

UPRR Folder No.: 2283-31

AUDIT 237225

# CONSTRUCTION & MAINTENANCE AGREEMENT

BETWEEN

**UNION PACIFIC RAILROAD COMPANY**

AND THE

**TOWN OF CASTLE ROCK**

COVERING

THE CONSTRUCTION OF THE NEW FRONT STREET FLYOVER  
OVERPASS GRADE SEPARATION CROSSING

AT

UPRR MILE POST 31.82 – COLORADO SPRINGS SUBDIVISION  
DOT NO. 921 156S

IN OR NEAR

CASTLE ROCK,  
DOUGLAS COUNTY,  
COLORADO

Railroad Original

Construction & Maintenance Agreement 20041018  
Non-Standard Form, Approved AVP-Law

UPRR Folder No. 2283-31

AUDIT 237225

# CONSTRUCTION AND MAINTENANCE AGREEMENT

Front Street – New Flyover Overpass  
UPRR Milepost 31.82, Colorado Springs Subdivision  
DOT No. 921 156 S

THIS AGREEMENT, made this 6<sup>th</sup> day of July, 2005, by and between the TOWN OF CASTLE ROCK, a municipal corporation of the State of Colorado (the "Town") and UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (the "Railroad"). The Town and Railroad are hereinafter collectively referred to as the "Parties".

WHEREAS, on or about May 10, 2004, the Town began construction of the new Front Street Flyover Overpass grade separation public road crossing, (DOT No. 921 156 S), located at Railroad Mile Post 31.82 on Railroad's Colorado Springs Subdivision in or near Castle Rock, Douglas County, Colorado.

WHEREAS, this contract is made to cover the construction, use and maintenance of the Structure.

NOW, THEREFORE, it is hereby mutually agreed as follows:

## ARTICLE I GENERAL PROVISIONS

### SECTION A. DEFINITIONS.

1. The term "MUTCD" shall mean the Manual on Uniform Traffic Control Devices for Streets and Highways.
2. The term "PUC" shall mean the Public Utilities Commission of Colorado.
3. The term "Project" shall mean the Town's project involving the construction of the grade separation.
4. The term "Structure" shall mean the portion of the grade separation structure located on, along and over the Railroad's property.
5. The term "CRS" shall mean the Colorado Revised Statutes.
6. The term "Railroad Work" shall consist of the following work performed by Railroad forces:

Construction & Maintenance Agreement 20041018  
Non-Standard Form, Approved AVP-Law

UPRR Folder No. 2283-31

Flagging and protective services, as required, for the Town's contractor during the Project.

7. The term "Project Work" shall consist of the following work performed by the Town's contractor:

Construction of the Structure in compliance with the Plans.

8. The term "Plans" shall mean the final one hundred percent (100%) completed plans that have been approved in writing by the Railroad's Assistant Vice President Engineering - Design or his authorized representative.

#### **SECTION B. ATTACHMENTS AND EXHIBITS.**

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

- Exhibit A Railroad's General Location Print.
- Exhibit B Sheets 1, 39 and 40 of the Town's Plan and Profile Plan sheets for the Structure.
- Exhibit C Farnsworth Group's print dated November 20, 2003, showing the permanent easement area that Town needs from Railroad for the Structure.
- Exhibit D Legal description describing the permanent easement area that Town needs from Railroad for the Structure.
- Exhibit E Form of Permanent Easement from Railroad to Town.
- Exhibit F Contractors Right of Entry Agreement with attached Certificate of Insurance.

Construction & Maintenance Agreement 20041018  
Non-Standard Form, Approved AVP-Law

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**ARTICLE II  
COMMITMENTS ON THE PART OF  
TOWN AND RAILROAD****SECTION A. COST PARTICIPATION.**

In accordance with PUC Decision No. R04-0960-I, under Document No. 03A-463R, on August 13, 2004, the Railroad has agreed to bear fifty percent (50%) of the theoretical cost of the Structure. The Parties have reached a compromise and have stipulated that the Railroad's financial responsibility for the Project shall be and is \$ 2,054,110, which shall be paid to the Town in the order of project submittal to the Railroad, including cost authority for railroad engineering, all subject to the Colorado State Law limiting annual payment by railroads in this regard, but in any event Railroad shall pay to the Town the total amount no later than June 1, 2007.

**SECTION B. PERMANENT EASEMENT.**

The consideration for this permanent easement shall not exceed the sum of SIXTY-SIX THOUSAND TWO HUNDRED TWENTY DOLLARS (\$ 66,220.00) This sum shall be paid by the Town to the Railroad and upon the execution and delivery of this agreement, the Railroad shall grant to the Town a permanent easement in the form marked Exhibit E, hereto attached.

**SECTION C. CONSTRUCTION.**

All Project Work performed on Railroad property pursuant to this contract shall be done strictly in compliance with the Plans with the understanding that notwithstanding any consents or approvals of the Plans given by the Railroad, the Railroad shall not be responsible for the design, details or construction of the Structure. The Railroad acknowledges that all Project Work has been completed.

**SECTION D. RAILROAD'S OBLIGATIONS.**

1. Railroad Work. The Railroad has performed the Railroad Work consisting of flagging protection, design review and engineering.
2. Railroad's Billings to the Town. The Railroad shall bill the Town for all actual costs incurred by the Railroad in performing the Railroad Work including, without limitation, all of Railroad's standard direct and indirect labor additives. The Town confirms that none of the Railroad Work consisting of flagging shall be included as part of the cost of the theoretical structure.
3. Final Bills Within One Hundred Twenty Days of Project Completion or Execution of Construction and Maintenance Agreement. The Railroad shall provide its final and complete billings of all actual incurred costs

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Non-Standard Form, Approved AVP-Law

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involving the Railroad Work within one hundred twenty (120) days following completion of the Project or following entering into a Construction and Maintenance Agreement, whichever shall occur later. The Town shall provide the Railroad with written notice of the completion of the work.

### ARTICLE III COMMITMENTS ON THE PART OF THE TOWN

#### SECTION A. TOWN ACTIVITIES.

1. Construction by the Town. The Town shall perform, or cause to be performed, all Project Work across and adjacent to the Railroad's property in accordance with the Plans.
2. Supervision by the Town. The Town shall maintain supervision over the operations of its contractor while performing Project Work across or adjacent to the Railroad's property. However, at all times such contractor shall be considered an independent contractor, and not an employee of the Town.
3. Plans. The Town represents that work across or adjacent to Railroad property has been performed in accordance with the Plans, or, to the extent not provided for in the Plans, with the prior consent of the Railroad.

#### SECTION B. TOWN'S CONSTRUCTION CONTRACTOR ACTIVITIES.

1. Contractor's Defaults and Omissions. To the extent authorized by law, the Town shall require its contractor to correct or eliminate any defaults or omissions of Towns' contractor for all Project Work performed relative to this contract.
2. Contractor's Operations. The Town's contractor and the Railroad have entered into a Contractor's Right of Entry Agreement, attached hereto as Exhibit F.
3. Contractor's Insurance. The Town shall require its contractor to furnish to the Town the certificate, policies and endorsements of insurance as described in the Contractor's Right of Entry Agreement, and the Town shall deliver the same directly to the Railroad. All certificates and policies of insurance required hereunder shall comply with the requirements set forth in the Contractor's Right of Entry Agreement. The Town's contractor or its subcontractors shall not be allowed to enter upon or perform any Project Work on Railroad's property unless or until the aforesaid insurance

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shall have been accepted in writing by the Railroad. All such insurance shall be kept in full force and effect during all times the Town's contractor is performing any such work on or adjacent to the Railroad's property.

### **SECTION C. TOWN'S OBLIGATIONS**

1. **Obligation to Railroad's Tenants.** The Railroad shall have no obligation with respect to removing, relocating, or reinstalling the facilities of its lessees or licensees, required to be removed, relocated or reinstalled incidental to the Town's construction of the Structure. The Town, at its expense, shall make or has made all arrangements with the lessees and/or licensees, which arrangements shall be subject to the approval of the Railroad.
  
2. **Maintenance.** Upon completion of construction of the Project Work, the Town will maintain and repair, at Town's expense, the entire Structure including, without limitation, all graffiti removal from the Structure and all drainage associated with the Structure. These maintenance requirements do not impose upon the Town any responsibility for care or maintenance of pre-existing drainage not affected by or directly related to the Project Work herein described, nor for care or maintenance of the Railroad's roadbed, communication and signal lines, tracks and appurtenances. The Town, at its sole discretion and expense, shall also be responsible for demolishing and removing the Structure and then constructing a new structure when it deems demolition, removal, and reconstruction appropriate or necessary. Such demolition and reconstruction shall comply with demolition and/or reconstruction plans approved in writing by the Railroad at the time such work is needed. Notwithstanding the terms and conditions contained in this Paragraph 2, if the Town shall fail, refuse or neglect to perform and abide by the terms of this Paragraph, the Railroad, in addition to any other rights and remedies and at the cost and expense of the Town, may perform any maintenance, reconstruction and/or repair work on the Structure which in the judgement of the Railroad is necessary to place the Structure and its appurtenances in such condition so as to not menace, endanger or interfere with the Railroad's facilities or operations or the safety of Railroad's employees.

### **SECTION D. PUC APPROVAL.**

The Town has received interim PUC approval for the Project.

Construction & Maintenance Agreement 20041018  
Non-Standard Form, Approved AVP-Law

UPRR Folder No. 2283-31

**ARTICLE IV  
ADDITIONAL PROVISIONS**

**SECTION A. TERM**

The term of this Contract shall begin as of the date that any Project Work commenced and shall continue in effect for as long as the Structure is located on Railroad's property.

**SECTION B. SUCCESSORS AND ASSIGNS**

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

**SECTION C. SIGNATURE AUTHORITY**

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

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers the day and year first above written.

**UNION PACIFIC RAILROAD COMPANY**

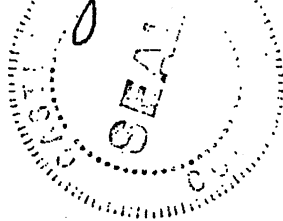
(Federal Tax ID #94-6004323)

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

*[Handwritten Signature]*  
GREGORY L. PINKER  
Director-Contracts

WITNESS:

\_\_\_\_\_ *[Handwritten Signature]*



**TOWN OF CASTLE ROCK**

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

*[Handwritten Signature]*  
Title: Mayor *[Handwritten]*

Approved as to form.

*[Handwritten Signature]*  
for Town Attorney

**RESOLUTION NO. 2005- 55**

**A RESOLUTION APPROVING A CONSTRUCTION  
AND MAINTENANCE AGREEMENT BETWEEN  
THE TOWN OF CASTLE ROCK AND UNION PACIFIC RAILROAD  
COVERING THE CONSTRUCTION OF THE NEW FRONT STREET  
FLYOVER OVERPASS GRADE SEPARATION CROSSING**

WHEREAS, the Town of Castles Rock and the Union Pacific Railroad have agreed to the terms and conditions set forth in the Construction and Maintenance Agreement concerning the construction, maintenance and use of the Front Street Flyover Overpass Grade Separation Crossing.

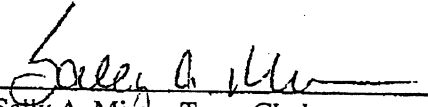
NOW, THEREFORE BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CASTLE ROCK AS FOLLOWS:

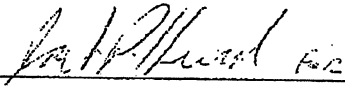
Section 1. Approval. The Construction and Maintenance Agreement in the form attached as *Exhibit I* is hereby approved. The Mayor and other proper Town officials are hereby authorized to execute the Agreement by and on behalf of the Town of Castle Rock, Colorado.

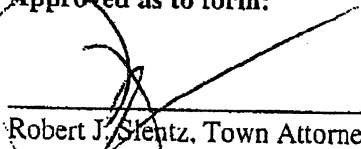
PASSED, APPROVED AND ADOPTED this 14th day of June, 2005, by the Town Council of the Town of Castle Rock, Colorado, on first and final reading by a vote of 7 for and 0 against.

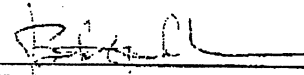
ATTEST:

TOWN OF CASTLE ROCK

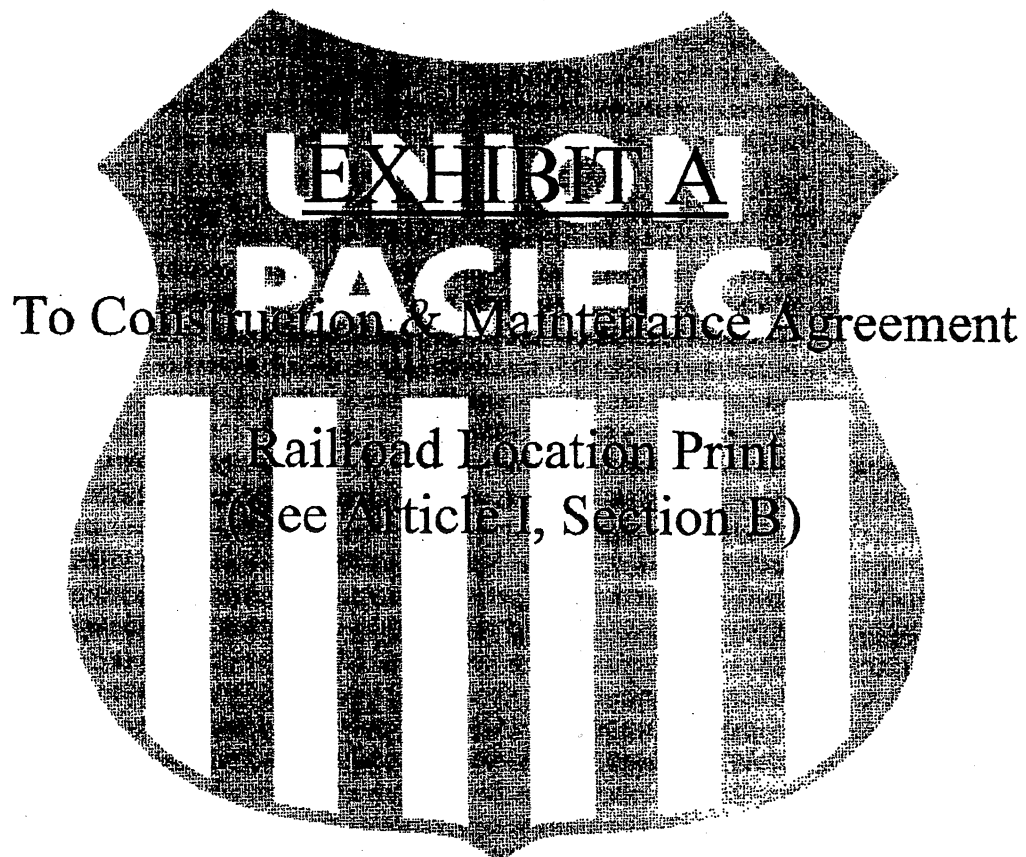
  
Sally A. Misare Town Clerk

  
Ray Waterman, Mayor

Approved as to form:  
  
Robert J. Stentz, Town Attorney

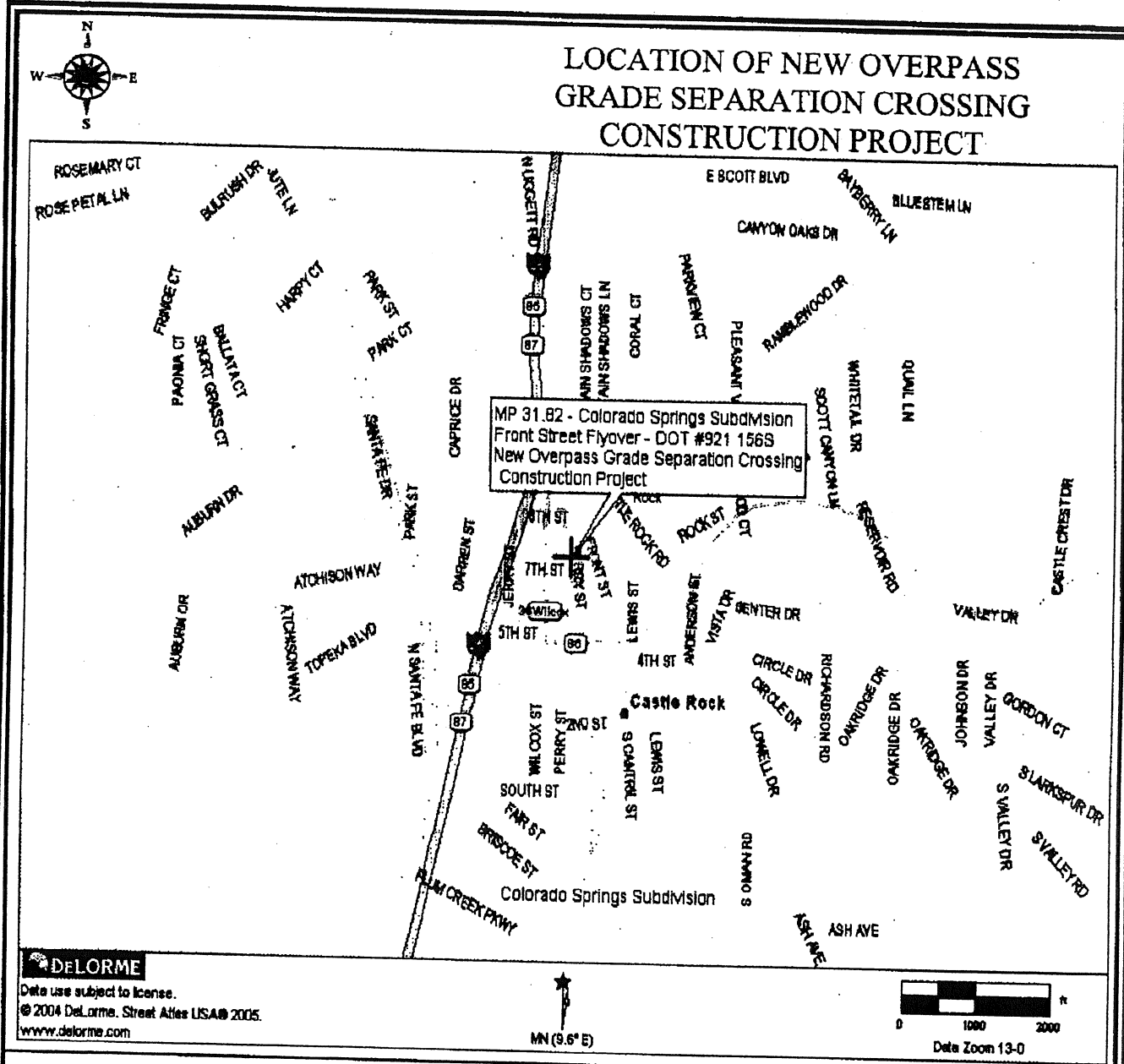
Approved as to content:  
  
Bob Goebel, Director of Public Works





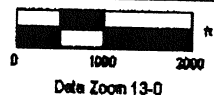
To Construction & Maintenance Agreement

Railroad Location Print  
(See Article I, Section B)



DeLORME

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www.delorme.com



**RAILROAD WORK TO BE PERFORMED:**

- 1. Flagging.

**EXHIBIT "A"  
UNION PACIFIC RAILROAD COMPANY**

COLORADO SPRINGS SUBDIVISION  
MILE POST 31.82  
GPS: N 39° 22.637', W 104° 51.527'  
CASTLE ROCK, DOUGLAS CO., CO.

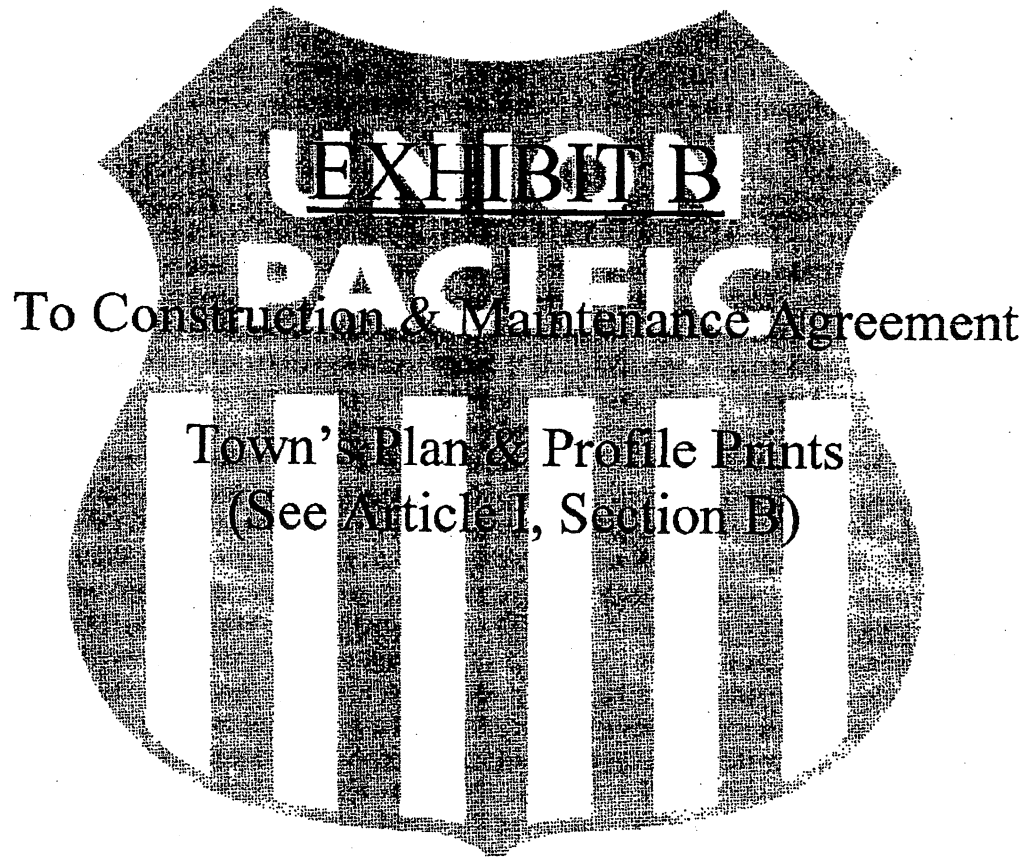
Illustrative print showing location of a new overpass grade separation crossing construction project with the  
**TOWN OF CASTLE ROCK.**

Folder No. 2283-31

Date: April 27, 2005

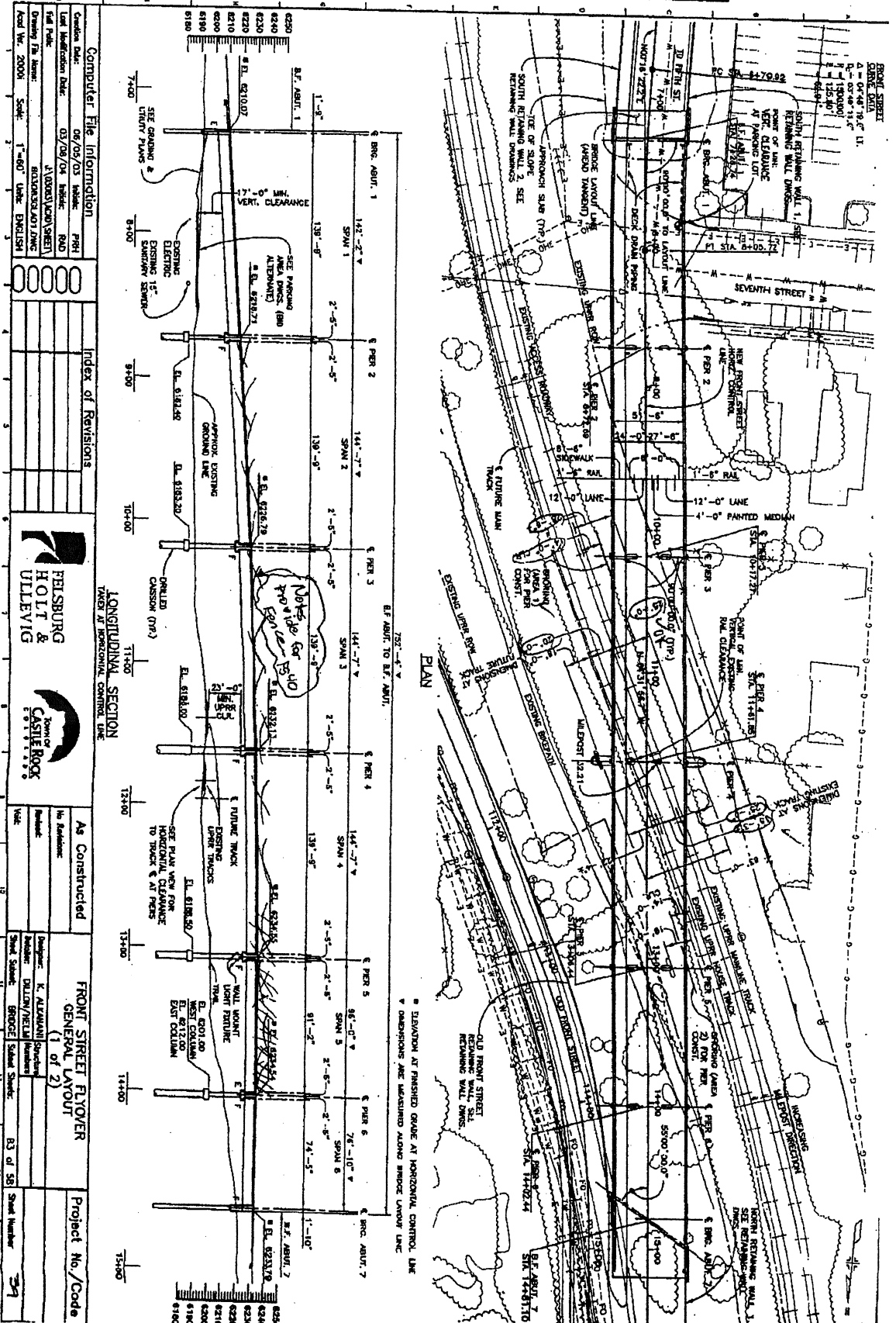
**WARNING**

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

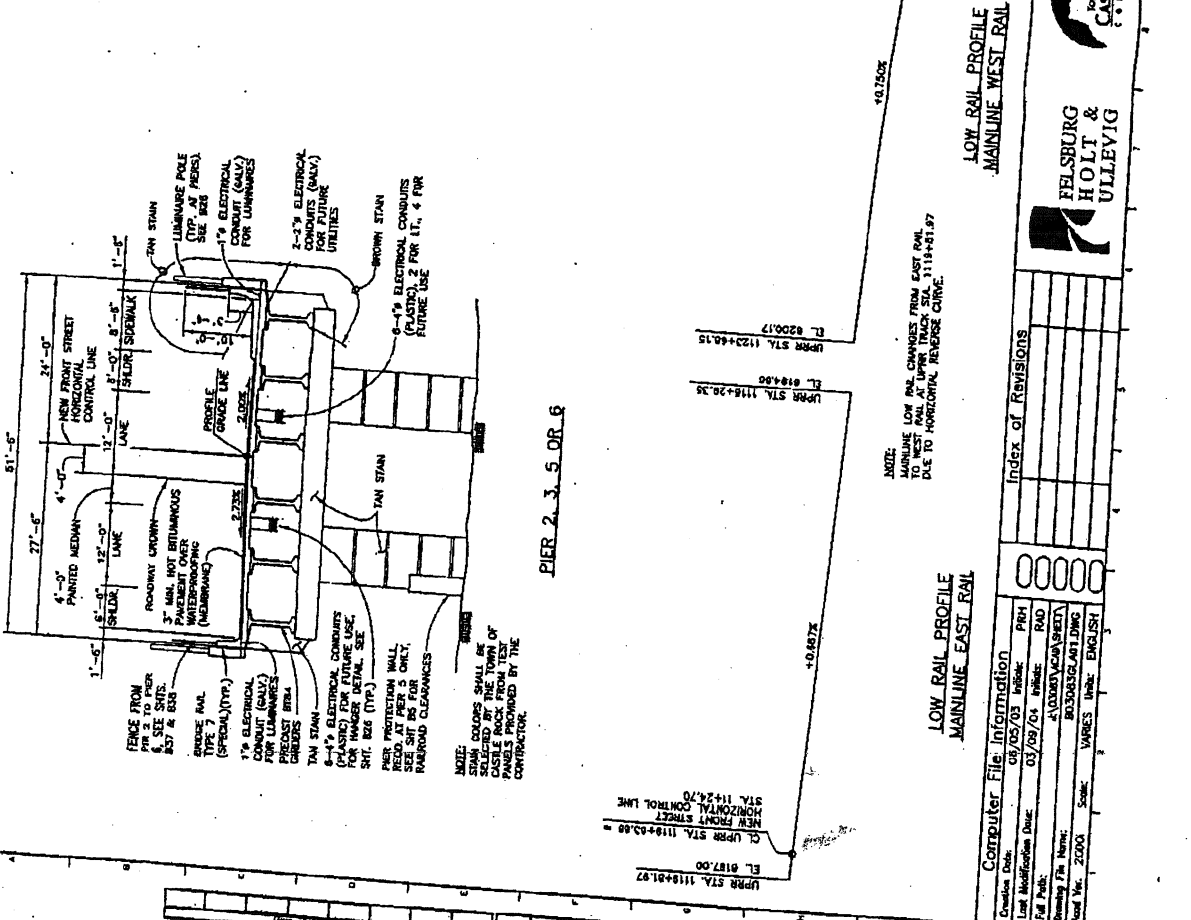
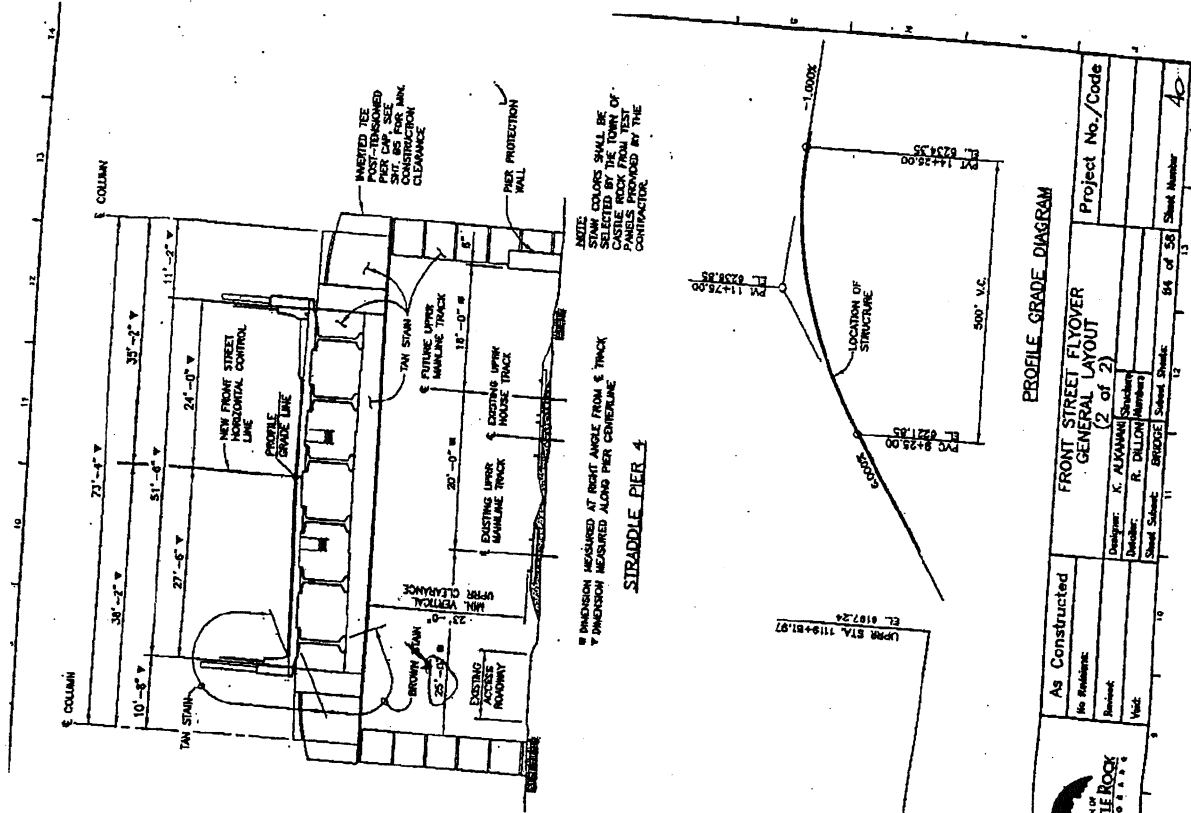




| REVISION |      | QUANTITY |      | REVISION DATE |      |
|----------|------|----------|------|---------------|------|
| NO.      | DATE | BY       | DATE | BY            | DATE |
|          |      |          |      |               |      |
|          |      |          |      |               |      |



| Computer File Information |                            | Index of Revisions |        | As Constructed |        | Project No./Code  |    |
|---------------------------|----------------------------|--------------------|--------|----------------|--------|-------------------|----|
| Condition Date:           | 06/05/03                   | PIR#               | 0000   | No. Revisions: | 1      | Project No./Code: | 39 |
| Last Modification Date:   | 03/28/04                   | Revised:           | 0000   | Revised:       | 0000   | Project No./Code: | 39 |
| File Path:                | J:\0000\0001\0001\0001.dwg | Revised:           | 0000   | Revised:       | 0000   | Project No./Code: | 39 |
| Drawing File Name:        | 0303030301.dwg             | Revised:           | 0000   | Revised:       | 0000   | Project No./Code: | 39 |
| Plot No.:                 | 2006                       | Scale:             | 1"=40' | Scale:         | 1"=40' | Project No./Code: | 39 |



**PIER 2, 3, 5, OR 6**

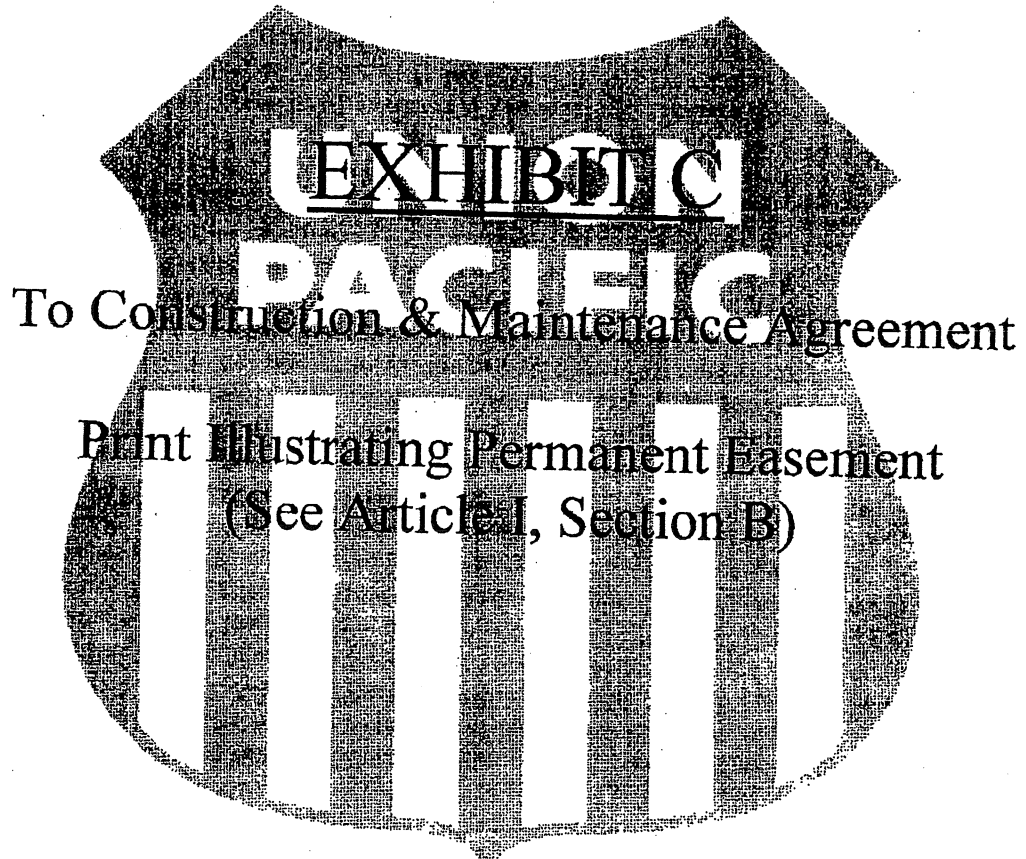
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 Last Modification Date: 03/09/04  
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 Drawing File Name: 030007\_04\_01.DWG  
 Acad Ver: 2000  
 Scale: VARIES  
 Units: INCHES  
 English

Index of Revisions  
 0000

As Constructed  
 No Revisions  
 Revisions:  
 1. Date: 03/09/04  
 Description: R. DILLON  
 Author: K. ALKHAMIS  
 Checked: R. DILLON  
 Sheet Name: BRIDGE  
 Sheet No.: 84 of 86  
 Sheet Scale: AS SHOWN

Project No./Code: FRONT STREET FLYOVER GENERAL LAYOUT (2 of 2)  
 Designer: K. ALKHAMIS  
 Checker: R. DILLON  
 Project Number: 40

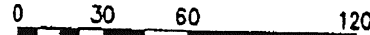
LOW RAIL PROFILE MAINLINE WEST RAIL  
 FELSBERG HOLT & ULLEVIG  
 ENGINEERS  
 1000 N. 10TH STREET  
 CASTLE ROCK, CO 80109



NOTE: THIS EXHIBIT DOES NOT REPRESENT  
A MONUMENTED SURVEY. IT IS INTENDED  
ONLY TO DEPICT THE ATTACHED DESCRIPTION.

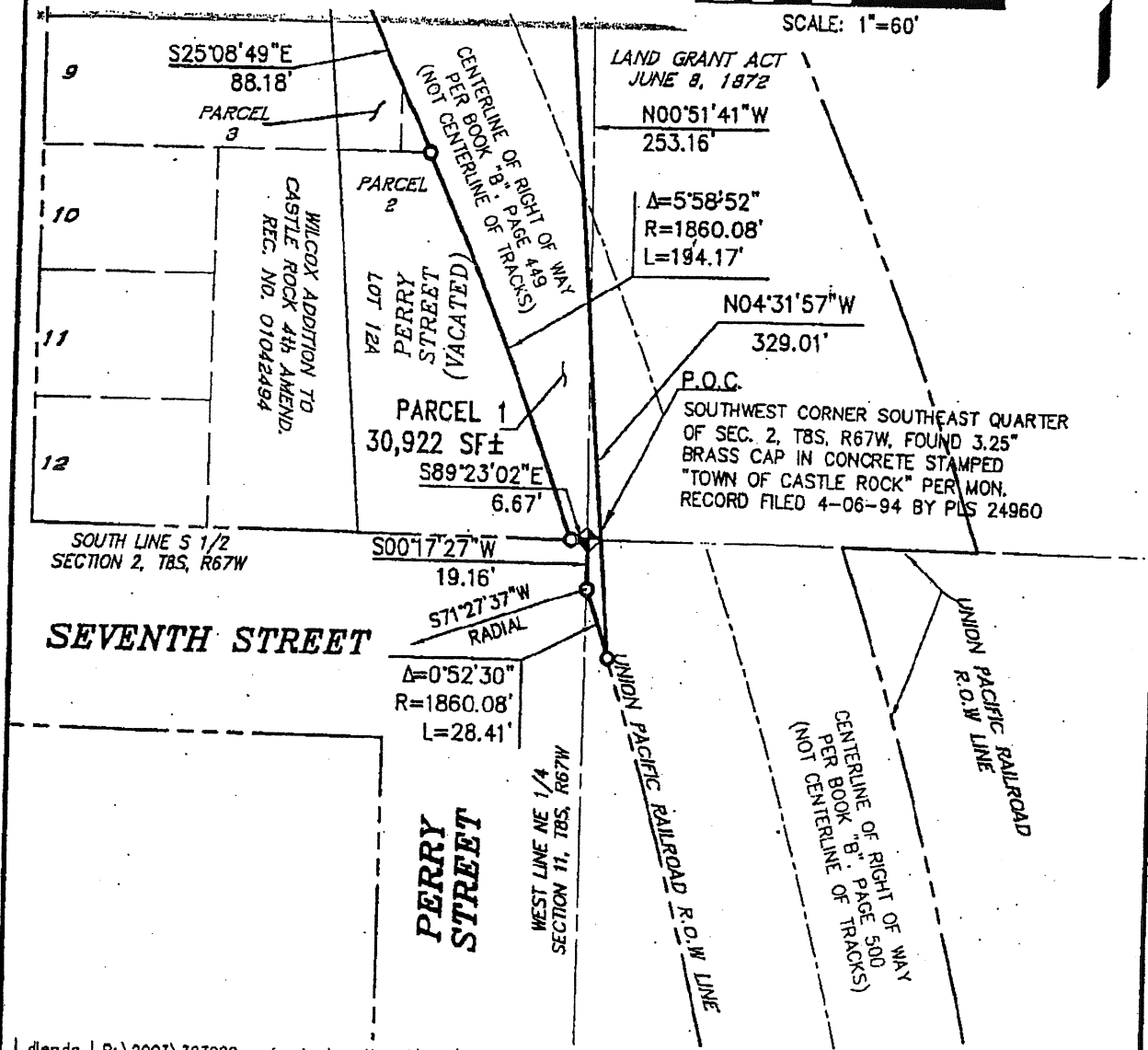
**LEGEND:**

- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT
- DENOTES CHANGE OF DIRECTION



SCALE: 1"=60'

MATCH SHEET 4 OF 4



| dlenda | P:\2003\303022 - front st. castle rck\dwg\V-303022-PARCEL-1-9-03.DWG | DATE: 11/21/2003 | Time: 08:28 |

**Farnsworth GROUP**  
 2696 S. COLORADO BLVD. SUITE 250  
 DENVER, COLORADO 80222  
 (303) 692-8838 / (303) 692-0470 Fax

FELSBURG HOLT & ULLEVIG  
 7951 E. Maplewood Ave, Greenwood Village, CO 80111  
**EXHIBIT "A" PARCEL 1**  
**FRONT STREET OVERPASS**  
**UNION PACIFIC RAILROAD LICENSE AGREEMENT**

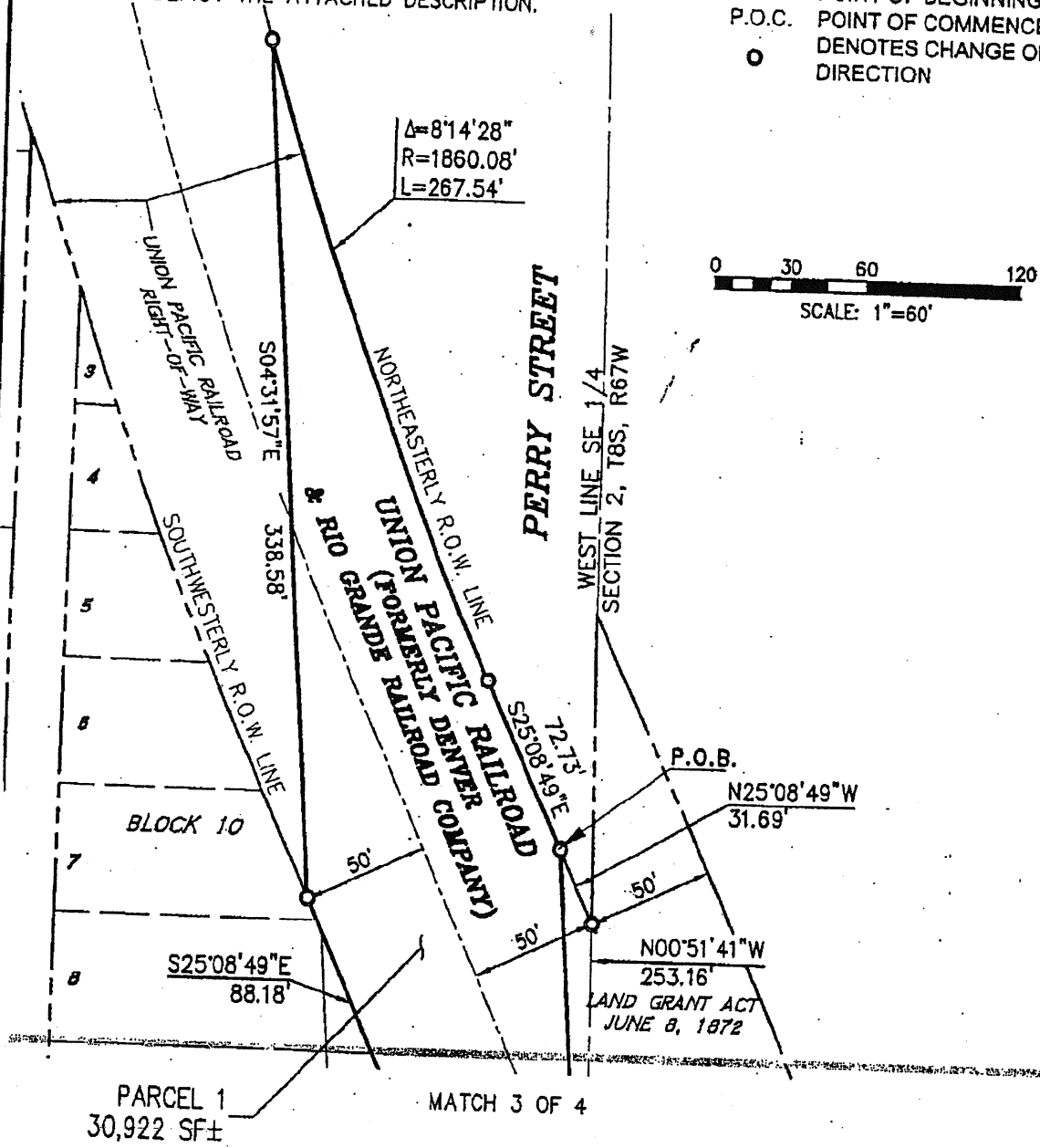
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|-------------|----------|
| Project No: | 303022.0 |
| Drawn by:   | LDL      |
| Approved:   | OCG      |
| Date:       | 11/20/03 |
| Revised:    |          |
| 3 OF 4      |          |



NOTE: THIS EXHIBIT DOES NOT REPRESENT  
A MONUMENTED SURVEY. IT IS INTENDED  
ONLY TO DEPICT THE ATTACHED DESCRIPTION.

**LEGEND:**

- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT
- DENOTES CHANGE OF DIRECTION

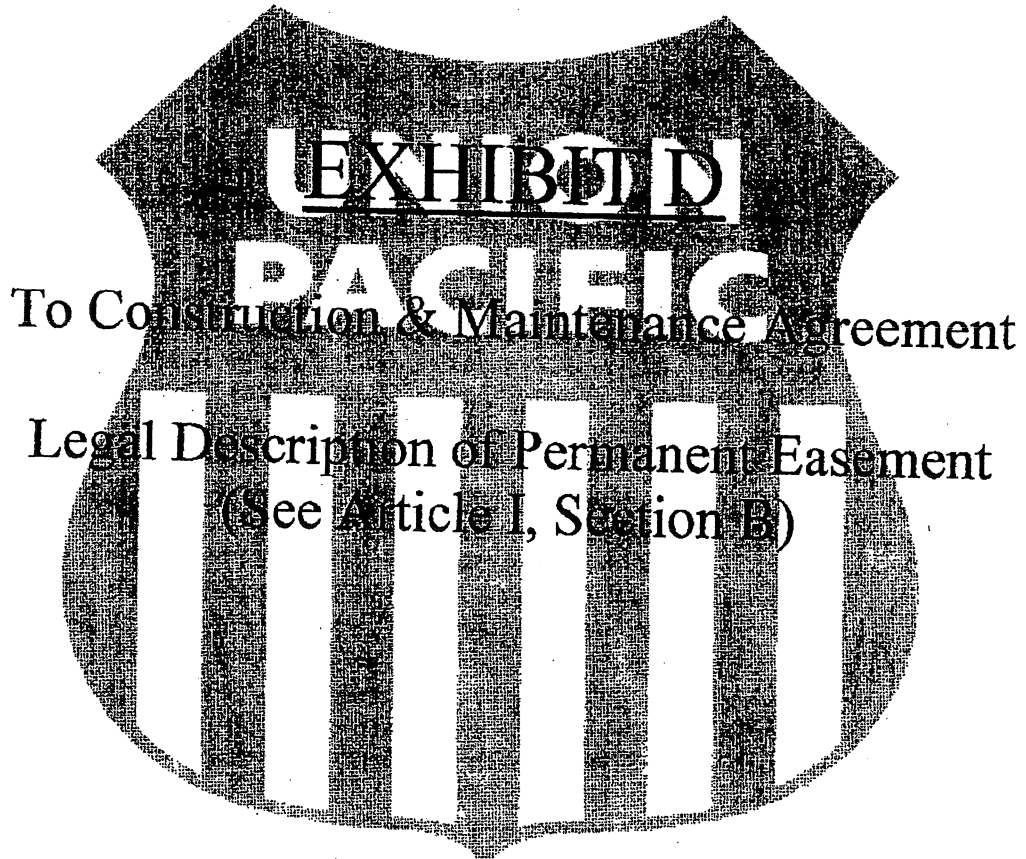


| dlenda | P:\2003\303022 - front st. cstle rck\dwg\V-303022-PARCEL-1-9-03.DWG | DATE: 11/21/2003 | Time: 08:28 |

**Farnsworth**  
GROUP  
2696 S. COLORADO BLVD, SUITE 250  
DENVER, COLORADO 80222  
(303) 692-8838 / (303) 692-0470 Fax

FELSBURG HOLT & ULLEVIG  
7951 E. Maplewood Ave, Greenwood Village, CO 80111  
**EXHIBIT 'A' PARCEL 1**  
FRONT STREET OVERPASS  
UNION PACIFIC RAILROAD LICENSE AGREEMENT

Project No: 303022.0  
Drawn by: LDL  
Approved: DCD  
Date: 11/20/03  
Revised:



FRONT STREET  
AT CASTLE ROCK  
JN 303022.0  
NOVEMBER 20, 2003  
SHEET 1 OF 24EXHIBIT "A"

## DESCRIPTION FOR PARCEL 1

A PARCEL OF LAND BEING A PORTION OF THE THREE (3) PARCELS AS DEFINED IN THE FOLLOWING DOCUMENTS, A QUIT CLAIM DEED RECORDED OCTOBER 26, 1871 IN BOOK "B" AT PAGE 449, A QUIT CLAIM DEED RECORDED DECEMBER 20, 1871 IN BOOK "B" AT PAGE 500 BOTH ON FILE IN THE RECORDS OF DOUGLAS COUNTY AND THE PARCEL COVERED BY AN UNRECORDED LAND GRANT TRACT COVERED BY THE LAND GRANT ACT OF JUNE 08, 1872, SAID PARCEL SITUATED IN THE SOUTH HALF OF SECTION 2 AND THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 8 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO AND BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 2; THENCE N00°51'41"W, ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER OF SECTION 2, 253.16 FEET TO THE INTERSECTION OF SAID WEST LINE WITH THE NORTHEASTERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD (FORMERLY THE DENVER AND RIO GRANGE RAILROAD COMPANY), SAID NORTHEASTERLY LINE BEING FIFTY (50.00) FEET, AS MEASURED AT RIGHT ANGLES, NORTHEASTERLY FROM THE CENTERLINE OF SAID RIGHT-OF-WAY; THENCE N25°08'49"W, ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE, 31.69 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE THE FOLLOWING TWO (2) COURSES:

- 1) N25°08'49"W, 72.73 FEET TO A POINT OF TANGENT CURVE;
- 2) ALONG THE ARC OF SAID TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 1860.08 FEET AND A CENTRAL ANGLE OF 08°14'28", 267.54 FEET;

THENCE S04°31'57"E, DEPARTING SAID NORTHEASTERLY LINE, 338.58 FEET TO THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF SAID UNION PACIFIC RAILROAD (FORMERLY THE DENVER AND RIO GRANDE RAILROAD COMPANY); THENCE SOUTHEASTERLY, ALONG SAID SOUTHWESTERLY LINE THE FOLLOWING FIVE (5) COURSES;

- 1) S25°08'49"E, 88.18 FEET TO A POINT OF TANGENT CURVE;
- 2) ALONG THE ARC OF SAID TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 1860.08 FEET AND A CENTRAL ANGLE OF 05°58'52", 194.17 FEET TO THE SOUTH LINE OF SAID SOUTH HALF OF SECTION 2;
- 3) S89°23'02"E, ALONG SAID SOUTH LINE, 6.67 FEET TO THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 11;
- 4) S00°17'27"W, ALONG THE WEST LINE OF SAID NORTHEAST QUARTER, 19.16 FEET TO A POINT ON A CURVE, WHENCE THE CENTER OF SAID CURVE BEARS S71°27'37"W;

FRONT STREET  
AT CASTLE ROCK  
JN 303022.0  
NOVEMBER 20, 2003  
SHEET 2 OF 24

- 5) ALONG THE ARC OF SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 1860.08 FEET AND A CENTRAL ANGLE OF 00°52'30", 28.41 FEET;

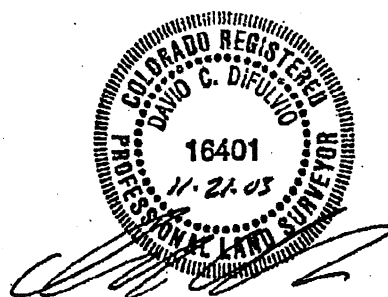
THENCE N04°31'57"W, DEPARTING SAID SOUTHWESTERLY RIGHT-OF-WAY LINE, 329.01 FEET TO THE POINT OF BEGINNING.

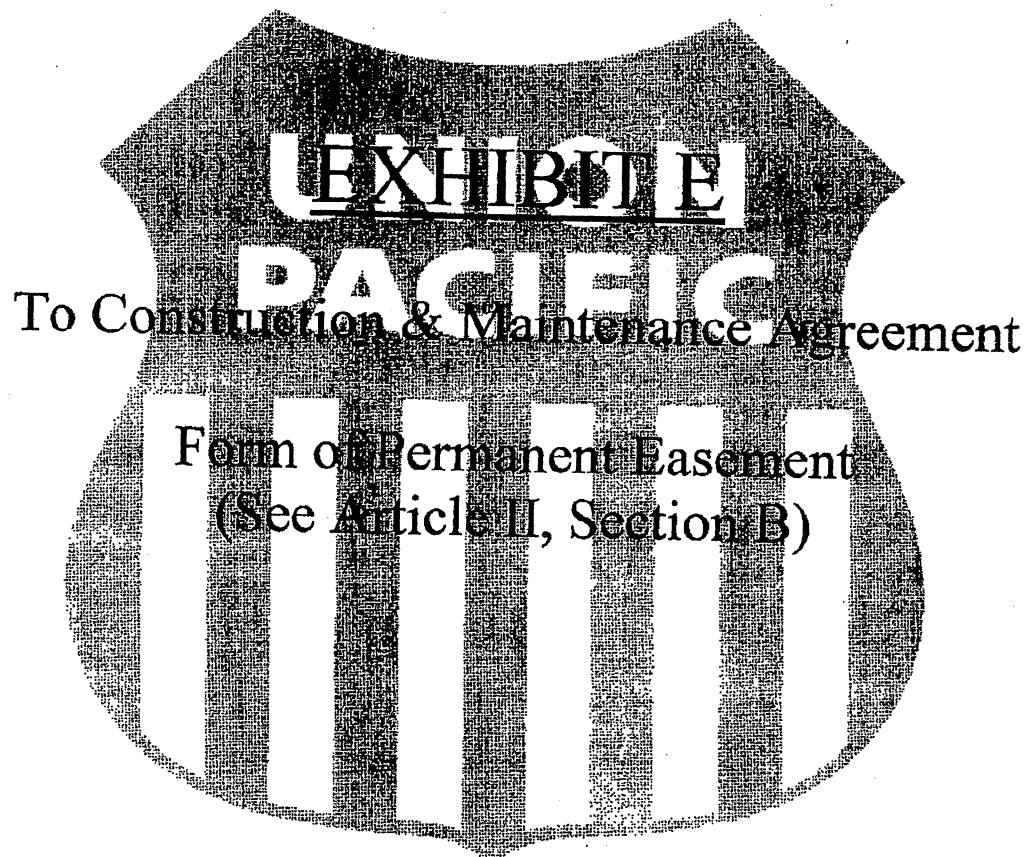
THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 30,922 SQUARE FEET MORE OR LESS.

THE BASIS OF BEARINGS FOR THE ABOVE DESCRIBED PARCEL BEING A LINE BETWEEN CONTROL POINTS PROVIDED TO FARNSWORTH GROUP, INC BY FORESIGHT WEST SURVEYING. THE CONTROL POINTS WE USED WERE A PORTION OF THE PRIMARY CONTROL NETWORK USED ON A PREVIOUS CITY OF CASTLE ROCK FRONT STREET PROJECT AND WERE IDENTIFIED AS CR-22 A ALUMINUM CAP ON A REBAR AND CR-24 A 60D NAIL ON EDGE OF SIDEWALK. THE BEARING FROM CR-22 TO CR-24 BEING S16°30'55"W.

THE ABOVE DESCRIBED PARCEL DESCRIPTION WAS PREPARED BY DAVID L. STUFFLEBEAM UNDER THE SUPERVISION OF DAVID C. DIFULVIO PLS NO.16401.

FOR AND ON BEHALF OF: **Farnsworth GROUP, INC.**  
2696 SOUTH COLORADO BOULEVARD  
SUITE 250  
DENVER, COLORADO 80222  
303-692-8838





RECORDING REQUESTED BY  
And When Recorded Mail to:

Name:

**DRAFT**

Street Address:  
City & State:

UPRR Folder No.: \_\_\_\_\_

**PERMANENT EASEMENT**

THIS Easement is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Grantor"), and successor in interest to Union Pacific Railroad Company, a Utah corporation, and The Denver and Rio Grande Western Railroad Company and the **TOWN OF CASTLE ROCK**, a municipal corporation of the State of Colorado ("Grantee").

The Grantor for and in consideration of the sum of SIXTY-SIX THOUSAND TWO HUNDRED TWENTY-TWO DOLLARS (\$66,220.00), and other valuable consideration to it paid by the Grantee, the receipt whereof is hereby confessed and acknowledged, does hereby grant unto the Grantee, and unto its successors and assigns an EASEMENT, on, along and over the property situated in Douglas County, Colorado, as shown on the print marked **Exhibit A**, and as also more particularly described in the legal description marked **Exhibit B**, with each exhibit being hereto attached and hereby made a part hereof, together with the right of ingress and egress to and from the Property for the purpose of exercising the rights herein granted, for the purpose of constructing, maintaining, using, operating, repairing, renewing and reconstructing the new Front Street Flyover Overpass structure, DOT No. 921 156S, at Grantor's Mile Post 31.82 on Grantor's Colorado Springs Subdivision in Castle Rock, Douglas County, Colorado.

Without limitation of the foregoing, this grant does not include the right to install utilities of any nature, including, without limitation, fiber optic, cable television, electrical, gas or liquid distribution, and telephone lines.

RESERVING, however, unto the Grantor, its successors and assigns, the right to construct at any and all times and to maintain railroad tracks, track appurtenances, fiber optic or signal lines and facilities, pipe, telephone, and electric pole and wire lines, over, under and across the Property, but in such a way as to not interfere with Grantee's use of the Property for the purposes specified in this easement; it being understood that the rights so reserved unto the Grantor, its successors and assigns, are retained along with the general right of the Grantor, its successors and assigns, to the use of the Property

for any purpose not inconsistent with Grantee's use of the Property, for the purposes herein defined, including, but not limited to any and all general railroad purposes.

This Easement is also made SUBJECT to all outstanding leases, licenses and other outstanding rights, including, but not limited to, those for pipe, telephone, electric and fiber optic lines and the right of renewals and extensions of the same, and subject also to all conditions, limitations, restrictions, encumbrances, reservations or interests of any person which may affect the Property, whether recorded or unrecorded.

This Easement is also limited to such rights as the Grantor may have in the Property and is granted without warranty, express or implied. No damages shall be recoverable from Grantor because of any dispossession of the Grantee or because of failure of, or defect in, Grantor's title.

The Grantee covenants to maintain the easement in good repair so that no damage will result from its use to the adjacent land of the Grantor, its successors and assigns. The Grantee covenants that its use of the easement will not interfere with the Grantor's operations, or the operations of the Grantor's successors and assigns.

It is expressly made a condition of this Easement that if the Grantee, its successors or assigns, shall abandon the Property or any portion of the Property, for the purposes of this Easement, the rights herein granted shall cease and terminate with respect to the portion of the Property so abandoned, and the title to the Property shall be freed from the burden of this Easement. It is further agreed that nonuse of the Property or any portion thereof, for the purposes of this Easement for the period of one (1) year shall be deemed an abandonment of the Property or portion thereof not used.

IN WITNESS WHEREOF, the Grantor has caused this deed to be duly executed as of the date first herein written.

ATTEST:

UNION PACIFIC RAILROAD COMPANY

\_\_\_\_\_  
MICHAEL E. HEENAN  
Assistant Secretary

By \_\_\_\_\_  
GREGORY L. PINKER  
Director-Contracts

(Seal)

**DRAFT**

ACKNOWLEDGMENT

STATE OF NEBRASKA )  
  ) ss.  
COUNTY OF DOUGLAS )

On \_\_\_\_\_, 200\_\_\_\_, before me, *Paul G. Farrell*, a Notary Public in and for said County and State, personally appeared *Gregory L. Pinker* and *Michael E. Heenan* who are the Director-Contracts and the Assistant Secretary, respectively, of Union Pacific Railroad Company, a Delaware corporation, and who are personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to in the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said State

My commission expires December 20, 2005

(Seal)



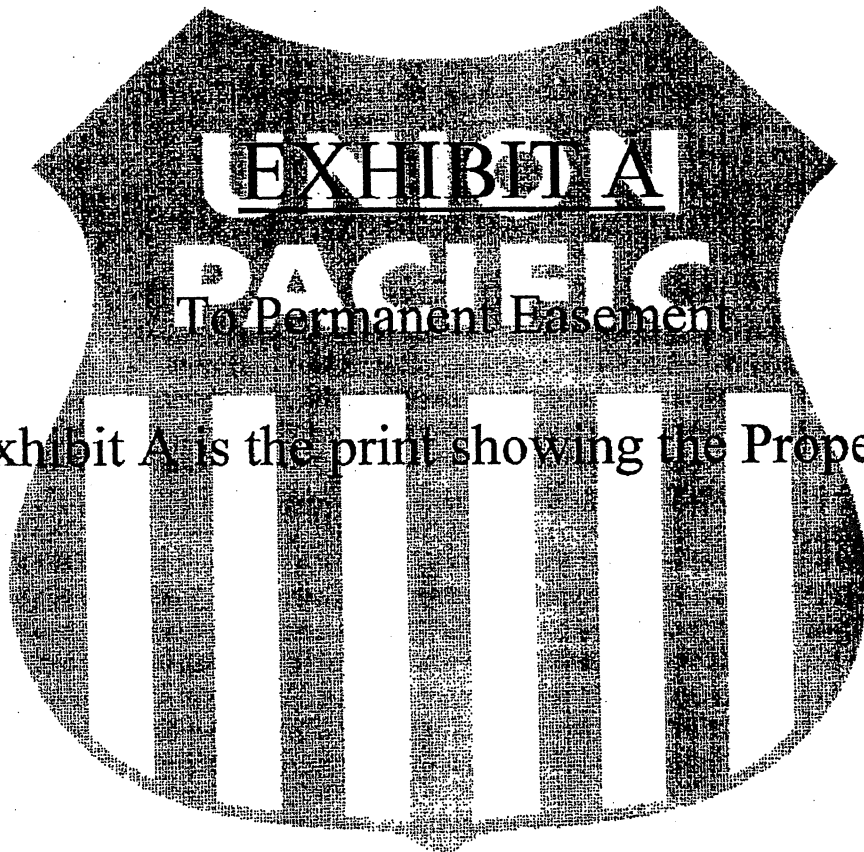
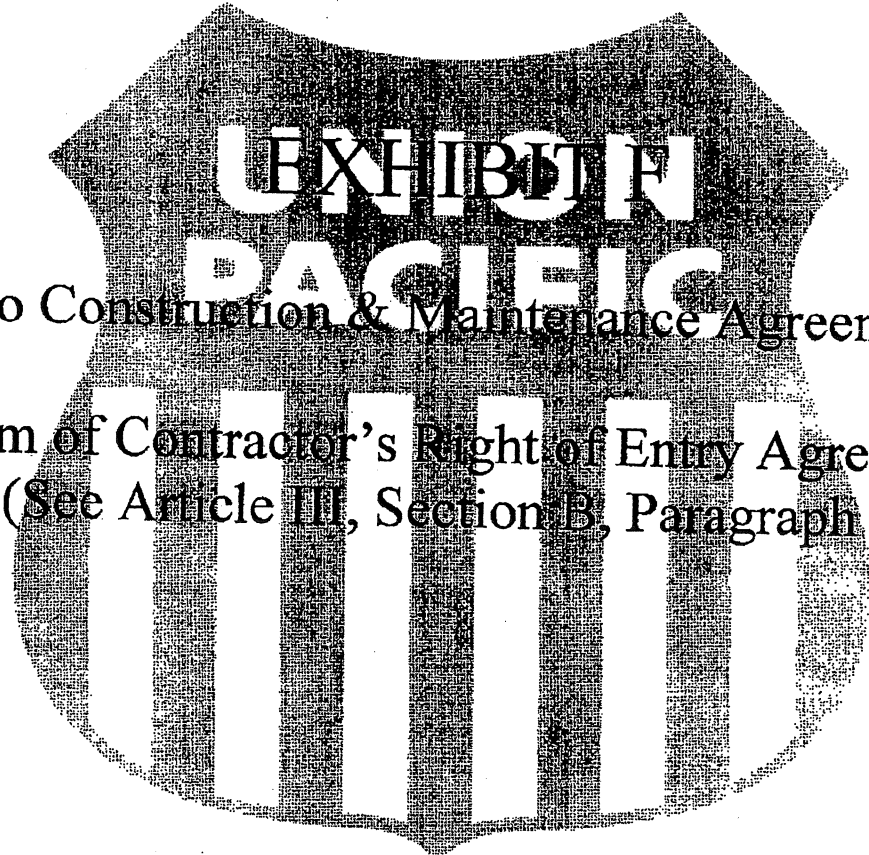


Exhibit A is the print showing the Property.



Exhibit A is the print showing the Property.



To Construction & Maintenance Agreement

Form of Contractor's Right of Entry Agreement  
(See Article III, Section B, Paragraph 2)


**UNION PACIFIC RAILROAD COMPANY**

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

April 26, 2005

To the Contractor:

Before Union Pacific Railroad Company can permit you to perform work on its property for

*(Description of Work to be Done)*

it will be necessary for you to sign and complete two originals of the enclosed Contractor's Permit as follows:

1. Fill in the complete legal name of the contractor in the space provided on Page 1 of the Contractor's Permit. 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 Permit. 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 Permit together with your Certificate of Insurance as required in Exhibit B-1, in the attached, self-addressed envelope.
5. 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.

After approval of the Right of Entry Agreement and insurance certificate, one fully executed counterpart of the agreement will be returned to you. In no event should you begin work until you have received your counterpart of the fully executed agreement.

Under Exhibit B-1 of the enclosed Contractor's Right of Entry, you are required to procure certain insurance and insurance endorsements including but not limited to, 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 the RPLI coverage from the Railroad is of benefit to you, please contact Ms. Nancy Savage at (402) 544-2215.

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.: \_\_\_\_\_

### CONTRACTOR'S PERMIT

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

\_\_\_\_\_ (Name of Contractor)  
a \_\_\_\_\_ corporation (the "Contractor").  
(State of Incorporation)

**RECITALS:**

Contractor has been hired by (the)

\_\_\_\_\_ (Name of Public Entity)  
to perform work relating to

\_\_\_\_\_ (Description of Work to be Performed)  
(the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of Mile Post \_\_\_\_\_ on the \_\_\_\_\_.  
(Mile Post) (Name of Subdivision)

(which work is the subject of a contract dated \_\_\_\_\_ between  
(Date of Agreement)  
Railroad and (the) \_\_\_\_\_).  
(Name of Public Entity)

Contractor has requested Railroad to permit it to perform the work on the portion of Railroad's property shown in the general location of the print(s) marked **Exhibit D**, attached hereto and hereby made a part hereof, and Railroad is agreeable thereto, subject to the following terms and conditions.

**AGREEMENT:**

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



UPRR Folder No.: \_\_\_\_\_

**ARTICLE 1 - DEFINITION OF CONTRACTOR.**

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

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

The Railroad hereby grants to the 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. The Contractor shall bear any and all costs and expenses associated with any work performed by the Contractor, or any costs or expenses incurred by the Railroad relating to this agreement.

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*(Name & Address of Manager Track Maintenance)*

C. The Contractor, at its own expense, shall adequately police and supervise all work to be performed by the 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 the Contractor for safe conduct and adequate policing and supervision of the Contractor's work shall not be lessened or otherwise affected by the Railroad's approval of plans and



UPRR Folder No.: \_\_\_\_\_

specifications involving the work, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad Representative, or by compliance by the Contractor with any requests or recommendations made by the 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  
*(Expiration Date)*  
terminated 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 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 C** of this agreement.

B. All insurance correspondence, binders, policies, certificates and/or endorsements shall be directed to:

Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street MS1690  
Omaha, NE 68179-1690  
Attn.: Senior Manager Contracts  
Folder No.: \_\_\_\_\_  
*(Folder Number)*

**ARTICLE 7 - DISMISSAL OF CONTRACTOR/SUBCONTRACTOR EMPLOYEE.**

At the request of Railroad, Contractor shall remove from Railroad property any employee of Contractor or any subcontractor 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 property.



UPRR Folder No.: \_\_\_\_\_

**ARTICLE 8 - ADMINISTRATIVE FEE.**

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 property without the prior written approval of the 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

WITNESS:

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

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

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



**EXHIBIT A****TO CONTRACTOR'S PERMIT****TERMS AND CONDITIONS****Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.**

A. The 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 the 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 the Contractor whether a flagman need be present and whether the Contractor need implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by the Railroad, such services will be provided at Contractor's expense with the understanding that if the Railroad provides any flagging or other services, the Contractor shall not be relieved of any of its responsibilities or liabilities set forth herein. Contractor shall promptly pay to Railroad all charges connected with such services within thirty (30) days after presentation of a bill.

B. The rate of pay per hour for each man will be the prevailing hourly rate in effect for an eight hour day for the class of men 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 on the day of execution of this agreement. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays; 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 the 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, the Contractor shall pay on the basis of the new rates and charges.

C. Reimbursement to the Railroad will be required covering the full eight hour day during which any flagman is furnished, unless he 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 said flagman following his assignment to work on the project for which the Railroad is required to pay the flagman and which could not reasonably be avoided by the Railroad by assignment of such flagman to other work, even though the Contractor may not be working during such time. When it becomes necessary for the Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, the Contractor must provide the 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, the 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 the Railroad if flagging service are needed again after such five day cessation notice has been given 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 the 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 the Railroad without liability to the 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 the Railroad's property, and others) and the right of the 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. The 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 the Railroad, including without limitation, the operations of the 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 the 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 the Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.

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

#### Section 4. LIENS.

The Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. The 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 the Railroad for any such work performed. The Contractor shall indemnify and hold harmless the 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 the Contractor fails to promptly cause any lien to be released of record, the 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 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. Contractor 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 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. The 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, the Contractor shall indemnify, defend and hold the 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 the Contractor, its contractor, 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, the 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 the Contractor. The Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. The Contractor shall at a minimum comply with the Railroad's safety standards listed in Exhibit D, hereto attached, to ensure uniformity with the safety standards followed by the Railroad's own forces. As a part of the Contractor's safety responsibilities, the Contractor shall notify the Railroad if the Contractor determines that any of the Railroad's safety standards are contrary to good safety practices. The Contractor shall furnish copies of Exhibit D to each of its employees before they enter on the job site.

B. Without limitation of the provisions of paragraph A above, the 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. The 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. The Contractor shall promptly notify the Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. The Contractor shall have a nondelegable duty to control its employees while they



are on the job site or any other property of the 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 the Railroad, the Contractor shall deliver to the Railroad a copy of the Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require the 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, the Contractor shall indemnify, defend and hold harmless the 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, the Contractor, or any employee of the Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by the Contractor, or (ii) any act or omission of the Contractor, its officers, agents or employees, or (iii) any breach of this agreement by the 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. The Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by the Contractor's own employees. The Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the 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 the Contractor in any attempt to assert liability against the Railroad.

E. The provisions of this Section 8 shall survive the completion of any work performed by the 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 the Contractor may have to any Indemnified Party by statute or under common law.

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

In the event the Railroad authorizes the Contractor to take down any fence of the Railroad or in any manner move or disturb any of the other property of the Railroad in connection with the work to be performed by Contractor, then in that event the 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. The 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 the Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by the Contractor shall in no way impair the right of the 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 the Contractor and the Railroad. This agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between the Contractor and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by the Contractor.

#### **Section 12. ASSIGNMENT - SUBCONTRACTING.**

The Contractor shall not assign or subcontract this agreement, or any interest therein, without the written consent of the Railroad. The Contractor shall be responsible for the acts and omissions of all subcontractors, and shall require all



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subcontractors to maintain the insurance coverage required to be maintained by the Contractor as provided in this agreement, and to indemnify the Contractor and the Railroad to the same extent as the Railroad is indemnified by the Contractor under this agreement.



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CROE ExB 7/30/01  
Form Approved, AVP-Law**EXHIBIT B****TO CONTRACTOR'S PERMIT****INSURANCE PROVISIONS**

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

**A. Commercial General Liability insurance.** This insurance shall contain broad form contractual liability with a single limit of at least \$5,000,000 each occurrence or claim and an aggregate limit of at least \$10,000,000. Coverage must be purchased on a post 1998 ISO or equivalent form, including but not limited to coverage for the following:

- Bodily injury including death and personal injury
- Property damage
- Fire legal liability (Not less than the replacement value of the portion of the premises occupied)
- Products and completed operations

The policy shall also contain the following endorsements which shall be indicated on the certificate of insurance:

- "For purposes of this insurance, Union Pacific Railroad payments related to the Federal Employers Liability Act or a Union Pacific Wage Continuation Program or similar programs are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law."
- The exclusions for railroads (except where the Job site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.
- Coverage for Contractor's (and Railroad's) employees shall not be excluded
- Waiver of subrogation

**B. Business Automobile Coverage insurance.** This insurance shall contain a combined single limit of at least \$5,000,000 per occurrence or claim, including but not limited to coverage for the following:

Bodily injury and property damage

Any and all motor vehicles including owned, hired and non-owned

The policy shall also contain the following endorsements which shall be indicated on the certificate of insurance:

- "For purposes of this insurance, Union Pacific Railroad payments related to the Federal Employers Liability Act or a Union Pacific Wage Continuation Program or similar programs are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law."
- The exclusions for railroads (except where the Job site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.
- Motor Carrier Act Endorsement- Hazardous materials clean up (MCS-90) if required by law.

**C. Workers Compensation and Employers Liability insurance** including but not 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 Workers Compensation insurance will not cover the liability of Contractor in states that require participation in state workers' compensation fund, Contractor shall comply with the laws of such states. If Contractor is self-insured, evidence of state approval must be provided along with evidence of excess workers compensation coverage. Coverage



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shall 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 shall also contain the following endorsement which shall be indicated on the certificate of insurance:

- Alternate Employer Endorsement

- D. **Umbrella or Excess Policies** In the event Contractor utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.
- E. **Railroad Protective Liability** insurance naming only the Railroad as the insured with a combined single limit of \$2,000,000 per occurrence with a \$6,000,000 aggregate. The policy shall be broad form coverage for "Physical Damage to Property" (ISO Form CG 00 35 07 98 or equivalent). A binder stating the policy is in place must be submitted to the Railroad until the original policy is forwarded to the Railroad.

#### Other Requirements

- F. Punitive damage exclusion must be deleted, which deletion shall be indicated on the certificate of insurance.
- G. Contractor agrees to waive its right of recovery, and its insurers, through policy endorsement, agree to waive their right of subrogation against Railroad. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under its care, custody and control. Contractor's insurance shall be primary with respect to any insurance carried by Railroad. All waivers of subrogation shall be indicated on the certificate of insurance.
- H. All policy(ies) required above (excluding Workers Compensation) shall provide severability of interests and shall name Railroad as an additional insured. **Severability of interest and naming Railroad as additional insured shall be indicated on the certificate of insurance.**
- I. Prior to commencing the Work, Contractor shall furnish to Railroad original certificate(s) of insurance evidencing the required coverage, endorsements, and amendments. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing of any cancellation or material alteration. **Upon request from Railroad, a certified duplicate original of any required policy shall be furnished.**
- J. Any insurance policy shall 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 service is to be provided.
- K. Contractor **WARRANTS** that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement and acknowledges that Contractor's insurance coverage will be primary.
- L. The fact that insurance is obtained by Contractor or Railroad on behalf of Contractor shall 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 shall not be limited by the amount of the required insurance coverage.

**EXHIBIT C****TO CONTRACTOR'S PERMIT****MINIMUM SAFETY REQUIREMENTS**

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

**I. Clothing**

- A. All employees of the 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, the 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**

The 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 the contractor's or subcontractor'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**

The 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.



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- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractors must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. The Contractors will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

#### IV. Equipment

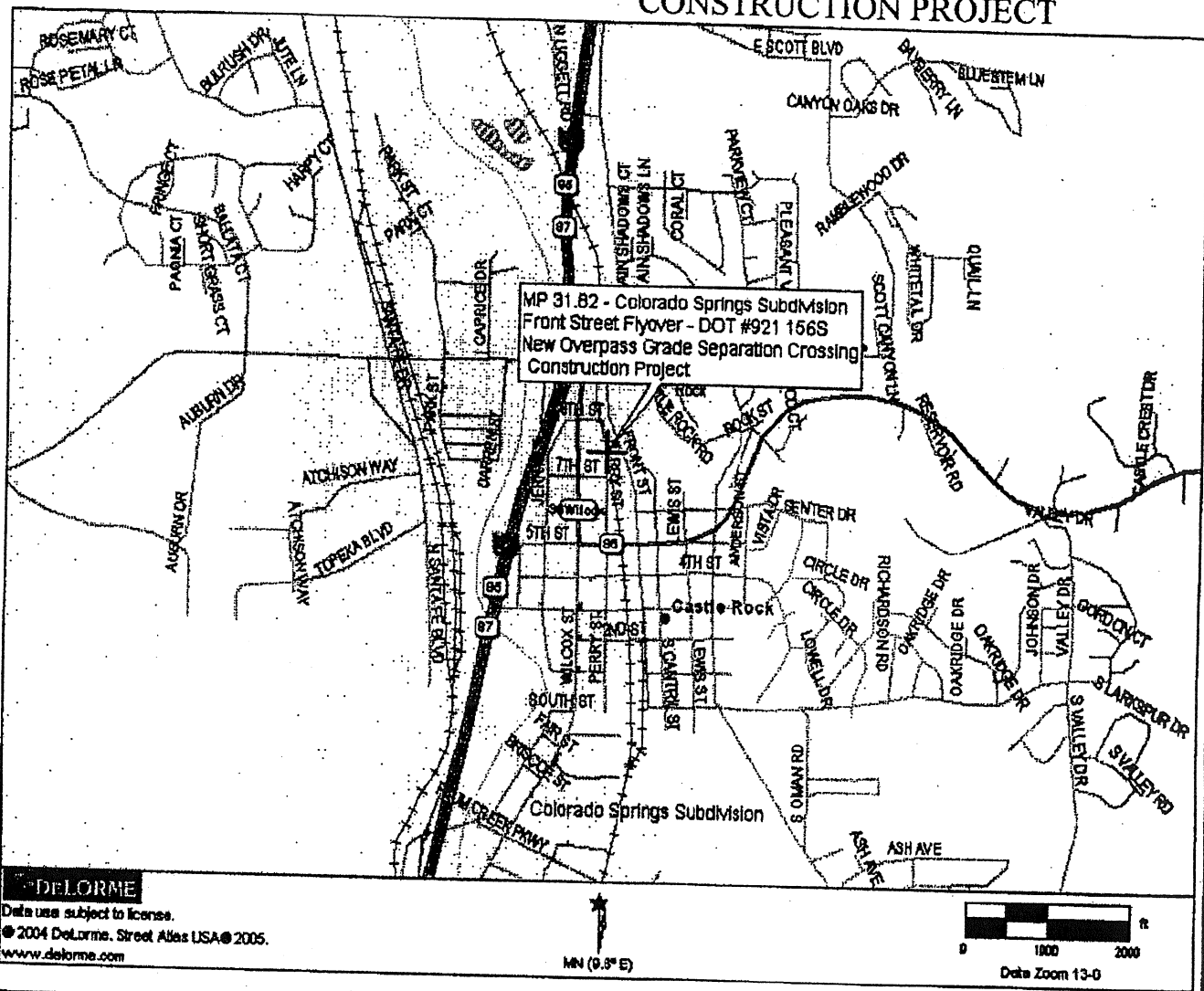
- A. It is the responsibility of the Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of the Contractor's equipment is unsafe for use, the Contractor shall remove such equipment from the Railroad's property. In addition, the 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. The Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. The 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 the 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.



### LOCATION OF NEW OVERPASS GRADE SEPARATION CROSSING CONSTRUCTION PROJECT



**RAILROAD WORK TO BE PERFORMED:**

1. Flagging.

**EXHIBIT "D"  
UNION PACIFIC RAILROAD COMPANY**

COLORADO SPRINGS SUBDIVISION  
MILE POST 31.82  
GPS: N 39° 22.637', W 104° 51.527'  
CASTLE ROCK, DOUGLAS CO., CO.

Illustrative print showing location of a new overpass grade separation crossing construction project with the  
**TOWN OF CASTLE ROCK.**

Folder No. 2283-31

Date: April 27, 2005

**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) 336-9191