

Section 6 - Third Party Agreements

General

The Contractor shall be responsible for obtaining all third-party approvals required to complete the Work, except as otherwise specified in the Contract Documents. Third-party coordination and approvals will be required from, but not limited to, the following agencies: Railroad, Irrigation Ditch Companies, Public Utility Owners and Private Utility Owners. Utility Company requirements are addressed in Section 7, Utility Relocations. Coordination and approval requirements of the Railroad and Irrigation Ditch Companies are addressed in this Section.

Railroad

The Project includes Work on, over and adjacent to the Union Pacific Railroad (Railroad) Right-of-Way (ROW) and/or properties on, over or adjacent to the tracks, wire lines, and other facilities of the Railroad. This Section provides requirements applicable to Work performed on, over or adjacent to the Railroad ROW. Anticipated Work on, over or adjacent to Railroad ROW is limited to construction work necessary for the construction of the SH 92 bridge structure foundations, piers, crash walls, abutments, roadway retaining walls and all other substructure and superstructure elements. The Contractor shall abide by and comply with the requirements of the Railroad, as well as those requirements specified herein.

The Contractor shall comply with all rules and regulations prescribed by the Railroad as to the proper manner of protecting the tracks (and the traffic moving thereon), telephone, telegraph and signal wires, and other property of the Railroad or their tenants at and in the vicinity of the Project during the time such Work is being performed. Compliance with the Railroad rules and regulations shall include execution of agreements required by the Railroad.

Applicable Standards

The design and construction of the Railroad Work for the Project shall be in accordance with the Railroad's written specifications, standards of practice (which may include design format), and construction methods that are current at the Proposal Due Date. The Contractor shall obtain all such written specifications, standards of practice, and construction methods from the Railroad. This information can be obtained at www.uprr.com . In the event of a conflict between the requirements of the Railroad and the requirements of the Contract Documents, CDOT, at its sole discretion, will determine which shall govern. The Contractor shall be responsible for resolution of any unresolved ambiguity prior to proceeding with any Railroad Work.

The Contractor shall meet the requirements included in the final executed Construction and Maintenance Agreement (C&M Agreement) between CDOT and the Railroad created for this Work. The Draft C&M Agreement for this project is included in the Reference Documents for referral.

The Contractor shall meet the requirements included in the Railroad's Contractor's Right of Entry Agreement (CROE Agreement) entered into by the Contractor for Work to be performed by the Contractor within Railroad ROW.

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Administrative Requirements

The Proposer shall develop a design in which the existing location of the UPRR crossing arms, communication equipment, and track crossing panels will remain in place throughout the project to maintain existing traffic. These items will then be removed by the UPRR at no cost to the Contractor once traffic has been transferred to the grade separated structure.

Within 10 Days after NTP for design, the Contractor shall notify the Railroad Manager of Industry and Public Projects:

Mr. Sherman Spear
Manager Industry & Public Projects
Union Pacific Railroad
1400 West 52nd Avenue
Denver, CO 80221
Phone: (303) 405-5039
FAX: (402) 997-3942

And, Railroad Manager of Track Maintenance:

Mr. Matthew Johnson
Manager Track Maintenance
Union Pacific Railroad
2790 D Road
Grand Junction, CO 81501
Phone: (970) 548-4254
FAX: (402) 233-3011
Cell: (402) 216-2305

The Contractor shall meet with the Railroad and CDOT as soon as practicable after NTP for design to review all Railroad points of concern and other items that may affect the Schedule. The Contractor shall identify critical Activities and sequences as they affect Railroad operations, and shall plan to effectively mitigate Railroad impacts.

The construction of the overhead grade separation structure on UPRR Right of Way will require CDOT to negotiate and execute a Construction and Maintenance Agreement with the Railroad prior to construction. The Contractor shall support CDOT in this effort by preparing any Contract exhibits and/or information requested by CDOT or the Railroad. The Contractor shall allow for appropriate duration in the Project Schedule for contract negotiation and execution, and shall provide the supporting documentation in a timely fashion to CDOT so as not to impact the Project Schedule.

All Railroad facilities requiring modifications shall be designed and constructed by the Railroad.

Before commencing any Work on Railroad properties, the Contractor shall enter into agreement with the Railroad in the form of a Contractor's Right of Entry Agreement (CROE).

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An example of the CROE, including Exhibits B, C and D, the Contractor's Endorsement and a copy of the application for a CROE is included with the Reference Documents. All costs associated with applying for and complying with CROE Agreement, including required insurance coverage, clerical, administrative, and handling expenses in connection with the processing of this agreement, shall be included in the Work.

Previous Approvals and Comments

The Railroad has previously reviewed conceptual plans for this project and provided comments on the 30% plan submittal. They have also provided comments and/or concurrence for variance requests as indicated in the Reference Documents. Copies of these documents are included with the Reference Documents and include the following:

- UPRR Conceptual Submittal and Variance Request
- UPRR Comments on Conceptual Submittal
- UPRR Comments on 30% plans; email dated 2-1-13
- UPRR Comments on 30% plans; email dated 4-16-13
- CDOT response to UPRR 30% plan comments

Railroad Insurance

The Contractor shall comply with the provisions for Railroad insurance as specified in the executed agreements or permits with the Railroad and in the terms and conditions of the Contract. See Exhibit C of the Contractor's Right of Entry Agreement in the Reference documents for the insurance requirements. All such insurance shall be maintained so long as work shall continue in the vicinity of Railroad property.

If any part of the Contract work on the Railroad's properties is sublet, similar insurance shall be provided by or in behalf of each subcontractor.

Flagging and Inspection

Any Work within, or Work Equipment that could potentially fall within, 25 feet of the centerline of the nearest track rail shall require a Railroad flagger. The Contractor shall notify the Railroad per the executed agreement with the Railroad to arrange for required flagging services. The Railroad flagger shall provide services for the Railroad only. The Contractor shall be responsible to appropriately notify the Railroad regarding flagging start and end dates for work on the Railroad ROW per the executed agreement. Railroad flagging that occurs as a result of the failure of the Contractor to provide timely notice when flagging will not be required, per the executed agreement, will not be paid for by CDOT but will be the responsibility of the Contractor. The Contractor shall provide advance notice to the Railroad, per the executed agreement, when all work on the Railroad ROW is scheduled for completion to provide for termination of Railroad flagger services.

During the period of construction, all flagging and protective services shall be performed strictly in accordance with directives and instructions issued by the Railroad. The Contractor shall

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confer with the Railroad for the times, locations, and manner of such protective measures. The Contractor shall include the Railroad flaggers in all its regularly scheduled safety meetings. If the Contractor does not comply with the above requirements, the Railroad may post a flagger or flaggers, as it deems necessary, for the duration of the Project. The Railroad utilizes independent consultant services to inspect and verify that any and all work on Railroad ROW is being undertaken in accordance with Railroad safety requirements. Failure to comply with Railroad safety requirements may result in a stop Work order.

Cost for Flagging, Inspection

~~The cost of Railroad flagging and inspection will be paid by CDOT in accordance with Section 16 – Traffic Control. The Contractor shall keep a log of actual time that the Railroad personnel are flagging. Copies of the log shall be submitted to CDOT on a weekly basis. The Railroad will bill the State directly for Railroad flagging and inspection, and other Railroad costs incurred on the Project. Costs incurred however as a result of Contractor's non-compliance to the requirements under "Flagging and Inspection" item in this Section shall be the Contractor's responsibility.~~

The cost of Railroad flagging, inspection and other Railroad related costs shall be paid by the Contactor and shall be included as part of the Contractor's original lump sum bid price. The Contractor shall keep a log of actual time that the Railroad personnel are flagging. Copies of the log shall be submitted to CDOT on a weekly basis. The Railroad will bill the Contractor for Railroad flagging and inspection, and other Railroad costs incurred on the Project. The Railroad's estimated cost of flagging that the Railroad deems necessary is \$1,500.00 per flagger per day, based on a 10-hour day. Work days longer than 10-hour days, and double shifts will require the utilization of additional Railroad flaggers.

The rates of pay of the Railroad employees customarily called upon to act for the protection of the Railroad are the Railroad rates in effect at the time of the Work for the various classes of labor. Compensation, property damage and public liability insurance, vacation and holiday time, Railroad retirement and unemployment taxes, health and welfare, and supervision charges shall be added to the above rates.

The Contractor shall be responsible for developing an estimate of the cost of the flagging protection that will be required and shall obtain concurrence from the Railroad. Such estimate shall be understood to be approximate only, and no guarantee is made that the total cost of such flagging will not be in excess of the estimated amount.

Authority of Railroad Flaggers and Inspectors

The Railroad flaggers and inspectors shall have the right to direct the Contractor to stop Work on, over or adjacent to Railroad property, if the Railroad in its sole discretion determines that the Work being performed is hazardous to Railroad property and/or operations. The Railroad will give immediate notice to CDOT of any Work stoppage. The Contractor, working with CDOT, shall be responsible for resolving to the Railroad's satisfaction the problems resulting in the Work stoppage. The Contractor shall accommodate any and all requests made by the Railroad that serve the purpose of avoiding hazards to Railroad property and/or operations.

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Neither the Railroad nor CDOT will have any liability to the Contractor for costs or delays associated with such Work stoppage or requirements associated with avoidance or hazardous situations.

Utility Crossings

The Railroad is not responsible for Utilities on Railroad ROW. The Contractor shall locate all Utilities on Railroad ROW within the immediate vicinity of the Work. The Contractor shall certify to the Railroad that all the Utilities on Railroad ROW and within the immediate vicinity of the Work have been identified and properly located.

Design Reviews

The Railroad will review design plans for Work on the Railroad's property. Railroad review is separate and independent from CDOT oversight. The Contractor shall coordinate the required Railroad design reviews with the CDOT Utility Engineer, Rob Martindale. His contact information is shown below. All plans submitted for Railroad review and approval shall be in English units. All documents shall be delivered to the CDOT Utility Engineer with a copy to the CDOT Project Engineer. The Contractor shall allow Railroad review time per the Burlington Northern Santa Fe (BNSF) Railway – Union Pacific Railroad Guidelines for Railroad Grade Separation Projects that are included with the Reference Documents. The cost of producing plans for design review shall not be paid separately but shall be included in the cost of the Work.

CDOT shall obtain Railroad Approval in writing of design plans for all of the design elements of the Work on the Railroad's property and will promptly copy the Contractor on all correspondence to or from the Railroad.

CDOT has executed an existing Task Order with the UPRR and will assume the payment responsibility to the UPRR for their review time.

Rob Martindale
CDOT Region 3 Utility Engineer
222 South Sixth Street, Room 317
Grand Junction, CO 81501
Office: 970-683-6209
Cell: 970-210-5913
rob.martindale@state.co.us

Construction Requirements

The Contractor shall comply with the rules and regulations of the Railroad or the instructions of its representatives in relation to the proper manner of protecting the tracks and property of the Railroad and the traffic moving on such tracks, as well as the wires, signals, and other property

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of the Railroad, its tenants, or licensees, at and in the vicinity of the Work during the period of construction.

All construction Work within the Railroad ROW and/or properties shall be performed during daylight hours unless authorized otherwise by the Railroad. The Contractor shall coordinate with the Railroad prior to beginning any construction on or adjacent to the Railroad ROW. The Contractor shall schedule and hold a Railroad pre-construction conference. Working windows for demolition and construction shall be coordinated with the Railroad and Railroad flaggers.

The Contractor shall provide written notification to the Railroad at least 30 Days in advance of the date on which the Contractor expects to begin Work on Railroad properties. All notices and correspondence with the Railroad shall contain the Project number and location. Copies of such agreements, notices, and correspondence shall also be submitted to CDOT.

The Contractor shall obtain Railroad agreement in writing, in advance, on methods and procedures covering all Work on the Railroad's property. Upon completion of the Work, the Contractor shall remove from the premises of the Railroad ROW all Equipment, surplus Material, and debris, leaving such premises in a neat condition satisfactory to the Railroad.

If the Contractor employed upon the Railroad's property performs the Work thereon contrary to the Railroad-approved plans, specifications, and requirements of the Contract Documents, or if the Contractor performs the Work on the Railroad's property in a manner deemed hazardous by the Railroad (to its property and facilities or the safe and expeditious movement of its traffic), the Railroad will have the right to stop the Work on the Railroad's property until the acts or omissions of the Contractor have been fully rectified to the satisfaction of the Railroad.

The Contractor shall be responsible to the Railroad and its tenants for all damages for delays that may be sustained by the Railroad, its tenants, their employees, or freight in their care caused by any interference that could have been avoided by proper handling of the Project Work.

All of the limitations and obligations imposed upon the Contractor by this Section shall apply with equal force and effect to any Subcontractor performing any Project Work for the Contractor upon the Railroad's ROW. The Contractor shall be primarily liable and responsible to the Railroad for all acts or omissions of any Subcontractor employed upon the Railroad's ROW.

Nothing herein contained shall be construed to preclude the Railroad from proceeding against the Contractor and Subcontractors individually or collectively.

The Contractor shall perform its Work in such manner and at such times as shall not to endanger or interfere with the safe operation of the tracks and property of the Railroad and the traffic moving on such tracks, as well as wires, signals, and other property of the Railroad, its tenants or licensees, at or in the vicinity of the Work. The Contractor shall not pile or store any Materials, tools, or park any Equipment, when not in use, closer to the center of nearest railroad track than permitted by the following clearances:

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1. 25 feet, 0 inches horizontally from nearest rail
2. 23 feet, 4 inches vertically above top of rail

Falsework, forms, bracing or other construction supports, driven piles, etc., shall be no closer to the center of the nearest railroad track than permitted by the following temporary construction clearances:

1. 12 feet, 0 inches horizontally from nearest rail
2. 21 feet, 0 inches vertically above top of rail

Any proposed variance of the above clearances shall be submitted by the Contractor to the Railroad, the Public Utilities Commission if applicable, and to CDOT; and the variance shall not be undertaken until approved by the Railroad and until CDOT has obtained any necessary authorization from any governmental body or bodies having jurisdiction. No extra compensation will be allowed in the event the Contractor's Work is delayed pending Railroad approval and Governmental Approval.

If required, temporary crossings at grade of the Railroad's tracks or roadways or unloading pits on the Railroad's ROW will only be constructed by the Railroad. If required, the Contractor shall execute a temporary crossing agreement with the Railroad. The Contractor shall only enter Railroad property through routes approved by the Railroad. The Contractor shall maintain any such crossings so established in good condition at all times; shall keep flange-ways free of ice, snow, dirt, rock and debris; and shall install, operate, maintain and remove in a manner satisfactory to the Railroad suitable barricades adequate to prevent unauthorized vehicles or Equipment from using such crossings or roadways. All costs and expenses for installation, maintenance, and operation of any such crossings or roadways and barricades, whether the Work performed by the Railroad or by the Contractor, shall be included in the Work, notwithstanding anything elsewhere contained herein. The Contractor shall not at any time cross the Railroad's tracks with vehicles or Equipment of any kind or character, except at existing public crossings or at crossings established, as provided for in this paragraph.

The Contractor shall provide positive drainage along the Railroad at all times during and at the end of construction in the area.

Work shall be performed in accordance with plans and specifications approved by the Railroad and in such manner and at such times as shall not endanger or interfere with the safe operation of the tracks and other facilities. The requirements of the Railroad and the instructions of its representatives shall be complied with relating to the proper manner of protecting the tracks, pipelines, wire lines, signals, and all other property at said location; the traffic moving on such tracks; and the removal of tools, Equipment, and Materials.

The Contractor shall not pursue any levies, liens, or encumbrances of any nature whatsoever against Railroad property, and shall promptly remove any lien against Railroad property arising from performance of Work hereunder by the Contractor or any Subcontractor; and if not

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removed within 20 Days, the Railroad may act to remove same and all the costs shall be paid by the Contractor. Railroad representatives, conductors, flagmen, or watchmen will be provided by the Railroad to protect its facilities, property, and movements of its trains or engines when, in the opinion of the Railroad's representative, they are necessary because of the Contractor's operations while working on or adjacent to Railroad property or its tracks.

~~The cost of all personnel deemed necessary by the Railroad and provided by the Railroad for the protection of the Railroad facilities and trains during the period of constructing the Project, and the cost of installing protective devices in the case of impaired clearance, as above specified, shall be borne by CDOT in accordance with Section 16—Traffic Control.~~

The cost of all personnel deemed necessary by the Railroad and provided by the Railroad for the protection of the Railroad facilities and trains during the period of constructing the Project, and the cost of installing protective devices in the case of impaired clearance, as above specified, shall be borne by the Contractor and shall be included as part of the Contractor's original lump sum bid price.

At the request of the Railroad, the Contractor shall remove from the Railroad premises any employee of said Contractor or any Subcontractor who fails to conform to the instructions of the Railroad's representative. All Work on the Railroad premises shall be suspended until such request of the Railroad is met. The Contractor shall indemnify the Railroad against any claim arising from the removal of any such employee from the Railroad premises.

Upon completion of the Work to be performed on Railroad property, the Contractor shall promptly remove from Railroad property all tools, Equipment, and Materials placed thereon by the Contractor or the Contractor's agents. The Contractor shall restore said property to the same state and condition as when the Contractor entered thereon and shall leave said property in a clean and presentable condition satisfactory to the Railroad.

The Contractor shall provide written notice to the Railroad that the Work has been completed within 10 Days following completion and acceptance of such Work. All notices and correspondence with the Railroad shall contain the Project number and location. Copies of such agreements, notices, and correspondence shall also be submitted to CDOT.

Colorado Public Utilities Commission (PUC)

Per PUC Regulations (4 CCR 723-7:7203), only the roadway or railroad authority in highway-rail crossings may petition or apply to the PUC. CDOT will apply for the highway-rail crossing PUC authorizations necessary for the Project. The Contractor shall support CDOT in these efforts by the following:

1. CDOT shall be responsible for preparing all applications to be submitted to the PUC.
2. The Contractor shall be responsible for assisting and supporting CDOT as needed by providing all supporting documentation, and preparing exhibits to the satisfaction of CDOT and the PUC.

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3. The Contractor shall attend meetings with appropriately qualified staff and cooperate with CDOT and the PUC, as reasonable and requested by CDOT.
4. The Contractor shall prepare and coordinate any post application exhibits and/or information requested by the PUC, including providing technical expertise at any PUC legal proceedings, as requested by CDOT.
5. The Contractor shall allow for appropriate PUC approval durations in the Project schedule and shall provide the supporting documentation in a timely fashion to CDOT so as not to impact the Project Schedule. Any delays or increase in costs of the completion of the Project caused by the failure of or delay by the Contractor to provide CDOT the supporting documentation shall be the responsibility of the Contractor.
6. The cost to provide CDOT with the supporting documentation and/or exhibits shall not be paid for but shall be included in the cost of the Work.

Irrigation Ditch Companies

The Project includes Work on irrigation facilities owned by two land owners on and adjacent to the project as described below under existing and proposed irrigation facilities. This Section provides requirements applicable to Work performed upon or adjacent to these irrigation facilities. Anticipated Work on or adjacent to the Irrigation Owners facilities is limited to the construction of structures and/or ditches that carry each owners flow and access modifications required to restore maintenance access for irrigation operations impacted by the Work and the proposed highway facilities. The Irrigation Owner representatives contact information is included in the Utility contact information in Section 7 – Utilities.

Existing and Proposed Irrigation Facilities

Station 446+80

Irrigation Owner – Holder

Description – The owner has an existing irrigation siphon that crosses SH 92 at Station 446+80. The current design, as shown in the Reference Documents, includes a design for a replacement 18 inch siphon pipe with headwalls. This design has been approved by CDOT and the Irrigation Owner and no further approvals will be required unless the Contractor proposes something other than what has already been approved. A copy of the approved Irrigation Agreement and siphon design is included in the Reference Documents.

Applicable Standards

The design and construction of all irrigation facilities for the Project shall be in accordance with the latest edition of the CDOT Standard Specifications for Road and Bridge Construction and the CDOT Standard Plans.

The Contractor shall meet the requirements included in the executed CDOT/Irrigation Owner agreement for the siphon at Station 446+80. If the Contractor chooses to change the design

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from what was previously approved they shall obtain the written approval of both CDOT and the Irrigation Owner.

In performing the Ditch Work, the Contractor shall ensure that all Irrigation Work results in the ditch and or structures being located in a manner to allow future maintenance to be performed by the relevant Irrigation Owner without disruption to the operation or maintenance of SH 92.

Administrative Requirements

Within 10 Days after NTP for design, the Contractor shall notify all the Irrigation Owner representatives. The Irrigation Owner representatives contact information is included in the Utility contact information in Section 7 – Utilities.

The Contractor shall meet with each Irrigation Owner representative and CDOT as soon as practicable after NTP for design to review all owner points of concern and other items which may affect the schedule. The Contractor shall identify critical Activities and sequences, as they affect irrigation operations, and plan to effectively mitigate irrigation impacts.

Unless previously approved, the Contractor shall obtain Irrigation Owner acceptance in writing, in advance, on methods and procedures covering all Work on the Irrigation Owners property. Upon completion of the Work, the Contractor shall remove from the premises of the Irrigation Owners ROW all equipment, surplus material, and debris, leaving such premises in a neat condition satisfactory to the Irrigation Owner. The Contractor shall provide As-Built drawings to the Irrigation Owner and obtain their acceptance in writing for all Work on the owner's property.

Utility Crossings

The Utility Owner is not responsible for Utilities on the Utility Owners ROW. The Contractor shall locate all Utilities on the Utility Owners ROW within the immediate vicinity of the Work. The Contractor shall certify to CDOT that all Utilities on the Utility Owners ROW and within the immediate vicinity of the Work have been identified and properly located.

Design Reviews

Unless previously approved, the Irrigation Owners will review design plans for Work on the Irrigation Owners' property. Irrigation Owners' review is separate from CDOT oversight. The Contractor shall coordinate the required Irrigation Owners' design reviews with the Irrigation Owners. All plans submitted to the Irrigation Owners for review and approval shall be in English units.

The Contractor shall obtain Irrigation Owners approval, in writing, of design plans for all of the design elements of the Work on the Irrigation Owners' property.

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The Contractor shall coordinate with the Irrigation Owners prior to beginning any construction on or adjacent to the Irrigation Owners' ROW. Working windows for demolition and construction shall be coordinated with the Irrigation Owners.

Unless previously approved, the Contractor shall obtain Irrigation Owners' agreements in writing, in advance, on methods and procedures covering all Work on the Irrigation Owners' property. Copies of such approvals, notices, and correspondence shall also be submitted to CDOT.

The Contractor shall cooperate with the Irrigation Owners where Work is within the limits of the Irrigation Owners' property to expedite the Work and to avoid interference with the operation of ditch flow.

The Contractor shall perform the Work in such manner and at such times as shall not to endanger or interfere with the continuous operation of the ditch and property of the Irrigation Owners and the flow of water at or in the vicinity of the Work. No Work shall be allowed that interferes with the deeded schedule and volume of flow of the ditch. The Contractor shall be responsible to the Irrigation Owners for all damages for delays that may be sustained by the Irrigation Owners caused by any interference that could have been avoided by proper handling of the Work.

The Contractor shall not pile or store any materials or tools, or park any equipment, when not in use, on Irrigation Owners' property. Upon completion of the Work, the Contractor shall remove from the premises of the Irrigation Owners ROW all equipment, surplus material, and debris, leaving such premises in a neat condition satisfactory to the Irrigation Owners.

The Contractor shall obtain Irrigation Owners' approval, in writing, of construction for all of the elements of the Work on the Irrigation Owners' property. Copies of such approvals, notices, and correspondence shall also be submitted to CDOT.

Deliverables

At a minimum, the Contractor shall submit the following for review, approval, and/or acceptance:

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Deliverable	Review, Acceptance, or Approval	Schedule
Notify Railroad of Project commencement	Railroad	Within 10 Days of NTP for design
Contractor's Right of Entry Agreement	Executed by the Railroad	Prior to commencing Work on Railroad property
Written notice of intent to commence Work on Railroad ROW	Railroad	30 days prior to beginning work. Per the executed agreement with the Railroad
Provide a monthly detailed schedule of Work to the Railroad Representative	Railroad	Monthly
Written notice that all work within Railroad property has been completed	Railroad	Within 10 days following completion and acceptance of the Work
Railroad design plans	Submitted through CDOT - Approval by the Railroad	Per the BNSF Railway – Union Pacific Railroad Guidelines for Railroad Grade Separation Projects
PUC documentation and/or exhibits	CDOT	As requested by CDOT
Notify Irrigation Owner of Project Commencement	Irrigation Owners	Within 10 Days of NTP for design
Irrigation Owners design plans (if not already approved)	Review and approval by Irrigation Owner	Prior to beginning any construction on Irrigation Owners property
Final written acceptance of Irrigation Work	Review and approval by Irrigation Owner	After construction is complete on Irrigation Owners property