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04/05/2017 11:28 AM
JOHN LA FAVE
REGISTER OF DEEDS
MILWAUKEE COUNTY, WI
AMOUNT: 30.00
FEE EXEMPT #:

COVER SHEET

FOR

RECORDING

OF

Temporary Limited Easement No.43959-02

from

Soo Line Railroad Company

to

Wisconsin Department of Transportation

Recording Area

Return to:

Peter Bradley
Railroads & Harbors Section
P.O. Box 7914
Room 701
Madison, WI 53707-7914

Parcel #: 390999300

This document drafted by: Wisconsin Department of Transportation.

TEMPORARY LIMITED EASEMENT No. 43959-02

Wisconsin DOT Project No. 1060-33-26
U.S. Hwy 45. Parcel 86
County of Milwaukee

Date: March 14, 2017.

In consideration of the sum of Five-thousand and No/100 Dollars ($5,000.00),

SOO LINE RAILROAD COMPANY, a Minnesota corporation doing business as Canadian Pacific, of 120 South Sixth Street, Suite 900, Minneapolis, Minnesota 55402, ("**Grantor**")

hereby grants and conveys unto **STATE OF WISCONSIN** ("**Grantee**"),

a temporary limited easement ("**Temporary Easement**") described, conditioned and limited as follows:

1.0 **DESCRIPTION OF TEMPORARY EASEMENT PROPERTY:** The Temporary Easement is granted over, under, across and through the following parcel of land in **Milwaukee County,** described as follows:

That part of the Southwest 1/4 of the Northwest 1/4 of Section 20, Township 7 North, Range 21 East, further described as follows:

Commence at the Northeast corner of Certified Survey Map 3116, as recorded in the Milwaukee County Register of Deeds Office as Document No. 5123772;
thence South 12°42'35" West 7.71 feet;
thence South 66°03'08" East 142.53 feet, to the point of beginning;
thence continue South 66°03'08" East 90.00 feet;
thence Southwesterly 25.02 feet along a curve to the left whose radius is 2200.20 feet and whose chord bears South 26°17'56" West, 25.02 feet,

thence North 66°03'08" West 90.00 feet;
thence Northeasterly 25.02 feet along a curve to the right whose radius is 2325.00 feet and whose chord bears North 26°17'18" East 25.02 feet, to the point of beginning.

Also,

Commence at the Northeast corner of Parcel 1 of Certified Survey Map 3116, as recorded in the Milwaukee County Register of Deeds Office as Document No. 5123772;
thence South 12°42'35" West 7.71 feet;
thence South 66°03'08" East 142.53 feet,
thence Northeasterly 251.39 along a curve to the right whose radius is 2325.00 feet and whose chord bears North 29°41'39" East 251.26 feet, to the point of beginning;
thence Northeasterly 25.32 along a curve to the right whose radius is 2325.00 feet and whose chord bears North 33°06'13" East 25.32 feet;
thence South 66°03'08" East 147.95 feet;
thence Southwesterly 25.37 feet along a curve to the left whose radius is 2144.20 feet and whose chord bears South 33°45'22" West 25.37 feet;
thence North 66°03'08" West 147.65 feet, to the point of beginning.

These parcels contain 0.137 acre, more or less hereinafter referred to as the "**Property**."

2.0 **PURPOSES:** The use of the Property shall be limited to limited to activities reasonably associated with the installation, construction, maintenance, repair, replacement, of a public highway bridge and associated supports and slopes over, through and land in the vicinity of the Property, including, but not limited to:

A. parking of equipment, supplies, work trailers;
B. storage of materials;
C. staging of people and formwork,
D. grading of the land, provided such grading does not materially affect storm water runoff or the lateral support of adjacent or nearby railroad tracks.
E. Erection of temporary fencing
F. Ingress & Egress
G. right to preserve, protect, remove, or plant thereon any vegetation that Grantee may deem necessary or desirable.

Except that no storage of materials or parking of vehicles shall be permitted within 25 feet, as measured at right angles to, the centerline of any railroad track, nor shall any other activities be permitted or persons dwell in said area without complying with the requirements herein. (See Section 5.)

hereinafter the "**Temporary Easement Activities**."

3.0 RESERVATIONS:

3.1 Grantor's railroad operations, tracks and facilities shall be deemed superior to and take priority over the rights granted herein for the Temporary Easement Activities set forth in Section 2.0 so long as such right and privilege does not unreasonably interfere with the rights granted herein for Temporary Easement Activities.

3.2 Grantor reserves:

A. fee title to the Property to itself; Grantee's maintenance and use of the Property, however long continued, shall not vest in the Grantee rights adverse to those of the Grantor other than those granted by this Temporary Easement;

B. the right to permit other parties to use the Property in a manner that does not unreasonably interfere with the Grantee's use of the Property pursuant to this Temporary Easement;

C. the right of incidental use of the Property in a manner that does not unreasonably interfere with the Grantee's use of the Property pursuant to this Temporary Easement; and

D. the right and privilege to use the Property for any and all other purposes that are not inconsistent with the use thereof for the purpose or purposes permitted by this Temporary Easement or which do not unreasonably interfere with or restricts the rights granted to Grantee.

4.0 TERM, TERMINATION AND EXPIRATION:

4.1 The right, Temporary Easement and privilege granted herein shall terminate **December 31, 2020,** or upon the completion of the Temporary Easement Activities, whichever is sooner.

4.2 The Temporary Easement shall be subject to termination If Grantee is unable or unwilling to cure a breach of any of the provisions of this Temporary Easement within thirty (30) days (or such longer period as may be reasonably required if Grantee promptly initiates the cure and diligently prosecutes the cure to completion) following receipt of a written notice from Grantor detailing such breach, then this Temporary Easement shall therewith be terminated. The foregoing shall be subject, however, to reasonable seasonal accommodations required to cure a breach.

4.3 Prior to expiration or within 30 days of termination of this Temporary Easement for any reason, Grantee shall, at its sole expense, promptly restore the Property to substantially its former state. In the event that Grantee fails to timely restore the Property then Grantor may perform such restoration work and upon receipt of a bill therefor, Grantee shall immediately pay to Grantor the reasonable costs and expenses incurred by Grantor therewith.

5.0 **RESPONSIBILITIES:**

The provisions of this Section 5 shall apply to the extent the provisions of this Section 5 are not included in a separate written agreement between the parties.

5.1 Costs: Grantee shall be liable for all costs and expenses associated with its Temporary Easement Activities and shall assume and pay any taxes or assessments which may be levied by any competent authority by reason of the use of said the Property by the Grantee.

5.2 Grantee's Responsibilities

5.2.1 Grantee, shall secure all necessary public approvals and permits for its Temporary Easement Activities.

5.2.2 Grantee shall be responsible for determining the location and existence of any pipes, wires, conduits, sewers, piling or other obstructions to its Temporary Easement Activities. Grantee expressly assumes the risk of damage to the foregoing pipes, wires, conduits, sewers, piling or other obstructions, if any, and agrees to pay any claims arising from damage thereto in connection with the Temporary Easement Activities.

Grantor makes no representation by the granting of this indenture that the Property is free of any such pipes, wires, conduits, sewers, pilings or other obstructions.

5.2.3 Grantee shall not carry on any work in connection with the Temporary Easement Activities within 25 feet of the center line of any Grantor – owned track until:

5.2.3.1 it shall have given Grantor at least five (5) days' written notice, and

5.2.3.2 an authorized representative of Grantor shall, at Grantor's election, be present to supervise same. If Grantor elects to have an authorized representative present, it shall make such authorized representative available on the date requested by Grantee, or, if such date is not

reasonably possible, within five (5) days of the requested date. Grantor's right to have its authorized representative present shall be deemed waived if Grantor does not provide Grantee notice of such election at least two (2) das prior to the scheduled work. Upon bills being rendered for the authorized representative's supervision, Grantee shall promptly reimburse Grantor for all reasonable expenses incurred by it in connection with such supervision, including all labor costs for flagmen supplied by Grantor to protect railroad operations, and for the entire cost of the furnishing, installation and later removal of any temporary supports for said tracks, if any.

6.0 <u>CONTRACTOR REQUIREMENTS</u>:

6.1 Prior to the commencement of its Temporary Easement Activities, the Grantee shall require any third party contractor acting on behalf of the Grantee pursuant to this Temporary Easement to:

6.1.1 to the extent permitted by law, execute and deliver to the Grantor a release of liability that shall provide that the contractor shall indemnify, hold harmless and defend the Indemnitees (as defined below) from and against all claims arising out of, resulting from or relating to any loss of (or damage to) any property or business or any injury to (or death of) any person, where such loss, damage, injury, or death actually or allegedly arises (whether directly or indirectly, wholly or in part) from any negligence or willful misconduct of the Contractor (or its employees, agents, or contractors) while on the Property pursuant to this Temporary Easement. Indemnitees means Grantor, its subsidiaries, affiliated companies and parent companies, and their directors, officers, employees and agents, including without limitation, Soo Line Railroad Company, Delaware and Hudson Railroad Corporation, Dakota, Minnesota and Eastern Railroad Corporation, Soo Line Corporation, Wyoming, Dakota Railroad Properties, Inc., The Milwaukee Motor Transportation Company, Hiawatha Transfer Company, and Canadian and Pacific Railway Company. In no event will the Grantee be required to indemnify, hold harmless and defend the Indemnitees (as defined above) from and against any claim whatsoever.

6.1.2 maintain during any period of time that any of its employees or agents or equipment are upon the Property, policies of insurance with initial limits of coverage shown in brackets "[ ]" as follows:

a) Worker's Compensation Insurance which fully meets the requirements of any Workers' Compensation law in force in Wisconsin, including the requirements of any Occupational Disease Law.

b) Business Automobile Coverage Insurance covering all owned, non-owned and hired vehicles engaged in or on the Property, with a combined single limit of $[1,000,000.]

c) Commercial General Liability insurance with a combined single limit of $[2,000,000].

6.2 The above polices of insurance shall further be subject to the following:

6.2.1 The coverage limits of the foregoing policies shall be initially as shown in brackets, but such amounts shall after one year from the date hereof be such amounts as Grantor reasonably deems standard for work in close proximity to railroad operations.

6.2.2 Each such insurance policy shall name the Grantor as an additional Insured. Prior to commencement of any work upon the Property, the Grantor must receive and approve a certificate or certificates of insurance for each such insurance policy stating that such coverage will not be canceled or materially changed without ten (10) days written notice being given to the Grantor. The certificate for the Commercial General Liability Policy of insurance shall include the following endorsement:

> "It is agreed that the policy or policies of insurance evidenced by this certificate covers the liability assumed by the insured in connection with work to be performed in connection with the Temporary Easement Activities as set forth in the Temporary Easement grant dated March 14, 2017 by Soo Line Railroad Company to the State of Wisconsin, including work upon railroad property, within railroad right of way and in close proximity of operating railroad tracks."

7.0 **LIABILITY:**

In consideration for the grant of the Temporary Easement, without which it would not be granted, Grantee assumes all risk of damage to or destruction of property, equipment, materials or other items brought onto Property pursuant to this Temporary Easement through any cause whatsoever while located upon the Property, except as may result from Grantor's willful malicious misconduct. Notwithstanding the foregoing, in no event will the Grantee be required to indemnify, hold harmless and defend the Indemnitees (as defined in Section 6.1.1) from and against any claim whatsoever.

8.0 **ENVIRONMENTAL:**

8.1 As used in this Section, the following terms have the following definitions:

8.1.1 "**Claim**" or "**Claims**" means any and all liabilities, suits, claims, counterclaims, causes of action, demands, penalties, debts, obligations, promises, acts, fines, judgments, damages, consequential damages, losses, costs, and expenses of every kind (including without limitation any attorney's fees, consultants' fees, response costs, remedial action costs, cleanup costs and expenses which may be related to any Claims);

8.1.2 "**Environmental Law**" or "**Environmental Laws**" means the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Clean Water Act, 33 U.S.C. § 1321 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., all as amended from time to time, and any other federal, state, local or other governmental statute, regulation, rule, law or ordinance dealing with the protection of human health, safety, natural resources or the environment now existing or hereafter enacted;

8.1.3 "**Hazardous Substance**" or "**Hazardous Substances**" means any petroleum product, distillate, or fraction, radioactive material, chemical known to the Federal Government or the State of Wisconsin to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by an Environmental Law of the United States or the State of Wisconsin including but not limited to Federal or Wisconsin hazardous waste laws;

8.1.4 "**Release**" or "**Released**" means any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing or spreading of any Hazardous Substance into the environment, as "Environment" is defined in CERCLA;

8.1.5 "**Response**" or "**Respond**" means action taken in compliance with Environmental Laws to correct, remove, remediate, cleanup, prevent, mitigate, monitor, evaluate, investigate, assess or abate the Release of a Hazardous Substance;

8.1.6 "**Use**" means to manage, generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of, or abandon a Hazardous Substance.

8.2 The Grantee:

8.2.1 shall be familiar with the requirements of, comply with, and secure at the Grantee's own expense any permits or licenses required by, all applicable laws, regulations, ordinances, and standards, including without limitation all Environmental Laws;

8.2.2 shall, upon written request by the Grantor (but only in such circumstances where Grantor has reasonably reliable information that the Property has been contaminated by the Release of a Hazardous Substance), provide the Grantor with the results of appropriate reports and tests from a qualified engineer to demonstrate that the Grantee has complied with all Environmental Laws relating to the Property;

8.2.3 shall not in any manner cause or allow the Property to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the Property within the ambit of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. or any similar state statute or local ordinance;

8.2.4 shall not, without prior written disclosure to and approval by the Grantor, Use or authorize the Use of any Hazardous Substance on the Property, except as may be in accordance with Environmental Laws;

8.2.5 shall not cause or allow the Release of any Hazardous Substance on, to, or from the Property;

8.2.6 shall promptly notify the Grantor of any actual or suspected Release of any Hazardous Substance on, to, or from the Property, regardless of the cause of the Release, but only when such Release is reasonably known by Grantee;

8.2.7 shall promptly provide the Grantor with copies of all summons, citations, directives, information inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, claims, causes of action, complaints, investigations, judgments, letters, notices of environmental liens or Response actions in progress, and other communications, written or oral, actual or threatened, from the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, or other federal, state or local agency or authority, or any other entity or individual, concerning any Release of a Hazardous Substance on, to or from the Property, or any alleged violation of or responsibility under any Environmental Law relating to the Property; and

8.2.8 shall promptly take all necessary action in Response to any Release or Use of a Hazardous Substance by Grantee at the Property that gives rise to any liability, claim, cause of action, obligation, demand, fine, penalty, loss, judgment or expense under any Environmental Law, or causes a significant public health or workplace effect, or creates a nuisance.

8.2.9 To the extent permitted by Wisconsin law, by accepting delivery of this Temporary Easement, the Wisconsin Department of Transportation covenants and agrees not to sue Grantor or its respective directors, officers, stockholders, divisions, agents, affiliates, subsidiaries, predecessors, successors and assigns, grantors or anyone acting on its behalf or their behalf with respect to any Claims (including without limitation all Claims arising under any Environmental Law), existing and contingent, known and unknown, that Grantee had, has or may have, whether arising at common law, in equity, or under a federal, state or local statute, rule or regulation, arising out of, resulting from, or relating to the condition of the Property. The foregoing shall apply to any condition of the Property, known or unknown, contemplated or uncontemplated, suspected or unsuspected, including without limitation the presence of any Hazardous Substance on the Property , whether such Hazardous Substance is located on or under the Property, or has migrated from or to the Property, regardless of whether the foregoing condition of the Property was caused in whole or in part by the Grantor's actions or inactions.

9.0 **MISCELLANEOUS:**

9.1 Grantee/Grantor: As used in this Temporary Easement, the terms "**Grantee**" and "**Grantor**" shall include the parties first named above and their respective successors or assigns.

9.2 Headings: The paragraph headings used in this Temporary Easement are used solely for the purpose of convenience. They are not intended to, and do not, modify or limit the wording of the paragraphs to which they are appended, and they shall not be used or construed as guides to the interpretation of said paragraphs.

9.3 Severability of Terms: Each provision, paragraph, sentence, clause, phrase, and word of this Temporary Easement shall apply to the extent permitted by applicable law and is intended to be severable. If any provision, paragraph, sentence, clause, phrase or word of this indenture is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of this Temporary Easement.

9.4 No Waiver: Any act or omission constituting a breach of this Temporary Easement shall be limited to such act or omission and shall not be construed as a permanent or continuing waiver thereof;

9.5 Notices: Any notice given by a party pursuant to this Temporary Easement, shall be good if served upon the other party, or if deposited in a United States post office, certified mail, addressed to the other party at its last known address.

9.6 Entire Agreement: This Temporary Easement constitutes the entire agreement of the parties concerning the rights, responsibilities, and obligations of the parties hereto, and supersedes any and all prior agreements or oral understandings between the parties with respect thereto. Any modification to the terms of this Temporary Easement shall be in the form of a duly-executed addendum or supplement to this Temporary Easement.

9.7 No Warranty: Grantor does not warrant title to the Property, and makes no representations or warranties, express or implied, as to the habitability of the Property or the fitness of the Property for Grantee's purpose or any other particular purpose.

9.8 Choice of Law: This Temporary Easement and all claims relating to or arising therefrom, or the breach thereof, whether sounding in contract, tort or otherwise, shall likewise be governed and construed according to the laws of Wisconsin, excluding Wisconsin's choice-of-law principles.

9.9 Prior Appropriation: To the extent this Temporary Easement imposes obligations on Grantee that require the expenditure of funds by Grantee, such obligations are contingent upon and subject to the Wisconsin Legislature appropriating funds for such obligations. If there is no appropriation of funding for all or part of any such obligation, Grantee shall make a good faith effort to secure funding to cover the obligation.

This Temporary Easement shall inure to the benefit of and be binding upon the successors and assigns of the Grantor and the Grantee.

SOO LINE RAILROAD COMPANY
doing business as Canadian Pacific

By: _____
David S. Drach
Its: Director Real Estate - U.S.

STATE OF MINNESOTA)
) ss:
COUNTY OF HENNEPIN)

The foregoing Temporary Easement was acknowledged before me this 14th day of March, 2017, by David S. Drach, Director Real Estate - U.S., of Soo Line Railroad Company, a corporation under the laws of the State of Minnesota, on behalf of the corporation.

AMY L ANDREWS
NOTARY PUBLIC
MINNESOTA
My Commission Expires Jan. 31, 2022

Notary Seal _____ Notary Public

This instrument was drafted by:
Real Estate Department
Canadian Pacific
700 Canadian Pacific Plaza
120 South Sixth Street
Minneapolis, Minnesota 55402