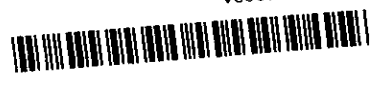


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•C88P661A•



2066-91

**EASEMENT FOR BICYCLE AND PEDESTRIAN
TRAIL CROSSING ON RAILROAD PROPERTY**

THIS AGREEMENT is made this 19th day of NOVEMBER, 2003, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware Corporation ("UP") and the **OGDEN CITY CORPORATION**, a Municipal Corporation of the State of Utah ("City").

IT IS AGREED as follows:

Section 1. RIGHT GRANTED.

A. Subject to the terms and conditions of this Agreement, UP hereby grants to City, its successors and assigns, an easement to construct, maintain, use, repair, renew and reconstruct a public pedestrian and bicycle trail along and under UP's right-of-way, tracks and bridges, at Milepost 817.9 on UP's Salt Lake Subdivision and Milepost 0.48 on UP's Hillfield Branch in the City of Ogden, Weber County, Utah, in the location shown on the prints dated October 23, 2003, marked **Exhibit A-1** and **Exhibit A-2**, and described in the legal description marked **Exhibit B-1** and **Exhibit B-2**, each exhibit being hereto attached and hereby made a part hereof (hereinafter the "Trail" or the "Property"). The Trail shall also consist of a galvanized chain link fence at least six (6) feet high, as well as a protective canopy over the Trail as the Trail traverses under UP's bridge's, as shown on **Exhibit A-1** and **Exhibit A-2** and made a part hereof. The rights granted herein are for an underpass only; City shall not have any rights to cross UP's right of way at grade.

B. City, at its sole cost and expense, will construct, maintain, repair, renew and reconstruct the Trail and all other necessary facilities, structures, appurtenances, warning signs, stop signs, fencing and concrete encasement protection covers on the Property, and/or on adjacent UP right-of-way or City's adjacent property, in compliance with all design and construction specifications and plans that have been reviewed and approved by UP prior to the commencement of any construction. City shall submit all plans (engineering and construction drawings) to:

Union Pacific Railroad Company
Attn: General Manager Real Estate
1416 Dodge St., WP001
Omaha, NE 68179

E# 1994883 PG1 OF25
DOUG CROFTS, WEBER COUNTY RECORDER
26-NOV-03 1203 PM FEE \$59.00 DEP JPM
REC FOR:

Ogden City

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for review and approval. City shall design the underpass taking into consideration potential high water/flood problems. UP shall either approve or disapprove the plans submitted by City within fifteen (15) business days after receipt of such plans by UP. Approval of such plans shall not be unreasonably withheld; failure to either approve or disapprove within the fifteen (15) day period shall constitute disapproval of said plans. UP's review and approval of the plans shall in no way relieve City from its responsibilities, obligations and/or liabilities under this Agreement, and shall be given with the understanding that UP makes no representation or warranty about the validity, accuracy, legal compliance or completeness of the plans and any reliance by City on the plans shall be at the risk of City.

C. City, at its sole expense, agrees to patrol, or cause the Trail to be patrolled by police officers with lawful citation authority, and to make reasonable efforts to prevent trespass of UP's adjacent right-of-way.

D. City will comply with all federal, state and local laws, ordinances, rules and regulations which are applicable to the use, management and maintenance of the Trail.

E. The rights granted herein are made subject to and subordinate to the prior and continuing right and obligation of UP, its successors and assigns, to use all of the tracks and property underlying and above the Trail in the performance of its duty as a common carrier, and there is reserved unto UP, and its successors and assigns, the right (consistent with the rights granted herein to City) to construct, reconstruct, maintain, repair, use and operate existing or future additional railroad tracks, track appurtenances, fiber optic or signal lines and facilities, pipe, and wire lines over, under and across the Property.

F. The rights granted herein are granted only insofar as UP may lawfully grant the same and UP makes no covenant or warranty of title, or for quiet possession or against encumbrances. No damages shall be recoverable from UP because of any dispossession of City or because of failure of, or defect, in UP's title to the Property. The rights granted herein are also subject to any and all outstanding or existing licenses, leases, easements, restrictions, conditions, covenants, claims of title and other rights (whether public or private and whether recorded or unrecorded) including, but not limited to, those for communication, pipeline and wire line facilities and also to any and all extensions and renewals thereof. The City shall not damage, destroy or interfere with the property or right of nonparties in, upon or relating to the Property, unless City at its sole expense, settles with and obtains a release from such nonparties on mutually satisfactory terms.

G. City, by virtue of this grant, shall not encroach upon, or occupy or use any other property of UP, except as required for the construction of the Trail, and emplacement and maintenance of the fencing, concrete protective covers and other items as herein required.

H. UP grants to City only the right for the purposes aforesaid and City shall not use or permit use of the Property for any other purpose.

I. To enable UP to perform construction, operation or maintenance work on its tracks, track appurtenances, right of way, bridge, embankments, or other improvements on the Property, from time to time as UP, in its sole discretion may deem necessary or convenient, UP may

temporarily close the Trail after reasonable notice to City, unless such work is an emergency nature in which event UP may close the Trail without prior notice to City. In the event of such an emergency, UP will immediately notify City.

J. If the right granted herein shall result in a substantial operational or safety problem for UP, then the parties shall negotiate in good faith to resolve such problem to the mutual satisfaction of the parties.

K. Fiber optic cable systems may be buried on UP's right-of-way. Protection of the fiber optic cable system is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. City, or its contractors, shall telephone UP during normal business hours (7:00 a.m. to 9:00 p.m., Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour seven day number for emergency calls) to determine if fiber optic cable is buried anywhere on the right-of-way to be used by City. If it is, City, or its contractors, 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 right-of-way.

L. City acknowledges that UP would not have granted this Easement without City's agreement to comply with the covenants in this Section 1, and that a breach of any covenant constitutes a material breach of this Agreement.

Section 2. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT; FLAGGING.

A. The City confirms that all work described herein, will be performed by a contractor or contractors hired by the City. The City agrees to require each of its contractors, (and their respective subcontractors), to execute UP's form of Contractor's Right of Entry Agreement that is marked **Schedule 1**, hereto attached and hereby made a part hereof, and to provide UP the insurance binders or certificates set forth in Exhibit A-1 of the Contractor's Right of Entry Agreement before commencing any work on any UP property.

B. The City shall also require its contractors/subcontractors to perform their construction work in such a manner so as not to endanger or delay the movement of trains, engines or cars of UP, and so as not to injure or endanger UP's officers, agents, employees or damage their property. The City shall also require its contractors/subcontractors to give precedence to the movement of trains, engines and cars of UP, over the movement of vehicles or equipment or construction activities of the City's contractors/subcontractors.

C. If at any time during the construction of the Trail, UP deems it necessary that flagging protection is necessary, such flagging shall be provided by UP at no cost to UP as set forth in the Contractor's Right of Entry Agreement described in Section 2A above.

Section 3. LIABILITY.

A. To the extent permitted by Utah law, City shall save, protect, defend, indemnify and hold harmless UP, and its respective affiliates, and their respective officers, agents and employees,

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against and from any and all liability, loss, damages, claims, demands, costs and expenses, fines and penalties of whatsoever nature, including court costs and attorney's fees, arising from and growing out of any injury or death of persons whomsoever (including officers, agents and employees of UP or the City and of any contractor as well as other persons) or loss of or damage to property whatsoever (including property of or in the custody of UP, the City or any contractor as well as other property). City's obligation to indemnify shall accrue when such injury, death, loss or damage occurs or arises from City's or the general public's use of the Property and Trail, or a breach of this Agreement, or any use or misuse of the Property and Trail.

Section 4. TERMINATION; WAIVER OF BREACH; TERM.

A. UP may terminate this Agreement by giving City notice of termination if City defaults under any obligation of City under this license and, if after written notice is given by UP to City specifying the default, City fails either to immediately begin to cure the default, or to complete the cure expeditiously but in any event within thirty (30) days after the default notice is given. A waiver by UP of a breach of City of any covenant or condition of this Agreement shall not impair the right of UP to avail itself of any subsequent breach thereof.

B. UP may also terminate this Agreement by giving written notice to City if safety and operational needs of UP are materially affected or impaired by City's use of the Property, and UP and City cannot come to any mutual agreement or understanding as to how City, at City's sole cost and expense, will eliminate such material effect or impairment.

C. This Agreement and the license and permission herein granted shall be effective as of the date first herein written, and shall remain in full force and effect until terminated as herein provided, or until the Property and Trail are abandoned as set forth in Section 5 below.

Section 5. ABANDONMENT.

If City, its successors and assigns, shall abandon the Trail and Property, or any portion thereof, for the purpose set forth herein for a continuous period of twelve (12) months, then this Agreement and the rights granted herein shall cease automatically and terminate with respect to the portion of the Property so abandoned.

Section 6. REMOVAL OF TRAIL UPON TERMINATION OR ABANDONMENT.

Within ninety (90) days after termination of this Agreement or City's abandonment of the Trail and/or Property, the City, at its sole cost and expense, shall remove all of the Trail improvements from the Property or adjacent UP right-of-way and restore the Property and such right-of-way to its original condition, failing in which UP may perform such activities at the expense of City.

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Section 7. NOTICES.

Any notices required or desired to be given under this Agreement shall be in writing and personally served, given by overnight express delivery, or given by mail. Telecopy notices shall be deemed valid only to the extent they are (a) actually received by the individual to whom addressed, and (b) followed by delivery of actual notice in the manner described above within three (3) business days thereafter. Any notice given by mail shall be sent, postage prepaid, by certified mail, return receipt requested, addressed to the party to receive at the following address or at such other address as the party may from time to time direct in writing:

UP: Union Pacific Railroad Company
ATTN: Manager - Real Estate; Folder 2066-91
Real Estate Department
1416 Dodge Street, WP001
Omaha, Nebraska 68102
Facsimile: (402) 997-3601/3602

City: Ogden City Corporation
ATTN: Norman L Ashton, City Attorney
2549 Washington Blvd, STE 840
Ogden, UT 84401
(801) 629-8145
Facsimile: (801) 629-8927

Express delivery notices shall be deemed to be given upon receipt. Postal notices shall be deemed to be given three (3) days after deposit with the United States Postal Service.

Section 8. SUCCESSORS AND ASSIGNS.

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns, but City shall not assign this Agreement or any rights herein to any party without the prior written consent of UP.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the day and year first above written.

WITNESS:




UNION PACIFIC RAILROAD COMPANY

By: 
Title: GENERAL MANAGER-REAL ESTATE

WITNESS:



OGDEN CITY CORPORATION

By: 
Title: MAYOR

E# 1994883 PG6 OF25

ACKNOWLEDGMENT

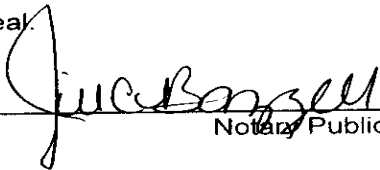
STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On November 19, 2003, before me, a Notary Public in and for said County and State, personally appeared Tony K. Love and Ted J. Stenstrom who are the General Manager – Real Estate and the Director – Real Estate, respectively, of Union Pacific Railroad Company, a Delaware corporation, and who are personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to in the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

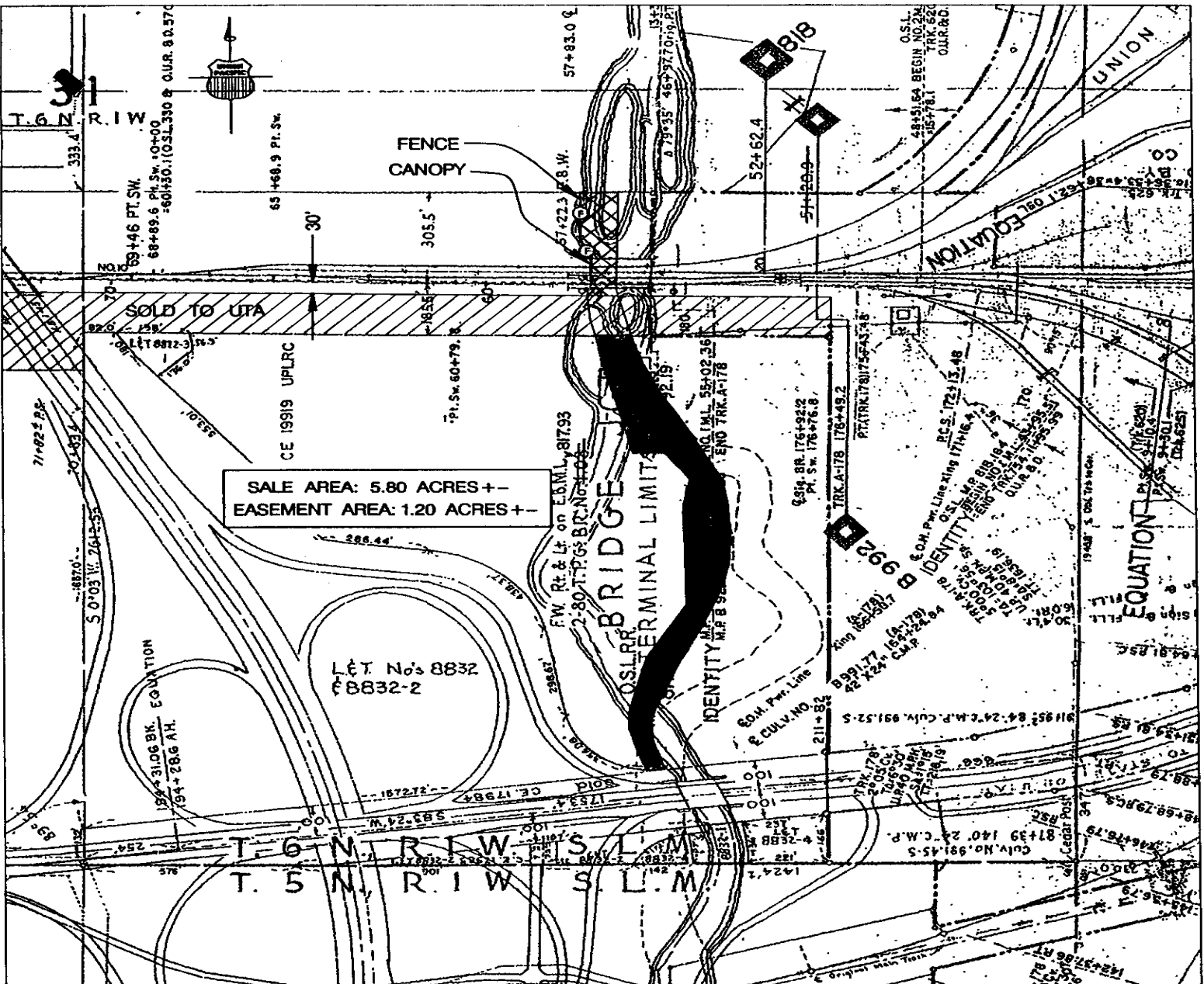
WITNESS my hand and official seal



(Seal)



Notary Public



SALE AREA: 5.80 ACRES +/-
 EASEMENT AREA: 1.20 ACRES +/-

SCALE: 1" = 400'

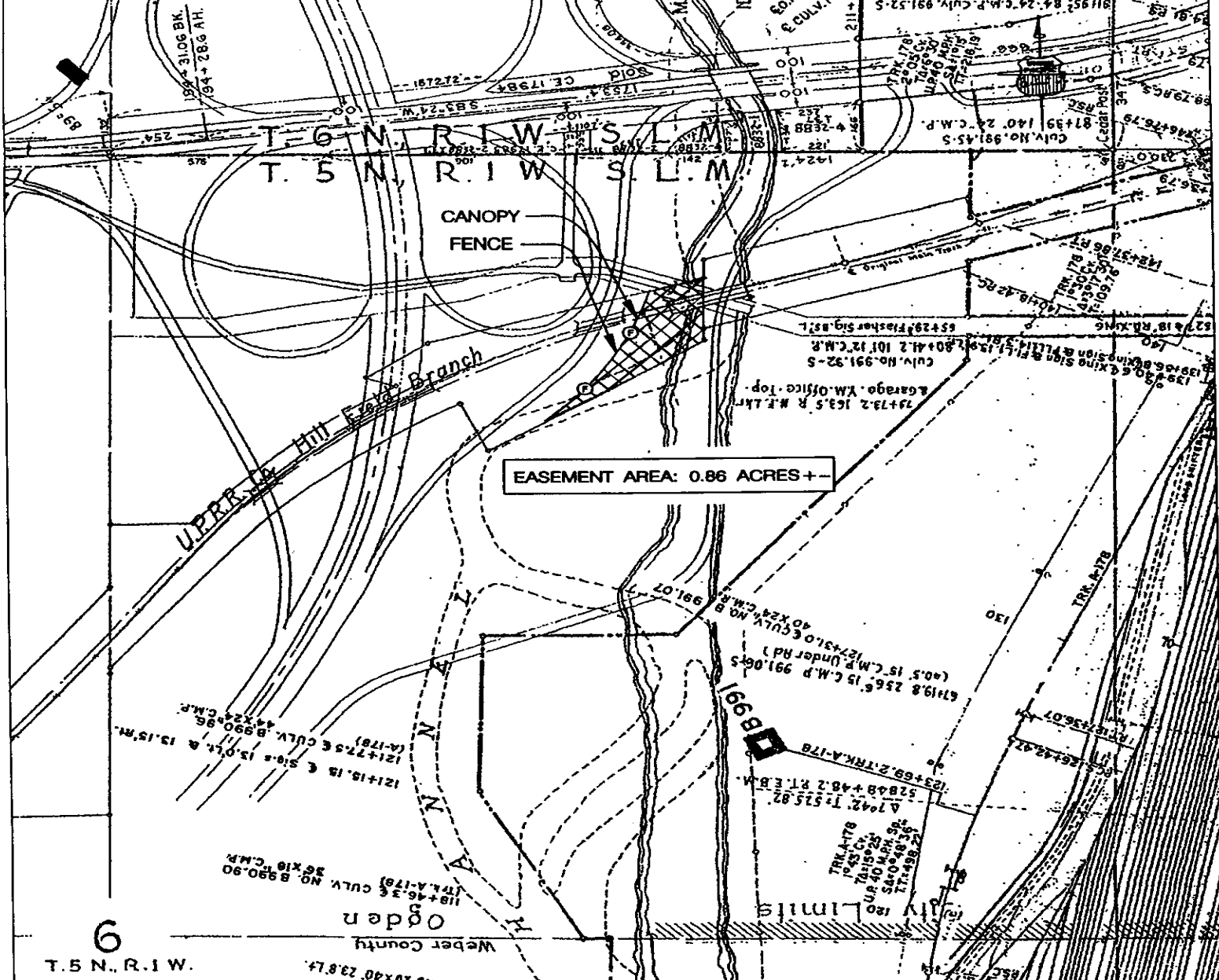
LEGEND

- U.P.R.R. RIGHT OF WAY
- SALE AREA SHOWN
- EASEMENT AREA SHOWN

EXHIBIT "A-1"
UNION PACIFIC RAILROAD CO.
 TO ACCOMPANY AGREEMENT WITH
OGDEN CITY CORP.
 OGDEN, WEBER COUNTY, UT.
 M.P. 817.9+- SALT LAKE SUB.
 OSL UT V 3 / 8

REAL ESTATE DEPARTMENT OMAHA NE.
 FILE #2066-91 DATE: 10-23-2003 T.D.A.

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EASEMENT AREA: 0.86 ACRES +-

SCALE: 1" = 400'

LEGEND

- U.P.R.R. RIGHT OF WAY
- EASEMENT AREA SHOWN

EXHIBIT "A-2"
UNION PACIFIC RAILROAD CO.

TO ACCOMPANY AGREEMENT WITH
OGDEN CITY CORP.

OGDEN, WEBER COUNTY, UT.
 M.P. 0.48+- HILL FIELD 1/L
 UP UT V 1/17

REAL ESTATE DEPARTMENT OMAHA NE.
 FILE #2066-91 DATE: 10-23-2003 T.D.A.

EXHIBIT B-1

Central Parcel UPRR Easement of the Weber River Trail

A tract of land in the Southeast Quarter of Section 31, Township 6 North, Range 1 West, Salt Lake Base and Meridian: having a Basis of Bearing between the referenced Center Quarter and the North Quarter of said section 31, which is North 00°21'30" East 2612.96 said Center Quarter Corner having NAD 83 State Plane Coordinates (feet) of N = 3601461.894 and E = 1503717.412 as maintained by the Weber County Surveyor's Office, more particularly described as follows;

Beginning at a point located South 75°37'19" East 1372.48 feet from the Center Quarter Corner of said Section,

THENCE South 29°10'59" West 51.92 feet,
thence South 09°31'09" East 135.50 feet,
thence South 38°27'44" East 82.14 feet,
thence South 02°03'42" West 99.73 feet,
thence South 38°43'00" West 15.44 feet,
thence East to the center of the Weber River, thence Northerly along the center of the said river to a point that is east of the point of beginning, thence West to the point of beginning.

Contains: Approx. 53,400 sq. ft / 1.20 Acres

~~R. 14-040-0002~~ F

PT. 14-040-0002
PT. 08-007-0023

EXHIBIT B-2

South Parcel -Easement for the Weber River Trail

A tract of land in the Northeast Quarter of Section 6, Township 5 North, Range 1 West, Salt Lake Base and Meridian: having a Basis of Bearing between the referenced North Quarter and the Northeast Quarter of said Section 6, which is South 89°22'52" East 2653.05 feet, said North Quarter having NAD 83 State Plane Coordinates (feet) of N = 3598854.7378 and E = 1503699.1724 and as maintained by the Weber County Surveyor's Office, more particularly described as follows;

Beginning at a point South 42°04' East 999.5 feet, South 69°45' East 265.6 feet, South 23°00'00" East 175.0 feet, North 57°42'00" East 172.42 feet to a point on the right of way line of the off-ramp of the 31st Street Northbound (Referenced by the Line "T-4" on the UDOT Project No. I-15-8(21)334 Sheet 13) to the point of beginning, from the NW corner of the NE quarter of Section 6, Township 5 North, Range 1 West.

THENCE North 57°42'00" East 508.08 feet,
thence North 207.80 feet,
thence South 74°15' West 151.75 feet to a point on said right of way,
thence along the right of way curve to the right (chord bearing South 32°53'54" West 521.77 feet, Radius 954.93 feet, Tangent 385.82 feet) to the point beginning.

Contains: 37,361 sq ft. / .86 acres

PT. 05-143-0026
PT. 05-143-0022

SCHEDULE 1

**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 (the "Railroad"); and _____, a _____ corporation (the "Contractor").

RECITALS:

Contractor has been hired by _____ to perform work relating to _____ (the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of _____ [, which work is the subject of a contract dated _____ between Railroad and _____].

Contractor has requested Railroad to permit it to perform the work on the portion of Railroad's property shown on the print dated _____, marked **Exhibit A**, attached hereto and hereby made a part hereof, and Railroad is agreeable thereto, subject to the following terms and conditions.

AGREEMENT:

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

ARTICLE 1 - DEFINITION OF CONTRACTOR.

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

ARTICLE 2 - RIGHT GRANTED; PURPOSE.

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

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

The terms and conditions contained in **Exhibit A, 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. The Contractor shall bear any and all costs and expenses associated with any work performed by the Contractor, or any costs or expenses incurred by the Railroad relating to this agreement.

B. The Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

C. The Contractor, at its own expense, shall adequately police and supervise all work to be performed by the 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 the Contractor for safe conduct and adequate policing and supervision of the Contractor's work shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications involving the work, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad Representative, or by compliance by the Contractor with any requests or recommendations made by the Railroad Representative.

ARTICLE 5 - TERM; TERMINATION.

A. The grant of right herein made to Contractor shall commence on the date of this agreement, and continue until _____, unless sooner terminated as herein provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad property.

B. This agreement may be terminated by either party on ten (10) days written notice to the other party.

ARTICLE 6 - CERTIFICATE OF INSURANCE.

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

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

Union Pacific Railroad Company
1800 Farnam Street
Omaha, NE 68102
Attn: Jill Bazzell, Folder 2066-91

ARTICLE 7 - DISMISSAL OF CONTRACTOR/SUBCONTRACTOR EMPLOYEE.

At the request of Railroad, Contractor shall remove from Railroad property any employee of Contractor or any subcontractor 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 property.

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ARTICLE 8 - ADMINISTRATIVE FEE.

Contractor shall pay to Railroad _____ Dollars (\$_____) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this agreement.

ARTICLE 9 - CROSSINGS.

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

ARTICLE 10.- EXPLOSIVES.

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

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

UNION PACIFIC RAILROAD COMPANY

By: _____
Title: _____

(Name of Contractor)

By: _____
Title: _____

EXHIBIT B TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

A. The Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least ten (10) working days in advance of proposed performance of any work by the Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such ten (10)-day notice, the Railroad Representative will determine and inform the Contractor whether a flagman need be present and whether the Contractor need implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by the Railroad, such services will be provided at Contractor's expense with the understanding that if the Railroad provides any flagging or other services, the Contractor shall not be relieved of any of its responsibilities or liabilities set forth herein. Contractor shall promptly pay to Railroad all charges connected with such services within thirty (30) days after presentation of a bill.

B. The rate of pay per hour for each man will be the prevailing hourly rate in effect for an eight hour day for the class of men 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 on the day of execution of this agreement. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays; 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 Contractor shall pay on the basis of the new rates and charges.

C. Reimbursement to the Railroad will be required covering the full eight hour day during which any flagman is furnished, unless he 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 said flagman following his 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 Contractor 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 Contractor 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 Contractor will still be required to pay flagging charges for the five (5)-day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to the Railroad if flagging service are needed again after such five day cessation notice has been given 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 the 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 the Railroad without liability to the Contractor or to any other party for compensation or damages.

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

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

A. The 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 the Railroad, including without limitation, the operations of the 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 the 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 the Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.

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

Section 4. LIENS.

The Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. The 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 the Railroad for any such work performed. The Contractor shall indemnify and hold harmless the 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 the Contractor fails to promptly cause any lien to be released of record, the 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 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. Contractor 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 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. The 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, the Contractor shall indemnify, defend and hold the Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of the Contractor, its contractor, agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/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, the 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 the Contractor. The Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. The Contractor shall at a minimum comply with the Railroad's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by the Railroad's own forces. As a part of the Contractor's safety responsibilities, the Contractor shall notify the Railroad if the Contractor determines that any of the Railroad's safety standards are contrary to good safety practices. The Contractor shall furnish copies of **Exhibit D** to each of its employees before they enter on the job site.

B. Without limitation of the provisions of paragraph A above, the 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. The 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. The Contractor shall promptly notify the Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. The Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of the 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 the Railroad, the Contractor shall deliver to the Railroad a copy of the Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require the 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, the Contractor shall indemnify, defend and hold harmless the Railroad, its affiliates, and its and their officers, agents and employees ("Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, the Contractor, or any employee of the Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by the Contractor, or (ii) any act or omission of the Contractor, its officers, agents or employees, or (iii) any breach of this agreement by the 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. The Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by the Contractor's own employees. The Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Railroad under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.

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

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E. The provisions of this Section 8 shall survive the completion of any work performed by the 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 the Contractor may have to any Indemnified Party by statute or under common law.

Section 9. RESTORATION OF PROPERTY.

In the event the Railroad authorizes the Contractor to take down any fence of the Railroad or in any manner move or disturb any of the other property of the Railroad in connection with the work to be performed by Contractor, then in that event the 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. The 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 the Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by the Contractor shall in no way impair the right of the 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 the Contractor and the Railroad. This agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between the Contractor and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by the Contractor.

Section 12. ASSIGNMENT - SUBCONTRACTING.

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

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

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

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

- A. Commercial General Liability insurance.** This insurance shall contain broad form contractual liability with a single limit of at least \$1,000,000 each occurrence or claim and an aggregate limit of at least \$5,000,000. Coverage must be purchased on a post 1998 ISO or equivalent form, including but not limited to coverage for the following:
- Bodily injury including death and personal injury
 - Property damage
 - Fire legal liability (Not less than the replacement value of the portion of the premises occupied)
 - Products and completed operations

The policy shall also contain the following endorsements **which shall be indicated on the certificate of insurance:**

- "For purposes of this insurance, Union Pacific Railroad payments related to the Federal Employers Liability Act or a Union Pacific Wage Continuation Program or similar programs are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law."
- The exclusions for railroads (except where the Job site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.
- Coverage for Contractor's (and Railroad's) employees shall not be excluded
- Waiver of subrogation

- B. Business Automobile Coverage insurance.** This insurance shall contain a combined single limit of at least \$5,000,000 per occurrence or claim, including but not limited to coverage for the following:

- Bodily injury and property damage
- Any and all motor vehicles including owned, hired and non-owned

The policy shall also contain the following endorsements **which shall be indicated on the certificate of insurance:**

- "For purposes of this insurance, Union Pacific Railroad payments related to the Federal Employers Liability Act or a Union Pacific Wage Continuation Program or similar programs are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law."

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- The exclusions for railroads (except where the Job site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.
- Motor Carrier Act Endorsement- Hazardous materials clean up (MCS-90) if required by law.

C. Workers Compensation and Employers Liability insurance including but not limited to:

- Contractor's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement
- Employers' Liability (Part B) with limits of at least
\$500,000 each accident, \$500,000 disease policy limit
\$500,000 each employee

If Workers Compensation insurance will not cover the liability of Contractor in states that require participation in state workers' compensation fund, Contractor shall comply with the laws of such states. If Contractor is self-insured, evidence of state approval must be provided along with evidence of excess workers compensation coverage. Coverage shall 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 shall also contain the following endorsement **which shall be indicated on the certificate of insurance:**

- Alternate Employer Endorsement

D. Umbrella or Excess Policies In the event Contractor utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.

E. Railroad Protective Liability insurance naming only the Railroad as the insured with a combined single limit of \$2,000,000 per occurrence with a \$6,000,000 aggregate. The policy shall be broad form coverage for "Physical Damage to Property" (ISO Form CG 00 35 07 98 or equivalent). A binder stating the policy is in place must be submitted to the Railroad until the original policy is forwarded to the Railroad.

Other Requirements

- F.** Contractor agrees to waive its right of recovery, and its insurers, through policy endorsement, agree to waive their right of subrogation against Railroad. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under its care, custody and control. Contractor's insurance shall be primary with respect to any insurance carried by Railroad. All waivers of subrogation **shall be indicated on the certificate of insurance.**
- G.** All policy(ies) required above (excluding Workers Compensation) shall provide severability of interests and shall name Railroad as an additional insured. **Severability of interest and naming Railroad as additional insured shall be indicated on the certificate of insurance.**
- H.** Prior to commencing the Work, Contractor shall furnish to Railroad original certificate(s) of insurance evidencing the required coverage, endorsements, and amendments. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to

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notify Railroad in writing of any cancellation or material alteration. **Upon request from Railroad, a certified duplicate original of any required policy shall be furnished.**

- I. Any insurance policy shall be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- J. Contractor **WARRANTS** that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement and acknowledges that Contractor's insurance coverage will be primary.
- K. The fact that insurance is obtained by Contractor or Railroad on behalf of Contractor shall 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 shall not be limited by the amount of the required insurance coverage.

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EXHIBIT D TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**MINIMUM SAFETY REQUIREMENTS**

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

I. Clothing

- A. All employees of the 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, the 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

The 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 the contractor's or subcontractor'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)
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- (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

The 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. Contractors must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. The Contractors 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 the Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of the Contractor's equipment is unsafe for use, the Contractor shall remove such equipment from the Railroad's property. In addition, the Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
 - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

- A. The Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.

- B. The 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 the 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.

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