

EXHIBIT 1

To Wayside Horn System Agreement

LOCATION OF GRADE CROSSINGS

UPRR Folder No.: _____

Audit No. _____

EXHIBIT 2

To Wayside Horn System Agreement

**RIGHT OF ENTRY AGREEMENT
PERTAINING TO WAYSIDE HORN SYSTEM AGREEMENT**

THIS RIGHT OF ENTRY AGREEMENT (REA) is made and entered into as of the _____ day of _____, 200__ by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (hereinafter the "Railroad"); and [_____] [(NAME OF LICENSEE)], a [_____] (corporate status)], at [_____] (applicant mailing address)]; Attn: [_____] (Name of Contact)]; Telephone: [_____] (Phone Number)] (hereinafter, the "Licensee"). This REA consists of this document and Appendices A and B hereto, and all Exhibits to those Appendices.

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

ARTICLE 1- WAYSIDE HORN AGREEMENT

Nothing contained herein shall alter any obligation of Licensee under the Wayside Horn System Agreement (“WHS Agreement”). To the extent there is any inconsistency between this REA and the language of the WHS Agreement, the WHS Agreement controls.

ARTICLE 2 - DEFINITION OF LICENSEE

Railroad and Licensee have entered into the WHS Agreement, to which this REA (and the attached Appendices and Exhibits) is an exhibit, which pertains to one or more wayside horn systems installed or to be installed and operated on Railroad property. Licensee and its non-employee contractors and subcontractors wish to enter onto Railroad property to perform certain work as authorized in the WHS Agreement. The WHS Agreement requires Licensee to execute this REA, and for Licensee’s non-employee contractors and subcontractors to do so by executing the Contractor’s Endorsement, Appendix B to this REA, and requires them to obtain Railroad’s written approval hereof before commencing such Work.

For purposes of this REA, all references to the “Licensee” shall include the Licensee's officers, agents and employees, and others acting under its authority. “Licensee” also shall include the Licensee’s contractors and subcontractors, to the extent such persons are made a party to this REA by their execution of the Contractor’s Endorsement, Appendix B hereto; provided that the municipal or governmental agency

Licensee who executed the WHS Agreement shall also remain a party to and be bound by the REA when the work is being performed by its non-employee contractors and subcontractors.

ARTICLE 3- RIGHT FOR WHICH REA IS GRANTED; PURPOSE

The Railroad hereby grants to the Licensee 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 Railroad's property in the vicinity of [_____ (Railroad Mile Post),] [_____ (Mile Post)], on the [_____ (Name of Subdivision or Branch Line)] at or near _____(Location)], for the purpose _____ of _____

in the area as shown on the location print marked Appendix A, Exhibit A attached hereto and hereby made a part hereof. The right herein granted to Licensee is limited to those portions of the Railroad's property specifically described herein, or designated by the Railroad representative.

ARTICLE 4 – ADMINISTRATIVE FEE

Upon the execution of this Agreement, the Licensee shall pay to Railroad a one-time administrative fee of _____ (\$_____.00).

ARTICLE 5 – OTHER TERMS AND CONDITIONS OF WORK

Other terms and conditions relating to the Work are contained in Appendix A, Exhibit B, attached hereto, and are hereby made a part of this REA.

ARTICLE 6 - ALL EXPENSES TO BE BORNE BY LICENSEE; RAILROAD REPRESENTATIVE

The Licensee shall bear any and all costs and expenses associated with any Work performed by the Licensee, and or any costs or expenses incurred by the Railroad relating to this REA. All work performed by Licensee on Railroad's property shall be performed, in accordance with the WHS Agreement, the REA, and in a manner satisfactory to the representative local Manager of Track Maintenance of the Railroad or his authorized representative (hereinafter the Railroad Representative): [_____(Name & Address of MTM)].

ARTICLE 7- TERM; TERMINATION

A. The grant of right herein made to Licensee shall commence on the date of this REA, and continue until [_____], unless sooner terminated as herein provided, or at such time as Licensee has completed its Work on Railroad's property, whichever is earlier. Licensee agrees to notify the Railroad

Representative in writing when it has completed its Work on Railroad property.

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

ARTICLE 8 - INSURANCE

- A. Before commencing any Work, the Licensee and its contractors and subcontractors shall procure the coverage and provide the Railroad with a Certificate issued by their respective insurance carriers providing the insurance coverage required pursuant to Appendix A, Exhibit C to this REA; except that to the extent Licensee has already complied with the insurance provisions of the WHS Agreement, Licensee shall not have to provide a further Certificate, but this shall not affect contractors' and subcontractors' obligations to do so.
- B. Licensee and its contractors and subcontractors warrant that this REA and Appendix A, Exhibit C, have been thoroughly reviewed by their respective insurance agent(s)/broker(s) and that said agent(s)/broker(s) has been instructed to procure insurance coverage and endorsement(s) as required herein.
- C. All insurance correspondence shall be directed to:

Union Pacific Corporation
Insurance Compliance
PO Box 12010-UP
Hemet, CA 92546-8010
Folder No: (Folder Number)

ARTICLE 9 - ENFORCEABILITY AND CHOICE OF LAW

THIS AGREEMENT SHALL BE GOVERNED, CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF _____ . LITIGATION TO ENFORCE, OR ARISING OUT OF, OR RELATED TO, OR CONNECTED WITH THIS AGREEMENT MAY BE INSTITUTED AND MAINTAINED SOLELY BEFORE THE _____ STATE DISTRICT COURT FOR _____ COUNTY, _____ .

ARTICLE 10 - RAILROAD FLAGMAN; WHEN REQUIRED; FLAGGING CHARGES

- A. 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 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. All expenses connected with the furnishing of said flagman shall be at the sole cost and

expense of the Licensee, who shall promptly pay to Railroad all charges connected therewith, within 30 days after presentation of a bill therefore. 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. The current hourly rate of pay for Assistant Track Foreman is \$19.50 (July 2003). In addition to the cost of such labor, a composite charge of 152.33 % for vacation, holiday, health & welfare, supplemental sickness, Railroad Retirement & UC, supplemental pension, Empl. Liability & Property Damage and Administration will be included, computed on actual payroll.

- B. 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.
- C. 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 Licensee shall pay on the basis of the new rates and charges.
- D. 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 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 Company by assignment of such flagman to other work, even though the Licensee may not be working during such time.
- E. Arrangements for flagging are to be made at least seventy-two (72) hours in advance of commencing work, with the Railroad Manager of Track Maintenance.

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

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

By: _____

PAUL G. FARRELL
Senior Manager Contracts

WITNESS:

NAME OF LICENSEE

By:

Title: _____

(Executed pursuant to ordinance, resolution, or other evidence of proper authority to execute this instrument, a copy of which shall be attached to the Railroad's original counterpart of this document.)

ADDITIONAL LICENSEES WHO ARE CONTRACTORS OR SUBCONTRACTORS OF THE MUNICIPAL OR GOVERNMENTAL LICENSEE, EACH OF WHOM HAS EXECUTED THE APPENDIX B, CONTRACTOR'S ENDORSEMENT, AND IS BOUND BY THIS REA AND THE APPENDICES AND EXHIBITS THERETO.

Company Name

Signature of
Authorized Representative

Date

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

APPENDIX A
EXHIBIT A

TO RIGHT OF ENTRY AGREEMENT
PERTAINING TO WAYSIDE HORN SYSTEM AGREEMENT

DESCRIPTION OF WORK SITE

APPENDIX A
EXHIBIT B

TO RIGHT OF ENTRY AGREEMENT
PERTAINING TO WAYSIDE HORN SYSTEM AGREEMENT

TERMS AND CONDITIONS

Section 1 - **NOTICE OF COMMENCEMENT OF WORK; FLAGGING; FLAGGING CHARGES.**

A. The Licensee agrees to notify the Railroad Representative at least 72 hours in advance of Licensee commencing its work and at least 72 hours in advance of proposed performance of any work by the Licensee under the REA in which any person or equipment will be within 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 25 feet of any track. Upon receipt of such notice, the Railroad Representative will determine and inform the Licensee whether a flagman need be present and whether the Licensee need implement any special protective or safety measures. If any flagmen or other special protective or safety measures are performed by the Railroad, such services will be provided at Licensee's expense with the understanding that if the Railroad provides any flagging or other services the Licensee shall not be relieved of any of its responsibilities or liabilities set forth herein.

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 Licensee 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 RAILROAD'S OPERATION.**

No work performed by Licensee shall cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Railroad its lessees, licensees or others, unless specifically permitted under this agreement, or specifically authorized in advance by the Railroad Representative. Nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof. When not in use, Licensee's machinery and materials shall be kept at least 50 feet from the centerline of Railroad's nearest track, and there shall be no crossings of Railroad's tracks except at existing open public crossings.

Section 4 - **PERMITS.**

Prior to beginning any work, the Licensee, at its sole expense, shall obtain all necessary permits to perform any work contemplated by this agreement.

Section 5 - **LIENS.**

The Licensee shall pay in full all persons who perform labor or provide materials for the work to be performed by Licensee. The Licensee shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be enforced against any property of the Railroad for any such work performed. The Licensee 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.

Section 6 - **PROTECTION OF SUBSURFACE FACILITIES ON RAILROAD PROPERTY.**

A. Cables, lines, wires, circuits, conduit, pipes and other facilities ("Facilities") may be buried on and under Railroad property, including, without limitation, its rights-of-way, as part of, or associated with, various systems and facilities, including, without limitation, fiber optic systems, railroad traffic control-related systems (e.g., wayside horn, switching, and signal control systems), and utility systems and facilities (e.g., electrical lines, natural gas and water main pipelines and distribution/supply lines, and sewer pipes and lines). Protection of the Facilities is of extreme importance since any break in or damage to the Facilities could, among other things, disrupt service to users, result in business interruption and loss of revenue and profits, result in injury or death to persons and damage to property, cause other economic losses, and/or create safety risks to the public. Accordingly, Licensee shall (1) comply with all one-call and other requirements of the law of the state where the Work is to be performed, (2) exercise due diligence in an effort to determine from the Railroad and all appropriate utilities, telecommunications companies, etc. to determine if Facilities are present in the area that is to be used or occupied by, or that will be accessible to, Licensee in connection with the Work, including, without limitation, by telephoning the Railroad at 1-800-336-9193 (between 6:30 a.m. and 8:00 p.m. Central Time) to determine if Facilities comprising fiber optic systems are buried anywhere at such location(s), (3) contact the Railroad and any party who is determined to be the owner of any such Facilities to make suitable arrangements for the relocation or other protection of the Facilities, (4) refrain from commencing Work on the Railroad's property in the vicinity of any Facilities unless and until such relocation or other protection has been completed, and (5) require its contractors and subcontractors to comply with the commitments set forth in (1) through (4), above. Licensee acknowledges and agrees that the Railroad will not be responsible for the cost to relocate or otherwise protect the Facilities.

B. In addition to other indemnity provisions in this Agreement, to the extent not prohibited by law, Licensee shall defend, indemnify and hold Railroad harmless from and against all costs, liability, loss and expense whatsoever (including, without limitation, consequential damages, attorneys' fees, court costs, and expenses) arising out of any act or omission of Licensee, its agents, contractors, subcontractors, and/or employees, relating in any way to the Facilities, to the extent all or any of their acts or omissions cause or contribute to (1) any disruption of service to users or damage for business interruption or loss of revenues or profits, (2) any damage to or destruction of any Facilities, (3) any injury or damage to property or injury to or the death of any persons, (4) any other economic loss, (5) any other damage or liability whatsoever, or (6) the assertion or filing of any claim, cause of action, or judgment whatsoever relating to such matters. If this Subsection B should be declared void or unenforceable by a court of competent jurisdiction, it shall be stricken, but the fact that it has been so struck shall not affect the enforceability of Subsection A.

Section 7 - **COMPLIANCE WITH LAWS.**

In the prosecution of the work covered by this agreement, the Licensee shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Licensee shall use only such methods as are consistent with safety, both as concerns the Licensee, the Licensee's agents and employees, the officers,

agents, employees and property of the Railroad and the public in general. The Licensee (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's property. If any failure by the Licensee to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Licensee shall reimburse and indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The Licensee further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

Section 8 - **SAFETY INSTRUCTIONS.**

Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work pursuant to this agreement. As reinforcement and in furtherance of overall safety measures to be observed by the Licensee (and not by way of limitation), the following special safety rules shall be followed:

a). The Licensee 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. The Licensee shall have proper first aid supplies available on the job site so that prompt first aid services can be provided to any person that may be injured on the job site. The Licensee shall promptly notify the Railroad of any U.S. Occupational Safety and Health Administration reportable injuries occurring to any person that may arise during the work performed on the job site. The Licensee shall have a non-delegable duty to control its employees, while they are on the job site or any other property of the Railroad to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage or illegally obtained drug, narcotic or other substance that may inhibit the safe performance of work by an employee.

b). The employees of the Licensee shall 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. Only waist length shirts with sleeves and trousers that cover the entire leg are to be worn. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching. The employees should wear sturdy and protective footwear. 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. In addition, the Licensee shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations or Railroad officials overlooking the work at the job site. In particular, the protective equipment to be worn shall be:

1). Protective head-gear that meets American National Standard-Z89.1-latest revision. It is suggested that all hardhats be affixed with Licensee's or subcontractor's company logo or name.

2). Eye protection that meets American National Standard 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, burning, etc.; and

3). Hearing protection which affords enough attenuation to give protection from noise levels that will be occurring on the job site.

c). All heavy equipment provided or leased by the Licensee shall be equipped with audible back-up warning devices. If in the opinion of the Railroad Representative any of Licensee's or any of its subcontractor's equipment is unsafe for use on the Railroad's right-of-way, the Licensee, at the request of the Railroad Representative, shall remove such equipment from the Railroad's right-of-way.

Section 9 - **INDEMNITY.**

a). The indemnity obligations of the Licensee who is the municipality or governmental agency identified in the Right of Entry Agreement to which this document is part of an Appendix are contained in the Wayside Horn System Agreement, to which the Right of Entry Agreement is an exhibit.

b). The indemnity obligations of any Licensee who is a contractor or subcontractor with whom the municipal or governmental Licensee has contracted to perform work under the Right of Entry Agreement are contained in the Appendix B, Contractor's Endorsement.

Section 10 - **RESTORATION OF PROPERTY.**

In the event the Railroad authorizes the Licensee 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 Licensee, then in that event the Licensee shall, as soon as possible and at Licensee'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, and the Licensee shall indemnify and hold harmless the Railroad, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, arising from the taking down of any fence or the moving or disturbance of any other property of the Railroad.

Section 11 - **WAIVER OF BREACH.**

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

Section 12 - **ASSIGNMENT - SUBCONTRACTING.**

The Licensee shall not assign, sublet or subcontract this agreement, or any interest therein, without the written consent of the Railroad and any attempt to so assign, sublet or subcontract without the written consent of the Railroad shall be void. If the Railroad gives the Licensee permission to subcontract all or any portion of the work herein described, the Licensee is and shall remain responsible for all work of subcontractors and all work of subcontractors shall be governed by the terms of this agreement.

APPENDIX A
EXHIBIT C

TO RIGHT OF ENTRY AGREEMENT
PERTAINING TO WAYSIDE HORN SYSTEM AGREEMENT

CONTRACT INSURANCE REQUIREMENTS

City, at its sole cost and expense, has procured and maintained the insurance insuring Railroad in accordance with the Wayside Horn System Agreement and Exhibit 6 thereto. The City shall cause its Contractors and subcontractors, as the case may be, to maintain, during the life of the REA to which this is an Exhibit (except as otherwise provided in this Agreement) the following insurance coverage:

A. Commercial General Liability insurance. Commercial general liability (CGL) with a limit of not less than \$10,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage). The policy must also contain the following endorsement, which must be stated on the certificate of insurance: “Contractual Liability Railroads” ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing “Union Pacific Railroad Company Property” as the Designated Job Site.

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

The policy must contain the following endorsements, which must be stated on the certificate of insurance: “Coverage For Certain Operations In Connection With Railroads” ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing “Union Pacific Property” as the Designated Job Site.

C. Workers Compensation and Employers Liability Insurance. Coverage must include but not be limited to:

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

D. Railroad Protective Liability Insurance. City must maintain (or cause its Contractor to maintain) Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.

E. Umbrella or Excess Insurance. If City and/or Contractor utilize umbrella or excess policies, these policies must “follow form” and afford no less coverage than the primary policy.

Other Requirements

F. The Commercial General Liability policy required above must include Railroad as “Additional Insured” using ISO Additional Insured Endorsement CG 20 26 (or substitute form providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26 provide coverage for Railroad’s negligence whether sole or partial, active or passive, and shall not be limited by City’s and/or Contractor’s liability under the indemnity provisions of this Agreement.

G. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.

H. City and Contractor waive all rights against Railroad and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by Workers’ Compensation and Employers Liability, commercial umbrella or excess liability insurance obtained by City required by this agreement.

I. Prior to commencement of the Work, City and/or Contractor shall furnish Railroad with certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement. Railroad’s permitting the Work to commence prior to receiving a certificate shall not be deemed a waiver of those requirements.

J. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A-, Class VII or better, and authorized to do business in the state(s) in which this agreement applies.

K. The fact that insurance is obtained by City and/or Contractor (or by Railroad on behalf of City) will not be deemed to release or diminish the liability of City and/or Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from any third party, including City’s contractors or subcontractors, will not be limited by the amount of the required insurance coverage.

APPENDIX B

TO RIGHT OF ENTRY AGREEMENT
PERTAINING TO WAYSIDE HORN SYSTEM AGREEMENT

CONTRACTOR'S ENDORSEMENT

This Contractor's Endorsement is an Appendix attached to the Right of Entry Agreement (REA) between Railroad and Licensee, dated _____. The municipality or governmental agency identified in the REA as "Licensee" has contracted under a Wayside Horn System Agreement (the WHS Agreement) with the Contractor identified herein, for the Contractor to perform certain work under the REA and the WHS Agreement (hereinafter, the Work).

Contractor, for good and sufficient consideration, the receipt of which is acknowledged, hereby agrees with the Railroad and with the municipality or governmental agency identified as Licensee in the REA, as follows:

1. Contractor's execution of this Contractor's Endorsement binds Contractor to, and constitutes Contractor's agreement to each and all of the terms of the REA set out therein and in the Appendices and Exhibits thereto, and to all terms of the WHS Agreement that pertain to the Work. This Endorsement is enforceable by the Railroad or the municipal or governmental Licensee.
2. Contractor (hereinafter "Contractor"), to the same effect as if it were named specifically in the REA as a "Licensee," shall comply with each and every term and provision of the REA and the Appendices and Exhibits thereto, and with all terms of the WHS Agreement that pertain to the Work.
3. Without in any way limiting Sections 1 and 2 hereof, Contractor specifically acknowledges that it has read, understands, and agrees, pursuant to the REA, to limit its Work in accordance with Articles 3 and 7 of the REA, to comply with and be bound in all respects by Articles 5 and 6 of the REA and Appendix A, Exhibits B and C thereto, to fulfill the insurance requirements of Article 8 of the REA, and Appendix A, Exhibit C thereto, and to be bound by Article 9 of the REA, relating to Enforceability and Choice of Law.

4. **INDEMNITY**

A) AS USED IN THIS SECTION, "LICENSEE" HAS THE SAME MEANING AS IN THE REA, AND SPECIFICALLY INCLUDES THE MUNICIPAL OR GOVERNMENTAL LICENSEE AND ITS CONTRACTORS AND SUBCONTRACTORS. "RAILROAD" INCLUDES OTHER RAILROAD COMPANIES USING THE RAILROAD'S PROPERTY AT OR NEAR THE LOCATION OF THE LICENSEE'S INSTALLATION AND THEIR OFFICERS, AGENTS, AND EMPLOYEES. "LOSS" INCLUDES LOSS, DAMAGE, CLAIMS, DEMANDS, ACTION,

CAUSES OF ACTION, PENALTIES, COSTS, AND EXPENSES OF WHATSOEVER NATURE, INCLUDING COURT COSTS AND ATTORNEYS' FEES, WHICH MAY RESULT FROM: (A) INJURY TO OR DEATH OF PERSONS WHOMSOEVER (INCLUDING THE RAILROAD'S OFFICERS, AGENTS, AND EMPLOYEES, THE LICENSEE'S OFFICERS, AGENTS AND EMPLOYEES, AS WELL AS ANY OTHER PERSON); AND (B) DAMAGE TO OR LOSS OR DESTRUCTION OF PROPERTY WHATSOEVER (INCLUDING LICENSEE'S PROPERTY, DAMAGE TO THE ROADBED, TRACKS, EQUIPMENT, OR OTHER PROPERTY OF THE RAILROAD, OR PROPERTY IN ITS CARE OR CUSTODY).

(B) AS A MAJOR INDUCEMENT AND IN CONSIDERATION OF THE LICENSE AND PERMISSION HEREIN GRANTED, THE CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE RAILROAD FROM ANY LOSS WHICH IS DUE TO OR ARISES FROM ANY CAUSE AND IS ASSOCIATED IN WHOLE OR IN PART WITH THE WORK PERFORMED UNDER THE REA AND THIS ENDORSEMENT, A BREACH OF THE AGREEMENTS OR THE FAILURE TO OBSERVE THE HEALTH AND SAFETY PROVISIONS APPLICABLE TO THE WORK, OR ANY ACTIVITY OR OMISSION ARISING OUT OF PERFORMANCE OR NONPERFORMANCE OF THE AGREEMENTS; REGARDLESS OF WHETHER CAUSED SOLELY OR CONTRIBUTED TO IN PART BY THE NEGLIGENCE OR FAULT OF THE RAILROAD. [State law may require that this provision be modified].

(C) ANY LIABILITY OF RAILROAD, LICENSEE, OR CONTRACTOR HEREUNDER TO ONE OF ITS EMPLOYEES UNDER ANY WORKERS' COMPENSATION ACT OR THE FEDERAL EMPLOYERS' LIABILITY ACT SHALL NOT BE QUESTIONED OR IN ANY WAY CHALLENGED BY THE OTHER PARTY, NOR SHALL ANY JURY OR COURT FINDINGS RESULTING FROM ANY EMPLOYEE'S SUIT AGAINST EITHER PARTY PURSUANT TO ANY SUCH ACT(S), BE RELIED UPON OR USED BY A PARTY IN ANY ATTEMPT TO ASSERT COMMON LAW LIABILITY AGAINST THE OTHER.

WITNESS:

(Name of Contractor)

(Address)_____

By:

Title: _____

EXHIBIT 3

To Wayside Horn System Agreement

PROTECTION OF SUBSURFACE FACILITIES ON RAILROAD PROPERTY

A. Cables, lines, wires, circuits, conduit, pipes and other facilities (“Facilities”) may be buried on and under Railroad property, including, without limitation, its rights of way, as part of, or associated with, various systems and facilities, including, without limitation, fiber optic systems, railroad traffic control-related systems (e.g., wayside horn, switching, and signal control systems), and utility systems and facilities (e.g., electrical lines, natural gas and water main pipelines and distribution/supply lines, and sewer pipes and lines). Protection of the Facilities is of extreme importance since any break in or damage to the Facilities could, among other things, disrupt service to users, result in business interruption and loss of revenue and profits, result in injury or death to persons and damage to property, cause other economic losses, and/or create safety risks to the public. Accordingly, Licensee shall (1) comply with all one-call and other requirements of the law of the state where the Work is to be performed, (2) exercise due diligence in an effort to determine from the Railroad and all appropriate utilities, telecommunications companies, etc. to determine if Facilities are present in the area that is to be used or occupied by, or that will be accessible to, Licensee in connection with the Work, including, without limitation, by telephoning the Railroad at 1-800-336-9193 (between 6:30 a.m. and 8:00 p.m. Central Time) to determine if Facilities comprising fiber optic systems are buried anywhere at such location(s), (3) contact the Railroad and any party who is determined to be the owner of any such Facilities to make suitable arrangements for the relocation or other protection of the Facilities, (4) refrain from commencing Work on the Railroad’s property in the vicinity of any Facilities unless and until such relocation or other protection has been completed, and (5) require its contractors and subcontractors to comply with the commitments set forth in (1) through (4), above. Licensee acknowledges and agrees that the Railroad will not be responsible for the cost to relocate or otherwise protect the Facilities.

B. In addition to other indemnity provisions in this Agreement, to the extent not prohibited by law, Licensee shall defend, indemnify and hold Railroad harmless from and against all costs, liability, loss and expense whatsoever (including, without limitation, consequential damages, attorneys’ fees, court costs, and expenses) arising out of any act or omission of Licensee, its agents, contractors, subcontractors, and/or employees, relating in any way to the Facilities, to the extent all or any of their acts or omissions cause or contribute to (1) any disruption of service to users or damage for business interruption or loss of revenues or profits, (2) any damage to or destruction of any Facilities, (3) any injury or damage to property or injury to or the death of any persons, (4) any other economic loss, (5) any other damage or liability whatsoever, or (6) the assertion or filing of any claim, cause of action, or judgment whatsoever relating to such matters. If this Subsection B should be declared void or unenforceable by a court of competent jurisdiction, it shall be stricken, but the fact that it has been so struck shall not affect the enforceability of Subsection A.

EXHIBIT 4

To Wayside Horn System Agreement

PRELIMINARY ENGINEERING AGREEMENT

EXHIBIT 5

To Wayside Horn System Agreement

ESTIMATE

EXHIBIT 6

To Wayside Horn System Agreement

CONTRACT INSURANCE REQUIREMENTS

The following describes the insurance requirements that are the subject of the Wayside Horn System Agreement Section 7c.

A. City must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 07 98 (or a substitute form providing equivalent coverage) (hereinafter, the Policy). The Policy shall have the following particulars set forth in its Declarations or by endorsement.

- The “Named Insured” is Union Pacific Railroad.
- The “Contractor” is City of _____, _____.
- The “Job Location” is:
 - a. Site #1 Geographic description of the location.
 - b. Site #2 Geographic description of the location.
 - c. Site #3 Geographic description of the location.
 - d. etc.
- The “Work” is “Installation and operation and maintenance of Automated Directional Horn Systems.”

B. Policy will provide limits of not less than \$10,000,000 per occurrence and \$10,000,000 in the annual aggregate with a per occurrence self insured retention not to exceed \$1,000,000.

C. City shall require its Contractors and subcontractors, as the case may be, to nonetheless maintain the insurance required pursuant to the Right of Entry Agreement, Appendix A, Exhibit C.