

GRADE CROSSING CONSTRUCTION AGREEMENT

This AGREEMENT is entered into this ____ day of _____ 2024, by and between **THE KANSAS CITY SOUTHERN RAILWAY COMPANY ("KCSR") d/b/a ("CPKC")** (herein sometimes called "KCS"), a Missouri corporation to be addressed at 4601 Hilry Huckaby III Drive, Shreveport LA 71107, and **CITY OF WYLIE, TEXAS** (herein sometimes called "City"), to be addressed at 300 Country Club Rd., Building 100, Wylie, TX 75098 (KCS and City each being sometimes referred to herein individually as a "Party" and sometimes being referred to herein together as the "Parties").

WHEREAS, Eubanks Lane in Wylie, Texas, is being widened from a two-lane thoroughfare to a four-lane divided thoroughfare; and

WHEREAS, said four-lane divided thoroughfare shall cross tracks utilized by KCS at approximate railroad Mile Post 200.02 on the Alliance Subdivision, DOT Crossing No. 789654 P (the "Crossing"); and

WHEREAS, City desires to provide for the reconstruction of the at-grade highway-rail crossing where the said Eubanks Lane crosses track utilized by KCS; and

WHEREAS, KCS has agreed to perform the work necessary for such reconstruction, but only as subject to the following terms and conditions of this Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. KCS shall provide the necessary materials and labor to perform the necessary construction of the grade crossing surface from end of tie to end of tie for the Crossing. KCS's estimate of the costs required to perform said work is attached hereto as Exhibit A. The Parties acknowledge that Exhibit A is only an estimate, and that the City shall be responsible for the actual cost of the labor, material and other expenses incurred by KCS for the grade crossing surface construction, determined according to the methodology shown in Exhibit A, whether such actual cost is more or less than shown on Exhibit A.

2. KCS shall provide the necessary materials and labor to construct the grade crossing warning devices for the Crossing. KCS's estimate of the costs required to perform said work is attached hereto as Exhibit B. The Parties acknowledge that Exhibit B is only an estimate, and that the City shall be responsible for the actual cost of the labor, material and other expenses incurred by KCS for the grade crossing warning device construction shown on Exhibit B, determined according to the methodology shown in Exhibit B, whether such actual cost is more or less than shown on Exhibit B.

3. Prior to KCS performing any work on this project, City will deposit with KCS ONE MILLION, TWO HUNDRED TWENTY-TWO THOUSAND, SEVEN HUNDRED AND TWENTY-TWO DOLLARS (\$1,222,722.00) to cover the estimated cost to procure and install the grade crossing surface and grade crossing warning devices, including estimated transportation, shipping and handling costs for the same (the “associated costs”). In the event that KCS determines that the cost to procure and install the grade crossing surface and grade crossing warning devices, including the associated costs, will exceed \$1,222,722.00 by less than \$50,000.00, KCS shall give written notice and supporting documentation to the City for its approval to proceed prior to incurring such additional cost and expenses. The City shall review and provide written approval within fourteen (14) days to avoid project delays. In the event that KCS determines that the cost to procure and install the grade crossing surface and grade crossing warning devices, including the associated costs, will exceed \$1,222,722.00 by \$50,000.00 or more, KCS shall give written notice and supporting documentation to the City for its approval to proceed prior to incurring such additional cost and expenses. The City shall review and provide written approval within thirty (30) days to avoid project delays. KCS shall be under no obligation to provide any materials or perform any labor until the City’s deposit has been received and cleared KCS’s bank.

4. City shall furnish KCS documentation of federal funds - particularly funds appropriated under 23 U.S.C. Section 130 - if any, being used to compensate KCS for the project.

5. Upon completion of the installation of the grade crossing surface and grade crossing warning devices, KCS shall determine the actual cost of the crossing surface and grade crossing warning devices, including associated costs. If that actual cost and associated costs together exceed \$1,222,722.00, then, so long as KCS has complied with the notice and approval procedures set forth in Section 3 above, KCS shall invoice the City for the additional amount by which the actual costs together with associated costs exceed \$1,222,722.00. If KCS issues such an invoice to the City, the City shall pay such invoice within sixty (60) days. If the actual cost of the project, together with associated costs, is less than \$1,222,722.00, KCS shall determine the actual cost and associated costs of the project and advise the City thereof, and shall within sixty (60) days thereafter issue a refund to the City of the difference between the actual cost-plus associated costs and the estimated cost of \$1,222,722.00.

6. City, at its sole cost and expense, shall provide all necessary materials and labor to construct the portions of the roadway surface outside the ends of ties. City will install the road approaches, drainage, pavement markings and arrange for disposal of the spoil (if any), cause the roadway to remain closed to all vehicular and truck traffic during construction except at times when KCS and City together agree that work may safely continue while traffic is allowed to pass, arrange for all construction and warning signs and barricades, and be responsible for any required notification of the public. In doing such work, the City shall enhance or, at a minimum, shall not impair or reduce the existing drainage of water away from the track.

7. City shall furnish KCS with a certified copy of a resolution or ordinance adopted by the governing body of City of Wylie, Texas authorizing the Mayor or City Manager to execute this Agreement on behalf of City.

8. City shall be responsible for providing and paying for all traffic and pedestrian control (including but not limited to barriers and flagmen) required during the project, all in accordance with the Manual on Uniform Traffic Control Devices and other applicable safety standards, including KCS's. Whenever City's contractor or its personnel or equipment are within twenty-five feet (25') of any railroad track at the Crossing, their activities shall be attended by a KCS-approved railroad flagman, hired and paid by the City. The City's contractor and its personnel and equipment shall clear the railroad track when so instructed by the railroad flagman. City and its contractors performing any work within the railroad right of way shall carry appropriate insurance which is sufficient, in the City's reasonable opinion, to fully compensate for any injury to or death of any person or for any damage to property occurring while City or its contractors are performing any work within railroad right of way. City shall apply for a Right of Entry (ROE) (including payment of applicable costs) prior to the City performing any of its work within 25 feet of the nearest rail. Information and ROE application can be obtained by contacting:

Denise Case
Jones Lang LaSalle Americas, Inc.
(817) 230-2614 – Office
Denise.case@am.jll.com
4200 Buckingham Road | Suite 110
Fort Worth, TX 76155

9. Upon completion of the work, the crossing surface, signal, flasher and gate will thereafter be maintained by KCS throughout their useful life.

10. The City, with the cooperation of KCS, will be responsible for obtaining any required governmental authorizations, including approval of the Texas Department of Transportation. All work will be done in accordance with the Manual on Uniform Traffic Control Devices.

11. The City acknowledges that KCS's agreement herein and cooperation with the City's effort to extend Eubanks Lane is based on the circumstances of this crossing, and is without prejudice to KCS's right to object and to oppose other expansion of or creation of other at-grade crossings.

(Remainder of this Page Intentionally Left Blank;
Signatures on Following Page)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate the day and year first above written.

THE KANSAS CITY SOUTHERN RAILWAY
COMPANY

Name: _____

Title: _____

Date: _____

CITY OF WYLIE, TEXAS

Name: _____

Title: _____

Date: _____

Seen and Agreed.
DALLAS AREA RAPID TRANSIT

By: _____
Signature

Printed Name

Title

Date