



**CANADIAN
PACIFIC**

Engineering Works – US East
11306 Franklin Avenue
Franklin Park IL 60131
Fax : 630-860-4170

COOPERATIVE AGREEMENT

THIS "AGREEMENT" made and entered into by and between CITY OF MILWAUKEE, a Wisconsin municipal corporation, hereinafter referred to as the "ROAD AUTHORITY" and SOO LINE RAILROAD COMPANY, d/b/a CANADIAN PACIFIC, hereinafter referred to as the "COMPANY."

WITNESSETH

THAT, WHEREAS, the ROAD AUTHORITY proposes replacement and intends to replace the West Lisbon Avenue bridge grade-separated structure carrying ROAD AUTHORITY traffic over the COMPANY's right-of-way and railroad track known as the North Milwaukee Line located between North 30th and North 31st Streets in the City of Milwaukee, Milwaukee County, Wisconsin, which work will be identified herein as the Project; and

WHEREAS, the proposed replacement of the overhead bridge structure will remain on the current alignment to carry the ROAD AUTHORITY's existing West Lisbon Avenue over the COMPANY's railroad track substantially as shown on the plan attached hereto and marked Exhibit "A;" and

WHEREAS, the parties desire the Project be performed in accordance with plans, specifications and special provisions to be prepared by the ROAD AUTHORITY, and approved by the COMPANY (the Project Plans); and

WHEREAS, as part of the Project, it will be necessary for the COMPANY to perform certain work on its facilities, and the COMPANY is agreeable to performing said work as hereinafter provided; and

WHEREAS, all work performed by the ROAD AUTHORITY as part of the Project shall be in accordance with the Project Plans; and

WHEREAS, the parties hereto desire to set forth the terms and conditions for establishment, payment, construction, operation and maintenance of said overhead bridge structure.

NOW, THEREFORE, the parties agree as follows:

SECTION 1. The ROAD AUTHORITY does not intend to use any federal funding for the Project. However, if any federal funds are used for the Project, the current rules, regulations and provisions of the Federal Aid Policy Guide as contained in 23 CFR 140, Subpart I and 23, CFR 646, Subparts A and B are incorporated into this Agreement by reference.

SECTION 2. The ROAD AUTHORITY shall secure, or cause to be secured, all rights-of-way or easements required for the Project and shall construct and complete the Project all without cost or assessment to the COMPANY, as provided in this Agreement.

SECTION 3. The COMPANY hereby agrees that it will grant by separate instrument and subject to the COMPANY's rights therein, a temporary right of entry agreement allowing the ROAD AUTHORITY to use and occupy a portion of the COMPANY's property as required for temporary access during the Project.

SECTION 4. The ROAD AUTHORITY shall permit and the COMPANY shall have the right to inspect and approve the work performed by the ROAD AUTHORITY under this Agreement during the regular working hours of the ROAD AUTHORITY without prior notice. The COMPANY may refuse to approve any and all work performed under this Agreement for failure to comply with applicable standards for the work of the type in

accordance with the Project Plans. All work on the overhead bridge structures will be done using applicable specifications and recommendations of the Wisconsin Department of Transportation, the Federal Highway Administration, the American Association of State Highway and Transportation Officials (AASHTO), the American Railway Engineering and Maintenance of Way Association (AREMA) and the COMPANY.

SECTION 5. The parties hereto shall perform, or cause to be performed, the following items of work:

1. **WORK BY THE COMPANY.** The COMPANY shall furnish, or cause to be furnished, at the expense of the ROAD AUTHORITY, or ROAD AUTHORITY's assigned contractor or contractors, all of the labor, materials and work equipment and tools required to perform and complete:

a. Provision of flagging and watchman protection, as necessitated by the replacement or work incidental to the Project to protect railroad traffic and operations as noted in Exhibit "C."

b. Incidental work necessary to complete the items hereinabove specified and to complete and restore the COMPANY's facilities and property.

2. **WORK BY THE ROAD AUTHORITY.** The ROAD AUTHORITY or its assigned contractor or contractors shall furnish or cause to be furnished, at the sole cost and expense of the ROAD AUTHORITY, all of the labor, material, work equipment, and tools required to perform and complete:

a. The removal of the existing bridge structure including all debris.

b. The construction of the replacement overhead bridge structure piers and superstructures as indicated on the Project Plans with required 23 foot vertical clearance and 60 foot horizontal clearance measurements. Temporary vertical clearance of 20 feet and temporary horizontal clearance of 12 feet will be used as minimum clearance during the duration of the construction. However, during removal of the existing bridge, which will require temporary shoring during removal of the existing piers, a temporary horizontal clearance of 7 feet may be used as the minimum clearance.

c. Install appropriate roadway signage and barricades necessary to detour West Lisbon Avenue traffic during bridge structure replacement.

d. The relocation of all utilities required for the replacement of the overhead bridge structure.

e. Provide all grading, drainage, paving, surfacing, traffic controls, and other work and incidental construction required to perform and complete the replacement of the bridge structure.

f. Perform all other work necessary to complete the replacement of the bridge structure.

g. Following replacement of the bridge structure, the ROAD AUTHORITY will maintain all bridge structures and components including sideslopes and wingwalls that are in the ROAD AUTHORITY's right-of-way while crossing the COMPANY's right-of-way.

SECTION 6. All work herein provided to be done by the ROAD AUTHORITY or its contractor or contractors on the right-of-way or upon, under, and across the railroad tracks of the COMPANY shall be done in accordance with the Project Plans and shall be performed at such time and matter as not to interfere unnecessarily with the movement of trains or traffic upon the tracks of the COMPANY. The ROAD AUTHORITY shall require its contractor or contractors to use all care and precaution necessary to avoid accident, damage or interference to the COMPANY's tracks or to the train or traffic using its track, and to notify the COMPANY a sufficient time in advance whenever the contractor is about to perform work adjacent to the tracks to enable the COMPANY to arrange for or furnish flagging services and such other protective service as might be necessary to insure safety of

railroad operations. The COMPANY shall have the right to furnish all such flagging services or protective service as in its judgment is necessary, and the ROAD AUTHORITY or its contractor or contractors shall reimburse the COMPANY for the cost thereof. Where ever safeguarding of trains or traffic of the COMPANY is mentioned in this Agreement, it is intended to cover all users of the COMPANY's tracks having permission for such use. The ROAD AUTHORITY shall require its contractor or contractors, upon completion of the Project, to remove all machinery, equipment, temporary buildings, false-work, debris, and rubbish from the COMPANY's right-of-way, to provide proper drainage away from the COMPANY's tracks in the area immediately adjacent to the replacement bridge, and to leave the COMPANY's tracks and right-of-way in a neat condition, satisfactory to the COMPANY's authorized representative. Nothing in this Section 6 shall make ROAD AUTHORITY responsible for repairing existing deficiencies with regard to drainage within the COMPANY's right-of-way except as necessitated by the Project.

SECTION 7. Before entering the COMPANY's property and during the entire time ROAD AUTHORITY's employees, agents or contractors are on the COMPANY's property, ROAD AUTHORITY or its contractor, as the case may be, shall maintain the following insurance:

- a. Worker's compensation insurance which fully meets the requirements of the worker's compensation laws in effect in the State of Wisconsin, including the requirements of any occupational disease law in effect in the State of Wisconsin.
- b. Automobile liability insurance covering all owned, non-owned and hired vehicles engaged in or about the work site, with a combined single limit of \$1,000,000.
- c. Comprehensive general liability with a combined single limit of not less than \$2,000,000 per occurrence and \$4,000,000 aggregate.
- d. Railroad protective liability insurance (occurrence form), in the name of the Soo Line Railroad Company d/b/a Canadian Pacific, with limits of \$2,000,000 per occurrence and \$6,000,000 aggregate for bodily injury (including death) and property damage.

ROAD AUTHORITY or its contractor or contractors must at all times when on COMPANY's property use personal protective equipment as follows: hard hats, orange reflectorized safety vests, safety glasses and safety boots.

SECTION 8. It is agreed that each party to this Agreement shall not be responsible or liable to the other party or to any other person or persons whomsoever for any claims, damage, action, or cause of action of any kind or character arising out of or by reason of the performance of any work or part hereof by the other party as provided for herein, except when due to the other party's negligence; and that each party further agrees to defend at its sole cost and expense any action or proceeding commenced for the purpose of asserting any claims of whatsoever character arising in connection with or by virtue of each party's performance hereunder, except when due to the other party's negligence.

SECTION 9. It is further agreed that any and all employees of the COMPANY and all other persons engaged by the COMPANY in the performance of any work or services required or provided herein to be performed by the COMPANY shall not be considered employees of the ROAD AUTHORITY, and that any and all claims that may or might arise under the Worker's Compensation Act or the Unemployment Compensation Act of the State of Wisconsin on behalf of said employees while so engaged and any and all claims made by any third parties as consequence of any act or omission on the part of said employees while so engaged on any of the work or services provided to be rendered herein shall in no way be the obligation or responsibility of the ROAD AUTHORITY. Also, any and all employees of the ROAD AUTHORITY and all other persons engaged by the ROAD AUTHORITY in the performance of any work or services required or provided for herein to be performed by the ROAD AUTHORITY shall not be considered employees of the COMPANY, and that any and all claims that may

or might arise under the Worker's Compensation Act or the Unemployment Compensation Act of the State of Wisconsin or Federal Railroad Unemployment Insurance Act on behalf of said employees while so engaged and any and all claims made by any third parties as consequence of any act or omission on the part of said employees while so engaged on any of the work or services provided to be rendered herein shall in no way be the obligation or responsibility of the COMPANY.

SECTION 10. The COMPANY, upon the completion of its work, shall render to the ROAD AUTHORITY a detailed statement of the actual cost and expense as incurred by it or for its account. After the ROAD AUTHORITY representatives have checked the progressive invoices and the final statement, and they have agreed with the COMPANY's representatives that the costs are reasonable and proper, insofar as they are able to ascertain, the ROAD AUTHORITY shall promptly reimburse the COMPANY for 100% of the amount agreed upon.

SECTION 11. Upon completion of the Project, the ROAD AUTHORITY, at its expense, shall thereafter own and maintain the bridge structure. ROAD AUTHORITY will furnish or cause to be furnished all the labor, materials, and railroad work equipment necessary for performing the proper maintenance of the bridge structure and insofar as the same affects the safety of the railroad operations, such maintenance work shall be coordinated with and approved by the Chief Engineer of the COMPANY. Any flagging or watchman protection required for such maintenance shall be the sole cost of the ROAD AUTHORITY.

SECTION 12. The ROAD AUTHORITY agrees that in the event any undesirable drainage or other conditions develop on the COMPANY's right-of-way because of the ROAD AUTHORITY's project or of its subsequent existence or operation, upon receipt of written notice from COMPANY, it will promptly remedy or eliminate such undesirable condition, and that upon failure to do so within a reasonable time, the COMPANY may perform the necessary work at the expense of the ROAD AUTHORITY and the ROAD AUTHORITY agrees that it will promptly, upon receipt of a bill or bills therefore, reimburse the COMPANY for the expense incurred by the COMPANY in remedying or eliminating the undesirable drainage or other conditions.

SECTION 13. This Agreement is subject to the superior title of the COMPANY to its property and to all other outstanding and superior rights, if any; and the ROAD AUTHORITY shall not, by reason of the rights hereby granted, acquire or assert title to any of said property adverse to the title of the COMPANY. The COMPANY shall have the continuing and compatible right to operate, maintain, and repair its facilities within the limits of said public right-of-way and to construct such other facilities as from time to time it may choose, provided however, that such facilities do not unreasonably interfere with the existence and use of the West Lisbon Avenue bridge structure.

SECTION 14. The grants, covenants and stipulations hereof shall extend to and be binding upon the respective successors of the parties hereto, but the ROAD AUTHORITY shall not assign any of its rights hereunder without the approval of the COMPANY and without first furnishing written notice to the COMPANY and an acceptance by the assignees of the terms hereof.

SECTION 15. Subject to the provisions in Section 14 hereof, this Agreement shall be binding upon and inure to the benefits of the successors or assigns of the respective parties hereto.

SECTION 16. Upon completion of the Project, this Agreement will supersede and terminate the Opinion and Decision of the Railroad Commission of Wisconsin dated January 30, 1915, but only for the described West Lisbon Avenue location. The ROAD AUTHORITY shall be the owner of the replacement bridge structure.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate counterparts, each of which shall be considered as an original by their duly authorized officers, as of the dates below indicated.

ACCEPTED: _____, 2014

CITY OF MILWAUKEE

By: _____

By: _____

By: _____

Approved as to Form and Constitutionality:

APPROVED: _____, 2014

SOO LINE RAILROAD COMPANY
d/b/a
CANADIAN PACIFIC

By: _____

DANIEL SABATKA
DIRECTOR ENGINEERING WORKS – US EAST
Daniel_Sabatka@cpr.ca
630-860-4430

Attest: _____

EDWARD OOM
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