
MEMORANDUM

DATE: July 12, 2007
TO: City Council Members
FROM: Russell Weeks
RE: Resolution: Cooperative Agreement with the Utah Department of Transportation regarding Federal Funds for Rail Improvements (Roper Yard – South of West Side Realignment Project)
CC: Cindy Gust-Jenson, Lyn Creswell, DJ Baxter, Louis Zunguze, George Shaw, Tim Harpst, Ed Rutan, Dan Mulé, Rusty Vetter, Jennifer Bruno, Janneke House

This memorandum pertains to a proposed resolution authorizing the execution of a cooperative agreement between Salt Lake City and the Utah Department of Transportation for the design and construction reimbursement for the reconfiguration of railroad tracks between 900 South and 2100 South near the Roper rail yard.

The resolution would allow the City to access \$5 million in federal funds to reimburse Union Pacific Railroad for work done south of the Westside Realignment Project, which will straighten the rail curves at Grant Tower west of the Gateway Mall.

The proposed resolution is scheduled for a briefing at the City Council's work session July 17 and for consideration under the *Unfinished Business* section of the agenda for the City Council's formal meeting the same night.

OPTIONS

- Adopt the resolution.
- Do not adopt the resolution.

POTENTIAL MOTIONS

- I move that the City Council adopt a motion authorizing the execution of a cooperative agreement between Salt Lake City Corporation and the Utah Department of Transportation for design and construction reimbursement for the reconfiguration of tracks north of the Roper rail yard.
- I move that the City Council consider the next item on the agenda.

KEY POINTS

- The agreement would allow the City to access up to \$5 million in U.S. Department of Transportation funds to reimburse Union Pacific Railroad for work it performs south of the Grant Tower realignment project.
- Salt Lake City would match the \$5 million with \$1.25 million in local funds. The \$1.25 million is expected to come from \$3.5 million in a one-time allowance of transportation

sales tax revenue collected by Salt Lake County. The Legislature authorized the allowance in 2006.

BACKGROUND/DISCUSSION

As mentioned earlier, the agreement addressed by the resolution will enable federal funds to help Union Pacific make a series of track improvements and safety upgrades south of downtown Salt Lake City. The improvements will enable higher train speeds through the straightened Grant Tower curves downtown. Straightening the track and making these improvements will result in accomplishing five major goals:

1. Straighter tracks will allow Union Pacific Railroad trains to travel through Salt Lake City faster, eliminating what some consider an operational bottleneck for the railroad.
2. Eliminating the bottleneck will eliminate the need to operate trains on what is known as the 900 South rail line. The line was activated in early 2002. Union Pacific has secured federal permission to abandon the 900 South rail line once the Westside Railroad Realignment Project is complete. After the 900 South line is abandoned the railroad will remove the tracks and transfer the land in the corridor to Salt Lake City.
3. Faster trains also require a series of connected safety projects at intersections. The safety projects ultimately will result in a “quiet zone” throughout much of the City in which trains no longer will be required to blow their horns at the intersections.
4. Reconfiguring the rail lines also allows the Utah Transit Authority to reconfigure its commuter rail line in a way that better enhances development opportunities in the Gateway area.
5. Union Pacific’s tracks going west from the city will be consolidated into a single alignment, thereby leaving a corridor in the Euclid neighborhood where the flow of City Creek could be brought to the surface, and a linear park created. The land along this corridor will also be transferred to the City once the tracks are removed.

The City Council in January authorized Mayor Ross C. Anderson to sign an agreement with Salt Lake County in which the County pledged to transfer \$3.5 million in one-time transportation sales tax revenue collected by Salt Lake County. A January 4 City Council staff report said, “The agreement calls for the ... County to transfer the funds as soon as they arrive and continue to do so until the entire \$3.5 million is paid. According to the Administration, the County projects that the full amount will be paid in three to four months.” The Administration reports that all of the funds have been transferred to the City.

The City Council in February authorized the signing of an agreement between the City and Union Pacific Railroad that outlined obligations for both parties to work toward straightening the Grant Tower curve and transferring to Salt Lake City “all land associated with the 900 South and Folsom Street track corridors.” The February agreement and a companion agreement signed in 2004 are the foundations of accomplishing the \$50 million project.

According to the Administration transmittal, the proposed agreement before the City Council would:


- Require Salt Lake City to pay to the Utah Department of Transportation its entire local match of \$1.25 million. According to the Administration, the \$1.25 million will come from the \$3.5 million in transportation sales tax revenue from Salt Lake County.
- UDOT will use the City's local share payment and \$5 million in federal funds to pay invoices submitted by Union Pacific for completed work on the project – up to a total project cost of \$6.25 million.
- UDOT will not process any Union Pacific payment requests without written authorization from Salt Lake City. The provision allows the City to stop payments if costs exceed the project total of \$6.25 million.
- UDOT also places all responsibility of paying for any project cost overruns on the City. According to the Administration, that is standard UDOT practice. However, the City has the ability to stop payments when the \$6.25 million is reached, and UDOT is scheduled to sign an agreement with Union Pacific that limits expenses to \$6.25 million in the Roper rail yard segment of the project.
- UDOT also places responsibility on the City for any shortfall in federal funds. However, in the February agreement with Union Pacific, the City limited its liability to make up federal fund shortfalls to \$674,000.


It should be noted that the following breakdown has been used to outline the financial participation in the project:

- \$5 million – Federal appropriation to Salt Lake City and Union Pacific through the SAFETEA-LU transportation spending bill
- \$15 million – UTA contribution for work that must also be completed to accommodate commuter rail
- \$15 million – Union Pacific's agreed contribution
- \$11.2 million – City share
- \$3.5 million – Utah Legislature authorized use of the transportation sales tax collected by Salt Lake County (one-time allowance).

It should be noted that on Tuesday the City closed on the sale of bonds for the Grant Tower and TRAX extension projects. The amount deposited into the Grant Tower construction account was \$5.6 million (\$3.1 million for RDA share and \$2.5 million for City share). The amount deposited into the TRAX extension construction account was \$2.81 million, according to the Administration.

MEMORANDUM

To: Lyn Creswell 
Chief Administrative Officer

From: D.J. Baxter 
Executive Director, Redevelopment Agency

Date: June 28, 2007

Re: Cooperative Agreement with Utah Department of Transportation regarding
Federal Funds for Rail Improvements, Job 109012

In 2005, the U.S. Congress earmarked \$5 million in Department of Transportation funds for the Grant Tower project. These funds will be used by Union Pacific for a project called the Roper Yard Segment, a series of separate track improvements and safety upgrades Union Pacific needs to make south of the Grant Tower area to improve the crossings and enable higher train speeds.

These funds will flow through the U.S. Federal Highway Administration, and will therefore be locally administered by the Utah Department of Transportation (UDOT), in a manner similar to the federal-aid road construction projects we have undertaken periodically. Like these other projects, the funds for the rail project must be governed by UDOT's standard agreements and terms. To access these funds, Salt Lake City must enter into a Cooperative Agreement with UDOT and provide a local match for the project equivalent to 20% of the total project cost. In this case the total project cost will be \$6.25 million, creating a federal share of 80% (\$5 million) and a local share of 20% (\$1.25 million).

The agreement contains several operative provisions, summarized as follows:

1. Upon signing, Salt Lake City must pay to UDOT its entire local match of \$1.25 million. Funds for this payment should be encumbered under Cost Center no. 83-07079-2740 and IFAS No. & Activity Code 83100312-695.
2. UDOT will use the City's local share payment and the federal funds to pay invoices submitted by Union Pacific for completed work, up to a total project cost of \$6.25 million.
3. UDOT will not process any Union Pacific payment requests without written authorization from Salt Lake City. This provision provides us with control over the expenditure of the funds, and allows us to stop payments if the costs exceed the project total of \$6.25 million. The

City's Engineering Division will handle the invoice approvals and track the budget.

4. Consistent with UDOT's standard practice, this agreement places all responsibility for any project cost overruns on the City. At the same time, however, we have the ability to stop payments when the project total is reached, and UDOT will be entering an agreement with Union Pacific that strictly limits the project to \$6.25 million.
5. Also consistent with UDOT's standard practice, this agreement makes the City responsible for any shortfall in federal funds. In our agreement with Union Pacific, we have limited our liability on this issue to \$673,000. Any shortfall in federal funds beyond this amount will be Union Pacific's responsibility.

Because of the timing of the delivery of the federal funds to UDOT, it is likely the City's share of any shortfall will be known and payable to UDOT by the end of this calendar year. It is possible the funds already appropriated for the project will be adequate to cover this liability. If not, however, we would need to seek an appropriation in a budget amendment during the year.

The timing of the federal funds and the terms of this agreement likely leave Union Pacific's potential liability to a later date, to be determined only after all of the federal funds have been received by UDOT in early calendar year 2009. It is important to note that if this later shortfall materializes, UDOT will, under the terms of this agreement, seek the funds from Salt Lake City. The City, in turn, will have to exercise its contractual indemnification from Union Pacific to recover the amount of the shortfall. While we certainly would have preferred to arrange for UDOT to collect those funds directly from Union Pacific, UDOT is unwilling to accept such an arrangement.

RESOLUTION NO. _____ OF 2007

AUTHORIZING THE EXECUTION OF COOPERATIVE AGREEMENT
BETWEEN SALT LAKE CITY CORPORATION AND
UTAH DEPARTMENT OF TRANSPORTATION FOR DESIGN &
CONSTRUCTION REIMBURSEMENT FOR
RECONFIGURATION OF TRACKS NORTH OF ROPER YARD

WHEREAS, Union Pacific Railroad Company ("Union Pacific") and City agreed on a process to enable the reconfiguration of Union Pacific's mainline tracks through in Salt Lake City, Salt Lake County, Utah, north of the Roper Yard and related railroad improvements (the "Roper Yard Segment Construction Work");

WHEREAS, City and Utah Department of Transportation ("UDOT") have agreed for UDOT to assist in the Roper Yard Segment Construction Work by making federal-aid highway funds available for the Project and engaging Union Pacific to perform certain design, engineering and construction work for the Project;

WHEREAS, the public benefits include faster clearing of city street crossings, reduced automobile and rail congestion through the metropolitan area, increased public safety and air quality, and reduced train whistle noise at rail crossings;

WHEREAS, the City and UDOT have reached an agreement on the project scope, funding, and other obligations of City and UDOT associated with the project;

WHEREAS, the attached agreement has been prepared to accomplish these purposes;

THEREFORE, BE IT RESOLVED by the City Council of Salt Lake City, Utah, as follows:

1. It does hereby approve the execution and delivery of the following:

COOPERATIVE AGREEMENT DESIGN AND CONSTRUCTION
REIMBURSEMENT

2. Ross C. Anderson, Mayor of Salt Lake City, Utah, or his designee, is hereby authorized to approve and execute said agreement on behalf of Salt Lake City Corporation, subject to such minor changes which do not materially affect the rights and obligations of the City thereunder and as shall be approved by the Mayor, his execution thereof to constitute conclusive evidence of such approval.

Passed by the City Council of Salt Lake City, Utah, this ____ day of June, 2007.

SALT LAKE CITY COUNCIL

By: _____
CHAIRPERSON

ATTEST AND COUNTERSIGN:

CHIEF DEPUTY CITY RECORDER

APPROVED AS TO FORM:



SALT LAKE CITY ATTORNEY

COOPERATIVE AGREEMENT DESIGN & CONSTRUCTION REIMBURSEMENT

Program
(FEDERAL PARTICIPATION)

THIS COOPERATIVE AGREEMENT (this "Agreement"), made and entered into this ____ day of _____, 2007, by and between the UTAH DEPARTMENT OF TRANSPORTATION ("UDOT"), and SALT LAKE CITY CORPORATION, a municipal corporation of the State of Utah (the "LOCAL AUTHORITY"), witnesseth that:

WHEREAS, the LOCAL AUTHORITY is the sponsor of a project consisting generally of railroad crossing safety improvements and more particularly described on Exhibit A attached hereto and identified as HPP-LC35(165) (the "Project"); and

WHEREAS, Federal-aid highway funds in the amount of \$5 million have been earmarked for the Project, and will be made available for the Project through UDOT on behalf of the LOCAL AUTHORITY; and

WHEREAS, as a condition of receiving such federal funds for the Project, the LOCAL AUTHORITY is required to provide a local match in the amount of \$1.25 million; and

WHEREAS, by law, UDOT may not expend State funds on any local government project, and

WHEREAS, the LOCAL AUTHORITY and UDOT desire to provide for the design, engineering and construction of the Project; and

WHEREAS, UDOT's Policy for Design Engineering and Construction Engineering on Local Government Projects provides that UDOT not perform design or construction engineering for local government projects, except in special circumstances which do not apply to the Project; and

WHEREAS, the parties desire that Union Pacific Railroad Company ("UP") be engaged to perform the design, engineering and construction work for the Project;

WHEREAS, the parties desire to document their understanding with respect to the engagement of UP to perform the design, engineering and construction work for the Project, and the disbursement of the available funds to pay for such work, and

WHEREAS, the parties are authorized to enter into this Agreement under the Utah Interlocal Cooperation Act, Title 11, Chapter 13 of the Utah Code (the "Act"),

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

- 1. Description of the Project:** The Project is described generally in the recitals above, and more particularly on Exhibit A attached hereto.
- 2. UDOT to Engage UP:** UDOT shall engage UP to perform all design, engineering and construction work related to the Project, by entering into an Addendum to that certain Railroad Master Agreement, UDOT Finance Department Number 88-2153, dated December 27, 1987, between UDOT and UP, which Addendum shall be in substantially the form attached hereto as Exhibit A. UDOT agrees to supervise and oversee the Project in a manner consistent with its standard practice in connection with projects performed under the Railroad Master Agreement. The work to be performed in connection with the Project shall be performed for the total amount of not to exceed \$6.25 million. Such amount shall include any and all costs associated with the Project, including without limitation all costs of design and engineering, labor and materials, and administration and overhead. UDOT agrees not to approve any change orders which increase the budget for the Project, without the express written approval of the LOCAL

AUTHORITY, and agreement among UDOT, the LOCAL AUTHORITY and UP regarding the funding of such change orders.

3. **Liability:** LOCAL AUTHORITY agrees to hold harmless and indemnify UDOT, its officers, employees and agents (Indemnities) from and against all claims, suits and costs, including attorneys' fees for injury or damage of any kind, arising out of the LOCAL AUTHORITY'S negligent acts, errors or omissions in the performance of this project, and from and against all claims, suits and costs, including attorneys' fees for injury or damage of any kind, arising out of Indemnities' failure to inspect, discover, correct, or otherwise address any defect, dangerous condition or other condition created by or resulting from LOCAL AUTHORITY's negligent acts, errors or omissions in the performance of this project.

Any periodic plan and specification review or construction inspection performed by UDOT arising out of the performance of the project does not relieve the LOCAL AUTHORITY of its duty in the performance of this project or to ensure compliance with acceptable standards.

4. **Financing of Project:** The costs shown below are only estimates. The available funding is comprised of actual distributions from earmarked federal funds in combination with Local Match. The actual distributions of earmarked funds may be less than \$5,000,000 as approved by Congress. Annual percentage distributions of earmarked funds are processed by the FHWA and are subject to funding availability as authorized by Congress. There is no guarantee that Congress will approve additional federal funds and therefore payment for additional costs will be the sole responsibility of the Local Authority.

Upon signing this agreement, the LOCAL AUTHORITY will pay their estimated matching share of \$1,250,000. All project costs not covered by Congressional appropriations will be the responsibility of the LOCAL AUTHORITY. It is currently estimated that 87% equaling \$4,350,000 of the earmarked funds will be approved by Congress. UDOT hereby agrees to pay City-approved invoices on the project up to that amount. In the event that project costs exceed \$5,600,000 and the sum of earmark funds and matching share is less than \$5,600,000, the LOCAL AUTHORITY shall, upon written request, reimburse UDOT for all documented costs in excess of \$5,600,000.

In the event that Congress has not distributed at least \$4,350,000 for this project by October 31, 2009, the LOCAL AUTHORITY shall pay UDOT the difference between what has been distributed by Congress for this project and \$4,350,000.

UDOT shall furnish a quarterly statement to the LOCAL AUTHORITY showing federal funds available to the project and costs charged to the project.

Project Number: HPP-LC35(165)
 Project Name: Grants Tower Reconfiguration
 Authority No.: 52319
 PIN No.: 5490

	FEDERAL PARTICIPATING	FEDERAL NON- PARTICIPATING
UDOT Technical Assistance and Engr. Services (Charged to CONSULTANT)	As requested	
UDOT Design Reviews, Environmental Document Preparation, Approvals, Agreements, and Project Management	\$50,000.00	\$
Design & Construction Costs	\$6,200,000.00	\$
ESTIMATED TOTAL PARTICIPATING AND NON-PARTICIPATING COSTS	\$6,250,000.00	\$0.00
GRAND TOTAL (Participating + Non- Participating)	\$6,250,000.00	
Federal Funds 80%	\$5,000,000.00	
Local Match 20%	\$1,250,000.00	
Local Authority Non-participating Costs	\$0.00	
Total Local Authority Match and Non- participating Costs	\$1,250,000.00	

- a. **Payment of LOCAL AUTHORITY Matching Share:** Upon signing this agreement, the LOCAL AUTHORITY will pay their matching share estimated at \$1,250,000. The LOCAL AUTHORITY shall make a check payable to the Utah Department of Transportation referencing the project number, HPP-LC35(165). Payment should be mailed to UDOT Comptroller's Office 4501 South 2700 West, Salt Lake City, Utah 84119-5998. UDOT shall place the matching share in a Public Treasures Investment Fund (PTIF). This interest bearing account will accrue interest that can be applied to project overruns or reimbursed to the City once the project is complete.
- b. **Union Pacific Pay Requests:** UDOT shall not approve or process any pay requests from UP without approval in writing from the LOCAL AUTHORITY. See Exhibit A, Item #2.
- c. **UDOT Design Reviews, Environmental Document Preparation, Approvals, Agreements, and Project Management:** The LOCAL AUTHORITY shall pay all costs (both direct and indirect) for Design Reviews, Approvals, Agreements, and Project Management performed by UDOT less the eligible amount reimbursed to UDOT by the Federal Government.
- d. **Underruns:** The UDOT Comptroller shall provide the LOCAL AUTHORITY with a final invoice, showing all costs, after final inspection and acceptance of the project by the FHWA. If the installments paid by the LOCAL AUTHORITY exceed the LOCAL AUTHORITY's share of the Project, UDOT shall return the amount of overpayment to the LOCAL AUTHORITY.
- e. **Overruns:** If project costs exceed the available funds approved by Congress, the LOCAL AUTHORITY shall pay for the overruns consistent with provisions in Section 4. Should the LOCAL AUTHORITY fail to reimburse UDOT for costs that exceed the federal reimbursement, federal funding for other LOCAL AUTHORITY projects or B&C road funds

may be withheld until payment is made. UDOT shall furnish a quarterly statement to the LOCAL AUTHORITY and UDOT project manager showing costs charged to the project.

- f. **Termination:** If this agreement is terminated for reasons other than satisfactory completion of the provisions of this agreement, UDOT may bill the LOCAL AUTHORITY for all costs incurred, providing prepaid amounts do not cover expenditures. The LOCAL AUTHORITY shall pay such costs within 30 days after receiving the billing. Federal funds for future projects may be withheld until payment is made.

5. **Termination:** This Agreement may be terminated as follows:

- a. By mutual agreement of the parties, in writing.
- b. By either UDOT or the LOCAL AUTHORITY for failure of the other party to fulfill its obligations as set forth in this Agreement. Reasonable allowances will be made for circumstances beyond the control of the parties. Written notice of intent to terminate is required and shall specify the reasons for termination.
- c. Upon satisfactory completion of the provisions of this Agreement.
- d. By UDOT, in the event that construction of the Project is not started by the close of the tenth fiscal year following the fiscal year in which this Agreement is executed.
- e. In no event shall this Agreement remain in effect beyond fifty (50) years after its effective date.

6. **Interlocal Cooperation Act Requirements:**

- a. This Agreement shall be approved by each party pursuant to § 11-13-202.5, of the Act.
- b. This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney on behalf of each party, pursuant to § 11-13-202.5 of the Act.
- c. A duly executed original counterpart of this Agreement shall be filed with the keeper of records of each party, pursuant to § 11-13-209 of the Act.
- d. Except as otherwise specifically provided herein, each party shall be responsible for its own costs of any action done pursuant to this Agreement, and for any financing of such costs; and
- e. No separate legal entity is created by the terms of this Agreement. To the extent that this Agreement requires administration other than as set forth herein, it shall be administered by the mayor of the LOCAL AUTHORITY and the Region Director of UDOT, acting as a joint board.
- f. The parties as a result of this Agreement shall acquire no real or personal property jointly. To the extent that a party acquires, holds, or disposes of any real or personal property for use in the joint or cooperative undertaking contemplated by this Agreement, such party shall do so in the same manner that it deals with other property of such party.
- g. Pursuant to Utah Code Ann. § 11-13-209, this Agreement does not take effect until it is filed with the keeper of records for each of the parties.

7. **REPRESENTATION REGARDING ETHICAL STANDARDS FOR OFFICERS AND EMPLOYEES AND FORMER OFFICERS AND EMPLOYEES.**

UDOT represents that it has not: (1) provided an illegal gift or payoff to a LOCAL AUTHORITY officer or employee or former LOCAL AUTHORITY officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in the LOCAL AUTHORITY's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code; or (4) knowingly influenced, and hereby promises that it will not knowingly influence, a LOCAL AUTHORITY officer or employee or former LOCAL AUTHORITY officer or employee to breach any of the ethical standards set forth in the LOCAL AUTHORITY's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code.

Project Number: HPP-LC35(165)
Project Name: Grants Tower Reconfiguration
Authority No.: 52319
PIN No.: 5490


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

AUTHORIZED LOCAL AUTHORITY OFFICIAL:

By: _____
Title: Mayor Date: _____

Printed Name: Rocky C. Anderson _____

Approved as to Form and Legality:


Senior City Attorney

UTAH DEPARTMENT OF TRANSPORTATION REGION OFFICE

By: _____
Title: Region Director Date: _____

UTAH DEPARTMENT OF TRANSPORTATION

Project Management Administration signature required when the standard boilerplate agreement has been modified.

☐ Check box if Project Management Administration signature is required.

By: _____
Title: Director of Engineering Services Date: _____

By: _____
Title: Contract Administrator Date: _____

This form agreement has been reviewed and approved by the designated representative of the Attorney General.

GENERAL (FHWA) PROVISIONS FOR FEDERAL-AID AGREEMENT

1. **General Provisions:** The Grantee will comply with all Federal laws and requirements which are applicable to grant agreements, and imposed by the Federal Highway Administration (FHWA) concerning special requirements of law, program requirements, and other administrative requirements.
2. **Modification:** This agreement may be amended at any time by a written modification properly executed by both the FHWA and the Grantee.
3. **Retention and Custodial for Records:**
 - (a) Financial records, supporting documents, statistical records, and all other records pertinent to this instrument shall be retained for a period of three (3) years, with the following exception:
 - (1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation claims, or audit findings involving the records have been resolved.
 - (2) Records for non-expendable property, if any, required with Federal funds shall be retained for three years after its final disposition.
 - (3) When records are transferred to or maintained by FHWA, the 3-year retention requirement is not applicable to the recipient.
 - (b) The retention period starts from the date of the submission of the final expenditure report.
 - (c) The Secretary of Transportation and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the recipient, and its contractors and subcontractors, to make audits, examinations, excerpts, and transcripts.
4. **Equal Employment Opportunity:**
 - (a) The applicant/recipient agrees to incorporate in all contracts having a value of over \$10,000, the provisions requiring compliance with Executive Order 11246, as amended, and implementing regulations of the United States Department of Labor at 41 CFR 60, the provisions of which, other than the standard EEO clause and applicable goals for employment of minorities and women, may be incorporated by reference.
 - (b) The application/recipient agrees to ensure that its contractors and subcontractors, regardless of tier, awarding contracts and/or issuing purchase orders for material, supplies, or equipment over \$10,000 in value will incorporate the required EEO provisions in such contracts and purchase orders.
 - (c) The applicant/recipient further agrees that its own employment policies and practices will be without discrimination based on race, color, religion, sex, national origin, handicap or age; and that it has or will develop and submit to FHWA by August 1 an affirmative action plan consistent with the Uniform Guidelines on Employee Selection Procedures, 29 CFR 1607, and the Affirmative Action Guidelines, 29 CFR 1608.
5. **Copeland Act:** All contracts in excess of \$2,000 for construction or repair awarded by recipient and its contractors or subcontractors shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, and person employed in the construction, completion, or repair of public work, or give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to FHWA.
6. **Davis-Bacon Act:** When required by the Federal program legislation, all construction contracts awarded by the recipient and its contractors or subcontractors of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the G/CAO.
7. **Contract Work Hours and Safety Standards Act:** Where applicable, all contracts awarded by recipient in excess of \$2,500 that involve the employment of mechanics or laborers, shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulation (29 CFR, Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages or every mechanic and laborer on the basis of a standard workday of 8 hours and a standard workweek of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the workweek. Section 107 of the Act if applicable to construction work provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
8. **Access to Records:** All negotiated contracts (except those of \$10,000 or less) awarded by recipients shall include a provision to the effect that the recipient, FHWA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts, and transcriptions.
9. **Civil Rights Act:** The recipient shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and in accordance with Title VI of that Act, no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied that benefits of, or be otherwise subjected to discrimination under any program or activity for which the recipient received Federal financial assistance and shall immediately take any measures necessary to effectuate this Agreement. It shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) prohibiting employment discrimination where:
 - (a) The primary purpose of and instrument is to provide employment, or
 - (b) Discriminatory employment practices will result in unequal treatment of persons who are or should be benefitting from the grant-aided activity.
10. **Nondiscrimination:** The applicant/recipient hereby agrees that, as a condition to receiving any Federal financial assistance from the Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d), related nondiscrimination statutes, and applicable regulatory requirements to the end that no person in the United States shall, on the grounds of race, color, national origin, sex, handicap or age, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the applicant/recipient receives Federal financial assistance. The specific requirements of the United States Department of Transportation standard Civil Rights assurances with regard to the States' highway safety programs (required by 49 CFR 21.7 and on file with the U.S. DOT) are incorporated in this grant agreement.
11. **Rehabilitation Act:** The recipient shall comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794, P.L. 93-112), and all requirements imposed by or pursuant to the regulations of the Department of Health, Education, and Welfare (45 CFR, Parts 80, 81, and 84), promulgated under the foregoing statute. It agrees that, in accordance with the foregoing requirements, no otherwise qualified handicapped person, by reason of handicap, shall be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and that it shall take any measures necessary to effectuate this Agreement.
12. **Government Rights (Unlimited):** FHWA shall have unlimited rights for the benefit of the Government in all other work developed in the performance of this Agreement, including the right to use same on any other Government work without additional cost to FHWA.
13. **Accountability of equipment acquired in prior years will be transferred to the current year Grant. An updated inventory list will be provided by FHWA.**
14. **This Grant is subject to the conditions specified in the enclosed Negotiation Document.**
15. **Drug-Free Workplace:** By signing this agreement, the recipient certifies that it is in compliance with the Drug-Free Workplace Act (41 U.S.C. Sec. 701 et seq.) and implementing regulations (49 CFR Part 29), which require, in part, that grantees prohibit drug use in the workplace, notify the FHWA of employee convictions for violations of criminal drug laws occurring in the workplace, and take appropriate personnel action against a convicted employee or require the employee to participate in a drug abuse assistance program.
16. **Limitation on Use of Federal Funds for Lobbying for Grants in Excess of \$100,000:** By signing this agreement the recipient declares that it is in compliance with 31 U.S.C. Sec. 1352, which prohibits the use of Federally appropriated funds to influence a Federal employee, officer, or Member of Congress in connection with the making or modification of any Federal grant, loan, contract, or cooperative agreement. Unless the payment of funds is otherwise reported to FHWA, signing this agreement constitutes a declaration that no funds, including funds not Federally appropriated, were used or agreed to be used to influence this grant. Recipients of subgrants in excess of \$100,000 must make the same declarations to the grant recipient. With respect to the payment of funds not federally appropriated by the recipient and sub-recipients, the recipient must report to the FHWA the name and address of each person paid or performing services for which payment is made, the amount paid, and the activity for which the person was paid.

EXHIBIT A

[Here attach estimate of the Project.]EXHIBIT B

ADDENDUM TO PROJECT NO. HPP-LC35(165)

Addendum to the Railroad Master Agreement, UDOT Finance Department Number 88-2153, dated December 27, 1987, between the **Union Pacific Railroad Company**, hereinafter referred to as **Company**, and the **UTAH DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as **UDOT**, relating to Project No. HPP-LC35(147) (the "Project").

1. Prior to proceeding with the work covered herein the **Company** is required to contact **Eric Cheng**; telephone number **801-965-4284** to arrange for daily record keeping.
2. All **Company** billings are to be submitted to **Eric Cheng, 4501 South 2700 West, Salt Lake City, UT 84114-8445**, and telephone number **801-965-4284**. All **Company** billings shall be approved by Salt Lake City in writing prior to being submitted to Eric Cheng. UDOT will not process or pay any billings without written approval from Salt Lake City.
3. The work to be performed in connection with the Project is described in **EXHIBIT B** attached hereto.
4. The estimated cost of the work covered by this addendum is shown in an estimate prepared by the **Company** in the amount of \$ **6,250,000.00**, details of which are marked **EXHIBIT B** and attached hereto and thereby made a part hereof.
5. **Company** agrees and acknowledges that the Department's involvement in this project is limited to that of supervising the transfer and use of federal funds. Consequently, **Company** indemnifies and holds the State of Utah, the Department, their employees, agents, and contractors from and against any and all claims arising out of or resulting from an act or omission of **Company** or its contractors or subcontractors relating to the design or construction of the Project.

THE MAXIMUM PROJECT AMOUNT IS \$6,250,000. MAXIMUM TOTAL REIMBURSEMENT TO THE COMPANY IS THE MAXIMUM PROJECT AMOUNT LESS ANY UDOT OVERSIGHT COSTS. THE WORK TO BE PERFORMED IN CONNECTION WITH THE PROJECT SHALL BE PERFORMED FOR THE TOTAL AMOUNT OF NOT TO EXCEED \$6,250,000. SUCH AMOUNT SHALL INCLUDE UDOT OVERSIGHT COSTS, AND EXCLUDE CITY ADMINISTRATION COSTS. PAYMENT TO THE COMPANY SHALL BE LIMITED TO SUCH AMOUNT, AND UDOT SHALL HAVE NO RESPONSIBILITY FOR ANY COST OVERRUNS.

6. UDOT oversight costs include all costs charged to the project by UDOT. These costs are estimated at \$50,000 but may be more or less than what is estimated depending on project needs.
7. All terms and conditions of said original Agreement shall remain in full force and effect.

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.

RECOMMENDED FOR APPROVAL:

UTAH DEPARTMENT OF TRANSPORTATION

By: _____
Chief Railroad and Utility Engineer

By: _____
Director, Right of Way

Date: _____

Date: _____

APPROVED AS TO FORM: The Utah State Attorney General Office has previously approved all paragraphs in this Agreement as to form.

ATTEST:

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

By: _____

By: _____

Title _____

Title: _____

Date: _____

Date: _____

(IMPRESS SEAL)