

LEVEE FACILITY AGREEMENT

Santa Clara River – Levee Floodwall Embankment Fill
Mile Post 401.17 on Santa Barbara Subdivision
Oxnard, Ventura County, California

THIS AGREEMENT (“Agreement”) is made and entered into as of _____ (“Effective Date”) by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, (“Railroad”) and **VENTURA COUNTY WATERSHED PROTECTION DISTRICT**, a municipal corporation to be addressed at 800 S. Victoria Avenue, Ventura, California 93009 (“Licensee” or “Political Body”).

RECITALS:

Ventura County Watershed Protection District has operated and maintained levee, floodwall and drainage facilities, including but not limited to, the levee embankment located at or near the right of way located at DOT 745836D, Mile Post 401.17 on the Santa Barbara Subdivision, located at or near Oxnard, Ventura County, California (hereinafter the "Existing Levee Facility") in the location shown on the **Exhibit A**, attached hereto and hereby made a part hereof.

Political Body seeks a license in order to improve and maintain the existing levee floodwall facilities by adding fill and 1-ton riprap to construct two earthen levee embankments on the northeast and southwest side of Railroad’s tracks (the “Proposed Levee Facility”). The Existing Levee Facility and Proposed Levee Facility, together, are the “Levee Facility”. Railroad and the Political Body desire to enter into an agreement which will set forth terms and conditions for the operation, maintenance, and installation of the improved levee floodwall improvements (hereafter the “Project”).

The Railroad is agreeable to the Political Body constructing, maintaining and using the Levee Facility upon the terms and conditions set forth herein.

AGREEMENT:

NOW, THEREFORE, IT IS AGREED by and between the parties hereto as follows:

Article 1. RAILROAD GRANT OF LICENSE RIGHTS.

For and in consideration of **SIXTY THOUSAND SIX HUNDRED SIXTY NINE DOLLARS and 18/100 (\$60,669.18)** to be paid by the Political Body to the Railroad upon the execution and delivery of this Agreement and in further consideration of the covenants and agreements herein contained to be by the Political Body kept, observed and

performed, the Railroad hereby grants to the Political Body the right to construct and maintain and use the Levee Facility as generally set forth in the Railroad Print marked as **Exhibit A**, attached hereto and hereby made a part hereof.

The Levee Facility shall be constructed in the location shown and in conformity with the dimensions and specifications indicated on Political Body's 100% approved engineering plan set generally depicted the general plans, marked as **Exhibit A-1** hereto attached.

Article 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

A. The grant of right herein made to the Political Body is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in **Exhibit B**, hereto attached and hereby made a part hereof.

B. Railroad has no duty or obligation to construct, inspect, operate, maintain, repair, renew, reconstruct or remove the Levee Facility or perform any work. Political Body shall be solely responsible for the performance of all the Levee Facility work. Political Body shall be responsive for the maintenance, repair, renewal, reconstruction or removal the Levee Facility.

C. Railroad has no duty or obligation to contribute money, labor or other resources towards the construction, inspection, operation, maintenance, repair, renewal, reconstruction or removal of the Levee Facility.

Article 3. DEFERRED CONSTRUCTION.

The Railroad and Political Body acknowledge that conditions inherent in the Levee Facility may cause the complete stabilization of Railroad's trackage supported by new cuts or fills to be deferred beyond the construction period, and that Railroad's operation over the roadbed during the seasoning period will impose extraordinary maintenance costs in the event of caving, sliding, slipping, sinking or settling, including damage to rip-rapping or protective work in connection therewith, as well as settlement and consolidation of tracks and ballast, until the seasoning period is complete. Therefore, the Political Body will pay to the Railroad, as a part of the consideration for this Agreement, all that part of the cost and expense of extraordinary maintenance (hereinafter referred to as "Deferred Construction") associated with the Levee Facility which can be attributed to failure of subgrade, settlement, and consolidation of subballast, or roadbed, or any combination thereof, which are incurred during the period commencing immediately following completion of the work on the Levee Facility by the Political Body or its contractor and ending five years thereafter. The Deferred Construction costs aforesaid shall include reimbursement of the extra cost, in excess of normal maintenance costs, of maintaining embankments and that portion of said tracks above subgrade in accordance with acceptable maintenance standards, and will include cost of maintaining proper alignment, proper surface and use of ballast and other necessary materials.

Article 4. TERM; TERMINATION.

A. This Agreement shall take effect as of the date first herein written and, unless sooner terminated as set forth in Paragraphs (B) and (C) below, shall continue in full force and effect for

so long as the Levee Facility shall be used by the Political Body for the purposes set forth herein; provided, however, that if the Political Body shall abandon the use of the Levee Facility, or any part thereof, for such purposes, this Agreement and the rights and privileges granted to Political Body herein as to the portion(s) so abandoned shall cease and terminate at the time such portions of the Levee Facility is abandoned.

B. If the Political Body continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Railroad to the Political Body specifying such default, the Railroad may, at its option, forthwith and immediately terminate this Agreement by written notice to Political Body.

C. This Agreement may be terminated by either party, with or without cause, upon six (6) months written notice to the other party. In the event of such notice of termination, the parties shall arrange for either the Levee Facility to be removed, filled in and graded to accommodate the surrounding grade surface, or to encase the Levee Facility to the standards and satisfaction of the Railroad.

D. Notice of default and notice of termination may be served personally upon the Political Body or by mailing to the last known address of the Political Body. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Article 5. DEFINITION OF CONTRACTOR.

For purposes of this Agreement, the term "Contractor" shall mean the contractor or contractors hired by Political Body to perform work associated with the Project Work or any other Work on any portion of Railroad's property, and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.

Article 6. IF WORK IS TO BE PERFORMED BY CONTRACTOR CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE

A. Prior to Contractor performing any work within the Levee Facility involving the Project, including initial construction and subsequent relocation or substantial maintenance and repair work, the Political Body shall require the Contractor to:

- execute the Railroad's then current Contractor's Right of Entry Agreement
- obtain the then current insurance required in the Contractor's Right of Entry Agreement; and
- provide such insurance policies, certificates, binders and/or endorsements to the Railroad.

B. The Railroad's current Contractor's Right of Entry Agreement is marked **Exhibit E**, attached hereto and hereby made a part hereof. The Political Body confirms that it will inform its Contractor that it is required to execute such form of agreement and obtain the required insurance

before commencing any work on any Railroad property. Under no circumstances will the Contractor be allowed on the Railroad's property without first executing the Railroad's Contractor's Right of Entry Agreement and obtaining the insurance set forth therein and also providing to the Railroad the insurance policies, binders, certificates and/or endorsements described therein.

C. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

Manager - Contracts
Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, Mail Stop 1690
Omaha, NE 68179-1690
UP Project No. 0781836

D. If the Political Body's own employees will be performing any of the Project work, the Political Body may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

Article 7. NO PROJECT EXPENSES TO BE BORNE BY RAILROAD

The Political Body agrees that no Project costs and expenses are to be borne by the Railroad. In addition, the Railroad is not required to contribute any funding for the Project.

Article 8. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO POLITICAL BODY; POLITICAL BODY'S PAYMENT OF BILLS

A. The work to be performed by the Railroad, at the Political Body's sole cost and expense, is described in the Railroad's Material and Force Account Estimate dated July 28, 2022, marked **Exhibit C**, attached hereto and hereby made a part hereof (the "Estimate"). As set forth in the Estimate, the Railroad's estimated cost for the Railroad's work associated with the Project is **Fifty Thousand Dollars (\$50,000)**.

B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the Political Body in the event the Political Body does not commence construction on the portion of the Project located on the Railroad's property within six (6) months from the date of the Estimate.

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

D. The Railroad shall send progressive billing to the Political Body during the Project, and final billing to the Political Body within one hundred eighty (180) days after receiving written notice from the Political Body that all Project work affecting the Railroad's property has been completed.

E. The Political Body agrees to reimburse the Railroad within thirty (30) days of its receipt of billing from the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, all actual costs of engineering review (including preliminary engineering review costs incurred by Railroad prior to the Effective Date of this Agreement), construction, inspection, flagging (unless flagging costs are to be billed directly to the Contractor), procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead labor/construction costs including Railroad's standard additive rates.

Article 9. PLANS

A. The Political Body, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Project and the Levee Facility and submit such plans and specifications to the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, for prior review and approval. The plans and specifications shall include all appurtenances, associated drainage, shoring, sheeting and excavations for bents and/or abutments next to or adjacent to the Railroad's tracks and, if applicable, all demolition and removal plans for the existing levee facilities.

B. The final one hundred percent (100%) completed plans that are approved in writing by the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.

C. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing.

D. Upon completion of the Levee Facility, the Political Body, at its expense, shall furnish to the Railroad an electronic set "as constructed" Plans of the Levee Facility.

E. The Railroad's review and approval of the Plans in no way relieves the Political Body or the Contractor from their responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that the Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by the Political Body or Contractor on the Plans is at the risk of the Political Body and Contractor.

Article 10. NON-RAILROAD IMPROVEMENTS

A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocation, replacing, removing and abandoning in place all non-railroad owned facilities (the "Non Railroad Facilities") affected by the Project including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required under Section 8. The Non Railroad Facilities plans and specifications shall comply with Railroad's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines. Railroad has no obligation to supply additional land for any Non Railroad Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted Non Railroad Facilities plans and specifications comply with Railroad's standard specifications and requirements. Railroad has no obligation to permit any Non Railroad Facilities to be abandoned in place or relocated on Railroad's property.

B. Upon Railroad's approval of submitted Non Railroad Facilities plans and specifications, Railroad will attempt to incorporate them into new agreements or supplements of existing agreements with Non Railroad Facilities owners or operators. Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for Non Railroad Facilities. Non Railroad Facilities work shall not commence before a supplement or new agreement has been fully executed by Railroad and the Non Railroad Facilities owner or operator, or before Railroad and Political Body mutually agree in writing to (i) deem the approved Non Railroad Facilities plans and specifications to be Plans pursuant to Section 8B, (ii) deem the Non Railroad Facilities part of the Structure, and (iii) supplement this Agreement with terms and conditions covering the Non Railroad Facilities.

Article 11. NO CONSENT OR PERMISSION TO CROSS TRACK.

This Agreement and any Railroad consent or permission stated herein does not permit the Political Body and/or any contractor to (A) cross any of Railroad's tracks (except at existing open public crossings) with vehicles, equipment, or machinery to access the Levee Facility; or (B) access any portion of Railroad's property other than the permitted access to the Levee Facility. Political Body and/or any contractor shall be required to obtain a separate written crossing agreement directly with Railroad before crossing any such tracks with vehicles, equipment or machinery to perform any work or to access the Levee Facility.

Article 12. FILL SPECIFICATIONS.

In addition to the requirements set forth herein and in the Plans, prior to depositing or using any fill in connection with the Levee Facility, such earthen fill (1) shall be thoroughly tested by Political Body for Hazardous Materials (defined below), and (2) shall include such documentation as is reasonably requested by Railroad certifying that the earthen fill is clean. Without limiting the foregoing, the earthen fill and any other fill material placed on Railroad's property shall be "clean" (free of Hazardous Materials) and shall fully comply with the composition, compaction, embankment stepping specifications and other applicable Railroad standards, as shall be approved in writing by

Railroad's Engineering Department prior to commencing the Project. As used in this Agreement, the term "Hazardous Materials" shall include, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, ballast, slag material, or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act, of 1980, as amended (42 U.S.C. § 9601, *et seq.*) ("CERCLA"), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 5101, *et seq.*), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901, *et seq.*) ("RCRA"), the Toxic Substances Control Act, as amended (15 U.S.C. §§ 2601, *et seq.*) ("TOSCA") and in the regulations adopted and publications promulgated pursuant thereto, as such laws or regulations now exist or may exist in the future.

Article 13. INSURANCE.

A. The Political Body, at its expense, shall obtain the insurance described in **Exhibit D**, hereto attached.

B. If the Political Body named in this Agreement is a public entity subject to any applicable statutory tort laws, the limits of insurance described in **Exhibit D** shall be the limits the Political Body then has in effect or which is required by applicable current or subsequent law, whichever is greater, a portion of which may be self-insured with the consent and approval of the Railroad.

C. All insurance correspondence shall be directed to:

Union Pacific Railroad Company
Attention: Manager-Contracts
Real Estate Department – Public Projects
1400 Douglas Street STOP 1690
Omaha, Nebraska 68179-1690

Article 14. MODIFICATION – ENTIRE AGREEMENT.

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by Political Body and Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by Railroad of any default by Political Body shall not affect or impair any right arising from any subsequent default. This Agreement (including the exhibits attached hereto and made a part hereof) constitutes the entire understanding between Political Body and Railroad with respect to the Project, and cancels and supersedes any prior negotiations, understandings or agreements, whether written or oral with respect thereto.

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

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

By: _____

Printed Name: _____

Title: _____

**VENTURA COUNTY WATERSHED PROTECTION
DISTRICT**

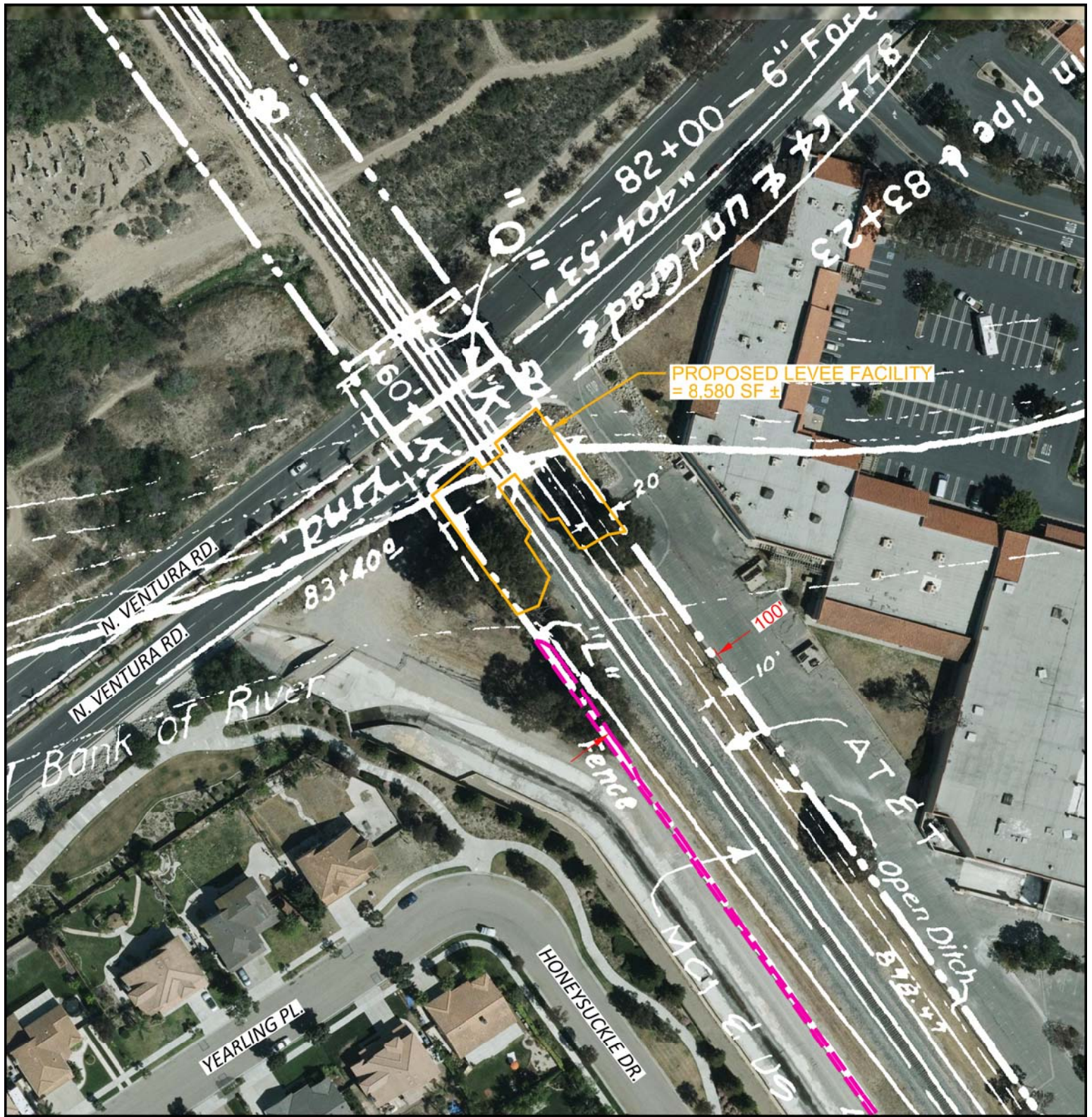
By: _____

Name: _____




Title: _____

EXHIBIT A
TO
LEVEE FACILITY AGREEMENT

Exhibit A will be a print showing the general location of the work site.



LEGEND:

- PROPOSED LEVEE FACILITY..... 
- EXISTING LEVEE FACILITY..... 
- UPRRCO. R/W OUTLINED..... 

NOTE: BEFORE YOU BEGIN ANY WORK, SEE
AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

OXNARD, VENTURA COUNTY, CA

M.P. 401.13 - SANTA BARBARA SUB.

MAP SP CA V-47 / 19

SCALE: 1" = 100'

OFFICE OF REAL ESTATE

OMAHA, NEBRASKA DATE: 1/4/2023

RRM FILE: 07863-16

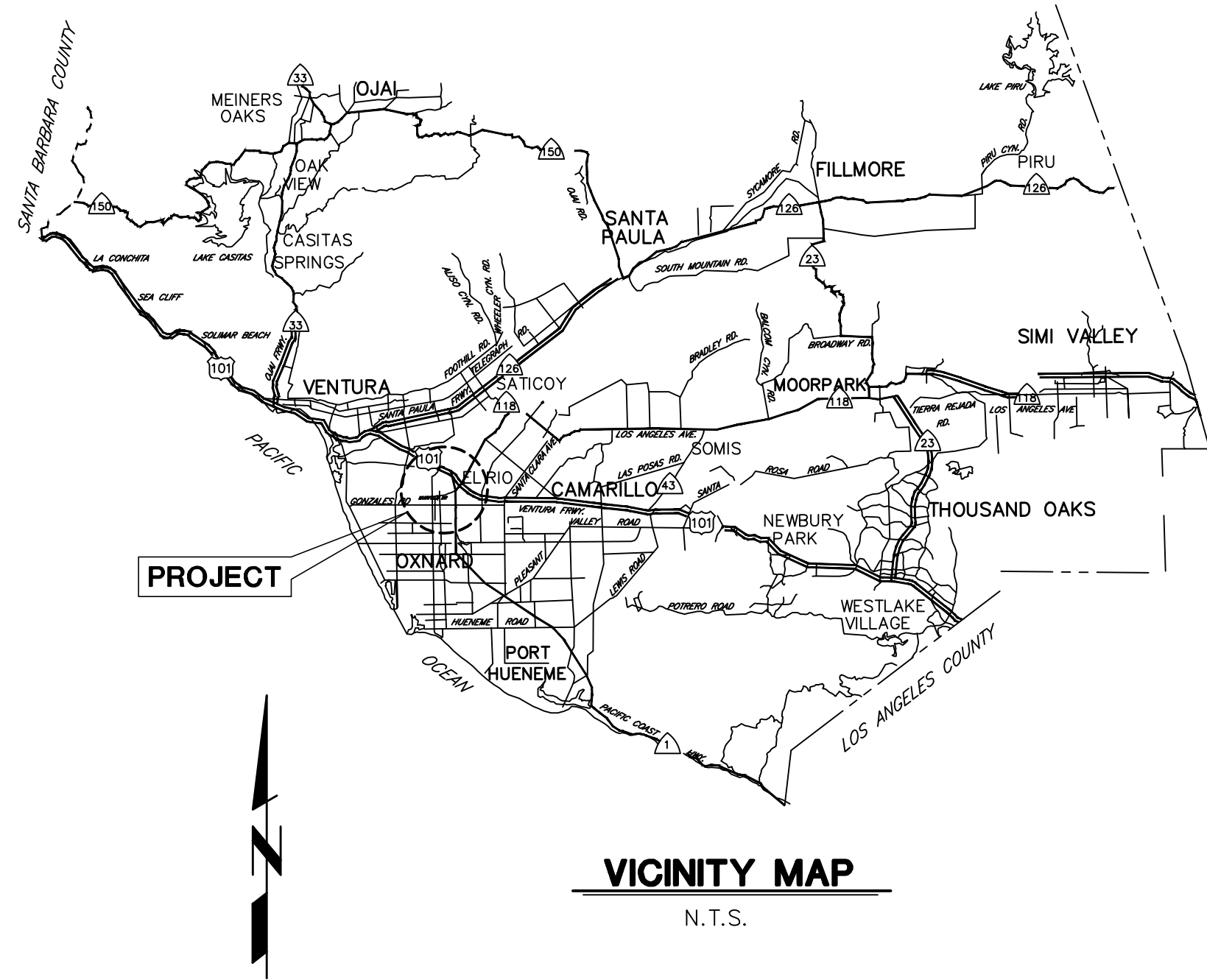
CADD
FILENAME 0786316.DGN

SCAN
FILENAME 0786316_CAV47019.TIF

EXHIBIT A-1
TO
LEVEE FACILITY AGREEMENT

Exhibit A-1 will be a print showing the general plans

VENTURA COUNTY
PUBLIC WORKS AGENCY
WATERSHED PROTECTION ZONE 2
SANTA CLARA RIVER LEVEE
DOWNSTREAM OF UPRR (SCR-3) - PHASE 2
IN THE CITY OF OXNARD



GENERAL NOTES

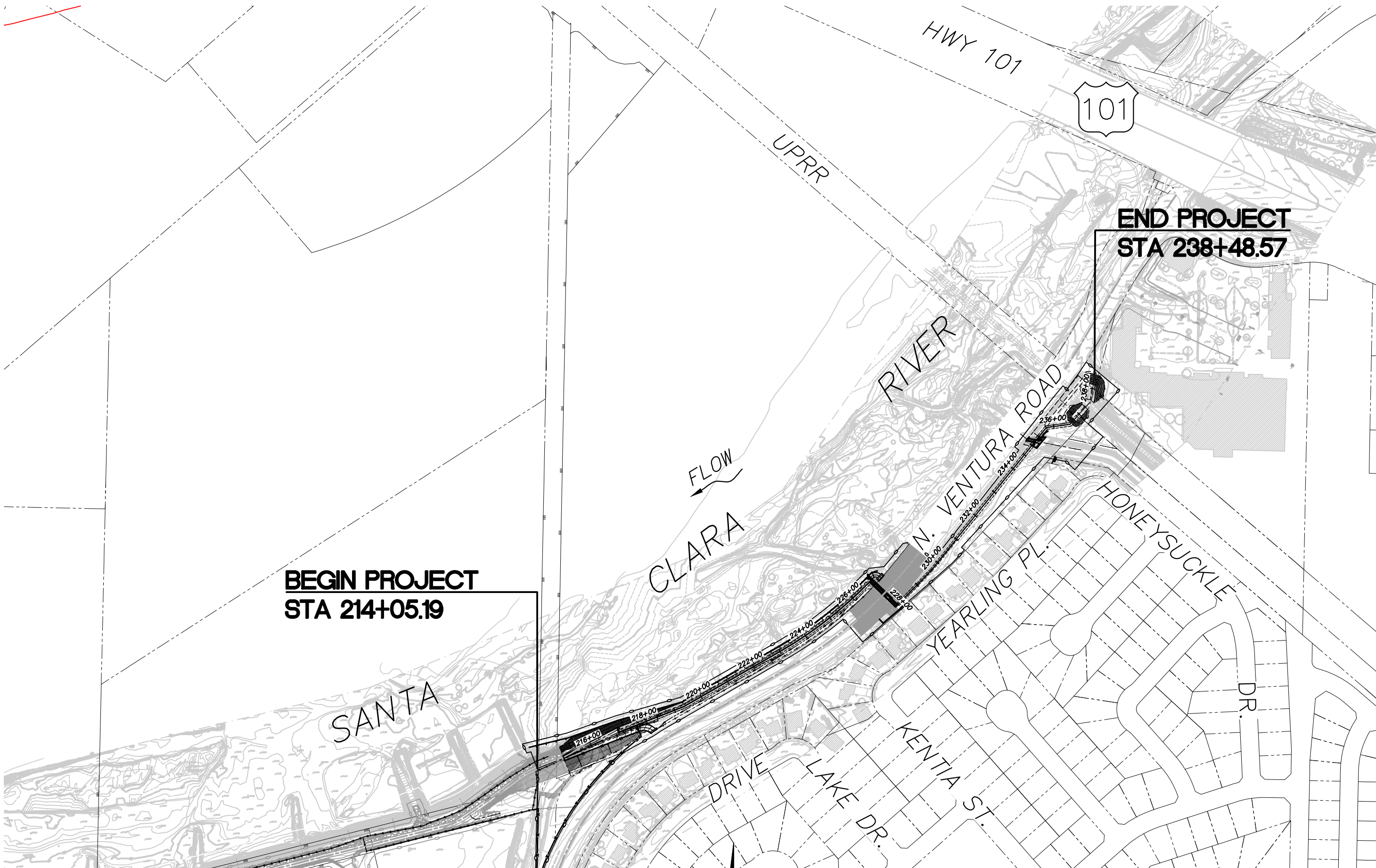
- ELEVATIONS SHOWN ARE IN US FEET, NORTH AMERICAN VERTICAL DATUM OF 1988.
- STATIONS SHOWN ON DRAWINGS ARE ALONG CENTERLINE OF STRUCTURE.
- E.G.L. AND H.G.L. ARE SHOWN FOR FUTURE REFERENCE BY THE DISTRICT ONLY.
- NUMBERS IN \diamond INDICATE BID ITEMS UNDER WHICH PAYMENT WILL BE MADE.
- LETTERS AND NUMBERS IN \ominus INDICATE THE DETAIL CALL-OUT AND SHEET ON WHICH REFERENCE DETAIL IS SHOWN.
- NUMBERS IN \triangle REFER TO NOTES ON THE SAME SHEET UNLESS OTHERWISE NOTED.
- TOPOGRAPHY AND CROSS SECTIONS FOR THIS PROJECT WERE TAKEN FROM SURVEYS PERFORMED IN 07/2013.
- SOIL TEST BORINGS FOR THE PROJECT WERE MADE IN 12/2013, 01/2014, 02/2016, AND 04/2016 AND THEIR LOCATION IS MARKED BY THE SYMBOL \bullet . SUBSURFACE SOIL INVESTIGATION RESULTS ARE FURNISHED FOR INFORMATION ONLY, IN ACCORDANCE WITH SUBSECTION 2-7 OF THE STANDARD SPECIFICATIONS, AND NO WARRANTY IS MADE THEREFOR.
- EXISTING IMPROVEMENTS WITHIN THE RIGHT OF WAY AND WORK AREAS SHALL REMAIN AND SHALL BE PROTECTED UNLESS OTHERWISE NOTED. DAMAGED IMPROVEMENTS SHALL BE REPLACED IN KIND TO A CONDITION EQUAL TO OR BETTER THAN THAT WHICH EXISTED PRIOR TO CONSTRUCTION.
- UTILITIES ARE SHOWN AS KNOWN TO EXIST AT TIME OF SURVEY. UTILITIES MAY HAVE BEEN OMITTED, MISPLACED, AND/OR RELOCATED. CONTRACTOR SHALL EXERCISE CARE IN EXCAVATION AND SHALL PROTECT ALL UTILITIES.
- SYMBOL \blacktriangle INDICATES THE LOCATION OF THE HORIZONTAL AND VERTICAL CONTROL POINTS WHICH WILL BE FURNISHED BY THE AGENCY FOR THE CONTRACTOR'S USE.
- CONTRACTOR SHALL NOTIFY UTILITY OWNERS A MINIMUM OF 48 HOURS PRIOR TO STARTING WORK IN AREAS AFFECTING THEIR FACILITIES:

CITY OF OXNARD
VENTURA REGIONAL SANITATION DISTRICT (VRSD)
RIVER RIDGE GOLF COURSE
SOUTHERN CALIFORNIA GAS COMPANY
SOUTHERN CALIFORNIA EDISON COMPANY
UNION PACIFIC RAIL AUTHORITY

TEL. NO. (805) 385-8265 ROBERT HEARNE
TEL. NO. (805) 658-4679 MATT BAUMGARDNER
TEL. NO. (805) 981-8722 OTTO KANNY
TEL. NO. (818) 701-3228 JACK RUSSO
TEL. NO. (805) 654-7472 CASEY SCHOONOVER
TEL. NO. (805) 312-6733 PHIL STEVENSON

UNDERGROUND SERVICE ALERT

1-800-422-4133
CALL USA/SC
FOR UNDERGROUND LOCATION
2 WORKING DAYS BEFORE YOU DIG



GENERAL PLAN

300 150 0 300 600
SCALE OF FEET

INDEX TO SHEETS

SHEET NO.	TITLE
1.	GENERAL PLAN
2.	SHEET INDEX
3.	FLOODWALL ALIGNMENT AND SURVEY CONTROL
4.	PLAN AND PROFILE FROM STA 214+05.19 TO STA 223+00.00
5.	PLAN AND PROFILE FROM STA 223+00.00 TO STA 231+00.00
6.	PLAN AND PROFILE FROM STA 231+00.00 TO STA 238+28.95
7.	MISCELLANEOUS RAMP PROFILES
8.	MISCELLANEOUS RAMP PROFILE
9.	FLOODBREAK BARRIER DETAILS
10.	VENTURA ROAD TRANSITION DETAILS
11.	UTILITY PLAN AND DETAILS
12.	EL RIO DRAIN RCB PLAN AND PROFILE
13.	SHEET PILE GENERAL PLAN AND PROFILE
14.	SHEET PILE PROFILE STA 10+00.00 TO STA 15+90.74
15.	SHEET PILE PROFILE STA 15+90.74 TO STA 21+81.47
16.	SHEET PILE PROFILE STA 21+81.47 TO STA 23+14.64
17.	SHEET PILE GENERAL NOTES, WALER BEAM, AND ANCHOR DETAILS
18.	SHEET PILE ANCHOR DETAILS
19.	SHEET PILE DETAILS NO. 1
20.	SHEET PILE DETAILS NO. 2
21.	SHEET PILE DETAILS NO. 3
22.	SHEET PILE ANCHOR SECTIONS
23.	SHEET PILE ANCHOR SECTION AND SCHEDULE
24.	FLOODWALL PLAN AND PROFILE STA 217+00 TO STA 236+90
25.	FLOODWALL DETAILS
26.	EL RIO DRAIN CHANNEL, RCB, AND HEADWALL SYSTEM DETAILS
27.	EL RIO DRAIN PLAN AND HEADWALL SYSTEM DETAILS
28.	TYPICAL STRUCTURAL DETAILS
29.	FLOOD GATE FOUNDATION PLAN AND SECTIONS
30.	BANK PROTECTION AND ACCESS ROAD DETAILS
31.	FENCE DETAILS
32.	ADDITIONAL OUTLET AND FLAP GATE DETAILS
33.	CROSS SECTIONS STA 215+00 TO STA 222+00
34.	CROSS SECTIONS STA 224+00 TO STA 234+00
35.	CROSS SECTIONS STA 236+00 TO STA 237+00
36.	LANDSCAPE PLAN
37.	PLANTING LEGEND, NOTES, AND DETAILS
38.	STAGE 1 TRAFFIC CONTROL
39.	STAGE 1 TRAFFIC CONTROL
40.	STAGE 2 TRAFFIC CONTROL
41.	STAGE 2 TRAFFIC CONTROL
42.	STAGE 3 TRAFFIC CONTROL
43.	STAGE 3 TRAFFIC CONTROL
44.	SOIL BORING LOG

HYDROLOGY DATA

Q ₅₀	=	161397 CFS
Q ₁₀₀	=	227000 CFS
Q _{DESIGN}	=	250000 CFS

INDEX OF STANDARD PLANS
USED BY REFERENCE

SPPWC STANDARD PLANS:
606-3 HAND RAIL TYPE A



SAVE DATE: 2/3/22 NICHOLAS.ZAMARRIPA H:\PDATA\136628\CADD\STRM\WATER\DLV\REACH 4\6628-SD-001-TITLE SHEET.DWG

REVISION	DESCRIPTION	APP.	DATE
△			

Michael Baker
INTERNATIONAL

5 Hutton Centre Drive, Suite 500
Santa Ana, CA 92707
Phone: (949) 472-3505
MBAKERINTL.COM

R.C.E. DATE

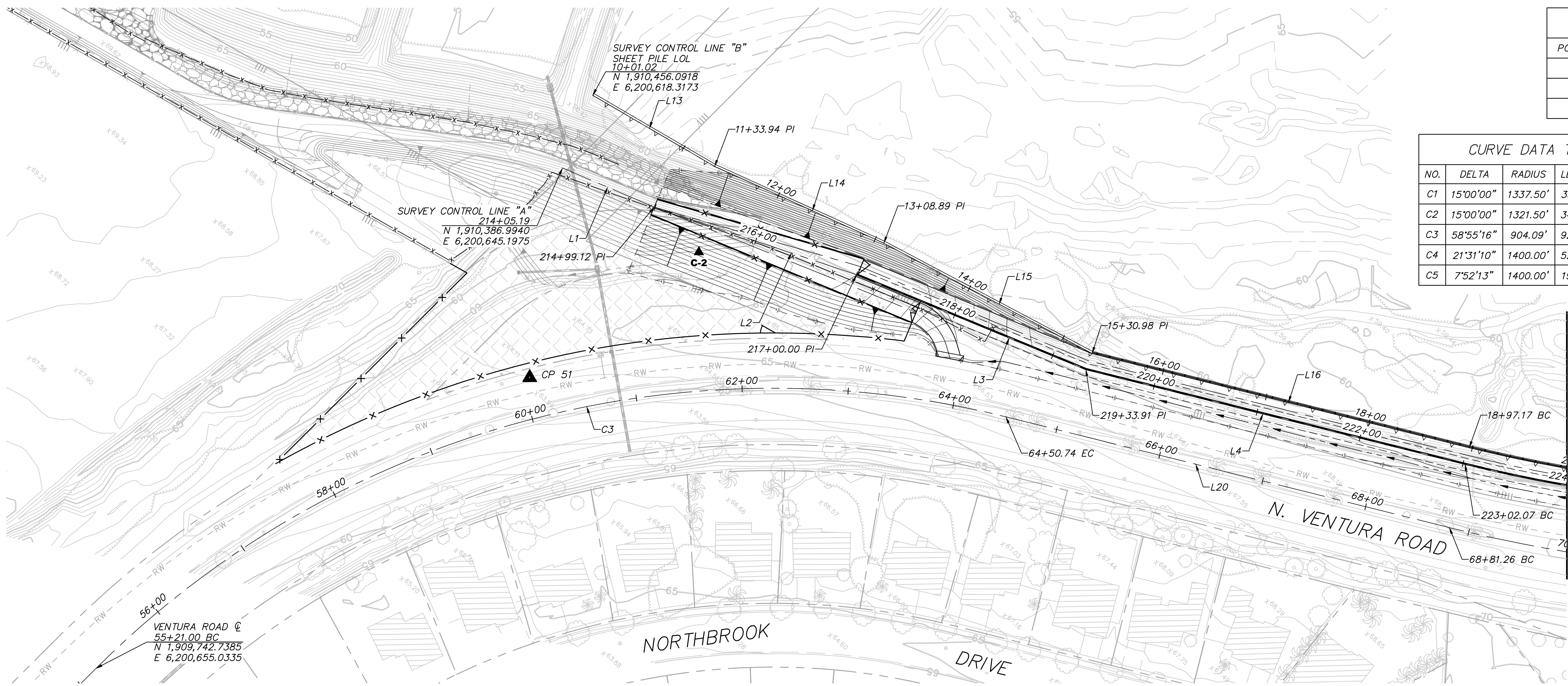
DEPUTY DIRECTOR	DATE
DISTRICT DIRECTOR	DATE
AGENCY DIRECTOR	DATE

VENTURA COUNTY
PUBLIC WORKS AGENCY
WATERSHED PROTECTION

SPEC. NO.
WP17-04
PROJ. NO.
82045

SANTA CLARA RIVER LEVEE
DOWNSTREAM OF UPRR (SCR-3) - PHASE 2
GENERAL PLAN

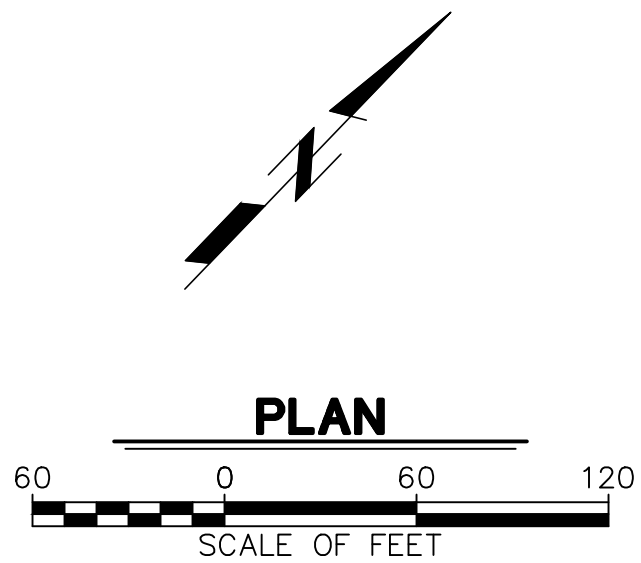
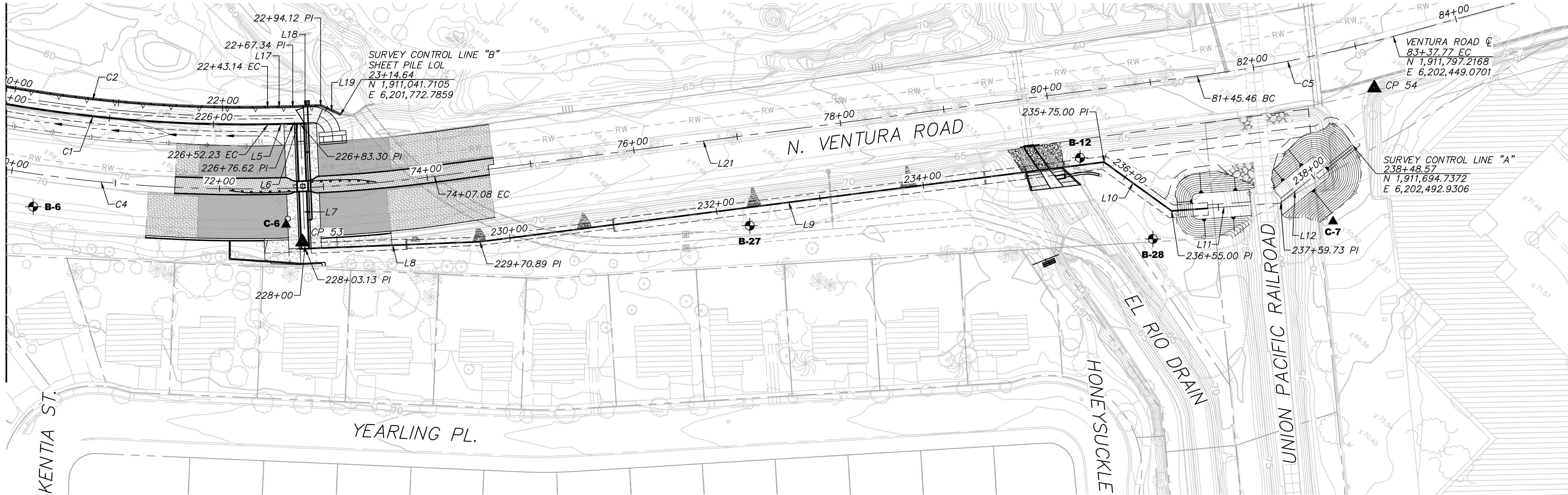
SHEET	1
OF	44
DRAWING SET NO.	--



SURVEY CONTROL POINTS				
POINT NO.	NORTHING	EASTING	ELEVATION	DESCRIPTION
CP51	1910223.3450	6200759.5620	63.750	MAG NAIL
CP53	1910929.0540	6201830.8540	69.762	MAG NAIL
CP54	1911749.0410	6202470.2190	60.994	SCRIBED

CURVE DATA TABLE					STATION	
NO.	DELTA	RADIUS	LENGTH	TANGENT	BC	EC
C1	15°00'00"	1337.50'	350.16'	176.09'	223+02.07	226+52.23
C2	15°00'00"	1321.50'	345.97'	173.98'	18+97.17	22+43.14
C3	58°55'16"	904.09'	929.74'	510.69'	55+21.00	64+50.74
C4	21°31'10"	1400.00'	525.82'	266.04'	68+81.26	74+07.08
C5	7°52'13"	1400.00'	192.31'	96.31'	81+45.46	83+37.77

LINE DATA TABLE		
NO.	BEARING	LENGTH
L1	N69°10'14"E	93.93'
L2	N64°37'45"E	200.88'
L3	N68°33'30"E	233.91'
L4	N60°08'16"E	368.17'
L5	N45°08'16"E	24.39'
L6	N43°49'08"E	6.68'
L7	S46°10'52"E	119.83'
L8	N43°49'08"E	167.76'
L9	N38°51'03"E	604.11'
L10	N81°59'41"E	80.00'
L11	N42°06'29"E	104.73'
L12	N7°06'29"E	88.84'
L13	N76°21'46"E	132.92'
L14	N70°31'26"E	174.95'
L15	N74°02'20"E	222.09'
L16	N60°08'16"E	366.19'
L17	N45°08'16"E	24.20'
L18	N43°49'08"E	26.78'
L19	N70°39'30"E	20.52'
L20	N60°08'16"E	430.52'
L21	N38°37'05"E	738.38'



DATE: 2/4/22

SAVE DATE: 2/3/22 NICHOLAS.ZAMARRIPA H:\PDATA\136628\CADD\STRM\WATER\DLV\REACH 4\6628-SD-003.DWG

REVISION	DESCRIPTION	APP.	DATE
D			
C			
B			
A			
△			

Michael Baker INTERNATIONAL
5 Hutton Centre Drive, Suite 500
Santa Ana, CA 92707
Phone: (949) 472-3505
MBAKERINTL.COM

DESIGNED	NZ
DRAWN	AL
CHECKED	

DISTRICT PROJECT MANAGER	DATE
DEPUTY DIRECTOR	DATE
DISTRICT DIRECTOR	DATE

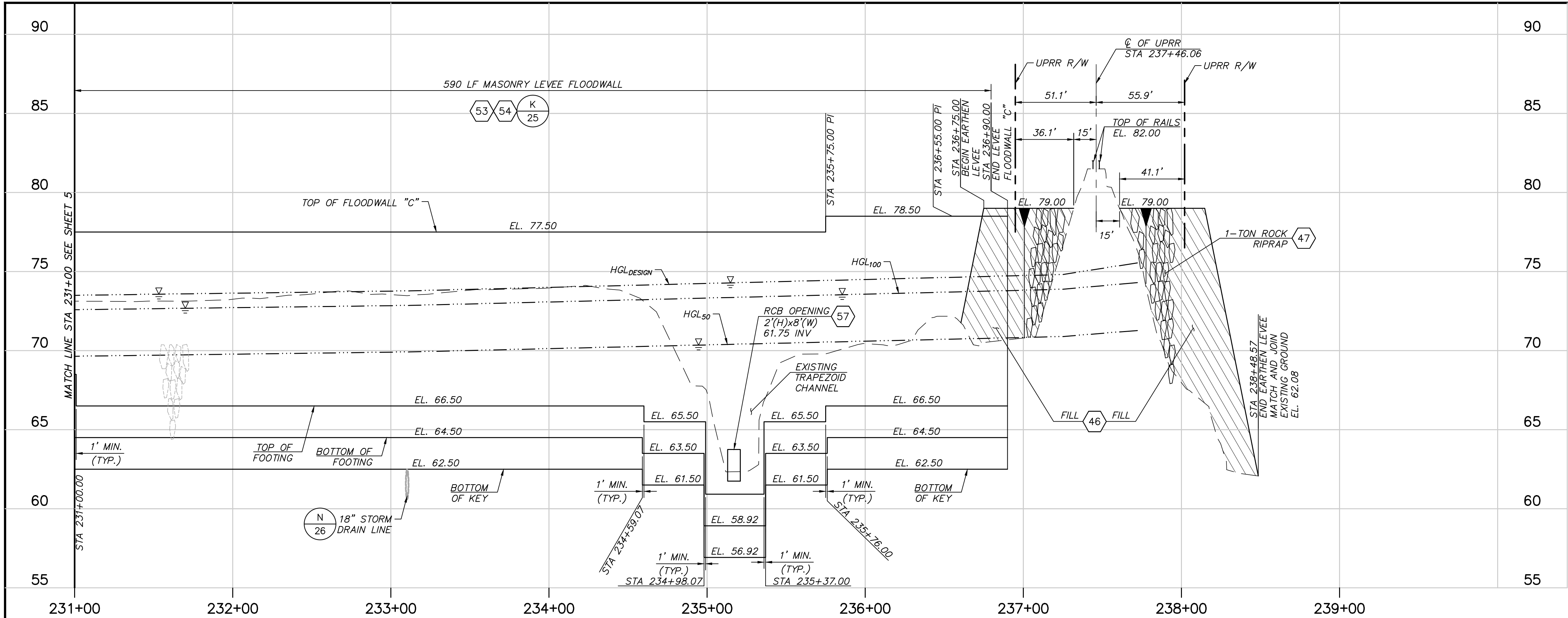
**VENTURA COUNTY
PUBLIC WORKS AGENCY
WATERSHED PROTECTION**

SPEC. NO.	WP17-04
PROJ. NO.	82045

**SANTA CLARA RIVER LEVEE
DOWNSTREAM OF UPRR (SCR-3) - PHASE 2**
FLOODWALL ALIGNMENT AND SURVEY CONTROL

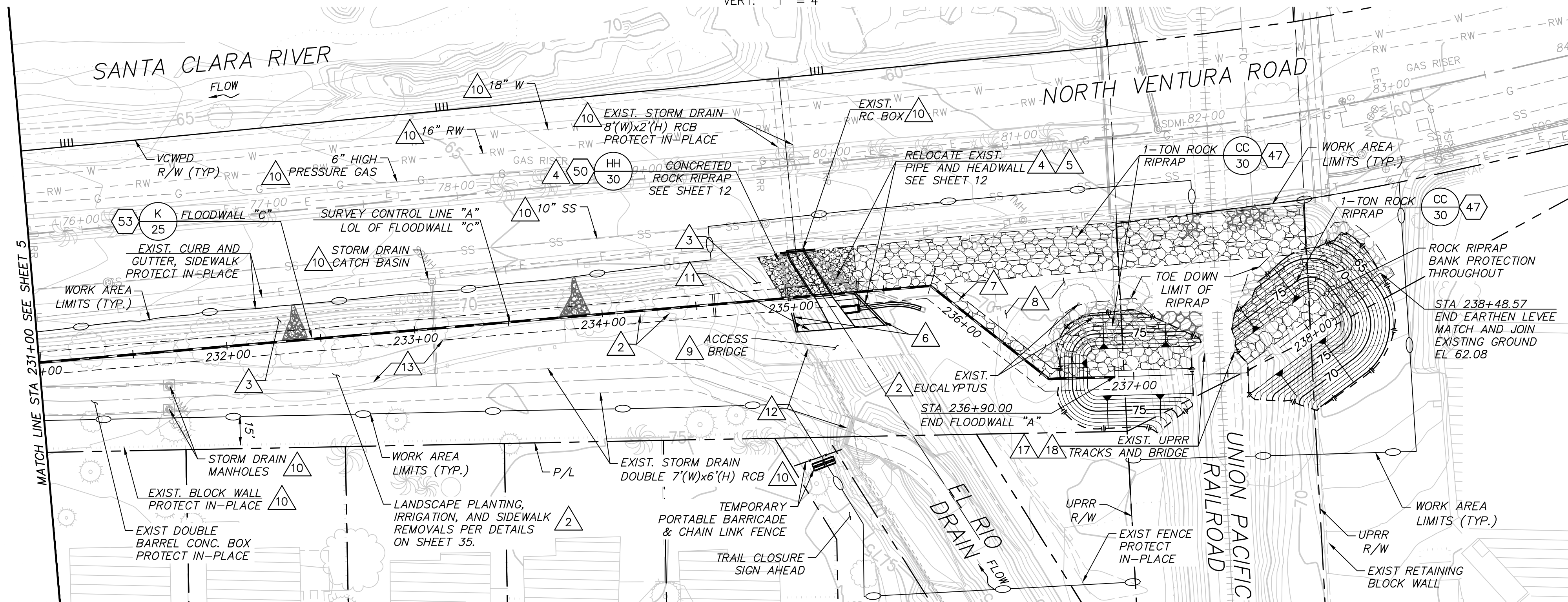
SHEET	3
OF	44
DRAWING SET NO.	--





PROFILE

SCALE: HORZ: 1" = 40'
VERT: 1" = 4'



PLAN

SCALE OF FEET
40 0 40 80

NOTES:

- WORK AREA LIMITS SHALL BE STAKED WITH VISIBLE FLAGGING AND ALL EQUIPMENT SHALL BE OPERATED WITHIN THE WORK AREA LIMITS.
- ALL EXISTING VEGETATION, TREES, DOWNED TREES, STUMPS, LOGS, BUSHES, SHRUBS, WILLOWS, GIANT REEDS, EUCALYPTUS, OLIVES, PALMS, PEPPER, ETC. WITHIN THE WORK AREA LIMITS, SHALL BE REMOVED TO MINIMUM 3-FT BELOW GRADE AND DISPOSED OF AT AN APPROVED OFFSITE LOCATION.
- CONTRACTOR SHALL PROTECT THE EXISTING CONCRETED ROCK RIPRAP IN-PLACE. DAMAGED OR REMOVED ROCK RIPRAP SHALL BE PLACED IN-KIND OR BETTER TO THE SATISFACTION OF THE PROJECT ENGINEER.
- CONTRACTOR SHALL SAWCUT, REMOVE AND DISPOSE EXISTING CONCRETE CHANNEL INVERT, BANK, STORM DRAIN PIPE HEADWALL, STEEL TUBE FENCE, AND CHAIN LINK FENCE. THE EXISTING CONCRETE CATCH BASIN AND HEADWALL AT VENTURA ROAD SHALL BE REMOVED TO THE LIMITS SHOWN ON SHEET 12.
- CONSTRUCT CONCRETE CHANNEL AND HEADWALL.
- INSTALL 5-FT HIGH CHAIN LINK FENCE WITH TOP RAIL.
- PLACE 5-FT WIDE BY 4-FT THICK 1-TON ROCK RIPRAP PAD AT BASE OF LEVEE FLOODWALL.
- REMOVE EXISTING BOULDERS AND ROCKS.
- CONTRACTOR SHALL PROTECT THE EXISTING ACCESS BRIDGE IN-PLACE. ANY DAMAGE SHALL BE REPAIRED IN-KIND OR BETTER TO THE SATISFACTION OF THE PROJECT ENGINEER.
- PROTECT ALL EXISTING FACILITIES IN-PLACE WITHIN THE WORK AREA LIMITS UNLESS OTHERWISE NOTED ON THE PLANS.
- REMOVE AND DISPOSE EXISTING WROUGHT IRON FENCE DOWNSTREAM OF THE BRIDGE.
- CONTRACTOR SHALL PROTECT THE EXISTING FENCE AND GATE IN-PLACE. DAMAGED OR REMOVED FENCE AND GATE SHALL BE REPLACED IN-KIND OR BETTER TO THE SATISFACTION OF THE PROJECT ENGINEER.
- REMOVE AND DISPOSE EXISTING CONCRETE WALK PATH.
- REMOVE AND DISPOSE INTERFERING CONC. ROCK RIPRAP THROUGHOUT THE FLOODWALL.
- CONSTRUCT 1/4-TON CONCRETED ROCK RIPRAP ON VENTURA ROAD SIDE OF THE FLOODWALL BETWEEN EXISTING CONC. ROCK RIPRAP AND FLOODWALL FROM STA 228+00 TO STA 235+36.
- CONTRACTOR SHALL MEET ALL THE UPRR REQUIREMENTS WHEN WORKING WITHIN THE UPRR RIGHT-OF-WAY.
- PROTECT EXISTING RAILROAD TRACKS AND BRIDGE IN-PLACE. BRIDGE MEMBERS MUST REMAIN VISIBLE AT ALL TIMES FOR INSPECTIONS. LOADING OF ANY BRIDGE MEMBERS IS NOT PERMITTED. PLACEMENT OF NEW ROCK RIPRAP SHALL MATCH AND JOIN THE EXISTING ROCK AND EMBANKMENT SLOPE AT THE SATISFACTION OF THE FIELD ENGINEER.
- A MINIMUM OF 15-FEET OF SEPARATION BETWEEN THE CENTER OF THE UPRR TRACKS AND PROPOSED IMPROVEMENTS SHALL BE MAINTAINED AT ALL TIMES. CONSTRUCTION PERSONNEL AND EQUIPMENT SHALL NOT CROSS OVER THE TRACKS AT ANY TIME.

DATE: 2/4/22

SAVE DATE: 2/4/22 NICHOLAS.ZAMARRIPA H:\PDATA\136628\CADD\STRM\WATER\DLV\REACH 4\6628-SD-006.DWG

REVISION	DESCRIPTION	APP.	DATE
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C			
B			
A			
△			

Michael Baker
INTERNATIONAL

5 Hutton Centre Drive, Suite 500
Santa Ana, CA 92707
Phone: (949) 472-3505
MBAKERINTL.COM

DESIGNED	NZ
DRAWN	AL
CHECKED	

DISTRICT PROJECT MANAGER	DATE
DEPUTY DIRECTOR	DATE
DISTRICT DIRECTOR	DATE

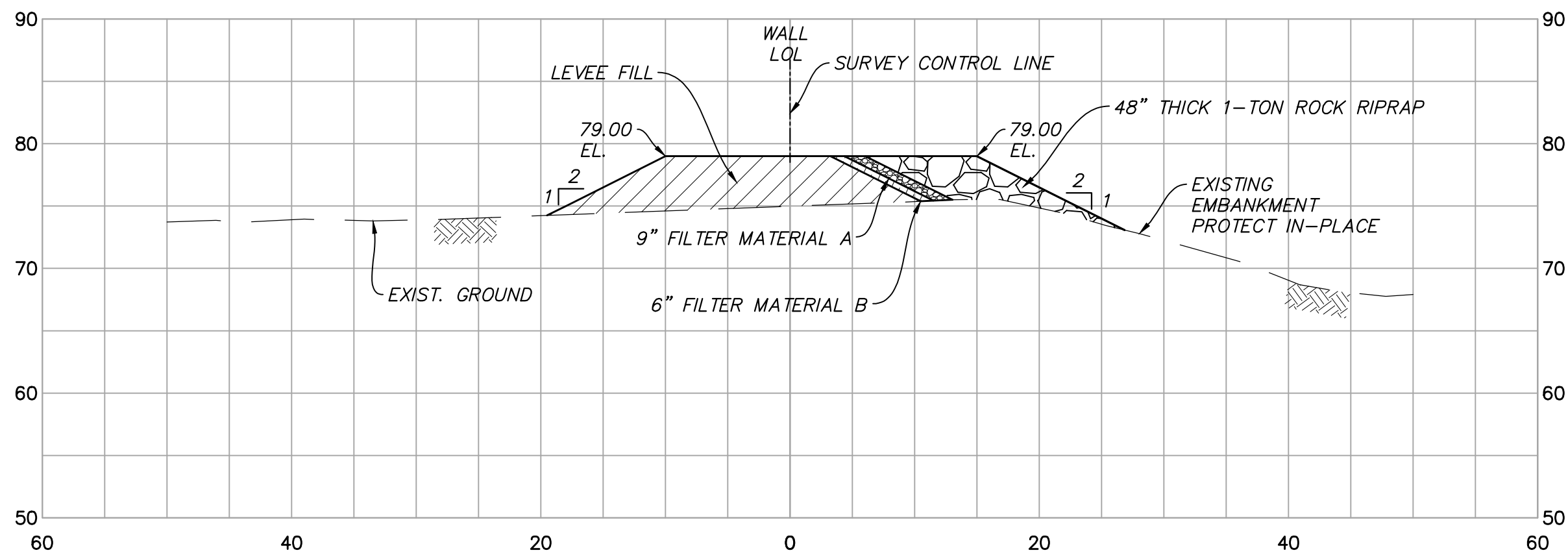
VENTURA COUNTY
PUBLIC WORKS AGENCY
WATERSHED PROTECTION

SPEC. NO.	WP17-04
PROJ. NO.	82045

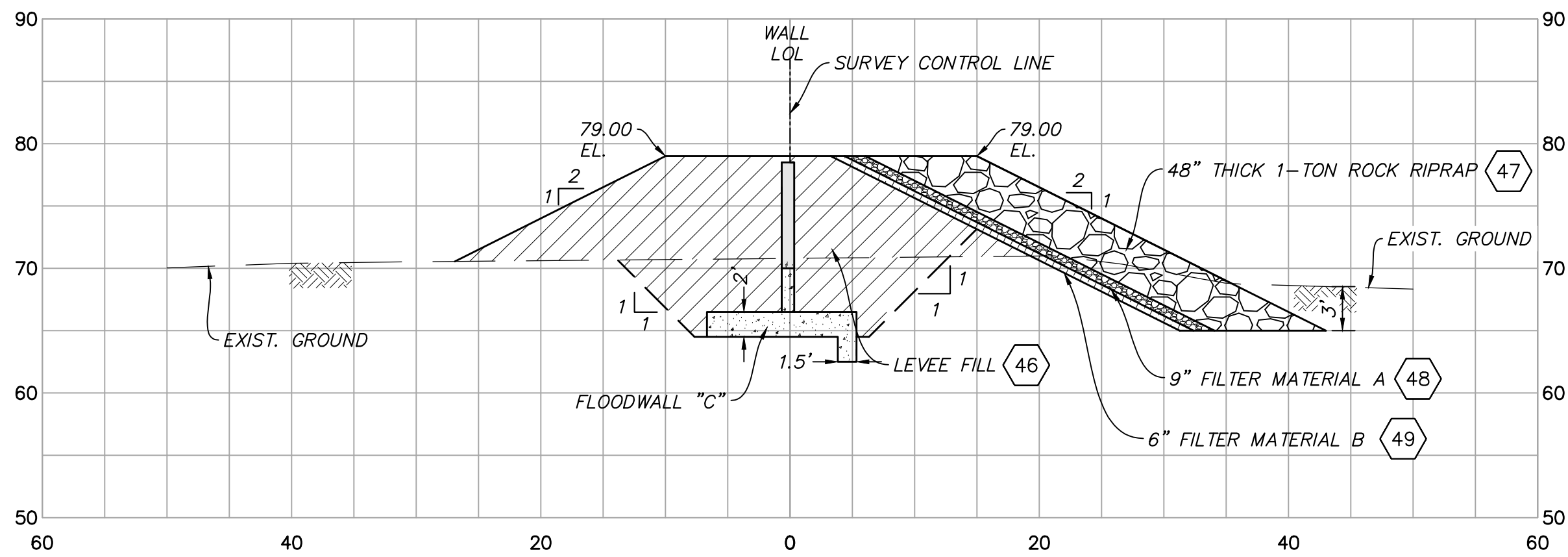
SANTA CLARA RIVER LEVEE
DOWNSTREAM OF UPRR (SCR-3) - PHASE 2
PLAN AND PROFILE STA 231+00.00 TO STA 238+28.95

SHEET	6
OF	44
DRAWING SET NO.	--

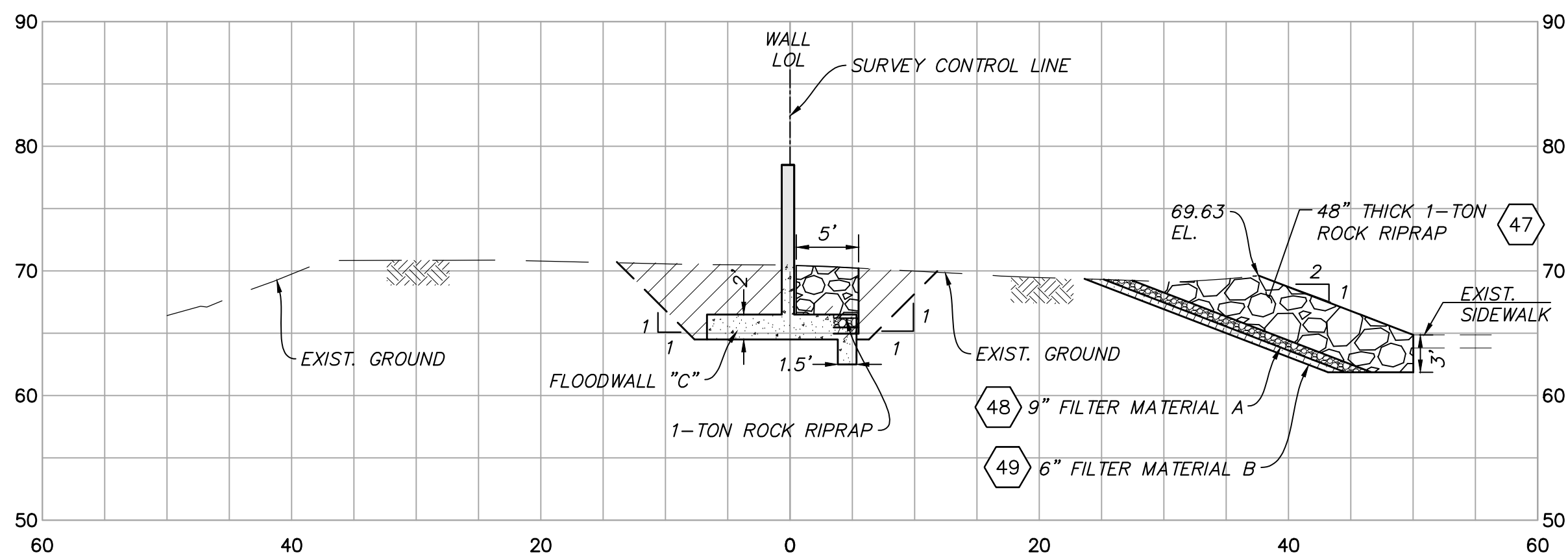




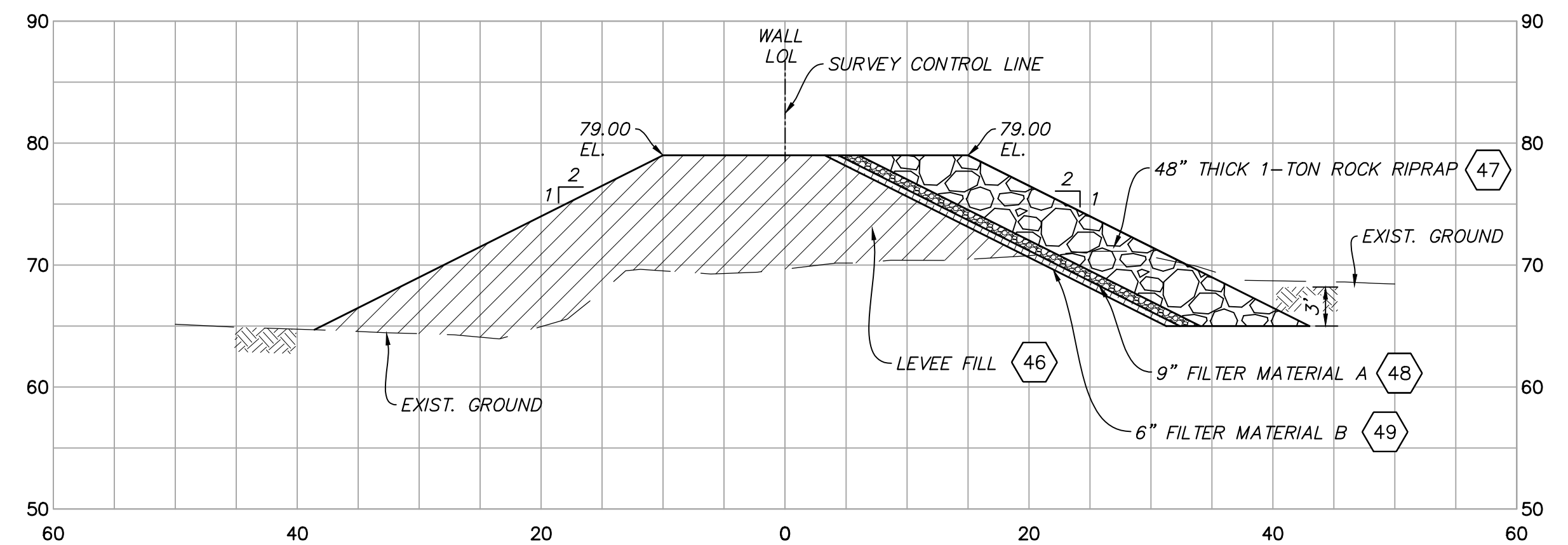
STA. 237+20



STA. 237+00
TYPICAL PAY SECTION



STA. 236+00
TYPICAL PAY SECTION



STA. 237+90
TYPICAL PAY SECTION

CROSS SECTIONS

SCALE: HORZ: 1" = 10'
 VERT: 1" = 10'

COUNTY OF VENTURA
PUBLIC WORKS AGENCY
WATERSHED PROTECTION DISTRICT

SANTA CLARA RIVER LEVEE
DOWNSTREAM OF UPRR (SCR-3) - PHASE 2
CROSS SECTIONS STA 236+00 TO STA STA 237+00

SHEET 35
OF 44
DRAWING NO. --



PGT DATE: 2/4/22

SAVE DATE: 2/4/22 BEATRICE.MWONGA H:\PDATA\136628\CADD\STRMWATER\DLV\REACH 4\6628-SD-035.DWG

REVISION	DESCRIPTION	APP.	DATE
D			
C			
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Michael Baker INTERNATIONAL	5 Hutton Centre Drive, Suite 500 Santa Ana, CA 92707 Phone: (949) 472-3505 mbakerintl.com
R.C.E.	DATE

NZ	PROJECT MANAGER	DATE
NZ, EC	DEPUTY DIRECTOR	DATE
AL	DISTRICT DIRECTOR	DATE
CHECKED		

EXHIBIT B
GENERAL TERMS AND CONDITIONS

Section 1. 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, 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 Political Body 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 Political Body 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. It shall be Political Body's sole obligation to obtain such additional permission, license and grants necessary on account of any such existing rights.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

- a) The Political Body shall submit the design of the Levee Facility to the Railroad for Railroad's prior approval. All work performed on property of the Railroad in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Levee Facility shall be done to the satisfaction of the Railroad and in substantial conformance to the specifications.
- b) The Political Body, at its sole expense, shall operate, maintain and use the Levee Facility in a good and safe condition and shall keep the Levee Facility free and clear of debris, sediment or obstructive matter which may or could interfere with or impede the proper functioning of the Levee Facility.
- c) The Political Body shall not cross any trackage of Railroad with any vehicles except at existing, open public crossings. The Levee Facility shall be installed by an approved method of construction, or if by the jacking and boring method, during jacking operations, the Political Body agrees to fill voids created between the embankment and pipe by pressure grouting. The Political Body shall provide adequate barrier protection around the entire excavation area.
- d) During the performance of excavating, constructing and maintaining the Levee Facility, or any part thereof, the Political Body shall not excavate near the toe of the track embankment of the trackbed and will protect the trackbed in the design, construction and maintenance of the Levee Facility. In the event of any settlement of the Railroad's embankment caused by excavation of the

Levee Facility, the Political Body, at its sole expense, shall restore Railroad's embankment to its proper grade and dimensions.

e) Prior to the commencement of any work in connection with the construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Levee Facility where it passes underneath the roadbed and track or tracks of the Railroad, the Political Body shall submit to the Railroad plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Railroad's operations, and shall not proceed with the work until such plans have been approved by the Vice President-Engineering Design of the Railroad and then the work shall be done to the satisfaction of the Manager of Track Maintenance or his authorized representative. The Railroad shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Levee Facility, and, in the event the Railroad provides such support, the Political Body shall pay to the Railroad, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by the Railroad in connection therewith, which expenses shall include all assignable costs.

Section 3. NOTICE OF COMMENCEMENT OF WORK.

a) If an emergency should arise requiring immediate attention, the Political Body shall provide as much notice as practicable to Railroad before commencing any work by calling the Response Management Communication Center at (888) 877-7267. In all other situations, the Political Body shall notify the Railroad at least ten (10) days (or such other time as the Railroad may allow) in advance of the commencement of any work upon property of the Railroad in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion. The Political Body will coordinate its initial, and any subsequent work with the following employee of Railroad or his or her duly authorized representative (hereinafter "Railroad Representative" or "Railroad Representative"):

Nick Vineyard
909-222-5659
nvineyard@benesch.com

Javier Sanchez
805-249-0959
jrsanche@up.com

b) Political Body, at its own expense, shall adequately police and supervise all work to be performed. The responsibility of Political Body for safe conduct and adequate policing and supervision of work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Political Body with any requests or recommendations made by the Railroad Representative.

c) At the request of Railroad, Political Body shall remove from Railroad's property any employee who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property. Political Body shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

d) Political Body shall notify the Railroad Representative at least ten (10) working days in advance of proposed performance of any work in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of 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 Political Body whether a flagman need be present and whether any special protective or safety measures need to be implemented. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Political Body for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Political Body, Political Body shall pay such bills within thirty (30) days of receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Political Body agrees that Political Body is not relieved of any of responsibilities or liabilities set forth in this Agreement.

e) The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between 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, Political Body (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

f) Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman 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 the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Political Body may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Political Body must provide 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, Political Body 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 Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

g) Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Political Body or its contractor. Political Body shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Political Body and its contractor shall at a minimum comply with Railroad's then current safety standards located at http://www.up.com/cs/groups/public/@uprr/@suppliers/documents/up_pdf_nativedocs/pdf_up_supplier_safety_req.pdf to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Political Body's safety responsibilities, Political Body shall notify Railroad if it determines that any of Railroad's safety standards are contrary to good safety practices. Political Body and its contractor shall furnish copies of each of its employees before they enter the job site.

h) Without limitation of the provisions of paragraph G above, Political Body shall keep the job site free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the job.

i) Political Body 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. Prompt notification shall be given to Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Political Body shall have a non-delegable duty to control its employees while they are on the job site or any other property of 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.

j) If and when requested by Railroad, Political Body shall deliver to Railroad a copy of its safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Political Body 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 4. POLITICAL BODY TO BEAR ENTIRE EXPENSE.

The Political Body shall bear the entire cost and expense incurred in connection with the construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Levee Facility, including any and all expense which may be incurred by the Railroad in connection therewith for inspection, flagging, or otherwise.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF LEVEE FACILITY.

a) The license herein granted is subject to the needs and requirements of the Railroad in the safe and efficient operation of its railroad and in the improvement and use of its property, and the Political Body shall, at the sole expense of the Political Body, reinforce or otherwise modify the Levee Facility, or move all or any portion of the Levee Facility to such new location, or remove

the Levee Facility from Railroad's property, as the Railroad may designate, whenever, in the furtherance of its needs and requirements, the Railroad shall find such action necessary or desirable.

b) All the terms, conditions and stipulations herein expressed with reference to the Levee Facility on property of the Railroad in the location hereinbefore described shall, so far as the Levee Facility remains on the property, apply to the Levee Facility as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH RAILROAD'S OPERATION.

a) The Drainage Facilities and all parts thereof within and outside of the limits of the property of the Railroad shall be designed, constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Railroad, and nothing shall be done or suffered to be done by the Political Body at any time that would in any manner impair the safety thereof.

b) Explosives or other highly flammable substances shall not be stored on Railroad's property without the prior written approval of Railroad.

c) No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Railroad or its contractors without the prior written permission of Railroad.

d) When not in use, any machinery and materials of Political Body or its contractors shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track.

e) Operations of Railroad and work performed by Railroad's personnel may cause delays in the work to be performed by Political Body. Political Body accepts this risk and agrees that Railroad shall have no liability to Political Body or any other person or entity for any such delays. Political Body shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad's train movements and other activities by Railroad take precedence over any work to be performed by Political Body.

Section 7. 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. Political Body shall visit up.com/CBUD to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the Political Body. If it is, Political Body will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Political Body's expense, and will commence no work on the Railroad's property until all such protection or relocation has been accomplished. Political Body shall indemnify 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 or caused in any way by Political Body's failure to comply with the provisions of this paragraph.

b) IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE POLITICAL BODY SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, 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) CAUSED BY THE NEGLIGENCE OF THE POLITICAL BODY, ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES, RESULTING IN (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, EXCEPT IF SUCH COSTS, LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF THE RAILROAD. POLITICAL BODY FURTHER AGREES THAT IT 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 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

a) The Political Body shall fully pay for all materials joined or affixed to and labor performed upon property of the Railroad in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Levee Facility, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Political Body. The Political Body shall indemnify and hold harmless the Railroad against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

b) The Political Body shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Levee Facility, to prevent the same from becoming a charge or lien upon property of the Railroad, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Levee Facility or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Political Body's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Political Body but shall be included in the assessment of the property of the Railroad, then the Political Body shall pay to the Railroad an equitable proportion of such taxes determined by the value of the Political Body's property upon property of the Railroad as compared with the entire value of such property.

Section 9. RESTORATION OF RAILROAD'S PROPERTY.

In the event the Railroad authorizes the Political Body 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 construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Levee Facility, then in that event the Political Body shall, as soon as possible and at Political Body'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 Political Body 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, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the taking down of any fence or the moving or disturbance of any other property of the Railroad.

Section 10. INDEMNITY.

a) As used in this Section, "Railroad" includes other railroad companies using the Railroad's property at or near the location of the Political Body's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, 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 Political Body's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Political Body'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, TO THE FULLEST EXTENT PERMITTED BY LAW, THE POLITICAL BODY SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE RAILROAD FROM ANY LOSS OF ANY KIND, NATURE OR DESCRIPTION ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE LEVEE FACILITY OR ANY PART THEREOF;

2. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE;

3. THE PRESENCE, OPERATION, OR USE OF THE LEVEE FACILITY OR CONTENTS ESCAPING THEREFROM;

4. THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR CONTRIBUTED TO BY POLITICAL BODY;

5. ANY ACT OR OMISSION OF POLITICAL BODY OR POLITICAL BODY'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER; OR

6. POLITICAL BODY'S BREACH OF THIS AGREEMENT,

EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT AND ACTIVE NEGLIGENCE OF THE RAILROAD, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, RAILROAD'S NEGLIGENCE.

c) Upon written notice from Railroad, Political Body agrees to assume the defense of any lawsuit of proceeding brought against any indemnitee by any entity, relating to any matter covered by this License for which Political Body has an obligation to assume liability for and/or save and hold harmless any indemnitee. Political Body shall pay all costs incident to such defense, including, but not limited to, reasonable attorney's fees, investigators' fees, litigation and appeal expenses, settlement payments and amounts paid in satisfaction of judgments.

Section 11. REMOVAL OF THE LEVEE FACILITY UPON TERMINATION OF AGREEMENT.

Prior to the termination of this Agreement howsoever, the Political Body shall, at Political Body's sole expense, remove the Levee Facility from those portions of the property not occupied by the roadbed and track or tracks of the Railroad and shall restore, to the satisfaction of the Railroad, such portions of such property to as good a condition as they were in at the time of the construction of the Levee Facility. If the Political Body fails to do the foregoing, the Railroad may, but is not obligated, to perform such work of removal and restoration at the cost and expense of the Political Body. In the event of the removal by the Railroad of the property of the Political Body and of the restoration of the roadbed and property as herein provided, the Railroad shall in no manner be liable to the Political Body for any damage sustained by the Political Body for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Railroad may have against the Political Body.

Section 12. 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 Political Body shall in no way impair the right of the Railroad to avail itself of any remedy for any subsequent breach thereof.

Section 13. AGREEMENT NOT TO BE ASSIGNED.

The Political Body shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Railroad, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Railroad, shall terminate this Agreement.

Section 14. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 13 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

Section 15. SEVERABILITY.

Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

EXHIBIT C

ESTIMATE OF FORCE ACCOUNT WORK BY THE UNION PACIFIC RAILROAD COMPANY

DESCRIPTION OF WORK: Engineering and other related services for work to be performed within railroad right of way. This includes project and construction management during construction activities in railroad right of way. All necessary railroad services will be billed at actual cost.

DATE:

7/28/2022

LOCATION:

Oxnard/Ventura County

DOT: N/A

SUBDIVISION

Santa Barbara

STATE:

CA

DESCRIPTION	LABOR	MATERIAL	UP %0	Agency % 100	TOTAL
ENGINEERING					
Project Management	\$ 15,000	\$ -	\$ -	\$ 5,000.00	\$ 15,000
Construction Submittals	\$ 15,000	\$ -	\$ -	\$ 5,000.00	\$ 15,000
Construction Management	\$ 15,000	\$ -	\$ -	\$ 5,000.00	\$ 15,000
Final Inspection	\$ 5,000	\$ -	\$ -	\$ 5,000.00	\$ 5,000
TOTAL PROJECT:	\$ 50,000	\$ -	\$ -	\$ 20,000.00	\$50,000

TOTAL ESTIMATED COST:

\$50,000

**THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION.
IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF
MATERIAL OR LABOR REQUIRED, THE RAILROAD WILL BILL FOR ACTUAL
COSTS AT THE CURRENT RATES EFFECTIVE THEREOF.**

Flagging may be performed by a third-party contractor. Any flagging performed by a third-party contractor will be billed at said third-party contractor rate not included in the above estimate. Alternatively, the Agency may enter into a separate agreement with third-party contractor and will be responsible for all actual costs incurred.

EXHIBIT D
Insurance Requirements

Political Body shall, at its sole cost and expense, (except for Railroad Protective Liability Insurance required in Paragraph D), procure and maintain in effect during the term of this Agreement the following insurance coverage. Political Body shall procure and maintain, or cause to be procured and maintained by its contractor, at its sole cost and expense, Railroad Protective Liability Insurance coverage described in Paragraph D during any period of construction, maintenance, repair or reconstruction work.

A. Commercial General Liability insurance. Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. 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 \$2,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired, and now-owned autos).

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 Railroad Company Property” as the Designated Job Site.

- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

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

Political Body’s and/or Political Body's contractor's statutory liability under the workers' compensation laws of the state 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 Political Body, and/or Political Body's contractor, is 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. 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 Political Body, and/or Political Body's contractor, utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

Other Requirements

F. All policy(ies) required above (except business automobile, worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsement CG 20 26 (or substitute form(s) providing equivalent coverage). The coverage provided to Railroad as additional insured shall not be limited by Political Body's liability under the indemnity provisions of this Agreement. BOTH POLITICAL BODY AND RAILROAD EXPECT THAT UNION PACIFIC RAILROAD COMPANY WILL BE PROVIDED WITH THE BROADEST POSSIBLE COVERAGE AVAILABLE BY OPERATION OF LAW UNDER ISO ADDITIONAL INSURED FORM CG 20 26.

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. Political Body waives all rights against Railroad and its agents, officers, directors and employees, where permitted by law, for recovery of damages to the extent these damages are covered by the workers compensation and employers liability or commercial umbrella/excess liability insurance obtained by Political Body required by this Agreement, which must be stated on the certificate of insurance.

I. Prior to commencing any work, Political Body, and/or Political Body's contractor, shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

J. All insurance policies must be written by a reputable insurance company with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state in which the Utility is located.

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

**EXHIBIT E
TO
LEVEE FACILITY AGREEMENT**

**CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT**

THIS AGREEMENT is made and entered into as of the _____ day of _____, 20_____, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and _____, a _____ corporation ("Contractor").

RECITALS:

Contractor has been hired by _____ to perform work relating to _____ (the "Work") with all or a portion of such Work to be performed on property of Railroad in the vicinity of Railroad's Milepost _____ on Railroad's _____ [Subdivision or Branch] [at or near DOT No. _____] located at or near _____, in _____ County, State of _____, as such location is in the general location shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof, which Work is the subject of a contract dated _____ between Railroad and _____.

Railroad is willing to permit Contractor to perform the Work described above at the location described above subject to the terms and conditions contained in this agreement

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between Railroad and Contractor, as follows:

ARTICLE 1 - DEFINITION OF CONTRACTOR.

For purposes of this agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. For purposes of clarity, Contractor agrees that any CIC (defined below) hired by Contractor is a subcontractor of Contractor and therefore included in the defined term Contractor pursuant to the foregoing sentence.

ARTICLE 2 - RIGHT GRANTED: PURPOSE.

Railroad hereby grants to 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 property described in the Recitals for the purpose of performing the Work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B AND C.

The terms and conditions contained in **Exhibit B** and **Exhibit C**, attached hereto, are hereby made a part of this agreement.

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

A. Contractor shall bear any and all costs and expenses associated with any Work performed by Contractor (including without limitation any CIC), or any costs or expenses incurred by Railroad relating to this agreement.

B. Contractor shall coordinate all of its Work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

C. Contractor, at its own expense, shall adequately police and supervise all Work to be performed by Contractor and shall ensure that such Work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's Work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the Work, or by Railroad's collaboration in performance of any Work, or by the presence at the Work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.

The Contractor, at its expense, shall provide on a monthly basis a detailed schedule of Work to the Railroad Representative named in Article 4B above. The reports shall start at the execution of this agreement and continue until this agreement is terminated as provided in this agreement or until the Contractor has completed all Work on Railroad's property.

ARTICLE 6 - TERM: TERMINATION.

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

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

ARTICLE 7 - CERTIFICATE OF INSURANCE.

A. Before commencing any Work and throughout the entire term of this Agreement, Contractor, at its expense, shall procure and maintain in full force and effect the types and minimum limits of insurance specified in **Exhibit C** of this agreement and require each of its subcontractors to include the insurance endorsements as required under Section 12 of **Exhibit B** of this agreement.

B. Not more frequently than once every two (2) years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

C. Upon request of Railroad, Contractor shall provide to Railroad a certificate issued by its insurance

carrier evidencing the insurance coverage required under **Exhibit B**.

D. Contractor understands and accepts that the terms of this Article are wholly separate from and independent of the terms of any indemnity provisions contained in this Agreement.

E. Upon request of Railroad, insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

Union Pacific Railroad Company

[Insert mailing address]

Attn: _____
Project No. 0786316

ARTICLE 8 - PRECONSTRUCTION MEETING

If the Work to be performed by the Contractor will involve the Railroad providing any flagging protection (or if a CIC is approved to provide flagging protection pursuant to the terms set forth herein) and/or there is separate work to be performed by the Railroad, the Contractor confirms that no work shall commence until the Railroad and Contractor participate in a preconstruction meeting involving flagging procedures and coordination of work activities of the Contractor and the Railroad (and any CIC, as applicable.)

ARTICLE 9. DISMISSAL OF CONTRACTOR'S EMPLOYEE

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the Work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

ARTICLE 10. ADMINISTRATIVE FEE

Upon the execution and delivery of this agreement, Contractor shall pay to Railroad One Thousand Twenty Five Dollars (\$1,025.00) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this agreement.

ARTICLE 11. CROSSINGS: COMPLIANCE WITH MUTCD AND FRA GUIDELINES

A. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications, negligence, or any other reason arising from the Contractor's presence on the Railroad's property, the Contractor agrees to assume liability for any civil penalties imposed upon the Railroad for such noncompliance.

ARTICLE 12.- EXPLOSIVES.

Explosives or other highly flammable substances shall not be stored or used on Railroad's property without the prior written approval of Railroad.

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

UNION PACIFIC RAILROAD COMPANY

By: _____

Title: _____

(Name of Contractor)

By: _____

Name: _____

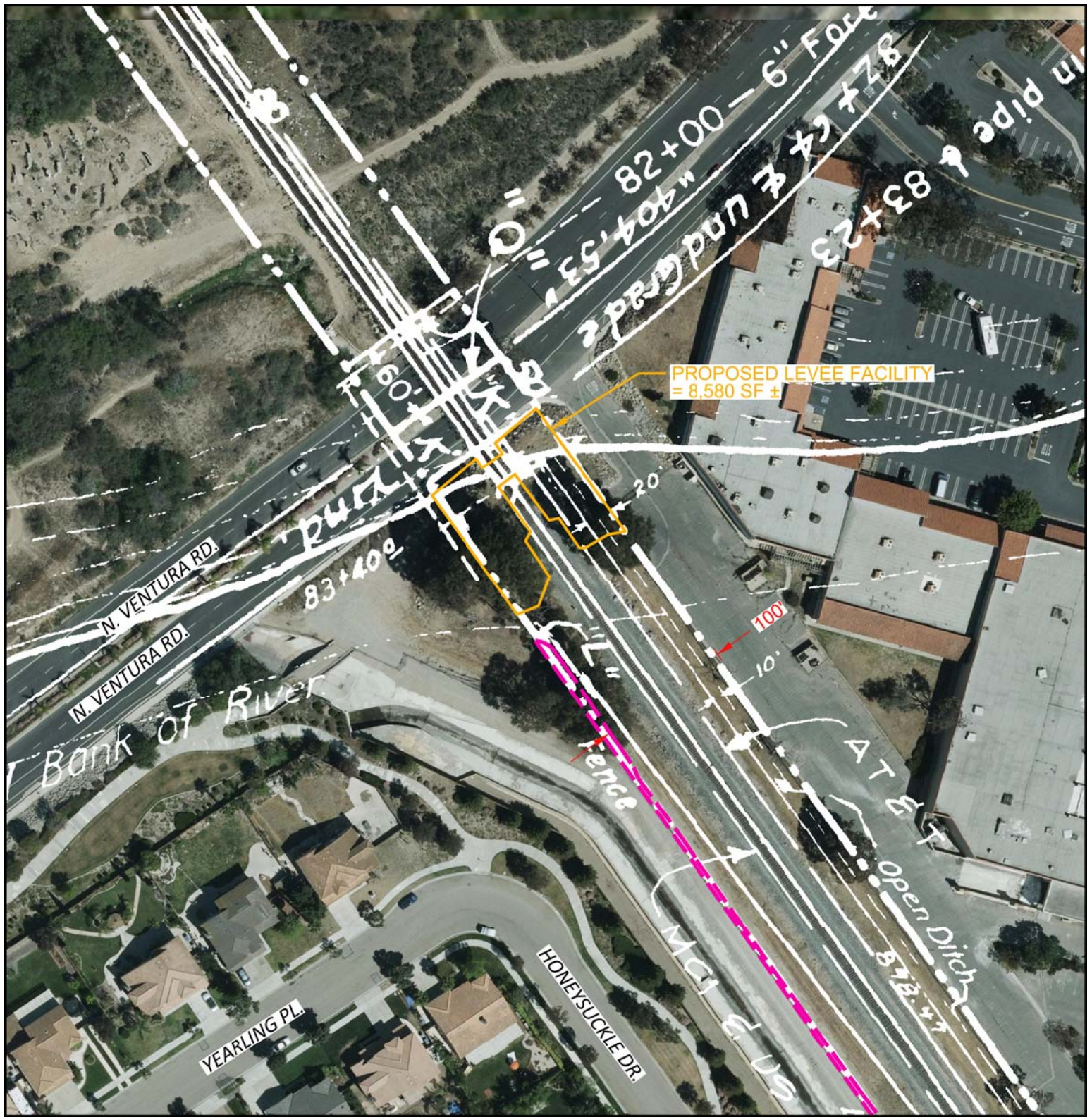
Title: _____

Phone: _____




E-Mail: _____

EXHIBIT A
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Exhibit A will be a print showing the general location of the work site.



LEGEND:

- PROPOSED LEVEE FACILITY..... 
- EXISTING LEVEE FACILITY..... 
- UPRRCO. R/W OUTLINED..... 

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

OXNARD, VENTURA COUNTY, CA

M.P. 401.13 - SANTA BARBARA SUB.

MAP SP CA V-47 / 19

SCALE: 1" = 100'

OFFICE OF REAL ESTATE

OMAHA, NEBRASKA DATE: 1/4/2023

RRM FILE: 07863-16

CADD
FILENAME 0786316.DGN

SCAN
FILENAME 0786316_CAV47019.TIF

EXHIBIT B
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK - RAILROAD FLAGGING - PRIVATE FLAGGING.

A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its Work and at least thirty (30) working days in advance of proposed performance of any Work by 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.

B. 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 approved flagman is provided to watch for trains. Upon receipt of such thirty (30)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures.

C. Contractor shall be permitted to hire a private contractor to perform flagging or other special protective or safety measures (such private contractor being commonly known in the railroad industry as a contractor-in-charge ("CIC")) in lieu of Railroad providing such services or in concert with Railroad providing such services, subject to prior written approval by Railroad, which approval shall be in Railroad's sole and absolute discretion. If Railroad agrees to permit Contractor to utilize a CIC pursuant to the preceding sentence, Contractor shall obtain Railroad's prior approval in writing for each of the following items, as determined in all respects in Railroad's sole and absolute discretion: (i) the identity of the third-party performing the role of CIC; (ii) the scope of the services to be performed for the project by the approved CIC; and (iii) any other terms and conditions governing such services to be provided by the CIC. If flagging or other special protective or safety measures are performed by an approved CIC, Contractor shall be solely responsible for (and shall timely pay such CIC for) its services. Railroad reserves the right to rescind any approval pursuant to this Section 1, Subsection C., in whole or in part, at any time, as determined in Railroad's sole and absolute discretion.

D. If any flagging or other special protective or safety measures are performed by employees of Railroad and/or any contractor of Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing.

E. If any flagging or other special protective or safety measures are performed by Railroad or a CIC, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this agreement.

F. The provisions set forth in this subsection are only applicable for Flagging Services performed by employees of Railroad: the rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with labor agreements and schedules in effect at the time the Work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the Work is performed. One and one-half times the current hourly rate is

paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between 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, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges. If flagging is performed by Railroad, reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman 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 the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide 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, 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 thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five-day cessation notice has been given to 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 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 Railroad without liability to Contractor or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (whether recorded or unrecorded and including those in favor of licensees and lessees of Railroad's property, and others) and the right of 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. 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 Railroad, including without limitation, the operations of 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 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 twenty-five (25) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.

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

Section 4. LIENS.

Contractor shall pay in full all persons who perform labor or provide materials for the Work to be performed by Contractor. 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 Railroad for any such Work performed. Contractor shall indemnify and hold harmless 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 Contractor fails to promptly cause any lien to be released of record, 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 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 visit www.up.com/CBUD to complete and submit the required form to determine if fiber optic cable is buried anywhere on Railroad's property to be used by 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. 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, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD 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 CONTRACTOR, ITS 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, 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 any Work on Railroad property performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the Work. Contractor shall, at a minimum, comply with Railroad's then current safety standards located at the below web address ("Railroad's Safety Standards") to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor

determines that any of Railroad's Safety Standards are contrary to good safety practices. Contractor shall furnish copies of Railroad's Safety Standards to each of its employees before they enter Railroad property.

http://www.up.com/cs/groups/public/@uprr/@suppliers/documents/up_pdf_nativedocs/pdf_up_supplier_safety_req.pdf

B. Without limitation of the provisions of paragraph A above, 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. 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. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of 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 Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the Work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require 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 FULLEST EXTENT ALLOWED BY APPLICABLE LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS RAILROAD, ITS AFFILIATES, AND ITS AND THEIR OFFICERS, AGENTS AND EMPLOYEES (INDIVIDUALLY AN "INDEMNIFIED PARTY" OR COLLECTIVELY "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, CONTRACTOR, OR ANY EMPLOYEE OF CONTRACTOR OR OF ANY INDEMNIFIED PARTY) ARISING OUT OF OR IN ANY MANNER CONNECTED WITH (I) ANY WORK PERFORMED BY CONTRACTOR, OR (II) ANY ACT OR OMISSION OF CONTRACTOR, ITS OFFICERS, AGENTS OR EMPLOYEES, OR (III) ANY BREACH OF THIS AGREEMENT BY 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. CONTRACTOR EXPRESSLY AND SPECIFICALLY ASSUMES POTENTIAL LIABILITY UNDER THIS SECTION 8 FOR CLAIMS OR ACTIONS BROUGHT BY CONTRACTOR'S OWN EMPLOYEES. CONTRACTOR WAIVES ANY IMMUNITY IT MAY HAVE UNDER WORKER'S COMPENSATION OR INDUSTRIAL INSURANCE ACTS TO INDEMNIFY THE INDEMNIFIED PARTIES 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 CONTRACTOR IN ANY ATTEMPT TO ASSERT LIABILITY AGAINST ANY INDEMNIFIED PARTY.

E. THE PROVISIONS OF THIS SECTION 8 SHALL SURVIVE THE COMPLETION OF ANY WORK PERFORMED BY 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 CONTRACTOR MAY HAVE TO ANY INDEMNIFIED PARTY BY STATUTE OR UNDER COMMON LAW.

Section 9. RESTORATION OF PROPERTY.

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

Section 12. ASSIGNMENT - SUBCONTRACTING.

Contractor shall not assign or subcontract this agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any Work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" on the subcontractor's Commercial General Liability policy and Umbrella or Excess policies (if applicable) with respect to all liabilities arising out of the subcontractor's performance of Work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 10, and CG 20 37 (or substitute forms providing equivalent coverage; (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

EXHIBIT C
TO
CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT

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

During the entire term of this Agreement and course of the Project, and until all Project Work on Railroad's property has been completed and all equipment and materials have been removed from Railroad's property and Railroad's property has been clean and restored to Railroad's satisfaction, Contractor shall, at its sole cost and expense, procure and maintain the following insurance coverage:

- A. Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than \$5,000,000 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.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

- B. Business Automobile Coverage** insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

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.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

- C. Workers' Compensation and Employers' Liability** insurance. Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state where the Work is being performed.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is 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. Contractor must maintain "Railroad Protective Liability" (RPL) 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. The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this agreement and shall describe all WORK or OPERATIONS performed under this agreement. Contractor shall provide this agreement to Contractor's insurance agent(s) and/or broker(s) and Contractor shall instruct such agent(s) and/or broker(s) to procure the insurance coverage required by this agreement. A BINDER STATING THE POLICY IS IN PLACE MUST BE SUBMITTED TO RAILROAD BEFORE THE WORK MAY COMMENCE AND UNTIL THE ORIGINAL POLICY IS FORWARDED TO UNION PACIFIC RAILROAD.

- E. **Umbrella or Excess** insurance. If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.
- F. **Pollution Liability** insurance. Pollution liability coverage must be included when the scope of the Work as defined in the agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

If required, coverage may be provided in separate policy form or by endorsement to Contractors CGL or RPL. Any form coverage must be equivalent to that provided in ISO form CG 24 15 "Limited Pollution Liability Extension Endorsement" or CG 28 31 "Pollution Exclusion Amendment" with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of Work as defined in this agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

Other Requirements

- G. All policy(ies) required above (except business automobile, worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 10, and CG 20 37 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall not be limited by Contractor's liability under the indemnity provisions of this agreement. BOTH CONTRACTOR AND RAILROAD EXPECT THAT UNION PACIFIC RAILROAD COMPANY WILL BE PROVIDED WITH THE BROADEST POSSIBLE COVERAGE AVAILABLE BY OPERATION OF LAW UNDER ISO ADDITIONAL INSURED FORMS CG 20 10 AND CG 20 37.
- H. 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.
- I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Contractor required in this agreement where prohibited by law. This waiver must be stated on the certificate of insurance.
- J. Prior to commencing the Work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this agreement.

- K.** 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- and Class VII or better, and authorized to do business in the state where the Work is being performed.
- L.** The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will 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 from Contractor or any third party will not be limited by the amount of the required insurance coverage.