

After Recording, Mail to:

Union Pacific Railroad Company
1400 Douglas Street -STOP 1580
Omaha, Nebraska 68179-1580
Attn: Gerry Sullivan

Space Above Reserved for County Recorder's Use
Folder No. 2724-86

ENCROACHMENT AGREEMENT

THIS AGREEMENT is made and entered into by and between **FORT BEND GRAND PARKWAY TOLL ROAD AUTHORITY** ("Grantor"), and **UNION PACIFIC RAILROAD COMPANY**, a Utah corporation ("Grantee").

WHEREAS, Grantor executed a Right of Use Agreement with the Texas Department of Transportation ("State") dated May 12, 2011, allowing Grantor to use State highway right of way in connection with the State Highway 99 / Grand Parkway Project.

WHEREAS, Grantor and Grantee have entered into that certain "Joint Project Agreement Covering New Railroad Bridge as Part of SH 99 / Grand Parkway Project," dated August 28, 2012.

WHEREAS, in order to construct the New Railroad Bridge, it is necessary for Grantor to grant to Grantee rights in that certain portion of the State right of way in the City of Sugar Land, County of Fort Bend, State of Texas, as such property is described on **Exhibit A** (the "Property") attached and hereby made a part hereof.

WHEREAS, Grantor and Grantee have entered into a Public Highway Overpass Agreement dated August 28, 2012, providing terms and conditions for Grantor to construct an elevated "Tolled Overpass System" over the Property and adjacent property owned or controlled by Grantee.

NOW THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor hereby grants Grantee permission for the construction, maintenance, operation, use, inspection, repair and reconstruction of a Railroad Bridge and all necessary piers, footings, supporting structures, signal equipment, communications systems and related appurtenances (collectively, the "Improvements") upon, over, under and across the Property, provided that any installation shall be below a plane which is forty-five (45) feet above the ground elevation of the Property.

This grant is subject to the prior and continuing right and obligation of Grantor, its successors and assigns, to construct, reconstruct, maintain, repair, use and operate existing and future road systems and all necessary and related appurtenances over, under and across and along the Property, which do not interfere with or diminish the Encroachment herein conveyed to Grantee. This reservation of rights to Grantor shall be paramount to this grant to Grantee.

If any utility, fiber optic or communication facilities require relocation as a result of Grantee's Railroad Bridge, all such relocations shall be arranged with the entities owing or controlling the facilities being relocated, at the sole expense and cost of Grantee. This grant includes the right of Grantee, its successors and assigns, to install such public utility lines or communication lines that may be needed by Grantee in connection with its Railroad Bridge. Other than as required for its railroad operations, Grantee shall not grant any such rights to others for public utility lines or communication lines; it being understood that for any additional public utility lines or communication lines, separate agreements must be entered into with Grantor.

Grantor makes no covenant or warranty of title, for quiet possession or against encumbrances. Grantee shall not use or permit use of the Property for any purposes other than those described in this instrument. No nonparty shall be admitted by Grantee to use or occupy any part of the Property without Grantor's written consent. Nothing herein shall obligate Grantor to give such consent.

This Encroachment Agreement is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded (including, without limitation, those in favor of Grantees and lessees of Grantor's property and others), and also to any renewals thereof and the word "grant" as used in this Encroachment Agreement shall not be construed as a covenant against the existence of any thereof. Grantee shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to Grantor's remaining property, unless Grantee, at its own expense, settles with and obtains releases from such nonparties.

Grantor reserves the right to access the surface of the Property as reasonably necessary to maintain adjacent frontage roads for SH 99 and adjacent overpass piers. When exercising such access, Grantor agrees not to unreasonably interfere with Grantee's railroad operations, and shall not enter upon either rail track or bridges, without permission of Grantee.

This Encroachment Agreement will remain in effect, commencing on the date hereof, and continuing so long as the Improvements remain on the Property. In the event the Improvements are abandoned, Grantee shall restore the Property to a condition reasonably acceptable to Grantor.

Grantee agrees to comply with all applicable federal, state and local laws, statutes, ordinances, codes or regulations in connection with the operation and maintenance of the Improvements.

Grantee shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the Property for any work done or materials furnished thereon at the instance or request or on behalf of the Grantee.

Grantee shall not assign this Encroachment Agreement, in whole or in part, or any rights herein granted, without the written consent of Grantor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Encroachment 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; provided, however, Grantee may assign this Encroachment Agreement to any successor railroad, or any entity with which Grantee is merged or consolidated, or which acquires ownership or control of all or substantially all of the assets of Grantee upon thirty (30) days written notice to Grantor.

Subject to the provisions heretofore, this Encroachment Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

TO HAVE AND TO HOLD the Easement unto Grantee, its successors and assigns forever.

[Signature pages follow this page.]

IN WITNESS WHEREOF, Grantor and Grantee have caused this instrument to be duly executed as of the ____ day of _____, 20__.

GRANTOR:

FORT BEND GRAND PARKWAY TOLL ROAD AUTHORITY

By: [Signature]
Name: James D. Cordrey
Title: Chairman, Board of Directors

ATTEST:

By: [Signature]
Name: Charles Rencher
Title: Secretary, Board of Directors

(SEAL)



THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This instrument was acknowledged before me on December 19, 2012, by James D. Cordrey, Chairman, and Charles Rencher, Secretary, of the Board of Directors of FORT BEND GRAND PARKWAY TOLL ROAD AUTHORITY, a political subdivision of the State of Texas, on behalf of said political subdivision.



(NOTARY SEAL)

[Signature]
Notary Public, State of Texas

GRANTEE:

UNION PACIFIC RAILROAD COMPANY

By: _____

Name: _____

Its: _____

ACKNOWLEDGMENT

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this ____ day of _____, 20__, before me, a Notary Public in and for said County and State, personally appeared _____, _____ of Union Pacific Railroad Company, a Utah corporation, who is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name are subscribed to in the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

Attachment:
Exhibit A: Description of the Property

EXHIBIT A

UNION PACIFIC RAILROAD
PROPOSED 5 FOOT EASEMENT

AUGUST 23, 2012

DESCRIPTION OF A 5 FOOT
STRIP OF LAND

BEING a 5 foot wide strip of land situated in the J.H. Cartwright Survey, Abstract No. 16, Fort Bend County, Texas, and being located North of and adjacent to the North right-of-way line of Union Pacific's Railroad right-of-way (Glidden Subdivision) running along the North side of U.S. Highway 90, and extending from the East right-of-way line of State Highway 99 (Grand Parkway)(width varies) as recorded under File No. 9830483 of the Official Public Records of Fort Bend County, Texas, an approximate distance of 674.7 feet to the West right-of-way line of said Grand Parkway.