

## **Appendix A**

### **Union Pacific Railroad Crossing Agreement**

AUDIT 292827

Pipeline Crossing 080808  
 Last Modified: 06/05/18  
 Form Approved, AVP-Law

Folder No. 03144-50

## PIPELINE CROSSING AGREEMENT

Mile Post: 68.75, Coast Subdivision  
 Location: Morgan Hill, Santa Clara County, California

**THIS AGREEMENT ("Agreement")** is made and entered into as of February 22, 2019, ("Effective Date") by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, ("Licensor") and **CITY OF MORGAN HILL**, to be addressed at 17575 Peak Avenue, Morgan Hill, California 95037 ("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 to be paid by Licensee set forth below and in further consideration of the covenants and agreements to be performed by Licensee, Licensor hereby grants to Licensee the right to construct and thereafter, during the term hereof, maintain and operate one (1) 27 inch plastic sanitary sewer pipe encased in a 42 inch steel pipeline crossing only, including any appurtenances required for the operation of said pipeline (collectively, "Licensee's Facilities") across Licensor's real property, trackage, or other facilities located in Morgan Hill, Santa Clara County, State of California ("Railroad Property"). The specific specifications and limited purpose for Licensee's Facilities on, along, across and under Railroad Property are described in and shown on the Print and Specifications dated January 24, 2019, attached hereto as **Exhibit A** and made a part hereof.

B. Licensee represents and warrants that Licensee's Facilities will (i) only be used for one (1) 27 inch plastic sanitary sewer pipe encased in a 42 inch steel pipeline crossing, and (ii) 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 life of this Agreement.

C. Licensee acknowledges that if it or its contractor provides Licensor with digital imagery depicting Licensee's Facilities ("Digital Imagery"), Licensee authorizes Licensor to use the Digital Imagery in preparing **Exhibit A**. Licensee represents and warrants that through a license or otherwise, it has the right to use the Digital Imagery and to permit Licensor to use the Digital Imagery in said manner.

**Article 2. TERM.**

This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as provided in the "TERMINATION; REMOVAL OF LICENSEE'S FACILITIES" Section of **Exhibit B**.

**Article 3. LICENSEE'S COMPLIANCE WITH GENERAL TERMS.**

Licensee represents and warrants that all work on Licensee's Facilities performed by Licensee or its contractors will strictly comply with all terms and conditions set forth herein, including the General Terms and Conditions, attached hereto as **Exhibit B** and made a part hereof.

**Article 4. INSURANCE.**

A. During the term of this Agreement, Licensee shall fully comply or cause its contractor(s) to fully comply with the insurance requirements described in **Exhibit C**, attached hereto and made a part hereof. Licensee shall send copies of all insurance documentation (e.g., certificates, endorsements, etc.) to Licensor at the address listed in the "NOTICES" Section of this Agreement.

B. If Licensee is subject to statute(s) limiting its insurance liability and/or limiting its ability to obtain insurance in compliance with **Exhibit C** of this Agreement, those statutes shall apply.

**Article 5. DEFINITION OF LICENSEE.**

For purposes of this Agreement, all references in this Agreement to Licensee will include Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority (collectively, a "Contractor"). If a Contractor is hired by Licensee to perform any work on Licensee's Facilities (including initial construction and subsequent relocation, maintenance, and/or repair work), then Licensee shall provide a copy of this Agreement to its Contractor(s) and require its Contractor(s) to comply with all terms and conditions of this Agreement, including the indemnification requirements set forth in the "INDEMNITY" Section of **Exhibit B**. Licensee shall require any Contractor to release, defend, and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend, and indemnify Licensor herein.

**Article 6. ATTORNEYS' FEES, EXPENSES, AND COSTS.**

If litigation or other court action or similar adjudicatory proceeding is undertaken by Licensee or Licensor to enforce its rights under this Agreement, all fees, costs, and expenses, including, without limitation, reasonable attorneys' fees and court costs, of the prevailing Party in such action, suit, or proceeding shall be reimbursed or paid by the Party against whose interest the judgment or decision is rendered. The provisions of this Article shall survive the termination of this Agreement.

**Article 7. 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.

**Article 8. ASSIGNMENT.**

A. Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of Licensor, which must be requested in writing by Licensee. Any assignment or attempted transfer of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without Licensor's written consent, will be absolutely void and may result

in Licensor's termination of this Agreement pursuant to the "TERMINATION; REMOVAL OF LICENSEE'S FACILITIES" Section of Exhibit B.

B. Upon Licensor's written consent to any assignment, this Agreement will be binding upon and inure to the benefit of the parties thereto, successors, heirs, and assigns, executors, and administrators.

**Article 9. 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.

**Article 10. NOTICES.**

Except Licensee's commencement of work notice(s) required under Exhibit B, all other notices required by this Agreement must be in writing, and (i) personally served upon the business address listed below ("Notice Address"), (ii) sent overnight via express delivery by a nationally recognized overnight delivery service such as Federal Express Corporation or United Parcel Service to the Notice Address, or (iii) by certified mail, return receipt requested to the Notice Address. Overnight express delivery notices will be deemed to be given upon receipt. Certified mail notices will be deemed to be given three (3) days after deposit with the United States Postal Service.

If to Licensor: Union Pacific Railroad Company  
Attn: Analyst – Real Estate Utilities (Folder No. 03144-50)  
1400 Douglas Street, MS 1690  
Omaha, Nebraska 68179

If to Licensee: CITY OF MORGAN HILL  
17575 Peak Avenue

Morgan Hill, California, 95037

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

UNION PACIFIC RAILROAD COMPANY

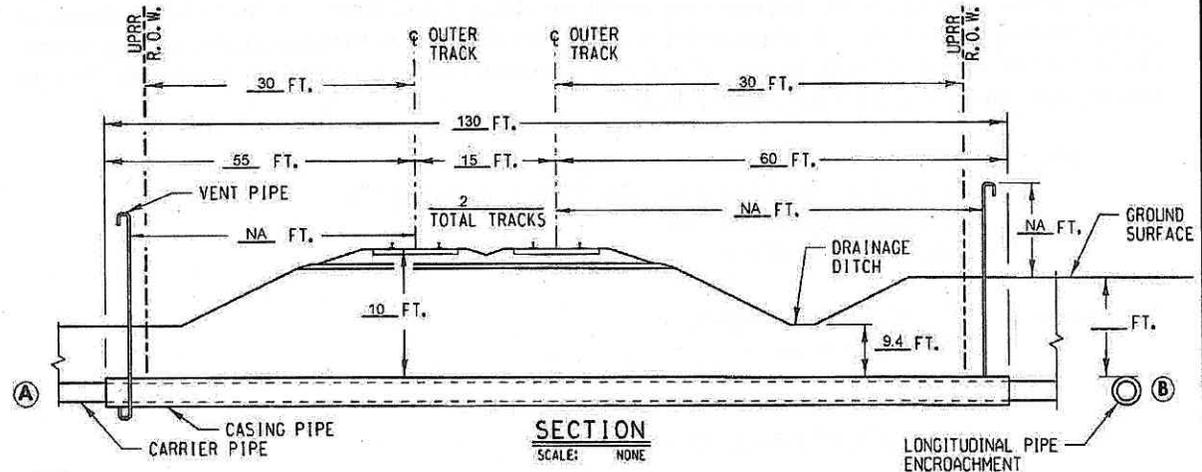
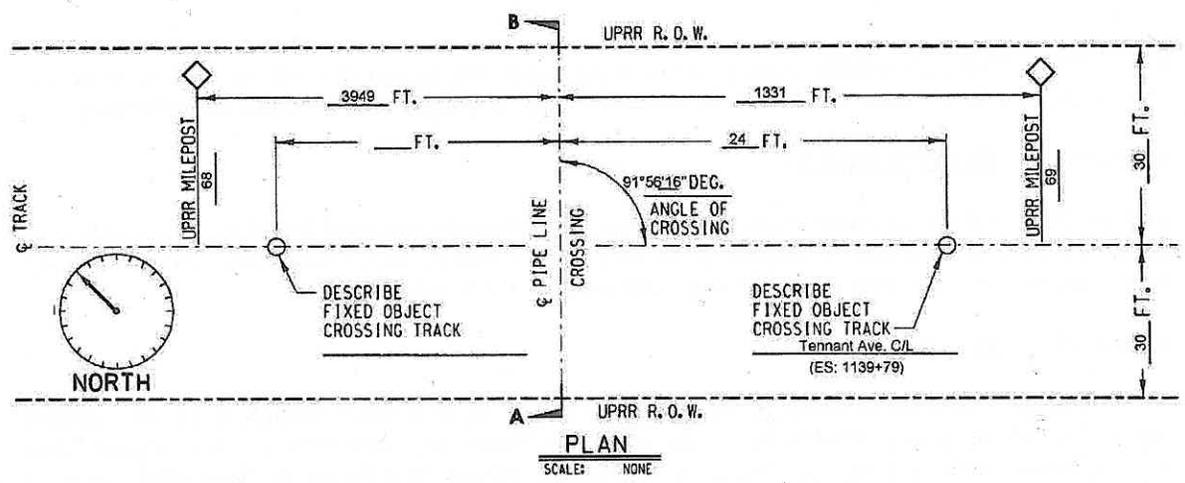
By: Valerie Harrill  
Valerie Harrill  
Mgr II Real Estate Contracts

CITY OF MORGAN HILL

By: Christina Turner  
Name Printed: Christina Turner  
Title: City Manager

# NON-FLAMMABLE LIQUID PIPELINE

- CROSSING
- ENCROACHMENT
- BOTH



NOTES:  
 1) ALL DIMENSIONS MEASURED PERPENDICULAR TO THE CENTERLINE OF TRACK  
 2) REFER TO AREMA VOLUME 1, CHAPTER 1, PART 5, SECTION 5.1

A) METHOD OF INSTALLATION BORED AND JACKED  
 B) DIST. FROM CENTERLINE OF TRACK TO PIPE ENCROACHMENT \_\_\_\_\_  
 C) SIGNS PROVIDED? SIGNS WILL NOT BE PROVIDED  
 D) CARRIER MATERIAL PLASTIC IF RCP, CLASS V? NA  
 COMMODITY TO BE CONVEYED SANITARY SEWER  
 OPERATIONAL PRESSURE 14 PSI. MAOP 14 PSI.  
 WALL THICKNESS (INCH)/ SCHEDULE 0 DIAMETER 27 IN.  
 CATHODIC/COATING PROTECTION NO  
 E) CASING MATERIAL STEEL PIPE IF RCP, CLASS V? NA  
 TOTAL LENGTH CASING PIPE: 130 FT.  
 WALL THICKNESS 0.5825 IN. DIAMETER 42 IN.  
 CATHODIC/COATING PROTECTION NO  
 CASING PIPE IS SEALED AT THE ENDS.  
 F) DISTANCE FROM CENTERLINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES 59 AND 54.



**BUILDING AMERICA®**

**EXHIBIT "A"**

SUBDIVISION: <u>Coast Sub.</u>	
TRACK TYPE: <u>MAINLINE</u>	
M.P.: <u>68.75</u>	LAT.: <u>37.1155901</u>
E.S.M.: <u>1139+55</u>	LONG.: <u>-121.6361618</u>
NEAREST CITY: <u>MORGAN HILL</u>	COUNTY: <u>SANTA CLARA</u> STATE: <u>CA</u>
APPLICANT: <u>CITY OF MORGAN HILL</u>	
FILE NO.: <u>0314450</u>	DATE: <u>01/24/2019</u>

## EXHIBIT B

### GENERAL TERMS AND CONDITIONS

#### **Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.**

A. The foregoing grant 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 Railroad Property) and the right of Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment. It shall be Licensee's sole obligation to obtain such additional permission, license and grants necessary on account of any such existing rights.

#### **Section 2. ENGINEERING REQUIREMENTS; PERMITS.**

A. Licensee's Facilities will be designed, constructed, operated, maintained, repaired, renewed, modified, reconstructed, removed, or abandoned in place on Railroad Property by Licensee or its contractor to Licensor's satisfaction and in strict conformity with: (i) Licensor's current engineering standards and specifications, including those for shoring and cribbing to protect Licensor's railroad operations and facilities ("UP Specifications"), except for variances approved in advance in writing by Licensor's Assistant Vice President Engineering - Design or its authorized representative ("UP Engineering 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, including any applicable Federal Railroad Administration and Federal Energy Regulatory Commission regulations and enactments (collectively, "Laws"). If there is any conflict between UP Specifications, UP Additional Requirements, and Laws, the most restrictive will apply.

B. Licensee shall keep the soil over Licensee's Facilities thoroughly compacted, and maintain the grade over and around Licensee's Facilities even with the surface of the adjacent ground.

C. If needed, Licensee shall secure, at Licensee's sole cost and expense, any and all necessary permits required to perform any work on Licensee's Facilities.

**Section 3. NOTICE OF COMMENCEMENT OF WORK; EMERGENCIES.**

A. Licensee and its contractors are strictly prohibited from commencing any work associated with Licensee's Facilities without Licensor's written approval that the work will be in strict compliance with the "ENGINEERING REQUIREMENTS; PERMITS" Section of this **Exhibit B**. Upon Licensor's approval, Licensee shall contact both of Licensor's field representatives ("Licensor's Field Representatives") at least ten (10) days before commencement of any work on Licensee's Facilities.

B. Licensee shall not commence any work until: (1) Licensor has determined whether flagging or other special protective or safety measures ("Safety Measures") are required for performance of the work pursuant to the "FLAGGING" Section of this **Exhibit B** and provided Licensee written authorization to commence work; and (2) Licensee has complied with the "PROTECTION OF FIBER OPTIC CABLE SYSTEMS" Section of this **Exhibit B**.

C. If, at any time, an emergency arises involving Licensee's Facilities, Licensee or its contractor shall immediately contact Licensor's Response Management Communications Center at (888) 877-7267.

**Section 4. FLAGGING.**

A. Following Licensee's notice to Licensor's Field Representatives required under the "NOTICE OF COMMENCEMENT OF WORK; EMERGENCIES" Section of this **Exhibit B**, Licensor shall inform Licensee if Safety Measures are required for performance of the work by Licensee or its contractor on Railroad Property. If Safety Measures are required, no work of any kind may be performed by Licensee or its contractor(s) until arrangements for the Safety Measures have been made and scheduled. If no Safety Measures are required, Licensor will give Licensee written authorization to commence work.

B. If any Safety Measures are performed or provided by Licensor, including but not limited to flagging, Licensor shall 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. Additional information regarding the submission of such expenses by Licensor and payment thereof by Licensee can be found in the "LICENSEE'S PAYMENT OF EXPENSES" Section of this **Exhibit B**. If Licensor performs any Safety Measures, Licensee agrees that Licensee is not relieved of any of responsibilities or liabilities set forth in this Agreement.

C. For flagging, the rate of pay per hour for each flagger 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.

D. Reimbursement to Licensor will be required covering the full eight-hour day during which any flagger is furnished, unless the flagger 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 flagger is engaged in other railroad work. Reimbursement will also be required for any day not actually worked by the flaggers following the flaggers' assignment to work on the project for which Licensor is required to pay the flaggers and which could not reasonably be avoided by Licensor by assignment of such flaggers 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 flagger. If five (5) days notice of cessation is not given, Licensee will still be required to pay flagging charges for the days the flagger was scheduled, even though flagging is no longer 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.

**Section 5. SAFETY.**

A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of any work on Railroad Property performed by Licensee or its contractor, and takes precedence over any work on Licensee's Facilities to be performed Licensee or its contractors. Licensee shall be responsible for initiating, maintaining and supervising all safety operations and programs in connection with any work on Licensee's Facilities. Licensee and its contractor shall, at a minimum comply, with Licensor's then current safety standards located at the below web address ("Licensor's Safety Standards") 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 Licensor's Safety Standards to each of its employees before they enter Railroad Property.

Union Pacific Current Safety Requirements

B. Licensee shall keep the job site on Railroad Property free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the work.

C. Licensee represents and warrants that all parts of Licensee's Facilities within and outside of the limits of Railroad Property will not interfere 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.

D. Licensor's operations and work performed by Licensor's personnel may cause delays in Licensee's or its contractor's work on Licensee's Facilities. 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 must coordinate any work on Railroad Property by Licensee or any third party with Licensor's Field Representatives in strict compliance with the "NOTICE OF COMMENCEMENT OF WORK; EMERGENCIES" Section of this **Exhibit**

E. Licensor shall have the right, if it so elects, to provide any support it deems necessary for the safety of Licensor's operations and trackage during Licensee's or its contractor's construction, maintenance, repair, renewal, modification, relocation, reconstruction, or removal of Licensee's Facilities. In the event Licensor provides such support, Licensor shall invoice Licensee, and Licensee shall pay Licensor as set forth in the "LICENSEE'S PAYMENT OF EXPENSES" Section of this **Exhibit B**.

F. Licensee may use unmanned aircraft systems ("UAS") to inspect Licensee's Facilities only upon the prior authorization from and under the direction of Licensor's Field Representatives. Licensee represents and warrants that its use of UAS on Railroad Property will comply with Licensor's then-current Unmanned Aerial Systems Policy and all applicable laws, rules and regulations, including any applicable Federal Aviation Administration regulations and enactments pertaining to UAS.

**Section 6. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.**

Fiber optic cable systems may be buried on Railroad 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. In addition to the notifications required under the "NOTICE OF COMMENCEMENT OF WORK; EMERGENCIES" Section of this **Exhibit B**, 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 Railroad Property to be used by Licensee. If it is, Licensee shall telephone the telecommunications company(ies) involved, and arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will not commence any work on Railroad Property until all such protection or relocation has been completed.

**Section 7. LICENSEE'S PAYMENT OF EXPENSES.**

A. Licensee shall bear the entire cost and expense of the design, construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, or removal of Licensee's Facilities.

B. Licensee shall fully pay for all materials joined, affixed to and labor performed on Railroad Property in connection with the construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, or removal of Licensee's Facilities, and shall 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 Licensee. Licensee shall promptly pay or discharge all taxes, charges, and assessments levied upon, in respect to, or on account of Licensee's Facilities, to prevent the same from becoming a charge or lien upon any 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 Licensee's Facilities 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 pay to Licensor an equitable proportion of such taxes determined by the value of Licensee's property upon property of Licensor as compared with the entire value of such property.

C. As set forth in the "FLAGGING" Section of this **Exhibit B**, Licensor shall have the right, if it so elects, to provide any Safety Measures Licensor deems necessary for the safety of Licensor's operations and trackage during Licensee's or its contractor's construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, or removal of Licensee's Facilities, including, but not limited to supervision, inspection, and flagging services. In the event Licensor provides such Safety Measures, Licensor shall submit an itemized invoice to Licensee's notice recipient listed in the "NOTICES" Article of this Agreement. Licensee shall pay to Licensor the total amount listed on such invoice within thirty (30) days of Licensee's receipt of such invoice.

**Section 8. MODIFICATIONS TO LICENSEE'S FACILITIES.**

A. This grant is subject to Licensor's safe and efficient operation of its railroad, and continued use and improvement of Railroad Property (collectively, "Railroad's Use"). Accordingly, Licensee shall, at its sole cost and expense, modify, reconstruct, repair, renew, revise, relocate, or remove (individually, "Modification", or collectively, "Modifications") all or any portion of Licensee's Facilities as Licensor may designate or identify, in its sole discretion, in the furtherance of Railroad's Use.

B. Upon any Modification of all or any portion of Licensee's Facilities to another location on Railroad Property, Licensor and Licensee shall execute a Supplemental Agreement to this Pipeline Agreement to document the Modification(s) to Licensee's Facilities on Railroad Property. If the Modifications result in Licensee's Facilities moving off of Railroad Property, this Agreement will terminate upon Licensee's completion of such Modification(s) and all requirements contained within the "TERMINATION; REMOVAL OF LICENSEE'S FACILITIES" Section of this **Exhibit B**. Any such Modification(s) off of Railroad Property will not release Licensee from any liability or other obligation of Licensee arising prior to and upon completion of any such Modifications to the Licensee's Facilities.

**Section 9. RESTORATION OF RAILROAD PROPERTY.**

In the event Licensee, in any manner moves or disturbs any property of Licensor in connection with the construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, or removal of Licensee's Facilities, then, Licensee shall, as soon as possible and at Licensee's sole cost and expense, restore Licensor's property to the same condition as the same were before such property was moved or disturbed.

**Section 10. INDEMNITY.**

A. Definitions. As used in this Section:

1. "Licensor" includes Licensor, its affiliates, its and their officers, directors, agents and employees, and other railroad companies using Railroad Property at or near the location of Licensee's installation and their officers, directors, agents, and employees.
2. "Licensee" includes Licensee and its agents, contractors, subcontractors, sub-subcontractors, employees, officers, and directors, or any other person or entity acting on its behalf or under its control.
3. "Loss" includes claims, suits, taxes, loss, damages (including punitive damages, statutory damages, and exemplary damages), costs, charges, assessments, judgments, settlements, liens, demands, actions, causes of action, fines, penalties, interest, and expenses of any nature, including court costs, reasonable attorneys' fees and expenses, investigation costs, and appeal expenses.

B. Licensee shall release, defend, indemnify, and hold harmless Licensor from and against any and all Loss, even if groundless, fraudulent, or false, that directly or indirectly arises out of or is related to Licensee's construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, removal, presence, use, or operation of Licensee's Facilities, including, but not limited to, any actual or alleged:

1. Bodily harm or personal injury (including any emotional injury or disease) to, or the death of, any person(s), including, but not limited to, Licensee, Licensor, any telecommunications company, or the agents, contractors, subcontractors, sub-subcontractors, or employees of the foregoing;
2. Damage to or the disturbance, loss, movement, or destruction of Railroad Property, including loss of use and diminution in value, including, but not limited to, any telecommunications system(s) or fiber optic cable(s) on or near Railroad Property, any property of Licensee or Licensor, or any property in the care, custody, or control of Licensee or Licensor;
3. Removal of person(s) from Railroad Property;
4. Any delays or interference with track or Railroad's Use caused by Licensee's activity(ies) on Railroad Property, including without limitation the construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, or removal of Licensee's Facilities or any part thereof, any activities, labor, materials, equipment, or machinery in conjunction therewith ;
5. Right(s) or interest(s) granted pursuant to this Agreement;
6. Contents escaping from Licensee's Facilities, including without limitation any actual or alleged pollution, contamination, breach, or environmental Loss;
7. Licensee's breach of this Agreement or failure to comply with its provisions, including, but not limited to, any violation or breach by Licensee of any representations and warranties Licensee has made in this Agreement; and
8. Violation by Licensee of any law, statute, ordinance, governmental administrative order, rule, or regulation, including without limitation all applicable Federal Railroad Administration regulations.

C. THE FOREGOING OBLIGATIONS SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW FOR THE BENEFIT OF LICENSOR TO LOSSES CAUSED BY, ARISING FROM, RELATING TO, OR RESULTING FROM, IN WHOLE OR IN PART, THE NEGLIGENCE OF LICENSOR, AND SUCH NEGLIGENCE OF LICENSOR SHALL NOT LIMIT, DIMINISH, OR PRECLUDE LICENSEE'S OBLIGATIONS TO LICENSOR IN ANY RESPECT. NOTWITHSTANDING THE FOREGOING, SUCH OBLIGATION TO INDEMNIFY LICENSOR SHALL NOT APPLY TO THE EXTENT THE LOSS IS CAUSED BY THE SOLE, ACTIVE AND DIRECT NEGLIGENCE, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT OF LICENSOR AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION.

**Section 11. TERMINATION; REMOVAL OF LICENSEE'S FACILITIES.**

A. If Licensee does not use the right herein granted on Licensee's Facilities for one (1) year, or if Licensee continues in default in the performance of any provision of this Agreement for a period of thirty (30) days after written notice from Licensor to Licensee specifying such default, Licensor may, at its sole discretion, terminate this Agreement by written notice to Licensee at the address listed in the "NOTICES" Article of this Agreement. This Agreement will not terminate until Licensee complies with Paragraphs "C" and "D" of this Section found below.

B. In addition to the provisions of Paragraph "A" above, this Agreement may be terminated by written notice given by either party, without cause, upon thirty (30) days written notice to the non-terminating party at the address listed in the "NOTICES" Article of this Agreement. This Agreement will not terminate until Licensee complies with Paragraphs "C" and "D" of this Section found below.

C. Prior to the effective date of any termination described in this Section, Licensee shall submit an application to Licensor's online Utility Contracts System at [this link](#) for Licensee's removal, or if applicable, abandonment in place of Licensee's Facilities located on Railroad Property ("Removal/Abandonment Work"). Upon the UP Engineering Representative's approval of Licensee's application for the Removal/Abandonment Work, Licensor and Licensee shall execute a separate consent document that will govern Licensee's performance of the Removal/Abandonment Work from those portions of Railroad Property not occupied by roadbed and/or trackage ("Consent Document"). Licensor shall then restore the impacted Railroad Property to the same or reasonably similar condition as it was prior to Licensee's installation of Licensee's Facilities. For purposes of this Section, Licensee's (i) performance of the Removal/Abandonment Work, and (ii) restoration work will hereinafter be collectively referred to as the "Restoration Work".

D. Following Licensee's completion of the Restoration Work, Licensee shall provide a written certification letter to Licensor at the address listed in the "NOTICES" Article of this Agreement which certifies that the Restoration Work has been completed in accordance with the Consent Document. Licensee shall report to governmental authorities, as required by law, and notify Licensor immediately if any environmental contamination is discovered during Licensee's performance of the Restoration Work. Upon discovery, the Licensee shall initiate any and all removal, remedial and restoration actions that are necessary to restore the property to its original, uncontaminated condition. Licensee shall provide written certification to Licensor at the address listed in the "NOTICES" Article of this Agreement that environmental contamination has been remediated and the property has been restored in accordance with Licensor's requirements. Upon Licensor's receipt of Licensee's restoration completion certifications, this Agreement will terminate.

E. In the event that Licensee fails to complete any of the Restoration Work, Licensor may, but is not obligated, to perform the Restoration Work. Any such work actually performed by Licensor will be at the cost and expense of Licensee. In the event that Licensor performs any of the Restoration Work, Licensee shall release Licensor from any and all Loss (defined in the "INDEMNITY" Section of this **Exhibit B**) arising out of or related to Licensor's performance of the Restoration Work.

F. Termination of this Agreement for any reason will not affect any of rights or obligations of the parties which may have accrued, or liabilities or Loss (defined in the "INDEMNITY" Section of this **Exhibit B**), accrued or otherwise, which may have arisen prior to such termination.

## EXHIBIT C

### **INSURANCE REQUIREMENTS**

In accordance with Article 5 of this Agreement, Licensee shall (1) procure and maintain at its sole cost and expense, or (2) require its Contractor(s) to procure and maintain, at their sole cost and expense, 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 Railroad Company 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. **Environmental Liability Insurance.** Environmental Legal Liability Insurance (ELL) applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed, cleanup costs, and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims, or compliance with statute, all in

connection with any loss arising from the insured's performance under this Agreement. Except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, this insurance must apply as if each named insured were the only named insured; and separately to the additional insured against which claim is made or suit is brought. Coverage shall be maintained in an amount of at least \$2,000,000 per loss, with an annual aggregate of at least \$4,000,000.

Licensee warrants that any retroactive date applicable to ELL insurance coverage under the policy is the same as or precedes the Effective Date of this Agreement, and that continuous coverage will be maintained for a period of five (5) years beginning from the time the work under this Agreement is completed or if coverage is cancelled for any reason the policies extended discovery period, if any, will be exercised for the maximum time allowed.

E. **Railroad Protective Liability Insurance.** Licensee must maintain for the duration of work "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. Notwithstanding the foregoing, Licensee does not need Railroad Protective Liability Insurance after its initial construction work is complete and all excess materials have been removed from Licensor's property; PROVIDED, however, that Licensee shall procure such coverage for any subsequent maintenance, repair, renewal, modification, reconstruction, or removal work on Licensee's Facilities.

F. **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**

G. All policy(ies) required above (except business automobile, workers' compensation and employers' liability) must include Licensor as "Additional Insured" using ISO Additional Insured Endorsement CG 20 26 (or substitute form(s) providing equivalent coverage). The coverage provided to Licensor as additional insured shall not be limited by Licensee's liability under the indemnity provisions of this Agreement. BOTH LICENSOR AND LICENSEE EXPECT THAT LICENSOR WILL BE PROVIDED WITH THE BROADEST POSSIBLE COVERAGE AVAILABLE BY OPERATION OF LAW UNDER ISO ADDITIONAL INSURED FORM CG 20 26.

H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this Agreement, or (b) all punitive damages are prohibited by all states in which this Agreement will be performed.

I. 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.

J. All insurance policies must be written by a reputable insurance company acceptable to Licensor 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.

K. The fact that insurance is obtained by 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 from Licensee or any third party will not be limited by the amount of the required insurance coverage.

## **Appendix B**

### **Union Pacific Railroad Consent Letter for Abandonment of Existing Crossing**



## CONSENT LETTER

5/23/2019  
Folder: 03131-42

DAVID GITTLESON  
CITY OF MORGAN HILL  
17575 PEAK AVENUE  
MORGAN HILL CA 95037

Dear David

Please refer to City Of Morgan Hill, (hereinafter the "City") request to abandon an existing 18 inch DIP sanitary sewer pipe encased in a 36 inch Steel pipe (undocumented) at Mile Post 68.76, on the Coast Subdivision at or near MORGAN HILL, Santa Clara County, California from Union Pacific Railroad Company (hereinafter the "Railroad Company"). Attached hereto is a Railroad Location Print marked **EXHIBIT A**, each attached hereto and hereby made a part hereof, which illustrate the location and specifications of the subject project.

This letter will serve as notification that the Railroad Company approves of your intentions above stated intentions.

It is understood and acknowledged that the City shall reimburse the Railroad Company for all expenses incurred by the Railroad Company for employment of flagmen, inspectors and other employees required to protect the right of way and property of the Railroad Company from damage arising out of and/or from the work on the utility line. The City shall reimburse the Railroad Company for such expenses within thirty (30) days after presentation of bill for such expenses.

Licensee will certify that the facilities will be removed according to the Abandonment Guidelines in **Exhibit B**. The utility crossing, including any appurtenances thereto, will no longer be physically present on the subject property. Certification will be made with the execution of **Exhibit C** by an authorized corporate officer.

**This consent will expire one (1) year from the date hereof. If the work is not completed by the date herein you must contact the Railroad Company and request an extension of this Consent Letter.**

If a contractor is to do any of the work performed on or about the Railroad Company's property, then City shall require its contractor to execute the Railroad Company's form Contractor's Right of Entry Agreement, **EXHIBIT D**. City acknowledges receipt of a copy of

Contractor's Right of Entry Agreement and understanding its term, provisions and requirements, and will inform its contractor of the need to execute the Agreement. Under no circumstances will City's contractor be allowed on or about the Railroad Company's property without first executing the Contractor's Right of Entry Agreement.

In order to protect the operations of the Railroad Company as well as for safety reasons, it is imperative that the City notify our field representatives at the following offices:

<u>UP.info@railpros.com</u> (877)-315-0513 x. 116	Maikel I. Younan Manager Signal Maintenance Work Phone: (402-216-2342 Email: <u>miyounan@up.com</u>
--	--

no less than ten (10) days in advance of any construction on, along, or across the Railroad Company's right of way and/or tracks.

The Railroad Company has authorized the installation of fiber optics cable facilities on its property in certain areas. Prior to using the Railroad Company's property covered herein, you must contact the Railroad Company at **1-800-336-9193** to determine if a fiber optic cable is buried on the subject property. When you or your representative enters the Railroad Company's property, a copy of this letter must be available at the site to be shown on request to any Railroad Company employee or official.

If you have any questions or concerns pertaining to this permit, feel free to contact Valerie Harrill at (402) 544-8801 or VAHARRILL@up.com.

**UNION PACIFIC RAILROAD COMPANY**

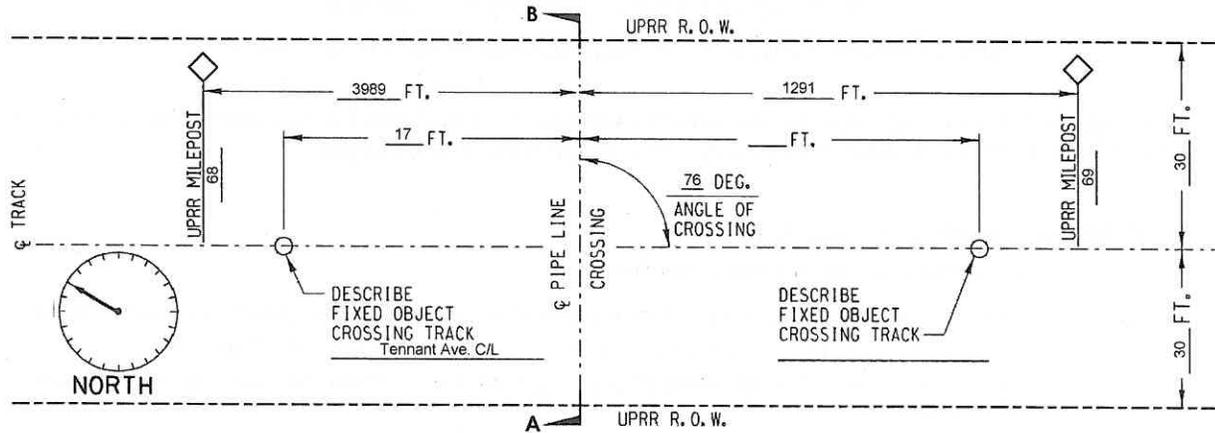
**CITY OF MORAN HILL**

By: \_\_\_\_\_  
Valerie Harrill  
Mgr II Real Estate Contracts

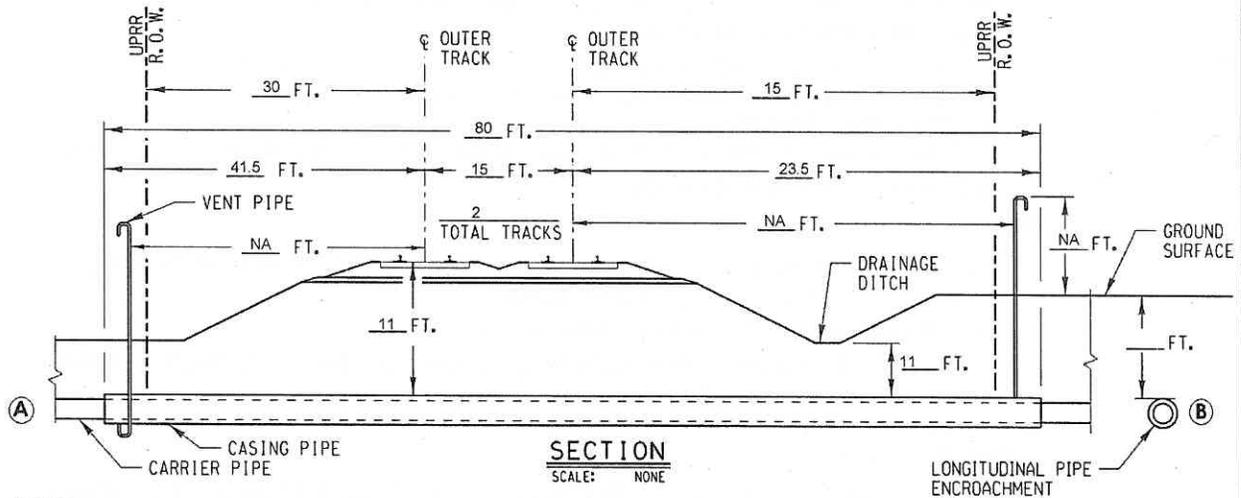
\_\_\_\_\_  
Printed  
Name \_\_\_\_\_

# NON-FLAMMABLE LIQUID PIPELINE

- CROSSING
- ENCROACHMENT
- BOTH



**PLAN**  
SCALE: NONE



**SECTION**  
SCALE: NONE

- NOTES:  
 1) ALL DIMENSIONS MEASURED PERPENDICULAR TO THE CENTERLINE OF TRACK  
 2) REFER TO AREMA VOLUME 1, CHAPTER 1, PART 5, SECTION 5.1

- A) METHOD OF INSTALLATION Existing Pipe: To Be Abandoned
- B) DIST. FROM CENTERLINE OF TRACK TO PIPE ENCROACHMENT \_\_\_\_\_
- C) SIGNS PROVIDED? SIGNS WILL NOT BE PROVIDED
- D) CARRIER MATERIAL DIP. IF RCP, CLASS V? NA.  
 COMMODITY TO BE CONVEYED SANITARY SEWER.  
 OPERATIONAL PRESSURE 0 PSI. MAOP 0 PSI.  
 WALL THICKNESS (INCH)/ SCHEDULE 0.32. DIAMETER 18 IN.  
 CATHODIC/COATING PROTECTION NO
- E) CASING MATERIAL STEEL PIPE. IF RCP, CLASS V? NA.  
 TOTAL LENGTH CASING PIPE: 80 FT.  
 WALL THICKNESS 0.25 IN. DIAMETER 36 IN.  
 CATHODIC/COATING PROTECTION NO  
 CASING PIPE IS OPEN AT THE ENDS.
- F) DISTANCE FROM CENTERLINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES 50 AND 26.



**BUILDING AMERICA®**

**EXHIBIT "A"**

SUBDIVISION: <u>Coast Sub.</u>	
TRACK TYPE: <u>MAINLINE</u>	
M.P.: <u>68.76</u>	LAT.: <u>37.115531</u>
E.S.M.: <u>1139+62</u>	LONG.: <u>-121.636077</u>
NEAREST CITY: <u>MORGAN HILL</u>	COUNTY: <u>SANTA CLARA</u> STATE: <u>CA</u>
APPLICANT: <u>CITY OF MORGAN HILL</u>	
FILE NO.: <u>0313142</u>	DATE: <u>04/23/2019</u>

## Exhibit B

# GUIDELINES FOR ABANDONMENT & REMOVAL OF SUBSURFACE STRUCTURES ON UNION PACIFIC RAILROAD RIGHT-OF-WAY

For pipelines, tunnels and other similar structures that are scheduled for abandonment or removal on the Union Pacific Railroad right-of-way, the following guidelines apply.

## 1. Abandonment Procedures

### A. Hazardous material testing & notification

1. Prior to either removal or abandon in-place of existing Facilities, testing for ACM, PACM, LBP and PCBs shall be completed and the results reported to the Railroad.
  - i. ACM or PACM – Asbestos Containing Materials or Presumed Asbestos Containing Materials
  - ii. LBP – Lead Based Paint
  - iii. PCBs – PolyChlorinated Biphenyls
2. Testing results shall be emailed to [asbestos@up.com](mailto:asbestos@up.com) (file size limit / email is 10mb) with one of the following subject lines:
  - i. Action Required – Priority Project
  - ii. Action Required – Request for Information/Question
  - iii. Reporting – Test Results
3. The Railroad may require removal or consider abandon in-place of the existing Facilities upon review of the testing results.

### B. Removal

1. At the time of abandonment, Facilities within Zone B shall be removed at the cost of the owner. See Figure 2-1 for Zone identification.
2. The following additional Zone requirements apply.
  - i. Zone A – Designed shoring systems are required per Section 3. Track & ground monitoring is required per Section 2.
  - ii. Zone B – Sloped or stepped excavations are acceptable.

### C. Abandon in-place

1. The Facility shall be filled with CLSM (Controlled Low-Strength Material). This process is designed to help avoid future subsidence as the line deteriorates after abandonment. The use of low strength CLSM also allows the future removal of CLSM at a later date if deemed necessary.
2. CLSM Design
  - i. The CLSM material shall have an unconfined compressive strength 300psi. This provides strength while allowing future removal if necessary.
  - ii. The mixture shall consist of water, Portland cement, fly ash, and sound fine or coarse aggregate or both.
  - iii. The mix design shall allow adequate flowability without segregation of aggregates.
  - iv. Hardening time is of prime importance and CLSM should develop 50psi in about one hour.
  - v. The maximum layer of thickness for CLSM shall be 3 feet.
  - vi. Additional layers shall not be placed until the CLSM has lost sufficient moisture.
  - vii. For pipelines or structures with a depth greater than 3 feet, CLSM shall be placed in lifts.
  - viii. Contractor should verify no voids will be present after filling the structure.

- ix. Access to fill pipelines shall be from off the UPRR right-of-way if possible. If excavation is required for the fill procedure, excavations shall meet requirements in Section 3.

## 2. Track and Ground Monitoring

### A. General track and ground monitoring requirements

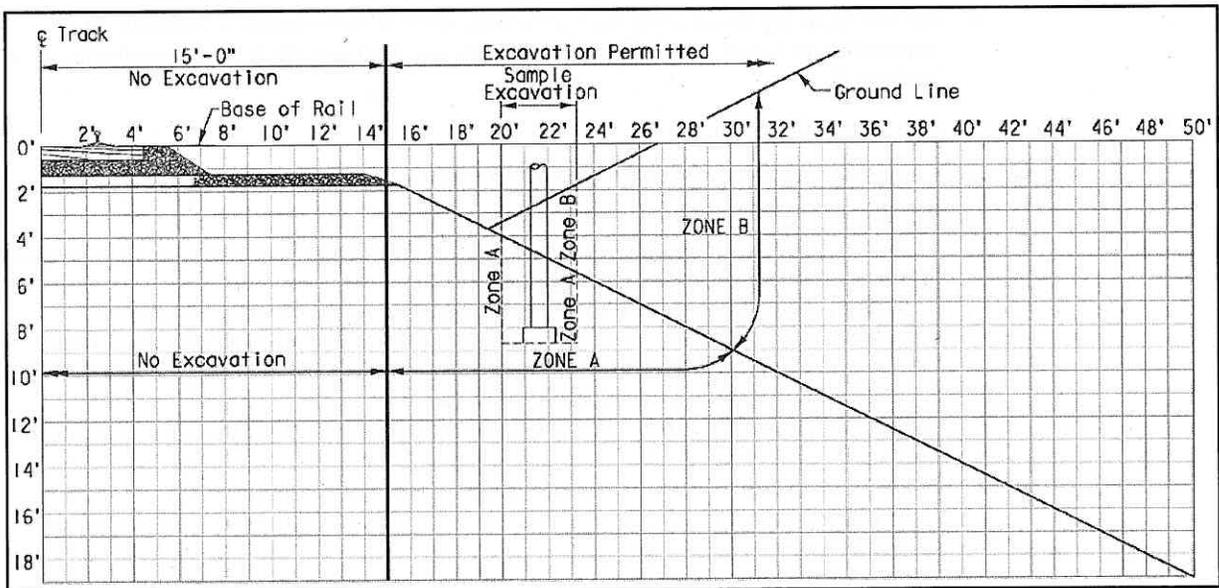
1. General requirement
  - i. Temporary lighting may also be required by the Railroad to identify tripping hazards to train crewmen and other Railroad personnel.
  - ii. Any excavation, holes or trenches on the Railroad property shall be covered, guarded and/or protected. Handrails, fence, or other barrier methods must meet OSHA and FRA requirements.
2. Track and ground monitoring are required as follows:
  - i. For crossings with pipe diameter and depth (below base of rail) as shown below in Table 2-1.
  - ii. For shoring within Zone A of any track, as shown below in Figure 2-1.
  - iii. Additional monitoring may be required by the Railroad on a case by case basis.
3. Monitoring schedule
  - i. Monitoring shall commence once any construction activity is within Zone A. See Figure 2-1.
  - ii. Monitoring shall continue, after installation is complete, for 7 days or as required by the Railroad.
    - a. For large and/or shallow pipeline installations monitoring may be required for up to 30 days.

Depth, feet (below base of rail)	<=6	<=12	<=18	<=24	<=30	<=36	<=42	<=48	<=54	<=60	>60
<=5	X	X	X	X	X	X	X	X	X	X	X
<=10	X	X	X	X	X	X	X	X	X	X	X
<=15	X	X	X	X	X	X	X	X	X	X	X
<=20				X	X	X	X	X	X	X	X
<=25					X	X	X	X	X	X	X
<=30								X	X	X	X
>30									X	X	X

X = Monitoring is required

**Table 2-1**

**Figure 2-1**



## B. Track Monitoring

### 1. Track Deflection Limits

- i. The top of rail shall not permanently deflect more than  $\frac{1}{4}$  inch vertical or horizontal.

### 2. Targets

- i. Track monitoring shall not require track access other than to place the track monitoring targets.
- ii. Monitoring targets should be placed such that monitoring is possible when a train is present. However, monitoring during the passing of a train is not required as the train will temporarily deflect the track.
- iii. Adhesive backed reflective targets may be attached to the side of the rail temporarily. Targets should be removed once monitoring phase is complete.

### 3. Monitoring Plan

- i. If the top of rail does deflect more than  $\frac{1}{4}$  inch, all operations shall stop until the matter is resolved.
- ii. Provide established contingency plan, See Section 2.D, in the event of ground loss and/or the rail deviates  $\frac{1}{4}$  inch vertical or horizontal.
- iii. Establish a bench mark in the vicinity of the construction. Establish locations for shooting elevations on the top of rail at each area of construction.
  - a. Example locations for shooting rail elevations would be at:
    - At the centerline of an under track crossing.
    - At both outside edges of the crossing. ie. For a wide excavation.
    - At multiple locations from the crossing/excavation edge but no less than 10, 20, 30, 40 and 50 feet from the crossing.
- iv. Monitoring shall be continuous and recorded in a field log book dedicated for this purpose. Copies of these field log entries can be made available to all concerned parties upon request at any time during construction.

## C. Ground Monitoring

1. Provide means for monitoring ground settlement. Submit monitoring plan for Railroad review.
2. Ground monitoring points should be in alignment above the proposed construction activities.

## D. Contingency Plans

1. The Contractor shall supply Contingency Plan(s), which anticipate reaching the Threshold and Shutdown values, for all construction activities which may result in horizontal and/or vertical track deflection.
  - i. Track monitoring values:
    - a. Threshold value = 1/8 inch permanent vertical or horizontal deflection
    - b. Shutdown value = 1/4 inch permanent vertical or horizontal deflection
2. The Contingency Plans shall provide means and methods, with options if necessary.
3. The Contractor should anticipate the need to implement each Contingency Plan with required materials, equipment and personnel.
  - i. Once the Threshold value is met, the contractor shall determine the appropriate Contingency Plan(s) and immediately discuss this plan with, and receive approval confirmation from, the Railroad.
  - ii. Once the Shutdown value is exceeded all project work shall stop and the chosen Contingency Plan shall commence.
    - a. The Railroad may choose to allow and/or require the immediate implementation of specific approved Contingency Plans, submitted by the Contractor, once the Shutdown value is exceeded.

### **3. Excavation Requirements**

#### **A. Shoring Design**

1. For temporary earth retention design requirements on the Right-of-Way, see the Guidelines for Temporary Shoring.  
[http://www.up.com/real\\_estate/roadxing/industry/index.htm](http://www.up.com/real_estate/roadxing/industry/index.htm)

#### **B. Excavation Safety**

1. Guardrails
  - i. Guardrails shall be provided to surround unattended excavations on Railroad Right-of-Way per OSHA Standard Number 1926.502 as follows:
    - a. The guardrail height shall be at least 42 inches above the walking surface.
    - b. The smallest dimension for openings in the guardrail shall be no greater than 19 inches.
    - c. Guardrail systems shall be capable of withstanding, without failure, a force of at least 200 pounds applied within 2 inches of the top edge, in any outward or downward direction, at any point along the top edge of the guardrail.

**EXHIBIT C**  
**Folder # 3131-42**  
**CERTIFICATION OF REMOVAL OF FACILITIES**

**CITY OF MORGAN HILL**  
**DAVID GITTLESON**  
**17575 PEAK AVENUE**  
**MORGAN HILL, CA 95037**

RE: Removal of 18 inch sanitary sewer pipe in a 36 inch steel casing pipeline crossing (undocumented).

**CITY OF MORGAN HILL** herein referred as "City", certifies that the facilities have been removed and that the utility crossing, including any appurtenances thereto, are no longer physically present on the subject property or have been abandoned in place per prior approval of Licensor. Certification is hereby made with the execution of this letter by an authorized corporate officer.

If at any time it is subsequently determined that the subject crossing has not actually been removed from the property or abandoned as set out by the Licensor, the Licensor shall thereafter have the option, in its sole discretion, of entering into a new agreement with a one-time fee.

Agreed and certified this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

**CITY OF MORGAN HILL**

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

Acknowledged:

**UNION PACIFIC RAILROAD**

BY: \_\_\_\_\_  
Manager – Real Estate

**EXHIBIT D**  
**TO**  
**MAINTENANCE CONSENT LETTER**

PL X&E ROE 940201  
Form Approved, AVP-Law  
08/25/2006

Folder No. 03131-42

**CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

THIS AGREEMENT is made and entered into as of the \_\_\_\_\_ by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, ("Railroad") and \_\_\_\_\_, ("Contractor"), to be addressed at \_\_\_\_\_.

**RECITALS:**

The Contractor has been hired by **City Of Morgan Hill** to abandon in place an existing 18 inch DIP sanitary sewer pipe encased in a 26 inch Steel pipe (undocumented) (the "work"), with all or a portion of such work to be performed on property of Railroad at Mile Post 68.76, on the Coast Subdivision at or near MORGAN HILL, Santa Clara County, California pursuant to a Consent Letter between Railroad and City Of Morgan Hill dated 5/23/2019 at such location as shown on the print marked **Exhibit A** attached hereto and hereby made a part hereof.

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

**AGREEMENT:**

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

**Article I. DEFINITION OF CONTRACTOR.**

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

**Article II. 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 any work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named

in Article IV, and is strictly limited to the scope of work identified to the Railroad, as determined by the Railroad in its sole discretion, and for no other purpose.

**Article III. TERMS AND CONDITIONS CONTAINED IN EXHIBITS B AND C.**

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

**Article IV. 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 representatives or his or her duly authorized representative (the "Railroad Representative"):

<u>UP.info@railpros.com</u> (877)-315-0513 x. 116	Maikel I. Younan Manager Signal Maintenance Work Phone: (402-216-2342 Email: <u>miyounan@up.com</u>
--	--

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 V. TERM; TERMINATION.**

A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and **continue for one (1) year from 5/23/2019**, unless sooner terminated as herein provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.

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

**Article VI. CERTIFICATE OF INSURANCE.**

A. Only upon request Contractor will provide Railroad with the insurance binders, policies, certificates and/or endorsements set forth in **Exhibit C** of this Agreement.

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

Folder No: 03131-42  
Union Pacific Railroad Company  
1400 Douglas Street STOP 1690  
Omaha, Nebraska 68179-1690

**Article VII. CHOICE OF FORUM.**

Litigation arising out of or connected with this Agreement may be instituted and maintained in the courts of the State of California only, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation, in those courts, and consent to service of process issued by such courts.

**Article VIII. DISMISSAL OF CONTRACTOR'S EMPLOYEE.**

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

**Article IX. ADMINISTRATIVE FEE.**

Upon the execution and delivery of this Agreement, Contractor shall pay to Railroad **One Thousand Dollars (\$1,000.00)** as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

**Article X. CROSSINGS.**

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

**Article XI. EXPLOSIVES.**

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

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

**UNION PACIFIC RAILROAD COMPANY**

By: \_\_\_\_\_  
Valerie Harrill  
Mgr II Real Estate Contracts

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

By \_\_\_\_\_

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

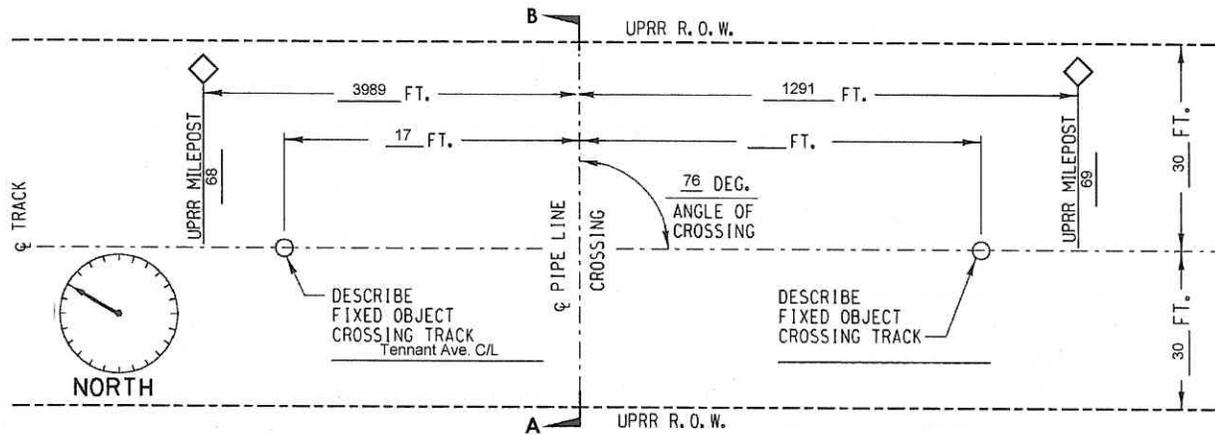
Title: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

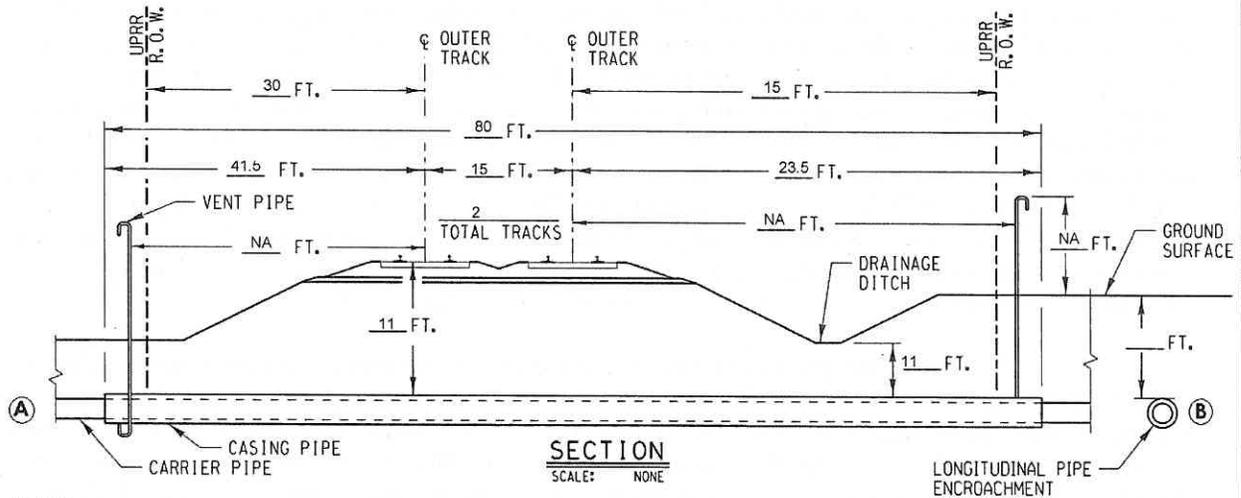
# NON-FLAMMABLE LIQUID PIPELINE

- CROSSING
- ENCROACHMENT
- BOTH



**PLAN**

SCALE: NONE



**SECTION**

SCALE: NONE

- NOTES:  
 1) ALL DIMENSIONS MEASURED PERPENDICULAR TO THE CENTERLINE OF TRACK  
 2) REFER TO AREMA VOLUME 1, CHAPTER 1, PART 5, SECTION 5.1

- A) METHOD OF INSTALLATION Existing Pipe: To Be Abandoned
- B) DIST. FROM CENTERLINE OF TRACK TO PIPE ENCROACHMENT \_\_\_\_\_
- C) SIGNS PROVIDED? SIGNS WILL NOT BE PROVIDED
- D) CARRIER MATERIAL DIP. IF RCP, CLASS V? NA.  
 COMMODITY TO BE CONVEYED SANITARY SEWER.  
 OPERATIONAL PRESSURE 0 PSI. MAOP 0 PSI.  
 WALL THICKNESS (INCH)/ SCHEDULE 0.32. DIAMETER 18 IN.  
 CATHODIC/COATING PROTECTION NO
- E) CASING MATERIAL STEEL PIPE. IF RCP, CLASS V? NA.  
 TOTAL LENGTH CASING PIPE: 80 FT.  
 WALL THICKNESS 0.25 IN. DIAMETER 36 IN.  
 CATHODIC/COATING PROTECTION NO  
 CASING PIPE IS OPEN AT THE ENDS.
- F) DISTANCE FROM CENTERLINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES 50 AND 26.



**BUILDING AMERICA®**

**EXHIBIT "A"**

SUBDIVISION: <u>Coast Sub.</u>	
TRACK TYPE: <u>MAINLINE</u>	
M.P.: <u>68.76</u>	LAT.: <u>37.115531</u>
E.S.M.: <u>1139+62</u>	LONG.: <u>-121.636077</u>
NEAREST CITY: <u>MORGAN HILL</u>	COUNTY: <u>SANTA CLARA</u> STATE: <u>CA</u>
APPLICANT: <u>CITY OF MORGAN HILL</u>	
FILE NO.: <u>0313142</u>	DATE: <u>04/23/2019</u>

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

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

A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least ten (10) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such ten (10)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

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

C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in

compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

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

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

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

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

A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.

B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

**Section 4. LIENS.**

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

**Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.**

A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.

B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

**Section 6. PERMITS - COMPLIANCE WITH LAWS.**

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

**Section 7. SAFETY.**

A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by 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 then current safety standards located at the following link UP Safety Standards 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 each of its employees before they enter the job site.

B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.

C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.

D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

**Section 8. INDEMNITY.**

A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees ("Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this agreement by Contractor.

B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.

C. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify Railroad under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.

D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against Railroad.

E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

**Section 9. RESTORATION OF PROPERTY.**

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

**Section 10. WAIVER OF DEFAULT.**

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

**Section 11. MODIFICATION - ENTIRE AGREEMENT.**

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

**Section 12. ASSIGNMENT - SUBCONTRACTING.**

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors, and shall require all subcontractors to maintain the insurance coverage required to be maintained by Contractor as provided in this Agreement, and to indemnify Contractor and Railroad to the same extent as Railroad is indemnified by Contractor under this Agreement.

**Union Pacific Railroad Company**  
**Insurance Provisions For**  
**Contractor's Right of Entry Agreement**  
**EXHIBIT C**

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

- A. **Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than \$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 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$2,000,000 for each accident.

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 substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.

Motor Carrier Act Endorsement – Hazardous materials clean up (MCS-90) if required by law.

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

Contractor's statutory liability under the workers' compensation laws of the state(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 excel workers compensation coverage must be provided. Coverage must include liability arising out of the U.S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

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

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

- D. **Railroad Protective Liability** insurance. Contractor must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.
- E. **Umbrella or Excess insurance**. If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.
- F. **Pollution Liability** insurance. Pollution Liability coverage must be included when the scope of the work as defined in the Agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

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

#### **Other Requirements**

- G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.

- J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.
- L. The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

## **Appendix C**

### **Tunnelman's Ground Classification Information**

City Project No. 302T17  
Tennant Avenue Sewer Main Project  
June 2019

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