

UPRR Folder No.: 2773-51

PUBLIC HIGHWAY & SIDEWALK AT-GRADE CROSSING AGREEMENT

BETWEEN

UNION PACIFIC RAILROAD COMPANY

AND THE

CITY OF PORTLAND, OREGON

COVERING

THE RELOCATION OF THE EXISTING SE 8TH AVENUE AT-
GRADE PUBLIC ROAD CROSSING AND THE CONSTRUCTION
OF NEW SIDEWALKS

AT

RAILROAD MILE POST 768.66 - BROOKLYN SUBDIVISION
DOT NO. 759-730Y

IN

PORTLAND,
MULTNOMAH COUNTY,
OREGON

Extra Copy



UPRR Folder No.: 2773-51

UPRR Audit No.: _____

PUBLIC HIGHWAY & SIDEWALK AT-GRADE CROSSING AGREEMENT

SE 8th Avenue – DOT No. 759-730Y
Mile Post 768.66 – Brooklyn Subdivision
Portland, Multnomah County, Oregon

THIS AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 2013 ("Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179 ("Railroad") and the **CITY OF PORTLAND**, a municipal corporation of the State of Oregon to be addressed at 1120 SW Fifth Avenue, Suite 800, Portland, Oregon 97204 ("City").

RECITALS:

The Railroad's tracks cross the existing SE 8th Avenue at-grade public road crossing at Railroad Mile Post 768.68, DOT No. 759-730Y, SE 9th Avenue at-grade public road crossing at Railroad Mile Post 768.60, DOT No. 759-731F, and SE Division Place at-grade public road crossing at Railroad Mile Post 768.58, DOT No. 759-732M, all on the Brooklyn Subdivision, in Portland, Multnomah County, Oregon, in the location shown on the attached Railroad Location Print marked **Exhibit A-1**, attached hereto and made a part hereof. As detailed below, the existing SE 9th Avenue and SE Division Place at-grade public road crossings are to be closed and removed, and the SE 8th Avenue at-grade public road crossing is to be relocated with new sidewalks added, requiring that the City secure property rights for their installation and future maintenance of the relocated SE 8th Avenue public road crossing and sidewalks.

The Tri-County Metropolitan Transportation District of Oregon ("TriMet") will be constructing a new light rail line adjacent to Railroad's tracks. In conjunction therewith, TriMet and/or Railroad will, among other things, perform the following activities in the vicinity of the existing SE 8th Avenue public road crossing:

- i. remove the existing SE 8th Avenue at-grade public road crossing, (DOT No. 759-730Y), at Mile Post 768.68 and relocate it to Mile Post 768.66, (Relocated Public Road Crossing);
- ii. remove the existing SE 9th Avenue at-grade public road crossing at Mile Post 768.71, DOT No. 759-731F;
- iii. remove the existing SE Division Place at-grade public road crossing at Mile Post 768.58, DOT No. 759-732M;
- iv. construct two (2) new sidewalks along the Relocated Public Road Crossing; and
- v. install new signal facilities along the Relocated Public Road Crossing.

Depictions of the Relocated Public Road Crossing and the existing street closures along with the construction of the sidewalks, as modified by the project work, are shown on the Detailed Prints collectively marked **Exhibit A-2**, attached hereto and made a part hereof.

Pursuant to separate agreements, including that certain Construction, Operating, and Maintenance Agreement between the Railroad and TriMet dated June 26, 2012, as amended (the “COMA”), TriMet will either assume responsibility for the described construction work or reimburse the Railroad for costs incurred by the Railroad in connection with that work. The City will not be performing any of this initial construction work but it will own the relocated roadway surface improvements and new sidewalks and be responsible for their future maintenance.

The City does not have sufficient right of way to accommodate the Relocated Public Road Crossing and the new sidewalks. By separate agreement, the Railroad has agreed to grant the City such rights and TriMet has paid compensation to Railroad for those rights. The purpose of this Agreement is to permit the City to utilize Railroad right of way for the Relocated Public Road Crossing and sidewalks and address future maintenance obligations for each. The portion of Railroad’s property that the City needs to use for the Relocated Public Road Crossing and sidewalks is described in the Legal Description marked **Exhibit A-3** and also shown on the Survey Print marked **Exhibit A-4**, with each exhibit being attached hereto and hereby made a part hereof (the Relocated Public Road Crossing and sidewalks are collectively referred to as the “Crossing Area”).

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

AGREEMENT:

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

ARTICLE 1. EXHIBIT B

The General Terms and Conditions marked **Exhibit B**, are attached hereto and hereby made a part of this Agreement. In the event of any conflict between the terms of these Articles of Agreement and Exhibit B of the Agreement, the terms of these Articles of Agreement shall control. This Agreement governs the rights and responsibilities of the parties regarding the Crossing Area, and the work under this Agreement.

ARTICLE 2. RAILROAD GRANTS RIGHT

For and in consideration of the terms of this Agreement, the Railroad hereby grants to the City the right to construct, maintain and repair the Crossing Area.

ARTICLE 3. DEFINITION OF CONTRACTOR

For purposes of this Agreement the term “Contractor” shall mean the contractor or contractors hired by the City to perform any work within the scope of this Agreement on any portion of the Railroad’s property and shall also include the Contractor’s subcontractors and the Contractor’s and subcontractor’s respective employees, officers and agents, and others acting under its or their authority. The term “Contractor” does not include TriMet or its contractors, as



the terms and conditions for TriMet and its contractors working on Railroad property for the purposes described in the Recitals are addressed in separate agreements, including the COMA.

ARTICLE 4. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT – INSURANCE

- A. Prior to any Contractor of the City performing any work within the Crossing Area and any subsequent maintenance and repair work, the City shall require the Contractor to:
- execute the Railroad's then current Contractor's Right of Entry Agreement
 - obtain the then current insurance required in the Contractor's Right of Entry Agreement; and
 - provide such insurance policies, certificates, binders and/or endorsements to the Railroad.
- B. The Railroad's current Contractor's Right of Entry Agreement is marked **Exhibit C**, attached hereto and hereby made a part hereof. The City confirms that it will inform its Contractor that it is required to execute such form of agreement and obtain the required insurance before commencing any work on Railroad property. Under no circumstances will the Contractor be allowed on the Railroad's property without first executing the Railroad's Contractor's Right of Entry Agreement and obtaining the insurance set forth therein and also providing to the Railroad the insurance policies, binders, certificates and/or endorsements described therein.
- C. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

*Senior Manager - Contracts
 Union Pacific Railroad Company
 Real Estate Department
 1400 Douglas Street, Mail Stop 1690
 Omaha, NE 68179-1690
 UPRR Folder No. 2773-51*

ARTICLE 5. MAINTENANCE RESPONSIBILITIES OF CITY, TRIMET, AND RAILROAD

Pursuant to Oregon Department of Transportation Order No. 50980, entered December 5, 2012 (the "ODOT Crossing Order"), and except as otherwise agreed in writing by duly authorized representatives of the parties, maintenance responsibilities of the City, TriMet and the Railroad shall be as set forth below:

- A. TriMet shall maintain the ordered automatic signals, circuitry, traffic signal interconnection circuitry on the railroad side of the contact terminals in the interface box and train detection equipment on the LRT tracks, Number of Tracks (R15-2P) plaques on the LRT line, TriMet style pedestrian flashing-light signals with attached LOOK (R15-8) signs, STOP HERE tactile warning surfaces, that portion of the relocated crossing lying between lines drawn perpendicular to the end of ties of each track on the LRT line at the crossing, and bear all the costs.
- B. City shall maintain the ordered VTS with back-up power supply and activated blank-out NO TURN ON RED (R10-11a) signs, the traffic signal interconnection circuitry on the road



authority side of the contact terminals attached to the interface box, DO NOT STOP ON TRACKS (R8-8) signs and HLWD flag kits, STOP HERE ON RED (R10-6) sign, Grade Crossing Advance Warning (W10-1) sign, side-road advance warning (W10-2 and W10-3) signs, NO TRAIN HORN (W10-9P) plaques, grade crossing advance warning pavement markings, stop clearance lines, median islands, standard curb, guardrails, that portion of the relocated crossing lying outside lines drawn perpendicular to the end of ties of each track at the crossing, and bear all the costs. However, Railroad acknowledges that the City will, in writing, delegate to TriMet responsibility to maintain those portions of the relocated crossing lying outside lines perpendicular to the end of the ties and between the TriMet light rail track and the Railroad's freight rail tracks, and Railroad hereby consents to such delegation.

- C. Railroad shall maintain the ordered flashing-light signals, pedestrian flashing-light signals with attached LOOK (R15-8) signs, side lights, automatic gates, train detection equipment on its double track main line, traffic signal interconnection circuitry on the railroad side of the contact terminals in the interface box, Number of Tracks (R15-2P) plaques on its tracks, that portion of the relocated crossing lying between lines drawn perpendicular to the end of ties of each of its tracks at the crossing, and bear all the costs.
- D. The areas described in this Article 5 are depicted in Exhibit A-4 to this Agreement.

**ARTICLE 6. WORK TO BE PERFORMED BY RAILROAD;
 RESPONSIBILITY FOR PAYMENT OF BILLS**

Payment for the work that is to be performed by the Railroad in connection with the TriMet construction work described in the Recitals is addressed in separate agreements with TriMet, including the COMA.

ARTICLE 7. PLANS

Detailed plans and specifications for the work described in the Recitals have previously been submitted by TriMet to the Railroad for approval. Once approved, no changes in those plans (the "Plans") shall be made unless the Railroad has consented to such changes in writing.

ARTICLE 8. EFFECTIVE DATE; TERM; TERMINATION

- A. This Agreement is effective as of the Effective Date first herein written and shall continue in full force and effect for as long as the Crossing Area remains on the Railroad's property.
- B. The Railroad, if it so elects, may terminate this Agreement effective upon delivery of written notice to the City in the event that TriMet does not commence construction on the portion of the Project located on the Railroad's property within two (2) years from the date of the ODOT Crossing Order authorizing that work.

**ARTICLE 9. CONDITIONS TO BE MET BEFORE CITY CAN COMMENCE
 WORK**

- A. Except for emergency repair work under Section B of this Article, neither the City nor any Contractor of the City may commence any work within the Crossing Area or on any other Railroad property until:



- (i) The Railroad and City have executed this Agreement.
 - (ii) If applicable, the Railroad has given its written approval of the plans referenced in Article 10.
 - (iii) Each Contractor of the City (if any) has executed Railroad's Contractor's Right of Entry Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements required under the Contractor's Right of Entry Agreement.
 - (iv) Each Contractor of the City (if any) has given the advance notice(s) required under the Contractor's Right of Entry Agreement to the Railroad Representative named in the Contractor's Right of Entry Agreement.
 - (v) If employees of the City are doing the work, advance notice is given in compliance with Exhibit B.
- B. In the event of an emergency of any kind, the City or its Contractor may perform necessary repair work within the Crossing Area. The City shall provide immediate telephonic notice to the Railroad as follows:

Director of Track Maintenance (currently A.J. Bernhard)
(503) 249-3006
301 NE 2nd Avenue
Portland, OR 97232

ARTICLE 10. FUTURE PROJECTS

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

ARTICLE 11. ASSIGNMENT; SUCCESSORS AND ASSIGNS

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



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

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

By: _____
PAUL G. FARRELL
Senior Manager - Contracts

ATTEST:

CITY OF PORTLAND

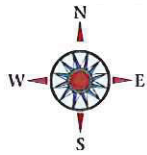
By _____ By _____
Printed Name: _____
Title: _____
(SEAL)

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

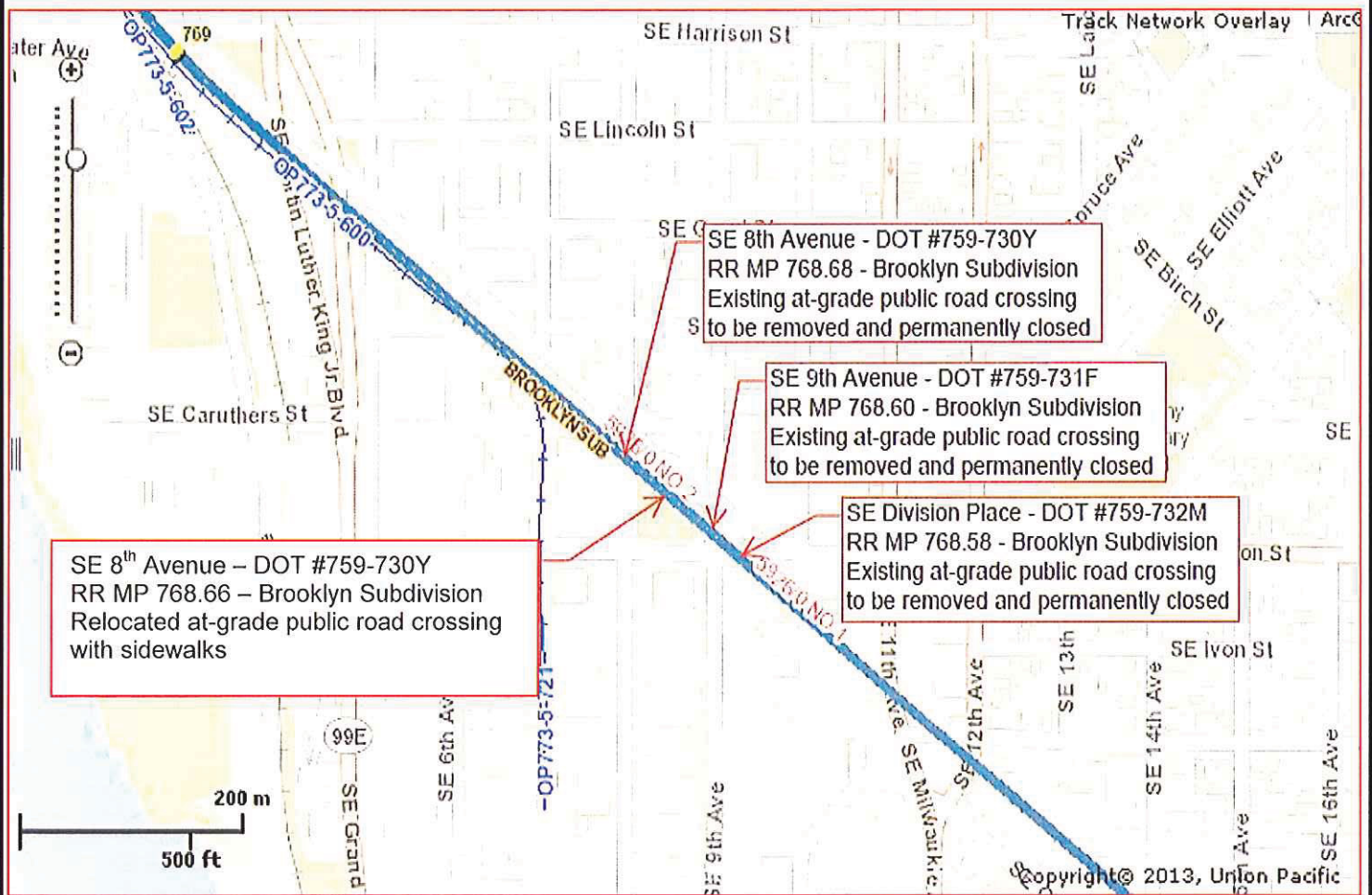
EXHIBIT A-1

To Public Highway & Sidewalk At-Grade
Crossing Agreement

Cover Sheet for the
Railroad Location Print



RAILROAD LOCATION PRINT OF AN EXISTING AT-GRADE PUBLIC ROAD CROSSING RELOCATION & SIDEWALK CONSTRUCTION PROJECT



RAILROAD WORK TO BE PERFORMED:

1. Install lights, gates and widen road crossing surface.
2. Flagging.

EXHIBIT "A-1"

UNION PACIFIC RAILROAD COMPANY

BROOKLYN SUBDIVISION
RAILROAD MILE POST 768.66
GPS: N 45° 30.3300', W 122° 39.4585'
PORTLAND, MULTNOMAH CO., OR.

To accompany an agreement with the
CITY OF PORTLAND
covering an existing at-grade public road crossing
relocation and sidewalk construction project.

Folder No. 2773-51

Date: February 13, 2013

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

EXHIBIT A-2

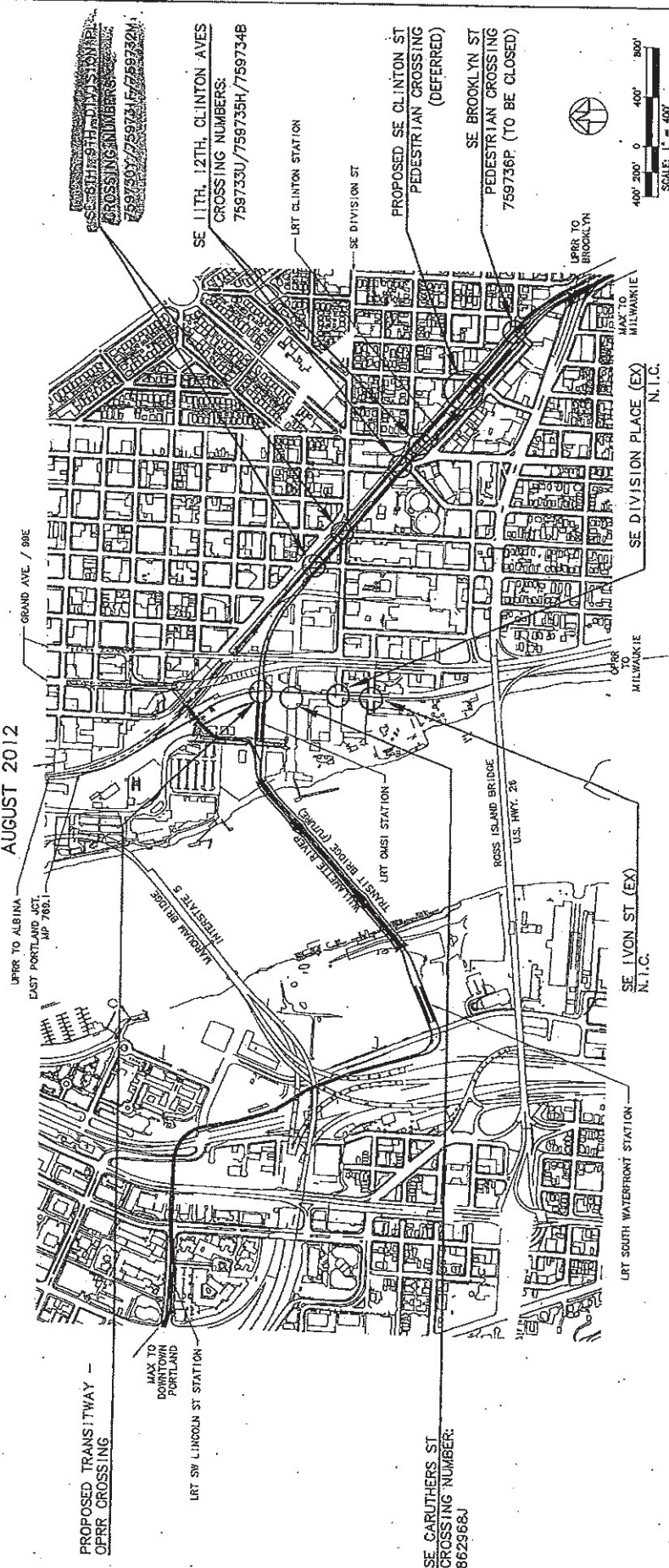
To Public Highway & Sidewalk At-Grade
Crossing Agreement

Cover Sheet for the
Detailed Prints



PLANS FOR PROPOSED PROJECT

TRIMET. LRT/PUBLIC HIGHWAY
RAILROAD CROSSINGS
MULTNOMAH COUNTY
AUGUST 2012



Appendix to Order No. 50980

RX 1663

Page 1 of 7

8/12 DUT	8/12 DUT	100	100
450 000000	450 000000	000000	000000

TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON

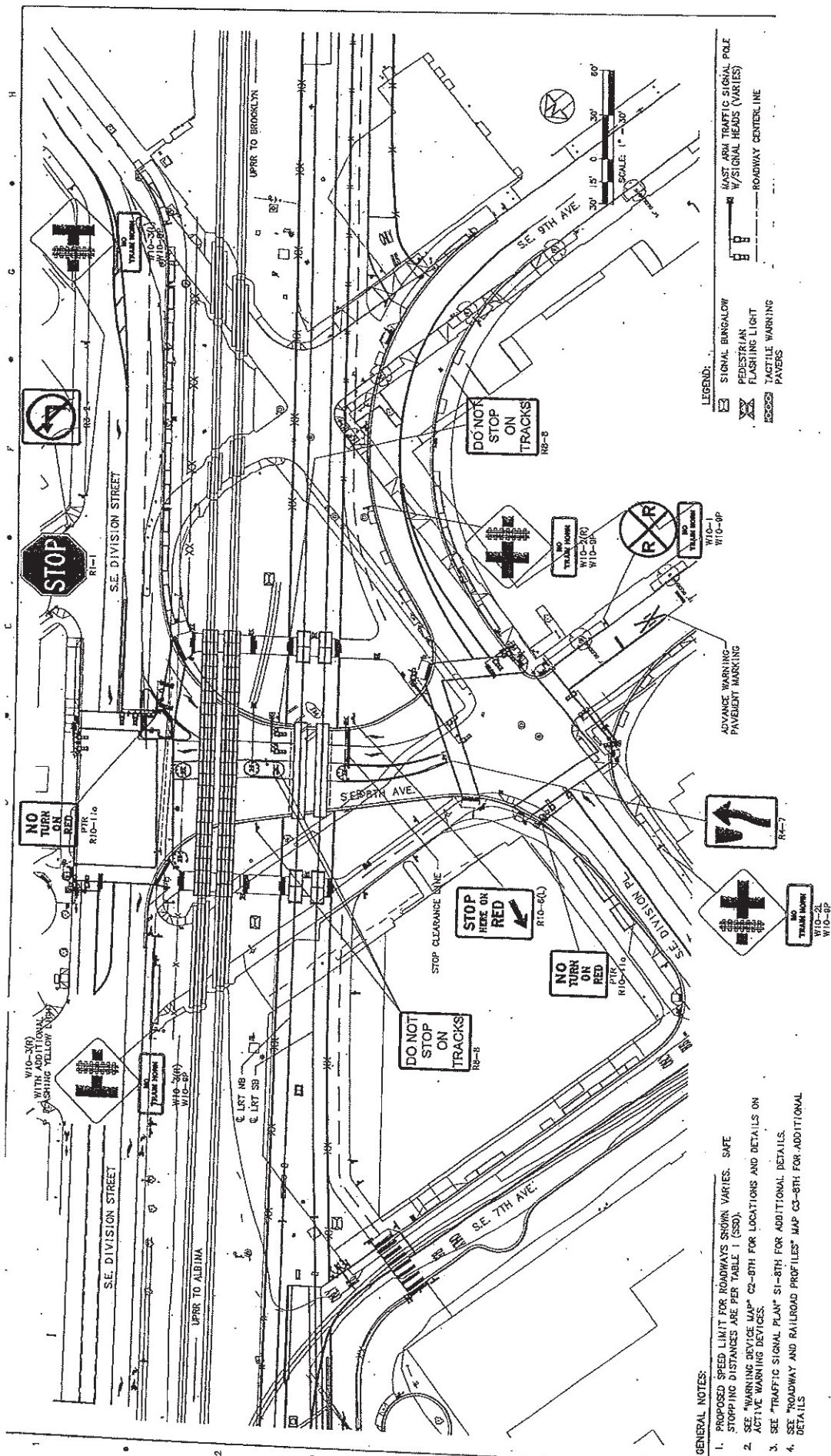
VICINITY MAP

TRIOMET

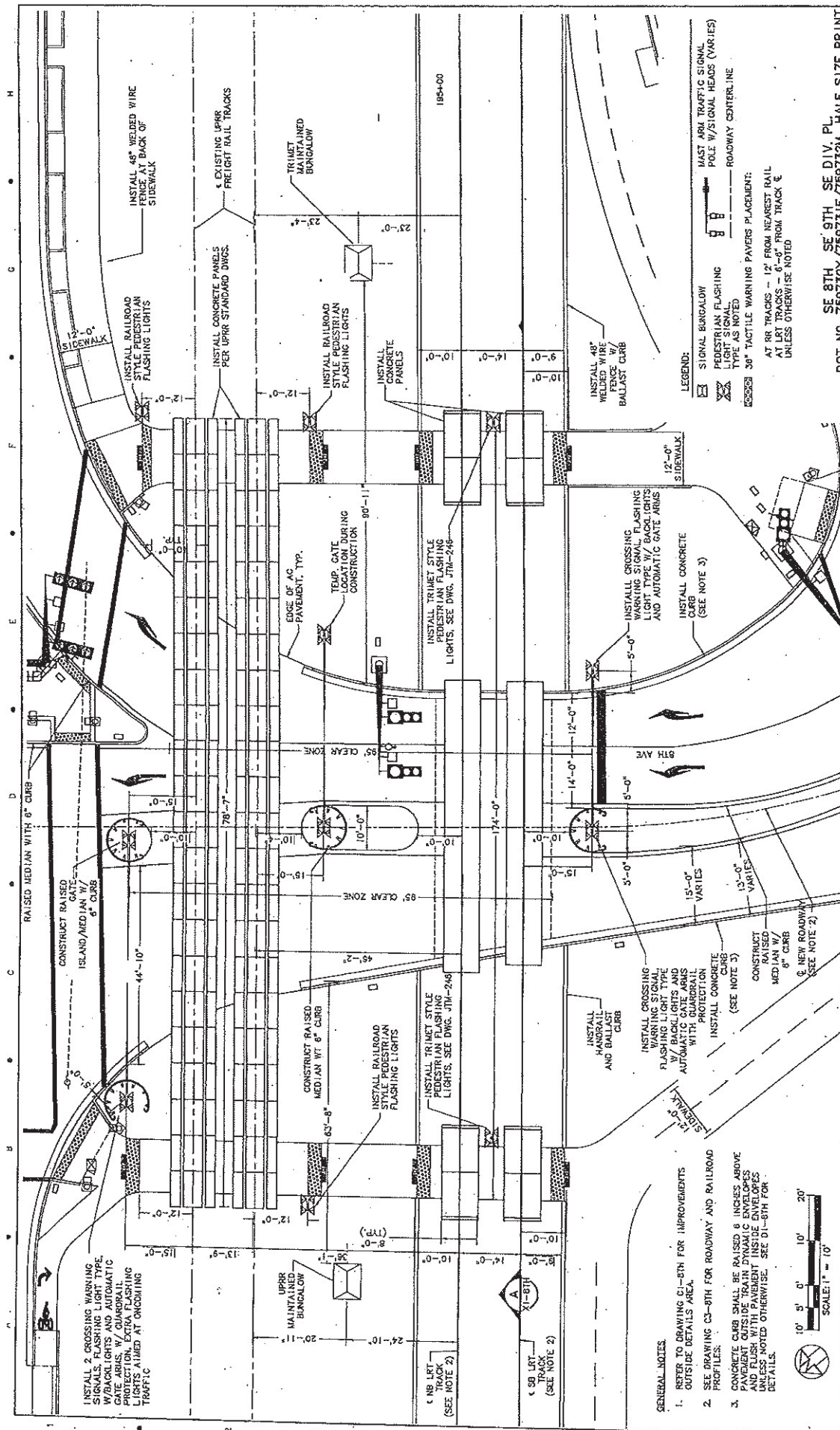
**CAPITAL PROJECTS
DIVISION**
710 NE HOLLADAY STREET
PORTLAND, OREGON 97232

PORTLAND TO MILWAUKIE LRT
SE 8TH/9TH/DIVISION PL

How many people are in the division?



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TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON		UNION PACIFIC RAILROAD UPRR MILEPOST 768.65 BROOKLYN SUBDIVISION PORTLAND, MULTNOMAH CO. OREGON SE 8TH AVE. AT-GRADE CROSSING	
SIGNING & STRIPING		TRI-MET CAPITAL PROJECTS DIVISION 710 NE HOLLADAY STREET PORTLAND, OREGON 97232	
DATE: 8/12 BY: [Signature] CHECKED: [Signature] TITLE: [Signature]	DATE: 8/12 BY: [Signature] CHECKED: [Signature] TITLE: [Signature]	DATE: 8/12 BY: [Signature] CHECKED: [Signature] TITLE: [Signature]	DATE: 8/12 BY: [Signature] CHECKED: [Signature] TITLE: [Signature]



GENERAL NOTES

1. REFER TO DRAWING C1-BTH FOR IMPROVEMENTS OUTSIDE DETAILS AREA.
2. SEE DRAWING C3-BTH FOR ROADWAY AND RAILROAD PROFILES.
3. CONCRETE CURB SHALL BE RAISED 8 INCHES ABOVE EXISTING GRADE. CONCRETE SHALL BE 1500 PSI AND FLUSH WITH PAVEMENT INSIDE ENDS UNLESS NOTED OTHERWISE. SEE D1-BTH FOR DETAILS.



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DATE: 8/12
 DRAWN BY: JAL
 CHECKED BY: PC
 APPROVED BY: JAL

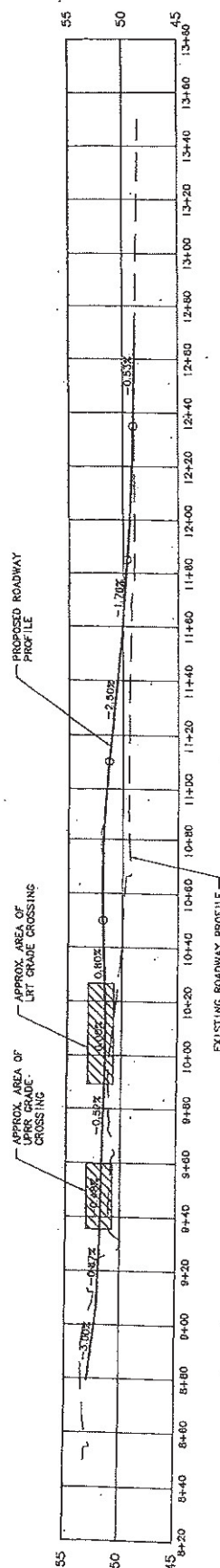
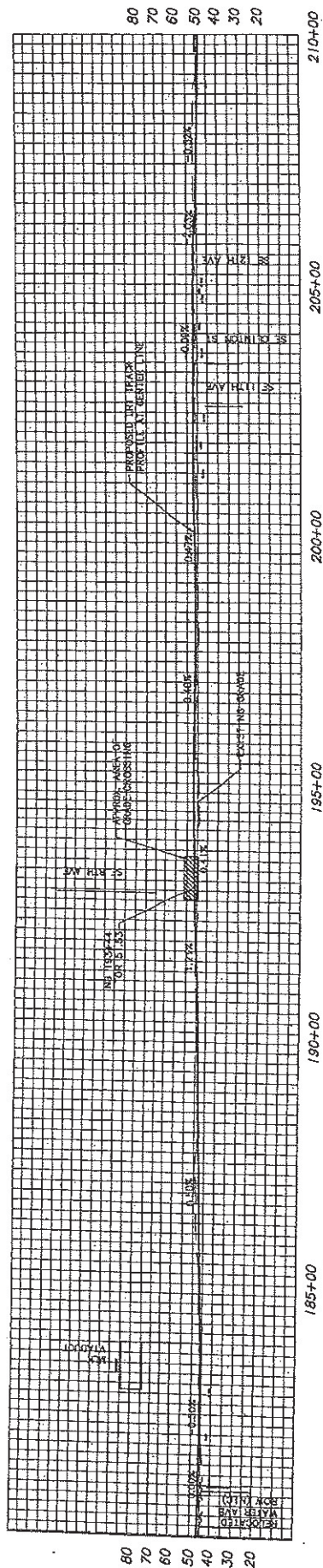


TRI-MET
 TRANSPORTATION DISTRICT OF OREGON
 WARNING DEVICE MAP

CAPITAL PROJECTS DIVISION
 710 NE HOLLADAY STREET
 PORTLAND, OREGON 97232

UNION PACIFIC RAILROAD
 UPRR MILEPOST 788.85
 BROOKLYN SUBDIVISION
 PORTLAND, MULTNOMAH CO., OREGON
 SE 8TH AVE. AT-GRADE CROSSING

DOT NO. 759730Y/759731F/759732M HALF SIZE PRINT



SE 8TH SE 9TH SE DIV. PL
DOT NO. 759730Y/759731F/759732M HALF SIZE PRINT

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THIS SPACE RESERVED FOR GDOT RAIL DIVISION

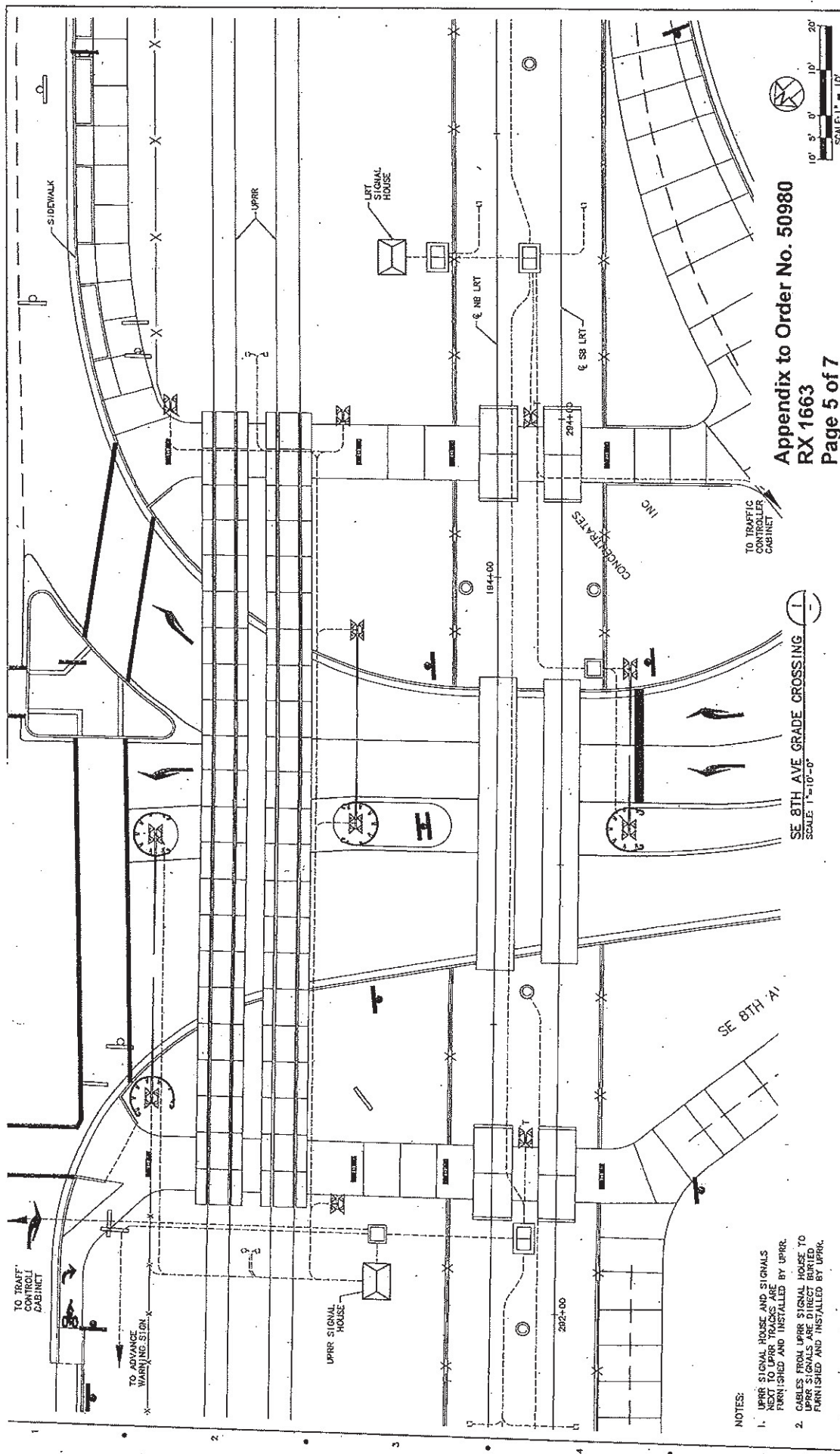
TRI-MET
TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON
CAPITAL PROJECTS DIVISION
710 NE HOLMAN STREET
PORTLAND, OREGON 97232

UNION PACIFIC RAILROAD
UPRR MILEPOST 768.65
BROOKLYN SUBDIVISION
PORTLAND, MULTNOMAH CO., OREGON
SE 8TH AVE. AT-GRADE CROSSING

DATE: 08/15/14
BY: [Signature]
CHECKED: [Signature]
DATE: 08/15/14
BY: [Signature]

AS NOTED
DRAWN BY: CS-8TH
CHECKED BY: [Signature]
DATE: 08/15/14


SHEET NO. 1

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SE 8TH AVE GRADE CROSSING (1)

SE 8TH AL

- NOTES:
1. UPRR SIGNAL HOUSE AND SIGNALS NEXT TO UPRR TRACKS ARE FURNISHED AND INSTALLED BY UPRR.
 2. CABLES FROM UPRR SIGNAL HOUSE TO UPRR SIGNALS ARE DIRECT BURIED FURNISHED AND INSTALLED BY UPRR.

 LTK LTK Engineering Services	TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON	
	CAPITAL PROJECTS DIVISION 710 NE HOLADAY STREET PORTLAND, OREGON 97232	TRI-COUNTY METRO
PROJECT NO. _____ DRAWING NO. _____ DATE _____	APPROPRIATION _____ FUND _____ PURPOSE _____	DATE _____

WED MAY	4/25/11 SAT	WED MAY	4/25/11 SAT	THU MAY	2/20/12 SAT	WED MAY	4/5/12 SAT
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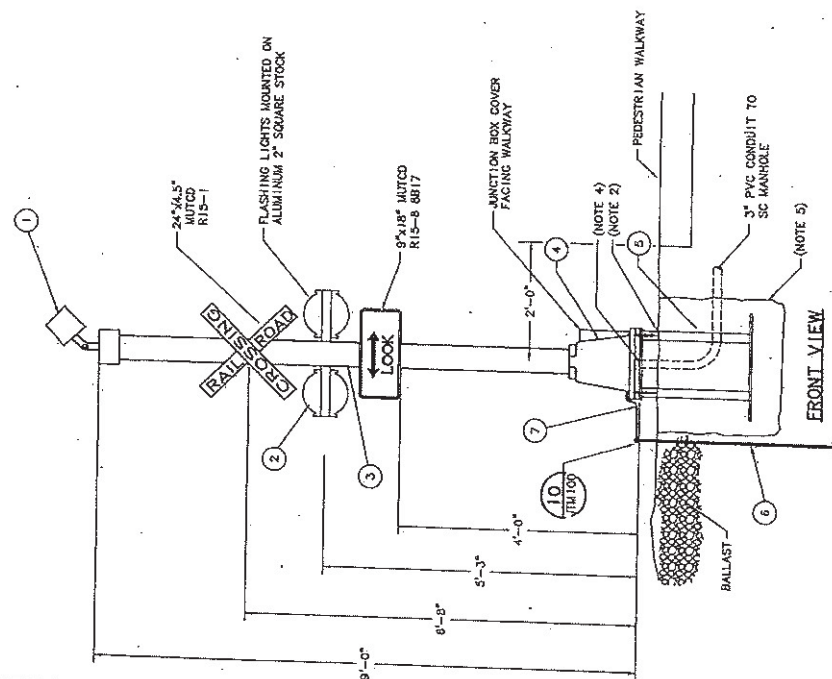
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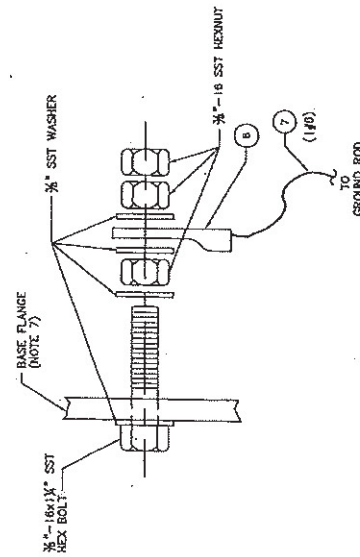
BILL OF MATERIALS	
ITEM	DESCRIPTION
1	NOVAX MODEL DS 101M4330 W/PHOM #EYR-1040 (NOTE 4)
2	AS REQ'D FLASHING LIGHT SET WESTERN CALLER HAYES PART # 1597-50 (NOTE 8)
3	SIGNAL MAST 5" ALUMINUM
4	SPLIT JUNCTION BOX BASE L&W 705920X (NOTE 5)
5	3/4" STEEL FOUNDATION L&W 8420140-IX (NOTE 6)
6	3/4" 10' COPPER CLAD GROUND ROD
7	AS REQ'D #6 BARE STRANDED COPPER WIRE
8	GROUND LUG AMP #3467 (NOTE 6)

NOTES:

1. THE BILL OF MATERIALS ONLY INCLUDES THE MAJOR ITEMS AND DOES NOT INCLUDE ALL REQUIRED ITEMS FOR A COMPLETE INSTALLATION.
2. TOP OF FOUNDATION TO BE 2" BELOW TOP OF RAIL.
3. THE CENTERLINE OF PEDESTRIAN FLASHER SHALL BE CENTERED BETWEEN TRACKS. COORDINATE LOCATION WITH TRIMET PRIOR TO INSTALLATION.
4. DUCT SEAL CONDUIT AFTER CABLE INSTALLATION.
5. EXCAVATION FOR FOUNDATION INSTALLATION WILL REQUIRE REMOVAL OF BALLAST, SUB-BALLAST AND NATIVE SOIL OR BACKFILL MATERIALS. THESE MATERIALS MUST BE KEPT SEPARATED AND MUST NOT BE MIXED TOGETHER WHEN BACKFILLING.
6. MANUFACTURERS OTHER THAN LISTED MUST BE SUBMITTED FOR APPROVAL AND BE APPROVED EQUAL, BY TRIMET.
7. DRILL FLANGE FOR CONNECTION OF GROUND STUD TO BASE.
8. THE LIGHT SET INCLUDES ONLY (3) LIGHTS AND AN ADDITIONAL SINGLE UNIT WILL BE REQUIRED FOR A COMPLETE INSTALLATION.



PEDESTRIAN FLASHER DETAIL
AT GATED CROSSINGS
NOT TO SCALE



PLAN VIEW

PEDESTRIAN FLASHER BASE PLATE DETAIL
NTS

PEDESTRIAN FLASHER POLE GROUNDING DETAIL
NTS

TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON TRIMET CAPITAL PROJECTS DIVISION 710 N.E. HOLLADAY STREET PORTLAND, OREGON 97232		DATE APPROVED DRAWN BY CHECKED BY IN CHARGE	SHEET NO. CONTRACT NO. SCALE DATE
DIRECTIVE DRAWING SIGNAL SYSTEM EQUIPMENT INSTALLATION FOR PEDESTRIAN FLASHER		SHEET NO. CONTRACT NO. SCALE DATE	

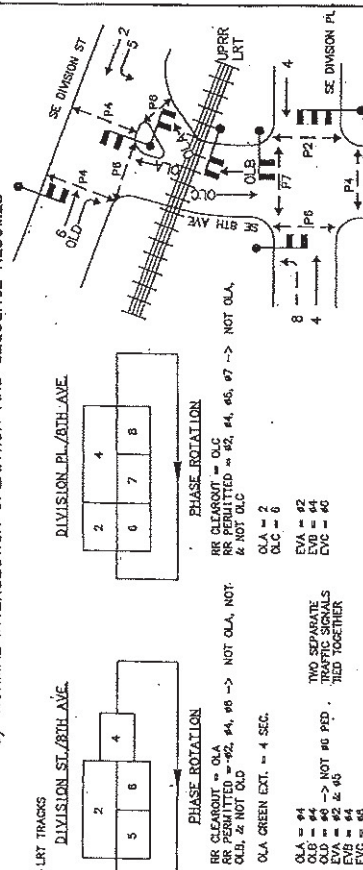
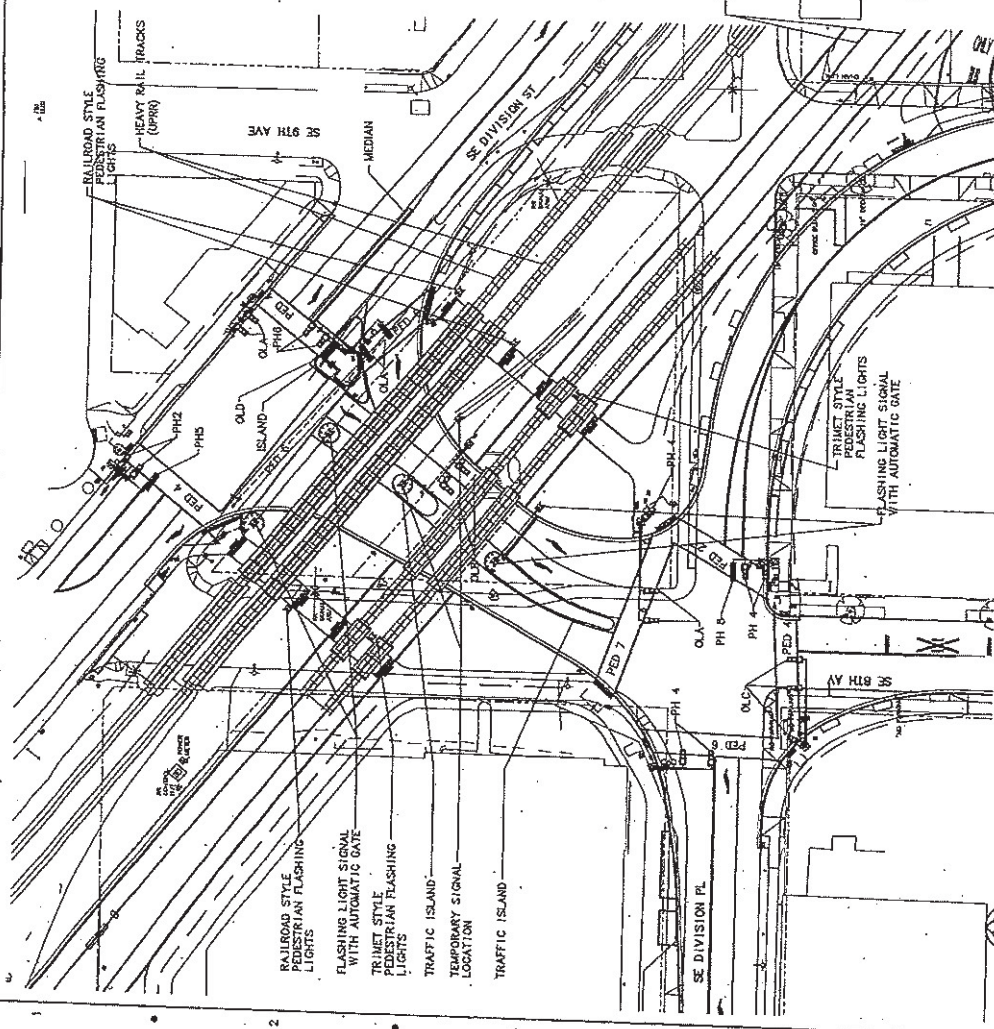
SITE SPECIFIC CONSTRAINTS:

1. CLEAROUT PHASES DIVISION ST: 0LA; CLEAROUT PHASES DIVISION PL: QLC;
2. LIMITED SERVICES VEHICLE PHASES AT DIVISION ST: 2, 4, 6 -> NOT OLD, NOT QLA;
3. LIMITED SERVICE VEHICLE PHASES AT DIVISION PL: 2, 4, 6, 7 ----> NOT QLA, NOT QLC
3. ACTIVE SIGN PRESENT DURING RAILROAD PREEMPTION "NO TURN ON RED" SIGN (TYPE R 10--11c)

THE PREEMPTION SEQUENCE IS AS FOLLOWS:

- 1) WHEN PEDESTRIAN INHIBIT (PCOI) (ADVANCE PREEMPTION RR INPUT) IS INITIATED:
 - a) NO CHANGE TO VEHICLE PHASE SEQUENCE
 - b) ALL ACTIVE PEDESTRIAN PHASE WALK INTERVALS IMMEDIATELY ADVANCE TO AND COMPLETE THE FLASHING DON'T WALK INTERVAL
 - c) ALL PEDESTRIAN PHASE CALLS ARE INHIBITED FROM BEING SERVICED
- 2) WHEN VCQI (SIMULTANEOUS PREEMPTION RR INPUT) IS INITIATED:
 - a) ALL ACTIVE PEDESTRIAN PHASE FLASHING DON'T WALK INTERVALS IMMEDIATELY ADVANCE TO SOLID DON'T WALK
 - b) ALL ACTIVE VEHICLE CLEAR OUT PHASE DISPLAYING GREEN REMAINS GREEN AND ALL NON-VEHICLE CLEAR OUT PHASES DISPLAYING GREEN TERMINATE BY ADVANCING THROUGH THEIR YELLOW AND RED CLEARANCE INTERVAL
 - c) ONCE ALL VEHICULAR CLEAR OUT PHASES DISPLAY GREEN SIMULTANEOUSLY, THE CONTROLLER PROGRAMMED VCQI INTERVAL IS TIMED FOLLOWED BY THE VEHICLE CLEAR OUT PHASES ADVANCING THROUGH THEIR YELLOW AND RED CLEARANCE INTERVALS
 - d) ALL PROGRAMMED LIMITED SERVICE VEHICLE PHASES AND THEIR ASSOCIATED PEDESTRIAN PHASES ARE SERVICED IN THEIR NORMAL SEQUENCE BASED ON DEMAND

- 3) AFTER THE RAILROAD PREEMPTION INPUTS RETURN TO NON--PREEMPT STATUS:
o) NORMAL INTERSECTION OPERATION AND SEQUENCE RESUMES



SE 8TH SE 9TH SE DIV. PLOLA
759730Y/759731F/759732M HALF SIZE PRINT

TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON



AF RECEIVED	8-12 DATE
NAVY RECEIVED	8-12 DATE
ARMY RECEIVED	DATE
AIR FORCE RECEIVED	DATE

Appendix to Order No. 50980

RX 1663

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TRAFFIC SIGNAL PLAN

TRIOMET

**CAPITAL PROJECTS
DIVISION**
7710 NE HOLLADAY STREET
PORTLAND, OREGON 97232

UNION PACIFIC RAILROAD
UPRR MILEPOST 768.65

BROOKLYN SUBDIVISION
PORTLAND, MULTNOMAH CO., OREGON
SE 8TH AVE. AT GRADE CROSSING

FOR ENLIGHTENED	CONTRACT NO.	RENTAL NO.

CHINESE

EXHIBIT A-3

To Public Highway & Sidewalk At-Grade
Crossing Agreement

Cover Sheet for the
Legal Description

Parcel 36-Sidewalk License

A tract of land in the southwest one-quarter of Section 2, Township 1 South, Range 1 East, Willamette Meridian, Multnomah County, Oregon, being a portion of that property described in that deed to Oregon and California Railroad Company, recorded on March 17, 1903 in Deed Book 305, Page 70, Multnomah County Deed Records, to wit:

Beginning at the intersection of the southwesterly line of said Deed Book 305, Page 70 property with the west line of Block 91, STEPHENS' ADDITION TO EAST PORTLAND, which point bears North, a distance of 156.75 feet, and East, a distance of 1,013.92 feet from the southwest corner of said Section 2; thence S.49°49'43"E. along the southwesterly line of said Deed Book 305, Page 70 property, a distance of 143.20 feet; thence leaving said southwesterly line, N.40°13'25"E., a distance of 47.38 feet; thence N.58°25'01"E., a distance of 4.37 feet; thence S.85°11'46"E., a distance of 4.37 feet; thence S.67°00'09"E., a distance of 3.19 feet to the southwesterly line of S.E. Division Street; thence N.49°49'43"W. along the southwesterly line of S.E. Division Street, a distance of 184.26 feet; thence leaving said southwesterly line, S.23°05'34"W., a distance of 4.12 feet; thence S.40°13'18"W., a distance of 10.87 feet to the west line of said Block 91; thence S.01°47'26"W, a distance of 51.27 feet to the Point of Beginning.

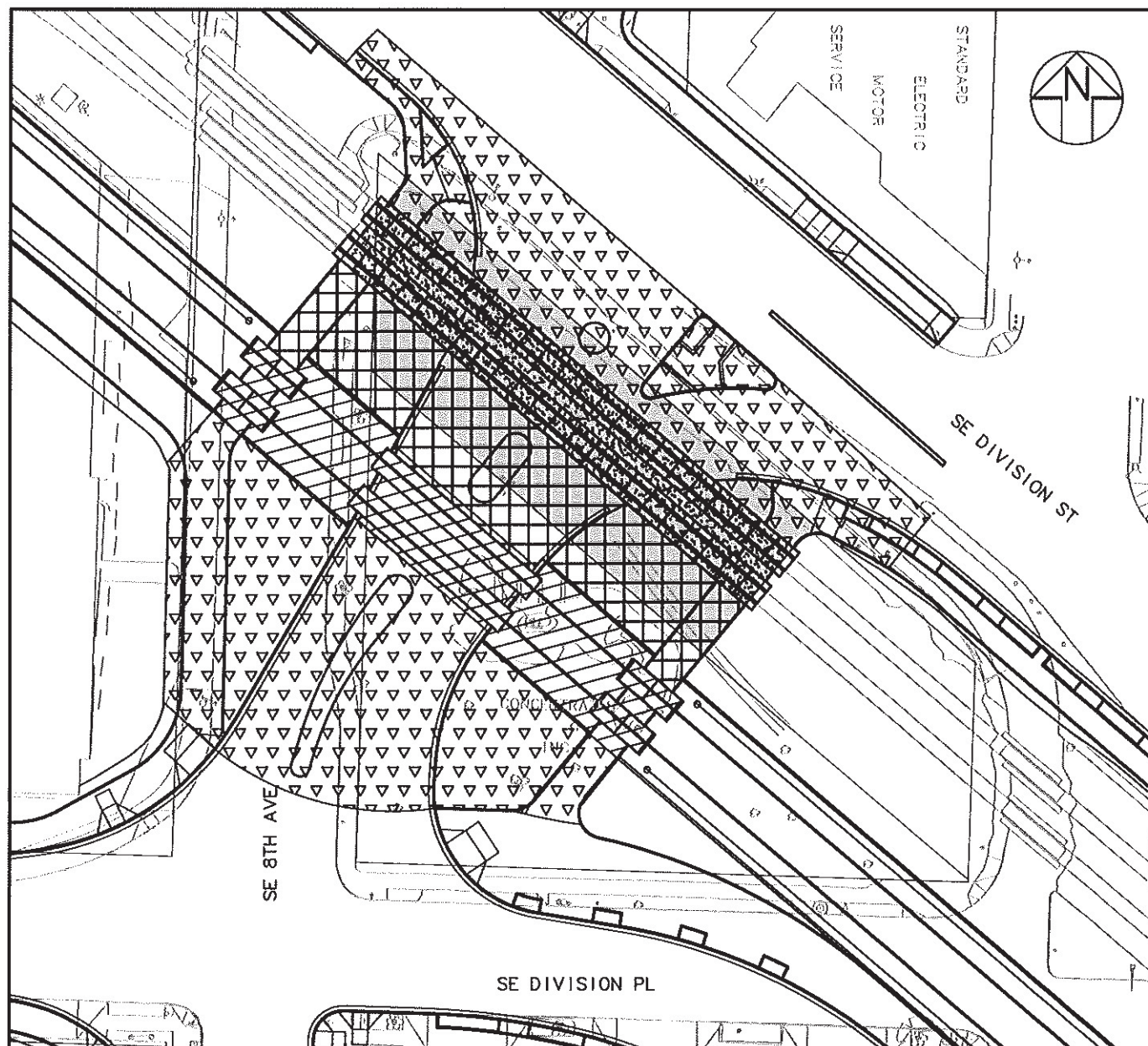
The tract of land to which this description applies contains 9,008 square feet, more or less.

Bearings are based on the Oregon Coordinate System of 1983, north zone.

EXHIBIT A-4

To Public Highway & Sidewalk At-Grade
Crossing Agreement

Cover Sheet for the
Survey Print



 CITY MAINTENANCE RESPONSIBILITY PER ODOT CROSSING ORDER DELEGATED TO TRIMET

 CROSSING AREA ACQUISITION

 TRIMET MAINTENANCE RESPONSIBILITY

 UPRR MAINTENANCE RESPONSIBILITY

 CITY OF PORTLAND MAINTENANCE RESPONSIBILITY

EXHIBIT A-4 SURVEY PRINT

TRIMET CAPITAL PROJECTS AND FACILITIES DIVISION
710 N.E. HOLLADAY STREET
PORTLAND, OREGON 97232

PARCEL 36
UPRR GRADE CROSSING AGREEMENT
SE 8TH AVE, DOT # 759730Y

DRAWN
JHM

DESIGN
MB

CHECKED
NS

APPROVED:

DATE:
DEC. 2012

SCALE:
1" = 50'

FILE NAME:
XING-EXHIBITS

CONTRACT NO:
TM-UPRR PSA

SHEET NO:
1 OF 8

Exhibit A-4

EXHIBIT B

To Public Highway & Sidewalk At-Grade
Crossing Agreement

Cover Sheet for the
General Terms and Conditions

EXHIBIT B

TO PUBLIC HIGHWAY & SIDEWALK AT-GRADE CROSSING AGREEMENT

GENERAL TERMS AND CONDITIONS

SECTION 1. CONDITIONS AND COVENANTS

A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The City shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the City shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the Railroad's property by or under authority of the City for the purpose of conveying electric power or communications incidental to the City's use of the property for public highway and sidewalk purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the City to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.

B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes. In the event the Railroad shall place additional tracks upon the Crossing Area, the City shall modify the Crossing Area to conform with all tracks therein, pursuant to the terms of the Oregon Department of Transportation order authorizing the modification.

C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The City shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's property, unless the City at its own expense settles with and obtains releases from such nonparties.

D. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property; and the right to cross the Crossing Area with all kinds of equipment. Any grant to third parties of the right to use the Crossing Area shall not materially interfere with the rights hereby granted to the City.

E. So far as it lawfully may do so, the City will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Crossing Area, excepting taxes levied upon and against the Crossing Area as a component part of the Railroad's operating property.

F. If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Crossing Area and its appurtenances, or for the performance of any work in connection therewith, the City will acquire all such other property and rights at its own expense and without expense to the Railroad.

SECTION 2. CONSTRUCTION OF CROSSING

A. The City, at its expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Crossing Area, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.

B. Except as may be otherwise specifically provided herein, the City will cooperate with TriMet's furnishing or arranging, at TriMet's own expense, all necessary labor, material and equipment to construct and complete the Crossing Area and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper pedestrian warning devices (except those installed by the Railroad within its right of way) and all necessary drainage facilities, guard rails or barriers, and right of way fences between the Relocated Public Highway, the Sidewalks, and the railroad tracks. Upon completion of the Crossing Area, the City shall cooperate with TriMet's removal from the Railroad's property of all temporary structures and false work, so as to leave the Crossing Area in a condition satisfactory to the Railroad.

SECTION 3. INJURY AND DAMAGE TO PROPERTY

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

SECTION 4. [INTENTIONALLY DELETED]

SECTION 5. MAINTENANCE AND REPAIRS

The City shall, at its own sole expense, maintain, repair, and renew, or cause to be maintained, repaired and renewed, all of Crossing Area, except the portions between the track tie ends, which shall be maintained by and at the expense of the Railroad.

SECTION 6. CHANGES IN GRADE

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

SECTION 7. REARRANGEMENT OF WARNING DEVICES

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

SECTION 8. SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS

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

A. **Entry on to Railroad's Property by City.** If the City's employees need to enter Railroad's property in order to perform an inspection of the Crossing Area, minor maintenance or other activities, the City shall first provide at least ten (10) working days advance notice to the Railroad Representative. With respect to such entry on to Railroad's property, the City, subject to the limitations of Oregon law, agrees to release, defend and indemnify the Railroad from and against any loss, damage, injury, liability, claim, cost or expense incurred by any person including, without limitation, the City's employees, or damage to any property or equipment (collectively the "Loss") that arises from the acts or omissions of City's employees on Railroad's property, except to the extent that any Loss is caused by the sole direct negligence of Railroad.

B. **Flagging.**

(i) If the City's employees need to enter Railroad's property as provided in Paragraph A above, the City agrees to notify the Railroad Representative at least thirty (30) working days in advance of proposed performance of any work by City in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30) day notice, the Railroad Representative will determine and inform City whether a flagman need be present and whether City needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill City for such expenses incurred by Railroad. If Railroad performs any flagging, or other

special protective or safety measures are performed by Railroad, City agrees that City is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

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

(iii) Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though City may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, City must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, City will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

C. **Compliance With Laws.** The City shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The City shall use only such methods as are consistent with safety, both as concerns the City, the City's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The City (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the City to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the City shall reimburse, and to the extent it may lawfully do so, indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The City further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

D. **No Interference or Delays.** The City shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.

E. **Supervision.** The City, at its own expense, shall adequately police and supervise all work to be performed by the City, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the City for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the City with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the City will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.



F. **Suspension of Work.** If at any time the City's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the City is being or is about to be done or prosecuted without due regard and precaution for safety and security, the City shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.

G. **Removal of Debris.** The City shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the City at the City's own expense or by the Railroad at the expense of the City. The City shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during snow removal from the Crossing Area.

H. **Explosives.** The City shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.

I. **Excavation.** The City shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The City shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The City, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the City in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering - Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.

J. **Drainage.** The City, at the City's own expense, shall provide and maintain suitable facilities for draining the Crossing Area and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The City, at the City's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the City, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The City shall not obstruct or interfere with existing ditches or drainage facilities.

K. **Notice.** Before commencing any work to be performed by city crews without using a Contractor, the City shall provide the advance notice to the Railroad that is required under Section 8.A. and B. above. If the work is to be done by a Contractor, the Contractor shall provide the advance notice to the Railroad that is required under the Contractor's Right of Entry Agreement.

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

SECTION 9. **INTERIM WARNING DEVICES**

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

SECTION 10. OTHER RAILROADS

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

SECTION 11. [INTENTIONALLY DELETED]

SECTION 12. REMEDIES FOR BREACH OR NONUSE

A. If the City shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Crossing Area and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the City will reimburse the Railroad for the expenses thereof.

B. Nonuse by the City of the Crossing Area for pedestrian purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the City hereunder.

C. The City will surrender peaceable possession of the Crossing Area upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

SECTION 13. MODIFICATION - ENTIRE AGREEMENT

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

EXHIBIT C

To Public Highway & Sidewalk At-Grade
Crossing Agreement

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



UPRR Folder No. _____
 (Folder Number)

UPRR Audit No.: _____
 (Audit Number)

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

 (NAME OF CONTRACTOR)
 a _____ corporation ("Contractor").
 (State of Incorporation)

RECITALS:

Contractor has been hired by _____
 (Name of Public Agency)
 ("Public Agency") to perform work relating to

 (Work to be Performed)
 (the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of Railroad Mile Post _____ on Railroad's _____,
 (Mile Post) (Name of Subdivision)
 DOT No. _____, located at or near _____, in _____ County,
 (DOT Number) (City) (County)
 State of _____, as such location is in the general location shown on the Railroad Location
 (State)

Print marked **Exhibit A**, and as detailed on the Detailed Prints collectively marked **Exhibit A-1**, each attached hereto and hereby made a part hereof, which work is the subject of a contract dated _____ between Railroad and the Public Agency.
 (Date of C&M Agreement)

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

AGREEMENT:

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



ARTICLE 1 - DEFINITION OF CONTRACTOR.

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

ARTICLE 2 - RIGHT GRANTED; PURPOSE.

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

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

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

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

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

Name & Address of MTM

Name & Address of MSM

- C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.

The Contractor, at its expense, shall provide on a monthly basis a detailed schedule of work to the Railroad Representative named in Article 4B above. The reports shall start at the execution of this Agreement and continue until this Agreement is terminated as provided in this Agreement or until the Contractor has completed all work on Railroad's property.



ARTICLE 6 - TERM; TERMINATION.

- A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until _____, unless sooner terminated as herein provided,
(Expiration Date)
or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.
- B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

ARTICLE 7 - CERTIFICATE OF INSURANCE.

- A. Before commencing any work, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement, and (ii) the insurance endorsements obtained by each subcontractor as required under Section 12 of **Exhibit B** of this Agreement.
- B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

*Union Pacific Railroad Company
1400 Douglas Street, Mail Stop 1690
Omaha, Nebraska 68179-1690
UPRR Folder No. _____
(Folder Number)*

ARTICLE 8 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

ARTICLE 9- ADMINISTRATIVE FEE.

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

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

- A. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.
- B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable



Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications, negligence, or any other reason arising from the Contractor's presence on the Railroad's property, the Contractor agrees to assume liability for any civil penalties imposed upon the Railroad for such noncompliance.

ARTICLE 11 - EXPLOSIVES.

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

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

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

By _____
PAUL G. FARRELL
Real Estate Manager - Contracts

(NAME OF CONTRACTOR)

By _____

Printed Name: _____

Title: _____



EXHIBITS A & A-1

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Shall be the Railroad Location Print & Detailed Prints

SAMPLE

EXHIBIT B

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

GENERAL TERMS AND CONDITIONS

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

- A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least thirty (30) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.
- B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

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

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

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

- A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroad's tracks except at existing open public crossings.
- B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

Section 4. LIENS.

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

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

- A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.
- B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 6. PERMITS - COMPLIANCE WITH LAWS.

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

Section 7. SAFETY.

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

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

- B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.
- C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 8. INDEMNITY.

- A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees (individually an "Indemnified Party" or collectively "Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.
- B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.
- C. **Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Indemnified Parties under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.**
- D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against any Indemnified Party.
- E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

Section 9. RESTORATION OF PROPERTY.

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



Section 10. WAIVER OF DEFAULT.

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

Section 11. MODIFICATION - ENTIRE AGREEMENT.

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

Section 12. ASSIGNMENT - SUBCONTRACTING.

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

EXHIBIT C

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

INSURANCE PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

- D. Railroad Protective Liability Insurance.** Contractor must maintain "Railroad Protective Liability" (RPL) insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement. Contractor shall provide this Agreement to Contractor's insurance agent(s) and/or broker(s) and Contractor shall instruct such agent(s) and/or broker(s) to procure the insurance coverage required by this Agreement. A BINDER STATING THE POLICY IS IN PLACE MUST BE SUBMITTED TO RAILROAD BEFORE THE WORK MAY COMMENCE AND UNTIL THE ORIGINAL POLICY IS FORWARDED TO UNION PACIFIC RAILROAD.

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



- F. Pollution Liability Insurance.** Pollution liability coverage must be included when the scope of the work as defined in the Agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

If required, coverage may be provided in separate policy form or by endorsement to Contractors CGL or RPL. Any form coverage must be equivalent to that provided in ISO form CG 24 15 "Limited Pollution Liability Extension Endorsement" or CG 28 31 "Pollution Exclusion Amendment" with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

Other Requirements

- G.** All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I.** Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J.** Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K.** All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.
- L.** The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

MINIMUM SAFETY REQUIREMENTS

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

I. CLOTHING

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

Specifically, Contractor's employees must wear:

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

II. PERSONAL PROTECTIVE EQUIPMENT

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

- i. Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- ii. Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- iii. Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers
 - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- iv. Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. ON TRACK SAFETY

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

- i. Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- ii. Wear an orange, reflectorized workwear approved by the Railroad Representative.

- iii. Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. EQUIPMENT

- A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
 - i. Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - ii. Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - iii. 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.