

STIPULATION
BY AND BETWEEN
THE STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
AND
UNION PACIFIC RAILROAD COMPANY
AND
THE CITY OF MILWAUKEE
South Whitnall Avenue Overpass
Project I.D. 2660-05-70

Structure B-40-846
DOT Crossing No. 176 791C MP 78.65

Located at the intersection of the
Milwaukee Subdivision of Union Pacific Railroad Company
with South Whitnall Avenue in the
City of Milwaukee, Milwaukee County

STIPULATION is made and entered into by and between the State of Wisconsin, Department of Transportation, hereinafter referred to as the "STATE", the Union Pacific Railroad Company, hereinafter referred to as the "COMPANY", and City of Milwaukee, hereinafter referred to as the "CITY".

WHEREAS, the grades of the crossing of South Whitnall Avenue with the COMPANY's Milwaukee Subdivision at the location shown on the title sheet marked Exhibit "A", which exhibit is attached hereto and made a part hereof, are now separated by means of a highway overpass structure, and

WHEREAS, the CITY proposes the removal and replacement of the South Whitnall Avenue overpass structure, and

WHEREAS the existing South Whitnall Avenue structure over the tracks of the COMPANY provides 18 feet – 2 inches of vertical clearance above the tops of the rails of the north

track; and

WHEREAS the CITY has developed a design that will provide 22 feet - 0 inches of vertical clearance above the northerly track and 22 feet – 0 inches above the southerly track

NOW, THEREFORE, in consideration of the premises and of their mutual dependent agreements hereinafter set forth, the parties hereto hereby stipulate as follows:

1. SEPARATION OF GRADES. A separation of grades between South Whitnall Avenue and the railroad shall be effected at the location herein before described by means of a highway overpass structure to be designated Structure B-40-846 shown on the general plans and cross sections, marked Exhibits B-1 through B-3, which are attached hereto and made a part hereof.

2. GENERAL. (a) Detail plans for the structure, the highway approaches, and for such other incidental or appurtenant work for which plans will be necessary will be subject to the approval of the parties to this Stipulation. Such approval shall not be unreasonably withheld by the parties to this Stipulation.

(b) Should federal aid funds be authorized to finance this separation project, the plans, contracts, agreements, and the work done under them, will be subject to the approval of the United States Department of Transportation, Federal Highway Administrator or authorized representative, and the regulations pertinent to the work issued by the Federal Highway Administration.

(c) Construction operations by the STATE or its contractors will be subject to the inspection of the Director – Track Maintenance of the COMPANY or his authorized representatives to insure safety of railroad operations during construction.

(d) Construction operations by the COMPANY with its own forces, performed in connection with this project, will be subject to the inspection and approval of the Administrator of the STATE or his authorized representatives.

3. CONSTRUCTION. (a) The STATE will undertake the removal of the existing overpass structure (P-40-898), the construction of the new overpass Structure B-40-846, highway approaches, and work incidental or appurtenant thereto under STATE Project I.D. 2660-05-70. All work to be undertaken by the STATE shall be performed in accordance with the plans there for, the Standard Specifications for Highway and Structure Construction of the State of Wisconsin, Department of Transportation, 2013 Edition, supplemental specifications and pertinent special provisions to be incorporated into the contracts for the work. Special provision item entitled “Railroad Requirements and Coordination”, and “Union Pacific Railroad

Requirements”, in form similar to Exhibits C-1 through C-4, and D-1 through D-4, which are attached hereto and made a part hereof, will be made a part of the proposal to be furnished to highway contractors for bidding purposes.

(b) The COMPANY with its own forces or by contract with others will make such alterations in the facilities owned or operated by it as may be made necessary by the separation of grades and will undertake such other work as may be mutually agreed upon. All of such work shall be the subject of a separate agreement between the STATE and the COMPANY. Said agreement shall contain a detailed statement of the work to be performed, supplemented as necessary with plans therefore, and shall show the estimated cost of the work.

4. COST SHARING. Inasmuch as the proposed structure is replacing an existing grade separation structure for which the COMPANY has a maintenance responsibility, and in compliance with Classification (646.210 (b) (2)) of Code of Federal Regulations 23, Part 646, Subpart B, Railroad-Highway Projects, costs for the construction and maintenance of the new structure shall be in accordance with the provisions stipulated in this agreement.

The COMPANY agrees to make a cash contribution of Seven Hundred Five Thousand Two Hundred thirty Six Dollars (\$705,236) within 60 days after opening the highway to public travel and billing by the STATE. The considerations herein stated shall constitute the COMPANY’S full share of the cost of the project work described in Item 3(a) above.

5. VERTICAL CLEARANCE. The parties hereto wish to provide greater vertical clearance under Structure B-40-846 than presently exists but agree that it is not necessary and not economically justified to provide 23 feet – 0 inch vertical clearance at this time. The parties agree that:

A) construction of a new structure with 23 feet 0 inch vertical clearance above the top of rails would adversely affect roadway sight distances, adjacent properties and street intersections;

B) lowering the tracks to provide vertical clearance of 23 feet – 0 inches above the top rails is not required to transport railroad freight at this location; and

C) vertical clearance of not less than 22 feet 0 inches above top of rails under structure B-40-718 will not imperil life or limb and the public interest requires that such minimum clearance be permitted above the top of rails under structure B-40-846; and

D) telltales are not required above the tracks on the railroad approaches to structure B-40-718.

6. MAINTENANCE. Upon completion of the work, the CITY shall perform routine

repairs and maintenance for the preservation of Structure B-4-846 and shall maintain the highway approaches thereto.

Obligation with respect to maintenance shall not include replacement, reconstruction, or modification of the Structure arising from the requirements of railroad usage.

In the event a major restoration or replacement of the Structure becomes necessary due to disaster, deterioration, or serious accident affecting the safe use of the Structure, the cost of such restoration or replacement shall be apportioned between the CITY and the COMPANY, as mutually agreed between them.

The maintenance of all highway approaches and the drainage there from will be by the constituted public authority having legal jurisdiction for the maintenance thereof.

The CITY or public highway authority shall notify the COMPANY in advance of undertaking any maintenance operations on the structure except the structure deck, and such work shall be conducted and performed in a manner satisfactory to the COMPANY.

The COMPANY shall continue to be responsible for maintenance of the retaining walls along or parallel to its right of way.

7. FIBER OPTIC LINES. The STATE will require its contractor to contact the COMPANY'S "call before you dig" office at 1-800-336-9193, referencing Milwaukee County, City of Milwaukee, Wisconsin, Mile Post 78.65, Milwaukee Subdivision to verify the location of fiber optic lines located on railroad right of way at the construction site.

8. FENCING. If in the future the absence of fencing on the portion of the Structure over the right of way of the COMPANY is causing a safety concern for railroad operations, the parties will work together to resolve the concern.

9. PREVIOUS STIPULATION TERMINATED. Upon completion of the construction of Structure B-40-846 under STATE Project I.D. 2660-05-70, and subject to the approval of the Office of the Commissioner of Railroads, this Stipulation shall terminate the provisions of the Previous Stipulation, signed by the CITY in August 4th 1955 and a predecessor to the COMPANY on August 11th 1955.

10. SALE OR TRANSFER OF CONTROL OF PROPERTY. The COMPANY agrees that any purchaser or other recipient of ownership or control of the property of the

COMPANY involved in this Stipulation shall be bound by this Stipulation to the same extent as the COMPANY. The COMPANY shall include specific notice of this Stipulation in any sale or transfer document and shall require the purchaser or other recipient of ownership or control to acknowledge and assume the COMPANY'S rights and/or obligations included herein.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed the year and the day below written by their proper officers and representatives.

CITY OF MILWAUKEE

UNION PACIFIC RAILROAD COMPANY

By _____

By _____

Title _____

Title _____

Date _____, 20____

Date _____, 20____

By _____ STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION

Title _____

By _____
Division Administrator or designee

Date _____, 20____

Date _____, 20____

By _____

Title _____

Date _____, 20____

By _____

Title _____

Date _____, 20____