

## **LICENSE AGREEMENT FOR INGRESS AND EGRESS**

This License Agreement for Ingress and Egress (hereafter "License") is made, dated and effective as of this day 23<sup>rd</sup> day of March, 2023 (the "Effective Date"), between the Terminal Railroad Association of St. Louis (hereafter "Licensor"), and Metro East Sanitary District (hereafter "Licensee"), in light of the following facts and circumstances:

### **RECITALS**

**WHEREAS**, Licensor owns certain real property located in Madison County, State of Illinois, as more particularly described as the Merchants Railroad Bridge and its bridge approach from the east; and

**WHEREAS**, Licensee owns property on the north and south side of Licensor's property that is commonly known as and comprised of a levee; and

**WHEREAS**, Licensee needs access to its property to the north and south of Licensor's property without having to travel a distance to go around Licensor's train tracks and approach to the Merchants Railroad Bridge; and

**WHEREAS**, Licensor is willing to allow Licensee to use its access roads that run parallel to its tracks and bridge approach to the Merchants Railroad Bridge on both the north and south side thereof, as well as access underneath the approach to the Merchants Railroad Bridge for access to the north or south side of the bridge approach pursuant to the terms and conditions of this License.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual obligations and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Licensor and Licensee (each, a "Party" and together, the "Parties") hereby agree as follows:

1. **Grant of License**. Licensor hereby grants to Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, for ingress and egress along and under Licensor's Merchants Railroad Bridge approach, in strict accordance with the terms and conditions contained herein.
2. **Term**. This License shall commence on the Effective Date and shall continue indefinitely until terminated pursuant to the terms and conditions hereunder.
3. **Existing Improvements**. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.
4. **Use of the Premises**. Licensee shall use Licensor's premises, as more specifically

depicted on the attached and incorporated map, labeled as **Exhibit A**, (hereinafter "Premises") solely for ingress and egress to Licensee's levee that lies to the north and south of Licensor's Merchants Railroad Bridge approach. Licensee's use of Licensor's roadways parallel to its Merchants Railroad Bridge approach and use of an accessway/cell to traverse under Licensor's Merchants Railroad Bridge approach, as designated by Licensor's Chief Engineer, shall be for access for general maintenance purposes only by Licensee. Licensee shall not use Licensor's roadways or accessway/cell for any other purpose. No use of, or entry onto, any railroad track within Licensor's Premises or right-of-way shall be permitted without the prior written approval by Licensor's Chief Engineer.

5. Alterations. Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent. Further, Licensee shall not park, leave standing or sitting, any materials, equipment or vehicles on the Premises without the prior written approval of Licensor's Chief Engineer.

6. Default and Termination.

(a) In the event that Licensee shall fail to comply with any of the terms, covenants, agreements, and conditions contained herein, and if Licensee continues in default in the performance of any term, covenant, agreement or condition herein for 7 days after written notice of said default from Licensor to Licensee specifying said default (or, in the case of a default which by its nature cannot be cured within such 7-day period, if Licensee shall not have commenced the curing of the default within such 7-day period and thereafter shall not diligently prosecute the curing of the default to completion), then Licensor, at its option and its sole, absolute and unfettered discretion, may terminate this License upon written notice to the Licensee or may proceed to take such action as shall be necessary to cure the default, all in the name of Licensee and for the account of Licensee; provided, however, in the event of an emergency and upon making reasonable efforts to contact Licensee, Licensor may take such action to cure the default without notice to the Licensee and shall subsequently notify Licensee of such action as soon as reasonably practicable. All sums paid and all expenses incurred by Licensor in connection with any work performed by Licensor pursuant to this Section 6(a) shall be due and payable to Licensor by Licensee on demand and shall bear interest at the rate of 1.5 percent per month or, if less, the maximum rate permitted by applicable law, from the date of any payment or expense by Licensor.

(b) Licensor shall have the option to terminate this License for any reason upon 30 days prior written notice to Licensee. Licensor's right to terminate under this Section 6(b) is unconditional and absolute, and Licensor may exercise such termination right freely, without hindrance or delay and without liability to Licensee or any other person or entity for any losses resulting therefrom.

(c) All rights of Licensor in the event of default or termination herein enumerated shall be in addition to and without prejudice to any remedy or remedies which Licensor may have at law or in equity for any other breach of any of the terms, covenants, agreements and conditions herein.

(d) Termination of this License for any reason shall not affect any of the rights or

obligations of the parties hereto which may have accrued, or liability, accrued or otherwise, which may have arisen prior thereto. Sections 7 and 8 shall survive any termination of this License.

7. Indemnification.

AS USED IN THIS SECTION, "LICENSOR" INCLUDES, LICENSOR, LICENSOR'S RESPECTIVE PARENTS, SUBSIDIARIES AND AFFILIATED COMPANIES, AND ALL OTHER RAILROAD COMPANIES USING LICENSOR'S PROPERTY AND THEIR OFFICERS, DIRECTORS, AGENTS, LICENSEES, INVITEES, PERMITEES, LESSEES, LESSORS, EMPLOYEES AND ANY OTHER PERSON OR ENTITY ACTING BY, THROUGH OR ON BEHALF OF LICENSOR, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS. AS USED IN THIS ARTICLE, "LICENSEE" MEANS LICENSEE'S OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, SUCCESSORS, AND ASSIGNS. "LOSS" INCLUDES LOSS, DAMAGE, CLAIMS, DEMANDS, ACTIONS, CAUSES OF ACTION, PENALTIES, COSTS AND EXPENSES OF WHATSOEVER NATURE, INCLUDING, BUT NOT LIMITED TO, COURT COSTS, EXPERT WITNESS FEES AND ATTORNEYS' FEES, WHICH MAY RESULT FROM: (A) INJURY TO OR DEATH OF A PERSON OR PERSONS WHOSEVER (INCLUDING, BUT NOT LIMITED TO, LICENSOR'S OFFICERS, AGENTS, AND EMPLOYEES, LICENSEE'S OFFICERS, AGENTS AND EMPLOYEES, AS WELL AS ANY OTHER PERSON); AND/OR (B) DAMAGE TO OR LOSS OR DESTRUCTION OF PROPERTY WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, LICENSEE'S PROPERTY, DAMAGE TO LICENSOR'S ROADWAYS, TRACKS, EQUIPMENT, BRIDGE APPROACH AND APPURTENANT STRUCTURES, OR OTHER PROPERTY OF LICENSOR, OR PROPERTY IN LICENSOR'S CARE OR CUSTODY).

LICENSEE, AS FURTHER CONSIDERATION AND AS A CONDITION WITHOUT WHICH THIS LICENSE WOULD NOT HAVE BEEN GRANTED, AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS LICENSOR FROM ANY LOSS WHICH IS DUE TO, CAUSED OR CONTRIBUTED TO AND/OR WHICH ARISES FROM: (A) LICENSEE'S USE OF ANY OF LICENSOR'S ROADWAYS, ACCESSWAYS AND/OR CELLS AS CONTEMPLATED BY THIS LICENSE; (B) THE PRESENCE, OPERATION OR USE OF ANY EQUIPMENT OR OTHER PROPERTY BY LICENSEE UPON LICENSOR'S PREMISES; (C) ANY OTHER MATTER RELATED TO OR ARISING FROM THIS LICENSE, INCLUDING, BUT NOT LIMITED TO, THE EXECUTION OF THIS LICENSE, AND ANY ASSERTED OR ALLEGED LIABILITY AGAINST LICENSOR BY VIRTUE OF ANY APPROVAL, PERMISSION, CONSENT, ACQUIESCENCE, WAIVER, REFUSAL, DENIAL, OR ANY OTHER ACT OR OMISSION HEREUNDER; (D) ANY ACT OR OMISSION OF THE LICENSEE, AND ITS CONTRACTORS, SUBCONTRACTORS, AGENTS AND/OR EMPLOYEES; AND (E) ANY FAILURE BY LICENSEE, ITS CONTRACTORS, SUBCONTRACTORS, AGENTS AND/OR EMPLOYEES TO COMPLY WITH ANY APPLICABLE LAWS, REGULATIONS AND ENACTMENTS. THE TERMS AND PROVISIONS OF THIS SECTION SHALL APPLY WHEREVER THE LOSS OCCURS AND REGARDLESS OF WHETHER THE ACTS OR OMISSIONS OF LICENSOR ARE THE CAUSE OF THE LOSS, EXCEPT WHERE LICENSOR'S MALICIOUS AND INTENTIONAL ACTS ARE THE SOLE AND DIRECT CAUSE OF THE LOSS.

LICENSEE AGREES, IN THE EVENT OF ANY SUCH ACTION AGAINST LICENSOR COVERED BY THE INDEMNITY OBLIGATIONS HEREUNDER, UPON NOTICE THEREOF BEING PROVIDED BY LICENSOR, TO DEFEND SUCH ACTION FREE OF COST, CHARGE, OR EXPENSE TO LICENSOR BY COUNSEL SELECTED BY LICENSOR, IN ITS SOLE AND ABSOLUTE DISCRETION. UNDER NO CIRCUMSTANCES SHALL LICENSEE HAVE OR SEEK RECOURSE AGAINST LICENSOR FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE.

THE INDEMNITY PROVISIONS HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THE LICENSE AND SHALL NOT BE CONSTRUED TO RELIEVE ANY INSURER OF ITS OBLIGATIONS TO PAY CLAIMS CONSISTENT WITH THE PROVISIONS OF A VALID INSURANCE POLICY AND SHALL INURE TO THE BENEFIT OF LICENSOR AND ANY SUCCESSOR AND ASSIGNEE OF LICENSOR AND SHALL BE BINDING UPON LICENSEE AND ITS SUCCESSOR AND ASSIGNS.

LICENSEE HEREBY ACKNOWLEDGES AND AGREES THAT ITS OBLIGATIONS TO INDEMNIFY, DEFEND, AND HOLD HARMLESS LICENSOR AS SET FORTH HEREIN SHALL NEITHER BE LIMITED BY ANY APPLICABLE TORT IMMUNITY AND/OR SOVEREIGN IMMUNITY LIMITATIONS/CAPS AFFORDED TO LICENSEE (INCLUDING BUT NOT LIMITED TO ANY LIMITATIONS/CAPS AS PROVIDED BY THE ILLINOIS LOCAL GOVERNMENTAL AND GOVERNMENTAL EMPLOYEES TORT IMMUNITY ACT, MISSOURI TORT CLAIMS ACT, OR ANY SOVEREIGN IMMUNITY STATUTES) NOR ANY POLICY LIMITS OF INSURANCE PROCURED BY THE LICENSEE. LICENSEE EXPRESSLY WAIVES ANY TORT IMMUNITY AND/OR SOVEREIGN IMMUNITY LIMITATIONS/CAPS AS IT PERTAINS TO LICENSEE'S OBLIGATIONS TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE LICENSOR.

8. Insurance. Licensee shall, at its sole cost and expense, procure and maintain during the term of this License the following insurance coverage, as may be adjusted at the discretion of Licensor:

(a) Commercial General Liability "CGL" Insurance.

The policy will provide a minimum of \$2,000,000 per occurrence and an aggregate limit of at least \$5,000,000 but in no event will the coverage be in an amount less than the amount otherwise carried by Licensee. Coverage must be purchased on an Insurance Services Office (ISO) CG 00 01 occurrence form or equivalent and include coverage for, but not limited to, the following:

- Bodily Injury and Property Damage
- Personal Injury
- Fire legal liability
- Contractual Liability for an "Insured Contract" consistent with the definition under the standard ISO general liability policy form.

This policy will include the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:

- The definition of “Insured Contract” will be amended to remove any exclusion or other limitation for any work being done within 50 feet of Licensor’s property; (ISO Endorsement CG2417)
- Waiver of subrogation in favor of and acceptable to Licensor;
- Additional insured endorsement in favor of and acceptable to Licensor;
- Separation of insureds;
- Per Project Aggregate Limit
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.
- If the required minimum limits can only be met when applying an umbrella/excess liability policy, the umbrella/excess liability policy must follow form of the underlying policy and be endorsed to “drop down” to become primary in the event the primary limits are exhausted.

The Parties agree that the workers’ compensation and employers’ liability related exclusions in the CGL policy(s) are intended to apply to employees of the policyholder and will not apply to Licensor’s employees.

No other endorsements that limit coverage with respect to Licensee’s obligations under this agreement may be included on the policy.

(b) Business Automobile Insurance

The insurance will provide minimum coverage with a combined single limit of at least \$1,000,000 per accident, and include coverage for, but not limited to the following:

- Bodily injury and property damage.
- Any and all vehicles owned, used or hired.

The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor;
- Additional insured endorsement in favor of and acceptable to Licensor;
- Separation of insureds;
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.
- The definition of “Insured Contract” will be amended to remove any exclusion or other limitation for any work being done within 50 feet of Licensor’s property; (ISO Endorsement CA2070).

(c) Workers' Compensation and Employers' Liability Insurance.

The policy will provide coverage of all Licensee’s employees utilizing Licensor’s Premises as set forth herein, including coverage for, but not limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) in which the work or services under this agreement are to be

performed. The policy will cover all of Licensee's employees, regardless of whether such coverage is optional under the law of that state(s).

- Employers' Liability (Part B) with limits of at least \$1,000,000 each accident, \$1,000,000 by disease policy limit, \$1,000,000 by disease each employee.

The policy will include contain the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor as allowable by law.

(d) Other Requirements.

- Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, Licensee's insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Licensor for all claims and suits. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Licensor for loss of Licensee's owned or leased property or property under Licensee's care, custody, or control.
- Where allowable by law, no exclusion for punitive damages may be included in any policy.
- Licensee is not allowed to self-insure without the prior written consent of Licensor. If Licensor allows Licensee to self-insure, Licensee shall directly cover any self-insured retention or other financial responsibility for claims in lieu of insurance. Any and all Licensor liabilities that would otherwise be covered by Licensee's insurance in accordance with the provisions of this agreement, will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.
- Licensee shall notify Licensor in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration of any insurance requirement.
- Licensee agrees to provide evidence to Licensor that it has the required coverage in place at least annually or in the event of a renewal or material change of coverage.
- If the coverage provided by any of the insurance policies required by this agreement is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this agreement.
- Failure to provide evidence as required by this section shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Licensee's obligations hereunder.
- The fact that Licensee obtains insurance (including, without limitation, self-insurance) shall not release or diminish Licensee's liabilities or obligations including, without limitation, the liabilities and obligations under the indemnity provisions of the License.

Damages recoverable by Licensor shall neither be limited by the amount of the required insurance coverage nor any tort immunity and/or sovereign immunity limitations/caps afforded to Licensee. Licensee expressly waives any tort immunity and/or sovereign immunity limitations/caps as it pertains to any damages recoverable by Licensor herein.

- In the event of a claim or lawsuit involving Licensor arising out of this Agreement, Licensee will make the policy covering such claims or lawsuits available to Licensor.

9. All Applicable Regulations. Licensee shall comply with all applicable local, state, and federal permits, conditions, rules, and regulations relating to use of this License.

10. Miscellaneous.

(a) Notice. All notices or other communications required or permitted hereunder, shall, unless otherwise provided herein, be in writing, and shall be delivered personally, by reputable overnight courier, sent by registered or certified mail (return receipt requested and postage prepaid), or electronic mail (email), addressed as follows:

If to Licensor:

Terminal Railroad Association of St. Louis  
Legal Department  
1017 Olive Street, 5<sup>th</sup> Floor  
St. Louis, MO 63101  
LegalDepartment@terminalrailroad.com

If to Licensee:

Metro East Sanitary District  
Executive Director  
1800 Edison Ave.  
Granite City, IL 62040  
E-Mail: \_\_\_\_\_

Notice personally delivered shall be deemed given the day so delivered. Notice given by overnight courier shall be deemed given on the first business day following the date of receipt. Notice mailed as provided herein shall be deemed given on the third business day following the postmarked date. Any Notice given via electronic mail shall be deemed received only after acknowledgement by recipient of written receipt of such Notice. Any Party may change its address for purposes of this subsection by giving written notice of such change to the other Party in the manner provided in this subsection.

(b) Entire Agreement. Except to the extent otherwise provided herein, this document constitutes the entire License Agreement between the Parties. No other agreements have been made modifying, adding to, or changing the terms hereof. This License Agreement may not be abrogated, modified, rescinded, or amended in whole or in part without the consent of Licensor

and Licensee, in writing and executed by each of them. No purported modifications or amendments, including, without limitation, any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication shall be binding on either Party.

(c) Governing Law. This License shall be governed by the laws of the State of Illinois and the venue of any action brought concerning the interpretation or enforcement of this License shall be proper in the County in which the Premises is located—Madison County, Illinois.

(d) No Waiver. The failure of either Party to insist upon strict performance of any of the terms or conditions of this License or to exercise any of its rights under this License shall not waive such rights and such Party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this License, either in law or in equity. No waiver of any right under this License shall be effective for any purpose unless it is in writing and is signed by the Party hereto possessing the right, nor shall any such waiver be construed to be a waiver of any subsequent right, term or provision of this License.

(e) Other General Provisions. The covenants contained herein are made solely for the benefit of the Parties and their respective successors and assigns and shall not be construed as benefiting any person or entity who is not a Party to this License, or otherwise give rise to any cause of action in any person or entity not a Party hereto. The duties, obligations; and liabilities of the Parties are intended to be several and not joint or collective. Neither this License nor any agreements or transactions contemplated hereby shall be interpreted as creating any partnership, joint venture, association or other relationship between the Parties, other than that of landowner and easement grantee, or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party.

(f) Counterparts. This License may be executed in counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

(g) Invalidity. If any provision herein is invalid, it shall be considered deleted from this License and shall not invalidate the remaining provisions of this License.

(h) Authority of Parties. To the best of the Parties' knowledge, each of the Parties hereto represents to the other that the person or persons executing this License on behalf of such Party has the full right, power and authority to enter into and execute this License on such Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this License.

(i) Relationship of Parties. Licensee and Licensor shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

(j) Good Faith and Fair Dealing; Reasonableness. The Parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this



License. Unless expressly provided otherwise in this License, (i) wherever the License requires the consent, approval, or similar action by a Party, such consent, approval, or similar action shall be in writing and not be unreasonably withheld, conditioned, delayed or denied, and (ii) wherever this License gives a Party a right to determine, require, specify or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.

(k) Cooperation. The Parties agree to reasonably cooperate with each other in the implementation and performance of this License. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under this License.

IN WITNESS WHEREOF, this License has been executed as of the 23<sup>rd</sup> day of March , 2023.

LICENSEE:  
Metro East Sanitary District

DocuSigned by:  
Sign:   
Rick Fancher  
Its Executive Director

LICENSOR:  
Terminal Railroad Association of  
St. Louis

DocuSigned by:  
Sign:   
Charles Cioffi  
Chief Financial Officer

**EXHIBIT A**

