

UP Real Estate Folder No.: [REDACTED]

Agreement Number: [REDACTED]

PEDESTRIAN OVERPASS AND TRAIL AGREEMENT
(PINOLE SHORES TO BAYFRONT PARK OVERPASS AND TRAIL)
DOT NO. 441041W
MILE POST 19.62 – 19.93 – MARTINEZ SUBDIVISION
PINOLE, CONTRA COSTA COUNTY, CALIFORNIA

THIS AGREEMENT (this "Agreement") is made and entered into as of the _____ day of _____, 20__ (the "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 **EAST BAY REGIONAL PARK DISTRICT**, a California special district, to be addressed at P.O. Box 5381, Oakland, California 94605-0381 (the "District"),

RECITALS:

The District desires to undertake as its project (the "Project") the construction of a new grade separated pedestrian overpass structure (the "Structure") and associated longitudinal recreational trail (the "Trail") over or along (as applicable) the Railroad's track(s) at or near Railroad's Milepost 19.62 through Milepost 19.93, DOT Number 441041W on Railroad's Martinez Subdivision at or near Pinole, Contra Costa County, California (the "Project Area"). The general location of the Project Area is shown on the railroad location print marked **Exhibit A** and the survey print marked **Exhibit A-1**, attached hereto and hereby made a part hereof. The type, size and location prints of the Structure are marked **Exhibit A-2**, attached hereto and hereby made a part hereof. The term "Trail" shall also include all Trail appurtenances such as, but not limited to, all applicable fencing, warning signs, pedestrian and bicycle control facilities and other related improvements that are included as part of the Plans (defined below).

The Railroad and the District 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. RAILROAD GRANTS EASEMENT AND TEMPORARY RIGHTS

A. For good and valuable consideration, which includes the payment of **TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00)** by the District to the Railroad for the Drainage Easement (defined below), and in further consideration of the District's agreement to perform and comply with the terms of this Agreement, the Railroad shall execute and deliver to

the District, and the District shall accept, an easement deed in the form marked **Exhibit G**, attached hereto and hereby made a part hereof (the "Easement Deed"), granting the District a nonexclusive: (i) aerial easement (the "Aerial Easement") at or above a plane parallel with and (a) twenty-three (23) feet six (6) inches above the top of the rail of the highest of Grantor's trackage facilities located on the portion of Project Area on the Railroad's property between bent 2 and bent 5 of the Structure, as such bents are more particularly shown on the Plans, and (b) five (5) feet eight (8) inches above the top of the rail of the highest of Grantor's trackage facilities running parallel to the portion of the Project Area on the Railroad's property between bent 8 and bent 13 of the Structure as such bents are more particularly shown on the Plans, as such areas are more particularly described in **Exhibit A-3**, attached hereto and made a part hereof (collectively, the "Aerial Easement Area"), for the purposes of constructing, reconstructing, maintaining, repairing, replacing and using, and allowing the District's invitees to use, the Structure; (ii) surface and subsurface support easement on, over and under a portion of the Aerial Easement Area, as such areas are more particularly described in **Exhibit A-4**, attached hereto and made a part hereof (the "Surface Easement Area"), for the purposes of constructing, reconstructing, maintaining, repairing and replacing the support column and structures necessary to support and protect the Structure (collectively, with the Structure, the "Bridge"); (iii) longitudinal, surface easement (the "Trail Easement") over and across a portion of the Railroad's property, as more particularly described in **Exhibit A-5**, attached hereto and made a part hereof (the "Trail Easement Area"), for the purposes of constructing, reconstructing, maintaining, repairing, replacing and using, and allowing the District's invitees to use, the Trail; and (iv) drainage easement (the "Drainage Easement") on, over and under a portion of the Railroad's property, as such areas are more particularly described in **Exhibit A-6**, attached hereto and made a part hereof (the "Drainage Easement Area" and together with the Aerial Easement Area, Surface Easement Area and Trail Easement Area, collectively, the "Easement Areas"), for the purposes of (1) constructing, reconstructing, maintaining, repairing, operating, removing and replacing drainage facilities, with any such replacement to be of similar facilities of the same size and function as the facilities to be initially installed, and (2) draining water through such drainage facilities and across the Railroad's property. The Railroad shall deliver the Easement Deed within fifteen (15) days after the Railroad's receipt of the monetary consideration for the Drainage Easement set forth in this Section 2A.

B. For purposes of this Agreement and the grant of the Aerial Easement and the Trail Easement contemplated hereunder, use of the Bridge and the Trail (collectively, the "Pinole Improvements") by the District and/or the District's invitees shall be limited to pedestrians, bicyclists, equestrians, emergency and patrol vehicles and light maintenance trucks operated by the District. The District shall not use or permit the use of the Pinole Improvements and/or the Easement Areas or any part thereof for any purpose other than the purposes expressly stated herein.

C. For and in consideration of **ONE HUNDRED TWELVE THOUSAND AND NO/100 DOLLARS (\$112,000.00)**, the Railroad hereby grants to the District temporary construction rights to use the portion of the Railroad's property shown and described on **Exhibit A-7**. The District's use of such property shall be subject to the terms and conditions of this Agreement and the obligation of the District and its Contractors to comply with such provisions. The temporary construction rights granted herein shall commence as of the later date of the Railroad's approval of the Plans or the issuance of the CROE Agreement (as defined

below) and continue for a period of twelve (12) months, or until the Project has been completed, whichever occurs earlier.

Section 3. DEFINITION OF CONTRACTOR

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

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

A. Prior to Contractor performing any work on the Railroad's property involving the Project, and any subsequent maintenance or repair work, the District shall require the Contractor to:

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

B. The Railroad's current form of the CROE Agreement is marked **Exhibit E**, attached hereto and hereby made a part hereof. The District confirms that it will inform its Contractor that it is required to execute such form of agreement and obtain the required insurance before commencing any work on any Railroad property. Under no circumstances will the Contractor be allowed on the Railroad's property without first executing the CROE Agreement, obtaining the insurance set forth therein and providing to the Railroad the insurance policies, binders, certificates and/or endorsements described therein.

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

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

D. In addition to the insurance coverage the District's Contractor is required to obtain pursuant to the CROE Agreement, the District 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. The

insurance to be procured and maintained by the District hereunder shall not be permitted to expire or be canceled unless thirty (30) days prior written notice is provided to the Railroad, and the District shall notify the Railroad of any cancellation, suspension or nonrenewal within seven (7) days of the District's receipt of notice from the insurance company to that effect. Subject to the Railroad's prior review and approval (which approval shall be in the Railroad's sole discretion), the District may self-insure all or a portion of the insurance coverage required to be maintained by the District pursuant to **Exhibit F**.

Section 5. FEDERAL AID POLICY GUIDE

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

Section 6. CONTRIBUTION TO THE PROJECT BY RAILROAD

In connection with the Project, the Railroad agrees to contribute to the District an amount equal to Two Million Thirty Thousand Five Hundred and no/100 Dollars (\$2,030,500.00) (the "Contribution Amount"). The Contribution Amount shall be due and payable to the District within thirty (30) days after the later of: (A) the date of completion of the initial construction of the Pinole Improvements (the "Pinole Date of Completion") and the Railroad's receipt of "as constructed" Plans of the Pinole Improvements in accordance with Section 8F below; (B) the date that the District (i) completes the Wilson Point Mitigation Obligations (as defined in the MOU (defined below)), (ii) prepares a complete permit application to the the S.F. Bay Conservation and Development Commission and (iii) completes any maintenance and/or repairs identified by the Railroad during the Railroad's inspection of the Wilson Point Mitigation Obligations, as more particularly contemplated in Section 5.4B of the MOU; (C) full payment by the District to the Railroad of any and all Railroad invoices in accordance with Section 7 below; and (D) the date that the District submits to the Railroad an invoice for the Contribution Amount. The Railroad's inspection of the Wilson Point Mitigation Obligations contemplated in (B) above shall occur concurrently with the Railroad's final inspection in connection with the initial construction of the Pinole Improvements. The Railroad shall not be required to contribute any additional funding to the Project (other than the Contribution Amount) and shall not be responsible for any Project costs and expenses.

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

A. The work to be performed by the Railroad in connection with the Project, at the District's sole cost and expense, is described in the Railroad's Summary Estimate Sheet dated October 16, 2015, and marked **Exhibit C**, attached hereto and hereby made a part hereof (the "Estimate"). As set forth in the Estimate, the Railroad's estimated cost for the Railroad's work associated with the Project is Three Hundred Ninety-One Thousand Nine Hundred Thirty and no/100 Dollars (\$391,930.00).

B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the District in the event the District does not commence construction on the portion of the Project located on the Railroad's property within six (6) months after the date of the Estimate.

C. Intentionally deleted.

D. The Railroad shall send progressive billings to the District during the Project, and a final billing to the District within one hundred eighty (180) days after receiving written notice from the District that all Project work affecting the Railroad's property has been completed.

E. The District agrees to reimburse the Railroad within thirty (30) days after 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/inspection (but not including any preliminary engineering costs incurred by the 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 Railroad's standard additive rates. The standard additive rates shall be subject to upward or downward adjustment based on industry standards and practices, and the parties acknowledge and agree that any such adjustment to standard additive rates may be made retroactively.

Section 8. PLANS

A. The District and the Railroad have approved the designs, plans and specifications for the Project (which includes the Pinole Improvements) at the design completion level of _____ percent (___%). The cover sheets (dated and initialed by both the District and the Railroad) for the approved _____ percent (___%) designs are attached to this Agreement as part of **Exhibit A-2**, and by and through such attachment the entire design set is incorporated herein by reference.

B. The District shall submit to the Railroad for its review and approval (at the District's sole cost and expense) the designs, plans and specifications for the Project (which includes the Pinole Improvements) at the one hundred percent (100%) design completion level. The designs, plans and specifications shall include all appurtenances, associated drainage, fencing, shoring, sheeting and excavations for bents and/or abutments next to or adjacent to the Railroad's tracks. Approval by the Railroad of any designs, plans and/or specifications shall not be deemed to have been given until the Railroad's Assistant Vice President Engineering-Design ("VP Engineering-Design") (or the VP Engineering-Design's authorized representative) has initialed or signed such designs, plans and/or specifications.

C. The Railroad shall have the right to review and approve or disapprove all designs and plans and specifications and proposed changes thereto for the Project (including, without limitation, subsequent iterations of the designs, plans and specifications), with respect to, *inter alia*, compliance with the standards below. The Railroad's scope of review shall include, *inter alia*, determining whether (i) the designs, plans and specifications (preliminary and final) and/or changes meet all applicable then-current Railroad standards and requirements, including, without

limitation, American Railway Engineering and Maintenance of Way Association ("AREMA") standards and guidelines, as applicable; (ii) the designs, plans and specifications (preliminary and final) and/or changes meet the terms and conditions of the Railroad's then-existing agreements with third parties, and do not otherwise adversely impact the use or condition of the Railroad's property; and (iii) there will be any interference with or danger to the Railroad's property or the Railroad's common carrier freight rail operations, during or after completion of the Project.

D. The final, detailed one hundred percent (100%) designs, plans and specifications for the Project (which includes the Pinole Improvements), as approved by the Railroad in accordance with this Agreement, are hereinafter referred to as the "Plans" and are made a part of this Agreement by reference. No Project work may commence on the Railroad's property until the Plans have been approved by the Railroad.

E. Once approved by the Railroad, no changes in the Plans, to the extent such changes affect the Railroad's property or operations, can be made unless and until the Railroad has consented to such changes in writing in accordance with this Agreement.

F. Upon completion of the Pinole Improvements, the District, at its expense, shall furnish to the Railroad two (2) sets of reproducible "as constructed" plans of the Pinole Improvements.

G. The Railroad's review and approval of the Plans in no way relieves the District from its responsibilities, obligations and/or liabilities under this Agreement, and the Railroad's review and approval of the Plans 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 District or its Contractor on the Plans is at the risk of the District and/or its Contractor, respectively. Notwithstanding anything contained in this Agreement to the contrary, the Railroad's review will be performed solely for its own purposes and benefit, and the Railroad shall not be deemed to be liable to the District or any other party for defects in the Plans.

Section 9. NON-RAILROAD IMPROVEMENTS

A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocation, replacing, removing and abandoning in place all non-railroad owned facilities (the "Non Railroad Facilities") affected by the Project including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required under Section 8. The Non Railroad Facilities plans and specifications shall comply with Railroad's standard specifications and requirements, including, without limitation, 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 District mutually agree in writing to (i) deem the approved Non Railroad Facilities plans and specifications to be Plans pursuant to Section 8D, (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 District, 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 District 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 Pinole Improvements remain on the Railroad's property.

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

C. If the Agreement is terminated as provided above, or for any other reason, the District 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 Project plans.

Section 12. FENCING; NO TRESPASSING

As contemplated by the Plans and as part of the initial construction of the Project, the District shall install a durable fence in accordance with the fence guidelines set forth in Section 2.4B of the MOU. "No Trespassing" signs shall be posted every 500 feet along the Trail. All advisory and regulatory signs on the Trail shall be in compliance with the Manual on Uniform Traffic Control Devices (MUTCD) and the American Association of State Highway and Transportation Officials (AASHTO) standards and guidelines. The District's police officers with lawful citation authority shall patrol the Pinole Improvements and shall take action to deter and reduce any incidents of trespassing onto the Railroad's property by users of the District's park lands, in accordance with the District's standard procedures for all of its park lands.

Section 13. MONITORING AND MITIGATION OBLIGATIONS

The District and the Railroad agree to continually assess and monitor the public's use of the Pinole Improvements in accordance with the terms of this Agreement and shall reasonably cooperate to address any safety concerns posed by the use of the Pinole Improvements by users of the District's park lands, including without limitation, mitigating and deterring incidents of trespass by such users on the Railroad's property. 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 Section 8 above, the Railroad shall have the right to review and approve plans for any improvements to be constructed or installed on the Railroad's property as part of any mitigation strategy adopted by the parties under this Section 13.

Section 14. CONDITIONS TO BE MET BEFORE DISTRICT CAN COMMENCE WORK

Neither the District nor the Contractor may commence any work on the Railroad's property until:

- (i) The Railroad and the District have executed this Agreement.
- (ii) The Railroad has provided to the District the Railroad's written approval of the Plans.
- (iii) Each Contractor has executed the CROE Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements required under the CROE Agreement.
- (iv) Each Contractor has given the advance notice(s) required under the CROE Agreement to the Railroad's representative named in the CROE Agreement.
- (v) A preconstruction meeting is held with the Railroad Project Representative named in **Exhibit D** of this Agreement.
- (vi) The District has procured the insurance required under Section 4D above.

Section 15. FUTURE PROJECTS

Future projects involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the Pinole Improvements that may impact or threaten the Railroad's operations or property shall not commence until the Railroad and the District agree on the plans for such future projects, cost allocations, right of entry terms and conditions and temporary construction rights, terms and conditions.

Section 16. ASSIGNMENT; SUCCESSORS AND ASSIGNS

A. The District shall not assign this Agreement without the prior written consent of the Railroad, which consent shall be the Railroad's sole and absolute discretion.

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 District.

Section 17. FEDERAL FUNDING

If the District will be receiving any federal funds for the Project, the District agrees that it is solely responsible for performing and completing all requirements, including, without limitation, 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 District also confirms and acknowledges that (A) the Railroad shall provide to the District 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 District to perform and complete any such reporting requirements in connection with any federal funding. The Railroad confirms that the District shall have the right to audit the Railroad's billing and documentation for the Project as provided in Section 9 of **Exhibit B** of this Agreement.

Section 18. LIABILITY

The District, for itself and its successors and assigns, acknowledges that its use and occupancy of the Easement Areas is at the District's own risk, and the District agrees to and does assume all risks thereof and incidental thereto, including without limitation, risks incident to train operations within the Railroad's right of way. The District acknowledges that such use of the Easement Areas for the purposes set forth herein will subject the Railroad's property and operations to additional hazards and liability; and as material consideration for this Agreement, the District, to the extent permitted by law, shall save, protect, defend, indemnify and hold harmless the Railroad, and its respective affiliates, and their respective officers, agents and employees, 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 the Railroad or the District 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 the Railroad, the District or any Contractor as well as other property). The District's obligation to indemnify shall accrue when such injury, death, loss or damage occurs or arises from the presence or use of the Pinole Improvements, the trespass upon the Railroad's adjacent right of way and trackage by the District, its agents, employees, Contractors, or invitees or permitted users or a breach of this Agreement. The District agrees that it will not raise either the California worker's compensation statutes, nor the Government Tort Claims Act, as a defense to any claim of indemnity by the Railroad pursuant to the terms of this Agreement.

Section 19. RAILROAD PROXIMITY COVENANT

A. The District acknowledges that the Railroad property surrounding the Easement Areas is dedicated and used for railroad purposes, that railroad operations may create noise, vibrations, emissions, fumes and odors twenty-four (24) hours a day, and that the amount, nature and intensity of railroad operations may increase or change (the "Permitted Effects"). The District

accepts use of the Easement Areas subject to the existence of the Permitted Effects. By acceptance of the Easement Deed, the District agrees that, at the District's sole cost and expense, as part of the development of the Pinole Improvements, the District, to the extent applicable, shall design and install and/or construct and thereafter maintain improvements to reduce or limit the Permitted Effects and to comply with all governmental requirements, if any, which may be imposed as a condition to the construction of the Pinole Improvements because of the Permitted Effects.

B. The District shall not, and hereby waives all rights to institute legal proceedings against the Railroad to reduce or lessen the Permitted Effects. In the event that the District breaches such covenant, the District shall reimburse the Railroad for all costs incurred by the Railroad to comply with any such orders arising from any such legal proceedings, including without limitation, attorney fees and court costs.

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

UNION PACIFIC RAILROAD COMPANY, a
Delaware corporation

By _____
Printed Name: _____
Title: _____

EAST BAY REGIONAL PARK DISTRICT, a
California special district

By _____
Printed Name: _____
Title: _____

APPROVED AS TO FORM:

District Counsel, EBRPD

**EXHIBIT A
TO
PEDESTRIAN OVERPASS AND TRAIL AGREEMENT**

Railroad Location Print—Project Area

(see attached)

**EXHIBIT A-1
TO
PEDESTRIAN OVERPASS AND TRAIL AGREEMENT**

Survey Print—Project Area

(see attached)

EXHIBIT A-2
TO
PEDESTRIAN OVERPASS AND TRAIL AGREEMENT

Type, Size and Location Prints of the Structure

(see attached)

EXHIBIT A-3
TO
PEDESTRIAN OVERPASS AND TRAIL AGREEMENT

Aerial Easement Area Legal Description

The area that is expressly limited vertically at or above a plane parallel with and twenty-three (23) feet six (6) inches above the top of the rail of the highest of Grantor's trackage facilities located on the portion of Project Area on the following Railroad property:

[Insert metes and bounds description for Parcel 3.]

The area that is expressly limited vertically at or above a plane parallel with and five (5) feet eight (8) inches above the top of the rail of the highest of Grantor's trackage facilities running parallel to the portion of the Project Area on the following Railroad property:

[Insert metes and bounds description for Parcel 4.]

**EXHIBIT A-4
TO
PEDESTRIAN OVERPASS AND TRAIL AGREEMENT**

Support Easement Area Legal Description

[Insert metes and bounds legal description for Parcels 2, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14.]

**EXHIBIT A-5
TO
PEDESTRIAN OVERPASS AND TRAIL AGREEMENT**

Trail Easement Area Legal Description

[Insert metes and bounds description for Parcel 1.]

**EXHIBIT A-6
TO
PEDESTRIAN OVERPASS AND TRAIL AGREEMENT**

Drainage Easement Area Legal Description

**EXHIBIT A-7
TO
PEDESTRIAN OVERPASS AND TRAIL AGREEMENT**

Temporary Construction Area Legal Description

EXHIBIT B
TO
PEDESTRIAN OVERPASS AND TRAIL AGREEMENT

SECTION 1 - CONDITIONS AND COVENANTS

A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The District shall not use or permit use of the Easement Areas for any purposes other than those described in this Agreement. Without limiting the foregoing, the District shall not use or permit use of the Easement Areas for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the Railroad's property by or under authority of the District for the purpose of conveying electric power or communications incidental to the District's use of the property as set forth herein shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not to adversely affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. Except as provided in Section 2 of this Agreement, no nonparty shall be admitted by the District to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent, which, if granted, may be subject to such terms and conditions as the Railroad, in the Railroad's sole discretion, may deem to be necessary or convenient.

B. To the extent the same with not interfere with the District's use of the Easement Areas, the Railroad reserves the right to cross the Easement Areas with such railroad tracks as may be required for its convenience or purposes.

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

D. The Railroad reserves the right to use and to grant to others the right to use the Easement Areas for any purpose not inconsistent with the rights hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property and the right to cross the Easement Areas with all kinds of equipment. Without limiting the foregoing, the Railroad shall have access across the Trail Easement Area to service its tracks and maintain its slopes and shall not be responsible for any damage to the Trail Easement Area caused by the Railroad's reasonable and responsible activities related to such maintenance. The Railroad further reserves the right to attach signal, communication or power lines to the Bridge, provided that such attachments shall comply with the District's specifications and will not interfere with the District's use of the Easement Areas.

E. So far as it lawfully may do so, the District 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 Easement Areas, excepting taxes levied upon and against the property as a component part of the Railroad's operating property.

F. If any property or rights other than the rights hereby granted are necessary for the construction, maintenance and use of the Pinole Improvements and their appurtenances, or for the performance of any work in connection with the Project, the District will acquire all such other property and rights at its own expense and without expense to the Railroad.

SECTION 2 - CONSTRUCTION OF PINOLE IMPROVEMENTS

A. The District, 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 District, at its expense, will furnish all necessary labor, material and equipment, and shall construct and complete the Pinole Improvements 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 Pinole Improvements and the Railroad's adjacent property and/or tracks, as applicable. Upon completion of the Project, the District shall remove from the Railroad's property all temporary structures and false work, and will leave the Easement Areas and the Railroad's property in a condition satisfactory to the Railroad.

C. All construction work of the District upon the Railroad's property (including, but not limited to, construction of the Pinole Improvements and all appurtenances and all related and incidental work) shall be performed and completed in a manner reasonably 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 any other guidelines furnished by the Railroad.

D. All construction work of the District 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 District. The District 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 District and/or the Contractor.

SECTION 3 - INJURY AND DAMAGE TO PROPERTY

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

SECTION 4 - RAILROAD MAY USE CONTRACTORS TO PERFORM WORK

The Railroad may contract for the performance of any of its work by other than railroad forces. The Railroad shall notify the District 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 District shall reimburse the Railroad for the amount of the contract.

SECTION 5 - MAINTENANCE AND REPAIRS

The District, at its expense, shall maintain, repair and renew, or cause to be maintained, repaired and renewed, the Pinole Improvements, including, but not limited to, (A) the superstructure, substructure, piers, abutments, walls, approaches and all backfill, grading and drainage required by reason of the Bridge and/or Trail, as applicable, (B) the Trail and (C) graffiti removal or overpainting and trash removal involving the Pinole Improvements. The District shall manage, maintain and repair the Pinole Improvements in good condition and repair so that (i) the Railroad's adjacent land will not be damaged and/or (ii) no user of the Pinole Improvements will incur injury or death, due to the use of the Pinole Improvements.

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 District 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 District 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 District shall include work both within and outside of the Railroad's property.

B. **Entry on to Railroad's Property by District.** If the District's employees need to enter the Railroad's property in order to perform an inspection of the Pinole Improvements, minor maintenance or other activities directly related thereto, the District shall first provide at least ten (10) working days advance notice to the Railroad's representative. With respect to such entry on to Railroad's property, the District, 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 District's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of the District's employees on the Railroad's property under this Paragraph B, except to the extent that any Loss is caused by the sole direct negligence of Railroad.

C. **Flagging.**

(i) If the District's employees need to enter the Railroad's property as provided in Paragraph B above, the District agrees to notify the Railroad's representative at least thirty (30) working days in advance of the proposed performance of any work by the District 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 flagman is provided to watch for trains. Upon receipt of such thirty (30) day notice, the Railroad's representative will determine and inform the District whether a flagman needs to be present and whether the District needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by the Railroad, the Railroad will bill the District for such expenses incurred by the Railroad. If the Railroad performs any flagging, or other special protective or safety measures are performed by the Railroad, the District agrees that the District is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

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

(iii) 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 District 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 District 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 District 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 (5) day cessation notice has been given to the Railroad.

D. **Compliance With Laws.** The District shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The District shall use only such methods as are consistent with safety, both as concerns the District, the District's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The District (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the District 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 District 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 District 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 District shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.

F. **Supervision.** The District, at its own expense, shall adequately police and supervise all work to be performed by the District, 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 District for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the Railroad's approval of any 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 District with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the District will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.

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

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

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

J. **Excavation.** All excavation work shall be done in accordance with the Plans. The District 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 District 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 District, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the District 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 District, at the District's own expense, shall provide and maintain suitable facilities for draining the Pinole Improvements and their appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The District, at the District'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 District, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or the property of others. The District shall not obstruct or interfere with existing ditches or drainage facilities.

L. **Notice.** Before commencing any work to be performed by the District (as opposed to a Contractor), the District shall provide the advance notice that is required under the CROE Agreement.

M. **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. The District 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 District. If it is, the District will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements

for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

SECTION 7 - INTENTIONALLY DELETED

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 property or facilities.

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, upon advance written notice delivered to the Railroad and during normal business hours by the agents and authorized representatives of the District for a period of three (3) years following the date of the Railroad's last billing sent to the District.

SECTION 10 - REMEDIES FOR BREACH OR NONUSE

A. If the District 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 Pinole Improvements and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the District will reimburse the Railroad for the expenses thereof.

B. Nonuse by the District of the Easement Areas for the purposes set forth herein 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 District hereunder. If the District's nonuse of the Easement Areas for a period of time is due to a Force Majeure Event, then such period of nonuse attributable to such Force Majeure Event shall not be used to calculate the eighteen (18) month period set forth herein. As used herein, "Force Majeure Event" shall mean any occurrence beyond the District's reasonable control and/or beyond the reasonable control of its vendors and Contractors, including without limitation, a riot, insurrection, act of terrorism or war, strikes or lockouts, freight embargoes, inability to procure critical materials, fire, earth movement, earthquake, flood, cloudburst, tornado or other phenomena of nature beyond the power of a party to foresee, accidents, or other unforeseeable circumstances (such as encountering historical artifacts or burial grounds). A rain, windstorm or other natural phenomenon of normal intensity, based on U.S. Weather Bureau reports for a particular locality and for the particular season of the year during which the subject work is being prosecuted, shall not be deemed a Force Majeure Event.

C. The District will surrender peaceable possession of the Easement Areas and Pinole Improvements 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 District 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 District shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof and that certain Amended and Restated Memorandum of Understanding dated _____, 2016 by and between the District and the Railroad (the "MOU") constitute the entire understanding between the District 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. To the extent that any terms or provisions of the MOU are inconsistent with the terms and provisions set forth in this Agreement, such terms and provisions set forth in the MOU shall be deemed superseded by this Agreement with respect to the Project to the extent of such inconsistency. Notwithstanding the foregoing, the terms of Section 7.9 of the MOU shall control over inconsistent terms of this Agreement for as long as the MOU is in effect with respect to the Project (as provided in the MOU).

**EXHIBIT C
TO
PEDESTRIAN OVERPASS AND TRAIL AGREEMENT**

**UNION PACIFIC RAILROAD COMPANY
SUMMARY ESTIMATE SHEET**

Date of Estimate: 01/14/16

Location: Pedestrian Overpass Agreement
Railroad Mile Post 19.79
US DOT Crossing No. 441041W
Martinez Subdivision
Pinole, Contra Costa County, California

Project: Construct Pedestrian Overcrossing over Railroad Tracks

ESTIMATE:

Flagging (250 days at \$1,500. Per 12 hour day, weekday)*:	\$375,000.
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Flagging (2 days at \$1,900. Per 12 hour day, weekend)*:	\$3,800.
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Engineering Inspection/Review:	\$15,000.
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Contingency (10%):	\$39,380.
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Total Cost Estimate:	\$433,180.
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* Assumes a Contractor work day of 8 hours.

EXHIBIT D
TO
PEDESTRIAN OVERPASS AND TRAIL AGREEMENT
RAILROAD COORDINATION REQUIREMENTS

1.01 DEFINITIONS

- Agreement: Agreement that has been signed, or will be signed, between Railroad and the District covering the construction and maintenance of the Project.
- District: East Bay Regional Park District
- AREMA: American Railway Engineering and Maintenance-of-way Association
- Contractor: The contractor or contractors hired by the District to perform any project work on any portion of the Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.
- MUTCD: Manual on Uniform Traffic Control Devices
- Project: District's Project Number _____ covering

- 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 the 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 District. All submittals and work shall be completed in compliance with these Requirements, the Railroad's guidelines and requirements, AREMA recommendations and/or as directed by the Railroad Project Representative and/or the Railroad MTM Representative.

1.03 UPRR CONTACTS

The Railroad Project Representative for this project is:

Kevin A. Yoder

9451 Atkinson Street, Roseville, CA 95747

(916) 789-5152

E-mail: kayoder@up.com

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

Justin D. Rogers

33 Bridgehead Road, Martinez, CA 94553

(402) 676-9562

E-Mail: jdrogers@up.com

1.04 PLANS / SPECIFICATIONS

The plans and specifications for the Project, affecting the Railroad, are subject to the written approval by the Railroad. Changes in the plans made after the execution of this Agreement and/or the awarding of the Project to the Contractor are subject to the prior review and written approval of the District 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 District's and/or the Contractor's plans in no way relieves the District and the Contractor from their responsibilities, obligations and/or liabilities under this Agreement, District's agreement with the Contractor for the Project and/or in the separate Contractor's Right of Entry Agreement referenced in Section 1.08 below. The 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 the District's and/or the Contractor's plans and that any reliance by the District or the Contractor with respect to such plans is at the risk of the District and the Contractor.

1.05 UTILITIES AND FIBER OPTICS

A. All installations shall be constructed in accordance with current AREMA recommendations and the Railroad's specifications and requirements. The Railroad's 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. The Railroad has no obligation to supply additional Railroad property for non-railroad facilities affected by the Project, nor does the Railroad have any obligation to permit non railroad facilities to be abandoned in place or relocated on the Railroad's property. Any facility and/or utility that

crosses the 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 the Railroad's 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 the Project will be at the District's expense.

1.06 GENERAL

A. It is essential that the proposed construction shall be performed without interference to the Railroad's operations and in compliance with all applicable Railroad and Federal Railroad Administration rules and regulations. The Railroad shall be reimbursed by the Contractor or the District for train delay costs and lost revenue claims due to any delays or interruption of train operations occurring outside of a scheduled work window and 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 the Railroad's operations.

C. Work windows for the Project shall be coordinated with the District or the 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 the 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 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 the 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. The Railroad 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 the Railroad's 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 **Exhibit E** of this Agreement, 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 the District 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 Railroad's operations. In the event such an order is given, the Contractor shall immediately notify the District 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 District 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 the Railroad's property and cleans the premises in a manner reasonably satisfactory to the Railroad.

1.10 RAILROAD SAFETY ORIENTATION

All personnel employed by the District, the Contractor and all subcontractors must complete the Railroad's course "Orientation for Contractor's Safety" and be registered prior to working on the Railroad's 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 the 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 District or the 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 District 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. The details of the construction affecting the Railroad tracks and property, not already included in the contract plans, shall be submitted by the District 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 the District, the 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 the 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 the 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 District 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 District or the 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 Project 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 tracks 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 the District'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 coordinate 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 the Contractor to access the project site. Alternative plans should be considered to avoid crossing Railroad tracks at grade.

1.21 RAILROAD FLAGGING

Performance of any work by the Contractor in which person(s) or equipment will be within twenty-five (25) feet of any track, or that any object or equipment extension (such as, but not limited to, a crane boom) will reach within twenty-five (25) feet of any track, require railroad flagging services or other protective measures. The Contractor shall give an advance notice to the Railroad as required in the Contractor's Right of Entry Agreement before commencing any such work, allowing the Railroad to determine the need for flagging or other protective measures which ensure the safety of the Railroad's operations, employees and equipment. The 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 is \$1,500 per day for a(n) 8-hour work day with time and one-half for overtime, Saturdays, Sundays; double time and one-half for holidays. Flagging rates 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).

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 of the Contractor's tools, implements and other materials whether brought upon the right-of-way by the Contractor or any subcontractors employee or agent of the 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 the 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
PEDESTRIAN OVERPASS AND TRAIL AGREEMENT**

**FORM OF CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT**

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

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 Railroad's Milepost _____ on Railroad's _____ [Subdivision] [Branch] [at or near DOT No. _____] located at or near _____, in _____ County, State of _____, as such location is in the general location shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof, which work is the subject of a contract dated _____ between Railroad and _____.

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

AGREEMENT:

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

ARTICLE 1 - DEFINITION OF CONTRACTOR.

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

ARTICLE 2 - RIGHT GRANTED; PURPOSE.

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the work described in the Recitals above. The right herein granted to

Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

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

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

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

A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.

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

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

ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.

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

ARTICLE 6 - TERM; TERMINATION.

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

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

ARTICLE 7 - CERTIFICATE OF INSURANCE.

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

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

Union Pacific Railroad Company

[Insert mailing address]

Attn: _____

Folder No. _____

ARTICLE 8 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.

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

ARTICLE 9- ADMINISTRATIVE FEE.

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

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

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

B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications, negligence, or any other reason arising from the Contractor's presence on the

Railroad's property, the Contractor agrees to assume liability for any civil penalties imposed upon the Railroad for such noncompliance.

ARTICLE 11-EXPLOSIVES.

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

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

UNION PACIFIC RAILROAD COMPANY

By: _____
Title: _____

(Name of Contractor)

By: _____
Title: _____

EXHIBIT A

Exhibit A will be a print showing the general location of the work site.

EXHIBIT B
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least thirty (30) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

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

C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which

could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days' notice prior to the cessation of the need for a flagman. If five (5) days' notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days' notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

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

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

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

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

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

Section 4. LIENS.

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

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

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

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

Section 6. PERMITS - COMPLIANCE WITH LAWS.

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

Section 7. SAFETY.

A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in

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

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

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

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

Section 8. INDEMNITY.

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

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

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

Indemnified Parties under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.

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

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

Section 9. RESTORATION OF PROPERTY.

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

Section 10. WAIVER OF DEFAULT.

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

Section 11. MODIFICATION - ENTIRE AGREEMENT.

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

Section 12. ASSIGNMENT - SUBCONTRACTING.

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage; (2)

require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from

the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

Other Requirements

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

EXHIBIT D
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

MINIMUM SAFETY REQUIREMENTS

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

I. Clothing

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

Specifically, Contractor's employees must wear:

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

II. Personal Protective Equipment

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

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.

- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers
 - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
 -
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

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

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

IV. Equipment

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

- (iii) Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

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

- (v) Before stepping over or crossing tracks, look in both directions first.
 - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

**EXHIBIT F
TO
PEDESTRIAN OVERPASS AND TRAIL AGREEMENT**

RAILROAD'S INSURANCE REQUIREMENTS

Section 1. REQUIRED INSURANCE.

The District 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 District 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:

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

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

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

D. Railroad Protective Liability insurance. Consistent with the terms hereof, the 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. The Contractor shall provide this Agreement to the Contractor's insurance agent(s) and/or broker(s), and the 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 THE RAILROAD BEFORE THE WORK MAY COMMENCE AND UNTIL THE ORIGINAL POLICY IS FORWARDED TO UNION PACIFIC RAILROAD.

E. Umbrella or Excess insurance. If the District 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 this 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 the 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, the District 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 worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to the Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for the Railroad's negligence whether sole or partial, active or passive, and shall not be limited by the District's liability under the indemnity provisions of this Agreement.
- H.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement. The provisions of this Paragraph H regarding the deletion of the punitive damages exclusion shall only apply if permitted by the laws of the state where the Project is located.
- I.** The District waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J.** Concurrently with the execution of this Agreement, the District 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 Project is located.
- L.** The fact that insurance is obtained by the District will not be deemed to release or diminish the liability of the District, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by the Railroad from the District or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT G
TO
PEDESTRIAN OVERPASS AND TRAIL AGREEMENT

Form of Non-Exclusive Easement Deed

After Recording, Mail To:

(Space Above Reserved for County Recorder's Use)

UPRR Folder No.

EASEMENT DEED

THIS Easement Deed is made this _____ day of _____, 201_, between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Grantor"), and **EAST BAY REGIONAL PARK DISTRICT**, a California special district ("Grantee"), whose address is P.O. Box 5381, Oakland, California 94605-0381.

Grantor for good and valuable consideration, the receipt whereof are hereby confessed and acknowledged, grants to Grantee, its successors and assigns, a nonexclusive:

(a) permanent aerial easement ("Aerial Easement"), for the sole purpose of constructing, reconstructing, maintaining, repairing, replacing and using, and allowing the District's invitees to use, a pedestrian overpass structure (the "Overpass Structure") in accordance with the Plans (as such term is defined in the C&M Agreement (defined below)) at or above a plane parallel with and (i) twenty-three (23) feet six (6) inches above the top of the rail of the highest of Grantor's trackage facilities located on Grantor's real property between bent 2 and bent 5 of the Overpass Structure and (ii) five (5) feet eight (8) inches above the top of the rail of the highest of Grantor's trackage facilities running parallel to the portion of Grantor's real property between bent 8 and bent 13 of the Overpass Structure, as such real property is located at or near Grantor's Milepost 19.62 through Milepost 19.93 (DOT Number 441041W) on Grantor's Martinez Subdivision at or near Pinole, Contra Costa County, California and is legally described and depicted on **Exhibit A**, attached and by reference made a part of this Easement Deed (collectively, the "Aerial Easement Area");

(b) permanent surface and subsurface support easement (the "Support Easement") on and under Grantor's real property described and depicted on **Exhibit B** attached hereto and made a part hereof (the "Support Easement Area") for the sole purposes of constructing, reconstructing, maintaining, repairing and replacing the support column and structures (collectively with the Overpass Structure, the "Bridge"), in accordance with the Plans, all as are necessary to support and protect the Overpass Structure, together with rights of ingress to and

egress from the Support Easement Area in connection with constructing, reconstructing, maintaining, repairing and replacing the Bridge;

(c) permanent longitudinal, surface easement (the "Trail Easement") over and across a portion of Grantor's real property described and depicted on **Exhibit C** attached hereto and made a part hereof (the "Trail Easement Area"), for the sole purposes of constructing, reconstructing, maintaining, repairing, replacing and using, and allowing Grantee's invitees to use, a pedestrian trail (the "Trail" and together with the Bridge, collectively, the "Pinole Improvements"); and

(d) permanent drainage easement (the "Drainage Easement" and together with the Aerial Easement, Support Easement and Trail Easement, each, an "Easement" and collectively, the "Easements") on, over and under portions of Grantor's real property described and depicted on **Exhibit D** attached hereto and made a part hereof (the "Drainage Easement Area" and together with the Aerial Easement Area, Support Easement Area and Trail Easement Area, each, an "Easement Area" and collectively, the "Easement Areas"), for the sole purposes of (i) constructing, reconstructing, maintaining, repairing, operating, removing and replacing drainage facilities, with any such replacement to be of similar facilities of the same size and function as the facilities to be initially installed, and (ii) draining water through such drainage facilities and across Grantor's property.

The Aerial Easement, the Support Easement, the Trail Easement and the Drainage Easement, respectively, are granted for the purposes described above only. Without limitation of the foregoing, the grants hereunder do not include the right to install utilities of any nature, including, without limitation, fiber optic, cable television, electrical, gas or liquid distribution, or telephone lines. Use of the Pinole Improvements by Grantee and/or Grantee's invitees shall be limited to pedestrians, bicyclists, equestrians and light maintenance trucks operated by Grantee.

Grantor, its successors and assigns, reserves the right to construct at any and all times and to maintain railroad tracks and appurtenances, fiber optic or signal lines and facilities, pipe, telephone, and electric pole and wire lines, over, under and across the Easement Areas, but in such a way as to not interfere with Grantee's use of the Easements; it being understood that the rights so reserved by Grantor, its successors and assigns, are retained along with the general right of Grantor, its successors and assigns, to use the Easement Areas for any purpose not inconsistent with Grantee's use of the Easements, including, but not limited to any and all general railroad purposes.

The Easements are granted subject to the terms and conditions contained in that certain Pedestrian Overpass and Trail Agreement dated as of [REDACTED], 201 [REDACTED] (UPPR Folder No.: [REDACTED]) (the "C&M Agreement"), and all outstanding leases, licenses and other outstanding rights, including, without limitation, those for pipe, telephone, electric and fiber optic lines and the right of renewals and extensions of the same, and subject also to all conditions, limitations, restrictions, encumbrances, reservations or interests of any person that may affect the Easement Areas, whether recorded or unrecorded.

The Easements are also limited to such rights as Grantor may have in the Easement Areas and are granted without warranty, express or implied. No damages shall be recoverable from

Grantor because of any dispossession of Grantee or because of failure of, or defect in, Grantor's title.

If Grantee, its successors or assigns, abandons the Aerial Easement Area, the Support Easement Area, the Trail Easement Area and/or the Drainage Easement Area or any portion thereof, the applicable Easement will cease and terminate with respect to the portion of the corresponding Easement Area so abandoned, and the title to the affected Easement Area will be freed from the burden of the corresponding Easement. Nonuse of an Easement Area or any portion thereof for a period of eighteen (18) months will be deemed an abandonment of such Easement Area or portion thereof not used.

Within ninety (90) days after termination or abandonment as contemplated by this Easement Deed, Grantee, at its sole expense, shall (a) peacefully and quietly vacate and surrender possession of the portions of the Easement Areas no longer encumbered by the Easements; (b) remove the Pinole Improvements from such portions of the Easement Areas and restore such portions of the Easement Areas which were used for the Pinole Improvements to the satisfaction of Grantor, failing in which Grantor may (but is not obligated to) perform such removal and restoration work at Grantee's sole expense; and (c) deliver to Grantor a fully executed and acknowledged release and quitclaim of such portions of the Easement Areas in recordable form satisfactory to Grantor.

Grantor and Grantee have caused this Easement Deed to be executed as of the date first herein written.

ATTEST:

**UNION PACIFIC RAILROAD
COMPANY**, a Delaware corporation

(Federal Tax ID No. 94-6001323)

By: _____
BEVERLY J. KUBAT
Assistant Secretary

By: _____
DANIEL A. LEIS
General Director Real Estate

(Seal)

EAST BAY REGIONAL PARK DISTRICT, a California
special district

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

District Counsel, EBRPD

ACKNOWLEDGMENT

STATE OF NEBRASKA)
) ss:
COUNTY OF DOUGLAS)

On this ____ day of _____, 201_, before me, David C. LaPlante, a Notary Public in and for said County and State, personally appeared **Daniel A. Leis** and **Beverly J. Kubat** who are the *General Director Real Estate* and the *Assistant Secretary*, 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.

David C. LaPlante
Notary Public for and in said State

My commission expires: September 18, 2017

↑ (Affix Notary Seal Here) ↑

ACKNOWLEDGMENT

STATE OF CALIFORNIA)

) ss:

COUNTY OF _____)

On this ____ day of _____, 201_, before me, a Notary Public in and for said County and _____ State, personally _____ appeared who is the

(Name of Individual Executing Agreement on Behalf of the Political Body)

(Title of Individual Executing Agreement on Behalf of the Political Body)

of the _____, and who is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to in the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

WITNESS my hand and official seal.

Notary Public for and in said State

My commission expires:

(Expiration Date)

↑ (Affix Notary Seal Here) ↑

**EXHIBIT A
TO
EASEMENT DEED**

Legal Description of Aerial Easement Area

The area that is expressly limited vertically at or above a plane parallel with and twenty-three (23) feet six (6) inches above the top of the rail of the highest of Grantor's trackage facilities located on the portion of Project Area on the following Railroad property:

[Insert metes and bounds description for Parcel 3.]

The area that is expressly limited vertically at or above a plane parallel with and five (5) feet eight (8) inches above the top of the rail of the highest of Grantor's trackage facilities running parallel to the portion of the Project Area on the following Railroad property:

[Insert metes and bounds description for Parcel 4.]

**EXHIBIT B
TO
EASEMENT DEED**

Legal Description of Support Easement Area

[Insert metes and bounds legal description for Parcels 2, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14.]

**EXHIBIT C
TO
EASEMENT DEED**

Legal Description of Trail Easement Area

[Insert metes and bounds description for Parcel 1.]

**EXHIBIT D
TO
EASEMENT DEED**

Legal Description of Drainage Easement Area