

Collin County
Agency Project No. _____
DOT – To be Decided, RRMP T199.50, KCS Station 4102+24
Park Boulevard Extension - Road Overpass
Wylie, TX
Greenville Subdivision

HIGHWAY CROSSING OVERPASS CONSTRUCTION AGREEMENT

This **AGREEMENT** made and entered into on the dates hereinafter shown as being fully executed, by and between Collin County hereinafter called the “**County**” and the City of Wylie “**City**” together hereinafter called as the “**Licensees**” and The Kansas City Southern Railway Company, a Missouri corporation, hereinafter called the “**Railroad**”, acting by and through its official contracting executives (County, City and Railroad each being sometimes referred to herein as a “**Party**” or two or more together as “**Parties**”).

W I T N E S S E T H

WHEREAS, the County proposes to construct a new four lane divided Park Boulevard Extension over the Railroad’s mainline, yard lead, switching and R&D tracks, said extension hereinafter identified as the “**Bridge**”, at milepost T199.50 railroad mainline track station 4102+24; and,

WHEREAS, there exists Spring Creek Parkway, a public roadway for access to the United States National Guard Armory facility, which roadway includes an at-grade crossing of the Railroad’s mainline and yard lead tracks at DOT crossing 022-364L, Railroad Milepost T199.50 (Greenville Subdivision) and Railroad Station 4155+01, hereinafter referred to as “**At-Grade Crossing**”, in the City of Wylie, Collin County, Texas; and,

WHEREAS, the Project intends to keep the At-Grade Crossing in its existing condition after the completion of the work described herein and provide continuous access for use, inspection and maintenance of the existing At-Grade Crossing during the entire duration and after the completion of the work described herein; and,

WHEREAS, all work related to the construction of the Bridge including drainage, erosion control, road construction, traffic maintenance, safety, and all other miscellaneous work related to the work described herein is hereinafter referred to as the “**Project**”; and,

WHEREAS, the final set of plans of the Project, approved by the Parties, shall be marked **Exhibit A**, attached hereto and made a part hereof; and,

WHEREAS, the County and the Railroad under separate agreements have entered into a quitclaim easement for roadway purposes where the Railroad will allow the County to place permanent infrastructure within the easement area and for the City to inspect, maintain and perform repairs to these permanent facilities, denominated as Roadway Easement No. 1 (42-1 RE) as shown in fuchsia color on **Exhibit B**; and,

WHEREAS, the County and the Railroad under a separate agreement have entered into an quitclaim easement for aerial roadway purposes where the Railroad will allow the County to place permanent infrastructure within the easement area and for the City to inspect, maintain and perform repairs to these permanent facilities, which aerial easement is denominated as Roadway Easement No. 2 (42-2 RE) as shown in fuchsia color on **Exhibit B** (and which easement, together with Roadway Easement No. 1 (42-1 RE) described in the immediately preceding paragraph, are hereinafter together called "**Easement Area**"); and

WHEREAS, the County, under a separate agreement, will grant the Railroad a license to connect an access driveway from Railroad's property east of the Roadway Easement No. 2 (42-2 RE) underneath the aerial Park Boulevard Extension to existing Spring Creek Parkway, which will remain in place, said connection approximately as shown with the blue dashed line on **Exhibit B**; and

WHEREAS, the Railroad by separate agreement, is granting the County temporary construction easements in areas adjacent to Roadway Easement No. 1 (42-1 RE), Roadway Easement No. 2 (42-2 RE) and the Licensed Areas, said temporary construction easements denominated as Temp. Construction Easement No. 1 (42-1 TCE), Temp. Construction Easement No. 2 (42-2 TCE) and Temp. Construction Easement No. 3 (42-3 TCE) (said temporary construction easements hereinafter together called the "TCEs"), as shown in light blue on **Exhibit B**; and

WHEREAS, the Railroad by executing this Agreement issues the Licensees an aerial license for the area for the portion of the Bridge crossing railroad track and right-of-way, hereinafter called the "**Licensed Area**", as show in **Exhibit B** as Roadway Crossing Agreement No. 1 (42-1 RCE) and Roadway Crossing Agreement No. 2 (42-2 RCE), allowing the County to construct and the City to inspect and maintain the Bridge and all associated infrastructure constructed as part of this Project within the aerial Licensed Area, subject to the terms of this Agreement; and,

WHEREAS, on December 12, 2019, the County and the Railroad have entered into an Agreement for Preliminary Engineering Services ("**PE Agreement**"), authorizing reimbursement to the Railroad for actual costs that are activities and to develop this Agreement, as attached hereto and made a part hereof as **Exhibit C**; and,

WHEREAS, the approved Railroad force account cost estimate that includes the amounts from the PE Agreement, construction inspections of the Project, construction support services, and other activities performed by the Railroad to complete the Project is marked as **Exhibit D**, attached hereto and made a part hereof; and,

WHEREAS, the contractor hired by the County to construct the Project ("**Contractor**") will require a right of entry permit from the Railroad to perform the work inside the Railroad's right-of-way, both in the areas encompassed by the License Agreement and the areas within the right-of-way covered by the TCEs and shall execute the Railroad's Contractor Right-of-Entry Agreement a sample of which is marked as **Exhibit E**, attached hereto and made a part hereof; and,

WHEREAS, the RAILROAD is willing to cooperate with the County in the accomplishment of the Project in the interest of public improvement and the safety and protection of the traveling public; and,

WHEREAS, the County will prepare the designs, plans and specifications for construction of the proposed Project at its own cost; and,

WHEREAS, all work to be performed and all materials to be provided shall be at the County's expense unless specifically identified herein; and,

WHEREAS, all infrastructure constructed by the County as part of this Project will be owned solely by one of the Licensees and at its sole cost, the City will inspect, maintain and perform repairs of this infrastructure after the completion and acceptance of the Project by the Parties.

A G R E E M E N T

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:

Article 1. Agreement Period

Upon execution by all Parties, this Agreement will be in effect and continue thereafter for so long as the Railroad property shall be used by the Licensees for the purposes set forth herein; provided, however, if the Licensees shall abandon the use of the Railroad's property, or any part thereof, for such purposes, this Agreement and the license and permission and the rights and privileges granted hereby as to the portion or portions so abandoned shall expire and terminate at the time each such portion shall be so abandoned; whereupon the Railroad shall have the same complete title to the Railroad property so abandoned as though these presents had never been executed and the right to enter thereon and exclude therefrom the Licensees, their successors, and assigns.

Article 2. Easement, License & Permission

a. Under separate agreements, the County and the Railroad have entered into the Easement, where the Railroad will allow the County to place permanent infrastructure within the Easement Area and for the City to inspect, maintain and perform repairs to these permanent facilities, as described in **Exhibit B**. Each Easement includes the terms of this Agreement, including but not limited to all of the terms of this Article 2, Easement, License & Permission, and Article 4, Plans, Estimates, Construction, and Maintenance.

b. The Railroad under this Agreement hereby grants to the Licensees license and permission for the construction, maintenance, and use of the aforesaid Bridge across and over the Railroad's property at the intersection of the Railroad's rail lines and the Bridge, "Licensed

Area”, shown in **Exhibit B**.

Such license and permission granted under items ‘a’ and ‘b’ above shall not prevent the Railroad from operating its trains or multiplying or changing its track across the land over which license has been given hereby.

Such license and permission is subject to the requirements of this Agreement, including but not limited to safety requirements of Article 4.n and insurance and right-of-entry requirements of Article 5.

c. The Parties agree that the Licensed Area is shown in the attached **Exhibit B**.

d. The license and permission given is subject to the rights of utility companies to maintain and operate facilities thereon and thereover, and the Licensees will make their own arrangements with the utility companies for any necessary relocation or alteration of said facilities to support construction of the Bridge. The Licensees agree that the Railroad retains all its existing rights to license future utility facilities across the licensed premises.

e. 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 said property shall in any way be affected by the giving of this license.

f. It is agreed that should the property or any portion thereof which is licensed hereunder cease to be used for public road purposes, this license, as to the portion so abandoned, shall immediately cease and terminate.

g. Permission is granted solely for the purposes of the Licensees, at their sole cost and expense, for the proposed highway improvements as shown in the **Exhibit A**, and is expressly subject and subordinate to the present and future rights of the Railroad, its successors, assignees, lessees, grantees and licensees, to maintain, use, operate, and renew on, beneath or above the surface of the Railroad’s property any telephone, telegraph, power, communication, or signal lines, poles and/or appurtenances, fiber optic communications, tracks, roadways, pipelines, structures, improvements, or facilities of similar or different character, as now located, and to permit, construct, install, establish, and thereafter maintain, use, operate, and to renew on, beneath or above the surface of the Railroad property, any or all said things which, except as provided in paragraph 2.d above, do not materially interfere with the Licensees’ use of the Railroad property as hereinabove provided.

h. The County shall pay the Railroad a one-time fee of Five Thousand Dollars (\$5,000.00) for issuance of this license, in addition such other fees as are due under other provisions of this Agreement. The County and the Railroad agree that this amount does not include the amounts negotiated under the separate Easement agreement.

i. Parties hereby agree to the following terms and conditions for the existing At-Grade Crossing:

The Licensees agree to:

- i. Not alter, modify or change the existing at-grade crossing.
- ii. Modify the road approaches planned under this Project in accordance with standards and specifications of the Railroad and other government agencies as applicable.
- iii. Not prevent use, inspection, or maintenance of the crossing by the Railroad or other authorized users of the at-grade crossing during the entire construction period of the Project.
- iv. Repair the approaches to the at-grade crossing at its own cost when damaged during the construction of the Project.
- v. Not hold the Railroad liable for any delays to the Project due to Railroad's work on the at-grade crossing.
- vi. Reimburse the Railroad for costs and expenses incurred during additional maintenance or for performing repairs to the at-grade crossing due to Contractor's use of the crossing.

The Railroad agrees to:

- i. Permit the County to use the at-grade crossing for construction of the Project.
- ii. Permit the City to use the at-grade crossing for the purpose of inspection and maintenance of the Project infrastructure.
- iii. Perform inspection, maintenance and repairs to the crossing in accordance with existing agreements between the Railroad and other entities.
- iv. Maintain and repair the crossing when damaged by Contractor's use at Licensee's sole cost.

Article 3. Scope of Work

a. The County and the Railroad agree that the County will perform the work as outlined in this Agreement and as shown in the plans in **Exhibit A**. The work will generally consist of building a highway bridge and other related appurtenances over the tracks and on the property owned by the Railroad.

b. In order to provide for safety of the Railroad, the Railroad and its designated representative shall provide Construction Monitoring Services ("**CMS**") and the Contractor shall provide protective services ("**Flagging**") during the period of performance of work in or incident to the Project. Flagging shall be performed by a Railroad-qualified Flagging company. The County or the City, as applicable, by signing this Agreement, agrees to bear one hundred (100) percent of CMS and Flagging costs. The Railroad and its designated representative shall have the right to furnish all such CMS Services shown in the Railroad force account estimate, attached hereto and to be identified as **Exhibit D**. During initial construction, the County will reimburse the Railroad for the cost thereof, including charges related to travel, boarding, lodging, etc., of CMS providers. The City shall notify the Railroad a minimum of thirty (30) days in advance whenever it is about to perform work adjacent to, on, under and over any track or bridge to enable the Railroad to furnish CMS as might be necessary to ensure safety of railroad operations and its facilities. With respect to such maintenance, the City will reimburse the Railroad for the cost thereof, including charges related to travel, boarding, lodging, etc., of CMS providers.

Article 4. Plans, Estimates, Construction, and Maintenance

a. The County, at its own expense, has prepared the final one hundred percent (100%) plans, specifications, and estimates (PS&E) for the Project identified herein. The written approval of the plans by the County and the Railroad are hereby adopted as the final one hundred percent (100%) plans and specifications covering the construction of the Project identified as **Exhibit A**. The construction of the Project shall conform to the final one hundred percent (100%) plans in **Exhibit A**. No changes to **Exhibit A** shall be made without the written approval of such changes by the County and the Railroad. Neither the County nor its contractors shall commence any work on the Railroad's property involving work identified in **Exhibit A** 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 Project, the County shall require its Contractor to provide Flagging during the period of performance of work in or incident to the proposed Project. Flaggers shall be provided from a Railroad-qualified Flagging contractor, as stated in the Railroad's Contractor Right-of-Entry Agreement, a sample attached hereto as **Exhibit E**. 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 project due to railroad flagger scheduling issues. Additional Flagging information can be found as stated in item "n. - Construction Requirements" below.

c. The County and Contractor, unless otherwise provided, shall make such changes or alterations to facilities not owned by the Railroad, including but not limited to communication, signal pole and wire lines, pipe, sewer and drainage or other facilities or buildings located upon the Railroad's right-of-way, that may be displaced or required by the construction of the 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 construction of said work. The County and its Contractor shall not, without Railroad's written approval, perform any work that may interfere with the operations or the safety of the Railroad other than what is approved under this Agreement.

d. Only the Railroad will perform the work to adjust facilities owned by the Railroad that are necessary to construct the Project whose costs are included in the railroad force account. The Railroad has prepared, and the County approves by executing this Agreement, written cost estimate(s) for all Railroad force account work, including CMS for the Project as detailed in accordance with the **Exhibit A**. One hundred percent of these costs shall be reimbursed by the County. Said approved cost estimate(s) are attached hereto and identified as **Exhibit D**.

e. Full execution of this Agreement serves as the official Work Order to the Railroad from the County for CMS.

f. Following the completion of the Project, the City shall assume full ownership and responsibility for maintenance and operation of the Roadway, highway bridge and all other improvements made as part of this Project.

g. INTENTIONALLY LEFT BLANK

h. The Railroad, under terms of this Agreement, gives the City permission to enter the Railroad's right-of-way to access and perform routine inspections, maintenance and/or emergency work (Repair Work) as required on the Roadway, the Bridge and other City-owned infrastructure. Except in case of an emergency threatening the safety of the public or of the Railroad, the City shall prepare plans, specifications and work methods to perform the Repair Work for review and approval by the Railroad prior to performing such Repair Work, and shall perform any work on the side of or under the Bridge within the Railroad right-of-way only in the presence of a railroad flagger from a Railroad-qualified Flagging contractor. In the event of an emergency threatening the safety of the public or of the Railroad the City shall contact Railroad's Critical Incident Desk at 1-877-527-9464 prior to entering the Railroad's right-of-way and shall only be within twenty-five feet of the Railroad's track when a Railroad employee is present. If the inspection or Repair Work is being performed by a contractor employed by the City, the City shall require its contractor to execute the Railroad's Contractor Right-of-Entry Agreement as required by the Railroad at that time before accessing the railroad property and/or commencing the Repair Work on the Railroad's property and provide insurance as required by the Railroad's Contractor Right-of-Entry Agreement at that time. All costs associated with the Repair Work to the City's infrastructure shall be borne by the City, unless the need for Repair Work is caused by the actions of the Railroad or its contractor(s) or the misuse of the Railroad's infrastructure.

i. Licensees, under terms of this Agreement, acknowledge that the Railroad retains the right to perform maintenance and/or emergency work (Repair Work) as required on its infrastructure. If Railroad's Repair Work will interfere with the ordinary use of the Bridge or Roadway or involve access to same by Railroad or Railroad contractor's personnel to perform the Repair Work, Railroad will, except in case of an emergency threatening public safety or Railroad safety, notify the City of such work and discuss with the City Railroad's plans for doing such work. If emergency work by the Railroad is required, in the interest of public safety or the safety of the railroad operations, the City shall fully cooperate with the Railroad to enable the Railroad to perform the emergency repairs. All costs associated with the Repair Work to the Railroad's infrastructure shall be borne by the Railroad unless the need for Repair Work is caused by the actions of the City or its contractor(s) or the misuse of the City's infrastructure.

j. The County assumes the entire responsibility for the construction and the City assumes the entire responsibility for the maintenance and use of said highway and the bridge upon and over the Railroad's property at the location herein described, 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 construction, maintenance, or use of the portion of said highway located upon the Railroad's property.

k. The term Contractor as used herein includes any and all subcontractors of the Licensees. The term "**Engineer**" as used in this article means the County's lead engineer for the Project. The term "**Railroad Engineer**" as used in this article means the Railroad's Chief Engineer, or his designee. The County shall designate its Engineer and his/her contact

information in writing to Railroad. Railroad Engineer's contact information is stated in Article 13 of this Agreement.

l. Licensees shall require their Contractors 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 and from any loss or damage to the 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 this Project, whether on, over, under or in the vicinity of the Railroad's property.

m. 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.

n. Construction Requirements – Railroad Requirements

Licensees shall, by contract, require their Contractors to do the following:

n.1. The Contractor's work on the Railroad's property shall be performed in accordance with these Railroad Requirements and per plans and specifications prepared by the County and approved as shown in **Exhibit A**.

n.2. The Contractor shall supply adequate equipment, labor and materials to perform the proposed work at the job site.

n.3. The Contractor shall take special precaution and care to prevent any debris or material from fouling the tracks that will interfere with safe operations of the Railroad. The safe operation of the Railroad shall take precedence over all work and nothing shall be done by the Contractor that will endanger the Railroad's operations. The Contractor shall protect the Railroad's property from any damage resulting from the Contractor's acts or omissions during the Project.

n.4. The Contractor shall notify the Railroad anytime work is being done adjacent to then-existing railroad tracks and shall take extreme care to not damage them. Contractor shall bear full responsibility of damages to the tracks and pay all costs associated with performing the repairs to bring the railroad track back to its original condition.

n.5. If the work to be done by the Contractor is deemed by the Railroad Engineer to affect the safety the railroad facilities, the Contractor shall submit to the Railroad for review and approval detailed plans, specifications, and work methodology prior to start of the work. Railroad reserves the right to perform the work on the railroad facilities to make the necessary adjustments to the railroad facilities for the Contractor to perform his work. The

Licensee(s) shall reimburse one hundred (100) percent of these costs to the Railroad.

n.6. Before performing any excavation, demolition, blasting, lifting of structural members or construction of falsework on or over Railroad's property or adjacent to the Railroad's property that may interfere with the safe operation of trains, the Contractor shall submit its excavation, shoring, demolition, blasting, lifting of structural members and falsework plans and relevant procedures to the Engineer and to the Railroad Engineer for review and approval. These plans and procedures shall be signed and sealed by a Professional Engineer licensed in the State of Texas. However, such approval shall not relieve the Contractor from any liability relating to this Project.

n.7. During the course of the Project, the Contractor shall submit any proposed changes to the approved plans and procedures to the Engineer for review and 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 within the Railroad property shall not be done prior to the 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.

n.8. Excavations for construction of footings, piers, columns, walls or other facilities that require shoring shall comply with requirements and recommendations 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." Shoring, excavations, erection of temporary structures, etc., that will affect the safety and structural integrity of the railroad facilities shall be submitted to the Railroad for review and approval prior to start of such work. No such work shall begin until such approval from the Railroad is received by the Contractor.

n.9. The Contractor shall abide by the following minimum temporary clearances during the course of construction

- a. 14.0 feet horizontal from centerline of track
- b. 22.0 feet vertical above top of the highest rail

n.10. The Contractor shall comply with the Railroad's rules and regulations concerning protection of persons and property and the Contractor shall consult with the Railroad Engineer concerning the Railroad's rules and regulations. Any questions arising about coordination of work between the Contractor and the Railroad Engineer or between the Contractor and others shall be taken up with the Engineer and the Contractor, Railroad Engineer and Engineer shall agree upon a method of coordination before the work is commenced.

n.11. Prior to commencing any work upon, over or under the Railroad's property, the Contractor shall furnish to the Railroad Engineer evidence that the Contractor's insurance is as noted in the Contractor's Right of Entry Permit.

n.12. Except as authorized by the Railroad, neither the Licensees nor their Contractor(s) or subcontractor(s) will construct a crossing over any track at any location. Where crossings are needed or desired, Licensees' Contractor shall make arrangements with Railroad and obtain a Permit, paying any and all fees thereof. If and when permitted by the Railroad, 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.

n.13. The Contractor shall be required to maintain all ditches and drainage structures free of silt or other obstructions which may result from Contractor's operations; to promptly repair eroded areas within Railroad's right-of-way and to repair any other damage to the property of the Railroad or its tenants which may result from Contractor's operations. All such maintenance and repair of damages due to the Contractor's operations shall be done at the Contractor's expense. If the Contractor's method of erosion control differs from the approved plans, the 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, County, City, and federal regulations.

n.14. The 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. Contractor shall remove all waste, excess materials, false work and other temporary structures, and equipment, leaving the location of the work cleaned to the reasonable satisfaction of Railroad. The 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 Project. Upon completion of the Project, the Contractor shall return the Railroad property and all other Railroad property to a condition equal to or better than existed prior to commencement of the work.

n.15. Site Inspections By Railroad's Designated Representative: In addition to the office review of construction submittals, site inspections to check progress of the work and to check the conformance of the work to the approved plans at any time throughout the construction as deemed necessary by the Railroad may be performed by Railroad's Designated Representative at milestone events during 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 overpass bridge superstructure
- v. Construction of overhead forms for the bridge decks
- vi. Reinforcement and concrete placement of overpass bridge decks.
- vii. Completion of the bridge structure

- viii. Work on or near the At-Grade Crossing
- ix. Placement of culverts under the railroad tracks, if any
- x. Construction of temporary at-grade construction crossing if permitted by the Railroad
- xi. Final inspections at the completion of the Project

Contractor shall fully cooperate with Railroad's site inspections. The County shall reimburse the Railroad all costs associated with Site Inspection work by the Railroad.

n.16. The Railroad's Designated Representative can either be an employee of the Railroad or a hired outside consultant.

n.17. In addition to the project schedule required by the County, the Contractor shall provide to the Engineer a detailed construction schedule for its work on Railroad property, including the proposed temporary horizontal and vertical clearances and construction sequence for all work to be performed on the Railroad property. The Contractor shall submit a copy of this detailed construction schedule to Railroad's Designated Representative for review prior to the start of the work. This schedule shall also include the anticipated dates when the milestone events listed in subsection n.15 will occur. The 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.

n.18. While on the Railroad's property, Contractor shall comply with Railroad's rules and regulations concerning protection of persons and property including Railroad's Personal Protective Equipment (PPE) rules. Railroad shall make its applicable rules available to the Contractor for review and copying.

n.19. Except as authorized by Railroad the Contractor shall not work within the "Minimum Clearance Zone" of any track. The "Minimum Clearance Zone" is defined as an area measured 25 feet, horizontally, on either side of the centerline of track with unlimited vertical distance above the top of rails within the horizontal limits. Additionally, Contractor will locate all equipment, devices, and materials at a sufficient distance from any track 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.

n.20. Contractor shall ensure that Flagging services provided by a Railroad-qualified Flagging contractor will be provided whenever agents, employees or equipment of the Contractor or any of its contractors or subcontractors on this Project shall be within the Minimum Clearance Zone, and when any equipment or its attachment or booms, even though stationed outside the Minimum Clearance Zone has a potential to come within the Minimum Clearance Zone. The term "Minimum Clearance Zone" is defined in n.19 above.

n.21. Contractor shall notify the Railroad concerning any Flagging services that will be required during the course of the Project, but the Contractor shall make all arrangements

for Flagging protection directly with a 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 Construction Requirements, all Flagging contractors utilized on the Project shall be treated solely as independent contractors of the Contractor for all purposes.

Railpros

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Bottom Line On-Track Safety Services

Jeff Yarbrough

972-824-3348

jeff.yarbrough@alliedtrack.com

Nick Loar

214-394-5237

nick.loar@alliedtrack.com

n.22. Contractor shall clear the tracks when directed to do so by the flagger. The presence of the flagger will not relieve Contractor of its duty to keep all its agents, employees and contractors clear of the tracks when trains are in dangerous proximity to the area where construction is occurring.

n.23. At the discretion of Licensees, all Contractor employees and supervisors performing work within the Railroad property, except any personnel employed or assigned by a Railroad-qualified Flagging contractor, may be trained with reference to the Railroad's On Track Safety Rules. Contractor, at its own cost, shall provide its employees this training by contacting:

RailPros

Susan Dunshee

904-296-8088

susan.dunshee@railpros.com

n.24. All railroad tracks within and adjacent to the Project site are active, and rail traffic over these facilities shall be maintained throughout the 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. The Contractor shall coordinate and schedule the work so that construction activities do not interfere with railroad operations. Any and all costs associated with delays caused to the train traffic by the Contractor shall be reimbursed by the Contractor. Licensees or their Contractor may audit these costs.

o. Ownership.

o.1. The City assumes ownership and maintenance of existing Roadway facilities and new Roadway improvements, including the new overpass bridge and drainage structures, whether shown or not on the **Exhibit A** which are within or impact the Railroad's right-of-way. Prior to making any maintenance on the City's infrastructure

within areas in **Exhibit B**, the City shall submit the planned maintenance and schedule to the Railroad for review and approval.

o.2. Under a separate agreement between the County and the City, at the completion of the Project, ownership and maintenance of all facilities constructed by the County in accordance with this Agreement will be transferred to the City. The City agrees to all the terms and conditions set forth in this Agreement.

o.3. The Railroad assumes ownership and maintenance of the existing track and other railroad infrastructure within the areas described in Exhibit B excluding items mentioned in o.1 above.

Article 5. Insurance and Right-of-Entry Requirements

a. The County shall require its Contractor to execute the Railroad's Contractor Right of Entry Agreement and pay the Railroad a one-time fee of One Thousand Dollars (\$1,000.00) for issuance of this permit before commencing any work on the Railroad's property. Contractor can obtain the right of entry permit from the Railroad by contacting:

Denise Case
Transaction Manager
Jones Lang Lasalle (JLL)
Rail Practice Group
4200 Buckingham, Suite 110
Fort Worth, Texas 76155
Tel: 817-230-2600 / direct 817-230-2614
denise.case@jll.com

Online Application:

https://jllrpg.360works.com/fmi/webd/rpo_web_kcs.fmp12

b. The County shall require its Contractor to provide the insurance coverages as contained in the Railroad's Contractor Right-of-Entry Agreement, a sample attached hereto and identified as **Exhibit E**.

c. For future maintenance work, the City shall require its Contractor to provide the then-current Railroad insurance coverages and be required to execute the then-current-standard Railroad's Contractor Right-of-Entry Agreement before commencing any work on the Railroad's property.

d. Licensees are self-insured for any work performed by them with their own employees. To the extent allowed under State law, and without waiving any governmental immunity to which Licensees are entitled under State law, Licensees are responsible to the Railroad to cover bodily injury and property damage claims which may occur during construction and maintenance of the overpass structure.

Article 6. Payment

a. Reimbursement to the Railroad and/or the Railroad's Contractor will be made for Construction Management Services ("CMS") and amendments thereto except as modified by the provisions herein.

b. CMS furnished by the Railroad and/or the Railroad's Contractor will be reimbursed by the County based on actual costs incurred by the Railroad and/or the Railroad's Contractor as they relate to the Project and approved in the cost estimate identified as **Exhibit D**. Parties understand that the amounts shown in **Exhibit D** are only an estimate and not a not-to-exceed amount. If the estimated amount in **Exhibit D** is found to be inadequate, the Railroad shall obtain a written approval from the County for the additional amounts required to complete CMS ("Additional Work") by the Railroad. The Railroad shall not commence the Additional Work until the written approval is obtained from the County. Railroad shall not be held liable for non-performance of the Additional Work resulting in financial damages to the County or the Contractor due to County delays in approval of or failure to approve the estimate of Additional Work.

c. The Railroad may submit monthly bills prepared in satisfactory form for CMS performed. Payment will be made within thirty (30) days for the costs detailed on the bills.

d. 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 Project Completion & Acceptance Letter forwarded to the Railroad by the County stating the Project is completed. Payment will be made within thirty (30) days of receipt of the Final Invoice.

Article 7. Termination

The County reserves the right to cancel this Agreement for any reason and at any time prior to start of construction of the Project. The County will not be responsible for any expense incident to any cost incurred in the event of the cancellation of this Agreement, unless (i) a Work Order was issued by the County and the Railroad and/or the Railroad's Contractor incurred expenses pursuant to that Work Order, or (ii) for any preliminary engineering costs authorized under **Exhibit C**. Cancellation of this Agreement shall not relieve the County or its Contractors of the responsibility to assure that Railroad's property is left in as good or better condition following any work on the Project on or near Railroad's property.

Article 8. Records & Audits

a. The Parties shall maintain books, documents, papers, accounting records, and other evidence pertaining to costs incurred and work performed hereunder and shall make such materials available at their offices during the Agreement term and for three (3) years from the date final payment is due under Article 6.d. The records shall be made available to representatives from the County for the purpose of making audits, inspections, transcriptions, or excerpts.

b. Licensees' Auditor may conduct an audit or investigation of any entity receiving funds from the Licensees directly under this Agreement, or indirectly through a subcontract under

the Agreement. Acceptance of funds directly under the Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the Licensees' Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the Licensees' Auditor with access to any information the Auditor considers relevant to the investigation or audit.

c. The Railroad is required to make any information created by or exchanged with the Licensees pursuant to this Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the County.

Article 9. Existing Agreements [reserved]

Article 10. Protection of Fiber Optic Cable Systems

Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance, since any break could disrupt service to users, resulting in business interruption and loss of revenue and profits. Licensees and/or their Contractor shall contact the Railroad during normal business hours (8:00 a.m. to 5:00 p.m., Central Standard Time, Monday through Friday, except holidays) at 877-527-9464 (also a 24-hour, seven-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's property to be used by the Licensees. If it is, the Licensees and/or their Contractor will contact the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's property. Information from Railroad is provided without warranty as to its correctness or completeness. Licensees and/or their Contractor shall also be responsible for contacting Texas811 or other applicable utility damage prevention systems to notify potentially affected utilities at the Project site to identify their facilities. Railroad shall also identify its signal lines, if any, to the Licensees.

Article 11. Limited Access

The County hereby agrees that during the construction of the proposed improvements, it will keep its employees, material, and machinery within the defined area of the premises in the attached **Exhibit A** final plans and easement areas show in **Exhibit B**, unless otherwise specified. There shall be no crossings of the Railroad's tracks except at existing, open, and public crossings, or at locations mutually agreed upon in writing by the County and/or the County's Contractor and the Railroad.

Article 12. Transfer

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), 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; provided, however, that any assignment of this Agreement arising from or relating to the control of Railroad as approved by the Surface Transportation Board (STB) in STB Finance Docket No. 36500, Decision No. 35 (served March 15, 2023) and related subdockets and subsequent decisions in said docket(s) shall not require the Licensees' consent. Contracting or subcontracting for the performance of work required under this Agreement shall not be considered to be a transfer or assignment of all or part of this Agreement.

Article 13. Notification

The County agrees to notify the Railroad in writing when all work on the Railroad's property is complete.

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

For Collin County

Clarence Daugherty, Director of Engineering
4690 Community Ave., Suite 200,
McKinney, TX 75071

Construction related questions:

Tracy Homfeld, PE, CFM
Assistant Director of Engineering
Collin County Engineering
4690 Community Ave., Ste. 200
McKinney, TX 75071
Telephone: 972.548.3733
thomfeld@co.collin.tx.us

Billing and invoices:

Bridell Miers, P.E.
Engineering Project Manager
Collin County Engineering
4690 Community Ave., Suite 200
McKinney, TX 75071
Telephone: 972-548-3723
bmiers@co.collin.tx.us

Dawn Redwine
Office Administrator
Collin County Engineering
Telephone: 972-548-3727
dredwine@co.collin.tx.us

For The Kansas City Southern Railway Company

Construction related questions:

Bentley Tomlin
Public, Utility, and Industrial
Project Manager,
Engineering Department
Overnight and USPS delivery
address:
427 W 12th Street, Kansas
City, MO 64105
Telephone: 816-983-1605
bentley.tomlin@cpkcr.com

Billing and Invoices:

Capital Investment Accounting
Overnight and USPS delivery
address:
427 W 12th Street, Kansas
City, MO 64105

[For the City of Wylie](#)

Tim Porter, PE, CFM
City Engineer
City of Wylie
O: 972-516-6414
tim.porter@wylitexas.gov

Article 14. Responsible For Its Own Actions

The Parties each acknowledge that they are not an agent, servant, or employee of the other Party, and that they each are responsible for their own acts and deeds and for those of their own agents and employees during performance of work under this Agreement.

Article 15. Conditions

a. In accordance with the provisions of Title 23, Code of Federal Regulations (CFR), Subchapter G, Part 646, Subpart B, issued by the Federal Highway Administration, and amendments thereto, the Railroad will not be required to participate in the cost of the Project.

b. The County may be reimbursed for its expenditures hereunder from federal funds for this Project. Therefore, the County and the Railroad will comply with statutes, rules, and regulations enacted and promulgated by the U.S. Government and its Federal Highway Administration.

Article 16. Compliance with Laws

The Parties shall comply with all applicable federal, County, City, 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. When required, the Railroad shall furnish the Licensees with satisfactory proof of this compliance. 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.

Article 17. Legal Construction

If one or more of the provisions contained in this Agreement shall for any reason be held inapplicable, invalid, illegal, or unenforceable in any respect, that inapplicability, invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the inapplicable, invalid, illegal, or unenforceable provision.

Article 18. Signatory Warranty

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

Article 19. Venue; Governing Law

The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement, without regard to conflict of law principles. This Agreement is performable in Collin County, Texas, and the exclusive venue for any action arising out of this Agreement shall be a court having jurisdiction in Collin County, Texas, including federal courts.

Article 20. Immunity

It is expressly understood and agreed that, in the execution and performance of this Agreement, neither party has waived, nor shall be deemed hereby to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein.

IN WITNESS WHEREOF, the Parties have executed duplicate counterparts of this Agreement for this Project identified as **Project No. 19351** on the dates indicated below.

COLLIN COUNTY, TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies, or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: _____ Date: _____

Name: _____

CITY OF WYLIE, TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies, or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: _____ Date: _____

Name: _____

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

By: _____ Date: _____

Name: _____