

Railroad Bridge Removal Agreement

THIS AGREEMENT, made and entered into on the date hereinafter shown as being fully executed, by and between Jackson County, Missouri (hereinafter, "the County"), and The Kansas City Southern Railway Company, a Missouri corporation (hereinafter, "the Railroad"), acting by and through their duly-authorized representatives, with the County and the Railroad each being sometimes referred to herein as a "Party" and together as "the Parties",

WITNESSETH

WHEREAS, the County, in partnership with the Kansas City Area Transportation Authority ("KCATA"), is party to an interim trail use/rail banking agreement for a railroad right-of-way in Jackson County, Missouri, that is more particularly described in the *Statement of Willingness to Assume Financial Responsibility Under Trail Use Agreement* (attached hereto as **Schedule A**) and that is referred to herein as "the Line"; and

WHEREAS, there exists on the Line near the intersection of Manchester Trafficway and Stadium Drive in Kansas City, Missouri, a certain railroad bridge structure that crosses over top of the Railroad's right-of-way at or around Mile Post 9.8 on the Railroad's Pittsburg Subdivision ("Bridge Structure") as reflected on **Schedule A** attached hereto; and

WHEREAS, the Bridge Structure was constructed pursuant to an agreement executed in 1904 between the Railroad and the County's predecessor in interest, the Kansas City Rock Island Railway Company ("1904 Agreement"), attached hereto as **Schedule B**; and

WHEREAS, the Railroad desires to construct additional track on its right-of-way at, around, and under the location where the Bridge Structure is currently located as specified above; and

WHEREAS, in order to maintain the necessary clearances for the Railroad's traffic on its right-of-way, the Bridge Structure's support piers will need to be relocated in connection with the Railroad's construction of additional track; and

WHEREAS, it was expressly provided for in the above-referenced 1904 Agreement that, should the Railroad make changes to its track, the overhead Bridge Structure, abutments, and supports would be relocated as necessary to preserve the height and width clearances for the Railroad's right-of-way and at no cost to the Railroad; and

WHEREAS, the County—pursuant to its Line management and liability commitments set forth in the attached **Schedule C** that include those obligations set forth in the 1904 Agreement—is responsible for relocating at its sole cost and expense the Bridge Structure support piers in order to accommodate the Railroad's changes to its track by maintaining the necessary height and width clearances for the Railroad's right-of-way; and

WHEREAS, the Railroad is willing to remove the Bridge Structure deck and support piers, desires to do so expediently, and is willing to bear the cost and expense associated therewith ("the Project"); and

WHEREAS, the County has no immediate need for the Bridge Structure on the Line and agrees that the entire Bridge Structure can be removed at the Railroad's sole cost and expense; and

WHEREAS, the Parties agree that all work to be performed and all materials to be provided in connection with the Project shall be at the Railroad's cost and expense unless otherwise specifically identified herein; and

WHEREAS, the Parties agree that, following the Bridge Structure's removal by the Railroad and subject to the terms and conditions set forth in this Agreement, the County and KCATA shall have the right to reestablish, at their discretion and at their sole cost and expense, a bridge structure crossing over the Railroad's right-of-way that is approved by the Railroad and that is capable of supporting foot, vehicular, and/or freight rail traffic at the location where the Bridge Structure is currently located; and

WHEREAS, the Parties agree that the County's custody over the Line remains intact and unsevered, notwithstanding the agreed-upon removal of the Bridge Structure set forth herein; and

WHEREAS, the Parties agree that the 1904 Agreement remains in effect and that any future Railroad-approved overhead bridge structure that the County elects to construct as set forth in the preceding paragraph shall be subject to the terms and conditions of the 1904 Agreement, as may hereafter be amended; and

WHEREAS, the Railroad's final set of plans and specifications for the Project ("P&S") have been submitted to the County for approval and are attached hereto as **Schedule D**; and

WHEREAS, a sample of the County's Contractor Right-of-Entry Agreement is marked **Schedule E** and attached hereto; and

WHEREAS, in the event the County elects to construct a replacement bridge structure in the future as set forth above, the Parties agree that, in the interest of protecting the Railroad's right-of-way and associated railway operations thereon, such construction project by the County shall be subject to the terms and conditions in **Schedule F** attached hereto; and

WHEREAS, a sample of the Railroad's Contractor Right-of-Entry License Agreement is marked **Schedule G** and attached hereto;

AGREEMENT

NOW THEREFORE, in consideration of the premises and of mutual covenants and agreements of the Parties hereto, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

1. INCORPORATION OF SCHEDULES AND WHEREAS PARAGRAPHS

The foregoing "WHEREAS" paragraphs and **Schedules** referenced therein are hereby incorporated into this Agreement and made part hereof.

2. PLANS/PROJECT WORK

The Parties shall perform, or cause to be performed, the following items of work, with all work to be performed in accordance with state and/or federal design requirements, and all applicable state and federal laws.

a. Work by the Railroad

- i. The Railroad shall furnish or cause to be furnished, at its own cost and expense, all of the labor, material, and work equipment required to perform and complete the following work for the Project (the "Railroad Work"):
 - A. The Railroad shall prepare, or cause to be prepared, and submit for the County's approval prior to commencement of the Project all necessary plans and specifications covering removal of the Bridge Structure, drainage, and all work incidental thereto generally in the area of the Line and the Railroad's right-of-way where the Bridge Structure is currently located. The Railroad will prepare the plans in conformance with American Railway Engineering and Maintenance of Way Association ("AREMA") and CPKC standards and specifications, as appropriate.
 - B. Coordination of all necessarily public utility locations, installations, and/or relocations.
 - C. Installation and maintenance of vehicular and/or pedestrian traffic control and detour signage for the duration of the Project.
 - D. Determine required railroad flagging and worker protection and provide railroad flagging services for the Project.
 - E. Removal of the Bridge Structure.
 - F. Incidental work necessary to complete the items hereinabove specified.
- ii. The Railroad Work, though not comprehensively, is more fully set detailed in the attached **Schedule D**.

b. Work by the County

- i. The County shall furnish, or cause to be furnished, at its own cost and expense, all of the labor, materials, and equipment required to perform and complete the following work (the "County Work"):
 - A. Review of the Railroad's plans and specifications, as may need to be amended, for the Project.
 - B. Provide to the Railroad the County's required Right-of-Entry License Agreement (a sample of which is attached as **Schedule E**) for the Railroad and all of its contractors or subcontractors, if any, performing Project work on the County's property, including but not limited to the Bridge Structure and the portions of the Line that must be accessed in order to remove the Bridge Structure.
 - C. Incidental work necessary to complete the items hereinabove specified.
- ii. The County Work, though not comprehensively, is more fully detailed in the attached **Schedule D**.

c. **Changes to Project Work**

The Railroad Work shall be completed in accordance with the P&S contained in **Schedule D**. No change shall be made on any approved plan or specification by either Party without prior written consent of the other Party.

3. **RIGHT OF ENTRY FOR THE PROJECT**

- a. For the purpose of completing the Project, and subject to the Railroad's execution of the County's Right-of-Entry License Agreement (a sample of which is attached as **Schedule E**) and compliance with its terms, the County hereby grants the Railroad a license to enter certain property owned or controlled by the County in and around the area on which the Bridge Structure is currently located, the limits of such property to which the Railroad is hereby granted licensed access being depicted and delineated on **Schedule D**.
- b. The Railroad shall secure, or cause to be secured, any and all additional rights-of-way, easements, licenses, or permissions that are necessary for completion of the Project.
- c. This Agreement is subject to the superior title of the each Party to its own property and to all other preexisting, outstanding, and superior rights, if any, in such property; and neither Party shall, by reason of any rights hereby granted, acquire or assert title to any of said property that is adverse to the title of the other Party, notwithstanding the County's authorization for the Railroad to remove the Bridge Structure from the Line as set forth herein and, further, notwithstanding the Railroad's agreement that the County shall have the right to reestablish an overhead bridge structure across the Railroad's right-of-way as set forth herein.

4. **INDEMNIFICATION**

TO THE FULLEST EXTENT PERMITTED BY LAW, THE RAILROAD SHALL RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE COUNTY, KCATA, AND BOTH THE COUNTY AND KCATA'S EXECUTIVES, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, AND INSURERS FROM AND AGAINST ANY AND ALL LIABILITIES, SUITS, CLAIMS, COUNTERCLAIMS, CAUSES OF ACTION, DEMANDS, PENALTIES, OBLIGATIONS, FINES, JUDGMENTS, DAMAGES, LOSSES, COSTS, AND EXPENSES ARISING FROM EITHER INJURY TO PERSONS, INCLUDING INJURIES RESULTING IN DEATH, OR DAMAGE TO ANY PROPERTY, INCLUDING PROPERTY OF THE PARTIES, CAUSED BY OR ATTRIBUTABLE TO THE PROJECT PERFORMED BY THE RAILROAD UNDER THIS AGREEMENT.

5. **THE COUNTY'S RETAINED RIGHT TO AN OVERHEAD CROSSING**

Notwithstanding the agreed-upon removal of the Bridge Structure as set forth herein, the Parties agree that County's custody over the Line remains intact and unsevered, and therefore the Parties further agree that the County has the right to reestablish, at its discretion and at its sole cost and expense, an overhead crossing of the Railroad's right-of-way that is capable of supporting foot, vehicular, and/or freight rail traffic (as determined by the County) on the Line at the location where the Bridge Structure is currently located. In the event that such replacement bridge structure is constructed over the Railroad's right-of-way, the rights and obligations pertaining to the bridge structure, once its construction is complete, shall be the same as were enjoyed and held by the County and its

predecessor(s) in interest under the 1904 Agreement (**Schedule B**), as may hereafter be amended. Further, the Parties agree that the County's construction of such replacement bridge structure, if any, shall be subject to the terms and conditions set forth in **Schedule F**.

6. AGREEMENT PERIOD

Upon execution by all Parties, this Agreement will be in effect and continue thereafter until the Project is completed by the Railroad's removal of the Bridge Structure from across the Railroad's right-of-way. Once access by the Railroad onto the property owned or controlled by the County is no longer necessary to effectuate removal or disposal of the Bridge Structure, the Railroad agrees to notify the County in writing that the Project is complete, at which point this Agreement shall terminate. Sections 4, 5, 7, 8, and 9 shall survive termination of this Agreement.

7. OWNERSHIP & DISPOSAL OF THE BRIDGE STRUCTURE

The Parties agree that, upon execution of this Agreement, the Bridge Structure shall become the property and responsibility of the Railroad. Following removal of the Bridge Structure from its current location across the Railroad's right-of-way, the Railroad shall dispose of the Bridge Structure in compliance with all applicable laws, rules, or regulations controlling such disposal.

8. GOVERNING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of Missouri without regard to any choice or conflict of laws principles (whether of the State of Missouri or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Missouri. All proceedings related to this Agreement shall be venued in Jackson County, Missouri.

9. COMPLIANCE WITH LAWS

The Parties shall comply with all applicable federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement, including but not limited to disposal of any hazardous or environmentally-sensitive materials used for or resulting from the Project or Railroad Work. Nothing herein is meant to be or will be interpreted to be a waiver of principles of legal preemption or preclusion that may apply to the Railroad because of its status as a common carrier regulated by the federal government.

10. SEVERABILITY

In the event any paragraph contained in this Agreement or any item, part, or term within any particular paragraph is determined by a court of competent jurisdiction to be invalid or unenforceable, the validity of the remaining paragraphs or items will not be affected; and

the rights and obligations of the Parties will be construed and enforced as if this Agreement did not contain that particular paragraph or item held to be invalid or unenforceable.

11. FORCE MAJEURE

The obligations of the Parties under this Agreement, other than payment, shall be subject to force majeure (which shall include strikes, riots, floods, accidents, Acts of God, and other causes or circumstances beyond the reasonable control of the Party claiming such force majeure as an excuse for non-performance), but only as long as, and to the extent that, such force majeure shall prevent performance of the obligations. In the event that an event of force majeure impairs either Party's ability to fulfill its obligations, that Party shall take reasonable measures to restore performance of its obligations in a timely manner.

12. TRANSFER/ASSIGNMENT

The Parties hereto shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the other Party(ies), except in connection with a transaction involving acquisition or merger of Railroad or its properties affected by the Project, and it is agreed that any transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the non-transferring Party(ies), shall terminate this Agreement.

13. NO THIRD-PARTY BENEFICIARY

This Agreement and each and every provision hereof is for the exclusive benefit of the Parties and not for the benefit of any third person. Nothing herein contained shall be taken as creating or increasing any right of any third person to recover by way of damages or otherwise against any Party hereto.

14. WAIVER

No consent or waiver, expressed or implied, by either Party of any breach or default by the other Party in the performance by such other Party of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance hereunder by such other Party. Failure on the part of a Party to complain of any act or failure of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such first mentioned Party of its rights hereunder.

15. NOTICES

For the purposes of this Agreement, all notices, correspondence, billings, and other documentation shall be mailed to the following addresses:

For the County:

[Contact info]

For the Railroad

CPKC
Attn: Michael Martin, P.E.
427 W 12th Street
Kansas City, MO 64105
Michael.Martin@cpkcr.com

16. DEFINITIONS/TERMS

Each definition in this Agreement includes the singular and the plural, and references in this Agreement to the neuter gender include the masculine and feminine where appropriate. References herein to any agreement or contract mean such agreement or contract as amended. As used in this Agreement, the word "including" means "without limitation," and the words "herein", "hereof," and "hereunder" refer to this Agreement as a whole. Any dollar amounts stated herein are in United States currency.

17. HEADINGS

The division of this Agreement into sections and subsections and the insertion of headings and section numbers are for convenience of reference only, and shall not affect the construction or interpretation of this Agreement. Unless the context otherwise requires, all references to sections are to sections of this Agreement.

18. MUTUAL NEGOTIATION

This Agreement is the result of mutual negotiations between the Parties, neither of whom shall be considered the drafter for purposes of contract construction.

19. LIMITS OF THIS AGREEMENT & THE PARTIES' RELATIONSHIP

Nothing herein shall be interpreted as creating an association, partnership, joint venture or other joint undertaking between the Parties. The Parties each hereto acknowledge that they are not an agent, servant, or employee of another other Party, and are responsible for their own acts and deeds and for those of their own agents and employees during performance of contract work.

20. ENTIRE AGREEMENT

To the extent that the provisions of this Agreement contradict the terms of any existing agreements between the County and Railroad concerning licenses, permits, leases, or easements at this location, the terms of this Agreement shall supersede the existing agreement to the extent of such conflict. This Agreement shall be binding upon the Parties and their successors or permitted assigns.

21. EXECUTION

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute but

one and the same instrument. Each signatory warrants that the signatory has necessary authority to execute this Agreement on behalf of the entity represented.

IN WITNESS WHEREOF, the County and the Railroad have executed duplicate counterparts of this Agreement for this Project on the dates indicated below.

JACKSON COUNTY, MISSOURI

By _____ Date _____

[Name]

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, d/b/a CPKC

By _____ Date _____

Michael Martin, P.E., Track and Bridge Construction Director

SCHEDULE A

300420

February 20, 2020

ENTERED
Office of Proceedings
February 20, 2020
Part of
Public Record

VIA E-FILE

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
395 "E" Street, S.W.,
Washington, D.C. 20423

JOINT NOTICE OF INTERIM TRAIL USE / RAIL BANKING AGREEMENT
BETWEEN UNION PACIFIC RAILROAD COMPANY AND
JACKSON COUNTY, MISSOURI IN ACCORDANCE WITH 49 C.F.R. § 1152.29(h)

Re: Abandonment of and Discontinuance of Service on the Rock Island Line from M.P. 288.3 to M.P. 270.6 near Lee's Summit, Jackson County, Missouri; STB Docket No. AB-33 (Sub No. 342X)

Dear Ms. Brown:

Union Pacific Railroad Company ("Union Pacific") and the Jackson County, Missouri (the "County") have entered into a trail use/rail banking agreement (the "Trail Use Agreement") covering the rail line from Milepost 288.3 to Milepost 270.6 near Lee's Summit, Jackson County, Missouri on Union Pacific's former Rock Island Subdivision (the "Line"). Attached to this Joint Notice as Exhibit A is a map depicting an accurate description of the Line, including mileposts, that is the subject of said Trail Use Agreement. In accordance with the requirements of 49 C.F.R. § 1152.29(h), Union Pacific and the County hereby certify that the Trail Use Agreement includes provisions requiring the trail sponsor, the County, to fulfill responsibilities described at 49 C.F.R. § 1152.29(a)(3). A copy of the County's Statement of Willingness to Assume Financial Responsibility under the Trail Use Agreement is attached hereto as Exhibit B and is hereby made a part hereof.

Sincerely,

UNION PACIFIC RAILROAD COMPANY

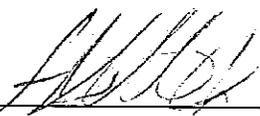
By: Chris Doble

Printed Name: CHRIS D. GOBLE

Title: Assistant Vice President - Real Estate

Sincerely,

JACKSON COUNTY, MISSOURI

By: 

Printed Name: Frank White, Jr.

Title: Jackson County Executive

Enclosures

cc: Parties of Record

EXHIBIT A

PRINT/DEPICTION OF THE LINE

EXHIBIT B

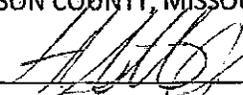
JACKSON COUNTY, MISSOURI
STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY
UNDER THE TRAIL USE AGREEMENT

Jackson County, Missouri (the "County") acquired the Line (defined below) on April 28, 2016, under a Line Sale Agreement between Union Pacific Railroad Company and the County, dated December 31, 2015.

In order to establish interim trail use and rail banking under 16 U.S.C. § 1247(d) and 49 CFR § 1152.29 with respect to the Line, the County hereby represents to the Surface Transportation Board and Union Pacific Railroad Company that the County assumes or has assumed responsibility for (1) managing the Line, (2) any legal liability arising out of the transfer or use of the Line, and (3) the payment of any and all taxes that may be levied or assessed against the Line. The Line is a portion of the right of way known as the Rock Island Line extending from Milepost 288.3 to Milepost 270.6 near Lee's Summit, Jackson County, Missouri. The Line is part of a longer line of railroad proposed for abandonment by Union Pacific Railroad and the County in Docket No. AB-33 (Sub No. 342X). A map of the property depicting the Line is attached hereto as Exhibit A and is hereby made a part hereof.

The County acknowledges that use of the Line is subject to the County's continuing to meet its responsibilities described above and subject to possible further reconstruction and reactivation of the Line for rail service. A copy of this statement is being served on Union Pacific Railroad Company on the same date it is being served on the Surface Transportation Board.

JACKSON COUNTY, MISSOURI

By: 

Printed Name: Frank White Jr.

Title: Jackson County Executive

Agreed to and acknowledged by Union Pacific Railroad Company, this 13th day of February, 2020.

By: 

Printed Name: CHRIS D. GOBLE

Title: Assistant Vice President - Real Estate

SCHEDULE B+C

The U. S. Dep. of
Accounting Department
NOV 28 1904
FILE

*Copy of Title 19
Executed agreement*

THIS AGREEMENT, made and entered into this fifteenth day of November, A. D. 1904, by and between THE KANSAS CITY SOUTHERN RAILWAY COMPANY, hereinafter called the "Southern Company", party of the first part, and the KANSAS CITY ROCK ISLAND RAILWAY COMPANY, hereinafter called the "Rock Island Company", party of the second part, WITNESSETH: that,

The Southern Company, for and in consideration of the sum of One Dollar (\$1.00) to it paid by the Rock Island Company, the receipt whereof is hereby acknowledged, and in consideration of the covenants and agreements of the Rock Island Company hereinafter mentioned, has granted, and by these presents does grant, to the Rock Island Company, for the use and purposes and subject to the conditions hereinafter set forth, the right to construct, maintain and operate, at its sole cost and expense and without cost or expense to the Southern Company, an overhead crossing, in a northerly and northerly direction to the north of forty-one (41) degrees and fifty-four (54) minutes, over, across and above the right of way and rolling ground of the Southern Company, at a point in the northeast quarter of Section Twenty-four (24), Township Forty-ninth (49) North, Range Thirty-sixth (36) West, in the County of Jackson and State of Missouri; said point being designated as Mile Post 9 plus 0325 feet of The Kansas City Southern Railway or Station 235 plus 71.7 of the Rock Island Company, and the location thereof is more specifically shown by the plat hereto attached and made a part hereof, upon which plat the right of way and property of the Southern Company is shown by the space colored yellow, and the right of way and property of the Rock Island Company is shown by the space colored red. Said plat being approved and marked for identification by the signatures of the Chief Engineer of each party hereto.

Said covenants and agreements are as follows:

FIRST: The Southern Company, in consideration of the aforesaid grant, shall have the right to remove the tracks at said point of crossing, and the right to the use of the full width of the right of way upon and over the crossing, according to the space colored yellow or hereinafter to be hereinafter provided for. And the Rock Island

Company, its successors or assigns, shall not do any act or thing, or suffer any act or thing to be done, that will, in any manner, impair the usefulness or safety of the tracks of the Southern Company or of the use of said right of way.

SECOND: The Rock Island Company shall construct, erect, complete and maintain the overhead crossing herein provided for, the permanent superstructure of which shall be of steel and the abutments of stone or concrete. The said abutments, and each of them, are to be located outside of the right of way of the Southern Company; but the Rock Island Company is hereby given the right to construct upon the said right of way four (4) steel towers or piers with stone or cement pedestals, so located as to give a clearance of at least thirty (30) feet over the right of way of the Southern Company, measured at right angles to the center line of its right of way, and said overhead crossing shall be constructed so as to provide a clearance of not less than twenty-three (23) feet between the lowest part of the superstructure thereof and the top of the rails of the Southern Company. The approaches to said span are to be of such type and design as may hereafter be agreed upon by the parties hereto, and all of said overhead crossing and piers or towers therefor are to be so constructed as to interfere as little as possible with the use by the Southern Company of its sixty-six (66) feet of right of way for railroad purposes and of its tracks as now existing, or which may hereafter be constructed, at any time, at said point of crossing. The plans and specifications of which said superstructure, piers and abutments shall be submitted to and subject to the approval of the Chief Engineer of the Southern Company before work is commenced thereon.

THIRD: As the construction of said permanent structure, piers and abutments over the right of way and tracks of the Southern Company cannot be completed as soon as the needs of the Rock Island Company require, the Southern Company agrees that the Rock Island Company may temporarily place a wooden trestle or bridge over its said right of way and tracks, the bents or supports of which are to be so constructed and located as to give a horizontal clearance of sixteen

(10) feet, eight (8) feet on either side of the center line of the existing tracks of the Southern Railway, and with a vertical clearance of at least twenty-three (23) feet above the top of the rails of said tracks. The said bents or supports are to be of wood.

It is understood and agreed that the rights hereby granted to construct such wooden trestles or bridges over the rights of way and tracks of the Southern Railway, and to place such wood supports on said rights of way, is for temporary purposes only and to supply the necessities of the Rock Island Company, and that said temporary trestle or bridge and supports are to be replaced and by permanent steel bridge and the supports therefor, as hereinafter provided, and to be constructed by the Rock Island Company within a reasonable time after notice in writing to be given by the Southern Railway, whenever it may require the same, the Southern Railway, however, agrees that it will not give such notice, or require such change to be made, at any time, within one year from and after the date of this agreement.

FIFTH: The Southern Railway grants to the Rock Island Company the right to enter upon the right of way of the Southern Railway for the purpose of constructing and maintaining both said temporary and permanent structures, and to use such right of way for such purposes, subject to the supervision, control and approval of the General Superintendent of the Southern Railway or his authorized representative; all such use of the said right of way to be so as will least interfere with the traffic and ordinary conduct of the business of the Southern Railway.

The Rock Island Company agrees that, before any work is commenced upon either said temporary or permanent structures, it will give to the Southern Railway, at least five (5) days' notice in writing of the time when it will commence said work so that the Southern Railway may have its representative present for the purpose of directing the manner in which said work shall be performed, so that the safety of the Southern Railway's tracks and trains is preserved and its traffic not interfered with or delayed; and the Rock Island Company agrees

that it will perform said work, including the location and erection of temporary structures or false work and furnish such material therefor as shall be required and approved by said representative; and if the Southern Company shall deem it necessary to provide any temporary structure for the preservation of its property, or for the safe and speedy passing of its trains, then the Rock Island Company agrees to pay to the Southern Company the entire cost of the materials thereof and of the labor used in the construction and removal of the same, immediately upon receipt of a statement showing the amount thereof.

FIFTH: The Rock Island Company shall not, in any manner, interfere with or obstruct the drainage of the right of way and tracks of the Southern Company, either during the construction or at any time after the completion of said overhead crossing, or any part thereof, and the Rock Island Company agrees that it will do all the work, at its sole expense, necessary for the preservation of said drainage; and if the Southern Company shall, at any time, deem it necessary and shall do any work for the proper drainage of its right of way or tracks on account of such overhead crossing, then the Rock Island Company agrees to reimburse the Southern Company the cost thereof immediately upon receipt of a statement showing the amount so expended.

SIXTH: The Rock Island Company further covenants and agrees that if, at any time hereafter, the Southern Company shall change the grade of its existing track, or of any track or tracks constructed by it, on said right of way, the Rock Island Company will make such changes in said overhead crossing, supports, abutments and appurtenances as will conform to such changes, and will preserve the clearances hereinbefore provided for at its own sole expense.

SEVENTH: The Rock Island Company further covenants and agrees that it shall and will at all times keep and maintain said overhead crossing in good condition and repair, and to safely, carefully and promptly operate its engines, cars and trains over and across the same, and that it will forever indemnify, keep and save harmless the Southern Company, its successors and assigns, from any and all loss,

damage or injury which it may sustain and from any and all costs and expenses of any nature whatsoever which it may incur arising from or growing out of injury to its property, or to its employees, or to its passengers, or to persons and property of other persons in its possession or control, or on its cars, as a common carrier or otherwise, or which the Southern Company may be liable for to any person or persons, corporation or corporations, which may, in any manner, accrue to, because of any defective construction or condition of said overhead crossing, or any part thereof, or as the result of any act or omission of the Rock Island Company, or its employees, in or relating said construction at any time in the operation or maintenance of its said structures or of its engines, cars or trains over and above the sum.

Eighth: The Rock Island Company acknowledged as a further consideration hereof and an inducement, among others, to the Rock Island Company to make this agreement and to construct and maintain the overhead crossing herein provided for, that the conveyance to be made by the Southern Company to the Rock Island Company of a right of way over the property owned by the Southern Company in the Northwest Quarter (1/4) of the Northeast Quarter (1/4) of Section Thirteen (13), Township Four (4) Range Thirty-three (33) Jackson County, Missouri, has been duly made by the Southern Company to the Rock Island Company to the satisfaction of the Rock Island Company.

Ninth: This agreement, and all the terms and conditions, rights, obligations and liabilities mentioned herein, shall inure to the benefit of and be binding upon the successors, assigns and lessees of both parties hereto.

IN WITNESS WHEREOF, each party hereto has caused this agreement to be signed by its proper officer and its corporate seal to be hereto affixed as hereon, the day and year first above written.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY,
 BY J. R. Knott *President*

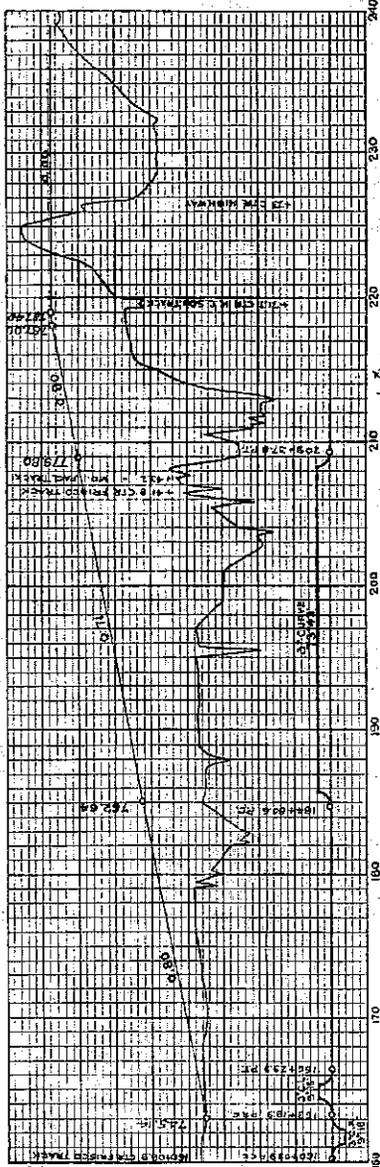
ATTEST:
Copy
M. B. Johnson
 Seal
 Secretary

KANSAS CITY, ROCK ISLAND RAILWAY COMPANY,
 BY J. F. Stevens
Second Vice President

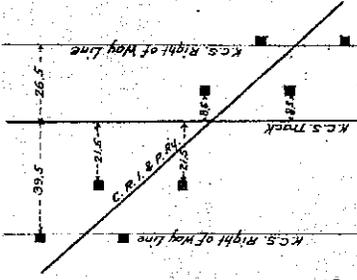
ATTEST Seal
G. H. Crosby
 Secretary

Approved as to form: C. M. Lucas, Assistant Attorney.
W. T. Ross *Gen. Atty.*

PROFILE - C.R.I. & P. RY.

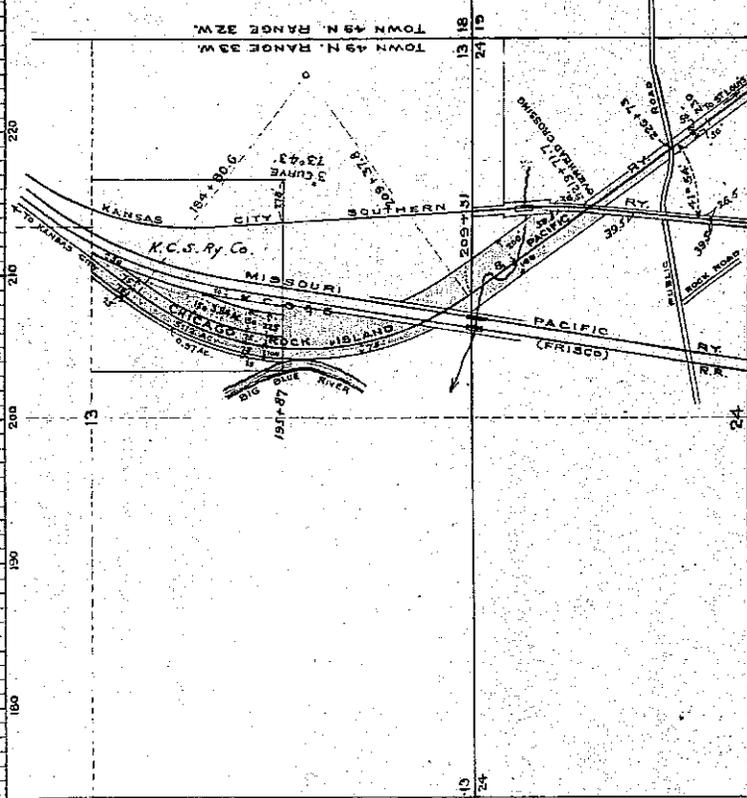


Sketch showing suggested position of columns for proposed bridge of C.R.I. & P. Ry. over K.C.S. Ry.



ROCK ISLAND SYSTEM
DIAGRAM OF CROSSING

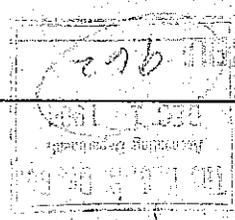
OF
CHICAGO, ROCK ISLAND & PACIFIC RAILWAY,
AND
KANSAS CITY SOUTHERN RAILWAY,
NEAR
LEEDS, JACKSON CO., MO.
IN THE N.E. 1/4 SEC. 24 T. 49 N. R. 33 W.



APPROVED *[Signature]*
CHIEF ENGR. C.R.I. & P. RY.
CHIEF ENGR. OFFICE
CHICAGO, ILL. AUG. 1904

SCALE: 1 INCH = 1000 FT.

Note: -
C.R.I. & P. Ry. Right of Way colored Red.
K.C.S. Ry. colored Yellow.
All property to be cleared to C.R.I. & P. Ry. colored Green.



COPY

Memorandum of agreement reached between the Kansas City Rock Island Railway Company, hereinafter referred to as the "Rock Island Company", and The Kansas City Southern Railway Company, hereinafter referred to as the "Southern Company", at Kansas City, Missouri, January 11th, 1904.

The Southern Company agrees that the Rock Island Company shall have the privilege of crossing its right of way, road bed, and track at the point indicated on the attached blue print, and more specifically designated as follows:

The Rock Island Company agrees to construct and properly maintain a steel overhead bridge across the right of way of the Southern Company, with a clearance of not less than twenty-three (23) feet above the top of the rail of the Southern Company's railroad, and so constructed as to give a clear span of not less than thirty (30) feet over the center of said Southern Company's right of way measured at right angles to the center of said track, and the approaches to said span to be of such type and design as may hereafter be agreed on by the two companies, constructed of steel, and so located as to least interfere with the use by the Southern Company of its sixty-six foot right of way for railway purposes covering present tracks and such additional tracks as may hereafter from time to time be constructed.

The right is hereby granted the Rock Island Company to

enter upon the right of way of the Southern Company to construct said steel overhead bridge, and to use such right of way during such construction, subject to the supervision, control and approval of the General Superintendent of the Southern Company or his authorized representative; such use of the Southern Company's right of way during such period of construction to be such as will least interfere with the ordinary use thereof by the Southern Company in the usual and ordinary conduct of its business.

As the construction of said steel bridge over the right of way and roadbed of the Southern Company cannot now be completed as rapidly as the needs of the Rock Island Company require, the Southern Company agrees that the Rock Island Company may temporarily place a timber trestle over said right of way and track, the bents thereof to be so constructed as to give sixteen (16) feet clear passage-way, eight (8) feet on each side of the center line of the Southern Company's tracks; it being understood that this timber trestle is for temporary purposes only, to be replaced by a steel structure within a reasonable time after notice, whenever the Southern Company may require it after one year from the date of this contract.

The Rock Island Company is, to construct such crossings, both temporary and permanent, entirely at its own expense, and to maintain same in good and safe condition. The Rock Island Company is to be responsible for any damage accruing on the right of way of the Southern Company or injuries resulting during the construction of said overhead bridge or bridges.

In consideration of the above and for the further consideration of One Dollar (\$1.00), the Southern Company also agrees to furnish the Rock Island Company right of way over the property owned by the Southern Company in the N.W. 1/4 of the S.E. 1/4, Section 13,

Township 49, Range 35, Jackson County, Missouri, and hereby grants permission to the Rock Island Company to enter upon said property to construct its railway as shown on blue print attached hereto, and to use such portion of said property as may be necessary for such construction purposes, and to thereafter deed to the Rock Island Company the right of way so occupied by it.

This memorandum of agreement to be authority for the Rock Island Company to proceed with the work herein agreed to be done, and to be supplemented by such subsequent permit or more definite agreement as may be required or as agreed to herein.

The R I Ry Co
by
J. R. Smith, Jr.

copy

Kans. City Rock Island Ry Co
By Jno F Stevens
4th Vice Pres't.

SCHEDULE E

Jackson County Parks + Rec Right of Entry Agreement

FROM PROJECT OWNER/REQUESTOR:

Name: CPKC

Address: 427 W. 12th Street, Kansas City, MO 64105

Contact Person: Michael Martin, P.E., Track and Bridge Construction Director

Phone: 816-983-1138

Email: Michael.Martin@cpkcr.com

PROJECT: Removal of the Rock Island Bridge over CPKC Track

DESCRIPTION OF PROPERTY: See attached Schedule A; project location at or around Mile Post 9.8 on Railroad's Pittsburg Subdivision, north of Stadium Drive, and west of Manchester Trafficway

DESCRIPTION OF PROPOSED WORK: CPKC shall remove the existing bridge per the terms and conditions as set forth in the parties Railroad Bridge Removal Agreement

INSURANCE: CPKC will provide to Jackson County Parks + Rec a certificate of insurance naming Jackson County as an additional insured. To the extent that any loss associated with this work is not covered by the insurance evidenced by the certificate, CPKC agrees that it will be responsible for such loss and that the County will not be responsible for any such loss. This includes any damage to county park property. See attached Jackson County, Missouri Insurance Requirements.

PROTECTION AND RESTORATION OF PROPERTY: CPKC will repair and restore any disturbed or damaged areas of County property upon completion of the work at no cost to County. CPKC shall take all steps necessary to keep the work areas safe for the public, contractors, and Jackson County associates at all times.

NOTIFICATION: CPKC shall notify Jackson County Parks + Rec prior to beginning of site work activities.

AGREEMENT: I, the undersigned on behalf of CPKC, hereby agree to the terms listed above and attached.

Project Owner Signature
Michael Martin, P.E., Track and Bridge Construction Director

Date

APPROVED:

Michele Newman, Director
Jackson County Parks + Rec

Date

EXHIBIT A
Insurance Requirements

Right of Entry

Lessee or Right of Entry Beneficiary (Authorized Agency) shall, at its sole cost and expense, procure and maintain during the life of this Lease or Right of Entry Agreement (except as otherwise provided in the Lease or Agreement) the following insurance coverage:

A. **Commercial General Liability Insurance.** Commercial general liability (CGL) with a limit of not less than \$1,000,000 each occurrence and an aggregate limit of not less than \$2,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage). The policy must also contain the following endorsement, which must be stated on the certificate of insurance: Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Premises" as the Designated Job Site.

B. **Business Automobile Coverage Insurance.**

Business auto coverage written on ISO form CA 00 01 10 01 (or substitute form providing equivalent liability coverage) with a combined single limit of not less \$2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a subtitle form providing equivalent coverage) showing "Premises" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. **Workers Compensation and Employers Liability Insurance.**

Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Lessee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

In any and all Claims against County by any employee of Lessee, Lessee's indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under any workers compensation acts, disability benefits acts or other employee benefits act.

D. **Pollution Liability Insurance.** If permitted use as defined in this Lease or Agreement includes any generation, handling, enrichment, storage, manufacture, or production of hazardous materials pollution liability insurance is required. Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 4 (or a substitute form providing equivalent liability coverage), with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If hazardous materials are disposed of from the Premises, Lessee must furnish to County evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

E. **Umbrella or Excess Insurance.** If Lessee utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

Other Requirements

F. All policy(ies) required above must include County as "Additional Insured" using ISO Additional Insured Endorsement CG 20 11 (or a substitute form providing equivalent coverage). The coverage provided to County as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 11, provide coverage for County's negligence whether sole or partial, active or passive, and shall not be limited by Lessee's liability under the indemnity provisions of this Lease.

G. Lessee waives all rights against County and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers' liability or commercial umbrella or excess liability insurance obtained by Lessee required by this agreement.

H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this Lease, or (b) all punitive damages are prohibited by all states in which the Premises are located.

I. All insurance policies must be written by a reputable insurance company acceptable to County or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the Premises are located.

J. The fact that insurance is obtained by Lessee, or by County on behalf of Lessee, will not be deemed to release or diminish the liability of Lessee, including, without limitation, liability under the indemnity provisions of this Lease. Damages recoverable by County from Lessee or any third party will not be limited by the amount of the required insurance coverage.

K. County shall be named as an additional insured on each insurance policy described in this Lease of Real Property.

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Railroad Bridge Removal Agreement

In the event that Jackson County, Missouri (the "County"), elects to construct a replacement bridge structure ("Bridge Replacement Project") over the right-of-way of The Kansas City Southern Railway Company (the "Railroad") the location identified in the Railroad Bridge Removal Agreement ("Agreement") to which this Schedule F is attached, such construction shall be subject to the following terms and conditions ("Railroad Requirements"), with all capitalized terms not specifically defined herein having the meaning ascribed to such terms in the Agreement:

Article 1. License & Permission

The Railroad right-of-way (sometimes also called herein "Railroad's Premises" or "Railroad's ROW") to be spanned by the Bridge Replacement Project is owned by the Railroad. The County and the Railroad will therefore work together for the Railroad to grant the County a license for the Bridge Replacement Project which will not prevent the Railroad from operating its trains or multiplying or changing its track across the Railroad's Premises over which license is to be given or under the new bridge structure contemplated for the Bridge Replacement Project. No legal right which the Railroad now has to reconstruct, maintain, and operate its existing track and appurtenances or to construct, maintain, and operate additional track and appurtenances upon and across the Railroad's Premises shall in anyway be affected by said license granted to the County, which shall be in effect and continue thereafter for so long as the Line remains a railbanked right-of-way that is subject to being returned to active rail service should such a need for rail service arise on the Line; provided, however, that if that portion of the Line where the Bridge Structure is currently located shall be abandoned, the license, permissions, rights, and privileges granted by the Railroad for the right to cross over the Railroad's ROW at such location shall expire and terminate at the time such portion of the Line shall be so abandoned; whereupon the Railroad shall have the same complete title and/or right to occupy the Railroad's ROW without any and as though these presents had never been executed. Upon such abandonment, the County shall safely remove all portions of the Project over or upon Railroad's ROW at no cost to the Railroad.

Article 2. Scope of Work

a. The County and the Railroad agree to perform their respective responsibilities for the Bridge Replacement Project work in accordance with the plans and specifications that will be prepared by the County and approved by the Railroad pursuant to *Article 3. Plans, Estimates, Construction, and Maintenance* below.

b. In the interests of safety, the Railroad and/or the Railroad's designated contractor ("Railroad Contractor") may provide, at the County's expense, construction inspection and protective services during the period of performance of work in or incident to the Bridge Replacement Project. The Railroad and/or the Railroad Contractor shall have the right to furnish all such construction inspection or protective services that have been approved by the County and shown in the Railroad force account estimate provided to the County before commencement of the Bridge Replacement Project. The County will reimburse the Railroad for the cost thereof, including charges related to travel, boarding, lodging, etc., of inspectors/protective service providers. The County shall notify the Railroad a minimum of

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thirty (30) days in advance whenever it is about to perform work adjacent to and over any track on the Railroad's Premises to enable the Railroad to furnish construction inspection and such other protective services as might be necessary to ensure safety of railroad operations.

Article 3. Plans, Estimates, Construction, and Maintenance

a. The County, at its own expense, will prep the preliminary plans and specifications, to include any signal wiring diagram(s), if applicable, for the proposed Bridge Replacement Project and will submit such plans and specifications to the Railroad for review and approval. Upon written approval by the County and the Railroad, the plans will be adopted as the final one hundred percent (100%) plans and specifications covering the construction of the Bridge Replacement Project. The construction of the Bridge Replacement Project shall conform to the final one hundred percent (100%) plans, and no changes to such plans and specifications shall be made without the written approval of such changes by the County and the Railroad. Neither the County nor its contractor ("County Contractor") shall commence any work on the Railroad's Premises until such final one hundred percent (100%) plans have been approved in writing by the Railroad.

b. In order to provide for the safety of all personnel working on the Bridge Replacement Project, the County shall require the County Contractor to provide flaggers during the period of performance of work in or incident to the proposed bridge structure construction. Flaggers shall be provided from one of the Railroad's designated flagging representatives, as stated in the Railroad's Right-of-Entry Agreement, a sample of which is attached to the Agreement as **Schedule G**. Flagging shall be provided at the County's expense and at no expense to the Railroad. The County's Contractor shall be solely responsible for scheduling the flaggers and the Railroad shall not be responsible for any costs or delays to the Bridge Replacement Project due to railroad flagger scheduling issues. Additional flagging information can be found as stated in *Article 4. Railroad's Construction Requirements* below.

c. The County/County Contractor, unless otherwise provided, shall make such changes or alterations in the communication, signal pole, wire line, pipe sewer, drainage, and/or other facilities or buildings located upon the Railroad's ROW that may be displaced or required by the Bridge Replacement Project as may be necessary to maintain continuous service and conform them to said construction and restore them to former condition for service either prior to, during, or following the Bridge Replacement Project work. The County and the County's Contractor shall not, without Railroad's written approval, perform any work other than what is approved under the Agreement and the Bridge Replacement Project's final one hundred percent (100%) plans and specifications which may interfere with the operations or the safety of the Railroad.

d. Following completion of the Bridge Replacement Project, the Railroad shall give the County permission to enter the Railroad's ROW to perform routine maintenance and/or emergency work as required for the new bridge structure. The County shall, and

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shall require the County's Contractor to, execute the Railroad's Right-of-Entry Agreement as required by the Railroad at that time before commencing any maintenance work on the Railroad's Premises and shall provide the insurance coverage as required by the Railroad's Right-of-Entry Agreement at that time. Following the completion of the Bridge Replacement Project, the new bridge structure shall further be subject to the terms, conditions, and obligations set forth in the 1904 Agreement as may be amended.

e. The County and/or the County Contractor shall assume the entire responsibility for the construction and use of said new bridge structure upon the Railroad's Premises at the location described in the Agreement, and nothing contained herein shall ever be construed to place upon the Railroad any manner of liability for injury to or death of persons, or for damage to or loss of property arising from or in any manner connected with the Bridge Replacement Project and the County's construction, maintenance, or use of said bridge located upon the Railroad's Premises.

f. The term "Contractor", as used herein, includes any and all subcontractors.

g. The County shall require any County Contractor retained to performed Bridge Replacement Work on or over the Railroad's Premises to agree to defend, indemnify and hold harmless Railroad, its directors, officers, employees, agents, successors and assigns from and against any injury or death of persons whomsoever or from any loss or damage to the Railroad's property, right of way, tracks and other facilities, herein called "Railroad's Property", and from the Railroad's liability or loss incurred for damage to any other property in Railroad's care, custody, or control in or upon Railroad's Property, caused by acts or omissions of the Contractor in performing work on the Bridge Replacement Project, whether on, over, under or in the vicinity of the Railroad's Property.

h. In the event the Contractor shall fail to restore the Railroad's Property immediately to a condition acceptable to the Railroad when any such loss or damage to the Railroad's Property is called to the Contractor's attention by the Railroad, the Railroad may perform such corrective work at the cost to the Contractor. The term "loss or damage", as used herein, shall include, but not be limited to, erosion and silting of, water damage to, and the accidental or intentional placing or dropping of objects on the Railroad's Property.

Article 4. Railroad's Construction Requirements

a. The County/County Contractor's work on the Railroad's ROW shall be performed in accordance with these Railroad Requirements and per the plans and specifications prepared by the County and approved by the Railroad. The County/County's Contractor shall supply adequate equipment, labor, and materials to perform the proposed Bridge Replacement Project work at the job site. The County/County's Contractor shall take special precaution and care to prevent any debris or material from falling on the Railroad's ROW. The safe operation of the Railroad shall take precedence over all Bridge Replacement Project work and nothing shall be done by the County/County's

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Contractor that will endanger the Railroad's operations. The County/County's Contractor shall protect the Railroad's Property from any damage resulting from the County/ County Contractor's acts or omissions during the Bridge Replacement Project.

b. Contractor Plans and Procedures: Before performing any excavation, demolition, blasting, lifting of structural members, or construction of falsework on or over Railroad's ROW or adjacent to the Railroad's ROW that may interfere with the safe operation of trains, the County/County Contractor shall submit its excavation, shoring, demolition, blasting, lifting of structural members and falsework plans and relevant procedures to the Railroad's designated engineer ("Railroad Engineer") for review and approval. These plans and procedures shall be signed and sealed by a Professional Engineer licensed in the State of Missouri. However, such approval shall not relieve the County/County Contractor from any liability relating to the Bridge Replacement Project. During the course of the Bridge Replacement Project, the Contractor shall submit any proposed changes to the approved plans and procedures to the Railroad Engineer for review and approval. Any clearing and grubbing to increase the sight distance for safer construction operation, or erection of temporary structures on or within the Railroad Property shall not be done without the prior approval of the Railroad. The Railroad Engineer shall make a decision within 30 days. Should the Railroad Engineer deny the plans and require a resubmittal, the Railroad Engineer shall provide approval or denial and requirement for resubmittal within 30 days after receipt of the revised plans from the County/County Contractor.

c. The County/County Contractor shall be required to take special precautions and care in connection with excavating and shoring. Excavations for construction of footings, piers, columns, walls or other facilities that require shoring shall comply with requirements of OSHA, AREMA, and Section IV, Design and Construction of Shoring Adjacent to and on Railroad Right-of-Way contained within the "KCS Guidelines for the Design and Construction of Railroad Overpasses and Underpasses."

d. The County/County Contractor shall abide by the following minimum temporary clearances during the course of construction for the Bridge Replacement Project:

- i. 15.0 feet horizontal from centerline of track; and
- ii. 23.0 feet vertical above top of the highest rail.

e. The County/County Contractor shall comply with the Railroad's rules and regulations concerning protection of persons and property, and the County/County Contractor shall consult with the Railroad Engineer concerning the Railroad's rules and regulations. Any questions arising about coordination of work between the County/County Contractor and the Railroad Engineer or between the County/County Contractor and others retained to perform any aspect of the Bridge Replacement Project on the Railroad's Premises shall be taken up before the work is commenced.

f. Prior to commencing any work upon, over, or under the Railroad's ROW, the County/County Contractor shall furnish to the Railroad Engineer evidence that the insurance for the County/County Contractor is as noted in the Right of Entry Permit.

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g. Except as authorized by the Railroad, neither the County nor any County Contractor will construct a crossing over any track at any location. Where crossings are needed or desired, the County/County Contractor shall make arrangements with Railroad and obtain a permit, paying any and all fees thereof. If and when permitted by the Railroad, the County/County Contractor may cross tracks with cleated or crawler type equipment, provided the track shall be protected with a temporary surfacing as approved by the Railroad Engineer.

h. The County/County Contractor shall be required to maintain all ditches and drainage structures free of silt or other obstructions which may result from its operations; to promptly repair eroded areas within Railroad's ROW and to repair any other damage to the property of the Railroad or its tenants which may result from the operations of the County/County Contractor. All such maintenance and repair of damages due to such operations shall be done at the sole cost and expense of the County/County Contractor. If the County/County Contractor's method of erosion control differs from the approved plans, the County/County Contractor shall submit a proposed method of erosion control and have the method reviewed by the Railroad and the County prior to beginning any grading work on the Project site. Erosion control methods must comply with all applicable local, state, and federal regulations.

i. The County/County Contractor shall, reasonably throughout each work day and at the end of each work day when performing work near the Railroad's tracks, inspect the track area and clean up any debris that may have been dropped on or within (10) feet of Railroad's tracks. Upon completion of the Bridge Replacement Project, the County/County Contractor shall return the Railroad ROW and all other Railroad Property to a condition equal to or better than existed prior to commencement of the Bridge Replacement Project work. The County/County Contractor shall remove all waste, excess materials, false work, and other temporary structures, as well as equipment, from off of the Railroad's Premises, leaving the location of the work cleaned to the reasonable satisfaction of Railroad. The County/County Contractor shall repair to the reasonable satisfaction of the Railroad Engineer, and at the Contractor's sole cost and expense, any and all damages to the Railroad's Property caused during construction of the Bridge Replacement Project.

j. Site Inspections By Railroad's Designated Representative

In addition to the office review of construction submittals for the Bridge Replacement Project, site inspections may be performed by one or more designated representatives of the Railroad ("Railroad's Designated Representative") at milestone events during Bridge Replacement Project construction, including but not limited to the following:

- i. Preconstruction meetings.
- ii. Excavations, shoring placement/removal, pile driving, drilling of caissons, or drilled shafts adjacent to tracks.
- iii. Reinforcement and concrete placement for near track piers.
- iv. Erection of precast concrete or steel overpass bridge superstructure.
- v. Reinforcement and concrete placement of overpass bridge decks.

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- vi. Completion of the bridge structure.
- k. The Railroad's Designated Representative can either be an employee of the Railroad or a hired outside consultant. Site inspection is not limited to the milestone events listed above. Site visits to check progress of the work may be performed at any time throughout the construction as deemed necessary by the Railroad.
- l. In addition to the project schedule required by the County, the County Contractor shall provide to the Railroad Engineer a detailed construction schedule for its work on the Railroad's Premises, including the proposed temporary horizontal and vertical clearances and construction sequence for all work to be performed on the Railroad's Premises. The County Contractor shall submit a copy of this detailed construction schedule to Railroad's Designated Representative for review prior to the start of the Bridge Replacement Project work. This schedule shall also include the anticipated dates when the milestone events listed above in subsection j will occur. The County Contractor shall update the schedule for these milestone events as necessary, but at least monthly, and shall provide a copy of all updates to the Railroad so that site visits may be scheduled. The County shall reimburse the Railroad all costs associated with site visits by the Railroad.
- m. While on the Railroad's Premises, the County/County Contractor shall comply with Railroad's rules and regulations concerning protection of persons and property. Railroad shall make its applicable rules available to the County/County Contractor for review and copying.
- n. Except as authorized by Railroad, the County/County Contractor shall not work within the "Minimum Clearance Zone" of any track on the Railroad's ROW. The "Minimum Clearance Zone" is defined as an area measured 25 feet, horizontally, on either side of the nearest rail of the track, with unlimited vertical distance within the horizontal limits. Additionally, the County/County Contractor will locate all equipment, devices, and materials at a sufficient distance from any track on the Railroad's ROW to ensure that no apparatus or part of any equipment, device, or material, such as the boom of a crane or a dragline, could under any circumstances encroach on the "Minimum Clearance Zone" of any track. A Railroad flagger will also be required when any equipment or its attachment or booms, even though stationed outside the above-mentioned 25 feet of the nearest rail but within the Railroad's ROW, has a potential to come within the 25 feet of the nearest rail.
- o. Flagging services provided by a Railroad-qualified flagging contractor will be required whenever agents, employees or equipment of the County or any of its Contractors for the Bridge Replacement Project shall be within twenty-five feet (25') of the nearest rail on the Railroad's ROW, unless specifically waived in writing by the Railroad.
- p. The County/County Contractor shall notify the Railroad concerning any flagging services that will be required during the course of the Bridge Replacement Project, but the Contractor shall make all arrangements for flagging protection directly with a

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Railroad-qualified flagging contractor. Railroad's designation of a flagging contractor as a "Railroad-qualified" flagging contractor shall be construed solely as Railroad's willingness to allow that flagging contractor to provide flagging services on Railroad's property without further proof of qualification, and shall not be construed as an endorsement or other verification of the abilities or qualifications of that flagging contractor. Under these Railroad Requirements, all flagging contractors utilized on the Project shall be treated solely as independent contractors of the County/County Contractor for all purposes.

q. The County/County Contractor shall clear the tracks when directed to do so by the flagger. The presence of the flagger will not relieve the County/County Contractor of its duty to keep all of its agents, employees, and Contractors clear of the tracks on the Railroad's ROW when trains are in dangerous proximity to the area where construction is occurring.

r. All County/County Contractor employees and supervisors who will routinely perform work on or within the Railroad's Premises, except any personnel employed or assigned by a Railroad-qualified flagging contractor, shall be trained with reference to the Railroad's On Track Safety Rules. The County/County Contractor shall provide the accommodations for this classroom training at its own expense, and shall pay any and all applicable fees for this training by a Railroad certified training consultant. The consultant can be contacted at:

TrackSense Inc.
308 Durst Dr. Warren, OH 44483
Phone: (330) 847-8661; Cell: (330) 219-4721
Attention: Larry Slater
Email: lslater@neo.rr.com

s. All railroad tracks within and adjacent to the Bridge Replacement Project site are active, and rail traffic over these facilities shall be maintained throughout the Bridge Replacement Project. Activities may include both through moves and switching moves to local customers. Railroad traffic and operations will occur continuously throughout the day and night on the tracks located on the Railroad's ROW. The County/County Contractor shall coordinate and schedule the Bridge Replacement Project work so that construction activities do not interfere with railroad operations on the Railroad's ROW. Any and all costs associated with delays caused to the train traffic by the County/County Contractor shall be reimbursed by the County/County Contractor. The County or the County Contractor may audit these costs.

Article 5. Insurance and Right-of-Entry Requirements

a. The County shall require their Contractor to execute the Railroad's Right of Entry Agreement before commencing any work on the Railroad's Premises in connection with the Bridge Replacement Project.

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b. The County shall require their Contractor to provide the insurance coverages as contained in the Railroad Contractor Right-of-Entry Agreement, a sample attached hereto and identified as **Schedule G**.

c. Following completion of the Bridge Replacement Project, the County shall require any County Contractor performing further maintenance on the new bridge structure to provide the then-current Railroad insurance coverages and to execute the then-current-standard Railroad's Right-of-Entry Agreement before commencing any work on the Railroad's Premises.

d. The County will be insured for any work performed by the County with its own employees for the Bridge Replacement Project. To the extent allowed under state law, the County will be responsible to the Railroad to cover bodily injury and property damage claims which may occur during construction and maintenance of the new bridge structure that is the subject of the Bridge Replacement Project, any contrary terms of the Right of Entry permit notwithstanding.

Article 6. Payment

a. Reimbursement to the Railroad and/or the Railroad Contractor will be made for construction inspection services furnished, including but not limited to, insurance premiums and coverage at the rate and amount set forth in the approved cost estimate to be provided by the Railroad before commencement of the Bridge Replacement Project. Construction inspection services furnished by the Railroad and/or the Railroad Contractor will be reimbursed by the County/County Contractor based on actual costs incurred by the Railroad and/or the Railroad Contractor as they relate to the Bridge Replacement Project and approved in the cost estimate.

b. The Railroad may submit monthly bills prepared in satisfactory form for construction inspection services performed in connection with the Bridge Replacement Project. Payment will be made by the County/County Contractor within thirty (30) days for the costs detailed on the bills.

c. The Railroad shall submit a final invoice for all work performed clearly marked "Final Invoice" no later than one (1) year from the date of the Bridge Replacement Project Completion & Acceptance Letter being forwarded to the Railroad by the County stating the Bridge Replacement Project is completed. Payment by the County/County Contractor will then be made within thirty (30) days of receipt of the Final Invoice from the Railroad.

SCHEDULE **G**

RIGHT OF ENTRY LICENSE AGREEMENT

THIS RIGHT OF ENTRY LICENSE AGREEMENT (hereinafter called, "**ROE License Agreement**") is made by and between

1. PARTIES

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, a Missouri corporation doing business as CPKC, with general offices at:

Address	Contact Info	
427 W. 12 th Street		
Kansas City, MO 64105		

hereinafter called "**CPKC**,"

and

[Add Your Company Name], a [State] [type of company/organization], whose address is:

Address	Contact Info	
Add Your Address	Name:	
	Phone:	
	Fax:	
	Email:	

hereinafter called "**Licensee**," each individually being referred to herein as "**Party**" and collectively as "**the Parties**."

2. PROPERTY; SCHEDULE; GRANT OF LICENSE;

2.1. Property

CPKC hereby grants Licensee a license to enter in and upon certain property owned or controlled by CPKC in Kansas City, Missouri **near railroad mile post 9.8+/-** on CPKC's **Pittsburg Subdivision**, as shown upon the map labeled **Schedule B** that is attached hereto and made a part hereof ("the Property"),

2.2 Work Schedule

for or the sole for the purpose of performing, generally, the following activities: **[Add a Detailed description of your Work/Project]** (the "Work") within the scope and in the manner described in Licensee's plans, specifications, and special provisions and which have been approved by CPKC's Designated Engineering Representative.

2.3. Grant of License

This license is granted subject to all the terms and conditions set forth below and apply to all Work and activities upon the Property that may be performed by Licensee through its employees, agents, and contractors. For the purposes of this ROE License Agreement, the actions and omissions of such employees, agents, and contractors shall be deemed the actions and omissions of Licensee.

2.4. Agreement To Be Available At Work Site

Licensee shall keep a copy of this ROE License Agreement at the Work site and shall make it available upon demand by any employee or agent of CPKC.

3. TERM, EFFECTIVE DATE, EXPIRATION & TERMINATION

3.1. Term

The term of this ROE Agreement shall

Commence at 12:01 am on [Add your start date], the "Commencement Date;" and

Expire at 11:59 pm on [Add your start date], the "Expiration Date;"

the "Term." Upon agreement between CPKC and Licensee, the Term may be lengthened or shortened without affecting any other provisions of this ROE License Agreement.

3.2. Effective Date

This ROE License Agreement shall become effective upon the date that it has been signed by the Parties.

3.3. Expiration

This ROE License Agreement will expire at the Expiration Date, or when the Work is completed, whichever occurs first. Notwithstanding any other provision of this ROE License Agreement, the preceding sentence shall not terminate or limit any Claim by CPKC against Licensee arising prior to the Expiration Date. If the Work includes monitoring wells, and if such wells remain on the Property after the Expiration Date, this ROE License Agreement shall remain in effect for those wells until the earlier of the following:

- (i) the date they are properly closed (i.e., sealed and abandoned in accordance with applicable legal requirements) by Licensee; or
- (ii) the date CPKC assumes ownership of such wells based upon Licensee's failure to remove or seal such wells within 30 days of being notified of the need to do the same by CPKC.

3.4. TERMINATION; EXCLUSION:

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, this ROE License Agreement is terminable by CPKC prior to the Expiration Date in the event Licensee

breaches any of its obligations under this ROE License Agreement. The early termination of this ROE License Agreement shall not terminate or limit any claim by CPKC against Licensee arising prior to such termination. If Licensee is in breach of any of its obligations under this ROE License Agreement, any employee or agent of CPKC may order Licensee off the Property, in which case Licensee shall immediately leave the Property; moreover, Licensee shall leave the property immediately upon termination pursuant to this paragraph.

4. PAYMENTS

4.1. License Fee

In consideration of the permissions herein granted, the Licensee shall with its execution hereof pay to CPKC the sum of **One Thousand Five Hundred Dollars (\$1,500.00)**.

4.2. Utilities

Licensee shall assume and timely pay for any gas, electrical, telephone, computer, sewer, water, storm water, waste or trash removal, or any other service or commodity connected with the Work, collectively "**Utility Service.**" If any Utility Service fee is in common with CPKC or other parties, Licensee shall be liable for its proportionate share of any such Utility Service Fee and upon receipt of a bill therefor, promptly pay CPKC or such other party for its share. It shall be a default in the terms of this ROE License Agreement if it can be shown that Licensee has not made such payments within 30 days if due to CPKC, or within 60 days if payable to any other party.

4.3. Mechanics' And Materialmen's Liens

If any mechanics' or materialmen's lien, or similar lien, is asserted against the Property, or any other property of CPKC, as a consequence of the Work, Licensee shall immediately satisfy, defend, or obtain the release of such lien, all at Licensee's expense, and Licensee shall indemnify and defend CPKC against any Claims (as defined in this ROE License Agreement) arising out of or connected with such lien.

4.4. Additional Charges

Licensee shall within 30 days of receipt of a bill therefor, pay to CPKC or its designee the costs for flagging, track changes, or damage, or other such charges as may be provided by this ROE License Agreement or that CPKC may reasonably impose in connection with Licensee's Work.

4.5. Due Dates; Penalties; Other Charges

4.5.1. Due Dates

Any item, submission, or payment required to be made shall be deemed timely made if received by the other Party on or before the specified due date, or prior to expiration of the applicable period for compliance, submission, or payment.

4.5.2. Late Fees

In addition to any amounts payable by Licensee to CPKC, Licensee shall pay CPKC a late fee for any payment not timely made by Licensee. The late fee shall be at the rate for overdue accounts set by CPKC's Accounting Department that is in effect at the time that any such payment is due. Said late fee shall initially be an amount equal to 1% of the invoice amount per month.

4.5.3. Fines & Service Fees

In addition to any other amounts payable by Licensee to CPKC, Licensee shall pay CPKC for any bank fines or service incurred by it in connection with the handling, non-payment, return, or currency conversion incurred by CPKC in connection with processing of any payment made by Licensee to CPKC.

4.6. Work At No Cost To CPKC:

The Work completed by Licensee shall be performed at no cost to CPKC.

5. CONTACT, NOTICES, ETC.

5.1. Contact Persons; Communications

Communications pursuant to this ROE License Agreement shall be directed to the contact persons designated in Section 1 or their designees. Either Party may change its contact person, or the address(es), telephone number, or fax number for the contact person, by notice to the other Party.

5.2. Notices

Except as otherwise provided in this ROE License Agreement, all notices pursuant to this ROE License Agreement shall be in writing and shall be effective upon delivery to the address or fax number of the contact person for the Party to whom notice is being given. If notice is given by fax, the notice shall not be deemed effective until received in legible form.

5.3. Notification Prior To Beginning Work

Licensee must notify CPKC in writing at least seven (7) days prior to beginning any separate phase of the Work, and again promptly after such phase of the Work has been completed so that CPKC may arrange for the necessary flagging protection.

6. PERMITTED & PROHIBITED USES; RIGHTS OF CPKC

6.1. Permitted Uses

6.1.1. The Work

The use of Property by Licensee shall be limited to the completion of the Work set forth in Section 2.2., or such other kind of activities as may be approved by CPKC in writing.

6.1.2. Government Authorities

Licensee may permit governmental authorities with jurisdiction over the Work to enter the Property for the purpose of inspecting or monitoring the Work. Whenever possible, Licensee shall advise CPKC (by telephone or other means calculated to bring the matter to CPKC's immediate attention) prior to permitting such governmental authorities to enter the Property for such purposes. The actions and omissions of such governmental authorities while on the Property for such inspections and monitoring shall be deemed the actions and omissions of Licensee. Licensee is not authorized to permit governmental authorities to enter the Property for any other purpose.

6.2. Prohibited Uses and Activities

The Licensee shall not use, occupy or permit the Property to be used for any purpose, activity or improvement except as provided in this ROE License Agreement or as may be approved of in writing by CPKC. Specifically, Licensee shall not:

6.2.1. Advertising

permit any advertisements or signs upon the Property;

6.2.2. Use of Hazardous Substances

without prior written disclosure to and approval by CPKC, Use or authorize the Use of any Hazardous Substance on the Property, including installation of any above or underground storage tanks; subject thereto, the Licensee shall arrange at its own cost for the lawful transportation and off-site disposal of any and all Hazardous Substances that it shall Use or generate;

6.2.3. Use of Premises for waste treatment or as storage or disposal facility

cause or allow the Property or any of CPKC's adjacent property to become a hazardous waste treatment, storage or disposal facility within the meaning of, or to otherwise bring any such property within the ambit of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., or any similar state statute or local ordinance; or

6.2.4. Subleasing Prohibited.

sublease the Property or the permissions or rights herein granted in any manner or form.

6.3. Reservations and Rights of CPKC

6.3.1. Railroad Activities Take Priority over Work

All Work by Licensee shall always and all times be subordinate to the needs of CPKC and any other duly-authorized third party/lessee in connection with their duly-authorized activities and operation, including but not limited to the movement of railroad trains and equipment and the repair of railroad track, structures, communications, and appurtenances thereto.

6.3.2. Reservation of prior and future uses not inconsistent with Licensee's activities.

The rights herein granted to Licensee to conduct the Work are subject to the rights granted in all other licenses, permits, and easements for tracks, roads, walkways, poles, wires, pipelines, sewers, billboards, and other improvements that exist or may be placed upon, across, above or underneath the Property by CPKC, or its employees, agents, licensees, grantees, representatives or invitees. Further, CPKC reserves unto itself the right to place (or to give others the right to place) additional tracks, roads, walkways, poles, wires, pipelines, sewers and billboards upon, across, above or underneath the Property in any manner that does not unreasonably interfere with Licensee's Work.

6.3.3. Monitoring

CPKC may elect to be present during the conduct of the Work and to monitor the same.

7. COVENANTS, CONDUCT & RESPONSIBILITIES

7.1 Definitions. For purposes of this ROE License Agreement:

7.1.1 "Claim" or "Claims" means any and all liabilities, suits, claims, counterclaims, causes of action, demands, penalties, debts, obligations, promises, acts, fines, judgments, damages, consequential damages, losses, costs, and expenses of every kind (including without limitation any attorneys' fees, consultants' fees, response costs, remedial action costs, cleanup costs, and expenses which may be related to any Claims);

7.1.2 "Environmental Law" or "Environmental Laws" means all Governmental Requirements that, in any way, govern or regulate Licensee's Work or activities arising from or relating to or resulting from such Work for the protection of human health, safety, the environment, and natural resources (including, without limitation, ambient air, surface, water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species, and vegetation), including, without limitation, Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., the Clean Water Act, 33 U.S.C. §1321 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§ 5101 et seq., the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. §§ 136 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Safe Drinking Water Act, as amended, 42 U.S.C. §§ 300f et seq., all as amended from time to time, or hereafter enacted;

7.1.3 "Governmental Requirements" shall mean all federal, state, and local laws, statutes, ordinances, regulations, codes, standards, guidance, judicial or administrative orders, consent decrees, binding judgments, or the orders of any public agency or authority, or association, or other similar requirements, now or hereafter in effect, in each case as

amended or supplemented from time to time, that, in any way, govern or regulate Licensee's Work on or use of the Property or activities arising from or relating to or resulting from such Work on or use of the Property.

7.1.4 "Hazardous Substance" or "Hazardous Substances" means any substance, class of substances, or such quantity of an otherwise non-hazardous substance or substances, which are or may be detrimental to the environment or human or animal health including, without limitation:

- a. radioactive, explosive, poisonous, corrosive, flammable, or toxic substances or materials;
- b. toxic substances, which shall include, without limitation, asbestos, polychlorinated biphenyls, all chemicals and substances known or suspected to cause cancer or reproductive toxicity;
- c. any substance, chemical, or material declared to be hazardous or toxic under any Governmental Requirements applicable to CPKC, Licensee, or the Property;
- d. any Waste containing hazardous biological material;
- e. any substance that, if added to any water, would degrade or alter the quality of the water to the extent that it is detrimental to its use by humans or by any animal, fish, or plant; and
- f. any solid, liquid, gas, or odor or combination of any of them that, if Released, creates or contributes to a condition that:
 - i. endangers the health, safety, or welfare of humans;
 - ii. interferes with the normal enjoyment of life or property; or
 - iii. causes damage to plant life, animal life, or to property.

7.1.5 "Release" or "Released" means any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, or spreading of any Hazardous Substance into the environment, as "environment" is defined in CERCLA or any other Governmental Requirement;

7.1.6 "Response" or "Respond" means action taken in compliance with Environmental Laws to correct, remove, remediate, cleanup, prevent, mitigate, monitor, evaluate, investigate, assess, or abate the Release of a Hazardous Substance;

7.1.7 "Use" as a verb, shall be broadly defined to include all uses, including without limitation to manage, generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend, or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of, or abandon.

7.2 Investigation; Compliance with Laws; Safety Requirements.

7.2.1 Tenants and Licensees in possession of Property

Before entering the Property to perform the Work, Licensee shall secure the consent of all persons or entities who are using or occupying any portion of the Property. CPKC will cooperate with Licensee to obtain consent from any such person or entity who unreasonably withholds consent.

7.2.2 Underground Utilities And Structures

- a. Licensee shall be responsible for determining the location of all underground utilities (electric lines, telephone lines, gas lines, steam lines, sewer lines, water lines, fiber optic cables, pipes, wires, and the like) and underground structures.
- b. Licensee shall call **CPCBYD “Canadian Pacific Call before You Dig” at 1-866-291-0741 for Signal, Fiber Optics, and Power for CPKC Facilities on Canadian Pacific Right of Way and the Missouri’s “ONE CALL”** a minimum of five (5) business prior to commencing any excavation, boring, or earth-moving on the Property.
- c. CPKC will cooperate with Licensee to identify the location of underground utilities and structures known to CPKC, but such cooperation shall not relieve Licensee from its primary responsibility to determine the locations of such utilities and structures.

7.2.3 Permits And Licenses; Compliance With Laws

Licensee shall secure, at no expense to CPKC, any permits or licenses required in connection with the Work and shall comply with all laws applicable to the Work and the Property, including (but not limited to) any Environmental Laws or other laws, standards, regulations, and permit requirements relating to environmental pollution or contamination or to occupational health and safety. Licensee shall indemnify and defend CPKC against any and all Claims arising out of or connected with the violation of any law by Licensee while on or about the Property to perform the Work.

7.2.4 Compliance With CPKC Safety Requirements; Identification

- a. While on the Property, Licensee shall comply with the safety requirements of CPKC, as such requirements may be amended from time to time during the duration of the Work, all at no expense to CPKC. CPKC’s safety requirements are set forth in CPKC’s **“MINIMUM SAFETY REQUIREMENTS FOR CONTRACTORS WORKING ON CPKC PROPERTY”**, which accompanies this ROE License Agreement, and in CPKC’s current safety handbook. One free copy of the current safety handbook will be provided to the Licensee by the CPKC contact person. Additional copies will be provided at Licensee’s expense. Licensee shall be responsible for ensuring that any person performing any of the Work for or on behalf of Licensee shall comply with the CPKC safety requirements that would apply to a CPKC employee performing similar work.

- b. Prior to any entry onto the Property, Licensee and every employee, agent, or subcontractor who carries out any part of the Work on the Property shall successfully complete the safety training available through the e-railsafe program at www.e-railsafe.com in respect to requirements for CPKC operations.
- c. Licensee and every employee, agent, or subcontractor who carries out any part of the Work on the Property shall at all times wear and visibly display the identification badge issued to them following successful completion of the e-railsafe safety training together with whatever additional identification materials that CPKC may reasonably require.

7.3 Work In Close Proximity To Railroad Operations; Drainage:

7.3.1 Interference With Railroad Operations

Licensee shall keep CPKC fully apprised of its proposed activities on the Property so as to prevent any interference with the operations of CPKC trains or equipment (or trains or equipment of others) operating on or near the Property.

7.3.2 Clearance

No work shall be done or any equipment or other obstruction placed over or within 25 feet laterally of the centerline of any track without advance notification to CPKC prior to performing such work or placing such equipment or obstruction.

7.3.3 Flagging

Licensee must make arrangements with CPKC for such flagging or watchman service for the protection of railroad traffic. However, the fact that CPKC provides such service shall not relieve Licensee from any liability under this ROE License Agreement. CPKC's labor and material additives are subject to change without notice to Licensee, and CPKC shall be reimbursed based upon its labor and material additives actually in effect as of the date of such service.

7.3.4 Certain Work Close To Track Not Permitted; Lateral Support:

- a. Unless otherwise agreed to in writing by CPKC, excavations, borings, wells, pits, test holes, probe sites, and the like shall not be located closer than 25 feet from the centerline of the nearest railroad track on or adjacent to the Property nor shall it take or allow any action upon the Property that would materially impair the lateral or subadjacent support of adjacent lands or railroad tracks;
- b. Unless otherwise agreed to in writing by CPKC, drilling and excavating equipment and related equipment shall not be located closer than 25 feet from the nearest rail of any such track;
- c. In the event that CPKC permits excavations, borings, wells, pits, test holes, probe sites, or the like in close proximity to tracks, embankments or other features providing lateral or subadjacent support to land or tracks, then notwithstanding

anything to the contrary in this license, Licensee shall be responsible for designing and constructing at no cost to CPKC any measure that is required to prevent the collapse, erosion, or impairment to said land or tracks.

7.3.5. Storm Water

Licensee shall not, without the advance written approval of CPKC, make any changes to the Property that would either increase the historic flow rate of storm water from the Property or create an impediment to the historic flow of storm water to the Property. Unless otherwise agreed in writing, between CPKC and the Licensee it is understood and agreed that Licensee shall at Licensee's cost and expense be liable to CPKC for the construction, maintenance, repair, and replacement upon the real property or other land not belonging to Grantor such storm sewer lines, manholes, mains, rip rap, boulders, wing walls, ditches, and related to improvements required for Licensee's compliance with this section.

7.3.6. Fencing

Licensee shall, as applicable and at no cost to CPKC, construct and maintain during the term hereof a fence acceptable to CPKC in the location(s) designated by CPKC in order to protect CPKC's railroad operations. Following completion of the Work, the Licensee shall remove the fencing, remove any post footings or concrete, and fill and tamp any post holes with clean fill material.

7.4 Conduct

7.4.1. Property clean, safe and free from nuisances

Licensee shall not permit the existence of any nuisance upon the Property and shall at all times keep the Property in a proper, clean, safe, and sanitary condition, and free from accumulations of waste materials, debris, or refuse.

7.4.2. Release of Hazardous Substances

Licensee shall not cause or allow the Release or threat of Release of any Hazardous Substance on, to, or from the Property.

7.4.3. Response Actions

The Licensee shall promptly take all necessary action in Response to any Release or Use of a Hazardous Substance at the Property caused by, or attributable to, any act or omission of the Licensee (or the Licensee's employees, agents, representatives or invitees) that could:

- a. Give rise to any Claim under any Environmental Law,
- b. Cause a public health or workplace hazard, or
- c. Create a nuisance.

7.5. Required Notices/Disclosures

7.5.1 Transportation and Disposal Contracts

The Licensee shall, as applicable and upon written request by CPKC, provide CPKC with copies of transportation and disposal contracts and manifests for Hazardous Waste, any permits issued under any Environmental Laws, and any other documents demonstrating that the Licensee has complied with all Environmental Laws relating to the Property

7.5.2 Releases or Suspected Releases

The Licensee shall promptly notify CPKC of any actual or suspected Release of any Hazardous Substance on, to, or from the Property, regardless of the cause of the Release.

7.5.3. Notices, summons citations, etc.

The Licensee shall promptly provide CPKC with copies of all summons, citations, directives, information inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, claims, causes of action, complaints, investigations, judgments, letters, notices of environmental liens, or Response actions in progress, and other communications, written or oral, actual or threatened, from the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, or other federal, state, or local agency or authority, or any other entity or individual, concerning:

- a. Any Release of a Hazardous Substance on, to or from the Property,
- b. The imposition of any lien on the Property, or
- c. Any alleged violation of or responsibility under any Environmental Law relating to the Property.

7.5.4. Other Reports

Licensee shall, at CPKC's option and at no cost to CPKC, provide CPKC a copy of any other report, summary or written test results, collectively "**Report**," pertaining to the Work. If any such Report is to be filed or made available to any governmental agency acting in a regulatory capacity, then Licensee shall also give CPKC a reasonable time (not less than five (5) working days) to review and comment on a draft of such Report and when preparing any such final Report pertaining to the Work, Licensee or its contractor shall give due consideration to CPKC's comments with respect to the draft of that Report. Licensee will promptly provide CPKC with a copy of any final Report.

7.6. CPKC's Right to Participate in Response Actions

Following receipt of any notice, order, claim, investigation, information request, letter, summons, citation, directive, or other communication identified in Section 7.5.3 above in connection with any response action taken pursuant to Section 7.4.3 above, Licensee shall notify CPKC of and permit CPKC to participate in any and all investigations, telephone conferences, settlement discussions, remediation plans, and all other interactions, direct or indirect, with governmental or regulatory officials, and Licensee shall take all action necessary to ensure that any indemnification, release, waiver, covenant not to sue, or hold harmless agreement benefiting Licensee and arising out of such activities, whether from a governmental or regulatory entity or from a private entity, also benefits CPKC to at least the same extent as Licensee.

7.7. Restoration of Property;

Upon completion of the Work or expiration or early termination of this ROE License Agreement, whichever occurs first, Licensee shall remove any debris resulting therefrom and shall restore the Property to the condition it was in prior to the commencement of the Work (or such other condition as is satisfactory to CPKC, taking into account the necessary changes associated with the agreed-to construction by Licensee of an underground box culvert, its approaches, drainage, and all work incidental thereto). All excavations are to be backfilled and tamped. All borings shall be backfilled with grout. Drill cuttings shall not be used as backfill. Licensee shall dispose of all drill cuttings, soil and sediment samples, purge water, dewatering effluent, and water samples and all excess excavation material in a manner acceptable to CPKC and in accordance with all applicable laws, all at no expense to CPKC.

8. LIABILITY

8.1. Damage To Tracks, Facilities, And Equipment

If any tracks, facilities, or equipment owned, used, or maintained by CPKC are damaged in connection with the Work, CPKC shall repair (or arrange for the repair of) such damage, and Licensee shall pay the full cost of such repair within 30 days after CPKC shall tender a bill therefor.

8.2. Assumption Of Risk

Licensee is fully aware of the dangers of working on and about railroad property and railroad operations and knowingly and willingly assumes the risk of harm (e.g., injury to or death of persons and damage to or destruction of property) that may occur while on and about the Property. Without in any way limiting the scope of the preceding sentence, Licensee assumes the risk that monitoring wells, elevation bench marks, reference points, and other installations located on the Property may be disturbed, damaged, or destroyed by CPKC or third persons, and Licensee shall not make any claim against CPKC on account of same, even if such disturbance, damage, or destruction arises from the negligence of CPKC or its employees, agents, lessees, or invitees. Licensee assumes full responsibility for protecting its installations and personal property from theft and vandalism while such installations and personal property are on the Property.

8.3. Indemnity

To the maximum extent permitted by applicable law, Licensee shall indemnify, defend, and hold harmless the CPKC Indemnified Parties (as defined below) against all Claims (as defined in this ROE License Agreement) arising out of, resulting from or relating to any loss of (or damage to) any property, natural resource, or business or any injury to (or death of) any person, where such loss, damage, injury, or death actually or allegedly arises (whether directly or indirectly, wholly or in part) from the Work, any action or omission of Licensee while on or about the Property pursuant to this ROE License Agreement, or the exercise by Licensee of the license granted by this ROE License Agreement. As used in this ROE License Agreement, CPKC Indemnified Parties, individually and collectively, means (a)

CPKC, (b) CPKC's directors, officers, stockholders, employees, agents, invitees, insurers, parents, affiliates, subsidiaries, predecessors, successors, and assigns, and (c) anyone acting on behalf of any person or entity described in (a) or (b).

9. INSURANCE.

9.1. During the Term of this ROE License Agreement, Licensee shall at its own cost and expense, take out and keep in full force and effect:

9.1.1. **Commercial General Liability Insurance**

Commercial General Liability Insurance policy with an inclusive limit of not less than Ten Million Dollars (\$10,000,000) per occurrence for personal injury, bodily injury, death or property damage, or any other increased amount as CPKC may reasonably require upon conducting reviews from time to time. Such insurance shall specifically state by its wording or by endorsement:

- a. CPKC, together with its associated parents, affiliates, and subsidiaries (and the directors, officers, employees, agents, and trustees of all of the foregoing) shall be named as an additional insured with respect to the Licensee's indemnity obligations under this ROE License Agreement;
- b. The policy shall contain a "cross-liability" or "severability of interest" clause which shall have the effect of insuring each entity, person, firm or corporation insured thereunder in the same manner and to the same extent as if a separate policy had been insured to each;
- c. Blanket contractual liability, including the insurable liabilities and obligations assumed by the Licensee under this ROE License Agreement;
- d. Broad form completed operations;
- e. Tenants' legal liability;
- f. Sudden and accidental pollution liability; and
- g. Shall include the following endorsement: *"It is agreed that the policy or policies of insurance evidenced by this certificate covers the liability assumed by the insured in connection with work to be performed in connection with the roadway bridge replacement agreement between The Kansas City Southern Railway Company and Jackson County, Missouri, including work upon railroad property, within railroad right-of-way, and in close proximity of operating railroad tracks."*

9.1.2. **Automobile Liability and Property Damage Insurance**

Automobile public liability and property damage insurance in an amount not less than Five Million dollars (\$5,000,000) all-inclusive covering the ownership, use and operation of any motor vehicles and trailers licensed for use on public highways and which are owned, non-owned, licensed, or controlled by Licensee or its agents or Licensee Representatives, and used in regards to this ROE License Agreement.

9.1.3. Workers Compensation Insurance

Workers compensation insurance which shall be in strict accordance with the requirements of the most current and applicable state workers compensation insurance laws, and employers' liability insurance, including occupational disease insurance with limits of not less than One Million Dollars (\$1,000,000) for each accident/each employee, and where appropriate coverage under said policies to be extended for liability under the Federal Employers Liability Act (FELA), United States Longshore and Harbor Workers Compensation Act (USL&H), and the Merchant Marine Act of 1920 ("Jones Act"). Licensee shall, before any services are commenced under this ROE License Agreement submit written evidence that it has obtained full Workers Compensation insurance coverage for persons whom it employs or may employ in carrying out the services under this ROE License Agreement. CPKC Indemnified Parties shall be waived of any and all subrogation in the event of injury, death, losses, incidents, claims and potential claims.

9.2. Insurance No Limit on Liabilities

Licensee agrees that the insurance requirements set out herein shall not limit or restrict its liabilities pursuant to this ROE License Agreement.

9.3. Form/Type of Insurance Policies

The insurance coverage required to be maintained pursuant to this ROE License Agreement shall be primary, and not excess of any other insurance that may be available. Unless otherwise provided above, all insurance coverage shall take the place in the form of an occurrence-basis policy, and not a claims-made policy.

9.4. Subrogation

Licensee shall waive any and all subrogation in the event of injury, death, losses, incidents, claims and potential claims where permissible under the insurance policies required under this ROE License Agreement.

9.5. Cancellation Notice to CPKC

The insurance coverages above shall be endorsed to provide CPKC with not less than thirty (30) days' written notice in advance of cancellation.

9.6. Contractual Endorsement

Licensee shall provide CPKC with written notice and all reasonable particulars and documents related to any damages, losses, incidents, claims, and potential claims concerning this ROE License Agreement as soon as practicable after the damage, loss, incident, or claim has been discovered. Licensee is responsible for any deductible and excluded loss under any insurance policy. The deductible in any insurance policy shall not exceed such maximum amount that a reasonably prudent business person would consider reasonable.

9.7. Insurance Documentation

Licensee shall, prior to the effective date of this ROE License Agreement, and upon the insurance renewal date thereafter for the duration of the Term of this ROE License Agreement, furnish to CPKC Certificates of Insurance evidencing the above coverages by email to CPKCrail@ebix.com. Upon request, Licensee shall provide CPKC with certified copies of the insurance policies. Such notice shall be by registered mail to the specific attention of: Risk Management, Canadian Pacific Railway Company, 7550 Ogden Dale Road SE, Calgary, AB T2C 4X9.

9.8. CPKC's Review of Insurance Documentation

CPKC shall have no obligation to examine such certificate(s) or to advise Licensee if its insurance coverage is not in compliance with this ROE License Agreement. Acceptance of any certificate(s) which are not compliant with the requirements set out herein shall in no way whatsoever imply that CPKC has waived its insurance requirements.

9.9. Maintenance of Insurance Coverage/Termination Option

CPKC reserves the right to maintain the insurance coverage in good standing at Licensee's expense and to require Licensee to obtain additional insurance where, in CPKC's reasonable opinion, the circumstances so warrant. If the Licensee fails to obtain and maintain the insurance coverage required in this ROE License Agreement, Licensee is not permitted access to the Property until Licensee has received written approval from CPKC or CPKC may, at its option, terminate this ROE License Agreement without notice.

10. GENERAL PROVISIONS

10.1. Survival of Indemnity Provisions.

The indemnification provisions of this ROE License Agreement shall survive its expiration or termination.

10.2. Mere License.

The permissions encompassed by this ROE License Agreement constitute a mere license to use the Property for the specified purpose of Licensee's performance of the Work and does not create any estate or interest in the Property.

10.3. No Warranty Of Title.

CPKC does not warrant that it has good title to the Property.

10.4. Assignment; Binding Effect:

This ROE License Agreement may not be assigned by Licensee without the advance written consent of CPKC. Subject to the preceding sentence, this ROE License Agreement shall be binding upon, and inure to the benefit of, the Parties' respective successors and assigns.

10.5. Governing Law:

This ROE License Agreement shall be construed and interpreted in accordance with the laws of the state in which the Property is located, without reference to the choice of law rules of that state.

10.6. Entire Agreement:

This ROE License Agreement is the full, complete, and entire agreement of the parties with respect to Licensee's licensed right of entry upon the Property as set forth herein, and any and all prior writings, representations, and negotiations with respect to those subjects are superseded by this ROE License Agreement.

10.7. Headings:

The headings used in this ROE License Agreement are provided solely as a convenient means of reference. They are not intended to, and do not, limit or expand the purpose or effect of the paragraphs to which they are appended. The headings shall not be used to construe or interpret this ROE License Agreement.

10.8. Singular And Plural:

As used in this ROE License Agreement, the singular form of a word includes the plural form of that word, and vice versa, and this ROE License Agreement shall be deemed to include such changes to the accompanying verbiage as may be necessary to conform to the change from singular to plural, or vice versa.

10.9. Duplicate Copies & Counterparts.

This ROE License Agreement may be executed in counterparts, which together shall constitute one and the same document. The Parties may execute more than one copy of this ROE License Agreement, each of which shall constitute an original.

11. SIGNATURES.

THE PARTIES have executed this ROE License Agreement as evidence of their agreement to the terms herein.

[Your Company Name]

**THE KANSAS CITY SOUTHERN RAILWAY
COMPANY, d/b/a CPKC**

By: _____
[Your name & title]

By: _____
Daniel Sabatka
Director Public Works

Date: _____

Date: _____