

Public Highway Provisions

SECTION 1 - CONDITIONS AND COVENANTS

- a) The Union Pacific makes no covenant or warranty of title for quiet possession or against encumbrances. The County 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 County 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 Union Pacific's property by or under authority of the County for the purpose of conveying electric power or communications incidental to the County's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Union Pacific, and in such manner as not adversely to affect communication or signal lines of the Union Pacific or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the County to use or occupy any part of the Union Pacific's property without the Union Pacific's written consent. Nothing herein shall obligate the Union Pacific to give such consent.
- b) The Union Pacific reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes in such manner as to not unreasonably interfere with its use as a public highway.
- 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. The County shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Union Pacific property, unless the County at its own expense settles with and obtains releases from such nonparties.
- d) The Union Pacific 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, facilities and appurtenances on the property; also the right to cross the Crossing Area with all kinds of equipment. The Union Pacific further reserves the right to attach signal, communication or power lines to any highway facilities located upon the property, provided that such attachments shall comply with County's specifications and will not interfere with the use of the Crossing Area. All such attachments shall be owned and maintained by the Company.
- e) So far as it lawfully may do so, the County 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 Union Pacific'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 County will acquire all such other property and rights at its own expense and without expense to the Union Pacific.

SECTION 2 - CONSTRUCTION OF PUBLIC HIGHWAY UNDERPASS

- a) The County, 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 Union Pacific upon request with satisfactory evidence that such authority has been obtained.

b) Except as may be otherwise specifically provided herein, the County, 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 Union Pacific 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 Union Pacific tracks. Upon completion of the Project, the County shall remove from the Union Pacific's property all temporary structures and false work, and will leave the Crossing Area in a condition satisfactory to the Union Pacific.

c) All construction work of the County upon the Union Pacific'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 Union Pacific or his authorized representative and in accordance with detailed Plans and Specifications prepared by and at the expense of the County, and approved in writing by the Union Pacific's Vice President-Engineering Services.

d) The Project shall be substantially completed within three (3) years from the date the Illinois Commerce Commission enters an order approving the Project, or within such further period of time as may be specified in writing by the Union Pacific's Vice President-Engineering Services. No part of the Project shall be suspended, discontinued or unduly delayed without the Union Pacific's written consent, and subject to such reasonable conditions as the Union Pacific may specify. It is understood that the Union Pacific'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 County. The County 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 Union Pacific.

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

SECTION 3 - INIURY AND DAMAGE TO PROPERTY

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

SECTION 4 - PAYMENT FOR WORK BY THE UNION PACIFIC

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

b) The Union Pacific may contract for the performance of any of its work by other than Union Pacific forces. The Union Pacific shall notify the County of the contract price within ninety (90) days after it is awarded. Unless the Union Pacific's work is to be performed on a fixed price basis, the County shall

reimburse the Union Pacific for the amount of the contract.

SECTION 5 - MAINTENANCE

In that the Project involves a public highway crossing under the Union Pacific's tracks and defined as an "Underpass":

- 1) The County shall, at its own sole expense, maintain, repair, and/or renew, or cause to be maintained, repaired and/or renewed, the entire structure of the highway at the Underpass and all highway approaches thereto.
- 2) The County shall, at its own sole expense, maintain, repair, and/ or renew or cause to be maintained, repaired, and/or renewed the entire superstructure of the Underpass.
- 3) The Union Pacific shall, at its own sole expense, maintain, repair and/or renew the Union Pacific's track structure over the superstructure of the Overpass.

SECTION 6 - REARRANGEMENT OF WARNING DEVICES

If the change or rearrangement of any warning device installed hereunder as necessitated for public or Union Pacific convenience or on account of improvements to either the railroad, or the highway or both, then the parties will apportion the expense therefore between themselves by negotiation, agreement or by the order of a competent authority before the change or rearrangement is undertaken.

SECTION 7 - SAFETY MEASURES: PROTECTION OF UNION PACIFIC OPERATIONS

It is understood and recognized that safety and continuity of the Union Pacific'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 County 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 County shall include the County'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 County shall include work both within and outside of Union Pacific property.
- b) Compliance With Laws. The County shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The County shall use only such methods as are consistent with safety, both as concerns the County, the County's agents and employees, the officers, agents, employees and property of the Union Pacific and the public in general. The County (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Union Pacific Railroad Administration regulations shall be followed when work is performed on the Union Pacific's Crossing Area. If any failure by the County 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 Union Pacific, the County shall reimburse and indemnify the Union Pacific for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses to the extent permitted by law. The County further agrees in the event of any such action, upon notice thereof being provided by the Union Pacific, to defend such action free of cost, charge, or expense to the Union Pacific.
- c) No Interference or Delays. The County shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Union

Pacific'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 Union Pacific's property or facilities.

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

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

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

g) Explosives. The County shall not discharge any explosives on or in the vicinity of the Union Pacific's property without the prior consent of the Union Pacific's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Union Pacific's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Union Pacific's property or facilities. For the purposes hereof, the "vicinity of the Union Pacific's property" shall be deemed to be any place on the Union Pacific's property or in such close proximity to the Union Pacific's property that the discharge of explosives could cause injury to the Union Pacific's employees or other persons, or cause damage to or interference with the facilities or operations on the Union Pacific's property. The Union Pacific reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Union Pacific, in the Union Pacific'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 Union Pacific's Vice President-Engineering Services agrees otherwise, the County shall provide no less than 48 hours' written 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 County, 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 County shall require explosives to be transported, handled, stored or otherwise secured and used in a manner satisfactory to the Union Pacific 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 County shall not cause or permit the view along the tracks of the Union Pacific to be obstructed, nor place any combustible material on the Crossing Area, nor erect any structures thereon except as shown on the Plans and Specifications for the Project.

1) Insofar as it may lawfully may do so, the County 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 County 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 Union Pacific. The County shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Union Pacific's tracks or facilities. The County, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the County 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 Union Pacific's Vice President-Engineering Services to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Union Pacific's operations in the vicinity.

j) Drainage. The County, at the County'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 Union Pacific so as to adversely affect any of the Union Pacific's operations, equipment or any third parties with permitted facilities on the Union Pacific's right-of-way. The County, at the County'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 Union Pacific's culverts and drainage facilities), so that said waters may not, because of any facilities or work of the County, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Union Pacific or any part thereof, or property of others. The County shall not obstruct or interfere with existing ditches or drainage facilities.

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

l) Fiber Optic Cables. Fiber optic cable systems may be buried on the Union Pacific'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. County shall telephone the Union Pacific at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the Union Pacific's Crossing Area to be used by the County. If it is, County will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Union Pacific's Crossing Area.

SECTION 8 - INTERIM WARNING DEVICES

If at anytime it is determined by a competent authority, by the County, or by Agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the County 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 9 - OTHER RAILROADS

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

SECTION 10 - REMEDIES FOR BREACH OR NONUSE

a) If the County shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Union Pacific, in addition to any other rights and remedies, may perform any work which in the judgment of the Union Pacific is necessary to place the highway and appurtenances in such condition as will not menace, endanger or interfere with the Union Pacific's facilities or operations or jeopardize the Union Pacific's employees; and the County will reimburse the Union Pacific for the expenses thereof.

b) Nonuse by the County 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 Union Pacific, work as a termination of this Agreement and of all rights of the County hereunder.

c) The County 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 11 - 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 County and the Union Pacific and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Union Pacific of any default by the County 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 County and the Union Pacific and cancel and supersede any prior negotiations, understandings or Agreements, whether written or oral, with respect to the Project and the work or any part thereof.