

# CONTRACT

---

BETWEEN THE

STATE OF COLORADO  
DEPARTMENT OF TRANSPORTATION

AND THE

UNION PACIFIC RAILROAD COMPANY

COVERING

THE RELOCATION AND RECONSTRUCTION OF THE  
EXISTING SH 96A OVERPASS GRADE SEPARATION  
CROSSING STRUCTURE

AT

RAILROAD MILE POST 117.92 – COLORADO SPRINGS SUBDIVISION  
CDOT PROJECT NO. BR 0961-008, 13141  
DOT #253147Y

IN OR NEAR

PUEBLO,  
PUEBLO COUNTY,  
COLORADO



CDOT Project No. BR 0961-008, 13141  
State Highway 96A;  
Overpass Demolition and Replacement  
NIC No. 253147Y

UPRR Folder No. **2417-88**  
UPRR Mile Post 117.92, Colorado Springs  
Subdivision  
DOT No. 253147Y

## CONTRACT

THIS CONTRACT, made this 30<sup>th</sup> day of April, 2007, by and between the **STATE OF COLORADO**, for the use and benefit of the Colorado Department of Transportation, Division of Engineering and Maintenance ("State"), and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad").

WHEREAS, authority exists in the Law and Funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment in Program 2000, Fund Number 400, Appropriation Code 010, Function 3987, Object 2311 1 P, Phase U, Originating Unit 9991, Reporting Category 6000, Sub-Account Number 13141. The Railroad Contract Encumbrance Estimated Amount is \$ 15,000.00

WHEREAS, required approval, clearance and coordination has been accomplished from and with appropriate agencies; and

WHEREAS, the State has the authority, as provided in sections 43-1-110 and 43-4-204, C.R.S. to enter into contracts, including contracts with railroads for construction work; and

WHEREAS, the State also has the authority, as provided in section 24-92-103, C.R.S., to solicit competitive sealed bids for construction of public projects; and

WHEREAS, State Highway 96A crosses over the Existing Structure that is defined in Article I; and

WHEREAS, the State will advertise and award a construction contract to construct the New Structures that is defined in Article I and then demolish the Existing Structure. The general location of the Existing Structure is illustrated on the Railroad print marked **Exhibit A**, attached hereto and hereby made a part hereof; and

WHEREAS, the State's Contractor will be required to perform the "Project Work," as defined in Article I, on Railroad property, that is necessary to complete the Project; and

WHEREAS, it is desirable, for the benefit, convenience and safety of the public using the state highway system and for the parties hereto, that the improvements provided by this Contract be accomplished; and

WHEREAS, it is in the public interest that Railroad forces, on a force account basis perform the Railroad Work; and

WHEREAS, the Project is a multi-phase project with a construction estimate of \$38 million; and

WHEREAS, the State requires temporary and permanent easements from the Railroad in order to construct and maintain the New Structures and to demolish and remove the Existing Structure; and

WHEREAS, the Existing Structure was constructed under the Existing Agreement that is defined in Article I; and

WHEREAS, the Railroad and the State wish to terminate the Existing Agreement as set forth in Article IV, Section F, and enter into this Agreement to cover the construction, maintenance and operation of the New Structures

NOW, THEREFORE, it is hereby agreed that:

**ARTICLE I**  
**GENERAL PROVISIONS**

**SECTION A. DEFINITIONS**

1. FHWA = Federal Highway Administration
2. MUTCD = The Manual on Uniform Traffic Control Devices for Streets and Highways
3. PUC = Public Utilities Commission of Colorado
4. CFR = Code of Federal Regulations
5. CRS = Colorado Revised Statutes
6. The term "Contractor" shall mean any individual, partnership, firm, corporation or any combination thereof including their respective officers, agents, employees and their respective subcontractors including officers, agents and employees that are hired by the State to perform any Project Work.
7. The term "Existing Agreement" shall mean the agreement dated March 12, 1957, between the parties hereto covering the construction and use of the Existing Structure.
8. The term "Existing Structure" shall mean the existing State Highway 96A overpass structure constructed pursuant to and under the Existing Agreement and under the State's Project US 0016(12) W. 4<sup>th</sup> St. Bridge-Pueblo at Railroad Milepost 117.92 on the Railroad's Colorado Springs Subdivision at DOT No. 253147Y in the City of Pueblo in Pueblo County, Colorado.
9. The term "New Structures" shall mean the newly constructed State Highway 96A overpass at Railroad Milepost 117.92, DOT No. 253147Y on the Railroad's Colorado Springs Subdivision located in the City of Pueblo in Pueblo County, Colorado, that replaces the Existing Structure.
10. The term "Plans" shall mean the final one hundred percent (100%) completed plans prepared by the State at its expense that are approved in writing by the Railroad's Assistant Vice President Engineering - Design, or his authorized representative covering the demolition and removal of the Existing Structure and the construction of its New Structures. The Plans shall include all appurtenances, associated drainage, shoring, sheeting and excavations for bents and/or abutments next to or adjacent to the Railroad's tracks.
11. The term "Project" shall mean the State's Project No. BR 0961-008, 13141 covering the construction of the New Structures and the demolition of the Existing Structure.
12. The term "Railroad Work" shall consist of the following work performed by Railroad forces:

- Engineering design review and construction oversight.
  - Flagging and protective services, as required, for the Contractor.
13. The term "Project Work" shall consist of the following work performed by the Contractor:
- Replacement, demolition and removal of the Existing Structure and the construction of the New Structures.

**SECTION B. LIST OF EXHIBITS**

The exhibits listed below are attached hereto and made a part of this Contract:

Exhibit A	Project Location Map
Exhibit B	PUC Notice of Application
Exhibit C	General layout plan of the New Structures
Exhibit D	Form of Permanent Easement
Exhibit D-1	Legal Description of Permanent Easement Parcel PE 44
Exhibit D-2	Legal Description of Permanent Easement Parcel PE 44A
Exhibit D-3	Map of Parcels PE 44 and PE 44A
Exhibit E	Form of Contractor's Right of Entry Agreement
Exhibit F	Civil Rights Exhibit
Exhibit G	Railroad's Guidelines for Bridge Demolition
Exhibit H	Railroad's Minimum Requirements for Overpass Structures
Exhibit I	Railroad's Estimate for design review, construction oversight and flagging
Exhibit J	Form of State's Funding Letter

**SECTION C. REFERENCE DOCUMENTS**

The following are made a part of this Contract by reference, the same as if attached hereto including any supplements or amendments thereto dated prior to the date of this Contract.

23 CFR	Part 140	Subpart I
23 CFR	Part 646	Subpart A
23 CFR	Part 646	Subpart B
MUTCD	Dated	2003

**ARTICLE II**  
**COMMITMENTS ON THE PART OF RAILROAD**

**SECTION A. RIGHT OF WAY**

1. Existing Agreement. The parties wish to terminate the Existing Agreement, as provided in Article IV, Section F upon the completion of the New Structures and the demolition and removal of the Existing Structure, and to have the Railroad grant a new permanent easement (as set forth in Paragraph 2 below) which combines the right of way covered in the Existing

Agreement as well as the additional right of way now needed by the State under the Project (Parcels PE-44 and PE-44A) to facilitate the construction, maintenance, use, operation, repair and renewal of the New Structures.

2. New Permanent Easement. For and in consideration of the sum of \$8,800 to be paid by the State to the Railroad upon the execution and delivery of this Contract, the Railroad will be granting to the State, subject to the terms and conditions set forth therein, a permanent easement in the form marked **Exhibit D** for the purpose of constructing, using, maintaining and reconstructing the New Structures on, along and over the portion of the Railroad's property that is described in the legal descriptions marked **Exhibit D-1** and **Exhibit D-2** and also shown on the prints marked **Exhibit D-3**.

## **SECTION B. PLANS; CONSTRUCTION**

1. The Plans are hereby made a part of this Contract by reference. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing. The Railroad's review and approval of the Plans in no way relieves the State or the Contractor from their responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that the Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by the State on the Plans is at the risk of the State. Project special provisions affecting the interests of the Railroad are also subject to approval by the Railroad. All work under this Contract shall be performed strictly in compliance with the Plans, special provisions and any guidelines or standards furnished by the Railroad to the State for this Project. The State confirms that no work of demolition or new construction is to commence until the Railroad's Assistant Vice President Engineering - Design or his authorized representatives have given final approval of the Plans.

2. The State also confirms that when the State advertises for bids from Contractors for this Project, it will include, among other things, **Exhibit G** and **Exhibit H** in its bid package and will require all Contractors awarded bids to work on this Project to comply with the Plans, provisions contained in **Exhibit G** and **Exhibit H** and other guidelines or standards furnished by the Railroad to the State for this Project.

## **SECTION C. CIVIL RIGHTS**

The Railroad, in the prosecution of the work herein prescribed, will adhere to the requirements of the Civil Rights **Exhibit F**, and will include the provisions of the said Civil Rights Exhibit in every subcontract; including procurement of materials and leases of equipment, unless exempt by the Regulations, orders or instructions issued pursuant thereto.

## **SECTION D. RAILROAD WORK; BILLING SENT TO STATE.**

1. Flagging. The Railroad will be providing flagging protection during the Project. Labor charges for any Railroad Work performed by Railroad forces will be in accordance with the then current working agreements between the Railroad and its employees and are subject to Railroad's standard direct and indirect labor costs and additives costs as identified in 23 CFR Part 140 Subpart I. The Railroad's current estimated daily cost of flagging is Seven Hundred Dollars (\$700.00) based on a ten (10) hour day. The flagging costs are for a normal business day and do not include weekends, overtime or holiday pay. The Railroad has agreed to directly bill the Contractor for flagging costs. The bills submitted by the Railroad to the Contractor shall

reference the Project Number. The State agrees to withhold ten percent (10%) of the estimated flagging costs as retainage until the Railroad has been paid in full for its final bill for flagging and other costs owed by the Contractor to the Railroad. The Railroad's estimated flagging costs are set forth in **Exhibit I**. The parties agree that the State's estimate of 620 days of Railroad flagging as set forth in **Exhibit I** is an estimate of flagging days required for the demolition of and the construction of the New Structures.

2. Railroad's Billings to the State. The Railroad shall bill the Contractor for flagging and the State for all other Railroad Work. The Railroad shall bill based on all actual costs incurred by the Railroad in performing the Railroad Work. Actual costs shall be determined in accordance with 23 CFR Part 140, Subpart I and will include indirect and direct labor additives.

3. Final Bills Within One Year of Project Completion. The Railroad shall send progressive billing to the State for Railroad Work prepared by the Railroad and send a final bill to the State within one (1) year following completion of the Project. The State shall provide the Railroad with written notice of the completion of the Project, thus marking the beginning of the one-year period. If the Railroad does not present its final billing to the State as described herein within such one-year time period, as required by paragraph 23 140.922 CFR, then previous payments to the Railroad for the Railroad Work may be considered as final and complete reimbursement for such work and the State may close out the Project with no further financial obligation.

#### **SECTION E. RAILROAD'S RELATIONS WITH STATE'S CONTRACTOR**

1. Insurance - Notice to State. The State agrees that it will not authorize any Contractor to enter upon or perform any work contemplated by this Contract across or adjacent to the Railroad's property unless or until the insurance specified in the Railroad's Contractor's Right of Entry Agreement marked **Exhibit E**, shall be delivered to and accepted by the Railroad. The insurance shall be kept in full force and effect during the times any Project Work is being performed across or adjacent to Railroad property by any Contractor. The Railroad shall endeavor to notify the State within twenty (20) calendar days following delivery of said certificates and policies of insurance to the Railroad, whether said insurance has been accepted or rejected.

2. State's Construction Contract Requirements. In conformity with the requirements of 23 CFR, Part 646, Subpart B and Part 140, Subpart I, the Railroad agrees to furnish the State detailed information set forth in Article III, Section A, paragraph 5 hereinafter, which data shall be included in the State's Construction Contract Provisions for the Project.

3. Railroad's Right to Stop Work. If the Contractor shall prosecute the Project Work across or adjacent to the Railroad property contrary to the Plans, the provisions of **Exhibit G** and **Exhibit H** or other guidelines or standards furnished to State, or if the Contractor shall prosecute the Project Work in a manner deemed hazardous by the Railroad to its property and facilities, or if the insurance prescribed in Article III, Section B, paragraph 3 hereof shall be cancelled during progress of said work, the Railroad shall have the right to stop the Project Work across or adjacent to Railroad property until the acts or omissions of such Contractor have been fully rectified to the satisfaction of the Railroad's Assistant Vice President Engineering - Design, or until additional insurance has been delivered to and accepted by the Railroad's insurance department. Such work stoppage shall not give rise to or impose upon the Railroad any liability

to the State or any Contractor. In the event the Railroad shall stop the Project Work herein provided, the Railroad agrees to give immediate notice thereof, in writing, to the Chief Engineer, Colorado Department of Transportation 4201 East Arkansas Ave., Denver, CO 80222.

### **ARTICLE III** **COMMITMENTS ON THE PART OF THE STATE**

#### **SECTION A. STATE ACTIVITIES**

1. Advertisement for Bids - Contract. The State will advertise the invitation for bids and enter into a construction contract with the lowest responsible bidder for the Project Work across or adjacent to the Railroad's property. The State will include the Plans, **Exhibit G** and **Exhibit H**, and other guidelines or standards furnished to the State in its bid solicitation document package for the construction contract.

2. Construction by the State. The State shall perform, or cause to be performed, in a manner acceptable to the Railroad all Project Work across and adjacent to the Railroad's property in compliance with the Plans, **Exhibit G** and **Exhibit H** and any guidelines or standards furnished by the Railroad.

3. Supervision by the State. The State shall maintain supervision over the operations of its Contractor while performing Project Work across or adjacent to the Railroad's property. The responsibility of the State for supervision of the Project shall not be lessened or otherwise affected by the Railroad's approval of the Plans 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 State or the Contractor with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the State and the Contractor will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations. However, at all times such Contractor shall be considered an independent contractor and not an employee of the State.

4. Utilities. The State's construction contract will include provisions that the Contractor take such measures as the Railroad and the State may agree upon in writing respecting any utilities located upon the Railroad's right of way as hereinafter provided. It is understood and agreed that the owner of any utility, located on the Railroad's property, retains the right to move, repair, recondition or relocate the same at the State's expense. The State shall require that if, during progress of the Project Work, the Contractor shall discover any utility that has a right to be on the Railroad's right of way, but that is not specifically mentioned and provided for elsewhere in the Plans, which utility must be moved, repaired, reconditioned or relocated because of this Project, the Contractor shall initiate immediate notice thereof to the State and the Railroad, and the State will furnish directions respecting the same; but, unless otherwise agreed upon between the State and the Railroad, the State will authorize the Contractor to make only such temporary or emergency repairs as may be required to protect and safeguard the utility and the property of the Railroad prior to commencement of work thereon by the owner of the utility or the Railroad. When such operations are undertaken by the owners of the utility or the Railroad, the State will require the Contractor to cooperate to the extent that ample protection of such work will be provided, to the end that the entire Project contemplated by this Contract may be expedited. The terms "utility" and "utilities" as used herein include all

properties and facilities of any person, firm or corporation constituting any part of the utility system, including, but not limited to, pipe lines, wire lines, fiber optic lines, tube lines, water and gas mains, electrical conduits, sewer pipes, overhead wiring, and supporting structures and appurtenances. All proposed and relocated utilities are subject to the prior review and approval of the Railroad's Vice President Engineering - Design or his authorized representatives and shall comply with the Railroad's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines.

5. Protective Services (Specifications for Construction). In consideration of the requirements of 23 CFR, Part 646, Subpart B, and Part 140, Subpart I, the State agrees that any contract awarded to any Contractor as herein provided will include in the specifications for construction the following general information:

- a. The provisions of this Contract applicable to the protective services the Railroad may require during the performance of the Project Work across or adjacent to the Railroad property.
- b. The prime Contractor will be required to enter into a Contractor's Right of Entry Agreement with the Railroad and all subcontractors will be required to have signed an endorsement by the prime Contractor's insurance company.
- c. The times and manner in which the Railroad will submit its billings to the State.

6. Advance Warning Protection. The State will require its Contractor to furnish, maintain and install advance warning signs or barricade protection which may be required for the duration of the Project Work for the protection of the Railroad's facilities and the work contemplated hereunder.

7. State's Payment of Billing from Railroad. State shall pay Railroad for all actual costs incurred by Railroad in performing the Railroad Work including Railroad's standard direct and indirect labor additives within forty-five (45) days of State's receipt of billing from the Railroad.

## **SECTION B. STATE'S CONSTRUCTION CONTRACTOR ACTIVITIES**

1. Contractor's Defaults and Omissions. To the extent authorized by law, the State shall require its Contractor to correct or eliminate any defaults or omissions of the Contractor for all Project Work performed relative to this Contract.

2. Contractor's Operations. In consideration of the premises and of the rights granted to the State in Article II, Section A hereof, the State hereby agrees to include in its construction contract provisions which require the Contractor to keep and perform the following covenants, conditions and stipulations:

- a. Notice. The State will require all contractors to provide to the Railroad the notifications that are required in the Railroad's Contractor's Right of Entry Agreement.
- b. Contractor's Methods and Procedures. Unless methods and procedures are otherwise provided for in the construction plans and specifications approved by the Railroad and the State, the Contractor and the Railroad shall agree, in advance of the Contractor performing the Project Work, upon methods and procedures covering all construction across or adjacent to the Railroad property and, when required by the Railroad, the

Contractor shall submit such proposals in writing. The Contractor shall at all times keep covered all pits or openings near or under tracks, except during the time required for actual operations in making such pits or openings and performing work therein. Provisions of this paragraph shall not be construed as relieving the Contractor of or subjecting the Railroad or the State to any responsibility or liability for the Contractor's operations, methods and procedures. The Contractor shall not pile or store any material nor park any equipment closer than twenty-five (25) feet of any track centerline unless authorized by the Railroad's designated representative. The Contractor shall also abide by the following minimum temporary clearances during the course of construction:

- (i) 12" - 0" horizontal from centerline of track
- (ii) 21' - 0" vertically above top of rail

For construction clearance less than listed above, local operating unit review and approval is required.

- c. No Interference with Railroad's Operations. The Contractor will cooperate with the officers and the authorized representatives of the Railroad and its tenants to the end that the Contractor's work will be begun, conducted, and completed in such manner as to cause no interference whatsoever with the safety or the continuous and uninterrupted use and operation of the tracks, wire lines and other facilities belonging to the Railroad or its tenants.
- d. Contract and License. The State will require in its Contract with its Contractor performing Project Work under the State's project no. BR 0961-008, 13141, on the Railroad properties pursuant to this Contract, that its Contractor will enter into Railroad's Contractor's Right of Entry Agreement with the Railroad in the attached form marked **Exhibit E**, and containing the covenants, conditions, and stipulations set forth therein.

3. Contractor's Insurance. The State shall require its Contractor to furnish to the State the certificate, policies and endorsements of insurance as described in the Contractor's Right of Entry Agreement, and the State shall deliver the same directly to the Railroad. All certificates and policies of insurance required hereunder shall comply with the requirements of 23 CFR, Part 646, Subpart A and as set forth in the Contractor's Right of Entry Agreement. Such insurance coverage shall be for:

- a. All damages arising out of bodily injuries to or death of one or more persons.
- b. All damages arising out of injury to or destruction of property.

The Contractor shall not be allowed to enter upon or perform any Project Work on the Railroad's property unless or until the aforesaid Contractor's Right of Entry Agreement has been executed by the Contractor and the insurance shall have been accepted in writing by the Railroad. All such insurance shall be kept in full force and effect during all times the Contractor is performing any such work on or adjacent to the Railroad's property.

4. Clearances. The State shall include provision in its construction contract which requires its Contractor to abide by all clearance requirements as described in the Contractor's Right of Entry Agreement and in the plans and specifications approved by the Railroad.

5. Temporary Crossings. The State shall include provisions in its construction contract that the Contractor shall only cross the Railroad's tracks and right of way at existing open public crossings and that temporary contractor haul road crossings will only be allowed if

absolutely necessary for the Project. If the Contractor can prove beyond a reasonable doubt that alternate public access cannot be utilized, then the Contractor shall submit design plans for the temporary crossing to the Railroad's Assistant Vice President Engineering – Design or his authorized representative. The Railroad will then review such design plans and the need for the temporary crossing. If, in the sole discretion of the Railroad, a temporary crossing is needed for the Project, the Railroad will advise the Contractor if the design plans for the temporary crossing are acceptable and shall also provide to the Contractor a Railroad cost estimate for the Railroad's installation and removal of the temporary crossing. If a temporary crossing is needed, the Contractor shall first execute the Railroad's Contractor's Road Crossing Agreement providing for the Contractor to be responsible for all costs and expenses in the Railroad's installation and removal of the Contractor's road crossing and any restoration costs involving the Railroad's ballast or other track structure material.

6. Delay to Trains. The State will require its Contractor to furnish, maintain and install, during performance of the Project Work, all advance warning signs or barricade protection that are expressly required by the Railroad for the duration of the Project Work. The State shall also require the Contractor to pay the Railroad for all train delay costs incurred by the Railroad resulting from a Contractor exceeding the agreed upon track construction window periods. The State agrees to reimburse the Railroad for any train delay costs incurred by the Railroad that are not reimbursed by a Contractor in a timely manner.

7. Protection of Fiber Optic Cable System. The State agrees to include the following provisions in its contract with any contractor performing any Project Work on the Railroad's property:

“Fiber optic cable systems may be buried on the Union Pacific'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 Contractor shall telephone Union Pacific 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 number for emergency calls) to determine if fiber optic cable is buried anywhere on Union Pacific's premises within the limits of the project. If it is, the Contractor shall telephone the telecommunications companies 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 Union Pacific's premises.”

8. Subcontractors. The State will require its Contractor to be and remain primarily liable and responsible to the Railroad for all acts or omissions of any subcontractor as described in the Contractor's Right of Entry Agreement.

### **SECTION C. STATE OBLIGATIONS**

1. Obligation to Railroad's Tenants. The Railroad shall have no obligation with respect to removing, relocating, or reinstalling the facilities of its lessees or licensees, required to be removed, relocated or reinstalled incidental to the State's construction. The State, at its expense, shall make all arrangements with the lessees and/or licensees, which arrangements shall be subject to the approval of the Railroad.

The State shall ensure that prior to any work within the Railroad's right of way, a fully executed Contractor's Right of Entry Agreement must be in place and the Railroad Flagging must be requested per terms of the Contractor's Right of Entry Agreement, a minimum of fifteen (15) business days in advance of construction and fifteen (15) days in advance of termination of construction.

2. Coordination of Work. The State's Regional Transportation Director, Region 2, Tim Harris, P.E., 901 Erie Avenue, Pueblo, CO 81001, is designated to coordinate the Project Work provided for herein; telephone 719-546-5452 and fax 719-546-5456. Resident Engineer is Karen Rowe, P.E., 902 Erie Avenue, Pueblo, CO 81001; telephone 719-546-5438 and fax 719-546-5702.

3. Maintenance. Upon completion of construction of the Project Work, the State will maintain, repair, renew, and reconstruct, at the State's expense, the entire New Structures, in accordance with the State's standard maintenance procedures. These maintenance requirements do not impose upon the State any responsibility for care or maintenance of pre-existing drainage not affected by or directly related to the Project Work herein described, nor for care or maintenance of the Railroad's roadbed, communication and signal lines, tracks and appurtenances.

#### **SECTION D. PUC APPLICATION AND APPROVAL**

The State has made application to the PUC for its approval of the Project and for approval of the continuing maintenance provisions agreed to by the parties. The parties shall cooperate in presenting all matters involved to the PUC in connection with the application. The provisions of this Contract pertaining to the performance of the Railroad Work shall not become effective until approval thereof has been obtained from the PUC.

### **ARTICLE IV ADDITIONAL PROVISIONS**

#### **SECTION A. NO PARTICIPATION BY RAILROAD IN ANY PROJECT COSTS**

Pursuant to the provisions of 23 CFR 646.210, the State confirms that this Project is of no ascertainable net benefit to the Railroad and that the Railroad shall not be required to share in any Project costs or costs involving the construction of the Structure.

#### **SECTION B. FINANCIAL PROVISIONS**

1. Contract Amount. The total encumbrance for this Project is \$ 15,000.00. The State's maximum financial obligation under this Contract is currently limited to that total encumbrance amount. The State will budget, appropriate and make funds available to pay the Railroad for additional work under this Project as long as the additional work is legitimate and the Railroad has communicated with the State Project Engineer to allocate more funds. The State Project Engineer will allocate more funds using a Funding Letter described below. The Railroad must communicate with the State before the work is performed if practicable. Additional work is work that falls under the definition of "Railroad Work" (but excluding flagging which is to be billed directly to the State's Contractor) contained in Article I, Section A and includes increases in costs of "Railroad Work" due to labor and materials. It is specifically

agreed that Railroad labor costs can include as additives, prorated equipment costs as specified in 23 CFR 140.910.

The State shall not be responsible for any unauthorized extra work. Extra work is work that does not fall under the definition of "Railroad Work" contained in Article I, Section A.

2. Funding Letter. The State may allocate more funds available on this Contract using a Funding Letter substantially equivalent to **Exhibit J** and bearing the approval of the State Controller or his designee. The Funding Letter shall not be deemed valid until it shall have been approved by the State Controller or his designee.

### **SECTION C. CANCELLATION**

In the event delays or difficulties arise in securing necessary approvals, or in acquiring necessary right of way, or in settling damages or damage claims, or for any other reason within twelve (12) months of agreement execution by either party, which, in the opinion of the State render it impracticable to utilize funds from the current appropriation for the construction of the Project, then at any time before actual construction is started pursuant to proper approval or authority, the State may serve formal notice of cancellation upon the Railroad and this Contract shall thereupon become null and void. In the event of any such cancellation the State shall reimburse the Railroad for all related preliminary engineering costs or other costs incurred by the Railroad prior to the effective date of termination.

The Railroad, if it so elects, may recalculate and update any Railroad estimate submitted to the State based on anticipated actual costs that will be incurred by the Railroad in the event the State does not commence construction on the portion of the Project located on the Railroad's property within six (6) months from the date of any such estimate.

The Railroad, if it so elects, may terminate this Contract effective upon delivery of written notice to the State in the event the State does not commence construction on the portion of the Project located on the Railroad's property within twelve (12) months from the scheduled start up of Project Work that will involve work on the Railroad's property.

### **SECTION D. TERM**

This Contract shall become effective as of the date first herein written and shall continue in full force and effect for as long as the Permanent Easement described in Article II, Section A, paragraph 2 remains in effect.

### **SECTION E. SUCCESSORS AND ASSIGNS**

All of the covenants and provisions hereof shall insure to the benefit of and be binding upon the parties hereto, their successors and assigns.

### **SECTION F. TERMINATION OF EXISTING AGREEMENT**

The Existing Agreement shall terminate upon the completion of the New Structures.

### **SECTION G. SIGNATURE AUTHORITY**

The Railroad and the State each represent and warrant that they have taken all actions that are necessary or that are required by their procedures, bylaws, or applicable law, to legally

authorize the undersigned signatories to execute this Contract on behalf of the Railroad and the State.

**SECTION H. EXCEPTIONS TO SPECIAL PROVISIONS**

The State and the Railroad agree that the State's Special Provisions are hereby amended in the following particulars:

"The parties hereto agree that paragraph 3, INDEMNIFICATION, of the Special Provisions, is hereby waived and shall not apply to the Railroad Company for this Contract."

The parties hereto agree that the final sentence of paragraph 4, INDEPENDENT CONTRACTOR. 4 CCR 801-2, of the Special Provisions, is replaced with the following:

"Contractor shall provide and keep in force such types of Workers' Compensation Insurance, in the amounts required by law (and provide proof of such insurance, if such insurance is required by law, when requested by the State) and Unemployment Compensation Insurance, if required by law, in the amounts required by law, and shall be solely responsible for the acts of the Contractor, its employees, and agents."

The parties hereto agree that the first sentence of paragraph 6, CHOICE OF LAW, of the Special Provisions, is replaced with the following:

"The laws of the State of Colorado and rules and regulations issued pursuant thereto, to the extent not preempted by federal law, shall be applied in the interpretation, execution, and enforcement of this Contract."

The parties hereto agree that paragraph 7, VENDOR OFFSET. CRS 24-30-202 (1) & 24-30-202.4 shall apply to this Contract, to the extent not preempted by federal law.

## SPECIAL PROVISIONS

The Special Provisions apply to all contracts except where noted in *italics*.

1. **CONTROLLER'S APPROVAL. CRS 24-30-202 (1).** This contract shall not be deemed valid until it has been approved by the Colorado State Controller or designee.
  2. **FUND AVAILABILITY. CRS 24-30-202(5.5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
  3. **INDEMNIFICATION.** Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.
- [Applicable Only to Intergovernmental Contracts]* No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.
4. **INDEPENDENT CONTRACTOR. 4 CCR 801-2.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither contractor nor any agent or employee of contractor shall be or shall be deemed to be an agent or employee of the state. Contractor shall pay when due all required employment taxes and income taxes and local head taxes on any monies paid by the state pursuant to this contract. Contractor acknowledges that contractor and its employees are not entitled to unemployment insurance benefits unless contractor or a third party provides such coverage and that the state does not pay for or otherwise provide such coverage. Contractor shall have no authorization, express or implied, to bind the state to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall provide and keep in force workers' compensation (and provide proof of such insurance when requested by the state) and unemployment compensation insurance in the amounts required by law and shall be solely responsible for its acts and those of its employees and agents.
  5. **NON-DISCRIMINATION.** Contractor agrees to comply with the letter and the spirit of all applicable State and federal laws respecting discrimination and unfair employment practices.
  6. **CHOICE OF LAW.** The laws of the State of Colorado, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract, to the extent that this contract is capable of execution. At all times during the performance of this contract, Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.
  7. *[Not Applicable to Intergovernmental Contracts]* **VENDOR OFFSET. CRS 24-30-202 (1) and 24-30-202.4.** The State Controller may withhold payment of certain debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State or its agencies, as a result of final agency determination or reduced to judgment, as certified by the State Controller.
  8. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** No State or other public funds payable under this contract shall be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies that, for the term of this contract and any extensions, Contractor has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
  9. **EMPLOYEE FINANCIAL INTEREST. CRS 24-18-201 and 24-50-507.** The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract.
  10. *[Not Applicable to Intergovernmental Contracts]*. **ILLEGAL ALIENS – PUBLIC CONTRACTS FOR SERVICES AND RESTRICTIONS ON PUBLIC BENEFITS. CRS 8-17.5-101 and 24-76.5-101.** Contractor certifies that it shall comply with the provisions of CRS 8-17.5-101 et seq. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall

not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor represents, warrants, and agrees that it (i) has verified that it does not employ any illegal aliens, through participation in the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security, and (ii) otherwise shall comply with the requirements of CRS 8-17.5-102(2)(b). Contractor shall comply with all reasonable requests made in the course of an investigation under CRS 8-17.5-102 by the Colorado Department of Labor and Employment. Failure to comply with any requirement of this provision or CRS 8-17.5-101 et seq., shall be cause for termination for breach and Contractor shall be liable for actual and consequential damages.

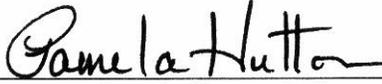
11. Contractor, if a natural person eighteen (18) years of age or older, hereby swears or affirms under penalty of perjury that he or she (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of CRS 24-76.5-101 et seq., and (iii) shall produce one form of identification required by CRS 24-76.5-103 prior to the effective date of this contract.

**Revised October 25, 2006**

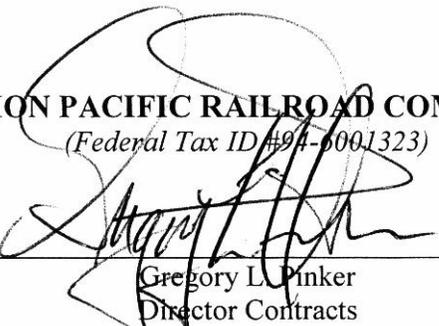
Effective Date of Special Provisions: August 7, 2006

THE PARTIES HERETO HAVE SIGNED THIS CONTRACT

STATE OF COLORADO  
BILL RITTER JR., GOVERNOR

By   
Pamela Hutton, P.E.  
Chief Engineer

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

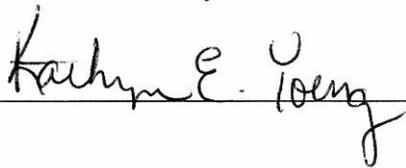
By   
Gregory L. Pinker  
Director Contracts  
1400 Douglas Street, MS 1690  
Omaha, NE 68179-1690

  
Michael E. Heenan  
Assistant Secretary

(Seal)

APPROVED:

JOHN W. SUTHERS  
Attorney General

By 

CRS 24-30-202 requires that the State Controller approve all state contracts. This Contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. Except for preliminary engineering review performed by the Railroad or a Railroad contractor as set forth in this Contract, the Railroad is not authorized to begin performance until the Contract is signed and dated below. Except for preliminary engineering review performed by the Railroad or a Railroad contractor as set forth in this Contract, if performance begins prior to the date below, the State may not be obligated to pay for goods and/or services provided.

LESLIE M. SHENEFELT  
State Controller

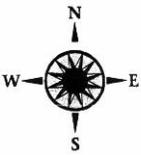
By   
Cheryl Traff, CDOT Controller

Date April 30, 2007

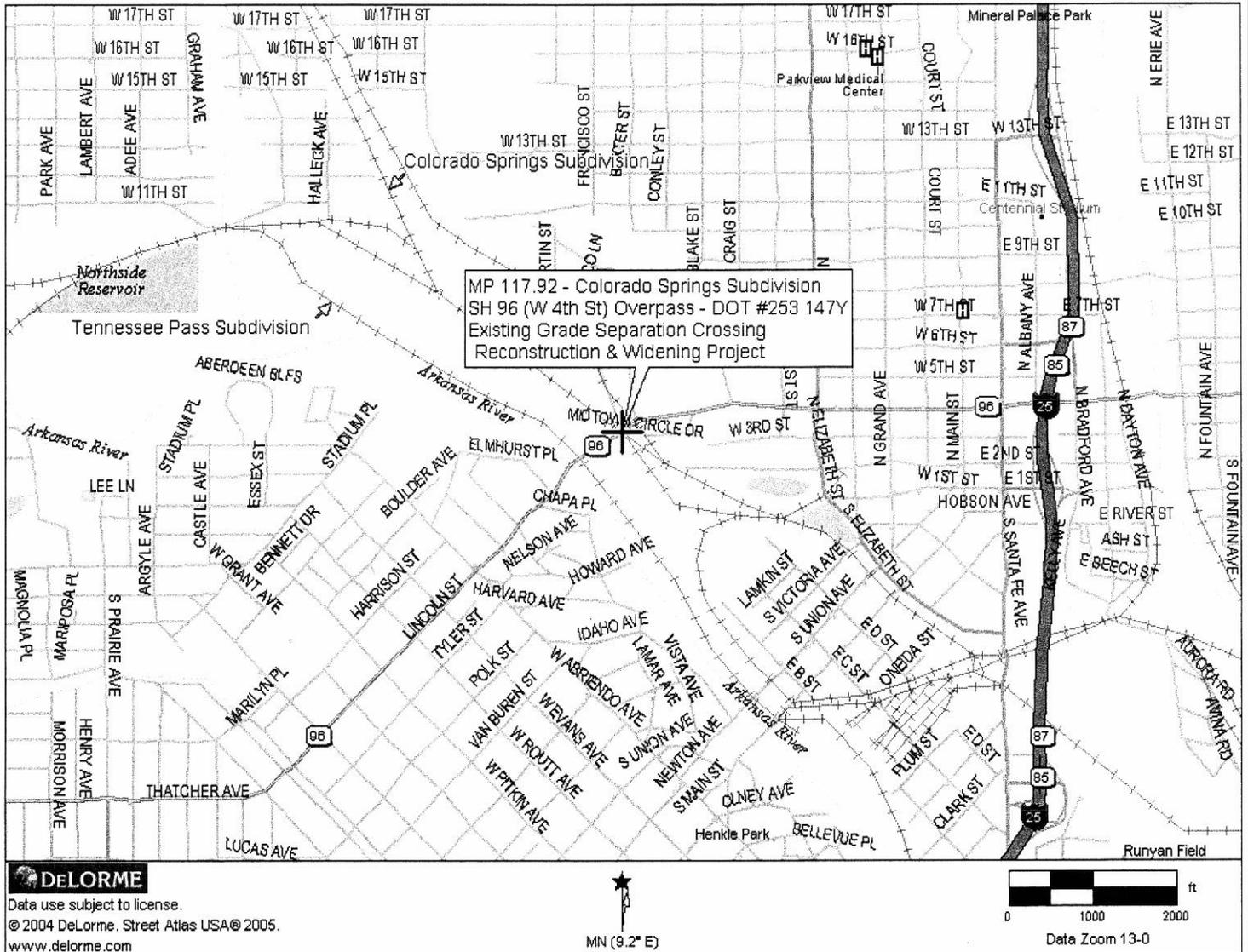
# EXHIBIT A

To Contract

Cover Sheet for **the Project Location Map**



# LOCATION PRINT ILLUSTRATING AN EXISTING OVERPASS GRADE SEPARATION CROSSING RELOCATION & RECONSTRUCTION PROJECT



**BRIEF DESCRIPTION OF RIGHT OF WAY:**

Two strips of Railroad right of way along SH 96 situated in the NW¼ of Section 36, Township 20 South, Range 65 West of the Sixth Principal Meridian in Pueblo County, Colorado.

**EXHIBIT "A"**

**UNION PACIFIC RAILROAD COMPANY**

COLORADO SPRINGS SUBDIVISION  
MILE POST 117.93  
GPS: N 38° 16.1823', W 104° 37.3554'  
PUEBLO, PUEBLO CO., CO.

Illustrative print showing location of an existing overpass grade separation crossing relocation and reconstruction project for the  
**COLORADO DEPARTMENT OF TRANSPORTATION.**

Folder No. 2417-88

Date: March 6, 2007

**WARNING**

IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.  
PHONE: 1-(800) 336-9193



# EXHIBIT B

To Contract

Cover Sheet for **the PUC Notice of Application**

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

Docket No.03A-531R

---

IN THE MATTER OF THE COLORADO DEPARTMENT OF TRANSPORTATION, FOR  
AUTHORITY TO DEMOLISH EXISTING BRIDGE AND CONSTRUCT A NEW BRIDGE ON  
STATE HIGHWAY 96A CROSSING OVER THE UNION PACIFIC RAILROAD TRACKS  
AND BURLINGTON NORTHERN SANTA FE RAILROAD TRACKS AND ARKANSAS  
RIVER IN THE CITY OF PUEBLO, COLORADO)

---

**NOTICE OF APPLICATION FILED**

---

---

TO THE PARTIES IN THIS MATTER AND ALL INTERESTED PERSONS, FIRMS OR  
CORPORATIONS:

You are notified that this application has been filed with the Colorado Public Utilities Commission, and any person desiring to intervene in or participate as a party in this proceeding shall file his petition for leave to intervene, or under the Commission's Rules of Practice and Procedure, file other appropriate pleadings to become a party, within 30 days after the date of this notice.

At the time of this notice, the Commission has not deemed this application to be complete within the meaning of § 40-6-109.5, C.R.S.

The Commission may consider and decide this application upon the record without a formal public hearing if the application is deemed complete and no notice of intervention or petition to intervene contesting or opposing the application has been timely filed.

If a hearing is required in this matter, the Commission will notify the parties of the hearing date, time and location. Applicants must appear at the hearing, if one is set, and present evidence in support of their application. Other parties may appear and present evidence in support of their position.

Unless previously filed, the applicant shall file its list of witnesses and copies of its exhibits at least 20 days before the first day of hearing. The applicant shall also serve each party and staff with its list of witnesses and copies of each of its exhibits.

Each intervenor shall file with the Commission a list of witnesses and copies of its exhibits at least 10 days before the first day of the hearing. Each intervenor shall also serve each party and staff with a list of its witnesses and copies of each of its exhibits.

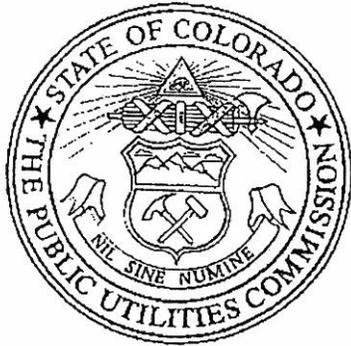
Upon objection by a party, no witness will be permitted to testify and no exhibit will be received in evidence, except in rebuttal, unless filed and served as provided in this notice.

If a party does not meet the requirements of this notice, the Commission may dismiss the application or intervention upon motion filed by any other party, or upon the Commission's own motion, unless good cause is shown.

No motion for continuance of any hearing set in this proceeding will be granted except as stated in Rule 69 of the Commission's Rules of Practice and Procedure.

Dated at Denver, Colorado, this 16th day of December 2003.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

BRUCE N. SMITH, Director  
Colorado Public Utilities Commission  
1580 Logan, OL2,  
Denver, Colorado 80203

ATTEST: A TRUE COPY

---

Bruce N. Smith  
Director

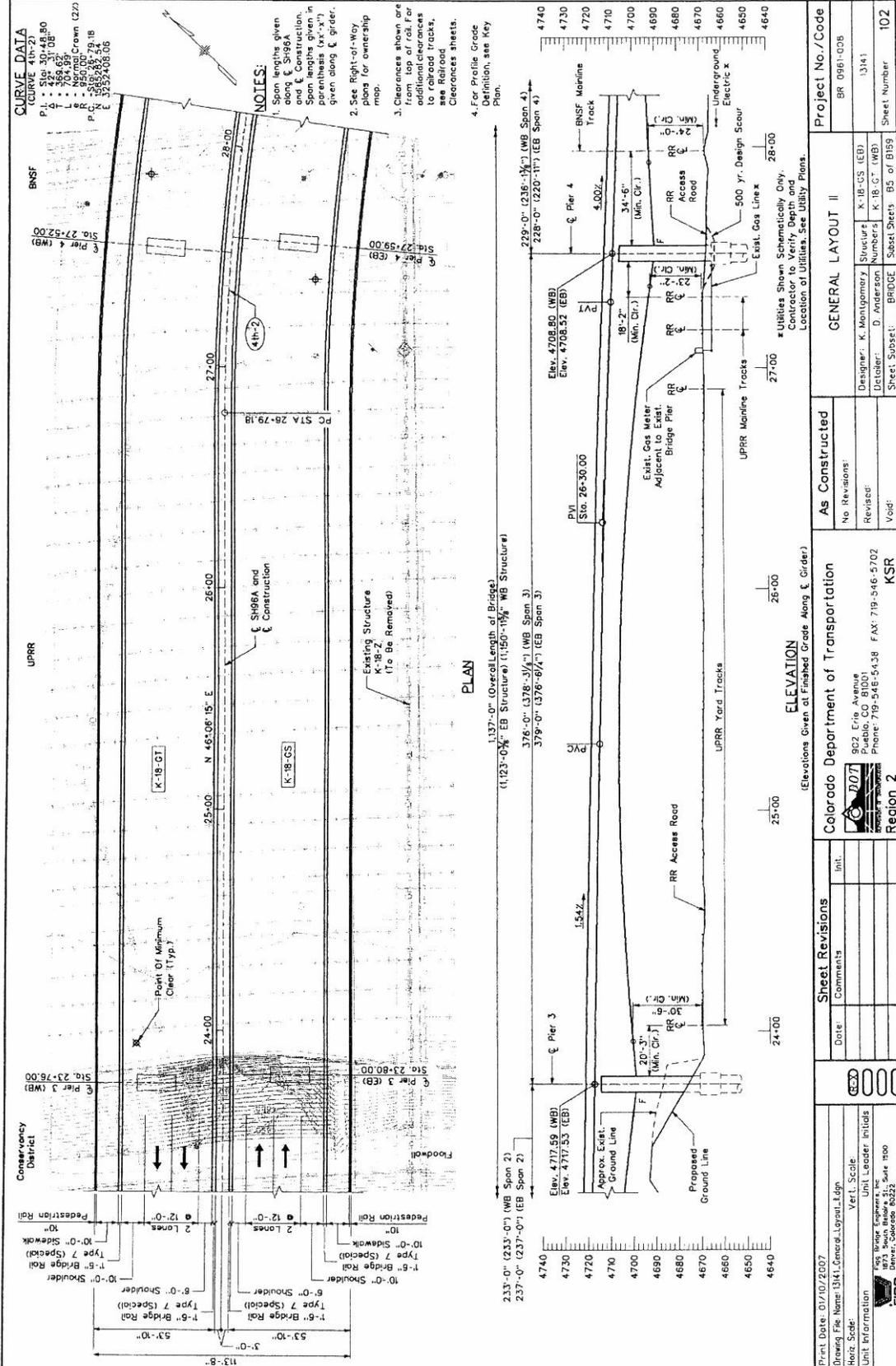
# EXHIBIT C

To Contract

**Cover Sheet for the General Layout Plan  
of the New Structure**



**EXHIBIT C**



CDOT Project No. BR 0961-008, 13141  
 State Highway 96A, UPRR - NIC No. 253147Y

DATE	DESCRIPTION	BY	CHECKED BY
12/08	DESIGN	RM	RM
12/08	CHECK	RM	RM
12/08	APPROVE	RM	RM

DATE	REVISIONS	COMMENTS
	1	INIT.

Print Date: 01/10/2007  
 Drawing File Name: I341\_General Layout\_Ldgn  
 Horiz. Scale: Vert. Scale:  
 Unit Information: Unit Leader: Initials  
 KRS Bridge Engineers, Inc.  
 1033 South State Street, Suite 1100  
 Fort Collins, CO 80525  
 Phone: 970-225-7500  
 Fax: 970-225-7500

As Constructed  
 No Revisions  
 Revised:  
 Void:

Colorado Department of Transportation  
 Region 2  
 902 E. Col. Avenue  
 Pueblo, CO 81001  
 Phone: 719-546-5438 FAX: 719-546-5702  
 KSR



# EXHIBIT D

To Contract

Cover Sheet for **the form of Permanent Easement**

**EXHIBIT D**

RECORDING REQUESTED BY

And When Recorded Mail to:

Name:

Street Address:

City & State:

CDOT Project No. BR 0961-008, 13141

Overpass Demolition and Replacement

Pueblo County

DOT No. 253147Y

UPRR Mile Post 117.92, Colorado Springs

**EASEMENT**

---

THIS Easement is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, and successor in interest by merger to Union Pacific Railroad Company, a Utah corporation ("Grantor"), and COLORADO DEPARTMENT OF TRANSPORTATION, DIVISION OF ENGINEERING AND MAINTENANCE ("Grantee").

The Grantor for and in consideration of the sum of Eight Thousand Eight hundred Dollars (\$8,800.00), to it paid by the Grantee, the receipt whereof is hereby confessed and acknowledged, does hereby grant unto the Grantee, and unto its successors and assigns an EASEMENT, on, along and over the property (hereinafter the "Property") situated in Pueblo County, Colorado, as shown on the print marked **Exhibit B**, and as also more particularly described in the legal description marked **Exhibit A**, with each exhibit being hereto attached and hereby made a part hereof, together with the right of ingress and egress to and from the Property for the purpose of exercising the rights herein granted, for the purpose of constructing, maintaining, using, operating, repairing, renewing and reconstructing overpass grade separation structures that will carry vehicular traffic over the Grantor's railroad trackage on State Highway 96A (4<sup>th</sup> Street) in Pueblo, Colorado.

Without limitation of the foregoing, this grant does not include the right to install utilities of any nature, including, without limitation, fiber optic, cable television, electrical, gas or liquid distribution, and telephone lines.

RESERVING, however, unto the Grantor, its successors and assigns, the right to construct at any and all times and to maintain railroad tracks, track appurtenances, fiber optic or signal lines and facilities, pipe, telephone, and electric pole and wire lines, over, under and across the Property, but in such a way as to not interfere with the Grantee's use of the Property for the purposes specified in this Easement; it being understood that the rights so reserved unto the Grantor, its successors and assigns, are retained along with the general right of the Grantor, its successors and assigns, to the use of the

Property for any purpose not inconsistent with the Grantee's use of the Property, for the purposes herein defined, including, but not limited to any and all general railroad purposes.

This Easement is also made SUBJECT to all outstanding leases, licenses and other outstanding rights, including, but not limited to, 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 which may affect the Property, whether recorded or unrecorded.

The Grantee covenants to maintain the easement in good repair so that no damage will result from its use to the adjacent land of the Grantor, its successors and assigns. The Grantee covenants that its use of the easement will not interfere with the Grantor's operations, or the operations of the Grantor's successors and assigns.

It is expressly made a condition of this Easement that if the Grantee, its successors or assigns, shall abandon the Property or any portion of the Property, for the purposes of this Easement, the rights herein granted shall cease and terminate with respect to the portion of the Property so abandoned, and the title to the Property shall be freed from the burden of this Easement. It is further agreed that nonuse of the Property or any portion thereof, for the purposes of this Easement for the period of one (1) year shall be deemed an abandonment of the Property or portion thereof not used.

IN WITNESS WHEREOF, the Grantor has caused this deed to be duly executed as of the date first herein written.

ATTEST:

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

\_\_\_\_\_  
MICHAEL E. HEENAN  
Assistant Secretary

By \_\_\_\_\_  
GREGORY L. PINKER  
Director Contracts

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

On \_\_\_\_\_, 200\_\_\_\_, before me, Paul G. Farrell, a Notary Public in and for said County and State, personally appeared Gregory L. Pinker and Michael E. Heenan, who are the Director Contracts and Assistant Secretary, respectively, of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to 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.

---

Paul G. Farrell  
Notary for the State of  
Nebraska

(SEAL)

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 200\_\_, before me, \_\_\_\_\_, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, \_\_\_\_\_ and Assistant Secretary, respectively, of the State of Colorado, Department of Transportation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to 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.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary for the State of  
Colorado

# **EXHIBIT A**

**TO**

The form of Permanent Easement (Exhibit D)

**Exhibit A** will be the legal description for Parcel PE 44.

**EXHIBIT A TO D**

EXHIBIT "A"  
PROJECT NUMBER: BR 0961-008  
PARCEL NUMBER: PE-44  
PROJECT CODE: 13141  
DATE: November 30, 2005

**LEGAL DESCRIPTION**

A permanent easement Number PE-44 of the Department of Transportation, State of Colorado, Project Number BR 0961-008 containing 20,457 square feet, more or less, in the NW ¼ of Section 36, Township 20 South, Range 65 West of the Sixth Principal Meridian, in Pueblo County, Colorado, said permanent easement being more particularly described as follows:

Beginning at the point of intersection of the easterly line of the Pueblo Conservancy District and the northerly line of West 4<sup>th</sup> Street, as described in the deed dated June 12, 1925 and recorded in Book 621, Page 302, in the records of the Pueblo County Clerk and Recorder, the POINT OF BEGINNING;

1. Thence N. 43°13'00" E. along said northerly line of West 4<sup>th</sup> Street, a distance of 392.56 feet to the westerly line of the BNSF Railway;
2. Thence along the westerly line of the BNSF Railway, the arc of a curve to the left having a radius of 1910.08 feet, a distance of 38.99 feet, (the chord of said arc bears N. 50°15'48" W., a distance of 38.99 feet);
3. Thence along the arc of a curve to the left having a radius of 1026.83 feet, a distance of 85.66 feet, (the chord of said arc bears S. 48°30'10" W., a distance of 85.64 feet);
4. Thence S. 46°06'15" W., a distance of 308.33 feet to the easterly line of the Pueblo Conservancy District;
5. Thence along the to the easterly line of the Pueblo Conservancy District, the arc of a curve to the right having a radius of 2634.58 feet, a distance of 62.41 feet, (the chord of said arc bears S. 49°33'39" E., a distance of 62.41 feet);, more or less, to the POINT OF BEGINNING.

The above described permanent easement contains 0.470 acres (20457 square feet), more or less.

**EXHIBIT A TO D**

The purpose of the above described permanent easement is for the construction and maintenance of a bridge structure.

Basis of Bearing: The basis of bearing for project reference is a line from CDOT Control Monument 7 (S.H. 96, M.P. 54.85 Rt.) to CDOT Control Monument 15 (S.H. 96, M.P. 55.65 Md.), having a bearing of N. 64° 45' 30" E.

For and on the behalf of the  
Colorado Department of Transportation  
Mark E. Lane, PLS 28276  
905 Erie Ave., Pueblo, CO 81001



**EXHIBIT A**

**TO**

The form of Permanent Easement (Exhibit D)

**Exhibit A** will be the legal description for Parcel PE 44A.

**EXHIBIT A TO D**

EXHIBIT "A"  
PROJECT NUMBER: BR 0961-008  
PARCEL NUMBER: PE-44A  
PROJECT CODE: 13141  
DATE: November 30, 2005

**LEGAL DESCRIPTION**

A permanent easement Number PE-44A of the Department of Transportation, State of Colorado, Project Number BR 0961-008 containing 8,707 square feet, more or less, in the NW ¼ of Section 36, Township 20 South, Range 65 West of the Sixth Principal Meridian, in Pueblo County, Colorado, said permanent easement being more particularly described as follows:

Beginning at the point of intersection of the easterly line of the Pueblo Conservancy District and the southerly line of West 4<sup>th</sup> Street, as described in the deed dated June 12, 1925 and recorded in Book 621, Page 302, in the records of the Pueblo County Clerk and Recorder, the POINT OF BEGINNING;

1. Thence N. 43°13'00" E. along the southerly line of West 4<sup>th</sup> Street, a distance of 393.21 feet to the westerly line of the BNSF Railway;
2. Thence along the westerly line of the BNSF Railway, the arc of a curve to the right having a radius of 1910.08 feet, a distance of 37.15 feet, (the chord of said arc bears S. 46°43'13" E., a distance of 37.15 feet);
3. Thence along the arc of a curve to the left having a radius of 873.17 feet, a distance of 98.48 feet, (the chord of said arc bears S. 49°20'06" W., a distance of 98.43 feet);
4. Thence S. 46°06'15" W., a distance of 295.63 feet to the easterly line of the Pueblo Conservancy District;
5. Thence along the easterly line of the Pueblo Conservancy District, the arc of a curve to the left having a radius of 2634.58 feet, a distance of 11.77 feet, (the chord of said arc bears N. 47°00'50" W., a distance of 11.77 feet);, more or less, to the POINT OF BEGINNING.

The above described permanent easement contains 0.200 acres (8707 square feet), more or less.

**EXHIBIT A TO D**

The purpose of the above described permanent easement is for the construction and maintenance of a bridge structure.

Basis of Bearing: The basis of bearing for project reference is a line from CDOT Control Monument 7 (S.H. 96, M.P. 54.85 Rt.) to CDOT Control Monument 15 (S.H. 96, M.P. 55.65 Md.), having a bearing of N. 64° 45' 30" E.

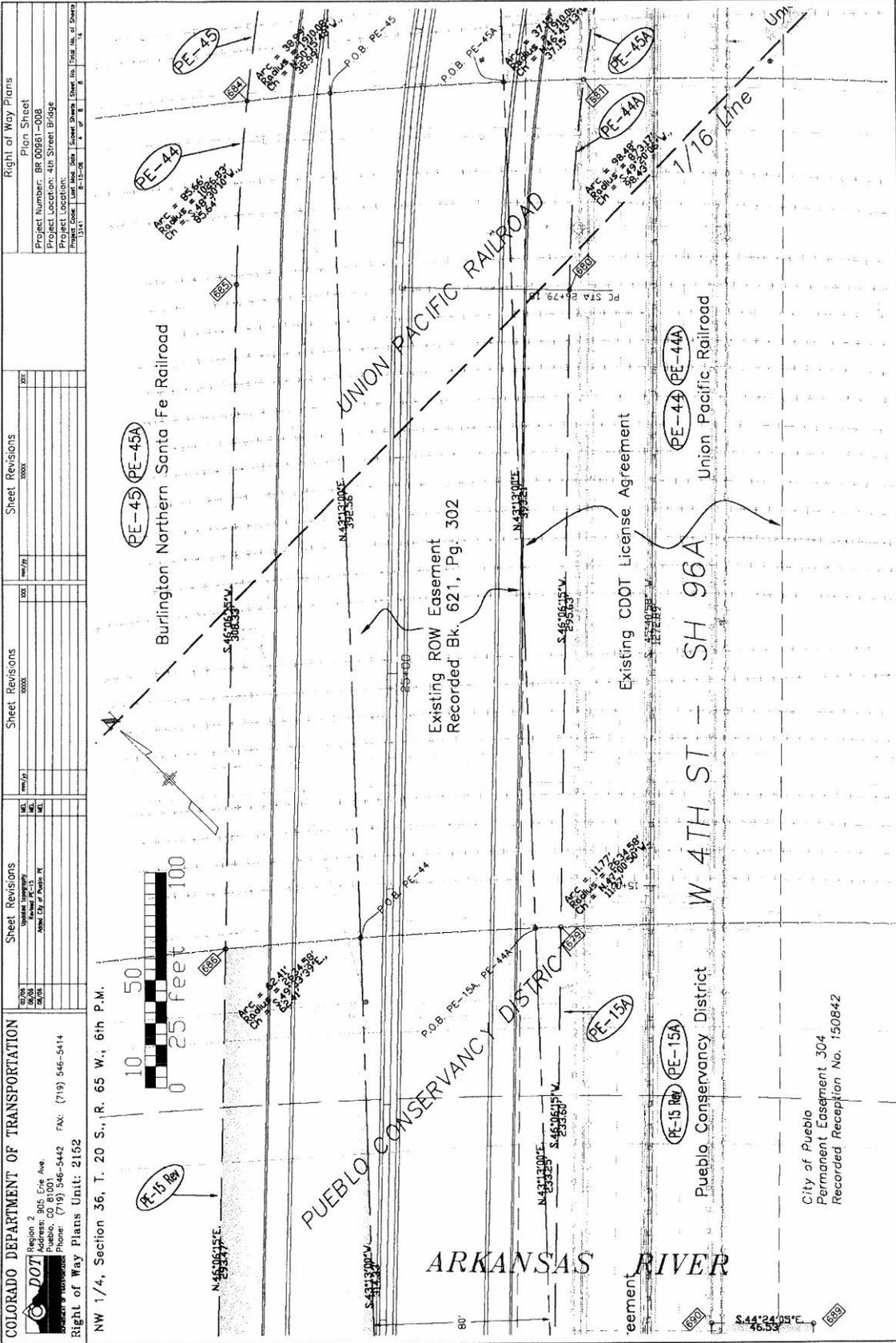
For and on the behalf of the  
Colorado Department of Transportation  
Mark E. Lane, PLS 28276  
905 Erie Ave., Pueblo, CO 81001



**EXHIBIT B  
TO**

The form of Permanent Easement (Exhibit D)

**Exhibit B** will be the print showing PE 44 and PE 44A



<b>COLORADO DEPARTMENT OF TRANSPORTATION</b> Region 2, 3015 Erie Ave. Pueblo, CO 81001 Phone: (719) 546-5442 FAX: (719) 546-5414 Right of Way Plans Unit: 2152		<b>Right of Way Plans</b> Plan Sheet Project Number: BR 00961-008 Project Location: 4th Street Bridge Project Code: LWF Mod. 2004 Sheet Shows: Sheet No. of Sheets: 13/14 Date: 8-15-08	
Sheet Revisions Date: 8/15/08 By: [Signature] Description: [Text]		Sheet Revisions Date: 8/15/08 By: [Signature] Description: [Text]	



# EXHIBIT D-1

To Contract

## **Cover Sheet for the Legal Description of Permanent Easement PE 44**

## EXHIBIT D-1

EXHIBIT "A"  
PROJECT NUMBER: BR 0961-008  
PARCEL NUMBER: PE-44  
PROJECT CODE: 13141  
DATE: November 30, 2005

### LEGAL DESCRIPTION

A permanent easement Number PE-44 of the Department of Transportation, State of Colorado, Project Number BR 0961-008 containing 20,457 square feet, more or less, in the NW ¼ of Section 36, Township 20 South, Range 65 West of the Sixth Principal Meridian, in Pueblo County, Colorado, said permanent easement being more particularly described as follows:

Beginning at the point of intersection of the easterly line of the Pueblo Conservancy District and the northerly line of West 4<sup>th</sup> Street, as described in the deed dated June 12, 1925 and recorded in Book 621, Page 302, in the records of the Pueblo County Clerk and Recorder, the POINT OF BEGINNING;

1. Thence N. 43°13'00" E. along said northerly line of West 4<sup>th</sup> Street, a distance of 392.56 feet to the westerly line of the BNSF Railway;
2. Thence along the westerly line of the BNSF Railway, the arc of a curve to the left having a radius of 1910.08 feet, a distance of 38.99 feet, (the chord of said arc bears N. 50°15'48" W., a distance of 38.99 feet);
3. Thence along the arc of a curve to the left having a radius of 1026.83 feet, a distance of 85.66 feet, (the chord of said arc bears S. 48°30'10" W., a distance of 85.64 feet);
4. Thence S. 46°06'15" W., a distance of 308.33 feet to the easterly line of the Pueblo Conservancy District;
5. Thence along the to the easterly line of the Pueblo Conservancy District, the arc of a curve to the right having a radius of 2634.58 feet, a distance of 62.41 feet, (the chord of said arc bears S. 49°33'39" E., a distance of 62.41 feet);, more or less, to the POINT OF BEGINNING.

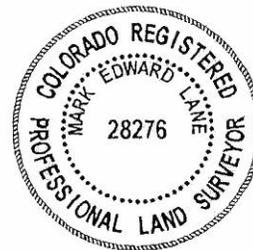
The above described permanent easement contains 0.470 acres (20457 square feet), more or less.

**EXHIBIT D-1**

The purpose of the above described permanent easement is for the construction and maintenance of a bridge structure.

Basis of Bearing: The basis of bearing for project reference is a line from CDOT Control Monument 7 (S.H. 96, M.P. 54.85 Rt.) to CDOT Control Monument 15 (S.H. 96, M.P. 55.65 Md.), having a bearing of N. 64° 45' 30" E.

For and on the behalf of the  
Colorado Department of Transportation  
Mark E. Lane, PLS 28276  
905 Erie Ave., Pueblo, CO 81001



# EXHIBIT D-2

To Contract

## **Cover Sheet for the Legal Description of Permanent Easement PE 44A**

**EXHIBIT D-2**

EXHIBIT "A"  
PROJECT NUMBER: BR 0961-008  
PARCEL NUMBER: PE-44A  
PROJECT CODE: 13141  
DATE: November 30, 2005

**LEGAL DESCRIPTION**

A permanent easement Number PE-44A of the Department of Transportation, State of Colorado, Project Number BR 0961-008 containing 8,707 square feet, more or less, in the NW ¼ of Section 36, Township 20 South, Range 65 West of the Sixth Principal Meridian, in Pueblo County, Colorado, said permanent easement being more particularly described as follows:

Beginning at the point of intersection of the easterly line of the Pueblo Conservancy District and the southerly line of West 4<sup>th</sup> Street, as described in the deed dated June 12, 1925 and recorded in Book 621, Page 302, in the records of the Pueblo County Clerk and Recorder, the POINT OF BEGINNING;

1. Thence N. 43°13'00" E. along the southerly line of West 4<sup>th</sup> Street, a distance of 393.21 feet to the westerly line of the BNSF Railway;
2. Thence along the westerly line of the BNSF Railway, the arc of a curve to the right having a radius of 1910.08 feet, a distance of 37.15 feet, (the chord of said arc bears S. 46°43'13" E., a distance of 37.15 feet);
3. Thence along the arc of a curve to the left having a radius of 873.17 feet, a distance of 98.48 feet, (the chord of said arc bears S. 49°20'06" W., a distance of 98.43 feet);
4. Thence S. 46°06'15" W., a distance of 295.63 feet to the easterly line of the Pueblo Conservancy District;
5. Thence along the easterly line of the Pueblo Conservancy District, the arc of a curve to the left having a radius of 2634.58 feet, a distance of 11.77 feet, (the chord of said arc bears N. 47°00'50" W., a distance of 11.77 feet);, more or less, to the POINT OF BEGINNING.

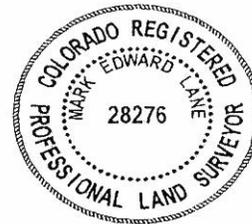
The above described permanent easement contains 0.200 acres (8707 square feet), more or less.

**EXHIBIT D-2**

The purpose of the above described permanent easement is for the construction and maintenance of a bridge structure.

Basis of Bearing: The basis of bearing for project reference is a line from CDOT Control Monument 7 (S.H. 96, M.P. 54.85 Rt.) to CDOT Control Monument 15 (S.H. 96, M.P. 55.65 Md.), having a bearing of N. 64° 45' 30" E.

For and on the behalf of the  
Colorado Department of Transportation  
Mark E. Lane, PLS 28276  
905 Erie Ave., Pueblo, CO 81001

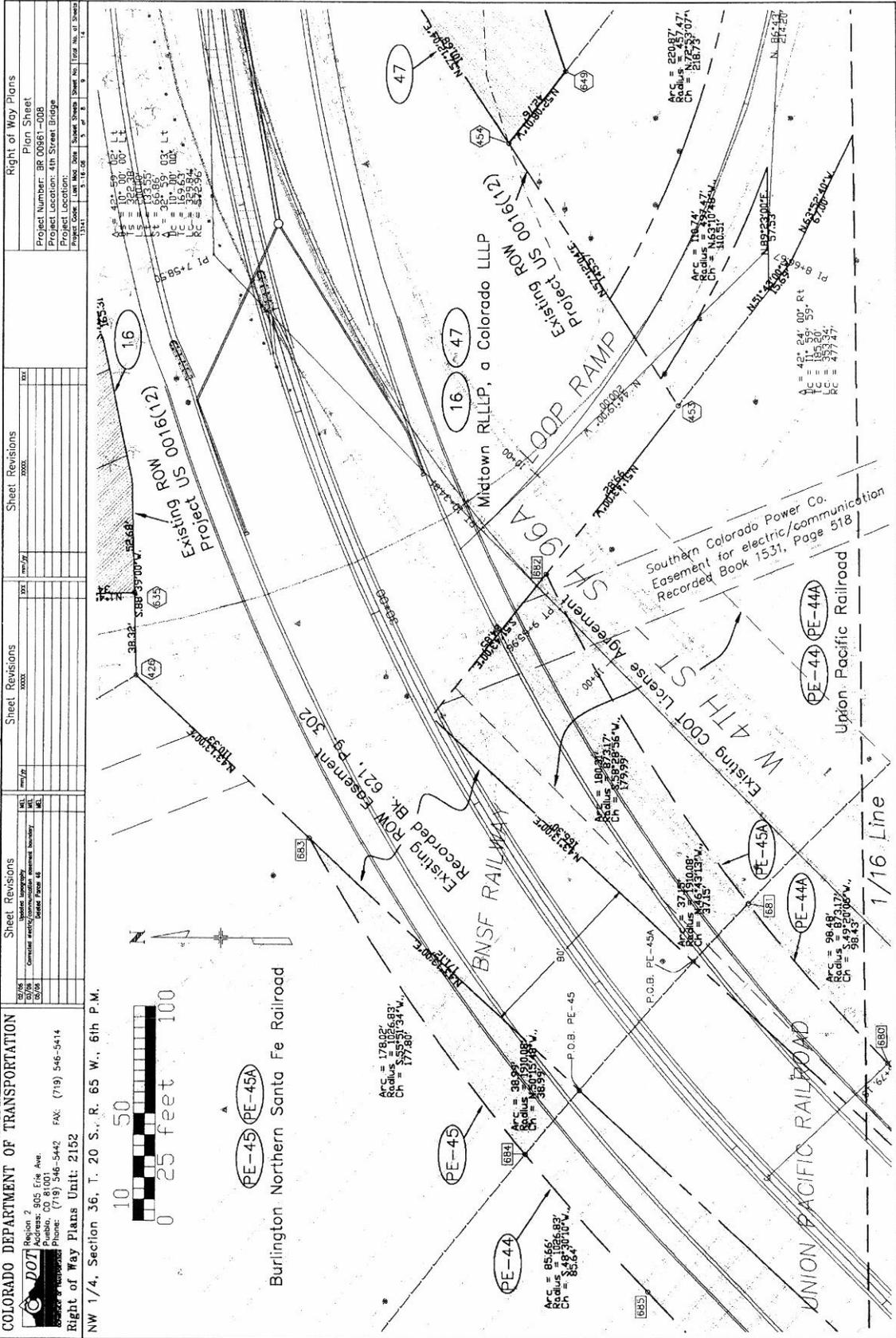


# EXHIBIT D-3

To Contract

**Cover Sheet for Map of Parcels PE 44  
and PE 44A**





**COLORADO DEPARTMENT OF TRANSPORTATION**  
 Region 2  
 Address: 905 Erie Ave.  
 Pueblo, CO 81001  
 Phone: (719) 546-5442 FAX: (719) 546-5414  
 Right of Way Plans Unit: 2152

Sheet Revisions

REV	DATE	DESCRIPTION

Sheet Revisions

REV	DATE	DESCRIPTION

Sheet Revisions

REV	DATE	DESCRIPTION

Right of Way Plans  
 Plan Sheet  
 Project Number: BR 00651-008  
 Project Location: 4th Street Bridge  
 Project Date: 5-18-08  
 Sheet No. of Sheets: 9  
 Total No. of Sheets: 14

# EXHIBIT E

To Contract

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

**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 \_\_\_\_\_. [which work is the subject of a contract dated \_\_\_\_\_ between Railroad and \_\_\_\_\_]. [as such location is also shown on the print dated \_\_\_\_\_, marked **Exhibit D**, attached hereto and hereby made a part hereof.]

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 any work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

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

The terms and conditions contained in **Exhibit A, Exhibit B** and **Exhibit C**, 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 A**. 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 - 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 6 - CERTIFICATE OF INSURANCE.**

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

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

Union Pacific Railroad Company

\_\_\_\_\_  
[Insert mailing address]

\_\_\_\_\_  
Attn: \_\_\_\_\_

**ARTICLE 7 - 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 8 - ADMINISTRATIVE FEE.**

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

**ARTICLE 9 - CROSSINGS.**

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

**ARTICLE 10.- EXPLOSIVES.**

Explosives or other highly flammable substances shall not be stored on Railroad'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**  
**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 fifteen (15) 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 fifteen (15)-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 a ten (10) 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 ten (10) 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 fifteen (15) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

**Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED**

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be

freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

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

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

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

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

**Section 4. LIENS.**

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

**Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.**

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

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

**Section 6. PERMITS - COMPLIANCE WITH LAWS.**

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

**Section 7. SAFETY.**

A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in **Exhibit C**, 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 C** to each of its employees before they enter the job site.

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

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

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

**Section 8. INDEMNITY.**

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

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

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

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

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

**Section 9. RESTORATION OF PROPERTY.**

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

**Section 10. WAIVER OF DEFAULT.**

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

**Section 11. MODIFICATION - ENTIRE AGREEMENT.**

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

**Section 12. ASSIGNMENT - SUBCONTRACTING.**

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

**EXHIBIT B**  
**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.

- B. Business Automobile Coverage insurance.** Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident.

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

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

- C. Workers' Compensation and Employers' Liability insurance.** Coverage must include but not be limited to:
- 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 insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.

**Exhibit B**

- 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 written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

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

### **Other Requirements**

- G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as “Additional Insured” using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state 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 B**

**EXHIBIT C**  
**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.

**Exhibit C**

**III. On Track Safety**

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49 CFR 214, Subpart C and Railroad's On-Track Safety rules. Under 49 CFR 214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

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

**IV. Equipment**

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

**V. General Safety Requirements**

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49 CFR 213.

**Exhibit C**

- 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 D  
TO  
CONTRACTORS RIGHT OF ENTRY AGREEMENT

If a print of the right of entry area to be used by Contractor is available, it should be marked **Exhibit D** and attached here as part of the Agreement

**Exhibit D**

CDOT Project No. BR 0961-008, 13141  
State Highway 96A, UPRR - NIC No. 253147Y

# EXHIBIT F

To Contract

Cover Sheet for **the Civil Rights Exhibit**

## EXHIBIT F

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees and successors in interest, agree as follows:

**A. Compliance with Regulations.** The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

**B. Nondiscrimination.** The Contractor, with regard to the work performed by it after ward and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

**C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractors' obligations under this contract and the Regulations relative to nondiscrimination of the ground of race, color, sex, mental or physical handicap or national origin.

**D. Information and Reports.** The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate, and shall set forth what efforts have been made to obtain the information.

**E. Sanctions for Noncompliance.** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

- (1) Withholding of payments to the Contractor under the contract until the Contractor complies, and/or;
- (2) Cancellation, termination or suspension of the contract, in whole or in part.

**F. Incorporation of Provisions.** The Contractor will include the provisions of Paragraphs A through F in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor of supplier as a result of such direction, the Contractor may request the State to enter such litigation to protect the interests of the State and, in addition, the Contractor may request FHWA to enter into such litigation to protect the interest of the United States.

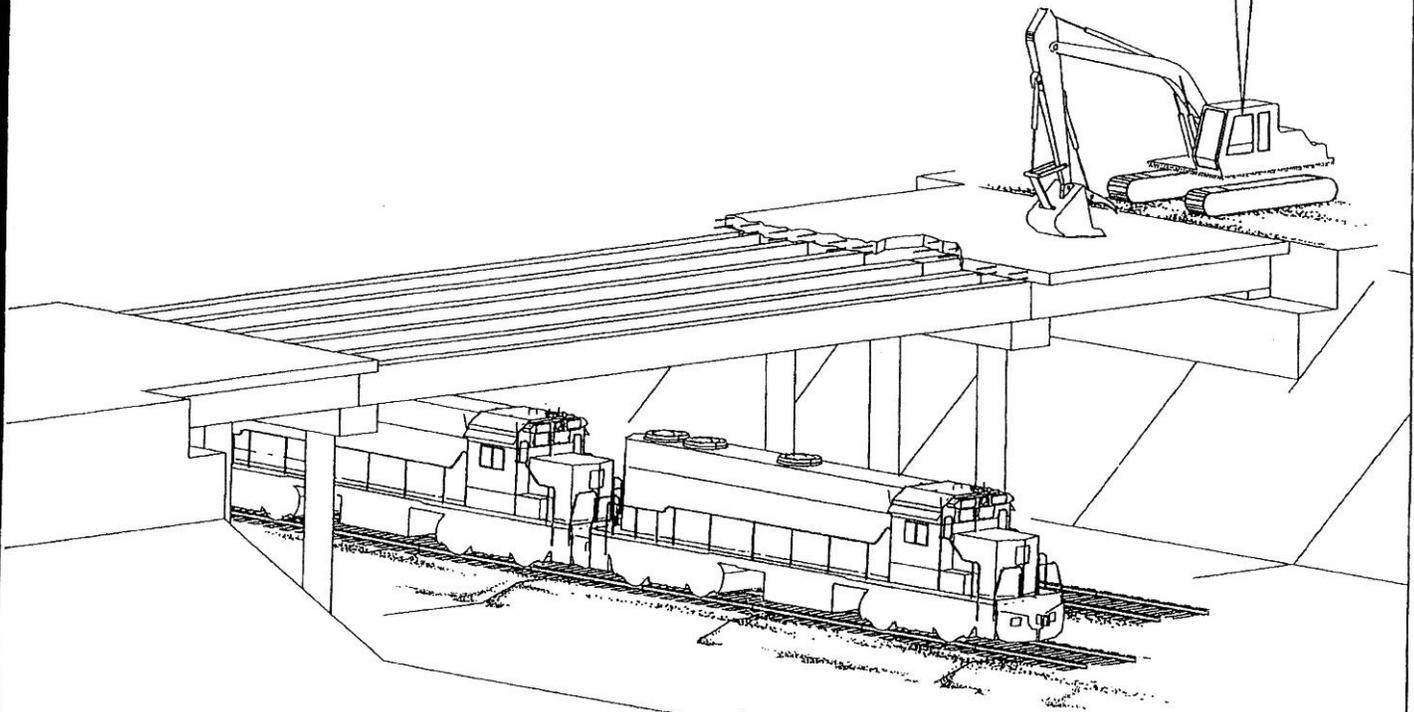
# EXHIBIT G

To Contract

## **Cover Sheet for the Railroad's Guidelines for Bridge Demolition**

# GUIDELINES FOR PREPARATION OF A BRIDGE DEMOLITION AND REMOVAL PLAN FOR STRUCTURES OVER RAILROAD

**STOP** ALL WORK  
DURING RAIL OPERATIONS



# UNION PACIFIC RAILROAD

OFFICE OF CHIEF ENGINEER DESIGN  
1416 DODGE ST.  
OMAHA, NE 68179

## INDEX

ITEM	PAGE
I. General	1
II. Bridge Removal Plan	1
III. Procedure	3
IV. Track Protection	4
V. Cranes	5
VI. Cutting Torches	6
VII. Utilities	6
VIII. Hazardous Material	6
Appendix	7

## **I. GENERAL**

- A. The Contractor's work shall in no way impede the train operations of the Union Pacific Railroad.
- B. The Contractor shall develop a work plan assuming that minimal track windows will be available.
- C. The Contractor shall be responsible for planning and executing all procedures necessary to remove the overhead bridge in a safe and controlled manner.
- D. The Railroad's tracks and property shall be protected at all times.
- E. The contractor shall ensure the area immediately adjacent to operational tracks shall remain free from stumble or like hazards to the ground Railroad personnel to prevent injuries. Open excavations shall be in accordance with current CE Drawing 106613 and shall be protected by appropriate fencing.
- F. The words "demolition" and "removal" will be used interchangeably.
- G. All removed materials shall be disposed of outside the Railroad right-of-way at no expense to the Railroad.
- H. No work is allowed within 50 feet of the nearest rail when trains pass the work site.
- I. Staged demolition of the portions of structure immediately adjacent to operational tracks will not jeopardize the integrity of the structure over said tracks until actual removal of the portion of the structure over the tracks is being done.
- J. A flagman is required when any work is performed within 25 feet of the nearest rail.
- K. No blasting will be permitted on Railroad's right-of-way.

## **II. BRIDGE REMOVAL PLAN**

- A. The Contractor shall submit a complete Bridge Removal Plan to the Railroad. The Bridge Removal Plan shall include details, procedures and the sequence of staged removal of the bridge, including all steps necessary to remove the bridge in a safe and controlled manner.

- B. The Contractor shall submit to the Railroad; three (3) complete sets of the Bridge Removal Plan for review and comments. The Plan shall be sealed by a Civil or Structural Engineer registered in the state where the proposed demolition will take place. A minimum of three (3) weeks shall be allowed for the Railroad's review after the complete submittal is received. No removal operations will be permitted over the Railroad right of way until the submitted material has been reviewed and comments provided.
- C. Review and comment of the Removal Plan by the Railroad will not relieve the Contractor of the ultimate responsibility and liability for the demolition of the structure.
- D. The Removal Plan shall include the following:
- 1) Plan, elevation and location of the bridge, and the locations of any access roads needed for movement of the equipment. The as-built drawings may be used for the submittal provided the removal steps are clearly marked and legible.
  - 2) Indicate the position of all railroad tracks below the bridge and identify each track as mainline, siding, spur, etc.
  - 3) Bridge removal sequence and procedures for entire bridge including the staging for the removal of the superstructure and substructure.
  - 4) List type and number of equipment required and their locations during demolition operations.
  - 5) Locations and types of temporary supports, shoring or bracing required. These members shall be designed to meet Union Pacific Railroad current standard drawing 106613 "General Shoring Requirements", "Guidelines for Design and Construction of Falsework for Structures Over Union Pacific Railroad", "Guidelines for Design and Construction of Shoring Adjacent to Active Railroad Tracks", and the appropriate local and national building and design code requirements.
  - 6) The proposed vertical and horizontal clearance from all tracks to the temporary and permanent supports. The minimum vertical and horizontal clearances shall be as per attached frame protection details.
  - 7) If any temporary supports interfere with the natural drainage along the Railroad right-of-way, a temporary drainage plan shall be submitted for review and comment prior to constructing temporary supports. The proposed drainage plan shall route all drainage away from the railroad tracks.

- 8) Details, limits, and locations of protective covers or other measures proposed to be used to protect the tracks. This includes any shields or other measures that will protect the tracks from falling debris during removal of the overhead bridge and from any debris rolling down the side slopes or otherwise coming into the area around the tracks which could affect train operations. Design loads, including impact loads, shall be noted. In addition equipment should be on site capable of removing debris and track shield from operational tracks.
- 9) All procedures necessary to remove the bridge in a safe and controlled manner. The estimated time for complete removal over the tracks shall be noted.
- 10) All overhead and underground utilities in the area affected by removal of the bridge shall be located on the drawings, including any fiber optic, railroad signal, and communication lines.
- 11) The location and details of track crossings required for moving of the equipment across the railroad tracks.
- 12) Limits of demolition of substructures.
- 13) Details of on-site fire suppression.

### **III. PROCEDURE**

- A. During removal operations the remaining structure shall be stable during all stages of the removal operations.
- B. Prior to proceeding with bridge removal the sealing Civil or Structural Engineer, or his authorized representative working for the Contractor, shall inspect the temporary support shoring, including temporary bracing and protective coverings, for conformity with the working drawings. The Engineer shall certify in writing to the Railroad that the work is in conformance with the drawings and that the materials and workmanship are satisfactory. A copy of this certification shall be available at the site of work at all times.
- C. Coordinate the removal schedule with the Railroad. All the removal work within the track area shall be performed during the time windows when the trains are not passing the work site.
- D. All substructures shall be removed to at least 3 feet below the final finished grade or at least 2 feet below base of rail whichever is lower, unless otherwise specified by the Railroad.

- E. All debris and refuse resulting from the work shall be removed from the right of way by the contractor and the premises left in a neat and presentable condition.
- F. The work progress shall be reviewed and logged by the Contractor's Engineer. Should an unplanned event occur, the Contractor shall inform the Railroad and submit procedure to correct or remedy the occurrence.
- G. Preferably all demolition and beam removal shall be from above. In the case that the beams require removal from below, the beams may temporarily straddle the tracks. The following steps shall be taken:
  - 1) The work shall be scheduled with the Railroad's Service Unit Superintendent subject to the Railroad's operational requirements for continuous train operations. The beams removed in sufficient time for train passage.
  - 2) The tracks shall be protected and no equipment placed on the tracks.
  - 3) The beams shall be blocked and not come in contact with the tracks. Blocking shall not be placed on the tracks.
  - 4) The beams and all equipment will be moved a minimum of 15 feet from the nearest rail of the tracks when a train is passing.

#### **IV. TRACK PROTECTION**

- A. The track protective cover shall be constructed before beginning bridge removal work and may be supported by falsework or members of the existing structure. See the attached Track Shield Detail and Frame Protection Detail for additional requirements. Types of protective covers that may be acceptable methods for protecting the tracks are:
  - 1) A decking supported by the bridge or a suspended cover from the bridge above the track clearance envelope.
  - 2) A track shield cover over the tracks per the attached detail.
  - 3) A framed cover outside the track clearance envelope.
  - 4) A catcher box or loader bucket under decking and parapets overhanging the exterior girders.
- B. Construction equipment shall not be placed on the tracks unless tracks are protected.

- C. Temporary haul road crossings shall be of either Section Timbers or Precast Concrete Panels. The type of crossing shall be determined by the Manager of Industry and Public Projects. Solid timbers or ballast with timber headers shall be used between multiple tracks. If temporary crossing is accessible to public crossing shall be protected with barricades or locked gates when contractor is not actively working at the site or weekends.
- D. Track protection is required for all equipment including rubber tired equipment operating within 25 ft. or over the tracks.

## V. CRANES

- A. When cranes are operated near the tracks the following is required:
  - 1) Only cranes with the capacity to handle the loads may be used. Front end loaders and backhoes cannot be used to lift over the tracks.
  - 2) The Contractor shall verify that the foundations under the crane can support the loads.
  - 3) The size and material type of crane mats shall be submitted to the Railroad for review and comment. No mat substitution will be allowed. The mats shall be rigid and of sufficient capacity to distribute the crane loads and prevent tipping of the crane.
  - 4) Installation of temporary track crossings for equipment shall be scheduled with the Manager of Industry and Public Projects .
  - 5) Additional track protection is required when crossing with a crane. The protection methods shall be submitted to the Railroad for review and comment.
  - 6) Equipment shall not place outriggers on the tracks or ballast.
  - 7) Cranes shall not be placed within the track clearance envelope without flagman protection.

## **VI. CUTTING TORCHES**

A. When a cutting torch is used near the tracks or any timber, the following steps shall be taken:

- 1) Fire suppression equipment is required on-site.
- 2) Do not use a torch over, between, or adjacent to the tracks unless a steel plate protective cover is used. Care shall be taken to make certain the use of a steel plate does not come in contact with the rails. See "Track Shield Details" for other requirements. Details of the shield shall be submitted to the Railroad for approval.
- 3) Wet the ties and other timber below the cutting area.
- 4) Monitor the work site for at least three hours after cutting for a smoldering fire.

B. Extensive overhead cutting will not be performed over the track area without the proper fire suppression equipment on-site and proper protection.

## **VII. UTILITIES**

A. The demolition operations shall be planned such that the utility lines are operating safely at all times. The utility lines shall be protected if affected by demolition operations. All the work associated with utility lines should be coordinated by the contractor with the respective utility companies.

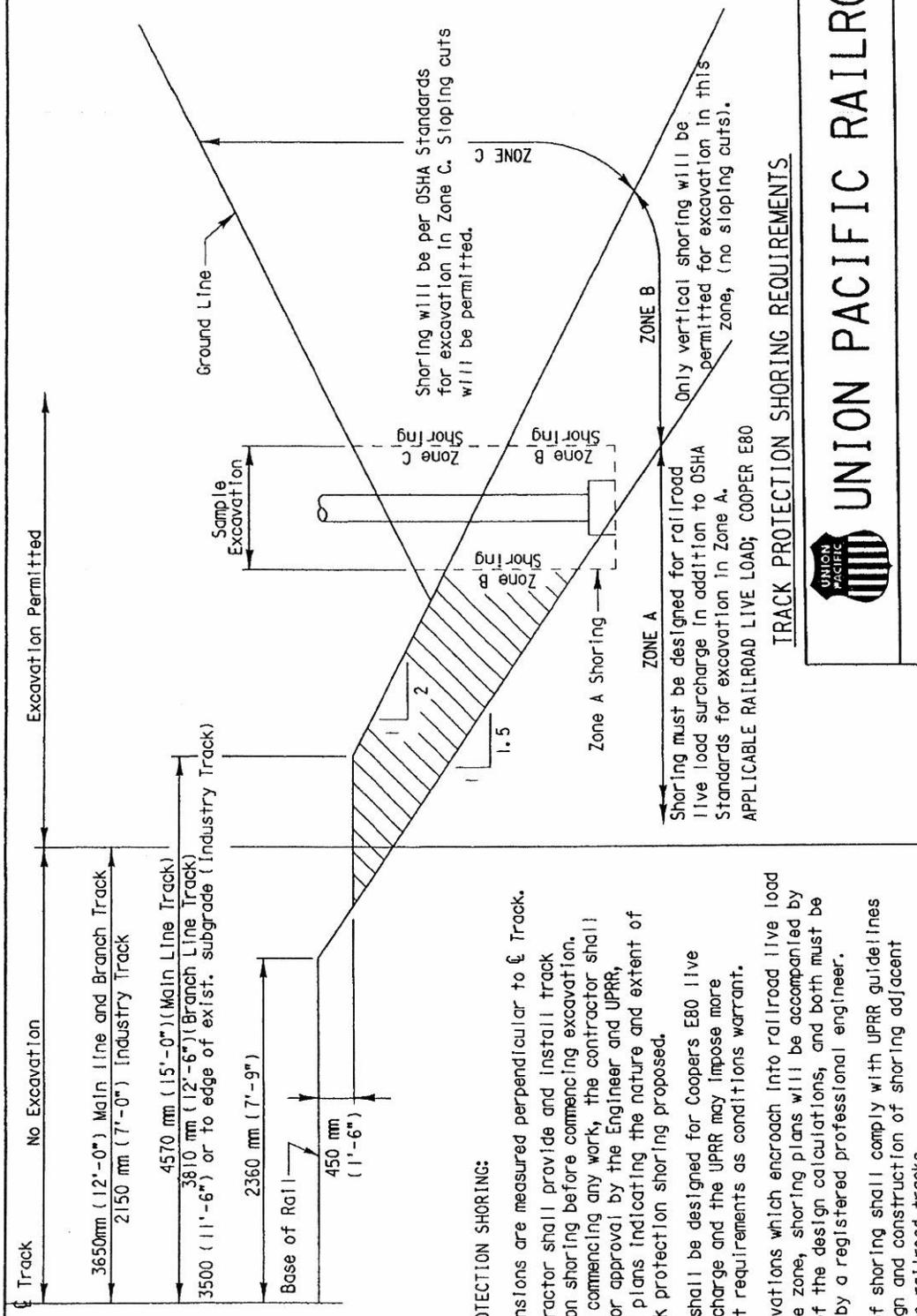
## **VIII. HAZARDOUS MATERIAL**

A. If any hazardous materials are found, provide material protection as specified in local hazardous material codes and immediately contact the Railroad.

---

## **APPENDIX**

- U.P.R.R. STANDARD DRAWING 106613
- TRACK SHIELD DETAIL
- FRAME PROTECTION DETAILS



Excavation Permitted

No Excavation

Track

3650mm (12'-0") Main Line and Branch Track  
2150 mm (7'-0") Industry Track

4570 mm (15'-0") (Main Line Track)  
3810 mm (12'-6") (Branch Line Track)  
3500 (11'-6") or to edge of exist. subgrade (Industry Track)

2360 mm (7'-9")

Base of Rail

450 mm (1'-6")

**TRACK PROTECTION SHORING:**

All dimensions are measured perpendicular to  $\hat{c}$  Track. The contractor shall provide and install track protection shoring before commencing excavation. Prior to commencing any work, the contractor shall submit for approval by the Engineer and UPRR, detailed plans indicating the nature and extent of the track protection shoring proposed.

Shoring shall be designed for Coopers E80 live load surcharge and the UPRR may impose more stringent requirements as conditions warrant.

For excavations which encroach into railroad live load surcharge zone, shoring plans will be accompanied by a copy of the design calculations, and both must be stamped by a registered professional engineer.

Design of shoring shall comply with UPRR guidelines for design and construction of shoring adjacent to active railroad tracks.

Shoring will be per OSHA Standards for excavation in Zone C. Sloping cuts will be permitted.

Zone A Shoring

ZONE A

Shoring must be designed for railroad live load surcharge in addition to OSHA Standards for excavation in Zone A. APPLICABLE RAILROAD LIVE LOAD; COOPER E80

Only vertical shoring will be permitted for excavation in this zone, (no sloping cuts).

**TRACK PROTECTION SHORING REQUIREMENTS**



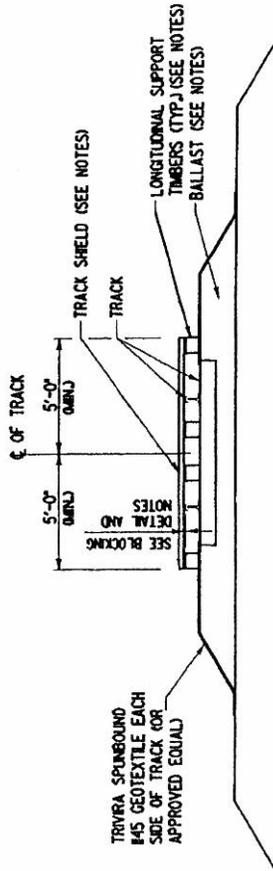
**UNION PACIFIC RAILROAD**

**GENERAL SHORING REQUIREMENTS**

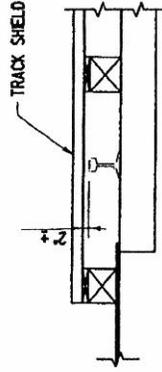
**OFFICE OF CHIEF ENGINEER DESIGN**

C.E. 106613

DATE: 3-31-98 REDRAWN



**TRACK SHIELD DETAIL  
FOR DEBRIS FALLING FROM BRIDGE DECK REMOVAL  
(WHEN TRACK TIME WINDOW IS AVAILABLE)**



**BLOCKING DETAIL**

**NOTES:**

1. A FLAGMAN IS REQUIRED AT ALL TIMES DURING THE USE OF A TRACK SHIELD.
2. THE TRACK SHIELD SHALL BE DESIGNED BY THE CONTRACTOR AND SHALL BE OF SUFFICIENT STRENGTH TO SUPPORT THE ANTICIPATED LOADS, INCLUDING IMPACT. THE SHIELD SHALL PREVENT ANY MATERIALS, EQUIPMENT OR DEBRIS FROM FALLING ONTO THE RAILROAD TRACK. ADDITIONAL LAYERS OF MATERIALS SHALL BE FURNISHED AS NECESSARY TO PREVENT FINE MATERIALS OR DEBRIS FROM SIFTING DOWN UPON THE TRACK.
3. THE SHIELD SHOULD PREFERABLY BE PREFABRICATED AND FURNISHED WITH LIFTING HOOKS TO SIMPLY REMOVAL.
4. THE SHIELD SHALL BE OF SUFFICIENT STRENGTH TO SPAN BETWEEN ITS SUPPORTS WITHOUT BEARING UPON THE RAILS AND TO WITHSTAND DROPPING RUBBLE.
5. BEFORE REMOVAL, THE SHIELD SHALL BE CLEANED OF ALL DEBRIS AND FINE MATERIAL.
6. THE TRACK SHIELD SHALL EXTEND AT LEAST 20 FEET BEYOND THE LIMITS OF DEMOLITION TRANSVERSE TO THE EDGE OF THE BRIDGE.
7. LONGITUDINAL SUPPORT TIMBERS FOR THE SHIELD SHALL NOT EXTEND ABOVE THE TOP OF RAIL WHEN THE SHIELD IS REMOVED. BLOCKING FROM THE TOP OF RAIL TO THE BOTTOM OF THE SHIELD MAY BE ATTACHED TO THE SHIELD. REMAINING TIMBERS SHALL BE ANCHORED.
8. FOR TRAIN PASSAGE, THE RUBBLE SHALL BE REMOVED TO A MINIMUM OF 8' 6" FROM THE NEAREST RAIL AND TO AN ELEVATION NO HIGHER THAN THE TOP OF RAIL.
9. AT THE END OF THE DAY, THE RUBBLE SHALL BE REMOVED COMPLETELY TO A MINIMUM OF 10' 0" FROM THE NEAREST RAIL AND DOWN TO ORIGINAL GRADE.
10. CARE SHALL BE TAKEN TO NOT PLACE METAL ACROSS THE TRACK RAILS. RAILROAD COMMUNICATIONS ARE SENT THROUGH THE RAILS AND WILL BE DISRUPTED BY A SHORT BETWEEN RAILS.
11. DETAILS SHOWN APPLY FOR TIMBER TIES. SPECIAL DETAILS ARE REQUIRED FOR CONCRETE TIES.



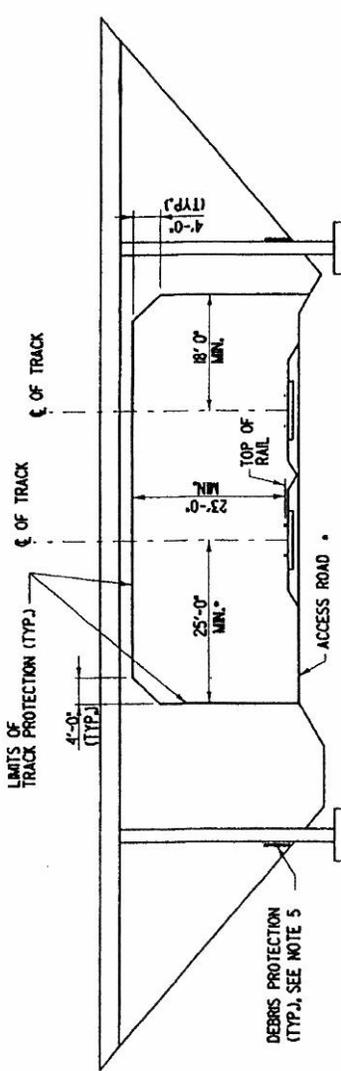
**UNION PACIFIC RAILROAD**

**TRACK SHIELD DETAIL**

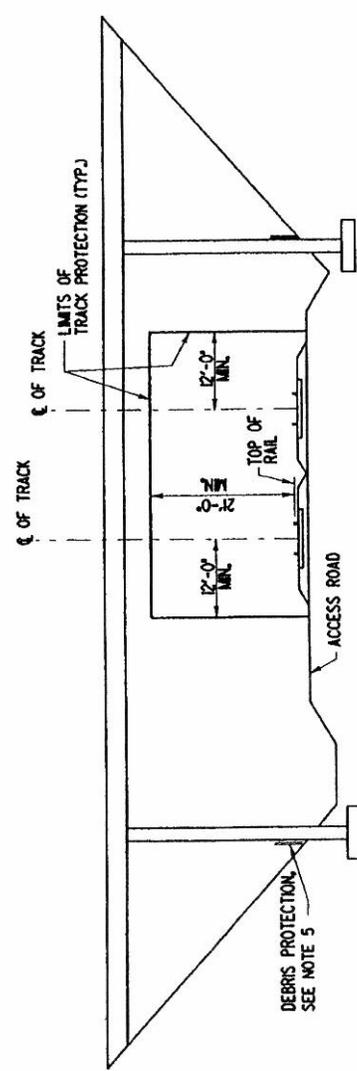
**OFFICE OF CHIEF ENGINEER DESIGN**

DATE: 3-31-98

SHEET 1 OF 1



**BRIDGE ELEVATION  
STANDARD LIMITS OF PROTECTION FOR FRAME PROTECTION**



**BRIDGE ELEVATION  
MINIMUM LIMITS OF PROTECTION FOR FRAME PROTECTION  
(SPECIAL PERMISSION REQUIRED, SEE NOTE 1)**

NOTES:

1. THE STANDARD LIMITS OF PROTECTION NOTED ARE THE MIN. CLEARANCES ALLOWED WITHOUT SPECIAL PERMISSION FROM THE RAILROAD. THE REDUCED CLEARANCES NOTED MAY BE ALLOWED BY THE RAILROAD. SPECIAL PERMISSION FOR THE REDUCED CLEARANCES IS REQUIRED FROM THE RAILROAD SERVICE UNIT SUPERINTENDENT.
2. THE PROTECTION FRAME SHALL AS A MINIMUM MATCH THE DEMOLITION LIMITS SHOWN AND EXTEND PAST THE BRIDGE WIDTH AS SHOWN ON THE ATTACHED DEMOLITION PLAN SHEET.
3. FOR ADDITIONAL CLEARANCE AND PROTECTION INFORMATION, SEE UNION PACIFIC RAILROAD STANDARD DRAWING NO. 0035
4. THE PROTECTION FRAME SHALL PREVENT DEMOLITION DEBRIS, DUST AND FINE MATERIAL FROM FALLING ONTO THE RAILROAD TRACKS, ACCESS ROAD OR TRAINS. THE FRAME SHALL BE DESIGNED BY THE CONTRACTOR TO SUPPORT THE ANTICIPATED DEMOLITION LOADS, AND IN ACCORDANCE WITH UNION PACIFIC GUIDELINES FOR DESIGN OF FALSEWORK FOR STRUCTURES OVER THE RAILROAD.
5. DEBRIS PROTECTION IS REQUIRED NEAR THE BASE OF THE SIDE SLOPES AND ADJACENT TO ROADS USED BY DEMOLITION EQUIPMENT TO PREVENT DEBRIS FROM ROLLING ONTO THE TRACK, ACCESS ROAD OR DITCH. USE TIMBERS AS REQUIRED TO STOP LARGE PIECES OF ROLLING DEBRIS.
6. ANY ACTIVITY WITHIN 25 FEET OF THE NEAREST RAIL OF A TRACK REQUIRES A FLAGMAN.

• IF NO ACCESS ROAD, USE MIN. DIMENSION FROM OTHER SIDE OF DETAIL.

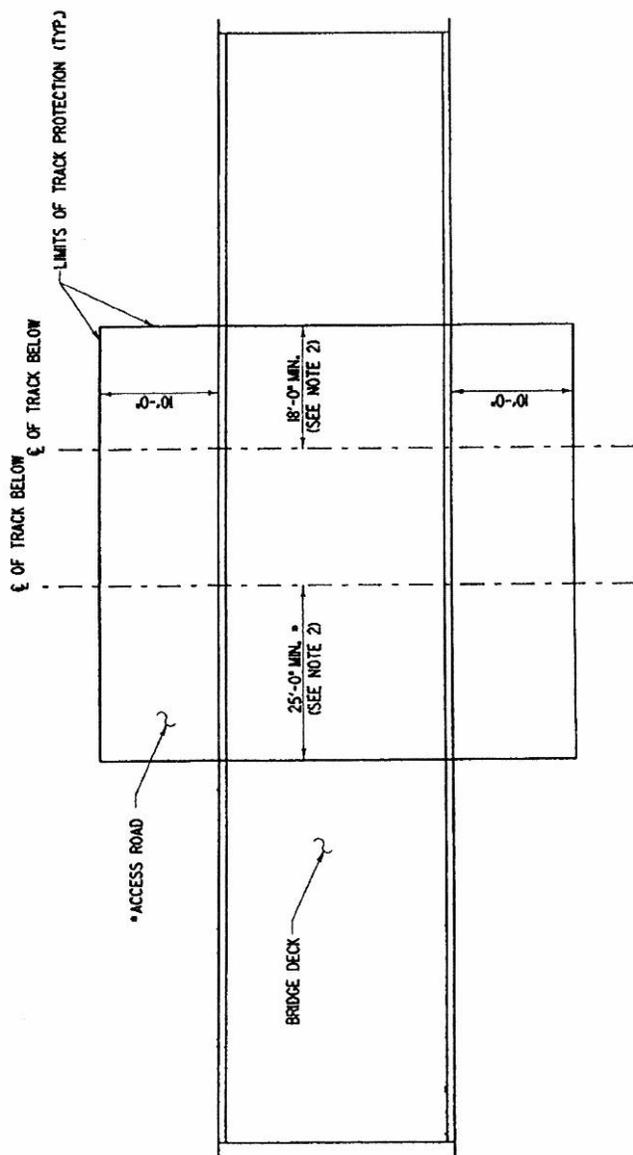


**UNION PACIFIC RAILROAD**

**FRAME PROTECTION DETAILS**  
**OFFICE OF CHIEF ENGINEER DESIGN**

DATE: 3-31-98

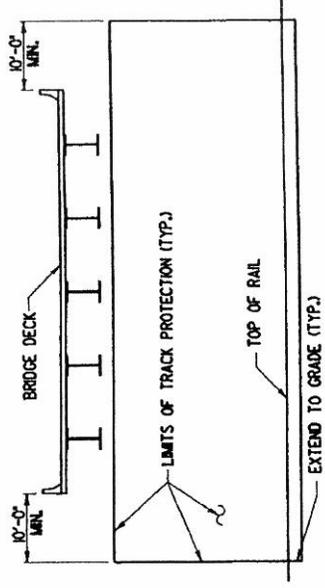
SHEET 1 OF 2



**BRIDGE PLAN  
STANDARD LIMITS OF PROTECTION FOR FRAME PROTECTION**

• IF NO ACCESS ROAD, USE MIN. DIMENSION FROM OTHER SIDE

- NOTES:**
1. SEE GENERAL NOTES ON BRIDGE ELEVATION SHEET
  2. STANDARD LIMITS OF PROTECTION ARE SHOWN FOR MIN. LIMITS OF PROTECTION DIMENSIONS, SEE BRIDGE ELEVATION, MINIMUM LIMITS OF PROTECTION.



**BRIDGE DECK CROSS SECTION  
STANDARD LIMITS OF PROTECTION**

• IF NO ACCESS ROAD, USE MIN. DIMENSION FROM OTHER SIDE



**UNION PACIFIC RAILROAD**

**FRAME PROTECTION DETAILS  
OFFICE OF CHIEF ENGINEER DESIGN**

# EXHIBIT H

To Contract

## **Cover Sheet for the Railroad's Minimum Requirements for Overpass Structures**

**SECTION XXXXX**  
**UNION PACIFIC RAILROAD**  
**MINIMUM REQUIREMENTS**

**PART 1 – GENERAL**

**1.01 DESCRIPTION**

This project includes construction work within the Right-of-Way and/or properties of the Union Pacific Railroad Company "UPRR" and adjacent to tracks, wire lines and other facilities. This section describes the special requirements for coordination with UPRR when work by the Contractor will be performed upon, over or under the UPRR Right-of-Way or may impact current or future UPRR operations. The Contractor will coordinate with UPRR while performing the work outlined in this Contract, and shall afford the same cooperation with UPRR as it does with the Agency. All submittals and work shall be completed in accordance with UPRR Guidelines and AREMA recommendations as modified by these minimum special requirements or as directed in writing by the UPRR Designated Representative.

For purposes of this project, the UPRR Designated Representative shall be the person or persons designated by the UPRR Manager of Industry and Public Projects to handle specific tasks related to the project.

**1.02 DEFINITION OF AGENCY AND CONTRACTOR**

As used in these UPRR requirements, the term "Agency" shall mean the state of Colorado, for the use and benefit of the Colorado Department of Transportation, Division of Engineering and Maintenance.

As used in these UPRR requirements, the term "Contractor" shall mean the contractor or contractor's hired by the Agency to perform any project work on any portion of UPRR's property and shall also include the contractor's subcontractors and the contractor's and subcontractor's respective officer, agents and employees, and others acting under its or their authority.

**1.03 UPRR CONTACTS**

The primary UPRR point of contact for this project is:

Sue Grabler  
Manager Industry and Public Projects  
Union Pacific Railroad Company  
1400 West 52<sup>nd</sup> Avenue  
Denver, Colorado 80221  
Phone: (303) 964-4099  
Fax: (402) 233-2259

For UPRR flagging services and track work, contact:

Name:  
Manager Track Maintenance  
Union Pacific Railroad Company  
Address  
Phone:  
Fax:

**1.04 REQUEST FOR INFORMATION / CLARIFICATION**

All Requests for Information ("RFI") involving work within any UPRR Right-Of-Way shall be in accordance with the procedures listed elsewhere in these bid documents. All RFI's shall be submitted to the Engineer of Record. The Engineer of Record will submit the RFI to the UPRR Designated Representative for review and approval for corresponding to work within the UPRR Right-Of-Way. The Contractor shall allow four (4) weeks for the review and approval process by UPRR.

### **1.05 PLANS / SPECIFICATIONS**

The plans and specifications for this project, affecting the UPRR, are subject to the written approval by the UPRR and changes in the plans may be required after award of the Contract. Such changes are subject to the approval of the Agency and the UPRR.

## **PART 2 – UTILITIES AND FIBER OPTIC**

All installations shall be constructed in accordance with current AREMA recommendations and UPRR specifications and requirements. UPRR general guidelines and the required application forms for utility installations can be found on the UPRR website at [www.uprr.com](http://www.uprr.com).

### **3.01 GENERAL**

- A. Contractor shall perform all work in compliance with all applicable UPRR and FRA rules and regulations. Contractor shall arrange and conduct all work in such manner and at such times as shall not endanger or interfere with the safe operation of the tracks and property of UPRR and the traffic moving on such tracks, or the wires, signals and other property of UPRR, its tenants or licensees, at or in the vicinity of the work. UPRR shall be reimbursed by Contractor or Agency for train delay costs and lost revenue claims due to any delays or interruption of train operations resulting from Contractor's construction work or other activities.
- B. Construction activities will be permitted within 12 feet of the centerline of operational tracks only if absolutely necessary and UPRR's Designated Representative grants approval. Construction activities within 12 feet of the operational track(s) must allow the tracks to stay operational.
- C. Track protection is required for all work equipment (including rubber tired equipment) operating within 25 feet from nearest rail.
- D. The Contractor is also advised that new railroad facilities within the project may be built by UPRR and that certain Contractor's activities cannot proceed until that work is completed. The Contractor shall be aware of the limits of responsibilities and allow sufficient time in the schedule for that work to be accomplished and shall coordinate its efforts with the UPRR.

### **3.02 RAILROAD OPERATIONS**

- A. The Contractor shall be advised that trains and/or equipment are expected on any track, at any time, in either direction. Contractor shall become familiar with the train schedules in this location and structure its bid assuming intermittent track windows in this period, as defined in Paragraph B below.
- B. All railroad tracks within and adjacent to the Contract Site are 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 will occur continuously throughout the day and night on these tracks and shall be maintained at all times as defined herein. The Contractor shall coordinate and schedule the work so that construction activities do not interfere with railroad operations.

- C. Work windows for this Contract shall be coordinated with the Agency's and the UPRR's Designated Representatives. Types of work windows include Conditional Work Windows and Absolute Work Windows, as defined below:
1. **Conditional Work Window:** A Conditional Work Window is a period of time that railroad 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 UPRR flag person will be required. At the direction of the UPRR 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, or as directed by the UPRR Designated Representative, from the tracks). Conditional Work Windows are available for the Project.
  2. **Absolute Work Window:** An Absolute Work Window is a period of time that construction activities are given priority over railroad operations. During this time frame the designated railroad track(s) will be inactive for train movements and may be fouled by the Contractor. At the end of an Absolute Work Window the railroad tracks and/or signals must be completely operational for train operations and all UPRR, Public Utilities Commission (PUC) and Federal Railroad Administration (FRA) requirements, codes and regulations for operational tracks must be complied with. In the situation where the operating tracks and/or signals have been affected, the UPRR will perform inspections of the work prior to placing that track back into service. UPRR flag persons will be required for construction activities requiring an Absolute Work Window. **Absolute Work Windows will not generally be granted. Any request will require a detailed explanation for UPRR review.**

### **3.03 RIGHT OF ENTRY, ADVANCE NOTICE AND WORK STOPPAGES**

- A. Prior to beginning any work on or over the property of, or affecting the facilities of, the UPRR, the Contractor shall enter into an agreement with the UPRR in the form of the "Contractor's Right of Entry Agreement", attached as Appendix E, or latest version thereof provided by the UPRR. There is a fee for processing of the agreement. This cost shall be borne by the Contractor. Contractor shall submit a copy of the executed agreement and the insurance policies, binders, certificates and endorsements set forth therein to the Agency prior to commencing work on UPRR property. The right of entry agreement shall specify working time frames, flagging and inspection requirements, and any other items specified by the UPRR.
- B. The Contractor shall give the advance notice to the UPRR as required in the "Contractor's Right of Entry Agreement" before commencing work in connection with construction upon or over UPRR's Right-of-Way and shall observe UPRR's rules and regulations with respect thereto.
- C. All work upon UPRR's Right-of-Way shall be done at such times and in such manner so as not to interfere with or endanger the operations of UPRR. Whenever work may affect the operations or safety of trains, the method of doing such work shall first be submitted to UPRR's Designated Representative for approval, but such approval shall not relieve the Contractor from liability. Any work to be performed by the Contractor, which requires flagging and/or inspection service, shall be deferred until the flagging protection required by UPRR is available at the job site. See Section 3.18 for railroad flagging requirements.
- D. The Contractor shall make requests in writing for both Absolute and Conditional Work Windows, at least two weeks in advance of any work. The written request must include:
1. Exactly what the work entails.
  2. The days and hours that work will be performed.
  3. The exact location of work, and proximity to the tracks.
  4. The type of window requested and the amount of time requested.
  5. The designated contact person.

- E. The Contractor shall provide a written confirmation notice to the UPRR at least 48 hours before commencing work in connection with 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.
- F. Should a condition arising from, or in connection with the work, require that immediate and unusual provisions be made to protect operations and property of UPRR, the Contractor shall make such provisions. If in the judgment of UPRR's Designated Representative such provisions are insufficient, the UPRR's Designated Representative may require or provide such provisions as deemed necessary. In any event, such provisions shall be at the Contractor's expense and without cost to the UPRR. UPRR or the Agency shall have the right to order Contractor to temporarily cease operations in the event of an emergency or, if in the opinion of the UPRR's Designated Representative, the Contractor's operations could endanger UPRR's operations. In the event such an order is given, Contractor shall immediately notify the Agency of the order.

### **3.04 INSURANCE**

Contractor shall not begin work upon or over UPRR's Right-of-Way until UPRR has been furnished the insurance policies, binders, certificates and endorsements required by the "Contractor's Right-of-Entry Agreement" and UPRR's Designated Representative has advised the Agency that such insurance is in accordance with the Agreement. The required insurance shall be kept in full force and effect during the performance of work and thereafter until Contractor removes all tools, equipment, and material from UPRR's property and cleans the premises in a manner reasonably satisfactory to UPRR. For the benefit of the Contractor and the Insurer(s), the current railroad traffic in the project area is estimated at 8 train movements per day at a maximum speed of 49 MPH.

### **3.05 RAILROAD SAFETY ORIENTATION**

All personnel employed by the Contractor and all subcontractors must complete the UPRR course "Orientation for Contractor's Safety", and be registered prior to working on UPRR property. This orientation is available at [www.contractororientation.com](http://www.contractororientation.com). This course is required to be completed annually.

### **3.06 COOPERATION**

UPRR will cooperate with Contractor so that work may be conducted in an efficient manner, and will cooperate with Contractor in enabling use of UPRR's right-of-way in performing the work.

### **3.07 MINIMUM CONSTRUCTION CLEARANCES FOR FALSEWORK AND OTHER TEMPORARY STRUCTURES**

The Contractor shall abide by the following minimum temporary clearances during the course of construction:

- A. 12' – 0" horizontal from centerline of track
- B. 21' – 0" vertically above top of rail.

For construction clearance less than listed above, local Operating Unit review and approval is required.

### **3.08 APPROVAL OF REDUCED CLEARANCES**

- A. The minimum track clearances to be maintained by the Contractor during construction are specified in Section 3.07 herein.

- B. Any proposed infringement on the specified minimum clearances due to the Contractor's operations shall be submitted to UPRR's Designated Representative through the Agency at least 30 days in advance of the work and shall not be undertaken until approved in writing by the UPRR's Designated Representative.
- C. No work shall commence until the Contractor receives in writing assurance from UPRR's Designated Representative that arrangements have been made for flagging service, as may be necessary and receives permission from UPRR's Designated Representative to proceed with the work.

### **3.09 CONSTRUCTION AND AS-BUILT SUBMITTALS**

- A. Submittals are required for construction materials and procedures as outlined below. The submittals shall include all review comments from the Agency and the Engineer of Record. All design submittals shall be stamped and signed by a Professional Engineer registered in the State of Colorado.
- B. The tables below provide UPRR's minimum submittal requirements for the construction items noted. Submittal requirements are in addition to those specified elsewhere in these bid documents. The minimum review times indicated below represent UPRR's requirements only. The Contractor shall allow additional time for the Agency's review time as stated elsewhere in these bid documents.
- C. Submittals shall be made by the Agency to the UPRR Manager of Industry and Public Projects unless otherwise directed by the Railroad. Items in Table 1 shall be submitted for both railroad overpass and underpass projects, as applicable. Items in Table 2 shall be submitted for railroad underpass projects only.

TABLE 1

ITEM	DESCRIPTION	SETS REQD.	UPRR's Minimum Review Time
1	Shoring design and details	4	4 weeks
2	Falsework design and details	4	4 weeks
3	Drainage design provisions	4	4 weeks
4	Erection diagrams and sequence	4	4 weeks
5	Demolition diagram and sequence	4	4 weeks

Prior to or during construction of railroad underpass structures, the UPRR requires the review of drawings, reports, test data and material data sheets to determine compliance with the specifications. Product information for items noted in Table 2 be submitted to UPRR's Designated Representative through the Agency for their own review and approval of the material. The signed submittal and the Agency's review comments will be reviewed by UPRR or their consultant. If a consultant performs the reviews, the consultant may reply directly to the Agency or its Designated Representative after consultation with UPRR. Review of the submittals will not be conducted until after review by the Agency or its Designated Representative. Review of the submittal items will require a minimum of four (4) weeks after receipt from the Agency.

TABLE 2

ITEM	DESCRIPTION	SETS REQD.	NOTES
1	Shop drawings	4	Steel and Concrete members
2	Bearings	4	For entire structures

3	Concrete Mix Designs	4	For entire structures
4	Rebar & Strand certifications	4	For superstructure only
5	28 day concrete strength	4	For superstructure only
6	Waterproofing material certifications and installation procedure	4	Waterproofing & protective boards
7	Structural steel certifications	4	All fracture critical members & other members requiring improved notch toughness
8	Fabrication and Test reports	4	All fracture critical members & other members requiring improved notch toughness
9	Welding Procedures and Welder Certification	4	AWS requirements
10	Foundation Construction Reports	4	Pile driving, drilled shaft construction, bearing pressure test reports for spread footings
11	Compaction testing reports for backfill at abutments	4	Must meet 95% maximum dry density, Modified Proctor ASTM D1557

- D. As-Built Records shall be submitted to the UPRR within 60 days of completion of the structures. These records shall consist of the following items:

Overpass Projects

1. Electronic files of all structure design drawings with as-constructed modifications shown, in Microstation J or Acrobat .PDF format.
2. Hard copies of all structure design drawings with as-constructed modifications shown.

Underpass Projects

1. Electronic files of all structure design drawings with as-constructed modifications shown, in Microstation J or Acrobat .PDF format.
2. Hard copies of all structure design drawings with as-constructed modifications shown.
3. Final approved copies of shop drawings for concrete and steel members.
4. Foundation Construction Reports
5. Compaction testing reports for backfill at abutments

### **3.10 APPROVAL OF DETAILS**

The details of the construction affecting the UPRR tracks and property not already included in the Contract Plans shall be submitted to UPRR's Designated Representative through the Agency for UPRR's review and written approval before such work is undertaken. Review and approval of these submittals will require a minimum of four (4) weeks in addition to the Agency's review time as stated elsewhere in these bid documents.

### **3.11 MAINTENANCE OF RAILROAD FACILITIES**

- A. The Contractor shall be required to maintain all ditches and drainage structures free of silt or other obstructions which may result from Contractor's operations; to promptly repair eroded areas within UPRR's right of way and to repair any other damage to the property of UPRR, or its tenants.
- B. All such maintenance and repair of damages due to the Contractor's operations shall be done at the Contractor's expense.

- C. The Contractor must submit a proposed method of erosion control and have the method reviewed by the UPRR prior to beginning any grading on the Project Site. Erosion control methods must comply with all applicable local, state and federal regulations.

### **3.12 SITE INSPECTIONS BY UPRR'S DESIGNATED REPRESENTATIVE**

- A. In addition to the office reviews of construction submittals, site inspections may be performed by UPRR's Designated Representative at significant points during construction, including but not limited to the following:
1. Preconstruction meetings.
  2. Pile driving, drilling of caissons or drilled shafts.
  3. Reinforcement and concrete placement for railroad bridge substructure and/or superstructure.
  4. Erection of precast concrete or steel bridge superstructure.
  5. Placement of waterproofing (prior to placing ballast on bridge deck).
  6. Completion of the bridge structure.
- B. Site inspection is not limited to the milestone events listed above. Site visits to check progress of the work may be performed at any time throughout the construction as deemed necessary by UPRR.
- 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 to the Agency for submittal to UPRR's Designated Representative for review prior to commencement of work. This schedule shall also include the anticipated dates when the above listed events will occur. This schedule shall be updated for the above listed events as necessary, but at least monthly so that site visits may be scheduled.

### **3.13 UPRR REPRESENTATIVES**

- A. UPRR representatives, conductors, flag person or watch person will be provided by UPRR at expense of the Agency or Contractor (as stated elsewhere in these bid documents) to protect UPRR facilities, property and movements of its trains or engines. In general, UPRR will furnish such personnel or other protective services as follows:
1. When any part of any equipment is standing or being operated within 25 feet, measured horizontally, from centerline of any track on which trains may operate, or when any object is off the ground and any dimension thereof could extend inside the 25 foot limit, or when any erection or construction activities are in progress within such limits, regardless of elevation above or below track.
  2. For any excavation below elevation of track subgrade if, in the opinion of UPRR's Designated Representative, track or other UPRR facilities may be subject to settlement or movement.
  3. During any clearing, grubbing, excavation or grading in proximity to UPRR facilities, which, in the opinion of UPRR's Designated Representative, may endanger UPRR facilities or operations.

4. During any contractor's operations when, in the opinion of UPRR's Designated Representative, UPRR facilities, including, but not limited to, tracks, buildings, signals, wire lines, or pipe lines, may be endangered.
5. The Contractor shall arrange with the UPRR Designated Representative to provide the adequate number of flag persons to accomplish the work.

### **3.14 WALKWAYS REQUIRED**

Along the outer side of each exterior track of multiple operated track, and on each side of single operated track, an unobstructed continuous space suitable for trainman's use in walking along trains, extending to a line not less than twelve feet (12') from centerline of track, shall be maintained. Any temporary impediments to walkways and track drainage encroachments or obstructions allowed during work hours while UPRR's flagman service is provided shall be removed before the close of each work day. Walkways with railings shall be constructed by Contractor over open excavation areas when in close proximity of track, and railings shall not be closer than 8' – 6" horizontally from center line of tangent track or 9' – 6" horizontally from centerline of curved track.

### **3.15 COMMUNICATIONS AND SIGNAL LINES**

If required, UPRR will rearrange its communications and signal lines, its grade crossing warning devices, train signals and tracks, and facilities that are in use and maintained by UPRR's forces in connection with its operation at expense of the Agency. This work by UPRR will be done by its own forces and it is not a part of the Work under this Contract.

### **3.16 TRAFFIC CONTROL**

Contractor's operations that control traffic across or around UPRR facilities shall be coordinated with and approved by the UPRR's Designated Representative.

### **3.17 CONSTRUCTION EXCAVATIONS**

- A. The Contractor shall be required to take special precaution 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 UPRR "Guidelines for Temporary Shoring".
- B. The Contractor shall contact UPRR's "Call Before Your Dig" 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 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 UPRR property, the Contractor will co-ordinate with UPRR and the Telecommunication Company(ies) to arrange for relocation or other protection of the system prior to beginning any work on or near UPRR property.

### **3.18 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 will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach within twenty-five (25) feet of any track, may require railroad flagging services or other protective measures. Contractor shall give the advance notice to the UPRR as required in the "Contractor's Right of Entry Agreement" before commencing any such work, so that the UPRR may determine the need for flagging or other protective measures to ensure the safety of the railroad's operations. 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 \$700.00 per day for a ten (10) 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 UPRR and are subject to change.

**3.19 CLEANING OF RIGHT-OF-WAY**

Contractor shall, upon completion of the work to be performed by Contractor upon the premises, over or beneath the tracks of UPRR, promptly remove from the Right-of-Way of UPRR all of Contractor's tools, implements, and other materials whether brought upon the Right-of-Way by Contractor or any subcontractors, employee or agent of Contractor or of any subcontractor, and leave the Right-of-Way in a clean and presentable condition to satisfaction of UPRR.

# EXHIBIT I

To Contract

**Cover Sheet for the Railroad's Estimate  
for the Railroad Work**

<b>EXHIBIT I</b>
------------------

**EXISTING REUSABLE MATERIAL  
ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK  
BY THE  
UNION PACIFIC RAILROAD COMPANY  
FOR THE  
STATE OF COLORADO**

**DESCRIPTION OF WORK:** Perform engineering design review, engineering construction oversight and flagging for the State during the replacement of the existing SH 96A structure in Pueblo, CO at Mile Post 117.92 on the Colorado Springs Subdivision.

**CROSSING/PUBLIC  
CO/PUEBLO  
PROJECT NO.: BR 0961-008, 13141  
STATE HIGHWAY 96A**

**LOCATION:** Denver Service Unit                      **STATE:** Colorado                      **DATE:** 1/9/07

<u>DESCRIPTION</u>	<u>LABOR</u>	<u>MATERIAL</u>	<u>TOTAL</u>
State of Colorado			
<b>ENGINEERING</b>			
Design Review	\$ 15,000		\$ 15,000
Construction Overview Contractor			
<b>FLAGGING</b>			
Flagging (620 days x \$700.00)*	\$434,400		
<b><u>TOTAL PROJECT COSTS:</u></b>	\$ 449,000	\$0	\$ 449,000
<b>EXISTING REUSABLE MATERIAL:</b>	\$0	\$0	\$0
<b>SALVAGE NONUSABLE MATERIAL:</b>	\$0	\$0	\$0
<b>TOTAL ESTIMATED COST OF PROJECT LESS CREDITS</b>			<b>\$449,000</b>

**THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVEN OF AN INCREASE OR DECREASE IN THE COST OF AMOUNT OF MATERIAL OR LABOR REQUIRED, THE CONTRACTOR WILL BE BILLED FOR THE ACTUAL FLAGGING COSTS AT THE CURRENT RATES EFFECTIVE THEREOF. DESIGN REVIEW WILL BE BILLED AS ACTUAL CHARGES DIRECTLY TO THE CDOT.**

**\*ESTIMATE OF NECESSARY FLAGGING DAYS FURNISHED BY CDOT. RAILROAD TO BILL STATE'S CONTRACTOR FOR FLAGGING PURSUANT TO ARTICLE II, SECTION D OF THE CONTRACT.**

# EXHIBIT J

To Contract

## **Cover Sheet for the Form of State's Funding Letter**

**SAMPLE FUNDING LETTER**

Exhibit   J  

Date: \_\_\_\_\_ State Fiscal Year: \_\_\_\_\_

TO: (contractor's name here)

SUBJECT: Funding Letter No. \_\_\_\_\_

In accordance with Paragraph \_\_\_\_\_ of contract routing number \_\_\_\_\_, between the State of Colorado Department of or Higher Ed Institution (agency name) (division) and (contractor's name) covering the period of (contract start date) through (contract end date), the undersigned commits the following funds to the contract:

The amount of funds available and specified in Paragraph \_\_\_\_\_ is (increased/decreased) by (\$ amount of change) to a new total funds available of (\$\_\_\_\_) to satisfy orders under the contract. Paragraph \_\_\_\_\_ is hereby modified accordingly.

This funding letter does not constitute an order for services under this contract.

This funding letter is effective upon approval by the State Controller or such assistant as he may designate.

**APPROVALS:**

**State of Colorado:**  
Bill Owens, Governor

By: \_\_\_\_\_ Date: \_\_\_\_\_  
For the Executive Director/College President  
Colorado Department of \_\_\_\_\_ or Higher Ed Institution \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_  
For \_\_\_\_\_ (Division)

**ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER**

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for goods and/or services provided.

**State Controller  
Arthur L. Barnhart**

By: \_\_\_\_\_  
Date: \_\_\_\_\_

TO: Bill Wimmer – Mail Stop 0910

CC: Tom Ogee – Mail Stop 0910  
David E. Peterson – Mail Stop 0910  
Susan K. Grabler – Denver

FROM: Steve W. Berki – Mail Stop 0910

DATE: September 26, 2006

FILE: CROSSING/GRADE SEP  
CO/PUEBLO  
SH 96/4<sup>TH</sup> AVENUE  
MP 117.92/CO SPRINGS SUL  
DOT # 253147Y

*SWB*

The Colorado Department of Transportation (CDOT) proposes to reconstruct the SH 96/4<sup>th</sup> Street highway overpass over the Pueblo Yard at Pueblo, CO. The proposal from CDOT is to build a permanent offset alignment for the new highway overpass which will clear span the UPRR with a 379' single span structure and then demolish the existing overpass once the new structure is opened to the public.

The project is funded with 100% CDOT funding and the electrical work for light tower relocation and railroad flagging is estimated to cost \$308,546.

As the estimated project costs of the proposed UPRR work for the replacement of the SH 96/4<sup>th</sup> Street highway overpass are within your authority to approve, I would appreciate your approval to enter into an agreement with CDOT. With your concurrence, we will execute the agreement and submit an AFE request under Budget Item 07EN11.

APPROVED:

*Bill Wimmer*

Bill Wimmer

WEW

*WEW*  
Date: 09 2006