

**SEVEN COUNTY INFRASTRUCTURE COALITION**  
**August 10, 2018**

**Resolution No. 2018-10B**

**RESOLUTION APPROVING NON-DISCLOSURE AGREEMENT WITH UNION PACIFIC RAILROAD COMPANY AND RELATED MATTERS.**

WHEREAS, the Coalition and Union Pacific Railroad Company have had preliminary discussions and desire to have more detailed discussions that would involve confidential or protected information, which each is only willing to disclose to the other under terms of a Confidentiality or Non-Disclosure Agreement (NDA); and

WHEREAS, the Coalition desires to enter into a NDA with Union Pacific:

NOW, THEREFORE, be it resolved by the Governing Board of the Seven County Infrastructure Coalition, Utah as follows:

1. The Governing Board hereby approves a Non-Disclosure Agreement with Union Pacific Railroad Company in substantially the form as attached hereto and further approves the Executive Director to execute such NDA with such modifications as the Executive Director deems desirable and approves the attestation of such NDA and application of the Coalition seal thereto.
2. All parts of this Resolution are severable, and if any section, clause or provision of this Resolution shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, clause or provision shall not affect the remaining sections, clauses or provisions of this Resolution.
3. All resolutions or parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Resolution shall be in full force and effect immediately upon its approval and adoption

APPROVED AND ADOPTED this August 10, 2018.

Motion by Horrocks and Seconded by Burdick.

SEVEN COUNTY INFRASTRUCTURE COALITION VOTING:

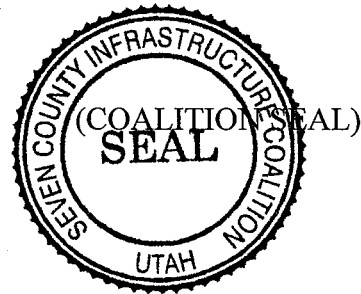
Carbon County	Yea <input checked="" type="checkbox"/>	No <input type="checkbox"/>	
Daggett County	Yea <input checked="" type="checkbox"/>	No <input type="checkbox"/>	
Duchesne County	Yea <input checked="" type="checkbox"/>	No <input type="checkbox"/>	
Emery County	Yea <input type="checkbox"/>	No <input type="checkbox"/>	absent
San Juan County	Yea <input checked="" type="checkbox"/>	No <input type="checkbox"/>	
Sevier County	Yea <input type="checkbox"/>	No <input type="checkbox"/>	absent
Uintah County	Yea <input checked="" type="checkbox"/>	No <input type="checkbox"/>	

Phil Lyman  
Co-Chair Phil Lyman

Jae Potter  
Co-Chair Jae Potter

ATTEST:

Eric Johnson  
Eric Johnson



## MUTUAL CONFIDENTIALITY AGREEMENT

This Mutual Confidentiality Agreement (the "Agreement"), is made on July 15, 2018 ("Effective Date") by and between Union Pacific Railroad Company, a Delaware corporation having an office located at 1400 Douglas St., Omaha Nebraska 68179, and its subsidiaries and affiliates (collectively, "UPRR"), and Seven County Infrastructure Coalition ("SCIC"), an independent political subdivision of the State of Utah, having an office located at 5995 S. Redwood Rd., Salt Lake City, Utah 84123 and its subsidiaries and affiliates. UPRR and SCIC are herein sometimes individually referred to as a Party and collectively as the Parties.

**WHEREAS**, the Parties will be having discussions concerning their respective business operations and one or more potential business transactions between them or their affiliated entities (the "Authorized Purpose"), which discussions will require the disclosure of information that the Parties deem proprietary and confidential.

**WHEREAS**, the Parties wish to protect their respective confidential information against any unauthorized use and any unauthorized or uncontrolled disclosure.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- A.** As used throughout this Agreement, the term "Confidential Information" means information not generally known to third parties and which is proprietary to the Party disclosing such information (the "Disclosing Party") including, but not limited to, information relating to product designs and strategies, manufacturing or development techniques, test protocols and results, financing strategies, organizational strategies, site location strategies, permitting strategies, design/build and other contract discussions and strategies, technical know-how, trade secret information, financial information, plant specifications, prospective investor lists and strategies, customer lists, pricing policies, operational methods, marketing information including without limitation strategy, sales, finance and business systems and techniques, business plans, and other business affairs of the Disclosing Party. All information of the Disclosing Party that is disclosed to the other Party (the "Receiving Party") or to which the other Party obtains access, whether originated by the Receiving Party or by the Disclosing Party or others, shall be presumed to be Confidential Information.
- B.** It is understood that unauthorized disclosure or use, whether intentional or unintentional, of any of the Confidential Information would be detrimental to the Disclosing Party. Accordingly, each Party agrees:
1. Except as set forth in Section (B)(4) below, not to disclose to any third party the object and scope of the discussions between the Parties except as required by law or as may be necessary to enforce the terms hereof.
  2. Not to use any of the Confidential Information for any purpose other than for or in connection with the Authorized Purpose.
  3. To maintain all of the Confidential Information in confidence and not to disclose any portion of the Confidential Information to any person or entity not authorized hereunder without the prior written consent of the Disclosing Party.

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4. That any dissemination of Confidential Information shall be only in connection with the Authorized Purpose and shall be only to the officers, directors or employees of Receiving Party who have a need to know said Confidential Information, and who have been advised of the confidential nature of such information in order for the Receiving Party to meet its obligations and carry out its responsibilities related to discussions with the Disclosing Party and the Authorized Purpose. Further, in the event the Receiving Party desires to disclose the Confidential Information to its agents, representatives, advisors or consultants (a "Non-Party"), the Receiving Party is solely responsible for ensuring that each Non-Party has agreed to comply with the terms and provisions of this Agreement in the same manner as each Party is bound hereby. The Receiving Party shall remain responsible for the actions and disclosures of any Non-Party provided with Confidential Information by Receiving Party.
5. That upon termination of the discussions between the Parties or upon the Disclosing Party's request, all records, any compositions, articles, documents and other items which contain, disclose and/or embody any Confidential Information (including, without limitation, all copies, reproductions, summaries and notes of the contents thereof), regardless of the person causing the same to be in such form, shall be returned to the Disclosing Party or destroyed by the Receiving Party, and, upon the Disclosing Party's written request, the Receiving Party shall certify that the provisions of this paragraph have been complied with. Notwithstanding anything to the contrary, the Receiving Party's legal counsel may maintain one copy of the records, compositions, articles, documents, and other items that contain, disclose, and/or embody the Confidential Information for its records. Upon termination of the discussions between the parties, all copies of the Confidential Information provided to any Non-Party shall be returned to the Disclosing Party at the Non-Party's expense.
6. The Receiving Party shall indemnify and defend the Disclosing Party and its subsidiaries or affiliates against all damages, losses, costs, liabilities and expenses (including reasonable legal fees and the costs associated with enforcing this indemnity) arising out of or related to any unauthorized use or disclosure of the Confidential Information in violation of this Agreement by the Receiving Party or any Non-Party who was provided Confidential Information by Receiving Party.

C. The obligations pursuant to Section B above shall not apply to information which:

1. Is or becomes a part of the public domain through no act or omission of the Receiving Party;
2. Can be shown to be already possessed by the Receiving Party prior to the date of disclosure;
3. Is made available to the Receiving Party on a non-confidential basis by a third party having a right to do so;
4. Is disclosed by order of a court of competent jurisdiction subject to Section D below; or

5. The Disclosing Party authorizes the release of the information in writing.
- D. If the Receiving Party or its representatives receive a request to disclose all or any part of the Confidential Information under the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction or by a governmental body, the Receiving Party agrees to:
1. Immediately notify the Disclosing Party of the existence, terms and circumstances surrounding such a request so that the Disclosing Party may seek an appropriate protective order and/or waive the Receiving Party's compliance with the provisions of this Agreement; and
  2. If disclosure of such Confidential Information is required in the opinion of the Receiving Party's counsel, to the extent possible, cooperate with the Disclosing Party in an effort to obtain written agreement that confidential treatment will be accorded to any disclosed Confidential Information.
- E. The Parties acknowledge that each Party's Confidential Information is the property of the Disclosing Party and the disclosure of the Confidential Information to the Receiving Party does not convey any right, title or license in the Confidential Information to the Receiving Party. The Receiving Party shall not appropriate the Confidential Information to its own use or to the use of any third party.
- F. It is further understood and agreed that no failure or delay by the Disclosing Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.
- G. This Agreement will enter into force on the Effective Date and remain in force until such time as both Parties agree in writing to terminate it, or for a period of three (3) years from the Effective Date, whichever comes first. The Parties' obligation to maintain the confidentiality of the Confidential Information as set forth in this Agreement will continue for three (3) years after the termination of this Agreement.
- H. The Confidential Information is being provided by the parties on an "AS IS" basis. NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, ARE MADE RESPECTING THE PROVISION OF THE CONFIDENTIAL INFORMATION, INCLUDING WITHOUT LIMITATION, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY.
- I. The Parties agree that money damages would not be sufficient remedy for any breach of this Agreement and that the non-breaching Party shall be entitled to enforce this Agreement by injunctive and other available relief, including without limitation specific performance.
- J. The exchange of any Confidential Information between the Parties is not intended to be interpreted that the Parties have formed or will form a partnership, joint venture or other relationship. Any business relationship between the Parties must be governed by separate agreement.

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K. Notwithstanding anything to the contrary, this Agreement is governed by and construed and interpreted in accordance with the substantive laws of the state of Nebraska, excluding the conflicts provisions of law. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision hereof is prohibited by or invalid under applicable law, such provision will be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or other provisions of this Agreement. All obligations and rights of the Parties expressed herein shall be in addition to and not in limitation of those provided by applicable law. This Agreement may be modified or waived only by a separate, mutual written amendment or agreement of the Parties. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. References to the Parties will be deemed to include each of their affiliates, if any. Any disputes arising out of this Agreement shall be venued in federal or state district court in the state of Nebraska, and each Party hereby consents to the jurisdiction of such court. This Agreement is binding upon the Parties hereto and their successors and assigns.

I. UPRR acknowledges that the SCIC is a political subdivision and public body of the State of Utah and is subject to the requirements of the Utah Government Records Access Management Act, Title 63G, Chapter 2 of the Utah Code ("GRAMA"). UPRR hereby claims business confidentially under Section 305 subsections (1) and (2) of Title 63G, Chapter 2 of the Utah Code as the Confidential Information it may disclose subject to this Agreement includes trade secrets and confidential commercial information the disclosure of which could reasonably be expected to result in harm or injury to the competitive interests of UPRR and would prevent it from further disclosing information to the SCIC. UPRR has a greater interest in prohibiting access to the Confidential Information than the public has in such information. In addition, the SCIC claims that its Confidential Information is protected under GRAMA, in particular Section 305 subsection (3) in that it contains commercial and/or financial information acquired or prepared by the SCIC that would likely lead to speculation in securities or commodities that will interfere in a planned transaction by the SCIC, or cause harm to the SCIC, its members, or the economy of the State of Utah. Consistent with the foregoing, the Confidential Information of both the Disclosing Parties and the Recipients shall be classified by the SCIC as protected under GRAMA.

**IN WITNESS WHEREOF**, the Parties acknowledge their agreement to the foregoing as of the date first set forth above by execution of the Agreement by their respective authorized representatives.

Agreed and Accepted:

Union Pacific Railroad Company

Seven County Infrastructure Coalition

Signature: \_\_\_\_\_

Signature: Michael J. Meeker

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_