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THE CITY CLERK
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2017 MAY 11 PM 3:16

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Christine Daniel
Acting Director, DOT

SUBJECT: Agreement With UPRR For The
Existing 5th Avenue At-Grade Crossing

DATE: April 21, 2017

City Administrator Approval

Date:

5/10/17

RECOMMENDATION

Staff Recommends That The City Council Approve A Resolution Authorizing The City Administrator or Designee, The Director of Transportation or Assistant Director of Transportation, To Negotiate and Execute An Agreement With Union Pacific Railroad Company (UPRR), In Accordance With California Public Utility Commission (CPUC) Regulations, For The Construction, Maintenance and Operations Of A Signal Interconnect Facility At The Existing 5th Avenue At-Grade Crossing.

EXECUTIVE SUMMARY

As a required mitigation measure, Brooklyn Basin (formerly named Oakland Army Base), a private development project, will install a traffic signal at the intersection of Embarcadero and 5th Avenue near the existing railroad tracks as shown in **Attachments A, B, C and D**. Because of the close proximity of the signal to the railroad crossing, the new traffic signal needs to be connected to the crossing gate equipment. This action requires UPRR approval in accordance with CPUC regulations, execution of an Agreement with UPRR as shown in **Attachment E**, and City's acceptance of maintenance and operational obligations with UPRR per said Agreement.

The UPRR Agreement delineates roles and responsibilities for UPRR and the City, and outlines their respective responsibility in the construction, maintenance and operation of the signal interconnect facility consistent with State law as required by CPUC. Final execution of the Agreement is subject to review by the City Attorney's Office.

BACKGROUND / LEGISLATIVE HISTORY

The City of Oakland Mitigation Monitoring and Reporting Program, Section B.1d, requires Brooklyn Basin (formerly named Oakland Army Base), a private development project, to install a traffic signal at the intersection of Embarcadero and 5th Avenue. Due to the close proximity of the intersection to the existing railroad tracks, a signal interconnect facility will also be constructed in UPRR right-of-way to facilitate railroad preemption operation. This action necessitates UPRR approval in accordance with CPUC regulations, and for the City to execute an Agreement with UPRR. Brooklyn Basin, as an agent of the City, shall pay an administrative fee of \$1,000 to UPRR, and reimburse UPRR a total of \$377,378 for actual labor and materials

Item: _____
Public Works Committee
May 23, 2017

costs for the construction, maintenance and operations of a signal interconnect facility at the at-grade railroad crossing on 5th Avenue. This interconnect system is in addition to the construction of the traffic signal at the 5th Avenue and Embarcadero intersection.

The UPRR Agreement will permit the installation of the signal interconnect facility and coordination of railroad grade crossing operation with traffic signal operation including railroad preemption. Railroad preemption assigns priority right-of-way to trains and allows for the safe passage of trains.

ANALYSIS

The UPRR Agreement delineates each agency's roles and responsibilities for the construction, maintenance and operation of the signal interconnect facility in question. The Agreement includes the following key topics:

- City (via the Brooklyn Basin project) will construct a traffic signal at the intersection of Embarcadero and 5th Avenue.
- City (via the Brooklyn Basin project) to install signal interconnect within UPRR right-of-way.
- UPRR to install relays and other materials to interconnect and coordinate the operation of railroad grade crossing with the operations of the traffic signal.
- UPRR grants permission and authority to the City and/or its contractor to install the signal interconnect conduit with the necessary wiring in UPRR right-of-way.
- City (via the Brooklyn Basin project) shall require any of its contractors performing work in UPRR right-of-way to enter into a Right of Entry Agreement with UPRR.
- City (via the Brooklyn Basin project) to pay to UPRR an administrative fee of \$1,000 upon execution of the UPRR Agreement.
- City (via the Brooklyn Basin project) to reimburse to UPRR 100 percent of UPRR actual labor and materials costs associated with the construction of the signal interconnect facility. UPRR estimates such cost to total \$377,378.

Upon completion and acceptance of the final traffic signal and signal interconnect construction, the City will maintain and operate the new equipment as part of its inventory.

FISCAL IMPACT

Approval of this Resolution will allow the City to negotiate and enter into an Agreement with UPRR. Initial costs associated with permit application is \$1,000 and UPRR costs for signal interconnect work associated with their facilities, necessary to connect with the new traffic signal at 5th Avenue and Embarcadero, is \$377,378. These costs will be borne by the Brooklyn Basin project and there is no cost to the City.

The UPRR Agreement is required for UPRR to grant the City's contractor a Right of Entry permit to complete construction of the signal interconnect facility, as well as clarifying ongoing maintenance and operation responsibilities after the improvements have been completed.

Long term maintenance costs for the traffic signal will be incorporated into the City's traffic signal system inventory, which stands at approximately 700 signals. The maintenance cost of the signal interconnect facility is negligible. The responsibilities of both the City and UPRR are regulated by state law, as administered by the CPUC, absent an agreement. The agreements serve to provide documentation to the specific crossing locations to the benefit of all parties.

PUBLIC OUTREACH / INTEREST

There was no public outreach specific to the UPRR Agreement that is the subject of this report. Normal process for public notification to residents and businesses will be followed prior to actual construction of the traffic signal and signal interconnect.

COORDINATION

Department of Transportation consulted and coordinated with the City Attorney's office and Budget Office in the writing of this report and the content.

SUSTAINABLE OPPORTUNITIES

Economic: Execution of the UPRR Agreement will improve safety for all road users and improve economic activity in the area.

Environmental: Execution of the UPRR Agreement will have no environmental impacts.

Social Equity: Execution of the UPRR Agreement will have no social equity impacts.

CEQA/NEPA

The UPRR Agreement is categorically exempted from both the California Environmental Quality Act (CEQA) and National Environmental Protection Act (NEPA) requirements.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council approve a resolution authorizing the City Administrator or Designee, the Director of Transportation or Assistant Director of Transportation, to negotiate and execute an Agreement with UPRR for the construction, maintenance and operations of a signal interconnect facility at the existing 5th Avenue at-grade crossing.

For questions regarding this report, please contact Wladimir Wlassowsky, Department of Transportation, Interim Assistant Director, at (510) 238-6383.

Respectfully submitted,



Christine Daniel
Acting Director
Department of Transportation

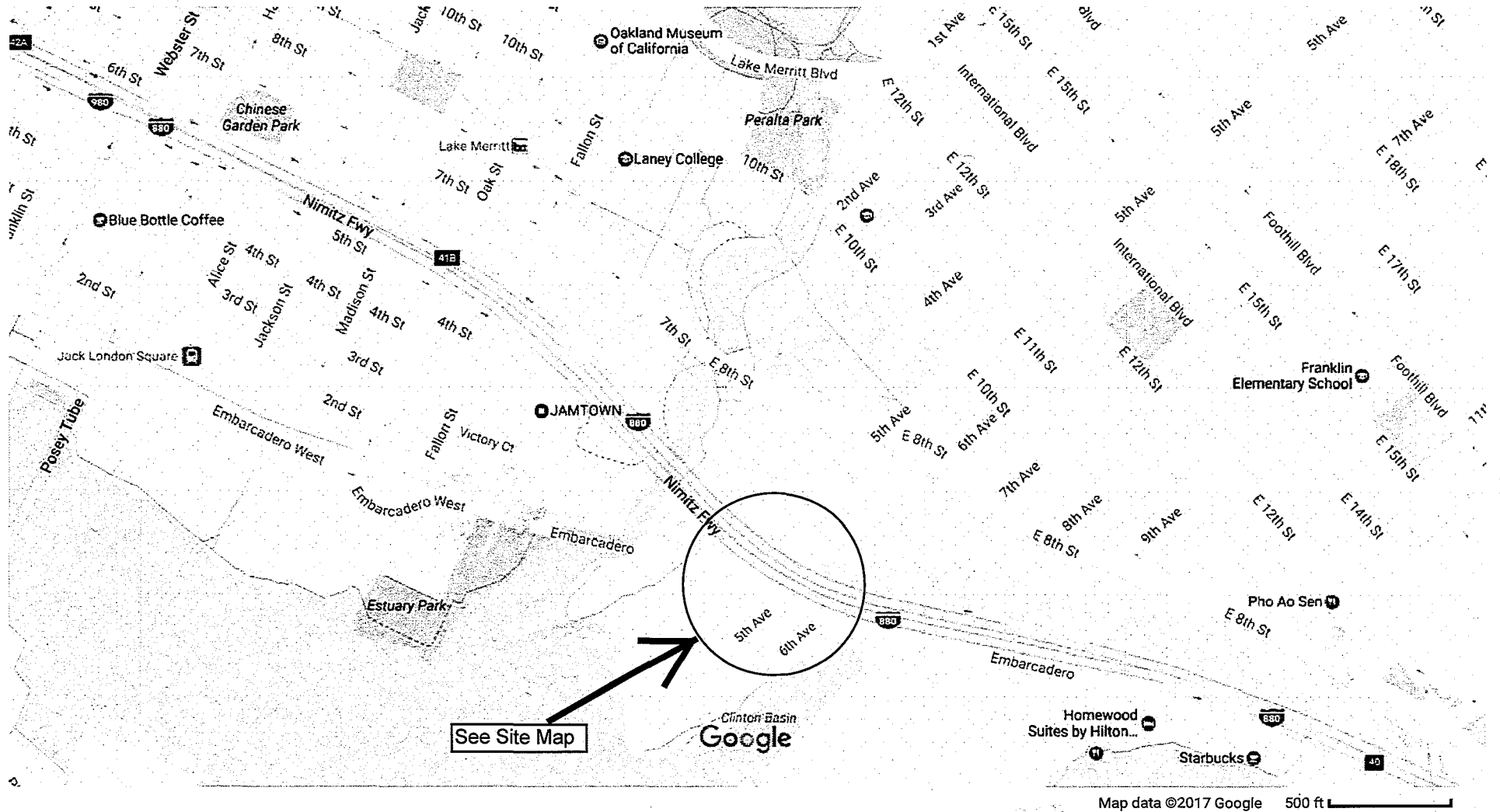
Prepared by:
Philip Ho, P.E.
Acting Supervising Transportation Engineer
Great Streets, Traffic Capital Projects
Department of Transportation

Attachments:

- A: Vicinity Map
- B: Site Map
- C: Signal Plan
- D: Mitigation Monitoring & Reporting Program
- E: Draft UPRR Agreement

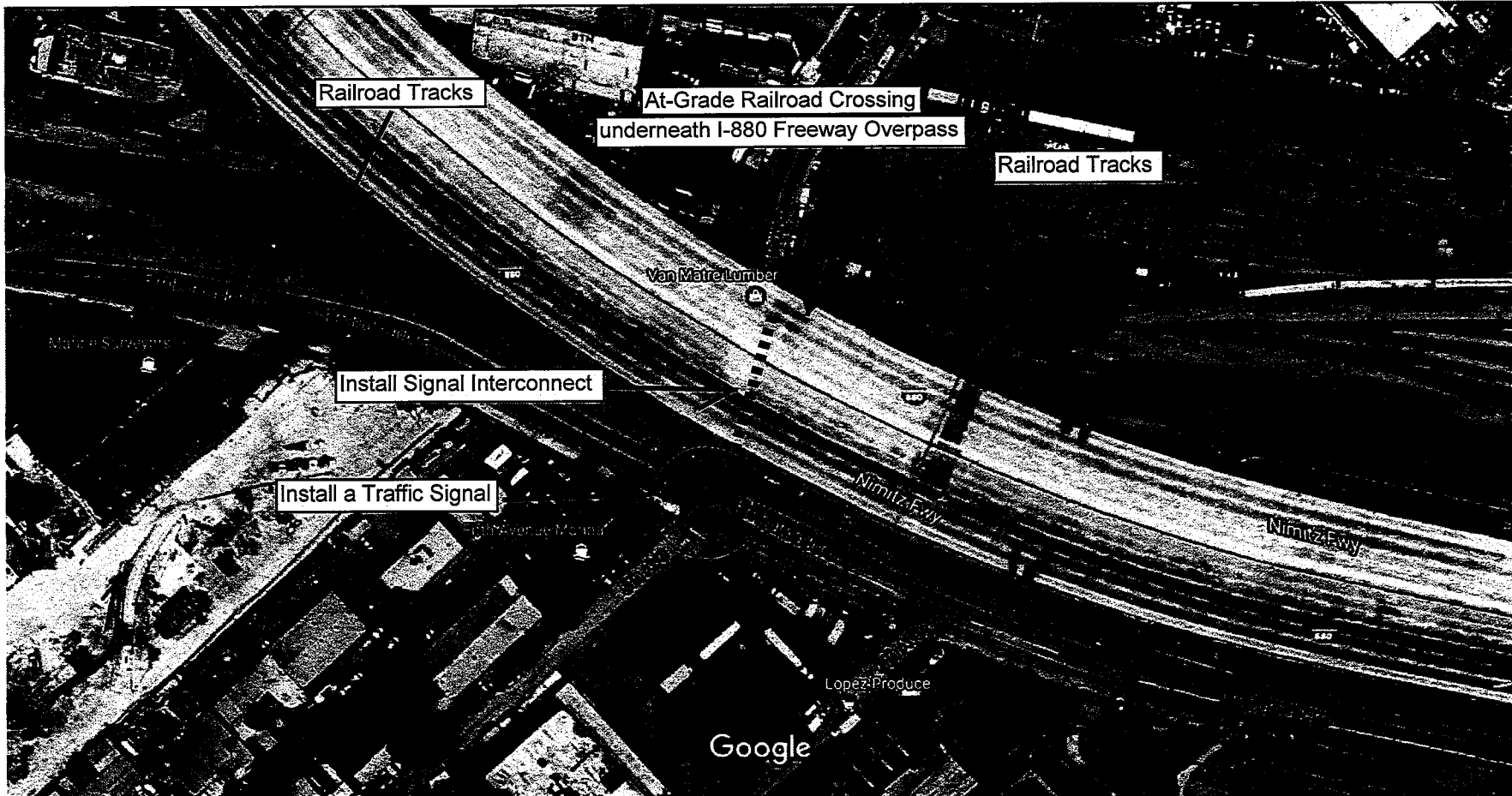
ATTACHMENT A VICINITY MAP

Google Maps



ATTACHMENT B SITE MAP

Google Maps



Imagery ©2017 Google, Map data ©2017 Google 100 ft

ATTACHMENT D
MITIGATION MONITORING AND REPORTING PROGRAM
FOR THE OAK TO NINTH MIXED USE REDEVELOPMENT PROJECT

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation ¹	Condition of Approval	Monitoring Responsibility ²	Monitoring Timeline
	and the previously described unacceptable LOS F conditions would continue. The constrained capacity of the tube is an issue of multi-jurisdictional concern (solutions are being explored by the cities of Oakland and Alameda, Caltrans, and the Alameda County Congestion Management Agency), and no feasible measures to increase the tube's capacity have been identified to date (e.g., the tube cannot simply be widened as can a roadway).				
B.1c: The signalized intersection of <i>6th and Jackson Streets at the I-880 Northbound On-Ramp</i> would degrade from LOS E to LOS F during the PM peak hour with the addition of traffic generated by Phase 1 of the project. (SU)	B.1c: Optimize the traffic signal timing at the signalized intersection of <i>6th and Jackson Streets at the I-880 Northbound On-Ramp</i> . Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.	This project impact would be significant and unavoidable because it is not certain that the measure could be implemented (because the City of Oakland, as lead agency, could not implement Measure B.1c without the approval of Caltrans. However, in the event that Mitigation Measure B.1c could be implemented, the impact would be less than significant.	18, 19	Public Works Agency, City Traffic Engineering Department; Caltrans	If encroachment permit is issued by Caltrans then the mitigation measure must be complete prior to the issuance of the Certificate of Occupancy for the 1,000 th unit
B.1d: Traffic generated by Phase 1 of the project would add more than ten vehicles to the unsignalized intersection of <i>Embarcadero and 5th Avenue</i> , and the peak-hour volumes would meet the Caltrans peak-hour traffic signal warrant during the PM peak hour. (S)	B.1d: Install traffic signals at the unsignalized intersection of <i>Embarcadero and 5th Avenue</i> . The signals shall have fixed-time controls with permitted left-turn phasing, which would not require a separate left-turn arrow. Installation of traffic signals shall include the traffic signal equipment and optimization of signal phasing and timing (i.e., allocation of green time for each intersection approach) in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections. Traffic signal equipment shall include pedestrian signal heads (with adequate time for pedestrians to cross the streets). Signal installation shall meet City of Oakland and Caltrans design standards.	Less than Significant	18, 19	City Public Works Agency	Prior to the issuance of the Certificate of Occupancy for the 1,000 th unit



ATTACHMENT E

March 14, 2017

UPRR Folder No. 2257-61

Wladimir Wlassowsky
City of Oakland
250 Frank Ogawa Plaza
Oakland, CA 94612

Dear Mr. Wlassowsky:

RE: Proposed construction of signal interconnect facilities for the 5th Ave. at Oakland, Alameda County, California.

Please refer to the above subject matter and the documentation to cover the construction project. Attached hereto are duplicate originals of a *Signal Interconnect Agreement*, for the public road crossing construction project. Please return to me **BOTH OF THE ORIGINAL COPIES** of the documents.

Payment in the amount of **\$1,000.00** is due and payable upon your execution of the agreement. Please include your check with the return of the documents. To ensure proper application of your check, please indicate the folder number listed above on your check. This agreement will not be accepted by the Railroad Company until the initial payment is received. If you require formal billing, you may consider this letter as a formal bill.

In compliance with the Internal Revenue Services' new policy regarding their Form 1099, I certify that 94-6001323 is the Railroad Company's correct Federal Taxpayer Identification Number and that Union Pacific Railroad Company is doing business as a corporation.

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



If you have any questions, please contact me.

Sincerely Yours,

Danielle Allen
Senior Manager – Real Estate

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

SIGNAL INTERCONNECT AGREEMENT

BETWEEN THE

UNION PACIFIC RAILROAD COMPANY

AND THE

CITY OF OAKLAND

COVERING

THE CONSTRUCTION, MAINTENANCE & OPERATION OF A
SIGNAL INTERCONNECT FACILITY FOR THE EXISTING 5TH AVE.
AT-GRADE PUBLIC ROAD CROSSING

AT

MILE POST 7.65-NILES
DOT NO.: 749616W

IN OR NEAR

OAKLAND,
ALAMEDA COUNTY,
CALIFORNIA

UPRR Folder No.: 2257-61

UPRR Audit No.: _____

SIGNAL INTERCONNECT AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 20____, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at 1400 Douglas Street, MS1690, Omaha, Nebraska 68179-1690 (hereinafter "Railroad"), and the **CITY OF OAKLAND** a municipal corporation/political subdivision of the State of California to be addressed at 250 Frank Ogawa Plaza, Oakland, CA 94612 (hereinafter "Political Body"),

WITNESSETH:

WHEREAS, Political Body desires to undertake as its project the installation of highway traffic control signals at the intersection of 5th Ave. and Embarcadero in Oakland, Alameda County, California, as shown on the Railroad Location Print, marked **Exhibit A** and specified in the Detailed Prints collectively marked **Exhibit A-1**, each hereto attached and hereby made a part hereof; and

WHEREAS, Railroad has grade crossing protection devices at the intersection of its track and 5th Ave. at Mile Post 7.65, Niles Subdivision; and

WHEREAS, Railroad agrees to install the necessary relays and other materials required to interconnect and coordinate the operation of said railroad grade crossing protection devices with the operation of said highway traffic control signals. Said work is to be performed at the sole expense of Political Body; and

WHEREAS, Political Body and Railroad, severally and collectively, desire to interconnect and coordinate the operation of said signals.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed as hereunder set forth, it is agreed as follows:

ARTICLE 1 – LIST OF EXHIBITS

Exhibit A	Railroad Location Print
Exhibit A-1	Detailed Prints
Exhibit B	Standard Drawing
Exhibit C	Railroad Material and Force Account Work Estimate
Exhibit D	Form of Contractor's Right of Entry Agreement

ARTICLE 2 - SCOPE OF WORK

- a). Political Body and Railroad, severally and collectively, agree to interconnect and coordinate the operation of the railroad grade crossing protection devices with the operation of the highway traffic control signals at Mile Post 7.65, Niles Subdivision.
- b). Railroad agrees to install the necessary relays and other materials required for interconnect at Political Body's expense, as set forth in Article 2(e) below.
- c). Railroad hereby grants permission and authority to Political Body and/or its contractor to install the conduit with the necessary wiring on Railroad right of way, in conformity with:
 - (i) the dimensions and specifications indicated on **Exhibit B** hereto attached and hereby made a part hereof;
 - (ii) Union Pacific Signal Tests and Standards (commonly referred to as the "Yellow Book") 1.1.12; and
 - (iii) the Detailed Prints marked Exhibit A-1.
- d). Political Body shall require any of its contractors performing work on Railroad's property to enter into a Right of Entry Agreement with Railroad. Political Body acknowledges receipt of a copy of the Right of Entry Agreement and understanding of its terms, provisions, and requirements, and will inform its contractor of the need to execute the agreement. Under no circumstances will Political Body's contractor be allowed onto Railroad's premises without first executing the Right of Entry Agreement.
- e). The Political Body agrees to reimburse the Railroad for one hundred percent (100%) of Railroad's actual labor and material costs associated with the work and materials described herein. The Railroad estimates such cost to be Three Hundred Seventy Seven Thousand Three Hundred Seventy Eight Dollars (\$377,378), as set for in Railroad's Material and Force Account Estimate dated February 22, 2017, marked **Exhibit C**, hereto attached and hereby made a part hereof. Within one hundred twenty (120) days after Railroad has completed its work, the Railroad will submit a final billing to Political Body for any balance owed. Political Body shall pay the Railroad within Thirty (30) days of its receipt of all bills submitted by the Railroad.

ARTICLE 3 - CONSTRUCTION AND MAINTENANCE

The Political Body, at it's expense, shall furnish all labor, material, equipment and supervision for the installation and maintenance of highway traffic control signals at the intersection of 5th Ave. and Embarcadero.

ARTICLE 4 - PAYMENT

In addition to the payment set forth in Article 2E above, in consideration of Political Body's agreement to perform and abide by the terms of this Agreement and the work to be performed by Railroad, Political Body agrees to pay Railroad an administrative fee of **ONE THOUSAND DOLLARS (\$1,000.00)** upon the execution of this Agreement.

ARTICLE 5 - CONDITIONS

- a). Except as set forth in Article 5, Political Body shall not be liable to Railroad on account of any failure of Railroad's flasher lights to operate properly nor shall Railroad have or be entitled to

maintain any action against Political Body arising from any failure from Railroad's flasher lights to operate properly. Similarly, Railroad shall not be liable to Political Body on account of any failure of Political Body's traffic signal to operate properly nor shall Political Body have or be entitled to maintain any action against Railroad arising from any failure of Political Body's traffic signal to operate properly.

- b). Political Body reserves the right to cancel this agreement for any reason and at any time prior to Railroad proceeding with any part of the work outlined herein.
- c). 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. Political Body or its contractor(s) shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m., Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour number, 7 day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's premises to be used by Political Body or its contractor(s). If it is, Political Body or its contractor(s) will telephone the telecommunication 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 Railroad's premises.

ARTICLE 6 - INTERFERENCE

Each party shall take all suitable precautions to prevent any interference (by induction, leakage of electricity or otherwise) with the operation of the other party's signals or communications lines, or those of its tenants; and if, at any time, the operation or maintenance of its signals results in any electrostatic effects, the party whose signals are causing the interference shall, at its expense, immediately take such action as may be necessary to eliminate such interference.

ARTICLE 7 - CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE

- a). If the Political Body will be hiring a contractor or contractors to perform any work involving the Project (including initial construction and any subsequent relocation or maintenance and repair work), the Political Body shall require its contractor(s) to (i) execute the Railroad's then current Contractor's Right of Entry Agreement; (ii) obtain the insurance coverage described in Exhibit D of the current Contractor's Right of Entry Agreement; and (iii) provide the insurance policies, certificates, binders and/or endorsements to Railroad that are required in Exhibit D of the current Contractor's Right of Entry Agreement before allowing any of its contractor(s) and their respective subcontractors to commence any work in the Crossing Area or on any other Railroad property.
- b). The Political Body acknowledges receipt of a copy of Railroad's current Contractor's Right of Entry Agreement, attached hereto as **Exhibit D** and hereby made a part hereof, and confirms that it will inform its contractor(s) that it/they and their subcontractors are required to execute such form of agreement before commencing any work on any Railroad property. Under no circumstances will Political Body's contractor(s) or any subcontractors be allowed on to Railroad's property without first executing the Railroad's Contractor's Right of Entry Agreement and obtaining the insurance set forth therein and also providing to Railroad the insurance policies, binders, certificates and/or endorsements described therein.

- c). All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:
*Senior Manager Contracts
Union Pacific Railroad Company
1400 Douglas Street, MS1690
Omaha, NE 68179-1690
UPRR Folder No. 2257-61*
- d). If the Political Body's own employees will be performing any of the Project work, the Political Body may self-insure all or a portion of the insurance coverage subject to Railroad's prior review and approval.

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

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

By _____
Danielle Allen
Senior Manager – Real Estate

ATTEST:

CITY OF OAKLAND

By _____
Printed Name: _____
Title: _____

EXHIBIT A

To Signal Interconnect Agreement

Cover Sheet for the
Railroad's Location Print

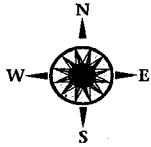
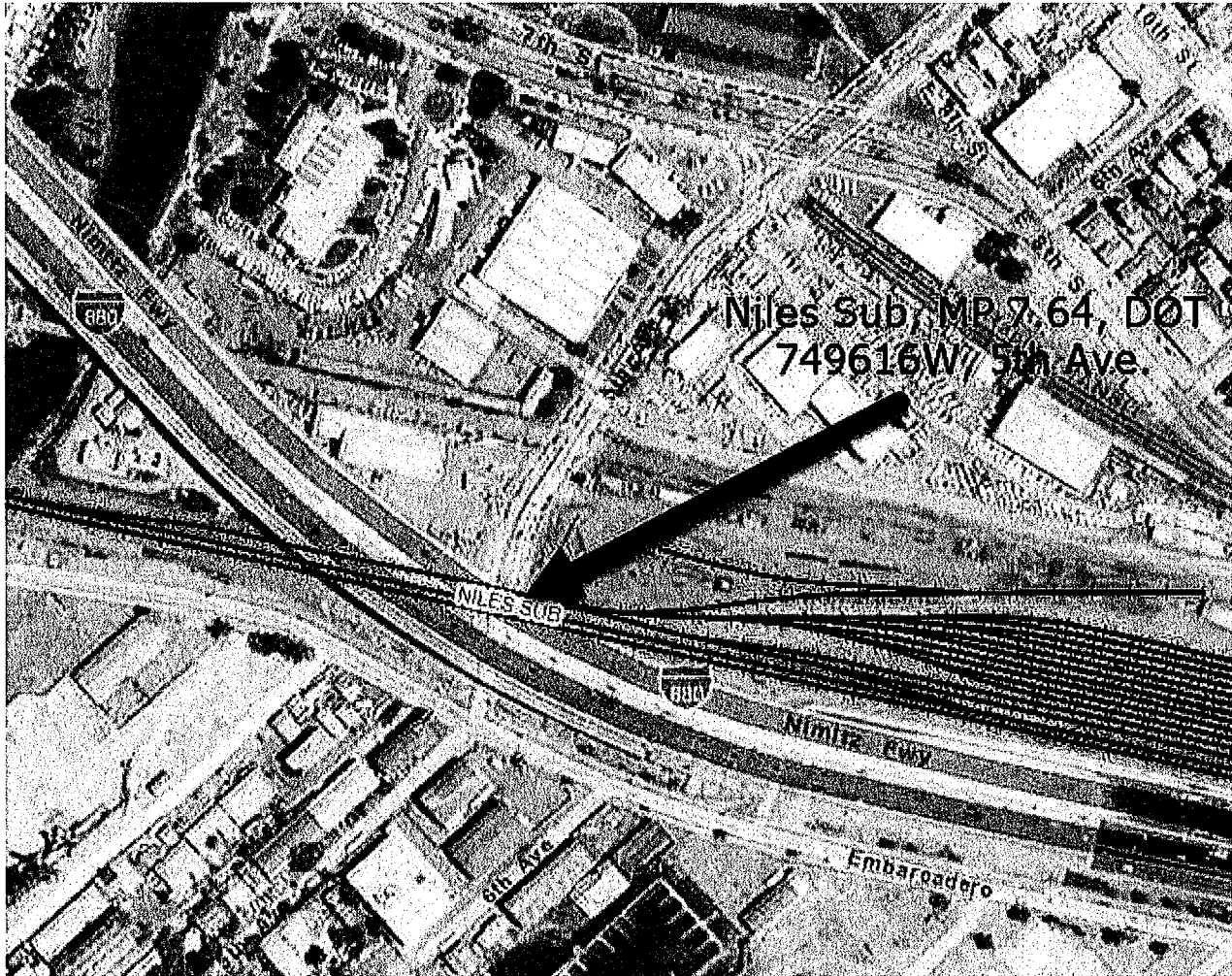


EXHIBIT "A"

RAILROAD LOCATION PRINT ACCOMPANYING A SIGNAL INTERCONNECT AGREEMENT



UNION PACIFIC RAILROAD COMPANY

NILES SUB

RAILROAD MILE POSTS 7.65
OAKLAND, ALAMEDA COUNTY, CA

To accompany an agreement with the

CITY OF OAKLAND and/or CONTRACTORS

UPRR Folder No. 2257-61 Date: March 14, 2017

WARNING

IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.

PHONE: 1-(800) 336-9193

EXHIBIT A-1

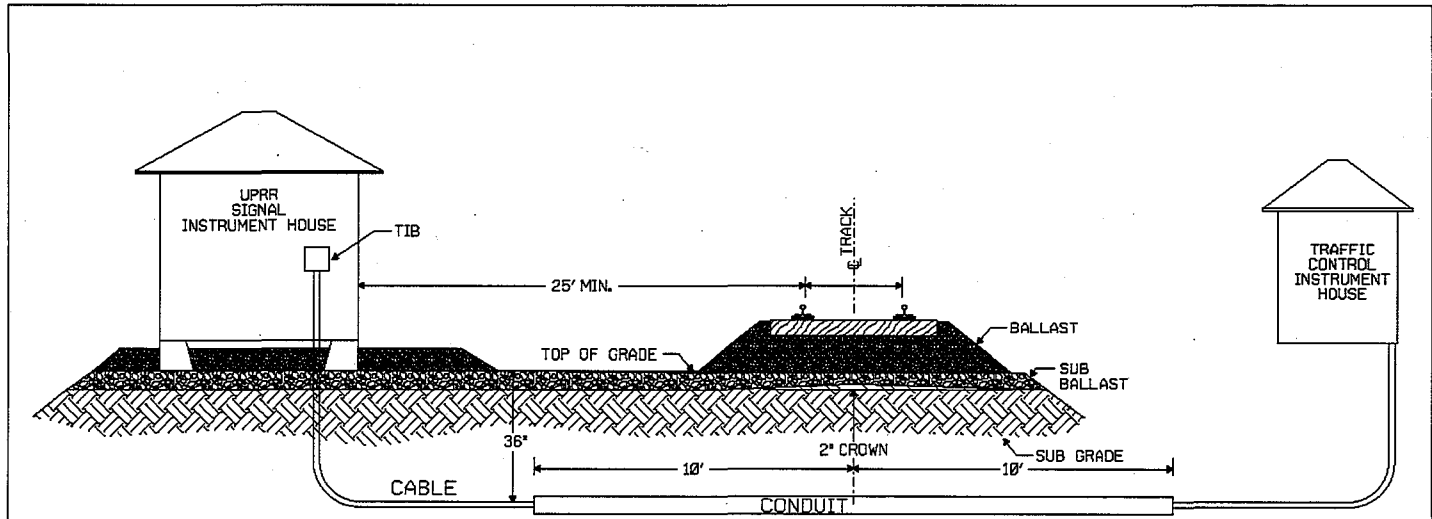
To Signal Interconnect Agreement

Cover Sheet for the
Detailed Prints

EXHIBIT B

To Signal Interconnect Agreement

Cover Sheet for the
Standard Drawing



NOTES:

1. LOCAL AGENCY IS TO PROVIDE ALL LABOR, MATERIAL, EQUIPMENT AND SUPERVISION FOR THE INSTALLATION OF TRAFFIC INTERCONNECT OR TRAFFIC PREEMPTION WIRE. UPRR FORCES MUST BE PRESENT PRIOR TO AND DURING ANY WORK ON UPRR RIGHT OF WAY.
2. CONDUIT REQUIRED TO EXTEND A MINIMUM OF 10' FROM CENTER OF TRACK.
3. TRENCH INTERCONNECT WIRING A MINIMUM OF 36" BELOW TOP OF GRADE.
4. CABLE IS TO DEMARK AT UPRR PROVIDED TIB ON UPRR SIGNAL ENCLOSURE.
5. GROUND TESTS MUST BE TAKEN PRIOR TO WORK AND AFTER WORK IS COMPLETED.
6. PRIOR TO CUTOVER, UPRR SIGNAL AND LOCAL TRAFFIC DEPARTMENTS MUST REVIEW THE INSTALLATION.
7. DURING CUTOVER, UPRR SIGNAL AND LOCAL TRAFFIC DEPARTMENTS MUST BE PRESENT.

928115UP

STANDARD DRAWING



UNDER-TRACK BORING FOR TRAFFIC INTERCONNECT OR TRAFFIC PREEMPTION WIRING

REV. DATE
09-03-15
06-08-15

FILE OWNER: UPRR	DATE: 06-08-15
REV. NO.: 2	DWG NO: 928115UP

EXHIBIT C

To Signal Interconnect Agreement

Cover Sheet for the
Railroad's Material Force & Account Estimate

DATE: 2017-02-22

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

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2017-08-23

DESCRIPTION OF WORK:
INSTALL AUTOMATIC FLASHING LIGHT CROSSING SIGNALS
WITH GATES AT OAKLAND, CA, 5TH AVENUE M.P. 7.65
ON THE NILES SUB, DOT #749616W
WORK TO BE PERFORMED BY RAILROAD WITH EXPENSE AS BELOW:
SIGNAL - CITY OF OAKLAND - 100%
ESTIMATED USING STANDARD LABOR ADDITIVES - 204.57%

FID: 93571 AWO: 31822 NP, SUBDIV: 7.65, NILES
SERVICE UNIT: 19 CITY: STRONG STATE: CA

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECELL	OPRR	TOTAL
ENGINEERING WORK							
ENGINEERING			7249		7249		7249
LABOR ADDITIVE 204.57%			24622		24622		24622
SIG-HWY XNG			4821		4821		4821
TOTAL ENGINEERING			36692		36692		36692
SIGNAL WORK							
BILL PREP			900		900		900
BORING				15000	15000		15000
CONTRACT				4810	4810		4810
LABOR ADDITIVE 204.57%			138703		138703		138703
MATL STORM EXPENSE				31	31		31
METER SERVICE				20000	20000		20000
PERSONAL EXPENSES				28800	28800		28800
RCON CONTRACT				1331	1331		1331
ROCK/GRAVEL/FILL				10000	10000		10000
SALES TAX				1932	1932		1932
SIGNAL			67368	48309	115671		115671
TRANSF/OB/ID/RCLM				3498	3498		3498
ENVIRONMENTAL PERMIT				10	10		10
TOTAL SIGNAL			206971	133715	340686		340686
LABOR/MATERIAL EXPENSE			243663	133715			
RECONSTRUCTIBLE/OPRR EXPENSE					377378	0	
ESTIMATED PROJECT COST							377378

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

EXHIBIT D

To Signal Interconnect Agreement

Cover Sheet for the Form of
Contractor's Right of Entry Agreement

Folder No.:

UPRR Audit No.:

CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ day of _____, 2017, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and

_____ (*Name of Contractor*)

a _____ corporation ("Contractor").

RECITALS:

Contractor has been hired by the _____ ("State" or "City") to perform work relating to the _____ at-grade public road crossing with all or a portion of such work to be performed on property of Railroad in the vicinity of the Railroad's Mile Post _____ (DOT _____) on its Subdivision in or near _____, _____ County, _____, as such location is in the general location shown on the Railroad Location Print marked **Exhibit A**, attached hereto and hereby made a part hereof, which work is the subject of a contract dated _____, between the Railroad and the [State or City].

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

AGREEMENT:

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

ARTICLE 1 - DEFINITION OF CONTRACTOR.

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

ARTICLE 2 - RIGHT GRANTED; PURPOSE.

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

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

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

The General Terms and Conditions contained in **Exhibit B**, the Insurance Requirements contained in **Exhibit C**, and the Minimum Safety Requirements contained in **Exhibit D**, each 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 B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.

The Contractor, at its expense, shall provide on a monthly basis a detailed schedule of work to the Railroad Representative named in Article 4B above. The reports shall start at the execution of this Agreement and continue until this Agreement is terminated as provided in this Agreement or until the Contractor has completed all work on Railroad's property.

ARTICLE 6 - TERM; TERMINATION.

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

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

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

ARTICLE 7 - CERTIFICATE OF INSURANCE.

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

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

ARTICLE 8 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.

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

ARTICLE 9 - 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 - CROSSINGS; COMPLIANCE WITH MUTCD AND FRA GUIDELINES.

- A. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.
- B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications, negligence, or any other reason arising from the Contractor's presence on the Railroad's property, the Contractor agrees to assume liability for any civil penalties imposed upon the Railroad for such

noncompliance.

ARTICLE 11 - EXPLOSIVES.

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

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

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

By: _____
Danielle Allen
Senior Manager-Real Estate

(Name of Contractor)

By _____

Printed Name: _____

Title: _____

EXHIBIT B

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

GENERAL TERMS & CONDITIONS

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

- A. Contractor agrees to notify the Railroad Representative at least thirty (30) 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 Railroads tracks except at existing open public crossings.
- B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

Section 4. LIENS.

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

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

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

Section 6. PERMITS - COMPLIANCE WITH LAWS.

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

Section 7. SAFETY.

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

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

- B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.
- C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 8. INDEMNITY.

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

Section 9. RESTORATION OF PROPERTY.

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

Section 10. WAIVER OF DEFAULT.

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

Section 11. MODIFICATION - ENTIRE AGREEMENT.

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

Section 12. ASSIGNMENT - SUBCONTRACTING.

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

EXHIBIT C

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

INSURANCE REQUIREMENTS

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

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

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

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

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

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

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

C. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE. Coverage must include but not be limited to:

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

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided.

Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

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

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

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

E. UMBRELLA OR EXCESS INSURANCE. If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

F. POLLUTION LIABILITY INSURANCE. Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least

\$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

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

OTHER REQUIREMENTS

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

EXHIBIT D

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

MINIMUM SAFETY REQUIREMENTS

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

I. CLOTHING

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

Specifically, Contractor's employees must wear:

- i. Waist-length shirts with sleeves.
 - ii. Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
 - iii. Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. PERSONAL PROTECTIVE EQUIPMENT

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

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

III. ON TRACK SAFETY

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

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

IV. EQUIPMENT

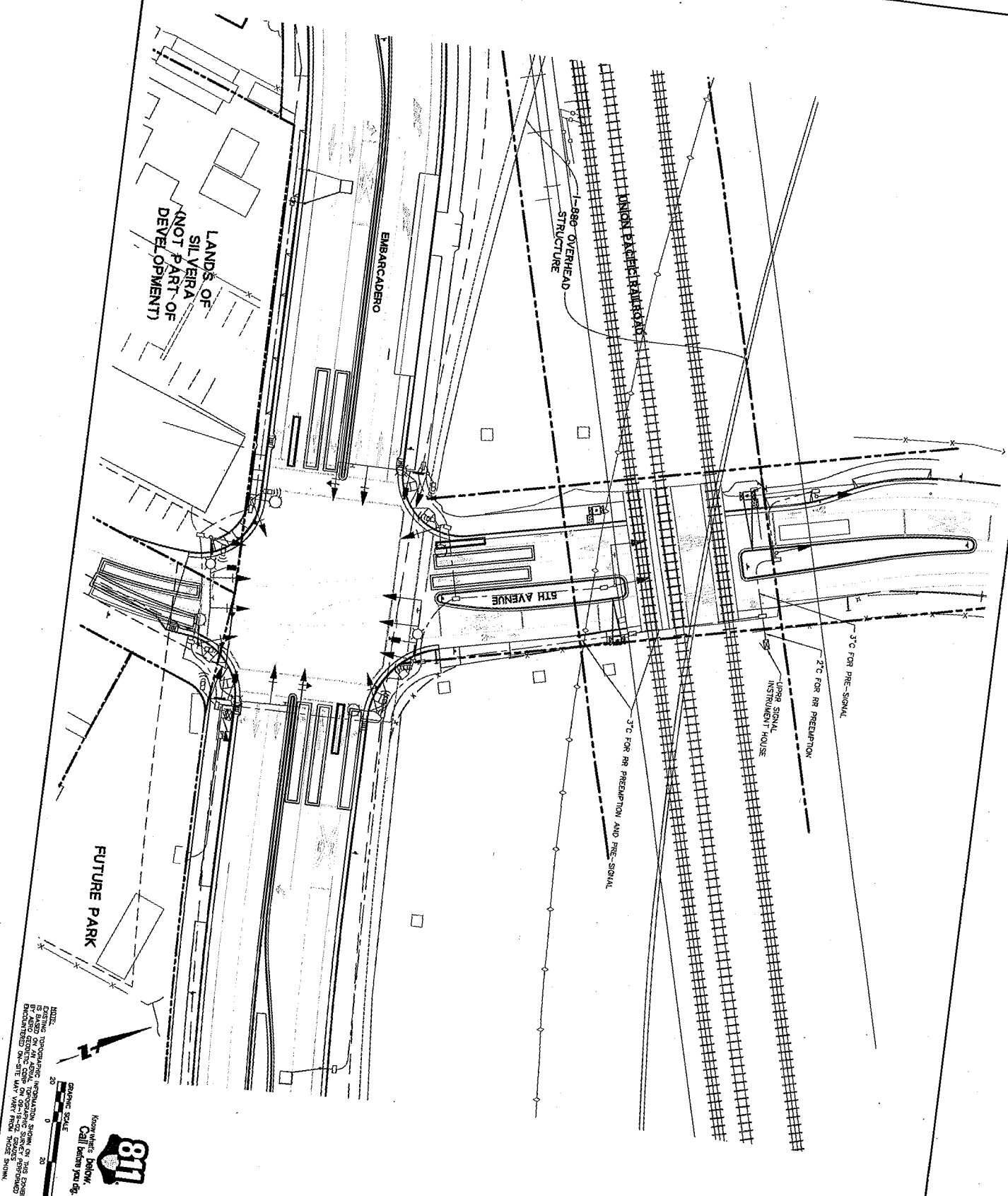
- A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must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

V. GENERAL SAFETY REQUIREMENTS

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
 - i. Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
 - ii. Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.

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

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



NOTE:
 1. EXISTING TOPOGRAPHIC INFORMATION SHOWN ON THIS SHEET IS BY ALSO CHECKED FOR ACCURACY. ANY DISCREPANCIES SHOULD BE CORRECTED ON-SITE AND MARKED FROM THESE SHEETS.

811
 Know what's Below,
 Call Before you Dig.

GRAPHIC SCALE
 0 20 40
 FEET

No.	Date	Revisions
1	1/9/15	
2	1/9/15	
3	1/9/15	
4	1/9/15	
5	1/9/15	
6	1/9/15	
7	1/9/15	
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9	1/9/15	
10	1/9/15	

Design AAS
 Drawn MPQ
 Approved SRN
 Job No 26130175

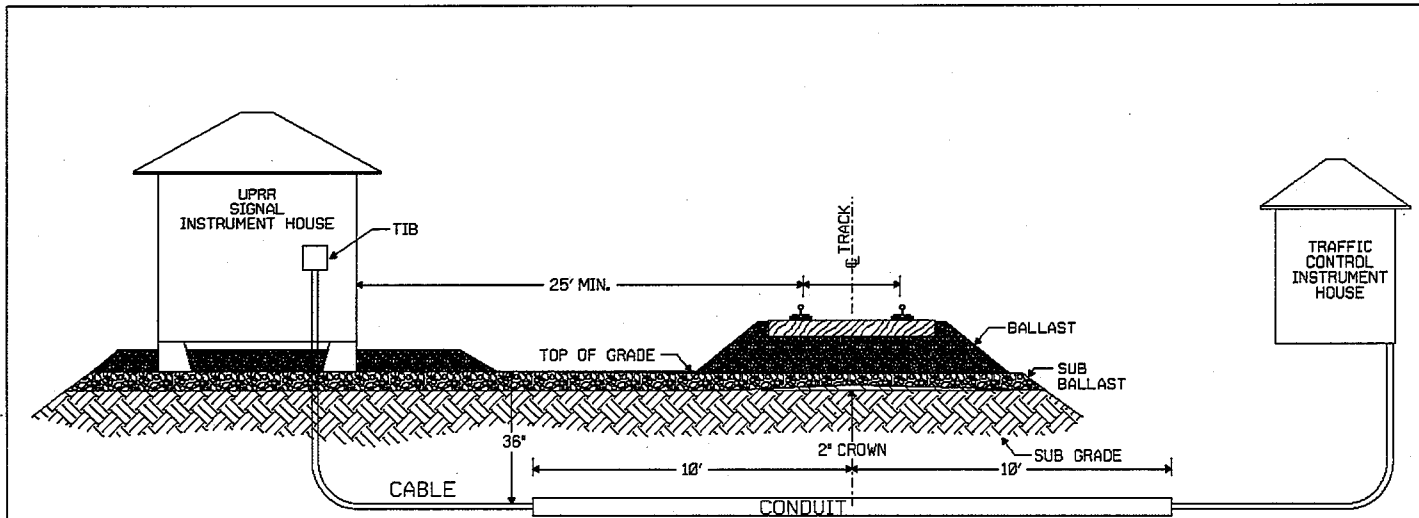
BROOKLYN BASIN
 SIGNAL INTERCONNECT EXHIBIT A-1
 (EMBARCADERO AT 5TH AVENUE)

CITY OF OAKLAND
 ALAMEDA COUNTY
 CALIFORNIA



300 FRANK OGAWA PLAZA
 SUITE 300
 OAKLAND, CA 94612
 510/227-5011
 510/227-5011 (FAX)

© BKF ENGINEERS



NEW FULL BOX INSTALLED OUTSIDE OF TRACK BALLAST

3" CONDUIT WITH CONDUCTORS FOR PRE-SIGNAL

NOTES:

1. LOCAL AGENCY IS TO PROVIDE ALL LABOR, MATERIAL, EQUIPMENT AND SUPERVISION FOR THE INSTALLATION OF TRAFFIC INTERCONNECT OR TRAFFIC PREEMPTION WIRE. UPRR FORCES MUST BE PRESENT PRIOR TO AND DURING ANY WORK ON UPRR RIGHT OF WAY.
2. CONDUIT REQUIRED TO EXTEND A MINIMUM OF 10' FROM CENTER OF TRACK.
3. TRENCH INTERCONNECT WIRING A MINIMUM OF 36" BELOW TOP OF GRADE.
4. CABLE IS TO DEMARK AT UPRR PROVIDED TIB ON UPRR SIGNAL ENCLOSURE.
5. GROUND TESTS MUST BE TAKEN PRIOR TO WORK AND AFTER WORK IS COMPLETED.
6. PRIOR TO CUTOVER, UPRR SIGNAL AND LOCAL TRAFFIC DEPARTMENTS MUST REVIEW THE INSTALLATION.
7. DURING CUTOVER, UPRR SIGNAL AND LOCAL TRAFFIC DEPARTMENTS MUST BE PRESENT.

926115UP

STANDARD DRAWING



UNDER-TRACK BORING FOR TRAFFIC INTERCONNECT OR TRAFFIC PREEMPTION WIRING

REV. DATE
09-03-15
06-08-15

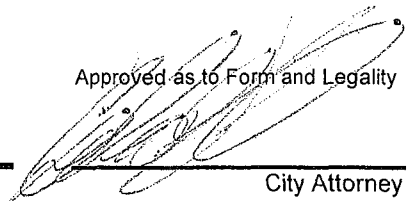
FILE OWNER: UPRR	DATE: 06-08-15
REV. NO.: 2	DWG NO: 926115UP

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2017 MAY 11 PM 3:17

OAKLAND CITY COUNCIL

Approved as to Form and Legality



City Attorney

RESOLUTION No. _____ C.M.S.

Introduced by Councilmember _____

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR DESIGNEE, THE DIRECTOR OF TRANSPORTATION OR ASSISTANT DIRECTOR OF TRANSPORTATION, TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH UNION PACIFIC RAILROAD COMPANY (UPRR), IN ACCORDANCE WITH CALIFORNIA PUBLIC UTILITY COMMISSION (CPUC) REGULATIONS, FOR THE CONSTRUCTION, MAINTENANCE AND OPERATIONS OF A SIGNAL INTERCONNECT FACILITY AT THE EXISTING 5TH AVENUE AT-GRADE CROSSING

WHEREAS, the City of Oakland requires Brooklyn Basin (formerly named Oakland Army Base), a private development project, to provide mitigation measures including the installation of a new traffic signal at the intersection of Embarcadero and 5th Avenue; and

WHEREAS, the close proximity of the new traffic signal at Embarcadero and 5th Avenue to the railroad tracks require Brooklyn Basin to also construct a signal interconnect to the existing at-grade railroad crossing; and

WHEREAS, the installation of the signal interconnect in UPRR right-of-way requires UPRR approval in accordance with CPUC regulations and execution of an Agreement with UPRR; and

WHEREAS, no City or railroad agreements for construction of any improvements or ongoing maintenance are currently in place at this location; and

WHEREAS, UPRR has required that the City execute the Agreement, prior to issuing the City's contractor permits to construct said signal interconnect improvements; and

WHEREAS, UPRR has required that the City pay an administrative fee of \$1,000 to UPRR upon execution of the Agreement; and

WHEREAS, UPRR has required that the City reimburse \$377,378 to UPRR for all actual labor and material costs for the construction, maintenance and operations of a signal interconnect facility at the at-grade railroad crossing on 5th Avenue; and

WHEREAS, Brooklyn Basin, as permittee to the City, shall pay to UPRR all said charges by UPRR under the Agreement, as a project requirement; now, therefore, be it

RESOLVED, the City Administrator or designee, the Director of Transportation or Assistant Director of Transportation, be authorized and directed to negotiate and enter into an Agreement with UPRR, subject to review and approval by the Office of the City Attorney, and be it

FURTHER RESOLVED, that an original copy of agreements be kept on file with the City Clerk, once executed.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GIBSON-MCELHANEY, GUILLEN, KALB, KAPLAN, and PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California