

**Meeting Date:** 2/17/2015

**Report Type:** Consent

**Report ID:** 2015-00098

**Title: Agreements: McKinley Village Project (P08-086) – Agreements with Union Pacific Railroad and Encore McKinley Village LLC for the Construction of the McKinley Village Underpass Project**

**Location:** Council District 3

**Recommendation:** Pass a Motion: 1) authorizing the City Manager to execute the New Public Highway Underpass Crossing Agreement with Union Pacific Railroad Company (Crossing Agreement) for the construction of the McKinley Village Underpass Project; and 2) authorizing the City Manager to execute an agreement with Encore McKinley Village, LLC for the reimbursement of costs incurred under the Crossing Agreement.

**Contact:** Nicholas Theocharides, Engineering Services Manager, (916) 808-5065, Department of Public Works

**Presenter:** None

**Department:** Public Works Department

**Division:** Engineering Services Admin

**Dept ID:** 15001111

**Attachments:**

- 1-Description/Analysis
- 2-Background
- 3-Exhibit A (Location Map)
- 4-Exhibit B (McKinley Village UPRR Crossing Agreement)
- 5-Exhibit C (McKinley Village Reimbursement Agreement)

---

**City Attorney Review**

Approved as to Form  
Gerald Hicks  
2/10/2015 2:07:51 PM

**Approvals/Acknowledgements**

Department Director or Designee: Jerry Way - 1/29/2015 2:20:28 PM

## Description/Analysis

**Issue:** The McKinley Village Project consists of the construction of a 336-unit residential development, a neighborhood recreation center, parks, and associated infrastructure on approximately 48.75-acres within the East Sacramento Community Plan Area located in the City of Sacramento. The Project was approved by the Sacramento City Council on April 29, 2014, subject to conditions of approval which include the provision that the developer construct a railroad underpass to extend 40<sup>th</sup> Street from C Street to the development site. As the railroad underpass will become a public road facility which will be operated and maintained by the City, a new public highway underpass crossing agreement (Exhibit B) between the City and Union Pacific Railroad (UPRR) is needed to set forth the terms for its construction. A separate agreement between the City and Encore McKinley Village LLC (Exhibit C) will provide full reimbursement to the City for all costs incurred for the construction of the underpass. Approval of both agreements is needed for the construction of the underpass to proceed.

**Policy Considerations:** The action requested is consistent with Title 3 of the Sacramento City Code and existing policy regarding approval of agreements.

**Economic Impact:** None.

### Environmental Considerations:

**California Environmental Quality Act (CEQA/NEPA):** On April 29, 2014, the City Council certified the Environmental Impact Report and adopted the Mitigation Monitoring Program and Findings of Fact for the McKinley Village Project.

**Sustainability Considerations:** This project is consistent with Sustainability Master Plan goals to promote infill development, and encourage bicycle and pedestrian trips.

**Commission/Committee Action:** On October 23, 2013, the City Planning and Design Commission held a public hearing in accordance with Government Code Section 65355 on the McKinley Village project, and received and considered information and public comments, and forwarded to the City Council to approve the project.

**Rationale for Recommendation:** The recommended action is necessary in order to proceed with the construction of the 40<sup>th</sup> Street underpass and meet conditions of approval for the McKinley Village project.

**Financial Considerations:** As a private development project, revenue and expenses will be tracked in the Private Development Fund (Fund 2018). All costs incurred by the City under the Crossing Agreement with UPRR will be borne by Encore McKinley Village, LLC per the terms of the reimbursement agreement between Encore McKinley Village, LLC and the City.

**Local Business Enterprise (LBE):** Not applicable.

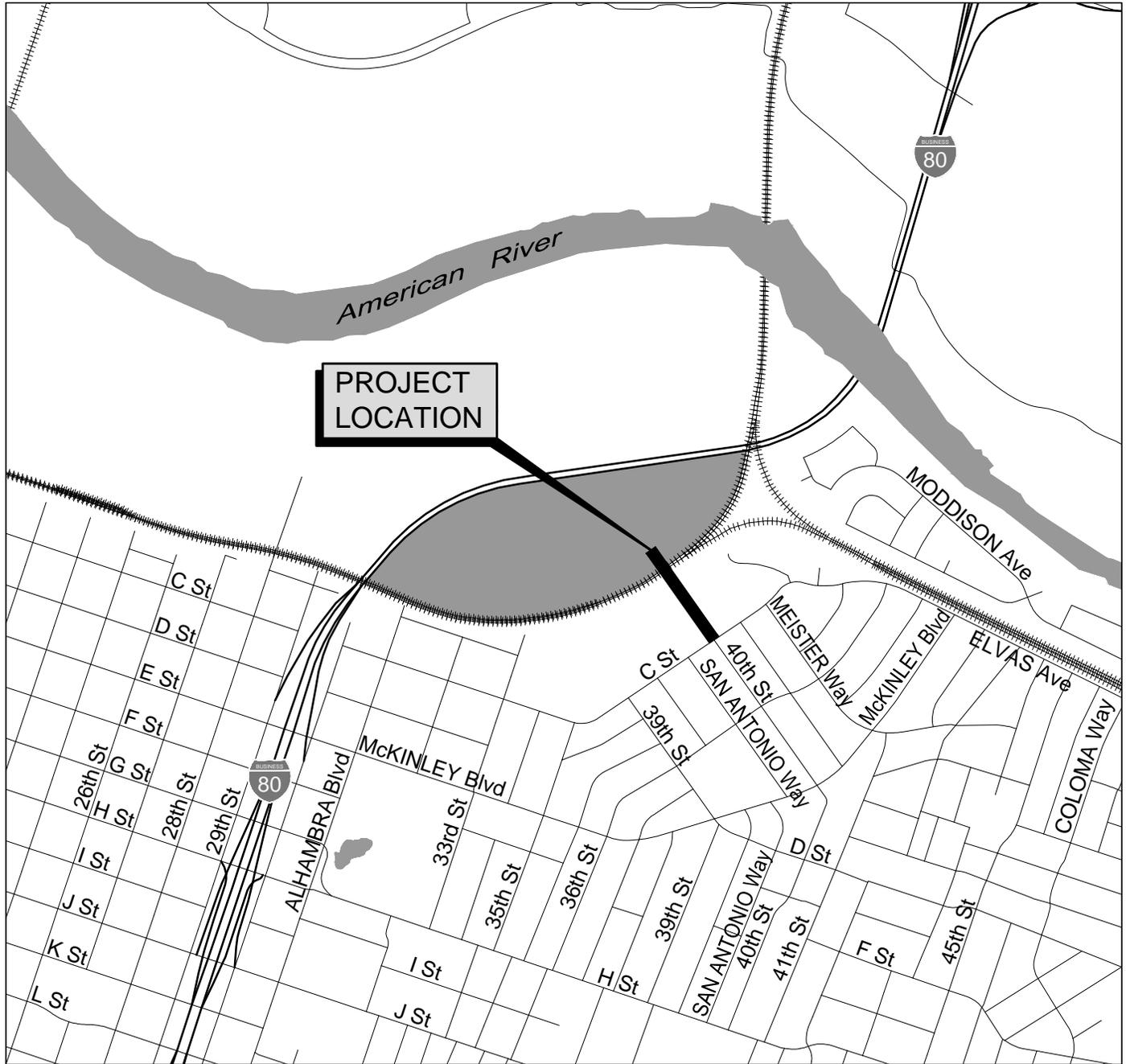
## **Background:**

Encore McKinley Village LLC (Encore) is the developer of the McKinley Village Project which was approved by the Sacramento City Council on April 29, 2014 subject to conditions of approval. Included among the Conditions of Approval was Condition I18:

The applicant shall coordinate with UPRR to obtain permission to construct the proposed McKinley Village Way underpass. The applicant shall also coordinate with the City of Sacramento regarding the design of the McKinley Village Way underpass and the required third party structural design review. The McKinley Village Way underpass shall be constructed as a 56-foot right of way section as shown on the Tentative Map dated March 19, 2014.

Pursuant to the Condition of Approval, Encore has sought permission from UPRR to construct an underpass beneath UP railroad tracks at McKinley Village Way and UP has agreed to provide consent to the City to construct or cause the underpass to be constructed, subject to complying with the provisions of the New Public Road Underpass Crossing Agreement. City staff has reviewed the provisions of the Crossing Agreement as well as the plans for the underpass structure and recommends approval of the Crossing Agreement for the benefit of Encore and the City. The underpass improvements will be constructed by Encore with its own forces and the City will issue an encroachment permit authorizing the construction. Encore has agreed to fully reimburse the City for the costs incurred under the Crossing Agreement, except for costs related to maintenance after the City's acceptance of the Underpass Project and the expiration of the warranty period which are to be borne by the City. Encore has also agreed to fully comply with all applicable provisions and conditions of the Crossing Agreement. Reimbursement of the City's costs and obligations under the Crossing Agreement will be secured through a bond to be furnished by Encore McKinley LLC prior to the issuance of the City encroachment permit.

Location Map For:  
**McKINLEY VILLAGE PROJECT**  
(P08-086)



UPRR Folder No.: 2803-89

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

## NEW PUBLIC HIGHWAY UNDERPASS CROSSING AGREEMENT

McKinley Village Underpass – DOT No.: 440824N  
91.75 – Martinez Subdivision  
Sacramento, Sacramento County, California

THIS AGREEMENT is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179-1690 (the "Railroad") and the **CITY OF SACRAMENTO**, a municipal corporation or political subdivision of the State of California to be addressed at 915 I Street, Sacramento, CA 95814 (the "Political Body").

### RECITALS:

The Political Body desires to undertake as its project the construction of the new grade-separated bridge underpass structure ("Structure"), DOT No. 440824N, over Railroad's property and trackage at Railroad's Mile 91.75 on the Railroad's Martinez Subdivision at or near Sacramento, Sacramento County, California (the "Crossing Area"). The Crossing Area is generally shown on the Railroad's Location Print marked **Exhibit A** and specified in the Survey and Detailed Prints both marked **Exhibit A-1**, and specifically described in the Legal Description marked **Exhibit A-2**, with each exhibit being attached hereto and hereby made a part hereof. The portion of the grade-separated underpass located within the Crossing Area is the "Structure."

The construction of the Structure will also necessitate the construction of a temporary Railroad shoofly (the "Shoofly") to provide for the Railroad's continued railroad operations during the Project as illustrated on the Shoofly Track Print marked **Exhibit A-4**, attached hereto and hereby made a part hereof.

The Railroad will be granting rights to the Political Body to facilitate the construction of the Structure. The portion of Railroad's property that Political Body needs for the new Structure is shown on the Survey Print marked **Exhibit A-1** and also described in the Legal Description marked **Exhibit A-2**, with each exhibit being attached hereto and hereby made a part hereof (the "Crossing Area").

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

### AGREEMENT:

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

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

The General Terms and Conditions marked **Exhibit B** and the Railroad's Coordination Requirements Minimum Underpass Construction Standards marked **Exhibit D**, are attached hereto and hereby made a part hereof.

**ARTICLE 2 - GRANT OF RIGHT**

- A. Upon completion of the execution of this Agreement and Railroad's receipt from Political Body of **TWO HUNDRED NINE THOUSAND ONE HUNDRED FORTY TWO DOLLARS (\$209,142.00)**, the Railroad shall execute and deliver to the Political Body a non-exclusive roadway purposes Easement in the form marked **Exhibit F**, attached hereto and hereby made a part hereof, for the property shown and described on **Exhibits A-2**.
- B. For and in consideration of **TWO HUNDRED SEVENTY THOUSAND TWO HUNDRED SEVENTY DOLLARS (\$270,270.00)**, the Railroad hereby grants to the Political Body temporary construction rights to use the portion of Railroad's property shown and described and shown on **Exhibits A-3**. The Political Body's use of such property shall be subject to the terms and conditions of this Agreement and the obligation of Political Body and its contractors to comply with such provisions. The temporary rights granted herein shall commence as of the effective date of this Agreement and continue for twelve (24) months, or until the project has been completed, whichever occurs earlier.

**ARTICLE 3 - DEFINITION OF CONTRACTOR**

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

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

- A. Prior to Contractor performing any work within the Crossing Area involving the Project, and any subsequent maintenance or repair work, the Political Body shall require the Contractor to:
- execute the Railroad's then current Contractor's Right of Entry Agreement
  - obtain the then current insurance required in the Contractor's Right of Entry Agreement; and
  - provide such insurance policies, certificates, binders and/or endorsements to the Railroad before allowing any Contractor to commence any work in the Crossing Area or on any other Railroad property. The Railroad's current insurance requirements are described in **Exhibit B-1**, attached hereto and hereby made a part hereof.
- B. The Railroad's current Contractor's Right of Entry Agreement is marked **Exhibit E**, attached hereto and hereby made a part hereof. The Political Body confirms that it will inform its Contractor that it is required to execute such form of agreement and obtain the required insurance before commencing any work on any Railroad property. Under no circumstances will the Contractor be allowed on the Railroad's property without first executing the

Railroad's Contractor's Right of Entry Agreement and obtaining the insurance set forth therein and also providing to the Railroad the insurance policies, binders, certificates and/or endorsements described therein.

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

*Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street, Mail Stop 1690  
Omaha, NE 68179-1690  
UPRR Folder No. 2803-89*

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

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

If the Political Body 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 THE RAILROAD**

- A. The work to be performed by the Railroad, at the Political Body's sole cost and expense, is described in the Railroad's Material and Force Account Estimate(s):
- Surface Estimate dated January 23, 2015, in the amount of \$3,365,232.00 – **Three Million Three Hundred Sixty Five Thousand Two Hundred Thirty Two Dollars**, marked **Exhibit C**;
  - Signal Estimate dated November 14, 2014, in the amount of \$700,267.00-**Seven Hundred Thousand Two Hundred Sixty Seven Dollars**, marked **Exhibit C**;
- (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 Political Body in the event the Political Body 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. All of such costs incurred by the Railroad are to be paid by the Political Body or the Contractor as determined by the Railroad and the Political Body. If it is determined that the Railroad will be billing the Contractor directly for such costs, the Political Body agrees that it will pay the Railroad for any flagging costs that have not been paid by any Contractor within thirty (30) days of the Contractor's receipt of billing.
- D. The Political Body agrees to reimburse the Railroad for one hundred percent (100%) of all

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

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

- A. The Political Body, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications and submit such plans and specifications to the Railroad's Assistant Vice President Engineering – Design, or his authorized representative, for review and approval. The plans and specifications shall include all appurtenances, associated drainage, shoring, sheeting and excavations for bents and/or abutments next to or adjacent to the Railroad's tracks and, if applicable, all demolition and removal plans for the existing structure.
- B. The final one hundred percent (100%) completed plans that are approved in writing by the Railroad's Assistant Vice President Engineering – Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.
- C. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing.
- D. Upon completion of the Structure, the Political Body, at its expense, shall furnish to the Railroad two (2) sets of reproducible "as constructed" Plans of the Structure.
- E. The Railroad's review and approval of the Plans in no way relieves the Political Body or the Contractor from their responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that the Railroad makes no representations or warranties as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by the Political Body or Contractor on the Plans is at the risk of the Political Body and Contractor.

#### **ARTICLE 9 - NON-RAILROAD IMPROVEMENTS**

- A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocation, replacing, removing and abandoning in place all non-railroad owned facilities (the "Non Railroad Facilities") affected by the Project including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required under Article 8. The Non Railroad Facilities plans and specifications shall comply with Railroad's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines. Railroad has no obligation to supply additional land for any Non Railroad Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted Non Railroad Facilities plans and specifications comply with Railroad's standard specifications and

requirements. Railroad has no obligation to permit any Non Railroad Facilities to be abandoned in place or relocated on Railroad's property.

- B. Upon Railroad's approval of submitted Non Railroad Facilities plans and specifications, Railroad will attempt to incorporate them into new agreements or supplements of existing agreements with Non Railroad Facilities owners or operators. Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for Non Railroad Facilities. Non Railroad Facilities work shall not commence before a supplement or new agreement has been fully executed by Railroad and the Non Railroad Facilities owner or operator, or before Railroad and Political Body mutually agree in writing to:
- i. deem the approved Non Railroad Facilities plans and specifications to be Plans pursuant to Article 8B,
  - ii. deem the Non Railroad Facilities part of the Structure, and
  - iii. supplement this Agreement with terms and conditions covering the Non Railroad Facilities.

#### ARTICLE 10 - SHOOFLY WORK

- A. The Political Body, at its expense, shall perform all grading and embankment work for the Shoofly (including the portions at both ends of the Shoofly that the Railroad will be constructing or realigning in order to connect the Shoofly to its existing trackage) to the satisfaction and standards of the Railroad, and in compliance with the Plans and all specifications and guidelines, if applicable, furnished by the Railroad to the Political Body, as described in the Shoofly Track Print marked **Exhibit A-4**.
- B. If the Political Body brings in any borrow material, all such borrow material shall come from a Railroad approved borrow source.
- C. The Political Body, at its expense, shall supply and lay all sub-ballast material upon the grading and embankment described in Paragraph A above to the standards and satisfaction of the Railroad and in compliance with the Plans and all specifications and guidelines, if applicable, that have been furnished by the Railroad to the Political Body.
- D. The Railroad, at the Political Body's expense, shall furnish, install and maintain the rail and ties, or shift, realign and maintain the existing railroad tracks, as the case may be, on the portions of the Shoofly that connect to the Railroad's existing trackage out to the clearance points on the Shoofly.
- E. Except as set forth in Paragraph D above, the Political Body shall supply and install all ties, track and other material to the satisfaction of the Railroad and in compliance with the Plans and all specifications and guidelines, if applicable, furnished by the Railroad to the Political Body.
- F. Except as provided in Paragraph D above, during the course of the Project, the Political Body, at its expense, shall maintain and repair the Shoofly to the standards and satisfaction of the Railroad.

- G. Upon completion of the Project, the Railroad, at the Political Body's expense, shall remove the rail and ties that it installed under Paragraph D above. Salvage credits, if any, due the Political Body shall be set forth in the Estimate.
- H. Upon completion of the Project, the Political Body, at its expense, shall remove all rails, ties and ballast installed by it for the Shoofly to the standards and satisfaction of the Railroad and in compliance with the Plans, and, if applicable, all specifications and guidelines, if applicable, furnished by the Railroad to the Political Body. The Political Body shall retain all salvage.

#### **ARTICLE 11 - DEFERRED SEASONING**

The Political Body acknowledges that conditions inherent in the construction of the Structure may cause the complete stabilization of the structure and Railroad's trackage supported by new cuts or fills to be deferred beyond the construction period, and that the Railroad's operation over the roadbed during the seasoning period will impose extraordinary maintenance costs in the event of caving, sliding, slipping, sinking or settling, including damage to rip-rapping or protective work in connection therewith, as well as settlement and consolidation of tracks and ballast, until the seasoning period is complete. Therefore, the Political Body shall pay to the Railroad all that part of the cost and expense of extraordinary maintenance (hereinafter referred to as "Deferred Seasoning") associated with the Project which can be attributed to failure of sub-grade, settlement, and consolidation of sub-ballast, or roadbed, or any combination thereof, which are incurred during the period commencing immediately following completion of the work on the Structure by the Political Body or its Contractor and ending five (5) years thereafter. The Deferred Seasoning costs aforesaid shall include reimbursement of the extra cost, in excess of normal maintenance costs, of maintaining embankments and that portion of said tracks above sub-grade in accordance with acceptable maintenance standards, and will include cost of maintaining proper alignment, proper surface and use of ballast and other necessary materials. The work of such Deferred Seasoning shall normally be performed by the Railroad either with its own forces or through responsible contractors employed by the Railroad. In the event major construction is required for Deferred Seasoning, the Political Body, at its expense, may accomplish such major items by contract, subject to approval and inspection by the Railroad. Except in cases where the continuity of train service is involved or threatened, the Railroad shall submit to the Political Body plans, specifications and estimates for such Deferred Seasoning work and shall not commence such work until the plans, specifications and estimates for such work have been approved by the Political Body.

#### **ARTICLE 12 - RAILROAD'S COORDINATION REQUIREMENTS**

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

#### **ARTICLE 13 - EFFECTIVE DATE; TERM; TERMINATION.**

- A. This Agreement shall become effective as of the date first herein written, or the date work commences on the Project, whichever is earlier, and shall continue in full force and effect for

as long as the Structure remains on the Railroad's property.

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

**ARTICLE 14 - CONDITIONS TO BE MET BEFORE POLITICAL BODY CAN COMMENCE WORK.**

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

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

**ARTICLE 15. FUTURE PROJECTS**

Future projects involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the Structure shall not commence until Railroad and Political Body agree on the plans for such future projects, cost allocations, right of entry terms and conditions and temporary construction rights, terms and conditions.

**ARTICLE 16. ASSIGNMENT; SUCCESSORS AND ASSIGNS**

- A. Political Body shall not assign this Agreement without the prior written consent of Railroad.
- C. Subject to the provisions of Paragraph A above, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad and Political Body.

**ARTICLE 17. SPECIAL PROVISIONS PERTAINING TO AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

If the Political Body will be receiving American Recovery and Reinvestment Act ("ARRA") funding for the Project, the Political Body agrees that it is responsible in performing and completing all ARRA reporting documents for the Project. The Political Body confirms and acknowledges that Section 1512 of the ARRA provisions applies only to a "recipient" receiving ARRA funding directly from the federal government and, therefore,

- i. the ARRA reporting requirements are the responsibility of the Political Body and not of the Railroad, and
- ii. the Political Body shall not delegate any ARRA reporting responsibilities to the Railroad.

The Political Body also confirms and acknowledges that

- i. the Railroad shall provide to the Political Body the Railroad's standard and customary billing for expenses incurred by the Railroad for the Project including the Railroad's standard and customary documentation to support such billing, and
- ii. such standard and customary billing and documentation from the Railroad provides the information needed by the Political Body to perform and complete the ARRA reporting documents.

The Railroad confirms that the Political Body and the Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for the Project as provided in Section 9 of Exhibit B of 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 \_\_\_\_\_  
DANIEL A. LEIS  
General Director Real Estate

ATTEST:

**CITY OF SACRAMENTO**

\_\_\_\_\_  
By \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

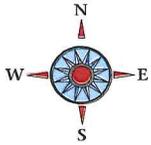
(Seal)

**Approved as to Form**  
By   
Printed Name: Gerald C. Hicks  
Title: Supervising Deputy City Attorney

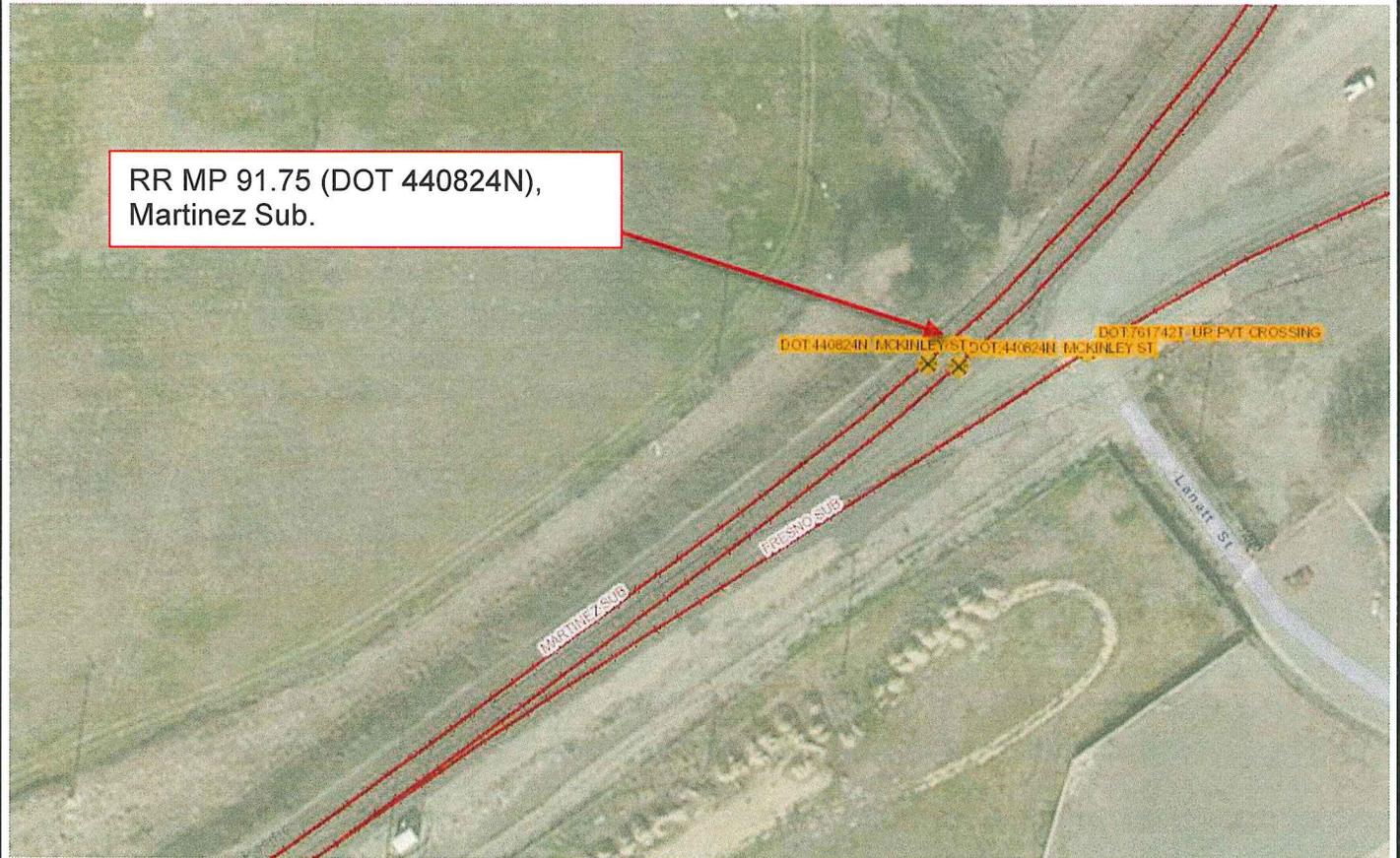
# EXHIBIT A

To New Public Highway Underpass Crossing  
Agreement

Cover Sheet for the  
Railroad's Location Print



**EXHIBIT "A"**  
**RAILROAD LOCATION PRINT**  
ACCOMPANYING A  
NEW GRADE-SEPARATED UNDERPASS AGREEMENT/  
CONTRACTORS RIGHT OF ENTRY



RR MP 91.75 (DOT 440824N),  
Martinez Sub.

DOT 440824N MCKINLEY ST DOT 440824N MCKINLEY ST  
DOT 761742T UP PVT CROSSING

MARTINEZ SUB  
FRESNO SUB  
Lanart St

**UNION PACIFIC RAILROAD COMPANY**

MARTINEZ SUBDIVISION  
RAILROAD MILE POST 91.75  
SACRAMENTO, SACRAMENTO COUNTY, CA

To accompany an agreement with the  
**CITY OF SACRAMENTO and its CONTRACTORS**

UPRR Folder No. 2803-89      Date: November 14, 2014

**WARNING**

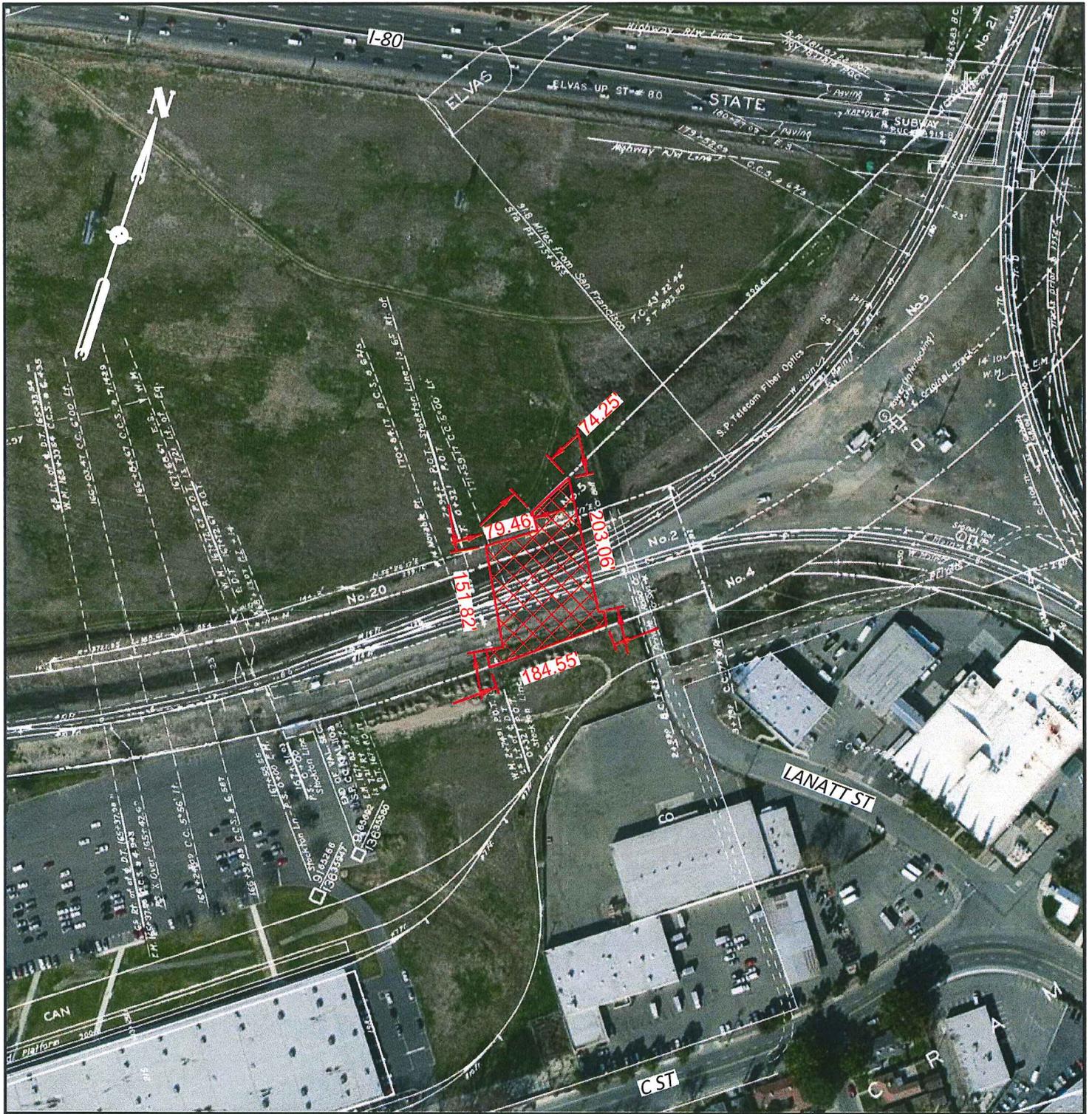
IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.

PHONE: 1-(800) 336-9193

# EXHIBIT A-1

To New Public Highway Underpass Crossing  
Agreement

Cover Sheet for the  
Survey and Detailed Prints



**LEGEND:**

EASEMENT AREA ..... 

UPPRCO. R/W OUTLINED ..... 

AREA = 0.65 ACRES +/-

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"

**UNION PACIFIC RAILROAD COMPANY**

SACRAMENTO, SACRAMENTO COUNTY, CALIFORNIA

M.P. 91.75 - MARTINEZ SUB.

TO ACCOMPANY AGREEMENT WITH CITY OF SACRAMENTO and its CONTRACTORS

MAP SP V-112 / S-2

SCALE: 1" = 200'

OFFICE OF REAL ESTATE

OMAHA, NEBRASKA DATE: 9-2-2014

PJB FILE: 0280389

|               |                     |
|---------------|---------------------|
| CADD FILENAME | 0280389             |
| SCAN FILENAME | CAV112S2-280389.TIF |



**LEGEND:**

TEMPORARY CONSTRUCTION Area .....

UPRRCO. R/W OUTLINED ..... - - - - -

AREA = 4.492 ACRES +/-

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.  
EXHIBIT "A-1"

**UNION PACIFIC RAILROAD COMPANY**  
SACRAMENTO, SACRAMENTO COUNTY, CALIFORNIA  
M.P. 91.75 - MARTINEZ SUB.

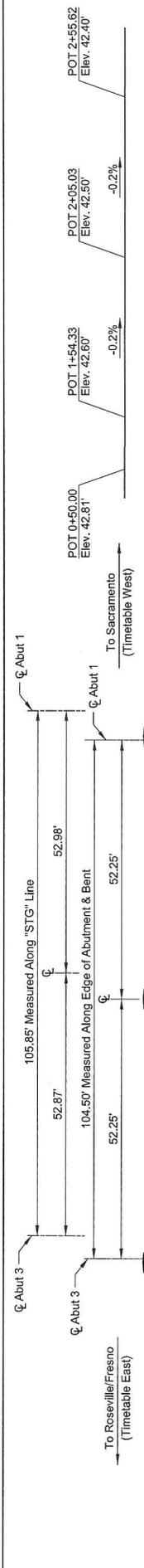
TO ACCOMPANY AGREEMENT WITH  
CITY OF SACRAMENTO and its CONTRACTORS  
MAP SP V-112 / S-2  
SCALE: 1" = 200'

OFFICE OF REAL ESTATE  
OMAHA, NEBRASKA DATE: 1-16-2015

PJB FILE: 0280389

|               |                     |
|---------------|---------------------|
| CADD FILENAME | 0280389-1           |
| SCAN FILENAME | CAV11252-280389.TIF |

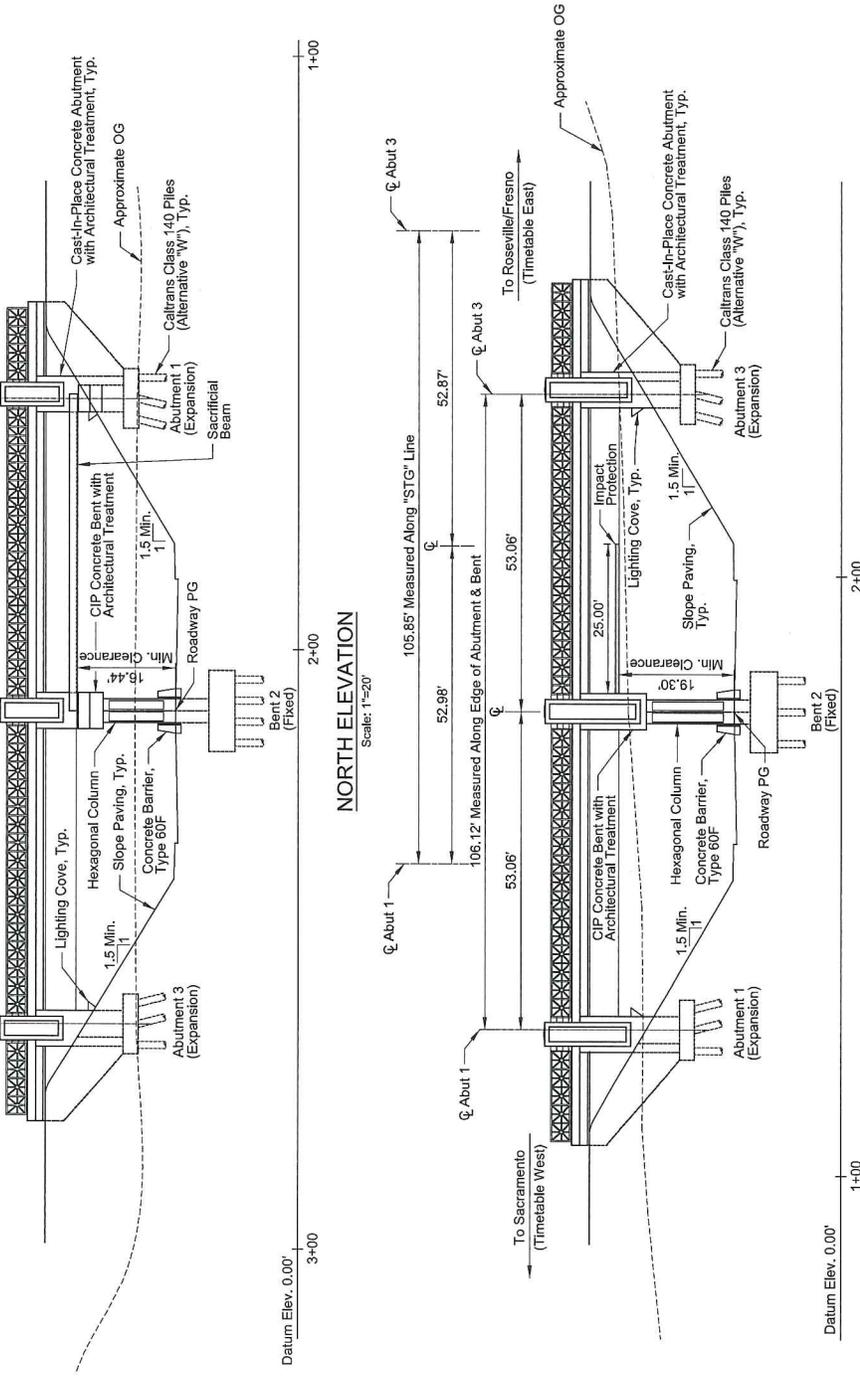




**PROFILE GRADE @ "STG" LINE**  
No Scale

**TOP OF RAIL ELEVATION**

| TRACK           | ☉ ABUT 1 | ☉ BENT 2 | ☉ ABUT 3 |
|-----------------|----------|----------|----------|
| SHOOFLY MS ML 1 | 45.07'   | 45.09'   | 45.10'   |
| SHOOFLY MS ML 2 | 45.07'   | 45.08'   | 45.10'   |
| SHOOFLY FS ML 1 | 45.07'   | 45.09'   | 45.10'   |
| FINAL MS ML 1   | 44.97'   | 44.97'   | 44.97'   |
| FINAL MS ML 2   | 45.15'   | 45.12'   | 45.09'   |
| FINAL FS ML 1   | 45.33'   | 45.39'   | 45.46'   |



**NORTH ELEVATION**  
Scale: 1"=20'

**SOUTH ELEVATION**  
Scale: 1"=20'



100% Submittal - Not IFC

|   |   |
|---|---|
|   | <b>UNION PACIFIC RAILROAD</b><br>Office of Assistant Vice President<br>Engineering Design<br>SACRAMENTO, CALIFORNIA<br>MARTINEZ SUB MP91.58 TO 91.91, FRESNO SUB MP38.60, LAT/LONG: 38.58/-121.45 |
|   | DRAWN BY: S-002<br>CHECKED BY: S-002<br>DATE: 09/25/2014<br>SHEET NUMBER: S-002   |
|   | <b>PARSONS</b><br>2455 NATOMAS PARK DRIVE, SUITE 800<br>SACRAMENTO, CALIFORNIA 95833  |
| PHONE NUMBER:<br>(800) 335-9193<br>(888) 258-0608<br>(888) 877-7267 | GENERAL:<br>UPRR CALL BEFORE YOU DIG<br>CALL BEFORE YOU DIG (NATIONAL DIRECTORY)<br>UPRR Response Management Communications Center (RMCC)   |
| REV   DATE   BY   CHK   APP   DESCRIPTION                           |   |
|   |   |

# EXHIBIT A-2

To New Public Highway Underpass Crossing  
Agreement

Cover Sheet for the  
Legal Description for Permanent Easement

## **EXHIBIT 'A-2'**

### **Legal Description BRIDGE UNDERPASS AREA (Union Pacific Railroad Company)**

Being a portion of the Lands of Union Pacific Railroad Company, as said Lands are shown on the map entitled "Plat of Tract of Land Owned By G.A. Meister" filed in Book "A" of Surveys, Map No. 101, Sacramento County Records, and located in the City and County of Sacramento, State of California, more particularly described as follows:

BEGINNING at a point which is the southeasterly most corner of the Lands of Encore McKinley Village, LLC, a Delaware Limited Liability Company, as said Lands are shown on that Record of Survey filed in Book 47 of Surveys at page 15, said County Records, said point being the southerly terminus of the course "South 34° 01' 32" East, a distance of 28.20 feet" as shown on said Record of Survey; thence leaving said POINT OF BEGINNING, along the southeasterly line of said Lands of Encore McKinley Village and Record of Survey, the following two (2) courses and distances:

1. North 34° 01' 32" West, a distance of 28.20 feet;
2. North 29° 14' 28" East, a distance of 74.25 feet;

Thence leaving said southeasterly line, entering into and crossing said Lands of Union Pacific Railroad Company, the following three (3) courses and distances:

1. South 30° 36' 22" East, a distance of 203.06 feet;
2. North 62° 18' 25" East, a distance of 7.46 feet;
3. South 30° 36' 22" East, a distance of 20.07 feet to a point on the southeasterly line of said Lands of Union Pacific Railroad Company;

Thence along last said southeasterly line, the following two (2) arcs, courses and distances:

1. South 51° 57' 24" West, a distance of 175.88 feet to a point of curvature;
2. 8.67 feet along the arc of a 1485.00 foot radius curve to the right, through a central angle of 00° 20' 04";

Thence leaving last said southeasterly line, entering into and crossing said Lands of Union Pacific Railroad Company, the following three (3) courses and distances:

1. North 27° 42' 21" West, a distance of 26.52 feet;
2. North 63° 37' 33" East, a distance of 24.81 feet;
3. North 27° 42' 21" West, a distance of 151.82 feet to a point on the southeasterly line of said Lands of Encore McKinley Village;

Thence along last said southeasterly line, North 55° 19' 31" East, a distance of 79.46 feet to the POINT OF BEGINNING.

Containing 28,120 square feet or 0.65 acres, more or less.

*See Exhibit "A-3", plat to accompany description, attached hereto and made a part hereof.*

The Basis of Bearings for this description is the line between the two found City of Sacramento Surveyor GPS Geodetic Control Stations designated "G3505" and "G3407" as shown on the map entitled "Record of Survey, GPS Static Survey" filed in Book 63 of Survey Maps at Page 29, Sacramento County Records. The bearing being taken as North 83° 25' 54" West. Distances shown are ground values, to obtain grid values, multiply by a csf=0.99995.

December 19, 2014

END OF DESCRIPTION



12/19/14

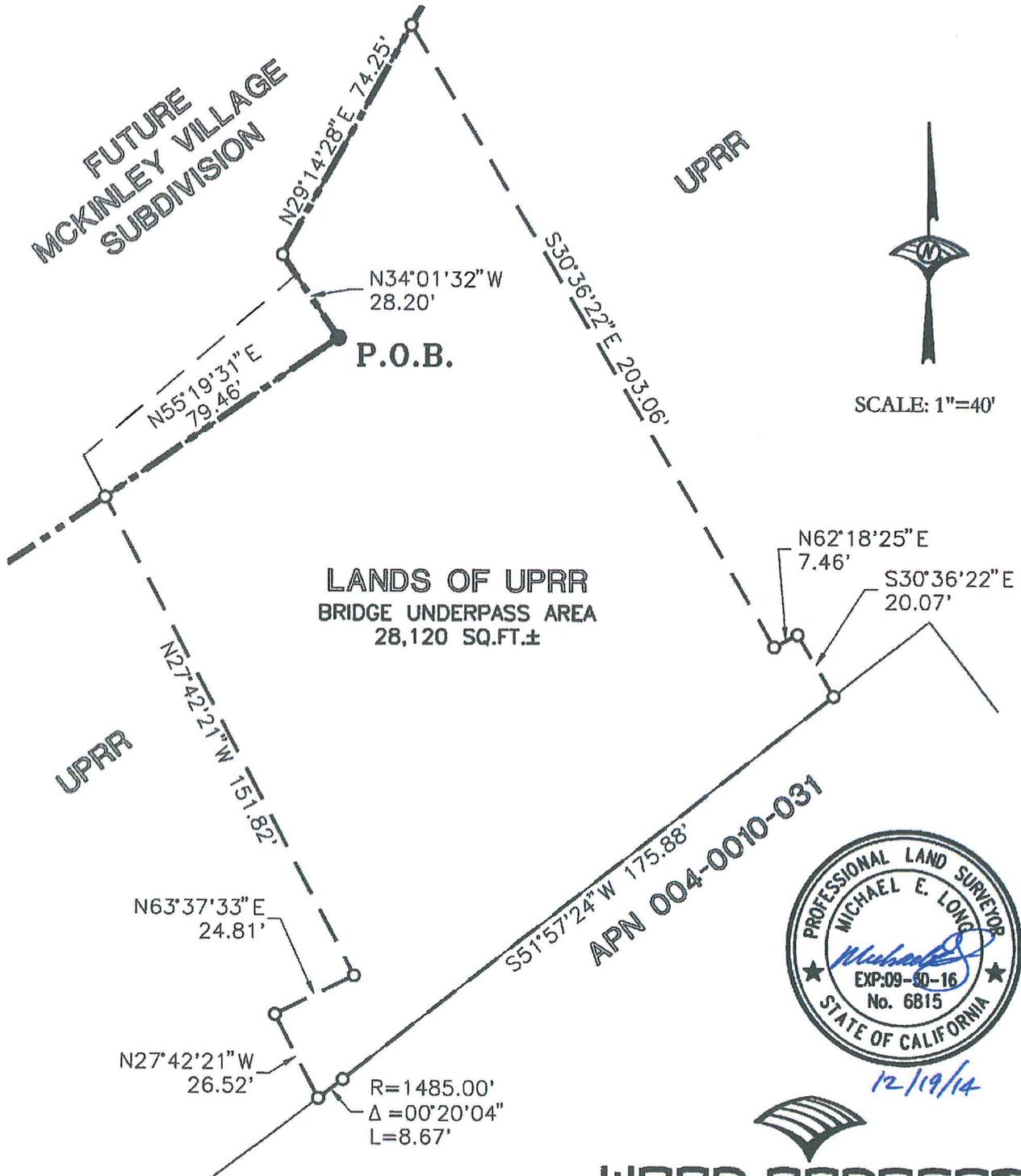
PREPARED BY WOOD RODGERS, INC.  
SACRAMENTO, CALIFORNIA

J:\1000-s\1262-McKinleyVillage\McKinley\_Village\Geomatics\docs\Descriptions\UPRR  
Bridge\BridgeUnderpass\_UPRR.doc

**EXHIBIT A-3**

PLAT TO ACCOMPANY  
DESCRIPTION

MCKINLEY VILLAGE  
UPRR BRIDGE UNDERPASS AREA  
CITY OF SACRAMENTO, COUNTY OF SACRAMENTO  
STATE OF CALIFORNIA



SEE DESCRIPTION FOR  
COURSE INFORMATION

DECEMBER 19, 2014 1262.018 SHEET 1 OF 1

# EXHIBIT A-3

To New Public Highway Underpass Crossing  
Agreement

Cover Sheet for the  
Legal Description for the Temporary Construction  
Area

## EXHIBIT A

### Legal Description TEMPORARY CONSTRUCTION EASEMENT (Union Pacific Railroad Company)

Being a portion of the Lands of Union Pacific Railroad Company, as said Lands are shown on the map entitled "Plat of Tract of Land Owned By G.A. Meister" filed in Book "A" of Surveys, Map No. 101, Sacramento County Records, and located in the City and County of Sacramento, State of California, more particularly described as follows:

**BEGINNING** at a point which is the southeasterly most corner of the Lands of Encore McKinley Village, LLC, a Delaware Limited Liability Company, as said Lands are shown on that Record of Survey filed in Book 47 of Surveys at Page 15, said County Records, said point being the southerly terminus of the course "South 34° 01' 32" East, 28.20'", as shown on said Record of Survey; thence leaving said **POINT OF BEGINNING**, along the southeasterly line of said Lands of Encore McKinley Village LLC and Record of Survey, the following two (2) courses and distances:

1. North 34° 01' 32" West, a distance of 28.20 feet;
2. North 29° 14' 28" East, a distance of 74.25 feet;

Thence leaving said southeasterly line, entering into and crossing said Lands of Union Pacific Railroad Company, the following ten (10) arcs, courses and distances:

1. South 30° 36' 22" East, a distance of 13.28 feet;
2. North 47°02'54" East, a distance of 147.73 feet to a point on an 825.00 foot radius tangent curve;
3. along the arc of said curve to the left, an arc distance of 273.03 feet, through a central angle of 18°57'43";
4. South 61°54'49" East, a distance of 87.69 feet to a point on a 1065.00 foot radius non-tangent curve;
5. from a radial line which bears South 65°56'31" East, along the arc of said curve to the right, an arc distance of 225.47 feet, through a central angle of 12°07'48" to a point on a 730.00 foot radius non-tangent curve;
6. from a radial line which bears North 20°44'16" West, along the arc of said curve to the right, an arc distance of 597.81 feet, through a central angle of 46°55'14";

7. South 63°49'02" East, a distance of 24.31 feet;
8. South 26°10'58" West, a distance of 57.57 feet to a point on a 740.00 foot radius non-tangent curve;
9. from a radial line which bears North 17°58'58" East, along the arc of said curve to the left, an arc distance of 705.19 feet, through a central angle of 54°36'03";
10. South 29°06'56" West, a distance of 65.69 feet to a point on the southeasterly line of said Lands of Union Pacific Railroad Company;

Thence along last said southeasterly line, the following two (2) arcs, courses and distances:

1. South 51°57'24" West, a distance of 175.88 feet to a point on a 1485.00 foot radius tangent curve;
2. along the arc of said curve to the right, an arc distance of 8.67 feet, through a central angle of 00°20'04";

Thence leaving last said southeasterly line, entering into and crossing said Lands of Union Pacific Railroad Company, the following five (5) arcs, courses and distances:

1. North 27°42'21" West, a distance of 24.31 feet;
2. South 57°56'19" West, a distance of 328.51 feet;
3. North 33°07'37" West, a distance of 98.92 feet to a point on a 1500.00 foot non-radius tangent curve;
4. from a radial line which bears South 33°07'37" East, along the arc of said curve to the left, an arc distance of 339.36 feet, through a central angle of 12°57'46";
5. North 43°54'37" East, a distance of 31.97 feet to a point on the southeasterly line of said Lands of Encore McKinley Village LLC;

Thence along last said southeasterly line, North 55°19'31" East, a distance of 79.46 feet to the **POINT OF BEGINNING**.

Containing 4.492 acres of land, more or less.

*See Exhibit B, plat to accompany description, attached hereto and made a part hereof.*

The Basis of Bearings for this description is the line between the two found City of Sacramento Surveyor GPS Geodetic Control Stations designated "G3505" and "G3407" as shown on the map entitled "Record of Survey, GPS Static Survey" filed in Book 63 of Survey Maps at Page 29, Sacramento County Records. The bearing being taken as North 83° 25' 54" West. Distances shown are ground values, to obtain grid values, multiply by a  $csf=0.99995$ .

December 22, 2014

END OF DESCRIPTION

PREPARED BY WOOD RODGERS, INC.  
SACRAMENTO, CALIFORNIA

# EXHIBIT B

PLAT TO ACCOMPANY  
DESCRIPTION

SEE DESCRIPTION FOR  
COURSE INFORMATION

TEMPORARY CONSTRUCTION  
EASEMENT - UPRR  
CITY OF SACRAMENTO, COUNTY OF SACRAMENTO  
STATE OF CALIFORNIA



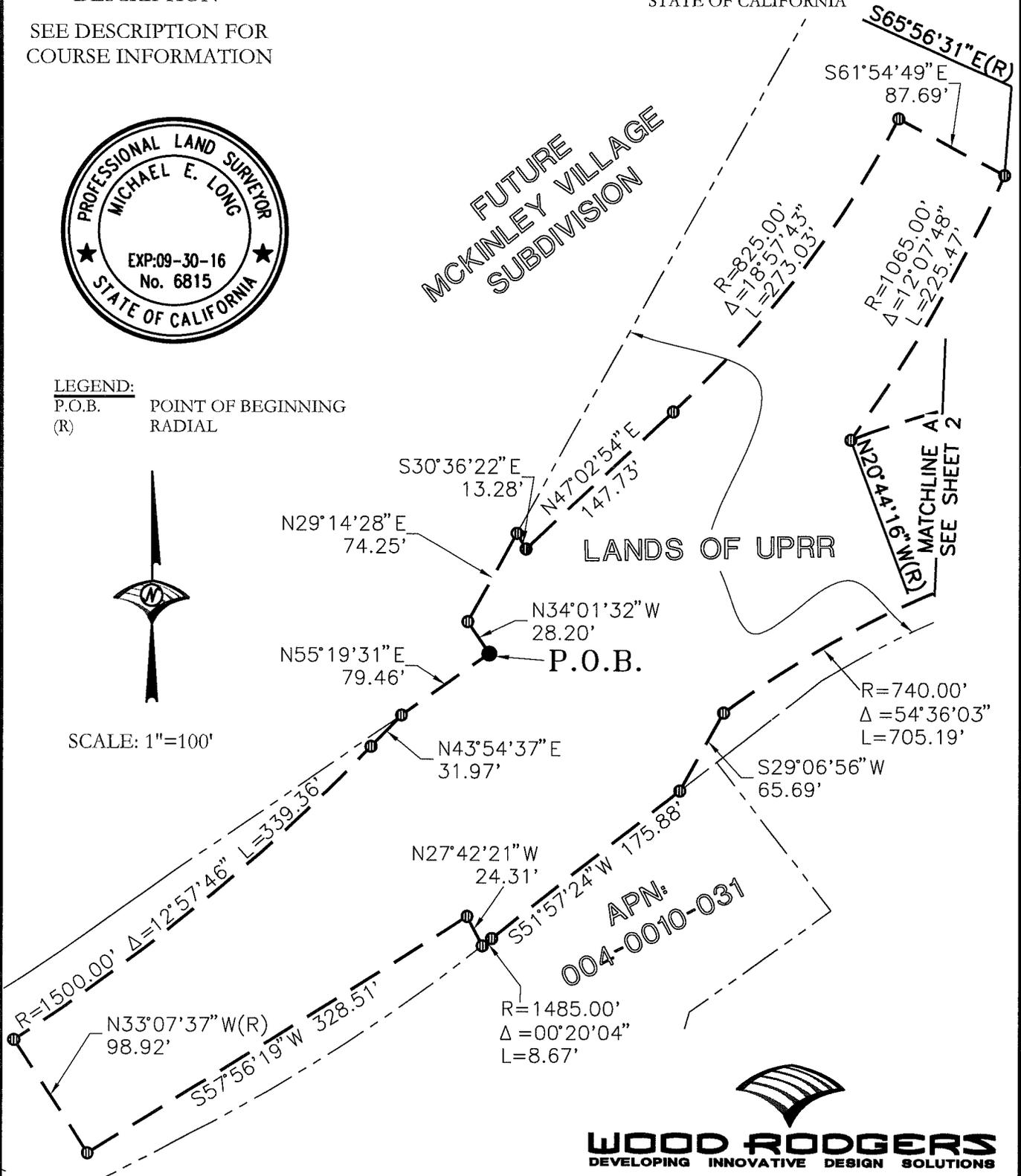
**LEGEND:**  
P.O.B. POINT OF BEGINNING  
(R) RADIAL



SCALE: 1"=100'

FUTURE  
MCKINLEY VILLAGE  
SUBDIVISION

LANDS OF UPRR



APN:  
004-0010-031



**WOOD RODGERS**  
DEVELOPING INNOVATIVE DESIGN SOLUTIONS

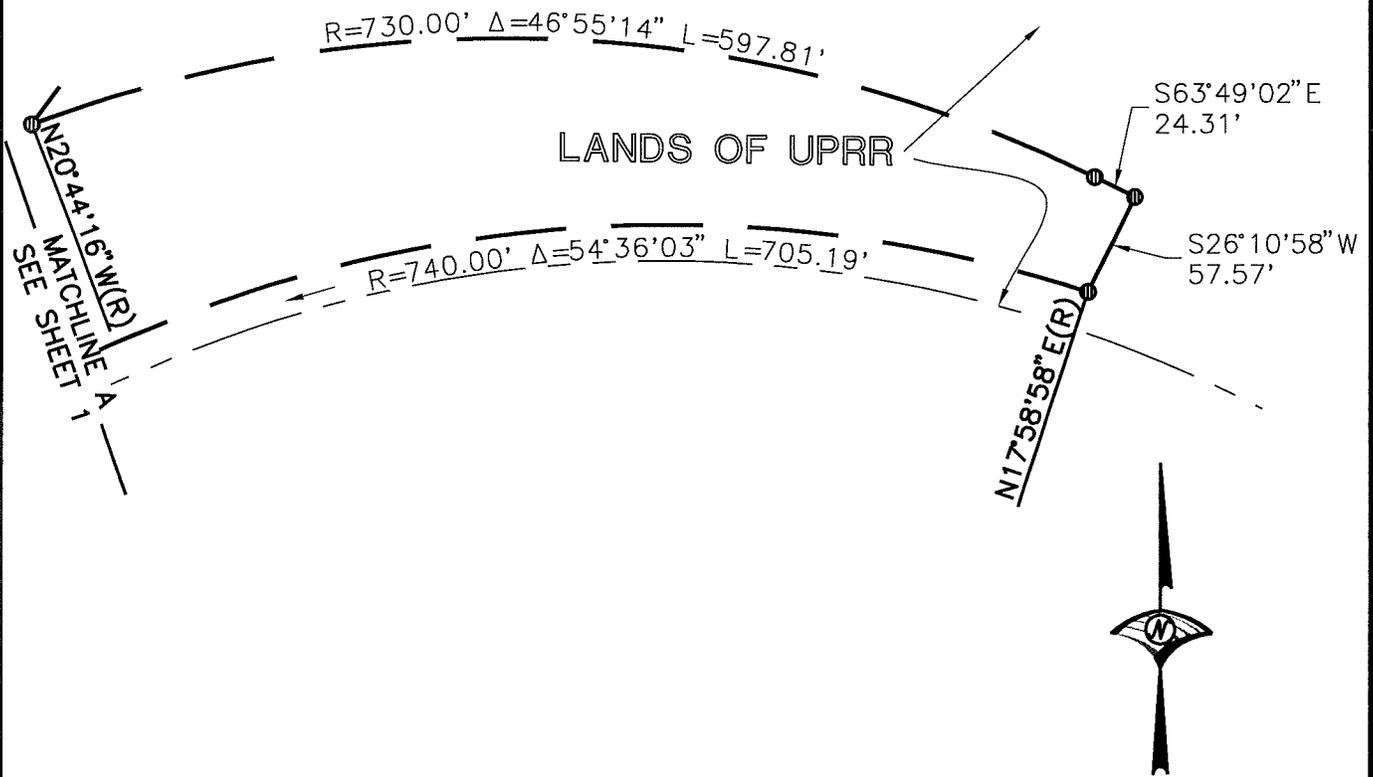
3301 C St, Bldg. 100-B Tel 916.341.7760  
Sacramento, CA 95816 Fax 916.341.7767

DECEMBER 22, 2014 1262.018 SHEET 1 OF 2

**EXHIBIT B**

PLAT TO ACCOMPANY  
DESCRIPTION

TEMPORARY CONSTRUCTION  
EASEMENT - UPRR  
CITY OF SACRAMENTO, COUNTY OF SACRAMENTO  
STATE OF CALIFORNIA



SEE SHEET  
MATCHLINE  
A  
1

LANDS OF UPRR

SCALE: 1"=100'

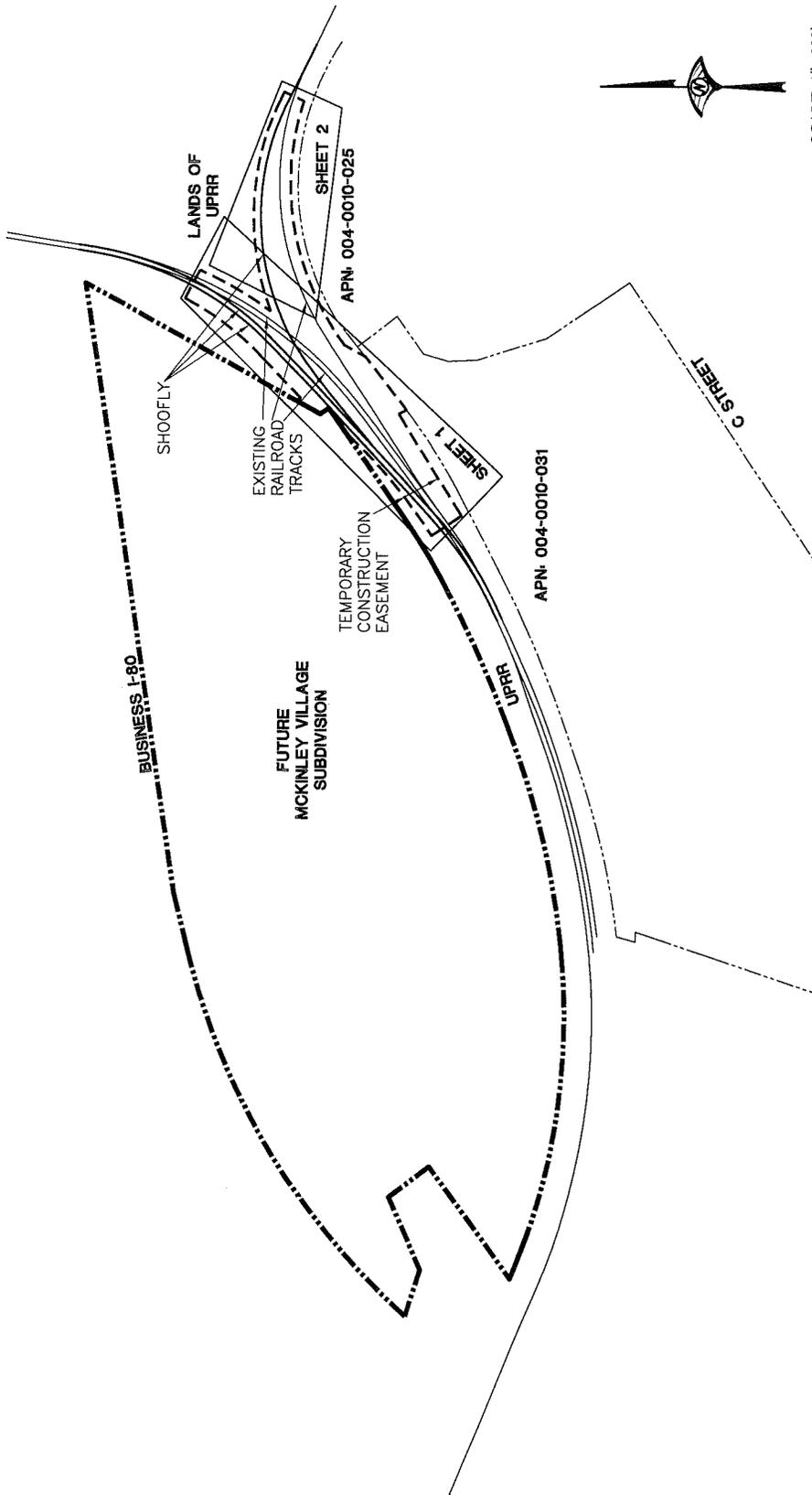
SEE DESCRIPTION FOR  
COURSE INFORMATION



**WOOD RODGERS**  
DEVELOPING INNOVATIVE DESIGN SOLUTIONS  
3301 C St, Bldg. 100-B Tel 916.341.7760  
Sacramento, CA 95816 Fax 916.341.7767

DECEMBER 22, 2014 1262.018 SHEET 2 OF 2

**LOCATION EXHIBIT**

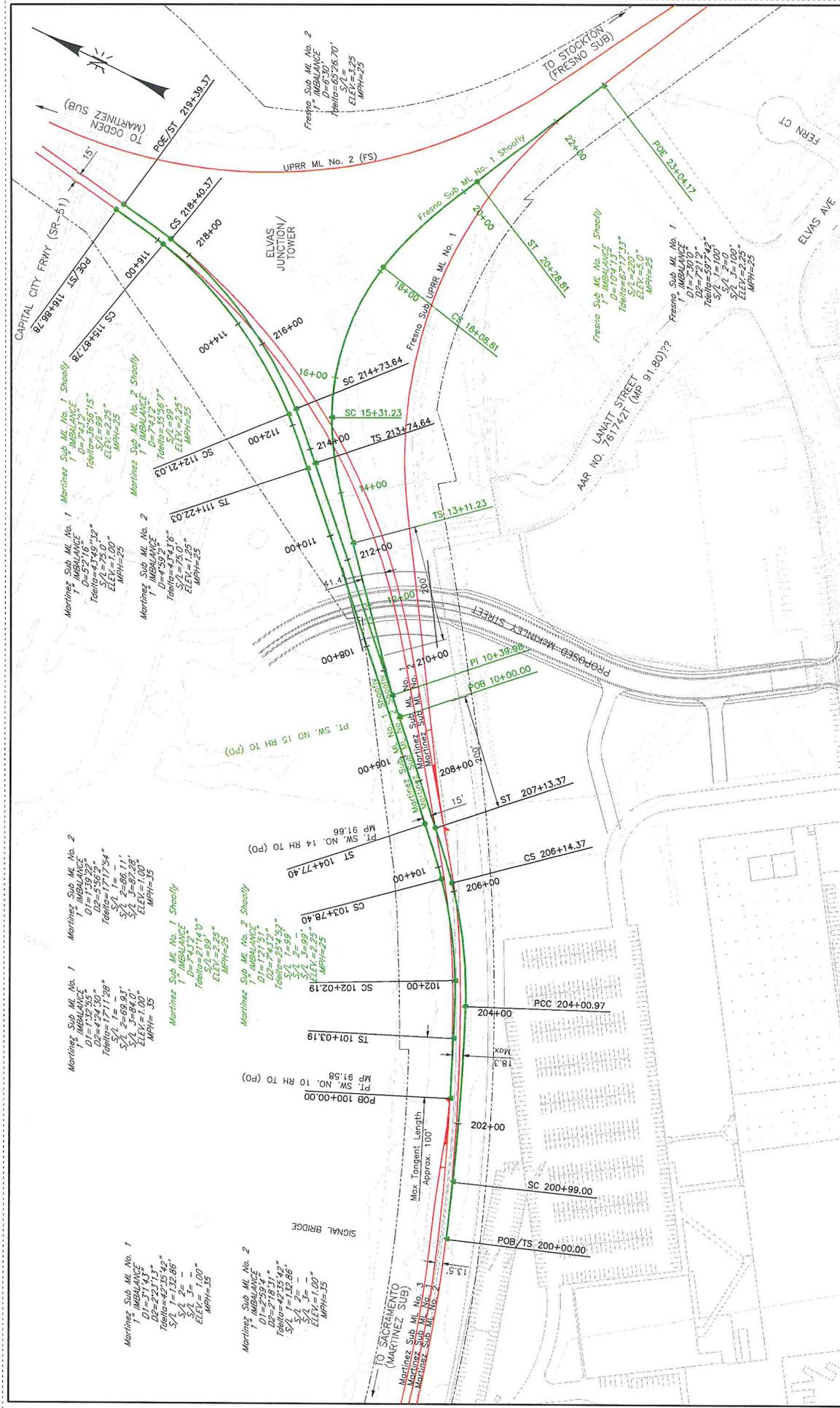


**WOOD RODGERS**  
DEVELOPING INNOVATIVE DESIGN SOLUTIONS  
3301 C St, Bldg. 100-B Tel 916.341.7780  
Sacramento, CA 95816 Fax 916.341.7787

# EXHIBIT A-4

To New Public Highway Underpass Crossing  
Agreement

Cover Sheet for the Shoefly Track Print



Martinez Sub ML No. 1  
 D=1737.55'  
 DA=159.79°  
 T=1717.54'  
 S/A=17+11.28"  
 S/A=86.11"  
 J=67.28"  
 ELEV=1.00'  
 MPH=35

Martinez Sub ML No. 2  
 D=1737.55'  
 DA=159.79°  
 T=1717.54'  
 S/A=17+11.28"  
 S/A=86.11"  
 J=67.28"  
 ELEV=1.00'  
 MPH=35

Martinez Sub ML No. 1  
 D=1737.55'  
 DA=159.79°  
 T=1717.54'  
 S/A=17+11.28"  
 S/A=86.11"  
 J=67.28"  
 ELEV=1.00'  
 MPH=35

Martinez Sub ML No. 2  
 D=1737.55'  
 DA=159.79°  
 T=1717.54'  
 S/A=17+11.28"  
 S/A=86.11"  
 J=67.28"  
 ELEV=1.00'  
 MPH=35

Martinez Sub ML No. 1  
 D=1737.55'  
 DA=159.79°  
 T=1717.54'  
 S/A=17+11.28"  
 S/A=86.11"  
 J=67.28"  
 ELEV=1.00'  
 MPH=35

Martinez Sub ML No. 2  
 D=1737.55'  
 DA=159.79°  
 T=1717.54'  
 S/A=17+11.28"  
 S/A=86.11"  
 J=67.28"  
 ELEV=1.00'  
 MPH=35

Martinez Sub ML No. 1  
 D=1737.55'  
 DA=159.79°  
 T=1717.54'  
 S/A=17+11.28"  
 S/A=86.11"  
 J=67.28"  
 ELEV=1.00'  
 MPH=35

Martinez Sub ML No. 2  
 D=1737.55'  
 DA=159.79°  
 T=1717.54'  
 S/A=17+11.28"  
 S/A=86.11"  
 J=67.28"  
 ELEV=1.00'  
 MPH=35

Martinez Sub ML No. 1  
 D=1737.55'  
 DA=159.79°  
 T=1717.54'  
 S/A=17+11.28"  
 S/A=86.11"  
 J=67.28"  
 ELEV=1.00'  
 MPH=35

Martinez Sub ML No. 2  
 D=1737.55'  
 DA=159.79°  
 T=1717.54'  
 S/A=17+11.28"  
 S/A=86.11"  
 J=67.28"  
 ELEV=1.00'  
 MPH=35

Martinez Sub ML No. 1  
 D=1737.55'  
 DA=159.79°  
 T=1717.54'  
 S/A=17+11.28"  
 S/A=86.11"  
 J=67.28"  
 ELEV=1.00'  
 MPH=35

Martinez Sub ML No. 2  
 D=1737.55'  
 DA=159.79°  
 T=1717.54'  
 S/A=17+11.28"  
 S/A=86.11"  
 J=67.28"  
 ELEV=1.00'  
 MPH=35

Martinez Sub ML No. 1  
 D=1737.55'  
 DA=159.79°  
 T=1717.54'  
 S/A=17+11.28"  
 S/A=86.11"  
 J=67.28"  
 ELEV=1.00'  
 MPH=35

Martinez Sub ML No. 2  
 D=1737.55'  
 DA=159.79°  
 T=1717.54'  
 S/A=17+11.28"  
 S/A=86.11"  
 J=67.28"  
 ELEV=1.00'  
 MPH=35

Martinez Sub ML No. 1  
 D=1737.55'  
 DA=159.79°  
 T=1717.54'  
 S/A=17+11.28"  
 S/A=86.11"  
 J=67.28"  
 ELEV=1.00'  
 MPH=35

Martinez Sub ML No. 2  
 D=1737.55'  
 DA=159.79°  
 T=1717.54'  
 S/A=17+11.28"  
 S/A=86.11"  
 J=67.28"  
 ELEV=1.00'  
 MPH=35

Martinez Sub ML No. 1  
 D=1737.55'  
 DA=159.79°  
 T=1717.54'  
 S/A=17+11.28"  
 S/A=86.11"  
 J=67.28"  
 ELEV=1.00'  
 MPH=35

Martinez Sub ML No. 2  
 D=1737.55'  
 DA=159.79°  
 T=1717.54'  
 S/A=17+11.28"  
 S/A=86.11"  
 J=67.28"  
 ELEV=1.00'  
 MPH=35

Martinez Sub ML No. 1  
 D=1737.55'  
 DA=159.79°  
 T=1717.54'  
 S/A=17+11.28"  
 S/A=86.11"  
 J=67.28"  
 ELEV=1.00'  
 MPH=35

Martinez Sub ML No. 2  
 D=1737.55'  
 DA=159.79°  
 T=1717.54'  
 S/A=17+11.28"  
 S/A=86.11"  
 J=67.28"  
 ELEV=1.00'  
 MPH=35

Martinez Sub ML No. 1  
 D=1737.55'  
 DA=159.79°  
 T=1717.54'  
 S/A=17+11.28"  
 S/A=86.11"  
 J=67.28"  
 ELEV=1.00'  
 MPH=35

Martinez Sub ML No. 2  
 D=1737.55'  
 DA=159.79°  
 T=1717.54'  
 S/A=17+11.28"  
 S/A=86.11"  
 J=67.28"  
 ELEV=1.00'  
 MPH=35

UNION PACIFIC RAILROAD  
 Office of Assistant Vice President  
 Engineering Design  
 Location & Description Sacramento, California  
 Martinez Sub MP 91.58 to 91.91, Fresno Sub MP 38.60  
 40th ST Conceptual Shootily, ML No. 1 & 2

UNION PACIFIC RAILROAD  
 Office of Assistant Vice President  
 Engineering Design  
 Location & Description Sacramento, California  
 Martinez Sub MP 91.58 to 91.91, Fresno Sub MP 38.60  
 40th ST Conceptual Shootily, ML No. 1 & 2

UNION PACIFIC RAILROAD  
 Office of Assistant Vice President  
 Engineering Design  
 Location & Description Sacramento, California  
 Martinez Sub MP 91.58 to 91.91, Fresno Sub MP 38.60  
 40th ST Conceptual Shootily, ML No. 1 & 2



# EXHIBIT B

To New Public Highway Underpass Crossing  
Agreement

Cover Sheet for the  
General Terms and Conditions

## EXHIBIT B

### TO PUBLIC HIGHWAY UNDERPASS CROSSING AGREEMENT

#### GENERAL 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 Political Body shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the Political Body shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the Railroad's property by or under authority of the Political Body for the purpose of conveying electric power or communications incidental to the Political Body's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the Political Body to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.
- b) The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes in such manner as not unreasonably to interfere with its use as a public highway. In the event the Railroad shall place tracks upon the Crossing Area, the Political Body 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 Political Body shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the railroad property, unless the Political Body 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 Political Body's specifications and will not interfere with the use of the Crossing Area.
- e) So far as it lawfully may do so, the Political Body will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Crossing Area, excepting taxes levied upon and against the property as a component part of the Railroad's operating property.
- f) If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Structure and its appurtenances, or for the performance of any work in connection with the Project, the Political Body will acquire all such other property and rights at its own expense and without expense to the Railroad.

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

- a) The Political Body, at its expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Project, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.
- b) Except as may be otherwise specifically provided herein, the Political Body, at its expense, will furnish all necessary labor, material and equipment, and shall construct and complete the Structure and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper drainage facilities, guard rails or barriers, and right of way fences between the Structure and the railroad tracks. Upon completion of the Project, the Political Body shall remove from the Railroad's property all temporary structures and false work, and will leave the Crossing Area in a condition satisfactory to the Railroad.
- c) All construction work of the Political Body upon the Railroad's property (including, but not limited to, construction of the Structure and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President Engineering - Design of the Railroad or his authorized representative and in

accordance with the Plans, the Railroad's Minimum Requirements set forth in **Exhibit D** and other guidelines furnished by the Railroad.

- d) All construction work of the Political Body shall be performed diligently and completed within a reasonable time, and in any event within three (3) years from the effective date of this Agreement, or within such further period of time as may be specified in writing by the Railroad's Assistant Vice President Engineering - Design. No part of the Project shall be suspended, discontinued or unduly delayed without the Railroad's written consent, and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of the Political Body. The Political Body hereby assumes the risk of any such delays and agrees that no claims for damage on account of any delay shall be made against the Railroad.

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

If the Political Body, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the Political Body 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 Political Body at the Political Body's own expense, or by the Railroad at the expense of the Political Body, and to the satisfaction of the Railroad's Assistant Vice President Engineering - Design.

### **SECTION 4 - RAILROAD MAY USE CONTRACTORS TO PERFORM WORK**

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

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

- a) The Political Body, at its expense, shall maintain, repair, and renew, or cause to be maintained, repaired and renewed, the entire Structure, including the waterproofing and below, and further including, but not limited to, the superstructure, substructure, piers, abutments, walls, approaches and all backfill, grading and drainage required by reason of the Structure, as well as all graffiti removal or over-painting involving the Structure.
- b) The Railroad, at its expense, will maintain, repair and renew, or cause to be maintained, repaired and renewed, above the waterproofing, including, but not limited to, the rails, ties, ballast and communication and signal facilities owned by the Railroad.

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

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the Political Body 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 Political Body shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the Political Body shall include work both within and outside of the Railroad's property.
- b) **Entry on to Railroad's Property by Political Body.** If the Political Body's employees need to enter Railroad's property in order to perform an inspection of the Structure, minor maintenance or other activities, the Political Body shall first provide at least ten (10) working days advance notice to the Railroad Representative. With respect to such entry on to Railroad's property, the Political Body, to the extent permitted by law, agrees to release, defend and indemnify the Railroad from and against any loss, damage, injury, liability, claim, cost or expense incurred by any person including, without limitation, the Political Body's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of Political Body's employees on Railroad's property, except to the extent that any Loss is caused by the sole direct negligence of Railroad.
- c) **Flagging.**

- (i) If the Political Body's employees need to enter Railroad's property as provided in Paragraph B above, the Political Body agrees to notify the Railroad Representative at least thirty (30) working days in advance of proposed performance of any work by Political Body 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 thirty (30) day notice, the Railroad Representative will determine and inform Political Body whether a flagman need be present and whether Political Body 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 Political Body for such expenses incurred by Railroad. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Political Body agrees that Political Body is not relieved of any of its responsibilities or liabilities set forth in this Agreement.
- (ii) 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, Political Body shall pay on the basis of the new rates and charges.
- (iii) 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 Political Body 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, Political Body 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, Political Body 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 thirty (30) 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.
- d) **Compliance With Laws.** The Political Body shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Political Body shall use only such methods as are consistent with safety, both as concerns the Political Body, the Political Body's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Political Body (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 Political Body 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 Political Body shall reimburse and, to the extent it may lawfully do so, indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The Political Body 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.
- e) **No Interference or Delays.** The Political Body 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.
- f) **Supervision.** The Political Body, at its own expense, shall adequately police and supervise all work to be performed by the Political Body, 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 Political Body 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 Political Body with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the Political Body will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.
- g) **Suspension of Work.** If at any time the Political Body'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 Political Body is being or is about to be done or prosecuted without due regard and precaution for safety and security, the Political Body shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.
- h) **Removal of Debris.** The Political Body 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 Political Body at the Political Body's own expense or by the Railroad at the expense of the Political Body. The Political Body 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.
- i) **Explosives.** The Political Body 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.
- j) **Excavation.** The Political Body 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 Political Body 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 Political Body, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the Political Body in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering - Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.
- k) **Drainage.** The Political Body, at the Political Body's own expense, shall provide and maintain suitable facilities for draining the Structure and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The Political Body, at the Political Body's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the Political Body, 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 Political Body shall not obstruct or interfere with existing ditches or drainage facilities.
- l) **Notice.** Before commencing any work, the Political Body shall provide the advance notice that is required under the Contractor's Right of Entry Agreement.
- m) **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. Political Body 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 Political Body. If it is, Political Body will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

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

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

## **SECTION 8 - OTHER RAILROADS**

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

## **SECTION 9 BOOKS AND RECORDS**

The books, papers, records and accounts of Railroad, so far as they relate to the items of expense for the materials to be provided by Railroad under this Project, or are associated with the work to be performed by Railroad under this Project, shall be open to inspection and audit at Railroad's offices in Omaha, Nebraska, during normal business hours by the agents and authorized representatives of Political Body for a period of three (3) years following the date of Railroad's last billing sent to Political Body.

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

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

## **SECTION 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 Political Body 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 Political Body 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 Political Body 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.

# EXHIBIT C

To New Public Highway Underpass Crossing  
Agreement

Cover Sheet for the  
Railroad's Material and Force Agreement  
Estimates

# Material And Force Account Estimate

Estimate Number: 85243    Version: 1

Standard Rates:      Labor Additive = 271%      WT Labor Additive = 368.99%

**Estimate Good for 6 Months Until 07/23/15**

Location: MARTINEZ SUB, SIMN, 91.6-106.4

Description of Work: Sacramento, CA - Martinez Sub. 91.58 - 91.91, Fresno Sub. 38.6 - McKinley Street Shoofly

**\*\*Note: Estimate will need to be revised once actual project quantities are available. -----ALL quantities are assumptions.---**

**\*\*Contractor to supply all materials. Estimate is for UPRR Labor only.**

S:\Projects\CA\Public Projects\McKinley Street - Elvas Wye, 91.58-91.91 (Martinez)\Submittal Documents\2014-03-05 60% plans

| COMMENTS | FACILITY | Description | QTY | UOM | UCST | LABOR | MATERIAL | TOTAL |
|----------|----------|-------------|-----|-----|------|-------|----------|-------|
|----------|----------|-------------|-----|-----|------|-------|----------|-------|

**ENGINEERING**

|                    |  |                      |     |    |            |                  |                |                  |
|--------------------|--|----------------------|-----|----|------------|------------------|----------------|------------------|
|                    |  | ENGINEERING          | 1   | LS | 500,000.00 | 500,000          | 0              | 500,000          |
|                    |  | CONTRACT ENGINEERING | 1   | LS | 200,000.00 | 0                | 200,000        | 200,000          |
|                    |  | FLAGGING             | 540 | MD | 1,300.00   | 702,000          | 0              | 702,000          |
| <b>Sub-Total =</b> |  |                      |     |    |            | <b>1,202,000</b> | <b>200,000</b> | <b>1,402,000</b> |

**TRACK CONSTRUCTION - COMPANY**

|                    |        |   |     |    |            |                |                |                |
|--------------------|--------|---|-----|----|------------|----------------|----------------|----------------|
|                    | TRACK  | 136# CWRHHO CWR 24-9' HWD N 16 TP       | 292 | TF | 218.98     | 63,943         | 0              | 63,943         |
|                    | COMPJT | TRANSITION RAIL - 136#                  | 8   | PR | 3,492.09   | 27,937         | 0              | 27,937         |
|                    | FLDWLD | FIELD WELD                              | 24  | EA | 1,075.07   | 25,802         | 0              | 25,802         |
|                    | BALCON | SHIFT TRACK: M.L. 50% TIES              | 12  | CL | 5,795.17   | 69,542         | 0              | 69,542         |
|                    | BALCON | SHIFT TRACK: M.L. 50% TIES - SHIFT BACK | 12  | CL | 5,795.17   | 69,542         | 0              | 69,542         |
|                    | MLRAIL | RELAY ML RAIL: 6" OUT. 136# IS IN       | 1   | TM | 614,494.03 | 191,604        | 422,890        | 614,494        |
| <b>Sub-Total =</b> |        |   |     |    |            | <b>448,371</b> | <b>422,890</b> | <b>871,260</b> |

**TRACK REMOVAL - COMPANY**

|                    |       |              |     |    |       |              |          |              |
|--------------------|-------|--------------|-----|----|-------|--------------|----------|--------------|
|                    | TRACK | REMOVE TRACK | 273 | TF | 13.75 | 3,754        | 0        | 3,754        |
| <b>Sub-Total =</b> |       |              |     |    |       | <b>3,754</b> | <b>0</b> | <b>3,754</b> |

**SIGNAL - COMPANY**

|                    |  |                 |   |    |      |          |          |          |
|--------------------|--|-----------------|---|----|------|----------|----------|----------|
| TBD                |  | SIGNAL: INSTALL | 1 | LS | 1.00 | 0        | 1        | 1        |
| <b>Sub-Total =</b> |  |                 |   |    |      | <b>0</b> | <b>1</b> | <b>1</b> |

**EQUIPMENT RENTAL**

|                    |  |                  |   |    |            |          |                |                |
|--------------------|--|------------------|---|----|------------|----------|----------------|----------------|
|                    |  | EQUIPMENT RENTAL | 1 | LS | 300,000.00 | 0        | 300,000        | 300,000        |
| <b>Sub-Total =</b> |  |                  |   |    |            | <b>0</b> | <b>300,000</b> | <b>300,000</b> |

**HOMELINE FREIGHT**

|                    |  |                  |      |         |      |          |               |               |
|--------------------|--|------------------|------|---------|------|----------|---------------|---------------|
|                    |  | HOMELINE FREIGHT | 3285 | Per Ton | 3.54 | 0        | 11,624        | 11,624        |
| <b>Sub-Total =</b> |  |                  |      |         |      | <b>0</b> | <b>11,624</b> | <b>11,624</b> |

**PROJECT LEVEL COST**

|                                   |               |             |    |   |           |                 |                  |                  |                  |
|-----------------------------------|---------------|-------------|----|---|-----------|-----------------|------------------|------------------|------------------|
|                                   | CONTINGENCIES | CONTINGENCY | 30 | % | 25,886.40 | 496,237         | 280,354          | 776,592          |                  |
| <b>Sub-Total =</b>                |               |             |    |   |           | <b>496,237</b>  | <b>280,354</b>   | <b>776,592</b>   |                  |
| <b>Total Wgt. in Tons = 3,285</b> |               |             |    |   |           | <b>Totals =</b> | <b>2,150,362</b> | <b>1,214,869</b> | <b>3,365,232</b> |

**Grand Total =**      **\$3,365,232**

This is a "Shotgun" estimate, intended to provide a ballpark cost to determine whether a proposed project warrants further study. This estimate is not to be used for budget authority. This estimate is based on a conceptual design, without detailed engineering or site investigation. Quantities and costs are estimated using readily available information and experience with similar projects. Site conditions and changes in project scope and design may result in significant cost variance.

# Preliminary Estimate

Estimate Creation Date: 4/17/2014    Number: 83223    Version: 1

Estimate Good for 6 Months Until 05/14/15

**Location: MARTINEZ SUB, NO 2, 90.21-91.6**

**Description of Work: Construct Signal Facilities -- McKinley Shoofly -- AWO# 20953 -- M.P. 91.58 to 91.91 on the Martinez Sub.**

| COMMENTS           | FACILITY | Description               | SubDivision  | QTY | UOM | Unit Cost | LABOR          | MATERIAL       | TOTAL          |
|--------------------|----------|---------------------------|--------------|-----|-----|-----------|----------------|----------------|----------------|
| <b>SIGNAL</b>      |          |                           |              |     |     |           |                |                |                |
|                    |          | ADDITIONAL SWITCH MACHINE | MARTINEZ SUB | 1   | EA  | 59,268.00 | 35,028         | 24,240         | 59,268         |
|                    |          | FIVE MAN GANG DAY         |              | 10  | EA  | 5,500.00  | 55,000         | 0              | 55,000         |
|                    |          | REMOVE SIGNAL             |              | 6   | EA  | 15,000.00 | 90,000         | 0              | 90,000         |
|                    |          | SIGNAL TIE-IN             |              | 1   | EA  | 15,000.00 | 7,500          | 7,500          | 15,000         |
|                    |          | UNDERGROUND CABLE/1000'   |              | 6   | EA  | 11,000.00 | 39,000         | 27,000         | 66,000         |
|                    |          | CP SIGNAL                 |              | 6   | EA  | 46,425.00 | 156,672        | 121,878        | 278,550        |
|                    |          | ADDITIONAL SIGNAL HEAD    |              | 1   | EA  | 18,738.00 | 11,855         | 6,883          | 18,738         |
|                    |          | MISC. SIGNAL EQUIPMENT    |              | 1   | EA  | 1,000.00  | 0              | 1,000          | 1,000          |
| <b>Sub-Total =</b> |          |                           |              |     |     |           | <b>395,055</b> | <b>188,501</b> | <b>583,556</b> |

**PROJECT LEVEL COST**

|                    |               |             |  |    |   |          |               |               |                |
|--------------------|---------------|-------------|--|----|---|----------|---------------|---------------|----------------|
|                    | CONTINGENCIES | CONTINGENCY |  | 20 | % | 5,835.56 | 79,011        | 37,700        | 116,711        |
| <b>Sub-Total =</b> |               |             |  |    |   |          | <b>79,011</b> | <b>37,700</b> | <b>116,711</b> |

**Totals =    474,066    226,201    700,267**

**Grand Total =                    \$700,267**

This is a "Shotgun" estimate, intended to provide a ballpark cost to determine whether a proposed project warrants further study. This estimate is not to be used for budget authority. This estimate is based on a conceptual design, without detailed engineering or site investigation. Quantities and costs are estimated using readily available information and experience with similar projects. Site conditions and changes in project scope and design may result in significant cost variance.

# EXHIBIT D

To New Public Highway Underpass Crossing  
Agreement

Cover Sheet for the  
Railroad's Coordination Requirements

## EXHIBIT D

### TO PUBLIC HIGHWAY GRADE-SEPARATED CROSSING AGREEMENT

#### RAILROAD COORDINATION REQUIREMENTS

##### 1.01 DEFINITIONS

|                                  |  |
|----------------------------------|--|
| Agreement:                       | Agreement that has been signed, or will be signed, between Railroad and Agency/Political Body covering the construction and maintenance of the Project.  |
| Agency:                          | City of Sacramento   |
| AREMA:                           | American Railway Engineering and Maintenance-of-way Association  |
| Contractor:                      | The contractor or contractors hired by the Agency to perform any project work on any portion of Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority. |
| MUTCD:                           | Manual on Uniform Traffic Control Devices  |
| Project:                         | McKinley Village Underpass   |
| Railroad:                        | Union Pacific Railroad Company   |
| Railroad Project Representative: | Railroad's Manager of Industry and Public Projects for this Project (see Section 1.03)   |
| Railroad MTM Representative:     | Railroad's Manager of Track Maintenance for this Project (see Section 1.03)  |
| Requirements:                    | The Railroad Coordination Requirements set forth in this Exhibit.  |

##### 1.02 DESCRIPTION

This Project includes construction work within Railroad's right-of-way. These Requirements describe coordination with the Railroad when work by the Contractor will be performed upon, over or under the Railroad right-of-way or may impact current or future Railroad operations. The Contractor will coordinate with the Railroad while performing the work outlined in this Agreement and shall afford the same cooperation with the Railroad as it does with the Agency. All submittals and work shall be completed in compliance with these Requirements, Railroad guidelines and requirements, AREMA recommendations and/or as directed by the Railroad Local Representative and/or the Railroad MTM Representative.

##### 1.03 UPRR CONTACTS

The Railroad Project Representative for this project is:

PEGGY J. YGBUHAY  
MGR IND & PUBLIC PRO  
9451 ATKINSON ST  
ROSEVILLE, CA 95747  
(916) 789-5152

For Railroad flagging services and track work, contact the following Railroad MTM Representative:

RICHARD A. CLARK  
MGR TRACK MNTCE  
9451 Atkinson St  
Roseville, CA 95747  
(916) 789-5311

##### 1.04 PLANS / SPECIFICATIONS

The plans and specifications for this Project, affecting the Railroad, are subject to the written approval by the Railroad. Changes in the plans made after the execution of the Agreement and/or the awarding of the Project to the Contractor are subject to the prior review and written approval of the Agency and the Railroad. No construction work shall commence until final stamped plans and/or changes to final stamped plans have been reviewed and approved by the Railroad in writing. The

Railroad's review and approval of the Agency's and/or Contractor's plans in no way relieves the Agency and Contractor from their responsibilities, obligations and/or liabilities under this Agreement, Agency's agreement with the Contractor for the Project and/or in the separate Contractor's Right of Entry Agreement referenced in Section 1.08. Railroad's approval will be given with the understanding that the Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of Agency's and/or Contractor's plans and that any reliance by the Agency or the Contractor with respect to such plans is at the risk of the Agency and the Contractor.

### **1.05 UTILITIES AND FIBER OPTICS**

- A. All installations shall be constructed in accordance with current AREMA recommendations and Railroad specifications and requirements. Railroad general guidelines and the required application forms for utility installations can be found on the Railroad website at <http://www.uprr.com/reus/pipeline/install.shtml>.
- B. It shall be the responsibility of the Contractor, at its expense, to make arrangements directly with utility companies involving the protection, encasement, reinforcement, relocation, replacement, removing or abandonment in place of non-railroad facilities affected by the Project. Railroad has no obligation to supply additional Railroad property for non-railroad facilities affected by this Project, nor does the Railroad have any obligation to permit non railroad facilities to be abandoned in place or relocated on Railroad's property. Any facility and/or utility that crosses Railroad right of way must be covered under an agreement with the Railroad including, without limitation, any relocations of an existing facility and/or utility.
- C. Any longitudinal fiber optic lines on Railroad right of way shall be treated as Railroad facilities. Project design may need to be altered to accommodate such facilities.
- D. Any fiber optic relocations or protections that are required due to this Project will be at the Agency's expense.

### **1.06 GENERAL**

- A. It is essential that the proposed construction shall be performed without interference to Railroad operations and in compliance with all applicable Railroad and Federal Railroad Administration rules and regulations. The Railroad shall be reimbursed by the Contractor or Agency for train delay costs and lost revenue claims due to any delays or interruption of train operations resulting from the Contractor's construction or other activities.
- B. Track protection is required for all work equipment (including rubber tired equipment) operating within 25 feet from nearest rail. All work shall be designed and executed outside the temporary construction clearance envelope defined in Section 1.12.
- C. The Contractor is also advised that new facilities within the Project may be scheduled to be built by the Railroad and that certain Contractor's activities cannot proceed until that work is complete. The Contractor shall be aware of the limits of responsibilities, allow sufficient time in the schedule for that work to be accomplished and shall coordinate its efforts with the Railroad.

### **1.07 RAILROAD OPERATIONS**

- A. The Contractor shall be advised that trains and/or equipment should be expected on any track, at any time, and in either direction. The Contractor shall communicate with the Railroad MTM Representative to improve the Contractor's understanding of Railroad traffic volume and operation at the Project site. The Contractor's bid shall be structured assuming intermittent track windows as defined in Section 1.07 C
- B. All Railroad tracks within and adjacent to the Project site are to be assumed as active and rail traffic over these facilities shall be maintained throughout the Project. Activities may include both through moves and switching moves to local customers. Railroad traffic and operations can occur continuously throughout the day and night on these tracks and shall be maintained at all times as defined herein. The Contractor shall coordinate and schedule the work so that construction activities do not interfere with Railroad's operations.
- C. Work windows for this Project shall be coordinated with the Agency or Contractor and the Railroad Project Representative and the Railroad MTM Representative. Types of work windows include Conditional Work Windows and Absolute Work Windows, as defined below:

1. Conditional Work Window: A period of time in which Railroad's operations have priority over construction activities.

When construction activities may occur on and adjacent to the railroad tracks within 25-feet of the nearest track, a Railroad flag person will be required. At the direction of the flag person, upon approach of a train and when trains are present on the tracks, the tracks must be cleared (i.e., no construction equipment, materials or personnel within 25-feet from the nearest active track or as directed by the Railroad MTM Representative). Conditional Work Windows are available for the project subject to Railroad's local operating unit review and approval.

2. Absolute Work Window: A period of time in which construction activities are given priority over Railroad's operations. During this time the designated Railroad track(s) will be inactive for train movements and may be fouled by the Contractor. Before the end of an Absolute Work Window, all Railroad tracks and signals must be completely operational for normal train operations. Also, all Railroad, Public Utilities Commission and Federal Railroad Administration requirements, codes and regulations for operational tracks must be complied with. Should the operating tracks and/or signals be affected, the Railroad will perform inspections of the work prior to placing the affected track back into service. Railroad flag persons will be required for construction activities requiring an Absolute Work Window. **Absolute Work Windows will generally not be granted. Any request will require a detailed written explanation for Railroad review and approval.**

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

- A. Prior to beginning any work within the Railroad right-of-way, the Contractor shall enter into an agreement with the Railroad in the form of the Contractor's Right of Entry Agreement, attached as **Exhibit \_\_**, or latest version thereof provided by the Railroad. There is a fee for processing of the agreement which shall be borne by the Contractor. The right of entry agreement shall specify working time frames, flagging, inspection and insurance requirements and any other items specified by the Railroad.
- B. The Contractor shall give advance notice to the Railroad as required in the Contractor's Right of Entry Agreement before commencing work in connection with construction upon or over Railroad's right-of-way and shall observe the Railroad rules and regulations with respect thereto.
- C. All work upon the Railroad right-of-way shall be done at such times and in such a manner as not to interfere with or endanger the operations of the Railroad. Whenever work may affect the operations or safety of trains, the method of doing such work shall first be submitted to the Railroad MTM Representative for approval, but such approval shall not relieve the Contractor from liability. Any work to be performed by the Contractor, which requires flagging service or inspection service, shall be deferred until the flagging protection required by the Railroad is available at the job site. See Section 1.21 for railroad flagging requirements.
- D. The Contractor shall make requests in writing to both the Railroad Project Representative and the Railroad MTM Representative for both Absolute and Conditional Work Windows, at least two weeks in advance of any work. The written request must include:
  1. Description of work to be done.
  2. The days and hours that work will be performed.
  3. The exact location of the work and proximity to the tracks.
  4. The type of window and amount of time requested.
  5. The designated contact person for the Contractor.

The Contractor shall provide a written confirmation notice to the Railroad MTM Representative at least fifteen (15) days prior to commencing work in connection with the approved work windows when work will be performed within **25 feet of any track center line**. All work shall be performed in accordance with previously approved work plans.

- E. Should a condition arise from, or in connection with, the work which requires immediate and unusual actions to be made to protect operations and property of the Railroad, the Contractor shall undertake such actions. If, in the judgment of the Railroad MTM Representative, such actions are insufficient, the Railroad MTM Representative may require or provide such actions as deemed necessary. In any event, such actions shall be at the Contractor's expense and without cost to the Railroad. The Railroad or Agency have the right to order the Contractor to temporarily cease operations in the event of an emergency or if, in the opinion of the Railroad MTM Representative, the Contractor's operations may inhibit the Railroads operations. In the event such an order is given, the Contractor shall immediately notify the Agency of the order.

## **1.09 INSURANCE**

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

## **1.10 RAILROAD SAFETY ORIENTATION**

All personnel employed by the Agency, Contractor and all subcontractors must complete the Railroad's course "Orientation for Contractor's Safety" and be registered prior to working on Railroad property. This orientation is available at [www.contractororientation.com](http://www.contractororientation.com). This course is required to be completed annually. The preceding training does not apply for longitudinal fiber optic installations.

## **1.11 COOPERATION**

The Railroad shall cooperate with the Contractor in the scheduling of Project work with the understanding that Railroad's train operations at the job site shall have priority over the Contractor's activities.

## **1.12 CONSTRUCTION CLEARANCES**

The Contractor shall abide by the twenty-one (21) foot temporary vertical construction clearance defined in section 4.4.1.1 and twelve (12) foot temporary horizontal construction clearance defined in section 4.4.1.2 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects. It shall be the Contractor's responsibility to obtain such guidelines from the Agency or Railroad.

Reduced temporary construction clearances, which are less than construction clearances defined above, will require special review and approval by the Railroad.

Any proposed variance on the specified minimum clearances due to the Contractor's operations shall be submitted to the Railroad Project Representative through the Agency at least thirty (30) days in advance of the work. No work shall be undertaken until the variance is approved in writing by the Railroad Project Representative.

## **1.13 SUBMITTALS**

- A. Construction submittals and Requests for Information (RFI) shall be submitted per Section 3.5 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects.
- B. The minimum review times, as indicated in tables 3-1 and 3-2 of Section 3.5 of the BNSF and UPRR Guidelines for Railroad Grade Separation Projects, should be anticipated for review of all submittals. Guidelines for Railroad Grade Separation Projects, should be anticipated for review of all submittals. The details of the construction affecting the Railroad tracks and property, not already included in the contract plans, shall be submitted by the Agency to the Railroad Project Representative for the Railroad's review and written approval before such construction is undertaken. The Railroad shall not be liable to Agency, Contractor, and or any other person or entity if the Railroad's review exceeds a four-week review time.
- C. As Built Submittals shall be submitted per Section 3.6 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects.

## **1.14 MAINTENANCE OF PROPER DRAINAGE AND DAMAGE TO RAILROAD FACILITIES**

- A. The Contractor, at its expense, shall be required to maintain all ditches and drainage structures free of silt or other obstructions which may result from the Contractor's operations and to repair and restore any Railroad property, tracks and facilities of Railroad and/or its tenants.

B. The Contractor must submit a proposed method of erosion control and have the method reviewed and approved by the Railroad prior to beginning any grading on the project site. Erosion control methods must comply with all applicable local, state and federal regulations.

**1.15 SITE INSPECTIONS BY RAILROAD PROJECT REPRESENTATIVE, RAILROAD MTM REPRESENTATIVE OR RAILROAD'S CONTRACTOR**

A. In addition to the office reviews of construction submittals, site observations will be performed by the Railroad Project Representative, Railroad MTM Representative or Railroad's Contractor at significant points during construction per Section 4.11 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects.

B. Site inspections are not limited to the milestone events listed in the guidelines. Site visits to check the progress of work may be performed at any time throughout the construction process as deemed necessary by the Railroad.

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

**1.16 RAILROAD REPRESENTATIVES**

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

1. When any part of any equipment or object, such as erection or construction activities, is standing or being operated within 25-feet, measured horizontally from centerline, of any track on which trains may operate.
2. For any excavation below the elevation of track subgrade when, in the opinion of the Railroad MTM Representative, the track or other Railroad facilities may be subject to settlement or movement.
3. During any clearing, grubbing, excavation or grading in proximity to Railroad facilities which, in the opinion of the Railroad MTM Representative, may affect Railroad facilities or inhibit operations.
4. During any Contractor's operations when, in the opinion of the Railroad MTM Representative, the Railroad facilities, including, but not limited to, tracks, buildings, signals, wire lines or pipe lines, may be endangered.

B. The Contractor shall arrange with the Railroad Local Representative to provide the adequate number of flag persons to accomplish the work.

**1.17 WALKWAYS REQUIRED**

Parallel to the outer side of each exterior track of multiple operated track and on each side of single operated track, an unobstructed continuous space suitable for trainman's use in walking along trains, extending in width not less than twelve feet (12') perpendicular from centerline of track, shall be maintained. Any temporary impediments to walkways and track drainage encroachments or obstructions allowed during working hours must be covered, guarded and/or protected as soon as practical. Walkways with railings shall be constructed by the Contractor over open excavation areas when in close proximity of track, and railings shall not be closer than 9' perpendicular from the center line of tangent track or 9' – 6" horizontal from curved track.

**1.18 COMMUNICATIONS AND SIGNAL LINES**

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

**1.19 TRAFFIC CONTROL**

The Contractor's operations which control traffic across or around Railroad facilities shall be coordinated with and approved by the Railroad MTM Representative and shall be in compliance with the MUTCD.

**1.20 CONSTRUCTION EXCAVATIONS;CALL BEFORE YOU DIG NUMBER**

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

B. In addition to calling the "811" number and/or the local "one call center", the Contractor shall call the Railroad's "Call Before Your Dig" number at least 48 hours prior to commencing work at 1-800-336-9193 during normal business hours (6:30 a.m. to 8:00 p.m. Central Standard Time, Monday through Friday, except holidays - also a 24 hour, 7 day a week number for emergency calls) to determine location of fiber optics. If a telecommunications system is buried anywhere on or near Railroad property, the Contractor will co-ordinate with the Railroad and the Telecommunication Company(ies) to arrange for relocation or other protection of the system prior to beginning any work on or near Railroad property. The determination of whether fiber optics will be affected by the Project shall be made during the initial design phase of the Project.

C. The Railroad does not allow temporary at grade crossings unless absolutely necessary and there is no alternative route available to contractor to access the project site. Alternative plans should be considered to avoid crossing Railroad tracks at grade.

**1.21 RAILROAD FLAGGING**

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

**The estimated pay rate for each flag person is \$1400.00 per day for a(n) 8-hour work day with time and one-half for overtime, Saturdays, Sundays; double time and one-half for holidays. Flagging rates are set by the Railroad and are subject to change due to, but not limited to, travel time, setup plus, per diem and rest time (if work is required at night).**

**1.22 CLEANING OF RIGHT-OF-WAY**

The Contractor shall, upon completion of the work to be performed within the right-of-way and/or properties of the Railroad and adjacent to its tracks, wire lines and other facilities, promptly remove from the Railroad right-of-way all Contractor's tools, implements and other materials whether brought upon the right-of-way by the Contractor or any subcontractors employee or agent of Contractor or of any subcontractor, and leave the right-of-way in a clean and presentable condition to the satisfaction of the Railroad.

**1.23 CONTRACTOR'S RESPONSIBILITY OF SUPERVISION**

The Contractor, at its expense, shall adequately supervise all work to be performed by the Contractor. Such responsibility shall not be lessened or otherwise affected by Railroad's approval of plans and specifications, or by the presence at the work site of the Railroad Project Representative, Railroad MTM Representative or any other Railroad representative or Railroad contractor providing inspection services, or by the compliance by the Contractor with any requests or recommendations made by such representatives. The Contractor will give due consideration to suggestions and recommendations made by such representatives for the safety and protection of the Railroad's property and operations.

**1.24 USE OF EXPLOSIVES AT PROJECT SITE PROHIBITED**

The Contractor's use of explosives at the Project site is expressly prohibited unless authorized in advance in writing by the Railroad Project Representative.

# EXHIBIT E

To New Public Highway Underpass Crossing  
Agreement

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

Folder No.: 2803-89  
UPRR Audit No.:

## CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

**THIS AGREEMENT** is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and

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

a \_\_\_\_\_ corporation ("Contractor").

### **RECITALS:**

Contractor has been hired by the City of Sacramento ("City") to construct a new grade-separated bridge underpass structure ("Structure"), DOT No. 440855M, over Railroad's property and trackage at Railroad's Mile 91.75 on the Railroad's Martinez Subdivision at or near Sacramento, Sacramento County, California, 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 \_\_\_\_\_, 2014, between the Railroad and City.

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

### **AGREEMENT:**

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

#### **ARTICLE 1 - DEFINITION OF CONTRACTOR.**

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

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

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

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

The General Terms and Conditions contained in **Exhibit B**, the Insurance Requirements contained in **Exhibit C**, and the Minimum Safety Requirements contained in **Exhibit D**, each attached hereto, are hereby made a part of this Agreement.

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

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

|  |
|--|
| RICHARD A. CLARK<br>MGR TRACK MNTCE<br>9451 Atkinson St<br>Roseville, CA 95747<br>(916) 789-5311 |
|--|

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

**ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.**

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

**ARTICLE 6 - TERM; TERMINATION.**

- A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until \_\_\_\_\_, unless sooner terminated as herein  
*(Expiration Date)*  
provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.

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

**ARTICLE 7 - CERTIFICATE OF INSURANCE.**

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

B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

*Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street, MS 1690  
Omaha, NE 68179-1690  
UPRR Folder No.: 2803-89*

**ARTICLE 8 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.**

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

**ARTICLE 9 - CROSSINGS.**

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

**ARTICLE 10 - CROSSINGS; COMPLIANCE WITH MUTCD AND FRA GUIDELINES.**

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

B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications, negligence, or any other reason arising from the Contractor's presence on the Railroad's property, the Contractor agrees to assume liability for any civil penalties imposed upon the Railroad for such noncompliance.

**ARTICLE 11 - EXPLOSIVES.**

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

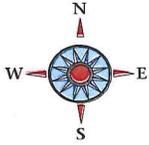
**IN WITNESS WHEREOF**, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

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

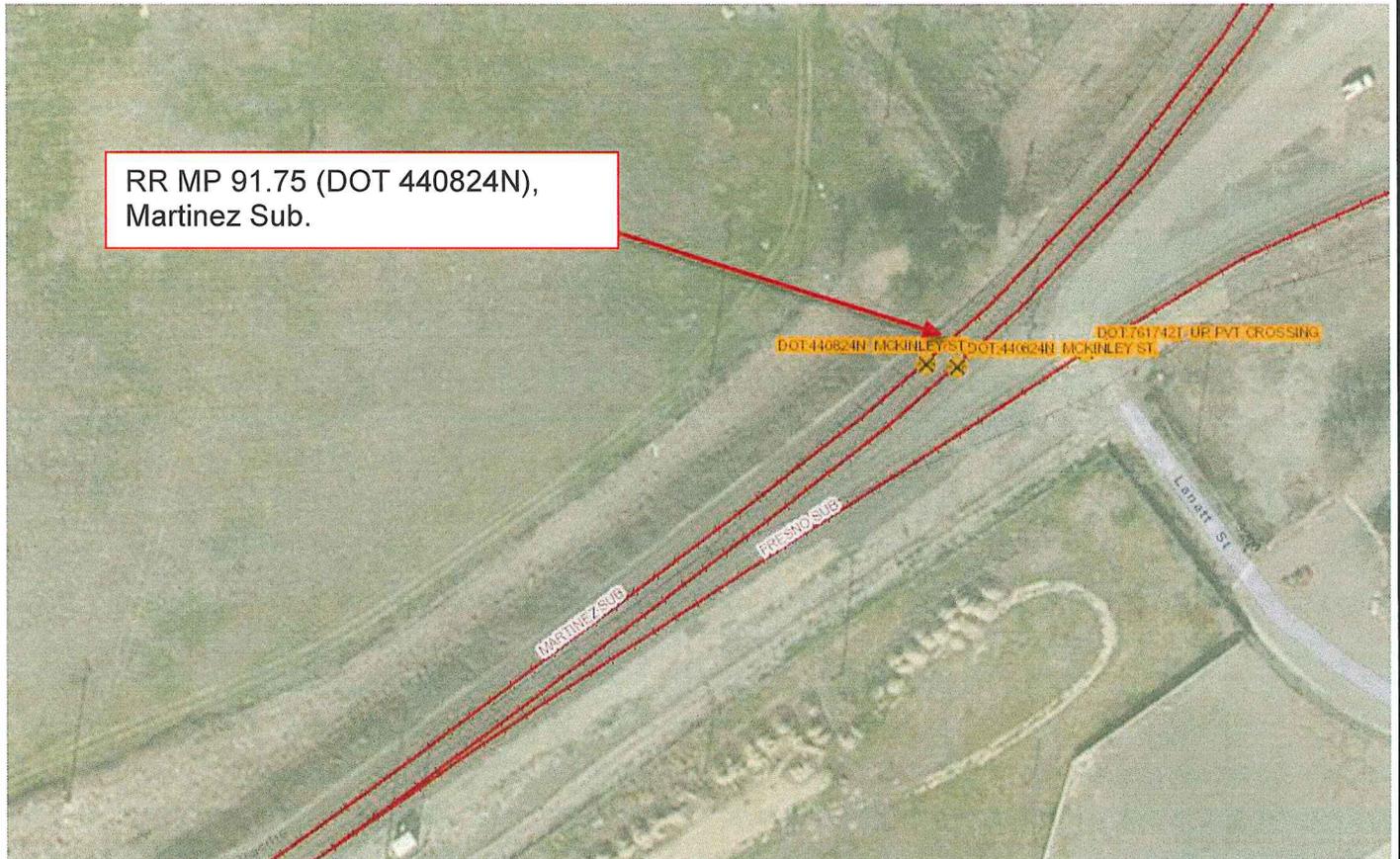
By: \_\_\_\_\_  
DAVID C. LAPLANTE  
Senior Manager-Contracts

*(Name of Contractor)*

By \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT "A"**  
**RAILROAD LOCATION PRINT**  
**ACCOMPANYING A**  
**NEW GRADE-SEPARATED UNDERPASS AGREEMENT/  
CONTRACTORS RIGHT OF ENTRY**



**UNION PACIFIC RAILROAD COMPANY**

MARTINEZ SUBDIVISION  
RAILROAD MILE POST 91.75  
SACRAMENTO, SACRAMENTO COUNTY, CA

To accompany an agreement with the  
**CITY OF SACRAMENTO and its CONTRACTORS**

UPRR Folder No. 2803-89      Date: November 14, 2014

**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

#### GENERAL TERMS & CONDITIONS

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

- A. Contractor agrees to notify the Railroad Representative at least thirty (30) working days in advance of Contractor commencing its work and at least ten (10) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such ten (10)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.
- B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

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

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

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

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

- A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.
- B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

**Section 4. LIENS.**

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

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

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

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

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

**Section 7. SAFETY.**

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

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

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

**Section 8. INDEMNITY.**

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

**Section 9. RESTORATION OF PROPERTY.**

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

**Section 10. WAIVER OF DEFAULT.**

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

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

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

**Section 12. ASSIGNMENT - SUBCONTRACTING.**

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

## EXHIBIT C

### TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

#### INSURANCE REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **OTHER REQUIREMENTS**

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

## EXHIBIT D

### TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

#### MINIMUM SAFETY REQUIREMENTS

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

#### I. CLOTHING

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

Specifically, Contractor's employees must wear:

- i. Waist-length shirts with sleeves.
- ii. Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
- iii. Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.

- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.

- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

#### II. PERSONAL PROTECTIVE EQUIPMENT

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

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

#### III. ON TRACK SAFETY

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

- i. Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.

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

#### IV. EQUIPMENT

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

#### V. GENERAL SAFETY REQUIREMENTS

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
  - i. Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
  - ii. Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
  - iii. In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
  - iv. Avoid walking or standing on a track unless so authorized by the employee in charge.
  - v. Before stepping over or crossing tracks, look in both directions first.
  - vi. Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

# EXHIBIT F

To New Public Highway Underpass Crossing  
Agreement

Cover Sheet for the  
Railroad's Form of Easement Deed

After Recording, Mail To:

---

Space Above Reserved for County Recorder's Use

UPRR Folder No.: 2803-89

**EASEMENT DEED**

THIS Easement Deed is made this \_\_\_\_\_ day of \_\_\_\_\_, 2015, between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, ("Grantor"), and the **CITY OF SACRAMENTO**, a municipal corporation/political subdivision, ("Grantee").

Grantor for and in consideration of the sum of **TWO HUNDRED NINE THOUSAND ONE HUNDRED FORTY TWO DOLLARS (\$209,142.00)** to be paid by Grantee, the receipt whereof is hereby confessed and acknowledged, grants to Grantee, its successors and assigns, a **NONEXCLUSIVE ROADWAY EASEMENT** ("Easement"), for the sole purpose of constructing, using, maintaining, repairing, renewing, and reconstructing the McKinley Village grade-separated bridge underpass public road crossing (DOT 440824N), Grantor's Mile Post 91.75 on Grantor's Martinez Subdivision on, along and across the property in or near Sacramento, Sacramento County, California described in the Legal Description **Exhibit A-2**, attached and by reference made a part of this Easement Deed (the "Easement Area").

The Easement is granted for the purpose described above only. 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, or telephone lines.

Grantor, its successors and assigns, reserves the right to construct at any and all times and to maintain railroad tracks and appurtenances, fiber optic or signal lines and facilities, pipe, telephone, and electric pole and wire lines, over, under and across the Easement Area, but in such a way as to not interfere with Grantee's use of the Easement; it being understood that the rights so reserved by Grantor, its successors and assigns, are retained along with the general right of Grantor, its successors and assigns, to use of the Easement Area for any purpose not inconsistent with Grantee's use of the Easement, including, but not limited to any and all general railroad purposes.

The Easement is granted subject to all outstanding leases, licenses and other outstanding rights, including, without limitation, 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 that may affect the Easement Area, whether recorded or unrecorded.

The Easement is also limited to such rights as Grantor may have in the Easement Area and is granted without warranty, express or implied.

If Grantee, its successors or assigns, abandons the Easement Area or any portion of the Easement Area, for the purposes of the Easement, the Easement will cease and terminate with respect to the portion of the Easement Area so abandoned, and the title to the Easement Area will be freed from the burden of the Easement. Nonuse of the Easement Area or any portion thereof, for the purposes of the Easement for the period of one (1) year will be deemed an abandonment of the Easement Area or portion thereof not used.

Grantor and Grantee have caused this Easement Deed to be executed as of the date first herein written.

Attest:

**UNION PACIFIC RAILROAD COMPANY**

By \_\_\_\_\_  
BEVERLY J. KUBAT  
Assistant Secretary

By \_\_\_\_\_  
DANIEL A. LEIS  
General Director Real Estate

(Seal)

ACCEPTED:

**CITY OF SACRAMENTO**

By \_\_\_\_\_

By \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

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





**EXHIBIT A-2**

TO EASEMENT

LEGAL DESCRIPTION OF THE EASEMENT AREA

## EXHIBIT 'A-2'

### Legal Description BRIDGE UNDERPASS AREA (Union Pacific Railroad Company)

Being a portion of the Lands of Union Pacific Railroad Company, as said Lands are shown on the map entitled "Plat of Tract of Land Owned By G.A. Meister" filed in Book "A" of Surveys, Map No. 101, Sacramento County Records, and located in the City and County of Sacramento, State of California, more particularly described as follows:

BEGINNING at a point which is the southeasterly most corner of the Lands of Encore McKinley Village, LLC, a Delaware Limited Liability Company, as said Lands are shown on that Record of Survey filed in Book 47 of Surveys at page 15, said County Records, said point being the southerly terminus of the course "South 34° 01' 32" East, a distance of 28.20 feet" as shown on said Record of Survey; thence leaving said POINT OF BEGINNING, along the southeasterly line of said Lands of Encore McKinley Village and Record of Survey, the following two (2) courses and distances:

1. North 34° 01' 32" West, a distance of 28.20 feet;
2. North 29° 14' 28" East, a distance of 74.25 feet;

Thence leaving said southeasterly line, entering into and crossing said Lands of Union Pacific Railroad Company, the following three (3) courses and distances:

1. South 30° 36' 22" East, a distance of 203.06 feet;
2. North 62° 18' 25" East, a distance of 7.46 feet;
3. South 30° 36' 22" East, a distance of 20.07 feet to a point on the southeasterly line of said Lands of Union Pacific Railroad Company;

Thence along last said southeasterly line, the following two (2) arcs, courses and distances:

1. South 51° 57' 24" West, a distance of 175.88 feet to a point of curvature;
2. 8.67 feet along the arc of a 1485.00 foot radius curve to the right, through a central angle of 00° 20' 04";

Thence leaving last said southeasterly line, entering into and crossing said Lands of Union Pacific Railroad Company, the following three (3) courses and distances:

J:\1000-s\1262-McKinleyVillage\McKinley\_Village\Geomatics\docs\Descriptions\UPRR  
Bridge\BridgeUnderpass\_UPRR.doc

1. North 27° 42' 21" West, a distance of 26.52 feet;
2. North 63° 37' 33" East, a distance of 24.81 feet;
3. North 27° 42' 21" West, a distance of 151.82 feet to a point on the southeasterly line of said Lands of Encore McKinley Village;

Thence along last said southeasterly line, North 55° 19' 31" East, a distance of 79.46 feet to the POINT OF BEGINNING.

Containing 28,120 square feet or 0.65 acres, more or less.

*See Exhibit "A-3", plat to accompany description, attached hereto and made a part hereof.*

The Basis of Bearings for this description is the line between the two found City of Sacramento Surveyor GPS Geodetic Control Stations designated "G3505" and "G3407" as shown on the map entitled "Record of Survey, GPS Static Survey" filed in Book 63 of Survey Maps at Page 29, Sacramento County Records. The bearing being taken as North 83° 25' 54" West. Distances shown are ground values, to obtain grid values, multiply by a  $csf=0.99995$ .

December 19, 2014

END OF DESCRIPTION



12/19/14

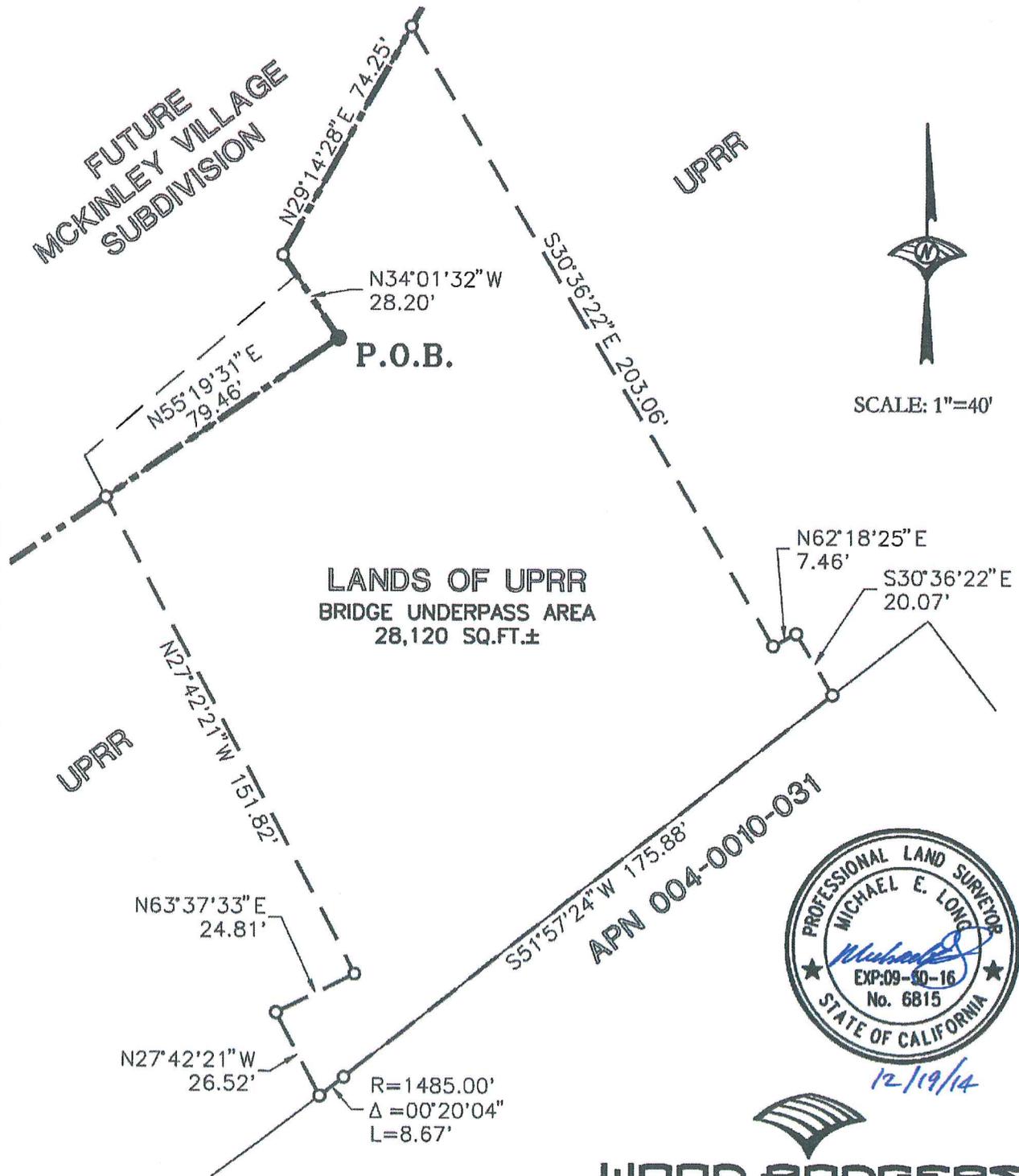
PREPARED BY WOOD RODGERS, INC.  
SACRAMENTO, CALIFORNIA

J:\1000-s\1262-McKinleyVillage\McKinley\_Village\Geomatics\docs\Descriptions\UPRR  
Bridge\BridgeUnderpass\_UPRR.doc

**EXHIBIT A-3**

PLAT TO ACCOMPANY  
DESCRIPTION

MCKINLEY VILLAGE  
UPRR BRIDGE UNDERPASS AREA  
CITY OF SACRAMENTO, COUNTY OF SACRAMENTO  
STATE OF CALIFORNIA



SEE DESCRIPTION FOR  
COURSE INFORMATION



**WOOD RODGERS**  
DEVELOPING INNOVATIVE DESIGN SOLUTIONS

3301 C St, Bldg. 100-B Tel 916.341.7760  
Sacramento, CA 95816 Fax 916.341.7767

DECEMBER 19, 2014 1262.018 SHEET 1 OF 1

## **AGREEMENT FOR REIMBURSEMENT OF UNION PACIFIC COSTS FOR MCKINLEY VILLAGE UNDERPASS PROJECT**

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2015 by and between **ENCORE MCKINLEY VILLAGE, LLC**, a Delaware limited liability company, hereinafter "ENCORE" and the **CITY OF SACRAMENTO**, hereinafter "CITY."

### **BACKGROUND**

1. ENCORE is the developer of the McKinley Village Project ("Project").
2. The Project was approved by the Sacramento City Council on April 29, 2014 subject to conditions of approval. Condition 118 generally requires ENCORE to coordinate with Union Pacific Railroad ("UP" or "Railroad") to obtain permission to construct an underpass beneath McKinley Village Way. The underpass includes the construction of a railroad bridge and roadway constructed to a 56-foot right-of-way section with all appurtenances and features shown in the final improvement plans approved by the City of Sacramento ("CITY") and agreed to by UP ("Underpass Project").
3. Pursuant to the Condition of Approval, ENCORE sought permission from UP to construct the Underpass Project.
4. UP will provide consent to the CITY to construct or cause to be constructed, the Underpass Project within its property subject to complying with the provisions of the New Public Highway Underpass Crossing Agreement ("Crossing Agreement"), attached as Exhibit 1.
5. CITY is agreeable to executing the Crossing Agreement for the benefit of ENCORE and the City, subject to a) full reimbursement by ENCORE for any and all costs, debts and obligations incurred by the City under the Crossing Agreement, including all costs associated with "Deferred Track Seasoning" as described in Article 11 of the Crossing Agreement, but excluding all costs arising under Section 5 of Exhibit B of the Crossing Agreement after the CITY's acceptance of the Underpass Project and b) subject to the foregoing exclusion to section 5(a) above, full compliance by ENCORE with all applicable provisions and conditions of the Crossing Agreement.
6. The Underpass Project will be constructed by Encore as part of and in conformance with the Project tentative map conditions, and is subject to the City's development processes including obtaining an encroachment permit, paying related fees, and providing insurance.

**NOW THEREFORE, IT IS AGREED AS FOLLOWS:**

#### A. EFFECTIVE DATE

The obligations set forth in this Agreement only become effective when both ENCORE and the CITY have signed this Agreement.

#### B. REIMBURSEMENT

ENCORE shall fully reimburse the CITY for all costs, debts and obligations incurred by the CITY under the Crossing Agreement, whether specified or not specified in the Crossing Agreement and whether such costs, debts and obligations exceed the estimates provided or to be provided by UP under the Crossing Agreement, including all costs associated with "Deferred Track Seasoning" as described in Article 11 of the Crossing Agreement, but excluding all costs arising under Section 5 of Exhibit B of the Crossing Agreement after the CITY's acceptance of the Underpass Project. The date of the CITY's acceptance of the Underpass Project shall be the date of completion as indicated on the issued Encroachment/Excavation Permit. "Deferred Track Seasoning" shall not be required for completion and acceptance; provided however, as a condition of CITY acceptance of the Underpass Project, ENCORE shall provide the CITY with adequate security for the costs of such "Deferred Track Seasoning." The costs, debts, and obligations referenced in this Section B include but are not limited to:

- the fee paid to UP by the CITY upon execution and delivery of the Crossing Agreement as required by Article 2 Sections A and B (\$209,142 and \$270,270 respectively);
- all amounts for work performed by UP as set forth in Article 6 including: (1) costs described in Railroad's Material and Force Account Estimate; (2) any amounts paid by CITY to UP for flagging or other protective services; (3) costs incurred by UP in connection with the Underpass Project including preliminary engineering review, construction inspection, procurement of materials, equipment rental, manpower and deliveries to the job site, UP's normal and customary additives (including direct and indirect overhead costs);
- all costs related to "deferred seasoning" as defined and described in Article 11 of the Crossing Agreement.
- all costs incurred by CITY or paid by CITY in the event of termination of the Crossing Agreement as provided in Article 13.

The CITY shall provide invoices to ENCORE for any costs to be reimbursed to the CITY pursuant to this agreement and ENCORE shall pay such invoices within 15 days of receipt.

#### C. BONDS

As part of the encroachment permit process, ENCORE shall obtain and file with the CITY, two good and sufficient surety bonds. Each bond shall be in a form

approved by the CITY, shall be in favor of CITY, and shall be issued by a sufficient surety company duly authorized to transact surety insurance in the State of California.

1. The first bond shall be in the penal sum of Four Million Sixty Five Thousand Four Hundred Ninety Nine Dollars (\$4,065,499). In the event of any default by ENCORE in reimbursing the CITY any costs incurred by CITY pursuant to Article 6 of the Crossing Agreement, the surety for this bond shall pay to CITY of all costs incurred by the CITY pursuant to Article 6 of the Crossing Agreement. CITY also shall be entitled to recover all costs and expenses incurred by CITY in order to collect on such bond, including costs of suit and reasonable attorney's fees.

2. The second bond shall be in the penal sum of Seven Million Seventy Seven Thousand Seven Hundred Seventy Nine Dollars (\$7,077,779). In the event of any default by ENCORE in completing all of the improvements and/or repairing any defects as provided herein, or to restore the site to its original condition in accordance with the Crossing Agreement, the surety for this bond shall pay to CITY all direct and indirect costs incurred by CITY to complete all of the improvements and/or repair any defects as provided herein, or to restore the site to its original condition in accordance with the Crossing Agreement. CITY also shall be entitled to recover all costs and expenses incurred by CITY in order to collect on such bond, including costs of suit and reasonable attorney's fees. The \$7,077,779 penal sum shall be reduced to Seven Hundred Seven Thousand Seven Hundred Seventy Eight Dollars (\$707,778) upon CITY's acceptance of the Underpass Project subject to the statutory one (1) year maintenance period, and shall be released upon CITY's acceptance of the Underpass Project at the end of such period and completion of the warranty work arising during such period.

#### D. COMPLIANCE WITH CROSSING AGREEMENT

ENCORE shall comply, and insure that its contractors and subcontractors comply, with each and every condition or obligation of the Crossing Agreement related to construction as if it were the CITY. These include but are not limited to:

- comply with the General Terms and Conditions set forth in Exhibit B of the Crossing Agreement;
- comply with Railroad's Coordination Requirements set forth in Exhibit D of the Crossing Agreement;
- require its contractors and subcontractors to execute Railroad's then current Contractor's Right of Entry Agreement (attached as Exhibit E to the Crossing Agreement);
- provide such insurance policies, certificates, binders and/or endorsements to the Railroad (as set forth in the Crossing Agreement) before allowing any of its contractors or subcontractors to commence any work in the Crossing Area or on any other Railroad property;

- prepare or cause to be prepared and submit for review and approval by the Railroad, the plans and specifications required by Article 8 of the Crossing Agreement;
- submit for approval to Railroad, plans and specifications in compliance with Railroad's standard specifications and requirements, for protecting, encasing, reinforcing, relocating, replacing, removing, and abandoning in place all non- railroad owned facilities affected by the Underpass Project as required by Article 9;

#### E. COMMENCEMENT OF WORK

ENCORE shall not commence any work on the Underpass Project in the Crossing Area or any other Railroad property until a) as set forth in Article 14, the Railroad and CITY have executed the Crossing Agreement; Railroad has provided to CITY/ENCORE written approval of Plans and Specifications; and each contractor has executed the Railroad's Contractor's Right of Entry Agreement and has provided the appropriate insurance policies, certificates, binders, and/or endorsements set forth in the Right of Entry Agreement, and b) ENCORE has obtained an encroachment permit from the CITY.

#### F. RESTORATION

In the event that the Underpass Project is not completed, ENCORE shall promptly restore UPRR property to the condition it was in prior to ENCORE's entry on the property, or restore it to the reasonable satisfaction of CITY, at the sole discretion of the CITY. As part of the encroachment permit process, ENCORE shall provide the CITY with reasonable access from ENCORE's property, and easements from others who have granted ENCORE easements related to construction of the Underpass Project sufficient to provide the CITY with reasonable access to construct the Underpass Project.

#### G. WAIVER, ALTERATION OR MODIFICATION

No waiver, alteration, modification, or termination of this Agreement will be valid unless made in writing and signed by the authorized parties thereof.

#### H. NOTICES

All notices and other communications under this Agreement must be in writing and will be deemed to have been given (i) on the date of delivery, if delivered personally to the party to whom notice is given, or if made by telecopy or e-mail directed to the party to whom notice is to be given at the telecopy number or e-mail address listed below, or (ii) at the earlier of actual receipt or the second business day following deposit in the United States mail, postage prepaid.

Notices and other communications will be directed to the parties at the addresses shown below. A party may change its person designated to receive notice, its telecopy number, or its address from time to time by giving notice to the other parties in accordance with the procedures set forth in this Article.

CITY: City of Sacramento  
Nicholas Theocharides  
915 I Street, 2<sup>nd</sup> Floor  
Sacramento, CA 95814  
Phone: (916) 808-5065  
Fax: (916) 808-8281  
Email: [ntheocharides@cityofsacramento.org](mailto:ntheocharides@cityofsacramento.org)

ENCORE: Phil Angelides  
Riverview Capital Investments, Inc.  
3001 I Street, Suite 200  
Sacramento, CA 95816  
(916) 448-1998  
Fax: (916)446-0966  
Email: [phil@riverviewci.com](mailto:phil@riverviewci.com)

Kevin Carson  
The New Home Company  
2220 Douglas Boulevard, Suite 240  
Roseville, CA 95661  
(916)771-2223  
Fax: (916)771-4199  
Email: [kcarson@thenewhomecompany.com](mailto:kcarson@thenewhomecompany.com)

---

## I. AMBIGUITIES

The parties have each carefully reviewed this Agreement and have agreed to each term of this Agreement. No ambiguity will be presumed to be construed against either party.

## J. SIGNATORIES

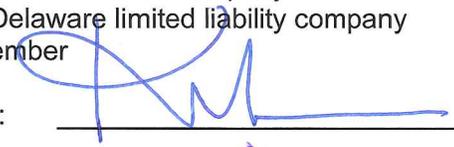
Each of the signatories to this Agreement represents that he/she is authorized to sign the Agreement on behalf of such party and that all approvals, resolutions and consents which must be obtained to bind such party have been obtained that no further approvals, acts or consents are required to bind such party to this Agreement.

The parties have entered into this Agreement as of the Effective Date set out above.

ENCORE

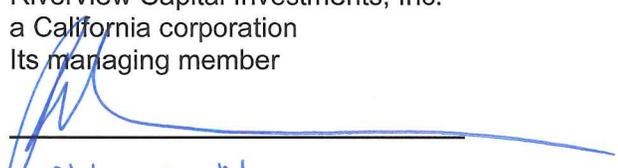
By: McKinley Village, LLC  
a Delaware limited liability company  
Its Managing Member

By: The New Home Company Northern California, LLC  
a Delaware limited liability company  
Member

By:   
\_\_\_\_\_  
Kevin S. Carson

By: RCI-McKinley Village, LLC  
a Delaware limited liability company  
Member

By: Riverview Capital Investments, Inc.  
a California corporation  
Its managing member

By:   
\_\_\_\_\_  
Philip Angelidis

Approved as to Form for ENCORE:

By: McKinley Village, LLC  
a Delaware limited liability company  
Its Managing Member

By: The New Home Company Northern California, LLC  
a Delaware limited liability company  
Member

By:   
\_\_\_\_\_  
Kevin S. Carson

By: RCI-McKinley Village, LLC  
a Delaware limited liability company  
Member

By: Riverview Capital Investments, Inc.  
a California corporation  
Its managing member

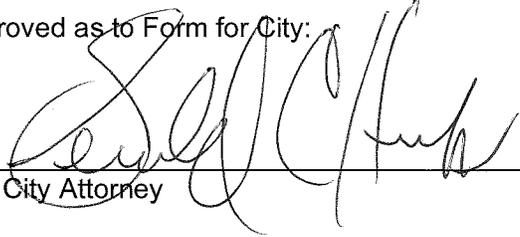
By:   
\_\_\_\_\_  
Philip Angelidis

**CITY OF SACRAMENTO**

---

By: John Shirey  
Title: City Manager

Approved as to Form for City:



---

By: City Attorney