

**REIMBURSEMENT AGREEMENT  
PRELIMINARY ENGINEERING SERVICES**

**Effective Date: 7/26/2021**

**Estimate: \$35,000.00**

THIS REIMBURSEMENT AGREEMENT (**Agreement**) is made and entered into as of the **Effective Date**, by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (**Railroad**), and CITY OF BROKEN ARROW, OKLAHOMA, a municipal corporation (**City**).

**RECITALS**

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

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

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

**AGREEMENT**

1. NOW THEREFORE, the parties hereto agree as follows:

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

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

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

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

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

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

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

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

**CITY OF BROKEN ARROW, OKLAHOMA**

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

Michael Spurgeon 6/15/2021  
Michael Spurgeon, City Manager Date

DocuSigned by:  
Tiecy Cotton  
Signature

Attested By: Curtis Green 6/22/2021  
Curtis Green, City Clerk Date

Tiecy Cotton  
Printed Name

Approved as to \_\_\_\_\_

Manager I, Engineering - Public Projects  
Title

Alex Sisemore 6/15/2021  
Alex Sisemore, Assistant City Attorney Date

**Exhibit A**  
**Project Description and Location**

**Project Description**

City of Broken Arrow, OK proposes to widen the existing 2 lane at-grade crossing referred to below to a 5 lane roadway.

**Location**

Tulsa Subdivision

| DOT     | Crossing Type | Milepost | Street Name                |
|---------|---------------|----------|----------------------------|
| 413397E | Public        | 292.506  | 177 <sup>th</sup> E Avenue |

## **Exhibit B**

### **Scope of Project Services**

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

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

## Exhibit C

### Billing Contact Information

|                         |                                                  |
|-------------------------|--------------------------------------------------|
| <b>Name</b>             | Travis Small                                     |
| <b>Title</b>            | Transportation Manager                           |
| <b>Address</b>          | 485 North Poplar Avenue, Broken Arrow, OK, 74012 |
| <b>Work Phone</b>       | (918) 259-7000                                   |
| <b>Cell Phone</b>       |                                                  |
| <b>Email</b>            | tsmall@brokenarrowok.gov                         |
| <b>City Project No.</b> | ST2027                                           |