

**PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

North Piedras Street  
DOT 741165T  
MP 967.35 – Carrizozo Subdivision  
El Paso, El Paso 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 **CITY OF EL PASO**, a municipal corporation or political subdivision of the State of Texas to be addressed at 218 North Campbell, Second Floor, El Paso, Texas 79901 ("Political Body").

**RECITALS:**

Presently, the Political Body utilizes the Railroad's property for the existing at grade public road crossing over North Piedras Street, DOT Number 741165T at Railroad's Milepost 967.35 on Railroad's Carrizozo Subdivision at or near El Paso, El Paso County, Texas.

The Political Body now desires to undertake as its project (the "Project") the reconstruction and widening of the existing at grade public road crossing for the addition of sidewalks. The road crossing, as reconstructed and widened is hereinafter the "Roadway."

The Railroad right of way being utilized for the existing at grade public road crossing is not sufficient to allow for the reconstruction and widening of the Roadway. Therefore, under this Agreement, the Railroad will be granting additional rights to the Political Body to facilitate the reconstruction and widening of the Roadway. The portion of Railroad's property that Political Body needs to use in connection with the Roadway (including the right of way being utilized for the existing at grade crossing) is shown on the Railroad's location print marked **Exhibit A** and the Political Body's type, size and location prints of the Project 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:

### **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 of the sum of **Twenty Thousand Two Hundred Fifty Dollars (\$20,250.00)** 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 C**, 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 Project No. 0768266

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. 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 8. 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 9. 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 10. 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 Contactor's Right of Entry Agreement.

#### **Section 11. 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 12. 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 13. 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.

### **Section 14. TERMINATION OF ORIGINAL AGREEMENT**

Upon the completion of the Roadway, the original agreement either governing currently, or any agreement to be found in the future at the existing at-grade crossing 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 as of the Effective Date first herein written.

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

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY OF EL PASO**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved As To Form:



\_\_\_\_\_  
Name: Roberta Brito  
Title: Senior Assistant City Attorney

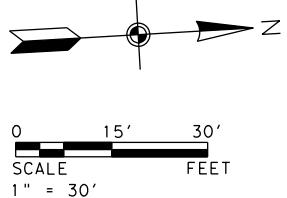
Approved As To Content:



\_\_\_\_\_  
Name: Joaquin Rodriguez, AICP  
Title: CID Grant Funded Programs Director

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

**Exhibit A** will be a print showing the Crossing Area (see Recitals)



LEGEND

NEW CROSSING AREA = 7,459 SQ FT +/-

|     |           |         |
|-----|-----------|---------|
|     |           |         |
|     |           |         |
|     |           |         |
|     |           |         |
|     |           |         |
| NO. | REVISIONS | BY DATE |

**100% SUBMITTAL**

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TEXAS REGISTERED ENGINEERING FIRM F-3557

**TRANSYSTEMS**

2777 ALLEN PARKWAY,  
SUITE 500  
HOUSTON, TX 77019  
(713) 807-0600

Texas Department of Transportation  
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**PIEDRAS ST  
INTERSECTION  
AT UPRR**

**EXHIBIT F TO CONSTRUCTION & MAINTENANCE AGREEMENT**  
CSJ 0924-06-693

RRMP: 967.350  
DOT NO. 741165T

| DESIGN   | FED. RD.<br>DIV. NO. | FEDERAL AID PROJECT NO. | HIGHWAY<br>NO. |
|----------|----------------------|-------------------------|----------------|
| MMZ      | 6                    | SEE TITLE SHEET         | FM76, ETC      |
| GRAPHICS | STATE                | DISTRICT                | COUNTY         |
| CHECK    | TEXAS                | ELP                     | EL PASO, ETC   |
| SGK      | CONTROL              | SECTION                 | JOB            |
| CHECK    | 0674                 | 01                      | 077, ETC       |
| BMO      |                      |                         |                |

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

**Exhibit A-1** will be the Political Body's type, size and location prints of the Project (see Recitals)

INDEX OF SHEETS

SHEET NO. DESCRIPTION

1 TITLE SHEET  
 2 N PIEDRAS STREET (741 165T) PLAN LAYOUT  
 3 GENERAL NOTES  
 4 SUMMARY OF QUANTITIES

STANDARD SHEETS

\*5 RCD(1)-22  
 \*6 RCD(2)-22  
 \*7 TCP(1-4)-18

STATE OF TEXAS  
 DEPARTMENT OF TRANSPORTATION

PLANS OF PROPOSED  
 STATE HIGHWAY IMPROVEMENT

## FEDERAL AID PROJECT

STP  
CSJ: 0924-06-628

UNION PACIFIC RAILROAD  
 GRADE CROSSING SAFETY UPGRADES

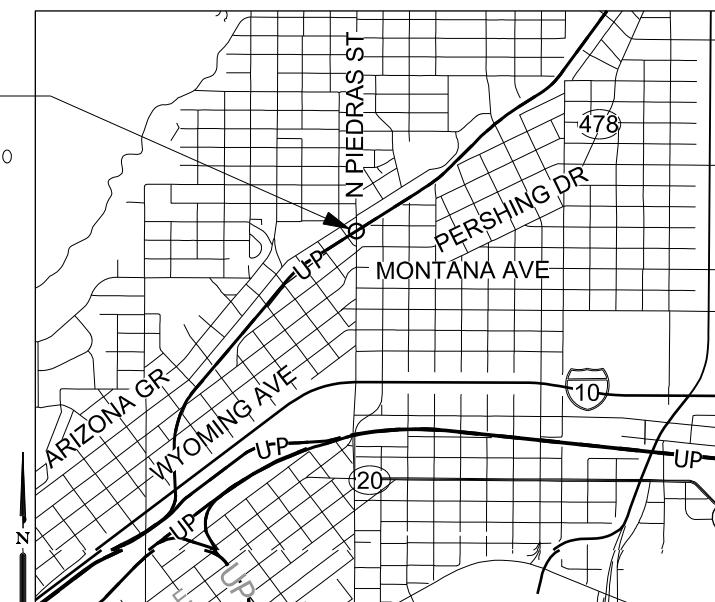
N PIEDRAS STREET IN CITY OF EL PASO, TX  
 EL PASO COUNTY EL PASO DISTRICT

|                |                      |                                  |                |
|----------------|----------------------|----------------------------------|----------------|
| DESIGN<br>BES  | FED. RD.<br>DIV. NO. | FEDERAL AID OR STATE PROJECT NO. | HIGHWAY<br>NO. |
| GRAPHICS<br>BS | 6                    | PIEDRAS ST                       |                |
| CHECK<br>BMO   | STATE                | DISTRICT                         | COUNTY         |
| CHECK<br>BRA   | TEXAS                | EL PASO                          |                |
|                | CONTROL              | SECTION                          | JOB            |
|                | 0924                 | 06                               | 628            |

## NOTES:

1. RAILROAD SIGNAL CIRCUITS AND FINAL DESIGN LOCATION FOR THIS PROJECT WERE NOT DESIGNED BY THE UNDERSIGNED ENGINEER.
2. THE RAILROAD SHALL ERECT AND MAINTAIN SUCH BARRICADES AND WARNING SIGNS OR USE SUCH PRECAUTIONS AS MIGHT BE NECESSARY IN THE OPINION OF THE TEXAS DEPARTMENT OF TRANSPORTATION ENGINEER TO ENSURE AND SAFEGUARD THE NORMAL USE OF THE HIGHWAY DURING THE INSTALLATION OF THE PROJECT.
3. THESE PLANS WERE DEVELOPED BY MEMBERS OF THE DIAGNOSTIC TEAM IN ACCORDANCE WITH TERMS OF THE STATE-RAILROAD AGREEMENT AND ARE HEREBY AUTHORIZED FOR CONSTRUCTION.
4. AMERICAN RAILWAY ENGINEERING AND MAINTENANCE-OF-WAY ASSOCIATION (AREMA) COMMUNICATIONS & SIGNALS MANUAL SPECIFICATIONS SHALL GOVERN THIS PROJECT.

N PIEDRAS STREET  
 CSJ 0924-06-628  
 DOT NO. 741 165T  
 RR MILEPOST 967.350



CITY OF EL PASO

APPROVED  20

|   |
|---|
| 100% SUBMITTAL  |
| INTERIM REVIEW ONLY   |
| DOCUMENT IS FOR INTERIM REVIEW AND NOT INTENDED FOR CONSTRUCTION BIDDING, OR PERMIT PURPOSES. |
| ENGINEER: BLANCA M. OBREGON, P.E.   |
| TEXAS SERIAL NO.: 105102  |
| DATE: 6/20/2023   |

APPROVED  
FOR LETTING:  20  
 , P.E.

RECOMMENDED  
FOR LETTING:  20  
 , P.E.

RECOMMENDED  
FOR LETTING:  20  
 , P.E.

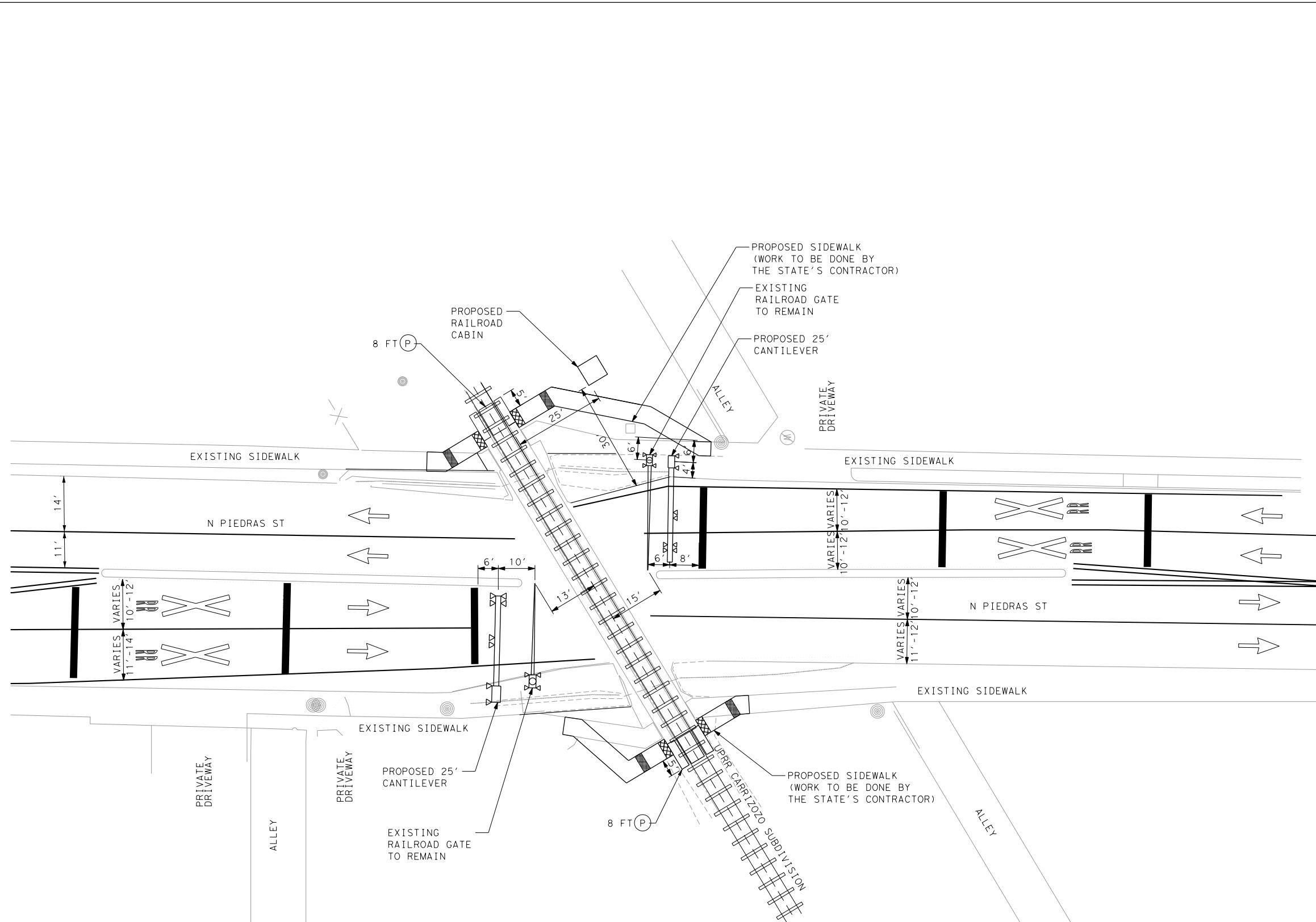
DIRECTOR OF TRANSPORTATION  
OPERATIONS

APPROVED  
FOR LETTING:  20  
 , P.E.

AREA ENGINEER

DISTRICT ENGINEER

RAIL GRADE CROSSING SECTION  
DIRECTOR



## NOTES:

1. FINAL RAILROAD SIGNAL PLACEMENT TO BE DETERMINED BY RAILROAD COMPANY.
2. SEE RCD(1) AND RCD(2) FOR ADDITIONAL DETAILS.
3. PAVEMENT MARKINGS ARE SHOWN FOR INFORMATION ONLY AND WILL BE INSTALLED BY STATE'S CONTRACTOR.

## LEGEND

(P) 8' CONCRETE CROSSING PANEL

|     |           |    |      |
|-----|-----------|----|------|
|     |           |    |      |
| NO. | REVISIONS | BY | DATE |

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TEXAS REGISTERED ENGINEERING FIRM F-3557

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SUITE 500  
HOUSTON, TX 77019  
(713) 807-0600

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N PIEDRAS ST  
DOT NO. 741 165T  
RRMP: 967.350

| DESIGN   | FED. RD.<br>DIV. NO. | FEDERAL AID PROJECT NO. |          | HIGHWAY<br>NO. |
|----------|----------------------|-------------------------|----------|----------------|
| BMO      | 6                    | SEE TITLE SHEET         |          | PIEDRAS ST     |
| GRAPHICS | VD                   | STATE                   | DISTRICT | COUNTY         |
| CHECK    | TEXAS                | EL PASO                 |          | SHEET<br>NO.   |
| SGK      | CONTROL              | SECTION                 | JOB      |                |
| CHECK    |                      |                         |          |                |
| BMO      | 0924                 | 06                      | 628      | 2              |

## GENERAL NOTES

1. SIGNAL CIRCUITS ARE DESIGNED TO GIVE 20 SECONDS MINIMUM WARNING TIME PRIOR TO THE ARRIVAL OF THE FASTEST TRAIN AT THIS CROSSING. AN ADDITIONAL X SECONDS OF ADVANCE TRAFFIC SIGNAL PREEMPTION TIME IS REQUIRED. REFER TO ATTACHED RAILROAD PROVIDED SIGNAL CIRCUIT LAYOUT FOR TOTAL APPROACH TIME.
2. THE CITY AGREES TO MAINTAIN THE PAVEMENT MARKINGS AND ADVANCE WARNING SIGNS PLACED ALONG THE ROADWAYS UNDER THEIR JURISDICTION IN ACCORDANCE WITH THE GUIDELINES IN THE TEXAS MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES AND AS SHOWN ON THE LAYOUT AND STANDARD SHEETS AS ACKNOWLEDGED ON THE TITLE SHEET.
3. THE CITY AGREES TO TRIM AND MAINTAIN TREES AND VEGETATION ALONG ROADWAY APPROACHES FOR ADEQUATE VISIBILITY OF THE CROSSING SIGNALS AND ADVANCE WARNING SIGNS AS ACKNOWLEDGED ON THE TITLE SHEET.
4. THE RAILROAD COMPANY AGREES TO INSTALL A 16 FOOT CONCRETE CROSSING AS SHOWN ON THE RE-SURFACE LAYOUT, AT A (COST OF \$1800 DOLLARS PER TRACK FOOT TO THE STATE).
5. THE STATE WILL COMPLETE MEDIAN, SIDEWALK AND/OR CURB WORK.

## GENERAL NOTES ON UPRR FSP PROJECTS WITH LOCAL GOVERNMENTS

BY SIGNATURE OF THE TITLE SHEET, THE LOCAL GOVERNMENT AGREES TO:

1. COMPLETE THE WORK SHOWN TO BE DONE BY THE LOCAL GOVERNMENT IN THIS EXHIBIT.
2. RELOCATE ANY UTILITIES NECESSARY FOR THE INSTALLATION OF THIS PROJECT NOT ON RAILROAD RIGHT-OF-WAY.
3. NOT CROSS THE RAILROAD COMPANY'S TRACKS EXCEPT AT EXISTING, OPEN, AND PUBLIC CROSSINGS FOR PROJECT CONSTRUCTION.
4. TELEPHONE THE RAILROAD COMPANY AT (800)336-9193 TO DETERMINE IF FIBER OPTIC CABLE IS LOCATED ANYWHERE ON THE RAILROAD COMPANY'S PREMISES. IF FIBER OPTIC CABLE IS LOCATED ON THE RAILROAD COMPANY'S PREMISES, THE LOCAL GOVERNMENT SHALL MAKE ANY NECESSARY ARRANGEMENTS FOR RELOCATION OF THE FIBER OPTIC CABLE.
5. REQUIRE ANY CONTRACTORS WORKING ON RAILROAD RIGHT-OF-WAY, BOTH DURING CONSTRUCTION OF THIS PROJECT AND FOR FUTURE MAINTENANCE, TO PROVIDE RAILROAD INSURANCES AND ENTER INTO A RIGHT-OF-ENTRY AGREEMENT WITH THE RAILROAD COMPANY.
6. ALLOW THE RAILROAD COMPANY TO PERFORM ROUTINE MAINTENANCE THAT WILL NOT IMPACT WARNING TIME OF ANY ACTIVE WARNING SYSTEMS SHOWN IN THIS EXHIBIT WITHOUT NOTIFYING THE LOCAL GOVERNMENT.
7. NOT HOLD THE RAILROAD COMPANY LIABLE FOR FAILURE OF ANY ADJACENT TRAFFIC SIGNALS MAINTAINED BY THE LOCAL GOVERNMENT TO OPERATE PROPERLY.
8. TAKE SUITABLE PRECAUTIONS TO PREVENT INTERFERENCE OF ANY COMMUNICATION LINES MAINTAINED BY THE LOCAL GOVERNMENT FROM INTERFERING WITH THE RAILROAD COMPANY'S GRADE CROSSING ACTIVE WARNING SYSTEM.
9. CONTINUE ROADWAY MAINTENANCE AT THIS CROSSING LOCATION UPON COMPLETION OF THE PROJECT.

| NO. | REVISIONS | BY | DATE |
|-----|-----------|----|------|
|-----|-----------|----|------|

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TEXAS REGISTERED ENGINEERING FIRM F-3557

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SUITE 500  
HOUSTON, TX 77019  
(713) 807-0600

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Texas Department of Transportation  
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## GENERAL NOTES

PREEMPTION SPECIFIC GENERAL NOTES:

1. THE RAILROAD OR ITS CONTRACTOR WILL FURNISH AND INSTALL A RELAY TO PROVIDE SIMULTANEOUS, ADVANCE PREEMPTION TO EXISTING TRAFFIC SIGNAL, PROPOSED TRAFFIC SIGNAL, AND ADVANCE FLASHER.
2. THE RAILROAD AGREES TO BORE UNDER THE TRACKS, AT THE STATE'S EXPENSE.
3. THE LOCAL ROAD AUTHORITY AGREES TO PLACE CONDUIT AND JUNCTION/PULL BOX AS SHOWN ON THE PLANS AT THE STATE'S EXPENSE.
4. THE LOCAL ROAD AUTHORITY AGREES TO INSTALL THE PREEMPTION CONDUCTOR WIRE FURNISHED BY THE LOCAL AUTHORITY AT THE STATE'S EXPENSE.
5. THE RAILROAD AGREES TO CONNECT THE PREEMPTION CONDUCTOR WIRE INTO THE RAIL SIGNAL SYSTEM.
6. THE LOCAL ROAD AUTHORITY AGREES TO CONNECT THE PREEMPTION CONDUCTOR WIRE INTO THE HIGHWAY SIGNAL SYSTEM.
7. THE LOCAL ROAD AUTHORITY AGREES TO MAINTAIN THE TRAFFIC SIGNAL PREEMPTION COMPONENTS, WIRING, AND TIMING AT THEIR EXPENSE.

| DESIGN BMO | FED. RD. DIV. NO. | FEDERAL AID PROJECT NO. |         | HIGHWAY NO. |
|------------|-------------------|-------------------------|---------|-------------|
| GRAPHICS   | 6                 | SEE TITLE SHEET         |         | PIEDRAS ST  |
| VD         | STATE             | DISTRICT                | COUNTY  | SHEET NO.   |
| CHECK SGK  | TEXAS             | ELP                     | EL PASO |             |
| CHECK      | CONTROL           | SECTION                 | JOB     |             |
| BMO        | 0924              | 06                      | 628     | 3           |

| SUMMARY OF QUANTITIES   |  |
|-------------------------|--|
| ITEM NO                 | 5104                                   |
| DESC CODE               | 6013                                   |
| LOCATIONS               | INSTALL<br>ROAD<br>CROSS<br>CONC PANEL |
| N PIEDRAS ST (741 165T) | LF<br>16                               |
| <b>TOTALS</b>           | <b>16</b>                              |

| NO. | REVISIONS | BY | DATE |
|-----|-----------|----|------|

TEXAS REGISTERED ENGINEERING FIRM F-3557

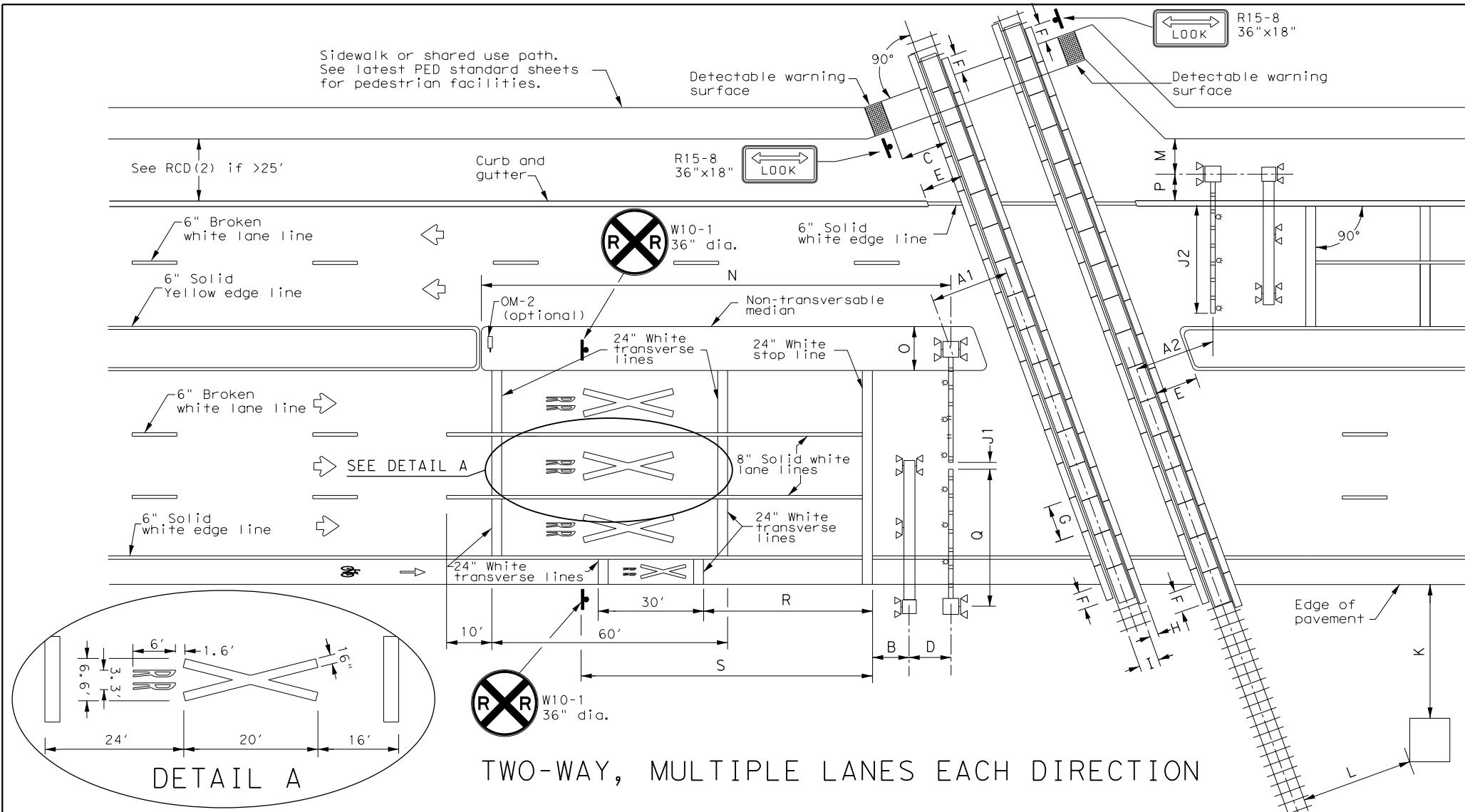
27777 ALLEN PARKWAY,  
SUITE 500  
HOUSTON, TX 77019  
(713) 807-0600

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### SUMMARY OF QUANTITIES

| DESIGN<br>BMO | FED. RD.<br>DIV. NO. | FEDERAL AID PROJECT NO. |         |  | HIGHWAY<br>NO. |
|---------------|----------------------|-------------------------|---------|--|----------------|
| GRAPHICS      | 6                    | SEE TITLE SHEET         |         |  | PIEDRAS ST     |
| VD            | STATE                | DISTRICT                | COUNTY  |  | SHEET<br>NO.   |
| CHECK<br>SGK  | TEXAS                | ELP                     | EL PASO |  |                |
| CHECK<br>BMO  | CONTROL              | SECTION                 | JOB     |  |                |
|               | 0924                 | 06                      | 628     |  |                |

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#### 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: Near edge of detectable warning surface to nearest rail: 12' 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 1/2".

J1: Tip of gate to tip of gate: 2' maximum.

J2: 90% of traveled roadway to be covered by gate.

K: Nearest edge of RR cabinet from edge of pavement: 30' typical. NOTE: Cabinet not required to be parallel to edge of pavement.

L: Nearest edge of RR cabinet 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-transaversable 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.

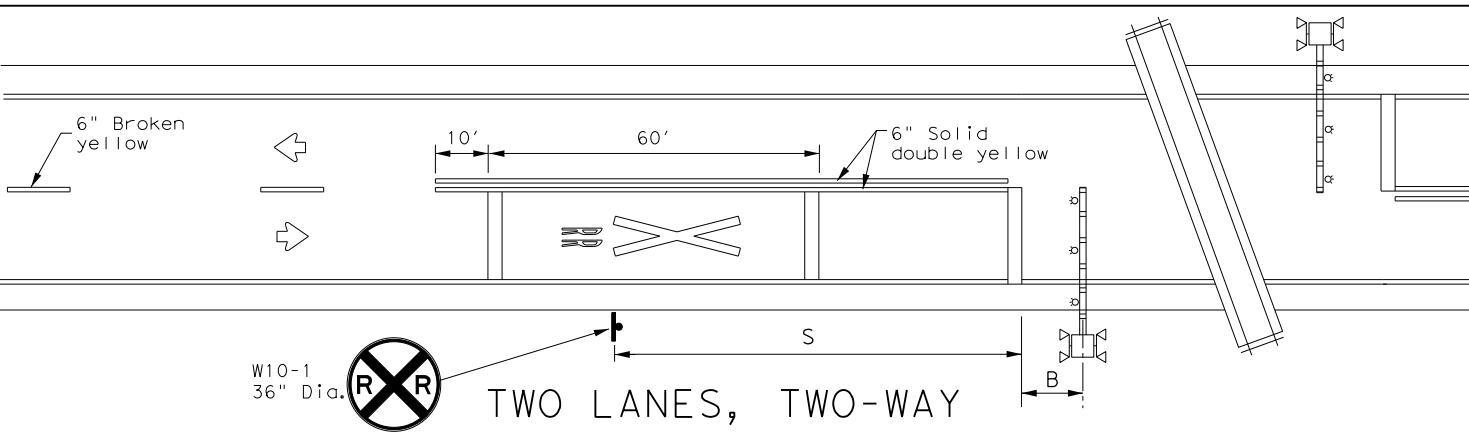
O: Width of median for RR gate assembly: 8'-6" minimum, 10' typical when using median gates. NOTE: Center of gate mast minimum 4'-3" from face of curb.

P: Center of RR mast to face of curb: 5'-3" minimum. Center of RR mast to edge of pavement (with shoulder): 7' minimum. Center of RR mast to edge of pavement (no shoulder): 9'-3" minimum. NOTE: Final location determined by the railroad company.

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.

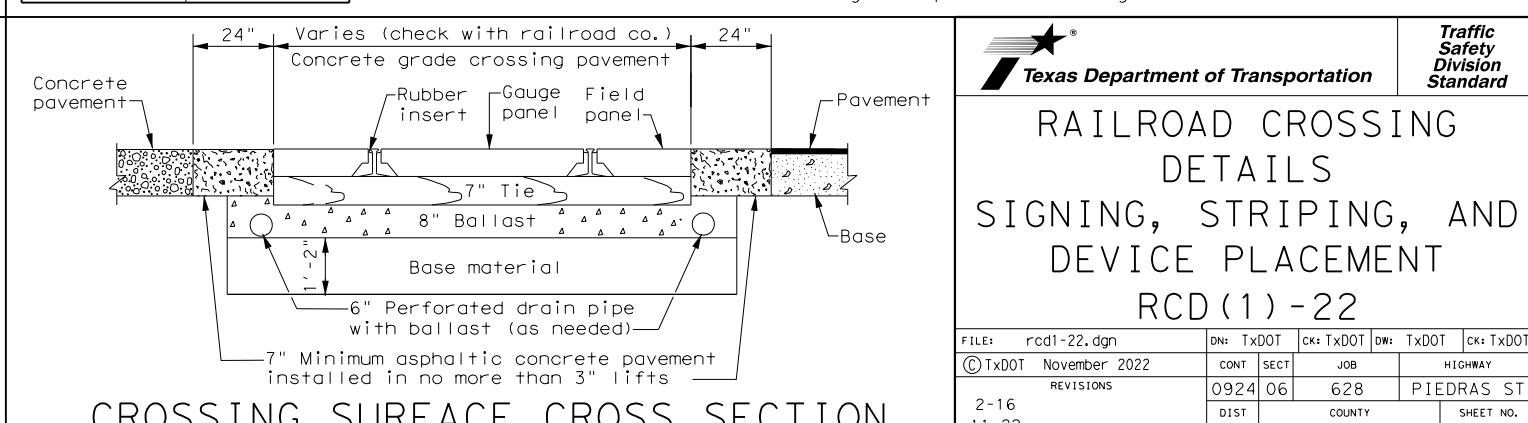


| Approach Speed (mph) | Desirable Placement (feet) |
|----------------------|----------------------------|
| 20                   | 100                        |
| 25                   | 100                        |
| 30                   | 100                        |
| 35                   | 100                        |
| 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

1. 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.
2. Raised pavement markers may be used to supplement striping. See PM(2) and PM(3) standard sheets.
3. Medians preferred whenever possible to prevent vehicles from driving around gates.
4. Longitudinal edge striping may be continued thru crossing as needed. Illumination may also be considered for nighttime visibility.
5. See SMD standard sheets for sign mounting details.
6. See the Standard Highway Sign Design for Texas (SHSD) manual for sign and pavement marking details.

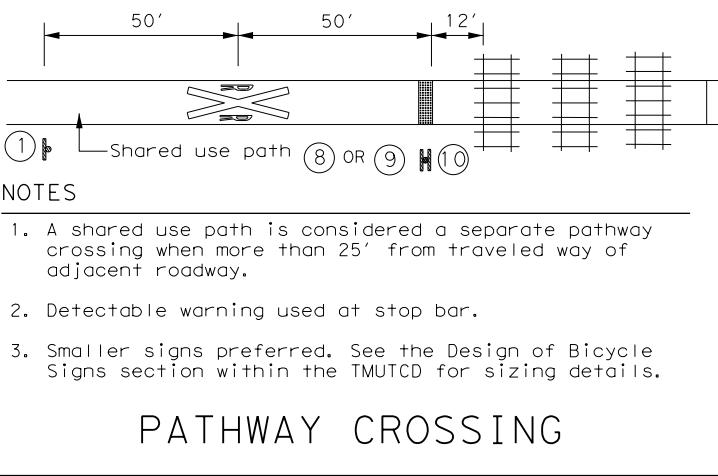
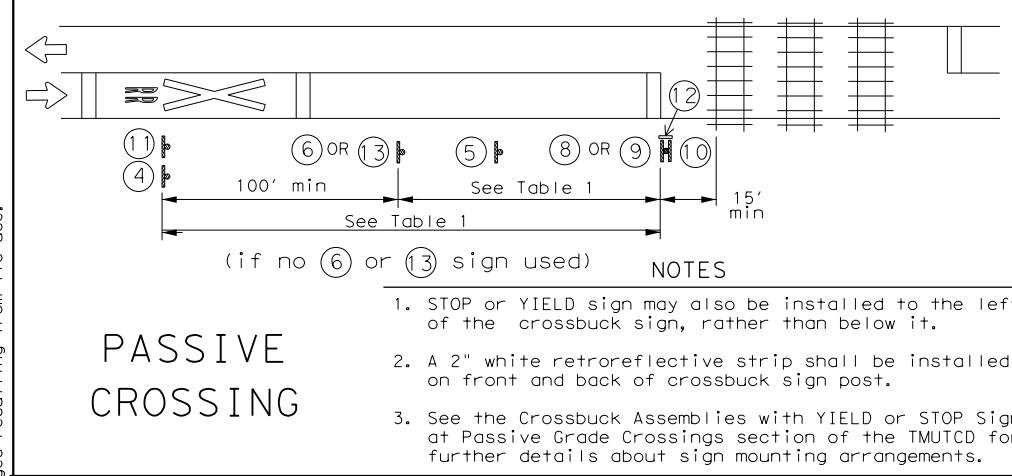


 **Texas Department of Transportation**  **Traffic Division Standard**

## RAILROAD CROSSING DETAILS SIGNING, STRIPING, AND DEVICE PLACEMENT

RCD(1)-22

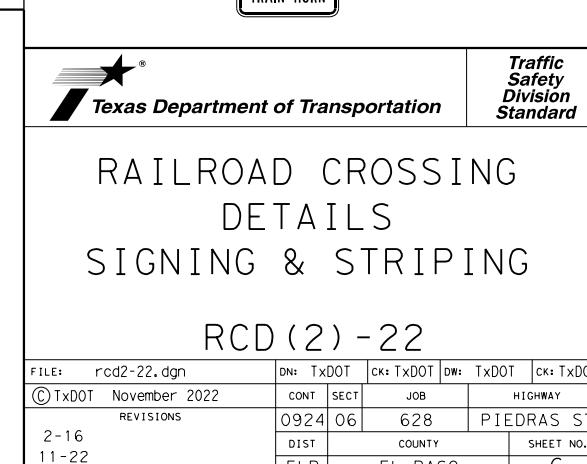
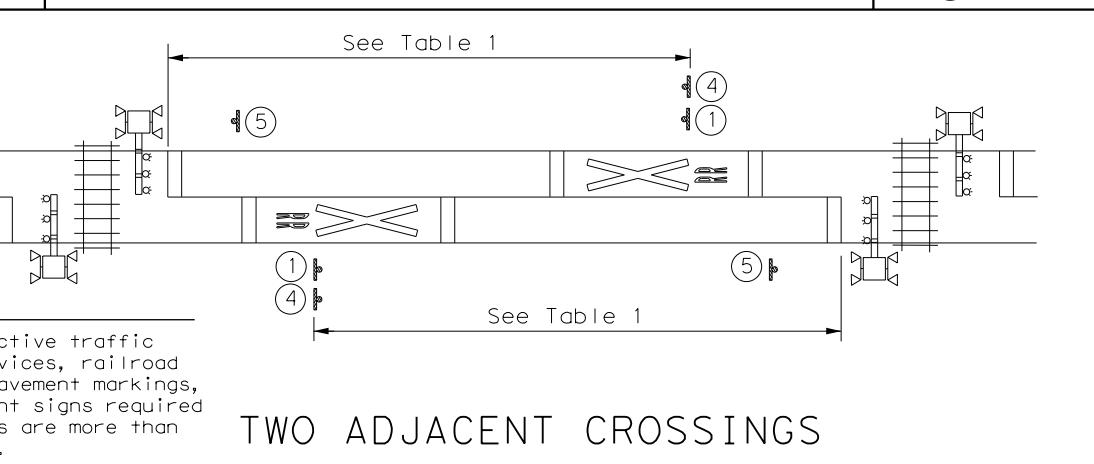
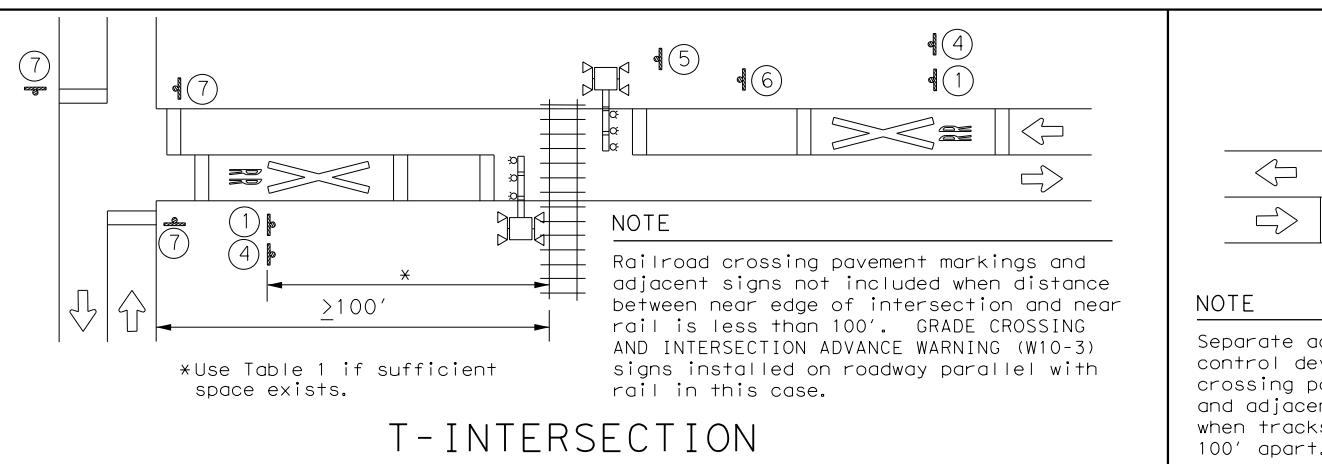
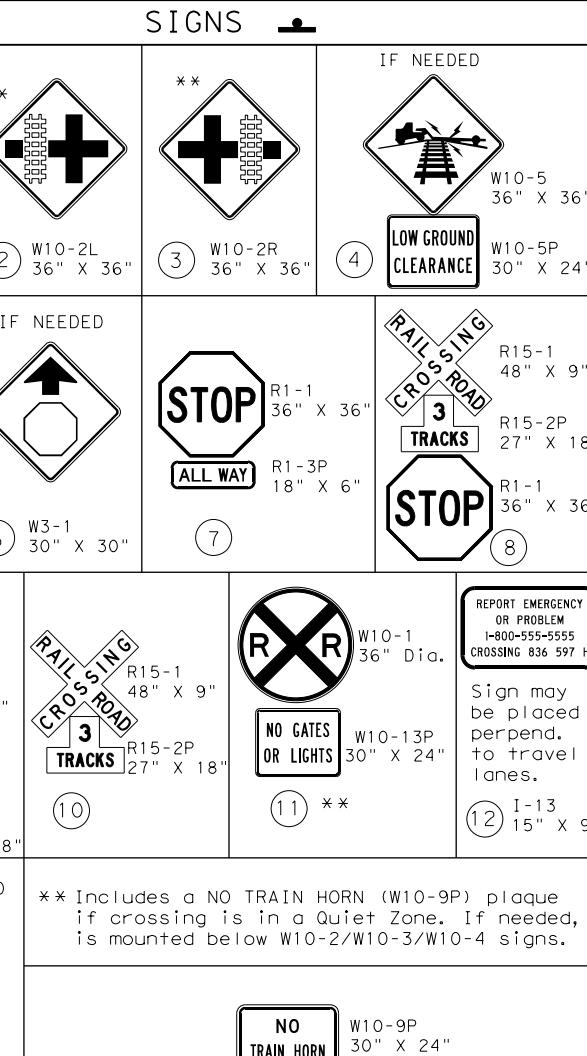
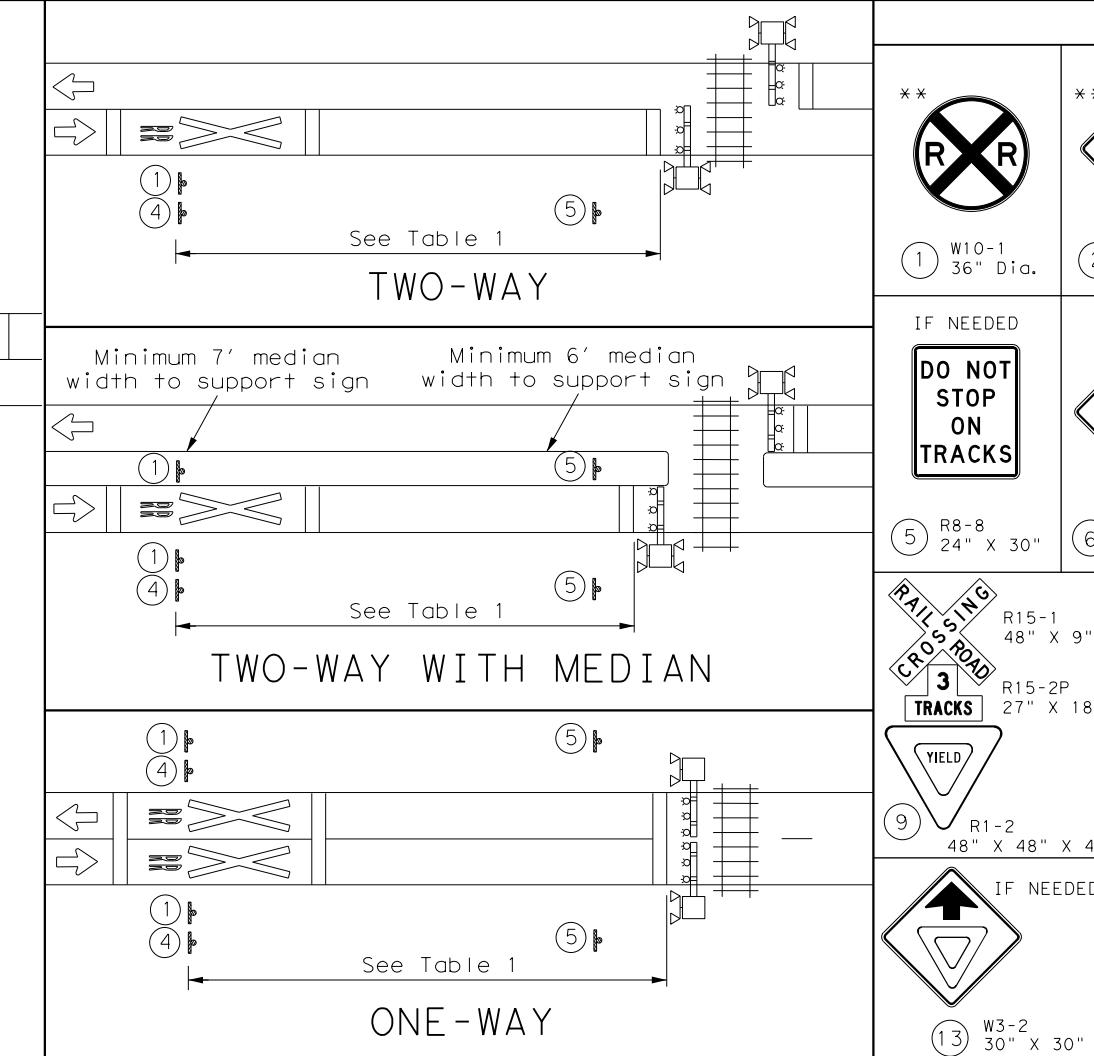
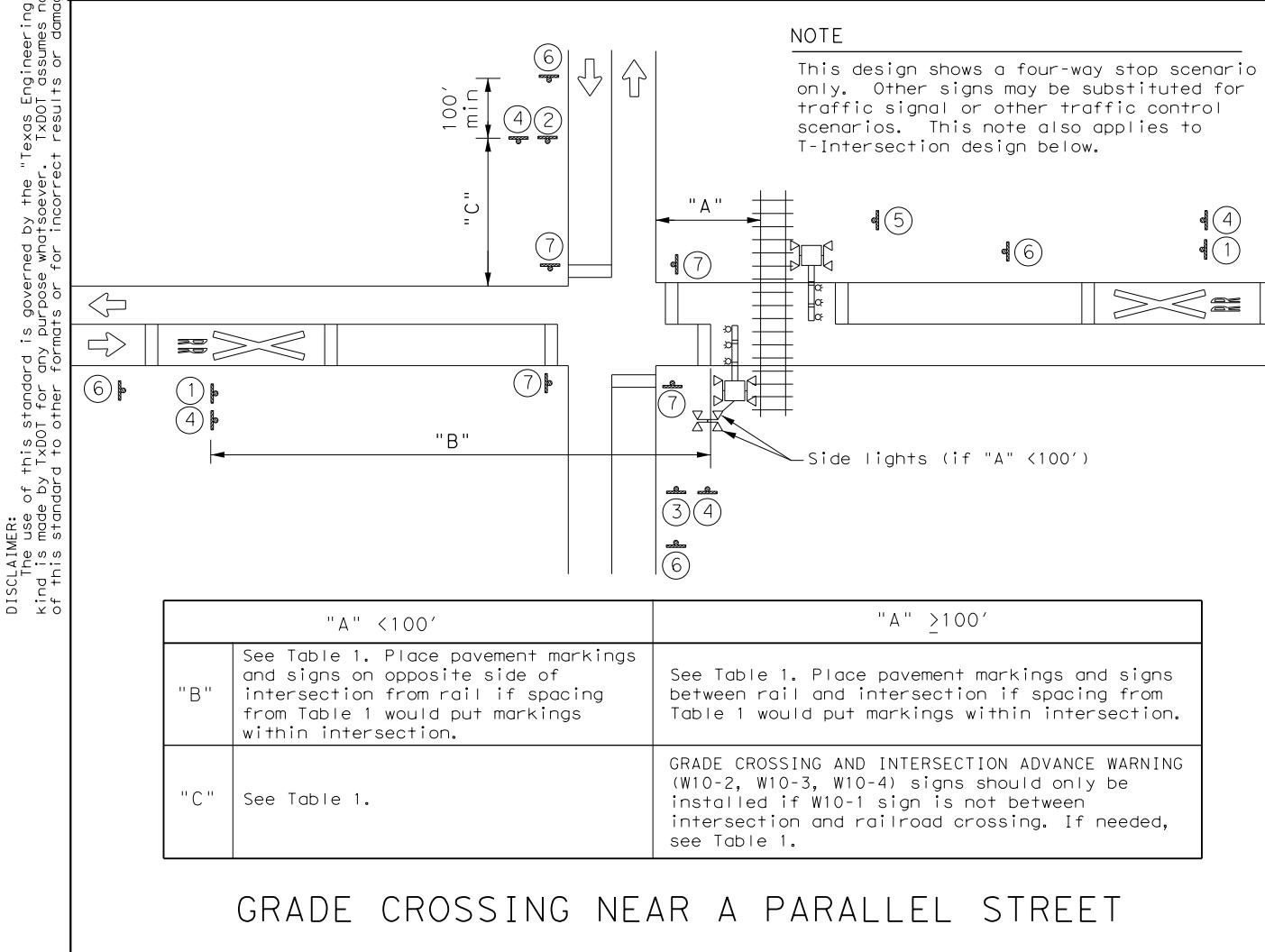
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| © TxDOT November 2022 | CONT      | SECT      | JOB       | HIGHWAY    |
| REVISIONS             | 0924      | 06        | 628       | PIEDRAS ST |
| 2-16<br>11-22         | DIST      | COUNTY    | SHEET NO. |            |
|                       | ELP       | EL PASO   | 5         |            |



| 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                        |

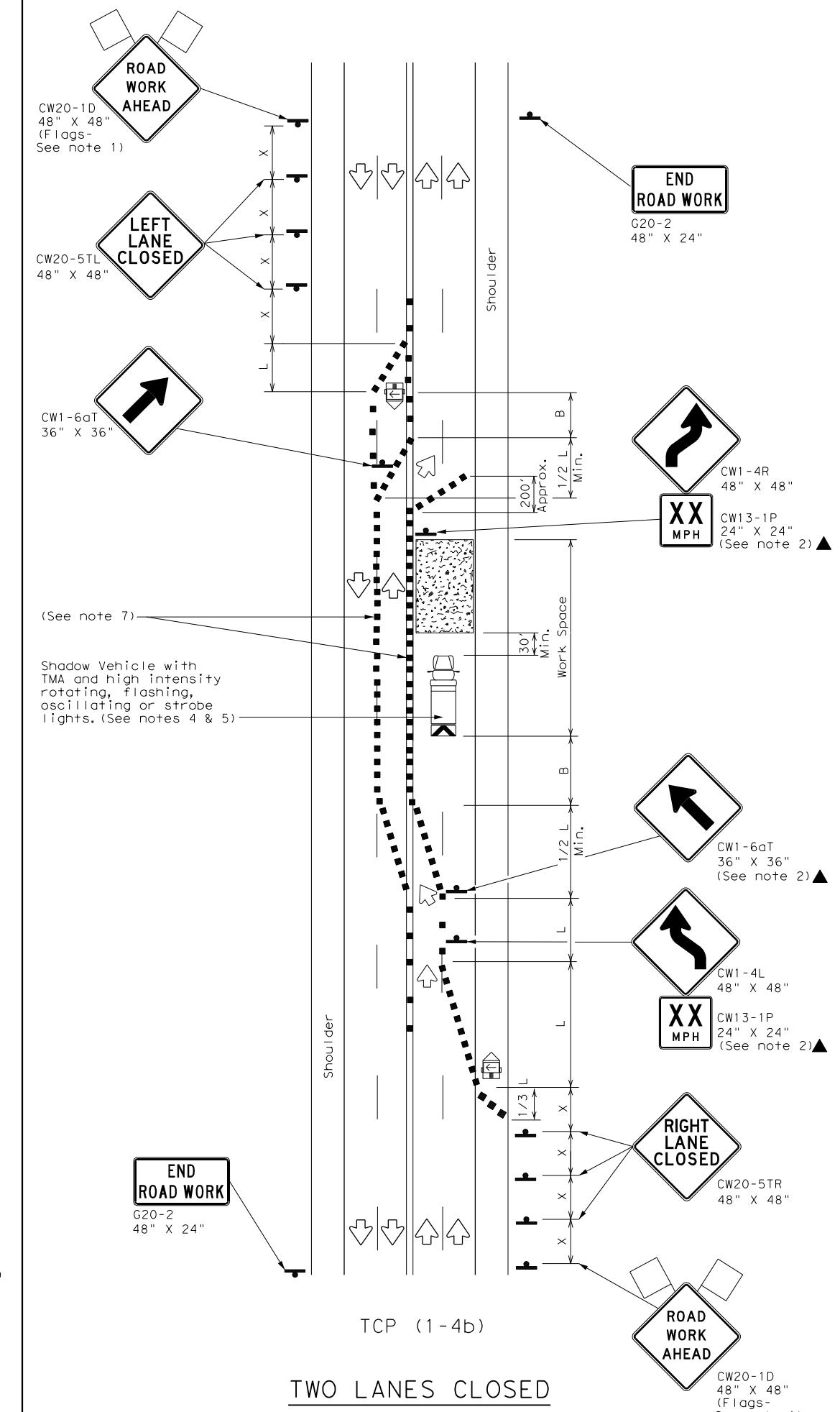
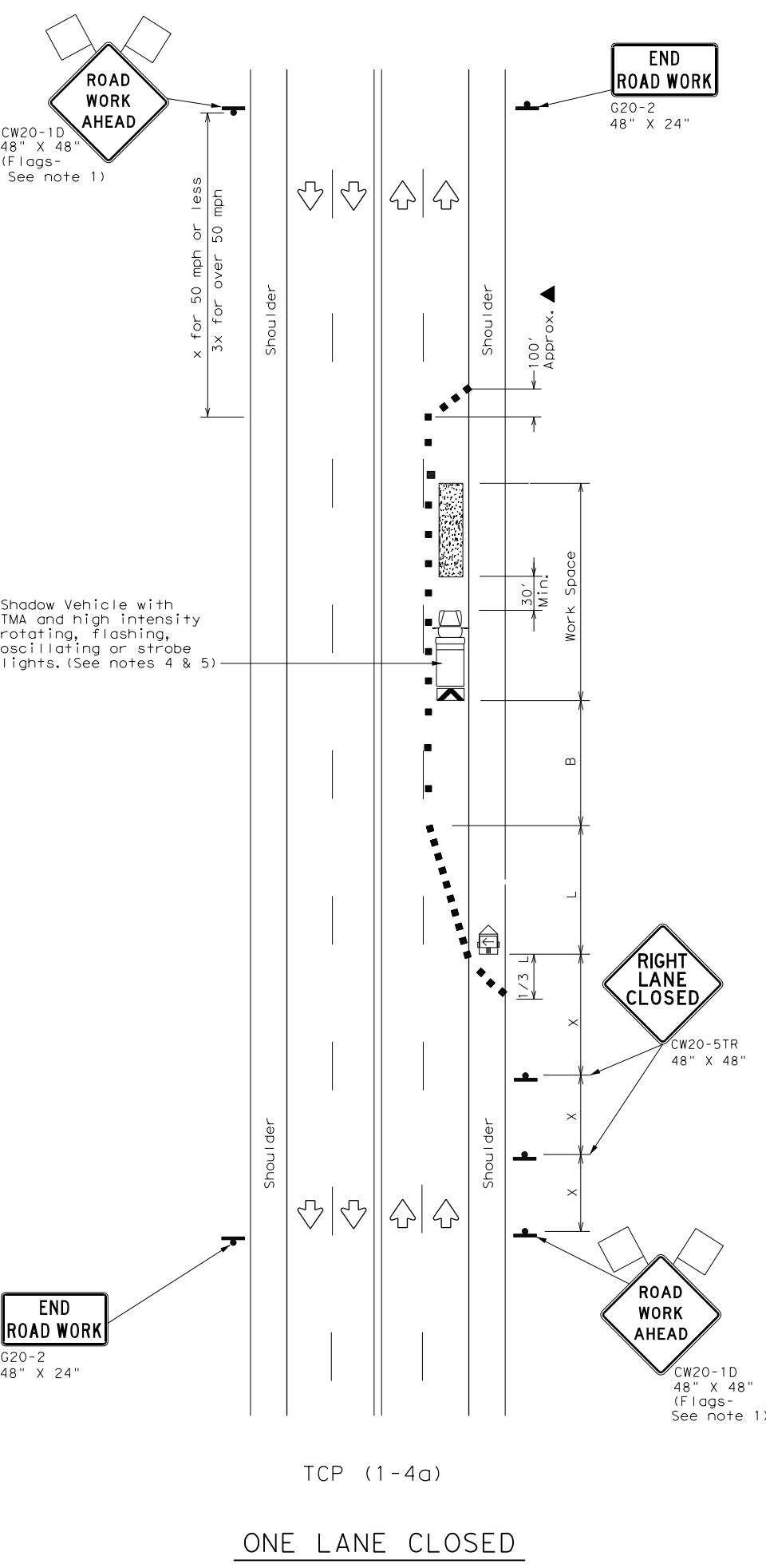
**GENERAL NOTES**

1. Railroad company to provide active traffic control devices, CROSSBUCK (R15-1), NUMBER OF TRACKS (R15-2P) plaque (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 the Placement of Warning Signs section 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.



**DISCLAIMER:**  
The use of this standard is governed by the "Texas Engineering Practice Act". No warranty of any kind is made by TxDOT for any purpose whatsoever. TxDOT assumes no responsibility for the conversion of this standard to other formats or for incorrect results or damages resulting from its use.

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| LEGEND                               |   |
|--------------------------------------|---|
| Type 3 Barricade                     | Channelizing Devices                    |
| Heavy Work Vehicle                   | Truck Mounted Attenuator (TMA)          |
| Trailer Mounted Flashing Arrow Board | Portable Changeable Message Sign (PCMS) |
| Sign                                 | Traffic Flow                            |
| Flag                                 | Flagger                                 |

| Posted Speed * | Formula               | Minimum Desirable Taper Lengths * * |            |            | Suggested Maximum Spacing of Channelizing Devices |              | Minimum Sign Spacing "X" Distance | Suggested Longitudinal Buffer Space "B" |
|----------------|-----------------------|-------------------------------------|------------|------------|---|--------------|-----------------------------------|---|
|                |                       | 10' Offset                          | 11' Offset | 12' Offset | On a Taper  | On a Tangent |                                   |   |
| 30             | $L = \frac{WS^2}{60}$ | 150'                                | 165'       | 180'       | 30'   | 60'          | 120'                              | 90'                                     |
| 35             | $L = WS$              | 205'                                | 225'       | 245'       | 35'   | 70'          | 160'                              | 120'                                    |
| 40             |                       | 265'                                | 295'       | 320'       | 40'   | 80'          | 240'                              | 155'                                    |
| 45             |                       | 450'                                | 495'       | 540'       | 45'   | 90'          | 320'                              | 195'                                    |
| 50             |                       | 500'                                | 550'       | 600'       | 50'   | 100'         | 400'                              | 240'                                    |
| 55             |                       | 550'                                | 605'       | 660'       | 55'   | 110'         | 500'                              | 295'                                    |
| 60             |                       | 600'                                | 660'       | 720'       | 60'   | 120'         | 600'                              | 350'                                    |
| 65             |                       | 650'                                | 715'       | 780'       | 65'   | 130'         | 700'                              | 410'                                    |
| 70             |                       | 700'                                | 770'       | 840'       | 70'   | 140'         | 800'                              | 475'                                    |
| 75             |                       | 750'                                | 825'       | 900'       | 75'   | 150'         | 900'                              | 540'                                    |

\* Conventional Roads Only

\*\* Taper lengths have been rounded off.

L=Length of Taper (FT) W=Width of Offset (FT) S=Posted Speed (MPH)

| TYPICAL USAGE |                |                       |                              |                      |
|---------------|----------------|-----------------------|------------------------------|----------------------|
| MOBILE        | SHORT DURATION | SHORT TERM STATIONARY | INTERMEDIATE TERM STATIONARY | LONG TERM STATIONARY |
|               | ✓              | ✓                     |                              |                      |

#### GENERAL NOTES

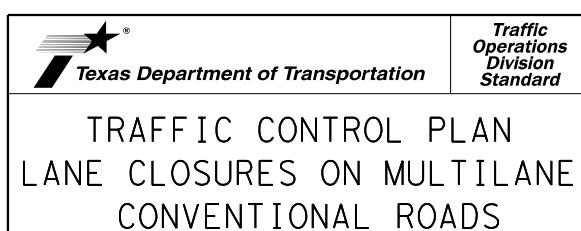
- Flags attached to signs where shown are REQUIRED.
- All traffic control devices illustrated are REQUIRED, except those denoted with the triangle symbol may be omitted when stated elsewhere in the plans, or for routine maintenance work, when approved by the Engineer.
- The CW20-1D "ROAD WORK AHEAD" sign may be repeated if the visibility of the work zone is less than 1500 feet.
- A Shadow Vehicle with a TMA should be used anytime it can be positioned 30 to 100 feet in advance of the area of crew exposure without adversely affecting the performance or quality of the work. If workers are no longer present but road or work conditions require the traffic control to remain in place, Type 3 Barricades or other channelizing devices may be substituted for the Shadow Vehicle and TMA.
- Additional Shadow Vehicles with TMAs may be positioned off the paved surface, next to those shown in order to protect wider work spaces.

#### TCP (1-4a)

- If this TCP is used for a left lane closure, CW20-5TL "LEFT LANE CLOSED" signs shall be used and channelizing devices shall be placed on the centerline where needed to protect the work space from opposing traffic with the arrow panel placed in the closed lane near the end of the merging taper.

#### TCP (1-4b)

- Where traffic is directed over a yellow centerline, channelizing devices which separate two-way traffic should be spaced on tapers at 20' or 15' if posted speeds are 35 mph or slower, and for tangent sections, at 1/2 S where S is the speed in mph. This tighter device spacing is intended for the areas of conflicting markings, not the entire work zone.



**TCP (1-4) - 18**

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|---------|---------------|-----------|---------|-----|------------|
| © TxDOT | December 1985 | CONT      | SECT    | JOB | HIGHWAY    |
|         |               | 0924      | 06      | 628 | PIEDRAS ST |
| 2-94    | 4-98          | REVISIONS |         |     |            |
| 8-95    | 2-12          |           |         |     |            |
| 1-97    | 2-18          | DIST      | COUNTY  |     | SHEET NO.  |
|         |               | ELP       | EL PASO |     | 7          |

**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 the Railroad at the Political Body's expense.

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 visit [up.com/CBUD](http://up.com/CBUD) to complete and submit the required form to determine if fiber optic cable is buried anywhere on Railroad's property 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.

**EXHIBIT C**  
**TO**  
**PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**  
**CONTRACTOR'S**  
**RIGHT OF ENTRY AGREEMENT**

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

**RECITALS:**

Contractor has been hired by \_\_\_\_\_ to perform work relating to \_\_\_\_\_ (the "Work") with all or a portion of such Work to be performed on property of Railroad in the vicinity of Railroad's Milepost \_\_\_\_\_ on Railroad's \_\_\_\_\_ [Subdivision or Branch] [at or near DOT No. \_\_\_\_\_] located at or near \_\_\_\_\_, in \_\_\_\_\_ County, State of \_\_\_\_\_, as such location is in the general location shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof, which Work is the subject of a contract dated \_\_\_\_\_ between Railroad and \_\_\_\_\_.

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

**AGREEMENT:**

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

**ARTICLE 1 - DEFINITION OF CONTRACTOR.**

For purposes of this agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. For purposes of clarity, Contractor agrees that any CIC (defined below) hired by Contractor is a subcontractor of Contractor and therefore included in the defined term Contractor pursuant to the foregoing sentence.

**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 Representatives named in Article 4.

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

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

#### **ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR: RAILROAD REPRESENTATIVES.**

A. Contractor shall bear any and all costs and expenses associated with any Work performed by Contractor (including without limitation any CIC), or any costs or expenses incurred by Railroad relating to this agreement.

B. Contractor shall coordinate all of its Work with the following Railroad representatives or their duly authorized representative (the "Railroad Representatives"):

MTM:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PM:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

#### **ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.**

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

#### **ARTICLE 6 - TERM: TERMINATION.**

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

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

#### **ARTICLE 7 - CERTIFICATE OF INSURANCE.**

A. Before commencing any Work and throughout the entire term of this Agreement, Contractor, at its expense, shall procure and maintain in full force and effect the types and minimum limits of insurance specified in **Exhibit C** of this agreement and require each of its subcontractors to include the insurance endorsements as required under Section 12 of **Exhibit B** of this agreement.

B. Not more frequently than once every two (2) years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

C. Upon request of Railroad, Contractor shall provide to Railroad a certificate issued by its insurance carrier evidencing the insurance coverage required under **Exhibit B**.

D. Contractor understands and accepts that the terms of this Article are wholly separate from and independent of the terms of any indemnity provisions contained in this Agreement.

E. Upon request of Railroad, insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

Union Pacific Railroad Company

[Insert mailing address]

Attn:

Project No. 0768266

#### **ARTICLE 8 - PRECONSTRUCTION MEETING.**

If the Work to be performed by the Contractor will involve the Railroad providing any flagging protection (or if a CIC is approved to provide flagging protection pursuant to the terms set forth herein) and/or there is separate work to be performed by the Railroad, the Contractor confirms that no work shall commence until the Railroad and Contractor participate in a preconstruction meeting involving flagging procedures and coordination of work activities of the Contractor and the Railroad (and any CIC, as applicable.) Union Pacific's Third Party Flagging Policy at the link provided here: [www.up.com/flagging](http://www.up.com/flagging)

#### **ARTICLE 9. 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 10. ADMINISTRATIVE FEE.**

Upon the execution and delivery of this agreement, Contractor shall pay to Railroad One Thousand Twenty Five Dollars (\$1,025.00) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this agreement.

#### **ARTICLE 11. 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 12.- EXPLOSIVES.**

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

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

**UNION PACIFIC RAILROAD COMPANY**

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

Title: \_\_\_\_\_

\_\_\_\_\_ (Name of Contractor)

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

Name: \_\_\_\_\_

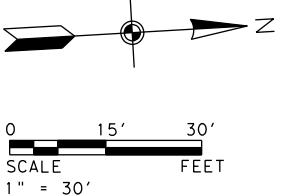
Title: \_\_\_\_\_

Phone: \_\_\_\_\_

E-Mail: \_\_\_\_\_

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

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



LEGEND

NEW CROSSING AREA = 7,459 SQ FT +/-

|     |           |         |
|-----|-----------|---------|
|     |           |         |
|     |           |         |
|     |           |         |
|     |           |         |
|     |           |         |
| NO. | REVISIONS | BY DATE |

**100% SUBMITTAL**

This document is incomplete and is released for the purpose of interim review only under the authority of Mahrin M. Zatar, P.E. Texas License No. 125004 on 12/4/2023. It is not to be used for construction, bidding or permit purposes.

TEXAS REGISTERED ENGINEERING FIRM F-3557

**TRANSYSTEMS**

2777 ALLEN PARKWAY,  
SUITE 500  
HOUSTON, TX 77019  
(713) 807-0600

Texas Department of Transportation  
© 2024

**PIEDRAS ST  
INTERSECTION  
AT UPRR**

**EXHIBIT F TO CONSTRUCTION & MAINTENANCE AGREEMENT**  
CSJ 0924-06-693

RRMP: 967.350  
DOT NO. 741165T

| DESIGN   | FED. RD.<br>DIV. NO. | FEDERAL AID PROJECT NO. | HIGHWAY<br>NO. |
|----------|----------------------|-------------------------|----------------|
| MMZ      | 6                    | SEE TITLE SHEET         | FM76, ETC      |
| GRAPHICS | STATE                | DISTRICT                | COUNTY         |
| CHECK    | TEXAS                | ELP                     | EL PASO, ETC   |
| SGK      | CONTROL              | SECTION                 | JOB            |
| CHECK    | 0674                 | 01                      | 077, ETC       |
| BMO      |                      |                         |                |

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

**Section 1. NOTICE OF COMMENCEMENT OF WORK - RAILROAD FLAGGING - PRIVATE FLAGGING.**

A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its Work and at least thirty (30) working days in advance of proposed performance of any Work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track.

B. 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 approved flagman is provided to watch for trains. Upon receipt of such thirty (30)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures.

C. Contractor shall be permitted to hire a private contractor to perform flagging or other special protective or safety measures (such private contractor being commonly known in the railroad industry as a contractor-in-charge ("CIC")) in lieu of Railroad providing such services or in concert with Railroad providing such services, subject to prior written approval by Railroad, which approval shall be in Railroad's sole and absolute discretion. If Railroad agrees to permit Contractor to utilize a CIC pursuant to the preceding sentence, Contractor shall obtain Railroad's prior approval in writing for each of the following items, as determined in all respects in Railroad's sole and absolute discretion: (i) the identity of the third-party performing the role of CIC; (ii) the scope of the services to be performed for the project by the approved CIC; and (iii) any other terms and conditions governing such services to be provided by the CIC. If flagging or other special protective or safety measures are performed by an approved CIC, Contractor shall be solely responsible for (and shall timely pay such CIC for) its services. Railroad reserves the right to rescind any approval pursuant to this Section 1, Subsection C., in whole or in part, at any time, as determined in Railroad's sole and absolute discretion.

D. If any flagging or other special protective or safety measures are performed by employees of Railroad and/or any contractor of 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.

E. If any flagging or other special protective or safety measures are performed by Railroad or a CIC, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this agreement.

F. The provisions set forth in this subsection are only applicable for Flagging Services performed by employees of Railroad: 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. If flagging is performed by Railroad, reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five-day cessation notice has been given to Railroad.

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

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

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

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

A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least twenty-five (25) 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 visit [www.up.com/CBUD](http://www.up.com/CBUD) to complete and submit the required form 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 RE COURSE 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 any Work on Railroad property 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 then current safety standards located at the below web address ("Railroad's Safety Standards") 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 Railroad's Safety Standards to each of its employees before they enter Railroad property.

[http://www.up.com/cs/groups/public/@uprr/@suppliers/documents/up\\_pdf\\_nativedocs/pdf\\_up\\_supplier\\_safety\\_req.pdf](http://www.up.com/cs/groups/public/@uprr/@suppliers/documents/up_pdf_nativedocs/pdf_up_supplier_safety_req.pdf)

B. All personnel employed by the Agency, Contractor and all subcontractors must complete the Railroad's course "Property Access Training" and be registered prior to working on Railroad property. This training is available at [www.up.com/up-pat](http://www.up.com/up-pat). This training is required to be completed annually.

C. 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.

D. 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.

E. 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 FULLEST EXTENT ALLOWED BY APPLICABLE LAW, 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" on the subcontractor's Commercial General Liability policy and Umbrella or Excess policies (if applicable) 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 10, and CG 20 37 (or substitute forms providing equivalent coverage; (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

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

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

During the entire term of this Agreement and course of the Project, and until all Project Work on Railroad's property has been completed and all equipment and materials have been removed from Railroad's property and Railroad's property has been clean and restored to Railroad's satisfaction, Contractor shall, at its sole cost and expense, procure and maintain 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.

**D. Railroad Protective Liability** insurance. Contractor must maintain "Railroad Protective Liability" (RPL) insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence

and an aggregate of \$6,000,000. The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this agreement and shall describe all WORK or OPERATIONS performed under this agreement. Contractor shall provide this agreement to Contractor's insurance agent(s) and/or broker(s) and Contractor shall instruct such agent(s) and/or broker(s) to procure the insurance coverage required by this agreement. A BINDER STATING THE POLICY IS IN PLACE MUST BE SUBMITTED TO RAILROAD BEFORE THE WORK MAY COMMENCE AND UNTIL THE ORIGINAL POLICY IS FORWARDED TO UNION PACIFIC RAILROAD.

- E. Umbrella or Excess** insurance. If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.
- F. Pollution Liability** insurance. Pollution liability coverage must be included when the scope of the Work as defined in the agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

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

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

### **Other Requirements**

- G.** All policy(ies) required above (except business automobile, worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 10, and CG 20 37 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall not be limited by Contractor's liability under the indemnity provisions of this agreement. BOTH CONTRACTOR AND RAILROAD EXPECT THAT UNION PACIFIC RAILROAD COMPANY WILL BE PROVIDED WITH THE BROADEST POSSIBLE COVERAGE AVAILABLE BY OPERATION OF LAW UNDER ISO ADDITIONAL INSURED FORMS CG 20 10 AND CG 20 37.
- H.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.
- I.** Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Contractor required in this agreement where prohibited by law. 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.