

RESOLUTION NO. 21-2013

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE THE SUPPLEMENTAL AGREEMENT WITH THE UNION PACIFIC RAILROAD COMPANY FOR THE RECONSTRUCTION OF THE EBRITE STREET AT-GRADE PUBLIC CROSSING AS PART OF THE QUIET ZONE PROJECT.

WHEREAS, at the pre-meeting on November 5, 2012, City Council directed staff to proceed with a project with Union Pacific Railroad Company (“UPRR”) to implement a quiet zone (the “Quiet Zone”) to include keeping the Ebrite Street at-grade public crossing open; and

WHEREAS, to implement the Quiet Zone, it is necessary to make various improvements to the Ebrite Street at-grade crossing for the safety of the public; and

WHEREAS, the Supplemental Agreement, attached hereto as Exhibit “A,” which supplements the April 5, 1971 agreement with UPRR, covers construction of the required improvements at Ebrite Street to implement the Quiet Zone (collectively the “Signal Improvements”); and

WHEREAS, UPRR policy requires public entities to execute a project agreement for all actual labor and equipment upgrade costs associated with the implementation of a quiet zone; and

WHEREAS, the Signal Improvements, which include the installation of automatic flashing light crossing signals with gates at the Ebrite Street at-grade public crossing, are necessary to preserve or protect the public health or safety of the residents of the City of Mesquite; and

WHEREAS, the Ebrite Street at-grade public crossing is located within a UPRR right-of-way; and

WHEREAS, the UPRR has total authority over and control of all construction, operations and maintenance within its rights-of-way.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the City Council hereby approves the Supplemental Agreement with the Union Pacific Railroad Company, attached hereto as Exhibit “A,” (“Agreement”) for the reconstruction of the Ebrite Street at-grade public crossing as part of the Quiet Zone project.


SECTION 2. That the City Council hereby finds that the reconstruction of the Ebrite Street at-grade public crossing as more fully set forth in the Agreement including, without limitation, the Signal Improvements is necessary to preserve or protect the public health or safety

of the residents of the City of Mesquite and accordingly, expenditures pursuant to the Agreement are authorized without competitive bidding pursuant to §252.022(a)(2) of the Texas Local Government Code.


SECTION 3. That the City Council further finds that expenditures made pursuant to the Agreement are authorized without competitive bidding pursuant to §252.022(a)(7) of the Texas Local Government Code.

SECTION 4. That the City Manager is hereby authorized and directed to execute the Agreement and the City Secretary is hereby authorized and directed to attest said Agreement and to attach to each duplicate original of said Agreement a certified copy of this resolution.


DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 5th day of August, 2013.



John Monaco
Mayor

ATTEST:


Sonja Land
City Secretary

APPROVED:


B. J. Smith
City Attorney



UPRR Folder No.: 2791-12

UPRR Audit No.: TC27146

SUPPLEMENTAL AGREEMENT

15th THIS SUPPLEMENTAL AGREEMENT (the "Second Supplement") is made as of the 15th day of August, 2013, by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Railroad") and the CITY OF MESQUITE, a Texas municipal corporation ("City").

RECITALS:

By instrument dated April 5, 1971, The Texas and Pacific Railway Company and the City of Mesquite entered into an agreement identified as the Railroad's Folder No. 2791-12, UPRR Audit No. TC27146 (the "Original Agreement") covering the reconstruction, maintenance and use of the existing Ebrite Street at-grade public road crossing, (DOT No. 794-825Y), located at Railroad Mile Post 202.27 on its Mineola Subdivision in Mesquite, Dallas County, Texas (the "Roadway").

The Railroad named herein is successor in interest to the The Texas and Pacific Railway Company.

The Railroad and the City now wish to enter into this Supplement providing for signal improvements and establishing a quiet zone.

AGREEMENT:

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

SECTION 1 - WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO CITY; CITY'S PAYMENT OF BILLS

- A. The work to be performed by the Railroad, at the City's sole cost and expense, is described in the Railroad's Signal Material and Force Account Estimate dated February 28, 2013, marked **Exhibit B**, 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 \$275,514.00.
- B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the City in the event the City 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 City acknowledges that the Estimate does not include any estimate of flagging or other protective service costs that are to be paid by the City 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 City or the Contractor as determined by the Railroad and the City. If it is determined that the Railroad will be billing the Contractor directly for such costs, the City 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 City 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.

SECTION 2 - EFFECTIVE DATE

This Supplemental Agreement shall be effective as of the date herein written.

SECTION 4- ADMINISTRATIVE HANDLING CHARGE

The City, when returning this executed agreement, shall furnish payment to the Railroad, an administrative handling charge of **FIVE HUNDRED DOLLARS (\$500.00)**.

SECTION 5 - AGREEMENT SUPPLEMENTAL

This agreement is supplemental to the Basic Agreement, as herein amended, and nothing herein contained shall be construed as amending or modifying the same except as herein specifically provided.

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

UNION PACIFIC RAILROAD COMPANY
(Federal Tax ID No. 94-6001323)

By 
DANIEL A. LEIS
General Director Real Estate


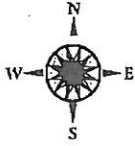
CITY OF MESQUITE
By 
Printed Name: Ted Barron
Title: City Manager

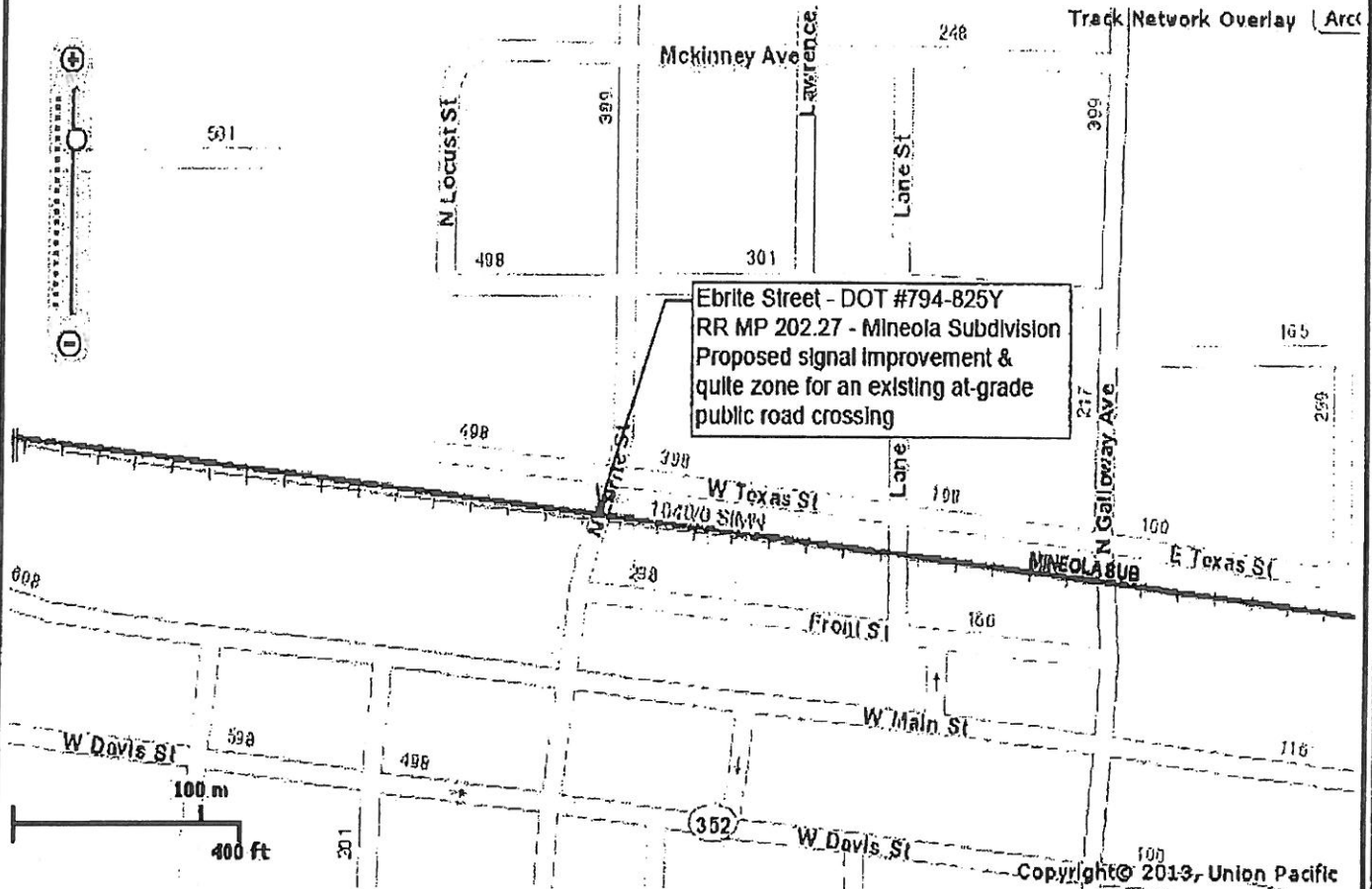
EXHIBIT A

To Supplemental Agreement

Cover Sheet for the
Railroad Location Print



RAILROAD LOCATION PRINT OF AN EXISTING AT-GRADE PUBLIC ROAD CROSSING SIGNAL IMPROVEMENT & QUIET ZONE PROJECT



RAILROAD WORK TO BE PERFORMED:

1. Install automatic flashing light crossing signals with gates.
2. Engineering Design & Flagging.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

MINEOLA SUBDIVISION
RAILROAD MILE POST 202.27
GPS: N 32° 46.0552', W 96° 36.1294'
MESQUITE, DALLAS CO., TX.

To accompany an agreement with the
CITY OF MESQUITE
covering a signal improvement and quiet zone project.

Folder No. 2791-12

Date: March 11, 2013

WARNING

IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE
OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE
PHONE: 1-(800) 336-9193

EXHIBIT B

To Supplemental Agreement

Cover Sheet for the
Railroad's Signal Material & Force Account Estimate

DATE: 2013-02-28

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK
 BY THE
 UNION PACIFIC RAILROAD

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2013-08-29

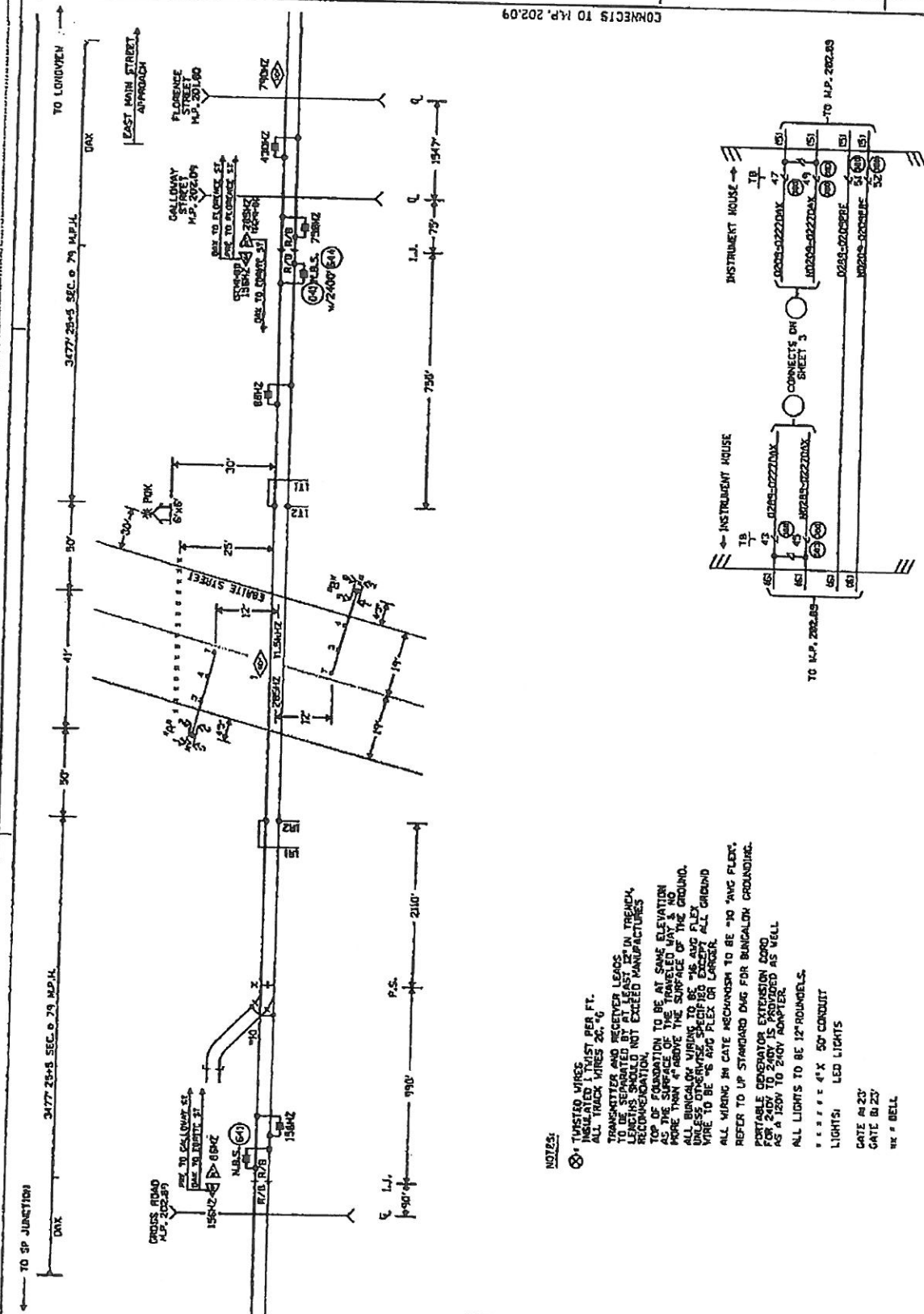
DESCRIPTION OF WORK:

INSTALL AUTOMATIC FLASHING LIGHT CROSSING SIGNALS
 WITH GATES AT MESQUITE, TX. BBRITE ST. N.P. 202.27
 ON THE MINEOLA SUB. DOT #794825X
 WORK TO BE PERFORMED BY RAILROAD WITH EXPENSE AS BELOW:
 SIGNAL - CITY OF MESQUITE - 100%
 ESTIMATED USING FEDERAL ADDITIVES WITH INDIRECT AND
 OVERHEAD CONSTRUCTION COST'S - 176.51%

RID: 81512 AWO: 17907 MP,SUBDIV: 202.27, MINEOLA
 SERVICE UNIT: 11 CITY: EAST MESQUITE STATE: TX

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
ENGINEERING WORK							
ENGINEERING			4386		4386		4386
LABOR ADDITIVE 176.51%			16204		16204		16204
SIG-WHY XNG			4821		4821		4821
TOTAL ENGINEERING			25411		25411		25411
SIGNAL WORK							
BILL PREP		900			900		900
CONTINGENCIES			25046		25046		25046
CONTRACT			6074		6074		6074
LABOR ADDITIVE 176.51%		77211			77211		77211
MATL STORE EXPENSE			21		21		21
METER SERVICE			1500		1500		1500
PERSONAL EXPENSES			21000		21000		21000
ROCK/GRAVEL/FILL			100		100		100
SIGNAL	42843		60742		103585		103585
TRANSP/IB/OB/RCLM CONTR			9940		9940		9940
WZT CONTROL			4725		4725		4725
ENVIRONMENTAL - PERMITS			1		1		1
TOTAL SIGNAL			120954	129149	250103		250103
LABOR/MATERIAL EXPENSE			146365	129149			
RECOLLECTIBLE/UPRR EXPENSE					275514	0	
ESTIMATED PROJECT COST							275514

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, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.

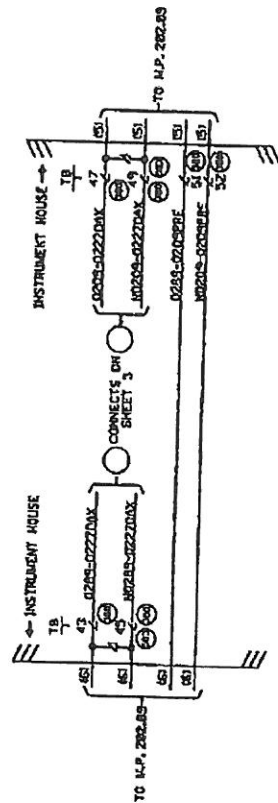


CONNECTS TO M.P. 202.09

CONNECTS TO M.P. 202.69

NOTES:

- ⊗ TWISTED WIRES INSULATED 1 TWIST PER FT. ALL TRACK WIRES 26.4°
- TRANSMITTER AND RECEIVER LEADS TO BE SEPARATED BY AT LEAST 12" IN TRENCH, AND NOT RECOMMENDED TO EXCEED MANUFACTURER'S TOP OF FOUNDATION TO BE AT SAME ELEVATION AS THE SURFACE OF THE TRENCH, AND MORE THAN 4" ABOVE THE SURFACE OF THE GROUND.
- ALL BUNGALOW WIRING TO BE "AS AVG FLEX WIRE" UNLESS OTHERWISE SPECIFIED EXCEPT ALL GROUND WIRE TO BE "AS AVG FLEX OR LARGER.
- ALL WIRING IN GATE RECOMMEND TO BE "AVG FLEX". REFER TO UP STANDARD DNG FOR BUNGALOW GROUNDING.
- PORTABLE GENERATOR EXTENSION CORD FOR 240V TO 240V IS PROVIDED AS WELL AS A 120V TO 240V ADAPTER.
- ALL LIGHTS TO BE 12" ROUND BULBS.
- ***** 4" X 50' CONDUIT
- LIGHTS: LED LIGHTS
- GATE IN 23'
- GATE IN 23'
- WE # BELL



CABLE TABULATION

CABLE # 7E 14 U.C.B.T. HOUSE TO M.P. 202.69
 CABLE # 7E 14 U.C.B.T. HOUSE TO M.P. 202.09

UNION PACIFIC RAILROAD
 MESQUITE, TEXAS
 EBRITE STREET
 MINEOLA SUBDIVISION

DATE	BY	CHKD	APP'D
1/14/13	WTR	WTR	WTR

UNION PACIFIC	STANDARD SECTION
UT	Y

Q.A. LAST LEVEL CHECKED	DU
LAST LEVEL AND WIRE STRUCK	DU
LAST LEVEL AND WIRE STRUCK	DU
CHANGED FROM DESIGNER	Y

WTR ← → EIRW