

THIS AGREEMENT, made this 28th day of February, 1910, by and between THE UTAH CONSTRUCTION COMPANY, a corporation organized and existing under the laws of the State of Utah, and hereinafter called the "Contractor," party of the first part, and WESTERN PACIFIC RAILWAY COMPANY, a corporation organized and existing under the laws of the State of California, and hereinafter called the "Railway Company," party of the second part,

W I T N E S S E T H :

WHEREAS, the parties hereto did, by agreement dated the 11th day of October, 1906, a copy of which is hereunto attached, contract for the doing by the Contractor of certain work in the construction of the railroad of the Railway Company extending from the town of Deeth, in the State of Nevada, eastward for a distance of 112 miles, more or less, to a point at the foot of the grade of said railroad descending eastward from Silver Zone Pass, in Nevada, which said point is in that near the western edge of the desert, and

WHEREAS, all of the work contracted to be done by the Contractor under said agreement of October 11th, 1906, has been completed and has been accepted by the Chief Engineer of the Railway Company, and he has returned to the Railway Company final certificate that the whole work provided for under said contract has been acceptably completed by the Contractor (with the exception in each case of that portion of the line known as "Arnold's Loop," being the portion of the permanent line of said railroad from station 390+45.3 to station 945+57.1 and being the portion comprised between the ends of the temporary line which is specified in subdivision "C" of Section 27 of said contract); and

WHEREAS, the Railway Company has simultaneously with the execution of this agreement paid to the Contractor for the doing and performing of work under said contract, including such work as has been done upon said Arnold's Loop, but excluding the sum of

\$10,000, which pursuant to said sub-division (c) of Section 27 of said contract has been deducted from the final payment under said contract to reimburse the Railway Company partially for the expense of grading said temporary line mentioned in said sub-division (c), the sum of \$107,039.12, being the balance due upon said final certificate together with all of the percentage retained at the time of previous payments on account of previous approximate estimates as provided in said contract; and

WHEREAS, it is distinctly understood and declared by the contractor that it is satisfied of its own knowledge and information and without relying on any representations, promises or assurances of any representative of the Railway Company that the amount above mentioned and paid to it as aforesaid is the true and correct amount payable to it by reason of the work performed by it under said contract; and

WHEREAS, the Contractor has paid or incurred expenses estimated and fixed at \$10,935.00, for preparatory work upon said Arnold's Loop, which work would not be measured or paid for under said agreement and its specifications thereto attached and forming part thereof in case the work upon said Loop called for by said agreement had been done and completed under said agreement, and

WHEREAS, the Contractor constructed a pipe line for the purpose of bringing water to the work on said Arnold's Loop for use in connection therewith, and the Railway Company has used said pipe line, and the value of such use up to the first day of January, 1910, has been fixed at the sum of \$2,361.65, and

WHEREAS, by reason of the delay at the instance of the Railway Company in completing said Arnold's Loop the said Contractor has also been put to an additional expense for watchmen, estimated and fixed at \$3,250.00.

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

1. In consideration of the payment by the Railway Com-

pany to the Contractor of the amounts above mentioned, aggregating the sum of \$123,585.77, the receipt whereof is hereby acknowledged, the Contractor hereby acknowledges payment in full for the work done under said contract, and hereby releases and discharges the Railway Company of and from any and all claims and demands whatsoever for all matters growing out of or connected with said contract or on account of or connected with the work performed or expenses incurred or loss suffered thereunder, or by reason of any thereof, and also from any and all claims for compensation for the use by the Railway Company of said pipe line up to January 1st, 1910. It is expressly understood, however, that neither the acceptance of said work nor said final payment therefor, nor the execution and acceptance of this agreement nor all nor any thereof by the Railway Company shall be taken to release the Contractor or its sureties on the bond given to secure the performance of said contract from its or their obligation and the Contractor acknowledges and declares its obligation to indemnify and save harmless the Railway Company from and against any and all claims, demands or liens for materials furnished for or used in or for labor performed or furnished on or in the doing of said work and against any and all liability for injury to any person or persons and any and all damage to property, as provided in said contract, or to release the contractor or its said sureties from their obligation to make good any defective or insufficient work which it is its or their duty to make good under said contract.

2. The Contractor shall permit the Railway Company to continue the use of said pipe line heretofore mentioned as long as it may desire, and the Railway Company shall pay to the Contractor for such use the sum of \$100.00 a month as long as such use shall continue; said sum of \$100.00 for the use of said pipe line for each month to be payable on or before the 20th day of the next succeeding month. The Railway Company shall, however, have the right at any time to substitute for said pipe line another pipe line on the same or a different location or to abandon the use of the same, in which case the obligation to pay said \$100. per month

another pipe line before the completion of said Arnold's Loop, it shall permit the Contractor in case the Railway Company requires the Contractor to complete said Arnold's Loop as hereinafter provided, to take from said pipe line without charge the water necessary for the Contractor's work in so completing said Loop.

In case the Contractor wishes to remove said pipe line upon the Railway Company ceasing to use the same and the Contractor notifies the Railway Company in writing to that effect within three months after July 2, 1911, in case the Railway Company has ceased to use said pipe line before that date, or within three months after the Railway Company ceases to use said pipe line in case it ceases after July 2, 1911, and the Contractor effects such removal within sixty days after the giving of such notice, the Contractor shall have the same rights relative to the transportation to and from the pipe, tanks, and other material of said pipe line as are hereby given the Contractor by Section 5 hereof relative to the transportation of other equipment and supplies now on the ground for the doing of said work on Arnold's Loop.

3. The Railway Company shall have the right to require the Contractor to resume the said work on Arnold's Loop, at any time within twenty-one (21) months from January 1st, 1910, upon notice in writing by the Railway Company to the Contractor of not less than ninety (90) days prior to the date at which the Railway Company directs that such work shall be so resumed, and thereupon the Contractor will resume said work on Arnold's Loop and will complete the same within nine (9) months from said date. The work so to be done on said Loop shall be that specified in said contract of October 11th, 1906, and shall be done and paid for in all respects in accordance with and subject to the terms, conditions, prices and specifications of said agreement, save and except in so far as the same are modified by this agreement.

In case the Railway Company so requires the Con-

shall cease, but in case the Railway Company does so substitute another pipe line before the completion of said Arnold's Loop, it shall permit the Contractor in case the Railway Company requires the Contractor to complete said Arnold's Loop as hereinafter provided, to take from said pipe line without charge the water necessary for the Contractor's work in so completing said Loop.

In case the Contractor wishes to remove said pipe line upon the Railway Company ceasing to use the same and the Contractor notifies the Railway Company in writing to that effect within three months after July 2, 1911, in case the Railway Company has ceased to use said pipe line before that date, or within three months after the Railway Company ceases to use said pipe line in case it ceases after July 2, 1911, and the Contractor effects such removal within sixty days after the giving of such notice, the Contractor shall have the same rights relative the transportation to and from the pipe, tanks, and other material of said pipe line as are hereby given the Contractor by Section 5 hereof relative the transportation of other equipment and supplies now on the ground for the doing of said work on Arnold's Loop.

The Railway Company shall have the right to require the Contractor to resume the said work on Arnold's Loop, at any time within twenty-one (21) months from January 1st, 1910, upon notice in writing by the Railway Company to the Contractor of not less than ninety (90) days prior to the date at which the Railway Company directs that such work shall be so resumed, and thereupon the Contractor will resume said work on Arnold's Loop and will complete the same within nine (9) months from said date. The work so to be done on said Loop shall be that specified in said contract of October 11th, 1906, and shall be done and paid for in all respects in accordance with and subject to the terms, conditions, prices and specifications of said agreement, save and except in so far as the same are modified by this agreement.

In case the Railway Company so requires the Con-

tractor to resume the doing of said work on Arnold's Loop, the Contractor shall repay to the Railway Company the said sum of \$10,935.00 estimated and fixed as heretofore recited as a portion of the expense of the preparatory work upon said Loop, In case the Contractor shall resume and complete said work on Arnold's Loop in accordance with the provisions hereof, said sum of \$10,935. shall be repaid to the Railway Company by deducting same from the final estimate of the amount to become due to the Contractor for said work; but if the Contractor shall fail to resume said work as required by this agreement, or in case it shall resume said work, but shall at any time fail to proceed with or complete the same in accordance with the provisions hereof or of said contract, said sum of \$10,935. shall thereupon immediately be repaid to the Railway Company by the Contractor

4. In case the Railway Company shall not so require the Contractor to resume said work upon said Loop, the Railway Company shall, at the expiration of twenty-one (21) months from January 1st, 1910, pay to the Contractor the sum of \$9,007.00, as the proportion of the expense of the installation and removal of the pipe line, steam shovels, rails and all other equipment for said work which is applicable to the portion of said work which is uncompleted, and shall also pay to the Contractor the sum of \$10,000.00, which as provided in subdivision (c) of Section 27 of said agreement of October 11th, 1906, has been retained by the Railway Company from the final payment on said contract as aforesaid.

5. In case the Contractor shall on or before July 2, 1911, notify the Railway Company of its desire to remove any of the equipment or supplies now on the ground for the doing of said work on Arnold's Loop and shall effect such removal within 60 days after the giving of such notice, transportation at free rates shall so far as may be lawfully done be given the Contractor by the Railway Company over the latter's railroad from Salt Lake City to said Loop for the men, teams and supplies required for the removal of



such equipment and supplies and also from said Loop to Salt Lake City for the equipment and supplies so removed, together with the said men, teams and supplies required for their removal.

The Railway Company shall also pay the Contractor on properly approved bills with vouchers attached the amount of excess over one half cent per passenger mile or per freight ton mile paid by the Contractor for the transportation from Ogden to Salt Lake City of the said men, teams and supplies on their way to said Loop for the removal of said equipment or supplies, and for the transportation from Salt Lake City to Ogden of said equipment and supplies, together with said men, teams and supplies necessary for their removal on their way from such removal; provided, however, that the routing of such men, teams, equipment and supplies between Ogden and Salt Lake City in both directions shall be as directed or approved by the Chief Engineer of the Railway Company.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their respective officers thereunto duly authorized, and have caused their respective corporate names and seals to be affixed hereto, the day and year first above written.

SEAL

THE UTAH CONSTRUCTION COMPANY

By (Signed) W.H. Wattis, President

Attest: M (Signed) Henry H. Rolapp
Secretary

SEAL

WESTERN PACIFIC RAILWAY COMPANY

By (Signed) C.H. Schlacks
Vice-President

Attest: (Signed) W.G. Bruen, Secretary

Approved as to Form
Warren Olney, Jr., Genl. Atty. W.P. Ry. Co

