



# City of Grand Island

Tuesday, August 11, 2009

Council Session

## Item G7

**#2009-190 - Approving Pipeline Crossing and Encroachment Agreement at Husker Hwy. & UP Railroad Crossing for Water Main Project 2009-W-3 - Alda Water Main Project**

Staff Contact: Gary R. Mader

# **Council Agenda Memo**

**From:** Gary R. Mader, Utilities Director  
Wesley Nespor, Asst. City Attorney/Purchasing  
Dale Shotkoski, City Attorney

**Meeting:** August 11, 2009

**Subject:** Pipeline Crossing and Encroachment Agreement with  
Union Pacific Railroad for Water Main Project 2009-W-3  
– Alda Water Main Project

**Item #'s:** G-7

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

## **Background**

In 2006 the Village of Alda contacted the Utilities Department regarding the possibility of the City of Grand Island providing water supply to the Village. At that time, the Village was beginning the processes of evaluating options to replace their current wells being used for water supply. The Village is under an Administrative Order from the Nebraska Department of Health and Human Services because the current wells do not meet the recently implemented regulations regarding uranium, a naturally occurring contaminate common in central Nebraska. One of the options being investigated was the construction of a water line from the southwest portion of Grand Island's present water distribution system to the Village. Information received from the Village's engineers, JEO Consulting Group, states that the water usage averages approximately 142,322 gallons per day (gpd). For reference, Grand Island water usage averages approximately 11,500,000 gpd.

The Village of Alda is located about 2.25 miles southwest from the closet point to the Grand Island water distribution system. This distance is also up-gradient. JEO conducted an engineering evaluation of a potential connecting pipeline and concluded that the project was feasible. Generally, the connecting line from Grand Island would supply water to a metering and pumping station located on the eastern edge of the Village. At that point, the pumping station would boost pressure to supply Alda's needs and fill their water tower. With the feasibility of the project confirmed, the Village proceeded with the pursuit of options for funding, through a grant from the U.S. Department of Agriculture, Rural Development Fund. Since a large portion on the proposed water line would be in an area immediately adjacent to the Grand Island City Limits, City staff thought it important

that the construction of that line be in compliance with current Grand Island standards and be constructed so as not to be a hindrance to future City expansion of water infrastructure required as the City grows, and not present problems of service area jurisdiction between the two communities. City Staff also advised that the Alda representatives should consider these discussions, just that, discussions. Any decisions as to whether or not the City of Grand Island participates in this proposed project rests with the City Council.

Initially, the staff discussions developed a program whereby the new line would be constructed to serve the Alda requirements, utilizing the grant funding, and then be turned over to the Grand Island Water Department for future maintenance, operation and use. That achieved the purpose of the program, to provide alternate water supply to Alda, alleviated the need for Alda to maintain the line, and provided for use of the line by the City for future development as Grand Island grows. But that program ran into a snag when the federal authorities determined that the federally funded line must continue to be owned by the Village of Alda since they were the party receiving the funding. Later it was determined that Grand Island could charge a “Connection Fee”, which could be paid from the grant funding.

At that time, the staff and consultants from the two communities set about re-developing the program to try to achieve the original purpose of providing for water supply to Alda while maintaining the ability of Grand Island to grow along the route without interference. That led to a shift of the construction responsibility from the Village to the Grand Island Water Department, with the connection fee based on the cost of construction. With this shift in responsibility, Grand Island assumes significantly more risk, in that the City is now responsible for route selection, design, specification, bidding, contract administration, construction residency, testing and final certifications.

## **Discussion**

In reviewing the possible methods and routes, Utility Engineering evaluated several different combinations of routing, line sizing and western terminus points to accomplish the connection of the Grand Island water distribution system to the Village of Alda. Seven potential routes were considered. Each achieves the basic purpose of the connection, but there are variations in the routes and sizes of the water line and in the eastern terminus, i.e. where the Water Department’s responsibility for line construction would end at the east edge of Alda, either at a point within the Village limits or at a point outside the Village limits nearer Grand Island. Additionally, the most direct route, which would parallel U.S. Highway 30, would involve the acquisition of Right-of-Way (ROW) access from Union Pacific Railroad or the acquisition of ROW or easements from private property owners along the route adjacent to the railroad land. Some of the alternate routes developed would allow water piping to be installed in existing public ROW. In all cases, the Village of Alda will have additional construction within their water service area to incorporate the new connecting line into their water system.

A major consideration in route evaluation was benefit to the future expansion of the City of Grand Island. A map of a route agreeable at the staff level is attached. It provides extension of the Grand Island water distribution system trunk line in Husker Highway to the east boundary of the Ordinance Plant, then south along 60<sup>th</sup> Road to U.S. Highway 30, in accordance with the City's standards. The total connection fee is \$1,060,000 to be paid by the Village of Alda from the federal grant funds.

### **Alternatives**

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

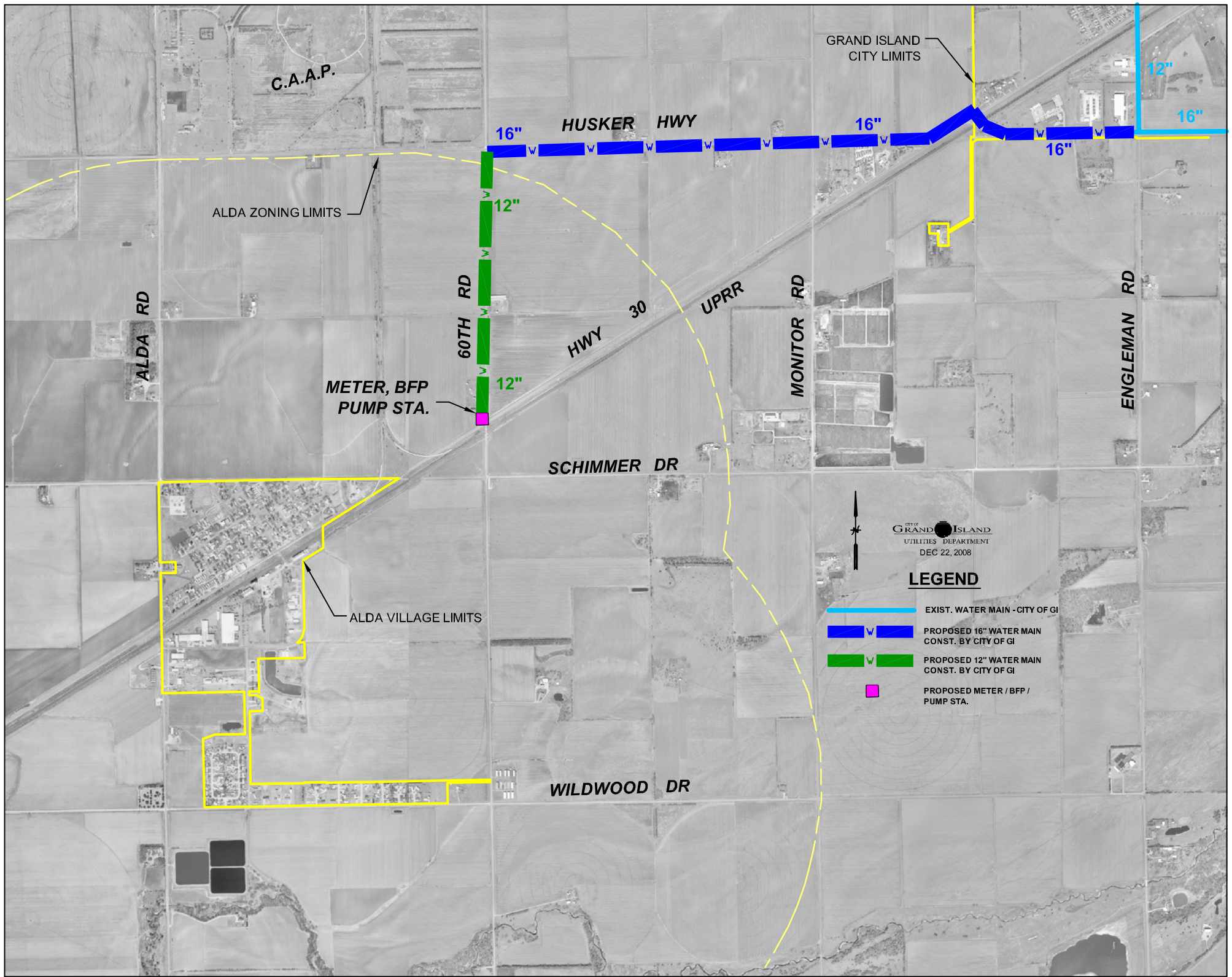
1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

### **Recommendation**

City Administration recommends that the Council approve the Pipeline Crossing and Encroachment Agreement between the City of Grand Island and Union Pacific Railroad.

### **Sample Motion**

Move to approve the Pipeline Crossing and Encroachment Agreement between the City of Grand Island and Union Pacific Railroad.



C.A.A.P.

GRAND ISLAND  
CITY LIMITS

ALDA ZONING LIMITS

ALDA RD

60TH RD

HWY 30

UPRR

MONITOR RD

ENGLEMAN RD

METER, BFP  
PUMP STA.

SCHIMMER DR

ALDA VILLAGE LIMITS

WILDWOOD DR



CITY OF  
GRAND ISLAND  
UTILITIES DEPARTMENT  
DEC 22, 2008

**LEGEND**

- EXIST. WATER MAIN - CITY OF GI
- PROPOSED 16" WATER MAIN  
CONST. BY CITY OF GI
- PROPOSED 12" WATER MAIN  
CONST. BY CITY OF GI
- PROPOSED METER / BFP /  
PUMP STA.

Form Approved, AVP-Law

## **PIPELINE CROSSING AND ENCROACHMENT AGREEMENT**

Mile Post 152.04 Kearney Subdivision  
Location: Grand Island, Hall County, Nebraska

**THIS AGREEMENT ("Agreement")** is made and entered into as of August 01, 2009, ("Effective Date") by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, ("Licensor") and **CITY OF GRAND ISLAND**, to be addressed at P. O. Box 1968, 100 East First Street, Grand Island, Nebraska 68802 ("Licensee").

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

### **Article 1. LICENSOR GRANTS RIGHT.**

In consideration of the License Fee to be paid by the Licensee and in further 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 16 inch encased pipeline encroachment for transporting and conveying potable water only

(hereinafter the "Pipeline") in the location shown and in conformity with the dimensions and specifications indicated on the attached print dated July 17, 2009 and marked Exhibit "A", attached hereto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than transporting and conveying potable water, and the Pipeline shall not be used to convey any other substance, any fiber optic cable, or 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 2. LICENSE FEE.**

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of **Ten Thousand Six Hundred Six Dollars (\$10,606.00)**.

### **Article 3. 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**, attached hereto and hereby made a part hereof.

### **Article 4. IF WORK IS TO BE PERFORMED BY CONTRACTOR.**

If a contractor is hired by the Licensee to do any of the work performed on the Pipeline (including initial construction and subsequent relocation or maintenance and repair work), then the Licensee shall require its contractor to execute the Licensor's current form of Contractor's Right of Entry Agreement. Licensee acknowledges receipt of a copy of Contractor's Right of Entry Agreement and an understanding

of 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 property without first executing the Contractor's Right of Entry Agreement and the contractor providing to the Licensor the insurance binders, certificates and endorsements described in the Contractor's Right of Entry Agreement.

**Article 5.      INSURANCE.**

A.      Before commencement of the term of this Agreement and prior to any Pipeline construction, the Licensee, at its sole expense, shall provide to the Licensor the insurance binders, certificates and endorsements described in **Exhibit C**, attached hereto and hereby made a part hereof. *The Licensee or it's contractor, whichever entity will be performing the Pipeline construction, will need to procure a Railroad Protective Liability Insurance policy for the duration of such work, as described in Exhibit C.*

B.      Not more frequently than once every two years, Licensor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

C.      All insurance correspondence, binders, certificates and endorsements shall be directed to:

Contracts Manager  
Folder No. 02559-46  
Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas St. STOP 1690  
Omaha, NE 68179-1690

D.      If the Licensee is a public entity subject to any applicable statutory tort laws, the limits of insurance described in **Exhibit C** 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 Licensor.

**Article 6.      TERM.**

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

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

**UNION PACIFIC RAILROAD COMPANY**

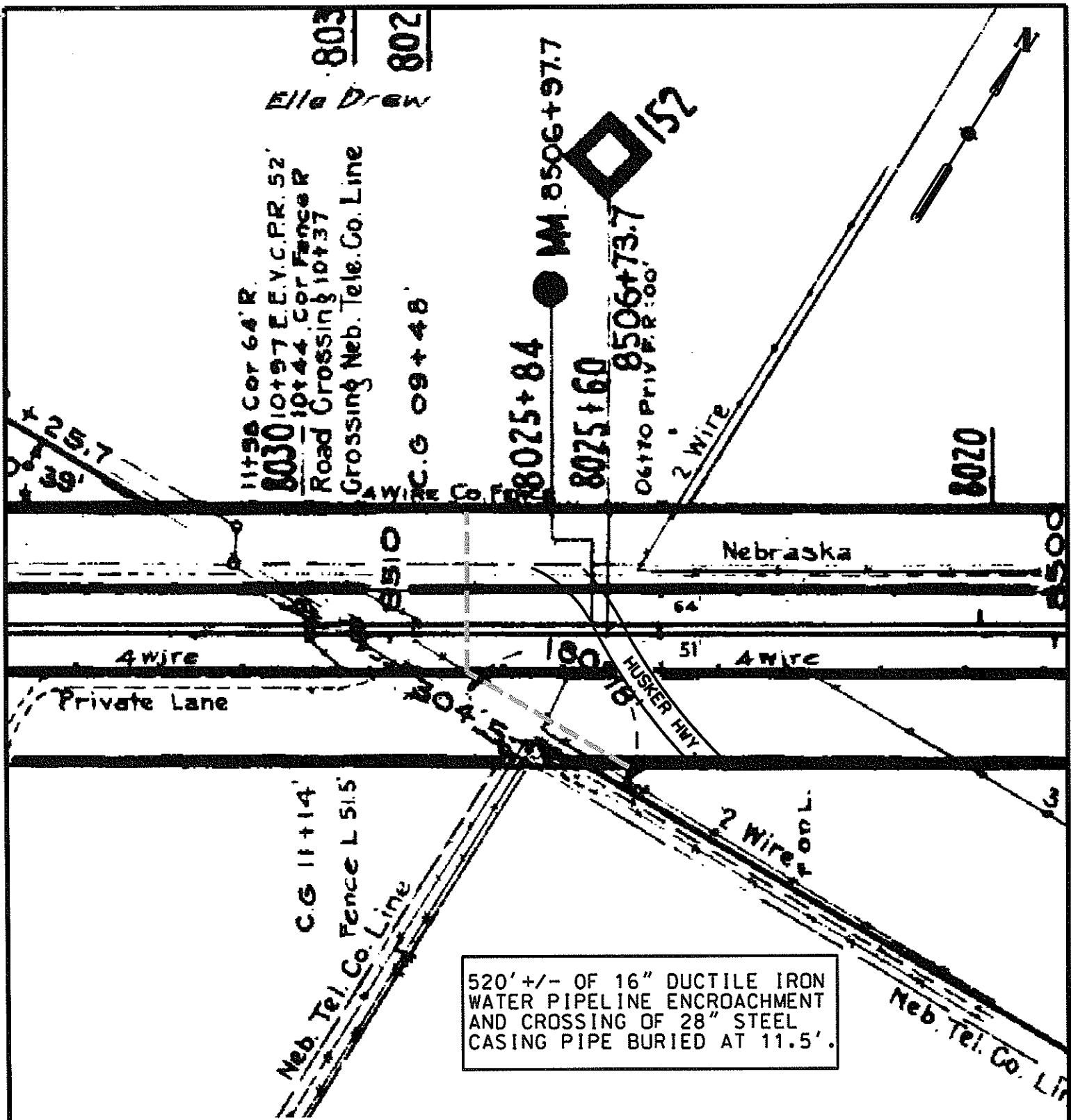
**CITY OF GRAND ISLAND**

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

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

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

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



**LEGEND:**

PIPELINE ENCROACHMENT .....

UPRRCO. R/W OUTLINED .....

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

GRAND ISLAND, HALL COUNTY, NE

M.P. 152.04 - KEARNEY SUB.

TO ACCOMPANY AGREEMENT WITH  
CITY OF GRAND ISLAND

UP NE V-4 / 1  
SCALE: 1" = 400'

OFFICE OF REAL ESTATE  
OMAHA, NEBRASKA DATE: 7-17-2009

NLP FILE: 2559-46

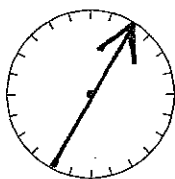
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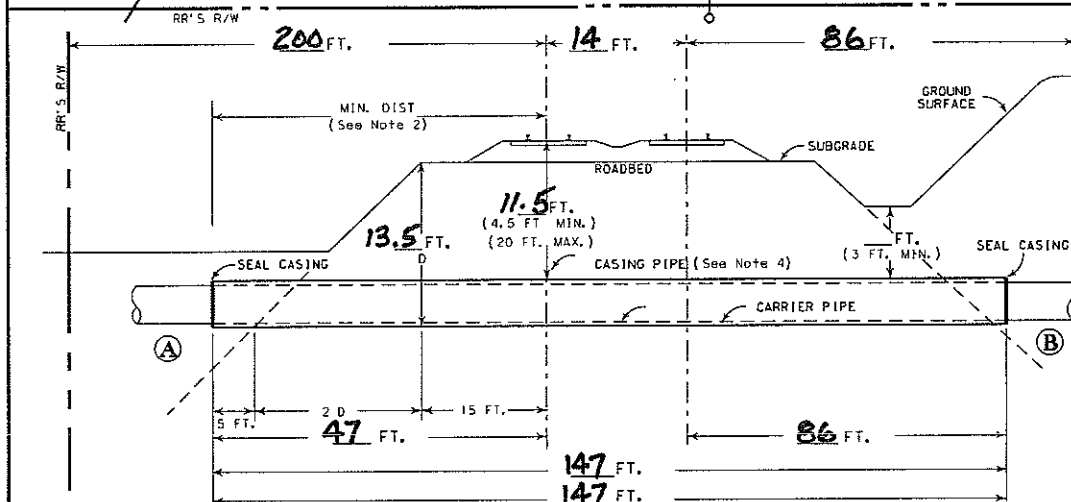
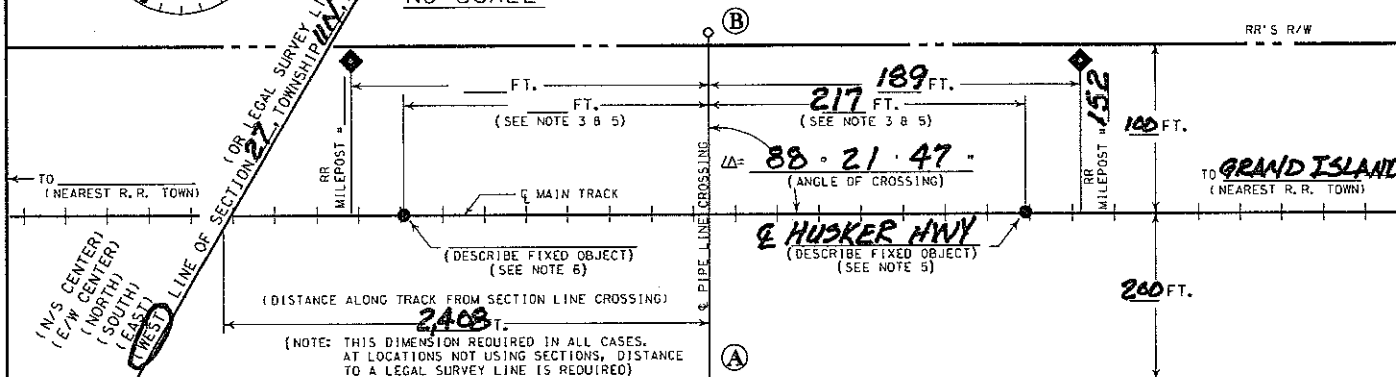
PLACE ARROW INDICATING NORTH  
DIRECTION RELATIVE TO CROSSING



# ENCASED NON-FLAMMABLE PIPELINE CROSSING

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

NO SCALE



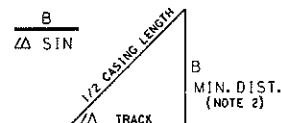
## STEEL CASING WALL THICKNESS CHART

MINIMUM THICKNESS	DIAMETER OF CASING PIPE
2500"	1/4" 12" OR LESS
3125"	5/16" OVER 12"-18"
3750"	3/8" OVER 18"-22"
4375"	7/16" OVER 22"-28"
5000"	1/2" OVER 28"-34"
5625"	9/16" OVER 34"-42"
6250"	5/8" OVER 42"-48"

OVER 48" MUST BE  
APPROVED BY R.R. CO.

NOTE: THIS CHART IS ONLY  
FOR SMOOTH STEEL CASING  
PIPES WITH MINIMUM YIELD  
STRENGTH OF 35,000 PSI.

FORMULA TO FIGURE CASING  
LENGTH WITH ANGLE OF  
CROSSING OTHER THAN 90°



### NOTES :

- 1) ALL HORIZONTAL DISTANCES TO BE MEASURED AT RIGHT ANGLES FROM  $\frac{1}{2}$  OF TRACK.
- 2) CASING TO EXTEND BEYOND THE  $\frac{1}{2}$  OF TRACK AT RIGHT ANGLES THE GREATER OF 20 + 20 FT., OR 30 FT., AND BEYOND LIMIT OF RAILROAD RIGHT-OF-WAY IF NECESSARY TO PROVIDE PROPER LENGTH OUTSIDE OF TRACK.
- 3) MINIMUM OF 50' FROM THE END OF ANY RAILROAD BRIDGE,  $\frac{1}{2}$  OF ANY CULVERT, OR FROM ANY SWITCHING AREA.
- 4) SIGNAL REPRESENTATIVE MUST BE PRESENT DURING INSTALLATION IF RAILROAD SIGNALS ARE IN THE VICINITY OF CROSSING.
- 5) ALLOWABLE FIXED OBJECTS INCLUDE: BACKWALLS OF BRIDGES;  $\frac{1}{2}$  OF ROAD CROSSINGS & OVERHEAD VIADUCTS (GIVE ROAD NAME), OR CULVERTS.
- 6) 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.

- A) IS PIPELINE CROSSING WITHIN DEDICATED STREET? ☒ YES; ☐ NO;  
B) IF YES, NAME OF STREET HUSKER HWY  
C) DISTRIBUTION LINE ☒ OR TRANSMISSION LINE \_\_\_\_\_  
D) CARRIER PIPE :  
COMMODITY TO BE CONVEYED POTABLE WATER  
OPERATING PRESSURE 70 PSI  
WALL THICKNESS 0.34" ; DIAMETER 16" ; MATERIAL DUCTILE IRON  
E) CASING PIPE :  
WALL THICKNESS 0.50" ; DIAMETER 28" ; MATERIAL STEEL ;  
NOTE : CASING MUST HAVE 2" CLEARANCE BETWEEN GREATEST OUTSIDE DIAMETER OF CARRIER PIPE AND INTERIOR DIAMETER OF CASING PIPE. WHEN FURNISHING DIMENSIONS, GIVE OUTSIDE OF CARRIER PIPE AND INSIDE OF CASING PIPE.  
F) METHOD OF INSTALLING CASING PIPE UNDER TRACK(S):  
☒ DRY BORE AND JACK (WET BORE NOT PERMITTED) ;  
TUNNEL ; OTHER \_\_\_\_\_  
G) WILL CONSTRUCTION BE BY AN OUTSIDE CONTRACTOR? ☒ YES; ☐ NO;  
H) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING, AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES TO TRACK 47 (30' MIN.)  
I) 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. 20090424019

## EXHIBIT "A"

(FOR RAILROAD USE ONLY)

UNION PACIFIC RAILROAD CO.

Kearney

(SUBDIVISION)

M. P. 152.04 E. S. 8027+49+

ENCASED Pipeline CROSSING AT  
Grand Island Hall NE

(NEAREST CITY)

(COUNTY)

(STATE)

City of Grand Island

(APPLICANT)

RR FILE NO. 2559-46 DATE 5-15-09

### 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. The Pipeline shall be constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with (i) Licensor's current standards and specifications ("UP Specifications"), except for variances approved in advance in writing by the Licensor's Assistant Vice President Engineering – Design, or his authorized representative; (ii) such other additional safety standards as the Licensor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"), and (iii) all applicable laws, rules and regulations ("Laws"). If there is any conflict between the requirements of any Law and the UP Specifications or the UP Additional Requirements, the most restrictive will apply.
- B. All work performed on property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Licensor.
- C. Prior to the commencement of any work in connection with the construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline where it passes underneath the roadbed and track or tracks of the Licensor, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Licensor's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Licensor's Assistant Vice President Engineering Design or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for

the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Licensor provides such support, the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by the Licensor in connection therewith, which expenses shall include all assignable costs.

- D. The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.

**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 Pipeline. 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 Pipeline, including any and all expense which may be incurred by the Licensor in connection therewith for supervision, inspection, flagging, or otherwise.

**Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE.**

- A. The license herein granted is subject to the needs and requirements of the Licensor in the safe and efficient operation of its railroad and in the improvement and use of its property. The Licensee shall, at the sole expense of the Licensee, reinforce or otherwise modify the Pipeline, or move all or any portion of the Pipeline to such new location, or remove the Pipeline from the Licensor's property, as the Licensor may designate, whenever, in the furtherance of its needs and requirements, the Licensor, at its sole election, finds such action necessary or desirable.
- B. All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of the Licensor in the location hereinbefore described shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

**Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.**

The Pipeline and all parts thereof within and outside of the limits of the property of the Licensor shall be constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor, and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.

**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 during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) 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 Licensor's property 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, DEFEND 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; TAXES.**

- 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 Pipeline, 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 Pipeline, 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 Pipeline 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 Pipeline, 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, 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, DEFEND 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 PIPELINE OR ANY PART THEREOF;**
  - 2. THE PRESENCE, OPERATION, OR USE OF THE PIPELINE OR CONTENTS ESCAPING THEREFROM; OR**
  - 3. LICENSEE'S BREACH OF THIS AGREEMENT, EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT NEGLIGENCE OF THE LICENSOR, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, LICENSOR'S NEGLIGENCE.**

**Section 11. REMOVAL OF PIPELINE UPON TERMINATION OF AGREEMENT.**

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If the Licensee fails to do the foregoing, the Licensor may, but is not obligated, to perform such work of removal and restoration at the cost and expense of the Licensee. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may 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 Pipeline 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 liabilities, 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 C**

### **Union Pacific Railroad Insurance Requirements**

Licensee shall, at its sole cost and expense, (except for Railroad Protective Liability Insurance required in Paragraph D), procure and maintain in effect during the term of this Agreement the following insurance coverage. Licensee shall procure and maintain, or cause to be procured and maintained by its contractor, at its sole cost and expense, Railroad Protective Liability Insurance coverage described in Paragraph D during any period of construction, maintenance, repair or reconstruction work.

**A. Commercial General Liability insurance.** Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

**B. Business Automobile Coverage insurance.** Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$2,000,000 for each accident.

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

**C. Workers Compensation and Employers Liability insurance.** Coverage must include but not be limited to:

- Licensee's and/or Licensee's contractor's statutory liability under the workers' compensation laws of the state where the Utility/Facility is located.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Licensee, and/or Licensee's contractor, is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must 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 must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

**D. Railroad Protective Liability insurance.** Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Licensors as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Licensors before the work may be commenced and until the original policy is forwarded to Licensors.

**E. Umbrella or Excess insurance.** If Licensee, and/or Licensee's contractor, utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

### **Other Requirements**

**F.** All policy(ies) required above (except worker's compensation and employers liability) must include Licensors as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Licensors as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Licensors' negligence whether sole or partial, active or passive, and shall not be limited by Licensee's liability under the indemnity provisions of this Agreement.

**G.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.

**H.** Licensee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.

**I.** Prior to commencing any work, Licensee, and/or Licensee's contractor, shall furnish Licensors with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

**J.** All insurance policies must be written by a reputable insurance company acceptable to Licensors or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state in which the Utility is located.

**K.** The fact that insurance is obtained by Licensee, and/or Licensee's contractor, or by Licensors on behalf of Licensee, and/or Licensee's contractor, will 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 Licensors from Licensee or any third party will not be limited by the amount of



the required insurance coverage.

**SUBMITTING REQUESTS FOR  
RAILROAD PROTECTIVE LIABILITY INSURANCE**  
(\$2,000,000 per occurrence/\$6,000,000 aggregate)

Application forms for inclusion in Union Pacific Railroad's Blanket Railroad Protective Liability Insurance Policy may be obtained by accessing the following website (includes premiums as well):

[www.uprr.com/reus/rrinsure/insurovr.shtml](http://www.uprr.com/reus/rrinsure/insurovr.shtml)

If you have questions regarding railroad protective liability insurance (i.e. premium quotes, application) please contact the Marsh USA Service Team, Bill Smith or Cindy Long at:

Phone: (800) 729-7001

Fax: (816) 556-4362

Email: [william.j.smith@marsh.com](mailto:william.j.smith@marsh.com)

Email: [cindy.long@marsh.com](mailto:cindy.long@marsh.com)

**\*PLEASE NOTE** - The RPLI application and premium check should be sent directly to Marsh, USA at the address shown below - do NOT send your check and application via overnight air, as the P.O. Box will NOT accept overnight deliveries.

If you are in a situation where you require a RUSH, please contact Bill Smith or Cindy Long and they will do their best to accommodate your needs. All checks written to Marsh, USA should reference Union Pacific Railroad in the "Memo" section of the check.

Send Checks and Applications to the following "NEW" address:

Marsh USA  
NW 8622  
PO Box 1450  
Minneapolis, MN 55485-8622

# Railroad Protective Liability Insurance - For Projects Under \$10,000,000 and do not exceed 12 months

## Overview

When working within Union Pacific Railroad's right of way, your company will be required to obtain Railroad Protective Liability Insurance for the project.

For RPLI application requests, you may be asked by your insurance carrier to provide train movement information. Due to the circumstances of September 11, 2001, for security and safety reasons, Union Pacific Railroad employees no longer supply train information to parties outside the Railroad. The major insurance companies are aware of this situation.

Obtaining this insurance for smaller projects can be a time-consuming and costly purchase for the contractor. With the Railroad Protective Liability Program made available by Union Pacific through a national broker, your company may save both time and money. In as little time as it takes to complete a single-page application and send a check, the Railroad Protective Liability coverage is in place. We consider this program a time saver in obtaining Railroad Protective Liability insurance.

**\*PLEASE READ** - there have been some modifications/enhancements to this site and the Railroad Protective Liability Application.

- If you are utilizing an old application, please begin to use the most updated version to ensure your request is fulfilled accurately and promptly.
- The Railroad Protective Liability Program does NOT cover new bridge construction, structural repair to bridges, widening of bridges and bridge demolition. Coverage for bridge construction must be obtained from your insurance agent/broker.

## Current Rate Schedule

### Section A

Installation of overhead wire and underground wire or pipe.

#### TRAVERSE INSTALLATIONS

Overhead	Underground	Open Cut
\$1,600	\$1,800	\$1,480

### Section B

#### LONGITUDINAL (PARALLEL) INSTALLATIONS

Length (in feet)	Overhead	Underground
0 - 250	\$1,600	\$1,800

# MARSH

## APPLICATION FORM RAILROAD PROTECTIVE LIABILITY INSURANCE

# COPY

**DO NOT submit unless all mandatory (\*) fields are complete.**

1. \*Name of Union Pacific Representative   
Telephone Number  E-Mail Address   
2. \*UPRR Contract Folder Number #####-##

**Note: Separate applications must be completed for each folder assigned**

3. Description of Project (example: horizontal bore / pipeline)   
4. Please Complete Either Section A OR Section B OR Section C Below:

### Section A. Traverse Installation

If Project is Traverse Installation

### Section B. Longitudinal (Parallel) Installation

Overhead or Underground, use the drop down arrow to select the linear feet.

Overhead

Underground

### Section C. Other Construction Project - Total project cost cannot exceed \$10,000,000

Please choose a project description from the drop down box before printing application.

Please Describe Project

Project Cost Within 50'RR Property \$

Total Project Value

5. \*Job Location (Nearest City, State)   
6. Estimated Start and End Date of Work Within RR Right-of-Way Begin  End   
7. Name on Certificate of Insurance (Contractor completing the project)

Mailing Address  City, State, ZIP

Phone #  Fax #  E-Mail

8. Name of Involved Governmental Authority or General Contractor   
9. Cost of Railroad Protective Liability Coverage for this Project:   
**ONLY enter amount from A OR B OR C above. THIS IS YOUR TOTAL PREMIUM**

**\*THIS COVERAGE WILL NOT BEGIN UNTIL BOTH ITEMS BELOW ARE RECEIVED BY MARSH USA**

1. A Check Payable in the amount quoted in Item #9 above  
Payable to: MARSH, USA  
NW 8622, PO Box 1450  
Minneapolis, MN 55485-8622  
2. This completed and signed application

Applicant Signature Robert H. Smith  
Please Print Applicant's Name Robert H. Smith

Applicant Phone  Date

RESOLUTION 2009-190

WHEREAS, the construction of Water Main Project 2009-W-3 will require crossing the Union Pacific railroad tracks at Husker Highway on the west side of Grand Island; and

WHEREAS, the Union Pacific Railroad requires a Pipeline Crossing Agreement to be entered into for persons crossing its property for such purposes with a one-time lease payment of \$10,606.00; and

WHEREAS, the Union Pacific Railroad requires Protective Liability Insurance, and the premium for the required insurance coverage is \$1,800.00; and

WHEREAS, a one-time payment of \$12,406.00 to the railroad is required for use of its property and for Protective Liability Insurance for this project; and

WHEREAS, the City Attorney's office has reviewed the proposed Pipeline Crossing Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Pipeline Crossing Agreement, by and between the City and the Union Pacific Railroad Company and the Railroad Protective Liability Insurance, for use of its property for the construction and maintenance of Water Main Project 2009-W-3, are hereby approved; and the Mayor is hereby authorized to sign such agreement on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, August 11, 2009.

\_\_\_\_\_  
Margaret Hornady, Mayor

Attest:

\_\_\_\_\_  
RaNae Edwards, City Clerk

Approved as to Form	☐ _____
August 5, 2009	☐ City Attorney