

Harris  
Rail  
(2)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 07A-260R

SEP 29 AM 8:40  
PUBLIC UTILITIES COMMISSION  
COLORADO

IN THE MATTER OF THE APPLICATION OF THE CITY OF STEAMBOAT SPRINGS FOR AUTHORITY TO IMPROVE THE EXISTING AT-GRADE CROSSING AT THE ANGLERS DRIVE CROSSING TO THE FISH CREEK MOBILE HOME PARK LOCATED AT 1245 ANGLERS DRIVE, STEAMBOAT SPRINGS, COLORADO 80477, MILEPOST 189.30 OF THE CRAID SUB. OF THE UNION PACIFIC RAILROAD, DOT 253657C.

**STATUS REPORT AND MOTION TO APPROVE SETTLEMENT AGREEMENT**

Daniel D. Foote, Staff Attorney, and Anthony B. Lettunich, Lettunich and Vanderbloemen, L.L.C., City Attorney hereby submit the following status report and motion to approve settlement agreement:

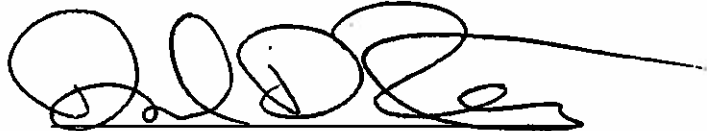
1. Applicant City of Steamboat Springs ("City") and Intervenor Union Pacific Railroad Company ("Union Pacific") have reached a settlement regarding the City's application to reconstruct an existing at-grade private highway-rail crossing located at 1245 Anglers Drive and to convert the crossing to an at-grade public road crossing. The details of the settlement are set forth in a document titled New Public Road Crossing Agreement dated September 15, 2008 and executed by the parties. A copy of the New Public Road Crossing Agreement is attached hereto as Exhibit "A".

2. The New Public Road Crossing Agreement resolves all disputed issues between the parties. The City therefore moves the Court to enter an order approving the proposed settlement, authorizing the proposed improvements to the crossing, and converting the existing at-grade private highway-rail crossing to a public crossing, all on the terms and conditions set forth in the New Public Road Crossing Agreement.

THE PUBLIC UTILITIES COMMISSION  
ENTERED  
SEP 29 2008  
COLORADO

3. Undersigned counsel has conferred with opposing counsel regarding this status report and motion. Opposing counsel concurs in the filing of this status report and motion.

RESPECTFULLY SUBMITTED this 29th day of September, 2008.



Daniel D. Foote, Atty. Reg. #24553  
Staff Attorney, City of Steamboat Springs  
P.O. Box 775088, 137 10<sup>th</sup> St.  
Steamboat Springs, CO 80477  
E-mail: dfoote@steamboatsprings.net  
Phone: (970) 871-8223  
Facsimile: (970) 879-8851

Anthony B. Lettunich, Atty. Reg. #6896  
LETTUNICH & VANDERBLOEMEN, L.L.C  
200 Lincoln Avenue, Suite 300  
P.O. Box 773990  
Steamboat Springs, CO 80477  
Email: abl@lvlaw.net  
Phone: (970) 879-0100  
Facsimile: (970) 870-0960

#### CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing Status Report and Motion to Approve Settlement Agreement, by depositing same in the U.S. mail, postage prepaid, this 26<sup>th</sup> day of September, 2008 to:

Kathleen Snead  
1331 Seventeenth St., Suite 406  
Denver, CO 80202



# NEW PUBLIC ROAD CROSSING AGREEMENT

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AMONG

UNION PACIFIC RAILROAD COMPANY

AND THE  
**UNION**  
YAMPA VALLEY HOUSING AUTHORITY  
**PACIFIC**

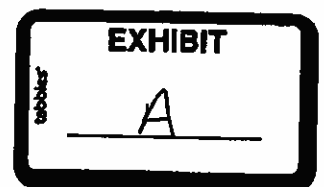
AND THE  
CITY OF STEAMBOAT SPRINGS

COVERING  
THE RECONSTRUCTION AND CONVERSION OF AN  
EXISTING AT-GRADE PRIVATE ROAD CROSSING TO  
THE NEW FISH CREEK ROAD AT-GRADE PUBLIC ROAD  
CROSSING

AT MILE POST 189.30 - CRAIG SUBDIVISION  
DOT NO. 253 657C

AT OR NEAR

STEAMBOAT SPRINGS,  
ROUTT COUNTY,  
COLORADO



City Original



UPRR Folder No.: 2470-24

UPRR Audit No.: \_\_\_\_\_

## NEW PUBLIC ROAD CROSSING AGREEMENT

Fish Creek Road – DOT No. 253 657C  
Railroad Mile Post 189.30 – Craig Subdivision  
Steamboat Springs, Routt County, Colorado

THIS AGREEMENT is made and entered into as of the 15<sup>th</sup> day of September, 2008, by and among UNION PACIFIC RAILROAD COMPANY, a Delaware corporation to be addressed at 1400 Douglas Street, MS 1690, Omaha, Nebraska 68179-1690 (the "Railroad"), YAMPA VALLEY HOUSING AUTHORITY, political subdivision of the State of Colorado to be addressed at PO Box 774542, Steamboat Springs, CO 80477, (the "Agency") and the CITY OF STEAMBOAT SPRINGS, a municipal corporation of the State of Colorado, to be addressed at PO Box (the "City").

### RECITALS:

The Railroad, the Agency and the City desire to undertake as their project:

- the reconstruction of an at-grade private road crossing, DOT No. 253 657C, at Railroad's Mile Post 189.30 on it's Craig Subdivision, in Steamboat Springs, Routt County, Colorado, and
- the conversion of the aforementioned at-grade private road crossing into the new Fish Creek Road at-grade public road crossing, DOT No. 253 657C, at Railroad's Mile Post 189.30 on it's Craig Subdivision, in Steamboat Springs, Routt County, Colorado (the "Crossing Area") as the Crossing Area is shown on the Railroad Location Print marked Exhibit A, and the Detail Prints collectively marked Exhibit A-1, with each exhibit being attached hereto and hereby made a part hereof.

Upon the Agency's completion of the construction of the Road, the City will be dedicating the Road as a public street and will incorporate the Road into its public street system.

### 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 Prints
Exhibit B	Terms and Conditions
Exhibit B-1	Insurance Requirements
Exhibit C	Railroad's Signal Material and Force Account Estimate



Exhibit C-1 Railroad's Surface Material and Force Account Estimate  
Exhibit D Railroad Form of Contractor's Right of Entry Agreement

**ARTICLE 2 - RAILROAD GRANTS RIGHT**

For and in consideration of the compensation to be paid by the Agency as set forth in Article 3 and in further consideration of the Agency's and City's agreement to perform and abide by the terms of this Agreement, including Exhibits A, B, B-1 and C, attached hereto and hereby made a part hereof, the Railroad hereby grants to the Agency and the City, the right to establish, construct, maintain, repair, renew, and use the Road as a public street over and across the Crossing Area, (together with the right of entry to control and remove from the Railroad's right-of-way on each side of the Crossing Area, the weeds and vegetation which may obstruct the view of motorists approaching the Crossing Area to any trains that may also be approaching the Crossing Area.

**ARTICLE 3 - COMPENSATION**

In consideration of the rights granted herein, the Agency hereby agrees to pay to the Railroad the sum of **TWENTY-THREE THOUSAND TWO HUNDRED EIGHTY-FOUR DOLLARS (\$23,284.00)**, upon the execution and delivery of this Agreement.

**ARTICLE 4 - CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE**

- A. The Agency, or its contractors (and their respective subcontractors), as the case may be, and/or the City's contractors (and their respective subcontractors), before commencing any construction work on the Project, or any subsequent maintenance and repair work, within the Crossing Area, or any other portion of Railroad's property, are required to:
- execute the Railroad's then current Contractor's Right of Entry Agreement, attached hereto as Exhibit D and hereby made a part hereof;
  - obtain the insurance coverage described in Exhibit B-1 hereto attached; and
  - provide to Railroad the insurance policies, certificates, binders and/or endorsements that are required in Exhibit B-1.
- B. The Agency and City acknowledge receipt of a copy of Railroad's current Contractor's Right of Entry Agreement and confirm that they will inform their contractor(s) that it/they and their subcontractors are required to execute such form of agreement before commencing any work on any Railroad property. Under no circumstances will the Agency, the City or their contractor(s) or any subcontractors be allowed on to Railroad's property without first executing the Railroad's Contractor's Right of Entry Agreement and obtaining the insurance set forth therein and also providing to Railroad the insurance policies, binders, certificates and/or endorsements described therein.
- C. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

*Union Pacific Railroad Company  
1400 Douglas Street MS1690  
Omaha, NE 68179-1690  
ATTN: Senior Manager Contracts  
UPRR Folder No.: 2470-24*



- 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 Railroad's prior review and approval.

#### **ARTICLE 5 - FEDERAL AID POLICY GUIDE**

If the Agency or 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.

#### **ARTICLE 6 - WORK TO BE PERFORMED BY RAILROAD**

- A. Upon the execution of this agreement, the Agency shall pay the Railroad a firm and fixed sum of \$266,860.00 for the work performed and materials supplied by the Railroad, as described in the Railroad's Material and Force Account Estimates:
- Railroad's Signal Material and Force Account Estimates dated November 9, 2007, marked **Exhibit C**, and
  - Railroad's Surface Material and Force Account Estimates dated November 29, 2007, marked **Exhibit C-1**,
- each attached hereto and hereby made a part hereof (collectively the "Estimate").
- B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the Agency in the event the Agency 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. If the Estimate provides for the Railroad to install public crossing warning signals and/or gates, the Railroad shall maintain and repair such warning devices; PROVIDED, HOWEVER, that such maintenance and repair shall not negate the Railroad's eligibility for any federal, state, local, or other public funds that may become available for the maintenance and repair of such warning devices and PROVIDED, FURTHER, that the cost of repair or replacement resulting from damage caused by the general public that is not recovered by the Railroad from the person or entity causing such damage shall be borne entirely by the City.
- D. The City agrees to reimburse the Railroad for any costs incurred by the Railroad involving the Project that have not been paid by the Agency in a timely manner.

#### **ARTICLE 7 - CITY TO DEDICATE ROAD AS PUBLIC STREET**

Upon the completion of the construction of the Road, in compliance with the City street construction standards, the City will dedicate the Road as a public street and will incorporate the Road into its public street system.

#### **ARTICLE 8 - EFFECTIVE DATE; TERM**

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 until terminated as provided in this Agreement.



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 #94-6001323)

By Beverly J. Kubat for  
GREGORY L. PINKER  
Director Contracts

WITNESS:

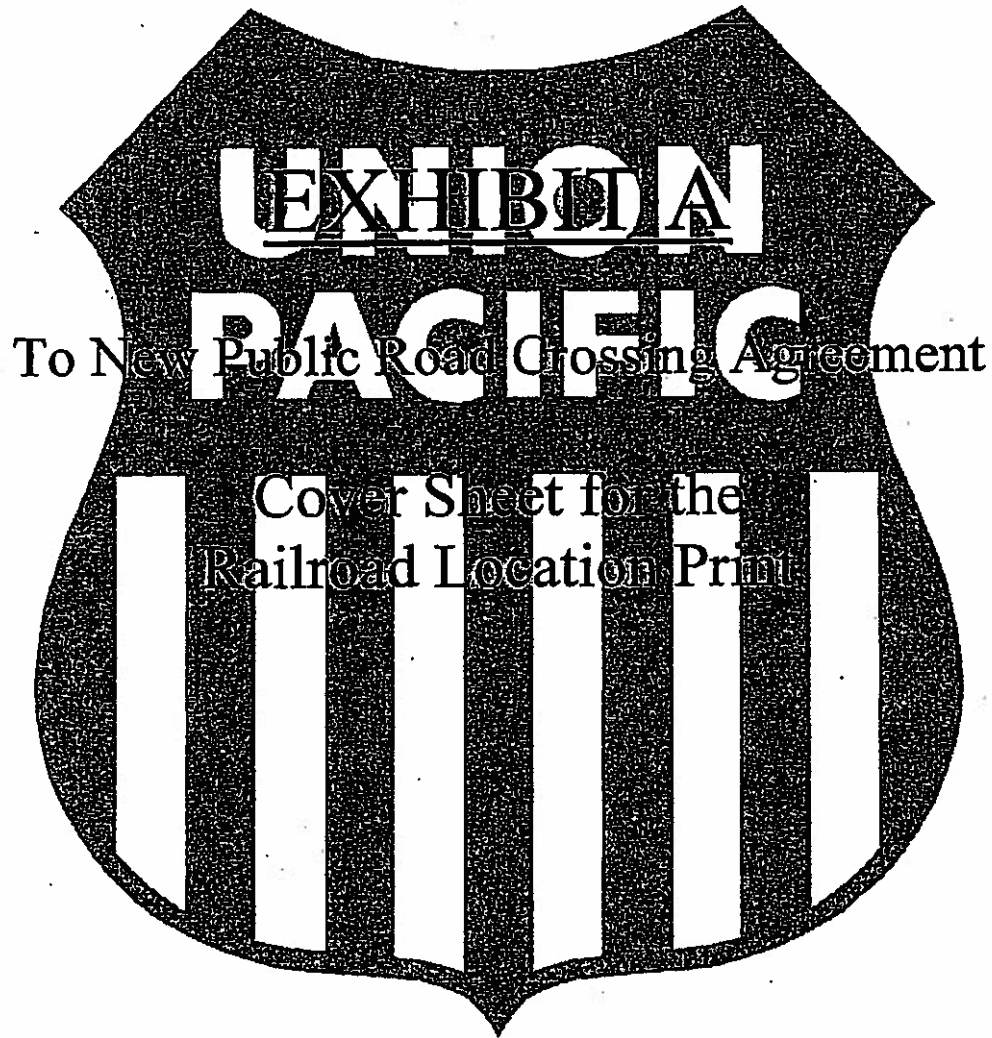
[Signature]

**YAMPA VALLEY HOUSING  
AUTHORITY**  
By [Signature]  
Title: PRESIDENT

WITNESS:

\_\_\_\_\_

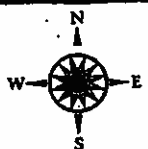
**CITY OF STEAMBOAT SPRINGS**  
By [Signature]  
Title: \_\_\_\_\_



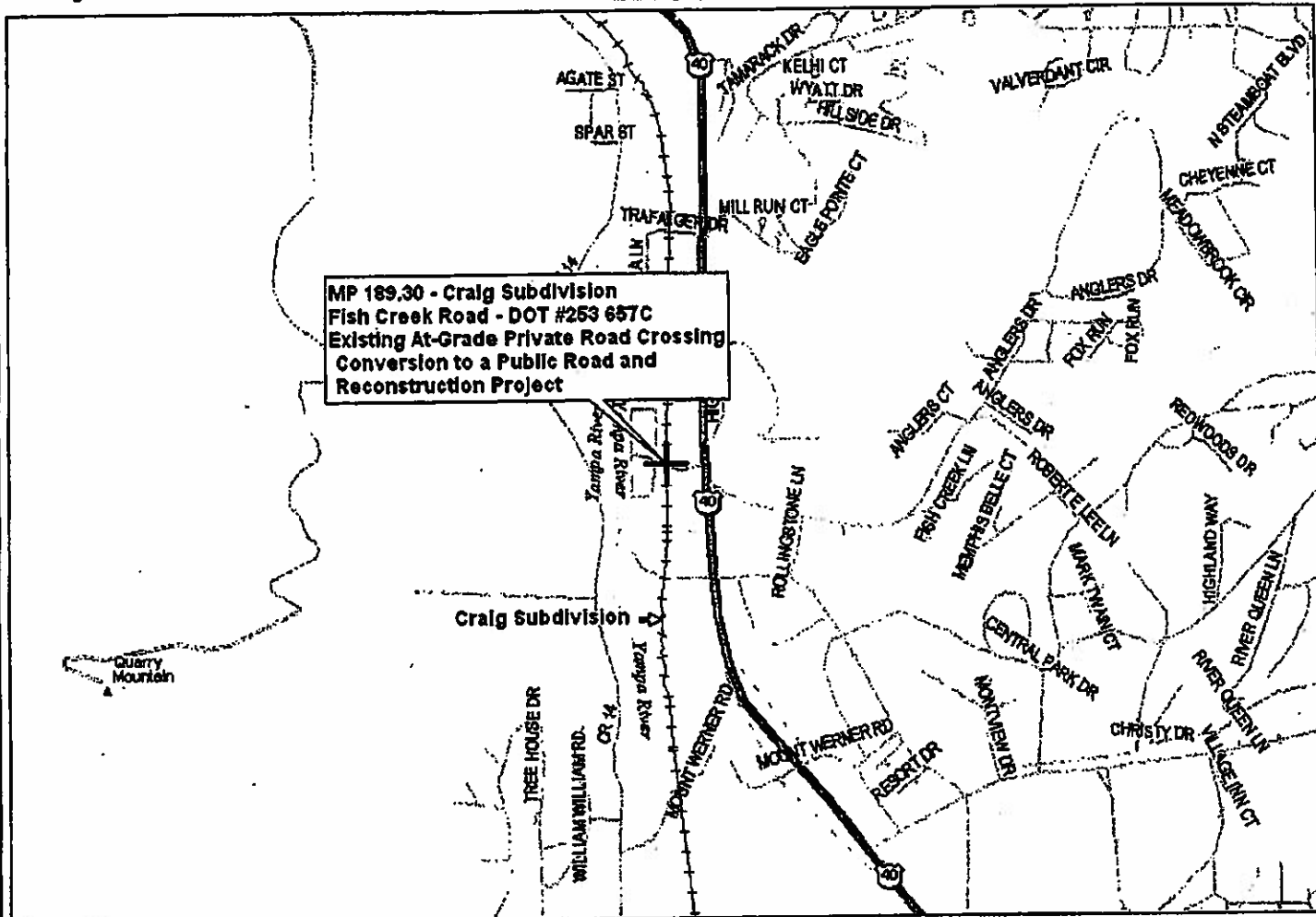
To New Public Road Crossing Agreement

Cover Sheet for the  
Railroad Location Print





# RAILROAD LOCATION PRINT OF AN EXISTING AT-GRADE PUBLIC ROAD CROSSING RECONSTRUCTION PROJECT



**MP 189.30 - Craig Subdivision  
 Fish Creek Road - DOT #253 657C  
 Existing At-Grade Private Road Crossing  
 Conversion to a Public Road and  
 Reconstruction Project**



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 www.delorme.com

↑  
 MN (10.4" E)



Date Zoom 13-0

**RAILROAD WORK TO BE PERFORMED:**

1. Install 48-feet of concrete road crossing surface; install 160-feet of track; install 50 cross ties; install 2 carloads of ballast; and other track and surface materials.
2. Install LED Flashing Signals with Gates; CWT in a New Cabin; and other signal facilities.
3. Flagging and Engineering.

**EXHIBIT "A"**

**UNION PACIFIC RAILROAD COMPANY**

CRAIG SUBDIVISION  
 MILE POST 189.30

GPS: N 40° 28.1061', W 106° 49.6513'  
 STEAMBOAT SPRINGS, ROUTT CO., CO.

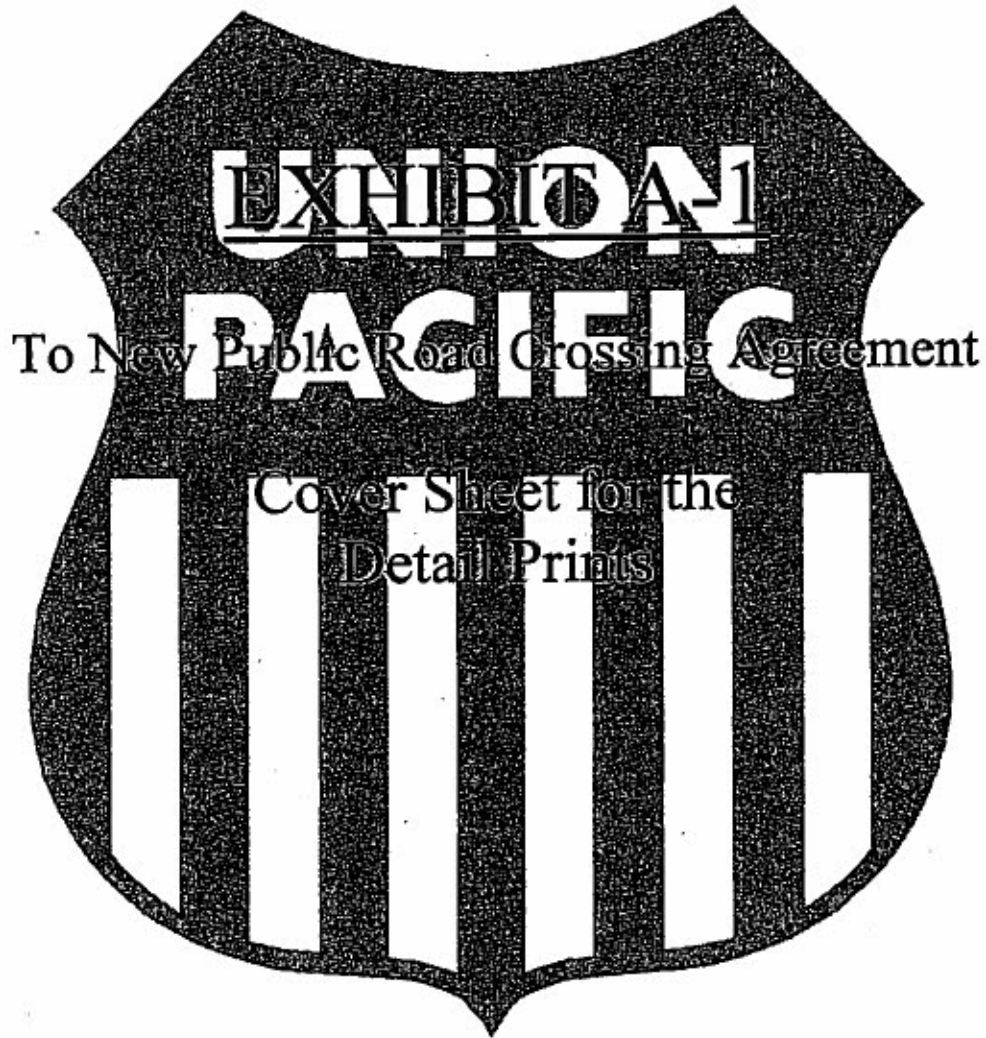
Location print of an existing at-grade private road crossing conversion and reconstruction project with the **YAMPA VALLEY HOUSING AUTHORITY** and the **CITY OF STEAMBOAT SPRINGS.**

Folder No. 2470-24

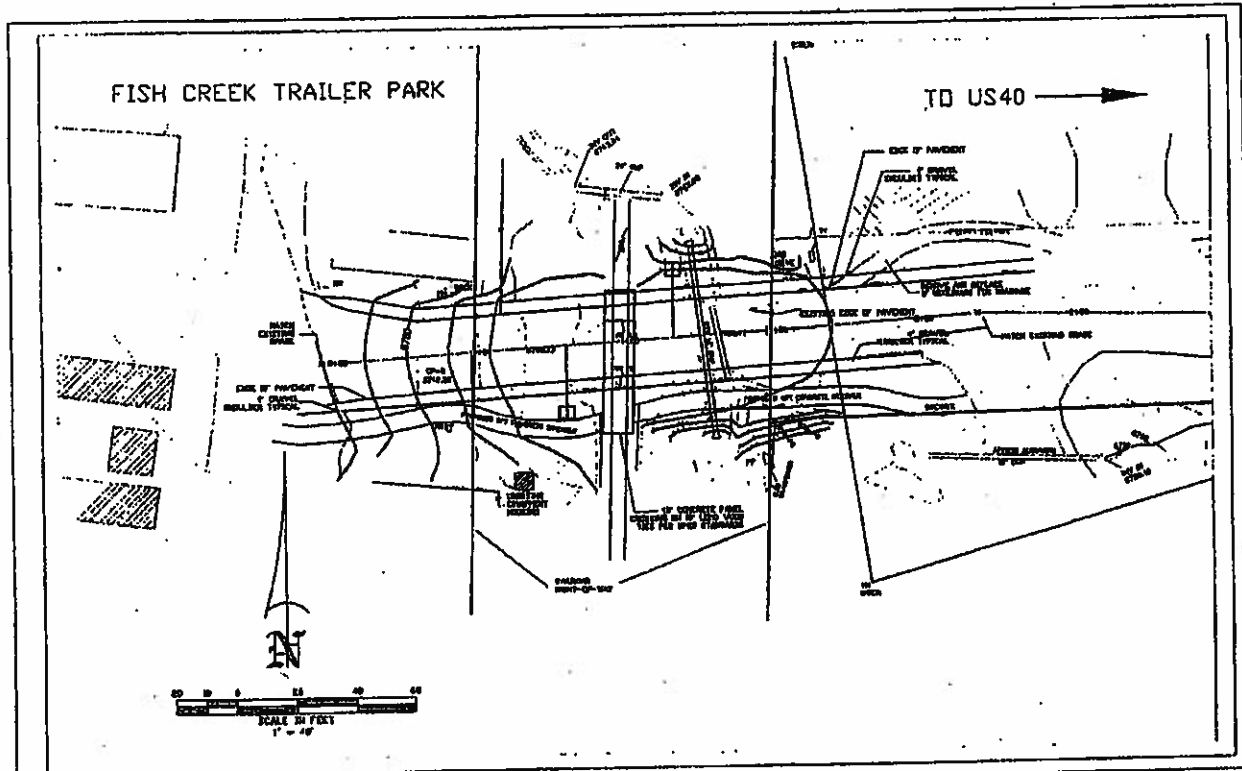
Date: August 12, 2008

**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

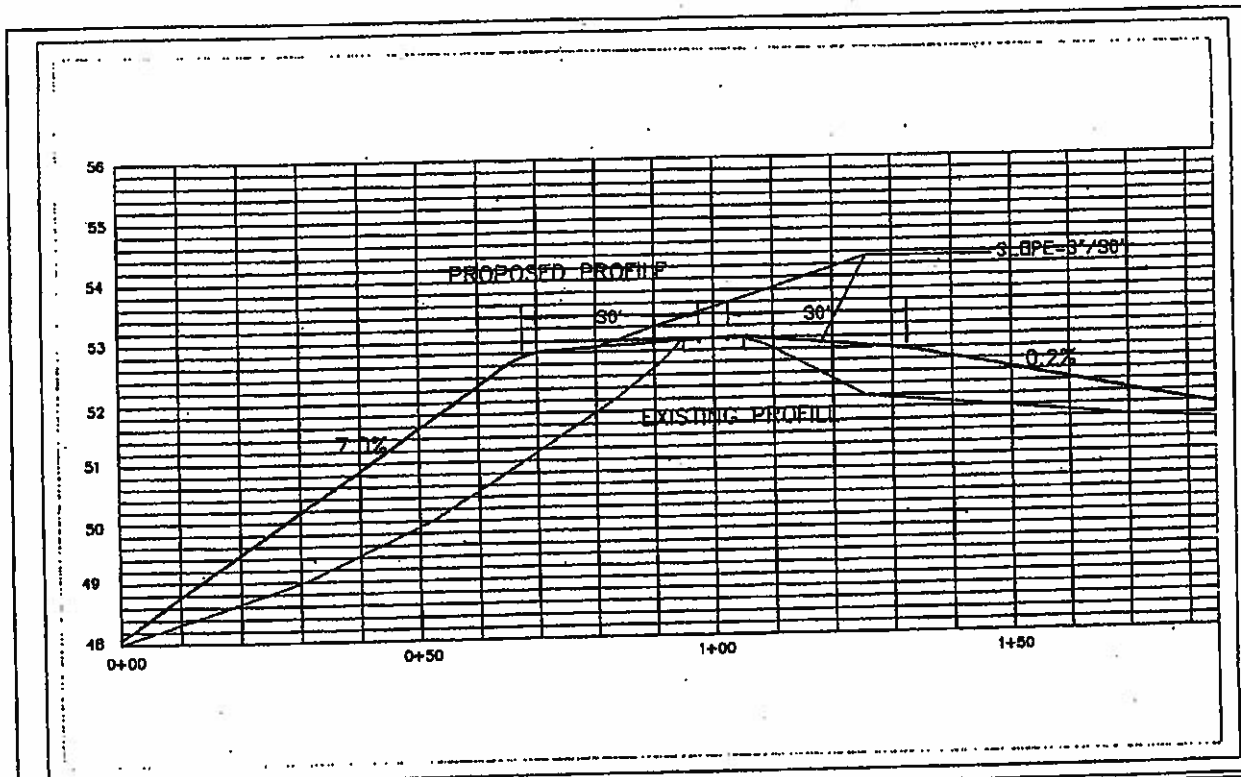


To New Public Road Crossing Agreement



City of <b>Steamboat Springs</b> Public Works Department	Fish Creek Railroad Crossing	
	Drawn by: BSB	Date: 4/18/07
PO BOX 775088 STEAMBOAT SPRINGS, CO (970) 871-6303 FAX (970) 871-6306	Scale: 1"=40'	Revision description: DRAFT

Exhibit A  
 Detailed Plan  
 To New Public Road Crossing Agreement




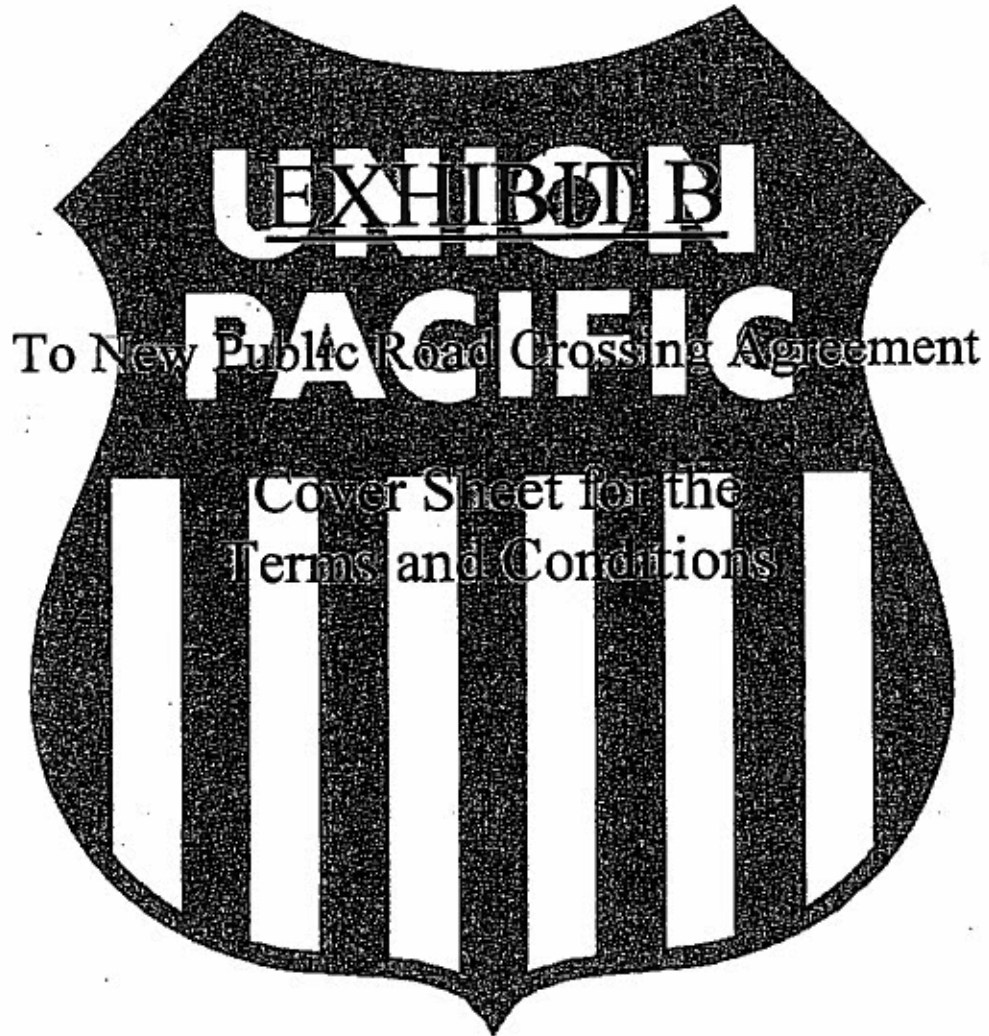
City of <b>Steamboat Springs</b>  Public Works Department	<b>Fish Creek Railroad Crossing</b>	
	Drawn by: BSB	
PO BOX 775088 STEAMBOAT SPRINGS, CO (970) 871-8303 FAX (970) 871-8306	Scale: 1"=20'	Date: 4/18/07
	Revision description: DRAFT	

Exhibit A -  
 Detailed Print  
 To New Public Road Crossing Agreement



## EXHIBIT B

### TO NEW PUBLIC ROAD CROSSING 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 Agency and City shall not use or permit use of the Road and Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the Agency and City shall not use or permit use of the Road and 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 Agency or City for the purpose of conveying electric power or communications incidental to the Agency's or City's use of the Crossing Area for street 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 Agency or 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 street. In the event the Railroad shall place additional tracks upon the Crossing Area, the Agency or 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 Agency and City shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the railroad property, unless the Agency and 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 Agency or 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 highway and its appurtenances, or for the performance of any work in connection with the Project, the Agency or City will acquire all such other property and rights at its own expense and without expense to the Railroad.

##### **SECTION 2 - CONSTRUCTION OF HIGHWAY**

- a) The Agency or City, at its own 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 Agency, at its own expense, will furnish all necessary labor, material and equipment, and shall construct and complete the street and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper highway warning devices (except those installed by the Railroad within its right-of-way), and all necessary and proper drainage facilities, guard rails or barriers, and right of way fences between the street and the railroad tracks. Upon completion of the Project, the Agency 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) The Railroad will receive no ascertainable benefit from the construction of the Project, and, except as may be specifically provided herein, shall not be required to pay or contribute any part of the cost thereof. If the Project is to be financed in whole or in part by Federal funds, all construction work by the Agency shall be performed, and any reimbursement to the Railroad for work it performs shall be made, in accordance with the applicable Federal acts, regulations, and this Agreement.
- d) All construction work of the Agency upon the Railroad's property (including, but not limited to, construction of the street and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Vice President-Engineering Services of the Railroad or his authorized representative and in accordance with detailed plans and specifications prepared by and at the expense of the Agency or City, and approved in writing by the Railroad's Vice President-Engineering Services.
- e) All construction work of the Agency shall be performed diligently and completed within a reasonable time. 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 Agency. The Agency or City hereby assume the risk of any such delays and agree 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 Agency or City, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the Agency or 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 Agency or City at the Agency's or City's own expense, or by the Railroad at the expense of the Agency or City, and to the satisfaction of the Railroad's Vice President-Engineering Services.

### **SECTION 4 - MAINTENANCE**

The City shall, at its own sole expense, maintain, repair, and renew, or cause to be maintained, repaired and renewed, the entire Road and Crossing Area. The Railroad, at the City's expense, shall repair or replace the Crossing surface between the end of ties if necessitated by repair or rehabilitation of the Railroad's tracks through the Crossing Area.

### **SECTION 5 - CHANGES IN GRADE**

If at any time the Railroad shall elect, or be required by competent authority to, raise or lower the grade of all or any portion of the track or tracks located on the Crossing Area, the City shall, at its own expense, conform the public street in the Crossing Area to conform with the change of grade of the trackage.

This section shall not apply in the event Railroad elects or is required to separate the highway-rail grades to waive the cost allocation provisions of 40-4-106, 4 CCR 723-7207, or other laws applicable to the allocation of costs of grade separation projects.

### **SECTION 6 - REARRANGEMENT OF WARNING DEVICES**

If the change or rearrangement of any warning device installed hereunder is necessitated for public or Railroad convenience or on account of improvements for either railroad, highway or both, the parties will apportion the expense incidental thereto between themselves by negotiation, agreement or by the order of a competent authority before the change or rearrangement is undertaken.

### **SECTION 7 - 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 Agency and 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 Agency and City shall include the Agency's and City's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the Agency or City shall include work both within and outside of railroad property.
- b) **Compliance With Laws.** The Agency and City shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Agency and City shall use only such methods as are consistent with safety, both as concerns the Agency and City, the Agency's and City's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Agency and 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 Agency and 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 Agency and 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 Agency and 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 Agency and 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 Agency and City, at their own expense, shall adequately police and supervise all work to be performed by the Agency and 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 Agency and 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 Agency and City with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the Agency and 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 Agency's or 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 Agency or City is being or is about to be done or prosecuted without due regard and precaution for safety and security, the Agency or City shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.
- f) **Removal of Debris.** The Agency and 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 Agency and City at the Agency and City's own expense or by the Railroad at the expense of the Agency and City. The Agency and 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 Agency and 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. In addition to any conditions, restrictions or limitations as may be specifically imposed:
- 1) Unless the Railroad's Vice President-Engineering Services agrees otherwise, the Agency and City shall provide no less than 48 hours' notice, excluding weekends and holidays, before discharging any explosives.
  - 2) Any explosives loaded in holes or placed or otherwise readied for discharge on a day shall be discharged on the same day during daylight hours, and at mutually acceptable times.
  - 3) The Agency and City, at their own expense, shall take all precautionary measures and construct all temporary shelters necessary to guard against danger of damage, destruction or interference arising out of or connected with any blasting or any transportation, handling, storage, security or use of explosives.
  - 4) The Agency and City shall require explosives to be transported, handled, stored or otherwise secured and used in a manner satisfactory to the Railroad and in accordance with local, state and Federal laws, rules and regulations, including, without limitation, United States Department of Labor, Bureau of Labor Standards, Safety and Health Regulations for Construction, 29 CFR Part 1518, Subpart U -- "Blasting and the Use of Explosives"; and Occupational Safety and Health Administration Occupational Safety and Health Standards, 29 CFR Part 1910, Subpart H -- "Hazardous Materials".
- h) **Obstructions to View.** Except as otherwise specifically provided herein, the Agency and City shall not cause or permit the view along the tracks of the Railroad to be obstructed, nor place any combustible material on the premises, nor erect any structures thereon. If public law or regulation requires control or removal of weeds or vegetation on each side of the Crossing Area, the Agency and City will perform such control or removal work without expense to the Railroad or, if the Agency and City may not lawfully perform the control or removal work, reimburse the Railroad for the cost of performing such control or removal. If the crossing is not equipped with automatic train activated warning devices with gate arms:
- 1) The City shall control or remove weeds and vegetation within and on each side of the Crossing Area so that the view of approaching motorists to approaching trains is not obstructed by weeds or vegetation; and
  - 2) Insofar as it may lawfully may do so, the City will not permit non-parties to construct sight obstructing buildings or other permanent structures on property adjacent to the right-of-way.
- i) **Excavation.** The Agency and 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 Agency and 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 Agency and City, at their own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the Agency and 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 Vice President-Engineering Services to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.
- j) **Drainage.** The Agency and City, at their own expense, shall provide and maintain suitable facilities for draining the highway and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The Agency and City, at their 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 Agency or 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 Agency and City shall not obstruct or interfere with existing ditches or drainage facilities.
- k) **Notice.** Before commencing any work, the Agency and City, or their contractors, shall provide at least ten (10) days prior notice (excluding weekends and holidays) to the Railroad's Manager-Track Maintenance.





l) **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. The Agency and 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 1-800-338-9193 (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 Agency and City. If it is, the Agency and 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 8 - 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 new or improved devices have been installed.

#### **SECTION 9 - 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 10 - REMEDIES FOR BREACH OR NONUSE**

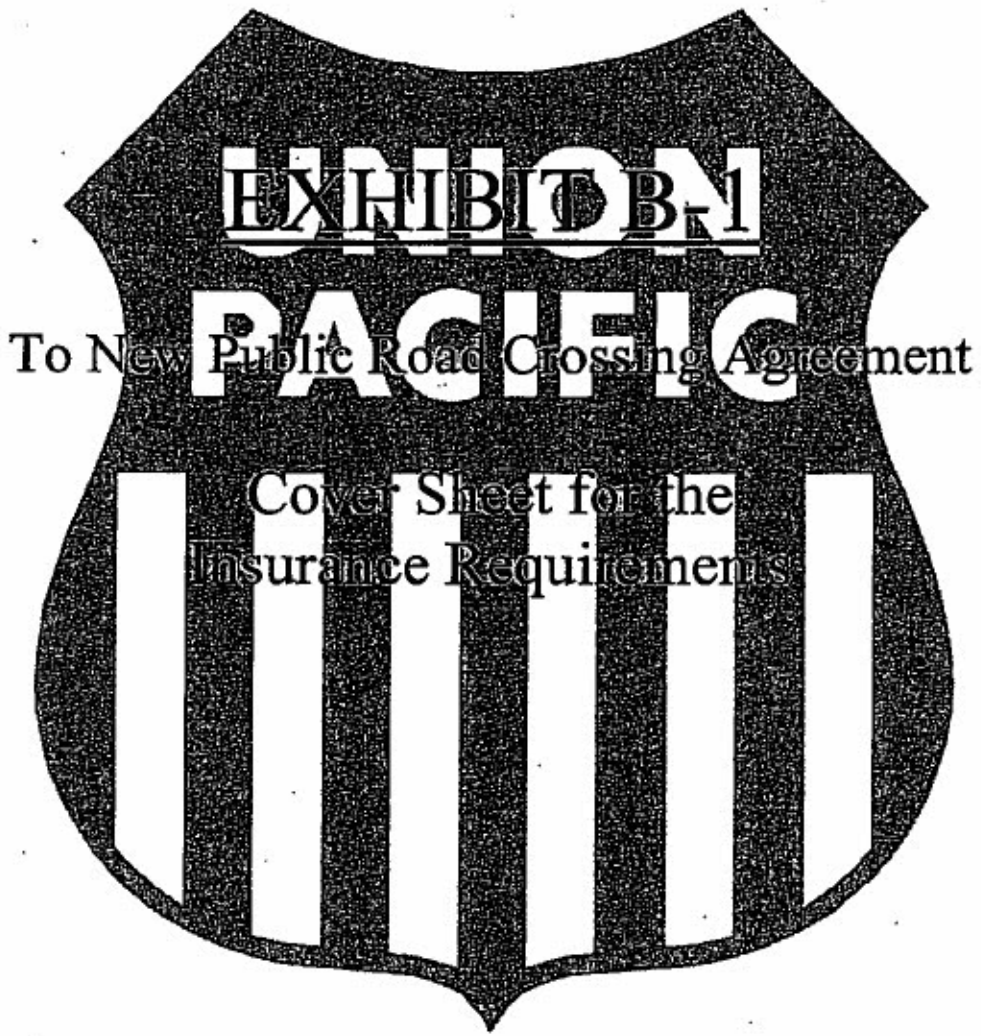
- a) If the Agency or City shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the street and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the Agency or City will reimburse the Railroad for the expenses thereof.
- b) Nonuse of the Crossing Area for public roadway 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 Agency and City hereunder.
- c) The Agency and City will surrender peaceable possession of the Crossing Area upon termination of this Agreement and the City will demolish and remove the Road and, if applicable, any overhead structure associated with the Road at City's sole expense and to the satisfaction of Railroad. 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 11 - 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 Agency and 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 Agency and 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 Agency and 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 12 - ASSIGNMENT; SUCCESSORS AND ASSIGNS**

This Agreement shall not be assigned without the prior 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.



To New Public Road Crossing Agreement



## EXHIBIT B-1

### TO NEW PUBLIC ROAD CROSSING 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 \$5000,000 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 (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.

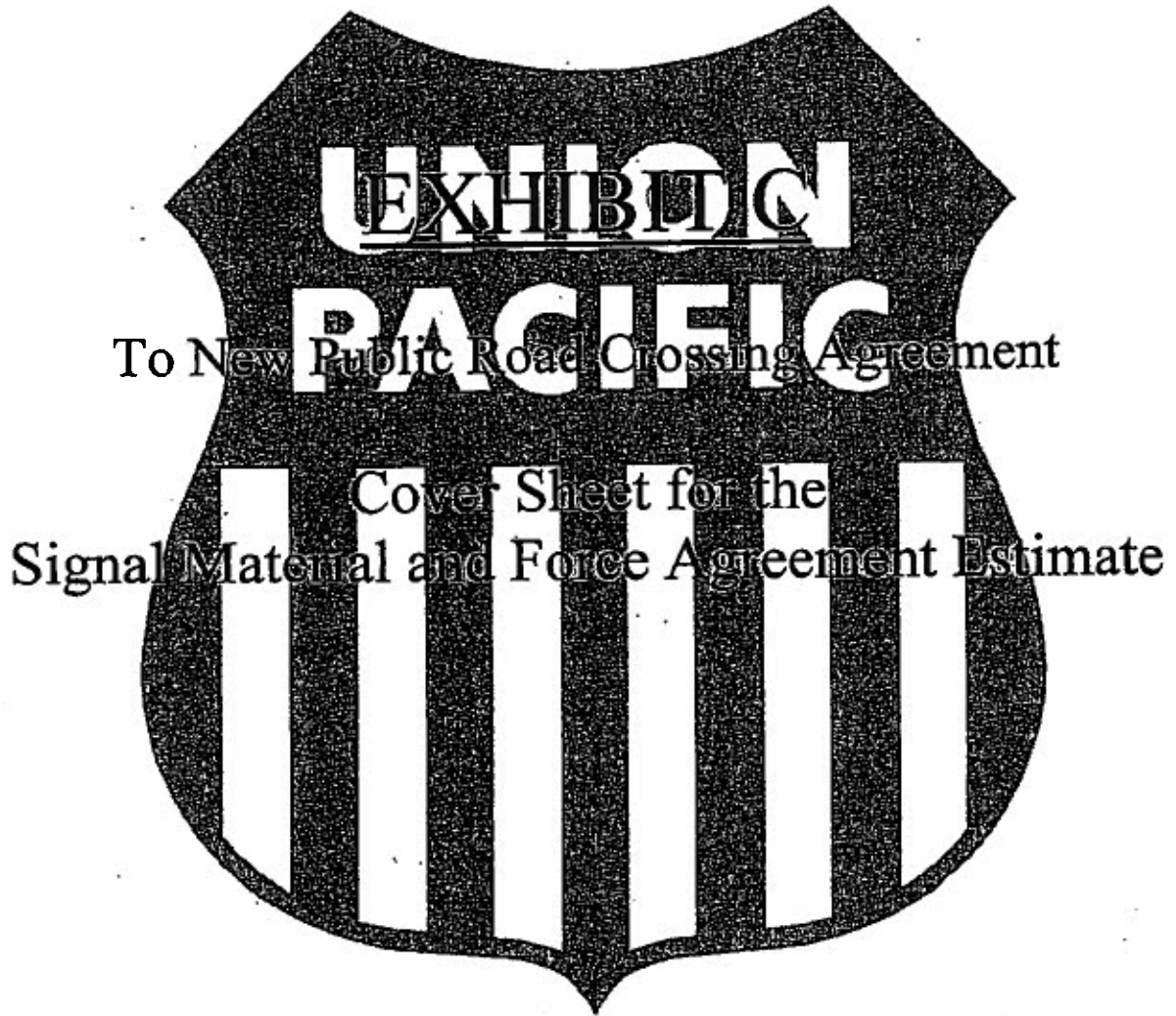


Approved: Insurance Group  
Created: 2/10/06; Last Modified: 2/10/06

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.



To New Public Road Crossing Agreement

Cover Sheet for the  
Signal Material and Force Agreement Estimate

DATE: 2007-11-09

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

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS 2008-05-09

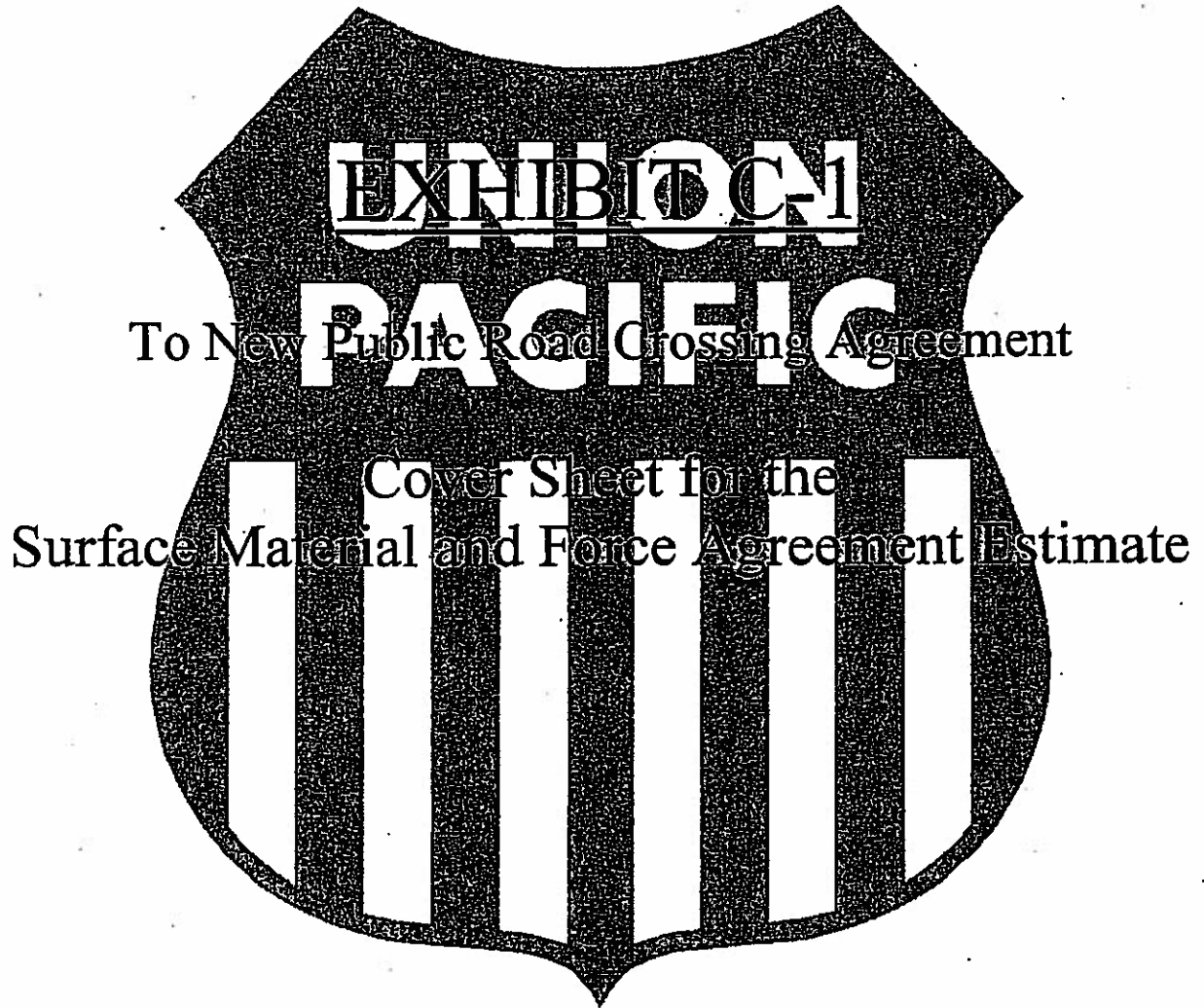
DESCRIPTION OF WORK:  
 INSTALL LED FL SIGNALS W/GATES AND CMT IN NEW CABIN AT FISH CREEK MOBILE  
 IN STEAMBOAT SPRINGS, CO. R.P. 189.30 ON THE GRADE SUB.  
 SIGNAL PROJECT MANAGER: BOB THOMPSON 246-2597  
 RAILROAD TO PERFORM ALL WORK / COST DISTRIBUTED AS FOLLOWS:  
 SIGNAL - FISH CREEK MOBILE HOME PARK 100% PRE-PAY

FID: 55606 AEO: 57531 MP,SUBDIV: 189.30, CRAIG  
 SERVICE UNIT: 14 CITY: STEAMBOAT SPRIN STATE: CO

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
<b>ENGINEERING WORK</b>							
ENGINEERING			2022		2022		2022
LABOR ADDITIVE 180%			12759		12759		12759
SIG-HWY ENG			4765		4765		4765
<b>TOTAL ENGINEERING</b>			<b>19546</b>		<b>19546</b>		<b>19546</b>
<b>SIGNAL WORK</b>							
BILL PREP			900		900		900
CONTRACT				6761	6761		6761
BANK FILL/ROCK				4050	4050		4050
LABOR ADDITIVE 180%			40495		40495		40495
WATER SERVICE				25000	25000		25000
PERSONAL EXPENSES				16500	16500		16500
SIGNAL			21540	53269	74809		74809
TRANSPORTATION CHARGES				3391	3391		3391
<b>TOTAL SIGNAL</b>			<b>62935</b>	<b>108961</b>	<b>171896</b>		<b>171896</b>
<b>LABOR/MATERIAL EXPENSE</b>			<b>82481</b>	<b>108961</b>			
<b>RECOLLECTIBLE/UPRR EXPENSE</b>					<b>191442</b>	<b>0</b>	
<b>ESTIMATED PROJECT COST</b>							<b>191442</b>
EXISTING REUSABLE MATERIAL CREDIT					0		
SALVAGE NONREUSABLE MATERIAL CREDIT					0		
<b>RECOLLECTIBLE LESS CREDITS</b>							

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







DATE: 2007-11-29

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

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2008-05-29

DESCRIPTION OF WORK:

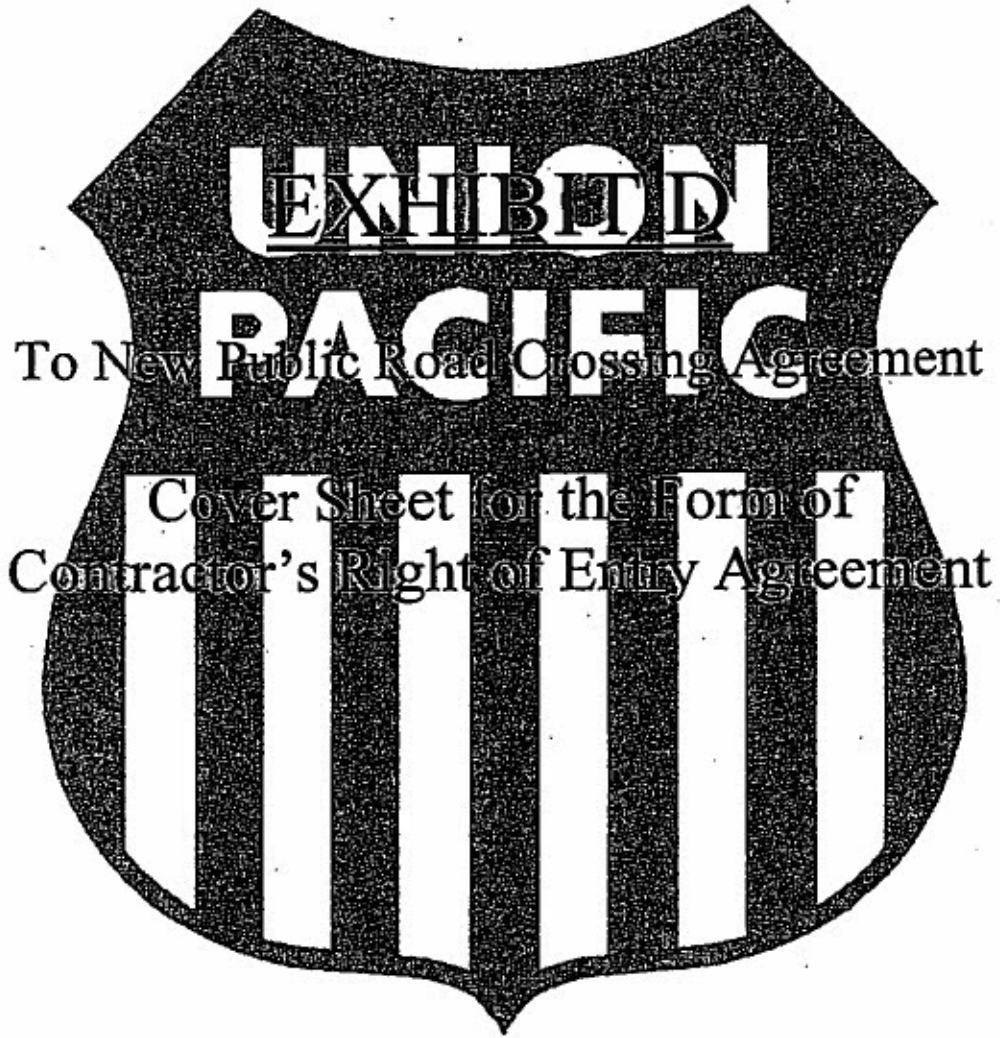
INSTALL ONE 48 FOOT CONCRETE ON WOODTIE GRADE CROSSING SURFACE INCLUDING  
 TIES, OTM AND BALLAST. AT FISH CREEK MOBILE PRIVATE CROSSING. MP. 189.30  
 ON THE CRAIG SUB. INSTALL 30" STOP SIGNS WITH CROSSBUCKS.  
 FISH CREEK MOBILE TO PREPAY 100% OF THE COST. USING STANDARD ADDITIVES.

RID: 55791 AWO: 57862 MP, SUBDIV: 189.30, CRAIG  
 SERVICE UNIT: 14 CITY: STEAMBOAT SPRIN STATE: CO

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
<b>ENGINEERING WORK</b>							
ENGINEERING			1000		1000		1000
LABOR ADDITIVE 236%			2320		2320		2320
<b>TOTAL ENGINEERING</b>			<b>3320</b>		<b>3320</b>		<b>3320</b>
<b>SIGNAL WORK</b>							
FNCE-R/W, SND			546		546		546
LABOR ADDITIVE 236%			3015		3015		3015
MATL STORE EXPENSE				8	8		8
SALES TAX				13	13		13
SIGNAL			979	347	1326		1326
<b>TOTAL SIGNAL</b>			<b>4540</b>	<b>368</b>	<b>4908</b>		<b>4908</b>
<b>TRACK &amp; SURFACE WORK</b>							
BALAST	2.00	CL	2187	1333	3520		3520
BILL PREP			900		900		900
EQUIPMENT RENTAL				3500	3500		3500
FIELD WELD			48		48		48
FOREIGN LINE FREIGHT				140	140		140
HOME LINE FREIGHT				900	900		900
LABOR ADDITIVE 236%			23272		23272		23272
MATL STORE EXPENSE				326	326		326
OTM			643	474	1117		1117
RAIL	160.00	LF	933	2788	3621		3621
RDKING	48.00	TF	3996	7875	11871		11871
SALES TAX				673	673		673
TRAFFIC CONTROL				3500	3500		3500
TRK-SURF, LIN			2375		2375		2375
WELD			1578	389	1967		1967
XOTIE	50.00	EA	5458	4002	9460		9460
<b>TOTAL TRACK &amp; SURFACE</b>			<b>41290</b>	<b>25900</b>	<b>67190</b>		<b>67190</b>
<b>LABOR/MATERIAL EXPENSE</b>			<b>49150</b>	<b>26268</b>			
<b>RECOLLECTIBLE/UPRR EXPENSE</b>					<b>75418</b>	<b>0</b>	
<b>ESTIMATED PROJECT COST</b>							<b>75418</b>
<b>EXISTING REUSEABLE MATERIAL CREDIT</b>					<b>0</b>		
<b>SALVAGE NONUSEABLE MATERIAL CREDIT</b>					<b>0</b>		
<b>RECOLLECTIBLE LESS CREDITS</b>							

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

D



To New Public Road Crossing Agreement

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

August 15, 2008

UPRR Folder No.: 2470-24

**To the Contractor:**

Before Union Pacific Railroad Company can permit you to perform work on its property for the reconstruction and conversion of an existing at-grade private road crossing to the new Fish Creek Road at-grade public road 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.

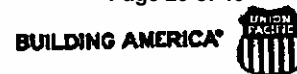
**RETURN ALL OF THESE REQUIRED ITEMS TOGETHER IN ONE ENVELOPE.  
DO NOT MAIL ANY ITEM SEPARATELY.**

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.: 2470-24

UPRR Audit No.: \_\_\_\_\_

## 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 Corporation)

### RECITALS:

Contractor has been hired by the *Yampa Valley Housing Authority* to perform work relating to the reconstruction and conversion of an existing at-grade private road crossing to the new Fish Creek Road at-grade public road crossing (the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of the Railroad's Mile Post 189.30 on the Railroad's Craig Subdivision in or near Steamboat Springs, Routt County, Colorado, as such location is in the general location shown on the Railroad Location Print marked Exhibit A, attached hereto and hereby made a part hereof, which work is the subject of a contract dated \_\_\_\_\_ among the  
(Date of C&M Agreement)  
Railroad, Yampa Valley Housing Authority and the City of Steamboat Springs.

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

### AGREEMENT:

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

#### ARTICLE 1 - DEFINITION OF CONTRACTOR.

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

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

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



the work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

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

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

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

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

*Lee Peyton*  
*Manager Track Maintenance*  
*Union Pacific Railroad Company*  
*304 Railroad Avenue*  
*Kremmling, CO 80459*  
*Phone: 970-653-4018*  
*Cell: 970-366-2229*

*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 B. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

**ARTICLE 5 - TERM; TERMINATION.**

- A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until \_\_\_\_\_, unless sooner terminated as herein provided, or  
*(Expiration Date)*  
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 (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement, and (ii) the insurance endorsements obtained by each subcontractor as required under Section 12 of **Exhibit B** of this Agreement.
- B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

*Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street, MS 1690  
Omaha, NE 68179-1690  
UPRR Folder No.: 2470-24*

**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

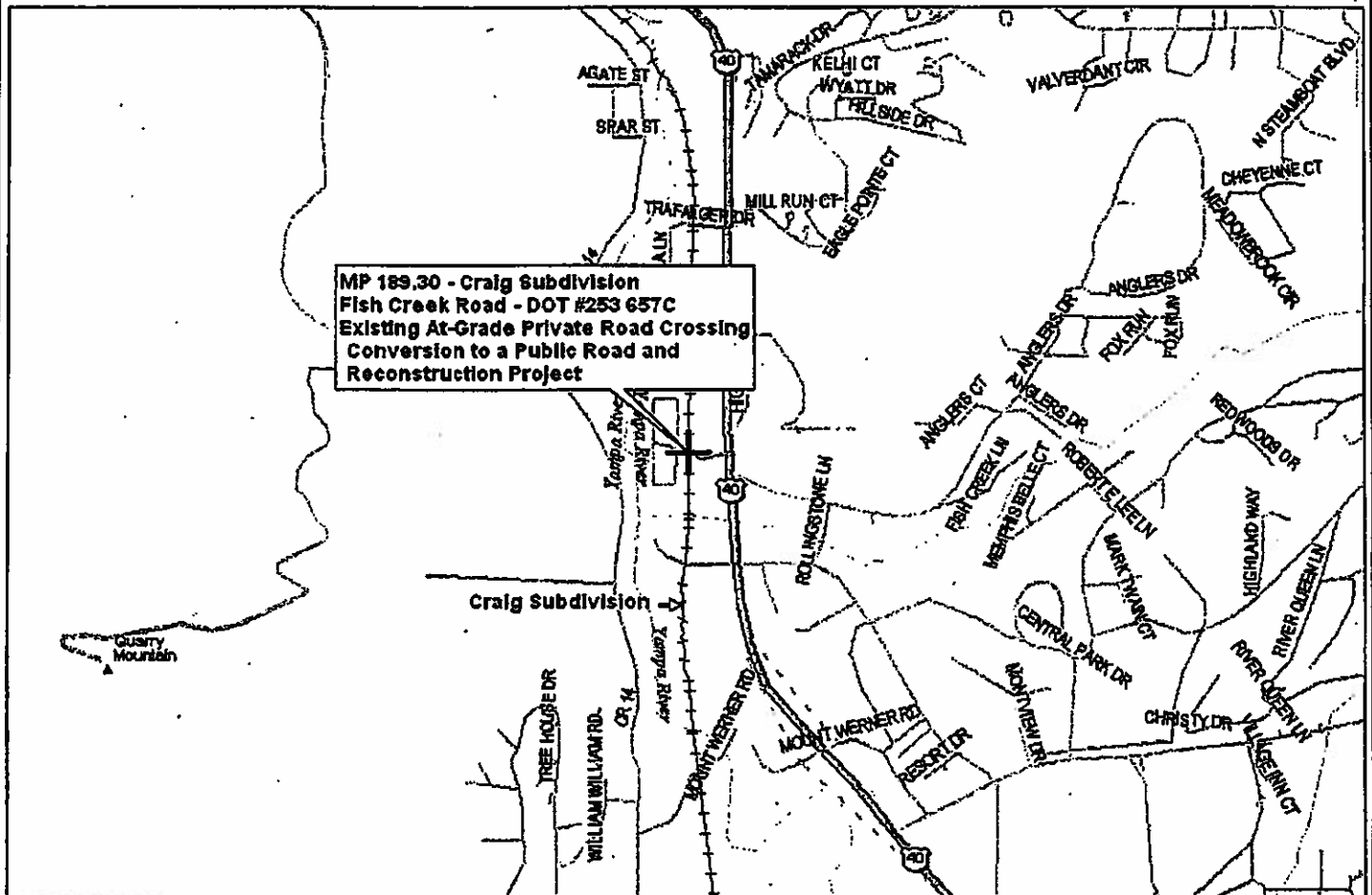
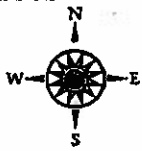
\_\_\_\_\_  
*(Name of Contractor)*

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

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



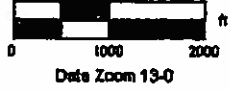
# RAILROAD LOCATION PRINT ACCOMPANYING A CONTRACTOR'S RIGHT OF ENTRY AGREEMENT



**MP 189.30 - Craig Subdivision  
Fish Creek Road - DOT #253 657C  
Existing At-Grade Private Road Crossing  
Conversion to a Public Road and  
Reconstruction Project**



Data uses subject to license.  
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www.delorme.com



### RAILROAD WORK TO BE PERFORMED:

1. Install 48-feet of concrete road crossing surface; install 160-feet of track; install 50 cross ties; install 2 carloads of ballast; and other track and surface materials.
2. Install LED Flashing Signals with Gates; CWT in a New Cabin; and other signal facilities.
3. Flagging and Engineering.

### EXHIBIT "A"

#### UNION PACIFIC RAILROAD COMPANY

CRAIG SUBDIVISION

MILE POST 189.30

GPS: N 40° 28.1061', W 106° 49.6513'  
STEAMBOAT SPRINGS, ROUTT CO., CO.

To accompany Contractor's Right of Entry Agreement with

*(Name of Contractor)*

for an existing at-grade private road crossing conversion and reconstruction project.

Folder No. 2470-24

Date: August 12, 2008

### 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 B**

### **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 Railroad's tracks except at existing open public crossings.

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

#### Section 4. LIENS.

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

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

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

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

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

#### Section 7. SAFETY.

- A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in Exhibit C, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of Exhibit C to each of its employees before they enter the job site.
- B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.
- C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.



**Section 8. INDEMNITY.**

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

**Section 9. RESTORATION OF PROPERTY.**

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

**Section 10. WAIVER OF DEFAULT.**

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

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

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

**Section 12. ASSIGNMENT - SUBCONTRACTING.**

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

## EXHIBIT C

### TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

#### INSURANCE PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Other Requirements



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

## EXHIBIT D

### TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

#### MINIMUM SAFETY REQUIREMENTS

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

#### I. Clothing

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

Specifically, Contractor's employees must wear:

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

#### II. Personal Protective Equipment

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

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

#### III. On Track Safety

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

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

#### IV. Equipment

A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's

- property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
- Familiar and comply with Railroad's rules on lockout/tagout of equipment.
  - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
    - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.
- V. General Safety Requirements**
- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
- (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
  - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
  - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment of the opening is less than one car length (50 feet).
  - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
  - (v) Before stepping over or crossing tracks, look in both directions first.
  - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.