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Attorneys for Petitioner

BEFORE THE PUBLIC SERVICE COMMISSION

**IN THE MATTER OF LOGAN CITY'S
PETITION REQUESTING
INVESTIGATION INTO UNION PACIFIC
RAILROAD COMPANY'S
ADMINISTRATION OF AGREEMENTS
AND MAINTENANCE PROVISIONS**

**PETITION AND REQUEST FOR
AGENCY ACTION**

Docket No. 21-888-01

STATEMENT OF THE CASE

Petitioner Logan City (the "City") requests that the Public Service Commission ("Commission") investigate the practices and actions taken by Union Pacific Railroad Company ("UPRR") with respect to UPRR's refusal to pay maintenance costs for improvements in at-grade crossings. The City maintains that UPRR's actions are in violation of the Public Utilities Act and associated rules, and are "unjust, unreasonable, [and] improper."

Specifically, in connection with the City's improvement of two intersections in the City that implicate UPRR tracks, UPRR has insisted that Petitioner be responsible for maintenance costs of the at-grade crossing and has refused to execute an at-grade crossing improvement agreement unless the City agrees. These actions are contrary to the Utah Department of

Transportation's ("UDOT") administrative rule, under which UPRR is responsible for maintenance of all passive and active warning devices within the UPRR-owned right-of-way as well as maintenance of the crossing material within the UPRR-owned right-of-way.

Petitioner respectfully requests the Commission investigate these impermissible practices of UPRR and take appropriate agency action to address the same. Notably, Petitioner understands that UPRR has taken similar positions with respect to at-grade crossings in other municipalities as well.

JURISDICTION

1. Petitioner brings this action under authority of [Section 54-4-1](#), granting the Commission jurisdiction to "supervise and regulate every public utility in this state, and to supervise all of the business of every such public utility in the state, and to do all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction; provided, however, that the Department of Transportation shall have jurisdiction over those safety functions transferred to it by the Department of Transportation Act."

2. In addition to the Commission's general jurisdiction, the following sections of the Public Utilities Code establish the Commission's specific jurisdiction and authority to consider and grant the relief Petitioner requests:

a. [Section 54-4-2](#) grants the Commission authority to conduct an investigation when such investigation "(i) is necessary to secure compliance with this title or with an order of the commission; (ii) is in the public interest; or (iii) should be made of any act or omission to act, or of anything accomplished or proposed, or of any schedule, classification, rate,

price, charge, fare, toll, rental, rule, regulation, service, or facility of a public utility.” In addition to seeking compliance with Title 54, Petitioner specifically seeks to compel UPRR’s compliance with UDOT’s June 8, 2021, order, attached as Exhibit A. Through that order, UDOT ordered UPRR “to proceed with the construction of the crossing improvements at the [crossings], without requiring additional signal maintenance fees from Logan City.” UDOT advised UPRR that it “may appeal this decision and order to the Public Service Commission in accordance with [Utah Code 54-4-15\(4\)](#).”¹ However, UPRR did not challenge UDOT’s decision.

b. [Section 54-4-7](#) grants the Commission the authority to investigate the practices of a public utility and determine whether they are “unjust, unreasonable, unsafe, improper, inadequate or insufficient,” and to remedy the same by order, rule, or regulation.

3. This Petition is filed under [Section 54-7-9\(1\)\(b\)](#) and is a request for agency action under [Section 63G-4-201](#).

PARTIES

4. Petitioner is a Utah municipality and a City of the third class.

5. UPRR is a Delaware corporation. It is a railroad franchise, connecting twenty-three states in the western two-thirds of the country by rail. UPRR is a “public utility” as defined by [Section 54-2-1\(22\)](#), subject to the jurisdiction and regulation of the Commission and the provisions of the Utah Public Utilities Act. [Utah Code § 54-2-1\(22\)](#).

¹ This section states: “The commission retains exclusive jurisdiction for the resolution of any dispute upon petition by any person aggrieved by any action of the department pursuant to this section, except as provided under Subsection (4)(b).”

CIRCUMSTANCES REQUIRING COMMISSION INVESTIGATION

6. This Petition arises out of UPRR’s efforts to require the City to make permanent and perpetual payments to UPRR for the costs it alleges are necessary to maintain UPRR’s facilities in at-grade crossing rights of way located at 1400 N 600 W, in Logan, Utah (DOT# 806354Y) and 1800 N 600 W in Logan, Utah (DOT# 806357U). These efforts have included refusal to enter an agreement for improvement of the at-grade crossings unless the City agrees to assume these maintenance cost obligations.

Relevant Authority

7. [Section 54-4-15\(1\) of the Utah Code](#) provides:

No track of any railroad shall be constructed across a public road, highway or street at grade, nor shall the track of any railroad corporation be constructed across the track of any other railroad or street railroad corporation at grade, nor shall the track of a street railroad corporation be constructed across the track of a railroad corporation at grade, without the permission of the Department of Transportation [(UDOT)] having first been secured; provided, that this subsection shall not apply to the replacement of lawfully existing tracks. The department shall have the right to refuse its permission or to grant it upon such terms and conditions as it may prescribe.

[Utah Code § 54-4-15\(1\)](#).

8. [Section 54-4-15\(2\)](#) gives UDOT the “the power to determine and prescribe the manner, including . . . *the terms of* installation, operation, *maintenance*, use and protection of . . . each crossing of a public road or highway by a railroad or street railroad” [Utah Code § 54-4-15\(2\)](#) (emphasis added).

9. [Section 54-4-15.1](#) requires UDOT to “provide for the installing, *maintaining*, reconstructing, and improving of automatic and other safety appliances, signals or devices at

grade crossings on public highways or roads over the tracks of any railroad or street railroad corporation in the state.” [Utah Code § 54-4-15.1](#) (emphasis added).

10. Pursuant to the Public Utilities Act, the State provides funds to be used, in conjunction with other available funds, “to pay all or part of the cost of the installation, maintenance, reconstruction or improvement of any signals or devices described in [Section 54-4-15.1](#) at any grade crossing of a public highway or any road over the tracks of any railroad or street railroad corporation in this state.” [Utah Code § 54-4-15.2](#).

11. Section 54-4-15.3 requires UDOT to “apportion the cost of the installation, maintenance, reconstruction or improvement of any signals or devices described in [Section 54-4-15.1](#) between the railroad or street railroad and the public agency involved,” “in accordance with the provisions of [Section 54-4-15.](#)” [Utah Code § 54-4-15.3](#).

12. “Unless otherwise ordered by [UDOT], the liability of cities, towns and counties to pay the share of maintenance cost assigned to the local agencies by the department shall be limited to the funds provided under this act. Payment of any money from the funds provided shall be made on the basis of verified claims filed with the Department of Transportation by the railroad or street railroad corporation responsible for the physical installation, maintenance, reconstruction or improvement of the signal or device.” [Utah Code § 54-4-15.3](#).

13. UDOT promulgated [Administrative Rule 930-5](#) to satisfy these obligations.

14. Rule 930-5-8 governs maintenance of at-grade railroad crossings, and Rule 930-5-8(1) previously provided, in relevant part:

(1) Responsibility for maintenance is as described in this section unless a separate agreement applies.

(a) The Railroad is responsible for the maintenance of all Railroad Passive Warning Devices and Active Warning Devices within the Railroad right-of-way.

(b) If the Railroad has a property interest in the right-of-way, the Railroad is responsible for the maintenance of Crossing material within the Railroad right-of-way and two feet beyond each outside rail for Crossings without concrete crossing panels or edge of concrete crossing panel.

[Utah Admin. Code R930-5-8\(1\) \(2020\)](#).

15. On September 18, 2020, UDOT authorized a proposed amendment to [Rule 930-5-8\(1\)](#) designed “to clarify the Department’s intent when it originally promulgated this rule in 2008.” (Sept. 18, 2020, Notice of Proposed Rule – Filing No. 53084 at 1, ¶ 3, attached as Exhibit B.)

16. As described in the notice, “[t]he change to Section [R930-5-8](#) adds text to make it clear that Section [R930-5-8](#) requires Railroads to maintain their railroad crossings through state owned right of way² and to pay maintenance of their railroad crossings through state owned right of way. The Department’s original intent was that meaning of the phrase ‘responsibility for maintenance’ includes the obligation to perform and pay for the maintenance of railroad crossings.” (*Id.* at 1, ¶ 4.)

² [Rule 930-5-8](#) actually applies more broadly to “Crossings” (also referred to as “Highway-Rail Grade Crossings”), which are defined as “the general area where a Highway and a Railroad cross at the same level within which are included the Railroad, Highway, and roadside facilities for public traffic traversing the area.” [Utah Admin. Code R.930-5-3\(8\)](#). “Highway” in turn defined as meaning “any public road, street, alley, lane, court, place, viaduct, tunnel, bridge, or structure laid out or erected for public use, or dedicated or abandoned to the public, or made public in an action for the partition of real property, including the area within the right-of-way.” [Utah Admin. Code R930-5-3\(7\)](#). And, “Highway Authority” is defined as “the Department or local governmental entity that owns or has jurisdiction over a Highway.” [Utah Admin. Code R930-5-3\(9\)](#). The reference to “state owned right of way” appears to be shorthand or an imprecise reference, as confirmed by the amended filing discussed in paragraphs 17 through 21.

17. On November 5, 2020, UDOT authorized an amended filing in response to informal comments received regarding the prior Notice of Proposed Rule “that made the Department realize parts of the analysis may be confusing, misleading, or inaccurate.” (Nov. 5, 2020, Notice of Proposed Rule – Filing No. 53184 at 1, ¶ 3, attached as Exhibit C.)

18. As described in the notice, “The Department propose[d] changing [Subsection R930-5-8\(1\)](#) to clarify the Railroads’ and Highway Authorities’ allocated responsibility for performing and paying the costs of maintenance described in [Subsection R930-5-8\(1\)](#) and the exception to the allocation, which is a prior signed written agreement that changes the responsibilities.” (*Id.* at 1, ¶ 4.) The “proposed change only clarifies existing requirements.” (*Id.* at 2, ¶ 5(F).)

19. The notice explains that “the proposed change may save local governments from incurring new costs to maintain railroad crossings that affect local governments’ highways.” (*Id.* at 1, ¶ 5(A).)

20. It further explains that “the proposed rule change will not lead to new [expenses or costs] to [large or small business] railroads. Historically, railroad companies have paid the costs to maintain their crossings that affect highway authorities.” (*Id.* at 2, ¶¶ 5(C), (D).)

21. The proposed amendment was adopted and enacted on March 25, 2021. [Utah Admin. Code R930-5-8 \(2021\)](#).

22. The current version of [Rule 930-5-8\(1\)](#) provides, “Responsibility for maintenance is as described in this section unless a *prior signed written* agreement applies. *Responsibility means the obligation to perform and pay for the maintenance.*” [Utah Admin. Code R930-5-8\(1\) \(2021\)](#) (emphasis to show changes).

23. With respect to closures of crossings of public roadways, [Utah Code Section 54-4-15](#), provides in pertinent part:

[UDOT] shall have the power to determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use and protection of each crossing . . . of a public road or highway by a railroad . . . and to alter or abolish any such crossing . . . , and to prescribe the terms upon which such alteration or abolition of such crossings . . . shall be divided between the railroad . . . corporations affected, or between such corporations and the state, county, municipality or other public authority in interest.

[Utah Code § 54-4-15\(2\)](#).

The Dispute

24. For several years, a UPRR track has run mostly parallel to 600 W in Logan, Utah. At the intersection of 1400 N and 600 W (the “Intersection”), the track is approximately seventy-five feet east of the center of the Intersection.

25. Until relatively recently, 1400 N and 600 W were each one-lane roads, and the Intersection was controlled as a four-way stop. However, in 2003, Petitioner commissioned a study of the Intersection and determined that it met the criteria and requirements for signalized traffic control.

26. In 2011, Petitioner updated its Transportation Master Plan, and, in doing so, designated 1400 N as a Minor Arterial Roadway (five-lane road). The Petitioner hired an engineering consultant to complete design of the Intersection and traffic signal in 2016. The improvement implicated UPRR’s facilities at the Intersection, and Petitioner and UPRR executed a preliminary engineering services agreement in December 2016.

27. In 2017, a diagnostic team consisting of representatives from UDOT, UPRR, and Petitioner met onsite and discussed improvements that were needed to ensure a safe crossing.

UPRR dictated the design elements of the crossing, including signal improvements necessary for the project.

28. Over the next several years, the parties coordinated and entered agreements necessary for the design and construction of the Intersection and associated UPRR facilities. Ultimately UPRR provided Petitioner and involved parties a Crossing Estimate. A copy is attached as Exhibit D. The estimate did not include any information regarding maintenance fees.

29. On December 23, 2019, the City issued a Notice to Proceed to its contractor, LeGrand Johnson Construction, authorizing the commencement of construction work.

30. On March 19, 2020, UPRR sent the City a proposed At-Grade Crossing Agreement. A copy is attached as Exhibit E. That proposed agreement included a provision purporting to require Petitioner to pay an annual maintenance fee of \$11,475 that would be adjusted annually based on the American Association of Railroad's signal unit cost index and could be "re-determined" by UPRR, in its sole discretion, "at any time subsequent to the expiration of five (5) years following the date on which the annual [fee] was last determined or established." This annual fee would be due regardless of any maintenance that was actually performed on UPRR's facilities at the Intersection. Petitioner had not previously been provided any information on how the costs of maintenance would be allocated.

31. Petitioner objected to the provision regarding maintenance of UPRR's facilities, and initiated discussions with UPRR to resolve the issue. The parties were unable to reach agreement.

32. On June 29, 2020, UPRR rejected the Petitioners' request to allow construction to proceed on the project while the parties continued to negotiate the terms of the At-grade Crossing Agreement.

33. The parties' discussions eventually involved UDOT and the State Attorney General's Office. Attempting to assist in resolving the dispute, UDOT adopted an emergency 120-day rule to amend [Rule 930-5-8\(1\)](#) as is proposed in the amendment described above. (Notice of Emergency (120-Day) Rule – Filing No. 52999, attached as Exhibit F.)

34. As with the proposed amendment, the notice explained the change “clarifies the Department's original intent was that ‘responsibility’ includes the obligation to perform and pay for the maintenance.” (*Id.* at 1, ¶ 5.)

35. It further explained that the engaging in regular rulemaking would

cause an imminent peril to the public health, safety, or welfare. . . . A dispute exists over interpretation of this rule that will lead to delay in a planned construction project. The project in question is for the purpose of improving safety at an intersection on a state road and a railroad crossing. A delay in the project will create imminent peril to the public health, safety, or welfare at the intersection according to the Logan City Safety Manager.

(*Id.* at 1, ¶ 6.)

36. The emergency rule became effective July 31, 2020. (*Id.* at 1, ¶ 3.) Following its adoption, on August 4, 2020, Petitioner requested that UPRR expedite its revisions to remove the maintenance fee and execute the At-Grade Crossing Agreement.

37. UPRR did not do so. Instead, Petitioner and UPRR continued to negotiate, with the City offering to share in UPRR's maintenance costs. Ultimately, however, UPRR continued to request that the City bear maintenance costs without any recourse except through re-negotiations and ultimate approval by UPRR.

38. UPRR has claimed and continues to take the position that [Sections 54-4-15](#) and - 15.3 do not authorize UDOT to require the railroad to pay the entirety of the signal maintenance and other maintenance costs.

39. UPRR has taken the same position with respect to the at-grade crossing located at 1800 N 600 W in Logan, Utah.

40. In 2016, a diagnostic team consisting of representatives from UDOT, UPRR, and Petitioner met onsite and determined the improvements necessary to ensure a safe crossing at 1800 N 600 W. UPRR dictated the design elements of the crossing including signal improvements necessary for the project.

41. In September 2020, Petitioner received an “AREMA Unit Statement of Railroad Highway Grade Crossing Signals Estimated Maintenance Costs” for this crossing. It identified an estimated annual maintenance cost of \$12,070.

42. In discussing the drafting of an agreement for the crossing, Petitioner expressed that the agreement should comply with the emergency rule regarding maintenance costs.

43. UPRR responded that the agreement would include that 100% of the maintenance costs for the at-grade crossing signals would be the responsibility of Petitioner unless it and UPRR negotiated otherwise.

44. Although the parties continued to discuss the matter, UPRR insisted that Petitioner bear the costs of signal maintenance for the crossing.

45. To date, no agreement has been reached because of the dispute over the obligation for those costs.

46. Certain permits and approvals that the City has obtained for the improvement of the 1800 N crossing expire beginning in August of this year.

47. The City alleges on information and belief that UPRR has taken the same position with other municipalities in this State as well.

48. On or about September 24, 2021, UPRR filed a lawsuit against UDOT challenging its amended Rule R930-5-8. However, the fact UPRR disagrees with the Rule does not excuse UPRR from compliance while and during the period the Rule is in effect, including the present time. *See, e.g., Macris v. Sevea Int'l Inc.*, 2013 UT App 176, ¶ 28, 307 P.3d 625 (“the proper method for contesting an adverse ruling is to appeal it, not to violate it”; “even if the trial court did err or exceed its discretion during the trial court proceedings, Appellants were obligated to comply with the trial court’s orders and assert their challenges through orderly and proper proceedings.” *Id.* (cleaned up)).

SPECIFIC REQUEST FOR AGENCY ACTION

49. The City incorporates the foregoing paragraphs by reference as though separately pled herein.

50. UPRR’s repeated efforts to require the City to bear the costs of maintaining UPRR’s facilities for the at-grade crossing at the Intersection, and other at-grade crossings in the City, is inconsistent with the Public Utilities Code—specifically [Sections 54-4-15 and 54-4-15.3](#)—and [Rule 930-5-8\(1\)](#).

51. As UDOT’s proposed—now adopted—amendment indicates, by adopting [Rule 930-5-8\(1\)](#) in 2008, UDOT intended to allocate the entirety of the responsibility for maintenance

of at-grade crossings as provided in that rule to the railroad—including the cost of the required maintenance. UPRR’s conduct is further in violation of UDOT’s June 8, 2021, order.

52. In addition, UPRR’s conditioning of the 400 North preliminary permit on the City’s closing of multiple other crossings usurps UDOT’s authority to dictate the timing and manner and costs apportionments for closing or abolishing crossings of a public highway by a railroad in violation of [Section 54-4-15](#).

53. The City therefore requests that the Commission investigate the matters detailed above and: (a) determine and adjudicate whether UPRR’s actions in attempting to require a contract term shifting the costs of maintenance to the City are in compliance with the Public Utilities Act, (b) determine and adjudicate whether UPRR’s practice of doing so is “unjust, unreasonable, . . . [or] improper;” and (c) compel UPRR’s compliance with the unchallenged June 8, 2021, UDOT order.

54. The City maintains UPRR’s lack of authority to require the City to bear the maintenance costs UDOT has allocated to railroads under the authority of [Sections 54-4-15](#) and [15.3](#) is clear. However, to the extent the Commission deems necessary or appropriate, the City requests the Commission engage in a formal administrative rulemaking proceeding under [Utah Code Section 63G-3-601](#) for the purpose of establishing by rule that regulated railroads cannot alter UDOT’s established allocation of maintenance costs by making such alteration a condition of approval of a crossing agreement.

DATED this 4th day of October, 2021.

SNOW, CHRISTENSEN & MARTINEAU



Robert C. Keller
Dani N. Cepernich
10 Exchange Place, 11th Floor
Post Office Box 45000
Salt Lake City, Utah 84145

THE CITY

/s/ Craig J. Carlston
(Signed with Permission)

Kymber Housley
Craig J. Carlston
Logan City Attorney
290 N 100 W
Logan, Utah 84321

Attorneys for Petitioner Logan City

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October, 2021, I served, via E-Mail, a true and correct copy of the attached **PETITION AND REQUEST FOR AGENCY ACTION** upon the parties listed below to:

Kymerly Housley
Craig J. Carlston
Logan City Attorney
290 North 100 West
Logan, UT 84321
kimber.housley@loganutah.org
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Robert C. Keller

EXHIBIT “A”

To:

“Petition and Request for Agency Action”



State of Utah

SPENCER J. COX
Governor

DEIDRE M. HENDERSON
Lieutenant Governor

DEPARTMENT OF TRANSPORTATION

CARLOS M. BRACERAS, P.E.
Executive Director

TERIANNE S. NEWELL, P.E.
Deputy Director of Planning and Investment

LISA J. WILSON, P.E.
Deputy Director of Engineering and Operations

June 8, 2021

Kenneth Tom
Union Pacific Manager of Industry and Public Projects
2015 So. Willow Ave.
Bloomington, CA 92316

Subject: Logan City Maintenance Agreement for Crossing at 1400 North 600 West
Crossing No.: DOT# 806354Y

Mr. Tom:

The Utah Department of Transportation is delegated the “power to determine and prescribe the manner . . . and terms of installation, operation, [and] maintenance” of each highway grade crossing in the state of Utah (Utah Code 54-4-15 and Administrative Rule R930-5). This delegated responsibility imposes on UDOT a duty to promote and safeguard the health and safety of the public as affected by highway railroad crossings. Additionally, UDOT has been charged by statute to work with federal programs, and otherwise, to install, maintain, reconstruct and improve automatic and other safety appliances, signals or devices at grade crossings on public streets (Utah Code 54-4-15.1 to 15.4). Pursuant to these authorities UDOT has enacted rules which prescribe the responsibilities of railroads, highway authorities and others to maintain crossings (R930-5-8). This rule was revised last year to clarify that maintenance includes the duty to pay for the maintenance work.

The highway crossing in Logan City referenced above has been subject to a review by the diagnostic team (see Surveillance Report dated June 6, 2017) and upon recommendation, was approved by UDOT for improvements to the highway and crossing. The highway improvements have been completed for some time, and the railroad crossing improvements have been designed, funded and approved. Union Pacific has refused to proceed with improvements to the rail crossing until Logan City enters into a written agreement to pay a fixed minimum amount yearly to cover all maintenance of devices and equipment at the crossing including those in the railroad’s right-of-way.

Utah Administrative Code R930-5-8 does provide an exception to the maintenance responsibilities set out in that rule if there is a prior written agreement. This provision is to protect rights established under agreements in place prior to the adoption of the rule. The language was not intended to permit a railroad to insist on an agreement that changes the maintenance obligations as a precondition to doing work on a previously approved crossing improvement project. The rule as constituted provides for sharing of responsibilities for

Mr. Tom
Page 2
June 8, 2021

maintenance of a crossing in a manner that places a duty on those best situated to carry out the required maintenance obligations and fairly distributes the duty to protect public health and safety. The insistence by Union Pacific on a new agreement that avoids its maintenance responsibilities is inconsistent with the rule. Such a precondition is contrary to the intent of the legislature in delegating authority to UDOT to make the present determinations by rule and undermines UDOT's authority to draft and enforce the rule.

Although Logan City and Union Pacific might in other circumstances mutually agree on a different regimen of maintenance responsibilities than required by the rule, UDOT has authority to determine and prescribe the terms governing maintenance of each highway rail grade crossing. In this instance Logan City has objected to the requested changes from the rule, and the proposed agreement in addition to being contrary to the obligations set out by rule, does not provide for an alternative exchange of benefits and burdens that is in the public interest. The railroad crossing improvement project has been properly reviewed and approved by UDOT and is ready to proceed. Refusing to proceed with this needed project unless Logan City signs an agreement that is contrary to UDOT's rule and without other justification is contrary to Union Pacific's duty to maintain highway crossings in a safe and efficient condition (Utah Code 10-7-26 and 56-1-11).

Union Pacific is ordered to proceed with the construction of the crossing improvements at the above crossing, without requiring the proposed additional signal maintenance fees from Logan City. Union Pacific may appeal this decision and order to the Public Service Commission in accordance with Utah Code 54-4-15(4).

If you have any questions regarding this letter, please contact me at 801-360-0052.
Sincerely,

James W. Golden

James W. Golden, P. E.
Chief Railroad Engineer
UDOT – Traffic & Safety

Cc:
Robert Keller, Attorney for Logan City
Paul Lindhardt, Public Works Director Logan City

EXHIBIT “B”

To:

“Petition and Request for Agency Action”

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):

R930-5-8

Filing No. 53084

Agency Information

1. Department:	Transportation	
Agency:	Preconstruction	
Room no.:	Administrative Suite, First floor	
Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state:	Taylorsville, UT	
Mailing address:	PO Box 148455	
City, state, zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	Phone:	Email:
Linda Hull	801-965-4253	lhull@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	ledwards@agutah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R930-5-8. Maintenance
3. Purpose of the new rule or reason for the change (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):
The Department of Transportation (Department) proposes this change to Section R930-5-8 to clarify the Department's intent when it originally promulgated this rule in 2008.
4. Summary of the new rule or change:
The change to Section R930-5-8 adds text to make it clear that Section R930-5-8 requires Railroads to maintain their railroad crossings through state owned right of way and to pay for maintenance of their railroad crossings through state owned right of way. The Department's original intent was that meaning of the phrase "responsibility for maintenance" includes the obligation to perform and pay for the maintenance of railroad crossings.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This proposed rule change will not lead to additional costs or savings to the state's budget because it only updates regulations the state is already responsible for enforcing.
B) Local governments:
This proposed rule change will not lead to additional costs or savings to local governments because it does not apply to them.
C) Small businesses ("small business" means a business employing 1-49 persons):
This proposed rule change will not lead to additional costs or savings to small businesses because it does not apply to them, generally.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
This proposed rule change will not lead to additional costs or savings to non-small businesses because it does not apply to

them, generally.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

This proposed rule change will not lead to additional costs or savings to persons other than small businesses, non-small businesses, state, or local government entities because it does not apply to them.

F) Compliance costs for affected persons:

This proposed rule change will not lead to compliance costs for persons affected by this proposed rule change that they do not already experience. This proposed change only updates existing requirements.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

Carlos M. Braceras, PE, Executive Director of the Department of Transportation, approves this regulatory impact analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

This proposed rule change will not have a fiscal impact on businesses, generally.

B) Name and title of department head commenting on the fiscal impacts:

Carlos M. Braceras, PE, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 41-6a-1205	Section 54-4-14	Section 54-4-15
Section 72-1-201		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until (mm/dd/yyyy): 11/16/2020

10. This rule change MAY become effective on (mm/dd/yyyy):	11/23/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Braceras, PE, Executive Director	Date (mm/dd/yyyy):	09/18/2020
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R930. Transportation, Preconstruction.

R930-5. Establishment and Regulation of At-Grade Railroad Crossings.

R930-5-8. Maintenance.

(1) Responsibility for maintenance is as described in this section unless a ~~separate~~ prior signed written agreement applies. Responsibility means the obligation to perform and pay for the maintenance.

(a) The Railroad is responsible for the maintenance of all Railroad Passive Warning Devices and Active Warning Devices within the Railroad right-of-way.

(b) If the Railroad has a property interest in the right-of-way, the Railroad is responsible for the maintenance of Crossing material within the Railroad right-of-way and two feet beyond each outside rail for Crossings without concrete crossing panels or edge of concrete crossing panel.

(c) On a temporary Highway Detour Crossing, the Railroad shall be responsible for the maintenance of pavement, Active Warning Devices, and Passive Warning Devices within the Railroad right-of-way at expense of the Highway Authority.

(d) When the Railroad alters the railway due to track and ballast maintenance, the Railroad shall coordinate their work with the Highway Authority so the pavement approaches can be adjusted to provide a smooth and level Crossing surface.

(e) When the Highway Authority changes the Highway profile, through construction or maintenance activities, the Highway Authority shall coordinate their work with the Railroad so the tracks can be adjusted to provide as smooth and level a Crossing surface as possible.

(f) Where a Highway structure overpasses a Railroad, the Highway Authority is responsible for the maintenance of the entire structure and its approaches.

(g) Where a Highway underpasses a Railroad and the Railroad owns the right-of-way in fee title, the Highway Authority is responsible for the maintenance of the Highway and the entire structure below and including the deck plate, girders, handrail, and parapets. The Railroad is responsible for the maintenance of the ballast, ties, rails and any portion of the supporting structure above the top of the ballast deck plate between parapets.

(i) If the Highway Authority owns the right-of-way in fee title, the Railroad is responsible for the maintenance of the entire structure unless a ~~separate~~ prior signed written agreement applies.

(ii) Cost of repairing damages to a Highway or a Highway structure, occasioned by collision, equipment failure, or derailment of the Railroad's equipment shall be borne by the Railroad.

(h) Responsibility for maintenance of private industrial trackage not owned by a Railroad that crosses a Highway shall be as follows:

(i) When a facility, plant, or property owner receives goods and services from a Railroad over private industrial trackage that crosses a Highway, maintenance of the Crossing shall be the responsibility of the industry owning the trackage, or as agreed to by the parties.

(ii) When the Crossing becomes a safety hazard to vehicles and is not maintained, the Department ~~and~~ or the Railroad shipping the goods and services shall notify the industry owning the trackage in writing to maintain or replace the Crossing material.

(iii) If the industry owning the trackage does not maintain or replace the Crossing material by a specified date, the Department shall order the Railroad to cease and desist operations across the Crossing.

(iv) If the industry owning the trackage does not respond to the order to maintain or replace the Crossing material the Department shall arrange to have the Crossing material replaced and bill the industry owning the trackage for the expenses to repair the trackage.

KEY: railroad, crossing, transportation, safety

Date of Enactment or Last Substantive Amendment: ~~April 21, 2011~~2020

Notice of Continuation: November 2, 2016

Authorizing, and Implemented or Interpreted Law: 41-6a-1205; 54-4-14; 54-4-15; 72-1-201

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EXHIBIT “C”

To:

“Petition and Request for Agency Action”

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):

R930-5-8

Filing No. 53184

Agency Information

1. Department:	Transportation	
Agency:	Preconstruction	
Room no.:	Administrative Suite, First Floor	
Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state:	Taylorsville, UT	
Mailing address:	PO Box 148455	
City, state, zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	Phone:	Email:
Linda Hull	801-965-4253	lhull@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	ledwards@agutah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R930-5-8. Maintenance
3. Purpose of the new rule or reason for the change (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):
The Department of Transportation (Department) proposes this change to Section R930-5-8 to clarify the Department's intent when it originally promulgated this rule. The Department filed proposed changes to this rule as Filing No. 53084 on September 23, 2020. The Office of Administrative Rules published the proposed changes in the October 15, 2020, Utah State Bulletin (2020-20). The Department subsequently received informal comments on the analysis that made the Department realize parts of the analysis may be confusing, misleading, or inaccurate. The Department is filing this amendment with a rewritten analysis that removes confusing, misleading, or inaccurate statements, and will let Filing No. 53084 lapse.
4. Summary of the new rule or change:
The Department proposes changing Subsection R930-5-8(1) to clarify the Railroads' and Highway Authorities' allocated responsibility for performing and paying the costs of maintenance described in Subsection R930-5-8(1) and the exception to the allocation, which is a prior signed written agreement that changes the responsibilities.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This proposed rule change will not lead to additional costs or savings to the state's budget because it only clarifies regulations the state is already responsible for enforcing.
B) Local governments:
This proposed rule change will not lead to additional costs to local governments. However, the proposed change may save local governments from incurring new costs to maintain railroad crossings that affect local governments' highways.
C) Small businesses ("small business" means a business employing 1-49 persons):

This proposed rule change will not lead to additional costs or savings to small businesses because it only applies to railroad companies. The proposed rule change will not lead to new expenses to railroads that are small businesses. Historically, railroad companies have paid the costs to maintain their crossings that affect highway authorities.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

This proposed rule change will not lead to additional costs or savings to non-small businesses because it only applies to railroad companies. The proposed rule change will not lead to new costs to large business railroads. Historically, railroad companies have paid the costs to maintain their crossings that affect highway authorities.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

This proposed rule change will not lead to additional costs or savings to persons other than small businesses, non-small businesses, state, or local government entities because it only applies to railroads and government entities.

F) Compliance costs for affected persons:

This proposed rule change will not lead to compliance costs for persons affected by this proposed rule change that they do not already experience. This proposed change only clarifies existing requirements.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

Carlos M. Bracerias, PE, Executive Director of the Department of Transportation, approves this regulatory impact analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

This proposed rule change will not have a fiscal impact on businesses, generally.

B) Name and title of department head commenting on the fiscal impacts:

Carlos M. Bracerias, PE, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 41-6a-1205	Section 54-4-14	Section 54-4-15
Section 72-1-201		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until (mm/dd/yyyy): 12/31/2020

10. This rule change MAY become effective on (mm/dd/yyyy): 01/07/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Braceras, PE, Executive Director	Date (mm/dd/yyyy):	11/05/2020
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R930. Transportation, Preconstruction.

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(ii) When the Crossing becomes a safety hazard to vehicles and is not maintained, the [D]department [and/or] the Railroad shipping the goods and services shall notify the industry owning the trackage in writing to maintain or replace the Crossing material.

(iii) If the industry owning the trackage does not maintain or replace the Crossing material by a specified date, the [D]department shall order the Railroad to cease and desist operations across the Crossing.

(iv) If the industry owning the trackage does not respond to the order to maintain or replace the Crossing material the [D]department shall arrange to have the Crossing material replaced and bill the industry owning the trackage for the expenses to repair the trackage.

KEY: railroad, crossing, transportation, safety

Date of Enactment or Last Substantive Amendment: [April 21, 2011]2021

Notice of Continuation: November 2, 2016

Authorizing, and Implemented or Interpreted Law: 41-6a-1205; 54-4-14; 54-4-15; 72-1-201

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EXHIBIT “D”

To:

“Petition and Request for Agency Action”

Material And Force Account Estimate

CITY / STATE / FED

Estimate Number: 125235 Version: 1

Standard Rates: Labor Additive = 233.58%

Estimate Good Until 03-11-20

Location: CACHE VALLEY SUB, SIMN, 25.89-25.93

Description of Work: Cache Valley Sub

DOT# 806354Y-5 / 14th North, Logan, UT

Widen road crossing. Possibly include lights, gates, bells, and advanced preemption with adjacent intersection

Prepared For:

Buy America: Yes

COMMENTS	FACILITY	Description	QTY	UOM	UCST	LABOR	MATERIAL	TOTAL	UP %100	Agcy %0
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ENGINEERING

		Engineering	1	LS	17,982.90	17,983	0	17,983	0	17,983
		Bill Prep Fee - Track Surface RECOLLECT	1	LS	900.00	0	900	900	0	900
		Homeline Freight - Track Surface RECOLLECT	1	LS	900.00	0	900	900	0	900
		Foreign Line Freight - Track Surface RECOLLECT	1	LS	990.76	0	991	991	0	991
Sub-Total =						17,983	2,791	20,774	0	20,774

TRACK CONSTRUCTION - COMPANY

	RDXING	RDXING 136# CONC W/SL3 10' CTIES	112	TF	651.82	45,418	27,586	73,004	0	73,004
	TRACK	136# CWRIS0 24-8'6" HWD N 16 TP	160	TF	394.04	45,168	17,879	63,047	0	63,047
	BALAST	BALAST CL1	2	CL	1,485.77	899	2,073	2,972	0	2,972
		Compromise Joint Bar	4	PR	500.00	0	2,000	2,000	0	2,000
Sub-Total =						91,485	49,538	141,022	0	141,022

TRACK REMOVAL - COMPANY

	RDXING	Remove road crossing - prefab	38	TF	125.77	4,779	0	4,779	0	4,779
	TRACK	Remove Track	168	TF	28.20	4,737	0	4,737	0	4,737
Sub-Total =						9,516	0	9,516	0	9,516

SITE WORK - CONTRACT

		Asphalt: Hot Mix	1	TN	5,000.00	0	5,000	5,000	0	5,000
		Asphalt: Saw Cut	1	LF	3,000.00	0	3,000	3,000	0	3,000
		Traffic Control - Detour Signs & Coordination	1	LS	6,000.00	0	6,000	6,000	0	6,000
Sub-Total =						0	14,000	14,000	0	14,000

SIGNAL - COMPANY

		Signal: Xing Signals	1	LS	1,500.00	1,500	0	1,500	0	1,500
Sub-Total =						1,500	0	1,500	0	1,500

Total Wgt. in Tons = 898

Totals = 120,484 66,329 186,812 0 186,812

Grand Total = \$186,812

Please Note: The above figures are estimates only and are subject to fluctuation. In the event of an increase or decrease in the cost or amount of material or labor required, CITY / STATE / FED will pay actual construction costs at the current rates effective thereof.

Material And Force Account Estimate

City of Logan UT

Estimate Creation Date: 06/12/2019 Number: 123083 Version: 1

Estimate Good Until 03/12/20

Location: CACHE VALLEY SUB, SIMN, .08-42.69

Buy America: Yes

Description of Work: Cache Valley Sub MP 25.91 Logan, UT 14th North DOT#806354Y WO#44175 PID#106694
100% Recollectable

COMMENTS	Description	SubDivision	From MP	To MP	QTY	UOM	Unit Cost	LABOR	MATERIAL	TOTAL	UP 00%	Agncy 100%
SIGNAL												
	Xing - Install Web and Head Bonds per 1000 TF	CACHE VALLEY SUB	0.08	42.69	4	EA	1,865.00	6,400	1,060	7,460	0	7,460
	Xing - 1 Trk CWE w/Four Quad Gates				1	EA	192,474.00	67,200	125,274	192,474	0	192,474
	Xing - Sidelight				2	EA	907.00	0	1,814	1,814	0	1,814
	Xing - Engineering Design				1	LS	6,427.00	6,427	0	6,427	0	6,427
	Xing - Boring				1	LS	10,000.00	0	10,000	10,000	0	10,000
	Xing - Contract Services for Preempt Cutover				1	LS	15,000.00	0	15,000	15,000	0	15,000
	Xing - Fill/Rock/Gravel				1	LS	10,000.00	0	10,000	10,000	0	10,000
Fed W/ OH & Ind. 190.55%	Xing - Labor Additive				1	LS	152,493.00	152,493	0	152,493	0	152,493
	Xing - Meter Service				1	LS	15,000.00	0	15,000	15,000	0	15,000
Sub-Total =								232,520	178,148	410,668	0	410,668

Totals = 232,520 178,148 410,668 0 410,668

Grand Total = \$410,668

Disclaimer: This is a preliminary estimate, intended to provide a ballpark cost to determine whether a proposed project warrants further study. Quantities and costs are estimated using readily available information and experience with similar projects. Site conditions and changes in project scope and design may result in significant cost variance.

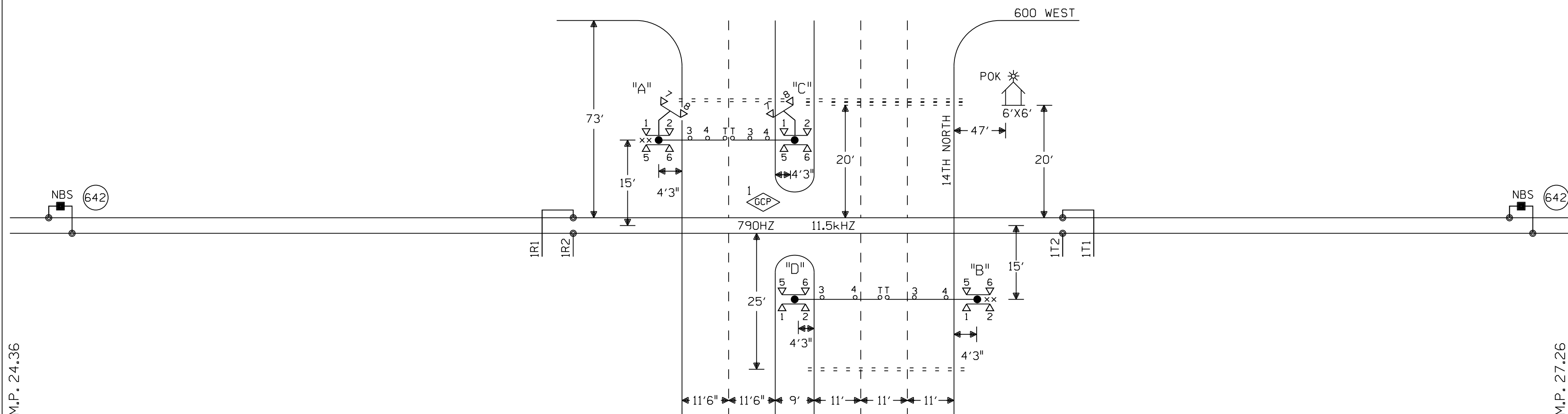
TO CACHE JCT.

PRIME WARNING TIME = 23 SECONDS
PREEMPT WARNING TIME = 50 SECONDS

TO PRESTON

1614' 25+5+25(PRE) SEC. @ 20 M.P.H.

1614' 25+5+25(PRE) SEC. @ 20 M.P.H.



CONNECTS TO M.P. 24.36

CONNECTS TO M.P. 27.26

NOTES:

⊗ = TWISTED WIRES
INSULATED 1 TWIST PER FT.
ALL TRACK WIRES 2C. #6

TRANSMITTER AND RECEIVER LEADS
TO BE SEPARATED BY AT LEAST 12" IN TRENCH,
LENGTHS SHOULD NOT EXCEED MANUFACTURER'S
RECOMMENDATION.

TOP OF FOUNDATION TO BE AT SAME ELEVATION
AS THE SURFACE OF THE TRAVELED WAY & NO
MORE THAN 4" ABOVE THE SURFACE OF THE GROUND.

ALL BUNGALOW WIRING TO BE #16 AWG FLEX
UNLESS OTHERWISE SPECIFIED EXCEPT ALL GROUND
WIRE TO BE #6 AWG FLEX OR LARGER.

ALL WIRING IN GATE MECHANISM TO BE #10 "AWG FLEX".
REFER TO UP STANDARD DWG 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" ROUNDELS.

==== 4" X 150' CONDUIT

LIGHTS: LED LIGHTS

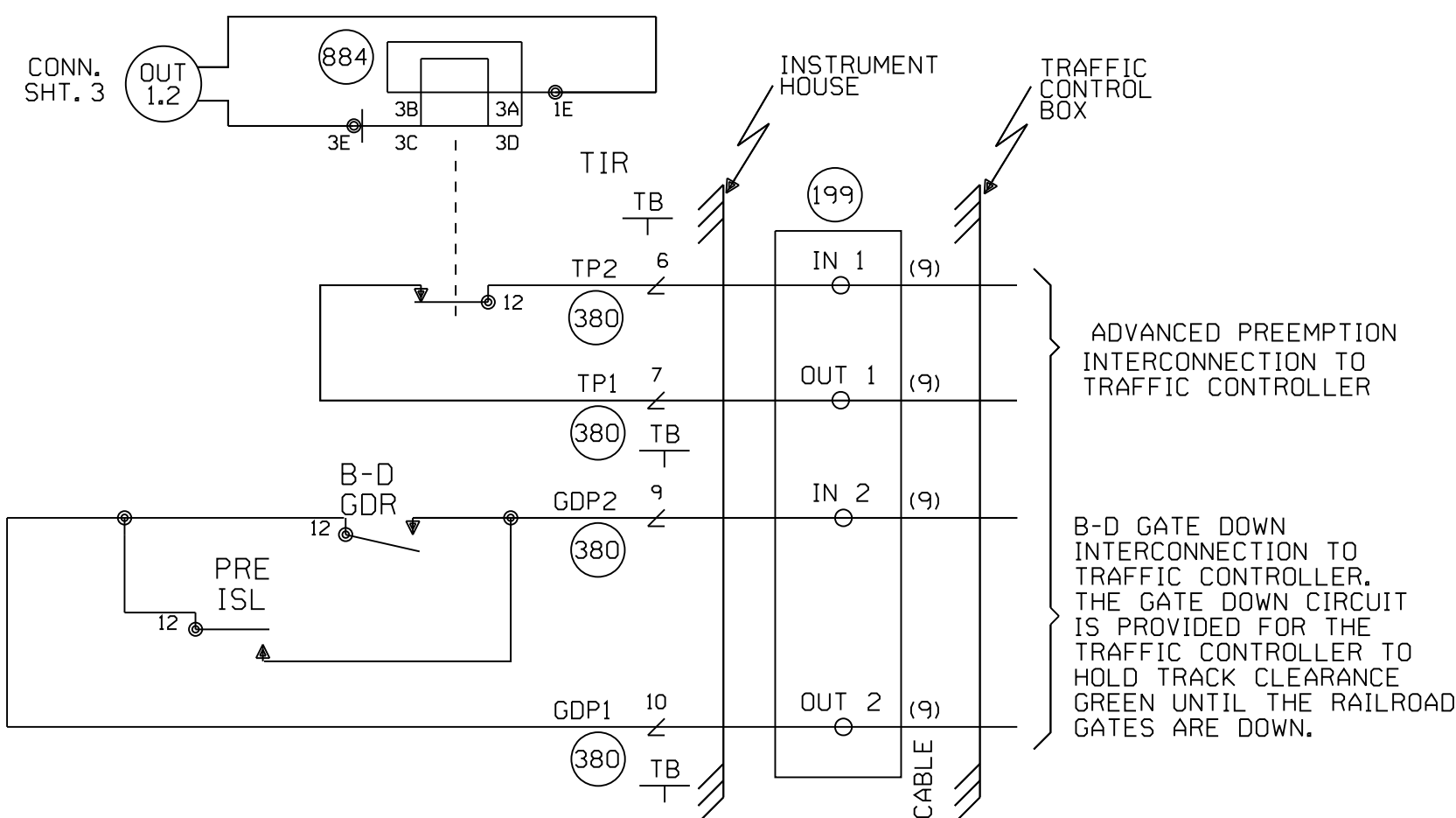
xx = BELL

TRK 1 ISLAND DISTANCE 165' MINIMUM 120' REQUIRED

OFFSET AND ISLAND DISTANCES
TO BE VERIFIED BY FIELD

W(S) ← ○ → E(N)

PREFERRED ISLAND WIRE CONNECTIONS
ARE A MINIMUM 50' FROM EDGE OF ROAD



CABLE TABULATION

CABLE NO. 9 U.G.B.T. HOUSE TO TRAFFIC CONTROLLER

ADVANCED PREEMPTION
INTERCONNECTION TO
TRAFFIC CONTROLLER

B-D GATE DOWN
INTERCONNECTION TO
TRAFFIC CONTROLLER.
THE GATE DOWN CIRCUIT
IS PROVIDED FOR THE
TRAFFIC CONTROLLER TO
HOLD TRACK CLEARANCE
GREEN UNTIL THE RAILROAD
GATES ARE DOWN.

NEW SHEET

Designed: 5/3/19 INSTALL FLS/GATES, CWT, & ADV. PRE. AT M.P. 25.91 14TH NORTH Rec'd: 5/15/19 W.D.: 44175 JLP/KPM	MODIFICATION LEVEL O. A. LAST LEVEL CHECKED DV LAST LEVEL MOD THIS TYPICAL DV LAST LEVEL BY DESIGNER DV CHANGED FROM TYPICAL? Y		CIRCUIT MODIFICATIONS ARE NOT TO BE MADE WITHOUT AUTHORITY FROM THE OFFICE OF SIGNAL DESIGN	Date: 05/03/19 Des: JLP Chk: SWP AFE: 44175	UNION PACIFIC RAILROAD LOGAN, UTAH 14TH NORTH CACHE VALLEY SUBDIVISION Office of AVP Engineering - Signal Omaha, Nebraska	Sh.: 1 DOT 806354Y MP: 25.91 ID: 36962591.IX
	Preferred Island Wire Connections are a minimum 50' from edge of road			Office of AVP Engineering - Signal Omaha, Nebraska		

EXHIBIT “E”

To:

“Petition and Request for Agency Action”

UP Real Estate Folder No.: 3196-94
Audit Number _____

PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT

W 1400 N
DOT NUMBER 806354Y
MILE POST 25.91 CACHE VALLEY
SUBDIVISION LOGAN, CACHE COUNTY, UTAH

THIS AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 20____ ("Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179 ("Railroad") and the **CITY OF LOGAN**, a municipal corporation or political subdivision of the State of Utah to be addressed at 450 N 1000 W, Logan, UT 84321 ("Political Body").

RECITALS:

The Political Body desires to undertake as its project (the "Project") the reconstruction and widening of the road with installation of new sidewalks over the W 1400 N at-grade public crossing, DOT Number 806354Y at Railroad's Mile Post 25.91 on Railroad's Cache Valley Subdivision at or near Logan, Cache County, Utah (the "Crossing Area") as depicted on **Exhibit A**, attached hereto and hereby made a part hereof. The area currently used by the Political Body and the new area which the Political Body needs in order to construct the Project is depicted as the "Existing Crossing Area" and the "New Crossing Area" on the legal descriptions attached as **Exhibit A-1**, attached hereto and hereby made a part hereof. The Existing Crossing Area and New Crossing Area are collectively referred to as the Crossing Area. The portion of the roadway located within the Crossing Area is the "Roadway".

In support of its Project, the Political Body has requested the Railroad's cooperation in connection with installing grade crossing protection devices, installing highway traffic control signals and installing the necessary relays and other materials required to interconnect and coordinate the operation of said railroad grade crossing protection devices with the operation of said highway traffic control signals. Said work is to be performed at the sole expense of Political Body.

The Railroad and the Political Body are entering into this Agreement to cover the above.

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

Section 1. EXHIBIT B

The general terms and conditions marked **Exhibit B**, are attached hereto and hereby made a part hereof.

Section 2. RAILROAD GRANTS RIGHT

For and in consideration **NINE THOUSAND EIGHT HUNDRED DOLLARS (\$9,800.00)** to be paid by the Political Body to the Railroad upon the execution and delivery of this Agreement and in further consideration of the Political Body's agreement to perform and comply with the terms of this Agreement, the Railroad hereby grants to the Political Body the right to construct, maintain and repair the Roadway over and across the Crossing Area.

For purposes of advanced signal preemption, Railroad hereby grants permission and authority to Political Body and/or its Contractor (as defined below) to install the conduit with the necessary wiring on Railroad right of way on the condition that prior to performing any work on Railroad's property, Political Body shall, or shall require its Contractor to, notify the Railroad and/or enter into a right of entry agreement with Railroad, as applicable pursuant to the terms and conditions of this Agreement.

Section 3. DEFINITION OF CONTRACTOR

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the Political Body to perform any Project work on any portion of the 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.

Section 4. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE

A. Prior to Contractor performing any work within the Crossing Area and any subsequent 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 D**, 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 File Folder No. 3196-94

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.

Section 5. FEDERAL AID POLICY GUIDE

If the Political Body will be receiving any federal funding for the Project, the current rules, regulations and provisions of the Federal Aid Policy Guide as contained in 23 CFR 140, Subpart I and 23 CFR 646, Subparts A and B are incorporated into this Agreement by reference.

Section 6. 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.

Section 7. 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 Summary of Material and Force Account Work dated 3/18/2020 and 6/12/2019, marked **Exhibit C**, attached hereto and hereby made a part hereof (the "Estimate"). As set forth in the Estimates, the Railroad's estimated

cost for the Railroad's work associated with the Project is FIVE HUNDRED NINETY SIX THOUSAND FIVE HUNDRED FORTY TWO DOLLARS (\$596,542.00).

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 an 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.

Section 8. 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 Structure 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 Roadway layout specifications, cross sections and elevations, associated drainage, and other appurtenances.

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. The Railroad's review and approval of the Plans will in no way relieve 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.

Section 9. 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.

Section 10. EFFECTIVE DATE; TERM; TERMINATION

A. This Agreement is effective as of the Effective Date first herein written and shall continue in full force and effect for as long as the Roadway remains on the

Railroad's property.

B. The Railroad, if it so elects, may terminate this Agreement effective upon delivery of written notice 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 twelve (12) months from the Effective Date.

C. If the Agreement is terminated as provided above, or for any other reason, the Political Body shall pay to the Railroad all actual costs incurred by the Railroad in connection with the Project up to the date of termination, including, without limitation, all actual costs incurred by the Railroad in connection with reviewing any preliminary or final Project Plans.

Section 11. CONDITIONS TO BE MET BEFORE POLITICAL BODY CAN COMMENCE WORK

Neither the Political Body nor the Contractor may commence any work within the Crossing Area or on any other Railroad property until:

- (i) The Railroad and Political Body have executed this Agreement.
- (ii) The Railroad has provided to the Political Body the Railroad's written approval of the Plans.
- (iii) Each Contractor has executed Railroad's Contractor's Right of Entry Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements required under the Contractor's Right of Entry Agreement.
- (iv) Each Contractor has given the advance notice(s) required under the Contractor's Right of Entry Agreement to the Railroad Representative named in the Contractor's Right of Entry Agreement.

Section 12. FUTURE PROJECTS

Future projects involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the Roadway shall not commence until Railroad and Political Body agree on the plans for such future projects, cost allocations, right of entry terms and conditions and temporary construction rights, terms and conditions.

Section 13. ASSIGNMENT; SUCCESSORS AND ASSIGNS

A. Political Body shall not assign this Agreement without the prior written consent of Railroad.

B. Subject to the provisions of Paragraph A above, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad and Political Body.

Section 14. SPECIAL PROVISIONS PERTAINING TO AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

If the Political Body will be receiving American Recovery and Reinvestment Act ("ARRA") funding for the Project, the Political Body agrees that it is responsible in performing and completing all ARRA reporting documents for the Project. The Political Body confirms and acknowledges that Section 1512 of the ARRA provisions applies only to a "recipient" receiving ARRA funding directing from the federal government and, therefore, (i) the ARRA reporting requirements are the responsibility of the Political Body and not of the Railroad, and (ii) the Political Body shall not delegate any ARRA reporting responsibilities to the Railroad. The Political Body also confirms and acknowledges that (i) the Railroad shall provide to the Political Body the Railroad's standard and customary billing for expenses incurred by the Railroad for the Project including the Railroad's standard and customary documentation to support such billing, and (ii) such standard and customary billing and documentation from the Railroad provides the information needed by the Political Body to perform and complete the ARRA reporting documents. The Railroad confirms that the Political Body and the Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for the Project as provided in Section 11 of **Exhibit B** of this Agreement.

Section 15. SIGNAL PREEMPTION

A. Political Body and Railroad, severally and collectively, agree to interconnect and coordinate the operation of the railroad grade crossing protection devices with the operation of the highway traffic control signals at the Crossing Area, in accordance with the design schematic marked **Exhibit E**, hereto attached and hereby made a part hereof (the "Designs").

B. Political Body, at its expense, shall furnish all material, labor, equipment and supervision for the installation and maintenance of highway traffic control signals at the Crossing Area, as applicable in accordance with the Designs.

C. Railroad, at Political Body's expense, shall furnish all material, labor, equipment and supervision for the work described in the Estimate(s) and in accordance with the Designs, including, as applicable, installation of signals and/or appurtenances and installation of the necessary relays and other materials required to interconnect and coordinate the operation of the highway traffic control signals to be installed by the Political Body.

D. Each party shall take all suitable precautions to prevent any interference (by induction, leakage of electricity or otherwise) with the operation of the other party's signals or communications lines, or those of its tenants; and if, at any time, the operation or maintenance of its signals results in any electrostatic effects, the party whose signals are causing the interference shall, at its expense, immediately take such action as may be necessary to eliminate such interference.

E. Except as set forth in this Section, Political Body shall not be liable to Railroad on account of any failure of Railroad's warning devices to operate properly, nor shall Railroad have or be entitled to maintain any action against Political Body arising from any failure from Railroad's warning devices to operate properly. Similarly, Railroad shall not be liable to Political Body on account of any failure of Political Body's traffic signal to operate properly, nor shall Political Body have or be entitled to maintain any action against Railroad arising from any failure of Political Body's traffic signal to operate properly.

Section 16. SIGNAL MAINTENANCE COSTS

A. Effective as of the Effective Date of this Agreement, the Political Body, in addition to maintaining at its sole cost and expense the portion of the Roadway described in Section 2 of **Exhibit B**, agrees to pay to Railroad the sum of **ELEVEN THOUSAND FOUR HUNDRED SEVENTY FIVE DOLLARS (\$11,475.00)** per annum, payable annually in advance, as payment for Railroad's maintenance of the railroad crossing warning signals that are to be installed by the Railroad at the Crossing Area.

B. The above annual fee is based on the number of current signal units at the Crossing Area as shown on **Exhibit F**, attached hereto and hereby made a part hereof. Effective on the first anniversary of this Agreement and on the anniversary date of each subsequent one year period, the annual fee will be increased at a rate based on the American Association of Railroad's (AAR) signal unit cost index. Such changes in the maintenance fee may be made by the Railroad by means of automatic adjustment in billing. The signal unit base for the annual fee may be re-determined by the Railroad at any time subsequent to the expiration of five (5) years following the date on which the annual rental was last determined or established. Such changes in the maintenance fee may be made by means of automatic adjustment in billing.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date first herein written.

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

By: _____
Printed Name: _____
Title: _____

CITY OF LOGAN

By: _____
Printed Name: _____
Title: _____

**EXHIBIT A
TO
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

Exhibit A will be a print showing the Crossing Area (see Recitals)

T.T. SOUTH TO CACHE JCT.

T.T. NORTH TO PRESTON



600 WEST

73'

15'

4'3"

4'3"

1400 NORTH

47'

* POK

6'X6'

20'

15'

SIDEWALK

RAISED
MEDIAN

SIDEWALK

11'6"

11'6"

9'

11'

11'

11'

xx = BELL

- Bells: 4
- Gate A: 15'
- Gate B: 20'
- Gate C: 15'
- Gate D: 20'

City: LOGAN
 State: UTAH
 Street: 1400 NORTH
 Mile Pole: 25.91

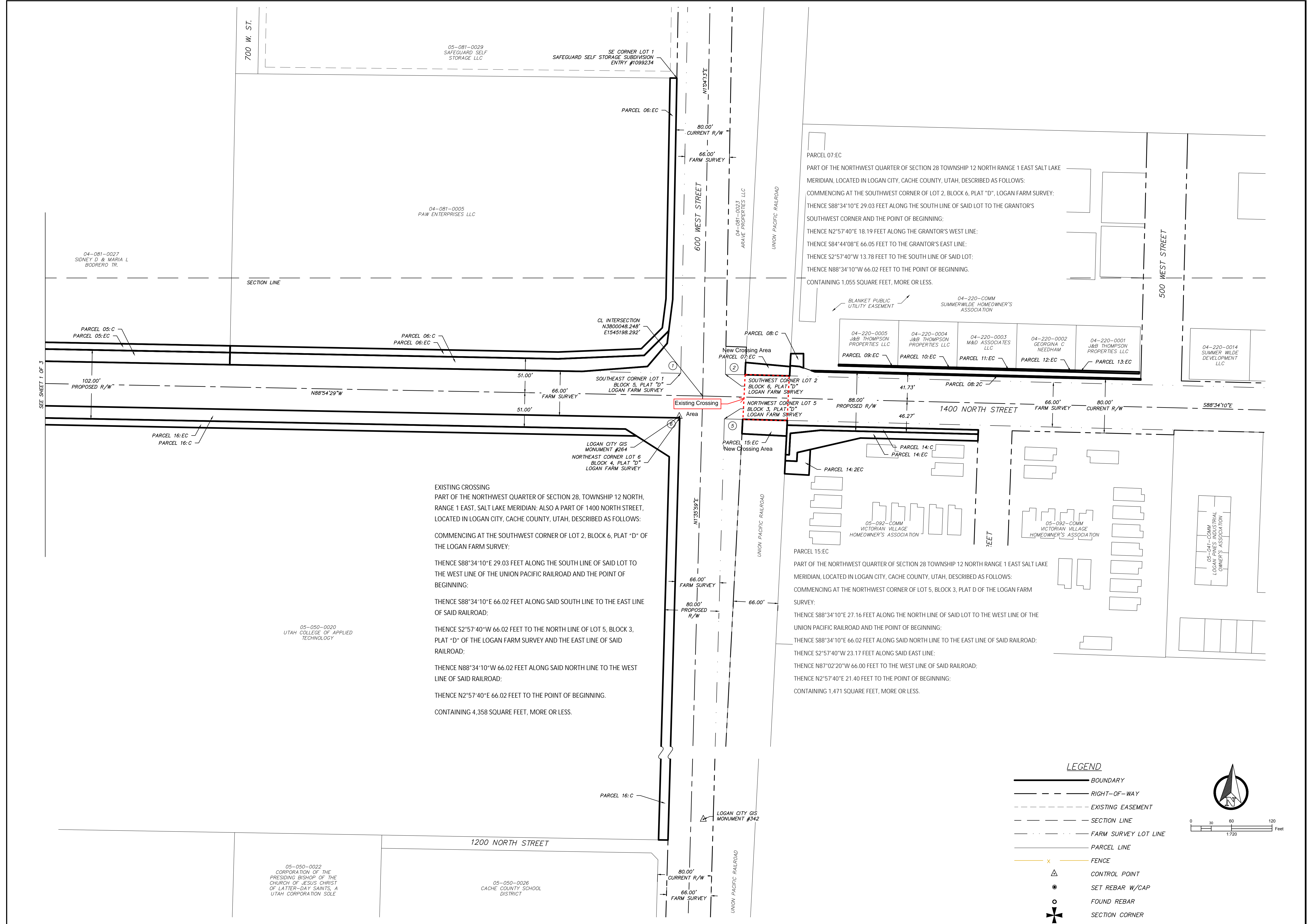
Subdivision: CACHE VALLEY
 DOT Number: 806354Y
 Date: 02/27/2019
 Drawn By: RPI
 AWO: 44175

Added Preemption Time: 25 SECS.
 Added Clear Time: 0 SECS.
 Maximum Timetable Speed: 10 MPH



**EXHIBIT A-1
TO
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

Exhibit A will be a print showing the Legal Descriptions of the Existing and New Crossing Areas (see Recitals)



EXISTING CROSSING
 PART OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 12 NORTH, RANGE 1 EAST, SALT LAKE MERIDIAN; ALSO A PART OF 1400 NORTH STREET, LOCATED IN LOGAN CITY, CACHE COUNTY, UTAH, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 2, BLOCK 6, PLAT "D" OF THE LOGAN FARM SURVEY;

THENCE S88°34'10"E 29.03 FEET ALONG THE SOUTH LINE OF SAID LOT TO THE WEST LINE OF THE UNION PACIFIC RAILROAD AND THE POINT OF BEGINNING;

THENCE S88°34'10"E 66.02 FEET ALONG SAID SOUTH LINE TO THE EAST LINE OF SAID RAILROAD;

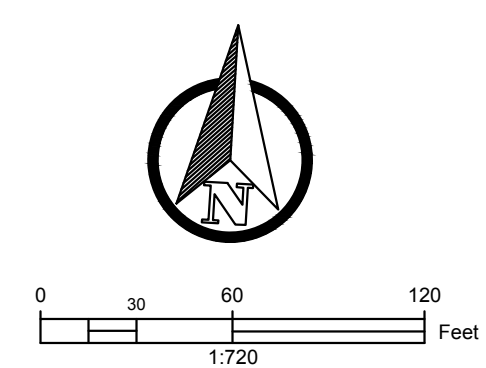
THENCE S2°57'40"W 66.02 FEET TO THE NORTH LINE OF LOT 5, BLOCK 3, PLAT "D" OF THE LOGAN FARM SURVEY AND THE EAST LINE OF SAID RAILROAD;

THENCE N88°34'10"W 66.02 FEET ALONG SAID NORTH LINE TO THE WEST LINE OF SAID RAILROAD;

THENCE N2°57'40"E 66.02 FEET TO THE POINT OF BEGINNING.

CONTAINING 4,358 SQUARE FEET, MORE OR LESS.

- LEGEND**
- BOUNDARY
 - - - RIGHT-OF-WAY
 - - - EXISTING EASEMENT
 - - - SECTION LINE
 - - - FARM SURVEY LOT LINE
 - - - PARCEL LINE
 - x - FENCE
 - △ CONTROL POINT
 - SET REBAR W/CAP
 - FOUND REBAR
 - ⊕ SECTION CORNER



S28 S29 T12N R1E SLM

INTERSECTION OF 600 W 1400 N
LOGAN, UT

RIGHT-OF-WAY SURVEY
FOR LOGAN CITY

Cache • Landmark
 Engineers
 Surveyors
 Planners

95 Golf Course Rd.
 Suite 101
 Logan, UT 84321
 435.713.0099

DATE: 12 APRIL 2019
 SCALE: 1" = 60'
 CALCULATED BY: S. EARL
 CHECKED BY: S. CROOKSTON
 APPROVED BY: S. EARL
 PROJECT NUMBER: 620-1801

2 / 3

**EXHIBIT B
TO
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT**

SECTION 1. CONDITIONS AND COVENANTS

A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The Political Body shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the Political Body shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the Railroad's property by or under authority of the Political Body for the purpose of conveying electric power or communications incidental to the Political Body's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the Political Body to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.

B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes. In the event the Railroad shall place additional tracks upon the Crossing Area, the Political Body shall, at its sole cost and expense, modify the Roadway to conform with all tracks within the Crossing Area.

C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The Political Body shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's property, unless the Political Body at its own expense settles with and obtains releases from such nonparties.

D. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property; and the right to cross the Crossing Area with all kinds of equipment.

E. So far as it lawfully may do so, the Political Body will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Crossing Area, excepting taxes levied upon and against the property as a component part of the Railroad's operating property.

F. If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Roadway and its appurtenances, or for the performance of any work in connection with the Project, the Political Body will acquire all such other property and rights at its own expense and without expense to the Railroad.

SECTION 2. CONSTRUCTION OF ROADWAY

A. The Political Body, at its expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Project, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.

B. Except as may be otherwise specifically provided herein, the Political Body, at its expense, will furnish all necessary labor, material and equipment, and shall construct and complete the Roadway and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper highway warning devices (except those installed by the Railroad within its right of way) and all necessary drainage facilities, guard rails or barriers, and right of way fences between the Roadway and the railroad tracks. Upon completion of the Project, the Political Body shall remove from the Railroad's property all temporary structures and false work, and will leave the Crossing Area in a condition satisfactory to the Railroad.

C. All construction work of the Political Body upon the Railroad's property (including, but not limited to, construction of the Roadway and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President Engineering-Design of the Railroad or his authorized representative and in compliance with the Plans, and other guidelines furnished by the Railroad.

D. All construction work of the Political Body shall be performed diligently and completed within a reasonable time. No part of the Project shall be suspended, discontinued or unduly delayed without the Railroad's written consent, and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of the Political Body. The Political Body hereby assumes the risk of any such delays and agrees that no claims for damages on account of any delay shall be made against the Railroad by the State and/or the Contractor.

SECTION 3. INJURY AND DAMAGE TO PROPERTY

If the Political Body, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the Political Body is responsible under the provisions of this Agreement, shall injure, damage or destroy

any property of the Railroad or of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the Political Body at the Political Body's own expense, or by the Railroad at the expense of the Political Body, and to the satisfaction of the Railroad's Assistant Vice President Engineering-Design.

SECTION 4. RAILROAD MAY USE CONTRACTORS TO PERFORM WORK

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

SECTION 5. MAINTENANCE AND REPAIRS

A. The Political Body shall, at its own sole expense, maintain, repair, and renew, or cause to be maintained, repaired and renewed, the entire Crossing Area and Roadway, except the portions between the track tie ends, which shall be maintained by and at the expense of the Railroad.

B. If, in the future, the Political Body elects to have the surfacing material between the track tie ends, or between tracks if there is more than one railroad track across the Crossing Area, replaced with paving or some surfacing material other than timber planking, the Railroad, at the Political Body's expense, shall install such replacement surfacing, and in the future, to the extent repair or replacement of the surfacing is necessitated by repair or rehabilitation of the Railroad's tracks through the Crossing Area, the Political Body shall bear the expense of such repairs or replacement.

SECTION 6. CHANGES IN GRADE

If at any time the Railroad shall elect, or be required by competent authority to, raise or lower the grade of all or any portion of the track(s) located within the Crossing Area, the Political Body shall, at its own expense, conform the Roadway to conform with the change of grade of the trackage.

SECTION 7. REARRANGEMENT OF WARNING DEVICES

If the change or rearrangement of any warning device installed hereunder is necessitated for public or Railroad convenience or on account of improvements for either the Railroad, highway or both, the parties will apportion the expense incidental thereto between themselves by negotiation, agreement or by the order of a competent authority before the change or rearrangement is undertaken.

SECTION 8. SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the Political Body that the work will be performed in a safe manner and in conformity with the following standards:

A. **Definitions.** All references in this Agreement to the Political Body shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the Political Body shall include work both within and outside of the Railroad's property.

B. **Entry on to Railroad's Property by Political Body.** If the Political Body's employees need to enter Railroad's property in order to perform an inspection of the Roadway, minor maintenance or other activities, the Political Body shall first provide at least ten (10) working days advance notice to the Railroad Representative. With respect to such entry on to Railroad's property, the Political Body, to the extent permitted by law, agrees to release, defend and indemnify the Railroad from and against any loss, damage, injury, liability, claim, cost or expense incurred by any person including, without limitation, the Political Body's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of Political Body's employees on Railroad's property, except to the extent that any Loss is caused by the sole direct negligence of Railroad.

C. **Flagging.**

(i) If the Political Body's employees need to enter Railroad's property as provided in Paragraph B above, the Political Body agrees to notify the Railroad Representative at least thirty (30) working days in advance of proposed performance of any work by Political Body 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 thirty (30) day notice, the Railroad Representative will determine and inform Political Body whether a flagman need be present and whether Political Body needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Political Body for such expenses incurred by Railroad. 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 its responsibilities or liabilities set forth in this Agreement.

(ii) 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 shall pay on the basis of the new rates and charges.

(iii) 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 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.

D. **Compliance With Laws.** The Political Body shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Political Body shall use only such methods as are consistent with safety, both as concerns the Political Body, the Political Body's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Political Body (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the Political Body to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Political Body shall reimburse, and to the extent it may lawfully do so, indemnify the Railroad for any such fine,

penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The Political Body further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

E. **No Interference or Delays.** The Political Body shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.

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

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

H. **Removal of Debris.** The Political Body shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the Political Body at the Political Body's own expense or by the Railroad at the expense of the Political Body. The Political Body shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during snow removal from the Crossing Area.

I. **Explosives.** The Political Body shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property

that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.

J. **Excavation.** The Political Body shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The Political Body shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The Political Body, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the Political Body in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering - Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.

K. **Drainage.** The Political Body, at the Political Body's own expense, shall provide and maintain suitable facilities for draining the Roadway and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The Political Body, at the Political Body's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the Political Body, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The Political Body shall not obstruct or interfere with existing ditches or drainage facilities.

L. **Notice.** Before commencing any work, the Political Body shall provide the advance notice to the Railroad that is required under the Contractor's Right of Entry Agreement.

M. **Fiber Optic Cables.** 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 telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) 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, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the

Railroad's premises.

SECTION 9. INTERIM WARNING DEVICES

If at anytime it is determined by a competent authority, by the Political Body, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the Political Body shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the new or improved devices have been installed.

SECTION 10. OTHER RAILROADS

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

SECTION 11. BOOKS AND RECORDS

The books, papers, records and accounts of Railroad, so far as they relate to the items of expense for the materials to be provided by Railroad under this Project, or are associated with the work to be performed by Railroad under this Project, shall be open to inspection and audit at Railroad's offices in Omaha, Nebraska, during normal business hours by the agents and authorized representatives of Political Body for a period of three (3) years following the date of Railroad's last billing sent to Political Body.

SECTION 12. REMEDIES FOR BREACH OR NONUSE

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

B. Nonuse by the Political Body of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the Political Body hereunder.

C. The Political Body will surrender peaceable possession of the Crossing Area and Roadway upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

SECTION 13. MODIFICATION - ENTIRE AGREEMENT

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the Political Body and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the Political Body shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof constitute the entire understanding between the Political Body and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.

EXHIBIT C

TO

PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT

Exhibit C will be Railroad's Work Estimate (see Recitals)

Material And Force Account Estimate

CITY / STATE / FED

Estimate Number: 125235 Version: 1

Standard Rates: Labor Additive = 233.58%

Estimate Good Until 03-11-20

Location: CACHE VALLEY SUB, SIMN, 25.89-25.93

Description of Work: Cache Valley Sub

DOT# 806354Y-5 / 14th North, Logan, UT

Widen road crossing. Possibly include lights, gates, bells, and advanced preemption with adjacent intersection

Prepared For:

Buy America: Yes

COMMENTS	FACILITY	Description	QTY	UOM	UCST	LABOR	MATERIAL	TOTAL	UP %100	Agcy %0
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ENGINEERING

		Engineering	1	LS	17,982.90	17,983	0	17,983	0	17,983
		Bill Prep Fee - Track Surface RECOLLECT	1	LS	900.00	0	900	900	0	900
		Homeline Freight - Track Surface RECOLLECT	1	LS	900.00	0	900	900	0	900
		Foreign Line Freight - Track Surface RECOLLECT	1	LS	990.76	0	991	991	0	991
Sub-Total =						17,983	2,791	20,774	0	20,774

TRACK CONSTRUCTION - COMPANY

	RDXING	RDXING 136# CONC W/SL3 10' CTIES	112	TF	651.82	45,418	27,586	73,004	0	73,004
	TRACK	136# CWRIS0 24-8'6" HWD N 16 TP	160	TF	394.04	45,168	17,879	63,047	0	63,047
	BALAST	BALAST CL1	2	CL	1,485.77	899	2,073	2,972	0	2,972
		Compromise Joint Bar	4	PR	500.00	0	2,000	2,000	0	2,000
Sub-Total =						91,485	49,538	141,022	0	141,022

TRACK REMOVAL - COMPANY

	RDXING	Remove road crossing - prefab	38	TF	125.77	4,779	0	4,779	0	4,779
	TRACK	Remove Track	168	TF	28.20	4,737	0	4,737	0	4,737
Sub-Total =						9,516	0	9,516	0	9,516

SITE WORK - CONTRACT

		Asphalt: Hot Mix	1	TN	5,000.00	0	5,000	5,000	0	5,000
		Asphalt: Saw Cut	1	LF	3,000.00	0	3,000	3,000	0	3,000
		Traffic Control - Detour Signs & Coordination	1	LS	6,000.00	0	6,000	6,000	0	6,000
Sub-Total =						0	14,000	14,000	0	14,000

SIGNAL - COMPANY

		Signal: Xing Signals	1	LS	1,500.00	1,500	0	1,500	0	1,500
Sub-Total =						1,500	0	1,500	0	1,500

Total Wgt. in Tons = 898

Totals = 120,484 66,329 186,812 0 186,812

Grand Total = \$186,812

Please Note: The above figures are estimates only and are subject to fluctuation. In the event of an increase or decrease in the cost or amount of material or labor required, CITY / STATE / FED will pay actual construction costs at the current rates effective thereof.

Material And Force Account Estimate

City of Logan UT

Estimate Creation Date: 06/12/2019 Number: 123083 Version: 1

Estimate Good Until 03/12/20

Location: CACHE VALLEY SUB, SIMN, .08-42.69

Buy America: Yes

Description of Work: Cache Valley Sub MP 25.91 Logan, UT 14th North DOT#806354Y WO#44175 PID#106694
100% Recollectable

COMMENTS	Description	SubDivision	From MP	To MP	QTY	UOM	Unit Cost	LABOR	MATERIAL	TOTAL	UP 00%	Agncy 100%
SIGNAL												
	Xing - Install Web and Head Bonds per 1000 TF	CACHE VALLEY SUB	0.08	42.69	4	EA	1,865.00	6,400	1,060	7,460	0	7,460
	Xing - 1 Trk CWE w/Four Quad Gates				1	EA	192,474.00	67,200	125,274	192,474	0	192,474
	Xing - Sidelight				2	EA	907.00	0	1,814	1,814	0	1,814
	Xing - Engineering Design				1	LS	6,427.00	6,427	0	6,427	0	6,427
	Xing - Boring				1	LS	10,000.00	0	10,000	10,000	0	10,000
	Xing - Contract Services for Preempt Cutover				1	LS	15,000.00	0	15,000	15,000	0	15,000
	Xing - Fill/Rock/Gravel				1	LS	10,000.00	0	10,000	10,000	0	10,000
Fed W/ OH & Ind. 190.55%	Xing - Labor Additive				1	LS	152,493.00	152,493	0	152,493	0	152,493
	Xing - Meter Service				1	LS	15,000.00	0	15,000	15,000	0	15,000
Sub-Total =								232,520	178,148	410,668	0	410,668

Totals = 232,520 178,148 410,668 0 410,668

Grand Total = \$410,668

Disclaimer: This is a preliminary estimate, intended to provide a ballpark cost to determine whether a proposed project warrants further study. Quantities and costs are estimated using readily available information and experience with similar projects. Site conditions and changes in project scope and design may result in significant cost variance.

EXHIBIT D
TO
PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT

Exhibit D will be Contractor's Right of Entry Agreement (see Recitals)

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.

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

Union Pacific Railroad Company
1400 Douglas Street, Stop 1690
Omaha, NE 68179
Attn: Manager
Folder No. 2992-98

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 _____ Dollars (\$_____) 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: _____
Title: _____

EXHIBIT A
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

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

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 fifty (50) 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 telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) 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 EXTENT NOT PROHIBITED BY APPLICABLE STATUTE, 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.

**AREMA UNIT STATEMENT OF RAILROAD HIGHWAY GRADE CROSSING SIGNALS
ESTIMATED MAINTENANCE COSTS**



BUILDING AMERICA®

**FOR PID # 106694
BY THE UNION PACIFIC RAILROAD**

STREET	14th North
TOWN	Logan, UT
MILEPOST	25.91
SUBDIVISION	Cache Valley
AAR/DOT NO.	806354Y
WORK ORDER#	44175

DESCRIPTION	VALUE	QUANTITY	UNITS
NON-CODED TRK. CIRCUIT (Standalone AFTAC or Ring 10)	2	0	0
SUPERIMPOSED CIRCUIT(AFTAC) / DETECTION LOOP	2	0	0
HIGHWAY GRADE CROSSING SIGNAL (FRONT LIGHTS)	2	4	8
ADDITIONAL PAIR OF LIGHTS (OTHER THAN FRONT LIGHTS)	1	6	6
GATE MECHANISM, AUTOMATIC WITH ARM UP TO 26 FT	8	4	32
GATE MECHANISM, AUTOMATIC WITH ARM OVER 26 FT	10	0	0
GCP/HXP (constant warning device, per track circuit)	15	1	15
EXIT GATE MANAGEMENT SYSTEM RACK*	10	0	0
MOVEMENT DETECTOR (PMD)	6	0	0
MOVEMENT DETECTOR (STANDBY UNIT)	3	0	0
RADIO DATA LINK, PER UNIT	1	0	0
PREEMPTION CIRCUIT	2	1	2
DATA RECORDER	1	0	0
REMOTE MONITORING DEVICE (SEAR, ETC)*	2	1	2
BONDED RAIL JOINTS (per mile, each rail, single bonded)	1	0.5	0.5
BATTERY AND CHARGER (per set)	1	2	2
TOTAL UNIT COUNT			67.5
PAVEMENT RESTORATION COSTS			(Actual)
	Annual Maintenance Cost at \$170/Unit		\$11,475

*UP supplied Unit Value

June 11, 2019

EXHIBIT “F”

To:

“Petition and Request for Agency Action”

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed July 16, 2020, 12:00 a.m. through July 31, 2020, 11:59 p.m.

Number 2020-16
August 15, 2020

Nancy L. Lancaster, Managing Editor

The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah state government. The Office of Administrative Rules, part of the Department of Administrative Services, produces the *Bulletin* under authority of Section 63G-3-402.

The Portable Document Format (PDF) version of the *Bulletin* is the official version. The PDF version of this issue is available at <https://rules.utah.gov/>. Any discrepancy between the PDF version and other versions will be resolved in favor of the PDF version.

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-957-7110. Additional rulemaking information and electronic versions of all administrative rule publications are available at <https://rules.utah.gov/>.

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)* of the same volume and issue number. The *Digest* is available by e-mail subscription or online. Visit <https://rules.utah.gov/> for additional information.

- (d) financial incentive plan that includes:
(i) budget of the proposed plan; and
(ii) timeline that establishes the funds will be expended prior to December 30, 2020.

R357-34-105. Program Requirements.

(1) The office will not issue a grant until all required information and documentation is submitted and approved, as determined by the office. Only complete applications will be considered submitted.

(2) Grant award shall not exceed \$50,000.

(3) An awardee shall submit only one application under the program.

(4) An awardee shall follow best practices to protect the health and safety of employees and customers.

(5) An award may be denied or reduced if the financial incentive proposed by the applicant has a limited customer reach or otherwise insufficiently incentivizes the customer, as reasonably determined by the office.

(6) An awardee shall use the grant funds to offset the economic impact of COVID-19 and will expend all funds on or before December 30, 2020.

(7) An awardee shall provide the financial incentive to the customer on or before December 30, 2020 and the customer may redeem the financial incentive any time up to and including June 30, 2021.

(8) An awardee shall submit to audits and information requests as reasonably requested by GOED or its designee.

KEY: Safe in Utah, small business, COVID-19 assistance

Date of Enactment or Last Substantive Amendment: July 30, 2020

Authorizing, and Implemented or Interpreted Law: 63N-15-202

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code Ref (R no.):	R930-5-8	Filing No. 52999

Agency Information

1. Department:	Transportation	
Agency:	Preconstruction	
Room no.:	Administrative Suite, 1st Floor	
Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state, zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 148455	
City, state, zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	Phone:	Email:
Linda Hull	801-965-4253	lhull@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov

Lori Edwards	801-965-4048	loriedwards@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R930-5-8. Maintenance

3. Effective Date:
07/31/2020

4. Purpose of the new rule or reason for the change:
This emergency rule change is needed to clarify the Department of Transportation's (Department) intent when it originally promulgated this rule.

5. Summary of the new rule or change:
Subsection R930-5-8(1) is changing to clarify that the purpose of Section R930-5-8 is to assign responsibility for maintenance of railroad crossings through state owned right of way as described in Section R930-5-8, unless a prior signed written agreement to the contrary applies. This change also clarifies the Department's original intent was that "responsibility" includes the obligation to perform and pay for the maintenance.

6. Regular rulemaking would:
<input checked="" type="checkbox"/> cause an imminent peril to the public health, safety, or welfare;
<input type="checkbox"/> cause an imminent budget reduction because of budget restraints or federal requirements; or
<input type="checkbox"/> place the agency in violation of federal or state law.

Specific reason and justification:
A dispute exists over interpretation of this rule that will lead to delay in a planned construction project. The project in question is for the purpose of improving safety at an intersection on a state road and a railroad crossing. A delay in the project will create an imminent peril to the public health, safety, or welfare at the intersection according to the Logan City Safety Manager.

Fiscal Information

7. Aggregate anticipated cost or savings to:
A) State budget:
The Department anticipates this rule change will lead to a savings to the state budget because it will avoid a costly legal dispute.

B) Local governments:
This change may lead to savings to local governments by avoiding current and possible future disputes over maintenance costs at railroad crossings.
C) Small businesses ("small business" means a business employing 1-49 persons):
This change may lead to savings to small businesses by avoiding unnecessary delays in maintenance and construction projects related to railroad crossings through state owned right of way.
D) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
The Department does not anticipate any costs or savings to persons other than small businesses, non-small businesses, state, or local government entities because the change does not apply to persons other than railroads that own tracks that cross through highway right of way.
8. Compliance costs for affected persons:
This change will not lead to costs or savings to affected persons because this change clarifies the Department's intent and does not change anything.
9. A) Comments by the department head on the fiscal impact this rule may have on businesses:
This change will not have a fiscal impact on businesses in general.
B) Name and title of department head commenting on the fiscal impacts:
Carlos M. Braceras, Executive Director

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Section 54-4-15	Section 41-6a-1205	Section 72-1-201
Section 54-4-14		

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Braceras, Executive Director	Date:	07/29/2020
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R930. Transportation, Preconstruction.

R930-5. Establishment and Regulation of At-Grade Railroad Crossings.

R930-5-8. Maintenance.

(1) Responsibility for maintenance is as described in this section unless a [separate] prior signed written agreement applies. Responsibility means the obligation to perform and pay for the maintenance.

(a) The Railroad is responsible for the maintenance of all Railroad Passive Warning Devices and Active Warning Devices within the Railroad right-of-way.

(b) If the Railroad has a property interest in the right-of-way, the Railroad is responsible for the maintenance of Crossing material within the Railroad right-of-way and two feet beyond each outside rail for Crossings without concrete crossing panels or edge of concrete crossing panel.

(c) On a temporary Highway Detour Crossing, the Railroad shall be responsible for the maintenance of pavement, Active Warning Devices, and Passive Warning Devices within the Railroad right-of-way at expense of the Highway Authority.

(d) When the Railroad alters the railway due to track and ballast maintenance, the Railroad shall coordinate their work with the Highway Authority so the pavement approaches can be adjusted to provide a smooth and level Crossing surface.

(e) When the Highway Authority changes the Highway profile, through construction or maintenance activities, the Highway Authority shall coordinate their work with the Railroad so the tracks can be adjusted to provide as smooth and level a Crossing surface as possible.

(f) Where a Highway structure overpasses a Railroad, the Highway Authority is responsible for the maintenance of the entire structure and its approaches.

(g) Where a Highway underpasses a Railroad and the Railroad owns the right-of-way in fee title, the Highway Authority is responsible for the maintenance of the Highway and the entire structure below and including the deck plate, girders, handrail, and parapets. The Railroad is responsible for the maintenance of the ballast, ties, rails and any portion of the supporting structure above the top of the ballast deck plate between parapets.

(i) If the Highway Authority owns the right-of-way in fee title, the Railroad is responsible for the maintenance of the entire structure unless a [separate] prior signed written agreement applies.

(ii) Cost of repairing damages to a Highway or a Highway structure, occasioned by collision, equipment failure, or derailment of the Railroad's equipment shall be borne by the Railroad.

(h) Responsibility for maintenance of private industrial trackage not owned by a Railroad that crosses a Highway shall be as follows:

(i) When a facility, plant, or property owner receives goods and services from a Railroad over private industrial trackage that crosses a Highway, maintenance of the Crossing shall be the responsibility of the industry owning the trackage, or as agreed to by the parties.

(ii) When the Crossing becomes a safety hazard to vehicles and is not maintained, the Department and/or the Railroad shipping the goods and services shall notify the industry owning the trackage in writing to maintain or replace the Crossing material.

(iii) If the industry owning the trackage does not maintain or replace the Crossing material by a specified date, the Department shall order the Railroad to cease and desist operations across the Crossing.

(iv) If the industry owning the trackage does not respond to the order to maintain or replace the Crossing material the Department shall arrange to have the Crossing material replaced and bill the industry owning the trackage for the expenses to repair the trackage.

KEY: railroad, crossing, transportation, safety
Date of Enactment or Last Substantive Amendment: July 31, 2020
Notice of Continuation: November 2, 2016
Authorizing, and Implemented or Interpreted Law: 41-6a-1205; 54-4-14; 54-4-15; 72-1-201

End of the Notices of 120-Day (Emergency) Rules Section