

**CSX Transportation, Inc.  
Temporary Right of Entry Agreement**

**THIS AGREEMENT**, made as of \_\_\_\_\_, 20\_\_\_\_, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called "**CSXT**," and the TOWN OF MUNSTER, INDIANA, whose mailing address is 1005 Ridge Road, Munster, Indiana 46321, hereinafter called "**Licensee**," WITNESSETH:

**WHEREAS**, Licensee has submitted a written application to CSXT requesting permission to enter CSXT's property located within the Chicago Zone, Monon Subdivision, at the 45th Street crossing, with Department of Transportation Crossing Inventory Number 341134P, Railroad Milepost Number 00Q 25.92, located in Munster, Lake County, Indiana, for the purpose of roadway milling six and a half inches (6½") and resurfacing six and a half inches (6½") up to approximately twelve feet (12'-0") from centerline of mainline track on the west side of crossing and up to approximately twelve feet (12'-0") from centerline of industry track on the east side of the crossing, and roadway striping, maintaining the existing roadway width and profile, within the CSXT right of way (the "**Project**"); and

**WHEREAS**, CSXT is willing to grant to Licensee the limited right and permission to enter upon the Property for the limited purpose of performing the Project.

**NOW THEREFORE**, CSXT hereby grants to Licensee the right and permission to enter upon the Property for the purpose of performing said Project, subject to the terms and conditions set forth below:

1. **PROJECT:** The Project shall be performed at the entire cost and expense of Licensee, in accordance with good and sound engineering practices, to the satisfaction of CSXT's Division Engineer or his or her duly authorized representative ("Division Engineer") and in a manner to avoid accidents, damages, unnecessary delays to or interference with train traffic of CSXT. Prior to entry, Licensee shall notify the CSXT's general engineering consultant ("GEC") on the Project to arrange for flagging protection in accordance to Sections 5 and 6 of this Agreement. Licensee shall not dig in the ballast line or within the tracks loading influence area, or otherwise disturb the track structure. Licensee and Licensee's employees, agents, contractors and other representatives (collectively, "Agents") shall maintain in their possession a copy of this Agreement at all times during their occupation of the Property.
2. **INDEMNITY:**
  - 2.1 Licensee hereby assumes risk of and agrees to indemnify, defend, protect and save CSXT and CSXT's Affiliates harmless with respect to any and all attorneys' fees, liability, claims, demands, payments, suits, actions, recoveries, penalties, costs, legal expenses, judgments, settlements, and damages of every nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages) for:
    - 2.1.1 personal injury, including, but not limited to bodily injury to or death of any person or persons whomsoever, including the agents, servants, Affiliates or employees of the parties;

- 2.1.2 the loss or damage to any property whatsoever, including property owned or in the care, custody or control of the parties hereto or their respective Affiliates;
  - 2.1.3 any environmental damage and any related remediation brought or recovered against CSXT or any of its Affiliates; and
  - 2.1.4 any and all other losses or damages; arising directly or indirectly from the presence of Licensee or its Agents on or about the Property, whether or not attributable in whole or part to the negligence, gross negligence, or intentional misconduct of CSXT or its Affiliates.
- 2.2 The parties waive any and all right or opportunity to contest the enforceability of this Section and agree that, in the event this Section, or any part of this Section, is found unenforceable by the final, unappealable judgment of a court of competent jurisdiction, this Section shall be construed so as to be enforceable to the maximum extent permitted by applicable law. In the event that such court of competent jurisdiction finds that Florida statutory construction contract indemnity monetary limits apply to this Agreement with respect to Licensee's indemnification of CSXT and its Affiliates for liability caused in whole or in part by any act, omission or default by CSXT or its Affiliates, the parties hereto agree that such limit shall be equal to the limits (exclusive of deductibles) of the applicable insurance required by Sections 3 and 4 of this Agreement. The parties acknowledge and agree that this monetary limit, if required, bears a commercially reasonable relationship to this Agreement, in so far as, among other factors, the parties have taken into account the availability and cost of insurance and other risk transference devices, the scope of the Project, the risks associated with the Project, and the compensation and any other benefits exchanged between the parties in connection with this Agreement.
- 2.2.1 Licensee shall comply with any federal, state, or local laws, statutes, codes, ordinances, rules, and regulations applicable to its presence or performance of any activity on the Property and agrees to indemnify, defend, and hold CSXT and its Affiliates harmless with respect to any fines, penalties, liabilities, or other consequences for its failure to so comply.
  - 2.2.2 For the purpose of this Agreement, the term "Affiliates" includes all entities, directly or indirectly owned or controlled by, or under common control of a party or its respective officers, directors, employees and agents, and in the case of CSXT, includes CSX Corporation, CSXT and their Affiliates and their respective officers, directors, employees and agents.
  - 2.2.3 The provisions of this Section shall survive the termination or expiration of this Agreement.
3. **PRIOR NOTIFICATION:** Licensee or Licensee's Agents shall notify CSXT's GEC working on the Project at least 14 days prior to requiring entry on the Property and shall abide by the instructions of the GEC.

4. **CLEARANCES:** Neither Licensee nor Agents shall perform any Project or place or operate any equipment of Licensee or Agents at a distance closer than fifty (50) feet from the center of any track, without the prior approval of the Division Engineer. The Division Engineer may require protective services or such other services as deemed necessary or appropriate. Equipment shall be moved across CSXT's track(s) only at a public crossing unless prior arrangements have been made with the Division Engineer and a Private Crossing Agreement is fully executed and in place. Licensee and Agents shall take all precautions necessary to avoid interference with or damage to CSXT's property and signal and communication facilities during their performance of the Project.
5. **PROTECTIVE SERVICES:** If protective services, such as flagging protection, are required by CSXT, Licensee shall make arrangements with CSXT's GEC, and the GEC will coordinate with the appropriate CSXT officials to furnish such personnel, flagman or watchman, that in CSXT's opinion may be necessary to protect the facilities and traffic of CSXT during the performance of the Project. Licensee shall pay for the cost of such services, including all applicable surcharges and additives. These services are estimated to be **thirteen thousand nine hundred four dollars and zero cents (\$13,904.00)**, as supported by the attached estimate.
6. **PAYMENT FOR PROTECTIVE SERVICES:** Payment shall be made by Licensee in accordance with the following:

Licensee shall make an advance deposit of funds based on an estimate of the cost of protective or other services as determined by CSXT. The cost for CSXT's services shall then be assessed by CSXT against this advance deposit. Upon completion of the Project, any unused funding will be returned to Licensee. If CSXT's costs exceed the advance deposit(s), a request will be made to Licensee for additional funds or an invoice will be issued to Licensee for final payment. Licensee shall remit payment to CSXT within thirty (30) days of receipt of either a request for additional funds or an invoice.
7. **ENVIRONMENTAL:** **This Agreement does not include and expressly excludes the performance of any site investigation activities designed to determine environmental conditions on, about or beneath the Property.** Precluded activities include performing soil borings for purposes other than geotechnical investigation, obtaining soil, sediment, groundwater and surface water samples, and conducting field or laboratory analyses of any soil, sediment, groundwater or surface water samples obtained from CSXT property to identify chemical composition or environmental condition. *If any type of environmental investigation is desired, a separate right of entry agreement issued through CSXT's Environmental Department must be secured.*
8. **CLAIMS:** Licensee shall, or shall require Agents, to promptly notify the Division Engineer of any loss, damage, injury or death arising out of or in connection with the Project.
9. **REMEDICATION:** It is understood and agreed that, upon completion of the Project, the Property shall be left in a condition satisfactory to Division Engineer or his or her duly authorized representative.

**10. SAFETY:**

- 10.1 All personnel entering the Property must comply with CSXT safety rules and requirements to include, without exception, the wearing of hard hats and approved safety shoes and safety glasses with side shields. Anyone not in compliance with these rules and regulations will be asked to leave the Property.
- 10.2 Before performing any work authorized by this Agreement, Licensee, at its sole cost and expense, shall obtain all necessary permit(s) (including but not limited to zoning, building, construction, health, safety or environmental matters), letter(s) or certificate(s) of approval. Licensee expressly agrees and warrants that it shall conform and limit its activities to the terms of such permit(s), approval(s) and authorization(s), and shall comply with all applicable ordinances, rules, regulations, requirements and laws of any governmental authority (state, federal or local) having jurisdiction over Licensee's activities, including the location, contact, excavation and protection regulations of the Occupational Safety and Health Act (OSHA) (29 CFR 1926.651(b), et al.), and State "One Call" -"Call Before You Dig" requirements.

- 11. GENERAL LIABILITY INSURANCE:** Licensee shall procure and maintain, at its expense: (i) statutory Worker's Compensation and Employers Liability Insurance with available limits of not less than \$1,000,000.00, which insurance must contain a waiver of subrogation against CSXT and its Affiliates; (ii) Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than \$5,000,000.00 in combined single limits for bodily injury and property damage and covering the contractual liabilities assumed under this Agreement; (iii) business automobile liability insurance with available limits of not less than \$1,000,000.00 combined single limit for bodily injury and/or property damage per occurrence; and (iv) such other insurance as CSXT may reasonably require. Upon request, Licensee shall provide CSXT with a copy of Licensee's applicable insurance policies. A policy endorsement naming CSXT as an additional insured and specifying such coverage shall be furnished to CSXT prior to the execution of this Agreement, and the required coverage will be kept in force until all of Licensee's obligations under this Agreement have been fully discharged and fulfilled, or until Licensee shall have been specifically released by a written instrument signed by an authorized officer of CSXT. Licensee shall also provide CSXT with a copy of the insurance policies. The insurance policies shall provide that the insurance carrier must give CSXT notice at least thirty (30) days in advance of cancellation of coverage, of any change in coverage, or of cancellation of the policy. Notwithstanding any provisions of this Section, the liability assumed by Licensee shall not be limited to the required insurance coverage.

- 12. RAILROAD PROTECTIVE LIABILITY INSURANCE:** Licensee agrees to purchase Railroad Protective Liability Insurance in accordance with CSXT's requirements (attached as Exhibit A and incorporated into this Agreement) for the benefit of CSXT for Licensee's operations under this Agreement. Licensee shall furnish an appropriate Insurance policy (and required endorsements), as the case may be, with the return of this executed Agreement.

- 13. TERM:** This Right-of-Entry Agreement and the permission conferred and the license granted by it does not constitute a grant of permanent easement and shall terminate upon completion of the Project or at midnight, **one (1) year after Agreement date**, whichever occurs first, unless extended in writing by CSXT. In the event Licensee fails to comply with terms and provisions of this Agreement, Licensee agrees to pay and agrees that CSXT shall be entitled to recover costs

and expenses incurred by CSXT, including legal fees and expenses, to enforce the terms of this Agreement.

14. **SEVERABILITY:** The parties agree that if any part, term or provision of the Agreement is held to be illegal, unenforceable or in conflict with any applicable federal, state, or local law or regulation, such part, term or provision shall be severable, with the remainder of the Agreement remaining valid and enforceable. If any provision or any part of a provision of the Agreement shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable law, ordinance, rule or regulation, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Agreement, which shall remain in full force and effect as if the unenforceable provision or part were deleted.
15. **ENTIRE AGREEMENT:** This Agreement embodies the entire understanding of the parties, may not be waived or modified except in a writing signed by authorized representatives of both parties, and supersedes all prior or contemporaneous written or oral understandings, agreements or negotiations regarding its subject matter.
16. **NOTICES:** All notices, consents and approvals required or permitted by this agreement shall be in writing and shall be deemed delivered; upon personal delivery, upon the expiration of three (3) business days following mailing by U.S. first class mail, or upon the next business day following mailing by a nationally recognized overnight carrier, to the Licensee at the address above, and to Licensor at the address shown on Page 1, or at such other addresses as either party may designate by delivery of prior notice to the other party .
17. **TERMINATION:** CSXT shall have the right at any time and at its sole discretion to terminate this Agreement upon notice to Licensee.
18. **WAIVER:** If either party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of the other party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.
19. **GOVERNING LAW; VENUE:** This Agreement shall be governed by and construed under the laws of the State of Florida, without regard to the choice of law provisions thereof. Venue for any action arising from, or brought to enforce, this Agreement, shall vest exclusively in the state or federal courts located in Duval County, Florida, and the parties agree to submit to the personal jurisdiction of any state or federal court located in Duval County, Florida.
20. **NO ASSIGNMENT:** Notwithstanding anything to the contrary contained in this Agreement, Licensee shall not permit Agents to enter the Property without first requiring Agents to agree in writing to comply with all of the terms of this Agreement. Notwithstanding the foregoing, Licensee shall continue to be responsible for insuring that Agents comply with all of the terms and conditions of this Agreement and shall indemnify and hold CSXT harmless for any damages described in Section 2 above caused in whole or in part by such subcontractor. Assignment of this Agreement to any party other than Agents in accordance with this Section shall not be permitted except upon the prior written consent of CSXT, which consent may be granted or withheld at CSXT's sole discretion. This Agreement shall be binding upon the parties and their respective successors and assigns.

Munster, Lake County, IN  
Roadway Resurfacing 45<sup>th</sup> Street  
341134P; Chicago Zone  
Monon Subdivision; 00Q 25.92  
CSXT OP No. IN1210

**BY SIGNING THIS AGREEMENT**, I certify that there have been no changes made to the content of this Agreement since its approval by the CSXT Legal Department on **October 27, 2021**.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

**Witness for CSX Transportation:**

**CSX TRANSPORTATION, INC.**

\_\_\_\_\_

By: \_\_\_\_\_  
**Brad Armstrong**  
**Project Manager – Public Projects of CSXT**

**Witness for: Town of Munster, Indiana**

**TOWN OF MUNSTER, INDIANA**

\_\_\_\_\_

By: \_\_\_\_\_  
Print/Type Name: \_\_\_\_\_  
Print/Type Title: \_\_\_\_\_

Who, by the execution hereof, affirms that he/she has the authority to do so and to bind **the Town of Munster, Indiana** to the terms and conditions of this Agreement.

# FORCE ACCOUNT ESTIMATE

<b>ACCT. CODE : 709 - IN1210</b>		<b>Form Revision</b> 4/21/2023
<hr/>		
<b>ESTIMATE SUBJECT TO REVISION AFTER:</b> 5/21/2024		<b>DOT NO.:</b> 341134P
<b>CITY:</b> Munster	<b>COUNTY:</b> Lake	<b>STATE:</b> IN
<b>DESCRIPTION:</b> 45th Street: Right of entry and flagging services for roadway resurfacing within the CSXT right of way.		
<b>ZONE:</b> Chicago	<b>SUB-DIV:</b> Monon	<b>MILE POST:</b> 00Q 25.92
<b>AGENCY PROJECT NUMBER:</b> Town of Munster, Indiana		
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<b><u>PRELIMINARY ENGINEERING:</u></b>		
212	Contracted & Administrative Engineering Services	\$ 4,000
	<b>Subtotal</b>	<b>\$ 4,000</b>
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<b><u>CONSTRUCTION ENGINEERING/INSPECTION:</u></b>		
212	Contracted & Administrative Engineering Services	\$ 500
	<b>Subtotal</b>	<b>\$ 500</b>
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<b><u>FLAGGING SERVICE: (Contract Labor)</u></b>		
70	Labor (Conductor-Flagman)	\$ -
50	Labor (Foreman/Inspector) 5 Days @ \$ 504.00	\$ 2,520
70	Additive (Transportation Department)	\$ -
50	Additive 223.00% (Engineering Department)	\$ 5,620
	<b>Subtotal</b>	<b>\$ 8,140</b>
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<b><u>SIGNAL &amp; COMMUNICATIONS WORK:</u></b>		\$ -
<b><u>TRACK WORK:</u></b>		\$ -
<b><u>PROJECT SUBTOTAL:</u></b>		<b>\$ 12,640</b>
900	<b><u>CONTINGENCIES:</u></b> 10.00%	\$ 1,264
<b><u>PROJECT TOTAL:</u></b>		<b>\$ 13,904</b>
<b><u>CURRENT AUTHORIZED BUDGET:</u></b>		<b>\$ -</b>
<b><u>TOTAL SUPPLEMENT REQUESTED:</u></b>		<b>\$ 13,904</b>
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<b><u>DIVISION OF COST:</u></b>		
	Agency 100.00%	\$ 13,904
	Railroad 0.00%	<b>\$ -</b>
<hr/>		
<b>NOTE: Estimate is based on FULL CROSSING CLOSURE during work by Railroad Forces.</b>		
<small>This estimate has been prepared based on site conditions, anticipated work duration periods, material prices, labor rates, manpower and resource availability, and other factors known as of the date prepared. The actual cost for CSXT work may differ based upon the agency's requirements, their contractor's work procedures, and/or other conditions that become apparent once construction commences or during the progress of the work</small>		
<small>Office of Chief Engineer Public Projects--Jacksonville, Florida</small>		
<small>Estimated prepared by: Benesch - CDS</small>		<small>Approved by: <b>BWA</b> CSXT Public Project Group</small>
<small>DATE: 05/22/23 REVISED:</small>		<small>DATE: 05/23/23</small>



Munster, Lake County, IN  
Roadway Resurfacing 45<sup>th</sup> Street  
341134P; Chicago Zone  
Monon Subdivision; 00Q 25.92  
CSXT OP No. IN1210

## **RAILROAD PROTECTIVE LIABILITY INSURANCE**

### Evidence required by CSX Transportation, Inc.

You are required to furnish Railroad Protective Insurance to protect CSX Transportation, Inc. in connection with activities to be performed on or adjacent to CSX Transportation's Right of Way.

Agency and Contractor, if and to the extent that either is performing work on or about CSXT's property, shall procure and maintain the following insurance policies:

1. Commercial General Liability coverage at their sole cost and expense with limits of not less than \$5,000,000 in combined single limits for bodily injury and/or property damage per occurrence, and such policies shall name CSXT as an additional named insured. The policy shall include endorsement ISO CG 24 17 evidencing that coverage is provided for work within 50 feet of a railroad. If such endorsement is not included, railroad protective liability insurance must be provided as described in item 4 below.
2. Statutory Worker's Compensation and Employers Liability Insurance with limits of not less than \$1,000,000, which insurance must contain a waiver of subrogation against CSXT and its affiliates (if permitted by state law).
3. Commercial automobile liability insurance with limits of not less than \$1,000,000 combined single limit for bodily injury and/or property damage per occurrence, and such policies shall name CSXT as an additional named insured. The policy shall include endorsement ISO CA 20 70 evidencing that coverage is provided for work within 50 feet of a railroad. If such endorsement is not included, railroad protective liability insurance must be provided as described in item 4 below.
4. Railroad protective liability insurance with limits of not less than \$5,000,000 combined single limit for bodily injury and/or property damage per occurrence and an aggregate annual limit of \$10,000,000, which insurance shall satisfy the following additional requirements:
  - a. The Railroad Protective Insurance Policy must be on the ISO/RIMA Form of Railroad Protective Insurance - Insurance Services Office (ISO) Form CG 00 35.
  - b. CSX Transportation must be the named insured on the Railroad Protective Insurance Policy.
  - c. Name and Address of Contractor and Agency must appear on the Declarations page.
  - d. Description of operations must appear on the Declarations page and must match the Project description.



- e. Authorized endorsements must include the Pollution Exclusion Amendment - CG 28 31, unless using form CG 00 35 version 96 and later.
  - f. Authorized endorsements may include:
    - (i) Broad Form Nuclear Exclusion - IL 00 21
    - (ii) 30-day Advance Notice of Non-renewal or cancellation
    - (iii) Required State Cancellation Endorsement
    - (iv) Quick Reference or Index - CL/IL 240
  - g. Authorized endorsements may not include:
    - (i) A Pollution Exclusion Endorsement except CG 28 31
    - (ii) A Punitive or Exemplary Damages Exclusion
    - (iii) A "Common Policy Conditions" Endorsement
    - (iv) Any endorsement that is not named in Section 4 (e) or (f) above.
    - (v) Policies that contain any type of deductible
- 5. All insurance companies must be A. M. Best rated A- and Class VII or better.
  - 6. The CSX OP number or CSX contract number, as applicable, must appear on each Declarations page and/or certificates of insurance.
  - 7. Such additional or different insurance as CSXT may require.

## II. Additional Terms

- 1. Contractor must submit the original Railroad Protective Liability policy, Certificates of Insurance and all notices and correspondence regarding the insurance policies to:

Insurance Department  
CSX Transportation, Inc.  
500 Water Street, C-907  
Jacksonville, FL 32202

OR

insurancedocuments@csx.com

- 2. Neither Agency nor Contractor may begin work on the Project until it has received CSXT's written approval of the required insurance.

CONTRACTOR'S ACCEPTANCE

To and for the benefit of CSX Transportation, Inc. ("CSXT") and to induce CSXT to permit Contractor on or about CSXT's property for the purposes of performing work in accordance with the Temporary Right of Entry Agreement dated \_\_\_\_\_, 20\_\_, between the **TOWN OF MUNSTER, INDIANA** and CSXT, Contractor hereby agrees to abide by and perform all applicable terms of the Agreement, including, but not limited to CSXT Insurance Requirements to the Agreement, and Sections 1, 2, and 10 through 12 of the Agreement.

Contractor: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Munster, Lake County, IN  
Roadway Resurfacing 45<sup>th</sup> Street  
341134P; Chicago Zone  
Monon Subdivision; 00Q 25.92  
CSXT OP No. IN1210

## **CSXT Schedule PA**

### **PAYMENT SUBMISSION FORM**

Project Description: Munster, Lake Co, IN; Roadway Resurfacing 45<sup>th</sup> Street within CSXT ROW; 341134P;  
Chicago Zone; Monon Subdivision; 00Q 25.92

CSXT OP# IN1210 (To be filled in by CSXT)

\*\*\*\*\*

Payment may be made via paper check or ACH/EFT payment as detailed below.  
Payment due prior to work commencing.

\*\*\*\*\*Mail a Check\*\*\*\*\*

Mail this form (via USPS only), along with  
your paper check (do not send the  
Agreement) to the following address:

**CSX Transportation, Inc.  
P.O. Box 530192  
Atlanta, GA 30353-0192**

**OR**

\*\*\*\*\*ACH/EFT Payment\*\*\*\*\*

Submit Payment to:

**CSXT Govt. Billing  
P.O. Box 530192  
Atlanta, GA 30353-0192**

**Acct # 1219082172  
ACH ABA# 267084199**

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When submitting payment VIA EITHER CHECK OR ACH/EFT, send a photocopy of the check or associated ACH/EFT  
payment info, along with this form via email/mail to:

**Brad Armstrong  
Project Manager – Public Projects  
4802 Decoursey Pike  
Taylor Mill, KY 41015  
brad\_armstrong@csx.com  
nicole\_henning@csx.com**

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**(All information below to be completed by Agency providing Payment)**

Sponsor Name

Payment Date

Check #

Amount

\_\_\_\_\_