

## **REIMBURSEMENT AGREEMENT**

THIS REIMBURSEMENT AGREEMENT (herein "Agreement") is made and entered into effective this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the CITY OF SAN ANTONIO, a municipal corporation of the state of Texas (herein "AGENCY"), having a mailing address at 114 W. Commerce, P.O. Box 839966, San Antonio, Texas 78283-3996, and UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (herein "UPRR"), having a mailing address at 1400 Douglas Street, STOP 910, Omaha, Nebraska 68179, collectively referred to herein as the "PARTIES."

### **WITNESSETH:**

WHEREAS, in the interest of public safety in relation to vehicular and railroad traffic, the AGENCY desires to install a vehicle height detection and warning system on AGENCY's South St. Mary's Street roadway near a UPRR bridge located at UPRR's MilePost 210.98 (DOT 764297T), on UPRR's Del Rio Subdivision, at or near San Antonio, Texas (the detection and warning system and related equipment shall be collectively referred to as the "Overheight Curtain").

WHEREAS, the AGENCY has agreed to purchase the Overheight Curtain and perform all work and pay all costs associated with the installation, operation, maintenance, and repair of the Overheight Curtain (the "Project").

WHEREAS, UPRR has agreed to reimburse the AGENCY for Fifty Percent (50%) of the AGENCY's actual costs to acquire and install the Overheight Curtain.

### **AGREEMENT:**

NOW THEREFORE, in consideration of the promises and mutual covenants herein contained, the parties hereto agree as follows:

1. The AGENCY shall purchase the Overheight Curtain and the AGENCY will, at its sole cost and expense, furnish all labor, materials, roadway traffic control, tools and equipment for the installation of the Overheight Curtain and shall pay all costs associated with the installation, operation and repair of the Overheight Curtain (collectively, the "Work"). The AGENCY agrees that it shall have the sole responsibility for future and ongoing operation, maintenance and repair of the Overheight Curtain.

2. UPRR shall reimburse the AGENCY for Fifty Percent (50%) of the AGENCY's actual costs to acquire and install the Overheight Curtain, which such costs are estimated by UPRR and the AGENCY to be Forty Three Thousand Eight Hundred Ninety Dollars (**\$43,890.00**), as indicated in the attached estimate attached hereto and incorporated herein by reference as Exhibit A (the "Estimate"). Upon completion of the Project, AGENCY shall have ninety (90) days to prepare a final invoice with the supporting documentation of its One Hundred Percent (100%) costs related to the Project. UPRR shall have no obligation to make the reimbursement unless and until UPRR receives copies of invoices supported by evidence of payment made by AGENCY. Within forty-five (45) days of proper billing received by UPRR from the AGENCY, UPRR shall reimburse the AGENCY for Fifty Percent (50%) of AGENCY's costs, subject to the terms, conditions and limitations contained in this Agreement.

3. UPRR agrees to reimburse the AGENCY within forty-five (45) days of its receipt of billing from the AGENCY for fifty percent (50%) of all actual costs incurred by the AGENCY in connection with the Work including, but not limited to, all actual costs of engineering review (including construction phase services incurred by the AGENCY), construction, inspection, procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead

labor/construction costs including the AGENCY's standard additive rates. Any and all contracts necessary for performance of the Work will be let by the AGENCY. The Work will be performed in accordance with the Manual on Uniform Traffic Control Devices ("MUTCD"), and/or other standards, as applicable and must be performed in a good and workmanlike manner.

4. No Work will be performed on Property owned or controlled by UPRR. The Work must be performed in a manner that will not endanger or interfere with the safe and timely operations of UPRR and its facilities. All Work must be performed at least twenty-five (25) feet away from UPRR's nearest track.

5. UPRR makes no representations or warranties of any kind, express or implied, regarding the Overheight Curtain. UPRR further makes no representations or warranties as to the merchantability or fitness of the Overheight Curtain and related equipment for any particular purpose, and AGENCY's reliance on the Overheight Curtain is at AGENCY's own risk.

6. This Agreement is the only understanding by and between the AGENCY and UPRR pertaining to the Project, and stands independent of any other agreements between the PARTIES and/or their affiliates.

7. Each party warrants that it has the full right and authority to enter into this Agreement. All necessary approvals and authority to enter into this Agreement have been obtained and the person executing this Agreement on behalf of each party has the express authority to do so and in so doing, to bind such party hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

**UNION PACIFIC RAILROAD COMPANY**

**CITY OF SAN ANTONIO**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

Exhibit A - The Estimate