

UPRR Folder No.: 3188-96

UPRR Audit No.: _____

**NEW PUBLIC HIGHWAY AT-GRADE CROSSING
AGREEMENT**
(RAILROAD LEASED LINE PROPERTY)

Peach Ave.– DOT No. 757162V
UPRR Mile Post 210.0 – Exeter Sub (Land Leased to SJVR)
Fresno, Fresno County, California

THIS AGREEMENT, made and entered into as of the _____ day of _____, 20____, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation to be addressed at 1400 Douglas Street, MS1690, Omaha, Nebraska 68179-1690 (“UPRR”), and **SAN JOAQUIN VALLEY RAILROAD CO**, a California Corporation to be addressed at 221 N. “F” Street, Exeter, CA 93221 (“Lessee”), and the **CITY OF FRESNO**, a municipal corporation of the State of California to be addressed at 2600 Fresno Street, Fresno, CA 93221 (hereinafter the “Political Body”). UPRR and the Lessee are hereinafter sometimes collectively referred to as the “Railroad”.

RECITALS:

By instrument dated September 17, 1946, the Southern Pacific Railroad Company, a corporation of the State of Delaware and the County of Fresno entered into an agreement (the “Original Agreement”), identified in the records of the Railroad as Audit No. S072714, covering the construction, use, maintenance and repair of an at grade public road crossing over Peach Ave., DOT No. 757162V, at or near Railroad’s Mile Post 210.0 on its Exeter Sub, in or near Fresno, Fresno County, California as generally depicted in the general location print marked **Exhibit A** attached hereto and made a part hereof.

The Railroad named herein is successor in interest to the Southern Pacific Transportation Company, a corporation of the State of Delaware.

The Political Body now desires to undertake as its project (the “Project”):

- The widening of the road, addition of landscaping and new sidewalks and medians on the north and south sides of the road crossing and the installation of new signal equipment. The structure, widened with the addition of landscaping, medians and new sidewalks as is hereinafter the “Roadway” and where the Roadway crosses the Railroad’s property is the “Crossing Area” as described as Proposed R/W and the Existing Crossing on the detailed print marked **Exhibit A-1**.

The right of way granted by Southern Pacific Transportation Company to the City of Fresno under the terms of the Original Agreement is not sufficient to allow for the widening of the road, addition of landscaping and new sidewalks on both sides of the road crossing constructed under the Original Agreement. Therefore, under this Agreement, the Railroad

will be granting an additional right of way right to the Political Body to facilitate the widening of the road, addition of landscaping and new sidewalks on both sides of the road crossing. The portion of Railroad's property that Political Body needs a right to use in connection with the road crossing (including the right of way area covered under the Original Agreement) is shown on the detailed prints marked **Exhibit A-1** with each exhibit being attached hereto and hereby made a part hereof (the "Crossing Area").

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:

ARTICLE 1 - LIST OF EXHIBITS

The exhibits below are attached hereto and hereby made a part hereof.

Exhibit A	Railroad Location Print
Exhibit A-1	Detailed Prints
Exhibit B	General Terms and Conditions
Exhibit C	Lessee's Material and Force Account Estimate
Exhibit D	Lessee's Right of Entry

ARTICLE 2 - EXHIBIT B

The General Terms and Conditions marked **Exhibit B** is attached hereto and hereby made a part hereof. For the avoidance of doubt, references to "Railroad" in such General Terms and Conditions shall also include UPRR and the Lessee.

ARTICLE 3 - RAILROAD GRANTS RIGHT

For and in consideration **FIVE THOUSAND DOLLARS and 0/100 (\$5,000.00)** 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 as described as Proposed R/W and the Existing Crossing on the detailed print marked **Exhibit A-1**.

ARTICE -4 - 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.

ARTICLE 5 - 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:
- | | |
|--|--|
| <i>Senior Manager - Contracts
Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, Mail Stop 1690
Omaha, NE 68179-1690
UPRR Folder No. 3188-96</i> | <i>General Manager
San Joaquin Valley Railroad Co
221 N. "F" Street
Exeter, CA 93221</i> |
|--|--|
- 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.

ARTICLE 6 - 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.

ARTICLE 7 - 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.

ARTICLE 8 - WORK TO BE PERFORMED BY LESSEE; BILLING SENT TO PUBLIC AUTHORITY; PUBLIC AUTHORITY'S PAYMENT OF BILLS

A. The work to be performed by the Lessee, at the Public Authority's sole cost and expense, is described in the Lessee's Material and Force Account Estimate marked **Exhibit C**, attached hereto and hereby made a part hereof (the "Estimate"). As set forth in the Estimate, the Lessee's estimated cost for the Lessee's work associated with the Project is (\$ 798,896.93).

B. The Lessee, if it so elects, may recalculate and update the Estimate submitted to the Public Authority in the event the Public Authority 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 Public Authority acknowledges that the Estimate may or may not include any estimate of flagging or other protective service costs that are to be paid by the Public Authority in connection with flagging or other protective services provided by the Lessee in connection with the Project. All of such costs incurred by the Lessee are to be paid by the Public Authority.

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

E. The Public Authority agrees to reimburse the Lessee and UPRR within thirty (30) days of its receipt of billing from the Lessee and UPRR for one hundred percent (100%) of all actual costs incurred by the Lessee and UPRR in connection with the Project including, but not limited to, all actual costs of engineering review (including preliminary engineering review costs incurred by UPRR and Lessee 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 UPRR's and Lessee's standard additive rates.

ARTICLE 9 - PLANS

A. The Political Body, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications and submit such plans and specifications to UPRR and Lessee, 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 UPRR'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.

ARTICLE 10 - 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 9. 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.

ARTICLE 11 - EFFECTIVE DATE; TERM; TERMINATION.

- A. This Agreement shall become effective as of the date first herein written, or the date work commences on the Project, whichever is earlier, and shall continue in full force and effect for as long as the Structure 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 date of this Agreement, or from the date that the Railroad has executed this Agreement and returned it to the Political Body for its execution, whichever is applicable.
- 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.

ARTICLE 12 - 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:

- The UPRR, Lessee and the Political Body have executed this Agreement.
- The Railroad has provided to the Political Body the Railroad's written approval of the Plans.
- 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 set forth in the Contractor's Right of Entry Agreement.

ARTICLE 13 - 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.

ARTICLE 14 - 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.

ARTICLE 15 - 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.

ARTICLE 16 - TERMINATION OF ORIGINAL AGREEMENT

Upon the completion of the Roadway, the Original Agreement shall terminate and the terms and conditions of this Agreement shall govern the use, maintenance and repair of the Roadway.

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

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

By _____
David C. LaPlante
Senior Manager - Real Estate

SAN JOAQUIN VALLEY RAILROAD CO

By _____
Printed Name: _____
Title: _____

CITY OF FRESNO

Public Works Department

By: _____

Printed
Name: _____

Title: _____

Approved as to Form:

Douglas T. Sloan

City Attorney

By: _____

Deputy

Attest:

Yvonne Spence, CMC

City Clerk

By: _____

Deputy

EXHIBIT A

To Public Highway At-Grade Crossing
Agreement
(For Railroad Leased Lines)

Cover Sheet for the
Railroad Location Print

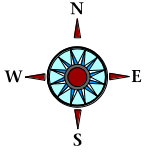
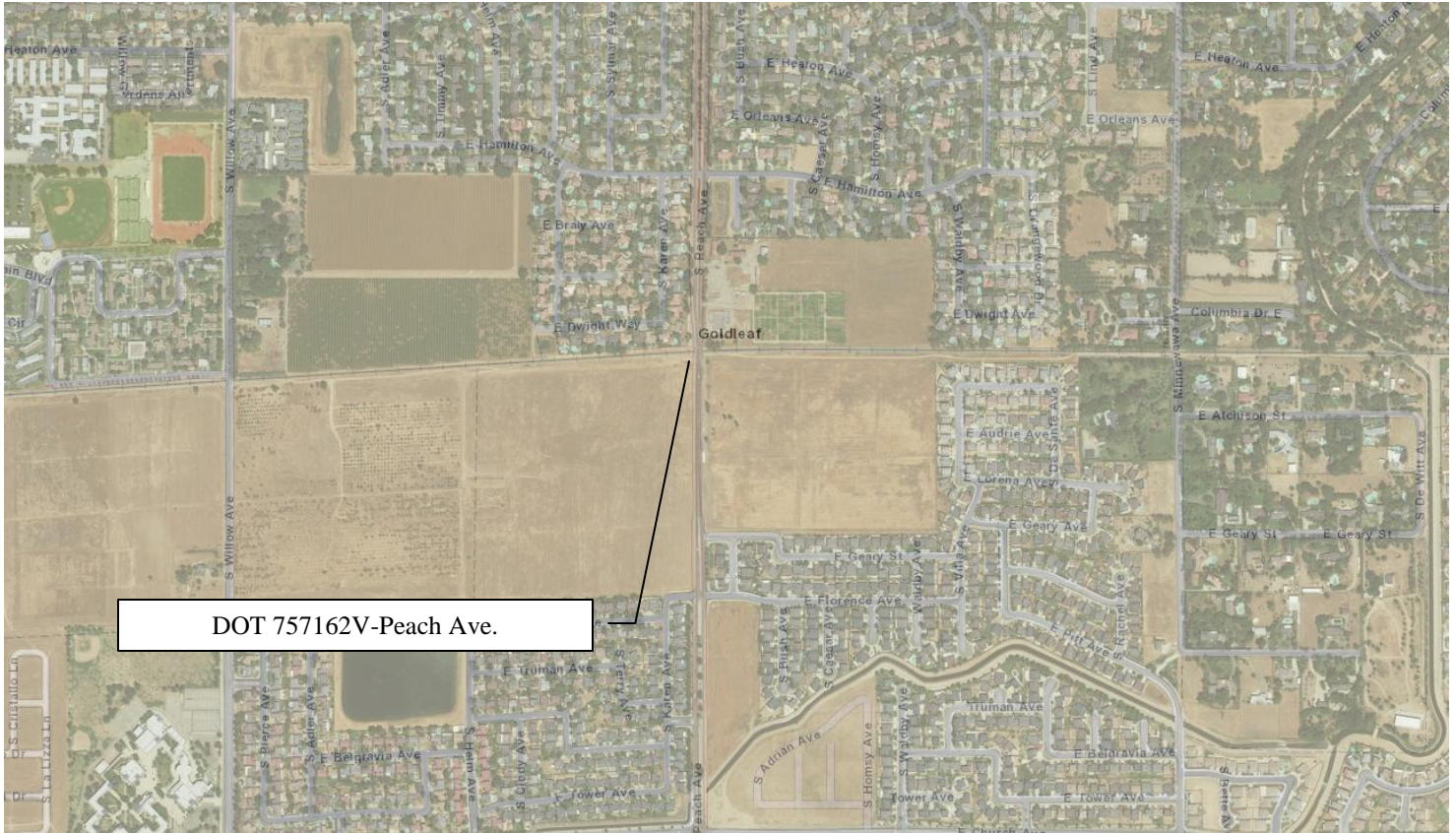


EXHIBIT "A"

RAILROAD LOCATION PRINT FOR AN EXISTING AT-GRADE PUBLIC ROAD CROSSING



UNION PACIFIC RAILROAD COMPANY

EXETER SUB (SJVR)
RAILROAD MILE POST 210.01
FRESNO, FRESNO COUNTY, CA

To accompany an agreement with
STATE OF ILLINOIS and its Contractor

Folder No. 3188-96

Date: December 3, 2019

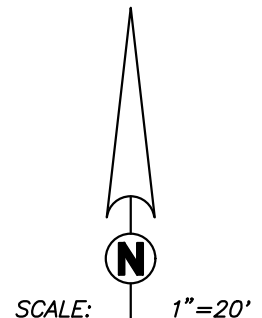
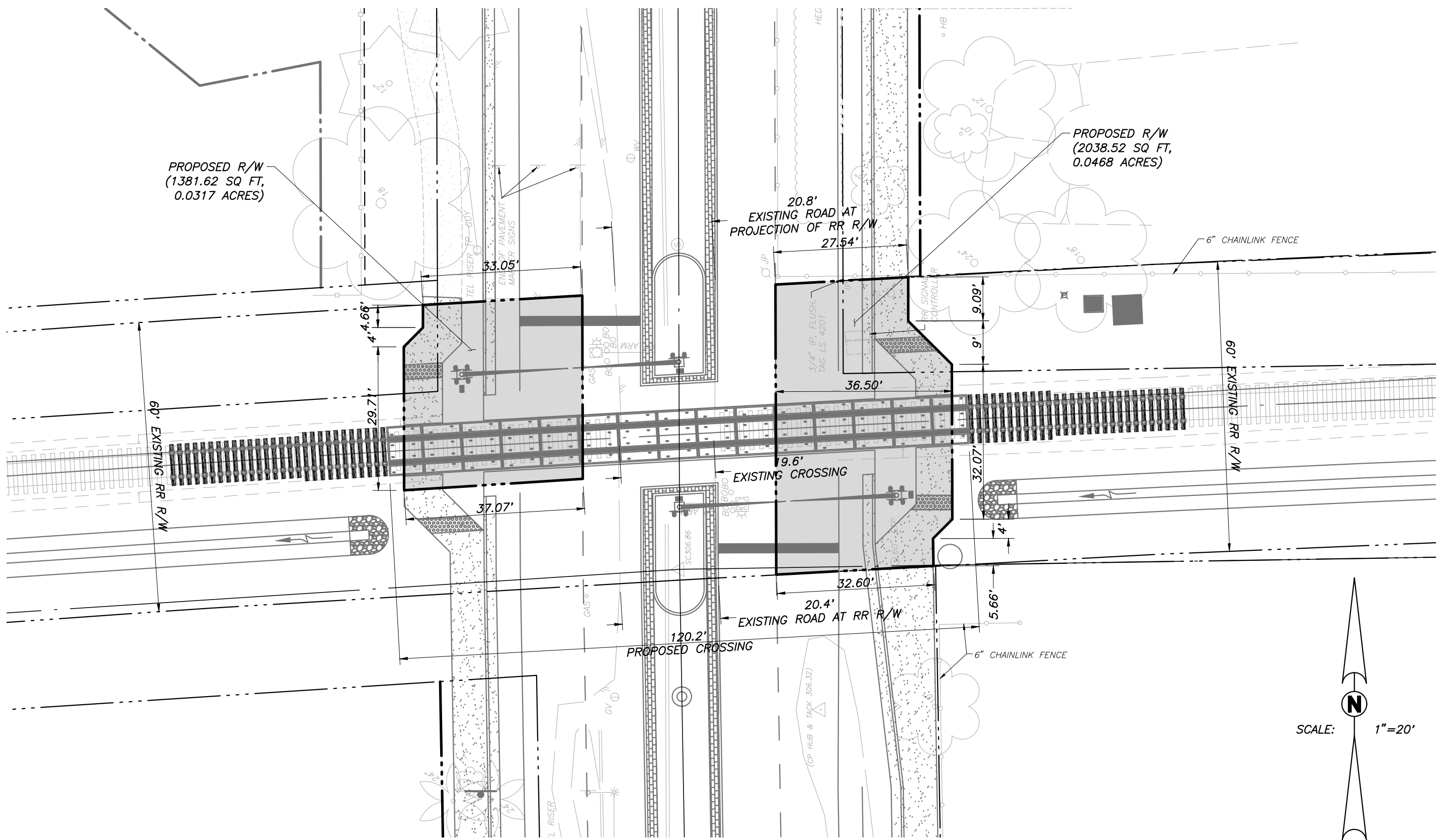
WARNING

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

EXHIBIT A-1

To Public Highway At-Grade Crossing
Agreement
(For Railroad Leased Lines)

Cover Sheet for the
Detailed Print



	CONSULTANT Blair, Church & Flynn Consulting Engineers 481 Civic Avenue, Suite 200 Clovis, California 93612 Tel: (509) 326-4400 Fax: (509) 326-1390	SAN JOAQUIN VALLEY RAILROAD	
	PEACH AVE GRADE CROSSING EXISTING AND PROPOSED IMPROVEMENTS		DR. BY TF CH. BY TF DATE 12-05-19 SCALE: AS NOTED
			SHEET NO. 1 OF 1 SHEETS

EXHIBIT A-2

To Public Highway At-Grade Crossing
Agreement
(For Railroad Leased Lines)

Cover Sheet for the
Plan and Profile

EXHIBIT B

To Public Highway At-Grade Crossing
Agreement
(For Railroad Leased Lines)

Cover Sheet for the
General Terms and Conditions

EXHIBIT B

TO PUBLIC AT-GRADE CROSSING AGREEMENT (Railroad Leased Line)

GENERAL TERMS AND CONDITIONS

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 Political Body 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 Railroad 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.

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 Lessee.
- 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.** 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 Lessee 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 Lessee flagman is provided to watch for trains. Upon receipt of such thirty (30) day notice, the Lessee 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 Lessee, the Lessee will bill Political Body for such expenses incurred by Lessee. If Lessee performs any flagging, or other special protective or safety measures are performed by Lessee, Political Body agrees that Political Body is not relieved of any of its responsibilities or liabilities set forth in this Agreement.
- 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 a Lessee representative, 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 Railroad 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, which shall not be given if, in the sole discretion of the Railroad, 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 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 UPRR 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 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.

EXHIBIT C

To Public Highway At-Grade Crossing Agreement
(For Railroad Leased Lines)

Cover Sheet for the
Lessee Railroad's Form of
Material Force Account Estimate



a Genesee & Wyoming Company

Estimate No.: 757162V - 10/17/19

SAN JOAQUIN VALLEY RAILROAD (SJVR) FRESNO, (FRESNO), CALIFORNIA - PEACH AVENUE

DOT#: 757162V
RR MP.: BC210.00

Western Region
EXETER Subdivision

RAILROAD #: RP# 15SJVR04R
XORAIL#: 103225

Summary

CROSSING WARNING SYSTEM (Includes all design, requisition, labor, materials, shop wiring, and installation)	\$311,109.43
CROSSING SURFACE/RESURFACE (Includes all design, requisition, labor, materials, and installation)	\$179,400.00
TRACK GRADE AND REHABILITATION (Includes all design, requisition, labor, materials, and installation)	\$184,420.40
PRELIMINARY ENGINEERING (Phase 1) (Includes CONTRACT Labor for all Engineering, Agency Coordination, and Project Management)	\$15,257.00 (Prepaid)
AGREEMENTS & APPROVALS (Phase 2) (Includes CONTRACT Labor for all Engineering, Agency Coordination, and Project Management)	\$6,821.50 (Prepaid)
CONSTRUCTION ENGINEERING (Phase 3) (Includes CONTRACT Labor for all Engineering, Agency Coordination, and Project Management)	\$18,148.00
CROSSING CONTROL CIRCUIT DESIGN (Phase 1)	\$9,840.60 (Prepaid)
CIVIL / STRUCTURAL ENGINEERING (Phase 1) (Includes Costs For Services Provided by TY Lin)	\$42,400.00 (Prepaid)
CONSTRUCTION ENGINEERING INSPECTION (Estimated Construction Engineering Inspection cost based on 4 days @ \$1500 per day)	\$6,000.00
UTILITY CROSSING (0 new utility crossings @ \$4000 per crossing, includes application, engineering review, and right of entry)	\$0.00
RIGHT OF ENTRY FEE (Right of Entry Fee of \$1,500 is valid for 60 days, after 60 days, additional fees of \$750 per 30 days are required.)	\$0.00
FLAGGING SERVICES (Estimated Flagging Services cost based on 10 days @ \$1050 per day)	\$10,500.00
AC POWER SERVICE (Includes all Power Service Charges not included in other costs)	\$5,000.00
OTHER (\$10,000 traffic control)	\$10,000.00
TOTAL ESTIMATE COST	\$798,896.93 (USD)

DATE: 10/17/19

RESPONSIBLE PARTY:

Name: **Cecilio Garcia**
Number: **TBD**
Contact: **559-621-8657**

NOTE : This Estimate has been prepared based on site conditions, anticipated work duration periods, material prices, labor rates, manpower, resource availability, and other factors known as of the date prepared. The actual cost for Railroad work may differ based upon the agency's requirements, their contractors work procedures, and/or other conditions that become apparent once construction commences or during the progress of the work. If any extended time elapses from the date of this Estimate, the Railroad will reserve the right to update the estimate to current price values, and require agency's approval before any work by Railroad will commence.

EXHIBIT D

To Public Highway At-Grade Crossing Agreement
(For Railroad Leased Lines)

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

CONTRACTOR RIGHT OF ENTRY LICENSE AGREEMENT

THIS AGREEMENT (the "Agreement") is made as of _____, 20____, (the "Effective Date"), by and between _____ ("Railroad") and _____ ("Licensee").

WITNESSETH:

WHEREAS, Licensee has submitted a written request or application to Railroad requesting permission to enter Railroad's property at or near the location specified in Section 1 below for the limited purpose of performing certain work; and

WHEREAS, Railroad is willing to grant to Licensee the limited right and permission to enter upon such property for the limited purpose of performing such work in accordance with the terms provided herein.

NOW THEREFORE, in consideration of these promises, the Agreement herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1. LOCATION/PAYMENT/WORK PRACTICES:

1.1 Railroad hereby conveys to Licensee the limited right and permission to enter upon the Railroad's property located at or near Milepost _____, _____ Subdivision, Latitude: _____, Longitude: _____ located in _____, in the County of _____, State of _____ as reflected on the map attached hereto as Exhibit A and incorporated herein by reference (the "Property") for the purpose of Licensee, through its employees, agents or contractors to _____ (the "Work"); and

1.2 Upon payment of a fee referenced in Section 11 herein, Railroad hereby grants to Licensee, the right and permission to enter upon Railroad's Property for the purpose of performing the Work, subject to the terms, conditions and provisions set forth in this Agreement.

1.3 The Work shall be performed at the entire cost and expense of Licensee, in accordance with good and sound engineering practices, to the satisfaction of Railroad's Chief Engineer, or his duly authorized representative (the "Representative"), and in a manner to avoid accident, damage or harm to persons or property and delays to or interference with the operations of Railroad.

Section 2. PRIOR NOTICE/FLAGGING/OTHER CONDITIONS.

2.1 Licensee or Licensee's contractor shall notify Railroad's Representative at least five (5) business days before proceeding with any phase of the Work on the Property and shall abide by the instructions of said Representative concerning the safety of the Railroad. All persons entering the Property pursuant to the permission granted herein shall comply with and perform the Work in accordance with Genesee & Wyoming Inc.'s Code of Ethics and Conduct and all publicly available policies referenced therein, including but not limited to the Contractor Safety Rules (collectively, the "Policies"), which can be located at <http://phx.corporate-ir.net/phoenix.zhtml?c=64426&p=irol-govconduct>. The following Personal Protective Equipment ("PPE") must be worn at all times on the Property: Hard Hats, Safety Footwear, certified Eye Protection with side shields and approved High-Visibility Work wear. Additional forms of PPE may be required under certain circumstances as specified in the aforesaid Contractor Safety Rules.

2.2 Railroad shall furnish such personnel, flagman or watchman which in Railroad's sole discretion may be necessary to protect the facilities and traffic of Railroad during the performance of said Work. The

Licensee or its contractor shall reimburse Railroad promptly for the actual cost of said services, including all applicable surcharges, upon receipt of bill or bills therefor.

2.3 No equipment of Licensee or of its contractor, shall be placed and operated, nor Work permitted to be performed at a distance closer than fifty (50) feet from the center of track, nor equipment moved across the Railroad's track(s) at other than an established public crossing, unless prior arrangements have been made with said Chief Engineer or his Representative. Appropriate precautions must be taken by Licensee and its contractor to avoid interference with or damage to Railroad's facilities during the course of the Work.

2.4 Prior to entering upon the Property, Licensee agrees to comply with **the RAILROAD'S ROADWAY WORKER PROTECTION TRAINING POLICY** as set forth in Exhibit B attached hereto and incorporated herein by reference, if such training is applicable as determined in the sole discretion of Railroad.

2.5 The permission herein granted is subject to all existing leases, licenses and occupancies of the Property by third parties. Licensee acknowledges that, in agreeing to this Agreement, Railroad acts on its own behalf only and has no authority to act, and does not claim to act, on behalf of any other entity or person with respect to any right any such other entity or person may have to object to this Agreement. Licensee shall secure the consent, and protect the facilities, of each such third party occupier of the Property.

2.6 Licensee shall implement and enforce a safety program conforming to all applicable requirements of federal, state and local laws, rules and regulations.

Section 3. LEGAL COMPLIANCE.

Licensee expressly agrees, at its own cost and expense, to comply and cause its agents, employees and contractor(s) to comply with all applicable ordinances, rules, regulations, requirements and laws of any governmental authority (state, federal or local) having jurisdiction over the Work or Licensee's activities, including the location, contact, excavation and protection regulations of the Occupational Safety and Health Act and state "One Call" - "Call Before You Dig" requirements. Licensee shall indemnify, defend and save harmless Railroad and its affiliates from and against, and shall pay, all expenses, damages, penalties, and claims, including without limitation reasonable counsel fees, that may arise from, or be imposed because of, the failure of Licensee to comply with this Section.

Section 4. LIABILITY/INDEMNITY.

4.1 Licensee hereby assumes risk of and agrees to indemnify, defend, protect and save Railroad and its affiliates, and each of their directors, officers, agents and employees of Railroad, harmless from and against (a) injury to or death of any person or persons whomsoever, including but not limited to the agents, employees or contractor(s) of the parties hereto, and (b) the loss or damage to any property whatsoever, including property claims, demands, suits, judgments or expenses incurred in connection therewith, resulting from or arising out of the acts or omissions of Licensee, its agents, employees or contractor(s), or resulting from, arising out of, or occurring in connection with the entry or presence of Licensee, its agents, employees or contractor(s) on the Property, or resulting from, arising out of, or occurring in connection with the performance or execution of the Work performed under this Agreement or incidental thereto.

4.2 IN NO EVENT UNDER THIS AGREEMENT WILL RAILROAD HAVE ANY LIABILITY FOR INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES. THE TERM "RAILROAD" AS USED IN THIS SECTION 4 SHALL INCLUDE THE SUCCESSORS, ASSIGNS, AND AFFILIATED COMPANIES OF RAILROAD, AND ANY OTHER RAILROAD COMPANY THAT MAY BE LAWFULLY OPERATING UPON AND OVER THE TRACKS, OR THE TRACKS CROSSING OR ADJACENT TO THE TRACKS, AND THE OFFICERS, AGENTS, INVITEES AND EMPLOYEES THEREOF.

Section 5. INSURANCE.

Licensee agrees to comply with the **INSURANCE REQUIREMENTS FOR CONTRACTOR RIGHT-OF-ENTRY LICENSE AGREEMENTS**, attached hereto as Exhibit C and incorporated herein by reference, and shall provide the required Certificate of Insurance to Railroad with return of the signed duplicate original of this Agreement prior to the commencement of the Work.

Section 6. NOTIFICATION.

Licensee shall promptly notify said Chief Engineer of any loss, damage, injury or death arising out of or in connection with said Work.

Section 7. RESTORATION.

Upon completion of the Work or the term of the Agreement, Licensee shall promptly remove from the Property all tools, equipment and materials placed thereon by Licensee. Licensee shall restore the Property to the same state and condition as when Licensee first entered thereon and shall leave the Property in a condition satisfactory to Railroad's Chief Engineer or Representative.

Section 8. TERM/TERMINATION.

This Agreement and the permission conferred and the license granted by it does not constitute a grant of permanent easement and shall terminate upon completion of the Work or at midnight 60 calendar days following the Effective Date, whichever occurs first, unless extended in writing by Railroad. Notwithstanding the foregoing, Railroad shall have the right to terminate this Agreement and the license granted hereunder immediately if Licensee defaults on any of the terms and/or conditions set forth herein.

Section 9. COMPLIANCE AND DOCUMENTATION.

Licensee agrees, and shall cause its agents, employees or contractor(s), to (a) understand and comply with the terms and conditions of this Agreement, (b) carry a copy of this Agreement at all times while on the Property, and (c) promptly present the copy of this Agreement to any employee of Railroad upon request.

Section 10. RAILROAD CONTACT INFORMATION.

The Railroad's Chief Engineer is:

The Railroad's Representative is:

Trainmaster, _____

Railroad **EMERGENCY** Phone Number: _____
Reference Location: _____ **Subdivision** _____ **Milepost** _____

Section 11. FEE.

Upon execution of this Agreement, Licensee shall pay Railroad the sum of \$1500 toward the cost of preparing this Agreement and for the privileges granted to the Licensee.

Section 12. NON-WAIVER.

If either party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of the other party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.

Section 13. APPLICABLE LAW.

This Agreement shall be governed by and construed under the laws of the State of SC, without regard to the choice of law provisions thereof.

Section 14. ASSIGNMENT.

Licensee shall not assign this Agreement without the prior written consent of Railroad, which consent may be granted or withheld at Railroad's sole discretion. This Agreement shall be binding upon the parties and their respective successors and permitted assigns.

Section 15. INTERPRETATION/SEVERABILITY.

To the maximum extent possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this Agreement.

Section 16. COUNTERPARTS.

This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and counterparts of this Agreement may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

Section 17. HEADINGS.

The headings of the Sections of this Agreement are inserted for convenience only and are not intended to govern, limit or aid in the construction of any term or provision of this Agreement.

Section 18. CONSTRUCTION OF TERMS.

The terms of this Agreement have been arrived at after mutual negotiation and, therefore, it is the intention of the Parties that its terms not be construed against any of the Parties by reason of the fact that it was prepared by one of the Parties.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

RAILROAD:

LICENSEE:

By: _____

By: _____

Name:

Name:

Its:

Its:

SAMPLE

EXHIBIT A

DESCRIPTION OF PROPERTY

SAMPLE

EXHIBIT B**ROADWAY WORKER PROTECTION TRAINING POLICY**

A. In order to maintain the integrity and security of the Property and Railroad's operations, prior to each employee of Licensee and its contractor entering upon the Property (each a "Licensee Applicant"), Licensee shall cause its employees, and shall cause its contractor to require its employees, to successfully complete the Genesee & Wyoming Inc. Roadway Worker Training Program (the "Program") on an annual basis to be administered by Roadway Worker Training, Inc. (the "Program Administer"), at the sole cost and expense of the Licensee or contractor, as the case may be (the current cost of which is \$35.00 USD per Licensee Applicant). The Program shall be available via the internet and instructions to access the Program set forth in Paragraph K.

B. Upon completion of the Program, the Licensee Applicant shall be required to satisfactorily complete a test administered by the Program Administer. The Program Administer shall be responsible for scoring such test and verifying whether the Licensee Applicant satisfies the requirements of Railroad to perform work on the Property. Any Licensee Applicant who fails to achieve a satisfactory score or who refuses to complete such test shall not be permitted to enter the Property.

C. When a satisfactory score is achieved by the Licensee Applicant, the Program Administrator shall furnish a certificate (the "Certificate") to the business address of Licensee or its contractor, as the case may be, for distribution to the Licensee Applicant. Until receipt of the Certificate from the Program Administrator, the Licensee Applicant shall print a temporary certificate authorizing the Licensee Applicant's access to the Property.

D. For the avoidance of doubt, satisfactory completion of the Program as evidenced by receipt of a Certificate does not in itself grant permission to the Licensee Applicant to enter the Property, except as expressly permitted under and in strict compliance with the terms of the Agreement.

E. The Licensee Applicant shall be responsible for carrying the Certificate at all times when on the Property.

F. All communications regarding Licensee Applicants, the Program, or any other matters described in this Exhibit B should be addressed to:

Michael Lundell
GWI Safety Department
13901 Sutton Park Drive South, Suite 180
Jacksonville, FL 32224
Mlundell@gwrr.com
(904) 596-1766

G. Licensee and its contractor shall be responsible for managing and recovering Certificates from their employees who resign, retire or are terminated.

H. Notwithstanding the receipt of a Certificate by a Licensee Applicant, Railroad reserves the right to reject any Licensee Applicant from entering upon the Property in Railroad's sole discretion in accordance with:

- i) Genesee & Wyoming Inc. Code of Ethics and Conduct,
- ii) Genesee & Wyoming Inc. Contractor Safety Rules, or
- iii) upon failure to comply with the terms and conditions of the Agreement and all applicable laws.

I. To the extent that any portion of the requirements set forth in this Exhibit B violates any law, ordinance, statute or regulation that portion shall be ignored and the Licensee or contractor, as the case may be, shall comply with all remaining portions of Railroad's Roadway Protection Training Policy, the Program or the related application process.

J. Licensee or its contractor, as the case may be, shall be primarily responsible for enforcement of the Program; *provided, however*, that both Railroad and the Federal Railroad Administration reserve the right to audit Licensee and its contractor, as the case may be, for compliance with the Program and Railroad's Roadway Protection Training Policy. Should a Licensee or its contractor, as applicable, be found out of compliance, any and all fines or penalties incurred by Railroad due to such non-compliance shall be the sole obligation of the Licensee.

K. To access the G&W Roadway Worker Protection Training for Railroad Contractors Course on the RWT On-Line please follow these instructions:

- Start at website www.rtrainers.com
- Click on the "On-Line Courses" button
- Select the G&W course by clicking on the course name
- On the right hand side of the page select "New User Registration"
- Fill out all of the fields on the registration page and submit
- You will receive a username and password via email
- After receiving the username and password go back to the On-Line Courses page and select the G&W course again
- Complete the registration process and training.

EXHIBIT C**INSURANCE REQUIREMENTS FOR RIGHT-OF-ENTRY LICENSE AGREEMENT**

(a) The Licensee shall, at its own cost and expense, prior to entry onto the Property or the commencement of any work pursuant to this Agreement, procure and thereafter maintain throughout the term of this Agreement the following types and minimum amounts of insurance:

(i) The Licensee shall maintain Public Liability or Commercial General Liability Insurance (“CGL”), including Contractual Liability Coverage and CG 24 17 “Contractual Liability – Railroads” endorsement, covering all liabilities assumed by the Licensee under this Agreement, without exception or restriction of any kind, with a combined single limit of not less than Two Million Dollars (\$2,000,000) for Bodily Injury and/or Property Damage Liability per occurrence, and an aggregate limit of not less than Six Million Dollars (\$6,000,000) per annual policy period. Such insurance policy shall be endorsed to provide a **Waiver of Subrogation in favor of the Railroad and its affiliates** and shall name the **Railroad and its affiliates as Additional Insured**. An Umbrella or Excess policy may be utilized to satisfy the required limits of liability under this section, but must “follow form” and afford no less coverage than the primary policy.

(ii) The Licensee shall maintain Commercial Automobile Insurance for all owned, non-owned and hired vehicles with a combined single limit of not less than One Million Dollars (\$1,000,000) for Bodily Injury and/or Property Damage Liability per occurrence. Such insurance policy shall be endorsed to provide a **Waiver of Subrogation in favor of the Railroad and its affiliates** and shall name the **Railroad and its affiliates as Additional Insured**.

(iii) The Licensee shall maintain Statutory Workers’ Compensation and Employers’ Liability Insurance for its employees (if any) with minimum limits of not less than One Million Dollars (\$1,000,000) for Bodily Injury by Accident, Each Accident; One Million Dollars (\$1,000,000) for Bodily Injury by Disease, Policy Limit; One Million Dollars (\$1,000,000) for Bodily Injury by Disease, Each Employee. Such insurance policy shall be endorsed to provide a **Waiver of Subrogation in favor of the Railroad and its affiliates**.

(iv) **Prior to construction within 50’ of the railroad tracks**, the Licensee shall purchase Railroad Protective Liability Insurance naming the Railroad as the named insured with limits of Two Million Dollars (\$2,000,000) each occurrence and Six Million Dollars (\$6,000,000) aggregate limit. The policy shall be issued on a standard ISO form CG 00 35 12 03 or, if available, obtain such coverage from the Railroad.

(b) The following general insurance requirements shall apply:

(i) The specified insurance policies must be effected under standard form policies underwritten by insurers licensed in the state where work is to be performed, and carry a minimum Best’s rating of “A-” and size “Class VII” or better. The Railroad reserves the right to reject as inadequate any insurance coverage provided by an insurer that is rated less than the ratings specified in this section.

(ii) All coverages shall be **primary and non-contributory to any insurance coverages maintained by the Railroad and its affiliates**.

(iii) All insurance policies shall be endorsed to provide the Railroad with thirty (30) days prior written notice of cancellation, non-renewal or material changes.

(iv) The Licensee shall provide the Railroad with certificates of insurance evidencing the insurance coverages, terms and conditions required prior to commencement of any activities on or about the Property. Said certificates should reference this Contractor Right of Entry License Agreement by agreement date and description and shall be furnished to the Railroad at the following address, or to such other address as the Railroad may hereafter specify:

Carolina Piedmont Railroad a Division of South Carolina Central Railroad Company, LLC.
C/O Genesee & Wyoming Railroad Services, Inc.
13901 Sutton Park Drive South, Suite 160
Jacksonville, FL 3224

(v) If any policies providing the required coverages are written on a Claims-Made basis, the following shall apply:

- (1) The retroactive date shall be prior to the commencement of the work;
- (2) The Licensee shall maintain such policies on a continuous basis;
- (3) If there is a change in insurer or policies are canceled or not renewed, the Licensee shall purchase an extended reporting period of not less than three (3) years after the contract completion date; and
- (4) Licensee shall arrange for adequate time for reporting of any loss under this Agreement.

(c) The Railroad may require the Licensee to purchase additional insurance if the Railroad reasonably determines that the amount of insurance then being maintained by the Licensee is insufficient in light of all relevant factors. If the Licensee is required to purchase additional insurance, the Railroad will notify the Licensee. Failure of the Licensee to comply within thirty (30) days shall be considered a default subject to termination of the Agreement.

(d) Furnishing of insurance by the Licensee shall not limit the Licensee's liability under this Agreement, but shall be additional security therefore.

(e) The above indicated insurance coverages shall be enforceable by any legitimate claimant after the termination or cancellation of this Agreement, or any amendment hereto, whether by expiration of time, by operation of law or otherwise, so long as the basis of the claim against the insurance company occurred during the period of time when the Agreement was in effect and the insurance was in force.

(f) Failure to provide the required insurance coverages or endorsements (including contractual liability endorsement) or adequate reporting time shall be at Licensee's sole risk.

(g) If contractors are utilized, the Licensee agrees to require all such contractors to comply with the insurance requirements of this Exhibit C.