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

Office of the Commissioner of Railroads
RECEIVED: 10/17/2019 1:49:11 PM

COVER SHEET

FOR

RECORDING

OF

Highway Bridge Easement No.43959-01

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.

HIGHWAY BRIDGE EASEMENT No. 43959-01

Date: March 14, 2017.

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

In consideration of the sum of Fifty-thousand and No/100 Dollars ($50,000.00), the receipt whereof is hereby acknowledged,

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**"),

an easement ("**Easement**") described and conditioned as follows:

1.0 **DESCRIPTION OF EASEMENT AREA:** The Easement is granted over, under, across and through the following parcel of land in **Milwaukee County, Wisconsin,** 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 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, to the point of beginning;
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;

thence South 66°03'08" East 147.65 feet;
thence Southwesterly 232.71 along a curve to the left whose radius is 2144.20 feet and whose chord bears South 30°18'14" West, 232.60 feet;
thence North 63°02'39" West 56.00 feet;
thence Southwesterly 21.82 along a curve to the left whose radius is 2200.20 feet and whose chord bears South 26°54'32" West 21.82 feet;
thence North 66°03'08" West 90.00 feet, to the point of beginning.

CONTAINING 0.816 acres, more or less and hereinafter referred to as the "**Easement Area.**"

2.0 **PURPOSES:** The Easement shall be limited to:

2.1. The installation, construction, maintenance, repair, replacement, and use of a public overhead highway bridge and associated piers and footings (the "**Highway Bridge**") for public vehicular and pedestrian uses, and any other highway purposes pursuant to Wisconsin law over, under, through and across the Easement Area.

2.2. The installation, construction, maintenance, repair, replacement, and use of State, county or City owned pipes, wires or other State, County or City-owned utilities (collectively "**Public Utilities**" or individually a "**Public Utility**") provided that:

A. any such Public Utility installed or replaced after the date hereof be affixed to the highway bridge structure.

B. No such Public Utility shall be installed without advance written approval of the Grantor and without submitting proposed plans at least 30 days in advance of planned construction, maintenance or replacement;

C. Subject to the preceding section 2.2(A) and (B), the installation, repair or replacement of any Public Utility shall be subject to the provisions of Section 5.2 herein;

D. The foregoing sections 2.2(A) through (C) shall not apply if railroad operations are abandoned across the Easement Area or if railroad tracks are permanently removed.

E. Nothing herein shall be construed to allow a non-government owned utility company to construct, maintain, repair or replace pipes wires or other items upon or across the Easement Area.

3.0 RESERVATIONS:

3.1 Grantor's railroad operations, tracks and facilities shall be deemed superior to the rights granted herein for Highway Bridge purposes and Grantor reserves the right and privilege to construct additional tracks or facilities as may be required for railroad traffic, operations or safety so long as such right and privilege does not unreasonably interfere with the rights granted herein for Highway Bridge purposes.

3.2 Grantor reserves:

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

B. the right to permit other parties to use the Easement Area in a manner that does not interfere with the Grantee's use of the Easement Area for highway purposes pursuant to Wisconsin state law and pursuant to this Easement;

C. the right of incidental use of the Easement Area in a manner that does not unreasonably interfere with the Grantee's use of the Easement Area for highway purposes pursuant to Wisconsin state law and pursuant to this Easement; and

D. the right and privilege to use the Easement Area for any and all other purposes that are not inconsistent with Wisconsin law as it relates to state highway purposes or with the use thereof for the purpose or purposes permitted by this Easement or which do not unreasonably interfere with or restricts the rights granted to Grantee.

4.0 TERM, TERMINATION AND EXPIRATION:

4.1 This Easement shall remain in effect so long as required by Grantee for Highway Bridge or Public Utility purposes. The Easement shall only terminate if the Highway is discontinued or abandoned pursuant to Wisconsin law.

4.2 Upon termination or expiration of this Easement pursuant to Section 4.1, Grantee shall, at its sole expense, promptly remove the Highway Bridge from the Easement Area and restore the Easement Area to substantially its former state. In the event that Grantee fails to remove the Highway Bridge, within one-hundred twenty (120) days following receipt by Grantee of a written notice from Grantor that it intends to remove the Highway Bridge, the Highway Bridge may

be so removed. Upon receipt of a bill therefor, Grantee shall immediately pay to Grantor the costs incurred by Grantor in the removal of the Highway Bridge.

5.0 **HIGHWAY BRIDGE CONSTRUCTION, MAINTENANCE AND REMOVAL WORK:**

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 Division of Responsibility: Grantee shall be responsible, at its cost and expense, for all work necessary to install, construct, maintain, repair, replace and remove the Highway Bridge.

5.2 Highway Bridge and Public Utility work by Grantee:

5.2.1 Grantee, shall secure all necessary public approvals and permits for the construction, maintenance, operation or removal of the Highway Bridge or Public Utilities from or in the Easement Area.

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

Prior to any construction, maintenance or removal of the Highway Bridge or Public Utilities, Grantee shall be responsible for determining the location and existence of any pipes, wires, conduits, sewers, piling or other obstructions to the construction of the Highway Bridge. 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 construction or maintenance of the Highway Bridge.

5.2.3 Grantee shall not carry on any work in connection with the installation, maintenance, repair, changing or renewal of the Highway Bridge or Public Utilities 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.

5.2.4 Prior to the commencement of work, the Grantee shall require any third party contractor acting on behalf of the Grantee pursuant to this Easement to:

5.2.4.1 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 Easement Area pursuant to this 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.

5.2.4.2 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 Easement Area, with a combined single limit of $[1,000,000.]

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

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

5.2.5.1 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.

5.2.5.2 Each such insurance policy shall name the Grantor as an additional Insured. Prior to commencement of any work upon the Easement Area, 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 Highway Bridge as set forth in the 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."

5.2.6 [not applicable]

5.2.7 [not applicable]

5.2.8 Grantee, at Grantee's sole expense, whenever notified in writing by Grantor to do so, shall promptly make emergency repairs to the Highway Bridge as Grantor and Grantee agree are necessary. If Grantee fails to make such repairs within a reasonable period, Grantor shall have the right, at its election, to make these emergency repairs to the Highway Bridge and in such event Grantee, upon bills being rendered therefor, will promptly reimburse Grantor for all reasonable expenses incurred in connection therewith.

5.3 Work by Grantor: Grantee shall, upon receipt of an invoice therefor, pay Grantor for all costs and expenses incurred by Grantor in connection with the following activities within the Easement Area:

5.3.1 The construction, maintenance or renewal of improvements necessary for rail bed, tracks, flanger signs, drainage, and road surface;

5.3.2 Flagging services as may be required by Grantor;

5.3.3 [not applicable]

5.3.4 [not applicable]

5.3.5 Other incidental expenses and reasonable administration or overhead charges not to exceed reasonable and customary expenses incurred or allocated under similar circumstances in the railroad industry.

6.0 **TAXES AND ASSESSMENTS:** Grantee shall assume and pay any taxes or assessments which may be levied by any competent authority by reason of the existence or use of said land for highway bridge purposes.

7.0 **LIABILITY:**
In consideration for the grant of the Easement, without which it would not be granted, Grantee assumes all risk of damage to or destruction of the Highway Bridge or Public Utilities through any cause whatsoever while located upon and across the Easement Area, 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 5.2.4.1 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 Easement Area 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 Easement Area;

8.2.3 shall not in any manner cause or allow the Easement Area to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the Easement Area 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 Easement Area, except for Hazardous Substances used for Highway purposes, or 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 Easement Area;

8.2.6 shall promptly notify the Grantor of any actual or suspected Release of any Hazardous Substance on, to, or from the Easement Area, 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 Easement Area, or any alleged violation of or responsibility under any Environmental Law relating to the Easement Area; 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 Easement Area 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 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 Easement Area. The foregoing shall apply to any condition of the Easement Area, known or unknown, contemplated or uncontemplated, suspected or unsuspected, including without limitation the presence of any Hazardous Substance on the Easement Area, whether such Hazardous Substance is located on or under the Easement Area, or has migrated from or to the Easement Area, regardless of whether the foregoing condition of the Easement Area 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 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 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 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 Easement.

9.4 No Waiver: Any act or omission constituting a breach of this 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 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 Merger: This 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 Easement shall be in the form of a duly-executed addendum or supplement to this Easement.

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

9.8 Choice of Law: This Easement shall be governed and construed in accordance with the laws of Wisconsin.

9.9 Prior Appropriation: To the extent this 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 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 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