

CITY CLERK DEPT.

2016 JAN -6 PM 2:24

CITY OF EL PASO, TEXAS  
AGENDA ITEM

DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Capital Improvement Department

AGENDA DATE: January 12, 2016

CONTACT PERSON NAME AND PHONE NUMBER: Monica Lombraña, A.A.E. Capital Improvement Director 212-1831

DISTRICT(S) AFFECTED: 3

**SUBJECT:**

A resolution that the City Manager be authorized to sign a Highway Overpass Agreement by and among the City of El Paso, the Union Pacific Railroad Company, and the State of Texas, acting by and through the Texas Department of Transportation, whereby Union Pacific Railroad Company will give permission for the construction, maintenance, and use of the an overpass structure known as the Carolina Bridge across Railroad property via an existing easement.

**BACKGROUND / DISCUSSION:**

Through this agreement, Union Pacific Railroad (UPRR) gives permission to the Texas Department of Transportation (TxDOT) and the City of El Paso to construct, maintain, and use the overpass structure over UPRR property and UPRR tracks. This agreement is required by UPRR as part of the reconstruction of the Carolina Bridge.

**PRIOR COUNCIL ACTION:**

**AMOUNT AND SOURCE OF FUNDING:**

**BOARD / COMMISSION ACTION:**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

2016 JAN -6 PM 2:24

**RESOLUTION**

**WHEREAS**, on June 14, 2007, the City of El Paso ("City") and the Texas Department of Transportation (TxDOT) entered into a Local Project Advance Funding Agreement ("LPAFA") for Bridge Replacement or Rehabilitation of the Carolina Bridge ("Project"); and

**WHEREAS**, on August 19, 2014, TxDOT and Union Pacific Railroad Company ("Railroad") entered into a Highway-Railroad Preliminary Engineering Agreement and Letter of Authorization authorizing reimbursement to the Railroad for actual costs that are incurred for collaborating in the development of the Project's preliminary engineering and other preliminary activities; and

**WHEREAS**, the City, the Railroad, and TxDOT desire to enter into a Highway Overpass Agreement whereby the Railroad will give permission for the construction, maintenance, and use of the Project across Railroad property via an existing easement; and

**WHEREAS**, TxDOT agrees to construct the Project and the City agrees to maintain the Carolina Bridge overpass structure upon the Project acceptance.

**NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the City Manager be authorized to sign a Highway Overpass Agreement by and among the City of El Paso, the Union Pacific Railroad Company, and the State of Texas, acting by and through the Texas Department of Transportation, whereby Union Pacific Railroad Company will give permission for the construction, maintenance, and use of the an overpass structure known as the Carolina Bridge across Railroad property via an existing easement.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

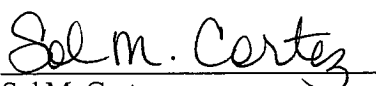
THE CITY OF EL PASO

ATTEST:


\_\_\_\_\_  
Oscar Leeser, Mayor

\_\_\_\_\_  
Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Sol M. Cortez  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Monica Lombraña, A.A.E., Director  
Capital Improvement Department

CITY CLERK DEPT.

2016 JAN -6 PM 2: 24

CFDA #20.205

Federal Highway Administration (FHWA)  
Not Research and Development

El Paso County  
CCSJ 0924-06-154  
Project BR 2008 (321)  
Carolina Drive in El Paso, TX  
DOT No. 741 220R, RRMP 820.96  
Replace Highway Overpass

UPRR Folder No.: 2939-72

STATE OF TEXAS §

COUNTY OF TRAVIS §

TEXAS DEPARTMENT OF TRANSPORTATION  
HIGHWAY OVERPASS AGREEMENT

THIS AGREEMENT, made and entered into on the date hereinafter shown as being fully executed, by and among the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State," the Union Pacific Railroad Company, a Delaware corporation, hereinafter called the "Railroad," and the City of El Paso, hereinafter called the "Local Government," acting by and through its official contracting executives.

WITNESSETH

WHEREAS, the State and Local Government propose to replace the existing highway overpass at DOT 741 220R in El Paso, El Paso County, Texas, hereinafter identified as the "Project" and as shown on the plans marked **Exhibit A**, attached hereto and made a part hereof; and,

WHEREAS, the final set of plans, specifications and estimates (PS&E) shall be submitted to the Railroad for approval and approved cover sheet shall be marked **Exhibit B**, attached hereto and made a part hereof; and

WHEREAS, on August 19, 2014, the State and the Railroad entered into a Highway-Railroad Preliminary Engineering Agreement and Letter of Authorization, as attached hereto and made a part hereof as **Exhibit C**, authorizing reimbursement to the Railroad for actual costs that are incurred for collaborating in the development of the Project's preliminary engineering and other preliminary activities prior to execution of this Agreement; and

WHEREAS, the Texas-approved version of the Railroad Contractor's Railroad Right-of-Entry Agreement is marked **Exhibit D**, attached hereto and made a part hereof; and,

WHEREAS, the State-approved Railroad force account cost estimate is marked **Exhibit E**, attached hereto and made a part hereof; and

WHEREAS, the State, Local Government, and the Railroad agree that the Railroad property encumbered by the Local Government via an existing easement is as shown on **Exhibit F**, attached hereto and made a part hereof; and

WHEREAS, the State agrees to construct the project and the Local Government agrees to maintain the overpass structure upon project acceptance.

WHEREAS, any and all State-approved work by the Railroad shall be at no expense to the Railroad, unless as provided herein.

## AGREEMENT

NOW THEREFORE, in consideration of the premises, a Ten Thousand Dollar (\$10,000.00) license fee, and of mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

### **Article 1. Permission**

a. The Railroad hereby gives to the State and Local Government permission for the construction, maintenance, and use of the aforesaid overpass structure across its property and over its tracks at the intersection of the railroad and roadway, as shown in the attached **Exhibit A**. This permission, given hereby, shall not prevent the Railroad from operating its trains or multiplying or changing its tracks across the land over which the Local Government has an existing easement or under the overpass contemplated hereby and grants permission to the Local Government for maintenance of said facilities as shown in **Exhibit A**.

b. The parties agree that the legal description of the licensed premises is as set forth in **Exhibit F**.

c. The permission given is subject to the rights of utility companies to maintain and operate facilities thereon and thereover, and the Local Government will make its own arrangements with the utility companies for any necessary relocation or alteration of said facilities.

d. No legal right which the Railroad now has to reconstruct, maintain, and operate its existing track and appurtenances or to construct, maintain, and operate an additional track or tracks and appurtenances upon and across said property shall in anywise be affected by the construction of this project.

e. Permission is granted solely for the purposes of the State and the Local Government, at its sole cost and expense, for the proposed improvements as shown on the attached **Exhibit A** and is expressly subject and subordinate to the present and future rights of the Railroad, its successors, assignees, lessees, grantees and licensees, to construct, maintain, use, operate, and renew on, beneath, or above the surface of the Railroad premises any telephone, telegraph, power, communication, or signal lines, poles and/or appurtenances, fiber optic communications, tracks, roadways, pipelines, structures, improvements, or facilities of similar or different character, as now located, and to construct, install, establish, and thereafter maintain, use, operate, and to renew on, beneath, or above the surface of the Railroad premises, any or all said things, provided the same do not materially interfere with the Local Government's use of the Railroad premises as hereinabove provided.

## Article 2. Scope of Work

a. The Railroad, the State and/or their Contractor agree to perform the work as outlined in the attached **Exhibit A**. The work will generally consist of replacing an overpass at the rail yard as shown in **Exhibit A** in accordance with the final one hundred percent (100%) plans that have been approved in writing by the Railroad as set forth in Article 3.

b. In order to provide for the safety of rail traffic, the Railroad may provide, at State's expense, flaggers during the period of performance of work in or incident to the proposed overpass construction. The State shall notify the Railroad a minimum of thirty (30) days in advance whenever it is about to perform work adjacent to any track to enable the Railroad to furnish flagging and such other protective services as might be necessary to ensure safety of railroad operations. These items must be approved by the State and shown in the estimate. The Railroad shall have the right to furnish all such flagging or protective services that have been approved by the State and shown in the estimate, attached hereto and to be identified as **Exhibit E**, and the State will reimburse the Railroad for cost thereof.

c. If applicable, demolition of the existing structure shall be in accordance with the Railroad's demolition guidelines. After the Project is let to contract by the State, the State and/or the State's Contractor shall submit a complete bridge removal plan for review and comment by the Railroad. No demolition operations will be undertaken without Railroad approval of the bridge removal plan.

d. The State shall give the Railroad at least thirty (30) days written notice prior to commencement of any work hereunder.

e. The Local Government shall remove the barricades and guardrail at Cadwallader Drive, DOT 741221X, and reopen the crossing during construction of the Carolina Drive bridge. Upon project completion, the Local Government shall reinstall the barricades and guardrail at Cadwallader Drive, DOT 741221X, to close the crossing.

## Article 3. Plans, Estimates, Construction, and Maintenance

a. The State, at its expense, has prepared the preliminary plans and specifications, to include any signal wiring diagram(s) if applicable, for the proposed Project and has submitted such plans and specifications to the Railroad for review and approval. The preliminary approved plans and specifications are hereby adopted as the plans and specifications covering the construction as contemplated herein and identified as **Exhibit A**. Final one hundred percent (100%) completed plans, specifications, and estimates (PS&E) shall also be submitted to the Railroad for review and approval. Upon written approval by the State and the Railroad's Assistant Vice President Engineering - Design or his authorized representative, the plans are hereby adopted as the plans and specifications covering the construction of such structure(s) and/or trackage. The cover sheet for such approved final one hundred percent (100%) completed plans shall become **Exhibit B (PS&E)** to this Agreement attached hereto, and such final plans shall be made a part of this Agreement by reference. No changes to such final plans and specifications shall be made without the written approval of such changes by the State and the Railroad. Neither the State nor its contractors shall commence any work on the Railroad's property involving such plans until such plans have been approved in writing by the Railroad.

b. If, in after a period of three (3) years from the date the Railroad executes this Agreement and the Project has not let to contract, the Railroad shall have the right to perform a design plan review of the previously approved design to confirm the design meets the then-current Railroad design guidelines and requirements.

c. The State and/or the State's Contractor shall furnish material for and perform the work to be done by it hereunder in accordance with the approved plans and specifications. The State and/or the State's Contractor shall construct the overpass structure(s), drainage facilities, and build its roadway, and pavement across the Railroad's right-of-way as shown on the plans and in accordance with approved specifications and the Local Government shall maintain or arrange for the maintenance of these facilities.

d. The Railroad and/or the State's Contractor, unless otherwise provided, shall make such changes or alterations in the tracks, communication, and signal pole and wire lines, pipe sewer and drainage, or other facilities or buildings located upon the Railroad's right-of-way, which may be displaced or required by the construction of the Project, as may be necessary to maintain continuous service and conform them to said construction and restore them to former condition for service either prior to, during, or following construction of said work. Flagging in the cost estimate has been included and is identified as **Exhibit E**. Only work shown in the cost estimates will be reimbursed.

e. Following the completion of the Project, for future maintenance work, the Railroad, under terms of this Agreement, gives the Local Government and/or its Contractor permission to enter the Railroad right-of-way to perform routine maintenance and/or emergency work as required. The Local Government's Contractor shall provide insurance coverages as contained in Article 4 of this Agreement and be required to execute the Railroad Contractor's Right-of-Entry Agreement before commencing any maintenance work on the Railroad's property.

f. The State, Local Government, and/or its Contractor assumes the entire responsibility for the construction, maintenance, and use of said highway and drainage facility upon the Railroad's property at the location herein described to the extent required by law, and nothing contained herein shall ever be construed to place upon the Railroad any manner of liability for injury to or death of persons, or for damage to or loss of property arising from or in any manner connected with the construction, maintenance, or use of the portion of said highway located upon the Railroad's property.

g. The State shall require the State's Contractor to provide the insurance coverages as contained in Article 4 of this Agreement and be required to execute the Railroad's then-current Texas-approved-standard Contractor's Right-of-Entry Agreement before commencing any work on the Railroad's property.

#### **Article 4. Insurance and Right-Of-Entry Requirements**

a. The State shall require the State's Contractor to provide the insurance coverages as contained in the then-current-standard Texas-approved Railroad Contractor's Right-of-Entry Agreement, a sample attached hereto and identified as **Exhibit D**. The State's Contractor shall execute the Contractor's Right-of-Entry Agreement before commencing any work on the Railroad's property.

b. For future maintenance work, the Local Government's Contractor shall provide the then-current Texas insurance coverages and be required to execute the then-current-standard Texas-approved Railroad Contractor's Right-of-Entry Agreement before commencing any work on the Railroad's property.

c. The State is self-insured for any work performed by the State with its own employees. To the extent allowed under state law, the State is responsible to the Railroad to cover bodily injury and property damage claims which may occur in the course of operations.

#### **Article 5. Payment**

a. Reimbursement to the Railroad will be made for work performed, including but not limited to, insurance premiums and coverage at the rate and amount set forth in the approved cost estimate attached hereto, in accordance with the provisions of Title 23, Code of Federal Regulations (CFR), Subchapter B, Part 140, Subpart I, issued by the Federal Highway Administration, and amendments thereto except as modified by the provisions herein. Work performed by the Railroad will be reimbursed by the State based on actual costs incurred by the Railroad as they relate to the development of the Project and approved in the cost estimate identified as **Exhibit E**.

b. The cost of preliminary engineering shall be eligible for reimbursement if incurred after final execution of the Letter of Authority (LOA) as detailed in **Exhibit C**.

c. The Railroad may submit monthly bills prepared in satisfactory form for flagging or inspection work performed. Payment will be made within thirty (30) days of receipt of the bill.

d. Upon completion of the Project, the Railroad shall submit a final invoice for all work performed clearly marked "Final Invoice" no later than one (1) year from the date of the Project Completion & Acceptance Letter stating the project is completed. Payment will be made within thirty (30) days of receipt of the Final Invoice.

#### **Article 6. Termination**

The State and the Local Government reserve the right to terminate this Agreement for any reason and at any time. In the event the State or Local Government terminates this Agreement, any State-approved Preliminary Engineering, flagging, and inspecting work performed prior to issuance of the termination will be eligible for payment.

#### **Article 7. Records & Audits**

a. The State, Local Government, and the Railroad shall maintain books, documents, papers, accounting records, and other evidence pertaining to costs incurred and work performed hereunder and shall make those items available at their offices during the contract period and for three (3) years from the date of final payment. The records shall be made available to representatives from the State or U. S. Department of Transportation, including the Office of Inspector General, for the purpose of making audits, inspections, transcriptions, or excerpts.

b. The State Auditor may conduct an audit or investigation of any entity receiving funds from the State directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

c. The Railroad is required to make any information created or exchanged with the State pursuant to this Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

Railroad and the State agree that Railroad will produce such information in an image format, or in another format selected by the Railroad that is accessible by the public.

#### **Article 8. Existing Agreements**

It is agreed that all existing agreements between the Railroad, the State, and the Local Government concerning permission, permits, leases or easements at this location shall remain in full force and effect.

#### **Article 9. Protection of Fiber Optic Cable Systems**

Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. The State and/or its Contractor shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m., Central Standard Time, Monday through Friday, except holidays) at (800) 336-9193 (also a 24-hour, seven-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the State. If it is, the State and/or its Contractor will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

#### **Article 10. Limited Access**

The State hereby agrees that during the construction of the proposed improvements it will keep its employees, material, and machinery within the defined area of the premises unless otherwise specified on the attached Exhibit A.

#### **Article 11. Transfer**

The parties hereto shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the other party(ies), and it is agreed that any transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the non-transferring party(ies), shall terminate this Agreement.

#### **Article 12. Notification**



The State agrees to notify the Railroad in writing when all work on the Railroad's property is complete.

#### **Article 13. Responsible For Its Own Actions**

The parties hereto acknowledge that they are not an agent, servant, or employee of the other parties, and are responsible for their own acts and deeds and for those of its agents and employees during performance of contract work.

#### **Article 14. Conditions**

a. In accordance with the provisions of Title 23, Code of Federal Regulations (CFR), Subchapter G, Part 646, Subpart B, issued by the Federal Highway Administration, and amendments thereto, the Railroad will not be required to participate five percent (5%) in the cost of the highway overpass portion of the Project.

b. The State may be reimbursed for its expenditures hereunder from federal funds for this Project. Therefore, the State, Local Government, and the Railroad will comply with statutes, rules, and regulations enacted and promulgated by the U. S. Government and its Federal Highway Administration.

c. If the State or the Local Government 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, Subpart A and B are incorporated into this Agreement by reference. The Railroad confirms that the State and Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for this Project as provided in Article 7, RECORDS and AUDITS, of this Agreement.

#### **Article 15. Compliance with Laws**

The parties shall comply with all applicable federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement. When required, the Railroad shall furnish the State with satisfactory proof of this compliance. Nothing herein is meant to be or will be interpreted to be a waiver of principles of legal preemption or preclusion that may apply to the Railroad because of its status as a common carrier regulated by the federal government.

#### **Article 16. Office of Management and Budget (OMB) Cost Principles**

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

#### **Article 17. Disadvantaged Business Enterprise (DBE) Program Requirements**

The Railroad maintains that it does not qualify as a recipient or sub-recipient under this Agreement of Federal-aid highway funds authorized under Titles I (other than Part B) and V of

the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 105-Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21), Pub. L. 105-178, 112 Stat. 107 (collectively "FHWA Funds") and that this Agreement does not qualify as a Federal-aid construction contract. If and to the extent required by the authorization for any Federal-aid highway funds applied to this Agreement, upon prior written notice, the Railroad agrees:

a. The State, the Local Government, and the Railroad shall set an appropriate DBE goal pursuant to 49 CFR Part 26 for this Agreement consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Railroad shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions. The State, the Local Government, and the Railroad agree that the appropriate DBE goal for this contract is zero percent (0%).

b. The Railroad shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U. S. Department of Transportation assisted contract or in the administration of any applicable DBE program or the requirements of 49 CFR Part 26 related to this Agreement. The Railroad shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of U. S. Department of Transportation assisted contracts related to this Agreement.

c. Each contract the Railroad signs with a contractor under this Agreement (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U. S. Department of Transportation assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.*

#### **Article 18. Civil Rights Compliance**

If and to the extent required by the authorization for any Federal-aid highway funds applied to this Agreement, the Railroad shall comply with the regulations of the U. S. Department of Transportation as they relate to non-discrimination (49 CFR Part 21 and 23 CFR Part 200), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

#### **Article 19. Debarment Certification**

If and to the extent required by the authorization for any Federal-aid highway funds applied to this Agreement, the parties agree not to make any award at any tier to any party that they know, or have reason to believe, is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this Agreement, the Railroad certifies to the best of its knowledge and belief that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and that it will not do business with any party that is known to the Railroad to be currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance

Programs under Executive Order 12549. The parties to this Agreement shall require any party to a subcontract or purchase order awarded under this Agreement to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

#### **Article 20. Lobbying Certification**

If and to the extent required by the authorization for any Federal-aid highway funds applied to this Agreement, the parties agree that, in executing this Agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

a. No federal appropriated funds have been paid or will be paid by or on behalf of the parties of this Agreement to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Railroad shall complete and submit the Federal Standard Form-LLL, *Disclosure Form to Report Lobbying*, in accordance with its instructions.

c. The parties shall require that the language of this certification shall be included in all lower tier subcontracts, which exceed \$100,000 and all such sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 USC §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

#### **Article 21. Federal Funding Accountability and Transparency Act Requirements**

If and to the extent required by the authorization for any Federal-aid highway funds applied to this Agreement, the Railroad agrees:

a. Any recipient of funds under this Agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This Agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.

b. The Railroad agrees that it shall:

i. Obtain and provide to the State a Central Contracting Registry (CCR) number (Federal Acquisition Regulation, Part 4, Sub-part 4.1100) if this award provides more than \$25,000 in federal funding. The CCR number

may be obtained by visiting the CCR website whose address is:  
<https://www.sam.gov/portal/public/SAM/>;

- ii. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the federal government to track the distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet on-line registration website <http://fedgov.dnb.com/webform>; and
- iii. Report the total compensation and names of its top five (5) executives to the State if:
  1. More than eighty percent (80%) of annual gross revenues are from the federal government, and those revenues are greater than \$25,000,000 annually; and
  2. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

c. The State acknowledges that the FFATA provisions of this Article may have no operative effect on the Railroad based on the Railroad's representation that it does not receive eighty percent (80%) or more of its annual gross revenues from federal procurement contracts and subcontracts.

#### **Article 22. Legal Construction**

If one or more of the provisions contained in this Agreement shall for any reason be held inapplicable, invalid, illegal, or unenforceable in any respect, that inapplicability, invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the inapplicable, invalid, illegal, or unenforceable provision.

#### **Article 23. Signatory Warranty**

Each signatory warrants that the signatory has the necessary authority to execute this Agreement on behalf of the entity represented.

IN WITNESS WHEREOF, the State, the Local Government, and the Railroad have executed triplicate counterparts of this Agreement for this Project identified as CSJ 0924-06-154 on the dates indicated below:

**THE STATE OF TEXAS**

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies, or work programs heretofore approved and authorized by the Texas Transportation Commission.

By \_\_\_\_\_ Date \_\_\_\_\_

Name and Title \_\_\_\_\_

**UNION PACIFIC RAILROAD COMPANY**

By Daniel A. Leis Date 12-3-2015

**DANIEL A. LEIS**

Name and Title GENERAL DIRECTOR REAL ESTATE

**CITY OF EL PASO**

By \_\_\_\_\_ Date \_\_\_\_\_

Name and Title \_\_\_\_\_

Approved as to  
Form:  
Sol M. Cortez  
Assistant City  
Attorney

Notices: For the purposes of this Agreement, all notices, correspondence, billings, and other documentation shall be mailed to the following addresses:

**For the State of Texas:**

Rail Highway Section Director  
Texas Department of Transportation  
Traffic Operations Division (TRF-RHS)  
125 E. 11th Street  
Austin, TX 78701-2483

**For the Union Pacific Railroad Company:**

Senior Manager, Industry & Public Projects  
Union Pacific Railroad Company  
24125 Aldine-Westfield Road  
Spring, TX 77373

**For the City of El Paso:**

City Engineer  
Engineering and Construction Management  
The City of El Paso  
218 N. Campbell St.  
El Paso, TX 79901

**EXHIBIT A**  
**Plan Sheets**

# INDEX OF SHEETS

SHEET NO.	DESCRIPTION
1	TITLE SHEET
2	GENERAL NOTES & SEQUENCE OF CONSTRUCTION
3	PROJECT LAYOUT
4	BRIDGE LAYOUT
5	BORING LOGS
6	BRIDGE TYPICAL SECTION
7 - 8	RAIL LAYOUT
9 - 11	RAILROAD REQUIREMENTS FOR BRIDGE CONSTRUCTION

## STATE OF TEXAS DEPARTMENT OF TRANSPORTATION

### NORTH CAROLINA DRIVE UPRR RAILROAD OVERPASS

FEDERAL AID PROJECT  
VALENTINE SUBDIVISION  
RR MILE POST 820.96  
DOT NO. 741-220R

#### EXHIBIT A

#### EL PASO COUNTY

FOR THE CONSTRUCTION OF THE REPLACEMENT OF EXISTING BRIDGE FACILITY  
CONSISTING OF REPLACING EXISTING BRIDGE STRUCTURE AND APPROACHES

FEDERAL AID PROJECT NO.			HIGHWAY NO.
6			CAR
STATE	DISTRICT	COUNTY	SHEET NO.
TEXAS	ELP	EL PASO	1
CONTROL	SECTION	JOB	
0924	06	154	

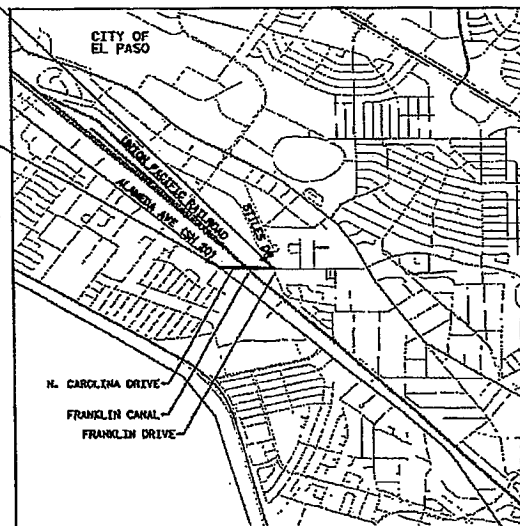
DESIGN SPEED = 30 MPH  
ADT (2012): N. CAROLINA DR - 8966  
FUNCTIONAL CLASS: MINOR ARTERIAL

TRAIN DATES:  
36 TRAINS/DAY  
MAX SPEED = 60 MPH

BR 2008 (321) CSJ:0924-06-154 N. CAROLINA DR FROM STILES AND FRANKLIN DR TO ALAMEDA AVE ROADWAY = 753.18 FT = 0.143 MI BRIDGE = 656.00 FT = 0.124 MI TOTAL = 1409.11FT = 0.267 MI

END PROJECT  
N. CAROLINA DR  
CSJ 0924-06-154  
STA 114+60.99

BEGIN PROJECT  
N. CAROLINA DR  
CSJ 0924-06-154  
STA 100+51.81



EL PASO COUNTY  
EL PASO DISTRICT

NO EXCEPTIONS  
NO EQUATIONS

PLANS PREPARED BY:

**Kimley»Horn**

TEXAS FORM F-904

SUBMITTED  
FOR LETTING

PROJECT MANAGER  
KIMLEY-HORN AND ASSOCIATES, INC.

Texas Department of Transportation  
© 2014

SPECIFICATIONS ADOPTED BY THE TEXAS DEPARTMENT OF  
TRANSPORTATION, JUNE 1, 2004, AND THE CONTRACT PROVISIONS  
LISTED AND DATED AS FOLLOWS SHALL GOVERN ON THIS PROJECT:  
REQUIRED CONTRACT PROVISIONS FOR ALL FEDERAL-AID  
CONSTRUCTION CONTRACTS (FORM FPM 1275, MAY, 2012)

© 2014 by Texas Department of Transportation; all rights reserved

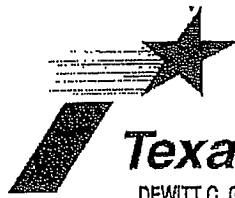
60% SUBMITTAL

**EXHIBIT B**  
**Executed Title Sheet**

**PLACE HOLDER**



**EXHIBIT C**  
**Preliminary Engineering**  
**Letter of Authority**



## EXHIBIT C

# Texas Department of Transportation<sup>®</sup>

DEWITT C. GREER STATE HIGHWAY BLDG. • 125 E. 11TH STREET • AUSTIN, TEXAS 78701-2483 • (512) 463-8585

August 7, 2014

### PRELIMINARY ENGINEERING SERVICES LETTER OF AUTHORITY FOR PREPARATION & APPROVAL OF PROJECT PLANS, ENGINEERING & ESTIMATES

El Paso County  
CSJ 0924-06-154  
Project BR 2008 (321)  
DOT No. 741 220R, RRMP 820.96  
Carolina Drive in El Paso

Off-System Federal-Aid Bridge Replacement and Rehabilitation

Mr. Steve Martchenke  
Manager, Special Projects  
Union Pacific Railroad Company  
101 S. Watson Road  
Arlington, TX 76010

Dear Mr. Martchenke:

Plans are being prepared to remove and reconstruct a highway overpass at the location referenced above. In connection with the project, the Texas Department of Transportation (TxDOT) considers it necessary for the successful advancement of the project for your company to collaborate with TxDOT in the development of the project by performing the following:

- Preliminary engineering and other related services for work to be performed within Railroad right of way
- Development of railroad force account cost estimate(s) for work to be performed within Railroad right of way
- Review and approval of preliminary and final project plan layouts
- Submit current train and switching moves

TxDOT authorizes and agrees to reimburse the Railroad up to a maximum amount payable of \$17,500 for actual costs that are incurred for collaborating in the development of the project's preliminary engineering and other preliminary activities for work to be performed within the proposed project limits and Railroad right of way. The preliminary engineering cost estimate should include a detailed Scope of Services using rates that are reasonable, usual and verifiable for the necessary preliminary engineering and other preliminary activities as outlined herein. Your approved cost estimate will be the maximum amount payable under this Project until a Construction & Maintenance (C&M) Agreement is executed between the parties, the Project is let to contract, and a Work Order is issued to the Railroad. Please enclose the cost estimate(s) for Railroad preliminary engineering and other preliminary activities when you return the signed State Original counterpart of this Preliminary Engineering Services Letter of Authority (LOA). The LOA cost estimate information is needed for District budgeting purposes and will be attached to the C&M Agreement.

#### OUR GOALS

MAINTAIN A SAFE SYSTEM • ADDRESS CONGESTION • CONNECT TEXAS COMMUNITIES • BEST IN CLASS STATE AGENCY

*An Equal Opportunity Employer*

## EXHIBIT C

Mr. Steve Martchenko

August 7, 2014

Reimbursement to your company is at actual cost based on reasonable, usual and verifiable audited overhead rates. The Railroad may submit monthly bills prepared in satisfactory form, for work performed as described herein. Payment will be made within thirty (30) days from the State's receipt and approval of the Railroad's request for reimbursement.

The project may require the Railroad to incur costs for force account activities. We will provide further information regarding the number of days of flagging, and signal and track work as it becomes available.

Please verify by filling in the following blank lines the number of current regular train 26 and switching movements 0 at this location. This information will be used by the TxDOT contractor to obtain Railroad Protective Liability Insurance.

This preliminary engineering agreement will be attached to and become a part of the fully executed Construction & Maintenance Agreement (C&M) for this project. Following receipt of written design approval of the Exhibit A plan set from the Railroad and TxDOT approval of the Railroad's Force Account cost estimates, TxDOT and the Railroad will enter into a separate highway overpass agreement associated with the actual construction of the project.

**Please sign both counterparts of this LOA and return the State Original and the preliminary engineering estimate to this office.** Work to be performed under this LOA is authorized upon execution by both parties. The effective date is the day the signatory for the Railroad signs and dates this LOA.

This LOA may be terminated or work suspended upon written notification by either party after providing at least thirty (30) days' notice. Costs incurred by the Railroad as provided herein are reimbursable by the State to the Railroad for the reasonable value of services and work satisfactorily performed up to the date of termination or suspension of work.

We will send the Exhibit A project plans when they are available and we would appreciate your review and approval of those plans as soon as possible so that we can meet our construction project contract letting date scheduled for **July 2015**.

Please contact Mark Johnson, P.E. at (512) 416-2277 or Robert Travis, P.E., at (512) 416-2635 if you have any questions.

Sincerely,



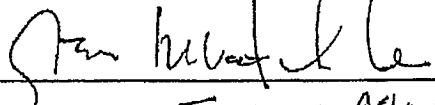
Darin Kosmak, Director  
Rail Safety Section  
Traffic Operations Division

# EXHIBIT C

Mr. Steve Martchenke

August 7, 2014

## UNION PACIFIC RAILROAD COMPANY

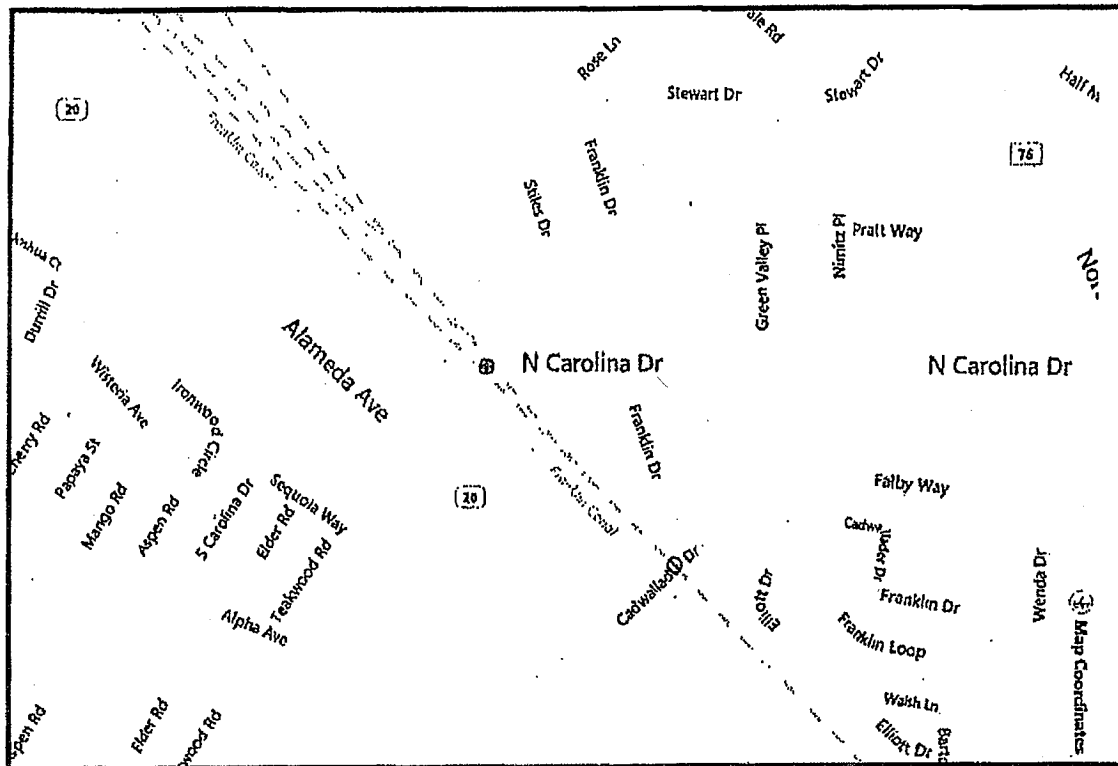
By  Date 8/19/14  
Name and Title STEVEN MARTCHENKE MSP

### Attachment

#### Electronic Copies To:

Steve Martchenke and Doug Woods, Union Pacific Railroad Company  
Michelle Veale, P. E., Bridge Division, TxDOT  
Eduardo Perales, P.E., Austin District Office, TxDOT

# EXHIBIT C



## Highway Overpass Replacement Project Location:

El Paso County

CSJ 0924-06-154

Project BR 2008 (321)

DOT No. 741 220R, RRMP 820.96

North Carolina Drive in El Paso

UP Valentine Subdivision

## EXHIBIT C

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK  
BY THE  
UNION PACIFIC RAILROAD COMPANY  
FOR THE  
THE STATE OF TEXAS

DESCRIPTION OF WORK: Perform Preliminary Engineering for the State of Texas's proposed reconstruction of the Carolina O/P in El Paso, El Paso County, TX. At UP's Mile Post 820.96 on the Valentine Subdivision and having a DOT number of 741220R. TXDOT project number is: CSJ 0924-06-154

LOCATION: SUNSET SERVICE UNIT: 22 STATE: Texas DATE: 8/11/2014

<u>DESCRIPTION</u>	<u>LABOR</u>	<u>MATERIAL</u>	<u>STATE TOTAL</u>
JOB 001 - ENGINEERING			
ENGINEERING LABOR	\$10,000	\$7,500	\$17,500.00
<u>TOTAL PROJECT</u>	<u>\$10,200</u>	<u>\$7,500</u>	<u>\$17,500.00</u>

EXISTING REUSABLE MATERIAL - NONE

SALVAGE NONUSABLE MATERIAL - NONE

**TOTAL ESTIMATED COST OF PROJECT LESS CREDITS \$17,500.00**

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

**EXHIBIT D**  
**Contractor Right of Entry**

**CONTRACTOR'S  
RIGHT OF ENTRY AGREEMENT**

(Texas)

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 Texas Department of Transportation to perform work relating to \_\_\_\_\_

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

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 any 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 A, B AND C.**

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

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



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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

**ARTICLE 5 - TERM: TERMINATION.**

A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until \_\_\_\_\_, unless sooner terminated as herein provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.

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

**ARTICLE 6 - CERTIFICATE OF INSURANCE.**

A. Before commencing any work, Contractor will provide Railroad with the insurance binders, policies, certificates and/or endorsements set forth in Exhibit B of this Agreement.

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

Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas St., STOP 1690  
Omaha, NE 68179  
Attn: \_\_\_\_\_

**ARTICLE 7 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.**

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

**ARTICLE 8 - ADMINISTRATIVE FEE.**

Upon the execution and delivery of this Agreement, the State of Texas shall pay to Railroad Five Hundred Dollars (\$500) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

**ARTICLE 9 - CROSSINGS.**

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

**ARTICLE 10.- EXPLOSIVES.**

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

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

**UNION PACIFIC RAILROAD COMPANY**

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

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

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

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

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

C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

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

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be

freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

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

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

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

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

**Section 4. LIENS.**

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

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

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

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

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

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

**Section 7.     SAFETY.**

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

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

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

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

**Section 8.     INDEMNITY.**

A.     TO THE EXTENT NOT PROHIBITED BY APPLICABLE STATUTE, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS RAILROAD, ITS AFFILIATES, AND ITS AND THEIR OFFICERS, AGENTS AND EMPLOYEES ("INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL LOSS, DAMAGE, INJURY, LIABILITY, CLAIM, DEMAND, COST OR EXPENSE (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S, CONSULTANT'S AND EXPERT'S FEES, AND COURT COSTS), FINE OR PENALTY (COLLECTIVELY, "LOSS") INCURRED BY ANY PERSON (INCLUDING, WITHOUT LIMITATION, ANY INDEMNIFIED PARTY, CONTRACTOR, OR ANY EMPLOYEE OF CONTRACTOR OR OF ANY INDEMNIFIED PARTY) ARISING OUT OF OR IN ANY MANNER CONNECTED WITH (I) ANY WORK PERFORMED BY CONTRACTOR, OR (II) ANY ACT OR OMISSION OF CONTRACTOR, ITS OFFICERS, AGENTS OR EMPLOYEES, OR (III) ANY BREACH OF THIS AGREEMENT BY CONTRACTOR.

B.     THE RIGHT TO INDEMNITY UNDER THIS SECTION 8 SHALL ACCRUE UPON OCCURRENCE OF THE EVENT GIVING RISE TO THE LOSS, AND SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF ANY INDEMNIFIED PARTY, EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE ACTIVE NEGLIGENCE OF AN INDEMNIFIED PARTY AS ESTABLISHED BY THE FINAL JUDGMENT OF A COURT OF COMPETENT JURISDICTION. THE SOLE ACTIVE NEGLIGENCE OF ANY INDEMNIFIED PARTY SHALL NOT BAR THE RECOVERY OF ANY OTHER INDEMNIFIED PARTY.

C.     CONTRACTOR EXPRESSLY AND SPECIFICALLY ASSUMES POTENTIAL LIABILITY UNDER THIS SECTION 8 FOR CLAIMS OR ACTIONS BROUGHT BY CONTRACTOR'S OWN EMPLOYEES. CONTRACTOR WAIVES ANY IMMUNITY IT MAY HAVE UNDER WORKER'S COMPENSATION OR INDUSTRIAL INSURANCE ACTS TO INDEMNIFY RAILROAD UNDER THIS SECTION 8. CONTRACTOR ACKNOWLEDGES THAT THIS WAIVER WAS MUTUALLY NEGOTIATED BY THE PARTIES HERETO.

D. NO COURT OR JURY FINDINGS IN ANY EMPLOYEE'S SUIT PURSUANT TO ANY WORKER'S COMPENSATION ACT OR THE FEDERAL EMPLOYERS' LIABILITY ACT AGAINST A PARTY TO THIS AGREEMENT MAY BE RELIED UPON OR USED BY CONTRACTOR IN ANY ATTEMPT TO ASSERT LIABILITY AGAINST RAILROAD.

E. THE PROVISIONS OF THIS SECTION 8 SHALL SURVIVE THE COMPLETION OF ANY WORK PERFORMED BY CONTRACTOR OR THE TERMINATION OR EXPIRATION OF THIS AGREEMENT. IN NO EVENT SHALL THIS SECTION 8 OR ANY OTHER PROVISION OF THIS AGREEMENT BE DEEMED TO LIMIT ANY LIABILITY CONTRACTOR MAY HAVE TO ANY INDEMNIFIED PARTY BY STATUTE OR UNDER COMMON LAW.

**Section 9. RESTORATION OF PROPERTY.**

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

**Section 10. WAIVER OF DEFAULT.**

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

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

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

**Section 12. ASSIGNMENT - SUBCONTRACTING.**

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors, and shall require all subcontractors to maintain the insurance coverage required to be maintained by Contractor as provided in this Agreement, and to indemnify Contractor and Railroad to the same extent as Railroad is indemnified by Contractor under this Agreement.

EXHIBIT B  
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. This insurance shall contain a single limit of at least \$2,000,000 each occurrence or claim and an aggregate limit of at least \$2,000,000 and include broad form contractual liability coverage. Coverage must be purchased on a post 1998 ISO or equivalent form, including but not limited to coverage for the following:

- Bodily injury including death and personal injury
- Property damage
- Fire legal liability
- Products and completed operations

The policy shall also contain the following endorsements which shall be indicated on the certificate of insurance:

- The workers compensation and employee related exclusions in the above policy apply only to Contractor's employees.
- The exclusions for railroads (except where the Job site is more than fifty feet (50') from any railroad including, but not limited to, tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.
- Coverage for Contractor's (and Railroad's) employees shall not be excluded
- Waiver of subrogation

If Contractor will be using, storing and/or handling hazardous materials, Contractor, in addition to the other endorsements to be obtained by Contractor as provided in this exhibit, must also ensure that the Commercial General Liability Insurance policy contains a Designated Premises Pollution Coverage (CG00-39) endorsement. Evidence of the endorsement must also be indicated on the certificate of insurance that is provided to Railroad.

- B. Business Automobile Coverage insurance. This insurance shall contain a combined single limit of at least \$2,000,000 per occurrence or claim, including but not limited to coverage for the following:

- Bodily injury and property damage
- Any and all motor vehicles including owned, hired and non-owned

The policy shall also contain the following endorsements which shall be indicated on the certificate of insurance:

- The workers compensation and employee related exclusions in the above policy apply only to Contractor's employees.
- Products and completed operations.
- The exclusions for railroads (except where the Job site is more than fifty feet (50') from any railroad

including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.

- Motor Carrier Act Endorsement- Hazardous materials clean up (MCS-90) if required by law.

C. Workers Compensation and Employers Liability insurance including but not limited to:

- Contractor's statutory liability under the workers' compensation laws of the State of Texas
- Employers' Liability (Part B) with limits of at least  
\$500,000 each accident, \$500,000 disease policy limit  
\$500,000 each employee

If the State of Texas requires participants in a state workers' compensation fund and if Workers Compensation insurance will not cover the liability of Contractor in the State of Texas, Contractor shall comply with such laws. If Contractor is self-insured, evidence of state approval must be provided along with evidence of excess workers compensation coverage. Coverage shall 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 shall also contain the following endorsement which shall be indicated on the certificate of insurance:

- Alternate Employer Endorsement

D. Umbrella or Excess Policies In the event Contractor utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.

E. Railroad Protective Liability insurance naming only Railroad as the insured with a combined single limit of \$5,000,000 per occurrence with a \$10,000,000 aggregate. The policy shall be broad form coverage for "Physical Damage to Property" (ISO Form CG 00 35 07 98 or equivalent). A binder stating the policy is in place must be submitted to Railroad until the original policy is forwarded to Railroad.

Other Requirements

F. Punitive damage exclusion must be deleted, which deletion shall be indicated on the certificate of insurance.

G. Contractor agrees to waive its right of recovery, and its insurers, through policy endorsement, agree to waive their right of subrogation against Railroad. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under its care, custody and control. Contractor's insurance shall be primary with respect to any insurance carried by Railroad. All waivers of subrogation shall be indicated on the certificate of insurance.

H. All policy(ies) required above (excluding Workers Compensation) shall provide severability of interests and shall name Railroad as an additional insured. The coverage provided to Railroad as additional insured shall 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. Severability of interest and naming Railroad as additional insured shall be indicated on the certificate of insurance.

I. Prior to commencing the work, Contractor shall furnish to Railroad original certificate(s) of insurance evidencing the required coverage, endorsements, and amendments. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing of any cancellation or material alteration. Upon request from Railroad, a certified duplicate original of any required policy shall be furnished.

J. Any insurance policy shall 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 of Texas.

- K. Contractor **WARRANTS** that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement and acknowledges that Contractor's insurance coverage will be primary.
- L. If Contractor fails to procure and maintain insurance as required, Railroad may elect to do so at the cost of Contractor, plus a 25% administration fee.
- M. The fact that insurance is obtained by Contractor or Railroad on behalf of Contractor shall 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 shall not be limited by the amount of the required insurance coverage.

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

**MINIMUM SAFETY REQUIREMENTS**

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

**I. Clothing**

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

Specifically, Contractor's employees must wear:

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

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

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

**II. Personal Protective Equipment**

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

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

### III. On Track Safety

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

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

### IV. Equipment

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

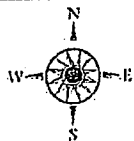
### V. General Safety Requirements

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.

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

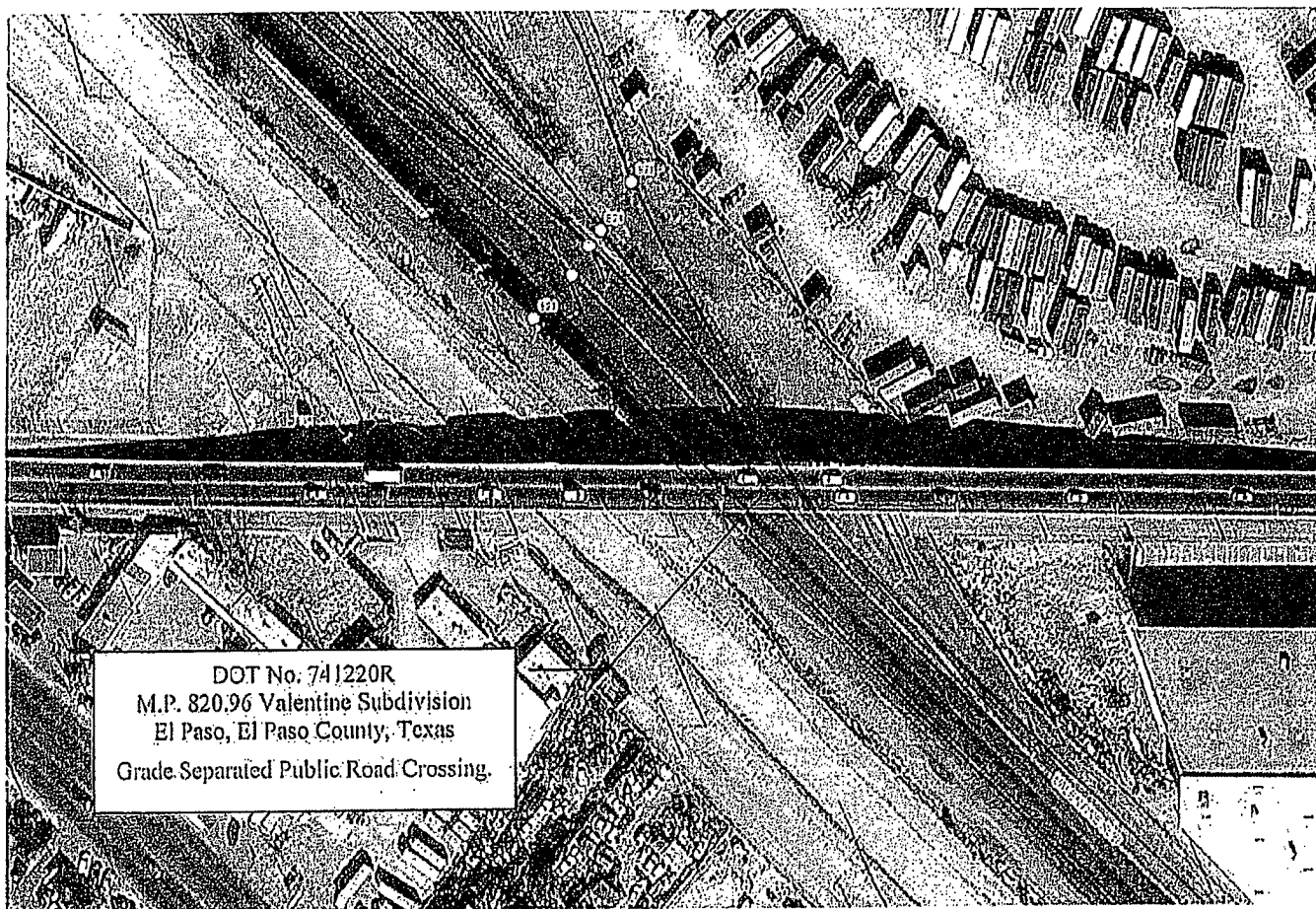
EXHIBIT D  
TO  
CONTRACTORS RIGHT OF ENTRY AGREEMENT

If a print of the right of entry area to be used by Contractor is available, it should be marked Exhibit D and attached here as part of the Agreement.



# EXHIBIT "D"

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



DOT No. 741220R  
M.P. 820.96 Valentine Subdivision  
El Paso, El Paso County, Texas  
Grade Separated Public Road Crossing.

### UNION PACIFIC RAILROAD COMPANY

VALENTINE SUBDIVISION  
RAILROAD MILE POST 820.96  
EL PASO, EL PASO COUNTY, TX

To accompany an agreement with  
**TEXAS DEPARTMENT OF TRANSPORTATION AND ITS  
CONTRACTOR**

covering a Grade Separated Public Road Crossing.

Folder No. 2939-72

Date: July 6, 2015

### WARNING

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

# **EXHIBIT E**

## **Flagging Estimate**

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK  
BY THE  
UNION PACIFIC RAILROAD COMPANY  
FOR THE  
THE STATE OF TEXAS

DESCRIPTION OF WORK: Reinstallation of Cadwallader St.: MP 820.67 – Valentine Sub / DOT – 741221X Under Cost Center EN11 in order for the State of Texas's proposed reconstruction of the Carolina O/P in El Paso, El Paso County, TX. At UP's Mile Post 820.96 on the Valentine Subdivision and having a DOT number of 741220R. TXDOT' project number is: CSJ 0924-06-154

LOCATION: SUNSET SERVICE UNIT: 22 STATE: Texas DATE: 9/11/2014

<u>DESCRIPTION</u>	<u>LABOR</u>	<u>MATERIAL</u>	<u>STATE TOTAL</u>
ENGINEERING LABOR	\$10,000		\$10,000.00
SIGNAL LABOR			
<u>TOTAL PROJECT</u>	<u>\$10,000</u>		<u>\$10,000.00</u>

EXISTING REUSABLE MATERIAL - NONE

SALVAGE NONUSABLE MATERIAL - NONE

**TOTAL ESTIMATED COST OF PROJECT LESS CREDITS \$20,000.00**

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



# **EXHIBIT F**

## **Metes and Bounds**

**Exhibit "A"****EXHIBIT F**

**County:** El Paso  
**Highway:** N. Carolina Drive  
**Limits:** From: Stiles/Franklin Drive  
To: Alameda Avenue  
**ROW CSJ:** 0924-06-154

Page 1 of 6  
April 17, 2015

**Property Description for Parcel 1RR**

**BEING** a 0.2769 acre (12,060 square feet) parcel of land situated in the Ysleta Town Tract Survey, Abstract Number 213, City of El Paso, El Paso County, Texas, and being part of the Union Pacific Railroad Company, Unit numbers 2, 3 and 7 (formerly known as "Southern Pacific Transportation Company) railroad right-of-way shown on the Southern Pacific Transportation Company Valuation Station Map, Sheet S-22-A, C.E. 41233, said 0.2769 acre (12,060 square feet) parcel being more particularly described by metes and bounds as follows:

**COMMENCING** at the common northeast corner of a tract of land as described in Special Warranty Deed dated July 5th, 2005, to DAD PARTNERS, L.P., recorded in Document Number 20050059927, Official Public Records of Real Property in El Paso County, Texas (O.P.R.E.P.C.T.), and the common southeast corner of a tract of land described as a right-of-way easement for an overpass of N. Carolina Drive (Variable Right-of-Way width at this point), to the City of El Paso, a municipal corporation of the State of Texas, dated October 27th, 1966, recorded in Volume 148, Page 1815 (O.P.R.E.P.C.T.), said corner also being on the westerly line of a Lateral U.S.R.S. as reflected on Rosedale Farms Map No. 4, an Addition in the City of El Paso, dated June 27th, 1933, recorded in Volume 3, Page 30, Plat Records El Paso County, Texas (P.R.E.P.C.T.), said DAD Partners tract of land also being Lots 37, 38, 39, 40 and 41 of said Rosedale Farms Map No. 4 Addition, from said common corner a found 3/8 inch Iron Rod bears South 05°39'46" East, a distance of 4.87 feet;

**THENCE** North 86°25'42" West, along the northerly line of said DAD Partners tract of land and the southerly existing right-of-way line of said N. Carolina Drive, a distance of 463.76 feet to an "X" cut set in concrete for an angle point;

**THENCE** South 87°40'45" West, along the previous mentioned line, a distance of 106.93 feet to a 5/8 inch Iron Rod with a plastic LTRA cap set 44.86 feet to the right of the proposed N. Carolina Drive Baseline Station 108+70.79 having coordinates of N: 10,650,397.56, E: 419,501.23 for the **POINT OF BEGINNING** of herein described parcel, said corner also being on the easterly existing right-of-way line of said Union Pacific Railroad Company (100' right-of-way width at this point);

Exhibit "A"

EXHIBIT F

Page 2 of 6  
April 17, 2015

- 1) **THENCE** North 85°18'42" West, over and across said Union Pacific Railroad Company right-of-way and the proposed southerly agreement line, a distance of 145.86 feet to a 5/8 inch Iron Rod with a plastic LTRA cap set for corner, 41.94 feet to the right of the proposed N. Carolina Drive Baseline Station 107+24.96, said corner being on the existing westerly right-of-way line of said Union Pacific Railroad Company and the easterly line of a tract of land as described in Warranty Deed dated November 12th, 1912, to El Paso County Water Improvement District #1, recorded in Volume 203, Page 455 (O.P.R.E.P.C.T.);
- 2) **THENCE** North 42°01'42" West, along the existing westerly right-of-way line of said Union Pacific Railroad Company and the easterly line of said El Paso County Water Improvement tract of land, a distance of 105.75 feet a 5/8 inch Iron Rod with a plastic LTRA cap set for corner, 32.08 feet to the left of the proposed N. Carolina Drive Baseline Station 106+49.44;
- 3) **THENCE** South 85°18'42" East, departing previous mentioned line, over and across said Union Pacific Railroad Company tract and along the proposed northerly agreement line, a distance of 124.93 feet to a 5/8 inch Iron Rod with a plastic LTRA cap set at an angle point, 29.59 feet to the left of the proposed N. Carolina Drive Baseline Station 107+74.35;
- 4) **THENCE** North 87°48'00" East, along the previous mentioned line, a distance of 18.68 feet to a 5/8 inch Iron Rod with a plastic LTRA cap set at an angle point, 31.45 feet to the left of the proposed N. Carolina Drive Baseline Station 107+92.94;
- 5) **THENCE** South 86°10'42" East, along the previous mentioned line, a distance of 55.58 feet to a 5/8 inch Iron Rod with a plastic LTRA cap set at an angle point, 31.18 feet to the left of the proposed N. Carolina Drive Baseline Station 108+48.51;
- 6) **THENCE** North 03°49'18" East, along the previous mentioned line, a distance of 6.25 feet to a 5/8 inch Iron Rod with a plastic LTRA cap set at an angle point, 37.43 feet to the left of the proposed N. Carolina Drive Baseline Station 108+48.55;

Exhibit "A"

EXHIBIT F

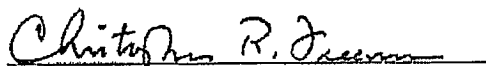
Page 3 of 6  
April 17, 2015

- 7) **THENCE** South  $86^{\circ}10'42''$  East, , along the previous mentioned line, a distance of 51.28 feet to a 5/8 inch Iron Rod with a plastic LTRA cap set at point for corner, 37.18 feet to the left of the proposed N. Carolina Drive Baseline Station 108+99.83, said corner being on the existing easterly right-of-way line of said Union Pacific Railroad Company tract and the existing northerly right-of-way line of said N. Carolina Drive, said corner being the southwest corner of a tract of land as described in a Assumption Special Warranty Deed with Vendor's Lien dated March 30th, 1999, to Associated Terminals, LTD, recorded in Volume 3566, Page 1273 (O.P.R.E.P.C.T.), ;
- 8) **THENCE** South  $39^{\circ}49'06''$  East, along the easterly existing right-of-way line of said Union Pacific tract, a distance of 22.46 feet to a PK Nail set for corner, 20.86 feet to the left of proposed N. Carolina Drive Baseline Station 109+15.25;
- 9) **THENCE** North  $86^{\circ}10'42''$  West, along the proposed agreement line, a distance of 112.12 feet to a point for corner, UNABLE TO SET MONUMENT, said corner being 21.40 feet to the left of proposed N. Carolina Drive Baseline Station 108+03.13;
- 10) **THENCE** South  $42^{\circ}03'27''$  East, along the existing easterly right-of-way line of said Union Pacific Railroad Company, a distance of 94.71 feet to the **POINT OF BEGINNING** and containing 0.2769 of an acre (12,060 square feet) of land.

**NOTES:**

1. Parcel plat with same date accompanies this description.
2. Basis of bearings is the Texas Coordinate System of 1983, Central Zone (4203), observed using GPS RTK as transmitted by TxDOT VRS. Distances and coordinates shown are surface values and may be converted to grid by dividing by the scale factor of 1.0002099270061. Distances are reported in U.S. Survey feet

I, Christopher R. Freeman, Registered Professional Land Surveyor, hereby certify that the legal description hereon and the accompanying plat of even date represents an actual survey made on the ground under my supervision.



Christopher R. Freeman, RPLS  
Texas Registered Number 5701  
April 17, 2015

Lina T. Ramey & Associates, INC.  
3320 Belt Line Road  
Farmers Branch, Texas 75234  
(214) 979-1144  
TBPLS FIRM NO. 10140700



EXHIBIT "A"

PAGE 5 OF 6  
APRIL 2015

CALLLED 9.119 ACRES  
ASSOCIATED TERMINALS, LTD  
VOL. 3566, PG. 1273  
O.P.R.E.P.C.T.

ALFALFA INDUSTRIAL PARK  
SUBDIVISION  
VOL. 43, PG. 1  
P.R.E.P.C.T.

LOT 2  
BLOCK 3

WATER & SEWER ESMT.  
VOL. 43, PG. 1

(VARIABLE ROW WIDTH)  
STILES DRIVE

CITY OF EL PASO  
PARCEL 3  
ACCORDING TO CITY  
ENGINEERING  
DEPARTMENT  
MAP NO. 236425  
(ACTUAL DEED  
NOT FOUND)

SEE SHEET H-100

MATCHLINE STA. 110+00

CITY OF EL PASO R.O.W. EASEMENT  
(VOL. 148, PG. 1815)

EXISTING R.O.W. LINE

N. CAROLINA DRIVE (VARIABLE R.O.W. WIDTH)

111+00

112+00

113+00

114+00

CITY OF EL PASO R.O.W. EASEMENT  
(VOL. 148, PG. 1815)

CITY OF EL PASO  
(VOL. 1680, PG. 1861)

FRANKLIN  
(40' R.O.W.)  
VOL. 3, PG. 30

N 86° 25' 42" W - 463.76'

EXISTING R.O.W. LINE



LOT 41

LOT 40

LOT 38

LOT 39

ROSEDALE FARMS  
MAP NO. 4  
VOL. 3, PG. 30  
P.R.E.P.C.T.

LOT 37

P.O.C.  
3/8" I.R.F. BEARS:  
S 05° 39' 46" E  
4.87'  
N = 10,650,373.00  
E = 420,070.92

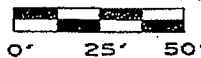
EXISTING R.O.W. LINE  
LATERAL (VOL. 3, PG. 30) LATERAL

-LEGEND-

EXISTING ROW LINE  
PROPOSED ROW LINE  
PROPERTY LINE  
SURVEY LINE  
EXISTING EASEMENT LINE  
RAILROAD  
FOUND MONUMENT - SEE MONUMENT NOTES  
SET 5/8" IRON ROD WITH 3-1/4" XDOT  
ALUMINUM CAP (UNLESS OTHERWISE NOTED)  
POINT OF BEGINNING  
POINT OF COMMENCEMENT  
RIGHT OF WAY

P.O.B.  
P.O.C.  
R.O.W.

SCALE 1" = 50'



A LEGAL DESCRIPTION AT EVEN SURVEY DATE HERewith  
ACCOMPANIES THIS PLAT.



RIGHT OF WAY PLAT  
PARCEL 1RR

FILE	HIGHWAY PROJECT N. CAROLINA DRIVE		STATE DIST. 24	DEED AREA	ACRES	SQUARE FEET
SCALE 1" = 50'	FEDERAL ATO PROJECT NO.	R.O.W. C.S.J. NO. 0924-06-154	COUNTY EL PASO	ACQUISITION	0.2769	12,060
				REMAINDER AREA		

**YSLETA TOWN TRACT  
ABSTRACT - 213**

EXHIBIT F

EL PASO COUNTY WATER  
IMPROVEMENT DISTRICT #1  
VOL. 203, PG. 455  
O.P.R.E.P.C.T.

SOUTHERN PACIFIC  
TRANSPORTATION COMPANY  
STATION MAP S-22-A, UNIT NO. 3  
(UNABLE TO OBTAIN DOCUMENT)

EXHIBIT "A"  
SOUTHERN PACIFIC  
TRANSPORTATION COMPANY  
STATION MAP S-22-A,  
UNIT NO. 7  
(UNABLE TO OBTAIN DOCUMENT)

ASSOCIATED TERMINALS, LTD  
VOL. 3566, PG. 1273  
O.P.R.E.P.C.T.

LOT 2 - BLOCK 3

5/8" IR W/LTRA CAP  
STA: 108+99.63  
37.18' (L)

S 39°49'06" E

22.46'

EXISTING R.O.W. LINE  
CITY OF EL PASO R.O.W. EASEMENT  
(VOL. 148, PG. 1815)

CITY OF EL PASO  
(VOL. 1580, PG. 186)

R.O.W. DOCUMENT  
NOT FOUND

N 86°25'42" W

463.76'

EXISTING R.O.W. LINE

S 87°40'45" W

106.93'

SET "X" CUT  
IN CONC.

P.O.B.  
5/8" IR W/LTRA CAP  
STA: 108+70.79  
44.86' (R)

N 10°50'39.56" E

E 419,501.23'

LOT 41

DAD PARTNERS L.P.

DOC. # 20050559927

O.P.R.E.P.C.T.

TRACTS 37, 38

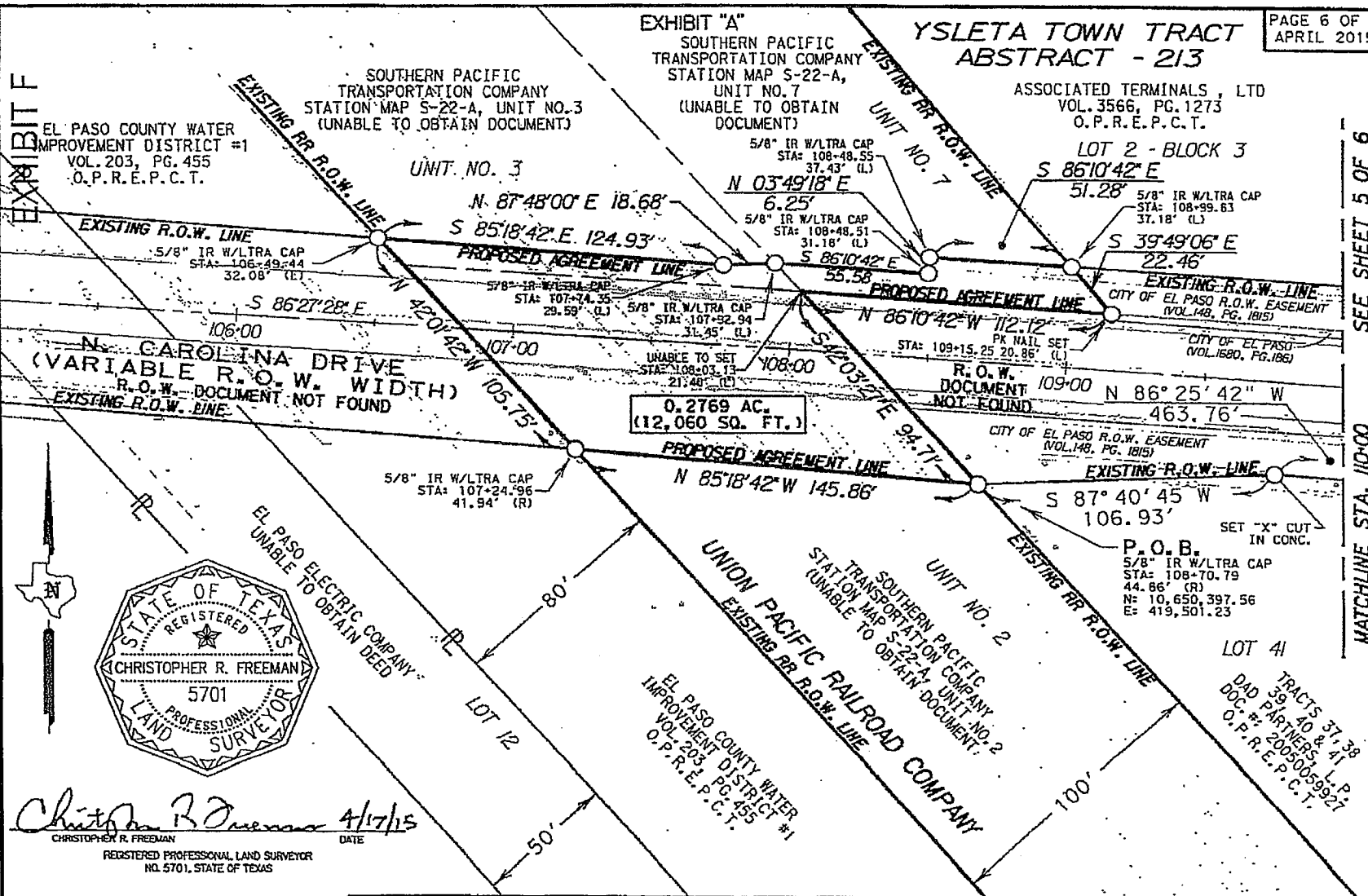
39, 40 & 41

L.P.

O.P.R.E.P.C.T.

SEE SHEET 5 OF 6

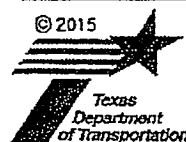
MATCHLINE STA. 110+00



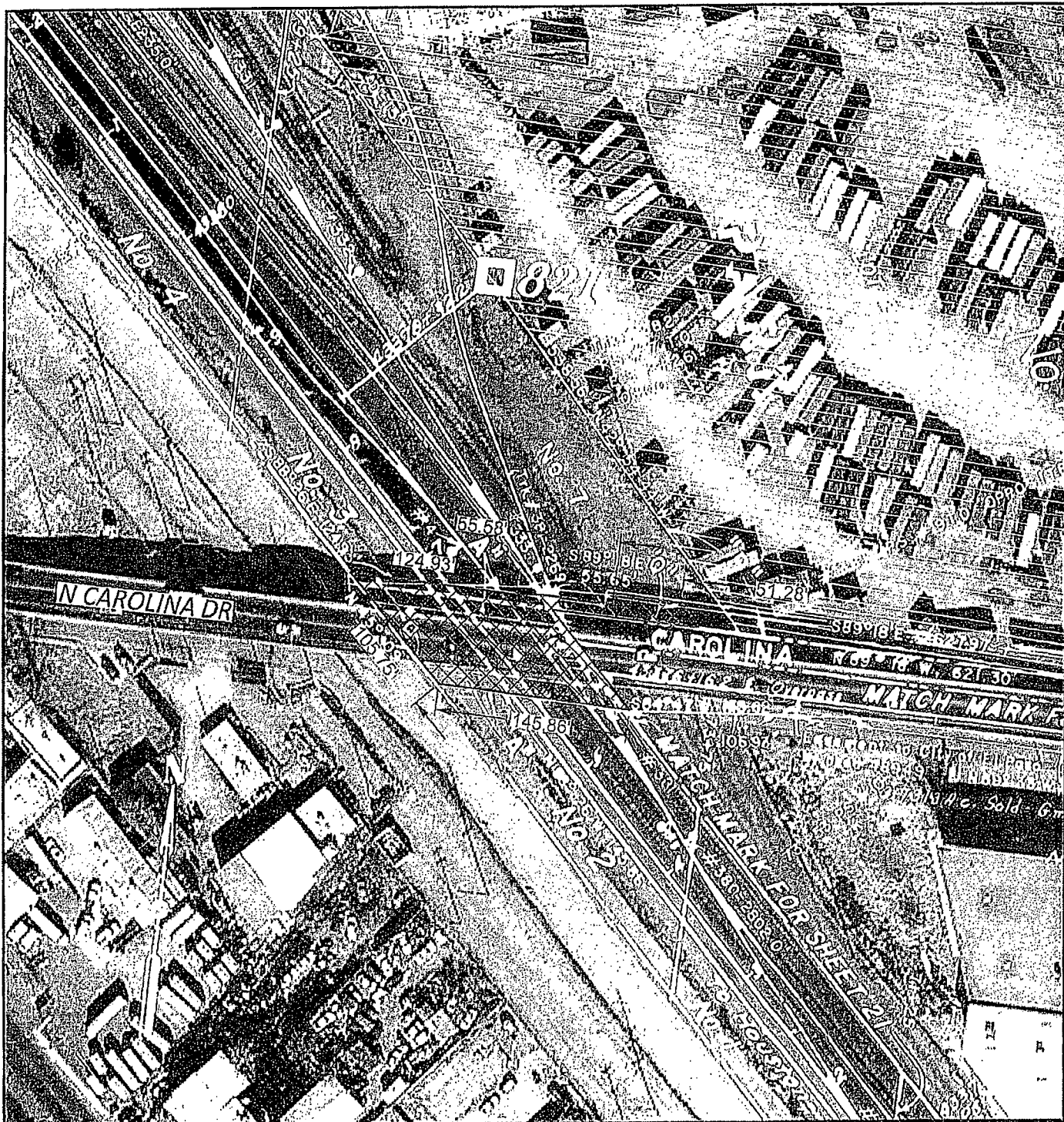
Christopher R. Freeman 4/17/15  
CHRISTOPHER R. FREEMAN  
REGISTERED PROFESSIONAL LAND SURVEYOR  
NO. 5701, STATE OF TEXAS

SCALE 1" = 50'  
0' 25' 50'


A LEGAL DESCRIPTION AT EVEN SURVEY DATE HEREWITH  
ACCOMPANIES THIS PLAT.



RIGHT OF WAY PLAT PARCEL 1RR			PARCEL NUMBER		1RR	
FILE	HIGHWAY PROJECT	STATE DIST.	DEED AREA	ACRES	SQUARE FEET	
	N. CAROLINA DRIVE	24				
SCALE	FEDERAL AID PROJECT NO.	R.O.W. C.S.J. NO.	COUNTY	DEED AREA	ACQUISITION	REMAINDER AREA
1" = 50'		0924-06-154	EL PASO		0.2769	12,060



**LEGEND:**

CROSSING AREA ..... 

UPRRCO. R/W OUTLINED ..... 

CROSSING AREA = 12,060 SQ. FT. +/-  
= 0.2769 ACRES +/-

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

EXHIBIT "A"

**UNION PACIFIC RAILROAD COMPANY**

EL PASO, EL PASO COUNTY, TEXAS

M.P. 820.96 - VALENTINE SUB.

TO ACCOMPANY AGREEMENT WITH  
TEXAS DOT

MAP GHSA V-12 / S-22A

SCALE: 1" = 100'

OFFICE OF REAL ESTATE  
OMAHA, NEBRASKA DATE: 7-17-2015

PJB FILE: 0293972

CADD FILENAME	0293972
SCAN FILENAME	TX12S22A-293972.TIF