

PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT

BETWEEN

UNION PACIFIC RAILROAD COMPANY

AND THE

COUNTY OF FORT BEND

COVERING THE

RECONSTRUCTION AND WIDENING OF THE EXISTING
HARLEM ROAD AT-GRADE PUBLIC ROAD CROSSING

AT

RAILROAD MILE POST 29.59 – GLIDDEN SUBDIVISION
DOT NO.: 743-713K

NEAR

SUGAR LAND,
IN FORT BEND COUNTY,
TEXAS



UPRR Folder No.: 2673-58

UPRR Audit No.: 260389

PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT

Harlem Road – DOT No. 743-713K
Railroad Mile Post 29.59 – Glidden Subdivision
near Sugar Land, in Fort Bend County, Texas

THIS AGREEMENT ("Agreement") is made and entered into as of the 18th day of October, 2011 ("Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179 ("Railroad") and the **COUNTY OF FORT BEND**, a political subdivision of the State of Texas to be addressed at 1124 Blume Road, Rosenberg, Texas 77471 ("County").

RECITALS:

Presently, the County occupies (without benefit of an agreement between the parties hereto), the Railroad's right of way with the existing Harlem Road at-grade public road crossing, (DOT No. 743-713K), at Railroad's Mile Post 29.59 on the Railroad's Glidden Subdivision near Sugar Land, in Fort Bend County, Texas (the "Crossing Area").

The County now desires to undertake as its project (the "Project") the reconstruction and widening of the Crossing Area. The road crossing, as reconstructed and widened is hereinafter the "Roadway". The Crossing Area as reconstructed and widened is shown on the Railroad Location Print marked **Exhibit A** and specified in the Detailed Prints collectively marked **Exhibit A-1**, with each exhibit being attached hereto and hereby made a part hereof.

The right of way presently utilized by the County is not sufficient to allow for the reconstruction and widening of the Roadway. Therefore, under this Agreement, the Railroad will be granting additional rights to the County to facilitate the reconstruction and widening of the Roadway. The portion of Railroad's property that County needs to use in connection with the Roadway (including the right of way area covered under the Original Agreement or in a separate document) is described in the Legal Description marked **Exhibit A-2** and also shown on the Illustrative Print of the Legal Description marked **Exhibit A-3**, with each exhibit being attached hereto and hereby made a part hereof (the "Crossing Area").

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

AGREEMENT:

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

Section 1. EXHIBIT B

The General Terms and Conditions marked **Exhibit B**, are attached hereto and hereby made a part hereof.

Section 2. RAILROAD GRANTS RIGHT

For and in consideration of the sum of **FOURTEEN THOUSAND FIVE HUNDRED EIGHTY-SIX DOLLARS (\$14,586.00)** to be paid by the County to the Railroad upon the execution and delivery of this Agreement and in further consideration of the County's agreement to perform and comply with the terms of this Agreement, the Railroad hereby grants to the County the right to construct, maintain and repair the Roadway over and across the Crossing Area.

Section 3. DEFINITION OF CONTRACTOR

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

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

A. Prior to Contractor performing any work within the Crossing Area and any subsequent maintenance and repair work, the County shall require the Contractor to:

- execute the Railroad's then current Contractor's Right of Entry Agreement
- obtain the then current insurance required in the Contractor's Right of Entry Agreement; and
- provide such insurance policies, certificates, binders and/or endorsements to the Railroad.

B. The Railroad's current Contractor's Right of Entry Agreement is marked **Exhibit D**, attached hereto and hereby made a part hereof. The County 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
UPRR Folder No. 2673-58*

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

Section 5. FEDERAL AID POLICY GUIDE

If the County will be receiving any federal funding for the Project, the current rules, regulations and provisions of the Federal Aid Policy Guide as contained in 23 CFR 140, Subpart I and 23 CFR 646, Subparts A and B are incorporated into this Agreement by reference.

Section 6. NO PROJECT EXPENSES TO BE BORNE BY RAILROAD

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

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

- A. The work to be performed by the Railroad, at the County's sole cost and expense, is described in the:
- Railroad's Track and Surface Material Estimate dated April 13, 2011, in the amount of \$191,224.00;
 - Railroad's Signal Material Estimate dated April 19, 2011, in the amount of \$628,310.00,
- collectively marked **Exhibit C** and attached hereto and hereby made a part hereof (collectively the "Estimate"). As set forth in the Estimate, the Railroad's estimated cost for the Railroad's work associated with the Project is \$819,534.00.
- B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the County in the event the County does not commence construction on the portion of the Project located on the Railroad's property within six (6) months from the date of the Estimate.
- C. The County acknowledges that the Estimate does not include any estimate of flagging or other protective service costs that are to be paid by the County or the Contractor in connection with flagging or other protective services provided by the Railroad in connection with the Project. All of such costs incurred by the Railroad are to be paid by the County or the Contractor as determined by the Railroad and the County. If it is determined that the Railroad will be billing the Contractor directly for such costs, the County agrees that it will pay the Railroad for any flagging costs that have not been paid by any Contractor within thirty (30) days of the Contractor's receipt of billing.
- D. The County agrees to reimburse the Railroad within thirty (30) days of its receipt of billing from the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, all actual costs of engineering review (including preliminary engineering review costs incurred by Railroad prior to the Effective Date of this Agreement), construction, inspection, flagging (unless flagging costs are to be billed directly to the Contractor), procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead labor/construction costs including Railroad's standard additive rates.



Section 8. PLANS

- A. The County, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Project and the Structure and submit such plans and specifications to the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, for prior review and approval. The plans and specifications shall include all Roadway layout specifications, cross sections and elevations, associated drainage and other appurtenances.
- B. The final one hundred percent (100%) completed plans that are approved in writing by the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.
- C. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing.
- D. The Railroad's review and approval of the Plans in no way relieves the County 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 County or Contractor on the Plans is at the risk of the County and Contractor.

Section 9. NON-RAILROAD IMPROVEMENTS

- A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocation, replacing, removing and abandoning in place all non-railroad owned facilities (the "Non Railroad Facilities") affected by the Project including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required under Section 8. The Non Railroad Facilities plans and specifications shall comply with Railroad's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines. Railroad has no obligation to supply additional land for any Non Railroad Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted Non Railroad Facilities plans and specifications comply with Railroad's standard specifications and requirements. Railroad has no obligation to permit any Non Railroad Facilities to be abandoned in place or relocated on Railroad's property.
- B. Upon Railroad's approval of submitted Non Railroad Facilities plans and specifications, Railroad will attempt to incorporate them into new agreements or supplements of existing agreements with Non Railroad Facilities owners or operators. Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for Non Railroad Facilities. Non Railroad Facilities work shall not commence before a supplement or new agreement has been fully executed by Railroad and the Non Railroad Facilities owner or operator, or before Railroad and County mutually agree in writing to (i) deem the approved Non Railroad Facilities plans and specifications to be Plans pursuant to Section 8B, (ii) deem the Non Railroad Facilities part of the Structure, and (iii) supplement this Agreement with terms and conditions covering the Non Railroad Facilities.

Section 10. EFFECTIVE DATE; TERM; TERMINATION

- A. This Agreement is effective as of the Effective Date first herein written and shall continue in full force and effect for as long as the Roadway remains on the Railroad's property.
- B. The Railroad, if it so elects, may terminate this Agreement effective upon delivery of written notice to the County in the event the County 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 County shall pay to the Railroad all actual costs for services provided by the Railroad to the County in connection with the Project up to the date of termination, including, without limitation, all actual costs incurred by the Railroad in connection with reviewing any preliminary or final Project Plans.

Section 11. CONDITIONS TO BE MET BEFORE COUNTY CAN COMMENCE WORK

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

- (i) The Railroad and the County have executed this Agreement.
- (ii) The Railroad has provided to the County the Railroad's written approval of the Plans.
- (iii) Each Contractor has executed Railroad's Contractor's Right of Entry Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements required under the Contractor's Right of Entry Agreement.
- (iv) Each Contractor has given the advance notice(s) required under the Contractor's Right of Entry Agreement to the Railroad Representative named in the Contractor's Right of Entry Agreement.

Section 12. FUTURE PROJECTS

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

Section 13. SIGNAL MAINTENANCE

The Railroad agrees to maintain the automatic flashing light crossing signals at its expense, however, if the County desires to improve or relocate the signal facilities, the Railroad will do so at the County's sole cost and expense.

Section 14. SPECIAL PROVISIONS PERTAINING TO AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

If the County will be receiving American Recovery and Reinvestment Act ("ARRA") funding for the Project, the County agrees that it is responsible in performing and completing all ARRA reporting documents for the Project. The County confirms and acknowledges that Section 1512 of the ARRA provisions applies only to a "recipient" receiving ARRA funding directly from the federal government and, therefore, (i) the ARRA reporting requirements are the responsibility of the County and not of the Railroad and (ii) the County shall not delegate any ARRA reporting responsibilities to



the Railroad. The County also confirms and acknowledges that (i) the Railroad shall provide to the County the Railroad's standard and customary billing for expenses incurred by the Railroad for the Project including the Railroad's standard and customary documentation to support such billing and (ii) such standard and customary billing and documentation from the Railroad provides the information needed by the County to perform and complete the ARRA reporting documents. The Railroad confirms that the County and the Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for the Project as provided in this Agreement.

Section 15. CONDITIONS

- a). County shall not be liable to Railroad on account of any failure of Railroad's flasher lights to operate properly nor shall Railroad have or be entitled to maintain any action against County arising from any failure from Railroad's flasher lights to operate properly. Similarly, Railroad shall not be liable to County on account of any failure of County's traffic signal to operate properly nor shall County have or be entitled to maintain any action against Railroad arising from any failure of County's traffic signal to operate properly.
- b). County reserves the right to cancel this agreement for any reason and at any time prior to Railroad proceeding with any part of the work outlined herein.
- c). 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. County or its contractor(s) shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m., Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour number, 7 day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's premises to be used by County or its contractor(s). If it is, County or its contractor(s) will telephone the telecommunication company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on Railroad's premises.

Section 16. INTERFERENCE

Each party shall take all suitable precautions to prevent any interference (by induction, leakage of electricity or otherwise) with the operation of the other party's signals or communications lines, or those of its tenants; and if, at any time, the operation or maintenance of its signals results in any electrostatic effects, the party whose signals are causing the interference shall, at its expense, immediately take such action as may be necessary to eliminate such interference.

Section 17. ASSIGNMENT; SUCCESSORS AND ASSIGNS

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

Section 18. SPECIAL PROVISIONS

The County believes that the indemnity agreements such as set forth in Sections 8B, 8D and 12C of Exhibit B and other obligations of the County under this Agreement are obligating the



County to the expenditure of other than current funds certified as available by the County Auditor and are thus "debts" under the provision of TEX. CONST. art XI §7. It is understood and agreed that the County is obligated to perform obligations under this Agreement only to the extent required by law. In order to obligate the County to perform to the full extent allowed by law, the Commissioners Court of Comal County agrees that during any year while there is any present, future or contingent obligation of the County under this Agreement, including the indemnity agreements such as set forth in Sections 8B, 8D and 12C of Exhibit B of this Agreement, the Comal County Commissioners Court shall compute and ascertain the amount of ad valorem tax, based on the latest approved tax rolls of the County, with full allowances being made for delinquencies and costs of tax collection, which will be sufficient to raise and produce the money required to fulfill the present, future or contingent obligations and liabilities of the County under said Agreement during any such year, in no instance to be less than two percent (2%) of such obligations, together with all interest thereon. Said rate and amount of ad valorem tax is levied against all taxable property in Comal County for each year while any present, future or contingent obligation or liability of the County exists under said Agreement, and said ad valorem tax shall be assessed and collected each such year until all of the obligations under said agreement have been discharged and all liability thereunder discharged.

Section 19. TERMINATION OF ORIGINAL AGREEMENT

Upon the completion of the Roadway, the Original Agreement covering the existing Roadway (if any) shall terminate and the terms and conditions of this Agreement shall govern the use, maintenance and repair of the Roadway.

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

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

By: _____

JAMES P. GADE
Director Contracts

ATTEST: _____

Hanson

COUNTY OF FORT BEND

By: _____

Robert Hebert
Title County Judge

September 6, 2011

Pursuant to Resolution/Order No. _____
dated: _____, 20____
hereto attached.



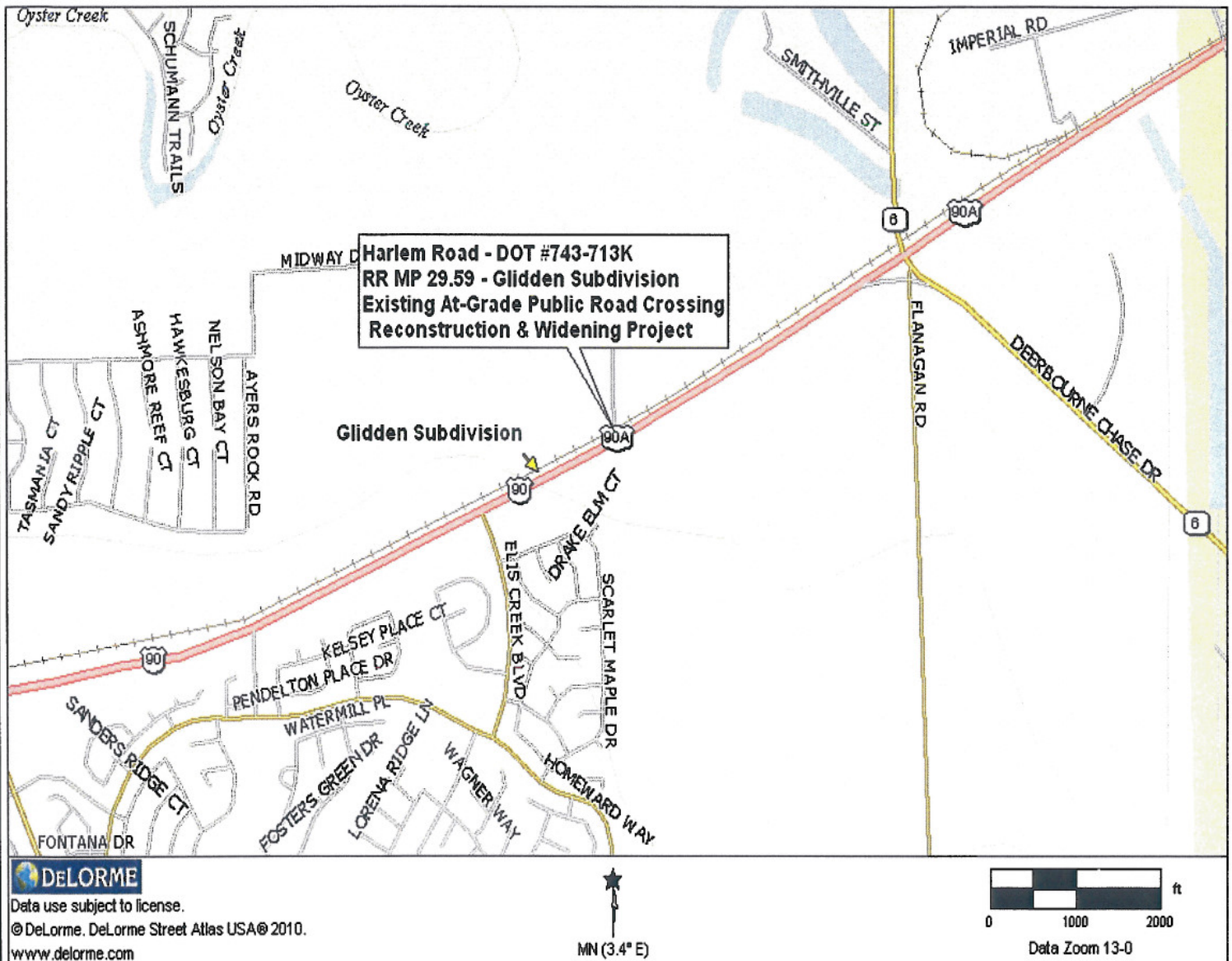
EXHIBIT A

To Public Highway At-Grade Crossing
Agreement

Cover Sheet for the
Railroad Location Print



RAILROAD LOCATION PRINT OF AN EXISTING AT-GRADE PUBLIC ROAD CROSSING RECONSTRUCTION & WIDENING PROJECT



RAILROAD WORK TO BE PERFORMED:

1. Re-lay 800-feet of rail; Install 192-feet of concrete road crossing panels; Install 250 Cross ties; Install 4 carloads of ballast; and other track & surface materials.
2. Install automatic flashing light crossing signals with gates and cantilevers; and other signal materials.
3. Engineering Design & flagging.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

GLIDDEN SUBDIVISION

MILE POST 29.59

GPS: N 29° 26.5237', W 95° 39.6277'
near SUGAR LAND, in FORT BEND CO., TX.

Railroad Location Print of an existing at-grade public
road crossing reconstruction and widening project with the
COUNTY OF FORT BEND.

Folder No. 2673-58

Date: July 22, 2011

WARNING

IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE
OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.
PHONE: 1-(800) 336-9193

EXHIBIT A-1

To Public Highway At-Grade Crossing
Agreement

Cover Sheet for the
Detailed Prints

CONSTRUCTION PLANS FOR ROADWAY MODIFICATIONS
HARLEM ROAD AT US 90A
IN
FORT BEND COUNTY, TEXAS



COUNTY JUDGE

ROBERT E. HEBERT

COUNTY COMMISSIONERS

PRECINCT 1 - RICHARD MORRISON

PRECINCT 2 - GRADY PRESTAGE

PRECINCT 3 - ANDY MEYERS

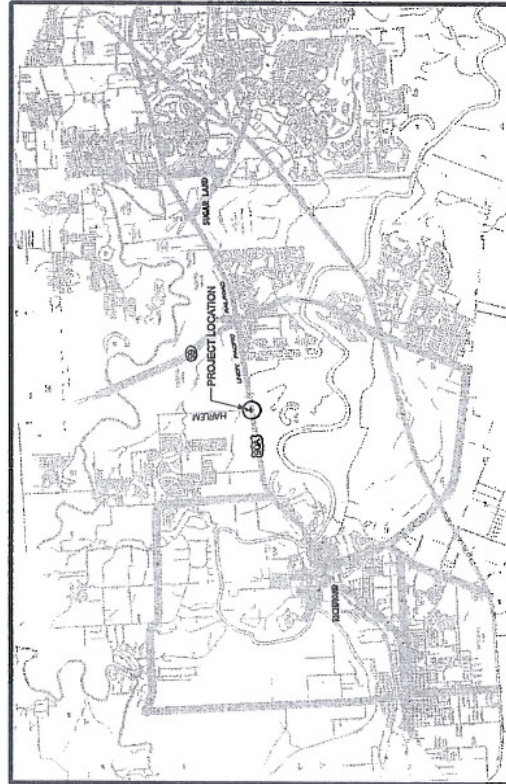
PRECINCT 4 - JAMES PATTERSON

COUNTY ENGINEER

D. JESSE HEGEMIER, P.E.

COUNTY AUDITOR

ROBERT ED STURDIVANT



DOCUMENT IS FOR INTERIM REVIEW AND NOT
INTENDED FOR CONSTRUCTION BIDDING, OR
FINAL RECORD SET.
STEVEN D. TOMBLEY, PE
88656
TEXAS SERIAL NO.
DATE
DATE



SPECIFICATIONS ADOPTED BY THE TEXAS DEPT. OF TRANSPORTATION,
JUNE 1, 2004 AND SPECIFICATIONS ITEMS SHALL GOVERN THIS PROJECT.

APPROVED _____ DATE _____
D. JESSE HEGEMIER, PE
FORT BEND COUNTY ENGINEER

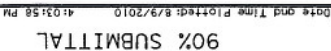
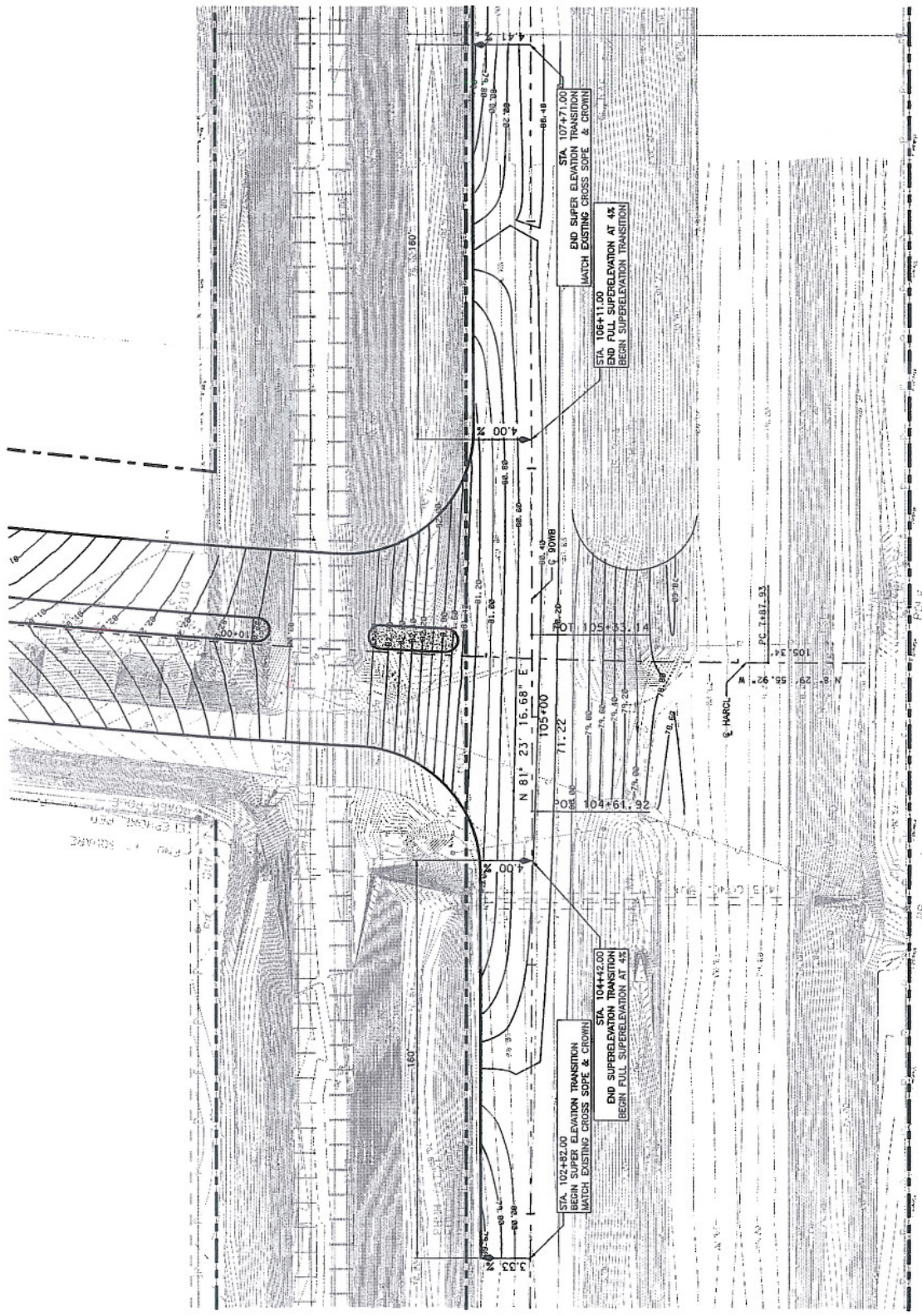
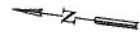


Exhibit A 1



DOCUMENT IS FOR INTERIM REVIEW
AND NOT INTENDED FOR
CONSTRUCTION BIDDING,
OR PERMIT PURPOSES.
STEVEN D. TEAPLER, PE
TEXAS SERIAL NO. 88656
DATE: 8/9/2010

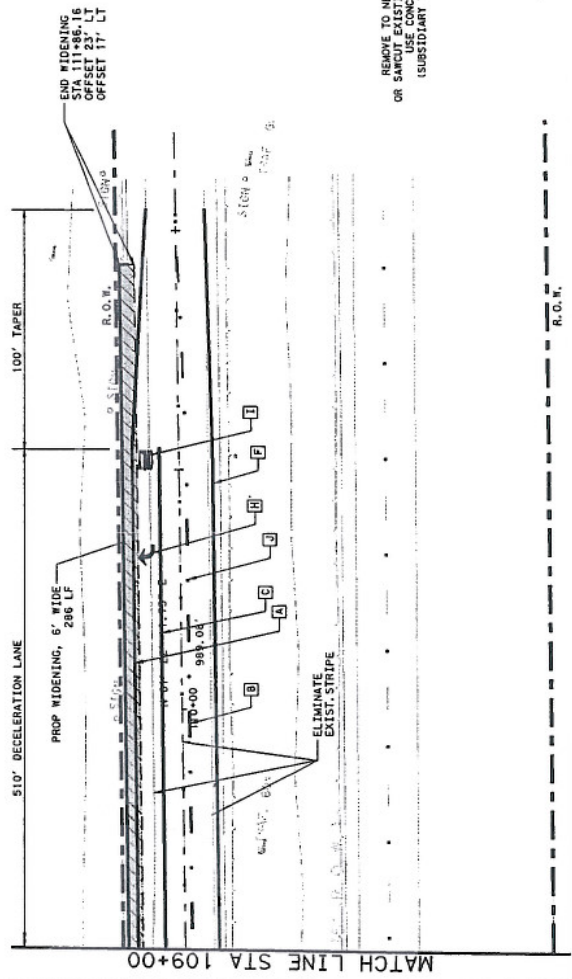


TEXAS INFRASTRUCTURE GROUP
10000 Katy Freeway, Suite 1000
Houston, Texas 77059
Tel: 281.469.1000
Fax: 281.469.1001
www.tiggroup.com

HARBEN ROAD AT US 90A
GRADING LAYOUT

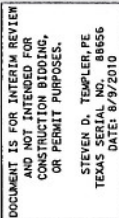
SCALE: 1"=40'	SHEET 1 OF 1
DATE: 8/9/2010	PROJECT:
TEXAS	COUNTY:
DATE:	SHEET NO.:
PORT ROAD	1A

File Name: ..\cs\Trodway\HARINT9001.dgn

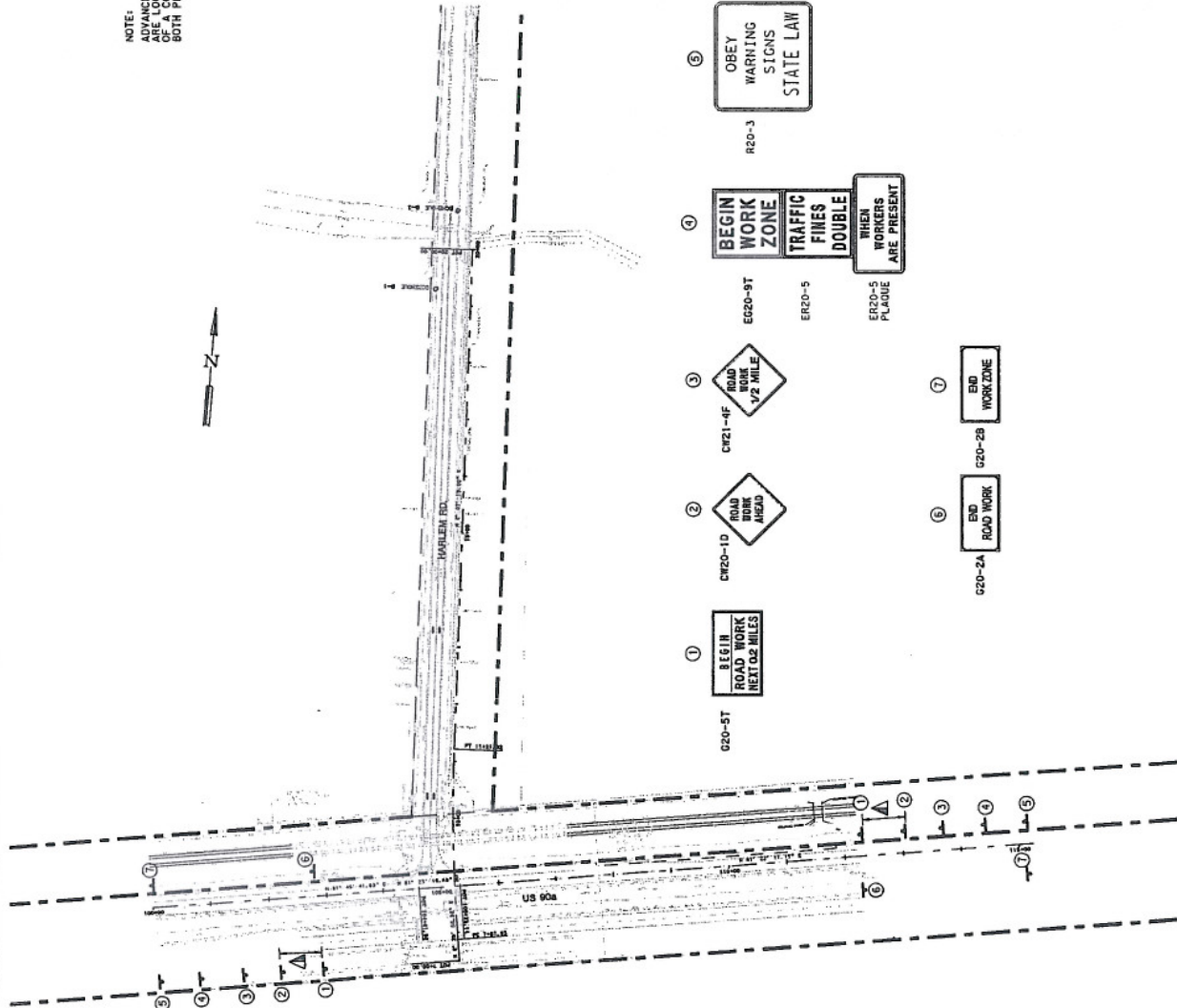


SCALE: 1"=40'		SHEET 1 OF 1	
STATE	PROJECT		
TEXAS			
COUNTY	DATE		SHEET NO.
FORT BEND			8


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File Name: #(*.USTIN*USEHMANE)
File Name: ...design\cs\fordway\HARPO1.dgn
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NOTE:
ADVANCE WARNING SIGNS ALONG HARLEN ROAD
ARE LOCATED AT PLANTATION DRIVE AS PART
OF A CONCURRENT PROJECT BY COUNTY FORCES.
BOTH PROJECTS TO BE BUILT SIMULTANEOUSLY.



▲ SIGN SPACING = 600'

DOCUMENT IS FOR INTERIM REVIEW
NOT FOR CONSTRUCTION BIDDING,
OR PERMIT PURPOSES.
STEVEN D. TEMPLE, PE
TEXAS SERIAL NO. 88656
DATE: 8/9/2010



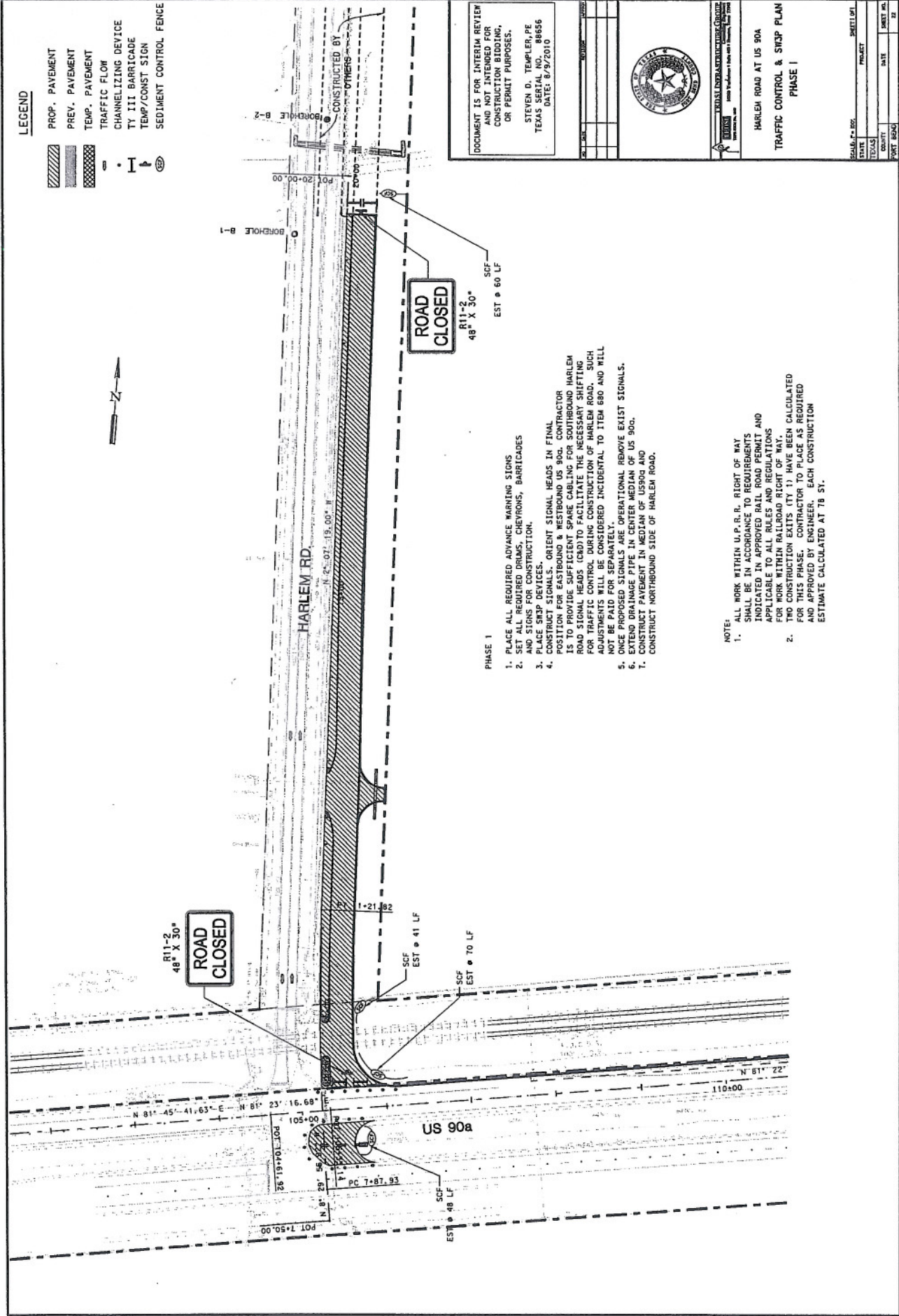
TEXAS INFRASTRUCTURE DESIGN
10000 Highway 130, Suite 100, Houston, Texas 77060
713.861.1000
www.tidesign.com

HARLEN ROAD AT US 90A
ADVANCE WARNING LAYOUT

SCALE: 1" = 200'	SHEET 1 OF 1
STATE: TEXAS	PROJECT:
COUNTY:	DATE:
PORT ROAD:	SHEET NO.:

LEGEND

PROP. PAVEMENT
PREV. PAVEMENT
TEMP. PAVEMENT
TRAFFIC FLOW
CHANNELIZING DEVICE
TY III BARRICADE
TEMP/CONST SIGN
SEDIMENT CONTROL FENCE



DOCUMENT IS FOR INTERIM REVIEW
NOT FOR CONSTRUCTION BIDDING,
OR PERMIT PURPOSES.
STEVEN D. TEMPLE, PE
TEXAS SERIAL NO. 88656
DATE: 8/9/2010



TRAFFIC CONTROL & STRIP PLAN
PHASE I

HARLEM ROAD AT US 90A

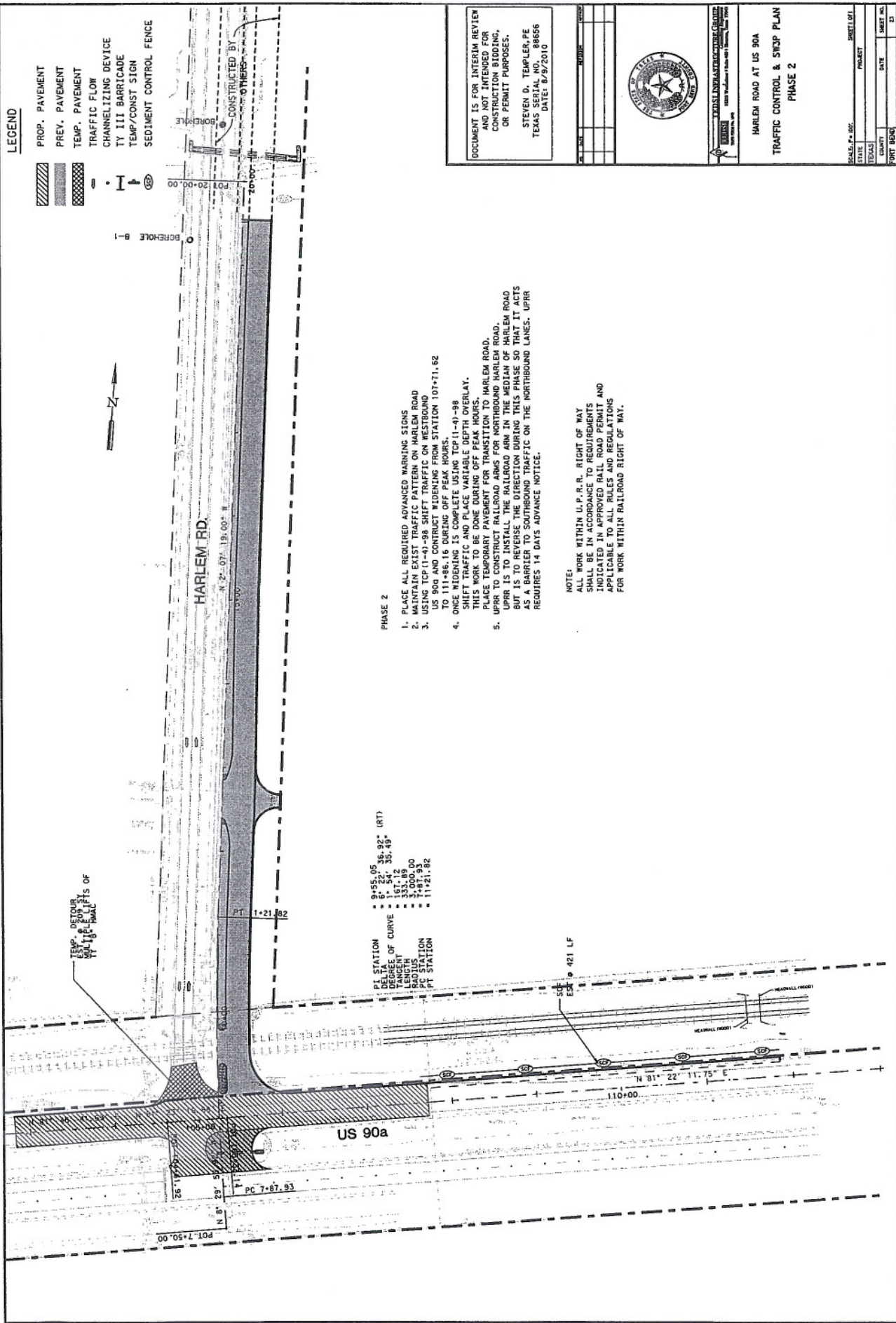
SCALE: 1" = 20'	SHEET 01
STATE: TEXAS	PROJECT:
COUNTY: DALLAS	DATE:
POINT ROAD:	SHEET NO. 22

PHASE I

1. PLACE ALL REQUIRED ADVANCE WARNING SIGNS
2. SET ALL REQUIRED DRUMS, CHEVRONS, BARRICADES AND SIGNS FOR CONSTRUCTION
3. PLACE SNIP DEVICES.
4. CONSTRUCT SIGNALS. ORIENT SIGNAL HEADS IN FINAL POSITION FOR EASTBOUND & WESTBOUND US 90A. IS TO PROVIDE SUFFICIENT SPARE CABLING FOR SOUTHBOUND HARLEM ROAD SIGNAL HEADS (GND) TO FACILITATE THE NECESSARY SHIFTING FOR TRAFFIC CONTROL DURING CONSTRUCTION OF HARLEM ROAD. SUCH ADJUSTMENTS WILL BE CONSIDERED INCIDENTAL TO ITEM 680 AND WILL NOT BE PAID FOR SEPARATELY. OPERATIONAL REMOVE EXIST SIGNALS.
5. EXTEND DRAINAGE PIPE IN CENTER MEDIAN OF US 90A.
6. CONSTRUCT PAVEMENT IN MEDIAN OF US90A AND
7. CONSTRUCT NORTHBOUND SIDE OF HARLEM ROAD.

NOTE:

1. ALL WORK WITHIN U.P.R.R. RIGHT OF WAY SHALL BE IN ACCORDANCE TO REQUIREMENTS INDICATED IN APPROVED RAIL ROAD PERMIT AND APPLICABLE TO ALL RULES AND REGULATIONS FOR WORK WITHIN RAILROAD RIGHT OF WAY.
2. FOR CONSTRUCTION ESTIMATES, THE ESTIMATE CALCULATED FOR THIS PHASE. CONTRACTOR TO PLACE AS REQUIRED AND APPROVED BY ENGINEER. EACH CONSTRUCTION ESTIMATE CALCULATED AT 75 SY.

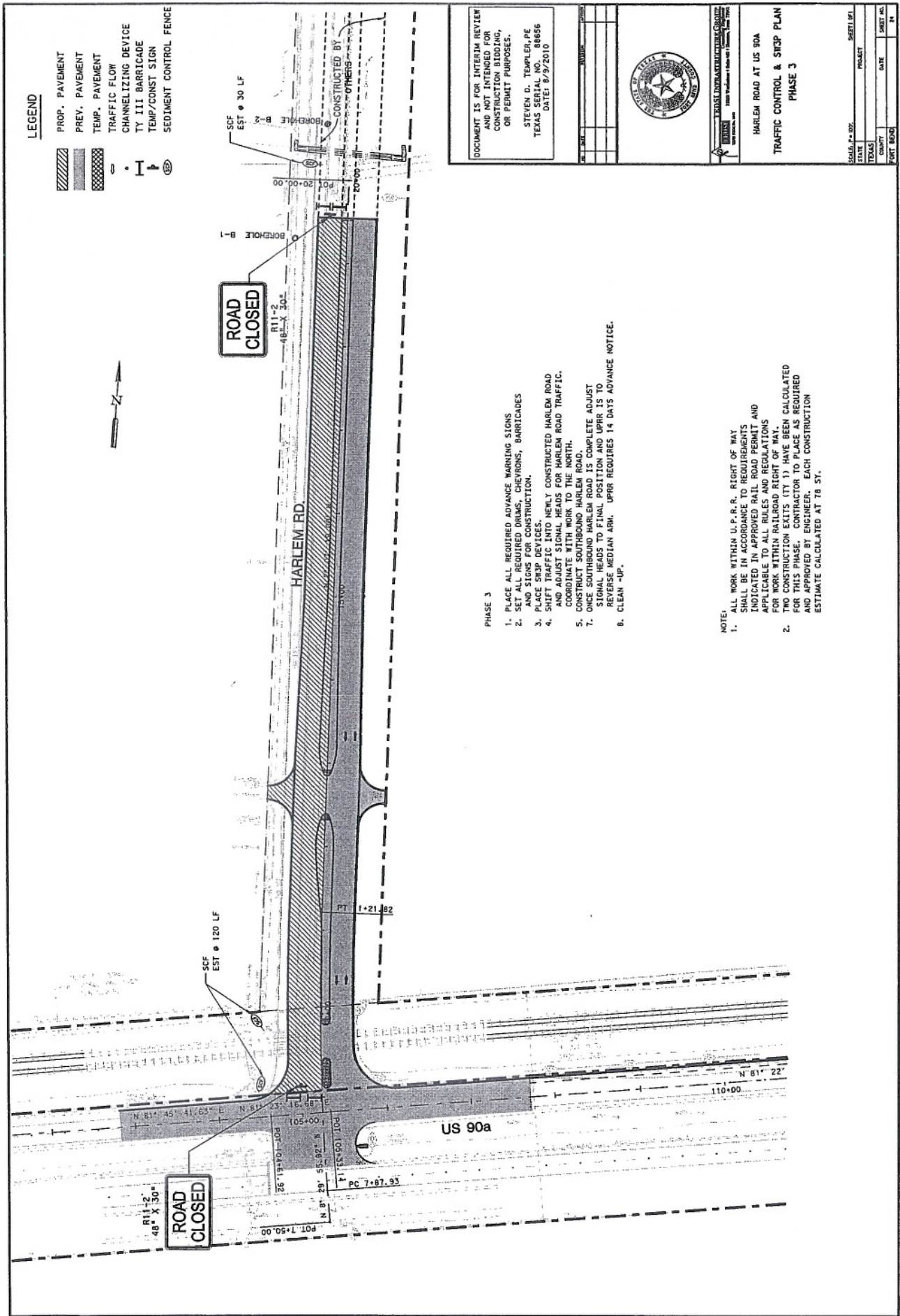


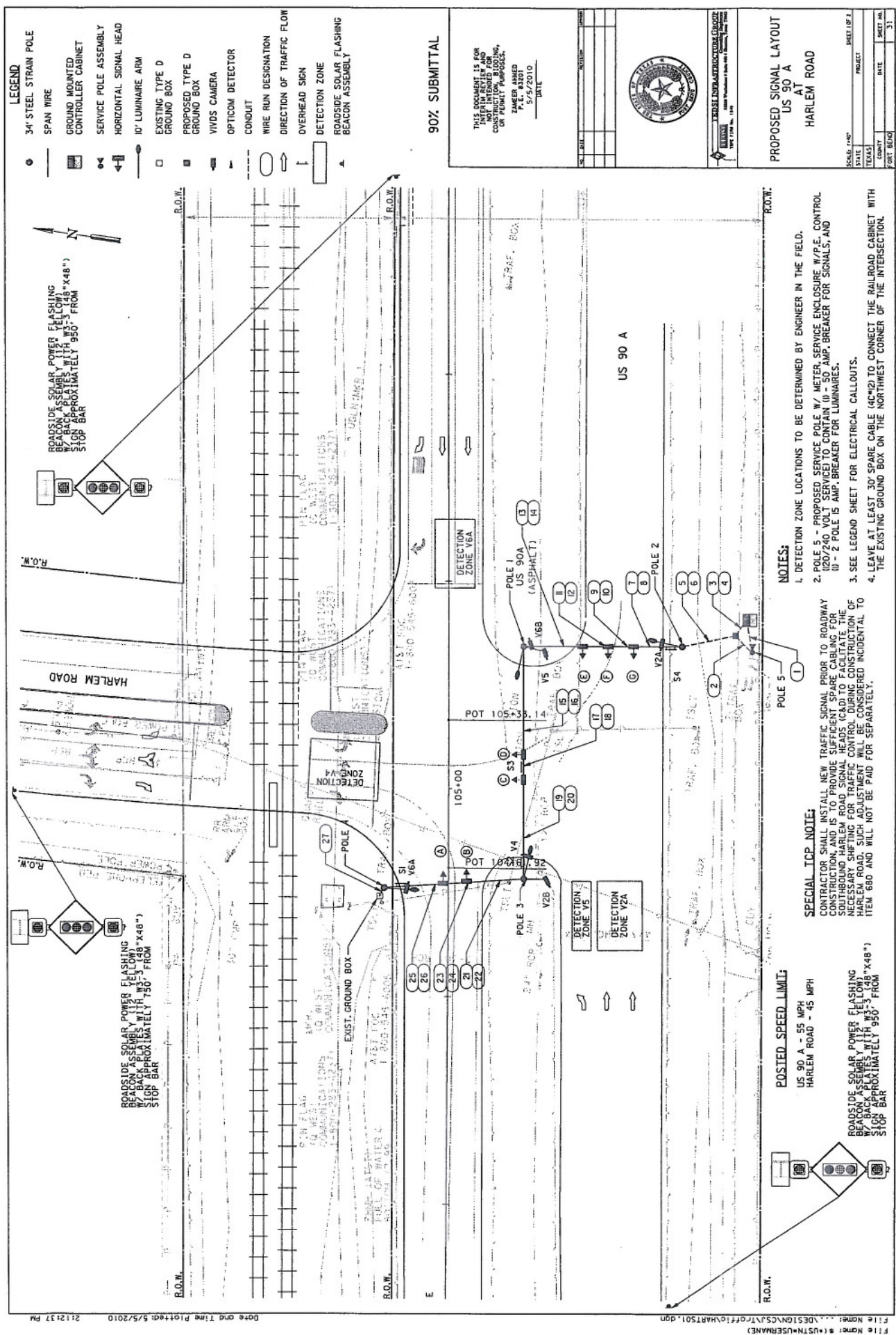
90% SUBMITTAL

Date and Time Plotted: 8/9/2010 4:09:35 PM

File Name: \\design\hst\TC\HARTEM201.dgn
User Name: (S)STEVEN D. TEMPLE

Exhibit A 1





21:21:37 PM
 Date and Time Plotted: 5/5/2010
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 File Name: \\N:\S\T\N\US90A\T\Off\HARLMS101.dgn

EXHIBIT A-2

To Public Highway At-Grade Crossing
Agreement

Cover Sheet for the
Legal Description

HARLEM ROAD
PROPERTY DESCRIPTION FOR PARCEL OUT OF
UNION PACIFIC RAILROAD RIGHT-OF-WAY

FIELD NOTES FOR 0.1848 ACRE (8,051 SQUARE FEET) OF LAND OUT OF THE UNION PACIFIC RAILROAD RIGHT-OF-WAY (CALLED 100.00 FEET WIDE), LOCATED IN THE JANE WILKINS LEAGUE, ABSTRACT NO. 96, FORT BEND COUNTY, TEXAS AND BEING OUT OF THOSE CERTAIN TRACTS DESCRIBED IN DEEDS TO GALVESTON HARRISBURG & SAN ANTONIO RAILROAD COMPANY RECORDED IN VOLUME 15, PAGE 218, VOLUME 59, PAGE 315 AND VOLUME 95, PAGE 24, FORT BEND COUNTY DEED RECORDS: (All bearings and coordinates cited herein are based on the Texas Coordinate System, South Central Zone, NAD 83. All coordinates and distances are surface and may be converted to grid by multiplying by a grid factor of 0.99987507.)

BEGINNING at a 5/8 inch iron rod with cap set in the north right-of-way line of the Union Pacific Railroad (N = 13,781,803.76, E = 3,013,170.86) and the proposed east right-of-way line of Harlem Road for the northeast corner of the herein described parcel, also being the southeast corner of a called 8.772 acre tract described as "Parcel 1" in deed dated October 5, 2010 to County of Fort Bend recorded under Clerk's File No. 2010100611, Fort Bend County Official Public Records;

THENCE, South 02°07'06" East, along the proposed east right-of-way line of Harlem Road, a distance of 100.64 feet to a 5/8 inch iron rod with cap set on the south line of said south right-of-way line of Union Pacific Railroad for the southeast corner of the herein described parcel, said point being in the north right-of-way line of U.S. Highway 90A (called 175.00 feet wide, per Volume 201, Page 216, Fort Bend County Deed Records);

THENCE, South 81°26'31" West, along the south right-of-way line of Union Pacific Railroad and the north right-of-way line of U.S. Highway 90A, a distance of 80.51 feet to a Mag nail with shiner set for the southwest corner of the herein described parcel;

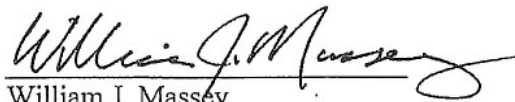
THENCE, North 02°07'06" West, a distance of 100.64 feet to a 5/8 inch iron rod with cap set in the north right-of-way line of Union Pacific Railroad also being the southwest corner of said 8.772 acre tract, for the northwest corner of the herein described parcel;

THENCE, North 81°26'31" East, along the said north right-of-way line of Union Pacific Railroad and the south line of said 8.772 acre tract, a distance of 80.51 feet to the POINT OF BEGINNING and containing 0.1848 acre (8,051 square feet) of land.

HARLEM ROAD
PROPERTY DESCRIPTION FOR PARCEL OUT OF
UNION PACIFIC RAILROAD RIGHT-OF-WAY

Note: Map sheets of even date were prepared in conjunction with this property description.

June 17, 2011
Landtech Consultants, Inc.



William J. Massey
Registered Professional Land Surveyor No. 4793



L.C. Job No. 11-1-0086.00
L.C. Drawing No. 1998-D-2835
s:\2011\1110086\survey\RRparcel.doc

EXHIBIT A-3

To Public Highway At-Grade Crossing
Agreement

Cover Sheet for the
Illustrative Print of Legal Description



EXHIBIT B

To Public Highway At-Grade Crossing
Agreement

Cover Sheet for the
General Terms and Conditions

EXHIBIT B

TO PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT

GENERAL TERMS & CONDITIONS

SECTION 1 - CONDITIONS AND COVENANTS

- A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The City shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the City shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the Railroad's property by or under authority of the City for the purpose of conveying electric power or communications incidental to the City's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the City to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.
- B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes. In the event the Railroad shall place additional tracks upon the Crossing Area, the City, at its sole cost and expense, shall modify the Roadway to conform with all tracks within the Crossing area.
- C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The City shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's property, unless the City at its own expense settles with and obtains releases from such nonparties.
- D. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property and the right to cross the Crossing Area with all kinds of equipment.
- E. So far as it lawfully may do so, the City will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Crossing Area, excepting taxes levied upon and against the property as a component part of the Railroad's operating property.
- F. If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Roadway and its appurtenances, or for the performance of any work in connection with the Project, the City will acquire all such other property and rights at its own expense and without expense to the Railroad.

SECTION 2 - CONSTRUCTION OF ROADWAY

- A. The City, at its expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Project, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.
- B. Except as may be otherwise specifically provided herein concerning the Railroad's work involving the Roadway, the City, at its expense, will furnish all necessary labor, material and equipment, and shall construct and complete the Roadway and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper highway warning devices (except those installed by the Railroad within its right of way) and all necessary drainage facilities, guard rails or barriers, and right of way fences between the Roadway and the railroad tracks. Upon completion of the Project, the City shall leave the Crossing Area in a condition satisfactory to the Railroad.
- C. All construction work of the City upon the Railroad's property (including, but not limited to, construction of the Roadway and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President Engineering-Design of the Railroad or his authorized representative and in compliance with the Plans and other guidelines furnished by the Railroad.

- D. All construction work of the City shall be performed diligently and completed within a reasonable time. No part of the Project shall be suspended, discontinued or unduly delayed without the Railroad's written consent, and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of the City. The City hereby assumes the risk of any such delays and agrees that no claims for damages on account of any delay shall be made against the Railroad by the City and/or the Contractor.

SECTION 3 - INJURY AND DAMAGE TO PROPERTY

If the City, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the City is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the City at the City's own expense, or by the Railroad at the expense of the City, and to the satisfaction of the Railroad's Assistant Vice President Engineering-Design.

SECTION 4 - RAILROAD MAY USE CONTRACTORS TO PERFORM WORK

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

SECTION 5 - MAINTENANCE AND REPAIRS

- A. The City, at its expense, shall maintain, repair and renew, or cause to be maintained, repaired and renewed, the entire Crossing Area and Roadway, except the portions between the track tie ends, which shall be maintained by and at the expense of the Railroad.
- B. If, in the future, the City elects to have the surfacing material between the track tie ends, or between tracks if there is more than one railroad track across the Crossing Area, replaced with paving or some surfacing material other than timber planking, the Railroad, at the City's expense, shall install such replacement surfacing, and in the future, to the extent repair or replacement of the surfacing is necessitated by repair or rehabilitation of the Railroad's tracks through the Crossing Area, the City shall bear the expense of such repairs or replacement.

SECTION 6 - CHANGES IN GRADE

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

SECTION 7 - REARRANGEMENT OF WARNING DEVICES

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

SECTION 8 - SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the City that the work will be performed in a safe manner and in conformity with the following standards:

- A. **Definitions.** All references in this Agreement to the City shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the City shall include work both within and outside of the Railroad's property.

- B. Entry on to Railroad's Property by City.** If the City's employees need to enter Railroad's property in order to perform an inspection of the Structure, minor maintenance or other activities, the City shall first provide at least ten (10) working days advance notice to the Railroad Representative. **WITH RESPECT TO SUCH ENTRY ON TO RAILROAD'S PROPERTY, THE CITY, TO THE EXTENT PERMITTED BY LAW, AGREES TO RELEASE, DEFEND AND INDEMNIFY THE RAILROAD FROM AND AGAINST ANY LOSS, DAMAGE, INJURY, LIABILITY, CLAIM, COST OR EXPENSE INCURRED BY ANY PERSON, INCLUDING, WITHOUT LIMITATION, THE CITY'S EMPLOYEES, OR DAMAGE TO ANY PROPERTY INCLUDING, WITHOUT LIMITATION, THE CITY'S PROPERTY OR EQUIPMENT (COLLECTIVELY THE "LOSS") THAT ARISES FROM THE PRESENCE OR ACTIVITIES OF CITY'S EMPLOYEES ON RAILROAD'S PROPERTY, EXCEPT TO THE EXTENT THAT ANY LOSS IS CAUSED BY THE SOLE DIRECT NEGLIGENCE OF RAILROAD.**
- C. Flagging.**
- (i) If the City's employees need to enter Railroad's property as provided in Paragraph B above, the City agrees to notify the Railroad Representative at least thirty (30) working days in advance of proposed performance of any work by City 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 City whether a flagman need be present and whether City 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 City for such expenses incurred by Railroad. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, City agrees that City is not relieved of any of its responsibilities or liabilities set forth in this Agreement.
 - (ii) The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, City shall pay on the basis of the new rates and charges.
 - (iii) Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though City 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, City 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, City will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.
- D. Compliance With Laws.** The City shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The City shall use only such methods as are consistent with safety, both as concerns the City, the City's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The City (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. **IF ANY FAILURE BY THE CITY TO COMPLY WITH ANY SUCH LAWS, REGULATIONS AND ENACTMENTS SHALL RESULT IN ANY FINE, PENALTY, COST OR CHARGE BEING**



ASSESSED, IMPOSED OR CHARGED AGAINST THE RAILROAD, THE CITY SHALL REIMBURSE AND, TO THE EXTENT IT MAY LAWFULLY DO SO, INDEMNIFY THE RAILROAD FOR ANY SUCH FINE, PENALTY, COST, OR CHARGE, INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES. THE CITY FURTHER AGREES IN THE EVENT OF ANY SUCH ACTION, UPON NOTICE THEREOF BEING PROVIDED BY THE RAILROAD, TO DEFEND SUCH ACTION FREE OF COST, CHARGE, OR EXPENSE TO THE RAILROAD.

- E. **No Interference or Delays.** The City shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.
- F. **Supervision.** The City, at its own expense, shall adequately police and supervise all work to be performed by the City, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the City for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the City with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the City will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.
- G. **Suspension of Work.** If at any time the City's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the City is being or is about to be done or prosecuted without due regard and precaution for safety and security, the City shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.
- H. **Removal of Debris.** The City shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the City at the City's own expense or by the Railroad at the expense of the City. The City shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during snow removal from the Crossing Area.
- I. **Explosives.** The City shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.
- J. **Excavation.** The City shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The City shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The City, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the City in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering-Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.
- K. **Drainage.** The City, at the City's own expense, shall provide and maintain suitable facilities for draining the Roadway and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The City, at the City's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the City, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The City shall not obstruct or interfere with existing ditches or drainage facilities.

- L. **Notice.** Before commencing any work, the City shall provide the advance notice to the Railroad that is required under the Contractor's Right of Entry Agreement.
- M. **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. City shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the City. If it is, City will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

SECTION 9 - INTERIM WARNING DEVICES

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

SECTION 10 - OTHER RAILROADS

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

SECTION 11 - BOOKS AND RECORDS

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

SECTION 12 - REMEDIES FOR BREACH OR NONUSE

- A. If the City shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Roadway and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the City will reimburse the Railroad for the expenses thereof.
- B. Nonuse by the City of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the City hereunder.
- C. The City will surrender peaceable possession of the Crossing Area and the Roadway upon termination of this Agreement. **TERMINATION OF THIS AGREEMENT SHALL NOT AFFECT ANY RIGHTS, OBLIGATIONS OR LIABILITIES OF THE PARTIES, ACCRUED OR OTHERWISE, WHICH MAY HAVE ARISEN PRIOR TO TERMINATION.**

SECTION 13 - MODIFICATION - ENTIRE AGREEMENT

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the City and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the City shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof constitute the entire understanding between the City and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.

EXHIBIT C

To Public Highway At-Grade Crossing
Agreement

Cover Sheet for the
Railroad Material & Force Account Estimates

DATE: 2011-04-13

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK
BY THE
UNION PACIFIC RAILROAD

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2011-10-12

DESCRIPTION OF WORK:

RECOLLECTABLE CROSSING SURFACE PROJECT
GLIDDEN SUBDIVISION/ M.P. 29.59/ DOT# 743713K/ FORT BEND COUNTY
100% RECOLLECTABLE FROM FORT BEND COUNTY, TX
ESTIMATED USING FEDERAL ADDITIVES WITH OVERHEAD & INDIRECT
CONSTRUCTION COST - 205%
INSTALL 96 TRACK FEET OF CONCRETE ROAD CROSSING SURFACE INCLUDING RAIL,
TIES, OTM, AND BALLAST.
SIGNAL AS NEEDED

PID: 71755 AWO: 06910 MP,SUBDIV: 29.59, GLIDDEN
SERVICE UNIT: 09 CITY: RICHMOND STATE: TX

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
ENGINEERING WORK							
ENGINEERING			6700		6700		6700
LABOR ADDITIVE 205%			13735		13735		13735
TOTAL ENGINEERING			20435		20435		20435
SIGNAL WORK							
LABOR ADDITIVE 205%			2337		2337		2337
SALES TAX				7	7		7
SIGNAL			1140	184	1324		1324
TOTAL SIGNAL			3477	191	3668		3668
TRACK & SURFACE WORK							
ADV WARNING				5000	5000		5000
BALAST	4.00	CL	702	3454	4156		4156
BILL PREP				900	900		900
ENVIRONMENTAL - PERMITS				1	1		1
EQUIP W/OPER				5000	5000		5000
FORT BEND COUNTY				414	414		414
HOMELINE FRIEGHT				900	900		900
LABOR ADDITIVE 205%			34167		34167		34167
MATL STORE EXPENSE				722	722		722
OTM			769	2112	2881		2881
RAIL	800.00	LF	1042	17344	18386		18386
RDXING	192.00	TF	4554	41396	45950		45950
SALES TAX				3598	3598		3598
SWTIE		EA	1699		1699		1699
TRK-SURF,LIN			5428		5428		5428
WELD			6848	1504	8352		8352
XTIE	250.00	EA	5273	24294	29567		29567
TOTAL TRACK & SURFACE			60482	106639	167121		167121
LABOR/MATERIAL EXPENSE							
RECOLLECTIBLE/UPRR EXPENSE			84394	106830	191224	0	191224
ESTIMATED PROJECT COST							191224
EXISTING REUSEABLE MATERIAL CREDIT					0		
SALVAGE NONUSEABLE MATERIAL CREDIT					0		
RECOLLECTIBLE LESS CREDITS							

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

DATE: 2011-04-19

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK
BY THE
UNION PACIFIC RAILROAD

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2011-10-18

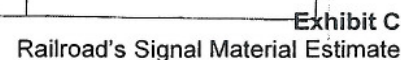
DESCRIPTION OF WORK:

INSTALL AUTOMATIC FLASHING LIGHT CROSSING SIGNALS
WITH GATES AND CANTILEVER AND REMOTE LOCATION
AT SUGARLAND, TX. HARLEM RD. M.P. 29.59 ON GLIDDEN SUB.
WORK TO BE PERFORMED BY RAILROAD WITH EXPENSE AS BELOW:
SIGNAL/TRACK - FORT BEND COUNTY - 100%
ESTIMATED USING FEDERAL ADDITIVES WITH INDIRECT AND
OVERHEAD CONSTRUCTION COST'S - SIGNAL 167.76% & TRACK 204.59%

FID: 71754 AWO: 06909 MP,SUBDIV: 29.59, GLIDDEN
SERVICE UNIT: 09 CITY: HARLEM STATE: TX

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
-----	---	---	-----	-----	-----	-----	-----
ENGINEERING WORK							
ENGINEERING			12201		12201		12201
LABOR ADDITIVE 167.76%			28426		28426		28426
SIG-HWY XNG			4821		4821		4821
			-----	-----	-----		-----
TOTAL ENGINEERING			45448		45448		45448
SIGNAL WORK							
BILL PREP			900		900		900
CANTILEVER				13338	13338		13338
CONTRACT				16556	16556		16556
LABOR ADDITIVE 167.76%			218104		218104		218104
MATL STORE EXPENSE				33	33		33
METER SERVICE				5000	5000		5000
ROCK/GRAVEL/FILL				7040	7040		7040
SIGNAL			129109	165564	294673		294673
TRANSP/IS/OB/RCIM CONTR				22161	22161		22161
			-----	-----	-----		-----
TOTAL SIGNAL			348113	229692	577805		577805
TRACK & SURFACE WORK							
ENVIRONMENTAL - PERMITS				1	1		1
FIELD WELD			43		43		43
LABOR ADDITIVE 204.59%			1209		1209		1209
MATL STORE EXPENSE				138	138		138
OTM			887	2525	3412		3412
WELD			3	251	254		254
			-----	-----	-----		-----
TOTAL TRACK & SURFACE			2142	2915	5057		5057
			-----	-----	-----		-----
LABOR/MATERIAL EXPENSE			395703	232607	-----		-----
RECOLLECTIBLE/UPRR EXPENSE					628310	0	-----
ESTIMATED PROJECT COST							628310

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



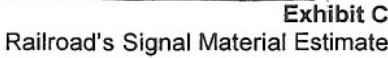


EXHIBIT D

To Public Highway At-Grade Crossing
Agreement

Cover Sheet for the
Contractor's Right of Entry Agreement



UPRR Folder No. Folder Number
UPRR Audit No. _____

**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

_____,
(NAME OF CONTRACTOR)
a _____ corporation ("Contractor").
(Corporate Status)

RECITALS:

Contractor has been hired by *Name of Public Agency* ("City or County") to perform work relating to purpose (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 Mile Post on Railroad's Name of Subdivision in or near City, County, Texas, as such location is in the general location shown on the Railroad Location Print marked **Exhibit A**, and as specified on the Detailed Print(s) collectively marked **Exhibit A-1**, each attached hereto and hereby made a part hereof. The Work is the subject of a contract dated _____ between the Railroad and the City or County. (Date of Contract)

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

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

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

Name & Address of MTM

Name & Address of MSM

- 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 - 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 6 - 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
1400 Douglas Street, MS 1690
Omaha, NE 68179-1690*



*Attn: Senior Manager Contracts
UPRR Folder No. Folder Number*

ARTICLE 7 - 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 8 - 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 9 - EXPLOSIVES.

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

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

UNION PACIFIC RAILROAD COMPANY
(Federal Tax ID No. 94-6001323)

By _____
PAUL G. FARRELL
Senior Manager Contracts

(NAME OF CONTRACTOR)

By _____
Printed Name: _____
Title: _____

EXHIBIT A

TO CONTACTOR'S RIGHT OF ENTRY AGREEMENT

RAILROAD LOCATION PRINT

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

TERMS AND CONDITIONS

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

- A. Contractor agrees to notify the Railroad Representative at least thirty (30) working days in advance of Contractor commencing its work and at least ten (10) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such 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 thirty (30) days notice prior to the cessation of the need for a flagman. If thirty (30) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the thirty (30) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

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



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

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

- A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroad's 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

INSURANCE REQUIREMENTS

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

- A. COMMERCIAL GENERAL LIABILITY INSURANCE.** Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$2,000,000. 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 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$2,000,000 for each accident.

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

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

- F. POLLUTION LIABILITY INSURANCE.** Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials on



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 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.

