

AGREEMENT

This Agreement made and entered into in duplicate as of the 1st day of Nov., 1996, by and between The Atchison, Topeka and Santa Fe Railway Company, a Delaware Corporation, hereinafter called "Railroad", and the Johnson County Park and Recreation District, hereinafter called "District."

WHEREAS, the District proposes to construct the Mill Creek Streamway Park under a Transportation Enhancement Project designated by Number 46 TE-0056-01; STP-T005(601); authorized under separate agreement dated December 27, 1995, and amended February 21, 1996 between the District and the Kansas Department of Transportation, Secretary of Transportation, hereinafter referred to as "Secretary," a copy of which is transmitted to the railroad for consideration. The Improvements include Construction of Two Bicycle/Pedestrian Tunnels Wood Rail Fence, Chain Link Fence, and a Bicycle/Pedestrian Trail on the right-of-way of the Railroad, located in Sections 26 and 36, T 12 S, R 23 E, Johnson County, Kansas as shown on Exhibit "A", attached hereto and made a part hereof, and

WHEREAS, the term "Improvements" as used in this Agreement, refers to any of the above described work located on the property of the Railroad and constructed in accordance with plans approved by the Railroad and the District, and such plans when approved are made a part of this Agreement by reference thereto, and

WHEREAS, the parties desire to set forth in this instrument an agreement relating to the construction, maintenance and allocation of costs of said Improvements and the changes made necessary in connection therewith:

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I

In consideration of covenants and conditions to be fulfilled by the District as hereinafter set forth, **RAILROAD AGREES:**

1. (A) To give or grant and hereby does give or grant to the District, its agents and contractors, License across Railroad's right-of-way, as shown outlined in red on Exhibit "A", and the right to enter, locate, construct, use and maintain the Mill Creek Streamway Park Improvements on Railroad's right-of-way and other facilities, in accordance with plans and specifications as approved by the Railroad, the Secretary, and the District, the Railroad reserving, however, to Railroad, its successors, assigns, tenants or lessees, the right to construct, operate, rearrange, and maintain along or across said right-of-way, such tracks, pipelines, communications lines, signal lines, electric lines and such other facilities as Railroad, its successors, assigns, tenants or lessees may from time to time find necessary or convenient, as will not unreasonably interfere with the use of the premises for said Improvement.

(b) To give or grant and hereby does give or grant to the District, its agents and contractors, the right to enter on and use the premises shown on Exhibit "A" for the construction of the Mill Creek Streamway Park Improvements. The right to enter upon and use the designated premises for construction purposes shall expire after notification to the Railroad of acceptance by the District and Secretary of all construction on the enhancement project for which this right to enter upon and use is hereby granted.

2. To furnish all labor, materials, tools and equipment and to perform all work required to make changes in alignment, location or elevation of tracks and appurtenances, telephone, telegraph, pipe and signal lines over and/or under its right-of-way, property and tracks and other facilities as may become necessary by reason of said improvement and to comply with the provisions of Chapter I, Subchapter G, Part 646, of the Federal Aid Policy Guide as supplemented and amended in relocation of non-railroad facilities occupying Railroad right-of-way. The description and estimated cost of such work, material, tools and equipment is particularly set forth in Exhibit "B" attached hereto and made a part hereof. The Railroad shall bill the District no more than monthly for the actual construction costs. It is understood and agreed that no work shall be done by the Railroad until such estimate has been approved by the District and Secretary.

All work to be done hereunder by Railroad shall be done by Railroad's employees working under Railroad Labor Agreements and shall be done on a force account basis, or by contract, subject to the provisions of Chapter I, Subchapter G, Part 646, of the Federal-Aid Policy Guide the cost thereof to be paid to Railroad by the District in the manner hereinafter set forth.

3. Railroad shall, immediately after plans are approved, deliver to the District a written schedule of its requirement for the number of watchmen and flag men deemed necessary for the safety of Railroad property or the movement of its trains during the progress of the work while on Railroad right-of-way, or in connection with operations off Railroad right-of-way affecting Railroad safety, and of the method to be used in computing its costs therefor. The District shall be liable for such costs and pay all such costs directly to the Railroad.

4. To present insofar as possible final detailed and itemized statement for work performed by Railroad at expense of the District within one hundred twenty (120) days after completion thereof, such statement to be on the basis of detailed and itemized cost for items set forth in the estimated therefor, and in accordance with and subject to the terms and provisions of Chapter I, Subchapter B, Part 140, Subpart I, of the Federal-Aid Policy Guide as supplemented and amended. The Railroad may present periodic itemized progress bills to the District for work as completed. Final payment will be made in the amount of the difference between the sum of the monthly payments made and the itemized audited statement for the total amount of the work performed by the Railroad upon completion of the work. In the event of overpayment, Railroad shall refund to the District such excess.

Items of material removed and not re-used on the project shall be credited to the cost of the project in accordance with Chapter I, Subchapter B, Part 140, Subpart I, of the Federal Aid Policy Guide.

ARTICLE II

In consideration of the covenants and conditions to be fulfilled by Railroad as herein set forth, **DISTRICT AGREES:**

1. To prepare all detail plans and specifications, including special provisions, for the Improvements involving the property of the Railroad, which plans and specifications shall be submitted to the Railroad for its approval. Such plans and specifications shall be approved by the Railroad, the Secretary, and by the District before any contracts are awarded by the District and before any work is done by the Railroad. All construction and work done by the parties shall be in accordance with the approved plans and specifications.

2. To secure or cause to be secured all project right-of-way required for or incident to the proposed Improvements, including any right-of-way required for borrow rights, except that provided for in Section 1 of Article 1 hereof.

3. To make any and all arrangements with Railroad and others that may be necessary for the location and relocation of wire lines, pipelines, and other facilities not owned by the Railroad; provided, however, that the Railroad (a) shall make or cause to be made such changes and rearrangements in its communication lines, signal lines, signals and other facilities as may be necessary at the expense of the District, and (b) make or cause to be made such changes and rearrangements in the wire lines, pipelines, or other facilities of its tenants or lessees as may be necessary on account of the construction of the improvement.

4. To furnish or cause to be furnished all labor, materials, tools and equipment and to construct the improvement, except such work as is to be performed by Railroad, in accordance with the approved plans and specifications.

5. To require the District's contractor, in respect to its work performed upon, over or under Railroad right-of-way, to provide Railroad Protective Liability Insurance as set forth in Chapter I, Subchapter G, Part 646, Subpart A, of the Federal Aid Policy Guide with Policy Limits for Bodily Injury, Death, and Property Damage limited to a combined single limit of \$2,000,000 per occurrence with an aggregate limit of \$6,000,000 applying separately to each annual period.

A. No work shall be started on Railroad property until:

1. Railroad receives copy of the District's contract with the District's contractor;

2. Certificate of contractor's public liability and property damage insurance has been furnished to Railroad;

3. Original copy of Railroad's protective insurance policy is furnished to Railroad; and

4. Railroad has advised the District, in writing, that limits, form and substance of insurance policies are satisfactory to Railroad.

B. The aforementioned public liability and property damage policy shall be kept in full force and effect by the District's contractor and the District during the performance of said work upon and adjacent to Railroad's property and thereafter until contractor removes all tools and equipment from Railroad's property and cleans up the premises to satisfaction of Railroad.

C. 1. DISTRICT shall, at its expense, procure and keep in force at all times during the term of this Agreement, a comprehensive form of insurance covering its liability, including but not limited to, Public Liability and Property Damage, assumed by DISTRICT under this Agreement covering bodily injury to or deaths of persons and property damage or destruction, in the amount of \$10,000,000 or in such lesser amount as required by Railroad. THE ATCHISON, TOPEKA and SANTA FE RAILWAY COMPANY SHALL BE NAMED AS ONE OF THE INSURED PARTIES, and such insurance shall provide coverage to Railroad, including but not limited to liability assumed by Railroad under this Agreement regardless of negligence or alleged negligence on the part of the Railroad.

2. All insurance shall be placed with insurance companies licensed to do business in the State of Kansas, and approved by Santa Fe. Said approval shall not be unreasonably withheld. DISTRICT shall furnish Santa Fe with a certificate, or certificates evidencing such insurance. INSURANCE MUST PROVIDE FOR COVERAGE OF INCIDENTS OCCURRING WITHIN FIFTY (50) FEET OF A RAILROAD TRACK, AND ANY PROVISION IN THE INSURANCE POLICY TO THE CONTRARY MUST BE SPECIFICALLY DELETED. Each policy shall provide that it shall not be canceled or materially changed unless at least thirty (30) days' prior written notice of cancellation or change shall have been mailed by the insurance company to Santa Fe.

6. The District, its contractor and agents, will give ten (10) days written notice to the Railroad before commencing work in connection with the improvement upon or adjacent to Railroad property. The District will require the Contractor to give not less than 72 hours notice to the Railroad's General Roadmaster at 4515 Kansas Avenue, Kansas City, Kansas 66106 prior to conducting blasting operations adjacent to or within limits of Railroad right-of-way.

7. District shall and will and does hereby agree, insofar as permitted by law, to assume and discharge, and indemnify and save harmless, the Railroad and the successors and assigns thereof, from and against any and all liability, loss, damage, cost, expense, claims, judgments, or attorney's fees for or on account of personal injuries to or death of persons or

damage to or loss or destruction of property, directly or indirectly caused by, due to arising out of, or in connection with, the maintenance operation, use, removal or existence of that portion of the Improvements herein described, regardless of the negligence or alleged negligence of the Railroad.

8. District does not warrant nor represent hereunder that it will levy any special tax nor assessments to pay any claims or judgments referred to in Paragraph 7 of this Article II hereinabove, which may arise as a direct result of the maintenance operation, use, removal of the improvements herein described.

9. To require all work on said project to be performed in a manner that will not endanger the safety of the Railroad or interfere with the operation thereof. If, in the opinion of the Railroad, the operation of the District's contractor is endangering the safety of the Railroad's operation, Railroad may immediately order the termination of further work on Railroad's premises without liability on the Railroad's part until the dangerous condition has been corrected.

10. To reimburse the Railroad promptly upon receipt of properly computed and compiled statements for cost incurred for work done by the Railroad in accordance with the provisions of this Agreement.

Provided, however, that should some unforeseen condition or combination of conditions increase the cost of the work to be performed by the Railroad, in excess of the total cost, as set forth in Article I, Section 2, the Railroad shall not incur any expenditures in excess of said total unless and until so authorized by the District.

Provided, however, that the District shall not have any liability for or obligation to pay for any work done by Railroad unless statement therefore is presented to and received by the District before the expiration of one year after the day of completion of all work done by the Railroad in accordance with the provisions of this Agreement.

In the event the District shall for any reason cancel or terminate its contract and abandon the construction of said improvement or in the event the District's contractor shall stop work thereon for a period of sixty (60) calendar days, other than seasonal suspensions authorized by the District, for reason over which the District or contractor has control, and the District has not prepared to re-let or resume work under the contract, the Railroad shall have the right to restore its property to the condition existing prior to commencement of work on said improvement. The District agrees to reimburse Railroad for all expenses incurred by Railroad for such restoration by Railroad.

11. The District, its contractor and agents are placed on notice that fiber optic, communications, control systems, and other types of cables may be buried on Railroad's property. Before beginning work, District shall telephone Railroad's Communications Network Control Center at 1-800-533-2891 (a 24 hour number) to assist in determining if cable systems are buried on Railroad's property to be used by District. The District shall contact the appropriate personnel to have cables located and make arrangements with the owner of the facility as to the protective

measures that must be adhered to prior to the commencement of any work on Railroad's property. In addition to the liability terms elsewhere in this Agreement, District shall indemnify and hold Railroad harmless against and from all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of District, its subcontractors, agents, and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any telecommunications and/or signal system by District, and/or its contractors, agents and/or employees on Railroad's property, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents, and/or employees on Railroad's property, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies).

ARTICLE III

DISTRICT AND RAILROAD MUTUALLY AGREE:

1. That all work contemplated in this Agreement shall be mutually scheduled and coordinated, commenced promptly and completed without undue delay. All work shall be performed in a good workmanlike manner.
2. The parties hereto agree that no benefits will accrue to the Railroad pursuant to the provisions of Title 23 of the US Code (Highways) as amended and Chapter I, Subchapter G, Part 646, of the Federal-Aid Policy Guide, due to the construction or use of said improvements.
3. The maintenance of the improvements shall be as follows: District to inspect, maintain and repair Improvements without cost or expense to the Railroad and in a manner satisfactory to the Federal Highway Administration, United States Department of Transportation, or their authorized representatives, and the Railroad.
4. District may terminate the Agreement and License for any reason upon 180 days advanced written notice to the Railroad. Railroad may terminate the Agreement and License upon 180 days written notice in the event the Railroad determines the property is required for its operation, maintenance or construction activities. Railroad may immediately terminate the Agreement and License in the event the District does not maintain the required insurance as provided for in Section 5C of Article II hereof.
5. If this Agreement or License is terminated by District for any reason, or is terminated by Railroad due to (i) District's failure to maintain the insurance required in Section 5C of Article II hereof or (ii) District's breach of any obligations set forth in this Agreement, all improvements located upon Railroad's property constructed or suffered by District shall, at Railroad's sole option, become Railroad's sole and exclusive property, or upon written notice by Railroad, shall be removed and the subject real property shall be restored to its original condition at the sole cost and expense of District, such removal and restoration to be performed by District or by Railroad, as Railroad shall in its sole discretion so designate. If this Agreement or License is terminated by Railroad for any reason other than as specified in (i) or (ii) in the preceding

sentence, all improvements located upon Railroad's property constructed or suffered by District shall become Railroad's sole and exclusive property, but District shall have no obligation to remove such improvements or to restore the property to its original condition, or to bear the expense thereof.

6. In the event District breaches any obligations set forth in this Agreement, which breach is not cured within ten (10) days from the date of written notice from Railroad to District at Railroad's option, and upon written notice to District, from Railroad may terminate this License Agreement and the use and enjoyment of the subject real property by District or its invitees.

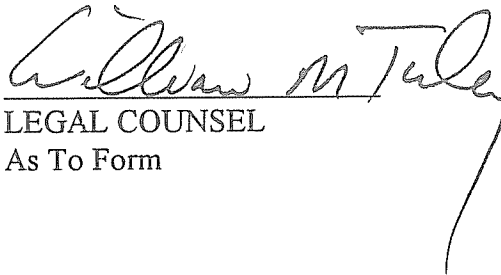
7. For the purposes of this License Agreement, all persons, firms and entities on or upon the subject real property shall be deemed Districts invitees.

8. The books, papers, and accounts of the parties hereto, so far as they relate to items of expense, labor and materials, or are in any way connected with the work herein contemplated, shall at all reasonable times during regular office hours be open to inspection and audit by agents and authorized representatives of the parties hereto and of the Federal Highway Administration for a period of three (3) years from the date final payment has been received by the Railroad.

9. This Agreement shall be binding upon and inure to the benefit of the Railroad, its successors and assigns, and upon and to the successors and assigns of the District.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement in duplicate the day and year first above written.

ATTEST:


LEGAL COUNSEL
As To Form

THE JOHNSON COUNTY
PARK AND RECREATION DISTRICT


BOARD CHAIR

THE ATCHISON TOPEKA AND
SANTA FE RAILWAY COMPANY

BY: 
Vice President and Chief Engineer

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
FORCE ACCOUNT ESTIMATE FOR
JOHNSON COUNTY PARKS

EXHIBIT "B"

PLACE ONE LINE OF 132" DIA., GALVANIZED, STRUCTURAL STEEL PLATE PIPE, 8 GAGE PLATES ALL AROUND, ENDS STEP BEVELED 1-1/2 IN 1, AND CENTER LINE LENGTH OF 78 FEET, ELONGATED VERTICALLY TO 5% OF THE PIPE DIAMETER UNDER THE NORTH AND SOUTH MAIN TRACKS TO BE USED FOR WALKING PATH FOR JOHNSON COUNTY PARKS AND RECREATION. BRIDGE NO. 18.2, LOCATED AT CRAIG, M.P. 18.2, EMPORIA SUBDIVISION, EASTERN DIVISION.

ACCT	CST	RSM	DESCRIPTION	QUANTITY	UNIT	SUBTOTALS	TOTAL COST	
=====								
LABOR								

8			130 CONSTRUCT BRIDGE			47,469		
8			106 EXCAVATE MADE FILL			684		
8			136 CONST/REMOVE FALSEWORK			4,746		
8			160 REPLACE CROSS TIES			684		
8			240 REPLACE RAIL/OTM			684		
8			242 WELDS			938		
8			292 UNLOAD BALLAST			171		
8			294 SURFACE TRACK			513		
			PAYROLL ASSOCIATED COSTS			30,800		
			SUPERVISION			28,442		
			INSURANCE			4,471		
TOTAL LABOR						-----	119,602	
MATERIAL								

1120	319	106	LIME SCREENING	100.000	CY	500		
1120	319	106	SELECT FILL	140.000	CY	63		
1120	319	130	C S P PIPE, 132" DIA, 8 GA	78.000	LF	10,560		
1120	319	130	CRUSHED ROCK PIPE BEDDING	20.000	CY	77		
1120	308	201	BOUTET WELD	16.000	EA	70		
1120	310	281	BALLAST, DAVIS	72.000	CY	763		
1120	319	134	PILING, STEEL BEARING, HP14" X 89 LB	640.000	LF	15,333		
1120	319	136	SHEET PILING	55080.000	LB	18,176		
1120	319	450	FUEL AND SUPPLIES	1.000	LS	2,200		
			HANDLING			1,370		
			TRANSPORTATION			4,436		
TOTAL MATERIAL						-----	61,258	
OTHER								

1120	398	106	EXCAVATE/FILL-CONTRACT			12,000		
1120	434	130	EQUIP RENTAL, TAMPERS			4,000		
1120	434	136	EQUIP RENTAL, S P HAMMER			4,400		
1120	790	423	EQUIPMENT RENTAL - COMPANY			19,969		
TOTAL OTHER						-----	40,369	
CONTINGENCIES							11,061	
TOTAL ESTIMATED COST							-----	\$232,290
=====								

THE A.T. AND S.F. RY. CO.
CHIEF ENGINEER SYSTEM - KANSAS CITY
DATE: January 8, 1996
FILE: 76- 05025463-1-1
SUA Q196

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
 FORCE ACCOUNT ESTIMATE FOR
 JOHNSON COUNTY PARKS

PLACE ONE LINE OF 132" DIA., GALVANIZED, STRUCTURAL STEEL PLATE PIPE,
 8 GAGE PLATES ALL AROUND, ENDS STEP BEVELED 1-1/2 IN 1, AND CENTER LINE
 LENGTH OF 78 FEET, ELONGATED VERTICALLY TO 5% OF THE PIPE DIAMETER UNDER
 THE NORTH AND SOUTH MAIN TRACKS TO BE USED FOR WALKING PATH FOR JOHNSON
 COUNTY PARKS AND RECREATION. BRIDGE NO. 18.5, LOCATED AT CRAIG, M.P. 18.5,
 EMPORIA SUBDIVISION, EASTERN DIVISION.

ACCT	CST	RSN	DESCRIPTION	QUANTITY	UNIT	SUBTOTALS	TOTAL COST	
=====								
LABOR								
8		130	CONSTRUCT BRIDGE			47,469		
8		106	EXCAVATE MADE FILL			684		
8		136	CONST/REHOVE FALSEWORK			4,746		
8		160	REPLACE CROSS TIES			684		
8		240	REPLACE RAIL/OTM			684		
8		242	WELDS			938		
8		292	UNLOAD BALLAST			171		
8		294	SURFACE TRACK			513		
			PAYROLL ASSOCIATED COSTS			30,800		
			SUPERVISION			28,442		
			INSURANCE			4,471		
TOTAL LABOR						-----	119,602	
MATERIAL								
1120	319	106	LIME SCREENING	100.000	CY	500		
1120	319	106	SELECT FILL	140.000	CY	63		
1120	319	130	C S P PIPE, 132" DIA, 8 GA	78.000	LF	16,560		
1120	319	130	CRUSHED ROCK PIPE BEDDING	20.000	CY	137		
1120	308	201	BOUTET WELD	16.000	EA	710		
1120	310	281	BALLAST, DAVIS	72.000	CY	763		
1120	319	134	PILING, STEEL BEARING, HP14" X 89 LB	640.000	LF	15,333		
1120	319	136	SHEET PILING	55080.000	LB	18,176		
1120	319	450	FUEL AND SUPPLIES	1.000	LS	3,210		
			HANDLING			1,370		
			TRANSPORTATION			4,436		
TOTAL MATERIAL						-----	61,258	
OTHER								
1120	398	106	EXCAVATE/FILL-CONTRACT			12,000		
1120	434	130	EQUIP RENTAL, TAMPERS			4,000		
1120	434	136	EQUIP RENTAL, S P HAMMER			4,400		
1120	790	423	EQUIPMENT RENTAL - COMPANY			19,969		
TOTAL OTHER						-----	40,369	
CONTINGENCIES							11,061	
TOTAL ESTIMATED COST							-----	\$232,290
=====								

THE A.T. AND S.F. RY. CO.
 CHIEF ENGINEER SYSTEM - KANSAS CITY
 DATE: January 8, 1996
 FILE: 76- 05025464-1-1
 SUA Q196