

JUL 27 2020

**REQUEST FOR AGENDA PLACEMENT FORM**

Submission Deadline - Tuesday, 12:00 PM before Court Dates

**Approved**

**SUBMITTED BY:** Bill Moore, County Attorney  
**TODAY'S DATE:** July 21, 2020

**DEPARTMENT:** County Attorney

**SIGNATURE OF DEPARTMENT HEAD:**

**REQUESTED AGENDA DATE:** July 27, 2020

**SPECIFIC AGENDA WORDING:** Consideration of Release and Indemnity Agreement between Fort Worth & Western Railroad and Johnson County Precinct 1

**PERSON(S) TO PRESENT ITEM:** Bill Moore

**SUPPORT MATERIAL:** (Must enclose supporting documentation)

<b>TIME:</b> 2 Minutes	<b>ACTION ITEM:</b> <u>  x  </u>
(Anticipated number of minutes needed to discuss item)	<b>WORKSHOP:</b> _____
	<b>CONSENT:</b> _____
	<b>EXECUTIVE:</b> _____

**STAFF NOTICE:**

<b>COUNTY ATTORNEY:</b> x	<b>IT DEPARTMENT:</b> _____
<b>AUDITOR:</b> _____	<b>PURCHASING DEPARTMENT:</b> _____
<b>PERSONNEL:</b> _____	<b>PUBLIC WORKS:</b> _____
<b>BUDGET COORDINATOR:</b> _____	<b>OTHER:</b> Commissioner Precinct #1

\*\*\*\*\*This Section to be Completed by County Judge's Office\*\*\*\*\*

ASSIGNED AGENDA DATE: \_\_\_\_\_

REQUEST RECEIVED BY COUNTY JUDGE'S OFFICE \_\_\_\_\_

COURT MEMBER APPROVAL \_\_\_\_\_ Date \_\_\_\_\_

**RELEASE AND INDEMNITY AGREEMENT**

The State of Texas       §  
                                          §  
County of Tarrant       §

Know all men by these Presents:

That FORT WORTH & WESTERN RAILROAD COMPANY (hereinafter called "FWWR") and JOHNSON COUNTY PRECINCT 1 (hereinafter called "County"), do hereby agree as follows:

Subject to the provisions hereof, FWWR hereby grants to County permission from July 28, 2020 to July 29, 2020 ("Term"), to enter onto railroad property solely for the purpose of removing stockpiled material encroaching on railroad property ("Work"), at or near Mile Post 7.8, Cleburne Subdivision, Godley, Johnson County, Texas ("Premises") as more particularly shown on Exhibit "A" attached hereto.

1. For purposes of this Agreement, all references in this Agreement to County shall include its contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.
2. County shall utilize the Premises in such manner and at such times as shall not endanger or interfere with FWWR's (i) constant, continuous and uninterrupted use and operation of its active rail line located on or adjacent to the Premises or (ii) the Railroad's employee's representatives, contractors and agents use of the Premises.
3. County shall notify FWWR's Director of Planning/Special Projects at (817) 201-4450 at least forty-eight (48) hours before conducting activities in accordance with this Agreement.
4. County shall be charged a one-time fee by FWWR in the amount of Zero Dollars (\$0.00).
5. County shall keep all equipment, tools and materials at least 50 feet from the centerline of any operable track. Explosives or other highly inflammable substances or any hazardous materials regulated pursuant to federal or state regulation will not be stored on the Premises.
6. County shall remove all of County's tools, equipment and materials from the Premises promptly upon completion of work, restoring Premises to the same state and condition as when County entered thereon.
7. Railroad will require County to have a flagman present at any time work is underway within 25 feet from the centerline of operable track. Railroad will bill

County for flagman at the rate of One Hundred Five Dollars (\$105.00) an hour, with overtime billed at time and one-half.

8. County hereby agrees, in the conduct of its operations hereunder, to abide by and comply with all applicable laws, statutes, rules and regulations of any federal, state or municipal authority, or any other public body having jurisdiction, including, without limitation, laws, ordinances and governmental regulations controlling air, water, noise, solid wastes and other pollution, and environmental damages, and to file all reports or statements required in connection with the conduct of its business. To the extent allowed by law, County shall and does hereby indemnify and hold harmless FWWR from any and all loss, cost or expense whatsoever, incurred by reason of any violation of such rules and regulations.

9. (a) FWWR shall not be liable to County or County's agents, or employees for any injury to persons, regardless of cause or of any fault or negligence of FWWR, its agents or employees, occurring while they are performing services for or on behalf of County, and County does hereby release FWWR from any and all liability and causes of action with respect thereto.

(b) To the extent allowed by law, County shall and does hereby agree to defend, indemnify and hold harmless FWWR from any loss, damage, injury, death, liabilities, claims, fines, actions, costs or expenses whatsoever, including attorney's fees, which arise as a result of any and all actions of County, County's employees or subcontractors, whether such actions are intentional or not.

(c) THE INDEMNIFICATION OBLIGATION ASSUMED BY COUNTY, TO THE EXTENT ALLOWED BY LAW, SHALL INCLUDE ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILROAD UNDER THE FEDERAL EMPLOYER'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE BOILER INSPECTION ACT.

10. PERSONAL PROPERTY WAIVER - ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF COUNTY ONLY, AND FWWR SHALL NOT BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF FWWR.

11. Insurance - County shall, at their sole cost and expense, except as otherwise provided, procure and maintain during the life of this Agreement the insurance coverage as set forth in Exhibit B and Exhibit C attached hereto.

12. It is further agreed that the execution of the Release and Indemnity shall not constitute a waiver by FWWR, with respect to third party claims asserted against County, of any defense allowed by law.

13. Neither termination nor expiration will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting

from any acts, omissions or events happening prior to the date of termination or expiration.

14. To the maximum extent possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this Agreement.

15. In the event that County consists of two or more parties, all the covenants and agreements of County herein contained shall be the joint and several covenants and agreements of such parties.

16. The waiver by FWWR of the breach of any provision herein by County shall in no way impair the right of FWWR to enforce that provision for any subsequent breach thereof.

17. All questions concerning the interpretation or application of provisions of this Agreement shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law. All parties to this Agreement have had access to counsel and have had an opportunity to read, review, or revise this Agreement. This Agreement is the result of the joint efforts of the parties and their counsel. Therefore, the parties agree that this Agreement, or any provision of it, shall not be construed against the drafter. Any modification to this Agreement must be in writing and signed by both parties.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed in duplicate on the date herein written.

Executed this 27<sup>th</sup> day of July 2020.

Accepted:

**JOHNSON COUNTY PRECINCT 1**

Signature: 

Print Name: Rick Bailey

Title: Commissioner Precinct #1

**FORT WORTH & WESTERN RAILROAD COMPANY**


  
Kevin Erasmus, President & CEO

Exhibit "A"

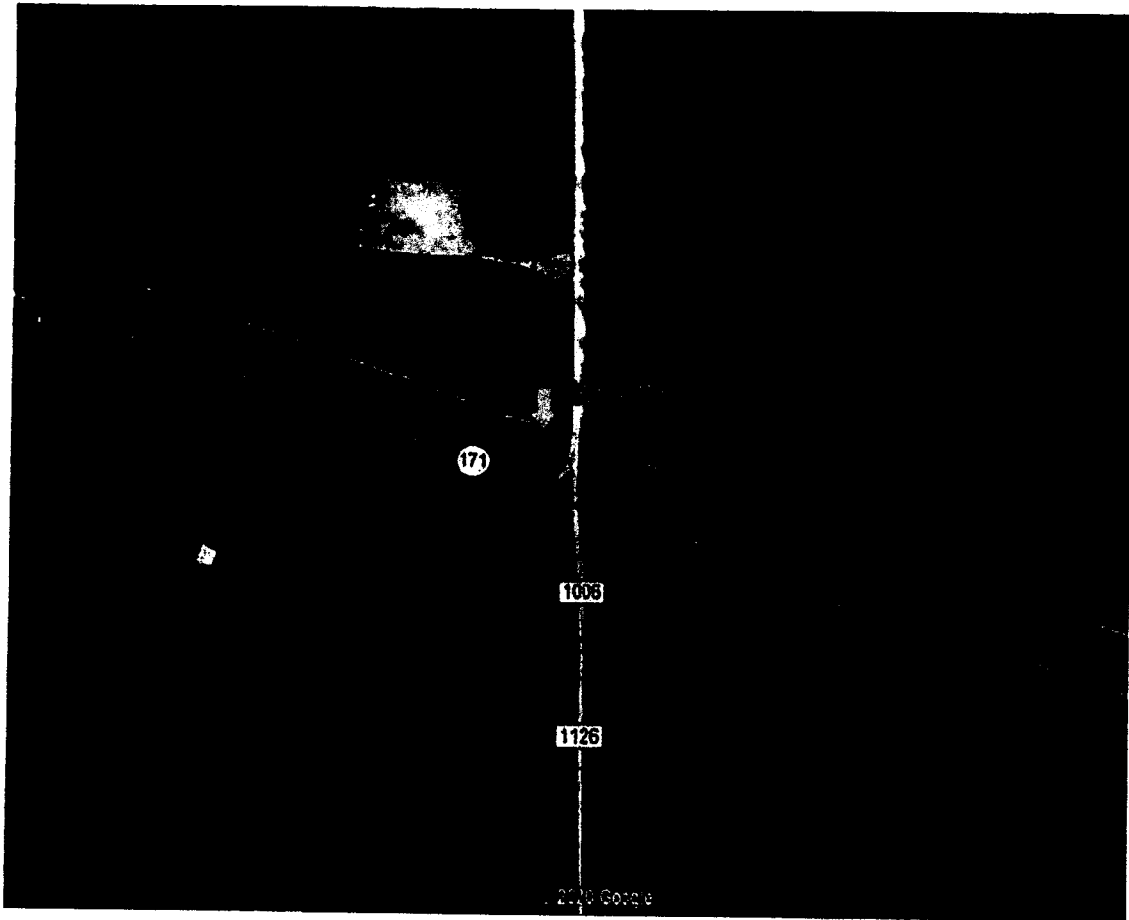
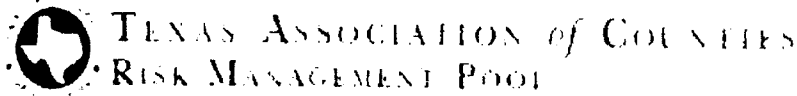


Exhibit "B"



**Liability Contribution & Coverage Declarations**

Member: Johnson County

Coverage Period: May 15, 2020 through May 15, 2021

This Contribution & Coverage Declaration (CCD) is part of the Coverage Documents between the Texas Association of Counties Risk Management Pool (Pool) and the Named Member shown above, subject to the terms, conditions, definitions, exclusions, and sub-limits contained in the Coverage Documents, any endorsements, and the Interlocal Participation Agreement (IPA).

AUTO LIABILITY	Limits of Liability	Deductible Per Occurrence	Contribution
Body Injury Liability - Each Person	\$100,000		
Body Injury Liability - Each Accident	\$300,000	\$0	\$62,744
Property Damage Liability - Each Accident	\$100,000		
<b>Included Coverage</b>			
Personal Injury Protection	\$5,000	No deductible	Included
<b>AUTO LIABILITY CONTRIBUTION</b>			<b>\$62,744</b>

AUTO PHYSICAL DAMAGE	Limits of Liability	Deductible Per Covered Auto	Contribution
Comprehensive Coverage	The lesser of the Actual Cash Value at time of loss or cost of repair with like kind and quality	\$1,000	
Collision Coverage	The lesser of the Actual Cash Value at time of loss or cost of repair with like kind and quality	\$1,000	\$62,726
<b>AUTO PHYSICAL DAMAGE CONTRIBUTION</b>			<b>\$62,726</b>

GENERAL LIABILITY	Limits of Liability	Deductible Per Occurrence	Contribution
Body Injury Liability - Each Person	\$100,000		
Body Injury Liability - Each Accident	\$300,000	\$0	\$24,674
Property Damage Liability - Each Accident	\$100,000		
<b>Included Coverage</b>			
Personal and Advertising Injury Liability			
Per Person	\$100,000	\$0	Included
Per Offense / Aggregate	\$300,000		
Crisis Management	\$100,000	\$0	Included
Employee Benefits Liability	\$500,000	\$1,000	Included
Garage Keeper's Legal Liability	\$50,000	\$1,000	Included
<b>Optional Coverage</b>			
Unmanned Aircraft	Number of Unmanned Aircraft 2	Per Endorsement	\$0
<b>GENERAL LIABILITY CONTRIBUTION</b>			<b>\$24,674</b>

Texas Association of Counties  
Risk Management Pool  
03/16/2020

Johnson County # 128  
Coverage Number CAS 1260-20200515-2

Exhibit "C"



TEXAS ASSOCIATION of COUNTIES  
RISK MANAGEMENT POOL

**Workers' Compensation  
Contribution & Coverage Declaration**

Named Member: Johnson County

Coverage Period: January 1, 2020 through January 1, 2021

This Contribution & Coverage Declaration (CCD) is part of the Coverage Documents between the Texas Association of Counties Risk Management Pool (Pool) and the Named Member shown above, subject to the terms, conditions, definitions, exclusions, and sublimits contained in the Coverage Documents, any endorsements, and the Interlocal Participation Agreement (IPA).

WORKERS' COMPENSATION	LIMITS
<i>Workers' Compensation Coverage: Part One of the Coverage Document applies to the Workers' Compensation Law in the State of Texas.</i>	
Each Accident	Statutory
Each Employee for Disease	Statutory
<i>Employers' Liability Coverage: Part Two of the Coverage Document applies to the work in the State of Texas. The Limits of the Pool's Liability under Part Two are:</i>	
Body Injury by Accident	\$1,000,000 Each Accident
Body Injury by Disease	\$1,000,000 Each Claimant
Aggregate per coverage period	\$2,000,000
<b>Optional Coverage</b>	
Elected Officials	Yes
Volunteers - Fire Fighters	No
Volunteers - Law Enforcement	No
Volunteers - Emergency Medical Personnel	No
Volunteers - All Others	No
Juries	No
Election Workers (non-employees)	No
<b>WORKERS' COMPENSATION DEDUCTIBLE</b>	
Deductible (per Occurrence)	\$0
<b>WORKERS' COMPENSATION ANNUAL CONTRIBUTION</b>	<b>\$283,217</b>

Texas Association of Counties  
Risk Management Pool  
10/21/2019

Johnson County # 1290  
Coverage Number WC-1290 20200101 1