Information Handout Document to Project Construction Contract Documents:

“RAILROAD RELATIONS AND INSURANCE REQUIREMENTS”

1.01 GENERAL

The term "Railroad" shall mean Union Pacific Railroad Company.

It is expected that the Railroad will cooperate with the Contractor to the end that the work may be handled in an efficient manner. However, except for the additional compensation provided for hereinafter for delays in completion of specific unit of work to be performed by the Railroad, and except as provided in Public Contracts Code Section 7102, the Contractor shall have no claim for damages, extension of time, or extra compensation in the event his work is held up by railroad train operations or other work performed by the Railroad.

The Contractor must understand the Contractor's right to enter the Railroad's property is subject to the absolute right of the Railroad to cause the Contractor's work on the Railroad's property to cease if, in the opinion of the Railroad, the Contractor's activities create a hazard to the Railroad's property, employees, and operations.

The Contractor acknowledges its receipt from the State of a copy of the Contractor’s Right of Entry Agreement that has been executed by the Railroad and the State. The Contractor agrees to execute and deliver to the Railroad the Contractor’s Endorsement that is attached hereto as Appendix 1 and to provide to the State and/or the Railroad all insurance policies, binders, certificates or endorsements that are set forth in Exhibits B and C of the Contractor’s Right of Entry Agreement.

1.02 RAILROAD REQUIREMENTS

The Contractor shall provide to Kevin Yoder, Manager, Industry and Public Projects, 9451 Atkinson Boulevard, Roseville, California 95747, (530)320-9943 and State’s Resident Engineer (Engineer) in writing, the advance notice requirements set forth in Section 1 of **Exhibit B** of the Right of Entry Agreement before performing any work on, or adjacent to the property or tracks of the Railroad.

Contractor shall cooperate with the Railroad where work is over or under the tracks, or within the limits of the Railroad property to expedite the work and avoid interference with the operation of railroad equipment.

Contractor shall comply with the rules and regulations of the Railroad or the instructions of its representatives in relation to protecting the tracks and property of the Railroad and the traffic moving on such tracks, as well as the wires, signals and other property of the Railroad, its tenants or licensees, at and in the vicinity of the work during the period of construction. The responsibility of the Contractor for safe conduct and adequate policing and supervision of its work at the job site shall not be lessened or otherwise affected by the presence at the work site of the Railroad representatives, or by the Contractor's compliance with any requests or recommendations made by the Railroad representatives.

Contractor shall perform work so as not to endanger or interfere with the safe operation of the tracks and property of the Railroad and traffic moving on such tracks, as well as wires, signals and other property of the Railroad, its tenants or licensees, at or in the vicinity of the work.

Contractor shall take protective measures to keep the Railroad facilities, including track ballast, free of sand or debris resulting from his operations. Damage to the Railroad facilities resulting from the Contractor's operations will be repaired or replaced by the Railroad and the cost of such repairs or replacement shall be deducted from the Contractor's progress and final pay estimates.

Contractor shall contact the Railroad's "Call Before You Dig" at least forty-eight (48) hours prior to commencing work, at 1-800-336-9193 during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays – also a 24-hour, 7-day number for emergency calls) to determine location of fiber optics. If a telecommunications system is buried anywhere on or near the Railroad property, the Contractor will coordinate with the Railroad and the Telecommunication Company (ies) to arrange for relocation or other protection of the system prior to beginning any work on or near Railroad property.

Contractor shall not pile or store any materials nor park any equipment closer than 25'-0" to the centerline of the nearest track, unless directed by the Railroad's representative.

Contractor shall also abide by the following temporary clearances during the course of construction:

- 12'-0" horizontally from centerline of track
- 21'-6" vertically above top of rail

The temporary vertical construction clearance above provided will not be permitted until authorized by the California Public Utilities Commission. It is anticipated that authorization will be received not later than fifteen (15) days after the approval of the highway contract by the Attorney General. In the event authorization is not received by the time specified, and, if in the opinion of the Engineer, the Contractor's operations are delayed or interfered with by reason of authorization not being received by the said time, the Licensee will compensate the Contractor for such delay to the extent provided in Section 8-1.07, "Delays," of the 2010 Standard Specifications and not otherwise.

Walkways with railing shall be constructed by the Contractor over open excavation areas when in close proximity of tracks, and railings shall not be closer than 8'-6" horizontally from centerline of the nearest track, if tangent, or 9'-6" if curved.

Infringement on the above temporary construction clearances by the Contractor's operations shall be submitted to the Railroad by the Engineer, and shall not be undertaken until approved by the Railroad, and until the Engineer has obtained any necessary authorization from any governmental body or bodies having jurisdiction there-over. No extension of time or extra compensation will be allowed in the event the Contractor's work is delayed pending Railroad approval and governmental authorization.

When the temporary vertical clearance is less than 22'-6" above top of rail, the Railroad shall have the option of installing tell-tales or other protective devices the Railroad deems necessary for protection of the Railroad trainmen or rail traffic.

Four (4) sets of plans, in 11" x 17" format, and two (2) sets of calculations showing details of construction affecting the Railroad's tracks and property not included in the contract plans, including but not limited to shoring and falsework, shall be submitted to the Engineer for review prior to submittal to the Railroad for final approval. At Railroad's option, these plans and calculations may be submitted electronically via email or be mailed with appropriate CD or DVD disk. Falsework shall comply with the Railroad guidelines. Demolition of existing structures shall comply with the Railroad guidelines. Shoring shall be designed in accordance with the Railroad's shoring requirement of UPRR Drawing No. 106613 and guidelines for shoring and falsework, latest edition, issued by the Railroad's Office of Chief Engineer. Shoring and falsework plans and calculations shall be prepared and signed by a professional engineer registered in California. This work shall not be undertaken until such time as the Railroad has given such approval; review by the Railroad may take up to six (6) weeks after receipt of necessary information.

Contractor shall notify the Engineer in writing, at least twenty-five (25) calendar days but not more than forty (40) days in advance of the starting date of installing temporary work with less than permanent clearance at each structure site. The Contractor shall not be permitted to proceed with work across railroad tracks until this requirement has been met. No extension of time or extra compensation will be allowed if the Contractor's work is delayed due to failure to comply with the requirements in this paragraph.

Blasting will be permitted only when approved by the Railroad.

All debris from spot-blasting shall be contained and not allowed to fall on the Railroad right-of-way.

If work platforms are used, temporary minimum vertical clearance over top of rail to lowest point of platform shall be 21'-6" to conform with current Railroad requirements. If this is not feasible provide detailed justification to review for a variance request. Work platforms shall be installed under flagging protection during a track window coordinated by the Railroad flagger.

Contractor shall, upon completion of the work covered by this Contract to be performed by the Contractor upon the premises or over or beneath the tracks of the Railroad, promptly remove from the premises of the Railroad, the Contractor's tools, implements and other materials, whether brought upon said premises and cause said premises to be left in a clean and presentable condition.

Under track pipeline installations (if required) shall be constructed in accordance with the Railroad's current standards that may be obtained from the Railroad. The general guidelines are as follows:

> Edges of jacking or boring pit excavations shall be a minimum of 25 feet from the centerline of the nearest track.

If the pipe to be installed under the track is 4 inches in diameter or less, the top of the pipe shall be at least 42 inches below base of rail.

If the pipe diameter is greater than 4 inches in diameter, it shall be encased and the top of the steel pipe casing shall be at least 66 inches below base of rail.

Installation of pipe or conduit under the Railroad's tracks shall be done by dry bore and jack method.

Hydraulic jacking or boring will not be permitted.

Safety of personnel, property, rail operations and the public is of paramount importance. As reinforcement and in furtherance of overall safety measures to be observed by the Contractor (and not by way of limitation), the following special safety rules shall be followed:

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

(b) Employees of the Contractor shall 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. Only waist length shirts with sleeves and trousers that cover the entire leg are to be worn. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching. Employees should wear sturdy and protective work boots and at least the following protective equipment:

(1) Protective headgear that meets American National Standard-Z89.l-latest revision. It is suggested that all hardhats be affixed with the Contractor's or the subcontractor's company logo or name.

(2) Eye protection that meets American National Standard 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, burning, etc.; and

(3) Hearing protection that affords enough attenuation to give protection from noise levels that will be occurring on the job site.

(c) All heavy equipment provided or leased by the Contractor shall be equipped with audible back-up warning devices. If in the opinion of the Railroad Representative any of the Contractor's or the subcontractor's equipment is unsafe for use on the

Railroad's right-of-way, the Contractor, at the request of the Railroad representative, shall remove such equipment from the Railroad's right-of-way.

1.03 PROTECTION OF RAILROAD FACILITIES

Upon the advance notification provided to the Railroad as set forth in Section 1 of Exhibit B of the Contractor's Right of Entry Agreement, the Railroad representatives, conductors, flagmen or watchmen will be provided by the Railroad to protect its facilities, property and movements of its trains or engines. Notice shall be made to the Railroad's Manager of Track Maintenance at (402) 594-5960. At the time of notification, the Contractor shall provide the Railroad with a schedule of dates that flagging services will be needed, as well as times, if outside normal working hours. Subsequent deviation from the schedule shall require ten (10) working days' advance notice from the first affected date. The Railroad will furnish such personnel or other protective devices:

(a) When equipment is standing or being operated within 25 feet, measured horizontally, from centerline of any track on which trains may operate, or when any erection or construction activities are in progress within such limits, regardless of elevation above or below track.

(b) For any excavation below elevation of track subgrade if, in the opinion of the Railroad's representative, track or other Railroad facilities may be subject to settlement or movement.

(c) During any clearing, grubbing, grading or blasting in proximity to the Railroad which, in the opinion of the Railroad's representative, may endanger the Railroad facilities or operations.

(d) During any of the Contractor's operations when, in the opinion of the Railroad's representatives, the Railroad facilities, including, but not limited to, tracks, buildings, signals, wire lines or pipe lines, may be endangered.

The cost of flagging and inspection provided by the Railroad during the period of constructing that portion of the project located on or near the Railroad property, as deemed necessary for the protection of the Railroad's facilities and trains, will be borne by the State. The Railroad has indicated that its estimated flagging rate will be around One Thousand Three Hundred Dollars ($1,300.00) per day and that the State has estimated a total of twenty-five (25) days of flagging. The State shall pay the Railroad for all actual flagging costs incurred by the Railroad under this Project.

1.04 WORK BY RAILROAD

The following work by the Railroad will be performed by Railroad forces and is not a part of the work under this Contract.

(a) Railroad will perform preliminary engineering and inspection (if any) construction inspection, plan change review (if any) and falsework plan review and flagging as specified in Section 1.03 "Protection of Railroad Facilities," of these special provisions.

(b) Temporary crossings at grade over tracks of Railroad for the purpose of hauling earth, rock, paving or other materials will require approval by railroad in advance. If the Contractor, for the purpose of constructing highway-railway grade separation structures, including construction ramps thereto, desires to move equipment or materials across Railroad's tracks, the Contractor shall first obtain permission from Railroad (at possible additional cost) via the State Engineer. Should Railroad approve the temporary crossings, State shall execute a Service Contract with Railroad for Railroad to construct the temporary crossing. Under the Service Contract, State shall bear the cost of the crossing surface, warning devices and other components that might be required. Notwithstanding State's Service Contract with Railroad, the Contractor is required to execute Railroad's form of Contractor's Haul Road Crossing Agreement. Railroad, at State's expense, shall provide flagmen to control movements of vehicles across the temporary crossing. State and its Contractor shall prevent the use of such temporary crossing by unauthorized persons and vehicles.

1.05 DELAYS DUE TO WORK BY RAILROAD.

If delays due to work by the Railroad occur, and the Contractor sustains loss which, in the opinion of the Engineer, could not have been avoided by the judicious handling of forces, equipment and plant, the amount of said loss shall be determined as provided in Section 8-1.07, " Delays," of the 2010 Standard Specifications.

If a delay due to work by the Railroad occurs, an extension of time determined pursuant to the provisions in Section 8-1.10, "Liquidated Damages," of the 2010 Standard Specifications will be granted.

1.06 LEGAL RELATIONS

The provisions of Section 1, "Relations with Railroad Company," and the provisions of Section 2, "Railroad Protective Insurance," of these special provisions shall inure directly to the benefit of the Railroad.

2.0 RAILROAD PROTECTIVE INSURANCE

In addition to any other form of insurance or bonds required under the terms of the contract and specifications, the Contractor will be required to carry insurance of the kinds and in the amounts hereinafter specified.

Such insurance shall be approved by the Railroad before any work is performed on the Railroad's property and shall be carried until all work required to be performed on or adjacent to the Railroad's property under the terms of the contract is satisfactorily completed as determined by the Engineer, and thereafter until all tools, equipment and materials have been removed from the Railroad's property and such property is left in a clean and presentable condition.

Full compensation for all premiums which the Contractor is required to pay on all the insurance described hereinafter shall be considered as included in the prices paid for the various items of work to be performed under the contract, and no additional

allowance will be made thereof or for additional premiums which may be required by extensions of the policies of insurance.

The following insurance coverage will be required:

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

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

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. **Business Automobile Coverage** insurance. Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less $5,000,000 for each accident. The policy must contain the following endorsements, which must be stated on the certificate of insurance:

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

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

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

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

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

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

D. **Railroad Protective Liability Insurance.** Contractor must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or

a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than $2,000,000 per occurrence and an aggregate of $6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.

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

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

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

Other Requirements

G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured

Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.

H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.

I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.

J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the State of California.

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

APPENDIX 1

CONTRACTOR'S ENDORSEMENT

_____

A. As a condition to entering upon the Railroad's right-of-way to perform Work pursuant to this agreement, State's contractor, _____
(*Name of Contractor)*
whose address is _____,
(C*ontractor's Mailing Address)*
(hereinafter "Contractor"), agrees to comply with and be bound by all the terms and provisions of the attached Caltrans Right of Entry Agreement that was signed by Union Pacific Railroad Company ("Railroad") and the State of California, Department of Transportation ("State") relating to the Work to be performed and the insurance requirements set forth in Exhibits B and C of the Right of Entry Agreement. The Contractor further acknowledges and agrees that the reference to Cal. Gov. Code §14662.5 in Sections 5.b) and 8.b) of Exhibit B to the Right of Entry Agreement does not apply to the Contractor and in no way limits the indemnities set forth in those provisions, to which the Contractor agrees to be bound.

B. Before the Contractor commences any Work, the Contractor will provide the Railroad with (i) a binder of insurance for the Railroad Protective Liability Insurance described in Section 2 of the Contract Special Provisions, hereto attached, and the original policy, or a certified duplicate original policy when available, and (ii) a certificate issued by its insurance carrier providing the other insurance coverage and endorsements required pursuant to Section 2 of the Contract Special Provisions.

C. All insurance correspondence, binders or originals shall be directed to:

Union Pacific Railroad Company
Attn: Real Estate Department
1400 Douglas Street, MS 1690
Omaha, Nebraska
Attn.: Senior Manager-Contracts
Folder No. _____

D. Please note that fiber optic cable may be buried on the Railroad's property. **Prior to commencing any work, the Contractor agrees to contact the Railroad's Telecommunications Operation Center as provided in Section 5 of Exhibit A of the Right of Entry Agreement to determine if any fiber optic cable is located on the Railroad's property on or near the location where the work is to be performed.** If there is, the Contractor must comply with the terms and conditions of Section 5 of Exhibit A before commencing any work on the Railroad's property.

E. **The Contractor agrees to also provide to the Railroad's Manager-Track Maintenance at (402) 594-5960** the advance notice required in Section 1 of Exhibit B of the Right of Entry Agreement prior to working on the Railroad's property in order for the Railroad to coordinate the Contractor's work with the Railroad's operations and to make arrangements for flagging protection (if applicable).

This endorsement shall be completed and sent to the person named in Paragraph C above.

_____
(Name of Contractor)

By_____

Title: _____

Date: _____

Information Handout Document to Project Construction Contract Documents:

UNION PACIFIC RAILROAD MINIMUM REQUIREMENTS

PART 1 – GENERAL

1.01 DESCRIPTION

This project includes construction work within the Right-of-Way and/or properties of the Union Pacific Railroad “UPRR” and adjacent to tracks, wire lines and other facilities. This section describes the special requirements for coordination with railroad when work by the Contractor will be performed upon, over or under the railroad right-of-way or may impact current or future railroad operations. The Contractor will coordinate with railroad while performing the work outlined in this Contract, and shall afford the same cooperation with railroad as it does with the Agency. The Railroad Designated Representative shall complete all submittals and work in accordance with railroad guidelines and AREMA recommendations as modified by these minimum special requirements or as directed in writing.

For purposes of this project, the Railroad Designated Representative shall be the person or persons designated by railroad to handle specific tasks related to the project.

1.02 DEFINITION OF AGENCY AND CONTRACTOR

As used in these railroad requirements, the term "Agency" shall mean the State of California, by and through its Department of Transportation.

As used in these railroad requirements, the term "Contractor" shall mean the contractor or contractor's hired by the Agency to perform any project work on any portion of railroad’s property and shall also include the contractor's subcontractors and the contractor's and subcontractor's respective officer, agents and employees, and others acting under its or their authority.

1.03 UPRR CONTACTS

The primary point of contact for this project is:

Kevin Yoder
Manager Industry and Public Projects
Union Pacific Railroad Company
9451 Atkinson Boulevard
Roseville, CA 95747
Phone: (530) 320-9943
KAYODER@UP.COM

For UPRR railroad flagging services and track work, contact:

Robert Brennon
Manager of Track Maintenance
Union Pacific Railroad Company
37950 Central Court, Suite B
Newark, CA 94560
(402) 594-5960 Cell

1.04 REQUEST FOR INFORMATION / CLARIFICATION

All Requests for Information ("RFI") involving work within any railroad right-of-way shall be in accordance with the procedures listed elsewhere in these bid documents. All RFI's shall be submitted to the Engineer of Record. The Engineer of Record will submit the RFI to the Railroad Designated Representative for review and approval for corresponding to work within the railroad right-of-way. The Contractor shall allow four (4) weeks for the review and approval process by railroad.

1.05 PLANS / SPECIFICATIONS

The plans and specifications for this project, affecting the railroad, are subject to the written approval by the railroad and changes in the plans may be required after award of the Contract. Such changes are subject to the approval of the Agency and Railroad.

PART 2 – UTILITIES AND FIBER OPTIC

2.01 UTILITIES AND FIBER OPTIC

All installations shall be constructed in accordance with current AREMA recommendations and railroad specifications and requirements. UPRR general guidelines and the required application forms for utility installations can be found on the UPRR website at www.uprr.com.

3.01 GENERAL

A. Contractor shall perform all work in compliance with all applicable Railroad and FRA rules and regulations. Contractor shall arrange and conduct all work in such manner and at such times as shall not endanger or interfere with the safe operation of the tracks and property of railroad and the traffic moving on such tracks, or the wires, signals and other property of railroad, its tenants or licensees, at or in the vicinity of the work. Railroad shall be reimbursed by Contractor or Agency for train delay costs and lost revenue claims due to any delays or interruption of train operations resulting from Contractor's construction work or other activities.

B. Construction activities will be permitted within 12 feet of the centerline of operational tracks only if absolutely necessary and Railroad's Designated Representative grants approval. Construction activities within 12 feet of the operational track(s) must allow the tracks to stay operational.

C. Track protection is required for all work equipment (including rubber tired equipment) operating within 25 feet from nearest rail.

D. The Contractor is also advised that new railroad facilities within the project may be built by UPRR and that certain Contractor's activities cannot proceed until that work is completed. The Contractor shall be aware of the limits of responsibilities and allow sufficient time in the schedule for that work to be accomplished and shall coordinate its efforts with UPRR.

3.02 RAILROAD OPERATIONS

A. The Contractor shall be advised that trains and/or equipment are expected on any track, at any time, in either direction. Contractor shall become familiar with the train schedules in this location and structure its bid assuming intermittent track windows in this period, as defined in Paragraph B below.

B. All railroad tracks within and adjacent to the Contract Site are active, and rail traffic over these facilities shall be maintained throughout the Project. Activities may include both through moves and switching moves to local customers. Railroad traffic and operations will occur continuously throughout the day and night on these tracks and shall be maintained at all times as defined herein. The Contractor shall coordinate and schedule the work so that construction activities do not interfere with railroad operations.

C. Work windows for this Contract shall be coordinated with the Agency's and the UPRR Designated Representatives. Types of work windows include Conditional Work Windows and Absolute Work Windows, as defined below:

1. Conditional Work Window: A Conditional Work Window is a period of time that railroad operations have priority over construction activities. When construction activities may occur on and adjacent to the railroad tracks within 25 feet of the nearest track center line, an UPRR flag person will be required. At the direction of the UPRR flag person, upon approach of a train, and when trains are present on the tracks, the tracks must be cleared (i.e., no construction equipment, materials or personnel within 25 feet, or as directed by the UPRR Designated Representative, from the tracks). Conditional Work Windows are available for the Project.

2. Absolute Work Window: An Absolute Work Window is a period of time that construction activities are given priority over railroad operations. During this time frame the designated railroad track(s) will be inactive for train movements and may be fouled by the Contractor. At the end of an Absolute Work Window the railroad tracks and/or signals must be completely operational for train operations and all UPRR, Public Utilities Commission (PUC) and Federal Railroad Administration (FRA) requirements, codes and regulations for operational tracks must be complied with. In the situation where the operating tracks and/or signals have been affected, the UPRR will perform inspections of the work prior to placing that track back into service. UPRR flag persons will be

required for construction activities requiring an Absolute Work Window. **Absolute Work Windows will not generally be granted. Any request will require a detailed explanation for UPRR review.**

3.03 RIGHT OF ENTRY, ADVANCE NOTICE AND WORK STOPPAGES

A. Prior to beginning any work on or over the property of, or affecting the facilities of, UPRR, Contractor shall execute the Contractor's Endorsement that is a part of the Right of Entry Agreement to be signed by UPRR and Agency. Contractor shall submit a copy of the executed agreement and the insurance policies, binders, certificates and endorsements set forth therein to the Agency prior to commencing work on UPRR property. The right of entry agreement shall specify working time frames, flagging and inspection requirements, and any other items specified by UPRR.

B. The Contractor shall give the advance notice to UPRR as required in the Right of Entry Agreement before commencing work in connection with construction upon or over UPRR Right-of-Way and shall observe UPRR rules and regulations with respect thereto.

C. All work upon UPRR Right-of-Way shall be done at such times and in such manner so as not to interfere with or endanger the operations of UPRR. Whenever work may affect the operations or safety of trains, the method of doing such work shall first be submitted to UPRR's Designated Representative for approval, but such approval shall not relieve the Contractor from liability. Any work to be performed by the Contractor, which requires flagging and/or inspection service, shall be deferred until the flagging protection required by UPRR is available at the job site. See Section 3.18 for railroad flagging requirements.

D. The Contractor shall make requests in writing for both Absolute and Conditional Work Windows, at least two weeks in advance of any work. The written request must include:

1. Exactly what the work entails.
2. The days and hours that work will be performed.
3. The exact location of work, and proximity to the tracks.
4. The type of window requested and the amount of time requested.
5. The designated contact person.

Contractor shall provide a written confirmation notice to UPRR at least 48 hours before commencing work in connection with approved work windows when work will be performed within **25 feet of any track center line.** All work shall be performed in accordance with previously approved work plans.

E. Should a condition arising from, or in connection with the work, require that immediate and unusual provisions be made to protect operations and property of UPRR, Contractor shall make such provisions. If in the judgment of UPRR's Designated Representative such provisions are insufficient, the UPRR Designated Representative may require or provide such provisions as deemed necessary. In any event, such provisions shall be at the Contractor's

expense and without cost to UPRR. UPRR or the Agency shall have the right to order Contractor to temporarily cease operations in the event of an emergency or, if in the opinion of the UPRR's Designated Representative, the Contractor's operations could endanger UPRR operations. In the event such an order is given, Contractor shall immediately notify the Agency of the order.

3.04 INSURANCE

Contractor shall not begin work upon or over UPRR Right-of-Way until UPRR has been furnished the insurance policies, binders, certificates and endorsements required by the Right-of-Entry Agreement and UPRR's Designated Representative has advised the Agency that such insurance is in accordance with the Agreement. The required insurance shall be kept in full force and effect during the performance of work and thereafter until Contractor removes all tools, equipment, and material from UPRR's property and cleans the premises in a manner reasonably satisfactory to UPRR.

3.05 RAILROAD SAFETY ORIENTATION

All personnel employed by the Contractor and all subcontractors must complete the UPRR or equivalent course "Orientation for Contractor's Safety", and be registered prior to working on UPRR property. This orientation is available at www.contractororientation.com**. This course is required to be completed annually.**

3.06 COOPERATION

UPRR will cooperate with Contractor so that work may be conducted in an efficient manner, and will cooperate with Contractor in enabling use of UPRR's right-of-way in performing the work.

3.07 MINIMUM CONSTRUCTION CLEARANCES FOR FALSEWORK AND OTHER TEMPORARY STRUCTURES

The Contractor shall abide by the following minimum temporary clearances during the course of construction:

- 12' – 0" horizontal from centerline of track
- 21' – 6" vertically above top of rail.

For construction clearance less than listed above, local Operating Unit review and approval are required.

3.08 APPROVAL OF REDUCED CLEARANCES

A. The minimum track clearances to be maintained by the Contractor during construction are specified in Section 3.07 herein.

B. Any proposed infringement on the specified minimum clearances due to the Contractor's operations shall be submitted to UPRR's Designated Representative through the Agency at least 30 days in advance of the work

and shall not be undertaken until approved in writing by UPRR's Designated Representative.

C. No work shall commence until the Contractor receives in writing assurance from UPRR's Designated Representative that arrangements have been made for flagging service, as may be necessary and receives permission from UPRR's Designated Representative to proceed with the work.

3.09 CONSTRUCTION AND AS-BUILT SUBMITTALS

A. Submittals are required for construction materials and procedures as outlined below. The submittals shall include all review comments from the Agency and the Engineer of Record. All design submittals shall be stamped and signed by a Professional Engineer registered in the State of California.

B. The tables below provide UPRR's minimum submittal requirements for the construction items noted. Submittal requirements are in addition to those specified elsewhere in these bid documents. The minimum review times indicated below represent UPRR's requirements only. The Contractor shall allow additional time for the Agency's review time as stated elsewhere in these bid documents.

C. Submittals shall be made by the Agency to UPRR's designated representative unless otherwise directed by the Railroad. Items in Table 1 shall be submitted for both railroad overpass and underpass projects, as applicable. Items in Table 2 shall be submitted for railroad underpass projects only.

TABLE 1

ITEM	DESCRIPTION	SETS REQD.	UPRR's Minimum Review Time
1	Shoring design and details	4	4 weeks
2	**Falsework design and details**	4	4 weeks
3	Drainage design provisions	4	4 weeks
4	Erection diagrams and sequence	4	4 weeks
5	Demolition diagram and sequence	4	4 weeks

Prior to or during construction of railroad's viaduct bridge structure, UPRR requires the review of drawings, reports, test data and material data sheets to determine compliance with the specifications. Product information for items noted in Table 2 be submitted to UPRR's Designated Representative through the Agency for their own review and approval of the material. UPRR or their consultant will review the signed submittal and the Agency's review comments. If a consultant performs the reviews, the consultant may reply directly to the Agency or its Designated Representative after consultation with UPRR. Review of the submittals will not be conducted until after review by the Agency or its Designated Representative. Review of the submittal items will require a minimum of four (4) weeks after receipt from the Agency.

TABLE 2

ITEM	DESCRIPTION	SETS REQD.	NOTES
1	Shop drawings	4	Steel and Concrete members
2	**Bearings**	4	For entire structures
3	Concrete Mix Designs	4	For entire structures
4	Rebar & Strand certifications	4	For superstructure only
5	28 day concrete strength	4	For superstructure only
6	Waterproofing material certifications and installation procedure	4	Waterproofing & protective boards
7	Structural steel certifications	4	All fracture critical members & other members requiring improved notch toughness
8	Fabrication and Test reports	4	All fracture critical members & other members requiring improved notch toughness
9	Welding Procedures and Welder Certification	4	AWS requirements
10	Foundation Construction Reports	4	Pile driving, drilled shaft construction, bearing pressure test reports for spread footings
11	Compaction testing reports for backfill at abutments	4	Must meet 95% maximum dry density, Modified Proctor ASTM D1557

D. As-Built Records shall be submitted to UPRR within 60 days of completion of the structures. These records shall consist of the following items:

<u>Overpass Projects</u>

1. Electronic files of all structure design drawings with as-constructed modifications shown, in Microstation J or Acrobat .PDF format.
2. Hard copies of all structure design drawings with as-constructed modifications shown.

<u>Underpass Projects</u>

1. Electronic files of all structure design drawings with as-constructed modifications shown, in Microstation J or Acrobat .PDF format.
2. Hard copies of all structure design drawings with as-constructed modifications shown.
3. Final approved copies of shop drawings for concrete and steel members.
4. Foundation Construction Reports
5. Compaction testing reports for backfill at abutments

E. Hard copies of all structure design drawings with as-constructed modifications shown.

F. Final approved copies of shop drawings for concrete and steel members.

G. Foundation Construction Reports

H. Compaction testing reports for backfill at abutments

3.10 APPROVAL OF DETAILS

The details of the construction affecting UPRR tracks and property not already included in the Contract Plans shall be submitted to UPRR's Designated Representative through the Agency for UPRR's review and written approval before such work is undertaken. Review and approval of these submittals will require a minimum of four (4) weeks in addition to the Agency's review time as stated elsewhere in these bid documents.

3.11 MAINTENANCE OF RAILROAD FACILITIES

A. The Contractor shall be required to maintain all ditches and drainage structures free of silt or other obstructions which may result from Contractor's operations; to promptly repair eroded areas within UPRR's right of way and to repair any other damage to the property of UPRR, or its tenants.

B. All such maintenance and repair of damages due to the Contractor's operations shall be done at the Contractor's expense.

C. The Contractor must submit a proposed method of erosion control and have the method reviewed by UPRR prior to beginning any grading on the Project Site. Erosion control methods must comply with all applicable local, state and federal regulations.

3.12 SITE INSPECTIONS BY UPRR's DESIGNATED REPRESENTATIVE

A. In addition to the office reviews of construction submittals, site inspections may be performed by UPRR's Designated Representative at significant points during construction, including but not limited to the following:

1. Preconstruction meetings.

2. Pile driving, drilling of caissons or drilled shafts.

3. Reinforcement and concrete placement for railroad bridge substructure and/or superstructure.

4. Erection of precast concrete or steel bridge superstructure.

5. Placement of waterproofing (prior to placing ballast on bridge deck).

6. Completion of the bridge structure.

B. Site inspection is not limited to the milestone events listed above. Site visits to check progress of the work may be performed at any time throughout the construction as deemed necessary by UPRR.

C. A detailed construction schedule, including the proposed temporary horizontal and vertical clearances and construction sequence for all work to be

performed, shall be provided to the Agency for submittal to UPRR's Designated Representative for review prior to commencement of work. This schedule shall also include the anticipated dates when the above listed events will occur. This schedule shall be updated for the above listed events as necessary, but at least monthly so that site visits may be scheduled.

3.13 UPRR's REPRESENTATIVES

A. UPRR representatives, conductors, flag person or watch person will be provided by UPRR at expense of the Agency or Contractor (as stated elsewhere in these bid documents) to protect UPRR facilities, property and movements of its trains or engines. In general, UPRR will furnish such personnel or other protective services as follows:

1. When any part of any equipment is standing or being operated within 25 feet, measured horizontally, from centerline of any track on which trains may operate, or when any object is off the ground and any dimension thereof could extend inside the 25 foot limit, or when any erection or construction activities are in progress within such limits, regardless of elevation above or below track.

2. For any excavation below elevation of track subgrade if, in the opinion of UPRR's Designated Representative, track or other UPRR facilities may be subject to settlement or movement.

3. During any clearing, grubbing, excavation or grading in proximity to UPRR facilities, which, in the opinion of UPRR's Designated Representative, may endanger UPRR facilities or operations.

4. During any contractor's operations when, in the opinion of UPRR's Designated Representative, UPRR facilities, including, but not limited to, tracks, buildings, signals, wire lines, or pipe lines, may be endangered.

5. The Contractor shall arrange with the UPRR Designated Representative to provide the adequate number of flag persons to accomplish the work.

3.14 WALKWAYS REQUIRED

Along the outer side of each exterior track of multiple operated track, and on each side of single operated track, an unobstructed continuous space suitable for trainman's use in walking along trains, extending to a line not less than twelve feet (12') from centerline of track, shall be maintained. Any temporary impediments to walkways and track drainage encroachments or obstructions allowed during work hours while UPRR's flagman service is provided shall be removed before the close of each work day. Walkways with railings shall be constructed by Contractor over open excavation areas when in close proximity of track, and railings shall not be closer than 8' – 6" horizontally from centerline of tangent track or 9' – 6" horizontally from centerline of curved track.

3.15 COMMUNICATIONS AND SIGNAL LINES

If required, UPRR will rearrange its communications and signal lines, its grade crossing warning devices, train signals and tracks, and facilities that are in use and maintained by UPRR's forces in connection with its operation at expense of the Agency. This work by UPRR will be done by its own forces and it is not a part of the Work under this Contract.

3.16 TRAFFIC CONTROL

Contractor's operations that control traffic across or around UPRR facilities shall be coordinated with and approved by the UPRR's Designated Representative.

3.17 CONSTRUCTION EXCAVATIONS

A. The Contractor shall be required to take special precaution and care in connection with excavating and shoring. Excavations for construction of footings, piers, columns, walls or other facilities that require shoring shall comply with requirements of OSHA, AREMA and "Guidelines for Temporary Shoring".

B. The Contractor shall contact UPRR's "Call Before Your Dig" at least 48 hours prior to commencing work at 1-800-336-9193 during normal business hours (6:30 a.m. to 8:00 p.m. central time, Monday through Friday, except holidays - also a 24 hour, 7 day a week number for emergency calls) to determine location of fiber optics. If a telecommunications system is buried anywhere on or near UPRR property, the Contractor will co-ordinate with UPRR and the Telecommunication Company(ies) to arrange for relocation or other protection of the system prior to beginning any work on or near UPRR property.

3.18 RAILROAD FLAGGING

Performance of any work by the Contractor in which person(s) 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 within twenty-five (25) feet of any track, may require railroad flagging services or other protective measures. Contractor shall give the advance notice to the UPRR as required in the "Contractor's Right of Entry Agreement" before commencing any such work, so that the UPRR may determine the need for flagging or other protective measures to ensure the safety of the railroad's operations. Contractor shall comply with all other requirements regarding flagging services covered by the "Contractor's Right of Entry Agreement". Any costs associated with failure to abide by these requirements will be borne by the Contractor.

3.19 CLEANING OF RIGHT-OF-WAY

Contractor shall, upon completion of the work to be performed by Contractor upon the premises, over or beneath the tracks of UPRR, promptly remove from the Right-of-Way of UPRR all of Contractor's tools, implements, and other materials whether brought upon the Right-of-Way by Contractor or any subcontractors, employee

or agent of Contractor or of any subcontractor, and leave the Right-of-Way in a clean and presentable condition to satisfaction of UPRR.

3.20 GUIDELINES FOR RAILROAD GRADE SEPARATION PROJECTS

The “Guidelines for Railroad Grade Separation Project” shall be followed and is a part of the Railroad’s minimum requirements by reference to the following website address:

http://www.uprr.com/aboutup/operations/specs/attachments/grade_separation.pdf

CALTRANS
RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ day of _____, 201_, by and between **UNION PACIFIC RAILROAD COMAPANY (UPRR)** (hereinafter "Railroad) and **STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION** (hereinafter "Licensee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

ARTICLE 1 - DEFINITION OF LICENSEE

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

ARTICLE 2 - RIGHT GRANTED; PURPOSE

Railroad hereby grants to Licensee 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 portion of Railroad's property located at or near Milepost 33.47, on Railroad's Niles Subdivision located near the City of Newark, Alameda County, California, DOT 750034N, for the purpose of performing work relating to slope repair of a bridge structure for the East Newark Underpass, Interstate 880 (the "Work") as such location is also shown on the print, marked **Exhibit A**, attached hereto and hereby made a part hereof. The right herein granted to Licensee is limited to those portions of Railroad's property specifically described herein, or designated by the Railroad representative named in Article 4.

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

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

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

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

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

Kevin Yoder
Manager Industry and Public Projects
Union Pacific Railroad Company
9451 Atkinson Boulevard
Roseville, CA 95747
Phone: (530) 320-9943
E-mail: KAYODER@UP.COM

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

ARTICLE 5 - TERM; TERMINATION

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

B. Railroad may terminate this Agreement if it reasonably determines in good faith that Licensee has failed to comply with any of the material terms and conditions of this Agreement and has not cured such failure within ten (10) days after receiving notice (oral or written) from Railroad describing such failure in reasonable detail.

ARTICLE 6 - INSURANCE; CONTRACTOR'S ENDORSEMENT.

A. Licensee is self-insured. Licensee shall provide Railroad defense and indemnification at least equal to the defense, indemnification and insurance provisions (including the endorsements) contained in **Exhibit B**. Nothing herein shall be deemed to insure Railroad against its sole negligence or willful misconduct.

B. In the event any of the Work to be done upon the property of Railroad is to be done by a contractor or subcontractor of Licensee, said contractor or subcontractor may have the benefit of the license herein granted, while performing work for Licensee, provided such contractor or subcontractor agrees to be subject to and bound by the terms and conditions of this Agreement by: (1) executing an endorsement to this Agreement in the form set forth in Contractor's Endorsement marked **Exhibit E**, attached hereto, and (2) providing to Railroad the insurance policies, certificates, binders, and/or endorsements described in **Exhibit B**.

C. All insurance correspondence, certificates, binders or originals shall be sent to:

Union Pacific Railroad Company
Senior Manager Contracts
1400 Douglas Street, MS 1690
Omaha, NE 68179-1690
Railroad Folder No.: _____

ARTICLE 7 - CHOICE OF FORUM

Unless otherwise preempted by applicable federal laws, rules or regulations, this Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Litigation arising out of or connected with this Agreement may be instituted and maintained in the courts of the State of California only, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation, in those courts, and consent to service of process issued by such courts.

ARTICLE 8 - REMOVAL OF CONTRACTOR/SUBCONTRACTOR EMPLOYEE

At the request of Railroad, Licensee shall remove from Railroad property any contractor, subcontractor, officer, agent and/or employee of Licensee who fails to conform to the instructions of the Railroad Representative in connection with the Work on Railroad's property, and any right of Licensee shall be suspended until such removal has occurred. Licensee shall indemnify Railroad against any claims arising from the removal of any such contractor, subcontractor, officer, agent and/or employee from Railroad property.

ARTICLE 9 - ADMINISTRATIVE FEE

Upon the execution and delivery of this Agreement, Licensee shall pay to Railroad Five Hundred Dollars ($500.00) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

ARTICLE 10 -SPECIAL PROVISIONS

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

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

C. The parties agree that this agreement is not, and is not intended to be, a construction contract for purposes of Cal. Civ. Code § 2782(a). Accordingly, to the maximum extent permitted by law, the provisions of Cal. Civ. Code § 2782(a), as interpreted by the California courts in Southern Pacific Transportation Co. v. Sandyland Protective Association, 224 Cal.App.3d 1494, 274 Cal.Rptr. 626 (1990), and in other past and future cases, shall not apply to this Agreement.

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

UNION PACIFIC RAILROAD COMPANY

By: _____
Title: _____

STATE OF CALIFORNIA,
DEPARTMENT OF TRANSPORTATION

By: _____
Title: _____

EXHIBIT A
TO
CALTRANS RIGHT OF ENTRY AGREEMENT

Exhibit A will be a print showing the general location of the right of entry area.
(Will be provided by UPRR)

EXHIBIT B
TO
CALTRANS RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

a. Licensee agrees to notify the Railroad Representative at least ten (10) working days in advance of Licensee commencing its Work and at least ten (10) working days in advance of proposed performance of any Work by Licensee 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 10-day notice, the Railroad Representative will determine and inform Licensee whether a flagman need be present and whether Licensee need implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, such services will be provided at Licensee's expense with the understanding that if Railroad provides any flagging or other services, Licensee shall not be relieved of any of its responsibilities or liabilities set forth herein. Licensee shall promptly pay to Railroad all charges connected with such services within 30 days after presentation of a bill therefore.

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 persons 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 & welfare, supplemental sickness, Railroad Retirement & UC, supplemental pension, Employee's Liability & 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, Licensee 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 the Licensee 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, Licensee 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, Licensee 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 (5) 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 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 wire lines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be reasonably done at any time or times by Railroad without liability to Licensee 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 OPERATION OF RAILROAD AND ITS TENANTS.

a. Licensee 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 Licensee at any time that would in any manner impair the safety of such operations. When not in use, Licensee'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 Licensee caused by such railroad operations and work are expected by Licensee, and Licensee agrees that Railroad shall have no liability to Licensee, or any other person or entity for any such delays. Licensee 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 Licensee.

Section 4. LIENS.

Licensee shall pay in full all persons who perform labor or provide materials for the work to be performed by Licensee. Licensee 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. Licensee 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.

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. Licensee 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 Licensee. If it is, Licensee shall telephone the telecommunications company (ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, and shall commence no work on the right of way until all such protection or relocation has been accomplished.

b. In addition to other indemnity provisions in this Agreement, Licensee shall, pursuant to Cal. Gov. Code §14662.5, indemnify 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 Licensee and its employees that proximately 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 contractors, agents and/or employees, on Railroad's property. Licensee 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, Licensee 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 Licensee. Licensee shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Licensee 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 Licensee's safety responsibilities, Licensee shall notify Railroad if Licensee determines that any of Railroad's safety standards are contrary to good safety practices. Licensee 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, Licensee 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. Licensee 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. Licensee shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Licensee shall have a non-delegable 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, Licensee shall deliver to Railroad a copy of Railroad's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Licensee 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. <u>INDEMNITY</u>.

a. To the extent not prohibited by Cal. Gov. Code §14662.5, Licensee 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, Licensee, or any employee of Licensee or of any Indemnified Party) arising out of or in any manner connected with (i) any Work performed by Licensee, or (ii) any act or omission of Licensee, its officers, agents or employees, or (iii) any breach of this agreement by Licensee.

b. To the extent not prohibited by Cal. Gov. Code §14662.5, 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 or willful misconduct of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence or willful misconduct of any Indemnified Party shall not bar the recovery of any other Indemnified Party.

c. To the extent not prohibited by Cal. Gov. Code §14662.5, Licensee expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Licensee's own employees. Licensee waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify Railroad under this Section 8. Licensee acknowledges that this waiver was mutually negotiated by the parties hereto.

d. To the extent not prohibited by Cal. Gov. Code §14662.5, no court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employer's Liability Act against a party to this Agreement may be relied upon or used by Licensee in any attempt to assert liability against Railroad.

e. The provisions of this Section 8 shall survive the completion of any Work performed by Licensee or the termination or expiration of this Agreement. To the extent not prohibited by Cal. Gov. Code §14662.5, in no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Licensee may have to any Indemnified Party by statute or under common law.

Section 9. RESTORATION OF PROPERTY.

In the event Railroad authorizes Licensee 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 Licensee, then in that event Licensee shall, as soon as possible and at Licensee'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. Licensee shall remove all of Licensee's tools, equipment and materials from Railroad's property promptly upon completion of the Work, restoring Railroad's property to the same state and condition as when Licensee 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 Licensee 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 Licensee and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Licensee 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 Licensee.

Section 12. ASSIGNMENT.

Licensee shall not assign or subcontract this Agreement, or any interest therein, without the written consent of Railroad.

EXHIBIT C
TO
CALTRANS RIGHT OF ENTRY AGREEMENT

INSURANCE PROVISIONS

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

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

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

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

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

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

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

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

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

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

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

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

the alternate employer (or a substitute form providing equivalent coverage).

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

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

F. **Pollution Liability** insurance**.** Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least $5,000,000 per occurrence and an aggregate limit of $10,000,000. If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of $1,000,000 per loss, and an annual aggregate of $2,000,000.

Other Requirements

G. All policy (ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.

H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.

I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.

J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the State of California.

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

EXHIBIT D
TO
CALTRAN'S RIGHT OF ENTRY AGREEMENT

MINIMUM SAFETY REQUIREMENTS

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

I. Clothing

A. All employees of Licensee 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, Licensee'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

Licensee 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 Licensee'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

Licensee 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 orange reflectorized workwear approved by Railroad Representative.

(iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Licensee must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Licensee 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 Licensee to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Licensee's equipment is unsafe for use, Licensee shall remove such equipment from the Railroad's property. In addition, Licensee 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. Licensee shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.

B. Licensee 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 Licensee 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, guardrails, or other track components.
(iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment of the opening is less than one car length (50 feet).
(iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
(v) Before stepping over or crossing tracks, look in both directions first.
(vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.

E. All employees must comply with all federal and state regulations concerning workplace safety.

EXHIBIT E
TO
CALTRANS RIGHT OF ENTRY AGREEMENT

CONTRACTOR'S ENDORSEMENT

_____

A. As a condition to entering upon the Railroad's right-of-way to perform Work pursuant to this agreement, State's contractor, _____,
(Name of Contractor)
whose address is _____
(Contractor's Mailing Address)

(hereinafter "Contractor"), agrees to comply with and be bound by all the terms and provisions of the attached Caltrans Right of Entry Agreement that was signed by Union Pacific Railroad Company ("Railroad") and the State of California, Department of Transportation ("State") relating to the Work to be performed and the insurance requirements set forth in Exhibit C of the Right of Entry Agreement. The Contractor further acknowledges and agrees that the reference to Cal. Gov. Code §14662.5 in Sections 5.b) and 8.b) of Exhibit B to the Right of Entry Agreement does not apply to the Contractor and in no way limits the indemnities set forth in those provisions, to which the Contractor agrees to be bound.

B. Before the Contractor commences any Work, the Contractor will provide the Railroad with (i) a binder of insurance for the Railroad Protective Liability Insurance described in Section 2 of the Contract Special Provisions, hereto attached, and the original policy, or a certified duplicate original policy when available, and (ii) a certificate issued by its insurance carrier providing the other insurance coverage and endorsements required pursuant to Section 2 of the Contract Special Provisions.

C. All insurance correspondence, binders or originals shall be directed to:

Union Pacific Railroad Company
Senior Manager Contracts
1400 Douglas Street, MS 1690
Omaha, NE 68179-1690
Folder No._____

D. Please note that fiber optic cable may be buried on the Railroad's property. **Prior to commencing any work, the Contractor agrees to contact the Railroad's Telecommunications Operation Center as provided in Section 5 of Exhibit B of the Right of Entry Agreement to determine if any fiber optic cable is located on the Railroad's property on or near the location where the work is to be performed.** If there is, the Contractor must comply with the terms and conditions of Section 5 of Exhibit B; before commencing any work on the Railroad's property.

E. **The Contractor agrees to also provide to the Railroad's Manager-Track Maintenance at (402) 594-5960** the advance notice required in Section 1 of Exhibit A of the Right of Entry Agreement prior to working on the Railroad's property in order for the Railroad to coordinate the Contractor's work with the Railroad's operations and to make arrangements for flagging protection (if applicable).

This endorsement shall be completed and sent to the person named in Paragraph C above.

_____
(Name of Contractor)

By_____

Title:_____

Date: _____