

CDOT Project No. SRP 0063-032, 17623

CONTRACT

BETWEEN THE

**COLORADO DEPARTMENT OF
TRANSPORTATION,**

CITY OF GRAND JUNCTION

AND THE

UNION PACIFIC RAILROAD COMPANY

COVERING

FURNISH AND INSTALL FLASHING LIGHT SIGNALS, GATES, BELLS,
CONSTANT WARNING CIRCUITRY, AND NEW CABIN

AT

RAILROAD MILE POST 453.56, GREEN RIVER SUBDIVISION

CDOT Project No. SRP 0063-032, 17623

DOT No. 254-295W

IN

GRAND JUNCTION, COLORADO

SRP 0063-032, 17623
River Road
Grand Junction
DOT No. 254-295W
UPRR M.P. 453.56; Green River Subdivision

**CONTRACT
FOR UPGRADING HIGHWAY/RAILROAD GRADE CROSSING WARNING
DEVICES
UNDER FEDERAL SECTION 130 PROGRAM**

THIS CONTRACT, by and among the **STATE OF COLORADO** for the use and benefit of the STATE DEPARTMENT OF TRANSPORTATION, DIVISION OF ENGINEERING, DESIGN AND CONSTRUCTION (“State”), **CITY OF GRAND JUNCTION**, of the State of Colorado (“Local Agency”), and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (“Railroad”)

WHEREAS, authority exists in the Law and Funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment in Fund Number 400, Function 3987, GL Account No. 423110001, WBS Element 17623.20.10, Contract Encumbrance Amount \$298,412.00; and

WHEREAS, required approval, clearance and coordination has been accomplished from and with appropriate agencies; and

WHEREAS, this contract is executed by the State under authority of section 43-1-110, C.R.S., by both the State and Local Agency under the authority of sections 29-1-203 and 43-2-144, C.R.S., and by the Local Agency pursuant to an appropriate ordinance or resolution duly passed and adopted by the Local Agency; and

WHEREAS, pursuant to Title I, Subtitle A, Section 1108 of the “Transportation Equity Act for the 21st Century” of 1998 (TEA-21) and/or the “Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users” (SAFETEA-LU) of 2005, and to applicable provisions of Title 23, United States Code, and the regulations promulgated thereunder, certain federal funds have been and will in the future be made available for the elimination of hazards at certain highway/railroad grade crossings on the Federal-aid Urban System and on roads not on any Federal-aid System, by the installation of warning devices, such projects being hereinafter referred to as the Section 130 Program.

WHEREAS, projects selected under the Section 130 Program are eligible for funding at the rate of 100% Federal-aid funds, provided the project costs are incurred in accordance with the conditions set forth herein, all without cost to the State and the Railroad Company, it being understood that such ratio applies only to such costs as are eligible for Federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%; and

WHEREAS, Federal regulations (23 CFR §§646.200 et.seq. (2010)) require the State to contract with railroad companies on Federal-aid projects involving use of railroad property or adjustment to railroad facilities; and

WHEREAS, the State is responsible for the administration of the Section 130 program and will act in the relative position of the Federal Highway Administration (FHWA) in reviewing and approving highway/railroad projects and in authorizing expenditure of Federal-aid funds on said projects; and

WHEREAS, the FHWA has determined that the use of a three-party contract is required in order for the State to fulfill its administrative responsibilities, including the responsibility of assuring that work is not performed prior to authorization by the State; and

WHEREAS, the Local Agency and the Railroad understand that, pursuant to 23 CFR §646.220, the State is responsible for issuing written authorization for all phases of the work described herein, and that the costs for such work will be eligible for reimbursement only if the work is performed after written authorization by the State; and

WHEREAS, the State may authorize advance preliminary engineering and/or the early purchasing of materials for the crossing, upon receipt of the Railroad's cost estimates (**Exhibit C and C-1**) for the Railroad Work, in the form of the Preliminary Engineering authorization letter, attached hereto as **Exhibit D**; and

WHEREAS, the State has initiated this Section 130 Program project numbered SRP 0063-032, 17623; and

WHEREAS, the project is not located on the State Highway System, but is under the legal jurisdiction of the Local Agency; and

WHEREAS, this contract provides for highway/railroad grade crossing improvements consisting of: installing flashing light signals, gates, bells, constant warning time circuitry, and concrete crossing surface as more specifically described herein; and

WHEREAS, the proposed improvements provided for herein are located on River Road, City of Grand Junction, Colorado, at the Railroad's track, DOT No. 254-295W, Railroad milepost 453.56 of the Green River Subdivision; and

WHEREAS, the Local Agency is responsible for complying with all terms and conditions of this contract for project SRP 0063-032, 17623; and

WHEREAS, the Railroad has agreed to be responsible for the installation and operation of the crossing warning devices installed hereunder; and

WHEREAS, the Railroad is adequately staffed and suitably equipped to undertake and satisfactorily complete the proposed improvements, and can perform the Railroad Work more advantageously and more cost effectively than the State; and

WHEREAS, it is in the public interest that the Railroad Work be performed by the Railroad's forces, on a Force Account basis; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, and the faithful performance thereof, the parties hereto promise and agree as follows:

**ARTICLE I
GENERAL PROVISIONS**

SECTION A. DEFINITIONS

1. FHWA - U. S. Department of Transportation Federal Highway Administration
2. CFR - Code of Federal Regulations
3. MUTCD - The Manual on Uniform Traffic Control Devices for Streets and Highways, Year 2003 Edition
4. PUC - Public Utilities Commission of Colorado
5. CRS - Colorado Revised Statutes
6. The term "Eligible Charges" shall include only those actual incurred costs, as provided in 23 CFR, Part 140, which are directly attributable to Project No. SRP 0063-032, 17623, including, without limitation, all applicable Federal additives which are incurred following written authorization by the State for the various work functions, except as provided in Article II, Section A.
7. The term "Railroad Work" shall consist of work done by Railroad forces and shall include the following:

Furnish and install flashing light signals, gates, bells, constant warning time circuitry, concrete crossing surface, and new cabin as well as all preliminary engineering design and review.

8. The term "Project" shall mean State Project No. SRP 0063-032, 17623.

SECTION B. EXHIBITS

The exhibits listed below are attached hereto and made a part of this contract:

- Exhibit A - Local Agency PUC Application or Order
- Exhibit B - Print Showing Crossing Location
- Exhibit C - The Railroad Company's Force Account Estimate
- Exhibit C-1 - The Railroad Company's Surface Estimate
- Exhibit D - Preliminary Engineering Authorization Letter
- Exhibit E - Civil Rights Exhibit

SECTION C. REFERENCE DOCUMENTS

The following are made a part of this contract by reference the same as if attached hereto including any supplements or amendments thereto dated prior to date of this contract:

23 CFR §§140.900 et.seq. (2010)

23 CFR §§646.101 et. seq. (2010)

23 CFR §§646.200 et. seq. (2010)

MUTCD, Dated 2003

SECTION D. DESIGN DATA

The Project provided herein consists generally of installing highway/railroad grade crossing improvements consisting of flashing light signals, gates, bells, constant warning time circuitry, and an new cabin located on River Road, City of Grand Junction, Colorado and the Railroad's track, DOT No. 254-295W, Railroad milepost 453.56 of the Green River Subdivision. Only those crossing warning device improvements detailed in the Railroad's estimate for this project are eligible for federal-aid participation under this contract.

ARTICLE II
COMMITMENTS ON THE PART OF THE LOCAL AGENCY

SECTION A. PRE-CONTRACT ADMINISTRATIVE TASKS

Certain administrative tasks are necessary to be performed prior to execution of this contract and the Local Agency agrees that the costs of those tasks, whether incurred by the Local Agency or the State shall be eligible for reimbursement from Project funds. Said tasks include, but are not limited to, attending pre-design meetings, help obtaining FHWA approvals and preparation of this contract. In the event Federal-aid funds are not made available, or are withdrawn for the project, the Local Agency shall reimburse the State for costs incurred by the State, subject to the limits provided in Article IV, Section B., in administering this contract.

SECTION B. PUC APPLICATION

The Local Agency will make application to the Public Utilities Commission requesting a PUC order providing for the improvement provided for herein. The Local Agency shall include a copy of this fully executed contract with the PUC application or submit it to the PUC as a late-filed exhibit. The Local Agency shall participate in any hearing before the PUC in this matter. The State's issuance of authorization to proceed with the Railroad Work shall be contingent upon the PUC approval.

SECTION C. UTILITIES

The Local Agency shall be responsible for obtaining proper clearance or approval, in writing, or formal agreement if utility adjustments are required, from utility companies which may be involved in the project. The Local Agency shall furnish the State with documentation of such clearance or approval prior to installation of the proposed improvements.

SECTION D. RIGHT-OF-WAY

The Local Agency shall provide written certification to the State that the proposed project will be constructed on existing right-of-way or that if right-of-way is acquired for the completion of the project that such acquisition was made in accordance with FHWA and State regulations.

SECTION E. COST ESTIMATES

Prior to execution of this contract, the Local Agency shall review the Railroad's plan and estimate (**Exhibits C and C-1**) for the Railroad Work defined in Article I, Section A, and shall notify the State, in writing whether the estimate is not acceptable as a basis for reimbursing the Railroad for eligible charges. The Local Agency shall also provide the State, if requested, with the Local Agency's cost estimate for construction zone signing, including detouring of traffic if required, pavement marking, and any other work the Local Agency will be responsible for in connection with this crossing improvement. The State will assist in determining these costs if requested by the Local Agency.

SECTION F. CROSSING IMPROVEMENT WORK

The Local Agency shall coordinate crossing improvement work and shall inspect the Railroad Work performed by Railroad forces. The Local Agency shall not initiate or authorize any crossing improvement work, including the Railroad Work until the State has issued the Notice to Proceed, Article IV, Section A, to the Local Agency and the Railroad. In the event that such work is initiated by the Local Agency prior to issuance of the notice to proceed, the Local Agency shall be solely responsible for all costs incurred for work performed prior to such issuance. The Local Agency shall be responsible for providing a traffic control plan that meets the criteria of the most current edition of the MUTCD. The Local Agency shall submit a traffic control plan to the Region 3 Utility Engineer before the Notice to Proceed will be issued.

SECTION G. RAILROAD COMPANY REIMBURSEMENT

Upon receipt of the Railroad's billings from the State's Railroad Coordinator, the Local Agency shall review and verify the billings for the Railroad Work performed hereunder to ensure that the billings are for eligible charges for work actually performed. After Local Agency verification, the designated representative from the Local Agency shall send written confirmation to the Region 3 Utility Engineer and the State's Railroad Program Manager that the work has been accomplished. The Railroad bill, whether a progress billing or a final billing shall be paid by the State within forty-five (45) days of the State's receipt of the Railroads bill, subject to the continued availability of sufficient encumbered funds therefore as provided in Article V, Section A. The Region 3 Utility Engineer will approve the bill for payment by the State to the Railroad.

SECTION H. MAINTENANCE

Upon completion of this Project, the Local Agency shall maintain the roadway approaches of River Road, to the crossing described in Article I, Section D. Roadway approaches shall be considered that section of roadway in the vicinity of the crossing beginning at the railroad crossing advance warning signs and extending to the ends of the railroad track cross ties. The Local Agency shall also be responsible for maintaining advance warning signs and, pavement markings. The Local Agency shall not be responsible for maintaining the Railroad's facilities.

SECTION I. INSPECTION AND AUDIT

The Local Agency shall, during all phases of the work, permit duly authorized agents and employees of the State and the FHWA to inspect the project and to inspect, review and audit the project records. The Local Agency shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and to make such materials available at all reasonable times during the construction of the project and for three (3) years from the date of final payment. Copies of such records shall be furnished by the Local Agency if requested.

ARTICLE III
COMMITMENTS ON THE PART OF THE RAILROAD COMPANY

SECTION A. CROSSING AT GRADE

1. Warning Devices. The Railroad agrees to accomplish by force account all the Railroad Work defined in Article I, Section A, as provided hereunder, provided that the Railroad shall obtain written notice to proceed from the State before it starts to perform or authorizes the performance of such railroad force account work. In the event that such work is initiated prior to the issuance by the State of the written notice to proceed, the Railroad shall be solely responsible for all costs incurred for such work.

2. Railroad Participation. The Railroad will voluntarily participate in the cost of the Surface project (**Exhibit C-1**) per Colorado Public Utilities Regulation 7211, (a).

7211 (a) A railroad, railroad corporation, rail fixed guideway, transit agency, or the owner of the track shall maintain the grade crossing surface from the outside end of the tie to the outside end of the tie at single track crossings. The roadway authority shall bear the cost of the materials to maintain, repair, or replace the crossing surface. The railroad, railroad corporation, rail fixed guideway, transit agency, or owner of the track shall bear the cost of installation, maintenance, repair, or replacement of the crossing surface. Railroads, railroad corporations, rail fixed guideways, transit agencies, and owners of the track shall promptly assist any roadway authority to the extent required to maintain the roadway surface between tracks at multiple track locations.

The Railroad's participation is labor, \$41,889 in **Exhibit C-1**.

3. Plans and Force Account Estimate. Prior to execution of this contract, the Railroad shall submit a general plan showing the crossing, the type(s) and location of crossing warning devices to be installed, and the approximate approach lengths and/or warning time for the devices along with an itemized cost estimate (**Exhibit C**) for the proposed Railroad Work to the Local Agency and the State. Said estimate shall take into account the value of all existing material that can be salvaged. The Local Agency shall be afforded the opportunity to inspect salvaged material. The cost estimate shall conform to the requirements of 23 CFR, Part 140, Subpart I, and shall be of the form prescribed in 23 CFR, Part 646, Subpart B.

4. Changes in the Railroad Work. No change shall be made in the Railroad Work which will alter the character or scope of the Railroad Work without the prior written concurrence from the Local Agency and prior written authorization by the State. The Railroad shall be responsible for cost increases resulting from unauthorized changes in the Railroad Work.

SECTION B. COORDINATION

After receipt of the notice to proceed from the State, the Railroad shall notify the Local Agency and the State at least ten working days in advance of beginning the Railroad Work so that the Local Agency can arrange for construction zone traffic control and inspection. The Railroad shall also furnish the Local Agency and the State a copy of the completion notice the Railroad furnishes to the PUC.

SECTION C. THE RAILROAD'S BILLINGS TO THE STATE

Progress billings for "eligible charges" for the Railroad Work shall be acceptable in minimum amounts of \$500 for each billing. The Railroad shall provide its final and complete billings of all incurred costs to the State's Railroad Program Manager within one-year following completion of the Railroad Work as described in Article I, Section C. The billing for such work shall reference the Project No. SRP 0063-032, 17623. EACH INVOICE SHALL SPECIFICALLY STATE THE WORK PERFORMED AND SHALL BE THE SAME AS THE WORK AUTHORIZED. IF PAYMENT IS NOT MADE WITHIN 45 DAYS OF THE STATE'S RECEIPT OF AN INVOICE, THE STATE SHALL PAY INTEREST TO THE RAILROAD NOT TO EXCEED 1% PER MONTH UNTIL PAYMENT IS MADE SUBJECT TO THE TERMS AND CONDITIONS OF SECTION 24-30-202 (24), C.R.S. The State shall provide the Railroad with written notice of the completion of the work, thus marking the beginning of the one-year period. If the Railroad does not present the final bill to the State's Railroad Program Manager within that one-year time period, as required by 23 CFR §140.922 of, then previous payments to the Railroad for the Railroad Work may be considered as final and complete reimbursement for that work, and the State may close out the project with no further financial obligation. Railroad's billings for incurred costs for the Railroad Work shall be audited by the State for compliance with 23 CFR, Part 140, Subpart 1.

SECTION D. MAINTENANCE

Upon completion of the work required under this contract, the Railroad shall thereafter operate, maintain, repair and keep its roadbed, track and appurtenances, including the railroad grade crossing warning devices installed hereunder, in proper working condition. In the event any federal, state or other funds become available for use in the operation, maintenance, or repair of the crossing warning devices installed hereunder, the Railroad shall be free to apply for such funds.

SECTION E. CIVIL RIGHTS

The Railroad, in the prosecution of the work herein prescribed, will adhere to the requirements of the Civil Rights (**Exhibit E**), and will include the provisions of the said Civil Rights Exhibit in every subcontract; including procurement of materials and leases of equipment, unless exempt by the regulations, orders or instructions issued pursuant thereto.

**ARTICLE IV
COMMITMENTS ON THE PART OF THE STATE**

SECTION A. PROJECT ADMINISTRATION

1. Approvals by the State. The State, acting in the relative position of the FHWA, shall be responsible for approving the various work functions relative to this Project. The work functions include, but are not limited to, preliminary engineering, right-of-way, utility adjustments, Railroad Work, and work by the Local Agency.

2. Notice to Proceed. The State's Regional Utility Engineer, Region 3, shall issue written notice to proceed for the various work functions as may be required. Any work function performed by the Local Agency for the Railroad prior to the issuance of the notices to proceed shall not be eligible for reimbursement from Federal-aid funds other than advance preliminary engineering as may be authorized in writing by the State's Chief Engineer (**Exhibit D**).

3. Contract Management System. The provisions of Article V, Section L, relating to the requirements of the Contract Management System, are the sole responsibility of the State and not the Railroad or the Local Agency.

SECTION B. STATE'S SUPPORT SERVICES AND CHARGES

The State shall perform the support services necessary for the approval and administration of this contract. These services may be performed in preparation for any conditions or requirements of this contract, including prior FHWA approval of project work. At the request of the Local Agency, the State may also provide other assistance under this contract as agreed in writing. However, in the event that Federal funding is either not made available or is withdrawn for this contract, or if the Local Agency terminates this contract prior to Project completion for any reason, then all actual incurred costs of such services and assistance provided by the State shall be at the sole expense of the Local Agency. The Local Agency shall reimburse the State the actual costs incurred by the State in performing such assistance.

**ARTICLE V
ADDITIONAL PROVISIONS**

SECTION A. FINANCIAL PROVISIONS

1. Contract Amount. The total encumbrance for this Project is \$298,412.00. Federal funds are 100% of the amount. The State's maximum financial obligation for all Eligible Charges and other work costs under this contract is currently limited to that total encumbrance amount. The State will budget, appropriate and make funds available to pay the Railroad for additional work on this Project as long as the additional work is legitimate and the Railroad has

communicated with the State Project Engineer to allocate more funds. The Railroad must communicate with the State regarding the allocation of more funds before the work is performed if practicable. Additional work is work that falls under the definition of “Railroad Work” contained in Article I(A)(7) and includes increases in costs of “Railroad Work” due to labor and materials. It is specifically agreed that Railroad labor costs can include as additives, prorated equipment costs as specified in 23 CFR 140.910. The State shall not be responsible for any unauthorized extra work. Extra work is work that does not fall under the definition of “Railroad Work” contained in Article I (A) (7). If Project costs under-run the estimated total budget, the Federal portion of such under-run shall be reallocated within the framework of the State’s Section 130 Program as mutually agreed upon by the State and the FHWA.

SECTION B. REPRESENTATIVES

1. To Local Agency:

Tim Moore
Director, Public Works and Planning
City of Grand Junction
250 N. 5th Street
Grand Junction, CO 81501
Phone: 970-244-1557; fax: 970-256-4022

2. To Railroad:

Kelly Abaray
Manager – Industry and Public Projects
Union Pacific Railroad Company
1400 West 52nd Avenue
Denver, CO 80221-1589
Phone: 303-964-4099; fax: 303-964-4054

3. To State:

Dwight Burgess, Project Manager
Colorado Department of Transportation
222 South 6th Street
Grand Junction, CO 81501
Phone: 970-683-6209 fax: 970-683-6205

4. Billings Sent To:

Bill Snowden
State Railroad Coordinator
Colorado Department of Transportation
4201 East Arkansas Avenue. 3rd Floor
Denver, CO 80222
Phone: 303-757-9268; fax: 303-757-9219

SECTION C. NO BENEFITS TO THE RAILROAD

In accordance with 23 CFR §646.210 (b)(1) (2009), it is determined that the improvements herein provided will not result in ascertainable benefits to the Railroad and, consequently, liability for the cost thereof shall not be required of the Railroad.

SECTION D. CANCELLATION

In the event delays or difficulties arise in securing necessary approvals, or in acquiring necessary right of way, or in settling damages or damage claims, or for any other reason, which, in the opinion of the State render it impracticable to utilize funds from the current appropriation for the construction of the project, then at any time before actual construction is started pursuant to proper approval or authority, the State may serve formal notice of cancellation upon the Railroad and this contract shall thereupon become null and void. In the event of any such cancellation, the State shall reimburse the Railroad for all related preliminary engineering costs incurred by the Railroad prior to the effective cancellation date.

SECTION E. FUTURE USE OF WARNING DEVICES

If, hereafter, by agreement, negotiation, or order of competent public authority, the grade crossing warning devices are rendered unnecessary, undesirable or improper by closing of said crossing, by relocation, by separation of grades, or by developments or improvements in crossing protection or otherwise, such devices shall be removed, and if by mutual agreement the grade crossing warning devices are deemed suitable for reuse at another location, they shall be reinstalled at that location by the Railroad under a separate agreement for relocation between the State, Local Agency, and the Railroad, as approved by the PUC. If the Local Agency widens the highway, or makes any changes therein which require relocation of said devices, the Local Agency will bear the entire cost of making such changes. Whenever by reason of Railroad changes said devices are removed, relocated or replaced, the entire cost thereof shall be borne by the Railroad.

SECTION F. TERM

The term of this contract, except for the provisions regarding roadway maintenance and future use of warning devices, shall continue through completion and final acceptance of this project by the State and the FHWA. The covenants regarding roadway maintenance and future use of warning devices constructed under this contract shall remain in effect in perpetuity or until such time as the Local Agency or the Railroad is, by law or otherwise, relieved of such responsibility.

SECTION G. FEDERAL AID PROJECTS

It is understood that the project herein contemplated shall be financed from funds made available by the federal government and expended under federal regulations; that all plans, estimates of cost, specification, authorizations, awards of contracts, acceptances of work and

procedures in general are subject at all times to all federal laws, rules, regulations, orders and approvals applying to federal projects.

SECTION H. SUCCESSORS AND ASSIGNS

All of the covenants and provisions hereof shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

SECTION I. SIGNATURE AUTHORITY

The Railroad represents and warrants that it has taken all actions that are necessary or that are required by its procedures, bylaws, or applicable law, to legally authorize the undersigned signatory to execute this contract on behalf of the Railroad and to bind the Railroad to its terms.

SECTION J. EXCEPTIONS TO SPECIAL PROVISIONS

1. The parties hereto agree that the final sentence of paragraph 4, Independent Contractor. (4 CCR 801-2) of Section K., Special Provisions, is replaced with the following:

Contractor shall provide and keep in force such types of Workers' Compensation Insurance, in the amounts required by law (and provide proof of such insurance, if such insurance is required by law, when requested by the State) and Unemployment Compensation Insurance, if required by law, in the amounts required by law, and shall be solely responsible for the acts of the Contractor, its employees, and agents.

2. The parties hereto agree that the first sentence of paragraph 6, Choice Of Law, of Section K., Special Provisions, is replaced with the following:

The laws of the State of Colorado and rules and regulations issued pursuant thereto, to the extent not preempted by federal law, shall be applied in the interpretation, execution, and enforcement of this contract.

3. The parties hereto agree that paragraph 7, Vendor Offset. (CRS §§ 24-30-202 (1) & 24-30-202.4) shall apply to this contract, to the extent not preempted by federal law.

SECTION K. SPECIAL PROVISIONS Revised 01/01/09

1. Controller's Approval. (CRS §24-30-202(1)).

This contract shall not be valid until it has been approved by the Colorado State Controller or designee.

2. Fund Availability. (CRS §24-30-202(5.5)).

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. Governmental Immunity.

No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

4. Independent Contractor.

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

5. Compliance with Law.

Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

6. Choice of Law.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.

7. Binding Arbitration Prohibited.

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

8. Software Piracy Prohibition. (Governor's Executive Order D 002 00).

State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

9. Employee Financial Interest/Conflict Of Interest. (CRS §§24-18-201 and 24-50-507).

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

10. Vendor Offset. (CRS §§24-30-202 (1) and 24-30-202.4).

Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(a)** unpaid child support debts or child support arrearages; **(b)** unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; **(c)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(d)** amounts required to be paid to the Unemployment Compensation Fund; and **(e)** other unpaid debts owing to the State as a result of final agency determination or judicial action.

11. Public Contracts For Services. (CRS §8-17.5-101,102).

Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ

or contract with an illegal alien to perform work under this contract. Contractor **(a)** shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, **(b)** shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, **(c)** shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and **(d)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

12. Public Contracts With Natural Persons. (CRS §24-76.5-101).

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she **(a)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(b)** shall comply with the provisions of CRS §24-76.5-101 et seq., and **(c)** has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

SECTION L. SPECIAL PROVISIONS FOR STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this § L applies.

Contractor agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

Contractor's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Contract, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this Contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a

final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Contract term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Colorado Department of Transportation, and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final Evaluation, Review and Rating by: **(a)** filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or **(b)** under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon showing of good cause.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

STATE OF COLORADO
JOHN W. HICKENLOOPER, GOVERNOR

UNION PACIFIC RAILROAD COMPANY

By *Penelope Hutto*
Chief Engineer
Colorado Department of Transportation

by *John Horvath*
Title **AVP ENGINEERING**

Attest *Maureen Fong Hinners*
1400 Douglas Street
Omaha, NE 68179
**Maureen Fong Hinners
Assistant Secretary**



Attest *Stephanie Lum*

CITY OF GRAND JUNCTION, COLORADO
By *Sam Kadus*
Title *CITY MANAGER*
250 N. 5th Street
Grand Junction, CO 81501

APPROVED:
JOHN SUTHERS
Attorney General

By *Kathryn E. Young*
Kathryn Young
Assistant Attorney General

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, sign it. Except for preliminary engineering review performed by the Railroad the Local Agency or their contractor as set forth in this Contract, the Railroad is not authorized to begin performance until the Contract is signed and dated below. Except for preliminary engineering review performed by the Railroad, Local Agency or its contractors as set forth in this Contract, if performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

State Controller
David J. McDermott
By *David J. McDermott*
CDOT Controller

Date *6/9/11*

EXHIBIT A

To Contract

Local Agency PUC Application

or Order

Decision No. C10-1039

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 10A-560R

IN THE MATTER OF CITY OF GRAND JUNCTION, FOR THE AUTHORITY TO MAKE ROADWAY CROSSING IMPROVEMENTS AT THE AT-GRADE CROSSING OF RIVER ROAD AND UNION PACIFIC RAILROAD RAIL SPUR.

**COMMISSION ORDER DEEMING APPLICATION
COMPLETE AND GRANTING APPLICATION**

Mailed Date: September 23, 2010
Adopted Date: September 22, 2010

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an application (Application) filed by the City of Grand Junction (Grand Junction) on August 16, 2010 seeking authority to install new flashing light signals with automatic gate arms, bells, constant warning time circuitry, new cabin, and new concrete crossing surface at the crossing of River Road with the Union Pacific Railroad Company (UPRR) spur serving Suncor Energy and National Propane, National Inventory No. 254295W, in Grand Junction, Mesa County, State of Colorado.

2. Notice of the Application was provided by the Commission to all interested parties, including adjacent property owners pursuant to § 40-6-108(2), C.R.S., on August 18, 2010.

3. On August 31, 2010, UPRR filed an Entry of Appearance and Notice of Intervention. UPRR is not opposing or contesting the granting of the Application, but rather indicates that it will participate in any hearing regarding the Application.

Submitted to Colorado PUC E-Filings System

4. Grand Junction omitted specific information from the Application including a detailed plan and profile drawing. The configuration and grades of River Road are not being changed as part of this project; only work necessary to install the active warning will occur. Our Rule 4 *Code of Colorado Regulations* (CCR) 723-7-7204(c) allows an applicant to omit required information the applicant believes is excessive compared to the scope of the proposed project provided the application specifically justifies the omission. Given the scope of this project, we agree with Grand Junction that the detailed plans and profile drawing are not necessary for this Application.

5. The Commission has reviewed the record in this matter and deems that the Application is complete within the meaning of § 40-6-109.5, C.R.S.

6. Now being fully advised in the matter, we grant the Application.

B. Findings of Fact

7. The Commission gave notice to all interested parties, including the adjacent property owners. No intervention was received opposing the Application.

8. Grand Junction is proposing to install active warning at the crossing of River Road with the UPRR spur serving Suncor Energy and National Propane consisting of flashing lights, gates, bells, constant warning time circuitry, and a new concrete crossing surface. Grand Junction is proposing these crossing upgrades given that bulk gasoline comes in by rail service through this crossing six days per week, the speed of traffic on River Road, and the significant heavy vehicle usage of River Road.

9. Current average daily traffic volumes on River Road are 2,200 vehicles per day (VPD) at a measured 85th percentile speed of 50 miles per hour and 44 percent heavy vehicle usage. Vehicle use of River Road is projected to increase to 3,600 VPD by 2035. There are

currently daily deliveries of bulk gasoline on the spur with two train movements per day through the crossing six days per week. There are no projected increases or decreases in train traffic projected within the next five years.

10. Grand Junction proposes to start construction in March 2011 and be complete by June 2011. Grand Junction will be required to inform the Commission in writing that the crossing upgrades and signal installation work is complete and operational within ten days of completion. Based on the dates provided by Grand Junction, the Commission will expect this letter by June 30, 2011. However, the Commission does understand this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule. Grand Junction shall also be required to file signed copies of the Construction and Maintenance Agreement for the crossing prior to the start of construction. We will expect this agreement to be filed by February 28, 2011 and expect that construction at the crossing will not begin until the signed agreement has been filed.

11. We will require UPRR to file a copy of the crossing inventory form to show the updated information for this crossing. The Commission will expect this information to be filed with the completion of the crossing work by June 30, 2011.

12. Grand Junction estimates the cost of the crossing work at River Road at approximately \$340,301. Federal Section 130 funds will pay for 100 percent of the costs.

13. Once construction of the crossing is complete, UPRR will maintain, at its expense, all railroad track, appurtenances, crossing surfaces, and warning devices and Grand Junction will maintain the roadway approaches to the crossing, advance working signs, and pavement markings, at its expense, pursuant to the Commission's Rules at 4 CCR 723-7-7211(a) and (c) respectively.

C. Conclusions

14. The Commission has jurisdiction in this matter under §§ 40-4-106(2)(a) and (3)(a), C.R.S.

15. No intervenor that filed a petition to intervene or other pleading contests or opposes the Application.

16. Because the Application is unopposed, the Commission finds that it will determine this matter upon the record, without a formal hearing under § 40-6-109(5), C.R.S., and Commission Rules of Practice and Procedure, 4 CCR 723-1-1403.

17. We find that good cause exists to grant the Application consistent with the above discussion in paragraphs 8 through 13.

II. ORDER**A. The Commission Orders That:**

1. The application (Application) filed by the City of Grand Junction (Grand Junction) on August 16, 2010 seeking authority to install new flashing light signals with automatic gate arms, bells, constant warning time circuitry, new cabin, and new concrete crossing surface at the crossing of River Road with the Union Pacific Railroad Company (UPRR) spur serving Suncor Energy and National Propane, National Inventory No. 254295W, in Grand Junction, Mesa County, State of Colorado is deemed complete within the meaning of § 40-6-109.5, C.R.S.

2. The Intervention by Right of UPRR is noted.

3. The Application is granted.

4. Grand Junction is authorized and ordered to proceed with the installation of active warning equipment consisting of flashing lights, gates, bells, and constant warning time circuitry

with a new concrete crossing surface at the crossing of River Road with the UPRR spur serving Suncor Energy and National Propane in Grand Junction, Mesa County, Colorado.

5. Grand Junction shall maintain the roadway approaches up to the end of tie, pavement markings, and advance warning signs at the crossing at its expense pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-7-7211(c).

6. UPRR shall maintain its track, rails, ties appurtenances, crossing surface, and active warning equipment at its expense pursuant to Rule 4 CCR 723-7-7211(a).

7. Grand Junction shall inform the Commission in writing that the active warning installation and surface installation are complete and operational within ten days of completion. The Commission will expect this letter by June 30, 2011. However, the Commission understands this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule.

8. Grand Junction shall file copies of the signed Construction and Maintenance Agreement prior to the start of any crossing construction. Based on the proposed project dates, we expect this filing will be made no later than February 28, 2011.

9. UPRR will be required to file a copy of the crossing inventory form for the updated crossing at the end of the project on or about June 30, 2011.

10. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Order.

11. The Commission retains jurisdiction to enter further orders as necessary.

12. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 22, 2010.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

COMMISSIONER JAMES K. TARPEY
ABSENT.

EXHIBIT B

To Contract

Print Showing Crossing Location

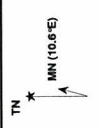
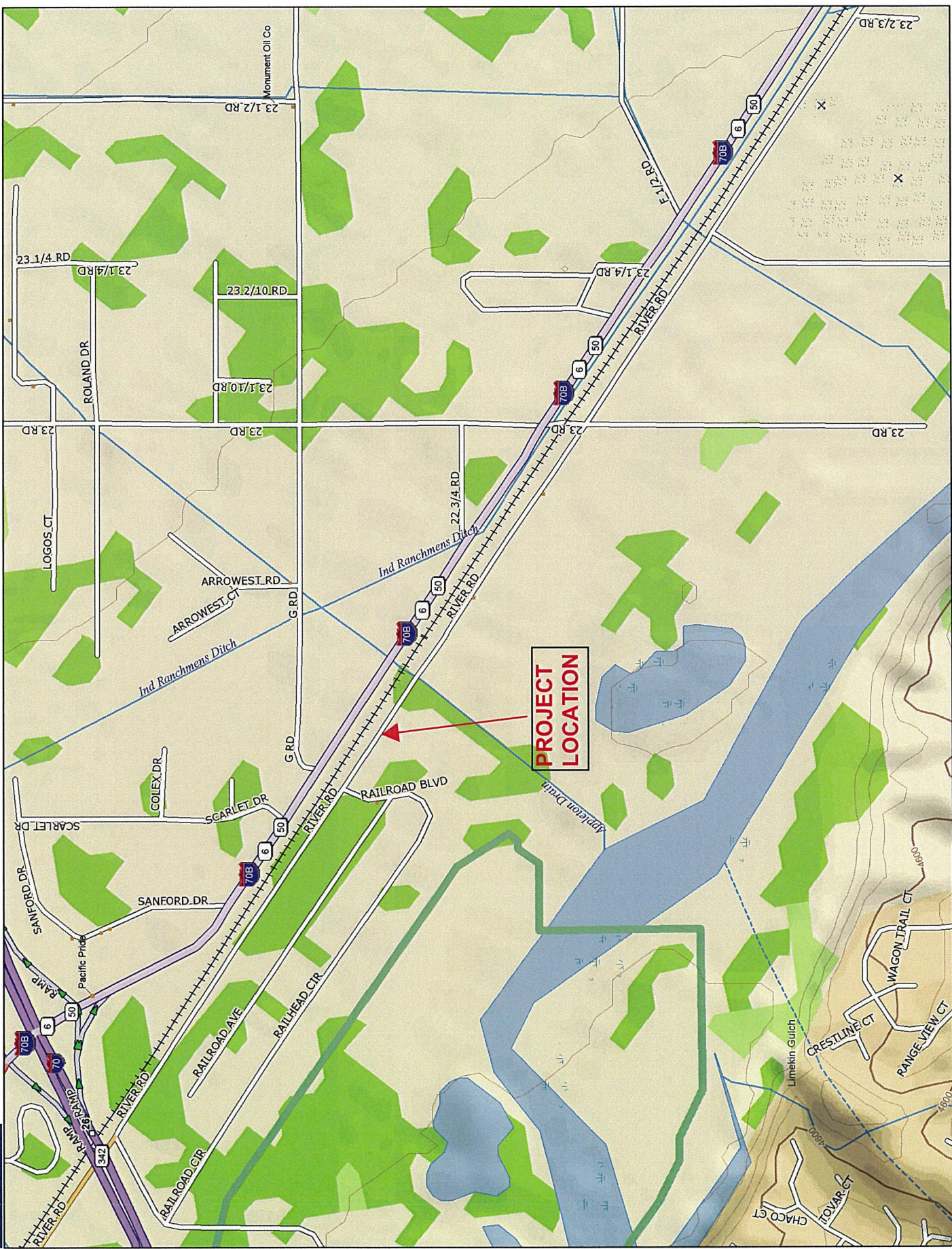


EXHIBIT C

To Contract

Railroad Company's Force Account Estimate

DATE: 2011-01-20

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

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2011-07-21

DESCRIPTION OF WORK:
 INSTALL AUTOMATIC FLASHING LIGHT CROSSING SIGNALS
 WITH GATES AT GRAND JUNCTION, CO. RIVER ROAD M.P. 453.56
 ON THE GREEN RIVER SUB. DOT #254295W
 WORK TO BE PERFORMED BY RAILROAD WITH EXPENSE AS BELOW:
 SIGNAL/TRACK - FEDERAL - 100%

PID: 68837 AWO: 05328 MP, SUBDIV: 453.56, GREENRIVER
 SERVICE UNIT: 14 CITY: GRAND JUNCTION STATE: CO

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
ENGINEERING WORK							
ENGINEERING			3303		3303		3303
LABOR ADDITIVE 105.61%			8530		8530		8530
SIG-HWY XNG			4821		4821		4821
TOTAL ENGINEERING			16654		16654		16654
SIGNAL WORK							
BILL PREP			900		900		900
CONTRACT				5387	5387		5387
LABOR ADDITIVE 105.61%			38897		38897		38897
MATL STORE EXPENSE				7	7		7
METER SERVICE				30000	30000		30000
PERSONAL EXPENSES				20250	20250		20250
ROCK/GRAVEL/FILL				700	700		700
SIGNAL			35931	53875	89806		89806
TRANSP/IB/OB/RCLW CONTR				9269	9269		9269
TOTAL SIGNAL			75728	119488	195216		195216
TRACK & SURFACE WORK							
ENVIRONMENTAL-PERMIT				1	1		1
FIELD WELD			150		150		150
LABOR ADDITIVE 142.44%			2528		2528		2528
MATL STORE EXPENSE				681	681		681
OSM				4139	4139		4139
OTM			2795	8738	11533		11533
WELD				762	762		762
TOTAL TRACK & SURFACE			5473	14321	19794		19794
LABOR/MATERIAL EXPENSE			97855	133809			
RECOLLECTIBLE/UPRR EXPENSE					231664	0	
ESTIMATED PROJECT COST							231664
EXISTING REUSEABLE MATERIAL CREDIT					0		
SALVAGE NONUSEABLE MATERIAL CREDIT					0		
RECOLLECTIBLE LESS CREDITS							

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

EXHIBIT C-1

To Contract

Railroad Crossing Surface Material Estimate

DATE: 2011-01-20

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

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2011-07-21

DESCRIPTION OF WORK:
 2010 RECOLLECTIBLE PROJECT
 GREEN RIVER SUB / M.P. 453.56
 GRAND JUNCTION, CO. / RIVER ROAD / DOT #254295W
 INSTALL 64 TF OF CONCRETE CROSSING SURFACE WITH RAIL AND TIES
 COST: MATERIAL 100% CODOT / LABOR 100% UPRR
 ESTIMATED USING STANDARD RAILROAD LABOR ADDITIVES - 154%

PID: 68838 AWO: 05339 MP,SUBDIV: 453.56, GREENRIVER
 SERVICE UNIT: 14 CITY: GRAND JUNCTION STATE: CO

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
ENGINEERING WORK							
ENGINEERING			5638			5638	5638
LABOR ADDITIVE 154%			8682			8682	8682
TOTAL ENGINEERING			14320			14320	14320
SIGNAL WORK							
LABOR ADDITIVE 154%			1634			1634	1634
SALES TAX				7	7		7
SIGNAL			1061	175	175	1061	1236
TOTAL SIGNAL			2695	182	182	2695	2877
TRACK & SURFACE WORK							
BALAST	2.00	CL	717	1533	1533	717	2250
BILL PREP				900	900		900
DRAINAGE IMPROVEMENTS				5000	5000		5000
ENVIRONMENTAL PERMITS				1	1		1
EQUIPMENT RENTAL W/OPER				5000	5000		5000
FIELD WELD			257			257	257
FOREIGN LINE FREIGHT				266	266		266
HOME LINE FREIGHT				900	900		900
LABOR ADDITIVE 154%			12074			12074	12074
MATL STORE EXPENSE				438	438		438
OTM			1057	6876	6876	1057	7933
RAIL	160.00	LF	461	3116	3116	461	3577
RDXING	64.00	TF	2040	13278	13278	2040	15318
ROADWAY APPROACH WORK				7500	7500		7500
SALES TAX				1213	1213		1213
SAW CUT STREET APPROACH				5000	5000		5000
TRAFFIC CONTROL				5000	5000		5000
TRK-SURF,LIN			2638			2638	2638
TRUCK IN BALLAST				5000	5000		5000
WELD			2736	636	636	2736	3372
XTIE	90.00	EA	2894	4909	4909	2894	7803
TOTAL TRACK & SURFACE			24874	66566	66566	24874	91440
LABOR/MATERIAL EXPENSE			41889	66748			
RECOLLECTIBLE/UPRR EXPENSE					66748	41889	
ESTIMATED PROJECT COST							108637
EXISTING REUSEABLE MATERIAL CREDIT							0
SALVAGE NONUSEABLE MATERIAL CREDIT							0
RECOLLECTIBLE LESS CREDITS							

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

EXHIBIT D

To Contract

Preliminary Engineering Authorization Letter

STATE OF COLORADO

DEPARTMENT OF TRANSPORTATION
Traffic Engineering Branch
4201 East Arkansas Avenue, 3rd Floor
Denver, Colorado 80222
(303) 757-9654 Voice
(303) 757-9219 Fax



November 23, 2009

Kelly Abaray
Manager, Industry and Public Projects
Union Pacific Railroad
1400 West 52nd Avenue
Denver, CO 80221-1529

Re: Preliminary Engineering Authorization

Dear Ms. Abaray:

This letter is the State's authorization to the UPRR, pursuant to 23 CFR 646, Subpart B, to perform the preliminary engineering services required for the following CDOT project(s):

SA 17263, SRP 0063-032, UPRR - River Road, Grand Jct., Mesa County
SA 17624, SRP 0063-033, UPRR - 17 Road in Fruita, Mesa County
SA 17625, SRP 0402-077, UPRR - US 40 West of Hayden, Routt County
SA 17695, SRP C030-037 UPRR - Weld County RD 22
SA 17696 SRP C030-038 UPRR - Weld County RD 40
SA 17697 SRP C030-039 UPRR - Weld County RD 42

Subject to the following conditions:

- a. The authorization is for the maximum amount of \$5,000.00 for each project and only for engineering services after the date of this notice. Services performed prior to the date of this notice are not reimbursable by the State;
- b. The maximum amount shall not be exceeded without first obtaining further authorization, in writing, from the State. The authorization amount in the above paragraph a. shall be included in the Railroad's written cost estimate for the project.
- c. This authorization is for preliminary engineering only and is not for the actual performance of the project installation work.

Under section 7-101.06 of the State's Procurement Code, 1 CCR 101.9 (4/87), the preliminary engineering that is an essential "pre-contract cost" can be authorized prior

to the execution to the contract for the project, but only if the contract is subject to the stated conditions below.

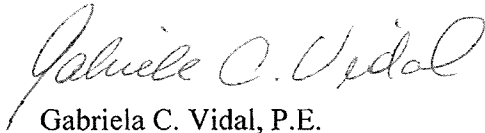
Preliminary engineering shall mean the work necessary to produce construction plans, specifications, and estimates to the degree of completeness required for undertaking construction thereunder, including locating, surveying, designing, and related work.

An itemized estimate that is developed as a result of preliminary engineering services shall take into account the value of all existing material that can be salvaged and/or scrapped. If there is no salvageable and/or scrapped material that has value, the estimate shall so state. The State shall have a reasonable opportunity to inspect the salvaged and/or scrapped material.

Eligible costs include only those actual incurred costs, as provided in 23 CFR 140, Subpart I.

If you have any questions, please contact Bill Snowden at 303-757-9268.

Sincerely,

A handwritten signature in cursive script that reads "Gabriela C. Vidal".

Gabriela C. Vidal, P.E.
Branch Manager

cc: Dwight Burgess, R3
Rocky Baker, R3 Business Office
Rudy Sipnefski, R4
Bryan Shafer, R4 Business Office
File

EXHIBIT E

To Contract

Civil Rights Exhibit

CIVIL RIGHTS EXHIBIT

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees and successors in interest, agree as follows:

A. Compliance with Regulations. The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

B. Nondiscrimination. The Contractor, with regard to the work performed by it after ward and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractors' obligations under this contract and the Regulations relative to nondiscrimination of the ground of race, color, sex, mental or physical handicap or national origin.

D. Information and Reports. The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate, and shall set forth what efforts have been made to obtain the information.

E. Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

- (1) Withholding of payments to the Contractor under the contract until the Contractor complies, and/or;
- (2) Cancellation, termination or suspension of the contract, in whole or in part.

F. Incorporation of Provisions. The Contractor will include the provisions of Paragraphs A through F in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter such litigation to protect the interests of the State and, in addition, the Contractor may request FHWA to enter into such litigation to protect the interest of the United States.

RESOLUTION NO. 23-11

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN
A CONTRACT WITH THE COLORADO DEPARTMENT OF TRANSPORTATION AND
THE UNION PACIFIC RAILROAD FOR THE INSTALLATION OF RAIL CROSSING
WARNINGS AT THE RAILHEAD SPUR (RAILROAD MILEPOST 453.56)
IN THE CITY OF GRAND JUNCTION**

RECITALS:

In 2007 the City applied for Federal rail hazard elimination grant funding through the Colorado Department of Transportation (CDOT) to improve the safety of the Railhead crossing on River Road. In late 2010 the City was notified that grant funds were awarded to the crossing project. The anticipated cost of construction of the improvements is \$392,000.00.

Pursuant to the terms of the grant agreement the City must enter into a contract for the funding of the lights, signals, gates and bells and the supporting infrastructure for the crossing project. The total construction cost of the crossing improvements are to be funded as follows.

The total funding in the amount of \$392,000 consists of \$372,000 Federal and railroad funds and \$20,000 City funds for temporary traffic control and permanent signing and striping.

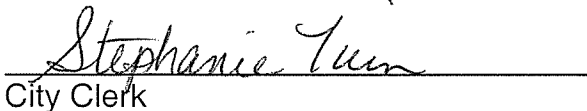
The City Council hereby approves and authorizes the City Manager to sign the contract with the Colorado Department of Transportation and the Union Pacific Railroad for the improvements described herein and detailed in the contract agreement.

PASSED AND APPROVED this 2nd day of May, 2011

Attest:



President of the Council



City Clerk