

Exhibit A

UP Real Estate Folder No.: 3158-33

PUBLIC PEDESTRIAN OVERPASS AGREEMENT

NE 7th AVENUE
DOT NO. 973914K
MILE POST 1.052, PORTLAND SUBDIVISION
PORTLAND, MULTNOMAH COUNTY, OREGON

THIS AGREEMENT ("Agreement") is made and entered into as of the _____ day of _____, 20__ ("Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179 (the "Railroad") and **CITY OF PORTLAND**, a municipal corporation or political subdivision of the State of Oregon to be addressed at 1120 SW Fifth Ave, Suite 800, Portland, OR 97204 (the "Political Body"),

RECITALS:

By Ordinance Number 310 dated September 13, 1881, as amended, the Political Body granted rights to Railroad's predecessor in interest over streets located in and around the area known as "Sullivan's Gulch", which area includes Northeast 7th Avenue (DOT No. 973914K) at Railroad's Mile Post 1.052 on Railroad's Portland Subdivision at or near Portland, Multnomah County, Oregon, as shown on the location print marked **Exhibit A** (the "Crossing Area"), and the Railroad continues to lawfully occupy and use the Crossing Area to conduct common carrier operations in accordance with applicable federal and state laws, rules and regulations.

The Political Body desires to undertake as its project (the "Project") the construction of a new grade separated overpass structure (the "Structure") that will carry bicycle and pedestrians over and across the Crossing Area. The Political Body's type, size and location prints of the Structure are marked **Exhibit A-1**, attached hereto and hereby made a part hereof.

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

AGREEMENT:

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

Section 1. EXHIBITS B AND D

The general terms and conditions marked **Exhibit B**, and the Railroad's Coordination Requirements marked **Exhibit D**, are attached hereto and hereby made a part hereof.

Section 2. USE OF STRUCTURE

For purposes of this Agreement, use of the Structure by the Political Body, and/or the Political Body's invitees, shall be limited to pedestrians and bicyclists for recreational purposes. No motorized vehicles shall be permitted on the Structure. The Political Body shall not use the Structure (or permit the use thereof) for any purpose other than the purposes expressly stated herein.

Section 3. DEFINITION OF CONTRACTOR

For purposes of this Agreement, the term "Contractor" shall mean the contractor or contractors hired by the Political Body to perform any Project work on any portion of the property used by the Railroad for operating purposes on or about the Crossing Area 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, including without limitation any CIC (defined below) hired by the Political Body.

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

A. Prior to Contractor performing any Project work within the Crossing Area or on any other property used by the Railroad for operations on or about the Crossing Area, and any subsequent maintenance or repair work, the Political Body shall require the Contractor to:

- (i) execute the Railroad's then current form of Contractor's Right of Entry Agreement ("CROE"); and
- (ii) obtain the then current insurance required in the CROE.

B. The Railroad's current CROE is marked **Exhibit E**, attached hereto and hereby made a part hereof. The Political Body confirms that it will inform its Contractor that it is required to execute such form of agreement and obtain the required insurance before commencing any work on any property used by the Railroad for operations on or about the Crossing Area. Under no circumstances will the Contractor be allowed on the Railroad's operating property on or about the Crossing Area without first executing the Railroad's CROE and obtaining the insurance set forth therein.

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

D. In addition to the insurance coverage the Political Body's Contractor is required to obtain pursuant to the CROE, the Political Body shall, at its sole cost and expense, procure and maintain in effect during the entire term of this Agreement the insurance required in Railroad's Insurance Requirements marked **Exhibit F**, attached hereto and made a part hereof. Subject to the Railroad's prior review and approval (which approval shall be in the Railroad's sole discretion), the Political Body may self-insure all or a portion of the insurance coverage required to be maintained by the Political Body pursuant to **Exhibit F**.

Section 5. FEDERAL AID POLICY GUIDE

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

Section 6. NO PROJECT EXPENSES TO BE BORNE BY RAILROAD

The Political Body agrees that no Project costs and expenses are to be borne by the Railroad, including without limitation any cost and expense for work performed by Contractor and/or any CIC. In addition, the Railroad is not required to contribute any funding for the Project.

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

A. The work to be performed by the Railroad, at the Political Body's sole cost and expense, is described in the estimate for flagging, review and inspection, marked **Exhibit C** (the "Estimate").

B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the Political Body in the event the Political Body does not commence construction on the portion of the Project located on property used by Railroad for operating purposes within six (6) months from the date of the Estimate.

C. The Railroad, in its sole and absolute discretion, shall determine whether a flagman or other special protective or safety measures are required in connection with the Project (any of the foregoing, collectively "Flagging Services"). For purposes of clarity, the Railroad and the Political Body each acknowledge that the Railroad may contract a CIC for the performance of any Flagging Services that are part of the Railroad's work (as provided in Section 4 of **Exhibit B**) or, alternatively, that the Political Body may hire a CIC as a Contractor to perform Flagging Services, subject to Section 6.C.(iii) of **Exhibit B** and any and all other applicable terms and conditions set forth in this Agreement. If any Flagging Services are to be performed in connection with the Project, then, after consultation with the Political Body, the

Railroad shall determine, in the Railroad's sole and absolute discretion, whether the Railroad or the CIC will bill the Political Body or, alternatively, the Contractor directly, for the costs of such Flagging Services. If the Railroad determines the Contractor will be billed directly pursuant to the foregoing sentence, the Political Body agrees that it will pay the Railroad or the CIC, as applicable, on demand for any such costs that have not been paid by any Contractor within thirty (30) days of the Contractor's receipt of billing. The Political Body acknowledges that whether or not the Estimate includes costs for Flagging Services performed by the Railroad or a CIC, as applicable, such costs shall be at no expense to the Railroad.

D. The Railroad shall send progressive billing to the Political Body during the Project and final billing to the Political Body within one hundred eighty (180) days after receiving written notice from the Political Body that all Project work affecting property used by Railroad for operations has been completed.

E. The Political Body agrees to reimburse the Railroad within thirty (30) days of its receipt of billing from the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, all actual costs of engineering review (including preliminary engineering review costs incurred by Railroad prior to the Effective Date), construction, inspection, flagging (unless flagging costs are to be billed directly to the Contractor), procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead labor/construction costs including the Railroad's standard additive rates.

Section 8. PLANS

A. The Political Body, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Project and the Structure and submit such plans and specifications to the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, for prior review and approval. The plans and specifications shall include all appurtenances, associated drainage, shoring, sheeting and excavations for bents and/or abutments next to or adjacent to the Railroad's tracks.

B. The final one hundred percent (100%) completed plans that are approved in writing by the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.

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

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

E. The Railroad's review and approval of the Plans in no way relieves the Political Body or the Contractor from their responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that the Railroad makes no representations or warranties as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by the Political Body or Contractor on the Plans is at the risk of the Political Body and Contractor.

Section 9. NON-RAILROAD IMPROVEMENTS

A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocating, replacing, removing and abandoning in place all non-railroad owned facilities (the "Non Railroad Facilities") affected by the Project including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required under Section 8. The Non Railroad Facilities plans and specifications shall comply with the Railroad's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines. The Railroad has no obligation to supply additional land for any Non Railroad Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted Non Railroad Facilities plans and specifications comply with the Railroad's standard specifications and requirements. The Railroad has no obligation to permit any Non Railroad Facilities to be abandoned in place or relocated on the Railroad's property.

B. Upon the Railroad's approval of submitted Non Railroad Facilities plans and specifications, the Railroad will attempt to incorporate them into new agreements or supplements of existing agreements with Non Railroad Facilities owners or operators. The Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for Non Railroad Facilities. Non Railroad Facilities work shall not commence before a supplement or new agreement has been fully executed by the Railroad and the Non Railroad Facilities owner or operator, or before the Railroad and the Political Body mutually agree in writing to (i) deem the approved Non Railroad Facilities plans and specifications to be Plans pursuant to Section 8B, (ii) deem the Non Railroad Facilities part of the Structure, and (iii) supplement this Agreement with terms and conditions covering the Non Railroad Facilities.

Section 10. RAILROAD'S COORDINATION REQUIREMENTS

The Political Body, at its expense, shall ensure that the Contractor complies with all of the terms and conditions contained in the Railroad's Coordination Requirements that are described in **Exhibit D**, attached hereto and hereby made a part hereof, and other special guidelines and/or requirements that the Railroad may provide to the Political Body for this Project.

Section 11. EFFECTIVE DATE; TERM; TERMINATION

A. This Agreement is effective as of the Effective Date and shall continue in full force and effect for as long as the Structure remains within the Crossing Area.

B. The Railroad, if it so elects, may terminate this Agreement effective upon delivery of written notice to the Political Body in the event the Political Body does not commence construction on the portion of the Project located on the Crossing Area within twelve (12) months after the Effective Date.

C. If this Agreement is terminated as provided above, or for any other reason, the Political Body shall pay to the Railroad all actual costs incurred by the Railroad in connection with the Project up to the date of termination, including, without limitation, all actual costs incurred by the Railroad in connection with reviewing any preliminary or final plans, including the Plans.

Section 12. CONDITIONS TO BE MET BEFORE POLITICAL BODY CAN COMMENCE WORK

Neither the Political Body nor the Contractor may commence any work within the Crossing Area or on any other property used by the Railroad for operations on or about the Crossing Area until:

(i) The Railroad and the Political Body have executed this Agreement.

(ii) The Railroad has provided to the Political Body the Railroad's written approval of the Plans.

(iii) The Political Body has required each Contractor to (a) execute Railroad's CROE and obtain the insurance policies, certificates, binders, and/or endorsements required under the CROE; (b) provide the advance notice(s) required under the CROE to the Railroad representative(s) named in the CROE; and (c) participate in a preconstruction meeting to coordinate work activities with the Railroad if any work to be performed by the Contractor will involve flagging protection and/or if there is separate work to be performed by the Railroad for the Project.

(iv) The Political Body has procured the insurance required pursuant to **Exhibit F**.

Section 13. FUTURE PROJECTS

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

Section 14. ASSIGNMENT; SUCCESSORS AND ASSIGNS

A. The Political Body shall not assign this Agreement without the prior written consent of the 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 the Railroad and the Political Body.

Section 15. FEDERAL FUNDING

If the Political Body will be receiving any federal funds for the Project, the Political Body agrees that it is solely responsible for performing and completing all reporting requirements in connection with the Project and receipt of such funding and that the Railroad shall not have any responsibility in connection with the same. The Political Body also confirms and acknowledges that (A) the Railroad shall provide to the Political Body the Railroad's standard and customary billing for expenses incurred by the Railroad for the Project including the Railroad's standard and customary documentation to support such billing, and (B) such standard and customary billing and documentation from the Railroad provides the information needed by the Political Body to perform and complete any such reporting requirements in connection with any federal funding. The Railroad confirms that the Political Body shall have the right to audit the Railroad's billing and documentation for the Project as provided in **Exhibit B** of this Agreement.

Section 16. MONITORING AND MITIGATION OBLIGATIONS

The Political Body and the Railroad agree to continually assess and monitor the public's use of the Structure in accordance with the terms of this Agreement and shall reasonably cooperate to address any safety concerns posed by the use of the Structure by the public, including without limitation, mitigating and deterring incidents of trespass by the public on the property used by Railroad for operations. Any mitigation strategy proposed by the parties shall take into consideration factors of cost and safety and shall not obstruct or hinder the Railroad's operations. In accordance with this Agreement, the Railroad shall have the right to review and approve plans for any improvements to be constructed or installed on any property used by the Railroad for operations on or about the Crossing Area as part of any mitigation strategy adopted by the parties under this Section.

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

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

By _____
Printed Name: _____
Title: _____

ATTEST:

CITY OF PORTLAND

City Clerk

By _____
Printed Name: _____
Title: _____

(SEAL)

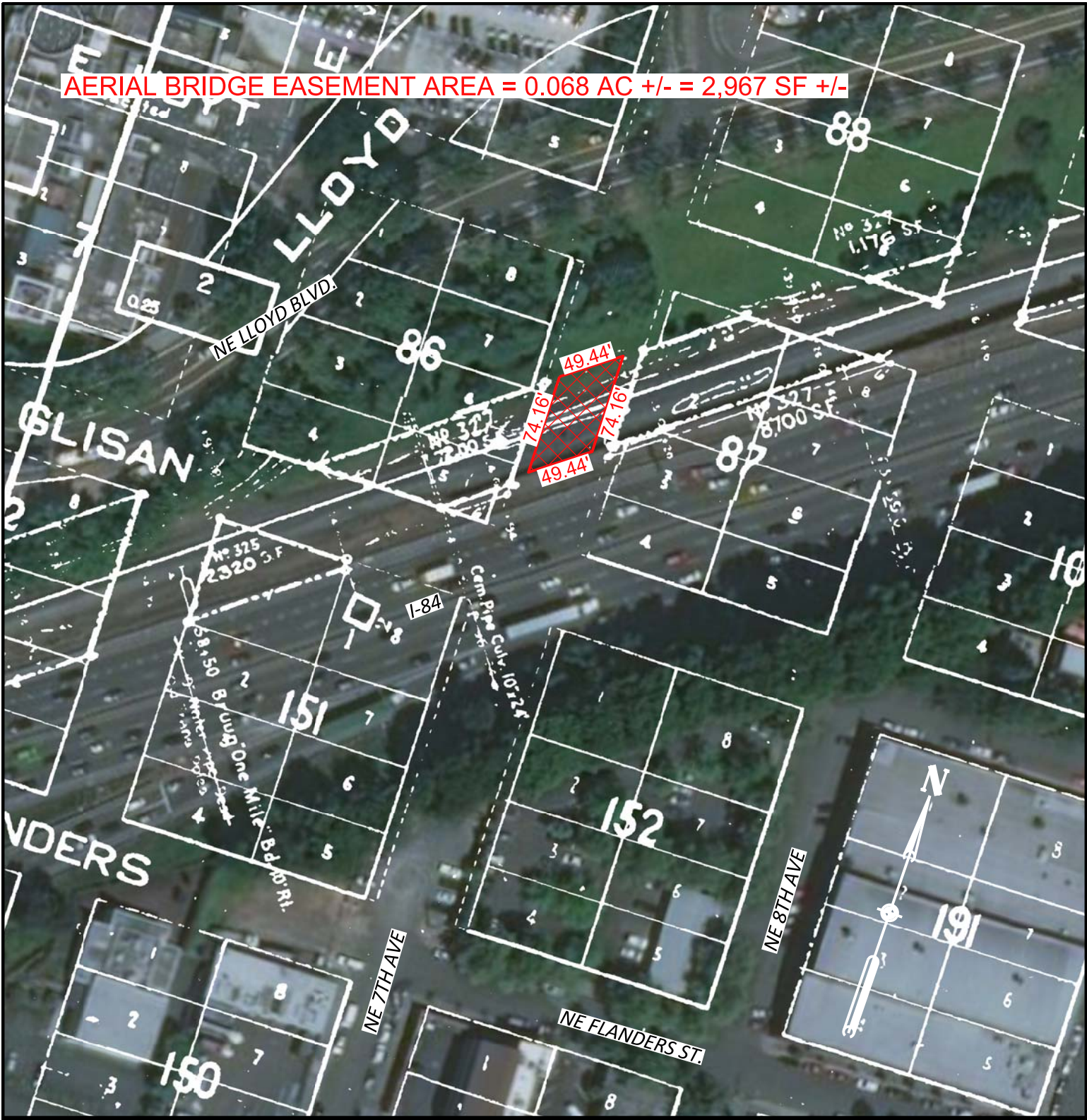
Pursuant to Resolution/Order No. _____
dated _____, 20_____,
hereto attached

**EXHIBIT A
TO
PUBLIC PEDESTRIAN OVERPASS AGREEMENT**

Crossing Area

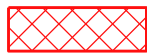
(see attached)

AERIAL BRIDGE EASEMENT AREA = 0.068 AC +/- = 2,967 SF +/-

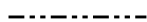


LEGEND:

Crossing Area



UPRRCO. R/W OUTLINED



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

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

PORTLAND, MULTNOMAH COUNTY, OR

M.P. 1.052 - PORTLAND SUB.

MAP OWRN OR V-2 / S-1

SCALE: 1" = 100'

OFFICE OF REAL ESTATE
OMAHA, NEBRASKA DATE: 7/23/2019

RRM FILE: 03158-33

CADD FILENAME 0315833.DGN

SCAN FILENAME 0315833_or0117.PNG

**EXHIBIT A-1
TO
PUBLIC PEDESTRIAN OVERPASS AGREEMENT**

Exhibit A-1 will be the type, size and location prints of the Structure (see Recitals).

**EXHIBIT B
TO
PUBLIC PEDESTRIAN OVERPASS AGREEMENT**

SECTION 1 - CONDITIONS AND COVENANTS

A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The Political Body shall not use or permit use of the Crossing Area for any purposes inconsistent with the Railroad's occupation and use of the Crossing Area to conduct common carrier operations in accordance with applicable federal and state laws, rules and regulations. Without limiting the foregoing, the Political Body 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 Crossing Area by or under authority of the Political Body for the purpose of conveying electric power or communications incidental to the Political Body's use of the property for recreational purposes shall be constructed in such manner as to not interfere with the Railroad's occupation and use of the Crossing Area to conduct common carrier operations and to not adversely 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 Political Body to use or occupy any part of the Crossing Area used by the Railroad for operations 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.

C. The Political Body shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Crossing Area, unless the Political Body at its own expense settles with and obtains releases from such nonparties.

D. The Railroad reserves the right to attach signal, communication or power lines to the Structure, provided that such attachments shall comply with Political Body's specifications and will not interfere with the Political Body's use of the Crossing Area.

E. So far as it lawfully may do so, the Political Body 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 against the Railroad for use of the Crossing Area for railroad operations.

F. If any property or rights are necessary for the construction, maintenance and use of the Structure and its appurtenances, or for the performance of any work in connection with the Project, the Political Body will acquire all such other property and rights at its own expense and without expense to the Railroad.

SECTION 2 - CONSTRUCTION OF STRUCTURE

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

B. Except as may be otherwise specifically provided herein, the Political Body, at its expense, will furnish all necessary labor, material and equipment, and shall construct and complete the Structure and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper drainage facilities, guard rails or barriers, and right of way fences between the Structure and the railroad tracks. Upon completion of the Project, the Political Body shall remove from the Railroad's operating property all temporary structures and false work, and will leave the Crossing Area in a condition satisfactory to the Railroad.

C. All construction work of the Political upon the Railroad's operating property on or about the Crossing Area (including, but not limited to, construction of the Structure and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President Engineering-Design of the Railroad or his authorized representative and in compliance with the Plans, the Railroad's Coordination Requirements set forth in **Exhibit D** and other guidelines furnished by the Railroad.

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

SECTION 3 -INJURY AND DAMAGE TO PROPERTY

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

SECTION 4 -RAILROAD MAY USE CONTRACTORS TO PERFORM WORK

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

SECTION 5 - MAINTENANCE AND REPAIRS

A. The Political Body, at its expense, shall maintain, repair and renew, or cause to be maintained, repaired and renewed, the entire Structure, including, but not limited to, the superstructure, substructure, piers, abutments, walls, approaches and all backfill, grading and drainage required by reason of the Structure, as well as all graffiti removal or overpainting involving the Structure.

B. The Railroad, at its expense, will maintain, repair and renew, or cause to be maintained, repaired and renewed, the rails, ties, ballast and communication and signal facilities owned by the Railroad beneath the Structure.

SECTION 6 - 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 Political Body that the work will be performed in a safe manner and in conformity with the following standards:

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

B. **Entry on to Railroad's Operating Property on or about the Crossing Area by Political Body.** If the Political Body's employees need to enter Railroad's operating property on or about the Crossing Area in order to perform an inspection of the Structure, minor maintenance or other activities, the Political Body shall first provide at least ten (10) working days advance notice to the Railroad Representative. With respect to such entry on to Railroad's operating property on or about the Crossing Area, the Political Body, to the extent permitted by law, agrees to release, defend and indemnify the Railroad from and against any loss, damage, injury, liability, claim, cost or expense incurred by any person including, without limitation, the Political Body's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of Political Body's employees on Railroad's operating

property on or about the Crossing Area, except to the extent that any Loss is caused by the sole direct negligence of Railroad.

C. **Flagging.**

(i) If the Political Body's employees need to enter any property used by the Railroad for operations on or about the Crossing Area as provided in Paragraph B above, the Political Body agrees to notify the Railroad Representative at least thirty (30) working days in advance of proposed performance of any work by the Political Body 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 the Railroad's track(s) at any time, for any reason, unless and until a Railroad approved flagman is provided to watch for trains. Upon receipt of such thirty (30) day notice, the Railroad Representative will determine and inform the Political Body whether a flagman need be present and whether the Political Body needs to implement any special protective or safety measures.

(ii) The provisions set forth in this subsection are only applicable for Flagging Services performed by employees of the Railroad: 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 the 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, the Political Body shall pay on the basis of the new rates and charges. Reimbursement to the 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 the Railroad is required to pay the flagman and which could not reasonably be avoided by the Railroad by assignment of such flagman to other work, even though the Political Body may not be working during such time. When it becomes necessary for the Railroad to bulletin and assign an employee to a flagging position in

compliance with union collective bargaining agreements, the Political Body must provide the 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, the Political Body 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 the Railroad if flagging services are needed again after such five day cessation notice has been given to the Railroad.

(iii) The Political Body or its Contractor shall be permitted to hire a private contractor (such private contractor being commonly known in the railroad industry as a contractor-in-charge ("CIC")) to perform Flagging Services in lieu of the Railroad providing such services or in concert with the Railroad providing such services, subject to receiving prior written approval by the Railroad, which approval shall be in the Railroad's sole and absolute discretion. If the Railroad agrees to permit the Political Body or its Contractor to utilize a CIC pursuant to the preceding sentence, the Political Body or its Contractor, as applicable, shall be required to obtain the Railroad's prior written approval for each of the following items, as determined in all respects in the Railroad's sole and absolute discretion: (i) the identity of the third-party performing the role of CIC; (ii) the scope of the Flagging Services to be performed by the approved CIC; and (iii) any other terms and conditions governing the Flagging Services to be provided by the CIC. The Railroad reserves the right to rescind any approval pursuant to this section, in whole or in part, at any time, as determined in the Railroad's sole and absolute discretion,

(iv) If any flagging or other special protective or safety measures are performed by the Railroad and/or a CIC, the Political Body agrees that the Political Body is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

D. **Compliance With Laws.** The Political Body shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Political Body shall use only such methods as are consistent with safety, both as concerns the Political Body, the Political Body's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Political Body (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 operating property. If any failure by the Political Body 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 Political Body 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 Political Body further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

E. **No Interference or Delays.** The Political Body 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 property used by the Railroad for operations or the Railroad's facilities.

F. **Supervision.** The Political Body, at its own expense, shall adequately police and supervise all work to be performed by the Political Body, 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 Political Body 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 Political Body with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the Political Body will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's operating property and operations.

G. **Suspension of Work.** If at any time the Political Body'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 Political Body is being or is about to be done or prosecuted without due regard and precaution for safety and security, the Political Body shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.

H. **Removal of Debris.** The Political Body 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 operating property by the Political Body at the Political Body's own expense or by the Railroad at the expense of the Political Body. The Political Body shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's operating property during snow removal from the Crossing Area.

I. **Explosives.** The Political Body shall not discharge any explosives on or in the vicinity of the Railroad's operating 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 operating property" shall be deemed to be any place on the Railroad's operating property or in such close proximity to the Railroad's operating 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 Railroad's facilities or operations. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of

explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.

J. **Excavation**. The Political Body 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 Political Body 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 Political Body, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the Political Body in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering-Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.

K. **Drainage**. The Political Body, at the Political Body's own expense, shall provide and maintain suitable facilities for draining the Structure and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property used by the Railroad for operations. The Political Body, at the Political Body'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 Political Body, be impeded, obstructed, diverted or caused to back up, overflow or damage the operating property of the Railroad or any part thereof, or property of others. The Political Body shall not obstruct or interfere with existing ditches or drainage facilities.

L. **Notice**. Before commencing any work, the Political Body shall provide the advance notice to the Railroad that is required under the Contractor's Right of Entry Agreement.

M. **Fiber Optic Cables**. Fiber optic cable systems may be buried on the Railroad's operating 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. Political Body 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 operating property within or near the Crossing Area to be used by the Political Body. If it is, Political Body 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 operating property.

SECTION 7 - INTENTIONALLY DELETED

If at any time it is determined by a competent authority, by the Political Body, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the Political Body shall install adequate temporary warning devices or signs and impose appropriate control measures to protect the public until the construction or reconstruction of the Structure has been completed.

SECTION 8 - 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 operating property or facilities on or about the Crossing Area.

SECTION 9 - BOOKS AND RECORDS

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

SECTION 10 - REMEDIES FOR BREACH OR NONUSE

A. If the Political Body 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 Structure and related 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 Political Body will reimburse the Railroad for the expenses thereof.

B. Nonuse by the Political Body of the Crossing Area for public recreational 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 Political Body hereunder.

C. The Political Body will surrender peaceable possession of the Structure 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 11 - 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 Political Body 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 Political Body 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 Political Body 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 PEDESTRIAN OVERPASS AGREEMENT**

ESTIMATE OF FORCE ACCOUNT WORK
BY THE
UNION PACIFIC RAILROAD COMPANY

DESCRIPTION OF WORK: Engineering and other related services for work to be performed within railroad right of way. This includes railroad flagging services, project and construction management during construction activities in railroad right of way. All necessary railroad services will be billed at actual cost.

DATE:
10/4/2019

LOCATION: <u>Multnomah County</u>	SUBDIVISION <u>Portland</u>	STATE: <u>OR</u>
DOT: <u>973914K</u>		

DESCRIPTION	LABOR	MATERIAL	UP %0	Agency % 100	TOTAL
ENGINEERING					
Project Management	\$ 5,000	\$ -	\$ -	\$ 5,000.00	\$ 5,000
Construction Submittals	\$ 5,000	\$ -	\$ -	\$ 5,000.00	\$ 5,000
Construction Management	\$ 5,000	\$ -	\$ -	\$ 5,000.00	\$ 5,000
Final Inspection	\$ 5,000	\$ -	\$ -	\$ 5,000.00	\$ 5,000
 FLAGGING / INSPECTION SERVICES					
RATE (per day)	\$ 1,400				
Estimated # Days of Flagging	80	\$ 112,000	\$ -	\$ -	\$112,000
TOTAL PROJECT:	\$ 132,000	\$ -	\$ -	\$ 20,000.00	\$132,000

TOTAL ESTIMATED COST: \$132,000

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

Flagging may be performed by a third-party contractor. Any flagging performed by a third-party contractor will be billed at said third-party contractor rate not included in the above estimate. Alternatively, the Agency may enter into a separate agreement with third-party contractor and will be responsible for all actual costs incurred.

**EXHIBIT D
TO
PUBLIC PEDESTRIAN OVERPASS AGREEMENT**

RAILROAD COORDINATION REQUIREMENTS

1.01 DEFINITIONS

Agreement: Agreement that has been signed, or will be signed, between Railroad and Political Body covering the construction and maintenance of the Project.

Political Body: City of Portland

AREMA: American Railway Engineering and Maintenance-of-way Association

Contractor: The contractor or contractors hired by the Political Body to perform any project work on any portion of 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.

MUTCD: Manual on Uniform Traffic Control Devices

Project: Sullivan's Crossing

Railroad: Union Pacific Railroad Company

Railroad Project Representative: Railroad's Manager of Industry and Public Projects for this Project (see Section 1.03)

Railroad MTM Representative: Railroad's Manager of Track Maintenance for this Project (see Section 1.03)

Requirements: The Railroad Coordination Requirements set forth in this Exhibit.

1.02 DESCRIPTION

This Project includes construction work within Railroad's right-of-way. These Requirements describe coordination with the Railroad when work by the Contractor will be performed upon, over or under the Railroad right-of-way or may impact current or future Railroad operations. The Contractor will coordinate with the Railroad while performing the work outlined in this Agreement and shall afford the same cooperation with the Railroad as it does with the Political Body. All submittals and work shall be completed in compliance with these Requirements, Railroad guidelines and requirements, AREMA recommendations and/or as directed by the Railroad Local Representative and/or the Railroad MTM Representative.

1.03 UPRR CONTACTS

The Railroad Project Representative for this project is:

Mary Schroll
916-789-6111

For Railroad flagging services and track work, contact the following Railroad MTM Representative:

Kevin W. Fernald
503-249-2323

1.04 PLANS / SPECIFICATIONS

The plans and specifications for this Project, affecting the Railroad, are subject to the written approval by the Railroad. Changes in the plans made after the execution of the Agreement and/or the awarding of the Project to the Contractor are subject to the prior review and written approval of the Political Body and the Railroad. No construction work shall commence until final stamped plans and/or changes to final stamped plans have been reviewed and approved by the Railroad in writing. The Railroad's review and approval of the Political Body's and/or Contractor's plans in no way relieves the Political Body and Contractor from their responsibilities, obligations and/or liabilities under this Agreement, Political Body's agreement with the Contractor for the Project and/or in the separate Contractor's Right of Entry Agreement referenced in Section 1.08. Railroad's approval will be given with the understanding that the Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of Political Body's and/or

Contractor's plans and that any reliance by the Political Body or the Contractor with respect to such plans is at the risk of the Political Body and the Contractor.

1.05 UTILITIES AND FIBER OPTICS

- A. All installations shall be constructed in accordance with current AREMA recommendations and Railroad specifications and requirements. Railroad general guidelines and the required application forms for utility installations can be found on the Railroad website at <http://www.uprr.com/reus/pipeline/install.shtml>.
- B. It shall be the responsibility of the Contractor, at its expense, to make arrangements directly with utility companies involving the protection, encasement, reinforcement, relocation, replacement, removing or abandonment in place of non-railroad facilities affected by the Project. Railroad has no obligation to supply additional Railroad property for non-railroad facilities affected by this Project, nor does the Railroad have any obligation to permit non railroad facilities to be abandoned in place or relocated on Railroad's property. Any facility and/or utility that crosses Railroad right of way must be covered under an agreement with the Railroad including, without limitation, any relocations of an existing facility and/or utility.
- C. Any longitudinal fiber optic lines on Railroad right of way shall be treated as Railroad facilities. Project design may need to be altered to accommodate such facilities.
- D. Any fiber optic relocations or protections that are required due to this Project will be at the Political Body's expense.

1.06 GENERAL

- A. It is essential that the proposed construction shall be performed without interference to Railroad operations and in compliance with all applicable Railroad and Federal Railroad Administration rules and regulations. The Railroad shall be reimbursed by the Contractor or Political Body for train delay costs and lost revenue claims due to any delays or interruption of train operations resulting from the Contractor's construction or other activities.
- B. Track protection is required for all work equipment (including rubber tired equipment) operating within 25 feet from nearest rail. All work shall be designed and executed outside the temporary construction clearance envelope defined in Section 1.12.
- C. The Contractor is also advised that new facilities within the Project may be scheduled to be built by the Railroad and that certain Contractor's activities cannot proceed until that work is complete. The Contractor shall be aware of the limits of responsibilities, allow sufficient time in the schedule for that work to be accomplished and shall coordinate its efforts with the Railroad.

1.07 RAILROAD OPERATIONS

- A. The Contractor shall be advised that trains and/or equipment should be expected on any track, at any time, and in either direction. The Contractor shall communicate with the Railroad MTM Representative to improve the Contractor's understanding of Railroad traffic volume and operation at the Project site. The Contractor's bid shall be structured assuming intermittent track windows as defined in Section 1.07 C
- B. All Railroad tracks within and adjacent to the Project site are to be assumed as active and rail traffic over these facilities shall be maintained throughout the Project. Activities may include both through moves and switching moves to local customers. Railroad traffic and operations can occur continuously throughout the day and night on these tracks and shall be maintained at all times as defined herein. The Contractor shall coordinate and schedule the work so that construction activities do not interfere with Railroad's operations.
- C. Work windows for this Project shall be coordinated with the Political Body or Contractor and the Railroad Project Representative and the Railroad MTM Representative. Types of work windows include Conditional Work Windows and Absolute Work Windows, as defined below:
 - 1. Conditional Work Window: A period of time in which Railroad's operations have priority over construction

activities. When construction activities may occur on and adjacent to the railroad tracks within 25 feet of the nearest track, a Railroad approved flag person will be required. At the direction of the flag person, upon approach of a train and when trains are present on the tracks, the tracks must be cleared (i.e., no construction equipment, materials or personnel within 25 feet from the nearest active track or as directed by the Railroad MTM Representative). Conditional Work Windows are available for the project subject to Railroad's local operating unit review and approval.

2. **Absolute Work Window:** A period of time in which construction activities are given priority over Railroad's operations. During this time the designated Railroad track(s) will be inactive for train movements and may be fouled by the Contractor. Before the end of an Absolute Work Window, all Railroad tracks and signals must be completely operational for normal train operations. Also, all Railroad, Public Utilities Commission and Federal Railroad Administration requirements, codes and regulations for operational tracks must be complied with. Should the operating tracks and/or signals be affected, the Railroad will perform inspections of the work prior to placing the affected track back into service. Railroad approved flag persons will be required for construction activities requiring an Absolute Work Window. **Absolute Work Windows will generally not be granted. Any request will require a detailed written explanation for Railroad review and approval.**

1.08 RIGHT OF ENTRY, ADVANCE NOTICE AND WORK STOPPAGES

- A. Prior to beginning any work within the Railroad right-of-way, the Contractor shall enter into an agreement with the Railroad in the form of the Contractor's Right of Entry Agreement, attached as _____, or latest version thereof provided by the Railroad. There is a fee for processing of the agreement which shall be borne by the Contractor. The right of entry agreement shall specify working time frames, flagging, inspection and insurance requirements and any other items specified by the Railroad.
- B. The Contractor shall give advance notice to the Railroad as required in the Contractor's Right of Entry Agreement before commencing work in connection with construction upon or over Railroad's right-of-way and shall observe the Railroad rules and regulations with respect thereto.
- C. All work upon the Railroad right-of-way shall be done at such times and in such a manner as not to interfere with or endanger the operations of the Railroad. Whenever work may affect the operations or safety of trains, the method of doing such work shall first be submitted to the Railroad MTM Representative for approval, but such approval shall not relieve the Contractor from liability. Any work to be performed by the Contractor, which requires flagging service or inspection service, shall be deferred until the flagging protection required by the Railroad is available at the job site. See Section 1.21 for railroad flagging requirements.
- D. The Contractor shall make requests in writing to both the Railroad Project Representative and the Railroad MTM Representative for both Absolute and Conditional Work Windows, at least two weeks in advance of any work. The written request must include:
 1. Description of work to be done.
 2. The days and hours that work will be performed.
 3. The exact location of the work and proximity to the tracks.
 4. The type of window and amount of time requested.
 5. The designated contact person for the Contractor.

The Contractor shall provide a written confirmation notice to the Railroad MTM Representative at least fifteen (15) days prior to commencing work in connection with the approved work windows when work will be performed within **25 feet of any track center line**. All work shall be performed in accordance with previously approved work plans.

- E. Should a condition arise from, or in connection with, the work which requires immediate and unusual actions to be made to protect operations and property of the Railroad, the Contractor shall undertake such actions. If, in the judgment of the Railroad MTM Representative, such actions are insufficient, the Railroad MTM Representative may require or provide such actions as deemed necessary. In any event, such actions shall be at the Contractor's expense and without cost to the Railroad. The Railroad or Political Body have the right to order the Contractor to temporarily cease operations in the event of an emergency or if, in the opinion of the Railroad MTM Representative,

the Contractor's operations may inhibit the Railroads operations. In the event such an order is given, the Contractor shall immediately notify the Political Body of the order.

1.09 INSURANCE

The Contractor shall not begin work within the Railroad's right-of-way until the Railroad has been furnished the insurance policies, binders, certificates and endorsements required by the Contractor's Right-of-Entry Agreement, and the Railroad Project Representative has advised the Political Body that such insurance is in accordance with such Agreement. The required insurance shall be kept in full force and effect during the performance of work and thereafter until the Contractor removes all tools, equipment, and material from Railroad property and cleans the premises in a manner reasonably satisfactory to the Railroad.

1.10 RAILROAD SAFETY ORIENTATION

All personnel employed by the Political Body, Contractor and all subcontractors must complete the Railroad's course "Orientation for Contractor's Safety" and be registered prior to working on Railroad property. This orientation is available at www.contractororientation.com. This course is required to be completed annually. The preceding training does not apply for longitudinal fiber optic installations.

1.11 COOPERATION

The Railroad shall cooperate with the Contractor in the scheduling of Project work with the understanding that Railroad's train operations at the job site shall have priority over the Contractor's activities.

1.12 CONSTRUCTION CLEARANCES

The Contractor shall abide by the twenty-one (21) foot temporary vertical construction clearance defined in section 4.4.1.1 and twelve (12) foot temporary horizontal construction clearance defined in section 4.4.1.2 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects. It shall be the Contractor's responsibility to obtain such guidelines from the Political Body or Railroad.

Reduced temporary construction clearances, which are less than construction clearances defined above, will require special review and approval by the Railroad.

Any proposed variance on the specified minimum clearances due to the Contractor's operations shall be submitted to the Railroad Project Representative through the Political Body at least thirty (30) days in advance of the work. No work shall be undertaken until the variance is approved in writing by the Railroad Project Representative.

1.13 SUBMITTALS

- A. Construction submittals and Requests for Information (RFI) shall be submitted per Section 3.5 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects.
- B. The minimum review times, as indicated in tables 3-1 and 3-2 of Section 3.5 of the BNSF and UPRR Guidelines for Railroad Grade Separation Projects, should be anticipated for review of all submittals. Guidelines for Railroad Grade Separation Projects, should be anticipated for review of all submittals. The details of the construction affecting the Railroad tracks and property, not already included in the contract plans, shall be submitted by the Political Body to the Railroad Project Representative for the Railroad's review and written approval before such construction is undertaken. The Railroad shall not be liable to Political Body, Contractor, and or any other person or entity if the Railroad's review exceeds a four-week review time.
- C. As Built Submittals shall be submitted per Section 3.6 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects.

1.14 MAINTENANCE OF PROPER DRAINAGE AND DAMAGE TO RAILROAD FACILITIES

- A. The Contractor, at its expense, shall be required to maintain all ditches and drainage structures free of silt or other obstructions which may result from the Contractor's operations and to repair and restore any Railroad property, tracks and facilities of Railroad and/or its tenants.
- B. The Contractor must submit a proposed method of erosion control and have the method reviewed and approved by the Railroad prior to beginning any grading on the project site. Erosion control methods must comply with all applicable local, state and federal regulations.

1.15 SITE INSPECTIONS BY RAILROAD PROJECT REPRESENTATIVE, RAILROAD MTM REPRESENTATIVE OR RAILROAD'S CONTRACTOR

- A. In addition to the office reviews of construction submittals, site observations will be performed by the Railroad Project Representative, Railroad MTM Representative or Railroad's Contractor at significant points during construction per Section 4.11 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects.
- B. Site inspections are not limited to the milestone events listed in the guidelines. Site visits to check the progress of work may be performed at any time throughout the construction process as deemed necessary by the Railroad.
- C. A detailed construction schedule, including the proposed temporary horizontal and vertical clearances and construction sequence for all work to be performed, shall be provided by the Contractor to the Political Body for submittal to the Railroad's Project Representative for review and approval prior to commencement of work. This schedule shall also include the anticipated dates on which the above listed events will occur. This schedule shall be updated for all critical listed events as necessary but at least monthly so that site visits may be scheduled.

1.16 RAILROAD REPRESENTATIVES

- A. Railroad representatives, conductors, flag persons or watch persons will be provided by the Railroad at the expense of the Political Body or Contractor (as stated elsewhere in these bid documents) to protect Railroad facilities, property and movements of its trains and engines. In general, the Railroad will furnish such personnel or other protective services as follows:
 - 1. When any part of any equipment or object, such as erection or construction activities, is standing or being operated within 25 feet, measured horizontally from centerline, of any track on which trains may operate.
 - 2. For any excavation below the elevation of track subgrade when, in the opinion of the Railroad MTM Representative, the track or other Railroad facilities may be subject to settlement or movement.
 - 3. During any clearing, grubbing, excavation or grading in proximity to Railroad facilities which, in the opinion of the Railroad MTM Representative, may affect Railroad facilities or inhibit operations.
 - 4. During any Contractor's operations when, in the opinion of the Railroad MTM Representative, the Railroad facilities, including, but not limited to, tracks, buildings, signals, wire lines or pipe lines, may be endangered.
- B. The Contractor shall arrange with the Railroad Local Representative to provide the adequate number of flag persons to accomplish the work.

1.17 WALKWAYS REQUIRED

Parallel to the outer side of each exterior track of multiple operated track and on each side of single operated track, an unobstructed continuous space suitable for trainman's use in walking along trains, extending in width not less than twelve feet (12') perpendicular from centerline of track, shall be maintained. Any temporary impediments to walkways and track drainage encroachments or obstructions allowed during working hours must be covered, guarded and/or protected as soon as practical. Walkways with railings shall be constructed by the Contractor over open excavation areas when in close proximity of track, and railings shall not be closer than 9' perpendicular from the center line of tangent track or 9' – 6" horizontal from curved track.

1.18 COMMUNICATIONS AND SIGNAL LINES

If required, the Railroad, at Political Body's expense, will rearrange its communications and signal lines, grade crossing warning devices, train signals, tracks and facilities that are in use and maintained by Railroad forces in connection with its operation. This work by the Railroad will be done by its own forces or by contractors under a continuing contract and may or may not be a part of the work under this contract.

1.19 TRAFFIC CONTROL

The Contractor's operations which control traffic across or around Railroad facilities shall be coordinated with and approved by the Railroad MTM Representative and shall be in compliance with the MUTCD.

1.20 CONSTRUCTION EXCAVATIONS; CALL BEFORE YOU DIG NUMBER

- A. The Contractor shall be required to take special precautions and care in connection with excavating and shoring. Excavations for construction of footings, piers, columns, walls or other facilities that require shoring shall comply with requirements of OSHA, AREMA and Railroad "Guidelines for Temporary Shoring".
- B. In addition to calling the "811" number and/or the local "one call center", the Contractor shall call the Railroad's "Call Before Your Dig" number at least 48 hours prior to commencing work at 1-800-336-9193 during normal business hours (6:30 a.m. to 8:00 p.m. Central Standard Time, Monday through Friday, except holidays - also a 24 hour, 7 day a week number for emergency calls) to determine location of fiber optics. If a telecommunications system is buried anywhere on or near Railroad property, the Contractor will co-ordinate with the Railroad and the Telecommunication Company(ies) to arrange for relocation or other protection of the system prior to beginning any work on or near Railroad property. The determination of whether fiber optics will be affected by the Project shall be made during the initial design phase of the Project.
- C. The Railroad does not allow temporary at grade crossings unless absolutely necessary and there is no alternative route available to contractor to access the project site. Alternative plans should be considered to avoid crossing Railroad tracks at grade.

1.21 RAILROAD FLAGGING

Contractor shall comply with all other requirements regarding Flagging Services covered by the Contractor's Right of Entry Agreement. Any costs associated with failure to abide by these requirements will be borne by the Contractor.

The estimated pay rate for each flag person that is a Railroad employee is \$ _____ per day for a(n) _____ - hour work day with time and one-half for overtime, Saturdays, Sundays; double time and one-half for holidays. Flagging rates for Railroad's employees are set by the Railroad and are subject to change due to, but not limited to, travel time, setup plus, per diem and rest time (if work is required at night). The rates for Flagging Services charged by a CIC are set by such CIC, and are variable and subject to change at any time.

1.22 CLEANING OF RIGHT-OF-WAY

The Contractor shall, upon completion of the work to be performed within the right-of-way and/or properties of the Railroad and adjacent to its tracks, wire lines and other facilities, promptly remove from the Railroad right-of-way all Contractor's tools, implements and other materials whether brought upon the right-of-way by the Contractor or any subcontractors employee or agent of Contractor or of any subcontractor, and leave the right-of-way in a clean and presentable condition to the satisfaction of the Railroad.

1.23 CONTRACTOR'S RESPONSIBILITY OF SUPERVISION

The Contractor, at its expense, shall adequately supervise all work to be performed by the Contractor. Such responsibility shall not be lessened or otherwise affected by Railroad's approval of plans and specifications, or by the presence at the work site of the Railroad Project Representative, Railroad MTM Representative or any other Railroad representative or Railroad contractor providing inspection services, or by the compliance by the Contractor with any requests or

recommendations made by such representatives. The Contractor will give due consideration to suggestions and recommendations made by such representatives for the safety and protection of the Railroad's property and operations.

1.24 USE OF EXPLOSIVES AT PROJECT SITE PROHIBITED

The Contractor's use of explosives at the Project site is expressly prohibited unless authorized in advance in writing by the Railroad Project Representative.

**EXHIBIT E
TO
PUBLIC PEDESTRIAN OVERPASS AGREEMENT**

Exhibit E will be Current Form of Contractor's Right of Entry Agreement

**EXHIBIT F
TO
PUBLIC PEDESTRIAN OVERPASS AGREEMENT**

**RAILROAD'S INSURANCE REQUIREMENTS
PEDESTRIAN AND BICYCLE USE**

Section 1. REQUIRED INSURANCE.

The Political Body shall, at its sole cost and expense, (except for Railroad Protective Liability Insurance required in Paragraph D), procure and maintain in effect during the entire term of this Agreement the following insurance coverage. The Political Body 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, renewal, reconstruction or removal work.

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.

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 the 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 the 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 business automobile, worker's compensation and employers liability) must include the Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 10, and CG 20 37 (or substitute forms providing equivalent coverage). The coverage provided to the Railroad as additional insured shall not be limited by Contractor's liability

under the indemnity provisions of this agreement. BOTH CONTRACTOR AND THE RAILROAD EXPECT THAT UNION PACIFIC RAILROAD COMPANY WILL BE PROVIDED WITH THE BROADEST POSSIBLE COVERAGE AVAILABLE BY OPERATION OF LAW UNDER ISO ADDITIONAL INSURED FORMS CG 20 10 AND CG 20 37.

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

I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against the Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Contractor required in this agreement where prohibited by law. This waiver must be stated on the certificate of insurance.

J. Prior to commencing the work, Contractor shall furnish the 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 the 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 the 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 the Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.