

Jue Ellen -
Original to Carmen
CC to Mike
Steve

Thanks,
Jim

2/5 Original To Charles
cc mm ✓
SC

UNION PACIFIC RAILROAD COMPANY

Real Estate Department

R. D. Uhrich
Assistant Vice President
D. D. Brown
General Director - Real Estate
J. P. Gade
Director - Facility Management



1800 Farnam Street
Omaha, Nebraska 68102
Fax: (402) 997-3801

J. L. Hawkins
General Director - Real Estate Operations
M. E. Heenan
Director - Real Estate Operations
T. K. Love
General Director - Real Estate
G. L. Pinker
Director - Contracts

January 28, 2002

Folder No. 1976-54

**MR JAMES C PIERCE JR
TOWN OF ADDISON
PO BOX 9010
ADDISON TX 75001-9010**

Dear Mr. Pierce:

Attached for your records is your original copy of a Public Road Crossing Agreement, fully executed on behalf of the Railroad Company.

You are hereby authorized to proceed with the work upon proper notification to the Railroad Company's Manager of Industry & Public Projects. In accordance with the terms of the above agreement, 10 days advance notification upon entering the Railroad Company's right of way shall be given to the following office:


Todd Cecil
RailAmerica
4040 Broadway Ste 200
San Antonio, TX 78209
Phone: 210-841-7657
Fax: 210-841-7600

When you or your representative enter the Railroad Company's property, a copy of this fully executed document must be available at the site to be shown on request to any Railroad employee or official.

We are continually trying to do a better job for you, our customer. To do this, we need to know if what we do is done right. If there are areas where you feel our performance could improve or needs to change, we need to know that also. Therefore, enclosed is a survey form that we would appreciate you completing and returning to us at your earliest convenience. We need to hear from you if we are to meet your needs.

Should you have any questions, please contact me at (402) 997-3620 or e-mail me at pgfarrell@up.com.

Sincerely Yours,



P.G. FARRELL
MANAGER CONTRACTS

NEW PUBLIC HIGHWAY CROSSING
AGREEMENT

BETWEEN

TOWN OF ADDISON

AND

DALLAS GARLAND & NORTHEASTERN
RAILROAD

AND

UNION PACIFIC RAILROAD COMPANY

COVERING

CONSTRUCTION OF TWO NEW
ARAPAHO ROAD AT-GRADE
PUBLIC ROAD CROSSINGS

AT OR NEAR

ADDISON,
DALLAS COUNTY,
TEXAS

Agreement Number _____

NEW PUBLIC HIGHWAY CROSSING AGREEMENT

ARAPAHO ROAD
MILE POST 598.3 - DAL-NOR BRANCH
ADDISON, DALLAS COUNTY, TEXAS

THIS AGREEMENT, made and entered into as of the _____ day of _____, 200____, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation to be addressed at 1800 Farnam Street, Omaha, Nebraska 68102 (hereinafter the "UP") and **DALLAS GARLAND & NORTHEASTERN RAILROAD**, a Texas corporation (hereinafter the "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 two 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 598.3 on the Dal-Nor Branch (hereinafter the "Crossing Area") shown and described on the attached prints dated March 27, 2001, marked Exhibit A.

The Town and UP entered into one (1) certain Letter Agreement dated December 14, 2001 concerning UP's sale of certain real property to the Town located adjacent to and surrounding the Crossing Area, as more specifically described therein, (the "Real Estate Contract"). The obligations of the Parties hereto are expressly conditioned on the closing of the Real Estate Contract, as defined therein.

AGREEMENT:

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

ARTICLE 1 - RAILROAD GRANTS RIGHT

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, the UP and the Railroad hereby grant to the Town, the right to establish, construct, maintain, repair, 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 Railroad 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 Railroad'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, to any trains that may also be approaching the Crossing Area.

ARTICLE 2 - ADMINISTRATIVE FEE

The Town shall pay to UP TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) as

reimbursement for clerical, administrative and handling expense in connection with the processing of this Agreement.

ARTICLE 3 - CERTIFICATE OF INSURANCE

A. Before any work on the Premises begins, the Town (as defined in Section 8(a) of Exhibit B to this Agreement) will provide the UP and 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 containing the following endorsement:

"Union Pacific Railroad Company and Dallas Garland & Northeastern Railroad are named as additional insured 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 agent(s)/broker(s) has been instructed to procure insurance coverage and an endorsement as required herein.

C. All insurance correspondence shall be directed to: Union Pacific Railroad Company, 1800 Farnam Street, Omaha, Nebraska 68102, with reference to Folder No. 1976-54.

D. The Town may self-insure all or a portion of the insurance coverage required hereunder, subject to UP and the Railroad'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 Railroad 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. The Railroad may make any and all changes, alterations or relocations, whether temporary or permanent, and may provide flagging and other protective services and devices, which in the Railroad's judgment may be or become necessary or expedient within the Railroad's right-of-way because of the Project, provided, however, that this right to make such changes, alterations or relocations shall not be a right to eliminate, ~~diminish, reduce~~ or unreasonable interfere with the crossing rights of the Town.

B. The Railroad shall, at the sole cost and expense of the Political Body, maintain, repair, and replace the warning devices installed hereunder; PROVIDED, HOWEVER, that this provision shall not negate the Railroad's eligibility for any further federal, state or local or other public funds that may become available for the maintenance of said devices; and PROVIDED, FURTHER, that the cost of repair or replacement resulting from damage caused by non-parties that is not recoverable by the Railroad 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. Notwithstanding any provision herein, the parties hereto agree and acknowledge that the obligations arising hereunder are conditioned upon and subject to the closing of the Real Estate Contract and if the closing is rescheduled for a later date, then the obligations of the parties hereunder shall commence following the closing on the rescheduled closing date.

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

UNION PACIFIC RAILROAD COMPANY


By 
Asst. Vice President- Real Estate

DALLAS GARLAND & NORTHEASTERN RAILROAD

By 
Title: REGIONAL VICE PRESIDENT

ATTEST:

TOWN OF ADDISON, TEXAS

By 
Title: CITY MANAGER

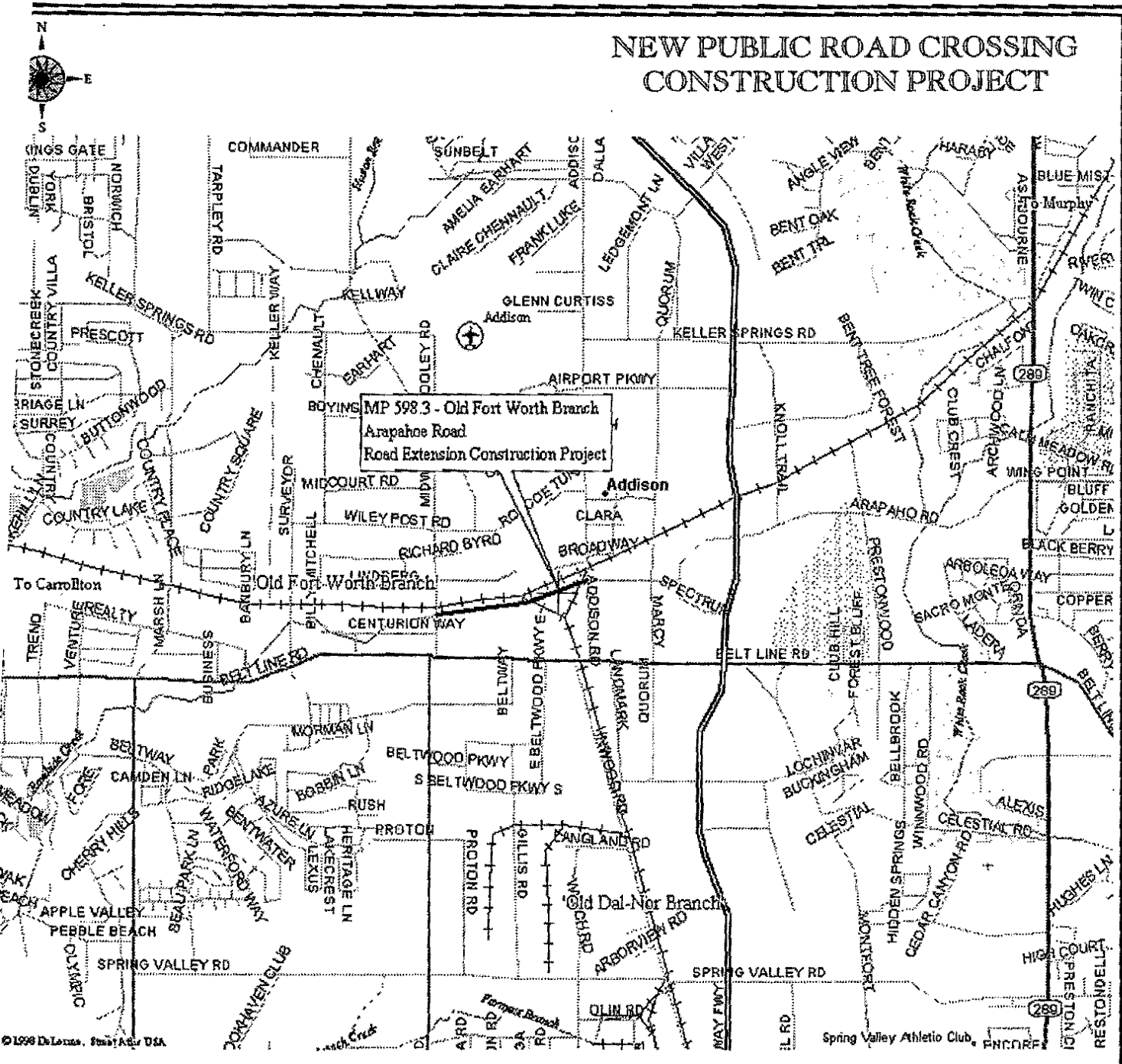
(Seal)

Resolution No.: _____
Pursuant to Resolution/Order dated: _____
_____, 200____
hereto attached.

EXHIBIT A

Location & Detail Prints

NEW PUBLIC ROAD CROSSING CONSTRUCTION PROJECT



RAILROAD WORK TO BE PERFORMED:

Flagging.

EXHIBIT "A"
UNION PACIFIC RAILROAD COMPANY
DALLAS GARLAND & NORTHEASTERN RAILROAD
 Old Fort Worth Branch
 Mile Post 598.3
 GPS: N 32° 57.436', W 96° 49.909'
 Addison Jct., Dallas Co., TX.

Illustrative print showing location of proposed public road crossing
 extension construction project with the
TOWN OF ADDISON, TEXAS.

Folder No. 1976-54 Date: December 19, 2001

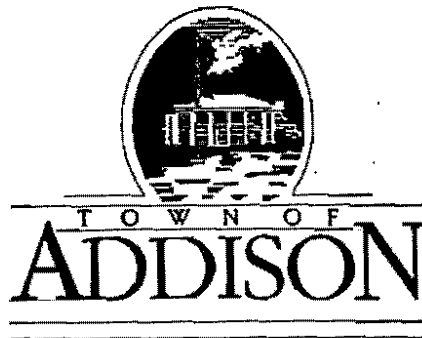
WARNING

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

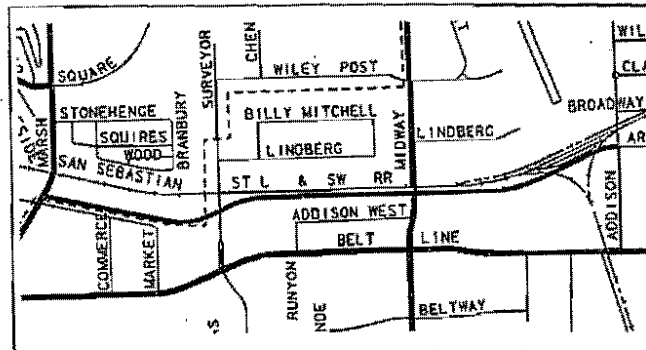
PLANS FOR THE CONSTRUCTION OF
 PAVING, STORMWATER, WATER, WASTEWATER,
 SIGNALIZATION AND STREETScape IMPROVEMENTS FOR

ARAPAHO ROAD

FROM MARSH LANE TO ADDISON ROAD



SHEET NO.	INDEX OF SHEETS
	COVER SHEET
	RIGHT-OF-WAY MAPS
	PAVING TYPICAL SECTIONS
	PAVING PLANS AND PROFILES
	CROSS SECTIONS
	DRAINAGE AREA MAPS



FOR INTERIM REVIEW ONLY
 Number: 21551
 HNTB CORPORATION
 9410 BELMONT-1008, 2025
 NOT FOR CONSTRUCTION, BIDDING, OR PERMIT
 PURPOSES

OWNER:

TOWN OF ADDISON
 DEPARTMENT OF PUBLIC WORKS
 1801 WESTGROVE
 P.O. BOX 144
 ADDISON, TEXAS 75001
 (214) 450-7000

ENGINEER:

HNTB CORPORATION
 1404 DALLAS PARKWAY, SUITE 210
 DALLAS, TEXAS 75210
 (972) 681-8825

DANIEL F. BECKER, P.E.
 LICENSE NO. 20880



EXHIBIT "B"

EDWARD COOK SURVEY
A-326

CURVE TABLE				
CURVE	DELTA	RADIUS	LENGTH	CHORD
C1	16°34'32"	890.00'	257.48'	N 74°39'20" E - 256.58'
C2	09°17'36"	714.00'	115.82'	S 36°26'21" W - 115.69'
C3	10°56'02"	810.00'	154.57'	S 71°50'05" W - 154.34'

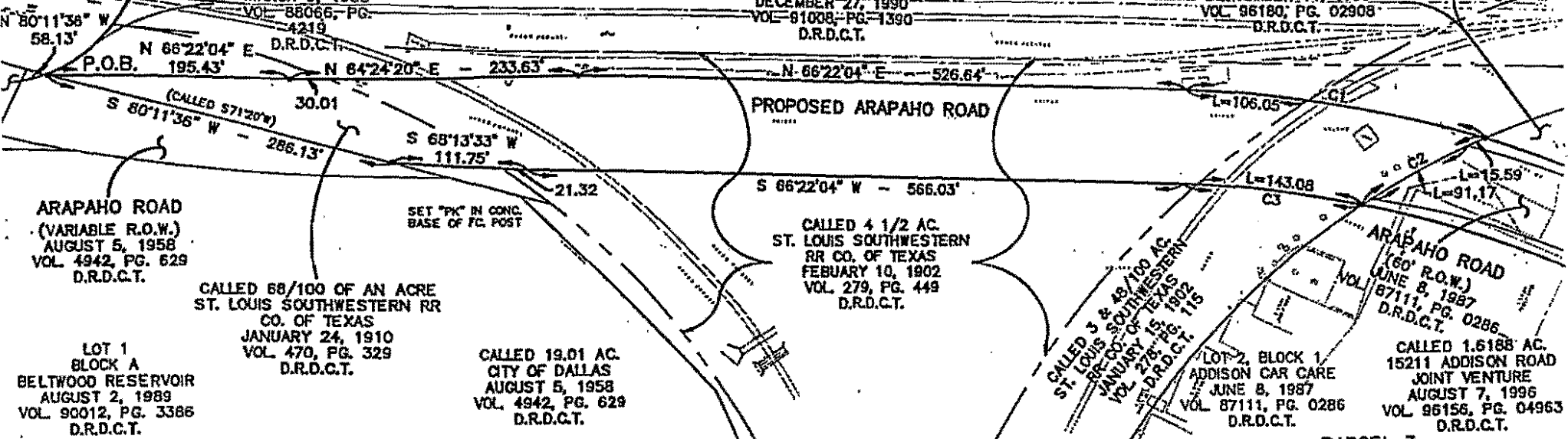
HERITAGE INN NUMBER XII, LIMITED PARTNERSHIP CALLED 4.1525 ACRES JANUARY 24, 1997 VOL- 97018, PG. 00073 D.R.D.C.T.

ADDISON RESTAURANT PARK MARCH 9, 1988 VOL- 88066, PG. 4219 D.R.D.C.T.

DALLAS AREA RAPID TRANSIT PROPERTY ACQUISITION CORPORATION (100' R.O.W.) DECEMBER 27, 1990 VOL- 91008, PG. 1390 D.R.D.C.T.

METRO BRICK COMPANY, INC. SEPTEMBER 11, 1996 VOL- 96180, PG. 02908 D.R.D.C.T.

LOT 3, BLOCK 1, ADDISON CAR CARE JUNE 8, 1987 VOL- 87111, PG. 0286 D.R.D.C.T.



ARAPAHO ROAD (VARIABLE R.O.W.) AUGUST 5, 1958 VOL- 4942, PG. 629 D.R.D.C.T.

LOT 1, BLOCK A, BELTWOOD RESERVOIR AUGUST 2, 1989 VOL- 90012, PG. 3386 D.R.D.C.T.

CALLED 68/100 OF AN ACRE ST. LOUIS SOUTHWESTERN RR CO. OF TEXAS JANUARY 24, 1910 VOL- 470, PG. 329 D.R.D.C.T.

CALLED 19.01 AC. CITY OF DALLAS AUGUST 5, 1958 VOL- 4942, PG. 629 D.R.D.C.T.

CALLED 4 1/2 AC. ST. LOUIS SOUTHWESTERN RR CO. OF TEXAS FEBRUARY 10, 1902 VOL- 279, PG. 449 D.R.D.C.T.

CALLED 3 & 49/100 AC. ST. LOUIS SOUTHWESTERN RR CO. OF TEXAS JANUARY 15, 1902 VOL- 278, PG. 715 D.R.D.C.T.

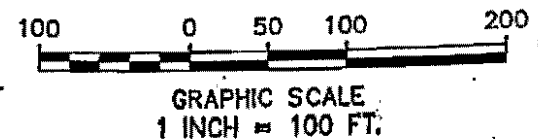
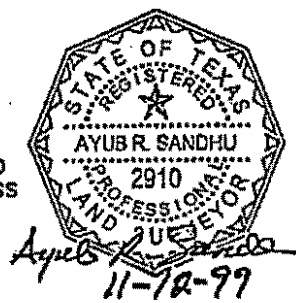
LOT 2, BLOCK 1, ADDISON CAR CARE JUNE 8, 1987 VOL- 87111, PG. 0286 D.R.D.C.T.

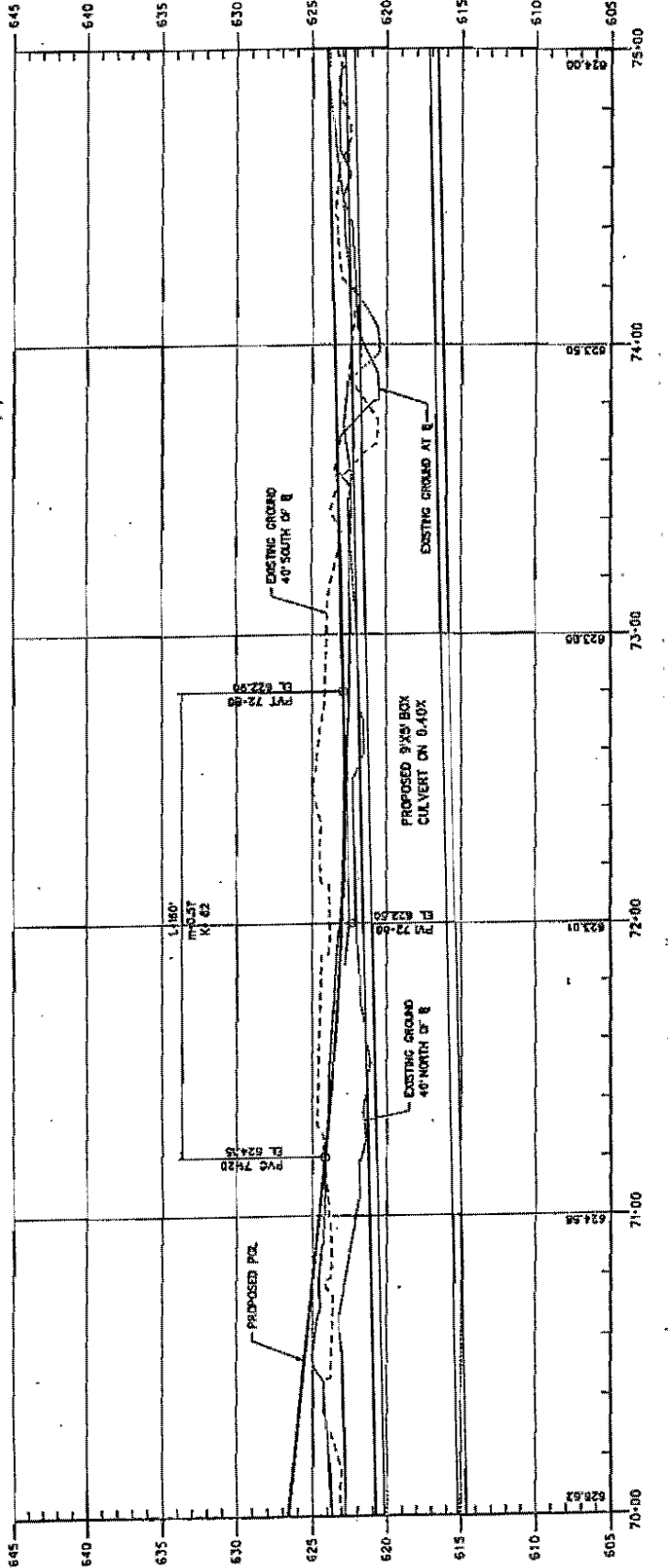
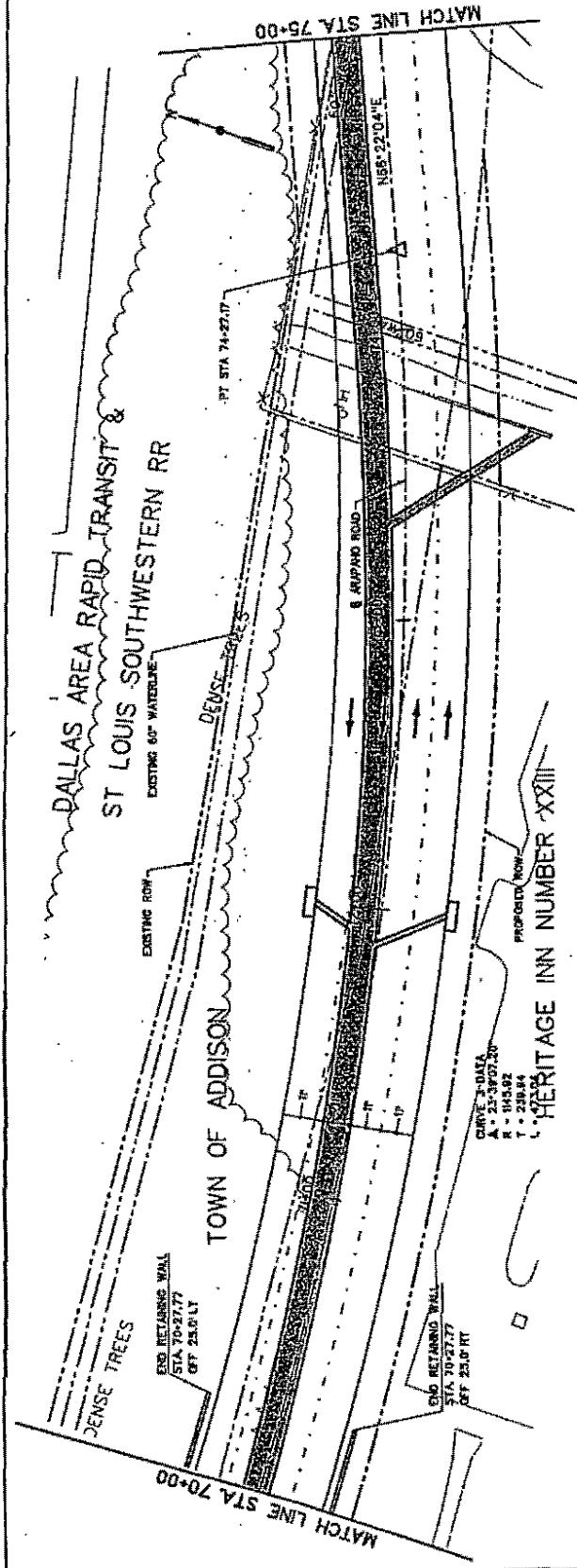
CALLED 1.6188 AC. 15211 ADDISON ROAD JOINT VENTURE AUGUST 7, 1996 VOL- 95156, PG. 04963 D.R.D.C.T.

PARCEL 3
A PLAT OF A 1.8273 ACRE (79,598 SQ. FT.) TRACT OF LAND IN THE EDWARD COOK SURVEY ABSTRACT NO. 326 TOWN OF ADDISON DALLAS COUNTY, TEXAS

NOTES:
ALL EASEMENTS SHOWN ARE TAKEN FROM THE PLATS INDICATED HEREON. THE SURVEYOR DID NOT ABSTRACT THE SUBJECT PROPERTY SO ALL EASEMENTS MAY NOT BE SHOWN.
ALL BEARINGS ARE REFERENCED TO THE NORTH RIGHT OF WAY LINE OF CENTURION WAY, CALLED S 89°51'55" E, ACCORDING TO THE FINAL PLAT OF LOT 3, SURVEYOR ADDITION, RECORDED IN VOL. 77173, PAGE 135, D.R.D.C.T.
A LEGAL DESCRIPTION OF EVEN SURVEY DATE HERewith ACCOMPANIES THIS PLAT.

- DENOTES A FOUND POINT AS INDICATED
- DENOTES A 5/8" IRON ROD SET UNLESS OTHERWISE NOTED
- PROPOSED RIGHT OF WAY LINE





LEGEND

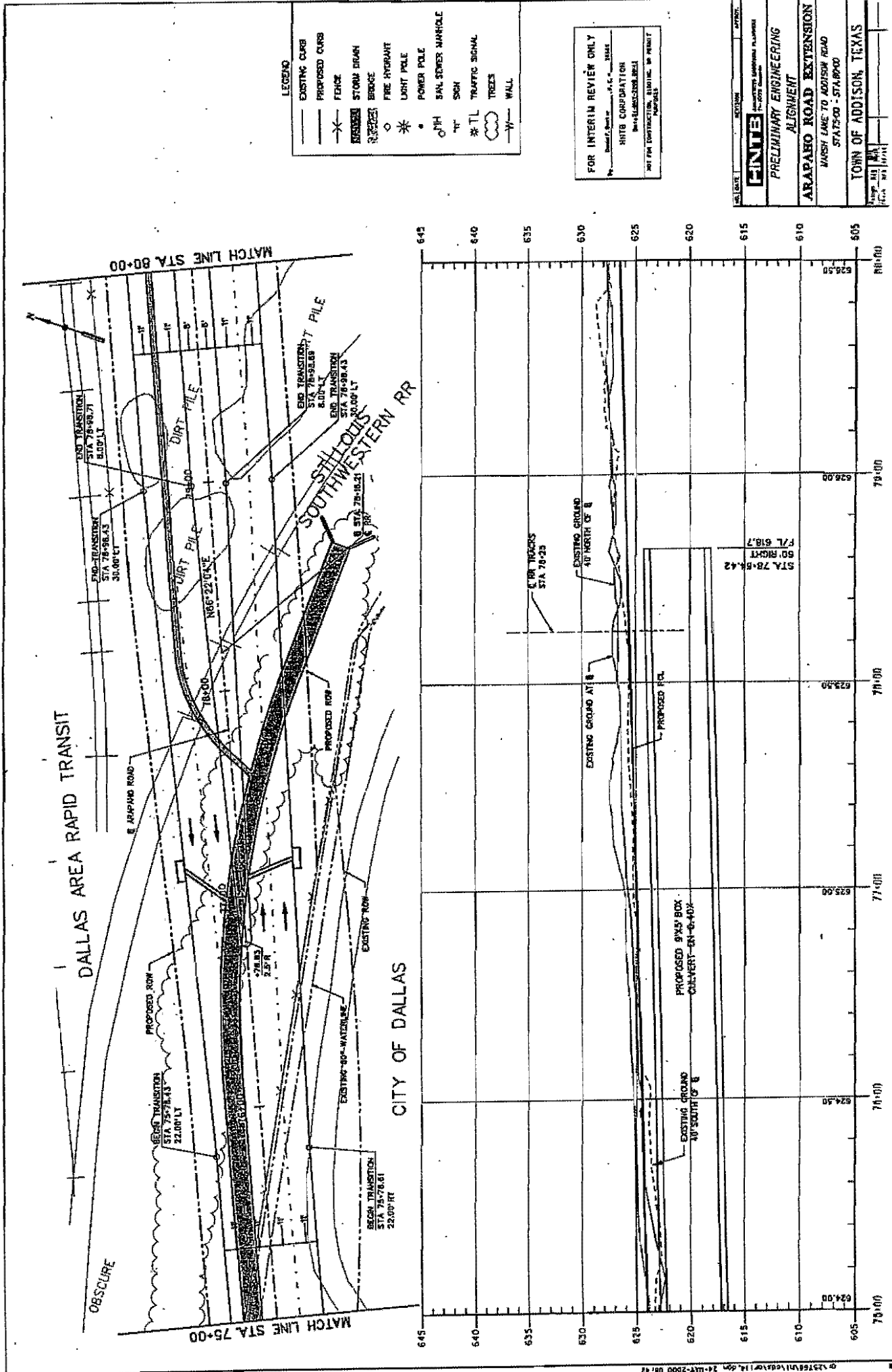
	EXISTING CURB
	PROPOSED CURB
	FENCE
	STORM DRAIN
	BRIDGE
	FIRE HYDRANT
	LIGHT POLE
	POWER POLE
	DUAL SEWER MANHOLE
	SIGN
	TRAFFIC SIGNAL
	TREES
	WALL

FOR INTERIM REVIEW ONLY
 Date: _____ P.E. # _____
 NRTS CORPORATION
 10000 N. CENTRAL EXPRESSWAY
 DALLAS, TEXAS 75243
 NOT FOR CONSTRUCTION, BIDDING, OR PERMIT

FNTE
 PRELIMINARY ENGINEERING
 ALIGNMENT
ARAPAHO ROAD EXTENSION
 ARAPAHO ROAD TO ADDISON ROAD
 STA 70+00 - STA 75+00
 TOWN OF ADDISON, TEXAS

Design: M.L. 1055
 Scale: 8 1/2" = 100'

10



- LEGEND**
- EXISTING CURB
 - - - PROPOSED CURB
 - - - FENCE
 - STORM DRAIN
 - BRIDGE
 - FIRE HYDRANT
 - LIGHT POLE
 - POWER POLE
 - /M SAIL SINKER MANHOLE
 - T SIGN
 - * TL TRAFFIC SIGNAL
 - TREES
 - WALL

FOR INTERIM REVIEW ONLY

DATE: _____

BY: _____

HRTB CORPORATION
3000 W. L. BRYAN BLVD.
DALLAS, TEXAS 75243

BY: _____
DATE: _____

SECTION: _____

FINITE
INCORPORATED
11000 GARDEN ROAD
DALLAS, TEXAS 75243

PRELIMINARY ENGINEERING

ALBUQUERQUE ROAD EXTENSION

WASHY LAKE TO ADDISON ROAD
STA 75+00 - STA 80+00

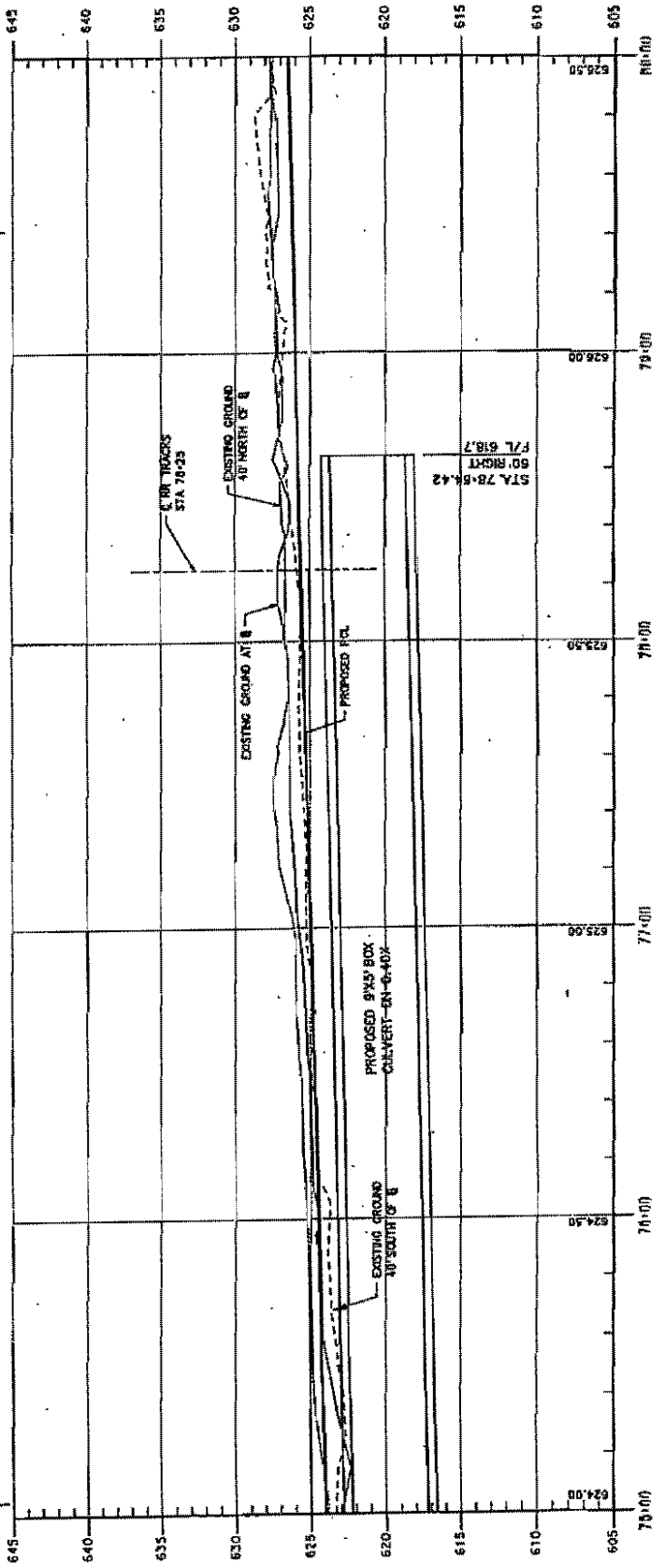
TOWN OF ADDISON, TEXAS

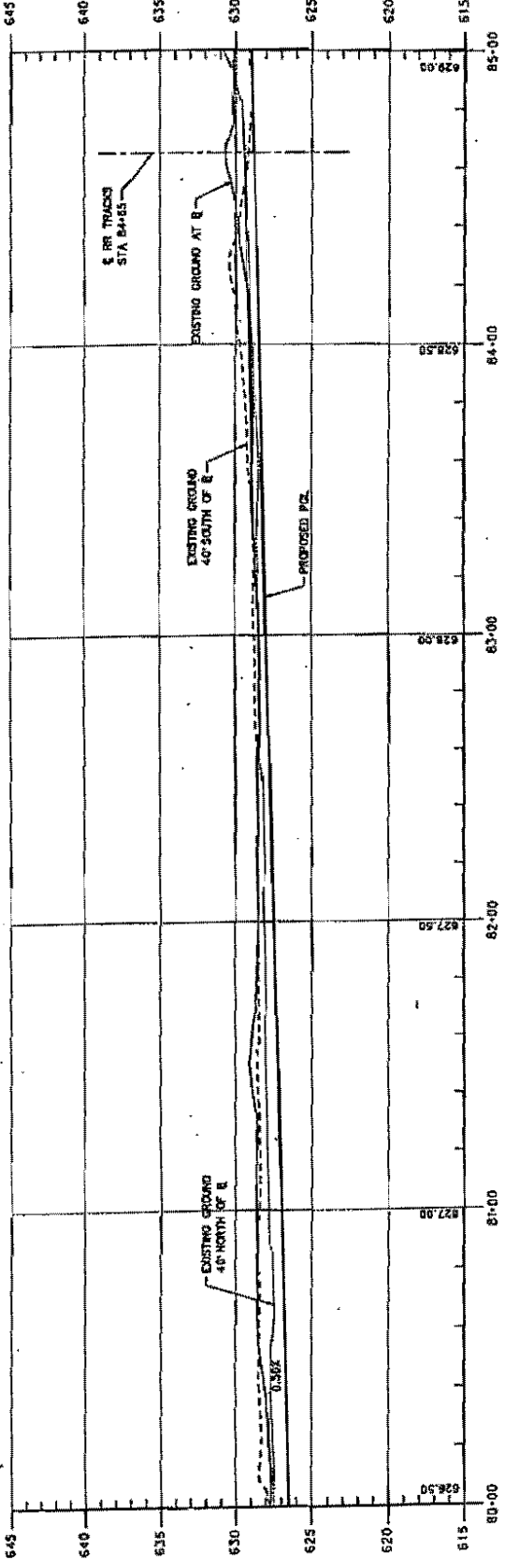
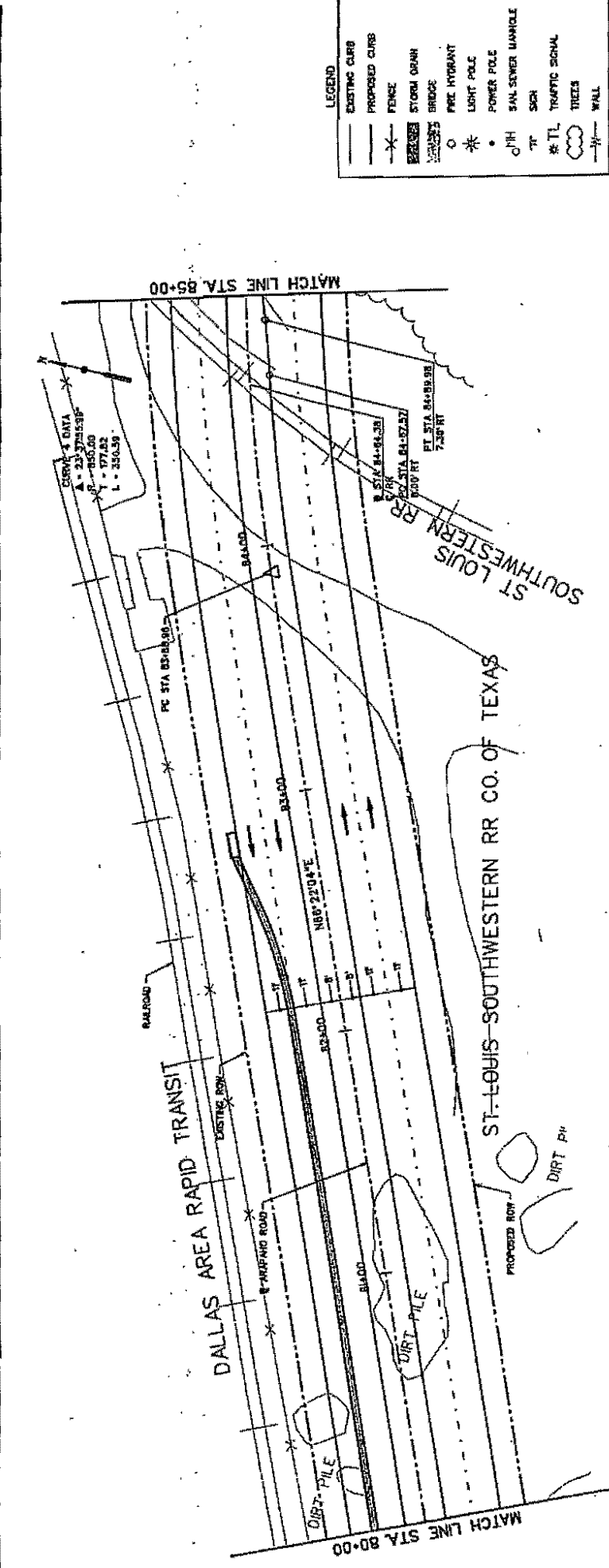
DALLAS AREA RAPID TRANSIT

CITY OF DALLAS

MATCH LINE STA. 80+00

MATCH LINE STA. 75+00





FOR INTERIM REVIEW ONLY

By: [Signature] S.E. 11110

DATE: 11/11/00

PROJECT: DALLAS AREA RAPID TRANSIT

NOT FOR CONSTRUCTION, SIGNING, OR PERMIT

DATE: 11/11/00

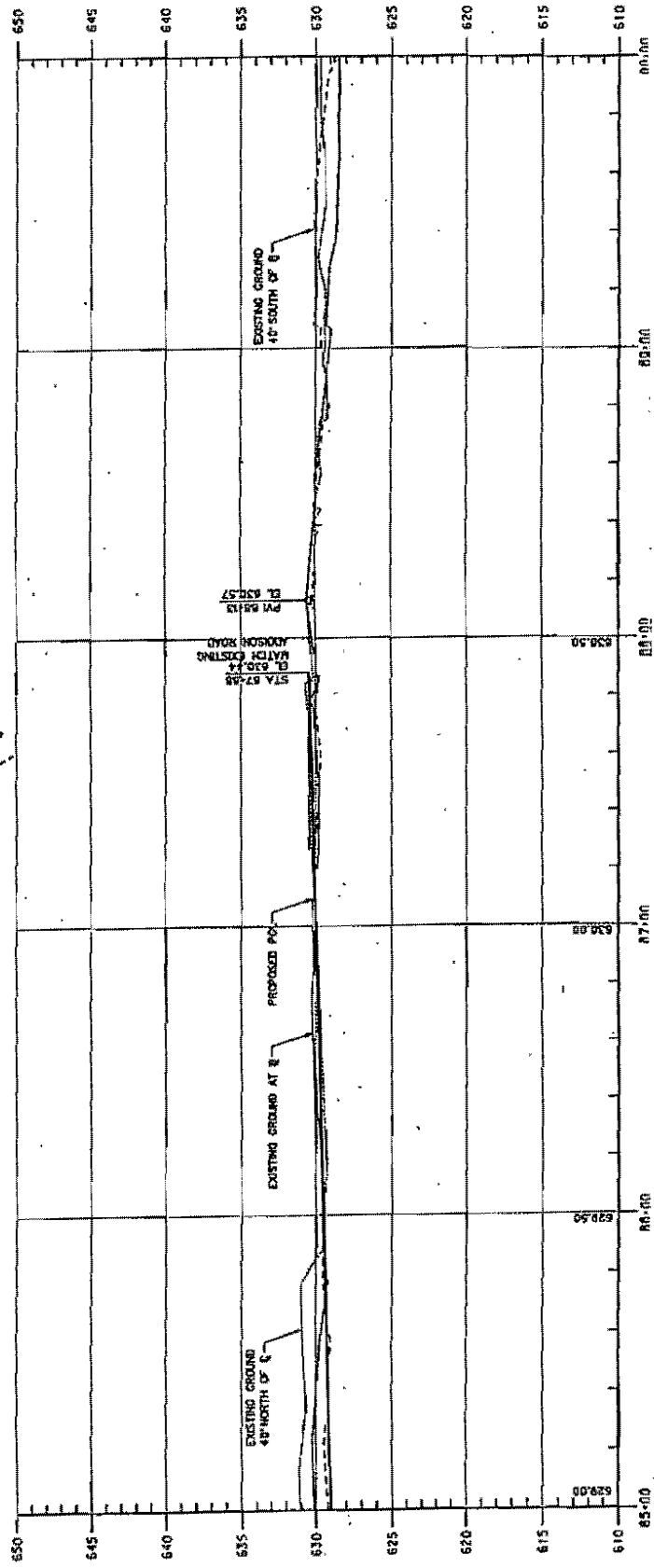
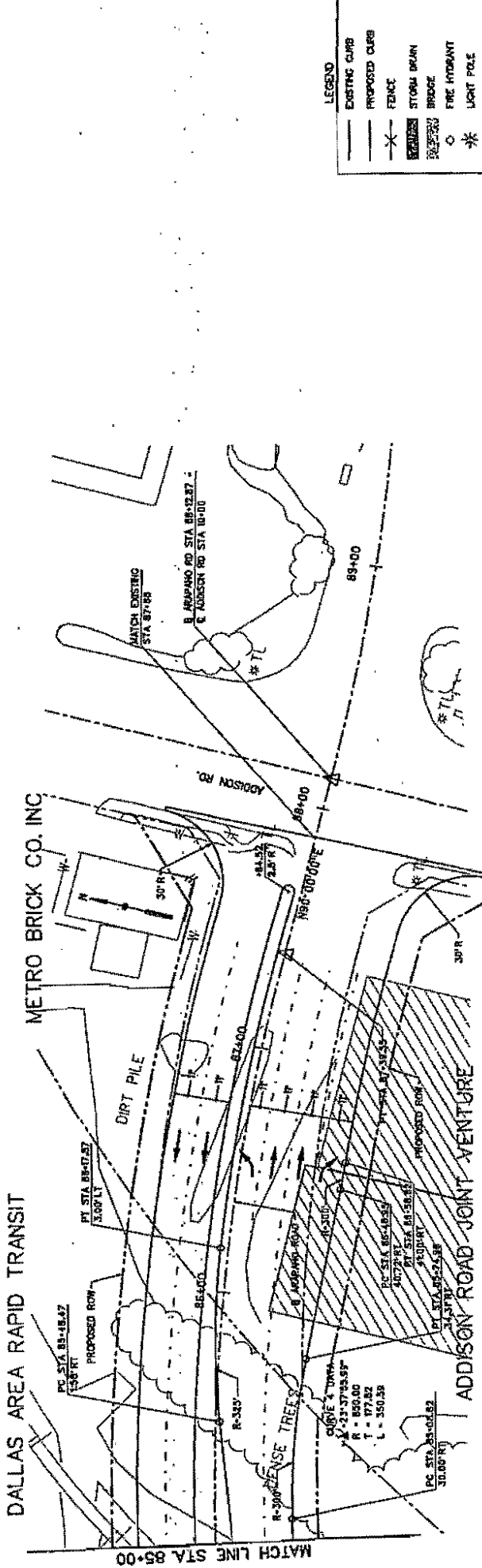
SCALE: 1"=40'

FINTE
AN ASSOCIATE COMPANY OF

PRELIMINARY ENGINEERING

ARAPAHO ROAD EXTENSION
 BASED LANE TO ADDISON ROAD
 STATIONED - STA 0+00 TO STA 85+00

TOWN OF ADDISON, TEXAS



LEGEND

- EXISTING CURB
- - - PROPOSED CURB
- - - FENCE
- STORM DRAIN
- BRIDGE
- FIRE HYDRANT
- * LIGHT POLE
- ▲ POWER POLE
- SIGNAL BEYOND MANHOLE
- SIGN
- ⊗ TL TRAFFIC SIGNAL
- TREES
- WALL

FOR INTERIM REVIEW ONLY
 Date of Issue: 11/11/2008
 HRTB CORPORATION
 10010 N. CENTRAL EXPRESSWAY, SUITE 1000
 DALLAS, TEXAS 75243

DATE: 11/11/2008
PROJECT: DALLAS AREA RAPID TRANSIT
CLIENT: METRO DALLAS
PRELIMINARY ENGINEERING
ALIGNMENT
ARAPAZO ROAD EXTENSION
 MARSH LAKE TO ADDISON ROAD
 STA 8500 - STA 8930
 TOWN OF ADDISON, TEXAS

EXHIBIT B

Terms and Conditions

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 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 pipe lines. 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. Nothing herein shall obligate the Railroad to give such consent.
- b) UP and the Railroad reserve 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 UP and 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 right hereby granted is 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, 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 three (3) 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, the Railroad may contract for the performance of any of its work by other than railroad forces. 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 the 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 and 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 trackage.

SECTION 7 - REARRANGEMENT OF WARNING DEVICES

If the change or rearrangement of any warning device installed hereunder is necessitated for public or Railroad convenience or on account of improvements for either 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. All references in this Agreement 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 Agreement to work of the Town shall include work both within and outside of railroad property.

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 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 shelters necessary to guard against danger of damage, destruction or interference arising out of or connected with any blasting or any transportation, handling, storage, security or use of explosives.

4) The 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 control or removal work without expense to the Railroad or, if the Town may not lawfully perform the control or removal 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 may 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, 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, a waiver of governmental immunity (ISO Form GL 24 14 or equivalent), severability of interests and name Railroad as an additional insured 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 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 CG 00 35) 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(s) affected by this Agreement.

EXHIBIT C

Contractor's Right of Entry Agreement

UNION PACIFIC RAILROAD COMPANY

Real Estate Department

R. D. Uhrich
Assistant Vice President
J. A. Anthony
Director - Contracts
D. D. Brown
Director - Real Estate
M. W. Casey
General Director - Special Properties
J. P. Gade
Director - Facility Management



1800 Farnam Street
Omaha, Nebraska 68102
Fax: (402) 997-3601

J. L. Hawkins
General Director - Real Estate Operations
M. E. Heenan
Director - Real Estate Operations
D. H. Lightwine
Director - Real Estate
T. K. Love
Director - Real Estate

December 19, 2001

Folder No. 1976-54

To the Contractor:

Before Union Pacific Railroad can permit you to perform work on its property for the construction of two new at-grade public road crossings, it will be necessary to complete two originals of the enclosed Right of Entry Agreement as follows:

1. Fill in the complete legal name of the contractor in the space provided on Page 1 of the Contractor's Right of Entry Agreement. If a corporation, give the state of incorporation. If a partnership, give the names of all partners.
2. Fill in the date construction will begin and be completed in Article 5, Paragraph A.
3. Fill in the name of the contractor in the space provided in the signature block at the end of the Contractor's Right of Entry Agreement. If the contractor is a corporation, the person signing on its behalf must be an elected corporate officer.
4. Return all copies of the Contractor's Right of Entry Agreement together with your Certificate of Insurance as required in Exhibit B-1, in the attached, self-addressed envelope.
5. Check made payable to the Union Pacific Railroad Company in the amount of \$500.00. If you require formal billing, you may consider this letter as a formal bill. In compliance with the Internal Revenue Services' new policy regarding their Form 1099, I certify that 13-6400825 is the Railroad Company's correct Federal Taxpayer Identification Number and that Union Pacific Railroad Company is doing business as a corporation.

After approval of the Right of Entry Agreement and insurance certificate, one fully executed counterpart of the agreement will be returned to you. In no event should you begin work until you have received your counterpart of the fully executed agreement.

Under Exhibit B-1 of the enclosed Contractor's Right of Entry, you are required to procure Railroad Protective Liability Insurance (RPLI) for the duration of this project. As a service to you, Union Pacific is making this coverage available to you. You are not required to purchase this coverage from the Railroad and are encouraged to shop the market for the best available rate. If you decide; however, that acquiring this coverage from the Railroad is of benefit to you, simply complete contact Ms. Nancy Savage at 402-271-2215.

If you have any questions concerning the agreement, please contact me at (402) 271-3620. Have a safe day!

Sincerely,

PAUL G. FARRELL
MANAGER CONTRACTS

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 two new at-grade public road crossings for Arapaho Road on the property of the Railroad at Milepost 598.3, on the Dal-Nor Branch, at or near Addison, Dallas County, Texas.

The Town's Contractor has been employed by the Licensee to construct two new at-grade public road crossings for Arapaho Road (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 - RIGHT 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 598.3 on the Railroad's Dal-Nor Branch at or near Addison, TX, for the purpose of constructing two new at-grade public road crossings 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:

Union Pacific Railroad Company 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
Folder No. 1976-54

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

Litigation arising out of or connected with this agreement may be instituted and maintained in the courts of the state of Texas, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation, in those courts, and consent to service of process issued by such courts.

ARTICLE 9 - ADMINISTRATIVE FEE

Applicant shall pay to the Railroad FIVE HUNDRED DOLLARS (\$500.00) as reimbursement for clerical, administrative and handling expense in connection with the processing of this Agreement.

ARTICLE 10 - 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: _____

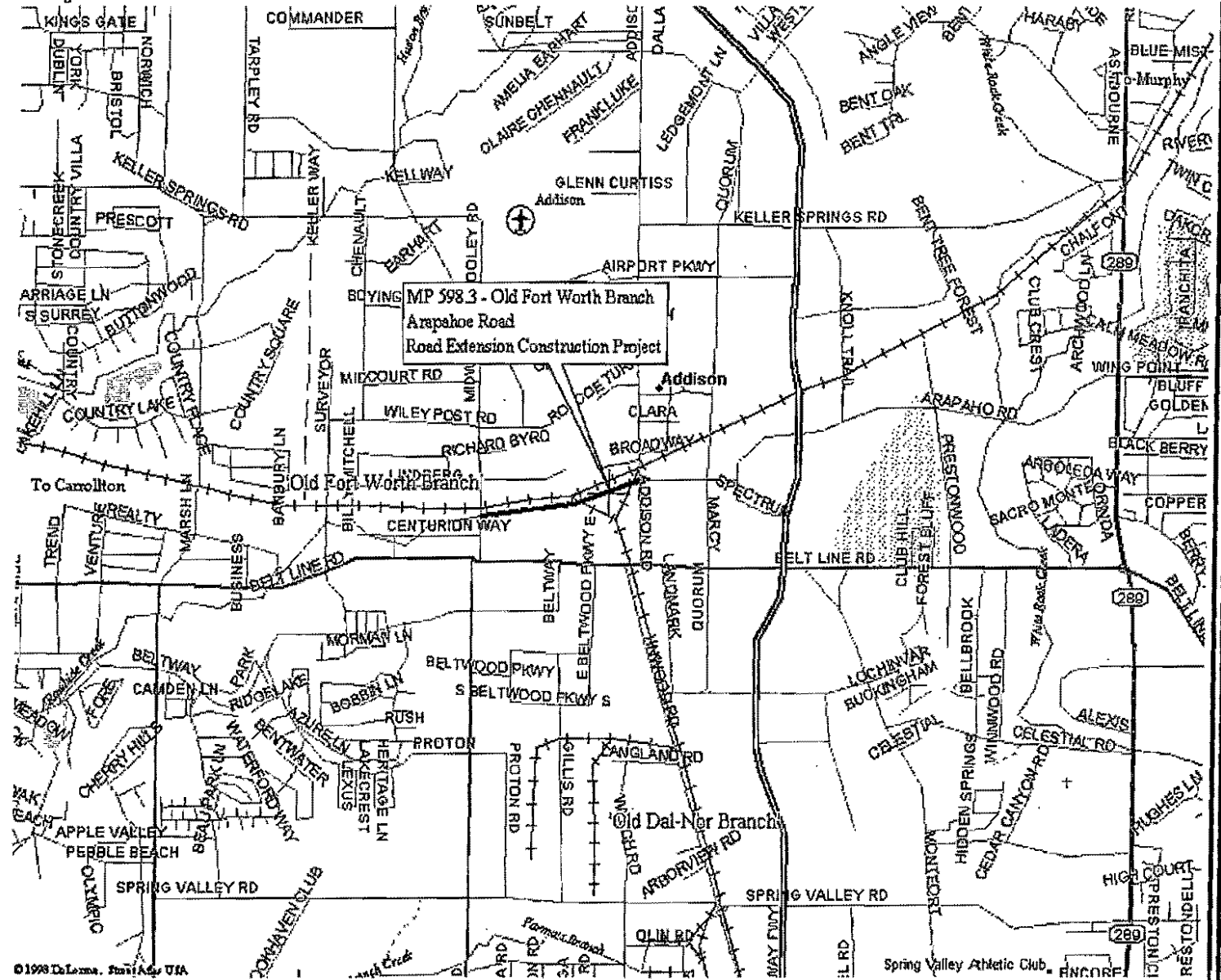
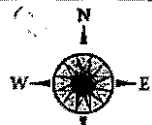
WITNESS:

(Name of Contractor)

By _____

Title: _____

NEW PUBLIC ROAD CROSSING CONSTRUCTION PROJECT



©1998 DeLoma, State & CIA

RAILROAD WORK TO BE PERFORMED:

1. Flagging.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY DALLAS GARLAND & NORTHEASTERN RAILROAD

Old Fort Worth Branch
Mile Post 598.3

GPS: N 32° 57.436', W 96° 49.909'
Addison Jct., Dallas Co., TX.

Illustrative print showing location of proposed public road crossing
extension construction project with the
TOWN OF ADDISON, TEXAS.

Folder No. 1976-54

Date: December 19, 2001

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

EXHIBIT B

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

A. The Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least ten (10) working days in advance of proposed performance of any work by the 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. 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 ten (10)-day notice, the Railroad Representative will determine and inform the Contractor whether a flagman need be present and whether the Contractor need implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by the Railroad, such services will be provided at Contractor's expense with the understanding that if the Railroad provides any flagging or other services, the Contractor shall not be relieved of any of its responsibilities or liabilities set forth herein. Contractor shall promptly pay to Railroad all charges connected with such services within thirty (30) days after presentation of a bill.

B. The rate of pay per hour for each man will be the prevailing hourly rate in effect for an eight hour day for the class of men 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 on the day of execution of this agreement. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays; 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 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, the Contractor shall pay on the basis of the new rates and charges.

C. Reimbursement to the Railroad will be required covering the full eight hour day during which any flagman is furnished, unless he 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 said flagman following his assignment to work on the project for which the Railroad is required to pay the flagman and which could not reasonably be avoided by the Railroad by assignment of such flagman to other work, even though the Contractor may not be working during such time. When it becomes necessary for the Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, the Contractor must provide the 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, the 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 Railroad if flagging service are needed again after such five day cessation notice has been given 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 the Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Railroad without liability to the Contractor or to any other party for compensation or damages.

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

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

A. The 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 the Railroad, including without limitation, the operations of the 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 the 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 fifty (50) feet from the centerline of the Railroad's nearest track, and there shall be no vehicular crossings of Railroad tracks except at existing open public crossings.

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

Section 4. LIENS.

The Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. The 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 the Railroad for any such work performed. The Contractor shall indemnify and hold harmless the Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If the Contractor fails to promptly cause any lien to be released of record, the 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 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. Contractor shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the 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. The 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, the Contractor shall indemnify, defend and hold the Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of the Contractor, its contractor, agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/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, the 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 the work performed by the Contractor. The Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. The Contractor shall at a minimum comply with the Railroad's safety standards listed in Exhibit D, hereto attached, to ensure uniformity with the safety standards followed by the Railroad's own forces. As a part of the Contractor's safety responsibilities, the Contractor shall notify the Railroad if the Contractor determines that any of the Railroad's safety standards are contrary to good safety practices. The Contractor shall furnish copies of Exhibit D to each of its employees before they enter on the job site.

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

C. The 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. The Contractor shall promptly notify the Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. The Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of the 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 the Railroad, the Contractor shall deliver to the Railroad a copy of the Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require the 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 extent not prohibited by applicable statute, the Contractor shall indemnify, defend and hold harmless the Railroad, its affiliates, and its and their officers, agents and employees ("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, the Contractor, or any employee of the Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by the Contractor, or (ii) any act or omission of the Contractor, its officers, agents or employees, or (iii) any breach of this agreement by the 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. The Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by the Contractor's own employees. The Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Railroad 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 the Contractor in any attempt to assert liability against the Railroad.

E. The provisions of this Section 8 shall survive the completion of any work performed by the 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 the Contractor may have to any Indemnified Party by statute or under common law.

Section 9. RESTORATION OF PROPERTY.

In the event the Railroad authorizes the Contractor to take down any fence of the Railroad or in any manner move or disturb any of the other property of the Railroad in connection with the work to be performed by Contractor, then in that event the 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. The 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 the Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by the Contractor shall in no way impair the right of the 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 the Contractor and the Railroad. This agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between the Contractor and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by the Contractor.

Section 12. ASSIGNMENT - SUBCONTRACTING.

The Contractor shall not assign or subcontract this agreement, or any interest therein, without the written consent of the Railroad. The Contractor shall be responsible for the acts and omissions of all subcontractors, and shall require all subcontractors to maintain the insurance coverage required to be maintained by the Contractor as provided in this agreement, and to indemnify the Contractor and the Railroad to the same extent as the Railroad is indemnified by the Contractor under this agreement.

EXHIBIT C

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

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

Contractor 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 broad form contractual liability with a single limit of at least \$5,000,000 each occurrence or claim and an aggregate limit of at least \$10,000,000. Coverage must be purchased on a post 1998 ISO or equivalent form, including but not limited to coverage for the following:

- Bodily injury including death and personal injury
- Property damage
- Fire legal liability (Not less than the replacement value of the portion of the premises occupied)
- Products and completed operations

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

- "For purposes of this insurance, Union Pacific Railroad payments related to the Federal Employers Liability Act or a Union Pacific Wage Continuation Program or similar programs are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law."
- The exclusions for railroads (except where the Job site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.
- Coverage for Contractor's (and Railroad's) employees shall not be excluded
- Waiver of subrogation

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

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

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

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

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

If Workers Compensation insurance will not cover the liability of Contractor in states that require participation in state workers' compensation fund, Contractor shall comply with the laws of such states. If Contractor 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 Contractor utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.
- E. Railroad Protective Liability insurance naming only the Railroad as the insured with a combined single limit of \$2,000,000 per occurrence with a \$6,000,000 aggregate. The policy shall be broad form coverage for "Physical Damage to Property" (ISO Form CG 00 35 07 98 or equivalent). A binder stating the policy is in place must be submitted to the Railroad until the original policy is forwarded to the Railroad.

Other Requirements

- F. Punitive damage exclusion must be deleted, which deletion shall be indicated on the certificate of insurance.
- G. Contractor agrees to waive its right of recovery, and its insurers, through policy endorsement, agree to waive their right of subrogation against Railroad. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under its care, custody and control. Contractor's insurance shall be primary with respect to any insurance carried by Railroad. All waivers of subrogation shall be indicated on the certificate of insurance.
- H. All policy(ies) required above (excluding Workers Compensation) shall provide severability of interests and shall name Railroad as an additional insured. Severability of interest and naming Railroad as additional insured shall be indicated on the certificate of insurance.
- I. Prior to commencing the Work, Contractor shall furnish to Railroad original certificate(s) of insurance evidencing the required coverage, endorsements, and amendments. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing of any cancellation or material alteration. Upon request from Railroad, a certified duplicate original of any required policy shall be furnished.
- J. Any insurance policy shall be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- K. Contractor WARRANTS that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement and acknowledges that Contractor's insurance coverage will be primary.
- L. The fact that insurance is obtained by Contractor or Railroad on behalf of Contractor shall 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 shall not be limited by the amount of the required insurance coverage.

EXHIBIT D

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of the Contractor as well as all employees of any subcontractor or agent of the Contractor.

I. Clothing

- A. All employees of the Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, the Contractor's employees must wear:

- (i) Waist-length shirts with sleeves.
- (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
- (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.

- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.

- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

The Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with the contractor's or subcontractor's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers
 - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
 -
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

The Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized workwear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractors must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. The Contractors will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

- A. It is the responsibility of the Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of the Contractor's equipment is unsafe for use, the Contractor shall remove such equipment from the Railroad's property. In addition, the Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
 - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - Trained in and comply with the applicable operating rules if operating any hi-rail equipment on-track.
 - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

- A. The Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. The Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by the Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
 - (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
 - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
 - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
 - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
 - (v) Before stepping over or crossing tracks, look in both directions first.
 - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.