

Funding Agreement

This Funding Agreement ("Agreement") is entered into this ____ day of _____, 202_, between, on the one hand, **THE TEXAS MEXICAN RAILWAY COMPANY ("TM")**, a Texas statutory corporation, and **THE KANSAS CITY SOUTHERN RAILWAY COMPANY ("KCSR")**, a Missouri corporation qualified to do business in Texas (TM and KCSR together referred to herein as "**CPKC**"), both to be addressed at 427 West 12th Street, Kansas City, MO 64105-1403, and, on the other hand, **THE CITY OF LAREDO, TEXAS**, a Texas Home Rule municipality, with mailing address of 1110 Houston Street, Laredo, Texas 78040-8019 ("**CITY**") (CPKC and CITY being sometimes herein referred to separately as a "Party" or together as the "Parties").

RECITALS:

WHEREAS, the Federal Railroad Administration ("FRA") has selected City of Laredo, Texas to receive a grant under the Consolidated Rail Infrastructure and Safety Improvements ("CRISI") program for the Downtown Laredo Rail Corridor Safety Planning Project ("Project"); and

WHEREAS, the Project Development consists of Preliminary Engineering, Utilities, Right-of-Way, NEPA and Outreach activities for improvements to 31 at-grade crossings between Mile Posts 0.780 and 4.20 on the CPKC Laredo Subdivision, including up to five closures, two at-grade crossings converted to grade separations, and crossing safety improvements at the remaining 24 at-grade crossings including 10 sets of Active Warning Devices, all according to the Grant Application Project Narrative; and

WHEREAS, the overall intent of the improvement concepts is to enhance safety throughout the CITY by reducing or eliminating railroad and roadway conflicts; and

WHEREAS, TM and KCSR are each wholly-owned subsidiaries of **Kansas City Southern ("KCS")**; and

WHEREAS, TM is the owner of the railroad right-of-way utilized by KCSR, pursuant to authorization of the Surface Transportation Board, to move freight rail traffic through the CITY; and

WHEREAS, CPKC is cooperating with CITY in the Project, supports the Project's objectives, and is willing to enter into this Agreement to help meet the requirements of the Project;

NOW, THEREFORE, the Parties hereby agree as follows:

AGREEMENTS:

1. TM and KCSR are each rail carriers as defined by 49 U.S.C. §10102(5), and TM owns and KCSR operates the CPKC Laredo Subdivision, including the railroad right-of-way ("ROW") on which the Project will be performed.
2. CPKC provides freight rail service to shippers over its Laredo Subdivision.
3. ~~KCS is contributing the 'local match' of 20% up to but not to exceed \$1,000,000 (One Million Dollars)~~ of the CRISI Grant Funds for the Project. CPKC, as the owner and operator of the Laredo Subdivision, will not require the CITY to compensate CPKC for use of the CPKC Laredo Subdivision in connection with the Project.
4. CPKC and CITY assure that, upon the completion of the Project, the adequacy of the Laredo Subdivision's infrastructure capacity shall accommodate both existing and future freight rail operations.

5. The CITY will perform all tasks required for the Project through a coordinated process, which will involve CPKC representatives, engineering consultants, TXDOT and FRA. The CITY will facilitate the coordination of all activities necessary for implementation of the Project. The CITY will:

- complete necessary steps to hire a qualified consultant/contractor to perform required Project work, as necessary;
- hold regularly scheduled Project meetings with FRA;
- inspect and approve work as it is completed; and
- participate in other coordination, as needed.

6. The CITY will submit in a timely manner all invoices to be reimbursed by FRA. When invoices are approved by FRA, the CITY will submit the FRA-approved invoices to CPKC to receive the 20% Local Match from KCS. KCS will reimburse the CITY within Forty-Five (45) days after receiving FRA approved invoices.

7. Independent Contractors. Parties covenant and agree that they are independent contractors and nothing in this AGREEMENT creates any relationship of an officer, agent, servant or employee of the other; that each Party shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of their respective officers, agents, employees, and consultants; that the doctrine of respondeat superior shall not apply as between the Parties, their officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between CITY and KCS. Neither Party shall have the authority to bind the other under this AGREEMENT.

8. Amendment. Except where the terms of this AGREEMENT expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected only by amendment, in writing, executed by both City and CPKC, and, if applicable, subject to formal approval by the City Council.

9. Severability. If any clause or provision of this AGREEMENT is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of Laredo, Texas, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this AGREEMENT shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this AGREEMENT that is invalid, illegal, or unenforceable, there be added as a part of the AGREEMENT a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

10. Applicable Law. THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN WEBB COUNTY, TEXAS. Venue for any legal action or proceeding brought or maintained, directly or indirectly, as a result of this AGREEMENT shall be heard and determined in a court of competent jurisdiction in Webb County, Texas.

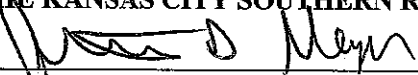
11. Non-Assignment. The Parties shall not transfer or assign all or any of their rights, obligations or benefits hereunder in whole or in part to any third party, without the prior written consent of the other Party.

12. Entire Agreement. This AGREEMENT, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the Parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this AGREEMENT shall be deemed to exist or to bind the Parties hereto, unless same be in writing, dated subsequent to the date hereof, and duly executed by the Parties.

WHEREFORE, the Parties have hereby executed this Agreement by the signatures below of each Party's duly-authorized representative.

**THE TEXAS MEXICAN RAILWAY COMPANY and
THE KANSAS CITY SOUTHERN RAILWAY COMPANY**

By



Printed Name

Justin D Meyer

Title

S.V.P. Mechanical & Engineering

CITY OF LAREDO, TEXAS

By _____

Printed Name _____

Title _____