



September 1, 2016  
Folder: 3008-36

Matthew Griffin, P.E.  
Civil Engineer Specialist  
Santa Barbara County Flood Control &  
Water Conservation District  
130 E. Victoria Street, Suite 200  
Santa Barbara, CA 93101

RE: LETTER OF AGREEMENT: Proposed construction of six-foot by eighteen-foot, (6' X 18') double RCB storm sewer crossing at UPRR Mile Post 367.38, Santa Barbara Subdivision at or near Santa Barbara, Santa Barbara County, California

Dear Matthew:

This letter is in reference to Santa Barbara County Flood Control & Water Conservation District's ("Utility") proposed construction, maintenance and operation of a double culvert for transporting and conveying storm water (the "Pipeline") at Mile Post 367.38, Santa Barbara Subdivision at or near Santa Barbara, Santa Barbara County, California, (the "Property").

UPRR confirms that it was granted an easement for operating its trackage and appurtenances (the "Trackage") at the proposed crossing installation location on the Property. UPRR has the obligation to ensure the safe operation of its track structure, and therefore it must review and approve the engineering data for all crossing installations prior to the commencement of construction.

This Letter of Agreement acknowledges the Utility's 2012 construction of the connection on the north side of tracks to an existing 30-inch CMP culvert installed in 2009 by Union Pacific Railroad Company ("UPRR"). The Utility now desires to connect on the southern side of tracks to the same existing 30-inch CMP culvert. The Utility will install a six-foot by eighteen-foot, (6' X 18') double RCB storm sewer crossin. The installation will require shoring and work within the railroad's easement.

This Letter of Agreement will serve as notification that UPRR approves of the Utility's intent to install a six-foot by eighteen-foot, (6' X 18') double RCB storm sewer crossing ("Pipeline") under Mile Post 367.38, Santa Barbara Subdivision at or near Santa Barbara, Santa Barbara County, California, as depicted on the **Exhibit A** attached hereto, and hereby made a

part hereof and in accordance with the engineering plans dated June 2016 and submitted to UPRR.

The foregoing consent is subject and subordinate to the prior and continuing right and obligation of UPRR to use and operate upon the Trackage and is made with the expectation that City will adhere to the terms, provisions, conditions, limitations and covenants set forth herein.

The Utility acknowledges and agrees that **supplemental construction submittals (excavation/shoring plan, track monitoring plan) shall be submitted to UPRR for review and approval prior to work.**

**NO EXCAVATION IS PERMITTED PRIOR TO UPRR APPROVAL OF EXCAVATION/SHORING PLANS**

1. The Contractor shall prepare and submit excavation/shoring plans for areas in Zone A and Zone B. This information shall be forwarded to UPRR for review and approval prior to work. Please note;

1A. See UPRR Markup (hereto attached as **Exhibit A-1**) for limits of shoring required by UPRR. Shoring may be installed beyond these limits at the discretion of the Submitting Agency/Contractor. At a minimum, shoring shall be installed to protect the excavation parallel to and aligned with the end of the existing culvert (running NE from the NE corner of the exist. culvert) and parallel to the 1:1 slope cut line to the end of the Zone B limit (running parallel to the culvert). These limits are shown in orange on the attached markup. The Zone B limit is shown in green on the attached markup.

1B. Track monitoring will be required for the excavation. The excavation/shoring plan shall indicate the following; *Track shall be monitored for heave, settlement, or displacement. Maximum acceptable horizontal or vertical movement of rail is 1/4". All work shall be suspended if rail meets or exceeds this limit and the Railroad flagger shall be notified. Remediation shall be coordinated with UPRR if necessary.* Instrumentation and methodology is at the discretion of the contractor.

1C. All excavations shall meet the requirements of *UPRR Guidelines for Temporary Shoring.*

Please verify that the Contractor will comply with all General Requirements listed below.

**General Requirements:**

1. Work on the Railroad ROW and/or within 25' of track will require Railroad flagging. Railroad flagging shall be coordinated with the Operating Railroad.
2. All equipment, materials, and personnel shall remain outside the Minimum Construction Clearance Envelope (see **Exhibit F**).

Utility represents and warrants that any and all of the work to be performed on or near the Trackage will be performed in accordance with UPRR's (i) general requirements for protection of its right of way set forth in **Exhibit B**, (ii) safety requirements set forth in **Exhibit C**, (iii) insurance requirements set forth in **Exhibit D**, (iv) Contractor Right of Entry as set forth in **Exhibit E** (v) Construction Clearance requirements as set forth in **Exhibit F** each of which are attached hereto and made a part hereof.

UPRR's consent to Utility's proposed installation of the Pipeline is made with the expectation that Utility will adhere to the terms, provisions, conditions, limitations and covenants set forth herein and in **Exhibit B, Exhibit C, Exhibit D, Exhibit E and Exhibit F**.

If you have any questions, please contact me at (402) 544-8658.

Thank you,

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Renay J. Robison  
Director – Real Estate

**Acknowledged and Approved by:**

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**Santa Barbara County Flood Control & Water Conservation District**




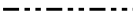
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

**EXHIBIT A**

**PRINT OF THE PROPERTY  
TO BE ATTACHED**



**LEGEND:**

- UPRR MAINTAINED..... 
- FLOOD CONTROL DISTRICT MAINTAINED..... 
- SHORING PROJECTS..... 
- UPRRCO. R/W OUTLINED..... 

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

EXHIBIT "A"

**UNION PACIFIC RAILROAD COMPANY**

SANTA BARBARA, SANTA BARBARA COUNTY, CA

M.P. 367.30 - SANTA BARBARA SUB  
 TO ACCOMPANY AGREEMENT WITH  
 SANTA BARBARA FLOOD CONTROL &  
 CONSERVATION DISTRICT

SP CA V-47 / S1A

SCALE: 1" = 100'

OFFICE OF REAL ESTATE  
 OMAHA, NEBRASKA DATE: 8/30/2016

AJM FILE: 3008-36

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Zone A Shoring

RR Track Centerline

Shoring Req'd

flagging within 25' of Centerline

CONTRACTOR TO EXCAVATE AT 1:1 SLOPE

UTILITY POLES, GUY WIRE, AND STREET LIGHT TO BE RELOCATED BY OTHERS

UTILITY PEDESTAL TO BE RELOCATED BY OTHERS

REMOVE AND REPLACE TRAFFIC SIGN

Zone B Shoring

Zone B Limit

**LMC REACH 2A - UPRR SHORING ZONES  
PLAN VIEW**

Exhibit A-1  
UNION PACIFIC RAILROAD COMPANY  
SANTA BARBARA SUBDIVISION  
Licensee: Santa Barbara County Flood Control & Conservation District  
RAILROAD MILE POST 367.38  
Santa Barbara, Santa Barbara County, CA  
Folder No. 3008-36 8/18/2016

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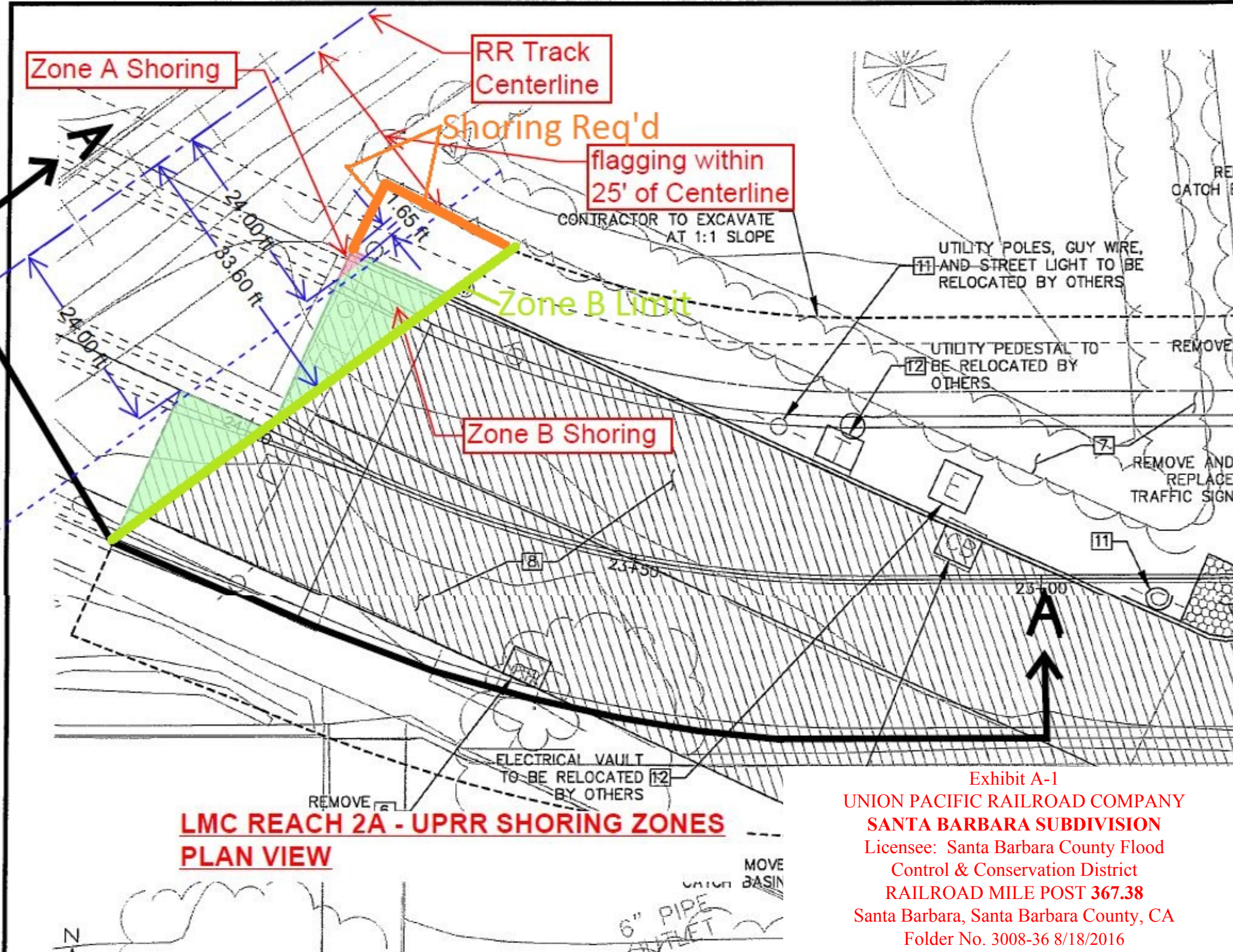
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ELECTRICAL VAULT TO BE RELOCATED BY OTHERS

REMOVE

MOVE BASIN

6" PIPE OUTLET



## EXHIBIT B

### GENERAL TERMS AND CONDITIONS

#### **Section 1. SUBJECT TO AND SUBORDINATE TO UPRR'S PRIOR RIGHTS.**

The foregoing consent is subject and subordinate to the prior and continuing right and obligation of UPRR to use and maintain the trackage and appurtenances (the "Trackage") located near Santa Barbara, Santa Barbara County, California, as shown in more detail on **Exhibit A**, attached hereto and made a part hereof (the "Property").

#### **Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.**

A. The Pipeline shall be designed, constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by Utility in strict conformity with: (i) UPRR's current standards and specifications ("UPRR Specifications"), except for variances approved in advance in writing by UPRR's Assistant Vice President Engineering – Design, or his authorized representative; (ii) such other additional safety standards as UPRR, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UPRR Additional Requirements"), and (iii) all applicable laws, rules and regulations ("Laws"). If there is any conflict between the requirements of any Law and the UPRR Specifications or the UPRR Additional Requirements, the most restrictive will apply.

B. All work performed with the design, construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of UPRR.

C. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, Utility shall submit to UPRR plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect UPRR's operations, and shall not proceed with the work until such plans have been approved by UPRR's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of UPRR's Assistant Vice President Engineering Design or his authorized representative. UPRR shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event UPRR provides such support, Utility shall pay to UPRR, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by UPRR in connection therewith, which expenses shall include all assignable costs.

D. Utility shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.

E. In the prosecution of any work covered under the terms and conditions herein, Utility 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 3. IF WORK IS TO BE PERFORMED BY CONTRACTOR.**

If a contractor is hired by the Utility to do any of the work performed on the Pipeline (including initial construction and subsequent relocation or maintenance and repair work), then the Utility shall require its contractor to execute the UPRR's current form of Contractor's Right of Entry Agreement, attached hereto and hereby made a part hereof as **Exhibit E**. Utility acknowledges receipt of a copy of the Contractor's Right of Entry Agreement and an understanding of its terms, provisions, and requirements, and will inform its contractor of the need to execute the agreement. Under no circumstances will Utility's contractor be allowed onto UPRR's property without first executing the Contractor's Right of Entry Agreement and the contractor providing to the UPRR the insurance binders, certificates and endorsements described in the Contractor's Right of Entry Agreement.

**Section 4. NOTICE OF COMMENCEMENT OF WORK/UPRR REPRESENTATIVE/SUPERVISION / FLAGGING / SAFETY.**

A. If an emergency should arise requiring immediate attention, Utility shall provide as much notice as practicable to UPRR before commencing any work. In all other situations, Utility shall notify UPRR at least ten (10) days (or such other time as UPRR may allow) in advance of the commencement of any work in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion. Utility will coordinate its initial and any subsequent work with the following employee of UPRR or his or her duly authorized representative (the "UPRR Representative"):

JAVIER R. SANCHEZ  
MGR TRACK MNTCE  
340 GUADALUPE ST  
GUADALUPE, CA 93434  
Work Phone: (805) 402-2331  
Cell Phone: 805-249-0959  
Email: [jrsanche@up.com](mailto:jrsanche@up.com)

ISAAC D. REYES  
ROS/SIGNAL SUPERVISOR  
Unknown Address  
Omaha, NE 68179  
Work Phone: 323 981-7824  
Cell Phone: 626 632-9575  
[idreyes@up.com](mailto:idreyes@up.com)



B. Utility, at its own expense, shall adequately police and supervise all work to be performed. The responsibility of Utility for safe conduct and adequate policing and supervision of work shall not be lessened or otherwise affected by UPRR's approval of plans and specifications involving the work, or by UPRR's collaboration in performance of any work, or by the presence at the work site of the UPRR Representative, or by compliance by Utility with any requests or recommendations made by the UPRR Representative.

C. At the request of UPRR, Utility shall remove any employee who fails to conform to the instructions of the UPRR Representative in connection with the work on the Pipeline. Utility shall indemnify UPRR against any claims arising from the removal of any such employee from the work on the Pipeline.

D. Utility shall notify the UPRR Representative at least ten (10) working days in advance of proposed performance of any work 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 UPRR's track(s) at any time, for any reason, unless and until a railroad flagman is provided to watch for trains. Upon receipt of such ten (10) day notice, the UPRR Representative will determine and inform Utility whether a flagman need be present and whether any special protective or safety measures need to be implemented. If flagging or other special protective or safety measures are performed by UPRR, UPRR will bill Utility for such expenses incurred by UPRR, unless UPRR and a federal, state or local governmental entity have agreed that UPRR is to bill such expenses to the federal, state or local governmental entity. If UPRR will be sending the bills to Utility, Utility shall pay such bills within thirty (30) days of receipt of billing. If UPRR performs any flagging, or other special protective or safety measures are performed by UPRR, Utility agrees that Utility is not relieved of any of responsibilities or liabilities set forth herein.

E. 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 UPRR 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, Utility (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

F. Reimbursement to UPRR 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 UPRR is required to pay the flagman and which could not reasonably be avoided by UPRR by assignment of such flagman to other work, even though Utility may not be working during such time. When it becomes necessary for UPRR to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Utility must provide UPRR 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, Utility will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to UPRR if flagging services are needed again after such five day cessation notice has been given to UPRR.

G. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Utility or its contractor. Utility shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Utility and its contractor shall at a minimum comply with UPRR's safety standards set forth in **Exhibit C**, attached hereto, to ensure uniformity with the safety standards followed by UPRR's own forces. As a part of Utility's safety responsibilities, Utility shall notify UPRR if it determines that any of UPRR's safety standards are contrary to good safety practices. Utility and its contractor shall furnish copies of **Exhibit C** to each of its employees before they enter the job site.

H. Without limitation of the provisions of Paragraph "G" above, Utility shall keep the job site free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the job.

I. Utility 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. Prompt notification shall be given to UPRR of any U.S. Occupational Safety and Health Administration reportable injuries. Utility shall have a non-delegable duty to control its employees while they are on the job site, 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.

J. If and when requested by UPRR, Utility shall deliver to UPRR a copy of its safety plan for conducting the work (the "Safety Plan"). UPRR shall have the right, but not the obligation, to require Utility to correct any deficiencies in the Safety Plan. The terms of this Exhibit shall control if there are any inconsistencies between this Exhibit and the Safety Plan.

**Section 5. UTILITY TO BEAR ENTIRE EXPENSE.**

Utility shall bear the entire cost and expense incurred in connection with the design, construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by UPRR in connection therewith for supervision, inspection, flagging, or otherwise.

**Section 6. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE.**

A. The agreement herein granted is subject to the needs and requirements of UPRR in the safe and efficient operation of its railroad. Utility shall, at its sole cost and expense, reinforce or otherwise modify the Pipeline, or move all or any portion of the Pipeline to such new location, or remove the Pipeline, as UPRR may designate, whenever, in the furtherance of its needs and requirements, UPRR, at its sole election, finds such action necessary or desirable.

B. In the event Utility, in any manner, moves or disturbs any Property or Trackage in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event Utility shall, as soon as possible and Utility's sole expense, restore property to the same condition as the same were in before such property was moved or disturbed.

**Section 7. NO INTERFERENCE WITH UPRR'S OPERATION.**

A. The pipeline shall be designed, constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the Trackage and Property by UPRR, and nothing shall be done or suffered to be done by Utility at any time that would in any manner impair the safety thereof.

B. Explosives or other highly flammable substances shall not be stored on the Property without the prior written approval of UPRR.

C. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over the Trackage shall be installed or used by Utility or its contractors without the prior written permission of UPRR.

D. When not in use, any machinery and materials of Utility or its contractors shall be kept at least fifty (50) feet from the centerline of the Trackage.

E. Operations of UPRR and work performed by UPRR's personnel may cause delays in the work to be performed by Utility. Utility accepts this risk and agrees that UPRR shall have no liability to Utility or any other person or entity for any such delays. Utility shall coordinate its activities with those of UPRR and third parties so as to avoid interference with railroad operations. The safe operation of UPRR's train movements and other activities by UPRR take precedence over any work to be performed by Utility.

**Section 8. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.**

A. Fiber optic cable systems may be buried on the 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. Utility shall telephone UPRR during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Property to be used by Utility. If it is, Utility will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Utility's expense, and will commence no work on the Property until all such protection or relocation has been accomplished. Utility shall indemnify and hold UPRR harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Utility's failure to comply with the provisions of this paragraph.

**B. IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, UTILITY SHALL, AND SHALL CAUSE ITS CONTRACTOR(S) TO, RELEASE, INDEMNIFY, DEFEND AND HOLD UPRR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF UTILITY, ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON THE 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 THE PROPERTY, EXCEPT IF SUCH COSTS, LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF UPRR. UTILITY FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RECOURSE AGAINST UPRR 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 THE PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON THE PROPERTY.**

**Section 9. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.**

Utility shall fully pay for all materials joined or affixed to and labor performed in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of Utility. Utility shall indemnify and hold harmless UPRR against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.



**Section 10. RESTORATION OF PROPERTY AND TRACKAGE.**

In the event Utility in any manner moves or disturbs any of the Property or Trackage in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event Utility shall, as soon as possible and at Utility's sole expense, restore such property to the same condition as the same were before such property was moved or disturbed, and Utility shall indemnify and hold harmless UPRR, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the moving or disturbance of the Property or Trackage.

**Section 11. INDEMNITY.**

A. As used in this Section, "UPRR" includes other railroad companies using the Trackage at or near the location of Utility's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including UPRR's officers, agents, and employees, Utility's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including the Property, Trackage, or other property of UPRR, or property in its care or custody).

**B. AS A MAJOR INDUCEMENT AND IN CONSIDERATION OF THE LICENSE AND PERMISSION HEREIN GRANTED, TO THE FULLEST EXTENT PERMITTED BY LAW, UTILITY SHALL, AND SHALL CAUSE ITS CONTRACTOR(S) TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS UPRR FROM ANY LOSS OF ANY KIND, NATURE OR DESCRIPTION ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):**

- 1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE PIPELINE OR ANY PART THEREOF;**
- 2. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE;**
- 3. THE PRESENCE, OPERATION, OR USE OF THE PIPELINE OR CONTENTS ESCAPING THEREFROM;**

4. **THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR CONTRIBUTED TO UTILITY;**
5. **ANY ACT OR OMISSION OF UTILITY OR UTILITY'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER; OR**
6. **UTILITY'S BREACH OF THIS AGREEMENT,**

**EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT AND ACTIVE NEGLIGENCE OF UPRR, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, UPRR'S NEGLIGENCE.**

C. Upon written notice from UPRR, Utility agrees to assume the defense of any lawsuit or proceeding brought against any indemnitee by any entity, relating to any matter covered by this agreement for which Utility has an obligation to assume liability for and/or save and hold harmless any indemnitee. Utility shall pay all costs incident to such defense, including, but not limited to, reasonable attorney's fees, investigators' fees, litigation and appeal expenses, settlement payments and amounts paid in satisfaction of judgments.

**Section 12. WAIVER OF BREACH.**

The waiver by UPRR of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by Utility shall in no way impair the right of UPRR to avail itself of any remedy for any subsequent breach thereof.

**Section 13. REVOCAION OF CONSENT.**

If Utility does not use install the Pipeline within one (1) year from the date of this agreement or if Utility continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from UPRR to Utility specifying such default, UPRR may, at its option, forthwith immediately revoke its consent to the crossing by written notice.

## EXHIBIT C

### UPRR SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Utility or its contractors, subcontractors, or agents, as well as any subcontractor or agent of Utility.

#### **I. Clothing**

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

Specifically, Utility's employees must wear:

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

#### **II. Personal Protective Equipment**

Utility shall require its employee to wear personal protective equipment as specified by UPRR rules, regulations, or recommended or requested by the UPRR Representative.

- A. Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Utility's company logo or name.
- B. Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- C. Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
- 100 feet of a locomotive or roadway/work equipment
  - 15 feet of power operated tools

- 150 feet of jet blowers or pile drivers
  - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- D. Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the UPRR Representative.

### **III. On Track Safety**

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

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

### **IV. Equipment**

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



- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

**V. General Safety Requirements**

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

## EXHIBIT D

### INSURANCE REQUIREMENTS

Utility shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

A. Commercial General Liability Insurance. Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE:

- "Contractual Liability Railroads" ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. Business Automobile Coverage Insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a limit of not less \$2,000,000 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.

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

- Utility's statutory liability under the workers' compensation laws of the state(s) affected by this letter.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Utility 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. Utility must maintain "Railroad Protective Liability" insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage)

on behalf of UPRR only 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 Letter and shall describe all WORK or OPERATIONS performed hereunder.

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

**Other Requirements**

F. All policy(ies) required above (except workers' compensation and employers' liability) must include UPRR as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to UPRR as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for UPRR's negligence whether sole or partial, active or passive, and shall not be limited by UPRR's liability under the indemnity provisions of this Letter.

G. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (1) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (2) all punitive damages are prohibited by all states in which this letter will be performed.

H. Utility waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against UPRR 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 Utility required hereunder, where permitted by law. This waiver must be stated on the certificate of insurance.

I. All insurance policies must be written by a reputable insurance company acceptable to UPRR or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

J. The fact that insurance is obtained by Utility or by UPRR on behalf of Utility will not be deemed to release or diminish the liability of Utility, including, without limitation, liability under the indemnity provisions of this Letter. Damages recoverable by UPRR from Utility or any third party will not be limited by the amount of the required insurance coverage.

**EXHIBIT E**  
**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 Santa Barbara County Flood Control & Water Conservation District to perform work relating to installation of a six-foot by eighteen-foot, (6' X 18') double RCB, (the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of Railroad's Mile Post 367.38, Santa Barbara Subdivision at or near Santa Barbara, Santa Barbara County, California, 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 September 1, 2016 between Railroad and Santa Barbara County Flood Control & Water Conservation District.

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.

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

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

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

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

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

A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.

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



JAVIER R. SANCHEZ  
MGR TRACK MNTCE  
340 GUADALUPE ST  
GUADALUPE, CA 93434  
Work Phone: (805) 402-2331  
Cell Phone: 805-249-0959  
Email: [jrsanche@up.com](mailto:jrsanche@up.com)

ISAAC D. REYES  
ROS/SIGNAL SUPERVISOR  
Unknown Address  
Omaha, NE 68179  
Work Phone: 323 981-7824  
Cell Phone: 626 632-9575  
[idreyes@up.com](mailto:idreyes@up.com)

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

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

Union Pacific Railroad Company  
1400 Douglas St. STOP 1960  
Omaha, NE 68179  
Attn: Folder No. 3008-36

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

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of

Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

**ARTICLE 9- ADMINISTRATIVE FEE.**

Upon the execution and delivery of this Agreement, Contractor shall pay to Railroad One Thousand Dollars (\$1,000.00) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

**ARTICLE 10 - CROSSINGS.**

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

**ARTICLE 11.- EXPLOSIVES.**

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

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

**UNION PACIFIC RAILROAD COMPANY**

\_\_\_\_\_

(Name of Contractor)

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

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

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

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



**LEGEND:**

- UPRR MAINTAINED .....
- FLOOD CONTROL DISTRICT MAINTAINED .....
- SHORING PROJECTS .....
- UPRRCO. R/W OUTLINED .....

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

EXHIBIT "A"

**UNION PACIFIC RAILROAD COMPANY**

SANTA BARBARA, SANTA BARBARA COUNTY, CA

M. P. 367.30 - SANTA BARBARA SUB

TO ACCOMPANY AGREEMENT WITH

SANTA BARBARA FLOOD CONTROL & CONSERVATION DISTRICT

SP CA V-47 / S1A

SCALE: 1" = 100'

OFFICE OF REAL ESTATE

OMAHA, NEBRASKA DATE: 8/30/2016

AJM FILE: 3008-36

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**EXHIBIT B**  
**TO**  
**CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

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

A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least 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. 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 Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional 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 fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.

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

**Section 4. LIENS.**

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

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

A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.

B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

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

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

**Section 7. SAFETY.**

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

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

B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.

C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.

D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

#### **Section 8. INDEMNITY.**

A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees (individually an "Indemnified Party" or collectively "Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.

B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.

**C. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Indemnified Parties under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.**

D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against any Indemnified Party.

E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

**Section 9. RESTORATION OF PROPERTY.**

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

**Section 10. WAIVER OF DEFAULT.**

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

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

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

**Section 12. ASSIGNMENT - SUBCONTRACTING.**

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

**EXHIBIT C**  
**TO**  
**CONTRACTOR'S**  
**RIGHT OF ENTRY AGREEMENT**

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

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

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

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

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

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

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

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

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

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

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

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

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

**D. Railroad Protective Liability insurance.** Contractor must maintain "Railroad Protective Liability" (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. In 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 worker’s compensation and employers liability) must include Railroad as “Additional Insured” using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad’s negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.

**H.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.

**I.** Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.

**J.** Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

**K.** All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.

**L.** The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.



**EXHIBIT D**  
**TO**  
**CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

**Minimum Safety Requirements**

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

**I. Clothing**

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

Specifically, Contractor's employees must wear:

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

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

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

**II. Personal Protective Equipment**

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

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:

- 100 feet of a locomotive or roadway/work equipment
- 15 feet of power operated tools
- 150 feet of jet blowers or pile drivers
- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- 
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

**III. On Track Safety**

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

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

#### **IV. Equipment**

A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:

- Familiar and comply with Railroad's rules on lockout/tagout of equipment.
- Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
- Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.

B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.

C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.

D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

#### **V. General Safety Requirements**

A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.

B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.

C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.

D. All employees comply with the following safety procedures when working around any railroad track:

- (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
- (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.

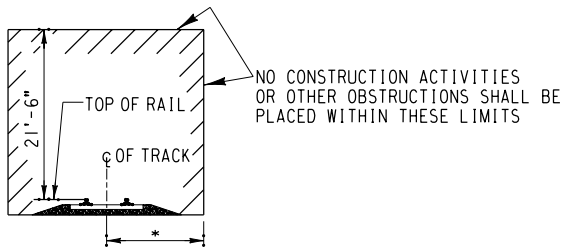
(iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).

(iv) Avoid walking or standing on a track unless so authorized by the employee in charge.

(v) Before stepping over or crossing tracks, look in both directions first.

(vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.

E. All employees must comply with all federal and state regulations concerning workplace safety.



**MINIMUM CONSTRUCTION CLEARANCE ENVELOPE**

(NORMAL TO RAILROAD)

\* 15'-0" for BNSF and 12'-0" for UPRR

EXHIBIT "F"  
UNION PACIFIC RAILROAD COMPANY  
RAILROAD MILE POST 367.38  
SANTA BARBARA SUBDIVISION  
Licensee: Santa Barbara County Flood  
Control & Conservation District

Santa Barbara, Santa Barbara County, CA  
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