



Office of the City Manager

CONSENT CALENDAR
January 21, 2025

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Terrance Davis, Director, Public Works

Subject: Agreements with Union Pacific Railroad for Reimbursement for Construction of Safety Improvements for Pedestrians, Cyclists and Vehicular Traffic at Addison and Bancroft railroad crossings

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute two reimbursement agreements and any amendments with Union Pacific Railroad Company (UPRR) to construct all necessary safety improvement elements at Addison Street and Bancroft Way railroad crossings subject to reimbursement by the City for actual costs incurred.

FISCAL IMPACTS OF RECOMMENDATION

There will be no fiscal impact to the City. The developers of the projects triggering the safety improvements are responsible for all actual costs and expenses for the UPRR parties performance of the safety improvement work at the two railroad crossings. There are separate agreements with the two developers regarding payment of actual costs of the safety improvements

CURRENT SITUATION AND ITS EFFECTS

Berkeley Commons is the owner of 600 Addison, and Steelwave Development is the owner of 747 Bancroft. Their projects are next to the railroad crossings at Addison Street and Bancroft Way. Berkeley Commons is constructing the Berkeley Commons research and development campus, which includes two buildings with a combined gross floor area of 470,986 square feet and two parking structures providing a total of 943 spaces on an approximately 8.5-acre industrial site. Steelwave is constructing a new development at 747 Bancroft Way, which consists of a 159,143-square-foot, three-story building containing 124,539 square feet of research and development space and 34,604 square feet of light manufacturing space, and a surface parking lot containing 76 off-street parking spaces and five loading spaces.

Both of these developments are subject to certain conditions of approval which requires them to coordinate with the UPRR, the California Public Utilities commission (CPUC) and the City to implement safety improvements of all travelers at the railroad crossings at Addison and Bancroft.

The mitigation measures for the two projects will result in safety improvements for all modes of travel across the Addison Street and Bancroft Way railroad crossings. Executing this agreement will support the City's Strategic Plan Goal of creating a resilient, safe, connected, and prepared City.

BACKGROUND

Developers are responsible for the need to implement project-triggered safety improvements across railroad crossings. UPRR has a strict policy of being in charge of implementing any work along their operating corridor, in this case those triggered by the two developments across railroad crossings at Addison Street and Bancroft Way. UPRR does not enter into agreements with private entities, therefore in order to support the development projects and implementation of these safety improvements the City will enter into an agreement with the UPRR on behalf of the developers with the developers agreeing to pay all the final UPRR costs associated with these improvements. Separate agreements between the city and the two developers regarding their payment of the final costs of the safety improvements have already been completed.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

In light of the upcoming research and development employment centers near the Addison and Bancroft railroad crossings, it is anticipated that implementation of the safety improvements will encourage non-motorized traffic. This is expected to have a positive impact on the environment.

RATIONALE FOR RECOMMENDATION

In order to construct required safety improvements within the UPRR operating corridor, a construction and maintenance agreement is required by UPRR as well as CPUC.

ALTERNATIVE ACTIONS CONSIDERED

UPRR requires a construction and maintenance agreement in order to implement safety improvements on City streets which cross their operating corridor, so no other alternatives were feasible.

CONTACT PERSON

Wahid Amiri, Deputy Director, Public Works, 510-981-6396

Attachments:

- 1: Resolution
- 2: Reimbursement Agreements with UPRR for Addison Street Crossing
- 3: Reimbursement Agreements with UPRR for Bancroft Way Crossing

RESOLUTION NO. ##,###-N.S.

REIMBURSEMENT AGREEMENTS WITH UNION PACIFIC RAILROAD

WHEREAS, Berkeley Commons is engaged in the development of certain real property located at 600 Addison Street in City of Berkeley; and

WHEREAS, Steelwave is engaged in the development of certain real property located at 747 Bancroft Way in City of Berkeley; and

WHEREAS, As part of the improvements for these two projects, safety improvements need to be constructed at Addison Street/Union Pacific Railroad crossing and at Bancroft Way/Union Pacific Railroad crossing; and

WHEREAS, Berkeley Commons and Steelwave will be responsible for paying for the costs of the safety improvements; and

WHEREAS, Union Pacific Railroad (UPRR) will be constructing the safety improvements at Addison Street and at Bancroft Way; and

WHEREAS, In order for the construction of these required improvements to proceed, the City must to enter into Construction and Maintenance agreements with UPRR;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that City Manager is authorized to execute two reimbursement agreements (Attachments 1 and 2) and any amendments with UPRR to reimburse UPRR actual costs incurred in connection with traffic safety improvement work at Addison St. and at Bancroft Way intersections with UPRR crossings.

UP Real Estate Project No.: 0770512

PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT

Addison Street
DOT 751177P
MP 6.14 – Martinez Subdivision
Berkeley, Alameda County, California

THIS AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 20____ ("Effective Date"), 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 ("Railroad") and **CITY OF BERKELEY**, a municipal corporation or political subdivision of the State of California to be addressed at 1947 Center Street, 2nd Floor, Berkeley, California 94704 ("Political Body").

RECITALS:

Presently, the Political Body utilizes the Railroad's property for the existing at grade public road crossing over Addison Street, DOT Number 751177P at Railroad's Milepost 6.14 on Railroad's Martinez Subdivision at or near Berkeley, Alameda County, California.

The Political Body now desires to undertake as its project (the "Project") the widening of the existing at grade public road crossing to accommodate the reconstruction of sidewalks. The road crossing, as widened is hereinafter the "Roadway."

The Railroad right of way being utilized for the existing at grade public road crossing is not sufficient to allow for the widening of the Roadway. Therefore, under this Agreement, the Railroad will be granting additional rights to the Political Body to facilitate the widening of the Roadway. The portion of Railroad's property that Political Body needs to use in connection with the Roadway (including the right of way being utilized for the existing at grade crossing) is shown on the Railroad's location print marked **Exhibit A** attached hereto and hereby made a part hereof (the "Crossing Area").

In support of its Project, the Political Body has requested the Railroad's cooperation in connection with upgrading grade crossing protection devices in accordance with the design schematic marked **Exhibit E**, hereto attached and hereby made a part hereof (the "Designs"). Said work is to be performed at the sole expense of Political Body.

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:

Section 1. EXHIBIT B

The general terms and conditions marked **Exhibit B**, are attached hereto and hereby made a part hereof.

Section 2. RAILROAD GRANTS RIGHT

For and in consideration of the sum of **THREE THOUSAND DOLLARS (\$3,000.00)** to be paid by the Political Body to the Railroad upon the execution and delivery of this Agreement and in further consideration of the Political Body's agreement to perform and comply with the terms of this Agreement, the Railroad hereby grants to the Political Body the right to construct, maintain and repair the Roadway over and across the Crossing Area.

Section 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, and others acting under its or their authority.

Section 4. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE

A. Prior to Contractor performing any work within the Crossing Area and any subsequent maintenance and 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.

B. The Railroad's current Contractor's Right of Entry Agreement is marked **Exhibit D**, 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:

Manager - Contracts
Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, Mail Stop 1690
Omaha, NE 68179-1690
UP Project No. 0770512

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.

Section 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.

Section 6. NO PROJECT EXPENSES TO BE BORNE BY RAILROAD

The Political Body agrees that no Project costs and expenses are to be borne by the Railroad. In addition, the Railroad is not required to contribute any funding for the Project.

Section 7. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO POLITICAL BODY; POLITICAL BODY'S PAYMENT OF BILLS

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 Estimates dated May 31, 2023, June 21, 2023, and September 28, 2023, marked **Exhibit C**, attached hereto and hereby made a part hereof (the "Estimates"). As set forth in the Estimates, the Railroad's estimated cost for the Railroad's work associated with the Project is Seven Hundred Eighty Four Thousand Three Hundred Forty One Dollars (\$784,341.00).

B. The Railroad, if it so elects, may recalculate and update the Estimates 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 Estimates.

C. The Political Body acknowledges that the Estimates may not include any estimate of flagging or other protective service costs that are to be paid by the Political Body or the Contractor in connection with flagging or other protective services provided by the Railroad in connection with the Project. All of such costs incurred by the Railroad are to be paid by the 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 Railroad shall send progressive billing to the Political Body during the Project and final billing to the Political Body within one hundred eighty (180) days after receiving written notice from the Political Body that all Project work affecting the Railroad's property has been completed.

E. The Political Body agrees to reimburse the Railroad within thirty (30) days of its receipt of billing from 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, all actual costs of engineering review (including preliminary engineering review costs incurred by Railroad prior to the Effective Date of this Agreement), construction, inspection, flagging (unless flagging costs are to be billed directly to the Contractor), procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead labor/construction costs including Railroad's standard additive rates.

Section 8. PLANS

A. The Political Body, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Project and the Structure and submit such plans and specifications to the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, for prior review and approval. The plans and specifications shall include all Roadway layout specifications, cross sections and elevations, associated drainage, and other appurtenances.

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. The Railroad's review and approval of the Plans will in no way relieve 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 warranty 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.

Section 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 Section 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 Section 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.

Section 10. EFFECTIVE DATE; TERM; TERMINATION

A. This Agreement is effective as of the Effective Date first herein written and shall continue in full force and effect for as long as the Roadway 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 Effective Date.

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.

**Section 11. 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:

- (i) The Railroad and Political Body have executed this Agreement.
- (ii) The Railroad has provided to the Political Body the Railroad's written approval of the Plans.
- (iii) 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 required under the Contractor's Right of Entry Agreement.
- (iv) Each Contractor has given the advance notice(s) required under the Contractor's Right of Entry Agreement to the Railroad Representative named in the Contractor's Right of Entry Agreement.

Section 12. FUTURE PROJECTS

Future projects involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the Roadway 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.

Section 13. ASSIGNMENT; SUCCESSORS AND ASSIGNS

A. Political Body shall not assign this Agreement without the prior written consent of Railroad.

B. 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.

Section 14. 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 directing 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 11 of **Exhibit B** of this Agreement.

Section 15. TERMINATION OF ORIGINAL AGREEMENT

Upon the completion of the Roadway, the original agreement either governing currently, or any agreement to be found in the future at the existing at-grade crossing, shall terminate and the terms and conditions of this Agreement shall govern the use, maintenance and repair of the Roadway.

Section 16. ANNUAL SIGNAL MAINTENANCE FEE

A. Effective as of three years from effective date of this Agreement or the date of installation and/or the in-service date of the new and/or improved or existing Grade Crossing Signal System(s) ("Signal System"), the Political Body, in addition to maintaining at its sole cost and expense the portion of the Roadway described in Section 2 of **Exhibit B**, agrees to pay to Railroad the sum of Twenty Two Thousand Five Hundred Thirty Eight Dollars (\$22,538.00) per annum, payable annually in advance, as payment for Railroad's maintenance of the Signal System that is installed at the Roadway. The annual signal maintenance fee is calculated as shown on the attached **Exhibit F**, attached hereto and made a part hereof.

B. The above annual signal maintenance fee for Railroad's maintenance of the Signal System is based on the number of current signal units installed at the Roadway. If the Signal System is improved and/or altered in any way, the Political Body must notify the Railroad in writing and the annual signal maintenance fee will be increased at a rate based on the American Railway Engineering and Maintenance of Way Association (AREMA) signal unit cost index. If the Political Body fails to notify Railroad of any improvement or alteration to the Signal System, the Railroad may increase the annual

signal maintenance fee at a rate based on the AREMA signal unit cost index any time after the date of installation and/or improvement of the Signal System. The signal unit base for the annual signal maintenance fee may also be re-determined by the Railroad at any time subsequent to the expiration of five (5) years following the date on which the annual signal maintenance fee was last determined or established. Any such changes in the annual signal maintenance fee referenced in Article 2 may be made by means of automatic adjustment in billing.

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

UNION PACIFIC RAILROAD COMPANY

(Federal Tax ID #94-6001323)

By: _____

Printed Name: _____

Title: _____

CITY OF BERKELEY

By: _____

Printed Name: _____

Title: _____

**EXHIBIT A
TO
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

Exhibit A will be a print showing the Crossing Area (see Recitals)

LEGEND:

PROPOSED IMPROVEMENTS



ADDISON STREET RAILROAD CROSSING IMPROVEMENTS

BERKELEY COMMONS RAILROAD IMPROVEMENTS

EXHIBIT B
TO
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT

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 the event the Railroad shall place additional tracks upon the Crossing Area, the Political Body shall, at its sole cost and expense, modify the Roadway to conform with all tracks within the Crossing Area.

C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, 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's 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; and the right to cross the Crossing Area with all kinds of equipment.

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 Roadway 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 ROADWAY

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 Roadway and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper highway warning devices (except those installed by the Railroad within its right of way) and all necessary drainage facilities, guard rails or barriers, and right of way fences between the Roadway 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 Roadway 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 compliance with the Plans, 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. 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 damages on account of any delay shall be made against the Railroad by the State and/or the Contractor.

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 the 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 shall, at its own sole expense, maintain, repair, and renew, or cause to be maintained, repaired and renewed, the entire Crossing Area and Roadway, except the portions between the track tie ends, which shall be maintained by the Railroad at the Political Body's expense.

B. If, in the future, the Political Body elects to have the surfacing material between the track tie ends, or between tracks if there is more than one railroad track across the Crossing Area, replaced with paving or some surfacing material other than timber planking, the Railroad, at the Political Body's expense, shall install such replacement surfacing, and in the future, to the extent repair or replacement of the surfacing is necessitated by repair or rehabilitation of the Railroad's tracks through the Crossing Area, the Political Body shall bear the expense of such repairs or replacement.

SECTION 6. CHANGES IN GRADE

If at any time the Railroad shall elect, or be required by competent authority to, raise or lower the grade of all or any portion of the track(s) located within the Crossing Area, the Political Body shall, at its own expense, conform the Roadway to conform with the change of grade of the trackage.

SECTION 7. REARRANGEMENT OF WARNING DEVICES

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

SECTION 8. 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 Roadway, 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 Roadway 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 to the Railroad 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 visit up.com/CBUD to complete and submit the required form to determine if fiber optic cable is buried anywhere on Railroad's property 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 9. 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 new or improved devices have been installed.

SECTION 10. 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 11. 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 12. 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 Roadway 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 Roadway 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 13. 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
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

Exhibit C (if applicable) will be Railroad's Material and Force Agreement Estimates.

Material And Force Account Estimate
Berkeley

Estimate Number: 144046 Version: 1

Standard Rates: Labor Additive = 70%
Estimate Good Until 05/31/24

Location: MARTINEZ SUB, NO 1, 6.12-6.16
Description of Work: 751177P 3rd St Berkeley CA 6.14 Martinez Sub
Prepared For: Berkeley
Buy America: No

COMMENTS	FACILITY	Description	QTY	UOM	UCST	LABOR	MATERIAL	TOTAL	UP %0	Agcy %100
ENGINEERING										
		Engineering	1	LS	23,942.00	23,942	0	23,942	0	23,942
		Bill Prep Fee - Track Surface RECOLLECT	1	LS	900.00	0	900	900	0	900
		Homeline Freight - Track Surface RECOLLECT	1	LS	900.00	0	900	900	0	900
		Foreign Line Freight - Track Surface RECOLLECT	1	LS	1,276.02	0	1,276	1,276	0	1,276
Sub-Total =						23,942	3,076	27,018	0	27,018
TRACK CONSTRUCTION - COMPANY										
		Mobilization: Company	1	DA	11,450.00	11,450	0	11,450	0	11,450
Sub-Total =						11,450	0	11,450	0	11,450
TRACK REMOVAL - COMPANY										
	RDXING	Remove road crossing - concrete	40	TF	56.82	2,273	0	2,273	0	2,273
	TRACK	Remove Track	40	TF	22.28	891	0	891	0	891
Sub-Total =						3,164	0	3,164	0	3,164
SITE WORK - CONTRACT										
		Asphalt	1	LS	37,000.00	0	37,000	37,000	0	37,000
Sub-Total =						0	37,000	37,000	0	37,000
EQUIPMENT RENTAL										
		Equipment Rental	1	LS	25,000.00	0	25,000	25,000	0	25,000
Sub-Total =						0	25,000	25,000	0	25,000
Total Wgt. in Tons =						Totals =	38,556	65,076	103,632	0 103,632

Grand Total = \$103,632

Please Note: The above figures are estimates only and are subject to fluctuation. In the event of an increase or decrease in the cost or amount of material or labor required, Berkeley will pay actual construction costs at the current rates effective thereof.

Material And Force Account Estimate

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Lane Partners

Estimate Creation Date: 6/7/2023 Number: 144226 Version: 1

Estimate Good Until 06/21/24

Location: MARTINEZ SUB, NO 1, 2.33-7
Buy America: No

Description of Work: Martinez Sub MP 6.14 Berkeley, CA 3rd St & Addison St DOT#751177P WO#604469
PID#115302 100% Recollectable

COMMENTS	Description	QTY	UOM	Unit Cost	LABOR	MATERIAL	TOTAL
SIGNAL							
	Gang Day - 5 Man	2	EA	7,500.00	15,000	0	15,000
	Xing - 2 Trk CWE w/Gates	1	EA	152,876.00	48,800	104,076	152,876
	Xing - Dax Cable 1000'	2.5	EA	6,440.00	10,000	6,100	16,100
	Xing - Flasher/Ped (pair)	1	LS	57,560.00	16,000	41,560	57,560
PPEC Project Mgmt	Xing - Misc.	1	LS	15,000.00	0	15,000	15,000
	Xing - Sidelight	1	EA	907.00	0	907	907
	Xing - Track Card (Main and Stand-by) New Cable	1	EA	12,889.00	6,000	6,889	12,889
	Xing - Remove Location (Gates/Cants)	1	LS	4,000.00	4,000	0	4,000
Security Fencing	Xing - Misc.	1	LS	16,000.00	0	16,000	16,000
	Xing - Engineering Design	1	LS	9,365.95	9,366	0	9,366
	Xing - Boring	1	LS	10,000.00	0	10,000	10,000
	Xing - Fill/Rock/Gravel	1	LS	60,000.00	0	60,000	60,000
Standard 224.45%	Xing - Labor Additive	1	LS	245,025.00	245,025	0	245,025
	Xing - Meter Service	1	LS	5,000.00	0	5,000	5,000
Sub-Total =					354,191	265,532	619,723

PROJECT LEVEL COST

5% Contingency	Contingency	5	%	6,197.23	17,710	13,277	30,986
Sub-Total =					17,710	13,277	30,986

Totals = 371,901 278,809 650,709

Grand Total = \$650,709

Disclaimer: This is a preliminary estimate, intended to provide a ballpark cost to determine whether a proposed project warrants further study. 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 C

**ESTIMATE OF FORCE ACCOUNT WORK
BY THE
UNION PACIFIC RAILROAD COMPANY**

DESCRIPTION OF WORK: Engineering and other related services for work to be performed within railroad right of way. This includes project and construction management during construction activities in railroad right of way. All necessary railroad services will be billed at actual cost.

DATE: 9/28/2023

LOCATION: Berkeley, CA DOT: 751177P	SUBDIVISION Martinez	STATE: CA			
DESCRIPTION	LABOR	MATERIAL	UP %0	Agency % 100	TOTAL
ENGINEERING					
Project Management	\$ 7,500	\$ -	\$ -	\$ 7,500.00	\$ 7,500
Construction Management	\$ 20,000	\$ -	\$ -	\$ 20,000.00	\$ 20,000
Final Inspection	\$ 2,500	\$ -	\$ -	\$ 2,500.00	\$ 2,500
FLAGGING / INSPECTION SERVICES					
RATE (per day)	\$ 1,500				
TOTAL PROJECT:	\$ 30,000	\$ -	\$ -	\$ 30,000.00	\$30,000

TOTAL ESTIMATED COST: \$30,000

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

Flagging is NOT included in this estimate. Agencies are instructed to follow Union Pacific's Third Party Flagging Policy.

Please utilize the following link to Union Pacific's Third Party Flagging Policy:

https://www.up.com/real_estate/third-party-flagging/index.htm

EXHIBIT D
TO
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT
CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ day of _____, 20_____, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and _____, a _____ corporation ("Contractor").

RECITALS:

Contractor has been hired by _____ to perform work relating to _____ (the "Work") with all or a portion of such Work to be performed on property of Railroad in the vicinity of Railroad's Milepost _____ on Railroad's _____ [Subdivision or Branch] [at or near DOT No. _____] located at or near _____, in _____ County, State of _____, as such location is in the general location shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof, which Work is the subject of a contract dated _____ between Railroad and _____.

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

AGREEMENT:

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

ARTICLE 1 - DEFINITION OF CONTRACTOR.

For purposes of this agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. For purposes of clarity, Contractor agrees that any CIC (defined below) hired by Contractor is a subcontractor of Contractor and therefore included in the defined term Contractor pursuant to the foregoing sentence.

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 AND C.

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

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

A. Contractor shall bear any and all costs and expenses associated with any Work performed by Contractor (including without limitation any CIC), 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"):

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 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 and throughout the entire term of this Agreement, Contractor, at its expense, shall procure and maintain in full force and effect the types and minimum limits of insurance specified in **Exhibit C** of this agreement and require each of its subcontractors to include the insurance endorsements as required under Section 12 of **Exhibit B** of this agreement.

B. Not more frequently than once every two (2) years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

C. Upon request of Railroad, Contractor shall provide to Railroad a certificate issued by its insurance

Contractor's Right of Entry Public
Projects Form Approved 02/09/2022

carrier evidencing the insurance coverage required under **Exhibit B**.

D. Contractor understands and accepts that the terms of this Article are wholly separate from and independent of the terms of any indemnity provisions contained in this Agreement.

E. Upon request of Railroad, insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

Union Pacific Railroad Company

[Insert mailing address]

Attn: _____

Project No. 0770512

ARTICLE 8 - PRECONSTRUCTION MEETING

If the Work to be performed by the Contractor will involve the Railroad providing any flagging protection (or if a CIC is approved to provide flagging protection pursuant to the terms set forth herein) and/or there is separate work to be performed by the Railroad, the Contractor confirms that no work shall commence until the Railroad and Contractor participate in a preconstruction meeting involving flagging procedures and coordination of work activities of the Contractor and the Railroad (and any CIC, as applicable.)

ARTICLE 9. 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 10. ADMINISTRATIVE FEE

Upon the execution and delivery of this agreement, Contractor shall pay to Railroad One Thousand Twenty Five Dollars (\$1,025.00) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this agreement.

ARTICLE 11. 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.

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ARTICLE 12.- 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

By: _____

Title: _____

(Name of Contractor)

By: _____

Name: _____

Title: _____

Phone: _____

E-Mail: _____

EXHIBIT A
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Exhibit A will be a print showing the general location of the work site.

LEGEND:

PROPOSED IMPROVEMENTS



ADDISON STREET RAILROAD CROSSING IMPROVEMENTS

BERKELEY COMMONS RAILROAD IMPROVEMENTS

EXHIBIT B
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK - RAILROAD FLAGGING - PRIVATE FLAGGING.

A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its Work and at least thirty (30) 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.

B. 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 approved flagman is provided to watch for trains. Upon receipt of such thirty (30)-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.

C. Contractor shall be permitted to hire a private contractor to perform flagging or other special protective or safety measures (such private contractor being commonly known in the railroad industry as a contractor-in-charge ("CIC")) in lieu of Railroad providing such services or in concert with Railroad providing such services, subject to prior written approval by Railroad, which approval shall be in Railroad's sole and absolute discretion. If Railroad agrees to permit Contractor to utilize a CIC pursuant to the preceding sentence, Contractor shall obtain Railroad's prior approval in writing for each of the following items, as determined in all respects in Railroad's sole and absolute discretion: (i) the identity of the third-party performing the role of CIC; (ii) the scope of the services to be performed for the project by the approved CIC; and (iii) any other terms and conditions governing such services to be provided by the CIC. If flagging or other special protective or safety measures are performed by an approved CIC, Contractor shall be solely responsible for (and shall timely pay such CIC for) its services. Railroad reserves the right to rescind any approval pursuant to this Section 1, Subsection C., in whole or in part, at any time, as determined in Railroad's sole and absolute discretion.

D. If any flagging or other special protective or safety measures are performed by employees of Railroad and/or any contractor of 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.

E. If any flagging or other special protective or safety measures are performed by Railroad or a CIC, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this agreement.

F. The provisions set forth in this subsection are only applicable for Flagging Services performed by employees of Railroad: 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. If flagging is performed by Railroad, 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 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.

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 (whether recorded or unrecorded and 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 twenty-five (25) 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 visit www.up.com/CBUD to complete and submit the required form 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 any Work on Railroad property 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 then current safety standards located at the below web address ("Railroad's Safety Standards") 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 Railroad's Safety Standards to each of its employees before they enter Railroad property.

http://www.up.com/cs/groups/public/@uprr/@suppliers/documents/up_pdf_nativedocs/pdf_up_supplier_safety_req.pdf

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 FULLEST EXTENT ALLOWED BY APPLICABLE LAW, 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" on the subcontractor's Commercial General Liability policy and Umbrella or Excess policies (if applicable) 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 10, and CG 20 37 (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

Union Pacific Railroad Company
Insurance Requirements For
Contractor's Right of Entry Agreement

During the entire term of this Agreement and course of the Project, and until all Project Work on Railroad's property has been completed and all equipment and materials have been removed from Railroad's property and Railroad's property has been clean and restored to Railroad's satisfaction, Contractor shall, at its sole cost and expense, procure and maintain 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.

- D. Railroad Protective Liability** insurance. Contractor must maintain "Railroad Protective Liability" (RPL) 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. The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this agreement and shall describe all WORK or OPERATIONS performed under this agreement. Contractor shall provide this agreement to Contractor's insurance agent(s) and/or broker(s) and Contractor shall instruct such agent(s) and/or broker(s) to procure the insurance coverage required by this agreement. A BINDER STATING THE POLICY IS IN PLACE MUST BE SUBMITTED TO RAILROAD BEFORE THE WORK MAY COMMENCE AND UNTIL THE ORIGINAL POLICY IS FORWARDED TO UNION PACIFIC 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 included when the scope of the Work as defined in the agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

If required, coverage may be provided in separate policy form or by endorsement to Contractors CGL or RPL. Any form coverage must be equivalent to that provided in ISO form CG 24 15 "Limited Pollution Liability Extension Endorsement" or CG 28 31 "Pollution Exclusion Amendment" 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.

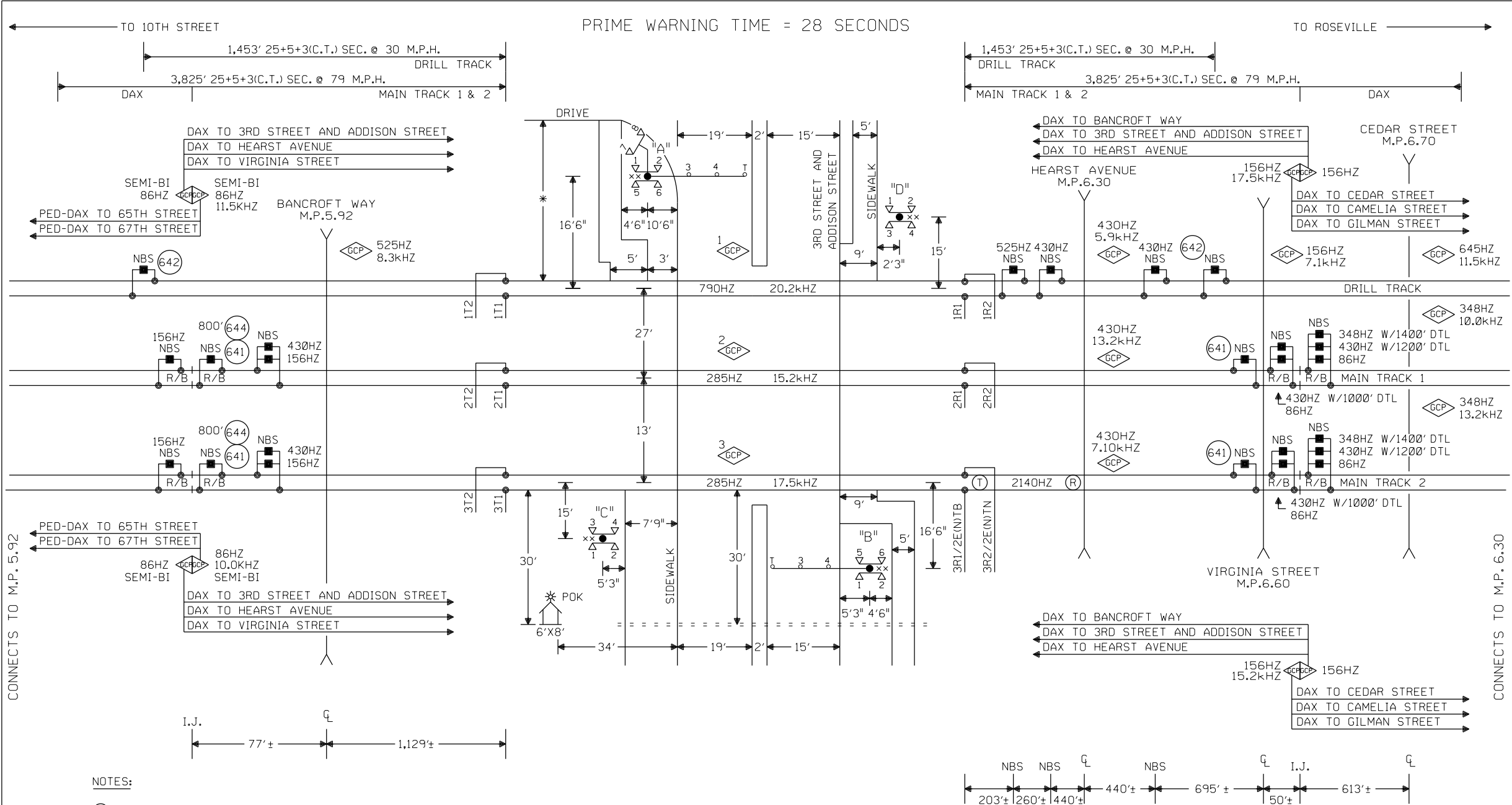
Other Requirements

- G. All policy(ies) required above (except business automobile, worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 10, and CG 20 37 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall not be limited by Contractor's liability under the indemnity provisions of this agreement. BOTH CONTRACTOR AND RAILROAD EXPECT THAT UNION PACIFIC RAILROAD COMPANY WILL BE PROVIDED WITH THE BROADEST POSSIBLE COVERAGE AVAILABLE BY OPERATION OF LAW UNDER ISO ADDITIONAL INSURED FORMS CG 20 10 AND CG 20 37.
- H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.
- 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 for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Contractor required in this agreement where prohibited by law. 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 E
TO
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

Exhibit E (if applicable) will be signal design schematic



NOTES:

⊗ = TWISTED WIRES
INSULATED 1 TWIST PER FT.
ALL TRACK WIRES 2C. #6

TRANSMITTER AND RECEIVER LEADS
TO BE SEPARATED BY AT LEAST 12" IN TRENCH,
LENGTHS SHOULD NOT EXCEED MANUFACTURER'S
RECOMMENDATION.

TOP OF FOUNDATION TO BE AT SAME ELEVATION
AS THE SURFACE OF THE TRAVELED WAY & NO
MORE THAN 4" ABOVE THE SURFACE OF THE GROUND.

ALL BUNGALOW WIRING TO BE #16 AWG FLEX
UNLESS OTHERWISE SPECIFIED EXCEPT ALL GROUND
WIRE TO BE #6 AWG FLEX OR LARGER.

ALL WIRING IN GATE MECHANISM TO BE #10 "AWG FLEX".
REFER TO UP STANDARD DWG FOR BUNGALOW GROUNDING.

PORTABLE GENERATOR EXTENSION CORD
FOR 240V TO 240V IS PROVIDED AS WELL
AS A 120V TO 240V ADAPTER.

ALL LIGHTS TO BE 12" ROUNDELS.

= = = = = 4" X 80' CONDUIT

LIGHTS: LED LIGHTS

xx = BELL

TRK 1 ISLAND DISTANCE 153' MINIMUM 120' REQUIRED

TRK 2 ISLAND DISTANCE 153' MINIMUM 120' REQUIRED

TRK 3 ISLAND DISTANCE 153' MINIMUM 120' REQUIRED

PREFERRED ISLAND WIRE CONNECTIONS
ARE A MINIMUM 50' FROM EDGE OF ROAD

OFFSET AND ISLAND DISTANCES
TO BE VERIFIED BY FIELD

W(S) ← ○ → E(N)

CONSTRUCTION NOTES:

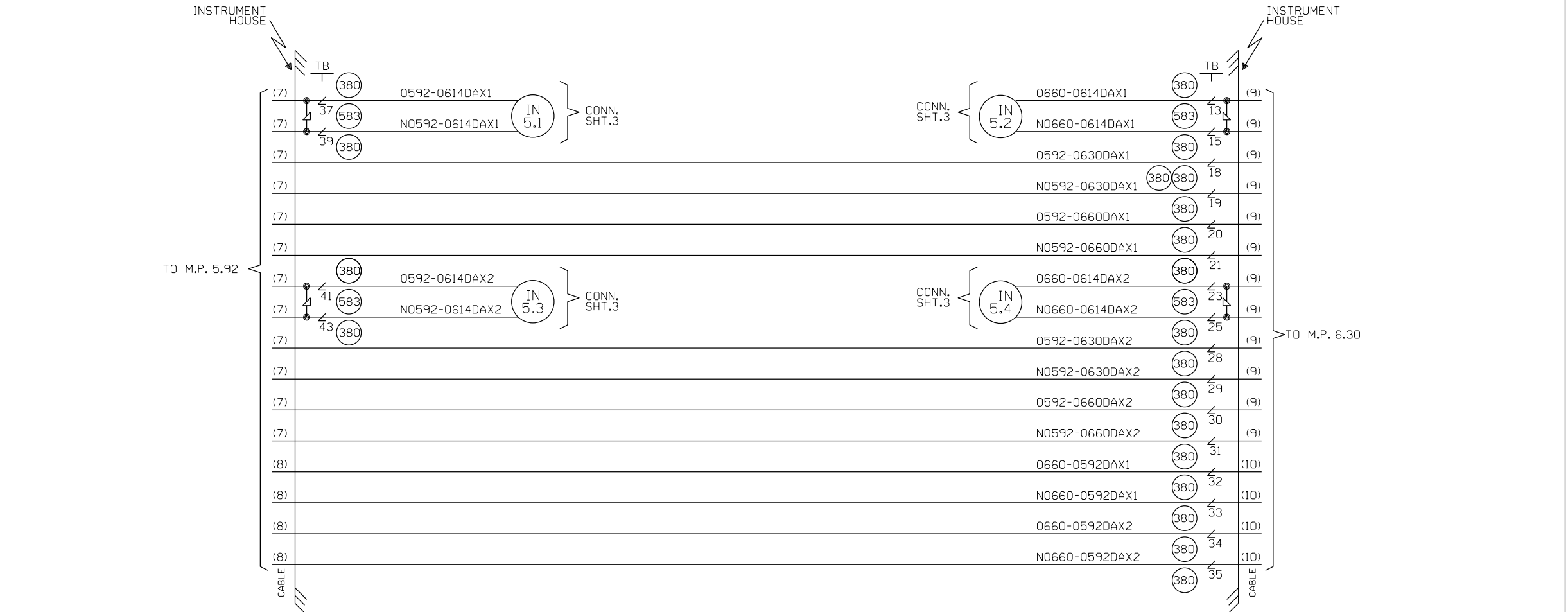
- 1.) INSTALL AS A CORRIDOR PROJECT WITH BANCROFT WAY
M.P. 5.92 (W0#60487)
- 2.) ORDER THE FOLLOWING FOR THIS LOCATION:
(1) 80413 RIO MODULE FOR THE GCP-5000
(1) TAB 701 PSO 4000 TRANSMITTER 2140HZ
- 3.) ORDER THE FOLLOWING FOR M.P. 6.30:
(1) TAB 702 PSO 4000 RECEIVER 2140HZ
(1) SIEMENS PART #7A355 2140HZ TUNED RECEIVER COUPLER
(2) TAB 641 NBS'S (430HZ) AND INSTALL 1 AT THE END OF EACH OF THE
DRILL TRACK APPROACHES REPLACING THE EXISTING HWS'S.
- 4.) ORDER (1) TAB 640 NBS (156HZ) AND INSTALL AT THE END OF THE EASTBOUND
DRILL TRACK APPROACH FOR M.P. 6.60, REPLACING THE EXISTING HWS'S.
- 5.) * = FIELD VERIFY DISTANCE

MATERIAL NOTES: DELETE UPON "AC"

⊗ 6X8 6X8 ALUMINUM CABIN
U.P. PART #520-0185

NEW SHEET

					Designed: 09/13/22	MODIFICATION LEVEL		CIRCUIT MODIFICATIONS ARE NOT TO BE MADE WITHOUT AUTHORITY FROM THE OFFICE OF SIGNAL DESIGN	Date: 09/13/22	UNION PACIFIC RAILROAD		Sh.: 1	
					INSTALL NEW HOUSE, GATES, FLASHERS AND CWT AT M.P. 6.14 CORRIDOR PROJECT WITH W0# 60487 Rev'd: 15 W0# 60469 IS: /NST/ANM	O. A. LAST LEVEL CHECKED	DW		Des: NST	BERKELEY, CALIFORNIA		DOT 751177P	
						LAST LEVEL MOD THIS TYPICAL	DW		Chk:	3RD STREET AND ADDISON STREET		MP: 6.14	
						LAST LEVEL BY DESIGNER	DW		A/E: 60469	MARTINEZ SUBDIVISION		ID: 0910614.1X	
											Office of AVP Engineering - Signal		
					CHANGED FROM TYPICAL?		Y						
					REV 03.28.22 5K 2TKUGTYP.1								



CABLE TABULATION

CABLE NO. 7 12C*14 U.G.B.T. HOUSE TO M.P. 5.92
CABLE NO. 8 7C*14 U.G.B.T. HOUSE TO M.P. 5.92
CABLE NO. 9 12C*14 U.G.B.T. HOUSE TO M.P. 6.30
CABLE NO. 10 7C*14 U.G.B.T. HOUSE TO M.P. 6.30

NEW SHEET

					Designed: 09/13/22		Date: 09/13/22		UNION PACIFIC RAILROAD		Sh.: 1A
INSTALL NEW HOUSE, GATES, FLASHERS AND CWT AT M.P. 6.14 CORRIDOR PROJECT WITH WO# 60487 Rec#: 156 W0# 60469 /NST/ANM					MODIFICATION LEVEL		CIRCUIT MODIFICATIONS ARE NOT TO BE MADE WITHOUT AUTHORITY FROM THE OFFICE OF SIGNAL DESIGN		BERKELEY, CALIFORNIA		DOT 751177P
					O. A. LAST LEVEL CHECKED		DW		3RD STREET AND ADDISON STREET		MP: 6.14
					LAST LEVEL MOD THIS TYPICAL		DW		MARTINEZ SUBDIVISION		ID: 0910614.1AX
					LAST LEVEL BY DESIGNER		DW		Office of AVP Engineering - Signal		
					CHANGED FROM TYPICAL?		Y		AFE: 60469		
					REV 03.28.22 5K 2TKUGTYP.1				Omaha, Nebraska		

**EXHIBIT F
TO
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

Exhibit F (if applicable) will be the annual signal maintenance fee

Page 45 of 91
AREMA UNIT STATEMENT OF RAILROAD-HIGHWAY GRADE CROSSING SIGNALS
ESTIMATED MAINTENANCE COSTS



BUILDING AMERICA®

FOR PID # 115302
BY THE UNION PACIFIC RAILROAD

STREET	3rd ST & ADDISON ST
TOWN	BERKELEY, CALIFORNIA
MILEPOST	6.14
SUBDIVISION	MARTINEZ
AAR/DOT NO.	751177P
WORK ORDER#	60469

DESCRIPTION	VALUE	QUANTITY	UNITS
NON-CODED TRK. CIRCUIT (Standalone AFTAC or Ring 10)	2	0	0
SUPERIMPOSED CIRCUIT(AFTAC) / DETECTION LOOP	2	0	0
HIGHWAY GRADE CROSSING SIGNAL (FRONT LIGHTS)	2	5	10
ADDITIONAL PAIR OF LIGHTS (OTHER THAN FRONT LIGHTS)	1	4	4
GATE MECHANISM, AUTOMATIC WITH ARM UP TO 26 FT	8	1	8
GATE MECHANISM, AUTOMATIC WITH ARM OVER 26 FT	10	1	10
GCP/HXP (constant warning device, per track circuit)	15	3	45
EXIT GATE MANAGEMENT SYSTEM RACK*	10	0	0
MOVEMENT DETECTOR (PMD)	6	0	0
MOVEMENT DETECTOR (STANDBY UNIT)	3	0	0
RADIO DATA LINK, PER UNIT	1	0	0
PREEMPTION CIRCUIT	2	0	0
DATA RECORDER	1	0	0
REMOTE MONITORING DEVICE (SEAR, ETC)*	2	1	2
BONDED RAIL JOINTS (per mile, each rail, single bonded)	1	0	0
BATTERY AND CHARGER (per set)	1	2	2

TOTAL UNIT COUNT **81**

PAVEMENT RESTORATION COSTS **(Actual)**

Annual Maintenance Cost at \$278.25/Unit **\$22,538**

*UP supplied Unit Value

June 5, 2023

UP Real Estate Project No.: 0783795

PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT

Bancroft Way
DOT 751176H
MP 5.92 – Martinez Subdivision
Berkeley, Alameda County, California

THIS AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 20____ ("Effective Date"), 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 ("Railroad") and **CITY OF BERKELEY**, a municipal corporation or political subdivision of the State of California to be addressed at 1947 Center Street, 2nd Floor, Berkeley, California 94704 ("Political Body").

RECITALS:

Presently, the Political Body utilizes the Railroad's property for the existing at grade public road crossing over Bancroft Way, DOT Number 751176H at Railroad's Milepost 5.92 on Railroad's Martinez Subdivision at or near Berkeley, Alameda County, California.

The Political Body now desires to undertake as its project (the "Project") the reconstruction and widening of the existing at grade public road crossing to accommodate the reconstruction of sidewalks and installation of delineators as medians. The road crossing, as reconstructed and widened is hereinafter the "Roadway."

The Railroad right of way being utilized for the existing at grade public road crossing is not sufficient to allow for the reconstruction and widening of the Roadway. Therefore, under this Agreement, the Railroad will be granting additional rights to the Political Body to facilitate the reconstruction and widening of the Roadway. The portion of Railroad's property that Political Body needs to use in connection with the Roadway (including the right of way being utilized for the existing at grade crossing) is shown on the Railroad's location print marked **Exhibit A** and the Political Body's type, size and location prints of the Project marked **Exhibit A-1**, with each exhibit being attached hereto and hereby made a part hereof (the "Crossing Area").

In support of its Project, the Political Body has requested the Railroad's cooperation in connection with upgrading grade crossing protection devices in accordance with the design schematic marked **Exhibit E**, hereto attached and hereby made a part hereof (the "Designs"). Said work is to be performed at the sole expense of Political Body.

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:

Section 1. EXHIBIT B

The general terms and conditions marked **Exhibit B**, are attached hereto and hereby made a part hereof.

Section 2. RAILROAD GRANTS RIGHT

For and in consideration of the sum of **THREE THOUSAND DOLLARS (\$3,000.00)** to be paid by the Political Body to the Railroad upon the execution and delivery of this Agreement and in further consideration of the Political Body's agreement to perform and comply with the terms of this Agreement, the Railroad hereby grants to the Political Body the right to construct, maintain and repair the Roadway over and across the Crossing Area.

Section 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, and others acting under its or their authority.

Section 4. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE

A. Prior to Contractor performing any work within the Crossing Area and any subsequent maintenance and 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.

B. The Railroad's current Contractor's Right of Entry Agreement is marked **Exhibit D**, 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:

Manager - Contracts
Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, Mail Stop 1690
Omaha, NE 68179-1690
UP Project No. 0783795

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.

Section 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.

Section 6. NO PROJECT EXPENSES TO BE BORNE BY RAILROAD

The Political Body agrees that no Project costs and expenses are to be borne by the Railroad. In addition, the Railroad is not required to contribute any funding for the Project.

Section 7. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO POLITICAL BODY; POLITICAL BODY'S PAYMENT OF BILLS

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 Estimates dated May 31, 2023, and June 7, 2023, marked **Exhibit C**, and October 4, 2023 marked **Exhibit C-1**, with each exhibit being attached hereto and hereby made a part hereof (the "Estimates"). As set forth in the Estimates, the Railroad's estimated cost for the Railroad's work associated with the Project is One Million Four Thousand Five Hundred Forty Four Dollars (\$1,004,544.00).

B. The Railroad, if it so elects, may recalculate and update the Estimates 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 Estimates.

C. The Political Body acknowledges that the Estimates may not include any estimate of flagging or other protective service costs that are to be paid by the Political Body or the Contractor in connection with flagging or other protective services provided by the Railroad in connection with the Project. All of such costs incurred by the Railroad are to be paid by the 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 Railroad shall send progressive billing to the Political Body during the Project and final billing to the Political Body within one hundred eighty (180) days after receiving written notice from the Political Body that all Project work affecting the Railroad's property has been completed.

E. The Political Body agrees to reimburse the Railroad within thirty (30) days of its receipt of billing from 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, all actual costs of engineering review (including preliminary engineering review costs incurred by Railroad prior to the Effective Date of this Agreement), construction, inspection, flagging (unless flagging costs are to be billed directly to the Contractor), procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead labor/construction costs including Railroad's standard additive rates.

Section 8. PLANS

A. The Political Body, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Project and the Structure and submit such plans and specifications to the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, for prior review and approval. The plans and specifications shall include all Roadway layout specifications, cross sections and elevations, associated drainage, and other appurtenances.

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. The Railroad's review and approval of the Plans will in no way relieve 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 warranty 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.

Section 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 Section 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 Section 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.

Section 10. EFFECTIVE DATE; TERM; TERMINATION

A. This Agreement is effective as of the Effective Date first herein written and shall continue in full force and effect for as long as the Roadway 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 Effective Date.

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.

Section 11. 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:

- (i) The Railroad and Political Body have executed this Agreement.
- (ii) The Railroad has provided to the Political Body the Railroad's written approval of the Plans.
- (iii) 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 required under the Contractor's Right of Entry Agreement.
- (iv) Each Contractor has given the advance notice(s) required under the Contractor's Right of Entry Agreement to the Railroad Representative named in the Contractor's Right of Entry Agreement.

Section 12. FUTURE PROJECTS

Future projects involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the Roadway 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.

Section 13. ASSIGNMENT; SUCCESSORS AND ASSIGNS

A. Political Body shall not assign this Agreement without the prior written consent of Railroad.

B. 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.

Section 14. 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 directing 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 11 of **Exhibit B** of this Agreement.

Section 15. TERMINATION OF ORIGINAL AGREEMENT

Upon the completion of the Roadway, the original agreement either governing currently, or any agreement to be found in the future at the existing at-grade crossing, shall terminate and the terms and conditions of this Agreement shall govern the use, maintenance and repair of the Roadway.

Section 16. ANNUAL SIGNAL MAINTENANCE FEE

A. Effective as of three years from effective date of this Agreement or the date of installation and/or the in-service date of the new and/or improved or existing Grade Crossing Signal System(s) ("Signal System"), the Political Body, in addition to maintaining at its sole cost and expense the portion of the Roadway described in Section 2 of **Exhibit B**, agrees to pay to Railroad the sum of Thirty Thousand Three Hundred Twenty Nine Dollars (\$30,329.00) per annum, payable annually in advance, as payment for Railroad's maintenance of the Signal System that is installed at the Roadway. The annual signal maintenance fee is calculated as shown on the attached **Exhibit F**, attached hereto and made a part hereof.

B. The above annual signal maintenance fee for Railroad's maintenance of the Signal System is based on the number of current signal units installed at the Roadway. If the Signal System is improved and/or altered in any way, the Political Body must notify the Railroad in writing and the annual signal maintenance fee will be increased at a rate based on the American Railway Engineering and Maintenance of Way Association (AREMA) signal unit cost index. If the Political Body fails to notify Railroad of any improvement or alteration to the Signal System, the Railroad may increase the annual

signal maintenance fee at a rate based on the AREMA signal unit cost index any time after the date of installation and/or improvement of the Signal System. The signal unit base for the annual signal maintenance fee may also be re-determined by the Railroad at any time subsequent to the expiration of five (5) years following the date on which the annual signal maintenance fee was last determined or established. Any such changes in the annual signal maintenance fee referenced in Article 2 may be made by means of automatic adjustment in billing.

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

UNION PACIFIC RAILROAD COMPANY

(Federal Tax ID #94-6001323)

By: _____

Printed Name: _____

Title: _____

CITY OF BERKELEY

By: _____

Printed Name: _____

Title: _____

**EXHIBIT A
TO
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

Exhibit A will be a print showing the Crossing Area (see Recitals)

LEGEND:

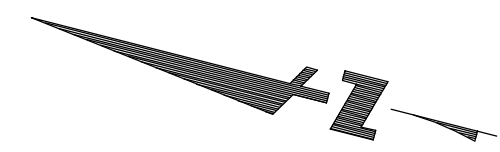
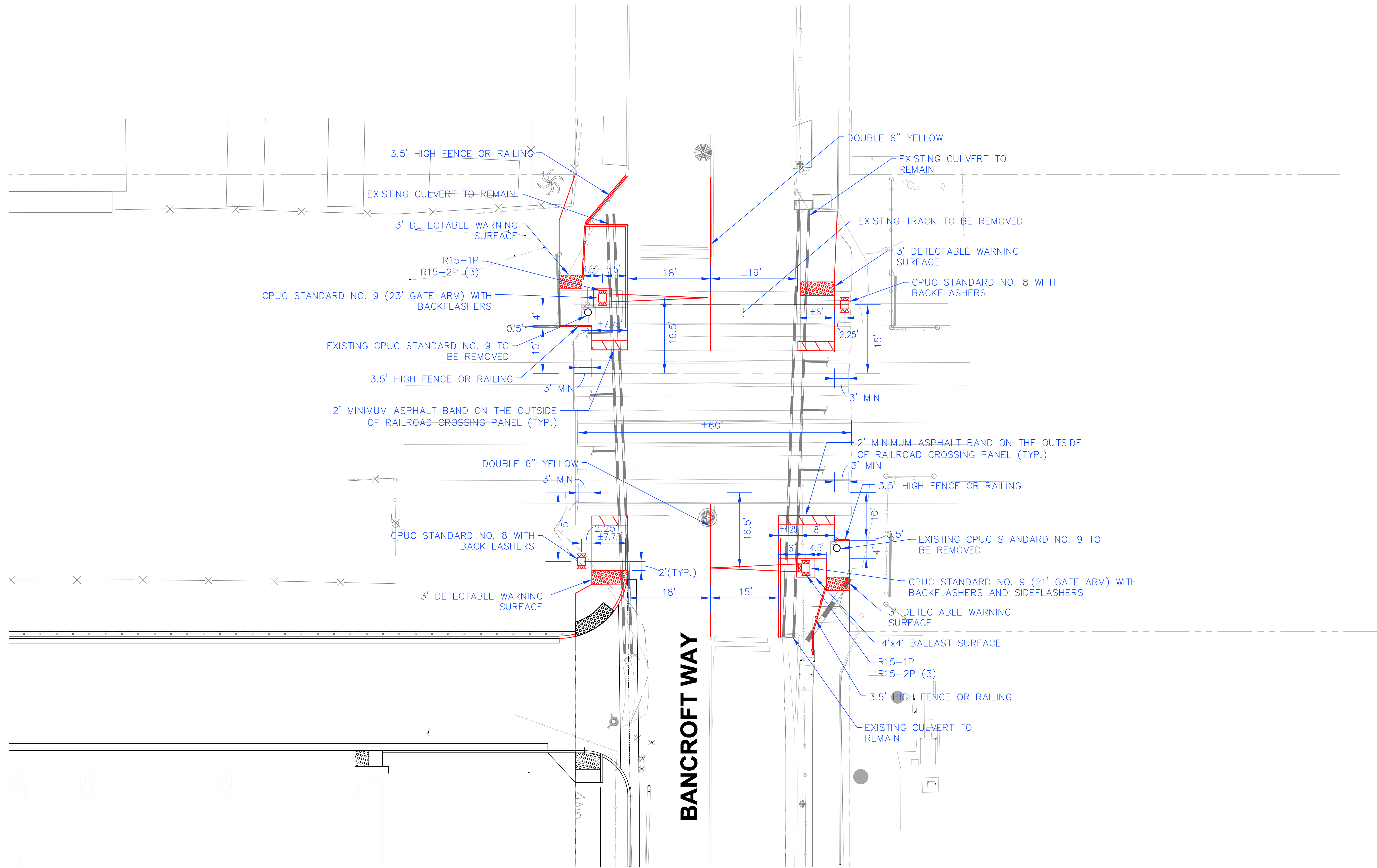
PROPOSED IMPROVEMENTS



BANCROFT STREET RAILROAD CROSSING IMPROVEMENTS
BERKELEY COMMONS RAILROAD IMPROVEMENTS

**EXHIBIT A-1
TO
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

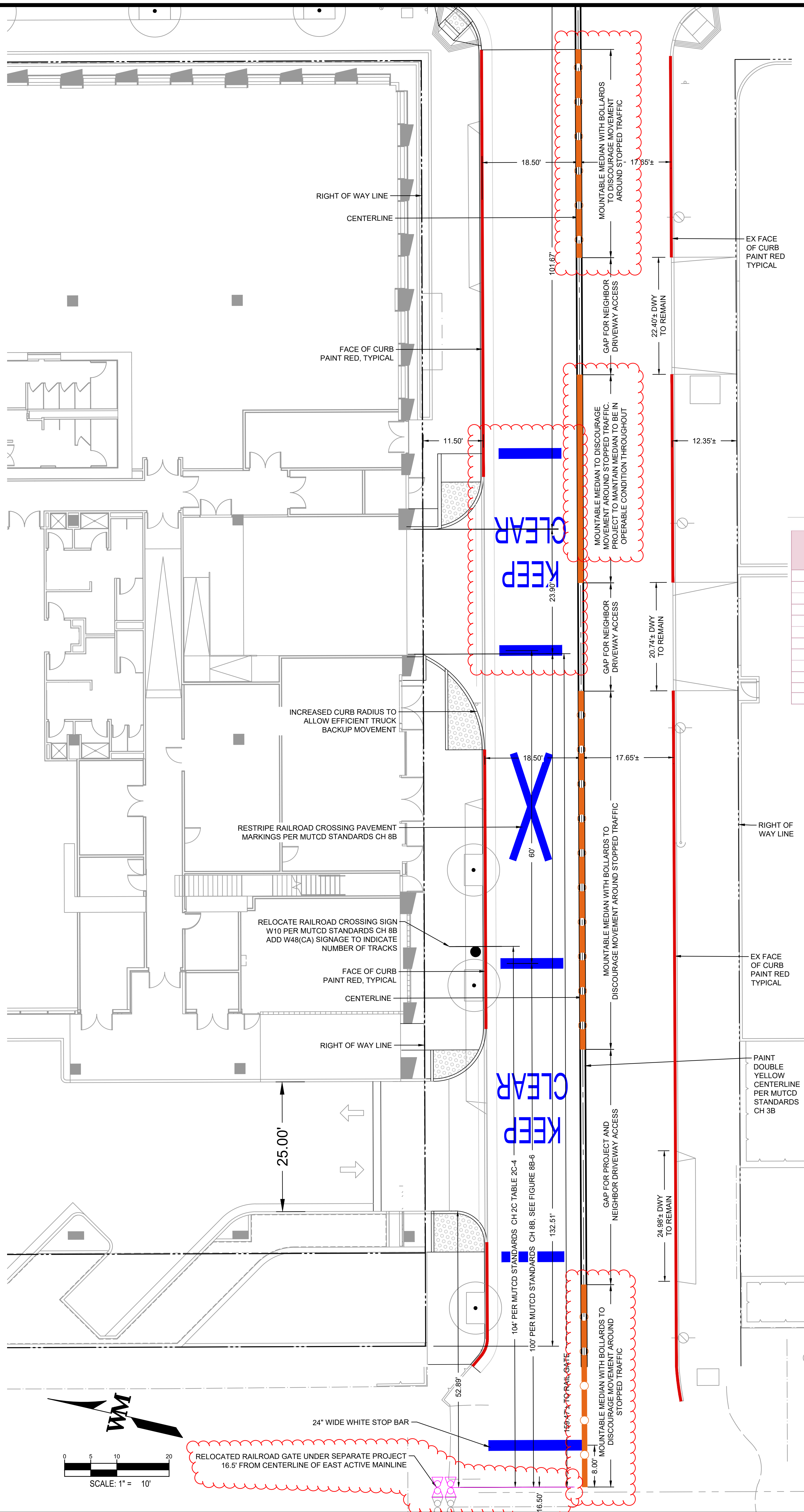
Exhibit A-1 will be the Political Body's type, size and location prints of the Project (see Recitals)



DRAWING NAME: BKF-210423-019-01-1-Bancroft Way - Common, COBENANCE 2408173-Bancroft Crossing-Bancroft RR Substation
PLOT DATE: 08/08/22 PLOTTED BY: lsa

COPYRIGHT © 2021 BKF ENGINEERS

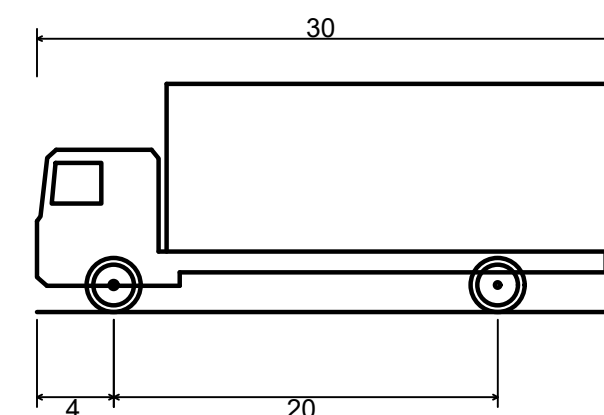
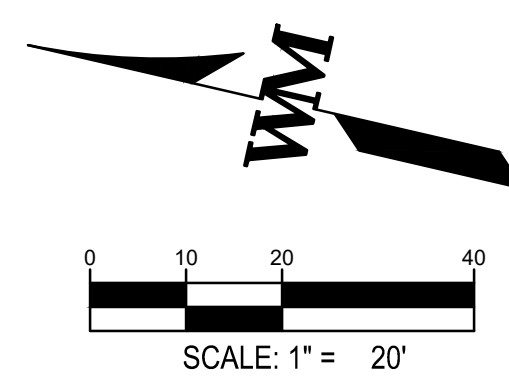
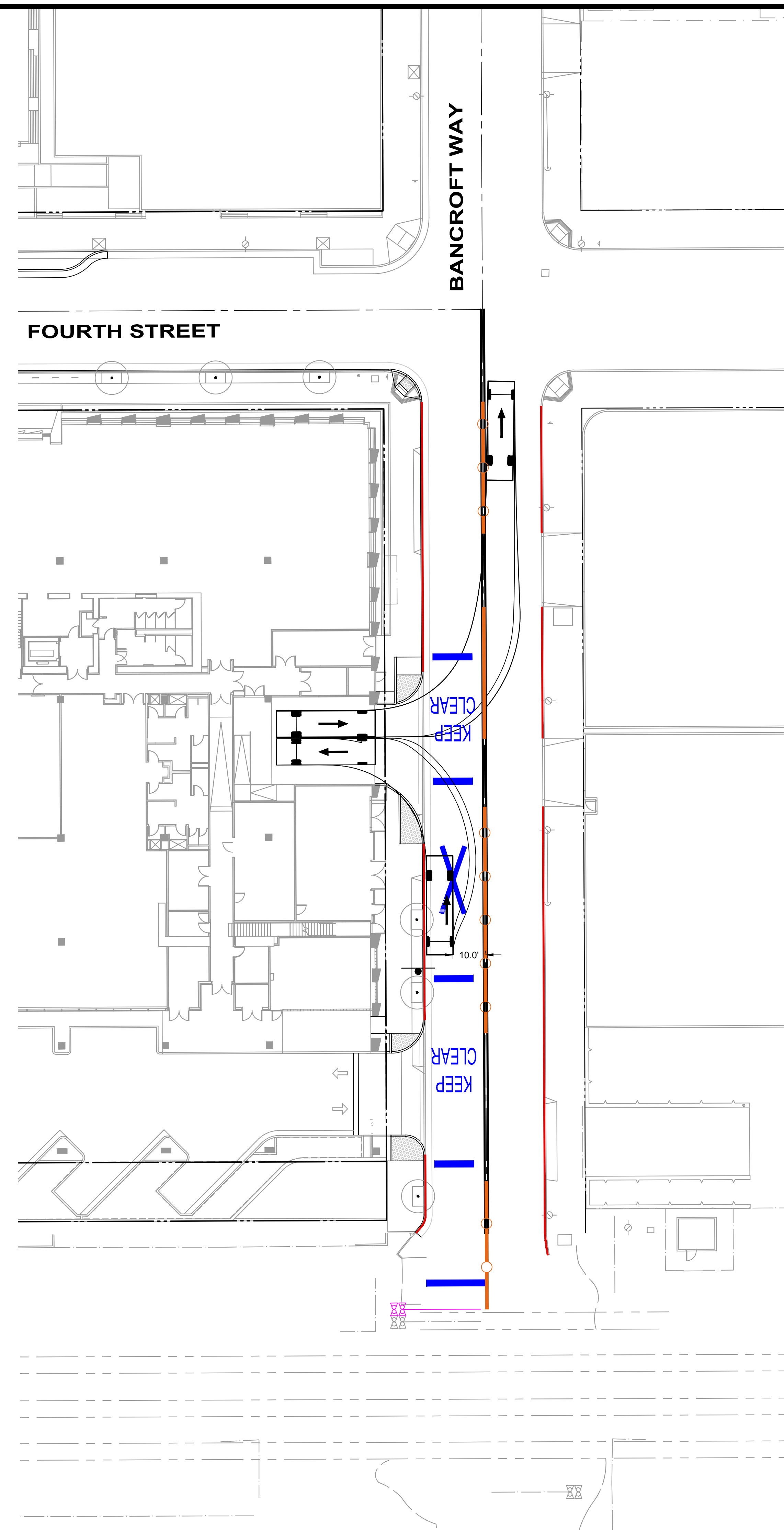
PRELIMINARY NOT FOR CONSTRUCTION	
DATE: 08/08/2022	
BKF ENGINEERS 255 SHORELINE DRIVE SUITE 200 REDWOOD CITY, CA 94065 (650) 482-6300 www.bkf.com	
BKF	
BERKELEY COMMONS RAILROAD IMPROVEMENTS BANCROFT WAY CITY OF BERKELEY, ALAMEDA COUNTY	
CPUC LAYOUT EXHIBIT	
Revisions	
No.	
Date: 8/8/2022	
Scale: AS SHOWN	
Design: JW	
Drawn: AJ	
Approved: JB	
Job No: 20191091	
Drawing Number:	
OF	



The diagram shows a cross-section of a roadway with a center line and two-lane approach. Key features include:

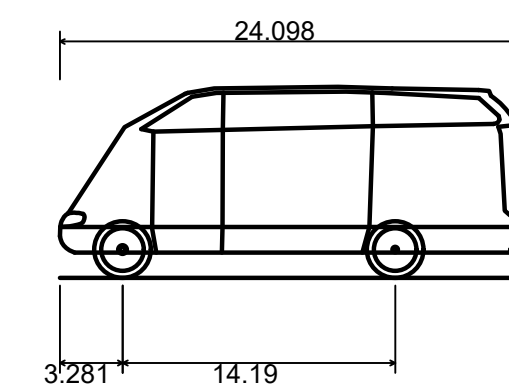
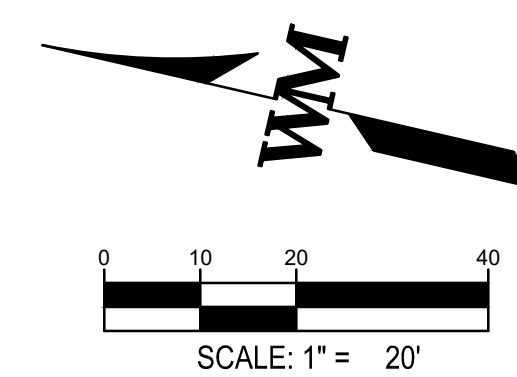
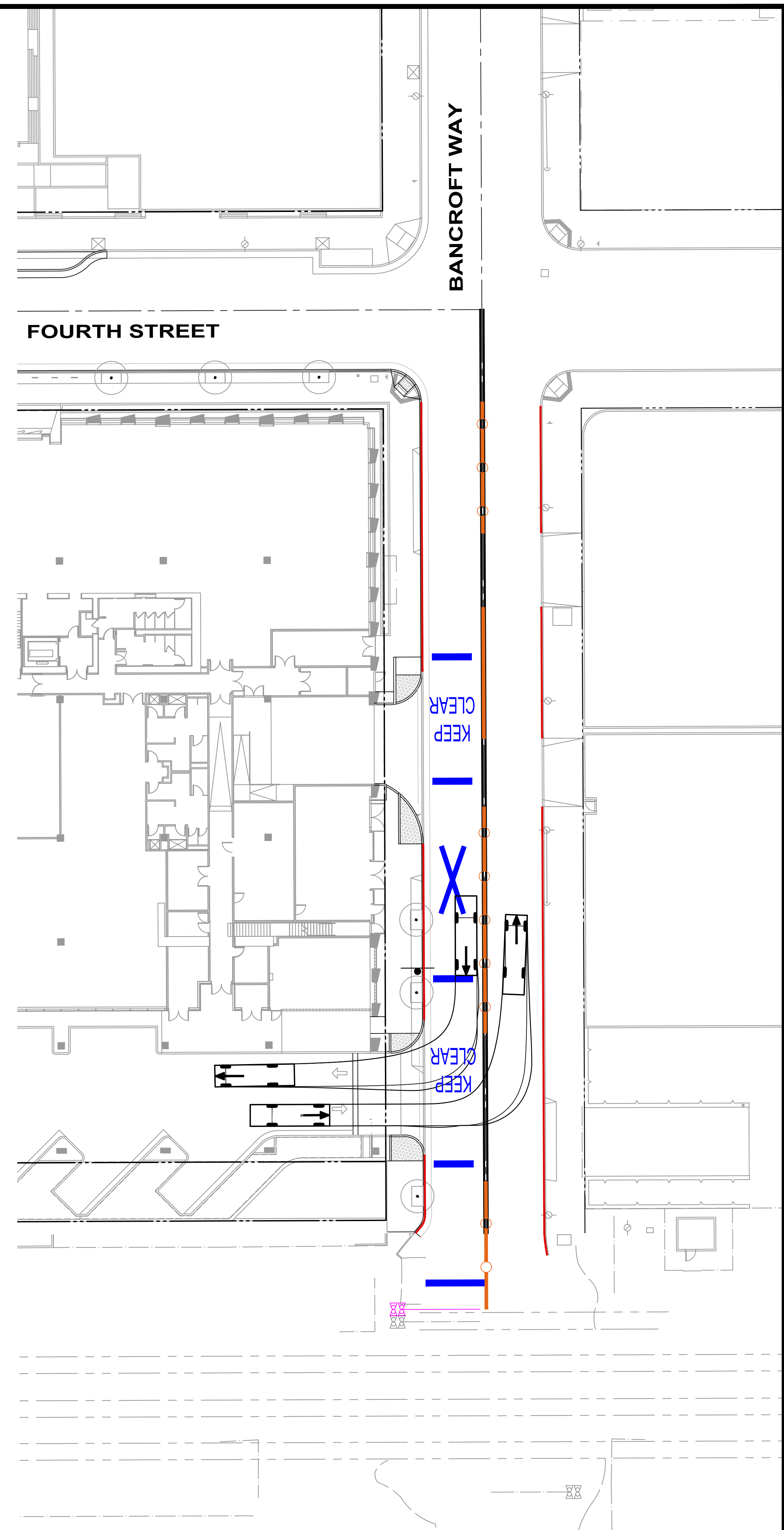
- Dynamic envelope pavement marking (optional):** Indicated by a dashed line on the center line.
- Direction of travel:** Indicated by an arrow pointing right.
- Three-lane roadway:** Marked with a center line for two-lane approach operation on the approach to a grade crossing.
- Transverse lines:** Used at the grade crossing, yield lines may be used instead of stop lines if YIELD signs are used at the grade crossing.
- Stop line:** Approximately 6 ft upstream from gate (if present).
- Pavement Marking Symbol:** See Chapter 2C, Table 2C-4.
- Signs:**
 - Dynamic envelope pavement marking (optional): 24 inches.
 - Stop line: 24 inches.
 - Yield sign (if needed): 24 inches.
 - Advance Warning Sign (W10-1): 50 ft.
 - Supplemental pavement marking symbol(s): 24 inches.
 - No Passing Zone sign (optional): 24 inches.
- Note:** In an effort to simplify the figure to show warning sign and pavement marking placement, not all required traffic control devices are shown.

Posted or 85th-Percentile Speed	Advance Placement Distance ¹											
	Condition A: Speed reduction and lane changing in heavy traffic ²	Condition B: Deceleration to the listed advisory speed (mph) for the condition										
		0 ³	10 ⁴	20 ⁴	30 ⁴	40 ⁴	50 ⁴	60 ⁴	70 ⁴			
20 mph	225 ft	100 ft ⁵	N/A ⁶	—	—	—	—	—	—	—	—	
25 mph	325 ft	100 ft ⁵	N/A ⁶	N/A ⁵	—	—	—	—	—	—	—	
30 mph	400 ft	100 ft ⁵	N/A ⁶	N/A ⁵	—	—	—	—	—	—	—	
35 mph	565 ft	100 ft ⁵	N/A ⁶	N/A ⁵	N/A ⁵	—	—	—	—	—	—	
40 mph	675 ft	125 ft ⁵	100 ft ⁶	100 ft ⁶	N/A ⁵	—	—	—	—	—	—	
45 mph	775 ft	175 ft	125 ft	100 ft ⁶	100 ft ⁶	N/A ⁵	—	—	—	—	—	
50 mph	885 ft	250 ft	200 ft	175 ft	125 ft	100 ft ⁶	—	—	—	—	—	
55 mph	990 ft	325 ft	275 ft	225 ft	200 ft	125 ft	N/A ⁵	—	—	—	—	
60 mph	1,100 ft	400 ft	350 ft	325 ft	275 ft	200 ft	100 ft ⁶	—	—	—	—	
65 mph	1,200 ft	475 ft	450 ft	400 ft	350 ft	275 ft	200 ft	100 ft ⁶	—	—	—	
70 mph	1,250 ft	550 ft	525 ft	500 ft	450 ft	375 ft	275 ft	150 ft	—	—	—	
75 mph	1,350 ft	650 ft	625 ft	600 ft	550 ft	475 ft	375 ft	200 ft	100 ft ⁶	—	—	



SU - Single Unit Truck	
Overall Length	30.000ft
Overall Width	8.000ft
Overall Body Height	11.881ft
Min Body Ground Clearance	1.367ft
Track Width	8.000ft
Lock-to-lock time	5.00s
Curb to Curb Turning Radius	42.000ft

DETAIL 2 - SU-30 TRUCK MOVEMENT AT LOADING DOCK



Mercedes Sprinter Panel Van 518CDI Extra Long Super High Roof	
Overall Length	24.098ft
Overall Width	6.539ft
Overall Body Height	9.942ft
Min Body Ground Clearance	1.312ft
Track Width	6.539ft
Lock-to-lock time	5.00s
Wall to Wall Turning Radius	25.591ft

DETAIL 1 - DELIVERY TRUCK MOVEMENT AT DRIVEWAY

THESE DRAWINGS AND SPECIFICATIONS ARE THE PROPERTY AND COPYRIGHT OF WARE MALCOMB AND SHALL NOT BE USED ON ANY OTHER WORK EXCEPT BY AGREEMENT WITH WARE MALCOMB. WRITTEN DIMENSIONS SHALL TAKE PRECEDENCE OVER SCALED DIMENSIONS AND SHALL BE VERIFIED ON THE JOB SITE. ANY DISCREPANCY SHALL BE BROUGHT TO THE NOTICE OF WARE MALCOMB PRIOR TO THE COMMENCEMENT OF ANY WORK.

4683 chabot dr
suite 300
pleasanton, ca 94566
p 925.244.9620
waremalcomb.com

WARE MALCOMB
CIVIL ENGINEERING

FOR AND ON BEHALF
OF WARE MALCOMB

747 BANCROFT
BERKELEY, CALIFORNIA

[illegible]

JOB NO.:	SNR21-4002
PA / PM:	M. MURPHY
DESIGNED:	STAFF
DATE:	JUNE 2023
PLOT DATE:	6/02/23

SHEET

EX-1.1

Sheet 1 of 1

EXHIBIT B
TO
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT

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 the event the Railroad shall place additional tracks upon the Crossing Area, the Political Body shall, at its sole cost and expense, modify the Roadway to conform with all tracks within the Crossing Area.

C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, 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's 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; and the right to cross the Crossing Area with all kinds of equipment.

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 Roadway 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 ROADWAY

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 Roadway and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper highway warning devices (except those installed by the Railroad within its right of way) and all necessary drainage facilities, guard rails or barriers, and right of way fences between the Roadway 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 Roadway 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 compliance with the Plans, 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. 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 damages on account of any delay shall be made against the Railroad by the State and/or the Contractor.

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 the 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 shall, at its own sole expense, maintain, repair, and renew, or cause to be maintained, repaired and renewed, the entire Crossing Area and Roadway, except the portions between the track tie ends, which shall be maintained by the Railroad at the Political Body's expense.

B. If, in the future, the Political Body elects to have the surfacing material between the track tie ends, or between tracks if there is more than one railroad track across the Crossing Area, replaced with paving or some surfacing material other than timber planking, the Railroad, at the Political Body's expense, shall install such replacement surfacing, and in the future, to the extent repair or replacement of the surfacing is necessitated by repair or rehabilitation of the Railroad's tracks through the Crossing Area, the Political Body shall bear the expense of such repairs or replacement.

SECTION 6. CHANGES IN GRADE

If at any time the Railroad shall elect, or be required by competent authority to, raise or lower the grade of all or any portion of the track(s) located within the Crossing Area, the Political Body shall, at its own expense, conform the Roadway to conform with the change of grade of the trackage.

SECTION 7. REARRANGEMENT OF WARNING DEVICES

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

SECTION 8. 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 Roadway, 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 Roadway 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 to the Railroad 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 visit up.com/CBUD to complete and submit the required form to determine if fiber optic cable is buried anywhere on Railroad's property 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 9. 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 new or improved devices have been installed.

SECTION 10. 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 11. 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 12. 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 Roadway 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 Roadway 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 13. 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
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

Exhibit C (if applicable) will be Railroad's Material and Force Agreement Estimates.

Material And Force Account Estimate

Berkeley

Estimate Number: 144048 Version: 1

Standard Rates: Labor Additive = 70%

Estimate Good Until 05/31/24

Location: MARTINEZ SUB, NO 1, 5.9-5.94
Description of Work: 751176H Bancroft Way Berkeley CA 5.92 Martinez Sub
Prepared For: Berkeley
Buy America: No

COMMENTS	FACILITY	Description	QTY	UOM	UCST	LABOR	MATERIAL	TOTAL	UP %0	Agcy %100
ENGINEERING										
		Engineering	1	LS	23,942.00	23,942	0	23,942	0	23,942
		Bill Prep Fee - Track Surface RECOLLECT	1	LS	900.00	0	900	900	0	900
		Homeline Freight - Track Surface RECOLLECT	1	LS	900.00	0	900	900	0	900
		Foreign Line Freight - Track Surface RECOLLECT	1	LS	1,276.02	0	1,276	1,276	0	1,276
Sub-Total =						23,942	3,076	27,018	0	27,018
TRACK CONSTRUCTION - COMPANY										
		Mobilization: Company	1	DA	11,450.00	11,450	0	11,450	0	11,450
Sub-Total =						11,450	0	11,450	0	11,450
TRACK REMOVAL - COMPANY										
	RDXING	Remove road crossing - concrete	40	TF	56.82	2,273	0	2,273	0	2,273
	TRACK	Remove Track	40	TF	22.28	891	0	891	0	891
Sub-Total =						3,164	0	3,164	0	3,164
SITE WORK - CONTRACT										
		Asphalt	1	LS	37,000.00	0	37,000	37,000	0	37,000
Sub-Total =						0	37,000	37,000	0	37,000
EQUIPMENT RENTAL										
		Equipment Rental	1	LS	25,000.00	0	25,000	25,000	0	25,000
Sub-Total =						0	25,000	25,000	0	25,000
Total Wgt. in Tons =						Totals =	38,556	65,076	103,632	0 103,632

Grand Total = \$103,632

Please Note: The above figures are estimates only and are subject to fluctuation. In the event of an increase or decrease in the cost or amount of material or labor required, Berkeley will pay actual construction costs at the current rates effective thereof.

Material And Force Account Estimate

Page 71 of 91

Lane Partners

Estimate Creation Date: 6/6/2023 Number: 144206 Version: 1

Estimate Good Until 06/07/24

Location: MARTINEZ SUB, NO 1, 2.33-7
Buy America: No

Description of Work: Martinez Sub MP 5.92 Berkeley, CA Bancroft Way DOT#751176H WO#60487 PID#119334
100% Recollectable

COMMENTS	FACILITY	Description	SubDivision	QTY	UOM	Unit Cost	LABOR	MATERIAL	TOTAL
SIGNAL									
		Xing - 2 Trk CWE w/Gates	MARTINEZ SUB	1	EA	152,876.00	48,800	104,076	152,876
		Xing - Flasher/Ped (pair)		1	LS	57,560.00	16,000	41,560	57,560
		Xing - IJ		2	PR	9,000.00	8,996	9,004	18,000
		Xing - IXS Track Circuit		2	EA	14,951.00	11,072	18,830	29,902
PPEC Project MGMT		Xing - Misc.		1	LS	15,000.00	0	15,000	15,000
		Xing - Semi-Bi Coupler		4	EA	898.00	0	3,592	3,592
		Xing - Sidelight		1	EA	907.00	0	907	907
		Xing - Track Card (Main and Stand-by) New Cable		3	EA	12,889.00	18,000	20,667	38,667
		Xing - Track Filter/Battery Choke		8	EA	240.00	0	1,920	1,920
		Xing - Dax Cable 1000'		7	EA	6,440.00	28,000	17,080	45,080
		Gang Day - 5 Man		2	EA	5,500.00	11,000	0	11,000
Security Fencing		Xing - Misc.		1	LS	16,000.00	0	16,000	16,000
		Xing - Remove Location (Gates)		1	LS	2,000.00	2,000	0	2,000
		Xing - Engineering Design		1	LS	17,897.83	17,898	0	17,898
		Xing - Boring		1	LS	10,000.00	0	10,000	10,000
		Xing - Fill/Rock/Gravel		1	LS	60,000.00	0	60,000	60,000
Standard 224.45%		Xing - Labor Additive		1	LS	363,086.00	363,086	0	363,086
		Xing - Meter Service		1	LS	5,000.00	0	5,000	5,000
Sub-Total =							524,852	323,636	848,488

PROJECT LEVEL COST

5%	CONTINGENCIES	Contingency		5	%	8,484.88	26,243	16,182	42,424
Sub-Total =							26,243	16,182	42,424

Totals = 551,094 339,818 890,912

Grand Total = \$890,912

Disclaimer: This is a preliminary estimate, intended to provide a ballpark cost to determine whether a proposed project warrants further study. 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 C-1

**ESTIMATE OF FORCE ACCOUNT WORK
BY THE
UNION PACIFIC RAILROAD COMPANY**

DESCRIPTION OF WORK: Engineering and other related services for work to be performed within railroad right of way. This includes project and construction management during construction activities in railroad right of way. All necessary railroad services will be billed at actual cost.

DATE: 10/4/2023

LOCATION: Berkeley, CA DOT: 751176H	SUBDIVISION Martinez					STATE: CA	
DESCRIPTION	LABOR		MATERIAL		UP %0	Agency % 100	TOTAL
ENGINEERING							
Project Management	\$	4,000	\$	-	\$	-	\$ 4,000.00 \$ 4,000
Construction Management	\$	5,000	\$	-	\$	-	\$ 5,000.00 \$ 5,000
Final Inspection	\$	1,000	\$	-	\$	-	\$ 1,000.00 \$ 1,000
FLAGGING / INSPECTION SERVICES							
RATE (per day)	\$	1,500					
TOTAL PROJECT:	\$	10,000	\$	-	\$	-	\$ 10,000.00 \$10,000

TOTAL ESTIMATED COST: \$10,000

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

Flagging is NOT included in this estimate. Agencies are instructed to follow Union Pacific's Third Party Flagging Policy.

Please utilize the following link to Union Pacific's Third Party Flagging Policy:

https://www.up.com/real_estate/third-party-flagging/index.htm

EXHIBIT D
TO
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT
CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ day of _____, 20____, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and _____, a _____ corporation ("Contractor").

RECITALS:

Contractor has been hired by _____ to perform work relating to _____ (the "Work") with all or a portion of such Work to be performed on property of Railroad in the vicinity of Railroad's Milepost _____ on Railroad's _____ [Subdivision or Branch] [at or near DOT No. _____] located at or near _____, in _____ County, State of _____, as such location is in the general location shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof, which Work is the subject of a contract dated _____ between Railroad and _____.

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

AGREEMENT:

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

ARTICLE 1 - DEFINITION OF CONTRACTOR.

For purposes of this agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. For purposes of clarity, Contractor agrees that any CIC (defined below) hired by Contractor is a subcontractor of Contractor and therefore included in the defined term Contractor pursuant to the foregoing sentence.

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 AND C.

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

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

A. Contractor shall bear any and all costs and expenses associated with any Work performed by Contractor (including without limitation any CIC), 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"):

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 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 and throughout the entire term of this Agreement, Contractor, at its expense, shall procure and maintain in full force and effect the types and minimum limits of insurance specified in **Exhibit C** of this agreement and require each of its subcontractors to include the insurance endorsements as required under Section 12 of **Exhibit B** of this agreement.

B. Not more frequently than once every two (2) years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

C. Upon request of Railroad, Contractor shall provide to Railroad a certificate issued by its insurance

Contractor's Right of Entry Public
Projects Form Approved 02/09/2022

carrier evidencing the insurance coverage required under **Exhibit B**.

D. Contractor understands and accepts that the terms of this Article are wholly separate from and independent of the terms of any indemnity provisions contained in this Agreement.

E. Upon request of Railroad, insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

Union Pacific Railroad Company

[Insert mailing address]

Attn: _____
Project No. 0783795

ARTICLE 8 - PRECONSTRUCTION MEETING

If the Work to be performed by the Contractor will involve the Railroad providing any flagging protection (or if a CIC is approved to provide flagging protection pursuant to the terms set forth herein) and/or there is separate work to be performed by the Railroad, the Contractor confirms that no work shall commence until the Railroad and Contractor participate in a preconstruction meeting involving flagging procedures and coordination of work activities of the Contractor and the Railroad (and any CIC, as applicable.)

ARTICLE 9. 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 10. ADMINISTRATIVE FEE

Upon the execution and delivery of this agreement, Contractor shall pay to Railroad One Thousand Twenty Five Dollars (\$1,025.00) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this agreement.

ARTICLE 11. 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.

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ARTICLE 12.- 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

By: _____

Title: _____

(Name of Contractor)

By: _____

Name: _____

Title: _____

Phone: _____

E-Mail: _____

EXHIBIT A
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Exhibit A will be a print showing the general location of the work site.

LEGEND:

PROPOSED IMPROVEMENTS



BANCROFT STREET RAILROAD CROSSING IMPROVEMENTS
BERKELEY COMMONS RAILROAD IMPROVEMENTS

EXHIBIT B
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK - RAILROAD FLAGGING - PRIVATE FLAGGING.

A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its Work and at least thirty (30) 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.

B. 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 approved flagman is provided to watch for trains. Upon receipt of such thirty (30)-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.

C. Contractor shall be permitted to hire a private contractor to perform flagging or other special protective or safety measures (such private contractor being commonly known in the railroad industry as a contractor-in-charge ("CIC")) in lieu of Railroad providing such services or in concert with Railroad providing such services, subject to prior written approval by Railroad, which approval shall be in Railroad's sole and absolute discretion. If Railroad agrees to permit Contractor to utilize a CIC pursuant to the preceding sentence, Contractor shall obtain Railroad's prior approval in writing for each of the following items, as determined in all respects in Railroad's sole and absolute discretion: (i) the identity of the third-party performing the role of CIC; (ii) the scope of the services to be performed for the project by the approved CIC; and (iii) any other terms and conditions governing such services to be provided by the CIC. If flagging or other special protective or safety measures are performed by an approved CIC, Contractor shall be solely responsible for (and shall timely pay such CIC for) its services. Railroad reserves the right to rescind any approval pursuant to this Section 1, Subsection C., in whole or in part, at any time, as determined in Railroad's sole and absolute discretion.

D. If any flagging or other special protective or safety measures are performed by employees of Railroad and/or any contractor of 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.

E. If any flagging or other special protective or safety measures are performed by Railroad or a CIC, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this agreement.

F. The provisions set forth in this subsection are only applicable for Flagging Services performed by employees of Railroad: 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. If flagging is performed by Railroad, 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 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.

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 (whether recorded or unrecorded and 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 twenty-five (25) 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 visit www.up.com/CBUD to complete and submit the required form 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 any Work on Railroad property 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 then current safety standards located at the below web address ("Railroad's Safety Standards") 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 Railroad's Safety Standards to each of its employees before they enter Railroad property.

http://www.up.com/cs/groups/public/@uprr/@suppliers/documents/up_pdf_nativedocs/pdf_up_supplier_safety_req.pdf

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 FULLEST EXTENT ALLOWED BY APPLICABLE LAW, 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" on the subcontractor's Commercial General Liability policy and Umbrella or Excess policies (if applicable) 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 10, and CG 20 37 (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

Union Pacific Railroad Company
Insurance Requirements For
Contractor's Right of Entry Agreement

During the entire term of this Agreement and course of the Project, and until all Project Work on Railroad's property has been completed and all equipment and materials have been removed from Railroad's property and Railroad's property has been clean and restored to Railroad's satisfaction, Contractor shall, at its sole cost and expense, procure and maintain 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.

- D. Railroad Protective Liability** insurance. Contractor must maintain "Railroad Protective Liability" (RPL) 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. The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this agreement and shall describe all WORK or OPERATIONS performed under this agreement. Contractor shall provide this agreement to Contractor's insurance agent(s) and/or broker(s) and Contractor shall instruct such agent(s) and/or broker(s) to procure the insurance coverage required by this agreement. A BINDER STATING THE POLICY IS IN PLACE MUST BE SUBMITTED TO RAILROAD BEFORE THE WORK MAY COMMENCE AND UNTIL THE ORIGINAL POLICY IS FORWARDED TO UNION PACIFIC 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 included when the scope of the Work as defined in the agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

If required, coverage may be provided in separate policy form or by endorsement to Contractors CGL or RPL. Any form coverage must be equivalent to that provided in ISO form CG 24 15 "Limited Pollution Liability Extension Endorsement" or CG 28 31 "Pollution Exclusion Amendment" 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 business automobile, worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 10, and CG 20 37 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall not be limited by Contractor's liability under the indemnity provisions of this agreement. BOTH CONTRACTOR AND RAILROAD EXPECT THAT UNION PACIFIC RAILROAD COMPANY WILL BE PROVIDED WITH THE BROADEST POSSIBLE COVERAGE AVAILABLE BY OPERATION OF LAW UNDER ISO ADDITIONAL INSURED FORMS CG 20 10 AND CG 20 37.
- H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.
- 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 for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Contractor required in this agreement where prohibited by law. 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.

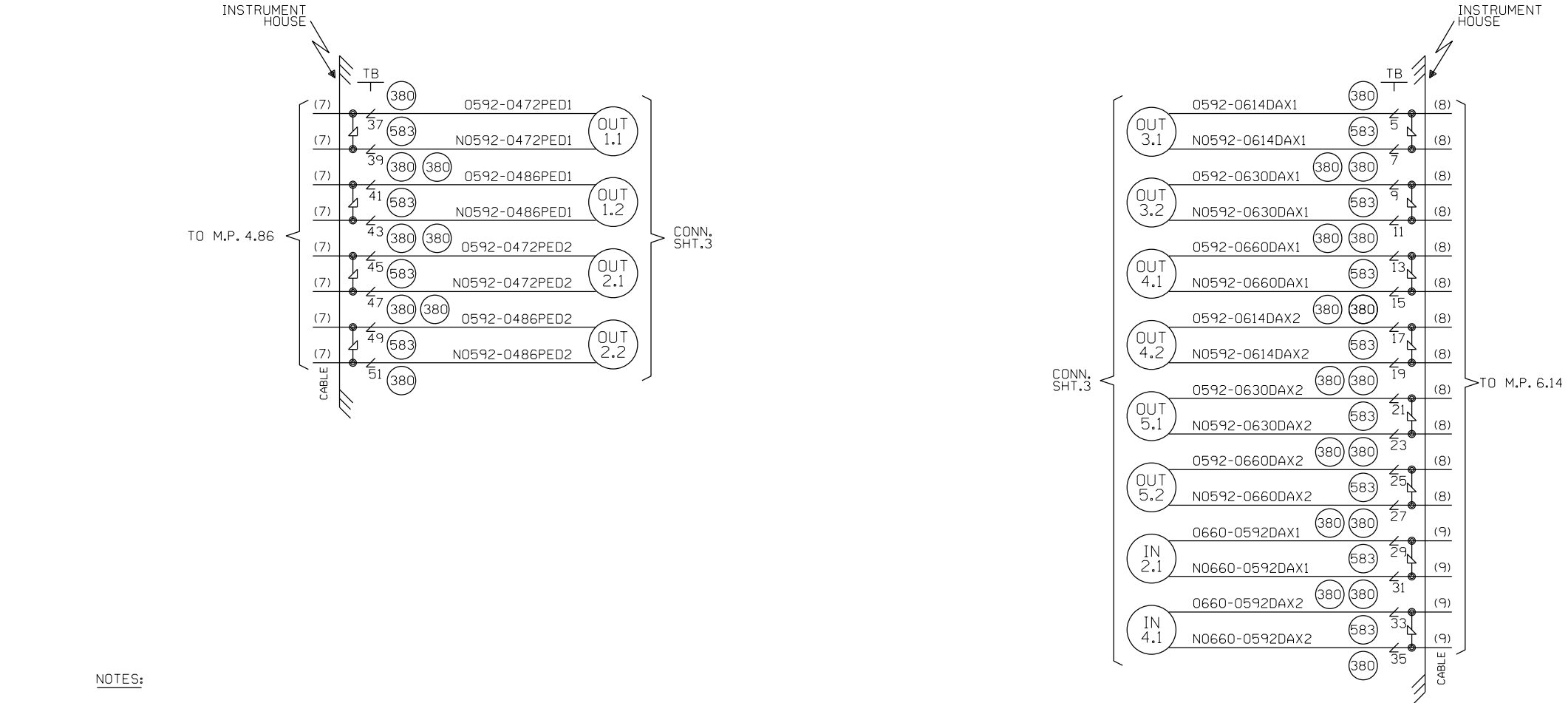
- K.** All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the Work is being performed.
- L.** The fact that insurance is obtained 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 E
TO
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

Exhibit E (if applicable) will be signal design schematic

NEW SHEET

Designed: 09/12/22 INSTALL NEW HOUSE, GATES, FLASHERS AND CUT AT M.P. 55.92 CORRIDOR PROJECT WITH W0* 60469 WO* 60487 Rec'd: / N/A Iss: / N/A	MODIFICATION LEVEL		CIRCUIT MODIFICATIONS ARE NOT TO BE MADE WITHOUT AUTHORITY FROM THE OFFICE OF SIGNAL DESIGN	Date: 09/12/22	UNION PACIFIC RAILROAD BERKELEY, CALIFORNIA BANCROFT WAY MARTINEZ SUBDIVISION Office of AVP Engineering - Signal Omaha, Nebraska	Sh: 1
	Q. A. LAST LEVEL CHECKED	DW		Des: NST		DOT 751176H
	LAST LEVEL MOD THIS TYPICAL	DW		Chk:		MP: 5.92
	LAST LEVEL BY DESIGNER	DW		AFE: 60487		ID: 0910592.1X
	CHANGED FROM TYPICAL?	Y				



NOTES:

- ⊗ = TWISTED WIRES
INSULATED 1 TWIST PER FT.
ALL TRACK WIRES 2C. #6
- TRANSMITTER AND RECEIVER LEADS
TO BE SEPARATED BY AT LEAST 12" IN TRENCH.
LENGTHS SHOULD NOT EXCEED MANUFACTURER'S
RECOMMENDATION.
- TOP OF FOUNDATION TO BE AT SAME ELEVATION
AS THE SURFACE OF THE TRAVELED WAY & NO
MORE THAN 4" ABOVE THE SURFACE OF THE GROUND.
- ALL BUNGALOW WIRING TO BE #16 AWG FLEX
UNLESS OTHERWISE SPECIFIED EXCEPT ALL GROUND
WIRE TO BE #6 AWG FLEX OR LARGER.
- ALL WIRING IN GATE MECHANISM TO BE #10 "AWG FLEX".
REFER TO UP STANDARD DWG FOR BUNGALOW GROUNDING.
- PORTABLE GENERATOR EXTENSION CORD
FOR 240V TO 240V IS PROVIDED AS WELL
AS A 120V TO 240V ADAPTER.
- ALL LIGHTS TO BE 12" ROUNDELS.
= = = = = 4" X 90' CONDUIT
- LIGHTS: LED LIGHTS
- xx = BELL
- ☆ = GCP TO OPERATE IN SEMI-BI
DIRECTIONAL MODE. USE TAB 627
COUPLER.
- △ = ENSURE TRACK POLARITY IS
TRANSPPOSED ACROSS ALL
INSULATED JOINTS.

TRK 1 ISLAND DISTANCE 153' MINIMUM 120' REQUIRED
TRK 2 ISLAND DISTANCE 153' MINIMUM 120' REQUIRED
TRK 4 ISLAND DISTANCE 153' MINIMUM 120' REQUIRED
PREFERRED ISLAND WIRE CONNECTIONS
ARE A MINIMUM 50' FROM EDGE OF ROAD

OFFSET AND ISLAND DISTANCES
TO BE VERIFIED BY FIELD

MATERIAL NOTES; DELETE UPON "AC"

6X8 ALUMINUM CABIN
U.P. PART #520-0185

CONSTRUCTION NOTES:

- 1.) INSTALL AS A CORRIDOR PROJECT WITH 3RD STREET
AND ADDISON STREET M.P. 6.14 (WO#60469)
- 2.) ORDER THE FOLLOWING FOR THIS LOCATION:
(4) 86HZ TAB 729 TRACK FILTERS
(4) 156HZ TAB 729 TRACK FILTERS
- 3.) INSTALL (2) PAIR OF I.J.'S
- 4.) * = FIELD VERIFY DISTANCE

CABLE TABULATION

CABLE NO. 7 12C*14 U.G.B.T. HOUSE TO M.P. 4.86
CABLE NO. 8 12C*14 U.G.B.T. HOUSE TO M.P. 6.14
CABLE NO. 9 7C*14 U.G.B.T. HOUSE TO M.P. 6.14

NEW SHEET

					Designed: 09/12/22 INSTALL NEW HOUSE, GATES, FLASHERS AND CWT AT M.P. 5.92 CORRIDOR PROJECT WITH WO# 60469 Res#s WO# 60487 15s / NST/ANM	MODIFICATION LEVEL		CIRCUIT MODIFICATIONS ARE NOT TO BE MADE WITHOUT AUTHORITY FROM THE OFFICE OF SIGNAL DESIGN	Date: 09/12/22	UNION PACIFIC RAILROAD		Sh.: 1A
						O. A. LAST LEVEL CHECKED	DW		Des: NST	BERKELEY, CALIFORNIA		DOT 751176H
						LAST LEVEL MOD THIS TYPICAL	DW		Chk:	BANCROFT WAY		MP: 5.92
						LAST LEVEL BY DESIGNER	DW		AFE: 60487	MARTINEZ SUBDIVISION		ID: 0910592.1AX
						CHANGED FROM TYPICAL?	Y			Office of AVP Engineering - Signal Omaha, Nebraska		
						REV 03.28.22 5K 2TKUGTYP.1						

**EXHIBIT F
TO
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

Exhibit F (if applicable) will be the annual signal maintenance fee

Page 91 of 91
AREMA UNIT STATEMENT OF RAILROAD-HIGHWAY GRADE CROSSING SIGNALS
ESTIMATED MAINTENANCE COSTS



BUILDING AMERICA®

FOR PID # 119334
BY THE UNION PACIFIC RAILROAD

STREET	<u>BANCROFT WAY</u>
TOWN	<u>BERKELEY, CALIFORNIA</u>
MILEPOST	<u>5.92</u>
SUBDIVISION	<u>MARTINEZ</u>
AAR/DOT NO.	<u>751176H</u>
WORK ORDER#	<u>60487</u>

DESCRIPTION	VALUE	QUANTITY	UNITS
NON-CODED TRK. CIRCUIT (Standalone AFTAC or Ring 10)	2	0	0
SUPERIMPOSED CIRCUIT(AFTAC) / DETECTION LOOP	2	0	0
HIGHWAY GRADE CROSSING SIGNAL (FRONT LIGHTS)	2	5	10
ADDITIONAL PAIR OF LIGHTS (OTHER THAN FRONT LIGHTS)	1	4	4
GATE MECHANISM, AUTOMATIC WITH ARM UP TO 26 FT	8	2	16
GATE MECHANISM, AUTOMATIC WITH ARM OVER 26 FT	10	0	0
GCP/HXP (constant warning device, per track circuit)	15	5	75
EXIT GATE MANAGEMENT SYSTEM RACK*	10	0	0
MOVEMENT DETECTOR (PMD)	6	0	0
MOVEMENT DETECTOR (STANDBY UNIT)	3	0	0
RADIO DATA LINK, PER UNIT	1	0	0
PREEMPTION CIRCUIT	2	0	0
DATA RECORDER	1	0	0
REMOTE MONITORING DEVICE (SEAR, ETC)*	2	1	2
BONDED RAIL JOINTS (per mile, each rail, single bonded)	1	0	0
BATTERY AND CHARGER (per set)	1	2	2

TOTAL UNIT COUNT **109**

PAVEMENT RESTORATION COSTS **(Actual)**

Annual Maintenance Cost at \$278.25/Unit **\$30,329**

*UP supplied Unit Value

June 5, 2023

