



Mr. Daniel Wright
City Attorney
City of Racine
730 Washington Avenue
Racine, WI 53403

RECEIVED

JUN 14 2006

CITY ATTORNEY

June 9, 2006

Ref: Supplemental Agreement to Union Pacific and the City of Racine Basic Agreement Audit Number 212180 of January 27, 1999.

Dear Dan,

In connection with the 75,000 sqft expansion of our warehouse at 3441 South Memorial Drive we provided for railroad access into and through the building. In reviewing the drawings with the Union Pacific, Bukacek Construction constructed the height and installed the doors as they understood the established norms. Apparently UP had some norms with a slightly higher margin of safety requirement on the height. After inspection, UP approved the impairment subject to us installing a warning sign on the exterior wall as per their specification.

The warning sign has been installed and insurance is in place.

Please execute the enclosed Supplemental Agreement (2 copies) and return to:

Ms. Milli M. Scheer
Product Manager, Industrial Development
Union Pacific Railroad
1400 Douglas St. STOP 1370
Omaha, NE 68179-1370

I would also for my files appreciate if you could provide me with a copy. Thank you.

Best regards,

A handwritten signature in black ink, appearing to read "Claes Wennnerth", with a long horizontal line extending to the right.

Claes Wennnerth



ALLOC Inc. is a member of the **BERRY GROUP**

THIS SUPPLEMENTAL AGREEMENT is made as of the _____ day of _____, 2006, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation having an address of 1400 Douglas Street, Omaha, Nebraska 68179 (hereinafter the "Railroad") and **CITY OF RACINE**, a Wisconsin municipal corporation to be addressed at 730 Washington Avenue, Racine, WI 53403 (hereinafter the "Industry").

RECITALS:

By instrument dated January 27, 1999, the parties hereto or their predecessors in interest (if any), entered into an agreement (herein the "Basic Agreement") identified as **Agreement Audit Number 212180**, covering the construction, maintenance and operation of a 1,282-foot spur track near Railroad's Milepost 58.92, Kenosha Subdivision, in Racine, Racine County, Wisconsin.

The parties hereto now desire to modify the Basic Agreement to provide the Railroad's written consent to an impairment of its vertical clearance requirements that resulted from the installation of an overhead door above the Track.

AGREEMENT:

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

Section 1. CONSENT OF THE RAILROAD TO CERTAIN FACILITIES OR OPERATIONS.

The Railroad hereby consents to the impairment of the Railroad's standard vertical clearance requirements beginning at the overhead door above the Track; subject to the terms, provisions and conditions set forth in this Agreement and to any prior regulatory approval that may be needed.

Section 2. INSTALLATION OF CLEARANCE WARNING SIGNS.

The Industry, at its expense, will install and maintain appropriate clearance warning signs that meet Railroad specifications as shown on **Exhibit N**, attached hereto and hereby made a part hereof.

Section 3. INSURANCE

A. The Industry, at its expense, shall obtain the insurance described in **Exhibit C**, hereto attached and hereby made a part hereof, and provide a certificate or certificates of insurance certifying to the effectiveness of such insurance to the person named in Paragraph C below.

B. If the Industry will be using the Track to store and/or handle hazardous materials, the Industry, in addition to the other coverage to be obtained by the Industry as provided herein, must also obtain "Pollution Liability Coverage Form Designated Sites" CG 00-39 and furnish the Railroad with an original certificate of insurance evidencing this coverage.

C. All insurance certificates and correspondence shall be addressed and sent to: Union Pacific Railroad Company, Real Estate Department, 1400 Douglas Street - Stop 1690, Omaha, NE 68179-1690.

Section 4. EFFECTIVE DATE.

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

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 Supplemental Agreement to be executed, in duplicate, as of the day and year first herein written.

UNION PACIFIC RAILROAD COMPANY

By _____
General Director - Industrial Development

CITY OF RACINE

By _____
Printed Name _____
Title _____

**Union Pacific Railroad
Contract Insurance Requirements**

Industrial Track

Industry shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

- A. Commercial General Liability insurance.** Commercial general liability (CGL) with a limit of not less than \$1,000,000 each occurrence and an aggregate limit of not less than \$2,000,000. 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 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 combined single limit of not less than \$1,000,000 for each accident.

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 Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous Materials Cleanup (MSC-90) if required by law.

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

- Industry's statutory liability under the Workers' Compensation laws of the state(s) affected by this Agreement.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit, \$500,000 each employee.

If Industry 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.

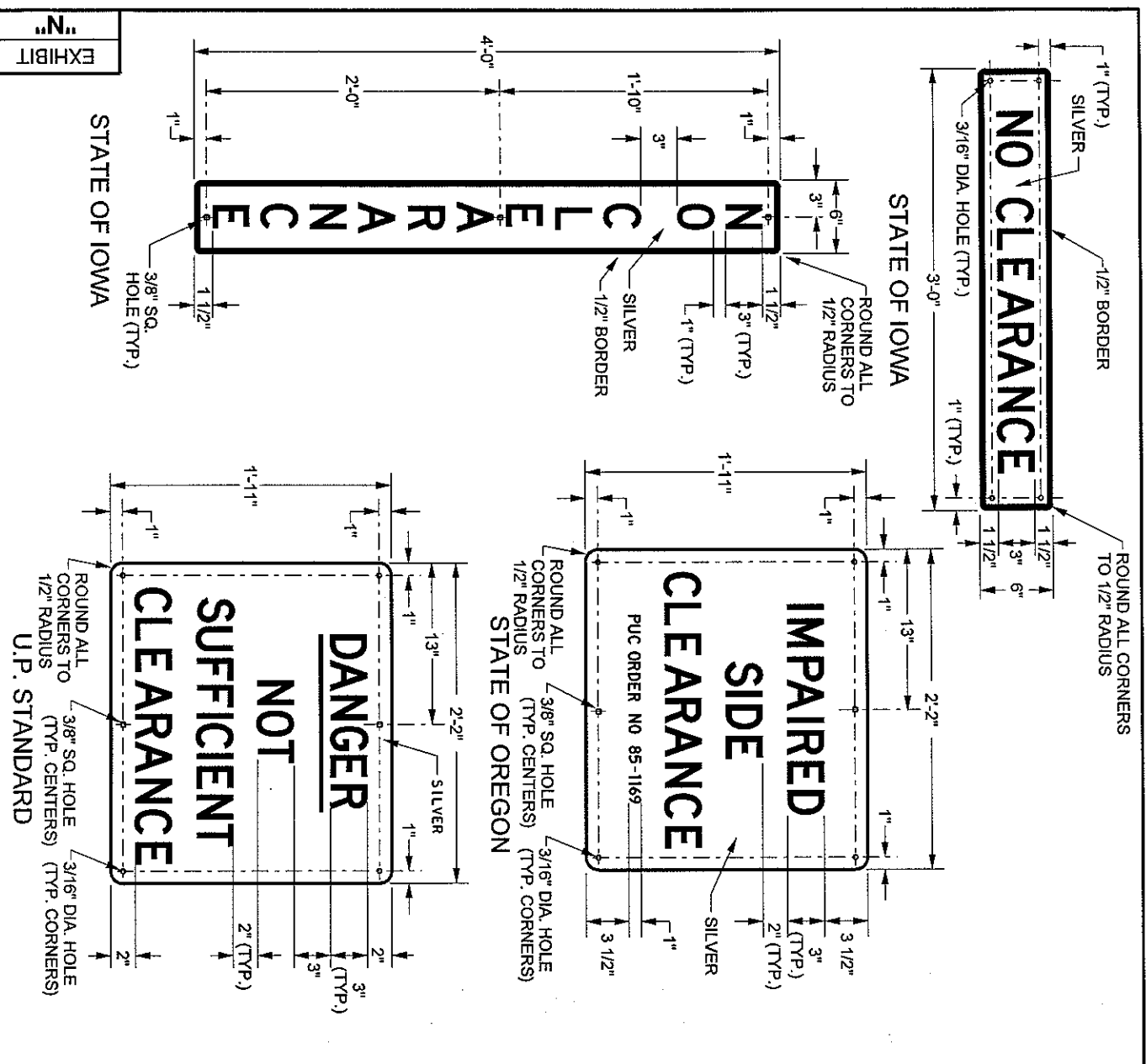
The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer Endorsement ISO Form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer.

- D. Umbrella or Excess insurance.** If Industry utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

Other Requirements

- E.** All policy(ies) required above (except Workers' Compensation and Employers' Liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26 and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsements CG 20 26 and CA 20 48, provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Industry's liability under the indemnity provisions of this Agreement.
- F.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- G.** Industry 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. This waiver must be stated on the certificate of insurance.
- H.** Prior to using the Track covered herein, Industry 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.
- I.** 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 in which the Track is located.
- J.** The fact that insurance is obtained by Industry, or by Railroad on behalf of Industry, will not be deemed to release or diminish the liability of Industry, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Industry or any third party will not be limited by the amount of the required insurance coverage.



- NOTES:
 1. SIGNS TO BE 3290 SILVER 3M ENGINEER GRADE BACKGROUND ON 0.0650" SHEET ALUMINUM.
 2. UNION PACIFIC STANDARD CLEARANCE WARNING SIGNS TO BE USED AT ALL LOCATIONS HAVING REDUCED VERTICAL OR HORIZONTAL CLEARANCES WHERE REQUIRED BY THE RAILROAD COMPANY.
 3. WHERE PRACTICABLE, ALL SIGNS SHOULD BE FASTENED TO BOTH SIDES OF THE ENCRANCHING STRUCTURE AND IN SUCH A MANNER AS NOT TO DECREASE EXISTING CLEARANCE. IF SUCH AN INSTALLATION WOULD NOT BE CLEARLY VISIBLE TO TRAINMEN OR IMPRACTICAL TO MOUNT, SIGNS SHOULD BE INSTALLED USING THE SIGN POST SHOWN ON UP STD DWG 0599. POST MOUNTED SIGNS TO BE LOCATED 50 FEET IN ADVANCE OF THE ENCRANCHING STRUCTURE WITH NEAREST POINT OF SIGN TO BE A MINIMUM OF TEN FEET FROM THE GAGE SIDE OF NEAREST RAIL. IF POINT OF SWITCH FOR THE TRACK ADJACENT TO THE IMPAIRED CLEARANCE IS LESS THAN 50 FEET FROM THE STRUCTURE, LOCATE SIGN OPPOSITE POINT OF SWITCH.
 4. REQUISITIONS FOR STATE OF OREGON IMPAIRED CLEARANCE SIGNS SHOULD SPECIFY THE SPECIFIC P.U.C. ORDER NO. ASSIGNED TO EACH IMPAIRED CLEARANCE, AND IF SIGNS ARE FOR SIDE OVERHEAD OR SIDE AND OVERHEAD CLEARANCE.
 5. OREGON STATE REQUIRES SIGNS ON STRUCTURES TO HAVE THE BOTTOM NO LESS THAN 4'-6" OR NO MORE THAN 8'-0" ABOVE THE TOP THE RAIL TO WHICH THE SIGN APPLIES. FREE STANDING SIGNS TO BE NO LESS THAN 6'-6" ABOVE THE GROUND.
 6. SPECIAL IOWA AND OREGON CLEARANCE WARNING SIGNS TO BE USED AT ALL LOCATIONS HAVING REDUCED VERTICAL OR HORIZONTAL CLEARANCES WHERE REQUIRED BY THE RAILROAD COMPANY, OR DEEMED DESIRABLE BY THE RAILROAD COMPANY.
 7. IMPAIRED CLEARANCE MAY ALSO READ "IMPAIRED OVERHEAD CLEARANCE" OR "IMPAIRED SIDE AND OVERHEAD CLEARANCE". AS MAY BE REQUIRED, SIGNS READING "IMPAIRED SIDE AND OVERHEAD CLEARANCE" WILL BE 22" HIGH TO ACCOMMODATE THE ADDED LINE USING THE SAME SIZE LETTERING AND LINE SPACING FOR P.U.C. ORDER NO.
 8. USE CORNER HOLES FOR MOUNTING TO BUILDINGS OR STRUCTURES.
 9. IMPAIRED CLEARANCE SIGNS SHALL BE ILLUMINATED AT NIGHT.

UNION PACIFIC RAILROAD
 Office of Chief Engineer Design
 INDUSTRY STANDARDS

CLEARANCE WARNING SIGNS

ADOPTED: NOV 26, 1919
 REVISED: AUG. 4, 2003
 FILE NO.: EXHIBIT N

EXHIBIT
 "N"