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Master Agreement
Grade Crossing Safety Improvement Projects
UNION PACIFIC RAILROAD COMPANY
UPRR Audit Number: _____

18190

Folder # 279070

MASTER AGREEMENT

BETWEEN THE

UTAH DEPARTMENT OF TRANSPORTATION

AND

UNION PACIFIC RAILROAD COMPANY

COVERING

GRADE CROSSING SAFETY IMPROVEMENT PROJECTS

IN THE

STATE OF UTAH

MASTER AGREEMENT

THIS MASTER AGREEMENT ("Agreement"), made and entered into this 6 day of March, 2013 (the "Effective Date"), by and between the **UTAH DEPARTMENT OF TRANSPORTATION** ("UDOT") and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad").

RECITALS:

WHEREAS, UDOT, with the aid of federal railroad safety funds supplied by the Federal Government, desires to provide for the improvement, installation, maintenance, and operation of active or passive grade crossing warning devices of various descriptions, including protective guardrails, impact attenuators bells, gates, flashing lights (hereinafter called "warning devices"), grade crossing surface improvements, illumination, pavement markings, advance warning signs, interim traffic control measures, or any combination thereof, at public highway and street grade crossings over the **Railroad's** track or tracks at various locations in the State of Utah.

In order to expedite the processing of applications for the installation or improvement of said facilities and the preparation of agreements therefore as required, it is the desire of the parties hereto to enter into a Master Agreement setting out the general terms and conditions under which said facilities shall be provided, with the understanding that supplements to this agreement will be issued covering specific individual projects.

AGREEMENT

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

1. **SUPERSEDES PREVIOUS BLANKET AGREEMENTS, FORM OF SUPPLEMENTAL:**

It is understood and agreed by the parties hereto that this agreement will supersede the Blanket Agreement Covering Grade Crossing Warning Devices and/or Grade Crossing Surface Improvements in Utah dated December 23, 1987, UDOT Finance No. 88 2153, Railroad L.D. No. 26588 and supplements thereto.

The parties incorporate by reference 23 CFR 140, subpart I and 23 CFR 646, subpart B.

The form of the Supplemental to be prepared by UDOT and submitted to Railroad for each specific individual project shall be in the form marked as Exhibit A, attached hereto and incorporated by reference.

2. **RAILROAD COMPANY TO MAKE INSTALLATIONS:**

The **Railroad** shall, at the expense of **UDOT**, furnish all necessary labor, material, flagmen and equipment and shall install warning devices and/or surface improvements of the type and at the locations on the **Railroad's** right-of-way described in future supplements hereto, subject to the terms and conditions hereinafter set forth.

The **Railroad** shall also furnish, at the expense of **UDOT**, such detailed plans, specifications, lists of material and estimates of cost which may be required in addition to those prepared by **UDOT**. Said plans, specifications, lists and estimates shall become, by reference, a part of each supplement that may be issued hereunder.

The position of the warning devices, advance warning signs, protective guardrails and the location, width of grade crossing materials, and the adjustment of tracks, warning signs and other appurtenances at any particular crossing shall be established jointly by representatives of **UDOT** and the **Railroad** in accordance with the "Manual on Uniform Traffic Control Devices (MUTCD)". The **Railroad** will not begin installation of the warning devices or surface improvements until authorization is received from **UDOT**.

3. **PRIOR NOTIFICATION OF WORK:**

On all projects where work is performed on an actual cost basis:

A. The **Railroad** will provide forty-eight (48) hours notice, exclusive of weekends and holidays, to **UDOT's** Resident Engineer's office before performing any work covered by this agreement and any supplements hereof. If the **Railroad** experiences emergency work of its own which interrupts work on the project, it will resolve said emergency and notify the Resident Engineer's office when work will be resumed on the project. Failure of the **Railroad** to give proper notification to **UDOT's** Resident Engineer's office may result in **UDOT's** disallowance of reimbursement for that portion of the **Railroad's** unsupervised work.

B. **UDOT**, through its Resident Engineer, will keep daily records of the work performed by the **Railroad** in duplicate on a mutually acceptable form. The daily record shall be signed by **UDOT's** Resident Engineer and the **Railroad's** authorized representative. Each party shall be provided a copy of the record. When emergencies require the **Railroad's** work forces to leave a project, the record shall be resumed when work on the highway project is again commenced.

C. Before commencing any construction or other substantial work contemplated by this agreement, **UDOT** shall notify the **Railroad** of the time when such work shall commence. Notice shall be given not less than forty-eight (48) hours, exclusive of weekends and holidays, prior to the time work is to commence. **UDOT** shall cooperate with the **Railroad** in every reasonable way for the adequate protection of the **Railroad's** facilities and operations during progress of the work.

D. On projects where the work can be accurately estimated and **UDOT** and the **Railroad** have agreed to Lump Sum Payment as described in 23 CFR 140 Subpart I & 646 subpart B, there will be no requirement for daily record keeping nor for audit and reimbursement shall be made in conformance with Section 6 of this agreement. However, prior notification shall remain as in A and C above.

4. **MATERIALS USED IN WARNING DEVICES AND SURFACE IMPROVEMENTS:**

All materials used for warning devices and surface improvements shall be purchased by the **Railroad** or furnished by the **Railroad** from its company stock in accordance with the provisions of 23 CFR 140.908, Materials and Supplies and any amendments thereto which are in effect at the time of the execution of each supplement hereto.

Railroad acknowledges that this Agreement covers federal-aid projects, and Union Pacific will comply with the requirements of U.S.C. Section 313 and 23 CFR Section 635.410, Buy America requirements.

5. **STATE TO REIMBURSE RAILROAD COMPANY:**

A. For work performed by the **Railroad** on a reimbursement for Actual Cost basis, **UDOT** will pay the **Railroad** as follows:

- 1) **UDOT** shall pay to the **Railroad**, within forty-five (45) days (one hundred twenty (120) days for final billing) from receipt of the invoice the actual cost incurred by the **Railroad** in carrying out the work to be performed by the **Railroad** under the provisions of this Agreement and each supplement hereto. The invoice shall be prepared in conformity with 23 CFR 140.922. Said invoice shall be submitted by the **Railroad** within ninety days (90) days after the completion of the work performed by the **Railroad**. The **Railroad** shall send the invoices to Chief Railroad Engineer, UDOT Traffic and Safety, PO Box 143200, Salt Lake City, Utah 84114-3200. All final bills rendered by the **Railroad** and paid by **UDOT** will be subject to audit and approval by the Federal Highway Administration. Progress payments shall be made to the **Railroad** on Bills rendered by the **Railroad** during the progress of the work. All bills shall be reviewed by **UDOT's** Resident Engineer for verification of the work performed. Any work performed without proper notification to **UDOT's** Resident Engineers and for which Federal Funding is denied as a direct result of failure to provide prior notification shall be cited to the **Railroad** and deducted from the reimbursement.
- 2) Reimbursements will be made only for items fully complying with the requirements of 23 CFR 646 subpart B and 23 CFR 140 subpart I and any amendments thereto which are in effect at the time of the execution of each supplement hereto. Rental rates for any items of equipment necessary to the job and not included in the standard rates bulletin will be established with advance approval by the parties.
- 3) Reference to the Federal-Aid Grade Crossing Project Number will be indicated on all bills, correspondence and records pertaining to the project.

B. For work performed by the **Railroad** on a Lump Sum basis, **UDOT** will pay the **Railroad** as follows:

- 1) **UDOT** agrees to pay the **Railroad** a lump sum for the work performed on a project that has been undertaken as a lump sum project in accordance with the provisions of 23 CFR 140 Subpart I and 23 CFR 646.216(d)(3) and any supplements thereto, incorporated herein by reference and made a part hereof. The lump sum price for the work to be performed by the **Railroad** will be provided on a per-crossing basis, using the form of detailed estimate provided as Attachment 2 to FAPG NS 23 CFR 646B, after approval by **UDOT** and the Federal Highway Administration of the final detailed plans submitted by the **Railroad**. After obtaining the necessary approvals, completion of the work and the invoice for the lump sum, **UDOT** shall pay the lump sum invoice within forty-five (45) days from receipt of the invoice. **UDOT** may accept the **Railroad's** proposal (as indicated in the detailed estimate) to perform the work on a lump sum basis at any time within ninety (90) days of receipt of the detailed estimate. If the proposal submitted by the **Railroad** is not accepted by **UDOT** and Federal Highway Administration within ninety (90) days, the proposal shall be considered withdrawn and the **Railroad** may, at its sole option, submit a new proposal in the form of a detailed estimate to perform the work on a lump sum basis subject to acceptance by **UDOT** for ninety (90) days or extend the time within which **UDOT** may accept the original proposal. **UDOT** may accept the **Railroad's** proposal to perform the work on a lump sum basis by forwarding the **Railroad** an addendum to this Master Agreement for execution by **Railroad** officials and a written authorization for the **Railroad** to proceed with the work. If lump sum basis is used, **UDOT** will perform periodic reviews and analyses of the railroad's methods and cost data used to develop lump sum estimates.
- 2) If by some unforeseen circumstance **Railroad** flagging and inspection should exceed the detailed estimate by 20% they shall be covered by a supplement to the addendum for the lump sum agreement.
- 3) The **Railroad** shall, upon completion of the work covered in the lump sum agreement, render to **UDOT** a statement for the total lump sum amount shown in the addendum to this Master Agreement.
- 4) Reimbursement by **UDOT** of the lump sum price shall be made within forty-five (45) days of receipt of the **Railroad's** statement.

6. **MAINTENANCE AND OPERATION OF WARNING DEVICES:**

Upon completion of the warning device installation at any particular grade crossing, the **Railroad**, at its own expense (except as herein or in any future supplement otherwise provided), shall thereafter operate and maintain said warning devices in proper working condition; PROVIDED, HOWEVER, that this provision shall not negate the **Railroad's** eligibility for any further federal, state or local or other public funds that may become available for the maintenance of said devices

If said warning devices or their appurtenances installed under any supplement to this agreement are damaged, and if after a diligent effort by the **Railroad**, documented in writing, the item for damages proves uncollectible from the person or persons responsible for such damage, or in the event the **Railroad** and **UDOT** agree that Said warning devices, because of age, cannot be

maintained or by virtue of their obsolescence require replacement, then in either event the apportionment of the cost to repair or replace the warning devices shall be negotiated by the parties.

UDOT will not assume any liability for further damage or participate in any flagging or other costs on account of the warning devices being inoperative due to damage or replacement. If the damage to said warning devices is caused by highway traffic, **UDOT** will cooperate with the **Railroad** in determining the location and identification of the parties responsible for such damage to the extent of making accident records available to the **Railroad**.

7. MOVING AND RELOCATION:

If for public or **Railroad** convenience, the rearrangement of any warning device is necessitated on account of improvements for either railroad, highway, or both, and before rearrangement of said warning device is undertaken, the apportionment of the expense incidental thereto shall be determined by agreement.

8. MAINTENANCE AND OPERATION OF CROSSING SURFACE IMPROVEMENTS:

Upon completion of a Project, **Railroad** hereby assumes all responsibility for the Railroad Work it has agreed to perform. The **Railroad** will remain the owner of the facilities constructed by the Railroad under this Agreement, and will thereafter, at no cost to **UDOT** or jurisdictional authority, maintain the 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. **Railroad** will not be responsible for maintenance of **UDOT's** or jurisdictional authority's facilities including, without limitation, the portions of the Road Crossing that are located beyond the area described above.

9. DRAINAGE:

If roadway approach paving work is included as part of the Railroad Crossing Project **UDOT** will, at its expense, design and install adequate facilities for draining the highway and its appurtenances, and shall not obstruct or interfere with existing drainage facilities or suffer or permit drainage water to flow or collect upon property of the **Railroad** because of any facilities or work of **UDOT**, and 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 water may not be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the **Railroad** or any part thereof, or the property of others.

10. INTERFERENCE WITH RAILROAD COMPANY OPERATIONS:

All work of **UDOT** contemplated by this agreement, including any work of maintenance of the highway facilities or appurtenances constructed on the **Railroad's** property shall be performed and accomplished without interruption to or delay of operations of the **Railroad** or of others lawfully occupying or using the property or facilities.

UDOT 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.

11. **INSTALLATION AND MAINTENANCE OF SIGNS, GUARDRAIL, PAVEMENT MARKINGS AND APPROACH PAVING:**

Installation and maintenance of any advance warning signs, protective guardrails, pavement markings and approach paving that may be required in any particular project shall be performed by and at the expense of UDOT or the local authority having jurisdiction over the highway right-of-way.

12. **CESSATION OF OPERATION:**

If the warning devices and surface improvements at any crossing, the subject of this agreement or any future supplement hereto, are rendered unnecessary or undesirable, or improper by closing said crossing, by relocation, by separation of grades, or improvements in crossing protection, the **Railroad** shall be released from further maintenance and obligation in connection therewith.

In the event of cessation of operation of any warning devices under the above conditions, the salvable items shall be disposed of by agreement of the parties hereto prior to said cessation of operation. UDOT and/or the Federal Highway Administration shall have the right to inspect salvageable material prior to its disposal.

13. **EACH PARTY RESPONSIBLE FOR ITS OWN ACTIONS:**

The **Railroad** and UDOT each hereby assume all responsibility for the construction and maintenance work it has agreed to perform.

14. **COMPLIANCE WITH FEDERAL-AID HIGHWAY PROGRAM:**

Installation of warning devices or surface improvements as contemplated hereunder and Federal participation in the cost thereof shall be in accordance with the provisions of 23 CFR 646 , 23 CFR 140 subpart I, and the Federal Aid Program Guide NS 23 CFR 646B issued by the Federal Highway Administration, and any supplements or amendments thereto which are in effect at the time of the execution of each supplement hereto, which are incorporated herein by this reference.

In accordance with the provisions of 23 CFR 646.210(b), the **Railroad** will receive no ascertainable benefit from the installation of the warning devices or surface improvements and consequently no contribution from the **Railroad** will be required toward the cost thereof except as otherwise specifically provided in this Agreement, and any supplement hereto.

If the work by the **Railroad** under this agreement at any particular crossing is performed by other than **Railroad** forces or equipment, the provisions of the Civil Rights Act of 1964, contained in attached Appendix A, will apply and become a part of the supplement for that particular project.

15. EXTRA WORK:

Except as otherwise provided in Section 6 (b) for lump sum projects, in the event there are changes in the scope of the work, extra work, or changes in the planned work covered by this agreement, reimbursement therefore shall be limited to costs covered by a modification to this agreement approved in writing by **UDOT** prior to the start of work on the changes or additions.

16. INSURANCE, UDOT PERFORMED WORK:

On any railroad safety improvement project where **UDOT** will be performing any Work on **Railroad's** property with its own contractors, **UDOT** will require its contractor to enter into a Contractor's Right of Entry Agreement.

AT NO TIME SHALL EITHER PERSONNEL OR EQUIPMENT BE ON RAILROAD PROPERTY OUTSIDE OF PUBLIC RIGHT OF WAY, OR BE CLOSER THAN TWENTY FIVE (25) FEET TO THE RAILROAD'S TRACK WITHOUT THE PRESENCE OF A RAILROAD FLAGMAN.

17. PROTECTION OF FIBER OPTIC CABLE SYSTEMS:

Fiber optic cable systems may be buried on the **Railroad's** property. **UDOT** or its contractors shall telephone the **Railroad** at 1-800-336-9193 (a 24-hour number), to determine if fiber optic cable is buried anywhere on the **Railroad's** premises to be used by **UDOT**. If it is, **UDOT** 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.

18. INDEMNITY

A. In addition to the liability terms elsewhere in this Agreement, **UDOT** shall indemnify, defend and hold **Railroad** harmless against and from all third party costs, liability, and expenses whatsoever (including, without limitation, attorney fees, court costs, and expenses) arising out of any act or omission of **UDOT**, its **Contractor**, agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on **Railroad's** property; (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. **UDOT** 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 telecommunications company using **Railroad's** property or a customer or user of services of the fiber optic cable on **Railroad's** property. **UDOT's** obligation to indemnify the **Railroad** shall be limited by the liability caps in the Governmental Immunity Act. Nothing in this Agreement shall be construed to waive any provision of the Utah Governmental Immunity Act.

B. As used in this Section, "Railroad" includes other railroad companies using **Railroad's** property at or near the location of the Work Site and their officers, agents and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (i) injury to or death of persons whomsoever (including **Railroad's** officers, agents and employees, **UDOT's** officers, agents and employees, as well as any other

person) and (ii) damage to or loss or destruction of property whatsoever (including UDOT's property, damage to the roadbed, tracks, equipment, or other property of Railroad, or property in its care or custody).

C. As a major inducement and in consideration of the permission herein granted, UDOT agrees to indemnify and hold harmless Railroad from any Loss which is due to or arises from the Work performed under this Agreement, a breach of the Agreement or the failure to observe the health and safety provisions herein, or any activity or omission arising out of performance or nonperformance of this Agreement by UDOT, its employees or agents; however, that UDOT shall not be responsible to indemnify Railroad for Loss caused by the negligence of the Railroad. UDOT's obligation to indemnify the Railroad shall be limited by the liability caps in the Governmental Immunity Act. The provisions of this paragraph are not intended to create any additional rights to third parties.

19. ASSIGNMENT:

UDOT shall not assign this agreement or any supplement without the prior written consent of the Railroad, which approval shall not be unreasonably withheld.

20. SUCCESSOR AND ASSIGNS:

Subject to the preceding section, all the covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by the duly authorized officers as of the day and year first above written.

RECOMMENDED FOR APPROVAL:

By [Signature]
Chief Railroad Engineer

Date: 2-14-13

APPROVED AS TO FORM:

[Signature]
UDOT Counsel

Date: 2/14/2013

UTAH DEPARTMENT OF TRANSPORTATION

By [Signature]
Director

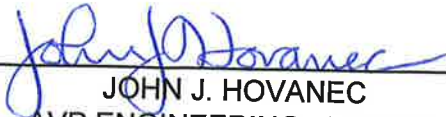
Date: 2-19-13

UDOT COMPTROLLERS OFFICE:

[Signature]
Contract Administrator

Date: 3-6-13

UNION PACIFIC RAILROAD COMPANY

By 
JOHN J. HOVANEK
AVP ENGINEERING - DESIGN

Date: March 4, 2013

Project No. _____; _____ County
Project Name: _____
UNION PACIFIC RAILROAD COMPANY
Milepost and Subdivision _____
USDOT No. _____
CID No. _____ PIN _____

EXHIBIT A

UNION PACIFIC RAILROAD COMPANY

SUPPLEMENTAL AGREEMENT

Contract to Master Agreement UDOT Finance No. _____

Dated _____

THIS CONTRACT, made and entered into this _____ day of _____, 20_____, by and between the **UTAH DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as "**UDOT**" and **UNION PACIFIC RAILROAD COMPANY**, a Registered Corporation in the State of Delaware, hereinafter referred to as the "**Company**",

The parties hereto entered in to a **MASTER AGREEMENT** dated _____, **UDOT** Finance No. _____. All the terms of said **MASTER AGREEMENT** remain in full force and effect unless otherwise specified herein.

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

1. The **Company** will perform the following described work in accordance with the terms and conditions of the **MASTER AGREEMENT**.

USDOT NO. _____, _____ (Location) _____

UPRR Required improvements include:

- _____ (Description of Work) _____
- _____
- _____

2. Prior to proceeding with the work covered herein, the **Company** is required to contact Eric Cheng, Chief Railroad Engineer; Telephone Number 801-965-4284, email echeng@utah.gov, to arrange for daily record keeping.
3. All billings are to be submitted to Chief Railroad Engineer, Utah Department of Transportation, 4501 South 2700 West, Box 143200, Salt Lake City, UT 84114-3200.
4. The estimated cost of the work covered by this **Contract** for crossing USDOT No. _____ is shown in an estimate prepared by the **Company** in the amount of \$ _____, details of which are marked **EXHIBIT A**, attached hereto and thereby made a part hereof.

TOTAL ESTIMATED REIMBURSEMENT TO THE COMPANY IS \$ _____

Project No. _____; _____ County

Project Name: _____

UNION PACIFIC RAILROAD COMPANY

Milepost and Subdivision _____

USDOT No. _____

CID No. _____ PIN _____

Note: The above is an estimate only. Final payment to the **Company** will be based on actual costs incurred as determined upon completion of construction.

5. Upon signature and return of this **Supplemental Agreement** to **UDOT**, the **Company** is authorized to proceed with the work covered herein.

IN WITNESS HEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers as of the day and year first above written.

RECOMMENDATION FOR APPROVAL:

UTAH DEPARTMENT OF TRANSPORTATION

By: _____
Chief Railroad Engineer

By: _____
Director, Traffic and Safety Division

Date: _____

Date: _____

APPROVED AS TO FORM:

UDOT COMPTROLLER'S OFFICE:

The Utah State Attorney General's Office has previously approved all paragraphs in this Agreement as to form.

By: _____
Contract Administrator

Date: _____

ATTEST:

UNION PACIFIC RAILROAD COMPANY,
A Corporation of the State of Delaware.

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

(IMPRESS SEAL)