

AGENDA ITEM **D5**



UPRR Folder No. 2493-75

UPRR Audit No. _____

**DRAINAGE FACILITY AND WATERWAY
AGREEMENT**

UPRR Mile Post: 25.30 - Glidden Subdivision
Location: Sugar Land, Fort Bend County, Texas

THIS AGREEMENT ("Agreement") is made and entered into as of the _____ day of _____, 2009 ("Effective Date") by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, ("Railroad") and **FORT BEND COUNTY DRAINAGE DISTRICT**, a political subdivision of the State of Texas, to be addressed at Construction & Maintenance Division, 1004 Blume Road, Rosenberg, Texas 77471 ("Licensee").

RECITALS:

In order to improve drainage conditions the Licensee desires to relocate and construct an drainage facility under the Railroad's property at Railroad Mile Post 25.30 on the Glidden Subdivision, near Sugar Land, Fort Bend County, Texas (hereinafter the "Premises"). The relocated drainage facility will require the Railroad to construct a bridge at the Premises that will replace existing bridge.

The drainage facilities to be relocated and constructed by the Licensee, at Licensee's expense, on the Premises are hereinafter collectively referred to as the "Drainage Facility". The Drainage Facility, the new Railroad bridge and Premises are shown on the Railroad Location Print marked **Exhibit A**, and specified on the Detailed Prints marked **Exhibit A-1**, each attached hereto and hereby made a part hereof.

Because of the construction of the above mentioned drainage facilities by the Licensee, the Railroad will need to remove the existing Railroad bridge located at Mile Post 25.35.

The Railroad is agreeable to the Licensee constructing, maintaining and using the Drainage Facility upon the terms and conditions set forth herein.

AGREEMENT:

NOW, THEREFORE, IT IS AGREED by and between the parties hereto as follows:

ARTICLE 1. RAILROAD GRANTS RIGHT.

In consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Railroad hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and use the Drainage Facility. Refer to Exhibit A-1.

ARTICLE 2. CONSTRUCTION WORK TO BE PERFORMED BY LICENSEE.

The Licensee, at its sole expense, shall construct the Drainage Facility and perform the work described in the Recitals above and/or described in Exhibits A and A-1.

ARTICLE 3. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in **Exhibit B**, hereto attached.



ARTICLE 4. WORK TO BE PERFORMED BY THE RAILROAD

- A. The work to be performed by the Railroad, at the Licensee's sole cost and expense, is described in the Railroad's Material and Force Account Estimate, dated _____, 2009, in the amount of \$1,800,000.00, marked Exhibit C, attached hereto and hereby made a part hereof (the "Estimate").
- B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the Licensee in the event the Licensee does not commence construction on the portion of the Project located on the Railroad's property within twelve(12) months from the date of the Estimate. Any change orders, of \$5,000.00 or greater, to this Project will require Licensee's approval. Said approval shall not be unreasonably withheld.
- C. The Licensee acknowledges that the Estimate does not include all estimates for protective service costs that are to be paid by the Licensee or the Contractor in connection with flagging or other protective services provided by the Railroad in connection with the Project. Any additional unforeseen costs incurred by Railroad are to be paid by the Licensee or the Contractor as determined by the Railroad and the Licensee.
- D. The Licensee agrees to reimburse 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, actual costs of preliminary engineering review, construction inspection, procurement of materials, equipment rental, manpower and deliveries to the job site and all of the Railroad's normal and customary additives (which shall include direct and indirect overhead costs) associated therewith. Licensee reserves the right to review and approve all requests for reimbursement. Said approval shall not be unreasonably withheld.

ARTICLE 5. DEFERRED CONSTRUCTION.

The Railroad and Licensee acknowledge that conditions inherent in the Drainage Facility may cause the complete stabilization of Railroad's trackage supported by new cuts or fills to be deferred beyond the construction period, and that Railroad's operation over the roadbed during the seasoning period will impose extraordinary maintenance costs in the event of caving, sliding, slipping, sinking or settling, including damage to rip-rapping or protective work in connection therewith, as well as settlement and consolidation of tracks and ballast, until the seasoning period is complete. Therefore, the Licensee will pay to the Railroad, as a part of the consideration for this Agreement, all that part of the cost and expense of extraordinary maintenance (hereinafter referred to as "Deferred Construction") associated with the Drainage Facility which can be attributed to failure of subgrade, settlement, and consolidation of subballast, or roadbed, or any combination thereof, which are incurred during the period commencing immediately following completion of the work on the Drainage Facility by the Licensee or its contractor and ending five years thereafter. The Deferred Construction costs aforesaid shall include reimbursement of the extra cost, in excess of normal maintenance costs, of maintaining embankments and that portion of said tracks above subgrade in accordance with acceptable maintenance standards, and will include cost of maintaining proper alignment, proper surface and use of ballast and other necessary materials. Upon Railroad's discovery of any suspected damage, Railroad will notify Licensee in writing and Licensee have seven (7) days within which to inspect such alleged damage. Upon agreement of Licensee, Railroad shall provide to Licensee the invoice for actual cost of repairs.

ARTICLE 6. ONE-TIME PAYMENT.

Upon execution and delivery of this Agreement, the Licensee shall pay to the Railroad a one-time License Fee of **TEN THOUSAND DOLLARS (\$10,000.00)**.



ARTICLE 7. TERM; TERMINATION.

- A. This Agreement shall take effect as of the date first herein written and, unless sooner terminated as set forth in Paragraph B below, shall continue in full force and effect for so long as the Premises and Drainage Facility shall be used by the Licensee for the purposes set forth herein; provided, however, that if the Licensee shall abandon the use of the Drainage Facility and Premises, or any part thereof, for such purposes, this Agreement and the rights and privileges granted to Licensee herein as to the portion(s) so abandoned shall cease and terminate at the time such portions of the Drainage Facility and Premises are abandoned.
- B. If the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of One Hundred Eighty (180) days after written notice from the Railroad to the Licensee specifying such default, the Railroad may, at its option, make necessary repairs at Licensee's expense.
- C. Notice of default may be served personally upon the Licensee or by mailing to the last known address of the Licensee.

ARTICLE 8 IF WORK IS TO BE PERFORMED BY CONTRACTOR.

If a contractor is to do any of the work performed on the Drainage Facility or Premises (including initial construction and subsequent relocation or substantial maintenance and repair work), then the Licensee shall require its contractor to execute the Railroad's Contractor's Right of Entry Agreement, attached hereto as **Exhibit D**, and hereby made a part hereof. Licensee acknowledges receipt of a copy of the Contractor's Right of Entry Agreement and understanding of its terms, provisions, and requirements, and will inform its contractor of the need to execute the Agreement. Under no circumstances will Licensee's contractor be allowed onto Railroad's Premises without first executing the Contractor's Right of Entry Agreement.

ARTICLE 9 INSURANCE.

- A. The Licensee, at its expense, shall obtain the insurance described in **Exhibit B-1**, hereto attached. The Licensee will also provide to the Railroad a Certificate of Insurance issued by its insurance carrier confirming the existence of such insurance and that the policy or policies contain the following endorsement:

"Union Pacific Railroad Company is named as an additional insured with respect to all liabilities arising out of the existence, use or any work performed on or associated with the Drainage Facility located on Railroad's right of way between Mile Post 25.35 and Mile Post 25.30 on the Glidden Subdivision, located at or near Sugar Land, Fort Bend County, Texas."
- B. If the Licensee named in this Agreement is a public entity subject to any applicable statutory tort laws, the limits of insurance described in Exhibit C shall be the limits the Licensee then has in effect or which is required by applicable current or subsequent law, whichever is greater, a portion of which may be self-insured with the consent and approval of the Railroad.



C. All insurance correspondence shall be directed to:

*UPRR Folder No.: 2493-75
Director-Contracts
Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street STOP 1690
Omaha, Nebraska 68179-1690*

ARTICLE 9. SPECIAL PROVISION

Licensee and the Railroad agree to perform the work as detailed in the Exhibits A and A-1. The work will generally consist of the following:

- UPRR will be responsible for the construction of proposed bridge at Railroad Mile Post 25.30 per the attached exhibit A, installation of temporary culvert and removal of existing bridge structure at Railroad Mile Post 25.35 per the attached exhibit A, and track work per the attached exhibit A. At Fort Bend County's cost the Railroad will be responsible for executing the above work and assembling all materials and equipment per exhibit A to perform this work.
- The Licensee will be responsible for final grading and lining of proposed channel including under the proposed bridge at Railroad Mile Post 25.30. Licensee under supervision of the Railroad, will be responsible for capping and grouting the temporary 60" pipe after the flow is diverted to the new channel.
- Licensee will also be responsible for establishing an access road into the north side of the project to facilitate construction by both Railroad and Licensee. All trees and other vegetation are to be removed by Licensee prior to commencement of work by Railroad at this site. Permitting for the project and construction of temporary driveways accessing Railroad right of way at the project site from US 90A will be the responsibility of Licensee.
- Licensee will also be responsible for any incidental work not directly related to the actual bridge construction and track work.
- All work to be performed as actual cost to be paid by the Licensee.



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

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

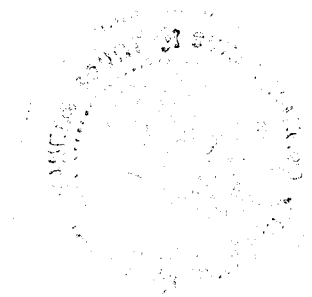
By _____
TONY K. LOVE
AVP-Real Estate

**FORT BEND COUNTY DRAINAGE
DISTRICT**

By Robert E. Hebert
Robert E. Hebert, County Judge
Title: Chairman, Drainage District

May 26, 2009

ATTEST: Dianne Wilson
Dianne Wilson, County Clerk



LIST OF EXHIBITS

TO DRAINAGE FACILITY & WATERWAY AGREEMENT

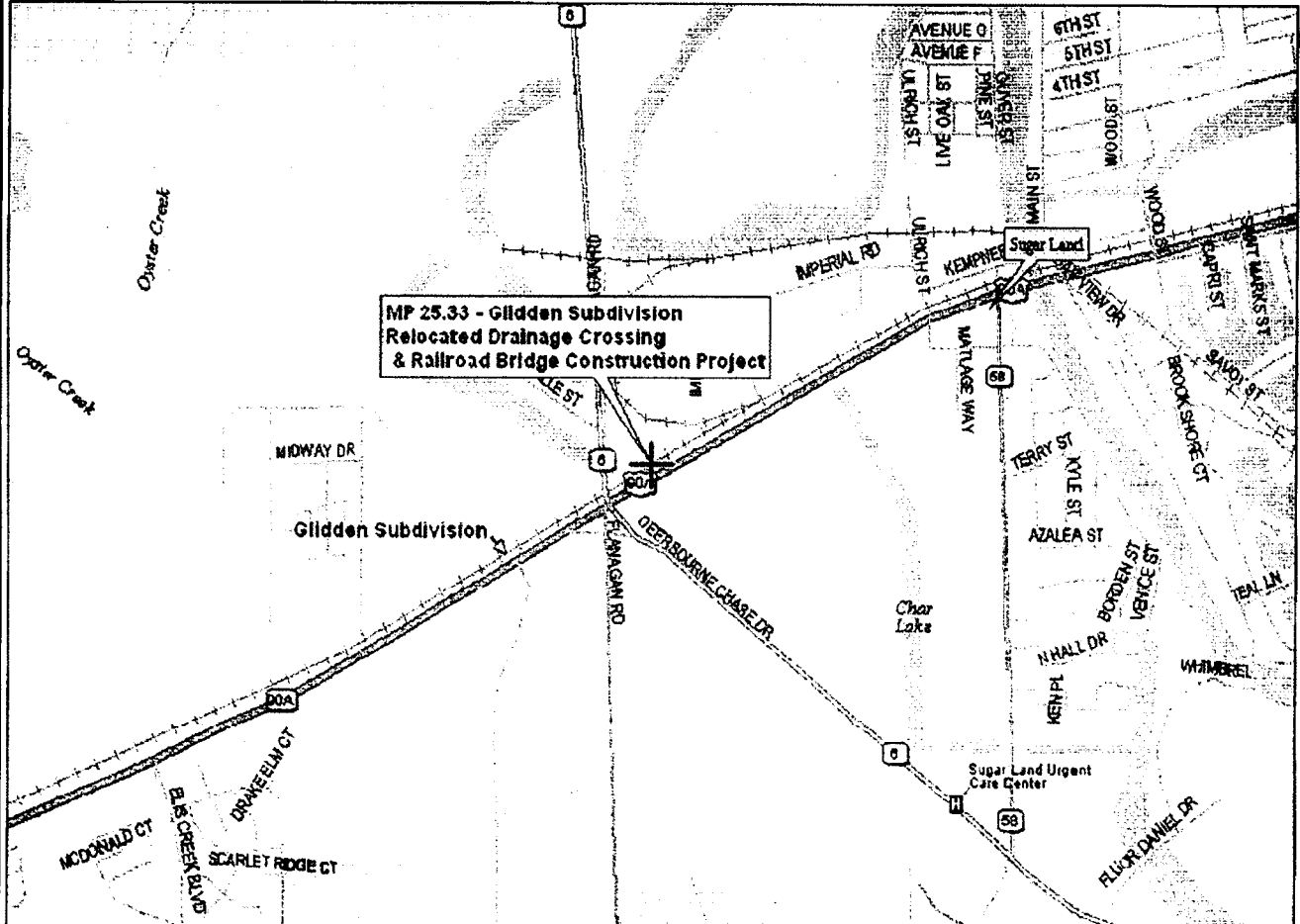
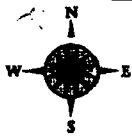
Exhibit A	Railroad Location Print
Exhibit A-1	Detailed Print
Exhibit B	Terms & Conditions
Exhibit B-1	Insurance Requirements
Exhibit C	Railroad's Material & Force Account Estimate
Exhibit D	Railroad's Form of Contractor's Right of Entry Agreement



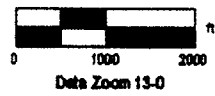
To Drainage Facility & Waterway Agreement

Cover Sheet for the
Railroad Location Print

RAILROAD LOCATION PRINT OF A RELOCATED DITCH & RAILROAD BRIDGE CONSTRUCTION PROJECT



DELOORME
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www.delorme.com



RAILROAD WORK TO BE PERFORMED:

1. Relocate existing tracks and construct a new Railroad bridge to accommodate the relocation and reconstruction of a drainage ditch.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

GLIDDEN SUBDIVISION
MILE POST 25.33

GPS: N 29° 36.8935', W 95° 38.8488'
near SUGAR LAND, FORT BEND CO., TX.

Location print of a ditch relocation and Railroad bridge construction project with the **FORT BEND COUNTY FLOOD CONTROL**.

Folder No. 2493-75 Date: April 11, 2008

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

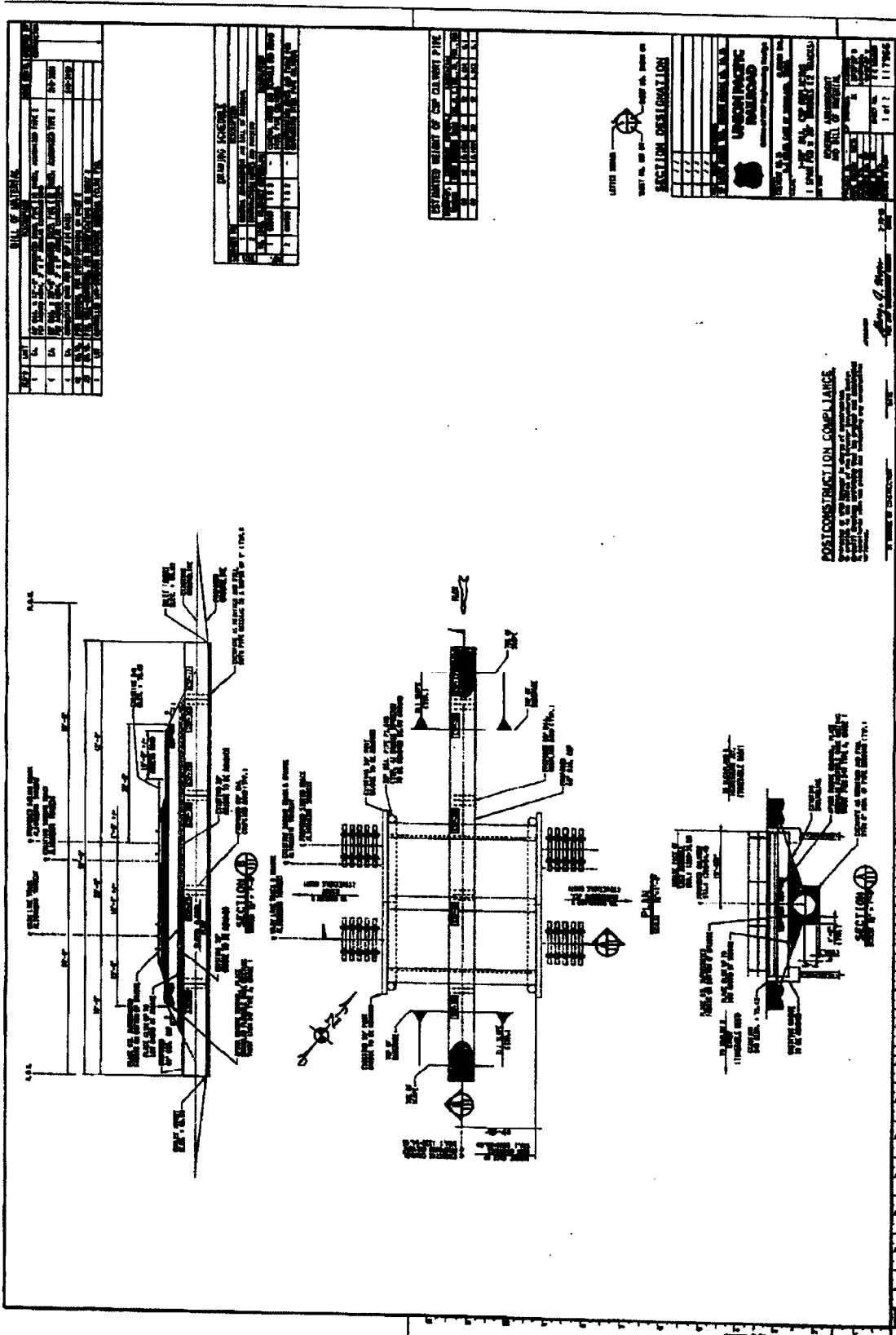


EXHIBIT A-1

PACIFIC

To Drainage Facility & Waterway Agreement

Cover Sheet for the
Detailed Prints



BILL OF MATERIALS

NO.	DESCRIPTION	QTY.	UNIT	REMARKS
1	REINFORCED CONCRETE			
2	STEEL REINFORCEMENT			
3	...			
4	...			
5	...			
6	...			
7	...			
8	...			
9	...			
10	...			

REINFORCING SCHEDULE

NO.	DESCRIPTION	QTY.	UNIT	REMARKS
1	...			
2	...			
3	...			
4	...			
5	...			
6	...			
7	...			
8	...			
9	...			
10	...			

ESTIMATED QUANTITY OF CONCRETE PIPE

NO.	DESCRIPTION	QTY.	UNIT	REMARKS
1	...			
2	...			
3	...			
4	...			
5	...			
6	...			
7	...			
8	...			
9	...			
10	...			

LETTER NUMBER: _____

SECTION DESIGNATION: _____

PROJECT NO. OR NAME: _____

DATE: _____

BY: _____

CHECKED BY: _____

APPROVED BY: _____

SCALE: _____

PROJECT LOCATION: _____

PROJECT NO. OR NAME: _____

DATE: _____

BY: _____

CHECKED BY: _____

APPROVED BY: _____

SCALE: _____

PROJECT LOCATION: _____

POSITION/CONSTRUCTION COMPLIANCE

THIS DRAWING IS THE PROPERTY OF THE ENGINEER AND ARCHITECT. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE ENGINEER AND ARCHITECT.

DIVISION OF RESPONSIBILITY

1. REVIEW AND APPROVE ALL PLANS, SPECIFICATIONS AND CONTRACT DOCUMENTS.
2. REVIEW AND APPROVE ALL CONTRACT DOCUMENTS.
3. REVIEW AND APPROVE ALL CONTRACT DOCUMENTS.
4. REVIEW AND APPROVE ALL CONTRACT DOCUMENTS.
5. REVIEW AND APPROVE ALL CONTRACT DOCUMENTS.
6. REVIEW AND APPROVE ALL CONTRACT DOCUMENTS.
7. REVIEW AND APPROVE ALL CONTRACT DOCUMENTS.
8. REVIEW AND APPROVE ALL CONTRACT DOCUMENTS.
9. REVIEW AND APPROVE ALL CONTRACT DOCUMENTS.
10. REVIEW AND APPROVE ALL CONTRACT DOCUMENTS.

CONSTRUCTION NOTES

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION, AS APPLICABLE.

2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

3. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AND UTILITIES AT ALL TIMES.

4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL EXISTING UTILITIES AND STRUCTURES.

5. THE CONTRACTOR SHALL MAINTAIN ADEQUATE DRAINAGE AND EROSION CONTROL MEASURES THROUGHOUT CONSTRUCTION.

6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION AND RESTORATION OF ALL ENVIRONMENTAL RESOURCES.

7. THE CONTRACTOR SHALL MAINTAIN ADEQUATE RECORDS OF ALL CONSTRUCTION ACTIVITIES.

8. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION AND RESTORATION OF ALL ENVIRONMENTAL RESOURCES.

9. THE CONTRACTOR SHALL MAINTAIN ADEQUATE RECORDS OF ALL CONSTRUCTION ACTIVITIES.

10. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION AND RESTORATION OF ALL ENVIRONMENTAL RESOURCES.

RAILROAD SUGGESTED CONSTRUCTION PHASING

1. PHASE 1: PRELIMINARY WORK AND SITE PREPARATION.
2. PHASE 2: EXCAVATION AND FOUNDATION WORK.
3. PHASE 3: CONSTRUCTION OF STRUCTURAL ELEMENTS.
4. PHASE 4: INSTALLATION OF MECHANICAL AND ELECTRICAL SYSTEMS.
5. PHASE 5: FINISH WORK AND COMMISSIONING.

NOTES FOR GSP

1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

2. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AND UTILITIES AT ALL TIMES.

3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL EXISTING UTILITIES AND STRUCTURES.

NO.	DATE	REVISION

UNIVERSITY OF MICHIGAN
 Department of Civil and Environmental Engineering
 400 Tappan Street, Ann Arbor, MI 48106-1324
 Phone: 734 763-3225 Fax: 734 763-3226
 E-mail: cees@engin.umich.edu

CONSTRUCTION NOTES AND PHASING

Project No. 08-001-0000
 Date: 11/11/08
 Scale: 1" = 10'-0"

CONSTRUCTION NOTES

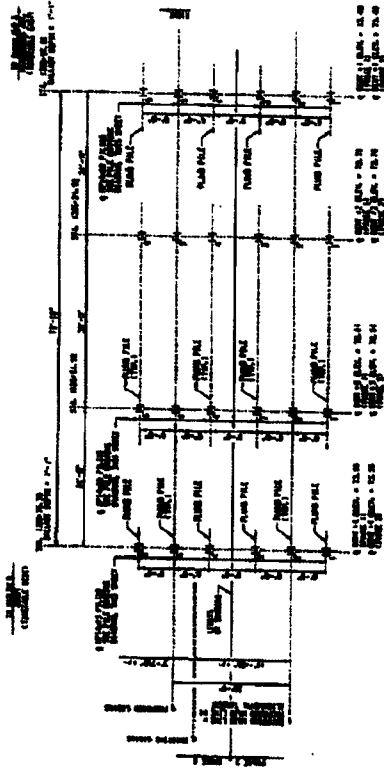
1. All work shall be done in accordance with the specifications and drawings. The contractor shall be responsible for obtaining all necessary permits and licenses. The contractor shall be responsible for the safety of all workers and the public. The contractor shall be responsible for the protection of all existing utilities and structures. The contractor shall be responsible for the removal of all debris and waste. The contractor shall be responsible for the maintenance of all access roads and easements. The contractor shall be responsible for the installation of all required signage and markers. The contractor shall be responsible for the completion of all work within the specified time frame. The contractor shall be responsible for the payment of all bills and invoices. The contractor shall be responsible for the coordination of all work with the other trades. The contractor shall be responsible for the communication of all changes and issues to the project manager. The contractor shall be responsible for the documentation of all work and materials. The contractor shall be responsible for the protection of all confidential information. The contractor shall be responsible for the compliance with all applicable laws and regulations. The contractor shall be responsible for the maintenance of all records and documents. The contractor shall be responsible for the resolution of all disputes. The contractor shall be responsible for the completion of all work in a professional and timely manner. The contractor shall be responsible for the satisfaction of all clients and stakeholders. The contractor shall be responsible for the overall success of the project.

DEFINITIONS

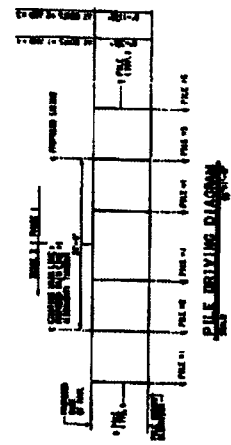
1. All dimensions shall be in feet and inches unless otherwise specified. All measurements shall be taken from the centerline of the road or easement unless otherwise specified. All elevations shall be in feet above sea level unless otherwise specified. All materials shall be of the highest quality and shall be approved by the project manager. All work shall be done in accordance with the specifications and drawings. The contractor shall be responsible for the safety of all workers and the public. The contractor shall be responsible for the protection of all existing utilities and structures. The contractor shall be responsible for the removal of all debris and waste. The contractor shall be responsible for the maintenance of all access roads and easements. The contractor shall be responsible for the installation of all required signage and markers. The contractor shall be responsible for the completion of all work within the specified time frame. The contractor shall be responsible for the payment of all bills and invoices. The contractor shall be responsible for the coordination of all work with the other trades. The contractor shall be responsible for the communication of all changes and issues to the project manager. The contractor shall be responsible for the documentation of all work and materials. The contractor shall be responsible for the protection of all confidential information. The contractor shall be responsible for the compliance with all applicable laws and regulations. The contractor shall be responsible for the maintenance of all records and documents. The contractor shall be responsible for the resolution of all disputes. The contractor shall be responsible for the completion of all work in a professional and timely manner. The contractor shall be responsible for the satisfaction of all clients and stakeholders. The contractor shall be responsible for the overall success of the project.

DIVISION OF RESPONSIBILITIES

1. The project manager shall be responsible for the overall management of the project. The project manager shall be responsible for the coordination of all work and the communication of all changes and issues. The project manager shall be responsible for the payment of all bills and invoices. The project manager shall be responsible for the completion of all work within the specified time frame. The project manager shall be responsible for the satisfaction of all clients and stakeholders. The project manager shall be responsible for the overall success of the project. The contractor shall be responsible for the execution of all work in accordance with the specifications and drawings. The contractor shall be responsible for the safety of all workers and the public. The contractor shall be responsible for the protection of all existing utilities and structures. The contractor shall be responsible for the removal of all debris and waste. The contractor shall be responsible for the maintenance of all access roads and easements. The contractor shall be responsible for the installation of all required signage and markers. The contractor shall be responsible for the completion of all work within the specified time frame. The contractor shall be responsible for the payment of all bills and invoices. The contractor shall be responsible for the coordination of all work with the other trades. The contractor shall be responsible for the communication of all changes and issues to the project manager. The contractor shall be responsible for the documentation of all work and materials. The contractor shall be responsible for the protection of all confidential information. The contractor shall be responsible for the compliance with all applicable laws and regulations. The contractor shall be responsible for the maintenance of all records and documents. The contractor shall be responsible for the resolution of all disputes. The contractor shall be responsible for the completion of all work in a professional and timely manner. The contractor shall be responsible for the satisfaction of all clients and stakeholders. The contractor shall be responsible for the overall success of the project.



FRONT SITE



DRIVEWAY DIAGRAM

1	1	1	1
2	2	2	2
3	3	3	3
4	4	4	4
5	5	5	5
6	6	6	6
7	7	7	7
8	8	8	8
9	9	9	9
10	10	10	10

UNION PACIFIC
RAILROAD

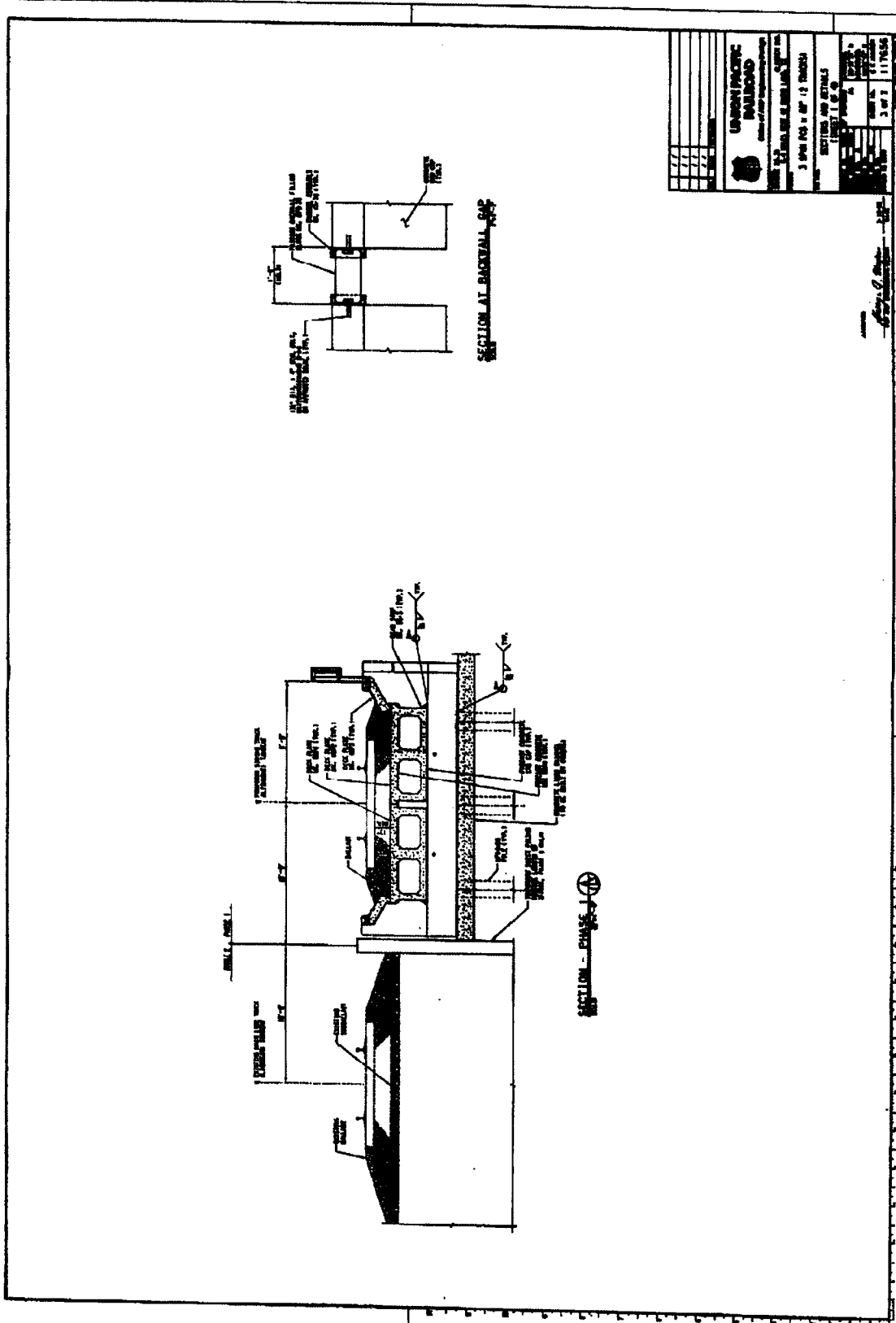
3 DIMS FOR 4 BY 12 TRACKS

RAIL LAYING, PALE DRIVING, BRIDGING AND CONSTRUCTION NOTES

DATE: 11/15/58

BY: [Signature]

2 of 7 | 117658



UNION PACIFIC RAILROAD	
3 3000 P.O. & 12 12 12 12 12	
SECTION AND DETAILS	
NO.	DATE
1	11/15/56
2	3/7
3	11/15/56

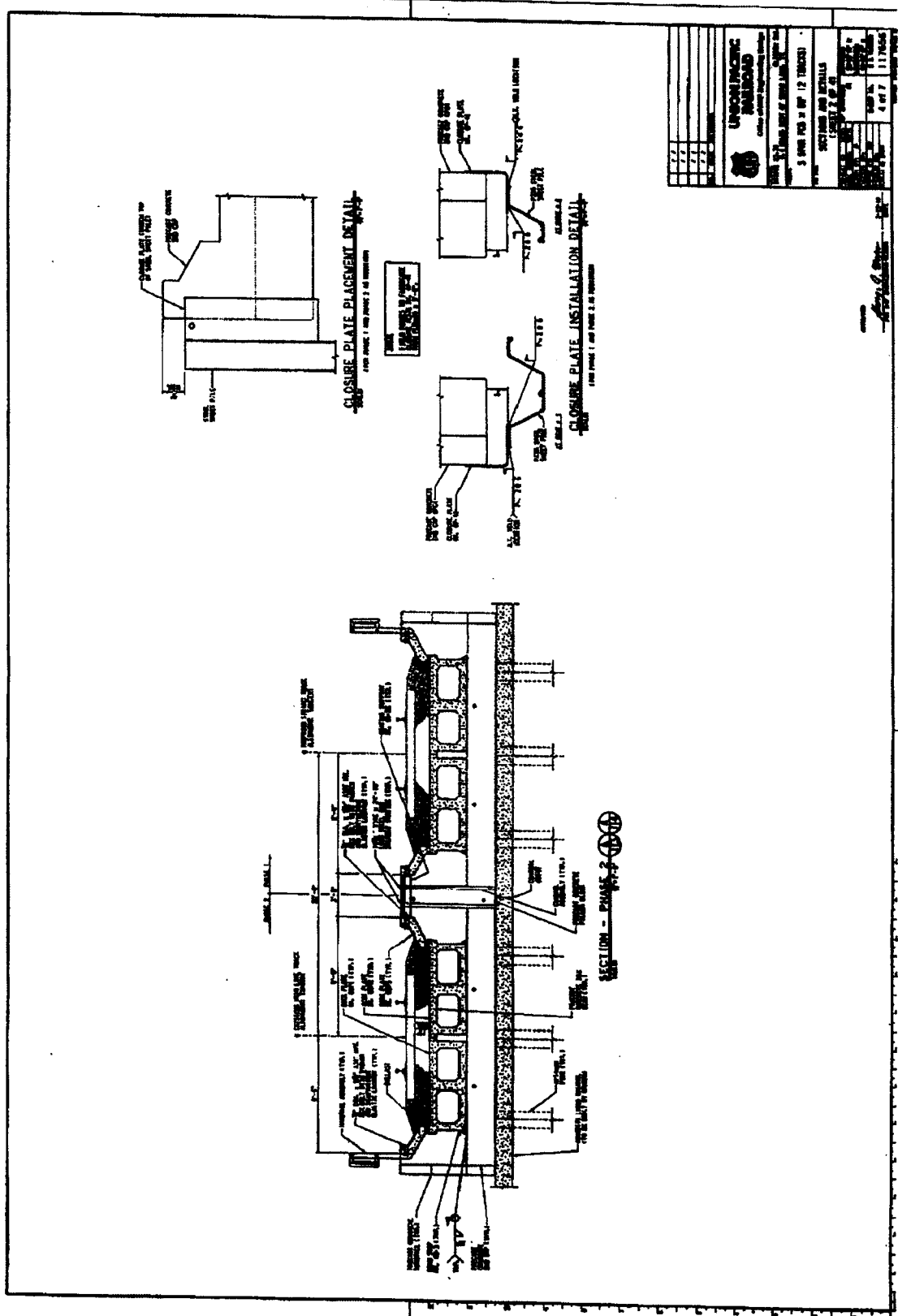


Exhibit A-1
 Detailed Print
 To Drainage Facility & Waterway Agreement

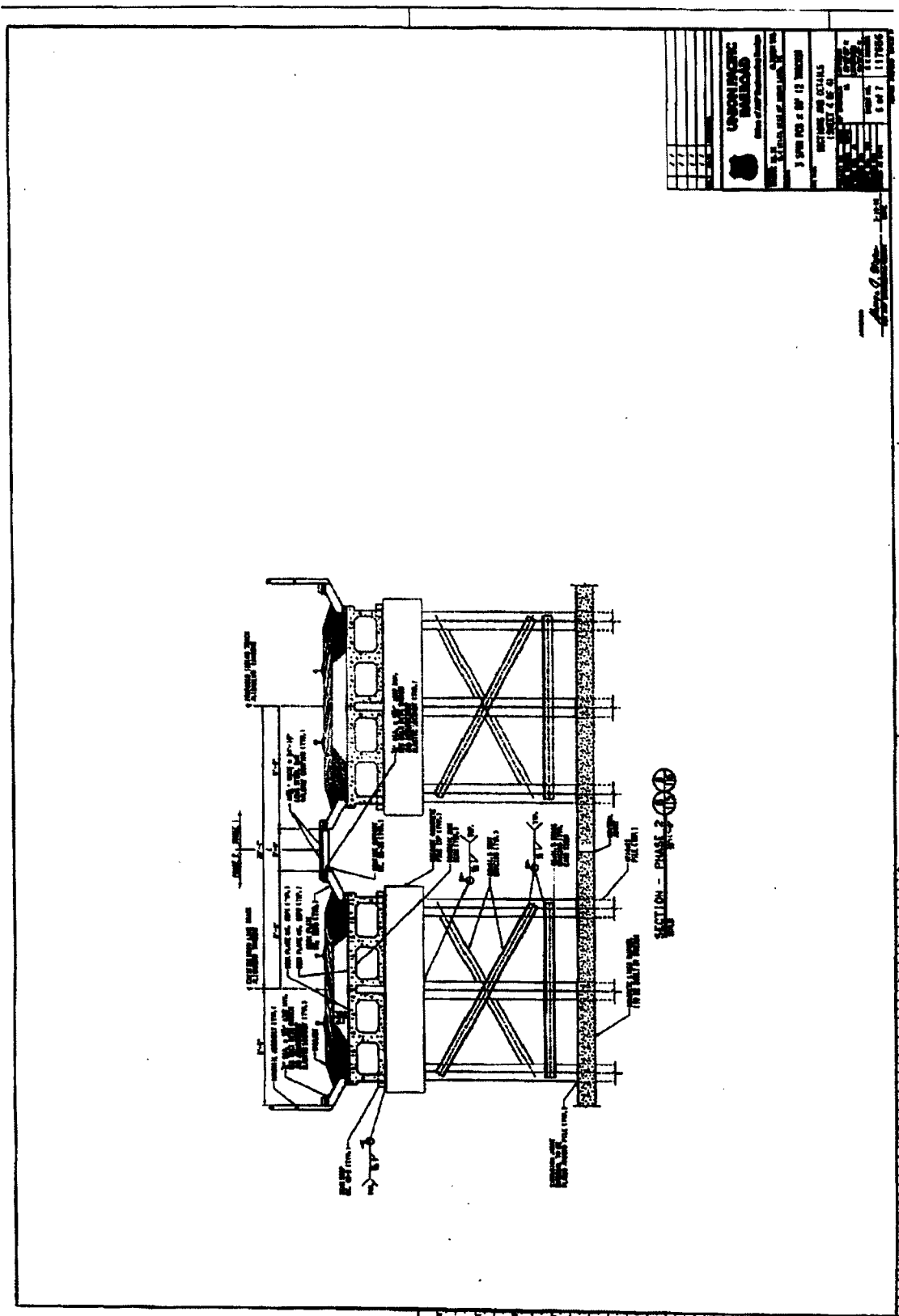
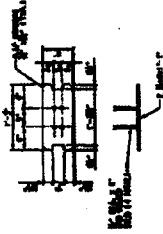
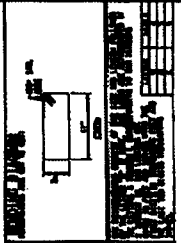


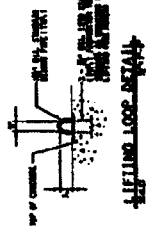
Exhibit A-1
 Detailed Print
 To Drainage Facility & Waterway Agreement

RETRACTING SCHEDULE

NO.	DATE	BY	REVISION

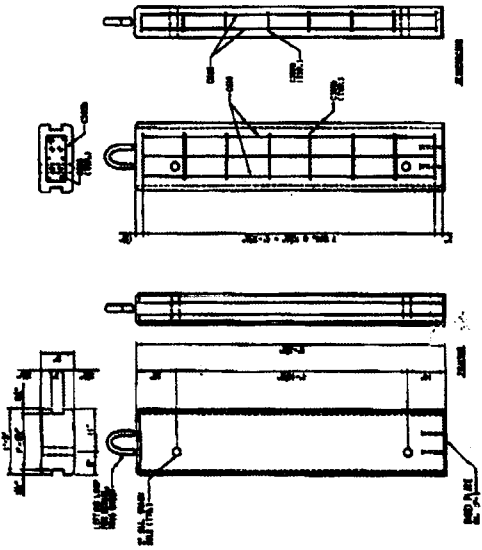


EMBED PHASE NO. 1
 10/11/1968



UNION PACIFIC

NO.	DATE	BY	REVISION



PRECAST BACKWALL FILLER BLOCK NO. BEP-20
 10/11/1968

PRECAST CONCRETE NOTES

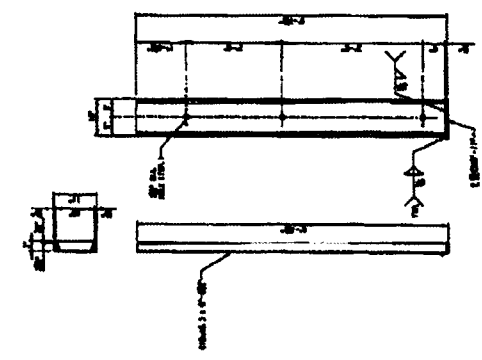
1. ALL PRECAST CONCRETE SHALL BE CAST AND CURED IN ACCORDANCE WITH THE SPECIFICATIONS OF THE AMERICAN CONCRETE INSTITUTE (ACI) AND THE PORTLAND CEMENT ASSOCIATION (PCA).

2. ALL PRECAST CONCRETE SHALL BE CAST AND CURED IN ACCORDANCE WITH THE SPECIFICATIONS OF THE AMERICAN CONCRETE INSTITUTE (ACI) AND THE PORTLAND CEMENT ASSOCIATION (PCA).

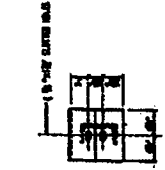
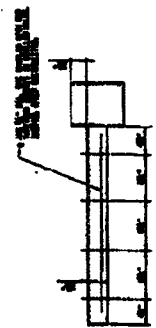
3. ALL PRECAST CONCRETE SHALL BE CAST AND CURED IN ACCORDANCE WITH THE SPECIFICATIONS OF THE AMERICAN CONCRETE INSTITUTE (ACI) AND THE PORTLAND CEMENT ASSOCIATION (PCA).

4. ALL PRECAST CONCRETE SHALL BE CAST AND CURED IN ACCORDANCE WITH THE SPECIFICATIONS OF THE AMERICAN CONCRETE INSTITUTE (ACI) AND THE PORTLAND CEMENT ASSOCIATION (PCA).

5. ALL PRECAST CONCRETE SHALL BE CAST AND CURED IN ACCORDANCE WITH THE SPECIFICATIONS OF THE AMERICAN CONCRETE INSTITUTE (ACI) AND THE PORTLAND CEMENT ASSOCIATION (PCA).

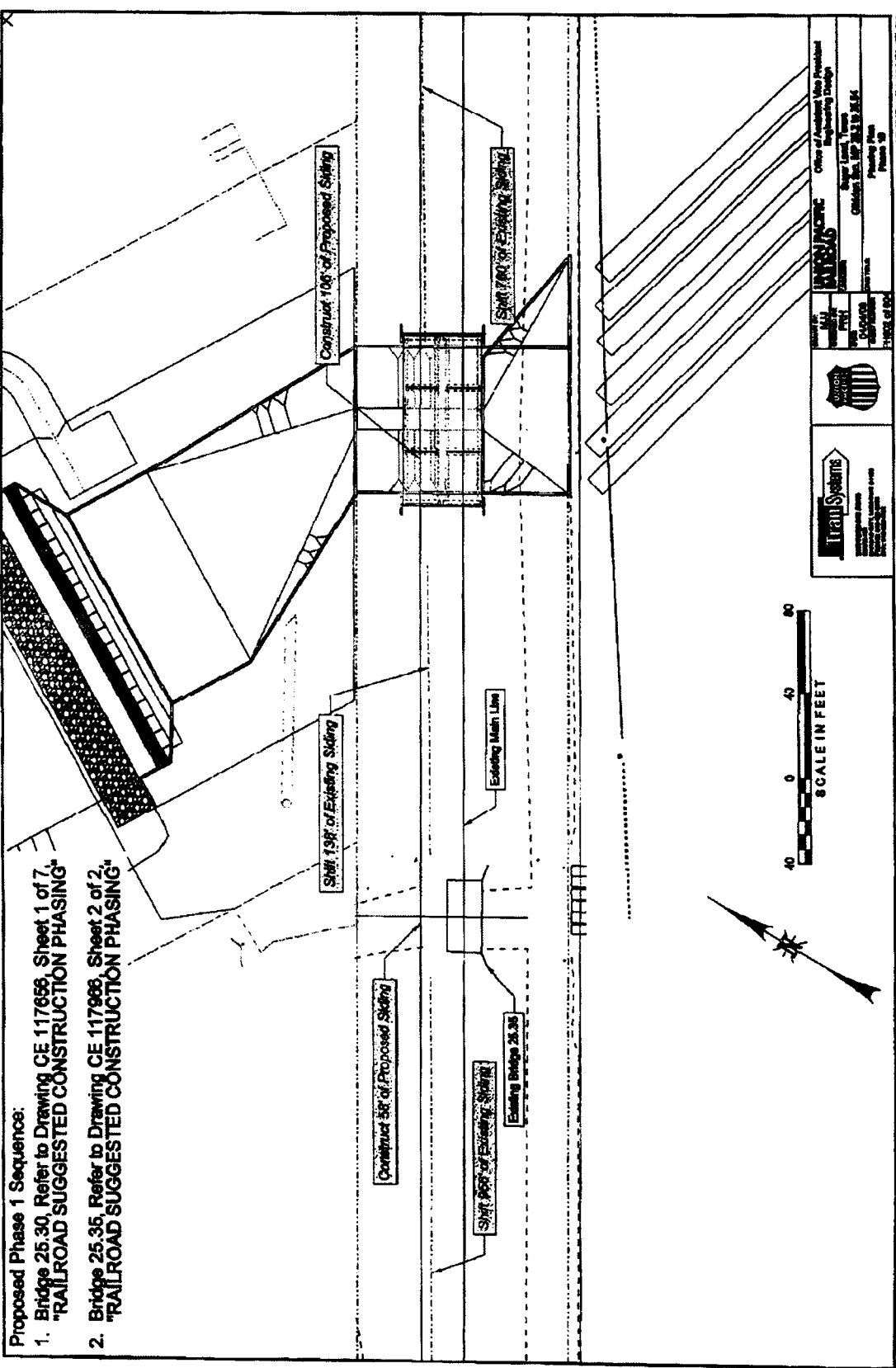


CHANNEL ASSEMBLY NO. CA-20
 10/11/1968

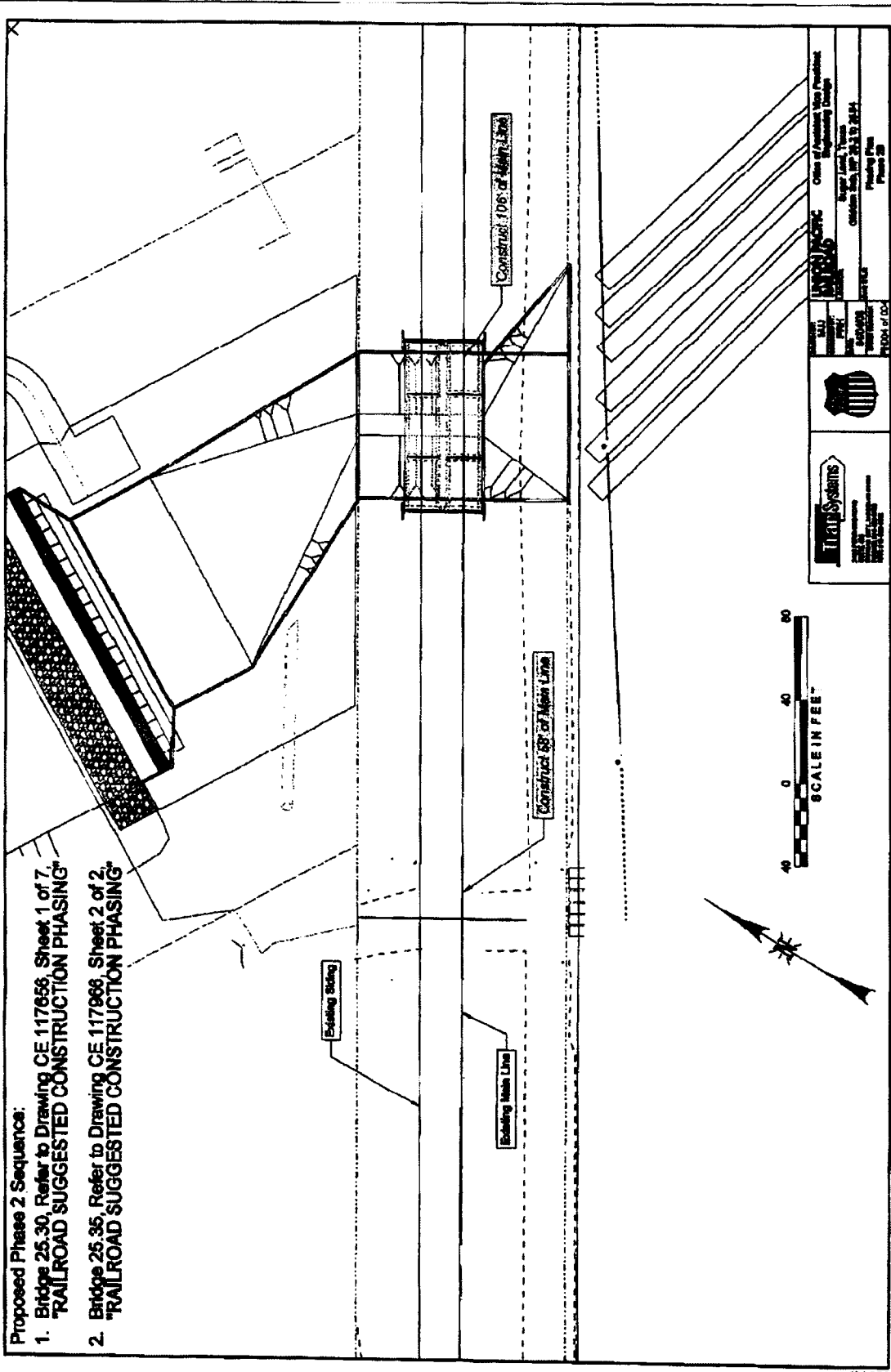


GRATING SUPPORT NO. GS-20
 10/11/1968

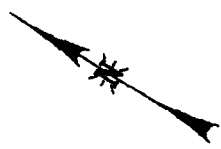
- Proposed Phase 1 Sequence:
1. Bridge 25.30, Refer to Drawing CE 117656, Sheet 1 of 7, "RAILROAD SUGGESTED CONSTRUCTION PHASING"
 2. Bridge 25.35, Refer to Drawing CE 117666, Sheet 2 of 2, "RAILROAD SUGGESTED CONSTRUCTION PHASING"



TransSystems 10000 E. 1st Avenue Denver, CO 80231		URS Office of Assistant Vice President Engineering Design 1900 S. York Street Golden, CO 80401	
Project No. 117656-01		Drawing No. 117656-01-01	
Date: 11/11/11		Project Name:	
Scale:		Project No.	



- Proposed Phase 2 Sequence:
1. Bridge 25.30, Refer to Drawing CE 117656, Sheet 1 of 7, "RAILROAD SUGGESTED CONSTRUCTION PHASING"
 2. Bridge 25.35, Refer to Drawing CE 117966, Sheet 2 of 2, "RAILROAD SUGGESTED CONSTRUCTION PHASING"



		CHINA OF AMERICA, NEW PROVIDENCE ENGINEERING DESIGN 1000 JEFFERSON AVENUE SUITE 1200 CHICAGO, ILL. 60601-2014 PHONE 312.467.8800 FAX 312.467.8801 WWW.CHINAOFAMERICA.COM
CHINA OF AMERICA ENGINEERING DESIGN PROJECT NO. 117966 SHEET NO. 25.35-2 DATE: 08/14/08	PROJECT NO. 117966 SHEET NO. 25.35-2 DATE: 08/14/08	

NO.	DESCRIPTION	QUANTITY	UNIT	PRICE	TOTAL
1	Excavation	100	cu yd	1.50	150.00
2	Concrete	50	cu yd	3.00	150.00
3	Reinforcing Steel	100	lb	0.10	10.00
4	Formwork	100	sq ft	0.20	20.00
5	Gravel	200	cu yd	1.00	200.00
6	Drainage Pipe	100	ft	2.00	200.00
7	Manhole	1	unit	100.00	100.00
8	Structural Steel	100	lb	0.15	15.00
9	Welding	100	hr	1.00	100.00
10	Paint	100	gal	0.50	50.00
11	Insulation	100	sq ft	0.30	30.00
12	Electrical	100	hr	1.50	150.00
13	Plumbing	100	hr	1.50	150.00
14	Roofing	100	sq ft	0.40	40.00
15	Interior Finishes	100	sq ft	0.60	60.00
16	Exterior Finishes	100	sq ft	0.50	50.00
17	Site Preparation	100	hr	2.00	200.00
18	Construction Management	100	hr	3.00	300.00
19	Permitting	1	unit	50.00	50.00
20	Contingency	100	hr	1.00	100.00
21	Subtotal				2000.00
22	Tax				100.00
23	Total				2100.00

NO.	DESCRIPTION	QUANTITY	UNIT	PRICE	TOTAL
1	Excavation	100	cu yd	1.50	150.00
2	Concrete	50	cu yd	3.00	150.00
3	Reinforcing Steel	100	lb	0.10	10.00
4	Formwork	100	sq ft	0.20	20.00
5	Gravel	200	cu yd	1.00	200.00
6	Drainage Pipe	100	ft	2.00	200.00
7	Manhole	1	unit	100.00	100.00
8	Structural Steel	100	lb	0.15	15.00
9	Welding	100	hr	1.00	100.00
10	Paint	100	gal	0.50	50.00
11	Insulation	100	sq ft	0.30	30.00
12	Electrical	100	hr	1.50	150.00
13	Plumbing	100	hr	1.50	150.00
14	Roofing	100	sq ft	0.40	40.00
15	Interior Finishes	100	sq ft	0.60	60.00
16	Exterior Finishes	100	sq ft	0.50	50.00
17	Site Preparation	100	hr	2.00	200.00
18	Construction Management	100	hr	3.00	300.00
19	Permitting	1	unit	50.00	50.00
20	Contingency	100	hr	1.00	100.00
21	Subtotal				2000.00
22	Tax				100.00
23	Total				2100.00

NO.	DESCRIPTION	QUANTITY	UNIT	PRICE	TOTAL
1	Excavation	100	cu yd	1.50	150.00
2	Concrete	50	cu yd	3.00	150.00
3	Reinforcing Steel	100	lb	0.10	10.00
4	Formwork	100	sq ft	0.20	20.00
5	Gravel	200	cu yd	1.00	200.00
6	Drainage Pipe	100	ft	2.00	200.00
7	Manhole	1	unit	100.00	100.00
8	Structural Steel	100	lb	0.15	15.00
9	Welding	100	hr	1.00	100.00
10	Paint	100	gal	0.50	50.00
11	Insulation	100	sq ft	0.30	30.00
12	Electrical	100	hr	1.50	150.00
13	Plumbing	100	hr	1.50	150.00
14	Roofing	100	sq ft	0.40	40.00
15	Interior Finishes	100	sq ft	0.60	60.00
16	Exterior Finishes	100	sq ft	0.50	50.00
17	Site Preparation	100	hr	2.00	200.00
18	Construction Management	100	hr	3.00	300.00
19	Permitting	1	unit	50.00	50.00
20	Contingency	100	hr	1.00	100.00
21	Subtotal				2000.00
22	Tax				100.00
23	Total				2100.00

RAILROAD SUGGESTED CONSTRUCTION PHASING

1. EXCAVATION AND CONSTRUCTION OF STRUCTURE
2. CONSTRUCTION OF ROOF
3. CONSTRUCTION OF WALLS
4. CONSTRUCTION OF FLOOR
5. CONSTRUCTION OF INTERIOR FINISHES
6. CONSTRUCTION OF EXTERIOR FINISHES
7. PAINTING
8. ELECTRICAL AND PLUMBING
9. TESTING AND COMPLETION

UNION PACIFIC RAILROAD

3000 WEST 10TH AVENUE, DENVER, CO. 80202

3000 WEST 10TH AVENUE, DENVER, CO. 80202

3000 WEST 10TH AVENUE, DENVER, CO. 80202

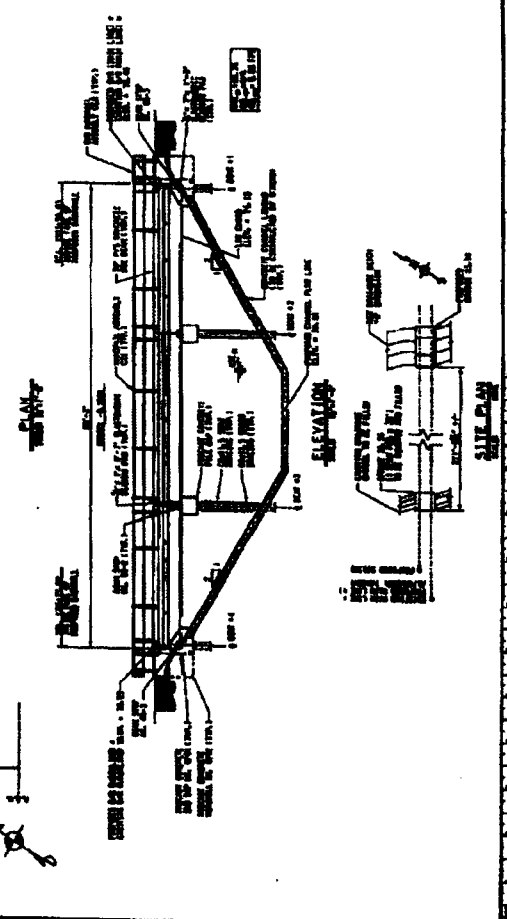
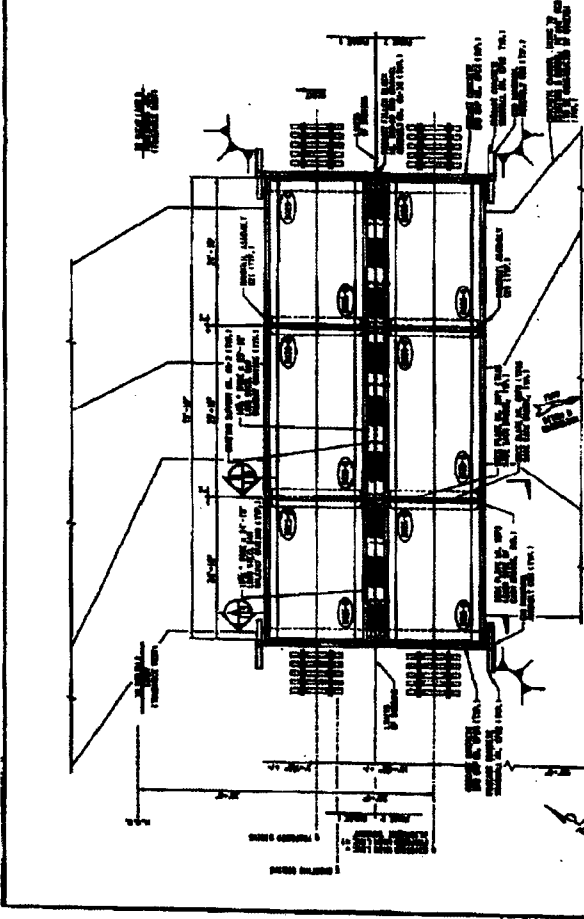


Exhibit A-1
Detailed Print
To Drainage Facility & Waterway Agreement

DIVISION OF RESPONSIBILITY

- 1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE DRAINAGE FACILITY AND WATERWAY.
- 2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE OBTAINING OF ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
- 3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES DURING THE CONSTRUCTION OF THE DRAINAGE FACILITY AND WATERWAY.
- 4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF ALL ACCESS ROADS AND TRAILS DURING THE CONSTRUCTION OF THE DRAINAGE FACILITY AND WATERWAY.
- 5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL ADJACENT PROPERTIES AND LANDS DURING THE CONSTRUCTION OF THE DRAINAGE FACILITY AND WATERWAY.
- 6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL ENVIRONMENTAL RESOURCES DURING THE CONSTRUCTION OF THE DRAINAGE FACILITY AND WATERWAY.

CONSTRUCTION NOTES

- 1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE SPECIFICATIONS AND DRAWINGS.
- 2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE OBTAINING OF ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
- 3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES DURING THE CONSTRUCTION OF THE DRAINAGE FACILITY AND WATERWAY.
- 4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF ALL ACCESS ROADS AND TRAILS DURING THE CONSTRUCTION OF THE DRAINAGE FACILITY AND WATERWAY.
- 5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL ADJACENT PROPERTIES AND LANDS DURING THE CONSTRUCTION OF THE DRAINAGE FACILITY AND WATERWAY.
- 6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL ENVIRONMENTAL RESOURCES DURING THE CONSTRUCTION OF THE DRAINAGE FACILITY AND WATERWAY.

RAILROAD SUBSIDIZED CONSTRUCTION PHASING

- 1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE OBTAINING OF ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
- 2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES DURING THE CONSTRUCTION OF THE DRAINAGE FACILITY AND WATERWAY.
- 3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF ALL ACCESS ROADS AND TRAILS DURING THE CONSTRUCTION OF THE DRAINAGE FACILITY AND WATERWAY.
- 4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL ADJACENT PROPERTIES AND LANDS DURING THE CONSTRUCTION OF THE DRAINAGE FACILITY AND WATERWAY.
- 5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL ENVIRONMENTAL RESOURCES DURING THE CONSTRUCTION OF THE DRAINAGE FACILITY AND WATERWAY.

UNION PACIFIC RAILROAD	
CONSTRUCTION NOTES AND PHASING	
DATE	2 OF 2 117965

[Handwritten signature]



To Drainage Facility & Waterway Agreement

Cover Sheet for the
Terms & Conditions

EXHIBIT B

TO DRAINAGE FACILITY & WATERWAY AGREEMENT

TERMS AND CONDITIONS

Section 1. 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 the Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, 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 the Railroad without liability to the Licensee 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 the Railroad's property, and others) and the right of the Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment. It shall be Licensee's sole obligation to obtain such additional permission, license and grants necessary on account of any such existing rights.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

- a) The Licensee shall submit the design of the Drainage Facility to the Railroad for Railroad's prior approval. All work performed on property of the Railroad in connection with the construction, maintenance, repair, renewal, modification or construction of the Drainage Facility shall be done to the satisfaction of the Railroad and in substantial conformance to the specifications, notes and cross sections shown on Exhibit A.
- b) The Licensee, at its sole expense, shall operate, maintain and use the Drainage Facility in a good and safe condition and shall keep the Drainage Facility free and clear of debris, sediment or obstructive matter which may or could interfere with or impede the proper functioning of the Drainage Facility.
- c) The Licensee shall not cross any trackage of Railroad with any vehicles except at existing, open public crossings. The Drainage Facility shall be installed by an approved method of construction, or if by the jacking and boring method, during jacking operations, the Licensee agrees to fill voids created between the embankment and pipe by pressure grouting. The Licensee shall provide adequate barrier protection around the entire excavation area.
- d) During the performance of excavating, constructing and maintaining the Drainage Facility, or any part thereof, the Licensee shall not excavate near the toe of the track embankment of the trackbed and will protect the trackbed in the design, construction and maintenance of the Drainage Facility. In the event of any settlement of the Railroad's embankment caused by excavation of the Drainage Facility, the Licensee, at its sole expense, shall restore Railroad's embankment to its proper grade and dimensions.
- e) Prior to the commencement of any work in connection with the construction, maintenance, repair, renewal, modification, relocation, construction or removal of the Drainage Facility where it passes underneath the roadbed and track or tracks of the Railroad, the Licensee shall submit to the Railroad plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Railroad's operations, and shall not proceed with the work until such plans have been approved by the Vice President-Engineering Services of the Railroad and then the work shall be done to the satisfaction of the Vice President-Engineering Services or his authorized representative. The Railroad shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, construction or removal of the Drainage Facility, and, in the event the Railroad provides such support, the Licensee shall pay to the Railroad, within thirty (30) days after bills shall have been rendered therefore, all expense incurred by the Railroad in connection therewith, which expense shall include all assignable costs.

Section 3. NOTICE OF COMMENCEMENT OF WORK.

If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Railroad before commencing any work. In all other situations, the Licensee shall notify the Railroad at least ten (10) days (or such other time as the Railroad may allow) in advance of the commencement of any work upon property of the Railroad in connection with the construction, maintenance, repair, renewal, modification, construction, relocation or removal of the Drainage Facility. All such work shall be prosecuted diligently to completion.

Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.

The Licensee shall bear the entire cost and expense incurred in connection with the construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or construction of the Drainage Facility, including any and all expense which may be incurred by the Railroad in connection therewith for inspection, flagging, or otherwise.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF DRAINAGE FACILITY.

All the terms, conditions and stipulations herein expressed with reference to the Drainage Facility on property of the Railroad in the location hereinbefore described shall, so far as the Drainage Facility remains on the property, apply to the Drainage Facility as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH RAILROAD'S OPERATION.

The Drainage Facility and all parts thereof within and outside of the limits of the property of the Railroad shall be constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Railroad, and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

- a) 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. Licensee shall telephone the Railroad at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, and will commence no work on the right of way until all such protection or relocation has been accomplished.
- b) In addition to other indemnity provisions in this Agreement, to the extent allowed by law, the Licensee shall indemnify and hold the 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 the Licensee, its contractor, agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and (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. To the extent allowed by Law, Licensee 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 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

- a) The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Railroad in connection with the construction, maintenance, repair, renewal, modification or construction of the Drainage Facility, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. To the extent allowed by law, the Licensee shall indemnify and hold harmless the Railroad against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.
- b) The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Drainage Facility, to prevent the same from becoming a charge or lien upon property of the Railroad, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Drainage Facility or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Railroad, then the Licensee shall pay to the Railroad an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Railroad as compared with the entire value of such property

Section 9. RESTORATION OF RAILROAD'S PROPERTY.

In the event the Railroad authorizes the Licensee to take down any fence of the Railroad or in any manner move or disturb any of the other property of the Railroad in connection with the construction, maintenance, repair, renewal, modification, construction, relocation or removal of the Drainage Facility, then in that event the Licensee shall, as soon as possible and at Licensee'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, and to the extent allowed by law, the Licensee shall indemnify and hold harmless the Railroad, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or

death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the taking down of any fence or the moving or disturbance of any other property of the Railroad.

Section 10. INDEMNITY.

- a) As used in this Section, "Railroad" includes other railroad companies using the Railroad's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Railroad's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and (b) damage to or loss or destruction of property whatsoever (including Licensee's property and adjacent property and crops, damage to the roadbed, tracks, equipment, or other property of the Railroad, or property in its care or custody).
- b) To the extent it may lawfully do so, the Licensee agrees to assume the risk of loss or damage to the Drainage Facility and to indemnify and hold harmless the Railroad from any Loss which is due to or arises from (i) the installation, construction, maintenance, repair, construction, removal, use or existence of the Drainage Facility and appurtenances thereto, or any part thereof, including any break in the Drainage Facility wall or structure or any leakage, flow of water or flooding from the Drainage Facility, or (ii) Licensee's failure to comply with or perform any of the terms and conditions set forth in this Agreement, except to the extent that the Loss is caused by the sole and direct negligence of the Railroad; provided, however, that the foregoing indemnification provisions shall not apply to any claims, damages, costs and expenses that have been fully compensated for through the insurance required of Licensee in Exhibit C, or required of Licensee's contractor under the separate Contractor's Right of Entry Agreement.
- c) Any liability of either party hereunder to one of its employees under any Workers' Compensation Act or the Federal Employers' Liability Act shall not be questioned or in any way challenged by the other party, nor shall any jury or court findings, resulting from any employee's suit against either party pursuant to any such Act(s), be relied upon or used by either party in any attempt to assert common law liability against the other.

Section 11. WAIVER OF BREACH.

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

Section 12. AGREEMENT NOT TO BE ASSIGNED.

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Railroad, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Railroad, shall terminate this Agreement.

Section 13. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 12 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

EXHIBIT B-1

PACIFIC

To Drainage Facility & Waterway Agreement

Cover Sheet for the
Insurance Requirements

EXHIBIT B-1

TO DRAINAGE FACILITY & WATERWAY AGREEMENT

INSURANCE REQUIREMENTS

Licensee shall, at its sole cost and expense, (except for Railroad Protective Liability Insurance required in Paragraph D), procure and maintain in effect during the term of this Agreement the following insurance coverage. Licensee shall procure and maintain, or cause to be procured and maintained by its contractor, at its sole cost and expense, Railroad Protective Liability Insurance coverage described in Paragraph D during any period of construction, maintenance, repair or construction work.

- A. Commercial General Liability Insurance.** Commercial general liability (CGL) with a limit of not less than \$1,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

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

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

- B. Business Automobile Coverage Insurance.** Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$1,000,000 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:

- Licensee's and/or Licensee's contractor's statutory liability under the workers' compensation laws of the state where the Utility/Facility is located.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Licensee, and/or Licensee's 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.** 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 \$1,000,000 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. Licensee will maintain said insurance for five(5) years from the completion of the project.

- E. Umbrella Or Excess Insurance.** If Licensee, and/or Licensee's contractor, utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

Other Requirements

- F.** 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).
- G.** 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.
- H.** Licensee 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.

- I. Prior to commencing any work, Licensee, and/or Licensee's 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.
- J. 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 in which the Utility is located.
- K. The fact that insurance is obtained by Licensee, and/or Licensee's contractor, or by Railroad on behalf of Licensee, and/or Licensee's contractor, will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Licensee or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT C

PACIFIC

To Drainage Facility & Waterway Agreement

Cover Sheet for the
Railroad's Materials & Force Account Estimate

Material And Force Account Estimate Fort Bend County

Estimate Number: 35743 Version: 5

Standard Rates: Labor Additive = 235.74% WT Labor Additive = 187.95%
Estimate Good for 6 Months Until 07/28/09

Location: GLIDDEN SUB, SIMN, 25-26

Description of Work: Sugarland, TX - Spread track centers to 20' between siding and main line
to accomodate construction of bridge 25.30 - Ft Bend County Drainage District Ditch H Extension.
Refreshed to 2009

COMMENTS	FACILITY	Description	QTY	UOM	UCST	LABOR	MATERIAL	TOTAL	
ENGINEERING									
		CONTRACT ENGINEERING	1	LS	25,000.00	0	25,000	25,000	
		ENGINEERING	1	LS	30,000.00	30,000	0	30,000	
		FLAGGING	85	MD	750.00	48,750	0	48,750	
					Sub-Total =	78,750	25,000	103,750	
TRACK CONSTRUCTION - COMPANY									
		TRACK	1880	TF	42.35	49,927	29,896	79,524	
Remove 376 TF for brdge work x2		RELOCATE TRACK: MI. 30% WOOD TIES, 100%	752	TF	66.60	32,896	17,251	50,146	
	FLDWLD	FIELD WELD	16	EA	869.34	12,843	1,066	13,909	
					Sub-Total =	95,667	48,014	143,681	
SITE WORK - CONTRACT									
		MOBILIZATION	1	LS	25,000.00	0	25,000	25,000	
		AGGREGATE - SUBBALLAST - FURNISH, PLACE	428	CY	50.00	0	21,400	21,400	
		GRADING, EXCAVATION	407	CY	15.00	0	6,105	6,105	
		LINE STABILIZATION, 6" PLC. CMPCT.	1832	SY	6.00	0	10,992	10,992	
actual cost to UP		REMOVE BILLBOARD	1	EA	9,650.00	0	9,650	9,650	
					Sub-Total =	0	73,147	73,147	
DRAINAGE - CONTRACT									
Install through existing 30' PCB		CULVERT CMP 60" - FURN. & INST.	100	LF	650.00	0	65,000	65,000	
					Sub-Total =	0	85,000	85,000	
BRIDGE - CONTRACT									
Includes back fill		BRIDGE - REMOVE	1	LS	50,000.00	0	50,000	50,000	
2 - 80'		BRIDGE	180	LF	7,000.00	0	1,260,000	1,260,000	
					Sub-Total =	0	1,170,000	1,170,000	
EQUIPMENT RENTAL									
		EQUIPMENT RENTAL	1	LS	50,000.00	0	50,000	50,000	
					Sub-Total =	0	50,000	50,000	
HOMELINE FREIGHT									
		HOMELINE FREIGHT	2637	Per Ton	8.87	0	23,387	23,387	
					Sub-Total =	0	23,387	23,387	
PROJECT LEVEL COST									
	CONTINGENCIES	CONTINGENCY	10	%	18,289.65	17,442	145,455	162,896	
					Sub-Total =	17,442	145,455	162,896	
Total Wgt. in Tons = 2,637						Totals =	191,858	1,600,003	1,791,861

Grand Total = \$1,791,861

This is a "Shotgun" estimate, intended to provide a ballpark cost to determine whether a proposed project warrants further study. This estimate is not to be used for budget authority. This estimate is based on a conceptual design, without detailed engineering or site investigation. Quantities and costs are estimated using readily available information and experience with similar projects. Site conditions and changes in project scope and design may result in significant cost variance.



EXHIBIT D

PACIFIC

To Drainage Facility & Waterway Agreement

Cover Sheet for the
Railroad's Form of Contractor's Right of Entry
Agreement

April 09, 2008
Folder: 2493-75

To the Contractor:

Before the Railroad Company can permit you to perform work on its right of way for the installation of as detailed in Article ____ and on the Exhibit A attached for FORT BEND COUNTY DRAINAGE DISTRICT Sugar Land, Texas, it will be necessary to complete the enclosed Contractor's Right of Entry Agreement as follows:

1. Fill in the complete legal name of the contractor in the space provided on Page 1 of the Contractor's Right of Entry Agreement. If a corporation, give the state of incorporation. If a partnership, give the names of all partners.
2. Fill in the date construction will begin and be completed in Article 6, Paragraph (a).
3. Fill in the name of the contractor in the space provided in the signature block at the end of the Contractor's Right of Entry Agreement. If the contractor is a corporation, the person signing on its behalf must be an elected corporate officer.
4. Return all copies of the Contractor's Right of Entry Agreement, together with your Certificate of Insurance, **identifying Folder No. 2493-75**, as required in Exhibit C, in the attached self-addressed envelope.
5. Check, with **Folder No. 2493-75** written on the front, made payable to the Union Pacific Railroad Company in the amount of **FIVE HUNDRED DOLLARS (\$500.00)**. If you require formal billing, you may consider this letter as a formal bill. In compliance with the Internal Revenue Service's policy regarding Form 1099, I certify that 94-6001323 is the Railroad Company's correct Federal Taxpayer Identification Number and that Union Pacific Railroad Company is doing business as a corporation.

After approval of the Contractor's Right of Entry Agreement and the Insurance Certificate, your fully-executed document will be returned to you, with instructions to proceed. In no event should you begin work until you have received a copy of the signed Contractor's Right of Entry Agreement.

Under Exhibit C of the enclosed Contractor's Right of Entry Agreement, you are required to procure Railroad Protective Liability Insurance (RPLI) for the duration of this project. As a service to you, Union Pacific is making this coverage available to you. You are not required to purchase this coverage from the Railroad and are encouraged to shop the market for the best available rate. If you decide, however, that acquiring this coverage from the Railroad is of benefit to you, simply follow the instructions on the enclosed form.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary C. Gross". The signature is written in a cursive style with a large initial "M" and "G".

Mary Gross

Manager - Contracts - Real Estate

(402) 544-8623

CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

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

RECITALS:

Contractor has been hired by the **FORT BEND COUNTY DRAINAGE DISTRICT** for the construction of a drainage facility (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 25.30, Glidden Subdivision, located at or near Sugar Land, Fort Bend County, State of Texas, which work is the subject of a contract dated April 01, 2008 between Railroad and **FORT BEND COUNTY DRAINAGE DISTRICT**, as such location is also shown on the print dated April 01, 2008, marked **Exhibit A** and specified on the Detailed Prints marked **Exhibit A-1** attached hereto and hereby made a part hereof.

Railroad is willing to permit Contractor to perform the work described above at the location describe above subject to the terms and conditions contained in this Agreement.

AGREEMENT:

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

Article I. DEFINITION OF CONTRACTOR.

For purposes of this Agreement, all references in this Agreement to the Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

Article II. 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 IV.

Article III. TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C AND D.

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

Article IV. 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"):

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 V. 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 VI. CERTIFICATE OF INSURANCE.

A. Before commencing any work, Contractor will provide Railroad with the insurance binders, policies, certificates and/or endorsements set forth in **Exhibit C** of this Agreement.

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

Folder No. 2493-75
Union Pacific Railroad Company
1400 Douglas Street STOP 1690
Omaha, Nebraska 68179-1690

Article VII. CHOICE OF FORUM.

Litigation arising out of or connected with this Agreement may be instituted and maintained in the courts of the States of Nebraska and only, and the parties consent to jurisdiction over their person and

over the subject matter of any such litigation, in those courts, and consent to service of process issued by such courts.

Article VIII. 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 IX. ADMINISTRATIVE FEE.

Upon the execution and delivery of this Agreement, Contractor shall pay to Railroad Five Hundred Dollars (\$500.00) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

Article X. 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 XI. 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 caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

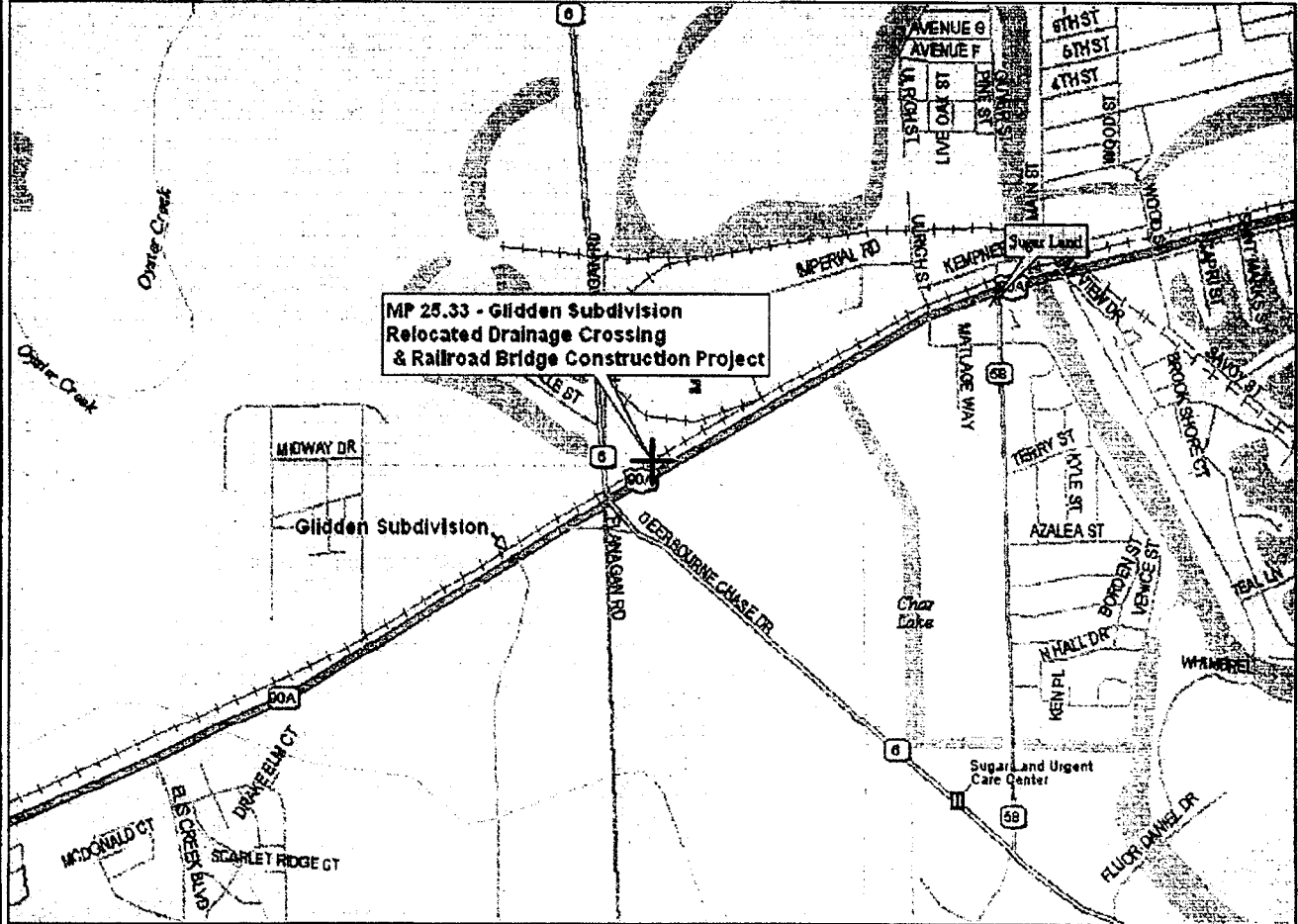
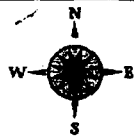
By _____
Manager Contracts

(Name of Contracting Company)

X _____

Title:
Telephone:
Fax:

RAILROAD LOCATION PRINT OF A RELOCATED DITCH & RAILROAD BRIDGE CONSTRUCTION PROJECT



DELORME

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www.delorme.com



RAILROAD WORK TO BE PERFORMED:

1. Relocate existing tracks and construct a new Railroad bridge to accommodate the relocation and reconstruction of a drainage ditch.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

GLIDDEN SUBDIVISION

MILE POST 25.33

GPS: N 29° 36.8935', W 95° 38.8488'

near SUGAR LAND, FORT BEND CO., TX.

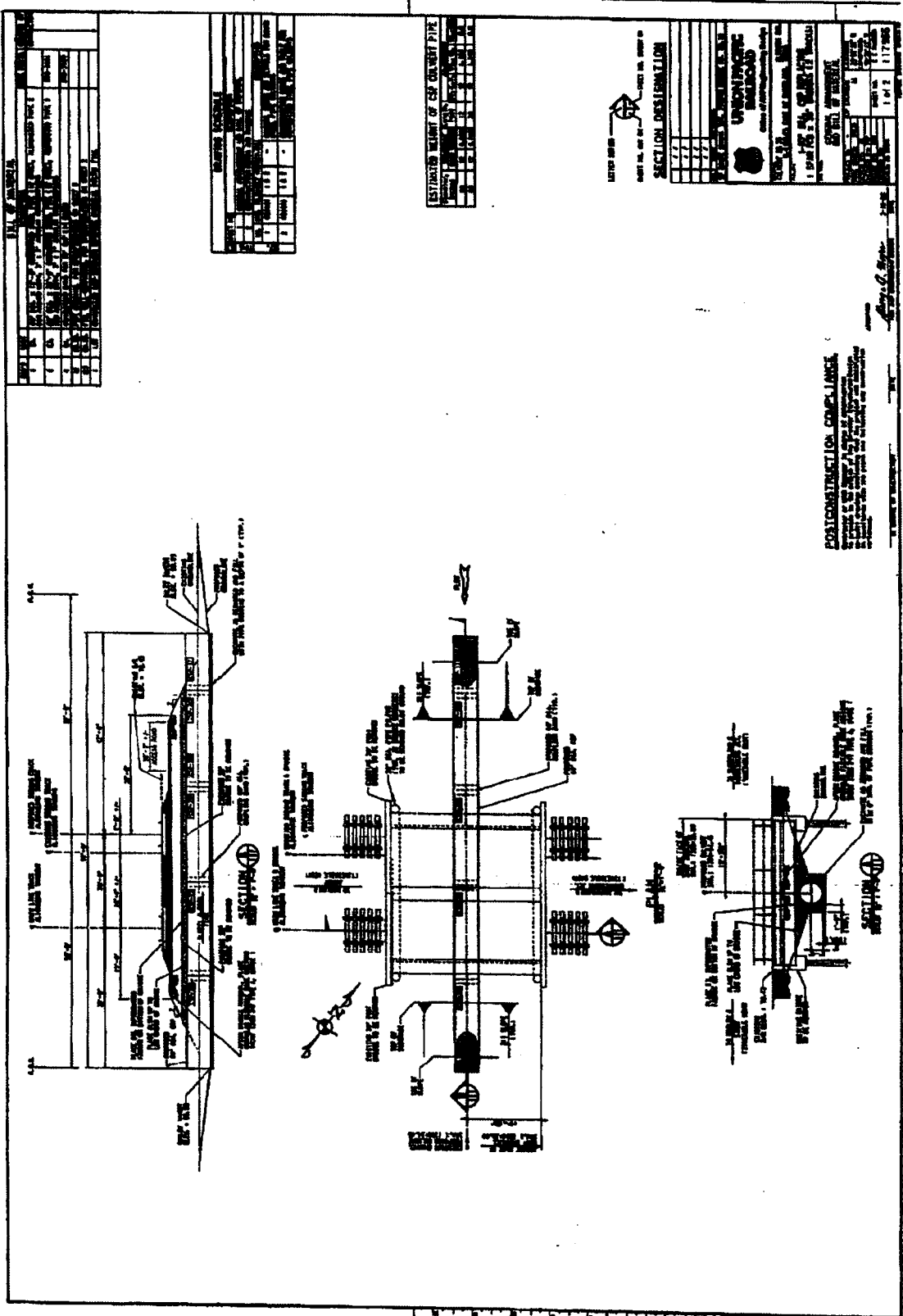
Location print of a ditch relocation and Railroad bridge construction project with the **FORT BEND COUNTY FLOOD CONTROL.**

Folder No. 2493-75

Date: April 11, 2008

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



DATE OF REVISION

NO.	DATE	DESCRIPTION
1	10/15/11	ISSUED FOR PERMIT
2	11/15/11	REVISED PER COMMENTS
3	12/15/11	REVISED PER COMMENTS
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SECTION DESIGNATION

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63	SECTION 63

DIVISION OF RESPONSIBILITY

- 1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE DRAINAGE FACILITY AND WATERWAY AGREEMENT.
- 2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE DRAINAGE FACILITY AND WATERWAY AGREEMENT.
- 3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE DRAINAGE FACILITY AND WATERWAY AGREEMENT.
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CONSTRUCTION NOTES

- 1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE DRAINAGE FACILITY AND WATERWAY AGREEMENT.
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RAILROAD SUGGESTED CONSTRUCTION PHASING

- 1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE DRAINAGE FACILITY AND WATERWAY AGREEMENT.
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- 3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE DRAINAGE FACILITY AND WATERWAY AGREEMENT.
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FOR										
APPROVED										
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UNION PACIFIC RAILROAD
 DIVISION OF CONSTRUCTION
 1000 WEST 10TH AVENUE, DENVER, COLORADO 80202
 TELEPHONE 333-1111
 TELETYPE 333-1111
 FAX 333-1111

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RAILROAD-SUGGESTED CONSTRUCTION METHODS

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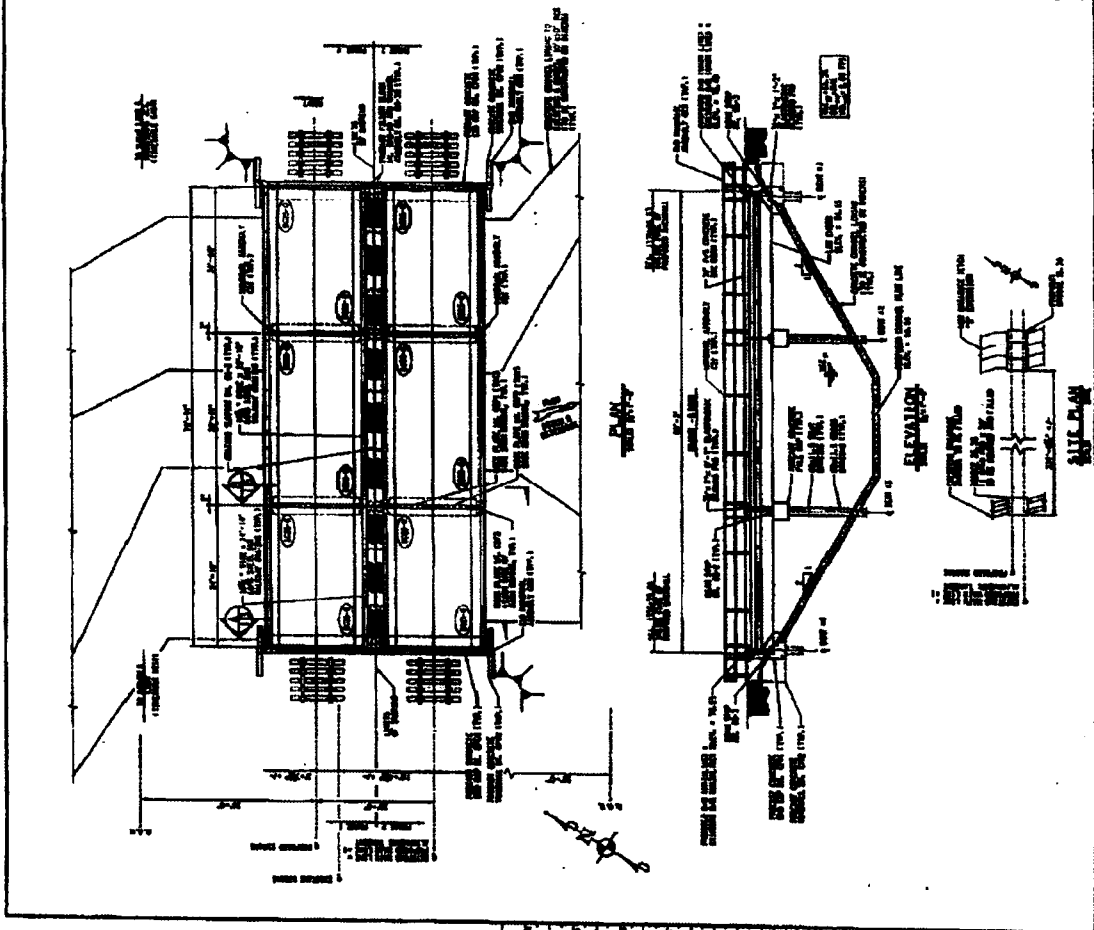
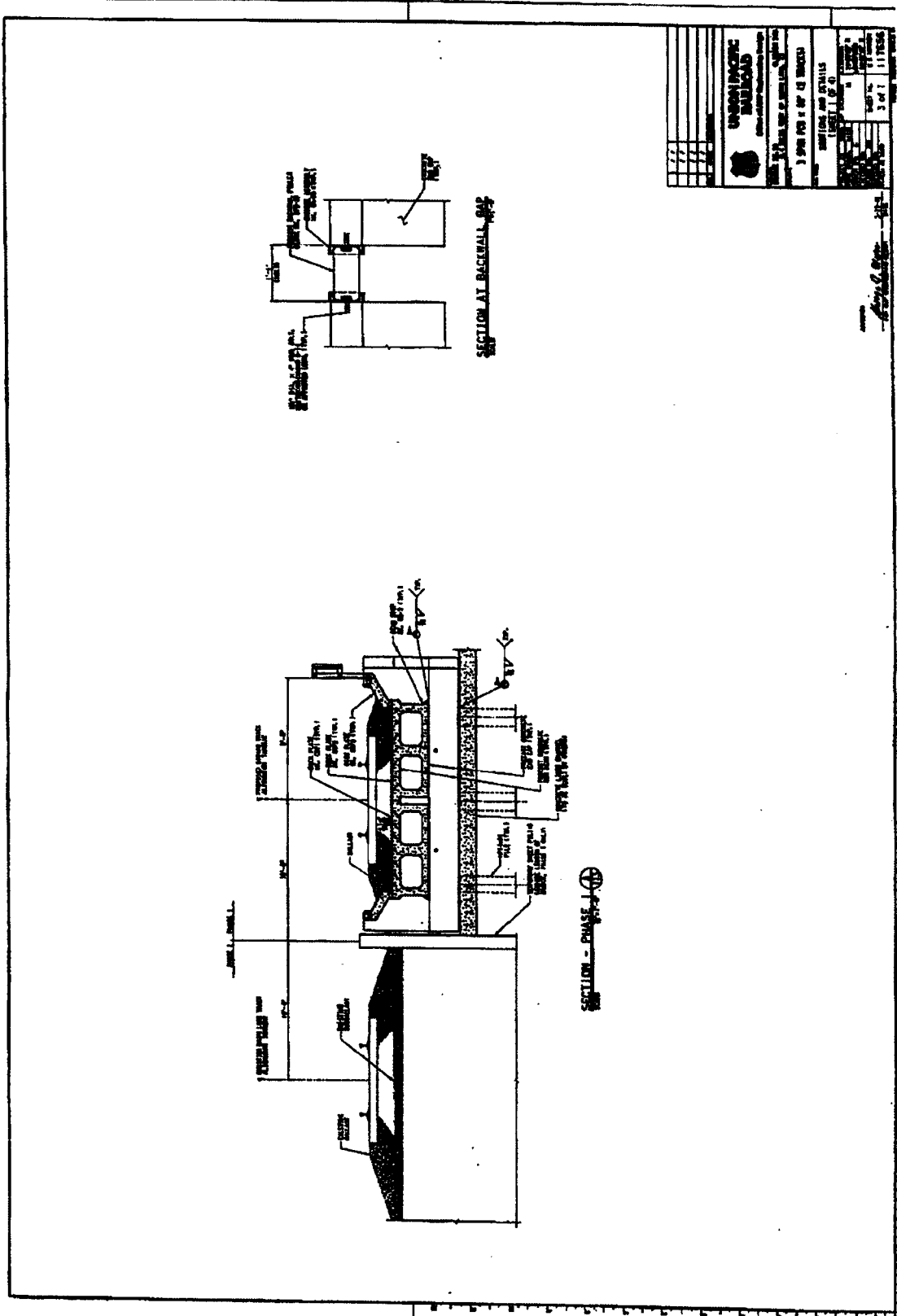
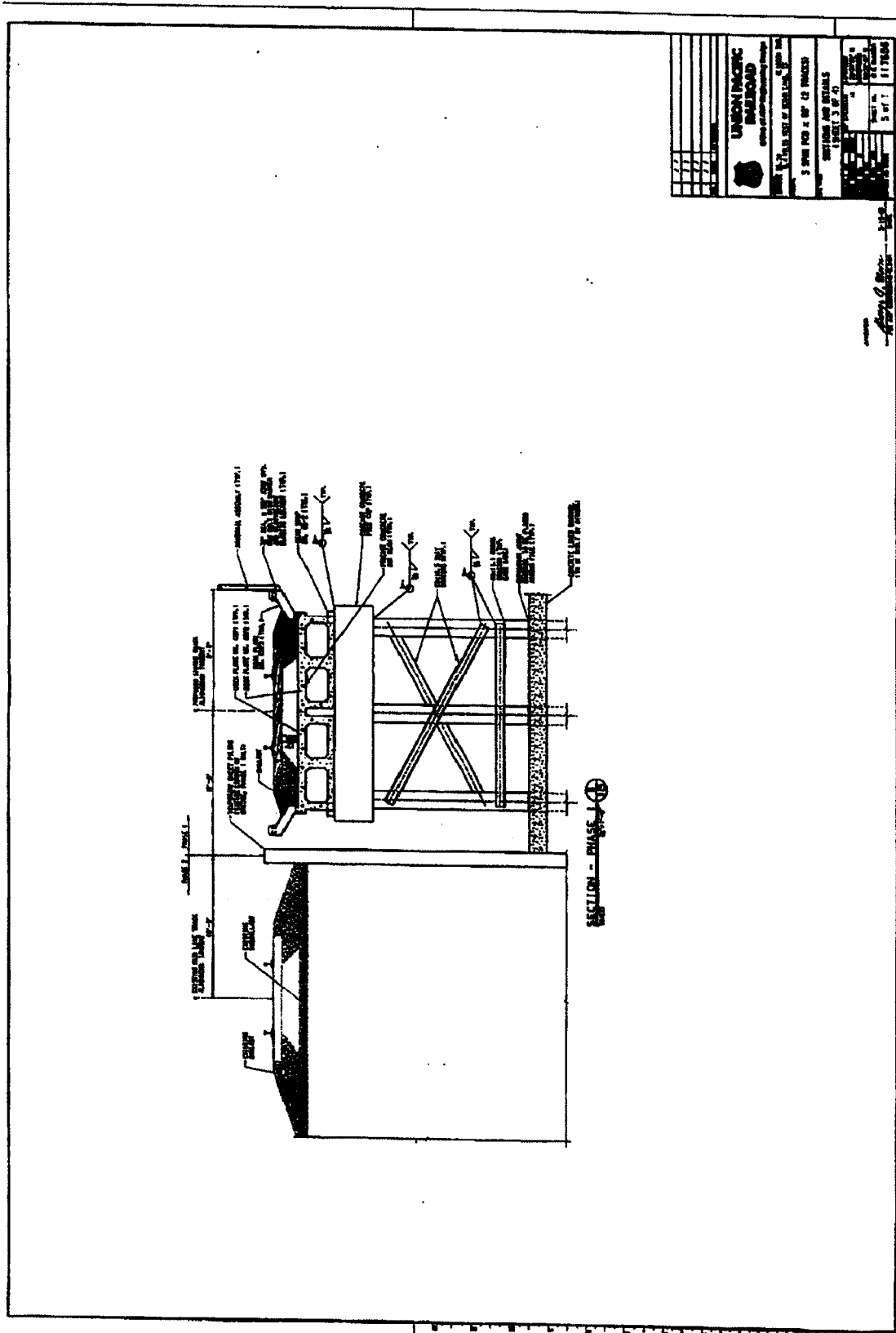


Exhibit A- Detailed Plan To Drainage Facility & Waterway Agreement



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Exhibit A-
Detailed Plan
To Drainage Facility & Waterway Agreement



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3 NEW RD. x 10' 0" WIDED									
DETAILS AND DETAILS									
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Approved: _____
Date: _____

Exhibit A-
Detailed Print
To Drainage Facility & Waterway Agreement

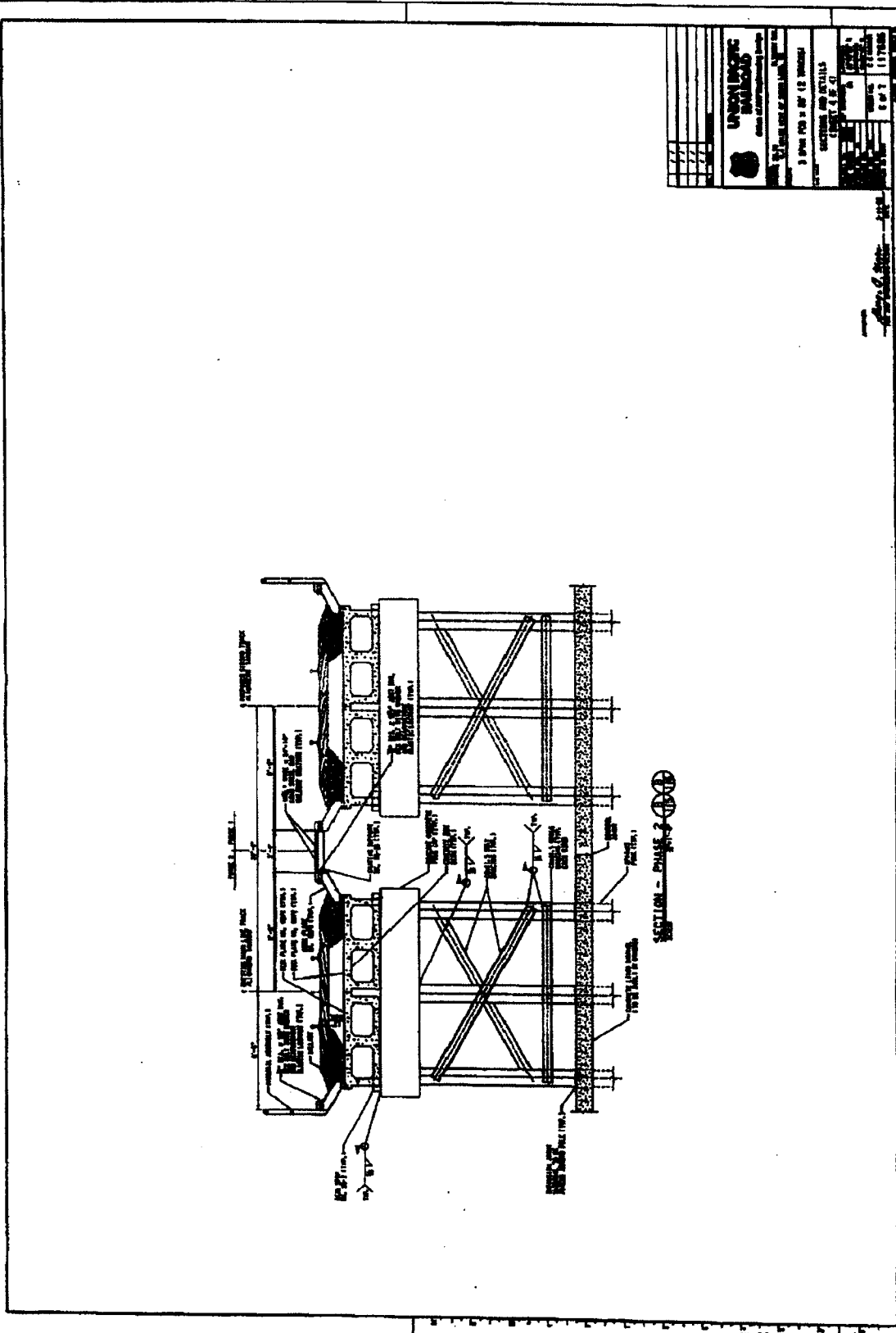
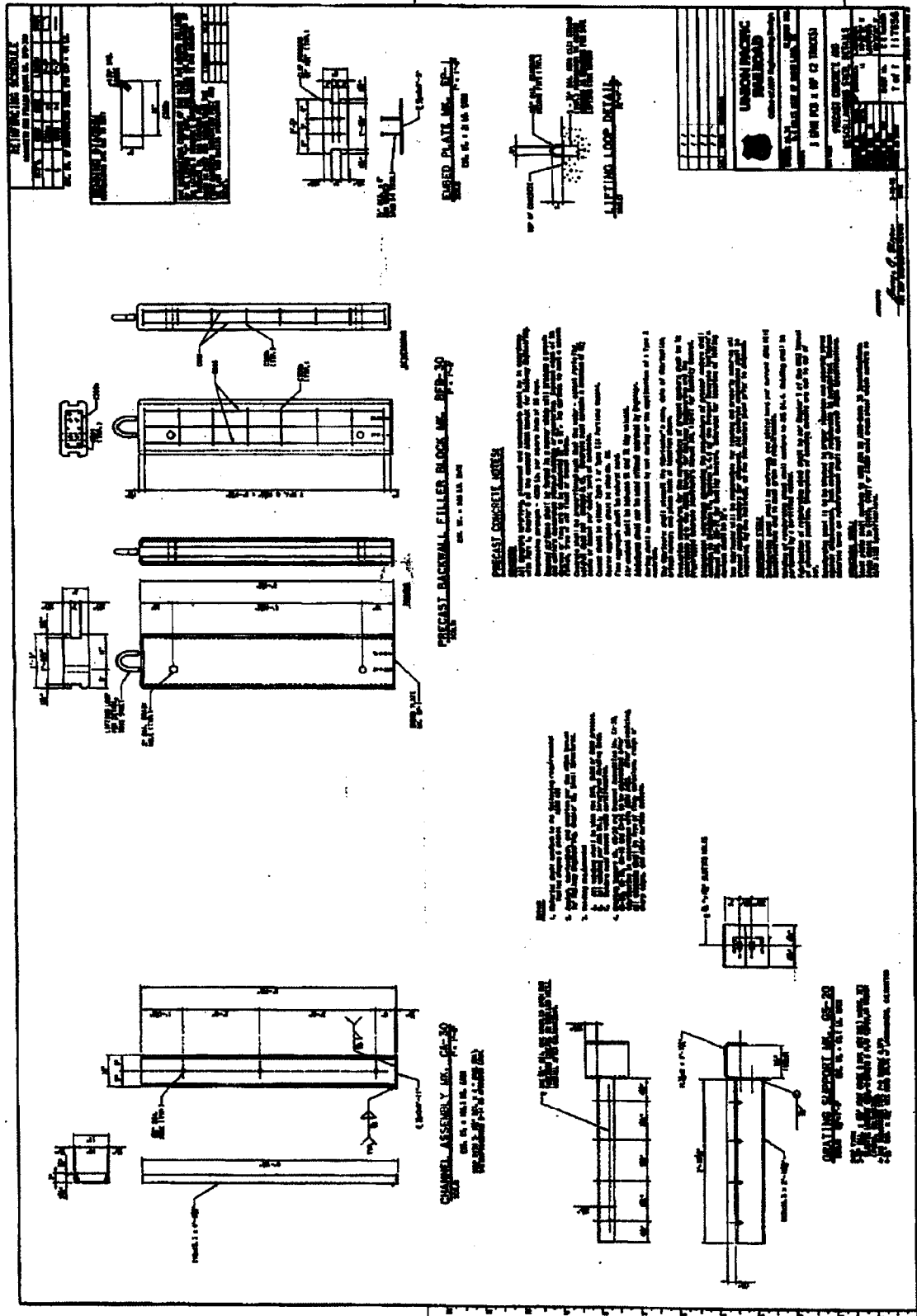


Exhibit A-
 Detailed Print
 To Drainage Facility & Waterway Agreement



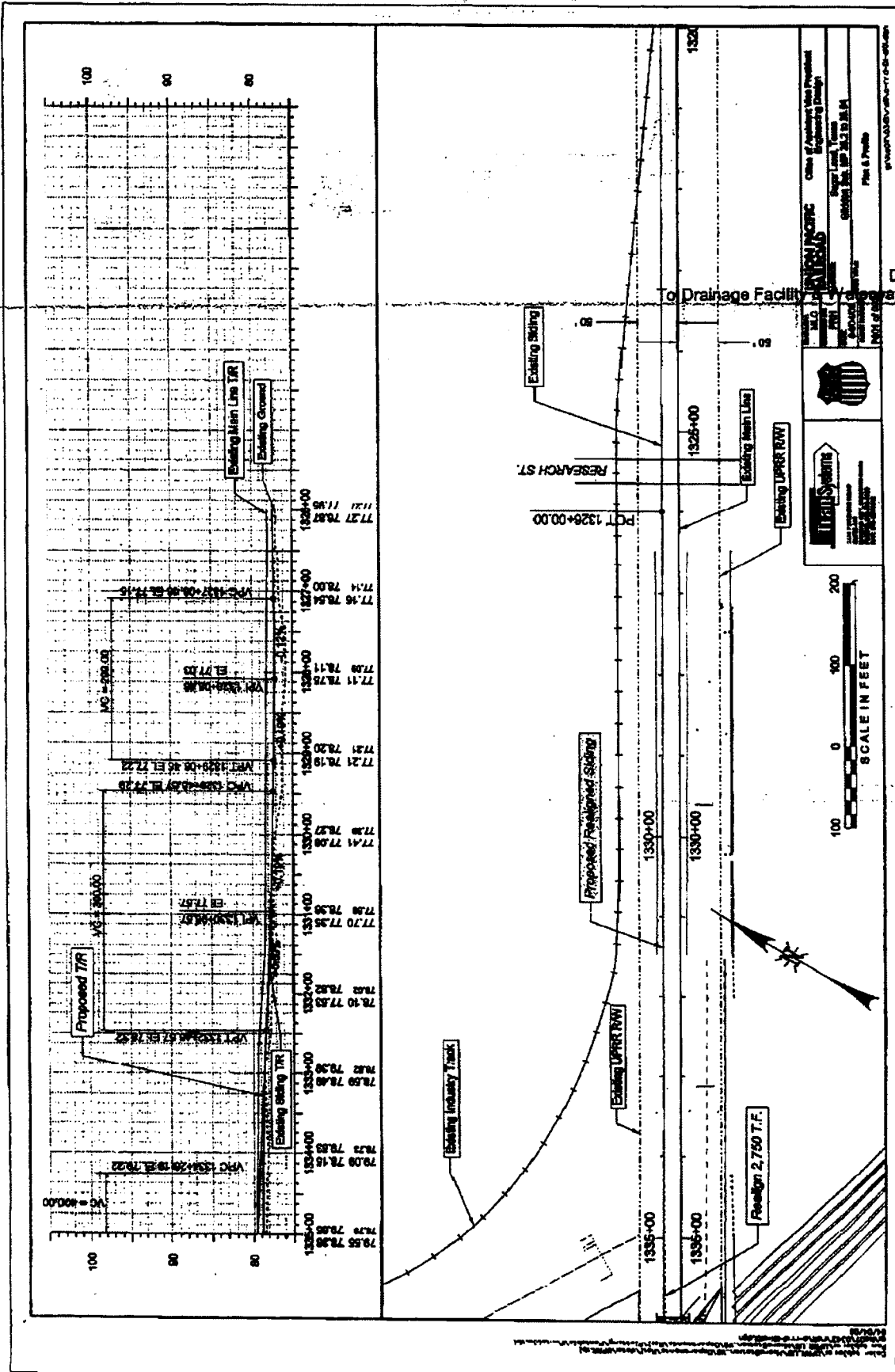


Exhibit A-1
Detailed Print
To Drainage Facility & Waterway Agreement

Exhibit A-1
Detailed Print
To Drainage Facility & Waterway Agreement

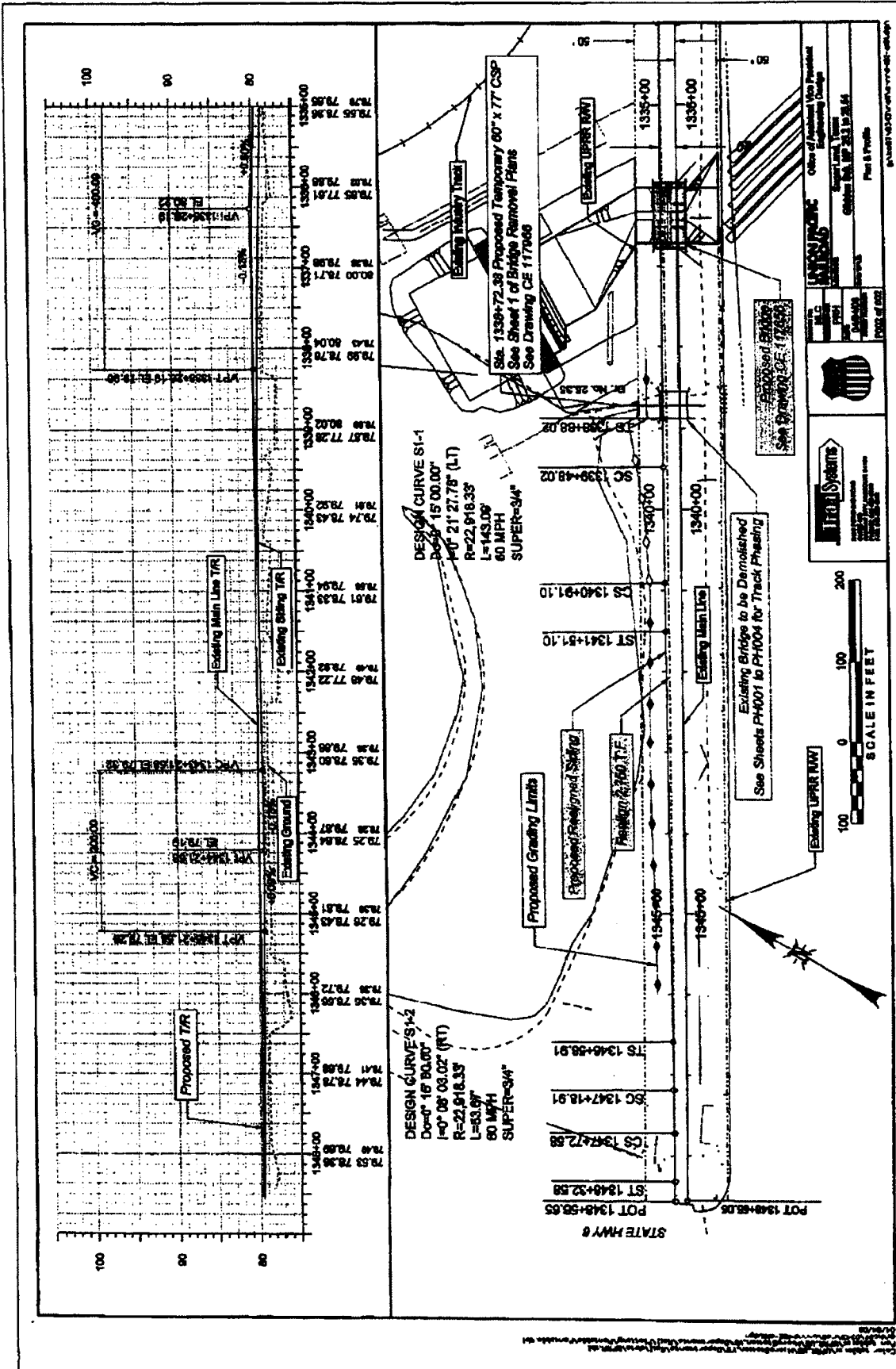
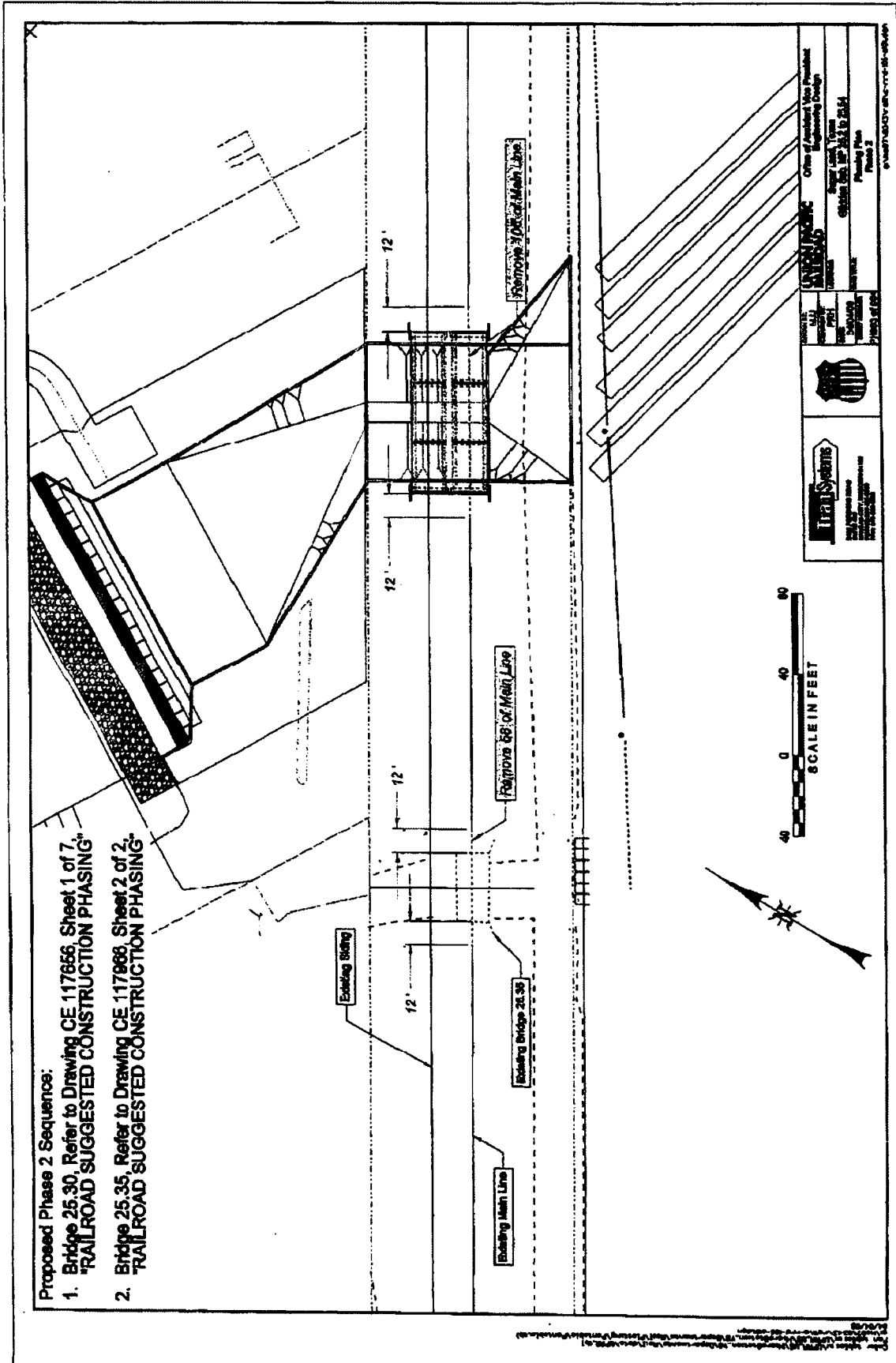


Exhibit A-
 Detailed Print
 To Drainage Facility & Waterway Agreement

Small text at the bottom of the drawing, likely a title block or project information, including the name of the engineering firm and project details.

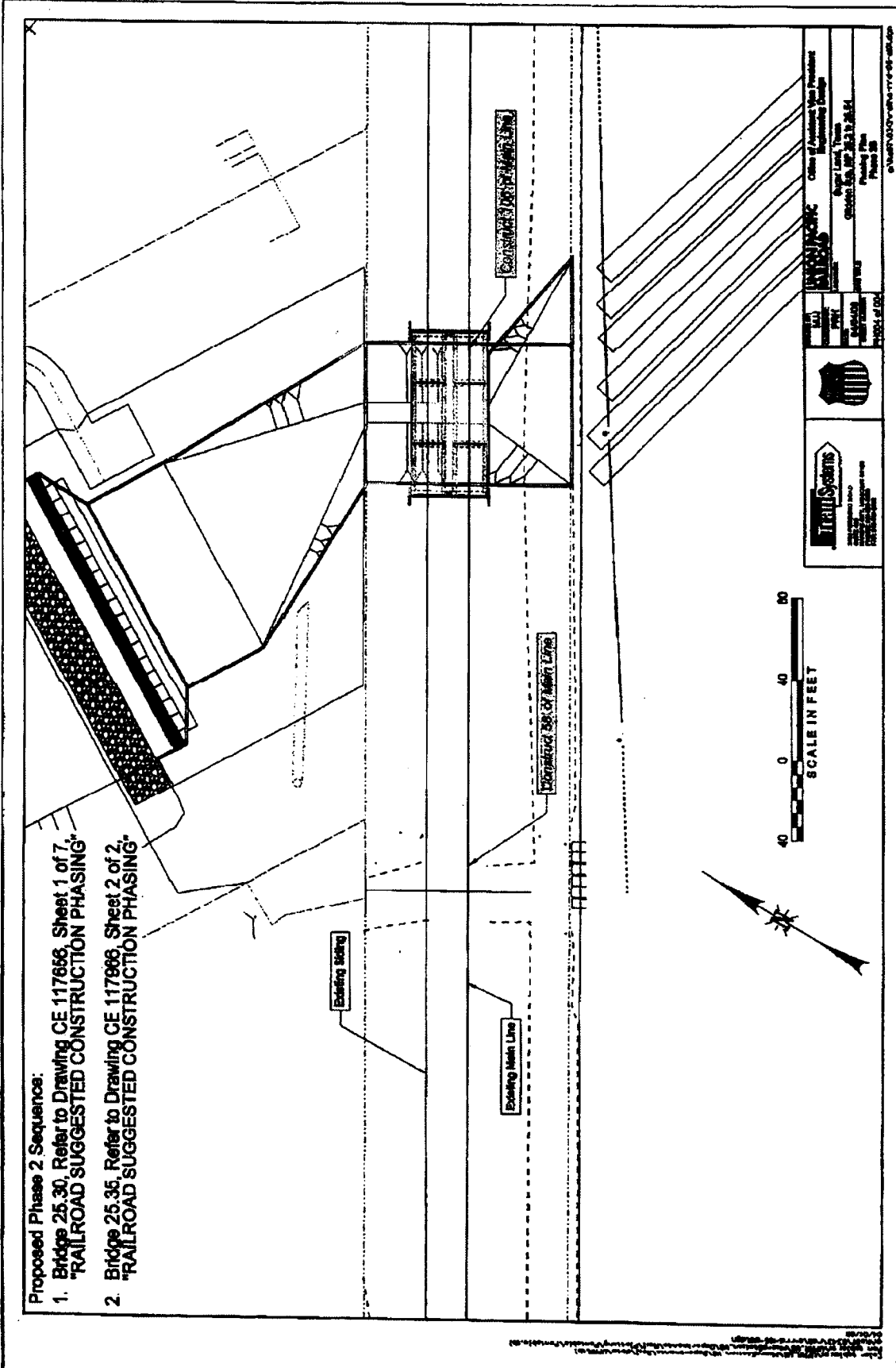


Proposed Phase 2 Sequence:
 1. Bridge 26.30 Refer to Drawing CE 117856 Sheet 1 of 7.
 "RAILROAD SUGGESTED CONSTRUCTION PHASING"
 2. Bridge 26.35 Refer to Drawing CE 117868 Sheet 2 of 2.
 "RAILROAD SUGGESTED CONSTRUCTION PHASING"

TransSystems
 200 West Street
 Cambridge, MA 02142
 Tel: 617.552.3300
 Fax: 617.552.3301
 www.transystems.com

City of Cambridge
 Office of Capital Planning
 100 North Street
 Cambridge, MA 02142
 Tel: 617.554.2200
 Fax: 617.554.2201
 www.cityofcambridge.org

Project No. CE 117868
 Drawing No. 26.35
 Phase 2



- Proposed Phase 2 Sequence:
1. Bridge 25.30, Refer to Drawing CE 117656, Sheet 1 of 7, "RAILROAD SUGGESTED CONSTRUCTION PHASING".
 2. Bridge 25.35, Refer to Drawing CE 117666, Sheet 2 of 2, "RAILROAD SUGGESTED CONSTRUCTION PHASING".

MA PA SD WA	Trails Systems, Inc. 10000 1st Avenue Everett, WA 98203 Phone: 425-335-1100 Fax: 425-335-1101 Website: www.trailsystems.com
CIVIL ENVIRONMENTAL GEOTECHNICAL HYDROLOGICAL SURVEYING TRAFFIC ENGINEERING	Office of Assistant Vice President Engineering Design 10000 1st Avenue Everett, WA 98203 Phone: 425-335-1100 Fax: 425-335-1101 Website: www.trailsystems.com
PROJECT NO. 117656-02 SHEET NO. 25.30	DATE: 11/14/07

CONSTRUCTION NOTES

1. The contractor shall be responsible for obtaining all necessary permits and approvals for the construction of the project. The contractor shall be responsible for obtaining all necessary permits and approvals for the construction of the project. The contractor shall be responsible for obtaining all necessary permits and approvals for the construction of the project.

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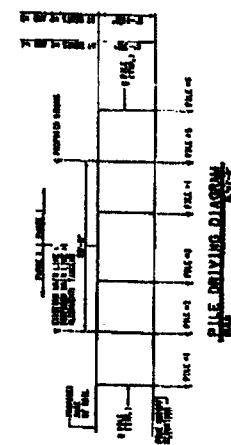
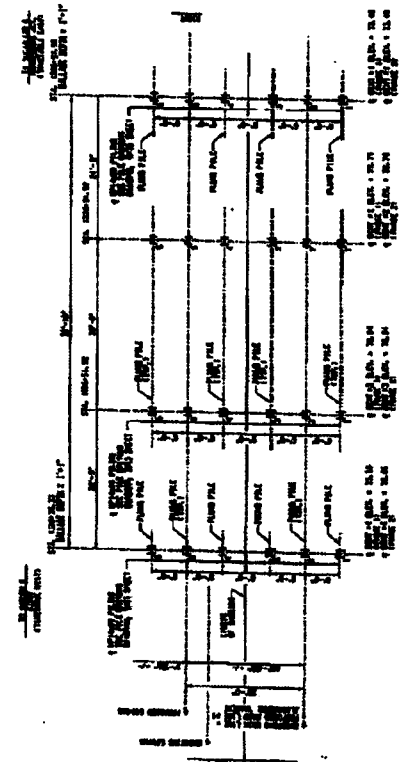
DESIGN NOTES

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DIVISION OF RESPONSIBILITY

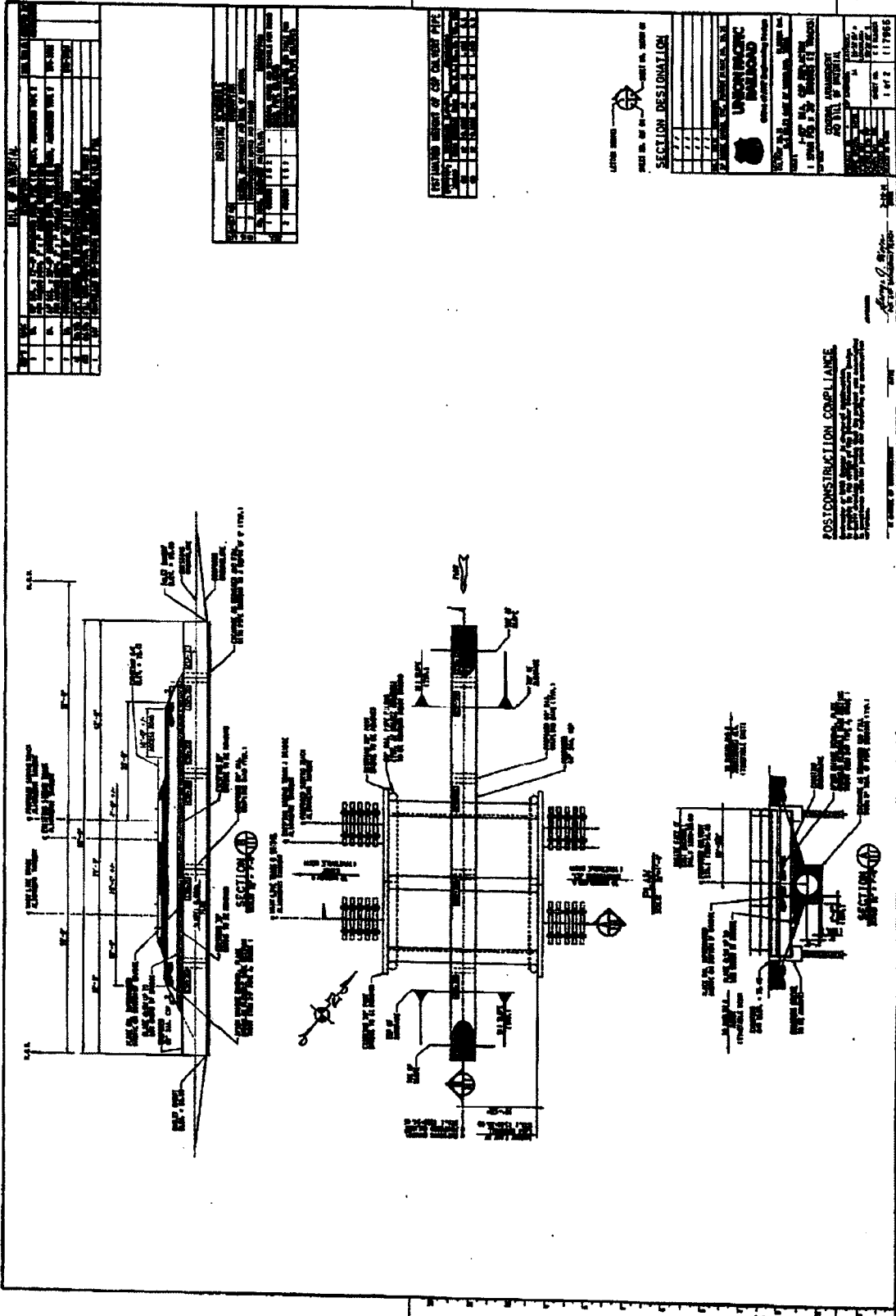
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UNION PACIFIC
RAILROAD

3 200 PDS 2 OF 12 SHEETS
 OF THE
 FILE LAYOUT, PILE DRIVING
 DIAGRAM AND CONSTRUCTION NOTES

DATE: 11/11/1955
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 2 OF 7 11/1955



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UNION PACIFIC
 DIVISION OF MATERIAL
 1972

POSITION/INSTRUCTION COMPLIANCE
 1972

Exhibit A-1
 Detailed Print
 To Drainage Facility & Waterway Agreement

DIVISION OF RESPONSIBILITY

- 1. The contractor shall be responsible for the design and construction of the drainage facility and waterway.
- 2. The contractor shall be responsible for the design and construction of the drainage facility and waterway.
- 3. The contractor shall be responsible for the design and construction of the drainage facility and waterway.
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CONSTRUCTION NOTES

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NOTES FOR C&P

1. The contractor shall be responsible for the design and construction of the drainage facility and waterway.

2. The contractor shall be responsible for the design and construction of the drainage facility and waterway.

RAILROAD-SUGGESTED CONSTRUCTION PHASING

- 1. The contractor shall be responsible for the design and construction of the drainage facility and waterway.
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UNION PACIFIC RAILROAD	
PROJECT NO.	2077
DATE	11/1/68
CONTRACTOR	
ENGINEER	
CHECKED BY	
APPROVED BY	

Form Approved, AVP-Law
07/25/06

EXHIBIT B
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

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

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

C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in

compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional 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 Railroads tracks except at existing open public crossings.

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

Section 4. LIENS.

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

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

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

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

Section 6. PERMITS - COMPLIANCE WITH LAWS.

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

Section 7. SAFETY.

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

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

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

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

Section 8. INDEMNITY.

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

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

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

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

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

Section 9. RESTORATION OF PROPERTY.

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

Section 10. WAIVER OF DEFAULT.

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

Section 11. MODIFICATION - ENTIRE AGREEMENT.

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

Section 12. ASSIGNMENT - SUBCONTRACTING.

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors, and shall require all subcontractors to maintain the insurance coverage required to be maintained by Contractor as provided in this Agreement, and to indemnify Contractor and Railroad to the same extent as Railroad is indemnified by Contractor under this Agreement.

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

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

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from the 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 \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

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

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

- B. **Business Automobile Coverage** insurance. Business auto coverage written on ISO form CA 00 01 (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 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(s) affected by this Agreement.
- 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 excel 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 included when the scope of the work as defined in the Agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

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 from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

Other Requirements

- G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.

- J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.
- L. The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

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

MINIMUM SAFETY REQUIREMENTS

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

I. Clothing

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

Specifically, Contractor's employees must wear:

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

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

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

II. Personal Protective Equipment

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

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

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

III. On Track Safety

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

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

IV. Equipment

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

V. General Safety Requirements

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

**SUBMITTING REQUESTS FOR
RAILROAD PROTECTIVE LIABILITY INSURANCE**
(\$2,000,000 per occurrence/\$6,000,000 aggregate)

Application forms for inclusion in Union Pacific Railroad's Blanket Railroad Protective Liability Insurance Policy may be obtained by accessing the following website (includes premiums as well):

www.uprr.com/reus/rinsure/insurovr.shtml

If you have questions regarding railroad protective liability insurance (i.e. premium quotes, application) please contact the Marsh USA Service Team, Bill Smith or Cindy Long at:

Phone: (800) 729-7001
Fax: (816) 556-4362
Email: william.j.smith@marsh.com
Email: cindy.long@marsh.com

***PLEASE NOTE - The RPLI application and premium check should be sent directly to Marsh, USA at the address shown below - do NOT send your check and application via overnight air, as the P.O. Box will NOT accept overnight deliveries.**

If you are in a situation where you require a RUSH, please contact Bill Smith or Cindy Long and they will do their best to accommodate your needs. All checks written to Marsh, USA should reference Union Pacific Railroad in the "Mcmo" section of the check.

Send Checks and Applications to the following "NEW" address:

Marsh USA
NW 8622
PO Box 1450
Minneapolis, MN 55485-8622