

UP Real Estate Folder No.: 2865-68
Agreement Number _____

PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT

DE ZAVALA ROAD
DOT NUMBER 763798U
MILE POST 13.76- KERRVILLE
SAN ANTONIO, BEXAR COUNTY, TEXAS

THIS AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 20____ ("Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179 ("Railroad") and the **CITY OF SAN ANTONIO TCI**, a municipal corporation or political subdivision of the State of Arizona to be addressed at 114 w. Commerce St, PO Box 839966, San Antonio, TX 78283 ("Political Body").

RECITALS:

The Political Body desires to undertake as its project (the "Project") the widening of the road, new sidewalks, new crossing surface, new lights, new gates, and new circuits over the De Zavala Road at-grade public crossing, DOT Number 763798U at Railroad's Mile Post 13.76 on Railroad's Kerrville Sub. at or near San Antonio, Bexar County, Texas (the Crossing Area"). The area currently used by the Political Body is depicted on **Exhibit A** as the "Existing Crossing Area" and the new area which the Political Body needs in order to construct the Project is the "New Crossing Area". The Existing Crossing Area and New Crossing Area are collectively referred to as the Crossing Area. The Crossing Area is further described in the plans marked **Exhibit A-1**. The portion of the roadway located within the Crossing Area is the "Roadway".

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

AGREEMENT:

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

Section 1. EXHIBIT B

The general terms and conditions marked **Exhibit B**, are attached hereto and hereby made a part hereof.

Section 2. RAILROAD GRANTS RIGHT

For and in consideration **EIGHTEEN THOUSAND EIGHT HUNDRED DOLLARS (\$18,800.00)** to be paid by the Political Body to the Railroad upon the execution and delivery of this Agreement and in further consideration of the Political Body's agreement to perform and comply with the terms of this Agreement, the Railroad hereby grants to the Political Body the right to construct, maintain and repair the Roadway over and across the Crossing Area.

Section 3. DEFINITION OF CONTRACTOR

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

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

A. Prior to Contractor performing any work within the Crossing Area and any subsequent maintenance and repair work, the Political Body shall require the Contractor to:

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

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

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

Manager - Contracts
Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, Mail Stop 1690
Omaha, NE 68179-1690
UP File Folder No. 2865-68

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

Section 5. FEDERAL AID POLICY GUIDE

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

Section 6. NO PROJECT EXPENSES TO BE BORNE BY RAILROAD

The Political Body agrees that no Project costs and expenses are to be borne by the Railroad. In addition, the Railroad is not required to contribute any funding for the Project.

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

A. The work to be performed by the Railroad, at the Political Body's sole cost and expense, is described in the Railroad's Summary of Surface Material and Force Account Work dated July 14, 2017, and Summary of Signal Material and Force Account Work dated June 6, 2017, marked **Exhibit C**, attached hereto and hereby made a part hereof (the "Estimates"). As set forth in the Estimates, the Railroad's estimated cost for the Railroad's work associated with the Project is Four Hundred Eighty Three Thousand Eight Hundred Thirty Three Dollars (\$483,833.00).

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

C. The Political Body acknowledges that the Estimate includes an estimate of flagging or other protective service costs that are to be paid by the Political Body or the Contractor in connection with flagging or other protective services provided by the Railroad in connection with the Project. All of such costs incurred by the Railroad are to be paid by the Political Body or the Contractor as determined by the Railroad and the Political Body. If it is determined that the Railroad will be billing the Contractor directly

for such costs, the Political Body agrees that it will pay the Railroad for any flagging costs that have not been paid by any Contractor within thirty (30) days of the Contractor's receipt of billing.

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

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

Section 8. PLANS

A. The Political Body, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Project and the Structure and submit such plans and specifications to the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, for prior review and approval. The plans and specifications shall include all Roadway layout specifications, cross sections and elevations, associated drainage, and other appurtenances.

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

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

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

Section 9. NON-RAILROAD IMPROVEMENTS

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

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

Section 10. EFFECTIVE DATE; TERM; TERMINATION

A. This Agreement is effective as of the Effective Date first herein written and shall continue in full force and effect for as long as the Roadway remains on the Railroad's property.

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

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

Section 11. CONDITIONS TO BE MET BEFORE POLITICAL BODY CAN COMMENCE WORK

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

- (i) The Railroad and Political Body have executed this Agreement.
- (ii) The Railroad has provided to the Political Body the Railroad's written approval of the Plans.
- (iii) Each Contractor has executed Railroad's Contractor's Right of Entry Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements required under the Contractor's Right of Entry Agreement.
- (iv) Each Contractor has given the advance notice(s) required under the Contractor's Right of Entry Agreement to the Railroad Representative named in the Contractor's Right of Entry Agreement.

Section 12. FUTURE PROJECTS

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

Section 13. ASSIGNMENT; SUCCESSORS AND ASSIGNS

- A. Political Body shall not assign this Agreement without the prior written consent of Railroad.
- B. Subject to the provisions of Paragraph A above, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad and Political Body.

Section 14. SPECIAL PROVISIONS PERTAINING TO AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

If the Political Body will be receiving American Recovery and Reinvestment Act ("ARRA") funding for the Project, the Political Body agrees that it is responsible in performing and completing all ARRA reporting documents for the Project. The Political Body confirms and acknowledges that Section 1512 of the ARRA provisions applies only to a "recipient" receiving ARRA funding directing from the federal government and, therefore, (i) the ARRA reporting requirements are the responsibility of the Political

Body and not of the Railroad, and (ii) the Political Body shall not delegate any ARRA reporting responsibilities to the Railroad. The Political Body also confirms and acknowledges that (i) the Railroad shall provide to the Political Body the Railroad's standard and customary billing for expenses incurred by the Railroad for the Project including the Railroad's standard and customary documentation to support such billing, and (ii) such standard and customary billing and documentation from the Railroad provides the information needed by the Political Body to perform and complete the ARRA reporting documents. The Railroad confirms that the Political Body and the Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for the Project as provided in Section 11 of **Exhibit B** of this Agreement.

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

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

By: _____
Printed Name: _____
Title: _____

CITY OF SAN ANTONIO TCI

By: _____
Printed Name: _____
Title: _____

**EXHIBIT A
TO
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

Exhibit A will be a print showing the Existing and New Crossing Area (see Recitals)

DRAFT



Area = 2738± Sq. Ft.

Area = 1120± Sq. Ft.

Existing Crossing Area = 5090± Sq. Ft. = 0.11± Acres
 New Crossing Area = 3858± Sq. Ft. = 0.09± Acres
 Total Area = 8948± Sq. Ft. = 0.20± Acres

LEGEND:

- EXISTING CROSSING AREA
- New Crossing Area
- UPRRCO. R/W OUTLINED

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

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

SAN ANTONIO, BEXAR COUNTY, TX

M.P. 13.76 - KERRVILLE SUB

SP TX V-3 / S-2A
 SCALE: 1" = 100'

OFFICE OF REAL ESTATE
 OMAHA, NEBRASKA DATE: 10/5/2017

AJM FILE:2865-68

CADD FILENAME 0305453.dgn

SCAN FILENAME 0305453_TX30S2A.tif

**EXHIBIT A-1
TO
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

Exhibit A-1 will be the plans for the Existing and New Crossing Area(see Recitals)



CITY OF SAN ANTONIO

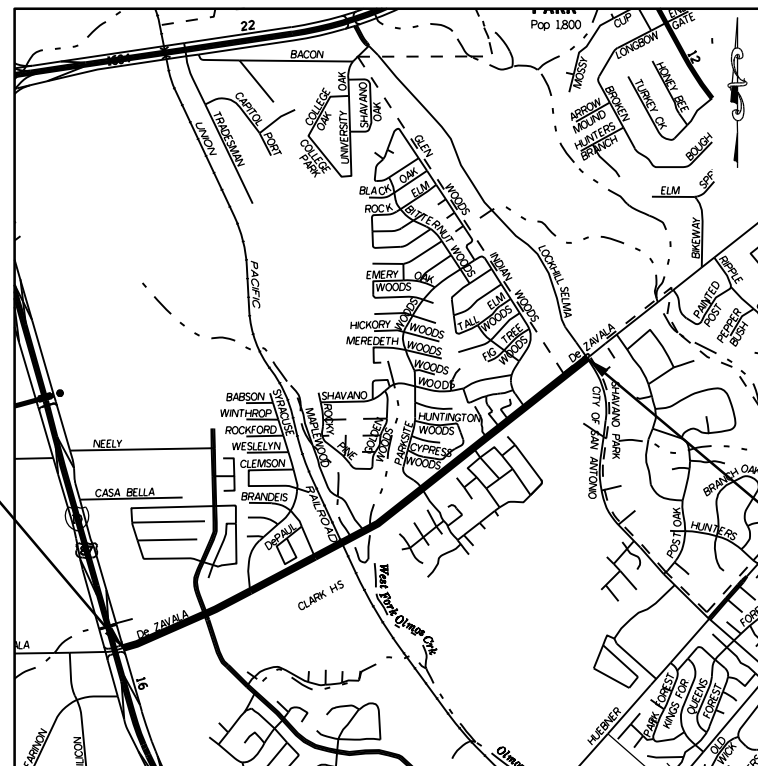
TRANSPORTATION & CAPITAL IMPROVEMENTS (TCI) DEPARTMENT

DE ZAVALA RD (UPRR TO LOCKHILL SELMA) PROJECT NO: 40-00461

UPRR EXHIBIT "A" INDEX OF SHEETS

SHEET NO.	DESCRIPTION
1	LOCATION MAP
2	EXHIBIT "A"
3	TCP PHASE 1 DETOUR
4-5	RAILROAD REQUIREMENT FOR NON-BRIDGE CONSTRUCTION PROJECTS
6	RAILROAD CROSSING DETAILS SIGNING, STRIPING, AND DEVICE PLACEMENT
7	RAILROAD CROSSING DETAILS SIGNING AND STRIPING

BEGIN PROJECT
STA 88+00.00



END PROJECT
STA 183+75.29

LOCATION MAP
NOT TO SCALE

THE STANDARD SHEETS SPECIFICALLY IDENTIFIED ABOVE HAVE BEEN SELECTED BY ME OR UNDER MY RESPONSIBLE SUPERVISION AS BEING APPLICABLE TO THIS PROJECT.

JUAN CARLOS SANCHEZ

DATE



CITY OF SAN ANTONIO
TRANSPORTATION & CAPITAL IMPROVEMENTS

PLANS PREPARED BY:

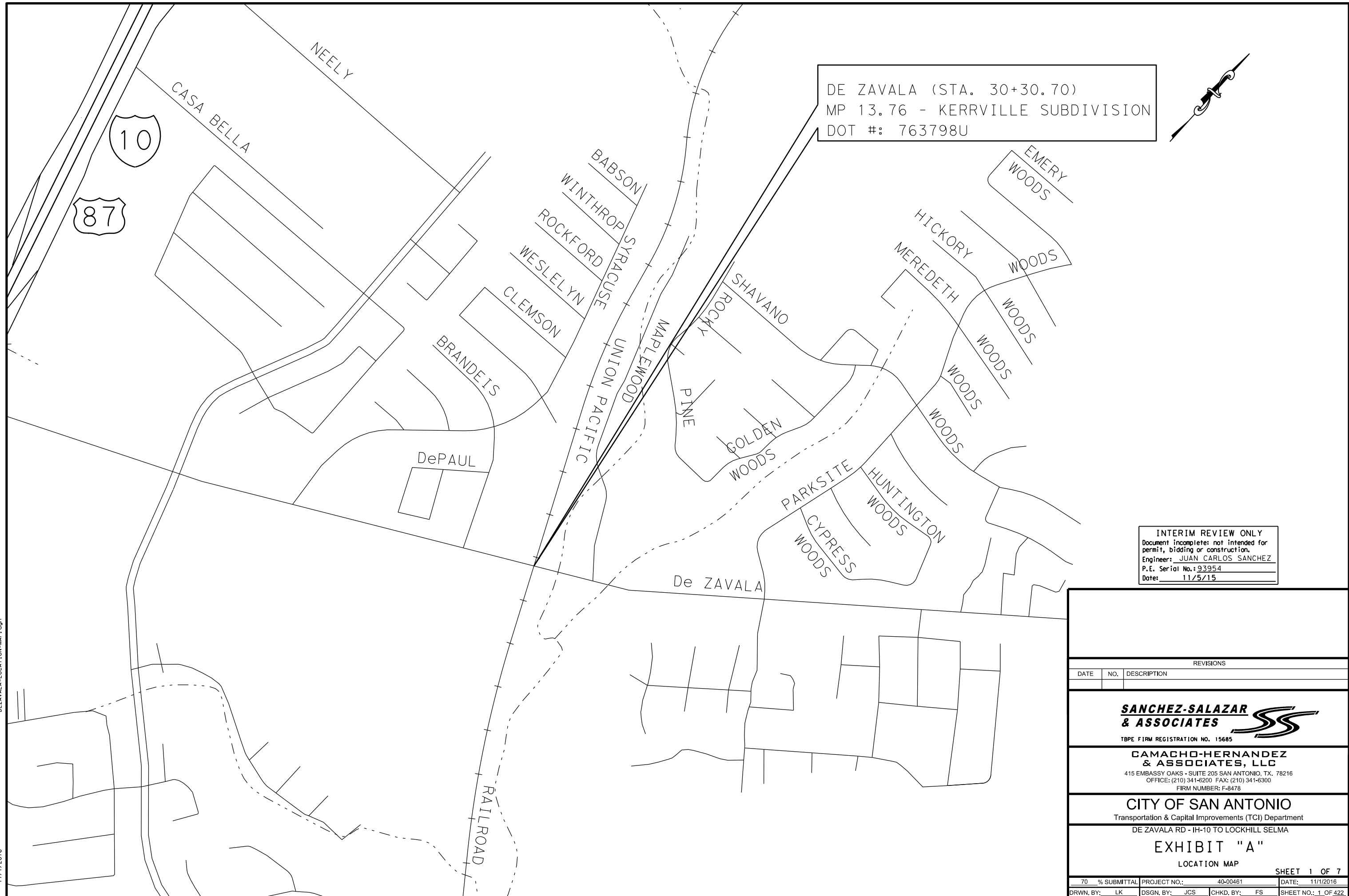
SANCHEZ-SALAZAR & ASSOCIATES

TBPE FIRM REGISTRATION NO. 15685

CAMACHO-HERNANDEZ & ASSOCIATES, LLC

415 EMBASSY OAKS - SUITE 205 SAN ANTONIO, TX. 78216
OFFICE: (210) 341-6200 FAX: (210) 341-6300
FIRM NUMBER: F-8478

Through innovation and dedication, we build and maintain San Antonio's infrastructure.



DE ZAVALA (STA. 30+30.70)
 MP 13.76 - KERRVILLE SUBDIVISION
 DOT #: 763798U

INTERIM REVIEW ONLY
 Document incomplete: not intended for
 permit, bidding or construction.
 Engineer: JUAN CARLOS SANCHEZ
 P.E. Serial No.: 93954
 Date: 11/5/15

REVISIONS		
DATE	NO.	DESCRIPTION

SANCHEZ-SALAZAR & ASSOCIATES

TBPE FIRM REGISTRATION NO. 15685
CAMACHO-HERNANDEZ & ASSOCIATES, LLC
 415 EMBASSY OAKS - SUITE 205 SAN ANTONIO, TX. 78216
 OFFICE: (210) 341-6200 FAX: (210) 341-6300
 FIRM NUMBER: F-8478

CITY OF SAN ANTONIO
 Transportation & Capital Improvements (TCI) Department

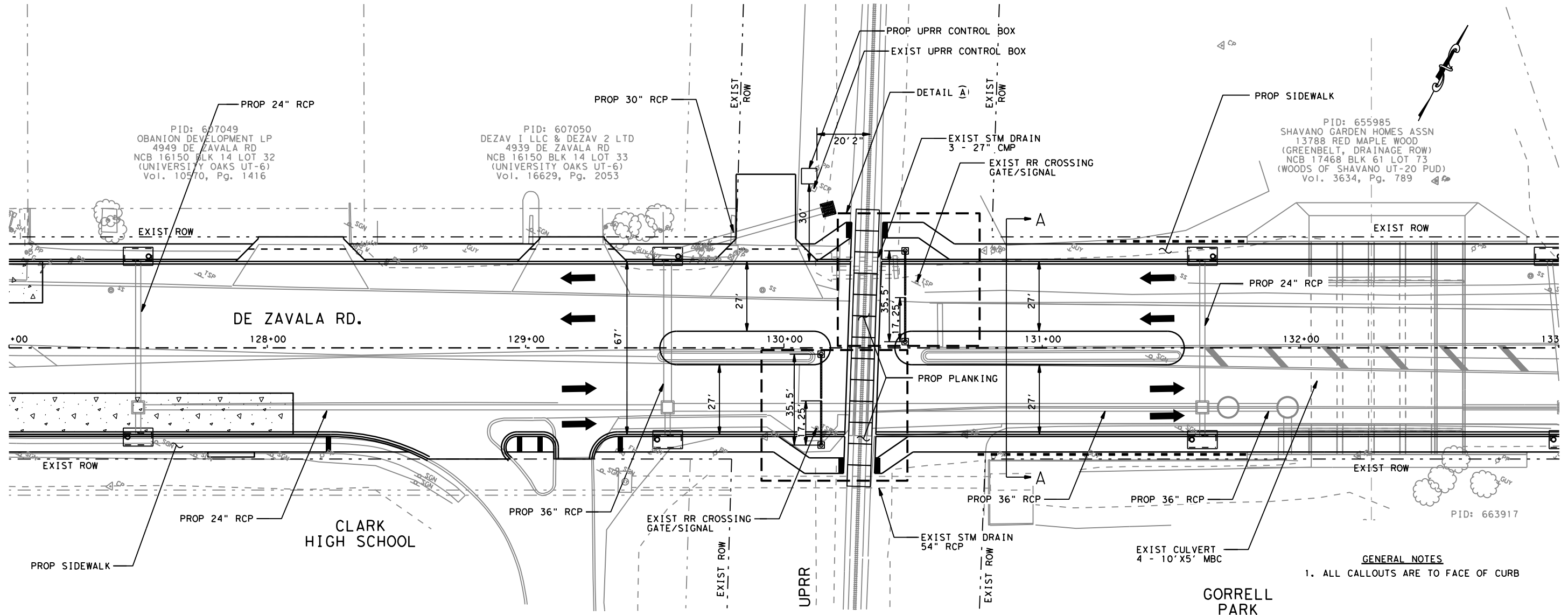
DE ZAVALA RD - IH-10 TO LOCKHILL SELMA

EXHIBIT "A"
 LOCATION MAP

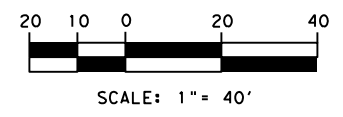
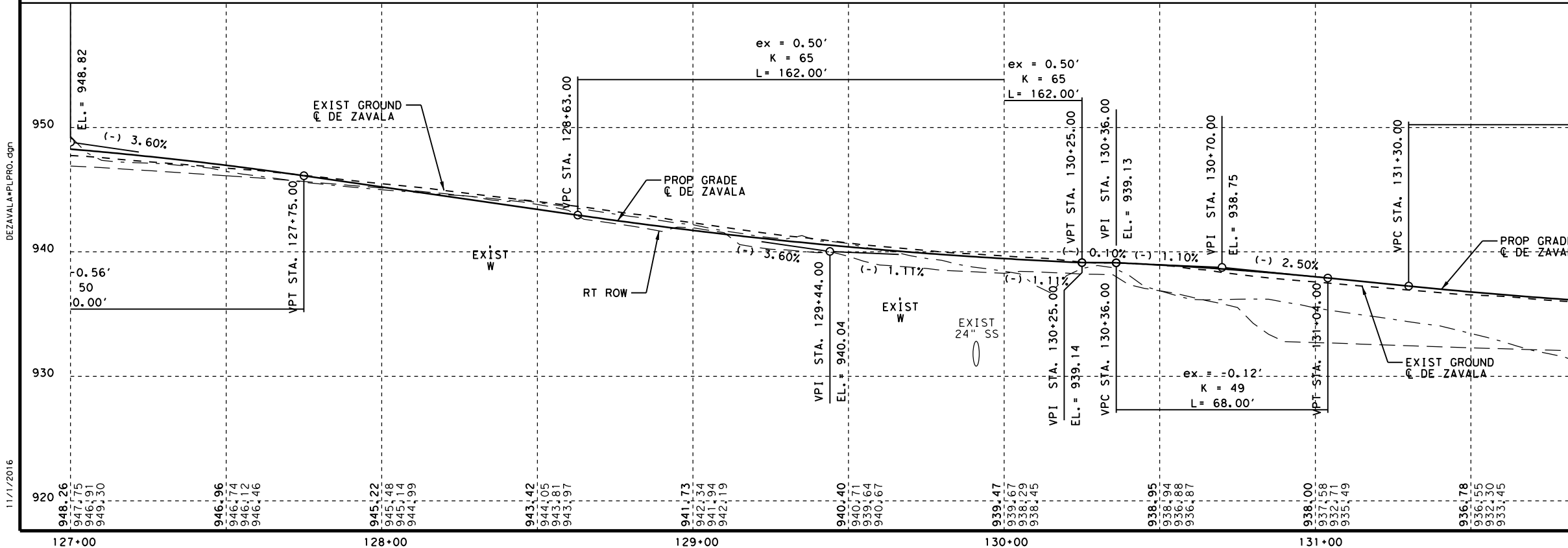
SHEET 1 OF 7

70 % SUBMITTAL	PROJECT NO.: 40-00461	DATE: 11/1/2016
DRWN. BY: LK	DSGN. BY: JCS	CHKD. BY: FS

DE ZAVALA LOCATION MAP.dgn
11/1/2016



GENERAL NOTES
 1. ALL CALLOUTS ARE TO FACE OF CURB



REVISIONS		
DATE	NO.	DESCRIPTION

SANCHEZ-SALAZAR & ASSOCIATES
 TBPE FIRM REGISTRATION NO. 15685

CAMACHO-HERNANDEZ & ASSOCIATES, LLC
 415 EMBASSY OAKS - SUITE 205 SAN ANTONIO, TX. 78216
 OFFICE: (210) 341-6200 FAX: (210) 341-6300
 FIRM NUMBER: F-8478

CITY OF SAN ANTONIO
 Transportation & Capital Improvements (TCI) Department
 DE ZAVALA RD - IH-10 TO LOCKHILL SELMA

UPRR EXHIBIT "A"






PLAN & PROFILE SHEET 2 OF 7

70 % SUBMITTAL	PROJECT NO.: 40-00461	DATE: 11/1/2016
DRWN. BY: LK	DSGN. BY: JCS	CHKD. BY: FS

DEZAVALA=PLPRO.dgn

11/1/2016

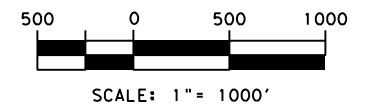
LEGEND

-  CONSTRUCTION THIS PHASE
-  DETOUR ROUTE
-  TYPE 3 BARRICADE
-  PORTABLE CHANGEABLE MESSAGE SIGN (PCMS)
-  SIGN

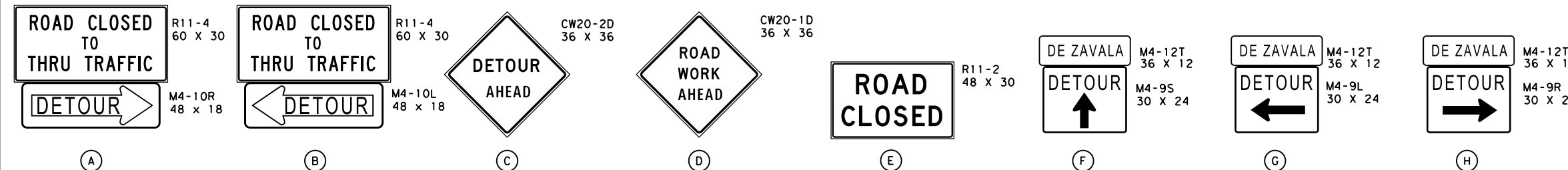
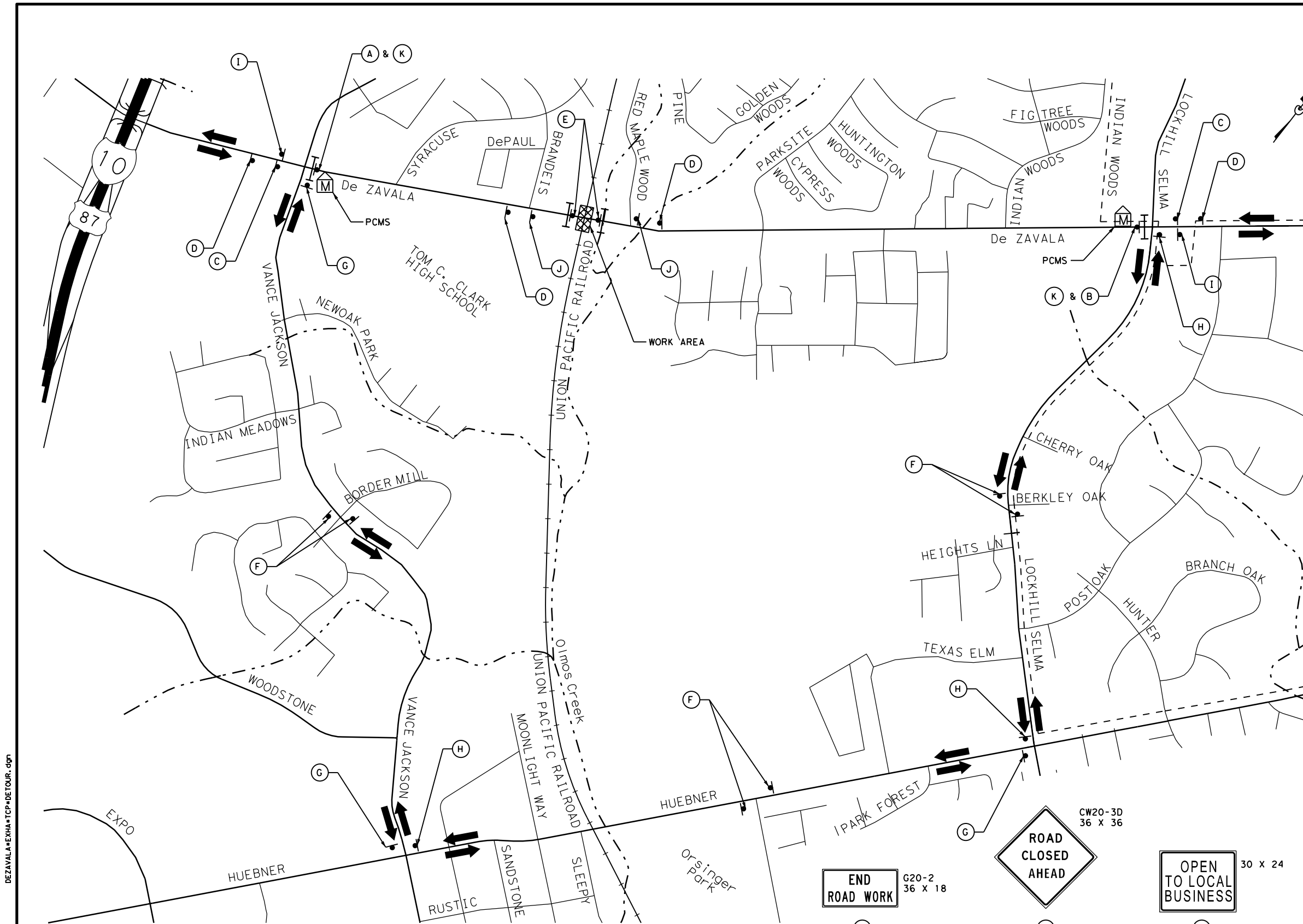
PCMS TEXT #1
 DEZAVALA
 CLSD AT
 RR TRACKS

PCMS TEXT #2
 NEXT
 FRI-SUN

PRELIMINARY
 FOR INTERIM REVIEW ONLY
 By: LIZARDO CEBALLOS P.E. 115555
 DATE 11/1/2016
DANNENBAUM ENGINEERING CORPORATION
 NOT FOR CONSTRUCTION, BIDDING, OR PERMIT PURPOSES



REVISIONS		
DATE	NO.	DESCRIPTION
DANNENBAUM ENGINEERING COMPANY - SAN ANTONIO, LLC T.B.P.E. FIRM REGISTRATION #F-15807 415 EMBASSY OAKS, SUITE 102 SAN ANTONIO, TEXAS 78216 (210) 249-2280		
CAMACHO-HERNANDEZ & ASSOCIATES, LLC 415 EMBASSY OAKS - SUITE 205 SAN ANTONIO, TX. 78216 OFFICE: (210) 341-6200 FAX: (210) 341-6300 FIRM NUMBER: F-8478		
DE ZAVALA RD - IH-10 TO LOCKHILL SELMA TRAFFIC CONTROL PLAN PHASE 1-DETOUR (RR CONST)		
70 % SUBMITTAL	PROJECT NO.: 40-00461	DATE: 11/1/2016
DRWN. BY: LK	DSGN. BY: JCS	CHKD. BY: FS



11/1/2016 DEZAVALA*EXHA*TCP*DETOUR.dgn

PART 1 - GENERAL

1.01 DESCRIPTION

This project includes construction work within the Right-of-Way and/or properties of the Railroad Company and adjacent to its tracks, wire lines and other facilities. These sheets describe the minimum special requirements for coordination with the Railroad when working upon, over or under Railroad Right-of-Way or when impacting current or future Railroad operations. Coordinate with the Railroad while performing the work outlined herein, and afford the same cooperation with the Railroad as with TxDOT. Complete all submittals and work in accordance with TxDOT Standard Specifications, Railroad Guidelines and AREMA recommendations as modified by these minimum special requirements or as directed in writing by the Railroad Designated Representative.

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

1.02 REQUEST FOR INFORMATION / CLARIFICATION

Submit Requests for Information ("RFI") involving work within any Railroad Right-Of-Way to the TxDOT Engineer. The TxDOT Engineer will submit the RFI to the Railroad Designated Representative for review and approval for RFI's corresponding to work within Railroad Right-Of-Way. Allow six (6) weeks total time for review and approval, which includes four (4) weeks for review and approval by the Railroad.

1.03 PLANS / SPECIFICATIONS

TxDOT has received written Railroad approval of the plans and specifications for this project. Any revisions or changes in the plans after award of the Contract must have the approval of TxDOT and the Railroad.

PART 2 - UTILITIES AND FIBER OPTIC

Construct all utility installations in accordance with current AREMA recommendations, Railroad, TxDOT and owning utility specifications and requirements. Railroad general guidelines can be found on the Railroad website or by contacting the Railroad Designated Representative.

PART 3 - CONSTRUCTION

3.01 GENERAL

- A. Perform all work in compliance with all applicable Railroad, Federal Railroad Administration (FRA), and TxDOT rules and regulations. Arrange and conduct work in a manner that does not endanger or interfere with the safe operation of the tracks and property of the Railroad and the traffic moving on such tracks, or the wires, signals and other property of the Railroad, its tenants or licensees, at or in the vicinity of the Work. The safe operation of Railroad train movements takes precedence over any work to be performed by the Contractor. The Contractor is responsible for train delay cost and lost revenue claims due to any delays or interruption of train operations resulting from Contractor's construction or other activities.
- B. Construction activities within 12 feet of the operational tracks will only be allowed if absolutely necessary and the Railroad's Designated Representative grants approval. Construction activities within 12 feet of the operational track(s) preferably allow the tracks to stay operational. In such cases, coordination and approval by the Railroad Track Manager is required with regard to schedule, flagging, and slow orders. See Sections 3.07 and 3.08 for additional information.
- C. Provide track protection for all work equipment (including rubber tired equipment) operating within 25 feet from nearest rail. When not in use, keep Contractor machinery and materials at least 50 feet from the Railroad's nearest track.
- D. Vehicular crossings of railroad track are allowed only at existing crossings, or haul road crossings developed with Railroad approval.
- E. The Contractor is also advised that new railroad facilities within the project may be built by the Railroad. If applicable, these facilities are delineated in the plans. Be aware of the limits of responsibilities and coordinate efforts with the Railroad and TxDOT.
- F. Railroad requirements do not allow work within 50 feet of track centers when a train passes the work site and all personnel must clear the area within 50 feet of the track centerline and secure all equipment. Additional allowances may be pursued as outlined in 3.02 and 3.03.
- G. All permanent clearances shall be verified before project closing.

3.02 RAILROAD OPERATIONS

- A. Trains and/or equipment are expected on any track, at any time, in either direction. Become familiar with the train schedules in this location and structure bid assuming intermittent track windows in this period, as defined in Paragraph B that follows.
- 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. Coordinate and schedule the work so that construction activities do not interfere with railroad operations.
- C. Coordinate work windows with TxDOT and the Railroad's Designated Representative. 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/or adjacent to the railroad tracks within 25 feet of the nearest track, a Railroad flag person will be required. At the direction of the Railroad 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 Railroad 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 Railroad, Public Utilities Commission (PUC) and FRA requirements, codes and regulations for operational tracks must be satisfied. In the situation where the operating tracks and/or signals have been affected, the Railroad will perform inspections of the work prior to placing that track back into service. Railroad 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 Railroad review.

3.03 RIGHT OF ENTRY, ADVANCE NOTICE AND WORK STOPPAGES

- A. Do not perform any work within Railroad Right-of-Way without a valid executed Right of Entry Agreement if required on this project.
- B. Give advance notice to the Railroad as required in the "Contractor's Right of Entry Agreement" before commencing work in connection with construction upon or over Railroad Right-of-Way and observe the Railroad's rules and regulations with respect thereto.
- C. Perform all work upon Railroad Right-of-Way in a manner to avoid interference with or endanger the operations of the Railroad. Whenever work may affect the operations or safety of trains, submit the work method to the Railroad Designated Representative for approval. Approval does not relieve the Contractor from liability. Do not commence any work which requires flagging service or inspection service until the flagging protection required by the Railroad is available at the job site. See Section 3.15 for railroad flagging requirements.
- D. Make requests in writing for both Absolute and Conditional Work Windows, at least 30 days in advance of any work. Include in the written request:
 - 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.
 Provide a written confirmation notice to the Railroad at least 48 hours before commencing work in connection with approved work windows when work is within 25 feet of nearest rail. Perform all work in accordance with previously approved work plans.
- E. Make provisions to protect operations and property of the Railroad should a condition arising from, or in connection with the work, require immediate and unusual action. If in the judgment of the Railroad Designated Representative such provisions are insufficient, the Railroad 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 Railroad or TxDOT. The Railroad or TxDOT shall have the right to order the Contractor to temporarily cease operations in the event of an emergency or, if in the opinion of the Railroad Designated Representative, the Contractor's operations could endanger railroad operations. In the event of such an order, immediately notify TxDOT of the order.

3.04 INSURANCE

Do not begin work upon or over Railroad Right-of-Way until furnishing the Railroad with the insurance policies, binders, certificates and endorsements required by the "Contractor's Right-of-Entry Agreement", and until the Railroad Designated Representative has advised TxDOT that such insurance is in accordance with the Agreement.

3.05 RAILROAD SAFETY ORIENTATION

- A. Complete the Railroad course "Orientation for Contractor's Safety", and maintain current registration prior to working on Railroad property. This orientation is available at www.contractororientation.com. This course is required to be completed annually by Contractor and Subcontractor personnel working on site.

"KCS/TEXMEX will not accept on-track safety training certificates from other railroads. Contractor's employees entering the KCS railroad shall hold current certificates at all times. The training can be had by contacting Larry Slater of TrackSense Inc. at 330-847-8661 or by email at lslater@neo.rr.com."

- B. Know and follow the "Contractor's Right of Entry Agreement" EXHIBIT D, MINIMUM SAFETY REQUIREMENTS regarding clothing, personal protective equipment, and general safety requirements.

3.06 COOPERATION

The Railroad will cooperate with Contractor so that work may be conducted in an efficient manner, and will cooperate with Contractor in enabling use of Railroad Right-of-Way in performing the work.


3.07 MINIMUM CONSTRUCTION CLEARANCES FOR FALSEWORK AND OTHER TEMPORARY STRUCTURES

Abide by the following minimum temporary clearances during the course of construction:
A. 15' - 0" (BNSF), 14'-0" (KCS), and 12'-0" (UPRR) horizontal from centerline of track
B. 22' (KCS) and 21' - 6" (UPRR & BNSF) vertically above top of rail.

For construction clearance less than listed above, obtain local Railroad Operating Unit review and approval.

3.08 APPROVAL OF REDUCED CLEARANCES

- A. Maintain minimum track clearances during construction as specified in Section 3.07.
- B. Submit any proposed infringement on the specified minimum clearances to the Railroad Designated Representative through TxDOT at least 30 days in advance of the work. Do not proceed with such infringement without written approval by the Railroad Designated Representative.
- C. Do not commence work involving an approved infringement without receiving written assurance from the Railroad Designated Representative that arrangements have been made for any necessary flagging service.

 Texas Department of Transportation				Traffic Operations Division	
RAILROAD REQUIREMENTS FOR NON-BRIDGE CONSTRUCTION PROJECTS					
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3.09 MAINTENANCE OF RAILROAD FACILITIES

- A. Maintain all ditches and drainage structures free of silt or other obstructions resulting from Contractor's operations. Repair eroded areas and any other damage within Railroad Right-of Way and repair any other damage to the property of the Railroad, or its tenants.
- B. Perform all such maintenance and repair of damages due to the Contractors's operations at Contractor's expense.
- C. Submit a proposed method of erosion control for review by the Railroad prior to beginning any grading on the Project Site. Comply with all applicable local, state and federal regulations when developing and implementing such erosion control.

3.10 SITE INSPECTIONS BY RAILROAD'S DESIGNATED REPRESENTATIVE

- A. In addition to the office reviews of construction submittals, site inspections may be performed by the Railroad Designated Representative at significant points during construction, including the following if applicable:
 1. Pre-construction 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 the Railroad.
- C. Provide a detailed construction schedule, including the proposed temporary horizontal and vertical clearances and construction sequence for all work to TxDOT for submittal to the Railroad Designated Representative for review prior to commencement of work. Include the anticipated dates when the above listed events will occur. Update this schedule for the above listed events as necessary and each month at a minimum to allow the Railroad to schedule site inspections.

3.11 RAILROAD REPRESENTATIVES

Railroad representatives, conductors, flag person or watch person will be provided by the Railroad at expense of TxDOT to protect Railroad facilities, property and movements of its trains or engines. In general, the Railroad will furnish such personnel or other protective services as follows:

- A. When any part of any equipment is standing or being operated within 25 feet, measured horizontally, from nearest rail 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.
- B. For any excavation below elevation of track subgrade if, in the opinion of the Railroad Designated Representative, track or other Railroad facilities may be subject to settlement or movement.
- C. During any clearing, grubbing, excavation or grading in proximity to Railroad facilities, which, in the opinion of the Railroad Designated Representative, may endanger Railroad facilities or operations.
- D. During any Contractor's operations when, in the opinion of the Railroad Designated Representative, Railroad facilities, including, but not limited to, tracks, buildings, signals, wire lines, or pipe lines, may be endangered.
- E. Arrange with the Railroad Designated Representative to provide the adequate number of flag persons to accomplish the work.

3.12 COMMUNICATIONS AND SIGNAL LINES

If required, the Railroad 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 the Railroad's forces in connection with its operation at expense of TxDOT. This work by the Railroad will be done by its own forces and it is not a part of the Work under this Contract.

3.13 TRAFFIC CONTROL

Coordinate any operations that control traffic across or around Railroad facilities with the Railroad Designated Representative.

3.14 CONSTRUCTION EXCAVATIONS AND BORING ACTIVITIES UNDER TRACK

- A. 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 TxDOT, OSHA, AREMA and Railroad "Guidelines for Temporary Shoring".
- B. The project plans indicate whether there are fiber optic lines or other such telecommunications systems that require consideration. Regardless, contact the necessary call center to determine if such cable systems are present:

UPRR 1-800-336-9193
7:00 AM to 9:00 PM CST Monday-Friday except holidays,
staffed 24 hrs/day for emergencies
48 hrs notice required

BNSF 1-800-533-2891
24 hour number
5 working days notice required

KCS 1-800-344-8377
Texas One Call, a 24 hour number
48 hrs notice required, excluding weekends and holidays

If a telecommunications system is buried anywhere on or near Railroad property, coordinate with TxDOT, the Railroad and the Telecommunication Company(ies) to arrange for relocation or protective measures prior to beginning work on or near Railroad property. Refer to the project General Notes for additional information.


- C. Projects involving a boring or jack and bore operation under track such as drainage pipes or culverts and utilities require an installation plan reviewed and approved by the Railroad and TxDOT prior to proceeding with such construction. A railroad inspector and contractor-assisted monitoring of ground and track movement is required to maintain safe passage of rail traffic. Stop installation and do not allow passage of trains if movements in excess of 1/4" vertical or horizontal is detected in the tracks. Immediately repair the damage to the satisfaction of TxDOT and the Railroad before proceeding.

3.15 RAILROAD FLAGGING

Per the RIGHT OF ENTRY agreement for flagging, notify the Railroad Representative at least 10 working days in advance of Contractor work and at least 30 working days in advance of any Contractor work in which any person or equipment will be within 25 feet of nearest rail.

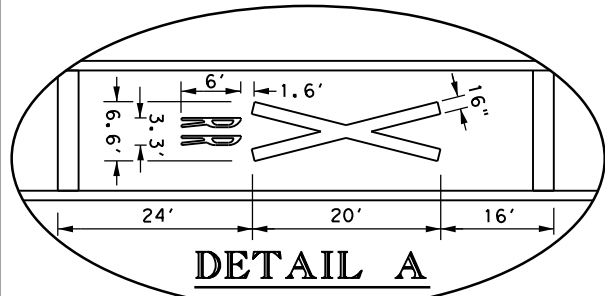
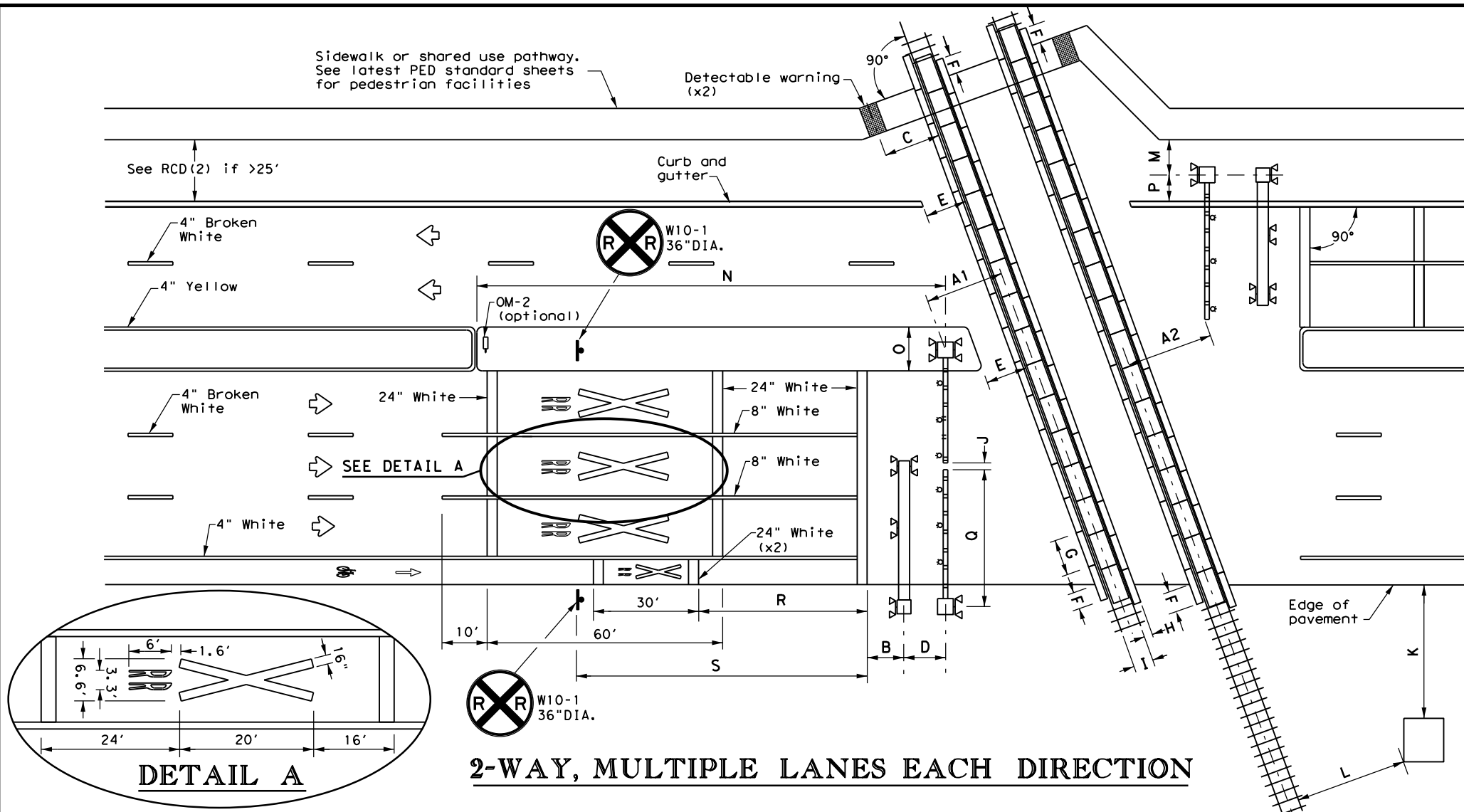
3.16 CLEANING OF RIGHT-OF-WAY

When work is complete, remove all tools, implements, and other materials brought into Railroad Right-of-Way and leave the Right-of-Way in a clean and presentable condition to the satisfaction of TxDOT and the Railroad.

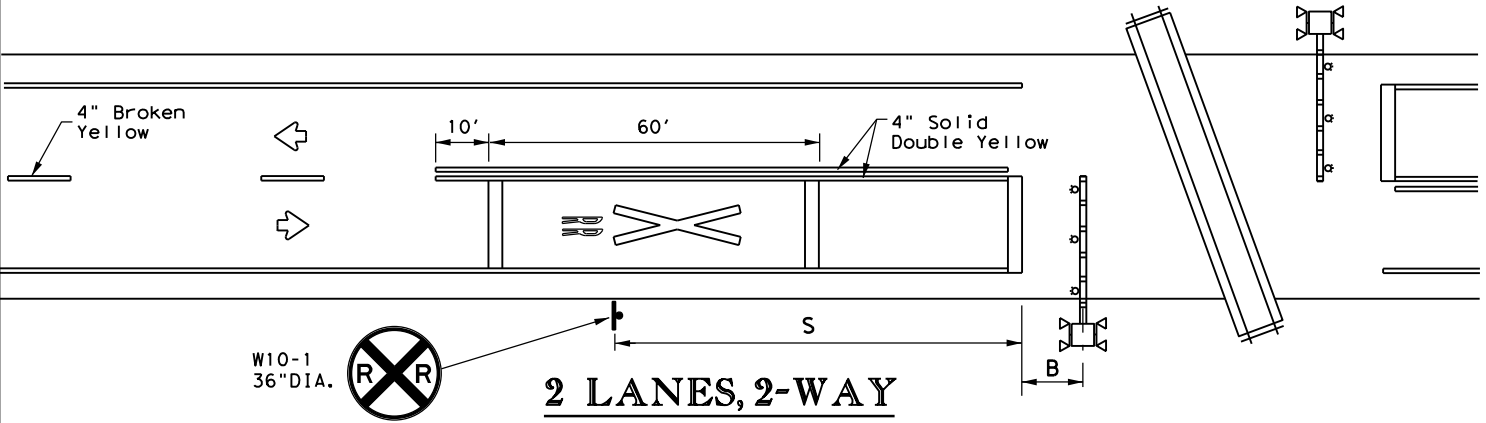
 Texas Department of Transportation		Traffic Operations Division		
RAILROAD REQUIREMENTS FOR NON-BRIDGE CONSTRUCTION PROJECTS				
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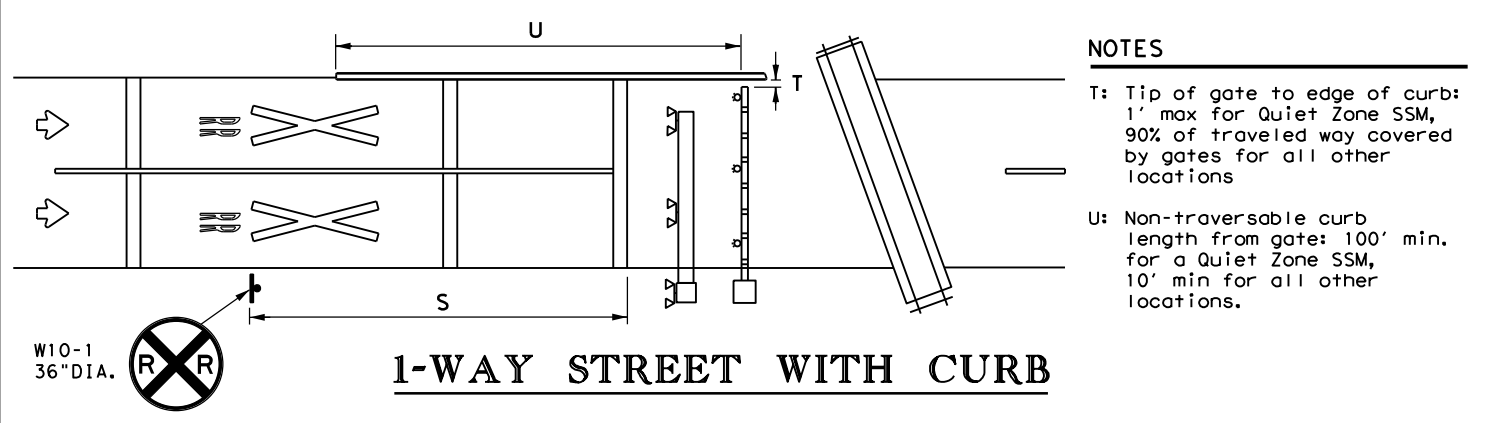
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2-WAY, MULTIPLE LANES EACH DIRECTION



2 LANES, 2-WAY



1-WAY STREET WITH CURB

- NOTES**
- T: Tip of gate to edge of curb: 1' max for Quiet Zone SSM, 90% of traveled way covered by gates for all other locations
 - U: Non-traversable curb length from gate: 100' min. for a Quiet Zone SSM, 10' min for all other locations.

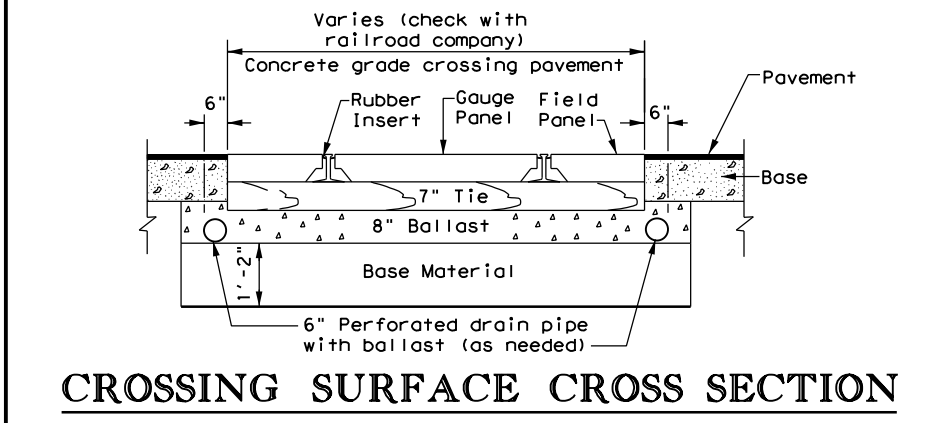
TABLE 1

Approach Speed (mph)	Desirable Placement (feet)
20	100
25	100
30	100
35	100
40	125
45	175
50	250
55	325
60	400
65	475
70	550
75	650

LEGEND

	Sign
	Object Marker
	Traffic Flow
	Cantilever
	Gate Assembly
	Mast Flasher Pair

- GENERAL NOTES**
- Medians and curbs must be non-traversable to qualify as a Quiet Zone Supplementary Safety Measure (SSM). Non-traversable curbs in Quiet Zones are 6" tall minimum and used on roadways where speed does not exceed 40 mph.
 - Raised pavement markers may be used to supplement striping. See PM(2) and PM(3) standard sheets.
 - Medians preferred whenever possible to prevent vehicles from driving around gates.
 - Longitudinal edge striping may be continued thru crossing as needed. Illumination may also be considered for nighttime visibility.
 - See SMD standard sheets for sign mounting details.
 - See the Standard Highway Sign Design for Texas (SHSD) manual for sign and pavement marking details.



CROSSING SURFACE CROSS SECTION

NOTES

- A1: Center of RR mast to center of rail: 12' minimum, 15' typical.
- A2: Tip of gate to center of rail: 12' minimum, 15' typical.
- B: Center of mast (cantilever, gate, or mast flasher) of nearest active traffic control device to stop line: 8' (NOTE: Stop line may be moved as needed, but should be at least 8' back from gates, if present).
- C: Center of detectable warning device to nearest rail: 6' minimum
- D: Center of gate mast to center of cantilever mast: 6' typical. NOTE: Cantilever may be located in front or behind gates.
- E: Edge of median or curb to nearest rail: 10' typical. NOTE: Design median edge to be parallel with rail.
- F: Edge of planking panel from edge of pavement or sidewalk: 3' minimum. NOTE: Field panels need not be in line with gauge panels.
- G: Length of panels along rail: 8' typical.
- H: Width of field panel: 2' typical (check with railroad company).
- I: Distance between rails: 4'-8.5".
- J: Tip of gate to tip of gate: 2' maximum for Quiet Zone SSM or 90% of traveled way covered by gates for all other locations.
- K: Nearest edge of RR cabin from edge of pavement: 30' typical. NOTE: Cabinet not required to be parallel to edge of pavement.
- L: Nearest edge of RR cabin from nearest rail: 25' typical.
- M: Center of RR mast to edge of sidewalk: 6' minimum.
- N: Center of gate mast to leading edge of non-traversable median: 100' minimum to qualify as a Quiet Zone SSM. NOTE: 60' will suffice if there is a street intersection within the 100' and all street intersections within 60' are closed.
- O: Width of median: 8'-6" minimum, 10' typical when using median gates. NOTE: Center of gate mast minimum 4'-3" from face of curb.
- P: Center of RR mast to face of curb: 4'-3" minimum. Center of RR mast to edge of pavement (with shoulder): 6' minimum. Center of RR mast to edge of pavement (no shoulder): 8'-3" minimum. NOTE: BNSF prefers 5'-3", 7', and 9'-3" minimums, respectively.
- Q: Gate length: 28' or less typical, but railroad company may allow up to 32' under special circumstances.
- R: Stop line to first RR Crossing transverse line (bike lane): 50' typical.
- S: Stop line to GRADE CROSSING ADVANCE WARNING (W10-1) sign and adjacent RR Crossing pavement markings. See Table 1. See RCD(2) for other signs.

Texas Department of Transportation

RAILROAD CROSSING DETAILS

SIGNING, STRIPING, AND DEVICE PLACEMENT

RCD(1)-16

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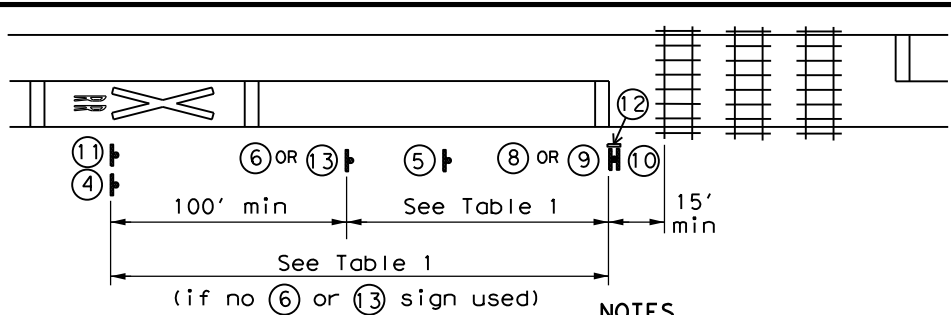
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REVISIONS

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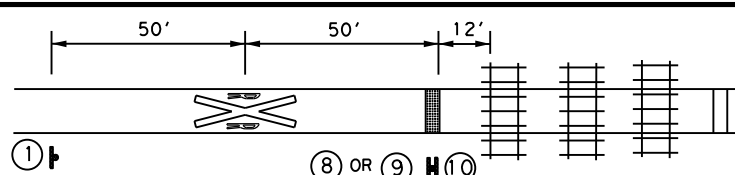
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PASSIVE CROSSING

- NOTES**
1. Stop or yield sign may also be installed to the left of the crossbuck sign, rather than below it.
 2. A 2" white retroreflective strip shall be installed on front and back of crossbuck sign post.



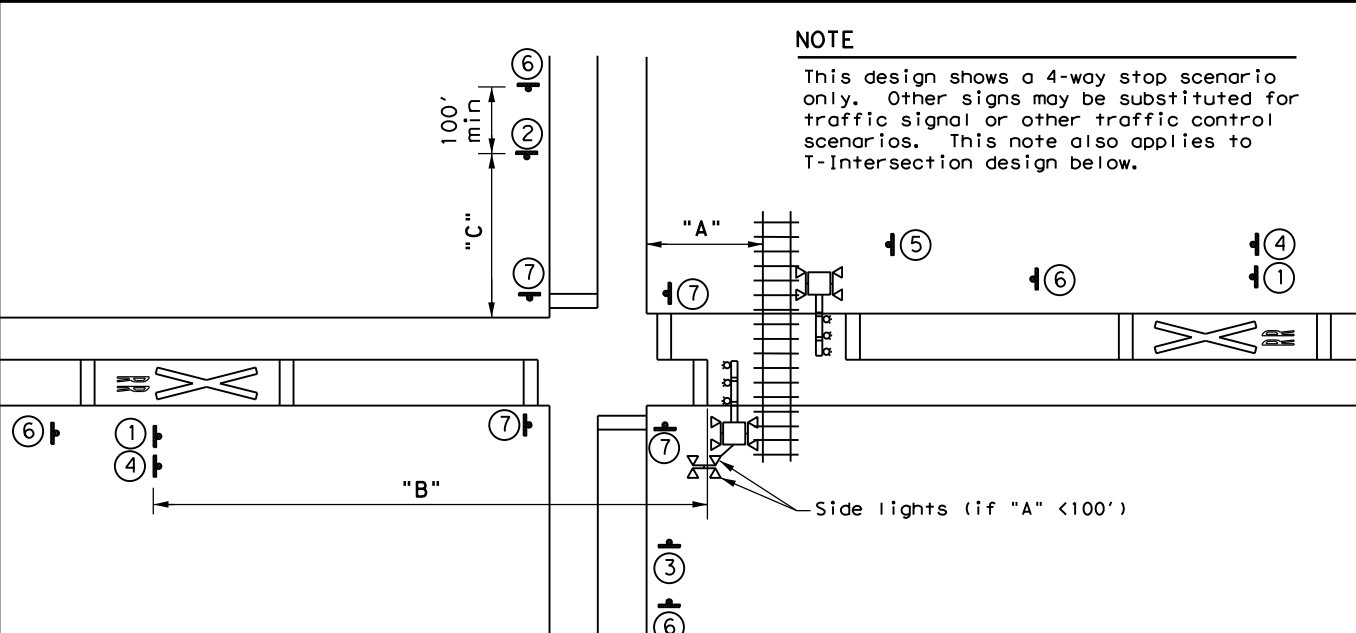
PATHWAY CROSSING

- NOTES**
1. A shared use pathway is considered a separate pathway crossing when more than 25' from traveled way of adjacent roadway.
 2. Detectable warning used at stop bar.
 3. Smaller sign sizes preferred than shown to the right on this sheet.

Approach Speed (mph)	Desirable Placement (feet)
20	100
25	100
30	100
35	100
40	125
45	175
50	250
55	325
60	400
65	475
70	550
75	650

GENERAL NOTES

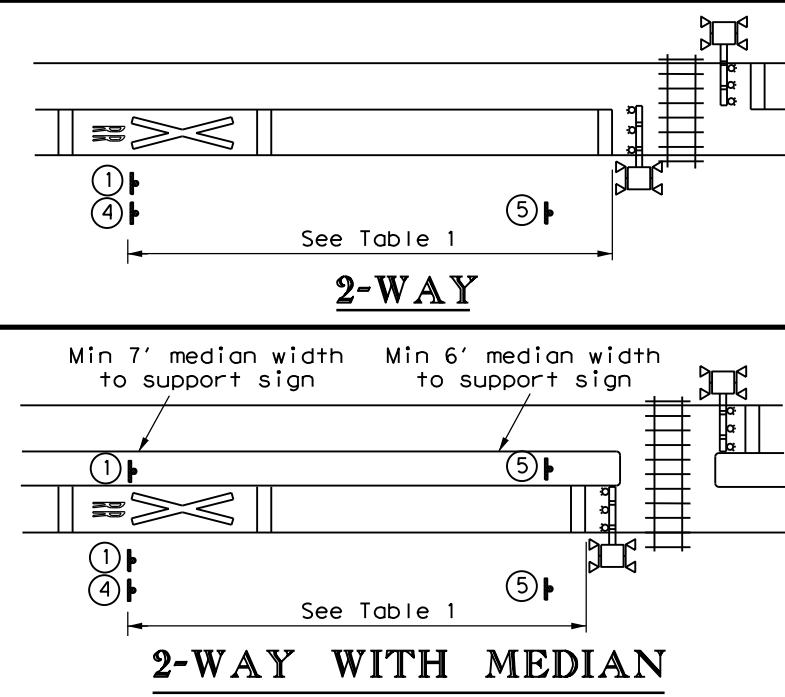
1. Railroad company to provide active traffic control devices, CROSSBUCK (R15-1), NUMBER OF TRACKS Plaque (R15-2P) (if more than 1 track), and EMERGENCY NOTIFICATION (I-13) signs.
2. LOW GROUND CLEARANCE (W10-5) signs may be relocated further upstream of crossing to provide advance warning of alternate route.
3. GRADE CROSSING AND INTERSECTION ADVANCE WARNING (W10-2) signs may be modified as needed to fit roadway geometry.
4. Table 1 placement distances may vary per Sect. 2C.05 of the TMUTCD.
5. See Table 1 to determine placement of STOP AHEAD (W3-1) and YIELD AHEAD (W3-2) signs unless shown otherwise.
6. DO NOT STOP ON TRACKS (R8-8) signs installed when potential for vehicles stopping on tracks is significant as determined by sealing engineer. Install so sign does not block view of RR mast.
7. See the Standard Highway Sign Design for Texas (SHSD) manual for sign and pavement marking details.



NOTE
 This design shows a 4-way stop scenario only. Other signs may be substituted for traffic signal or other traffic control scenarios. This note also applies to T-intersection design below.

	"A" < 100'	"A" ≥ 100'
"B"	See Table 1. Place pavement markings and signs on opposite side of intersection from rail if spacing from Table 1 would put markings within intersection.	See Table 1. Place pavement markings and signs between rail and intersection if spacing from Table 1 would put markings within intersection.
"C"	See Table 1.	GRADE CROSSING AND INTERSECTION ADVANCE WARNING (W10-2, W10-3, W10-4) signs should only be installed if W10-1 sign is not between intersection and railroad crossing. If needed, see Table 1.

GRADE CROSSING NEAR A PARALLEL STREET



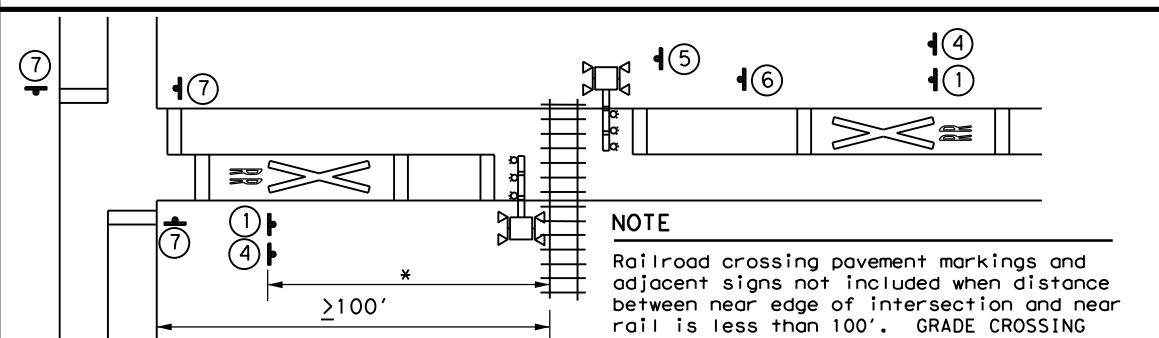
2-WAY

2-WAY WITH MEDIAN

1-WAY

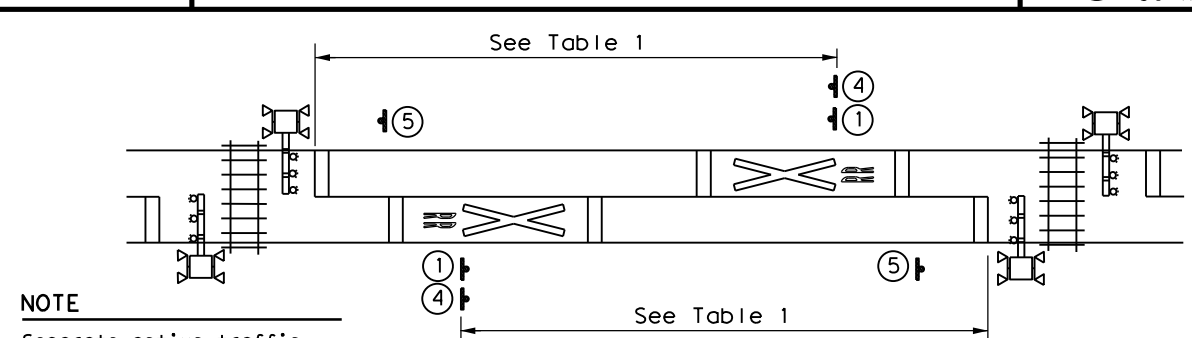
SIGNS

**** Includes a NO TRAIN HORN Plaque (W10-9P) if crossing is in a Quiet Zone. LOW GROUND CLEARANCE Plaque (W10-5P) if needed is mounted below W10-2/W10-3/W10-4 signs.**



NOTE
 Railroad crossing pavement markings and adjacent signs not included when distance between near edge of intersection and near rail is less than 100'. GRADE CROSSING AND INTERSECTION ADVANCE WARNING (W10-3) signs installed on roadway parallel with rail in this case.

T-INTERSECTION



NOTE
 Separate active traffic control devices, railroad crossing pavement markings, and adjacent signs required when tracks are more than 100' apart.

2 ADJACENT CROSSINGS

RAILROAD CROSSING DETAILS
SIGNING & STRIPING
RCD(2) - 16

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**EXHIBIT B
TO
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

SECTION 1. CONDITIONS AND COVENANTS

A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The Political Body shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the Political Body shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the Railroad's property by or under authority of the Political Body for the purpose of conveying electric power or communications incidental to the Political Body's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the Political Body to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.

B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes. In the event the Railroad shall place additional tracks upon the Crossing Area, the Political Body shall, at its sole cost and expense, modify the Roadway to conform with all tracks within the Crossing Area.

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

D. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property; and the right to cross the Crossing Area with all kinds of equipment.

E. So far as it lawfully may do so, the Political Body will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Crossing Area, excepting taxes levied upon and against the property as a component part of the Railroad's operating property.

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

SECTION 2. CONSTRUCTION OF ROADWAY

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

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

C. All construction work of the Political Body upon the Railroad's property (including, but not limited to, construction of the Roadway and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President Engineering-Design of the Railroad or his authorized representative and in compliance with the Plans, and other guidelines furnished by the Railroad.

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

SECTION 3. INJURY AND DAMAGE TO PROPERTY

If the Political Body, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the Political Body is responsible under the provisions of this Agreement, shall injure, damage or destroy

any property of the Railroad or of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the Political Body at the Political Body's own expense, or by the Railroad at the expense of the Political Body, and to the satisfaction of the Railroad's Assistant Vice President Engineering-Design.

SECTION 4. RAILROAD MAY USE CONTRACTORS TO PERFORM WORK

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

SECTION 5. MAINTENANCE AND REPAIRS

A. The Political Body shall, at its own sole expense, maintain, repair, and renew, or cause to be maintained, repaired and renewed, the entire Crossing Area and Roadway, except the portions between the track tie ends, which shall be maintained by and at the expense of the Railroad.

B. If, in the future, the Political Body elects to have the surfacing material between the track tie ends, or between tracks if there is more than one railroad track across the Crossing Area, replaced with paving or some surfacing material other than timber planking, the Railroad, at the Political Body's expense, shall install such replacement surfacing, and in the future, to the extent repair or replacement of the surfacing is necessitated by repair or rehabilitation of the Railroad's tracks through the Crossing Area, the Political Body shall bear the expense of such repairs or replacement.

SECTION 6. CHANGES IN GRADE

If at any time the Railroad shall elect, or be required by competent authority to, raise or lower the grade of all or any portion of the track(s) located within the Crossing Area, the Political Body shall, at its own expense, conform the Roadway to conform with the change of grade of the trackage.

SECTION 7. REARRANGEMENT OF WARNING DEVICES

If the change or rearrangement of any warning device installed hereunder is necessitated for public or Railroad convenience or on account of improvements for either the Railroad, highway or both, the parties will apportion the expense incidental thereto between themselves by negotiation, agreement or by the order of a competent authority before the change or rearrangement is undertaken.

SECTION 8. SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the Political Body that the work will be performed in a safe manner and in conformity with the following standards:

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

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

C. **Flagging.**

(i) If the Political Body's employees need to enter Railroad's property as provided in Paragraph B above, the Political Body agrees to notify the Railroad Representative at least thirty (30) working days in advance of proposed performance of any work by Political Body in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30) day notice, the Railroad Representative will determine and inform Political Body whether a flagman need be present and whether Political Body 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 Political Body for such expenses incurred by Railroad. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad,

Political Body agrees that Political Body is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

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

(iii) Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Political Body 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, Political Body 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, Political Body will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

D. **Compliance With Laws.** The Political Body shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Political Body shall use only such methods as are consistent with safety, both as concerns the Political Body, the Political Body's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Political Body (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the Political Body to comply with any such laws,

regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Political Body shall reimburse, and to the extent it may lawfully do so, indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The Political Body further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

E. **No Interference or Delays.** The Political Body shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.

F. **Supervision.** The Political Body, at its own expense, shall adequately police and supervise all work to be performed by the Political Body, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the Political Body for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the Political Body with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the Political Body will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.

G. **Suspension of Work.** If at any time the Political Body's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the Political Body is being or is about to be done or prosecuted without due regard and precaution for safety and security, the Political Body shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.

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

I. **Explosives.** The Political Body shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be

dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.

J. **Excavation.** The Political Body shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The Political Body shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The Political Body, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the Political Body in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering - Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.

K. **Drainage.** The Political Body, at the Political Body's own expense, shall provide and maintain suitable facilities for draining the Roadway and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The Political Body, at the Political Body's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the Political Body, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The Political Body shall not obstruct or interfere with existing ditches or drainage facilities.

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

M. **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Political Body shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used

by the Political Body. If it is, Political Body will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

SECTION 9. INTERIM WARNING DEVICES

If at anytime it is determined by a competent authority, by the Political Body, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the Political Body shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the new or improved devices have been installed.

SECTION 10. OTHER RAILROADS

All protective and indemnifying provisions of this Agreement shall inure to the benefit of the Railroad and any other railroad company lawfully using the Railroad's property or facilities.

SECTION 11. BOOKS AND RECORDS

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

SECTION 12. REMEDIES FOR BREACH OR NONUSE

A. If the Political Body shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Roadway and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the Political Body will reimburse the Railroad for the expenses thereof.

B. Nonuse by the Political Body of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the Political Body hereunder.

C. The Political Body will surrender peaceable possession of the Crossing Area

and Roadway upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

SECTION 13. MODIFICATION - ENTIRE AGREEMENT

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the Political Body and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the Political Body shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof constitute the entire understanding between the Political Body and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.

DRAFT

EXHIBIT C
TO
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT

Exhibit C will be Railroad's Material and Force Agreement Estimates (see Recitals)

EXHIBIT D
TO
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT

Exhibit D will be Contractor's Right of Entry Agreement (see Recitals)

Folder No.: 2865-68
UPRR Audit No.:

CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ day of _____, 2017, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and

_____ (*Name of Contractor*)

a _____ corporation ("Contractor").

RECITALS:

Contractor has been hired by CITY OF SAN ANTONIO TCI for the widening of the road, new sidewalks, new crossing surface, new lights, new gates, and new circuits over the De Zavala Road at-grade public crossing, DOT Number 763798U at Railroad's Mile Post 13.76 on Railroad's Kerrville Sub. at or near San Antonio, Bexar County, Texas, in the general location shown on the Railroad Location Print marked **Exhibit A**, attached hereto and hereby made a part hereof, which work is the subject of a Crossing Agreement dated _____, between the Railroad and the CITY OF SAN ANTONIO TCI.

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

AGREEMENT:

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

ARTICLE 1 - DEFINITION OF CONTRACTOR.

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

ARTICLE 2 - RIGHT GRANTED; PURPOSE.

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

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

The General Terms and Conditions contained in **Exhibit B**, the Insurance Requirements contained in **Exhibit C**, and the Minimum Safety Requirements contained in **Exhibit D**, each 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"):

PEDERSON, Jason M.
MANAGER OF TRACK MAINTENANCE
210/8 825-0362
jpederso@up.com
8555 E LOOP 1604 S
ADKINS, TX 78101

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

ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.

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

ARTICLE 6 - TERM; TERMINATION.

- A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until _____, unless sooner terminated as herein
(Expiration Date)

provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.

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

ARTICLE 7 - CERTIFICATE OF INSURANCE.

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

*Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, MS 1690
Omaha, NE 68179-1690
UPRR Folder No.: 2865-68*

ARTICLE 8 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.

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

ARTICLE 9 - 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 - CROSSINGS; COMPLIANCE WITH MUTCD AND FRA GUIDELINES.

- A. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.
- B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications, negligence, or any other reason arising from the Contractor's presence on the Railroad's

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

ARTICLE 11 - EXPLOSIVES.

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

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

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

By: _____
Daniel Peters
Real Estate – Public Projects

(Name of Contractor)

By _____

Printed Name: _____

Title: _____



Area = 2738± Sq. Ft.

Area = 1120± Sq. Ft.

Existing Crossing Area = 5090± Sq. Ft. = 0.11± Acres
 New Crossing Area = 3858± Sq. Ft. = 0.09± Acres
 Total Area = 8948± Sq. Ft. = 0.20± Acres

LEGEND:

- EXISTING CROSSING AREA
- New Crossing Area
- UPRRCO. R/W OUTLINED

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

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

SAN ANTONIO, BEXAR COUNTY, TX
 M.P. 13.76 - KERRVILLE SUB

SP TX V-3 / S-2A
 SCALE: 1" = 100'

OFFICE OF REAL ESTATE
 OMAHA, NEBRASKA DATE: 10/5/2017

AJM FILE:2865-68

CADD FILENAME	0305453.dgn
SCAN FILENAME	0305453_TX30S2A.tif

EXHIBIT B

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

GENERAL TERMS & CONDITIONS

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

- A. Contractor agrees to notify the Railroad Representative at least thirty (30) working days in advance of Contractor commencing its work and at least ten (10) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such ten (10)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.
- B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) 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 D**, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.
- B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.
- C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 8. INDEMNITY.

- A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees (individually an "Indemnified Party" or collectively "Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.
- B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.
- C. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Indemnified Parties under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.
- D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against any Indemnified Party.
- E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

Section 9. RESTORATION OF PROPERTY.

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

Section 10. WAIVER OF DEFAULT.

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

Section 11. MODIFICATION - ENTIRE AGREEMENT.

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

Section 12. ASSIGNMENT - SUBCONTRACTING.

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage; (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

EXHIBIT C

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

INSURANCE REQUIREMENTS

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

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

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

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

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

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

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

C. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE. Coverage must include but not be limited to:

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

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided.

Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

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

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

D. RAILROAD PROTECTIVE LIABILITY INSURANCE. Contractor must maintain Railroad Protective Liability 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.

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 D

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

MINIMUM SAFETY REQUIREMENTS

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

I. CLOTHING

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

Specifically, Contractor's employees must wear:

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

II. PERSONAL PROTECTIVE EQUIPMENT

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

- i. Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- ii. Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- iii. Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers
 - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- iv. Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. ON TRACK SAFETY

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

- i. Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.

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

IV. EQUIPMENT

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

V. GENERAL SAFETY REQUIREMENTS

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