STAFF REPORT

TOWN COUNCIL MEETING OF FEBRUARY 14, 2017

CONSENT AGENDA

To: Town Council

From: Public Works Director

Subject: Lease Agreement for a Civic Signboard with Union Pacific Railroad Company

Date: February 14, 2017

RECOMMENDATION
Adopt resolution to execute a Lease Agreement with Union Pacific Railroad Company for a Civic Signboard.

DISCUSSION:
The Town Council directed the Town Manager to pursue an agreement with Union Pacific Rail Road to place an entry sign at the corner of Taylor Road and Sierra College Boulevard.

Staff prepared a design for an entry sign that would meet the needs of the Town, current Building Codes, Union Pacific Design Standards and the Loomis Basin Chamber of Commerce.

Staff then negotiated with Union Pacific for the location and placement of the sign. Ultimately drafting an agreement that is acceptable to both Union Pacific and Town Staff. The agreement has been reviewed by the Town attorney. That portion of the agreement dealing with insurance has also been reviewed by SCORE (Small Cities Organized Rick Effort).

CEQA
There are no CEQA issues involved with this lease agreement. CEQA clearance for placement of the sign will be pursued when the sign is ready to be constructed.

FINANCIAL IMPLICATIONS
The cost of the lease is $250.00 per year renewable each year.

TOWN OF LOOMIS

RESOLUTION NO. 17 - __

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOOMIS APPROVING A LEASE WITH UNIION PACIFIC RAILROAD FOR PROPERTY AT THE CORNER OF TAYLOR ROAD AND SIERRA COLLEGE BOULEVARD FOR A CIVIC SIGNBOARD

WHEREAS, the TOWN COUNCIL desired to place a Entry Sign at the corner of Taylor Road and Sierra College Boulevard; and

WHEREAS, the property the sign is to be placed on is currently owned by Union Pacific Railroad; and

WHEREAS, the TOWN COUNCIL directed the Town Manager to pursue an agreement with Union Pacific Railroad to place an entry signage at the corner of Taylor Road and Sierra College Boulevard; and

WHEREAS, the TOWN Staff negotiated an agreement that is acceptable to Union Pacific Railroad and Town Staff and is attached as Exhibit A hereto; and

NOW, THEREFORE, IT IS HEREBY RESOLVED that the Town of Loomis hereby authorizes the Town Manager to execute a Lease of Railroad Property at Loomis, California, for a Civic Signboard

PASSED AND ADOPTED by the Council of the Town of Loomis this 14th day of February, 2017 by the following vote:

AYES:
NOES:
ABSTAINED:
ABSENT:

_____
Mayor

ATTEST:

_____
Town Clerk

SIGNBOARD 930618
Form Approved, AVP-Law

Folder: 3010-54

LEASE OF RAILROAD

PROPERTY AT LOOMIS, CALIFORNIA, FOR A CIVIC SIGNBOARD

This Agreement made and entered into this _____day of _____, 20__, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179 (hereinafter "Lessor"), and **TOWN OF LOOMIS**, a California municipal corporation or political subdivision, to be addressed at 3665 Taylor Rd, Loomis, California, 95650 (hereinafter "Lessee").

Article 1. PREMISES; LOCATION; USE.

A. Lessor, for and in consideration of the rental to be paid and the covenants and conditions to be performed by Lessee as hereinafter provided, does hereby lease and let unto Lessee, for the period and subject to the terms and conditions herein stated, that portion of the premises of Lessor (hereinafter "Premises"), at or near Loomis, Placer County, California on the Roseville Subdivision at Mile Post 112.90, as described in Article 4 below. The Premises leased under this agreement (hereinafter "Lease") may be used by Lessee for the placement and operation of a Civic Signboard with a 14'x10' sign, 4'-6' high piers, and a concrete foundation (hereinafter "Signboard"), which is described in Article 4 below, and for other purposes incidental to the use and operation of the Signboard, but shall not be used for any other purposes unless Lessee has received the prior written consent of Lessor. The Signboard and any improvements associated therewith that are placed upon the Premises by Lessee shall not become a part of the realty and shall always remain the personal property of Lessee, except as set forth in Section 16 of Exhibit "A" attached hereto.

B. The grant of right herein made to Lessee is subject to each and all of the terms, provisions, conditions, limitation and covenants set forth in these Articles of Agreement and in Exhibit "A", hereto attached and hereby made a part of this Lease.

Article 2. TERM.

A. The term of this Lease is for the period of one year, commencing on_____, 2017 (hereinafter the "effective date"), unless sooner terminated with or without cause as hereinafter provided.

B. Thereafter, so long as neither party is in default, this Lease will renew itself without further documentation from year to year until terminated as provided herein. Each

renewal term will be upon the same terms and conditions set forth herein, including, without limitation, Lessor's right to reevaluate the rental as provided in Article 3 below.

Article 3. RENTAL; RENTAL REEVALUATION.

A. The Lessee covenants and agrees to pay to the Lessor as rental for the use of the Premises during the term of this Lease, or any extension or renewal thereof, rental of thereof, rental of **TWO HUNDRED FIFTY DOLLARS ($250.00)** per annum payable annually in advance during the term of this Lease, subject to re-evaluation as provided in Paragraph B below. The rental is due and payable on the effective date every year during the term of this Lease.

B. The Lessor may re-evaluate the rental base upon which the above rental is computed every five (5) years on the effective date of this Lease. In the event the Lessor shall determine that the rental paid is no longer representative of the fair market rental, the Lessor may adjust the rental and shall advise the Lessee by written notice of such change. Such written notice shall be served at least thirty (30) days prior to the effective date of the new rental, it being understood, however, that the rental adjustments shall not be made more often than once every five (5) years.

C. All rental shall be paid in lawful money of the United States of America at the office of Union Pacific Railroad Company, Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179, or at such other place as Lessor shall designate.

D. In the event that the rental herein specified to be paid has not been received by Lessor within fifteen (15) days after the date that such rental payment is due, a finance charge of ten (10) percent of each unpaid rental payment shall be assessed against Lessee and interest, at the rate of thirteen (13) percent per annum, shall be assessed against the unpaid rental and shall accrue until such rental payments are current and all interest payments and finance charges have been paid.

E. If requested by Lessor, the Lessee agrees to promptly submit to the Lessor a copy of Lessee's contracts (or at Lessor's option, summaries thereof) which pertain to the display of advertising on the Premises and which show the true consideration charged by the Lessee for the display of advertising on the Premises.

Article 4. DESCRIPTION OF SIGNBOARD AND PREMISES.

A. The Premises are to be used only for a Civic Signboard which has no more than two 14' X 10' sign faces.

B. Prior to commencing work to rebuild or substantially modify the Signboard, Lessee shall submit to Lessor structural plans showing the proposed work and bearing a registered professional engineer's stamp, and Lessee shall comply with Article 7. Lessee shall

not reduce any horizontal or vertical clearances between the track and Signboard without Lessor's prior written approval.

C. The Premises consists of the ground space occupied by the Signboard's pole and footing and the airspace occupied by the remainder of the Signboard.

D. The Signboard is located along the South side of the Railroad right of way on the Roseville Subdivision at Mile Post 112.90 approximately 20' from Taylor Rd., at the intersection of Taylor Rd and Sierra College Blvd., at the Sierra College Blvd. at-grade road crossing DOT 750573C as shown and described on the Exhibit "A-1" Survey Print attached hereto.

Article 5. ELECTRICAL SERVICE TO SIGNBOARD.

A. If Electricity will be supplied to the Signboard, Electricity for the Signboard shall be obtained by Lessee from a third party private or publicly owned and operated utility. The electricity supply line to the Signboard shall be metered and installed at the sole expense and cost of Lessee. Billing by the third party for electricity supplied to the Signboard shall be made directly to the account of Lessee. Lessee shall be solely responsible for paying for all electricity supplied to the Signboard.

B. Lessee shall secure the written permission of Lessor, through a separate written application made to Lessor's Real Estate Department via its online utilities application at http://www.up.com/real_estate/utilities/index.htm or the then current utilities application, prior to the installation by Lessee or any third party of any electricity supply line that:

1) requires the installation of a pole on railroad right of way; or
2) is installed underground on any portion of railroad right of way; or
3) crosses any railroad track; or
4) crosses any overhead railroad signal/communication line; or
5) has a voltage greater than 240 volts.

Article 6. INSURANCE.

A. Lessee shall, at its sole cost and expense, procure and maintain during the life of this Lease the following insurance coverage:

1) General Liability insurance providing bodily injury including death, personal injury and property damage coverage with a combined single limit of at least $2,000,000 each occurrence or claim and an aggregate limit of at least $4,000,000. This insurance shall contain broad form contractual liability. Exclusions for railroads (except where the Premises is more than fifty feet (50') from any railroad tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed. Coverage purchased on a claims made form shall provide for at least a two (2) year extended reporting or discovery period if (a) the coverage changes from a claims made form to an occurrence form, (b)

there is a lapse/cancellation of coverage, or (c) the succeeding claims made policy retroactive date is different for the expiring policy.

2) Automobile Liability insurance providing bodily injury and property damage coverage with a combined single limit of at least $1,000,000 each occurrence or claim. This insurance shall cover all motor vehicles including hired and non-owned, and mobile equipment if excluded from coverage under the general public liability insurance.

3) Workers' Compensation insurance covering Lessee's statutory liability under the workers' compensation laws of the state(s) affected by this Lease, and Employers' Liability. If such insurance will not cover the liability of Lessee in states that require participation in state workers' compensation fund, Licensee shall comply with the laws of such states. If Lessee is self-insured, evidence of state approval must be provided.

B. Lessee and its insurers shall endorse the required insurance policy(ies) to waive their right of subrogation against Lessor. Lessee and its insurers also waive their right of subrogation against Lessor for loss of its owned or leased property or property under its care, custody and control. Lessee's insurance shall be primary with respect to any insurance carried by Lessor. The policy(ies) required under (a) and b) above shall provide severability of interests and shall name Lessor as an additional insured.

C. Lessee shall furnish to Lessor certificate(s) of insurance evidencing the required coverage and endorsements and upon request, a certified duplicate original of any required policy. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Lessor in writing of any material alteration including any change in the retroactive date in any "claims-made" policies or substantial reduction of aggregate limits, if such limits apply, or any cancellation at least thirty (30) days prior thereto.

D. The insurance policy(ies) shall be written by a reputable insurance company(ies) acceptable to Licensor or with a current Best's Insurance Guide Rating of B and Class VII or better, and authorized to do business in the state(s) in which the Premises is located.

E. Lessee WARRANTS that this Lease has been thoroughly reviewed by Lessee's insurance agent(s)/broker(s), who have been instructed by Lessee to procure the insurance coverage required by this Lease.

F. If Lessee fails to procure and maintain insurance as required, Lessor may elect to do so at the cost of Lessee.

G. The fact that insurance is obtained by Lessee shall not be deemed to release or diminish the liability of Lessee, including, without limitation, liability under the indemnity provisions of this Lease. Damages recoverable by Lessor shall not be limited by the amount of the required insurance coverage.

Article 7. <u>SPECIAL PROVISION: CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE</u>

A. Prior to Contractor performing any work within the Premises and any subsequent maintenance and repair work, the Lessee shall require the Contractor to:

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

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

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

Senior Manager – Special & Public Projects
Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, Mail Stop 1690
Omaha, NE 68179-1690
UP File Folder No. 3010-54

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

SIGNBOARD 930618
Form Approved, AVP-Law

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first herein written.

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

By: _____
DAVID C. LAPLANTE
Senior Manager-Real Estate

TOWN OF LOOMIS

By: _____

Printed name _____

Title: _____

EXHIBIT A

Terms and Conditions Covering the
Construction, Maintenance and Use of
the Signboard and the Use of the Premises

Section 1. NOTIFICATION OF SUPERINTENDENT PRIOR TO ENTRY; LESSEE TO USE PREMISES IN A SAFE MANNER.

A. Lessee shall notify Lessor's Superintendent of Transportation Services at least 48 hours in advance of each entry by Lessee upon the Premises. If Lessee's entry will result in any person, vehicle, equipment (including, without limitation, an extended crane boom), or other property being within 25 feet of any railroad track, Lessee shall notify the Superintendent and inquire whether the Superintendent will require Lessee to have a flagman present or implement other special protective or safety measures. Lessee shall be required to have a flagman present for any entry by Lessee upon the Premises where the Signboard overhangs any railroad track, and to take such other protective or special measures as may be required by the Superintendent for such entry. The required flagman and other special protective or safety measures in all events shall be provided at Lessee's expense. Lessor's imposition or failure to impose protective or safety measures, or its provision of such service, shall not in any way diminish Lessee's obligations or liabilities under this Lease.

B. The Lessee shall enter and use the Premises only in such a manner which does not interfere with Lessor's train operations or other business activities and which does not result in an unsafe circumstance. If Lessee needs to cross any tracks of Lessor with its equipment, it shall do so only at existing open public road crossings.

Section 2. PROTECTION OF FIBER OPTICS CABLE.

A. Fiber optic cable systems may be buried on or in proximity to the Premises. Lessee shall telephone the Lessor at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on or in proximity to the Premises. If cable is buried on or in the proximity of the Premises, Lessee shall telephone the telecommunications company(ies) involved, arrange for location of the cable, make arrangements for relocation or other protection of the cable and shall commence no work on or excavation of the Premises or land in proximity to the Premises until all such protection or relocation has been accomplished.

B. In addition to the liability terms elsewhere in this Lease, the Lessee shall indemnify and hold the Lessor harmless from and against all cost, loss, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising

out of or in any way contributed to by any act or omission of the Lessee, its contractor, agents and/or employees, that causes or in any way or degree contributed to (a) any damage to or destruction of any telecommunications system by the Lessee, and/or its contractor, agents and/or employees, on Lessor's property, (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 Lessor's property, and/or its contractor, agents and/or employees, on Lessor's property, and/or (c) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of, such telecommunication company(ies).

Section 3. LESSEE TO BEAR ALL EXPENSES.

All work of placing, erecting, operating, maintaining, repairing and removing the Signboard (or any other improvement associated with the Signboard), and any other work associated with the Signboard or improvement, shall be performed at Lessee's sole cost and expense.

Section 4. ALTERATION AND EXCAVATION OF THE PREMISES AND OTHER PROPERTY OF LESSOR.

A. Prior to commencing any work of erecting the Signboard, the Lessee shall take all precautions to determine the existence and exact location of and to not damage any existing underground equipment, utility or communication lines or other facilities that are located on or in proximity to the Premises. The Lessee shall be responsible in contacting any and all utility companies or other entities to determine the exact location of any underground equipment, utilities, communication lines or other facilities before commencing any work on or in proximity to the Premises. The Lessee shall not rely upon any map or information supplied by Lessor in determining the exact location of or existence or non-existence of any underground utilities, communication lines, equipment or other facilities.

B. The Lessee shall not alter or prepare the Premises, and other land which is owned or controlled by the Lessor and located in proximity to the Premises, without first obtaining the written consent of the Lessor. The Lessee is authorized during the term of this Lease to excavate the Premises as necessary for the Signboard's footings and to cut volunteer (not planted) vegetation on and in proximity to the Premises as necessary to promote the visibility of the Signboard's faces. All vegetation cut by Lessee shall be totally removed by the Lessee from Lessor's right-of-way. Excavated ground shall be either removed from the Lessor's right-of-way or spread out in the vicinity of the Premises in such a manner which does not impair any water course or drainage, roadway, or Lessor's use of the land. All excavation, alteration or other work involved in erecting the Signboard shall be to the satisfaction of the Lessor.

Section 5. PRIOR RIGHTS.

A. This Lease is made without covenant of title or to give possession or for quiet enjoyment.

B. This Lease is made subject to all outstanding superior rights, including, but not limited to, underground facilities, rights-of-way for highways and for power, fiber optics and other communication lines and facilities, and the right of the Lessor to renew such outstanding rights, to renew the term thereof and to grant such new or additional rights, licenses or easements unto others as the Lessor in its sole discretion should deem necessary, convenient or appropriate. In the Lessee's use and occupancy of the Premises, the Lessee shall not disturb, damage or interfere with any such facilities of the Lessor or nonparties.

Section 6. RESTRICTIONS ON DISPLAY OF ADVERTISING.

Advertisements of a character which the Lessor, in its sole discretion deems objectionable or which it deems in its sole discretion detrimental to Lessor's business activities shall not be displayed on the Premises.

Section 7. CARE AND USE OF PREMISES; APPEARANCE AND MAINTENANCE OF SIGNBOARD AND PREMISES.

A. In the Lessee's use and occupancy of the Premises, the Lessee shall not cause any damage or destruction of the Premises or other property in proximity to the Premises by fire or otherwise. The Lessee shall not do, tolerate or permit anything which increases the hazard of fire. The Lessee shall not commit, tolerate or permit waste of or injury to the Premises or other property in proximity to the Premises and shall not use or permit the use of the Premises for any unlawful purpose nor create or maintain thereon any nuisance or any offensive object, matter or thing. The Lessee, at Lessee's expense, shall at all times keep the Premises in a safe, neat, clean and presentable condition.

B. The Lessee, at its sole cost and expense, shall be responsible in maintaining a clean and presentable Signboard and display including, but not limited to, the obligations of frequently painting and cleaning the Signboard's structure, cutting vegetation and removing litter in the immediate vicinity of the Signboard, controlling bird roosting, removing bird waste, and keeping the Signboard's advertising copy current and in good condition at all times.

C. In the event the Signboard or any other improvement associated therewith not belonging to the Lessor on the Premises is damaged or destroyed by fire, storm, or other casualty, the Lessee shall, within thirty days after such happening, remove all debris and rubbish resulting therefrom; and if Lessee fails to do so, the Lessor may enter the Premises and remove such debris, and the Lessee agrees to reimburse the Lessor, within thirty days after bill rendered, for all expenses incurred in such cleanup. However, any impairment of the tracks shall be corrected immediately by the Lessee.

D. In the Lessee's use of the Signboard and its occupancy and use of the Premises, the Lessee, at Lessee's expense, shall conform and comply with all applicable laws, ordinances and public regulations now or hereafter in effect, and hold harmless the Lessor from any failure so to do and from any fines, penalties, forfeitures or judgments resulting from Lessee's failure to conform and comply with all such laws, ordinances and public regulations.

Section 8. TAXES AND ASSESSMENTS.

The Lessee further agrees to pay, before the same shall become delinquent, all taxes levied during the life of this Lease upon the Signboard or any improvement associated therewith, or to reimburse the Lessor, either directly or as an amount included in Lessee's rental payment for sums paid by the Lessor for such taxes.

Section 9. HAZARDOUS SUBSTANCES AND WASTES.

A. Lessee shall comply with all federal, state and local environmental laws and regulations in its use of the Premises and its use, maintenance and repair of the Signboard, including the Resource Conservation and Recovery Act, as amended (RCRA) and the Comprehensive Environmental Response Compensation and Liability Act, as amended (CERCLA).

B. Lessee shall use its best efforts and safety practices to prevent the release on or in proximity to the Premises of any paint, solvent, oil or adhesive, or any other hazardous substance or waste as defined in CERCLA. Notwithstanding, Lessee assumes all responsibility for the investigation and cleanup of any such release and shall indemnify and defend the Lessor, its officers, agents and employees, for all costs, including environmental consultant and attorney fees, and claims resulting from or associated with any such release. This provision shall continue in full force and effect regardless of whether this Lease is terminated pursuant to any other provision, or the Premises are abandoned and vacated by the Lessee.

Section 10. LIENS.

The Lessee shall pay, when due and before any lien shall attach to the Premises, if the same may lawfully be asserted, all charges for electrical power furnished; and fully pay for all materials joined or affixed to the Premises, pay for all taxes and assessments, and pay in full all persons who perform labor upon the Premises, and shall not permit or suffer any mechanic's or materialman's or other lien of any kind or nature to be created or enforced against the Premises for any work done or materials furnished thereon at the instance or request or on behalf of the Lessee; and the Lessee agrees to indemnify, hold harmless, and defend, the Lessor and Lessor's property 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 or other things furnished.

Section 11. ASSUMPTION OF RISK, INDEMNIFICATION.

A. The Lessee accepts the Premises in its present condition and hereby assumes the risk of any injury to and death of persons and damage to or destruction of property resulting from the condition of or any defects anywhere in or upon the Premises, regardless of whether such condition or defects are known or unknown, apparent or latent, and regardless of whether such condition or defects exist at the commencement of this Lease or at some later time.

B. The Lessee's occupation of and activities on and in proximity to the Premises will expose the Lessor's property, operations and facilities to additional hazards; and as one of the material considerations for this Lease, the Lessee agrees to assume the risk of and to indemnify and hold harmless the Lessor as follows:

1. The Lessee agrees to assume the risk of and shall indemnify and hold harmless the Lessor, and its affilitates, their officers, agents, and employees, from and against any and all liability, loss, damage, claims, demands, costs, fines, penalties, and expenses of whatsoever nature, including court costs and attorney's fees, arising from or growing out of any injury to or death of persons whomsoever or destruction of, loss of, or damage to property whatsoever. This indemnification and assumption of risk shall accrue when such injury, death, destruction, loss, or damage occurs from any cause and in whole or in part is associated with, incidental to, or caused by:
    a. the presence of the Signboard, any Wireline serving the Signboard, any attachment to the Signboard, or any other property on or in proximity to the Premises that is associated with or incident to the Signboard or to the use and occupation of the Premises; or
    b. the use and occupation of the Premises by the Lessee, its affiliates, their officers, employees, or agents or by any other person or entity using or occupying the Premises by reason of any relation, contractual or otherwise, with the Lessee, its affiliates, their employees, officers, or agents; or
    c. any activity of the Lessee, its affiliates, employees, officers, or agents on or in proximity to the Premises or of any other person or entity on or in proximity to the Premises by reason of any relation, contractual or otherwise, with the Lessee, its employees, officers, or agents; or
    d. Lessee's breach of this Lease.

2. The Lessee agrees to assume the risk of and to indemnify and hold harmless the Lessor, and its affiliates, their officers, employees, and agents from and against any and all liability, loss, damage, claims, demands, costs, fines, penalties, and expenses of whatsoever nature, including court costs and attorney's fees, asserted by any person, including insurers and advertisers, for any and all destruction of, loss of, or damage to:
    a. the Signboard, any Wireline serving the Signboard, any attachment to the Signboard, and any other property on or in proximity to the Premises which is associated with or incidental to the Signboard or to the use and occupation of the Premises; and

b. the businesses of the Lessee and any displayer of advertising on the Premises.

C. The covenants for assumption of risk and indemnification set forth in Paragraphs A and B above shall accrue in all circumstances, including but not limited to circumstances when such injury, death, destruction, loss, or damage arises from, is caused by, is associated with, or is incidental to (in whole or in part) any activities or negligence of the Lessor, its affiliates, their officers, employees, or agents.

Section 12. NOTICE.

A. Any notice, demand, request, consent, approval or communication that either party hereto desires or is required to give to the other party under this Lease shall be in writing. Notice shall be deemed to have been given to the Lessee by serving the Lessee personally or by mailing the same, postage prepaid, to the Lessee at the last address known to the Lessor. Notice may be given to the Lessor by mailing the same, postage prepaid to the Real Estate Department, Union Pacific Railroad Company, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179-1690.

B. Postal notices shall be by certified mail, return receipt requested, and such notice shall be deemed given on the date deposited with the United States Postal Service.

Section 13. CONSENT.

Wherever the consent, approval, judgment or determination of Lessor is required or permitted under this Lease, Lessor shall exercise good faith and reasonable business judgment in granting or withholding such consent or approval or in making such judgment or determination and shall not unreasonably withhold or delay its consent, approval, judgment or determination.

Section 14. TERMINATION ON DEFAULT; REPOSSESSION OF PREMISES BY LESSOR.

A. It is further agreed that the breach of any covenant, stipulation or condition herein contained to be kept and performed by the Lessee, shall, at the option of the Lessor, forthwith work a termination of this Lease, and all rights of the Lessee hereunder; provided, however, that the Lessee shall not be deemed in default under this Lease unless the Lessor has furnished written notice to the Lessee of Lessee's default, and the Lessee has failed to begin to cure that default within seventy-two (72) hours after receipt of Lessor's default notice or after commencing a cure and has failed to proceed diligently with its cure efforts.

B. After a default by the Lessee, the Lessor may at once re-enter upon the Premises and repossess itself thereof and remove all persons and property therefrom or may resort to an action of forcible/unlawful entry and detainer, or any other action to recover the same. A waiver by the Lessor of the breach by the Lessee of any covenant or condition of this Lease shall not impair the right of the Lessor to avail itself of any subsequent breach thereof.

Section 15. TERMINATION ON NOTICE.

A. This Lease may be terminated by written notice given by either the Lessor or the Lessee to the other party on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date on which such notice shall be given.

B. Upon such termination and vacation of the Premises by the Lessee, the Lessor shall refund to the Lessee, on a pro rata basis, any unearned rental paid in advance.

Section 16. SURRENDER; ABANDONMENT; VACATION OF PREMISES; REMOVAL OF LESSEE'S PROPERTY.

A. The Lessee agrees that upon the expiration, abandonment of Premises by Lessee, or sooner termination of this Lease, the Lessee will peaceably and quietly surrender possession of the Premises to the Lessor, or the Lessor's successors and assigns, without Lessor giving any notice to quit or demand for possession. Lessee's non-use of the Premises for the purposes described in Article 1 of the Articles of Agreement of this Lease continuing for thirty (30) days shall be sufficient and conclusive evidence of such abandonment. No later than the expiration or termination date of this Lease, the Lessee shall (a) remove from the Premises and from areas in proximity to the Premises, at the expense of the Lessee, the Signboard and its supporting footing(s) and pole(s) and any other structures, property and other materials not belonging to the Lessor; and (b) restore the surface of the ground to as good a condition as the same was in before such Signboard and structures were erected, including, without limiting the generality of the foregoing, the removal of foundations of such structures, the filling in of all excavations and pits and the removal of all debris and rubbish, all of which shall be performed at Lessee's expense. If the Lessee should fail to perform such removal, the Lessor may perform the work and the Lessee shall reimburse the Lessor for the cost thereof within thirty (30) days after bill rendered.

B. In the case of the Lessee's failure to remove such Signboard, structures, property and other material, the same, at the option of the Lessor, shall upon the expiration of thirty (30) days after the termination of this Lease, become and thereafter remain the property of the Lessor; and if within one (1) year after the expiration of such thirty-day period the Lessor elects to and does remove, or cause to be removed, said Signboard, structures, property and other material and the market value thereof on removal does not equal the cost of such removal plus the cost of restoring the surface of the ground as aforesaid, then the Lessee shall reimburse the Lessor for the deficit within thirty (30) days after bill rendered.

Section 17. LESSEE NOT TO SUBLET OR ASSIGN.

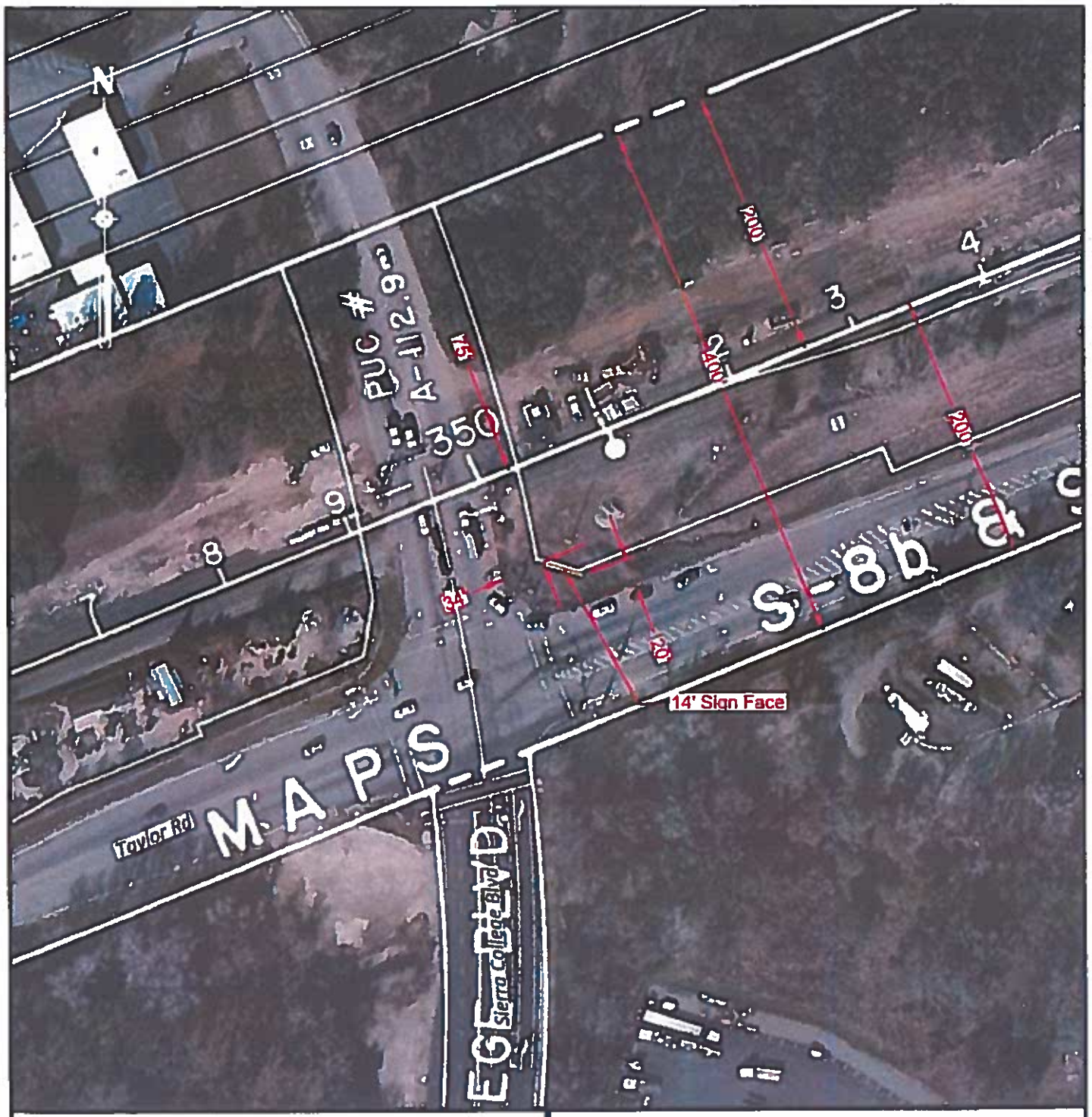
The Lessee agrees not to let to sublet the Premises, in whole or in part, or to assign this Lease without the consent in writing of the Lessor, and it is agreed that any transfer or assignment of this Lease, whether voluntary, by operation of law or otherwise, without such

consent in writing, shall be absolutely void and, at the option of the Lessor, shall terminate this Lease.

Section 18. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 17 hereof, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

EXHIBIT A-1
Survey Print



LEGEND:

SIGN BOARD .....

UPRRCO. R/W OUTLINED .....

CADD FILENAME	0301054.dgn
SCAN FILENAME	0301054_CAV1129A.tif

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

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

LOOMIS, PLACER COUNTY, CA

M.P. 112.90 - ROSEVILLE SUB

TO ACCOMPANY AGREEMENT WITH
CLEAR CHANNEL OUTDOOR
SP CA V-112 / 9A
SCALE: 1" = 100'

OFFICE OF REAL ESTATE
OMAHA, NEBRASKA DATE: 9/2/2016

AJM FILE: 3010-54

SIGNBOARD 930618
Form Approved, AVP-Law

EXHIBIT B
Contractor's Right of Entry

Folder No.: 3010-54
UPRR Audit No.:

CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ day of _____, 2016, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and

_____ (*Name of Contractor*)

a _____ corporation ("Contractor").

RECITALS:

Contractor has been hired by the Town of Loomis (Town) to construct a civic signboard in the vicinity between Mile Post 112.90 at the Sierra College Blvd. at-grade road crossing DOT 750573C on the Roseville Subdivision in or near Loomis, Placer County, California, as such location is in the general location shown on the Railroad Survey Print marked **Exhibit A**, attached hereto and hereby made a part hereof, which work is the subject of an agreement dated _____, between the Railroad and the Town.

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

AGREEMENT:

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

ARTICLE 1 - DEFINITION OF CONTRACTOR.

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

ARTICLE 2 - RIGHT GRANTED; PURPOSE.

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

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

The General Terms and Conditions contained in **Exhibit B**, the Insurance Requirements contained in **Exhibit C**, and the Minimum Safety Requirements contained in **Exhibit D**, each attached hereto, are hereby made a part of this Agreement.

ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.

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

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

Michael P. Upton
MGR TRACK MNTCE
1 SOUTH PYRAMID WAY
SPARKS, NV 89431
402/501-1237
mupton@up.com

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

ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.

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

ARTICLE 6 - TERM; TERMINATION.

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

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

ARTICLE 7 - CERTIFICATE OF INSURANCE.

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

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

Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, MS 1690
Omaha, NE 68179-1690
UPRR Folder No.: 3010-54

ARTICLE 8 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.

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

ARTICLE 9 - CROSSINGS.

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

ARTICLE 10 - CROSSINGS; COMPLIANCE WITH MUTCD AND FRA GUIDELINES.

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

B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications, negligence, or any other reason arising from the Contractor's presence on the Railroad's property, the Contractor agrees to assume liability for any civil penalties imposed upon the Railroad for such noncompliance.

ARTICLE 11 - EXPLOSIVES.

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

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

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

By:_____
DAVID C. LAPLANTE
Senior Mgr. Contracts

(Name of Contractor)

By_____

Printed Name:_____

Title:_____

LEGEND:

SIGN BOARD .....

UPRRCO. R/W OUTLINED .....

CADD FILENAME	0301054.dgn
SCAN FILENAME	0301054_CAV1129A.tif

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

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

LOOMIS, PLACER COUNTY, CA

M.P. 112.90 - ROSEVILLE SUB

TO ACCOMPANY AGREEMENT WITH
CLEAR CHANNEL OUTDOOR
SP CA V-112 / 9A
SCALE: 1" = 100'

OFFICE OF REAL ESTATE
OMAHA, NEBRASKA DATE: 9/2/2016

AJM FILE: 3010-54

EXHIBIT B

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

GENERAL TERMS & CONDITIONS

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

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

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

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

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

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

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

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

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

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

Section 4. LIENS.

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

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

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

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

Section 6. PERMITS - COMPLIANCE WITH LAWS.

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

Section 7. SAFETY.

A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in

Exhibit D, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of Exhibit D to each of its employees before they enter the job site.

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

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

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

Section 8. INDEMNITY.

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

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

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

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

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

Section 9. RESTORATION OF PROPERTY.

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

Section 10. WAIVER OF DEFAULT.

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

Section 11. MODIFICATION - ENTIRE AGREEMENT.

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

Section 12. ASSIGNMENT - SUBCONTRACTING.

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

EXHIBIT C

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

INSURANCE REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

D. **RAILROAD PROTECTIVE LIABILITY INSURANCE**. Contractor must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than $2,000,000 per occurrence and an aggregate of $6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.

E. **UMBRELLA OR EXCESS INSURANCE**. If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

F. **POLLUTION LIABILITY INSURANCE**. Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least

$5,000,000 per occurrence and an aggregate limit of $10,000,000.

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

OTHER REQUIREMENTS

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

H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.

I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.

J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.

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

EXHIBIT D

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

MINIMUM SAFETY REQUIREMENTS

Please see link to current Minimum Safety Requirements at www.up.com

Minimum Safety Requirements; http://www.up.com/suppliers/contractor-safety/index.htm