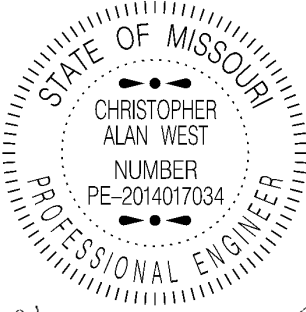


Job No.: JKU0321
Route: Various
County: Jackson and
Clay

JOB SPECIAL PROVISIONS TABLE OF CONTENTS (ROADWAY)

(Job Special Provisions shall prevail over General Special Provisions whenever in conflict therewith.)

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	MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION 105 W. CAPITOL AVE. JEFFERSON CITY, MO 65102 Phone 1-888-275-6636
	If a seal is present on this sheet, JSP's have been electronically sealed and dated.
	JOB NUMBER: JKU0321 JACKSON AND CLAY COUNTY, MO DATE PREPARED: 06/29/2026
	ADDENDUM DATE:
Only the following items of the Job Special Provisions (Roadway) are authenticated by this seal: All	

JOB
SPECIAL PROVISION

A. General - Federal JSP-09-02M

1.0 Description. The Federal Government is participating in the cost of construction of this project. All applicable Federal laws, and the regulations made pursuant to such laws, shall be observed by the contractor, and the work will be subject to the inspection of the appropriate Federal Agency in the same manner as provided in Sec 105.10 of the Missouri Standard Specifications for Highway Construction with all revisions applicable to this bid and contract.

1.1 This contract requires payment of the prevailing hourly rate of wages for each craft or type of work required to execute the contract as determined by the Missouri Department of Labor and Industrial Relations and requires adherence to a schedule of minimum wages as determined by the United States Department of Labor. For work performed anywhere on this project, the contractor and the contractor's subcontractors shall pay the higher of these two applicable wage rates. State Wage Rates, Information on the Required Federal Aid Provisions, and the current Federal Wage Rates are available on the Missouri Department of Transportation web page at www.modot.org under "Doing Business with MoDOT", "Contractor Resources". Effective Wage Rates will be posted 10 days prior to the applicable bid opening. These supplemental bidding documents have important legal consequences. It shall be conclusively presumed that they are in the bidder's possession, and they have been reviewed and used by the bidder in the preparation of any bid submitted on this project.

1.2 The following documents are available on the Missouri Department of Transportation web page at www.modot.org under "Doing Business with MoDOT"; "Standards and Specifications". The effective version shall be determined by the letting date of the project.

General Provisions & Supplemental Specifications

Supplemental Plans to July 2026 Missouri Standard Plans
For Highway Construction

These supplemental bidding documents contain all current revisions to the published versions and have important legal consequences. It shall be conclusively presumed that they are in the bidder's possession, and they have been reviewed and used by the bidder in the preparation of any bid submitted on this project.

B. Contract Liquidated Damages

1.0 Description. Liquidated Damages for failure or delay in completing the work on time for this contract shall be in accordance with [Sec 108.8](#). The liquidated damages include separate amounts for road user costs and contract administrative costs incurred by the Commission.

2.0 Period of Performance. Prosecution of work is expected to begin on the date specified below in accordance with [Sec 108.2](#). Regardless of when the work begins on this contract, all work on all projects shall be completed on or before the date specified below. Completion by this date shall be in accordance with the requirements of [Sec 108.7.1](#).

Notice to Proceed: November 23, 2026
Contract Completion Date: November 1, 2027

2.1 Calendar Days. Completion of the project is required as specified herein. The count of calendar days will begin on the date the contractor starts any construction operations on the project.

Project	Calendar Days	Daily Road User Cost
JKU0321	72	\$9,800

3.0 Liquidated Damages for Contract Administrative Costs. Should the contractor fail to complete the work on or before the contract completion date specified in Section 2.0, or within the number of calendar days specified in Section 2.1, whichever occurs first, the contractor will be charged contract administrative liquidated damages in accordance with [Sec 108.8](#) in the amount of **\$750** per calendar day for each calendar day, or partial day thereof, that the work is not fully completed. For projects in combination, these damages will be charged in full for failure to complete one or more projects within the specified contract completion date or calendar days.

4.0 Liquidated Damages for Road User Costs. Should the contractor fail to complete the work on or before the contract completion date specified in Section 2.0, or within the number of calendar days specified in Section 2.1, whichever occurs first, the contractor will be charged road user costs in accordance with [Sec 108.8](#) in the amount specified in Section 2.1 for each calendar day, or partial day thereof, that the work is not fully completed. These damages are in addition to the contract administrative damages and any other damages as specified elsewhere in this contract.

C. Work Zone Traffic Management

1.0 Description. Work zone traffic management shall be in accordance with applicable portions of Division 100 and Division 600 of the Standard Specifications, and specifically as follows.

1.1 Maintaining Work Zones and Work Zone Reviews. The Work Zone Specialist (WZS) shall maintain work zones in accordance with Sec 616.3.3 and as further stated herein. The WZS shall coordinate and implement any changes approved by the engineer. The WZS shall ensure all traffic control devices are maintained in accordance with Sec 616, the work zone is operated within the hours specified by the engineer, and will not deviate from the specified hours without prior approval of the engineer. The WZS is responsible to manage work zone delay in accordance with these project provisions. When requested by the engineer, the WZS shall submit a weekly report that includes a review of work zone operations for the week. The report shall identify any problems encountered and corrective actions taken. Work zones are subject to unannounced inspections by the engineer and other departmental staff to corroborate the validity of the WZS's review and may require immediate corrective measures and/or additional work zone monitoring.

1.2 Work Zone Deficiencies. Failure to make corrections on time may result in the engineer suspending work. The suspension will be non-excusable and non-compensable regardless if road user costs are being charged for closures.

2.0 Traffic Management Schedule.

2.1 Traffic management schedules shall be submitted to the engineer for review prior to the start of work and prior to any revisions to the traffic management schedule. The traffic management schedule shall include the proposed traffic control measures, the hours traffic control will be in place, and work hours.

2.2 The traffic management schedule shall conform to the limitations specified in Sec 616 regarding lane closures, traffic shifts, road closures and other width, height and weight restrictions.

2.3 The engineer shall be notified as soon as practical of any postponement due to weather, material or other circumstances.

2.4 In order to ensure minimal traffic interference, the contractor shall schedule lane closures for the absolute minimum amount of time required to complete the work. Lanes shall not be closed until material is available for continuous construction and the contractor is prepared to diligently pursue the work until the closed lane is opened to traffic.

2.5 Traffic Congestion. The contractor shall, upon approval of the engineer, take proactive measures to reduce traffic congestion in the work zone. The contractor shall immediately implement appropriate mitigation strategies whenever traffic congestion reaches an excess of **15 minutes** to prevent congestion from escalating beyond this delay threshold. If disruption of the traffic flow occurs and traffic is backed up in queues equal to or greater than the delay time threshold listed above, then the contractor shall immediately review the construction operations which contributed directly to disruption of the traffic flow and make adjustments to the operations to prevent the queues from reoccurring. Traffic delays may be monitored by physical presence on site or by utilizing real-time travel data through the work zone that generate text and/or email notifications where available. The engineer monitoring the work zone may also notify the contractor of delays that require prompt mitigation. The contractor may work with the engineer to determine what other alternative solutions or time periods would be acceptable. When a Work Zone Analysis Spreadsheet is provided, the contractor will find it in the electronic deliverables on MoDOT's Online Plans Room. The contractor may refer to the Work Zone Analysis Spreadsheet for detailed information on traffic delays.

2.5.1 Traffic Safety.

2.5.1.1 Recurring Congestion. Where traffic queues routinely extend to within 1000 feet of the ROAD WORK AHEAD, or similar, sign on a divided highway or to within 500 feet of the ROAD WORK AHEAD, or similar, sign on an undivided highway, the contractor shall extend the advance warning area, as approved by the engineer.

2.5.1.2 Non-Recurring Congestion. When traffic queues extend to within 1000 feet of the ROAD WORK AHEAD, or similar, sign on a divided highway or to within 500 feet of the ROAD WORK AHEAD, or similar, sign on an undivided highway infrequently, the contractor shall deploy a means of providing advance warning of the traffic congestion, as approved by the engineer. The warning location shall be no less than 1000 feet and no more than 0.5 mile in advance of the end of the traffic queue on divided highways and no less than 500 feet and no more than 0.5 mile in advance of the end of the traffic queue on undivided highways.

2.7 Traffic Management Center (TMC) Coordination. The Work Zone Specialist (WZS) or their designee shall contact by phone the MoDOT Traffic Management Center (KC Scout TMC at #816-347-2250 or Gateway Guide TMC at #314-275-1513) within five minutes of a lane or ramp closure beginning and within five minutes of a lane or ramp closure being removed. The WZS shall make this phone call 24 hours a day, 365 days of the year since the MoDOT Traffic Management Centers are always staffed.

3.0 Work Hour Restrictions.

3.1 Except for emergency work, as determined by the engineer, and long term lane closures required by project phasing, all lanes shall be scheduled to be open to traffic during the five major holiday periods shown below, from 12:00 noon on the last working day preceding the holiday until 6:00 a.m. on the first working day subsequent to the holiday unless otherwise approved by the engineer.

Memorial Day
Labor Day
Thanksgiving
Christmas
New Year's Day

3.1.1 Independence Day. The lane restrictions specified in Section 3.1 shall also apply to Independence Day, except that the restricted periods shall be as follows:

When Independence Day falls on:	The Holiday is Observed on:	Halt Lane Closures beginning at:	Allow Lane Closures to resume at:
Sunday	Monday	Noon on Friday	6:00 a.m. on Tuesday
Monday	Monday	Noon on Friday	6:00 a.m. on Tuesday
Tuesday	Tuesday	Noon on Monday	6:00 a.m. on Wednesday
Wednesday	Wednesday	Noon on Tuesday	6:00 a.m. on Thursday
Thursday	Thursday	Noon on Wednesday	6:00 a.m. on Friday
Friday	Friday	Noon on Thursday	6:00 a.m. on Monday
Saturday	Friday	Noon on Thursday	6:00 a.m. on Monday

3.2 The contractor shall not perform any construction operation on the roadway, roadbed or active lanes, including the hauling of material within the project limits, during restricted periods, holiday periods or other special events specified in the contract documents.

Working hours for evenings, weekends and holidays will be determined by the engineer. The contractor may not work during the following listed hours:

Weekends: No restrictions
Weekdays: During work hours – Night work only

3.4 Any work requiring a reduction in the number of through lanes of traffic shall be completed during nighttime hours. Nighttime hours shall be considered to be 7:00 p.m. to 6:00 a.m. for this project.

3.5 The contractor shall not alter the start time, ending time, or a reduction in the number of through lanes of traffic or ramp closures without advance notification and approval by the engineer. The only work zone operation approved to begin 30 minutes prior to a reduction in through traffic lanes or ramp closures is the installation of traffic control signs. Should lane closures be placed or remain in place, prior to the approved starting time or after the approved ending time, the Commission, the traveling public, and state and local police and governmental authorities will be damaged in various ways, including but not limited to, increased construction administration cost, potential liability, traffic and traffic flow regulation cost, traffic congestion and motorist delays, with a resulting cost to the traveling public. These damages are not easily computed or quantified. Therefore, the contractor will be charged with liquidated damages specified in the amount of **\$1000 per 15 minute increment** for each 15 minutes that the temporary lane closures are in place and not open to traffic in excess of the limitation as specified

elsewhere in this special provision. It shall be the responsibility of the engineer to determine the quantity of unapproved closure time.

3.5.1 The said liquidated damages specified will be assessed regardless if it would otherwise be charged as liquidated damages under the Missouri Standard Specification for Highway Construction, as amended elsewhere in this contract.

4.0 Detours and Lane Closures.

4.1 When a changeable message sign (CMS) is provided, the contractor shall use the CMS to notify motorists of future traffic disruption and possible traffic delays one week before traffic is shifted to a detour or prior to lane closures. The CMS shall be installed at a location as approved or directed by the engineer. If a CMS with Communication Interface is required, then the CMS shall be capable of communication prior to installation on right of way. All messages planned for use in the work zone shall be approved and authorized by the engineer or its designee prior to deployment. When permanent dynamic message signs (DMS) owned and operated by MoDOT are located near the project, they may also be used to provide warning and information for the work zone. Permanent DMS shall be operated by the TMC, and any messages planned for use on DMS shall be approved and authorized by the TMC at least 72 hours in advance of the work.

4.2 At least one lane of traffic in each direction shall be maintained at all times except for brief intervals of time required when the movement of the contractor's equipment will seriously hinder the safe movement of traffic. Periods during which the contractor will be allowed to interrupt traffic will be designated by the engineer.

5.0 Basis of Payment. No direct payment will be made to the contractor to recover the cost of equipment, labor, materials, or time required to fulfill the above provisions, unless specified elsewhere in the contract document. All authorized changes in the traffic control plan shall be provided for as specified in Sec 616.

D. Emergency Provisions and Incident Management

1.0 The contractor shall have communication equipment on the construction site or immediate access to other communication systems to request assistance from law enforcement or other emergency agencies for incident management. In case of traffic accidents or the need for law enforcement to direct or restore traffic flow through the job site, the contractor shall notify law enforcement or other emergency agencies immediately as needed. The area engineer's office shall also be notified when the contractor requests emergency assistance.

2.0 In addition to the 911 emergency telephone number for ambulance, fire or law enforcement services, the following agencies may also be notified for accident or emergency situation within the project limits.

Missouri Highway Patrol: 800-525-5555	
Jackson County	Clay County
Sheriff: 816-541-8017	Sheriff: 816-407-3750

2.1 This list is not all inclusive. Notification of the need for wrecker or tow truck services will remain the responsibility of the appropriate law enforcement agency.

2.2 The contractor shall notify law enforcement and emergency agencies before the start of construction to request their cooperation and to provide coordination of services when emergencies arise during the construction at the project site. When the contractor completes this notification with law enforcement and emergency agencies, a report shall be furnished to the engineer on the status of incident management.

3.0 No direct pay will be made to the contractor to recover the cost of the communication equipment, labor, materials or time required to fulfill the above provisions.

E. Project Contact for Contractor/Bidder Questions

1.0 All questions concerning this project during the bidding process shall be forwarded to the project contact listed below.

Christopher West, Project Contact
Kansas City District
600 NE Colbern Rd
Lee's Summit, MO 64086

Telephone Number: 816-607-2211
Email: christopher.west@modot.mo.gov

1.1 All questions concerning the bid document preparation can be directed to the Central Office – Design as listed below.

Telephone Number: (573) 751-2876
Email: BCS@modot.mo.gov

2.0 Upon award and execution of the contract, the successful bidder/contractor shall forward all questions and coordinate the work with the engineer listed below:

Steven Sandifer, Resident Engineer
Kansas City District
9400 E. 43rd St.
Kansas City, MO 64113

Telephone Number: 816-927-9214
Email: steven.sandifer@modot.mo.gov

F. Supplemental Revisions JSP-18-01KK

- Compliance with [2 CFR 200.216 – Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment](#).

The Missouri Highways and Transportation Commission shall not enter into a contract (or extend or renew a contract) using federal funds to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as substantial or as critical technology as part of any system where the video surveillance and telecommunications equipment was produced by Huawei Technologies

Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

- Stormwater Compliance Requirements

1.0 Description. This provision requires the contractor to provide a Water Pollution Control Manager (WPCM) for any project that includes land disturbance on the project site and the total area of land disturbance, both on the project site, and all Off-site support areas, is one (1) acre or more. Regardless of the area of Off-site disturbance, if no land disturbance occurs on the project site, these provisions do not apply. When a WPCM is required, all sections within this provision shall be applicable, including assessment of specified Liquidated Damages for failure to correct Stormwater Deficiencies, as specified herein. This provision is in addition to any other stormwater, environmental, and land disturbance requirements specified elsewhere in the contract.

1.1 Definitions. The project site is defined as all areas designated on the plans, including temporary and permanent easements. The project site is equivalent to the “permitted site”, as defined in MoDOT’s State Operating Permit. An Off-site area is defined as any location off the project site the contractor utilizes for a dedicated project support function, such as, but not limited to, staging area, plant site, borrow area, or waste area.

1.2 Reporting of Off-Site Land Disturbance. If the project includes any planned land disturbance on the project site, prior to the start of work, the contractor shall submit a written report to the engineer that discloses all Off-site support areas where land disturbance is planned, the total acreage of anticipated land disturbance on those sites, and the land disturbance permit number(s). Upon request by the engineer, the contractor shall submit a copy of its land disturbance permit(s) for Off-site locations. Based on the total acreage of land disturbance, both on and Off-site, the engineer shall determine if these Stormwater Compliance Requirements shall apply. The contractor shall immediately report any changes to the planned area of Off-site land disturbance. The contractor is responsible for obtaining its own separate land disturbance permit for Off-site areas.

2.0 Water Pollution Control Manager (WPCM). The contractor shall designate a competent person to serve as the Water Pollution Control Manager (WPCM) for projects meeting the description in Section 1.0. The contractor shall ensure the WPCM completes all duties listed in Section 2.1.

2.1 Duties of the WPCM:

- (a) Be familiar with the stormwater requirements including the current MoDOT State Operating Permit for construction stormwater discharges/land disturbance activities; MoDOT’s statewide Stormwater Pollution Prevention Plan (SWPPP); the Corps of Engineers Section 404 Permit, when applicable; the project specific SWPPP, the Project’s Erosion & Sediment Control Plan; all applicable special provisions, specifications, and standard drawings; and this provision;
- (b) Successfully complete the MoDOT Stormwater Training Course within the last 4 years. The MoDOT Stormwater Training is a free online course available at MoDOT.org;
- (c) Attend the Pre-Activity Meeting for Grading and Land Disturbance and all subsequent Weekly Meetings in which grading activities are discussed;
- (d) Oversee and ensure all work is performed in accordance with the Project-specific SWPPP and all updates thereto, or as designated by the engineer;

- (e) Review the project site for compliance with the Project SWPPP, as needed, from the start of any grading operations until final stabilization is achieved, and take necessary actions to correct any known deficiencies to prevent pollution of the waters of the state or adjacent property owners prior to the engineer's weekly inspections;
- (f) Review and acknowledge receipt of each MoDOT Inspection Report (Land Disturbance Inspection Record) for the Project within forty eight (48) hours of receiving the report and ensure that all Stormwater Deficiencies noted on the report are corrected as soon as possible, but no later than stated in Section 5.0.

3.0 Pre-Activity Meeting for Grading/Land Disturbance and Required Hold Point. A Pre-Activity meeting for grading/land disturbance shall be held prior to the start of any land disturbance operations. No land disturbance operations shall commence prior to the Pre-Activity meeting except work necessary to install perimeter controls and entrances. Discussion items at the pre-activity meeting shall include a review of the Project SWPPP, the planned order of grading operations, proposed areas of initial disturbance, identification of all necessary BMPs that shall be installed prior to commencement of grading operations, and any issues relating to compliance with the Stormwater requirements that could arise in the course of construction activity at the project.

3.1 Hold Point. Following the pre-activity meeting for grading/land disturbance and subsequent installation of the initial BMPs identified at the pre-activity meeting, a Hold Point shall occur prior to the start of any land disturbance operations to allow the engineer and WPCM the time needed to perform an on-site review of the installation of the BMPs to ensure compliance with the SWPPP is met. Land disturbance operations shall not begin until authorization is given by the engineer.

4.0 Inspection Reports. Weekly and post run-off inspections will be performed by the engineer and each Inspection Report (Land Disturbance Inspection Record) will be entered into a web-based Stormwater Compliance database. The WPCM will be granted access to this database and shall promptly review all reports, including any noted deficiencies, and shall acknowledge receipt of the report as required in Section 2.1 (f.).

5.0 Stormwater Deficiency Corrections. All stormwater deficiencies identified in the Inspection Report shall be corrected by the contractor within 7 days of the inspection date or any extended period granted by the engineer when weather or field conditions prohibit the corrective work. If the contractor does not initiate corrective measures within 5 calendar days of the inspection date or any extended period granted by the engineer, all work shall cease on the project except for work to correct these deficiencies, unless otherwise allowed by the engineer. All impact costs related to this halting of work, including, but not limited to stand-by time for equipment, shall be borne by the contractor. Work shall not resume until the engineer approves the corrective work.

5.1 Liquidated Damages. If the contractor fails to complete the correction of all Stormwater Deficiencies listed on the MoDOT Inspection Report within the specified time limit, the Commission will be damaged in various ways, including but not limited to, potential liability, required mitigation, environmental clean-up, fines, and penalties. These damages are not reasonably capable of being computed or quantified. Therefore, the contractor will be charged with liquidated damages specified in the amount of \$2,000 per day for failure to correct one or more of the Stormwater Deficiencies listed on the Inspection Report within the specified time limit. In addition to the stipulated damages, the stoppage of work shall remain in effect until all corrections are complete.

6.0 Basis of Payment. No direct payment will be made for compliance with this provision.

- **Delete Sec 106.9 in its entirety and substitute the following:**

106.9 Buy America Requirements.

Buy America Requirements are waived if the total amount of Federal financial assistance applied to the project, through awards or subawards, is below \$500,000.

106.9.1 Buy America Requirements for Iron or Steel Products.

The contractor's attention is directed to Title 23 CFR 635.410 *Buy America Requirements*. Where articles, materials or supplies that consist wholly or predominantly of iron or steel or a combination of both are to be permanently incorporated into the contract work, steel and iron material shall be manufactured, from the initial melting stage through the application of coatings, in the USA except for "minimal use" as described herein. Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. Under a general waiver from FHWA the use of pig iron and processed, pelletized, and reduced iron ore manufactured outside of the USA will be permitted in the domestic manufacturing process for steel or iron material.

106.9.1.1 Any sources other than the USA as defined will be considered foreign. The required domestic manufacturing process shall include formation of ingots and any subsequent process. Coatings shall include any surface finish that protects or adds value to the product.

106.9.1.2 "Minimal use" of foreign steel, iron or coating processes will be permitted, provided the cost of such products does not exceed 1/10 of one percent (0.1 percent) of the total contract cost or \$2,500.00, whichever is greater. If foreign steel, iron, or coating processes are used, invoices to document the cost of the foreign portion, as delivered to the project, shall be provided and the engineer's written approval obtained prior to placing the material in any work.

106.9.1.3 Buy America requirements include a step certification for all fabrication processes of all steel or iron materials that are accepted per Sec 1000. The AASHTO Product Evaluation and Audit Solutions compliance program verifies that all steel and iron products fabrication processes conform to 23 CFR 635.410 Buy America Requirements and is an acceptable standard per 23 CFR 635.410(d). AASHTO Product Evaluation and Audit Solutions compliant suppliers will not be required to submit step certification documentation with the shipment for some selected steel and iron materials. The AASHTO Product Evaluation and Audit Solutions compliant supplier shall maintain the step certification documentation on file and shall provide this documentation to the engineer upon request.

106.9.1.3.1 Items designated as Category 1 will consist of steel girders, piling, and reinforcing steel installed on site. Category 1 items require supporting documentation prior to incorporation into the project showing all steps of manufacturing, including coating, as being completed in the United States and in accordance with CFR Title 23 Section 635.410 Buy America Requirements. This includes the Mill Test Report from the original producing steel mill and certifications documenting the manufacturing process for all subsequent fabrication, including coatings. The certification shall include language that certifies all steel and iron materials permanently incorporated in this project was procured and processed domestically and all manufacturing processes, including coating, as being completed in the United States and in accordance with CFR Title 23 Section 635.410.

106.9.1.3.2 Items designated as Category 2 will include all other steel or iron products not in Category 1 and permanently incorporated in the project. Category 2 items shall consist of, but not be limited to items such as fencing, guardrail, signing, lighting and signal supports. The prime contractor is required to submit a material of origin form certification prior to incorporation into the project from the fabricator for

each item that the product is domestic. The Certificate of Materials Origin form ([link to certificate form](#)) from the fabricator must show all steps of manufacturing, including coating, as being completed in the United States and in accordance with CFR Title 23 Section 635.410 Buy America Requirements and be signed by a fabricator representative. The engineer reserves the right to request additional information and documentation to verify that all Buy America requirements have been satisfied. These documents shall be submitted upon request by the engineer and retained for a period of 3 years after the last reimbursement of the material.

106.9.1.3.3 Any minor miscellaneous steel or iron items that are not included in the materials specifications shall be certified by the prime contractor as being procured domestically. Examples of these items would be bolts for sign posts, anchorage inserts, etc. The certification shall read “I certify that all steel and iron materials permanently incorporated in this project during all manufacturing processes, including coating, as being completed in the United States and in accordance with CFR Title 23 Section 635.410 Buy America Requirements procured and processed domestically in accordance with CFR Title 23 Section 635.410 Buy America Requirements. Any foreign steel used was submitted and accepted under minor usage”. The certification shall be signed by an authorized representative of the prime contractor.

106.9.1.4 When permitted in the contract, alternate bids may be submitted for foreign steel and iron products. The award of the contract when alternate bids are permitted will be based on the lowest total bid of the contract based on furnishing domestic steel or iron products or 125 percent of the lowest total bid based on furnishing foreign steel or iron products. If foreign steel or iron products are awarded in the contract, domestic steel or iron products may be used; however, payment will be at the contract unit price for foreign steel or iron products.

106.9.2 Buy America Requirements for Construction Materials other than iron or steel products. Construction materials mean articles, materials, or supplies that consist of only one of the items listed. Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material. Upon request by the engineer, the contractor shall submit a domestic certification for all construction materials listed that are incorporated into the project.

- (a) Non-ferrous metals
- (b) Plastic and Polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables)
- (c) Glass (including optic glass)
- (d) Fiber optic cable (including drop cable)
- (e) Optical fiber
- (f) Lumber
- (g) Engineered wood
- (h) Drywall

106.9.3 Buy America Requirements for Manufactured Products.

Manufactured products mean articles, materials or supplies that have been processed into a specific form and shape, or combined with other articles, materials or supplies to create a product with different properties than the individual articles, materials or supplies. If an item is classified as an iron or steel product, an excluded material, or other product category as specified by law or in 2 CFR part 184, then it is not a manufactured product. However, an article, material or supply classified as a manufactured product may include components that are iron or steel products, excluded materials, or other product categories as specified by law or in 2 CFR part 184. Mixtures of excluded materials delivered to a work site without final form for incorporation into a project are not a manufactured product.

106.9.3.1 Produced in the United States, in the case of manufactured products, means:

(A) For projects obligated on or after October 1, 2025, the product was manufactured in the United States; and

(B) For projects obligated on or after October 1, 2026, the product was manufactured in the United States and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product.

106.9.3.2 (i) With respect to precast concrete products that are classified as manufactured products, components of precast concrete products that consist wholly or predominantly of iron or steel or a combination of both shall meet the requirements of paragraph (b) of this section. The cost of such components shall be included in the applicable calculation for purposes of determining whether the precast concrete product is produced in the United States.

(ii) With respect to intelligent transportation systems and other electronic hardware systems that are installed in the highway right of way or other real property and classified as manufactured products, the cabinets or other enclosures of such systems that consist wholly or predominantly of iron or steel or a combination of both shall meet the requirements of paragraph (b) of this section. The cost of cabinets or other enclosures shall be included in the applicable calculation for purposes of determining whether systems referred to in the preceding sentence are produced in the United States.

106.9.4 Waiver for De Minimis Costs for Manufactured and Construction Materials other than iron or steel products.

"The total value of the non-compliant products is no more than the lesser of \$1,000,000 or 5% of total applicable costs for the project." The contractor shall submit to the engineer any non-domestic materials and their total material cost to the engineer. The contractor and the engineer will both track these totals to assure that the minimal usage allowance is not exceeded.

- Third-Party Test Waiver for Concrete Aggregate

1.0 Description. Third party tests may be allowed for determining the durability factor for concrete pavement and concrete masonry aggregate.

2.0 Material. All aggregate for concrete shall be in accordance with Sec 1005.

2.1 MoDOT personnel shall be present at the time of sampling at the quarry. The aggregate sample shall be placed in an approved tamper-evident container (provided by the quarry) for shipment to the third-party testing facility.

2.2 AASHTO T 161 Method B Resistance of Concrete to Rapid Freezing and Thawing, shall be used to determine the aggregate durability factor. All concrete beams for testing shall be 3-inch wide by 4-inch deep by 16-inch long or 3.5-inch wide by 4.5-inch deep by 16-inch long. All beams for testing shall receive a 35-day wet cure fully immersed in saturated lime water prior to initiating the testing process.

2.3 Concrete test beams shall be made using a MoDOT approved concrete pavement mix design.

3.0 Testing Facility Requirements. All third-party test facilities shall meet the requirements outlined in this provision.

3.1 The testing facility shall be AASHTO accredited.

3.1.1 For tests ran after January 1, 2025, accreditation documentation shall be on file with the Construction and Materials Division prior to any tests being performed.

3.1.2 Construction and Materials Division may consider tests completed prior to January 1, 2025, to be acceptable if all sections of this provision are met, with the exception of 3.1.1. Accreditation documentation shall be provided with the test results for tests completed prior to January 1, 2025. No tests completed prior to September 1, 2024, will be accepted.

3.2 The testing facility shall provide their testing process, list of equipment, equipment calibration documentation, and testing certifications or qualifications of technicians performing the AASHTO T 161 Procedure B tests. The testing facility shall provide details on their freezing and thawing apparatus including the time and temperature profile of their freeze-thaw chamber. The profile shall include the temperature set points throughout the entirety of the freeze-thaw cycle. The profile shall show the cycle time at which the apparatus drains/fills with water and the cycle time at which the apparatus begins cooling the specimens.

3.3 Results, no more than five years old, from the third-party test facility shall compare within ± 2.0 percent of an independent test from another AASHTO accredited test facility or with MoDOT test records, in order to be approved for use (e.g. test facility results in a durability factor of 79, MoDOT's recent durability test factor is 81; this compared within +2 percent). The independent testing facility shall be in accordance with this provision. The comparison test can be from a different sample of the same ledge combination.

3.4 When there is a dispute between the third party durability test results and MoDOT durability test results, the MoDOT durability test result shall govern.

3.5 Test results shall be submitted to MoDOT's Construction and Materials division electronically for final approval. Test results shall include raw data for all measurements of relative dynamic modulus of elasticity and percent length change for each individual concrete specimen. Raw data shall include initial measurements made at zero cycles and every subsequent measurement of concrete specimens. Raw data shall include the cycle count and date each measurement was taken. Test results shall also include properties of the concrete mixture as required by AASHTO T 161. This shall include the gradation of the coarse aggregate sample. If AASHTO T 152 is used to measure fresh air content, then the aggregate correction factor for the mix determined in accordance with AASHTO T 152 shall also be included.

4.0 Method of Measurement. There is no method of measurement for this provision. The testing requirements and number of specimens shall be in accordance with AASHTO T 161 Procedure B.

5.0 Basis of Payment. No direct payment will be made to the contractor or quarry to recover the cost of aggregate samples, sample shipments, testing equipment, labor to prepare samples or test samples, or developing the durability report.

- **Delete paragraph 15.0 of the General Provision Disadvantaged Business Enterprise (DBE) Program Requirements and substitute the following:**

15.0 Bidder's List Quote Summary. MoDOT is a recipient of federal funds and is required by 49 CFR 26.11 to provide data about its DBE program. All bidders who seek to work on federally assisted contracts must submit data about all DBE and non-DBEs in accordance with Sec 102.7.9. MoDOT will not compare the submitted Bidder's List Quote Summary to any other documents or submittals, pre or post award. All information will be used by MoDOT in accordance with 49 CFR 26.11 for reporting to USDOT and to aid in overall DBE goal setting.

- **Add Sec 102.7.9 to include the following:**

102.7.9 Bidder's List Quote Summary. Each bidder shall submit with each bid a summary of all subcontractors, material suppliers, and service providers (e.g. hauling) considered on federally funded projects pursuant to 49 CFR 26.11. The bidder will provide the firm's name, the corresponding North American Industry Classification System (NAICS) code(s) the firm(s) were considered for, and whether or not they were used in the bid. The information submitted should be the most complete information available at the time of bid. The information shall be disclosed on the Bidder's List Quote Summary form provided in the bidding documents and submitted in accordance with Sec 102.10. Failure to disclose this information may result in a bid being declared irregular.

G. Traffic Control Plan Types

1.0 Description. The following traffic control plan types shall be used for the Job Orders issued for this contract.

2.0 Plan Types.

2.1 Type 1, Single Lane Closure. A single lane closure shall be performed by furnishing, installing, and removing the following set of traffic control devices which are also depicted on the temporary traffic control plan sheet:

2 each	Road Work Ahead (WO20-1)
2 each	Left (Right) Lane Closed Ahead (WO20-5)
1 each	Left (Right) Lane Closed (WO20-6a)
1 each	Merge (WO4-1aL) or (WO4-1aR)
2 each	Work Zone (Plaque) (GO20-5aP)
4 each	Speed Limit XX (Normal or Reduced Speed) (R2-1)
35 each	Channelizer (Trim-Line) With Light
15 each	Direction Indicator Barricade, with Light
1 each	Flashing Arrow Panel

2.2 Type 2, Double Lane Closure. The contractor shall obtain approval from the engineer prior to any double lane closure. A double lane closure shall be performed by furnishing, installing, and removing the following set of traffic control devices which are also depicted on the temporary traffic control plan sheet:

2 each	Road Work Ahead (WO20-1)
2 each	2 Left (Right) Lanes Closed Ahead (WO20-5a)
2 each	Left (Right) Lane Closed (WO20-6a)
2 each	Merge (WO4-1aL) or (WO4-1aR)
2 each	Work Zone (Plaque) (GO20-5aP)
4 each	Speed Limit XX (Normal or Reduced Speed) (R2-1)
70 each	Channelizer (Trim-Line) With Light
30 each	Direction Indicator Barricade, with Light
2 each	Flashing Arrow Panel

2.3 Type 3, Partial or Total Exit Ramp Closure. The contractor shall obtain approval from the engineer a minimum of five days prior to any ramp closure. A ramp closure shall be performed by furnishing, installing, and removing the following set of traffic control devices which are also depicted on the temporary traffic control plan sheet:

1 each	Road Work Ahead (WO20-1)
1 each	Ramp Closed Ahead (WO20-3)
1 each	Exit Closed (EO5-2a)
1 each	Ramp Narrows (W05-1)
1 each	Advisory Speed (W013-1)
30 each	Channelizer (Trim-Line) With Light
4 each	Type III Moveable Barricade, with Light
15 each	Direction Indicator Barricade, with Light
1 each	Changeable Message Sign, w/o Comm. Interface
	Contractor Furnished/Retained

2.4 Type 4, Work in Vicinity of Entrance Ramp. The contractor shall obtain approval from the engineer a minimum of five days prior to any ramp closure. A ramp closure shall be performed by furnishing, installing, and removing the following set of traffic control devices which are also depicted on the temporary traffic control plan sheet:

1 each	Ramp Narrows (WO5-1)
1 each	Gore Exit (EO5-1)
2 each	Road Work Ahead (WO20-1)
2 each	Right Lane Closed Ahead (WO20-5)
1 each	Left (Right) Lane Closed (WO20-6a)
1 each	Merge (WO4-1aL) or (WO4-1aR)
2 each	Work Zone (Plaque) (GO20-5aP)
4 each	Speed Limit XX (Normal or Reduced Speed) (R2-1)
100 each	Channelizer (Trim-Line) With Light
30 each	Direction Indicator Barricade, with Light
1 each	Flashing Arrow Panel

2.5 Type 5, Work in Vicinity of Clover Leaf Ramp. The contractor shall obtain approval from the engineer a minimum of five days prior to any ramp closure. A ramp closure shall be performed by furnishing, installing, and removing the following set of traffic control devices which are also depicted on the temporary traffic control plan sheet:

3 each	Road Work Ahead (WO20-1)
2 each	Right Lane Closed Ahead (WO20-5)
1 each	Left (Right) Lane Closed (WO20-6a)
1 each	Merge (WO4-2R)
2 each	Work Zone (Plaque) (GO20-5aP)
4 each	Speed Limit XX (Normal or Reduced Speed) (R2-1)
1 each	Truck Mounted Attenuator (TMA)
1 each	Be Prepared to Stop (W3-4)
1 each	Yield (R1-2)
70 each	Channelizer (Trim-Line) With Light
15 each	Direction Indicator Barricade, with Light
2 each	Flashing Arrow Panel

2.6 Type 6, Left and Right Turn Lane Closure at Entrance Ramp Closure. The contractor shall obtain approval from the engineer a minimum of five days prior to any ramp closure. A ramp closure

shall be performed by furnishing, installing, and removing the following set of traffic control devices which are also depicted on the temporary traffic control plan sheet:

2 each	Ramp Closed Ahead (WO20-3)
1 each	No Right Turn (R3-1)
2 each	No Left Turn (R3-2)
1 each	Road Closed (R11-2)
4 each	Type 3 Movable Barricade
2 each	Changeable Message Sign, w/o Comm. Interface
	Contractor Furnished/Retained
30 each	Channelizer (Trim-Line) With Light
15 each	Direction Indicator Barricade, with Light

H. Contractor Quality Control and Daily Reporting

1.0 The contractor shall perform Quality Control (QC) testing and reporting in accordance with the specifications and as specified herein. The contractor shall submit a Quality Control Plan (QC Plan) to the engineer for approval that includes all items listed in Section 2.0, prior to beginning work.

2.0 Quality Control Plan.

- (a) The name and contact information of the person in responsible charge of the QC testing.
- (b) A list of the QC technicians who will perform testing on the project, including the fields in which they are certified to perform testing.
- (c) A proposed independent third party testing firm for dispute resolution, including all contact information.
- (d) A list of Hold Points, when specified by the engineer.
- (e) The MoDOT Standard Inspection and Testing Plan (ITP). This shall be the version that is posted at the time of bid on the MoDOT website (www.modot.org/quality).

3.0 Quality Control Testing and Reporting. Testing shall be performed per the test method and frequency specified in the ITP. All personnel who perform sampling or testing shall be certified in the MoDOT Technician Certification Program for each test that they perform.

3.1 Reporting of Test Results. All QC test reports shall be submitted as soon as practical, but no later than the day following the test. Test data shall be immediately provided to the engineer upon request at any time, including prior to the submission of the test report. No payment will be made for the work performed until acceptable QC test results have been received by the engineer and confirmed by QA test results.

3.1.1 Test results shall be reported on electronic forms provided by MoDOT. Forms and Contractor Reporting Excel2Oracle Reports (CRE2O) can be found on the MoDOT website. All required forms, reports and material certifications shall be uploaded to a Microsoft SharePoint® site provided by MoDOT, and organized in the file structure established by MoDOT.

3.2 Non-Conformance Reporting. A Non-Conformance Report (NCR) shall be submitted by the contractor when the contractor proposes to incorporate material into the work that does not meet the testing requirements or for any work that does not comply with the contract terms or specifications.

3.2.1 Non-Conformance Reporting shall be submitted electronically on the Non-Conformance Report form provided on the MoDOT Website. The NCR shall be uploaded to the MoDOT SharePoint® site and an email notification sent to the engineer.

3.2.2 The contractor shall propose a resolution to the non-conforming material or work. Acceptance of a resolution by the engineer is required before closure of the non-conformance report.

3.3 Contractor Daily Work Reporting. The contractor shall submit to the engineer a Contractor Daily Work Report (CDWR) for each calendar day that work is performed. The CDWR shall include all information listed in 3.3.2.

3.3.1 The CDWR information may be provided on the MoDOT-provided form or an approved contractor form. Each CDWR shall be digitally signed by the contractor and uploaded to the MoDOT SharePoint® site no later than two (2) business days following the end of each week.

3.3.2 CDWR information:

- (a) Date and Contract Identification Number
- (b) Weather conditions, rainfall amounts, high/low ambient temperatures
- (c) List of subcontractors who performed work
- (d) Description of all work performed, including general location (ex. Sta, offset, log mile, etc.), and any testing performed.
- (e) Date range of days when no work was performed since the previous DWR
- (f) Pertinent traffic control information (changes, delays, accidents, etc.)
- (g) Statement: "All items installed meet or exceed contract requirements."

4.0 Work Planning and Scheduling.

4.1 Two-week Schedule. Each week, the contractor shall submit to the engineer a schedule that outlines the planned project activities for the following two-week period. The two-week schedule shall detail all work and traffic control events planned for that period and any Hold Points specified by the engineer.

4.2 Weekly Meeting. When work is active, the contractor shall hold a weekly project meeting with the engineer to review the planned activities for the following week and to resolve any outstanding issues. Attendees shall include the engineer, the contractor superintendent or project manager and any foreman leading major activities. This meeting may be waived when, in the opinion of the engineer, a meeting is not necessary. Attendees may join the meeting in person, by phone or video conference.

4.3 Pre-Activity Meeting. A pre-activity meeting is required in advance of the start of each new activity, except when waived by the engineer. The purpose of this meeting is to review construction details of the new activity. Discussion topics should include: safety precautions, QC testing, traffic impacts, and any required Hold Points.

4.4 Hold Points. Hold Points are events that require approval by the engineer prior to continuation of work. Hold Points occur at definable stages of work when, in the opinion of the engineer, a review of the preceding work is necessary before continuation to the next stage.

4.4.1 A list of typical Hold Point events is available on the MoDOT website. Use of the Hold Point process will only be required for the project-specific list of Hold Points, if any, that the engineer submits to the contractor in advance of the work. The engineer may make changes to the Hold Point list at any time.

4.4.2 Prior to all Hold Point inspections, the contractor shall verify the work has been completed in accordance with the contract and specifications. If the engineer identifies any corrective actions needed during a Hold Point inspection, the corrections shall be completed prior to continuing work. The engineer may require a new Hold Point to be scheduled if the corrections require a follow-up inspection. Re-

scheduling of Hold Points require a minimum 24-hour advance notification from the contractor unless otherwise allowed by the engineer.

5.0 Quality Assurance Testing and Inspection. MoDOT will perform quality assurance testing and inspection of the work, except as specified herein. The contractor shall utilize the inspection checklists provided in the ITP as a guide to minimize findings by MoDOT inspection staff. Submittal of completed checklists is not required, except as specified in 5.1.

5.1 Inspection and testing required in the production of concrete for the project shall be the responsibility of the contractor. Submittal of the 501 Concrete Plant Checklist is required.

6.0 Basis of Payment. No direct payment will be made for compliance with this provision.

I. Penetrating Concrete Sealer

1.0 Description. This provision contains the requirements for surface sealing the concrete decks of the bridges in this project in accordance with [Sec 703.3.8](#). If asphalt roadway surface is adjacent to the bridge being sealed, the asphalt surface shall be protected from spillage of the sealant.

2.0 Construction Requirements. The 35 existing bridges to be sealed on this project are shown on the roadway plans. The plans for the existing structures are included in the contract in the bridge electronic deliverables zip file for informational purposes only. Existing bridge decks do not require diamond grinding or texturing.

2.1 In order to assure the least traffic interference, the work shall be scheduled so that a lane closure is for the absolute minimum amount of time required to complete the work. A lane shall not be closed until material is available for continuous construction and the contractor is prepared to diligently pursue the work until the closed lane is opened to traffic. Traffic on the bridge shall be maintained in accordance with the contract documents.

2.2 Provisions shall be made to prevent any debris and material from falling into the waterway or onto the roadway. If determined necessary by the engineer, any debris and material that falls below the bridge outside the previously specified limits shall be removed as approved by the engineer at the contractor's expense. Traffic under the bridge shall be maintained in accordance with the contract documents.

2.3 Any damage sustained to the remaining structure as a result of the contractor's operations shall be repaired or the material replaced as approved by the engineer at the contractor's expense.

2.4 Provisions shall be made to prevent damage to any existing utilities. Any damage sustained to the utilities as a result of the contractor's operations shall be the responsibility of the contractor. All costs of repair and disruption of service shall be as determined by the utility owners and as approved by the engineer.

3.0 Method of Measurement. Final measurement will not be made except for authorized changes during construction or where significant errors are found in the contract quantity. The revision or correction will be computed and added to or deducted from the contract quantity. The areas being measured are the areas where the sealant is being applied in accordance with [Sec 703.3.8](#).

4.0 Basis of Payment. Payment for the above described work, including all material, equipment, labor and any other incidental work necessary to complete this item, will be considered completely covered by the contract unit price for Penetrating Concrete Sealer per square yard.

J. Multi-Year, Multi-Location Project – Special Requirements

1.0 Description. Whereas this project is identified by a single Job Number, and the project requires work be performed at multiple Bridge Locations, and the contract allows for work to be performed in multiple calendar years, these special requirements and allowances shall apply.

2.0 Completion of Work per Location. This contract includes work at multiple Bridge Locations, with non-contiguous project limits defined at each Bridge Location. Once work begins at a Bridge Location, the contractor shall diligently pursue completion of the work at that Location until all work is complete.

3.0 Basis of Payment. No additional payment will be made for compliance with these Special Requirements and Allowances provisions.

K. Truck Mounted Attenuator (TMA) for Stationary Activities JSP-23-04

1.0 Description. Provide and maintain Truck Mounted Attenuators (TMA) in accordance with Sec 612 and as specified herein.

2.0 Construction Requirements. Truck Mounted Attenuators (TMA) shall be used for the work activities indicated in the plans or specified herein.

2.1 Clover Leaf Ramp Closure

Stationary TMAs are to be used for traffic control as shown on the plans for clover leaf ramp closures at following locations:

- a) I-470 and MO350/ US50 Interchange
- b) I-29 and MO210/ Armour Rd Interchange

3.0 Method of Measurement. No measurement will be made for Truck Mounted Attenuators (TMA).

4.0 Basis of Payment. Delete Sec 612.5.1 and substitute with the following:

612.5.1 No payment will be made for truck mounted attenuators (TMAs) used in mobile operations or for any TMAs designated as optional.

612.5.1.1 Payment for TMAs required for stationary work activities will be paid for as a lump sum in Traffic Control Plan Type 5, Work in the Vicinity of a Clover Leaf Ramp. The lump sum payment includes all work activities that require a TMA, regardless of the number of deployments, relocations, or length of time utilized. No payment will be made for repair or replacement of damaged TMAs.

L. The Canadian Pacific Kansas City Railway Company (CPKC) Requirements

To report an emergency on The Canadian Pacific Kansas City Railway Company right-of-way call: (800) 527-9464. This Project is located in Jackson County, I-70 over CPKC Mexico Subdivision, MP 471.27 and 471.25, designated as DOT# 293591N and 293590G in Blue Springs, MO. **Current FRA data shows 2 daytime trains and 2 nighttime trains and 0 passenger trains per day.**

1.0 Authority of Railroad Engineer and State Engineer.

1.1 The authorized representative of The Canadian Pacific Kansas City Railway Company, herein called "Railroad Engineer", shall have final authority in all matters affecting the safety of employees of The Kansas City Southern Railway Company, herein called "Railroad", the public, and the safe maintenance and operation of railroad traffic including the adequacy of the foundations and structures supporting the railroad tracks. The Railroad designates the following individual as the Railroad Engineer for this project. Except as otherwise provided in this document, herein called "Railroad Requirements", the Missouri Highway and Transportation Commission's Contractor, herein called "Contractor", shall address all notices to the Railroad concerning this Project to the following person:

Mr. Justin Meyer
Senior Vice President, Engineering and Mechanical
The Kansas City Southern Railway Company
427 West 12th Street
Kansas City, MO 64105
c/o Mr. Charles Kretchman
Office: (612) 247-0706
E-mail: Charles.Kretchman@CPKCR.com

1.2 The authorized representative, herein called "Engineer", of the Missouri Highways and Transportation Commission, herein called "Commission", shall have authority over all other matters as prescribed herein and in the project plans and specifications.

1.3 The Railroad's right of way (hereinafter, "Railroad ROW") is located within this Project, which requires the Contractor to perform work on Railroad ROW. Therefore, the Contractor shall coordinate its work activities with the activities of the Railroad as required in this document.

1.4 Indemnification of Railroad by Contractor.

1.4.a. The term Contractor as used herein includes any and all subcontractors.

1.4.b. The Contractor agrees 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 this Project, whether on, over, under or in the vicinity of the Railroad's property.

1.4.c. 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, then the Railroad may perform such corrective work at the cost of the Contractor. The term "loss or damage" as used herein shall include, but not be limited to, the erosion and silting of, water damage to, and the accidental or intentional placing or dropping of objects on the Railroad's property.

2.0 Right of Entry. At least forty-five (45) days in advance of the date the contractor proposes to begin work on the Railroad's Property, the contractor shall enter into a Right of Entry Agreement with Railroad prior to working on Railroad property. Request application for Right of Entry Agreement from:

Denise Case – Permit Manager
JLL – Rail Practice Group
4200 Buckingham Road, Suite 110
Fort Worth, TX 76155
Phone: (817) 230-2614
Email: denise.case@am.jll.com
Online Permit Application: https://jllrpg.360works.com/fmi/webd/rpo_web_kcs.fmp12

2.1 Right of Entry Fee. A Two Thousand Dollar (\$2,000) non-refundable fee must accompany the application, made payable to CPKC, or the application will be returned.

3.0 Construction Requirements. The Contractor's work on the Railroad's ROW shall be performed in accordance with these Railroad Requirements. The Contractor shall supply adequate equipment, labor and materials to perform the proposed work at the job site. The Contractor shall take special precaution and care to prevent any debris or material from falling on the Railroad's right of way. 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 property from any damage resulting from the Contractor's acts or omissions during the highway Project.

4.0 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 the trains, the Contractor shall submit its excavation, shoring, demolition, blasting, lifting of structural members and falsework plans and relevant procedures to the Engineer for review, 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 Missouri. However, such approval shall not relieve the Contractor from any liability relating to this Project. During the course of the Project, the Contractor shall submit any proposed changes to the approved plans or 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 a 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 requires a resubmittal, the Railroad Engineer shall provide approval or denial and requirement for resubmittal within 30 days after receipt of the revised plans.

4.1 The 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".

4.2 The Contractor shall abide by the following minimum temporary clearances during the course of construction:

- (a) 14 feet horizontal from centerline of track
- (b) 22 feet vertical above top of rail.

4.3 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 commencing the work.

4.4 Prior to commencing any work upon, over or under the Railroad's ROW, the Contractor shall furnish to the Railroad Engineer evidence that the Contractor's insurance is in compliance with Section 6 of this special provision.

4.5 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 ROW 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 Commission prior to beginning any grading work on the Project site. Erosion control methods must comply with all applicable local, state and federal regulations.

4.6 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 ten (10) feet of Railroad's tracks. Upon completion of the Project, the 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 work. 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 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.

5.0 Site Inspections By Railroad's Designated Representative.

5.1 In addition to the office review of construction submittals, site inspections may be performed by Railroad's Designated Representative at milestone events during construction, including but not limited to the following:

- (a) Preconstruction meetings.
- (b) Excavations, shoring placement/removal, pile driving, drilling of caissons or drilledshafts adjacent to tracks.
- (c) Reinforcement and concrete placement for near track piers.
- (d) Erection of precast concrete or steel overpass bridge superstructure.
- (e) Reinforcement and concrete placement of overpass bridge decks.
- (f) Completion of the bridge structure.

5.2 The Railroad 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.

5.3 In addition to the project schedule required by the Commission, the Contractor shall provide to the Engineer a detailed construction schedule for its work on Railroad ROW, including the proposed temporary horizontal and vertical clearances and construction sequence for all work to be performed on Railroad ROW. 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 5.1 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. The Commission shall reimburse the Railroad all costs associated with Site Inspection work by the Railroad.

6.0 Safety and Railroad Flagging.

6.1 The safe operation of the Railroad shall take precedence over Commission's work on, under and above the Railroad ROW. Contractor shall not, without Railroad's prior consent, come within 50 feet of Railroad's tracks. All work of the Contractor to be performed on, above, below or adjacent to the Railroad ROW shall be coordinated with Railroad so as to avoid, to the greatest extent possible, interference with railroad operations and to assure, at a minimum, sufficient advance notice to Railroad to ensure operational safety. Contractor shall be solely responsible with complying with any applicable laws, rules and regulations, including but not limited to OSHA regulations governing multi-employer work sites.

6.2 While on the Railroad's ROW, Contractor shall comply with Railroad's rules and regulations concerning protection of persons and property. Railroad shall make its applicable rules available to the Contractor for review and copying.

6.3 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 50 feet, horizontally, on either side of the centerline of track with unlimited vertical distance 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. A railroad flagger will also be required when any equipment or its attachment or booms, even though stationed outside the above-mentioned 50 feet of the nearest rail but within the railroad ROW, has a potential to come within the 50 feet of the nearest rail.

6.4 Flagging services provided by a Railroad-qualified flagging contractor will be required whenever agents, employees or equipment of the Contractor or any of its contractors or subcontractors on this Project shall be within Fifty (50') of the nearest rail or if conditions as noted in item 6.3 above arise, unless specifically waived in writing by the Railroad.

6.5 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 Railroad Requirements, all flagging contractors utilized on the Project shall be treated solely as independent contractors of the Contractor for all purposes under these Railroad Requirements.

6.6 The Contractor shall contract directly with any of the Railroad-qualified flagging contractors and pay them directly. The Contractor shall provide at least one month's notice prior to the first use of flaggers. Current Railroad-qualified flagging contractors are:

Railpros Field Services

Joel Ashcraft 417-362-9007 joel.ashcraft@railpros.com
Jon Norris 601-502-6985 jon.norris@railpros.com

6.7 Contractor may also obtain a list of Railroad-qualified flagging contractors together with their address and telephone numbers for flagging purposes at the proposed site by written request, sent at least 30 (thirty) days in advance, by U.S. mail or by e-mail addressed to:

Mr. Charles Kretchman
Supervisor of Public Works
The Canadian Pacific Kansas City Railway Company
120 South 6th Street Suite 500
Minneapolis, MN 55402
Office: 612-247-0706
E-mail: Charles.Kretchman@CPKCR.com

6.8 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 of its agents, employees and contractors clear of the tracks when trains are in dangerous proximity to the area where construction is occurring.

6.9 All railroad tracks within and adjacent to the Project site are active, and rail traffic over these facilities shall be maintained throughout the Project. Railroad signal facilities within the project limits shall be protected at all times. CPKC shall be notified if any of its facilities are in conflict with the planned work. 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. The Commission or the Contractor may audit these costs.

6.10 The Contractor shall notify Railroad of the completion of work on Railroad ROW within 30 days after the completion of work on Railroad ROW. Railroad shall inspect Railroad's property within 30 days after the Contractor has given this notice, to verify the Contractor's compliance with these Railroad Requirements. Railroad shall notify the Engineer of any outstanding issues to be addressed on Railroad ROW. Engineer will notify the Contractor of work to be completed.

7.0 Insurance Requirements. The amount of work to be performed upon, over or under Railroad's right of way is estimated to be one percent of the Contractor's total bid for the Project. In addition to any other forms of insurance or bonds required under the terms of the contract and specifications, the Contractor shall be required to carry insurance of the following kinds:

(a) Commercial General Liability Insurance, including contractual liability and products completed/operations, against claims arising out of bodily injury, illness and death and from damage to or destruction of property of others, including loss of use thereof, with minimum limits for bodily injury and property damage of \$2,000,000 for each occurrence, with an aggregate of \$10,000,000.

1. The definition of "insured contract" shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.

2. No other endorsement limiting the coverage required by paragraph (a) of section 7.0 of these Railroad Requirements shall be included on the policy with regard to the work being performed under the contract between the contractor and the Commission.

(b) Business Automobile Policy Insurance, including owned, non-owned, and hired vehicles with minimum limits for bodily injury and property damage of \$2,000,000 per occurrence, on all vehicles used on Railroad's property during the term of the contract between the contractor and the Commission.

(c) Worker's Compensation Insurance or coverage as required under the Worker's Compensation Act of the State of Missouri. The policy shall include occupational disease to required statutory limits, employer's liability of \$1,000,000 to include FELA, if appropriate, and an "all states" endorsement.

(d) A Railroad Protective Liability policy issued in the name of the Railroad with limits of \$2,000,000 for bodily injury and property damage per occurrence, with an aggregate of \$10,000,000. The policy shall remain in force during the construction phase of the Project and shall be provided prior to start of work. The following provisions apply to the endorsements to this policy:

1. The policy shall be endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93).
2. The policy shall be endorsed to include the Limited Seepage and Pollution Endorsement.
3. The policy shall be endorsed to remove any exclusion for punitive damages.
4. The policy shall be endorsed to include Evacuation Expense Coverage Endorsement.
5. No other endorsements restricting coverage shall be added to the policy, except as authorized by paragraph 7.1.2 of these Railroad Requirements.
6. The Contractor shall provide the original policy to the Railroad before performing any work or services under the contract between the Contractor and the Commission.

7.1 Evidence of Insurance. The Declarations shall include the description of operations matching the Project description in the Contractor's contract with the Commission and shall include the appropriate Commission project and contract identification numbers. The job number and Project location shall appear on the Declarations and shall include the city, state and appropriate highway designation as follows:

7.1.1 The name and address of the Contractor shall appear on the Declarations. The name and address of the Commission shall be identified on the Declarations as the "Involved Governmental Authority or Other Contracting Party".

7.1.2 Other endorsements/forms that will be accepted are:

- (a) Broad Form Nuclear Exclusion – Form IL 00 21.
- (b) 30-day Advance Notice of Non-renewal or cancellation.
- (c) Required State Cancellation Endorsement.
- (d) Quick Reference or Index Form CL/IL 240.

7.1.3 Endorsements/forms that will NOT be acceptable are:

- (a) Any Pollution Exclusion Endorsement except CG 28 31.
- (b) Any Punitive or Exemplary Damages Exclusion.

- (c) Known injury or Damage Exclusion form CG 00 59.
- (d) Any Common Policy Conditions form.
- (e) Any other endorsement/form not specifically authorized in this special provision.

7.1.4 If any part of the work is sublet, similar insurance and evidence thereof as specified above, shall be provided by or on behalf of the subcontractor to cover the subcontractor's operations on the Railroad ROW, including such operations by any Railroad-qualified flagging contractor.

7.1.5 Prior to entry on the Railroad's ROW, the Contractor shall submit the original Railroad Protective Liability Insurance Policy to the Commission and to the Railroad at the addresses below, for review by the Commission and approval by the Railroad. In addition, the Contractor shall submit certificates of insurance evidencing the Contractor's and any subcontractor's Commercial General Liability Insurance to the Railroad and the Commission at the addresses below, for review by the Commission and approval by the Railroad. The certificates of insurance shall state that the insurance coverage shall not be suspended, voided, canceled or reduced in coverage or limits without 30 days advance written notice to the Railroad and the Commission. No work shall be permitted on the Railroad's right-of-way until the Railroad has reviewed and approved the evidence of insurance required herein.

Railroad

Mr. Charles Kretchman
CPKC Limited
120 South 6th Street Suite 500
Minneapolis, MN 55402
P.O. Box 219335
Kansas City, MO 64121-9335

Commission

Mr. Brandi Baldwin
State Construction & Material Engineer
MoDOT
P.O. Box 270
Jefferson City, MO 65102

8.0 Failure to Comply. If the Contractor violates or fails to comply with any of these Railroad Requirements, then the provisions in paragraphs (a) and (b) of this section shall apply, and shall remain in effect until the Contractor has remedied the situation to the satisfaction of the Railroad Engineer and the Engineer.

- (a) The Railroad Engineer may require that the Contractor shall vacate the Railroad's property.
- (b) The Engineer may withhold all monies due to the Contractor until the Contractor has remedied the situation to the satisfaction of the Railroad Engineer and the Engineer.

9.0 Payment for Cost of Compliance. No separate payment will be made for any extra cost incurred by the Contractor on account of compliance with these Railroad Requirements. The Contractor shall include all such costs in its contract unit price for other items included in its contract with the Commission.

The northbound viaduct of US 71 over KCT tracks KCT's tracks ML2, ML3, and ML4 at Line Segment 1001, approximately MP 6.06 in Kansas City
Bridge deck sealing (MoDOT bridge # A5169).

M. Kansas City Terminal Railway Requirements

The northbound viaduct of US 71 over KCT tracks KCT's tracks ML2, ML3, and ML4 at Line Segment 1001, approximately MP 6.06 in Kansas City
Bridge deck sealing (MoDOT bridge # A5169).

It is not anticipated that the scope of work over the railroad will require railroad involvement. Should the Contractor desire access to RR property from the ground, the Contractor shall follow all requirements listed below.

1.0 Introduction.

1.1 These requirements set forth terms and conditions agreed between the Kansas City Terminal Railway (Railroad) and the Missouri Highways and Transportation Commission (Commission), under which the Railroad will allow the Commission's contractor to enter in and upon the Railroad's real property, right of way, tracks and other facilities to perform the contractor's work relating to this project.

1.2 To report an emergency on the Railroad, call: (816) 627-0119

1.3 The project is located over the Kansas City Terminal Railway System at the northbound viaduct of US 71 over KCT tracks KCT's tracks ML2, ML3, and ML4 at Line Segment 1001, approximately MP 6.06 in Kansas City, bridge A5169 in Kansas City.

2.0 Right of Entry.

2.1 The Contractor shall be required to secure a Right of Entry Agreement from the Railroad (Example of the form follows below in Section 2.3) for any work on this project over, on, across, or adjacent to the Railroad's property. Further, if the Contractor does not need to enter the Railroad's Right of Way but merely has the potential to foul the Railroad right of way, including, but not limited to, the Railroad's tracks (by working over or near the tracks, using an extended crane or other equipment near the tracks, etc.), the Contractor shall be required to secure a Right of Entry Agreement. The Contractor shall complete the form and secure all insurance requirements in Schedule 8, secure the Railroad's execution of the form, and pay the associated fee before working over, on, across, or adjacent to any portion of the Railroad's property.

2.2 Payment for Cost of Compliance. The contractor is not entitled to any separate payment for any extra cost it may incur on account of compliance with these Railroad Requirements or the Right of Entry Agreement. The contractor shall include all such costs in the contract unit price for items properly authorized in the contract.

2.3 Example of Right of Entry

(ii) RIGHT OF ENTRY AGREEMENT

This Right of Entry Agreement ("**Agreement**") is entered into by and between Kansas City Terminal Railway Company ("**KCT**") and [**Name of Permittee**], a [corporation/limited liability company/limited partnership] ("**Permittee**") effective on the last date indicated on the signature pages as the date of execution of this Agreement (the "**Effective Date**").

KCT is the owner of certain real property legally described and/or depicted on **Exhibit A** (the "**Property**"). Permittee desires the right to enter upon and/or work over or adjacent to the Property for the sole and exclusive purpose of performing the following professional and/or construction activities:

[Describe with specificity the activities to be allowed]

(together or collectively, as applicable, the "**Permitted Activities**").

NOW, THEREFORE, for other good and valuable consideration and the promises, covenants and representations in this Agreement, the parties agree as follows:

GRANT OF RIGHT OF ENTRY. KCT hereby grants Permittee a non-exclusive, limited right of entry to the Property solely for the purpose of performing the Permitted Activities and for no other purpose. The performance of the Permitted Activities will at all times be subject to the requirements of the Railroad Representative (as defined below) and must be performed and completed with commercially reasonable dispatch.

Conditions to Entry on the Property. Prior to entering on, working over, or adjacent to the Property and the commencement of the Permitted Activities:

Permittee will contact the Director Safety & Administration of KCT, Mr. Shawn Lauby, at (816) 627-6737, or such other person as may be designated by KCT or Mr. Lauby (the "**Railroad Representative**") at least fifteen (15) days prior to commencing any Permitted Activities on, over, or adjacent to the Property in order for the Railroad Representative to arrange appropriate time windows in the Railroad Representative's sole discretion for Permittee's Permitted Activities and to arrange for one or more flaggers at various locations throughout the Property. In connection with this Agreement, KCT will provide flagging services to Permittee through a third party flagging service ("**Flagger**"), an independent provider of flagging services to the railroad industry.

Permittee must be in compliance with the insurance requirements of **Section 8** below,

Permittee and the Authorized Personnel (as defined below) must be safety trained in the manner required by 49 CFR 214 (c) of the FRA Rules and Regulations for Roadway Worker Protection and must be familiar with and abide by the safety requirements set forth set forth on **Schedule 1.1(c)** (the "**Permittee Safety Requirements**"),

Permittee and the Authorized Personnel must be familiar with and abide by the requirements set forth on **Schedule 1.1(d)** (collectively, the "**Protection of Railroad Facilities Requirements**"), and, Permittee will request that KCT locate and mark, at Permittee's cost and expense, all buried cable, air lines, communication lines and other buried or below grade systems or facilities of KCT on the Property and KCT will have so marked such system or facilities, and

Permittee will have paid the Right of Entry Fee (as defined below) to KCT.

AUTHORIZED PERSONNEL. Permittee represents and agrees that the Permitted Activities will be performed solely by (i) persons within the direct employ of Permittee, or (ii) subcontractors and agents of Permittee, all of which have been approved in advance by KCT, which approval may not be unreasonably withheld (collectively (i) and (ii), the "**Authorized Personnel**").

TERM. The term of this Agreement ("**Term**") will commence upon the Effective Date and will continue, unless earlier terminated, to the earlier of (i).

(____) [days/months/year] following the Effective Date; or

(iii)____, 20__.

FEES. In consideration of this Agreement and as a condition precedent to entering onto, working over or adjacent to the Property, Permittee must pay to KCT a one-time, non-refundable fee in the amount of \$_ (the "**Right of Entry Fee**"). Permittee will pay Flagger directly as agreed to between Permittee and Flagger for all costs of providing flagger services under this Agreement.

RESTORATION OF PROPERTY. After the expiration or earlier termination of the Term, Permittee agrees that all rights of entry granted by KCT to Permittee by this Agreement will cease and be no longer in effect. Prior to the expiration or earlier termination of the Term, unless otherwise authorized by KCT in writing, Permittee must (i) remove from the Property all equipment, tools, vehicles, items, or other property of Permittee or the Authorized Personnel used in connection with the Permitted Activities, and (ii) at Permittee's sole cost and expense, restore the Property to substantially the same condition that existed prior to the Effective Date, if such change in condition was caused by Permittee's exercise of its rights under this Agreement.

KCT Right to Cure. If Permittee fails to remove its equipment, tools, vehicles, items, or other property or fails to restore the Property to the same condition that existed prior to the Effective Date, then KCT may, but will not be required to, perform such acts at Permittee's cost. In such event, KCT will not be liable to Permittee for any damage to such equipment, tools, vehicles, or other property incurred during such removal, nor will KCT be required to secure or safeguard such equipment, tools, vehicles, or other property either while located on the Property or following the removal thereof.

Recovery of Losses. KCT will have the right to recover from Permittee, and Permittee agrees to pay to KCT, any loss or damage sustained by KCT due to Permittee's breach of its agreements contained in this Section. KCT will provide Permittee a written accounting of such loss or damage, and Permittee must pay such amount to KCT not later than thirty (30) days following receipt of such accounting. Permittee agrees to withhold from final payment due any of Permittee's Authorized Personnel, such amount(s) as may be reasonable and necessary to reimburse KCT for such loss or damage arising from the actions or inactions of Permittee's Authorized Personnel. The term "loss or damage" as used in this Section means all of the costs incurred by KCT to remove such equipment and other property and as may be required to repair or restore the Property to its condition prior to the Effective Date, including, without limitation, costs associated with repairing damage from erosion, silting, water and the accidental or intentional placement of objects on the Property. Permittee's obligations under this **Section 5** will survive the expiration or earlier termination of this Agreement.

Notwithstanding the foregoing, in the event KCT executes this Agreement with a Permittee acting on behalf of a political subdivision, rather than entering into such Agreement directly with a political subdivision (as an accommodation to such political subdivision), Permittee hereby agrees that such political subdivision, upon receipt of written demand from KCT (i) may withhold from final payment due its Permittee and its Authorized Personnel, such amount(s) as may be reasonable and necessary to reimburse KCT for such loss or damage arising from the actions or inactions of Permittee or its Authorized Personnel, and (ii) will pay such amount directly to KCT.

SAFETY. Safety is of prime importance in performing the Permitted Activities. Nothing will be done or suffered to be done by Permittee and the Authorized Personnel at any time that would in any manner impair the safety of the personnel, tracks, property and facilities of KCT or its lessees, licensees or others. Permittee and the Authorized Personnel will take all necessary precautions so as not to suffer or permit any unreasonably dangerous condition to be created, exist or continue over, on or near the Property. Permittee must incorporate the Permittee Safety Requirements into any subcontract relating to the Permitted Activities to which Permittee is a party.

NO INTERFERENCE. No Permitted Activities performed by Permittee and the Authorized Personnel in connection with this Agreement may cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of KCT or its lessees, licensees or others, unless specifically permitted under this Agreement or specifically authorized in writing in advance by the Railroad Representative. Permittee must incorporate the Protection of Railroad Facilities Requirements into any subcontract relating to the Permitted Activities to which Permittee is a party.

INSURANCE. Permittee shall procure and maintain during the continuance of this Agreement, at its sole cost and expense, all such insurance coverage as is set forth on **Schedule 8**, which insurance coverage will include, without limitation, coverage for each and all of Permittee's contractual indemnity obligations set forth in this Agreement.

CONDITION OF THE PROPERTY. KCT makes no representation concerning the condition of the Property and Permittee expressly accepts the use of the Property pursuant to this Agreement in the Property's current condition. Permittee specifically waives and disclaims any and all claims related to damage to property, personal injury or death resulting from the performance of the Permitted Activities on, over, or near the Property by Permittee and the Authorized Personnel.

Subsurface Conditions. In the event Permittee or the Authorized Personnel damages any of KCT's property (including the Property), including, without limitation, any property, equipment or systems which are buried or below grade (such as cables, air lines, communication lines gas, water, sewer or other utility lines) or any property of KCT's owner railroads as a result of the Permitted Activities or any other action or inaction of Permittee and the Authorized Personnel, Permittee will be liable for and pay for all such damage. Permittee will be responsible for and pay such damages, regardless of the accuracy or completeness of any markings by KCT of the location of any subsurface conditions.

Modifications to Property. If Permittee makes any modifications, alterations or improvements to the Property, Permittee must promptly provide KCT with written notice thereof and will provide KCT with as-built drawings and surveys of any such modifications, alterations or improvements. The foregoing notwithstanding, nothing in this Agreement may be construed to grant Permittee the right to make any modifications, alterations or improvements to the Property unless such modifications, alterations or improvements are expressly provided for in the Permitted Activities. Permittee acknowledges that any such modifications, alterations or improvements to the Property will (at the option of KCT) become the sole property of KCT and that KCT may require Permittee to remove any such unauthorized modifications, alterations or improvements at Permittee's sole cost and expense.

COMPLIANCE WITH LAWS. Permittee will be responsible for determining and complying with all federal, state and local statutes, laws and regulations applicable to the Permitted Activities, including, but not limited to (i) environmental laws and regulations (including, but not limited to, the Oil Pollution Act, the hazardous Materials Transportation Act and CERCLA), and (ii) the location, contact, excavation and protection regulations of the Occupational Safety and Health Act (20 CFR 1926.651(b), et al.), and applicable state "One Call"—"Call Before You Dig" requirements. Prior to performing any Permitted Activities, Permittee will secure any and all necessary permits, if any, and must comply with all applicable federal, state and local laws, regulations and enactments affecting the acts covered by the right of entry granted by this Agreement. Permittee assumes sole responsibility for failure to obtain any permit(s) and approval(s) required for the performance of the Permitted Activities and for any violations thereof or for costs or expenses of compliance or remedy. If any failure by Permittee to comply with any such laws, regulations, and enactments results in any fine, penalty, cost or charge being assessed, imposed or charged against KCT, Permittee must reimburse and indemnify KCT for any such fine, penalty, cost, or charge, including, without limitation, attorneys' fees, court costs and expenses. Permittee further agrees in the event of any such action, upon notice thereof being provided by KCT, to defend such action free of cost, charge, or expense to KCT. Permittee's obligations under this **Section 10** will survive the expiration or earlier termination of this Agreement.

LIENS. Permittee will not allow any mechanic's lien to be filed against the Property by reason of Permitted Activities, labor, or services performed or furnished to Permittee or the Authorized Personnel. If any such lien is at any time be filed against the Property, Permittee may contest the same in good faith but notwithstanding such contest, Permittee must, within fifteen (15) days after the filing thereof, cause such lien to be released of record by payment, bond, order of a court of competent jurisdiction, or otherwise. If Permittee fails to remove said lien within fifteen (15) days after the filing thereof, KCT may (but will not be obligated to) satisfy and remove said lien by payment or otherwise, without investigation of the validity of said lien, and Permittee will reimburse KCT upon demand all amounts paid by KCT, including KCT's costs and expenses, including attorneys' fees. Permittee's obligations to KCT pursuant to this **Section 11** will survive the expiration or earlier termination of this Agreement.

(iv) **DEFAULT; REMEDIES.**

Default. Permittee will be in default if Permittee or the Authorized Personnel fail to timely comply with any material term or provision of this Agreement, and KCT has provided Permittee written notice of such failure. Material terms or provisions of this Agreement include, without limitation, **Sections 5, 6, 7 and 8.**

Upon the date of such notice of default, Permittee will have twenty-four (24) hours in which to cure any such default (or such longer period of time as may be provided by KCT in the notice of default), provided that such default is of the nature which can be reasonably cured within twenty-four (24) hours. For any failure which cannot reasonably be cured within twenty-four (24) hours, the cure period will be extended for a reasonable period so long as Permittee commences to cure the failure within such twenty-four (24) hour period and thereafter continues diligently and in a professional manner to cure such failure. KCT will have the right to suspend Permittee's or the Authorized Personnel's access to the Property during any such cure period.

Remedies. In the event of an uncured default, KCT may, in its sole discretion terminate this Agreement, and

seek such other remedies available to KCT at law or in equity, including injunctive relief.

All rights and remedies under this Agreement are cumulative and no one of them will be exclusive of any other, and each party will have the right to pursue any one or all of such rights and remedies or any other remedy which may be provided by law, whether or not stated in this Agreement, except to the extent expressly provided to the contrary in this Agreement.

(v) RELEASE OF LIABILITY; INDEMNITY.

Indemnification. Permittee hereby expressly **waives, releases and discharges and does hereby expressly agree to defend, indemnify and save harmless** KCT, its owner railroads and their respective agents, representatives and employees from all judgments, awards, liability, loss, cost, demands or claims (including attorneys' fees) for:

injury or death to all persons, including, without limitation, KCT's, Permittee's or the Authorized Personnel's officers and employees, which occurs as a result of, or arises in any manner from Permittee's and/or the Authorized Personnel's acts, omissions, presence or activities on and/or about the Property; for loss of or damage to any property (regardless of who owns said property) which occurs as a result of, or arises in connection with, Permittee's and/or the Authorized Personnel's acts, omissions, presence or activities on and/or about the Property; and

any other damage, liability, loss, cost or claim which occurs as a result of, or arises in connection with Permittee's and/or the Authorized Personnel's acts, omissions, presence or activities on and/or about the Property.

THE LIABILITY ASSUMED BY PERMITTEE WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF KCT, ITS AGENTS, SERVANTS, EMPLOYEES, OWNERS OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF KCT. THE INDEMNIFICATION OBLIGATION ASSUMED BY PERMITTEE INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST KCT UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, AND CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.

Defense and Settlement of Claims. KCT will give notice to Permittee, in writing, of the receipt of notice or pendency of any claim or cause of action against KCT arising or growing out of or in any manner connected with the Permitted Activities and any other liability assumed by Permittee under this Agreement. Upon receipt of such notice, Permittee must proceed (at its sole cost and expense) to adjust and handle to a conclusion such claims. In the event of a suit being brought against KCT, KCT will forward the summons and complaint or other process in connection therewith to Permittee. At KCT's discretion, either (i) Permittee (at its sole cost and expense) will defend, adjust or settle such suits and protect, indemnify, and save harmless KCT from and against all damages, judgments, decrees, attorney's fees, costs and expenses growing out of or resulting from or incident to any such claims or suits, or (ii) KCT

may elect to defend, adjust and settle such suit and Permittee will reimburse KCT for any and all costs and expenses (including, without limitation, attorneys' fees) incurred by KCT as well as all damages, judgments, awards and settlements associated with such suit. Permittee may not settle any claim or suit without the express written consent of KCT.

Survival. Permittee expressly acknowledges and agrees that Permittee's obligations under this Section survive the termination or expiration of this Agreement.

NOTICES. Any notice to be given by either party in connection with or required by this Agreement must be delivered either by hand delivery, via certified United States mail or for next business day delivery by a reputable overnight delivery service (e.g., FedEx or UPS). All such notices which are not hand delivered must be postage prepaid to the following addresses or to such other address as either party may specify for itself by written notice given pursuant to this Section:

To KCT: Kansas City Terminal Railway Company 600 Broadway Blvd., Suite #501
Kansas City, Missouri 64105 Attention: General Manager

To Permittee: At the address shown beneath Permittee's signature on the execution page

A notice which is delivered (i) by hand will be deemed received on the date delivered, (ii) by US Mail will be deemed received three (3) days following deposit with the US Postal Service, and by overnight delivery service will be deemed received on the next business day following deposit with the overnight delivery service.

(vi) **MISCELLANEOUS.**

Savings Clause. To the maximum extent possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is prohibited by, or held to be invalid under applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity, and this will not invalidate the remainder of such provision, or any other provision of this Agreement.

State Law: Venue. This Agreement will be governed by, and construed in accordance with, the laws of the State of [Missouri / Kansas]. The [Circuit Court of Jackson County, Missouri / Wyandotte County Kansas District Court] will have exclusive jurisdiction of any litigation between the parties arising out of or related to this Agreement.

Expenses. Permittee will bear any and all costs and expenses associated with this Agreement or any costs or expenses incurred by KCT relating to this Agreement or the enforcement of KCT's rights under the Agreement (including, but not limited to, cost for flaggers (whether paid directly to KCT or to Flagger) and any reasonable and necessary attorneys fees or expenses incurred by KCT in enforcing this Agreement).

Waiver of Breach. The waiver by KCT of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by Permittee will in no way impair the right of KCT to avail itself of any remedy for any subsequent breach thereof.

Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

Integration. This Agreement constitutes the entire agreement between KCT and Permittee and there are no other oral or written agreements between them with respect to the Permitted Activities.

Exhibits and Schedules. Each Exhibit and Schedule to this Agreement is attached hereto and is incorporated into this Agreement by this reference. Capitalized terms used in the Exhibits or Schedules,

unless expressly stated to the contrary in such Exhibit or Schedules, have the same meaning as in this Agreement.

Authority. Each person executing this Agreement in a representative capacity warrants and represents that such person has the authority to do so and, upon request, proof of such authority in customary form will be furnished to the requesting party.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have entered into this Right of Entry on the date last written below.

KCT:

(vii) **KANSAS CITY TERMINAL RAILWAY COMPANY**

BY: _____

NAME: Bradley E. Peek

TITLE: General Manager

ADDRESS: 600 Broadway Blvd., Suite #501

Kansas City, Missouri 64105 PHONE: (816) 627-6742

Executed by KCT this _____ day of _____, 20____.

Attach: **Schedule 1.1(c):** Permittee Safety Requirements

Schedule 1.1(d): Protection of Railroad Facilities

Schedule 8: Insurance Requirements

Exhibit D: Legal Depiction/Description of Property

PERMITTEE'S SIGNATURE APPEARS ON NEXT PAGE

Signature Page for Right of Entry between KCT and [_____].

(viii) **PERMITEE:**

BY:_____
NAME:_____
TITLE:_____
ADDRESS:_____
PHONE:_____

Executed by Permittee this __ day of _____, 20____.

And if Permittee desires that a notice be sent to a second party, with a copy to:

Signature Page for Right of Entry between KCT and [_____]

SCHEDULE 1.1(c) to Right of Entry
Permittee Safety Requirements

(ix) **SAFETY ORIENTATION**

Orientation and Training. No Authorized Personnel may enter, work over, or adjacent to the Property without first having completed the KCT-specific e-RAILSAFE SHORTLINE course located at www.ers-shortline.com, and the FRA Roadway Worker Protection course located at www.railroadeducation.com (collectively, the “**Permittee Safety Orientation**”). The Authorized Personnel must have in their possession at all times the credentials and ID cards obtained from the Permittee Safety Orientation prior to entering onto, working over, or adjacent to the Property or performing any Permitted Activities. It will be the responsibility of Permittee to ensure that its Authorized Personnel understand and adhere to the safety requirements outlined in such orientation. Notwithstanding the foregoing, it is agreed and understood that Permittee will have ultimate responsibility for supervision, safe work method and practices of its agents, subcontractors, servants, and employees and compliance with FRA regulations (including, but not limited to, FRA Roadway Worker Protection – 49 CFR, Part 214, Subpart C) and Occupational Safety and Health Administration (“**OSHA**”) regulations, as well as other appropriate local, State, and Federal regulations. Permittee is responsible for the cost of the Permittee Safety Orientation. Permittee must renew the Permittee Safety Orientation annually, in the event the Term exceeds one year. Further clarification regarding the Permittee Safety Orientation may be found on the web site [what web site?] or obtained from the Railroad Representative.

(x) **PERMITTEE ROADWAY WORKER ON TRACK SAFETY PROGRAM AND SAFETY ACTION PLAN**

Development of Safety Program. For each of the Authorized Personnel that will perform Permitted Activities within 25 feet of the centerline of a railroad track, Permittee must develop and implement a Roadway Worker Protection/On Track Safety Program (a “**RW Safety Program**”) with the Railroad Representative in order to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Permittee Safety Orientation. This RW Safety Program must provide training for the Authorized Personnel. Permittee will reinforce this training at the job site through job safety briefings. During the performance of the Permitted Activities, Permittee must audit the performance of the Permitted Activities to ensure RW Safety Program compliance. Permittee must designate one on-site supervisor to serve as the contact person for KCT and who will be responsible to maintain a copy of the RW Safety Program, safety audits, and Material Safety Datasheets, at the site of the Permitted Activities. All Permitted Activities performed by the Authorized Personnel within 25 feet of any track must be in compliance with Federal Railroad Administration (“**FRA**”) Roadway Worker Protection Regulations.

(xi) **PERMITTEE GENERAL SAFETY REQUIREMENTS**

Moving Trains. Permitted Activities in the proximity of KCT’s railroad track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any

direction. When any Permitted Activities are in progress in the vicinity of railroad tracks located over, on or near the Property, Permittee and the Authorized Personnel should always be alert for approaching trains or engines, and should expect the movement of trains, engines or cars on any track at any time. Upon the approach of a train or engine, the Authorized Personnel must stop all Permitted Activities and station themselves not closer than twenty five feet (25'0") from the centerline of the track on which the train is operating. Because the performance of the Permitted Activities on and around railroad tracks can be hazardous, safety precautions and KCT's instructions must be followed at all times.

Protective Equipment/Clothing. All personnel protective equipment ("**PPE**") used on the Property must meet applicable OSHA and American National Standards Institute specifications. Such specifications require that the Authorized Personnel performing the Permitted Activities in and around train operations must wear suitable clothing and other PPE as may be required by KCT. Current KCT PPE is set forth on the Safety Web Site, however, a partial list of the requirements include: (i) safety glasses with permanently affixed side shields (no yellow lenses); (ii) hard hats; (iii) safety shoes with hardened toes, above-the ankle lace-up and a defined heel; and (iv) high visibility retro-reflective work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. In the event of a discrepancy between the information contained on the Safety Web Site and the information in this Section, the Safety Web Site will govern.

Report Injuries. Permittee and the Authorized Personnel will report to KCT, in writing, any personal injury of any of the Authorized Personnel or any other person, occurring on the Property or relating to the Permitted Activities, within 24 hours of the injury or as soon as practicable.

Safety Briefings. Before commencing any of the Permitted Activities on or above the Property, a thorough job safety briefing must be conducted with all Authorized Personnel involved with the Permitted Activities. Such job safety briefing will be repeated when the Authorized Personnel or task involved with the Permitted Activities changes. If the Permitted Activities or a particular task of the Permitted Activities is above or within 25 feet of the centerline of any railroad track, the job safety briefing must include KCT's flagger, as applicable, and include the procedures Permittee will use to protect the Authorized Personnel when moving any equipment adjacent to or across any railroad track(s).

Safety Strategy. Authorized Personnel may not perform Permitted Activities above or within 25 feet of the centerline of any track without an on-track safety strategy approved by the Railroad Representative. When authority is provided, each of the Authorized Personnel must know: (i) the identity of the Flagger flagger and how to contact the Flagger flagger, (ii) limits of the authority, (iii) the method of communication to stop and resume Permitted Activities, and

- (xii) location of the designated place of safety. Persons or equipment entering flag/Permitted Activities limits that were not previously job briefed must notify the flagger immediately and be given a job briefing when Permitted Activities are above or within 25 feet of the centerline of track.

Activities After Hours. When Authorized Personnel are to perform Permitted Activities on or near the Property after normal business hours or on weekends, the Railroad Representative

must be notified prior to conducting such activities. A minimum of two employees must be present at all times such Permitted Activities are conducted.

Drugs, Alcohol, Weapons. For safety reasons, while conducting Permitted Activities above, on, or near the Property no person may (i) have in their possession any pocket knives, firearms or other deadly weapons, or (ii) be under the influence of drugs or alcohol, or (iii) be in possession of drugs or alcohol. Any Authorized Personnel under suspicion of being under the influence of drugs or alcohol, or in the possession of same, may be immediately removed from the Property by Permittee or KCT, and if removed by KCT, such Authorized Personnel will be subsequently released to the custody of a representative of Permittee. Future access to the Property will be denied to any Authorized Personnel found to have violated this Section.

Report Damage. Permittee and any of the Authorized Personnel must immediately report to the Railroad Representative any damage to the Property or any trains, or any hazard noticed on passing trains. In the event any vehicle or machine comes in contact with any track, signal equipment, or structure (bridge) and such contact could result in a train derailment or any damage to any train, Permittee and any of the Authorized Personnel must report such contact immediately to the KCT representative in charge of the project and to KCT's Operations Center at (816) 627-0119. Local emergency numbers are to be obtained from the Railroad Representative prior to the start of any Permitted Activities and Permittee will post such emergency numbers at the job site.

Storage. NEITHER PERMITTEE NOR ANY OF THE AUTHORIZED PERSONNEL WILL PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST KCT TRACK ON THE PROPERTY. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING OF THE PERMITTED ACTIVITIES, PERMITTEE MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF KCT'S GENERAL MANAGER.

Unattended Equipment. Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on the Property must be left inoperable and secured against movement. (See Safety Web Site for more detailed specifications).

Drainage. Neither Permittee nor the Authorized Personnel may create and leave any conditions on the Property where the Permitted Activities have been/are being performed that would interfere with water drainage. Any Permitted Activities performed near and over water or which may impact a water way must meet all Federal, State and Local regulations.

Power Lines. All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be: (i) 200 KV or below – 15 feet; (ii) 200 to 350 KV – 20 feet; (iii) 350 to 500 KV – 25 feet; (iv) 500 to 750 KV – 35 feet; and

- (xiii) 750 to 1000 KV – 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

SCHEDULE 1.1(d) to Right of Entry
Protection of Railroad Facilities

1. GENERAL.

No Interference. Permittee and all Authorized Personnel must plan, schedule and conduct all Permitted Activities so as not to interfere with the movement of any trains on the Property.

Cooperation of KCT. Subject to the movement of KCT's trains, KCT will cooperate with Permittee such that the Permitted Activities may be handled and performed in an efficient manner, if possible, but in no event will there be any train delays or shutdowns.

Cease Activities. KCT has the absolute right to cause the Permitted Activities over, on, or near the Property to cease if, in the opinion of KCT, Permittee's or any of the Authorized Personnel's activities create a hazard to the Property, or any of KCT's other property, employees, and/or operations or delays, shuts down, or has the potential to delay or shut down KCT's operations and the trains thereon. Permittee and its Authorized Personnel will have no claim whatsoever for any type of damages or for extra or additional compensation in the event the Permitted Activities are delayed by KCT.

False Work or Excavations. Permittee must furnish KCT with five (5) sets of drawings showing details of construction affecting the Property and tracks, if the Permitted Activities involve (i) any false work above any tracks, or (ii) any excavations (A) located within twenty-five (25) feet of the centerline of the nearest track, or (B) intersecting a slope from the plane of the top of rail on a 1 ½ horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to the centerline of the track, or (iii) any demolition or construction above the Property. The drawings of the Permitted Activities must include the proposed method of installation and removal of false work, shoring or cribbing, not included in the contract plans and two (2) sets of structural calculations of any false work, shoring or cribbing. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance of Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state in which the project is located. Permittee may not begin Permitted Activities until notified by KCT that the plans for false work and work over the Property have been approved. Permittee will be required to use lifting devices such as, cranes and/or winches to place or to remove any false work over KCT's tracks. In no case will Permittee be relieved of responsibility for results obtained by the implementation of said approved plans.

(xiv) **FLAGGER SERVICES.**

Prior Notice. Permittee must give the Railroad Representative a minimum of thirty (30) calendar days' advance notice when flagging services will be required so that the Railroad

Representative may make appropriate arrangements to provide flagging services to Permittee through Flagger.

When Required. Unless determined otherwise by the Railroad Representative, a Flagger flagger and protective services and devices will be required and furnished when Permittee's Permitted Activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track, or (ii) cranes or similar equipment positioned over or beyond 25-feet from the track centerline could foul the track in the event of tip-over or other catastrophic occurrence. In addition, KCT may require flagger and protective services and devices:

When in the opinion of the Railroad Representative it is necessary to safeguard the Property, and KCT's employees, trains, engines and facilities.

When any excavation is performed below the bottom of tie elevation, if, in the opinion of the Railroad Representative, track or other KCT facilities may be subject to movement or settlement.

When Permitted Activities in any way interfere with the safe operation of trains at timetable speeds.

When any hazard is presented to KCT track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.

Heavy Equipment/Objects. Special permission must be obtained from KCT before moving heavy or cumbersome objects or equipment which might result in making the track impassable.

Flagging Services. All flagging services provided in connection with this Agreement will be provided by Flagger. Permittee will be responsible for and pay all Flagger fees in connection with this Agreement directly to Flagger and in accord with the arrangement between Permittee and Flagger.

(xv) **EXCAVATION.**

Underground Structures. In the event the Permitted Activities involve excavation, prior to performing any such excavation, Permittee must determine whether any underground structures, equipment or facilities (including, without limitation, utility lines, pipe lines, electric wires or cables, fiber optic cable systems) (any of which may be referred to as an "**Underground Structure**") are present and located within the portion of the Property where such Permitted Activities may be performed. Permittee must determine whether excavation on the Property could cause damage to any Underground Structure. Damage to an Underground Structure may result in delays to KCT traffic and disruption of service to other users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, Permittee must contact the Railroad Representative. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. It is Permittee's responsibility to notify any other

companies that have underground utilities on the Property and arrange for the location of all underground utilities before performing any excavation activity.

Location of Underground Structures. If there is any doubt about the location of Underground Structure of any kind, no Permitted Activities may be performed until the exact location of such Underground Structure has been determined. There will be no exceptions to this provision. Permittee must cease all Permitted Activities and notify the Railroad Representative immediately before continuing excavation in the area if obstructions (including Underground Structure) are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then Permittee must also notify the owner immediately.

OSHA Standards. All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be properly shored where there is any danger to tracks, structures or personnel.

Excavations Secured. Any excavations, holes or trenches on the Property must be covered, guarded and/or protected at all times, including when work thereon is not being performed. When leaving the Property at night and over weekends, Permittee must secure the Property and leave it in a condition that will ensure that KCT employees and other personnel who may be working or passing through the Property are protected from all hazards. All excavations must be back filled as soon as possible and to such specifications as may be required by KCT.

(xvi) **PROTECTIVE MEASURES.**

Protection of Facilities. Permittee and all Authorized Personnel must take protective measures as are necessary to keep KCT's facilities, including track ballast, free of sand, debris, and other foreign object and materials resulting from Permittee's and the Authorized Personnel's operations. Any damage to KCT's facilities resulting from Permittee's Permitted Activities will be repaired or replaced by KCT and Permittee agrees to promptly reimburse KCT for all costs of such repairs or replacement.

Blasting. Permittee must notify the Railroad Representative at (816) 627-0119 and provide blasting plans to KCT for review not less than thirty (30) calendar days prior to conducting any blasting operations adjacent to or on the Property.

Temporary Clearances. Permittee must abide by the following temporary clearances during construction and the performance of all Permitted Activities:

15' Horizontally from center line of nearest track

21'-6" Vertically above top of rail

27'-0" Vertically above top of rail for electric wires carrying less than 750 volts

28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts

30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts

34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts

Permanent Clearances. Upon completion of construction, the following clearances must be maintained:

25' Horizontally from centerline of nearest track

23'-3 1/2" Vertically above top of rail

Clearance Infringement. If any infringement of State statutory clearances due to the Permitted Activities is anticipated, details of such infringement must be submitted to KCT and, if Permittee is working on behalf of a political subdivision of the State, to such political subdivision. No Permitted Activities involving such infringement may be undertaken until

(i) approved in writing by KCT, and (ii) the applicable political subdivision has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Permitted Activities are delayed pending KCT approval and/or the State Regulatory Authority's approval.

Tell-Tale. In the case of impaired vertical clearance above top of rail, KCT may install "tell-tale" or other protective devices KCT deems necessary for protection of KCT operations. The cost of tell-tale or protective devices will be borne by Permittee.

Additional Details. The details of Permitted Activities affecting the Property and tracks not included in the contract plans must be submitted to KCT for approval before Permitted Activities may be undertaken.

Temporary Crossing. Other than at public road crossings, Permittee may not move any equipment or materials across the Property or tracks until permission has been obtained from KCT. Permittee must obtain a "Temporary Private Crossing Right of Entry" from KCT prior to moving such equipment or materials across KCT's tracks. The temporary crossing must be gated and locked at all times when not required for use by Permittee. The temporary crossing for use of Permittee will be at the sole expense of Permittee.

Hazardous Materials. Permittee will not allow the Property to become a treatment, storage or transfer facility for hazardous materials or substances as those terms are defined in the Resource Conservation and Recovery Act or any state analogue. The discharge, release or spill on the Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited.

(xvii) **REPORTING REQUIREMENTS.**

Environmental Laws. If, while performing any Permitted Activities under this Agreement, any of the Authorized Personnel (i) discover any hazardous waste, hazardous substance, petroleum or other deleterious material, including, but not limited to, any non-

containerized commodity or material, (A) on or adjacent to the Property, or (B) in or near any surface water, swamp, wetlands or waterways; or (ii) cause any discharge, release or spills of such materials in excess of a reportable quantity, then Permittee must immediately:

notify KCT's Operations Center at (816) 627-0119, of such discovery or release;

take safeguards necessary to protect its Authorized Personnel and/or third parties; and

exercise due care with respect to the discovery or release, including the taking of any appropriate measure to minimize the impact of such release and to clean up the same.

Personal Injuries. KCT is required to report certain injuries as a part of compliance with FRA reporting requirements. Any personal injury sustained by the Authorized Personnel while on KCT's property must be reported immediately (by voice mail if unable to contact in person) to the Railroad Representative. The Individual Incident Report form is to be completed and sent by fax to KCT at (816) 627-0119 and to the Railroad Representative no later than the close of shift on the date of the injury.

(xviii) **TRAIN DELAY.**

Permittee Liable for Delays. Permittee is responsible for and hereby indemnifies and holds harmless KCT (and its owner roads and its tenants, contractors, consultants, customers, and any user of KCT's property and facilities) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects KCT's ability to fully utilize its equipment and to meet customer service and contract obligations which are caused by Permittee, or the Authorized Personnel performing Permitted Activities under the Agreement. Permittee will be billed, as further provided below, for all of the economic losses arising from such delay, including, without limitation (i) loss of use of equipment, (ii) contractual loss of incentive pay and bonuses, and (iii) contractual penalties resulting from train delays. For loss of use of equipment, Permittee will be billed the current freight train hour rate per train as determined from KCT's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between KCT and its customer(s). Under these arrangements, if KCT does not meet its contract service commitments, KCT may suffer loss of performance or incentive pay and/or be subject to penalty payments. Permittee is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by KCT which are attributable to a train delay caused by Permittee or the Authorized Personnel.

The contractual relationship between KCT and its customers is proprietary and confidential. In the event of a train delay covered by the Agreement, KCT will share information relevant to any train delay to the extent consistent with KCT confidentiality obligations. Damages for train delay for certain trains may be significant per incident.

Work Windows. If absolutely required for the Permitted Activities, Permittee may request work windows from KCT and KCT may, in its sole discretion, grant Permittee permission for such work windows provided that Permittee provides KCT's Railroad Representative thirty (30) days advance notice of the times and dates for proposed work windows. KCT and Permittee will establish mutually agreeable work windows for the Permitted Activities. KCT has the right at any time to revise or change the work windows due to train operations or service obligations. KCT will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows will be accounted for in Permittee's expenses for the Permitted Activities. Permittee and the Authorized Personnel must plan, schedule, coordinate and conduct all Permitted Activities so as to not cause any delays to any trains.

SCHEDULE 8 to Right of Entry

Kansas City Terminal Railway Company ("**KCT**")/
("**Permittee**")

Insurance Requirements

Permittee must, at its sole cost and expense, procure and maintain for the duration of the Right of Entry Agreement (the "**Agreement**") (except as otherwise provided in the Agreement) the following insurance coverage and comply with all other terms and conditions set forth in this **Schedule 8**.

1. INSURANCE COVERAGES

- A. **Commercial General Liability ("CGL")**. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. The policy must also contain the following endorsements (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 KCT as the "Scheduled Railroad" and the "Designated Job Site" refers to the Agreement describing all work or operations performed on or within 50 feet of any KCT property.
 - "Designated Construction Project(s) General Aggregate Limit" ISO Form CG 25 03 03 97.
- B. **Business Automobile ("BA")**. BA coverage must be written on ISO form CA 00 01 12 93 (or a substitute form providing equivalent liability coverage) with a limit not less than \$2,000,000 for each accident. Such insurance will cover liability arising out of any auto (including owned, hired, and non-owned autos). This 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 substitute form providing equivalent coverage) showing KCT as the "Scheduled Railroad" and the "Designated Job Site" refer to the Agreement and describes all work or operations performed on or within 50 feet of any KCT property.
 - "Endorsement for Motor Carrier Policies of Insurance for Public Liability" under Sections 29 and 30 of the Motor Carrier Act of 1980, MCS-90, if required by law.
- C. **Permittee's Pollution Liability ("CPL")**. CPL coverage must be included when the scope of the work as defined in the Agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

If required, coverage may be provided by policy or by endorsement to Permittee's CGL policy. In either form coverage must be equivalent to that provided in ISO form "Pollution Liability Coverage Form Designated Sites" CG 00 39 12 04 with limits of at least \$1,000,000 per occurrence and an aggregate limit of \$2,000,000.

- The retroactive date applicable to coverage must precede the effective date of the Agreement.

- Permittee hereby agrees and warrants that continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of three (3) years beginning from the time the Agreement is terminated for any reason.

If the scope of work as defined in the Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Permittee must furnish to KCT 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.

- D. **Workers Compensation and Employers Liability ("WC")**. WC coverage must include, but not be limited to:
- Permittee's statutory liability under the workers compensation laws of the state(s) affected by the Agreement.
 - Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

(xix) **ADDITIONAL TERMS AND CONDITIONS**

- E. **Umbrella or Excess**. If Permittee utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.
- F. **Additional Insured**. All CGL, Umbrella or Excess and CPL policies required above must include KCT as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26 07 04 (or substitute form providing equivalent coverage).
- G. **Punitive Damages**. Punitive damages exclusions in all policies, if any, must be deleted (and the deletion indicated on the certificate of insurance).
- H. **Certificates of Insurance**. Prior to commencing the work, Permittee will furnish KCT with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in the Agreement. For the duration of the Agreement or period of service provided by the Agreement, and upon renewal or change in the insurance coverage required by the Agreement, Permittee will cause KCT to be provided with a certificate(s) of insurance identifying any renewal or change and otherwise complying with the terms of this Section.

Said certificate(s) of insurance will identify the insured, the insurer, the policy number, the policy dates of coverage, all coverage limits and sublimits, if any, by type of coverage, contain the signature of the authorized representative signing the certificate on behalf of the insurer, and attach copies of any amendatory endorsements or copies of the applicable policy language effecting the coverage required by the Agreement. All certificates and endorsements are to be received and approved by KCT before work commences. However, failure to obtain the required documents prior to the work beginning will not waive Permittee's obligation to provide them.

KCT reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time upon request.

- I. **Insurer Qualification**. All insurance policies must be written by a reputable commercial insurance company acceptable to KCT or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.
- J. **Waiver of Rights**. If permitted by law, Permittee hereby waives all rights against KCT and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by insurance required by the Agreement and obtained by Permittee. Permittee agrees to obtain any endorsement that may be necessary to affect this waiver of

subrogation, but this provision applies regardless of whether or not a waiver of subrogation provision has been issued by the insurer.

- K. **Minimum Limits and No Representation of Coverage Adequacy.** Permittee acknowledges that by requiring insurance herein, KCT does not represent that the coverage and limits will be adequate to protect Permittee. If Permittee maintains higher limits than the minimums shown above, KCT requires and will be entitled to coverage for the higher limits maintained by Permittee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage will be available to KCT.

Permittee understands and agrees that the insurance coverages required herein: (i) are not to be construed to void or limit Permittee's indemnity obligations as contained in the Agreement; and (ii) are being, or have been, obtained by Permittee in support of Permittee's liability and indemnity obligations under the Agreement. Irrespective of these insurance requirements, the insolvency or bankruptcy of any insurance company providing insurance to Permittee or the insurer's failure to pay claims will not affect, negate or waive any of the provisions of the Agreement.

- L. **Remedies.** Failure to provide evidence of insurance as required by this Section will entitle, but not require, KCT to terminate the Agreement immediately. KCT's acceptance of a certificate that does not comply with this Schedule will not operate as a waiver of Permittee's obligations hereunder.