Pipeline Crossing 0808
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Form Approved, AVP-Law

Folder No. 02738-99
City 60215

PIPELINE CROSSING AGREEMENT

Mile Post: 1.50, Greeley Subdivision/Branch
Location: Denver, Denver County, Colorado
(33rd Outfall)

This PIPELINE CROSSING AGREEMENT ("Agreement") is between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Licensor"), and **CITY AND COUNTY OF DENVER**, a home rule city and municipal corporation of the State of Colorado, c/o Wastewater Management, 2000 West 3rd Avenue, Denver, Colorado 80223 ("Licensee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article 1. LICENSOR GRANTS RIGHT.

A. In consideration of the License Fee (defined below) to be paid by Licensee and in further consideration of the covenants and agreements herein contained to be by Licensee kept, observed and performed, Licensor hereby grants to Licensee the right to construct and thereafter, during the Term (defined below) to own, inspect, maintain, modify, repair, reconstruct, replace and operate one (1) 120-inch (120") pipeline for transporting and conveying storm water only ("Pipeline"), under and across Licensor's track(s) and property in the location generally depicted on **Exhibit A** and legally described in **Exhibit A-1**, each of which is attached hereto and made a part hereof (collectively, "Pipeline License Area"). Licensor also grants to Licensee a temporary right to the property legally described in **Exhibit A-2**, attached hereto and made a part hereof ("Temporary License Area"), for the sole purpose of construction and staging required for Licensee's installation of the Pipeline. For the purpose of consistent reference to the various property rights granted by Licensor to Licensee hereunder, the Pipeline License Area and the Temporary License Area shall hereinafter be collectively referred to as the "Property".

B. Under no circumstances will Licensee modify the use of the Pipeline for a purpose other than transporting and conveying storm water, and the Pipeline shall not be used to convey any other substance, any fiber optic cable, or for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the Term of this Agreement.

Article 2. LICENSE FEE.

A. Upon execution of this Agreement, Licensee shall cause Licensor to be paid a one-time fee of Four Hundred Thousand Dollars ($400,000.00) ("License Fee"), which License Fee covers any and all fees for the rights granted to Licensee under this Agreement and any rights to be granted under a CROE (defined below) for purposes of initial construction of the Pipeline. Subject to the requirements to pursue additional appropriations and the termination provisions set forth herein, Licensee's total monetary obligations under this Agreement for initial construction shall not exceed $2,000,000.00 (the "Maximum Contract Amount").

B. All Licensee payment obligations under this Agreement, whether direct or contingent, extends only to funds appropriated annually by Licensee's City Council, paid into the Treasury of

Licensee, and encumbered for the purpose of this Agreement. If at any time during the term of this Agreement, either party determines that the Maximum Contract Amount may be insufficient to meet Licensee's obligations, Licensee's Manager of Public Works shall promptly initiate and pursue the process for budgeting, authorizing and appropriating the additional amounts required. If a requested appropriation is denied by Licensee's City Council, the parties shall meet in good faith during the sixty (60) days after such denial to resolve any outstanding issues impacting the funding requirements. In the event additional funds are not made available within such sixty (60) day period, Licensor has the right to: (i) stop providing services until such time as additional funds are appropriated and encumbered in the amount necessary for payment to Licensor or (ii) terminate this Agreement. Licensee does not, by this Agreement, irrevocably pledge present cash reserves for payment or performance in future fiscal years. This Agreement does not, and is not intended, to create a multi-fiscal year direct or indirect debt or financial obligation of Licensee.

Article 3. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in **Exhibit B**, attached hereto and made a part hereof.

Article 4. INSURANCE.

A. Prior to construction of the Pipeline, Licensee or Licensee's contractor (whichever entity will be performing the Pipeline construction work), at its sole expense, shall provide to Licensor the insurance binders, certificates and endorsements described in **Exhibit C**, attached hereto and made a part hereof ("Insurance Requirements").

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

C. Licensee shall direct or cause Licensee's contractor to direct all documents related to the Insurance Requirements to:

Union Pacific Railroad Company
Attn: Real Estate Department (Folder No. 2738-99)
1400 Douglas Street, MS 1690
Omaha, Nebraska 68179-1690

D. If Licensee is a public entity subject to any applicable statutory tort laws, the limits of insurance described in **Exhibit C** will be the limits Licensee then has in effect or which is required by applicable current or subsequent law, whichever is greater, a portion of which may be self-insured with the consent and approval of Licensor. Licensee is allowed to retain (self-insure) in whole or in part any insurance obligation under this Agreement. Any retention shall be for the account of Licensee. If Licensee elects to retain (self-insure) any insurance required by this Agreement, Licensee agrees that it shall provide Licensor with the same coverage that would have been provided to it by the required commercial insurance forms had Licensee obtained commercial insurance. For all coverage not retained (self-insured), Licensee shall furnish Licensor with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement. For all coverage retained or self-insured, Licensee shall provide a letter stating that through its risk management programs it

retains its insurance obligation under this Agreement (or portion thereof to the extent that part of the insurance coverage obligation is not retained) and that such letter is provided in lieu of a certificate of insurance from an insurer. As such, and not withstanding anything herein to the contrary, Licensee shall not be required to purchase or obtain any insurance as a result of this Agreement.

Article 5. DEFINITION OF LICENSEE; WORK PERFORMED BY CONTRACTOR.

A. For purposes of this Agreement, all references in this Agreement to Licensee shall include Licensee's contractors, subcontractors, officers, agents and employees, and others acting under Licensee's authority. If a contractor is hired by Licensee for any work performed on the Pipeline (including initial construction and subsequent relocation or maintenance and repair work), then Licensee shall require its contractor to execute Licensor's current form of Contractor's Right of Entry Agreement, attached hereto as **Exhibit D** and made a part hereof ("CROE").

B. By executing this Agreement, Licensee (i) acknowledges receipt of a copy of the CROE, (ii) understands terms, provisions, and requirements of the CROE, and (iii) acknowledges its obligation to require its contractor(s) to execute the CROE before performing any work on the Pipeline. Under no circumstances will Licensee's contractor be allowed onto the Property without first (i) executing the CROE, and (ii) providing or causing Licensee's contractor to provide to Licensor proof of Licensee's or Licensee's contractors compliance with the Insurance Requirements.

C. Notwithstanding the expectation that Licensee's contractor will perform the Pipeline work and will pay Licensor any and all amounts due to Licensor under this Agreement, Licensee shall remain responsible for, and shall not be released from, its obligations under this Agreement, including any monetary obligations hereunder.

Article 6. ADDITIONAL PROVISIONS.

A. No provision of this Agreement shall constitute a waiver of the provisions of the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq. applicable to Licensee or Licensee's Permitted Assignee (defined in Section 14 of **Exhibit B** of this Agreement).

B. Notwithstanding anything herein that may be construed otherwise, Licensee's project plans dated May 2014 ("Licensee's Plans") have been approved by Licensor (Control Number 6901EC) on or about December 8, 2014. No additional plan review and approval for Licensee's Plans is required.

C. The parties agree that Licensee's Plans exclude Licensee's tunneling/shoring/cribbing plans for work on the Pipeline ("Licensee's Shoring Plans"). To the extent that Licensor determines need to review Licensee's Shoring Plans, Licensor shall review and provide either (i) the approval of Licensee's Shoring Plans by Licensor's Assistant Vice President Engineering – Design, or his authorized representative, or, if revisions are needed, or (ii) Licensor's written request for such revisions to Licensee's Shoring Plans, within sixty (60) days of Licensor's receipt of Licensee's Shoring Plans. Licensee agrees that Licensee's Shoring Plans, which must be stamped and signed by an engineer licensed in the State of Colorado, will comply with Licensor's Shoring Guidelines, attached hereto as **Exhibit F** and made a part hereof. Upon Licensor's approval of Licensee's Shoring Plans as described in this Paragraph, Licensee's performance of such tunneling/shoring/cribbing work will be performed by Licensee in compliance with the terms of **Exhibit B** to this Agreement.

C. Counterparts, Electronic Signatures and Electronic Records. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall together

constitute one and the same document. Facsimile signatures shall be accepted as originals. The parties consent to the use of electronic signatures by Licensee. This Agreement and any other documents requiring a signature may be signed electronically by Licensee in the manner specified by Licensee. The parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The parties agree not to object to the admissibility of this Agreement in the form of an electronic records, a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the grounds that it is an electronic record or an electronic signature or that it is not in its original form or is not an original.

Article 7. TERM.

This Agreement shall take effect as of the last date of execution and shall continue in full force and effect until terminated as herein provided ("Term").

[Remainder of page intentionally left blank. Signature block located on next page.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of _____ day of _____, 2015.

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: _____
Printed Name: Renay J. Robison
Title: Director – Real Estate

[Remainder of page intentionally left blank. Signature block located on next page.]

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

ATTEST:

_____
DEBRA JOHNSON,
Clerk and Recorder, Ex-Officio Clerk
of Licensee and County of Denver

CITY AND COUNTY OF DENVER

By:_____
Mayor

APPROVED AS TO FORM:

D. SCOTT MARTINEZ,
Attorney for the City and County of Denver

By:_____
Assistant City Attorney

REGISTERED AND COUNTERSIGNED:

By:_____
Manager of Finance

By:_____
Auditor

EXHIBIT A

GENERAL DEPICTION OF THE PIPELINE LICENSE AREA

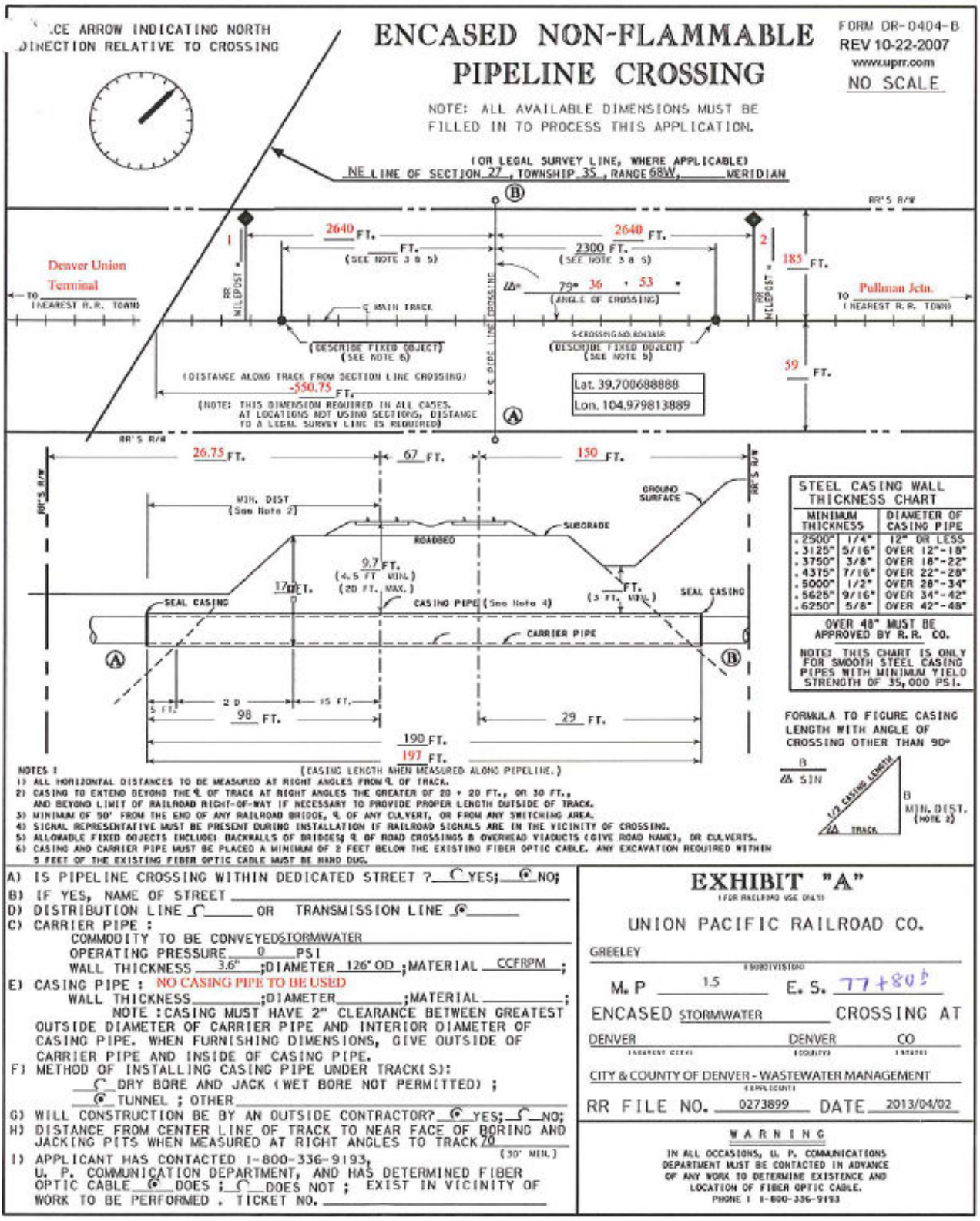

EXHIBIT A-1

LEGAL DESCRIPTION OF THE PIPELINE LICENSE AREA

PARCEL NUMBER: LA-7
DATE: September 16, 2014
DESCRIPTION

A parcel of land, containing 8,637 sq. ft. (0.198 acres) of land, more or less, being a portion of the Union Pacific Railroad Company property, lying in the Northeast Quarter of Section 27, Township 3 South, Range 68 West, of the 6th Principal Meridian, in the City and County of Denver, State of Colorado, said parcel being more particularly described as follows:

COMMENCING at the Northeast Corner of said Section 27, (Whence the North Quarter corner of said Section 27, bears S. 89°58'34" W., a distance of 2645.64 feet); Thence S. 43°45'42" W., a distance of 742.78 feet, to a point on the southwesterly line of that parcel of land described in Exhibit A, in the Quit Claim Deed recorded at Reception No. 88-00265644, on May 12, 1988 in the City and County of Denver Clerk and Recorder's Office, said point being the **TRUE POINT OF BEGINNING**;

1. Thence along said southwesterly line, S.45°06'59"E.,a distance of 51.99 feet;
2. Thence S.14°49'59"W.,a distance of 73.45 feet;
3. Thence S.45°14'17"E.,a distance of 137.09 feet, to a point on the northwesterly line of that parcel of land described in Reception No. 2013029218, recorded on March 4, 2013 in said City and County of Denver Clerk and Recorder's Office;
4. Thence along said northwesterly line, S.55°07'44"W.,a distance of 30.50 feet;
5. Thence N.45°14'17"W.,a distance of 166.26 feet;
6. Thence N.14°49'59"E.,a distance of 108.19 feet, to the **TRUE POINT OF BEGINNING.**

The above described parcel contains 8,637 sq. ft. (0.198 acres) of land, more or less.

Basis of Bearings: All bearings are based on the line connecting the Northeast Corner of Section 27, and the North Quarter Corner of said Section 27, both in Township 3 South, Range 68 West of the 6th P.M., said line having a grid bearing of S. 89°58'34" W., a distance of 2,645.64 feet, as obtained from a Global Positioning System (GPS) survey based on the Colorado High Accuracy Reference Network (CHARN). Said grid bearing is NAD83 (1992) Universal Transverse Mercator (Zone 13 North). Said Northeast Corner of Section 27 being monumented by a found 6" diameter stone with chiseled cross, with a 3 1/2" aluminum cap also found 10 feet north of stone and on-line stamped as a 10 foot witness corner "WC-10.0'-PLS 24961-2008"; and said North Quarter Corner of Section 27 being monumented by a found 3 1/4" diameter aluminum cap stamped in part "Aztec Consultants Inc.- LS 33204-1/4-S22-S27-2007".

Prepared by: James A. Daley, PLS 37044
For and on Behalf of
The Lund Partnership, Inc.
12265 West Bayaud Avenue, Suite 130
Lakewood, Colorado 80228

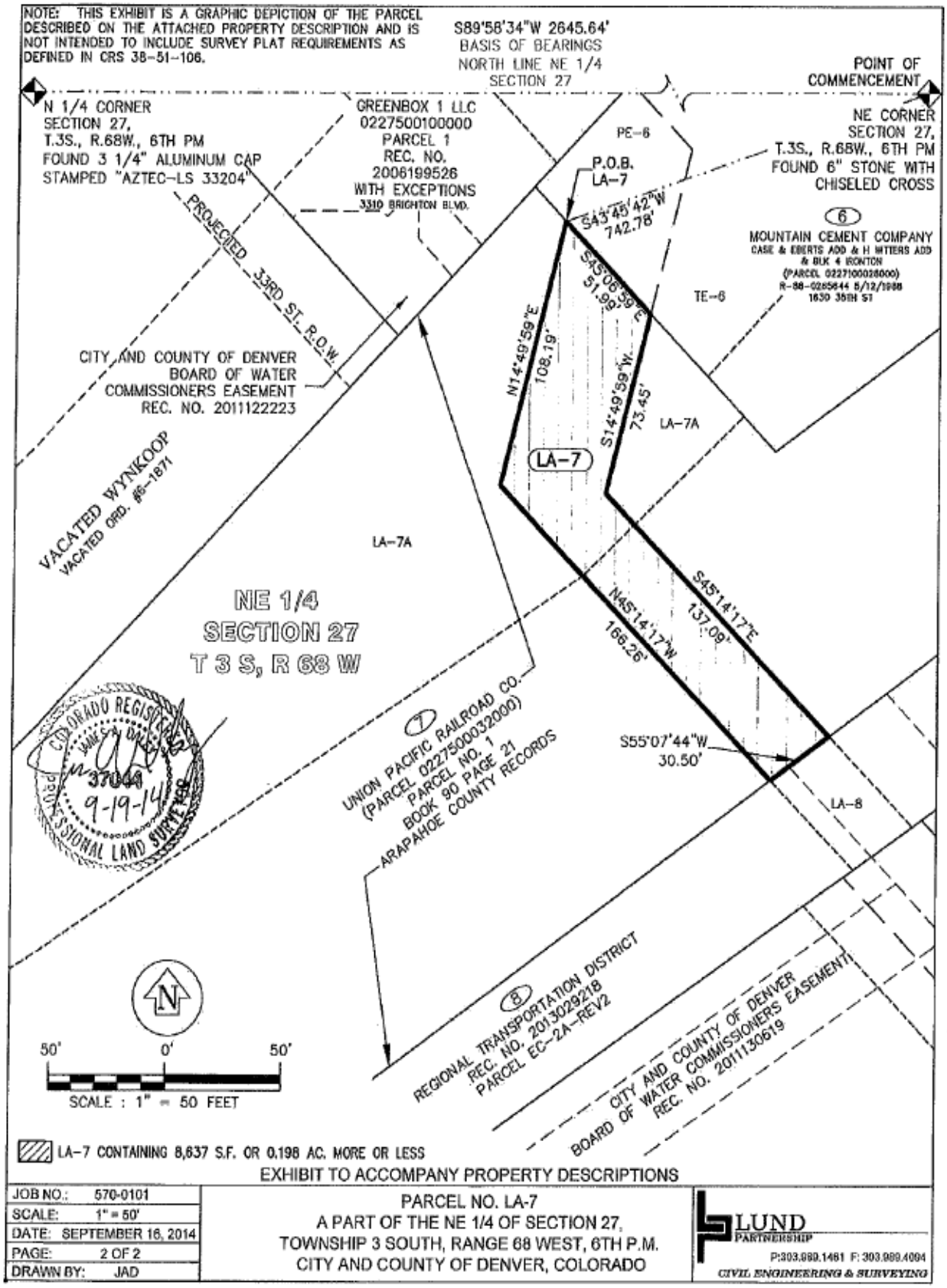

EXHIBIT TO ACCOMPANY PROPERTY DESCRIPTIONS

JOB NO.:	570-0101
SCALE:	1" = 50'
DATE:	SEPTEMBER 16, 2014
PAGE:	2 OF 2
DRAWN BY:	JAD

PARCEL NO. LA-7
A PART OF THE NE 1/4 OF SECTION 27,
TOWNSHIP 3 SOUTH, RANGE 68 WEST, 6TH P.M.
CITY AND COUNTY OF DENVER, COLORADO

LUND PARTNERSHIP
P:303.989.1461 F: 303.989.4094
CIVIL ENGINEERING & SURVEYING

EXHIBIT A-2

LEGAL DESCRIPTION OF THE TEMPORARY LICENSE AREA

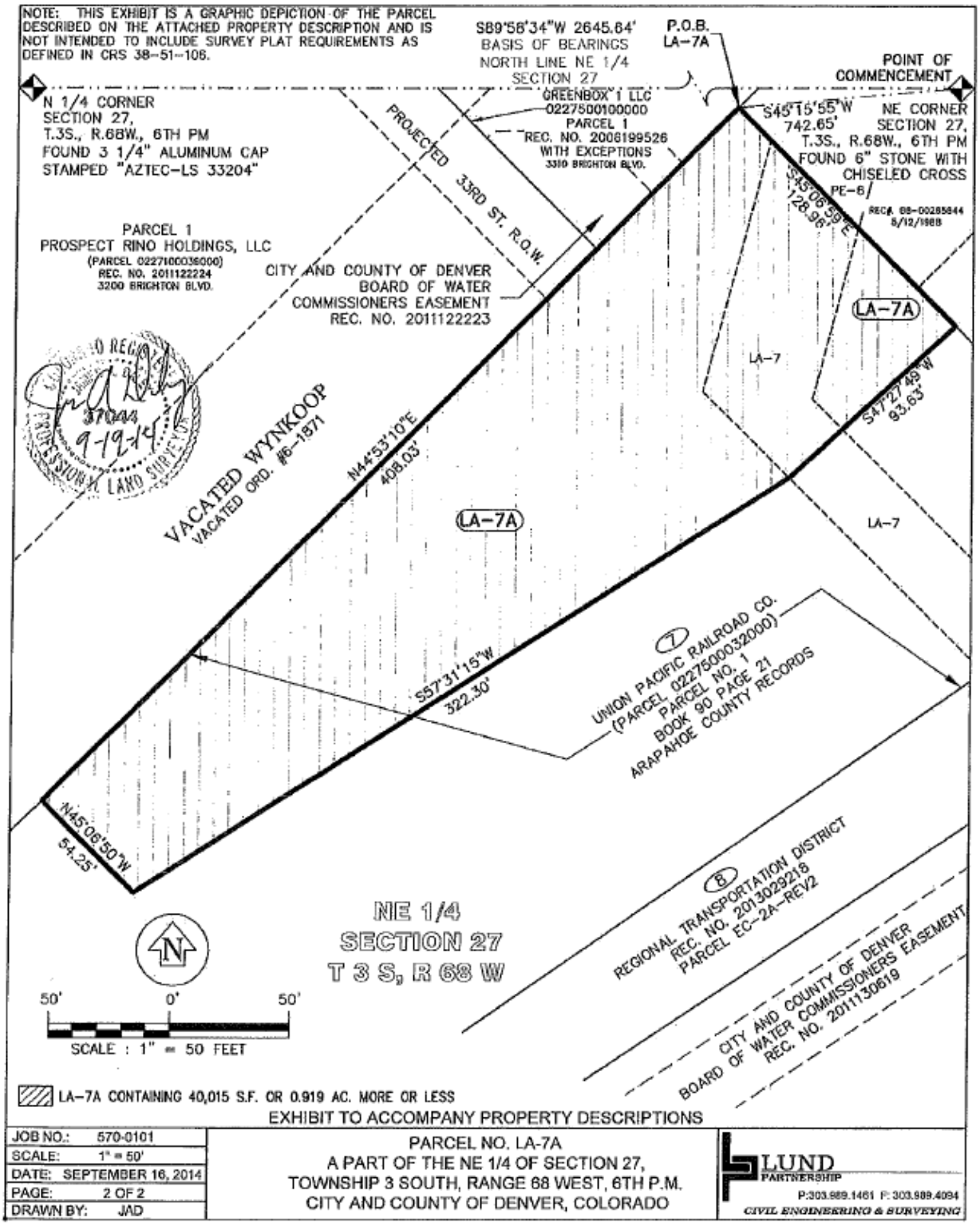

EXHIBIT B

GENERAL TERMS AND CONDITIONS

Section 1. 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 Licensor to use and maintain its entire property including the right and power of Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, 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 Licensor without liability to Licensee or to any other party for compensation or damages.

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

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

A. The Pipeline shall be designed and constructed in accordance with Licensee's Plans. Future operation, maintenance, repair, renewal, modification and/or reconstructed by Licensee shall be in strict conformity with: (i) Licensor's current standards and specifications ("UP Specifications"), except for variances approved in advance in writing by Licensor's Assistant Vice President Engineering – Design, or his authorized representative; (ii) such other additional safety standards as Licensor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"); and (iii) all applicable laws, rules and regulations ("Laws"). If there is any conflict between the requirements of any Law and the UP Specifications or the UP Additional Requirements, the most restrictive will apply.

B. All work performed on the Property in connection with the design, construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of Licensor.

C. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline from the Property, Licensee shall submit to Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect Licensor's operations, and shall not proceed with the work until such plans have been approved by Licensor's Assistant Vice President Engineering – Design, or his authorized representative, and then the work shall be done to the satisfaction of Licensor's Assistant Vice President Engineering Design or his authorized representative. Licensor has approved Licensee's Plans for initial construction of the Pipeline. Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event Licensor provides such support, Licensee shall cause its contractors to pay to Licensor, within sixty (60) days after bills shall have been rendered therefore, all expenses incurred by Licensor in connection therewith, which expenses shall include all assignable costs. If such payments are

not timely made by Licensee's contractors, Licensor, in its sole and absolute discretion, may stop any and all work on the Pipeline until Licensor receives such payment.

D. Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.

E. In the prosecution of any work covered by this Agreement, Licensee 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 3. NOTICE OF COMMENCEMENT OF WORK / LICENSOR REPRESENTATIVE / SUPERVISION / FLAGGING / SAFETY.

A. If an emergency should arise requiring immediate attention, Licensee shall provide as much notice as practicable to Licensor before commencing any work. In all other situations, Licensee shall notify Licensor at least ten (10) days (or such other time as Licensor may allow) in advance of the commencement of any work upon the Property in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion. Licensee will coordinate its initial, and any subsequent work with the following employee of Licensor or his or her duly authorized representative ("Licensor's Representative"):

Union Pacific Railroad Company
Attn: _____, Manager of Track Maintenance
_____
_____
Work Phone: (___) ___-____
Cell Phone: (___) ___-____

B. Licensee, at its own expense, shall adequately police and supervise all work to be performed. The responsibility of Licensee for safe conduct and adequate policing and supervision of work shall not be lessened or otherwise affected by Licensor's approval of plans and specifications involving the work, or by Licensor's collaboration in performance of any work, or by the presence at the work site of Licensor's Representative, or by compliance by Licensee with any requests or recommendations made by Licensor's Representative.

C. At the request of Licensor, Licensee shall remove from Licensor's property any individual who fails to conform to the instructions of Licensor's Representative in connection with the work on the Property. Licensee shall cause its contractors to indemnify Licensor, against any claims arising from the removal of any such individual from the Property.

D. Except in an emergency situation, Licensee shall notify Licensor's Representative at least ten (10) working days in advance of proposed performance of any work in which any person or equipment will be within twenty-five feet (25') 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 feet (25') 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 feet (25') of any of Licensor's track(s) at any time, for any reason, unless and until a railroad flagman is provided to watch for trains. Upon receipt of such ten (10) day notice, Licensor's Representative will determine and inform Licensor whether a flagman need be present and whether any special protective or safety measures

need to be implemented. If flagging or other special protective or safety measures are performed by Licensor, Licensor will bill Licensee for such expenses incurred by Licensor, unless Licensor and a federal, state or local governmental entity have agreed that Licensor is to bill such expenses to the federal, state or local governmental entity. If Licensor will be sending the bills to Licensee, Licensee shall cause such bills to be paid within sixty (60) days of receipt of billing. If Licensor performs any flagging, or other special protective or safety measures are performed by Licensor, Licensee agrees that Licensee is not relieved of any of responsibilities or liabilities set forth in this Agreement.

E. 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 Licensor 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, Licensee (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

F. Reimbursement to Licensor 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 Licensor is required to pay the flagman and which could not reasonably be avoided by Licensor by assignment of such flagman to other work, even though Licensee may not be working during such time. When it becomes necessary for Licensor to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Licensee must provide Licensor 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, Licensee will still be required to cause to be paid flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Licensor if flagging services are needed again after such five day cessation notice has been given to Licensor.

G. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Licensee or its contractor. Licensee shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Licensee and its contractor shall at a minimum comply with Licensor's safety standards listed in **Exhibit E**, attached hereto and made a part hereof, to ensure uniformity with the safety standards followed by Licensor's own forces. As a part of Licensee's safety responsibilities, Licensee shall notify Licensor if it determines that any of Licensor's safety standards are contrary to good safety practices. Licensee and its contractor shall furnish copies of **Exhibit E** to each of its employees before they enter the job site.

H. Without limitation of the provisions of Paragraph "G" above, Licensee shall keep the job site free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the job.

I. Licensee 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. Prompt notification shall be given to Licensor of any U.S. Occupational Safety and Health Administration reportable injuries. Licensee shall have a non-delegable duty to control its employees while they are on the job site or any other property of Licensor, 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.

J. If and when requested by Licensor, Licensee shall deliver to Licensor a copy of its safety plan for conducting the work (the "Safety Plan"). Licensor shall have the right, but not the obligation, to require Licensee 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 4. LICENSEE TO BEAR ENTIRE EXPENSE.

Licensor shall not bear any cost and expense incurred in connection with the design, construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, and to the extent that Licensor incurs any expense in connection with the Pipeline, including expense for supervision, inspection, flagging or otherwise, Licensor shall be reimbursed for any and all expenses.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF THE PIPELINE.

A. The license herein granted is subject to the needs and requirements of Licensor in the safe and efficient operation of its railroad and in the improvement and use of its property. Licensee shall, at no expense to Licensor, reinforce or otherwise modify the Pipeline, or move all or any portion of the Pipeline to such new location, or remove the Pipeline from the Property, as Licensor may designate, whenever, in the furtherance of its needs and requirements, Licensor, at its sole election, finds such action necessary or desirable.

B. All the terms, conditions and stipulations herein expressed with reference to the Pipeline on the Property in the location hereinbefore described shall, so far as the Pipeline remains on the Property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.

A. The Pipeline and all parts thereof within and outside of the limits of the Property shall be designed, constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of Licensor and nothing shall be done or suffered to be done by Licensee at any time that would in any manner impair the safety thereof.

B. Explosives or other highly flammable substances shall not be stored on the Property without the prior written approval of Licensor.

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

D. When not in use, any machinery and materials of Licensee or its contractors shall be kept at least fifty feet (50') from the centerline of Licensor's nearest track.

E. Operations of Licensor and work performed by Licensor's personnel may cause delays in the work to be performed by Licensee. Licensee accepts this risk and agrees that Licensor shall have no liability to Licensee or any other person or entity for any such delays. Licensee shall coordinate its activities with those of Licensor and third parties so as to avoid interference with railroad operations. The safe operation of Licensor's train movements and other activities by Licensor take precedence over any work to be performed by Licensee.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

A. Fiber optic cable systems may be buried on the 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. Licensee shall telephone Licensor during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Property to be used by Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at no cost to Licensor, and will commence no work on the Property until all such protection or relocation has been accomplished. Licensee shall cause its contractors to indemnify and hold Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.

B. **IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, LICENSEE (1) SHALL RELEASE AND HOLD LICENSOR HARMLESS, AND TO THE EXTENT ALLOWED BY LAW AND WITHOUT LICENSEE WAIVING ANY ARGUMENTS RELATED TO THE ILLEGALITY OF INDEMNIFICATION BY LICENSEE, INCLUDING, BUT NOT LIMITED TO, ARGUMENTS THAT INDEMNIFICATION VIOLATES LICENSEE'S CHARTER AND ORDINANCES, COLORADO STATUTES, THE COLORADO CONSTITUTION AND ANY FEDERAL LAWS, WHICH LICENSOR HEREBY ACKNOWLEDGES THAT THIS IS LICENSEE'S POSITION, LICENSEE AGREES TO, SUBJECT TO APPROPRIATION, INDEMNIFY LICENSOR, AND (2) SHALL CAUSE ITS CONTRACTOR TO INDEMNIFY, DEFEND, RELEASE AND HOLD LICENSOR HARMLESS, FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF LICENSEE, ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES, RESULTING IN (a) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON THE PROPERTY, AND/OR (b) 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 THE PROPERTY, EXCEPT IF SUCH COSTS, LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF LICENSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RECOURSE AGAINST LICENSOR 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 THE PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON THE PROPERTY.**

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

A. Licensee shall cause its contractor to fully pay for all materials joined or affixed to and labor performed upon the Property in connection with the construction, maintenance, repair, renewal,

modification or reconstruction of the Pipeline, and shall not permit or suffer any mechanic's or materialmen's lien of any kind or nature to be enforced against the Property for any work done or materials furnished thereon at the instance or request or on behalf of Licensee. Licensee shall cause its contractor to indemnify and hold harmless Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

B. Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to Licensee but shall be included in the assessment of the property of Licensor, then Licensee shall cause Licensor to be paid an equitable proportion of such taxes determined by the value of Licensee's property upon the Property as compared with the entire value of such property.

Section 9. RESTORATION OF THE PROPERTY.

In the event Licensee in any manner moves or disturbs any of the Property in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event Licensee shall, as soon as possible and at no expense to Licensor, restore such property to the same condition as the same were before such property was moved or disturbed. Licensee shall cause its contractors to indemnify and hold harmless Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the moving or disturbance of any other property of Licensor.

Section 10. INDEMNITY.

A. As used in this Section, "Licensor" includes other railroad companies using the Property at the location of Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including Licensor's officers, agents, and employees, Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of Licensor, or property in its care or custody).

B. AS A MAJOR INDUCEMENT AND IN CONSIDERATION OF THE AGREEMENT AND THE PERMISSIONS HEREIN GRANTED, LICENSEE SHALL RELEASE AND HOLD LICENSOR HARMLESS AND SHALL CAUSE ITS CONTRACTOR TO INDEMNIFY, DEFEND, RELEASE AND HOLD LICENSOR HARMLESS FROM ANY LOSS OF ANY KIND, NATURE OR DESCRIPTION ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION,

RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE PIPELINE OR ANY PART THEREOF;

2. **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS AGREEMENT;**

3. **THE PRESENCE, OPERATION, OR USE OF THE PIPELINE OR CONTENTS ESCAPING THEREFROM;**

4. **THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR CONTRIBUTED TO BY LICENSEE;**

5. **ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER; OR**

6. **LICENSEE'S BREACH OF THIS AGREEMENT,**

EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT AND ACTIVE NEGLIGENCE OF LICENSOR, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, LICENSOR'S NEGLIGENCE.

C. Upon written notice from Licensor, Licensee agrees to cause its contractors to assume the defense of any lawsuit of proceeding brought against any indemnitee by any entity, relating to any matter covered by this Agreement for which there is an obligation to indemnify any indemnitee. Licensee shall cause its contractors to pay all costs incident to such defense, including, but not limited to, reasonable attorney's fees, investigators' fees, litigation and appeal expenses, settlement payments and amounts paid in satisfaction of judgments.

D. Notwithstanding anything herein to the contrary, as it relates to Licensee, Licensee, to the extent allowed by law and without Licensee waiving any arguments related to the illegality of indemnification by Licensee, including, but not limited to, arguments that indemnification violates Licensee's Charter and Ordinances, Colorado Statutes, the Colorado Constitution, and any federal laws, which Licensor hereby acknowledges that this is Licensee's position, Licensee agrees to, subject to appropriation, indemnify Licensor for any damages, claims, demands, actions, and causes of actions arising from third party claims but only to the extent of the amounts set forth under C.R.S. Section 24-10-114 entitled "Limitations on Judgments", to the extent applicable, and only after a court of law finds that: (a) Licensor is liable for such claim or damage; (b) such claim or damage is related to or arises out of the existence of the Pipeline crossing within the Pipeline License Area; (c) such claim or damage would not have arisen but for the existence of the Pipeline within the Pipeline License Area; and (d) such claim or damage occurred within the Property.

Section 11. <u>REMOVAL OF THE PIPELINE UPON TERMINATION OF AGREEMENT</u>.

Within two years after termination of this Agreement howsoever, Licensee shall, at no cost to Licensor, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of Licensor and shall restore, to the satisfaction of Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If Licensee fails to do the

foregoing, Licensor may, but is not obligated, to perform such work of removal and restoration at the cost and expense of Licensee, subject, however, to Licensee's prior appropriation of funds for such purpose. In the event of the removal by Licensor of the property of Licensee and of the restoration of the roadbed and property as herein provided, Licensor shall in no manner be liable to Licensee for any damage sustained by Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that Licensor may have against Licensee.

Section 12. WAIVER OF BREACH.

The waiver by Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by Licensee shall in no way impair the right of Licensor to avail itself of any remedy for any subsequent breach thereof.

Section 13. TERMINATION.

A. Licensee does not use the right herein granted or the Pipeline for two (2) years, or if Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from Licensor to Licensee specifying such default, Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.

B. In addition to the provisions of Paragraph "A" above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than one (1) year subsequent to the date upon which such notice shall be given.

C. Notice of default and notice of termination may be served personally upon Licensee or by mailing to the last known address of Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Section 14. AGREEMENT NOT TO BE ASSIGNED.

Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of Licensor, shall terminate this Agreement

Section 15. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

Section 16. SEVERABILITY.

Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

EXHIBIT C

INSURANCE REQUIREMENTS

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

A. **Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than $2,000,000 each occurrence and an aggregate limit of not less than $4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Contractual Liability Railroads" ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. **Business Automobile Coverage** insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a limit of not less $2,000,000 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.

C. **Workers' Compensation and Employers' Liability** insurance. Coverage must include but not be limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.

- Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 disease policy limit $500,000 each employee.

If Licensee 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. Licensee must maintain "Railroad Protective Liability" insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Licensor only 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.

E. **Umbrella or Excess** insurance. If Licensee utilizes umbrella or excess policies, and these policies must "follow form" and afford no less coverage than the primary policy.

Other Requirements

F. All policy(ies) required above (except workers' compensation and employers' liability) must include Licensor as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Licensor as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Licensor's negligence whether sole or partial, active or passive, and shall not be limited by Licensee's liability under the indemnity provisions of this Agreement.

G. 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.

H. Licensee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Licensor 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 Licensee required in this Agreement, where permitted by law. This waiver must be stated on the certificate of insurance.

I. 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(s) in which the work is to be performed.

J. The fact that insurance is obtained by Licensee or by Licensor on behalf of Licensee will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Licensor rom Licensee or any third party will not be limited by the amount of the required insurance coverage.

K. Licensee is allowed to retain (self-insure) in whole or in part any insurance obligation under this Agreement. Any retention shall be for the account of Licensee. If Licensee elects to retain (self-insure) in whole or in part any insurance required by the Agreement, Licensee agrees that it shall provide Licensor with the same coverage that would have been provided to it by the required commercial insurance forms had Licensee obtained commercial insurance. For all coverage not retained (not self-insured), Licensee shall furnish Licensor with certificates(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

EXHIBIT D

LICENSOR'S FORM OF CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

This CONTRACTOR'S RIGHT OF ENTRY AGREEMENT ("Agreement") is made and entered into as of the _____ day of _____, 201_, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad") and _____, a _____ _____ ("Contractor").

RECITALS:

Contractor has been hired by _____, a _____ _____ ("_____"), for the installation, operation, maintenance, repair, renewal, and removal (if needed) of one (1) 120-inch (120") pipeline for transporting and conveying storm water only ("Pipeline"), with all or a portion of such work to be performed on property of Railroad located at Railroad Mile Post 1.50 on Railroad's Greeley Subdivision/Branch located in the City and County of Denver, Colorado, which work is the subject of that certain Pipeline Crossing Agreement dated _____, 201_, between Railroad and the City and County of Denver, as such location is also shown on the print dated May 2014, attached hereto as **Exhibit A** and made a part hereof.

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

AGREEMENT:

It is mutually agreed by and between Railroad and Contractor, as follows:

Article 1. DEFINITION OF CONTRACTOR.

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

Article 2. RIGHT GRANTED; PURPOSE.

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

Article 3. ADDITIONAL TERMS AND CONDITIONS; EXHIBITS.

Contractor's performance of the work described in this Agreement is subject to the terms and conditions contained in **Exhibit B (General Terms and Conditions)**, **Exhibit C (Insurance**

Requirements), and **Exhibit D (Minimum Safety Requirements)**, each of which are attached hereto and made a part of this Agreement.

Article 4. **ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.**

A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.

B. Contractor shall coordinate all of its work with the following Railroad representative or his/her duly authorized representative ("Railroad Representative"):

Union Pacific Railroad Company
Attn: _____, Manager of Track Maintenance
_____
_____
Work Phone: (___) ___-____
Cell Phone: (___) ___-____

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.**

Contractor, at its expense, shall provide on a monthly basis a detailed schedule of work to Railroad Representative named in Article 4.B. 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 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 Railroad Representative in writing when it has completed its work on Railroad's property.

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

Article 7. **CERTIFICATE OF INSURANCE.**

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

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

Union Pacific Railroad Company
Attn: Real Estate Department (Folder No. 2738-99)
1400 Douglas Street, MS 1690
Omaha, Nebraska 68179-1690

Article 8. DISMISSAL OF CONTRACTOR'S EMPLOYEE.

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

Article 9. ADMINISTRATIVE FEE.

Upon the execution and delivery of this Agreement, Contractor shall pay to Railroad Five Hundred Dollars ($500.00) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

Article 10. CROSSINGS.

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 and any applicable Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by Railroad prior to any changes being implemented. In the event Railroad is found to be out of compliance with federal safety regulations due to Contractor’s modifications, negligence, or any other reason arising from Contractor’s presence on Railroad’s property, Contractor agrees to assume liability for any civil penalties imposed upon Railroad for such noncompliance.

Article 11. EXPLOSIVES.

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

[Remainder of page intentionally left blank. Signature block located on next page.]

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

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: _____
Printed Name: _____
Title: _____

_____,
a _____ _____

By: _____
Printed Name: _____
Title: _____

EXHIBIT A
TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

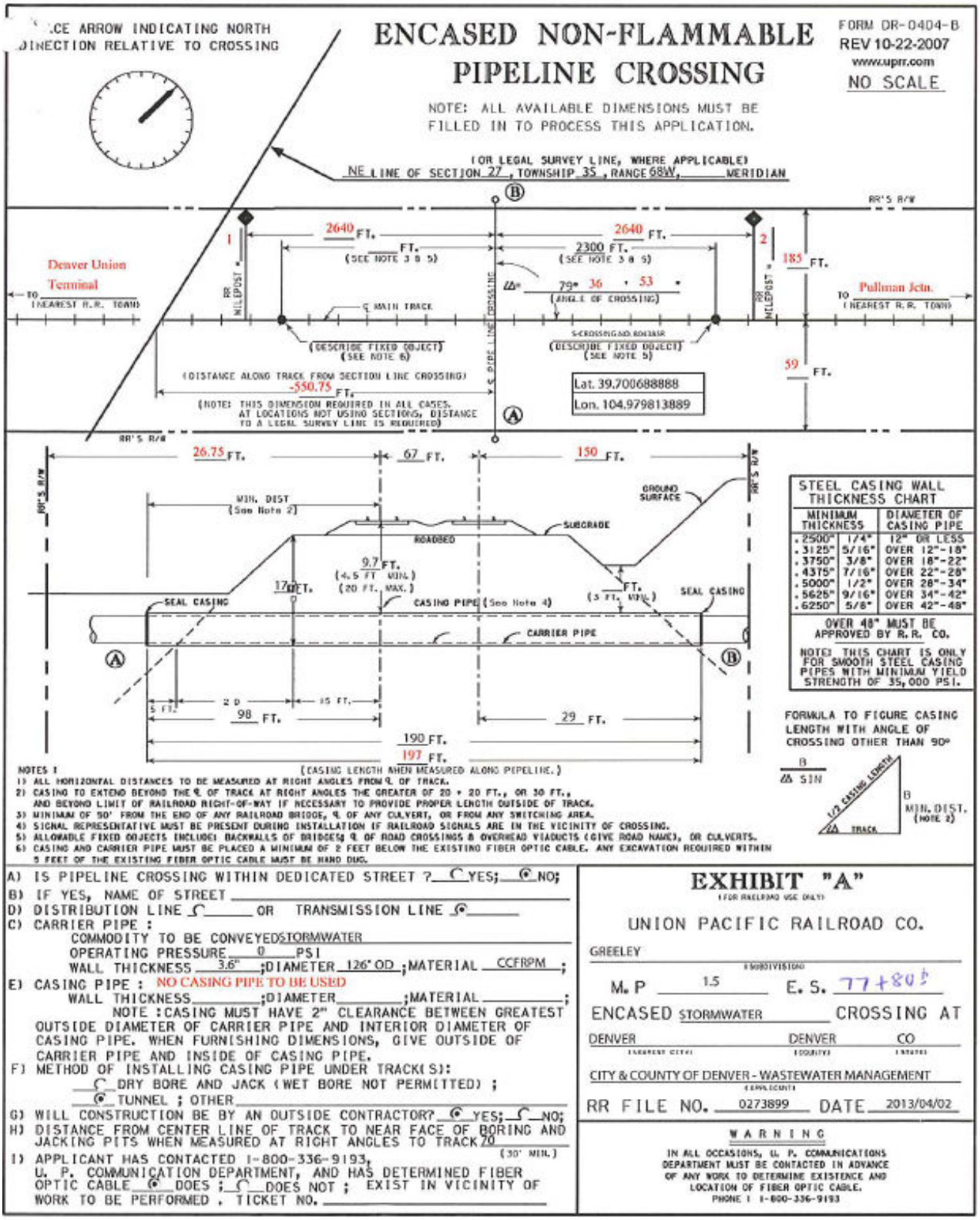

EXHIBIT B
TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

GENERAL TERMS AND CONDITIONS

Section 1. 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 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, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

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

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

A. The Pipeline will be designed, constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by Contractor in strict conformity with: (i) Railroad's current standards and specifications ("UP Specifications"), except for variances approved in advance in writing by Railroad's Assistant Vice President Engineering – Design, or his authorized representative; (ii) such other additional safety standards as Railroad, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"); and (iii) all applicable laws, rules and regulations ("Laws"). If there is any conflict between the requirements of any Law and the UP Specifications or the UP Additional Requirements, the most restrictive will apply.

B. All work performed on property of Railroad in connection with the design, construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of Railroad.

C. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, Contractor shall submit to Railroad plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect Railroad's operations, and shall not proceed with the work until such plans have been approved by Railroad's Assistant Vice President Engineering – Design, or his authorized representative, and then the work shall be done to the satisfaction of Railroad's Assistant Vice President Engineering – Design or his authorized representative. Railroad shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event Railroad provides such support, Contractor shall pay to Railroad, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by Railroad in connection therewith, which expenses shall include all assignable costs.

D. In the prosecution of any 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.

E. Contractor shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.

F. In the prosecution of any 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 3. NOTICE OF COMMENCEMENT OF WORK / RAILROAD'S REPRESENTATIVE / SUPERVISION / FLAGGING / SAFETY.

A. If an emergency should arise requiring immediate attention, Contractor shall provide as much notice as practicable to Railroad before commencing any work. In all other situations, Contractor shall notify Railroad at least ten (10) days (or such other time as Railroad may allow) in advance of the commencement of any work in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion. Contractor will coordinate its initial and any subsequent work with the following employee of Railroad or his or her duly authorized representative ("Railroad's Representative"):

Union Pacific Railroad Company
Attn: _____, Manager of Track Maintenance
_____
_____
Work Phone: (___) ___-____
Cell Phone: (___) ___-____

B. Contractor, at its own expense, shall adequately police and supervise all work to be performed. The responsibility of Contractor for safe conduct and adequate policing and supervision of 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 Railroad's Representative, or by compliance by Contractor with any requests or recommendations made by Railroad's Representative.

C. At the request of Railroad, Contractor shall remove any employee who fails to conform to the instructions of Railroad's Representative in connection with the work on the Pipeline. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from the work on the Pipeline.

D. Contractor shall notify Railroad's Representative at least ten (10) working days in advance of proposed performance of any work in which any person or equipment will be within twenty-five feet (25') 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 feet (25') 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 feet (25') of any of Railroad's track(s) at any time, for any reason, unless and until a railroad flagman is provided to watch for trains. Upon receipt of such ten (10) day notice, Railroad's Representative will determine and inform Contractor whether a flagman need be present and whether any special protective or safety measures need to be implemented. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local

governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of responsibilities or liabilities set forth herein.

E. 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.

F. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

G. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor or its contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor and its contractor shall at a minimum comply with Railroad's safety standards set forth in **Exhibit 1 to Exhibit B**, attached hereto, 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 it determines that any of Railroad's safety standards are contrary to good safety practices. Contractor and its contractor shall furnish copies of **Exhibit 1 to Exhibit B** to each of its employees before they enter the job site.

H. Without limitation of the provisions of Paragraph "G" above, Contractor shall keep the job site free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the job.

I. 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. Prompt notification shall be given to

Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a non-delegable duty to control its employees while they are on the job site, 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.

J. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of its safety plan for conducting the work ("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 **Exhibit B** shall control if there are any inconsistencies between this **Exhibit B** and the Safety Plan.

Section 4. CONTRACTOR TO BEAR ENTIRE EXPENSE.

Contractor shall bear the entire cost and expense incurred in connection with the design, construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by Railroad in connection therewith for supervision, inspection, flagging, or otherwise.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF THE PIPELINE.

A. The right herein granted is subject to the needs and requirements of Railroad in the safe and efficient operation of its railroad and in the improvement and use of its property. Contractor shall, at its sole cost and expense, reinforce or otherwise modify the Pipeline, or move all or any portion of the Pipeline to such new location as necessary for the safety of rail operations.

B. All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of Railroad in the location hereinbefore described shall, so far as the Pipeline remains on Railroad's property, apply to the Pipeline as modified, changed or relocated within the contemplation of this Section.

Section 6. NO INTERFERENCE WITH RAILROAD'S OPERATION.

A. The Pipeline and all parts thereof within and outside of the limits of the property of Railroad shall be designed, constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of Railroad (including without limitation, its tracks, pole lines, communication lines, radio equipment, wayside and/or cab based train signal systems, advanced train control systems, positive train separation systems, and grade crossing systems), and nothing shall be done or suffered to be done by Contractor at any time that would in any manner impair the safety thereof.

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

C. When not in use, any machinery and materials of Contractor or its contractors shall be kept at least fifty feet (50') from the centerline of Railroad's nearest track.

D. Operations of Railroad and work performed by Railroad's personnel may cause delays in the work to be performed by Contractor. Contractor accepts this risk and agrees that Railroad shall have no liability to Contractor or any other person or entity for any such delays. 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's train movements and other activities by Railroad take precedence over any work to be performed by Contractor.

Section 7. 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's contractor shall telephone Grantor during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Contractor's expense, and will commence no work on Railroad's property until all such protection or relocation has been accomplished. Contractor shall indemnify 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 or caused in any way by their respective failure to comply with the provisions of this paragraph.

B. IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD RAILROAD HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF CONTRACTOR, IT'S CONTRACTORS, AGENTS AND/OR EMPLOYEES, RESULTING IN (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, EXCEPT IF SUCH COSTS, LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF RAILROAD. CONTRACTOR ALSO AGREES THAT IT SHALL NOT HAVE OR SEEK RECOURSE AGAINST RAILROAD FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE TO A TELECOMMUNICATION COMPANY USING RAILROAD'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON RAILROAD'S PROPERTY.

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

A. Contractor shall fully pay for all materials joined or affixed to and labor performed upon property of Railroad in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and to not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of Contractor. Contractor shall indemnify and hold harmless Railroad against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

B. Contractor shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of Railroad, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline

or any improvement, appliance or fixture connected therewith placed upon such property, or on account of Contractor's interest therein. Where such tax, charge or assessment may not be separately made or assessed to Contractor but shall be included in the assessment of the property of Railroad, then Contractor shall pay to Railroad an equitable proportion of such taxes determined by the value of Contractor's property upon property of Railroad as compared with the entire value of such property.

Section 9. RESTORATION OF RAILROAD'S PROPERTY.

In the event Contractor in any manner moves or disturbs any of Railroad's property in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event Contractor (to the extent that it is performing the work) shall, restore such property to the same condition as the same were before such property was moved or disturbed, and Contractor shall indemnify and hold harmless Railroad, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the moving or disturbance of Railroad's property.

Section 10. INDEMNITY.

A. As used in this Section, "Railroad" includes other railroad companies using Railroad's property at or near the location of the Pipeline and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including Railroad's officers, agents, and employees, Railroad's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Railroad's property or property in its care or custody).

B. AS A MAJOR INDUCEMENT AND IN CONSIDERATION OF THE RIGHTS AND PERMISSION HEREIN GRANTED, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS RAILROAD FROM ANY LOSS OF ANY KIND, NATURE OR DESCRIPTION ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE PIPELINE OR ANY PART THEREOF;

2. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS AGREEMENT;

3. THE ENVIRONMENTAL STATUS OF RAILROAD'S PROPERTY CAUSED BY OR CONTRIBUTED TO CONTRACTOR;

4. ANY ACT OR OMISSION OF CONTRACTOR OR CONTRACTOR'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER; OR

5. CONTRACTOR'S BREACH OF THIS AGREEMENT,

EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT AND ACTIVE NEGLIGENCE OF RAILROAD, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, RAILROAD'S NEGLIGENCE.

C. Upon written notice from Railroad, Contractor (to the extent that Contractor is performing the work) agrees to assume the defense of any lawsuit or proceeding brought against any indemnitee by any entity, relating to any matter covered by this license for which Contractor has an obligation to assume liability for and/or save and hold harmless any indemnitee. Contractor shall pay all costs incident to such defense, including, but not limited to, reasonable attorney's fees, investigators' fees, litigation and appeal expenses, settlement payments and amounts paid in satisfaction of judgments.

Section 11. REMOVAL OF THE PIPELINE UPON TERMINATION OF AGREEMENT.

Prior to the termination of this Agreement howsoever, Contractor shall, at Contractor's sole expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of Railroad and shall restore, to the satisfaction of Railroad, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If Contractor fails to do the foregoing, Railroad may, but is not obligated, to perform such work of removal and restoration at the cost and expense of Contractor. In the event of the removal by Railroad of the property of Contractor and of the restoration of the roadbed and property as herein provided, Railroad shall in no manner be liable to Contractor for any damage sustained by Contractor for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that Railroad may have against Railroad.

Section 12. WAIVER OF BREACH.

The waiver by Railroad of the breach 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 thereof.

Section 13. TERMINATION.

A. If Contractor continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from Railroad to Contractor specifying such default, Railroad may, at its option, forthwith immediately terminate this Agreement by written notice.

B. Notice of default and notice of termination may be served personally upon Contractor or by mailing to the last known address of Contractor. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Section 14. AGREEMENT NOT TO BE ASSIGNED.

Contractor shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of Railroad, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by

operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of Railroad, shall terminate this Agreement.

Section 15. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

Section 16. SEVERABILITY.

Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

EXHIBIT C
TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

INSURANCE REQUIREMENTS

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

A. **Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than $2,000,000 each occurrence and an aggregate limit of not less than $4,000,000. 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.

C. **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 limit of not less $2,000,000 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.

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(s) affected by this Agreement.

- 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" insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad only 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.

E. **Umbrella or Excess** insurance. If Contractor utilizes umbrella or excess policies, and these policies must "follow form" and afford no less coverage than the primary policy.

Other Requirements

F. All policy(ies) required above (except workers' compensation and employers' liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.

G. 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.

H. 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 permitted by law. This waiver must be stated on the certificate of insurance.

I. 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(s) in which the work is to be performed.

J. 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.

K. Contractor is allowed to retain (self-insure) in whole or in part any insurance obligation under this Agreement. Any retention shall be for the account of Contractor. If Contractor elects to retain (self-insure) in whole or in part any insurance required by the Agreement, Contractor agrees that it shall provide Railroad with the same coverage that would have been provided to it by the required commercial insurance forms had Contractor obtained commercial insurance. For all coverage not retained (not self-insured), Contractor shall furnish Railroad with certificates(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

EXHIBIT D
TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Contractor or its contractors, subcontractors, or agents, as well as any subcontractor or agent of any Contractor.

I. Clothing

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

Specifically, Contractor's employees must wear:

(i) Waist-length shirts with sleeves.
(ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
(iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.

B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.

C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

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

A. Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.

B. Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.

C. Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:

- 100 feet of a locomotive or roadway/work equipment
- 15 feet of power operated tools
- 150 feet of jet blowers or pile drivers
- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)

D. Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by Railroad Representative.

III. On Track Safety

Contractor and its contractor are responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49 CFR 214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

A. Maintain a minimum distance of at least twenty-five (25) feet to any track unless Railroad's Representative is present to authorize movements.

B. Wear an orange, reflectorized work wear approved by Railroad Representative.

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

IV. Equipment

A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of Railroad's Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:

- Familiar and comply with Railroad's rules on lockout/tagout of equipment.
- Trained in and comply with the applicable operating rules if operating any hyrail equipment on-track.
- Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other rail bound equipment.

B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.

C. Unless otherwise authorized by Railroad's Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.

D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.

B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by Railroad's Representative, if applicable. During this briefing, Railroad's Representative will specify safe work procedures (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.

C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.

D. All employees comply with the following safety procedures when working around any railroad track:

(i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
(ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
(iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment of the opening is less than one car length (50 feet).
(iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
(v) Before stepping over or crossing tracks, look in both directions first.
(vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.

E. All employees must comply with all federal and state regulations concerning workplace safety.

EXHIBIT E

LICENSOR'S SHORING GUIDELINES
TO BE ATTACHED

EXHIBIT F

SAFETY STANDARDS

The term "employees" as used herein refer to all employees of Licensee or its contractors, subcontractors, or agents, as well as any subcontractor or agent of any Licensee.

I. Clothing

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

Specifically, Licensee's employees must wear:

(i) Waist-length shirts with sleeves.
(ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
(iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.

B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.

C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

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

(i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Licensee's company logo or name.
(ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
(iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:

- 100 feet of a locomotive or roadway/work equipment
- 15 feet of power operated tools
- 150 feet of jet blowers or pile drivers
- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)

(iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

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

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

IV. Equipment

A. It is the responsibility of Licensee to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Licensee's equipment is unsafe for use, Licensee shall remove such equipment from Railroad's property. In addition, Licensee must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:

- Familiar and comply with Railroad's rules on lockout/tagout of equipment.
- Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
- Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other rail bound equipment.

B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.

C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.

D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

A. Licensee shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.

B. Licensee shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.

C. All track work performed by Licensee meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.

D. All employees comply with the following safety procedures when working around any railroad track:

(i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
(ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
(iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment of the opening is less than one car length (50 feet).
(iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
(v) Before stepping over or crossing tracks, look in both directions first.
(vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.

E. All employees must comply with all federal and state regulations concerning workplace safety.

SUBMITTING REQUESTS FOR
RAILROAD PROTECTIVE LIABILITY INSURANCE
($2,000,000 per occurrence/$6,000,000 aggregate)

Application forms for inclusion in Union Pacific Railroad's Blanket Railroad Protective Liability Insurance Policy may be obtained by accessing the following website (includes premiums as well):

www.uprr.com/reus/rrinsure/index.shtml

If you have questions regarding railroad protective liability insurance (i.e. premium quotes, application) please contact the Marsh USA Service Team, Bill Smith or Cindy Long at:

Phone: (800) 729-7001
Fax: (816) 556-4362
Email: william.j.smith@marsh.com
Email: cindy.long@marsh.com

*PLEASE NOTE - The RPLI application and premium check should be sent directly to Marsh, USA at the address shown below - do NOT send your check and application via overnight air, as the P.O. Box will NOT accept overnight deliveries.

If you are in a situation where you require a RUSH, please contact Bill Smith or Cindy Long and they will do their best to accommodate your needs. All checks written to Marsh, USA should reference Union Pacific Railroad in the "Memo" section of the check.

Send Checks and Applications to the following "NEW" address:

Marsh USA
NW 8622
PO Box 1450
Minneapolis, MN 55485-8622