **ARTICLE X TERMINATION**

10.1 UTA may terminate this Agreement if: (a) Licensee ceases to use the Crossing Improvements in an active and substantial way for any continuous period of 1 year; (b) Licensee continues in default with respect to any provision of this Agreement for a period of 30 days after UTA delivers written notice to Licensee identifying the nature of Licensee's breach of this Agreement; provided, however that if the nature of Licensee's breach is such that it cannot be cured within such 30-day period, Licensee shall not be deemed in default if Licensee commences to cure the breach within 30 days and thereafter diligently continues to remedy the breach; or (c) Licensee removes the Crossing Improvements from the Right of Way.

10.2 In addition to the provisions of Section 10.1, either Party may terminate this Agreement upon delivery of 360 days written notice to the other Party, with or without cause.

10.3 Termination of this Agreement for any reason shall not affect any of the rights, obligations or liabilities that have accrued prior to or concurrent with such termination.

#### **ARTICLE XI INSURANCE**

11.1 During the life of this Agreement, Licensee shall, at its sole cost and expense, obtain and maintain the insurance described in Exhibit "B" (Exhibit "B" is attached hereto and hereby incorporated into and made a part of this Agreement by reference). Licensee will also provide to UTA a Certificate of Insurance, identifying UTA Contract Number TI/U/2376/G issued by its insurance carrier confirming the existence of such insurance and indicating that the policy or policies contain the following endorsement:

"Utah Transit Authority is named as an additional insured with respect to all liabilities arising out of the existence, use or any work performed on or

associated with the pipeline crossing located on railroad right of way at Mile Post 2.0 at or near Spanish Fork, Utah County, Utah”

11.2 Failure to maintain insurance as required shall entitle, but not require UTA to terminate this License immediately.

11.3 If Licensee is a public entity subject to any applicable statutory governmental immunity laws, the limits of insurance described in Exhibit “B” shall be the limits the Licensee then has in effect or that are required by applicable current or subsequent law, whichever is greater, a portion of which may be self-insured with the consent and approval of UTA. Licensee does not waive any of its rights of entitlements to governmental immunity and limitations on liability to Third Persons under the Utah Governmental Immunity Act.

11.4 Licensee hereby acknowledges that it has reviewed the requirements of Exhibit “B”, including without limitation the requirement for Railroad Protective Liability Insurance during construction, maintenance, installation, repair or removal of the pipeline which is the subject of this Agreement.

## **ARTICLE XII REMOVAL OF CROSSING IMPROVEMENTS UPON TERMINATION OF AGREEMENT**

Upon termination of this Agreement howsoever, Licensee shall, at Licensee’s sole cost and expense, remove the Crossing Improvements from the Right of Way and shall restore, to the satisfaction of UTA, such portions of the Right of Way to at least as good a condition as such were in at the time that Licensee first entered the Right of Way. If Licensee fails to do the foregoing within a reasonable time, UTA may, at its option, perform such removal and restoration work at the expense of Licensee. Licensee shall reimburse UTA for the costs incurred in any restoration or removal work performed under this Article within 30 days after receipt of the bill therefore. In the event UTA removes the Crossing Improvements pursuant to this Article, UTA shall in no manner be liable to the Licensee for any damage sustained by Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any other right of action, including the recovery of damages, that UTA may have against the Licensee. The provisions of this Article shall survive the termination of this Agreement.

## **ARTICLE XIII ASSIGNMENT**

Licensee may not assign this Agreement, in whole or in part, or any rights herein granted, without UTA’s written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Licensee may assign this Agreement and its rights hereunder as part of a sale to any entity that: (a) is a corporate parent to Licensee; (b) is merged or consolidated with Licensee; or (c) that purchases substantially all of the assets or capital stock of Licensee provided, however, that in any of the above instances such entity seeking an assignment under this Article must, as a condition to such assignment, assume all terms and conditions of this Agreement without limitation.

**ARTICLE XIV  
SUCCESSORS AND ASSIGNS**

Subject to the provisions of Article XIII, this Agreement shall be binding upon and inure to the benefit of the Parties hereto, their heirs, executors, administrators, successors and assigns.

**ARTICLE XV  
SEVERABILITY**

This Agreement is executed by the Parties under current interpretation of any and all applicable federal, state, county, municipal, or other local statutes, ordinances, or laws. Furthermore, each and every separate division hereof shall have independent and severable status from each other division, or combination thereof, for the determination of legality, so that if any separate division herein is determined to be unconstitutional, illegal, violative of trade or commerce, in contravention of public policy, void, invalid or unenforceable for any reason, that separate division shall be treated as a nullity but such holding or determination shall have no effect upon the validity or enforceability of each and every other division, or other combination thereof.

**ARTICLE XVI  
NOTICES**

Except as specifically provided elsewhere in this Agreement, all notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the addresses set forth herein. Addresses for notice may be changed by giving ten (10) days written notice of the change in the manner set forth herein.

If to UTA:

Utah Transit Authority  
Attn: Property Management  
P.O. Box 30810  
Salt Lake City, UT 84130-0810

With a Copy to:

Utah Transit Authority  
Attn: General Counsel  
P.O. Box 30810  
Salt Lake City, UT 84130-0810

If to Licensee:

Spanish Fork City Corp.  
Attn: City Manager  
40 S Main Street  
Spanish Fork City, UT 84660

**ARTICLE XVII  
NO IMPLIED WAIVER**

The waiver by UTA of the breach by Licensee of any condition, covenant or agreement herein contained shall not impair any future ability of UTA to avail itself of any remedy or right set forth in this Agreement. Neither the right of supervision by UTA, nor the exercise or failure to exercise such right, nor the approval or failure to disapprove, nor the election by UTA to repair or reconstruct all or any part of the work contemplated by this Agreement shall be deemed a waiver of any of the obligations of Licensee contained or set forth in this Agreement.

**ARTICLE XVIII  
ENTIRE AGREEMENT - COUNTERPARTS**

This Agreement shall constitute the entire agreement and understanding of the Parties with respect to the subject matter hereof, and shall supersede all offers, negotiations and other agreements with respect thereto. Any amendment to this Agreement must be in writing and executed by the authorized representatives of each Party. This Agreement may be executed in any number of counterparts and by each of the Parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Any signature page of this Agreement may be detached from any counterpart and reattached to any other counterpart hereof. The facsimile transmission of a signed original of this Agreement or any counterpart hereof and the retransmission of any signed facsimile transmission hereof shall be the same as delivery of an original.

**ARTICLE XIX  
FORUM SELECTION AND CHOICE OF LAW**

This Agreement shall be construed and interpreted under the laws of the State of Utah and the parties agree that any action or proceeding brought concerning this Agreement may be brought only in the courts of Salt Lake County, Utah, and each party hereto hereby consents to the jurisdiction of such courts.

**ARTICLE XX  
SPECIAL PROVISIONS**

Special provisions, if any, are included in the attached Exhibit "C" (Exhibit "C" is attached hereto and hereby incorporated into and made a part of this Agreement by reference).

**Space Intentionally Left Blank.**

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate as of the date first herein written.

Reviewed and Approved as to Form for UTA

*Tak Jones*

UTA Engineering

*Ruth Howe*

UTA Legal

**UTAH TRANSIT AUTHORITY**

By: *Paul Edwards*  
Paul Edwards  
Senior Program Manager

By: *Mailia Lauto'o*  
Mailia Lauto'o  
Manager, Property Administration



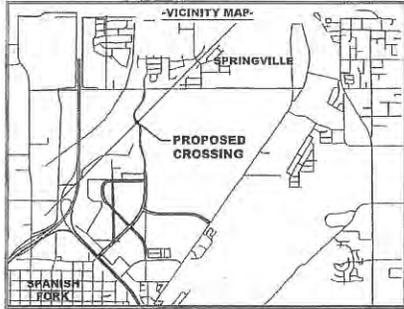
**LICENSEE**  
By: *G. Wayne Andersen*  
G. Wayne Andersen  
Mayor of Spanish Fork City

**ATTEST:**  
By: *Kent R. Clark*  
Kent R. Clark  
City Recorder

**EXHIBIT "A"**  
**DESIGN PLANS**

[Insert engineering drawings showing the proposed crossing including proposed construction methods, shoring and cribbing requirements and milepost location]

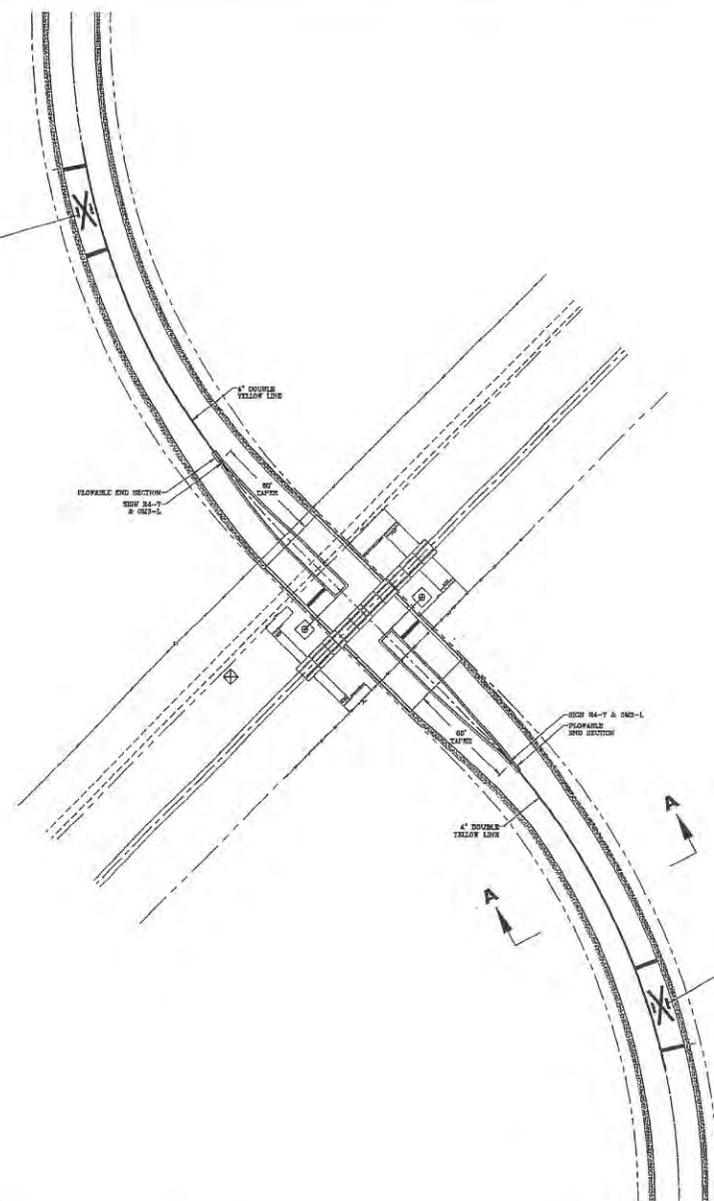




**LEI**  
ENGINEERS  
SURVEYORS  
PLANNERS

3302 N. Main Street  
Spanish Fork, UT 84603  
Phone: 801.798.0553  
Fax: 801.798.8393  
info@leieng.com  
www.lei-eng.com

PAVEMENT MARKING AND SIGNS FOR LIGHT  
TRAFFIC ON RAMP, APPROX. AT 100' FROM BRIDGE  
TABLE USE SPEED LIMIT OF 35 - 40 MPH.



PAVEMENT MARKING AND SIGNS FOR LIGHT  
TRAFFIC ON RAMP, APPROX. AT 100' FROM BRIDGE  
TABLE USE SPEED LIMIT OF 35 - 40 MPH.



SIGN TYPE A-1  
24 INCH X 30 INCH  
024-7



SIGN TYPE A-1  
12 INCH X 36 INCH  
024-2

**2700 NORTH CONNECTOR**  
SPANISH FORK, UTAH  
RAILROAD CROSSING SIGNING AND STRIPING

NO.	DESCRIPTION
1	
2	
3	
4	
5	

LEI PROJECT #  
**10-0672**  
DRAWN BY:  
JLH  
CHECKED BY:  
BTG  
SCALE:  
1" = 30'  
DATE:  
12/08/2012  
SHEET

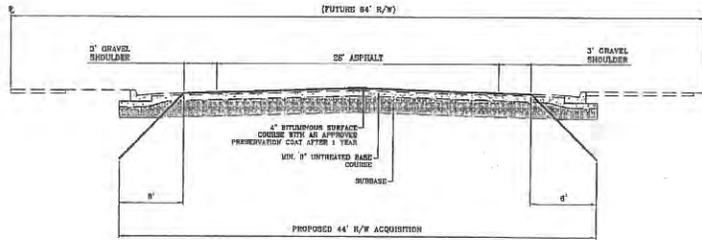
**RR-2**

TWS 12/11/12

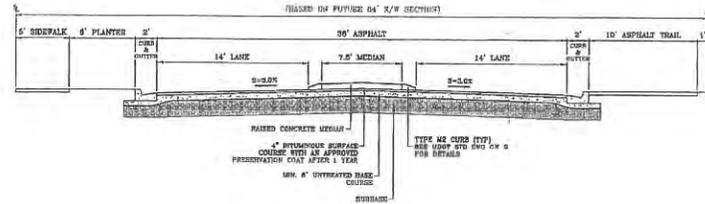


**ENGINEERS  
SURVEYORS  
PLANNERS**

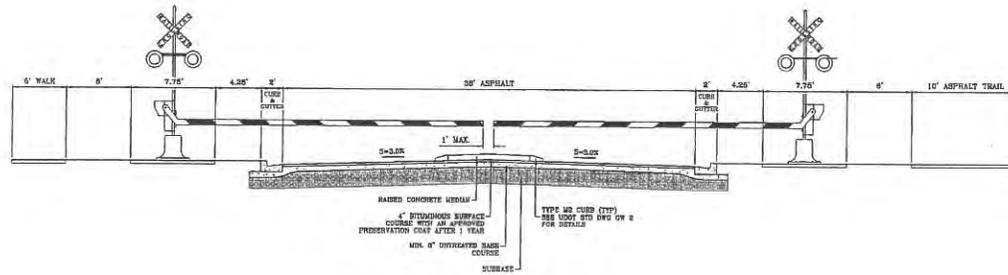
2302 N. Main Street  
Sandy, UT 84086  
Phone: 801.798.0288  
Fax: 801.798.0282  
office@lei-eng.com  
www.lei-eng.com



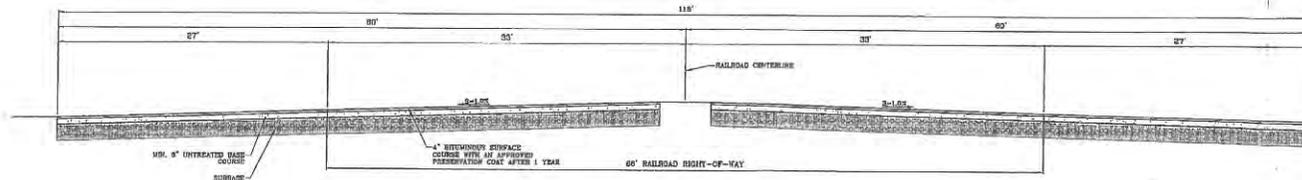
**SECTION A-A**



**SECTION B-B**



**CROSSING ELEVATION**



**CROSSING PROFILE**

**2700 NORTH CONNECTOR**  
SPANISH FORK, UTAH  
**RAILROAD CROSSING INSTALLATION**

REVISIONS


PROJECT NO:  
10-0072  
DRAWN BY:  
JER  
CHECKED BY:  
BTG  
SCALE:  
1" = 8'  
DATE:  
12/06/2012  
SHEET

**RR-3**

TWJ 12/11/12

**EXHIBIT "B"**  
**INSURANCE REQUIREMENTS**

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

- A. **Commercial General Liability Insurance:** Policy providing coverage for death, personal injury and property damage with a combined single limit of at least \$2,000,000 each occurrence or claim and an aggregate limit of at least \$4,000,000. The policy shall contain broad form contractual liability insurance covering the indemnity obligations assumed by Licensee in the Agreement. Exclusions for railroads (except where the Pipeline is in all places more than 50 feet from any railroad tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed. Coverage provided on a "claims made" form shall provide for at least a two-year extended reporting and discovery period if (a) the coverage changes from a claims made form to an occurrence form, (b) there is a lapse/cancellation of coverage, or (c) the succeeding claims made policy retroactive date is different for the expiring policy.
- a. The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Contractual Liability Railroads" ISO from CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Utah Transit Authority Property" as the Designated Job Site.
- B. **Automobile Liability Insurance:** Policy providing bodily injury, property damage and uninsured vehicles coverage with a combined single limit of at least \$2,000,000 each occurrence or claim. This insurance shall cover all motor vehicles including hired and non-owned, and mobile equipment if excluded from coverage under the commercial general liability insurance.
- C. **Worker's Compensation and Employer's Liability Insurance:** Policy covering Licensee's statutory liability under the laws of the State of Utah. If Licensee is self-insured, evidence of State approval must be provided.
- D. **Railroad Protective Liability Insurance:** Licensee must maintain "Railroad Protective Liability" insurance on behalf of UTA only as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000.
- a. 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.
- E. **Umbrella or Excess Insurance:** If Licensee utilizes umbrella or excess policies, and these policies must "follow form" and afford no less coverage than the primary policy.
- F. **Other Insurance Provisions:**
- a. Licensee and their insurers shall endorse the required insurance policy(ies) to waive their right of subrogation against UTA. Licensee's insurance shall be primary with respect to any insurance carried by UTA. Contractor

will furnish UTA at least 30 days advance written notice of any cancellation or non-renewal of any required coverage that is not replaced.

- b. The required insurance policy(ies) shall be written by a reputable insurance company with a current AM Best's Insurance Guide Rate of A better, or as may otherwise be acceptable to UTA. Such insurance company shall be authorized to transact business in the State of Utah.
- c. The fact that insurance is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by UTA shall not be limited by the amount of the required insurance coverage.

**SUBMITTING REQUESTS FOR  
RAILROAD PROTECTIVE LIABILITY INSURANCE**  
( \$2,000,000 per occurrence/ \$6,000,000 aggregate)

Application forms for inclusion in Utah Transit Authority's Blanket Railroad Protective Liability Insurance Policy may be obtained from a Property Administrator.

If you have questions regarding railroad protective insurance (i.e. premium quotes, application) please contact David Pitcher at:

Phone: (801) 287-2371  
Email: [dcpitcher@rideuta.com](mailto:dcpitcher@rideuta.com)

Send Checks and Applications to the following address:

Utah Transit Authority  
Attn: David Pitcher  
3600 South 700 West  
P.O. Box 30810  
Salt Lake City, UT 84130-0810

**EXHIBIT "C"**  
**SPECIAL PROVISIONS**

Licensee or Licensee's contractor must contact Union Pacific Railroad to gain access to UTA property. The contact person for Union Pacific Railroad is Bill Ince at (801) 212-3939 or Mike Stanton at (801) 212-2744.

**EXHIBIT "C"**  
**INSURANCE REQUIREMENTS**

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

- A. **Commercial General Liability Insurance:** Policy providing coverage for death, personal injury and property damage with a combined single limit of at least \$2,000,000 each occurrence or claim and an aggregate limit of at least \$4,000,000. Exclusions for railroads (except where the New Crossing is in all places more than fifty (50) feet from any railroad tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed. Coverage provided on a "claims made" form shall provide for at least a two-year extended reporting and discovery period if (a) the coverage changes from a claims made form to an occurrence form, (b) there is a lapse/cancellation of coverage, or (c) the succeeding claims made policy retroactive date is different for the expiring policy.
  - a. The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Contractual Liability Railroads" ISO from CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Utah Transit Authority Property" as the Designated Job Site.
- B. **Automobile Liability Insurance:** Policy providing bodily injury, property damage and uninsured vehicles coverage with a combined single limit of at least \$2,000,000 each occurrence or claim. This insurance shall cover all motor vehicles including hired and non-owned, and mobile equipment if excluded from coverage under the commercial general liability insurance.
- C. **Worker's Compensation and Employer's Liability Insurance:** Policy covering Licensee's statutory liability under the laws of the State of Utah. If Licensee is self-insured, evidence of State approval must be provided.
- D. **Railroad Protective Liability Insurance:** During Construction and Maintenance within fifty (50) feet of an active railroad track, including but not limited to installation, repair or removal of facilities, equipment, services or materials, the Licensee and/or Licensee's Contractor must maintain "Railroad Protective Liability" insurance on behalf of UTA only as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000.
  - a. If the Licensee and/or Licensee's Contractor is not enrolling for this coverage under UTA's blanket RRPLI program, the policy provided must have 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.
- E. **Umbrella or Excess Insurance:** If Licensee utilizes umbrella or excess policies, and these policies must "follow form" and afford no less coverage than the primary policy.

**F. Other Insurance Provisions:**

- a. Licensee and their insurers shall endorse the required workers compensation insurance policy to waive their right of subrogation against UTA. Licensee and its insurers shall not be required to waive any rights of subrogation as to any other insurance policy(ies). Licensee's insurance shall be primary with respect to any insurance carried by UTA. Licensee will furnish UTA at least thirty (30) days advance written notice of any cancellation or non-renewal of any required coverage that is not replaced.
- b. The required insurance policy(ies) shall be written by a reputable insurance company with a current AM Best's Insurance Guide Rate of A better, or as may otherwise be acceptable to UTA. Such insurance company shall be authorized to transact business in the State of Utah.
- c. The fact that insurance is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by UTA shall not be limited by the amount of the required insurance coverage.

**SUBMITTING REQUESTS FOR  
RAILROAD PROTECTIVE LIABILITY INSURANCE**  
( \$2,000,000 per occurrence/ \$6,000,000 aggregate)

Application forms for inclusion in Utah Transit Authority's Blanket Railroad Protective Liability Insurance Policy may be obtained from a Property Administrator.

If you have questions regarding railroad protective insurance (i.e. premium quotes, application) please contact David Pitcher at:

Phone: (801) 287-2371  
Email: [dcpitcher@rideuta.com](mailto:dcpitcher@rideuta.com)

Send Checks and Applications to the following address:

Utah Transit Authority  
Attn: David Pitcher  
669 West 200 South  
  
Salt Lake City, UT 84101



## DECLARATION OF COVERAGE FOR FISCAL YEAR 2018-2019

<b>Member Entity:</b>	Spanish Fork City Corporation	<b>Member Representative:</b>	Seth Perrins
<b>Address:</b>	40 South Main	<b>Telephone:</b>	(801) 798-5000
	Spanish Fork, Utah 84067	<b>Fax:</b>	(801) 798-5005

### 18 – 19 Fiscal Year Coverage

- A. Type: THIRD PARTY LIABILITY – CLAIMS MADE**  
Limits: \$6 Million - Per occurrence, no aggregate  
Deductible: \$5,000  
Policy #: JPP2019  
Availability: October 1, 1985  
Comments: 2018-2019 Joint Protection Program contains all details.
- B. Type: PROPERTY – MASTER POLICY**  
Limits: Per individual Member  
Deductible: Per individual Member  
Policy #: SG720 through Moreton & Company  
Availability: July 1, 1990  
Participation: Mandatory  
Comments: Members may select a variety of coverage provided under the Master Property Policy through Moreton & Company.
- C. Type: AUTO PHYSICAL DAMAGE FOR VEHICLES VALUED UNDER \$50,000**  
Deductible: \$1,000  
Policy #: APD2019  
Comments: All listed vehicles, comprehensive & collision coverage.
- D. Type: AUTO PHYSICAL DAMAGE FOR HIGH VALUED VEHICLES OVER \$50,000**  
Deductible: \$2,500 to \$25,000  
Policy #: CAP1708324 through Moreton & Company  
Availability: July 1, 1990  
Comments: All listed vehicles. Members must contact Moreton & Company regarding coverage, changes, rates & premiums.
- E. Type: OFF-DUTY AUTO LIABILITY – MASTER POLICY**  
Limits: \$1,000,000  
Deductible: Waived  
Policy #: CAP1708324 through Moreton & Company  
Availability: July 1, 1988  
Comments: Member must contact Moreton & Company directly regarding coverage, changes, rates & premiums. A certificate & schedule of positions covered will be issued by Moreton & Company.
- F. Type: SPECIAL EVENTS LIABILITY**  
Limits: Per individual event  
Deductible: Per individual event  
Policy #: Per individual event  
Availability: July 1, 1995  
Comments: Member must contact Moreton & Company directly regarding available coverage. Moreton & Company will deal directly with the organization and/or individual sponsoring the event. No additional involvement is required by Member.

THE VARIOUS COVERAGES OUTLINED IN A, B, C, D, E AND F  
ARE THE COMPLETE COVERAGES OFFERED BY URMMA TO ITS MEMBERS

**EXHIBIT "D"**  
**SPECIAL PROVISIONS**

1. Licensee or Licensee's contractor must contact Union Pacific Railroad to gain access to UTA property. The contact person for Union Pacific Railroad is Lance Kippen 303-405-5039.
  - a. Union Pacific coordination is required; flagging and/or special inspection requirements invoiced and/or required by Union Pacific will be the responsibility of the Licensee to satisfy.
2. Licensee or Licensee's contractor must first obtain a Right of Way Access Permit from UTA before any access will be allowed on UTA property. The current contact person for obtaining a Right of Way Access Permit is Dane Cooley, P.E. at (801) 834-8042, or such other contact as shall be identified on UTA's website location noted below.

A copy of the Right of Way Access Permit is attached to this Agreement, if it is missing or you need an additional copy please contact the Property Administrator. This permit will need to be filled out and submitted before any work can begin.

Note: Access Permits will not be issued without first having an executed Contractor's Right of Entry Agreement, UTA having received proof of insurance as provided in the Right of Entry Agreement, and verification that the Contractor and all of the Contractor's Employees have gone through UTA's Roadway Worker Training, if applicable.

# **EXHIBIT 5**

**\*661546\***



## **REMS FileNet Cover Sheet**

<b>AUDIT NUMBER</b>	255624
<b>FOLDER NUMBER</b>	0254802
<b>CITY</b>	LOGAN
<b>STATE</b>	UT
<b>PARTY NAME</b>	LOGAN, CITY OF
<b>PRIMARY PURPOSE</b>	Crossing - Public Roadway
<b>EFF. DATE</b>	8/11/2010
<b>MP START</b>	22.1
<b>MP END</b>	
<b>PRIMARY CIRC7</b>	UC224
<b>DESCRIPTION</b>	Public Road At-Grade Crossing Agrmt
<b>BOX NUMBER</b>	0
<b>BATCH</b>	00

# PUBLIC ROAD AT-GRADE CROSSING AGREEMENT

---

BETWEEN

UNION PACIFIC RAILROAD COMPANY

AND THE

CITY OF LOGAN

COVERING THE

RECONSTRUCTION AND WIDENING OF THE EXISTING 1700  
SOUTH STREET AT-GRADE PUBLIC ROAD CROSSING

AT

RAILROAD MILE POST 22.10 – CACHE VALLEY SUBDIVISION  
DOT NO.: 806-311F

AT OR NEAR

LOGAN,  
CACHE COUNTY,  
UTAH



UPRR Folder No.: 2548-02

UPRR Audit No.: 255624

## PUBLIC ROAD AT-GRADE CROSSING AGREEMENT

1700 South Street – DOT No.: 806-311F  
UPRR Mile Post 22.10 – Cache Valley Subdivision  
Logan, Cache County, Utah

THIS AGREEMENT is made and entered into as of the 11<sup>th</sup> day of August, 2010, 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 (the "Railroad") and the **CITY OF LOGAN**, a municipal corporation of the State of Utah, to be addressed at 950 West 600 North, Logan, UT 84321 (the "City"),

### RECITALS:

Presently, the City utilizes the Railroad's property for the existing 1700 South Street at-grade public road crossing, DOT No. 806-311F, at Railroad's Mile Post 22.10 on it's Cache Valley Subdivision, in Logan, Cache County, Utah.

The City now desires to undertake as its project (the "Project") the reconstruction and widening of the existing 700 South Street at-grade public road crossing as shown on the Railroad Location Print marked **Exhibit A**, and as specified on the Detail Prints collectively marked **Exhibit A-1**, with each exhibit being attached hereto and hereby made a part hereof. The existing aforementioned roadway, as reconstructed and widened is hereinafter the "Roadway" and where the Roadway crosses the Railroad's property is the "Crossing Area."

The right of way presently utilized by the City for the Roadway is not sufficient to allow for the reconstruction and widening of the road crossing. Therefore, under this Agreement, the Railroad will be granting an additional right of way right to the City to facilitate the reconstruction and widening of the road crossing.

The Railroad and the City 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 - LIST OF EXHIBITS

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

Exhibit A	Railroad Location Print
Exhibit A-1	Detailed Prints
Exhibit B	General Terms and Conditions



Exhibit B-1	Contractor's Insurance Requirements
Exhibit C	Railroad's Summary Estimate
Exhibit C-1	Railroad's Track & Surface Material Estimate
Exhibit C-2	Railroad's Signal Material Estimate
Exhibit D	Railroad Form of Contractor's Right of Entry Agreement

#### **ARTICLE 2 - EXHIBITS B AND B-1.**

The General Terms and Conditions marked **Exhibit B**, and the Contractor's Insurance Requirements marked **Exhibit B-1**, are attached hereto and hereby made a part hereof.

#### **ARTICLE 3 - RAILROAD GRANTS RIGHT.**

For and in consideration **THIRTEEN THOUSAND THREE HUNDRED SEVENTY-FIVE DOLLARS (\$13,375.00)** to be paid by the City to the Railroad upon the execution and delivery of this Agreement and in further consideration of the City's agreement to perform and abide by the terms of this Agreement including all exhibits, the Railroad hereby grants to the City the right to establish or reestablish, construct or reconstruct, maintain, repair and renew the road crossing over and across the Crossing Area.

#### **ARTICLE 4 - DEFINITION OF CONTRACTOR**

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the City 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.

#### **ARTICLE 5 - CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE**

- A. If the City will be hiring a Contractor to perform any work involving the Project (including initial construction and any subsequent relocation or maintenance and repair work), the City shall require the Contractor to:
- execute the Railroad's then current Contractor's Right of Entry Agreement
  - obtain the then current insurance required in the Contractor's Right of Entry Agreement; and
  - provide such insurance policies, certificates, binders and/or endorsements to the Railroad before allowing any Contractor to commence any work in the Crossing Area or on any other Railroad property. The Railroad's current insurance requirements are described in **Exhibit B-1**, attached hereto and hereby made a part hereof.
- B. The Railroad's current Contractor's Right of Entry Agreement is marked **Exhibit D**, attached hereto and hereby made a part hereof. The City 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:

*Senior Manager - Contracts  
Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street, Mail Stop 1690  
Omaha, NE 68179-1690  
UPRR Folder No.: 2548-02*

- D. If the City's own employees will be performing any of the Project work, the City may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

#### **ARTICLE 6 - FEDERAL AID POLICY GUIDE**

- A. If the City 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, and
  - construction work by the City and Contractor shall be performed, and any reimbursement to the Railroad for work it performs, shall be made in accordance with the Federal Aid Policy Guide.
- B. If federal funding is involved, as provided in 23 CFR 646.210(b)(2), the Project is of no ascertainable benefit to the Railroad and the Railroad shall not be obligated to pay or contribute to any Project costs.

#### **ARTICLE 7 - WORK TO BE PERFORMED BY THE RAILROAD**

- A. The work to be performed by the Railroad, at the City's sole cost and expense, is described in the Railroad's Material and Force Account Estimates:
- Railroad's Summary Estimate dated May 18, 2010, in the amount of \$315,241.00, marked **Exhibit C**, the
  - Railroad's Track & Surface Material Estimate dated April 7, 2010, in the amount of \$95,993.00, marked **Exhibit C-1**, and the
  - Railroad's Signal Material Estimate dated April 6, 2010, in the amount of \$219,248.00, marked **Exhibit C-2**,
- each attached hereto and hereby made a part hereof (collectively the "Estimate"). As set forth in the Estimate, the Railroad's combined estimated cost for the Railroad's work associated with the Project is (\$315,241.00).
- B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the City in the event the City does not commence construction on the portion of the Project located on the Railroad's property within six (6) months from the date of the Estimate.
- C. The City agrees to reimburse the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, actual costs of preliminary engineering review, construction inspection, procurement of materials, equipment rental, manpower and deliveries to the job site and all of the Railroad's normal



and customary additives (which shall include direct and indirect overhead costs) associated therewith.

#### **ARTICLE 8 - PLANS**

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

#### **ARTICLE 9 - EFFECTIVE DATE; TERM; TERMINATION.**

- A. This Agreement shall become effective as of the date first herein written, or the date work commences on the Project, whichever is earlier, and shall continue in full force and effect for as long as the Road Crossing 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 City in the event the City does not commence construction on the portion of the Project located on the Railroad's property within twelve (12) months from the date of this Agreement, or from the date that the Railroad has executed this Agreement and returned it to the City for its execution, whichever is applicable.
- C. If the Agreement is terminated as provided above, or for any other reason, the City 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 10 - CONDITIONS TO BE MET BEFORE CITY CAN COMMENCE WORK.**

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

- The Railroad and City have executed this Agreement.
- The Railroad has provided to the City the Railroad's written approval of the Plans.
- 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 set forth in the Contractor's Right of Entry Agreement.



**ARTICLE 11 - SIGNAL MAINTENANCE.**

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

**ARTICLE 12 - TERMINATION OF ORIGINAL AGREEMENT.**

Upon the completion of the Roadway, the Original Agreement (if any existing public road crossing agreement exists for this location) shall terminate and the terms and conditions of this Agreement shall govern the use, maintenance, repair and reconstruction of the Roadway.

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

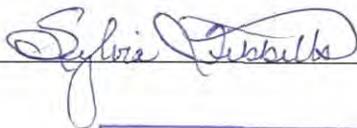
**UNION PACIFIC RAILROAD COMPANY**

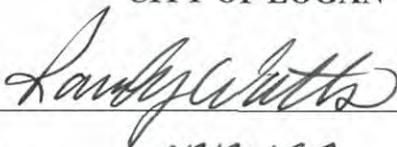
*(Federal Tax ID #94-6001323)*

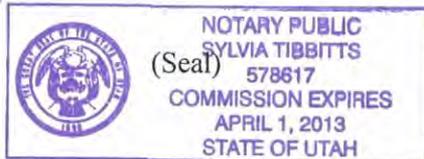
By  \_\_\_\_\_  
JAMES P. GADE  
Director Contracts

WITNESS:

**CITY OF LOGAN**

 \_\_\_\_\_

By  \_\_\_\_\_  
Title MAYOR



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

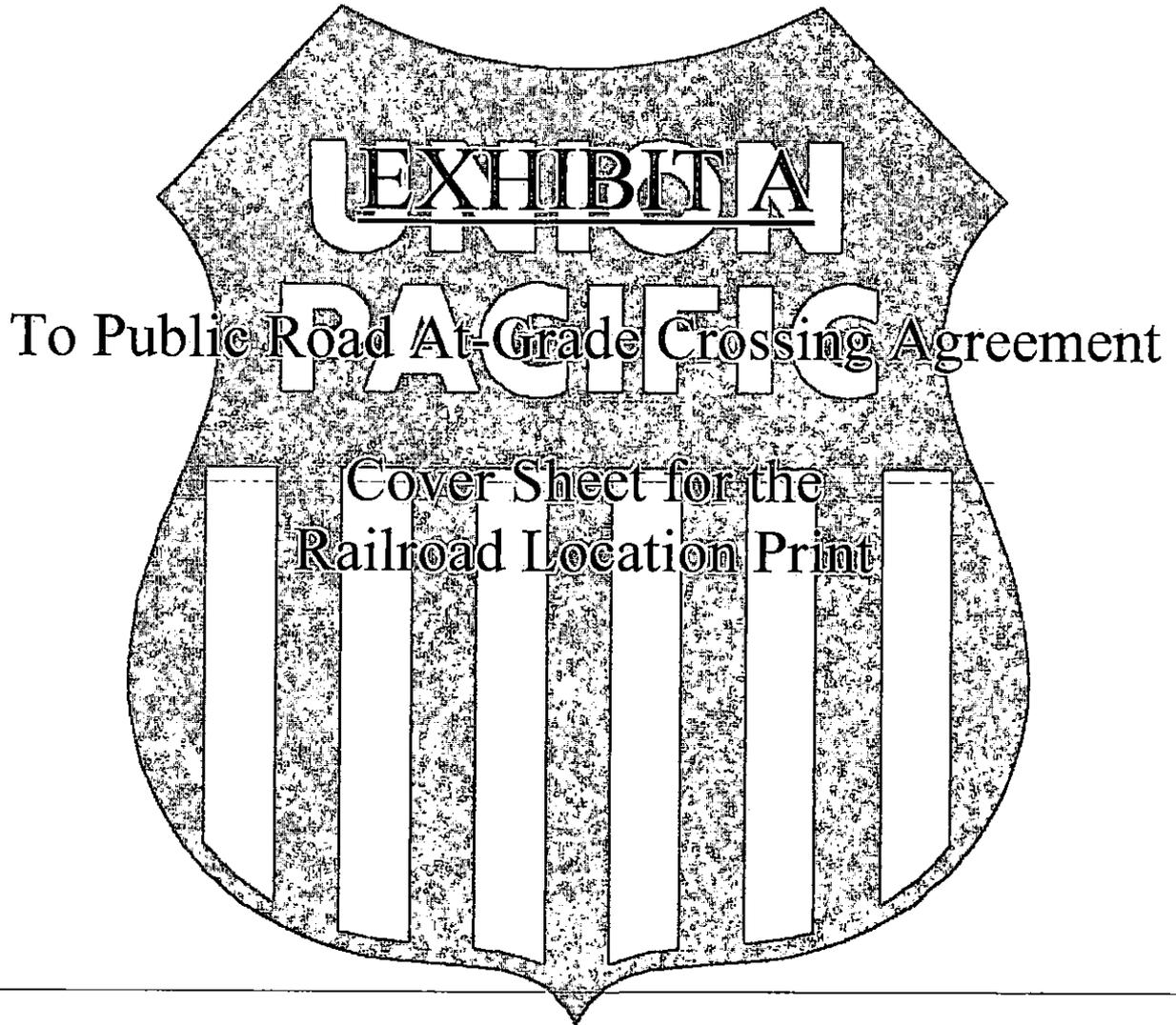


EXHIBIT A

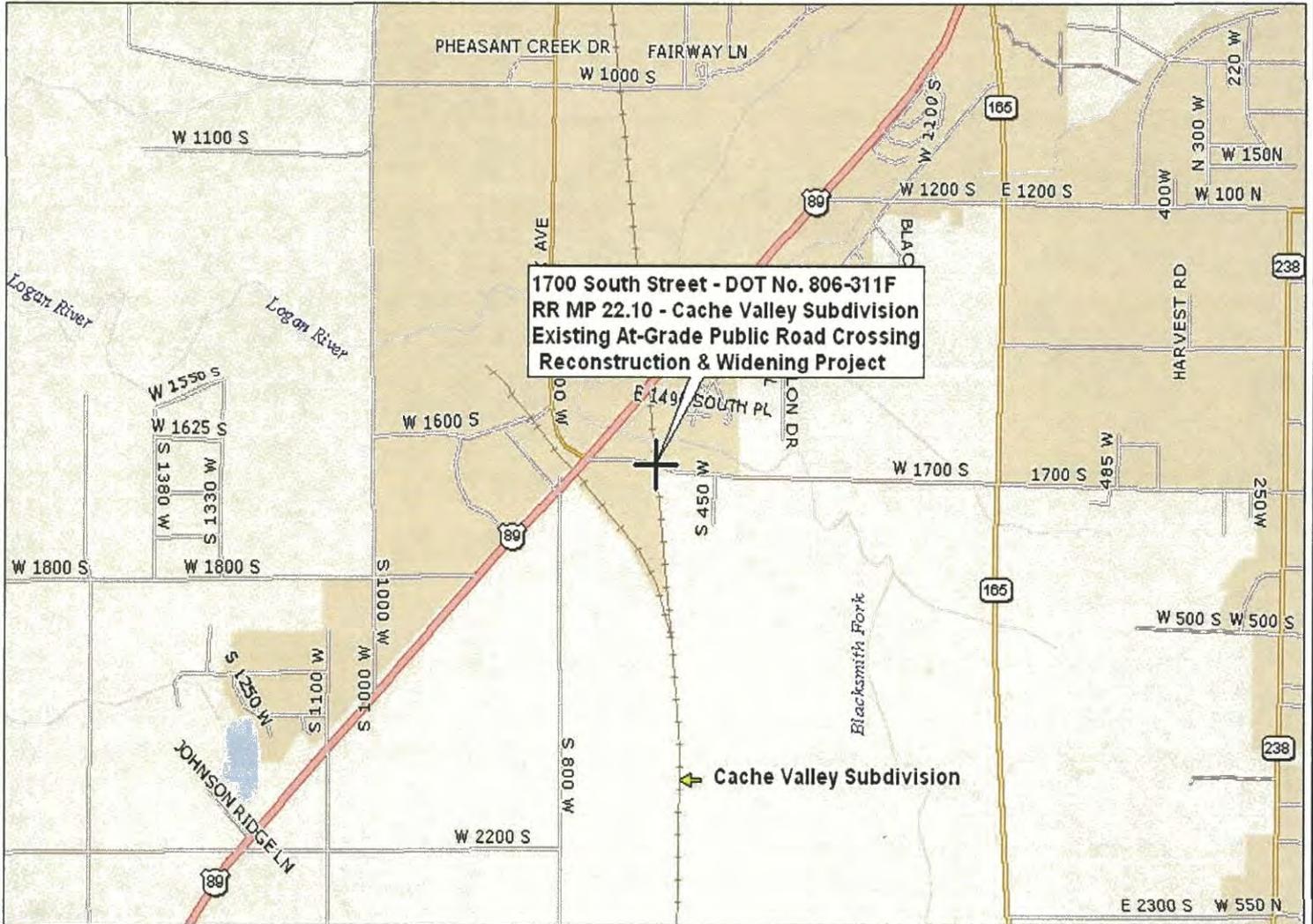
To Public Road At-Grade Crossing Agreement

UNION PACIFIC

Cover Sheet for the  
Railroad Location Print



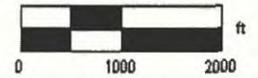
# RAILROAD LOCATION PRINT OF AN EXISTING AT-GRADE PUBLIC ROAD CROSSING RECONSTRUCTION & WIDENING PROJECT



1700 South Street - DOT No. 806-311F  
RR MP 22.10 - Cache Valley Subdivision  
Existing At-Grade Public Road Crossing  
Reconstruction & Widening Project



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www.delorme.com



Data Zoom 13-0

## RAILROAD WORK TO BE PERFORMED:

1. Re-lay 240-feet of track; Install 64-feet of concrete road crossing panels; Install 50 cross ties; Install 1 carload of ballast; and other track & surface materials.
2. Install automatic flashing light crossing signals with gates; and other signal facilities.
3. Engineering Design Review & Flagging.

## EXHIBIT "A"

### UNION PACIFIC RAILROAD COMPANY

CACHE VALLEY SUBDIVISION  
MILE POST 22.10

GPS: N 41° 42.1907', W 111° 50.9223'  
LOGAN, CACHE CO., UT.

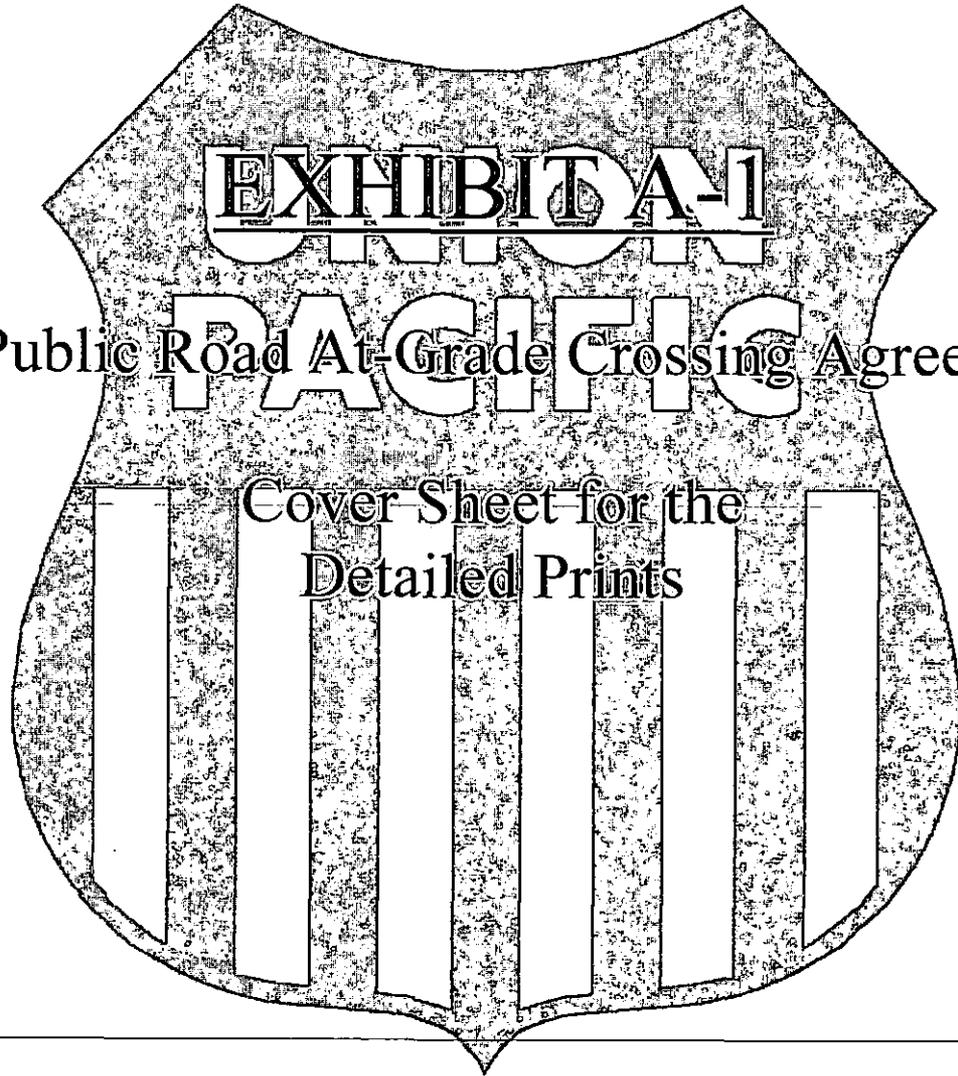
Railroad Location Print of an existing at-grade public road crossing reconstruction and widening project with the  
**CITY OF LOGAN.**

Folder No. 2548-02

Date: April 29, 2009

### 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

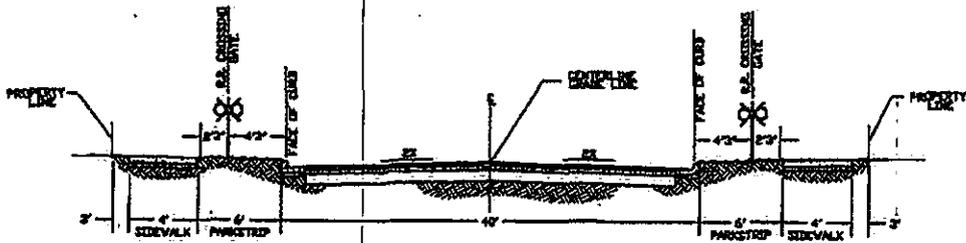


**EXHIBIT A-1**

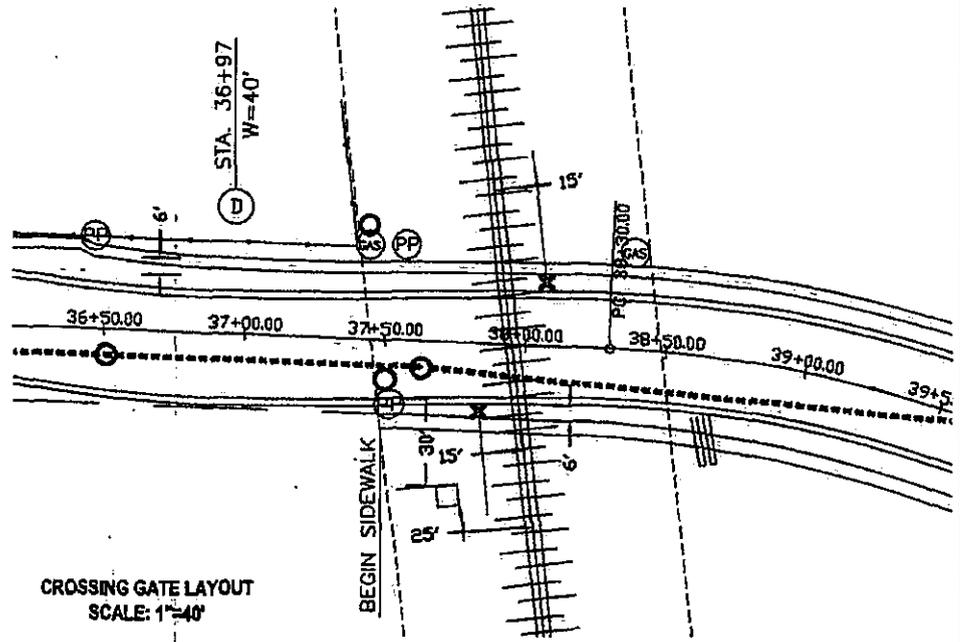
To Public Road At-Grade Crossing Agreement

**PACIFIC**

Cover Sheet for the  
Detailed Prints



TYPICAL ROADWAY SECTION  
NO MARK  
STA 36+25 TO STA 38+50



CROSSING GATE LAYOUT  
SCALE: 1"=40'

LOGAN CITY ENGINEERING  
255 NORTH MAIN  
LOGAN, UTAH 84321

1700 SOUTH - HIGHWAY 89/91 TO 400 W.  
ROAD RECONSTRUCTION

RAILROAD CROSSING DETAILS

DESIGNED	CRJ	DATE	08/02/07
DRAFTED	RLW	PROJECT	807-016
CHECKED	CRJ		

NO SCALE

SHEET NO.

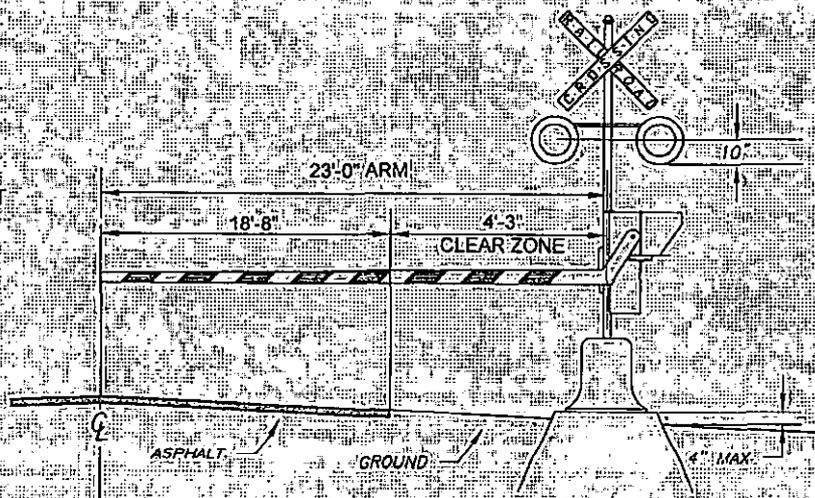
6/7

# SCOPE OF WORK

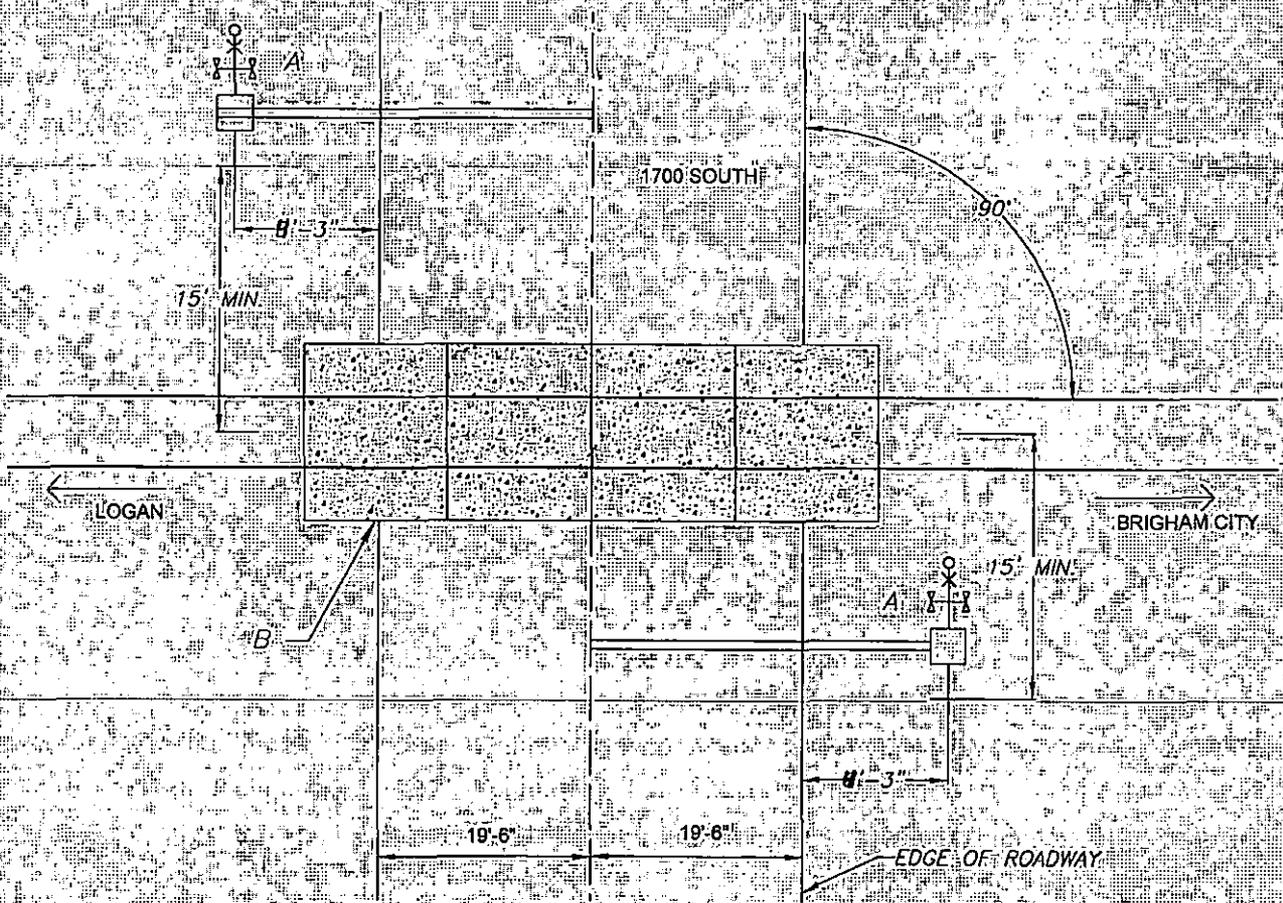
A: UPRR TO INSTALL LED LIGHTS, GATES AND CONSTANT WARNING

B: UPRR TO INSTALL 64" INSULATED CONCRETE PANELS

C: LOGAN CITY TO INSTALL ALL PAVEMENT MARKINGS AND ADVANCED WARNING SIGNS AS PER MUTCD



TYPICAL CLEARANCE FOR FLASHING LIGHT SIGNALS AND AUTOMATIC GATES  
(NO SCALE)



FIBER OPTIC CABLE CALL BEFORE YOU DIG 1-800-336-9193



UNION PACIFIC RAILROAD  
MILEPOST 22.10  
CACHE VALLEY SUBDIVISION  
POCATELLO SERVICE UNIT  
DOT # 806311F



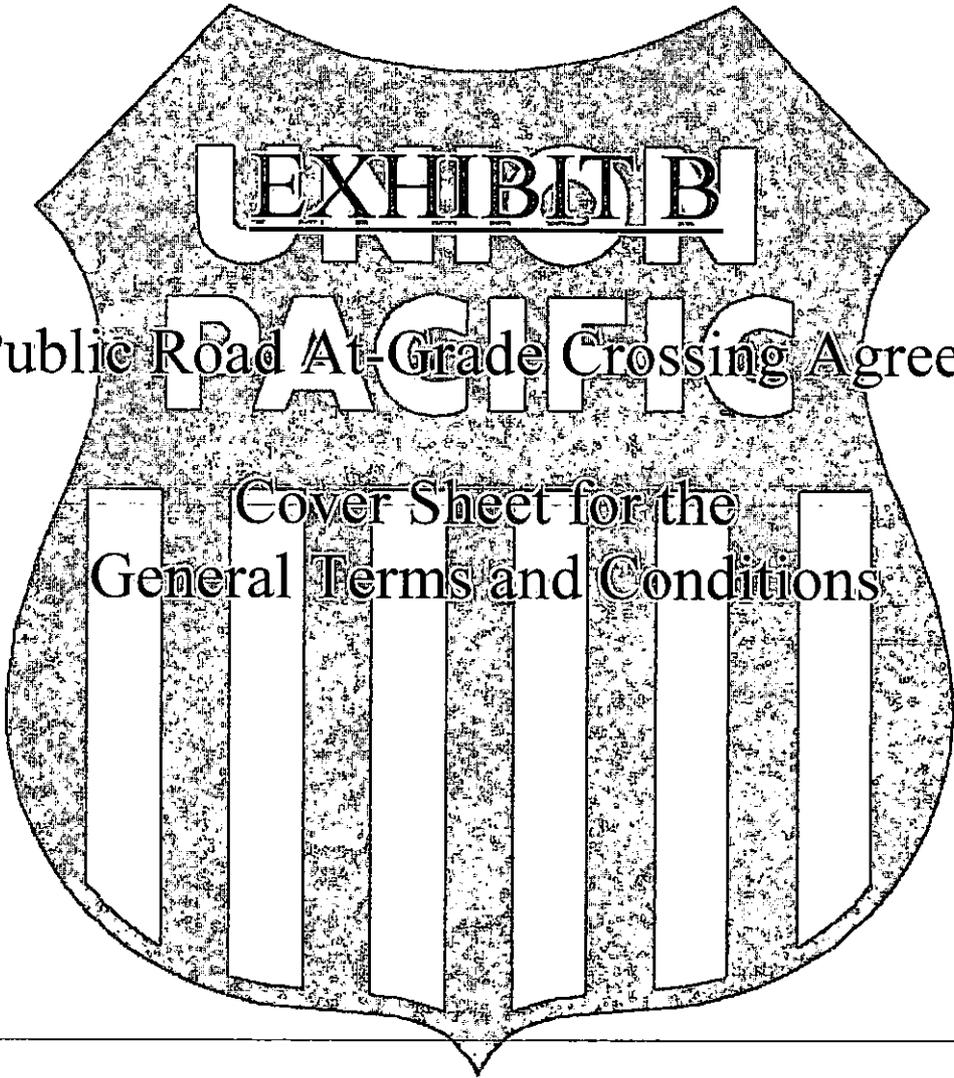


EXHIBIT B

To Public Road At-Grade Crossing Agreement

UNION PACIFIC

Cover Sheet for the  
General Terms and Conditions

## EXHIBIT B

### TO PUBLIC ROAD AT GRADE CROSSING AGREEMENT

#### GENERAL TERMS AND CONDITIONS

##### **SECTION 1. CONDITIONS AND COVENANTS**

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

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

- a) The City, at its expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Project, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.
- b) Except as may be otherwise specifically provided herein, the City, at its expense, will furnish all necessary labor, material and equipment, and shall construct and complete the Roadway and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper highway warning devices (except those installed by the Railroad within its right of way) and all necessary drainage facilities, guard rails or barriers, and right of way fences between the Roadway and the railroad tracks. Upon completion of the Project, the City shall remove from the Railroad's property all temporary structures and false work, and will leave the Crossing Area in a condition satisfactory to the Railroad.
- c) All construction work of the City upon the Railroad's property (including, but not limited to, construction of the Roadway and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President Engineering - Design of the Railroad or his authorized representative and in accordance with the Plans, and other guidelines furnished by the Railroad.
- d) All construction work of the City shall be performed diligently and completed within a reasonable time, and in any event within three (3) years from the effective date of this Agreement, or within such further period of time as may be specified in writing by the Railroad's Assistant Vice President Engineering - Design. No part of the Project shall be suspended, discontinued or unduly delayed without the Railroad's written consent, and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of the City. The City hereby assumes the risk of any such delays and agrees that no claims for damage on account of any delay shall be made against the Railroad.

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

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

### **SECTION 4. PAYMENT FOR WORK BY THE RAILROAD**

- a) Bills for work and materials shall be paid by the City within thirty (30) days of its receipt thereof. The Railroad will submit to the City current bills for all work performed by the Railroad and all flagging and other protective services and devices during progress of the Project (unless flagging is to be billed directly to the Contractor). The Railroad will submit final billing within one hundred and twenty (120) days after completion of the Project, provided the City advises the Railroad of the commencement of the 120-day period by giving the Railroad written notification of completion of the Project.
- b) The Railroad may contract for the performance of any of its work by other than railroad forces. The Railroad shall notify the City of the contract price within ninety (90) days after it is awarded. Unless the Railroad's work is to be performed on a fixed price basis, the City shall reimburse the Railroad for the amount of the contract.

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

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

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

If at any time the Railroad shall elect, or be required by competent authority to, raise or lower the grade of all or any portion of the tracks located on the crossing Area, the City shall, at its own expense, conform the public highway in the Crossing Area 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 railroad, highway or both, the parties will apportion the expense incidental thereto between themselves by negotiation, agreement or by the order of a competent authority before the change or rearrangement is undertaken.

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

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

- a) **Definitions.** All references in this Agreement to the City shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the City shall include work both within and outside of the Railroad's property.
- b) **Compliance With Laws.** The City shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The City shall use only such methods as are consistent with safety, both as concerns the City, the City's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The City (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the City to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the City shall reimburse and indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The City further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.
- c) **No Interference or Delays.** The City shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations

- or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.
- d) **Supervision.** The City, at its own expense, shall adequately police and supervise all work to be performed by the City, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the City for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the City with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the City will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.
  - e) **Suspension of Work.** If at any time the City's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the City is being or is about to be done or prosecuted without due regard and precaution for safety and security, the City shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.
  - f) **Removal of Debris.** The City shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the City at the City's own expense or by the Railroad at the expense of the City. The City shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during snow removal from the Crossing Area.
  - g) **Explosives.** The City shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.
  - h) **Excavation.** The City shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The City shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The City, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the City in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering - Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.
  - i) **Drainage.** The City, at the City's own expense, shall provide and maintain suitable facilities for draining the Road Crossing and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The City, at the City's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the City, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The City shall not obstruct or interfere with existing ditches or drainage facilities.
  - j) **Notice.** Before commencing any work, the City shall provide at least ten (10) days prior notice (excluding weekends and holidays) to the Railroad's Manager-Track Maintenance.
  - k) **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. City shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the City. If it is, City will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

#### SECTION 9. INTERIM WARNING DEVICES

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

#### SECTION 10. OTHER RAILROADS

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

**SECTION 11. REMEDIES FOR BREACH OR NONUSE**

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

**SECTION 12. MODIFICATION - ENTIRE AGREEMENT**

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

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

This Agreement shall not be assigned without the written consent of the Railroad. Subject hereto, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

**EXHIBIT B-1**

To Public Road At-Grade Crossing Agreement

**PACIFIC**

Cover Sheet for the  
Contractor's Insurance Requirements



## EXHIBIT B-1

### TO PUBLIC ROAD AT-GRADE CROSSING AGREEMENT

#### CONTRACTOR'S INSURANCE REQUIREMENTS

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) 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.

- B. Business Automobile Coverage Insurance.** Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident.

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(s) affected by this Agreement.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If 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.

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

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

#### **Other Requirements**

- F.** 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.

- G.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless:

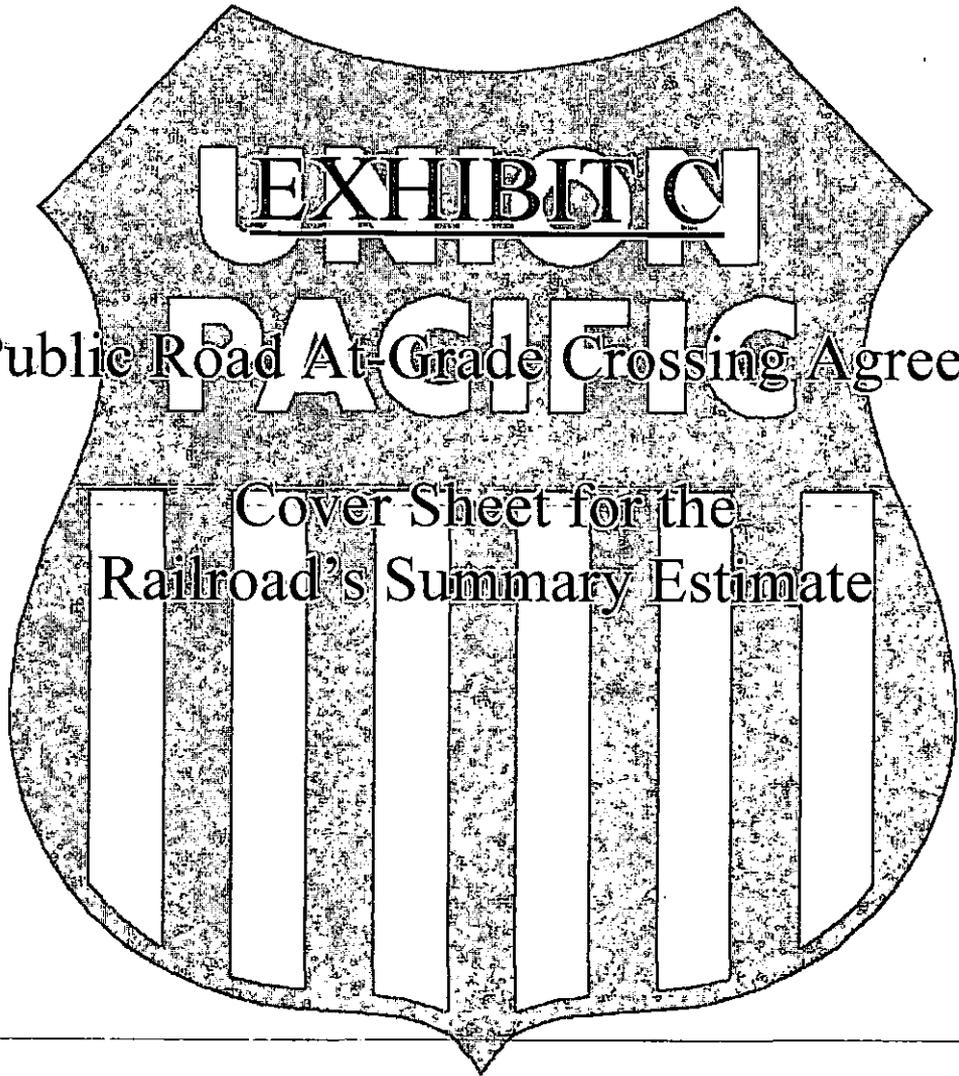
- insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or
- all punitive damages are prohibited by all states in which this agreement will be performed.

- H.** Contractor waives all rights against Railroad and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers liability or commercial umbrella or excess liability insurance obtained by Contractor required by this agreement.

- I.** 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.



- J. 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(s) in which the work is to be performed.
- K. 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.



To Public Road At-Grade Crossing Agreement

Cover Sheet for the  
Railroad's Summary Estimate

## EXHIBIT C

**SUMMARY OF MATERIAL AND FORCE ACCOUNT WORK  
BY THE UNION PACIFIC RAILROAD COMPANY  
FOR THE  
1700 SOUTH - LOGAN, UTAH PROJECT**

**DESCRIPTION OF WORK:** Widening of existing at-grade Public Crossing at MP 22.10 on the Cache Valley Subdivision, 1700 South, in Logan, Cache County, Utah. Includes UPRR work detailed in material and force account estimates, surface and signal.

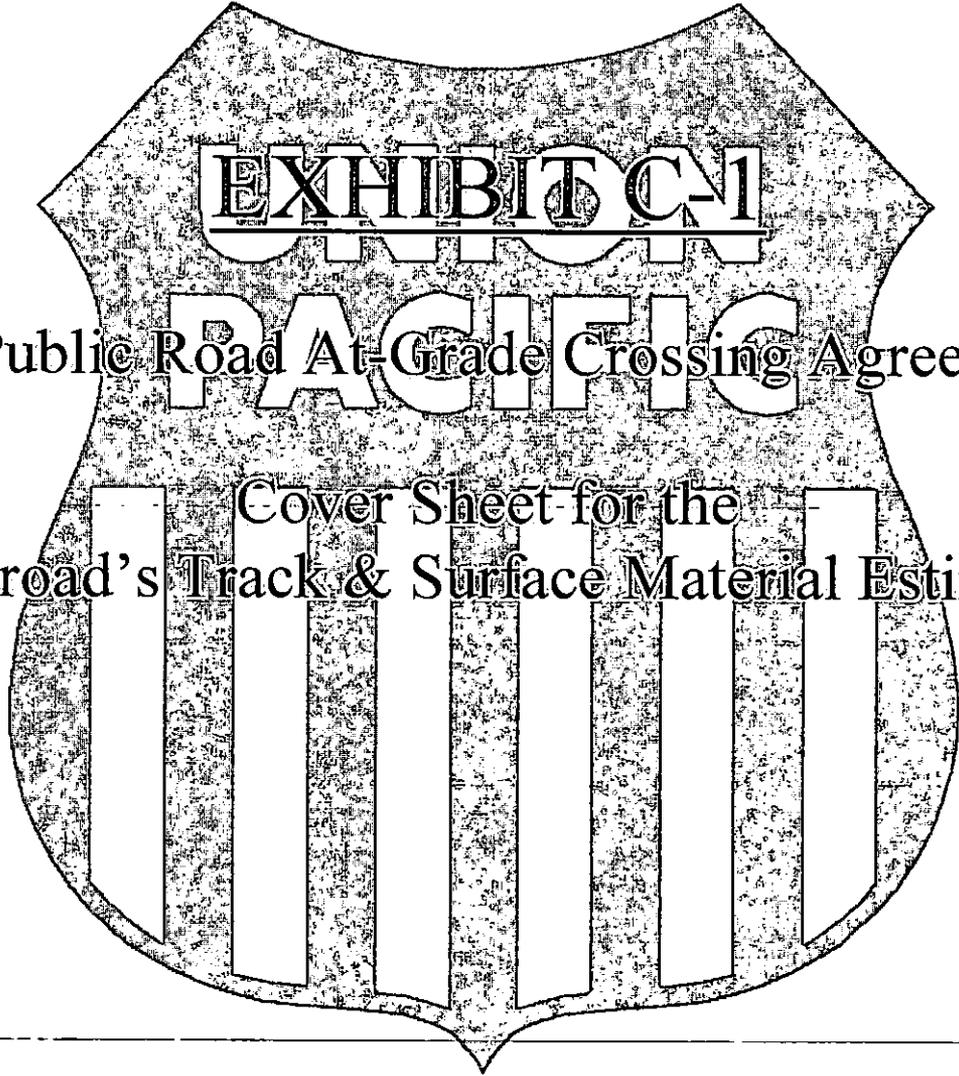
Cache County  
Project No.: 07-016  
1700 South

LOCATION: Pocatello Service Unit - 21    STATE: Utah    DATE: May 18, 2010

<u>DESCRIPTION</u>	<u>LABOR</u>	<u>MATERIAL</u>	<u>TOTAL</u>
Recollectable Railroad Work	64,124 116,324	31,869 102,924	95,993 219,248
<b>TOTAL PROJECT</b>	<b>180,448</b>	<b>134,793</b>	<b>315,241</b>
EXISTING REUSABLE MATERIAL			0
SALVAGE NONUSABLE MATERIAL			0

**TOTAL ESTIMATED COST OF PROJECT LESS CREDITS \$315,241.00**

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



**UNION**

**PACIFIC**

To Public Road At-Grade Crossing Agreement

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

DATE: 2010-04-07

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

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2010-10-06

DESCRIPTION OF WORK:

2009 RECOLLECT ROAD CROSSING - CACHE VALLEY SUB - MP 22.10 - 1700 SOUTH.  
100% RECOLLECT FROM CITY OF LOGAN UT, - ACTUAL COST - STD RATE.  
1 KING LOCATION = 64 TF OF CONCRETE KING.  
ESTIMATED USING FEDERAL ADDITIVES WITH INDIRECT AND OVERHEAD - 205%

PID: 61555 AWO: MP, SUBDIV: 22.10, CACHEVALLEY  
SERVICE UNIT: 17 CITY: CACHE JCT STATE: UT

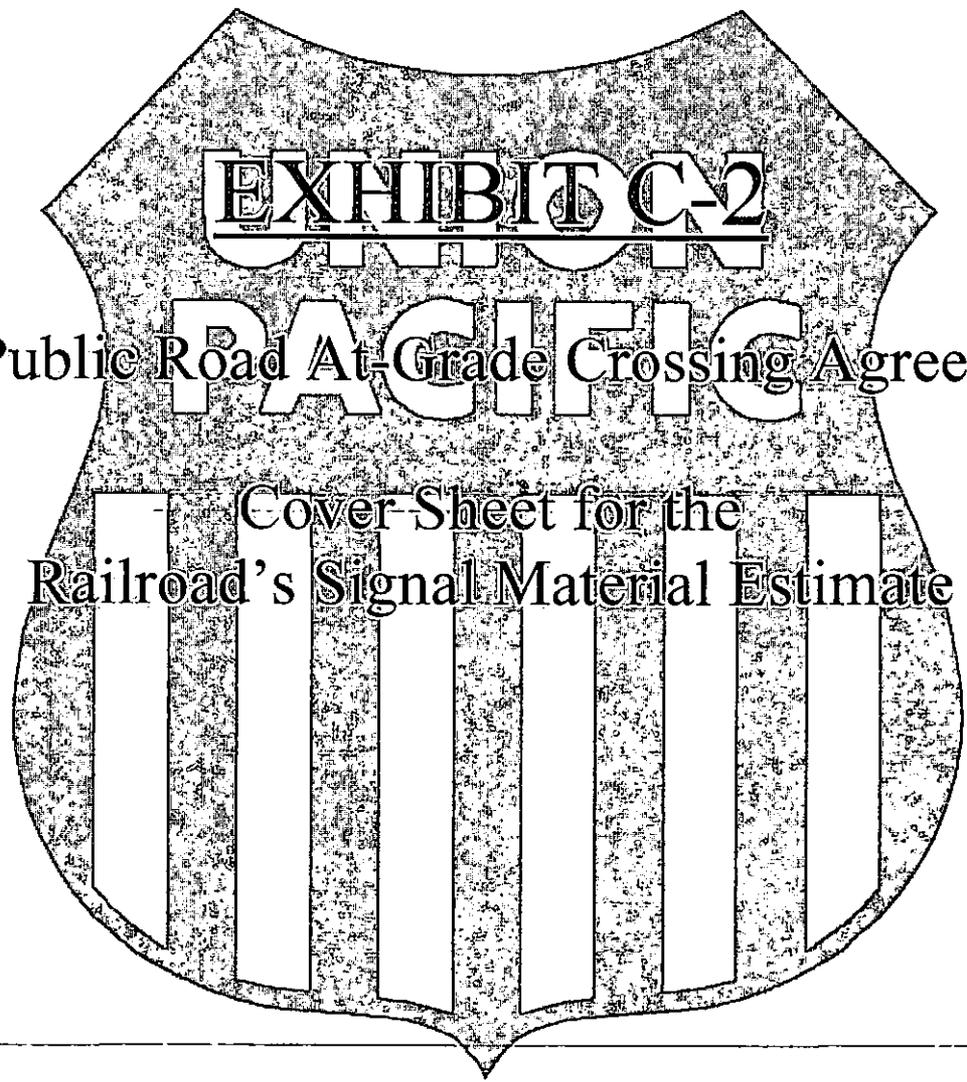
DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
<b>ENGINEERING WORK</b>							
ENGINEERING			1456		1456		1456
<b>TOTAL ENGINEERING</b>			<b>1456</b>		<b>1456</b>		<b>1456</b>
<b>SIGNAL WORK</b>							
LABOR ADDITIVE 205%			2252		2252		2252
SALES TAX				2	2		2
SIGNAL			1098	70	1168		1168
<b>TOTAL SIGNAL</b>			<b>3350</b>	<b>72</b>	<b>3422</b>		<b>3422</b>
<b>TRACK &amp; SURFACE WORK</b>							
BALAST	1.00	CL	793	812	1605		1605
BILL PREP				900	900		900
ENVIRONMENTAL PERMITS				1	1		1
FIELD WELD			114		114		114
HOME LINE FREIGHT				900	900		900
LABOR ADDITIVE 205%			34739		34739		34739
MATL STORE EXPENSE				308	308		308
OTM			2040	5647	7687		7687
RAIL	240.00	LF	1201	3453	4654		4654
ROCKING	64.00	TF	5591	13277	18868		18868
SALES TAX				1063	1063		1063
SAW CUT STREET APPROACH				2000	2000		2000
TRK-SURF, LIN			3604		3604		3604
WELD			3706	254	3960		3960
XTIE	50.00	EA	7530	3182	10712		10712
<b>TOTAL TRACK &amp; SURFACE</b>			<b>59318</b>	<b>31797</b>	<b>91115</b>		<b>91115</b>

LABOR/MATERIAL EXPENSE	64124	31869		
RECOLLECTIBLE/UPRR EXPENSE			95993	0
ESTIMATED PROJECT COST				95993
EXISTING REUSEABLE MATERIAL CREDIT				0
SALVAGE NONUSEABLE MATERIAL CREDIT				0

RECOLLECTIBLE LESS CREDITS

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

□



**EXHIBIT C-2**

To Public Road At-Grade Crossing Agreement

**PACIFIC**

Cover Sheet for the  
Railroad's Signal Material Estimate

DATE: 2010-04-06

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

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS : 2010-10-05

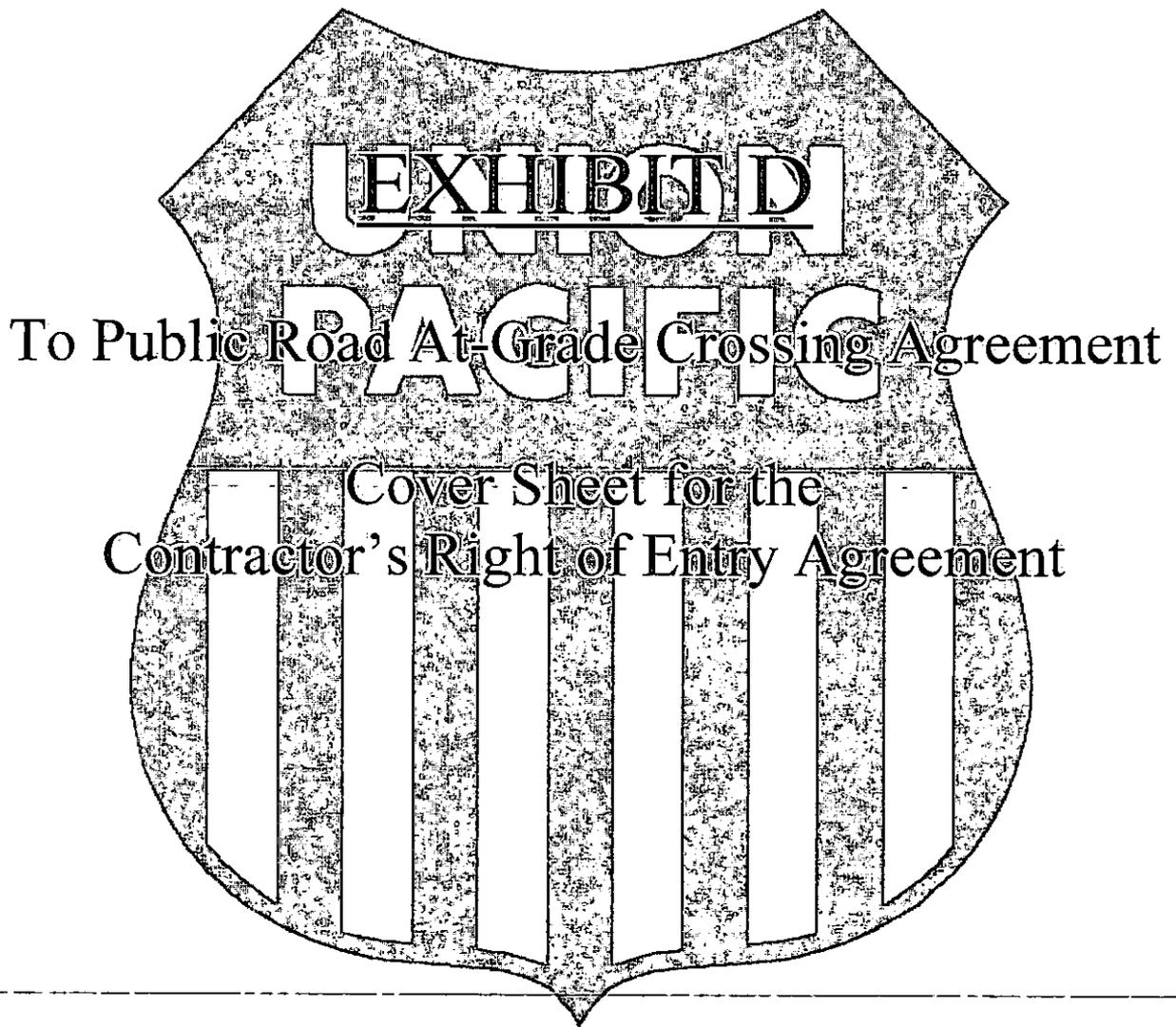
DESCRIPTION OF WORK:  
INSTALL AUTOMATIC FLASHING LIGHT CROSSING SIGNALS  
WITH GATES AT LOGAN, UT. 1700 SOUTH M.P. 22.10  
ON THE CACHE VALLEY SUB. DOT 806 311F  
WORK TO BE PERFORMED BY RAILROAD WITH EXPENSE AS BELOW:  
SIGNAL - CITY OF LOGAN, UT. - 100%  
ESTIMATED USING FEDERAL ADDITIVES WITH INDIRECT  
AND OVERHEAD COST'S - 167.76%

PID: 61431 ANO: 87597 MP,SUBDIV: 22.10, CACHEVALLEY  
SERVICE UNIT: 17 CITY: LOGAN STATE: UT

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
<b>ENGINEERING WORK</b>							
ENGINEERING			3304		3304		3304
LABOR ADDITIVE 167.76%			13568		13568		13568
SIG-HWY XNG			4821		4821		4821
<b>TOTAL ENGINEERING</b>			<b>21693</b>		<b>21693</b>		<b>21693</b>
<b>SIGNAL WORK</b>							
BILL PREP			900		900		900
CONTRACT				5407	5407		5407
LABOR ADDITIVE 167.67%			59290		59290		59290
MATL STORE EXPENSE				4	4		4
METER SERVICE				5000	5000		5000
PERSONAL EXPENSES				18750	18750		18750
ROCK/GRAVEL/FILL				3000	3000		3000
SALES TAX				2163	2163		2163
SIGNAL			34441	54075	88516		88516
TRANSP/IB/OB/RCLM CONTR				10306	10306		10306
WZT CONTROL				4218	4218		4218
ENVIRONMENTAL-PERMITS				1	1		1
<b>TOTAL SIGNAL</b>			<b>94631</b>	<b>102924</b>	<b>197555</b>		<b>197555</b>
<b>LABOR/MATERIAL EXPENSE</b>			<b>116324</b>	<b>102924</b>			
<b>RECOLLECTIBLE/UPRR EXPENSE</b>					<b>219248</b>	<b>0</b>	
<b>ESTIMATED PROJECT COST</b>							<b>219248</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.





To Public Road At-Grade Crossing Agreement

Cover Sheet for the  
Contractor's Right of Entry Agreement



April 29, 2009

UPRR Folder No.: 2548-02

**To the Contractor:**

Before Union Pacific Railroad Company can permit you to perform work on its property for the reconstruction and widening of the existing 1700 South Street at-grade public road crossing, it will be necessary for you to complete and execute two originals of the enclosed Contractor's Right of Entry Agreement. Please:

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

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

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

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

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



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

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

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

*Paul G. Farrell*

Senior Manager Contracts

Phone: (402) 544-8620

e-mail: [pgfarrell@up.com](mailto:pgfarrell@up.com)



UPRR Folder No.: 2548-02

UPRR Audit No.: \_\_\_\_\_

## CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

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

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

**RECITALS:**

Contractor has been hired by the *City of Logan* to perform work relating to the reconstruction and widening of the existing 1700 South Street at-grade public road crossing (the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of the Railroad's Mile Post 22.10' on the Railroad's Cache Valley Subdivision in Logan, Cache County, Utah, as such location is in the general location shown on the Railroad Location Print marked **Exhibit A**, and as specified on the Detailed Prints collectively marked **Exhibit A-1**, each attached hereto and hereby made a part hereof, which work is the subject of a contract dated \_\_\_\_\_ between Railroad and the City of Logan. (Date of Contract)

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

**AGREEMENT:**

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

**ARTICLE 1 - DEFINITION OF CONTRACTOR.**

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

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

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

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

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

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

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

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

*Jeff Gale*  
*Manager Track Maintenance*  
*Union Pacific Railroad Company*  
*2101 Pacific Avenue*  
*Ogden, UT 84401*  
*Phone: 801-212-4005*  
*Facsimile: 801-212-4049*  
*Cell: 801-557-4410*

*Andre Williams*  
*Manager Signal Maintenance*  
*Union Pacific Railroad Company*  
*2101 Pacific Avenue*  
*Ogden, UT 84401*  
*Phone: 801-626-8207*  
*Fax: 402-997-3616*  
*Cell: 801-388-4504*

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

**ARTICLE 5 - TERM; TERMINATION.**

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

*(Expiration-Date)*

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

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

**ARTICLE 6 - CERTIFICATE OF INSURANCE.**

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

*Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street, MS 1690  
Omaha, NE 68179-1690  
UPRR Folder No.: 2548-02*

**ARTICLE 7 - 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 8 - 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 9 - CROSSINGS.**

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

**ARTICLE 10 - EXPLOSIVES.**

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

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

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

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

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

By \_\_\_\_\_

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





LOGAN CITY ENGINEERING  
 255 NORTH MAIN  
 LOGAN, UTAH 84321

1700 SOUTH ROAD RECONSTRUCTION  
 HWY. 89/81 TO 400 W.

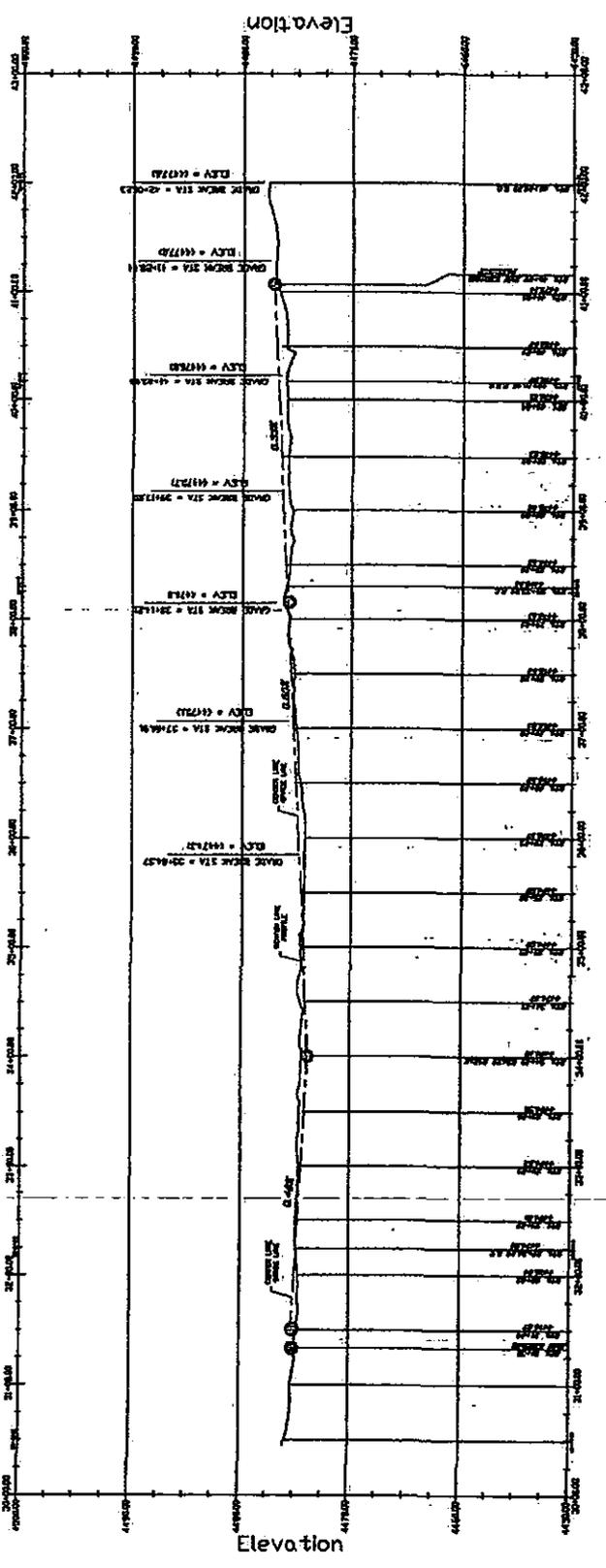
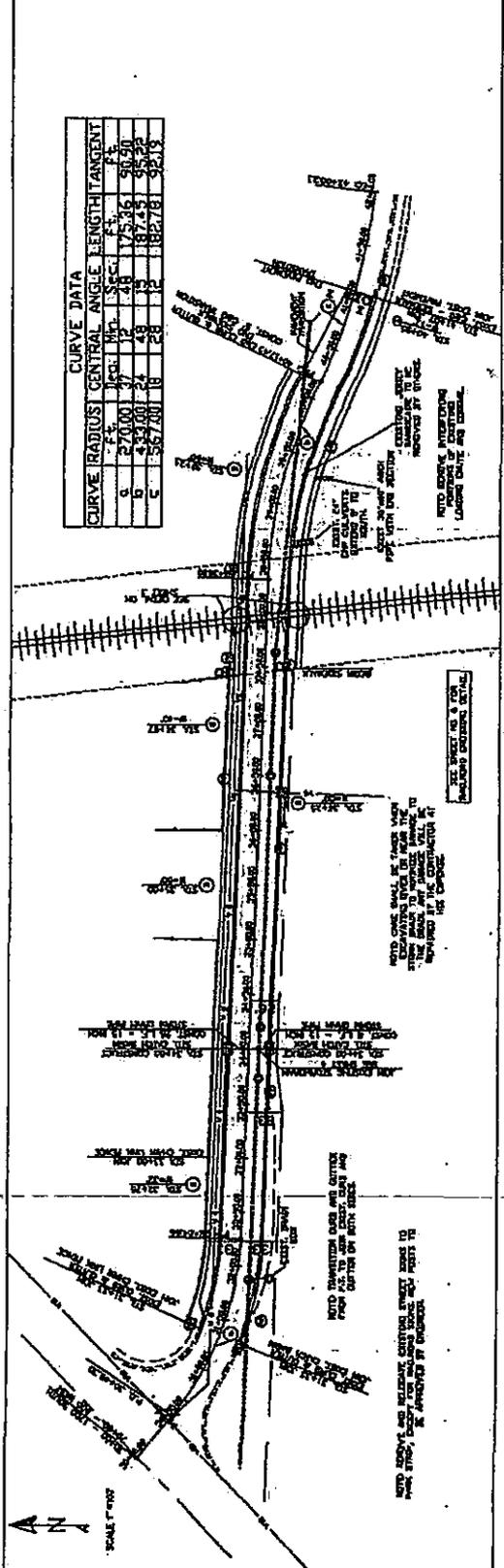
DATE	DESCRIPTION	BY
08-22-07	PROJECT	CRJ
08-22-07	REVISION	RW
08-22-07	DESIGN	CRJ

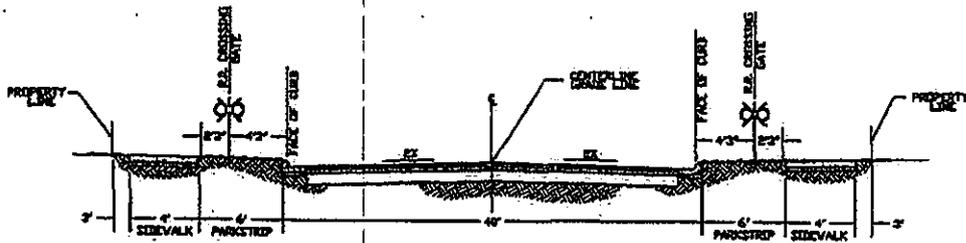
SCALE: 1" = 40'

SHEET NO. 5/5

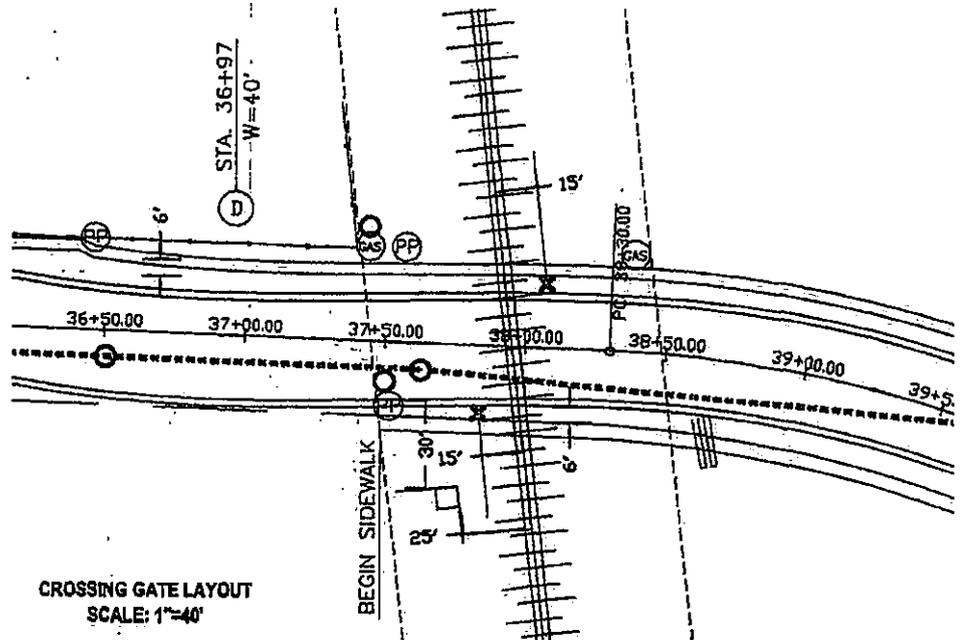
CURVE DATA

CURVE NO.	RADIUS	CENTRAL ANGLE	LENGTH	TANGENT
1	1000.00	180.00	1000.00	1000.00
2	1000.00	180.00	1000.00	1000.00
3	1000.00	180.00	1000.00	1000.00
4	1000.00	180.00	1000.00	1000.00
5	1000.00	180.00	1000.00	1000.00
6	1000.00	180.00	1000.00	1000.00
7	1000.00	180.00	1000.00	1000.00
8	1000.00	180.00	1000.00	1000.00
9	1000.00	180.00	1000.00	1000.00
10	1000.00	180.00	1000.00	1000.00





TYPICAL ROADWAY SECTION  
NO SCALE  
STA 36+25 TO STA 38+50



CROSSING GATE LAYOUT  
SCALE: 1"=40'

LOGAN CITY ENGINEERING  
255 NORTH MAIN  
LOGAN, UTAH 84321

1700 SOUTH - HIGHWAY 89/91 TO 400 W.  
ROAD RECONSTRUCTION.

RAILROAD CROSSING DETAILS

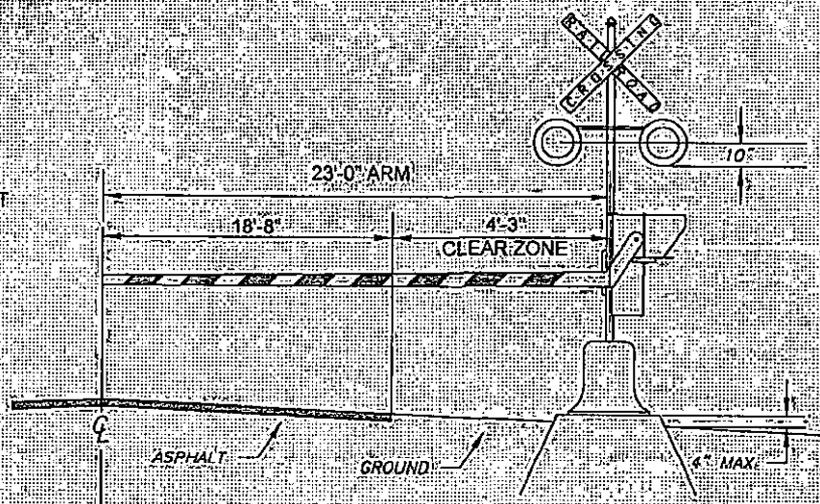
DESIGNED	CRJ	DATE	08/02/07
DRAFTED	RLW	PROJECT	807-016
CHECKED	CRJ		

NO SCALE

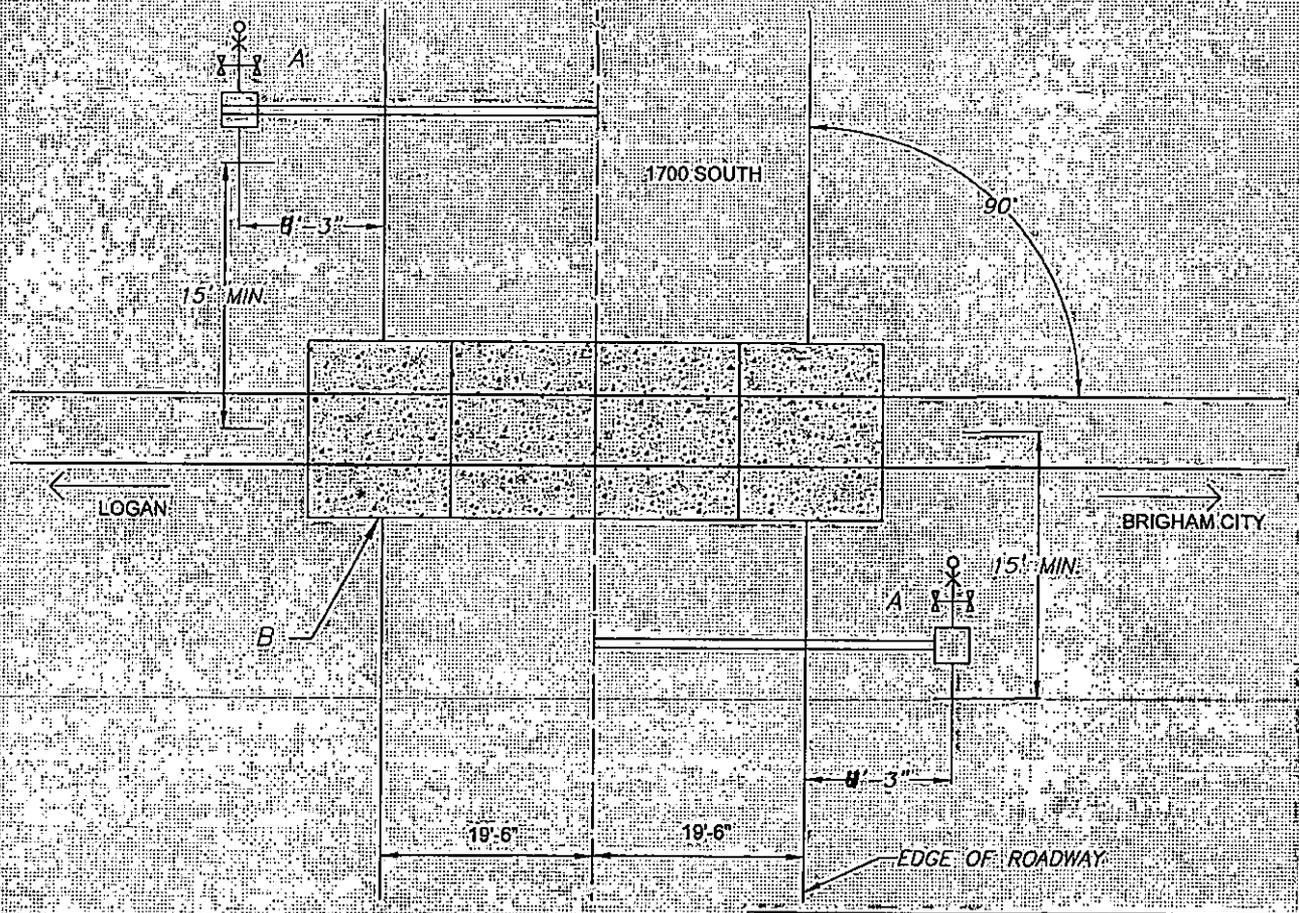
SHEET NO.  
6/7

# SCOPE OF WORK

- A. UPRR TO INSTALL LED LIGHTS, GATES AND CONSTANT WARNING
- B. UPRR TO INSTALL 64' INSULATED CONCRETE PANELS
- C. LOGAN CITY TO INSTALL ALL PAVEMENT MARKINGS AND ADVANCED WARNING SIGNS AS PER MUTCD



TYPICAL CLEARANCE FOR FLASHING LIGHT SIGNALS AND AUTOMATIC GATES  
(NO SCALE)



FIBER OPTIC CABLE! CALL BEFORE YOU DIG 1-800-338-9193



UNION PACIFIC RAILROAD  
MILEPOST 22.10  
CACHE VALLEY SUBDIVISION  
FOCATELLO SERVICE UNIT  
DOT # 806311F

## EXHIBIT B

### TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

#### TERMS AND CONDITIONS

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

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

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

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

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

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

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

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

#### Section 4. LIENS.

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

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

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

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

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

#### Section 7. SAFETY.

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

**Section 8. INDEMNITY.**

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

**Section 9. RESTORATION OF PROPERTY.**

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

**Section 10. WAIVER OF DEFAULT.**

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

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

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

**Section 12. ASSIGNMENT - SUBCONTRACTING.**

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



## EXHIBIT C

### TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

#### INSURANCE PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Other Requirements

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

## EXHIBIT D

### TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

#### MINIMUM SAFETY REQUIREMENTS

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

#### I. Clothing

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

Specifically, Contractor's employees must wear:

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

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

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

#### II. Personal Protective Equipment

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

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

#### III. On Track Safety

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

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

#### IV. Equipment

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

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

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

- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

**V. General Safety Requirements**

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
  - (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
  - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
  - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment 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.



August 12, 2010

UPRR Folder No. 2548-02

**MR PAUL LINDHARDT  
CITY OF LOGAN  
290 N 100 W  
LOGAN UT 84321**

Dear Mr. Lindhardt:

Attached for your file is your original copy of a Public Road At-Grade Crossing Agreement, fully executed on behalf of the Railroad Company.

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

*Jim Marshall  
Manager Industry & Public Projects  
Union Pacific Railroad Company  
400 West 280 South  
Salt Lake City, UT 84101  
Phone: 801-595-3560  
Fax: 801-595-3337  
Cell: 801-920-1693*

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

Sincerely Yours,  
Original Signed

**P. G. FARRELL**  
PAUL G. FARRELL  
Senior Manager Contracts  
Phone: 402.544.8620  
e-Mail: pgfarrell@up.com

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

# **EXHIBIT 6**

**\*757474\***



## **REMS FileNet Cover Sheet**

<b>AUDIT NUMBER</b>	288253
<b>FOLDER NUMBER</b>	0300917
<b>CITY</b>	KEARNS
<b>STATE</b>	UT
<b>PARTY NAME</b>	WEST JORDAN CITY OF
<b>PRIMARY PURPOSE</b>	Crossing - Public Roadway
<b>EFF. DATE</b>	3/9/2018
<b>MP START</b>	7.45
<b>MP END</b>	
<b>PRIMARY CIRC7</b>	UJ206
<b>DESCRIPTION</b>	Crossing - Public Roadway (03-09-2018)
<b>BOX NUMBER</b>	0
<b>BATCH</b>	00

**PUBLIC HIGHWAY AT-GRADE CROSSING**

7000 SOUTH  
DOT NUMBER 254962R  
MILE POST 7.45 – GARFIELD SUBDIVISION (LEASED TO SBG)  
KEARNS, SALT LAKE COUNTY, UTAH

THIS AGREEMENT ("Agreement") is made and entered into as of the 9<sup>th</sup> day of March, 2018 ("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 ("**UPRR**"); **UTAH TRANSIT AUTHORITY**, a public transit district organized under Title 17B, Chapter 2a, Part 8, Utah Code Annotated 1953, as amended ("**UTA**"); **SAVAGE BINGHAM & GARFIELD RAILROAD** a Utah corporation ("**SBGR**") and **THE CITY OF WEST JORDAN** a municipal corporation or political subdivision of the State of Utah to be addressed at 8000 South, 2<sup>nd</sup> Floor, Redwood Road, West Jordan UT 84088 ("**Public Authority**"). UPRR, UTA and SBGR are hereinafter sometimes collectively referred to as the "Railroad".

**RECITALS:**

UPRR owns the Garfield Subdivision, which it leases under separate agreements for different purposes to UTA and SBGR.

The Public Authority desires to undertake as its project (the "Project") the conversion of a closed private road crossing to a new at grade public road crossing over 7000 South DOT Number 254962R at Railroad's Milepost 7.45 on Railroad's Garfield Subdivision at or near Kearns, Salt Lake County, Utah (the "Roadway"). The portion of the Road within the Railroad's property is hereinafter referred to as the "Crossing Area". The Crossing Area which is generally shown on the print marked **Exhibit A** and more specifically shown on the print marked **Exhibit A-1** and the new area is described in the legal description marked **Exhibit A-2** with each exhibit being attached hereto and hereby made a part hereof.

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

**AGREEMENT:**

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

**Section 1. EXHIBIT B**

The general terms and conditions marked **Exhibit B**, are attached hereto and hereby made a part hereof.

**Section 2. RAILROAD GRANTS RIGHT**

For and in consideration of the sum of **SIXTY THREE THOUSAND FIVE HUNDRED DOLLARS (\$63,500.00)** to be paid by the Public Authority to UPRR upon the execution and delivery of this Agreement and in further consideration of the Public Authority's agreement to perform and comply with the terms of this Agreement, the Railroad hereby grants to the Public Authority the right to construct, maintain and repair the Roadway on and across the Crossing Area.

**Section 3. DEFINITION OF CONTRACTOR**

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the Public Authority 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.

**Section 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 Authority shall require the Contractor to:

- execute UPRR and UTA's then current Contractor's Right of Entry Agreement
- obtain the then current insurance required in the Contractor's Right of Entry Agreements; and
- provide such insurance policies, certificates, binders and/or endorsements to UPRR and UTA.

B. UPRR's current Contractor's Right of Entry Agreement is marked **Exhibit C**, attached hereto and hereby made a part hereof. The Public Authority 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:

UPRR:           Manager - Contracts  
                  Union Pacific Railroad Company  
                  Real Estate Department  
                  1400 Douglas Street, Mail Stop 1690  
                  Omaha, NE 68179-1690  
                  UP File Folder No. 3009-17

D. If the Public Authority's own employees will be performing any of the Project work, the Public Authority may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

**Section 5. FEDERAL AID POLICY GUIDE**

If the Public Authority 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 6. NO PROJECT EXPENSES TO BE BORNE BY RAILROAD**

The Public Authority 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 7. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO PUBLIC AUTHORITY; PUBLIC AUTHORITY'S PAYMENT OF BILLS**

The Public Authority agrees to reimburse any work performed by Railroad, and shall pay UPRR, SBGR and/or UTA, as applicable, within thirty (30) days of its receipt of billing from the UPRR, SBGR and/or UTA, as applicable, for one hundred percent (100%) of all actual costs incurred by UPRR, SBGR and/or UTA, as applicable, 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, maintenance, 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 8. PLANS**

A. The Public Authority, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Project and the

Roadway and submit such plans and specifications to UPRR, SBGR and UTA 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 each of the Railroad's Assistant Vice President Engineering-Design, or their authorized representatives, 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 Authority 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 Authority or Contractor on the Plans is at the risk of the Public Authority and Contractor.

#### **Section 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 Authority 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.

**Section 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 Authority in the event the Public Authority 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 Authority 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.

**Section 11. CONDITIONS TO BE MET BEFORE PUBLIC AUTHORITY CAN COMMENCE WORK**

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

- (i) UPRR, SBGR and UTA have executed this Agreement.
- (ii) The Railroad has provided to the Public Authority 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.

**Section 12. FUTURE PROJECTS**

Future projects involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the Roadway shall not commence until Railroad and Public

Authority agree on the plans for such future projects, cost allocations, right of entry terms and conditions and temporary construction rights, terms and conditions.

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

A. Public Authority 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 Authority.

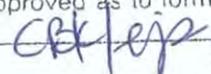
**Section 14. SPECIAL PROVISIONS PERTAINING TO AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

If the Public Authority will be receiving American Recovery and Reinvestment Act ("ARRA") funding for the Project, the Public Authority agrees that it is responsible in performing and completing all ARRA reporting documents for the Project. The Public Authority 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 Authority and not of the Railroad, and (ii) the Public Authority shall not delegate any ARRA reporting responsibilities to the Railroad. The Public Authority also confirms and acknowledges that (i) the Railroad shall provide to the Public Authority 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 Authority to perform and complete the ARRA reporting documents. The Railroad confirms that the Public Authority and the Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for the Project as provided in Section 11 of **Exhibit B** of this Agreement.

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

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

Approved as to form.

  
Attorney

By:   
Printed Name: DANIEL A. LEIS  
Title: D.A. Leis

**Senior Director - Real Estate**

**SAVAGE BINGHAM & GARFIELD  
RAILROAD**

By: *Donald W. Alexander*  
Printed Name: Donald W. Alexander  
Title: CVP

**THE CITY OF WEST JORDAN**



By: *[Signature]*  
Printed Name: Kim V. Zolfe  
Title: Mayor

Pursuant to Resolution/Order No. 17-240  
dated: Dec 20, 2017 hereto attached

**UTAH TRANSIT AUTHORITY**

By: *Paul Drake*  
Printed Name: PAUL B. DRAKE  
Title: SR MANAGER REAL ESTATE & TOD

Approved As To Form

*[Signature]*  
UTA Legal Counsel

By: *Mailia Lauto'o*  
Mailia Lauto'o  
Manager of Property Admin.  
Utah Transit Authority

**EXHIBIT A  
TO  
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

**Exhibit A** will be a print showing the Crossing Area (see Recitals)



# EXHIBIT "A"

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



DOT No. 254962R  
M.P. 7.45 Garfield (SBG) Subdivision  
Kearns, Salt Lake County, Utah  
At Grade Public Road Crossing.

### UNION PACIFIC RAILROAD COMPANY

GARFIELD (SBG) SUBDIVISION  
RAILROAD MILE POST 7.45  
KEARNS, SALT LAKE COUNTY, UTAH

To accompany an agreement with  
**THE CITY OF WEST JORDAN AND ITS CONTRACTOR**  
covering an At Grade Public Road Crossing.

Folder No. 3009-17

Date: August 23, 2016

### 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**

**Exhibit A-1** will be a detailed print showing the Crossing Area (see Recitals)



**LEGEND:**

CROSSING AREA

TOTAL CROSSING AREA = 9,910 SQ. FT. +/-

UPRRCO. R/W OUTLINED

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A-1"

**UNION PACIFIC RAILROAD COMPANY**

WEST JORDAN, SALT LAKE COUNTY, UTAH

M.P. 7.45 - GARFIELD SUB. (LEASED TO SBG)

TO ACCOMPANY AGREEMENT WITH

CITY OF WEST JORDAN

MAP DRGW V-7B / 1

SCALE: 1" = 100'

OFFICE OF REAL ESTATE

OMAHA, NEBRASKA DATE: 10-23-2016

PJB FILE: 0300917

CADD FILENAME	0300917
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SCAN FILENAME	UTV7B001-300917.TIF
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**EXHIBIT A-2  
TO  
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

**Exhibit A-2** will be the legal description of the Crossing Area (see Recitals)



**EXHIBIT B  
TO  
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

**SECTION 1. CONDITIONS AND COVENANTS**

A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The Public Authority 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 Authority 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 Authority for the purpose of conveying electric power or communications incidental to the Public Authority'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 Authority 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 Authority 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 Authority 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 Authority 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 Authority 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 Authority 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 Authority, 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 Authority, 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 Authority 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 Authority 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 Railroad and in compliance with the Plans, and other guidelines furnished by the Railroad.

D. All construction work of the Public Authority 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 Authority. The Public Authority 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 Authority, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the Public Authority 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 Authority at the Public Authority's own expense, or by the Railroad at the expense of the Public Authority, and to the satisfaction of the Railroad.

#### **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 Authority 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 Authority shall reimburse the Railroad for the amount of the contract.

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

A. The Public Authority 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 **UTA** and at the expense of the **Public Authority**.

B. If, in the future, the Public Authority 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 Authority'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 Authority 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 Authority 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 Authority 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 Authority 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 Authority shall include work both within and outside of the Railroad's property.
- B. **Entry on to Railroad's Property by Public Authority.** If the Public Authority's employees need to enter Railroad's property in order to perform an inspection of the Roadway, minor maintenance or other activities, the Public Authority 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 Authority, 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 Authority's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of Public Authority's employees on Railroad's property, except to the extent that any Loss is caused by the sole direct negligence of Railroad.
- C. **Flagging.** If the Public Authority's employees need to enter Railroad's property as provided in Paragraph B above, the Public Authority agrees to notify the Railroad at least thirty (30) working days in advance of proposed performance of any work by Public Authority 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 will determine and inform Public Authority whether a flagman need be present and whether Public Authority needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, the Railroad will bill Public Authority for such expenses incurred by Railroad. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Public Authority agrees that Public Authority is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

D. **Compliance With Laws.** The Public Authority shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Public Authority shall use only such methods as are consistent with safety, both as concerns the Public Authority, the Public Authority's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Public Authority (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 Authority 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 Authority 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 Authority 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 Authority 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 Authority, at its own expense, shall adequately police and supervise all work to be performed by the Public Authority, 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 Authority 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 a Railroad representative, or by compliance by the Public Authority with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the Public Authority 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 Authority's engineers or the Railroad shall be of the opinion that any work of the Public Authority is being or is about to be done or prosecuted without due regard and precaution for safety and security, the Public Authority shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.

H. **Removal of Debris.** The Public Authority 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 Authority at the Public Authority's own expense or by the Railroad at the expense of the Public Authority. The Public Authority 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 Authority shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad, which shall not be given if, in the sole discretion of the Railroad, 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 Authority 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 Authority 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 Authority, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the Public Authority 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 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 Authority, at the Public Authority'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 Authority, at the Public Authority'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 Authority, 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 Authority shall not obstruct or interfere with existing ditches or drainage facilities.

L. **Notice**. Before commencing any work, the Public Authority 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 Authority shall telephone UPRR 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 Authority. If it is, Public Authority 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 Authority, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the Public Authority 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 during normal business hours by the agents and authorized representatives of Public Authority for a period of three (3) years following the date of Railroad's last billing sent to Public Authority.

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

A. If the Public Authority 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 Authority will reimburse the Railroad for the expenses thereof.

B. Nonuse by the Public Authority 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 Authority hereunder.

C. The Public Authority 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 Authority 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 Authority 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 Authority 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**

**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 ("UPRR"); \_\_\_[Insert Name of Branch Line Lessee]\_\_\_, a \_\_\_\_\_ corporation ("Lessee") and \_\_\_\_\_, a \_\_\_\_\_ corporation ("Contractor"). UPRR and Lessee are hereinafter sometimes collectively referred to as the "Railroad".

**RECITALS:**

Contractor has been hired by \_\_\_\_\_ to perform work relating \_\_\_\_\_ to \_\_\_\_\_

\_\_\_\_\_ (the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of Railroad's Milepost \_\_\_\_\_ on Railroad's \_\_\_\_\_ [Branch] [at or near DOT No. \_\_\_\_\_] located at or near \_\_\_\_\_, in \_\_\_\_\_ County, State of \_\_\_\_\_, as such location is in the general location shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof. [which work is the subject of a contract dated \_\_\_\_\_ between Railroad and \_\_\_\_\_].

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 representatives or their duly authorized representative (the "Railroad Representatives"):

Lessee: \_\_\_\_\_ [Insert Name]  
\_\_\_\_\_ [Insert Name and Address of Lessee]\_\_\_\_\_  
\_\_\_\_\_ [Insert Phone No of Lessee Representative]\_\_\_\_\_

UPRR: \_\_\_\_\_ [Insert Name]\_\_\_\_\_  
Union Pacific Railroad Company  
\_\_\_\_\_ [Insert Address]\_\_\_\_\_  
\_\_\_\_\_ [Insert Phone Number]\_\_\_\_\_

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 Representatives 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, 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:

Lessee: \_\_\_\_\_ [Insert Name or Title]  
\_\_\_\_\_ [Insert Name and  
Address of Short Line]\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

UPRR: Union Pacific Railroad Company

\_\_\_\_\_  
[Insert mailing address]

\_\_\_\_\_  
Attn: \_\_\_\_\_

Folder No. \_\_\_\_\_

**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 Representatives 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 **[Insert either UPRR or Lessee]** \_\_\_\_\_ Dollars (\$\_\_\_\_\_) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

**ARTICLE 10 - CROSSINGS.**

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

**ARTICLE 11 - EXPLOSIVES.**

Explosives or other highly flammable substances shall not be stored 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**

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

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

**[Insert Name of Branch Line Lessee]**

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

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

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

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

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

**EXHIBIT B**  
**TO**  
**CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

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

Contractor agrees to notify the Lessee 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 flagman assigned by the Lessee is provided to watch for trains. Upon receipt of such thirty (30)-day notice, the Lessee 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 Lessee, Lessee will bill Contractor for such expenses incurred by Lessee, unless Lessee and a federal, state or local governmental entity have agreed that Lessee is to bill such expenses to the federal, state or local governmental entity. If Lessee will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Lessee performs any flagging, or other special protective or safety measures are performed by Lessee, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

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

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

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

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

A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad. 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 UPRR 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 UPRR and Lessee, jointly and severally, 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 UPRR and Lessee, jointly and severally, and their respective affiliates and 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 For**  
**Contractor's Right of Entry Agreement**

For purposes of this Exhibit C, Union Pacific Railroad Company, is referred to as "UPRR" and **Insert Name of Short Line Railroad** is referred to as "Lessee". UPRR and Lessee are hereinafter sometimes collectively referred to as the "Railroad". 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" and **Insert Name of Short Line Railroad** 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 Railroad Company Property and **Insert Name of Short Line Railroad** 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 obtain and maintain two separate "Railroad Protective Liability" (RPL) insurance policies written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage). The first RPL policy shall name Union Pacific Railroad Company as the named insured. The second RPL policy shall name **[Insert name of Lessee]** as the named insured. Both RPL policies shall provide for 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 instruction such agent(s) and/or broker(s) to procure the insurance coverage required by this Agreement. A BINDER OF INSURANCE STATING THE POLICY IS IN PLACE MUST BE SUBMITTED TO UPRR AND LESSEE BEFORE WORK MAY COMMENCE AND UNTIL THE ORIGINAL POLICY IS FORWARDED TO UPRR AND LESSEE.
- 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 a separate policy form or by endorsement to Contractors CGL or RPL. In an 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 the RPL policies and the worker's compensation and employers liability policies) must include both UPRR and Lessee as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.

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

**EXHIBIT D**  
**TO**  
**CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

**MINIMUM SAFETY REQUIREMENTS**

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

**I. Clothing**

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

Specifically, Contractor's employees must wear:

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

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

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

**II. Personal Protective Equipment**

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

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

**III. On Track Safety**

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

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

#### **IV. Equipment**

- A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
  - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
  - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
  - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

#### **V. General Safety Requirements**

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
  - (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.

- (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
  - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
  - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
  - (v) Before stepping over or crossing tracks, look in both directions first.
  - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.



**BUILDING AMERICA®**

March 9, 2018

UPRR Folder No. 3009-17

THE CITY OF WEST JORDAN  
8000 SOUTH, 2<sup>ND</sup> FLOOR, REDWOOD ROAD  
WEST JORDAN, UT 84088

Dear Sir/Madam:

Enclosed please find one fully executed agreement for your records.

Regards,

Daniel Peters  
Real Estate – Public Projects  
Phone: (402) 544-8549



BUILDING AMERICA®

March 9, 2018

UPRR Folder No. 3009-17

UTAH TRANSIT AUTHORITY  
669 W 200 S BLDG 1  
SLC, UT 84101

Dear Sir/Madam:

Enclosed please find one fully executed agreement for your records.

Regards,

Daniel Peters  
Real Estate – Public Projects  
Phone: (402) 544-8549



**BUILDING AMERICA®**

March 9, 2018

UPRR Folder No. 3009-17

Savage Bingham & Garfield Railroad  
7371 S Rio Grande Street  
Midvale, Utah 84047

Dear Sir/Madam:

Enclosed please find one fully executed agreement for your records.

Regards,

Daniel Peters  
Real Estate – Public Projects  
Phone: (402) 544-8549

# **EXHIBIT 7**

UP Real Estate Folder No.: 3196-94  
Audit Number \_\_\_\_\_

**PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

W 1400 N  
DOT NUMBER 806354Y  
MILE POST 25.91 CACHE VALLEY  
SUBDIVISION LOGAN, CACHE COUNTY, UTAH

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 **CITY OF LOGAN**, a municipal corporation or political subdivision of the State of Utah to be addressed at 450 N 1000 W, Logan, UT 84321 ("Political Body").

**RECITALS:**

The Political Body desires to undertake as its project (the "Project") the reconstruction and widening of the road with installation of new sidewalks over the W 1400 N at-grade public crossing, DOT Number 806354Y at Railroad's Mile Post 25.91 on Railroad's Cache Valley Subdivision at or near Logan, Cache County, Utah (the "Crossing Area") as depicted on **Exhibit A**, attached hereto and hereby made a part hereof. The area currently used by the Political Body and the new area which the Political Body needs in order to construct the Project is depicted as the "Existing Crossing Area" and the "New Crossing Area" on the legal descriptions attached as **Exhibit A-1**, attached hereto and hereby made a part hereof. The Existing Crossing Area and New Crossing Area are collectively referred to as the Crossing Area. The portion of the roadway located within the Crossing Area is the "Roadway".

In support of its Project, the Political Body has requested the Railroad's cooperation in connection with installing grade crossing protection devices, installing highway traffic control signals and installing the necessary relays and other materials required to interconnect and coordinate the operation of said railroad grade crossing protection devices with the operation of said highway traffic control signals. Said work is to be performed at the sole expense of Political Body.

The Railroad and the Political 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:

### **Section 1. EXHIBIT B**

The general terms and conditions marked **Exhibit B**, are attached hereto and hereby made a part hereof.

### **Section 2. RAILROAD GRANTS RIGHT**

For and in consideration **NINE THOUSAND EIGHT HUNDRED DOLLARS (\$9,800.00)** to be paid by the Political Body to the Railroad upon the execution and delivery of this Agreement and in further consideration of the Political Body's agreement to perform and comply with the terms of this Agreement, the Railroad hereby grants to the Political Body the right to construct, maintain and repair the Roadway over and across the Crossing Area.

For purposes of advanced signal preemption, Railroad hereby grants permission and authority to Political Body and/or its Contractor (as defined below) to install the conduit with the necessary wiring on Railroad right of way on the condition that prior to performing any work on Railroad's property, Political Body shall, or shall require its Contractor to, notify the Railroad and/or enter into a right of entry agreement with Railroad, as applicable pursuant to the terms and conditions of this Agreement.

### **Section 3. DEFINITION OF CONTRACTOR**

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the Political 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.

### **Section 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 Political Body shall require the Contractor to:

- execute the Railroad's then current Contractor's Right of Entry Agreement
- obtain the then current insurance required in the Contractor's Right of Entry Agreement; and

- 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 Political 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:

Manager - Contracts  
Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street, Mail Stop 1690  
Omaha, NE 68179-1690  
UP File Folder No. 3196-94

D. If the Political Body's own employees will be performing any of the Project work, the Political Body may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

#### **Section 5. FEDERAL AID POLICY GUIDE**

If the Political 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.

#### **Section 6. NO PROJECT EXPENSES TO BE BORNE BY RAILROAD**

The Political 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.

#### **Section 7. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO POLITICAL BODY; POLITICAL BODY'S PAYMENT OF BILLS**

A. The work to be performed by the Railroad, at the Political Body's sole cost and expense, is described in the Railroad's Summary of Material and Force Account Work dated 9/11/19 and 6/12/19, marked **Exhibit C**, attached hereto and hereby made a part hereof (the "Estimate"). As set forth in the Estimates, the Railroad's estimated

cost for the Railroad's work associated with the Project is FIVE HUNDRED NINETY SEVEN THOUSAND FOUR HUNDRED Eighty DOLLARS (\$597,480.00).

B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the Political Body in the event the Political 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 Political Body acknowledges that the Estimate does not include an estimate of flagging or other protective service costs that are to be paid by the Political 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 Political Body or the Contractor as determined by the Railroad and the Political Body. If it is determined that the Railroad will be billing the Contractor directly for such costs, the Political 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 Railroad shall send progressive billing to the Political Body during the Project and final billing to the Political Body within one hundred eighty (180) days after receiving written notice from the Political Body that all Project work affecting the Railroad's property has been completed.

E. The Political 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.

## **Section 8. PLANS**

A. The Political Body, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Project and the Structure 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 Political 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 Political Body or Contractor on the Plans is at the risk of the Political Body and Contractor.

## **Section 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 Political 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.

## **Section 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 Political Body in the event the Political 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 Political 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.

#### **Section 11. CONDITIONS TO BE MET BEFORE POLITICAL BODY CAN COMMENCE WORK**

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

- (i) The Railroad and Political Body have executed this Agreement.
- (ii) The Railroad has provided to the Political 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.

#### **Section 12. FUTURE PROJECTS**

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

#### **Section 13. ASSIGNMENT; SUCCESSORS AND ASSIGNS**

A. Political 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 Political Body.

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

If the Political Body will be receiving American Recovery and Reinvestment Act ("ARRA") funding for the Project, the Political Body agrees that it is responsible in performing and completing all ARRA reporting documents for the Project. The Political 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 Political Body and not of the Railroad, and (ii) the Political Body shall not delegate any ARRA reporting responsibilities to the Railroad. The Political Body also confirms and acknowledges that (i) the Railroad shall provide to the Political 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 Political Body to perform and complete the ARRA reporting documents. The Railroad confirms that the Political Body and the Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for the Project as provided in Section 11 of **Exhibit B** of this Agreement.

#### **Section 15. SIGNAL PREEMPTION**

A. Political Body and Railroad, severally and collectively, agree to interconnect and coordinate the operation of the railroad grade crossing protection devices with the operation of the highway traffic control signals at the Crossing Area, in accordance with the design schematic marked **Exhibit E**, hereto attached and hereby made a part hereof (the "Designs").

B. Political Body, at its expense, shall furnish all material, labor, equipment and supervision for the installation and maintenance of highway traffic control signals at the Crossing Area, as applicable in accordance with the Designs.

C. Railroad, at Political Body's expense, shall furnish all material, labor, equipment and supervision for the work described in the Estimate(s) and in accordance with the Designs, including, as applicable, installation of signals and/or appurtenances and installation of the necessary relays and other materials required to interconnect and coordinate the operation of the highway traffic control signals to be installed by the Political Body.

D. Each party shall take all suitable precautions to prevent any interference (by induction, leakage of electricity or otherwise) with the operation of the other party's signals or communications lines, or those of its tenants; and if, at any time, the operation or maintenance of its signals results in any electrostatic effects, the party whose signals are causing the interference shall, at its expense, immediately take such action as may be necessary to eliminate such interference.

E. Except as set forth in this Section, Political Body shall not be liable to Railroad on account of any failure of Railroad's warning devices to operate properly, nor shall Railroad have or be entitled to maintain any action against Political Body arising from any failure from Railroad's warning devices to operate properly. Similarly, Railroad shall not be liable to Political Body on account of any failure of Political Body's traffic signal to operate properly, nor shall Political Body have or be entitled to maintain any action against Railroad arising from any failure of Political Body's traffic signal to operate properly.

#### **Section 16. SIGNAL MAINTENANCE COSTS**

A. Effective as of the Effective Date of this Agreement, the Political Body, in addition to maintaining at its sole cost and expense the portion of the Roadway described in Section 2 of **Exhibit B**, agrees to pay to Railroad the sum of **ELEVEN THOUSAND FOUR HUNDRED SEVENTY FIVE DOLLARS (\$11,475.00)** per annum, payable annually in advance, as payment for Railroad's maintenance of the railroad crossing warning signals that are to be installed by the Railroad at the Crossing Area.

B. The above annual fee is based on the number of current signal units at the Crossing Area as shown on **Exhibit F**, attached hereto and hereby made a part hereof. Effective on the first anniversary of this Agreement and on the anniversary date of each subsequent one year period, the annual fee will be increased at a rate based on the American Association of Railroad's (AAR) signal unit cost index. Such changes in the maintenance fee may be made by the Railroad by means of automatic adjustment in billing. The signal unit base for the annual fee may be re-determined by the Railroad at any time subsequent to the expiration of five (5) years following the date on which the annual rental was last determined or established. Such changes in the maintenance fee may be made by means of automatic adjustment in billing.

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

**CITY OF LOGAN**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A  
TO  
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

**Exhibit A** will be a print showing the Crossing Area (see Recitals)

T.T. SOUTH TO CACHE JCT.

T.T. NORTH TO PRESTON



600 WEST

73'

15'

"A"

1 2 3 4 5 6

xx

4'3"

"C"

1 2 3 4 5 6

xx

4'3"

"B"

1 2 3 4 5 6

xx

4'3"

"D"

1 2 3 4 5 6

xx

4'3"

\* POK

6'X6'

20'

1400 NORTH

47'

15'

SIDEWALK

RAISED  
MEDIAN

SIDEWALK

11'6" 11'6" 9' 11' 11' 11'

xx = BELL

- Bells: 4
- Gate A: 15'
- Gate B: 20'
- Gate C: 15'
- Gate D: 20'

City: LOGAN  
 State: UTAH  
 Street: 1400 NORTH  
 Mile Pole: 25.91

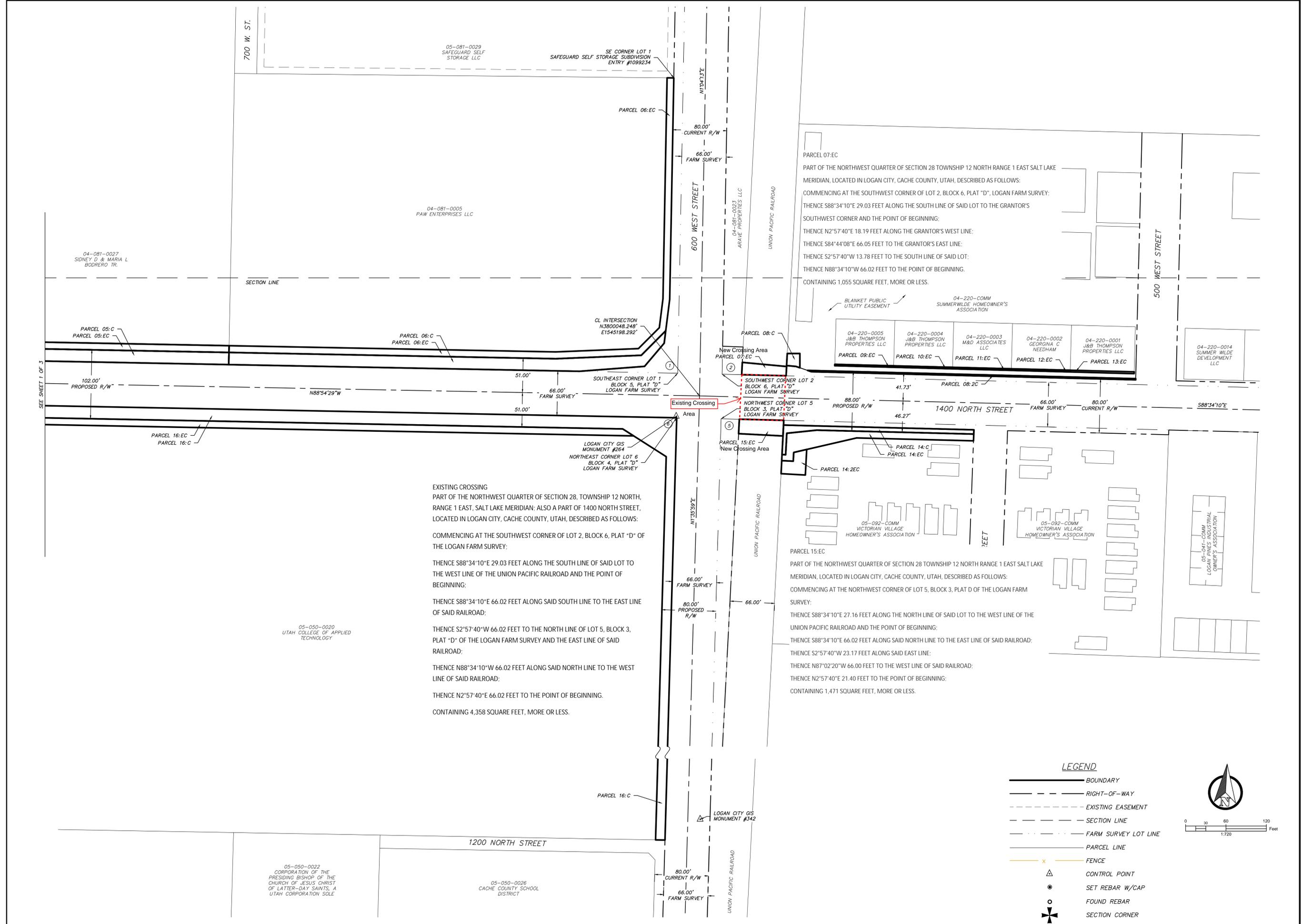
Subdivision: CACHE VALLEY  
 DOT Number: 806354Y  
 Date: 02/27/2019  
 Drawn By: RPI  
 AWO: 44175

Added Preemption Time: 25 SECS.  
 Added Clear Time: 0 SECS.  
 Maximum Timetable Speed: 10 MPH



**EXHIBIT A-1  
TO  
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

**Exhibit A** will be a print showing the Legal Descriptions of the Existing and New Crossing Areas (see Recitals)



**EXISTING CROSSING**  
 PART OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 12 NORTH, RANGE 1 EAST, SALT LAKE MERIDIAN; ALSO A PART OF 1400 NORTH STREET, LOCATED IN LOGAN CITY, CACHE COUNTY, UTAH, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 2, BLOCK 6, PLAT "D" OF THE LOGAN FARM SURVEY;

THENCE S88°34'10"E 29.03 FEET ALONG THE SOUTH LINE OF SAID LOT TO THE WEST LINE OF THE UNION PACIFIC RAILROAD AND THE POINT OF BEGINNING;

THENCE S88°34'10"E 66.02 FEET ALONG SAID SOUTH LINE TO THE EAST LINE OF SAID RAILROAD;

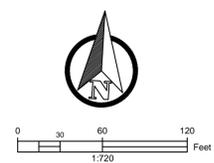
THENCE S2°57'40"W 66.02 FEET TO THE NORTH LINE OF LOT 5, BLOCK 3, PLAT "D" OF THE LOGAN FARM SURVEY AND THE EAST LINE OF SAID RAILROAD;

THENCE N88°34'10"W 66.02 FEET ALONG SAID NORTH LINE TO THE WEST LINE OF SAID RAILROAD;

THENCE N2°57'40"E 66.02 FEET TO THE POINT OF BEGINNING.

CONTAINING 4,358 SQUARE FEET, MORE OR LESS.

- LEGEND**
- BOUNDARY
  - - - RIGHT-OF-WAY
  - - - EXISTING EASEMENT
  - - - SECTION LINE
  - - - FARM SURVEY LOT LINE
  - - - PARCEL LINE
  - x - FENCE
  - △ CONTROL POINT
  - SET REBAR W/CAP
  - FOUND REBAR
  - ⊕ SECTION CORNER



S28 S29 T12N R1E SLM

---

INTERSECTION OF 600 W 1400 N  
LOGAN, UT

---

RIGHT-OF-WAY SURVEY  
FOR LOGAN CITY

---



Cache • Landmark  
 Engineers  
 Surveyors  
 Planners

95 Golf Course Rd.  
 Suite 101  
 Logan, UT 84321  
 435.713.0099

---

DATE: 12 APRIL 2019  
 SCALE: 1" = 60'  
 CALCULATED BY: S. EARL  
 CHECKED BY: S. CROOKSTON  
 APPROVED BY: S. EARL  
 PROJECT NUMBER: 620-1801

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2 / 3

**EXHIBIT B  
TO  
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

**SECTION 1. CONDITIONS AND COVENANTS**

A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The Political 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 Political 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 Political Body for the purpose of conveying electric power or communications incidental to the Political 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 Political 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 Political 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 Political 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 Political 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 Political 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 Political 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 Political 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 Political 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 Political 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 Political 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 Political 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 Political Body. The Political 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 Political Body, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the Political 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 Political Body at the Political Body's own expense, or by the Railroad at the expense of the Political 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 Political 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 Political Body shall reimburse the Railroad for the amount of the contract.

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

A. The Political 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 Political 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 Political 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 Political 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 Political 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 Political 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 Political 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 Political Body shall include work both within and outside of the Railroad's property.

B. **Entry on to Railroad's Property by Political Body.** If the Political Body's employees need to enter Railroad's property in order to perform an inspection of the Roadway, minor maintenance or other activities, the Political 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 Political 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 Political Body's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of Political 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 Political Body's employees need to enter Railroad's property as provided in Paragraph B above, the Political Body agrees to notify the Railroad Representative at least thirty (30) working days in advance of proposed performance of any work by Political 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 Political Body whether a flagman need be present and whether Political 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 Political Body for such expenses incurred by Railroad. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Political Body agrees that Political 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, Political 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 Political 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, Political 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, Political 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 Political Body shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Political Body shall use only such methods as are consistent with safety, both as concerns the Political Body, the Political Body's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Political 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 Political 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 Political 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 Political 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 Political 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 Political Body, at its own expense, shall adequately police and supervise all work to be performed by the Political 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 Political 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 Political Body with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the Political 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 Political 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 Political Body is being or is about to be done or prosecuted without due regard and precaution for safety and security, the Political Body shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.

H. **Removal of Debris.** The Political 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 Political Body at the Political Body's own expense or by the Railroad at the expense of the Political Body. The Political 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 Political 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 Political 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 Political 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 Political Body, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the Political 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 Political Body, at the Political 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 Political Body, at the Political 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 Political 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 Political Body shall not obstruct or interfere with existing ditches or drainage facilities.

L. **Notice.** Before commencing any work, the Political 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. Political 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 Political Body. If it is, Political 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 Political Body, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the Political 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 Political Body for a period of three (3) years following the date of Railroad's last billing sent to Political Body.

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

A. If the Political 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 Political Body will reimburse the Railroad for the expenses thereof.

B. Nonuse by the Political 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 Political Body hereunder.

C. The Political 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 Political 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 Political 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 Political 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**

**Exhibit C** will be Railroad's Work Estimate (see Recitals)

# Material And Force Account Estimate

## CITY / STATE / FED

Estimate Number: 125235    Version: 1

Standard Rates:      Labor Additive = 233.58%

Estimate Good Until 03-11-20

Location: CACHE VALLEY SUB, SIMN, 25.89-25.93

Description of Work: Cache Valley Sub

DOT# 806354Y-5 / 14th North, Logan, UT

Widen road crossing. Possibly include lights, gates, bells, and advanced preemption with adjacent intersection

Prepared For:

Buy America: Yes

COMMENTS	FACILITY	Description	QTY	UOM	UCST	LABOR	MATERIAL	TOTAL	UP %100	Agcy %0	
<b>ENGINEERING</b>											
		Engineering	1	LS	17,982.90	17,983	0	17,983	0	17,983	
		Bill Prep Fee - Track Surface RECOLLECT	1	LS	900.00	0	900	900	0	900	
		Homeline Freight - Track Surface RECOLLECT	1	LS	900.00	0	900	900	0	900	
		Foreign Line Freight - Track Surface RECOLLECT	1	LS	990.76	0	991	991	0	991	
<b>Sub-Total =</b>						<b>17,983</b>	<b>2,791</b>	<b>20,774</b>	<b>0</b>	<b>20,774</b>	
<b>TRACK CONSTRUCTION - COMPANY</b>											
	RDXING	RDXING 136# CONC W/SL3 10' CTIES	112	TF	651.82	45,418	27,586	73,004	0	73,004	
	TRACK	136# CWRIS0 24-8'6" HWD N 16 TP	160	TF	394.04	45,168	17,879	63,047	0	63,047	
	BALAST	BALAST CL1	2	CL	1,485.77	899	2,073	2,972	0	2,972	
		Compromise Joint Bar	4	PR	500.00	0	2,000	2,000	0	2,000	
<b>Sub-Total =</b>						<b>91,485</b>	<b>49,538</b>	<b>141,022</b>	<b>0</b>	<b>141,022</b>	
<b>TRACK REMOVAL - COMPANY</b>											
	RDXING	Remove road crossing - prefab	38	TF	125.77	4,779	0	4,779	0	4,779	
	TRACK	Remove Track	168	TF	28.20	4,737	0	4,737	0	4,737	
<b>Sub-Total =</b>						<b>9,516</b>	<b>0</b>	<b>9,516</b>	<b>0</b>	<b>9,516</b>	
<b>SITE WORK - CONTRACT</b>											
		Asphalt: Hot Mix	1	TN	5,000.00	0	5,000	5,000	0	5,000	
		Asphalt: Saw Cut	1	LF	3,000.00	0	3,000	3,000	0	3,000	
		Traffic Control - Detour Signs & Coordination	1	LS	6,000.00	0	6,000	6,000	0	6,000	
<b>Sub-Total =</b>						<b>0</b>	<b>14,000</b>	<b>14,000</b>	<b>0</b>	<b>14,000</b>	
<b>SIGNAL - COMPANY</b>											
		Signal: Xing Signals	1	LS	1,500.00	1,500	0	1,500	0	1,500	
<b>Sub-Total =</b>						<b>1,500</b>	<b>0</b>	<b>1,500</b>	<b>0</b>	<b>1,500</b>	
<b>Total Wgt. in Tons = 898</b>						<b>Totals =</b>	<b>120,484</b>	<b>66,329</b>	<b>186,812</b>	<b>0</b>	<b>186,812</b>

**Grand Total =**      **\$186,812**

Please Note: The above figures are estimates only and are subject to fluctuation. In the event of an increase or decrease in the cost or amount of material or labor required, CITY / STATE / FED will pay actual construction costs at the current rates effective thereof.

# Material And Force Account Estimate

## City of Logan UT

Estimate Creation Date: 06/12/2019    Number: 123083    Version: 1

Estimate Good Until 03/12/20

Location: CACHE VALLEY SUB, SIMN, .08-42.69

Buy America: Yes

Description of Work: Cache Valley Sub MP 25.91 Logan, UT 14th North DOT#806354Y WO#44175 PID#106694  
100% Recollectable

COMMENTS	Description	SubDivision	From MP	To MP	QTY	UOM	Unit Cost	LABOR	MATERIAL	TOTAL	UP 00%	Agncy 100%
<b>SIGNAL</b>												
	Xing - Install Web and Head Bonds per 1000 TF	CACHE VALLEY SUB	0.08	42.69	4	EA	1,865.00	6,400	1,060	7,460	0	7,460
	Xing - 1 Trk CWE w/Four Quad Gates				1	EA	192,474.00	67,200	125,274	192,474	0	192,474
	Xing - Sidelight				2	EA	907.00	0	1,814	1,814	0	1,814
	Xing - Engineering Design				1	LS	6,427.00	6,427	0	6,427	0	6,427
	Xing - Boring				1	LS	10,000.00	0	10,000	10,000	0	10,000
	Xing - Contract Services for Preempt Cutover				1	LS	15,000.00	0	15,000	15,000	0	15,000
	Xing - Fill/Rock/Gravel				1	LS	10,000.00	0	10,000	10,000	0	10,000
Fed W/ OH & Ind. 190.55%	Xing - Labor Additive				1	LS	152,493.00	152,493	0	152,493	0	152,493
	Xing - Meter Service				1	LS	15,000.00	0	15,000	15,000	0	15,000
<b>Sub-Total =</b>								<b>232,520</b>	<b>178,148</b>	<b>410,668</b>	<b>0</b>	<b>410,668</b>

**Totals =        232,520        178,148        410,668        0        410,668**

**Grand Total =                                \$410,668**

**Disclaimer:** This is a preliminary estimate, intended to provide a ballpark cost to determine whether a proposed project warrants further study. Quantities and costs are estimated using readily available information and experience with similar projects. Site conditions and changes in project scope and design may result in significant cost variance.

**EXHIBIT D**  
**TO**  
**PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

**Exhibit D** will be Contractor's Right of Entry Agreement (see Recitals)

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

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

**RECITALS:**

Contractor has been hired by \_\_\_\_\_ to perform work relating to \_\_\_\_\_

(the "work") with all or a portion of such work to be performed on property of Railroad in the vicinity of Railroad's Milepost \_\_\_\_\_ on Railroad's \_\_\_\_\_ [Subdivision or Branch] [at or near DOT No. \_\_\_\_\_ located at or near \_\_\_\_\_, in \_\_\_\_\_ County, State of \_\_\_\_\_, as such location is in the general location shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof, which work is the subject of a contract dated \_\_\_\_\_ between Railroad and \_\_\_\_\_.

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. For purposes of clarity, Contractor agrees that any CIC (defined below) hired by Contractor is a subcontractor of Contractor and therefore included in the defined term Contractor pursuant to the foregoing sentence.

**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 AND C**

The terms and conditions contained in **Exhibit B** and **Exhibit C**, 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 (including without limitation any CIC), or any costs or expenses incurred by Railroad relating to this agreement.

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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, 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 and throughout the entire term of this Agreement, Contractor, at its expense, shall procure and maintain in full force and effect the types and minimum limits of insurance specified in **Exhibit C** of this agreement and require each of its subcontractors to include the insurance endorsements as required under Section 12 of **Exhibit B** of this agreement.

B. Not more frequently than once every two (2) years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

C. Upon request of Railroad, Contractor shall provide to Railroad a certificate issued by its insurance carrier evidencing the insurance coverage required under **Exhibit B**.

D. Contractor understands and accepts that the terms of this Article are wholly separate from and independent of the terms of any indemnity provisions contained in this Agreement.

D. Upon request of Railroad, insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

Union Pacific Railroad Company  
1400 Douglas Street, Stop 1690  
Omaha, NE 68179  
Attn: Manager  
Folder No. 2992-98

**ARTICLE 8 - PRECONSTRUCTION MEETING.**

If the work to be performed by the Contractor will involve the Railroad providing any flagging protection (or if a CIC is approved to provide flagging protection pursuant to the terms set forth herein) and/or there is separate work to be performed by the Railroad, the Contractor confirms that no work shall commence until the Railroad and Contractor participate in a preconstruction meeting involving flagging procedures and coordination of work activities of the Contractor and the Railroad (and any CIC, as applicable.)

**ARTICLE 9. 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 10. ADMINISTRATIVE FEE.**

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

**ARTICLE 11. 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 12.- 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**

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

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

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

**EXHIBIT A**  
**TO**  
**CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

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

**EXHIBIT B**  
**TO**  
**CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

**Section 1. NOTICE OF COMMENCEMENT OF WORK - RAILROAD FLAGGING - PRIVATE 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.

B. 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 approved 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.

C. Contractor shall be permitted to hire a private contractor to perform flagging or other special protective or safety measures (such private contractor being commonly known in the railroad industry as a contractor-in-charge ("CIC")) in lieu of Railroad providing such services or in concert with Railroad providing such services, subject to prior written approval by Railroad, which approval shall be in Railroad's sole and absolute discretion. If Railroad agrees to permit Contractor to utilize a CIC pursuant to the preceding sentence, Contractor shall obtain Railroad's prior approval in writing for each of the following items, as determined in all respects in Railroad's sole and absolute discretion: (i) the identity of the third-party performing the role of CIC; (ii) the scope of the services to be performed for the project by the approved CIC; and (iii) any other terms and conditions governing such services to be provided by the CIC. If flagging or other special protective or safety measures are performed by an approved CIC, Contractor shall be solely responsible for (and shall timely pay such CIC for) its services. Railroad reserves the right to rescind any approval pursuant to this Section 1, Subsection C., in whole or in part, at any time, as determined in Railroad's sole and absolute discretion.

D. If any flagging or other special protective or safety measures are performed by employees of Railroad and/or any contractor of 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.

E. If any flagging or other special protective or safety measures are performed by Railroad or a CIC, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this agreement.

F. The provisions set forth in this subsection are only applicable for Flagging Services performed by employees of Railroad: 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. If flagging is performed by Railroad, 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 any work on Railroad property 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 then current safety standards located at the below web address ("Railroad's Safety Standards") 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 Railroad's Safety Standards to each of its employees before they enter Railroad property.

[http://www.up.com/cs/groups/public/@uprr/@suppliers/documents/up\\_pdf\\_nativedocs/pdf\\_up\\_supplier\\_safety\\_req.pdf](http://www.up.com/cs/groups/public/@uprr/@suppliers/documents/up_pdf_nativedocs/pdf_up_supplier_safety_req.pdf)

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" on the subcontractor's Commercial General Liability policy and Umbrella or Excess policies (if applicable) 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 10, and CG 20 37 (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**

**Union Pacific Railroad Company**  
**Insurance Requirements For**  
**Contractor's Right of Entry Agreement**

During the entire term of this Agreement and course of the Project, and until all Project work on Railroad's property has been completed and all equipment and materials have been removed from Railroad's property and Railroad's property has been clean and restored to Railroad's satisfaction, Contractor shall, at its sole cost and expense, procure and maintain 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.

- 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 business automobile, worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 10, and CG 20 37 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall not be limited by Contractor's liability under the indemnity provisions of this agreement. BOTH CONTRACTOR AND RAILROAD EXPECT THAT UNION PACIFIC RAILROAD COMPANY WILL BE PROVIDED WITH THE BROADEST POSSIBLE COVERAGE AVAILABLE BY OPERATION OF LAW UNDER ISO ADDITIONAL INSURED FORMS CG 20 10 AND CG 20 37.
- H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.
- 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 for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Contractor required in this agreement where prohibited by law. 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.

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



BUILDING AMERICA®

**FOR PID # 106694  
BY THE UNION PACIFIC RAILROAD**

<b>STREET</b>	<b>14th North</b>
<b>TOWN</b>	<b>Logan, UT</b>
<b>MILEPOST</b>	<b>25.91</b>
<b>SUBDIVISION</b>	<b>Cache Valley</b>
<b>AAR/DOT NO.</b>	<b>806354Y</b>
<b>WORK ORDER#</b>	<b>44175</b>

<b>DESCRIPTION</b>	<b>VALUE</b>	<b>QUANTITY</b>	<b>UNITS</b>
<b>NON-CODED TRK. CIRCUIT (Standalone AFTAC or Ring 10)</b>	2	0	0
<b>SUPERIMPOSED CIRCUIT(AFTAC) / DETECTION LOOP</b>	2	0	0
<b>HIGHWAY GRADE CROSSING SIGNAL (FRONT LIGHTS)</b>	2	4	8
<b>ADDITIONAL PAIR OF LIGHTS (OTHER THAN FRONT LIGHTS)</b>	1	6	6
<b>GATE MECHANISM, AUTOMATIC WITH ARM UP TO 26 FT</b>	8	4	32
<b>GATE MECHANISM, AUTOMATIC WITH ARM OVER 26 FT</b>	10	0	0
<b>GCP/HXP (constant warning device, per track circuit)</b>	15	1	15
<b>EXIT GATE MANAGEMENT SYSTEM RACK*</b>	10	0	0
<b>MOVEMENT DETECTOR (PMD)</b>	6	0	0
<b>MOVEMENT DETECTOR (STANDBY UNIT)</b>	3	0	0
<b>RADIO DATA LINK, PER UNIT</b>	1	0	0
<b>PREEMPTION CIRCUIT</b>	2	1	2
<b>DATA RECORDER</b>	1	0	0
<b>REMOTE MONITORING DEVICE (SEAR, ETC)*</b>	2	1	2
<b>BONDED RAIL JOINTS (per mile, each rail, single bonded)</b>	1	0.5	0.5
<b>BATTERY AND CHARGER (per set)</b>	1	2	2
<b>TOTAL UNIT COUNT</b>			<b>67.5</b>
<b>PAVEMENT RESTORATION COSTS</b>			<b>(Actual)</b>
	Annual Maintenance Cost at \$170/Unit		<b>\$11,475</b>

\*UP supplied Unit Value

June 11, 2019

# **EXHIBIT 8**

May 27, 2020

Union Pacific Railroad- Engineering  
C/O Mary Schroll  
9451 Atkinson Street  
Roseville, CA 95747

**RE: Folder No. 3196-94- DOT 806354- Signal Maintenance Fee**

Madam Schroll,

I am writing to you addressing the email response that you sent on May 1, 2020 regarding Logan City's (City) request to remove the signal maintenance fee clause noted in Section 16.A SIGNAL MAINTENANCE COSTS from the proposed Union Pacific Railroad (UPRR) Public Highway At-Grade Crossing Agreement (Agreement). The City would like to proceed with the current construction schedule of the 1400 North project while continuing discussions on the maintenance fee issue.

Research of records finds several past instances where the City and UPRR have partnered to improve railways and crossings. Some documents date back to the 1950s and more recently the 1990s. The City wishes to maintain the partnership with UPRR and seeks a temporary resolve to the maintenance clause until issues are sorted out and a long-term agreement can be reached.

Construction on the 1400 North 600 West intersection is currently underway and improvements to the crossing are an important element to its success. It is imperative that the maintenance issue is resolved as soon as possible to avoid unnecessary and costly delays.

Based on the email sent to you by the Office of the Utah Attorney General on May 11, 2020, it appears that there is no clear legal authority for Union Pacific Railroad to mandate to Logan City the responsibility for the cost of maintaining UPRR owned and maintained signals and equipment. The Assistant Attorney General's email cited a multitude of Code, historic, and other reasons as to why the responsibility lies with UPRR, but the legal process sorting this out will take some time.

The City has consulted the Utah Department of Transportation (UDOT) for guidance in this matter. It is the desire of the City that any permanent agreement between the City and UPRR match any agreement made between UPRR, UDOT, and the State of Utah. Ideally UPRR will be willing to remove or delay the maintenance portion of the Agreement and not hold hostage the 1400 North project while UDOT and UPRR continue to negotiate maintenance terms. There is also concern that a project on 1800 North (in final design) and other projects in the future may be delayed by extended negotiations.

The City is willing to consider one of the options below in an effort to move forward with the referenced projects. Please note that the following proposals are not intended to force either party

into accepting the proposed temporary conditions, nor should they be interpreted as setting precedence for future agreements.

1. Remove the Signal Maintenance Fee clause noted in Section 16.A of the proposed Agreement.
2. Delay the maintenance portion of the Agreement until negotiations between UDOT and UPRR are complete. Once terms are set, negotiate maintenance terms between the City and UPRR that align with terms codified with the State of Utah and UDOT.
3. Enter into a three (3) year limited Agreement whereas Logan City pays a \$1,000 per year signal maintenance fee in a lump sum or invoiced yearly: The proposed fee is more in line with that paid by Texas (\$770/yr) and California (50% share of \$2,263/yr).

Please consider one of the options. The options can be accepted and considered satisfactory and final, or they may be implemented in part or as a whole as we continue discussions and let the legalities of the issue play out with the State of Utah and Union Pacific Railroad.

Thank you for your consideration.

Sincerely,



Tom Dickinson

CC: File  
Craig Carlston  
Paul Lindhardt  
Jim Golden  
Bill Young