

PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT

PANORAMA ROAD
DOT NO. 811014X
MILE POST 56.20, LOS ANGELES SUBDIVISION
RIVERSIDE, RIVERSIDE COUNTY, CALIFORNIA

THIS AGREEMENT (this "Agreement") is made and entered into as of the ____ day of _____, 20____ (the "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 (the "Railroad") and the **CITY OF RIVERSIDE**, a municipal corporation or political subdivision of the State of California to be addressed at 3900 Main St. #4, Riverside, CA 92522 (the "Political Body").

RECITALS:

By ordinance number 303 dated May 28, 1902 (the "1902 Ordinance"), the Political Body granted rights to the Railroad's predecessor over a portion of Panorama Road, DOT Number 811014X at Railroad's Mile Post 56.2 on Railroad's Los Angeles Subdivision at or near Riverside, Riverside County, California, as such property is shown on the location print marked **Exhibit A** (the "1902 Crossing Area or Ordinance Area").

Upon the expiration of the Original Agreement per its terms, Railroad has continued to lawfully occupy and use the 1902 Crossing Area to conduct common carrier operations in accordance with applicable federal and state laws, rules and regulations, including without limitation, the California Public Utilities Code, Division 1, Part 1, Chapter 6 (enacted by Stats. 1951, Ch. 764) and Chapter 6.5 (added by Stats. 1961, Ch. 1302).

The Railroad's predecessor and the Political Body entered into that certain Easement dated February 13, 1962 (the "1962 Agreement") whereby the Railroad's predecessor granted the Political Body easement rights to construct, operate and maintain a portion of Panorama Road on a portion of the Railroad's right of way located adjacent to the 1902 Crossing Area, as such property is shown on the location print marked **Exhibit A** (the "1962 Crossing Area or 1962 Easement Area" and together with the 1902 Crossing Area, collectively, the "Existing Crossing Area").

The Political Body has requested the Railroad's cooperation in connection with certain improvements at the Crossing Area (as defined below), at least in part, in furtherance of the Political Body's creation or use of a "Quiet Zone" in accordance with

Part 222 of Title 49 of the Code of Federal Regulations (49 CFR x.221.1 et seq.), including (i) the removal of the existing railroad grade crossing warning signal devices, (ii) the installation of quad gates at the vehicular crossing, (iii) the installation of two pedestrian gates at the sidewalk, and (iv) the removal and replacement of multiple concrete crossing panels (collectively, the "Project") all in accordance with the Plans (as defined below). The road located within the Crossing Area, as reconstructed, is hereinafter the "Roadway".

A portion of the Project work will take place outside of the Existing Crossing Area on Railroad's right of way located adjacent to the Existing Crossing Area, as such property is shown on **Exhibit A** and described in the legal description marked **Exhibit A-1** (the "Additional Crossing Area or Easement Area" and together with the Existing Crossing Area, collectively, the "Crossing Area"). To facilitate the Project, the Railroad is willing to grant the Political Body easement rights on, along and/or over the Additional Crossing Area for the sole purpose of constructing, operating, maintaining and repairing the Roadway.

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 of the sum of **Twenty Eight Thousand Five Hundred DOLLARS (\$28,500)** to be paid by the Political Body to 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 shall execute and deliver to the Political Body an Easement Deed in the form marked **Exhibit E**, attached hereto and hereby made a part hereof, granting the Political Body easement rights on, along and/or over the Additional Crossing Area or Easement Area, as shown on **Exhibit A** and described on **Exhibit A-1**, for the sole purpose of constructing, operating, maintaining and repairing the Roadway.

Section 3. ANNUAL SIGNAL MAINTENANCE FEE.

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 Crossing Area described in Section 5 of **Exhibit B**, agrees to pay to Railroad the sum of Eighteen

Thousand Five Hundred Thirty Dollars (\$18,530.00) per annum, payable annually in advance, which amount is equal to the incremental increase in Railroad's maintenance costs at the Crossing Area resulting from the installation of additional gates in connection with the Project.

B. The above annual fee is based on the incremental increase in Railroad's maintenance costs attributable to the number of signal units located on the additional gates to be installed at the Crossing Area in connection with the Project. 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.

Section 4. 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 property used by the Railroad for operating purposes on or about the Crossing Area 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 5. 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 property used by the Railroad for operating purposes. Under no circumstances will the Contractor be allowed on any property used by the Railroad for operating purposes 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
UP File Folder No. 2390-58

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 6. 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 7. 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 8. 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 Material and Force Account Surface Estimates in the amount of Fifty Six Thousand Five Hundred Thirty Dollars and no/100 (\$56,530.00) and a Signal Estimate in the amount of Six Hundred Eleven Thousand Two Hundred Thirty Seven Dollars and no/100 (\$611,237.00), and the Railroad Flagging Estimate dated June 23, 2016 in the amount of Thirty One Thousand Dollars and no/100 (\$31,000.00), marked **Exhibit C**, attached hereto and hereby made a part hereof (collectively, the "Estimate"). As set forth in the Estimate, the Railroad's total estimated cost for the Railroad's work associated with the Project is Six Hundred Ninety Eight Thousand Seven Hundred Sixty Seven Dollars no/100 (\$698,767.00).

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 property used by the Railroad for operating purposes within six (6) months from the date of the Estimate.

C. 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 property used by the Railroad for operating purposes has been completed.

D. 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 9. 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 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 10. 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 9. 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 9B, (ii) deem the Non Railroad Facilities part of the Roadway, and (iii) supplement this Agreement with terms and conditions covering the Non Railroad Facilities.

Section 11. 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 within the Crossing Area.

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 Crossing Area 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 plans, including the Plans.

Section 12. 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 property used by Railroad for operations 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 13. 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 14. 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 15. 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 16. AGREEMENT AS A SUPPLEMENT

Each of the 1902 Ordinance and the 1962 Agreement shall be supplemented by this Agreement. In the event of any conflict among the 1902 Ordinance, the 1962 Agreement and this Agreement, the terms and provisions of this Agreement shall control.

SECTION 17. SOUNDING OF LOCOMOTIVE HORNS

The Railroad's rights and duties regarding the sounding of the locomotive horns at the Crossing Area shall be as set out in 49 CFR Part 222, and by other applicable law. Nothing contained in this Agreement shall be construed to alter such rights and duties.

SECTION 18. OTHER RESPONSIBILITIES AND OBLIGATIONS OF THE POLITICAL BODY WITH RESPECT TO THE WORK AND THE PROJECT

A. The Political Body shall comply with all applicable laws with respect to the Project, including, but not limited to, 49 CFR Part 222. The Political Body shall comply with all applicable Federal Railroad Administration regulations and requirements with respect to the Project and Crossing Area.

B. Costs and expenses associated with or resulting from any relocation of the Project improvements, including without limitation any relocation work that results from track alignment changes, new track construction, signal upgrades, or from any work implemented in the discretion of the Railroad, or resulting from the Railroad's business needs or the requirements of an administrative agency, shall be at the Political Body's sole cost and expense. The Railroad shall provide reasonable prior notification of such relocation or other work.

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: _____

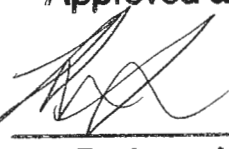
CITY OF RIVERSIDE

By: _____
Printed Name: _____
Title: _____

CERTIFIED AS TO FUNDS AVAILABILITY:

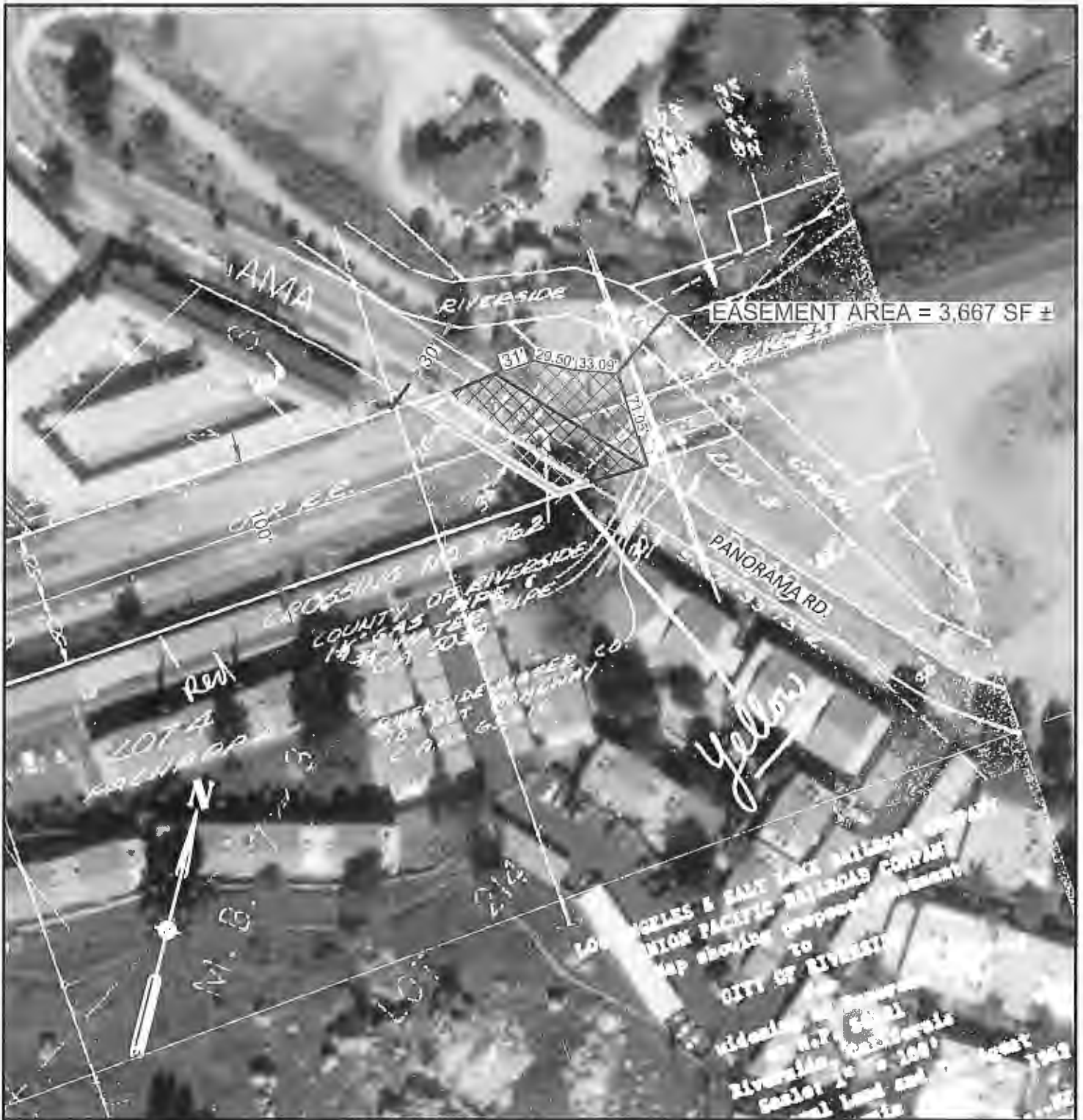
BY: 
CHIEF FINANCIAL OFFICER/ TREASURER

Approved as to Form:





By: 
Ruthann M. Salera
Deputy City Attorney

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

Exhibit A is the location print showing the Crossing Area (see attached)



LEGEND:

EASEMENT AREA.....	
ORDINANCE AREA.....	
1962 EASEMENT AREA.....	
UPRRCO. R/W OUTLINED.....	

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

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

RIVERSIDE, RIVERSIDE COUNTY, CA

M.P. 56.2 - LOS ANGELES SUB.

MAP UP CA V-6 / 18

SCALE: 1" = 100'

OFFICE OF REAL ESTATE
OMAHA, NEBRASKA DATE: 12/3/2019

RRM FILE: 2390-58

CADD
FILENAME 0301984.DGN

SCAN
FILENAME 0301984-MAP.TIF

EXHIBIT A-1

TO
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT

Exhibit A-1 will be a legal description of the “Additional Crossing Area” (See Recitals)

EXHIBIT "A"
LEGAL DESCRIPTION

Project: U.P.R.R. at Panorama Road Easement
Por. A.P.N.: 215-182-005

That certain real property located in the City of Riverside, County of Riverside, State of California, described as follows:

All that portion of Lots 193, 194, 213 and 214 of the Lands of the Southern California Colony Association, as shown by map on file in Book 7, Page 3 of Maps, Records of San Bernardino County, California, described as follows:

BEGINNING at the southwest corner of Lot 3 of Rancheria De Pachappa, as shown by map on file in Book 2, Page 38 of Maps, Records of Riverside County, California, said point being the intersection of the southeasterly line of the 100 foot right-of-way of the Union Pacific Railway Company and the northerly right-of-way line of Panorama Road (30.00 feet in width);

Thence North 71°33'13" West, along said northerly right-of-way line of Panorama Road, a distance of 129.67 feet to its intersection with the northwesterly line of said Union Pacific Railway Company right-of-way;

Thence North 57°59'10" East, along said northwesterly line of Union Pacific Railway Company right-of-way, a distance of 31.00 feet;

Thence North 88°26'22" East, a distance of 29.50 feet;

Thence North 81°19'12" East, a distance of 33.09 feet;

Thence South 32°00'50" East, along a line perpendicular to said southeast line of Union Pacific Railway Company right-of-way, a distance of 71.50 feet to a point thereon distant 4.00 feet northeast of the Point of Beginning;

Thence South 57°59'10" West, along said southeast line of Union Pacific Railway Company right-of-way, a distance of 4.00 feet to the **POINT OF BEGINNING**.

Area – 3,687 S.F. more or less

This description was prepared by me or under my direction in
conformance with the requirements of the Land Surveyors Act.

Curtis C. Stephens 4/26/16 Prep. CS
Curtis C. Stephens, L.S. 7519 Date



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 1962 Crossing Area and/or the Additional Crossing Area for any purposes other than those described in this Agreement and/or the 1902 Crossing Area for any purpose inconsistent with the Railroad's occupation and use of the 1902 Crossing Area to conduct common carrier operations in accordance with applicable federal and state laws, rules and regulations. 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 Crossing Area 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, as to the 1962 Crossing Area and the Additional Crossing Area, in accordance with specifications and requirements of the Railroad, and shall be constructed, as to the Crossing Area, in such a manner as to not interfere with the Railroad's occupation and use of the Crossing Area to conduct common carrier operations and to not adversely 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 Crossing Area used by the Railroad for operations 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 1962 Crossing Area and/or the Additional Crossing Area, the Political Body shall, at its sole cost and expense, modify the portion of the Roadway within the 1962 Crossing Area and the Additional Crossing Area, respectively, to conform with all tracks within such areas.

C. The right hereby granted under Section 2 above (in the body of the Agreement) with respect to the Additional Crossing Area 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 Crossing Area, 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 Additional Crossing Area for any purpose not inconsistent with the right granted under Section 2 above, 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 Additional Crossing Area. The Railroad also has 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 operating 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 operating property on or about the Crossing Area (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 Political Body 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 on or about the Crossing Area, 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 portion of the Roadway located within the 1962 Crossing Area and the Additional 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 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 operating property on or about the Crossing Area.

B. **Entry on to Railroad's Operating Property on or about the Crossing Area by Political Body.** If the Political Body's employees need to enter Railroad's operating property on or about the Crossing Area 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 operating property on or about the Crossing Area, 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 operating property on or about the Crossing Area, 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 any property used by Railroad for operations on or about the Crossing Area 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 operating property. 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 property used by Railroad for operations or Railroad's 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 operating 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 operating 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 operating 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 operating 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 operating property" shall be deemed to be any place on the Railroad's operating property or in such close proximity to the Railroad's operating 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 Railroad's facilities or operations. 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 used by the Railroad for operations. 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 operating 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 operating 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 operating property on or about the Crossing Area 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 operating property.

SECTION 9. INTERIM WARNING DEVICES

If at any time 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 operating property or facilities on or about the Crossing Area.

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 the rights granted under this Agreement 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.

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



BUILDING AMERICA®

FOR

PID #95606

BY THE UNION PACIFIC RAILROAD

STREET

PANORAMA RD.

TOWN

RIVERSIDE, CA.

MILEPOST

56.2

SUBDIVISION

LOS ANGELES

AAR/DOT NO.

811014X

WORK ORDER#

34114

DESCRIPTION

UNIT VALUE

QUANTITY

UNITS

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

2

0

0

SUPERIMPOSED CIRCUIT(AFTAC) / DETECTION LOOP

2

10

20

HIGHWAY GRADE CROSSING SIGNAL
(ONE PAIR OF FLASHING LIGHTS)

2

5

10

ADDITIONAL PAIR OF LIGHTS

1

2

2

GATE MECHANISM, AUTOMATIC
WITH ARM UP TO 26 FT

8

6

48

increase of 3
gates=24
units

GATE MECHANISM, AUTOMATIC
WITH ARM OVER 26 FT

10

0

0

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

15

1

15

EXIT GATE MANAGEMENT SYSTEM RACK*

10

1

10

MOVEMENT DETECTOR (PMD)

6

0

0

MOVEMENT DETECTOR (STANDBY UNIT)

3

0

0

RADIO DATA LINK, PER UNIT

1

0

0

PREEMPTION CIRCUIT

2

0

0

DATA RECORDER

1

0

0

REMOTE MONITORING DEVICE*

2

1

2

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

1

0

0

BATTERY AND CHARGER (per set)

1

2

2

TOTAL UNIT COUNT

109

PAVEMENT RESTORATION COSTS

(Actual)

Annual Maintenance Cost at \$170/Unit

\$18,530

*UP supplied Unit Value

August 11, 2016

unit price \$170.00X24=

will increase
maintenace by
\$4,080.00

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

Exhibit C will be Railroad's Material and Force Agreement Estimate and Railroad Flagging Estimate.

Material And Force Account Estimate Riverside

Estimate Number: 125183 Version: 1

Standard Rates: Labor Additive = 233.58%

Estimate Good Until 03/05/20

Location: LOS ANGELES SUB, SIMN, 56.18-56.22

Description of Work: 811014X Panorama Dr. Riverside, CA, 56.2 Los Angeles Sub.

Prepared For: Riverside

Buy America: Yes

COMMENTS	FACILITY	Description	QTY	UOM	UC ST	LABOR	MATERIAL	TOTAL	UP %0	Agcy %199
ENGINEERING										
		Engineering	1	LS		0.072	0	0.072	0	0.072
		BB Prep Fee - Track Surface RECOLLECT	1	LS		900.00	0	900.00	0	900.00
		Remeshing Weight - Track Surface RECOLLECT	1	LS		900.00	0	900.00	0	900.00
		Foreign Line Weight - Track Surface RECOLLECT	1	LS		754.35	0	754.35	0	754.35
		Sub-Total =				0.072	2,534	0.008	0	0.008
TRACK CONSTRUCTION - COMPANY										
	ROADING	ROADING 15m CONC WGL 3 12' CTR	33	TF		637.50	11,518	0.073	20,360	20,360
	BALAST	BALAST 0.1	1	CL		2,123.50	1,000	3,123.50	3,123.50	0
		Sub-Total =				12,000	9,518	22,520	22,520	0
TRACK REMOVAL - COMPANY										
	ROADING	Remove road crossing - concrete	8	TF		85.43	400	0	400	400
		Sub-Total =				400	0	400	400	0
EQUIPMENT RENTAL										
		Equipment Rental	2	LS		5,000.00	0	25,000	0	25,000
		Sub-Total =				0	25,000	25,000	0	25,000
Total Wgt. in Tons = 280						Totals =				
						19,001				
						37,440				
						56,530				
						0				
						56,530				

Grand Total = \$66,530

Please Note: The above figures are estimates only and are subject to fluctuation. In the event of an increase or decrease in the cost of amount of material or labor required, Riverside will pay actual construction costs at the current rates effective thereof.

Material And Force Account Estimate City of Riverside

Estimate Creation Date: 7/11/2017 Number: 112727 Version: 2

Standard Rates: 190.39%

Estimate Good Until 06/06/20

Location: LOS ANGELES SUB, SIMN. 49.84-52.63

Buy America: No

Description of Work: Riverside, CA Panorama Rd. mp. 56.20 Los Angeles Sub. DOT 811014X WO 34114 PID 95606

100% Recollectable (100% City of Riverside)

COMMENTS	Description	QTY	UOM	Unit Cost	LABOR	MATERIAL	TOTAL
SIGNAL							
	Xing - Pedestrian Gates (part)	1	EA	57,233.00	22,393	34,860	87,283
Asphalt/Sawcut	Xing - Misc.	1	LS	10,000.00	0	10,000	10,000
	Xing - Dwr Cable 1000'	15	EA	8,440.00	6,000	3,600	8,600
190.39%	Xing - Labor Additive	1	LS	230,003.00	220,003	0	230,003
	Xing - Boring	1	LS	10,000.00	0	10,000	10,000
	Xing - Sidelight	1	EA	907.68	0	907	907
	Xing - 1 Yr CNE E/GMS (4 loops and gates)	1	EA	278,024.00	72,300	199,224	278,024
	Xing - Engineering Design	1	LS	10,360.00	10,360	0	10,360
	Xing - Fill/Rock/Gravel	1	LS	2,000.00	0	2,000	2,000
	Xing - Meter Service	1	LS	15,000.00	0	15,000	15,000
	Sub-Total =				335,556	275,681	611,237
	Totals =				335,556	275,681	611,237

Grand Total = \$611,237

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 of Riverside will pay actual construction costs at the current rates effective thereof.

EXHIBIT

RAILROAD FLAGGING ESTIMATE
TO PUBLIC ROAD CROSSING RECONSTRUCTION

DESCRIPTION OF WORK: Perform flagging and inspection services for the City of Riverside for the roadway improvements of Pandora Road (USDOT# 811014X), at Railroad Mile Post 58.2 on the Los Angeles Subdivision in Riverside, Riverside County, California

LOCATION: Riverside, Riverside County, California DATE: 23 June 2016

DESCRIPTION	LABOR	MATERIAL	AUTHORITY TOTAL
FLAGGING (at \$1,400/day; 15 days)	\$21,000	0	\$21,000
Site Inspections	\$10,000	0	\$10,000
TOTAL			\$31,000

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

**EXHIBIT D
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 ("Railroad"); and _____,
a _____ corporation ("Contractor").

RECITALS:

Contractor has been hired by the City of Riverside to reconstruct the existing Panorama Road at-grade public road crossing, DOT Number 811014X at Railroad's Mile Post 56.2 on Railroad's Los Angeles Subdivision at or near Riverside, Riverside County, California, 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 the City.

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

AGREEMENT:

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

ARTICLE 1 - DEFINITION OF CONTRACTOR.

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

ARTICLE 2 - RIGHT GRANTED; PURPOSE.

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

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

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

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

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

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

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

Silvio Molina-Manager Track Mntc
562/566-4447
smolina@up.com

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, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement, and (ii) the insurance endorsements obtained by each subcontractor as required under Section 12 of **Exhibit B** of this Agreement.

B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

Union Pacific Railroad Company
1400 Douglas St. STOP 1690
Omaha NE 68179
Attn: Sr. Mgr. Real Estate
Folder No. 2390-58

ARTICLE 8 - DISMISSAL OF CONTRACTOR's EMPLOYEE.

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

ARTICLE 9- ADMINISTRATIVE FEE.

Upon the execution and delivery of this Agreement, Contractor shall pay to Railroad Five Hundred Dollars (\$1025.00) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

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

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

B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications, negligence, or any other reason arising from the Contractor's presence on the Railroad's property, the Contractor agrees to assume liability for any civil penalties imposed upon the Railroad for such noncompliance.

ARTICLE 11.- EXPLOSIVES.

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

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

UNION PACIFIC RAILROAD COMPANY

By: _____
Title: _____

(Name of Contractor)

By: _____
Title: _____

EXHIBIT A

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

EXHIBIT B
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least thirty (30) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

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

C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project

for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

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

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

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

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

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

Section 4. LIENS.

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

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

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

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

Section 6. PERMITS - COMPLIANCE WITH LAWS.

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

Section 7. SAFETY.

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

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

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

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

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

Section 8. INDEMNITY.

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

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

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

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

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

Section 9. RESTORATION OF PROPERTY.

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

Section 10. WAIVER OF DEFAULT.

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

Section 11. MODIFICATION - ENTIRE AGREEMENT.

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

Section 12. ASSIGNMENT - SUBCONTRACTING.

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

24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

EXHIBIT C
TO
CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT

Union Pacific Railroad Company
Insurance Provisions For
Contractor's Right of Entry Agreement

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

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

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

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

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

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

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

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

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

disease policy limit \$500,000 each employee.

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

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

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

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

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

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

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

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

Other Requirements

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

EXHIBIT D
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

MINIMUM SAFETY REQUIREMENTS

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

I. Clothing

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

Specifically, Contractor's employees must wear:

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

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

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

II. Personal Protective Equipment

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

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job

- situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers
 - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
 -
 - (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

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

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

IV. Equipment

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

- 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 E
TO
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

Easement Deed
(see attached)

After Recording, Mail To:

(Space Above Reserved for County Recorder's Use)

UPRR Folder No. 2390-58

EASEMENT DEED

THIS Easement Deed is made this _____ day of _____, 20____, between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Grantor"), and the **CITY OF RIVERSIDE**, a MUNICIPAL CORPORATION OR POLITICAL SUBDIVISION OF THE State of California ("Grantee"), whose address is 3900 Main St. #4, Riverside, CA 92522.

Grantor for and in consideration of the sum of **TWENTY EIGHT THOUSAND FIVE HUNDRED DOLLARS (\$28,500.00)** and other valuable consideration, to it paid by Grantee, the receipt whereof is hereby confessed and acknowledged, grants to Grantee, its successors and assigns, a **NONEXCLUSIVE EASEMENT** ("Easement") on, along and/or over the property described in **Exhibit A**, attached and by reference made a part of this Easement Deed (the "Easement Area"), for the sole purpose of constructing, operating, maintaining and repairing an at-grade crossing over at or near Grantor's Mile Post 56.20 (DOT No. 811014X), on Grantor's Los Angeles Subdivision in Riverside, Riverside County, California.

The Easement is granted for the purpose described above only. Without limitation of the foregoing, this grant does not include the right to install utilities of any nature, including, without limitation, fiber optic, cable television, electrical, gas or liquid distribution, or telephone lines.

Grantor, its successors and assigns, reserves the right to construct at any and all times and to maintain railroad tracks and appurtenances, fiber optic or signal lines and facilities, pipe, telephone, and electric pole and wire lines, over, under and across the Easement Area, but in such a way as to not interfere with Grantee's use of the Easement; it being understood that the rights so reserved by Grantor, its successors and assigns, are retained along with the general right of Grantor, its successors and assigns, to use of the Easement Area for any purpose not inconsistent with Grantee's use of the Easement, including, but not limited to any and all general railroad purposes.

The Easement is granted subject to the terms and conditions contained in the separate Public Highway At Grade Crossing Agreement dated _____ 20__, as signed by Grantor and Grantee, and all outstanding leases, licenses and other outstanding rights, including, without limitation, those for pipe, telephone, electric and fiber optic lines and the right of renewals and extensions of the same, and subject also to all conditions, limitations, restrictions, encumbrances, reservations or interests of any person that may affect the Easement Area, whether recorded or unrecorded.

The Easement is also limited to such rights as Grantor may have in the Easement Area and is granted without warranty, express or implied. No damages shall be recoverable from Grantor because of any dispossession of Grantee or because of failure of, or defect in, Grantor's title.

If Grantee, its successors or assigns, abandons the Easement Area or any portion of the Easement Area, for the purposes of the Easement, the Easement will cease and terminate with respect to the portion of the Easement Area so abandoned, and the title to the Easement Area will be freed from the burden of the Easement. Nonuse of the Easement Area or any portion thereof, for the purposes of the Easement for the period of one (1) year will be deemed an abandonment of the Easement Area or portion thereof not used.

Grantor and Grantee have caused this Easement Deed to be executed as of the date first herein written.

ATTEST:

UNION PACIFIC RAILROAD COMPANY

(Federal Tax ID No. 94-6001323)

By _____

BEVERLY J. KUBAT
Assistant Secretary

By _____

DANIEL A. LEIS
General Director Real Estate

(Seal)

CITY OF RIVERSIDE

By _____

Printed
Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF NEBRASKA)
) ss:
COUNTY OF DOUGLAS)

On this ____ day of _____, 2020, before me, David C. LaPlante, a Notary Public in and for said County and State, personally appeared **Daniel A. Leis** and **Beverly J. Kubat** who are the *General Director Real Estate* and the *Assistant Secretary*, respectively, of Union Pacific Railroad Company, a Delaware corporation, and who are personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to in the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public for and in said State

My commission expires Sept. 18. 2021:

↑ (Affix Notary Seal Here) ↑

ACKNOWLEDGMENT

STATE OF _____)
) ss:
COUNTY OF _____)

On this _____ day of _____, 20____, before me, a Notary Public in
and for said County and State, personally appeared

(Name of Individual Executing Agreement on Behalf of the Political Body)

who _____ is _____ the

(Title of Individual Executing Agreement on Behalf of the Political Body)
of the _____, and who is personally known to me (or proved to me on the
basis of satisfactory evidence) to be the person whose name is subscribed to in the
within instrument, and acknowledged to me that he/she executed the same in his/her
authorized capacity, and that by his/her signature on the instrument the person, or the
entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public for and in said State

My commission expires:

↑ (Affix Notary Seal Here) ↑

(Expiration Date)

EXHIBIT A

Legal Description of Easement Area

(see attached)

EXHIBIT "A"
LEGAL DESCRIPTION

Project: U.P.R.R. at Panorama Road Easement
Por. A.P.N.: 219-182-005

That certain real property located in the City of Riverside, County of Riverside, State of California, described as follows:

All that portion of Lots 193, 194, 213 and 214 of the Lands of the Southern California Colony Association, as shown by map on file in Book 7, Page 3 of Maps, Records of San Bernardino County, California, described as follows:

BEGINNING at the southwest corner of Lot 3 of Rancharia De Pachappa, as shown by map on file in Book 2, Page 38 of Maps, Records of Riverside County, California, said point being the intersection of the southeasterly line of the 100 foot right-of-way of the Union Pacific Railway Company and the northerly right-of-way line of Panorama Road (30.00 feet in width);

Thence North 71°33'13" West, along said northerly right-of-way line of Panorama Road, a distance of 129.67 feet to its intersection with the northwesterly line of said Union Pacific Railway Company right-of-way;

Thence North 57°59'10" East, along said northwesterly line of Union Pacific Railway Company right-of-way, a distance of 31.00 feet;

Thence North 89°26'22" East, a distance of 29.50 feet;

Thence North 81°19'12" East, a distance of 33.09 feet;

Thence South 32°00'50" East, along a line perpendicular to said southeast line of Union Pacific Railway Company right-of-way, a distance of 71.50 feet to a point thereon distant 4.00 feet northeast of the Point of Beginning;

Thence South 57°59'10" West, along said southeast line of Union Pacific Railway Company right-of-way, a distance of 4.00 feet to the **POINT OF BEGINNING**.

Area – 3,667 S.F. more or less

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyors Act.

Curtis C. Stephens 4/26/16 Prep. CS
Curtis C. Stephens, L.S. 7519 Date

