

**JOINT PROJECT AGREEMENT  
COVERING  
NEW RAILROAD BRIDGE AS PART OF SH 99/GRAND PARKWAY PROJECT**

This Joint Project Agreement (the "Agreement") is entered into by Fort Bend Grand Parkway Toll Road Authority (the "Authority"), and Union Pacific Railroad Company, a Delaware corporation ("UP") (each a "Party" and collectively, the "Parties").

RECITALS

WHEREAS, the Authority was established by Fort Bend County (the "County") to aid, assist, and act on behalf of the County in the development of the portion of the Grand Parkway within the County; and

WHEREAS, the Authority is developing Segment D of the Grand Parkway, a portion of State Highway 99 located within Fort Bend County, including the construction of a tolled overpass highway bridge over UP's railroad right-of-way at latitude 29°36'08" N, longitude 95°41'05" W adjacent to U.S. 90A and at Railroad Milepost 27.79 on UP's Glidden Subdivision in Sugar Land, Fort Bend County, Texas (the "Overpass"); and

WHEREAS, the Authority executed a Right of Use Agreement with the Texas Department of Transportation (the "State") dated May 12, 2011, allowing the Authority to use State highway right-of-way and to construct tolled overpasses, including the Overpass (the "Grand Parkway Right of Way"); and

WHEREAS, the Overpass will cross over certain right-of-way owned by UP (the "UP Right of Way"), running perpendicular to the Grand Parkway Right of Way; and

WHEREAS, UP desires to construct a second railroad bridge within the UP Right of Way and the Grand Parkway Right of Way, but situated below the Overpass (the "Railroad Bridge");

WHEREAS, as a matter of convenience to UP and the Authority, UP has requested the Authority include in its construction contract for the Overpass with the Authority's contractor, Williams Brothers Construction Co., Inc., a Texas corporation (the "Contractor") to add preliminary components of the Railroad Bridge (the "Minimum Scope" as described below in Section 1); and

WHEREAS, the Authority has obtained bids for the construction of the Overpass, and in addition has obtained bids for alternate work items related to the Minimum Scope ; and

WHEREAS, the Authority is willing to accommodate that request, subject to the terms of this Agreement, in order to coordinate the construction of the Overpass and the Minimum Scope.

## AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, obligations, and benefits herein set forth, the Parties contract and agree as follows:

Section 1. Scope of Project and Responsibility for Design. The Minimum Scope consists of the construction of the facilities more particularly described on **Exhibit A**, attached hereto and made part hereof in accordance with 100% completed UP approved plans (the "Plans") that were prepared by UP. UP is solely responsible for the design of the Minimum Scope and the Railroad Bridge and UP acknowledges that the Minimum Scope as bid is consistent with the design it previously provided to the Authority.

Section 2. Overpass Contract. The Parties agree that the Authority shall construct the Minimum Scope in addition to the Overpass, as provided herein pursuant to a contract by and between the Authority and Contractor, a true and correct copy of the relevant portions of which is attached as Exhibit A-1 and made a part hereof (collectively the "Overpass Contract"). The Authority shall cause the Minimum Scope to be constructed on or before the expiration of twelve (12) months from the date this Agreement is fully executed, consistent with the Plans pursuant to required governmental permits and in compliance with applicable law. The Authority shall cause the Overpass Contract to require the Contractor to provide a payment and performance bond in an amount sufficient to secure the performance of the Minimum Scope, which also provides a rider naming UP as an additional obligee as to the Minimum Scope.

Section 3. Payment of Project Costs. The Parties hereby agree that UP shall be responsible for all costs associated with construction of the Minimum Scope, including engineering, testing, land acquisition, applicable governmental fees and taxes or other related costs (the "Project Costs") pursuant to the Overpass Contract, estimated to be in the amount of \$993,621.00 based on the alternate bid tabulation shown on **Exhibit B**, attached hereto and made part hereof. UP will advance the estimated Project Costs, plus a 10% contingency, (total of **\$1,092,983.10**) to the Authority within 30 days of the effective date of this Agreement (as defined in Section 19).

### Section 4. Construction.

a. After award of the Overpass Contract, the Authority shall administer the Overpass Contract for both the Overpass work and the Railroad Bridge Work, with UP being responsible for the following contract administration work associated with the construction of the Railroad Bridge.

1.) UP representatives shall visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the work on the Minimum Scope and to determine in general if Contractor's work on the Minimum Scope is proceeding in accordance with the Plans. However, UP will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work on the Minimum Scope. UP will not be responsible for or have control or charge of the Contractor with respect to any work, including the Minimum Scope, including

without limitation the Contractor's subcontractors or any of their agents or employees or other persons working on the Minimum Scope. UP will at all times have access to the work on the Minimum Scope for the aforesaid purpose;

2.) UP will have the authority to stop Contractor's work on the Minimum Scope or portions thereof which are not being performed in accordance with the Plans until the cause for such stop work order has been eliminated by Contractor; to reject work on the Minimum Scope that does not conform to the Plans; and to require special inspection or testing whether or not such work be then fabricated, installed or completed;

(hereinafter, collectively, "Contract Administration").

UP's foregoing rights to stop the work being performed by Contractor shall not give rise to a duty on the part of UP to exercise this right for the benefit of Contractor or any other person or entity. All Contract Administration shall be coordinated through the Authority's designee, initially Michael Stone.

b. The Authority shall require the Contractor to complete the construction of the Minimum Scope of the Railroad Bridge prior to the Contractor commencing any work on the portion of the Overpass that will extend over the Railroad Bridge.

c. No changes in the Plans related to the Minimum Scope for the Railroad Bridge or the portion of the overpass that will extend over the Railroad Bridge or UP's tracks or property shall be made unless UP has provided its prior written consent to the Authority of such changes.

d. The Authority shall require the Contractor, at UP's expense, to furnish UP four (4) set(s) of reproducible "as constructed" Plans of the Railroad Bridge.

e. The Authority shall require the Contractor, prior to Contractor performing any work on any UP property, to execute and deliver to UP UP's form of Contractor's Right of Entry Agreement in the form marked **Exhibit C**, attached hereto and made part hereof, and to obtain the insurance coverage and endorsements that are required in such agreement. The Authority warrants and represents that it will not be performing any of the Minimum Scope work with its own employees or agents or independent contractors, but rather exclusively through Contractor. In the event the Authority, its employees or agents or independent contractors other than Contractor intend to enter UP property, the Authority shall prior to any such entry execute and deliver to UP UP's form of Contractor's Right of Entry Agreement, with the Authority hereby agreeing to be bound by the terms of Exhibit C. The foregoing does not apply to Authority's agents/contractors doing inspection only; however Authority's agent/contractors shall coordinate any entry upon UP Property with the UP's Director of Track Maintenance (DTM) or the Railroad representative designated in Exhibit C.

f. Pay estimates and change orders related to the Minimum Scope will be submitted to the Authority and are subject to approval by both UP and the Authority. If UP approves change orders that increase the cost of the Minimum Scope, UP must submit additional funds prior to approval by the Authority.

g. Subject to the terms of Section 2, above, the Parties agree that the Authority does not warrant the quality of any engineering or construction work done by any third party in connection with, or materials provided for, the Overpass Contract, nor for compliance of same with County standards and other governmental codes and regulations applicable thereto, nor shall the Authority be deemed to be responsible for any such compliance, provided and on the condition that the Authority with the Contractor's consent assigns the warranties Contractor provides the Authority pursuant to the Overpass Contract.

Section 5. Final Accounting. Within 60 days of the completion of the Overpass Contract and the construction by the Authority's contractor in compliance with the Plans as evidenced by an inspection and approval of UP, the Authority shall submit to UP for approval a final accounting of the Minimum Scope costs accompanied by "as built" renderings of the completed Minimum Scope. If the final accounting shows that the total amount of the Minimum Scope costs is more than the amount previously advanced by UP to the Authority, UP shall remit the balance owed to the Authority within sixty(60) days of receipt of such notice. If the final accounting shows that the total amount of the Minimum Scope costs is less than the amount previously advanced by UP to the Authority, the Authority shall remit any overage to UP within sixty (60) days of the submission of the final accounting. All payments to the Authority shall be submitted to: Fort Bend Grand Parkway Toll Road Authority, c/o Pamela Logsdon, AVANTA Services, 5635 Northwest Central Dr., Suite 104E, Houston, TX 77092. The final accounting and final payment shall not be deemed a waiver of unsettled liens, faulty or defective work appearing after final accounting and final payment, and the warranties provided by Contractor.

Section 6. Acquisition of Right of Way. The parties are contemporaneously entering into agreements related to the Overpass and Railroad Bridge within each other's rights of way, including without limitation a "Public Highway Overpass Agreement" by and among UP, the Authority and the County, an "Encroachment Agreement" between the Authority and UP, and a "Grant of Aerial Easement" between UP and the Authority, with the parties executing and delivering such agreements simultaneously with the execution and delivery of this Agreement. The Authority will indicate to the Texas Department of Transportation that the Authority has no objection and consents to TxDOT's grant of sufficient rights to UP to accommodate not only the Minimum Scope but also the Railroad Bridge.

Section 7. Ownership of Improvements. Upon completion of construction of the Minimum Scope and final payment to the Authority for the completed Overpass Contract ("Final Completion"), the Authority shall execute and deliver a Bill of Sale to UP in the form marked **Exhibit D**, attached hereto, and made part hereof. Thereafter, UP shall own the Minimum Scope except that UP and the State shall be allowed to allocate between UP and the State the maintenance responsibilities involving the Railroad Bridge. As indicated above, the Authority shall assign to UP any warranties and bonds of the Contractor as they relate to the Minimum Scope.

Section 8. Insurance. UP shall self-insure its contractual obligations under this Agreement pursuant to its risk management program, which has self insured retentions up to \$25,000,000.00. UP has provided the Authority with a Certificate of Insurance from Aon Risk Services, Inc., of Maryland evidencing its excess liability coverage.

Section 9. Indemnification.

- A. "Indemnified Parties" means the County, the Authority, the County's and Authority's Engineer, and the officers, directors, employees, agents, and representatives of each such party.
- B. TO THE FULLEST EXTENT PERMITTED BY LAW, UP SHALL PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST EVERY LOSS, ITEM OF DAMAGE, INJURY, EXPENSE, DEMAND, CLAIM, CAUSE OF ACTION, JUDGMENT OR LIABILITY, OF WHATSOEVER KIND OR CHARACTER, WHETHER ARISING IN CONTRACT OR TORT OR UNDER ANY STATUTE, FOR EVERY ELEMENT OF RECOVERY, WHETHER DIRECT OR INDIRECT, INCLUDING SPECIAL AND CONSEQUENTIAL DAMAGES, AND INCLUDING ALL RELATED FINES, FEES AND COSTS, TO INCLUDE ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS, INVOLVING THE ACCURACY AND SUFFICIENCY OF THE PLANS FOR BODILY INJURY TO OR DEATH OF ANY PERSON, PROPERTY DAMAGE OR ECONOMIC LOSS (INCLUDING LOSS OF USE) CAUSED BY OR ARISING OUT OF THE PERFORMANCE OF THE MINIMUM SCOPE UNDER THIS AGREEMENT, OR THE BREACH OF THIS AGREEMENT OR ANY COMMON LAW DUTY, OR THE VIOLATION OF ANY STATUTE OR REGULATION IN CONNECTION WITH THE PERFORMANCE (OR NON-PERFORMANCE) OF THE MINIMUM SCOPE UNDER THIS AGREEMENT, IN EACH INSTANCE, EVEN IF DUE IN PART TO THE NEGLIGENCE, BREACH OF CONTRACT, BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR OTHER FAULT OF AN INDEMNIFIED PARTY.**
- C. THIS INDEMNITY AGREEMENT IS INTENDED TO MEET THE TEXAS "EXPRESS NEGLIGENCE RULE" BECAUSE UP AGREES THAT IT APPLIES AND IS ENFORCEABLE EVEN AS TO LOSSES, DAMAGES, INJURIES, EXPENSES, CLAIMS, CAUSES OF ACTION, JUDGMENTS OR LIABILITIES JOINTLY OR CONCURRENTLY CAUSED BY THE NEGLIGENCE OR OTHER FAULT OF THE INDEMNIFIED PARTIES. THE TERM "FAULT" IN THE PREVIOUS SENTENCE INCLUDES THE VIOLATION OR BREACH BY THE INDEMNIFIED PARTIES OF ANY COMMON LAW DUTY, ANY TERM OF THIS AGREEMENT, OR ANY STATUTE OR REGULATION.**
- D. THIS INDEMNIFICATION OBLIGATION SHALL NOT BE LIMITED IN ANY WAY BY ANY OTHER PROVISION OF THIS AGREEMENT OR BY ANY LIMITATIONS ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE INDEMNIFIED PARTIES UNDER**

**WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFITS ACTS.**

- E. THIS INDEMNIFICATION OBLIGATION IS IN ADDITION TO ALL OTHER LEGAL, EQUITABLE, OR INDEMNIFICATION REMEDIES AVAILABLE TO THE INDEMNIFIED PARTIES. THIS INDEMNIFICATION OBLIGATION SURVIVES THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.**
- F. In the event that any statute, rule of law or equitable principle should be held applicable to any indemnity clause contained in this Agreement in favor of one or more of the Indemnified Parties which would render void, voidable, or unenforceable any such indemnity clause as to any party by reason of any provisions contained therein, then and in only such event, such indemnity clause shall be deemed modified and read, construed and enforced as to such party with respect to the provisions held to violate the statute, rule of law or equitable principle to require indemnity by UP of the Indemnified Parties to the fullest extent required by such indemnity provision modified and limited only to the degree or extent necessary to bring such indemnity into compliance with such statute, rule of law or equitable principle, but otherwise, the indemnity shall remain in full force and effect and binding upon the parties hereto.
- G. Each party hereto agrees and covenants that it will not contest the validity or enforceability of any indemnity or exculpatory provision of this Agreement on the basis that the party has no notice or knowledge of such provision or that the provision is not "conspicuous."
- H. If other provisions contain any indemnities or limitations, such indemnities shall be deemed to be cumulative of and to operate independently of the indemnities provided herein to the end that all indemnities provided in the Agreement shall be construed to grant indemnity to the Indemnified Parties to the fullest extent of each such indemnity.
- I. Within ten (10) working days following the time that an Indemnified Party has notice of the commencement of or the threat of commencement of any action of proceeding for which indemnity will be claimed pursuant to the provisions of this Section 9, the Indemnified Party shall notify UP of the commencement or threat of commencement thereof. However, a failure to so notify UP following the Indemnified Party's receipt of such notice shall not relieve UP from any liability that it may have to the Indemnified Party except to the extent that UP is materially prejudiced in its defense of such action or proceeding as a result of such failure.
- J. UP's obligation to defend, indemnify and hold harmless under this Agreement shall expire as to all claims of a contractual nature (but not for claims related to bodily injury or property damage) which are not filed in a court of competent jurisdiction on or before four (4) years from the date of the completion of the Minimum Scope with proper service thereof being served on the Authority on or before such date, and notice of such claim being sent to UP within 45 days of receipt.

Section 10. Notices. Any notice or other communication required or permitted to be given under this Agreement ("Notices") shall be in writing and shall be (i) delivered by a reputable overnight courier; or (ii) delivered by certified mail, return receipt requested and

deposited in the U.S. Mail, postage prepaid. Notices shall be deemed received at the earlier of actual receipt or one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or four (4) business days following deposit in the U.S. Mail, as evidenced by a return receipt. Notices shall be directed to the parties at their respective addresses shown below, or such other address as either party may, from time to time, specify in writing to the other in the manner described above:

If to Authority: Fort Bend Grand Parkway Toll Road Authority  
c/o Allen Boone Humphries Robinson LLP  
3200 Southwest Freeway, Suite 2600  
Houston, Texas 77027  
Attn: Richard L. Muller, Jr.  
rmuller@abhr.com  
Tel: (713) 860-6415  
Fax: (713) 860-6615

If to UP: Union Pacific Railroad Company  
Attn: Director Industry & Public Projects  
Engineering Department, MS 0910  
1400 Douglas Street  
Omaha, Nebraska 68179  
pahalste@up.com  
Tel: (402) 544-4357  
Fax: (402) 233-3150

With copy to: Union Pacific Railroad Company  
Attn: Real Estate Attorney  
1400 Douglas Street – STOP 1580  
Omaha, Nebraska 68179-1580

Section 11. Termination of Agreement. This Agreement is subject to termination by (i) any Party if construction of the Minimum Scope does not begin within twelve (12) months from the effective date hereof, and (ii) the Authority if the Project Costs Estimate is not paid pursuant to Section 3, or (iii) by UP if the Authority does not cure a failure to perform within thirty (30) days after written notice from UP. Otherwise, this Agreement is to remain in full force and effect until completion of the construction of the Minimum Scope, unless terminated by mutual agreement of the parties hereto. Sections 8 and 9 of this Agreement shall survive the term of this Agreement.

Section 12. Entire Agreement; Modification. This Agreement constitutes the entire agreement between the Parties concerning the Minimum Scope. There have been and are no agreements, covenants, representations, or warranties between the parties other than those expressly stated or provided for herein. No modification hereof or subsequent agreement relative to the subject matter hereof shall be binding on any party unless reduced to writing and signed by the Parties.

Section 13. Parties in Interest. This Agreement shall be for the sole and exclusive benefit of the County, the Authority and UP and shall not be construed to confer any benefit or right upon any other party, including particularly any resident of the County.

Section 14. Severability. The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application thereof to any other person or circumstance shall ever be held by any court of competent jurisdiction to contravene or be invalid under the constitution or laws of the State of Texas for any reason, that contravention or invalidity shall not invalidate the entire Agreement. Instead, this Agreement shall be construed as if it did not contain the particular provision or provisions held to be invalid, the rights and obligations of the parties shall be enforced accordingly, and this Agreement shall remain in full force and effect, as construed. The remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to the other parties or circumstances shall not be affected thereby.

Section 15. Successors and Assigns. This Agreement shall apply to and be binding upon the Parties hereto and their respective officers, directors, successors, and assigns. This Agreement and any of the rights obtained hereunder are not assignable by any party hereto without the express written consent of the other Parties, which consent shall not be unreasonably withheld, provided, however the Authority may assign its rights and obligations to the County after written notice to UP; provided that the County has assumed in writing all of the obligations set forth in this Agreement and the Authority has provided the County's written assumption to UP.

Section 16. Authorization. Each Party represents that (i) execution and delivery of this Agreement by it has been duly authorized by its governing body or other persons from whom such party is legally bound to obtain authorization; (ii) that the consummation of the contemplated transactions will not result in a breach or violation of, or a default under, any agreement by which it or any of its properties is bound, or by any statute, rule, regulation, order, or other law to which it is subject; and (iii) this Agreement is a binding and enforceable agreement on its part.

Section 17. Authorship. The Parties agree that this Agreement shall not be construed in favor of or against either Party on the basis that the Party did or did not author this Agreement.

Section 18. Applicable Law. Unless otherwise preempted by applicable federal laws, rules and regulations, this Agreement shall be governed and construed in accordance with the laws of the State of Texas. Venue shall be in Fort Bend County.

Section 19. Effective Date. This Agreement will be effective as of the date of the execution by the last Party to execute this Agreement.

Section 20. Records. The Authority shall maintain books, documents, papers, accounting records, and other evidence pertaining to costs incurred and work performed hereunder and shall make such materials available to UP at its offices during the contract period and for three (3) years from the date of final payment..

[EXECUTION PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement in multiple counterparts, each of which shall be deemed to be an original.

FORT BEND GRAND PARKWAY TOLL ROAD  
AUTHORITY

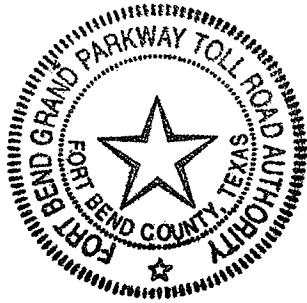
By:   
Chairman, Board of Directors

Date: August 28, 2012

ATTEST:

\_\_\_\_\_  
Secretary, Board of Directors

(SEAL)



UNION PACIFIC RAILROAD COMPANY

By: John Hovanec  
Printed Name: John Hovanec  
Title: AVP Engineering  
Date: 8/28/12

ATTEST:

Maura J. Thomas  
Assistant Secretary

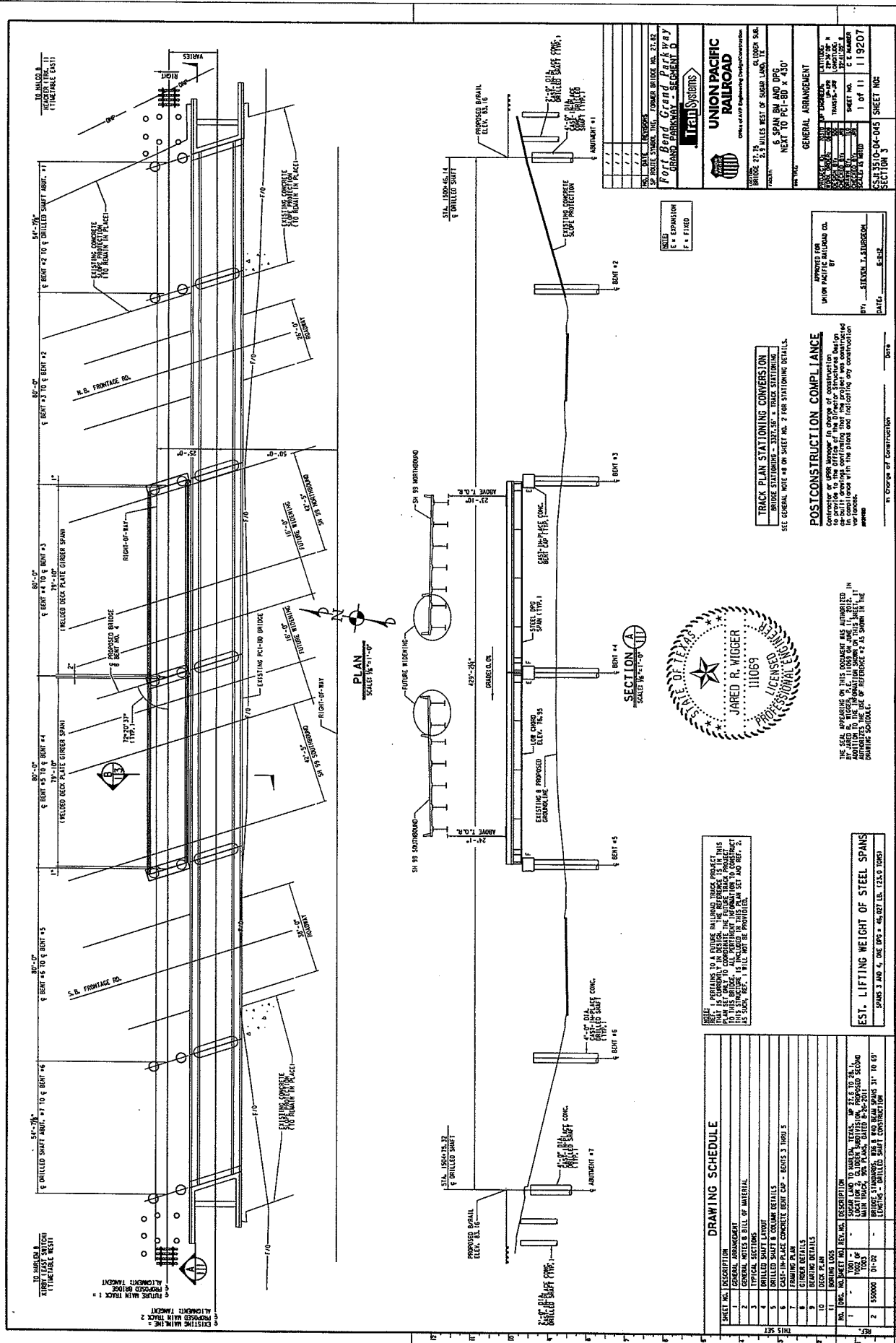
(SEAL)

**CONTRACTOR'S CONSENT**

The undersigned agrees to the terms of Sections 4(a), 4 (b), 4(e) and 4(g) as they pertain to the performance of the Minimum Scope by Contractor, to the Contractor's entry into the Contractor's Right of Entry Agreement, and the assignment of Contractor's warranties.

WILLIAMS BROTHERS CONSTRUCTION CO., INC.

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



<b>UNION PACIFIC RAILROAD</b> DIVISION OF CIVIL ENGINEERING PROJECT NO. 1000-46-14 BRIDGE 213 3/4 MILES WEST OF SPAN LAND, UT NEXT TO PCT-BD X 430	
<b>GENERAL ARRANGEMENT</b> SHEET NO. 1 OF 11 SHEET NO. C & NUMBER 119207 SCALE 1/8" = 1'-0"	
APPROVED FOR UNION PACIFIC RAILROAD CO. BY: STEVEN T. STUBBORN DATE: 5-2-02	

C = EXPANSION  
 F = FIXED

**TRACK PLAN STATIONING CONVERSION**  
 BRIDGE STATIONING - 3372.55' + TRACK STATIONING  
 SEE GENERAL NOTE #8 ON SHEET NO. 2 FOR STATIONING DETAILS.

**POSTCONSTRUCTION COMPLIANCE**  
 CONTRACTOR TO PERMANENTLY MAINTAIN RECORD DRAWINGS AND AS-BUILT DRAWINGS CONFIRMING THAT THE PROJECT WAS CONSTRUCTED IN ACCORDANCE WITH THE PERMITS AND INDICATING ANY CORRECTIONS TO THE ORIGINAL DRAWINGS.



THE SEAL APPEARING ON THIS DOCUMENT HAS AUTHORIZED JARED R. WIGGER TO SEAL THIS PROJECT. THE SEALING AUTHORITY IS LIMITED TO THE PROJECT AND THE DATE OF ISSUANCE. THE SEALING AUTHORITY DOES NOT GUARANTEE THE ACCURACY OF THE DRAWINGS OR THE QUALITY OF THE CONSTRUCTION.

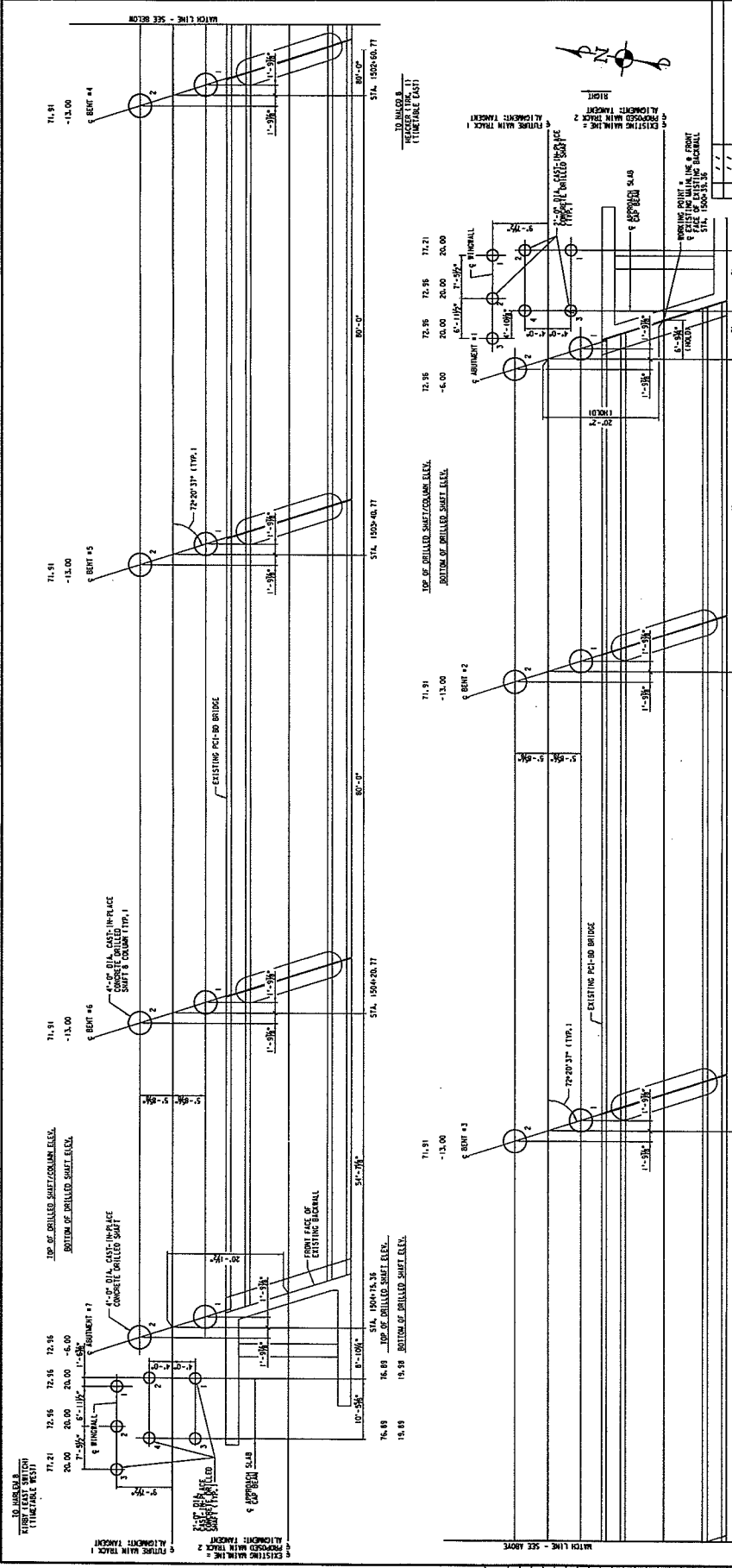
REF: 1. PERMITTING TO A FUTURE RAILROAD TRACK PROJECT THIS PLAN SET ONLY TO COMPLETE THE FUTURE TRACK PROJECT. THIS PLAN SET IS NOT TO BE USED FOR ANY OTHER PROJECT. IF SUCH USE IS NECESSARY, IT WILL NOT BE PROVIDED.

**EST. LIFTING HEIGHT OF STEEL SPANS**  
 SPANS 3 AND 4, ONE (1) I.B. = 44,027 LB. (20.0 TONS)

DRAWING SCHEDULE	
SHEET NO.	DESCRIPTION
1	GENERAL ARRANGEMENT
2	GENERAL NOTES & BILL OF MATERIAL
3	DRILLED SHAFT LAYOUT
4	DRILLED SHAFT LAYOUT
5	COST-IN-PLACE CONCRETE BRIDGE CD - BRIDGE 3 THRU 5
6	FRAMING PLAN
7	GIRDER DETAILS
8	DECK PLAN
9	BRIDGE LAYOUT
10	BRIDGE LAYOUT
11	BRIDGE LAYOUT
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14	BRIDGE LAYOUT
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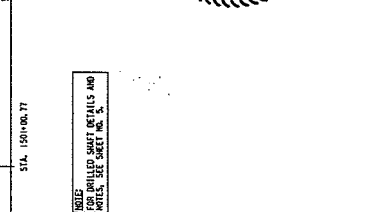




NO.	DATE	REVISIONS
1	11/11/07	ISSUED FOR PERMIT
2	11/11/07	REVISED PER COMMENTS
3	11/11/07	REVISED PER COMMENTS
4	11/11/07	REVISED PER COMMENTS
5	11/11/07	REVISED PER COMMENTS
6	11/11/07	REVISED PER COMMENTS
7	11/11/07	REVISED PER COMMENTS
8	11/11/07	REVISED PER COMMENTS
9	11/11/07	REVISED PER COMMENTS
10	11/11/07	REVISED PER COMMENTS

**UNION PACIFIC RAILROAD**  
 Office of Civil Engineering & Construction  
 BRIDGE 2214  
 2.8 MILES WEST OF SUGAR LAND, TX  
 DRAWING NO. 119207  
 SHEET NO. 4 OF 11  
 SECTION 3

APPROVED FOR  
 UNION PACIFIC RAILROAD CO.  
 BY  
 STEVEN J. SINGHSON  
 DATE  
 6-2-02



**DRILLED SHAFT LAYOUT**  
 SCALE: 1/4" = 1'-0"

SEE DRILLED SHAFT DETAILS AND NOTES, SEE SHEET NO. 5.

TOP OF DRILLED SHAFT COLUMN ELEV.  
 BOTTOM OF DRILLED SHAFT ELEV.

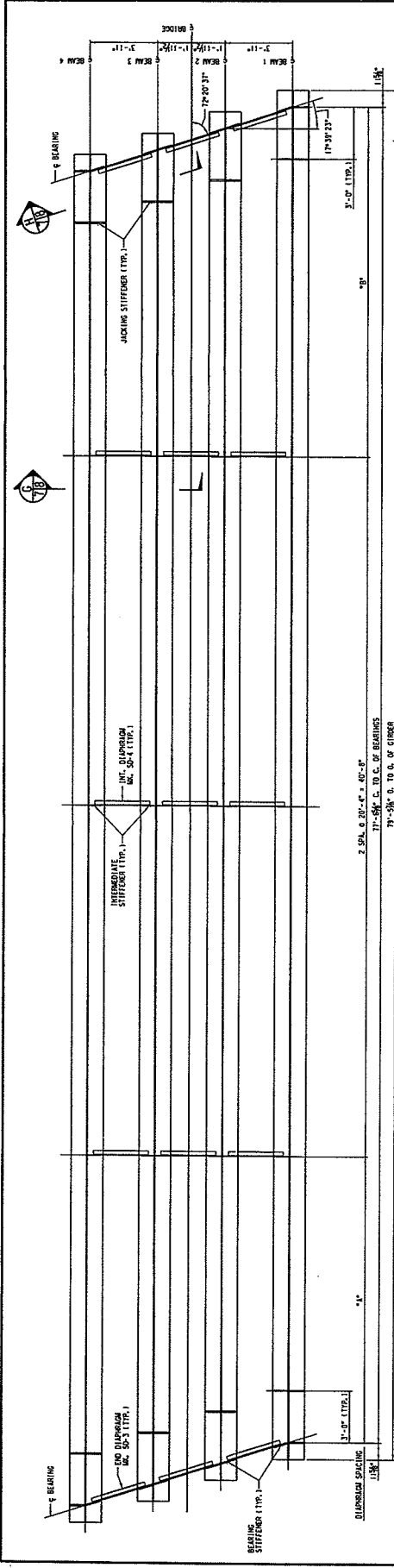
TOP OF DRILLED SHAFT COLUMN ELEV.  
 BOTTOM OF DRILLED SHAFT ELEV.

TOP OF DRILLED SHAFT COLUMN ELEV.  
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TOP OF DRILLED SHAFT COLUMN ELEV.  
 BOTTOM OF DRILLED SHAFT ELEV.



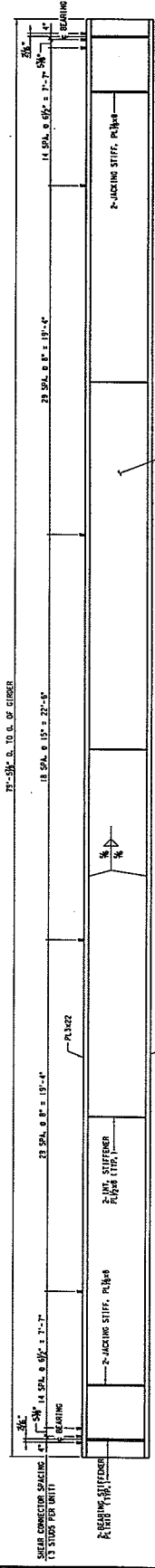




**FRAMING PLAN**  
SCALE: 1/4" = 1'-0"

**TABLE OF DIMENSIONS**

BEAM	DIMENSIONAL SPACING
1	18'-0"
2	17'-0"
3	17'-0"
4	18'-0"



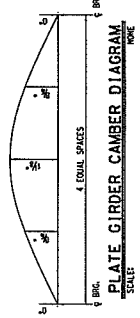
**GIRDER ELEVATION**  
SCALE: 1/4" = 1'-0"

**STRESS TABLE**

GIRDER SECTION	MOMENT (K-FT)		TOTAL		BENT FLANGE SECTION MOMENTS (K-FT)		BENDING STRESS (KSI)		EXTREME STRESS (KSI)	
	DEAD LOAD (100% COMP.)	LIVE LOAD	IMPACT	1+2+3+4	TOP	BOT.	ACTUAL	ALLOWABLE	ACTUAL	ALLOWABLE
1	1025.2	2064.3	674.0	2300.4	4713.3	2390	10	11	12	13
2	17	18	19	20	21	22	23	24	25	26
3	17	18	19	20	21	22	23	24	25	26
4	17	18	19	20	21	22	23	24	25	26

**STRESS TABLE**

GIRDER SECTION	SHEAR (K)		TOTAL		SHEAR STRESS (KSI)	
	DEAD LOAD (100% COMP.)	LIVE LOAD	IMPACT	1+2+3+4	ACTUAL	ALLOWABLE
1	54.2	41.4	121.3	35.6	262.5	35.2
2	17	18	19	20	21	22
3	17	18	19	20	21	22
4	17	18	19	20	21	22



**PLATE GIRDER CAMBER DIAGRAM**  
SCALE: NONE



APPROVED FOR  
UNION PACIFIC RAILROAD CO.  
BY: STEVEN T. STUBBS  
DATE: 6-6-02

UNION PACIFIC RAILROAD  
BRIDGE 27, 2 MILES WEST OF SEAS LAKE, ORE.  
NEXT TO P.C.T. BOX # 430

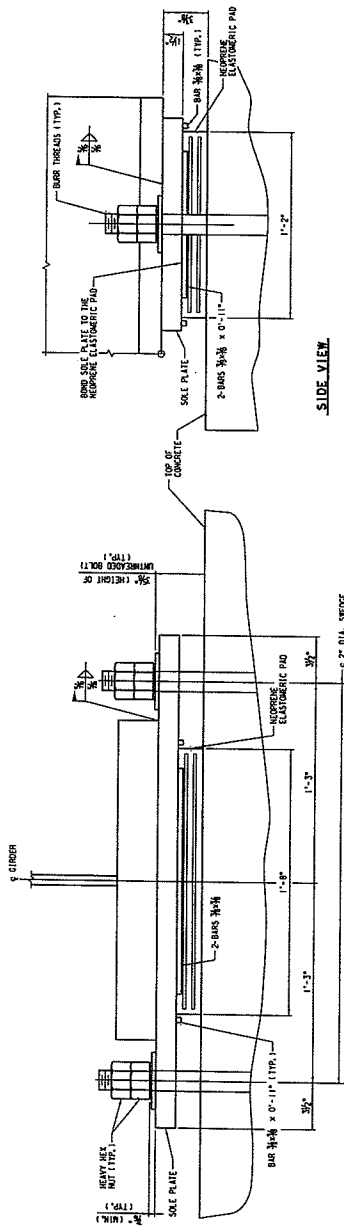
DATE: 6-6-02

BY: STEVEN T. STUBBS

SCALE: 1/4" = 1'-0"

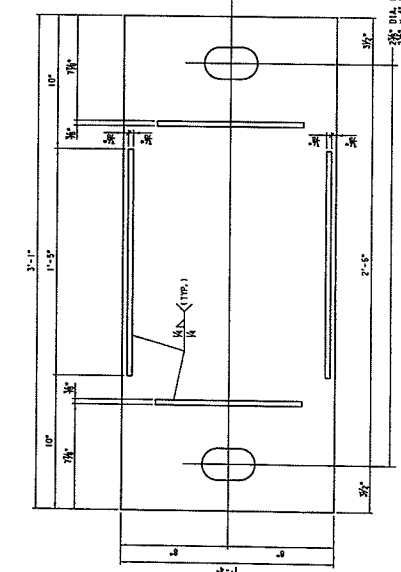
SECTION 3



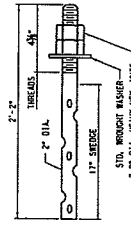


END VIEW

BEARING DETAILS  
SCALE: 3/4" = 1'-0"



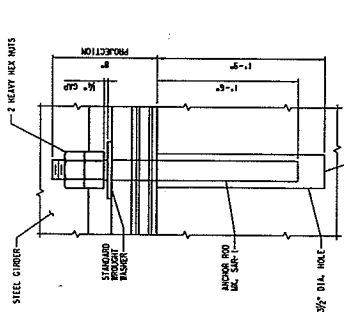
TYPICAL SECTION THRU BEARING  
SCALE: 3/4" = 1'-0"



ANCHOR ROD MK. SAR-1  
SCALE: EST. WT. = 25.8 LB. E70C

GIRDER SOLE PLATE DETAIL  
SCALE: 1/2" = 1'-0"

NOTES:  
EXPANSION BEARING SHOWN, FIXED BEARING SIMILAR.  
FIXED BEARING PLATE - 4 RIGID, PER SPAN.  
EXPANSION BEARING PLATE - 4 RIGID PER SPAN.



ANCHOR ROD DETAILS  
SCALE: 1" = 1'-0"



APPROVED FOR  
UNION PACIFIC RAILROAD CO.  
BY: \_\_\_\_\_  
DATE: \_\_\_\_\_

UNION PACIFIC RAILROAD	
Division of Engineering & Construction	
BRIDGE 17.7, 2.3 MILES WEST OF SUGAR LAND, TX	
PROJECT: 17.7 MILES WEST OF SUGAR LAND, TX	
NEXT TO PCL-80 P. 430	
DATE: 11/19/2017	
SHEET NO. 9 OF 11	
E.E. NUMBER: 1119207	
SECTION 3	
SHEET NO. 3510-04-043	









**EXHIBIT A-1  
TO THE JOINT PROJECT AGREEMENT  
COVERING  
NEW RAILROAD BRIDGE AS PART OF SH 99/GRAND PARKWAY PROJECT**

**PUBLIC HIGHWAY OVERPASS AGREEMENT**

SH-99 (Grand Parkway) Overpass - DOT No. 440-717F  
Railroad Mile Post 27.79 - Glidden Subdivision  
Sugar Land, Fort Bend County, Texas

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 ("Railroad"); **FORT BEND GRAND PARKWAY TOLL ROAD AUTHORITY** ("Authority") and **COUNTY OF FORT BEND** ("County"), each a "Party" and collectively, the "Parties".

**RECITALS:**

A. On May 12, 2011, the State of Texas, Texas Department of Transportation (the "State") and the Authority entered into a Right of Use Agreement for a Local Toll Project Entity's Use of State Highway Right of Way agreement (the "State/Authority Agreement") providing for the Authority to design, construct, operate and maintain the SH 99/Grand Parkway, Segment D highway mainline structure on behalf of the State.

B. Pursuant to the State/Authority Agreement described in Paragraph A above, the Authority desires to undertake as its project (the "Project") the construction of a new grade separated toll road crossing overpass structure (the "Structure") that will carry vehicular traffic traversing on SH-99 (Grand Parkway) over Railroad's tracks and property at Railroad Mile Post 27.79 (DOT No. 440-717F), on the Railroad's Glidden Subdivision at Sugar Land, Fort Bend County, Texas (the "Crossing Area"). The location of the Crossing Area is shown on the Railroad's print marked **Exhibit A**, attached hereto and made a part hereof.

C. The Railroad and the Authority 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. REAL ESTATE DOCUMENTS**

Within fifteen (15) days after both parties approve surveys and legal descriptions to be prepared by the Authority, at its expense, (i) the Railroad shall execute and deliver a Grant of Aerial Easement to the Authority in the form marked **Exhibit D**, attached hereto and hereby made a part hereof, and (ii) the Authority shall execute and deliver to the Railroad the Encroachment Agreement marked **Exhibit E**, attached hereto and hereby made a part hereof.

### **Section 3. DEFINITION OF CONTRACTOR**

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the Authority 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 involving the Project, and any subsequent maintenance or repair work, the Authority 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 C**, attached hereto and hereby made a part hereof. The Authority 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:

Senior Manager - Contracts  
Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street, Mail Stop 1690  
Omaha, NE 68179-1690  
UP File Folder No. 2724-86

D. If the Authority is self insured, the Railroad confirms that it may self insure all risks involving the Authority's own employees entering the Railroad's property in connection with this Project.

#### **Section 5. FEDERAL AID POLICY GUIDE**

If the Authority 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**

Except as set forth in Section 7, the Authority 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 except as provided in the Joint Project Agreement defined below.

#### **Section 7. WORK TO BE PERFORMED BY RAILROAD; BILLING TO AUTHORITY; AUTHORITY'S PAYMENT OF BILLING**

A. The Railroad, at its expense, shall provide engineering design review and inspection services involving the construction of the highway overpass Structure.

B. The Railroad, at Authority's expense, shall provide flagging that is needed for the construction of the highway overpass Structure.

C. The Railroad's Estimate is dated August 16, 2012, and marked **Exhibit F**, attached hereto and hereby made a part hereof. The Authority confirms that Railroad's flagging estimate is based on an estimated number of flagging days as provided by the Authority and that the Railroad's billing for flagging shall be the actual flagging costs incurred by the Railroad for this highway overpass Project. The Authority also confirms that the Railroad's daily flagging rate may change during the course of the Project.

D. The Railroad shall send progressive billing to the Authority during the Project and final billing to the Authority within one hundred eighty (180) days after receiving written notice from the Authority that all Project work affecting the Railroad's property has been completed.

E. The Authority 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 involving flagging for this highway overpass Project including Railroad's standard additive rates.

## **Section 8. PLANS**

A. The Authority, at its expense, shall prepare, or cause to be prepared by others the final detailed plans and specifications for the Project and the Structure and shall 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 appurtenances, associated drainage, shoring, sheeting and excavations for bents and/or abutments next to or adjacent to the Railroad's tracks.

B. The Authority submitted to the Railroad the final one hundred percent (100%) completed plans and specifications for the Project and the Structure. The front page of the final plans, the index sheets and the general profile sheets of the northbound and southbound portions of the Structure and the Railroad Requirements for Bridge Construction are marked **Exhibit G**, attached hereto and hereby made a part hereof. As noted on the Exhibit G prints, the plan prints have been prepared by LJA Engineering, Inc. and approved by Tanya Fox Linquist, P.E. for LJA Engineering, Inc. on May 25, 2012, and show the concurrence of the Texas Department of Transportation on June 13, 2012 and June 14, 2012, and the concurrence of the Authority on July 10, 2012. The Railroad has provided its written approval of such final plans to the Authority and such final plans are referred to in this Agreement as the "Plans" and the Plans are hereby made a part of this Agreement by reference.

C. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing.

D. Upon completion of the Structure, the Authority, at its expense, shall furnish to the Railroad two (2) sets of reproducible "as constructed" Plans of the Structure.

E. The Railroad's review and approval of the Plans in no way relieves the Authority 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 Authority or Contractor on the Plans is at the risk of the Authority and Contractor.

## **Section 9. NON-RAILROAD IMPROVEMENTS**

A. 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 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 Authority mutually agree in writing that such plans are acceptable.

## **Section 10. RAILROAD'S COORDINATION REQUIREMENTS**

The Political Body, at its expense, shall ensure that the Contractor complies with all of the Construction Notes set forth in the Railroad's Requirements For Bridge Construction that are a part of the Exhibit A-1 Plans, hereto attached, and other special guidelines and/or requirements that the Railroad may provide to the Political Body for this Project.

## **Section 11. 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 Structure remains on the Railroad's property.

B. The Railroad, if it so elects, may terminate this Agreement effective upon delivery of written notice to the Authority in the event the Authority 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 Authority shall pay to the Railroad all actual costs for services provided by the Railroad to the Authority 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 12. CONDITIONS TO BE MET BEFORE  
AUTHORITY CAN COMMENCE WORK**

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

- (i) The Railroad and the Authority have executed this Agreement.
- (ii) The Railroad and the Authority have executed the Joint Project Agreement Covering New Railroad Bridge as Part of SH 99 / Grand Parkway Project ("Joint Agreement").
- (iii) The Railroad and the Authority shall have executed and delivered the real estate documents described in Section 2 (i) and (ii) above, including as to the document described in Section 2(ii), obtaining the written consent of the Texas Department of Transportation.
- (iv) The Railroad has provided to the Authority the Railroad's written approval of the Plans.
- (v) The New Railroad Bridge, to be located adjacent to the existing railroad bridge, that will be constructed by the Authority's Contractor, must be constructed and completed in compliance with the Railroad Bridge plans.
- (vi) The Authority shall have caused its contractor to complete performance of the construction of the Minimum Scope pursuant to the Joint Agreement referenced in Section 12 (ii) above prior to commencement of construction of that portion of the Structure located above the Railroad's tracks and property (including both the existing bridge and the New Railroad Bridge).
- (vii) 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.
- (viii) 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 13. FUTURE PROJECTS**

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

**Section 14. COUNTY'S RIGHT AND OBLIGATIONS**

Upon any failure by the Authority to properly maintain, repair and renew the Structure, or upon either the termination or expiration of the State/Authority Agreement, the County confirms that the County, at its sole expense, shall be responsible for all of the Authority's rights and obligations under this Agreement, including, without limitation, the obligation to maintain, repair and renew the Structure as provided in Section 4 of Exhibit B of this Agreement. Upon any termination or expiration of the State/Authority Agreement, the Authority shall provide written documentation to the Railroad that it has assumed all rights and obligations of the Authority under this Agreement.

**Section 15. ASSIGNMENT; SUCCESSORS AND ASSIGNS**

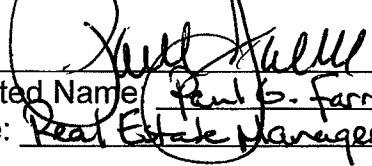
A. The Authority shall not assign this Agreement without the prior written consent of Railroad; provided, however, that the Authority may assign this Agreement to the County as set forth in Section 14 above.

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 the Authority.

**{Rest of Page Left Blank Intentionally}**

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**

By   
Printed Name: Paul G. Farrell  
Title: Real Estate Manager - Contracts

**FORT BEND GRAND PARKWAY TOLL ROAD AUTHORITY**

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

**COUNTY OF FORT BEND**

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

**EXHIBIT B**  
**MINIMUM PROJECT COST ESTIMATE**  
**(Per Bid)**

Description	Unit	Qty	Williams Brothers Construction Company, Inc.	Total
1 STRUCTURAL STEEL AND FASTENERS	LOT	2.00	\$75,000.00	\$ 150,000.00
2 4000 PSI CONCRETE FOR SUBSTRUCTURE	CY	681.00	\$740.00	\$ 503,940.00
3 5000 PSI CONCRETE FOR DECK SLAB	CY	103.00	\$500.00	\$ 51,500.00
4 REINFORCING STEEL	LB	166886.00	\$1.00	\$ 166,886.00
5 CONCRETE AND REINFORCING STEEL	LOT	1.00	\$15,000.00	\$ 15,000.00
6 SONIC LOG TESTING PIPES	LOT	1.00	\$80,000.00	\$ 80,000.00
7 4000 PSI NON-SHRINK GROUT	LOT	1.00	\$15,000.00	\$ 15,000.00
8 PREFORMED JOINT FILLER	LOT	1.00	\$500.00	\$ 500.00
9 HILTI CS-2130 GRAY CAULK	LOT	1.00	\$1,000.00	\$ 1,000.00
10 ROOFING FELT	SF	10.00	\$50.00	\$ 500.00
11 THOROC EPOXY ADHESIVE 24 LPL	GAL	1.00	\$100.00	\$ 100.00
12 CLEAN AND PAINT STRUCTURAL STEEL (SYSTEM II)	SF	3065.00	\$3.00	\$ 9,195.00
				\$ 993,621.00

Total with 10% Contingency \$ 1,092,983.10

**CONTRACTOR'S  
RIGHT OF ENTRY AGREEMENT  
  
(TEXAS)**

**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] [Branch] [at or near DOT No. \_\_\_\_\_] located at or near \_\_\_\_\_, in \_\_\_\_\_ County, State of Texas, as such location is in the general location shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof. The 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.

**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 RAILROAD; RAILROAD REPRESENTATIVE.**

A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor. Railroad shall bear any costs 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, Contractor will provide Railroad with (i) the 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/or endorsements shall be sent to:

Union Pacific Railroad Company

\_\_\_\_\_  
[Insert mailing address]

\_\_\_\_\_  
Attn: \_\_\_\_\_  
UP Folder No. \_\_\_\_\_

**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. Waived.**

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

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

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

**ARTICLE 11 - EXPLOSIVES.**

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

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

**UNION PACIFIC RAILROAD COMPANY**

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

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

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

**EXHIBIT A  
TO  
CONTACTOR'S RIGHT OF ENTRY AGREEMENT**

Exhibit A will be a print showing the general location of the right of entry area.

**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 (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 ("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 RAILROAD UNDER THIS SECTION 8. CONTRACTOR ACKNOWLEDGES THAT THIS WAIVER WAS MUTUALLY NEGOTIATED BY THE PARTIES HERETO.**

**D. NO COURT OR JURY FINDINGS IN ANY EMPLOYEE'S SUIT PURSUANT TO ANY WORKER'S COMPENSATION ACT OR THE FEDERAL EMPLOYERS' LIABILITY ACT AGAINST A PARTY TO THIS AGREEMENT MAY BE RELIED UPON OR USED BY CONTRACTOR IN ANY ATTEMPT TO ASSERT LIABILITY AGAINST RAILROAD.**

**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 of Texas.
- 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. 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.

a. **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 of Texas.
- 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.

## EXHIBIT D

### BILL OF SALE

FORT BEND GRAND PARKWAY TOLL ROAD AUTHORITY, a Texas political agency ("Seller") for and in consideration of One Dollar (\$1.00) and other valuable consideration does hereby sell, grant, transfer and deliver unto UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Buyer"), its successors and assigns, the following described property, to-wit:

One (1) railroad bridge and appurtenances at or near Buyer's Milepost 27.79 on Buyer's Glidden Subdivision in Fort Bend County, Texas (the "Bridge") in the location shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof.

THE SELLER BY THIS INSTRUMENT MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND FURTHER MAKES NO WARRANTY AS TO THE MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE; IT BEING UNDERSTOOD THAT THE BUYER IS ACQUIRING THE BRIDGE FROM THE SELLER IN AN "AS IS" AND "WHERE IS" CONDITION WITH ALL FAULTS, AND THAT THE BUYER ASSUMES ALL RISKS IN CONNECTION THEREWITH.

Notwithstanding the disclaimer in the preceding paragraph, Seller hereby sells, grants, transfers, assigns and delivers to Buyer all warranties of Contractor to that certain Minimum Scope of work set forth in that certain Overpass Contract as the aforesaid are defined in that certain Joint Project Agreement dated as of \_\_\_\_\_, 2012 by and between Seller and Buyer and consented to by Contractor, Williams Brothers \_\_\_\_\_.

Subject to the above disclaimer by the Seller, the Seller represents and warrants: (1) that the Seller has good, sufficient and marketable title in and to, and is the sole owner of, the Bridge; (2) that the Seller has authority to sell and convey the Bridge without breach of any other agreement; (3) that the Bridge is free and clear of all liens and encumbrances, and that no person or entity has or claims any security interest or lien in or to the Bridge including, but not limited to, any mortgage, deed of trust, pledge or assignment; (4) that there are no mechanic's or materialmen's liens of any kind or nature existing against the Bridge and that no work has been done on the Bridge or material furnished therewith that has not been paid for that would be the basis of any mechanic's or materialman's liens to be enforced against the Property and (5) that it

will defend title to and sale of the Bridge unto the Buyer against any claims and demands of all and every person, persons or entity whatsoever.

IN WITNESS WHEREOF, the Seller has caused this instrument to be duly executed as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**FORT BEND GRAND PARKWAY  
TOLL ROAD AUTHORITY**

By: \_\_\_\_\_  
Jim Condrey  
Chairman