

CCO Form: MO65
Approved: 04/04 (BDG)
Revised: 05/17 (MWH)
Modified:

Route B
Columbia
Boone County
Crossing No. 480 778Y
Job No. RRP-000S(597)

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION SUPPLEMENTAL
AGREEMENT FOR HIGHWAY/RAIL CROSSING IMPROVEMENTS**

THIS SUPPLEMENTAL AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission"), the City of Columbia, Missouri, the owner and operator of Columbia Terminal Railroad (hereinafter, "Railroad") pursuant to the terms of a Master Agreement for Improved Warning Devices between the Railroad and the Commission, executed by the Railroad on June 4, 1992, and by the Commission on June 10, 1992 (hereinafter, "Master Agreement").

WITNESSETH:

WHEREAS, the highway/rail grade crossing safety improvements appears to be warranted at an existing grade crossing in Columbia, Missouri, where Route B intersects Railroad's tracks at a public highway/rail grade crossing designated as USDOT # 480 778Y (hereinafter referred to as the "Route B Grade Crossing"); and

WHEREAS, the parties agree that this installation shall be in substantial compliance with the *Manual on Uniform Traffic Control Devices* (MUTCD), and will enhance safety to both highway and railroad traffic at said grade crossing.

WHEREAS, representatives of the parties participated in a diagnostic review and field inspection of this grade crossing on December 4, 2018, during which they considered and tentatively agreed on the specific safety improvements that should be implemented to enhance safety for both highway and railroad traffic at this crossing; and

NOW, THEREFORE, in consideration of these premises and of the mutual covenants herein contained, the parties agree as follows:

(1) **PURPOSE:** The purpose of this Agreement is to provide for funding, installation, and maintenance of additional warning devices or other improvements at the Route B Grade Crossing (hereinafter the "Project").

(2) **SCOPE OF WORK:** The scope of work includes the Railroad's installation of new concrete crossing surface panels, ties, rail and related track materials, roadway approach pavement and pavement markings at the Route B Grade Crossing (US DOT# 480 778Y). The Railroad shall also be responsible for providing roadway traffic control during construction of the new crossing surface.

(3) FUNDING AND APPORTIONMENT OF COSTS: The Commission will reimburse the Railroad for one hundred percent (100 %) of the eligible costs of the work described in Section (2) of this Supplemental Agreement.

(4) COST OF PROJECT: The cost of the project shall be the total monies expended by the Railroad to complete the work described in Section (2) and Section (5), all in accordance with the plan and cost estimate developed by the Railroad for this specific project. The detailed plan and cost estimate (marked as Exhibits 1 and 2, respectively) are attached hereto and incorporated by reference in this Supplemental Agreement.

(5) PRELIMINARY WORK: The Railroad will prepare and submit to the Commission a detailed plan and cost estimate for the work of the Project, as described during the diagnostic inspection and field review conducted on December 4, 2018, and in accordance with the provisions of the Master Agreement. The Railroad shall also prepare and submit to the Commission a detailed traffic control plan for review and approval.

(6) CHANGE ORDERS: If any change is made in the original plan and extent of the work, the Commission's reimbursement to the Railroad shall be limited to costs covered by a change order, which is approved by the Commission before the performance of the work.

(7) RAILROAD NOTIFICATION: At least fourteen (14) days prior to the commencement of work, the Railroad shall notify the Commission of the date it plans to commence said work. If the Commission does not receive said notification from the Railroad, the Commission will withhold an amount of five percent (5%) of the final payment to the Railroad. Such five percent (5%) payment will not be provided to the Railroad until after a final audit has been performed by the Commission.

(8) INSTALLATION:

(A) The Railroad, upon receipt of notification from the Commission and in accordance with the Ordered Due Date of the Commission's Administrative Order Pursuant to Section 389.610, RSMo, approving this Project, shall furnish all labor and material and complete the work described in Section (2) and Section (5) in accordance with this Supplemental Agreement, and in accordance with the plan and estimate attached hereto, and the rules and regulations contained in 23 CFR Part 140 Subpart I and 23 CFR Part 646 Subpart B.

(B) The Project must be completed in a single weekend agreed upon by the Railroad and Commission, beginning at 6 pm on a specified Friday and reopened to vehicular traffic the following Monday by 6 am.

(9) FORCE ACCOUNT AND NON-FORCE ACCOUNT WORK: The Railroad

will furnish all of the material and do all of the work described in Section (2) and Section (5) of this Supplemental Agreement with its own forces, or the work may be done by a contractor paid under a contract let by the Railroad in compliance with the applicable provisions of 23 C.F.R. Chapter I, Subchapter B, Part 140, Subpart I, and Chapter 34, RSMo. The applicable provisions of Title 23 CFR, and Chapter 34, RSMo, are incorporated by reference in this Supplemental Agreement.

(10) MAINTENANCE AND OPERATION: The Railroad shall operate and maintain the warning devices at the Railroad's expense as long as it operates trains through the crossing; or until the Commission orders that signals are no longer necessary at the crossing; or until the crossing is abandoned, closed, or for any reason the operation and maintenance of the signals becomes unnecessary.

(11) RELOCATION OF SIGNALS: In the event the warning devices become unnecessary for any of the above reasons, the Railroad shall remove and install the devices at another crossing mutually acceptable to the Commission and the Railroad, and subject to the approval of the Commission.

(12) PAYMENT PROVISIONS: Upon receipt of the Railroad's final statement of costs and after a review of the statement in relation to the work performed, the Commission will reimburse the Railroad for one hundred percent (100%) of the costs incurred by the Railroad for its work as described in Section (2) and Section (5) of this Supplemental Agreement. If audit reveals that the Railroad has been overpaid, the Railroad will immediately refund to the Commission such overpayment. If audit reveals that the Railroad has been underpaid, the Commission will reimburse the Railroad for such underpayment.

(13) AUDIT OF RECORDS: The Railroad shall maintain all records relating to this Supplemental Agreement, including but not limited to invoices, payrolls, etc. These records must be available at all reasonable times at no charge to the Commission and/or its designees or representatives during the period of this Supplemental Agreement and any extension thereof, and for three (3) years from the date of final payment made under this Agreement.

(14) INDEMNIFICATION: The Railroad shall defend, indemnify and hold harmless the Commission, including its members and department employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the Railroad's performance of its obligations under this Supplemental Agreement.

(15) NON-EMPLOYMENT OF UNAUTHORIZED ALIENS: Pursuant to Section 285.530, RSMo, no business entity or employer shall knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the State of Missouri. As a condition for the award of any contract or grant in excess of five thousand dollars by the State or by any political subdivision of the State to a business

entity, or for any business entity receiving a state-administered or subsidized tax credit, tax abatement, or loan from the state, the business entity shall:

(A) By sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. E-Verify is an example of a federal work authorization program. The business entity must affirm its enrollment and participation in the E-Verify federal work authorization program with respect to the employees proposed to work in connection with the services requested herein by providing acceptable enrollment and participation documentation consisting of completed copy of the E-Verify Memorandum of Understanding (MOU). For business entities that are not already enrolled and participating in a federal work authorization program, E-Verify is available at http://www.dhs.gov/xprevprot/programs/gc_1185221678150.shtm.

(B) By sworn affidavit, affirm that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. A copy of the affidavit referenced herein is provided within this document, attached as Exhibit 3.

(16) WAIVER OF HEARING ON ISSUANCE OF ADMINISTRATIVE ORDERS: This Supplemental Agreement is made subject to the approval of the proposed Project by a final Administrative Order issued by the Missouri Highways and Transportation Commission or the Administrative Hearing Commission (hereinafter "AHC"), in accordance with section 389.610, RSMo Supp. 2004, Section 622.240, RSMo 2000, and any other applicable regulatory statutes or rules. With reference to the issuance of such an Administrative Order, all parties to this Supplemental Agreement stipulate that the construction of the project as described in this Supplemental Agreement will promote public safety, and will not adversely affect public necessity. All the parties to this Supplemental Agreement further consent that the Commission or the AHC, or both, may issue one or more Administrative Orders approving and authorizing the construction of this project in conformity with the provisions of this Supplemental Agreement, and requiring the parties to perform in accordance with the provisions of this Supplemental Agreement. Each of the parties waives its right to notice and an opportunity for hearing before the issuance of these Administrative Orders.

(17) NONDISCRIMINATION ASSURANCE: If work under this Supplemental Agreement is funded in whole or in part with any Federal funds administered by the United States Department of Transportation, the following provisions apply:

(A) Civil Rights Statutes: The Railroad shall comply with all state and federal statutes relating to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d and 2000e, et seq.), as well as any applicable titles of the Americans with Disabilities Act. In addition, if the Railroad is providing services or operating programs on behalf of the Department or the Commission, it shall comply with all applicable provisions of Title II of the Americans with Disabilities Act.

(B) Administrative Rules: The Railroad shall comply with the administrative rules of the United States Department of Transportation relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation (49 CFR Subtitle A, Part 21) which are herein incorporated by reference and made part of this Supplemental Agreement.

(C) Nondiscrimination: The Railroad shall not discriminate on grounds of the race, color, religion, creed, sex, disability, national origin, age or ancestry of any individual in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Railroad shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5, including employment practices.

(D) Solicitations for Subcontracts, Including Procurements of Material and Equipment: These assurances concerning nondiscrimination also apply to subcontractors and suppliers of the Railroad. These apply to all solicitations either by competitive bidding or negotiation made by the Railroad for work to be performed under a subcontract including procurement of materials or equipment. Each potential subcontractor or supplier shall be notified by the Railroad of the requirements of this Supplemental Agreement relative to nondiscrimination on grounds of the race, color, religion, creed, sex, disability or national origin, age or ancestry of any individual.

(E) Information and Reports: The Railroad shall provide all information and reports required by this Supplemental Agreement, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Commission or the United States Department of Transportation to be necessary to ascertain compliance with other contracts, orders and instructions. Where any information required of the Railroad is in the exclusive possession of another who fails or refuses to furnish this information, the Railroad shall so certify to the Commission or the United States Department of Transportation as appropriate and shall set forth what efforts it has made to obtain the information.

(F) Sanctions for Noncompliance: In the event the Railroad fails to comply with the nondiscrimination provisions of this Supplemental Agreement, the Commission shall impose such contract sanctions as it or the United States Department of Transportation may determine to be appropriate, including but not limited to:

1. Withholding of payments under this Supplemental Agreement until the Railroad complies; and/or
2. Cancellation, termination or suspension of this Supplemental Agreement, in whole or in part, or both.

(G) Incorporation of Provisions: The Railroad shall include the provisions of paragraph 17 of this Supplemental Agreement in every subcontract, including procurements of materials and leases of equipment, unless exempted by the statutes, executive order, administrative rules or instructions issued by the Commission or the United States Department of Transportation. The Railroad will take such action with respect to any subcontract or procurement as the Commission or the United States Department of Transportation may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that in the event the Railroad becomes involved or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Railroad may request the United States to enter into such litigation to protect the interests of the United States.

(18) PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES: If the Railroad is either a “recipient” or “contractor” within the meaning of 49 CFR Section 26.5, then the provisions in this section shall apply: As used in this section, the term “DBE” means “disadvantaged business enterprise” as defined in 49 CFR Part 26; and the term “USDOT” means the United States Department of Transportation.

(A) The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC Section 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC Sections 3801, *et seq.*).

(B) Each contract the recipient signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

(19) COMPLIANCE WITH LAWS: The Railroad shall comply with all applicable Federal, State and local laws and regulations in the performance of this Supplemental Agreement.

(20) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representative of the parties.

(21) COMMISSION REPRESENTATIVE: The Multimodal Operations Director is designated as the Commission's representative for the purpose of administering the provisions of this Supplemental Agreement.

(22) ASSIGNMENT: The Railroad shall not assign, transfer, or delegate any interest in this Supplemental Agreement without the prior written consent of the Commission.

(23) AUTHORITY TO EXECUTE: The signers of this Supplemental Agreement warrant that they are acting officially and properly on behalf of their respective institutions and have been duly authorized, directed and empowered to execute this Supplemental Agreement.

(24) ORIGINAL AGREEMENT: Except as otherwise modified, amended, or supplemented by this Supplemental Agreement, the Master Agreement, and all previous Supplemental Agreements between the parties relating to the same subject matter, shall remain in full force and effect.

(25) LAW OF MISSOURI TO GOVERN: This Supplemental Agreement shall be construed according to the laws of the State of Missouri. The Railroad shall comply with all local, state and federal laws and regulations relating to the performance of this Supplemental Agreement.

(26) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Supplemental Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(27) CANCELLATION: The Commission may cancel this Supplemental Agreement at any time for a material breach of contractual obligations by providing the Railroad with written notice of cancellation. If the Commission exercises its right to cancel the Supplemental Agreement for any of these reasons, the cancellation will become effective upon the date specified in the notice of cancellation sent to the Railroad.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties have entered into this Supplemental Agreement on the last date written below. The Railroad has executed this Supplemental Agreement pursuant to Ordinance No. _____ of the City of Columbia, MO, which was approved on the ___ day of _____, 20__.

Executed by Railroad this _____ day of _____, 20__.

Executed by Commission this _____ day of _____, 20__.

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

CITY OF COLUMBIA, MO -
COLUMBIA TERMINAL RAILROAD

Michelle Teel
Multimodal Operations Division Director

By: _____
Name: _____
Title: City Manager

ATTEST:

Commission Secretary

Attest: _____
Name: _____
Title: City Clerk

APPROVED AS TO FORM:

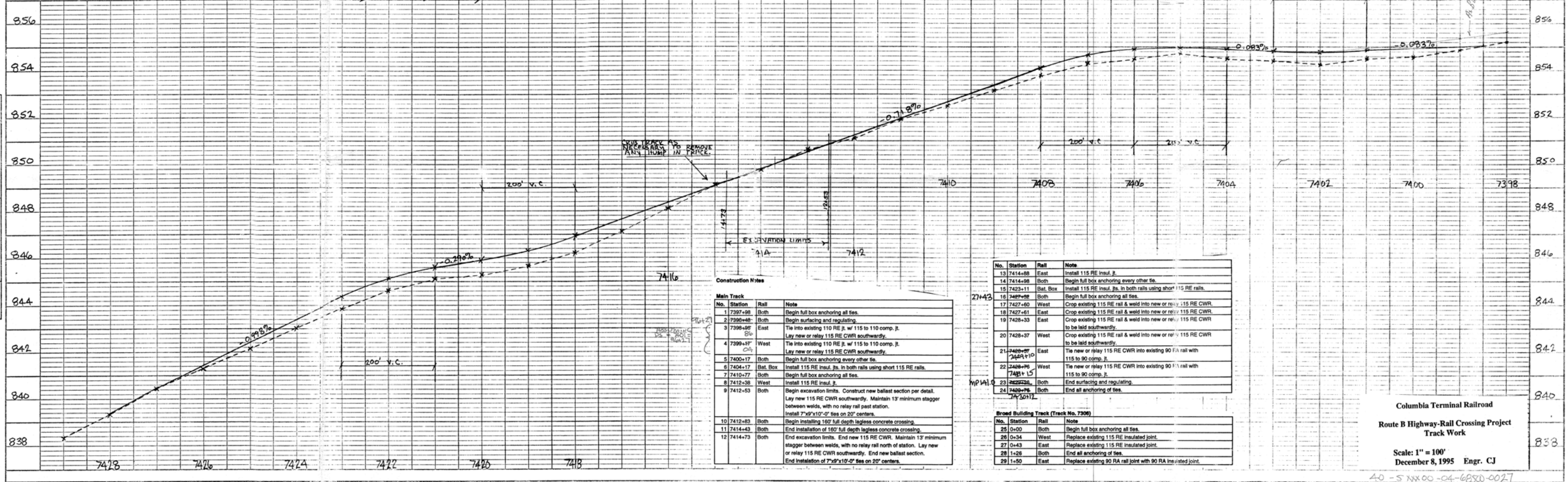
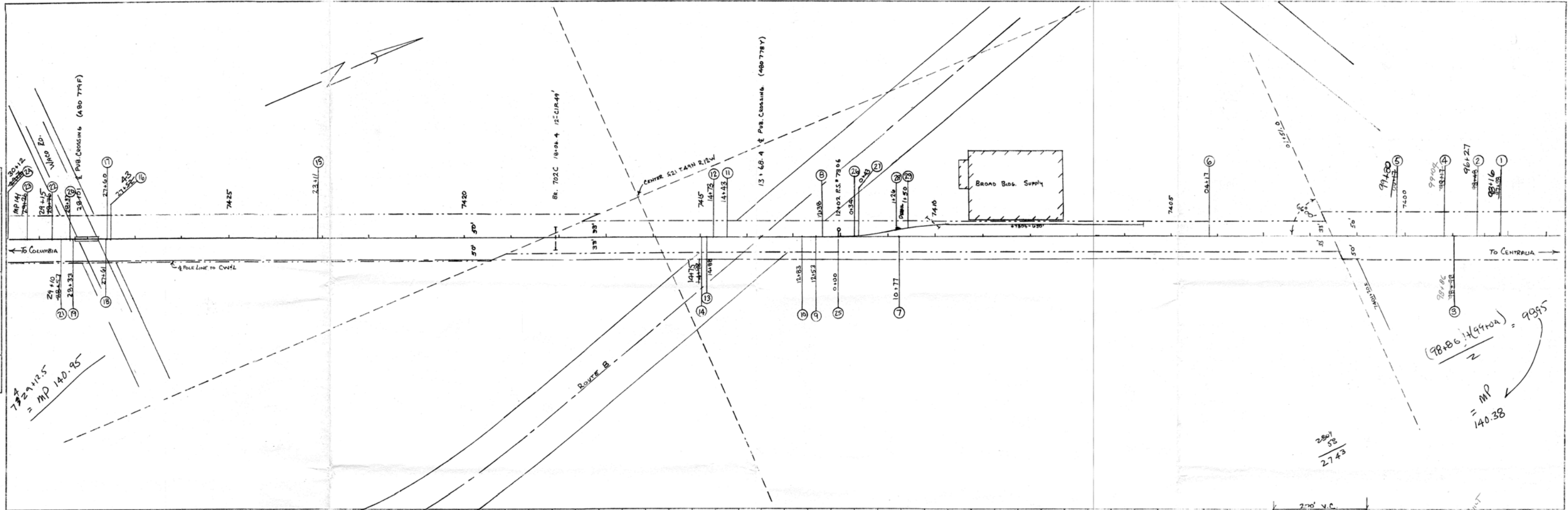
Senior Administrative Counsel

Approved
As to Form: _____
Name: _____
Title: City Counselor **AK**

EXHIBIT
1

BY	DATE
REVIEWED	
NOTED	
ALIGNED	
RET. OF WAY	

BY	DATE
REVIEWED	
NOTED	
GRADERS	
PAVING	
CONCRETE	



Construction Notes

No.	Station	Rail	Note
1	7397+98	Both	Begin full box anchoring all ties.
2	7398+48	Both	Begin surfacing and regulating.
3	7398+08	East	Tie into existing 110 RE R. w/ 115 to 110 comp. R.
4	7399+17	West	Tie into existing 110 RE R. w/ 115 to 110 comp. R.
5	7400+17	Both	Begin full box anchoring every other tie.
6	7404+17	Both	Install 115 RE Insul. R. in both rails using short 115 RE rails.
7	7410+77	Both	Begin full box anchoring all ties.
8	7412+38	West	Install 115 RE Insul. R.
9	7412+53	Both	Begin excavation limits. Construct new ballast section per detail. Lay new 115 RE CWR southw. Maintain 13' minimum stagger between weils, with no relay rail past station. Install 7'x9'x10'-0" ties on 20' centers.
10	7412+83	Both	Begin installing 160' full depth legless concrete crossing.
11	7414+43	Both	End installation of 160' full depth legless concrete crossing.
12	7414+73	Both	End excavation limits. End new 115 RE CWR. Maintain 13' minimum stagger between weils, with no relay rail north of station. Lay new or relay 115 RE CWR southw. End new ballast section. End installation of 7'x9'x10'-0" ties on 20' centers.

No.	Station	Rail	Note
13	7414+08	East	Install 115 RE Insul. R.
14	7414+08	Both	Begin full box anchoring every other tie.
15	7423+11	Both	Install 115 RE Insul. R. in both rails using short 115 RE rails.
16	7427+08	Both	Begin full box anchoring all ties.
17	7427+60	West	Crop existing 115 RE rail & weld into new or relay 115 RE CWR.
18	7427+61	East	Crop existing 115 RE rail & weld into new or relay 115 RE CWR.
19	7428+33	East	Crop existing 115 RE rail & weld into new or relay 115 RE CWR to be laid southw.
20	7428+37	West	Crop existing 115 RE rail & weld into new or relay 115 RE CWR to be laid southw.
21	7428+47	East	The new or relay 115 RE CWR into existing 90 RA rail with 115 to 90 comp. R.
22	7428+76	West	The new or relay 115 RE CWR into existing 90 RA rail with 115 to 90 comp. R.
23	7428+76	Both	End surfacing and regulating.
24	7428+76	Both	End all anchoring of ties.

Broad Building Track (Track No. 7306)

No.	Station	Rail	Note
25	0+00	Both	Begin full box anchoring all ties.
26	0+34	West	Replace existing 115 RE Insulated joint.
27	0+43	East	Replace existing 115 RE Insulated joint.
28	1+26	Both	End all anchoring of ties.
29	1+50	East	Replace existing 90 RA rail joint with 90 RA Insulated joint.

Columbia Terminal Railroad
Route B Highway-Rail Crossing Project
Track Work
Scale: 1" = 100'
December 8, 1995 Engr. CJ

EXHIBIT
2



Capital Railroad Contracting

"Driving safety and excellence home, one spike at a time"

August 9, 2018

Quotation No. 8012-09-08

Dave Sprague
Columbia Terminal Railroad
573-441-5562

Project: RT B Crossing Rehab Budget

Project Overview and Construction

Rt. B Crossing Rehab budget numbers. Pricing includes 162.5 TF of new concrete crossing panels, new 10' ties, new rail and OTM. Project to be performed over a weekend with traffic shut down Friday evening at 8 pm and reopening to traffic at 6:00 am Monday. All numbers are budgetary and at time of bidding a final number will be presented.

<u>ITEM DESCRIPTION</u>	<u>TOTAL</u>
Field Welds	\$4,000.00
Ballast	\$3,412.50
Asphalt for Approaches	\$36,000.00
Rail Ties/ OTM	\$26,420.00
Crossing Panels	\$46,101.25
Subtotal	\$115,933.75
Disposal of Spoils	\$3,000.00
Mob in & Mob Out	\$2,000.00
Traffic Control, Detouring and Advertising	\$15,000.00
Pavement Markings/Striping	\$4,200.00
Total of items listed above	\$140,133.75
Total estimated labor, and equipment cost	\$71,207.00
Total amount of work listed above	\$211,340.75
Tamper/ Plow, if necessary including mob/de-mob	\$12,000.00

Respectfully submitted,

Aaron Vollrath
President

EXHIBIT
3

ANNUAL WORKER ELIGIBILITY VERIFICATION AFFIDAVIT

STATE OF _____)
) ss.
COUNTY OF _____)

On the _____ day of _____, 20____, before me appeared (Affiant's name:) _____, who is personally known to me or proved on the basis of satisfactory evidence to be the person whose name is subscribed to this affidavit, and being by me first duly sworn, he/she stated as follows:

- I, the Affiant, am of sound mind, capable of making this affidavit, and personally certify the facts herein stated, as required by Section 285.530, RSMo, to enter into any contract agreement with the state to perform any job, task, employment, labor, personal services, or any other activity for which compensation is provided, expected, or due, including but not limited to all activities conducted by business entities.
- I, the Affiant, am the (Title:) _____ of BNSF Railway Company, and I am duly authorized, directed, and/or empowered to act officially and properly on behalf of this business entity.
- I, the Affiant, hereby affirm and warrant that the aforementioned business entity is enrolled in a federal work authorization program operated by the United States Department of Homeland Security, and the aforementioned business entity shall participate in said program to verify the employment eligibility of newly hired employees working in connection with any services contracted by the Missouri Highways and Transportation Commission (MHTC). I have attached documentation to this affidavit to evidence enrollment/participation by the aforementioned business entity in a federal work authorization program, as required by Section 285.530, RSMo.
- I, the Affiant, also hereby affirm and warrant that the aforementioned business entity does not and will not knowingly employ, in connection with any services contracted by MHTC, any alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 USC § 1324a(h)(3).
- I, the Affiant, am aware and recognize that, unless certain contract and affidavit conditions are satisfied pursuant to Section 285.530, RSMo, the aforementioned business entity may be held liable under Sections 285.525 through 285.550, RSMo, for subcontractors that knowingly employ or continue to employ any unauthorized alien to work within the state of Missouri.
- I, the Affiant, acknowledge that I am signing this affidavit as a free act and deed of the aforementioned business entity and not under duress.

Affiant Signature

Subscribed and sworn to before me in the city or county and state, and upon the day and year first above-written.

Notary Public

My commission expires:

[documentation of enrollment/participation in a federal work authorization program attached]