

# REMS FileNet Cover Sheet

**AUD NBR: 249922**

**FLDR NBR: 0253252**

**CITY: RIO RICO**

**STATE: AZ**

**PARTY NAME: SANTA CRUZ COUNTY**

**PURPOSE: Crossing - Public Roadway**

**AGMT. DATE: 12/02/2008**

**MP STRT: 1034.4**

**PRIM CRC7: LB122**

**BOX NBR: 0**

**BATCH: 0**

AUDIT 249922

Folder Number: 2532-52

## INTERIM PUBLIC ROAD CROSSING AGREEMENT

Mile Post 1034.4 Nogales Subdivision

Location: Palo Parado Road, Santa Cruz County, Arizona

THIS INTERIM PUBLIC ROAD CROSSING AGREEMENT ("Agreement") is made this 2<sup>nd</sup> day of DECEMBER, 2008, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at 1400 Douglas Street, STOP 1690, Omaha, Nebraska 68179 (hereinafter "Licensor"), and Santa Cruz County, a political subdivision of the State of Arizona, whose address is 2150 North Congress Drive, Nogales, Arizona 85621 (hereinafter "County").

### RECITALS:

The County has requested that Union Pacific Railroad Company continue to maintain and allow use of an existing private road crossing (hereinafter "Road Crossing") identified for purposes of this agreement as the Palo Parado Road crossing, consisting of a two-lane private road crossing and all appurtenances thereto, including but not limited to any gates, cattle guards, stop signs or identification signs, drainage facilities, on, over and across the Licensor's right-of-way on the Nogales Subdivision trackage at Mile Post 1034.4, further identified as DOT Number (742018J), at or near the former Otero station location, Santa Cruz County, in the location shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof.

County has requested that the Road Crossing remain open as an interim public crossing and has represented to Union Pacific Railroad that it intends to take all legal action required to convert Palo Parado Drive to a permanent public roadway on both approaches to the Road Crossing as defined under the laws of the State of Arizona. County has requested funding from the Arizona Department of Transportation for such purposes. Licensor is willing to allow the Road Crossing to remain open as a public crossing at the location shown on **Exhibit A**, subject to the terms set forth below and to County's representations concerning conversion of the roadway to full public status.

Licensor understands that the County is undertaking this project in a partnership with adjacent developers. County has an agreement with those developers to share in the roadway improvement costs and will name the developers as the County's designee for performance of some duties that this agreement assigns to the County, but County will remain responsible for such performance.

NOW, THEREFORE, the parties agree as follows:

**ARTICLE I. LICENSOR GRANTS RIGHT.**

The Licensor grants the County the right to cross its right-of-way and tracks at the location shown on **Exhibit A** as a public crossing subject to the terms set forth herein and in **Exhibit B**, attached hereto and hereby made a part hereof, together with the right of entry to install, repair and maintain cattle guards on each side of the Road Crossing and to control and remove from the Licensor's right-of-way, on each side of the Road Crossing, weeds and vegetation which may obstruct the view of motorists approaching the crossing area to any trains that may also be approaching the crossing area. The County agrees to accept the right to cross at the Road Crossing shown on Exhibit "A" attached, said crossing to be further legally described by metes and bounds description to be provided by County.

**ARTICLE II. CONSIDERATION.**

For good and valuable consideration in the amount of ten dollars (\$10.00), both parties agree to the license and permission granted herein. The County agrees to observe and abide by the terms and conditions of this Agreement and to pay to the Licensor a one-time license fee of (WAIVED) DOLLARS (\$0.00), upon the execution and delivery of this Agreement.

**ARTICLE III. ADMINISTRATIVE HANDLING CHARGE.**

The County agrees to pay to the Licensor an administrative handling charge in the amount of FIVE HUNDRED DOLLARS (\$500.00) for clerical, administrative and handling expense in connection with processing this Agreement.

**ARTICLE IV. WORK TO BE PERFORMED BY LICENSOR**

A. The work to be performed by the Licensor, at the County's sole cost and expense, is described in the Licensor's Material and Force Account Estimate dated August 21, 2008 marked **Exhibit D**, attached hereto and hereby

made a part hereof (the "Estimate"). As noted in the Estimate, the Licensor's estimated cost for the Licensor's work associated with the Roadway is Eighty nine thousand seven hundred fifty eight Dollars (\$\_89758) and the Licensor's portion of the Road Crossing construction will be limited to the portion of the Road Crossing located between the track tie ends, and includes the installation of standard crossbucks and stop signs on each side of the Road Crossing. County agrees to install at its own cost all advance warning signs which are required by Arizona law.

B. The Licensor, if it so elects, may recalculate and update the Estimate submitted to the County in the event the County does not commence Roadway construction within six (6) months from the date of the Estimate.

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

D. The County agrees to reimburse the Licensor for one hundred percent (100%) of all actual costs incurred by the Licensor in connection with the interim Palo Parado Road Crossing only including, but not limited to, actual costs of preliminary engineering review, construction inspection, procurement of materials, equipment rental, manpower and deliveries to the job site and all of the Licensor's normal and customary additives (which shall include direct and indirect overhead costs) associated therewith.

**ARTICLE V. WORK TO BE PERFORMED BY COUNTY.**

The County or designee, at its sole cost and expense, shall construct and maintain the Roadway approaches, cattle guards and all other Roadway appurtenances and work that will not be performed by Licensor as set forth in Article IV. County agrees to begin the process, as quickly as possible, to accept the Palo Parado roadway into the County's system of public roadways in accordance with Arizona law. County agrees to accept said roadway, on both sides of the crossing, into the County's system of public roadways within seven (7) years of the date this Agreement is executed by County. County's obligation hereunder includes the portion of Palo Parado which crosses the Santa Cruz River up to the interchange with Interstate 19 highway.

Licensor shall have the right to close and remove the Road Crossing hereunder if Palo Parado has not become a full-fledged County roadway with an all-weather bridge across the Santa Cruz River within the seven-year period.

**ARTICLE VI. IF WORK IS TO BE PERFORMED BY CONTRACTOR.**

If a contractor is to do any of the work performed on the Road Crossing (including initial construction and subsequent relocation or substantial maintenance and repair work), then the County shall require its contractor to execute the Railroad's form Contractor's Right of Entry Agreement. County acknowledges receipt of a copy of the Contractor's Right of Entry Agreement and understanding of its terms, provisions, and requirements, and will inform its contractor of the need to execute the Agreement. Under no circumstances will County's contractor be allowed onto Licensor's premises without first executing the Contractor's Right of Entry Agreement.

**ARTICLE VII. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.**

A. The County or its contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of commencing its work and at least ten (10) working days in advance of proposed performance of any work 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 the Licensor's track(s) at any time, for any reason, unless and until a Licensor flagman is provided to watch for trains. Upon receipt of such ten (10)-day notice, the Licensor Representative will determine and inform the County or its contractor whether a flagman need be present and whether the County or its contractor needs to implement any special protective or safety measures. If the Licensor performs any flagging, or other special protective or safety measures are performed by the Licensor, the County or its contractor agrees that it is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The

composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between the Licensor and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, County or its contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

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

D. Arrangements for flagging are to be made with the Licensor's Manager of Track Maintenance. His name and phone number are as shown:

Larry R. Collins

(520) 629-2230

#### **ARTICLE VIII. INSURANCE.**

A. Before commencing any Roadway construction work on any portion of the Licensor's property, the County shall obtain the insurance coverage described in **Exhibit C**, attached hereto and hereby made a part hereof and to provide to the Licensor, the insurance policies, certificates, binders and endorsements described therein.

B. All insurance correspondence shall be directed to:

Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street, Mail Stop 1690  
Omaha, Nebraska 68179  
Attn.: Folder No. \_\_\_\_\_

**ARTICLE IX. ANNUAL SIGNAL MAINTENANCE FEE**

Deleted.

**ARTICLE X. SPECIAL PROVISIONS**

A. County agrees to not oppose nor interfere with Licensor's efforts to identify and close two existing private crossings within County. County shall not be obligated to incur any costs or expenses in assisting Licensor in this matter, but County shall not oppose closing of any private crossings identified as a result of this process. County also agrees not to oppose Licensor's future project to install a second main track over the Road Crossing, which project shall be at no cost to County.

B. If the Road Crossing is accepted into the county roadway system as a full fledged permanent public crossing as contemplated by this Agreement, Licensor shall grant such additional rights to County as are typically granted in Arizona for public crossings, but this Agreement does not obligate Licensor to convey such additional rights by an easement or other property interest.

C. County and Licensor will cooperate on required filings and communications with the Arizona Corporation Commission and staff concerning the interim public crossing and the potential for a permanent public crossing at Palo Parado.

D. Neither County nor Licensor intend to waive any rights or legal defenses they may have with respect to the status of the Road Crossing by entering into this Agreement. It is the intent of the parties that applicable state and federal law shall govern the existence of the Road Crossing and the rights of the parties with respect thereto.

E. Subject to the parties' rights of termination as provided in Section 6 of Exhibit B hereto, this Agreement shall not terminate until such time that a permanent right of entry agreement is executed by all parties to this Agreement.

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

WITNESS:

UNION PACIFIC RAILROAD COMPANY



By:   
for Director - Contracts

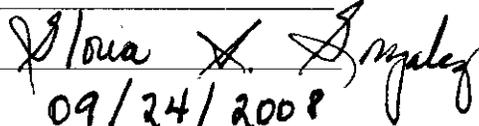
Date: 12/2/2008

Pursuant to Ordinance/Resolution

SANTA CRUZ COUNTY, STATE OF ARIZONA

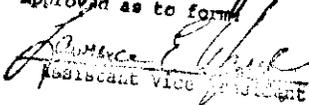
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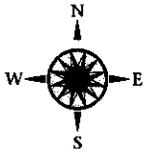
By: 

*for* Clerk: 

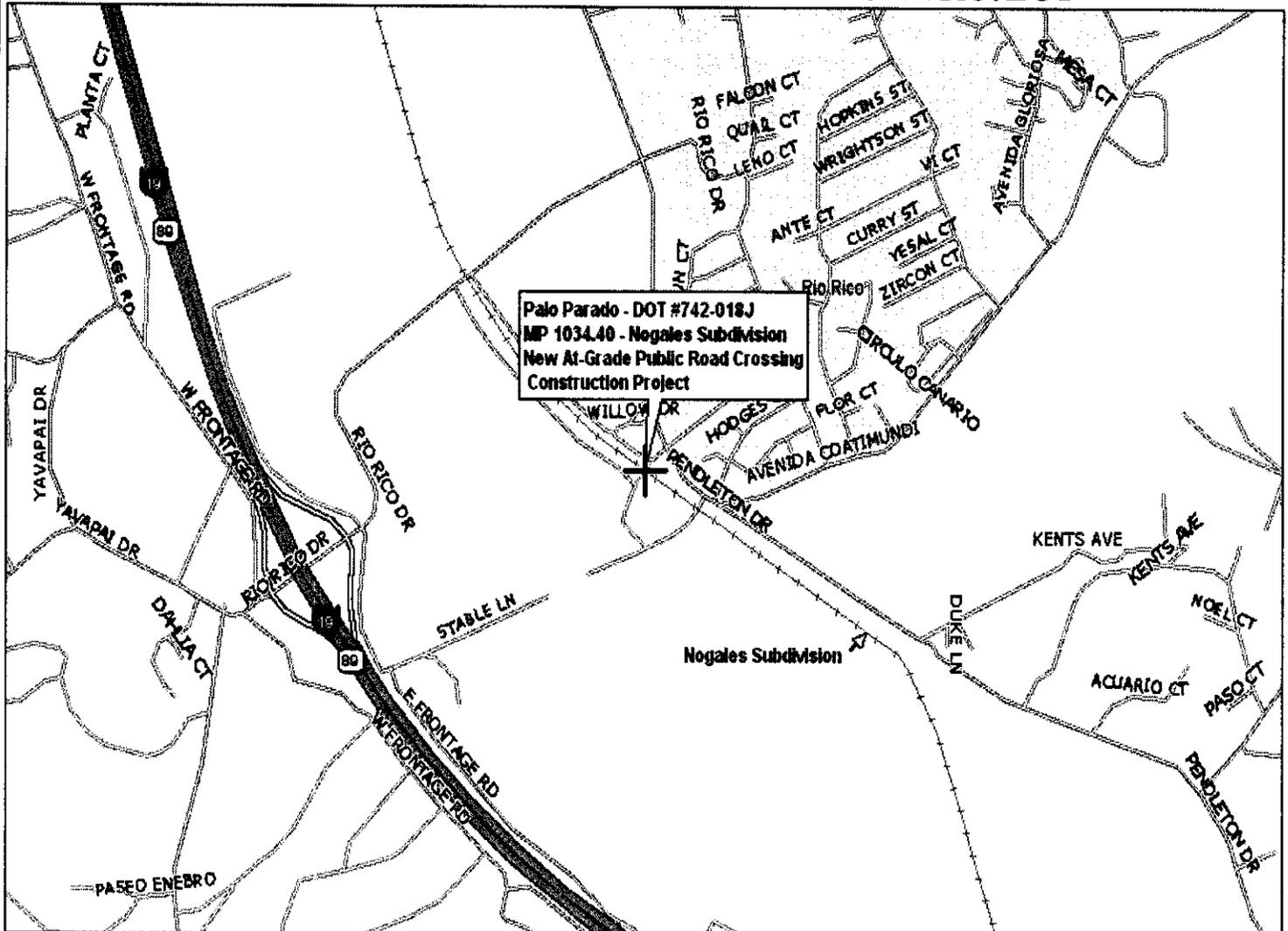
Title: Chairman

Date: 09/24/2008

*K/0 for J.S. Army*  
Approved as to form  
  
Assistant Vice President



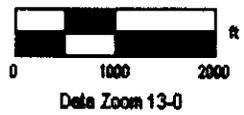
# RAILROAD LOCATION PRINT OF A NEW AT-GRADE PUBLIC ROAD CROSSING CONSTRUCTION PROJECT



Palo Parado - DOT #742-018J  
MP 1034.40 - Nogales Subdivision  
New At-Grade Public Road Crossing  
Construction Project



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www.delorme.com



**RAILROAD WORK TO BE PERFORMED:**

1. Re-lay 160-feet of track; Install 32-feet of concrete road crossing panels; Install 60 cross ties; Install 2 carloads of ballast; and other track and surface materials.
2. Miscellaneous signal work.
3. Engineering Review and Flagging.

**EXHIBIT "A"**

**UNION PACIFIC RAILROAD COMPANY**

NOGALES SUBDIVISION  
MILE POST 1034.40  
GPS: N 31° 28.0213', W 110° 58.9096'  
RIO RICO, SANTA CRUZ CO., AZ.

Location print of an new at-grade public road crossing  
construction project with **SANTA CRUZ COUNTY**.

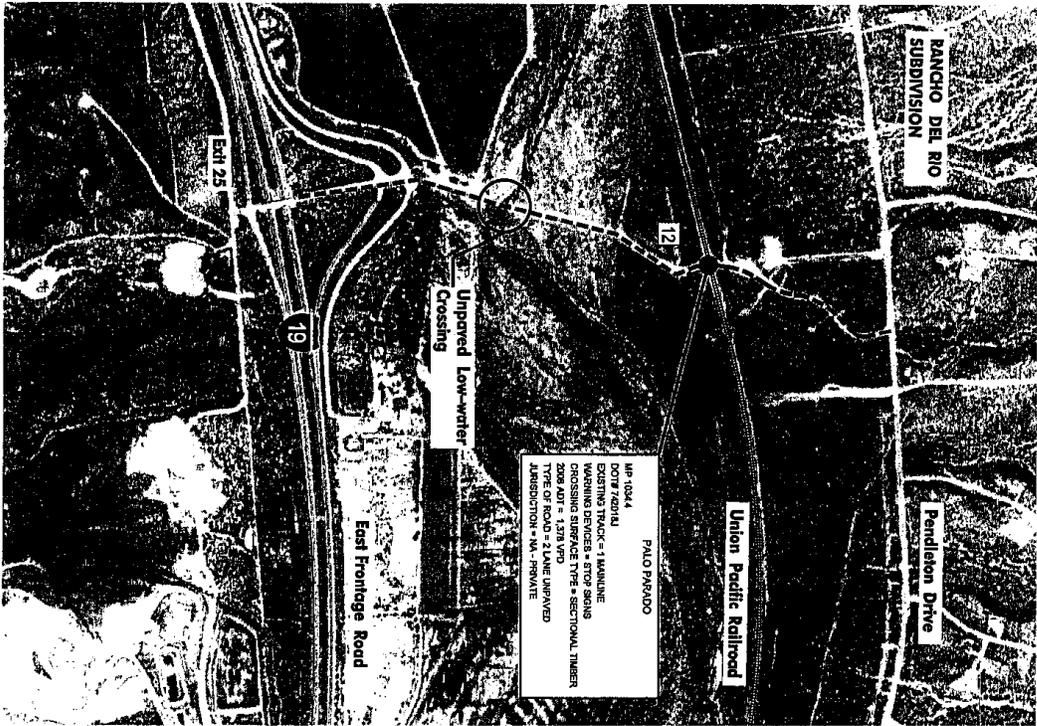
Folder No. 2532-52                      Date: November 24, 2008

**WARNING**

IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE  
OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.  
PHONE: 1-(800) 336-9193

NORTH

1" = 1000'



- LEGEND**
- EXISTING TRACK
  - EXISTING AT-GRADE CROSSING
  - ▲ SCHOOL
  - ⊕ HOSPITAL
  - ⊙ FUEL STATION

**PROPOSED LOCATIONS**

HP 10344 - PALO PARADO

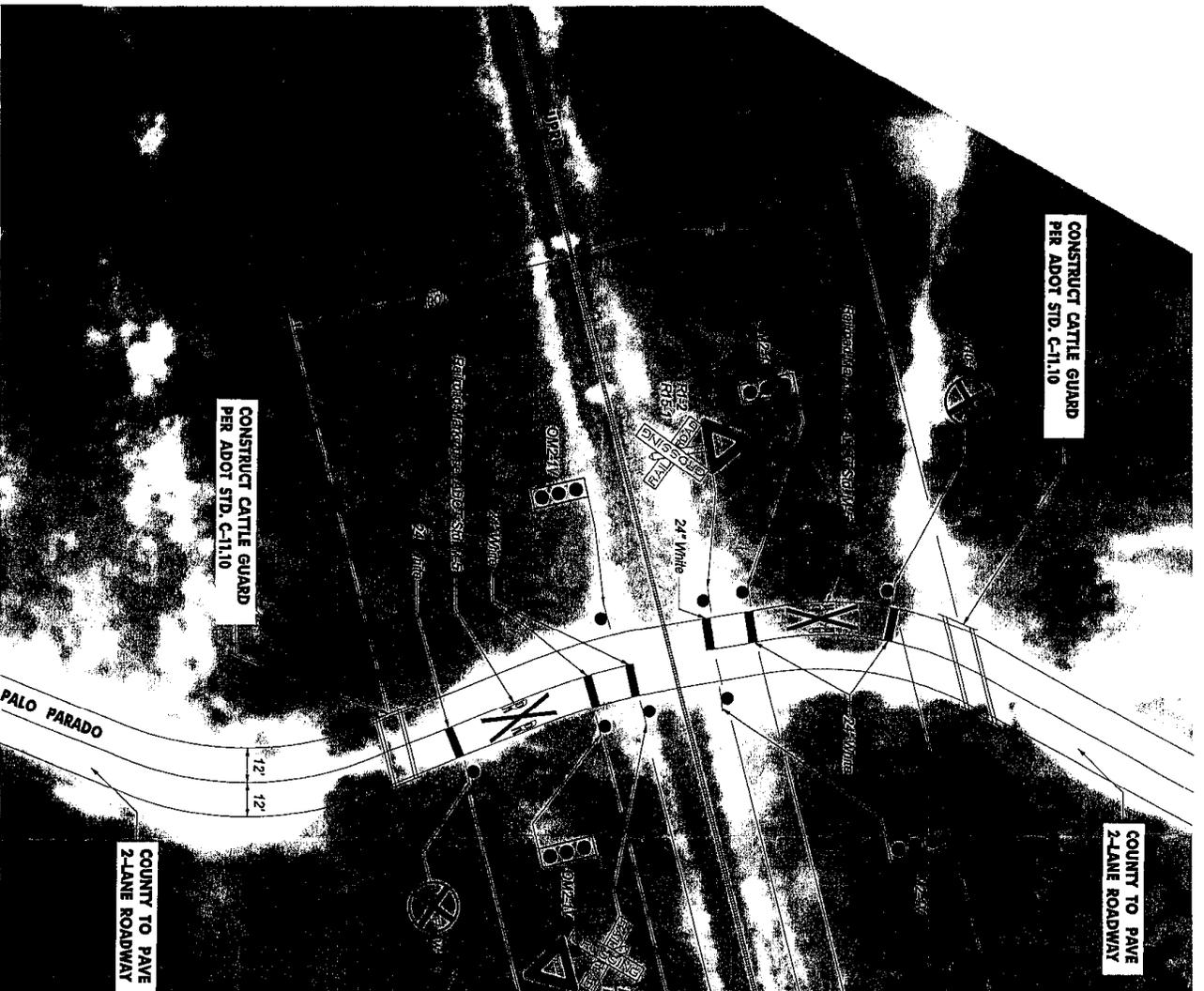


EXHIBIT  
RECOMMENDED  
PALO PARADO

**SECTION 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.**

(a) The rights granted to the County are subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire railroad right of way, and are also subject to the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics or other wire lines, pipelines and other facilities upon, along or across any or all parts of said right of way, any of which may be freely done at any time by the Licensor without liability to the County or to any other party for compensation or damages.

(b) The County's rights are also subject to all outstanding superior rights (including those in favor of governmental entities, lessees of said right of way, and others) whether recorded or unrecorded, and the right of the Licensor to renew and extend the same, and are granted without covenant of title or quiet enjoyment.

(c) It is expressly stipulated that the Road Crossing is to be an interim public crossing until accepted into County's roadway system in accordance with Arizona law. The County, without expense to the Licensor, will take any and all necessary action to preserve the interim public character of the Road Crossing until conversion.

**SECTION 2.     MAINTENANCE AND USE.**

(a) The Licensor, at the sole expense of the County, shall maintain the crossbucks and stop signs at the Road Crossing and also the portion of the Road Crossing lying between the rails of the tracks and for one (1) foot on the outside of each rail; provided, however, that such maintenance work shall be limited to that required for the safe and efficient operation of its tracks, and such other maintenance as the Licensor has agreed to perform on specific request of the County. The County, at its own expense, shall maintain the remaining portion of the Road Crossing and shall keep the rail flangeways clear of obstructions.

(b) The County shall, at its sole expense, maintain, repair, renew and replace any gates, cattle guards, drainage facilities, traffic signs or devices, and identification signs on the Palo Parado Road right of way as agreed to by Licensor and as shown on **Exhibit A**. The County shall, at its own expense, install and thereafter maintain any such appurtenances that may subsequently be required by the Licensor, by law, or by any public authority having jurisdiction. The County shall control vegetation along the Licensor's right of way on each side of the crossing so that the line of sight to approaching trains is not impaired or obstructed by vegetation. All work performed by the County on the Licensor's right of way during the term of this interim agreement shall be done to the satisfaction of the Licensor. Such satisfaction shall not be unreasonably withheld.

(c) The County shall require all vehicles approaching the crossing to stop a safe distance from the tracks before crossing the tracks. The County shall not do, suffer or permit anything which will or may obstruct, endanger or interfere with, hinder or delay

the maintenance and operation of the Licensor's railroad tracks or appurtenant facilities or the facilities or equipment of others lawfully using the Licensor's property. The County shall assert all reasonable efforts to assure that use of the Road Crossing is safe and that no person or vehicle or livestock stops or stands on the Licensor's tracks or attempts to cross the Licensor's railroad tracks when a railroad train, engine, equipment, or car is approaching or occupying the Road Crossing. Right of Way fencing shall be maintained as required by Arizona law.

**SECTION 3.     MODIFICATION OR RELOCATION OF ROAD CROSSING.**

(a) Whenever the Licensor deems it necessary or desirable in the furtherance of its railroad operating requirements or for the improvement and use of its property to modify or relocate the Road Crossing:

(1) the Licensor shall, at the sole expense, of the County, modify or move the portion of the Road Crossing lying between the rails of the tracks and for one (1) foot on the outside of each rail; and

(2) the County shall, at the County's sole expense, modify or move the remaining portion of the Road Crossing and the appurtenances thereto.

(b) All the terms of this Agreement shall govern the continued maintenance and use of the Road Crossing as modified or relocated pursuant to this section.

**SECTION 4.     PROTECTION OF FIBER OPTIC CABLE SYSTEMS.**

(a) Fiber optic cable systems may be buried on the Licensor's property. The County shall telephone the Licensor at 1-800-336-9193 (a 24-hour number) to determine

if fiber optic cable is buried anywhere on the Licensor's premises to be used by the County. If it is, the County 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 the Licensor's premises.

(b) In addition to the liability terms elsewhere in this Agreement, the County shall indemnify and hold the Licensor harmless against and from all cost, liability, and expense whatsoever (including, without limitation, attorneys' fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of the County, its contractor, agents and/or employees, that causes or in any way or degree contributes to (1) any damage to or destruction of any telecommunications system by the County, and/or its contractor, agents and/or employees, on the Licensor's property, (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 the Licensor's property, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of, such telecommunication company(ies).

**SECTION 5. INDEMNITY.**

The County assumes the risk of and shall indemnify and hold harmless the Licensor and other railroad companies which use the property of the Licensor, their officers, agents and employees, against and from any and all loss, damages, claims, demands, actions, causes of action, costs, attorneys' fees, fines, penalties and expenses of whatsoever nature (hereinafter "Loss") which may result from: (1) injury to or death of persons whomsoever, (including officers, agents and employees of the Licensor and of

the County, as well as other persons); (2) loss of or damage to property whatsoever (including damage to property of or in the custody of the County and damage to the roadbed, tracks, equipment or other property of or in the custody of the Licensor and such other railroad companies, as well as other property); or (3) the County's failure to comply with any federal, state or local law, regulation, or enactment; when such Loss is due to or arises in connection with or as a result of:

(a) the construction of the Road Crossing;

(b) any work done by the County on or in connection with the Road Crossing;

(c) the use of said Road Crossing by the County, or the officers, agents, employees, patrons or invitees of the County, or by any other person;

(d) the use of said Road Crossing by the County's successors or assigns or the officers, agents, employees, patrons or invitees of the County's successors or assigns until the County either complies with the provisions of Section 8 or this Agreement is terminated pursuant to Section 6;

(e) or the breach of any covenant or obligation assumed by or imposed on the County pursuant to this Agreement, or the failure of the County to promptly and fully do any act or work for which the County is responsible pursuant to this Agreement; regardless of whether such Loss is caused solely or contributed to in part by the negligence of the Licensor, its officers, agents or employees.

**SECTION 6. TERMINATION ON BREACH OR ON NOTICE.**

(a) The Licensor may terminate this Agreement by giving the County notice of termination if the County defaults under any obligation to be kept by the County under this Agreement and, after written notice is given by the Licensor to the County specifying the default, the County fails either to immediately commence to cure the default, or to complete the cure expeditiously but in all events within thirty (30) days after the default notice is given. A waiver by the Licensor of a breach by the County of any covenant or condition of this Agreement shall not impair the right of the Licensor to avail itself of any subsequent breach thereof.

**SECTION 7.     REMOVAL OF ROAD CROSSING.**

(a) Upon termination of this Agreement howsoever, the Licensor shall, at the sole expense of the County, remove the Road Crossing and restore the premises of the Licensor to a condition acceptable to Licensor.

(b) In the event of the removal of the Road Crossing as in this section provided, the Licensor shall not be liable to the County for any damage sustained by the County for or on account of such removal, and such removal shall not prejudice or impair any right of action for damage, or otherwise, which the Licensor may have against the County.

**SECTION 8.     ASSIGNMENT.**

The County shall not assign this Agreement, or any rights or obligations hereunder to any purchaser, lessee or other holder of any property served by the crossing or to any other person, without the written consent of the Licensor, which consent shall not be unreasonably withheld. Licensor understands that County intends to assign some rights and obligations hereunder to certain real property developers in the vicinity of the

crossing, which Licensor shall not oppose subject to its right of consent as herein provided. Notwithstanding the foregoing, however, County shall remain obligated if any of such assignees fails to abide by the terms and conditions of this Agreement as assigned. If the County fails to secure the Licensor's consent to any assignment, such assignment shall be void ab initio.

**SECTION 9. SUCCESSORS AND ASSIGNS.**

Subject to the provisions of Section 8 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.

**SECTION 10. CHOICE OF FORUM**

This agreement shall be governed, construed and enforced in accordance with the laws of the state of Arizona. Litigation arising out of or connected with this Agreement may be instituted and maintained in the courts of the state of Arizona only, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation, in those courts, and consent to service of process issued by such courts.

**UNION PACIFIC RAILROAD**

**CONTRACT INSURANCE REQUIREMENTS**

Commercial: Industrial; Contractor's Private Grade Crossing and / or Encroachment

County shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

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

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

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

- **The employee and worker's compensation related exclusions in the above policy apply only to County's employees**

The exclusions for railroads (except where the Job Site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.

- Coverage for Licensor's employees shall not be excluded

- Waiver of subrogation

B. **Business Automobile Coverage** insurance. This insurance shall contain a combined single limit of at least \$2,000,000 per occurrence or claim, including but not limited to coverage for the following:

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

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

- **The employee and worker's compensation related exclusions in the above policy apply only to County's employees**
- The exclusions for railroads (except where the Job Site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.
- Motor Carrier Act Endorsement – Hazardous materials clean up (MCS-90) if required by law

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

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

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

If Workers' Compensation insurance will not cover the liability of County in states that require participation in state workers' compensation fund, County shall comply with the laws of such states. If County is self-insured, evidence of state approval must be provided along with evidence of excess workers' compensation coverage. Coverage shall include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

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

- Alternate Employer Endorsement

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

**Other Requirements**

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

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

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

H. Prior to commencing the Work, County shall furnish to Licensor original certificate(s) of insurance evidencing the required coverage, endorsements, and amendments. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Licensor in writing of any cancellation or material alteration. **Upon request from Licensor, a certified duplicate original of any required policy shall be furnished.**

I. Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

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

K. If County fails to procure and maintain insurance as required, Licensor may elect to do so at the cost of County plus a 25% administration fee.

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

# Exhibit D

DATE: 2008-08-21

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK  
 BY THE  
 UNION PACIFIC RAILROAD

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2009-02-19

DESCRIPTION OF WORK:

RECOLLECT ROAD CROSSING - NOGALES SUB - MP 1,034.40 SIMN, PALO PARADO.  
 100% RECOLLECT FROM COUNTY OF SANTA CRUZ AZ, FEDERAL RATE W/OH & INDIRECT  
 1 KING LOCATION = 32 FT.  
 2 CARS OF BALLAST  
 MISC SIGNAL WORK.

PID: 62777 AWO: MP, SUBDIV: 1034.40, NOGALES  
 SERVICE UNIT: 16 CITY: TUCSON STATE: AZ

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
<b>ENGINEERING WORK</b>							
ENGINEERING			932		932		932
<b>TOTAL ENGINEERING</b>			<b>932</b>		<b>932</b>		<b>932</b>
<b>SIGNAL WORK</b>							
FNCS-R/W, SND			533		533		533
MATL STORE EXPENSE				13	13		13
SALES TAX				16	16		16
SIGNAL			1017	422	1439		1439
<b>TOTAL SIGNAL</b>			<b>1550</b>	<b>451</b>	<b>2001</b>		<b>2001</b>
<b>TRACK &amp; SURFACE WORK</b>							
BALAST	2.00	CL	2280	1504	3784		3784
BILL PREP				900	900		900
CONTRACT CLEAN UP				10000	10000		10000
ENVIRONMENTAL PERMIT				100	100		100
EQUIP RENT W/OPER				10000	10000		10000
FIELD WELD			69		69		69
HOMELINE FREIGHT				900	900		900
LABOR ADDITIVE 205%			25431		25431		25431
MATL STORE EXPENSE				319	319		319
OTM			547	2534	3081		3081
RAIL	160.00	LF	740	3200	3940		3940
RDXING	32.00	TF	3378	9008	12386		12386
SALES TAX				871	871		871
TRK-SURF, LIN			2567		2567		2567
WELD			2262	254	2516		2516
XTIS	60.00	EA	4647	5314	9961		9961
<b>TOTAL TRACK &amp; SURFACE</b>			<b>41921</b>	<b>44904</b>	<b>86825</b>		<b>86825</b>
<b>LABOR/MATERIAL EXPENSE</b>			<b>44403</b>	<b>45355</b>			
<b>RECOLLECTIBLE/UPRR EXPENSE</b>					<b>89758</b>	<b>0</b>	
<b>ESTIMATED PROJECT COST</b>							<b>89758</b>
<b>EXISTING REUSEABLE MATERIAL CREDIT</b>					<b>0</b>		
<b>SALVAGE NONUSEABLE MATERIAL CREDIT</b>					<b>0</b>		
<b>RECOLLECTIBLE LESS CREDITS</b>							

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, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.