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January 22, 2002

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423



Re: *Salt Lake City Corporation - Adverse Abandonment -
in Salt Lake City, Utah, Docket No. AB 33 (Sub-No. 183)*

Dear Sir:

I am enclosing an original and ten (10) copies of the Reply of Salt Lake City Corporation To Protests Of Union Pacific Railroad and the Association of American Railroads in the above referenced matter. I am also enclosing a 3.5 inch diskette with this document.

In addition, I have enclosed one additional copy of this document for date stamp and return to our messenger.

Thank you.

Sincerely,



Charles A. Spitulnik

Enclosures

cc: All parties on the Certificate of Service

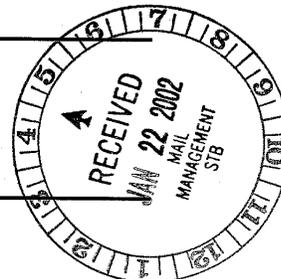
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Public Record

**Before the
Surface Transportation Board**

DOCKET NO. AB-33 (Sub-No. 183)

**SALT LAKE CITY CORPORATION ADVERSE ABANDONMENT -
IN SALT LAKE CITY, UT**

**REPLY OF SALT LAKE CITY CORPORATION
TO PROTESTS OF UNION PACIFIC RAILROAD
AND THE ASSOCIATION OF AMERICAN RAILROADS**



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THE ASSOCIATION OF AMERICAN RAILROADS**

Salt Lake City Corporation (the “City”), through counsel, hereby replies to the Protest of Union Pacific Railroad Company (“UP Protest”) and the Comments of the American Association of Railroads on the Application for Adverse Abandonment (“AAR Comments”), both of which were filed on December 28, 2001.¹

I.

INTRODUCTION AND OVERVIEW

The Board has clearly defined the dispositive issue in this matter: “whether the public convenience and necessity (“PC&N”) requires or permits the abandonment of the line.” *See Salt Lake City Corporation Adverse Abandonment – In Salt Lake City, UT*, STB Docket No. AB-33 (Sub-No. 183) served January 11, 2002. UP, however, disagrees with the Board. In its Protest, UP argues that the dispositive issue is UP’s convenience. UP states expressly that “the key issues in this proceeding are whether UP is ready willing and able to provide freight services over this line, and whether there are reasonable prospects for continued freight service.” *See UP Protest* at p. 12. UP trumpets these as the sole dispositive issues because the reinstatement of the

¹ The Reply to the UP Protest was due on January 14, 2002; however, the Board extended the time for the City to file its Reply to January 22, 2002. *See Salt Lake City Corporation – Adverse Abandonment – In Salt Lake City, UT*, STB Docket No. AB-33 (Sub-No. 183) served January 11, 2002.

900 South Line benefits UP by increasing its profitability, not because it would serve the public convenience. In fact, the 900 South Line was inactive for two (2) years and the members of the public, many of whom have voiced opposition to the reinstatement of the 900 South Line, did not suffer any harm as a result of the inactivity.

The STB's approach to the PC&N requires a balancing of competing interests, and UP's approach avoids that quite effectively, focusing solely on its perceptions and asserted needs. UP raises three points in its Protest²:

- 1) that a request for an abandonment of a rail line must be denied when "a railroad is...willing, ready and able to provide service and where the rail line is either operating or has reasonable prospects for future rail operations." See *UP Protest* at p. 1;
- 2) that franchise arrangements for rail/highway grade crossings can never serve as a basis for the abandonment of rail lines because it would result in the "fragmentation of rail lines throughout the country." *Id* at 2; and
- 3) that the City has not made a case for abandonment.

None of these points properly address the PC&N, and UP fails in each instance to properly balance, evaluate or consider the interests involved. Nowhere in its Protest does UP evaluate, analyze, or assess the "public's convenience" or the "public necessity." Contrary to UP's approach, the PC&N in this case cannot rest upon or be satisfied solely by UP's statement that it wants to and is physically able to run trains over 900 South Line. The Board's evaluation

² UP also raises the point that Washington D.C. counsel for the City has taken an "inconsistent position" in another matter before the STB styled Finance Docket No. 34111, North San Diego County Development Board – Declaratory Order. See *UP Protest* at p. 19 n. 24. UP's efforts to argue that the "Washington attorneys" take inconsistent positions is unclear, primarily because the facts fail to bear this out. In the instant proceeding the City is asking the Board to require UP to comply with obligations it voluntarily undertook in the Franchise Agreement, and to authorize abandonment of a line because the public convenience and necessity mitigates in favor of such an abandonment. In the NCTD proceeding, the "Washington attorneys" are arguing that because the construction of a
... footnote continued on next page

of the PC&N must look at the factors underscored by the three words of the test: what is the public's interest, not just UP's and not just its shippers, but the entire public; what is convenient for each of the different components of the public whose interests are at stake here; and what is necessary to satisfy the needs of the public.

In its Protest UP states that this case "could well be the most significant adverse application ever to come before the Board or the former Interstate Commerce Commission, and it raises important policy issues that could have wide-ranging effects on the national rail transportation system." Yet UP would have this Board resolve this matter without evaluating all the facts and properly balancing the necessary interests. It introduces no evidence from shippers, no evidence that the market mandates the use of one route rather than the other. It would have this Board pursue a course of action that can only lead to unwillingness of cities and private parties to enter into contracts with railroads. The UP's cavalier treatment of its obligations is directly contrary to the "public convenience and necessity" and to the interests of the public overall, and the application for adverse abandonment should be approved.

II.

STATEMENT OF FACTS

The 900 South Line was constructed in 1905-1906. It linked the UP Passenger Depot to the line that continued west to Los Angeles. On March 20, 1989, the City and UP entered into the Franchise Agreement in which the City granted to UP a franchise and right-of-way to UP to "construct, operate and maintain standard gauge railroad tracks within the streets of Salt Lake City." See Franchise Agreement between Salt Lake City Corporation and the Union Pacific Railroad Company dated March 20, 1989 ("*Franchise Agreement*") at p.1. The term of the

"passing track" impacts interstate commerce, state law cannot interfere with that construction. In both cases,
... footnote continued on next page

Franchise Agreement ends on June 30, 2003, except that if “for any period of nine (9) consecutive months during the term of this franchise, the Franchise Area, or any part thereof, is not used for the purpose for which this Franchise is granted, or if there is any abandonment or non-use of the Franchise Area, or any part thereof, the Franchise or applicable part thereof shall be voidable at the option of the City.” *Franchise Agreement*, §6 at 6-7.

In 1997, UP filed an abandonment application (“UP Abandonment Application”) with respect to .47 miles of the 900 South Line, which ran from milepost 782.32 to milepost 782.79, along with other segments of track that previously connected the 900 South Line to a rail yard that UP has since developed into a retail shopping center. Following the abandonment in 1999, rail freight service did not operate on the 900 South Line. In fact, it could not because the tracks led to a dead end and could not be used to provide service to any freight customers. This segment of a former rail line that UP has described as an integral part of its system in Salt Lake City, was instead a short segment that by 2001 had become a long narrow patch of weeds that led nowhere except in the direction of a commercial, retail shopping center that UP developed (in conjunction with a local developer) on the site of the former yard. UP has now fundamentally altered the prior use of this line by connecting it a north-south line that it did not even own until its recent acquisition of the Southern Pacific/DRGW.

UP, in its Protest at 4, attempts to create the impression that the only reason it stopped using the remnant of the 900 South Line that remained after the abandonment was the construction project to improve I-15 through the City. This was not entirely beyond UP’s control. If there had been traffic on this segment at that time, UP would have made certain that the Utah Department of Transportation (“UDOT”), the coordinator of that construction project made alternative arrangements to accommodate the needs of UP or its shippers. UP permitted

counsel is taking the entirely consistent position that this Board has jurisdiction over the matters presented.

the tracks and its service options over this line to be shredded because it had no need for the tracks at that time. Period.

UP's suggestion that the City knew of its plans to reactivate this line in 1997 goes nowhere as well. At that time, the City advised UP that reactivation of this line, if UP were ever to seek to justify its use, would be an uphill battle.

On August 3, 2001 the Mayor of the City, exercising the City's contractual rights under the Franchise Agreement, sent UP a letter voiding UP's rights to use the street crossings on the Line and directing UP to remove the tracks at the crossings by November 1, 2001.³ UP responded to the Mayor's letter on September 7, 2001, disputing that the City had the authority to oust UP from the crossing and filed a Petition for Declaratory Order with the Board on August 23, 2001⁴, requesting a finding that the City could not sever, or prevent operation over, the Line without first obtaining adverse abandonment authority. The City filed its Reply To The Petition For Declaratory Order on September 14, 2001 and filed its Notice of Intent to File an Adverse Abandonment on that same day. On November 9, 2001, the Board served a decision in the declaratory proceeding, concluding that abandonment of the Line could occur only if authorized by the Board. On November 13, 2001, the City filed its application for Adverse Abandonment.

³ The Mayor's action was motivated in part by the interests of the communities that surround the 900 South Line. Currently, the area in which the 900 South Line is situated is a minority community comprised of residential neighborhoods including schools, parks and single-family homes.

⁴ It is important to recognize that UP initiated this series of proceedings. The Board stated in its decision in this proceeding served January 11, 2002 that the City had "complete control over the timing of the court filing and of this application." *See Salt Lake City Corporation – Adverse Abandonment – In Slat Lake City, UT*, STB Docket No. AB-33 (Sub-No. 183) served January 11, 2002 at fn. 5. Unfortunately, this is not correct. It was UP who initiated this and the related proceeding by filing its declaratory action with the Board. It is the City's contention, presently pending before the U.S. District Court, that UP had a contractual obligation to file its own abandonment application. Because UP did just the opposite and sought instead to hide behind this Board's jurisdiction over the line, the City had no choice but to file its Application for Adverse Abandonment. UP's action drove the City to file the court action and the abandonment proceeding to preserve its rights. The City and its citizens are the victims here, not the aggressor.

III. ARGUMENT

A. **Evaluating The Public Convenience And Necessity In This Adverse Abandonment Requires A Balancing Of All The Issues And Facts Relating To The Abandonment Of The 900 South Line, Not Just Issues Relating To UP's Convenience.**

In the instant action UP seeks to justify the reinstatement of service (which has already occurred) on a rail line that the City and the members of the affected public contend adversely affects the "public convenience". UP proceeds along this path, notwithstanding its agreement to abandon this line segment in the Franchise Agreement with the City, the entity that represents the public.⁵ This Board has made it clear that the PC&N is the paramount issue in this proceeding. Accordingly, in order to properly resolve the issues raised in this adverse abandonment proceeding a full and complete assessment of the "public's convenience" and the "public's necessity" must be performed, not simply an evaluation of what UP believes is convenient for itself and what it stands ready, willing and able to do. UP has not met its burden, and the City's application must be approved.

1. **The Public Convenience and Necessity Standard Requires This Board to Look Beyond UP's Assertions of Its Willingness to Operate the Line**

The National Rail Transportation Policy requires, among other things, that the United States Government ensure the operation of "transportation facilities and equipment without detriment to the public health and safety." 49 U.S.C. §10101 (8). This policy is in place to guide the Board in its decisions relating to rail transportation. *See Chesapeake and Ohio Ry. Co. v. U.S.* 704 F.2d 373 (7th Cir. 1983). The STB's governing statute contains and informs the Board's power to approve an abandonment when required by public convenience and necessity. *See* 49

⁵ The contractual promises UP made in the Franchise Agreement must be a significant factor in determining UP's obligations in this instance. UP and the American Association of Railroads ("AAR") in the Comments it filed on the Application for Adverse Abandonment ("AAR Comments") argue that if a carrier determines, after the fact, that its contractual commitments interferes with interstate commerce then those commitments must not be enforced. If this argument were adopted then it would be difficult to understand why any local or state agency, or in fact anyone at all, would contract with a railroad if the railroad can run to the Board and claim, after the fact, that its contractual . . . footnote continued on next page

U.S.C. 10903(b)(1)(A). The Supreme Court has defined the phrase “public convenience and necessity” broadly, saying that it must be given “a scope consistent with the broad purpose” of the statute. *I.C.C. v. Railway Labor Exec. Assoc.*, 315 U.S. 373, 376-77 (1942). Section 10903 does not define “public convenience and necessity” and it does not specify any criteria that the Board must consider in deciding what is consistent with public convenience and necessity. *Farmland Industries, Inc., v. U.S.* 642 F.2d 208 (7th Cir. 1981). The statute, however, authorizes the Board to “use its discretion and expertise to determine, in each instance, whether abandonment should be permitted.” *Id.* at 211. To that end, the Board has engaged in balancing of conflicting needs to determine whether abandonment is consistent with public convenience and necessity. *Id.*

This balancing approach has long been approved by the cases interpreting §10903:

The sole test prescribed is that abandonment be consistent with public necessity and convenience.... **The benefit to one of the abandonment must be weighed against the inconvenience and loss to which the other will be subjected.** Conversely, the benefits to particular communities and commerce of continued operation must be weighed against the burden thereby imposed upon other commerce.

Id. citing *Colorado v. United States* 271 U.S. 153, 168-69 (1926) (emphasis added). Ultimately, the determination is made upon a balancing of the respective interests with an effort to seeking fairness to all concerned. *Id.*

While it is the case that one factor to consider is the promotion and development of a sound rail transportation system,⁶ such a consideration cannot justify turning a blind eye to the effect of these decisions on the public good, as UP advocates. UP states that local community opposition “cannot be the basis for action by the Board forcing a rail line, particularly a rail line such as this, which is an important part of UP’s rail network in the Salt Lake City area.” *See UP*

obligations interfere with interstate commerce and essentially ask the Board to relieve them of otherwise valid enforceable contractual obligations.

⁶ See 49 U.S.C. § 10101 (3-4).

Protest at p. 17. First, UP assumes away the analysis that this Board must conduct by asserting, without proof or explanation, that this is "an important part of UP's rail network in the Salt Lake City area." Nonsense. This route was not an important part of UP's network in the City when Mayor Anderson submitted his letter to the railroad in August asking it to comply with its obligations under the Franchise Agreement. At the time, it was a dead-end stub of a rail line that had previously connected to a rail yard but that, following the abandonment in 1997, led part of the way to a new commercial, retail development that UP had placed on the site of that former yard. This was a patch of weeds that went nowhere, not a part of UP's network of active rail lines.

Second, UP's argument urges the Board to simply ignore the public convenience aspect of the analysis. The Rail Transportation Policy clearly states that the health and safety of the local community, while not dispositive, must be considered and not wholly ignored as UP suggests. In other words, public opposition to use of a line can be a basis for abandonment. *See* 49 U.S.C. §10101 (8).

The City acknowledges that it has the burden to establish that the "public convenience and necessity require or permit abandonment," *Chelsea Property Owners - Abandonment*, 8 I.C.C.2d 773, 778 (1992) *aff'd sub nom, Consolidated R. Corp. v. I.C.C.*, 29 F.3d 706 (D.C. Cir. 1994). However, the Railroad Transportation Policy, public policy and fundamental fairness also dictate that UP be required to address the PC&N with all the relevant facts so that the Board can evaluate the PC&N by balancing each party's respective interests with the goal of seeking fairness for all involved.

Ultimately, UP is right when it says the Board has a statutory duty to preserve and promote continued rail service, and to protect the public against the unnecessary discontinuance, interruption or obstruction of rail service. However, the Board also has a statutory duty to

protect the public against unnecessary continuance of rail service that is contrary to the public convenience and necessity. UP, by virtue of concurring in the Franchise Agreement that non-use of a line covered by that agreement for more than 9 months justifies removal of the tracks, has demonstrated its concurrence that such track is unnecessary.

These are the issues that must be balanced, after a complete evaluation of all the interests involved, in determining whether the abandonment should be granted. Furthermore, the Board has a duty to ensure that railroads honor their agreements with the public and their representatives, and do not use the Board's jurisdiction as a vehicle to avoid its legal responsibility and commitments.

2. **An Analysis of the Public Convenience and Necessity Should Begin With a Determination of UP's Obligations Under a Valid Contracts Into Which It Voluntarily Entered With the City.**

The public has a clear interest in ensuring that when the City enters into a contract it is enforceable according to its terms and not depending on the whim of the other party. This is clearly a public necessity. Without that certainty, not only the City's but any non-railroad's contracts with any railroad anywhere in the country will be subject to being ignored as long as a moat of federal regulation can arguably be constructed around those contractual obligations. Clearly, it is necessary as a matter of public policy, that parties that enter into contracts with railroads have the ability to expect that railroads will be required to honor their agreements.

With respect to the Franchise Agreement that is at issue here, the public's interest lies in requiring UP to live up to the obligations it assumed when it signed that agreement. That is why the City has sought enforcement of UP's obligations in the Federal Court, arguing that UP is breaching the contract by virtue of its failure to come to this Board seeking abandonment on its own, and by opposing the City's application for adverse abandonment. As the City has argued in the Federal Court, the elements of a breach of contract case are (1) a contract; (2) performance

by the party seeking recovery; (3) breach of the contract by the other party; and (4) damages.

Bair v. Axiom Design, L.L.C., 20 P.3d 388, 392 (Utah 2001). Applying those elements to this case demonstrates that the City is correct.

The uncontested facts are (1) the existence of a voluntary agreement between the parties; (2) a provision in that agreement that permits the City to void a portion of the agreement for non-use and require removal of the track; (3) UP did not use the tracks for freight traffic for well in excess of the non-use period⁷; (4) notice was given by the City voiding part of the Agreement and requiring track removal; and (5) UP has refused to remove the track and has taken actions diametrically opposed to its contractual obligations. In the court case, UP apparently does not seriously contend that it has not breached the Agreement but only that its breach is excusable because of this Board's jurisdiction over the line at issue. That jurisdiction, however, is not a bar to the contractual provisions. Rather, the Board's regulations provide an administrative process to effectuate contractual compliance. UP's refusal in the circumstances of this case, to seek the STB's approval and for abandonment of the line presents an additional breach.⁸

⁷ This period of non-use is what differentiates the circumstances here from the parade of horrors that UP and the AAR attempt to create by raising the specter of disruption of the entire rail network. If a railroad has a crossing agreement or a franchise agreement that relates to a section of main line track that is in constant use, a party claiming that the public convenience and necessity did not warrant continued use of the line would have a strenuous uphill battle to wage. That is not this case. Here, UP can not hide from the fact that the line segment was not used for a period of time well in excess of the contractually agreed upon period of non-use, and that its ability to function effectively without this line during that time suggests that the UP's convenience may warrant its reactivation, but the convenience and necessity of the public in general does not.

⁸ The City has also argued to the court that UP's action constitutes a breach of UP's covenants of good faith and fair dealing, which Utah law views as an essential part of every contract. *Olympus Hills Shopping Center v. Smith's Food & Drug Center, Inc.*, 889 P.2d 445, 450 (Utah App. 1994), cert. denied 899 P.2d 1231 (Utah 1995). See also, *Sanpete Water Conservancy District v. Carbon Water Conservancy District*, 226 F.3d, 1170, 1178 (10th Cir. 2000) citing *Brown v. Moore*, 973 P.2d 950, 954 (Utah 1998) "Under the covenant of good faith and fair dealing, each party impliedly promises that it will not intentionally or purposely do anything [that] will destroy or injure the other party's right to receive the fruits of the contract." Accordingly, "a party must act consistently 'with the agreed common purpose and the justified expectations of the other party.'" *St. Benedict's Development Co. v. St. Benedict's Hospital*, 811 P.2d 194, 200 (Utah 1991) citing Restatement (Second) of Contracts § 205 cmt. a. A party breaches that covenant when "it fails to exercise all of its rights under the contract reasonably." *Leigh Furniture and Carpet Co. v. Isom*, 657 P.2d 293, 311 (Utah 1982). In this case, the City has argued, there is no question regarding the contractual expectations of the parties. Section 6 clearly anticipated removal of tracks upon the requisite non-use. UP does not argue vagueness, ambiguity or that it somehow acted in good faith. Rather, it has simply thumbed

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B. UP's Contention That This Abandonment Must Be Denied Because The Railroad Is Willing, Ready And Able To Provide Service On The 900 South Line Does Not Adequately Address The Public Convenience And Necessity Because It Does Not Balance The Respective Interests With An Effort To Seek Fairness For All Concerned.

The dispositive question in this matter is whether the PC&N requires or permits the abandonment of the line. This determination requires a balancing of the interests involved. Nonetheless, UP contends that the key issue in this proceeding is whether "UP is ready willing and able to provide freight services over this line, and whether there are reasonable prospects for continued freight service." See *UP Protest* at p. 12. Of course, there is more to the story.

What is the interest of the public here? Is it to prevent UP from providing effective, efficient, high quality and reliable rail service to the shippers who rely on UP's service? Surely not. This is why the City, acting on behalf of its citizens, has undertaken an analysis of alternatives to the current Grant Tower arrangement, an analysis in which UP is participating by contributing to the cost of the study. See Declaration of Ron Love, attached to this Reply as Exhibit A and Exhibit 1 thereto. This is why the City, throughout its history, has permitted UP to bring its rail lines into the City and construct street crossings and yards in the middle of commercial and residential neighborhoods that predate the arrival of the railroad into the region.

UP does not support its claim, either, that its willingness and ability to provide service over the line presents the beginning and end of the analysis, or that the Board or the public in general has an interest in permitting the railroad to breezily dismiss its obligations under a valid and binding contract. It does not explain why it focuses on UP's convenience, not the public convenience or the necessity for this route rather than any other. Also, in its explanation of its need to use the 900 South Line, UP's attempts to address points such as alternative routes are one sided and incomplete. For example, UP argues that Grant Tower is not a "reasonable" substitute

its corporate nose at the City and the Agreement and done as it chose in utter disregard for the Agreement and with
... footnote continued on next page

for 900 South Line. *See UP Protest* at p. 16. The argument is based on UP's contention that the "major problems at Grant Tower are the volume of trains, the low operating speeds and the conflicting routings." *See UP Protest*, Exhibit 9, Wickersham/Scott Declaration p. 10. However, these statements are conclusory in nature and are not supported by any independent factual evidence.

UP does not demonstrate whether, assuming (for the sake of discussion) that Grant Tower is crowded and that delays occur, those delays could not be mitigated by improving Grant Tower. If the curve at Grant Tower is straightened, permitting faster operations through that area, does UP still "need" the 900 South Line? UP does not address this possibility. More important, UP does not address whether it would be more beneficial for the PC&N to improve Grant Tower rather than the 900 South Line. The Board must explore these options to properly evaluate the interests involved in this matter. Without that analysis neither UP nor the Board can conclude that the public necessity aspect of the required analysis has been satisfied.

The City strongly believes that improving Grant Tower is the preferred solution, for a number of reasons. First, the movement of traffic through the Grant Tower facility can be improved, and the City is in the process of studying (with contribution to the cost of the study from UP) possible ways to effect this improvement. Second, improving traffic at Grant Tower would give UP added flexibility of diverting this traffic onto one of two westbound tracks, giving them greater options. Third, the improvements to Grant Tower would allow UP to honor its promises as set forth under the Franchise Agreement. Fourth, improving Grant Tower would permit trains to avoid using the 900 South Line that crosses a major north-south thoroughfare in the City at grade.

absolute disdain for the covenant of good faith and fair dealing.

Furthermore, some of the evidence UP submits in support of its protest is inconsistent and in some instance simply wrong. For example UP has stated in a newspaper article that fixing Grant Tower would cost \$100,000,000, while in its Protest, UP says that number is \$15-25 million. *See UP Protest*, Exhibit 9, Wickersham/Scott Declaration p. 10. In fact, UP's representatives have stated in meetings attended by Donald Baxter, Senior Advisor to the Mayor of Salt Lake City, that they did not have any idea of what the cost of reconfiguring Grant Tower would be. *See Declaration of Donald J. Baxter, Jr.* attached hereto as Exhibit B, at para. 6. Also, UP, in its responses to the City's Discovery stated that "UP has not determined to undertake a recent study jointly with the City's Redevelopment Agency." *See UP's Responses to Salt Lake City's Interrogatories To Union Pacific Railroad Company* at p 9. That statement is flatly contradicted by the email correspondence attached to Mr. Love's Declaration as Exhibit 2, in which UP agrees to pay one-half of the cost of such a study. Exhibit 1 to Mr. Love's Declaration is a contract between the City and Carter & Burgess, Inc. to conduct a feasibility study, in part, relating to relocating the Union Pacific Railroad's main line west of Grant Tower. UP has agreed to pay one-half of the cost of this study. *See Declaration of Ron Love*, Exhibit A to this Reponse at Exhibit 2 thereto. In fact, UP officials have been meeting with the City on a regular basis for most of 2001 relating to this project. *Id.*

These questions, inconsistencies and misstatements highlight the fact that there is no basis for UP to state with absolute certainty and finality that the 900 South Line is necessary in lieu of other available alternatives. UP has failed to address the issues and respective interests relating to this abandonment proceeding and, more specifically, the PC&N, which is the applicable standard in this proceeding.

C. UP's Contention That Franchise Arrangements For Rail/Highway Grade Crossings Can Never Serve As A Basis For The Abandonment Of Rail Lines Is Misguided And Does Not Serve Or Address The Public Convenience And Necessity.

UP attempts to argue that the City's attempts to enforce the terms of the Franchise Agreement would "have enormous consequences for the national rail transportation system."⁹ The City believes this is at least a mild overstatement. It is important to note that UP did not execute this Agreement at gunpoint. UP negotiated, reviewed and executed the Franchise Agreement voluntarily. Having agreed to those terms and conditions, the company should not now be permitted to ask the Board to, in essence, protect it from itself.

Contrary to the overstatement presented by both UP and the AAR, the City is not stating that all state or local jurisdictions can "justify the abandonment of rail lines by termination or revocation of franchise rights." Nor is the City stating that it can force UP to abandon or close all the franchise crossings upon expiration of the Franchise Agreement.¹⁰ The City is stating, however, that if the railroad agreed to relinquish an unused line that led nowhere and that served no one based on specific factors in the agreement it negotiated, reviewed and voluntarily entered into, it must honor that agreement.¹¹ The agreement called for abandonment upon non-use for nine months. UP was aware of this, as was the City. Non-use means that the line is not being used

⁹ In fact the AAR states (*See AAR Comments* p. 7, Section II), that agreements like the franchise agreement should not be dispositive on the issue of PC&N. The City believes these agreements should be a factor the Board considers in balancing the interests when determining the PC&N. In other words, the fact that the railroad contracted and agreed to certain terms should not be summarily dismissed. Rather, the Board should view it as evidence that the railroad agrees that the line at issue may not in all circumstances be essential for the conduct of its business in interstate commerce.

¹⁰ A similar point is raised by the AAR in the AAR Comments. Specifically, AAR incorrectly argues that the City's position is that "a railroad can be forced to abandon a rail line and remove track when its contract rights to cross a public highway expire." *See AAR Comments* at p. 6. The City respectfully contends that there is a distinction between expiration of the franchise agreement and termination of a franchise as specifically set forth in the agreement due to the occurrence of specific facts that the railroad agreed would constitute abandonment. In the expiration context there would be a reasonable expectation of renewal, whereas in a termination context the express purpose of the provision is to end the agreement because of a specific occurrence negotiated, agreed to and contemplated by the parties.

¹¹ The City's position is narrowly tailored to a specific set of circumstances agreed to in the Franchise Agreement. It is not a broad policy the City is seeking to enforce, which would allow the City to attempt to unilaterally dismantle UP's dismantling UP's Western Rail Network.

in interstate commerce. As a result, UP agreed, based on this non-use, that abandoning the line would not unreasonably interfere with interstate commerce. The City could only conclude, at the time it signed the Franchise Agreement, that UP must have made this determination before it decided to sign the Agreement. *See* Docket No. 42053, *Town of Woodbridge, NJ v. Consolidated R. Corp.* (not printed), served December 1, 2000 (voluntary agreements must be seen as reflecting the carriers own determination and admission that the agreement would not unreasonably interfere with interstate commerce).

In fact, this Board's decision in *Woodbridge* shifts the burden to UP to demonstrate that compliance with its obligations under the Franchise Agreement will impose a burden on interstate commerce. UP has not and cannot make that showing. Abandoning this line will impose no burden. At the time that the City first asked the UP to fulfill its obligations under the Franchise Agreement, the 900 South Line was not being used at all. How can abandonment of an unused line that led nowhere and that had no traffic, be a burden on interstate commerce? UP undertook the reactivation of this line with full knowledge that the City was expecting it to comply with its obligations under the Franchise Agreement, and cannot use the existence of traffic on that line today as a retroactive justification for the importance of this line.

This is a factor that this Board should consider when balancing the interests used to evaluate the PC&N, a factor that mitigates strongly in favor of permitting abandonment of the 900 South Line. The public, through the City, contracted with UP. UP promised to abandon the line if it did not use it. The public relied on that promise. Thus, the public convenience and necessity can only be served by requiring UP to honor that promise. *See* Finance Docket No. 33966, *Friends of the Aquifer* (not printed), served August 15, 2001.

D. UP's Contention That The City Has Not Made A Case For Abandonment Is Misguided And Incorrect.

UP's contention that the City has not presented the necessary evidence to support this abandonment is both disingenuous and wrong. The City presented all the evidence it had when it submitted its abandonment application. As UP demonstrates in its Protest, the City submitted with its application: (1) a map of the line from a 1997 UP environmental filing; (2) the 1989 Franchise Agreement; (3) a letter from a community action association; (4) a 1995 West Salt Lake Community Action Plan; (5) census data for three census tracts in Salt Lake City that are affected by the 900 South Line; (6) census data for Salt Lake City as a whole; (7) a listing of all Salt Lake City schools showing minority enrollment; and (8) an August 11, 2001, newspaper story. *See UP Protest* at p. 11. There are two key points that relate to the City's introduction of this evidence: 1) UP, other than cursory attempts to dismiss the evidence with conclusory statements, has not addressed, much less factually challenged, the issues the evidence raises, and 2) this evidence, unlike the limited information provided by UP, addresses the public convenience and the public necessity, not solely UP's convenience.

The City has demonstrated that the convenience of the public in Salt Lake City does not support the reactivation of this line, and that the "necessity" for the line is really UP's convenience. The evidence submitted by the City is sufficient to support the abandonment of the 900 South Line, as it demonstrates that the reinstatement of service on the 900 South Line is detrimental to the public convenience. The line crosses a busy 4 lane north-south thoroughfare that had seen no disruption from train traffic for nearly two years prior to UP's recent reactivation of the line. Using other routes, such as the Grant Tower route which has a grade separated street crossing would avoid this problem, but because that is more convenient for the public but less convenient for UP, UP finds that factor irrelevant.

This Board should not tolerate UP's disregard of its own obligations or the impacts of its actions on the surrounding community. UP's own conduct demonstrates that while it may be more convenient to use the 900 South Line, that line is not necessary. Rather, UP's evidence submitted in protest to this abandonment application is limited in nature and demonstrates and

addresses only that the reinstatement of the 900 South Line is beneficial and convenient for UP. To create the balance required by the statute, more is required.

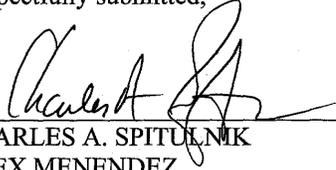
IV. CONCLUSION

The City is driven to come to this Board by the refusal of UP to comply with an agreement it reached voluntarily and in exchange for valuable consideration. This Board must require UP to clearly articulate its views of why it wants to operate over the 900 South Line instead of any of the other routes that are or might be available through Salt Lake City. The Board cannot look past UP's changing story. First, UP told the City and this Board that it had to use the 900 South Line to avoid congestion around the sites that would be used for the Olympics. When the City called UP on that, attempting unsuccessfully to require UP to identify the sources for the requests that it reroute traffic during the games, UP provided no answers, as it could not. UP then argued that the 900 South Line is necessary given the congestion at Grant Tower. However, when the City called UP on this argument, UP failed to provide any comparative analysis whatsoever about the relative advantages of reactivating the 900 South Line over implementing improvements at Grant Tower. Because neither ploy works, UP now simply demurred stating that it stands ready willing and able to provide service on the 900 South Line, and that, in essence, "there endeth the lesson" or at least the inquiry.

Is operation on the 900 South Line "necessary"? Clearly it is "convenient" to UP, but there is no showing other than through conclusory statements by UP's witnesses in this proceeding that it is "necessary". On the other hand, the railroad's voluntary execution of the Franchise Agreement, the statements submitted by the only members of the "public" from whom this Board has heard (that is, the statements provided to the Board's Section of Environmental Analysis) which demonstrate that the "public" convenience is not in any way served by UP's operation over this line, and the harm to the public interest that will flow from a decision by this Board to permit UP to flout its obligations under any agreement with any party if the railroad simply erects a self-righteous shield based on the STB's jurisdiction, all lead inexorably to the conclusion that the City's Application for Adverse Abandonment should be granted.

WHEREFORE, and in view of all of the foregoing, the City respectfully requests that this Board grant its Application for Abandonment.

Respectfully submitted,



CHARLES A. SPITULNIK
ALEX MENENDEZ
McLeod, Watkinson & Miller
One Massachusetts Avenue, NW
Suite 800
Washington, DC 20001
202/842-2345

ROGER F. CUTLER
STEVEN W. ALLRED
CHRISTOPHER E. BRAMHALL
451 South State Street
Room 505
Salt Lake City, Utah 84111
801/535-7788

Counsel for Salt Lake City Corporation

Date: January 22, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of January, 2002 caused a copy of the foregoing Reply Of Salt Lake City Corporation To Protests Of Union Pacific Railroad and the Association of American Railroads, to be served by first class mail, postage prepaid upon the following:

Robert T. Opal, Esquire
Union Pacific Railroad Company
1416 Dodge Street, Room 830
Omaha, Nebraska 68179

Governor Mike Leavitt (via certified mail)
210 State Capitol
Salt Lake City, Utah 84118

Utah Public Service Commission
Herber M. Wells Building, 4th Floor
160 East 300 South
Salt Lake City, Utah 84111

Utah State Cooperative Extension Service
Salt Lake County Government Center
2001 South State Street
Room #S1200
Salt Lake City, Utah 84190-2350

U.S. Department of Transportation
400 Seventh Street SW
Room 4102 C-30
Washington, DC 20590

U.S. Department of Defense
OASD(PA)PIA
1400 Defense Pentagon
Room 3A750
Washington, DC 20301-1400

U.S. Department of the Interior
National Park Service
Recreation Resources Assistance Division
P.O. Box 37127
Washington, DC 20013-7127

U.S. Railroad Retirement Board
Bennett Federal Building
Room 1205
125 South State
Salt Lake City, Utah 84138-1102

National Railroad Passenger Corporation
60 Massachusetts Avenue, N.E.
Washington, DC 20002

Mr. Dale Bosworth
Chief of the Forest Service
U. S. Department of Agriculture
Sidney R. Yates Federal Building
201 14th Street, SW
Washington, DC 20250

Leon R. Fenhaus
General Chairman, BMW
45743 308th Street
Wakonda, South Dakota 57073

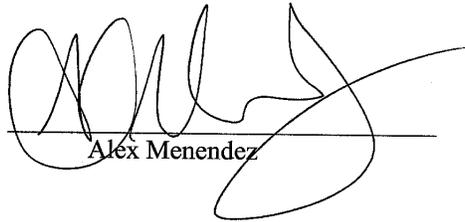
J.O. McArthur
General Chairman, BRS
P.O. Box 5100
Fallon, Nevada 89407

John W. Barber
General Chairman UTU
307 W. Layton Avenue
Milwaukee, Wisconsin 53207

Art D' Alessandro
President AR&ASA
3 Research Place
Rockville, Maryland 20850

Rich Johnson
General President, BRC
3 Research Place
Rockville, Maryland 20850

Dennis J. Starks
Senior Commerce Counsel
Association of American Railroads
50 F Street, N.W.
Washington, D.C. 20001-1564



Alex Menendez

A

**Before the
Surface Transportation Board**

Docket No. AB-33 (Sub-No. 183)

**SALT LAKE CITY CORPORATION -
ADVERSE ABANDONMENT OF LINE OF UNION PACIFIC RAILROAD COMPANY
-- IN SALT LAKE CITY, UT**

DECLARATION OF DONALD J. BAXTER, JR.

I, Donald J. Baxter, Jr. state as follows:

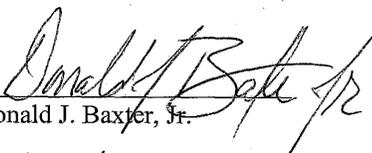
1. I, Donald J. Baxter, Jr. currently serve as the Senior Advisor to the Mayor of Salt Lake City.
2. I have personal knowledge of Salt Lake City's ("City") relationship, dealings and interaction with Union Pacific Railroad Company ("UP").
3. On August 21, 2001, I attended a meeting between representatives the City and the UP.
4. At that meeting, on behalf of UP the following persons were in attendance:
Cameron Scott, Scott D. Moore, J. Clare Williams and Dennis Farley.
4. At that meeting, on behalf of the City the following persons were in attendance:
Roger Cutler, Steven Allred, Mayor Anderson and myself.
5. At that meeting UP made a statement, of which I have personal knowledge, that it planned on reconfiguring Grant Tower within the next ten to fifteen years. However, UP also

claimed that it could not currently undertake the reconfiguration because it would cost approximately one hundred million dollars to perform the necessary work.

6. Thereafter, in a meeting with UP on November 19, 2001, at which Scott D. Moore and Alex Tice represented UP, I have personal knowledge of additional statements made by these UP representatives that they did not, in fact, have any idea what the costs of reconfiguring Grant Tower would be.

Further, affiant sayeth naught.

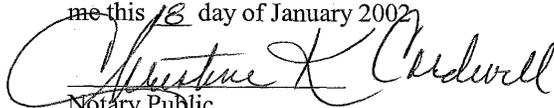
By:

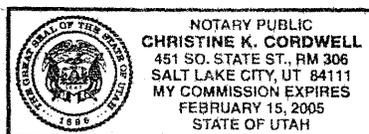

Donald J. Baxter, Jr.

Date:

1-18-2002

Subscribed and sworn to before
me this 18 day of January 2002


Notary Public
Mt Commission Expires: _____



B

**Before the
Surface Transportation Board**

Docket No. AB-33 (Sub-No. 183)

**SALT LAKE CITY CORPORATION -
ADVERSE ABANDONMENT OF LINE OF UNION PACIFIC RAILROAD COMPANY
-- IN SALT LAKE CITY, UT**

DECLARATION OF RON LOVE

I, Ron Love state as follows:

1. I, Ron Love currently serve as the technical planner with the Salt Lake City Public Services Department.
2. I have personal knowledge of Salt Lake City's ("City") relationship, dealings and interaction with Union Pacific Railroad Company ("UP").
3. I have personal knowledge of the dealing relating to the contract between the City and Carter & Burgess, Inc. ("Carter Contract") to conduct a feasibility study, in part, relating to relocating the Union Pacific Railroad's mail line west of Grant Tower. A copy of the Carter Contract is attached hereto as Exhibit 1.
4. Part of the feasibility study to be performed under the Carter Contract addresses, among other things, the straightening of the rail lines at Grant Tower and increasing the speed of train traffic through Grant Tower.
5. UP played an active role in negotiating and drafting the scope of work to be performed under the Carter Contract.

6. UP played an active role in determining which engineers would be hired to perform the work under the Carter Contract. In fact, UP recommended and requested that the engineers be selected from a list that UP deemed to be acceptable.

7. UP has agreed to pay for a portion of the study as evidenced by the e-mail I received on August 10, 2001 from Steve McLaws of Union Pacific a copy of which is attached hereto as Exhibit 2 to this declaration.

8. UP officials have had several meeting with the City relating to this project.
Further, affiant sayeth naught.

By:

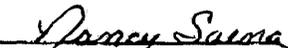


Ron Love

Date:

1-22-02

Subscribed and sworn to before
me this 22 day of January 2002



Notary Public

Mt Commission Expires: Sept 18, 2004

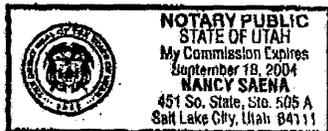


Exhibit 1

Carter=Burgess

420 East South Temple, Suite 345
Salt Lake City, Utah 84111-1321
Phone: 801.355.1112
Fax: 801.355.3990
www.c-b.com

July 31, 2001

Mr. Ron Love
Salt Lake City Corporation
451 South State Street
Salt Lake City, Utah 84111

Dear Mr. Love:

Reference: **Union Pacific Railroad Relocation Project at Salt Lake City, Utah**

Carter & Burgess, Inc. is pleased to submit this proposal to provide engineering services for the Union Pacific Railroad (UPRR) railroad relocation feasibility study in Salt Lake City, Utah. The feasibility study consists of relocating the UPRR main line west of Grant Tower to an existing rail corridor to allow the City to extend City Creek to the Jordan River using the current rail alignment.

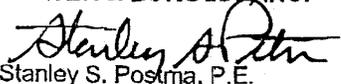
It is our understanding that the City has an agreement with the Corp of Engineers (COE) to extend City Creek from Grant Tower to the Jordan River. The COE will participate in the funding of the project once the City has secured the right of way. This feasibility study will provide the City a cost estimate to be used to coordinate the City Creek project with the UPRR and the COE.

Attached is a detailed scope of work and fee estimate to complete the study. The feasibility study will include but not be limited to right of way acquisition, signalization, trackwork, grade crossings, grading, drainage, utility relocations, and building displacements. The unit costs for the estimate will be based on previous UDOT, City, and UPRR similar projects.

We look forward to working with you on this challenging project.

Sincerely,

CARTER & BURGESS, INC.


Stanley S. Postma, P.E.
Utah Office Manager

C: Steffanie Wallace
D. J. Baxter, Mayor Office
Steve McLaws, Union Pacific

08168.AB.doc

UNION PACIFIC RAILROAD RELOCATION PROJECT AT SALT LAKE CITY, UTAH

SCOPE OF SERVICES

ENGINEER shall provide all necessary professional services related to this project. The scope shall include all services specified herein and any supplemental agreements and/or amendments that are requested by the OWNER. ENGINEER will provide for any specialized services or consultant as needed to perform the required work in an acceptable manner to the OWNER. ENGINEER's scope of work will include but not be limited to:

Task 1- Data Collection:

Attend kick-off meeting with City and UPRR and collect all information available including but not limited to:

- Thoroughfare Plans
- Signalization Plans from UPRR
- COE Studies
- Valuation Maps from UPRR
- Utility Plans
- "As-Built" City Street plans
- "As-Built" UDOT plans

Task 2 - Schematic Plan:

Develop schematic plan showing the two railroad corridors and the following preliminary information:

- Existing railroad tracks, streets and highways
- Existing utilities (water, sanitary and storm sewer, power, gas, fiber optics, telephone, cable, etc.)
- Existing right of way (City and UPRR are currently working on determine the limits)
- Existing drainage features (creeks, rivers, bridges, etc.)
- Proposed trackwork alignment and bridge structures
- Proposed right of way (including displacements)
- Proposed access along South Temple Street
- Proposed typical sections for track section, grade crossings, bridge structures

Task 3 – Signalization Plan:

Evaluate existing signalization system. Develop schematic plan showing the two railroad corridors including:

- Existing signalization
- Proposed signalization

Task 4 - Quantities and Estimates:

Prepare a quantity "take-off" report and develop construction cost estimates for the proposed improvements. Unit Costs will be based on City, UDOT, and UPRR previous projects.

FEE ESTIMATE

Task 1	\$ 2,500
Task 2	\$ 9,500
Task 3	\$10,000
Task 4	<u>\$ 2,900</u>
TOTAL COST	\$24,900

WORK PLAN

The existing trackwork and signalization systems will be closely evaluated to rationalize the two mainlines and try to increase the speeds within the Grant Tower area. A new track alignment will be evaluated to connect the northbound to the westbound main line, crossing under Interstate Highway 15. West South Temple Street will be evaluated to determine right of way limits and access to the adjacent property. A new plan will be developed to incorporate the new main line track and proposed access to this area. Off-site drainage will be evaluated to identify major storm sewer crossings. A new bridge structure will be required at the Jordan bridge crossing.

Major utilities will be evaluated and determine relocations. Existing at-grade crossing configurations will also be evaluated to develop new configurations for the additional main line track. This project will eliminate three at-grade crossings, which creates the potential to secure Federal Funding through Section 130 (Federal Funding for Grade Crossing Safety Improvements) with assistance and at the discretion of UDOT.

Upon completion of the preliminary design, a cost estimate will be developed for the proposed improvements.

RICHARD GRAHAM
PUBLIC SERVICES DIRECTOR

SALT LAKE CITY CORPORATION

DEPARTMENT OF PUBLIC SERVICES

ROSS C. "ROCKY" ANDERSON
MAYOR

Faxed: 7 November 2002

To: Scott Stoddard
Jane Bolton

From: Ron Love

Re: Union Pacific Railroad relocation Feasibility Study

Attached for your files are the contract, subject as above, with Carter Burgess and the Notice to proceed. The contract is an amendment to an existing City contract with CB.

Please call me at (801) 535-6438 with any questions.

451 SOUTH STATE STREET, ROOM 148, SALT LAKE CITY, UTAH 84111
TELEPHONE: 801-535-7775 FAX: 801-535-7789



RICHARD GRAHAM
PUBLIC SERVICES DIRECTOR

SALT LAKE CITY CORPORATION
DEPARTMENT OF PUBLIC SERVICES

ROSS C. "ROCKY" ANDERSON
MAYOR

November 2, 2001

Stan Postma, P.E., Utah Area Manager
Carter & Burgess, Inc.
420 East South Temple, Suite 345
Salt Lake City, UT 84111-1321

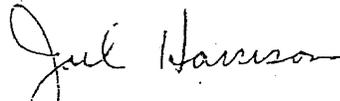
Re: Union Pacific Railroad Relocation Feasibility Study
Job No. 870006/102092

Dear Mr. Postma:

Attached is a copy of the amended agreement for the referenced job. It was approved by the City on October 25, 2001.

A notice to proceed with the study is hereby issued. It is to be completed by December 5, 2001.

Sincerely,



Joel Harrison, P.E.
Contract Administrator

JH:lb
Attachment

cc: Rick Johnston
Valda Tarbet
Ron Love
Vault

SALT LAKE CITY ENGINEERING
324 SOUTH STATE STREET, SUITE 310, SALT LAKE CITY, UTAH 84111
TELEPHONE: 801-535-7961 FAX: 801-535-6093



Consultant

AGREEMENT AMENDMENT

RECORDED

THIS AGREEMENT AMENDMENT is made and entered into as of this OCT 25 2001 day of _____, 2001, by and between SALT LAKE CITY CORPORATION, a Utah municipal corporation (the "City"), and Carter & Burgess, Inc. a Texas corporation authorized to do business in the State of Utah (the "Consultant").

RECITALS

WHEREAS, the parties entered into an Agreement dated November 27, 2000 (the "Initial Agreement") for Consultant to perform consulting services on City Project No. 102092;

WHEREAS, the parties amended the Initial Agreement on April 10, 2001 and August 17, 2001 (the "Prior Amendment(s)"); and

WHEREAS, the parties desire to amend the Initial Agreement and Prior Amendments;

NOW, THEREFORE, in consideration of the foregoing recitals and the following mutual promises, the parties hereby agree to the following:

TERMS

A. **ADDITIONAL SERVICES.** Consultant's scope of services shall be amended to include;

1. Preparation of a relocation feasibility study for the Union Pacific Railroad (UPRR).
2. The job number for this amendment shall be 870006.
3. The specific scope of services is as identified in Exhibit "A".
4. The study to be completed by December 5, 2001.

Job: 102092
Consultant: Carter & Burgess, Inc.
Project Name: Perimeter Road (Constitution Drive) in Liberty Park

B. **FEE FOR ADDITIONAL SERVICES.** For performing the additional services specified in paragraph "A" above, Consultant shall be paid an amount not to exceed Nine Thousand Nine Hundred fifty dollars and no cents (\$9,950.00) based on the hourly rates incorporated in Exhibit "A".

C. **REPRESENTATION REGARDING ETHICAL STANDARDS FOR CITY OFFICERS AND EMPLOYEES AND FORMER CITY OFFICERS AND EMPLOYEES**
Consultant represents that it has not: (1) provided an illegal gift or payoff to a City officer or employee or former City 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 City'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 City officer or employee or former City officer or employee to breach any of the ethical standards set forth in the City's conflict of interest ordinance, chapter 2.44, Salt Lake City Code.

D. **EFFECT OF PRIOR AGREEMENTS.** Other than as modified by this amendment, the Initial Agreement and the Prior Amendments shall remain in full force and effect.

Job: 102092
Consultant: Carter & Burgess, Inc.
Project Name: Perimeter Road (Constitution Drive) in Liberty Park

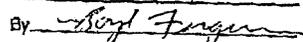
IN WITNESS WHEREOF, the parties have signed this Agreement Amendment
to be effective as of the day and year first above written.

SALT LAKE CITY CORPORATION

BY 
MAX G. PETERSON, P.E.
Salt Lake City Engineer

Attest:

CHRISTINA MEEK
CHIEF DEPUTY CITY RECORDER

APPROVED AS TO FORM
Salt Lake City Attorney's Office
Date: 10-25-01
By: 

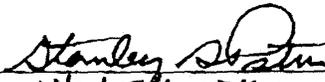
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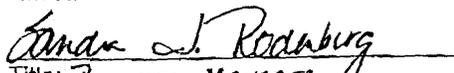
OCT 25 2001

CITY RECORDER



CARTER & BURGESS, INC.

By 
Title: Utah Office Manager

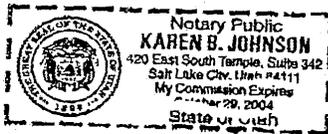
Attest:

Title: BUSINESS MANAGER

Job: 102092
Consultant: Carter & Burgess, Inc.
Project Name: Perimeter Road (Constitution Drive) in Liberty Park

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The foregoing agreement amendment was acknowledged before me this _____
day of Oct 2, 2001 by Stanley S. Postma and
Sandra Rodenberg, the Hotel Area Manager and Business Manager
_____, respectively, of Carter & Burgess, Inc., a Texas corporation authorized to
do business in the State of Utah.

Karen B. Johnson
NOTARY PUBLIC, residing in
Salt Lake County, Utah



My Commission Expires:
10/29/04

EXHIBIT A

UNION PACIFIC RAILROAD RELOCATION PROJECT (Main Line west of Grant Tower to an existing rail corridor)

SCOPE OF SERVICES

CONSULTANT shall provide all necessary professional services related to this project. The scope shall include all services specified herein and any supplemental agreements and/or amendments that are requested by the OWNER. CONSULTANT will provide for any specialized services or consultant, as needed, to perform the required work in an acceptable manner to the OWNER. CONSULTANT's scope of work will include but not be limited to:

Task 1- Data Collection:

Attend kick-off meeting with City and UPRR and collect all information available including but not limited to:

- Thoroughfare Plans
- Signalization Plans from UPRR
- COE Studies
- Valuation Maps from UPRR
- Utility Plans
- "As-Built" City Street plans
- "As- Built" UDOT plans

Task 2 - Schematic Plan:

Develop schematic plan showing the two railroad corridors and the following preliminary information:

- Existing railroad tracks, streets and highways
- Existing utilities (water, sanitary and storm sewer, power, gas, fiber optics, telephone, cable, etc.)
- Existing right of way (City and UPRR are currently working on determine the limits)
- Existing drainage features (creeks, rivers, bridges, etc.)
- Proposed trackwork alignment and bridge structures
- Proposed right of way (including displacements)
- Proposed access along South Temple Street
- Proposed typical sections for track section, grade crossings, bridge structures

Task 3 -- Signalization Plan:

Evaluate existing signalization system. Develop schematic plan showing the two railroad corridors including:

- Existing signalization
- Proposed signalization

Task 4 - Quantities and Estimates:

Prepare a quantity "take-off" report and develop construction cost estimates for the proposed improvements. Unit Costs will be based on City, UDOT, and UPRR previous projects.

EMPLOYEES AND HOURLY RATES

Stan Postma	\$145.00
Art Baraza	\$150.00
Mary Nelson	\$105.00
Ron Jeffries	\$110.00
Rusty Todaro	\$ 80.00

WORK PLAN

The existing trackwork and signalization systems will be closely evaluated to rationalize the two mainlines and try to increase the speeds within the Grant Tower area. A new track alignment will be evaluated to connect the northbound to the westbound main line, crossing under Interstate Highway 15. West South Temple Street will be evaluated to determine right of way limits and access to the adjacent property. A new plan will be developed to incorporate the new main line track and proposed access to this area. Off-site drainage will be evaluated to identify major storm sewer crossings. A new bridge structure will be required at the Jordan bridge crossing.

Major utilities will be evaluated and determine relocations. Existing at-grade crossing configurations will also be evaluated to develop new configurations for the additional main line track. This project will eliminate three at-grade crossings, which creates the potential to secure Federal Funding through Section 130 (Federal Funding for Grade Crossing Safety Improvements) with assistance and at the discretion of UDOT.

Upon completion of the preliminary design, a cost estimate will be developed for the proposed improvements.

Exhibit 2

Love, Ron

From: Tarbet, Valda
Sent: Thursday, August 16, 2001 1:44 PM
To: Love, Ron
Subject: RE: Charter Burgess, Railroad Relocation Project

CONFIRMED. WHAT ELSE DO YOU NEED?

-----Original Message-----

From: Love, Ron
Sent: Thursday, August 16, 2001 12:29 PM
To: Tarbet, Valda
Cc: Wallace, Stephanie; Baxter, DJ
Subject: FW: Charter Burgess, Railroad Relocation Project

Valda, if you can provide me confirmation that you will pay the other half, I'll get with Engineering and we'll get this part of the show on the road.

Ron

Ron Love
(801) 535-6438

-----Original Message-----

From: SJMCLAWS@up.com [mailto:SJMCLAWS@up.com]
Sent: Friday, August 10, 2001 4:28 AM
To: ron.love@ci.slc.ut.us
Subject: Re: Charter Burgess, Railroad Relocation Project

Ron,
UPRR will participate in the payment of 1/2 of the study cost estimated at \$24,900. I have contacted Carter-Burgess and requested them to provide me with a project proposal for UP's portion.

"Love, Ron" <ron.love@ci.slc.ut.us> on 08/03/2001 12:39:09 PM

To: "sjmclaws@up.com" <sjmclaws@up.com>
cc: "Tarbet, Valda" <Valda.Tarbot@ci.slc.ut.us>, "Wallace, Stephanie" <Stephanie.Wallace@ci.slc.ut.us>, "Johnston, Richard" <richard.johnston@ci.slc.ut.us>

Subject: Charter Burgess, Railroad Relocation Project

Steve,

Stan Postma sent me the scope of services for the determination of cost of relocating the rails from the Folsom line to the adjacent mainline, and copied you. I am currently staffing that document with the City folks and RDA.

The RDA has agreed to pay 1/2 of the estimated \$24,900.00 for this project provided you pay the other half. If you can commit to that via e-mail, I will proceed with the necessary work on this end to contract with CB, and set up an initial meeting to kick this off.

On another subject: I believe Stephanie Wallace ask if there was anything you could do to assist with moving the access agreement for sampling of the Folsom line along. Analysis of the data will take some time, even if we pay the extra cost for expediting it. The Corps is becoming concerned about sticking to their February date for the completion of the Ecosystem Restoration Report and Environmental Assessment. The data from the sampling is key to that report. Anything you can do to move this along will be greatly appreciated.

I look forward to working with you on this matter.

Ron

Ron Love
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