

**PUBLIC HIGHWAY OVERPASS AGREEMENT**

Kellogg Blvd  
DOT# 083009P  
MP 409.667 – Mankato Subdivision  
St. Paul, Ramsey County, State of Minnesota

THIS AGREEMENT ("Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ ("Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179 ("Railroad") and **CITY OF SAINT PAUL**, a municipal corporation or political subdivision of the State of Minnesota to be addressed at 25 West 4<sup>th</sup> Street, Saint Paul, Minnesota, 55102 ("Political Body").

**RECITALS:**

By instrument dated January 1, 1984 (the "Original Agreement"), Political Body granted rights to the Chicago and North Western Transportation Company near Kellogg Blvd, at MP 409.667 on Railroad's Mankato Subdivision at or near St. Paul, Ramsey County, State of Minnesota (the "Crossing Area"), as shown on the location print marked **Exhibit A** attached hereto and hereby made a part hereof.

The Railroad is the successor in interest to the Chicago and North Western Transportation Company.

Railroad continues to lawfully occupy and use the Crossing Area to conduct common carrier operations in accordance with applicable federal and state laws, rules and regulations.

The Political Body now desires to undertake as its project (the "Project") the improvement of the Crossing Area, which improvements shall include the reconstruction of the Grade Separated structure over the Railroad's tracks, in accordance with the Plans (defined below), as depicted or described on **Exhibit A-1**, attached hereto and hereby made a part hereof. The grade separated road Kellogg Blvd, as improved in accordance with this Agreement is hereinafter the "Roadway" and the portion of the Roadway and Crossing Area, collectively, that cross Railroad's operating property is hereinafter the "Railroad's Operating Property."

Railroad and Political Body are entering into this Agreement to cover the above.

**AGREEMENT:**

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

**Section 1. EXHIBITS B AND E**

The general terms and conditions marked **Exhibit B** and Railroad's Coordination Requirements marked **Exhibit E**, are attached hereto and hereby made a part hereof.

**Section 2. RAILROAD GRANT OF RIGHTS**

For and in consideration of the Political Body's agreement to perform and comply with the terms of this Agreement, the Railroad hereby grants to the Political Body the right to construct, maintain and repair the Roadway over and across the Crossing Area.

For and in consideration of **SEVENTEEN THOUSAND AND FOURTEEN DOLLARS (\$17,014.00)** the Railroad hereby grants to the Political Body (a) temporary construction area(s) on the Railroad's property as described and shown on Exhibit A. The Political Body's use of such property shall be subject to the terms and conditions of this Agreement and the obligation of the Political Body and its contractors to comply with such provisions. The temporary construction area granted herein shall commence as of the effective date of this Agreement and continue for thirty-six (36) months, or until the project has been completed, whichever occurs earlier.

**Section 3. DEFINITION OF CONTRACTOR**

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the Political Body to perform any Project work on any portion of Railroad's Operating Property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.

**Section 4. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE**

A. Prior to Contractor performing any work within the Crossing Area and any subsequent maintenance and repair work, Political Body shall require the Contractor to:

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

B. The Railroad's current CROE is marked **Exhibit D**, attached hereto and hereby made a part hereof. The Political Body confirms that it will inform its Contractor that it is required to execute such form of agreement and obtain the required insurance

before commencing any work on any portion of Railroad's Operating Property. Under no circumstances will the Contractor be allowed on the Railroad's Operating Property without first executing Railroad's CROE and obtaining the insurance set forth therein and also providing to Railroad the insurance policies, binders, certificates and/or endorsements described therein.

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

Manager - Contracts  
Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street, Mail Stop 1690  
Omaha, NE 68179-1690  
UP File Folder No. 0776044

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

#### **Section 5. FEDERAL AID POLICY GUIDE**

If the Political Body will be receiving any federal funding for the Project, the current rules, regulations and provisions of the Federal Aid Policy Guide as contained in 23 CFR 140, Subpart I and 23 CFR 646, Subparts A and B are incorporated into this Agreement by reference.

#### **Section 6. NO PROJECT EXPENSES TO BE BORNE BY RAILROAD**

The Political Body agrees that no Project costs and expenses are to be borne by the Railroad. In addition, the Railroad is not required to contribute any funding for the Project.

#### **Section 7. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO POLITICAL BODY; POLITICAL BODY'S PAYMENT OF BILLS**

A. The work to be performed by the Railroad, at the Political Body's sole cost and expense, is described in the Railroad's Material and Force Account Estimate dated May 1, 2023, marked **Exhibit C**, attached hereto and hereby made a part hereof (the "Estimate"). As set forth in the Estimate, the Railroad's estimated cost for the Railroad's work associated with the Project is One Hundred and Five Thousand Dollars (\$105,000.00).

B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the Political Body in the event the Political Body does not commence construction on the portion of the Project located on the Railroad's property within six (6)

months from the date of the Estimate.

C. The Political Body acknowledges that the Estimate does not include any estimate of flagging or other protective service costs that are to be paid by the Political Body or the Contractor in connection with flagging or other protective services provided by the Railroad in connection with the Project. All of such costs incurred by the Railroad are to be paid by the Political Body or the Contractor as determined by the Railroad and the Political Body. If it is determined that the Railroad will be billing the Contractor directly for such costs, the Political Body agrees that it will pay the Railroad for any flagging costs that have not been paid by any Contractor within thirty (30) days of the Contractor's receipt of billing.

D. The Railroad shall send progressive billing to the Political Body during the Project and final billing to the Political Body within one hundred eighty (180) days after receiving written notice from the Political Body that all Project work affecting the Railroad's property has been completed.

E. The Political Body agrees to reimburse the Railroad within thirty (30) days of its receipt of billing from the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, all actual costs of engineering review (including preliminary engineering review costs incurred by Railroad prior to the Effective Date of this Agreement), construction, inspection, flagging (unless flagging costs are to be billed directly to the Contractor), procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead labor/construction costs including Railroad's standard additive rates.

## **Section 8. PLANS**

A. The Political Body, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Project and the improvements to be installed as part of the Project and shall submit such plans and specifications to the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, for prior review and approval. The plans and specifications shall include, as applicable, all layout specifications, cross sections and elevations, associated drainage, and other appurtenances for the improvements to be installed as part of the Project.

B. The final one hundred percent (100%) completed plans for the Project within the Crossing Area and Railroad's Operating Property that are approved in writing by Railroad's Assistant Vice President Engineering-Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.

C. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing.

D. The Railroad's review and approval of the Plans will in no way relieve the Political Body or the Contractor from their responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that the Railroad makes no representations or warranties as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by the Political Body or Contractor on the Plans is at the risk of the Political Body and Contractor.

## **Section 9. NON-RAILROAD IMPROVEMENTS**

A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocating, replacing, removing and abandoning in place all non-railroad owned facilities (the "Non Railroad Facilities") affected by the Project including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required under Section 8. The Non Railroad Facilities plans and specifications shall comply with Railroad's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines. Railroad has no obligation to supply additional land for any Non Railroad Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted Non Railroad Facilities plans and specifications comply with Railroad's standard specifications and requirements. Railroad has no obligation to permit any Non Railroad Facilities to be abandoned in place or relocated on Railroad's property.

B. Upon Railroad's approval of submitted Non Railroad Facilities plans and specifications, Railroad will attempt to incorporate them into new agreements or supplements of existing agreements with Non Railroad Facilities owners or operators. Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for Non Railroad Facilities. Non Railroad Facilities work shall not commence before a supplement or new agreement has been fully executed by Railroad and the Non Railroad Facilities owner or operator, or before Railroad and Political Body mutually agree in writing to (i) deem the approved Non Railroad Facilities plans and specifications to be Plans pursuant to Section 8B, (ii) deem the Non Railroad Facilities part of the improvements, and (iii) supplement this Agreement with terms and conditions covering the Non Railroad Facilities.

## **Section 10. EFFECTIVE DATE; TERM; TERMINATION**

A. This Agreement is effective as of the Effective Date and shall continue in full force and effect for as long as the improvements remain within the Crossing Area.

B. Railroad, if it so elects, may terminate this Agreement effective upon delivery of written notice to Political Body in the event Political Body does not commence construction on the portion of the Project located on the Railroad's Operating Property within twelve (12) months from the Effective Date.

C. If the Agreement is terminated as provided above, or for any other reason, Political Body shall pay to Railroad all actual costs incurred by the Railroad in connection with the Project up to the date of termination, including, without limitation, all actual costs incurred by the Railroad in connection with reviewing any preliminary plans, including the Plans.

**Section 11. CONDITIONS TO BE MET BEFORE POLITICAL BODY CAN COMMENCE WORK**

For the Project and any subsequent maintenance or repair work on Railroad's Operating Property, neither the Political Body nor the Contractor may commence any work within the Crossing Area or Railroad's Operating Property until:

- (i) The Railroad and Political Body have executed this Agreement.
- (ii) The Railroad has provided to the Political Body the Railroad's written approval of the Plans.
- (iii) Each Contractor has executed Railroad's CROE and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements required under the CROE.
- (iv) Each Contractor has given the advance notice(s) required under the CROE to the Railroad Representative named in the CROE.

**Section 12. FUTURE PROJECTS**

Future projects involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the improvements within the Crossing Area shall not commence until Railroad and Political Body agree on the plans for such future projects, cost allocations, right of entry terms and conditions and temporary construction rights, terms and conditions.

**Section 13. ASSIGNMENT; SUCCESSORS AND ASSIGNS**

A. Political Body shall not assign this Agreement without the prior written consent of Railroad.

B. Subject to the provisions of Paragraph A above, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad and Political Body.

**Section 14. SPECIAL PROVISIONS PERTAINING TO FEDERAL FUNDING**

If Political Body will be receiving any federal funds for the Project, Political Body agrees that it is solely responsible for performing and completing all requirements,

including, without limitation, reporting requirements in connection with the Project and the receipt of such funding and that Railroad shall not have any responsibility in connection with the same. Political Body also confirms and acknowledges that (i) Railroad shall provide to Political Body the Railroad's standard and customary billing for any expenses incurred by Railroad for the Project including Railroad's standard and customary documentation to support such billing, and (ii) such standard and customary billing and documentation from Railroad provides the information needed by Political Body to perform and complete any such reporting requirements in connection with any federal funding. Railroad confirms that Political Body shall have the right to audit the Railroad's billing and documentation for the Project as provided in Section 11 of **Exhibit B** of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date.

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

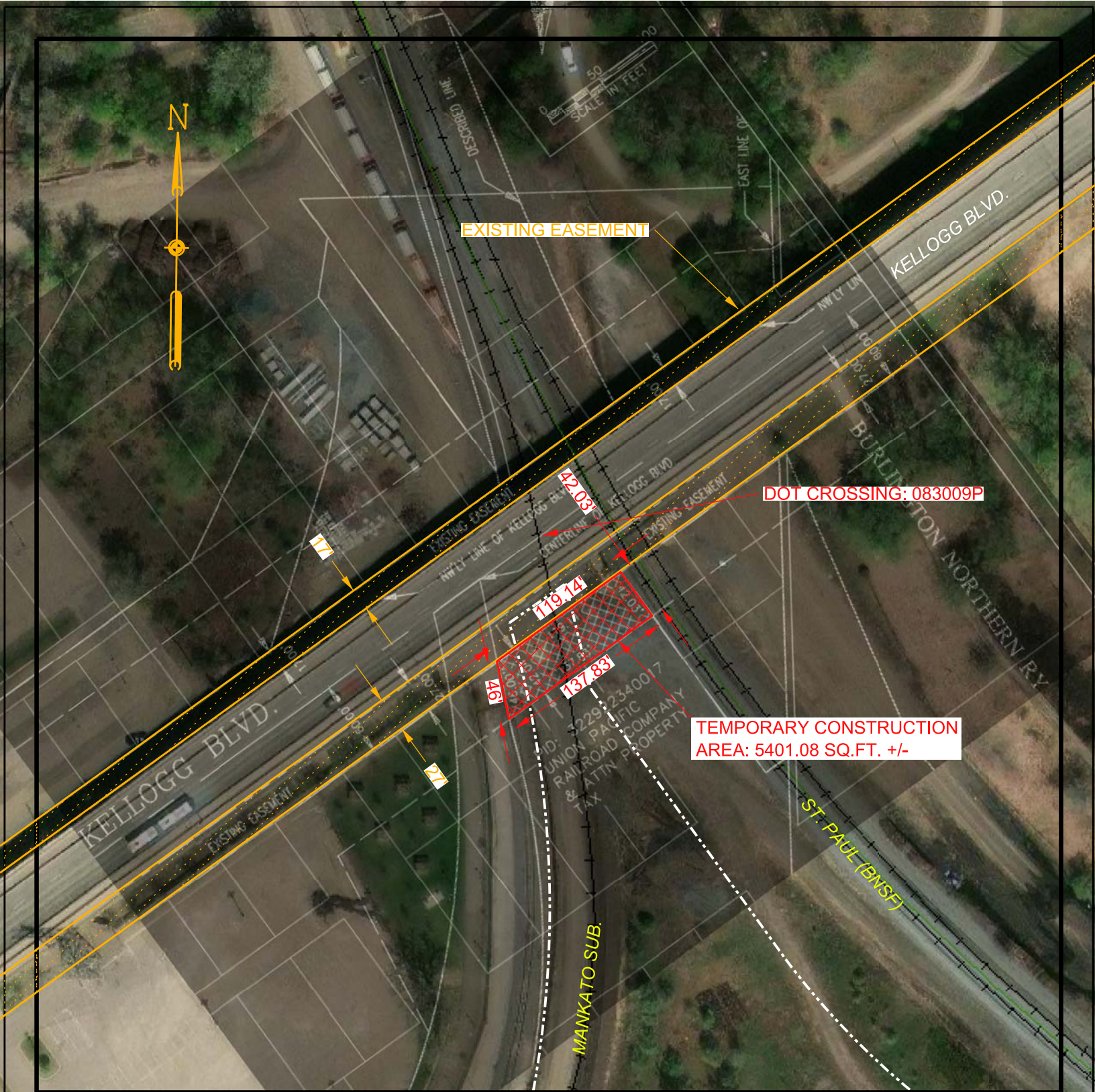
By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY OF SAINT PAUL**

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

**EXHIBIT A  
TO  
PUBLIC HIGHWAY OVERPASS AGREEMENT**

**Exhibit A** will be a print showing the Crossing Area (see Recitals)



\*DISTANCES ARE APPROXIMATE\*

LEGEND:

- TEMP CONSTRUCTION AREA
- EXISTING EASEMENT
- UPRRCO. R/W OUTLINED

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

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

ST. PAUL, RAMSEY COUNTY, MN

M.P. 430.3 - MANKATO SUB.

CGW/MN/V-323/29  
SCALE: 1" = 100'

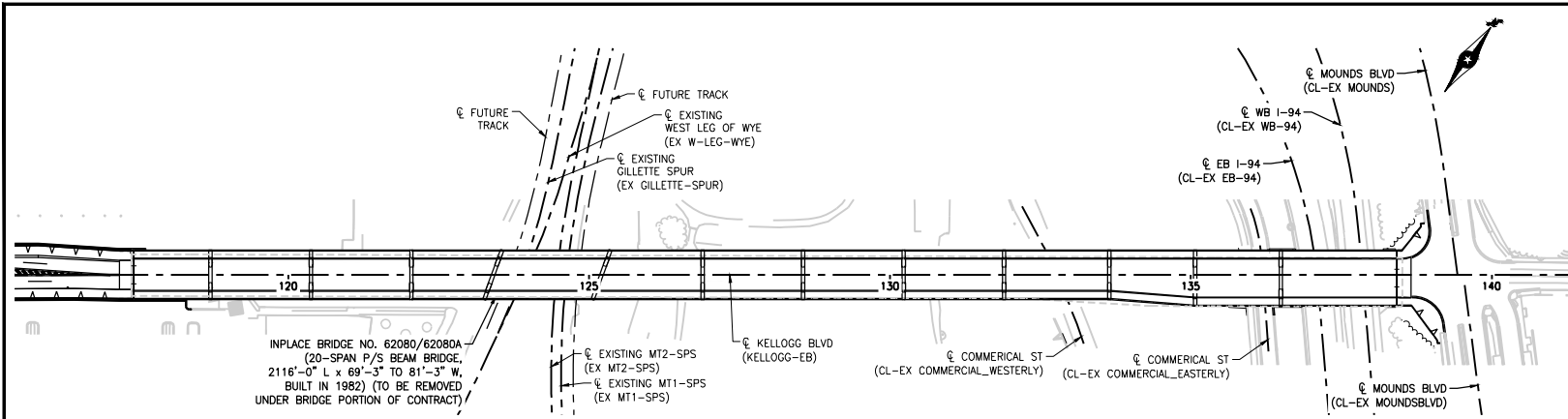
OFFICE OF REAL ESTATE  
OMAHA, NEBRASKA DATE: 11-1-2023

DSK FILE: 0776044

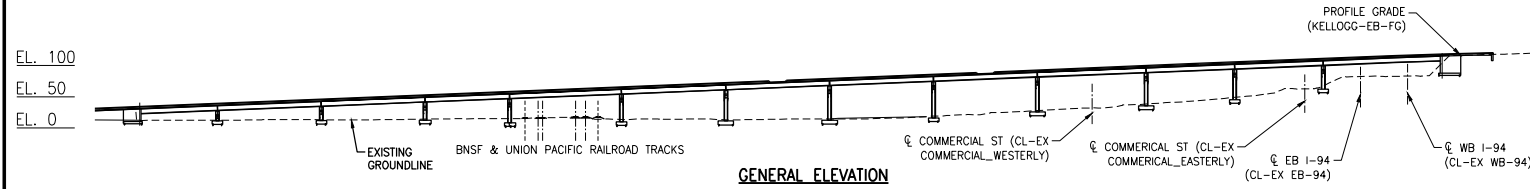
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**EXHIBIT A-1  
TO  
PUBLIC HIGHWAY OVERPASS AGREEMENT**

**Exhibit A-1** will be the Plans of the Crossing Area (see Recitals)



**GENERAL PLAN**



**GENERAL ELEVATION**

**VERTICAL DATUM**

THE VERTICAL DATUM IS BASED ON THE CITY OF SAINT PAUL DATUM. (1)  
ZERO DATUM (SAINT PAUL) = EL. 694.26 (NAVD 88)

**CONSTRUCTION NOTES**

THE 2020 EDITION OF THE MINNESOTA DEPARTMENT OF TRANSPORTATION "STANDARD SPECIFICATIONS FOR CONSTRUCTION" SHALL GOVERN.

SEE SPECIAL PROVISIONS FOR ALL XXXX.GXX SERIES PAY ITEMS FOR ADDITIONAL REQUIREMENTS.

THE BAR SIZES SHOWN IN THIS PLAN ARE IN U.S. CUSTOMARY DESIGNATIONS.

BARs MARKED WITH THE SUFFIX "E" SHALL BE EPOXY COATED IN ACCORDANCE WITH SPEC. 3301.

THE SUBSURFACE UTILITY INFORMATION IN THIS PLAN IS UTILITY QUALITY LEVEL D. THIS UTILITY QUALITY LEVEL WAS DETERMINED ACCORDING TO THE GUIDELINES OF CI/ASCE 38-02, ENTITLED "STANDARD GUIDELINES FOR THE COLLECTION AND DEPICTION OF EXISTING SUBSURFACE UTILITY DATA".

THE PILE LOADS SHOWN IN THE PLANS AND THE CORRESPONDING NOMINAL PILE BEARING RESISTANCE (Rn) WERE COMPUTED USING LRFD METHODOLOGY. PILE BEARING RESISTANCE DETERMINED IN THE FIELD SHALL INCORPORATE THE METHODS AND/OR FORMULAS DESCRIBED IN THE SPECIAL PROVISIONS.

CONSTRUCTION OF THE WEST ABUTMENT SHALL NOT BE STARTED UNTIL THE APPROACH FILL AT THAT ABUTMENT HAS BEEN CONSTRUCTED TO THE FULL HEIGHT AND CROSS SECTION (AND ALLOWED TO SETTLE FOR 2 MONTHS).

DIMENSIONS SHOWN ARE BASED ON AN AMBIENT TEMPERATURE OF 45°F. THE CONTRACTOR SHALL ADJUST THE POSITION OF BEAMS, BEARINGS, AND EXPANSION JOINTS FOR THE TEMPERATURE AT INSTALLATION.

DEWATERING EQUIPMENT MAY BE NEEDED FOR FOUNDATION REMOVAL OR CONSTRUCTION. SEE SPECIAL PROVISIONS.

POURING THE BEAM SEATS SHALL NOT BE STARTED UNTIL THE CONTRACTOR HAS PROVIDED THE MEASURED BEAM CAMBER TO THE ENGINEER. THE ENGINEER WILL PROVIDE ADJUSTED BEAM SEAT ELEVATIONS IF REQUIRED TO ACCOMMODATE LESS THAN ANTICIPATED BEAM CAMBER. SEE SPECIAL PROVISIONS.

THE BEAMS ARE SUPPORTED BY LOW FRICTION BEARINGS. THE CONTRACTOR'S ENGINEER SHALL DESIGN, AND THE CONTRACTOR SHALL CONSTRUCT, A TEMPORARY BRACING SYSTEM THAT PROVIDES LONGITUDINAL, LATERAL, AND ROTATIONAL STABILITY OF THE GIRDERS BEFORE THE ENTIRE DECK IN EACH UNIT HAS ATTAINED A MINIMUM STRENGTH OF 2800 PSI.

**NOTES:**

- (1) SEE BRIDGE SURVEY SHEET FOR BENCH MARK LOCATION.
- TRAFFIC TO BE DETOURED DURING CONSTRUCTION.
- BRIDGE APPROACH PANEL STANDARDS 5-297.222 & 5-297.223 APPLY AT THE WEST ABUTMENT. STANDARDS 5-297.224 & 5-297.225 APPLY AT THE EAST ABUTMENT.
- BRIDGE APPROACH TREATMENT STANDARD 5-297.233 APPLIES.
- ALL SLOPES ARE SHOWN VERTICAL:HORIZONTAL.

**LIST OF SHEETS**

B1	COVER SHEET
B2	RAILROAD CONSTRUCTION REQUIREMENTS
B3-B6	GENERAL PLAN & ELEVATION
B7	ROADWAY UNDERPASS DETAIL
B8	SCHEDULE OF QUANTITIES
B9	TRANSVERSE SECTION
B10	CORNER DETAILS
B11-B13	BRIDGE LAYOUT
B14-B15	EXISTING PIER REMOVAL SHEETS
B16-B39	ABUTMENT DETAILS
B40-B103	PIER DETAILS
B104-B110	FRAMING PLAN
B111-B123	BEAM SHEETS
B124-B136	SUPERSTRUCTURE DETAILS
B137	POUR SEQUENCE
B138-B149	BARRIER AND PARAPET DETAILS
B150-B153	ORNAMENTAL METAL RAILING DETAILS
B154-B155	MODULAR BRIDGE JOINT DETAILS
B156	DISC BEARING DETAILS
B157-B161	DECK DRAINAGE DETAILS
B162-B163	UNDERJOINT CONTAINMENT DETAILS
B164-B166	CONDUIT SYSTEM DETAILS
B167	CONCRETE SLOPE PAVING DETAILS
B168-B173	BRIDGE APPROACH PANEL DETAILS
B174-B179	B-DETAILS
B180	AS-BUILT BRIDGE DATA
B181-B187	BRIDGE SURVEY
B188-B203	BORINGS - PLAN & PROFILE
B204-B207	SOIL BORINGS

**DESIGN DATA**

DESIGNED IN ACCORDANCE WITH 2020 AASHTO LRFD BRIDGE DESIGN SPECIFICATIONS

HL-93 LIVE LOAD

DEAD LOAD INCLUDES 20 POUNDS PER SQUARE FOOT ALLOWANCE FOR FUTURE WEARING COURSE MODIFICATIONS

MATERIAL DESIGN PROPERTIES:  
REINFORCED CONCRETE:  
f<sub>c</sub> = 4 KSI CONCRETE  
f<sub>y</sub> = 60 KSI PLAIN AND EPOXY COATED BARS  
n = 8 FOR REINFORCEMENT BARS  
PRETENSIONED CONCRETE:  
f<sub>c</sub> = 9.8 KSI CONCRETE (MAX.)  
f<sub>pu</sub> = 300 KSI LOW RELAXATION STRANDS  
n = 1 FOR PRETENSIONING STRANDS  
0.72 f<sub>pu</sub> FOR INITIAL PRESTRESS

DESIGN SPEED:  
OVER = 30 MPH  
UNDER = 55 MPH (I-94)  
30 MPH (COMMERCIAL ST)

APPROXIMATE DECK AREA = 176879 SQUARE FEET

2042 PROJECTED TRAFFIC VOLUMES:  
ROADWAY OVER ROADWAY UNDER  
10500 AADT 118000 (I-94)  
N/A (COMMERCIAL)

HL-93 LRFD  
BRIDGE OPERATING RATING FACTOR RF = 2.02

**CITY OF ST. PAUL**

**BRIDGE NO. 62666**

KELLOGG BLVD (MSAS 158) OVER TH 94, COMMERCIAL ST., BNSF RAILWAY & UNION PACIFIC RAILROAD  
0.5 MI EAST OF JCT. TH 52  
13 VARIABLE PRESTRESSED CONCRETE BEAM SPANS  
ROADWAY VARIES FROM 52'-0" TO 63'-0"  
BRIDGE ID NO. 501  
SEC. 32, T29N, R22W  
CITY OF ST. PAUL, RAMSEY COUNTY

APPROVED: \_\_\_\_\_  
CITY OF SAINT PAUL BRIDGE ENGINEER DATE

APPROVED: \_\_\_\_\_  
STATE BRIDGE ENGINEER DATE

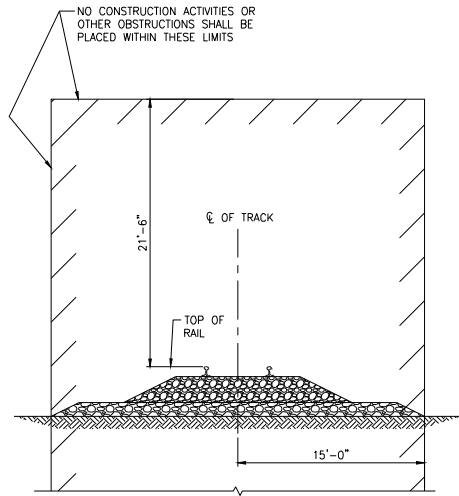
C:\SRF\PIV\K15104\GEBR62666\_TSRV.DWG 9/27/2022 12:32:37 PM

DESIGNED BY	RMS	I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA
DESIGN CHECK	JMB	
DRAWN BY	HMF	
DWG CHECK	JMB	
SIGNED:	JAMISON M. BEISSWENGER	DATE: XX/XX/XXXX LIC. NO. 44648



**KELLOGG BLVD/3RD ST BRIDGE REPLACEMENT  
COVER SHEET**

STATE PROJECT NUMBER:	S.P. 164-158-028	PROJECT: B-1202 DRAWER: 143
CAD DRAWING FOLDER:	B1202 KELLOGG THIRD \ PLANS	BRIDGE NO. 62666
APPROVED:	SHEET NO. B1 OF B207 SHEETS	BRIDGE DIVISION



**MINIMUM CONSTRUCTION CLEARANCE ENVELOPE**  
(NORMAL TO RAILROAD TRACK)

**RAILROAD PROJECT NOTES:**

1. THE PROPOSED PROJECT SHALL NOT INCREASE THE QUANTITY AND/OR CHARACTERISTICS OF THE FLOW IN THE RAILROAD'S DITCHES AND/OR DRAINAGE STRUCTURES.
2. THE ELEVATION OF THE EXISTING TOP-OF-RAIL PROFILE SHALL BE VERIFIED BEFORE BEGINNING CONSTRUCTION. ALL DISCREPANCIES SHALL BE BROUGHT TO THE ATTENTION OF THE RAILROAD PRIOR TO CONSTRUCTION.
3. THE CONTRACTOR MUST SUBMIT A PROPOSED METHOD OF EROSION AND SEDIMENT CONTROL AND HAVE THE METHOD APPROVED BY THE RAILROAD.
4. ALL SHORING SYSTEMS THAT IMPACT THE RAILROAD'S OPERATIONS AND/OR SUPPORTS THE RAILROAD'S EMBANKMENT SHALL BE DESIGNED AND CONSTRUCTED PER CURRENT RAILROAD GUIDELINES FOR TEMPORARY SHORING. THE METHOD OF SHORING PERMISSIBLE IS DEPENDENT UPON THE AVAILABILITY OF TRACK WINDOWS, IF ANY.
5. ALL DEMOLITIONS WITHIN THE RAILROAD'S RIGHT-OF-WAY AND/OR DEMOLITION THAT MAY IMPACT THE RAILROAD'S TRACKS OR OPERATIONS SHALL BE IN COMPLIANCE WITH THE RAILROAD'S DEMOLITION GUIDELINES. DEMOLITION ACTIVITIES SHALL BE DESIGNED TO CAUSE NO INTERRUPTION TO THE RAILROAD'S OPERATION, ENABLING THE TRACK(S) TO REMAIN OPEN TO TRAFFIC PER THE RAILROAD'S REQUIREMENTS. THE METHOD OF DEMOLITION PERMISSIBLE IS DEPENDENT UPON THE AVAILABILITY OF TRACK WINDOWS, IF ANY.
6. ERECTION OVER THE RAILROAD'S RIGHT-OF-WAY SHALL BE DESIGNED TO CAUSE NO INTERRUPTION TO THE RAILROAD'S OPERATION, ENABLING THE TRACK(S) TO REMAIN OPEN TO TRAFFIC PER THE RAILROAD'S REQUIREMENTS. THE METHOD OF ERECTION PERMISSIBLE IS DEPENDENT UPON THE AVAILABILITY OF TRACK WINDOWS, IF ANY.
7. RAILROAD REQUIREMENTS DO NOT ALLOW WORK WITHIN 50 FEET OF TRACK CENTERLINE WHEN A TRAIN PASSES THE WORK SITE AND ALL PERSONNEL MUST CLEAR THE AREA WITHIN 25 FEET OF THE TRACK CENTERLINE AND SECURE ALL EQUIPMENT.
8. FALSE-WORK CLEARANCES SHALL COMPLY WITH THE RAILROAD MINIMUM CONSTRUCTION CLEARANCES.
9. ALL PERMANENT CLEARANCES SHALL BE VERIFIED BEFORE PROJECT CLOSING. ALL DISCREPANCIES SHALL BE BROUGHT TO THE ATTENTION OF THE RAILROAD.
10. CALL BEFORE YOU DIG. PRIOR TO EXCAVATION, DISRUPTING, OR WORKING ON THE RAILROAD PROPERTY THE CONTRACTOR SHALL LOCATE AND PROTECT UPRR FACILITIES BY CALLING THE UPRR "CALL BEFORE YOU DIG" (CBYD) PHONE NUMBER: 1-800-336-9193.
11. CALL BEFORE YOU DIG. PRIOR TO EXCAVATION, DISRUPTING, OR WORKING ON THE RAILROAD PROPERTY THE CONTRACTOR SHALL LOCATE AND PROTECT BNSF FACILITIES BY CALLING THE BNSF "CALL BEFORE YOU DIG" (CBYD) PHONE NUMBER: 1-800-533-2891.

NOTICE: ALL CONSTRUCTION SUBMITTALS SHALL BE REVIEWED AND APPROVED BY THE AGENCY PRIOR TO SUBMITTING TO THE RAILROAD FOR REVIEW AND APPROVAL. REVIEW TIMES FOR CONSTRUCTION SUBMITTALS ARE DETAILED WITHIN TABLE 3-1 OF THE CURRENT UPRR GUIDELINES OF RAILROAD GRADE SEPARATION PROJECTS.

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DESIGNED BY	JMB
DESIGN CHECK	RMS
DRAWN BY	HMF
DWG CHECK	RMS

I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA

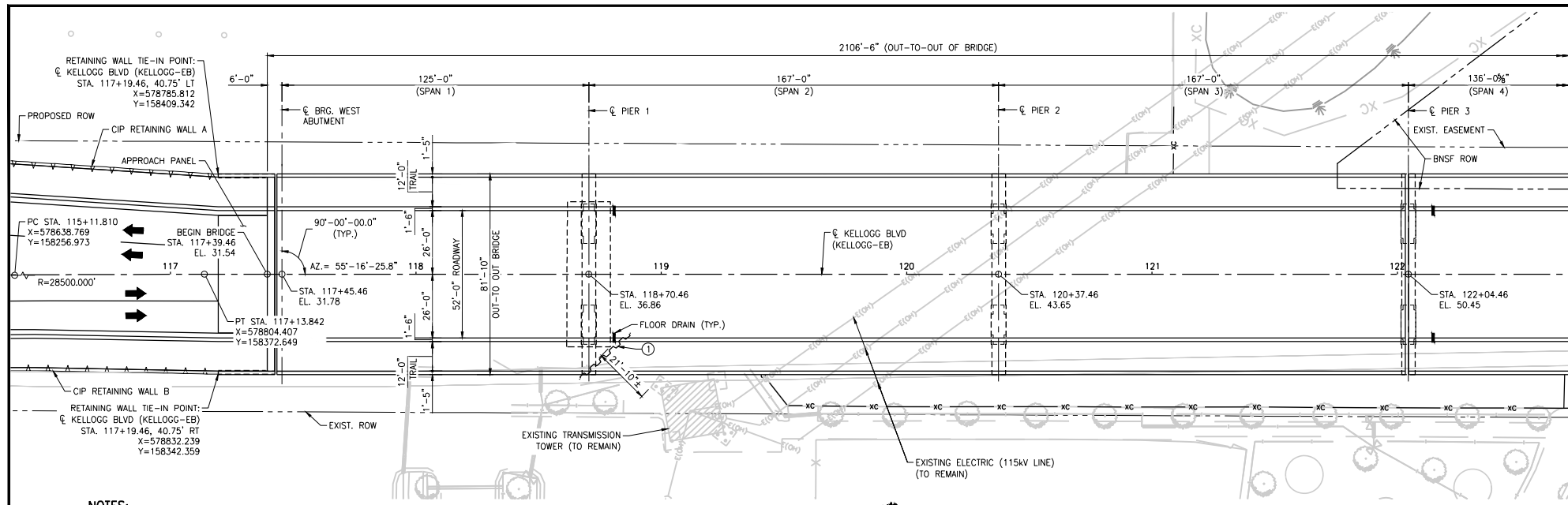
SIGNED: JAMISON M. BEISSWENGER DATE: XX/XX/XXXX LIC. NO. 44648



**KELLOGG BLVD/3RD ST BRIDGE REPLACEMENT  
RAILROAD CONSTRUCTION REQUIREMENTS**

STATE PROJECT NUMBER:	S.P. 164-158-028
CAD DRAWING FOLDER:	B1202 KELLOGG THIRD \ PLANS
APPROVED:	SHEET NO. B2 OF B207 SHEETS

PROJECT: B-1202	
DRAWER: 143	
BRIDGE NO. 62666	



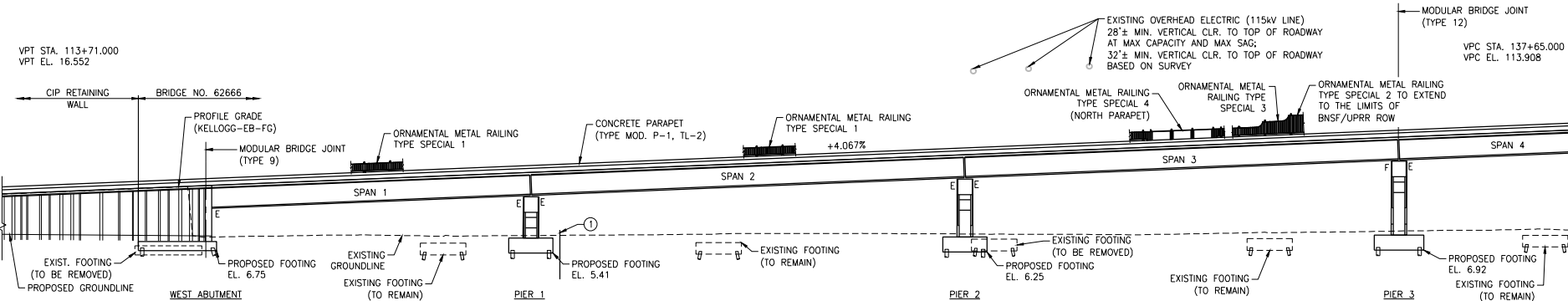
**NOTES:**

- SEE BORINGS - PLAN & PROFILE SHEETS FOR INPLACE UTILITIES.
- AN APPROACH SETTLEMENT PERIOD OF 2 MONTHS IS REQUIRED BEFORE CONSTRUCTION OF THE WEST ABUTMENT MAY BEGIN.
- NO EXCAVATION IS PERMITTED WITHIN 20'-0" OF EXISTING TRANSMISSION TOWER FOOTING. PROVIDE TEMPORARY SHORING AS REQUIRED FOR FOOTING CONSTRUCTION.

**GENERAL PLAN**



EL. 120  
EL. 110  
EL. 100  
EL. 90  
EL. 80  
EL. 70  
EL. 60  
EL. 50  
EL. 40  
EL. 30  
EL. 20  
EL. 10  
EL. 0



**GENERAL ELEVATION**

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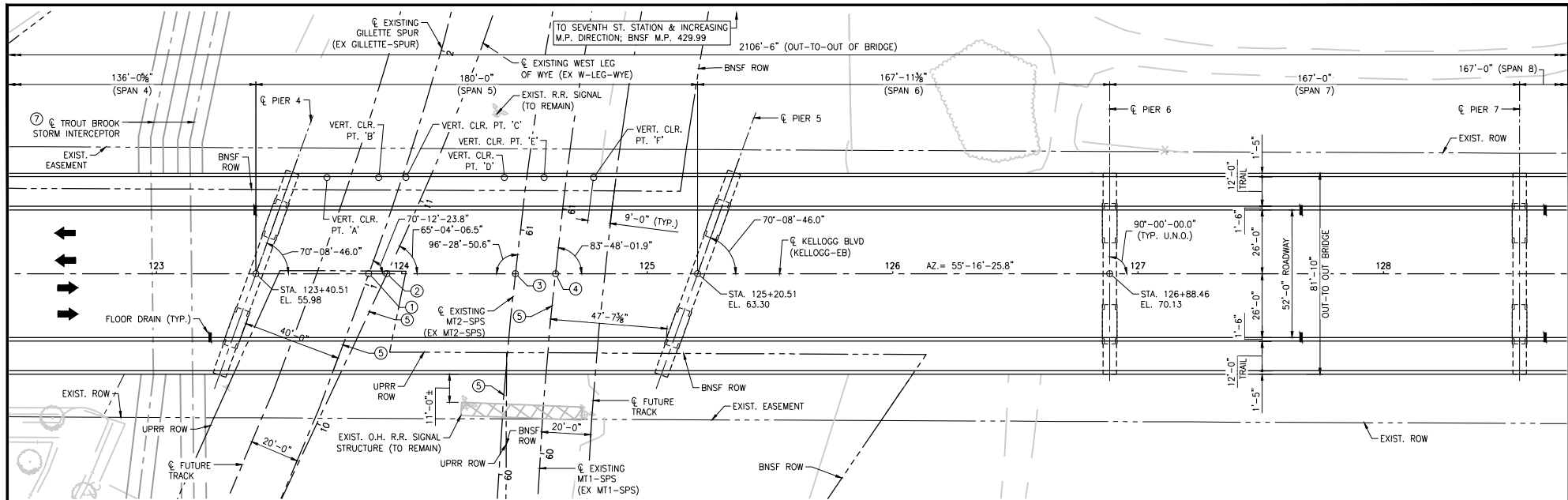
DESIGNED BY	RMS	I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA
DESIGN CHECK	JMB	
DRAWN BY	HMF	
DWG CHECK	JMB	
SIGNED:	JAMISON M. BEISSWENGER	DATE: XX/XX/XXXX LIC. NO. 44648



**KELLOGG BLVD/3RD ST BRIDGE REPLACEMENT**  
GENERAL PLAN & ELEVATION  
(SHEET 1 OF 4)

STATE PROJECT NUMBER:	S.P. 164-158-028	PROJECT: B-1202
CAD DRAWING FOLDER:	B1202 KELLOGG THIRD \ PLANS	DRAWER: 143
APPROVED:	SHEET NO. B3 OF B207 SHEETS	BRIDGE NO. 62666





**NOTES:**

- 1 KILLOGG BLVD (KELLOGG-EB) STA. 123+86.53
- 2 KILLOGG BLVD (KELLOGG-EB) STA. 123+93.91
- 3 KILLOGG BLVD (KELLOGG-EB) STA. 124+46.29
- 4 KILLOGG BLVD (KELLOGG-EB) STA. 124+62.61
- 5 SEE BORINGS - PLAN & PROFILE FOR RAILROAD ALIGNMENT DATA.
- 6 EXISTING FOOTING ADJACENT TO ACTIVE R.R. TRACKS TO BE REMOVED TO THE LIMITS AS DIRECTED BY BNSF RAILWAY & UP RAILROAD DURING CONSTRUCTION. SEE SHEET B14.
- 7 STOCKPILES OF SOIL AND CONSTRUCTION MATERIAL AND ANY IMPOSITION OF LOADING THAT EXCEEDS THE LIMITS DEFINED IN THE SPECIAL PROVISIONS IS NOT PERMITTED WITHIN 20 FEET FROM THE OUTERMOST EDGES OF THE INPLACE SEWER.
- 8 MEASURED PERPENDICULAR TO ALIGNMENT.
- 9 TEMPORARY SHORING AS REQUIRED TO REMOVE EXISTING FOUNDATION AND/OR CONSTRUCT NEW FOUNDATIONS. SEE SHEET B2 FOR REQUIREMENTS.

EL. 120 FUTURE TRACKS ARE ASSUMED TO BE AT THE SAME ELEVATION AS THE ADJACENT EXISTING TRACK.

EL. 110

EL. 100

EL. 90

EL. 80 VPT STA. 113+71.000 VPT EL. 16.552

EL. 70

EL. 60 CONCRETE PARAPET (TYPE MOD. P-1, TL-2)

EL. 50

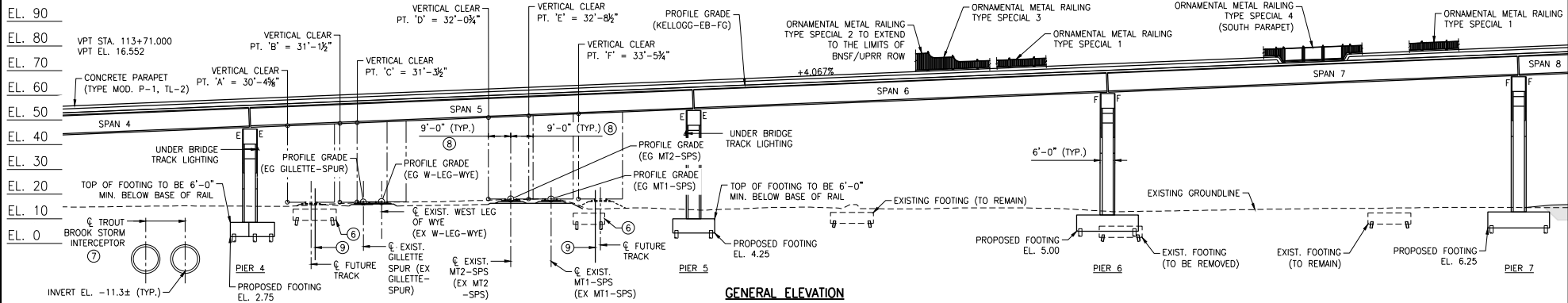
EL. 40 UNDER BRIDGE TRACK LIGHTING

EL. 30

EL. 20 TOP OF FOOTING TO BE 6'-0" MIN. BELOW BASE OF RAIL

EL. 10

EL. 0 INVERT EL. -11.3± (TYP.)



**GENERAL ELEVATION**

DESIGNED BY: RMS  
 DESIGN CHECK: JMB  
 DRAWN BY: HMF  
 DWG CHECK: JMB

I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA

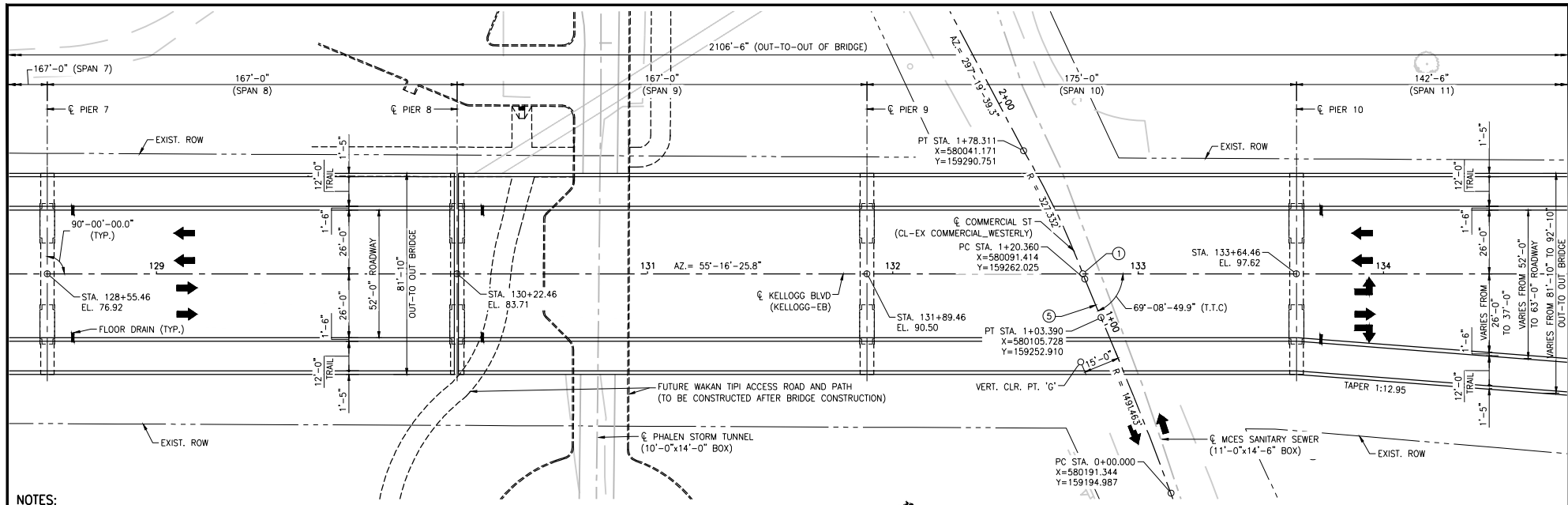
SIGNED: \_\_\_\_\_ DATE: XX/XX/XXXX LIC. NO. 44648  
 JAMISON M. BEISSWENGER



**KELLOGG BLVD/3RD ST BRIDGE REPLACEMENT  
 GENERAL PLAN & ELEVATION  
 (SHEET 2 OF 4)**

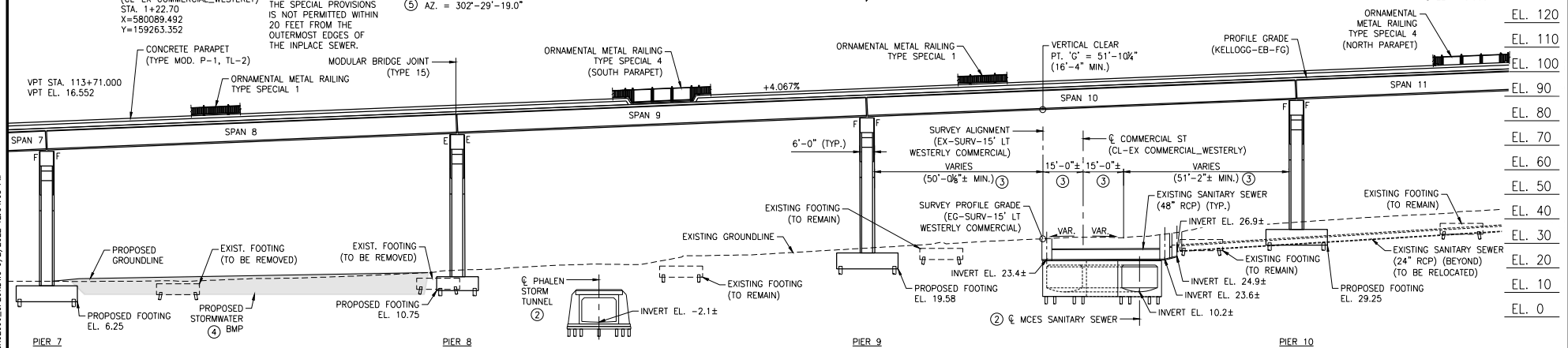
STATE PROJECT NUMBER:	S.P. 164-158-028	PROJECT: B-1202 DRAWER: 143
CAD DRAWING FOLDER:	B1202 KELLOGG THIRD \ PLANS	BRIDGE NO. 62666
APPROVED:	SHEET NO. B4 OF B207 SHEETS	BRIDGE DIVISION

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- NOTES:**
- SEE BORINGS - PLAN & PROFILE SHEETS FOR INPLACE UTILITIES.
  - STOCKPILES OF SOIL AND CONSTRUCTION MATERIAL AND ANY IMPOSITION OF LOADING THAT EXCEEDS THE LIMITS DEFINED IN THE SPECIAL PROVISIONS IS NOT PERMITTED WITHIN 20 FEET FROM THE OUTERMOST EDGES OF THE INPLACE SEWER.
  - MEASURED PERPENDICULAR TO ALIGNMENT.
  - SEE GRADING PLANS.
  - AZ. = 302'-29'-19.0"
- ①  $\text{CL}$  KELLOGG BLVD (KELLOGG-EB)  
 STA. 132+77.43  
 $\text{CL}$  EXISTING COMMERCIAL ST (CL-EX COMMERCIAL\_WESTERLY)  
 STA. 1+22.70  
 X=580089.492  
 Y=159263.352

**GENERAL PLAN**



**GENERAL ELEVATION**

DESIGNED BY: RMS  
 DESIGN CHECK: JMB  
 DRAWN BY: HMF  
 DWG CHECK: JMB

I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA

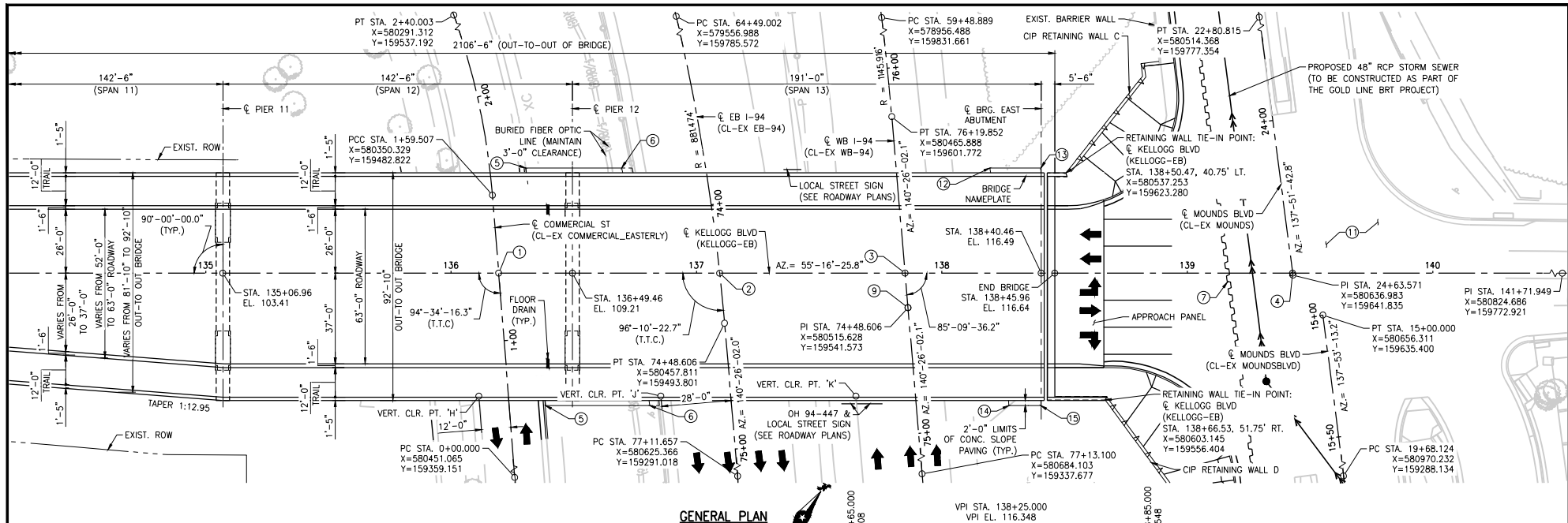
SIGNED: JAMISON M. BEISSWENGER DATE: XX/XX/XXXX LIC. NO. 44648



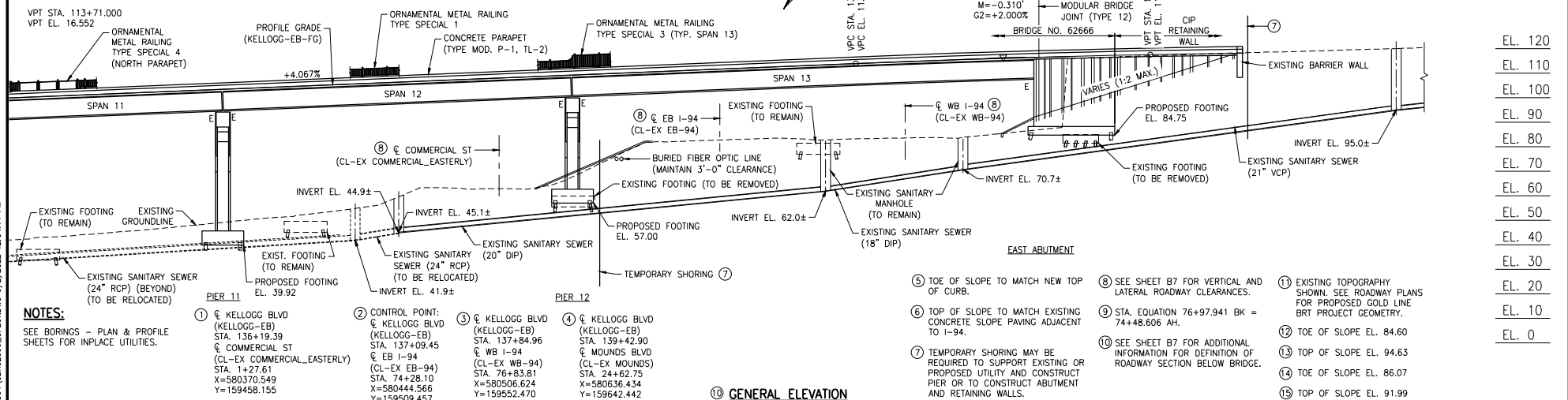
**KELLOGG BLVD/3RD ST BRIDGE REPLACEMENT**  
**GENERAL PLAN & ELEVATION**  
 (SHEET 3 OF 4)

STATE PROJECT NUMBER: S.P. 164-158-028	PROJECT: B-1202
CAD DRAWING FOLDER: B1202 KELLOGG THIRD \ PLANS	DRAWER: 143
APPROVED:	BRIDGE DIVISION
SHEET NO. B5 OF B207 SHEETS	BRIDGE NO. 62666

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GENERAL PLAN



GENERAL ELEVATION

EL. 120
EL. 110
EL. 100
EL. 90
EL. 80
EL. 70
EL. 60
EL. 50
EL. 40
EL. 30
EL. 20
EL. 10
EL. 0

**NOTES:**  
SEE BORINGS - PLAN & PROFILE SHEETS FOR INPLACE UTILITIES.

- ① K Kellogg Blvd (Kellogg-EB) STA. 136+19.39  
C Commercial St (CL-EX Commercial\_Easterly) STA. 1+27.61  
X=580370.549  
Y=159458.155
- ② CONTROL POINT: (Kellogg-EB) STA. 137+09.45  
C EB I-94 (CL-EX EB-94) STA. 74+28.10  
X=580444.566  
Y=159509.457
- ③ K Kellogg Blvd (Kellogg-EB) STA. 137+84.96  
C WB I-94 (CL-EX WB-94) STA. 76+83.81  
X=580636.434  
Y=159552.470
- ④ K Kellogg Blvd (Kellogg-EB) STA. 139+42.90  
C Kellogg Blvd (Kellogg-EB) STA. 24+62.75  
X=580636.434  
Y=159642.442

- ⑤ TOE OF SLOPE TO MATCH NEW TOP OF CURB.
- ⑥ TOP OF SLOPE TO MATCH EXISTING CONCRETE SLOPE PAVING ADJACENT TO I-94.
- ⑦ TEMPORARY SHORING MAY BE REQUIRED TO SUPPORT EXISTING OR PROPOSED UTILITY AND CONSTRUCT PIER OR TO CONSTRUCT ABUTMENT AND RETAINING WALLS.
- ⑧ SEE SHEET B7 FOR VERTICAL AND LATERAL ROADWAY CLEARANCES.
- ⑨ STA. EQUATION 76+97.941 BK = 74+48.606 AH.
- ⑩ SEE SHEET B7 FOR ADDITIONAL INFORMATION FOR DEFINITION OF ROADWAY SECTION BELOW BRIDGE.
- ⑪ EXISTING TOPOGRAPHY PLANS SHOWN. SEE ROADWAY PLANS FOR PROPOSED GOLD LINE BRT PROJECT GEOMETRY.
- ⑫ TOE OF SLOPE EL. 84.60
- ⑬ TOP OF SLOPE EL. 94.63
- ⑭ TOE OF SLOPE EL. 86.07
- ⑮ TOP OF SLOPE EL. 91.99

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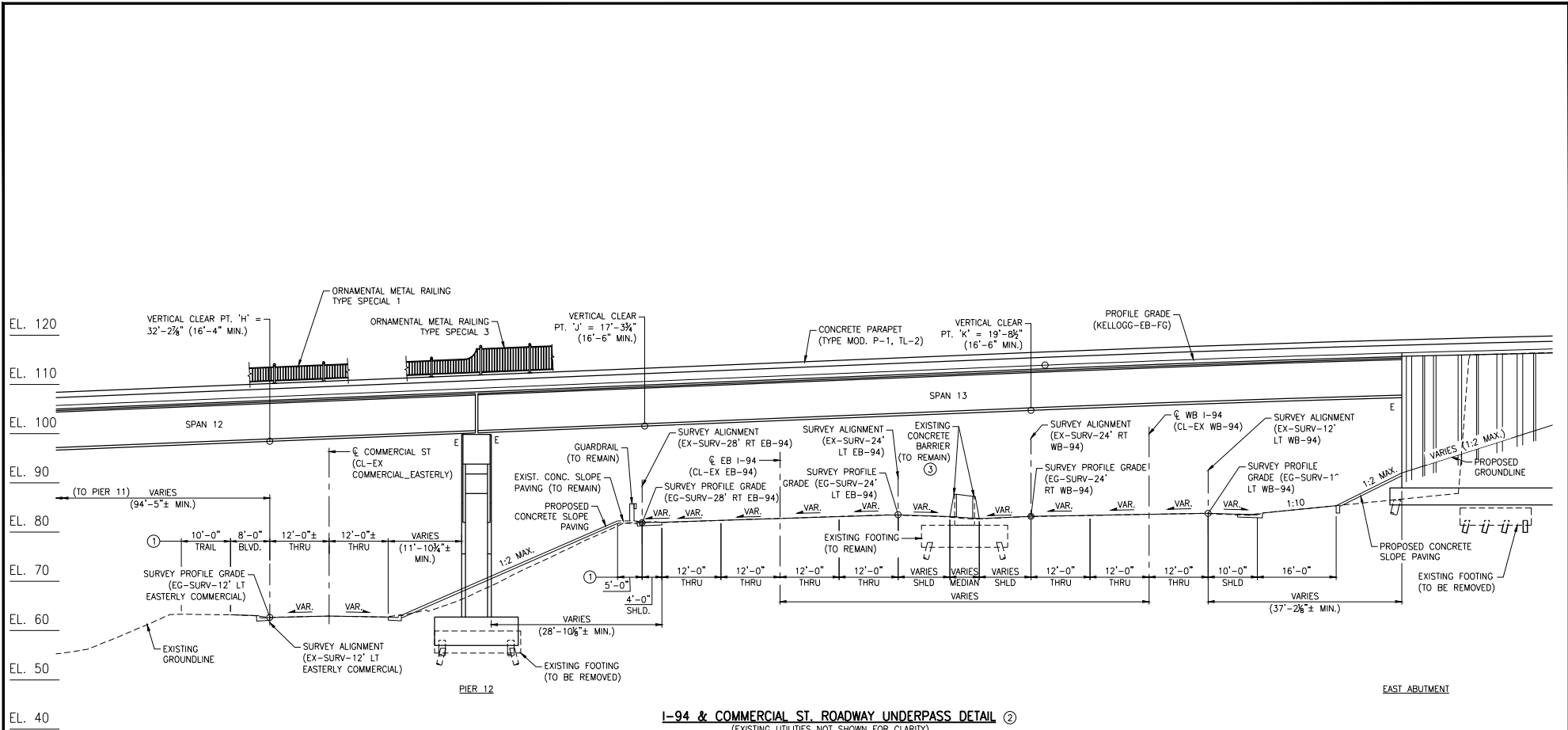
DESIGNED BY	RMS	I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA
DESIGN CHECK	JMB	
DRAWN BY	HMF	
DWG CHECK	JMB	
SIGNED:	JAMISON M. BEISSWENGER	DATE: XX/XX/XXXX LIC. NO. 44648



KELLOGG BLVD/3RD ST BRIDGE REPLACEMENT  
GENERAL PLAN & ELEVATION  
(SHEET 4 OF 4)

STATE PROJECT NUMBER:	S.P. 164-158-028	PROJECT: B-1202
CAD DRAWING FOLDER:	B1202 KELLOGG THIRD \ PLANS	DRAWER: 143
APPROVED:	SHEET NO. B6 OF B207 SHEETS	BRIDGE NO. 62666





- NOTES:**
- ① MEASURED PERPENDICULAR TO ALIGNMENT.
  - ② SEE SHEET B6 FOR ADDITIONAL INFORMATION AND EXISTING UTILITIES.
  - ③ SEE SHEET B15 FOR REMOVAL DETAILS.

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DESIGNED BY	RMS	I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA
DESIGN CHECK	JMB	
DRAWN BY	HMF	
DWG CHECK	JMB	
SIGNED:	JAMISON M. BEISSWENGER	DATE: XX/XX/XXXX LIC. NO. 44648



**KELLOGG BLVD/3RD ST BRIDGE REPLACEMENT  
ROADWAY UNDERPASS DETAIL**

STATE PROJECT NUMBER:	S.P. 164-158-028	PROJECT: B-1202
CAD DRAWING FOLDER:	B1202 KELLOGG THIRD \ PLANS	DRAWER: 143
APPROVED:	SHEET NO. B7 OF B207 SHEETS	BRIDGE NO. 62666



**EXHIBIT B  
TO  
PUBLIC HIGHWAY OVERPASS AGREEMENT**

**SECTION 1. CONDITIONS AND COVENANTS**

A. Political Body shall not use or permit use of the Crossing Area for any purpose inconsistent with Railroad's occupation and use of the Crossing Area to conduct common carrier operations in accordance with applicable federal and state laws, rule and regulations. Without limiting the foregoing, the Political Body shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on Railroad's Operating Property by or under authority of the Political Body for the purpose of conveying electric power or communications incidental to Political Body's use of the property for highway purposes shall be constructed in such manner as to not interfere with Railroad's occupation and use of the Crossing Area and Railroad's Operating Property to conduct common carrier operations and to not adversely affect communication or signal lines of Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the Political Body to use or occupy any part of the Crossing Area or Railroad's Operating Property without Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.

B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes.

C. The Political Body shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's Operating Property, unless Political Body at its own expense settles with and obtains releases from such nonparties.

D. Intentionally deleted.

E. So far as it lawfully may do so, Political Body will 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 Crossing Area, excepting taxes levied against Railroad for use of the Crossing Area for railroad operations.

F. If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Project or for the performance of any work in connection with the Project, the Political Body will acquire all such other property and rights at its own expense and without expense to the Railroad.

**SECTION 2. CONSTRUCTION OF IMPROVEMENTS**

A. Political Body, at its expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Project, and will furnish the Railroad upon

request with satisfactory evidence that such authority has been obtained.

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

C. All construction work of Political Body upon the Railroad's Operating Property (including, but not limited to, construction of the Roadway and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President Engineering-Design of the Railroad or his authorized representative and in compliance with the Plans, and other guidelines furnished by the Railroad.

D. All construction work of Political Body shall be performed diligently and completed within a reasonable time. No part of the Project shall be suspended, discontinued or unduly delayed without Railroad's written consent, and subject to such reasonable conditions as Railroad may specify. It is understood that 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 Political Body. Political Body hereby assumes the risk of any such delays.

### **SECTION 3. INJURY AND DAMAGE TO PROPERTY**

If Political Body, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which Political Body is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of Railroad or of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the Political Body at the Political Body's own expense, or by Railroad at the expense of the Political Body, and to the satisfaction of Railroad's Assistant Vice President Engineering-Design.

### **SECTION 4. RAILROAD MAY USE CONTRACTORS TO PERFORM WORK**

Railroad may contract for the performance of any of its work by other than Railroad forces. Railroad shall notify Political Body of the contract price within ninety (90) days after it is awarded. Unless Railroad's work is to be performed on a fixed price basis, Political Body shall reimburse Railroad for the amount of the contract.

### **SECTION 5. MAINTENANCE AND REPAIRS**

The Roadway, Crossing Area and improvements installed as part of the Project shall be owned and maintained by Political Body and Railroad in accordance with the terms and conditions of the Original Agreement, and as required by applicable federal and state laws, rule and regulations.

## **SECTION 6. INTENTIONALLY DELETED**

## **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, highway 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 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 said work of the Political Body that the work will be performed in a safe manner and in conformity with the following standards:

A. **Definitions.** All references in this Agreement to the Political Body shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the Political Body shall include work both within and outside of Railroad's Operating Property.

B. **Entry on to Railroad's Operating Property by Political Body.** If the Political Body's employees need to enter Railroad's Operating Property in order to perform an inspection of the Roadway, minor maintenance or other activities, Political Body shall first provide at least ten (10) working days advance notice to the Railroad Representative. With respect to such entry on to Railroad's Operating Property, the Political Body, to the extent permitted by law, agrees to release, defend and indemnify Railroad from and against any loss, damage, injury, liability, claim, cost or expense incurred by any person including, without limitation, Political Body's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of Political Body's employees on Railroad's Operating Property, except to the extent that any Loss is caused by the sole direct negligence of Railroad.

C. **Flagging.**

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

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

(iii) Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Political Body may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Political Body must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Political Body will still

be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

D. **Compliance With Laws**. Political Body shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. Political Body shall use only such methods as are consistent with safety, both as concerns the Political Body, the Political Body's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. Political Body (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 premises. If any failure by the Political Body to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against Railroad, Political Body shall reimburse, and to the extent it may lawfully do so, indemnify Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. Political Body further agrees in the event of any such action, upon notice thereof being provided by Railroad, to defend such action free of cost, charge, or expense to Railroad.

E. **No Interference or Delays**. Political Body shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of 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 Operating Property or its property or facilities.

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

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

measures are adopted and provided.

H. **Removal of Debris**. Political Body shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon Railroad's Operating Property or any property or facilities of the Railroad; and any such material and debris shall be promptly removed by Political Body at Political Body's own expense or by Railroad at the expense of Political Body. Political Body shall not cause, suffer or permit any snow to be plowed or cast upon Railroad's Operating Property during snow removal from the Crossing Area.

I. **Explosives**. Political Body shall not discharge any explosives on or in the vicinity of Railroad's Operating Property without the prior consent of Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with Railroad's Operating Property or its other property or facilities. For the purposes hereof, the "vicinity of the Railroad's Operating Property" shall be deemed to be any place on Railroad's Operating Property or in such close proximity to the Railroad's Operating Property that the discharge of explosives could cause injury to Railroad's employees or other persons, or cause damage to or interference with the facilities or operations in the vicinity of Railroad's Operating Property. 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 its sole discretion, may deem to be necessary, desirable or appropriate.

J. **Excavation**. Political Body 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. Political Body 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 tracks or facilities. The Political Body, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by Political Body 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 Railroad's Assistant Vice President Engineering - Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by Railroad's operations in the vicinity.

K. **Drainage**. Political Body, at Political Body's own expense, shall provide and maintain suitable facilities for draining the Roadway and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon Railroad's Operating Property. Political Body, at Political Body'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 Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of Political Body, be impeded, obstructed, diverted or caused to back up, overflow or damage the Railroad's Operating Property or any part thereof, or property of others. Political Body shall not

obstruct or interfere with existing ditches or drainage facilities.

L. **Notice.** Before commencing any work, Political Body shall provide the advance notice to the Railroad that is required under the CROE.

M. **Fiber Optic Cables.** Fiber optic cable systems may be buried on Railroad's Operating 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. Political Body shall visit [up.com/CBUD](http://up.com/CBUD) to complete and submit the required form to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Political Body. If it is, Political Body will 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 Railroad's Operating Property.

## **SECTION 9. INTENTIONALLY DELETED**

## **SECTION 10. OTHER RAILROADS**

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

## **SECTION 11. BOOKS AND RECORDS**

The books, papers, records and accounts of Railroad, so far as they relate to the items of expense for the materials to be provided by Railroad under this Project, or are associated with the work to be performed by Railroad under this Project, shall be open to inspection and audit at Railroad's offices in Omaha, Nebraska, during normal business hours by the agents and authorized representatives of Political Body for a period of three (3) years following the date of Railroad's last billing sent to Political Body.

## **SECTION 12. REMEDIES FOR BREACH OR NONUSE**

A. If Political Body shall fail, refuse or neglect 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 Railroad is necessary to place the Roadway and appurtenances in such condition as will not menace, endanger or interfere with Railroad's facilities or operations or jeopardize Railroad's employees; and the Political Body will reimburse the Railroad for the expenses thereof.

B. Nonuse by Political Body of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of any and all rights of Political Body hereunder.

C. The Political Body will surrender any rights granted under this Agreement 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 13. MODIFICATION - ENTIRE AGREEMENT**

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by Political Body and Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by Railroad of any default by Political Body 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 Political Body and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.

**EXHIBIT C  
TO  
PUBLIC HIGHWAY OVERPASS AGREEMENT**

**Exhibit C** will be Railroad's Material and Force Account Estimate.

**EXHIBIT C**

**ESTIMATE OF FORCE ACCOUNT WORK  
BY THE  
UNION PACIFIC RAILROAD COMPANY**

DESCRIPTION OF WORK: Engineering and other related services for work to be performed within railroad right of way. This includes project and construction management during construction activities in railroad right of way. All necessary railroad services will be billed at actual cost.

**DATE: 5-1-2023**

<b>LOCATION:</b> City, State: St Paul, MN DOT: 083009P 3rd Street/Kellogg	<b>SUBDIVISION</b>  Mankato	<b>STATE:</b>  MN
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DESCRIPTION	LABOR	MATERIAL	UP %0	Agency % 100	TOTAL
<b>ENGINEERING</b>					
Project Management	\$ 75,000	\$ -	\$ -	\$ 75,000.00	\$ 25,000
Construction Submittals	\$ 8,000	\$ -	\$ -	\$ 8,000.00	\$ 8,000
Construction Management	\$ 70,000	\$ -	\$ -	\$ 70,000.00	\$ 70,000
Final Inspection	\$ 2,000	\$ -	\$ -	\$ 2,000.00	\$ 2,000
<b>FLAGGING / INSPECTION SERVICES</b>					
RATE (per day)	\$ 1,500				
<b>TOTAL PROJECT:</b>	<b>\$ 155,000</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 155,000.00</b>	<b>\$105,000</b>

**TOTAL ESTIMATED COST: \$105,000**

**THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION.  
IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF  
MATERIAL OR LABOR REQUIRED, THE RAILROAD WILL BILL FOR ACTUAL  
COSTS AT THE CURRENT RATES EFFECTIVE THEREOF.**

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Flagging is NOT included in this estimate. Agency's are instructed to follow Union Pacific's Third Party Flagging Policy.  
Please utilize the following link to Union Pacific's Third Party Flagging Policy:  
[https://www.up.com/real\\_estate/third-party-flagging/index.htm](https://www.up.com/real_estate/third-party-flagging/index.htm)

**EXHIBIT D  
TO  
PUBLIC HIGHWAY OVERPASS AGREEMENT**

**Exhibit D** will be the Railroad's then current form of Contractor's Right of Entry.

**CONTRACTOR'S  
RIGHT OF ENTRY AGREEMENT**

**THIS AGREEMENT** is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and \_\_\_\_\_, a \_\_\_\_\_ corporation ("Contractor").

**RECITALS:**

Contractor has been hired by \_\_\_\_\_ to perform work relating to \_\_\_\_\_ (the "Work") with all or a portion of such Work to be performed on property of Railroad in the vicinity of Railroad's Milepost \_\_\_\_\_ on Railroad's \_\_\_\_\_ [Subdivision or Branch] [at or near DOT No. \_\_\_\_\_ located at or near \_\_\_\_\_, in \_\_\_\_\_ County, State of \_\_\_\_\_, as such location is in the general location shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof, which Work is the subject of a contract dated \_\_\_\_\_ between Railroad and \_\_\_\_\_.

Railroad is willing to permit Contractor to perform the Work described above at the location described above subject to the terms and conditions contained in this agreement

**AGREEMENT:**

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

**ARTICLE 1 - DEFINITION OF CONTRACTOR.**

For purposes of this agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. For purposes of clarity, Contractor agrees that any CIC (defined below) hired by Contractor is a subcontractor of Contractor and therefore included in the defined term Contractor pursuant to the foregoing sentence.

**ARTICLE 2 - RIGHT GRANTED; PURPOSE.**

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

**ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B AND C.**

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

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

A. Contractor shall bear any and all costs and expenses associated with any Work performed by Contractor (including without limitation any CIC), or any costs or expenses incurred by Railroad relating to this agreement.

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

**ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.**

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

**ARTICLE 6 - TERM; TERMINATION.**

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

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

**ARTICLE 7 - CERTIFICATE OF INSURANCE.**

A. Before commencing any Work and throughout the entire term of this Agreement, Contractor, at its expense, shall procure and maintain in full force and effect the types and minimum limits of insurance specified in **Exhibit C** of this agreement and require each of its subcontractors to include the insurance endorsements as required under Section 12 of **Exhibit B** of this agreement.

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

C. Upon request of Railroad, Contractor shall provide to Railroad a certificate issued by its insurance

carrier evidencing the insurance coverage required under **Exhibit B**.

D. Contractor understands and accepts that the terms of this Article are wholly separate from and independent of the terms of any indemnity provisions contained in this Agreement.

D. Upon request of Railroad, insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

Union Pacific Railroad Company

\_\_\_\_\_  
[Insert mailing address]

\_\_\_\_\_

Attn: \_\_\_\_\_

Folder No. \_\_\_\_\_

**ARTICLE 8 - PRECONSTRUCTION MEETING.**

If the Work to be performed by the Contractor will involve the Railroad providing any flagging protection (or if a CIC is approved to provide flagging protection pursuant to the terms set forth herein) and/or there is separate work to be performed by the Railroad, the Contractor confirms that no work shall commence until the Railroad and Contractor participate in a preconstruction meeting involving flagging procedures and coordination of work activities of the Contractor and the Railroad (and any CIC, as applicable.)

**ARTICLE 9. DISMISSAL OF CONTRACTOR'S EMPLOYEE.**

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

**ARTICLE 10. ADMINISTRATIVE FEE.**

Upon the execution and delivery of this agreement, Contractor shall pay to Railroad One Thousand Twenty Five Dollars (\$1,025.00) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this agreement.

**ARTICLE 11. CROSSINGS; COMPLIANCE WITH MUTCD AND FRA GUIDELINES.**

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

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

**ARTICLE 12.- EXPLOSIVES.**

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

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

**UNION PACIFIC RAILROAD COMPANY**

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

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

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

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

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

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

Phone: \_\_\_\_\_

E-Mail: \_\_\_\_\_

**EXHIBIT A**  
**TO**  
**CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**

Exhibit A will be a print showing the general location of the work site.

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

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

A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its Work and at least thirty (30) working days in advance of proposed performance of any Work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track.

B. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad approved flagman is provided to watch for trains. Upon receipt of such thirty (30)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures.

C. Contractor shall be permitted to hire a private contractor to perform flagging or other special protective or safety measures (such private contractor being commonly known in the railroad industry as a contractor-in-charge ("CIC")) in lieu of Railroad providing such services or in concert with Railroad providing such services, subject to prior written approval by Railroad, which approval shall be in Railroad's sole and absolute discretion. If Railroad agrees to permit Contractor to utilize a CIC pursuant to the preceding sentence, Contractor shall obtain Railroad's prior approval in writing for each of the following items, as determined in all respects in Railroad's sole and absolute discretion: (i) the identity of the third-party performing the role of CIC; (ii) the scope of the services to be performed for the project by the approved CIC; and (iii) any other terms and conditions governing such services to be provided by the CIC. If flagging or other special protective or safety measures are performed by an approved CIC, Contractor shall be solely responsible for (and shall timely pay such CIC for) its services. Railroad reserves the right to rescind any approval pursuant to this Section 1, Subsection C., in whole or in part, at any time, as determined in Railroad's sole and absolute discretion.

D. If any flagging or other special protective or safety measures are performed by employees of Railroad and/or any contractor of Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing.

E. If any flagging or other special protective or safety measures are performed by Railroad or a CIC, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this agreement.

F. The provisions set forth in this subsection are only applicable for Flagging Services performed by employees of Railroad: the rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with labor agreements and schedules in effect at the time the Work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the Work is performed. One and one-half times the current hourly rate is

paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges. If flagging is performed by Railroad, reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five-day cessation notice has been given to Railroad.

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

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

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

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

A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least twenty-five (25) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.

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

**Section 4. LIENS.**

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

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

A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall visit [www.up.com/CBUD](http://www.up.com/CBUD) to complete and submit the required form to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any Work until all such protection or relocation (if applicable) has been accomplished.

**B. IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD RAILROAD HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) ARISING OUT OF ANY ACT OR OMISSION OF CONTRACTOR, ITS AGENTS AND/OR EMPLOYEES, THAT CAUSES OR CONTRIBUTES TO (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON RAILROAD'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON RAILROAD'S PROPERTY. CONTRACTOR SHALL NOT HAVE OR SEEK RECOURSE AGAINST RAILROAD FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE TO A TELECOMMUNICATION COMPANY USING RAILROAD'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON RAILROAD'S PROPERTY.**

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

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

**Section 7. SAFETY.**

A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of any Work on Railroad property performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the Work. Contractor shall, at a minimum, comply with Railroad's then current safety standards located at the below web address ("Railroad's Safety Standards") to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor

determines that any of Railroad's Safety Standards are contrary to good safety practices. Contractor shall furnish copies of Railroad's Safety Standards to each of its employees before they enter Railroad property.

[http://www.up.com/cs/groups/public/@uprr/@suppliers/documents/up\\_pdf\\_natedocs/pdf\\_up\\_supplier\\_safety\\_req.pdf](http://www.up.com/cs/groups/public/@uprr/@suppliers/documents/up_pdf_natedocs/pdf_up_supplier_safety_req.pdf)

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

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

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

**Section 8. INDEMNITY.**

**A. TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS RAILROAD, ITS AFFILIATES, AND ITS AND THEIR OFFICERS, AGENTS AND EMPLOYEES (INDIVIDUALLY AN "INDEMNIFIED PARTY" OR COLLECTIVELY "INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL LOSS, DAMAGE, INJURY, LIABILITY, CLAIM, DEMAND, COST OR EXPENSE (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S, CONSULTANT'S AND EXPERT'S FEES, AND COURT COSTS), FINE OR PENALTY (COLLECTIVELY, "LOSS") INCURRED BY ANY PERSON (INCLUDING, WITHOUT LIMITATION, ANY INDEMNIFIED PARTY, CONTRACTOR, OR ANY EMPLOYEE OF CONTRACTOR OR OF ANY INDEMNIFIED PARTY) ARISING OUT OF OR IN ANY MANNER CONNECTED WITH (I) ANY WORK PERFORMED BY CONTRACTOR, OR (II) ANY ACT OR OMISSION OF CONTRACTOR, ITS OFFICERS, AGENTS OR EMPLOYEES, OR (III) ANY BREACH OF THIS AGREEMENT BY CONTRACTOR.**

**B. THE RIGHT TO INDEMNITY UNDER THIS SECTION 8 SHALL ACCRUE UPON OCCURRENCE OF THE EVENT GIVING RISE TO THE LOSS, AND SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF ANY INDEMNIFIED PARTY, EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE ACTIVE NEGLIGENCE OF AN INDEMNIFIED PARTY AS ESTABLISHED BY THE FINAL JUDGMENT OF A COURT OF COMPETENT JURISDICTION. THE SOLE ACTIVE NEGLIGENCE OF ANY INDEMNIFIED PARTY SHALL NOT BAR THE RECOVERY OF ANY OTHER INDEMNIFIED PARTY.**

**C. CONTRACTOR EXPRESSLY AND SPECIFICALLY ASSUMES POTENTIAL LIABILITY UNDER THIS SECTION 8 FOR CLAIMS OR ACTIONS BROUGHT BY CONTRACTOR'S OWN EMPLOYEES. CONTRACTOR WAIVES ANY IMMUNITY IT MAY HAVE UNDER WORKER'S COMPENSATION OR INDUSTRIAL INSURANCE ACTS TO INDEMNIFY THE INDEMNIFIED PARTIES UNDER THIS SECTION 8. CONTRACTOR ACKNOWLEDGES THAT THIS WAIVER WAS MUTUALLY NEGOTIATED BY THE PARTIES HERETO.**

**D. NO COURT OR JURY FINDINGS IN ANY EMPLOYEE'S SUIT PURSUANT TO ANY**

**WORKER'S COMPENSATION ACT OR THE FEDERAL EMPLOYERS' LIABILITY ACT AGAINST A PARTY TO THIS AGREEMENT MAY BE RELIED UPON OR USED BY CONTRACTOR IN ANY ATTEMPT TO ASSERT LIABILITY AGAINST ANY INDEMNIFIED PARTY.**

**E. THE PROVISIONS OF THIS SECTION 8 SHALL SURVIVE THE COMPLETION OF ANY WORK PERFORMED BY CONTRACTOR OR THE TERMINATION OR EXPIRATION OF THIS AGREEMENT. IN NO EVENT SHALL THIS SECTION 8 OR ANY OTHER PROVISION OF THIS AGREEMENT BE DEEMED TO LIMIT ANY LIABILITY CONTRACTOR MAY HAVE TO ANY INDEMNIFIED PARTY BY STATUTE OR UNDER COMMON LAW.**

**Section 9. RESTORATION OF PROPERTY.**

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

**Section 10. WAIVER OF DEFAULT.**

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

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

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

**Section 12. ASSIGNMENT - SUBCONTRACTING.**

Contractor shall not assign or subcontract this agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any Work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" on the subcontractor's Commercial General Liability policy and Umbrella or Excess policies (if applicable) with respect to all liabilities arising out of the subcontractor's performance of Work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 10, and CG 20 37 (or substitute forms providing equivalent coverage; (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

**EXHIBIT C**  
**TO**  
**CONTRACTOR'S**  
**RIGHT OF ENTRY AGREEMENT**

**Union Pacific Railroad Company**  
**Insurance Requirements For**  
**Contractor's Right of Entry Agreement**

During the entire term of this Agreement and course of the Project, and until all Project Work on Railroad's property has been completed and all equipment and materials have been removed from Railroad's property and Railroad's property has been clean and restored to Railroad's satisfaction, Contractor shall, at its sole cost and expense, procure and maintain the following insurance coverage:

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

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

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

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

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

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

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

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

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

- D. Railroad Protective Liability insurance.** Contractor must maintain "Railroad Protective Liability" (RPL) 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. The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this agreement and shall describe all WORK or OPERATIONS performed under this agreement. Contractor shall provide this agreement to Contractor's insurance agent(s) and/or broker(s) and Contractor shall instruct such agent(s) and/or broker(s) to procure the insurance coverage required by this agreement. A BINDER STATING THE POLICY IS IN PLACE MUST BE SUBMITTED TO RAILROAD BEFORE THE WORK MAY COMMENCE AND UNTIL THE ORIGINAL POLICY IS FORWARDED TO UNION PACIFIC RAILROAD.

- E. Umbrella or Excess insurance.** If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.
- F. Pollution Liability insurance.** Pollution liability coverage must be included when the scope of the Work as defined in the agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

If required, coverage may be provided in separate policy form or by endorsement to Contractors CGL or RPL. Any form coverage must be equivalent to that provided in ISO form CG 24 15 "Limited Pollution Liability Extension Endorsement" or CG 28 31 "Pollution Exclusion Amendment" with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

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

### **Other Requirements**

- G.** All policy(ies) required above (except business automobile, worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 10, and CG 20 37 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall not be limited by Contractor's liability under the indemnity provisions of this agreement. BOTH CONTRACTOR AND RAILROAD EXPECT THAT UNION PACIFIC RAILROAD COMPANY WILL BE PROVIDED WITH THE BROADEST POSSIBLE COVERAGE AVAILABLE BY OPERATION OF LAW UNDER ISO ADDITIONAL INSURED FORMS CG 20 10 AND CG 20 37.
- 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.** Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Contractor required in this agreement where prohibited by law. This waiver must be stated on the certificate of insurance.
- J.** Prior to commencing the Work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this agreement.

- K.** All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the Work is being performed.
  
- L.** The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

**EXHIBIT E**  
**TO**  
**PUBLIC HIGHWAY OVERPASS AGREEMENT**

**RAILROAD COORDINATION REQUIREMENTS**

**1.01 DEFINITIONS**

Agreement: Agreement that has been signed, or will be signed, between Railroad and Agency covering the construction and maintenance of the Project.

Agency: City of St. Paul, Minnesota

AREMA: American Railway Engineering and Maintenance-of-way Association

Contractor: The contractor or contractors hired by the Agency to perform any project work on any portion of Railroad's

property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's

respective employees, officers and agents, and others acting under its or their authority.

MUTCD: Manual on Uniform Traffic Control Devices

Project: Agency's Project Number \_\_\_\_\_ covering the reconstruction of Kellogg Blvd Overpass

Railroad: Union Pacific Railroad Company

Railroad Project Representative: Railroad's Manager of Industry and Public Projects for this Project (see Section 1.03)

Railroad MTM Representative: Railroad's Manager of Track Maintenance for this Project (see Section 1.03)

Requirements: The Railroad Coordination Requirements set forth in this Exhibit.

**1.02 DESCRIPTION**

This Project includes construction work within Railroad's right-of-way. These Requirements describe coordination with the Railroad when work by the Contractor will be performed upon, over or under the Railroad right-of-way or may impact current or future Railroad operations. The Contractor will coordinate with the Railroad while performing the work outlined in this Agreement and shall afford the same cooperation with the Railroad as it does with the Agency. All submittals and work shall be completed in compliance with these Requirements, Railroad guidelines and requirements, AREMA recommendations and/or as directed by the Railroad Local Representative and/or the Railroad MTM Representative.

**1.03 UPRR CONTACTS**

The Railroad Project Representative for this project is:

**Michele Martin**  
**MaMartin@benesch.com**

For Railroad flagging services and track work, contact the following Railroad MTM Representative:

**Blair Brown**  
**402-800-0912**  
**bgbrown@up.com**

**1.04 PLANS / SPECIFICATIONS**

The plans and specifications for this Project, affecting the Railroad, are subject to the written approval by the Railroad. Changes in the plans made after the execution of the Agreement and/or the awarding of the Project to the Contractor are subject to the prior review and written approval of the Agency and the Railroad. No construction work shall commence until final stamped plans and/or changes to final stamped plans have been reviewed and approved by the Railroad in writing. The Railroad's review and approval of the Agency's and/or Contractor's plans in no way relieves the Agency and Contractor from their responsibilities, obligations and/or liabilities under this Agreement, Agency's agreement with the Contractor for the Project and/or in the separate Contractor's Right of Entry Agreement referenced in Section 1.08. Railroad's approval will be given with the understanding that the Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of Agency's and/or Contractor's plans and that any reliance by the Agency or the Contractor with respect to such plans is at the risk of the Agency and the Contractor.

### **1.05 UTILITIES AND FIBER OPTICS**

A. All installations shall be constructed in accordance with current AREMA recommendations and Railroad specifications and requirements. Railroad general guidelines and the required application forms for utility installations can be found on the Railroad website at <http://www.uprr.com/reus/pipeline/install.shtml>.

B. It shall be the responsibility of the Contractor, at its expense, to make arrangements directly with utility companies involving the protection, encasement, reinforcement, relocation, replacement, removing or abandonment in place of non-railroad facilities affected by the Project. Railroad has no obligation to supply additional Railroad property for non-railroad facilities affected by this Project, nor does the Railroad have any obligation to permit non railroad facilities to be abandoned in place or relocated on Railroad's property. Any facility and/or utility that crosses Railroad right of way must be covered under an agreement with the Railroad including, without limitation, any relocations of an existing facility and/or utility.

C. Any longitudinal fiber optic lines on Railroad right of way shall be treated as Railroad facilities. Project design may need to be altered to accommodate such facilities.

D. Any fiber optic relocations or protections that are required due to this Project will be at the Agency's expense.

### **1.06 GENERAL**

A. It is essential that the proposed construction shall be performed without interference to Railroad operations and in compliance with all applicable Railroad and Federal Railroad Administration rules and regulations. The Railroad shall be reimbursed by the Contractor or Agency for train delay costs and lost revenue claims due to any delays or interruption of train operations resulting from the Contractor's construction or other activities.

B. Track protection is required for all work equipment (including rubber tired equipment) operating within 25 feet from nearest rail. All work shall be designed and executed outside the temporary construction clearance envelope defined in Section 1.12.

C. The Contractor is also advised that new facilities within the Project may be scheduled to be built by the Railroad and that certain Contractor's activities cannot proceed until that work is complete. The Contractor shall be aware of the limits of responsibilities, allow sufficient time in the schedule for that work to be accomplished and shall coordinate its efforts with the Railroad.

### **1.07 RAILROAD OPERATIONS**

- A. The Contractor shall be advised that trains and/or equipment should be expected on any track, at any time, and in either direction. The Contractor shall communicate with the Railroad MTM Representative to improve the Contractor's understanding of Railroad traffic volume and operation at the Project site. The Contractor's bid shall be structured assuming intermittent track windows as defined in Section 1.07 C
- B. All Railroad tracks within and adjacent to the Project site are to be assumed as active and rail traffic over these facilities shall be maintained throughout the Project. Activities may include both through moves and switching moves to local customers. Railroad traffic and operations can occur continuously throughout the day and night on these tracks and shall be maintained at all times as defined herein. The Contractor shall coordinate and schedule the work so that construction activities do not interfere with Railroad's operations.
- C. Work windows for this Project shall be coordinated with the Agency or Contractor and the Railroad Project Representative and the Railroad MTM Representative. Types of work windows include Conditional Work Windows and Absolute Work Windows, as defined below:
  - 1. Conditional Work Window: A period of time in which Railroad's operations have priority over construction activities. When construction activities may occur on and adjacent to the railroad tracks within 25 feet of the nearest track, a Railroad flag person will be required. At the direction of the flag person, upon approach of a train and when trains are present on the tracks, the tracks must be cleared (i.e., no construction equipment, materials or personnel within 25 feet from the nearest active track or as directed by the Railroad MTM Representative). Conditional Work Windows are available for the project subject to Railroad's local operating unit review and approval.
  - 2. Absolute Work Window: A period of time in which construction activities are given priority over Railroad's operations. During this time the designated Railroad track(s) will be inactive for train movements and may be fouled by the Contractor. Before the end of an Absolute Work Window, all Railroad tracks and signals must be completely operational for normal train operations. Also, all Railroad, Public Utilities Commission and Federal Railroad Administration requirements, codes and regulations for operational tracks must be complied with. Should the operating tracks and/or signals be affected, the Railroad will perform inspections of the work prior to placing the affected track back into service. Railroad flag persons will be required for construction activities requiring an Absolute Work Window. **Absolute Work Windows will generally not be granted. Any request will require a detailed written explanation for Railroad review and approval.**

#### **1.08 RIGHT OF ENTRY, ADVANCE NOTICE AND WORK STOPPAGES**

- A. Prior to beginning any work within the Railroad right-of-way, the Contractor shall enter into an agreement with the Railroad in the form of the Contractor's Right of Entry Agreement, attached as **Exhibit D** or latest version thereof provided by the Railroad. There is a fee for processing of the agreement which shall be borne by the Contractor. The right of entry agreement shall specify working time frames, flagging, inspection and insurance requirements and any other items specified by the Railroad.
- B. The Contractor shall give advance notice to the Railroad as required in the Contractor's Right of Entry Agreement before commencing work in connection with construction upon or over Railroad's right-of-way and shall observe the Railroad rules and regulations with respect thereto.
- C. All work upon the Railroad right-of-way shall be done at such times and in such a manner as not to interfere with or endanger the operations of the Railroad. Whenever work may affect the operations or safety of trains, the method of doing such work shall first be submitted to the Railroad MTM Representative for approval, but such approval shall not relieve the Contractor from liability. Any work to be performed by the Contractor, which requires flagging service or inspection service, shall be deferred until the flagging protection required by the Railroad is available at the job site. See Section 1.21 for railroad flagging requirements.

- D. The Contractor shall make requests in writing to both the Railroad Project Representative and the Railroad MTM Representative for both Absolute and Conditional Work Windows, at least two weeks in advance of any work. The written request must include:
1. Description of work to be done.
  2. The days and hours that work will be performed.
  3. The exact location of the work and proximity to the tracks.
  4. The type of window and amount of time requested.
  5. The designated contact person for the Contractor.

The Contractor shall provide a written confirmation notice to the Railroad MTM Representative at least fifteen (15) days prior to commencing work in connection with the approved work windows when work will be performed within **25 feet of any track center line**. All work shall be performed in accordance with previously approved work plans.

- E. Should a condition arise from, or in connection with, the work which requires immediate and unusual actions to be made to protect operations and property of the Railroad, the Contractor shall undertake such actions. If, in the judgment of the Railroad MTM Representative, such actions are insufficient, the Railroad MTM Representative may require or provide such actions as deemed necessary. In any event, such actions shall be at the Contractor's expense and without cost to the Railroad. The Railroad or Agency have the right to order the Contractor to temporarily cease operations in the event of an emergency or if, in the opinion of the Railroad MTM Representative, the Contractor's operations may inhibit the Railroads operations. In the event such an order is given, the Contractor shall immediately notify the Agency of the order.

#### **1.09 INSURANCE**

The Contractor shall not begin work within the Railroad's right-of-way until the Railroad has been furnished the insurance policies, binders, certificates and endorsements required by the Contractor's Right-of-Entry Agreement, and the Railroad Project Representative has advised the Agency that such insurance is in accordance with such Agreement. The required insurance shall be kept in full force and effect during the performance of work and thereafter until the Contractor removes all tools, equipment, and material from Railroad property and cleans the premises in a manner reasonably satisfactory to the Railroad.

#### **1.10 RAILROAD SAFETY ORIENTATION**

**All personnel employed by the Agency, Contractor and all subcontractors must complete the Railroad's course "Property Access Training" and be registered prior to working on Railroad property. This training is available at <https://www.up.com/aboutup/community/safety/erailsafe/up-pat/index.htm>. This training is required to be completed annually. The preceding training does not apply for longitudinal fiber optic installations.**

#### **1.11 COOPERATION**

The Railroad shall cooperate with the Contractor in the scheduling of Project work with the understanding that Railroad's train operations at the job site shall have priority over the Contractor's activities.

#### **1.12 CONSTRUCTION CLEARANCES**

The Contractor shall abide by the twenty-one feet, six inches (21'6") temporary vertical construction clearance defined in section 4.4.1.1 and fifteen (15) foot temporary horizontal construction clearance defined in section 4.4.1.2 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects. It shall be the Contractor's responsibility to obtain such guidelines from the Agency or Railroad.

Reduced temporary construction clearances, which are less than construction clearances defined above,

will require special review and approval by the Railroad.

Any proposed variance on the specified minimum clearances due to the Contractor's operations shall be submitted to the Railroad Project Representative through the Agency at least thirty (30) days in advance of the work. No work shall be undertaken until the variance is approved in writing by the Railroad Project Representative.

### **1.13 SUBMITTALS**

- A. Construction submittals and Requests for Information (RFI) shall be submitted per Section 3 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects.
- B. The minimum review times, as indicated in tables 3-1 and 3-2 of Section 3.10 of the BNSF and UPRR Guidelines for Railroad Grade Separation Projects, should be anticipated for review of all submittals. Guidelines for Railroad Grade Separation Projects, should be anticipated for review of all submittals. The details of the construction affecting the Railroad tracks and property, not already included in the contract plans, shall be submitted by the Agency to the Railroad Project Representative for the Railroad's review and written approval before such construction is undertaken. The Railroad shall not be liable to Agency, Contractor, and or any other person or entity if the Railroad's review exceeds a four-week review time.
- C. As Built Submittals shall be submitted per Section 3 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects.

### **1.14 MAINTENANCE OF PROPER DRAINAGE AND DAMAGE TO RAILROAD FACILITIES**

- A. The Contractor, at its expense, shall be required to maintain all ditches and drainage structures free of silt or other obstructions which may result from the Contractor's operations and to repair and restore any Railroad property, tracks and facilities of Railroad and/or its tenants.
- B. The Contractor must submit a proposed method of erosion control and have the method reviewed and approved by the Railroad prior to beginning any grading on the project site. Erosion control methods must comply with all applicable local, state and federal regulations.

### **1.15 SITE INSPECTIONS BY RAILROAD PROJECT REPRESENTATIVE, RAILROAD MTM REPRESENTATIVE OR RAILROAD'S CONTRACTOR**

- A. In addition to the office reviews of construction submittals, site observations will be performed by the Railroad Project Representative, Railroad MTM Representative or Railroad's Contractor at significant points during construction per Section 4.11 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects.
- B. Site inspections are not limited to the milestone events listed in the guidelines. Site visits to check the progress of work may be performed at any time throughout the construction process as deemed necessary by the Railroad.
- C. A detailed construction schedule, including the proposed temporary horizontal and vertical clearances and construction sequence for all work to be performed, shall be provided by the Contractor to the Agency for submittal to the Railroad's Project Representative for review and approval prior to commencement of work. This schedule shall also include the anticipated dates on which the above listed events will occur. This schedule shall be updated for all critical listed events as necessary but at least monthly so that site visits may be scheduled.

### **1.16 RAILROAD REPRESENTATIVES**

- A. Railroad representatives, conductors, flag persons or watch persons will be provided by the Railroad

at the expense of the Agency or Contractor (as stated elsewhere in these bid documents) to protect Railroad facilities, property and movements of its trains and engines. In general, the Railroad will furnish such personnel or other protective services as follows:

1. When any part of any equipment or object, such as erection or construction activities, is standing or being operated within 25 feet, measured horizontally from centerline, of any track on which trains may operate.
  2. For any excavation below the elevation of track subgrade when, in the opinion of the Railroad MTM Representative, the track or other Railroad facilities may be subject to settlement or movement.
  3. During any clearing, grubbing, excavation or grading in proximity to Railroad facilities which, in the opinion of the Railroad MTM Representative, may affect Railroad facilities or inhibit operations.
  4. During any Contractor's operations when, in the opinion of the Railroad MTM Representative, the Railroad facilities, including, but not limited to, tracks, buildings, signals, wire lines or pipe lines, may be endangered.
- B. The Contractor shall arrange with the Railroad Local Representative to provide the adequate number of flag persons to accomplish the work.

### **1.17 WALKWAYS REQUIRED**

Parallel to the outer side of each exterior track of multiple operated track and on each side of single operated track, an unobstructed continuous space suitable for trainman's use in walking along trains, extending in width not less than fifteen feet (15') perpendicular from centerline of track, shall be maintained. Any temporary impediments to walkways and track drainage encroachments or obstructions allowed during working hours must be covered, guarded and/or protected as soon as practical. Walkways with railings shall be constructed by the Contractor over open excavation areas when in close proximity of track, and railings shall not be closer than 9' perpendicular from the center line of tangent track or 9' – 6" horizontal from curved track.

### **1.18 COMMUNICATIONS AND SIGNAL LINES**

If required, the Railroad, at Agency's expense, will rearrange its communications and signal lines, grade crossing warning devices, train signals, tracks and facilities that are in use and maintained by Railroad forces in connection with its operation. This work by the Railroad will be done by its own forces or by contractors under a continuing contract and may or may not be a part of the work under this contract.

### **1.19 TRAFFIC CONTROL**

The Contractor's operations which control traffic across or around Railroad facilities shall be coordinated with and approved by the Railroad MTM Representative and shall be in compliance with the MUTCD.

### **1.20 CONSTRUCTION EXCAVATIONS;CALL BEFORE YOU DIG NUMBER**

- A. The Contractor shall be required to take special precautions and care in connection with excavating and shoring. Excavations for construction of footings, piers, columns, walls or other facilities that require shoring shall comply with requirements of OSHA, AREMA and Railroad "Guidelines for Temporary Shoring".
- B. In addition to calling the "811" number and/or the local "one call center", the Contractor shall call the Railroad's "Call Before Your Dig" number at least 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 Standard Time, Monday through Friday, except holidays - also a 24 hour, 7 day a week number for emergency calls) to determine location of fiber optics. If a telecommunications system is buried anywhere on or near Railroad property,

the Contractor will co-ordinate 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 determination of whether fiber optics will be affected by the Project shall be made during the initial design phase of the Project.

- C. The Railroad does not allow temporary at grade crossings unless absolutely necessary and there is no alternative route available to contractor to access the project site. Alternative plans should be considered to avoid crossing Railroad tracks at grade.

### **1.21 RAILROAD FLAGGING**

Performance of any work by the Contractor in which person(s) or equipment will be within twenty-five (25) feet of any track, or that any object or equipment extension (such as, but not limited to, a crane boom) will reach within twenty-five (25) feet of any track, require railroad flagging services or other protective measures. The Contractor shall give an advance notice to the Railroad as required in the Contractor's Right of Entry Agreement before commencing any such work, allowing the Railroad to determine the need for flagging or other protective measures which ensure the safety of Railroad's operations, employees and equipment. Contractor shall comply with all other requirements regarding flagging services covered by the Contractor's Right of Entry Agreement. Any costs associated with failure to abide by these requirements will be borne by the Contractor.

**The estimated pay rate for each flag person is \$ \_\_\_\_\_ per day for a(n) 8-hour work day with time and one-half for overtime, Saturdays, Sundays; double time and one-half for holidays. Flagging rates are set by the Railroad and are subject to change due to, but not limited to, travel time, setup plus, per diem and rest time (if work is required at night).**

### **1.22 CLEANING OF RIGHT-OF-WAY**

The Contractor shall, upon completion of the work to be performed within the right-of-way and/or properties of the Railroad and adjacent to its tracks, wire lines and other facilities, promptly remove from the Railroad right-of-way all Contractor's tools, implements and other materials whether brought upon the right-of-way by the Contractor or any subcontractors employee or agent of Contractor or of any subcontractor, and leave the right-of-way in a clean and presentable condition to the satisfaction of the Railroad.

### **1.23 CONTRACTOR'S RESPONSIBILITY OF SUPERVISION**

The Contractor, at its expense, shall adequately supervise all work to be performed by the Contractor. Such responsibility shall not be lessened or otherwise affected by Railroad's approval of plans and specifications, or by the presence at the work site of the Railroad Project Representative, Railroad MTM Representative or any other Railroad representative or Railroad contractor providing inspection services, or by the compliance by the Contractor with any requests or recommendations made by such representatives. The Contractor will give due consideration to suggestions and recommendations made by such representatives for the safety and protection of the Railroad's property and operations.

### **1.24 USE OF EXPLOSIVES AT PROJECT SITE PROHIBITED**

The Contractor's use of explosives at the Project site is expressly prohibited unless authorized in advance in writing by the Railroad Project Representative.