

## CROSSING SURFACE INSTALLATION AGREEMENT

### **Between The Minnesota Commercial Railway & the City of Saint Paul**

Minnesota Commercial Railway  
RIGHT-OF-WAY  
Wabash Avenue at Cleveland Avenue  
DOT No. 463518L

Myrtle Avenue at Cleveland Avenue  
DOT No. 463520M

This Crossing Surface Installation Agreement (“Agreement”) is entered into between the City of Saint Paul (“City”) and Minnesota Commercial Railway (“Railway”).

### RECITALS

*Whereas*, Railway operates a freight transportation system by rail with operations throughout the state of Minnesota; *and*

*Whereas*, City and Railway desire to replace the existing crossing surfaces at two locations with a new concrete surface: Wabash Avenue at Cleveland Avenue, and Myrtle Avenue at Cleveland Avenue; *and*

*Now*, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

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### TERMS & CONDITIONS

#### *Section 1. Railway’s Duties.*

- 1.1. The Railway will install a new concrete and rubber crossing surface on Wabash Avenue at Cleveland Avenue for a width of one hundred seventeen (117) feet from the edge of the pavement on the West side of the street to the edge of the pavement on the East side of the street including sidewalks. The Railway will perform all necessary track upgrades to accommodate the new crossing surface.
- 1.2. The Railway will install a new concrete and rubber crossing surface on Myrtle Avenue at Cleveland Avenue for a width of two hundred and seventy-seven (277) feet from the edge of the pavement on the West side of the street to the edge of the pavement on the East side of the street including sidewalks. The

Railway will perform all necessary track upgrades to accommodate the new crossing surface.

*Section 2. City's Duties.*

2.1. Vehicular Traffic During Installation. The City shall provide, at its own cost and expense, all necessary barricades, lights or traffic control devices for detouring vehicular traffic at the Wabash Avenue and Myrtle Avenue crossings during removal of the existing crossing surfaces.

2.2. Asphalt. The City agrees to provide, at its sole cost and expense, enough asphalt to cover the distances between the existing roadway surfaces at Wabash Avenue and Myrtle Avenue and the removed crossing surfaces where previous tracks existed.

*Section 3. Payment; Invoicing.* Upon execution of this Agreement by both parties, Railway will periodically send City invoices for materials needed for completion of Railway's duties under this Agreement during the term of this Agreement. The City shall pay these invoices for materials within thirty (30) days of receipt.

Upon satisfactory completion of the duties in this Agreement, the Railway will send the City a final invoice detailing the total amount owed by City for the removal of existing crossing surface, minus the total costs from the invoices for materials. City shall pay the final invoice within thirty (30) days of receipt.

City agrees to pay Railway **One Hundred and One Thousand Three Hundred Sixty-Four Dollars (\$370,244.00)** for the replacement of existing crossing surface.

*Section 4. Term.* This Agreement begins on the effective date set forth above and remains in effect until completion of all work contemplated in this Agreement and City's payment of the amounts set forth in Section 3 above.

*Section 5. Amendment or Changes to Agreement.* Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when reduced to writing and duly signed by the parties.

*Section 6. Survival of Obligations.* The respective obligations of the City and Railway under these terms and conditions, which by their nature would continue beyond the termination, cancellation, or expiration hereof, shall survive termination, cancellation or expiration hereof.

If a court or governmental agency with proper jurisdiction determines that this Agreement, or a provision herein is unlawful, this Agreement or that provision, shall terminate. If a provision is so terminated but the parties legally, commercially, and

practicably can continue this Agreement without the terminated provision, the remainder of this Agreement shall continue in effect.

- Section 7.* **Compliance With Applicable Law.** The Railway agrees to comply with all federal, state and local laws or ordinances, and all applicable rules, regulations and standards established by any agency of such governmental units, insofar as they relate to the Railway's performance of the provisions of this Agreement. It shall be the obligation of the Railway to apply for, pay for and obtain all permits and/or licenses required.
- Section 8.* **Conflict of Interest.** Railway's acceptance of this agreement indicates compliance with Chapter 24.03, City of Saint Paul Administrative Code: "Except as permitted by law, no city official or employee shall be a party to or have a direct financial interest in any sale, lease, or contract with the City." The contractor also affirms that to the best of the Railway's knowledge, their involvement in this contract does not result in a conflict of interest with any part or entity which may be affected by the terms of this contract. The Railway agrees that should any conflict or potential conflict of interest become known to the Railway, they will immediately notify the Purchasing Systems Manager of the situation so that a determination can be made about Railway's ability to continue performing services under this contract.
- Section 9.* **Hold Harmless.** The Railway and the City agree that they will be responsible for their own acts and the results thereof to the extent authorized by law, and shall not be responsible for the acts of the other party and the results thereof. Any liability of the City will be governed by Minnesota Statutes Chapter 466 and other applicable law, as may be amended from time to time.
- Section 10.* **Assignment.** The City and Railway each bind themselves and their successors, legal representatives, and assigns of such other party, with respect to all covenants of this Agreement; and neither the City nor the Railway will assign or transfer their interest in this Agreement without the written consent of the other.
- Section 11.* **Termination.** The City reserves the right to terminate this Agreement if the Railway violates any of the terms or does not fulfill, in a timely and proper manner, its obligations under this Agreement. In the event the City exercises its right to terminate under this Section, it shall submit written notice to the Railway, specifying the nature of the breach and the date by which such breach must be cured. Upon receipt of such notice, the Railway shall take all actions necessary to discontinue further commitments of funds to the extent that they relate to the terminated portions of this Agreement.

In the event of termination, the City will pay Railway for all services and/or products, received by the City up to the receipt of the notice of termination and thereafter until the date of termination. The Railway will deliver all work products and supporting documentation developed up to the time of termination prior to the City rendering final payment for service.

- Section 12.* **Interpretation of Agreement, Venue.** This Agreement shall be interpreted and construed according to the laws of the State of Minnesota. All litigation regarding this agreement shall be venued in the District Court of the County of Ramsey, Second Judicial District, State of Minnesota.
- Section 13.* **Waiver.** The waiver by the City of any breach under the terms of this Agreement or the foregoing by the City of any of the rights or remedies arising under the terms of this Agreement shall not constitute a waiver of the City's right to any rights and/or remedies with respect to any subsequent breach or default of the terms of the contract. The rights and remedies of the City provided or referred to under the terms of the contract are cumulative and not mutually exclusive.
- Section 14.* **Force Majeure.** Neither the City nor the Railway shall be held responsible for performance if its performance is prevented by acts or events beyond the party's reasonable control, including, but not limited to: severe weather and storms, earthquake or other natural occurrences, strikes and other labor unrest, power failures, electrical power surges or current fluctuations, nuclear or other civil military emergencies, or acts of legislative, judicial, executive.
- Section 15.* **Entire Agreement.** The specifications and other solicitation materials associated with this Agreement and these General Terms and Conditions shall constitute the entire Agreement between the parties and shall supersede all prior oral or written negotiations.
- Section 16.* **Counterparts.** The parties may sign this Agreement in counterparts, each of which constitutes an original, but all of which together constitute one instrument.
- Section 17.* **Electronic Signatures.** The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties further agree that any document (including this Agreement and any attachments or exhibits to this Agreement) containing, or to which there is affixed, an electronic signature shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes hereof, "electronic signature" also means a manually signed original signature that is then transmitted by any electronic means, including without limitation a faxed version of an original signature or an electronically scanned and transmitted version (e.g., via PDF) of an original signature. Any party's failure to produce the original signature of any electronically transmitted signature shall not affect the enforceability of this Agreement.

**[The rest of the page is left intentionally blank for signatures on the following page]**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first written above.

**CITY OF SAINT PAUL**

**MINNESOTA COMMERCIAL RAILWAY**

By: \_\_\_\_\_  
Melvin Carter III  
*Mayor*

By: \_\_\_\_\_  
Robert E Bagaus  
*Chief Maintenance Of Way Officer*

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Sean Kershaw  
*Director of Public Works*

Date: \_\_\_\_\_

By: \_\_\_\_\_  
John McCarthy  
*Director of the Office of Finance Services*

Date: \_\_\_\_\_

*Approved as to form by:*

\_\_\_\_\_  
*Assistant City Attorney*

Date: \_\_\_\_\_