



March 27, 2017
Folder: 2967-63

ANDY HUMMEL
CITY OF SPARKS
431 PRATER WAY
SPARKS NV 89431

Andy Hummel:

Re: Supplemental Agreement for License Audit No. 283911 covering One double Eight foot wide, by Eight foot long (8'W x8'L) Box Culvert for transporting and conveying storm water only on Railroad property at Mile Post 246.24 on the Roseville Subdivision at or near Sparks, County, Nevada

Attached is an original of the above referenced Supplemental License Agreement modifying the Basic Agreement (copy attached) by clarifying the method of installation and coordination thereof by the addition of several articles: .Article 2. Project Work: Licensee to Bear Entire Expense and Work Responsibility, Article 3. Schedule of Project Work and Work Window, Article 4. Licensor May Shut Down Work and Remedy Disruption, Exhibit E-1, Estimate of Material and Force Account, and Exhibit E-2, Flagging and Engineering Estimate.

Please RETURN DUPLICATE COPIES of the document for execution on behalf of the Railroad Company. Your copy of the fully-executed document will be returned to you, if approved by the Railroad Company. Also, please provide a resolution or other authorization for the party executing the documents.

Sincerely,

Justin Mahr
Manager - Real Estate
(402) 544-2623

SUPPLEMENTAL AGREEMENT

THIS SUPPLEMENTAL AGREEMENT is made as of the ____ day of _____ 2017, between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, (hereinafter the "Licensor") and **CITY OF SPARKS**, a Nevada municipal corporation, with a mailing address at 431 Prater Way, Sparks, Nevada 89431 (hereinafter the "Licensee").

RECITALS:

By instrument dated August 15, 2016, the parties hereto, or their predecessors in interest (if any), entered into an agreement (herein the "Basic Agreement"), identified as Audit No. 283911, covering One double Eight foot wide, by Eight foot long (8'W X 8'L) Box Culvert for transporting and conveying storm water only at or near Sparks, County, Nevada.

The parties now desire to modify the Basic Agreement by clarifying the method of installation and coordination thereof by the addition of several articles.

AGREEMENT:

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

Article 1. EFFECTIVE DATE.

This Supplemental Agreement shall be effective as of _____, 2017.

Article 2. PROJECT WORK; LICENSEE TO BEAR ENTIRE EXPENSE AND WORK RESPONSIBILITY.

A. Except as limited in this Article, any project work performed in connection with this Agreement is collectively referred to herein as the "**Project Work**". The parties acknowledge and agree that any Project Work to be performed in connection with the initial construction of the project, without regard to whether such work is performed on the Licensor property or in the vicinity of Licensor's operations and facilities, shall be subject to the terms and conditions of this Agreement. After the Licensee completes the Project Work related to the initial construction of the project in accordance with the Plans (and Licensor has reviewed and approved the same), the term "Project Work" shall only apply to any project improvements installed (at any time) on the Licensor Property, and the Licensee's rights and obligations under this Agreement shall be limited to those that arise from or are related to the rights granted to the Licensee on the Licensor's property.

B. Licensor has no duty or obligation to construct, reconstruct, inspect, maintain, repair, renew, or operate the project improvements or perform any Project Work. The Licensee shall bear the sole and

entire responsibility to perform all necessary and appropriate Project Work. Project Work does not include Licensor Work (as defined below).

C. Licensor has no duty or obligation to contribute money, labor or other resources towards the construction, reconstruction, inspection, maintenance, repair, renewal or operation of the project improvements or any Project Work. Unless otherwise provided herein, the Licensee shall bear the entire cost and expense incurred in connection with the project and all Project Work, along with all Reimbursable Costs (as defined below).

D. At the Licensee's sole expense, Licensor agrees to perform track replacement and certain road work (the "**Railroad Work**") in connection with Licensee's performance of the Project Work (as more particularly described in the Estimate (defined below)).

E. The Licensee agrees to pay Licensor all actual costs and expenses incurred by Licensor in connection with the Railroad Work (the "**Reimbursable Costs**"), including without limitation, any and all actual costs and expenses in connection with the labor, materials, supplies, transportation, insurance and direct and indirect overhead charges (including standard additive rates) properly allocable to the project, supervision, engineering review, inspection, flagging and other protective services, surveys, permits, and rental of tools, equipment and machinery, together with any other items of expense incurred by Licensor in performing the Railroad Work. The standard additive rates shall be subject to upward or downward adjustment based on industry standards and practices, and the Licensee acknowledges and agrees that any such adjustment to standard additive rates may be made retroactively.

F. The Licensee shall pay all invoices submitted by Licensor for Reimbursable Costs within sixty (60) days after the Licensee's receipt of billing from Licensor. If the Licensee disputes any portion of the invoiced costs, Licensee's time to make such payments shall be tolled (with respect only to the disputed portion) while any judicial proceeding or alternative dispute resolution procedure agreed to by the parties is pending. Licensor agrees to provide as much supporting documentation as is customarily provided by Licensor for projects of this type.

ARTICLE 3. SCHEDULE OF PROJECT WORK AND WORK WINDOW

A. Following thirty (30) days prior written notice from the Licensee to Licensor thereof, the Licensee and Licensor shall meet for the purpose of establishing a schedule detailing the timing and duration of the Project Work phases and sequences, and detailing the number, timing, duration, and frequency of work windows, as applicable. A work window is a time period during which a track is taken out of service to accommodate the Project Work. No work shall be performed on the property in connection with the project or the Project Work until a schedule has been approved by Licensor in writing. The Licensee cannot perform any Project Work on the property until such schedule has been approved by Licensor in writing. If multiple tracks are present, the Licensee agrees not to remove from service all existing tracks at the work site at the same time unless agreed to by Licensor in the Approved Work Schedule (as defined below). **Without limiting the generality of the foregoing, Licensor agrees to provide a limited work window subject to the following additional limitations. Licensor will provide two (2) outages, both for a period not to exceed twelve (12) hours.** Following the Licensor's receipt of such request, the parties shall reasonably cooperate to identify the dates and times the work window will be made available to perform the work. The Licensee acknowledges that the work windows include any time required for the Licensor to inspect the applicable structure to ensure that the same has been installed in compliance with the engineering plans and the other requirements contained in this Agreement.

B. Once a schedule setting forth the minimum number, duration and frequency of work windows is agreed to by the parties pursuant to (a) above, such schedule shall be deemed a component of the approved engineering plans. Any work windows requested by Licensee beyond the minimums agreed upon by the parties shall be subject to Licensor's approval.

C. "Approved Work Schedule" means the agreed-to timing and duration of the various Project Work phases, sequences and work windows, approved in writing by Licensor and which is based on minimums agreed to by the parties pursuant to section A. above, subject to modification, restriction, rescheduling, and canceling as permitted herein. Whenever the term Approved Work Schedule is used herein, it includes the work schedule as it has been modified, restricted, or rescheduled by Licensor after initial approval by both parties. Such Approved Work Schedule shall be deemed a component of the Plans.

D. The Licensee agrees that it will strictly comply with all Approved Work Schedules. The Licensee agrees that the Project Work shall be performed only in the sequence and only within the window periods set forth in an Approved Work Schedule, unless otherwise directed or authorized by the Licensor Representative.

E. The Licensee agrees that any Project Work may be restricted and rescheduled as Licensor deems appropriate or necessary to accommodate Licensor's operations or alleviate train or track congestion. The Licensee agrees that Licensor shall have the right to restrict, modify or cancel an Approved Work Schedule on short written notice or oral notice in the field including, without limitation, on the day of a scheduled work window, due to Licensor operations or congestion on Licensor's track at the work site or on other portions of Licensor's track system. However, Licensor will not unreasonably restrict or reschedule the Project Work, or unreasonably restrict, modify or cancel Approved Work Schedules, and Licensor will do so only as appropriate or necessary in connection with Licensor's common carrier obligations. The Licensee hereby waives all claims against Licensor for all damages whatsoever related to Licensor restricting or rescheduling Project Work and/or canceling, restricting or modifying an Approved Work Schedule. In the event that an Approved Work Schedule is cancelled or otherwise modified so as to prevent the Licensee from proceeding with the Project Work, Licensor shall propose an alternative Approved Work Schedule to the Licensee for review and approval to accommodate the Project Work.

F. The Licensor work to be performed by Licensor in connection with the project is described on Licensor's Material Force Account Estimate dated March 21, 2017 and corresponding summary estimate, and flagging and engineering estimate on **Exhibit "E-1, and Exhibit E-2"** attached hereto (collectively, the "**Estimate**").

G. Licensor, if it so elects, may recalculate and update the Estimate in the event the project and the work contemplated thereunder to be performed in connection with the project does not commence within six (6) months after the date of the Estimate. The Licensee acknowledges that the Estimate may not include any estimate of flagging or other protective service costs that are to be paid by the Licensee in connection with flagging or other protective services provided by Licensor in connection with the project. All of such costs incurred by Licensor are to be paid by the Licensee.

ARTICLE 4. LICENSOR MAY SHUT DOWN WORK AND REMEDY DISRUPTION.

a) Licensor, following short written notice or oral notice in the field to the Licensee, shall have the right to immediately shut down all Project Work on Licensor's property and require the removal of all persons, vehicles and equipment from such property without Licensor incurring any liability to the Licensee, or any other person or entity, if a phase of Project Work:

- i) has not been completed, or appears to Licensor that it cannot be completed, within a respective work window set forth in an Approved Work Schedule; or
- ii) is being conducted in an unsafe manner, or in a manner that is inconsistent with or in breach of this Agreement; or
- iii) is being conducted in a manner which violates government law, rules or regulations, including without limitation Federal Railroad Administration or Occupational Safety and Health Administration rules and regulations.

b) If any Project Work is shut down by Licensor pursuant to this Article 4, and Licensor's railway operating schedule is disrupted as a result, all subsequent work windows can be delayed or modified by Licensor until after Licensor fully recovers its railway operating schedule, at Licensor's sole discretion.

c) In the event that the Project Work is shut down by Licensor pursuant to this Article 4, Licensor shall propose an alternative Approved Work Schedule to the Licensee for review and approval to accommodate the Project Work. Any such approved Work Schedule proposed by Licensor and approved hereunder shall not take effect until the Licensee has modified or corrected its work procedures in such a manner to ensure the Licensee can complete its work in strict compliance with an Approved Work Schedule.

d) The Licensee agrees that if the Licensee is unable or appears not likely to quickly remedy any disruption to Licensor's operations beyond any authorized work window pursuant to an Approved Work Schedule, then Licensor, at the Licensee's expense, has the right (but not the obligation) to immediately use Licensor's personnel and equipment (or contracted personnel and equipment) to remedy or reduce the disruption.

Article 5. AGREEMENT SUPPLEMENT.

Nothing in this Supplemental Agreement shall be construed as amending or modifying the Basic Agreement unless specifically provided herein.

IN WITNESS WHEREOF, the parties have executed this Supplemental Agreement as of the day and year first written.

UNION PACIFIC RAILROAD COMPANY

CITY OF SPARKS

A Municipal Corporation

By: _____
Justin K. Mahr
Manager II – Real Estate

By: _____
Geno R. Martini, Mayor

APPROVED AS TO FORM

ATTEST:

City Attorney

Teresa Gardner, City Clerk

Exhibit E-1

DATE: 2017-03-21

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK
BY THE
UNION PACIFIC RAILROAD

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2017-09-19

DESCRIPTION OF WORK:
SPARKS, NV / BRIDGE @ MP 246.23 / ROSVILLE SUBDIVISION
REMOVE BRIDGE AND INSTALL CULVERT TO BE DONE BY CITY OF SPARKS
UPRR TO REMOVE 2EA - 40 TRACK FEET SECTIONS OF TRACK, REINSTALL SAME
TRACK W/ 20% TIE RENEWAL ONCE CITY HAS INSTALLED CULVERT
PROJECT TO BE FUNDED 100% BY CITY OF SPARKS

PID: 93585 AWO: MP,SUBDIV: 246.23, ROSEVILLE
SERVICE UNIT: 19 CITY: SPARKS STATE: NV

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
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ENGINEERING WORK							
ENGINEERING			2599		2599		2599
FLAGGING			1599		1599		1599
LABOR ADDITIVE 234%			13567		13567		13567
TRACK			1599		1599		1599
			-----		-----		-----
TOTAL ENGINEERING			19364		19364		19364
SIGNAL WORK							
SIGNAL			1280	5	1285		1285
			-----		-----		-----
TOTAL SIGNAL			1280	5	1285		1285
TRACK & SURFACE WORK							
BALAST	2.00	CL	763	1797	2560		2560
BILL PREP FEE				900	900		900
CONTRACT EQUIPMENT RNTL				10000	10000		10000
ENVIRONMENTAL PERMIT				10	10		10
FIELD WELD			2454		2454		2454
FOREIGN LINE FREIGHT				297	297		297
HOMELINE FREIGHT				900	900		900
LABOR ADDITIVE 234%			32162		32162		32162
MATL STORE EXPENSE				26	26		26
OTM			171	27	198		198
SALES TAX				115	115		115
TRACK-RELOCA			4580		4580		4580
TRK-SURF,LIN			3903		3903		3903
WELD				504	504		504
XTIE	10.00	EA	589	575	1164		1164
			-----		-----		-----
TOTAL TRACK & SURFACE			44622	15151	59773		59773
			-----		-----		-----
LABOR/MATERIAL EXPENSE			65266	15156			80422
RECOLLECTIBLE/UPRR EXPENSE					80422	0	80422
ESTIMATED PROJECT COST							80422

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.

Exhibit E-2

Flagging and Engineering Estimate

The estimated costs for Railroad Flagging, Engineering, and Field Inspections are \$1300.00 per 12hr day for the North Truckee Drain Improvement Project. The City of Sparks has projected that one flagman for 40 days will be required during construction, UPRR estimates 6 days of engineering and field inspections for this project therefore,

46 days @ \$1300.00 per 12hr day = \$59,800.00 estimated labor costs.