

W. 4. B. 3.

Memorandum Date: 4/4/07

Order Date: 5/02/07

TO: Board of County Commissioners

DEPARTMENT: Public Works

PRESENTED BY: Sonny Chickering, County Engineer

AGENDA ITEM TITLE: ORDER/IN THE MATTER OF AUTHORIZING PUBLIC WORKS TO ENTER INTO AN AGREEMENT WITH ODOT RAIL DIVISION TO UPGRADE THE HIGHWAY-RAILROAD CROSSING AT IRVING ROAD

I. MOTION

Move approval of Board Order authorizing Public Works staff to enter into an agreement with ODOT Rail Division to upgrade the Highway-Railroad crossing at Irving Road and delegate authority to the County Administrator to execute the agreement with ODOT for this project.

II. DISCUSSION

A. Background / Analysis

This safety improvement project (Irving Road at NW Expressway and U.P. Railroad Crossing) was approved by the Board in the 2007-2011 Capital Improvement Program and is also included in the upcoming 2008-2012 Capital Improvement Program for construction in FY 07-08. Federal Funds are involved in the funding of this project which creates a need to expedite the execution of an agreement with ODOT Rail Division in order for the State to submit a project funding request with the Federal Highway Administration (FHWA) to obtain approval of federal-aid participation for the project. Work cannot be started until approval has been obtained from the FHWA.

The Oregon Department of Transportation Order No. 50479, entered 1/10/2007 found that the proposed crossing alterations are required by public safety, necessity, convenience and general welfare. The Order set forth the work required to improve the crossing, and the above mentioned agreement encompasses this work as it applies to ODOT Rail Division and Lane County.

This portion of the project will be conducted as part of the Highway-Railroad Crossings Program under Title 23, United States Code. Lane County will contribute \$100,000 to the \$466,000 total estimated cost. The State will apply for federal funds and will be responsible for the match of federal funds. The State will pay the remainder of the costs in excess of Lane County's contribution.

If successful, staff is asking the Board to delegate contract signature authority to the County Administrator for the contract that would be forthcoming.

B. Recommendation

The Board's options are to approve the motion stated above, to deny the motion, or to take some other course of action. Staff is recommending that the Board approve the motion.

III. ATTACHMENTS

Local Agency Agreement- Rail-Highway Crossings Program Project

**IN THE BOARD OF COMMISSIONERS OF LANE COUNTY
STATE OF OREGON**

ORDER NO.) **IN THE MATTER OF AUTHORIZING PUBLIC WORKS**
) **TO ENTER INTO AN AGREEMENT WITH ODOT RAIL**
) **DIVISION TO UPGRADE THE HIGHWAY-RAILROAD**
) **CROSSING AT IRVING ROAD**
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WHEREAS, improvement of Irving Road at NW Expressway and U.P. Railroad Crossing was approved by the Board in the 2007-2011 Capital Improvement Program and is also included in the upcoming 2008-2012 Capital Improvement Program for construction in FY 07-08; and

WHEREAS, ODOT Order No. 50479 entered on 01/10/07, found that the proposed crossing alterations were required by public safety, necessity, convenience and general welfare. The Order encompasses the proposed work at the crossing as it applies to ODOT Rail Division and Lane County. The proposed agreement includes the scope of work described in the Order and the contributions of each agency; and

WHEREAS, Federal Funds are involved in the funding of this project creating a need to expedite the execution of an agreement with ODOT Rail Division in order to meet project timelines; and

WHEREAS, this portion of the project will be conducted as part of the Highway-Railroad Crossings Program under Title 23, United States Code. Lane County will contribute \$100,000 to the \$466,000 total estimated cost of this portion of the project. The State will apply for federal funds and will be responsible for the match of federal funds. The State will pay the remainder of the costs in excess of Lane County's contribution; **NOW THEREFORE, BE IT**

ORDERED, that the Board approve authorizing Public Works to enter into an agreement with ODOT Rail Division to upgrade the Highway-Railroad crossing at Irving Road; **AND, BE IT**

ORDERED, that the County Administrator be delegated authority as described in LM 21.145 to execute contracts and agreements for this project.

DATED this _____ day of _____ 2007.

Faye Stewart, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM

Date 4-25-07 Lane County

OFFICE OF LEGAL COUNSEL

LOCAL AGENCY AGREEMENT
RAIL-HIGHWAY CROSSINGS PROGRAM PROJECT

THIS AGREEMENT is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State", and Lane County, acting by and through its Board of County Commissioners, hereinafter referred to as "Agency".

RECITALS

1. By the authority granted in ORS 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.

NOW THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

1. State and Agency agree to alter the highway-railroad crossing at Irving Road, Lane County, Crossing No. C-652.20 hereinafter referred to as "Project." Project description and scope of work are described in Department Order No. 50479, marked Exhibit A, attached hereto and by this reference made a part hereof. The total estimated cost of the Project is \$466,000. Agency shall contribute \$100,000 to the Project and State shall pay the remainder of the costs in excess of Agency's contribution necessary to complete the work described in Exhibit A.
2. The Project shall be conducted as part of the Highway-Railroad Crossings Program under Title 23, United States Code. State shall be responsible for the match of federal funds. Engineering, right of way, and construction costs for the Project as depicted by Exhibit A are reimbursable under this program. Agency shall be responsible for all costs of any additional highway work it chooses to add to the Project which is not covered by state or federal funds.
3. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or ten calendar years following the date all required signatures are obtained, whichever is sooner.
4. This Agreement may be terminated by mutual written consent of both parties.

5. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within 10 days or such longer period as State may authorize.
 - c. If Agency fails to provide payment of its share of the cost of the Project.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such work from the planned funding source.
6. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.
7. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.
8. Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability

Agreement No. 23915
Lane County/ODOT Rail Division

of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.

9. Agency shall enter into and execute this Agreement during a duly authorized session of its Board of County Commissioners.
10. This Agreement may be executed in several counterparts [facsimile or otherwise] all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
11. This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year hereinafter written.

This Project is in the 2006-2009 Statewide Transportation Improvement Program, (Key #12749) that was approved by the Oregon Transportation Commission on August 17, 2005 (or subsequently approved by amendment to the STIP).

The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations when the work is related to a project included in the Statewide Transportation Improvement Program or a line item in the biennial budget approved by the Commission.

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On October 24, 2002, the Director approved Subdelegation Order No. 15, in which the Director delegates to the Rail Division Manager the authority to approve and execute agreements over \$75,000 for programs within the Rail Division when the work is related to a project included in the STIP or in other system plans approved by the Oregon Transportation Commission, or in a line item in the legislatively adopted biennial budget, or by specific statutory direction.

LANE COUNTY, by and through its
Board of County Commissioners

By _____

Date _____

By _____

Date _____

By _____

Agency Counsel

Date _____

STATE OF OREGON, by and through
its Department of Transportation

By _____

Kelly Taylor
Rail Division Administrator

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date: _____

Agency Contact:
Edward Chastain
Traffic Engineer
3040 N. Delta Highway
Eugene Oregon, 97401
Phone: 541-682-6931

ATTACHMENT NO. 1 to Agreement No. 23915
SPECIAL PROVISIONS

1. Construction work on this Project is estimated to be more than \$50,000. The Project will be constructed by contract, let by the State.
2. Agency shall, as a federal-aid participating preliminary engineering function, conduct the necessary field surveys, environmental studies, traffic investigations, foundation explorations, and hydraulic studies, identify and obtain all required permits, and perform all preliminary engineering and design work required to produce final plans, preliminary/final specifications and cost estimates for project related roadwork as specified in Order 50479.
3. Agency, as project manager, will obtain the required Construction and Maintenance Agreement with the Railroad, ODOT prospectus, and provide STIP and MTIP coordination.
4. Agency shall acquire right-of-way, if required by the Project, in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1980, as amended.
5. Agency insures that all Project right-of-way monumentation will be conducted in conformance with ORS 209.150.
6. Agency shall, upon State's award of the construction contract, furnish all construction engineering, field testing of materials, technical inspection and project manager services for administration of the contract. Agency shall obtain "Record Samples" at specified intervals for testing in the State Materials Laboratory in Salem.
7. Upon completion of the Project, refer to State Order No. 50479 for maintenance responsibilities, and any other issues that are not expressly addressed by this agreement.
8. Agency and State shall be responsible for the project costs as specified in Order 50475.
9. Agency agrees to send completed plans to both the Highway Division and Rail Division of ODOT for review and approval prior to starting construction.

ATTACHMENT NO. 2

STANDARD PROVISIONS

JOINT OBLIGATIONS

PROJECT ADMINISTRATION

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will further act for Agency in other matters pertaining to the Project. Agency shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and/or Technical Advisory Committee, conduct a hearing and recommend the preferred alternative. State and Agency shall each assign a liaison person to coordinate activities and assure that the interests of both parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.

PRELIMINARY & CONSTRUCTION ENGINEERING

3. State, Agency, or others may perform preliminary and construction engineering. If Agency or others perform the engineering, State will monitor the work for conformance with FHWA rules and regulations. In the event that Agency elects to engage the services of a personal services consultant to perform any work covered by this Agreement, Agency and Consultant shall enter into a State reviewed and approved personal services contract process and resulting contract document. State must concur in the contract prior to beginning any work. State's personal services contracting process and resulting contract document will follow Title 23 Code of Federal Regulations (CFR) 172, Title 49 CFR 18, ORS 279A.055, the current State Administrative Rules and State Personal Services Contracting Procedures as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. Subcontracts shall contain all required provisions of Agency as outlined in the Agreement. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or its consultant prior to receiving authorization from State to proceed. Any amendments to such contract(s) also require State's approval.

4. On all construction projects where State is the signatory party to the contract, and where Agency is doing the construction engineering and project management, Agency, subject to any limitations imposed by state law and the Oregon Constitution, agrees to accept all responsibility, defend lawsuits, indemnify and hold State harmless, for all tort claims, contract claims, or any other lawsuit arising out of the contractor's work or Agency's supervision of the project.

**REQUIRED STATEMENT FOR UNITED STATES DEPARTMENT OF
TRANSPORTATION (USDOT) FINANCIAL ASSISTANCE AGREEMENT**

5. If as a condition of assistance, Agency has submitted and the United States Department of Transportation (USDOT) has approved a Disadvantaged Business Enterprise Affirmative Action Program which Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference. That program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of the financial assistance agreement. Upon notification from USDOT to Agency of its failure to carry out the approved program, USDOT shall impose such sanctions as noted in Title 49, CFR, Part 26, which sanctions may include termination of the agreement or other measures that may affect the ability of Agency to obtain future USDOT financial assistance.
6. **Disadvantaged Business Enterprises (DBE) Obligations.** State and its contractor agree to ensure that DBE as defined in Title 49, CFR, Part 26, have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. In this regard, Agency shall take all necessary and reasonable steps in accordance with Title 49, CFR, Part 26, to ensure that DBE have the opportunity to compete for and perform contracts. Neither State nor Agency and its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. Agency shall carry out applicable requirements of Title 49, CFR, Part 26, in the award and administration of such contracts. Failure by Agency to carry out these requirements is a material breach of this Agreement, which may result in the termination of this contract or such other remedy as State deems appropriate.
7. The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Agreement.
8. Agency agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of

1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.

9. The parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR Parts 1.11, 140, 710, and 771; Title 49 CFR Parts 18, 24 and 26; OMB CIRCULAR NO. A-87 and NO. A-133 Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended and provisions of Federal-Aid Policy Guide (FAPG).

STATE OBLIGATIONS

PROJECT FUNDING REQUEST

10. State shall submit a Project funding request to FHWA with a request for approval of federal-aid participation in all engineering, right-of-way acquisition, eligible utility relocations and/or construction work for the Project. **No work shall proceed on any activity in which federal-aid participation is desired until such approval has been obtained.** The program shall include services to be provided by State, Agency, or others. State shall notify Agency in writing when authorization to proceed has been received from FHWA. Major responsibility for the various phases of the Project will be as outlined in the Special Provisions. All work and records of such work shall be in conformance with FHWA rules and regulations.

FINANCE

11. State shall, in the first instance, pay all reimbursable costs of the Project, submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. Agency may request a statement of costs to date at any time by submitting a written request. When the actual total cost of the Project has been computed, State shall furnish Agency with an itemized statement of final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal 100 percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of Project, minus federal reimbursement, shall be released to Agency. The actual cost

of services provided by State will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.

PROJECT ACTIVITIES

12. State shall, if the preliminary engineering work is performed by Agency or others, review and process or approve all environmental statements, preliminary and final plans, specifications and cost estimates. State shall, if they prepare these documents, offer Agency the opportunity to review and approve the documents prior to advertising for bids.
13. The party responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
14. State shall prepare contract and bidding documents, advertise for bid proposals, and award all contracts.
15. Upon State's award of a construction contract, State shall perform independent assurance testing in accordance with State and FHWA Standards, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
16. State shall, as a Project expense, assign a liaison person to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). The liaison shall process reimbursement for federal participation costs.

RIGHT OF WAY

17. State is responsible for proper acquisition of the necessary right-of-way and easements for construction and maintenance of the Project. Agency may perform acquisition of the necessary right-of-way and easements for construction and maintenance of the Project, provided Agency (or Agency's consultant) are qualified to do such work as required by the State's Right of Way Manual and have obtained prior approval from State's Region Right of Way office to do such work.

18. Regardless of who acquires or performs any of the right of way activities, a right of way services agreement shall be created by State's Region Right of Way office setting forth the responsibilities and activities to be accomplished by each party. State shall always be responsible for requesting project funding, coordinating certification of the right of way, and providing oversight and monitoring. Funding authorization requests for federal right of way funds must be sent through the State's Region Right of Way offices on all projects. All projects must have right of way certification coordinated through State's Region Right of Way offices (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on the Project). Agency should contact the State's Region Right of Way office for additional information or clarification.
19. State shall review all right-of-way activities engaged in by Agency to assure compliance with applicable laws and regulations. Agency agrees that right of way activities shall be in accord with the Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FHWA Federal-Aid Policy Guide, State's Right of Way Manual and the Code of Federal Regulations, Title 23, Part 710 and Title 49, Part 24.
20. If any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations, which are in effect at the time of disposition. Reimbursement to State and FHWA of the required proportionate shares of the fair market value may be required.
21. Agency insures that all Project right of way monumentation will be conducted in conformance with ORS 209.155.
22. State and Agency grants each other authority to enter onto the other's right of way for the performance of the Project.

AGENCY OBLIGATIONS

FINANCE

23. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount, unless otherwise agreed to and specified in the intergovernmental agreement.
24. Agency's estimated share and advance deposit.

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- A. Agency shall, prior to commencement of the preliminary engineering and/or right-of-way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
 - B. Agency's construction phase deposit shall be 110 percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within 45 days of receipt of written notification by State of the final amount due, unless the contract is canceled. Any unnecessary balance of a cash deposit, based on the actual bid, will be refunded within 45 days of receipt by State of the Project sponsor's written request.
 - C. Pursuant to ORS 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool, and an Irrevocable Limited Power of Attorney is sent to the Highway Finance Office), or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
 - D. Agency may satisfy all or part of any matching funds requirements by use of in-kind contributions rather than cash when prior written approval has been given by State.
25. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall also pay 100 percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds, or allocations of State Highway Trust Funds, to that Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the Local Agency Guidelines that result in items being declared non-participating, those items will not result in the withholding of Agency's future allocations of federal funds or the future allocations of State Highway Trust Funds.
26. Costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon.

27. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear 100 percent of all costs as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear 100 percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all development costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
28. Agency shall follow requirements of the Single Audit Act. The requirements stated in the Single Audit Act must be followed by those local governments and non-profit organizations receiving \$500,000 or more in federal funds. The Single Audit Act of 1984, PL 98-502 as amended by PL 104-156, described in "OMB CIRCULAR NO. A-133", requires local governments and non-profit organizations to obtain an audit that includes internal controls and compliance with federal laws and regulations of all federally-funded programs in which the local agency participates. The cost of this audit can be partially prorated to the federal program.
29. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
30. Agency shall present invoices for 100 percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison Person for review and approval. Such invoices shall identify the Project and Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Billings shall be presented for periods of not less than one-month duration, based on actual expenses to date. All billings received from Agency must be approved by State's Liaison Person prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of Title 23 CFR Parts 1.11, 140 and 710. Final billings shall be submitted to State for processing within three months from the end of each funding phase as follows: 1) award date of a construction contract for preliminary engineering 2) last payment for right-of-way acquisition and 3) third notification for construction. Partial billing (progress payment) shall be submitted to State within three months from date that costs are incurred. Final billings submitted after the three months shall not be eligible for reimbursement.
31. The cost records and accounts pertaining to work covered by this Agreement are to be kept available for inspection by representatives of State and FHWA

for a period of six (6) years following the date of final voucher to FHWA. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition (Title 49 CFR 18.42).

32. State shall request reimbursement, and Agency agrees to reimburse State, for federal-aid funds distributed to Agency if any of the following events occur:
- a) Right-of-way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which the federal-aid funds were authorized;
 - b) Right-of-way acquisition is undertaken utilizing federal-aid funds and actual construction is not started by the close of the twentieth fiscal year following the fiscal year in which the federal-aid funds were authorized for right-of-way acquisition.
 - c) Construction proceeds after the Project is determined to be ineligible for federal-aid funding (e.g., no environmental approval, lacking permits, or other reasons).
33. Agency shall maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that projects are completed in conformance with approved plans and specifications.

RAILROADS

34. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through State's appropriate Region contact or State's Railroad Liaison. Only those costs allowable under Title 23 CFR Part 646, subpart B and Title 23 CFR Part 140, subpart I, shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others. Agency may request State, in writing, to provide railroad coordination and negotiations. However, State is under no obligation to agree to perform said duties.

UTILITIES

35. Agency shall cause to be relocated or reconstructed, all privately or publicly-owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements of the Project. Only those utility relocations, which are eligible for federal-aid participation under, Title 23 CFR 645A, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. State will arrange for utility relocations/adjustments in areas lying within jurisdiction of State, if State is performing the preliminary engineering. Agency may request State in writing to arrange for utility relocations/adjustments lying within Agency jurisdiction, acting on behalf of Agency. This request must be submitted no later than 21 weeks prior to bid let date. However, State is under no obligation to agree to perform said duties.
36. Agency shall follow established State utility relocation policy and procedures. The policy and procedures are available through the appropriate State's Region Utility Specialist or State's Right of Way Section Railroad Liaison, and Utility Engineer.

STANDARDS

37. Agency agrees that design standards for all projects on the National Highway System (NHS) and the Oregon State Highway System shall be in compliance to standards specified in the current "State Highway Design Manual" and related references. Construction plans shall be in conformance with standard practices of State for plans prepared by its own staff. All specifications for the Project shall be in substantial compliance with the most current "Oregon Standard Specifications for Highway Construction".
38. Agency agrees that minimum design standards for non-NHS projects shall be recommended AASHTO Standards and in accordance with the current "Oregon Bicycle and Pedestrian Plan", unless otherwise requested by Agency and approved by State.
39. Agency agrees and will verify that the installation of traffic control devices shall meet the warrants prescribed in the "Manual on Uniform Traffic Control Devices and Oregon Supplements".
40. All plans and specifications shall be developed in general conformance with the current "Contract Plans Development Guide" and the current "Oregon Standard Specifications for Highway Construction" and/or guidelines provided.

41. The standard unit of measurement for all aspects of the Project may be either System International (SI) Units (metric), or English Units. However, all Project documents and products shall be in one or the other unit of measurement. This includes, but is not limited to, right-of-way, environmental documents, plans and specifications, and utilities. It should be recognized that the State is currently transitioning to English, and will be completely English by 2006.

GRADE CHANGE LIABILITY

42. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.
43. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.
44. Agency, if a City, by execution of Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the project covered by the Agreement.

CONTRACTOR CLAIMS

45. Agency shall, to the extent permitted by state law, indemnify, hold harmless and provide legal defense for State against all claims brought by the contractor, or others resulting from Agency's failure to comply with the terms of this Agreement.
46. Notwithstanding the foregoing defense obligations under paragraph 45, neither Agency nor any attorney engaged by Agency shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency is prohibited from defending the State of Oregon, or that Agency is not adequately defending the State of Oregon's interests, or that an important governmental principle is

at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Agency if the State of Oregon elects to assume its own defense.

MAINTENANCE RESPONSIBILITIES

47. Agency shall, upon completion of construction, thereafter maintain and operate the Project at its own cost and expense, and in a manner satisfactory to State and FHWA.

WORKERS' COMPENSATION COVERAGE

48. *All employers, including Agency that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Agency shall ensure that each of its contractors complies with these requirements.*

LOBBYING RESTRICTIONS

49. Agency certifies by signing the Agreement that:
- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans,

and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.

E. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Paragraphs 35, 36, and 47 are not applicable to any local agency on state highway projects.

EXHIBIT A

ORDER NO. 50479

ENTERED 01/10/2007

ODOT CROSSING NO. C-652.20

U.S. DOT NO. 756532T

**BEFORE THE OREGON DEPARTMENT
OF TRANSPORTATION**

RX 1305

In the Matter of the Investigation on the Department's)
Own Motion into the Need for Safety Improvements at the)
Railroad-Highway Grade Crossing at Irving Rd 3268 and)
UNION PACIFIC RAILROAD COMPANY (UPRR), a)
Delaware Corporation, Brooklyn Subdivision, Main Line,)
in Eugene, Lane County, Oregon.)

ORDER

In the furtherance of its duties in the administration of ORS 824.206, Rail Division staff has investigated the adequacy of the safety at the subject grade crossing. The affected railroad is UPRR. The public authority in interest is Lane County.

A diagnostic team reviewed the crossing site on March 21, 2006. The team consisted of representatives from UPRR, Lane County, and ODOT Rail Division. The diagnostic team reached agreement regarding the proposed safety improvements at the crossing. Based upon that agreement, by letter dated December 6, 2006, staff served a Proposed Final Order (PFO) and its Appendix for all parties to review and acknowledge their agreement with its terms. Lane County, by letter dated December 21, 2006, suggested wording changes to paragraph 4 of the PFO to clarify the nature of the County's contribution to the project. Rail Division Staff agreed to the changes and has incorporated the wording into this Order. No other objections or comments to the terms of the PFO were received from any party.

All parties in this matter have agreed that the proposed crossing alterations are required by the public safety, necessity, convenience and general welfare. Therefore, under ORS 824.214, the Department may enter this Order without hearing.

The Appendix to this Order depicts the crossing vicinity of Irving Road, including the alignment of the roadway and tracks at the crossing. It also illustrates the scope of proposed work at the crossing. The tracks intersect the roadway at an angle of ≈ 69 degrees. The crossing is equipped with active warning devices interconnected with the vehicle traffic signal at the intersection of Irving Road and Northwest Expressway. The interconnection uses a FLASHING YELLOW clear-out of traffic queues during train preemption of the traffic signal. The average daily traffic volume is approximately 5,600 vehicles at the crossing. The average speed of vehicles is approximately 35 miles per hour (mph). There is a daily average of 26 freight trains, 6 switch trains

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and 6 passenger trains over the crossing. The maximum authorized speed on this track is 40 mph for freight trains and 60 mph for passenger trains. There have been two reported train-vehicle collisions at the crossing in the last 10 years. The collisions resulted in two fatalities and one injury.

It is proposed to reconstruct the crossing and upgrade the traffic signal interconnection at the intersection of Irving Road and Northwest Expressway to improve safety and comply with the Department's Traffic Signal guidelines. The reconstructed crossing will be configured as depicted in the Appendix to this Order. Upgrading the traffic signal interconnection requires existing train detection equipment to be upgraded at the crossing. The upgraded interconnection will provide train preemption of traffic signal phases with a pedestrian clear-out interval (PCOI) and a vehicle clear-out interval (VCOI) to permit vehicular traffic to clear the tracks before a train enters the crossing. The VCOI will use a GREEN signal aspect. A GREEN left turn arrow will be displayed during railroad preemption for eastbound vehicles turning left. The interconnected crossing and traffic signal system shall operate such that when an approaching train is detected, the normal operation of the pedestrian signals will be preempted to provide a PCOI of ≈ 17 seconds. Railroad switching within the control limits of the crossing may abbreviate the PCOI. Following the PCOI, the operation of the train detection equipment will activate the crossing signals at the crossing, preempt the normal operation of the traffic signals, and provide a VCOI.

From the foregoing, the Department finds that the proposed crossing alterations are required by the public safety, necessity, convenience and general welfare, and that it is appropriate to authorize expenditure of federal funds, as set forth in ORS 824.240(3) and 824.250, in the amount agreed upon by the parties.

IT IS THEREFORE ORDERED that:

1. The authority to alter the crossing is granted. All alterations shall be completed within two years from the date of approval of federal funds for this project. No authority to establish a Quiet Zone is granted by this Order.
2. Lane County shall:
 - a. Subject to reimbursement as set forth below:
 - (1) Construct that portion of the crossing lying outside lines drawn perpendicular to the end of ties of each track to accommodate the roadway configuration and sidewalks depicted in the Appendix to this Order. The roadway approaches shall comply with OAR 741-120-0020.
 - (2) Furnish and install standard curb according to OAR 741-110-0030 (7) adjacent to the ordered automatic signals in the SW quadrant of the crossing. Curb shall commence not less than 10 feet from the centerline of nearest track and extend at full height not less than 50 feet in advance of the automatic signals.
 - (3) Furnish and install a wide-base shoulder barrier wall adjacent to the ordered automatic signals in the NE quadrant of the crossing, located as depicted in

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the Appendix to this Order. The barrier shall be installed according to Oregon Standard Drawing No. RD 505.

- (4) Furnish and install standard curb median islands as depicted in the Appendix to this Order. The median islands shall be installed according to Oregon Standard Drawing No. RD 705, and located not less than 10 feet from the centerline of nearest track.
 - (5) Furnish and install two stop clearance lines at the crossing as depicted in the Appendix to this Order, located according to OAR 741-110-0040 (4).
 - (6) Furnish and install one side road advance warning (W10-4) sign on the Northwest Expressway north approach to the crossing, located according to Table 2C-4 of the Manual on Uniform Traffic Control Devices, 2003 Edition, and bear all the costs.
 - (7) Furnish and install two advance warning (W10-1) signs and two advance warning pavement markings on the roadway approaches to the crossing as depicted in the Appendix to this Order. The signs and markings shall be located according to OAR 741-110-0040 (5).
 - (8) Furnish and install one ground-mounted DO NOT STOP ON TRACKS (R8-8) sign with attached High Level Warning Device (HLWD) flag kit as set forth in OAR 741-115-0040(15) (c). The sign shall be mounted at the crossing, located according to OAR 741-110-0040 (10) (c). The sign shall not obstruct approaching motorists' view of the existing automatic signals.
 - (9) Reprogram the existing traffic signal controller at the intersection of Irving Road and NW Expressway to accommodate the PCOI and VCOI operations described above in the body of this Order, and as depicted in the Appendix to this Order.
 - (10) Upgrade the interconnection between the existing vehicle traffic signal case and the new crossing signal case. The interconnection shall provide train preemption of the normal operation of the traffic signals with a PCOI and VCOI described above in the body of this Order, and as depicted in the Appendix to this Order. Green left turn arrow shall be displayed during railroad preemption for east bound vehicles turning left.
 - (11) Remove the previously ordered part-time STOP HERE ON RED, and PROCEED ON FLASHING YELLOW restriction signs, and guardrails.
- b. Maintain the ordered advance warning (W10-1) signs, advance warning pavement markings, DO NOT STOP ON TRACKS (R8-8) sign with attached HLWD flag kit, stop clearance lines, median islands, standard curb, shoulder barrier, the interconnection circuitry on the public authority side of the contact terminals in the interface box, that portion of the crossing lying outside lines drawn perpendicular to the end of ties of each track, and bear all the costs.

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- c. Ensure compliance with all provisions of OAR 741-115-0040 for the traffic signal interconnection at the intersection of Irving Road and Northwest Expressway.
- 3. UPRR shall:
 - a. Subject to reimbursement as set forth below:
 - (1) Procure crossing surfacing material to accommodate the roadway configuration and sidewalks depicted in the Appendix to this Order.
 - (2) Furnish and install two Standard No. 2 flashing light signals, equipped with Standard No. 1M multiple tracks signs, and two Standard No. 4 automatic gate signals at the crossing. The signals shall be located as depicted in the Appendix to this Order and activated according to OAR 741-110-0070.
 - (3) Furnish and install an extra set of flashing lights on the signal mast in the NE quadrant of the crossing, directed at vehicles turning right from the Northwest Expressway.
 - (4) Upgrade the existing train detection equipment circuitry to accommodate the ordered PCOI and VCOI operations as described in the body of this order, and as depicted in the Appendix to this Order.
 - (5) Furnish and install an interface box on a new signal case, equipped with contact terminals and interconnection circuitry on the railroad side of the contact terminals to facilitate the train preemption as described in the body of this Order.
 - b. Using the surfacing material obtained under paragraph 3.a. (1), above, reconstruct that portion of the crossing lying between lines drawn perpendicular to the end of ties of each track to accommodate the roadway configuration and sidewalks depicted in the Appendix to this Order, and bear all the costs.
 - c. Maintain the ordered automatic signals and circuitry, multiple tracks signs, traffic signal interconnection circuitry on the railroad side of the contact terminals in the interface box and that portion of the crossing lying between lines drawn perpendicular to the end of ties of each track, and bear all the costs.
 - d. Notify the Rail Division of the Department in writing or by facsimile transmission not less than five working days prior to the date that the ordered automatic signals will be activated and placed in service.
- 4. Lane County shall bear \$100,000 of the costs of work item 2.a., above. The work includes engineering services, preparing plans and specifications, construction engineering, and contract administration.

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5. Using SAFETEA-LU Section 1401 federal funds, the Department shall bear the cost of work items in paragraph 2.a., above, in excess of \$100,000, and 100 percent of the costs of the work in item 3.a., above.
6. Each party shall notify the Rail Division of the Department in writing upon completion of its portion of the project.
7. Upon completion of the ordered reimbursable work, UPRR and Lane County, shall present claims for reimbursement for Department approval.

All previous Orders of the Public Utility Commission or the Department pertaining to this crossing, not in conflict with this Order, remain in full effect.

Made, entered, and effective

January 10, 2007

Kelly Taylor
Kelly Taylor
Rail Division Administrator

RETURN TO NORMAL PHASE ROTATION AFTER PREEMPTION

Ph No.	NORMAL PHASE ROTATION									
2	G	G	Y	R	R	R	R	R	R	R
6	G	G	Y	R	R	R	R	R	R	R
3	R	R	R	G	Y	R	R	R	R	R
4	R	R	R	R	R	G	Y	R	R	R
8	R	R	R	R	R	G	G	Y	R	R
1	R	R	R	R	R	R	R	R	G	Y
5	R	R	R	R	R	R	R	R	G	Y
Ped 2&6	W	FDW	DW	DW	DW	DW	DW	DW	DW	DW
Ped 4&8	DW	DW	DW	DW	DW	W	FDW	DW	DW	DW
PTR	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF

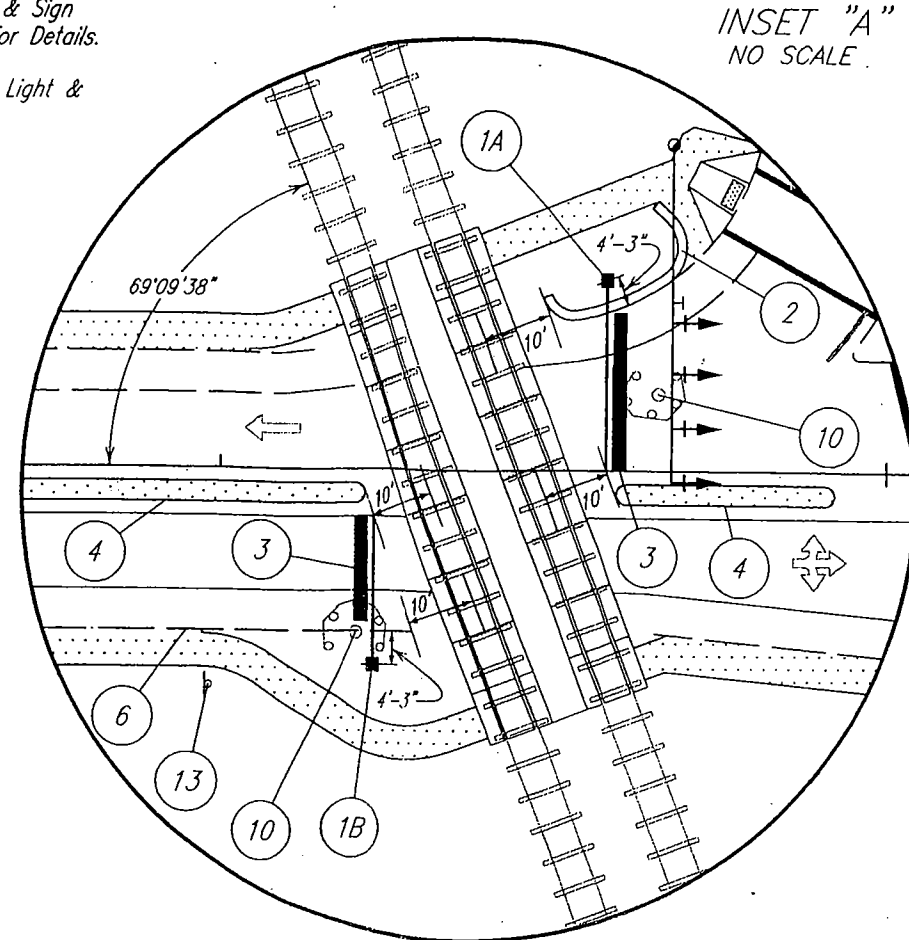
Ph No.	SIGNAL INDICATION ACTIVE WHEN RAILROAD PREEMPTION IS INITIATED									
2	G	Y	R	R	R	R	R	R	R	R
6	G	Y	R	R	R	R	R	R	R	R
3	R	R	G	Y	R	R	R	R	R	R
4	R	R	R	R	G	Y	R	R	R	R
8	R	R	R	R	G	Y	R	R	R	R
1	R	R	R	R	R	R	G	Y	R	R
5	R	R	R	R	R	R	G	Y	R	R
Ped 2&6	FDW	DW	DW	DW	DW	DW	DW	DW	DW	DW
Ped 4&8	DW	DW	DW	DW	FDW	DW	DW	DW	DW	DW
PTR	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF	OFF

SERVE ALL NON-CONFLICTING PHASES (PHASES 1, 2, 3 & 6)

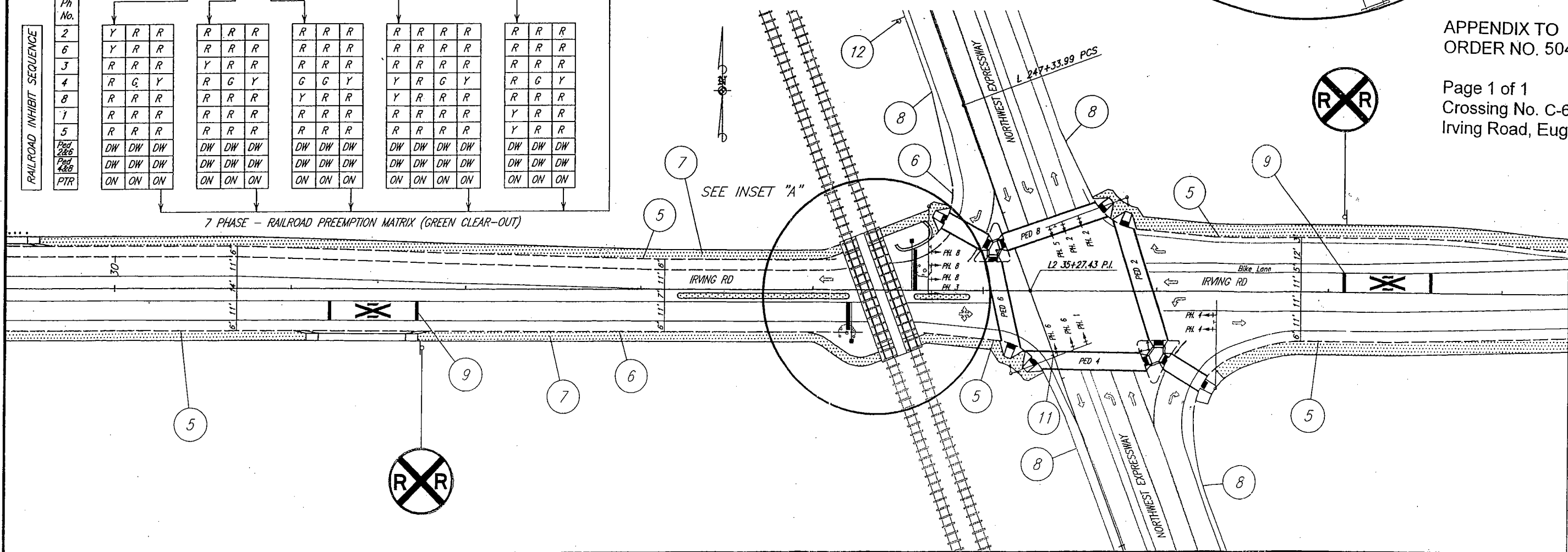
Ph No.	RAILROAD INHIBIT SEQUENCE									
2	Y	R	R	R	R	R	R	R	R	R
6	Y	R	R	R	R	R	R	R	R	R
3	R	R	R	Y	R	R	R	R	R	R
4	R	R	R	R	G	Y	R	R	R	R
8	R	R	R	R	R	R	R	R	R	R
1	R	R	R	R	R	R	R	R	R	R
5	R	R	R	R	R	R	R	R	R	R
Ped 2&6	DW	DW	DW	DW	DW	DW	DW	DW	DW	DW
Ped 4&8	DW	DW	DW	DW	DW	DW	DW	DW	DW	DW
PTR	ON	ON	ON	ON	ON	ON	ON	ON	ON	ON

7 PHASE - RAILROAD PREEMPTION MATRIX (GREEN CLEAR-OUT)

- 1A Install Std. No. 2 Flashing Light, Std. No. 4 Automatic Gate Signal, Extra Set Of Lights, & Std. No. 1M Multiple Track Sign. (Extra Set Of Lights To Face NW Exp. Right Turn Traffic)
- 1B Install Std. No. 2 Flashing Light & Std. No. 4 Automatic Gate Signal & Std. No. 1M Multiple Track Sign.
- 2 Install Cast In Place Wide Base Shoulder Barrier. See Standard Drawing No. RD 505 For Details.
- 3 2' Stop Clearance Line. (Located 1' In Advance Of Gate)
- 4 Raised Concrete Center Median With Mountable Curb. See Standard Drawing No. RD 705 For Details.
- 5 6" High Curb And Gutter.
- 6 7" High Curb And Gutter.
- 7 Sidewalk.
- 8 Edge Of Pavement.
- 9 Advance Warning Pavement Markings & Sign See Standard Drawing No. TM 505 For Details.
- 10 Remove Existing Std. No. 2 Flashing Light & Std. No. 4 Automatic Gate Signal.
- 11 Install "NO RIGHT TURN" Part Time Restriction Sign.
- 12 Install Side Advance Warning Sign (W10-2R), 450 Ft. In Advance Of The Crosswalk.
- 13 Install "DO NOT STOP ON TRACKS" (R8-8) Sign, And Attached High Level Warning Device Flag Kit, 25 Ft. In Advance Of The Stop Bar. (Do Not Obscure Visibility Of Flashers)



INSET "A"
NO SCALE



APPENDIX TO
ORDER NO. 50479

Page 1 of 1
Crossing No. C-652.20
Irving Road, Eugene

LANE COUNTY DEPARTMENT OF PUBLIC WORKS ENGINEERING DIVISION OLIVER P. SNOWDEN Public Works Director	
Date: _____ Project No.: _____ Road No.: _____	Date: _____ Project No.: _____ Road No.: _____
SHEET NO. 1	