

UPR07NFS

TYPE OF RECORD:

PERMANENT

CATEGORY OF RECORD:

CONTRACT

NAME OF CONTRACTOR:

UNION PACIFIC RAILROAD COMPANY

PURPOSE:

RIVERSIDE PARKWAY 4<sup>TH</sup> STREET RAMP  
OVERPASS

ADDRESS:

RAILROAD MILE POST 0.31 ON ITS NORTH  
FORK SUBDIVISION

CITY DEPARTMENT:

PUBLIC WORKS AND PLANNING

YEAR:

2007

EXPIRATION DATE:

NONE

DESTRUCTION DATE:

NONE



March 28, 2007

UPRR Folder No. 2400-20

**MR JIM SHANKS  
CITY OF GRAND JUNCTION  
250 N 5<sup>TH</sup> ST  
GRAND JUNCTION CO 81501-2668**

Dear Mr. Shanks:

Attached for your file is your original copy of an New Public Road Crossing Overpass Agreement, fully executed on behalf of the Railroad Company.

You are hereby authorized to proceed with the work upon proper notification to the Railroad Company's Manager of Track Maintenance. In accordance with the terms of the above agreement, 10 days advance notification upon entering the Railroad Company's right of way shall be given to the following office:

*Dave Peterson  
Senior Manager Public Projects  
Union Pacific Railroad Company  
1400 Douglas Street, MS 0910  
Omaha, NE 68179-0910  
Phone: 402-544-5891  
Fax: 402-233-3079*

When you or your representative enter the Railroad Company's property, a copy of this fully executed document must be available at the site to be shown on request to any Railroad employee or official. Should you have any questions, please contact me.

Sincerely Yours,

  
PAUL G. FARRELL  
Senior Manager Contracts  
phone: (402) 544-8620  
e-mail: pgfarrell@up.com



**Real Estate**

**UNION PACIFIC RAILROAD**  
1400 Douglas Street, Stop 1690  
Omaha, Nebraska 68179-1690  
fx. (402) 501-0340



April 4, 2007

UPRR Folder No. 2400-20

**MR JAMES SHANKS  
CITY OF GRAND JUNCTION  
2529 HIGH COUNTY COURT  
GRAND JUNCTION CO 81501**

Dear Mr. Shanks:

Attached is your original copy of a Supplemental Agreement, fully executed on behalf of the Railroad Company.

In order to protect the Railroad Company's property as well as for safety reasons, it is imperative that you notify the Railroad Company's Manager of Track Maintenance and the Communications Department:

*Dave Peterson*  
*Senior Manager Public Projects*  
*Union Pacific Railroad Company*  
*1400 Douglas Street, MS 0910*  
*Omaha, NE 68179-0910*  
*Phone: 402-544-5891*  
*Fax: 402-233-3079*

Fiber Optics Hot Line  
1-800-336-9193

If you have any questions, please contact me.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Paul G. Farrell", written over a circular stamp or seal.

PAUL G. FARRELL  
Senior Manager Contracts  
phone: (402) 544-8620  
e-mail: [pgfarrell@up.com](mailto:pgfarrell@up.com)



**Real Estate**

**UNION PACIFIC RAILROAD**  
1400 Douglas Street, Stop 1690  
Omaha, Nebraska 68179-1690  
fx. (402) 501-0340

UPRR Folder No.: 2400-20

UPRR Audit No.: 243575

## SUPPLEMENTAL AGREEMENT

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**THIS SUPPLEMENTAL AGREEMENT** is made as of the 4<sup>th</sup> day of April, 2007, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, or its predecessor in interest, (hereinafter the Railroad) and the **CITY OF GRAND JUNCTION**, a municipal corporation of the State of Colorado with a mailing address at 250 North 5<sup>th</sup> Street, Grand Junction, CO 81501-2668 (hereinafter the City).

### RECITALS:

By instrument dated March 28, 2007, the parties hereto or their predecessors in interest (if any), entered into an agreement (herein the "Basic Agreement") identified as Railroad's Audit No. 243575, covering the construction, maintenance and use of the new 4th Street Ramp Overpass grade separation crossing located at Railroad Mile Post 0.31 on its North Fork Subdivision in Grand Junction, Mesa County, Colorado.

The parties now desire to modify the Basic Agreement by amending Article 7 of the Basic Agreement to include Railroad engineering review costs.

### AGREEMENT:

**NOW, THEREFORE, IT IS AGREED** by and between the parties hereto as follows:

#### SECTION 1 - AMENDMENT OF ARTICLE 7 OF THE BASIC AGREEMENT

Effective as of March 28, 2007, Article 7 of the Basic Agreement, shall be, and hereby is amended to read as follows:

- A. The Railroad engineering review work to be performed by the Railroad, at the City's sole cost and expense, is described in the Railroad's Material and Force Account Estimate:
  - Engineering Review Estimate dated March 27, 2007, in the amount of \$10,000.00, marked **Exhibit F**,  
attached hereto and hereby made a part hereof (the "Estimate"). .
- B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the City in the event the City does not commence construction on the portion of the Project located on the Railroad's property within six (6) months from the date of the Estimate.
- C. The City acknowledges that the Estimate does not include any estimate of flagging or other protective service costs that are to be paid by the City or the Contractor in connection with flagging or other protective services provided by the Railroad in connection with the Project. All of such costs incurred by the Railroad are to be paid by the City or the Contractor as

determined by the Railroad and the City. If it is determined that the Railroad will be billing the Contractor directly for such costs, the City agrees that it will pay the Railroad for any flagging costs that have not been paid by any Contractor within thirty (30) days of the Contractor's receipt of billing.

- D. The City agrees to reimburse the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, actual costs of preliminary engineering review, construction inspection, procurement of materials, equipment rental, manpower and deliveries to the job site and all of the Railroad's normal and customary additives (which shall include direct and indirect overhead costs) associated therewith.

**SECTION 2 - EFFECTIVE DATE**

This Supplemental Agreement shall be effective as of March 28, 2007.

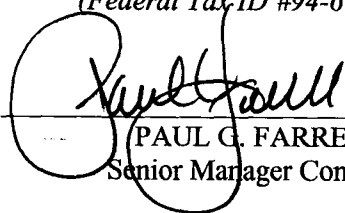
**SECTION 3- AGREEMENT SUPPLEMENTAL**

This agreement is supplemental to the Basic Agreement, as herein amended, and nothing herein contained shall be construed as amending or modifying the same except as herein specifically provided.

**IN WITNESS WHEREOF**, the parties hereto have caused this Supplemental Agreement to be executed as of the day and year first hereinabove written.

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

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



PAUL G. FARRELL  
Senior Manager Contracts

WITNESS:

**CITY OF GRAND JUNCTION**

\_\_\_\_\_  
*Stephanie Linn*

x \_\_\_\_\_  
*David VanDer*

Title: CITY MANAGER



# EXHIBIT F

## TO SUPPLEMENTAL AGREEMENT

### SUMMARY OF MATERIAL AND FORCE ACCOUNT WORK

#### GRAND JUNCTION, CO – 4<sup>TH</sup> STREET RAMP OVERPASS

DESCRIPTION OF WORK: Overpass Grade Separation Crossing at MP 0.31 North Fork Subdivision, 4<sup>th</sup> Street Ramp, DOT No. 924-472T. Includes Railroad Engineering Review and Inspections.

LOCATION: Denver Service Unit    STATE: Colorado    DATE: 03/27/2007

<u>DESCRIPTION</u>	<u>LABOR</u>	<u>MATERIAL</u>	<u>TOTAL</u>
<u>City of Grand Junction</u>			
Engineering Review and Inspections	\$10,000		\$10,000
TOTAL PROJECT	\$10,000		\$10,000

**TOTAL ESTIMATED COST OF PROJECT    \$10,000**

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



UPRR Folder No.: 2400-20  
UPRR Audit No.: 243575

## NEW PUBLIC ROAD CROSSING OVERPASS AGREEMENT

4th Street Ramp Overpass – DOT No.: 922472T  
Mile Post 0.31 – North Fork Subdivision  
Grand Junction, Mesa County, Colorado

THIS AGREEMENT is made and entered into as of the 28<sup>th</sup> day of March, 2007, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179-1690 (the "Railroad") and the **CITY OF GRAND JUNCTION**, a municipal corporation of the State of Colorado, to be addressed at 250 North, 5<sup>th</sup> Street, Grand Junction, CO 81501-2668 (the "City"),

### RECITALS:

The City desires to undertake as its project (the "Project"):

- the construction of the new 4th Street Ramp overpass grade separation crossing, DOT No. 922472T, at Railroad's Mile Post 0.31 on it's North Fork Subdivision, in Grand Junction, Mesa County, Colorado (the "Crossing Area") as the Crossing Area is shown on the location print marked **Exhibit A**, the detail prints of the Structure, collectively marked **Exhibit A-1**, and as described and illustrated in the legal description and print marked **Exhibit A-2** and **Exhibit A-3**, respectively, with each exhibit being attached hereto and hereby made a part hereof.

Under this Agreement, the Railroad will be granting a right of way right to the City to facilitate the construction of the new Structure. The portion of Railroad's property that City needs a right to use in connection with the construction of the Structure is described on the metes and bounds legal description marked **Exhibit A-2**, and illustrated on the print marked **Exhibit A-3**, (collectively the "Crossing Area").

The Railroad and the City are entering into this Agreement to cover the above.

### AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

### ARTICLE 1 - LIST OF EXHIBITS

The exhibits below are attached hereto and hereby made a part hereof.

Exhibit A	Railroad Location Print
Exhibit A-1	Detailed Drawings
Exhibit A-2	Metes and Bounds Legal Description

Exhibit A-3	Illustrative Print of Legal Description
Exhibit B	Terms and Conditions
Exhibit B-1	Insurance Requirements
Exhibit C	Railroad's Minimum Requirements
Exhibit D	Railroad Form of Contractor's Right of Entry Agreement
Exhibit E	Settlement Agreement or Final CPUC Order

**ARTICLE 2 - EXHIBITS B, B-1 AND D.**

The general terms and conditions marked **Exhibit B**, the Contractor's insurance requirements marked **Exhibit B-1**, and the Railroad's minimum overpass construction standards marked **Exhibit C**, are attached hereto and hereby made a part hereof.

**ARTICLE 3- RAILROAD GRANTS RIGHT.**

For and in consideration in the sum of **NINE THOUSAND ONE HUNDRED THIRTY-NINE DOLLARS (\$9,139.00)** to be paid by the City to the Railroad upon the execution and delivery of this Agreement and in further consideration of the City's agreement to perform and abide by the terms of this Agreement including all exhibits, the Railroad hereby grants to the City the right to establish or reestablish, construct or reconstruct, maintain, repair and renew the Structure over and across the Crossing Area.

**ARTICLE 4 - DEFINITION OF CONTRACTOR**

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the City to perform any Project work on any portion of the Railroad's property and shall also include the contractor's subcontractors and the contractor's and subcontractor's respective employees, officers and agents.

**ARTICLE 5 - CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE**

- A. If the City will be hiring a Contractor to perform any work involving the Project (including initial construction and any subsequent relocation or maintenance and repair work), the City shall require the Contractor to:
- execute the Railroad's then current Contractor's Right of Entry Agreement
  - obtain the then current insurance required in the Contractor's Right of Entry Agreement; and
  - provide such insurance policies, certificates, binders and/or endorsements to the Railroad before allowing any Contractor to commence any work in the Crossing Area or on any other Railroad property. The Railroad's current insurance requirements are described in **Exhibit B-1**, attached hereto and hereby made a part hereof.
- B. The Railroad's current Contractor's Right of Entry Agreement is marked **Exhibit D**, attached hereto and hereby made a part hereof. The City confirms that it will inform its Contractor that it is required to execute such form of agreement and obtain the required insurance before commencing any work on any Railroad property. Under no circumstances will the Contractor be allowed on the 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 the Railroad the insurance policies, binders, certificates and/or endorsements described therein.

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

*Senior Manager - Contracts  
Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street, Mail Stop 1690  
Omaha, NE 68179-1690  
UPRR Folder No. 2400-20*

- D. If the City's own employees will be performing any of the Project work, the City may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

#### **ARTICLE 6 - FEDERAL AID POLICY GUIDE**

- A. If the City will be receiving any federal funding for the Project:
- the current rules, regulations and provisions of the Federal Aid Policy Guide as contained in 23 CFR 140, Subpart I and 23 CFR 646, Subparts A and B are incorporated into this Agreement by reference, and
  - construction work by the City and Contractor shall be performed, and any reimbursement to the Railroad for work it performs, shall be made in accordance with the Federal Aid Policy Guide.
- B. If federal funding is involved, as provided in 23 CFR 646.210(b)(2), the Project is of no ascertainable benefit to the Railroad and the Railroad shall not be obligated to pay or contribute to any Project costs.

#### **ARTICLE 7 - WORK TO BE PERFORMED BY THE RAILROAD**

The City agrees to reimburse the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, actual costs of preliminary engineering review, construction inspection, procurement of materials, equipment rental, manpower and deliveries to the job site and all of the Railroad's normal and customary additives (which shall include direct and indirect overhead costs) associated therewith.

#### **ARTICLE 8 - PLANS**

- A. The City, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications and submit such plans and specifications to the Railroad's Assistant Vice President Engineering – Design, or his authorized representative, for review and approval. The plans and specifications shall include all appurtenances, associated drainage, shoring, sheeting and excavations for bents and/or abutments next to or adjacent to the Railroad's tracks and, if applicable, all demolition and removal plans for the existing structure.
- B. The final one hundred percent (100%) completed plans that are approved in writing by the Railroad's Assistant Vice President Engineering – Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this

Agreement by reference.

- C. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing.
- D. Upon completion of the Structure, the City, at its expense, shall furnish to the Railroad two (2) sets of reproducible “as constructed” Plans of the Structure.
- E. Notwithstanding the Railroad’s approval of the Plans, the Railroad shall not be responsible for the design, details, permitting or construction of the Structure.

#### **ARTICLE 9 - THE RAILROAD’S SPECIFICATIONS**

The City, at its expense, shall ensure that the Contractor shall comply with all of the terms and conditions contained in the Railroad’s Minimum Requirements that are described in **Exhibit C** and other special guidelines that the Railroad may provide to the City for this Project.

#### **ARTICLE 10 - EFFECTIVE DATE; TERM; TERMINATION.**

- A. This Agreement shall become effective as of the date first herein written, or the date work commences on the Project, whichever is earlier, and shall continue in full force and effect for as long as the Structure remains on the Railroad’s property.
- B. The Railroad, if it so elects, may terminate this Agreement effective upon delivery of written notice to the City in the event the City does not commence construction on the portion of the Project located on the Railroad’s property within twelve (12) months from the date of this Agreement, or from the date that the Railroad has executed this Agreement and returned it to the City for its execution, whichever is applicable.
- C. If the Agreement is terminated as provided above, or for any other reason, the City shall pay to the Railroad all actual costs incurred by the Railroad in connection with the Project up to the date of termination, including, without limitation, all actual costs incurred by the Railroad in connection with reviewing any preliminary or final Project Plans.

#### **ARTICLE 11 - CONDITIONS TO BE MET BEFORE CITY CAN COMMENCE WORK.**

Neither the City nor the Contractor may commence any work within the Crossing Area or on any other Railroad property until:

- The Railroad and City have executed this Agreement.
- The Railroad has provided to the City the Railroad’s written approval of the Plans.
- Each Contractor has executed Railroad’s Contractor’s Right of Entry Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements set forth in the Contractor’s Right of Entry Agreement.

**ARTICLE 12 - RAILROAD CONTRIBUTION TO COSTS**

The City agrees to pay one hundred percent (100%) of all costs of the project at Crossing Area, including all costs incurred by the Railroad, unless and until one of the following two events occurs:

1. The City and the Railroad settle the apportionment claims brought by the City before the Colorado Public Utilities Commission (CPUC), in case number 06A-388R. Once the aforementioned settlement is reached then the amounts to be borne by the City and the Railroad shall be as spelled out in the settlement agreement between the parties, which shall be attached to this Agreement as **Exhibit E**,
2. The Colorado Public Utilities Commission (CPUC) enters a final order in Case number 06A-388R, which Order is not appealed by the Railroad. In that case the amounts to be paid by both the City and the Railroad shall be as provided in the Final CPUC Order which shall be attached to this Agreement as **Exhibit E**.

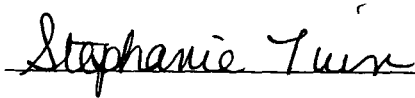
IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed in duplicate as of the date first herein written.


**UNION PACIFIC RAILROAD COMPANY**  
(Federal Tax ID #94-6001326)

By   
GREGORY L. FINKER  
Director Contracts

ATTEST:

**CITY OF GRAND JUNCTION**

  
\_\_\_\_\_

By   
\_\_\_\_\_

Title: David A. Varley, City Manager



Pursuant to Resolution/Order No.         
dated March 8, 2007,  
hereto attached.

**AUTHORIZATION AND ORDER DIRECTING THE CITY MANAGER TO  
SIGN UNION PACIFIC RAILROAD NEW PUBLIC ROAD CROSSING AND  
OVERPASS AGREEMENTS**

for

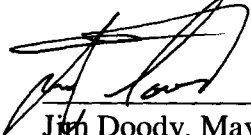
25 Road Overpass, Riverside Parkway Overpass, 4<sup>th</sup> Avenue Ramp Overpass  
and Main Street Overpass

**RECITALS:**

The Mayor of the City Council of the City of Grand Junction, by the authority vested in him does hereby authorize and direct City Manager David A. Varley to execute those certain agreements by and between the City and Union Pacific Railroad for the 25 Road Overpass, Riverside Parkway Overpass, 4<sup>th</sup> Avenue Ramp Overpass and Main Street Overpass. The agreements are individually known by UPRR Folder numbers 2294-19, 2400-18, 2400-20 and 2400- 16.

The agreements authorized are for the construction of crossing facilities for the Riverside Parkway, a project authorized by the voters of the City in November 2004.

SIGNED this 8<sup>th</sup> day of March 2007.

  
\_\_\_\_\_  
Jim Doody, Mayor  
City of Grand Junction

Attest:

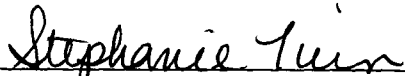
  
\_\_\_\_\_  
Stephanie Tuin  
City Clerk



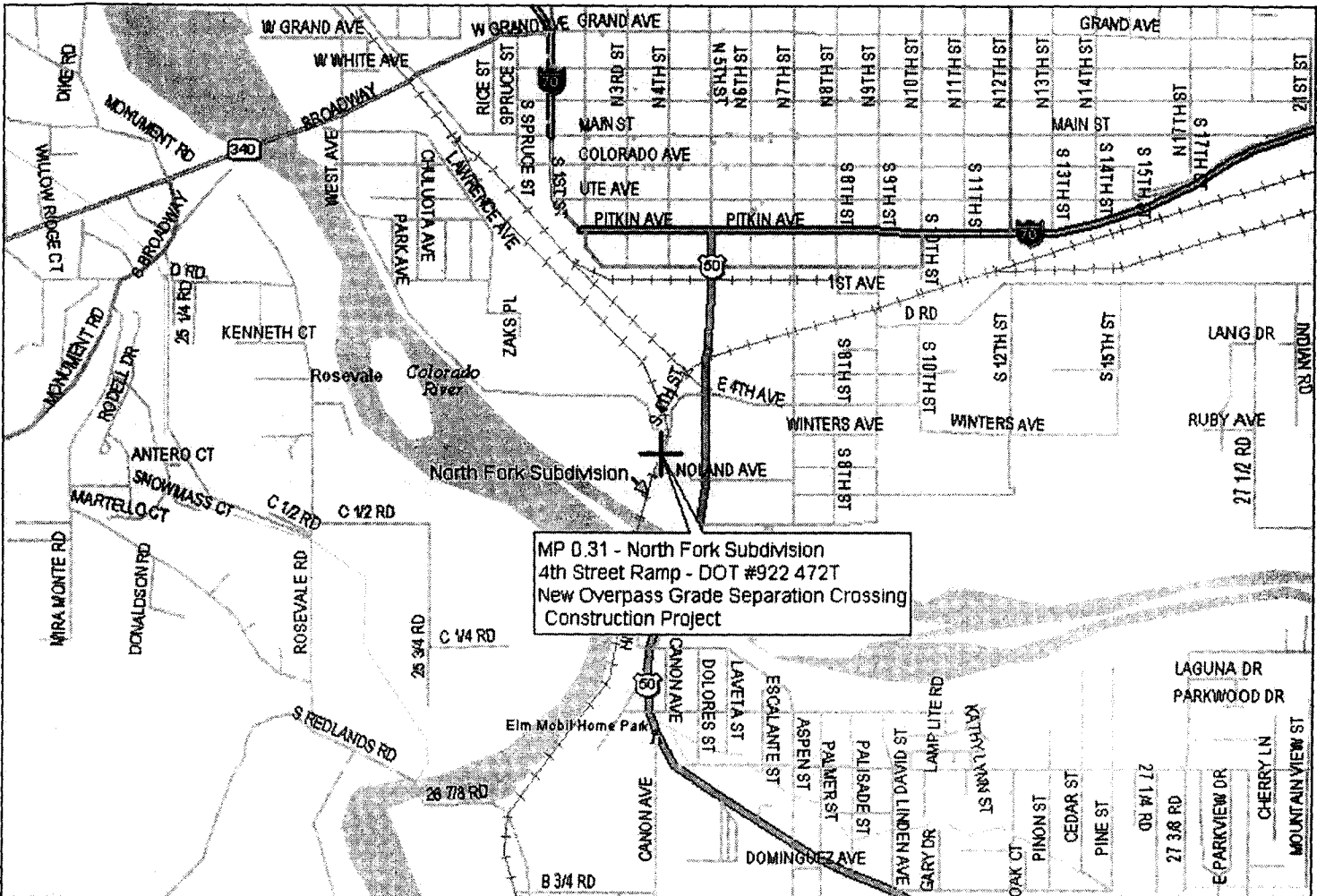
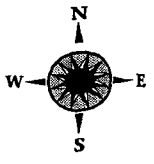


EXHIBIT A

To Public Road Crossing Overpass Agreement

Cover Sheet for the  
Railroad's Location Print

# LOCATION OF NEW OVERPASS GRADE SEPARATION CROSSING CONSTRUCTION PROJECT



MP 0.31 - North Fork Subdivision  
4th Street Ramp - DOT #922 472T  
New Overpass Grade Separation Crossing  
Construction Project

DeLORME  
Data use subject to license.  
© 2004 DeLorme. Street Atlas USA® 2005.  
www.delorme.com

MN (11.2° E)

0 1000 2000 ft  
Data Zoom 13-0

## RAILROAD WORK TO BE PERFORMED:

1. Flagging.

## EXHIBIT "A"

### UNION PACIFIC RAILROAD COMPANY

NORTH FORK SUBDIVISION  
MILE POST 0.31  
GPS: N 39° 03.4681', W 108° 33.9898'  
GRAND JUNCTION, MESA CO., CO.

Illustrative print showing location of a new overpass grade separation  
crossing construction project with the  
**CITY OF GRAND JUNCTION.**

Folder No. 2400-20

Date: February 27, 2007

#### WARNING

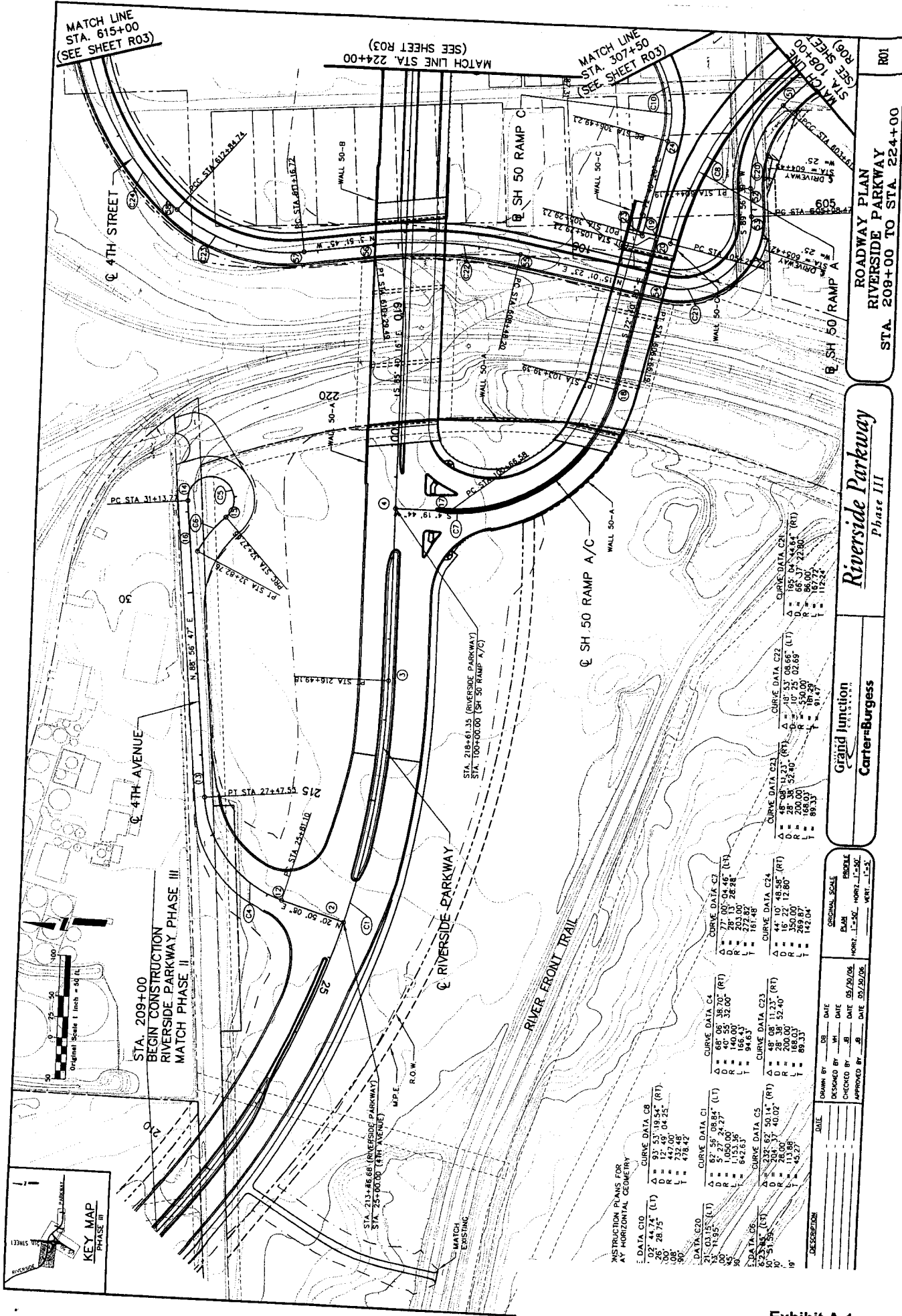
IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE  
OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE  
PHONE: 1-(800) 336-9193

**EXHIBIT A-1**

To Public Road Crossing Overpass Agreement

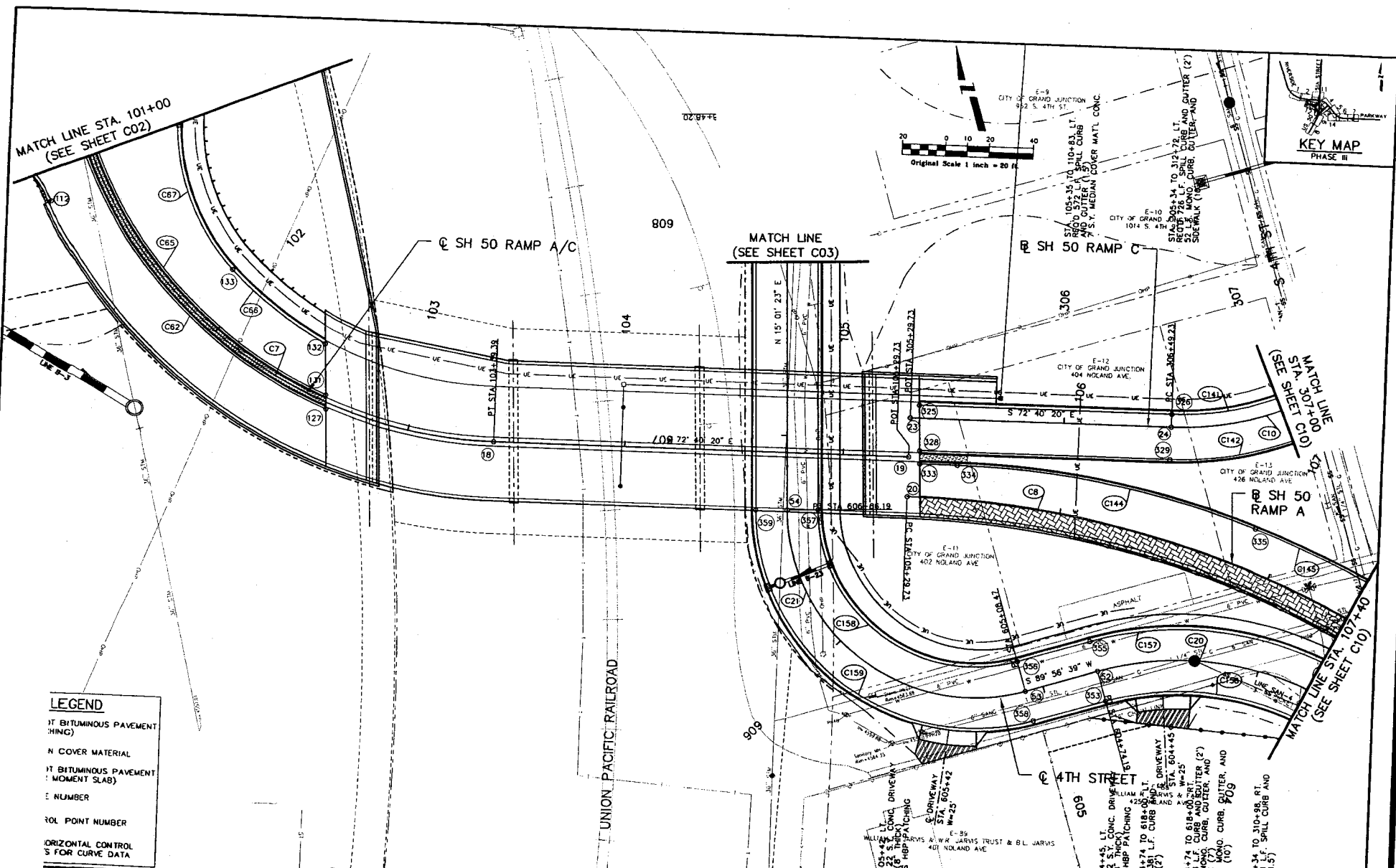
**UNION  
PACIFIC**

Cover Sheet for the  
Detailed Drawings



**Exhibit A-1**  
 DOT's Detailed Prints  
 To New Public Road Crossing Overpass Agreement





**LEGEND**

BT BITUMINOUS PAVEMENT (HING)

N COVER MATERIAL

BT BITUMINOUS PAVEMENT (MOMENT SLAB)

E NUMBER

101 POINT NUMBER

HORIZONTAL CONTROL DATA

DESCRIPTION	DATE	DRAWN BY	DATE	DESIGNED BY	DATE	CHECKED BY	DATE	APPROVED BY	DATE	ORIGINAL SCALE	PLAN	PROFILE
		DB		SF		JB	05/30/06	JB	05/30/06	1"=20'	HORIZ	HORIZ

**Grand Junction**  
COLDWATER  
**Carter-Burgess**

**Riverside Parkway**  
Phase III

**CONSTRUCTION PLANS**  
RAMPS A/C AND 4TH STREET

EXHIBIT A-2

**UNION**

To Public Road Crossing Overpass Agreement

**PACIFIC**

Cover Sheet for the  
Metes and Bounds Legal Description

**PARCEL UPRR #35 Rev2 (LA E-92BRev2)**  
Property Description

A portion of the Union Pacific Railroad right of way lying in the Northwest Quarter of Section 23, Township 1 South, Range 1 West of the Ute Principal Meridian, being more particularly described as follows:

COMMENCING at the Center Quarter Corner of said Section 23 (a 3"Brass Cap stamped "MESA COUNTY SURVEY MARKER-C 1/4 S23-NO1280), whence the Center North 1/16<sup>th</sup> Corner of said Section 23 (a brass cap stamped PLS16413-1/16 S23-1991) bears N00°11'11"E a distance of 1315.15;

THENCE N56°05'38"W a distance of 1468.69 feet to the POINT OF BEGINNING;

THENCE S15°01'23"W tangent with the following described curve a distance of 79.33 feet; THENCE along the arc of a curve to the left, having a central angle of 8°19'32", a radius of 105.00 feet, a chord bearing S10°51'37"W a distance of 15.24 feet, and an arc distance of 15.26 feet;

THENCE N72°40'20"W non-tangent with the last described curve and tangent with the following described curve a distance of 118.93 feet;

THENCE along the arc of a curve to the right, having a central angle of 10°11'34", a radius of 244.92 feet, a chord bearing N67°34'34"W a distance of 43.51 feet, and an arc distance of 43.57 feet;

THENCE along the westerly line of said Union Pacific Railroad right of way, as shown on the station map COLO V-13-A S-1-A, Grand Junction Colorado, Stations 0+00 to 13+73, along the arc of a curve to the left, non-tangent with the last described curve, having a central angle of 5°37'02", a radius of 1045.92 feet, a chord bearing of N09°33'46"E a distance of 102.50 feet, and an arc distance of 102.54 feet;

THENCE S62°53'03"E non-tangent with the last described curve a distance of 64.75 feet;

THENCE S72°40'20"E tangent with the last described curve a distance of 107.41 feet to the POINT OF BEGINNING.

Containing 15,803 square feet, (0.363Acres), more or less.

Basis of Bearing: N89°58'01"E between Mesa County Local Coordinate System points Southwest Corner of Section 15 (2-1/2"Alumn.Cap in Monument Box Stamped: AES T1S R1W S16/S15/S21/S22 2002 PLS 24320) and the Southeast Corner of Section 15, (2-1/2"Brass Cap Stamped: COUNTY SURVEY MARKER 828-1 15/14/22/23), both in Township 1 South, Range 1 West Ute P.M.


Prepared by:   
Marla Mellor Member, PLS 24961  
Date:  
For and on behalf of Carter & Burgess, Inc.

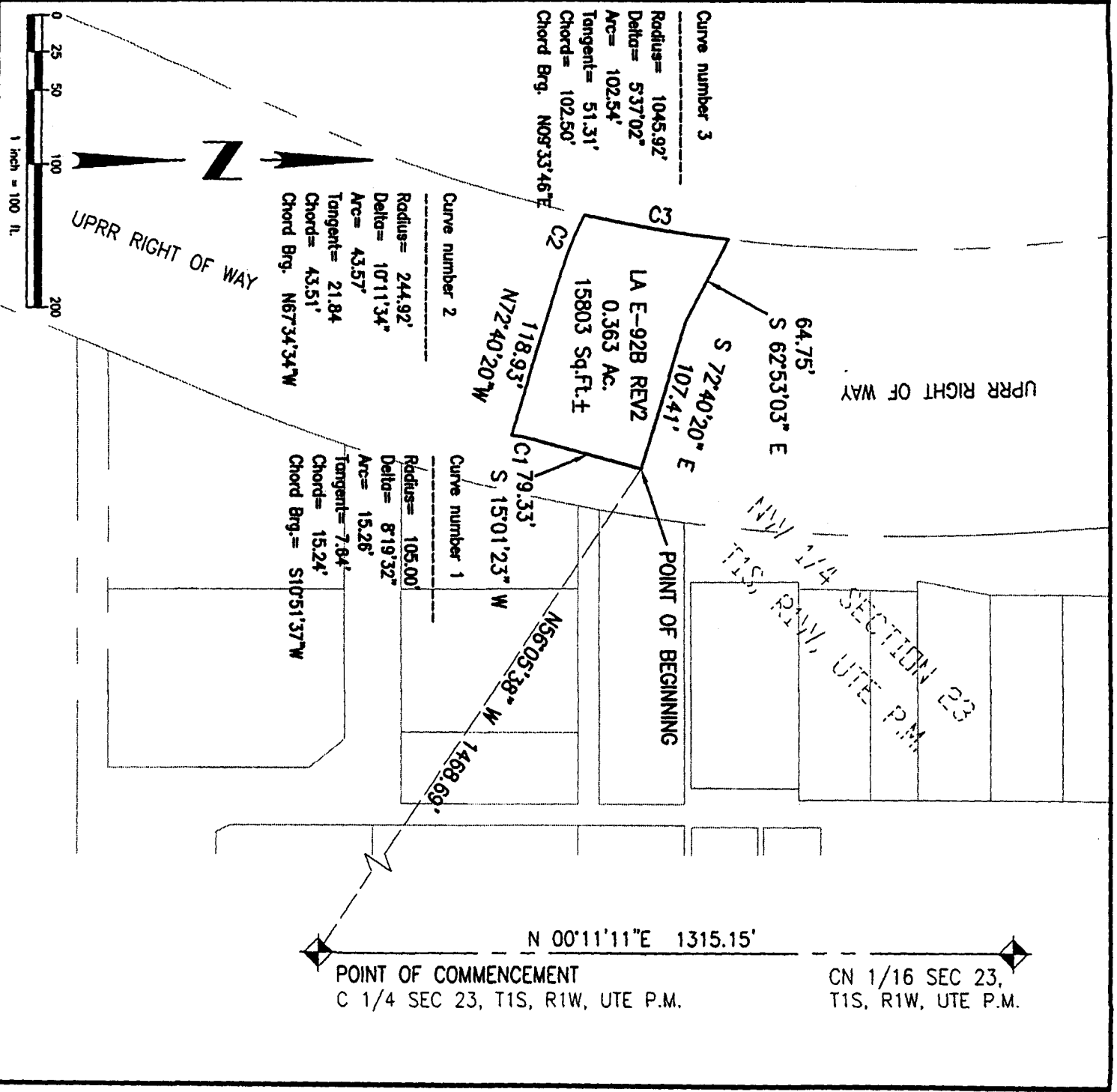
EXHIBIT A-3

**UNION**

To Public Road Crossing Overpass Agreement

**PACIFIC**

Cover Sheet for the  
Print Illustrating the  
Metes and Bounds Legal Description



SECTION 23  
T1S, R1W, UTE P.M.

CN 1/16 SEC 23,  
T1S, R1W, UTE P.M.

POINT OF COMMENCEMENT  
C 1/4 SEC 23, T1S, R1W, UTE P.M.

CLIENT PROJECT NO.	071514
CLIENT PROJECT NO.	
REVISION DESCRIPTION	Revised parcel configuration 2-28-06
DRAWN	jdj/sk DATE: 09-04 SCALE 1"=100'

**Carter & Burgess**  
707 17th Street, Suite 2300, Denver CO 80202  
(303) 896-9940 Fax (303) 896-4642

THIS MATERIAL AND ANY ASSOCIATED ELECTRONIC DATA WAS PREPARED BY CARTER & BURGESS, INC. FOR THE PROJECT INDICATED. ANY REUSE OR MODIFICATION WITHOUT THE WRITTEN CONSENT OF CARTER & BURGESS SHALL BE AT THE SOLE RISK OF THE USER.

TITLE:	RIVERSIDE PARKWAY GRAND JUNCTION COLORADO	
EXHIBIT	LA F-92R RFV?	
REVISION:	2	DRAWING NO. LdE-9



**EXHIBIT B**

To Public Road Crossing Overpass Agreement

**PACIFIC**

Cover Sheet for the  
Terms and Conditions

## EXHIBIT B

### TO PUBLIC ROAD CROSSING OVERPASS AGREEMENT

#### TERMS AND CONDITIONS

##### **SECTION 1 - CONDITIONS AND COVENANTS**

- a) The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The City shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the City shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the Railroad's property by or under authority of the City for the purpose of conveying electric power or communications incidental to the City's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the City to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.
- b) The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes in such manner as not unreasonably to interfere with its use as a public highway. In the event the Railroad shall place tracks upon the Crossing Area, the City shall, at its sole cost and expense, modify the highway to conform with the rail line.
- c) The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or not, and also to any renewals thereof. The City shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the railroad property, unless the City at its own expense settles with and obtains releases from such nonparties.
- d) The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property; also the right to cross the Crossing Area with all kinds of equipment. The Railroad further reserves the right to attach signal, communication or power lines to any highway facilities located upon the property, provided that such attachments shall comply with City's specifications and will not interfere with the use of the Crossing Area.
- e) So far as it lawfully may do so, the City will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Crossing Area, excepting taxes levied upon and against the property as a component part of the Railroad's operating property.
- f) If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Structure and its appurtenances, or for the performance of any work in connection with the Project, the City will acquire all such other property and rights at its own expense and without expense to the Railroad.

##### **SECTION 2 - CONSTRUCTION OF STRUCTURE**

- a) The City, at its expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Project, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.
- b) Except as may be otherwise specifically provided herein, the City, at its expense, will furnish all necessary labor, material and equipment, and shall construct and complete the Structure and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper drainage facilities, guard rails or barriers, and right of way fences between the Structure and the railroad tracks. Upon completion of the Project, the City shall remove from the Railroad's property all temporary structures and false work, and will leave the Crossing Area in a condition satisfactory to the Railroad.
- c) All construction work of the City upon the Railroad's property (including, but not limited to, construction of the Structure and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President Engineering - Design of the Railroad or his authorized representative and in accordance with the Plans, the Railroad's Minimum Requirements set forth in **Exhibit D** and other guidelines furnished by the Railroad.
- d) All construction work of the City shall be performed diligently and completed within a reasonable time, and in any event within three (3) years from the effective date of this Agreement, or within such further period of time as may be specified in writing by the Railroad's Assistant Vice President Engineering - Design. No part of the Project shall be suspended, discontinued or unduly delayed without the Railroad's written consent, and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that

movement or stoppage of trains, engines or cars may cause delays in the work of the City. The City hereby assumes the risk of any such delays and agrees that no claims for damage on account of any delay shall be made against the Railroad.

### **SECTION 3 - INJURY AND DAMAGE TO PROPERTY**

If the City, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the City is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the City at the City's own expense, or by the Railroad at the expense of the City, and to the satisfaction of the Railroad's Assistant Vice President Engineering - Design.

### **SECTION 4 - PAYMENT FOR WORK BY THE RAILROAD**

a) Bills for work and materials shall be paid by the City within thirty (30) days of its receipt thereof. The Railroad will submit to the City current bills for all work performed by the Railroad and all flagging and other protective services and devices during progress of the Project (unless flagging is to be billed directly to the Contractor). The Railroad will submit final billing within one hundred and twenty (120) days after completion of the Project, provided the City advises the Railroad of the commencement of the 120-day period by giving the Railroad written notification of completion of the Project.

b) The Railroad may contract for the performance of any of its work by other than railroad forces. The Railroad shall notify the City of the contract price within ninety (90) days after it is awarded. Unless the Railroad's work is to be performed on a fixed price basis, the City shall reimburse the Railroad for the amount of the contract.

### **SECTION 5 - MAINTENANCE AND REPAIRS**

a) The City, at its expense, shall maintain, repair and renew, or cause to be maintained, repaired and renewed, the entire Structure, including, but not limited to, the superstructure, substructure, piers, abutments, walls, approaches and all backfill, grading and drainage required by reason of the Structure, as well as all graffiti removal or over-painting involving the Structure.

b) The Railroad, at its expense, will maintain, repair and renew, or cause to be maintained, repaired and renewed, the rails, ties, ballast and communication and signal facilities owned by the Railroad beneath the Structure.

### **SECTION 6 - SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS**

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the City that the work will be performed in a safe manner and in conformity with the following standards:

a) **Definitions.** All references in this Agreement to the City shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the City shall include work both within and outside of the Railroad's property.

b) **Compliance With Laws.** The City shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The City shall use only such methods as are consistent with safety, both as concerns the City, the City's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The City (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the City to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the City shall reimburse and indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The City further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

c) **No Interference or Delays.** The City shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.

d) **Supervision.** The City, at its own expense, shall adequately police and supervise all work to be performed by the City, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the City for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in



performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the City with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the City will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.

e) **Suspension of Work.** If at any time the City's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the City is being or is about to be done or prosecuted without due regard and precaution for safety and security, the City shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.

f) **Removal of Debris.** The City shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the City at the City's own expense or by the Railroad at the expense of the City. The City shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during snow removal from the Crossing Area.

g) **Explosives.** The City shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.

h) **Excavation.** The City shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The City shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The City, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the City in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering - Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.

i) **Drainage.** The City, at the City's own expense, shall provide and maintain suitable facilities for draining the Structure and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The City, at the City's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the City, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The City shall not obstruct or interfere with existing ditches or drainage facilities.

j) **Notice.** Before commencing any work, the City shall provide at least ten (10) days prior notice (excluding weekends and holidays) to the Railroad's Manager-Track Maintenance.

k) **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. City shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the City. If it is, City will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

#### **SECTION 7 - INTERIM WARNING DEVICES**

If at anytime it is determined by a competent authority, by the City, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the City shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the construction or reconstruction of the Structure has been completed.

#### **SECTION 8 - OTHER RAILROADS**

All protective and indemnifying provisions of this Agreement shall inure to the benefit of the Railroad and any other railroad company lawfully using the Railroad's property or facilities.

**SECTION 9 - REMEDIES FOR BREACH OR NONUSE**

- a) If the City shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Structure and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the City will reimburse the Railroad for the expenses thereof.
- b) Nonuse by the City of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the City hereunder.
- c) The City will surrender peaceable possession of the Crossing Area and Structure upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

**SECTION 10 - MODIFICATION - ENTIRE AGREEMENT**

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the City and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the City shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof constitute the entire understanding between the City and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.

**SECTION 11 - ASSIGNMENT; SUCCESSORS AND ASSIGNS**

This Agreement shall not be assigned without the written consent of the Railroad. Subject hereto, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.



**EXHIBIT B-1**

To Public Road Crossing Overpass Agreement

Cover Sheet for the  
Insurance Requirements

## EXHIBIT B-1

### TO PUBLIC ROAD CROSSING OVERPASS AGREEMENT

#### CONTRACT INSURANCE REQUIREMENTS

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

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

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

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

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

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

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

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

- Contractor's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.
- 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.

**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.

#### **Other Requirements**

**F.** 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.

**G.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless:

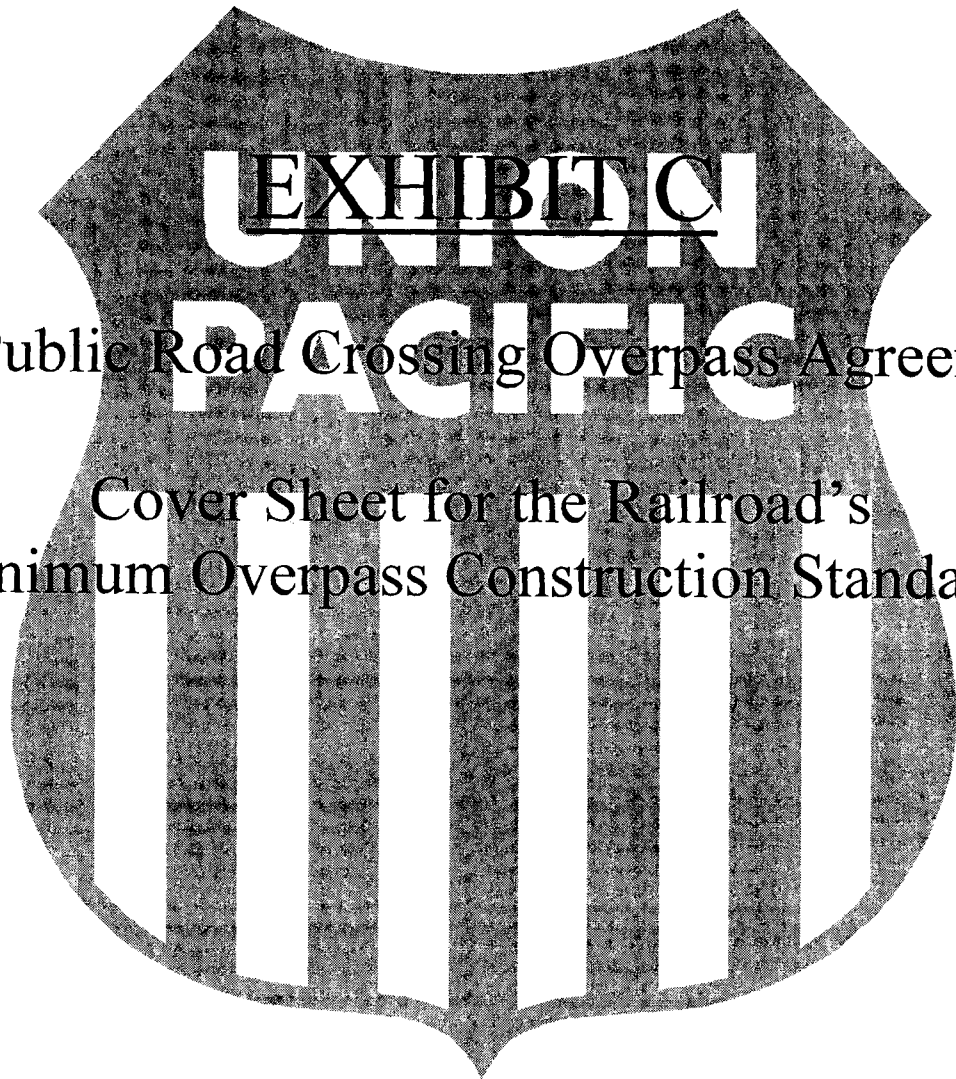
- insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or
- all punitive damages are prohibited by all states in which this agreement will be performed.

H. Contractor waives all rights against Railroad and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers liability or commercial umbrella or excess liability insurance obtained by Contractor required by this agreement.

I. 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.

J. 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(s) in which the work is to be performed.

K. 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.



**UNION**

**PACIFIC**

To Public Road Crossing Overpass Agreement

Cover Sheet for the Railroad's  
Minimum Overpass Construction Standards

## EXHIBIT C

### TO PUBLIC ROAD CROSSING OVERPASS AGREEMENT

#### MINIMUM CONSTRUCTION REQUIREMENTS

##### 1.01 DESCRIPTION

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

For purposes of this project, the UPRR Designated Representative shall be the person or persons designated by the UPRR Manager of Industry and Public Projects to handle specific tasks related to the project.

##### 1.02 DEFINITION OF AGENCY AND CONTRACTOR

As used in these UPRR requirements, the term "Agency" shall mean the Political Body.

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

##### 1.03 UPRR CONTACTS

The primary UPRR point of contact for this project is:

*Sue Grabler  
Manager Industry & Public Projects  
Union Pacific Railroad Company  
1400 West 52<sup>nd</sup> Avenue  
Denver, CO 80221  
Phone: 303-964-4099  
Fax: 303-964-2259  
Cell: 303-579-1985*

For UPRR flagging services and track work, contact:

*Bobby Cordova  
Manager Track Maintenance  
Union Pacific Railroad Company  
2790 D Road  
Grand Junction, CO 81501  
Phone: 970-248-4254  
Fax: 970-248-4216*

##### 1.04 REQUEST FOR INFORMATION / CLARIFICATION

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

##### 1.05 PLANS / SPECIFICATIONS

The plans and specifications for this project, affecting the UPRR, are subject to the written approval by the UPRR and  
Minimum Construction Requirement ExC  
Standard Form, Approved AVP-Law 06/15/2006

changes in the plans may be required after award of the Contract. Such changes are subject to the approval of the Agency and the UPRR.

### **1.06 UTILITIES AND FIBER OPTICS**

All installations shall be constructed in accordance with current AREMA recommendations and UPRR specifications and requirements. UPRR general guidelines and the required application forms for utility installations can be found on the UPRR website at [uprr.com](http://uprr.com).

### **1.07 GENERAL**

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

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

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

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

### **1.08 RAILROAD OPERATIONS**

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

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

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

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

2. **Absolute Work Window:** An Absolute Work Window is a period of time that construction activities are given priority over railroad operations. During this time frame the designated railroad track(s) will be inactive for train movements and may be fouled by the Contractor. At the end of an Absolute Work Window the railroad tracks and/or signals must be completely operational for train operations and all UPRR, Public Utilities Commission (PUC) and Federal Railroad Administration (FRA) requirements, codes and regulations for operational tracks must be complied with. In the situation where the operating tracks and/or signals have been affected, the UPRR will perform inspections of the work prior to placing that track back into service. UPRR flag persons will be required for construction activities requiring an Absolute Work Window. **Absolute Work Windows will not generally be granted. Any request will require a detailed explanation for UPRR review.**



### **1.09 RIGHT OF ENTRY, ADVANCE NOTICE AND WORK STOPPAGES**

A. Prior to beginning any work on or over the property of, or affecting the facilities of, the UPRR, the Contractor shall enter into an agreement with the UPRR in the form of the "Contractor's Right of Entry Agreement", attached as **Exhibit D**, or latest version thereof provided by the UPRR. There is a fee for processing of the agreement. This cost shall be borne by the Contractor. Contractor shall submit a copy of the executed agreement and the insurance policies, binders, certificates and endorsements set forth therein to the Agency prior to commencing work on UPRR property. The right of entry agreement shall specify working time frames, flagging and inspection requirements, and any other items specified by the UPRR.

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

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

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

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

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

E. Should a condition arising from, or in connection with the work, require that immediate and unusual provisions be made to protect operations and property of UPRR, the Contractor shall make such provisions. If in the judgment of UPRR's Designated Representative such provisions are insufficient, the UPRR's Designated Representative may require or provide such provisions as deemed necessary. In any event, such provisions shall be at the Contractor's expense and without cost to the UPRR. UPRR or the Agency shall have the right to order Contractor to temporarily cease operations in the event of an emergency or, if in the opinion of the UPRR's Designated Representative, the Contractor's operations could endanger UPRR's operations. In the event such an order is given, Contractor shall immediately notify the Agency of the order.

### **1.10 INSURANCE**

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

### **1.11 RAILROAD SAFETY ORIENTATION**

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

### **1.12 COOPERATION**

UPRR will cooperate with Contractor so that work may be conducted in an efficient manner, and will cooperate with

Contractor in enabling use of UPRR's right-of-way in performing the work.

**1.13 MINIMUM CONSTRUCTION CLEARANCES FOR FALSEWORK AND OTHER TEMPORARY STRUCTURES**

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

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

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

**1.14 APPROVAL OF REDUCED CLEARANCES**

- A. The minimum track clearances to be maintained by the Contractor during construction are specified in Section 3.07 herein.
- B. Any proposed infringement on the specified minimum clearances due to the Contractor's operations shall be submitted to UPRR's Designated Representative through the Agency at least 30 days in advance of the work and shall not be undertaken until approved in writing by the UPRR's Designated Representative.
- C. No work shall commence until the Contractor receives in writing assurance from UPRR's Designated Representative that arrangements have been made for flagging service, as may be necessary and receives permission from UPRR's Designated Representative to proceed with the work.

**1.15 CONSTRUCTION AND AS-BUILT SUBMITTALS**

- A. Submittals are required for construction materials and procedures as outlined below. The submittals shall include all review comments from the Agency and the Engineer of Record. All design submittals shall be stamped and signed by a Professional Engineer registered in the State of Colorado.
- B. The tables below provide UPRR's minimum submittal requirements for the construction items noted. Submittal requirements are in addition to those specified elsewhere in these bid documents. The minimum review times indicated below represent UPRR's requirements only. The Contractor shall allow additional time for the Agency's review time as stated elsewhere in these bid documents.
- C. Submittals shall be made by the Agency to the UPRR Manager of Industry and Public Projects unless otherwise directed by the Railroad. Items in Table 1 shall be submitted for both railroad overpass and underpass projects, as applicable. Items in Table 2 shall be submitted for railroad underpass projects only.

TABLE 1

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

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

TABLE 2

ITEM	DESCRIPTION	SETS REQD.	NOTES
1	Shop drawings	4	Steel and Concrete members

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

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

**Overpass Projects**

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

**Underpass Projects**

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

**1.16 APPROVAL OF DETAILS**

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

**1.17 MAINTENANCE OF RAILROAD FACILITIES**

- A. The Contractor shall be required to maintain all ditches and drainage structures free of silt or other obstructions which may result from Contractor's operations; to promptly repair eroded areas within UPRR's right of way and to repair any other damage to the property of UPRR, or its tenants.
- B. All such maintenance and repair of damages due to the Contractor's operations shall be done at the Contractor's expense.
- C. The Contractor must submit a proposed method of erosion control and have the method reviewed by the UPRR prior to beginning any grading on the Project Site. Erosion control methods must comply with all applicable local, state and federal regulations.

### **1.18 SITE INSPECTIONS BY UPRR's DESIGNATED REPRESENTATIVE**

A. In addition to the office reviews of construction submittals, site inspections may be performed by UPRR's Designated Representative at significant points during construction, including the following if applicable:

1. Pre-construction meetings.
2. Pile driving/drilling of caissons or drilled shafts.
3. Reinforcement and concrete placement for railroad bridge substructure and/or superstructure.
4. Erection of precast concrete or steel bridge superstructure.
5. Placement of waterproofing (prior to placing ballast on bridge deck).
6. Completion of the bridge structure.

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

C. A detailed construction schedule, including the proposed temporary horizontal and vertical clearances and construction sequence for all work to be performed, shall be provided to the Agency for submittal to UPRR's Designated Representative for review prior to commencement of work. This schedule shall also include the anticipated dates when the above listed events will occur. This schedule shall be updated for the above listed events as necessary, but at least monthly so that site visits may be scheduled.

### **1.19 UPRR REPRESENTATIVES**

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

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

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

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

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

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

### **1.20 WALKWAYS REQUIRED**

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

### **1.21 COMMUNICATIONS AND SIGNAL LINES**

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

## **1.22 TRAFFIC CONTROL**

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

## **1.23 CONSTRUCTION EXCAVATIONS**

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

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

## **1.24 RAILROAD FLAGGING**

Performance of any work by the Contractor in which person(s) or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach within twenty-five (25) feet of any track, may require railroad flagging services or other protective measures. Contractor shall give the advance notice to the UPRR as required in the "Contractor's Right of Entry Agreement" before commencing any such work, so that the UPRR may determine the need for flagging or other protective measures to ensure the safety of the railroad's operations. Contractor shall comply with all other requirements regarding flagging services covered by the "Contractor's Right of Entry Agreement". Any costs associated with failure to abide by these requirements will be borne by the Contractor.

**The estimated pay rate for each flag person is \$700.00 per day for an 8 hour work day with time and one-half for overtime, Saturdays, Sundays; double time and one-half for holidays. Flagging rates are set by the UPRR and are subject to change.**

## **1.25 CLEANING OF RIGHT-OF-WAY**

Contractor shall, upon completion of the work to be performed by Contractor upon the premises, over or beneath the tracks of UPRR, promptly remove from the right-of-way of UPRR all of Contractor's tools, implements, and other materials whether brought upon the right-of-way by Contractor or any subcontractors, employee or agent of Contractor or of any subcontractor, and leave the right-of-way in a clean and presentable condition to satisfaction of UPRR.

**EXHIBIT D**

To Public Road Crossing Overpass Agreement

**PACIFIC**

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

UNION PACIFIC RAILROAD COMPANY  
Real Estate Department  
1400 Douglas Street, MS 1690  
Omaha, NE 68179-1690  
(402) 544-8620

February 27, 2007

UPRR Folder No.: 2400-20

To the Contractor:

Before Union Pacific Railroad Company can permit you to perform work on its property for the construction of the new 4th Street Ramp Overpass grade separation crossing, it will be necessary for you to complete and execute two originals of the enclosed Contractor's Right of Entry Agreement. Please:

1. Fill in the complete legal name of the contractor in the space provided on Page 1 of the Contractor's Right of Entry Agreement. If a corporation, give the state of incorporation. If a partnership, give the names of all partners.
2. Fill in the date construction will begin and be completed in Article 5, Paragraph A.
3. Fill in the name of the contractor in the space provided in the signature block at the end of the Contractor's Right of Entry Agreement. If the contractor is a corporation, the person signing on its behalf must be an elected corporate officer.
4. Execute and return all copies of the Contractor's Right of Entry Agreement together with your Certificate of Insurance as required in Exhibit B, in the attached, self-addressed envelope.
5. Include a check made payable to the Union Pacific Railroad Company in the amount of **\$500.00**. 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.

Under Exhibit B of the enclosed Contractor's Right of Entry Agreement, you are required to procure Railroad Protective Liability Insurance (RPLI) for the duration of this project. As a service to you, Union Pacific is making this coverage available to you. If you decide that acquiring this coverage from the Railroad is of benefit to you, please contact Mr. Mike McGrade of Marsh USA @ 800-729-7001, e-mail: [michael.mcgrade@marsh.com](mailto:michael.mcgrade@marsh.com).

This agreement will not be accepted by the Railroad Company until you have returned **all** of the following to the undersigned at Union Pacific Railroad Company:

1. Executed, unaltered duplicate original counterparts of the Contractor's Right of Entry Agreement;
2. Your check in the amount of \$500.00 to pay the required balance due of the required Contractor's Right of Entry fee. (The Folder Number and the name "Paul G. Farrell" should be written on the check to insure proper credit). If you require formal billing, you may consider this letter as a formal bill;





3. Copies of all of your **up-to-date** General Liability, Auto Liability & Workman's Compensation Insurance Certificates (*yours and all contractors'*), naming Union Pacific Railroad Company as additional insured;
4. Copy of your **up-to-date** Railroad Protective Liability Insurance Certificate (*yours and all contractors'*), naming Union Pacific Railroad Company as additional insured.

**RETURN ALL OF THESE REQUIRED ITEMS TOGETHER IN ONE ENVELOPE.  
DO NOT MAIL ANY ITEM SEPARATELY.**

If you have any questions concerning this agreement, please contact me as noted below. Have a safe day!

**Paul G. Farrell**  
Senior Manager Contracts  
Phone: (402) 544-8620  
e-mail: [pgfarrell@up.com](mailto:pgfarrell@up.com)







UPRR Folder No. 2400-20  
UPRR Audit No. 243575

## CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Railroad"); and

\_\_\_\_\_  
(NAME OF CONTRACTOR)  
a \_\_\_\_\_ corporation ("Contractor").  
(State of Incorporation)

### RECITALS:

Contractor has been hired by the *City of Grand Junction* to perform work relating to the

- construction of the new 4th Street Ramp Overpass grade separation crossing (the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of Railroad's Mile Post 0.31 on Railroad's North Fork Subdivision located at Grand Junction, Mesa County, Colorado, which work is the subject of a contract dated \_\_\_\_\_ between \_\_\_\_\_ (Date of C&M Agreement) Railroad and the City of Grand Junction as such location is also shown and detailed on the Location Print and Specification Plans collectively marked **Exhibit D**, attached hereto and hereby made a part hereof.

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

### AGREEMENT:

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

#### ARTICLE 1 - DEFINITION OF CONTRACTOR.

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

**ARTICLE 2 - RIGHT GRANTED; PURPOSE.**

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing any work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

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

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

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

- A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.
- B. Contractor shall coordinate all of its work with the following Railroad representatives or his or her duly authorized representatives (hereinafter collectively the "Railroad Representative"):

*Bobby Cordova*  
*Manager Track Maintenance*  
*Union Pacific Railroad Company*  
*2790 D Road*  
*Grand Junction, CO 81501*  
*Phone: 970-248-4254*  
*Fax: 970-248-4216*

*Scott Thompson*  
*Manager Signal Maintenance*  
*Union Pacific Railroad Company*  
*2790 Road*  
*Grand Junction, CO 81501*  
*Phone: 970-248-4237*  
*Fax: 970-248-4248*

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

**ARTICLE 5 - TERM; TERMINATION.**

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

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

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

**ARTICLE 6 - CERTIFICATE OF INSURANCE.**

- A. Before commencing any work, Contractor will provide Railroad with the insurance binders, policies, certificates and/or endorsements set forth in **Exhibit B** of this Agreement.
- B. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

*Union Pacific Railroad Company  
1400 Douglas Street, MS 1690  
Omaha, NE 68179-1690  
Attn.: Senior Manager Contracts  
UPRR Folder No.: 2400-20*

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

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

**ARTICLE 8 - ADMINISTRATIVE FEE.**

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

**ARTICLE 9 - CROSSINGS.**

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

**ARTICLE 10 - EXPLOSIVES.**

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

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

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

By: \_\_\_\_\_  
PAUL G. FARRELL  
Senior Manager Contracts

\_\_\_\_\_  
*(NAME OF CONTRACTOR)*

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

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



## EXHIBIT A

### TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

#### TERMS AND CONDITIONS

##### **Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.**

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

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

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

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

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

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

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

A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of 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 C**, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit C** to each of its employees before they enter the job site.

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

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

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

#### **Section 8. INDEMNITY.**

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

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

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

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

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

#### **Section 9. RESTORATION OF PROPERTY.**

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

#### **Section 10. WAIVER OF DEFAULT.**

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

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

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

**Section 12. ASSIGNMENT - SUBCONTRACTING.**

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



## EXHIBIT B

### TO RIGHT OF ENTRY AGREEMENT

#### CONTRACT INSURANCE REQUIREMENTS

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

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

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

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

**B. Business Automobile Coverage insurance.** Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$500,000 for each accident.

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

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

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

- Contractor's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.
- 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.

**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.

#### Other Requirements

**F.** 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.

**G.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.

**H.** Contractor waives all rights against Railroad and its agents, officers, directors and employees for recovery of damages to the

extent these damages are covered by the workers compensation and employers liability or commercial umbrella or excess liability insurance obtained by Contractor required by this agreement.

I. 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.

J. 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(s) in which the work is to be performed.

K. 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 C

### TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

#### MINIMUM SAFETY REQUIREMENTS

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

#### **I. Clothing**

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

Specifically, Contractor's employees must wear:

- Waist-length shirts with sleeves.
- Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
- 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.

- 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.
- 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.
- 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)
- 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:

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

#### **IV. Equipment**

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

- Familiar and comply with Railroad's rules on lockout/tagout of equipment.
- Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
- Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.

B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.

C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.

D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

#### **V. General Safety Requirements**

A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.

B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.

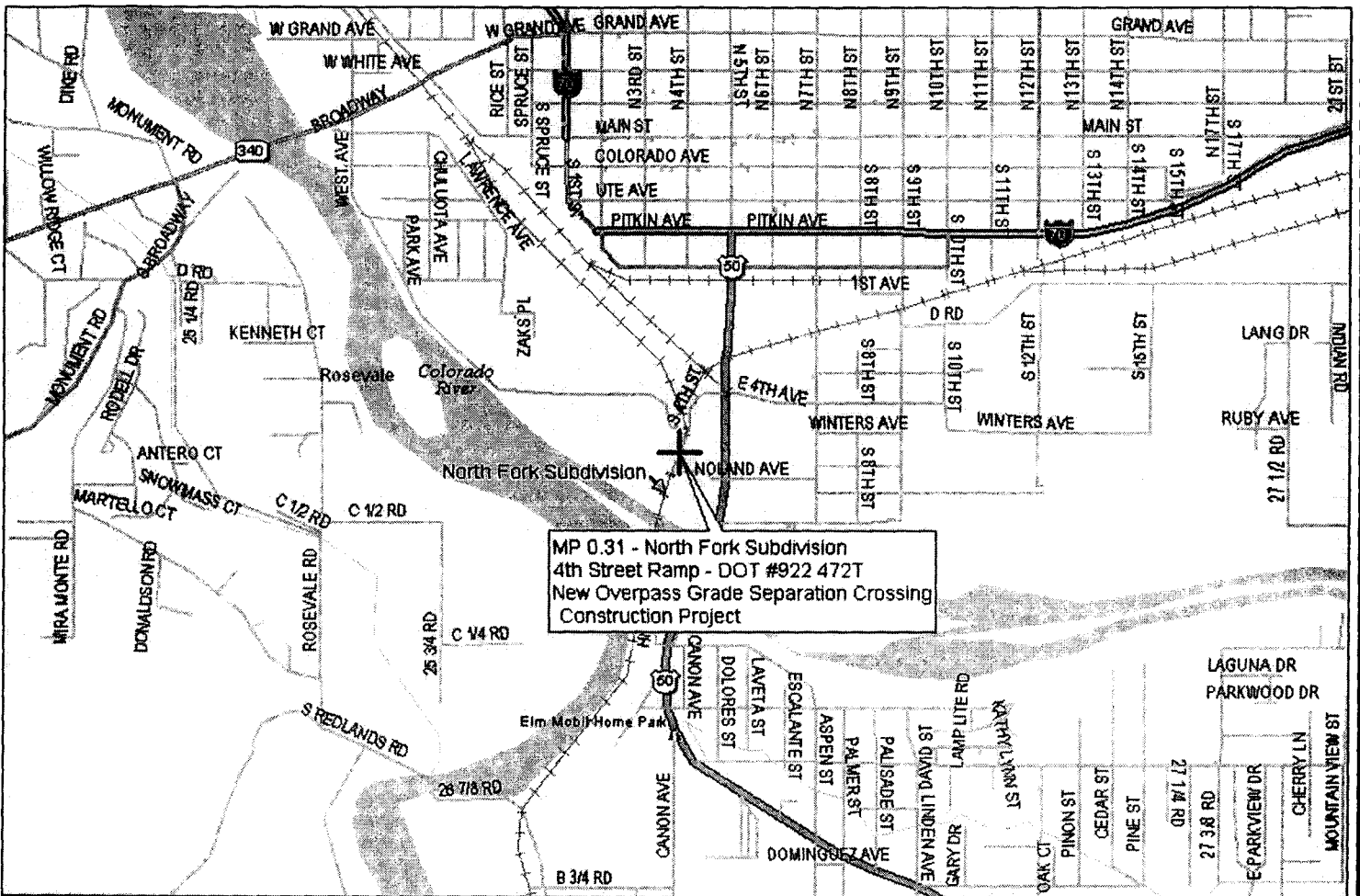
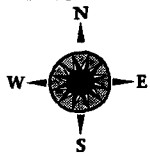
C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.

D. All employees comply with the following safety procedures when working around any railroad track:

- Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
- Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
- 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).
- Avoid walking or standing on a track unless so authorized by the employee in charge.
- Before stepping over or crossing tracks, look in both directions first.
- 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.

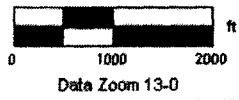
# LOCATION PRINT ACCOMPANYING A CONTRACTOR'S RIGHT OF ENTRY AGREEMENT



MP 0.31 - North Fork Subdivision  
4th Street Ramp - DOT #922 472T  
New Overpass Grade Separation Crossing  
Construction Project

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**RAILROAD WORK TO BE PERFORMED:**

1. Flagging.

**EXHIBIT "D"**

**UNION PACIFIC RAILROAD COMPANY**

NORTH FORK SUBDIVISION  
MILE POST 0.31

GPS: N 39° 03.4681', W 108° 33.9898'  
GRAND JUNCTION, MESA CO., CO.

To accompany Contractor's Right of Entry Agreement with

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

for the construction of a new overpass grade separation crossing.

Folder No. 2400-20

Date: February 27, 2007

**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 D  
Railroad Location Print  
To Contractor's Right of Entry Agreement



**EXHIBIT**

To Public Road Crossing Overpass Agreement

**PACIFIC**

Cover Sheet for the  
Settlement Agreement or  
Final CPUC Order