

**PROJECT AGREEMENT**  
**BETWEEN THE CITY OF SACRAMENTO & THE STATE OF CALIFORNIA**  
for the  
**TOWER BRIDGE PEDESTRIAN / BICYCLE IMPROVEMENTS PROJECT**

This Agreement is made and entered into this \_\_\_\_ day of May 2006, by and between the State of California, acting by and through its Director of the Department of Parks and Recreation, hereinafter called the "State", and the City of Sacramento, a municipal corporation, hereinafter called the "City".

**RECITALS:**

- A) Whereas, the City has undertaken a project referred to as the Tower Bridge Pedestrian / Bicycle Improvements Project, hereinafter called the "Project", and has filed a final Environmental Impact Report, dated May 2005, with the State Clearinghouse, No. 2004012020; and
- B) Whereas, the State owns and operates a railroad, known as the Sacramento Southern Railroad, hereinafter called "the Railroad", which passes through the eastern end of the Project site; and
- C) Whereas, construction of the Project as designed and engineered will require temporary use of and encroachments upon a certain segment of the Railroad right of way easement; and
- D) Whereas, the City has requested permission from the State to enter said easement for the purpose of facilitating construction of the Project as designed and engineered; and
- E) Whereas, the City has also requested the State to relocate certain State-owned electrical equipment, devices and circuitry located on City-owned land that interfere with the City's ability to construct the Project as designed and engineered; and
- F) Whereas, the City has offered to grant the State an easement for the purpose of creating a new location for said electrical equipment, devices and circuitry; and
- G) Whereas, the State desires to accommodate the City's request in order to enable the Project's completion, but only to the extent the Project does not interfere with and does not adversely affect the Railroad operations or facilities.
- H) NOW THEREFORE, in consideration of the terms and conditions set forth herein, the parties hereto agree as follows:

**TERMS AND CONDITIONS:**

1. **Purpose & Intent:** The City and the State are desirous of cooperating in good faith so that the City's Project may move forward to realization as designed and engineered, and that neither the State's property nor the Railroad operation is adversely affected or harmed as a result of the Project's implementation. It is recognized and acknowledged that certain activities resulting from the Project must and will take place upon both a portion of the City-owned property, hereinafter called the "City Premises", and a portion of the Railroad easement, hereinafter called the "State Premises", and that it will be necessary for the parties hereto to grant reciprocal permission to enter upon and traverse the Premises of both parties. Both the City Premises and the State Premises are graphically illustrated on Exhibit "A", attached hereto and made part hereof. The primary work or activities to be

conducted as part of the Project include the following:

- a. The performance of all work necessary for and incidental to the Project.
  - b. Creating a new easement or easements to where the State's electrical equipment, devices and circuitry are to be relocated.
  - c. Installing or constructing a foundation for the relocated electrical equipment structure.
  - d. Removing and relocating all existing electrical equipment, devices, and circuitry.
  - e. Installing a new warning device for improved safety of the State's railroad operations.
  - f. Installing new below-grade circuitry and conductors.
  - g. Installing a new power supply for the electrical equipment at the new location.
  - h. Installing a new at-grade pedestrian walkway crossing the Railroad tracks.
2. **Term of Agreement:** This Agreement shall commence on the effective date stated above and shall continue in full force and effect through June 30, 2008, unless earlier terminated as provided in Section 24, below.
3. **Right of Entry Permits:** Formal permissions for the City to enter the State Premises and the State to enter the City Premises shall be granted reciprocally to both the City and the State by means of standard Right of Entry Permits. Such permits will be prepared and executed by both parties within ninety (90) days from the effective date stated above in this Agreement. Both the City and the State agree to cooperate in good faith in preparing and executing such Right of Entry Permits.
4. **Granting of Easement(s):** The City shall create, write and grant to the State an exclusive easement or easements upon City-owned land for the benefit of and appurtenant to the existing Railroad easement. Such easement(s), hereinafter called "the Easement", shall grant the State the right to install, construct, operate, inspect, maintain, repair, replace, and remove components to the highway/railroad grade crossing warning system, including but not limited to: electrical equipment and devices; subsurface conduit, conductors, and circuitry; and electrical railroad signal device (also know as a dwarf signal). Any costs for creating and granting the Easement shall be born solely by the City and at no cost to the State. The terms and conditions of the Easement are indicated on Exhibit "B", attached hereto and made a part hereof. A document creating the Easement shall be prepared, executed and recorded by both parties within ninety (90) days from the effective date stated above in this Agreement.
5. **Reservation of Rights:** The State reserves the right to use the State Premises in any manner it deems necessary, provided such use does not unreasonably interfere with the rights that are herein provided to the City, and the City reserves the right to use the City Premises in any manner it deems necessary, provided such use does not unreasonably interfere with the rights that are herein provided to the State.
6. **City's Coordination with Railroad Operations:** The City shall cooperate with the State to coordinate Project work or activity that may adversely affect or potentially affect the Railroad operation. The City shall adequately monitor and supervise all Project work and activity within the State Premises so as not to endanger, interfere with, hinder or delay the State's operation of the Railroad. The City shall notify the State at least 48 hours in advance of any and all scheduled or unscheduled Project work or activity that will be conducted on the State Premises. Project work or activity includes but is not limited to the following:
- a. Construction, modification, relocation and/or removal of structural elements located adjacent to or within the State Premises in accordance with the City's plans and specifications.
  - b. Movement of heavy equipment and vehicles on, across or through the State Premises.
  - c. Installation of temporary crossings on the Railroad tracks.

7. **State's Coordination with Project Work:** The State shall cooperate with the City to coordinate Railroad operations that could affect Project work or activities. On a weekly basis, the State shall provide the City seven (7) days in advance with a schedule listing the dates and approximate times trains, including both passenger and freight, will be running through the Premises. The schedule will also note the direction, either north or south, the trains will be traveling.
8. **Relocation Work by State:** The State shall furnish, or cause to be furnished, all engineering design, materials, equipment, labor, construction supervision and contract administration for the removal, relocation, and upgrading of the following State-owned components to the existing highway grade crossing warning system that is an integral part of the railroad operation:
  - a. Electrical equipment and devices.
  - b. Subsurface conduit, conductors, and circuitry.
  - c. Electrical warning device (also know as a dwarf or search light).
9. **Relocation Work by City:** At its own expense and sole cost, the City shall furnish, or cause to be furnished, all engineering design, materials, equipment, labor, construction supervision and contract administration for the removal, relocation, and reinstallation of the existing City-owned electrical meter box which is a component to the traffic signal system at Front Street and Capital Mall. Said meter box and the location it is to be moved to is shown on said Exhibit "A".
10. **Pedestrian Walkway:** The State shall furnish, or cause to be furnished, all engineering design, materials, equipment, labor, construction supervision and contract administration for the removal and replacement of the existing pedestrian walkway crossing the Railroad tracks. The new pedestrian walkway shall be maintained by the State.
11. **Payment for Work by the State:** To compensate the State for performing both the utility relocation work and the pedestrian walkway reinstallation work provided for herein, the City shall pay the State an amount up to Two Hundred Thousand Dollars (\$200,000.00). The City agrees to pay a deposit in said amount of \$200,000 to the State within twenty (20) calendar days of final execution of this Agreement. The State shall submit to City an itemized work and cost breakdown for said work within forty-five (45) calendar days of final payment to its contractor or contractors. Should said work cost less than said \$200,000 deposit, the State shall return to the City the excess funds via a state-issued warrant within sixty (60) calendar days from the date of final payment to its contractor or contractors.
12. **Special Provisions:** The Special Provisions attached hereto as Exhibit "C" are hereby incorporated and made a part of this Agreement by this reference. In the event of any conflict or inconsistency between this Agreement and the Special Provisions, the terms of this Agreement shall prevail.
13. **Agreement Subject to Existing Rights and Claims:** This Agreement is subject to any and all existing contracts, permits, licenses, encumbrances and claims which may affect either the City Premises or the State Premises.
14. **Notice of Work:** Prior to commencing any work or activity covered by this Agreement, each party shall notify the other party by written notice at least 48 hours in advance of commencing any such work or activity. The officials to be notified are identified in section 14, below.
15. **Notices:** All notices which may be given by either party to the other, shall be deemed to have been given when made in writing and sent either electronically (email) or via the U.S.

Postal Service (regular mail). Notices shall be addressed as follows:

To the City:

Department of Transportation  
915 'I' Street, Room 2000  
Sacramento 95814  
Attention: Nader Kamal  
nkamal@cityofsacramento.org

To the State:

Capital District Headquarters  
111 'I' Street  
Sacramento 95814  
Attention: Catherine Taylor  
ctaylor@parks.ca.gov

16. **State's Representative:** The person charged with the administration of this Agreement on behalf of the State is the Capital District Superintendent, Ms. Catherine Taylor, or her designee or replacement. The District Superintendent is the initial contact for information, application, approvals, and problems that may arise in the exercise and operation of this Agreement. Ms. Taylor's phone number is (916) 324-7815.
17. **City's Representative:** The person charged with the administration of this Agreement on behalf of the City is the Project Manager, Mr. Nader Kamal, or his designee or replacement. The Project Manager is the initial contact for information, application, approvals, and problems that may arise in the exercise and operation of this Agreement. Mr. Kamal's phone number is (916) 808-7035.
18. **Contracting:** Both the City and the State shall incorporate all the terms, conditions, and requirements contained herein in any and all contracts when hiring out any portion of the work or activity covered by this Agreement. The City and the State shall be equally and individually responsible for ensuring all contractors and subcontractors comply with the terms and conditions contained herein. Failure by contractors or subcontractors hired by either party to abide by the terms and conditions contained herein shall constitute a default by the party to which the contractor was working for. In such cases, both the City and the State reserve the right to seek legal remedies as provided herein.
19. **Indemnification by City:** The City shall indemnify, defend and hold harmless the State, its officers, agents, and employees from and against any and all losses, costs, damages, expenses, claims, actions, suit demands and/or liability of any kind or character, including but not limited to attorney fees arising from or related to any act, omission, or negligence of the City, its officers, agents, or employees in the performance of, or otherwise in connection with the work or activities covered by this Agreement.
20. **Indemnification by State:** The State shall indemnify, defend and hold harmless the City, its officers, agents, and employees from and against any and all loss, cost damage, expense, claim, suit demand and/or liability of any kind or character, including but not limited to attorney fees arising from or related to any act, omission, or negligence of the State, its officers, agents, or employees in the performance of, or otherwise in connection with the work or activities covered by this Agreement.
21. **Restoration of Premises:** The City shall be solely responsible for restoring the State Premises to an orderly, firm, even-graded, clean and safe condition following completion of the Project to the satisfaction of the State, and the State shall be solely responsible for restoring the City Premises to an orderly, firm, even-graded, clean and safe condition following completion of said relocation work to the satisfaction of the City. Restoring the Premises includes, but is not limited to, repairs and/or replacement of any and all damaged property, both real and personal.
22. **Right to Halt Access:** The State reserves the right to halt and suspend the City's use of the State Premises in the event the State determines that any provision contained herein is

violated or any threat to the health and safety of any individual on the State Premises arises. Such action may occur with or without prior notice being given to the City.

23. **Use Restrictions:** The use of the State Premises by the City shall be restricted to the daytime hours between sunrise and sunset on a day-by-day basis, unless otherwise approved in advance by State. Furthermore, the City shall not use or allow the State Premises to be used, either in whole or in part, for any purpose other than as herein provided, without the prior written consent of the State.
24. **Default:** In the event of a default or breach by the City of any of the terms or conditions set forth in this Agreement, State may at any time thereafter, without limiting itself in the exercise of any right of remedy at law or in equity which it may have by reason of such default or breach:
- (a) Maintain this Agreement in full force and effect and recover the consideration, if any, and other monetary charges as they become due, without terminating the City's right to use the State Premises, irrespective of whether the City shall have abandoned the State Premises.
  - (b) Terminate this Agreement whereupon the City shall immediately surrender possession of the State Premises to the State. In such event, the State shall be entitled to recover from the City all damages incurred by the State by reason of the City's default including, but not limited to, the following:
    - (i) any amount necessary to compensate State for all the detriment proximately caused by the City's failure to perform its obligations under this Agreement or which in the ordinary course of events would be likely to result therefrom; plus
    - (ii) at the State's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law. Upon termination of this Agreement, the State shall have the right to make any reasonable repairs, alterations or modifications to the State Premises, which the State, in its sole discretion, deems reasonable and necessary for the State's use of the State Premises.
25. **State's Right to Cure Default:** At any time, after the City is in default or material breach of this Agreement, State may, but is not required to, cure such default or breach at the City's cost. If the State at any time, by reason of such default or breach, pays any sum or does any act that requires the payment of any sum, the sum paid by the State shall be due immediately from the City to the State at the time the sum is paid, and if paid at a late date shall bear the maximum interest allowed by California law from the date the sum is paid by the State until the State is reimbursed by the City.
26. **Recovery of Legal Fees:** If any action including actions or proceedings under Title II of the United States Code is brought by the State to enforce or interpret any provisions of this Agreement or to restrain the breach of any agreement contained herein, or for the recovery of possession of the State Premises, or to protect any rights given to the State against the City, and if the State shall prevail in such action on trial or appeal, the City shall pay to the State such amount in attorney's fees in said action as the court shall determine to be reasonable, which shall be fixed by the court as part of the costs of said action.
27. **Entire Agreement:** The parties further declare and represent that no inducement, promise or agreement not herein expressed has been made to them and this Agreement contains the entire agreement of the parties, and that the terms of this agreement are contractual

and not a mere recital.

- 28. **Voluntary Execution and Independence of Counsel:** By their respective signatures below each party hereto affirms that they have read and understood this Agreement and have received independent counsel and advice from their attorneys with respect to the advisability of executing this Agreement.
- 29. **Assignment:** This Agreement shall not, nor shall any interest herein be assigned, mortgaged, hypothecated, or transferred by either party, whether voluntary or involuntary or by operation of law, nor shall either party let or sublet or grant any license with respect to the use and occupancy of either Premises or any portions thereof, without the written consent of the respective party being first had and obtained.
- 30. **Warranty of Authority:** The undersigned represents that they have the authority to, and does, bind the person or entity on whose behalf and for whom they are signing this Agreement and the attendant documents provided for herein, and this Agreement and said additional documents are, accordingly, binding on said person or entity.
- 31. **Choice of Law:** This Agreement will be governed and construed by the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

**The City**  
City of Sacramento, a Municipal Corporation

**The State**  
Department of Parks & Recreation

By: \_\_\_\_\_  
Ray Kerridge, City Manager

By: Catherine A. Taylor  
Catherine A. Taylor, District Superintendent

Date: \_\_\_\_\_

Date: 5-12-06

RECOMMENDED FOR APPROVAL:

By: \_\_\_\_\_  
Supervising Real Property Agent

By: \_\_\_\_\_  
Real Property Agent

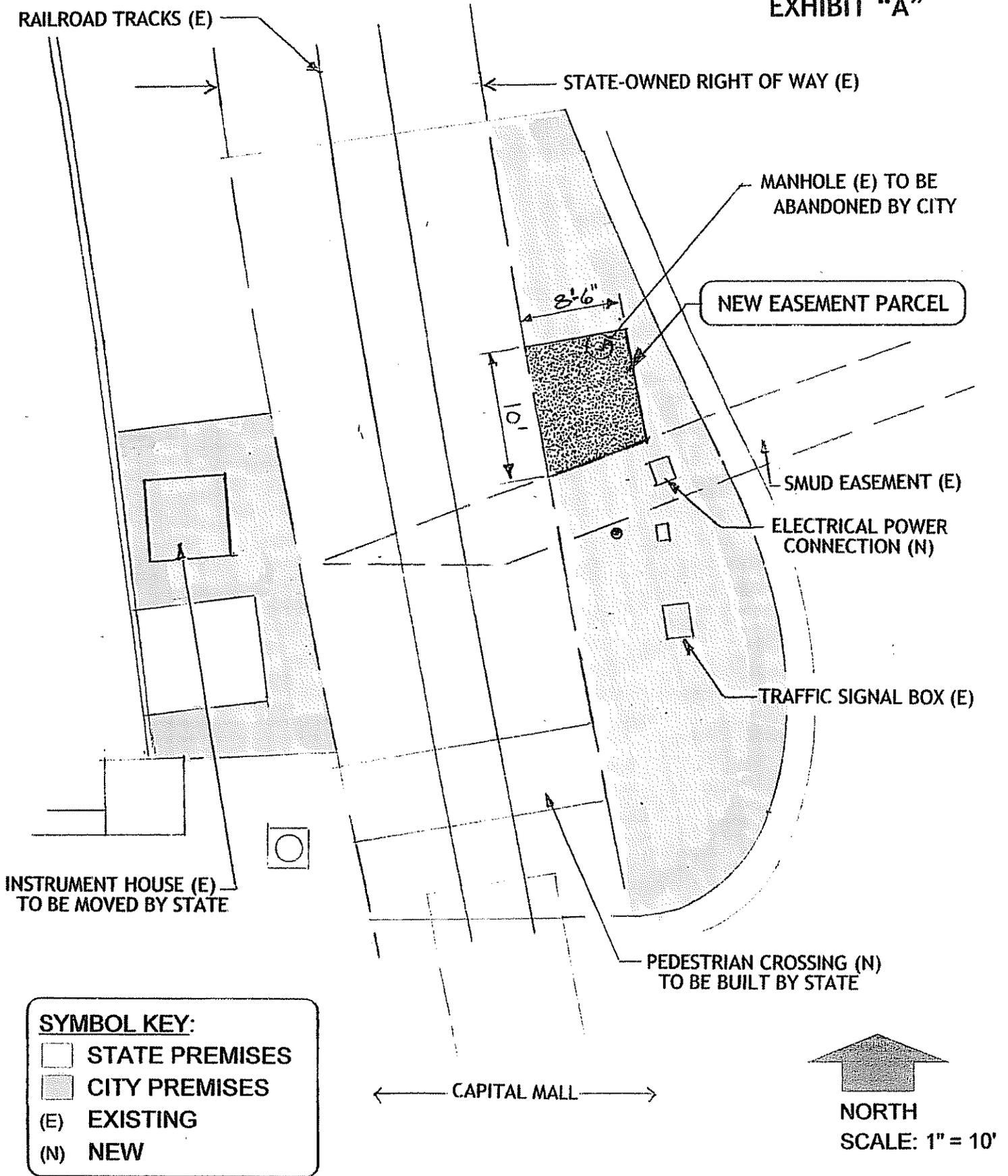
ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: [Signature]  
City Attorney

EXHIBIT "A"



TOWER BRIDGE PEDESTRIAN / BICYCLE IMPROVEMENTS PROJECT - SITE DIAGRAM

**RECORDING REQUESTED By and for the benefit of the State of California**

**EXHIBIT "B"**

**When Recorded Mail Document and Tax Statement To:**

**NO FEE DOCUMENT, per Government Code 6103**

**SPACE ABOVE THIS LINE FOR RECORDER'S USE**

APN:

**UTILITY EASEMENT**

**FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,** The City of Sacramento, a municipal corporation **hereby GRANT(S) to** The State of California Department of Parks and Recreation

the following described real property in the City of Sacramento, County of Sacramento, State of California: an exclusive easement for the construction, use, repair, rehabilitation and maintenance of a utility box together with associated uses over, across and under all that real property situated in the City of Sacramento, County of sacramento, Sate of California, described as follows:

SEE EXHIBIT "A", LEGAL DESCRIPTION, AND "B" PLAT TO ACCOMPANY LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF

**SAMPLE**

City of Sacramento, a municipal corporation

Dated: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

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

For Ray Kerridge, City Manager

APPROVED AS TO FORM:

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

City Attorney

ATTEST:

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

City Clerk

SPECIAL PROVISIONS

to the Agreement concerning the Tower Bridge Project

In order to protect and safeguard the State's Railroad tracks from damage and shunting that could be caused by Project work or activity, the City is required to assemble and place rubber pads, wood mats, or other protective material on or over the Railroad tracks. Such protective materials, hereinafter called "temporary crossings", shall be designed by the City in accordance with the Union Pacific Railroad's standard designs for such temporary crossings. Furthermore, the City shall comply with the following requirements concerning the placement and use of the temporary crossings:

- 1) The Railroad tracks include rock ballast, rails, ties, plates, spikes and all fastening hardware.
- 2) The City shall not move vehicles or heavy equipment over or along the Railroad tracks unless it has first placed a temporary crossing or other means of protection approved by the State's Representative. The State's Representative is identified in the Agreement.
- 3) The City shall submit to the State's Representative plan drawings of all temporary crossings the City or its contractors intends on placing on the Railroad tracks prior to such placement or installation. The plan drawings shall show the design, dimensions, materials used, how the temporary crossing is to be assembled and fastened, and the method of installation.
- 4) The State's Representative shall review the plan drawing(s) for adequacy and, if deemed acceptable, will approve the plan drawing and authorize the City to install or place the temporary crossing. The State reserves the right to disallow and prohibit the installation of any temporary crossing deemed inadequate for any reason.
- 5) In the event the plan drawing is deemed inadequate by the State's Representative, the City must redesign the temporary crossing and resubmit a plan drawing to the State's Representative for reconsideration.
- 6) The City's use of the temporary crossings shall be limited to daylight hours only. If authorized by the State's Representative to remain in place overnight, temporary crossings shall be adequately barricaded to prevent unauthorized use.
- 7) Temporary crossing placed by the City are considered to be very temporary in nature and shall only remain in place for limited periods of time. The State's Representative shall specify the period of time any and all temporary crossings are allowed to remain in place, and the City shall remove the temporary crossing at the end of the approved duration, or sooner if so ordered by the State's Representative. The State reserves the right to order the City to remove any temporary crossing at any time to permit the safe and unrestricted passage of trains. City shall keep tools and equipment suitable for quick removal of the temporary crossing on site at all times.