

**FIRST AMENDMENT TO FORMAL AGREEMENT  
SECOND AMENDMENT TO FORMAL AGREEMENT  
THIRD AMENDMENT TO FORMAL AGREEMENT  
FOURTH AMENDMENT TO FORMAL AGREEMENT**

**SOUTHWEST PARKWAY/SH 121  
DAVIDSON YARD**

## FIRST AMENDMENT TO FORMAL AGREEMENT

### SOUTHWEST PARKWAY/SH 121

THIS FIRST AMENDMENT TO FORMAL AGREEMENT (this "Amendment") is made and entered into as of the 19th day of May, 2009 (the "Effective Date"), by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (the "Railroad"), the NORTH TEXAS TOLLWAY AUTHORITY, a regional tollway authority and political subdivision of the State of Texas (the "NTTA"), the CITY OF FORT WORTH, TEXAS, a Texas home-rule municipality (the "City"), and the TEXAS DEPARTMENT OF TRANSPORTATION, an agency of the State of Texas ("TxDOT"). The Railroad, the NTTA, the City and TxDOT are herein collectively called the "Parties".

#### RECITALS:

A. The Railroad, the NTTA, the City and TxDOT (TxDOT, the NTTA and the City are sometimes herein collectively called the "Project Partners"), entered into that certain Southwest Parkway/SH 121 Union Pacific Railroad/Project Partners Formal Agreement executed as of January 8, 2009 (the "Formal Agreement"), pursuant to which the Railroad and the Project Partners established certain agreements and understandings with respect to the design, construction, operation and maintenance of Southwest Parkway/SH 121 ("SWP/SH 121")

B. Part of the development of SWP/SH 121 involves (i) the design and construction of the two new SWP/SH 121 Bridges and the new Hulen Street Bridge, (ii) the design and construction of certain retaining walls and related drainage systems at various locations along the boundaries separating the North Mainline Bypass Tracks and other portions of the Railroad's Davidson Yard from the right of way of SWP/SH 121 and other properties of the Project Partners, and (iii) the demolition of the now-existing bridge carrying Hulen Street, all of which shall take place upon, over, across or adjacent to the Davidson Yard, which is owned and operated by the Railroad (the "Crossing Project").

C. In connection with the Crossing Project, (i) the Railroad will design and construct the 4+4+4 Plan, including the design and construction of the North Mainline Bypass Tracks, (ii) the Railroad will design and construct certain retaining walls and related drainage systems at various locations along the boundaries separating the North Mainline Bypass Tracks and other portions of the Railroad's Davidson Yard from the right of way of SWP/SH 121 and other properties of the Project Partners, and (iii) the Railroad has elected to design and construct the Trinity River Railroad Bridge, the easterly extension of trackage and certain other related improvements (collectively, the "Railroad Project").

D. In connection with the Crossing Project, the City will design and construct certain relocated and new water and sewer lines under the Railroad's Davidson Yard as part of the development of SWP/SH 121 (the "City Utility Work").

E. Section III.L. of the Formal Agreement (i) acknowledged that, as of the date of execution of the Formal Agreement, the design, investigation and due diligence of, and with respect to, the Crossing Project, the Railroad Project and the City Utility Work (collectively, the "Project") had not progressed to a point that would enable the Parties to (1) establish a mutually acceptable Construction Schedule for the Project, (2) determine that the Parties' respective structures would coexist, (3) identify the respective property interests that the Parties would require from third parties and from one another for the Project, (4) determine whether the necessary Permits for the Project could be obtained on a timely basis and on reasonably acceptable terms and conditions, (5) determine whether the environmental condition of the relevant properties was satisfactory, and (6) determine the financial feasibility and availability of funds

for the Project (collectively, the "Conditions Precedent"); and (ii) afforded any of the Parties the right to terminate the Formal Agreement if such Conditions Precedent had not been addressed to their satisfaction by May 19, 2009.

F. The Parties desire to enter into this Amendment to extend the date by which the Conditions Precedent are to be satisfied.

#### AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree, as follows:

1. Defined Terms. Capitalized terms used but not defined in this Amendment shall have the meanings given to such terms in the Formal Agreement.

2. Hump Lead. The Railroad acknowledges and agrees that the construction and testing of the Hump Lead was successful and satisfied the Criteria set forth in the Hump Lead Agreement. Consequently, the Railroad acknowledges that there remains no right to terminate the Formal Agreement by reason of, or related to, the test of the Hump Lead.

3. Extension of Conditions Precedent. Sections III.E.4, III.H.1, III.H.3, III.H.5, III.I.3, III.J.5 and III.L of the Formal Agreement are hereby amended by deleting each the references therein to "May 19, 2009" and substituting "June 17, 2009" in place thereof, and Section III.L of the Formal Agreement is hereby amended by deleting each of the references therein to "June 2, 2009" and substituting "July 1, 2009" in place thereof.

4. Termination Notices under Section III.L. Notwithstanding anything in Section III.P.2 of the Formal Agreement to the contrary, the Parties hereby stipulate and agree that any notice of termination given by a Party under Section III.L of the Formal Agreement may be given, in addition to the means currently provided in the Formal Agreement, via electronic mail (\*.pdf or similar file types) and shall be effective when sent if sent before 6:00 p.m. central time and otherwise shall be deemed sent on the next succeeding business day, provided a copy of such notice is also sent pursuant to one of the methods authorized under Section III.P.2 of the Formal Agreement. The email addresses for the notice parties under the Formal Agreement are as follows: (a) UPRR, to gsullivan@up.com, (b) TxDOT, to mchavez@dot.state.tx.us, (c) the City at amy.ramsey@fortworthgov.org, and (d) NITA, to rherrington@nita.org.

5. Miscellaneous.

(a) Representations and Warranties. Each of the Parties hereby represents and warrants to the other Parties that (i) such Party has full power and authority to execute and deliver this Amendment and to effectuate the terms hereof without the approval or consent of any other Person that has not been obtained; and (ii) this Amendment constitutes the legal, valid and binding obligation and agreement of such Party, enforceable against such Party in accordance with its terms. Without limiting the foregoing, the signatories to this Amendment warrant that each has the authority to enter into this Amendment on behalf of the Party represented.

(b) No Other Modifications. Notwithstanding anything to the contrary contained herein or inferred hereby, or in any other instrument executed by the Parties, or in any other action or conduct undertaken by the Parties on or before the date of execution hereof, the agreements, covenants

and provisions contained herein constitute the only evidence of the Parties' agreement to modify the terms and provisions of the Formal Agreement. No express or implied consent to any further modifications of the Formal Agreement shall be inferred or implied from the Parties' execution of this Amendment.

(c) No Waivers. The Parties hereby agree that neither the purchase of materials, the commencement of any field work (including site mobilization, fiber-optic relocation, or grading), nor the undertaking of any other design, acquisition or construction-related steps by any of the Parties in anticipation that the Parties' will be able to timely and collectively satisfy the Conditions Precedent shall not constitute a satisfaction, modification or waiver by such Party or Parties of any of the Conditions Precedent or of such Party's or Parties' related termination rights under Section III.L. of the Formal Agreement nor a waiver of any rights or defenses available to the Parties at law (including by statute) or in equity in the event this Agreement is terminated in accordance with its terms.

(d) Choice of Law. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS WITHOUT GIVING EFFECT TO ANY PRINCIPLES OF CONFLICTS OF LAWS.

(e) Execution. This Amendment may be executed in multiple counterparts, each of which for all purposes is deemed an original, and all of which constitute collectively one agreement. Signatures of this Amendment transmitted by facsimile or via electronic mail (\*.pdf or similar file types) shall be valid and effective to bind the Party so signing.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have caused this Amendment to be duly executed as of the Effective Date first herein written.

**UNION PACIFIC RAILROAD COMPANY,**  
a Delaware corporation

By: *Lawrence E. Wzorek*  
Name: Lawrence E. Wzorek  
Title: Assistant Vice President - Law

**NORTH TEXAS TOLLWAY AUTHORITY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

**LOCKE LORD BISSELL & LIDDELL, LLP,**  
General Counsel

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

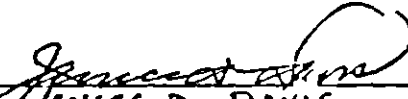
Signature Pages to  
First Amendment to Formal Agreement

IN WITNESS WHEREOF, the Parties have caused this Amendment to be duly executed as of the Effective Date first herein written.

**UNION PACIFIC RAILROAD COMPANY,**  
a Delaware corporation


By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**NORTH TEXAS TOLLWAY AUTHORITY**

By:   
Name: NANICE D. DAVIS  
Title: INTERIM EXEC. DIRECTOR

APPROVED AS TO FORM:


**LOCKE LORD BISSELL & LIDDELL, LLP,**  
General Counsel

By:   
Name: Frank E. Skovran  
Title: Partner


Signature Pages to  
First Amendment to Formal Agreement

DAL:0567318/47205:1858991v2

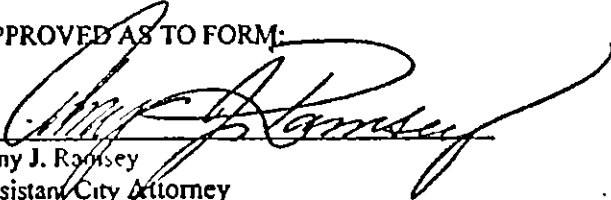
**CITY OF FORT WORTH,**

  
\_\_\_\_\_  
Fernando Costa  
Assistant City Manager

**RECOMMENDED BY:**

  
\_\_\_\_\_  
Bryan Beck, P.E., Program Manager  
City Manager's Office

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Amy J. Ramsey  
Assistant City Attorney

**ATTEST:**

  
\_\_\_\_\_  
Mary Hendrix  
City Secretary

Authorization: M&C C-23519

Date: May 19, 2009

**TEXAS DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signature Pages to  
First Amendment to Formal Agreement

**CITY OF FORT WORTH,**

---

Fernando Costa  
Assistant City Manager

**RECOMMENDED BY:**

---

Bryan Beck, P.E., Program Manager  
City Manager's Office

**APPROVED AS TO FORM:**

---

Amy J. Ramsey  
Assistant City Attorney

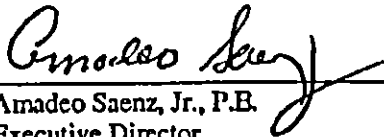
**ATTEST:**

---

Mary Hendrix  
City Secretary

Authorization: M&C C-23519  
Date: May 19, 2009

**TEXAS DEPARTMENT OF TRANSPORTATION**

  
\_\_\_\_\_  
Amadeo Saenz, Jr., P.E.  
Executive Director

Signature Pages to  
First Amendment to Formal Agreement



## SECOND AMENDMENT TO FORMAL AGREEMENT

### SOUTHWEST PARKWAY/SH 121

THIS SECOND AMENDMENT TO FORMAL AGREEMENT (this "Amendment") is made and entered into as of the 17<sup>th</sup> day of June, 2009 (the "Effective Date"), by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (the "Railroad"), the NORTH TEXAS TOLLWAY AUTHORITY, a regional tollway authority and political subdivision of the State of Texas (the "NTTA"), the CITY OF FORT WORTH, TEXAS, a Texas home-rule municipality (the "City"), and the TEXAS DEPARTMENT OF TRANSPORTATION, an agency of the State of Texas ("TxDOT"). The Railroad, the NTTA, the City and TxDOT are herein collectively called the "Parties".

#### RECITALS:

A. The Railroad, the NTTA, the City and TxDOT (TxDOT, the NTTA and the City are sometimes herein collectively called the "Project Partners"), entered into that certain Southwest Parkway/SH 121 Union Pacific Railroad/Project Partners Formal Agreement executed as of January 8, 2009 (the "Formal Agreement"), pursuant to which the Railroad and the Project Partners established certain agreements and understandings with respect to the design, construction, operation and maintenance of Southwest Parkway/SH 121 ("SWP/SH 121").

B. Part of the development of SWP/SH 121 involves (i) the design and construction of the two new SWP/SH 121 Bridges and the new Hulen Street Bridge, (ii) the design and construction of certain retaining walls and related drainage systems at various locations along the boundaries separating the North Mainline Bypass Tracks and other portions of the Railroad's Davidson Yard from the right of way of SWP/SH 121 and other properties of the Project Partners, and (iii) the demolition of the now-existing bridge carrying Hulen Street, all of which shall take place upon, over, across or adjacent to the Davidson Yard, which is owned and operated by the Railroad (the "Crossing Project").

C. In connection with the Crossing Project, (i) the Railroad will design and construct the 4+4+4 Plan, including the design and construction of the North Mainline Bypass Tracks, (ii) the Railroad will design and construct certain retaining walls and related drainage systems at various locations along the boundaries separating the North Mainline Bypass Tracks and other portions of the Railroad's Davidson Yard from the right of way of SWP/SH 121 and other properties of the Project Partners, and (iii) the Railroad has elected to design and construct the Trinity River Railroad Bridge, the easterly extension of trackage and certain other related improvements (collectively, the "Railroad Project").

D. In connection with the Crossing Project, the City will design and construct certain relocated and new water and sewer lines under the Railroad's Davidson Yard as part of the development of SWP/SH 121 (the "City Utility Work").

E. Section III.L. of the Formal Agreement (i) acknowledged that, as of the date of execution of the Formal Agreement, the design, investigation and due diligence of, and with respect to, the Crossing Project, the Railroad Project and the City Utility Work (collectively, the "Project") had not progressed to a point that would enable the Parties to (1) establish a mutually acceptable Construction Schedule for the Project, (2) determine that the Parties' respective structures would coexist, (3) identify the respective property interests that the Parties would require from third parties and from one another for the Project, (4) determine whether the necessary Permits for the Project could be obtained on a timely basis and on reasonably acceptable terms and conditions, (5) determine whether the environmental condition of the relevant properties was satisfactory, and (6) determine the financial feasibility and availability of funds

for the Project (collectively, the "Conditions Precedent"); and (ii) afforded any of the Parties the right to terminate the Formal Agreement if such Conditions Precedent had not been addressed to their satisfaction by May 19, 2009.

F. Pursuant to a First Amendment to Formal Agreement dated as of May 19, 2009, the Parties extended the date by which the Conditions Precedent were to be satisfied to June 17, 2009.

G. The Parties desire to enter into this Amendment to further extend the date by which the Conditions Precedent are to be satisfied.

#### **AGREEMENT:**

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree, as follows:

1. **Defined Terms.** Capitalized terms used but not defined in this Amendment shall have the meanings given to such terms in the Formal Agreement.

2. **Extension of Conditions Precedent.** Sections III.E.4, III.H.1, III.H.3, III.H.5, III.I.3, III.J.5 and III.L of the Formal Agreement are hereby amended by deleting each the references therein to "June 17, 2009" and substituting "August 20, 2009" in place thereof, and Section III.L of the Formal Agreement is hereby amended by deleting each of the references therein to "July 1, 2009" and substituting "September 3, 2009" in place thereof.

3. **Termination Notices under Section III.L.** Notwithstanding anything in Section III.P.2 of the Formal Agreement to the contrary, the Parties hereby stipulate and agree that any notice of termination given by a Party under Section III.L of the Formal Agreement may be given, in addition to the means currently provided in the Formal Agreement, via electronic mail (\*.pdf or similar file types) and shall be effective when sent if sent before 6:00 p.m. central time and otherwise shall be deemed sent on the next succeeding business day, provided a copy of such notice is also sent pursuant to one of the methods authorized under Section III.P.2 of the Formal Agreement. The email addresses for the notice parties under the Formal Agreement are as follows: (a) UPRR, to gsulliva@up.com, (b) TxDOT, to mchavez@dot.state.tx.us, (c) the City at amy.ramsey@fortworthgov.org, and (d) NTTA, to rherrington@ntta.org.

4. **Miscellaneous.**

(a) **Representations and Warranties.** Each of the Parties hereby represents and warrants to the other Parties that (i) such Party has full power and authority to execute and deliver this Amendment and to effectuate the terms hereof without the approval or consent of any other Person that has not been obtained; and (ii) this Amendment constitutes the legal, valid and binding obligation and agreement of such Party, enforceable against such Party in accordance with its terms. Without limiting the foregoing, the signatories to this Amendment warrant that each has the authority to enter into this Amendment on behalf of the Party represented.

(b) **No Other Modifications.** Notwithstanding anything to the contrary contained herein or inferred hereby, or in any other instrument executed by the Parties, or in any other action or conduct undertaken by the Parties on or before the date of execution hereof, the agreements, covenants and provisions contained herein constitute the only evidence of the Parties' agreement to modify the terms and provisions of the Formal Agreement. No express or implied consent to any further

modifications of the Formal Agreement shall be inferred or implied from the Parties' execution of this Amendment.

(c) No Waivers. The Parties hereby agree that neither the purchase of materials, the commencement of any field work (including site mobilization, fiber-optic relocation, or grading), nor the undertaking of any other design, acquisition or construction-related steps by any of the Parties in anticipation that the Parties' will be able to timely and collectively satisfy the Conditions Precedent shall not constitute a satisfaction, modification or waiver by such Party or Parties of any of the Conditions Precedent or of such Party's or Parties' related termination rights under Section III.L. of the Formal Agreement nor a waiver of any rights or defenses available to the Parties at law (including by statute) or in equity in the event this Agreement is terminated in accordance with its terms.

(d) Choice of Law. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS WITHOUT GIVING EFFECT TO ANY PRINCIPLES OF CONFLICTS OF LAWS.

(e) Execution. This Amendment may be executed in multiple counterparts, each of which for all purposes is deemed an original, and all of which constitute collectively one agreement. Signatures of this Amendment transmitted by facsimile or via electronic mail (\*.pdf or similar file types) shall be valid and effective to bind the Party so signing.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have caused this Amendment to be duly executed as of the Effective Date first herein written.

**UNION PACIFIC RAILROAD COMPANY,**  
a Delaware corporation

By: *Lawrence E. Wzorek*  
Name: Lawrence E. Wzorek  
Title: Assistant Vice President - Law

**NORTH TEXAS TOLLWAY AUTHORITY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

**LOCKE LORD BISSELL & LIDDELL, LLP,**  
General Counsel

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signature Pages to  
Second Amendment to Formal Agreement

DAL:0567318/47205:1864604v1

IN WITNESS WHEREOF, the Parties have caused this Amendment to be duly executed as of the Effective Date first herein written.

**UNION PACIFIC RAILROAD COMPANY,**  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**NORTH TEXAS TOLLWAY AUTHORITY**

By: Allen Clemson  
Name: Allen Clemson  
Title: Executive Director

APPROVED AS TO FORM:

**LOCKE LORD BISSELL & LIDDELL, LLP,**  
General Counsel

By: Frank E. Stevenson  
Name: Frank E. Stevenson  
Title: Partner

Signature Pages to  
Second Amendment to Formal Agreement

DAL-0567318/47205:1864604v1

CITY OF FORT WORTH,



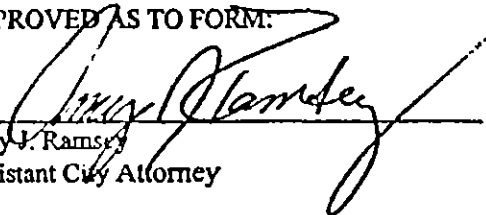
Fernando Costa  
Assistant City Manager

RECOMMENDED BY:



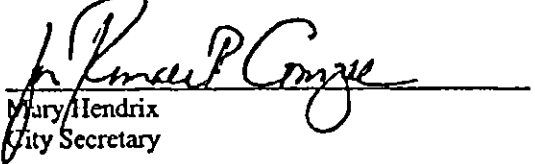
Bryan Beck, P.E., Program Manager  
City Manager's Office

APPROVED AS TO FORM:



Amy J. Ramsey  
Assistant City Attorney

ATTEST:



Mary Hendrix  
City Secretary

Authorization: C-23586  
Date: June 16, 2009

TEXAS DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signature Pages to  
Second Amendment to Formal Agreement

**CITY OF FORT WORTH,**

\_\_\_\_\_  
Fernando Costa  
Assistant City Manager

**RECOMMENDED BY:**

\_\_\_\_\_  
Bryan Beck, P.E., Program Manager  
City Manager's Office

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Amy J. Ramsey  
Assistant City Attorney

**ATTEST:**

\_\_\_\_\_  
Mary Hendrix  
City Secretary

Authorization: \_\_\_\_\_  
Date: \_\_\_\_\_, 2009

**TEXAS DEPARTMENT OF TRANSPORTATION**

By: Amadeo Saenz, Jr. P.E.  
Name: Amadeo Saenz, Jr., P.E.  
Title: Executive Director

Signature Pages to  
Second Amendment to Formal Agreement

## THIRD AMENDMENT TO FORMAL AGREEMENT

### SOUTHWEST PARKWAY/SH 121

THIS THIRD AMENDMENT TO FORMAL AGREEMENT (this "Amendment") is made and entered into as of the 20<sup>th</sup> day of August, 2009 (the "Effective Date"), by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (the "Railroad"), the NORTH TEXAS TOLLWAY AUTHORITY, a regional tollway authority and political subdivision of the State of Texas (the "NTTA"), the CITY OF FORT WORTH, TEXAS, a Texas home-rule municipality (the "City"), and the TEXAS DEPARTMENT OF TRANSPORTATION, an agency of the State of Texas ("TxDOT"). The Railroad, the NTTA, the City and TxDOT are herein collectively called the "Parties".

#### RECITALS:

A. The Railroad, the NTTA, the City and TxDOT (TxDOT, the NTTA and the City are sometimes herein collectively called the "Project Partners"), entered into that certain Southwest Parkway/SH 121 Union Pacific Railroad/Project Partners Formal Agreement executed as of January 8, 2009 (the "Formal Agreement"), pursuant to which the Railroad and the Project Partners established certain agreements and understandings with respect to the design, construction, operation and maintenance of Southwest Parkway/SH 121 ("SWP/SH 121").

B. Part of the development of SWP/SH 121 involves (i) the design and construction of the two new SWP/SH 121 Bridges and the new Hulen Street Bridge, (ii) the design and construction of certain retaining walls and related drainage systems at various locations along the boundaries separating the North Mainline Bypass Tracks and other portions of the Railroad's Davidson Yard from the right of way of SWP/SH 121 and other properties of the Project Partners, and (iii) the demolition of the now-existing bridge carrying Hulen Street, all of which shall take place upon, over, across or adjacent to the Davidson Yard, which is owned and operated by the Railroad (the "Crossing Project").

C. In connection with the Crossing Project, (i) the Railroad will design and construct the 4+4+4 Plan, including the design and construction of the North Mainline Bypass Tracks, (ii) the Railroad will design and construct certain retaining walls and related drainage systems at various locations along the boundaries separating the North Mainline Bypass Tracks and other portions of the Railroad's Davidson Yard from the right of way of SWP/SH 121 and other properties of the Project Partners, and (iii) the Railroad has elected to design and construct the Trinity River Railroad Bridge, the easterly extension of trackage and certain other related improvements (collectively, the "Railroad Project").

D. In connection with the Crossing Project, the City will design and construct certain relocated and new water and sewer lines under the Railroad's Davidson Yard as part of the development of SWP/SH 121 (the "City Utility Work").

E. Section III.L. of the Formal Agreement (i) acknowledged that, as of the date of execution of the Formal Agreement, the design, investigation and due diligence of, and with respect to, the Crossing Project, the Railroad Project and the City Utility Work (collectively, the "Project") had not progressed to a point that would enable the Parties to (1) establish a mutually acceptable Construction Schedule for the Project, (2) determine that the Parties' respective structures would coexist, (3) identify the respective property interests that the Parties would require from third parties and from one another for the Project, (4) determine whether the necessary Permits for the Project could be obtained on a timely basis and on reasonably acceptable terms and conditions, (5) determine whether the environmental condition of the relevant properties was satisfactory, and (6) determine the financial feasibility and availability of funds



for the Project (collectively, the "Conditions Precedent"); and (ii) afforded any of the Parties the right to terminate the Formal Agreement if such Conditions Precedent had not been addressed to their satisfaction by May 19, 2009.

F. Pursuant to a First Amendment to Formal Agreement dated as of May 19, 2009, the Parties (i) extended the date by which the Conditions Precedent were to be satisfied to June 17, 2009 and (ii) the date by which notice of termination must be given with respect to certain of such Conditions Precedent to July 1, 2009.

G. Pursuant to a Second Amendment to Formal Agreement dated as of June 17, 2009, the Parties (i) extended the date by which the Conditions Precedent were to be satisfied to August 20, 2009 and (ii) the date by which notice of termination must be given with respect to certain of such Conditions Precedent to September 3, 2009.

H. The Parties desire to enter into this Amendment to further extend the date by which the Conditions Precedent are to be satisfied and the date by which notice of termination must be given with respect to certain of such Conditions Precedent.

#### AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree, as follows:

1. Defined Terms. Capitalized terms used but not defined in this Amendment shall have the meanings given to such terms in the Formal Agreement.

2. Extension of Period to Satisfy Conditions Precedent. Sections III.E.4, III.H.1, III.H.3, III.H.5, III.I.3, III.J.5, III.L.1, III.L.2 and III.L.6 of the Formal Agreement are hereby amended by deleting each the references therein to "August 20, 2009" and substituting "September 1, 2009" in place thereof. In addition, Section III.I.4 of the Formal Agreement is hereby amended by deleting the reference therein to "May 20, 2009" and substituting "September 2, 2009" in place thereof.

3. Extension of Date by Which Termination Notice Must be Given. Sections III.L.3, III.L.4 and III.L.5 of the Formal Agreement are hereby deleted in their entirety and the following are substituted as new Sections III.L.3, III.L.4 and III.L.5 in place thereof:

3. In addition to the foregoing, if UPRR reasonably determines, on or before September 1, 2009, 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, UPRR shall have the right to terminate this Formal Agreement by delivering written notice thereof to all other Parties on or before September 3, 2009.

4. In addition to the foregoing, if any Project Partner reasonably determines, on or before September 1, 2009, that UPRR is unlikely to obtain its required Permits prior to January 1, 2010, any such Project Partner shall have the right to terminate this Formal Agreement by delivering written notice thereof to all other Parties on or before September 3, 2009. Notwithstanding the foregoing, if prior to September 1, 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 or before September 1, 2009, 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 September 3, 2009.

4. Termination Notices under Section III.L. Notwithstanding anything in Section III.P.2 of the Formal Agreement to the contrary, the Parties hereby stipulate and agree that any notice of termination given by a Party under Section III.L of the Formal Agreement may be given, in addition to the means currently provided in the Formal Agreement, via electronic mail (\*.pdf or similar file types) and shall be effective when sent if sent before 6:00 p.m. central time and otherwise shall be deemed sent on the next succeeding business day, provided a copy of such notice is also sent pursuant to one of the methods authorized under Section III.P.2 of the Formal Agreement. The email addresses for the notice parties under the Formal Agreement are as follows: (a) UPRR, to gsulliva@up.com, (b) TxDOT, to mchavez@dot.state.tx.us, (c) the City at amy.ramsey@fortworthgov.org, and (d) NTTA, to rherrington@ntta.org.

5. Miscellaneous.

(a) Representations and Warranties. Each of the Parties hereby represents and warrants to the other Parties that (i) such Party has full power and authority to execute and deliver this Amendment and to effectuate the terms hereof without the approval or consent of any other Person that has not been obtained; and (ii) this Amendment constitutes the legal, valid and binding obligation and agreement of such Party, enforceable against such Party in accordance with its terms. Without limiting the foregoing, the signatories to this Amendment warrant that each has the authority to enter into this Amendment on behalf of the Party represented.

(b) No Other Modifications. Notwithstanding anything to the contrary contained herein or inferred hereby, or in any other instrument executed by the Parties, or in any other action or conduct undertaken by the Parties on or before the date of execution hereof, the agreements, covenants and provisions contained herein constitute the only evidence of the Parties' agreement to modify the terms and provisions of the Formal Agreement. No express or implied consent to any further modifications of the Formal Agreement shall be inferred or implied from the Parties' execution of this Amendment.

(c) No Waivers. The Parties hereby agree that neither the purchase of materials, the commencement of any field work (including site mobilization, fiber-optic relocation, or grading), nor the undertaking of any other design, acquisition or construction-related steps by any of the Parties in anticipation that the Parties' will be able to timely and collectively satisfy the Conditions Precedent shall not constitute a satisfaction, modification or waiver by such Party or Parties of any of the Conditions Precedent or of such Party's or Parties' related termination rights under Section III.L. of the Formal Agreement nor a waiver of any rights or defenses available to the Parties at law (including by statute) or in equity in the event this Agreement is terminated in accordance with its terms.

(d) Choice of Law. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS WITHOUT GIVING EFFECT TO ANY PRINCIPLES OF CONFLICTS OF LAWS.

(e) Execution. This Amendment may be executed in multiple counterparts, each of which for all purposes is deemed an original, and all of which constitute collectively one agreement.

Signatures of this Amendment transmitted by facsimile or via electronic mail (\*.pdf or similar file types) shall be valid and effective to bind the Party so signing.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have caused this Amendment to be duly executed as of the Effective Date first herein written.

**UNION PACIFIC RAILROAD COMPANY,**  
a Delaware corporation

By: Lawrence E. Wzotek  
Name: Lawrence E. Wzotek  
Title: Assistant Vice President - Law

**NORTH TEXAS TOLLWAY AUTHORITY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

**LOCKE LORD BISSELL & LIDDELL, LLP,**  
General Counsel

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signature Pages to  
Third Amendment to Formal Agreement

DAL:0567318/47205:1874660v2

IN WITNESS WHEREOF, the Parties have caused this Amendment to be duly executed as of the Effective Date first herein written.

**UNION PACIFIC RAILROAD COMPANY,**  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**NORTH TEXAS TOLLWAY AUTHORITY**

By: Allen Clemson  
Name: Allen Clemson  
Title: Executive Director

APPROVED AS TO FORM:

**LOCKE LORD BISSELL & LIDDELL, LLP,**  
General Counsel

By: Frank E. Stevenson  
Name: Frank E. Stevenson  
Title: Partner

Signature Pages to  
Third Amendment to Formal Agreement

CITY OF FORT WORTH,



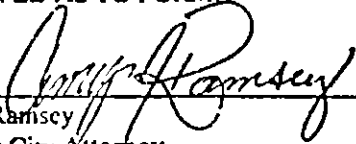
Fernando Costa  
Assistant City Manager

RECOMMENDED BY:



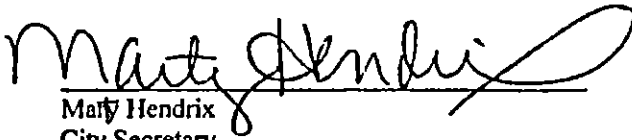
Bryan Beck, P.E., Program Manager  
City Manager's Office

APPROVED AS TO FORM:



Amy J. Ramsey  
Assistant City Attorney

ATTEST:



Mary Hendrix  
City Secretary

Authorization: C-73716  
Date: August 18, 2009

TEXAS DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY OF FORT WORTH,**

\_\_\_\_\_  
Fernando Costa  
Assistant City Manager

**RECOMMENDED BY:**

\_\_\_\_\_  
Bryan Beck, P.E., Program Manager  
City Manager's Office

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Amy J. Ramsey  
Assistant City Attorney

**ATTEST:**

\_\_\_\_\_  
Mary Hendrix  
City Secretary

Authorization: \_\_\_\_\_  
Date: August \_\_\_\_, 2009

**TEXAS DEPARTMENT OF TRANSPORTATION**

By: *Arnoldo Sanchez Jr.*  
Name: Arnoldo Sanchez Jr.  
Title: Executive Director

Signature Pages to  
Third Amendment to Formal Agreement

## FOURTH AMENDMENT TO FORMAL AGREEMENT

### SOUTHWEST PARKWAY/SH 121

THIS FOURTH AMENDMENT TO FORMAL AGREEMENT (this "Amendment") is made and entered into as of the 1<sup>st</sup> day of September, 2009 (the "Effective Date"), by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (the "Railroad"), the NORTH TEXAS TOLLWAY AUTHORITY, a regional tollway authority and political subdivision of the State of Texas (the "NTTA"), the CITY OF FORT WORTH, TEXAS, a Texas home-rule municipality (the "City"), and the TEXAS DEPARTMENT OF TRANSPORTATION, an agency of the State of Texas ("TxDOT"). The Railroad, the NTTA, the City and TxDOT are herein collectively called the "Parties".

#### RECITALS:

A. The Railroad, the NTTA, the City and TxDOT (TxDOT, the NTTA and the City are sometimes herein collectively called the "Project Partners"), entered into that certain Southwest Parkway/SH 121 Union Pacific Railroad/Project Partners Formal Agreement executed as of January 8, 2009 (the "Formal Agreement"), pursuant to which the Railroad and the Project Partners established certain agreements and understandings with respect to the design, construction, operation and maintenance of Southwest Parkway/SH 121 ("SWP/SH 121").

B. Part of the development of SWP/SH 121 involves (i) the design and construction of the two new SWP/SH 121 Bridges and the new Hulen Street Bridge, (ii) the design and construction of certain retaining walls and related drainage systems at various locations along the boundaries separating the North Mainline Bypass Tracks and other portions of the Railroad's Davidson Yard from the right of way of SWP/SH 121 and other properties of the Project Partners, and (iii) the demolition of the now-existing bridge carrying Hulen Street, all of which shall take place upon, over, across or adjacent to the Davidson Yard, which is owned and operated by the Railroad (the "Crossing Project").

C. In connection with the Crossing Project, (i) the Railroad will design and construct the 4+4+4 Plan, including the design and construction of the North Mainline Bypass Tracks, (ii) the Railroad will design and construct certain retaining walls and related drainage systems at various locations along the boundaries separating the North Mainline Bypass Tracks and other portions of the Railroad's Davidson Yard from the right of way of SWP/SH 121 and other properties of the Project Partners, and (iii) the Railroad has elected to design and construct the Trinity River Railroad Bridge, the easterly extension of trackage and certain other related improvements (collectively, the "Railroad Project").

D. In connection with the Crossing Project, the City will design and construct certain relocated and new water and sewer lines under the Railroad's Davidson Yard as part of the development of SWP/SH 121 (the "City Utility Work").

E. Section III.L. of the Formal Agreement (i) acknowledged that, as of the date of execution of the Formal Agreement, the design, investigation and due diligence of, and with respect to, the Crossing Project, the Railroad Project and the City Utility Work (collectively, the "Project") had not progressed to a point that would enable the Parties to (1) establish a mutually acceptable Construction Schedule for the Project, (2) determine that the Parties' respective structures would coexist, (3) identify the respective property interests that the Parties would require from third parties and from one another for the Project, (4) determine whether the necessary Permits for the Project could be obtained on a timely basis and on reasonably acceptable terms and conditions, (5) determine whether the environmental condition of the relevant properties was satisfactory, and (6) determine the financial feasibility and availability of funds



for the Project (collectively, the "Conditions Precedent"); and (ii) afforded any of the Parties the right to terminate the Formal Agreement if such Conditions Precedent had not been addressed to their satisfaction by May 19, 2009.

F. Pursuant to a First Amendment to Formal Agreement dated as of May 19, 2009, the Parties (i) extended the date by which the Conditions Precedent were to be satisfied to June 17, 2009 and (ii) the date by which notice of termination must be given with respect to certain of such Conditions Precedent to July 1, 2009.

G. Pursuant to a Second Amendment to Formal Agreement dated as of June 17, 2009, the Parties (i) extended the date by which the Conditions Precedent were to be satisfied to August 20, 2009 and (ii) the date by which notice of termination must be given with respect to certain of such Conditions Precedent to September 3, 2009.

H. Pursuant to a Third Amendment to Formal Agreement dated as of August 20, 2009, the Parties (i) extended the date by which the Conditions Precedent were to be satisfied to September 1, 2009 and (ii) the date by which notice of termination must be given with respect to all such Conditions Precedent to September 3, 2009.

I. The Parties desire to enter into this Amendment to further extend the date by which the Conditions Precedent are to be satisfied and the date by which notice of termination must be given with respect to certain of such Conditions Precedent.

#### AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree, as follows:

1. Defined Terms. Capitalized terms used but not defined in this Amendment shall have the meanings given to such terms in the Formal Agreement.

2. Extension of Period to Satisfy Conditions Precedent. Sections III.E.4, III.H.1, III.H.3, III.H.5, III.I.3, III.J.5, III.L.1, III.L.2 and III.L.6 of the Formal Agreement are hereby amended by deleting each of the references therein to "September 1, 2009" and substituting "September 23, 2009" in place thereof. In addition, Section III.I.4 of the Formal Agreement is hereby amended by deleting the reference therein to "September 2, 2009" and substituting "September 24, 2009" in place thereof.

3. Extension of Date by Which Termination Notice Must be Given. Sections III.L.3, III.L.4 and III.L.5 of the Formal Agreement are hereby amended by (a) deleting each of the references therein to "September 1, 2009" and substituting "September 23, 2009" in place thereof, and (b) deleting each of the references therein to "September 3, 2009" and substituting "September 25, 2009" in place thereof.

4. Termination Notices under Section III.L. Notwithstanding anything in Section III.P.2 of the Formal Agreement to the contrary, the Parties hereby stipulate and agree that any notice of termination given by a Party under Section III.L of the Formal Agreement may be given, in addition to the means currently provided in the Formal Agreement, via electronic mail (\*.pdf or similar file types) and shall be effective when sent if sent before 6:00 p.m. central time and otherwise shall be deemed sent on the next succeeding business day, provided a copy of such notice is also sent pursuant to one of the methods authorized under Section III.P.2 of the Formal Agreement. The email addresses for the notice parties under the Formal Agreement are as follows: (a) UPRR, to gsulliva@up.com, (b) TxDOT, to

mchavez@dot.state.tx.us, (c) the City at amy.ramsey@fortworthgov.org, and (d) NTTA, to rherrington@ntta.org.

5. Miscellaneous.

(a) Representations and Warranties. Each of the Parties hereby represents and warrants to the other Parties that (i) such Party has full power and authority to execute and deliver this Amendment and to effectuate the terms hereof without the approval or consent of any other Person that has not been obtained; and (ii) this Amendment constitutes the legal, valid and binding obligation and agreement of such Party, enforceable against such Party in accordance with its terms. Without limiting the foregoing, the signatories to this Amendment warrant that each has the authority to enter into this Amendment on behalf of the Party represented.

(b) No Other Modifications. Notwithstanding anything to the contrary contained herein or inferred hereby, or in any other instrument executed by the Parties, or in any other action or conduct undertaken by the Parties on or before the date of execution hereof, the agreements, covenants and provisions contained herein constitute the only evidence of the Parties' agreement to modify the terms and provisions of the Formal Agreement. No express or implied consent to any further modifications of the Formal Agreement shall be inferred or implied from the Parties' execution of this Amendment.

(c) No Waivers. The Parties hereby agree that neither the purchase of materials, the commencement of any field work (including site mobilization, fiber-optic relocation, or grading), nor the undertaking of any other design, acquisition or construction-related steps by any of the Parties in anticipation that the Parties' will be able to timely and collectively satisfy the Conditions Precedent shall not constitute a satisfaction, modification or waiver by such Party or Parties of any of the Conditions Precedent or of such Party's or Parties' related termination rights under Section III.L. of the Formal Agreement nor a waiver of any rights or defenses available to the Parties at law (including by statute) or in equity in the event this Agreement is terminated in accordance with its terms.

(d) Choice of Law. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS WITHOUT GIVING EFFECT TO ANY PRINCIPLES OF CONFLICTS OF LAWS.

(e) Execution. This Amendment may be executed in multiple counterparts, each of which for all purposes is deemed an original, and all of which constitute collectively one agreement. Signatures of this Amendment transmitted by facsimile or via electronic mail (\*.pdf or similar file types) shall be valid and effective to bind the Party so signing.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have caused this Amendment to be duly executed as of the Effective Date first herein written.

**UNION PACIFIC RAILROAD COMPANY,**  
a Delaware corporation

By: *Lawrence E. Wzorek*  
Name: Lawrence E. Wzorek  
Title: Assistant Vice President - Law

**NORTH TEXAS TOLLWAY AUTHORITY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

**LOCKE LORD BISSELL & LIDDELL, LLP,**  
General Counsel

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signature Pages to  
Fourth Amendment to Formal Agreement

DAL:0567318/47205:1881623v1

IN WITNESS WHEREOF, the Parties have caused this Amendment to be duly executed as of the Effective Date first herein written.

UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

NORTH TEXAS TOLLWAY AUTHORITY

By: *Rich Herringford*  
Name: *Rich Herringford*  
Title: *DEPUTY EXECUTIVE DIRECTOR*

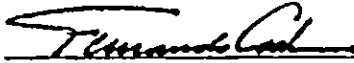
APPROVED AS TO FORM:

LOCKE LORD BISSELL & LIDDELL, LLP,  
General Counsel


By: *Frank E. Stevenson*  
Name: *Frank E. Stevenson*  
Title: *Partner*

Signature Pages to  
Fourth Amendment to Formal Agreement

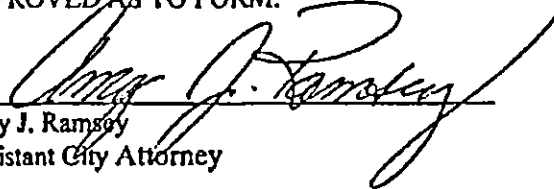
CITY OF FORT WORTH,

  
\_\_\_\_\_  
Fernando Costa  
Assistant City Manager

RECOMMENDED BY:

  
\_\_\_\_\_  
Bryan Beck, P.E., Program Manager  
City Manager's Office

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Amy J. Ramsey  
Assistant City Attorney

ATTEST:

\_\_\_\_\_  
Maity Hendrix  
City Secretary

Authorization: C-23755  
Date: September 1, 2009

TEXAS DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY OF FORT WORTH,**

---

Fernando Costa  
Assistant City Manager

**RECOMMENDED BY:**

---

Bryan Beck, P.E., Program Manager  
City Manager's Office

**APPROVED AS TO FORM:**

---

Amy J. Ramsey  
Assistant City Attorney

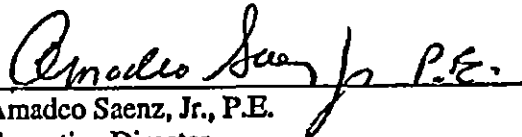
**ATTEST:**

---

Mary Hendrix  
City Secretary

Authorization: \_\_\_\_\_  
Date: September \_\_\_\_, 2009

**TEXAS DEPARTMENT OF TRANSPORTATION**

  
Amadco Saenz, Jr., P.E.  
Executive Director

Signature Pages to  
Fourth Amendment to Formal Agreement