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DGNO

Agreement Number _____

NEW PUBLIC HIGHWAY CROSSING AGREEMENT

LANDMARK PLACE
MILE POST - DAL-NOR BRANCH
ADDISON, DALLAS COUNTY, TEXAS

THIS AGREEMENT, made and entered into as of the _____ day of _____, 200____, by and between **DALLAS GARLAND & NORTHEASTERN RAILROAD**, a Texas corporation (hereinafter the "DGNO" or "Railroad"), and the **TOWN OF ADDISON, TEXAS**, a municipal corporation of the State of Texas to be addressed at PO Box 9010, Addison, TX 75001-9010 (hereinafter the "Town").

WITNESSETH:

RECITALS:

The Town desires to undertake as its project the construction of a new at-grade public road crossings (hereinafter the "Project").

The Town desires the right to use for the Project that portion of the right-of-way of the Railroad at MP5_____, the Dal-Nor Branch (hereinafter the "Crossing Area") shown and described on the attached prints dated _____, 2002, marked **Exhibit A**.

AGREEMENT:

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

ARTICLE 1 - CROSSING APPROVAL

For and in consideration: of the Town's agreement to perform and abide by the terms of this Agreement, including **Exhibit A, B, and B-1**, attached hereto and hereby made a part hereof; of the payment set forth in Article 2 hereof; and of other good and valuable consideration, the sufficiency of which is hereby acknowledged, DGNO hereby grants to the Town, the right to establish, construct, maintain, repair, replace, reconstruct, renew, and use a public highway and right of way at grade over and across the Crossing Area, (together with any and all uses incidental thereto, including, without limitation, the installation, repair, maintenance, and replacement of water lines, sanitary sewer lines, drainage, and other utilities typically located underground within public right of way), provided that the DGNO consents in writing to the installation of the above utilities, such consent to not be unreasonably withheld, together with the right of entry to control and remove from the DGNO's right-of-way, on each side of the Crossing Area, weeds and vegetation which may obstruct the view of motorists approaching the Crossing Area, and to any trains that may be also be approaching the Crossing Area.

ARTICLE 2 - RAIL OPERATIONS COST

The new crossing will occur in the middle of an existing DGNO rail yard area. The crossing and other rights granted by DGNO will cause the Railroad to incur increased rail operations and expense. To reduce the increased rail operating expense, the Town and DGNO acknowledge that occasionally the crossing may be blocked for more than ten (10) minutes during night rail yard movements from 10:00 PM to 5:00 AM. As full and complete payment, compensation, and satisfaction to the Railroad for (i) such increased rail operations and any and all costs, fees, and or expenses incurred or arising out of any negative impact to the railroad's current or future operations due to the crossing, and (ii) for the rights granted herein by the Railroad, the Town agrees to pay to DGNO **THREE HUNDRED SEVENTY SEVEN THOUSAND DOLLARS (\$377,000)**, the complete and total compensation for these increased operating costs.

ARTICLE 3 - CERTIFICATE OF INSURANCE

A. Before any work on the Premises begins, the Town will provide DGNO with a Certificate issued by its insurance carrier providing the insurance coverage required pursuant to **Exhibit B-1** of this Agreement in a policy containing the following endorsement:

“Union Pacific Railroad Company and Dallas Garland & Northeastern Railroad are named as additional insured or indemnitees with respect to all liabilities arising out of Insured’s performance of the work required for the Project.”

B. The Town WARRANTS that this agreement has been thoroughly reviewed by its insurance agent(s)/broker(s) and that said agents(s)/broker(s) has been instructed to procure insurance coverage and an endorsement as required herein.

C. All insurance correspondence shall be directed to: (_____)

D. The Town may self-insure all or a portion of the insurance coverage required hereunder, subject to DGNO’s review and approval. However, the Town’s contractor/subcontractor (if any) shall obtain and provide evidence of insurance coverage pursuant to **Exhibit B-1** of this agreement.

ARTICLE 4 - IF WORK IS TO BE PERFORMED BY CONTRACTOR

If a contractor is to perform any of the work on the Project (including initial construction and subsequent relocation or substantial maintenance and repair work), then the Town shall require its contractor to execute the Railroad’s Contractor’s Right of Entry Agreement attached hereto as **Exhibit C**, including revisions thereto that DGNO is willing to approve, which approval shall not be unreasonably withheld, and hereby made a part hereof. Town acknowledges receipt of a copy of the 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 Town’s contractor be allowed onto the Railroad’s premises without first executing the Contractor’s Right of Entry Agreement.

ARTICLE 5 - WORK TO BE PERFORMED BY THE RAILROAD

A. DGNO may make any and all changes, alterations or relocations, whether temporary or permanent, and may provide flagging and other protective services and devices, which in DGNO’s judgment may be or become necessary or expedient within the right-of-way because of the Project, provided, however, that this right to make such changes, alterations or relocations shall not be a right to eliminate, or unreasonably interfere with the crossing rights of the Town.

B. The Railroad, shall, at the sole cost and expense of the Town, maintain, repair, and replace the warning devices installed hereunder: PROVIDED, HOWEVER, that this provision shall not negate DGNO’s eligibility for any further federal, state or local or other public funds that may become available for the maintenance of said devices; and PROVIDED, FURTHER, that the cost of repair or replacement resulting from damage caused by non-parties that is not recoverable by DGNO (after using its best efforts to recover such cost) from the non-parties shall be borne entirely by the Town.

C. The Town agrees to pay the Dallas Garland & Northeastern Railroad for the work performed and materials supplied by the Dallas Garland & Northeastern Railroad for the Project.

ARTICLE 7 - EFFECTIVE DATE; TERM

This Agreement shall become effective as of the date first herein written, or the date work commences on the Project, whichever is earlier, and shall continue in full force and effect until terminated as herein provided.

ARTICLE 8 - VENUE

In the event of any action under this Agreement, venue for all causes of action shall be instituted and maintained in Dallas County, Texas (State court), or the Northern District of Texas, Dallas Division (Federal court), as the case may be. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Agreement; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate as of the date.

DALLAS GARLAND & NORTHEASTERN RAILROAD

By _____

Title: _____

ATTEST:

TOWN OF ADDISON, TEXAS

By _____

Title: _____

Resolution N.: _____

Pursuant to Resolution/Order Dated: _____

(Seal)

EXHIBIT B

Public Highway Crossing

SECTION 1 - CONDITIONS AND COVENANTS

A) The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances; the Railroad warrants and represents that it has full power and authority to execute this Agreement and to grant to the Town the rights and interests described herein. The Town shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the Town shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipelines. Any lines constructed on the Railroad's property by or under authority of the Town for the purpose of conveying electric power or communications incidental to the Town's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the Town to use or occupy any part of the Railroad's property without the Railroad's written 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 in such manner as not unreasonably to interfere with its use as a public highway. In the event the Railroad shall place tracks upon the Crossing Area, the Town shall, at its sole cost and expense, modify the highway to conform with the rail line.

c) The rights hereby granted are subject to any existing encumbrances and rights (whether public or private), recorded or not, and also to any renewals thereof. Except as authorized pursuant to law or by agreement, the Town shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the railroad property, unless the Town at its own expense settles with and obtains releases from such nonparties.

d) The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, railroad facilities and railroad appurtenances on the property; also the right to cross the Crossing Area with all kinds of equipment in connection with a railroad use. The Railroad further reserves the right to attach signal, communication or power lines in connection with its railroad use to any highway facilities located upon the property, provided that such attachments shall comply with Town's specifications and will not interfere with the use of the Crossing Area.

e) So far as it lawfully may do so, the Town 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 which are directly related to the Town's rights therein and use thereof, excepting taxes levied upon and against the property as a component part of the Railroad's operating property.

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

SECTION 2 - CONSTRUCTION OF HIGHWAY

a) The Town, at its own 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 Town, at its own expense, will furnish all necessary labor, material and equipment, and shall construct and complete the highway 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 and proper drainage facilities, guard rails or barriers, and right of way fences between the highway and the railroad tracks. Upon completion of the Project, the Town shall remove from the Railroad's property all temporary structures and false work, and will leave the Crossing Area in a condition satisfactory to the Railroad.

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

d) All construction work of the Town upon the Railroad's property (including, but not limited to, construction of the highway and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Vice President-Engineering Services of the Railroad or his authorized representative and in accordance with detailed plans and specifications prepared by and at the expense of the Town, and approved in writing by the Railroad's Vice President-Engineering Services.

e) All construction work of the Town shall be performed diligently and completed within a reasonable time, and in any event within five (5) years from the effective date of this Agreement, or within such further period of time as may be specified in writing by the Railroad's Vice President-Engineering Services. No part of the Project shall be suspended, discontinued or unduly delayed without the Railroad's written consent, and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of the Town. The Town hereby assumes the risk of any such delays and agrees that no claims for damage on account of any delay shall be made against the Railroad.

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

SECTION 3 - INJURY AND DAMAGE TO PROPERTY

If the Town, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the Town is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or of any other person lawfully occupying

or using the property of the Railroad, such property shall be replaced or repaired by the Town at the Town's own expense, or by the Railroad at the expense of the Town, and to the satisfaction of the Railroad's Vice President-Engineering Services.

SECTION 4 - PAYMENT FOR WORK BY THE RAILROAD COMPANY

a) Bills for work and materials shall be paid by the Town promptly upon receipt thereof. The Railroad will submit to the Town current bills for flagging and other protective services and devices during progress of the Project. The Railroad will submit final billing for flagging and other protective services within one hundred and twenty (120) days after completion of the Project, provided the Town advises the Railroad of the commencement of the 120-day period by giving the Railroad written notification of completion of the Project.

b) In connection with the Crossing Area, certain work will need to be performed by the Railroad (and the Railroad shall notify the Town of the nature of such work). The Railroad may contract for the performance of any of its work by other than railroad forces; provided, however, that prior to contracting, the Railroad shall give notice to the Town of its intent to do so and an estimate of the cost of such work. The Railroad shall give reasonable notice to the Town of its intent to work on the Crossing Area, and the Railroad and Town agree to work together to coordinate such work and its effect on the Crossing Area. The Railroad shall notify the Town of the contract price within ninety (90) days after it is awarded. Unless the Railroad's work is to be performed on a fixed price basis, the Town shall reimburse the Railroad for the amount of the contract.

SECTION 5 - MAINTENANCE

a) If the Project involves a grade crossing:

1) The Town shall, at its own sole expense, maintain, repair, and renew, or cause to be maintained, repaired and renewed, the entire Crossing Area, except the portions between the track tie ends, which shall be maintained by and at the expense of the Railroad.

2) If, in the future, the Town elects to have the surfacing material between the track tie ends, or between tracks if there is more than one railroad track across the Crossing Area, replaced with paving or some surfacing material other than timber planking, the Railroad, at Town's expense, shall install such replacement surfacing, and in the future, to the extent repair or replacement of the surfacing is necessitated by repair or rehabilitation of the Railroad's tracks through the Crossing Area, the Town shall bear the expense of such repairs or replacement.

b) If the Project involves a public highway crossing under the Railroad's tracks:

1) The Town shall, at its own sole expense, maintain, repair, and renew, or cause to be maintained, repaired and renewed, the entire substructure of the highway-railroad grade separation structure.

2) The Railroad shall, at its own sole expense, maintain, repair, or cause to be maintained and repaired, the entire superstructure of the highway-railroad grade separation structure.

c) If the Project involves a public highway crossing over the Railroad's tracks, the Town shall, at its own sole expense, maintain, repair, and renew, or cause to be maintained, repaired, and renewed, the entire highway-railroad grade separation structure.

SECTION 6 - CHANGES IN GRADE

If at any time the Railroad shall elect, or be required by competent authority to, raise or lower the grade of all or any portion of the track or tracks located on the Crossing Area, the Town shall, at its own expense, conform the public highway in the Crossing Area to conform with the change of grade of the track age.

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 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 the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the Town that the work will be performed in a safe manner and in conformity with the following standards:

a) Definitions. References in this Section 8 to the Town shall include the Town's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority; and all references in this Section to work of the Town shall include work both within and outside of railroad property; provided that such work is in connection with the Crossing Area.

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

c) No Interference or Delays. Recognizing that a public street and right-of-way will be constructed and used by the Town across the Crossing Area, the town shall not unreasonably do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.

d) Supervision. The Town, at its own expense, shall adequately police and supervise all work to be performed by the Town, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the Town for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the Railroad's approval of plans

and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the Town with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the Town will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.

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

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

g) Explosives. The Town shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate. In addition to any conditions, restrictions or limitations as may be deemed to be necessary, desirable or appropriate. In addition to any conditions, restrictions or limitations as may be specifically imposed:

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

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

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

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

h) Obstructions to View. Except as otherwise specifically provided herein, the town shall not cause or permit the view along the tracks of the Railroad to be obstructed, nor place any combustible material on the premises, nor erect any structures thereon. If public law or regulation requires control or removal of weeds or vegetation on each side of the Crossing Area, the Town will perform such work, reimburse the Railroad for the cost of performing such control or removal. If the crossing is not equipped with automatic train activated warning devices with gate arms:

1) The Town shall control or remove weeds and vegetation within and on each side of the Crossing Area so that the view of approaching motorists to approaching trains is not obstructed by weeds or vegetation; and

2) Insofar as it may lawfully do so, the Town will not permit non-parties to construct sight obstructing buildings or other permanent structures on property adjacent to the right-of-way.

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

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

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

l) Fiber Optic Cables. Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Town shall telephone the Railroad at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the Town. If it is, Town 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 Railroad's premises.

SECTION 9 - INTERIM WARNING DEVICES

If at anytime it is determined by a competent authority, by the Town, or

by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the Town shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the new or improved devices have been installed.

SECTION 10 - OTHER RAILROADS

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

SECTION 11 - REMEDIES FOR BREACH OR NONUSE

a) If the Town shall fail, refuse or neglect to perform and abide by the terms of this Agreement after written notice of such failure, refusal, or neglect is provided by the Railroad to the Town and the Town has not cured such failure, refusal, or neglect within a reasonable period of time after its receipt of such notice, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the highway and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the Town will reimburse the Railroad for the expenses thereof.

b) Nonuse by the Town of the Crossing Area for public roadway 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 all rights of the Town hereunder.

c) The Town will surrender peaceable possession of the Crossing Area upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

SECTION 12 - MODIFICATION - ENTIRE AGREEMENT

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

SECTION 13 - ASSIGNMENT: SUCCESSORS AND ASSIGNS

This Agreement shall not be assigned without the written consent of the Railroad. Subject hereto, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

EXHIBIT B-1

Public Road Insurance Requirements

The Town and/or its Contractor/Subcontractor shall, at its own and/or its Contractor's/Subcontractor's sole cost and expense, procure the following kinds of insurance and promptly pay when due all premiums for that insurance. The Railroad Protective Insurance described in Paragraph D below only needs to be obtained and kept in force during the duration of construction or major reconstruction of the highway located on the Premises. The other insurance coverage described in Paragraphs A, B and C below shall be kept in force by the Town during the life of this Agreement.

A. General Public Liability insurance providing bodily injury, including death, personal injury and property damage coverage with a combined single limit of at least \$2,000,000 each occurrence or claim, and a general aggregate limit of at least \$4,000,000. This insurance shall provide Broad Form Contractual Liability covering the indemnity provisions contained in this Agreement, Underground Hazard, Broad Form Property Damage, severability of interests and name Railroad as an additional insured, or indemnitee, with respect to all liabilities arising out of Town's obligation to Railroad in the Agreement. If coverage is purchased on a "claims made" basis it shall provide for at least a three (3) year extended reporting or discovery period, which shall be invoked should insurance covering the time period of this Agreement be cancelled.

B. Automobile Public Liability insurance providing bodily injury and property damage with a combined single limit of at least \$2,000,000 each occurrence or claim. This insurance shall provide contractual liability by endorsement ISO Form CA 00 25 or equivalent covering all motor vehicles including hired and non-owned, mobile equipment to the extent it may be excluded from general liability insurance, severability of interests and name Railroad as an additional insured or indemnitee with respect to all liabilities arising out of Town's obligation to Railroad in the Agreement.

C. Worker's Compensation insurance covering the statutory liability as determined by the compensation laws of the state(s) affected by this Agreement and Employers' Liability with a limit of at least \$1,000,000. Also compliance with all laws of states which require participation in their state workers' compensation fund.

D. Railroad Protective Liability insurance naming Railroad as insured with a combined single limit of \$2,000,000 per occurrence with a \$6,000,000 aggregate. The policy form shall be AAR-AASHTO with broad form coverage for "Physical Damage to Property" (ISO Form GL 00 30) or as revised ISO-RIMA (Form CGT 0035) and include pollution arising out of fuels and lubricants brought to the job site (ISO Form CG 2831 or equivalent). If the Lloyd's London policy form is used, limits shall be \$3,000,000 per occurrence with a \$9,000,000 aggregate and the Extended Claims Made Date shall be determined by adding the length of the original policy period plus one year to the policy expiration date.

The Town and/or its Contractor(s)/Subcontractor(s) hereby waive their right of subrogation, as respects the above insurance policy(ies), against Railroad for payments made to or on behalf of employees of Town or its agents or its Contractor(s)/Subcontractor(s) and for loss of their owned or leased property or property under their care, custody and control while on or near Railroad's right-of-way or other real property. Town's and/or its Contractor's/Subcontractor's insurance shall be primary with respect to any insurance carried by Railroad.

Town and/or its Contractor(s)/Subcontractor(s) shall furnish to Railroad certificate(s) of insurance evidencing the required coverage and endorsement(s) and upon request a certified duplicate original of any of those policies. The insurance company(ies) issuing such policy(ies) shall notify Railroad in writing of any material alteration including any change in the retroactive date in any "claims-made" policies or substantial reduction of aggregate limits, if such limits apply, or cancellation thereof at least thirty (30) days prior thereto.

The insurance policy(ies) shall be written by a reputable insurance company or companies acceptable to Railroad or with a current Best's Insurance Guide Rating of B and Class VII or better. Such insurance company shall be authorized to transact business in the state of Texas.

CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ day of _____, 200____, By and between **DALLAS GARLAND & NORTHEASTERN RAILROAD**, a Texas corporation to be addressed in care of RailAmerica, 4040 Broadway, Suite 200, San Antonio, TX 78209 (hereinafter the "Railroad"), and _____, a(n) _____ (hereinafter the "Town's Contractor").

RECITALS:

By agreement dated _____, the Railroad granted the *Town of Addison* (hereinafter "Licensee") the right to construct a new at-grade public road crossings for Landmark Place on the property of the Railroad at Milepost _____, on the Dal-Nor Branch, at or near Addison, Dallas County, Texas.

The Town's Contractor has been retained by the Licensee to construct a new at-grade public road crossing for Landmark Place (hereinafter referred to as the "work") and has requested the Railroad to permit it to perform the work on Railroad property, to which the Railroad is agreeable, subject to the following terms and conditions.

AGREEMENT:

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

ARTICLE 1 - DEFINITION OF CONTRACTOR

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

ARTICLE 2 - RIGHTS GRANTED; PURPOSE

The Railroad hereby grants to the Town's 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 portion of the Railroad's property at Mile Post _____ on the Railroad's Dal-Nor Branch at or near Addison, TX, for the purpose of constructing a new at-grade public road crossing hereinabove described. The right herein granted to Town's Contractor is limited to those portions of the Railroad's property specifically described herein, or designated by the Railroad representative named in Article 4.

ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B AND B-1

The terms and conditions contained in Exhibits B and B-1, hereto attached, are hereby made a part of this agreement.

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

The Town's Contractor shall bear any and all costs and expenses associated with any work performed by the Town's Contractor, or any costs or expenses incurred by the Railroad relating to this agreement. All work performed by Town's Contractor on Railroad's property shall be performed in a manner satisfactory to the respective local Superintendent of Transportation Services of the Railroad or his authorized representative (hereinafter the Railroad Representative).

ARTICLE 5 - TERM; TERMINATION

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

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

ARTICLE 6 - CERTIFICATE OF INSURANCE

a). Before commencing any work, the Town's Contractor will provide the Railroad with a Certificate issued by its insurance carrier providing the insurance coverage required pursuant to Exhibit B-1 of this agreement in a policy which contains the following type of endorsement:

Dallas Garland & Northeastern railroad is named as additional insured with respect to all liabilities arising out of Insured's, as Town's Contractor, performance of any work on the property of the Railroad.

b). Town's Contractor warrants that this agreement has been thoroughly reviewed by its insurance agent(s)/broker(s) and that said agent(s)/broker(s) has been instructed to procure insurance coverage and an endorsement as required herein.

c). All insurance correspondence shall be directed to:

RailAmerica
4040 Broadway, Suite 200
San Antonio, TX 78209

ARTICLE 7 - PROTECTION OF FIBER OPTIC CABLE SYSTEMS

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

ARTICLE 8 - ENFORCEABILITY; CHOICE OF LAW; CHOICE OF FORUM

In the event of any action or litigation arising out of or connected with this Agreement such action or litigation shall be instituted and maintained in Dallas County, Texas (State court) or in the Northern District of Texas, Dallas Division (Federal court), as the case may be, 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. The parties agree that the laws of the state of Texas shall govern and apply to the interpretation, validity, and enforcement of this Agreement; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of the State of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity, and enforcement of this Agreement.

ARTICLE 9 - SPECIAL PROVISIONS

None.

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

DALLAS GARLAND & NORTHEASTERN RAILROAD

By _____

Title: _____

WITNESS:

(Name of Contractor)

By _____
Title: _____