MEMORANDUM OF UNDERSTANDING BETWEEN PRAIRIE TRAVELERS AND SEDGWICK COUNTY FOR CONSTRUCTION AND MAINTENANCE OF THE PRAIRIE SUNSET TRAIL

WHEREAS: Sedgwick County, Kansas, ("County") and Prairie Travelers, Inc., a Kansas Not for Profit Corporation ("PTI") have a mutual interest in developing recreational corridors, and

WHEREAS: In recognition of the provisions set forth in K.S.A. 58-3212, and

WHEREAS: The County and PTI desire to extend the Prairie Sunset Trail, a rail banked corridor generally south of US Highway 54/400 (Kellogg), formerly known as the WATCO or KNO Railroad Corridor;

NOW THEREFORE: This Trail Construction and Maintenance Agreement ("Agreement") is made and entered into on _____, 2015 (the "Effective Date") between the Sedgwick County, Kansas ("County") and Prairie Travelers, Inc., a Kansas Not for Profit Corporation ("PTI") having a registered office at 7026 O'Neil, Wichita, KS 67212.

I. GENERAL

1. Grant of Right to Construct and Maintain. The County hereby grants to PTI the right to design, construct, and maintain a trail ("Trail") for bicycle, equestrian and pedestrian use in accordance with the terms and conditions of this Agreement in the portions of the former railroad corridor rail banked by the County and known as the Prairie Sunset Trail – detailed in "Exhibit A" and located generally south of Kellogg between:

    - From 135th Street West to 119th Street West, Parcel ID Number (PIN) 30003349

2. Terms of Agreement. This Agreement shall be for a term of five (5) years commencing on the effective date. Thereafter, this Agreement shall be automatically renewed for two successive two (2) year terms upon the same terms and conditions as contained herein, unless either party shall deliver written notice to the other of its intention not to renew this Agreement not less than ninety (90) days prior to the expiration of the current term.

3. Trail Use.

    a. The County will not permit motor vehicles, such as motorcycles, all-terrain vehicles (ATVs) or any other vehicle or device which will cause damage to the surface of the Trail to be allowed on the Trail, with the exception of motorized wheelchairs, law enforcement, emergency and maintenance vehicles. Equestrian use will be evaluated with regards to trail safety and wear. If necessary, equestrian use may be restricted and/or prohibited based on further studies.

4. Improvements to the Property. Any permanent improvements made to the Trail including storage buildings, shelters, etc. become property of the County upon termination of the Agreement.

5. Other Park Improvements. The County may wish to develop or construct other improvements on the Property and shall notify PTI prior to the construction of any such improvements that may affect the Trail.

6. Rules, Regulations and Ordinances. PTI agrees to comply with all rules, regulations and county codes.

7. Indemnity. PTI shall indemnify and hold Sedgwick County harmless from and against any and all claims of any kind or character for injuries and damages to persons and property arising out of or in connection with the construction or maintenance of the Trail by PTI, its agents, invitees, members, officers or directors that is not caused by the County's negligence, during the term of this Agreement or any renewal term. The parties shall notify the other party as soon as practicable of any claim made or litigation threatened or instituted which in any way directly or indirectly contingently or otherwise affects or might affect PTI. PTI shall have the right to compromise and participate in the defense of the same to the extent of its own interest.

8. Insurance. PTI shall acquire, at its own cost, general liability insurance in an amount not less than the maximum liability of a governmental entity for claims arising out of a single occurrence as provided by the Kansas Tort Claims Act or other similar future law (currently $500,000 per occurrence). Sedgwick County shall be named as an additional insured under said policy and such policy shall properly protect and indemnify the County in amounts not less than aforesaid. The issuer may not cancel the insurance thereof without at least thirty (30) days advance written notice to the County. Such policies or copies or certificates thereof shall be furnished to the County upon request.

9. Default. PTI's failure to perform any duty or obligation contained herein and PTI's failure to cure such failure within thirty (30) days after the County has delivered written notice to PTI identifying such default; or within such additional period, if any, as may be reasonably required to cure any such default if it is of such a nature that it cannot be cured within said thirty (30) day period because of a cause beyond the control of PTI, shall be deemed to be a default under this Agreement. If a default exists, the County may terminate this Agreement at any time by giving PTI written notice of intention to terminate this Agreement on a date specified therein, which date shall not be earlier than ten (10) days after said notice is given. If all defaults have not been cured on the date so specified, PTI's right to possession of the Property as provided herein and all rights under this Agreement shall be terminated.

10. Surrender of Possession. PTI shall deliver possession of any improvements constructed thereon to the County upon the termination of this Agreement if terminated by PTI. In the event the County terminates this Agreement or exercises its option not to renew this Agreement upon any anniversary date for reasons other than provided in Section

13, PTI may at no cost to the County remove from the Property any and all improvements not of a permanent nature that may have been made subject to PTI, repairing any damage to the Property caused by such removal and provided that said improvements are removed within six months of receipt of written notice of termination of the Agreement.

11. Notices.

a. Any formal notice required or allowed hereunder shall be deemed sufficiently given if personally delivered sent by registered or certified mail return receipt requested or sent via email, to the party to whom said notice is to be given. Notices sent by registered or certified mail return receipt requested shall be deemed to have been served seventy-two (72) hours after the date said notice is postmarked to the addressee postage prepaid. Notices sent by email shall be deemed to have been served on the day sent.

b. Until changed by written notice given by either party to the other the addresses of the parties shall be as follows:

Sedgwick County, Kansas
Mark Furry
Director of Noxious Weeds
901 Stillwell
Wichita, Kansas 67213

Prairie Travelers, Inc.
c/o Larry Hatfield
7026 O'Neil
Wichita, KS 67212

12. Non-Discrimination. In exercising the rights hereunder, PTI shall comply with all applicable requirements of the County Statement attached hereto as "Exhibit A".

13. No warranty of condition. Sedgwick County does not warranty the condition of any features or facilities currently existing within the Trail Easement.

14. Miscellaneous.

a. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. There are no verbal understandings agreements representations or warranties between the parties that are not expressly set forth herein. This Agreement supersedes all prior agreements and understandings between the parties, both written and oral.

b. This Agreement may not be amended, modified, altered or changed in any respect except in writing signed by the parties hereto.

c. The parties acknowledge that each party and their counsel have had the opportunity to review and negotiate the terms and conditions of this Agreement, and that the normal rule of construction to the effect that any ambiguities are to be construed

against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

d. The descriptive headings used herein are for the convenience of the parties only and shall not be used in the construction of this Agreement.

e. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.

f. In the event any covenant condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provisions shall in no way affect any other covenant, condition or provision contained herein.

g. The rights granted to PTI under this Agreement are personal and cannot be assigned, sublet or transferred without the specific written consent of the County.

h. The laws of the State of Kansas shall govern the validity, construction interpretation and effect of this Agreement.

i. The parties acknowledge that the construction, maintenance and operation of the trail is subject to the Recreational Trails Act, K.S.A. 58-3211, et. seq., the terms of the Line Donation Agreement previously entered into between the County and the Central Kansas Railway, Inc., and any documents of record, including but not limited to the License for the Installation of Public Utilities recorded on May 24, 2010, at the Sedgwick County Register of Deeds office, Document No. 29143194.

II. RESPONSIBILITIES OF EACH PARTNER

1. Prairie Travelers, Inc. (PTI) agrees to the following:

a. Barricading by PTI. PTI shall barricade portions of the trail not approved by the County for opening for public use.

b. Opening of Trail for public use by PTI. PTI shall not open the trail to public use until it is inspected by the County and given final approval.

c. Maintenance by PTI. PTI shall maintain the Trail for use by the general public by performing the PTI activities identified in "Exhibit B".

d. Compliance by PTI. PTI shall comply with all applicable federal, state, and local laws, regulations and codes.

e. Fundraising by PTI. PTI shall solicit donations from individuals and corporations to improve the trail.

f. Contacts by PTI. PTI shall maintain on file with the County, the identity and contact information for the Prairie Traveler's main point of contact for the trail and implementation of this MOU.

g. Signs. PTI may install signs denoting sponsorship for Adopt-a-Trail purposes.

2. The County agrees to the following:

a. Planning and design by the County. The County shall coordinate with PTI in the planning and design of the Trail.

b. Maintenance by the County. The County shall maintain the Trail for use by the general public by performing the County activities identified in "Exhibit B".

c. Encroachments removal by the County. The County shall seek to remove any unauthorized encroachments on the trail on segments where construction is planned within the next twelve (12) months, including but not limited to:

i. Parking encroachments
ii. Fencing
iii. Other private improvements

d. Regulatory Signs. The County shall be responsible for posting and maintaining Trail Rules signs.

(Signature Page to Follow)

APPROVED this _____ day of _____, 2015:

Sedgwick County, Kansas

_____
Richard Ranzau, Chairman, 4th District
Board of County Commissioners

Prairie Travelers, Inc.

_____
Larry Hatfield, President

APPROVED AS TO FORM:

Robert W. Parnacott

_____
Robert W. Parnacott
Assistant County Counselor

Date: _____

ATTEST:

_____
Kelly B. Arnold
County Clerk

Date: _____

EXHIBIT A

NONDISCRIMINATION PROVISIONS

1. PTI shall observe the provisions of the Kansas acts against discrimination and shall not discriminate against any person in the performance of work under the present agreement because of race, religion, color, sex, disability, national origin or ancestry;

2. In all solicitations or advertisements for employees, PTI shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission;

3. If PTI fails to comply with the manner in which PTI reports to the Kansas Human Rights Commission in accordance with the provisions of KSA 44-1031 and amendments thereto, PTI shall be deemed to have breached the present contract and it may be canceled, terminated or suspended in whole or in part, by the COUNTY;

4. If PTI is found guilty of a violation of the Kansas acts against discrimination under a decision or order of the Kansas Human Rights Commission which has become final, PTI shall be deemed to have breached the present agreement and it may be canceled, terminated or suspended, in whole or in part, by the COUNTY;

5. PTI shall include the provisions of the above paragraphs 1 through 4, inclusively, in every sub-contract or purchase order so that such provisions will be binding upon such sub-contractor or purchase order.

EXHIBIT B

Maintenance Activities

Responsible Organization	Activity
Sedgwick County	Inspection for maintenance and compliance
Sedgwick County	Signs – replacement of missing, damaged, or deficient signs and related equipment (i.e. posts, assemblies, etc.) along rail corridor
PTI	Mowing
PTI	Fence repair
PTI	Drainage – ensure culverts and other drainage structures are free of debris and free flowing
PTI	Structures – repair and/or replacement of structures
PTI	Landscaping – trim trees, shrubs, and other landscaping to maintain clearances, sight distances, and safety
PTI	Furniture – maintain, repair, and replace furniture and other furnishings
PTI	Litter and debris – pick up trash and debris, empty any trash receptacles
PTI	Graffiti – remove or cover graffiti
PTI	Surface Grading – level trail surface materials and repair washouts
PTI	Surface Material – apply materials as needed to provide a stable surface and to maintain adequate surface coverage
PTI	Safety, use and accessibility of existing easements, utility facilities and access licenses along the trail
Sedgwick County	Noxious weed control as required by K.S.A. 2-1314, and amendments thereto
Sedgwick County	Law enforcement