



Railroad-DOT Mitigation Strategies (R16)

Highway Overpass Agreement

The following agreement addresses the construction or reconstruction of highway structures over railways. These projects tend to be complex in terms of coordination issues. Among the issues that need to be addressed are the length of span, the number of future tracks to be accommodated, elevation above roadway, and a variety of considerations during the construction process. Such projects require the construction of embankments and piers adjacent to the railway and the installation of beams above the active railway. These activities require strict control of construction activities and close coordination among the highway agency, the railroad, and the contractor.

RAILROAD-HIGHWAY AGREEMENT FOR OVERPASS

This Agreement (“AGREEMENT”) is made and entered into this _____ day of _____, 20_____, by and between the _____ Department of Transportation, hereinafter called the “DEPARTMENT,” and _____ [Railroad Company], hereinafter called the “RAILROAD.”

WITNESSTH:

WHEREAS, the RAILROAD owns and operates a line of railroad in and through the City/County of _____, in the State of _____;

WHEREAS, the DEPARTMENT proposes to construct an overpass structure that crosses over the RAILROAD’S rail line, Bridge Number _____, at milepost _____, in _____ County;

WHEREAS, said construction requires the construction of a new structure (Bridge Number _____) to separate the grades of track of the RAILROAD and the highway at the point hereinbefore mentioned (said Structure and any and all work related to the construction of the proposed Overpass and the necessary approaches thereto, are hereinafter referred to as the Project);

WHEREAS, the RAILROAD desires to cooperate with the DEPARTMENT in the construction of the Project by permitting the construction and future maintenance of the Project over its track and right-of-way and the performance of other services as may be required that do not interfere with the RAILROAD’S use and enjoyment of the right-of-way;

WHEREAS, the RAILROAD desires to cooperate with the DEPARTMENT in the construction of the Project with the understanding that the DEPARTMENT will be solely responsible for the cost of constructing and maintaining the new bridge and bearing all other costs and expenses associated with the Project.

NOW, THEREFORE, in consideration of the mutual covenants and agreement of the PARTIES contained herein, the receipt and sufficiency of which are hereby acknowledged, the PARTIES agree as follows:

Section 1: Scope of Work

The RAILROAD, the DEPARTMENT, and/or their Contractor agree to perform the work, including but not limited to construction of said Structure; the necessary earthwork to effect the clearance, grading, drainage, and paving of the highway; the sodding, seeding, and planting of slopes; the highway guardrails; the preliminary engineering; and the construction engineering required, as detailed in Exhibit A.

Section 2: Railroad Obligations

1. The RAILROAD hereby grants to the DEPARTMENT, its successors, and its assigns, upon and subject to the terms and conditions set forth in this AGREEMENT, a Right of Entry and Use as necessary over the portion of the RAILROAD’S right-of-way as indicated in Exhibit B to construct the Project in accordance with the plans and specifications indicated in Exhibit A approved by the RAILROAD herein. Unless noted otherwise in this AGREEMENT, the RAILROAD reserves its rights, and the rights of any others who have obtained or may obtain permission or authority from the RAILROAD, to do the following:

- A. Operate, maintain, renew, and/or relocate any and all existing railroad track or tracks, wires, pipelines, and other facilities of like character upon, over, or under the surface of said right-of-way;

- B. Construct, operate, maintain, renew, and/or relocate upon said right-of-way, without limitation, such facilities as the RAILROAD may from time to time deem appropriate, provided such facilities do not materially interfere with the DEPARTMENT'S use of the said Structure (Overpass); and
- C. Otherwise use or operate the right-of-way as the RAILROAD may from time to time deem appropriate, provided such use or operation does not materially interfere with the DEPARTMENT'S use of the said Structure (Overpass).

The term of the Temporary Construction Easement (identified in Exhibit B) shall commence on the date of the DEPARTMENT'S Notice to Proceed to the RAILROAD, pursuant to Section 3.13 herein, and terminate one (1) year thereafter; however, the term of the Temporary Construction Easement may be extended upon written approval from the RAILROAD. *The Temporary Construction Easement is for construction of the Project only and shall not be used by DEPARTMENT for any other purpose.*

In the event the DEPARTMENT is evicted by anyone owning or claiming title to or any interest in said right-of-way, the RAILROAD will not be liable to the DEPARTMENT for any damages, losses, or expenses of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this AGREEMENT, will not impair or interfere with the rights herein granted to the DEPARTMENT. The Temporary Construction Easement and related rights given by the RAILROAD to the DEPARTMENT in this provision are without warranty of title of any kind, expressed or implied, and no covenant of warranty of title will be implied from the use of any word or words herein contained.

- 2. Provided the DEPARTMENT is in compliance with the terms and conditions of this AGREEMENT, the RAILROAD, upon receiving payment detailed in Exhibit C, will grant to the DEPARTMENT, its successors, and its assigns, an easement (hereinafter referred to as "Easement") in substantially the same form as Exhibit B attached hereto and by this reference made a part hereof pursuant to the terms and conditions of this AGREEMENT. The Easement will include a Footing Easement and a Slope Easement as shown in Exhibit B, a Temporary Construction Easement as identified in Exhibit B, and additional square feet as indicated in Exhibit C to allow the DEPARTMENT to work on construction and other work necessary to complete the Project.

The DEPARTMENT agrees to pay the RAILROAD the sum of \$ _____ for a one-year term, and the DEPARTMENT agrees to pay the RAILROAD the sum of \$ _____ as detailed in Exhibit C as compensation for the combined Footing, Slope, and Temporary Construction Easements.

- 3. The RAILROAD will furnish all labor, materials, tools, and equipment for the RAILROAD work required for the construction of the Project, with estimated costs as shown in Exhibit D attached hereto and made a part hereof. The work will include
 - A. Preliminary engineering, design, and contract preparation;
 - B. Changes in communication and signal lines, interlocking, and signal apparatus;
 - C. Furnishing of flagging services and other protective services necessary for the safety of the RAILROAD'S personnel and property and for the operation of its trains during construction of the Project; and
 - D. Furnishing engineering and inspection as required or deemed necessary by the RAILROAD in connection with the construction of the Project.

In the event that construction of the Project has not commenced within six (6) months following the effective date of this AGREEMENT, the RAILROAD may, in its sole and absolute discretion, revise the cost estimates set forth in Exhibit D. In such event, RAILROAD shall provide to the DEPARTMENT its revised cost estimates highlighting all changes that are made.

Any item of work incidental to the items listed in Exhibit D but not specifically mentioned therein may be included as a part of this AGREEMENT upon written approval by the DEPARTMENT, whose approval of which will not be unreasonably withheld. The RAILROAD shall be reimbursed for its actual costs by the DEPARTMENT for each category of Railroad Work identified in Exhibit D.

4. The RAILROAD will do all Railroad Work set forth in Section 2.3 above and detailed in Exhibit D with the RAILROAD'S own employees working under railroad labor agreements or with contractor(s), if necessary, and on an actual-cost basis.
5. The DEPARTMENT agrees to reimburse the RAILROAD for work of an emergency nature caused by the DEPARTMENT or the DEPARTMENT'S contractor in connection with the Project that the RAILROAD deems is reasonably necessary for the immediate restoration of railroad operations or for the protection of persons or RAILROAD property. Such work may be performed by the RAILROAD without prior approval of the DEPARTMENT, and the DEPARTMENT agrees to fully reimburse the RAILROAD for all such emergency work.
6. The RAILROAD will submit progressive invoices detailing the cost incurred on Railroad Work performed by the RAILROAD under this AGREEMENT in the construction of the Project, within thirty (30) days and no later than one hundred twenty (120) days of completion of work. The DEPARTMENT will pay all undisputed parts of the said progressive invoices within thirty (30) days of receipt and promptly notify the RAILROAD of all disputed billings.
7. Upon completion of the Project, a final and complete billing of all actual incurred costs and expenses, ascertained in accordance with the provisions of 23 CFR, Chapter I, Subchapter B, Part 140, Subpart I, as supplemented and amended, which by this reference is incorporated in this AGREEMENT, shall be made at the earliest practical date by the RAILROAD. The DEPARTMENT shall pay the final invoice within ninety (90) days of receipt of said final invoice.

Section 3: Department Obligations

In consideration of the herein covenants and conditions to be fulfilled by the RAILROAD and the faithful performance thereof, the DEPARTMENT agrees as follows:

1. To furnish to the RAILROAD plans and specifications for the Structure. Said plans, together with _____ [number] copies of calculations and _____ [number] copies of specifications in _____ Units, must be submitted in PDF format to the RAILROAD for approval prior to commencement of any construction. The RAILROAD will give the DEPARTMENT its final written approval of the plans and specifications substantially in the form of Exhibit E attached to this AGREEMENT and made a part hereof. After approval of the plans and specifications by the RAILROAD, said plans and specifications will become part of this AGREEMENT and shall thereby be incorporated herein.
2. Any approval of the plans and specifications by the RAILROAD shall in no way obligate the RAILROAD with respect to the finished product design and/or construction. Any approval by the RAILROAD shall mean only that the plans and specifications meet the subjective standards of the RAILROAD, and such approval by the RAILROAD shall not be deemed to mean that the plans and specifications or construction is structurally sound and appropriate or that such plans and specifications meet applicable regulations, laws, statutes, or local ordinances and/or building codes.
3. The DEPARTMENT must make any required application and obtain all required permits and approvals for the construction of the Project.
4. The DEPARTMENT must provide for and maintain minimum vertical and horizontal clearances as required and approved by the RAILROAD as part of the plans and specifications for the Project.

5. The DEPARTMENT must acquire all rights-of-way necessary for the construction of the Project.
6. The DEPARTMENT must make any and all arrangements to secure the relocation of wire lines, pipelines, and other facilities owned by private persons, companies, corporations, political subdivisions, or public utilities other than the RAILROAD which may be necessary to relocate in any manner whatsoever due to the construction of the Project.
7. The DEPARTMENT must construct the Project in substantial conformance with the plans and specifications accepted or approved by the RAILROAD pursuant to Section 2.1 herein and do all work (“Department’s Work”) provided for in the plans and specifications for the Project as shown in Exhibit A, except Railroad Work that will be performed by the RAILROAD hereunder. The principal elements of Department’s Work are as follows:
 - A. Construction of the Structure in accordance with the plans and specifications approved by the RAILROAD pursuant to Section 2.1 herein;
 - B. All necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on the RAILROAD’S right-of-way;
 - C. Provide suitable drainage, both temporary and permanent;
 - D. Job site cleanup, including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter, and other waste materials to the reasonable satisfaction of the RAILROAD; and
 - E. Conduct required environmental testing and appropriate disposal of all soils and groundwater removed from the RAILROAD property during the construction of the Project, in accordance with RAILROAD policy and State and Federal rules and regulations.
8. The DEPARTMENT shall furnish all labor, materials, tools, and equipment in performing the work it agrees to perform herein. All work of construction with respect to the Project shall be undertaken by the DEPARTMENT or the DEPARTMENT’S contractor(s) and shall be performed at such times as not to endanger or interfere with the safe and timely operation of the RAILROAD’S track and other facilities.
9. In order to prevent damage to the RAILROAD’S trains and property, the DEPARTMENT shall require its contractor(s) to notify the RAILROAD’S Roadmaster at least thirty (30) calendar days before commencing work on or over RAILROAD property or near the RAILROAD’S tracks.
10. The DEPARTMENT will not commence work until it gives the RAILROAD’S Manager of Public Projects listed in Exhibit F not less than thirty (30) days prior written notice of such commencement. The notice will state the date that the DEPARTMENT requests construction activities to begin.
11. The DEPARTMENT’S contractor shall notify the RAILROAD’S Roadmaster at least thirty (30) calendar days before initially commencing work requiring a RAILROAD flagman. Any such work occurring subsequent to the work for which the 30-day notice was provided shall require at least seventy-two (72) hours’ notice to the RAILROAD’S Roadmaster.
12. The DEPARTMENT or its contractor(s) must submit _____ [number] copies in PDF format of any plans (including calculations in _____ Units) for proposed shoring, falsework, or cribbing to be used over, under, or adjacent to the RAILROAD’S tracks to the RAILROAD’S Manager of Public Projects, listed in Exhibit F, for approval.
13. The DEPARTMENT must give the RAILROAD’S Manager of Public Projects, as listed in Exhibit F, a written Notice to Proceed with the Railroad Work. The RAILROAD will not begin the Railroad Work (including, without limitation, procurement of supplies, equipment, or materials) until a written Notice to Proceed is received from the DEPARTMENT.
14. The DEPARTMENT must notify RAILROAD’S Manager of Public Projects, listed in Exhibit F, in writing, of the completion date of the Project within thirty (30) days after project completion. The

DEPARTMENT will also notify the RAILROAD'S Manager of Public Projects in writing of the date on which DEPARTMENT and/or its contractor(s) desire to meet with the RAILROAD for the purpose of conducting final inspection of the completed Overpass.

15. The DEPARTMENT must include the following provisions in any contract with its contractor(s) working on the Project:
 - A. The contractor is placed on notice that fiber optic, communication, and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried on the RAILROAD'S property or right-of-way. The contractor shall be responsible to contact the RAILROAD'S designated Engineering Representative as shown in Exhibit F and/or the telecommunications companies to determine whether there are any Lines located within the Project boundaries that could be damaged or their service disrupted due to the construction of the Project. The contractor must also use all reasonable methods when working in the RAILROAD right-of-way or on RAILROAD property to verify the location of all identified Lines as well as determine if any other Lines may exist.
 - B. Failure to mark or identify these Lines will be sufficient cause for the DEPARTMENT'S Engineer to stop construction at no cost to the DEPARTMENT or the RAILROAD until these items are completed.
 - C. In addition to the liability terms contained elsewhere in this AGREEMENT, the contractor hereby indemnifies, defends, and holds harmless the RAILROAD for, from, and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of the contractor, its subcontractors, agents, and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any lines by the contractor and/or its subcontractors, agents, and/or employees on RAILROAD'S property or within RAILROAD'S right-of-way, (2) any injury to or death of any person employed by or on behalf of any telecommunications company and/or its contractor, agents, and/or employees on the RAILROAD'S property or within the RAILROAD'S right-of-way, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by, a customer or user of such telecommunication company(ies). Any obligation to indemnify, defend, and hold harmless the RAILROAD pursuant to this provision shall not apply to costs, liability, and expenses caused by the sole negligence of the RAILROAD, its agents, employees, successors, or assigns. Where such costs, liability, and expenses are caused by or result from the concurrent negligence of: (a) the RAILROAD, its agents, employees, successors, or assigns and (b) the contractor, its agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the contractor or its agents or employees.
 - D. As between the contractor and the RAILROAD, the contractor shall be responsible to coordinate the rearrangement of any lines within the RAILROAD'S right-of-way determined to interfere with the construction of the Project. The contractor must cooperate fully with any company performing these rearrangements.
16. Except as otherwise provided below in this Section, all construction work performed hereunder by the DEPARTMENT for the Project will be pursuant to a contract or contracts to be let by the DEPARTMENT, and all such contracts must include the following:
 - A. All work performed under such contract or contracts within the limits of the RAILROAD'S right-of-way shall be performed in a good and workmanlike manner, in accordance with plans and specifications approved by the RAILROAD.

- B. Changes or modifications during construction that affect safety or RAILROAD operations shall be subject to the RAILROAD approval.
 - C. No work shall be commenced within the RAILROAD'S right-of-way until each of the contractors employed in connection with said work shall have (1) executed and delivered to RAILROAD a Right-of Entry Agreement and (2) delivered to and secured the RAILROAD'S approval of the insurance.
 - D. To facilitate scheduling for the Project, the DEPARTMENT shall have its contractor give the RAILROAD representative (Roadmaster) four (4) weeks' advance notice of the proposed times and dates for proposed work windows. The RAILROAD and the DEPARTMENT'S contractor will make all efforts to establish mutually agreeable work windows for the Project. The RAILROAD has the right at any time to revise or change the work windows due to train operations, service obligations, or other operating requirements of the railway. The RAILROAD will give the DEPARTMENT two (2) weeks' advance notice of all nonemergency schedule changes. The RAILROAD cannot be responsible for any additional costs and expenses resulting from a change in work windows or the inability to schedule work windows as requested.
17. The DEPARTMENT and its contractors, as part of any contract for work to be performed on or about the RAILROAD'S right-of-way, shall indemnify and save harmless the RAILROAD against any and all damage to or destruction of property whatsoever, or injury to or death of persons whomsoever, arising from or as a result of work on the Project (hereafter collectively "Claims"), which shall include but not be limited to interference with the normal movement of trains; whether such Claims are caused by or result from work performed by the DEPARTMENT, its contractors, or by the RAILROAD doing work at the DEPARTMENT'S direction and expense. Should the DEPARTMENT or its contractor's operations result in such Claims, the DEPARTMENT shall reimburse the RAILROAD therefore.
18. Nothing in this AGREEMENT is intended to be construed as a requirement for an indemnification against the sole negligence of the RAILROAD, its officers, employees, or agents. Moreover, for any work performed in the State of _____, the DEPARTMENT will require its contractor to indemnify the RAILROAD and any other railroad company occupying or using the RAILROAD'S right-of-way or line of railroad against all loss, liability, and damages, including environmental damages, hazardous materials damages, penalties, or fines that may be assessed for, caused by, or the result of the contractor's negligence; provided, however, that if such loss, liability, damages, penalties, or fines are caused by or result from the concurrent negligence of (a) the RAILROAD or the RAILROAD'S officers, employees, or agents and (b) the DEPARTMENT'S contractor or the contractor's employees, agents, or subcontractors, such indemnity shall be valid and enforceable only to the extent of the negligence of the DEPARTMENT'S contractor or the contractor's employees, agents, or subcontractors. Likewise, if such loss, liability, damages, penalties, or fines are caused by or result from the concurrent negligence of (a) the RAILROAD or the RAILROAD'S officers, employees, or agents and (b) the DEPARTMENT officers, employees, or agents, such indemnity shall be valid and enforceable only to the extent of the negligence of the DEPARTMENT'S officers, employees, or agents.

Section 4: Joint Obligations

In consideration of the premises, the parties hereto mutually agree to the following:

1. All work contemplated in this AGREEMENT must be performed in a good and workmanlike manner and each portion must be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence.

Furthermore, any changes or modifications during construction that affect the RAILROAD will be subject to the RAILROAD'S approval prior to the commencement of any such changes or modifications.

2. The DEPARTMENT must require its contractor(s) to reasonably adhere to the Project's construction schedule for all work. The parties hereto mutually agree that the RAILROAD'S failure to complete the Railroad Work in accordance with the construction schedule due to inclement weather, unforeseen railroad emergencies including those related to scheduling and operations, or other conditions beyond the RAILROAD'S reasonable control, will not constitute a breach of this AGREEMENT by the RAILROAD and will not subject the RAILROAD to any liability. Regardless of the requirements of the construction schedule, in the event of an unforeseen railroad emergency, the RAILROAD reserves the right to reallocate all or a portion of its labor forces assigned to perform the Railroad Work when the RAILROAD believes such reallocation is necessary to provide for the immediate restoration of railroad operations of the RAILROAD or its affiliates or to protect persons or property on or near any RAILROAD-owned property or any related railroad. The RAILROAD will not be liable for any additional costs or expenses of the Project resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by the RAILROAD pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this AGREEMENT by the RAILROAD.
3. The RAILROAD will have the right to stop construction work on the Project if any of the following events take place: (1) the DEPARTMENT (or any of its contractors) performs the work in a manner contrary to the plans and specifications approved by the RAILROAD; (2) the DEPARTMENT (or any of its contractors), in the RAILROAD'S opinion, prosecutes the work in a manner that is hazardous to RAILROAD personnel, property, facilities, or the safe and expeditious movement of railroad traffic; or (3) the insurance is canceled prior to the completion of the Project. The work stoppage will continue until all necessary actions are taken by the DEPARTMENT or its contractor(s) to rectify the situation to the satisfaction of the RAILROAD'S Division Engineer or designee listed in Exhibit F or until insurance coverage is purchased and is valid for the period of the Project and has been delivered to and accepted by the RAILROAD. Any such work stoppage under this provision will not give rise to any liability on the part of the RAILROAD. The RAILROAD'S right to stop the work is in addition to any other rights the RAILROAD may have, including, but not limited to, actions or suits for damages or lost profits. In the event that the RAILROAD desires to stop construction work on the Project, the RAILROAD agrees to immediately attempt to notify the DEPARTMENT Project Manager listed in Exhibit F by telephone and will notify the DEPARTMENT Project Manager in writing.
4. The DEPARTMENT shall supervise and inspect the operations of all DEPARTMENT contractors to ensure compliance with the plans and specifications and the terms of this AGREEMENT. If it is determined by the RAILROAD that the DEPARTMENT'S contractor is not acting in accordance with these requirements and the RAILROAD believes the situation is not being corrected in an expeditious manner, the RAILROAD shall immediately notify the DEPARTMENT so that the DEPARTMENT can take appropriate corrective action.
5. In addition to the terms and conditions set forth elsewhere in this AGREEMENT, the RAILROAD and the DEPARTMENT agree to the following terms upon completion of construction of the Project:
 - A. The DEPARTMENT will own and maintain, at its sole cost and expense, the Overpass, including the highway approaches and the appurtenances thereto, lighting, drainage, and any

access roadway up to any gate to RAILROAD property installed pursuant to this AGREEMENT. If the RAILROAD determines in good faith that emergency maintenance work on the Overpass is needed for the immediate restoration of railroad operations or for the protection of persons or RAILROAD property, such work may be performed by the RAILROAD without prior approval of the DEPARTMENT. The RAILROAD will notify the DEPARTMENT of the emergency work and the necessity for it at its earliest opportunity. The RAILROAD shall maintain records regarding the emergency work performed and the costs incurred in accordance with generally accepted accounting principles and practices. Said records shall be made available to the DEPARTMENT for audit on request during normal business hours, for a period of three (3) years after final payment is made to the RAILROAD for the emergency maintenance work. Except for the emergency work as described herein, no maintenance work will be performed on the Overpass by RAILROAD without prior written approval from the DEPARTMENT.

- B. The DEPARTMENT must, at the DEPARTMENT'S sole cost and expense, keep the Overpass painted and free from graffiti.
 - C. The DEPARTMENT must apply and maintain vertical clearance signs that consistently and accurately describe the minimum actual vertical clearance from the bottom of the Overpass to the top of the rails below.
 - D. The DEPARTMENT shall conduct inspections of the Overpass every two (2) years and provide inspection reports to the RAILROAD. The RAILROAD shall promptly provide the DEPARTMENT a right of entry to perform such inspections.
 - E. It is expressly understood by the DEPARTMENT and the RAILROAD that any right to install utilities will be governed by a separate permit or license agreement between the PARTIES hereto.
 - F. The DEPARTMENT shall make efforts to keep Overpass and surrounding areas clean and free from birds, pigeons, scavengers, vermin, creatures, and other animals.
 - G. If the DEPARTMENT (including its contractors and agents) or the RAILROAD, on behalf of the DEPARTMENT, performs (1) alterations or modifications to the Structure/Overpass, or (2) any maintenance or other work on the Overpass with heavy tools, equipment, or machinery at ground surface level horizontally within 25'-0" of the centerline of the nearest track, or (3) any maintenance or other work outside the limits of the deck of the Overpass vertically above the top of the rail, the DEPARTMENT or its contractors and/or agents must procure and maintain the following insurance coverage:
 - i. Railroad Protective Liability insurance naming only the RAILROAD as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy must be issued on a standard ISO form CG 00 35 10 93 and include the following:
 - a. Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93).
 - b. Endorsed to include the Limited Seepage and Pollution Endorsement.
 - c. No other endorsements restricting coverage may be added.
 - d. The original policy must be provided to the RAILROAD prior to performing any work or services under this AGREEMENT.
 - ii. As used in this paragraph, "RAILROAD" includes the RAILROAD and the subsidiaries, successors, assigns, and affiliates of each.
 - iii. If the above work is performed by DEPARTMENT forces, a Railroad Protective Liability Insurance Policy will not be required, since the DEPARTMENT is self-insured.
6. Except in the event of an emergency and for maintenance on the deck of the Structure/Overpass, the DEPARTMENT must notify and obtain prior authorization from the RAILROAD'S Manager of

Public Projects before entering RAILROAD right-of-way for maintenance or future alteration or reconstruction purposes, which authorization shall not be unreasonably withheld or delayed. If the alteration or reconstruction work is contracted, the DEPARTMENT will require its contractor(s) to comply with the obligations in favor of the RAILROAD.

7. The RAILROAD may, at its expense, make future changes or additions to the railroad components under the Overpass if necessary or desirable, in the RAILROAD'S sole discretion, including, without limitation, the following: (1) the right to raise or lower the grade or change the alignment of its tracks, (2) the right to lay additional track or tracks, or (3) the right to build other facilities in connection with the operation of its railroad. Such changes or additions must not change or alter the highway components of the Overpass. If it becomes necessary or desirable in the future to change, alter, widen, or reconstruct the highway components of the Overpass to meet AREMA horizontal clearance and/or crashworthiness standards and/or any DEPARTMENT requirements related to railroad projects, the cost of such work, including any cost incidental to alteration of railroad or highway facilities made necessary by any such changes to the Overpass, shall be paid for by the DEPARTMENT.
8. The DEPARTMENT may, at the DEPARTMENT'S sole expense, alter or reconstruct the Overpass if necessary or desirable, due to traffic conditions or pedestrian or other recreational traffic, provided, however, that any such alteration or reconstruction must not encroach further upon or occupy the surface of the RAILROAD'S right-of-way without obtaining the RAILROAD'S prior written consent and the execution of a supplement to this AGREEMENT or the completion of a separate written agreement.
9. Any books, papers, records, and accounts of the PARTIES hereto relating to the work hereunder or the costs or expenses for labor and material connected with the construction will at all reasonable times be open to inspection and audit by the agents and authorized representatives of the PARTIES hereto, as well as the State of _____ and the Federal Highway Administration, for a period of three (3) years from the date of final payment under this AGREEMENT.
10. The covenants and provisions of this AGREEMENT are binding on and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the preceding sentence, neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party. Provided, that the DEPARTMENT may transfer or assign its interest in this AGREEMENT to any other public agency or public entity as permitted by law, provided that such successor or assignee has assumed all the obligations, duties, and liabilities of the DEPARTMENT under this AGREEMENT then in effect, and has provided the RAILROAD with reasonable assurances of its legal and financial authority to honor and perform the same.
11. In the event that construction of the Project does not commence within three (3) years of the Effective Date, this AGREEMENT will become null and void.
12. Neither termination nor expiration of this AGREEMENT will release either party from any liability or obligation under this AGREEMENT, whether of indemnity or otherwise, resulting from any acts, omissions, or events happening prior to the date of termination or expiration.
13. To the maximum extent possible, each provision of this AGREEMENT will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this AGREEMENT is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.
14. This AGREEMENT (including exhibits and other documents, manuals, and so forth incorporated herein) is the full and complete agreement between the RAILROAD and the DEPARTMENT with

respect to the subject matter herein and supersedes any and all other prior agreements between the PARTIES hereto.

15. Any notice provided for herein or concerning this AGREEMENT must be in writing and will be deemed sufficiently given when sent by certified mail, return receipt requested, to the PARTIES at the following addresses:

RAILROAD
Contact Name: _____
Address: _____

City: _____ State: _____
Contact Number: _____

DEPARTMENT
Contact Name: _____
Address: _____

City: _____ State: _____
Contact Number: _____

16. No modification or amendment to this AGREEMENT shall be valid until the same is provided in writing and executed with the same formalities as were attendant to the AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have caused this MASTER AGREEMENT to be executed in duplicate by their proper officers thereunto duly authorized, as of the day and year first herein written.

RAILROAD (Federal Tax ID # _____)
By: _____
Title: _____

DEPARTMENT
By: _____
Title: _____

EXHIBIT A

DETAILED PLAN OF STRUCTURE/OVERPASS
FOR PROJECT

Note: The plans will include structure, grading, paving, drainage, and fence.

EXHIBIT B

DETAILED PLANS HIGHLIGHTING RIGHT-OF-WAY AND TEMPORARY EASEMENTS REQUIRED FOR PROJECT

Note: These plans will highlight and color code plans in Exhibit A to show the easement, slope, footing, and temporary construction easement and additional square feet to allow the Department to work on construction and will include square feet for other necessary work.

EXHIBIT C

COST ESTIMATE FOR
TEMPORARY EASEMENT, INCLUDING FOOTING EASEMENT

The estimated cost of easement includes a Footing Easement of _____ square feet, highlighted in red in Exhibit B, and a Slope Easement of _____ square feet, designated in blue in Exhibit B.

For the Temporary Construction Easement, highlighted in green (_____ square feet) in Exhibit B, the DEPARTMENT agrees to pay the RAILROAD the sum of \$ _____ for a one-year term.

The DEPARTMENT agrees to pay the RAILROAD the sum of \$ _____ as compensation for the combined Footing, Slope, and Temporary Construction Easements.

EXHIBIT D

WORK REQUIRED BY THE RAILROAD ON THE PROJECT

Note: This Exhibit will include cost estimates for work to be done by the Railroad.

Preliminary engineering, design, and contract preparation, costing \$ _____.

Changes in communication and signal lines, interlocking and signal apparatus, costing \$ _____.

Furnishing of flagging services and other protective services necessary for the safety of the RAILROAD'S personnel and property and for the operation of its trains during construction of the Project, costing \$ _____.

Furnishing engineering and inspection as required by the RAILROAD in connection with the construction of the Project, costing \$.

EXHIBIT E

APPROVAL BY THE RAILROAD OF THE PROJECT

The RAILROAD hereby approves the plans and specifications and Temporary Easement and other work detailed in Exhibit A and Exhibit B.

RAILROAD

(Federal Tax ID # _____)

By: _____

Title: _____

Date: _____

EXHIBIT F

DEPARTMENT AND RAILROAD
DESIGNATED CONTACTS FOR THE PROJECT

Note: This Exhibit will list contacts for the Railroad and the Department.

RAILROAD'S MANAGER OF PUBLIC PROJECTS

Railroad: _____

Name: _____

Contact Phone: _____

RAILROAD'S ENGINEERING REPRESENTATIVE

Railroad: _____

Name: _____

Contact Phone: _____

DEPARTMENT PROJECT MANAGER

Name: _____

Contact Phone: _____

Mailing Address: _____