

32809-01 OVERHEAD HIGHWAY BRIDGE EASEMENT

Date: _____, 2014.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged,

SOO LINE RAILROAD COMPANY,

a corporation under the laws of the State of Minnesota, having its principal place of business at 120 South Sixth Street, Minneapolis, Minnesota 55402, and doing business as Canadian Pacific, ("**Grantor**")

hereby grants, conveys and transfers unto

CITY OF MILWAUKEE

a Wisconsin municipal corporation ("**Grantee**"),

a permanent easement ("**Easement**") described and conditioned as follows:

1. **DESCRIPTION OF PROPERTY:** The Easement is granted over portions of Grantor's railroad spur to include: 1) airspace over Grantor's railroad right-of-way and parallel to Grantee's West Lisbon Avenue right-of-way consisting of 2 feet of width along both the north and south sides of Grantee's existing West Lisbon Avenue right-of-way and with a length that is between, but not including, the face of Grantor's retaining walls at a level of 23 feet above Grantor's railroad and 2) ground space to accommodate the concrete leveling pads and the four retaining walls that will be part of the support structure of the New Highway Bridge (as defined herein).

as shown and described on Exhibit A in Milwaukee, Milwaukee County, Wisconsin and hereinafter referred to as the “**Easement Area.**”

2. **PURPOSE:** The Easement shall be limited to the installation, construction, maintenance, repair, replacement, and use of street lighting blisters attached to a public highway bridge; concrete leveling pads and four retaining walls that comprise the support structure of new bridge (the “**New Highway Bridge**”), through the Easement Area and over Grantor’s railroad right-of-way and tracks.

3. **RESERVATIONS:** Grantor reserves unto itself, and its successors and assigns:

- (a) fee title to the Easement Area to itself; Grantee's maintenance and use of the Easement Area, however long continued, shall not vest in the Grantee rights adverse to those of the Grantor other than those granted by this Agreement;
- (b) the right and privilege to use Easement Area for the maintenance, construction, and operation of railroad tracks and facilities provided it does not unreasonably interfere with Grantee’s use of the Easement Area pursuant to this Agreement;
- (c) the right to permit other parties to use the Easement Area in a manner that does not unreasonably interfere with the Grantee’s use of the Easement Area pursuant to this Agreement;
- (d) the right of incidental use of the Easement Area in a manner that does not unreasonably interfere with the Grantee’s use of the Easement Area pursuant to this Agreement; and
- (e) the right and privilege to use the Easement Area for any and all other purposes that are not inconsistent with the use thereof for the purpose or purposes permitted by this Agreement or which unreasonably interferes with or restricts the rights granted to Grantee.

4. **TERM, TERMINATION AND EXPIRATION:**

- (a) This Easement shall remain in effect so long as required by Grantee for New Highway Bridge purposes. Additionally, the Easement shall be subject to termination or expiration as follows:

- (i) Abandonment: In the event Grantee fails to use or occupy any part of the Easement Area for a period of twelve (12) consecutive months and Grantor serves upon Grantee a written notice alleging such failure. If Grantee, does not refute said allegation or reinstitute its use of the New Highway Bridge within 30 days following receipt of said written notice, then Grantee shall be deemed to have agreed with Grantor's allegations and the Easement shall therewith be extinguished.
- (ii) Removal: In the event Grantee substantially removes the New Highway Bridge with the intent of not replacing it, then the Easement shall therewith be extinguished.
- (iii) Breach: If Grantee is unable or unwilling to cure a breach of any of the provisions of this Agreement within thirty (30) days (or such longer period as may be reasonably required if Grantee promptly initiates the cure and diligently prosecutes the cure to completion) following receipt of a written notice from Grantor detailing such breach, then this Easement shall therewith be terminated. The foregoing shall be subject, however, to reasonable seasonal accommodations for any physical work to the New Highway Bridge required to cure a breach.

5. **HIGHWAY BRIDGE CONSTRUCTION, MAINTENANCE AND REMOVAL WORK:**

The initial construction of the New Highway Bridge will be pursuant to a separate agreement between the parties. Any construction, maintenance, removal or other changes or modifications to the New Highway Bridge or the "**Structure**" (the New Highway Bridge, excluding the roadway surface), except those made on an emergency basis, made after completion of the New Highway Bridge's initial construction shall be subject to a Construction and Maintenance Agreement to be hereafter negotiated by the parties.

6. **TAXES AND ASSESSMENTS:** Grantee shall assume and pay any taxes or assessments which may be levied by any competent authority by reason of the existence or use of said land for New Highway Bridge purposes.

7. **LIABILITY AND HOLD HARMLESS:** Grantee acknowledges that is fully aware of the dangers of working on and about railroad property and railroad operations. Grantee assumes the risk that the New Highway Bridge, monitoring wells, elevation bench marks, reference points, and other installations located on the Easement Area may be disturbed, damaged, or destroyed as the result of railroad operations or mishaps. As an inducement to Grantor to grant the rights herein and as part consideration therefor, Grantee agrees that it shall not make any claim against and shall hold harmless Grantor, its officers, agents, and employees ("Grantor") on account of damage or destruction of the New Highway Bridge or any of Grantee's property located within the Easement Area that may result from railroad operations or mishaps, but excluding damage or destruction that is attributable to Grantor's negligence or gross negligence.

8. **MISCELLANEOUS:**

- (a) Grantee/Grantor: As used in this Agreement, the terms “Grantee” and “Grantor” shall include the parties first named above and their respective successors or assigns.
- (b) Headings: The paragraph headings used in this Agreement are used solely for the purpose of convenience. They are not intended to, and do not, modify or limit the wording of the paragraphs to which they are appended, and they shall not be used or construed as guides to the interpretation of said paragraphs.
- (c) Severability of Terms: Each provision, paragraph, sentence, clause, phrase, and word of this Agreement shall apply to the extent permitted by applicable law and is intended to be severable. If any provision, paragraph, sentence, clause, phrase or word of this indenture is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of this Agreement.
- (d) No Waiver: Any act or omission constituting a breach of this Agreement shall be limited to such act or omission and shall not be construed as a permanent or continuing waiver thereof;
- (e) Notices: Any notice given by a party pursuant to this Agreement, shall be good if served upon the other party, or if deposited in a United States post office, certified mail, addressed to the other party at its last known address.
- (f) Merger: This Agreement completely outlines all of the rights, responsibilities, and obligations of the parties hereto and said indenture may not be amended or altered except by an instrument in writing signed by both parties. Furthermore, this Agreement merges all prior oral representations and negotiations of the parties hereto.
- (g) No Warranty: Grantor does not warrant title to the Easement Area, and makes no representations or warranties, express or implied, as to the habitability of the Easement Area or the fitness of the Easement Area for Grantee’s purpose or any other particular purpose.
- (h) Wisconsin Law: This Agreement shall be governed by the laws of the State of Wisconsin. Grantee, at its cost, may cause a copy of this Agreement to be recorded with the Milwaukee County Register of Deeds Office.

Acceptance:

CITY OF MILWAUKEE

By: _____
Ghassan Korban, Commissioner of Public Works

By: _____
Martin Matson, Comptroller

Mary L. Schanning, as a member in good standing of the State Bar of Wisconsin, hereby approves the signatures of the City representatives above per M.C.O. § 304-21, and also authenticates the signatures of those City representatives/signatories per Wis. Stat. § 706.06 so this document may be recorded per Wis. Stat. § 706.05 (2)(b).

Mary L. Schanning, Assistant City Attorney
State Bar No. 1029016

EXHIBIT A

Legal Description of the Easement Area