

2001-0467

INTRODUCED BY: ALBERT D. LAQUE
PARISH PRESIDENT

ORDINANCE NO. 02-1-4

An ordinance to approve and authorize the execution of a Railroad Crossing Agreement by and between Union Pacific Railroad Company, Esperanza Land Company and the Parish of St. Charles.

- WHEREAS, Esperanza Land Company is the developer of a certain tract of land located West of the Hale Boggs Bridge in Luling; and,
- WHEREAS, in order to develop said property it is necessary for a new railroad crossing to be constructed over the Union Pacific Railroad; and,
- WHEREAS, the Railroad has proposed a Railroad Crossing Agreement to provide for the construction, maintenance and use of a new road crossing at mile post 22.900, Livonia Subdivision.

THE ST. CHARLES PARISH COUNCIL HEREBY ORDAINS:

SECTION I. That the Railroad Crossing Agreement by and between the Union Pacific Railroad Company, Esperanza Land Company and the Parish of St. Charles is hereby approved.

SECTION II. That the Parish President is hereby authorized to execute said Agreement on behalf of the Parish of St. Charles.

The foregoing ordinance having been submitted to a vote, the vote thereon was as follows:

YEAS: RAMCHANDRAN, FAUCHEUX, HILAIRE, FABRE, ABADIE, AUTHEMENT,
BLACK, MARINO, MINNICH
 NAYS: NONE
 ABSENT: NONE

And the ordinance was declared adopted this 7th day of January 2002, to become effective five (5) days after publication in the Official Journal.

CHAIRMAN: [Signature]
 SECRETARY: [Signature]
 DLVD/PARISH PRESIDENT January 9, 2002
 APPROVED _____ DISAPPROVED _____

PARISH PRESIDENT: Albert D. Laque
 RETD/SECRETARY: January 9, 2002
 AT 11:00 AM RECD BY: [Signature]

PARISH COUNCIL MEETING OF 1-22-02

A motion was made by Councilman Minnich to reconsider the vote on Ordinance No. 02-1-4.

VOTE:
 YEAS: RAMCHANDRAN, HILAIRE, FABRE, ABADIE, AUTHEMENT, MARINO, MINNICH
 NAYS: FAUCHEUX
 ABSENT: BLACK

VOTE ON ORIGINAL ORDINANCE:
 YEAS: FAUCHEUX, HILAIRE, FABRE, AUTHEMENT, MARINO
 NAYS: RAMCHANDRAN, ABADIE, MINNICH
 ABSENT: BLACK

CHAIRMAN: [Signature]
 SECRETARY: [Signature]
 DLVD/PARISH PRESIDENT: 1-23-02
 APPROVED _____ DISAPPROVED _____

PARISH PRESIDENT: Albert D. Laque
 RETD/SECRETARY: January 24, 2002
 AT 12:10 pm RECD BY: [Signature]

THIS ORDINANCE WAS RETURNED BY THE PARISH PRESIDENT ON JANUARY 24, 2002, AT 12:10 P.M. AND THE SAME WAS NEITHER APPROVED NOR DISAPPROVED BY THE PARISH PRESIDENT. THEREFORE, SAID ORDINANCE SHALL BECOME EFFECTIVE FIVE (5) DAYS AFTER PUBLICATION IN THE OFFICIAL JOURNAL IN ACCORDANCE WITH THE HOME RULE CHARTER.

RAILROAD CROSSING AGREEMENT

Mile Post 22.900, Livonia Subdivision/Branch
Location: Luling, St. Charles Parish, Louisiana

THIS AGREEMENT (including all Exhibits hereto, hereinafter being referred to as this "Agreement") is made this ___ day of _____, 200__ (hereinafter the "Effective Date"), by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, to be addressed at 1800 Farnam Street, Omaha, Nebraska 68102 (hereinafter the "Railroad"), ESPERANZA LAND COMPANY, a Louisiana corporation, to be addressed at 14035 River Road, Luling, Louisiana 70070 (hereinafter the "Developer") and PARISH OF ST. CHARLES, STATE OF LOUISIANA, a municipal corporation or political subdivision of the State of Louisiana, to be addressed at P.O. Box 302, Hahnville, Louisiana 70057 (hereinafter the "Parish"). The Developer, its successors or assigns, and the Parish are hereinafter sometimes collectively referred to as the "Licensee". For the purposes of this Agreement, the Parish shall not be deemed a successor or assign of the Developer, notwithstanding the Dedication as hereinafter defined.

RECITALS:

The Developer desires the construction, maintenance and use of a new road crossing (hereinafter "Road Crossing"), consisting of a 50-foot wide concrete road crossing and all appurtenances thereto, including but not limited to any gates, cattle guards, stop signs or identification signs, drainage facilities, on, over and across the Railroad's right-of-way on the Livonia Subdivision trackage at Mile Post 22.900, at or near Luling, St. Charles Parish, Louisiana, in the location shown on the attached print marked Exhibit "A".

The Parish is agreeable to accepting ownership and maintenance of the Road Crossing after construction and dedication thereof by the Developer to the Parish (hereinafter the "Dedication"), from which time the Parish agrees to be bound under this Agreement in accordance with any and all terms of this Agreement specifically applicable to the Parish or to the "Licensee" generally (but not such terms as are specifically applicable only to the Developer, its successors or assigns).

The Railroad is willing to grant the Licensee the right to cross its right-of-way and tracks at the location shown on Exhibit "A" subject to the terms set forth below.

NOW, THEREFORE, the parties agree as follows:

Article 1. THE RAILROAD GRANTS RIGHT.

The Railroad grants the Developer, and upon the Dedication, the Parish, the right to construct, maintain, repair, renew, and use a highway at grade over and to cross its right-of-way and

tracks at the location shown on Exhibit "A" subject to the terms set forth herein and in the attached Exhibit "B", together with the right of entry to control and remove from the Railroad's right-of-way, on each side of the Road Crossing, weeds and vegetation which may impair the view of motorists approaching the crossing area to any trains that may also be approaching the crossing area.

Article 2. CONSIDERATION.

In consideration of the license and permission granted herein, the Developer, and its successors or assigns, agrees to observe and abide by the terms and conditions of this Agreement and to pay to the Railroad a one-time license fee of **TEN THOUSAND DOLLARS (\$10,000.00)** (hereinafter the "License Fee"), payment of which shall be due upon the execution of this Agreement.

Article 3. CONSTRUCTION AND MAINTENANCE OF ROAD CROSSING.

1. The Railroad will furnish the materials for and install the portion of the Road Crossing lying between the rails of the tracks and for one (1) foot on the outside of each rail and will furnish and install the stop signs and identification signs on each side of the Road Crossing and raise, or cause to be raised, any interfering wireline of the Railroad, all at an estimated cost to the Developer of **FORTY-EIGHT THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$48,750.00)** due upon execution of this Agreement. Any actual costs in excess of the estimated cost stated in this Article 3 shall be due and payable by the Developer upon receipt of an invoice for said excess costs from the Railroad. The Railroad shall bill such excess costs within one-hundred twenty (120) days of the completion of the Railroad's construction under this Article 3(a). Developer's obligation to pay said excess costs shall survive the Dedication.

2. The Developer, at its own expense, shall construct and perform grading and surfacing work for the remaining portion of the Road Crossing and install any and all appurtenant gates, cattle guards, drainage facilities, traffic signs, or traffic devices (any such gates and traffic devices shall not include the Signals, as defined in Article 5 hereof) shown on Exhibit "A". The construction work shall be done to the satisfaction of the Railroad.

3. The Railroad, at the sole expense of the Developer, prior to the Dedication, and at the sole expense of the Parish, upon and subsequent to the Dedication, may make any and all changes, alterations or relocations, whether temporary or permanent, and may provide flagging and other protective services and devices, which in the Railroad's judgment may be or become necessary or expedient within the Railroad's right-of-way because of the construction of the Road Crossing.

4. The Railroad, at the sole expense of the Developer, prior to the Dedication, and at the sole expense of the Parish, upon and subsequent to the Dedication, shall maintain the portion of the Road Crossing lying between the rails of the tracks and for one (1) foot on the outside of each rail; provided, however, that such maintenance work shall be limited to that required for the safe and efficient operation of its tracks, and such other maintenance as the Railroad has agreed to perform on

specific request of the Developer or the Parish, as the case may be. The Developer, prior to the Dedication, and the Parish, upon and subsequent to the Dedication, shall, at each such party's respective expense, maintain, repair and renew the remaining portion of the Road Crossing and shall keep the rail flangeways clear of obstructions.

5. The Developer, prior to the Dedication, or the Parish, upon and subsequent to the Dedication, agree to notify the Railroad's representative at least 48 hours in advance of commencing any work in which any person or equipment will be within twenty-five (25) feet of any track.

Article 4. ADMINISTRATIVE HANDLING CHARGE.

The Developer agrees to pay to the Railroad, upon execution of this Agreement, an administrative handling charge in the amount of **ONE THOUSAND DOLLARS (\$1,000.00)** for clerical, administrative and handling expense in connection with processing this Agreement.

Article 5. INSTALLATION AND MAINTENANCE OF AUTOMATED CROSSING PROTECTION.

6. The Railroad will furnish all labor, material, equipment, and supervision for, and shall install, automatic flashing light signals with gates at the Road Crossing (hereinafter the "Signals").

7. Upon execution of this Agreement, the Developer shall pay the Railroad the sum of **ONE HUNDRED THIRTY-THREE THOUSAND FIVE HUNDRED SEVENTY-EIGHT DOLLARS (\$133,578.00)** as the Developer's estimated fixed portion of the costs of the work performed and materials supplied by the Railroad pursuant to Article 5(a) of this Agreement. Any actual costs in excess of the estimated cost stated in this Article 5 shall be due and payable by the Developer upon receipt of an invoice for said excess costs from the Railroad. The Railroad shall bill such excess costs within one-hundred twenty (120) days of the completion of the Railroad's installation under Article 5(a). Developer's obligation to pay said excess costs shall survive the Dedication.

8. The Railroad shall be responsible for the inspection, maintenance, repair and adjustment of the Signals. The Developer, prior to the Dedication, and the Parish, upon and subsequent to the Dedication, shall pay the Railroad **FIVE THOUSAND ONE HUNDRED THIRTEEN DOLLARS (\$5,113.00)** (hereinafter the "Maintenance Fee") annually in advance, commencing on the date the Signals are installed, for said inspection, maintenance, repair and adjustment of the Signals; provided, however, that this provision shall not negate the Railroad's eligibility for any further federal, state or local or other public funds that may become available for the maintenance of the Signals; and provided, further, that the cost of repair or replacement resulting from damage caused by non-parties that is not recoverable by the Railroad, the Developer or the Parish from the non-parties shall be borne by the Developer, prior to the Dedication, or the Parish, upon and subsequent to the Dedication, as the case may be.

9. The Maintenance Fee may be redetermined by the Railroad at the end of each two-year period that this Agreement is in effect. Such redetermination shall be based on the actual number of relative signal units included in the Signals and would reflect fluctuations in the cost of labor and materials relating to said relative signal units. Upon reasonable request of the Developer or the Parish, as the case may be, the Railroad will provide appropriate documentation relating to said fluctuations in the cost of labor and materials.

10. In the event of loss, damage to or destruction of the Signals involving replacement of major items or components of the Signals (which shall be classified as extraordinary maintenance) beyond the purview of Article 5(c) above, the Railroad, upon request by, and at the sole expense of, the Developer, prior to the Dedication, or the Parish, upon and subsequent to the Dedication, shall repair or rebuild the Signals so as to restore the Signals to substantially as good a condition as existed prior to such loss, damage or destruction; and, if the Signals are restored by the Railroad, the Developer, prior to the Dedication, and the Parish, upon and subsequent to the Dedication, shall and hereby agree to reimburse the Railroad for all costs incurred by the Railroad from time to time in connection with any work performed by the Railroad hereunder within thirty (30) days after receipt of the Railroad's bill therefor.

Article 6. IF WORK IS TO BE PERFORMED BY CONTRACTOR.

If a contractor is to do any of the work performed on the Road Crossing (including initial construction and subsequent relocation or substantial maintenance and repair work), then the Developer, or the Parish, as the case may be, shall require its contractor to execute the Railroad's form of Contractor's Right of Entry Agreement. The Developer and the Parish acknowledge receipt of a copy of Contractor's Right of Entry Agreement and understand its terms, provisions and requirements, and will inform its contractor of the need to execute the Agreement. Under no circumstances will the Developer's or the Parish's contractor be allowed onto the Railroad's Property (as defined in Exhibit "B" hereto) without first executing the Contractor's Right of Entry Agreement.

Article 7. LIABILITY INSURANCE.

11. The Developer shall provide the Railroad, at the time of execution of this Agreement, (i) with a certificate, identifying Folder No. 01840-890, issued by an approved insurance carrier, providing the Railroad Protective Liability coverage required pursuant to Exhibit "B-1" of this Agreement in a policy or policies which names the Union Pacific Railroad Company as the insured and (ii) with written assurance from an approved insurance carrier that Developer will be able to bind the remainder of the insurance coverage required pursuant to Exhibit "B-1" prior to the date this Railroad commences installation under Article 3(a) or Article 5(a), whichever shall first occur.

12. The Developer shall provide the Railroad, prior to the commencement of the Railroad's installation under Article 3(a) or Article 5(a) of this Agreement (whichever shall first occur), with a certificate, identifying Folder No. 01840-890, issued by an approved insurance carrier,

providing all insurance coverage required pursuant to Exhibit "B-1" of this Agreement (other than that coverage already in effect pursuant to Article 7(a) of this Agreement) in a policy or policies which names the Union Pacific Railroad Company as an additional insured. In the event Developer has not provided the Railroad with said certificate prior to the date the Railroad's installation is set to commence, Developer acknowledges that the Railroad shall not commence said installation until such time as the Railroad has received said certificate and such installation can reasonably be rescheduled by the Railroad, considering all other projects and contingencies as may exist at that time with respect to the Railroad's schedule.

13. Subject to the limitations imposed by LSA-R.S. 38:2195, to the extent said limitations are applicable to the obligation of the parish to provide the insurance required herein, the Parish shall provide the Railroad, immediately prior to the Dedication, with a certificate, identifying Folder No. 01840-890, issued by an approved insurance carrier, providing the insurance coverage required pursuant to Exhibit "B-2" of this Agreement in a policy or policies that names the Union Pacific Railroad Company as an additional insured. The Developer and the Parish acknowledge and agree that the Dedication shall not occur until the Parish has provided the Railroad with said certificate. Following the Dedication, the Developer and its assigns shall have no further obligations under this Agreement to provide insurance. The Parish shall, from and after the Dedication, continue to provide all coverage required pursuant to Exhibit B-2 for the life of this Agreement. If at any time the Parish is unable to obtain all or any portion of the insurance required by Exhibit B-2, the Parish shall send written notice, in advance of the expiration of coverage currently in place, to the Railroad at the addresses set forth in Article 7(e) below, or to such other address as the Railroad shall provide from time to time.

14. The Developer and the Parish WARRANT that this Agreement has been thoroughly reviewed by their respective insurance agent(s)/broker(s) and that said agent(s)/broker(s) have been instructed to procure insurance coverage and all endorsements as required herein. The Developer and the Parish further acknowledge and agree that their procurement and maintenance of the insurance required by this Article 7, Exhibit B-1 and Exhibit B-2 of this Agreement is a primary cause for the Railroad to enter into this Agreement, and that the failure by either the Developer or the Parish, as the case may be, to procure and maintain the required insurance coverage throughout the term of this Agreement, as required by this Agreement, shall be a material breach of the failing party's obligations under this Agreement.

15. All insurance correspondence shall be directed to: Union Pacific Railroad Company, Real Estate Department, 1800 Farnam Street, Omaha, NE 68102, with reference to Folder No. 01840-89, with copies to Director of Insurance, Union Pacific Railroad Company, 1416 Dodge Street, Room 820, Omaha, NE 68179 and to General Solicitor, Union Pacific Railroad Company, 815 Walker Street, Suite 803, Houston, TX 77002 and to William H. Howard, III, Esq., Phelps Dunbar, L.L.P., 365 Canal Street, Suite 2000, New Orleans, LA 70130.

Article 8. TIMING OF THE RAILROAD'S PERFORMANCE.

The Railroad will perform the installation, as contemplated by Article 3(a) and Article 5(a) of this Agreement, in the ordinary course of its business, but subject to events of force majeure and other contingencies, certain of which are outside of the Railroad's control, including, for illustrative purposes and not limited to, the availability of materials, delays in receipt of materials from manufacturers, and priority scheduling of emergency and government/public projects.

Article 9. USE OF CROSSING IN ADVANCE OF INSTALLATION OF SIGNALS.

In the event the Road Crossing shall be completed in advance of the installation of the Signals by the Railroad, Developer and the Parish hereby agree and acknowledge that the Road Crossing shall not be dedicated to the Parish until the Signals are installed. The Developer or the Parish shall, at Developer's sole expense, install at the Road Crossing appropriate temporary warning devices and signs and impose appropriate vehicular control measures to protect the motoring public until the Signals are properly installed.

Article 10. TERM.

a. This Agreement shall be effective as of the Effective Date and shall continue in full force and effect until terminated as provided in Exhibit "B".

b. The Developer shall be bound by this Agreement for a period beginning on the Effective Date and will remain bound until the written notice of the Dedication is provided to the Railroad together with such appropriate documentation as shall effect such Dedication.

c. Upon the Railroad's receipt of the aforesaid notice of Dedication and the accompanying documentation, the Parish shall be bound by this Agreement for a period beginning on the date said written notice is received by the Railroad and will remain bound until this Agreement is terminated as provided in Exhibit "B".

Article 11. LEGAL FEES

In the event of any dispute among the parties hereto with respect to the performance of their respective obligations under this Agreement, the prevailing party in any litigation to resolve such a dispute shall be entitled to recover its reasonable attorney's fees from the other party or parties, as the case may be.

The remainder of this page is intentionally left blank.

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

WITNESS:

UNION PACIFIC RAILROAD COMPANY

By: _____
Director - Contracts

WITNESS:

ESPERANZA LAND COMPANY

By: _____
Title: _____

WITNESS:

PARISH OF ST. CHARLES, LOUISIANA

By: _____
Title: _____

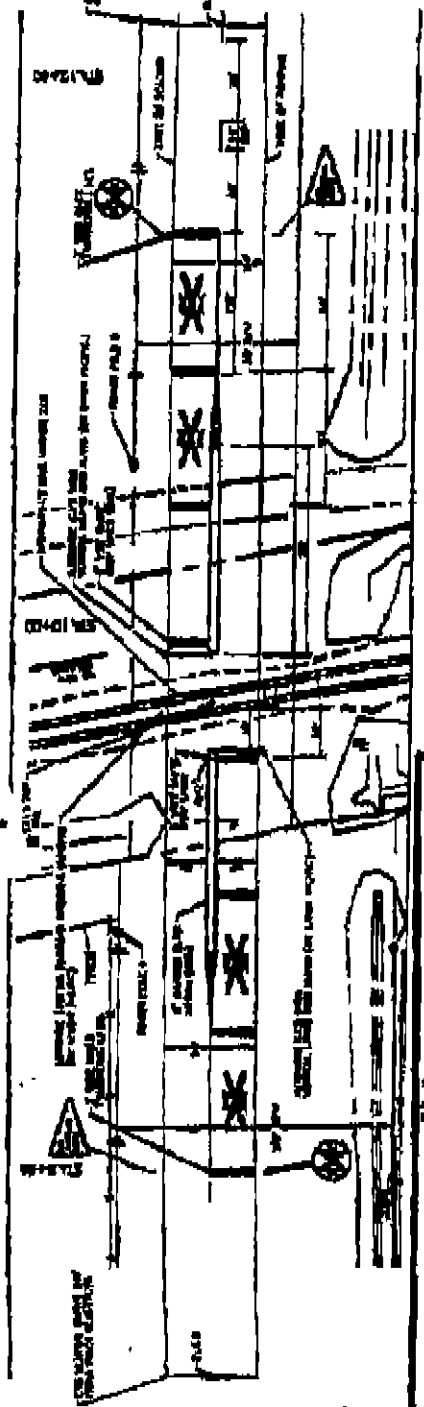
EXHIBIT A

SEPARATE PARAGRAPHS

DANNY J. HEARD, P.E.

LEWIS & CLARK, INC. (UNIVERSITY PARK)

FIBER OPTIC CABLE - Call before you dig.
 All plans should include comments retaining sub-contractor's or general contractor's to UPRR's
 Toll free number @ 800 330-9183



- Notes**
- 1) Applicant to perform all grading, drainage, paving, & utility adjustments at its expense.
 - 2) Applicant to remove and maintain vegetation from the Railroad's R.O.W. for 500ft. Each side of the centerline of the crossing at its expense.
 - 3) Construction of Electronic Signalization and Standard Rail Crossing Surface to be completed by the railroad at the Applicant's expense.

UNION PACIFIC RAILROAD
 Proposed Road Crossing By
 Esperanza Land Company
 Mr. Luling, L.A.
 MP 22.00 - Livonia Sub
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Handwritten signature and date
 10/24/01

EXHIBIT B

Road Crossing

SECTION 1. CONDITIONS AND COVENANTS

(a) The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The Developer, prior to the Dedication, and the Parish, upon and subsequent to the Dedication, shall not use or permit use of the Road Crossing for any purposes other than those described in this Agreement. Without limiting the foregoing, the Developer, prior to the Dedication, and the Parish, upon and subsequent to the Dedication, shall not use or permit use of the Road Crossing for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the "Railroad's Property" (which shall include the tracks and all appurtenant devices and equipment and the entirety of the Railroad's right of way) by or under authority of the Developer or the Parish for the purpose of conveying electric power or communications incidental to their use of the Railroad's Property for crossing purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No non-party shall be admitted by the Developer, prior to the Dedication, or by the Parish, upon and subsequent to the Dedication, to use or occupy any part of the Railroad's Property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.

(b) The Railroad reserves the right to cross the Road Crossing with such railroad tracks as may be required for its convenience or purposes in such manner as not unreasonably to interfere with the Licensee's use as the Road Crossing. In the event the Railroad shall place tracks upon the Road Crossing, the Developer, prior to the Dedication, and the Parish, upon and subsequent to the Dedication, shall, at each party's respective expense, modify the Road Crossing to conform with the rail line.

(c) The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or not, and also to any renewals thereof. The Licensee shall not damage, destroy or interfere with the property or rights of non-parties in, upon or relating to the Railroad's Property unless the Developer, prior to the Dedication, or the Parish, upon and subsequent to the Dedication, shall, at each party's respective expense, settle with and obtain releases from such non-parties.

(d) The Railroad reserves the right to use and to grant to others the right to use the Road Crossing for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property; also the right to cross the Road Crossing with all kinds of equipment. The Railroad further reserves the right to attach signal, communication or power lines to any Road Crossing facilities located upon the Railroad's Property, provided that such

attachments shall comply with the Licensee's specifications and shall not interfere with the Licensee's use of the Road Crossing.

(e) So far as it lawfully may do so, the Developer, prior to the Dedication, and the Parish, upon and subsequent to the Dedication, shall assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Road Crossing, excepting taxes levied upon and against the Railroad's Property as a component part of the Railroad's operating property.

(f) If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Road Crossing and its appurtenances, or for the performance of any work in connection with the Road Crossing, the Developer, prior to the Dedication, and the Parish, upon and subsequent to the Dedication, shall acquire all such other property and rights at its own expense and without expense to the Railroad.

(g) During construction of the Road Crossing, it is expressly stipulated that the Road Crossing is to be a private one. Upon the completion and the Dedication of the Road Crossing and the streets leading up to the Road Crossing to the Parish, it is contemplated that the Road Crossing shall become part of a public street with access to the public.

SECTION 2. CONSTRUCTION OF THE ROAD CROSSING

(a) The Developer, at its own expense, shall apply for and obtain all public authority required by law, ordinance, rule or regulation for the construction of the Road Crossing, and shall furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.

(b) Except as may be otherwise specifically provided herein, the Developer, at its own expense, shall furnish all necessary labor, material and equipment, and shall construct and complete the Road Crossing and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper crossing warning devices (except the Signals installed by the Railroad within its right-of-way), and all necessary and proper drainage facilities, guard rails or barriers, and right of way fences between the highway and the Railroad tracks. Upon completion of the Road Crossing, the Developer shall remove from the Railroad's Property all temporary structures and false work, and shall leave the Road Crossing in a condition satisfactory to the Railroad.

(c) The Railroad will receive no ascertainable benefit from the construction of the Road Crossing, and, except as may be specifically provided herein, shall not be required to pay or contribute any part of the cost thereof. If the Road Crossing is to be financed in whole or in part by Federal funds, all construction work by the Developer shall be performed and any reimbursement to the Railroad for work it performs shall be made, in accordance with the applicable Federal acts, regulations, and this Agreement.

(d) All construction work of the Developer upon the Railroad's Property (including, but not limited to, construction of the Road Crossing and all appurtenances and all related and incidental

work) shall be performed and completed in a manner satisfactory to the Vice President-Engineering Services of the Railroad or his authorized representative and in accordance with detailed plans and specifications prepared by and at the expense of the Developer, and approved in writing by the Railroad's Vice President-Engineering Services.

(e) All construction work of the Developer shall be performed diligently and completed within a reasonable time, and in any event within three (3) years from the effective date of this Agreement, or within such further period of time as may be specified in writing by the Railroad's Vice President-Engineering Services. No part of the Road Crossing shall be suspended, discontinued or unduly delayed without the Railroad's written consent, and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of the Developer. The Developer hereby assumes the risk of any such delays and agrees that no claims for damage on account of any delay shall be made against the Railroad.

(f) If the Road Crossing includes construction of a structure over which trains are to be operated, or for which the Railroad has any responsibility for maintenance, the Developer shall furnish the Railroad permanent reproducible prints of all design and shop drawings as soon as possible after approval by the Vice President-Engineering Services of the Railroad or his authorized representative. Upon completion of construction, the Developer shall furnish the Railroad two sets of "as constructed" prints and, in addition, upon request of the Vice President-Engineering Services of the Railroad, "as constructed" permanent reproducible prints of all or any portion of the structure.

SECTION 3. INJURY AND DAMAGE TO PROPERTY

If the Developer, prior to the Dedication, or the Parish, upon and subsequent to the Dedication, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the Developer or the Parish, as the case may be, is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or of any other person lawfully occupying or using the Railroad's Property, such property shall be replaced or repaired by the Developer or the Parish, at each party's respective expense, or by the Railroad at the expense of the Developer or the Parish, as the case may be, and to the satisfaction of the Railroad's Vice President-Engineering Services.

SECTION 4. PAYMENT FOR WORK BY THE RAILROAD COMPANY

The Railroad will submit to the Developer bills for flagging and other protective services and devices provided by the Railroad during the construction of the Road Crossing. Bills for work and materials shall be paid by the Developer promptly upon receipt thereof. The Railroad will submit its final billing for flagging and other protective services within one hundred and twenty (120) days after the Railroad receives notice of the Dedication, in accordance with Article 10 of the Agreement.

SECTION 5. MAINTENANCE AND USE

(a) The Railroad, at the sole expense of the Developer, prior to the Dedication, and at the sole expense of the Parish, upon and subsequent to the Dedication, shall maintain the portion of the Road Crossing lying between the rails of the tracks and for one (1) foot on the outside of each rail; provided, however, that such maintenance work shall be limited to that required for the safe and efficient operation of its tracks, and such other maintenance as the Railroad has agreed to perform on specific request of the Developer or the Parish, as the case may be. The Developer, prior to the Dedication, and the Parish, upon and subsequent to the Dedication, shall, at each party's respective expense, maintain, repair and renew the remaining portion of the Road Crossing and shall keep the rail flangeways clear of obstructions. To the extent any such work by the Developer or the Parish, as the case may be, shall be required to be made upon the Railroad's Property, the Developer or the Parish shall notify the Railroad in advance, shall execute a Contractor's Right of Entry Agreement in accordance with Article 6 of the Agreement and shall obtain the requisite Railroad Protective Insurance, as required by Exhibit "B-1".

(b) The Developer, prior to the Dedication, and the Parish, upon and subsequent to the Dedication, shall, at each party's respective expense, maintain, repair, renew and replace any gates, cattle guards, drainage facilities, traffic signs or devices, identification signs approved by the Railroad or other appurtenances shown on Exhibit "A", except the Signals, which shall be maintained and repaired by the Railroad in accordance with Article 5(c) of the Agreement. Developer, prior to the Dedication, and the Parish, upon and subsequent to the Dedication, shall be responsible for the Maintenance Fee, as defined in Article 5(c) of the Agreement. The Developer, prior to the Dedication, and the Parish, upon and subsequent to the Dedication, shall, at each party's respective expense, install and thereafter maintain any such appurtenances that may subsequently be required by the Railroad, by law, or by any public authority having jurisdiction.

(c) The Developer, prior to the Dedication, and the Parish, upon and subsequent to the Dedication, shall, at each party's respective expense, require all vehicles approaching the crossing to stop a safe distance from the tracks before crossing the tracks. The Developer, prior to the Dedication, and the Parish, upon and subsequent to the Dedication, shall not do, suffer or permit anything which will or may obstruct, endanger or interfere with, hinder or delay the maintenance and operation of the Railroad's tracks or appurtenant facilities or the facilities or equipment of others lawfully using the Railroad's Property.

(d) If, in the future, the Developer, prior to the Dedication, and the Parish, upon and subsequent to the Dedication, elects to have the surfacing material between the track tie ends, or between the tracks if there is more than one railroad track across the Road Crossing, replaced with paving or some surfacing material other than timber planking, the Railroad, at the sole expense of the Developer, prior to the Dedication, and at the sole expense of the Parish, upon and subsequent to the Dedication, shall install such replacement surfacing, and in the future, to the extent repair or replacement of the surfacing is necessitated by repair or rehabilitation of the Railroad's tracks

through the Road Crossing, the Developer, prior to the Dedication, and the Parish, upon and subsequent to the Dedication, shall bear the expense of such repairs or replacement.

SECTION 6. CHANGES IN GRADE.

If at any time the Railroad shall elect, or be required by competent authority, to raise or lower the grade of all or any portion of the track or tracks located in the Road Crossing, the Developer, prior to the Dedication, and the Parish, upon and subsequent to the Dedication, shall, at each party's respective expense, conform the road in the Road Crossing to conform with the change of grade of the trackage.

SECTION 7. REARRANGEMENT OF WARNING DEVICES

If the change or rearrangement of any warning device installed hereunder is necessitated for public or Railroad convenience or on account of improvements for either the Railroad, the Road Crossing or both, the parties will apportion the expense incidental thereto between themselves by negotiation, agreement or by the order of a competent authority before the change or rearrangement is undertaken.

SECTION 8. SAFETY MEASURES: PROTECTION OF RAILROAD COMPANY OPERATIONS

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of the aforesaid work of the Licensee, as hereinafter defined, that the work shall be performed in a safe manner and in conformity with the following standards:

- (a) Definitions. All references in this Section 8 of this Exhibit "B" to the Licensee shall include the Developer, prior to the Dedication, and the Parish, upon and subsequent to the Dedication, and each of their contractors, subcontractors, officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the Licensee shall include work both within and outside of the Railroad's Property.
- (b) Compliance With Laws. 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.

(c) No Interference or Delays. The Licensee shall not do, suffer or permit anything which or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's Property or facilities.

(d) Supervision. The Licensee, at its own expense, shall adequately police and supervise all work to be performed by the Licensee, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the Licensee for safe conduct and adequate policing and supervision of the Road Crossing shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the Licensee with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Road Crossing, the Licensee shall give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's Property and operations.

(e) Suspension of Work. If at any time the Licensee's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the Licensee is being or is about to be done or prosecuted without due regard and precaution for safety and security, the Licensee shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.

(f) Removal of Debris. The Licensee shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any of the Railroad's Property or facilities, and any such material and debris shall be promptly removed from the Railroad's Property by the Licensee at the Licensee's own expense or by the Railroad at the expense of the Licensee. The Licensee shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's Property during snow removal from the Road Crossing.

(g) Explosives. The Licensee shall not discharge any explosives on or in the vicinity of the Railroad's Property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's Property or facilities. For the purposes hereof, the "vicinity of the

Railroad's Property" shall be deemed to be any place on the Railroad's Property or in such close proximity to the Railroad's Property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's Property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate. In addition to any conditions, restrictions or limitations as may be specifically imposed:

(1) Unless the Railroad's Vice President-Engineering Services agrees otherwise, the Licensee shall provide no less than 48 hours' notice, excluding weekends and holidays, before discharging any explosives.

(2) Any explosives loaded in holes or placed or otherwise readied for discharge on a day shall be discharged on the same day during daylight hours, and at mutually acceptable times.

(3) The Licensee, at its own expense, shall take all precautionary measures and construct all temporary shelters necessary to guard against danger of damage, destruction or interference arising out of or connected with any blasting or any transportation, handling, storage, security or use of explosives.

(4) The Licensee shall require explosives to be transported, handled, stored or otherwise secured and used in a manner satisfactory to the Railroad and in accordance with local, state and Federal laws, rules and regulations, including without limitation, United States Department of Labor, Bureau of Labor Standards, Safety and Health Regulations for Construction, 29 CFR Part 1518, Subpart U - "Blasting and the Use of Explosives"; and Occupational Safety and Health Administration Occupational Safety and Health Standards, 29 CFR Part 1910, Subpart H - "Hazardous Materials".

(h) Obstructions to View. Except as otherwise specifically provided herein, the Licensee shall not cause or permit the view along the tracks of the Railroad to be obstructed, nor place any combustible material on the premises, nor erect any structures thereon. If public law or regulation requires control or removal of weeds or vegetation on each side of the Road Crossing, the Licensee shall perform such control or removal work without expense to the Railroad or, if the Licensee may not lawfully perform the control or removal work, reimburse the Railroad for the cost of performing such control or removal. Developer shall pay to the Railroad, at the time of execution of the Agreement, a one-time, non-refundable flat fee of **Sixteen Thousand Six Hundred and none/100 (\$16,600.00) Dollars** in full payment for Licensee's obligation to reimburse the Railroad for such control and removal work over the life of the Agreement. Insofar as it may lawfully do so, the Parish will prevent

nonparties from constructing sight-obstructing buildings or other permanent structures on property adjacent to the Railroad's Property.

(i) Excavation. The Licensee shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The Licensee shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's Property, tracks or facilities. The Licensee, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation, and/or trenching performed by the Licensee in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Vice President-Engineering Services to withstand all stresses likely to be encountered including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.

(j) Drainage. The Licensee, at the Licensee's own expense, shall provide and maintain suitable facilities for draining the Road Crossing and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon the Railroad's Property. The Licensee, at the Licensee's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the Licensee, be impeded, obstructed, diverted or caused to back up, overflow or damage the Railroad's Property or any part thereof, or property of others. The Licensee shall not obstruct or interfere with existing ditches or drainage facilities.

(k) Notice. Before commencing any work, the Licensee shall provide 48 hours prior notice (excluding weekends and holidays) to the Railroad's Manager-Track Maintenance.

(l) Fiber Optic Cables. Fiber optic cable systems may be buried on the Railroad's Property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. 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 Railroad's Property to be used by the Licensee. If it is, the Licensee shall telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's Property. The Developer, prior to the Dedication, and the Parish, upon and subsequent to the Dedication, shall, in addition to all other obligations and indemnities set forth elsewhere in this Agreement, indemnify and hold the Railroad harmless against and from all cost, liability and expense whatsoever (including, without limitation, attorneys' fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of the Developer or the Parish, as the case may be, or any subcontractor, agent and/or employees of either of

them, that causes or contributes to (i) any damage to or destruction of any telecommunications system on the Railroad's Property, and (ii) 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. Neither the Developer nor the Parish, as the case may be, shall have or seek recourse against the Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or any consequential damage to a telecommunications company using Railroad's Property or a customer or user of services of any fiber optic cable on Railroad's Property.

SECTION 9. INTERIM WARNING DEVICES

If at anytime it is determined by a competent authority, by the Developer, prior to the Dedication, by the Parish, upon and subsequent to the Dedication, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Road Crossing, the Developer or the Parish, as the case may be, shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the new or improved devices have been installed by the Railroad, at the expense of the Developer, prior to the Dedication, or the Parish, upon and subsequent to the Dedication.

SECTION 10. OTHER RAILROADS

All protective and indemnifying provisions of this Agreement shall inure to the benefit of the Railroad and any other railroad company lawfully using the Railroad's Property or facilities.

SECTION 11. REMEDIES FOR BREACH OR NON-USE

(a) If the Developer, prior to the Dedication, or the Parish, upon and subsequent to the Dedication, fails, refuses or neglects to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Road Crossing and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's Property, facilities or operations or jeopardize the Railroad's employees; and the Developer or the Parish, as the case may be, shall reimburse the Railroad for the expenses thereof.

(b) Non-use by the Developer or the Parish of the Road Crossing for roadway purposes continuing at any time for a period of eighteen (18) months, at the option of the Railroad, shall work a termination of this Agreement and of all the rights of the Developer and the Parish, hereunder.

(c) The Developer or the Parish, as the case may be, shall surrender peaceable possession of the Road Crossing upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

SECTION 12. MODIFICATION - ENTIRE AGREEMENT

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the Developer (but only if such waiver, modification or amendment occurs prior to the Dedication), the Parish and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the Developer or the Parish shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof constitute the entire understanding between the Developer, the Parish and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.

SECTION 13. INDEMNIFICATION BY THE DEVELOPER, AND ITS SUCCESSORS OR ASSIGNS, PRIOR TO THE DEDICATION.

Prior to the Dedication, the Developer and its successors or assigns assume the risk of and shall indemnify and hold harmless the Railroad and other railroad companies which use the Railroad's Property, their current, former and future officers, agents and employees, against and from any and all loss, damages, claims, demands, actions, causes of action, costs, attorneys' fees, fines, penalties and expenses of whatsoever nature (hereinafter "Loss") which may result from: (1) injury to or death of persons whomsoever, (including officers, agents and employees of the Railroad and of the Developer, or its successors or assigns, as well as other persons); (2) loss of or damage to any property whatsoever (including damage to property of or in the custody of the Developer, or its successors or assigns, and damage to the roadbed, tracks, equipment or other property of or in the custody of the Railroad and such other railroad companies, as well as other property); or (3) the failure of the Developer, or its successors or assigns, to comply with any federal, state or local law, regulation, or enactment; when such Loss is due to or arises in connection with or as a result of:

16. the construction of the Road Crossing;
17. any work done by the Developer, or its successors or assigns, on or in connection with the Road Crossing;
18. the use of said Road Crossing by the Developer, or the officers, agents, employees, patrons or invitees of the Developer or by the Parish, or by any other person;
19. the use of said Road Crossing by the Developer's successors or assigns or the officers, agents, employees, patrons or invitees of the Developer's successors or assigns; or
20. the breach of any covenant or obligation assumed by or imposed on the Developer, or its successors or assigns, pursuant to this Agreement, or the failure of the Developer, or its successors or assigns, to promptly and fully do any act or work for which any Licensee is responsible pursuant to this Agreement.

regardless of whether such Loss is caused solely or contributed to in part by the negligence of the Railroad, its officers, agents or employees.

To the extent the work performed by the Railroad pursuant to Article 3(a) and Article 5(a) of the Agreement requires subsequent repair or replacement (other than that regular maintenance provided for in Article 3(d) and Article 5(c) of the Agreement and in Section 5 of Exhibit "B" to the Agreement), for reasons not resulting from the acts or omissions of the Developer, and notwithstanding anything in this Section 13 to the contrary, Developer shall not be responsible for the cost of materials or labor required for such repair and replacements; provided, however, that if such repair or replacement is necessitated by damage caused by flood, hurricane, earthquake or other natural or man-made disaster, Developer shall bear sole responsibility for all costs associated with such repair or replacement.

After the Dedication, this Section 13 shall be null and void except with respect to any Loss which results from an occurrence prior to the Dedication.

SECTION 14. INDEMNIFICATION BY THE PARISH

The Parish assumes the risk of and shall indemnify and hold harmless the Railroad and other railroad companies which use the Railroad's Property, their officers, agents and employees, against and from any and all loss, damages, claims, demands, actions, causes of action, costs, attorneys' fees, fines, penalties and expenses of whatsoever nature (hereinafter "Loss") which may result from: (1) injury to or death of persons whomsoever, (including officers, agents and employees of the Railroad and of the Parish, as well as other persons); (2) loss of or damage to any property whatsoever (including damage to property of or in the custody of the Parish and damage to the roadbed, tracks, equipment or other property of or in the custody of the Railroad and such other railroad companies, as well as other property); or (3) the failure of the Parish to comply with any federal, state or local law, regulation, or enactment; when such Loss is due to or arises in connection with or as a result of:

1. any work done by the Parish, its employees or agents on or in connection with the Road Crossing;
2. the use of said Road Crossing by the Parish, its employees or agents, to the extent the actions or inactions of said employees or agents are imputable to the Parish; and
3. the breach of any covenant or obligation assumed by or imposed on the Parish, subsequent to the Dedication, pursuant to this Agreement, or the failure of the Parish to promptly and fully do any act or work for which the Parish, subsequent to the Dedication, is responsible pursuant to this Agreement.

This Section 14 shall apply only to the extent the loss, damages, claims, demands, actions, causes of action, costs, attorneys' fees, fines, penalties and expenses of the Railroad (or other railroad company using the Railroad's Property) are not otherwise covered by insurance obtained by the Parish in favor of the Railroad pursuant to Article 7(c) of the Agreement.

SECTION 15. ASSIGNMENT: SUCCESSORS AND ASSIGNS.

This Agreement shall not be assigned by the Developer or the Parish, as the case may be, without the written consent of the Railroad. Subject hereto, this Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, executors, administrators, successors or assigns.

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EXHIBIT B-1

**UNION PACIFIC RAILROAD
CONTRACT INSURANCE REQUIREMENTS
OF DEVELOPER**

The Developer, prior to the Dedication and/or its Contractor(s)/Subcontractor(s) shall, at its own and/or its Contractor's/Subcontractor's own expense, procure the following kinds of insurance and promptly pay when due all premiums for that insurance. The Railroad Protective Insurance described in Paragraph E below only needs to be obtained and kept in force during the duration of construction or major reconstruction or repair, on a project-by-project basis, of the Road Crossing located on the Railroad's Property. The other insurance coverage described in Paragraph A, B, C and D below shall be kept in force by the Developer prior to the Dedication.

A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a single limit of at least \$5,000,000 each occurrence or claim and an aggregate limit of at least \$10,000,000. 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:

- "For purposes of this insurance, Union Pacific Railroad payments related to the Federal Employers Liability Act or a Union Pacific Wage Continuation Program or similar programs are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law."
- 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.
- Separate general aggregate for the project
- Coverage for Railroad's employees shall not be excluded
- Waiver of subrogation

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:**

- “For purposes of this insurance, Union Pacific Railroad payments related to the Federal Employers Liability Act or a Union Pacific Wage Continuation Program or similar programs are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.”

C. Workers Compensation and Employers Liability insurance including but not limited to:

- Developer’s and/or its contractor’s statutory liability under the workers’ compensation laws of the state(s) affected by this Agreement
- Employers’ Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit, \$500,000 each employee

If Workers Compensation insurance will not cover the liability of Developer and/or its contractor in states that require participation in state workers’ compensation fund, Developer and/or its contractors shall comply with the laws of such states. 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 Developer and/or its contractors utilize 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

1. Punitive damage exclusion must be deleted, **which deletion shall be indicated on the certificate of insurance.**
2. Developer and/or its contractors agree to waive their respective rights of recovery, and their respective insurers, through policy endorsement, agree to waive their right of subrogation against

Railroad. Developer and/or its contractors further waive their respective right of recovery, and their respective insurers also waive their right of subrogation against Railroad for loss of their respective owned or leased property or property under their respective care, custody and control. Developer and/or its contractors' insurance shall be primary with respect to any insurance carried by Railroad. All waivers of subrogation **shall be indicated on the certificate of insurance.**

3. All policy(ies) required above (excluding Workers Compensation) shall provide severability of interests and shall name Railroad as an additional insured. **Severability of interest and naming Railroad as additional insured shall be indicated on the certificate of insurance.**

4. Prior to commencing the Work, Developer shall furnish to Railroad original certificate(s) of insurance evidencing the required coverage, endorsements, and amendments, and reference the contract audit/folder number if available, as provided in Article 7(b) of the Agreement. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing in advance of any cancellation. Developer shall notify the Railroad in advance of any material alteration. **Upon request from Railroad, a certified duplicate original of any required policy shall be furnished.**

5. Any insurance policy shall 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 service is to be provided.

6. The Developer **WARRANTS** that this Agreement has been thoroughly reviewed by its insurance agent(s)/broker(s), who have been instructed by Developer to procure the insurance coverage required by this Agreement and acknowledge that Developer's insurance coverage will be primary.

7. The fact that insurance is obtained by Developer, or Railroad on behalf of Developer, as the case may be, shall not be deemed to release or diminish the liability of Developer, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage. However, nothing in this Paragraph 7 shall be construed to enable the Railroad to recover more than its actual damages (as used herein) or Loss (as defined in Section 13 of the Crossing Agreement), it being understood that this Paragraph 7 is not intended to enable the Railroad to receive a double recovery.

EXHIBIT B-2

**UNION PACIFIC RAILROAD
CONTRACT INSURANCE REQUIREMENTS
OF PARISH UPON AND SUBSEQUENT TO DEDICATION**

Subject to the limitations imposed by LSA-R.S. 38:2195, to the extent said limitations are applicable to the obligation of the parish to provide the insurance required herein, the Parish, upon and subsequent to the Dedication, and/or its Contractor(s)/Subcontractor(s) shall, at its own and/or its Contractor's/Subcontractor's own expense, procure the following kinds of insurance and promptly pay when due all premiums for that insurance and keep said insurance in force during the life of this Agreement.

A. **Railroad Liability insurance.** This insurance shall contain broad form contractual liability with a single limit of at least \$5,000,000 each occurrence or claim and an aggregate limit of at least \$5,000,000. Coverage must include but not limited to coverage for the following:

- Bodily injury including death and personal injury
- Property damage
- Products and completed operations
- Foreign Rolling Stock and Bill of Lading

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

- "For purposes of this insurance, Union Pacific Railroad payments related to the Federal Employers Liability Act or a Union Pacific Wage Continuation Program or similar programs are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law."

- Coverage for Contractors (and Railroads) employees shall not be excluded
- Waiver of subrogation

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:

- "For purposes of this insurance, Union Pacific Railroad payments related to the Federal Employers Liability Act or a Union Pacific Wage Continuation Program or similar programs are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law."

- 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. **Workers Compensation and Employers Liability Insurance** including but not limited to:

- Parish'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 Workers Compensation insurance will not cover the liability of Parish in states that require participation in state workers' compensation fund, Parish shall comply with the laws of such states.

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 Parish utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.

Other Requirements

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

F. The Parish agrees to waive its right of recovery, and its insurers, through policy endorsement, agree to waive their right of subrogation against Railroad. The Parish further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned

or leased property or property under its care, custody and control. The Parish's insurance shall be primary with respect to any insurance carried by Railroad. All waivers of subrogation shall be indicated on the certificate of insurance.

G. All policy(ies) required above (excluding Workers Compensation) shall provide severability of interests and shall name Railroad as an additional insured. Severability of interest and naming Railroad as additional insured shall be indicated on the certificate of insurance.

H. Prior to the Dedication, Parish shall furnish to 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 Railroad in writing in advance of any cancellation. Parish shall notify the Railroad in writing in advance of any material alteration. Upon request from Railroad, a certified duplicate original of any required policy shall be furnished.

I. Any insurance policy shall 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 service is to be provided.

J. Parish WARRANTS that this Agreement has been thoroughly reviewed by Parish's insurance agent(s)/broker(s), who have been instructed by Parish to procure the insurance coverage required by this Agreement and acknowledges that Parish's insurance coverage will be primary.

K. The fact that insurance is obtained by Parish, or Railroad on behalf of Parish, shall not be deemed to release or diminish the liability of Parish, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage.