

Reimbursement Agreement (and any exhibits attached thereto) attached hereto as Exhibit "A" and incorporated by reference for all intents and purposes.

2. Costs and Payment.

- (a) County shall pay all of the Costs for the Services provided by Union Pacific under this Agreement pursuant to the terms and conditions of Section 2(b) of this Addendum. Such Costs shall be based on the actual costs and expenses incurred by Union Pacific in providing the Services to County. Union Pacific has estimated the Costs for the Services at Seventy Five Thousand and 00/100 Dollars (\$75,000.00) (the "Cost Estimate"). However, the Parties acknowledge that the Costs for the Services may be higher than the Cost Estimate provided.
- (b) County will pay Union Pacific based on the following procedures: Union Pacific shall submit to County staff person designated by the County Engineer, one (1) electronic (pdf) copy of an invoice showing the amounts due for services performed in a form acceptable to County. County shall review such invoices and approve them with such modifications as are consistent with this Agreement and forward the same to the County Auditor for processing. County shall pay each such approved invoice within sixty (60) calendar days.

3. Limit of Appropriation.

- (a) County represents and warrants to Union Pacific that, as of the Effective Date of this Agreement, the Commissioners Court of Fort Bend County, Texas has identified, appropriated, and set aside sufficient monies to fund the Costs for the Services at the Cost Estimate of \$75,000.00.
- (b) Notwithstanding anything to the contrary under this Agreement, or anything that may be construed to the contrary, in no event shall County's liability for and obligation to pay the Costs for the Services exceed the Cost Estimate of \$75,000.00 unless such excess cost is itemized and provided to County in advance and approved by County as evidenced by the issuance of a County approved change order.
- (c) Additionally, Union Pacific understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of \$75,000.00 specifically allocated to fully discharge any and all liabilities County may incur under this Agreement. Union Pacific does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Union Pacific may become entitled to and the total maximum sum that County may become liable to pay to Union Pacific under this Agreement

shall not under any conditions, circumstances, or interpretations thereof exceed the Cost Estimate of \$75,000.00 without a county approved change order.

4. **Indemnity.** TO THE EXTENT ALLOWED BY LAW, UNION PACIFIC SHALL INDEMNIFY AND HOLD HARMLESS COUNTY, ITS OFFICIALS, OFFICERS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, LIABILITY, AND COSTS, INCLUDING THE REIMBURSEMENT OF REASONABLE ATTORNEY FEES, ARISING OUT OF OR RESULTING FROM AN ACT OF: NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY UNION PACIFIC OR UNION PACIFIC'S AGENTS, EMPLOYEES, OR ANOTHER ENTITY OVER WHICH UNION PACIFIC EXERCISES CONTROL.

5. **Insurance.** Prior to the commencement of the Services provided under this Agreement, Union Pacific shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Union Pacific shall maintain such insurance coverage from the time Services commence until Services are completed and provided replacement certificates, policies, and/or endorsements for any such insurance expiring prior to completion of Services. Union Pacific shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the state of Texas , and shall obtain such insurance of the following types and minimum limits:
 - (a) Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed.

 - (b) Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

 - (c) Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

 - (d) Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

 - (e) Professional Liability Insurance with limits not less than \$1,000,000.

County shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies including Workers' Compensation written on behalf of Union Pacific shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

If required coverage is written on a claims-made basis, Union Pacific warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of two years beginning from the time that work under the Agreement is completed.

6. **Entire Agreement and Modification.** This Agreement constitutes the entire Agreement between the Parties and supersedes all previous agreements, written or oral, pertaining to the subject matter of this Agreement. Any amendment to this Agreement must be in writing and signed by each Party to come into full force and effect.
7. **No Waiver of Immunity.** Neither the execution of this Agreement nor any other conduct of either Party relating to this Agreement shall be considered a waiver or surrender by County of its governmental powers or immunity under the Texas Constitution or the laws of the state of Texas.
8. **Venue and Applicable Law.** This Agreement shall be construed in accordance with the laws of the State of Texas and venue for any claim or legal action by Union Pacific against County shall lie in a court of competent jurisdiction of Fort Bend County, Texas.
9. **Conflict.** In the event of a conflict between the Reimbursement Agreement attached hereto and the terms of this Addendum, this Addendum shall prevail.
10. **Effective Date.** The Effective Date of this Agreement shall be the date upon which the Agreement is fully executed by both Parties hereto.
11. **Certain State Law Requirements for Contracts** The contents of this Section are required by Texas law and are included by County regardless of content For purposes of Sections 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, Union Pacific hereby verifies that Union Pacific and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:
 - (a) Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.

- (b) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Union Pacific does not boycott Israel and is authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in § 808.001 of the Texas Government Code.
- (c) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Union Pacific does not boycott energy companies and is authorized to agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in § 809.001 of the Texas Government Code.
- (d) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Union Pacific does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in § 2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in § 2274.001(6) and (7) of the Texas Government Code.

12. **Human Trafficking.** BY ACCEPTANCE OF THIS AGREEMENT, UNION PACIFIC ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.

{Execution Page Follows}

IN WITNESS WHEREOF, and intending to be legally bound, County and Contractor hereto have executed this Agreement to be effective on the date signed by the last Party hereto.

FORT BEND COUNTY, TEXAS

UNION PACIFIC RAILROAD COMPANY

KP George, County Judge

Authorized Agent – Signature

Date

Authorized Agent- Printed Name

ATTEST:

Title

Laura Richard, County Clerk

Date

APPROVED:

J. Stacy Slawinski, County Engineer

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$_____ are available to pay the obligation of Fort Bend County, Texas within the foregoing Agreement.

Robert Ed Sturdivant, County Auditor

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EXHIBIT A

(Reimbursement Agreement for Preliminary Engineering Services Follows Behind)

**REIMBURSEMENT AGREEMENT
PRELIMINARY ENGINEERING SERVICES**

Effective Date:

Estimate: \$75,000.00

THIS REIMBURSEMENT AGREEMENT (**Agreement**) is made and entered into as of the **Effective Date**, by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (**Railroad**), and COUNTY OF FORT BEND, TEXAS (**Agency**).

RECITALS

A. Agency desires to initiate the project more particularly described on Exhibit A attached hereto (**Project**).

B. The Project will affect Railroad's track and right of way at or near the Project area more particularly described on Exhibit A.

C. Railroad agrees to collaborate with Agency on the conceptualization and development of the Project in accordance with the terms and conditions of this Agreement.

AGREEMENT

NOW THEREFORE, the parties hereto agree as follows:

1. Railroad, and/or its representatives, at Agency's sole cost and expense, agrees to perform (or shall cause a third-party consultant to perform on Railroad's behalf) the preliminary engineering services work described on Exhibit B attached hereto (**PE Work**). Agency acknowledges and agrees that: (a) Railroad's review of any Project designs, plans and/or specifications, as part of the PE Work, is limited exclusively to potential impacts on existing and future Railroad facilities and operations; (b) Railroad makes no representations or warranties as to the validity, accuracy, legal compliance, or completeness of the PE Work; and (c) Agency's reliance on the PE Work is at Agency's own risk.

2. Notwithstanding the Estimate (**Estimate**), Agency agrees to reimburse Railroad and/or Railroad's third-party consultant, as applicable, for one hundred percent (100%) of all actual costs and expenses incurred for the PE Work. During the performance of the PE Work, Railroad will provide (and/or will cause its third-party consultant to provide) progressive billing to Agency based on actual costs in connection with the PE Work. Within sixty (60) days after completion of the PE Work, Railroad will submit (and/or will cause its third-party consultant to submit) a final billing to Agency for any balance owed for the PE Work. Agency shall pay Railroad (and/or its third-party consultant, as applicable) within thirty (30) days after Agency's receipt of any progressive and final bills submitted for the PE Work. Bills will be submitted to the Agency using the contact information provided on Exhibit C. Agency's obligation hereunder to reimburse Railroad (and/or its third-party consultant, as applicable) for the PE Work shall apply regardless whether Agency declines to proceed with the Project or Railroad elects not to approve the Project.

3. Agency acknowledges and agrees that Railroad may withhold its approval for the Project for any reason in its sole discretion, including without limitation, impacts to Railroad's safety, facilities, or operations. If Railroad approves the Project, Railroad will continue to work with Agency to develop final plans and specifications, and prepare material and force cost estimates for any Project related work performed by Railroad.

4. If the Project is approved by Railroad, Railroad shall prepare and forward to Agency a Construction and Maintenance Agreement (**C&M Agreement**) which shall provide the terms and conditions for the construction and ongoing maintenance of the Project. Unless otherwise expressly set forth in the C&M Agreement, the construction and maintenance of the Project shall be at no cost to Railroad. No construction work on the Project affecting Railroad's property or operations shall commence until the C&M Agreement is finalized and executed by Agency and Railroad.

5. Neither party shall assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned, or delayed.

6. No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties.

7. This Agreement sets forth the entire agreement between the parties regarding the Project and PE Work. To the extent that any terms or provisions of this Agreement regarding the PE Work are inconsistent with the terms or provisions set forth in any existing agreement related to the Project, such terms and provisions shall be deemed superseded by this Agreement to the extent of such inconsistency.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

COUNTY OF FORT BEND, TEXAS

UNION PACIFIC RAILROAD COMPANY,
a Delaware Corporation

Signature

Signature

KP George

Erik Lewis

Printed Name

Printed Name

County Judge

Manager I, Engineering – Public Projects

Title

Title

Exhibit A

Project Description and Location

Project Description

County of Fort Bend, TX proposes to widen the crossing at the location referenced below from a 2 lane roadway, to a 4 lane roadway, including relocation of the existing traffic control devices.

Location

Glidden Subdivision

DOT	Crossing Type	Milepost	Street Name
743724X	Public	33.05	Tenth Street

Exhibit B

Scope of Project Services

Scope of work includes, but is not limited to the following

- Field diagnostic(s) and inspections
- Plan, specification, and construction review
- Project design
- Preparation of Project estimate for force account or other work performed by the Railroad
- Meetings and travel

Exhibit C
Billing Contact Information

Name	Stacy Slawinski
Title	County Engineer
Address	301 Jackson, 4th Floor, Richmond, TX 77469
Work Phone	(281) 633-7508
Cell Phone	
Email	enginvoices@fortbendcountytexas.gov
Agency Project No.	13106