

# **INFORMATION HANDOUT**

**For Contract No. 07-4Y8504  
At 07-LA-103-0.9/1.2**

**Identified by  
Project ID 0700020042**

## **AGREEMENTS**

Right of Entry Agreement ROE 880702

Right of Entry Agreement ROE 920316

## **RAILROAD RELATIONS**

Union Pacific Railroad Company Service Contract No. 0715RRC00327

Pacific Harbor Lines Service Contract No. 07R328

Alameda Corridor Transportation Authority (ACTA) Service Contract No. 07R329

## RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of March 29, 2012, by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (hereinafter the "Railroad"), and CALIFORNIA DEPARTMENT OF TRANSPORTATION, to be addressed at California Department Of Transportation, 100 South Main Street Ms - 6, Los Angeles, CA 90012 (hereinafter the "Licensee").

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

**Article 1. DEFINITION OF LICENSEE.**

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

**Article 2. RIGHT GRANTED; PURPOSE.**

The Railroad hereby grants to the Licensee 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 portion of Railroad's property in the vicinity of Mile Post 22, San Pedro Subdivision, at or near Los Angeles, California, for the purpose of maintenance on an existing bridge to paint railings, spot blast, clean and apply overcoat primer on the structural steel girders & columns. The right herein granted to Licensee is limited to those portions of the Railroad's property specifically described herein in the location shown on the print marked Exhibit A, attached hereto and hereby made a part hereof, or designated by the Railroad Representative named in Article 4.

**Article 3. TERMS AND CONDITIONS CONTAINED IN EXHIBITS B AND C.**

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

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

The Licensee shall bear any and all costs and expenses associated with any work performed by the Licensee, or any costs or expenses incurred by the Railroad relating to this Agreement. All work performed by Licensee on Railroad's property shall be performed in a manner satisfactory to the representative local Manager of Track Maintenance of the Railroad or his authorized representative (hereinafter the Railroad Representative):

MANUEL ARAMBULO  
MGR TRACK MNTCE  
11406 Los Nietos Road  
Santa Fe Springs, CA 90670  
Work Phone: 909/8 685-2469  
Fax: 402 271-4070  
Cell Phone: 909 265-2201

JOSE A. RUBIO  
MGR SIGNAL MNTCE  
11406 LOS NIETOS RD  
Santa Fe Springs, CA 90670  
Work Phone: 626/8 935-7681  
Fax: 402 233-2113  
Cell Phone: 562 318-4153

2019

**Article 5. TERM; TERMINATION.**

A. The grant of right herein made to Licensee shall commence on the date of this Agreement, and continue until April 31, 2017 unless sooner terminated as herein provided, or at such time as Licensee has completed its work on Railroad's property, whichever is earlier. Licensee agrees to notify the Railroad Representative in writing when it has completed its work on Railroad property.

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

**Article 6. CERTIFICATE OF INSURANCE.**

A. Before commencing any work, the Licensee will provide the Railroad with a Certificate issued by its insurance carrier providing the insurance coverage required pursuant to Exhibit C of this Agreement in a policy which contains the following type of endorsement:

"Union Pacific Railroad Company is named as additional insured with respect to all liabilities arising out of Insured's, as Licensee, performance of any work on the property of the Railroad."

B. Licensee warrants that this Agreement has been thoroughly reviewed by its insurance agent(s)/broker(s) and that said agent(s)/broker(s) has been instructed to procure insurance coverage and an endorsement as required herein.

C. All insurance correspondence shall be directed to: Union Pacific Railroad Company, Director (Attn.: Kylan Crawford - Folder No.02731-74), 1400 Douglas Street STOP 1690, Omaha, Nebraska 68179-1690.

**Article 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.**

Fiber optic cable systems may be buried on Licensor'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. Prior to beginning any work, the Licensee shall telephone the Railroad at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the property set forth herein. If it is, the Licensee shall also comply with and be subject to the provisions contained in Section 6 of Exhibit B.

**Article 8. ENFORCEABILITY; CHOICE OF LAW; CHOICE OF FORUM.**

This Agreement shall be governed, construed, and enforced in accordance with the laws of the state of Nebraska. Litigation arising out of or connected with this Agreement may be instituted and maintained in the courts of the state of Nebraska and 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 9. LICENSE FEE.**

Licensee shall pay, and Railroad shall accept, upon the execution and return of this instrument, the nonrefundable sum of **Fourteen Thousand Five Hundred Dollars (\$14,500.00)** to cover Railroad's cost to prepare and administer this Agreement.

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

**UNION PACIFIC RAILROAD COMPANY**  
*Federal Taxpayer I.D. #94-6001323*

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

Sr Manager - Contracts

**CALIFORNIA DEPARTMENT OF  
TRANSPORTATION**

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

Title: Railroad Coordination

*(Pursuant to ordinance, resolution, or other evidence of proper authority to execute this instrument, a copy of which shall be attached to the Railroad's original counterpart of this document.)*

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

Right of Entry Agreement  
Folder No. 02731-74

CALIFORNIA DEPARTMENT OF TRANSPORTATION

nr. M.P. 22, SAN PEDRO SUBDIVISION

at/near LOS ANGELES, CALIFORNIA

Office of Dir. Contracts - Omaha, NE  
March 29, 2012

WARNING:

In all occasions, U.P. Communications Department must be contacted in advance of any work to determine the existence and location of FIBER OPTIC CABLE.

PHONE: 1-800-336-9193



**EXHIBIT B**

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

The Licensee agrees to notify the Railroad Representative at least Ten (10) days in advance of Licensee commencing its work and at least 24 hours in advance of proposed performance of any work by the Licensee in which any person or equipment will be within 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 25 feet of any track. Upon receipt of such notice, the Railroad Representative will determine and inform the Licensee whether a flagman need be present and whether the Licensee need implement any special protective or safety measures. If any flagmen or other special protective or safety measures are performed by the Railroad, such services will be provided at Licensee's expense with the understanding that if the Railroad provides any flagging or other services, the Licensee shall not be relieved of any of its responsibilities or liabilities set forth herein.

**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 the 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 the Railroad without liability to the 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 the Railroad's property, and others) and the right of the Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

**Section 3 - NO INTERFERENCE WITH RAILROAD'S OPERATION.**

No work performed by Licensee shall cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Railroad, its lessees, licensees or others, unless specifically permitted under this Agreement, or specifically authorized in advance by the Railroad Representative. Nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof. When not in use, Licensee's machinery and materials shall be kept at least 50 feet from the centerline of Railroad's nearest track, and there shall be no crossings of Railroad's tracks except at existing open public crossings.

**Section 4 - PERMITS.**

Prior to beginning any work, the Licensee, at its sole expense, shall obtain all necessary permits to perform any work contemplated by this Agreement.

**Section 5 - MECHANIC'S LIENS.**

The Licensee shall pay in full all persons who perform labor or provide materials for the work to be performed by Licensee. The Licensee shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be enforced against any property of the Railroad for any such

work performed. The Licensee shall indemnify and hold harmless the 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.

**Section 6 - FIBER OPTIC CABLE SYSTEMS.**

In addition to other indemnity provisions in this Agreement, the Licensee shall indemnify and hold the 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 the Licensee, its contractor, agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and (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. Licensee 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 7 - COMPLIANCE WITH LAWS.**

In the prosecution of the work covered by this Agreement, the Licensee shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Licensee shall use only such methods as are consistent with safety, both as concerns the Licensee, the Licensee's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Licensee (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's property. If any failure by the Licensee to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Licensee shall reimburse and indemnify the Railroad for any such fine, penalty, cost or charge, including without limitation attorneys' fees, court costs and expenses. The Licensee further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

**Section 8 - SAFETY INSTRUCTIONS.**

Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work pursuant to this Agreement. As reinforcement and in furtherance of overall safety measures to be observed by the Licensee (and not by way of limitation), the following special safety rules shall be followed:

a. The Licensee 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. The Licensee shall have proper first aid supplies available on the job site so that prompt first aid services can be provided to any person that may be injured on the job site. The Licensee shall promptly notify the Railroad of any U.S. Occupational Safety and Health Administration reportable injuries occurring to any person that may arise during the work performed on the job site. The Licensee shall have a non-delegable duty to control its employees, while they are on the job site or any other property of the Railroad to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage or illegally obtained drug, narcotic or other substance that may inhibit the safe performance of work by an employee.

b. The employees of the Licensee shall be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing or free use of their hands or feet. Only waist length shirts with sleeves and trousers that cover the entire leg are to be worn. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching. The employees should wear sturdy and protective footwear. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes or other shoes that have thin soles or heels that are higher than normal. In addition, the Licensee shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations or Railroad officials overlooking the work at the job site. In particular, the protective equipment to be worn shall be:

(1) Protective head gear that meets American National Standard-Z89.1-latest revision. It is suggested that all hardhats be affixed with Licensee's or subcontractor's company logo or name.

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

(3) Hearing protection which affords enough attenuation to give protection from noise levels that will be occurring on the job site.

c. All heavy equipment provided or leased by the Licensee shall be equipped with audible back-up warning devices. If in the opinion of the Railroad Representative any of Licensee's or any of its subcontractors' equipment is unsafe for use on the Railroad's right-of-way, the Licensee, at the request of the Railroad Representative, shall remove such equipment from the Railroad's right-of-way.

#### Section 9 - INDEMNITY.

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

b. As a major inducement and in consideration of the license and permission herein granted, the Licensee agrees to indemnify and hold harmless the Railroad from any Loss which is due to or arises from any cause and is associated in whole or in part with the work performed under this Agreement, a breach of the Agreement or the failure to observe the health and safety provisions herein, or any activity or omission arising out of performance or nonperformance of this Agreement; regardless of whether caused solely or contributed to in part by the negligence or fault of the Railroad.

c. Any liability of either party hereunder to one of its employees under any Workers' Compensation Act or the Federal Employers' Liability Act shall not be questioned or in any way challenged by the other party, nor shall any jury or court findings, resulting from any employee's suit against either party pursuant to any such Act(s), be relied upon or used by either party in any attempt to assert common law liability against the other.

**Section 10 - RESTORATION OF PROPERTY.**

In the event the Railroad authorizes the Licensee to take down any fence of the Railroad or in any manner move or disturb any of the other property of the Railroad in connection with the work to be performed by Licensee, then in that event the Licensee shall, as soon as possible and at Licensee'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, and the Licensee shall indemnify and hold harmless the Railroad, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, arising from the taking down of any fence or the moving or disturbance of any other property of the Railroad.

**Section 11 - WAIVER OF BREACH.**

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

**Section 12 - ASSIGNMENT - SUBCONTRACTING.**

The Licensee shall not assign, sublet or subcontract this Agreement, or any interest therein, without the written consent of the Railroad and any attempt to so assign, sublet or subcontract without the written consent of the Railroad shall be void. If the Railroad gives the Licensee permission to subcontract all or any portion of the work herein described, the Licensee is and shall remain responsible for all work of subcontractors and all work of subcontractors shall be governed by the terms of this Agreement.

## SAMPLE ONLY-ENVIRONMENTAL RIGHT OF ENTRY

CERTIFICATE OF INSURANCE				ISSUE DATE (MM/DD/YY)	
PRODUCER  INSURANCE COMPANY NAME ADDRESS CITY, STATE, ZIP CODE		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.			
		COMPANIES AFFORDING COVERAGE			
INSURED  Licensee's NAME ADDRESS CITY, STATE, ZIP CODE		COMPANY LETTER A  COMPANY LETTER B  COMPANY LETTER C  COMPANY LETTER D  COMPANY LETTER E			
<b>COVERAGES</b> THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAME ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.					
CO	TYPE OF INSURANCE	POLICY EFF. DATE(MM/DD/YY)	POLICY EXP. DATE(MM/DD/YY)	LIMITS	
LTR	GENERAL LIABILITY OR			GENERAL AGGREGATE	\$10,000,000
	<input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR. <input type="checkbox"/> OWNERS & CONTRACTOR'S PROF. <input type="checkbox"/>			PRODUCTS-COMP/OP AGG.	\$5,000,000
				PERSONAL & ADV. INJURY	\$5,000,000
				EACH OCCURRENCE	\$5,000,000
				FIRE DAMAGE (ANY ONE FIRE)	NA
				MED. EXPENSE(ANYONE PERSON)	NA
	AUTOMOBILE LIABILITY			COMBINED SINGLE LIMIT	\$2,000,000
	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>			BODILY INJURY (PER ACCIDENT)	
				PROPERTY DAMAGE)	
	EXCESS LIABILITY			EACH OCCURRENCE	
	<input type="checkbox"/> <input type="checkbox"/>			AGGREGATE	
	WORKER' COMPENSATION AND EMPLOYER'S LIABILITY			X STATUTORY LIMITS	
				EACH ACCIDENT	\$500,000
				DISEASE - POLICY LIMIT	\$500,000
				DISEASE - EACH EMPLOYEE	\$500,000
	OTHER: Pollution liability (when required by agreement)			GENERAL AGGREGATE	\$10,000,000
				EACH OCCURRENCE	\$5,000,000
CGL Policy is endorsed to include Union Pacific Railroad as Additional Insured as required by agreement. CGL Policy is endorsed to include "Contractual Liability Railroads" as required by agreement. Auto Liability Policy is endorsed to include "Certain Operations In Connection With Railroads" as required by agreement. Auto Liability Policy is endorsed to include Union Pacific Railroad as Additional Insured as required by agreement. Policy is endorsed with Motor Carrier Act Endorsement MCS 90 as required by agreement. Punitive damages (one of the following statements must be included): 1. Policies are silent concerning punitive damages. 2. Insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement.					

3. All punitive damages are prohibited by all states in which this agreement will be performed. Workers' Compensation Policy is endorsed waiving subrogation for Workers' Compensation and Employers Liability in favor of Union Pacific Railroad. Railroad Protective Liability as required by agreement with Railroad as named insured with limits of not less than \$2.0 million per occurrence and an aggregate of \$6.0 million. A binder stating policy is in place must be provided to Railroad until policy is forwarded to Railroad.

CERTIFICATE HOLDER	CANCELLATION
UNION PACIFIC RAILROAD CO Real Estate Department ATT: 1400 Douglas St STOP 1690 OMAHA, NE 68175-1690	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.  AUTHORIZED REPRESENTATIVE
ACCORD 25-3(7/90)	ACCORD CORPORATION 1990

## EXHIBIT C

### Union Pacific Railroad Contract Insurance Requirements

#### Right of Entry Agreement

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

**A. Commercial General Liability insurance.** Commercial general liability (CGL) with a limit of not less than \$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.

**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 than \$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 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:

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

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

If Licensee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

**D. Railroad Protective Liability insurance.** Licensee must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of 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 Licensee 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, Licensee 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 Licensee'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 (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 against Railroad and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers liability or commercial umbrella or excess liability insurance obtained by Licensee required by this agreement.

J. Prior to commencing the work, Licensee 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 Licensee or by Railroad on behalf of Licensee will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Licensee or any third party will not be limited by the amount of the required insurance coverage.

WHITE-COMPANY  
 GOLDEN ROD-AGREEMENTS  
 YELLOW-CONTROLLERS  
 GREEN-ACCOUNTING  
 BLUE-CONSTRUCTION  
 PINK-RIGHT OF WAY

STATE OF CALIFORNIA  
 DEPARTMENT OF  
 TRANSPORTATION

SHEET 1 OF 3  
 LA 103 1.0  
 CO. ROUTE P.M.

Anaheim Street Overhead-Mead Yard-UPRR

SOURCE		CHARGE		EXP AUTH		SPECIAL DESIGNATION		Object	AMOUNT DEBIT OR CREDIT	FISCAL YEAR	ENC CODE	ENCUMBRANCE DOCUMENT NO.
DIST.	UNIT	DIST.	UNIT	GEN. LED	SUB-ACCT	PRE FIX	SUB-JOB NO.-R/W PARCEL NO.					
					EA 4Y8504		Bridge No. 53-2627		\$ 145,860.00	12		

ITEM \_\_\_\_\_ CHAPTER \_\_\_\_\_ Statutes \_\_\_\_\_ FISCAL YEAR \_\_\_\_\_

I HEREBY CERTIFY UPON MY OWN PERSONAL KNOWLEDGE THAT BUDGETED FUNDS ARE AVAILABLE FOR THE PERIOD AND PURPOSE OF THE EXPENDITURE STATED ABOVE.

SIGNATURE OF ACCOUNTING OFFICIER \_\_\_\_\_ DATE \_\_\_\_\_

SERVICE CONTRACT NO. 0715RRC00327  
 THIS NUMBER IS TO BE PLACED ON ALL BILLS

Los Angeles, CALIFORNIA

February 10, 2015

RAILROAD Union Pacific Railroad Company PHONE (909) 685-2264

ADDRESS 2015 South Willow Avenue, Bloomington, CA 92316

The Railroad hereby agrees to do the work hereinafter set forth for the Department of Transportation in accordance with the provision of this form and of the attached sheets if any and the Railroad agrees to receive and accept as full compensation therefore the payment provided herein.

The project consist of painting the Anaheim Street Overhead Bridge No 53-2627 over State Route 103 that crosses over the railroad facility. The work involves Bridge Preventive Maintenance work to paint the bridge railings, spot blast, clean and apply overcoat paint on the structural steel girders and columns of the overhead Bridge. UPRR cannot commit to any schedule or window and will need to be able to run train operations without interruption.

**The contract is for flagging for protection of UPRR trains only. Construction on this project will not begin until the appropriate agreements and all approvals from Union Pacific covering the project has been fully executed.**

**Total Estimate Cost to State +145,860.00**  
**This is a Estimate Only. UPRR will Bill on Actual Cost Basis.**

It is expressly agreed that all persons engaged on this work are employees of the Railroad or its contractor, and that none are employees of the Department of Transportation of the State of California.

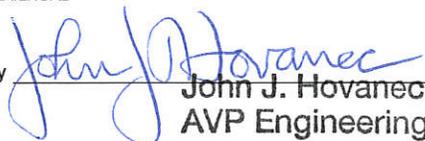
Further, the said Department of Transportation hereby agrees to the terms as above set forth, and hereby agrees to pay the same; provided, that by mutual consent this agreement may be modified or terminated at any time.

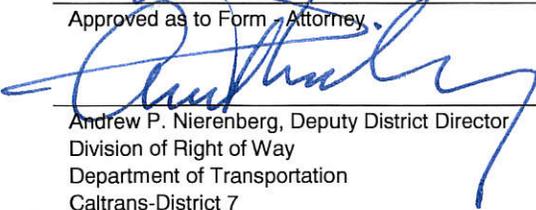
**IN WITNESS WHEREOF**, the parties to these presents have hereunto set their hand the year and date first above written.

DEPARTMENT OF TRANSPORTATION

Union Pacific Railroad Company

  
 Approval Recommended – Railroad Coordinator

RAILROAD \_\_\_\_\_  
 By   
 John J. Hovanec  
 AVP Engineering

  
 Approved as to Form - Attorney  
 Andrew P. Nierenberg, Deputy District Director  
 Division of Right of Way  
 Department of Transportation  
 Caltrans-District 7

TITLE OR POSITION

Mail three (3) copies of invoice to:  
 Please Reference: 0715RRC00327

DEPARTMENT OF TRANSPORTATION  
 DIVISION OF RIGHT OF WAY AND LAND SURVEYS, MS 37  
 P.O. Box 942873  
 Sacramento, CA 94273-0001  
 Attn: Railroad Agreements

State agrees to reimburse UPRR for actual costs and expenses reasonably and necessarily incurred by UPRR in the performance of these items for work.

The estimated amount of cost and expense to be incurred by UPRR is summarized in the estimate attached hereto as Exhibit "B". Any additional work incidental to that shown on the attached estimate, but not specifically detailed thereon, may be included as part of this contract by written request or approval of State.

All work to be performed under this Service Contract shall be by UPRR employees working under Railroad Labor Agreements and shall be done on a force account basis, the cost hereof to be paid to UPRR by State in the manner herein set forth.

The parties hereto agree to UPRR is a qualified self-insurer.

Conditions under which railroad flagmen are required in connection with this project shall be included in the contract Special Provisions for State's Contract No.0715RRC00327

All applicable portions of Federal-Aid Policy Guide, Title 23, Code of Federal Regulations, Parts 646A, 646B and 140I are by reference incorporated herein and made a part thereof.

The records accounts of UPRR relating to the project shall be open for inspection and audit by State and/or Federal Government for a period of three years from the date final payment is received by UPRR.

Under Federal Regulations there are no ascertainable net benefits to UPRR and there shall be no required UPRR sharing of the costs.

In accordance to California Prompt Payment Act, all bills shall be paid within 45 days of receipt of the invoice.

All work under this contract is estimated to be completed by **June, 30, 2016** unless an extension of time is approved by the State in writing.

**UNION PACIFIC RAILROAD COMPANY (UPRR)**

**ESTIMATE**

**Location:** Anaheim Street Overhead Bridge No. 53-2627  
PUC No. 003A-22.70 AC  
DOT # 811431G  
MP 22.00, San Pedro (PHL), Route 103, Terminal Island Frwy, Long Beach. CA  
(Los Angeles County)

**Project:** In Los Angeles County, Terminal Island Overhead Structure Scaffolding for painting structure over tracks.

No. of Days: 85

**Estimate:**

Flagging & Inspection (see Exhibit B)	
\$1,300.00/days X 85 days =	\$110,500.00
20% Contingency	= \$ 22,100.00
10% Inspection Fees	\$13,260.00
Total	= \$ 145,860.00

**Note:** This is an estimate only, railroad shall bill on an actual cost basis.

**EXHIBIT C**

**SECTION 13: RAILROAD RELATIONS AND INSURANCE REQUIREMENTS.**

**13-1.01 GENERAL**

The term "Railroad" shall mean the Union Pacific Railroad Company.

It is expected that the Railroad will cooperate with the Contractor to the end that the work may be handled in an efficient manner. However, except for the additional compensation provided for hereinafter for delays in completion of specific unit of work to be performed by the Railroad, and except as provided in Public Contracts Code Section 7102, the Contractor shall have no claim for damages, extension of time, or extra compensation in the event his work is held up by railroad train operations or other work performed by the Railroad.

The Contractor must understand the Contractor's right to enter the Railroad's property is subject to the absolute right of the Railroad to cause the Contractor's work on the Railroad's property to cease if, in the opinion of the Railroad, the Contractor's activities create a hazard to the Railroad's property, employees, and operations.

The Contractor shall sign and submit to the Railroad the Contractor's Endorsement, in the form attached hereto.

**13-1.02 RAILROAD REQUIREMENTS**

The Contractor shall provide to Mr. Ken Tom, Manager, Industry and Public Projects, 19100 Slover Avenue, Bloomington, California, 92316, Telephone: (909) 879-6288 and the Engineer, in writing, at least 10 working days before performing any work on, or adjacent to the property or tracks of the Railroad.

The Contractor shall cooperate with the Railroad where work is over or under the tracks, or within the limits of the Railroad property to expedite the work and avoid interference with the operation of railroad equipment.

The Contractor shall comply with the rules and regulations of the Railroad or the instructions of its representatives in relation to protecting the tracks and property of the Railroad and the traffic moving on such tracks, as well as the wires, signals and other property of the Railroad, its tenants or licensees, at and in the vicinity of the work during the period of construction. The responsibility of the Contractor for safe conduct and adequate policing and supervision of its work at the job site shall not be lessened or otherwise affected by the presence at the work site of the Railroad representatives, or by the Contractor's compliance with any requests or recommendations made by the Railroad representatives.

The Contractor shall perform work so as not to endanger or interfere with the safe operation of the tracks and property of the Railroad and traffic moving on such tracks, as well as wires, signals and other property of the Railroad, its tenants or licensees, at or in the vicinity of the work.

The Contractor shall take protective measures to keep the Railroad facilities, including track ballast, free of sand or debris resulting from his operations. Damage to the Railroad facilities resulting from the Contractor's operations will be repaired or replaced by the Railroad and the cost of such repairs or replacement shall be deducted from the Contractor's progress and final pay estimates.

The Contractor shall contact the Railroad's "Call Before You Dig" at least forty-eight (48) hours prior to commencing work, at 1-800-336-9193 during normal business hours (6:30 a.m. to 8:00 p.m. Central Time, Monday through Friday, except holidays – also a 24-hour, 7-day number for emergency calls) to determine location of fiber optics. If a telecommunications system is buried anywhere on or near the Railroad property, the Contractor will coordinate with the Railroad and the Telecommunication Company(ies) to arrange for relocation or other protection of the system prior to beginning any work on or near Railroad property.

The Contractor shall not pile or store any materials nor park any equipment closer than 7.62-meters (25'-0") to the centerline of the nearest track, unless directed by the Railroad's representative.

The Contractor shall also abide by the following temporary clearances during the course of construction:

- 3.66 meter (12'-0") horizontally from centerline of track
- 6.40 meter (21'-0") vertically above top of rail

The temporary vertical construction clearance above provided will not be permitted until authorized by the Public Utilities Commission. It is anticipated that authorization will be received not later than fifteen (15) days after approval of the contract by the State's legal Counsel pursuant to section 138 of the Street and Highways Code. In the event authorization is not received by the time specified, and, if in the opinion of the Engineer, the Contractor's operations are delayed or interfered with by reason of authorization not being received by the said time, the Licensee will compensate the Contractor for such delay to the extent provided in Section 8-1.09, "Right of Way Delays," of the Standard Specifications and not otherwise.

Walkways with railing shall be constructed by the Contractor over open excavation areas when in close proximity of tracks, and railings shall not be closer than 2.60-meter (8'-6") horizontally from centerline of the nearest track, if tangent, or 2.90-meter (9'-6") if curved.

Infringement on the above temporary construction clearances by the Contractor's operations shall be submitted to the Railroad by the Engineer, and shall not be undertaken until approved by the Railroad, and until the Engineer has obtained any necessary authorization from any governmental body or bodies having jurisdiction thereover. No extension of time or extra compensation will be allowed in the event the Contractor's work is delayed pending Railroad approval and governmental authorization.

When the temporary vertical clearance is less than 6.86-meter (22'-6") above top of rail, the Railroad shall have the option of installing tell-tales or other protective devices the Railroad deems necessary for protection of the Railroad trainmen or rail traffic.

Four (4) sets of plans, in 279mm x 432mm (11" x 17") format, and two (2) sets of calculations showing details of construction affecting the Railroad's tracks and property not included in the contract plans, including but not limited to shoring and falsework, shall be submitted to the Engineer for review prior to submittal to the Railroad for final approval. Falsework shall comply with the Railroad guidelines. Demolition of existing structures shall comply with the Railroad guidelines. Shoring shall be designed in accordance with the Railroad's shoring requirement of Drawing No. 106613 and guidelines for shoring and falsework, latest edition, issued by the Railroad's Office of Chief Engineer. Shoring and falsework plans and calculations shall be prepared and signed by a professional engineer registered in California. This work shall not be undertaken until such time as the Railroad has given such approval. Review by the Railroad may take up to six (6) weeks after receipt of necessary information.

The Contractor shall notify the Engineer in writing, at least twenty-five (25) calendar days but not more than forty (40) days in advance of the starting date of installing temporary work with less than

permanent clearance at each structure site. The Contractor shall not be permitted to proceed with work across railroad tracks until this requirement has been met. No extension of time or extra compensation will be allowed if the Contractor's work is delayed due to failure to comply with the requirements in this paragraph.

Private crossings at grade over tracks of Railroad for the purpose of hauling earth, rock, paving or other materials will not be permitted. If the Contractor, for the purpose of constructing highway-railway grade separation structures, including construction ramps thereto, desires to move equipment or materials across Railroad's tracks, the Contractor shall first obtain permission from Railroad. Should Railroad approve the crossing, the Contractor shall execute Railroad's form of Contractor's Road Crossing Agreement. By this agreement, the Contractor shall bear the cost of the crossing surface, with warning devices that might be required. The Contractor shall furnish its own employees as flagmen to control movements of vehicles on the private roadway and shall prevent the use of such roadway by unauthorized persons and vehicles

Blasting will be permitted only when approved by the Railroad.

The Contractor shall, upon completion of the work covered by this Contract to be performed by the Contractor upon the premises or over or beneath the tracks of the Railroad, promptly remove from the premises of the Railroad, the Contractor's tools, implements and other materials, whether brought upon said premises by said Contractor or any subcontractor, employee or agent of said Contractor, and cause said premises to be left in a clean and presentable condition.

Under track pipeline installations shall be constructed in accordance with the Railroad's current standards which may be obtained from the Railroad. The general guidelines are as follows:

Edges of jacking or boring pit excavations shall be a minimum of 6.10-meter (20 feet) from the centerline of the nearest track.

If the pipe to be installed under the track is 100 mm (4 inches) in diameter or less, the top of the pipe shall be at least 1.067-meters 42 inches below base of rail.

If the pipe diameter is greater than 100-meter (4 inches) in diameter, it shall be encased and the top of the steel pipe casing shall be at least 1.60-meter (66 inches) below base of rail.

Installation of pipe or conduit under the Railroad's tracks shall be done by dry bore and jack method.

Hydraulic jacking or boring will not be permitted.

Safety of personnel, property, rail operations and the public is of paramount importance. As reinforcement and in furtherance of overall safety measures to be observed by the Contractor (and not by way of limitation), the following special safety rules shall be followed:

- (a) The 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. The Contractor shall have proper first aid supplies available on the job site so that prompt first aid services can be provided to any person that may be injured on the job site. The Contractor shall promptly notify the Railroad of any U.S. Occupational Safety and Health Administration reportable injuries occurring to any person that may arise during the work performed on the job site. The Contractor shall have a non-delegable duty to control its employees while they are on the job site or any other property of the Railroad to be certain they do not use, be under the

influence of, or have in their possession any alcoholic beverage, drug, narcotic or other substance that may inhibit the safe performance of work by the employee.

- (b) The employees of the Contractor shall be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing or free use of their hands or feet. Only waist length shirts with sleeves and trousers that cover the entire leg are to be worn. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching. The employees should wear sturdy and protective work boots and at least the following protective equipment:
- (1) Protective head gear that meets American National Standard-Z89.1-latest revision. It is suggested that all hardhats be affixed with the Contractor's or the subcontractor's company logo or name.
  - (2) Eye protection that meets American National Standard for occupational and educational eye and face protection, Z87.1-latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, burning, etc.; and
  - (3) Hearing protection which affords enough attenuation to give protection from noise levels that will be occurring on the job site.
- (c) All heavy equipment provided or leased by the Contractor shall be equipped with audible back-up warning devices. If in the opinion of the Railroad Representative any of the Contractor's or the subcontractor's equipment is unsafe for use on the Railroad's right-of-way, the Contractor, at the request of the Railroad representative, shall remove such equipment from the Railroad's right-of-way.

### 13-1.03 PROTECTION OF RAILROAD FACILITIES

Upon advance notification of not less than 10 working days by the Contractor, Railroad representatives, conductors, flagmen or watchmen will be provided by the Railroad to protect its facilities, property and movements of its trains or engines. Notice shall be made to the Railroad's Manager of Track Maintenance at (402) 501-3774. At the time of notification, the Contractor shall provide the Railroad with a schedule of dates that flagging services will be needed, as well as times, if outside normal working hours. Subsequent deviation from the schedule shall require ten (10) working days' advance notice from the first affected date. The Railroad will furnish such personnel or other protective devices:

- (a) When any part of any equipment is standing or being operated within 25 feet, measured horizontally, from centerline of any track on which trains may operate, or when any erection or construction activities are in progress within such limits, regardless of elevation above or below track.
- (b) For any excavation below elevation of track subgrade if, in the opinion of the Railroad's representative, track or other Railroad facilities may be subject to settlement or movement.
- (c) During any clearing, grubbing, grading or blasting in proximity to the Railroad which, in the opinion of the Railroad's representative, may endanger the Railroad facilities or operations.
- (d) During any of the Contractor's operations when, in the opinion of the Railroad's representatives, the Railroad facilities, including, but not limited to, tracks, buildings, signals, wire lines or pipe lines, may be endangered.

The cost of flagging and inspection provided by the Railroad during the period of constructing that portion of the project located on or near the Railroad property, as deemed necessary for the protection of

the Railroad's facilities and trains, will be borne by the State for a period of three (3) working days beginning on the date work commences on or near property of Railroad. The Contractor shall pay to the State liquidated damages in the sum of One Thousand Dollars (\$1,100.00) per day for each day in excess of the above three (3) working days the Contractor works on or near Railroad property, and which requires flagging protection of Railroad's facilities and trains.

#### **13-1.04 WORK BY RAILROAD**

The following work by the Railroad will be performed by Railroad forces and is not a part of the work under this Contract.

- (a) The Railroad will perform preliminary engineering and inspection (if any) and flagging as specified in Section 13-1.03 "Protection of Railroad Facilities," of these special provisions.
- (b) Underground railroad communication line in vicinity of proposed Structure (if any).
- (c) Remove advertising signboards and signboard appurtenances (if any).
- (d) Temporary crossings at grade over tracks of Railroad for the purpose of hauling earth, rock, paving or other materials will not be permitted. If the Contractor, for the purpose of constructing highway-railway grade separation structures, including construction ramps thereto, desires to move equipment or materials across Railroad's tracks, the Contractor shall first obtain permission from Railroad via the State Engineer. Should Railroad approve the temporary crossing, State shall execute a Service Contract with Railroad for Railroad to construct the temporary crossing. Under the Service Contract, State shall bear the cost of the crossing surface, warning devices and other components that might be required. Notwithstanding State's Service Contract with Railroad, the Contractor is required to execute Railroad's form of Contractor's Haul Road Crossing Agreement. Railroad, at State's expense, shall provide flagmen to control movements of vehicles across the temporary crossing.

#### **13-1.05 DELAYS DUE TO WORK BY RAILROAD.**

No delay due to work by the Railroad is anticipated.

If delays due to work by the Railroad occur, and the Contractor sustains loss which, in the opinion of the Engineer, could not have been avoided by the judicious handling of forces, equipment and plant, the amount of said loss shall be determined as provided in Section 8-1.09, "Right of Way Delays," of the Standard Specifications.

If a delay due to work by the Railroad occurs, an extension of time determined pursuant to the provisions in Section 8-1.07, "Liquidated Damages," of the Standard Specifications will be granted.

#### **13-1.06 LEGAL RELATIONS**

The provisions of Section 13-1, "Relations with Railroad Company," and the provisions of Section 13-2, "Railroad Protective Insurance," of these special provisions shall inure directly to the benefit of the Railroad.

#### **13-2 RAILROAD PROTECTIVE INSURANCE**

In addition to any other form of insurance or bonds required under the terms of the contract and specifications, the Contractor will be required to carry insurance of the kinds and in the amounts hereinafter specified.

Such insurance shall be approved by the Railroad before any work is performed on the Railroad's property and shall be carried until all work required to be performed on or adjacent to the Railroad's property under the terms of the contract is satisfactorily completed as determined by the Engineer, and thereafter until all tools, equipment and materials have been removed from the Railroad's property and such property is left in a clean and presentable condition.

Full compensation for all premiums which the Contractor is required to pay on all the insurance described hereinafter shall be considered as included in the prices paid for the various items of work to be performed under the contract, and no additional allowance will be made thereof or for additional premiums which may be required by extensions of the policies of insurance.

The following insurance coverage will be required:

- A. **Commercial General Liability** insurance. This insurance shall contain a single limit of at least \$5,000,000 each occurrence or claim and an aggregate limit of at least \$10,000,000 and include broad form contractual liability coverage. Coverage must be purchased on a post 1998 ISO or equivalent form, including but not limited to coverage for the following:

- Bodily injury including death and personal injury
- Property damage
- Fire legal liability
- Products and completed operations

The policy shall also contain the following endorsements **which shall be indicated on the certificate of insurance:**

- The worker's compensation and employee related exclusions in the above policy apply only to the Contractor's employees.
- The exclusions for railroads [except where the Job site is more than fifty feet (50') from any railroad including, but not limited to, tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings], and explosion, collapse and underground hazard shall be removed.
- Coverage for the Contractor's employees shall not be excluded.
- Waiver of subrogation

If the Contractor will be using, storing and/or handling hazardous materials, the Contractor, in addition to the other endorsements to be obtained by the Contractor as provided in this exhibit, must also ensure that the Commercial General Liability Insurance policy contains a Designated Premises Pollution Coverage (CG00-39) endorsement. Evidence of the endorsement must also be indicated on the certificate of insurance that is provided to the Railroad.

- B. **Business Automobile Coverage** insurance. This insurance shall contain a combined single limit of at least \$5,000,000 per occurrence or claim, including but not limited to coverage for the following:

- Bodily injury and property damage
- Any and all motor vehicles including owned, hired and non-owned

The policy shall also contain the following endorsements **which shall be indicated on the certificate of insurance:**

- The worker's compensation and employee related exclusions in the above policy apply only to the Contractor's employees.
- The exclusions for railroads [except where the Job Site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings], and explosion, collapse and underground hazard shall be removed.

**C. Worker's Compensation and Employer's Liability insurance including but not limited to:**

- The Contractor's statutory liability under the workers' compensation laws of the State of California
- Employer's Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee

If the State of California requires participants in a state worker's compensation fund and if Worker's Compensation insurance will not cover the liability of the Contractor in the State of California, the Contractor shall comply with such laws. If the Contractor is self-insured, evidence of state approval must be provided along with evidence of excess worker's compensation coverage. Coverage shall 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 shall also contain the following endorsement **which shall be indicated on the certificate of insurance:**

- Alternate Employer Endorsement

**D. Umbrella or Excess Policies In the event the Contractor utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.**

**E. Railroad Protective Liability insurance naming only the Railroad as the insured with a combined single limit of \$2,000,000 per occurrence with a \$6,000,000 aggregate. The policy shall be broad form coverage for "Physical Damage to Property" (ISO Form CG 00 35 07 98 or equivalent). A binder stating the policy is in place must be submitted to the Railroad until the original policy is forwarded to the Railroad.**

**Other Requirements**

**F. Punitive damage exclusion must be deleted, **which deletion shall be indicated on the certificate of insurance.****

**G. The Contractor agrees to waive its right of recovery, and its insurers, through policy endorsement, agree to waive their right of subrogation against the Railroad. The Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against the Railroad for loss of its owned or leased property or property under its care, custody and control. The Contractor's insurance shall be primary with respect to any insurance carried by the Railroad. All waivers of subrogation **shall be indicated on the certificate of insurance.****

**H. All policy(ies) required above (excluding Workers Compensation) shall provide severability of interests and shall name the Railroad as an additional insured. The coverage provided to the Railroad as additional insured shall provide coverage for the Railroad's negligence whether sole or partial, active or passive, and shall not be limited by the Contractor's liability under the**

indemnity provisions of this Agreement. **Severability of interest and naming the Railroad as additional insured shall be indicated on the certificate of insurance.**

- I. Prior to commencing the Work, the Contractor shall furnish to the Railroad original certificate(s) of insurance evidencing the required coverage, endorsements, and amendments. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify the Railroad in writing of any cancellation or material alteration. **Upon request from the Railroad, a certified duplicate original of any required policy shall be furnished.**
- J. Any insurance policy shall be written by a reputable insurance company acceptable to the 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 of California.
- K. The Contractor **WARRANTS** that this Agreement has been thoroughly reviewed by the Contractor's insurance agent(s)/broker(s), who have been instructed by the Contractor to procure the insurance coverage required by this Agreement and acknowledges that the Contractor's insurance coverage will be primary.
- L. If the Contractor fails to procure and maintain insurance as required, the Railroad may elect to do so at the cost of the Contractor plus a 25% administration fee.
- M. The fact that insurance is obtained by the Contractor the or Railroad on behalf of the Contractor shall not be deemed to release or diminish the liability of the Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by the Railroad shall not be limited by the amount of the required insurance coverage.

**CONTRACTOR'S ENDORSEMENT**

---

A. As a condition to entering upon the Railroad's right-of-way to perform Work pursuant to this agreement, State's contractor, \_\_\_\_\_

(Name of Contractor)

whose address is \_\_\_\_\_,

(Contractor's Mailing Address)

(hereinafter "Contractor"), agrees to comply with and be bound by all the terms and provisions of the attached Caltrans Right of Entry Agreement that was signed by Union Pacific Railroad Company ("Railroad") and the State of California, Department of Transportation ("State") relating to the Work to be performed and the insurance requirements set forth in Exhibit B of the Right of Entry Agreement. The Contractor further acknowledges and agrees that the reference to Cal. Gov. Code §14662.5 in Sections 5.b) and 8.b) of Exhibit A to the Right of Entry Agreement does not apply to the Contractor and in no way limits the indemnities set forth in those provisions, to which the Contractor agrees to be bound.

B. Before the Contractor commences any Work, the Contractor will provide the Railroad with (i) a binder of insurance for the Railroad Protective Liability Insurance described in Section 13-2 of the Contract Special Provisions, hereto attached, and the original policy, or a certified duplicate original policy when available, and (ii) a certificate issued by its insurance carrier providing the other insurance coverage and endorsements required pursuant to Section 13-2 of the Contract Special Provisions.

C. All insurance correspondence, binders or originals shall be directed to:

Union Pacific Railroad Company  
Attn: Real Estate Department  
1400 Douglas Street, MS 1690  
Omaha, Nebraska 68179-1690  
Attn.: Senior Manager - Contracts  
Folder No.

D. Please note that fiber optic cable may be buried on the Railroad's property. **Prior to commencing any work, the Contractor agrees to contact the Railroad's Telecommunications Operation Center as provided in Section 5 of Exhibit A of the Right of Entry Agreement to determine if any fiber optic cable is located on the Railroad's property on or near the location where the work is to be performed.** If there is, the Contractor must comply with the terms and conditions of Section 5 of Exhibit A before commencing any work on the Railroad's property.

E. **The Contractor agrees to also provide to the Railroad's Manager-Track Maintenance at (402) 501-3774 the advance notice required in Section 1 of Exhibit A of the Right of Entry Agreement prior to working on the Railroad's property in order for the Railroad to coordinate the Contractor's work with the Railroad's operations and to make arrangements for flagging protection (if applicable).**

This endorsement shall be completed and sent to the person named in Paragraph C above.

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

By \_\_\_\_\_

State Agreement No. 07R302  
PUC No. 003A-22.70 AC  
DOT # 811431G

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

State Agreement No. 07R302  
UPRR Folder No. :  
07-LA-103-PM 1.0  
PUC No. 003A-22.70.AC  
UPRR Milepost 22.0  
San Pedro Subdivision  
DOT 811431G

WHITE-COMPANY  
 GOLDEN ROD-AGREEMENTS  
 YELLOW-CONTROLLERS  
 GREEN-ACCOUNTING  
 BLUE-CONSTRUCTION  
 PINK-RIGHT OF WAY

STATE OF CALIFORNIA  
 DEPARTMENT OF  
 TRANSPORTATION  
 Exhibit "A"

SHEET 1 OF 3

LA 103 0.9/1.2  
 CO. ROUTE P.M.

SOURCE		CHARGE		EXP AUTH		SPECICAL DESIGNATION		Object	AMOUNT DEBIT OR CREDIT	FISCAL YEAR	ENC CODE	ENCUMBRANCE DOCUMENT NO.
DIST.	UNIT	DIST.	UNIT	GEN. LED	SUB-ACCT	PRE FIX	SUB- JOB NO.-R/W PARCEL NO. LOCATION BRIDGE NO. ETC.					
07		07		EA 4Y8504			Bridge No 53-2627		\$ 30, 937.50	15		
				0700020042								

ITEM \_\_\_\_\_ CHAPTER \_\_\_\_\_ Statutes \_\_\_\_\_ FISCAL YEAR \_\_\_\_\_

I HEREBY CERTIFY UPON MY OWN PERSONAL KNOWLEDGE THAT BUDGETEED FUNDS ARE AVAILABLE FOR THE PERIOD AND PURPOSE OF THE EXPENDITURE STATED ABOVE.

SIGNATURE OF ACCOUNTING OFFICIER \_\_\_\_\_ DATE \_\_\_\_\_

SERVICE CONTRACT NO. 07R328  
 THIS NUMBER IS TO BE PLACED ON ALL BILLS

Los Angeles, CALIFORNIA

September 29, 2014

RAILROAD Pacific Harbor Lines PHONE (310) 834-4594

ADDRESS 340 Water Street, Wilmington, California 90744

The Railroad hereby agrees to do the work hereinafter set forth for the Department of Transportation in accordance with the provision of this form and of the attached sheets if any and the Railroad agrees to receive and accept as full compensation therefore the payment provided herein.

Description of work: For flagging only after written approval of the project by Pacific Harbor Lines

Flagging and Inspection for the painting of the Anaheim Street Overhead Bridge No 53-2627 for the Bridge Preventive Maintenance Project to paint the bridge railings, spot blast, clean and apply overcoat paint on the structural steel girders.

Flagging, Inspection & Protection: \$ 30,937.50

Flagging & Inspection (see Exhibit B)

\$625.00/day X 45 days = \$ 28,125.00

10% Contingency = \$ 2,812.50,

Total = \$ 30,937.50

It is expressly agreed that all persons engaged on this work are employees of the Railroad or its contractor, and that none are employees of the Department of Transportation of the State of California.

Further, the said Department of Transportation hereby agrees to the terms as above set forth, and hereby agrees to pay the same; provided, that by mutual consent this agreement may be modified or terminated at any time.

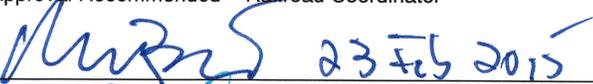
IN WITNESS WHEREOF, the parties to these presents have hereunto set their hand the year and date first above written.

DEPARTMENT OF TRANSPORTATION

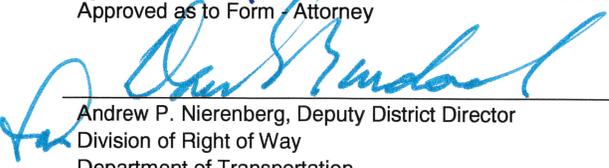
PACIFIC HARBOR LINES (PHL)

  
 Approval Recommended - Railroad Coordinator

  
 RAILROAD

  
 Approved as to Form / Attorney

By   
 \_\_\_\_\_

  
 Andrew P. Nierenberg, Deputy District Director  
 Division of Right of Way  
 Department of Transportation  
 Caltrans-District 7

TITLE OR POSITION

Mail three (3) copies of invoice to:  
 Please Reference: 0715RRC00238  
 DEPARTMENT OF TRANSPORTATION  
 DIVISION OF RIGHT OF WAY AND LAND SURVEYS, MS 37  
 P.O. Box 942873  
 Sacramento, CA 94273-0001  
 Attn: Railroad Agreements 07R328

State agrees to reimburse PHL for actual costs and expenses reasonably and necessarily incurred by PHL in the performance of these items for work.

The estimated amount of cost and expense to be incurred by PHL is summarized in the estimate attached hereto as Exhibit "B". Any additional work incidental to that shown on the attached estimate, but not specifically detailed thereon, may be included as part of this contract by written request and approval of State.

All work to be performed under this Service Contract shall be by PHL employees working under Railroad Labor Agreements and shall be done on a force account basis, the cost hereof to be paid to PHL by State in the manner herein set forth.

The parties hereto agree to PHL, Caltrans is a qualified self-insurer.

Conditions under which railroad flagmen are required in connection with this project shall be included in the contract Special Provisions for State's Contract No. 07R328

—

All applicable portions of Federal-Aid Policy Guide, Title 23, Code of Federal Regulations, Parts 646A, 646B and 140I are by reference incorporated herein and made a part thereof.

The records accounts of PHL relating to the project shall be open for inspection and audit by State and/or Federal Government for a period of three years from the date final payment is received by PHL.

Under Federal Regulations there are no ascertainable net benefits to PHL and there shall be no required PHL sharing of the costs.

In accordance to California Prompt Payment Act, all bills shall be paid within 45 days of receipt of the invoice.

All work under this contract is estimated to be completed by **June 30, 2017**, unless an extension of time is approved by the State in writing.

Exhibit "B"

**UNION PACIFIC RAILROAD COMPANY (UPRR)**

**ESTIMATE**

Location: Anaheim Street OH Bridge No. 53-2627  
PUC No. 003A-22.70 AC  
DOT # 811431G  
MP. 22.0 San Pedro (PHL), Route 103, Terminal Island Frwy, Long Beach, CA. (Los Angeles County)

Project: ANAHEIM STREET OH BRIDGE NO 53-2627 PAINT PROJECT

No. of Days: 365 DAYS FOR THE PROJECT ( UNDER PACIFIC HARBOR LINE SPANS FOR APPROXIMATELY 45 DAYS)

**Estimate:**

Flagging & Inspection (see Exhibit B)

\$625.00/day X 45 days = \$ 28,125.00

10% Contingency = \$ 2,812.50

Total = \$ 30,937.50

Note: This is an estimate only, railroad shall bill on an actual cost basis.

State Agreement No. 07R328  
PHL Folder No. :  
07-LA-103-MP 22.0 PM 0.9/1.2  
PUC No. 003 SP-0022-A  
UPRR Milepost 22.0  
San Pedro Subdivision  
DOT 811431G

**APPENDIX 1**

**EXHIBIT C**

**SECTION 13: RAILROAD RELATIONS AND INSURANCE REQUIREMENTS.**

**13-1.01 GENERAL**

The term "Railroad" shall mean the Pacific Harbor Lines.

It is expected that the Railroad will cooperate with the Contractor to the end that the work may be handled in an efficient manner. However, except for the additional compensation provided for hereinafter for delays in completion of specific unit of work to be performed by the Railroad, and except as provided in Public Contracts Code Section 7102, the Contractor shall have no claim for damages, extension of time, or extra compensation in the event his work is held up by railroad train operations or other work performed by the Railroad.

The Contractor must understand the Contractor's right to enter the Railroad's property is subject to the absolute right of the Railroad to cause the Contractor's work on the Railroad's property to cease if, in the opinion of the Railroad, the Contractor's activities create a hazard to the Railroad's property, employees, and operations.

The Contractor shall sign and submit to the Railroad the Contractor's Endorsement, in the form attached hereto.

**13-1.02 RAILROAD REQUIREMENTS**

The Contractor shall provide to Mr. James Connelly, Manager, Track Maintenance, Pacific Harbor Line, 340 Water Street, Wilmington, California 90744, Telephone: (310) 427-5035 or (310) 834-4594 and the Engineer, in writing, at least 10 working days before performing any work on, or adjacent to the property or tracks of the Railroad.

The Contractor shall cooperate with the Railroad where work is over or under the tracks, or within the limits of the Railroad property to expedite the work and avoid interference with the operation of railroad equipment.

The Contractor shall comply with the rules and regulations of the Railroad or the instructions of its representatives in relation to protecting the tracks and property of the Railroad and the traffic moving on such tracks, as well as the wires, signals and other property of the Railroad, its tenants or licensees, at and in the vicinity of the work during the period of construction. The responsibility of the Contractor for safe conduct and adequate policing and supervision of its work at the job site shall not be lessened or otherwise affected by the presence at the work site of the Railroad representatives, or by the Contractor's compliance with any requests or recommendations made by the Railroad representatives.

The Contractor shall perform work so as not to endanger or interfere with the safe operation of the tracks and property of the Railroad and traffic moving on such tracks, as well as wires, signals and other property of the Railroad, its tenants or licensees, at or in the vicinity of the work.

The Contractor shall take protective measures to keep the Railroad facilities, including track ballast, free of sand or debris resulting from his operations. Damage to the Railroad facilities resulting from the Contractor's operations will be repaired or replaced by the Railroad and the cost of such repairs or replacement shall be deducted from the Contractor's progress and final pay estimates.

The Contractor shall contact the Railroad's "Call Before You Dig" at least forty-eight (48) hours prior to commencing work, at 1-800-336-9193 during normal business hours (6:30 a.m. to 8:00 p.m. Central

Time, Monday through Friday, except holidays – also a 24-hour, 7-day number for emergency calls) to determine location of fiber optics. If a telecommunications system is buried anywhere on or near the Railroad property, the Contractor will coordinate with the Railroad and the Telecommunication Company(ies) to arrange for relocation or other protection of the system prior to beginning any work on or near Railroad property.

The Contractor shall not pile or store any materials nor park any equipment closer than 7.62-meters (25'-0") to the centerline of the nearest track, unless directed by the Railroad's representative.

The Contractor shall also abide by the following temporary clearances during the course of construction:

- 3.66 meter (12'-0") horizontally from centerline of track
- 6.40 meter (21'-0") vertically above top of rail

The temporary vertical construction clearance above provided will not be permitted until authorized by the Public Utilities Commission. It is anticipated that authorization will be received not later than fifteen (15) days after approval of the contract by the State's legal Counsel pursuant to section 138 of the Street and Highways Code. In the event authorization is not received by the time specified, and, if in the opinion of the Engineer, the Contractor's operations are delayed or interfered with by reason of authorization not being received by the said time, the Licensee will compensate the Contractor for such delay to the extent provided in Section 8-1.09, "Right of Way Delays," of the Standard Specifications and not otherwise.

Walkways with railing shall be constructed by the Contractor over open excavation areas when in close proximity of tracks, and railings shall not be closer than 2.60-meter (8'-6") horizontally from centerline of the nearest track, if tangent, or 2.90-meter (9'-6") if curved.

Infringement on the above temporary construction clearances by the Contractor's operations shall be submitted to the Railroad by the Engineer, and shall not be undertaken until approved by the Railroad, and until the Engineer has obtained any necessary authorization from any governmental body or bodies having jurisdiction thereover. No extension of time or extra compensation will be allowed in the event the Contractor's work is delayed pending Railroad approval and governmental authorization.

When the temporary vertical clearance is less than 6.86-meter (22'-6") above top of rail, the Railroad shall have the option of installing tell-tales or other protective devices the Railroad deems necessary for protection of the Railroad trainmen or rail traffic.

Four (4) sets of plans, in 279mm x 432mm (11" x 17") format, and two (2) sets of calculations showing details of construction affecting the Railroad's tracks and property not included in the contract plans, including but not limited to shoring and falsework, shall be submitted to the Engineer for review prior to submittal to the Railroad for final approval. Falsework shall comply with the Railroad guidelines. Demolition of existing structures shall comply with the Railroad guidelines. Shoring shall be designed in accordance with the Railroad's shoring requirement of Drawing No. 106613 and guidelines for shoring and falsework, latest edition, issued by the Railroad's Office of Chief Engineer. Shoring and falsework plans and calculations shall be prepared and signed by a professional engineer registered in California. This work shall not be undertaken until such time as the Railroad has given such approval. Review by the Railroad may take up to six (6) weeks after receipt of necessary information.

The Contractor shall notify the Engineer in writing, at least twenty-five (25) calendar days but not more than forty (40) days in advance of the starting date of installing temporary work with less than permanent clearance at each structure site. The Contractor shall not be permitted to proceed with work across railroad tracks until this requirement has been met. No extension of time or extra compensation

will be allowed if the Contractor's work is delayed due to failure to comply with the requirements in this paragraph.

Private crossings at grade over tracks of Railroad for the purpose of hauling earth, rock, paving or other materials will not be permitted. If the Contractor, for the purpose of constructing highway-railway grade separation structures, including construction ramps thereto, desires to move equipment or materials across Railroad's tracks, the Contractor shall first obtain permission from Railroad. Should Railroad approve the crossing, the Contractor shall execute Railroad's form of Contractor's Road Crossing Agreement. By this agreement, the Contractor shall bear the cost of the crossing surface, with warning devices that might be required. The Contractor shall furnish its own employees as flagmen to control movements of vehicles on the private roadway and shall prevent the use of such roadway by unauthorized persons and vehicles

Blasting will be permitted only when approved by the Railroad.

The Contractor shall, upon completion of the work covered by this Contract to be performed by the Contractor upon the premises or over or beneath the tracks of the Railroad, promptly remove from the premises of the Railroad, the Contractor's tools, implements and other materials, whether brought upon said premises by said Contractor or any subcontractor, employee or agent of said Contractor, and cause said premises to be left in a clean and presentable condition.

Under track pipeline installations shall be constructed in accordance with the Railroad's current standards which may be obtained from the Railroad. The general guidelines are as follows:

Edges of jacking or boring pit excavations shall be a minimum of 6.10-meter (20 feet) from the centerline of the nearest track.

If the pipe to be installed under the track is 100 mm (4 inches) in diameter or less, the top of the pipe shall be at least 1.067-meters 42 inches below base of rail.

If the pipe diameter is greater than 100-meter (4 inches) in diameter, it shall be encased and the top of the steel pipe casing shall be at least 1.60-meter (66 inches) below base of rail.

Installation of pipe or conduit under the Railroad's tracks shall be done by dry bore and jack method.

Hydraulic jacking or boring will not be permitted.

Safety of personnel, property, rail operations and the public is of paramount importance. As reinforcement and in furtherance of overall safety measures to be observed by the Contractor (and not by way of limitation), the following special safety rules shall be followed:

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

- (b) The employees of the Contractor shall be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing or free use of their hands or feet. Only waist length shirts with sleeves and trousers that cover the entire leg are to be worn. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching. The employees should wear sturdy and protective work boots and at least the following protective equipment:
- (1) Protective head gear that meets American National Standard-Z89.1-latest revision. It is suggested that all hardhats be affixed with the Contractor's or the subcontractor's company logo or name.
  - (2) Eye protection that meets American National Standard for occupational and educational eye and face protection, Z87.1-latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, burning, etc.; and
  - (3) Hearing protection which affords enough attenuation to give protection from noise levels that will be occurring on the job site.
- (c) All heavy equipment provided or leased by the Contractor shall be equipped with audible back-up warning devices. If in the opinion of the Railroad Representative any of the Contractor's or the subcontractor's equipment is unsafe for use on the Railroad's right-of-way, the Contractor, at the request of the Railroad representative, shall remove such equipment from the Railroad's right-of-way.

### 13-1.03 PROTECTION OF RAILROAD FACILITIES

Upon advance notification of not less than 10 working days by the Contractor, Railroad representatives, conductors, flagmen or watchmen will be provided by the Railroad to protect its facilities, property and movements of its trains or engines. Notice shall be made to the Railroad's Manager of Track Maintenance at (310) 427-5035. At the time of notification, the Contractor shall provide the Railroad with a schedule of dates that flagging services will be needed, as well as times, if outside normal working hours. Subsequent deviation from the schedule shall require ten (10) working days' advance notice from the first affected date. The Railroad will furnish such personnel or other protective devices:

- (a) When any part of any equipment is standing or being operated within 25 feet, measured horizontally, from centerline of any track on which trains may operate, or when any erection or construction activities are in progress within such limits, regardless of elevation above or below track.
- (b) For any excavation below elevation of track subgrade if, in the opinion of the Railroad's representative, track or other Railroad facilities may be subject to settlement or movement.
- (c) During any clearing, grubbing, grading or blasting in proximity to the Railroad which, in the opinion of the Railroad's representative, may endanger the Railroad facilities or operations.
- (d) During any of the Contractor's operations when, in the opinion of the Railroad's representatives, the Railroad facilities, including, but not limited to, tracks, buildings, signals, wire lines or pipe lines, may be endangered.

The cost of flagging and inspection provided by the Railroad during the period of constructing that portion of the project located on or near the Railroad property, as deemed necessary for the protection of the Railroad's facilities and trains, will be borne by the State for a period of three (3) working days beginning on the date work commences on or near property of Railroad. The Contractor shall pay to the State liquidated damages in the sum of Six Hundred and Twenty Five Dollars (\$625.00) per day for each

day the Contractor works on or near Railroad property, and which requires flagging protection of Railroad's facilities and trains.

#### **13-1.04 WORK BY RAILROAD**

The following work by the Railroad will be performed by Railroad forces and is not a part of the work under this Contract.

- (a) The Railroad will perform preliminary engineering and inspection (if any) and flagging as specified in Section 13-1.03 "Protection of Railroad Facilities," of these special provisions.
- (b) Underground railroad communication line in vicinity of proposed Structure (if any).
- (c) Remove advertising signboards and signboard appurtenances (if any).
- (d) Temporary crossings at grade over tracks of Railroad for the purpose of hauling earth, rock, paving or other materials will not be permitted. If the Contractor, for the purpose of constructing highway-railway grade separation structures, including construction ramps thereto, desires to move equipment or materials across Railroad's tracks, the Contractor shall first obtain permission from Railroad via the State Engineer. Should Railroad approve the temporary crossing, State shall execute a Service Contract with Railroad for Railroad to construct the temporary crossing. Under the Service Contract, State shall bear the cost of the crossing surface, warning devices and other components that might be required. Notwithstanding State's Service Contract with Railroad, the Contractor is required to execute Railroad's form of Contractor's Haul Road Crossing Agreement. Railroad, at State's expense, shall provide flagmen to control movements of vehicles across the temporary crossing.

#### **13-1.05 DELAYS DUE TO WORK BY RAILROAD.**

No delay due to work by the Railroad is anticipated.

If delays due to work by the Railroad occur, and the Contractor sustains loss which, in the opinion of the Engineer, could not have been avoided by the judicious handling of forces, equipment and plant, the amount of said loss shall be determined as provided in Section 8-1.09, "Right of Way Delays," of the Standard Specifications.

If a delay due to work by the Railroad occurs, an extension of time determined pursuant to the provisions in Section 8-1.07, "Liquidated Damages," of the Standard Specifications will be granted.

#### **13-1.06 LEGAL RELATIONS**

The provisions of Section 13-1, "Relations with Railroad Company," and the provisions of Section 13-2, "Railroad Protective Insurance," of these special provisions shall inure directly to the benefit of the Railroad.

#### **13-2 RAILROAD PROTECTIVE INSURANCE**

In addition to any other form of insurance or bonds required under the terms of the contract and specifications, the Contractor will be required to carry insurance of the kinds and in the amounts hereinafter specified.

Such insurance shall be approved by the Railroad before any work is performed on the Railroad's property and shall be carried until all work required to be performed on or adjacent to the Railroad's property under the terms of the contract is satisfactorily completed as determined by the Engineer, and

thereafter until all tools, equipment and materials have been removed from the Railroad's property and such property is left in a clean and presentable condition.

Full compensation for all premiums which the Contractor is required to pay on all the insurance described hereinafter shall be considered as included in the prices paid for the various items of work to be performed under the contract, and no additional allowance will be made thereof or for additional premiums which may be required by extensions of the policies of insurance.

The following insurance coverage will be required:

**A. Commercial General Liability insurance.** This insurance shall contain a single limit of at least \$5,000,000 each occurrence or claim and an aggregate limit of at least \$10,000,000 and include broad form contractual liability coverage. Coverage must be purchased on a post 1998 ISO or equivalent form, including but not limited to coverage for the following:

- Bodily injury including death and personal injury
- Property damage
- Fire legal liability
- Products and completed operations

The policy shall also contain the following endorsements **which shall be indicated on the certificate of insurance:**

- The worker's compensation and employee related exclusions in the above policy apply only to the Contractor's employees.
- The exclusions for railroads [except where the Job site is more than fifty feet (50') from any railroad including, but not limited to, tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings], and explosion, collapse and underground hazard shall be removed.
- Coverage for the Contractor's employees shall not be excluded.
- Waiver of subrogation

If the Contractor will be using, storing and/or handling hazardous materials, the Contractor, in addition to the other endorsements to be obtained by the Contractor as provided in this exhibit, must also ensure that the Commercial General Liability Insurance policy contains a Designated Premises Pollution Coverage (CG00-39) endorsement. Evidence of the endorsement must also be indicated on the certificate of insurance that is provided to the Railroad.

**B. Business Automobile Coverage insurance.** This insurance shall contain a combined single limit of at least \$5,000,000 per occurrence or claim, including but not limited to coverage for the following:

- Bodily injury and property damage
- Any and all motor vehicles including owned, hired and non-owned

The policy shall also contain the following endorsements **which shall be indicated on the certificate of insurance:**

- The worker's compensation and employee related exclusions in the above policy apply only to the Contractor's employees.
- The exclusions for railroads [except where the Job Site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings], and explosion, collapse and underground hazard shall be removed.

C. **Worker's Compensation and Employer's Liability** insurance including but not limited to:

- The Contractor's statutory liability under the workers' compensation laws of the State of California
- Employer's Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee

If the State of California requires participants in a state worker's compensation fund and if Worker's Compensation insurance will not cover the liability of the Contractor in the State of California, the Contractor shall comply with such laws. If the Contractor is self-insured, evidence of state approval must be provided along with evidence of excess worker's compensation coverage. Coverage shall 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 shall also contain the following endorsement **which shall be indicated on the certificate of insurance:**

- Alternate Employer Endorsement

D. **Umbrella or Excess Policies** In the event the Contractor utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.

E. **Railroad Protective Liability** insurance naming only the Railroad as the insured with a combined single limit of \$2,000,000 per occurrence with a \$6,000,000 aggregate. The policy shall be broad form coverage for "Physical Damage to Property" (ISO Form CG 00 35 07 98 or equivalent). A binder stating the policy is in place must be submitted to the Railroad until the original policy is forwarded to the Railroad.

Other Requirements

F. Punitive damage exclusion must be deleted, **which deletion shall be indicated on the certificate of insurance.**

G. The Contractor agrees to waive its right of recovery, and its insurers, through policy endorsement, agree to waive their right of subrogation against the Railroad. The Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against the Railroad for loss of its owned or leased property or property under its care, custody and control. The Contractor's insurance shall be primary with respect to any insurance carried by the Railroad. All waivers of subrogation **shall be indicated on the certificate of insurance.**

H. All policy(ies) required above (excluding Workers Compensation) shall provide severability of interests and shall name the Railroad as an additional insured. The coverage provided to the Railroad as additional insured shall provide coverage for the Railroad's negligence whether sole or partial, active or passive, and shall not be limited by the Contractor's liability under the indemnity provisions of this Agreement. **Severability of interest and naming the Railroad as additional insured shall be indicated on the certificate of insurance.**

I. Prior to commencing the Work, the Contractor shall furnish to the Railroad original certificate(s) of insurance evidencing the required coverage, endorsements, and amendments. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify the Railroad in writing of any cancellation or material alteration. **Upon**

**request from the Railroad, a certified duplicate original of any required policy shall be furnished.**

- J.** Any insurance policy shall be written by a reputable insurance company acceptable to the 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 of California.
- K.** The Contractor **WARRANTS** that this Agreement has been thoroughly reviewed by the Contractor's insurance agent(s)/broker(s), who have been instructed by the Contractor to procure the insurance coverage required by this Agreement and acknowledges that the Contractor's insurance coverage will be primary.
- L.** If the Contractor fails to procure and maintain insurance as required, the Railroad may elect to do so at the cost of the Contractor plus a 25% administration fee.
- M.** The fact that insurance is obtained by the Contractor the or Railroad on behalf of the Contractor shall not be deemed to release or diminish the liability of the Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by the Railroad shall not be limited by the amount of the required insurance coverage.

**APPENDIX 1**

**CONTRACTOR'S ENDORSEMENT**

A. As a condition to entering upon the Railroad's right-of-way to perform Work pursuant to this agreement, State's contractor, \_\_\_\_\_

(Name of Contractor)

whose address is \_\_\_\_\_,

(Contractor's Mailing Address)

(hereinafter "Contractor"), agrees to comply with and be bound by all the terms and provisions of the attached Caltrans Right of Entry Agreement that was signed by Union Pacific Railroad Company ("Railroad") and the State of California, Department of Transportation ("State") relating to the Work to be performed and the insurance requirements set forth in Exhibit B of the Right of Entry Agreement. The Contractor further acknowledges and agrees that the reference to Cal. Gov. Code §14662.5 in Sections 5.b) and 8.b) of Exhibit A to the Right of Entry Agreement does not apply to the Contractor and in no way limits the indemnities set forth in those provisions, to which the Contractor agrees to be bound.

B. Before the Contractor commences any Work, the Contractor will provide the Railroad with (i) a binder of insurance for the Railroad Protective Liability Insurance described in Section 13-2 of the Contract Special Provisions, hereto attached, and the original policy, or a certified duplicate original policy when available, and (ii) a certificate issued by its insurance carrier providing the other insurance coverage and endorsements required pursuant to Section 13-2 of the Contract Special Provisions.

C. All insurance correspondence, binders or originals shall be directed to:

Union Pacific Railroad Company  
Attn: Real Estate Department  
1400 Douglas Street, MS 1690  
Omaha, Nebraska 68179-1690  
Attn.: Senior Manager - Contracts  
Folder No. 2308-65

D. Please note that fiber optic cable may be buried on the Railroad's property. **Prior to commencing any work, the Contractor agrees to contact the Railroad's Telecommunications Operation Center as provided in Section 5 of Exhibit A of the Right of Entry Agreement to determine if any fiber optic cable is located on the Railroad's property on or near the location where the work is to be performed.** If there is, the Contractor must comply with the terms and conditions of Section 5 of Exhibit A before commencing any work on the Railroad's property.

E. **The Contractor agrees to also provide to the Railroad's Manager-Track Maintenance at (402) 501-3774 the advance notice required in Section 1 of Exhibit A of the Right of Entry Agreement prior to working on the Railroad's property in order for the Railroad to coordinate the Contractor's work with the Railroad's operations and to make arrangements for flagging protection (if applicable).**

This endorsement shall be completed and sent to the person named in Paragraph C above.

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

By \_\_\_\_\_

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

WHITE-COMPANY  
 GOLDEN ROD-AGREEMENTS  
 YELLOW-CONTROLLERS  
 GREEN-ACCOUNTING  
 BLUE-CONSTRUCTION  
 PINK-RIGHT OF WAY

STATE OF CALIFORNIA  
**DEPARTMENT OF  
 TRANSPORTATION**

Page 1 OF 3

CO. ROUTE P.M  
 LA 103 1.0

SOURCE		CHARGE		EXP AUTH		SPECIAL DESIGNATION		Object	AMOUNT DEBIT OR CREDIT	FISCAL YEAR	ENC CODE	ENCUMBRANCE DOCUMENT NO.
DIST.	UNIT	DIST.	UNIT	GEN. LED	SUB-ACCT	PRE	SUB-JOB NO.-R/W PARCEL NO.					
					WORK ORDER NO.	FIX	LOCATION BRIDGE NO. ETC					
					EA 4Y8504		Bridge No 53-2627		\$42,000.00	15		

ITEM CHAPTER Statutes FISCAL YEAR

I HEREBY CERTIFY UPON MY OWN PERSONAL KNOWLEDGE THAT BUDGETED FUNDS ARE AVAILABLE FOR THE PERIOD AND PURPOSE OF THE EXPENDITURE STATED ABOVE.

SIGNATURE OF ACCOUNTING OFFICER DATE

SERVICE CONTRACT NO. 07R330 SN 07R329 2H  
 THIS NUMBER IS TO BE PLACED ON ALL BILLS

Los Angeles, CALIFORNIA

November 21, 2014

Local Agency Alameda Corridor Transportation Authority (ACTA) PHONE (310) 233-7480  
 ADDRESS 3760 Kilroy Airport Way, Suite 200, Long Beach, California 90806

ACTA hereby agrees to do the work hereinafter set forth for the Department of Transportation in accordance with the provision of this form and of the attached sheets if any and ACTA agrees to receive and accept as full compensation therefore the payment provided herein.

For Flagging and Inspection, required for the protection of ACTA property, tracks and appurtenances thereto, trains and equipment during that period that State is above, on and/or near ACTA tracks located at Anaheim Street OH Bridge No. 53-2627, MP 22.00, at Route 103, Terminal Island, Long Beach, CA. This project is a Bridge Rehab to clean and paint the steel girders. The proposed work will be done by State's Contractor upon final approval by ACTA.

(see Exhibit A)

**Total Estimated Cost to State = \$ 42,000.00**

**This is a Cost Estimate Only ACTA will Bill on Actual Cost Basis**

It is expressly agreed that all persons engaged on this work are employees of the ACTA or its contractor, and that none are employees of the Department of Transportation of the State of California.

Further, the said Department of Transportation hereby agrees to the terms as above set forth, and hereby agrees to pay the same; provided, that by mutual consent this agreement may be modified or terminated at any time.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hand the year and date first above written.

DEPARTMENT OF TRANSPORTATION

Brian Walker Acting  
 Approval Recommended - D-7 Railroad Coordination

[Signature]  
 Approved as to Form - Attorney

Andrew P. Nierenberg  
 ANDREW P. NIERENBERG, Deputy District Director  
 Division of Right of Way 11-7-14

ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY

By: [Signature] Title: CEO 11/3/14  
 Approval Recommended

By: [Signature] Date: 10/29/14  
 Approved as to Form  
 City Attorney Michael N. Feuer  
Deputy City Attorney  
 TITLE OR POSITION

Mail three (3) copies of invoice to:  
 Please Reference: Service Contract No. 07R329  
 DEPARTMENT OF TRANSPORTATION  
 DIVISION OF RIGHT OF WAY AND LAND SURVEYS, MS 37  
 P.O. Box 942873  
 Sacramento, CA 94273-0001  
 Attn: Railroad Agreements

State agrees to reimburse ACTA for actual costs and expenses reasonably and necessarily incurred by ACTA in the performance of these items for work.

The estimated amount of cost and expense to be incurred by ACTA is summarized in the estimate attached hereto as Exhibit "A". Any additional work incidental to that shown on the attached estimate, but not specifically detailed thereon, may be included as part of this contract by written request or approval of State.

All work to be performed under this Service Contract shall be by employees of the Authority or its contractor, and that none are employees of the Department of Transportation of the State of California. This Agreement shall be done on a force account basis, the cost hereof to be paid to ACTA by State in the manner herein set forth.

The parties hereto agree ACTA is a qualified self-insurer.

Conditions under which ACTA flagmen are required in connection with this project shall be included in the contract Special Provisions for State's Contract No.. **07R329**

All applicable portions of Federal-Aid Policy Guide, Title 23, Code of Federal Regulations, Parts 646A, 646B and 140I are by reference incorporated herein and made a part thereof.

The records accounts of ACTA relating to the project shall be open for inspection and audit by State and/or Federal Government for a period of three years from the date final payment is received by ACTA.

Under Federal Regulations there are no ascertainable net benefits to ACTA and there shall be no required ACTA sharing of the costs.

In accordance to California Prompt Payment Act, all bills shall be paid within 45 days of receipt of the invoice.

All work under this contract is estimated to be completed by **June 30th, 2016**, unless an extension of time is approved by the parties in writing.

Exhibit "A"

**ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY (ACTA)**

**ESTIMATE**

Location: ANAHEIM STREET OVERHEAD BRIDGE (07-LA-103-M.P..22.0)  
PUC No. 003A-22.70 AC  
DOT# 811431G  
Railroad MP 22.0  
Anaheim Street Overhead Bridge No. 53-2627

MILEPOST 22.0, San Pedro (PHL), Route 103, Terminal Island Freeway,  
Long Beach, CA., LOS ANGELES COUNTY, CALIFORNIA

Project: This service contract is for Flagging and Inspection of ACTA railroad property, tracks and appurtenances thereto, trains equipment during that period the State is above, on and/or near the ACTA tracks located within the Anaheim Street OH Bridge No. 53-2627.

Estimate:

Flagging & Inspection	
17 labor days X \$1000.00/per day, per flagmen@ \$1,000.00 per day	
17 Days X 2 flagmen necessary= 34 labor days=	\$34,000.00
25% Contingency =	<u>8,500.00</u>
<b>Total Estimated Cost to State +</b>	<b>\$42,000.00</b>

Project Duration: Schedule to be provided upon Notice to Proceed.

**Total Estimate Cost for work to be performed by the Agency= \$42,000.00**

Note: This is an estimate only, ACTA shall bill on an actual cost basis.