

CFDA #20.205  
Federal Highway Administration (FHWA)  
Not Research and Development

\_\_\_\_\_ COUNTY  
CCSJ , Etc. \_\_\_\_\_  
Billing CSJ \_\_\_\_\_  
Project CM 1402(021)  
Location \_\_\_\_\_  
DOT No. \_\_\_\_\_, RRMP #  
ADD Subdivision

STATE OF TEXAS §

UPRR Folder No. \_\_\_\_\_

COUNTY OF TRAVIS §

TxDOT Contract No. \_\_\_\_\_

**TEXAS DEPARTMENT OF TRANSPORTATION  
CONDUIT OVER TRACK AGREEMENT**

THIS SUPPLEMENTAL AGREEMENT, made and entered into on the date hereinafter shown as being fully executed, by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State" and/or "Department," and the Union Pacific Railroad Company, a Delaware corporation, hereinafter called the "Railroad," acting by and through its official contracting executives.

W I T N E S S E T H

WHEREAS, on **DATE**, a contract, hereinafter called the original agreement, was executed between the State of Texas and the **NAME** Company (tracks now owned by the Union Pacific Railroad Company) for the construction and maintenance of an overpass structure(s) on **ROADWAY, TOWN, COUNTY** County, Texas, said original agreement being further identified as CSJ NUMBER; and,

WHEREAS, the State proposes to attach conduit with fiber optic cable to the ROADWAY overpass structure for the State's in-house, closed system Traffic Management System (TMS) at DOT No. **NUMBER**, RRMP #, **NAME** Subdivision, in **TOWN, COUNTY** County, Texas, to be hereinafter identified as the "Project," as shown on **Exhibit A** attached hereto and made a part hereof, and,

WHEREAS, the approved Railroad force account cost estimate shall be marked **Exhibit B**, attached hereto and made a part hereof; and

WHEREAS, said work is to be performed at no expense to the Railroad, unless as provided herein.

A G R E E M E N T

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto be by them respectively kept and performed, as hereinafter set forth, it is agreed as follows:

## **Article 1. Agreement Period**

Upon execution by all parties, this Agreement will be in effect and continue thereafter for so long as the Railroad premises shall be used for the purposes set forth herein; provided, however, if the State shall abandon the use of the Railroad premises, or any part thereof, for such purposes, this license and permission and the rights and privileges granted hereby as to the portion or portions so abandoned shall expire and terminate at the time each such portion shall be so abandoned; whereupon the Railroad shall have the same complete title to the Railroad premises so abandoned as though these presents had never been executed and the right to enter thereon and exclude therefrom the State, its successors, and assigns.

## **Article 2. Permission**

a. The Railroad hereby grants permission to the State and/or its Contractor to attach conduit with fiber optic cable for TMS purposed to the highway structure(s) and over the railroad tracks where the State has existing license to cross the Railroad's right-of-way. The permission given herein shall not prevent the Railroad from operating its trains or multiplying or changing its tracks across the land over which permission has been given.

b. The permission given is subject to the rights of utility companies to maintain and operate facilities thereon and thereover, and the State will make its own arrangements with the utility companies for any necessary relocation or alteration of said facilities.

c. No legal right which the Railroad now has to reconstruct, maintain, and operate its existing track and appurtenances or to construct, maintain, and operate an additional track or tracks and appurtenances upon and across said property shall in anyway be affected by the giving of this license.

d. It is agreed that should the property or any portion thereof, which is licensed hereunder, cease to be used for public road purposes, this license, as to the portion so abandoned, shall immediately cease and terminate.

e. Permission is granted solely for the purposes of the State, at its sole cost and expense, for the proposed improvements as shown on the attached **Exhibit A** and is expressly subject and subordinate to the present and future rights of the Railroad, its successors, assignees, lessees, grantees and licensees, to construct, maintain, use, operate, and renew on, beneath, or above the surface of the Railroad premises any telephone, telegraph, power, communication, or signal lines, poles and/or appurtenances, fiber optic communications, tracks, roadways, pipelines, structures, improvements, or facilities of similar or different character, as now located, and to construct, install, establish, and thereafter maintain, use, operate, and to renew on, beneath, or above the surface of the Railroad premises, any or all said things, provided the same do not materially interfere with the State's use of the Railroad premises as hereinabove provided.

## **Article 3. Scope of Work**

a. The Railroad, the State and/or their Contractor agree to perform the work as outlined in the attached **Exhibit A**. The work will generally consist of constructing a highway overpass across the tracks as necessitated by constructing a dedicated northbound direct connector from westbound \_\_\_\_\_ Road to SH \_\_\_\_\_ northbound over the rail line as shown in **Exhibit A**.

b. In order to provide for the safety of rail traffic, the Railroad may provide, at State's expense, flaggers during the period of performance of work in or incident to the proposed installation of conduit and fiber optic cable. The Railroad shall prepare a written cost estimate, subject to approval by the State, attached hereto and to be identified as **Exhibit B**. The Railroad should include the cost associated with flagging and engineering in the estimate. Only work shown in the approved estimate will be reimbursed. The providing of this service shall not relieve the State and/or its Contractor of any responsibility or liability.

c. The State shall give the Railroad at least thirty (30) days written notice prior to commencement of any work hereunder.

#### **Article 4. Plans, Estimates, Construction and Maintenance**

a. The State, at its expense, has prepared the plans and specifications, to include any signal wiring diagram(s) if applicable, for the proposed Project and has submitted such plans and specifications to the Railroad for review and approval. The approved plans and specifications are hereby adopted as the plans and specifications covering the construction as contemplated herein and identified as **Exhibit A**. No changes to such final plans and specifications shall be made without the written approval of such changes by the State and the Railroad. Neither the State nor its contractors shall commence any work on Railroad's property involving such plans until such plans have been approved in writing by the Railroad.

b. If, in after a period of three (3) years from the date the Railroad executes this Agreement and the Project has not let to contract, the Railroad shall have the right to perform a design plan review of the previously approved design to confirm the design meets the then-current Railroad design guidelines and requirements.

c. The State and/or the State's Contractor shall furnish material for and perform the work to be done by it hereunder in accordance with the approved plans and specifications. The State and/or the State's Contractor shall install conduit with fiber optic cable across the Railroad's right-of-way as shown on the plans and in accordance with approved specifications and shall maintain or arrange for the maintenance of these facilities.

d. The Railroad and/or the State's Contractor, unless otherwise provided, shall make such changes or alterations in the tracks, communication, and signal pole and wire lines, pipe sewer and drainage, or other facilities or buildings located upon the Railroad's right-of-way, which may be displaced or required by the construction of the Project, as may be necessary to maintain continuous service and conform them to said construction and restore them to former condition for service either prior to, during, or following construction of said work. The Railroad has prepared cost estimates, and has been approved by the State, for the adjustment of such facilities. Flagging and engineering in the cost estimate have been included. Only work shown in the cost estimates will be reimbursed. Said cost estimates are identified as **Exhibit B**.

e. The Railroad shall commence the work to be done by it herein within thirty (30) days, or by a date mutually acceptable by the State and the Railroad, after receipt of written notice from the State that the work may proceed and shall proceed diligently to the conclusion of its obligations herein. Assembly of materials should be made sufficiently in advance of the work to assure prompt delivery to the jobsite.

f. Following the issuance of the Work Order, it will be necessary for the Railroad to contact the Texas Department of Transportation district office a minimum of seven (7) days prior to the actual commencement of work in order that State forces may provide inspection during the necessary work.

g. Following the completion of the Project, for future maintenance work, the Railroad, under terms of this Agreement, gives the State and/or its Contractor permission to enter the Railroad right-of-way to perform routine maintenance and/or emergency work as required. The State's Contractor shall provide the usual insurance coverages as contained in Article 5 of this Agreement and be required to execute the Railroad's Contractor Right-of-Entry Agreement before commencing any maintenance work on the Railroad's property.

h. The State and/or its Contractor assumes the entire responsibility for the construction, maintenance, and use of said highway and drainage facility upon the Railroad's property at the location herein described to the extent required by law, and nothing contained herein shall ever be construed to place upon the Railroad any manner of liability for injury to or death of persons, or for damage to or loss of property arising from or in any manner connected with the construction, maintenance, or use of the portion of said highway located upon the Railroad's property.

i. The State shall require the State's Contractor to provide the insurance coverages as contained in Article 5 of this Agreement before commencing any work on the Railroad's property.

## **Article 5. Insurance Requirements**

The contract or contracts to be let by the State for the construction of the work to be undertaken by it hereunder shall provide:

a. Commercial Comprehensive General Liability Insurance Policy.  
The State's Contractor shall furnish evidence to the State that, with respect to the operations the Contractor performs, the Contractor carries a Standard Comprehensive General Liability Insurance Policy providing limits of not less than two million dollars (\$2,000,000) for bodily injury and property damage per occurrence, and not less than two million dollars (\$2,000,000) aggregate for all occurrences.

If any part of the work is sublet, similar insurance shall be provided by or on behalf of the subcontractors to cover their operations.

b. Railroad Protective Liability Insurance (which includes Bodily Injury, Property Damage, and Physical Damage Insurance). The State's Contractor shall furnish an original policy to the State for and on behalf of the Railroad which, with respect to the operations the Contractor or any subcontractors perform, provides the Standard Railroad Protective Liability Insurance Policy with a limit of not less than two million dollars (\$2,000,000) for bodily injury, property damage and physical damage to property, and not less than six million dollars (\$6,000,000) aggregate for all occurrences.

c. Business Automobile Coverage. The State's Contractor shall furnish an original policy to the State for and on behalf of the Railroad which, with respect to the operations of the Contractor or any subcontractors perform, provide the Standard Business Automobile Coverage Insurance Policy with a limit of not less than \$2,000,000 per occurrence to claim, including but not limited to coverage for the bodily injury, property damage, and any and all motor vehicles including owned, hired and non-owned.

d. Workers compensation and Employers Liability. The State's Contractor shall furnish an original policy to the State for and on behalf of the Railroad which, with respect to the operations of the Contractor or any subcontractors perform, provide the Standard Worker's Compensation and Employers Liability insurance including but not limited to Contractor's statutory liability under the workers' compensation laws of the State of Texas and Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit, and \$500,000 each employee.

e. General. The insurance specified in paragraphs a. and b. shall be carried until all work required to be performed under the terms of the contract is satisfactorily completed as evidenced by formal acceptance by the State.

## **Article 6. Payment.**

a. No payment, except for any preliminary engineering costs in Article 6 (c) and where written Authority To Order material may have been issued prior to the Work Order resulting in some material and material handling costs, will be due the Railroad unless a Work Order for work to begin is issued by the State.

b. Reimbursement to the Railroad will be made for work performed and materials furnished, including but not limited to, insurance premiums and coverage at the rate and amount set forth in the approved cost estimate attached hereto, in accordance with the provisions of Title 23, Code of Federal Regulations (CFR), Subchapter B, Part 140, Subpart I, issued by the Federal Highway Administration, and amendments thereto except as modified by the provisions herein. Work performed and materials furnished by the Railroad will be reimbursed by the State based on actual costs incurred by the Railroad as they relate to the development of the Project and approved in the cost estimate identified as **Exhibit B**.

c. The cost of preliminary engineering will be eligible for reimbursement if incurred after the State's request for preparation of estimates.

d. The Railroad may submit monthly bills prepared in satisfactory form for flagging work performed and materials installed. Payment will be made within thirty (30) days the costs detailed on the bills.

e. Upon completion of the Project, the Railroad shall submit a final invoice for all work performed clearly marked "Final Invoice" no later than one (1) year from the date of the Project Completion & Acceptance Letter stating the project is completed. Payment will be made within thirty (30) days of receipt of the Final Invoice.

## **Article 7. Termination**

The State reserves the right to cancel this Agreement for any reason and at any time prior to the issuance of a Work Order by the State to the Railroad to proceed with any part of the work outlined herein. The State will not be responsible for any expense incident to any cost incurred in the event of the cancellation of this contract, unless a Work Order was issued by the State and the Railroad incurred expenses pursuant to that Work Order, except for any preliminary engineering costs in Article 6 (c) and where written Authority To Order material may have been issued prior to the Work Order resulting in some material and material handling costs. In the event the State terminates this Agreement, any materials ordered by the Railroad upon receipt of the Authority to Order may be re-allocated to other State-approved projects upon consultation with the State.

## **Article 8. Records & Audits**

a. The State and the Railroad shall maintain books, documents, papers, accounting records, and other evidence pertaining to costs incurred and work performed hereunder and shall make such materials available at their offices during the contract period and for three (3) years from the date of final payment. The records shall be made available to representatives from the State or U. S. Department of Transportation, including the Office of Inspector General, for the purpose of making audits, inspections, transcriptions, or excerpts.

b. The State Auditor may conduct an audit or investigation of any entity receiving funds from the State directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

c. The Railroad is required to make any information created or exchanged with the State pursuant to this Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

Railroad and the State agree that Railroad will produce such information in an image format, or in another format selected by the Railroad that is accessible by the public.

#### **Article 9. Existing Agreements**

It is agreed that all existing agreements between the Railroad and the State concerning permission, permits, leases or easements at this location shall remain in full force and effect.

#### **Article 10. Protection of Fiber Optic Cable System**

Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. The State and/or its Contractor shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m., Central Standard Time, Monday through Friday, except holidays) at (800) 336-9193 (also a 24-hour, seven-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the State. If it is, the State and/or its Contractor will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

#### **Article 11. Limited Access**

The State hereby agrees that during the construction of the proposed improvements it will keep its employees, material, and machinery within the defined area of the premises unless otherwise specified on the attached **Exhibit A**. There shall be no crossings of the Railroad's tracks except at existing, open, and public crossings.

#### **Article 12. Transfer**

The parties hereto shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the other party(ies), and it is agreed that any transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the non-transferring party(ies), shall terminate this Agreement.

#### **Article 13. Relocation or Removal of Fiber Optic System**

a. The permission herein granted for the installation of low voltage fiber optic cable for the State's Traffic Management System (TMS) and/or Intelligent Transportation System (ITS) is subject to the reasonable needs and requirements of the Railroad in the operation of its railroad and in the improvements and use of its property for railroad purposes. The State shall, upon the Railroad giving the District Engineer reasonable advance written notice, relocate all or any portion of the fiber optic cable system as installed as part of this Project to another portion of the Railroad's property. The relocation of the State's Traffic Management System (TMS) and/or Intelligent Transportation System (ITS) shall be at the sole expense of the State to the extent allowed by State law, whenever, in the furtherance of the Railroad's reasonable railroad needs and requirements, the Railroad reasonably finds that such relocation is necessary.

b. All the terms, conditions, and stipulations herein expressed with reference to the State's Traffic Management System (TMS) and/or Intelligent Transportation System (ITS) on property of the Railroad in the locations hereinbefore described as shown in **Exhibit A** shall, so far as the State's fiber optic Traffic Management System (TMS) and/or Intelligent Transportation System (ITS) remains on the property, apply to the fiber optic cable system as modified, changed, or relocated within the contemplation of this section.

c. In State's use, operation, maintenance and repair of the State's fiber optic system located on the Railroad's property and State's TMS and ITS system, the State shall ensure to take all suitable precautions to prevent any interference with the operation of the signal, communication lines or other installations or facilities of the Railroad or its tenants, and if at any time such use, operation, maintenance or repair of the fiber optics, TMS or ITS systems results in any electrostatic or other interference effects which the Railroad deems undesirable or harmful or causes interference with the operation of the signal, communication lines or other installations or facilities, as now existing or which may hereafter be installed by the Railroad and/or its tenants, the State shall, at the State's sole expense, immediately take such actions as may be necessary to eliminate such interference.

#### **Article 14. Notification**

The State agrees to notify the Railroad in writing when all work on the Railroad's property is complete.

#### **Article 15. Responsible For Its Own Actions**

The parties hereto acknowledge that they are not an agent, servant, or employee of the other parties, and are responsible for their own acts and deeds and for those of its agents and employees during performance of contract work.

#### **Article 16. Conditions**

a. In accordance with the provisions of Title 23, Code of Federal Regulations (CFR), Subchapter G, Part 646, Subpart B, issued by the Federal Highway Administration, and amendments thereto, the Railroad will not be required to participate five percent (5%) in the cost of the Project.

b. The State may be reimbursed for its expenditures hereunder from federal funds for this Project. Therefore, the State and the Railroad will comply with statutes, rules, and regulations enacted and promulgated by the U. S. Government and its Federal Highway Administration.

c. If the State will be receiving any federal funding for the Project, the current rules, regulations and provisions of the Federal Aid Policy Guide as contained in 23 CFR 140, Subpart I and 23 CFR 646, Subpart A and B are incorporated into this Agreement by reference. If the State will be receiving American Recovery and Reinvestment Act of 2009 ("ARRA") funding for this Project, the State shall be solely responsible in performing and completing all ARRA reporting documents for this Project. The State further confirms and acknowledges that



Section 1512 of the ARRA provisions applies only to the “recipient” receiving ARRA funds directly from the federal government and, therefore, (i) the ARRA reporting requirements are the responsibility of the State and not of the Railroad and (ii) the State shall not delegate any ARRA reporting responsibilities on the Railroad. The State confirms that (A) the Railroad shall provide the Railroad’s standard and customary billing for expenses incurred by the Railroad for this Project including the Railroad’s standard and customary documentation to support such billing and (B) such standard and customary billing and documentation from the Railroad provides the information needed by the State to perform and complete the ARRA reporting documents. The Railroad confirms that the State and Federal Highway Administration shall have the right to audit the Railroad’s billing and documentation for this Project as provided in Article 8, RECORDS and AUDITS, of this Agreement.

#### **Article 17. Compliance with Laws**

The parties shall comply with all applicable federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement. When required, the Railroad shall furnish the State with satisfactory proof of this compliance. Nothing herein is meant to be or will be interpreted to be a waiver of principles of legal preemption or preclusion that may apply to the Railroad because of its status as a common carrier regulated by the federal government.

#### **Article 18. Office of Management and Budget (OMB) Cost Principles**

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

#### **Article 19. Disadvantaged Business Enterprise (DBE) Program Requirements**

The Railroad maintains that it does not qualify as a recipient or sub-recipient under this Agreement of Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 105-Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21), Pub. L. 105-178, 112 Stat. 107 (collectively “FHWA Funds”) and that this Agreement does not qualify as a Federal-aid construction contract. If and to the extent required by the authorization for any Federal-aid highway funds applied to this Agreement, upon prior written notice, the Railroad agrees:

a. The State and the Railroad shall set an appropriate DBE goal pursuant to 49 CFR Part 26 for this Agreement consistent with the State’s DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Railroad shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions. The State and the Railroad agree that the appropriate DBE goal for this contract is zero percent (0%).

b. The Railroad shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U. S. Department of Transportation assisted contract or in the administration of any applicable DBE program or the requirements of 49 CFR

Part 26 related to this Agreement. The Railroad shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of U. S. Department of Transportation assisted contracts related to this Agreement.

c. Each contract the Railroad signs with a contractor under this Agreement (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U. S. Department of Transportation assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.*

## **Article 20. Civil Rights Compliance**

If and to the extent required by the authorization for any Federal-aid highway funds applied to this Agreement, the Railroad shall comply with the regulations of the U. S. Department of Transportation as they relate to non-discrimination (49 CFR Part 21 and 23 CFR Part 200), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

## **Article 21. Debarment Certification**

If and to the extent required by the authorization for any Federal-aid highway funds applied to this Agreement, the parties agree not to make any award at any tier to any party that they know, or have reason to believe, is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this Agreement, the Railroad certifies to the best of its knowledge and belief that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and that it will not do business with any party that is known to the Railroad to be currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this Agreement shall require any party to a subcontract or purchase order awarded under this Agreement to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

## **Article 22. Lobbying Certification**

If and to the extent required by the authorization for any Federal-aid highway funds applied to this Agreement, the parties agree that, in executing this Agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

a. No federal appropriated funds have been paid or will be paid by or on behalf of the parties of this Agreement to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Railroad shall complete and submit the Federal Standard Form-LLL, *Disclosure Form to Report Lobbying*, in accordance with its instructions.

c. The parties shall require that the language of this certification shall be included in all lower tier subcontracts, which exceed \$100,000 and all such sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 USC §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

### **Article 23. Federal Funding Accountability and Transparency Act Requirements**

If and to the extent required by the authorization for any Federal-aid highway funds applied to this Agreement, the Railroad agrees:

a. Any recipient of funds under this Agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This Agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.

b. The Railroad agrees that it shall:

i. Obtain and provide to the State a Central Contracting Registry (CCR) number (Federal Acquisition Regulation, Part 4, Sub-part 4.1100) if this award provides more than \$25,000 in federal funding. The CCR number may be obtained by visiting the CCR website whose address is: <https://www.sam.gov/portal/public/SAM/>;

ii. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the federal government to track the distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet on-line registration website <http://fedgov.dnb.com/webform>; and

iii. Report the total compensation and names of its top five (5) executives to the State if:

1. More than eighty percent (80%) of annual gross revenues are from the federal government, and those revenues are greater than \$25,000,000 annually; and

2. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

c. The State acknowledges that the FFATA provisions of this Article may have no operative effect on the Railroad based on the Railroad's representation that it does not receive eighty percent (80%) or more of its annual gross revenues from federal procurement contracts and subcontracts.

#### **Article 24. Legal Construction**

If one or more of the provisions contained in this Agreement shall for any reason be held inapplicable, invalid, illegal, or unenforceable in any respect, that inapplicability, invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the inapplicable, invalid, illegal, or unenforceable provision.

#### **Article 25. Signatory Warranty**

Each signatory warrants that the signatory has the necessary authority to execute this Agreement on behalf of the entity represented.

**IN WITNESS WHEREOF**, the State and the Railroad have executed duplicate counterparts of this Agreement for this Project identified as CSJ \_\_\_\_\_ on the dates indicated below.

**THE STATE OF TEXAS**

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies, or work programs heretofore approved and authorized by the Texas Transportation Commission.

By \_\_\_\_\_ Date \_\_\_\_\_

Name and Title \_\_\_\_\_

**UNION PACIFIC RAILROAD COMPANY**

By \_\_\_\_\_ Date \_\_\_\_\_

Name and Title \_\_\_\_\_

**Notices:**

For the purposes of this Agreement, all notices, correspondence, billings, and other documentation shall be mailed to the following addresses:

For the State of Texas

Rail Highway Section Director  
Texas Department of Transportation  
Traffic Operations Division (TRF-RHS)  
125 E. 11th Street  
Austin, TX 78701-2483

For the Union Pacific Railroad Company

Senior Manager Industry & Public Projects  
Union Pacific Railroad Company  
24125 Aldine-Westfield Road  
Spring, TX 77373-9015

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STATE OF TEXAS §

UPRR Folder No. \_\_\_\_\_

COUNTY OF TRAVIS §

TxDOT Contract No. \_\_\_\_\_

**TEXAS DEPARTMENT OF TRANSPORTATION**

**CONDUIT UNDER TRACK AGREEMENT**

THIS AGREEMENT, made and entered into on the date hereinafter shown as being fully executed, by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State" and/or "Department," and the Union Pacific Railroad Company, a Delaware corporation, hereinafter called the "Railroad".

W I T N E S S E T H

WHEREAS, the State proposes to improve the safety of the traveling public by installing conduit with fiber-optic cable for the State's in-house, closed system Traffic Management System (TMS) under the railroad track by jack and bore method at IH \_\_ at IH \_\_\_ in Houston, DOT No. \_\_\_\_\_, RRMP \_\_\_\_ in Houston, Harris County, Texas, to be hereinafter identified as the "Project," as shown on **Exhibit A** attached hereto and made a part hereof. **THE FOLLOWING SENTENCE IS OPTIONAL: All other work associated with this project will be covered under a separate agreement; and,**

WHEREAS, the Texas-approved version of the Railroad Contractor's Right-of-Entry Agreement shall be marked **Exhibit B**, attached hereto and made a part hereof; and

WHEREAS, the approved Railroad force account cost estimate shall be marked **Exhibit C**, attached hereto and made a part hereof; and

WHEREAS, said work is to be performed at no expense to the Railroad, unless as provided herein.

A G R E E M E N T

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto be by them respectively kept and performed, as hereinafter set forth, it is agreed as follows:

## Article 1. Agreement Period

Upon execution by all parties, this Agreement will be in effect and continue thereafter for so long as the Railroad premises shall be used for the purposes set forth herein; provided, however, if the State shall abandon the use of the Railroad premises, or any part thereof, for such purposes, this license and permission and the rights and privileges granted hereby as to the portion or portions so abandoned shall expire and terminate at the time each such portion shall be so abandoned; whereupon the Railroad shall have the same complete title to the Railroad premises so abandoned as though these presents had never been executed and the right to enter thereon and exclude therefrom the State its successors, and assigns

## Article 2. License & Permission

a. The Railroad hereby gives to the State and/or the State's Contractor license and permission to install TMS conduit under the tracks at the locations referenced above, as shown in said **Exhibit A**. The license and permission given herein shall not prevent the Railroad from operating its trains or multiplying or changing its tracks across the land over which license and permission has been given and grants additional permission to the State for maintenance of said facilities as shown in said **Exhibit A**.

b. The license and permission given is subject to the rights of utility companies to maintain and operate facilities thereon and thereover, and the State will make its own arrangements with the utility companies for any necessary relocation or alteration of said facilities.

c. No legal right which the Railroad now has to reconstruct, maintain, and operate its existing track and appurtenances or to construct, maintain, and operate an additional track or tracks and appurtenances upon and across said property shall in anywise be affected by the giving of this license.

d. It is agreed that should the property or any portion thereof, which is licensed hereunder, cease to be used for public road purposes, this license, as to the portion so abandoned, shall immediately cease and terminate.

e. Permission is granted solely for the purposes of the State, at its sole cost and expense, for the proposed improvements as shown on the attached **Exhibit A** and is expressly subject and subordinate to the present and future rights of the Railroad, its successors, assignees, lessees, grantees and licensees, to construct, maintain, use, operate, and renew on, beneath, or above the surface of the Railroad premises any telephone, telegraph, power, communication, or signal lines, poles and/or appurtenances, fiber optic communications, tracks, roadways, pipelines, structures, improvements, or facilities of similar or different character, as now located, and to construct, install, establish, and thereafter maintain, use, operate, and to renew on, beneath, or above the surface of the Railroad premises, any or all said things, provided the same do not materially interfere with the State use of the Railroad premises as hereinabove provided.

### Article 3. Scope of Work

a. The Railroad, the State and/or their Contractor agree to perform the work as outlined in the attached **Exhibit A**. The work will generally consist of installing the State's in-house fiber optic cable under the tracks as shown in **Exhibit A**.

b. In order to provide for the safety of rail traffic, the Railroad may provide, at State's expense, flaggers during the period of performance of work in or incident to the proposed installation of conduit and fiber-optic cable. The Railroad shall prepare a written cost estimate, subject to approval by the State, attached hereto and to be identified as **Exhibit C**. The Railroad should include the cost associated with flagging and engineering in the estimate. Only work shown in the approved estimate will be reimbursed. The providing of this service shall not relieve the State and/or its Contractor of any responsibility or liability.

c. The State shall give the Railroad at least thirty (30) days written notice prior to commencement of any work hereunder.

### Article 4. Plans, Estimates, Construction, and Maintenance

a. The State, at its expense, has prepared preliminary plans and specifications, to include any signal wiring diagram(s) if applicable, for the proposed Project and has submitted such plans and specifications to the Railroad for review and approval. The approved plans and specifications are hereby adopted as the plans and specifications covering the construction as contemplated herein and identified as **Exhibit A**. No changes to such final plans and specifications shall be made without the written approval of such changes by the State and the Railroad. Neither the State nor its contractors shall commence any work on Railroad's property involving such plans until such plans have been approved in writing by the Railroad.

b. If, in after a period of three (3) years from the date the Railroad executes this Agreement and the Project has not let to contract, the Railroad shall have the right to perform a design plan review of the previously approved design to confirm the design meets the then-current Railroad design guidelines and requirements.

c. The State and/or the State's Contractor shall furnish material for and perform the work to be done by it hereunder in accordance with the approved plans and specifications. The State and/or the State's Contractor shall install the fiber optic cable across the Railroad's right-of-way as shown on the plans and in accordance with approved specifications and shall maintain or arrange for the maintenance of these facilities.

d. The Railroad and/or the State's Contractor, unless otherwise provided, shall make such changes or alterations in the tracks, communication, and signal pole and wire lines, pipe sewer and drainage, or other facilities or buildings located upon the Railroad's right-of-way, which may be displaced or required by the construction of the Project, as may be necessary to maintain continuous service and conform them to said construction and restore them to former condition for service either prior to, during, or following construction of said work. The Railroad has prepared cost estimates, and has been approved by the State, for the adjustment of such facilities. Flagging and engineering in the cost estimate have been included. Only work shown in the cost estimates will be reimbursed. Said cost estimates are identified as **Exhibit C**.

e. The Railroad shall commence the work to be done by it herein within thirty (30) days, or by a date mutually acceptable by the Sate and the Railroad, after receipt of written



notice from the State that the work may proceed and shall proceed diligently to the conclusion of its obligations herein. Assembly of materials should be made sufficiently in advance of the work to assure prompt delivery to the jobsite.

f. Following the issuance of the Work Order, it will be necessary for the Railroad to contact the Texas Department of Transportation district office a minimum of seven (7) days prior to the actual commencement of work in order that State forces may provide inspection during the necessary work.

g. Following the completion of the Project, for future maintenance work, the Railroad, under terms of this Agreement, gives the State and/or its Contractor permission to enter the Railroad right-of-way to perform routine maintenance and/or emergency work as required. The State's Contractor shall provide the then-current Texas insurance coverages and be required to execute the Railroad's then-current Texas-approved-standard Contractor's Right-of-Entry Agreement before commencing any work on the Railroad's property.

h. The State assumes the entire responsibility for the installation of said TMS facility and the maintenance responsibilities and use upon the Railroad's property at the location herein described to the extent required by law, and nothing contained herein shall ever be construed to place upon the Railroad any manner of liability for injury to or death of persons, or for damage to or loss of property arising from or in any manner connected with the construction, maintenance, or use of the portion of said highway and drainage facility located upon the Railroad's property.

i. The State shall require the State's Contractor to provide the insurance coverages as contained in Article 5 of this Agreement and be required to execute the Railroad then-current Texas-approved standard Contractor's Right-of-Entry Agreement before commencing any work on the Railroad's property.

## **Article 5. Insurance and Right-Of-Entry Requirements**

a. The State shall require the State's Contractor to provide the insurance coverages as contained in the then-current standard Texas-approved Railroad Contractor's Right-of-Entry Agreement, a sample attached hereto and identified as **Exhibit B**. The State's Contractor shall execute the Contractor's Right-of-Entry Agreement before commencing any work on the Railroad's property.

b. For future maintenance work, the State's Contractor shall provide the then-current Texas insurance coverages and be required to execute the Railroad's then-current standard Texas-approved-standard Contractor's Right-of-Entry Agreement before commencing any work on the Railroad's property.

c. The State is self-insured for any work performed by the State with its own employees. To the extent allowed under state law, the State is responsible to the Railroad to cover bodily injury and property damage claims which may occur in the course of operations.

## **Article 6. Payment**

a. No payment, except for any preliminary engineering costs in Article 6 (c) and where written Authority To Order material may have been issued prior to the Work Order resulting in some material and material handling costs, will be due the Railroad unless a Work Order for work to begin is issued by the State.

b. Reimbursement to the Railroad will be made for work performed and materials furnished, including but not limited to, insurance premiums and coverage at the rate and amount set forth in the approved cost estimate attached hereto, in accordance with the provisions of Title 23, Code of Federal Regulations (CFR), Subchapter B, Part 140, Subpart I, issued by the Federal Highway Administration, and amendments thereto except as modified by the provisions herein. Work performed and materials furnished by the Railroad will be reimbursed by the State based on actual costs incurred by the Railroad as they relate to the development of the Project and approved in the cost estimate identified as **Exhibit C**.

c. The cost of preliminary engineering will be eligible for reimbursement if incurred after the State's request for preparation of estimates.

d. The Railroad may submit monthly bills prepared in satisfactory form for flagging work performed and materials installed. Payment will be made within thirty (30) days of the costs detailed on the bills.

e. Upon completion of the Project, the Railroad shall submit a final invoice for all work performed clearly marked "Final Invoice" no later than one (1) year from the date of the Project Completion & Acceptance Letter stating the project is completed. Payment will be made within thirty (30) days of receipt of the Final Invoice.

## **Article 7. Termination**

The State reserves the right to cancel this Agreement for any reason and at any time prior to the issuance of a Work Order by the State to the Railroad to proceed with any part of the work outlined herein. The State will not be responsible for any expense incident to any cost incurred in the event of the cancellation of this contract, unless a Work Order was issued by the State and the Railroad incurred expenses pursuant to that Work Order, except for any preliminary engineering costs in Section 6 (c) and where written Authority To Order material may have been issued prior to the Work Order resulting in some material and material handling costs. In the event the State terminates this Agreement, any materials ordered by the Railroad upon receipt of the Authority to Order may be re-allocated to other State-approved projects upon consultation with the State.

## **Article 8. Records & Audits**

a. The State and the Railroad shall maintain books, documents, papers, accounting records, and other evidence pertaining to costs incurred and work performed hereunder and shall make such materials available at their offices during the contract period and for three (3) years from the date of final payment. The records shall be made available to representatives from the State or U. S. Department of Transportation, including the Office of Inspector General, for the purpose of making audits, inspections, transcriptions, or excerpts.

b. The State Auditor may conduct an audit or investigation of any entity receiving funds from the State directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

c. The Railroad is required to make any information created or exchanged with the State pursuant to this Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

Railroad and the State agree that Railroad will produce such information in an image format, or in another format selected by the Railroad that is accessible by the public.

### **Article 9. Existing Agreements**

It is agreed that all existing agreements between the Railroad and the State concerning permission, permits, leases or easements at this location shall remain in full force and effect.

### **Article 10. Protection of Fiber Optic Cable Systems**

Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. The State and/or its Contractor shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m., Central Standard Time, Monday through Friday, except holidays) at (800) 336-9193 (also a 24-hour, seven-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the State. If it is, the State and/or its Contractor will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

### **Article 11. Limited Access**

The State hereby agrees that during the construction of the proposed improvements it will keep its employees, material, and machinery within the defined area of the premises unless otherwise specified on the attached **Exhibit A**. There shall be no crossings of the Railroad's tracks except at existing, open, and public crossings.

### **Article 12. Transfer**

The parties hereto shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the other party(ies), and it is agreed that any transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the non-transferring party(ies), shall terminate this Agreement.

### **Article 13. Relocation or Removal of Fiber Optic Systems**

a. The permission herein granted for the installation of low voltage fiber-optic cable for the State's Traffic Management System (TMS) and/or Intelligent Transportation System (ITS) is subject to the reasonable needs and requirements of the Railroad in the operation of its railroad and in the improvements and use of its property for railroad purposes. The State shall, upon the Railroad giving the District Engineer reasonable advance written notice, relocate all or any portion of the fiber-optic cable system as installed as part of this Project to another portion of the Railroad's property. The relocation of the State's Traffic Management System (TMS) and/or Intelligent Transportation System (ITS) shall be at the sole expense of the State to the extent allowed by State law, whenever, in the furtherance of the Railroad's reasonable railroad needs and requirements, the Railroad reasonably finds that such relocation is necessary.

b. All the terms, conditions, and stipulations herein expressed with reference to the State's Traffic Management System (TMS) and/or Intelligent Transportation System (ITS) on property of the Railroad in the locations hereinbefore described as shown in **Exhibit A** shall, so far as the State's fiber-optic Traffic Management System (TMS) and/or Intelligent Transportation System (ITS) remains on the property, apply to the fiber-optic cable system as modified, changed, or relocated within the contemplation of this section.

c. In the State's use, operation, maintenance and repair of the State's fiber-optic system located on the Railroad's property and the State's TMS and ITS system, the State shall ensure to take all suitable precautions to prevent any interference with the operation of the signal, communication lines or other installations or facilities of the Railroad or its tenants, and if at any time such use, operation, maintenance or repair of the fiber-optics, TMS or ITS systems results in any electrostatic or other interference effects which the Railroad deems undesirable or harmful or causes interference with the operation of the signal, communication lines or other installations or facilities, as now existing or which may hereafter be installed by the Railroad and/or its tenants, the State shall, at the State's sole expense, immediately take such actions as may be necessary to eliminate such interference.

### **Article 14. Notification**

The State agrees to notify the Railroad in writing when all work on the Railroad's property is complete.

### **Article 15. Responsible For Its Own Actions**

The parties hereto acknowledge that they are not an agent, servant, or employee of the other parties, and are responsible for their own acts and deeds and for those of its agents and employees during performance of contract work.

### **Article 16. Conditions**

a. In accordance with the provisions of Title 23, Code of Federal Regulations (CFR), Subchapter G, Part 646, Subpart B, issued by the Federal Highway Administration, and amendments thereto, the Railroad will not be required to participate five percent (5%) in the cost of the Project.

b. The State may be reimbursed for its expenditures hereunder from federal funds for this Project. Therefore, the State and the Railroad will comply with statutes, rules, and regulations enacted and promulgated by the U. S. Government and its Federal Highway Administration.

c. If the State will be receiving any federal funding for the Project, the current rules, regulations and provisions of the Federal Aid Policy Guide as contained in 23 CFR 140, Subpart I and 23 CFR 646, Subpart A and B are incorporated into this Agreement by reference. If the State will be receiving American Recovery and Reinvestment Act of 2009 (“ARRA”) funding for this Project, the State shall be solely responsible in performing and completing all ARRA reporting documents for this Project. The State further confirms and acknowledges that Section 1512 of the ARRA provisions applies only to the “recipient” receiving ARRA funds directly from the federal government and, therefore, (i) the ARRA reporting requirements are the responsibility of the State and not of the Railroad and (ii) the State shall not delegate any ARRA reporting responsibilities on the Railroad. The State confirms that (A) the Railroad shall provide the Railroad’s standard and customary billing for expenses incurred by the Railroad for this Project including the Railroad’s standard and customary documentation to support such billing and (B) such standard and customary billing and documentation from the Railroad provides the information needed by the State to perform and complete the ARRA reporting documents. The Railroad confirms that the State and Federal Highway Administration shall have the right to audit the Railroad’s billing and documentation for this Project as provided in Article 8, RECORDS and AUDITS, of this Agreement.

#### **Article 17. Compliance with Laws**

The parties shall comply with all applicable federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement. When required, the Railroad shall furnish the State with satisfactory proof of this compliance. Nothing herein is meant to be or will be interpreted to be a waiver of principles of legal preemption or preclusion that may apply to the Railroad because of its status as a common carrier regulated by the federal government.

#### **Article 18. Office of Management and Budget (OMB) Cost Principles**

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

## **Article 19. Disadvantaged Business Enterprise (DBE) Program Requirements**

The Railroad maintains that it does not qualify as a recipient or sub-recipient under this Agreement of Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 105-Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21), Pub. L. 105-178, 112 Stat. 107 (collectively "FHWA Funds") and that this Agreement does not qualify as a Federal-aid construction contract. If and to the extent required by the authorization for any Federal-aid highway funds applied to this Agreement, upon prior written notice, the Railroad agrees:

a. The State and the Railroad shall set an appropriate DBE goal pursuant to 49 CFR Part 26 for this Agreement consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Railroad shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions. The State and the Railroad agree that the appropriate DBE goal for this contract is zero percent (0%).

b. The Railroad shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U. S. Department of Transportation assisted contract or in the administration of any applicable DBE program or the requirements of 49 CFR Part 26 related to this Agreement. The Railroad shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of U. S. Department of Transportation assisted contracts related to this Agreement.

c. Each contract the Railroad signs with a contractor under this Agreement (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U. S. Department of Transportation assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.*

## **Article 20. Civil Rights Compliance**

If and to the extent required by the authorization for any Federal-aid highway funds applied to this Agreement, the Railroad shall comply with the regulations of the U. S. Department of Transportation as they relate to non-discrimination (49 CFR Part 21 and 23 CFR Part 200), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

## **Article 21. Debarment Certification**

If and to the extent required by the authorization for any Federal-aid highway funds applied to this Agreement, the parties agree not to make any award at any tier to any party that they know, or have reason to believe, is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this Agreement, the Railroad and the State certify to the best of its knowledge and belief that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and

that it will not do business with any party that is known to the Railroad or the State to be currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this Agreement shall require any party to a subcontract or purchase order awarded under this Agreement to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

## **Article 22. Lobbying Certification**

If and to the extent required by the authorization for any Federal-aid highway funds applied to this Agreement, the parties agree that, in executing this Agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

a. No federal appropriated funds have been paid or will be paid by or on behalf of the parties of this Agreement to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Railroad shall complete and submit the Federal Standard Form-LLL, *Disclosure Form to Report Lobbying*, in accordance with its instructions.

c. The parties shall require that the language of this certification shall be included in all lower tier subcontracts, which exceed \$100,000 and all such sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 USC §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

## **Article 23. Federal Funding Accountability and Transparency Act Requirements**

If and to the extent required by the authorization for any Federal-aid highway funds applied to this Agreement, the Railroad agrees:

a. Any recipient of funds under this Agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This Agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.

b. The Railroad agrees that it shall:

i. Obtain and provide to the State a Central Contracting Registry (CCR) number (Federal Acquisition Regulation, Part 4, Sub-part 4.1100) if this award provides more than \$25,000 in federal funding. The CCR number

may be obtained by visiting the CCR website whose address is:  
<https://www.sam.gov/portal/public/SAM/>;

- ii. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the federal government to track the distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet on-line registration website <http://fedgov.dnb.com/webform>; and
- iii. Report the total compensation and names of its top five (5) executives to the State if:
  1. More than eighty percent (80%) of annual gross revenues are from the federal government, and those revenues are greater than \$25,000,000 annually; and
  2. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

c. The State acknowledges that the FFATA provisions of this Article may have no operative effect on the Railroad based on the Railroad's representation that it does not receive eighty percent (80%) or more of its annual gross revenues from federal procurement contracts and subcontracts.

#### **Article 24. Legal Construction**

If one or more of the provisions contained in this Agreement shall for any reason be held inapplicable, invalid, illegal, or unenforceable in any respect, that inapplicability, invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the inapplicable, invalid, illegal, or unenforceable provision.

#### **Article 25. Signatory Warranty**

Each signatory warrants that the signatory has the necessary authority to execute this Agreement on behalf of the entity represented.



**IN WITNESS WHEREOF**, the State and the Railroad have executed duplicate counterparts of this Agreement for this Project identified as CSJ \_\_\_\_\_ on the dates indicated below.

**THE STATE OF TEXAS**

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies, or work programs heretofore approved and authorized by the Texas Transportation Commission.

By \_\_\_\_\_ Date \_\_\_\_\_

Name and Title \_\_\_\_\_

**UNION PACIFIC RAILROAD COMPANY**

By \_\_\_\_\_ Date \_\_\_\_\_

Name and Title \_\_\_\_\_

Notices:

For the purposes of this Agreement, all notices, correspondence, billings, and other documentation shall be mailed to the following addresses:

For the State of Texas

Rail Highway Section Director  
Texas Department of Transportation  
Traffic Operations Division (TRF-RHS)  
125 E. 11th Street  
Austin, TX 78701-2483

For the Union Pacific Railroad Company

Senior Manager Industry & Public  
Projects  
Union Pacific Railroad Company  
24125 Aldine-Westfield Road  
Spring, TX 77373-9015