



# City of Grand Island

Tuesday, September 27, 2011

Council Session

## Item G14

**#2011-267 - Approving Four Railroad Crossing Agreements with BNSF Railroad (East Stolley Park, Mile Post 92.3, Mile Post 92.56, and Shady Bend Crossings)**

Staff Contact: Tim Luchsinger

# **Council Agenda Memo**

**From:** Timothy Luchsinger, Utilities Director

**Meeting:** September 27, 2011

**Subject:** Utility Relocations for Burlington Northern Santa Fe Railroad

**Item #'s:** G-14

**Presenter(s):** Timothy Luchsinger, Utilities Director

## **Background**

Burlington Northern Santa Fe Railroad (BNSF) is in the process of obtaining land for the construction of a second track through Grand Island. As part of the process, the railroad is requiring all utility companies that are currently either in their property or that cross their property, to move or remove the Utilities. BNSF has proposed to pay for a part of that relocation for portions of the utilities outside of their easement.

## **Discussion**

The first four relocations that require agreements to be signed are at the East Stolley Park Crossing, Mile Post 92.3 secondary, Mile Post 92.56 secondary, and the Shady Bend Crossing. The agreement for the Stolley Park Crossing is for BNSF to pay the non-betterment costs of moving the electric overhead lines, not to exceed \$100,000. The crossing agreement at Shady Bend provides for BNSF to pay one third of the cost of the relocation, not to exceed \$5,000.00. The agreements for the two secondary crossings at Mile Post 92.3 and Mile Post 92.56 provides for BNSF to pay 20% of actual costs, not to exceed \$2,200.00 each. These percentages of the not-to-exceed payments are based on a proportion of the length of the crossing in the permit and the total length of the crossing relocation.

## **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 agreements with BNSF to relocate the utility lines at Stolley Park Road, Mile Post 92.3, Mile Post 92.56, and Shady Bend Road crossings.

### **Sample Motion**

Move to approve agreements with BNSF to relocate utility lines at Stolley Park Road, Mile Post 92.3, Mile Post 92.56, and Shady Bend Road crossings.

## UTILITY RELOCATION AGREEMENT

THIS UTILITY RELOCATION AGREEMENT (this "**Agreement**") is entered into the day of \_\_\_\_\_, 2011 (the "**Effective Date**"), between the **CITY OF GRAND ISLAND**, a municipality of the State of Nebraska (the "**Utility Company**"), and **BNSF RAILWAY COMPANY**, a Delaware corporation ("**BNSF**").

### RECITALS

A. BNSF proposes to construct an additional rail line in Hall County, Nebraska (the "**Project**").

B. BNSF has notified the Utility Company that certain of its utility facilities and appurtenances (the "**Utilities**") are in locational conflict with the Project and has requested that the Utility Company undertake a relocation of the Utilities (the "**Work**") as necessary to accommodate the Project.

C. The Utility Company has provided BNSF with a copy of all documentation outlining the Work to be performed and the design and specifications of all related appurtenances, adjustments, existing utilities, and relocations, which outlining documentation will also include the exact location of the relocated Utilities (collectively, the "**Plans**"), which Plans have been approved by BNSF and a copy of which Plans are attached hereto and made a part hereof as **Exhibit A**.

D. BNSF and the Utility Company desire to enter into this Agreement to outline their respective obligations regarding the cost and timely execution of the Work by the Utility Company.

### AGREEMENTS

For and in consideration of the foregoing recitals which are incorporated herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BNSF and the Utility Company agree as follows:

1. The Utility Company will commence its performance of the Work within five (5) days of the Effective Date of this Agreement (the "**Commencement Date**") and complete the Work within Sixty (60) days from the Effective Date of this Agreement (the "**Completion Date**"), in accordance with the approved Plans. Once commenced, the Work shall be performed and prosecuted to completion with due diligence: (i) in accordance with the Plans, (ii) in conformity and compliance with all applicable laws and highest generally accepted industry standards for such Work, and (iii) in a good and workmanlike manner, free from defects in materials and workmanship.

2. The Utility Company agrees that it shall obtain all necessary property rights (including but not limited to all property rights necessary to relocate the Utilities to right of way and/or property owned or controlled by third parties), approvals, permits, and/or authorizations,

Stolley Park

whether private or governmental, for the performance of the Work and/or the relocation of the Utilities (collectively, the "**Third Party Permits**"). Upon BNSF's request, the Utility Company shall promptly provide BNSF with copies of all Third Party Permits as well as all documents relating to any denials of approvals, permits, and/or authorizations, whether private or governmental, in connection with the Work.

3. Subject to the terms and conditions set forth in this Agreement, BNSF hereby agrees to reimburse the Utility Company to cover its actual costs and expenses associated with the Work, at the City of Grand Island's Retail rate, including labor and material, but not including overhead and betterments, in accordance with the BNSF Utility Accommodation Specifications policy and requirements, provided, however, that the amount BNSF agrees to reimburse the Utility Company shall not exceed One Hundred Thousand Dollars and 00/100 (\$100,000) (the "**Reimbursement Cap**").

4. Upon timely completion of the Work and in accordance with the approved Plans, the Utility Company shall submit to BNSF all invoices that evidence that the costs and expenses have been paid for in full by the Utility Company. The invoices shall also reflect that the costs and expenses incurred by the Utility Company were in accordance with the approved Plans and that the costs and expenses incurred by the Utility Company include only actual costs and do not include overhead or Betterments. For purposes of this Agreement, a "Betterment" means any upgrading of the Utilities that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Utility Company, including, but not limited to, an increase in the capacity, capability, efficiency or function of the Utilities over that provided by the existing Utilities or an expansion of the existing Utilities. Any invoices reflecting such overhead or Betterments will be denied reimbursement by BNSF. All such costs and expenses as well as all other costs and expenses that exceed the Reimbursement Cap will be borne solely by the Utility Company.

5. As a condition of reimbursement by BNSF for the costs and expenses of the Work in accordance with the requirements for such reimbursement contained in this Agreement, the Utility Company must (i) commence the Work by the Commencement Date, and (ii) complete the Work by the Completion Date. The Completion Date may be extended for delays caused by events outside the Utility Company's control, including an event of force majeure, which shall include a strike, war or act of war (whether or not an actual declaration of war is made), insurrection, riot, act of public enemy, accident, fire, flood, or other act of God, sabotage, or other similar events, interference by BNSF or any other third party with the Utility Company's ability to proceed with such relocation, or any other event in which the Utility Company has exercised all due care in the prevention thereof so that the causes or other events are beyond the control, and without the fault or negligence, of the Utility Company. The Utility Company acknowledges and agrees that it will conduct the Work associated with the relocation contemplated under this Agreement at its own risk, and that BNSF makes no warranties or representations regarding the existence or location of the Utilities or any other utilities currently within its right-of-way in the Project.

6. Utility Company shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction relating to the performance of the Work.

7. Prior to commencing the Work, Utility Company shall and shall cause its contractor to (i) comply with all BNSF's applicable safety rules and regulations, and (ii) complete the safety-orientation program at the BNSF's Internet Web site "<http://contractororientation.com>". This program must be completed no more than one year in advance of Utility Company's performance of the Work.

8. Utility Company shall notify BNSF's Roadmaster, Don Marget at 14<sup>th</sup> & Grant Avenue, York, NE 68467, telephone (402) 362-5501, at least five (5) business days prior to performing the Work. After completion of use of the Work, Utility Company shall notify BNSF in writing that such use has been completed.

9. Utility Company shall bear the cost of flagger services and other safety measures provided by BNSF in connection with the Work, when deemed necessary by BNSF's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this paragraph.

10. In performing the Work, Utility Company shall use only public roadways to cross from one side of BNSF's tracks to the other.

11. Under no conditions shall Utility Company be permitted to conduct any tests, investigations, or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools, or other materials, within fifty (50) feet of the centerline of any BNSF track unless Utility Company has obtained prior written approval from BNSF. Utility Company shall, at its sole cost and expense, perform all the Work in such a manner as not at any time to be a source of danger to or interference with the existence or use of present or future tracks, roadbed, or property of BNSF, or the safe operation and activities of BNSF. If ordered to cease performance of the Work at any time by BNSF's personnel due to any hazardous condition, Utility Company shall immediately do so. Notwithstanding the foregoing right of BNSF, the parties agree that BNSF has no duty or obligation to monitor Utility Company's performance of the Work to determine the safe nature thereof, it being solely Utility Company's responsibility to ensure that Utility Company's performance of the Work is safe. Neither the exercise nor the failure by BNSF to exercise any rights granted in this Section will alter the liability allocation provided by this Agreement.

12. Upon completion of Work or upon termination of this Agreement, whichever shall occur first, Utility Company shall, at its sole cost and expense:

- (a) remove all of its equipment from BNSF property;
- (b) report and restore any damage arising from, growing out of, or connected with the Work;
- (c) remedy any unsafe conditions created or aggravated by the Work; and
- (d) leave all BNSF property in the condition which existed as of the Effective Date of this Agreement.

13. BNSF and the Utility Company shall each pay their respective attorneys' fees.

14. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one agreement, but in making proof hereof it shall only be necessary to produce one such counterpart.

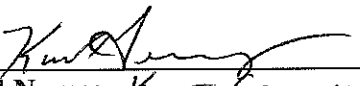
15. This Agreement (a) shall be binding upon and inure to the benefit of BNSF and Utility Company and their respective legal representatives, successors and assigns; (b) may be modified or amended only by a writing signed by each party hereto; and (c) shall be governed by and construed in accordance with the laws of the State of Nebraska. Notwithstanding anything herein to the contrary, the Utility Company may not assign its rights and obligations under this Agreement without the prior written consent of BNSF. BNSF may assign its rights or obligations under this Agreement without the Utility Company's consent, but with notice to the Utility Company.

The parties hereto have caused this Agreement to be executed in duplicate by their duly authorized representatives as of the date below each party's signature; to be effective, however, as of the Effective Date.

**CITY OF GRAND ISLAND**

**BNSF RAILWAY COMPANY**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

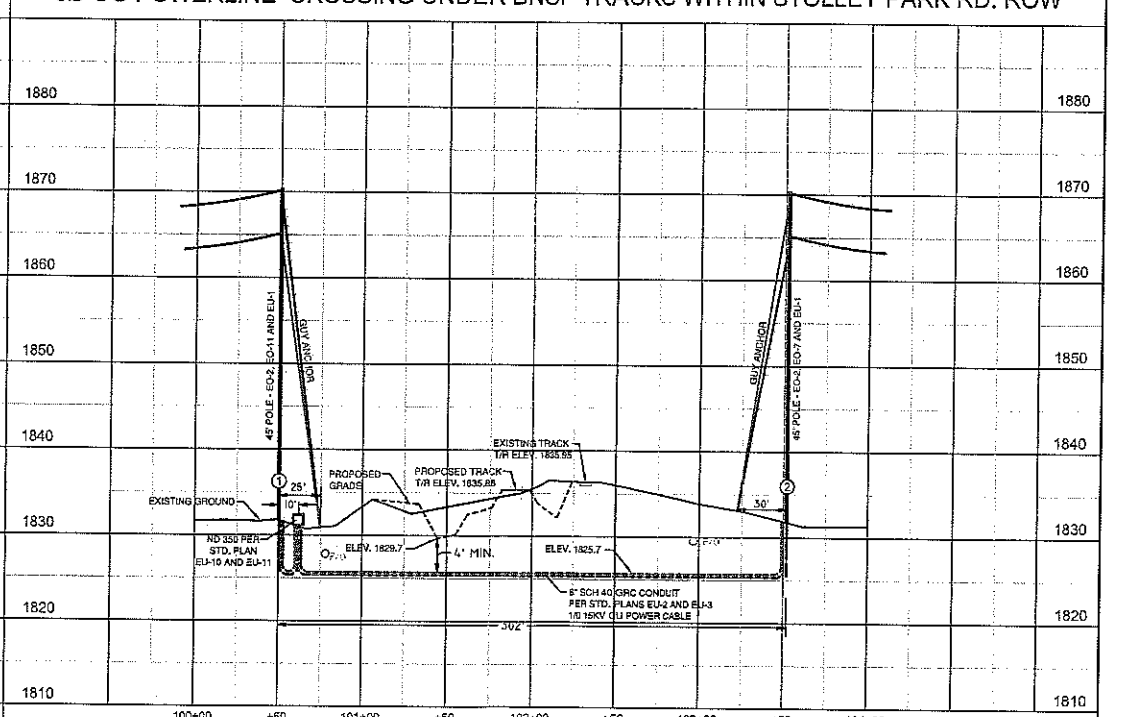
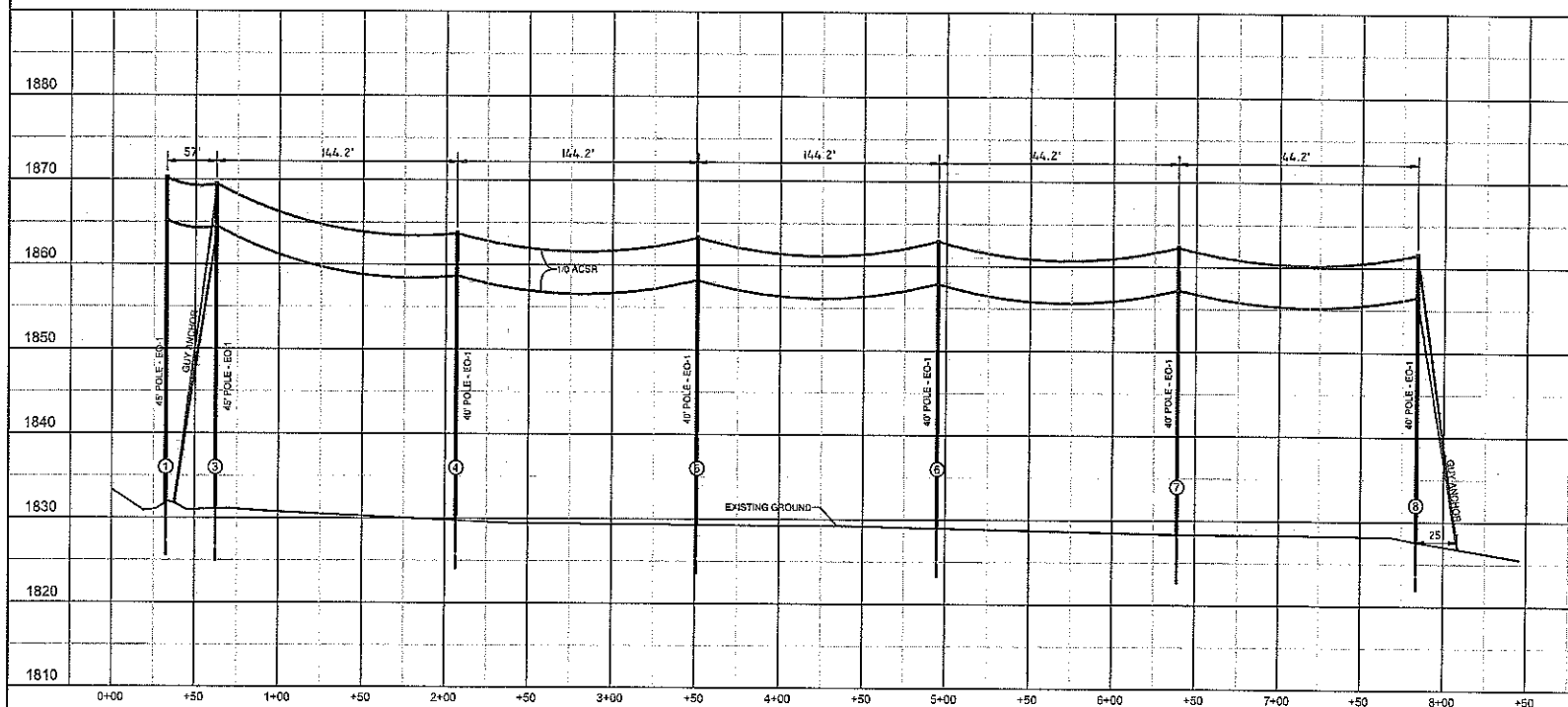
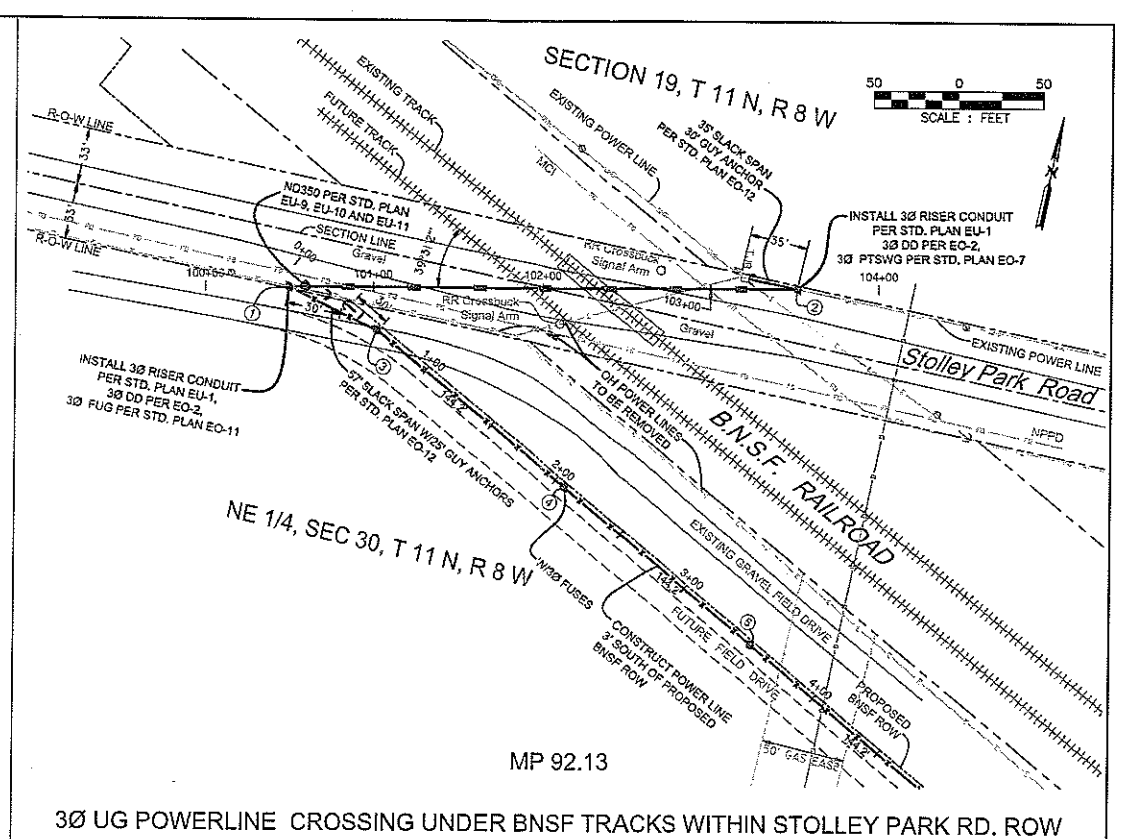
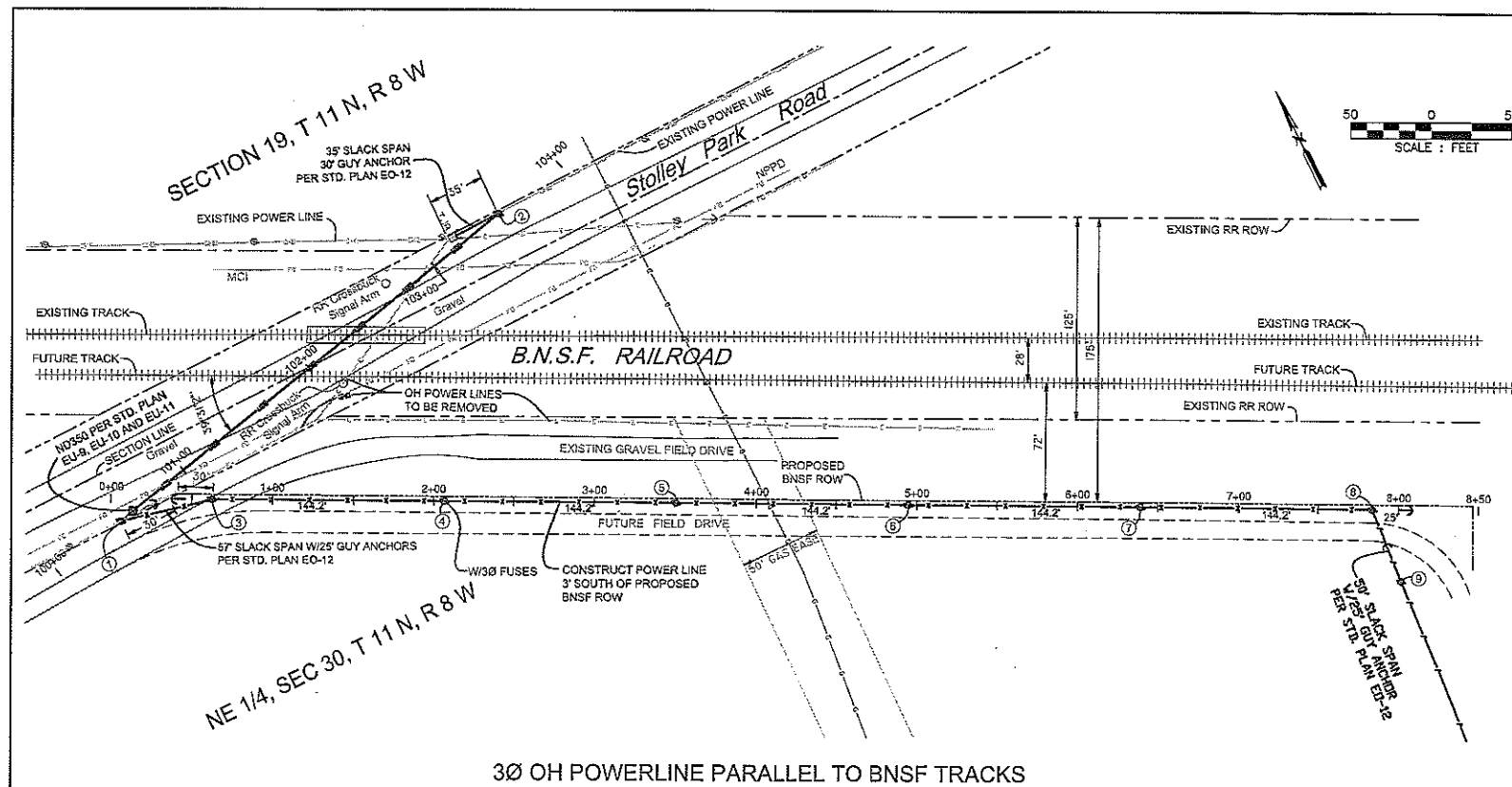
By:   
Printed Name: KURT GERWIEN  
Title: Director - Acquisition & Development

**EXHIBIT A**

**The Plans**

[to be attached]





**LEGEND**

- RAILROAD RIGHT-OF-WAY LINE
- EXISTING OVERHEAD POWER LINE
- PROPOSED 13.8 KV 3PH OVERHEAD
- PROPOSED 13.8 KV 1PH OVERHEAD
- EXISTING OVERHEAD POWER LINE TO BE REMOVED
- POWER POLE
- GUY ANCHOR
- NEW POWER POLE IDENTIFIER

REVISIONS			SURV. BY: BH
DATE	BY	DESCRIPTION	DATE
			DR. BY: PFG
			DATE: 7/12/2011
			CHK. BY: TWB
			DATE: 7/13/2011
			APPR. BY: RRS
			DATE: 7/14/2011
			HORIZ.: 1" = 50'
			VERT.: 1" = 10'

**CITY OF GRAND ISLAND**  
**UTILITIES DEPARTMENT**  
**STOLLEY PARK ROAD**  
**BNSF TRACK WIDENING**  
 DRAWING NO.: **131-42**  
 1

## UTILITY RELOCATION AGREEMENT

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### RECITALS

A. BNSF proposes to construct an additional rail line in Hall County, Nebraska (the "Project").

B. BNSF has notified the Utility Company that certain of its utility facilities and appurtenances (the "Utilities") are in locational conflict with the Project and has requested that the Utility Company undertake a relocation of the Utilities (the "Work") as necessary to accommodate the Project.

C. The Utility Company has provided BNSF with a copy of all documentation outlining the Work to be performed and the design and specifications of all related appurtenances, adjustments, existing utilities, and relocations, which outlining documentation will also include the exact location of the relocated Utilities (collectively, the "Plans"), which Plans have been approved by BNSF and a copy of which Plans are attached hereto and made a part hereof as Exhibit A.

D. Pursuant to the Plans, the Utility Company shall relocate the Utilities to (i) railroad right of way owned and controlled by BNSF (the "BNSF ROW"), the BNSF ROW being more particularly described in Exhibit B attached hereto, and (ii) other right of way and/or property owned or controlled by third parties ("Third Party ROW"), the Third Party ROW being more particularly described in Exhibit C attached hereto. The BNSF ROW and the Third Party ROW are collectively referred to in this Agreement as the "Relocated Premises".

E. The Utility Company has obtained a permit or an amendment to its existing permit (either, the "Permit") to carry out the Work on the BNSF ROW in accordance with the approved Plans, a copy of which Permit is attached hereto and made a part hereof as Exhibit D.

F. BNSF and the Utility Company desire to enter into this Agreement to outline their respective obligations regarding the cost and timely execution of the Work by the Utility Company.

### AGREEMENTS

For and in consideration of the foregoing recitals which are incorporated herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BNSF and the Utility Company agree as follows:

Shady Bend

1. The Utility Company will commence its performance of the Work within five (5) days of the Effective Date of this Agreement (the "**Commencement Date**") and complete the Work within Thirty (30) days from the Effective Date of this Agreement (the "**Completion Date**"), in accordance with the approved Plans. Once commenced, the Work shall be performed and prosecuted to completion with due diligence: (i) in accordance with the Plans, (ii) in accordance with the Permit, (iii) in conformity and compliance with all applicable laws and highest generally accepted industry standards for such Work, and (iv) in a good and workmanlike manner, free from defects in materials and workmanship.

2. The Utility Company agrees that it shall obtain all necessary property rights (including but not limited to all property rights necessary to relocate the Utilities to the Third Party ROW), approvals, permits, and/or authorizations, whether private or governmental, for the Work and/or the relocation of the Utilities to the Relocated Premises (collectively, the "**Third Party Permits**"). Upon BNSF's request, the Utility Company shall promptly provide BNSF with copies of all Third Party Permits as well as all documents relating to any denials of approvals, permits, and/or authorizations, whether private or governmental, in connection with the Work.

3.

3.1 To the extent that the costs and expenses of the Work incurred by Utility Company arise from or are attributable to the relocation of the Utilities on or to the BNSF ROW, the costs and expenses of such Work shall be borne solely by the Utility Company, and BNSF shall have no responsibility or obligation to fund or reimburse the Utility Company for the costs and expenses associated with such Work or anything pertaining thereto.

3.2 To the extent that the costs and expenses of the Work incurred by Utility Company arise from or are attributable to the relocation of the Utilities on or to the Third Party ROW, subject to the terms and conditions set forth in this Agreement, BNSF hereby agrees to reimburse the Utility Company to cover its actual costs and expenses associated with the Work, at the City of Grand Island's Retail rate, including labor and material, but not including overhead and betterments, in accordance with the BNSF Utility Accommodation Specifications policy and requirements, provided, however, that the amount BNSF agrees to reimburse the Utility Company shall not exceed Six Thousand Six Hundred Sixty Seven Dollars and 00/100 (\$6,667.00) (the "**Reimbursement Cap**").

4. Upon timely completion of the Work and in accordance with the approved Plans, the Utility Company shall submit to BNSF all invoices that evidence that the costs and expenses have been paid for in full by the Utility Company. The invoices shall also reflect that the costs and expenses incurred by the Utility Company were in accordance with the approved Plans and that the costs and expenses incurred by the Utility Company include only actual costs and do not include overhead or Betterments. For purposes of this Agreement, a "Betterment" means any upgrading of the Utilities that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Utility Company, including, but not limited to, an increase in the capacity, capability, efficiency or function of the Utilities over that provided

by the existing Utilities or an expansion of the existing Utilities. Any invoices reflecting such overhead or Betterments will be denied reimbursement by BNSF. All such costs and expenses as well as all other costs and expenses that exceed the Reimbursement Cap will be borne solely by the Utility Company.

5. As a condition of reimbursement by BNSF for the costs and expenses of the Work in accordance with the requirements for such reimbursement contained in this Agreement, the Utility Company must (i) commence the Work by the Commencement Date, and (ii) complete the Work by the Completion Date. The Completion Date may be extended for delays caused by events outside the Utility Company's control, including an event of force majeure, which shall include a strike, war or act of war (whether or not an actual declaration of war is made), insurrection, riot, act of public enemy, accident, fire, flood, or other act of God, sabotage, or other similar events, interference by BNSF or any other third party with the Utility Company's ability to proceed with such relocation, or any other event in which the Utility Company has exercised all due care in the prevention thereof so that the causes or other events are beyond the control, and without the fault or negligence, of the Utility Company. The Utility Company acknowledges and agrees that it will conduct the Work associated with the relocation contemplated under this Agreement at its own risk, and that BNSF makes no warranties or representations regarding the existence or location of the Utilities or any other utilities currently within its right-of-way in the Project.

6. Utility Company shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction relating to the performance of the Work.

7. Prior to commencing the Work, Utility Company shall and shall cause its contractor to (i) comply with all BNSF's applicable safety rules and regulations, and (ii) complete the safety-orientation program at the BNSF's Internet Web site "<http://contractororientation.com>". This program must be completed no more than one year in advance of Utility Company's performance of the Work.

8. Utility Company shall notify BNSF's Roadmaster, Don Marget at 14<sup>th</sup> & Grant Avenue, York, NE 68467, telephone (402) 362-5501, at least five (5) business days prior to performing the Work. After completion of use of the Work, Utility Company shall notify BNSF in writing that such use has been completed.

9. Utility Company shall bear the cost of flagger services and other safety measures provided by BNSF in connection with the Work, when deemed necessary by BNSF's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this paragraph.

10. In performing the Work, Utility Company shall use only public roadways to cross from one side of BNSF's tracks to the other.

11. Under no conditions shall Utility Company be permitted to conduct any tests, investigations, or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools, or other materials, within fifty (50) feet of the centerline of any BNSF track unless Utility Company has obtained prior written approval from BNSF. Utility Company shall, at its sole cost and expense, perform all the Work in such a manner as not at any time to be a source of danger to or interference with the existence or use of present or future tracks, roadbed, or property of BNSF, or the safe operation and activities of BNSF. If ordered to cease performance of the Work at any time by BNSF's personnel due to any hazardous condition, Utility Company shall immediately do so. Notwithstanding the foregoing right of BNSF, the parties agree that BNSF has no duty or obligation to monitor Utility Company's performance of the Work to determine the safe nature thereof, it being solely Utility Company's responsibility to ensure that Utility Company's performance of the Work is safe. Neither the exercise nor the failure by BNSF to exercise any rights granted in this Section will alter the liability allocation provided by this Agreement.

12. Upon completion of Work or upon termination of this Agreement, whichever shall occur first, Utility Company shall, at its sole cost and expense:

- (a) remove all of its equipment from BNSF property;
- (b) report and restore any damage arising from, growing out of, or connected with the Work;
- (c) remedy any unsafe conditions created or aggravated by the Work; and
- (d) leave all BNSF property in the condition which existed as of the Effective Date of this Agreement.

13. BNSF and the Utility Company shall each pay their respective attorneys' fees.

14. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one agreement, but in making proof hereof it shall only be necessary to produce one such counterpart.

15. This Agreement (a) shall be binding upon and inure to the benefit of BNSF and Utility Company and their respective legal representatives, successors and assigns; (b) may be modified or amended only by a writing signed by each party hereto; and (c) shall be governed by and construed in accordance with the laws of the State of Nebraska. Notwithstanding anything herein to the contrary, the Utility Company may not assign its rights and obligations under this Agreement without the prior written consent of BNSF. BNSF may assign its rights or

obligations under this Agreement without the Utility Company's consent, but with notice to the Utility Company.

The parties hereto have caused this Agreement to be executed in duplicate by their duly authorized representatives as of the date below each party's signature; to be effective, however, as of the Effective Date.

**CITY OF GRAND ISLAND**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**BNSF RAILWAY COMPANY**

By: Luddy Arias  
Printed Name: Luddy Arias  
Title: Manager - Acquisition & Development  
Date: 9/14/2011

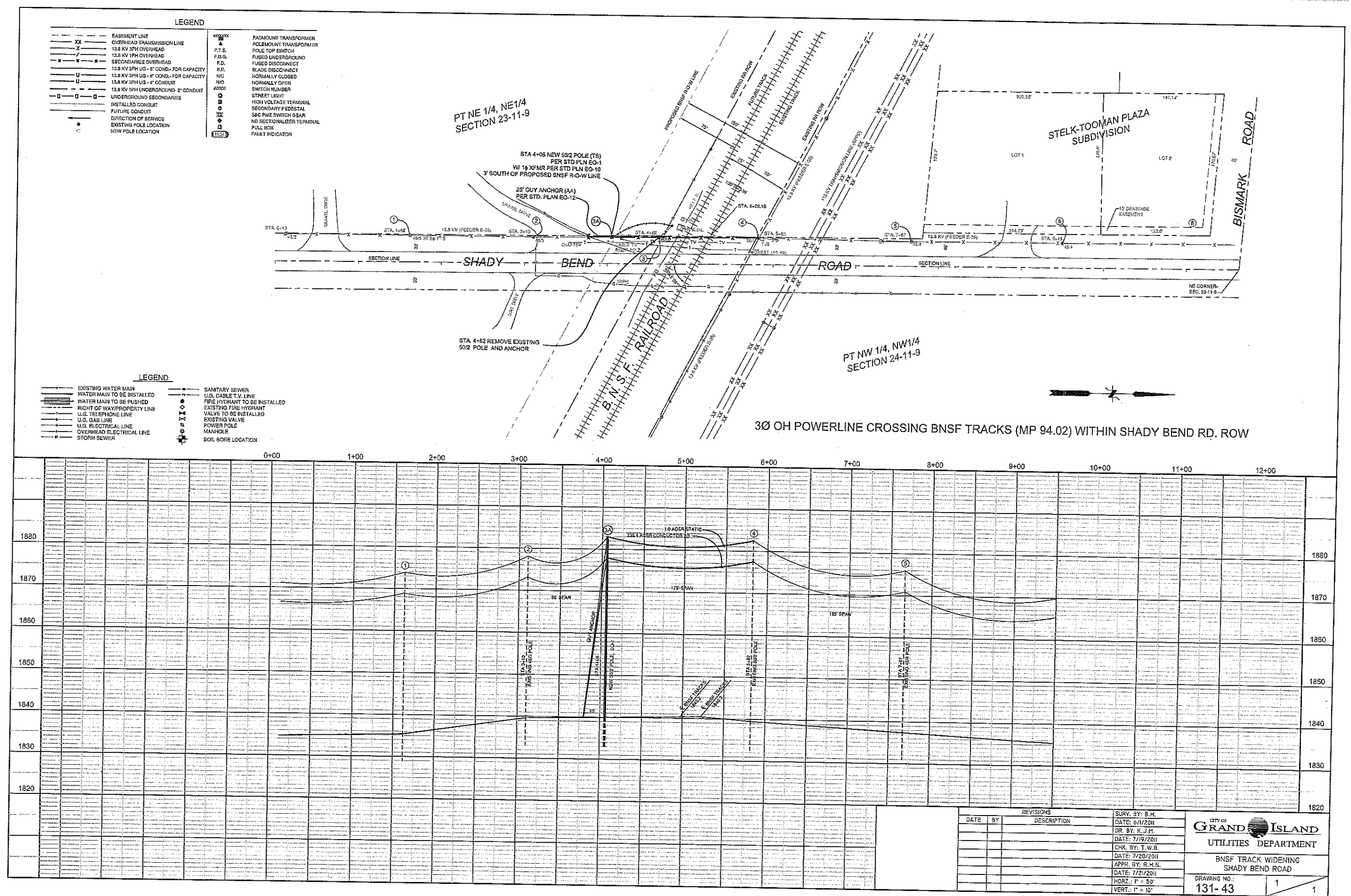
**EXHIBIT A**

**The Plans**

**EXHIBIT B**

**BNSF ROW**





Y.E.A. N.E.A. Soc. 23

MP, 94.10; HM

MP 94.02

Shady Bend Road

**EXHIBIT B**

BR. (12) 93.92

2-16 & 2-14 C.P.T.  
3 Walk on So.

+69 N Poles

**EXHIBIT C**

**Third Party ROW**



**EXHIBIT D**

**The Permit**

## WIRE LINE CROSSING PERMIT

No. PX 89 8039



BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation, hereinafter called "Burlington", whose address is P.O. Box 29136, Overland Park, Kansas 66201-9136, in consideration of the rents to be paid and the covenants to be kept and performed by City of Grand Island, NE, hereinafter called "Permittee", whose address is P.O. Box 1968 City Hall Grand Island, NE 68802, hereby grants Permittee the right to construct, operate, maintain, inspect, use, and remove a wire line facility, including all necessary poles, wires, cables, and conduits together with necessary appurtenances thereto, hereinafter called "Wire Line", upon and across the railroad tracks, and the communication or signal wires, and right-of-way of Burlington, either above or below the surface thereof, for the purpose of transmitting electric current for power or for communication, as hereinafter described: 13.8kv 30 power line 4w 300 amps

A Wire Line across the right-of-way of Burlington ~~below~~/above the surface thereof, and ~~under~~/over the tracks of its railroad at or near MP 94.02 Grand Island, NE, Hall County, Nebraska, to be located at Survey Station 1038 +07, as shown colored red on the print hereto attached, marked Exhibit "A", dated 6/8/89, and made a part hereof.

\*cross out description that does not apply

This permission is given upon the following terms and conditions:

1. Permittee will pay in advance to Burlington for this permit the sum of Four Hundred Fifty Dollars (\$450.00) for the entire period that this permit remains in effect, and Permittee will also pay all taxes and assessments that may be levied or assessed against the Wire Line. This provision shall in no way affect Burlington's right to terminate this permit pursuant to Paragraph 15 hereof. Fee Waived

2. Said Wire Line shall be used for the sole purpose of conducting electric currents at a potential not to exceed 13.8kvvolts.

3. Said Wire Line shall be constructed and maintained in accordance with Burlington's requirements, the National Electric Safety Code, and any statute, order, rule, or regulation of any public authority having jurisdiction. Application and plans shall be submitted by Permittee to Burlington and must be approved by Burlington prior to construction or any reconstruction of said Wire Line. see Exhibit "C"

4. All cost of construction and maintenance of said Wire Line shall be paid by Permittee. If it is necessary, as determined by Burlington's Division Superintendent, for Burlington to perform any portion of the work of construction, maintenance, or removal of said Wire Line, same shall be done at the expense of Permittee. Burlington will determine the costs of any such work and submit bill for same to Permittee and Permittee shall pay such billed amount within 30 days after bill is rendered therefor.

5. If in the judgment of Burlington's Division Superintendent, the construction, maintenance, or continued existence of Wire Line herein contemplated necessitates any change or alteration in the location or arrangement of any wires, structures, or other facilities of Burlington or of third persons, the cost of such change or alteration will be paid by Permittee.



6. Burlington shall have the right, for reasons of safety, to require that repairs be made to said Wire Line, and upon request from Burlington, Permittee shall immediately make such repairs at Permittee's expense. If at any time it becomes necessary in the judgment of Burlington for reasons of safety or otherwise, to require change in the location, elevation, or method of construction of said Wire Line, such changes will be made by Permittee at Permittee's expense within thirty (30) days after being requested to do so. If Permittee fails to do so, Burlington may make such changes and the cost thereof will be paid by Permittee.

7. If Wire Line is to be placed below the surface, Permittee, at Permittee's sole cost and expense, shall excavate for, construct, maintain, and repair said Wire Line, placing the same at least 38 feet ( ) below the bottom of the rails of Burlington's railroad. It is understood that fiber optic cable systems may be buried on Burlington's property. Permittee shall telephone Burlington at 1-800-533-2891 (a 24-hour number) to determine if fiber optic cable is buried anywhere on Burlington's premises to be used by Permittee. If it is, Permittee will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on Burlington's premises. In addition to the liability terms elsewhere in this Agreement, Permittee shall indemnify and hold Burlington harmless against and from all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Permittee, its contractor, agents and/or employees, that causes or in any way or degree contributes to (1) any damage to or destruction of any telecommunications system by Permittee, and/or its contractor, agents and/or employees, on Burlington's property, (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 Burlington's property, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of, such telecommunication company(ies).

8. After the completion of any Wire Line construction, repair, or removal, Permittee shall remove from the premises of Burlington, to the satisfaction of Burlington's Division Superintendent, all falsework and equipment used in such construction, repair, or removal work.

9. Permittee shall, upon the giving of 48 hours advance notice to Burlington's Division Superintendent, have the right to enter the premises of Burlington for the purpose of maintaining, repairing, or removing said Wire Line, and, in the exercise of this right, Permittee shall not unduly interfere with the rights of Burlington or others on or about the premises. In the case of bona fide emergency, the 48 hours notice may be waived; however, if emergency work is necessary, Permittee shall make every effort to notify Burlington that such work is to be done. Permittee shall, at its own expense, restore any facilities on said premises which are in any manner disturbed by such maintenance, repairs, or removal.

10. This permission is granted subject to permits, leases, and licenses, if any, heretofore granted by Burlington affecting the premises upon which said Wire Line is located.

11. If the operation or maintenance of said Wire Line shall at any time cause interference, including but not limited to physical interference, from electromagnetic induction, electrostatic induction, or from stray or other currents, with the facilities of Burlington or of any lessee or licensee of Burlington, or in any manner interfere with operation, maintenance or use by Burlington of its right-of-way, tracks, structures, poles lines, signal and communication lines, radio or other equipment, devices, or other property or appurtenances thereto, Permittee agrees immediately to make such changes in said Wire Line and furnish such protective devices to Burlington and its lessees or licensees as shall be necessary in the judgment of Burlington's representatives to eliminate such interference. The cost of such protective devices and their installation shall be borne solely by the Permittee. If any of the interference covered by this paragraph shall be, in the judgment of Burlington, of such importance to the safety of Burlington's operations as to require immediate corrective action, Permittee, upon notice from Burlington, shall either, at Burlington's election, cease using said Wire Line for any purpose whatsoever and remove the same, or reduce the voltage or load on said Wire Line, or take such other interim protective measures as Burlington may deem advisable until the protective devices required by this paragraph have been installed, put in operation, tested, and found to be satisfactory to correct the interference.

12. Permittee agrees that said Wire Line and the use of same for conducting electric current shall not damage the railroad or structures of Burlington, or the property of any other tenant of Burlington, or any other property upon the premises of Burlington, or be a menace to the safety of Burlington's operations or any other operations conducted on said premises. Permittee does hereby release, indemnify, and save harmless Burlington and Burlington's other tenants, their successors and assigns, from and against all loss, damages, claims, demands, actions, causes of action, costs, and expenses of every character which may result from any injury to or death of any person whomsoever, including but not limited to, employees and agents of the parties hereto, and from loss of or damage to property of any kind or nature to whomsoever belonging, including but not limited to, property owned by, leased to, or in the care, custody, and control of the parties hereto and other tenants of Burlington, when such injury, death, loss, or damage is caused or contributed to by, or arises from, the construction, installation, maintenance, condition, use, operation, removal, or existence of said Wire Line upon Burlington premises. THE LIABILITY ASSUMED BY PERMITTEE SHALL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE LOSS, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BURLINGTON, ITS AGENTS, SERVANTS, EMPLOYEES, OR OTHERWISE.

13. It is understood by the parties that said Wire Line will be in danger of damage or destruction by fire or other causes incident to the operation, maintenance, or improvement of Burlington's property, and Permittee accepts this permit subject to such dangers. It is therefore agreed, as one of the material considerations of this permit, without which the same would not be granted, that Permittee hereby assumes all risk of loss, damage, or destruction to said Wire Line without regard to whether such loss be occasioned by fire or sparks from locomotives or other causes incident to or arising from the movement of locomotives, trains, or cars of any kind, misaligned switches, or in any respect from the operation, maintenance, or improvement of Burlington's property, OR TO WHETHER SUCH LOSS OR DAMAGE BE THE RESULT OF NEGLIGENCE OR MISCONDUCT OF BURLINGTON OR ANY PERSON IN THE EMPLOY OR SERVICE OF BURLINGTON, or of defective appliances, engines, or machinery, and Permittee does hereby save and hold harmless Burlington from all such damage, claims, and losses.

14. It is agreed that the provisions of this permit are for the equal protection of any other railroad company or companies including National Railroad Passenger Corporation (AMTRAK) heretofore or hereafter granted the joint use of Burlington's property upon which the above described Wire Line is located.

15. Either party hereto shall have the right to terminate this permit, and the same shall terminate, at the expiration of ninety (90) days after the giving of written notice by one party to the other of intention to terminate same. Any such notice shall be good if properly deposited with the United States Postal Service addressed to the party being notified at such party's post office address above stated. Upon termination Permittee shall promptly remove the Wire Line from Burlington's premises and if Permittee shall fail to remove same or any other material or property owned by it within the time prescribed in a notice of termination, Burlington may appropriate such property to its own use without compensation, or may remove the same at the expense of Permittee.

16. This permit shall be binding upon, and inure to the benefit of the parties, their successors and assigns; provided, however, that Permittee shall not assign this permit or any interest therein without Burlington's written consent.

17. Nothing herein contained shall imply or import a covenant on the part of Burlington for quiet enjoyment.

- 18 Insurance required and to remain in force for one full year.
- A. Public Liability and Property Damage Insurance  
Minimum amounts as follows: \$500,000 \$1,000,000
  - B. Railroad Protective Policy  
Minimum amounts as follows: \$2,000,00 \$6,000,000



19. In the event of Permittee's removal of the Wire Line from Burlington's premises, Permittee agrees to notify Burlington's Division Superintendent in writing of Permittee's removal of such Wire Line and terminate this Agreement effective with the date of removal of said Wire Line from Burlington's premises.

IN WITNESS WHEREOF, the parties hereto have executed these presents this 29th day of August, 1989.

BURLINGTON NORTHERN RAILROAD COMPANY

By T. R. Jannagin

Title Division General Manager

City Of Grand Island  
(PERMITTEE)

By Chuck Bassich

Title MAYOR

Marti Ann Hill, City Clerk  
(Witness)



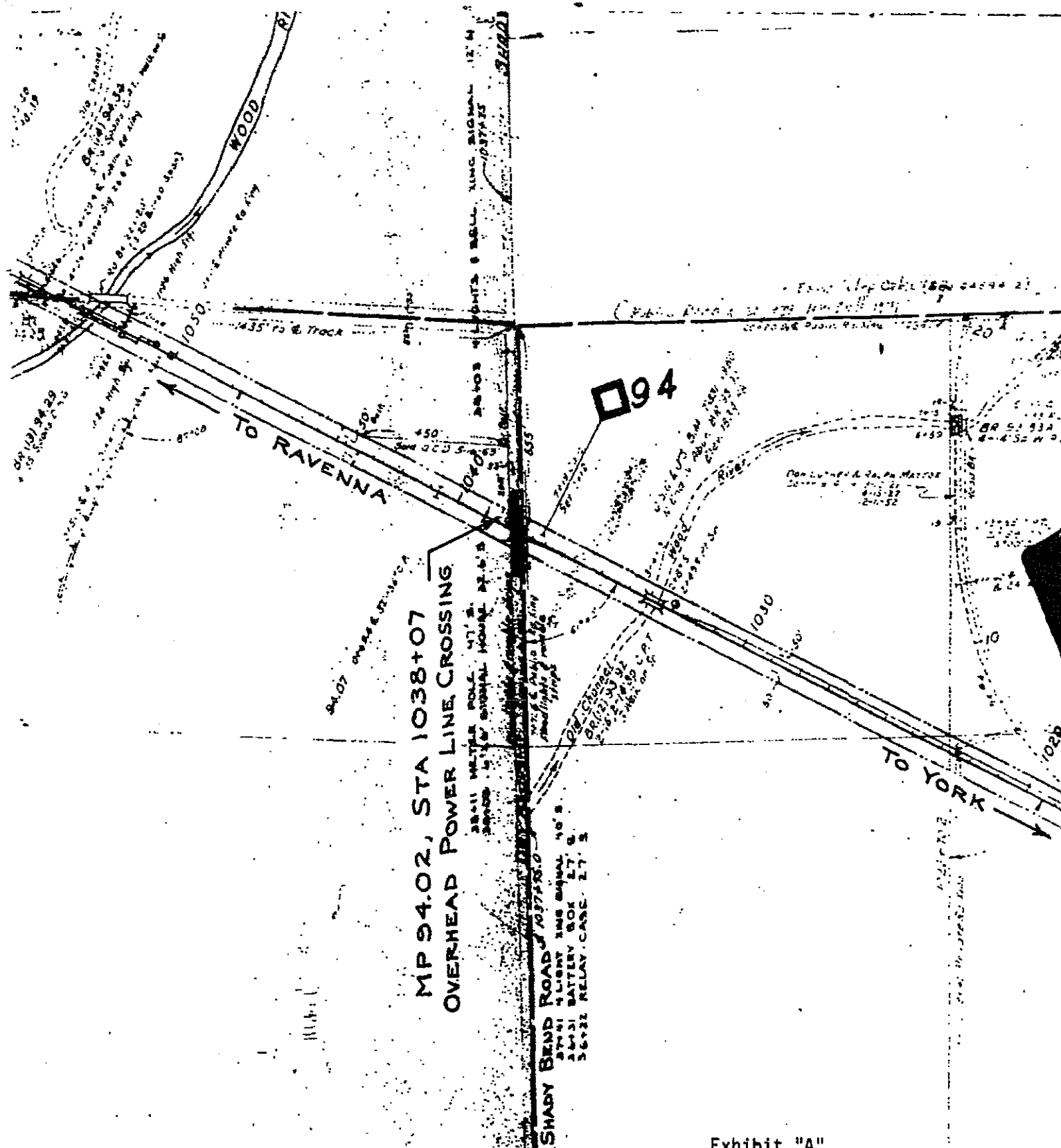


Exhibit "A"

SCALE 1"=400'

GRAND ISLAND, NEBRASKA  
6/8/89  
OVERHEAD POWER LINE CROSSING  
GRAND ISLAND UTILITIES DEPT.  
GRAND ISLAND, NEBRASKA  
LINE SEGMENT 4

GENERAL REQUIREMENTS FOR POLE AND WIRE LINE CROSSINGS

(OD-19)



OVERHEAD CROSSINGS

Burlington Northern Railroad will consider each wire crossing on its merits and reserves the right to require higher standards than specified in either state or national codes.

Structure and conductor conflict shall be minimized by selecting the best location and grade of construction such that the over track span will remain standing after a failure in any adjacent span.

For single wood pole construction, poles adjacent to the crossing span shall be at least Class 4 and adjoining poles shall be Class 5 or stronger. For electric supply lines, normally the crossing span shall not exceed 150 feet with adjacent span not exceeding  $1\frac{1}{2}$  times the crossing span length. For communication lines, the crossing span shall not exceed 100 feet in heavy loading district, 125 feet in medium loading district, and 150 feet in light loading district, and adjacent span shall not exceed  $1\frac{1}{2}$  times the crossing span length. For heavier type construction, longer spans will be considered.

In general, all crossing span poles shall be side guyed and head guyed. Double crossarms with flat construction shall be used with dead end construction desirable.

To ensure that overhead wire crossings are clear from contact with any equipment passing under such wires, communication lines shall be constructed with a minimum clearance above top of rail of 30 feet and electric lines with a minimum clearance of 36 feet or greater when required by appropriate codes for high voltage wires. It is desirable that no overhead wire crossings be built within 200 feet of any railroad bridge. Where such construction is necessary, 60 feet overhead clearance above top of rail is required.

UNDERGROUND CROSSINGS

Underground electric distribution supply lines may be buried directly in the ground provided that the top of the cables are placed a minimum of 42" below the base of rail or 36" below the bottom of adjacent drainage ditches, whichever is lower. Applicable statutory codes shall prevail if a greater depth is specified. Cables used for communications as defined in Article 800 of the current National Electrical Code shall be approved for direct burial and shall be buried to a depth as specified above. Cables used for secondary distribution, rated 600 volts or less, shall be type USE or UF, or other approved types, installed according to the current National Electrical Code, except that the depth of burial shall be as specified above. Cables rated more than 600 volts shall meet the current National Electrical Code and the current National Electrical Safety Code requirements for shielding and shall have a bare concentric neutral consisting of annealed copper wires coated per applicable IPCEA specification applied spirally over the insulation with uniform spacing between the wires. Trench backfill shall include a sand cushion of 4" minimum completely around the cables with the rest of the backfill compacted to the same density as the adjoining earth.

Warning signs shall be placed over the cable at each right-of-way line and 12' 6" on each side of each track or group of tracks. If the right-of-way line is not over twenty-five feet from the nearest track, the placement of a sign at 12' 6" from the track shall not be required. Signs shall be 18" high by 24" wide, mounted on single post with top of sign four feet above ground level. Lettering shall be black BPR alphabet, Series C, on a white background. In 2" lettering shall be, BURIED POWER LINE, and in 1" lettering the number of volts, depth below top of tie, owner's name, and emergency telephone number.

If subgrade conditions will not permit direct burial as outlined above, the underground crossing shall be in conduit or duct which is structurally designed for rail loadings, not to exceed a Cooper's E 72 loading. Plans shall be submitted for approval.

In addition to the information shown on the application, a copy of the specifications of the power cable used and a description of over-current and fault-current protection being provided for that particular power circuit shall be attached as a part of the application.

NOTE: BURLINGTON NORTHERN RAILROAD WILL NOT ALLOW OPEN TRENCH INSTALLATION. ALL UNDERGROUND UTILITIES MAY ONLY BE INSTALLED BY JACKING AND BORING METHODS. UNDERGROUND WIRE LINE CROSSINGS SHALL BE IN CONDUIT CASINGS.

## **SUPPLEMENTAL AGREEMENT**

This **SUPPLEMENTAL AGREEMENT**, made this 9<sup>th</sup> day of September, 2011, subject to the terms and conditions set forth in the original agreement, between **BNSF RAILWAY COMPANY**, a Delaware corporation, its successors and assigns, (hereinafter called "Licensor") and the **CITY OF GRAND ISLAND** (hereinafter called "Licensee").

### **RECITALS:**

Licensor and Licensee are now parties to an agreement dated August 29, 1989, Licensor's Contract No. PX898039, together with any and all modifications, supplements and amendments thereto (hereinafter called "Original Contract"), relating to a 13.8 kV 30 power line.

### **AGREEMENT:**

It is mutually agreed that the following modification(s) will be made to the Original Contract:

1. The Original Contract shall be modified as follows:

**PREMISES.** That property at or near the station of Grand Island, County of Hall, State of Nebraska, Line Segment 0004, Mile Post 94.02, shown by bold line upon the print No. 1-52738, dated September 7, 2011 marked "Exhibit A", attached hereto and made a part hereof ("Premises").

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 combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$ 4,000,000 but in no event less than the amount otherwise carried by the Licensee. Coverage must be purchased on a post 1998 ISO occurrence or equivalent and include coverage for, but not limited to, the following:
  - ◆ Bodily Injury and Property Damage
  - ◆ Personal Injury and Advertising Injury
  - ◆ Fire legal liability
  - ◆ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Waiver of subrogation in favor of and acceptable to **Licensor**.

Shady Bend

- ◆ Additional insured endorsement in favor of and acceptable to *Licensor and Jones, Lang, LaSalle Global Services RR, Inc.*
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by *Licensor*.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to *Licensor* employees.

No other endorsements limiting coverage may be included on the policy.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired
- ◆ Waiver of subrogation in favor of and acceptable to *Licensor*.
- ◆ Additional insured endorsement in favor or and acceptable to *Licensor*.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by *Licensor*.

C. Workers Compensation and Employers Liability Insurance. This insurance shall include coverage for, but not limited to:

- ◆ Licensee's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.  
This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:
- ◆ Waiver of subrogation in favor of and acceptable to *Licensor*.

D. Railroad Protective Liability Insurance. This insurance shall name only the Licensor as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Electric Supply Line. **THE CONSTRUCTION OF THE ELECTRIC SUPPLY LINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Electric Supply Line is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)

- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to include Evacuation Expense Coverage Endorsement.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the Licenser prior to performing any work or services under this Agreement

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate in Licenser's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$400.00.

- ☐ I **elect** to participate in Licenser's Blanket Policy;
- ☐ I **elect not** to participate in Licenser's Blanket Policy.

**Other Requirements:**

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

Licensee agrees to waive its right of recovery against Licenser for all claims and suits against Licenser. In addition, its insurers, through policy endorsement, waive their right of subrogation against Licenser for all claims and suits. The certificate of insurance must reflect waiver of subrogation endorsement. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Licenser for loss of its owned or leased property or property under its care, custody or control.

Licensee is not allowed to self-insure without the prior written consent of Licenser. If granted by Licenser, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licenser liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Licensee's insurance will be covered as if Licensee elected not to include a deductible, self-insured retention, or other financial responsibility for claims.

Prior to commencing the Work, Licensee shall furnish to Licenser an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Licenser in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon request from Licenser, a certified duplicate original of any required policy shall be furnished.

Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's 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.

If coverage is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this contract. Annually, Licensee agrees to provide evidence of such coverage as required hereunder.

Licensee represents that this License 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. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five 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.

If any portion of the operation is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

Failure to provide evidence as required by this section shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Licensee's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.

For purposes of this section, Licensor shall mean "Burlington Northern Santa Fe Corporation", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The insurance is procured from an underwriter of BNSF and the price is subject to change if the cost from the underwriter changes. Licensor will cover the RPLI cost for this relocation project under AFE# A110658.

3. (a) TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL [AND SHALL CAUSE ITS CONTRACTOR TO] RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LICENSOR AND LICENSOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

(i) THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,

(ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,

(iii) LICENSEE'S OCCUPATION AND USE OF THE PREMISES,

(iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED BY LICENSEE, OR

(v) ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER,

EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH LICENSEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.



- (b) **FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN SECTION 21(a), LICENSEE SHALL [AND SHALL CAUSE ITS CONTRACTOR TO] NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS WHETHER BASED ON THE STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT RAILROAD IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE ELECTRIC SUPPLY LINE FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LICENSEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LICENSEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL NOT IN ANY WAY SUBJECT LICENSOR TO CLAIMS THAT LICENSOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL LICENSOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**
- (c) **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE FURTHER AGREES, [AND SHALL CAUSE ITS CONTRACTOR TO] REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF LICENSEE OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**
- (d) Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnatee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnatee. Licensee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees,

investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

**PERSONAL PROPERTY WAIVER**

4. **ALL PERSONAL PROPERTY OF LICENSEE, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

Except as herein modified, the Original Contract shall continue in full force and effect.

Staubach Global Services, Inc. is acting as representative for BNSF Railway Company.

**IN WITNESS WHEREOF**, this Supplemental Agreement has been duly executed in duplicate by the parties hereto as of the day and year first above written.

**BNSF RAILWAY COMPANY**

Jones Lang LaSalle Global Services RR, Inc., its  
Attorney in Fact  
3017 Lou Menk Drive, Suite 100  
Fort Worth, TX 76131-2800

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

Ed Darter  
Vice President – National Accounts

**CITY OF GRAND ISLAND**

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

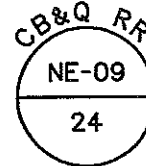
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# EXHIBIT "A"

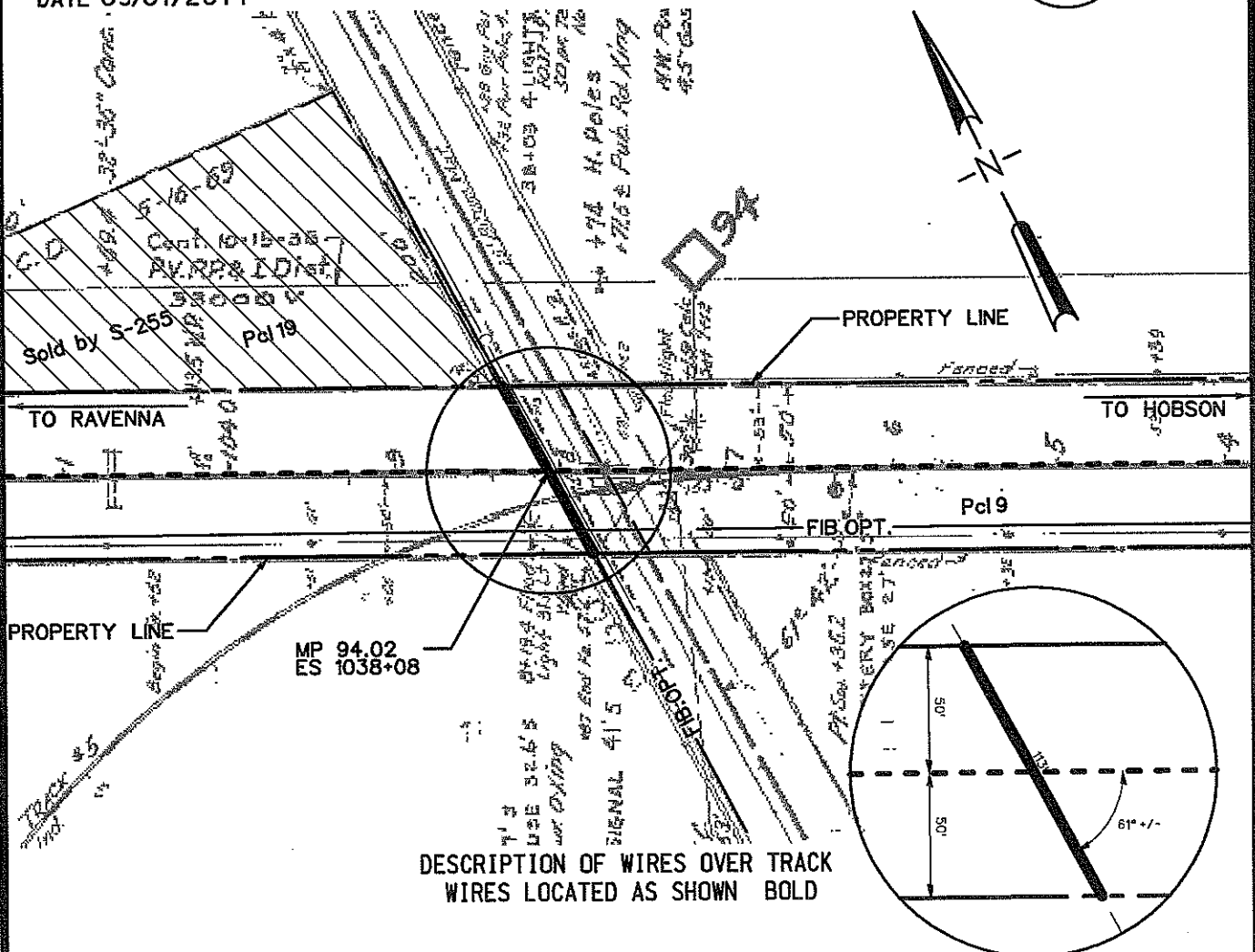
ATTACHED TO CONTRACT BETWEEN  
BNSF RAILWAY COMPANY  
AND  
CITY OF GRAND ISLAND

SCALE: 1 IN. = 100 FT.  
NEBRASKA DIV.  
RAVENNA SUBDIV. L.S. 0004  
DATE 09/07/2011

SECTION: 23  
TOWNSHIP: 11N  
RANGE: 09W  
MERIDIAN: 6PM



MAP REF. S63982



DESCRIPTION OF WIRES OVER TRACK  
WIRES LOCATED AS SHOWN BOLD

TYPE	NUMBER	VOLTAGE	DISTANCE ABOVE TOP OF RAIL	CLEARANCE RAILWAY COMPANY'S WIRES
ELECTRIC	4	13.3KV	35'	-

NEAR GRAND ISLAND  
COUNTY OF HALL

STATE OF NE

JWD

## UTILITY RELOCATION AGREEMENT

THIS UTILITY RELOCATION AGREEMENT (this "**Agreement**") is entered into the \_\_\_\_\_ day of \_\_\_\_\_, 2011 (the "**Effective Date**"), between the **CITY OF GRAND ISLAND**, a municipality of the State of Nebraska (the "**Utility Company**"), and **BNSF RAILWAY COMPANY**, a Delaware corporation ("**BNSF**").

### RECITALS

A. BNSF proposes to construct an additional rail line in Hall County, Nebraska (the "**Project**").

B. BNSF has notified the Utility Company that certain of its utility facilities and appurtenances (the "**Utilities**") are in locational conflict with the Project and has requested that the Utility Company undertake a relocation of the Utilities (the "**Work**") as necessary to accommodate the Project.

C. The Utility Company has provided BNSF with a copy of all documentation outlining the Work to be performed and the design and specifications of all related appurtenances, adjustments, existing utilities, and relocations, which outlining documentation will also include the exact location of the relocated Utilities (collectively, the "**Plans**"), which Plans have been approved by BNSF and a copy of which Plans are attached hereto and made a part hereof as **Exhibit A**.

D. Pursuant to the Plans, the Utility Company shall relocate the Utilities to (i) railroad right of way owned and controlled by BNSF (the "**BNSF ROW**"), the BNSF ROW being more particularly described in **Exhibit B** attached hereto, and (ii) other right of way and/or property owned or controlled by third parties ("**Third Party ROW**"), the Third Party ROW being more particularly described in **Exhibit C** attached hereto. The BNSF ROW and the Third Party ROW are collectively referred to in this Agreement as the "**Relocated Premises**".

E. The Utility Company has obtained a permit or an amendment to its existing permit (either, the "**Permit**") to carry out the Work on the BNSF ROW in accordance with the approved Plans, a copy of which Permit is attached hereto and made a part hereof as **Exhibit D**.

F. BNSF and the Utility Company desire to enter into this Agreement to outline their respective obligations regarding the cost and timely execution of the Work by the Utility Company.

### AGREEMENTS

For and in consideration of the foregoing recitals which are incorporated herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BNSF and the Utility Company agree as follows:

1. The Utility Company will commence its performance of the Work within five (5) days of the Effective Date of this Agreement (the "**Commencement Date**") and complete the Work within Thirty (30) days from the Effective Date of this Agreement (the "**Completion Date**"), in accordance with the approved Plans. Once commenced, the Work shall be performed and prosecuted to completion with due diligence: (i) in accordance with the Plans, (ii) in accordance with the Permit, (iii) in conformity and compliance with all applicable laws and highest generally accepted industry standards for such Work, and (iv) in a good and workmanlike manner, free from defects in materials and workmanship.

2. The Utility Company agrees that it shall obtain all necessary property rights (including but not limited to all property rights necessary to relocate the Utilities to the Third Party ROW), approvals, permits, and/or authorizations, whether private or governmental, for the Work and/or the relocation of the Utilities to the Relocated Premises (collectively, the "**Third Party Permits**"). Upon BNSF's request, the Utility Company shall promptly provide BNSF with copies of all Third Party Permits as well as all documents relating to any denials of approvals, permits, and/or authorizations, whether private or governmental, in connection with the Work.

3.

3.1 To the extent that the costs and expenses of the Work incurred by Utility Company arise from or are attributable to the relocation of the Utilities on or to the BNSF ROW, the costs and expenses of such Work shall be borne solely by the Utility Company, and BNSF shall have no responsibility or obligation to fund or reimburse the Utility Company for the costs and expenses associated with such Work or anything pertaining thereto.

3.2 To the extent that the costs and expenses of the Work incurred by Utility Company arise from or are attributable to the relocation of the Utilities on or to the Third Party ROW, subject to the terms and conditions set forth in this Agreement, BNSF hereby agrees to reimburse the Utility Company to cover its actual costs and expenses associated with the Work, at the City of Grand Island's Retail rate, including labor and material, but not including overhead and betterments, in accordance with the BNSF Utility Accommodation Specifications policy and requirements, provided, however, that the amount BNSF agrees to reimburse the Utility Company shall not exceed Two Thousand Two Hundred Dollars and 00/100 (\$2,200.00) (the "**Reimbursement Cap**").

4. Upon timely completion of the Work and in accordance with the approved Plans, the Utility Company shall submit to BNSF all invoices that evidence that the costs and expenses have been paid for in full by the Utility Company. The invoices shall also reflect that the costs and expenses incurred by the Utility Company were in accordance with the approved Plans and that the costs and expenses incurred by the Utility Company include only actual costs and do not include overhead or Betterments. For purposes of this Agreement, a "Betterment" means any upgrading of the Utilities that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Utility Company, including, but not limited to, an increase in the capacity, capability, efficiency or function of the Utilities over that provided by the existing Utilities or an expansion of the existing Utilities. Any invoices reflecting such

overhead or Betterments will be denied reimbursement by BNSF. All such costs and expenses as well as all other costs and expenses that exceed the Reimbursement Cap will be borne solely by the Utility Company.

5. As a condition of reimbursement by BNSF for the costs and expenses of the Work in accordance with the requirements for such reimbursement contained in this Agreement, the Utility Company must (i) commence the Work by the Commencement Date, and (ii) complete the Work by the Completion Date. The Completion Date may be extended for delays caused by events outside the Utility Company's control, including an event of force majeure, which shall include a strike, war or act of war (whether or not an actual declaration of war is made), insurrection, riot, act of public enemy, accident, fire, flood, or other act of God, sabotage, or other similar events, interference by BNSF or any other third party with the Utility Company's ability to proceed with such relocation, or any other event in which the Utility Company has exercised all due care in the prevention thereof so that the causes or other events are beyond the control, and without the fault or negligence, of the Utility Company. The Utility Company acknowledges and agrees that it will conduct the Work associated with the relocation contemplated under this Agreement at its own risk, and that BNSF makes no warranties or representations regarding the existence or location of the Utilities or any other utilities currently within its right-of-way in the Project.

6. Utility Company shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction relating to the performance of the Work.

7. Prior to commencing the Work, Utility Company shall and shall cause its contractor to (i) comply with all BNSF's applicable safety rules and regulations, and (ii) complete the safety-orientation program at the BNSF's Internet Web site "<http://contractororientation.com>". This program must be completed no more than one year in advance of Utility Company's performance of the Work.

8. Utility Company shall notify BNSF's Roadmaster, Don Marget at 14<sup>th</sup> & Grant Avenue, York, NE 68467, telephone (402) 362-5501, at least five (5) business days prior to performing the Work. After completion of use of the Work, Utility Company shall notify BNSF in writing that such use has been completed.

9. Utility Company shall bear the cost of flagger services and other safety measures provided by BNSF in connection with the Work, when deemed necessary by BNSF's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this paragraph.

10. In performing the Work, Utility Company shall use only public roadways to cross from one side of BNSF's tracks to the other.

11. Under no conditions shall Utility Company be permitted to conduct any tests, investigations, or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools, or other materials, within fifty (50) feet of the centerline of any BNSF track unless Utility Company has obtained prior written approval from BNSF. Utility Company shall, at its sole cost and expense, perform all the Work in such a manner as not at any time to be a source of danger to or interference with the existence or use of present or future tracks, roadbed, or property of BNSF, or the safe operation and activities of BNSF. If ordered to cease performance of the Work at any time by BNSF's personnel due to any hazardous condition, Utility Company shall immediately do so. Notwithstanding the foregoing right of BNSF, the parties agree that BNSF has no duty or obligation to monitor Utility Company's performance of the Work to determine the safe nature thereof, it being solely Utility Company's responsibility to ensure that Utility Company's performance of the Work is safe. Neither the exercise nor the failure by BNSF to exercise any rights granted in this Section will alter the liability allocation provided by this Agreement.

12. Upon completion of Work or upon termination of this Agreement, whichever shall occur first, Utility Company shall, at its sole cost and expense:

- (a) remove all of its equipment from BNSF property;
- (b) report and restore any damage arising from, growing out of, or connected with the Work;
- (c) remedy any unsafe conditions created or aggravated by the Work; and
- (d) leave all BNSF property in the condition which existed as of the Effective Date of this Agreement.

13. BNSF and the Utility Company shall each pay their respective attorneys' fees.

14. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one agreement, but in making proof hereof it shall only be necessary to produce one such counterpart.

15. This Agreement (a) shall be binding upon and inure to the benefit of BNSF and Utility Company and their respective legal representatives, successors and assigns; (b) may be modified or amended only by a writing signed by each party hereto; and (c) shall be governed by and construed in accordance with the laws of the State of Nebraska. Notwithstanding anything herein to the contrary, the Utility Company may not assign its rights and obligations under this Agreement without the prior written consent of BNSF. BNSF may assign its rights or obligations under this Agreement without the Utility Company's consent, but with notice to the Utility Company.

The parties hereto have caused this Agreement to be executed in duplicate by their duly authorized representatives as of the date below each party's signature; to be effective, however, as of the Effective Date.

**CITY OF GRAND ISLAND**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**BNSF RAILWAY COMPANY**

By: Luddy Arias  
Printed Name: Luddy Arias  
Title: Manager - Acquisition & Development  
Date: 9/14/2011



## **EXHIBIT A**

### **The Plans**

**EXHIBIT B**

**BNSF ROW**

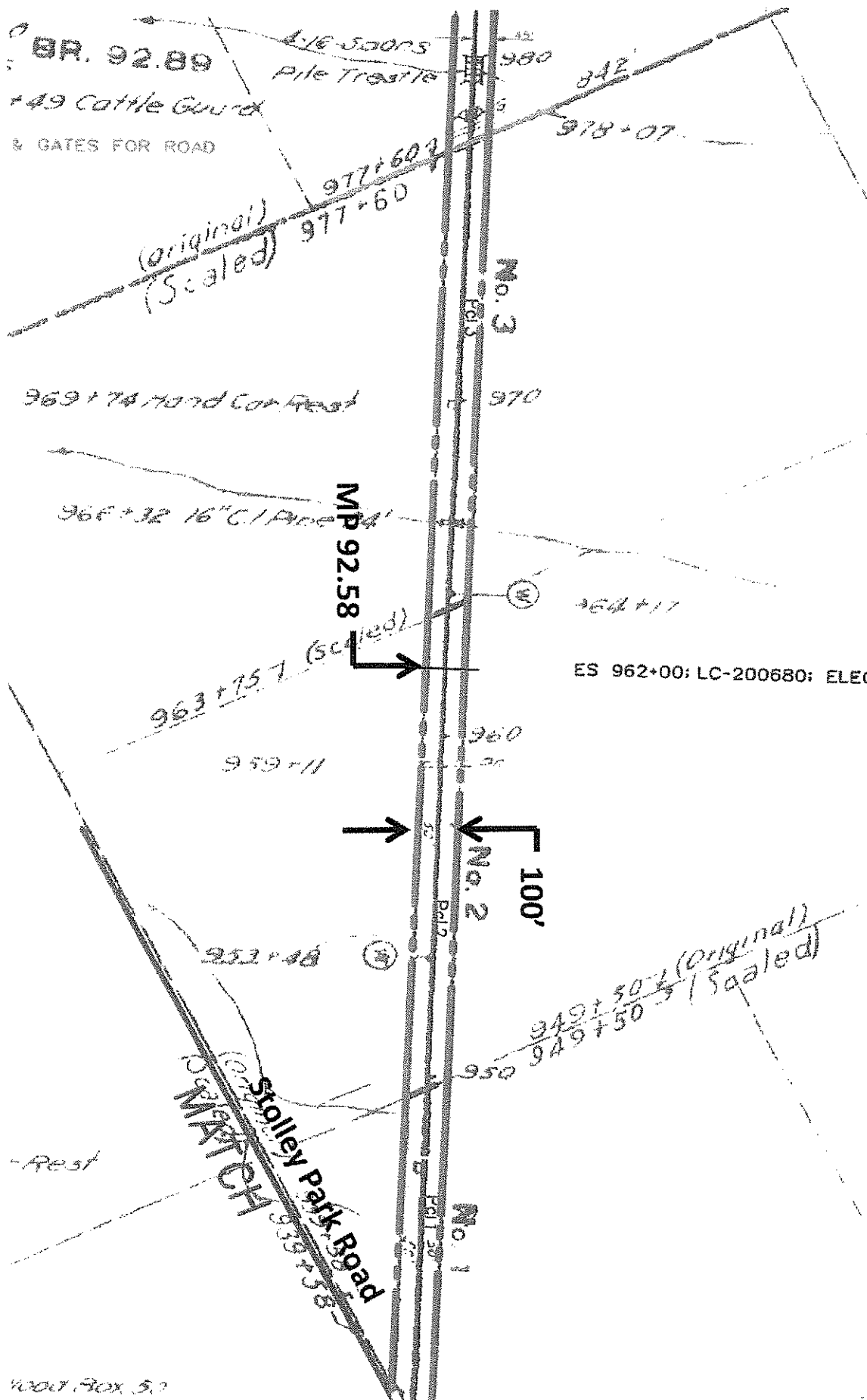
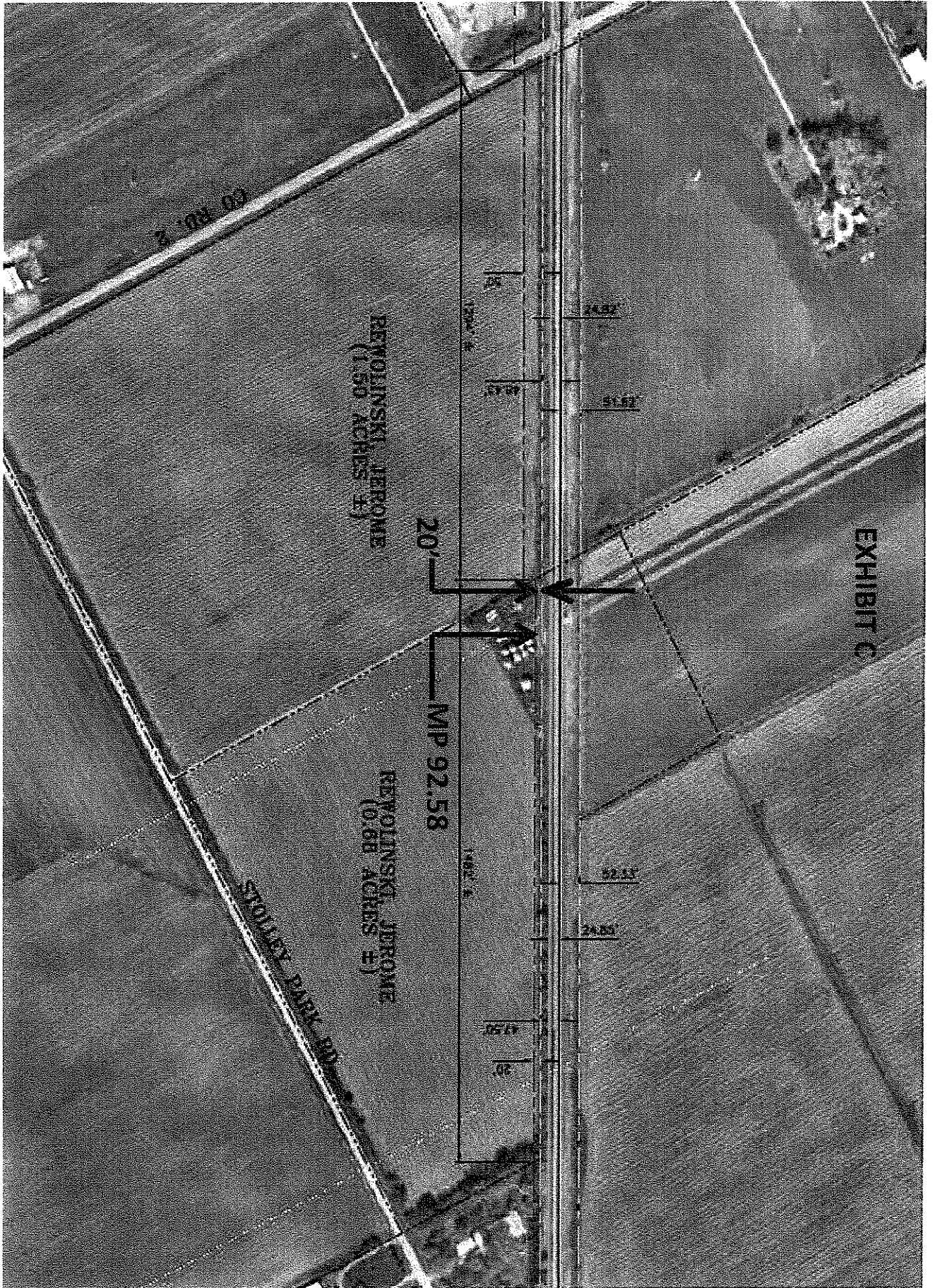


EXHIBIT B

**EXHIBIT C**

**Third Party ROW**



## **EXHIBIT D**

### **The Permit**

AGREEMENT FOR WIRE LINE UNDER RIGHT OF WAY

THIS AGREEMENT, made and entered into as of the 10th day of April, 1970,  
BURLINGTON NORTHERN INC.  
between ~~THE CITY OF GRAND ISLAND, A MUNICIPALITY OF THE STATE OF NEBRASKA~~, hereinafter called "Railroad", and  
CITY OF GRAND ISLAND, a municipality  
of the State of Nebraska  
hereinafter called "Licensee".

WITNESSETH: Railroad, in consideration of Fifty Dollars (\$50.00) to be paid by Licensee to Railroad immediately upon execution of this agreement, ~~and in consideration of the faithful performance by Licensee of its covenants herein contained, hereby grants unto Licensee, upon the conditions hereinafter set forth, license to lay~~  
its three (3) power

wires in a wrought iron pipe or other type of  
conduit underneath the property and railroad tracks of Railroad, and to place poles on said property at each end of said pipe or conduit, at or near Railroad Survey Station 962 + 00, Mile Post 92.58, 0.76 mile west of P.O. Box (3.69 miles east of Grand Island), Nebraska,  
in the SE 1/4, SW 1/4, Section 10, Township 11 North, Range 8 West of the Sixth Principal Meridian, Merrick County, Nebraska,

upon the following terms and conditions:

1. The pipe or conduit and said poles and the aerial construction shall be located as shown on the attached plan No. 1326-33, identified by the signature thereon of T. L. Livingston, which is made a part hereof.

The pipe or conduit shall be laid with the top of same not less than three (3) feet six (6) inches below the top of the tie, but not less than three (3) feet below the surface of the ground at any point on Railroad's property.

Said undercrossing shall be constructed in accordance with details shown on form number 1415 hereto attached and made a part hereof, identified by the signature thereon of Bob G. Renard.

2. The kind and quality of material used for said pipe or conduit, and kind and quality of the terminal poles, and manner of construction, maintenance, repair, replacement or removal thereof shall be subject to the approval of Railroad, and Licensee expressly agrees that forty-eight (48) hours before beginning any work of whatever nature upon and in connection with the laying, maintenance, repair, removal or renewal of said pipe or conduit, or poles, the Superintendent of Railroad shall be notified by Licensee and may be present, in person or by representative, to see that the material and work meets with the approval and satisfaction of Railroad.

The construction and maintenance of said underground crossing shall comply with the requirements of the current National Electrical Safety Code, except as otherwise herein specified.

3. If Railroad, for itself or on behalf of its lessees or grantees, should at any time or from time to time find it necessary or desirable to make changes in any existing building, track, structure or overhead or underground installation, or place any additional building, track, structure or overhead or underground installation on any premises where said pipe, wires or poles are located, Licensee agrees that it will promptly, at its own cost and expense and without cost or expense to Railroad or Railroad's lessees or grantees, upon receipt of written notice from Railroad so to do, relocate, change or remove said pipe, wires and poles as requested or required by Railroad, and in the event of its failure so to do, Railroad may perform such work at the expense of Licensee.

4. The pipe or conduit, and the wires contained therein, and the poles, shall be at all times maintained by Licensee in an entirely safe and secure manner, and Licensee shall be charged with all duty, liability and obligation as to the due and proper construction, maintenance, repair, use and operation of same on and around Railroad's said property; but if at any time Railroad shall consider that the manner of constructing, maintaining, repairing, renewing, using or operating said pipe or conduit, wires and appurtenances, or poles, adopted by said Licensee, is not due and proper, then said Licensee will at once at its own expense, upon notice from Railroad, make such changes and repairs as Railroad may require.

Should Licensee fail or neglect to make such changes, Railroad may, at its election, either make such changes and repairs at the expense of Licensee, or terminate this agreement, and immediately and without notice remove from its property, at the expense of Licensee, said pipe or conduit, wires and appurtenances or poles of Licensee.

5. The wires in the conduit covered by this agreement shall be used exclusively for power transmission at potentials not exceeding 120/240 volts and no material change shall be made in the voltage or number of wires without the written consent of Railroad.

6. The depositing of a notice by Railroad in any mail box of the United States, addressed to Licensee at address shown above, shall constitute a service of said notice upon said Licensee.

7. The permission hereby granted shall not be assigned by Licensee without the written consent of Railroad, and, unless otherwise terminated as hereinbefore provided, shall continue for a period of one (1) year from the date hereof, and thereafter until terminated by either party hereto giving to the other party not less than thirty (30) days' notice in writing of its desire to terminate the same. Licensee hereby accepts the permission above granted, subject to the strict and punctual performance of all of said terms and conditions by it on its part, and further agrees that, upon the termination of this permission, it will remove all of the said property from the property of Railroad and surrender up the quiet and peaceable possession to said Railroad of all its property affected by the terms of this agreement.

8. Licensee shall at all times protect, indemnify and save harmless Railroad from and against all liability, claims, demands, judgments, loss, damages, costs and expenses, including court costs and attorneys' fees, arising from damage to, loss, or destruction of the property of any person or persons whomsoever, or from injury to or death of any person or persons whomsoever, including the parties hereto and any employees of either or both parties hereto, when same is due to or in any manner results from or grows out of the installation, construction, reconstruction, relocation, existence, modification, adjustment, change, maintenance, repair, renewal, use, operation or removal of the said poles, fixtures, pipe, conduit, wires or appurtenances, or out of the subsidence of the soil over said pipe or conduit, and whether caused or contributed to by the negligence of Railroad, or otherwise.

The word "Licensee" wherever used herein shall be held to include such persons, co-partnerships or corporations as are mentioned in the title hereof as Licensee.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate as of the date first above written.

~~EMILY M. BENTLEY, J.C.~~  
~~CHIEF OF POLICE, BIRMINGHAM RAILROAD COMPANY~~

MP By /s/ J. S. Hamer  
~~CHIEF OF POLICE, BIRMINGHAM RAILROAD COMPANY~~

CITY OF GRAND ISLAND

Licensee

APPROVED:

As to Form . . .

/s/ R. S. Skov  
Law Department

As to Property Interests

/s/ H. G. Schelling  
Land Department

As to Description

/s/ A. J. Strobel  
~~CHIEF OF POLICE, BIRMINGHAM RAILROAD COMPANY~~  
Manager Engineering  
As to Communications Department

/s/ E. F. Hutchinson  
Communications Department

As to Electrical Department

/s/ H. C. Nelson  
Electrical Engineer

As to Signal Department

/s/ H. R. Roberts  
Signal Engineer

By /s/ John Litter  
Title Pres. of Council and Ex officio Mayor



RESOLUTION

RESOLVED, by the City Council of the City of Grand Island, Nebraska:

That, the Mayor be and is hereby authorized and directed to enter into agreement with the Burlington Northern Inc. in connection with the City's construction of a 120/240 three-wire power line undercrossing of track and right of way at Mile Post 92.58, 0.76 mile west of Power, Merrick County, Nebraska, illustrated by exhibit print 176-33.

(Albee, Bredthauer, Burke, Dittler, Eaton, ~~McGahan~~, McGahan)

ATTEST:

G. J. McLean  
City Clerk

The above is a copy of the records showing that the resolution referred to was passed by the City Council on the 27 day of May, 1976.

G. J. McLean  
City Clerk



## **SUPPLEMENTAL AGREEMENT**

**This SUPPLEMENTAL AGREEMENT**, made this 9<sup>th</sup> day of September, 2011, subject to the terms and conditions set forth in the original agreement, between **BNSF RAILWAY COMPANY**, a Delaware corporation, its successors and assigns, (hereinafter called "Licensor") and the **CITY OF GRAND ISLAND** (hereinafter called "Licensee").

### **RECITALS:**

Licensor and Licensee are now parties to an agreement dated April 10, 1970, Licensor's Contract No. LC200680, together with any and all modifications, supplements and amendments thereto (hereinafter called "Original Contract"), relating to an underground power line.

### **AGREEMENT:**

It is mutually agreed that the following modification(s) will be made to the Original Contract:

1. The Original Contract shall be modified as follows:

**PREMISES.** That property at or near the station of Grand Island, County of Hall, State of Nebraska, Line Segment 0004, Mile Post 92.58, shown by bold line upon the print No. 1-52722, dated September 6, 2011 marked "Exhibit A", attached hereto and made a part hereof ("Premises").

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 combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$ 4,000,000 but in no event less than the amount otherwise carried by the Licensee. Coverage must be purchased on a post 1998 ISO occurrence or equivalent and include coverage for, but not limited to, the following:
  - ◆ Bodily Injury and Property Damage
  - ◆ Personal Injury and Advertising Injury
  - ◆ Fire legal liability
  - ◆ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Waiver of subrogation in favor of and acceptable to *Licensor*.

- ◆ Additional insured endorsement in favor of and acceptable to *Licensors and Jones, Lang, LaSalle Global Services RR, Inc.*
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by *Licensors*.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to *Licensors* employees.

No other endorsements limiting coverage may be included on the policy.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired
- ◆ Waiver of subrogation in favor of and acceptable to *Licensors*.
- ◆ Additional insured endorsement in favor of and acceptable to *Licensors*.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by *Licensors*.

C. Workers Compensation and Employers Liability Insurance. This insurance shall include coverage for, but not limited to:

- ◆ Licensee's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.  
This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:
- ◆ Waiver of subrogation in favor of and acceptable to *Licensors*.

D. Railroad Protective Liability Insurance. This insurance shall name only the Licensors as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Electric Supply Line. **THE CONSTRUCTION OF THE ELECTRIC SUPPLY LINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Electric Supply Line is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)

- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to include Evacuation Expense Coverage Endorsement.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the Licensor prior to performing any work or services under this Agreement

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$400.00.

- ☐ I **elect** to participate in Licensor's Blanket Policy;
- ☐ I **elect not** to participate in Licensor's Blanket Policy.

#### Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, its insurers, through policy endorsement, waive their right of subrogation against Licensor for all claims and suits. The certificate of insurance must reflect waiver of subrogation endorsement. 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 or control.

Licensee is not allowed to self-insure without the prior written consent of Licensor. If granted by Licensor, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licensor liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Licensee's insurance will be covered as if Licensee elected not to include a deductible, self-insured retention, or other financial responsibility for claims.

Prior to commencing the Work, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Licensor in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon request from Licensor, a certified duplicate original of any required policy shall be furnished.

Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's 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.

If coverage is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this contract. Annually, Licensee agrees to provide evidence of such coverage as required hereunder.

Licensee represents that this License 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. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five 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.

If any portion of the operation is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

Failure to provide evidence as required by this section shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Licensee's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.

For purposes of this section, Licensor shall mean "Burlington Northern Santa Fe Corporation", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The insurance is procured from an underwriter of BNSF and the price is subject to change if the cost from the underwriter changes. Licensor will cover the RPLI cost for this relocation project under AFE# A110658.

3. (a) TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL [AND SHALL CAUSE ITS CONTRACTOR TO] RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LICENSOR AND LICENSOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

(i) THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,

(ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,

(iii) LICENSEE'S OCCUPATION AND USE OF THE PREMISES,

(iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED BY LICENSEE, OR

(v) ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER,

EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH LICENSEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.

- (b) **FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN SECTION 21(a), LICENSEE SHALL [AND SHALL CAUSE ITS CONTRACTOR TO] NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS WHETHER BASED ON THE STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT RAILROAD IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE ELECTRIC SUPPLY LINE FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LICENSEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LICENSEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL NOT IN ANY WAY SUBJECT LICENSOR TO CLAIMS THAT LICENSOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL LICENSOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**
- (c) **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE FURTHER AGREES, [AND SHALL CAUSE ITS CONTRACTOR TO] REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF LICENSEE OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**
- (d) Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnatee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnatee. Licensee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees,



investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

**PERSONAL PROPERTY WAIVER**

4. ALL PERSONAL PROPERTY OF LICENSEE, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.

Except as herein modified, the Original Contract shall continue in full force and effect.

Staubach Global Services, Inc. is acting as representative for BNSF Railway Company.

IN WITNESS WHEREOF, this Supplemental Agreement has been duly executed in duplicate by the parties hereto as of the day and year first above written.

**BNSF RAILWAY COMPANY**

Jones Lang LaSalle Global Services RR, Inc., its  
Attorney in Fact  
3017 Lou Menk Drive, Suite 100  
Fort Worth, TX 76131-2800

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

Ed Darter  
Vice President – National Accounts

**CITY OF GRAND ISLAND**

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

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

# EXHIBIT "A"

ATTACHED TO CONTRACT BETWEEN  
BNSF RAILWAY COMPANY  
AND

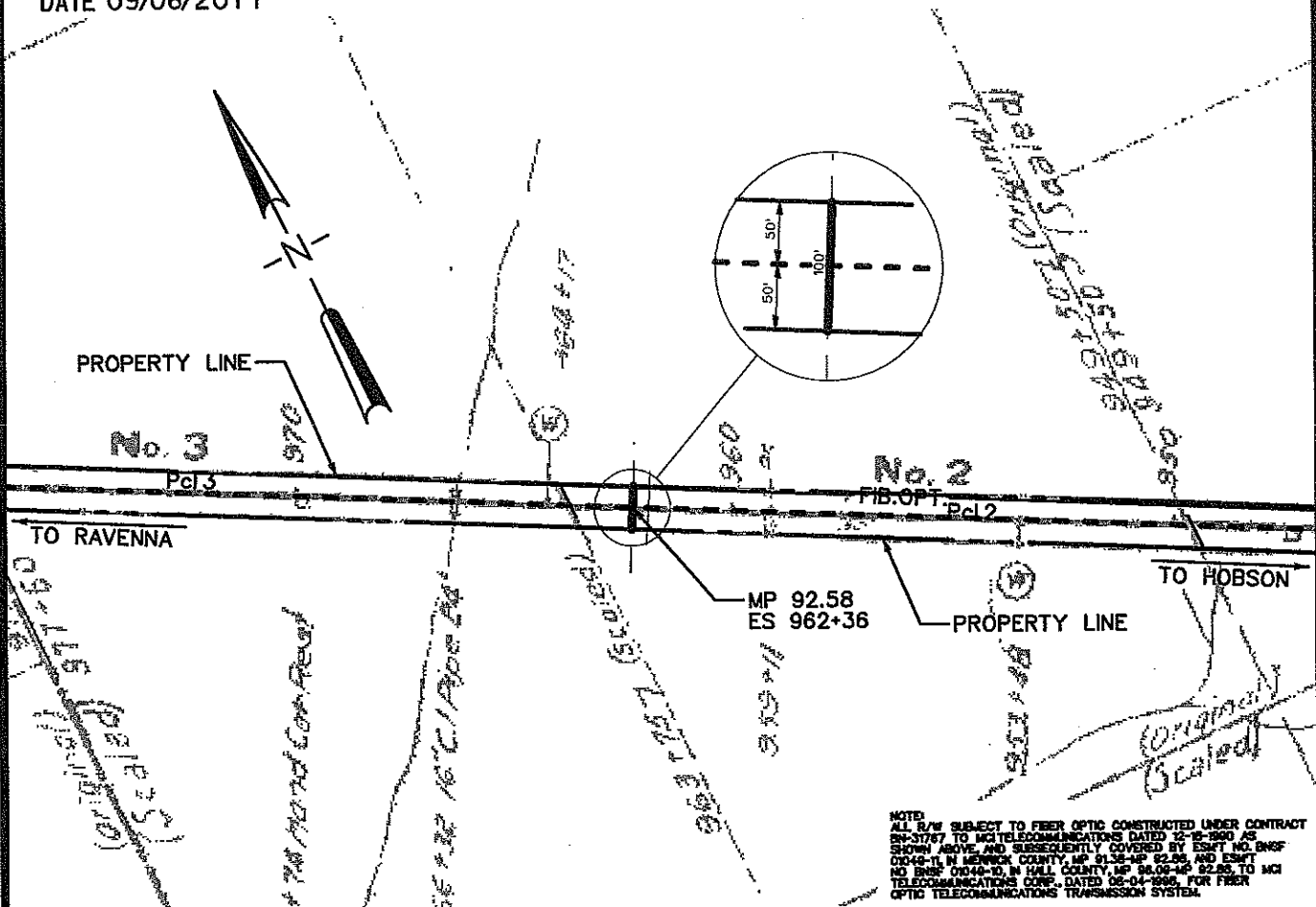
CITY OF GRAND ISLAND, NE

SCALE: 1 IN. = 400 FT.  
NEBRASKA DIV.  
RAVENNA SUBDIV. L.S. 0004  
DATE 09/06/2011

SECTION: 19  
TOWNSHIP: 11N  
RANGE: 08W  
MERIDIAN: 6PM



MAP REF. R71482



NOTE:  
ALL R/W SUBJECT TO FIBER OPTIC CONSTRUCTED UNDER CONTRACT  
SN-31767 TO MCI TELECOMMUNICATIONS DATED 12-19-2000 AS  
SHOWN ABOVE AND SUBSEQUENTLY COVERED BY ESMT NO. BNSF  
00448-11 IN NEBRASKA COUNTY MP 91.33-UP 92.05 AND ESMT  
NO BNSF 00448-12 IN HALL COUNTY MP 96.05-UP 97.05 TO MCI  
TELECOMMUNICATIONS CORP. DATED 02-04-2005 FOR FIBER  
OPTIC TELECOMMUNICATIONS TRANSMISSION SYSTEM.

NOTE:  
1 CONDUIT OCCUPIED

## DESCRIPTION OF WIRES UNDER TRACK

WIRES LOCATED AS SHOWN BOLD

TYPE	<u>ELECTRIC</u>
NUMBER OF CONDUITS	<u>1</u>
VOLTAGE	<u>0.120KV/0.240KV</u>

SIZE OF CONDUIT	<u>4"x100'</u>
CONDUIT MATERIAL	<u>STEEL</u>
WALL THICKNESS	<u>0.188"</u>
LENGTH ON R/W	<u>100'</u>
BASE OF RAIL TO TOP OF CONDUIT	<u>5.5' MIN.</u>

NOTE: CASING TO BE JACKED OR DRY BORED ONLY  
AT GRAND ISLAND  
COUNTY OF HALL

STATE OF NE

JWD

## UTILITY RELOCATION AGREEMENT

THIS UTILITY RELOCATION AGREEMENT (this "**Agreement**") is entered into the \_\_\_\_\_ day of \_\_\_\_\_, 2011 (the "**Effective Date**"), between the **CITY OF GRAND ISLAND**, a municipality of the State of Nebraska (the "**Utility Company**"), and **BNSF RAILWAY COMPANY**, a Delaware corporation ("**BNSF**").

### RECITALS

A. BNSF proposes to construct an additional rail line in Hall County, Nebraska (the "**Project**").

B. BNSF has notified the Utility Company that certain of its utility facilities and appurtenances (the "**Utilities**") are in locational conflict with the Project and has requested that the Utility Company undertake a relocation of the Utilities (the "**Work**") as necessary to accommodate the Project.

C. The Utility Company has provided BNSF with a copy of all documentation outlining the Work to be performed and the design and specifications of all related appurtenances, adjustments, existing utilities, and relocations, which outlining documentation will also include the exact location of the relocated Utilities (collectively, the "**Plans**"), which Plans have been approved by BNSF and a copy of which Plans are attached hereto and made a part hereof as **Exhibit A**.

D. Pursuant to the Plans, the Utility Company shall relocate the Utilities to (i) railroad right of way owned and controlled by BNSF (the "**BNSF ROW**"), the BNSF ROW being more particularly described in **Exhibit B** attached hereto, and (ii) other right of way and/or property owned or controlled by third parties ("**Third Party ROW**"), the Third Party ROW being more particularly described in **Exhibit C** attached hereto. The BNSF ROW and the Third Party ROW are collectively referred to in this Agreement as the "**Relocated Premises**".

E. The Utility Company has obtained a permit or an amendment to its existing permit (either, the "**Permit**") to carry out the Work on the BNSF ROW in accordance with the approved Plans, a copy of which Permit is attached hereto and made a part hereof as **Exhibit D**.

F. BNSF and the Utility Company desire to enter into this Agreement to outline their respective obligations regarding the cost and timely execution of the Work by the Utility Company.

### AGREEMENTS

For and in consideration of the foregoing recitals which are incorporated herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BNSF and the Utility Company agree as follows:

1. The Utility Company will commence its performance of the Work within five (5) days of the Effective Date of this Agreement (the "**Commencement Date**") and complete the Work within Thirty (30) days from the Effective Date of this Agreement (the "**Completion Date**"), in accordance with the approved Plans. Once commenced, the Work shall be performed and prosecuted to completion with due diligence: (i) in accordance with the Plans, (ii) in accordance with the Permit, (iii) in conformity and compliance with all applicable laws and highest generally accepted industry standards for such Work, and (iv) in a good and workmanlike manner, free from defects in materials and workmanship.

2. The Utility Company agrees that it shall obtain all necessary property rights (including but not limited to all property rights necessary to relocate the Utilities to the Third Party ROW), approvals, permits, and/or authorizations, whether private or governmental, for the Work and/or the relocation of the Utilities to the Relocated Premises (collectively, the "**Third Party Permits**"). Upon BNSF's request, the Utility Company shall promptly provide BNSF with copies of all Third Party Permits as well as all documents relating to any denials of approvals, permits, and/or authorizations, whether private or governmental, in connection with the Work.

3.

3.1 To the extent that the costs and expenses of the Work incurred by Utility Company arise from or are attributable to the relocation of the Utilities on or to the BNSF ROW, the costs and expenses of such Work shall be borne solely by the Utility Company, and BNSF shall have no responsibility or obligation to fund or reimburse the Utility Company for the costs and expenses associated with such Work or anything pertaining thereto.

3.2 To the extent that the costs and expenses of the Work incurred by Utility Company arise from or are attributable to the relocation of the Utilities on or to the Third Party ROW, subject to the terms and conditions set forth in this Agreement, BNSF hereby agrees to reimburse the Utility Company to cover its actual costs and expenses associated with the Work, at the City of Grand Island's Retail rate, including labor and material, but not including overhead and betterments, in accordance with the BNSF Utility Accommodation Specifications policy and requirements, provided, however, that the amount BNSF agrees to reimburse the Utility Company shall not exceed Two Thousand Two Hundred Dollars and 00/100 (\$2,200.00) (the "**Reimbursement Cap**").

4. Upon timely completion of the Work and in accordance with the approved Plans, the Utility Company shall submit to BNSF all invoices that evidence that the costs and expenses have been paid for in full by the Utility Company. The invoices shall also reflect that the costs and expenses incurred by the Utility Company were in accordance with the approved Plans and that the costs and expenses incurred by the Utility Company include only actual costs and do not include overhead or Betterments. For purposes of this Agreement, a "Betterment" means any upgrading of the Utilities that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Utility Company, including, but not limited to, an increase in the capacity, capability, efficiency or function of the Utilities over that provided by the existing Utilities or an expansion of the existing Utilities. Any invoices reflecting such

overhead or Betterments will be denied reimbursement by BNSF. All such costs and expenses as well as all other costs and expenses that exceed the Reimbursement Cap will be borne solely by the Utility Company.

5. As a condition of reimbursement by BNSF for the costs and expenses of the Work in accordance with the requirements for such reimbursement contained in this Agreement, the Utility Company must (i) commence the Work by the Commencement Date, and (ii) complete the Work by the Completion Date. The Completion Date may be extended for delays caused by events outside the Utility Company's control, including an event of force majeure, which shall include a strike, war or act of war (whether or not an actual declaration of war is made), insurrection, riot, act of public enemy, accident, fire, flood, or other act of God, sabotage, or other similar events, interference by BNSF or any other third party with the Utility Company's ability to proceed with such relocation, or any other event in which the Utility Company has exercised all due care in the prevention thereof so that the causes or other events are beyond the control, and without the fault or negligence, of the Utility Company. The Utility Company acknowledges and agrees that it will conduct the Work associated with the relocation contemplated under this Agreement at its own risk, and that BNSF makes no warranties or representations regarding the existence or location of the Utilities or any other utilities currently within its right-of-way in the Project.

6. Utility Company shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction relating to the performance of the Work.

7. Prior to commencing the Work, Utility Company shall and shall cause its contractor to (i) comply with all BNSF's applicable safety rules and regulations, and (ii) complete the safety-orientation program at the BNSF's Internet Web site "<http://contractororientation.com>". This program must be completed no more than one year in advance of Utility Company's performance of the Work.

8. Utility Company shall notify BNSF's Roadmaster, Don Marget at 14<sup>th</sup> & Grant Avenue, York, NE 68467, telephone (402) 362-5501, at least five (5) business days prior to performing the Work. After completion of use of the Work, Utility Company shall notify BNSF in writing that such use has been completed.

9. Utility Company shall bear the cost of flagger services and other safety measures provided by BNSF in connection with the Work, when deemed necessary by BNSF's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this paragraph.

10. In performing the Work, Utility Company shall use only public roadways to cross from one side of BNSF's tracks to the other.

11. Under no conditions shall Utility Company be permitted to conduct any tests, investigations, or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools, or other materials, within fifty (50) feet of the centerline of any BNSF track unless Utility Company has obtained prior written approval from BNSF. Utility Company shall, at its sole cost and expense, perform all the Work in such a manner as not at any time to be a source of danger to or interference with the existence or use of present or future tracks, roadbed, or property of BNSF, or the safe operation and activities of BNSF. If ordered to cease performance of the Work at any time by BNSF's personnel due to any hazardous condition, Utility Company shall immediately do so. Notwithstanding the foregoing right of BNSF, the parties agree that BNSF has no duty or obligation to monitor Utility Company's performance of the Work to determine the safe nature thereof, it being solely Utility Company's responsibility to ensure that Utility Company's performance of the Work is safe. Neither the exercise nor the failure by BNSF to exercise any rights granted in this Section will alter the liability allocation provided by this Agreement.

12. Upon completion of Work or upon termination of this Agreement, whichever shall occur first, Utility Company shall, at its sole cost and expense:

- (a) remove all of its equipment from BNSF property;
- (b) report and restore any damage arising from, growing out of, or connected with the Work;
- (c) remedy any unsafe conditions created or aggravated by the Work; and
- (d) leave all BNSF property in the condition which existed as of the Effective Date of this Agreement.

13. BNSF and the Utility Company shall each pay their respective attorneys' fees.

14. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one agreement, but in making proof hereof it shall only be necessary to produce one such counterpart.

15. This Agreement (a) shall be binding upon and inure to the benefit of BNSF and Utility Company and their respective legal representatives, successors and assigns; (b) may be modified or amended only by a writing signed by each party hereto; and (c) shall be governed by and construed in accordance with the laws of the State of Nebraska. Notwithstanding anything herein to the contrary, the Utility Company may not assign its rights and obligations under this Agreement without the prior written consent of BNSF. BNSF may assign its rights or obligations under this Agreement without the Utility Company's consent, but with notice to the Utility Company.

The parties hereto have caused this Agreement to be executed in duplicate by their duly authorized representatives as of the date below each party's signature; to be effective, however, as of the Effective Date.

**CITY OF GRAND ISLAND**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

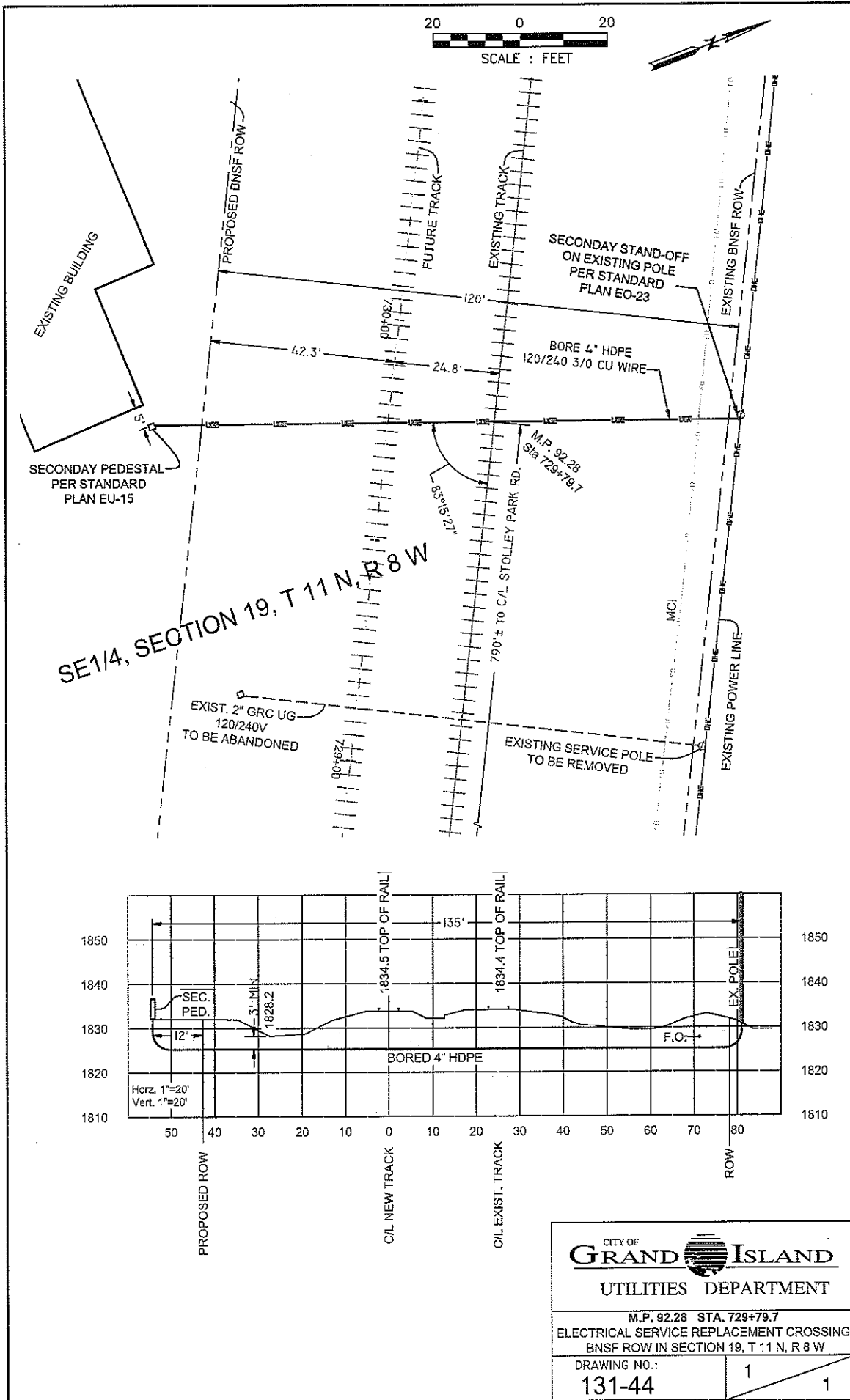
**BNSF RAILWAY COMPANY**

By: Luddy Aras  
Printed Name: Luddy Aras  
Title: Manager - Acquisition & Development  
Date: 9/14/2011

## **EXHIBIT A**

### **The Plans**





**EXHIBIT B**

**BNSF ROW**

EXHIBIT B

No. 2

MP 92.27

No. 1

100'

Stolley Park Road

949+50.7 (10' M)

949+50.3

939+60

938+23

937+15 (Elevated)

937+10

930+272

929+35.7

931+89 Rail Rest

931+95

MARK

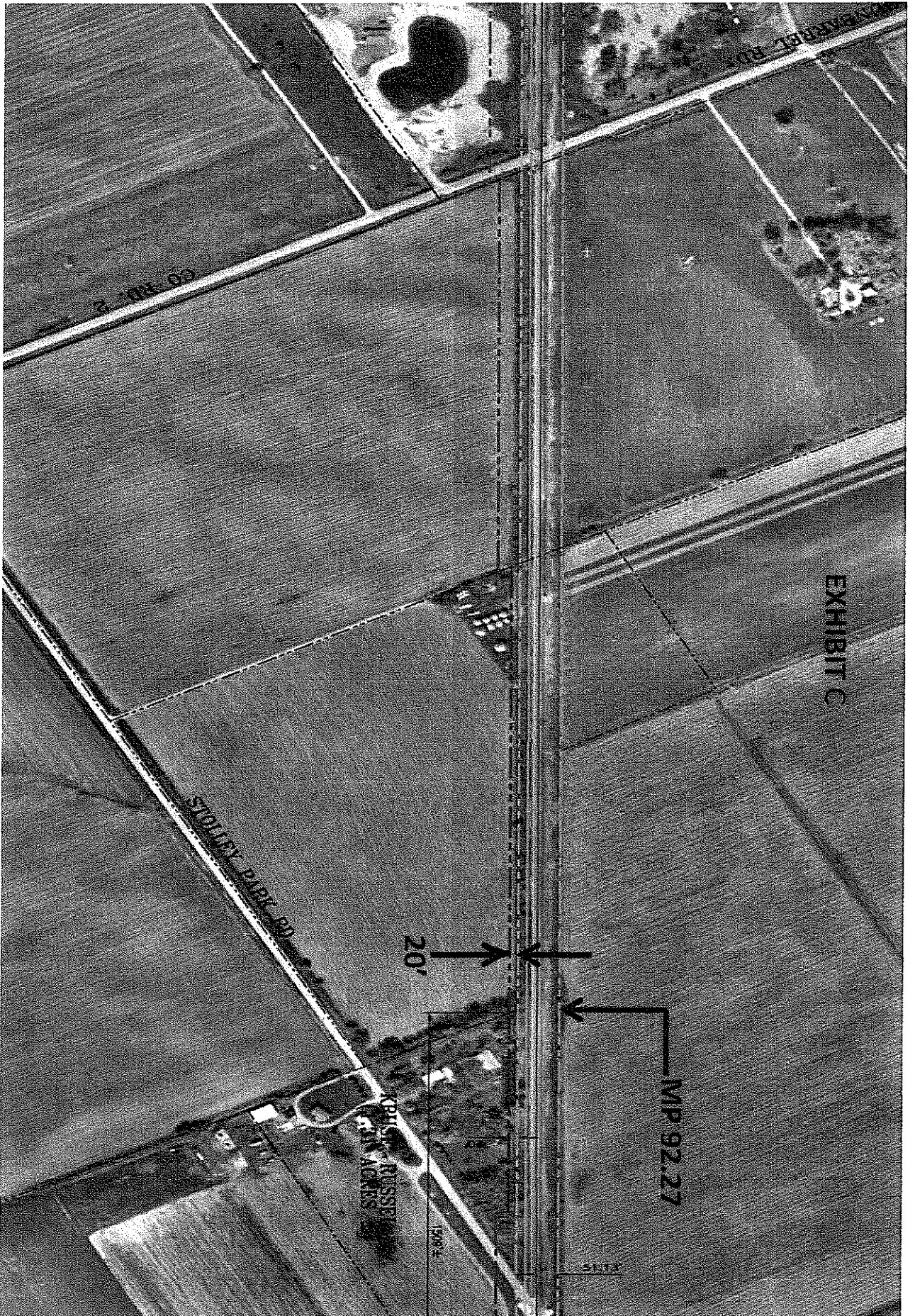
MATCH

MARK

~~SECRET~~

**EXHIBIT C**

**Third Party ROW**



## **EXHIBIT D**

### **The Permit**

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

OPERATING



DEPARTMENT

W. S. JOHNSTON  
SUPERINTENDENT

LINCOLN, NEBRASKA 68508

January 17, 1969

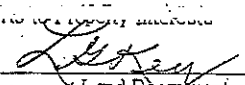
117-A cc L-1314

City Clerk,  
City of Grand Island,  
Grand Island, Nebraska.

Dear sir:

Please find enclosed herewith, for your files, the duplicate  
original executed copy of agreement dated December 2, 1968,  
the City  
with ~~your company~~, covering construction of power cable undercrossing  
Mile Post 92.27, 0.45 miles west of Power (4.05 miles east of  
Grand Island.

Yours truly,

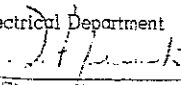
  
Land Department  
General Manager - Real Estate  
As to Description

  
Asst. Chief Engineer

As to Communications Department

  
Communications Department

As to Electrical Department

  
Electrical Engineer

Department

Should Licensee fail or neglect to make such changes, Railroad may, at its election, either make such changes and repairs at the expense of Licensee, or terminate this agreement, and immediately and without notice remove from its property, at the expense of Licensee, said pipe or conduit, wires and appurtenances or poles of Licensee.

5. The wires in the conduit covered by this agreement shall be used exclusively for power transmission at potentials not exceeding 120/240 volts and no material change shall be made in the voltage or number of wires without the written consent of Railroad.

6. The depositing of a notice by Railroad in any mail box of the United States, addressed to Licensee at address shown above, shall constitute a service of said notice upon said Licensee.

7. The permission hereby granted shall not be assigned by Licensee without the written consent of Railroad, and, unless otherwise terminated as hereinbefore provided, shall continue for a period of one (1) year from the date hereof, and thereafter until terminated by either party hereto giving to the other party not less than thirty (30) days' notice in writing of its desire to terminate the same. Licensee hereby accepts the permission above granted, subject to the strict and punctual performance of all of said terms and conditions by it on its part, and further agrees that, upon the termination of this permission, it will remove all of the said property from the property of Railroad and surrender up the quiet and peaceable possession to said Railroad of all its property affected by the terms of this agreement.

8. Licensee shall at all times protect, indemnify and save harmless Railroad from and against all liability, claims, demands, judgments, loss, damages, costs and expenses, including court costs and attorneys' fees, arising from damage to, loss, or destruction of the property of any person or persons whomsoever, or from injury to or death of any person or persons whomsoever, including the parties hereto and any employees of either or both parties hereto, when same is due to or in any manner results from or grows out of the installation, construction, reconstruction, relocation, existence, modification, adjustment, change, maintenance, repair, renewal, use, operation or removal of the said poles, fixtures, pipe, conduit, wires or appurtenances, or out of the subsidence of the soil over said pipe or conduit, and whether caused or contributed to by the negligence of Railroad, or otherwise.

The word "Licensee" wherever used herein shall be held to include such persons, co-partnerships or corporations as are mentioned in the title hereof as Licensee.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate as of the date first above written.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

By J. E. Hamer  
General Manager

CITY OF GRAND ISLAND

Licensee

By John Diller  
Title Pres. of Council and Ex officio Mayor

APPROVED:

As to Form

[Signature]  
Law Department

As to Property Interests

[Signature]  
Land Department  
General Manager - Real Estate

As to Description

[Signature]  
Asst. Chief Engineer

As to Communications Department

[Signature]  
Communications Department

As to Electrical Department

[Signature]  
Electrical Engineer

As to Signal Department

[Signature]



...Railroad's said property; but if at any time Railroad shall consider that the manner of constructing, maintaining, repairing, renewing, using or operating said pipe or conduit, wires and appurtenances, or poles, adopted by said Licensee, is not due and proper, then said Licensee will at once at its own expense, upon notice from Railroad, make such changes and repairs as Railroad may require.

## RESOLUTION

RESOLVED, by the City Council of the City of Grand Island, Nebraska,

THAT, the Mayor be and is hereby authorized and directed to enter into agreement with the Chicago, Burlington & Quincy Railroad Company covering the City's construction of its 120/240 volt 3-wire power line undercrossing of Burlington tracks and right of way at Mile Post 92.27, 0.45 mile west of Power (4.05 miles east of Grand Island), Merrick County, Nebraska.

Bob Albee  
Oscar Bredthauer  
Wm. Burke  
Virgil Eihusen  
Barney McGahan  
Mrs. A. W. Eaton  
John Ditter

ATTEST:

*J. H. Minnis*  
City Clerk

The above is a copy of the records showing that the resolution referred to was passed by the City Council on the 16 day of Dec., 1968.

*J. H. Minnis*  
City Clerk

Construction details shall comply with all requirements of public authority and the current National Electrical Safety Code.

City of Grand Island, Nebraska, Utilities Dept., P. O. BOX 1968.

(Name and Address of Municipality or Public Service Company)

Grand Island, Nebr.

By Bob G. Ranard

Title Engineering Division

Date Dec. 3, 1968

Location of Proposed Wire Line

Exhibit #1122-47

Mile Post 92.27  
0.45 mile west of  
POWER

Merrick County, Nebraska  
Scale: 1" = 400'

Office of Assistant Chief Engineer  
Lincoln, Nebr.

Dec. 2, 1968

1122-47

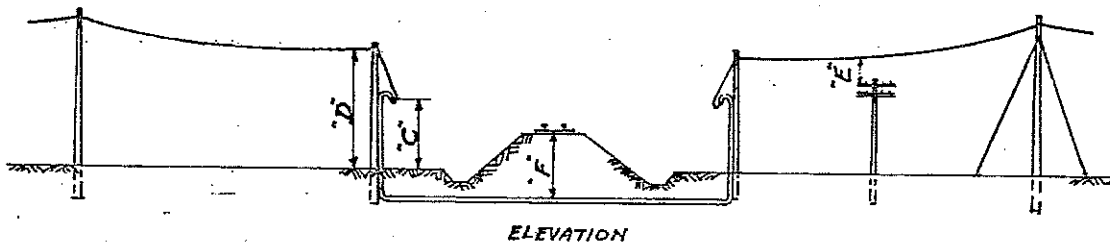
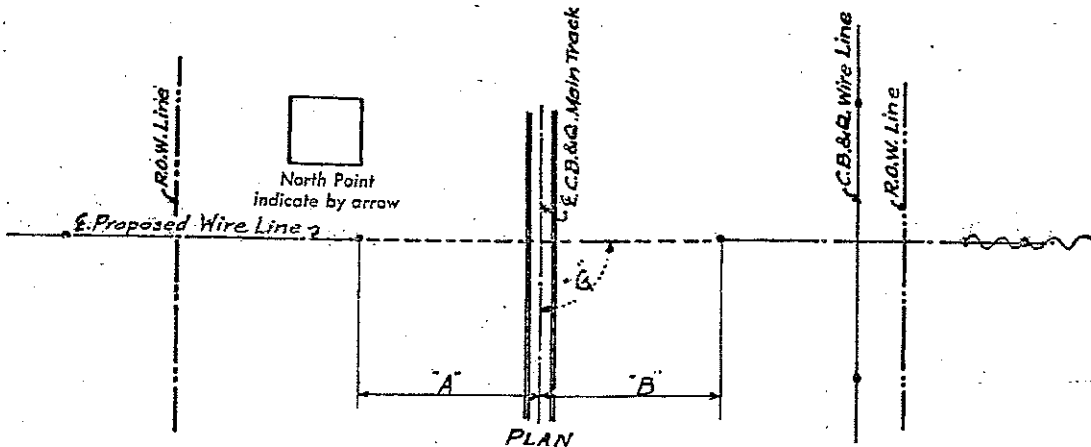
*A. Stobbe*  
Assistant Chief Engineer

# Burlington Lines WIRE LINE UNDER CROSSING

Station \_\_\_\_\_, M. P. \_\_\_\_\_, Miles \_\_\_\_\_ of \_\_\_\_\_

(Leave Blank)

Sec. 19 T. 11 R. 8



A \_\_\_\_\_ Feet (Not less than 25 feet)  
 B \_\_\_\_\_ Feet (Not less than 25 feet)  
 C 20' Feet (Not less than 12 feet)  
 D 27' Feet (Preferably 20 feet or over)  
 E \_\_\_\_\_ Feet (Not less than 4 feet)  
 F 4' Feet (Not less than 3 feet 6 inches)  
 G \_\_\_\_\_ Degrees

## WIRES:

Number 3  
 Gauge 2  
 Material Copper  
 Voltage (If Power Lines) 120/240 Volts

## CONDUIT:

Size 2"  
 Material Steel (Rigid)

Pole carrying power lines over C. B. & Q. wires to be guyed as indicated above.

NOTE:—Telephone Line may cross under C. B. & Q. wires, but with a clearance of not less than 4 feet to the nearest wire.  
 Construction details shall comply with all requirements of public authority and the current National Electrical Safety Code.

City of Grand Island, Nebraska, Utilities Dept., P. O. BOX 1968.

(Name and Address of Municipality or Public Service Company)

Grand Island, Nebr.

By Bob G. Ranard Title Engineering Division Date Dec. 3, 1968

Location of Proposed Wire Line Exhibit #1122-47

mile post 92.27  
 0.45 mile west of  
 POWER

Merrick County, Nebraska  
 Scale: 1" = 400'

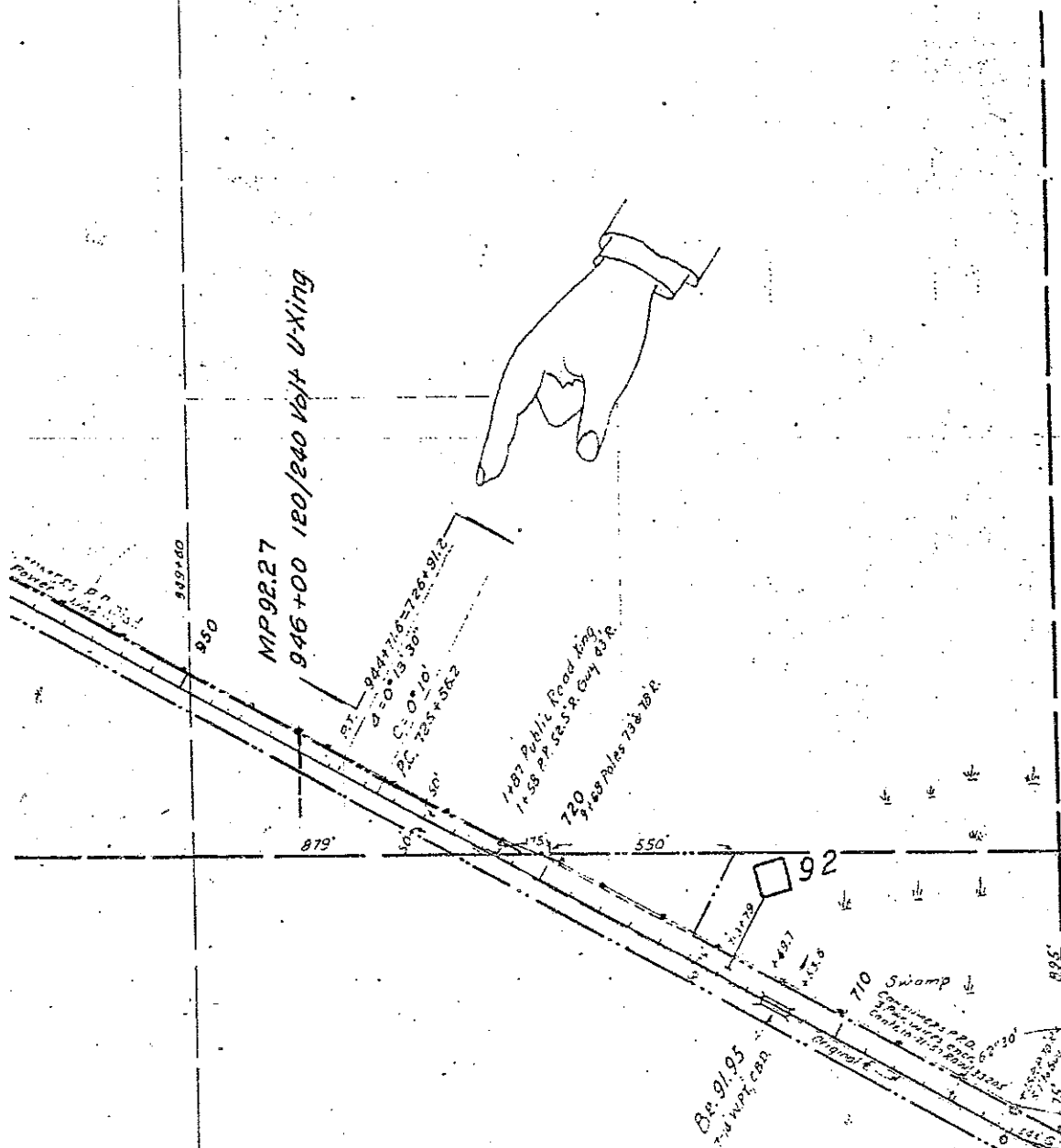
Office of Assistant Chief Engineer  
 Lincoln, Nebr. Dec. 2, 1968

1122-47

Assistant Chief Engineer

19  
MIN. R8W

To Accompany Contract:  
Dated:



C.B. & Q. R.R. Co.  
Lincoln Division

120/240 volt power line undercrossing  
of track and right of way

CITY OF GRAND ISLAND

Mile Post 92.27

0.45 mile west of

POWER

Merrick County, Nebraska

Scale: 1" = 400'

Office of Assistant Chief Engineer  
Lincoln, Nebr. Dec. 2, 1968

1122-47

*al. Storkel*  
Assistant Chief Engineer

## **SUPPLEMENTAL AGREEMENT**

This **SUPPLEMENTAL AGREEMENT**, made this 9<sup>th</sup> day of September, 2011, subject to the terms and conditions set forth in the original agreement, between **BNSF RAILWAY COMPANY**, a Delaware corporation, its successors and assigns, (hereinafter called "Licensor") and the **CITY OF GRAND ISLAND** (hereinafter called "Licensee").

### **RECITALS:**

Licensor and Licensee are now parties to an agreement dated December 2, 1968, Licensor's Contract No. 1122-47, together with any and all modifications, supplements and amendments thereto (hereinafter called "Original Contract"), relating to an underground power line.

### **AGREEMENT:**

It is mutually agreed that the following modification(s) will be made to the Original Contract:

1. The Original Contract shall be modified as follows:

**PREMISES.** That property at or near the station of Grand Island, County of Hall, State of Nebraska, Line Segment 0004, Mile Post 92.27, shown by bold line upon the print No. 1-52717, dated September 6, 2011 marked "Exhibit A", attached hereto and made a part hereof ("Premises").

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 combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$ 4,000,000 but in no event less than the amount otherwise carried by the Licensee. Coverage must be purchased on a post 1998 ISO occurrence or equivalent and include coverage for, but not limited to, the following:
  - ◆ Bodily Injury and Property Damage
  - ◆ Personal Injury and Advertising Injury
  - ◆ Fire legal liability
  - ◆ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Waiver of subrogation in favor of and acceptable to **Licensor**.

MP 92.27

- ◆ Additional insured endorsement in favor of and acceptable to *Licensor and Jones, Lang, LaSalle Global Services RR, Inc.*
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by *Licensor*.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to *Licensor* employees.

No other endorsements limiting coverage may be included on the policy.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired
- ◆ Waiver of subrogation in favor of and acceptable to *Licensor*.
- ◆ Additional insured endorsement in favor or and acceptable to *Licensor*.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by *Licensor*.

C. Workers Compensation and Employers Liability Insurance. This insurance shall include coverage for, but not limited to:

- ◆ Licensee's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.  
This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:
- ◆ Waiver of subrogation in favor of and acceptable to *Licensor*.

D. Railroad Protective Liability Insurance. This insurance shall name only the Licensor as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Electric Supply Line. **THE CONSTRUCTION OF THE ELECTRIC SUPPLY LINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Electric Supply Line is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)

- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to include Evacuation Expense Coverage Endorsement.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the Licenser prior to performing any work or services under this Agreement

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate in Licenser's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$400.00.

- ☐ I **elect** to participate in Licenser's Blanket Policy;
- ☐ I **elect not** to participate in Licenser's Blanket Policy.

#### Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

Licensee agrees to waive its right of recovery against Licenser for all claims and suits against Licenser. In addition, its insurers, through policy endorsement, waive their right of subrogation against Licenser for all claims and suits. The certificate of insurance must reflect waiver of subrogation endorsement. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Licenser for loss of its owned or leased property or property under its care, custody or control.

Licensee is not allowed to self-insure without the prior written consent of Licenser. If granted by Licenser, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licenser liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Licensee's insurance will be covered as if Licensee elected not to include a deductible, self-insured retention, or other financial responsibility for claims.

Prior to commencing the Work, Licensee shall furnish to Licenser an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Licenser in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon request from Licenser, a certified duplicate original of any required policy shall be furnished.

Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's 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.

If coverage is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this contract. Annually, Licensee agrees to provide evidence of such coverage as required hereunder.

Licensee represents that this License 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. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five 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.

If any portion of the operation is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

Failure to provide evidence as required by this section shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Licensee's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.

For purposes of this section, Licensor shall mean "Burlington Northern Santa Fe Corporation", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The insurance is procured from an underwriter of BNSF and the price is subject to change if the cost from the underwriter changes. Licensor will cover the RPLI cost for this relocation project under AFE# A110658.

3. (a) TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL [AND SHALL CAUSE ITS CONTRACTOR TO] RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LICENSOR AND LICENSOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

(i) THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,

(ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,

(iii) LICENSEE'S OCCUPATION AND USE OF THE PREMISES,

(iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED BY LICENSEE, OR

(v) ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER,

EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH LICENSEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.



- (b) **FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN SECTION 21(a), LICENSEE SHALL [AND SHALL CAUSE ITS CONTRACTOR TO] NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS WHETHER BASED ON THE STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT RAILROAD IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE ELECTRIC SUPPLY LINE FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LICENSEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LICENSEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL NOT IN ANY WAY SUBJECT LICENSOR TO CLAIMS THAT LICENSOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL LICENSOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**
- (c) **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE FURTHER AGREES, [AND SHALL CAUSE ITS CONTRACTOR TO] REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF LICENSEE OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**
- (d) Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees,

investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

**PERSONAL PROPERTY WAIVER**

4. **ALL PERSONAL PROPERTY OF LICENSEE, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

Except as herein modified, the Original Contract shall continue in full force and effect.

Staubach Global Services, Inc. is acting as representative for BNSF Railway Company.

**IN WITNESS WHEREOF**, this Supplemental Agreement has been duly executed in duplicate by the parties hereto as of the day and year first above written.

**BNSF RAILWAY COMPANY**

Jones Lang LaSalle Global Services RR, Inc., its  
Attorney in Fact  
3017 Lou Menk Drive, Suite 100  
Fort Worth, TX 76131-2800

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

Ed Darter  
Vice President – National Accounts

**CITY OF GRAND ISLAND**

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

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

# EXHIBIT "A"

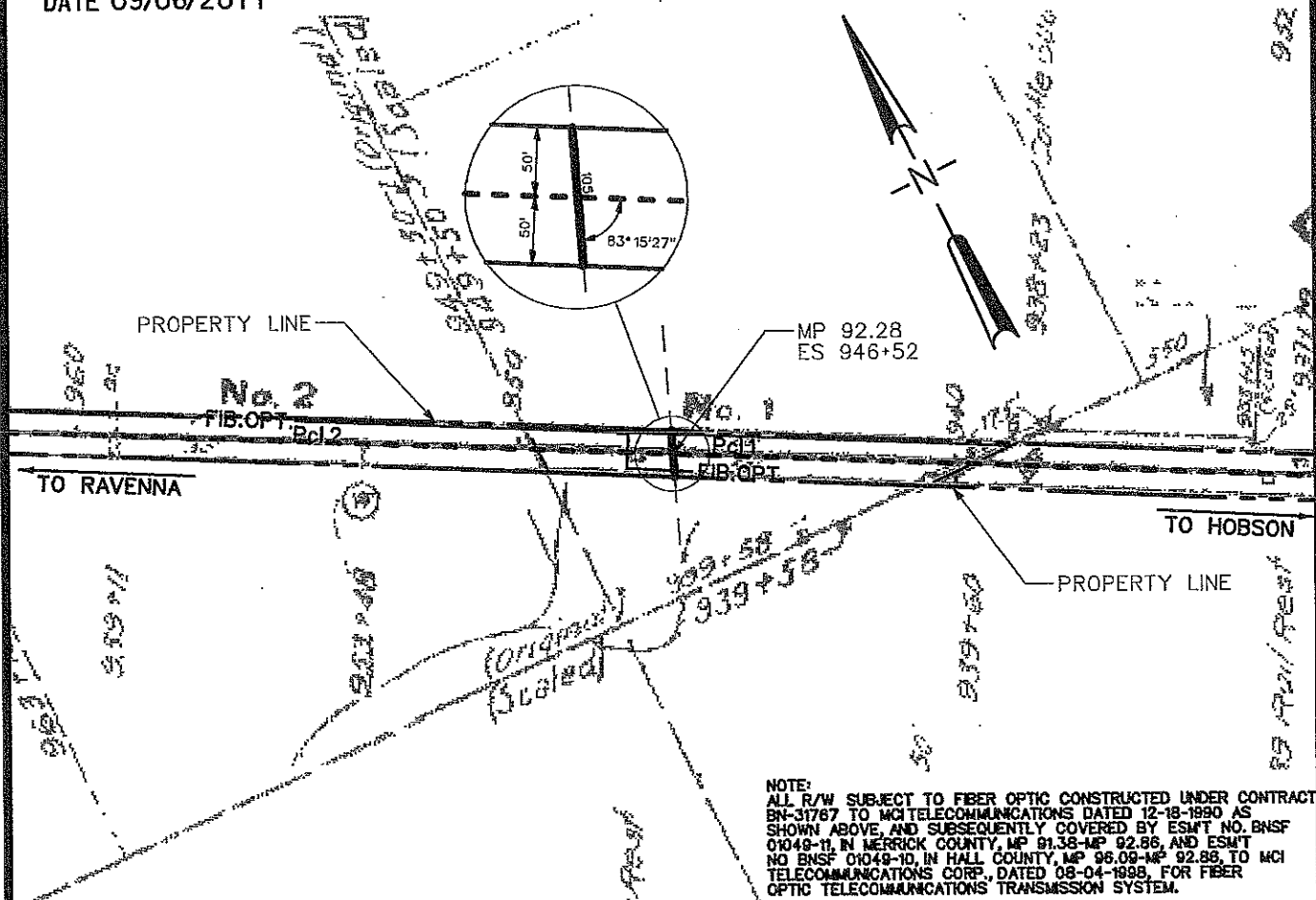
ATTACHED TO CONTRACT BETWEEN  
BNSF RAILWAY COMPANY  
AND  
CITY OF GRAND ISLAND, NE

SCALE: 1 IN. = 400 FT.  
NEBRASKA DIV.  
RAVENNA SUBDIV. L.S. 0004  
DATE 09/06/2011

SECTION: 19  
TOWNSHIP: 11N  
RANGE: 08W  
MERIDIAN: 6PM



MAP REF. R71482



NOTE:  
1 CONDUIT OCCUPIED

DESCRIPTION OF WIRES UNDER TRACK  
WIRES LOCATED AS SHOWN BOLD

TYPE	<u>ELECTRIC</u>
NUMBER OF CONDUITS	<u>1</u>
VOLTAGE	<u>0.120KV/0.240KV</u>

SIZE OF CONDUIT	<u>4"x105'</u>
CONDUIT MATERIAL	<u>STEEL</u>
WALL THICKNESS	<u>0.188"</u>
LENGTH ON R/W	<u>105'</u>
BASE OF RAIL TO TOP OF CONDUIT	<u>5.5' MIN.</u>

NOTE: CASING TO BE JACKED OR DRY BORED ONLY  
AT GRAND ISLAND  
COUNTY OF HALL

STATE OF NE

JWD

RESOLUTION 2011-267

WHEREAS, Burlington Northern Santa Fe Railroad (BNSF) is in the process of obtaining land for construction of a second track through Grand Island; and

WHEREAS, as a part of the process, BNSF is requiring all utilities that are currently either in their property, or cross their property to move or be removed; and

WHEREAS, there are four relocations that are required; one at the East Stolley Park crossing, one at Mile Post 92.3, one at Mile Post 92.56 and one at the Shady Bend Crossing; and

WHEREAS, the agreement for the Stolley Park Crossing is for BNSF to pay the non-betterment costs of moving the electric overhead lines, approximately 20% of Mile Post 92.3, approximately 20% of Mile Post 92.56, and at the crossing at Shady Bend, to pay approximately one third of the cost of the relocation.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Relocation Agreements between the City of Grand Island and Burlington Northern Santa Fe Railroad at Stolley Park Road, Milepost 92.3, Milepost 92.56, and Shady Bend Road, are hereby approved.

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Adopted by the City Council of the City of Grand Island, Nebraska, September 27, 2011.

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Jay Vavricek, Mayor

Attest:

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RaNae Edwards, City Clerk