GRADE CROSSING IMPROVEMENTS AGREEMENT

This AGREEMENT is entered into this _____ day of _____, 2017 by and between **THE KANSAS CITY SOUTHERN RAILWAY COMPANY,** a Missouri corporation called herein "KCS", and **CITY of JOPLIN, MO** to be addressed at 602 South Main, Joplin, MO 64801, called herein "City" (KCS and City being sometimes referred to herein individually as a "Party" or together as the "Parties").

WHEREAS, 4th Street is an existing public road in Joplin, MO which crosses the mainline utilized by KCS at Mile Post 154.65, on the KCS Heavener Subdivision, DOT No. 330045S ("Crossing"); and

WHEREAS, City desires to modify the Crossing by installation of a concrete crossing surface for the roadway and a sidewalk as per Exhibit A, which is attached hereto and incorporated herein for all purposes; and it is the City's desire to reuse the concrete crossing surface panels removed from 20th Street upon 20th Street's permanent closure in October 2015; and

WHEREAS, KCS is agreeable to performing the work necessary to modify the aforesaid Crossing from end of tie to end of tie, including installation of concrete crossing surfaces for the road and a sidewalk as per Exhibit A (the "Project"), but only as subject to the following terms and conditions of this Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. KCS shall provide the necessary materials and labor to rehabilitate and extend the grade crossing surface from end of tie to end of tie for the sidewalk at the Crossing as per Exhibit A. KCS's estimate of the costs required to perform said work is attached hereto as Exhibit B. The City shall pay 50% of KCS's actual costs of installing the new crossing surface, including labor, equipment, materials, shipping and handling of the material, and standard additives. The Parties acknowledge that Exhibit B is only an estimate, and that the City shall be responsible for 50% of the actual cost of the labor, material and other expenses incurred by KCS for the grade crossing surface rehabilitation and extension, determined according to the methodology shown in Exhibit B, whether such actual cost is more or less than shown on Exhibit B.

2. KCS estimates the cost to perform the work described in the paragraph immediately above to be ONE HUNDRED FIFTY-FOUR THOUSAND, EIGHT HUNDRED AND TEN DOLLARS

($154,810.00), as shown on Exhibit B. Prior to KCS performing any work on this project, City will deposit with KCS SEVENTY-SEVEN THOUSAND, FOUR HUNDRED AND FIVE DOLLARS ($77,405.00) to cover 50% of the estimated cost to install the grade crossing surface. KCS shall be under no obligation to provide any materials or perform any labor until the City's deposit has been received and has cleared KCS's bank. Following completion of the Project, KCS shall determine its actual cost of the Project. If the actual cost exceeds the estimated amount stated above, KCS shall invoice the City for 50% of the difference between the estimated amount and the actual cost and the City shall pay that additional invoice within 30 days after the date it is received. If the estimated amount exceeds the actual cost, KCS shall refund to the City 50% of the difference between the estimated amount and the actual cost within 30 days of KCS determining the actual cost.

3. KCS recognizes that the elevation of the crossing surface is important to the City. The City recognizes that the elevation of KCS's track is dictated by railroad engineering requirements, including that the track is curved, and therefore is slightly super-elevated, at the Crossing. KCS will share information on the elevation of the crossing surface with the City surveyor during construction.

4. City shall furnish KCS documentation of Federal Funds - particularly funds appropriated under 23 U.S.C. Section 130 - if any, being used to compensate KCS for the project.

5. City, at its sole cost and expense, shall provide all necessary materials and labor to reconstruct the portions of the Crossing outside the ends of ties. City will install the sidewalk and road approaches, drainage, pavement markings and arrange for disposal of the spoil removed from the Crossing, close the roadway to all vehicular and truck traffic as needed during construction, arrange for all construction and warning signs and barricades, and be responsible for any required notification of the public.

6. The City will hire a contractor to tie the adjacent roadway into the replacement crossing surface being installed by KCS under this Agreement. The City and KCS agree that the City will require its contractor to, and KCS will, use best efforts to coordinate scheduling of the contractor's and KCS's work. The City acknowledges that KCS's scheduling of its work is subject to operational requirements of KCS's interstate rail network, and that KCS work schedules may sometimes change on short notice due to those requirements. KCS will keep the City's contractor informed of any scheduling changes.

7. City shall furnish KCS with a certified copy of a resolution or ordinance adopted by the governing body of City of Joplin, Missouri authorizing the Mayor or City Manager to execute this Agreement on behalf of City.

8. City shall be responsible for providing and paying for all traffic and pedestrian control (including but not limited to barriers and flagmen) and be responsible for any required notification of the public if necessary during the project, all in accordance with the Manual on Uniform Traffic Control Devices and other applicable safety standards, including KCS's. Whenever City's contractor or its personnel or equipment are within twenty-five feet (25') of KCS's track, their activities shall be attended by a KCS-approved railroad flagman, hired and paid by the City. The City's contractor and its personnel and equipment shall clear the KCS track when so instructed by the railroad flagman. City and its contractors performing any work within KCS's right of way shall carry appropriate insurance which is sufficient, in the City's reasonable opinion, to fully compensate for any injury to or death of any person or for any damage to property occurring while City or its contractors are performing any work within KCS's right of way.

9. Upon completion of the work, the crossing surface will thereafter be maintained by KCS.

10. The City, with the cooperation of KCS, will be responsible for obtaining any required governmental authorizations, including approval of the Missouri Department of Transportation. All work will be done in accordance with the Manual on Uniform Traffic Control Devices.

11. The City acknowledges that KCS's agreement herein and cooperation with the City's effort to rehabilitate and extend 4th Street is based on the circumstances of this crossing, and is without prejudice to KCS's right to object and to oppose other expansion of or creation of other at-grade crossings.

12. KCS and the City shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60741.5(a) and 29 CFR Section Part 471, Appendix A to Subpart A, if applicable. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

Name: _____

Title: _____

Date:

Approved as to legal form:

_____
Associate General Counsel

The Kansas City Southern Railway Company

CITY of JOPLIN, MISSOURI

By:

_____
Samuel L. Anselm
City Manager, City of Joplin

ATTEST:

_____
Barbara Hogelin
City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards City Attorney