



City of Grand Island

Tuesday, April 12, 2005

Council Session

Item G19

#2005-107 - Approving Wireline Crossing Agreement with Union Pacific Railroad and Grand Island Utilities Department

Staff Contact: Gary R. Mader;Dale Shotkoski

Council Agenda Memo

From: Gary R. Mader, Utilities Director
Doug Walker, City Attorney

Meeting: April 12, 2005

Subject: Wireline Crossing Agreement between Union Pacific
Railroad and Grand Island Utilities Department

Item #'s: G-19

Presenter(s): Gary R. Mader, Utilities Director

Background

Grand Island Utilities Department is working with CXT to support the expansion of their existing manufacturing plant in Grand Island. As part of the expansion, nearly a mile of new rail spur line will be constructed by CXT to serve the increased capacity of their plant. A fifty foot tall gantry crane will be used along the new rails to load concrete ties on to rail cars.

The existing CXT plant and the planned expansion are located in the Union Pacific rail yards on the east side of Grand Island. The Utilities Department has two 13.8kV overhead distribution lines crossing the CXT construction. Those lines must be reconstructed to underground configuration to provide clearance for the planned gantry crane.

Discussion

The installation of the required underground conduit for the power line work will be done by CXT as a part of their expansion project. After the conduit has been installed, Utilities Department crews will install all electrical conductor and equipment to complete the conversion. The cost of the conversion will be billed to CXT.

Because this power line work is being done on Railroad property, and crosses the rail yard, a new Wireline Crossing Agreement with Union Pacific is required to allow the reconstruction of the high voltage circuits. Since the power line work is being done for a Railroad Client, there is no charge for the Crossing Agreement.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve the Wireline Crossing Agreement between the City Of Grand Island and Union Pacific Railroad
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the Wireline Crossing Agreement with Union Pacific.

Sample Motion

Move to approve the Wireline Crossing Agreement between Union Pacific Railroad and The City of Grand Island, Utilities Department.

WIRELINE CROSSING AGREEMENT

Mile Post: 145.63, Kearney Subdivision
Location: Grand Island, Hall County, Nebraska

THIS AGREEMENT is made and entered into as of March 15, 2005, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, (hereinafter the "Licensor") and **CITY OF GRAND ISLAND**, a Nebraska municipal corporation to be addressed at P O Box 1968, Grand Island, Nebraska 68802-1968 (hereinafter the "Licensee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article I. LICENSOR GRANTS RIGHT.

In consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate

one underground power wireline crossing only

(hereinafter the "Wireline") in the location shown and in conformity with the dimensions and specifications indicated on the attached print dated March 04, 2005, marked Exhibit "A". Under no circumstances shall Licensee modify the use of the Wireline for a purpose other than the above-mentioned, and said Wireline shall not be used for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

Article II. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in Exhibit B, hereto attached.

Article III. IF WORK IS TO BE PERFORMED BY CONTRACTOR.

If a contractor is to do any of the work performed on the Wireline (including initial construction and subsequent relocation or substantial maintenance and repair work), then the Licensee shall require its contractor to execute the Licensor's form Contractor's Right of Entry Agreement. Licensee acknowledges receipt of a copy of the Contractor's Right of Entry Agreement and understands its terms, provisions, and requirements, and will inform its contractor of the need to execute the Agreement. Under no circumstances will Licensee's contractor be allowed onto Licensor's premises without first executing the Contractor's Right of Entry Agreement.

Article IV. INSURANCE

A. The Licensee, at its expense, shall obtain the insurance described in Exhibit B-1, hereto attached. The Licensee will also provide to the Licensor a Certificate of Insurance, **identifying Folder No. 02307-75**, issued by its insurance carrier confirming the existence of such insurance and that the policy or policies contain the following endorsement:

UNION PACIFIC RAILROAD COMPANY is named as an additional insured with respect to all liabilities arising out of the existence, use or any work performed on or associated with the 'Wireline' located on Railroad right-of-way at Mile Post 145.63, on the Kearney Subdivision/Branch, at or near Grand Island, Hall County, Nebraska.

B. If the Licensee named in this Agreement is a public entity subject to any applicable statutory tort laws, the limits of insurance described in Exhibit B-1 shall be the limits the Licensee then has in effect or which is required by applicable current or subsequent law, whichever is greater, a portion of which may be self-insured with the consent and approval of the Licensor

C. All insurance correspondence shall be directed to:

Ernestine W. Burtley
Folder No. 02307-75
Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street STOP 1690
Omaha, NE 68179-1690

Article V. TERM.

This Agreement shall take effect as of the date first herein written and shall continue in full force and effect until terminated as herein provided.

Article VI. SPECIAL PROVISION -- LICENSE FEE WAIVER (Lessee not Licensee)

The customary License Fee for this Agreement has been waived by the Licensor as the facilities covered under the Basic Agreement serve a Lessee of the Licensor.

~~It is understood by the Licensee that, should the leased premises be sold by the Licensor or the Wireline be expanded to serve third parties other than the Licensor or its Lessees, the Licensor reserves the right to begin charging the Licensee for the occupation of its property by the Wireline as this License will no longer be considered incidental to the Lease site.~~

Article VII. SPECIAL PROVISION - RAILROAD FLAGMAN; WHEN REQUIRED; FLAGGING CHARGES.

A. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within 25 feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains, pursuant to the terms of the attached Exhibit 'B'. All expenses connected with the furnishing

of said flagman shall be at the sole cost and expense of the Licensee, who shall promptly pay to Railroad all charges connected therewith, within 30 days after presentation of a bill therefore.

B. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays; two and one-half times current hourly rate for holidays.

C. Wage rates are subject to change, at any time, by law or by agreement between the Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized Governmental Agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, the Licensee shall pay on the basis of the new rates and charges.

D. Reimbursement to the Railroad will be required covering the full eight hour day during which any flagman is furnished, unless he can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other work. Reimbursement will also be required for any day not actually worked by said flagman following his assignment to work on the project for which the Railroad is required to pay the flagman and which could not reasonably be avoided by the Railroad Company by assignment of such flagman to other work, even though the Licensee may not be working during such time.

E. Arrangements for flagging are to be made at least Ten (10) days in advance of commencing work, with the Railroad Manager of Track Maintenance.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

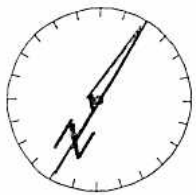
UNION PACIFIC RAILROAD COMPANY

CITY OF GRAND ISLAND

By: _____
Manager - Contracts

By: _____
Title: _____

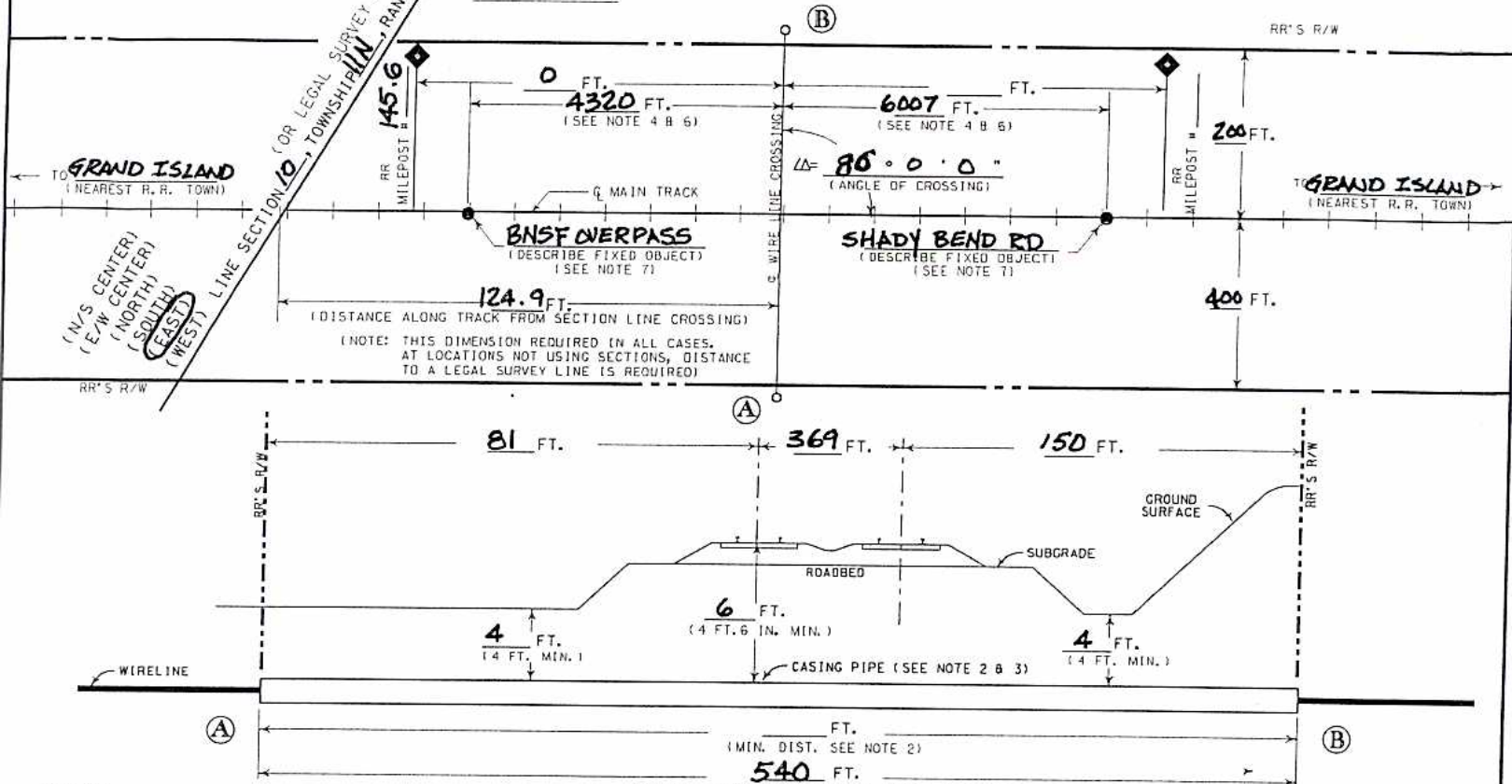
PLACE ARROW INDICATING NORTH
DIRECTION RELATIVE TO CROSSING



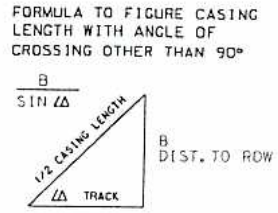
UNDERGROUND WIRELINE CROSSING OVER 750 VOLTS

NO SCALE

NOTE: ALL AVAILABLE DIMENSIONS MUST BE
FILLED IN TO PROCESS THIS APPLICATION.



- NOTES :
- 1) ALL HORIZONTAL DISTANCES TO BE MEASURED AT RIGHT ANGLES FROM \bar{C} OF TRACK, EXCEPT AS NOTED.
 - 2) ENCASE COMPLETELY ACROSS OUR R/W WITH A RIGID METALLIC CONDUIT OR NON-METALLIC CONDUIT (PVC) ENCASED IN A MINIMUM OF 3 INCHES OF CONCRETE.
 - 3) INSTALL 6 INCH WIDE WARNING TAPE 1 FOOT BELOW GROUNDLINE DIRECTLY OVER THE UNDERGROUND POWER LINE WHERE LOCATED ON OUR R/W OUTSIDE THE TRACK BALLAST SECTIONS.
 - 4) IF WITHIN AREA OF UNDERGROUND SIGNAL FACILITIES SUCH AS FLASHING CROSSING SIGNALS, POWER SWITCHES, TRACK SIGNALS, ETC., CHECK WITH SIGNAL DEPARTMENT.
 - 5) SIGNAL REPRESENTATIVE MUST BE PRESENT DURING INSTALLATION IF RAILROAD SIGNALS ARE IN THE VICINITY OF CROSSING.
 - 6) MINIMUM OF 50' FROM THE END OF ANY RAILROAD BRIDGE, \bar{C} OF ANY CULVERT, OR FROM ANY SWITCHING AREA.
 - 7) ALLOWABLE FIXED OBJECTS INCLUDE: BACKWALLS OF BRIDGES; \bar{C} OF ROAD CROSSINGS & OVERHEAD VIADUCTS (GIVE ROAD NAME), OR \bar{C} CULVERTS.
 - 8) CASING AND CARRIER PIPE MUST BE PLACED A MINIMUM OF 2 FEET BELOW THE EXISTING FIBER OPTIC CABLE. ANY EXCAVATION REQUIRED WITHIN 5 FEET OF THE EXISTING FIBER OPTIC CABLE MUST BE HAND DUG.



1) IS WIRELINE CROSSING WITHIN DEDICATED STREET? YES; NO;

2) IF YES, NAME OF STREET _____

3) VOLTAGE TO BE CARRIED UNDER TRACK 13,800 V.

4) DISTRIBUTION LINE OR TRANSMISSION LINE _____

5) MAXIMUM CURRENT 200 AMP EA. CIRCUIT

6) SINGLE PHASE _____ THREE PHASE NO. OF CIRCUITS 2

7) MAX. OPERATING CURRENT TO GROUND AT FEED END 0 AMPS.

8) MAX. OPERATING CURRENT TO GROUND AT LOAD END 0 AMPS.

9) WHAT TYPE OF FACILITY WILL LINE BE SERVING? PUBLIC

10) IF SEPARATE CABLES ARE USED, WHAT IS THE AVG. DISTANCE BETWEEN CABLES? 2"

11) IF A NEW POWER SUBSTATION IS TO BE BUILT OR REVISED WITHIN 1/2 MILE OF RR, WHAT IS: MAX OPERATING CURRENT TO GROUND? _____ AMPS;

MAX RESISTANCE TO GROUND? _____ OHMS; MAX FAULT CURRENT TO GROUND? _____ AMPS.

12) CASING TYPE TO BE INSTALLED 24" X 0.438" STEEL

13) METHOD OF INSTALLING CASING PIPE UNDER TRACK(S):
 DRY BORE AND JACK (WET BORE NOT PERMITTED);
_____ TUNNEL; OTHER OPEN TRENCH

14) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES TO TRACK 30 FT. (30' MIN.)

15) APPLICANT HAS CONTACTED 1-800-336-9193
U. P. COMMUNICATION DEPARTMENT, AND HAS DETERMINED FIBER OPTIC CABLE
 DOES; _____ DOES NOT; EXIST IN VICINITY OF WORK TO BE PERFORMED.

TICKET NO. 2005-0128-005

EXHIBIT "A"
(FOR RAILROAD USE ONLY - DO NOT WRITE IN THIS BOX)

UNION PACIFIC RAILROAD CO.

Kearney (SUBDIVISION)

M. P. 145.63 E. S. 8170+894

UNDERGROUND WIRELINE CROSSING

Grand Island Hall NE
(NEAREST RR STATION) (COUNTY) (STATE)

FOR City of Grand Island (APPLICANT)

RR FILE NO. 2307-75 DATE 3-4-05

WARNING

IN ALL OCCASIONS, U. P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.
PHONE: 1-800-336-9193

EXHIBIT B

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

(a) The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.

(b) The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

(a) If the Wireline or any part thereof is to be located above the top of the rails of any track or communication and signal lines, including static wires, overhead clearance provided by the Wireline shall be no less than that shown on Exhibit A. The Wireline shall be constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with the Specifications prescribed in the current issue of the National Electrical Safety Code of the American National Standards Institute. In the event such Specifications conflict in any respect with the requirements of any federal, state or municipal law or regulation, such requirements shall govern on all points of conflict, but in all other respects the Specifications shall apply.

(b) All work performed on property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Wireline shall be done to the satisfaction of the Licensor.

(c) If the Wireline is an existing one not conforming in its construction to the above provisions of this Section 2, the Licensee shall, within ninety (90) days after the date hereof, reconstruct it so as to conform therewith.

(d) The Wireline shall be constructed, maintained and operated by the Licensee in such manner as not to be or constitute a hazard to aviation. With respect to the Wireline the Licensee, without expense to the Licensor, will comply with all requirements of law and of public authority, whether federal, state or local, including but not limited to aviation authorities.

(e) In the operation of the Wireline, the Licensee shall not transmit electric current at a difference of potential in excess of the voltage indicated on Exhibit A. If the voltage indicated is in excess of seven hundred fifty (750) volts, and the Wireline is, or is to be, buried at any location on the property of the Licensor outside track ballast sections or roadbed, the Licensee shall install metallic conduit, or non-metallic conduit encased in a minimum of three (3) inches of concrete with a minimum of four (4) feet of ground cover the entire length of the Wireline on the property of the Licensor. A Wireline buried by removal of the soil shall have, at a depth of one (1) foot beneath the surface of the ground directly above the Wireline, a six (6) inch wide warning tape bearing the warning, "Danger-High Voltage," or equivalent wording. A Wireline encased in conduit, jacked or bored under the property of the Licensor, must be identified by placing warning signs, to be installed and properly maintained at the expense of the Licensee, at each edge of the Licensor's property. The Licensee shall not utilize the signs in lieu of the warning tape where portions of the casing are installed by direct burial.

Section 3. NOTICE OF COMMENCEMENT OF WORK.

If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensor before commencing any work. In all other situations, the Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Wireline. All such work shall be prosecuted diligently to completion.

Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.

The Licensee shall bear the entire cost and expense incurred in connection with the construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Wireline, including any and all expense which may be incurred by the Licensor in connection therewith for supervision or inspection, or otherwise.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF WIRELINE.

(a) The license herein granted is subject to the needs and requirements of the Licensor in the operation of its railroad and in the improvement and use of its property, and the Licensee shall, at the sole expense of the Licensee, reinforce or encase the Wireline (if it is an underground facility) to the satisfaction of the Licensor, or move all or any portion of the Wireline to such new location, as the Licensor may designate, whenever in the furtherance of its needs and requirements, the Licensor shall find such action necessary or desirable.

(b) All the terms, conditions and stipulations herein expressed with reference to the Wireline on property of the Licensor in the location hereinbefore described shall, so far as the Wireline remains on the property, apply to the Wireline as modified, changed or relocated within the contemplation of this section.

Section 6. INTERFERENCE.

In the operation and maintenance of the Wireline the Licensee shall take all suitable precaution to prevent any interference (by induction, leakage of electricity, or otherwise) with the operation of the signal, communication lines or other installations or facilities of the Licensor or of its tenants; and if, at any time, the operation or maintenance of the Wireline results in any electrostatic effects which the Licensor deems undesirable or harmful, or causes interference with the operation of the signal, communication lines or other installations or facilities, as now existing or which may hereafter be provided by the Licensor and/or its tenants, the Licensee shall, at the sole expense of the Licensee, immediately take such action as may be necessary to eliminate such interference.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

(a) Fiber optic cable systems may be buried on the Licensor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Licensor at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the right of way until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.

(b) In addition to other indemnity provisions in this Agreement, the Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) caused by the negligence of the Licensee, its contractor, agents and/or employees, resulting in (1) any damage to or destruction of any telecommunications system on Licensor's property, and/or (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 Licensor's property, except if such costs, liability or expenses are caused solely by the direct active negligence of the Licensor. Licensee further agrees that it shall not 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 to a telecommunication company using Licensor's property or a customer or user of services of the fiber optic cable on Licensor's property.

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL.

(a) The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Wireline, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and

hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

(b) The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Wireline, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Wireline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licensor as compared with the entire value of such property.

Section 9. RESTORATION OF LICENSOR'S PROPERTY.

In the event the Licensor authorizes the Licensee to take down any fence of the Licensor or in any manner move or disturb any of the other property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Wireline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, penalties, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the taking down of any fence or the moving or disturbance of any other property of the Licensor.

Section 10. INDEMNITY.

(a) As used in this Section, "Licensor" includes other railroad companies using the Licensor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licensor's officers, agents, and employees, the 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 Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licensor, or property in its care or custody).

(b) As a major inducement and in consideration of the license and permission herein granted, the Licensee agrees to indemnify and hold harmless the Licensor from any Loss which is due to or arises from:

1. The prosecution of any work contemplated by this Agreement including the installation, construction, maintenance, repair, renewal, modification, reconstruction, relocation, or removal of the Wireline or any part thereof; or
2. The presence, operation, or use of the Wireline or electric current conducted thereon or escaping therefrom,

except to the extent that the Loss is caused by the sole and direct negligence of the Licensor.

Section 11. REMOVAL OF WIRELINE UPON TERMINATION OF AGREEMENT.

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Wireline from the property of the Licensor and restore such property to as good a condition as it was in before the Wireline was originally constructed, all to the satisfaction of the Licensor. If the Licensee fails to do the foregoing, the Licensor may perform the work of removal and restoration at the expense of the Licensee. The Licensor shall not be liable to the Licensee for any damage sustained by the Licensee as a result of the removal of the Wireline by the Licensor as in this section provided, nor shall such action prejudice or impair any right of action for damages or otherwise that the Licensor may, at the time of such removal, have against the Licensee.

Section 12. WAIVER OF BREACH.

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

Section 13. TERMINATION.

(a) If the Licensee does not use the right herein granted or the Wireline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.

(b) In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.

(c) Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement 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.

Section 14. AGREEMENT NOT TO BE ASSIGNED.

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

Section 15. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

EXHIBIT B-1

Union Pacific Railroad Company Insurance Provisions For Pipeline / Wireline / Drainage License Agreements

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a single limit of at least \$2,000,000 each occurrence or claim and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post 1998 ISO or equivalent form, including but not limited to coverage for the following:

- Bodily injury including death and personal injury
- Property damage
- Fire legal liability (Not less than the replacement value of the portion of the premises occupied)
- Products and completed operations

The policy shall also contain the following endorsements **which shall be indicated on the certificate of insurance**:

- The employee and worker's compensation related exclusions in the above policy apply only to Licensee's employees
- The exclusions for railroads (except where the Job site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed
- Waiver of subrogation

B. Business Automobile Coverage insurance. This insurance shall contain a combined single limit of at least \$2,000,000 per occurrence or claim, including but not limited to coverage for the following:

- Bodily injury and property damage
- Any and all motor vehicles including owned, hired and non-owned

The policy shall also contain the following endorsements **which shall be indicated on the certificate of insurance**:

- The employee and worker's compensation related exclusions in the above policy apply only to Licensee's employees
- The exclusions for railroads (except where the Job site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed
- Motor Carrier Act Endorsement- Hazardous materials clean up (MCS-90) if required by law.

C. Workers Compensation and Employers Liability insurance including but not limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement
- Employers' Liability (Part B) with limits of at least
\$500,000 each accident, \$500,000 disease policy limit
\$500,000 each employee

If Workers Compensation insurance will not cover the liability of Licensee in states that require participation in state workers' compensation fund, Licensee shall comply with the laws of such states. If Licensee is self-insured, evidence of state approval must be provided along with evidence of excess workers compensation coverage. Coverage shall include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy shall also contain the following endorsement **which shall be indicated on the certificate of insurance**:

- Alternate Employer Endorsement

D. Umbrella or Excess Policies In the event Licensee utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.

Other Requirements

- E. Punitive damage exclusion must be deleted, **which deletion shall be indicated on the certificate of insurance.**
- F. Licensee agrees to waive its right of recovery, and its insurers, through policy endorsement, agree to waive their right of subrogation against Licensor. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Licensor for loss of its owned or leased property or property under its care, custody and control. Licensee's insurance shall be primary with respect to any insurance carried by Licensor. All waivers of subrogation **shall be indicated on the certificate of insurance.**
- G. All policy(ies) required above (excluding Workers Compensation) shall provide severability of interests and shall name Licensor as an additional insured. **Severability of interest and naming Licensor as additional insured shall be indicated on the certificate of insurance.**
- H. Prior to commencing the Work, Licensee shall furnish to Licensor original certificate(s) of insurance evidencing the required coverage, endorsements, and amendments. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Licensor in writing of any cancellation or material alteration. **Upon request from Licensor, a certified duplicate original of any required policy shall be furnished.**
- I. Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- J. Licensee **WARRANTS** that this Agreement has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this Agreement and acknowledges that Licensee's insurance coverage will be primary.
- K. The fact that insurance is obtained by Licensee or Licensor on behalf of Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.

RESOLUTION

WHEREAS, UNION PACIFIC RAILROAD COMPANY has tendered to CITY OF GRAND ISLAND an agreement covering a wireline crossing at Grand Island, Hall County, Nebraska; and

WHEREAS, the City Council of CITY OF GRAND ISLAND has said proposed agreement before it and has given it careful review and consideration; and

WHEREAS, it is considered that the best interests of said City will be suberved by the acceptance of said agreement;

THEREFORE, BE IT RESOLVED by City Council of CITY OF GRAND ISLAND:

That the terms of the agreement submitted by UNION PACIFIC RAILROAD COMPANY as aforesaid be, and the same are hereby, accepted on behalf of said City;

That the Mayor of said City is hereby authorized, empowered and directed to execute said agreement on behalf of said City and that the City Clerk of said City is hereby authorized and directed to attest said agreement and to attach to each duplicate original of said agreement a certified copy of this Resolution.

STATE OF _____)
COUNTY OF _____) ss

I, _____, City Clerk of CITY OF GRAND ISLAND, hereby certify that the above and foregoing is a true, full and correct copy of a resolution adopted by the City Council of CITY OF GRAND ISLAND at a meeting held according to law at Grand Island, Nebraska, on the _____ day of _____, 20____, as the same appears on file and of record in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the corporate seal of said City, this _____ day of _____, 20____.

City Clerk of CITY OF GRAND ISLAND

State of _____

RESOLUTION 2005-107

WHEREAS, the Grand Island Utilities Department is working with CXT Incorporated to support the expansion of their existing manufacturing plant in Grand Island; and

WHEREAS, as part of the expansion, nearly a mile of new rail spur line will be constructed by CXT to serve the increased capacity of their plant; and

WHEREAS, the existing CXT plant and the planned expansion are located in the Union Pacific rail yards on the east side of Grand Island; and

WHEREAS, the City Utilities Department has two 13.8kV overhead distribution lines crossing the CXT construction, which will need to be reconstructed to underground configuration; and

WHEREAS, since the power line work is being done on railroad property, and crosses the rail yard, Union Pacific Railroad Company requires a Wireline Crossing Agreement to allow the reconstruction of the high voltage circuits; and

WHEREAS, the City Attorney has reviewed the proposed agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that a Wireline Crossing Agreement is hereby approved between the City and the Union Pacific Railroad Company to all the reconstruction of high voltage circuits for the expansion of CXT Incorporated.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute such agreement on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, April 12, 2005.

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
April 6, 2005	☐ City Attorney