SOUTHWEST PARKWAY/SH 121

UNION PACIFIC RAILROAD / PROJECT PARTNERS FORMAL AGREEMENT

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SOUTHWEST PARKWAY/SH 121

UNION PACIFIC RAILROAD / PROJECT PARTNERS FORMAL AGREEMENT

This **FORMAL AGREEMENT** (this "Formal Agreement") is executed as of the 8th day of January, 2009, by and between the **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("UPRR"), the **TEXAS DEPARTMENT OF TRANSPORTATION**, an agency of the State of Texas ("TxDOT"), the **CITY OF FORT WORTH, TEXAS**, a Texas home-rule municipality (the "City"), and the **NORTH TEXAS TOLLWAY AUTHORITY**, a regional tollway authority and political subdivision of the State of Texas (the "NTTA") pertaining to the construction of the Southwest Parkway/ SH 121 project ("SWP/SH 121"); all such entities are sometimes referred to collectively as "Parties" or individually as a "Party;" further, TxDOT, the City, and the NTTA are sometimes referred to collectively as the "Project Partners."

ARTICLE I
RECITALS

WHEREAS, the NTTA is a regional tollway authority created and operating pursuant to Chapter 366 of the Texas Transportation Code under which the NTTA is authorized to design, finance, construct, operate, and maintain turnpike projects within its service area; and

WHEREAS, on July 29, 1999, the Texas Transportation Commission passed Minute Order 107892, authorizing TxDOT to construct the SWP/SH 121 as a turnpike project from IH 30 to Alta Mesa Boulevard; and

WHEREAS, the Project Partners executed that certain Agreement Between The City Of Fort Worth, The North Texas Tollway Authority, And The Texas Department Of Transportation Concerning Development Of The Southwest Parkway, dated as of November 28, 2000, as subsequently amended (the "Project Partners Agreement"), to effectuate their agreement to cooperate with each other to develop SWP/SH 121; and

WHEREAS, SWP/SH 121 affects the Davidson Yard owned and operated by UPRR and located within the City's municipal limits (the "Davidson Yard"); and

WHEREAS, the Project Partners had extensive negotiations over several months with UPRR regarding the undertakings of UPRR and the Project Partners with respect to the SWP/SH 121's effect on UPRR's rail operations in the Davidson Yard; and

WHEREAS, the NTTA, the City, and UPRR first reached agreement regarding the design, construction, testing, and ultimate removal of a "hump lead" in the Davidson Yard, so as to determine if it may be used successfully for UPRR's operations during construction of SWP/SH 121, said agreement being set forth in that certain Hump Lead Agreement dated as of November 19, 2008 (the "Hump Lead Agreement"); and

WHEREAS, the Parties have reached agreement on certain additional aspects of the design, construction, operation, and maintenance of SWP/SH 121 across the Davidson Yard, as more fully set forth herein;

ARTICLE II
THE HUMP LEAD AGREEMENT

A. The Hump Lead

1. Promptly upon the complete execution of the Hump Lead Agreement, UPRR began to diligently design, construct, and test a temporary hump lead (the "Hump Lead"), the cost of which shall be paid to UPRR (estimated by UPRR to be in the amount of $2.452 million as shown on Attachment 1 to this Formal Agreement) by the NTTA (with the City, pursuant to a separate agreement, reimbursing the NTTA a one-half share), as set forth in the Hump Lead Agreement. The Hump Lead Agreement provides that the Parties will resolve any disputes regarding the accuracy or appropriateness of invoices, costs, or other charges as set forth in subsection III.P.9. and in Section III.R.

2. The Hump Lead shall be tested to determine if it is capable of maintaining the safety and productivity of current UPRR operations during construction of SWP/SH 121 in accordance with the terms and criteria set forth in the Hump Lead Agreement. If the Hump Lead test ultimately fails to meet the Criteria within the time frame specified in the Hump Lead Agreement, UPRR will immediately cease incurring Hump Lead design, construction (which in all references in the Hump Lead Agreement includes the purchase of required materials), testing, and removal costs and refund to the City and the NTTA within 30 days 50% of the sum they collectively remitted to UPRR to cover costs incurred for the design, construction, and testing of the Hump Lead, and no other work, including any under this Formal Agreement, will proceed until and unless a suitable solution is implemented pursuant to the terms of the Hump Lead Agreement and this Formal Agreement. Provided that UPRR performs its obligations regarding the Hump Lead (including, if applicable, any refunding to the City and the NTTA under this subsection I.A.2.), UPRR shall have sole ownership of all track and other materials acquired or constructed in accordance with the Hump Lead Agreement.

3. The design, construction, and testing costs for the Hump Lead are included in the estimated $95 million total costs described in Section III.I.; the cost of the design, construction, and testing of any alternative configuration of the Hump Lead pursuant to a written amendment to the Hump Lead Agreement (if any) are not included in either the original $95 million estimate or the recalculation at the point of 50% design completion described in Section III.I.

4. All of the Parties' rights and obligations under this Formal Agreement shall be terminable if UPRR is ultimately unable to accomplish a successful test of the Hump Lead. The Parties acknowledge and agree that entry into the Hump Lead Agreement does not constitute a waiver of any Party's legal rights, including without limitation UPRR's right of preemption under federal law. UPRR's right of preemption under federal law (as well as any other Party's other legal rights) shall not be deemed waived until and unless the Parties' termination rights provided in Section III.L. have expired or have been waived, at which time (and without any additional action by any Party), the Parties shall be deemed to have waived any defenses (including UPRR's right of preemption under federal law) to, or other rights to contest or object to, the full performance of this Formal Agreement, including any effort or action to enforce its terms by specific performance or otherwise, and in no event shall such defenses or other rights be raised as a defense or bar to the full enforcement hereof; notwithstanding the foregoing, any Party's uncured breach of this Formal Agreement may be used as a defense to performance hereunder by any non-breaching Party. In the event this Formal Agreement is terminated under Section III.L., no waiver of UPRR's right of preemption (or of any other Party's other legal rights) shall be deemed to have occurred.

5. UPRR, the City, and the NTTA hereby amend the Hump Lead Agreement to correct and change all references therein to "Union Pacific Railroad Corporation" to "Union Pacific Railroad Company."

ARTICLE III
THE FORMAL AGREEMENT

The Parties intend, acknowledge, and agree that the NTTA is the only Project Partner that will enter and construct improvements in and around the Davidson Yard or other UPRR property pursuant to this Formal Agreement. In those instances throughout this Formal Agreement in which the NTTA is authorized and granted rights to enter, and/or to construct improvements in or around, the Davidson Yard or other UPRR property under certain conditions, controls, timetables, or restrictions, that authorization and grant is exclusive (except, of course, for the NTTA's contractors, subcontractors, consultants, employees, and agents) and no other Project Partner(s) should be deemed or construed as being similarly authorized, whether subject to or exempt from those conditions, controls, timetables, and restrictions. If the Project Partners determine that TxDOT or the City requires similar entry and construction authorization and rights, they will request same, in writing, from UPRR, and UPRR will not unreasonably withhold or delay its consent, provided that in all events such other Project Partner shall exercise that authorization and those rights subject to the same conditions, controls, timetables, and restrictions as applied to the NTTA's exercise thereof pursuant to this Formal Agreement.

A. THE 4+4+4 PLAN

For the purposes of this Formal Agreement, the "4+4+4 Plan" defined in Section III.A. includes the scope of work to be performed by UPRR pursuant to Sections III.A. and B., including the construction of the "North Mainline Bypass Tracks" defined in Section III.B., which, notwithstanding anything contained herein to the contrary, is a component of the 4+4+4 Plan.

1. The Parties have agreed upon an approach to allow and expedite the construction of SWP/SH 121 across UPRR's Davidson Yard in a manner which mitigates the impacts of SWP/SH 121 on the uninterrupted flow of railroad traffic in and around the Davidson Yard and without causing the resulting construction activities to take place above an operating track.

2. One feature of that approach is the "4+4+4 Plan," including the reconfiguration of the Davidson Yard interior and all associated work, all as conceptually depicted on Attachment 3 and Attachment 4, which facilitates construction sequencing which the Parties agree will limit temporary track closures to only those tracks beneath a single span of the two bridges composing the "SWP/SH 121 Bridge" and a single span of the one bridge composing the "Hulen Street Bridge" (as those terms are defined in subsection III.E.4.) then being constructed, proceeding sequentially with the temporary closure of only one of three four-track series in UPRR's departure yard at a time, then the Hump Lead, and then the existing, permanent hump lead, so that in no event shall more than one four-track series in the departure yard be temporarily closed and at all times either the Hump Lead or the permanent hump lead shall be fully operational, and three mainline bypass tracks as well as the tracks connecting the receiving yard to the hump lead shall be fully operational at all times, all as further set forth in the terms and conditions of this Formal Agreement. Upon completion of the SWP/SH 121 Bridge and the Hulen Street Bridge, the now-existing bridge carrying Hulen Street shall be demolished using the same sequential method of temporary track closures.

3. Subject to the provisions of subsection III.F.1. and Section III.I., the City and the NTTA will pay UPRR the cost of the design, permitting, and construction of the 4+4+4 Plan.

4. Subject to the terms of subsection III.F.1., UPRR shall be responsible for preparing the design for the 4+4+4 Plan, and UPRR and the Project Partners will work collaboratively and in good faith to develop mutually compatible designs that provide coexistence of both UPRR and SWP/SH 121 functions, as conceptually depicted on Attachment 3.

5. UPRR will construct all components of the 4+4+4 Plan, except for the retaining walls to be designed and constructed by the NTTA pursuant to subsection III.K.1.

B. THE NORTH MAINLINE BYPASS TRACKS

1. A second feature of the 4+4+4 Plan is to reroute trackage to permit SWP/SH 121 work to be accomplished, and thereby allow and expedite the construction of SWP/SH 121 without construction activities occurring above an operating track, by means of the two-track "North Mainline Bypass Tracks," and all associated work from a point approximately 350 feet west of Hulen Street (mile post 249.90) to, but not including, the west abutment of the Trinity River Railroad Bridge (defined below), all as conceptually depicted on Attachment 3.

2. Subject to the provisions of Section III.I., the City and the NTTA will fund the design, permitting, and construction of the North Mainline Bypass Tracks, as a component of the 4+4+4 Plan.

3. Subject to the terms of subsection III.F.1., UPRR shall be responsible for preparing the design for the North Mainline Bypass Tracks, and UPRR and the Project Partners will work collaboratively and in good faith to develop mutually compatible designs that provide coexistence of both UPRR and SWP/SH 121 functions, as conceptually depicted on Attachment 3.

4. The Parties shall allocate construction activities for the North Mainline Bypass Tracks maximizing the use of their respective strengths and experience – specifically, UPRR shall construct all trackage and the NTTA shall construct the retaining walls described in subsection III.K.1.

C. THE TRINITY RIVER RAILROAD BRIDGE AND EASTERLY EXTENSION OF TRACKAGE

1. At UPRR's sole discretion, it may elect to construct a new two-track bridge (or, alternatively, two single-track bridges) extending the North Mainline Bypass Tracks from and including the west abutment of that bridge and continuing east across the Trinity River (hereinafter, however designed and constructed, the "Trinity River Railroad Bridge"), all as conceptually depicted on Attachment 3.

2. If UPRR elects to construct the Trinity River Railroad Bridge (which it must declare within 60 days following the effective date of this Formal Agreement), it will be responsible for the design, permitting, and construction, and for all resulting costs except as provided in subsection III.C.4. and in Attachment 9, of said Trinity River Railroad Bridge and of extending the two North Mainline Bypass Tracks from their terminus at the west abutment of the Trinity River Railroad Bridge continuing east across the Trinity River from mile post 248.00 on the

Dallas Subdivision and connecting to the existing four mainlines at Mile Post 247.36 near Summit Avenue, including the design and construction of any retaining walls east of the west limit of Forest Park Boulevard to Mile Post 247.36 near Summit Avenue necessary to support the extension of track.

3. If UPRR elects to construct the Trinity River Railroad Bridge, the Project Partners will defer construction (which shall be conducted by the NTTA) of the two most-southern sections of the nearby bridge carrying SWP/SH 121 over the Trinity River (the "Trinity River SWP/SH 121 Bridge") until the earlier to occur of (a) UPRR's completion of its construction obligations under this Formal Agreement or (b) the expiration of the "UPRR Construction Period" defined in subsection III.E.5. Thereafter, UPRR will use all reasonable means to prevent its construction activities for the Trinity River Railroad Bridge from interfering with, or increasing the costs of, the Trinity River SWP/SH 121 Bridge.

4. If UPRR elects to construct the Trinity River Railroad Bridge, the NTTA, in addition to its other retaining wall obligations provided in this Formal Agreement, will design, construct, and maintain retaining walls necessary for co-existence of SWP/SH 121, UPRR facilities, and TxDOT facilities from mile post 248.00 on the Dallas Subdivision to the west side of Forest Park Boulevard. Such costs will be the responsibility of the City and the NTTA as part of their SWP/SH 121 work and are excluded from the calculation of the City's and the NTTA's payments to UPRR specified in Section III.I. Any additional walls necessary from the west side of Forest Park Boulevard to the existing four mainlines near Summit Avenue are specifically excluded from the City's and the NTTA's responsibilities and shall be designed, constructed, maintained, and funded by UPRR.

D. PERMITTING OBLIGATIONS

1. UPRR shall be responsible for obtaining the necessary "Permits," as defined in subsection III.E.5., for the 4+4+4 Plan, the North Mainline Bypass Tracks, and, if UPRR elects to construct it, the Trinity River Railroad Bridge and the easterly extension of trackage toward Summit Avenue. The Project Partners shall support, but not be a party to, UPRR's permitting process described above.

2. The City and the NTTA shall be responsible for obtaining any necessary Permits for the 4+4+4 Plan retaining walls, except for the retaining walls to be constructed by UPRR pursuant to subsections III.C.4. and III.K.1.

3. Insofar as UPRR's receipt of the necessary Permits affects the completion of SWP/SH 121 as described under Section III.E., UPRR agrees to use all reasonable, good faith efforts to expedite the identification, preparation, filing, and advancement of all necessary Permit applications for the 4+4+4

Plan, the North Mainline Bypass Tracks, and, if UPRR elects to construct it, the Trinity River Railroad Bridge. Additionally, within 30 days after the complete execution and delivery of this Formal Agreement, the Parties shall agree upon milestones (which may be based on the completion of various deliverables or other tasks, instead of calendar dates) that UPRR intends to meet regarding the steps it must timely perform to file for those Permits, in distinction to the actions of third parties UPRR cannot control. The foregoing milestones shall constitute guidelines (rather than deadlines which serve as events of default) and in no event will UPRR be liable in damages (including, without limitation, consequential, punitive, or damages for delay) if UPRR misses any such milestone.

4. Each Party shall contemporaneously provide the other Parties a copy of any application it files for a Permit. Each Party acknowledges and agrees that the other Parties may contact any of the entities issuing the Permits to assist regarding (or otherwise monitor) the issuance of any Permit.

E. TIMETABLE

1. Promptly upon the execution of this Formal Agreement, the Parties shall diligently and with all reasonable, good faith efforts undertake and advance their respective obligations thereunder, including their respective funding, design, and permitting obligations. Notwithstanding the foregoing, and subject to the other provisions of this Formal Agreement governing construction sequencing (including without limitation subsections III.C.3., III.E.4., and III.E.5.), the Parties shall not advance their construction activities in or adjacent to the Davidson Yard until after the execution and delivery of this Formal Agreement, the successful testing of the Hump Lead, and the expiration of the termination rights set forth in Section III.L.

2. Without limiting the foregoing, after the execution and delivery of this Formal Agreement, the successful testing of the Hump Lead, and the expiration of the termination rights set forth in Section III.L., and the Parties' simultaneous conveyance to one another of all temporary construction easements (or delivery of license agreements terminable only upon either (a) completion of UPRR's work identified in this Formal Agreement or (b) a default under their terms, and otherwise reasonably acceptable to the Parties receiving and providing the license agreements) necessary to perform their respective rights and obligations under the terms of this Formal Agreement, the NTTA may undertake the construction of all portions of SWP/SH 121 depicted in aqua on Attachment 4 and specifically those portions shown in green depicting the work that should most efficiently be completed by the NTTA before UPRR begins construction of its portion of the 4+4+4 Plan and the North Mainline Bypass Tracks, provided, however, that the Project Partners may not undertake construction (which shall be conducted by the NTTA) of the

portion of SWP/SH 121 depicted in red on Attachment 4 until the commencement of such portion is authorized pursuant to Section III.E.4. below.

3. Promptly upon the execution and delivery of this Formal Agreement, UPRR shall diligently advance its design and permitting obligations regarding the 4+4+4 Plan, the North Mainline Bypass Tracks, and, if it elects to construct it, the Trinity River Railroad Bridge. Without limiting the foregoing, upon the execution and delivery of this Formal Agreement, UPRR's satisfactory testing of the Hump Lead, the expiration of the termination rights set forth in Section III.L., and the Project Partners' and UPRR's conveyance of the temporary construction easements or delivery of license agreements to one another pursuant to subsection III.E.2. above, UPRR further shall undertake all construction work that does not require permitting as soon as reasonably possible (taking into consideration the NTTA's progress constructing the Project Partners' retaining walls and any other structures that must be coordinated with UPRR's work in the manner set forth in the "Construction Schedule" described in subsection III.E.4.), it being the shared intent of the Parties that all of their respective obligations be advanced concurrently and not sequentially consistent with the other provisions of this Formal Agreement governing construction sequencing (including without limitation subsections III.C.3., III.E.4., and III.E.5.) so as to support the completion of SWP/SH 121 by the December 31, 2012 scheduled opening date. To that end, UPRR shall promptly undertake and diligently advance other portions of its work obligations as soon as each is properly permitted and to the extent practicable in light of the NTTA's progress constructing the Project Partners' retaining walls that must be coordinated with UPRR's work in accordance with the Construction Schedule.

4. Additionally, the Parties acknowledge their agreement that SWP/SH 121 work shown in red on Attachment 4 shall not be conducted either in the Davidson Yard or adjacent to the Trinity River Railroad Bridge until the earlier to occur of (a) UPRR's completion of its construction obligations under this Formal Agreement or (b) the expiration of the UPRR Construction Period. As more specifically set forth in the provisions of this Formal Agreement governing construction sequencing, the Parties shall work collaboratively to identify sequencing and other methods to expedite construction of both UPRR's work and the two bridges carrying SWP/SH 121 (the "SWP/SH 121 Bridge") and the new bridge carrying Hulen Street (together with the demolition of the existing bridge carrying Hulen Street) (the "Hulen Street Bridge") over the Davidson Yard, including opportunities for the NTTA to accelerate construction during normally occurring periods of reduced UPRR operations or planned maintenance by UPRR, provided that UPRR does not currently anticipate any such periods during the construction of SWP/SH 121. To that end and to facilitate the uninterrupted flow of rail traffic in and around the Yard, prior to the

May 19, 2009 expiration of the period described in Section III.L. UPRR and the NTTA shall develop a detailed schedule, satisfactory to the Parties, consistent with the terms of this Formal Agreement setting forth the construction of the SWP/SH 121 Bridge and the Hulen Street Bridge and also sequencing the construction of the Trinity River SWP/SH 121 Bridge with the Trinity River Railroad Bridge (if UPRR elects to construct same), that supports both the completion of UPRR's work within the period described in subsection III.E.5. below, and the opening of the SWP/SH 121 main lanes and Hulen Street by the December 31, 2012 scheduled opening date (the "Construction Schedule"). The milestones in the Construction Schedule shall constitute guidelines (rather than deadlines which serve as events of default) and in no event will any Party be liable in damages if that Party misses any such milestone.

5. Notwithstanding anything to the contrary contained in subsections III.D.3. and III.E.4., UPRR shall complete all of its construction obligations not later than 24 months following the last to occur of: (a) the issuance of the last regulatory permit, certificate, approval or permission required for its work contemplated under this Formal Agreement (including, without limitation, the Trinity River Railroad Bridge, the North Mainline Bypass Track extension west of Hulen Street, and the easterly extension of trackage toward Summit Avenue), as well as the issuance of required permits, certificates, approvals, or permissions from the City to enter, cross, construct improvements upon, and occupy the City's rights-of-way, including at Forest Park Boulevard, Old University Drive, University Drive, Rogers Road, the existing bike trail, and the Forest Park Miniature Railroad (to be more particularly defined in this Formal Agreement consistent with subsection III.P.8. and called the "Permits"), and (b) the satisfaction or waiver by the Parties of their rights to terminate this Formal Agreement pursuant to Section III.L., subject to delays to the extent resulting from (i) force majeure events such as acts of God, materially unseasonable weather, fire, explosion, flooding, acts of terrorism, embargoes, derailments, labor strikes, organized labor "slowdowns," labor interruptions and labor or materials shortages beyond UPRR's control that materially affect UPRR's ability to perform its construction obligations, (ii) the presence of Hazardous Materials as provided in subsection III.J.1., (iii) the failure of the Project Partners to make any payment required under this Formal Agreement within either (A) 15 days of the date due under this Formal Agreement or (B) when an invoice from UPRR is required, within 45 days of the Project Partners' deemed receipt of UPRR's invoice for the same, (iv) the failure of the Project Partners to perform any of their material obligations under this Formal Agreement, (v) the failure of the NTTA to complete the retaining walls or other identified work that must precede UPRR's work which the NTTA is obligated to design and construct under this Formal Agreement and in accordance with the Construction Schedule, (vi) UPRR's inability to obtain in a timely manner necessary property interests or licenses from TxDOT to enter, cross,

construct improvements on, or occupy TxDOT right-of-way, or (vii) a material change in the Project Partners' plans and specifications (which shall be prepared by the NTTA) from what has previously been approved pursuant to subsection III.L.1. requiring additional review and approval by UPRR in the same manner as described in subsection III.L.1., said 24-month period, as it may be extended under this subsection III.E.5., being hereinafter referred to as the "UPRR Construction Period." Upon advancing completion of the plans for the UPRR construction work for a period of 150 days from the date of the execution of the Hump Lead Agreement to at least the 50% completion level, UPRR and the NTTA shall review the Construction Schedule to determine if, based on more fully developed information, the UPRR Construction Period can be shortened without additional cost to UPRR, which may occur only with UPRR's concurrence, which it may withhold in its discretion.

6. Upon, but not prior to, the earlier to occur of (a) UPRR's completion of its construction obligations under this Formal Agreement or (b) the expiration of the UPRR Construction Period, the NTTA may commence and diligently advance its remaining construction activities in the Davidson Yard. If UPRR has completed its construction obligations under this Formal Agreement prior to the expiration of the UPRR Construction Period as described in clause (a) of the preceding sentence, UPRR and the NTTA will meet to review the Construction Schedule to confirm it avoids 24/7 use of the Davidson Yard for active construction except as otherwise required for prudent construction practices (*e.g.*, to complete a concrete pour) and avoids the use of the entire Davidson Yard simultaneously for construction purposes, yet still projects that the NTTA can achieve the December 31, 2012 scheduled opening for SWP/SH 121 using reasonable construction approaches and sequencing. UPRR and the NTTA, prior to commencement of the Project Partners' work (which shall be conducted by the NTTA), shall convene a meeting which includes the NTTA's contractors and key consultants to explain the operation of the Davidson Yard and UPRR's generally applicable operational and safety standards, norms, and procedures.

7. If UPRR has not completed its construction obligations under this Formal Agreement before the expiration of the UPRR Construction Period, (a) UPRR shall promptly prepare a Davidson Yard Operations Plan that describes how Davidson Yard operations will be modified in a manner which enables the NTTA to complete its remaining construction obligations in the Davidson Yard within a twelve-month period using reasonable approaches and sequencing and at no additional cost than had UPRR timely completed its work, (b) UPRR and the NTTA shall promptly convene a meeting among themselves to discuss and reach agreement upon the aforesaid Operations Plan with the objectives of (i) enabling the NTTA to complete its remaining construction obligations in the Davidson Yard within a twelve-month period despite resulting

operational challenges and other difficulties for UPRR, on the one hand, and (ii) preventing material disruptions to interstate commerce despite the best efforts of UPRR pursuant to clause (i) of this sentence, on the other. Subsequently, UPRR and the NTTA will convene a meeting prior to the commencement of the Project Partners' construction activity (which shall be conducted by the NTTA) which includes the NTTA's contractors and key consultants to explain the operation of the Davidson Yard and UPRR's generally acceptable operational and safety standards, norms, and procedures. UPRR and the NTTA will use all reasonable efforts to forecast if UPRR will not complete its construction obligations prior to the expiration of the UPRR Construction Period in order to hold the meeting described in this subsection III.E.7. on or about 30 days in advance of that expiration.

8. Regardless of whether the NTTA enters the Davidson Yard pursuant to subsection III.E.6. or III.E.7., the NTTA will complete its construction activity within the Davidson Yard within 12 months of the earlier to occur of (a) UPRR's written notification that it has completed its construction activities under this Formal Agreement or (b) the expiration of the UPRR Construction Period (provided that in all events the NTTA is actually then allowed entry by UPRR into the Davidson Yard in accordance with this Formal Agreement for the purpose of advancing their aforesaid remaining construction activities), subject to delays to the extent resulting from (i) force majeure events such as acts of God, materially unseasonable weather, fire, explosion, flooding, acts of terrorism, embargoes, derailments, labor strikes, organized labor "slowdowns," labor interruptions and labor or materials shortages beyond the NTTA's control that materially affect the NTTA's ability to perform its construction obligations, (ii) the presence of Hazardous Materials as provided in Section III.J., (iii) the failure of UPRR to make any payment required under this Formal Agreement within either (A) 15 days of the date due under this Formal Agreement or (B) when an invoice from the Project Partners is required, within 45 days of UPRR's deemed receipt of the Project Partners' invoice for the same, (iv) the failure of UPRR to perform any of its material obligations under this Formal Agreement, (v) the Project Partners' inability to obtain in a timely manner necessary property interests or licenses from UPRR to enter, cross, construct improvements on, or occupy UPRR property, (vi) the failure of UPRR to complete any of its work which it is obligated to design and construct under this Formal Agreement, (vii) a material change in UPRR's plans and specifications from what has previously been approved pursuant to subsection III.L.1. requiring additional review and approval by the NTTA in the same manner as described in subsection III.L.1., or (viii) the exercise of UPRR's stoppage and other rights pursuant to subsections III.G. 3. and 4., said 12-month period, as it may be extended under this subsection III.E.8., being hereinafter referred to as the "NTTA Construction Period." If the NTTA fails to complete its construction activities prior to the expiration of the

NTTA Construction Period, UPRR and the NTTA shall meet to adjust the Construction Schedule to allow the NTTA's construction to continue, but with no material interference with UPRR's activities, as more specifically set forth in the following sentences. Despite the resulting construction challenges and other difficulties for the NTTA, following the expiration of the NTTA Construction Period the NTTA shall reasonably adjust its practices to restore full normal operations at the Davidson Yard during NTTA's remaining construction activities. UPRR shall continue to extend reasonable accommodation to expedite the completion of the NTTA's required construction, but the final two sentences of subsection III.G.4. will then be deemed amended to provide that UPRR shall pay only 50% of the incremental mobilization/demobilization and similar costs actually incurred by the NTTA directly resulting from a work abatement under that subsection (but not under subsection III.G.3.), and UPRR will in no event owe such additional amounts as the Parties may later determine pursuant to the final sentence of that subsection and in conjunction with the preparation of the Construction Schedule; additionally, the maximum cumulative amount of costs for which UPRR may be liable after the expiration of the NTTA Construction Period and pursuant to this sentence shall be Two Hundred Fifty Thousand Dollars ($250,000.00).

9. UPRR will not unreasonably exercise its safety and other rights described in Section III.G. to prevent the NTTA from advancing its construction obligations as described in this Section III.E. or so as to impair the NTTA's ability to complete its work prior to the conclusion of the NTTA Construction Period.

F. SWP/SH 121 DESIGN ISSUES

1. As further provided in subsection III.L.1., the Parties will use all reasonable and good faith efforts to design their respective improvements so as to permit them to be constructed and to thereafter coexist without interference or increase in construction costs and with no impairment of safety or productivity from mile post 249.90 to the western abutment of the Trinity River Railroad Bridge or, if UPRR elects to construct the Trinity River Railroad Bridge and related trackage, continuing east across the Trinity River and extending from Mile Post 248.00 on the Dallas Subdivision and connecting to the existing four mainlines at Mile Post 247.36.

2. The NTTA (on behalf of the Project Partners) has conceptually agreed that the bridge pier south of the relocated south bypass tracks will be designed with an opening to allow two future departure yard tracks and necessary access roads on the south side of the Davidson Yard under and to the west of Hulen Street.

G. CONSTRUCTION SAFETY AND YARD OPERATIONAL ISSUES

1. As noted above, the Project Partners have agreed to refrain from conducting construction activities for SWP/SH 121 above operating UPRR track. Additionally, this Formal Agreement further describes the conditions for the undertaking of work within the Davidson Yard, including, without limitation, the requirements of (a) prior written approval, which if requested in accordance with this Formal Agreement shall not be unreasonably withheld or delayed, of the UPRR Designated Individual for the commencement of those activities, (b) the NTTA's general contractor's provision of on-site UPRR flagmen, at the NTTA's expense, within 25 feet of an operating track and (c) the NTTA's general contractor satisfying certain insurance requirements.

2. UPRR shall designate, and identify to the NTTA, a single management-level individual well-familiar with the Davidson Yard and this Formal Agreement, authorized to render decisions, to serve as a liaison between the NTTA's contractor and UPRR operating personnel, and to exercise UPRR's stoppage rights under this Section III.G. (the "UPRR Designated Individual"). Until notified to the contrary, that UPRR Designated Individual is Ed Adelman, whose contact information is as follows:

   5701 West Vickery
   Fort Worth, Texas 76107
   817-353-7035
   edadelman@up.com

   If Ed Adelman becomes unavailable for any reason, UPRR will reasonably consider any recommendations provided by the NTTA with respect to selecting and maintaining a replacement UPRR Designated Individual with a positive and professional working relationship with the NTTA.

3. If the UPRR Designated Individual reasonably determines, in accordance with UPRR's generally applicable operational and safety standards, norms and procedures, that an unsafe condition in the Davidson Yard necessitates the suspension of SWP/SH 121 construction activities, the UPRR Designated Individual shall notify the NTTA which, regardless of whether it agrees with the reasonableness of the UPRR Designated Individual's determination, will cease any construction or other activities as soon as it may safely do so for the period of time necessary to immediately meet with the NTTA's contractor(s) and the UPRR Designated Representative and remedy the situation, subject to the final approval of UPRR through the UPRR Designated Individual, not to be unreasonably withheld or delayed. UPRR will work diligently and cooperatively with the NTTA to mitigate any unsafe condition to minimize the need or duration of such a stoppage so to retain the December 31, 2012 scheduled opening day for SWP/SH 121 or such other scheduled

opening date as was in effect prior to the stoppage without requiring a Project Partner to incur overtime or other additional or extraordinary costs and resources for expedited work.

4. Further, and subject to the provisions of subsection III.E.7., upon the request of the UPRR Designated Individual, any SWP/SH 121 construction activities that are reasonably likely to affect UPRR maintaining normal productivity within the Davidson Yard or to create an impediment to train traffic in and around the Yard must be mutually developed by the NTTA and UPRR and included in the project specifications and special provisions for any applicable construction contract. The Parties shall work diligently and collaboratively to finalize and establish such specifications and provisions subject to the approval of the UPRR Designated Individual, such approval not to be unreasonably withheld or delayed, so to the greatest extent feasible (which will not be construed to require payment by the NTTA of overtime, or incurring additional or extraordinary costs and resources for expedited work) retain the December 31, 2012 scheduled opening day for SWP/SH 121. However, if after execution of the construction contract such specifications and special provisions fail to perform as expected, and the UPRR Designated Individual reasonably determines that, due to unforeseeable events, UPRR's accommodation of construction activities pursuant to this Formal Agreement are creating a material loss of normal productivity within the Yard or an material impediment to train traffic in and around the Yard, the NTTA will immediately meet with the NTTA's contractor and use all reasonable efforts to remedy the unforeseen situation. Additionally, if the UPRR Designated Representative reasonably determines that no reasonable alternative exists but that the NTTA's construction must abate for a period of time to avoid an unanticipated risk of imminent material disruption to interstate commerce, the UPRR Designated Individual may so notify the NTTA, which, regardless of whether it agrees with the reasonableness of the UPRR Designated Individual's determination, will cease any construction or other activities as soon as it may safely do so only for the period of time necessary to mitigate the aforesaid unanticipated risk of imminent material disruption to interstate commerce, on the one hand, and to ensure to the greatest extent feasible (which will not be construed to require payment by the NTTA of overtime, or incurring additional or extraordinary costs or resources for expedited work) the December 31, 2012 scheduled opening day for SWP/SH 121, on the other. Provided that the NTTA's default under this Formal Agreement did not cause the unanticipated risk of imminent material disruption of interstate commerce, UPRR shall (a) pay the incremental mobilization/ demobilization and similar costs actually incurred by the NTTA directly resulting from the determination of the UPRR Designated Individual and work abatement under this subsection III.G. 4. (but not under subsection III.G.3.) and (b) provide additional and reasonable work opportunities and scheduling to make up for construction time lost to the NTTA due to the

abatement. In conjunction with UPRR's and the NTTA's preparation of the Construction Schedule in accordance with subsection III.E.4., the Parties shall address the consequences of UPRR seeking the work abatement described in the preceding two sentences more than a specified number of instances or days during the NTTA's construction activities under this Formal Agreement.

5. Any work stoppage or abatement under this Section III.G. that continues for more than 24 hours shall be promptly brought to the attention of the Parties' upper management for evaluation and possible action.

6. The NTTA and TxDOT have entered into a term sheet pursuant to which the Project Partners Agreement will be amended to provide, among other things, that the NTTA will construct all SWP/SH 121 interchanges. As a result, and except as provided in the following sentence, Section III.E., Section III.F. and this Section III.G. anticipate that the NTTA will construct all, or virtually all, of SWP/SH 121 extending near and through the Davidson Yard. If the term sheet between the NTTA and TxDOT regarding interchanges or any other allocation of SWP/SH 121 design or construction responsibilities between the Project Partners is modified, then UPRR and the Project Partners shall promptly meet and formalize the reallocation between the Project Partners of their respective construction rights and obligations under this Formal Agreement so as to permit TxDOT and/or the City to exercise all or part of the NTTA's rights hereunder, but only subject to the same terms and restrictions applicable to the NTTA's exercise thereof.

H. RESPECTIVE RIGHT-OF-WAY OBLIGATIONS

1. As more specifically set forth in Section III.L., the Parties do not anticipate that UPRR's property requirements will be precisely known prior to the execution and delivery of this Formal Agreement. Consequently, the Parties agree to work diligently and in good faith to identify all required property interests prior to May 19, 2009.

2. The Project Partners will convey to UPRR the reasonably acceptable permanent property rights (in distinction to the temporary rights described in subsection III.E.2.) (a) to accommodate the trackage and other structures UPRR is required to construct from the west end of the Davidson Yard to Summit Avenue near railroad milepost 247.1 and (b) to provide UPRR vehicular access to public roads at two locations depicted conceptually on Attachment 4 and generally described as (i) a location at the east end of Davidson Yard near railroad milepost 248.4, as a replacement for the existing Kimzey Street entrance providing access to the proposed MONT-UNI Frontage Road, and (ii) a second location west of Summit Avenue near railroad milepost 247.1, providing access to the proposed IH 30 EBFR Frontage Road. Except as otherwise agreed

between the City and UPRR regarding the City's facilities, neither TxDOT nor the City will be required to close or relocate any portion of its currently operating facilities in order to provide UPRR the above-described property rights (except for agreed-upon temporary closures necessitated by construction). If UPRR elects to construct the Trinity River Railroad Bridge, the Project Partners will provide UPRR the reasonably acceptable permanent property rights to use such property owned by the Project Partners as is necessary to accommodate the trackage to be constructed east of the Trinity River to Summit Avenue as conceptually depicted on Attachment 3. To the extent provided by law, UPRR will pay fair market appraised value for any of the foregoing property rights in this subsection III.H.2. directly to the parties currently holding those property rights, which value has been included in (and shall not further adjust) the amount owed by the Project Partners set forth in Section III.I.

3. Simultaneously with the UPRR's receipt of the property rights generally described above (including, without limitation, the release/provision of access rights UPRR needs from TxDOT), UPRR shall provide the City and/or the NTTA (as the City and the NTTA shall jointly instruct UPRR on or before April 15, 2009) (a) the parcels to be acquired in fee title (to the extent UPRR holds fee title and otherwise such property interest as UPRR may convey), subject to reservations necessary to accommodate UPRR structures or uses now existing and/or contemplated under this Formal Agreement, (b) the temporary construction and utility easements, (c) the aerial/footing/bridge easement rights required for the construction of SWP/SH 121 (including for the reconstruction of the Hulen Street Bridge), and (d) the reasonable, non-revocable, access rights needed by the NTTA or the City for the maintenance and inspection of the SWP/SH 121 and Hulen Street facilities, respectively, over and adjacent to the UPRR property (in addition to the general access rights described in subsection III.H.4.), which are conceptually described on Attachment 5, provided these property interests shall not include utility easements unrelated to the SWP/SH121 Bridge construction sought from UPRR by the City of Fort Worth, which are the subject of separate negotiations. At that time UPRR will also provide to the NTTA or TxDOT (as those parties shall jointly designate in writing on or before May 19, 2009 as described in subsection III.G.6.) such property rights and licenses as are necessary for the construction and operation of the interchange of SWP/SH 121 and IH 30, which is identified as Parcels 11-PT1 and 11-PT2 on Attachment 5 (provided that the Parties acknowledge that the acreage of Parcel 11-PT1 will be reduced from what is shown on Attachment 5).

4. The party conveying any property interest will reserve all mineral rights, but such conveyance shall restrict and prohibit such party from using the surface for the exploration or extraction of minerals. The instruments conveying any property interest under this Section III.H. shall contain such reservation, together with such restriction and prohibition, and shall

additionally provide the receiving party reasonable access rights for the inspection and maintenance of its constructed improvements in accordance with safe and customary practices. TxDOT real estate and rights conveyed under this Section III.H. shall be conveyed or otherwise provided in accordance with TxDOT's standard policies and rules regarding control of access and permissible driveway locations. The Party receiving a permanent property right in a parcel shall discharge all costs incurred in surveying and obtaining title insurance for that parcel, and shall accordingly determine the nature and extent of any such title insurance, if any. The Parties will evaluate the possible advantages of using a single (or limited number of) surveyor(s).

5. Notwithstanding anything to the contrary contained in subsections III.H.2. and III.H.3. regarding the timing of the Parties' real property conveyances, the Parties shall simultaneously provide one another without charge the temporary property rights and licenses described in subsection III.E.2. to one another as and when reasonably necessary to perform obligations under the terms and conditions of this Formal Agreement. The Parties acknowledge and confirm that any such temporary property rights or licenses shall have effect only for a limited purpose and time consistent with this Formal Agreement (and that the documentation of such property rights and licenses shall explicitly note such limits), while interests of an unlimited duration shall be made by conveyance of the ultimate interests. As provided in Section III.L., the ultimate interests to be acquired by the Parties, in distinction to temporary property rights and licenses, shall be conveyed on or before May 19, 2009 provided and on the condition that (a) UPRR will simultaneously acquire all third-party real estate interests described in Section III.L., (b) UPRR will simultaneously acquire the interests from TxDOT to be provided to UPRR pursuant to this Formal Agreement, provided UPRR has previously applied to acquire (and is diligently pursuing) those TxDOT property rights and licenses under all statutory and TxDOT procedures (including, without limitation, appraisal and Texas Transportation Commission approvals, if any), and (c) the termination rights described below in Section III.L. have been terminated or waived.

I. FINANCIAL OBLIGATIONS

1. The City's and the NTTA's plan to acquire real property interests in UPRR's Davidson Yard by means of the exercise of the power of eminent domain has resulted in a dispute between UPRR and both the City and the NTTA. UPRR has asserted preemption defenses under federal law which it alleges would, if successful, prevent the City and the NTTA from either acquiring or occupying the Davidson Yard. All Parties acknowledge and agree that the Hump Lead Agreement and this Formal Agreement are designed to effect a settlement of the aforesaid dispute which will, on the terms and conditions set forth therein, ultimately require UPRR to waive

the aforesaid defenses, convey valuable real estate interests to the Project Partners, allegedly cause UPRR to incur damages to its special use property and damages to the remainder of the Davidson Yard and future expansion and improvement thereof, and UPRR's incurrence of additional design, construction and management costs to accommodate the Project Partners' proposal, in return for which the City and the NTTA shall pay in settlement the amount $95,000,000, subject to adjustment pursuant to subsections III.I.3. and III.I.6., in full satisfaction (subject to the Project Partners' compliance with the terms of this Formal Agreement) of all the real estate interests and all alleged UPRR claims, damages, and costs. The City and the NTTA, in turn, dispute all or part of UPRR's alleged claims, damages, and costs. Without constituting an admission by any of the Parties, the amount to be funded by the City and the NTTA for the design, permitting, and construction of the 4+4+4 Plan and the North Mainline Bypass Tracks components of the aforesaid consideration provided to the Project Partners by UPRR, including any work by in-house labor and personnel, including work that must be performed by UPRR forces in accordance with labor agreements, and UPRR management time and expense associated with actions required by UPRR to maintain operations during construction of SWP/SH 121, are estimated to be $72 million as shown in the estimate set forth on Attachment 6.

2. Subject to adjustment pursuant to subsections III.I.3. and III.I.6., the total financial obligation of the Project Partners for the aforesaid settlement, including their funding the 4+4+4 Plan and the North Mainline Bypass Tracks, the Hump Lead, acquiring the property interests, and fulfilling their other funding responsibilities to UPRR under this Formal Agreement shall be $95 million. The Project Partners acknowledge that the calculation of the aforesaid $95 million, and its recalculation pursuant to subsections III.I.3. and III.I.6., does not include: the costs that the NTTA's general contractor must incur in providing adequate construction flagging for construction of SWP/SH 121, and the cost of the design, construction, testing, dismantling, and removal of any alternative configuration of the Hump Lead if the Parties elect to undertake same by means of a written amendment to the Hump Lead Agreement (if any).

3. If, on the basis of UPRR's professional engineer's review of the plans for the 4+4+4 Plan and the North Mainline Bypass Tracks then prepared and available as of the 150th day after the execution date of the Hump Lead Agreement (and advanced to at least the 50% completion level), UPRR's professional engineer's opinion of the estimated cost of the work described on Attachment 6 as composing the $72 million adjustable portion of the $95 million financial obligation is greater than $72 million (utilizing a contingency of no more than 15%), upon approval of a corresponding amendment to this Formal Agreement by the respective governing body, the City's and the NTTA's $95 million financial obligation will be increased by 50% of that amount, with UPRR responsible for the

remaining 50% of the increase. If additional action by the Project Partners' governing bodies are required, it must be obtained on or before May 19, 2009 as a contingency under subsection III.L.6. If the UPRR professional engineer's opinion of the estimated cost of the work composing that adjustable portion is lower than $72 million, the $95 million financial obligation shall not be reduced. Thereafter, the $72 million (and, as a result, the $95 million) financial obligation will be reduced as provided in subsection III.I.6. This Formal Agreement includes in Section III.R. a process to resolve any dispute between UPRR, on the one hand, and the City and the NTTA, on the other hand, regarding the amount of UPRR's professional engineer's opinion regarding such costs. The mechanics of the calculation described in this subsection III.I.6. is illustrated on Attachment 7.

4. Except as provided in the Hump Lead Agreement and in subsection III.I.5. respecting the $1.5 million payment of UPRR's design costs, payments to UPRR of the $95 million financial obligation will be made beginning upon May 20, 2009 and only after the expiration of the termination rights' set forth in Section III.L. based upon UPRR pay requests as the performance of UPRR's obligations pertaining to the $72 million adjustable portion (adjusted pursuant to subsection III.I.3. and reduced pursuant to subsection III.I.6.) progresses and in the following manner. The cost of materials pertaining to work described under the $72 million adjustable portion shall be paid as those costs are incurred by UPRR; additionally, the City and the NTTA will advance funds to pay those materials costs as necessary to accelerate completion of construction of UPRR's obligations under this Formal Agreement, including without limitation the ordering of lead-time materials such as steel, rail, ties, turn-outs and signal equipment. Labor charges shall be paid by the City and the NTTA based on the percentage of completion of the UPRR work described listed under the $72 million adjustable portion (adjusted pursuant to subsection III.I.3. and reduced pursuant to subsection III.I.6.) as certified by UPRR and reviewed and reasonably approved by the Project Partners Designated Individual. The $23 million component of the aforesaid settlement shall be paid by the City and the NTTA as follows: (a) $11.5 million upon the mutual conveyances of the permanent property interests (in distinction to temporary easements or licenses) described in Section III.H., and (b) the remaining $11.5 million to be paid by the City and the NTTA based on the percentage of completion of the UPRR work described listed under the $72 million adjustable portion (adjusted pursuant to subsection III.I.3. and reduced pursuant to subsection III.I.6.), provided, however, that a holdback of $5 million of the $23 million nonadjustable portion shall be established to be remitted to UPRR (together with all of any other remaining portion of the $23 million and the $72 million [as adjusted] not previously paid to UPRR) promptly upon the first to occur of: (i) completion of the construction of SWP/SH 121 from the east abutment of the Trinity River Railroad Bridge to the south abutments of the SWP/SH

121 Bridge and the Hulen Street Bridge over the Davidson Yard, or (ii) the expiration of the NTTA Construction Period. Forms and certifications by which UPRR will invoice and request payment of the amounts described in this Section III.I. are set forth on Attachment 7. Any delayed payments properly owing to UPRR shall bear interest at the rate per annum of 6.3% commencing from the date due; UPRR may stop its performance of this Formal Agreement if such nonpayment in full continues for more than (A) 15 days from the applicable fixed payment date set forth in this Formal Agreement or (B) 45 days from the date of the Project Partners' deemed receipt of the applicable required UPRR invoice, as the case may be, with the performance of UPRR obligations to be extended for each day such nonpayment by the City and the NTTA continues beyond said 15- and 45-day respective periods. The Parties will resolve any disputes regarding the accuracy of invoices, costs, or other charges as set forth in subsection III.P.9. and in Section III.R. UPRR shall have sole ownership of all structures (including track) and other materials it constructs or acquires in accordance with this Formal Agreement, except with respect to the culvert extensions and other associated channel work covered by or modified per the existing Drainage & Waterway Agreement dated April 15, 1991, audit number 154808, between UPRR and the City, and the City will retain ownership of and maintenance responsibilities for these adjustments constructed by UPRR per the above referenced agreement. Similarly, the NTTA (or any other Project Partner) shall have sole ownership of all structures and other materials it constructs or acquires in accordance with this Formal Agreement.

5. Subsequent to the execution of this Formal Agreement but prior to the successful testing of the Hump Lead and the expiration of the termination rights' set forth in Section III.L., the City and the NTTA will nonetheless reimburse UPRR, up to the amount of $1.5 million, for in-house and third-party costs UPRR has incurred prior to the effective date of this Formal Agreement or will thereafter incur in preparing the design of the 4+4+4 Plan and North Mainline Bypass Tracks, all for the purpose of advancing that design for a period of 150 days from the date of the execution of the Hump Lead Agreement to at least the 50% completion level. Invoices complying with the terms of this subsection III.I.5. shall be due and paid to UPRR within 30 days from their effective date of receipt by the "Project Partners Designated Individual" defined in subsection III.K.5., regardless of whether said invoice is issued after this Formal Agreement has been terminated, provided that invoices issued after such termination may only include the costs of services and work performed prior to the termination of this Formal Agreement; any such invoice shall include reasonable supporting information regarding the invoiced amount, which in the case of in-house labor and services shall be UPRR's customarily maintained internal logs typically provided to parties with which UPRR similarly contracts. This $1.5 million amount is included in the Project Partner's $95 million total funding obligation.

6. Notwithstanding anything to the contrary set forth in this Formal Agreement, a portion (but not all) of the estimated design and construction costs of the retaining walls from 350 feet west of Hulen Street to the west abutment of the Trinity River Railroad Bridge to be designed, permitted, and constructed by the NTTA is included in the $72 million adjustable portion of the $95 million and therefore will be credited to the City and the NTTA and thus removed from their financial obligation in the manner described below. Attachment 8 currently includes $8.493 million as an estimate of additional costs resulting from substituting a different type of retaining wall (a drilled-shaft wall for a mechanically stabilized earth [MSE] wall) and increasing the height of walls in order to achieve coexistence between SWP/SH 121 and UPRR's facilities. The Parties agree that the $8.493 million is part of the overall adjustment of the aforesaid $72 million portion of the $95 million pursuant to subsection III.I.3., and that prior to the UPRR professional engineer's review of the $72 million adjustable portion of the $95 million pursuant to subsection III.I.3., the City and the NTTA shall provide the UPRR professional engineer the Project Partners' professional engineer's opinion as to whether the aforesaid $8.493 million estimate should be adjusted up or down, with the mathematical outcome to be included in the overall subsection III.I.3. adjustment. Because the NTTA is designing, permitting, and building the applicable retaining walls instead of UPRR, the $72 million adjustable portion of the City's and the NTTA's financial obligation (as it may have been adjusted upward pursuant to subsection III.I.3.) will then be reduced by the $8.493 million (as it may have been adjusted up or down pursuant to this subsection III.I.6.) and that $72 million amount, as reduced, and the total $95 million, as identically reduced, shall constitute the City's and the NTTA's financial obligation thereafter. Provided, however, if the Project Partners' professional engineer's opinion regarding the $8.493 million is contested by UPRR's professional engineer, it shall be resolved through the dispute resolution process in Section III.R. Similarly, amounts paid by the City and the NTTA under the Hump Lead Agreement and that portion of the $1.5 million actually advanced by the City and the NTTA to UPRR under subsection III.I.5. (which are included in the $72 million adjustable portion of the $95 million) will be credited to the City and the NTTA and removed from their financial obligation.

J. ENVIRONMENTAL OBLIGATIONS

1. UPRR will be responsible for promptly and diligently addressing, through clean-up or other appropriate and lawful steps, based on a property use appropriate risk-based clean-up standard, any "Hazardous Materials," as hereafter defined, it or the Project Partners encounter while performing construction work contemplated by this Formal Agreement within the real estate rights and interests transferred by UPRR to the Project Partners. Except as provided in subsection III.J.3., if soil excavated in the course of the NTTA's construction of SWP/SH 121 on property that has been

transferred by UPRR to any of them is identified as containing hazardous materials which exceed regulatory action levels for highway projects based on a risk-based cleanup standard and, consequently, requires special treatment or disposal ("Hazardous Materials"), UPRR may elect: (a) to accept delivery of the identified soil and handle it properly, or (b) to reimburse the Project Partners for their reasonable and necessary costs incurred due to the presence of Hazardous Materials, which are in excess of the normal excavation and disposal costs that would have been incurred otherwise ("Incremental Costs") associated with such soil. Provided that UPRR is discharging its obligations in accordance with the preceding sentence, the UPRR Construction Period will be extended accordingly. The foregoing clean-up obligation is in lieu of any form of indemnity by UPRR for the benefit of the Project Partners. Nothing in this subsection, however, is intended to shift the burden of costs to the Project Partners that are otherwise the responsibility of UPRR under this Formal Agreement.

2. Notwithstanding subsection III.J.1., the Project Partners will be responsible for promptly and diligently addressing, through cleanup or other appropriate and lawful steps, based on a property use appropriate risk-based clean-up standard, any Hazardous Materials UPRR or the Project Partners encounter while performing construction work contemplated by this Formal Agreement within the real estate rights and interests transferred by the Project Partners to UPRR. If soil excavated by UPRR in the course of UPRR's construction of improvements contemplated by this Formal Agreement on property that has been transferred to it by the Project Partners is identified as containing Hazardous Materials, the Project Partners may elect: (a) to accept delivery of the identified soil and handle it properly, or (b) to reimburse UPRR for its Incremental Costs associated with such soil. Provided that the Project Partners are discharging their obligations in accordance with the preceding sentence, the NTTA Construction Period will be extended accordingly. The foregoing cleanup obligation is in lieu of any form of indemnity by the Project Partners for the benefit of UPRR. Nothing in this subsection, however, is intended to shift the burden of costs to UPRR that are otherwise the responsibility of the Project Partners under this Formal Agreement.

3. The NTTA will be responsible for hauling and disposal of excavated soils from the construction of the footings for the SWP/SH 121 and the Hulen Street Bridges to be constructed over the Davidson Yard in instances in which foundations, railroad ties, and similar structures are located by the NTTA at a depth within 5 feet below the final top of rail of the lowest adjacent track and two feet below final ground surface where existing or planned operating track is not within 30 feet of such foundations, railroad ties and similar located structures. The NTTA will be responsible for hauling such facilities and materials off-site (except as provided in

subsection III.J.6.) at the NTTA's expense; any such structures and materials located below the depths described in the preceding sentence may remain in place.

4. Subject to the terms of subsections III.J.1., 2., and 3., all property and property interests transferred by any Party shall be made on an "as is/where is" basis and without any representation or indemnity or contractual assumption of responsibility regarding environmental conditions thereon and each Party receiving such a transfer shall release the transferring Party from liability apart from the transferring Party's obligations under this Section III.J. Each transferring Party's obligation under this Section III.J. with respect to a transferred parcel shall terminate 30 days following the date that the construction work contemplated by this Formal Agreement within such transferred parcel is complete. Notwithstanding anything in this Section III.J. to the contrary, each Party shall be fully responsible for the release of any Hazardous Materials by it or its employees, agents, contractors, or subcontractors that occurs during the performance of any of the construction work contemplated by this Formal Agreement.

5. Each Party will be provided a right-of-entry to conduct Phase I and Phase II environmental testing, which testing (if any) must be concluded prior to May 19, 2009. Additionally, the Parties will share with one another any notices, reports, or similar materials they possess regarding the transferred property.

6. The Parties will cooperate to facilitate the reuse, within the respective property interests acquired pursuant to this Formal Agreement, of any soil excavated during the course of any construction work contemplated by this Formal Agreement to the extent doing so would be feasible, commercially reasonable, and allowed under applicable laws without the need for authorization from or notice to any environmental agency.

K. <u>OTHER OBLIGATIONS.</u>

1. The City and the NTTA will pay for (subject to the credit described in subsection III.I.6.), design, obtain necessary permits for, and construct, and maintain all required retaining walls for co-existence of UPRR facilities and TxDOT facilities and for the construction and operation of SH121/SWP extending from 350 feet west of Hulen Street (mile post 249.90) to the west side of Forest Park Boulevard. UPRR will be responsible for the payment, design, construction, and maintenance of all retaining walls necessary for the extension of trackage from a point 350 feet west of Hulen Street to the west limit of the Davidson Yard and from the west side of Forest Park Boulevard to the existing four mainlines at approximate milepost 247.36 near Summit Avenue. The limits of the

retaining walls (and of the Parties' respective obligations relating thereto) are depicted on Attachment 9.

2. Subject to the provisions of (and included in the calculation of) the $95 million financial obligation described in Section III.I., the City and the NTTA will fund the design and construction by UPRR of the replacement team track at a location to be agreed between the Project Partners and UPRR that is compatible with both UPRR's operations and SWP/SH 121. UPRR will promptly advance that work consistent with the pertinent provisions of this Formal Agreement; alternatively, UPRR may spend the reasonable costs of designing and constructing the replacement team track remitted by the City and the NTTA on other items.

3. The Project Partners will use reasonable and diligent efforts to cooperate with UPRR to attempt to obtain a new Davidson Yard entrance from Edwards Ranch Road, provided that they will not be required to incur any costs or liability in doing so and the Parties' other rights and obligations under this Formal Agreement shall not be conditioned upon obtaining that entrance.

4. At the time this Formal Agreement is executed and delivered, the vast majority of the engineering design work for UPRR's work has not been completed. Any improvements to the Davidson Yard not generally described in this Formal Agreement as the responsibility of the Project Partners will be funded and undertaken by UPRR, provided UPRR shall not undertake additional improvements not appearing or otherwise indicated in the finalized plans and designs described in subsection III.L.1. that will either (a) impede its completion of the improvements herein described or (b) otherwise delay completion, require changes in the finalized plans and designs, or impair the operation, of SWP/SH 121 as indicated in its finalized plans and designs. After all plans and designs for the Project Partners' and UPRR's construction have been finalized pursuant to subsection III.L.1., the Project Partners shall not without the written consent of UPRR, not to be unreasonably withheld or delayed, materially modify or expand the SWP/SH 121 project as it relates to the Davidson Yard or, if UPRR so elects, UPRR's extension of track from the west abutment of the Trinity River Bridge to the existing four mainlines at approximate milepost 247.36 near Summit Avenue in a manner that will either (i) impede UPRR's completion of the improvements shown on its finalized plans and designs or (ii) impose constraints on, or require changes in, the layout or the operation of the Davidson Yard and such track extension beyond those shown in the finalized plans and designs described in subsection III.L.1. or otherwise already approved by UPRR. Any Party seeking another Party's consent to a material modification, addition, or expansion of any finalized plans and designs shall reimburse the consenting Party for its reasonable review costs.

5. The Project Partners will provide a designated Project Partners management-level employee suitably authorized to render decisions on behalf of all the Project Partners and serve as liaison between the UPRR operations personnel during the construction in the Davidson Yard and the Project Partners (the "Project Partners Designated Individual"). Until notified to the contrary, that individual is Rick Herrington of the NTTA, whose contact information is:

   5900 W. Plano Parkway, Suite 100
   Plano, Texas 75093
   214-461-2020
   rherrington@ntta.org

   Notwithstanding any provision to the contrary in the Hump Lead Agreement or this Formal Agreement, an invoice from UPRR shall be deemed received by the Project Partners upon its personal delivery to the Project Partners Designated Individual, one business day after its deposit with a recognized overnight air courier service addressed to the Project Partners Designated Individual at his or her address then-provided to UPRR, or upon the Project Partners Designated Individual's actual receipt.

6. UPRR shall contemporaneously provide a copy of any written communication delivered to the Project Partners Designated Individual to Bryan Beck with the City and to the District Engineer of TxDOT's Fort Worth District office.

7. UPRR and the Project Partners shall each provide such other management support as needed to facilitate the performance by the Parties of their respective obligations under this Formal Agreement.

8. To the extent not provided under subsections III.H.2., III.H.3., and III.H.4., UPRR and the applicable Project Partners shall collaboratively and in good faith work to finalize agreements for the continued long-term maintenance of their respective structures contemplated by this Formal Agreement, which agreements will also address the manner in which those structures may be removed in the future if the applicable owner so elects.

9. The Chairman of UPRR, the Mayor of the City, and the Chairman of the NTTA intend to meet, either telephonically or in person, not less frequently than once a month throughout the period of time that the Parties are advancing their activities under this Formal Agreement to discuss any outstanding issues related thereto.

L. TERMINATION EVENTS AND RIGHTS ON MAY 19, 2009

1. The design of the work to be performed by the NTTA and UPRR has not advanced sufficiently (a) to prepare the Construction Schedule described

in subsection III.E.4., as well as to address the work abatement issue discussed in the concluding sentence of subsection III.G.4., or (b) to confirm designs that will ensure that (i) the Parties' respective structures will coexist (including without limitation IH 30) without impairing the safety, productivity, construction costs, or efficient operation of their respective operations, (ii) the SWP/SH 121 design addresses to UPRR's satisfaction the issues discussed in subsection III.F.2., and (iii) the retaining walls to be constructed by the Parties are acceptable to the Parties. The Parties will work diligently and in good faith to prepare the Construction Schedule and to finalize all plans and designs so as to confirm such coexistence and reasonable accommodation of future expansion on or before May 19, 2009. The Project Partners have indicated that they are unwilling to make any change to the alignment or location of SWP/SH 121 that would reopen its Final Environmental Impact Statement, provided that the foregoing indication by the Project Partners does not obligate, bind, or estop UPRR in any manner or waive any of UPRR's rights, claims, or defenses regarding preemption, environmental laws, or otherwise. If the Parties fail to satisfy the conditions set forth in this subsection III.L.1., said satisfaction to be evidenced in writing and executed by the Parties prior to that time, this Formal Agreement may be terminated by any Party delivering written notice thereof to all other Parties on or before June 2, 2009.

2. Similarly, the design of the work to be performed by the Project Partners and UPRR has not advanced sufficiently to precisely identify the property rights or licenses required to accomplish the construction and operation of their improvements described under this Formal Agreement (including without limitation property rights or licenses required from both TxDOT pursuant to Section III.H. and from third parties by UPRR at their fair market value). The Parties will work diligently and in good faith to finalize all plans and designs so as to confirm the description of and obtain such necessary property rights which the Parties need from one another and/or execute such licenses (including without limitation property rights or licenses required from both TxDOT pursuant to Section III.H. and subsection III.K.8. and from third parties by UPRR at their fair market value) on or before May 19, 2009. Except as provided in the following sentence, if the Parties fail to satisfy the condition set forth in this subsection III.L.2., said satisfaction to be evidenced by written, authorized, executed, acknowledged, and fully recordable conveyance instruments and/or executed licenses exchanged between the Parties and between UPRR and TxDOT (pursuant to Section III.H.) and between UPRR and the aforesaid third parties in satisfaction of all of their respective property interest or license needs prior to that time, this Formal Agreement may be terminated by any Party delivering written notice thereof to all other Parties on or before June 2, 2009. Notwithstanding the foregoing sentence, if the property rights or licenses required by UPRR from TxDOT are the only remaining property rights and licenses that have not been

granted on May 19, 2009, this Formal Agreement may not be terminated, provided UPRR has applied to obtain those rights or licenses from TxDOT and is pursuing them with reasonable diligence. The Project Partners acknowledge and agree that, to the best of their current actual knowledge, they do not require the conveyance of property rights or licenses from third parties (other than UPRR) in order to proceed with their obligations under the Hump Lead Agreement or this Formal Agreement. The City and the NTTA agree to provide assistance to UPRR in UPRR's efforts to obtain property interests and licenses from both TxDOT (pursuant to Section III.H.) and from third parties, provided that the City and the NTTA will not be required to incur any costs or liability in doing so.

3. In addition to the foregoing, UPRR shall have the right, prior to May 19, 2009, to terminate this Formal Agreement if it reasonably determines that the Permits it must obtain for its work described in this Formal Agreement will not be available prior to January 1, 2010 or on reasonably acceptable terms and conditions proximately related to the work in question.

4. In addition to the foregoing, the Project Partners shall have the right, prior to May 19, 2009, to terminate this Formal Agreement if they reasonably determine that UPRR is unlikely to obtain its required Permits prior to January 1, 2010. Notwithstanding the foregoing, if prior to May 19, 2009 all of the Permits are issued to and obtained by UPRR, the Project Partners' termination right under this subsection III.L.4. shall terminate.

5. If any Party reasonably determines on the basis of the environmental due diligence investigation conducted pursuant to subsection III.J.5. that the results of said investigations are unsatisfactory with respect to property that Party is to receive or convey under this Formal Agreement, that Party may terminate this Formal Agreement on written notice given to the other Parties on or before May 19, 2009.

6. If on or before May 19, 2009, either (a) sufficient funds have not been officially appropriated and budgeted or are otherwise unavailable through other legal and dependable means to satisfy a Project Partner's obligations under this Formal Agreement, including without limitation subsections III.I.1. and III.I.5. or (b) a Project Partner is unwilling to execute and deliver an amendment to this Formal Agreement approving and authorizing an adjustment to the $72 million component described in subsection III.I.3., then that Project Partner will immediately notify the other Parties of such occurrence on or before May 19, 2009 and this Formal Agreement may be terminated by any Party delivering written notice thereof to all other Parties on or before June 2, 2009. In addition to the foregoing, the Project Partners will provide monthly status reports to UPRR on the respective Project Partner's efforts to authorize and appropriate sufficient funds, whether by means of budgeting funds on

hand or through bond issues or borrowing, to fulfill the Project Partners' obligations under this Formal Agreement, including the adjustment of the $72 million component payable by the City and the NTTA pursuant to subsection III.I.3.

7. If this Formal Agreement terminates (a) due to the expiration of the Maximum Test Period under the Hump Lead Agreement without the Hump Lead testing successfully or (b) pursuant to subsections III.L.1., 2., 4., 5., or 6., this Formal Agreement shall be of no further force or effect and no reimbursements (including for any Hump Lead costs or the $1.5 million advanced to UPRR pursuant to subsection III.I.5.) shall be owing between the Parties. If UPRR terminates this Formal Agreement pursuant to subsection III.L.3., this Formal Agreement shall be of no further force or effect, provided that UPRR shall promptly reimburse the City and the NTTA for one-half of that portion of the $1.5 million advanced to UPRR pursuant to subsection III.I.5. (but not Hump Lead costs).

M. FINALIZING THIS FORMAL AGREEMENT

The Parties acknowledge that the condition set forth in Section III.C. of the Hump Lead Agreement that this Formal Agreement be fully executed within 30 business days following the complete execution and delivery of the Hump Lead Agreement has been fully satisfied.

N. OBLIGATIONS OF TXDOT AND THE PROJECT PARTNERS

1. Without in any manner abrogating or otherwise affecting any obligation of the Project Partners to UPRR, this Formal Agreement does not affect the rights and obligations of TxDOT, the City, and the NTTA amongst themselves regarding the development of SWP/SH 121. The Project Partners Agreement established support for SWP/SH 121 to be developed by the NTTA, but specified, among other matters, that TxDOT's participation in the development is subject to future review and approval by the Texas Transportation Commission.

2. Any conveyances of property rights by TxDOT are subject to the review and approval by the Texas Transportation Commission. However, a license described in subsection III.E.2. needed by UPRR to accommodate its construction of improvements under this Formal Agreement may be provided by TxDOT's Fort Worth District without action by the Texas Transportation Commission and at no cost. As noted in subsection III.G.6., the Parties acknowledge that TxDOT and the NTTA have entered into a term sheet indicating their shared intent that, among other things, the NTTA, instead of TxDOT, will construct the IH 30 interchange, in which case the related right-of-way provisions in this Formal Agreement shall benefit the NTTA and not TxDOT.

O. PRESS RELEASES

As noted in subsection III.I.1., the negotiation and execution of the Hump Lead Agreement and this Formal Agreement resulted from an effort to agree to a settlement of disputes, thus avoiding Surface Transportation Board litigation and the imminent threat of eminent domain proceedings.

The Parties shall coordinate the timing of and comments in press releases and public announcements related to the full execution and delivery of this Formal Agreement to assure consistency with the contents hereof. As noted above, UPRR will not waive, or be deemed to have waived, its right to assert federal preemption until such time that not only this Formal Agreement is fully executed and delivered, but also such time that the Parties' respective rights to terminate this Formal Agreement under Section III.L. have been either terminated or waived. Likewise, the Project Partners will not waive, or be deemed to have waived, any right to pursue condemnation of UPRR property (including the filing of any related action with the Surface Transportation Board or in eminent domain) until such time that not only this Formal Agreement is fully executed and delivered, but also such time that the Parties' respective rights to terminate this Formal Agreement under Section III.L. have been either terminated or waived.

P. MISCELLANEOUS

1. Amendments to this Formal Agreement shall only be valid if in writing and signed by all of the Parties.

2. All notices to be provided under this Formal Agreement shall be delivered personally or sent by a recognized overnight air courier service, addressed to such Party at the following addresses:

UPRR: Union Pacific Railroad Company
Attn: AVP Engineering – Design and Construction
1400 Douglas Street – STOP 0910
Omaha, NE 68179-0910

With a copy to:

Union Pacific Railroad Company
Attn: Real Estate Attorney
1400 Douglas Street – STOP 1580
Omaha, NE 68179-1580

TxDOT: Amadeo Saenz Jr., P.E.
Executive Director
Texas Department of Transportation
125 East 11th Street
Austin, TX 78701

The City: Dale A. Fisseler, P.E.
City Manager
City of Fort Worth
1000 Throckmorton Street
Fort Worth, TX 76102

NTTA: Rick Herrington
Deputy Executive Director
North Texas Tollway Authority
Suite 100
5900 West Plano Parkway
Plano, TX 75093

A notice shall be deemed received by a Party upon its personal delivery to that Party, one business day after its deposit with a recognized overnight air courier service properly addressed to that Party, or upon that Party's actual receipt. Any Party may change its notice address by notifying the other Parties at their then-current notice addresses.

3. The Parties agree that no Party is an agent, partner, servant, or employee of any other party. This Formal Agreement does not in any way create a partnership, joint venture, joint enterprise or principal/agent relationship between the Parties.

4. 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 Formal Agreement.

5. This Formal Agreement and the Hump Lead Agreement constitute the only agreements between UPRR and the Project Partners and supersedes any prior understandings or written or oral agreements respecting their subject matter.

6. Except as provided in subsection III.G.6., the rights and obligations of any Party hereunder shall not be assigned without the prior written consent of the other Parties. The obligations created under this Formal Agreement are binding upon the Parties and their successors and permitted assigns.

7. The Parties shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under the Final Agreement and shall make such materials available to each other upon a reasonable request.

8. Due to the important role the Permits play in the commencement of the UPRR Construction Period and the need to avoid future disputes between the Parties, this Formal Agreement includes a comprehensive list of all Permits required for UPRR's work under this Formal Agreement and

known to UPRR and the Project Partners upon the execution and delivery thereof consistent with the definition provided in subsection III.E.5. The Permits are those listed on Attachment 10. Additional Permits not now known to UPRR and discovered as work progresses under this Formal Agreement may be added to the Permits, but conditions or tasks known by UPRR upon execution of this Formal Agreement will not be re-characterized as Permits.

9. As indicated in the Hump Lead Agreement, this Formal Agreement includes a disputes resolution process applicable to the Parties under Section III.R., as well as provisions dealing with events of default and remedies under Section III.Q. Among its other uses, the Parties shall utilize the disputes resolution process if any Party (the "Paying Party") disagrees with the accuracy or appropriateness of any invoice, cost, or charge that it is presented under this Formal Agreement. If the Paying Party discovers the alleged inaccuracy prior to the due date for the invoice, cost, or charge, it will bring the matter to the attention of the Party seeking payment (the "Invoicing Party") and they will attempt to resolve the disagreement prior to the due date. If the matter is not resolved prior to the due date, the payment will nonetheless be made by the Paying Party and the matter referred to the dispute resolution process. If any portion of the payment is later determined to have exceeded the amount properly due at the time of the invoice, cost, or charge, the Paying Party shall be reimbursed that portion by the Invoicing Party, with interest at 6.3% per annum on that portion from the date it was improperly paid, within 30 days; alternatively, the Paying Party may set off that amount (the improperly paid portion plus interest) from any invoice, cost, or charge subsequently presented to it by the Invoicing Party. Any payment by the Paying Party shall neither (a) relieve the Invoicing Party of its obligations under this Formal Agreement to the extent those obligations have not been properly performed nor (b) effect an accord and satisfaction; as set forth above, after making any payment that is later determined to be inaccurate or inappropriate, the Paying Party may recover same as provided in this subsection III.P.9.

10. Each of the Parties (in such capacity, the "Representing Party") hereby represents, warrants and covenants to the other Parties as of the effective date hereof, as set forth below.

    (a) Organization and Authority. The Representing Party is either a Delaware corporation, in the case of UPRR, an agency of the State of Texas, in the case of TxDOT, a Texas home rule municipality, in the case of the City, or a regional tollway authority and political subdivision of the State of Texas, in the case of NTTA, is duly organized, validly existing and, in the case of UPRR, in good standing under the applicable laws of the jurisdiction in which it has been formed, and has all requisite power and authority to own,

lease and operate its assets and to conduct its business as now being conducted. The Representing Party is not in default under or in violation of any provision of the documents, laws and regulations governing its formation and existence.

(b) Authority Relative to this Formal Agreement. The Representing Party has full power and authority to enter into, execute and deliver this Formal Agreement and the ancillary agreements explicitly referenced herein, including, without limitation, the Hump Lead Agreement (collectively, the "Additional Documents") to which it is a party and to perform fully its obligations hereunder and thereunder. The Representing Party has taken all action required by any statute, law, code, regulation, treaty or other state or federal legislative, executive or administrative requirement or by its articles of incorporation, charter, by-laws or other organizational documents to authorize the execution and delivery of and performance of its obligations under this Formal Agreement and the Additional Documents to which such Representing Party is a party. This Formal Agreement and the Additional Documents to which the Representing Party is a party have been duly and validly executed and delivered by the Representing Party and, assuming due authorization, execution and delivery by the other Parties, constitute valid and binding legal obligations of the Representing Party, enforceable against the Representing Party in accordance with their terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and general principles of equity. Notwithstanding anything to the contrary contained in this subsection III.P.10.b., the Parties acknowledge and agree that the Project Partners have not received authorization, nor have all actions been taken (including action by the Texas Transportation Commission or the Fort Worth City Council), for the Project Partners to convey any of the permanent property interests anticipated by this Formal Agreement.

(c) Appropriation of Funds. Each Representing Party other than UPRR has obtained final and binding authorization from all necessary persons or entities for an appropriation or, in the case of NTTA, a designated source of funds sufficient to cover such Representing Party's share of all anticipated amounts due to UPRR under the Hump Lead Agreement and under this Formal Agreement with respect to the $1,500,000 payment to UPRR for design costs under subsection III.I.5. The appropriate portions of the funds so appropriated or designated will be available to such Representing Party for disbursement without condition, deduction or offset except as expressly set forth in this Formal Agreement or the Hump Lead Agreement on the dates its share of such amounts due to UPRR are payable hereunder or thereunder. The Parties acknowledge

and agree that this subsection III.P.10.c. is inapplicable to TxDOT insofar as this Formal Agreement and the Additional Documents do not anticipate any amounts being due to UPRR by TxDOT.

(d) Absence of Conflicts. The execution, delivery and performance of this Formal Agreement and the Additional Documents, and the transactions contemplated hereby and thereby, do not and will not (i) conflict with or result in any violation of or constitute a breach or default under any provision of any statute, law, code, regulation, treaty or other state or federal legislative, executive or administrative requirement or any of the articles of incorporation, charter, by-laws or other organizational documents applicable to or governing the creation and existence of such Representing Party, (ii) violate, conflict with or result in a violation or breach of, or constitute a default (with or without due notice or lapse of time or both) under, or permit the termination of, or require any notice under, or require the consent of any other party to, or result in the acceleration of, or entitle any party to accelerate any obligation or agreement, or result in the loss of any benefit or the imposition of any fee or penalty, or give rise to the creation of any lien upon any of the assets of such Representing Party, in each case under any of the terms, conditions or provisions of any debt, note, bond, mortgage, indenture, deed of trust, license, lease, permit, agreement or other instrument or obligation to which such Representing Party is a party or by which such Representing Party or any of its assets may be bound or affected, or (iii) violate any judgment to which such Representing Party or any of its assets is bound or subject.

(e) Consents. Except with respect to the Project Partners' conveyance of any permanent property interests anticipated in this Formal Agreement, no notice to and no permit, authorization, consent or approval of any governmental entity or other person or entity is necessary for the performance by the Representing Party of its obligations under this Formal Agreement or the Additional Documents.

(f) Brokers. No agent, broker, investment banker, financial advisor, finder or other Person is or will be entitled to any brokerage commission, finder's fee or like payment in connection with any of the transactions contemplated by this Formal Agreement based upon such arrangements made by or on behalf of the Representing Party.

(g) Survival. The Representing Party's representations and warranties shall survive for a period of 12 months after the later to occur of (i) the date of the last payment made by such Representing Party

hereunder, and (ii) the date of performance of the final obligation of the Representing Party to another Party hereunder.

(h) No Third Party Beneficiaries. The Parties to this Formal Agreement do not intend for any third party to obtain any rights by virtue of this Formal Agreement. By entering into this Formal Agreement, the Parties do not intend to create any obligations express or implied other than those stated in this Formal Agreement; further, this Formal Agreement shall not create any rights in any party not a signatory to this Formal Agreement.

11. All references in this Formal Agreement to "days" shall refer to calendar days unless otherwise explicitly indicated.

12. Without limiting the terms of subsection III.P.10., the signatories to this Formal Agreement warrant that each has the authority to enter into this Formal Agreement on behalf of the Party represented.

13. As part of the good and valuable consideration provided one another under this Formal Agreement, the Parties agree to limit the nature and scope of the monetary damages for which they may be liable or responsible under this Formal Agreement. Without in any manner limiting any defenses available on any basis to any Party after taking into account any waivers effected under or pursuant to this Formal Agreement (including any contract defenses available to any Party, provided that any counterclaim shall be subject to the provisions of this subsection III.P.13.) or the ability of any Party to seek or obtain equitable relief or other non-monetary remedies (including, without limitation, specific performance) available to that Party, no Party under this Formal Agreement shall as a result of any default under or breach of this Formal Agreement be liable for monetary damages in excess of or in addition to direct, actual damages, including having no liability for any consequential damages, lost profits, delay damages (except as expressly illustrated below), punitive damages, special damages, or indirect damages, and each Party hereby waives its rights to the aforesaid damages in excess of or in addition to direct, actual damages and hereby releases all other Parties from any liability for such aforesaid damages in excess of or in addition to direct, actual damages. The Parties agree that direct, actual damages specifically include, without limitation, the following: (a) damages for nonpayment of all agreed contract payments and specific reimbursement amounts expressly required to be paid by one Party to another Party hereunder (*e.g.*, all amounts due to UPRR under Sections II.A. and III.I., and all amounts, if any, due the Project Partners under subsections II.A.2. and III.L.7.), (b) damages related to claims for bodily injury or damage to tangible personal property, (c) damages arising from the breach of or default under covenant obligations contained in this Formal Agreement which are expressly included in direct, actual damages by reference to this

subsection III.P.13., and (d) amounts owed by the Project Partners to their contractors as a result of delay, disruption, hindrance, or acceleration resulting from UPRR's breach or default under this Formal Agreement. Illustrative of the foregoing, in the event of a UPRR breach or default, UPRR will in no event be liable for delay damages for lost project tolls or other revenues on SWP/SH 121 or for escalating construction costs due to inflation or similar factors, but would be liable for amounts owed by the Project Partners to their contractors as a result of delay, disruption, hindrance, or acceleration resulting from UPRR's breach or default under this Formal Agreement. Additionally, in any instance under this Formal Agreement in which the Parties have stipulated the amount of damages owing in a certain circumstance (*e.g.*, as the Parties commit to do in the concluding two sentences of subsection III.G.4. and in the concluding sentence of subsection III.E.8.), such stipulated amount shall be the exclusive monetary damages that can be sought or recovered.

Finally, and in addition to the reservation of defenses and the limitations of monetary damages provisions set forth or referenced above, the Parties agree that the maximum cumulative amount of actual, direct damages for which either UPRR, on the one hand, or the Project Partners, on the other hand, may be liable with respect to defaults under or breaches of this Formal Agreement shall be Seven Million Five Hundred Thousand Dollars ($7,500,000.00), provided however that recovery from a Party on account of either (a) nonpayment of all agreed contract payments and specific reimbursement amounts expressly required to be paid by such Party to another Party hereunder or (b) claims for bodily injury or damage to tangible personal property, shall not be limited by such maximum cumulative amount. The Parties agree that any incremental mobilization/demobilization and similar costs, together with any penalties or other damages, due to the NTTA under the concluding two sentences of subsection III.G.4. (and limited to only mobilization/demobilization and similar costs up to the cumulative amount of $250,000.00 under the circumstances described in subsection III.E.8.) shall be deemed to be actual, direct damages included in the calculation of such maximum cumulative amount set forth in the preceding sentence. The Parties acknowledge that, as a matter of law, TxDOT, the City, and the NTTA are subject to the Texas Tort Claims Act.

Q. EVENTS OF DEFAULT

The happening of any one or more of the following listed events shall constitute a breach of this Formal Agreement on the part of a Party:

1. Such Party fails to pay any sum of money required to be paid hereunder to another Party when due under this Formal Agreement or under any of the Additional Documents, provided that if such sum does not have a specific due date expressly provided for under this Formal Agreement, such sum

shall be due 30 days after written demand from the Party entitled to receive payment of such sum; or

2. Such Party fails to perform any term, covenant or condition of this Formal Agreement or of any of the Additional Documents, except those requiring the payment of a sum of money, within the period permitted hereunder or under such Additional Document, taking into account any extension of such period explicitly provided under this Formal Agreement or such Additional Document for force majeure or other circumstance, and such Party fails to cure such breach within 10 days after written notice from any other Party.

If any Party believes that any event or condition claimed by another Party to be breach is not in fact an breach, such Party shall have the right to contest such claim by giving written notice of such contest for resolution pursuant to Section III.R. below.

R. DISPUTE RESOLUTION

The Parties agree that any disputes among the Parties to this Formal Agreement arising out of or relating to this Formal Agreement (a "Dispute"), including, without limitation, all rights to receive payments from, or the benefits of performance by, another Party hereto inuring to a Party under or as a result of this Formal Agreement and all obligations to make payments or perform duties owed by a Party arising under or as a result of this Formal Agreement, shall be resolved exclusively as set out in this Section III.R. Disputes regarding either (a) design, engineering, construction methods, construction sequencing, operations or any other matters that involve or affect the functionality, safety or operation of the Davidson Yard, SWP/SH 121 or any of the other highways, roads, bridges or tracks referenced herein or (b) any Party's failure to provide, or interference with, UPRR's or the NTTA's right and ability to advance its construction activities during, with respect to UPRR, the UPRR Construction Period, or, with respect to the NTTA, during the NTTA Construction Period, pursuant to this Formal Agreement (the "Non-Arbitrable Disputes") shall be resolved solely by the procedures set forth in subsection III.R.1. and shall not be subject to mediation or arbitration, but shall instead, if not resolved under subsection III.R.1., be resolved either by a final, non-appealable order of a court of competent jurisdiction or by the subsequent agreement of all of the Involved Parties (as hereinafter defined). Except as provided in the following sentence, disputes regarding all other Disputes (the "Arbitrable Disputes") shall be resolved by the procedures set forth in subsections III.R.1., 2., and 3. Notwithstanding anything to the contrary contained in this Section III.R. or otherwise in this Formal Agreement, TxDOT cannot agree, and does not agree, to final, exclusive, and binding arbitration and, consequently, a Dispute with TxDOT (whether an Arbitrable Dispute or a Non-Arbitrable Dispute) shall under no circumstances be resolved by the procedures set forth in subsection III.R.3., but shall instead, if not resolved under subsection III.R.1., be resolved as provided in the penultimate sentence of subsection III.R.2.

1. Informal Resolution. If any Party believes a Dispute exists, that Party may notify all of the other Parties pursuant to the notice provisions of this Formal Agreement that a Dispute exists, and of the specific nature of the Dispute. For a period of 10 business days after receipt of such notice, all Parties shall negotiate in good faith to resolve the Dispute. If the negotiations are not successful, any Party may notify in writing the other Parties that the provisions of this Section III.R. shall be invoked (the "Resolution Start Notice"). The Resolution Start Notice shall include (a) a statement of such Party's position on the Dispute, (b) a summary of the reasons supporting such Party's position and (c) a proposed resolution to such Dispute that would be satisfactory to such Party. Within 5 business days from receipt of the Resolution Start Notice, each Party receiving such Resolution Start Notice shall either (i) notify the other Parties that it is not involved in or affected by such Dispute and will not participate in the resolution thereof or (ii) deliver to the other Parties a written response to the Dispute (a "Resolution Response Notice"). Each Resolution Response Notice shall include (x) a statement of such Party's position on the Dispute, (y) a summary of the reasons supporting such Party's position and (z) a proposed resolution of such Dispute that would be satisfactory to such Party. If a Party either notifies the other Parties that it is not involved in or affected by such Dispute or fails to issue a Resolution Response Notice within the applicable time period, such Party shall be excluded from the resolution process for such Dispute and the Party sending the Resolution Start Notice and the Parties timely delivering Resolution Response Notices shall be deemed to be the "Involved Parties" with respect to such Dispute, provided however that if any Involved Party gives written notice to the other Involved Parties within 15 business days after receipt of the Resolution Start Notice claiming that a Party desiring or deemed to be uninvolved in such Dispute is a necessary party to the resolution of such Dispute, such Party shall be deemed an Involved Party and shall participate in the resolution process. Each Party hereby designates the following senior executive of such Party (the "Designated Executive") and agrees that such Designated Executives shall have full authority to resolve such Dispute. The Designated Executive for UPRR shall be John Hovanec. The Designated Executive for NTTA shall be Rick Herrington. The Designated Executive for the City shall be Bryan Beck. The Designated Executive for TxDOT shall be Maribel Chavez. In the event any Designated Executive is no longer employed by the applicable Party or has undertaken a new position with such Party that does not include responsibilities related to this Formal Agreement, such Party shall designate a replacement, and deliver written notice of such replacement to the other Parties. Any Party may also replace its Designated Executive upon written notice to the other Parties. The Designated Executives shall immediately begin to communicate regarding the Dispute, including attendance at a personal meeting if requested by any other Designated Executive, and shall exercise good

faith efforts to resolve the Dispute fairly and completely within 30 days from the date of the last Resolution Response Notice.

If the Dispute has not been resolved within 30 days of the submission of such Dispute to the Designated Executives (or at any time after such submission, if any Involved Party believes that time is of the essence with respect to such Dispute and that the resolution process should be expedited), then any Involved Party may by written notice to the other Involved Parties refer the Dispute to the Chief Executive Officers (or persons having equivalent decision-making authority regardless of title) of the Involved Parties for their review and resolution.

2. Non-Binding Mediation. If the applicable Chief Executive Officers do not resolve the Dispute within 20 days of submission to them, then any Involved Party may give written notice to the other Involved Parties of its intent to mediate the Dispute. If the Involved Parties do not agree upon a mediator within 20 days following the other Involved Parties' receipt of the notice of the intent to mediate, any Involved Party may refer the matter to the Austin office of the American Arbitration Association for non-binding mediation. The Designated Executives for the Involved Parties shall attend the mediation in person. The applicable Chief Executive Officers will not be required to attend the mediation in person, but will remain involved in the mediation process to consult with the Designated Executives. Subject to the availability of the mediator, any mediation shall be initiated within 30 days (or other mutually agreed time period) of the selection of the mediator, and the mediation process must be concluded within 45 days (or other mutually agreed time period) from the mediation start date.

If such mediation is concluded without a resolution to the Dispute that is satisfactory to all of the Involved Parties, (a) if such Dispute is an Arbitrable Dispute, it shall be resolved pursuant to the procedures set forth in subsection III.R.3., or (b) if such Dispute is a Non-Arbitrable Dispute, it shall not be subject to the procedures set forth in such subsection III.R.3., but shall instead be resolved either by a final, non-appealable order of a court of competent jurisdiction or by the subsequent agreement of all of the Involved Parties. Notwithstanding the foregoing, any Dispute (whether an Arbitrable Dispute or a Non-Arbitrable Dispute) in which TxDOT is an Involved Party shall not be subject to the procedures set forth in such subsection III.R.3., but instead the Party asserting the Dispute may seek to resolve the Dispute through either its exercise of any remedy or means available in law or equity or by the subsequent agreement of all of the Involved Parties. The costs and expenses of mediation, including compensation and expenses of the mediator, but excluding attorneys' fees incurred by any Party, shall be borne 50% by UPRR and 50% by the other Involved Parties, unless such

Dispute is between the Project Partners, in which case each Project Partner shall bear an equal share of such costs, compensation and expenses.

3. Final, Exclusive and Binding Arbitration. Any Arbitrable Dispute that is not resolved consistent with the procedures in subsections III.R.1. and 2. and does not include TxDOT as an Involved Party shall be finally resolved by final, exclusive, and binding arbitration under this subsection III.R.3. Judgment upon the award rendered by the arbitral tribunal may be entered in any court having jurisdiction thereof.

   (a) The arbitration process will be commenced by the initiating Party giving written notice to the other Involved Parties of its intention to arbitrate such Arbitrable Dispute (the "Arbitration Demand"). The Arbitration Demand specifically shall identify the questions to be submitted for arbitration. The other Involved Parties, within 10 business days after receipt of the Arbitration Demand, shall submit a written response to the initiating Party and the other Involved Parties that specifically responds to the questions identified in the Arbitration Demand and identifies any additional questions (which may include counterclaims or additional claims against the initiating Party arising under this Formal Agreement) to be submitted for arbitration in connection with such Arbitrable Dispute. The initiating Party, within 10 business days after receipt of the last of such response(s), shall deliver to each other Involved Party a written response that specifically responds to any new questions identified in such response(s).

   (b) Venue for the arbitration shall be as set out below, unless otherwise mutually agreed by the Involved Parties. Within 20 business days after the Arbitration Demand is made, UPRR shall choose one arbitrator and the Involved Party or Parties that are Project Partners will jointly designate one arbitrator (collectively, the "party arbitrators") and shall notify the other Involved Parties of such choice. Within 10 days after notice is served of their appointment by such Involved Parties, the two arbitrators so chosen will appoint a third arbitrator (the "Chairperson"). The three arbitrators are hereinafter referred to as the "Arbitration Panel". Disputes which primarily involve interpretations of the scope or nature of the Parties' legal rights and obligations under this Formal Agreement shall be determined by arbitrators who are practicing attorneys or retired judges having at least 10 years experience of involvement in the litigation or arbitration of public or commercial contract disputes. Disputes which primarily involve claims or defenses based on the nature of the construction to be performed pursuant to this Formal Agreement or the facts and circumstances surrounding the execution of such construction shall be determined

by arbitrators who have at least 10 years experience of involvement in both large-scale rail transportation and large-scale highway transportation projects as either an officer or construction manager at a nationally recognized construction, construction management, or civil engineering firm that has not been employed by any of the Project Partners or UPRR during the past 5 years. If the selecting Involved Parties disagree about the type of arbitrators to be appointed for any Dispute, each such selecting Involved Party shall designate the type of arbitrator it deems appropriate and the party arbitrators shall select a Chairperson of the type they deem appropriate. The Chairperson shall preside over the Arbitration Panel. Any issue presented to the Arbitration Panel shall be decided by two or more of the arbitrators; provided, however, that in the event two or more panel members cannot reach agreement on any particular issue, the issue shall be decided by the Chairperson. If the two arbitrators so chosen are unable to select a Chairperson as provided above, the Chairperson shall be selected by a Judge of the United States Federal District Court sitting in Austin, upon a petition that forthwith shall be filed by the two arbitrators selected by the Involved Parties. Once the arbitration process has commenced and until it has concluded, the arbitrators shall not communicate *ex parte* with any of the Involved Parties or their representatives concerning the arbitration. The Arbitration Panel, when complete, shall meet forthwith with the Involved Parties in an initial hearing to discuss procedures and preliminary issues.

(c) At the request of any Involved Party, or at the discretion of the Arbitration Panel, and consistent with the expedited nature of the arbitration procedure set forth in this Formal Agreement, the Arbitration Panel may direct the following discovery:

(i) the production of documents and other information;

(ii) the depositions of select witnesses identified by the Involved Parties; and

(iii) answers to written interrogatories or requests for admissions.

(d) The Arbitration Panel may, in its discretion, apply the standards of Federal Rule of Civil Procedure 26 in order to resolve any disputes that may arise in connection with these discovery procedures. In addition, at the request of any Involved Party, the Arbitration Panel may enter such protective orders as are appropriate to protect trade secret, proprietary and confidential information.

(e) The discovery and disclosure addressed in this Section III.R. shall be completed within 90 days after the initial hearing. If necessary to compel attendance of witnesses to provide testimony at depositions or at trial or to provide documents, any Involved Party or the Arbitration Panel may petition any court of competent jurisdiction to issue subpoenas compelling discovery.

(f) The Arbitration Panel shall, with reasonable diligence (not to exceed 120 days after the initial hearing) conduct an evidentiary hearing, and such other proceedings as they deem appropriate, and complete those proceedings. The evidentiary hearing, and all other hearings, will be held after reasonable notice is given of the time and place to the Involved Parties. At the evidentiary hearing, each Involved Party will be permitted to present its case, witnesses and evidence, if any, in the presence of the other Involved Parties, and to conduct direct and cross-examination as the Arbitration Panel may decide is appropriate. Witnesses will testify under oath and the oath taken shall have the same effect as testifying before a court of competent jurisdiction. The Involved Parties may offer such evidence as is relevant and material to such Arbitrable Dispute and shall admit such evidence as the Arbitration Panel may deem necessary to an understanding and determination of such Dispute. Conformity to legal rules of evidence shall not be necessary; provided, however, that the Arbitration Panel may consider the requirements of the Federal Rules of Evidence in resolving issues that may arise concerning the admissibility of evidence. All evidence shall be taken in the presence of all of the arbitrators and all of the Involved Parties. A written transcript of the hearing may, at the request of any Involved Party, be made. If more than one Involved Party requests a transcript, the requesting Involved Parties shall split the cost. If one or more Involved Parties requests a transcript, it or they shall pay the cost but shall have no obligation to provide a copy to the other Involved Parties. Within 10 days after the close of the evidentiary hearing, each Involved Party shall have the right to submit a written brief setting forth such Involved Party's position.

(g) A majority of the Arbitration Panel (or the Chairperson if a majority cannot be obtained) forthwith shall issue its arbitration decision, which shall be in writing and delivered to all Involved Parties, within 30 days after the deadline for submittal of written briefs, provided, that the Project Partners and UPRR acknowledge and agree that any damages awarded under these arbitration proceedings are and shall be expressly limited as provided in subsection III.P.13. of this Formal Agreement and all of the limitations and maximum amounts set forth in such subsection shall apply to any such awards

regardless of any action or holdings to the contrary by the arbitrators therein. The Arbitration Panel shall interpret this Formal Agreement and shall follow the statutory and common law that applies to the Arbitrable Dispute. The Arbitration Panel is hereby expressly authorized to include interest on any amounts awarded accruing prior to the date of such award at the rate and on the terms provided for in subsection III.I.4. of this Formal Agreement. Nothing contained herein shall be deemed to give the Arbitration Panel any authority, power or right to change, modify, add to or subtract from any of the provisions of this Formal Agreement. The decision will state the reasons upon which it is based. The decision will be final and binding upon all of the Involved Parties, but shall not in any way affect the rights or obligations of the Parties which were not Involved Parties. The Involved Parties forthwith shall comply therewith. Judgment in any court of competent jurisdiction on the Arbitration Panel's decision and award may be entered on the request of any Involved Party or of the Arbitration Panel. Such judgment shall have the same effect as any other judgment entered by such court where venue is appropriate and there is jurisdiction over the Involved Parties and the subject matter of the Dispute. Payment of damages pursuant to the arbitration decision shall be made within 30 days after entry of the Arbitration Panel's decision, whether or not it has yet been reflected in a judgment of any such court. UPRR, the City and the NTTA each hereby expressly agrees that the Arbitration Panel shall have jurisdiction to render a decision as set forth in this Section III.R. and that a court shall have jurisdiction to enter a judgment on the Arbitration Panel's award and that neither the rendering of such award or the entry of judgment on such award are preempted under state or federal law, and UPRR, the City and the NTTA each expressly waives any defense to the Arbitration Panel rendering an award or the entry of judgment on such award based on state or federal preemption.

(h) Unless otherwise ordered by the Arbitration Panel, each of the Involved Parties shall bear the costs of the arbitrator selected by it, its own attorneys fees, and its own other costs associated with the arbitration, and UPRR, on the one hand, and the other Involved Parties, on the other hand, shall each bear 50% of the fees and costs incurred in connection with the Chairperson, unless such Dispute is between the City and the NTTA in which case the City and NTTA will each bear 50% of such fees and costs incurred in connection with the Chairperson. The deadlines set forth in this subsection III.R.3. may be extended by the agreement of the Involved Parties, by the Arbitration Panel or at the request of any Involved Party upon a showing of good cause. The Arbitration Panel shall have the power and discretion, anything to the contrary in law or custom or

contract notwithstanding, to award attorneys fees and costs in whole or in part to any Involved Party at any point in the proceedings pursuant to this Section III.R. of this Formal Agreement and/or if the Arbitration Panel determines that an Involved Party has acted in a dilatory manner, has proceeded in bad faith, or has caused unnecessary delay or needlessly increased the cost of the arbitration procedure.

4. Performance. Subject to the terms of subsection III.I.4, each of the Parties shall continue performance under this Formal Agreement during the process of resolving a Dispute, except to the extent that such performance is made commercially impracticable by reason of the existence of the Dispute. If it is contested that the ability to perform was made impracticable by the Dispute, that issue and damages relating thereto shall be decided by the Arbitration Panel in any evidentiary hearing and related proceedings.

5. Interim Relief. Notwithstanding the foregoing, any Party may resort to any court of competent jurisdiction to the extent reasonably necessary to (a) avoid expiration of a claim that might eventually be permitted, including claims seeking orders requiring compliance with this Section III.R., (b) obtain interim relief, including injunctive relief, to preserve the status quo or prevent irreparable harm, or (c) vindicate a Party's intellectual property rights, including, without limitation, the recovery of money damages for infringement or other misappropriation.

6. Confidentiality. The informal dispute resolution, mediation, and arbitration and all proceedings thereunder shall be confidential and, absent a court order or subpoena, no Party, nor any mediator, or arbitrator may disclose to any third party the existence, content (including communications, documents and pleadings), or results of any proceeding hereunder without the prior written consent of each Party.

7. Choice of Law and Forum. The Parties hereby agree that Texas law will apply to any Dispute, without giving effect to any conflict of law rules or other rules that might render such law inapplicable or unavailable. The Parties agree that all mediations and all arbitrations shall be conducted in Austin, Texas, except to the extent the Parties explicitly agree otherwise in writing. The Parties (except TxDOT) agree to sign all documents and to do all other things reasonably necessary to submit any such matter to arbitration and further agree to, and hereby do, waive any and all rights they or either of them may at any time have to revoke their agreement hereunder to submit to arbitration and to abide by the decision rendered thereunder.

8. Governing Rules. Unless otherwise agreed by the Parties at the time of such election, the rules governing mediation or arbitration shall be the Construction

Industry Dispute Resolution Procedures of the American Arbitration Association.

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