



City of Grand Island

Tuesday, December 06, 2011

Council Session

Item I3

#2011-364 - Approving Utilities Relocation Agreement with the Burlington Northern Santa Fe Railroad for Double Track Project

Staff Contact: Tim Luchsinger

Council Agenda Memo

From: Timothy Luchsinger, Utilities Director
Robert Sivick, City Attorney

Meeting: December 6, 2011

Subject: BNSF Double Track Project Master Utility Relocation Agreement

Item #'s: I-3

Presenter(s): Timothy Luchsinger, Utilities Director

Background

In 1993, Burlington Northern Railroad completed an elevated rail overpass to eliminate traffic conflicts caused by an at-grade crossing with the Union Pacific Railroad. In April of this year, the City was advised by BNSF that they were proceeding with a project to widen this overpass to a double track to alleviate traffic congestion as a result of multiple tracks reducing to a single track through Grand Island. As a result of this, multiple electrical, water, and sewer utility crossings by the City across BNSF right-of-way will need to be modified to accommodate the track improvement project. These modifications include either relocating utilities or encasement of the utilities to current railroad crossing standards. BNSF would also like to acquire portions of Utilities Department properties adjoining BNSF property south of the JBS facility and at the Burdick Station. Crossing agreements currently in place with BNSF require that utilities conflicts in railroad right-of-way be corrected at the City's expense. Relocations outside of railroad right-of-way and acquisition of City property are subject to negotiations regarding compensation.

Discussion

In order to expedite some of the logistic and regulatory processes needed to meet their project schedule, BNSF has offered to undertake the design and relocation of all utility crossings at their expense, in exchange for transfer of the required Utilities Department property and other considerations. Their proposed Master Utility Relocation Agreement is attached. The other considerations include the following.

- The City will cooperate and refrain from causing any delays and will grant any required construction approvals.

- The City will complete work, designated to be by the City, in accordance with the project schedule.
- The City will resolve any construction issues within two business days.
- The City will provide review of all utility design by the BNSF within one week.
- The City will execute standard crossing agreements for all utilities in BNSF right-of-way within six months.
- The City will provide all property rights and temporary construction easements within one month.
- The BNSF will acquire all property rights for relocating utilities outside of BNSF right-of-way, except where the City must exercise the right of eminent domain.

Subject to approval of the utility agreement, the BNSF will provide aesthetic treatment to the retaining wall that will be used on much of the project, to improve its appearance and reduce the impact of graffiti.

City staff has reviewed the BNSF Master Utility Relocation Agreement and recommends that the Mayor be authorized for its execution on the City's behalf.

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 BNSF Master Utility Relocation Agreement and authorize its execution by the Mayor.

Sample Motion

Move to approve the BNSF Master Utility Relocation Agreement and authorize its execution by the Mayor.



Todd M. Kuhn, PE
Manager Engineering

BNSF Railway Company
3700 Globeville Road
Denver, CO 80216

303-480-6582 (Office)
303-319-0542 (Cell)
Todd.Kuhn@bnsf.com

November 21, 2011

Robert J. Sivick
Grand Island City Attorney
Grand Island City Hall
100 East First Street
P.O. Box 1968
Grand Island, NE 68802

Dear Mr. Sivick:

As you know, BNSF Railway will be constructing a second main track through Grand Island alongside our existing single main track. Concrete retaining walls will be used to construct the new BNSF grade along the west side of our current right-of-way between the Union Pacific tracks and Capital Avenue. These retaining walls are necessary to avoid significant impacts to adjacent property owners. At the City's request, BNSF has reviewed the addition of an aesthetic treatment to these proposed walls. Pending City Council approval of the Master Utility Relocation Agreement on December 6, 2011, BNSF will include the below-described aesthetic treatment on our proposed retaining walls.

The aesthetic treatment will consist of casting the face of the retaining walls with a formliner that creates the appearance of a natural stacked stone wall. The Georgia Ashlar formliner has a relatively random, natural appearance, and the shallow depth of the aesthetic "mortar" lines will reduce the potential for wall climbing. Example photos of the wall appearance are attached to this letter.

Additionally, these retaining wall surfaces that are within the reach of vandals will be treated with a graffiti protection barrier. This product will be applied to the exposed concrete surfaces and will prevent paint from being absorbed into the voids of the concrete. Prevention of paint absorption results in easier cleanup of the concrete surfaces with minimal permanent staining from graffiti.

If you have any questions, please contact me at (303) 480-6582 or todd.kuhn@bnsf.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd M. Kuhn", followed by a long horizontal flourish.

Todd M. Kuhn, PE
Manager Engineering

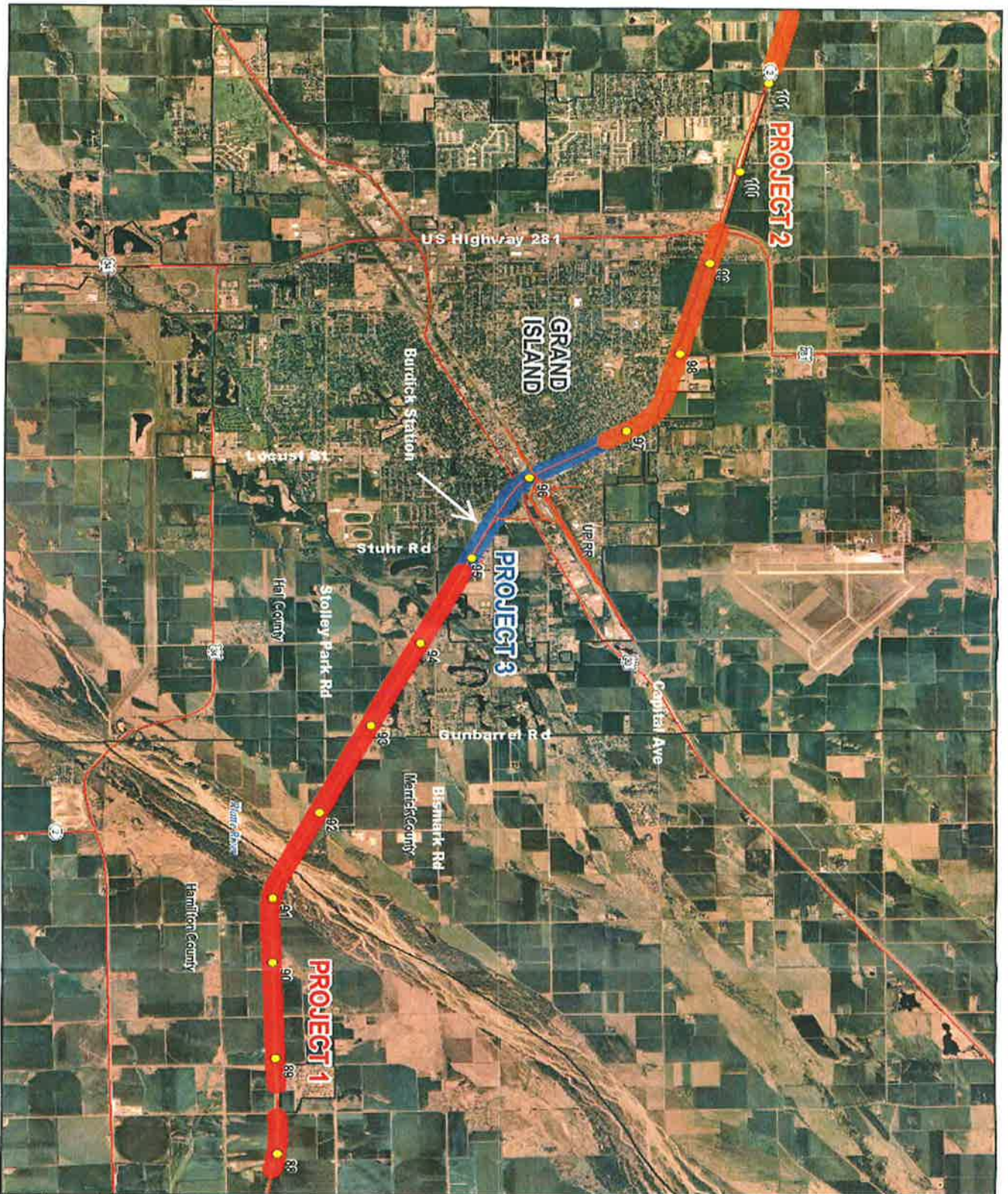
Attachments

Figure 1. Georgia Ashlar Formliner Appearance



Figure 2. Georgia Ashlar Cut Sheet Image





SHEET NO. OVERALL PROJECT EXHIBIT	SHEET TITLE:	SCALE: AS SHOWN 1" = 1 MILE	REVISIONS:	PHILLIPS TO McDONALD DOUBLE TRACK PROJECT (GRAND ISLAND) BNSF RAILWAY	CONSULTANTS:		







MASTER UTILITY RELOCATION AGREEMENT

THIS UTILITY RELOCATION AGREEMENT (this "Agreement") is entered into and effective as of this _____ day of _____, 20____ (the "Effective Date"), by and between the **CITY OF GRAND ISLAND, NEBRASKA** (the "City"), and **BNSF RAILWAY COMPANY**, a Delaware corporation ("BNSF").

RECITALS

- A.** BNSF plans to construct a second main track on the Ravenna Subdivision passing through Grand Island, Nebraska (the "Project").
- B.** BNSF has notified the City that certain of its utility facilities and appurtenances (the "Utilities") are in locational conflict with the Project and has requested that the City relocate the Utilities in order to accommodate the Project.
- C.** With respect to certain Utilities under permits obligating the City to undertake relocations and other Utilities without existing permits between the City and BNSF and/or its predecessors, BNSF desires to cause such relocations to occur at its cost.
- D.** Due to budgetary and other resource restraints, the City has been unable to relocate the Utilities; therefore, BNSF has requested that the City allow BNSF to undertake a relocation of the Utilities (the "Work") as necessary to accommodate the Project.
- E.** The parties desire to enter into this Agreement to outline their respective obligations regarding the cost and timely execution of the Work.

NOW, THEREFORE, for the mutual covenants contained herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1) BNSF Obligations

- a) BNSF shall fund one hundred percent (100%) of the cost of the Work required by the Project and initiated after the Effective Date. The execution of this Agreement shall in no way impair preexisting agreements between the parties as to Work commenced prior to the Effective Date. The respective Work obligations of the parties are set forth on Exhibit A, which is attached hereto and incorporated by this reference. Funding obligations assumed by BNSF under this Section 1(a) shall also include funding for Work that the City is obligated to fund under the terms of existing utility permits between the parties as well as Utilities encroaching on BNSF property without permits. However, voluntary payment by BNSF for Work which it otherwise has no contractual payment obligation shall in

no way be construed as a waiver of any of its other rights with respect to the City under existing and future utility permits.

- b) Reimbursement to the City for Work completed by City forces shall be in accordance with the rate schedule set forth in Exhibit B, which is attached hereto and incorporated by this reference.
- c) For all Work funded by BNSF in accordance with subsection (a) above, BNSF shall be free to use a contractor of its choosing.

2) City Obligations

- a) The City agrees to cooperate in all respects with BNSF throughout the course of the Project and otherwise refrain from causing any delay in the execution of Work whatsoever. The City further agrees to grant BNSF any required construction approvals and acquire any third party approvals required for the Work under this Agreement.
- b) For Work which the City, using its own forces, agrees to complete in accordance with the schedule for Work set forth in Exhibit A, the City shall provide contact information for a primary and secondary representative for the purpose of coordinating such work with BNSF.
 - i. The City's representatives shall cooperate with BNSF and BNSF's contractor in the coordination of Work the City elects to perform with its own forces.
 - ii. In agreeing to the timing of the parties respective Work obligations to be contained in Exhibit A, the schedule for Work undertaken by the City shall in no way adversely affect the Work to be performed by BNSF's contractor.
 - iii. For any Work undertaken by the City on BNSF's right of way, the City shall pay for the cost of flagging services.
 - iv. In the event that the City fails to complete Work it elects to complete using its own forces in advance of the deadlines set forth in Exhibit A, BNSF shall have the right to complete such Work using its own contractor. Further, the City shall forfeit its right to reimbursement from BNSF under this Agreement to the extent of any Work not completed in accordance with the timelines set forth in Exhibit A.
- c) The City agrees to resolve any and all construction issues which may arise throughout the course of the Work within two business days of its initial receipt of notice of such issues from BNSF or BNSF's contractor. When giving the City notice of construction issues, BNSF shall also provide the City with its recommended resolution of such issue. In the event that the City fails to resolve any such construction issue within two business days, the City will be deemed to have concurred in the resolution of such issue recommended by BNSF.

- d) The City shall expeditiously review and approve all utility designs submitted by BNSF. The City further agrees to provide a one week turnaround time for review and approval of utility designs submitted to it by BNSF. In the event that the City has not completed its review and approval of any utility design within one week of its submission by BNSF, such design will be deemed approved by the City.
- e) No later than six (6) months following the execution of this Agreement, the City shall execute BNSF's standard Utility Crossing Agreement for (1) all Utilities to be relocated on BNSF property for which Utility Crossing Agreements exist and (2) all Utilities present and existing on BNSF property for which no Utility Crossing Agreements exist. Copies of BNSF's standard Utility Crossing Agreements, the forms of which depend on the particular type of Utility, are included as Exhibit E, which are attached hereto and incorporated by this reference.
- f) No later than one (1) month following the execution of this Agreement, the City shall provide, at no cost to BNSF, all necessary property rights for the completion of the Project, including but in no way limited to temporary construction easements. The locations of properties required by BNSF for the completion of the Project are set forth on Exhibit D, which is attached hereto and incorporated by reference.
- g) For Utilities to be relocated outside of BNSF's right of way, BNSF shall be primarily responsible for acquiring any and all property rights which the City needs but does not currently hold. Property rights to be acquired by BNSF under this subsection shall also include the right for BNSF and/or its agents to access properties for the purpose of completing Work hereunder. In the event that the acquisition of property rights under this subsection threatens to delay the Project for any reason, the City shall exercise its power of eminent domain in order to acquire necessary property rights.

3) Terms and Conditions of Existing Permits Govern

- a) To the extent not inconsistent with this Agreement, the terms and conditions of any and all existing utility permits between the parties shall continue in full force and effect. The execution of this Agreement by the parties will in no way, shape, or form alter or impair the current rights and obligations of the parties as set forth in those instruments, except for those changes made herein.
- b) For Utilities existing on BNSF property without Utility Crossing Agreements prior to the execution of this Agreement, BNSF hereby agrees that the Utility Crossing Agreements to be executed by the City shall in no way, shape, or form obligate the City to pay to BNSF any amount as a fee for the right to have such Utilities located on BNSF property.

4) Release and Indemnification

a) *Personal Injury and Property Damage Claims*

- i. The City agrees to release, indemnify, defend, and hold harmless BNSF, its officers, employees, agents, and contractors for all losses, damages, expenses, injuries, or death to the City, its employees, agents, and contractors, arising in any manner from the performance of this agreement, except to the extent of BNSF's gross negligence or intentional misconduct.
- ii. The City further agrees to release, indemnify, defend, and hold harmless BNSF, its officers, employees, agents, and contractors for all losses, damages, expenses, injuries, or death to any person, including BNSF, which arise in any manner from the construction, maintenance, relocation, use, state of repair, or presence of the Utilities.

b) *Utility Design and Utility Interruption Claims*

- i. The City agrees to release, indemnify, defend, and hold harmless BNSF, its officers, employees, agents, and contractors for any and all losses, damages, expenses, injuries, or death to any person arising from or relating to (i) the design of and/or function of Utilities undertaken by BNSF and/or its agents and (ii) service interruptions in any Utility, except to the extent caused by BNSF's gross negligence or misconduct.

5) Term and Termination; Survival

- a) This agreement shall remain in effect until the completion of the Project.
- b) The obligations set forth in Section 4 (release and indemnification) shall survive any termination of this agreement.

6) General

- a) *Counterparts.* 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.
- b) *Assignments.*
 - i. The City may not assign its rights and obligations under this Agreement without the prior written consent of BNSF. All assignments made without the written consent of BNSF are VOID.
 - ii. BNSF may assign its rights or obligations under this agreement without the City's consent, but BNSF shall provide notice of such assignment to the City.
- c) *Modification.* This Agreement may be modified or amended only by a writing signed by each party hereto.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized representative.

THE CITY OF GRAND ISLAND, NEBRASKA

BNSF RAILWAY COMPANY

(Signature)

(Signature)

(Name Printed)

(Name Printed)

(Title)

(Title)

Schedule of Exhibits

- Exhibit A – Project Timeline
- Exhibit B – City Reimbursement Schedule
- Exhibit C – (Reserved)
- Exhibit D – Additional Properties Required for Completion of the Project
- Exhibit E – Samples of BNSF's Standard Utility Crossing Agreements
 - Exhibit E-1 – Sample Supplemental Agreement
 - Exhibit E-2 – Sample Electrical License
 - Exhibit E-2 – Sample Pipeline License

Exhibit A

Project Timeline

**EXHIBIT A
PROJECT TIMELINE**

BNSF MILE POST	CITY UTILITY	WORK RESPONSIBILITY	SCHEDULED COMPLETION DATE
PROJECT 1			
**92.13	OH Power Line crossing AND perpendicular service on Kruse property	City	10/15/2011
**92.27	UDG 120/240 Power	City	10/15/2011
**92.58	UG power 120/240 volt xing tied to transformer	City	10/15/2011
92.77	Guy wire	City	1/6/2012
**94.02	OH Power, west R/W Shady Bend Rd; BNSF service drop; Pole relocation	City	10/30/2011
94.4	OH Power Line crossing	BNSF	3/1/2012
94.56	36" Sanitary Sewer Interceptor	BNSF	3/1/2012
94.62	OHD Power Line crossing	BNSF	3/1/2012
94.7	OHD Power Line crossing 115kV multi-wire 43' VCL	City	1/6/2012
94.71	0.75" Guy Wire Cable	BNSF	3/1/2012
94.89	OH Power Line crossing	BNSF	3/1/2012
94.97	OH Power Line crossing, pole & guy wire	BNSF	3/1/2012
94.94 - 95.12	Overhead Power Line parallel to and south of rail	BNSF	3/1/2012
94.40 - 95.44	Overhead Power Line parallel to and south of rail	BNSF	3/1/2012
94.42-95.39	Burdick Plant cooling water line from Bismark Rd. to Plant	BNSF	3/1/2012
PROJECT 2			
97.14	10" water main	BNSF	3/1/2012
97.3	Light Pole	City	1/6/2012
97.4	Power Pole	City	1/6/2012
97.82	13.8 kv 4 wire overhead power line	City	1/6/2012
97.96	6" Sanitary Sewer crossing at Broadwell Ave	BNSF	3/1/2012
97.96	6" Water Line crossing at Broadwell Ave	BNSF	3/1/2012
97.97	60" Storm Sewer crossing at Broadwell Ave	BNSF	3/1/2012
98.31	48" Storm sewer pipeline at Soldiers Home	BNSF	3/1/2012
99.06	20" Water Line crossing at Webb Road	BNSF	3/1/2012
97.14-96.9	10" Water main parallel to rail along Vine street 18-17th St.	BNSF	3/1/2012
PROJECT 3			
95.08	OH Power Line crossing 13.8 kv 40' VCL	BNSF	12/31/2012
95.16	20" water Line crossing at Stuhr Road	BNSF	12/31/2012
95.31	UDG Electric	BNSF	12/31/2012
95.33	24" Water Line crossing	BNSF	12/31/2012
95.37	30" Water Line crossing	BNSF	12/31/2012
95.39	36" Water Line crossing	BNSF	12/31/2012
95.39	24" Water Line crossing	BNSF	12/31/2012
95.4	30" CIP sanitary sewer	BNSF	12/31/2012
95.42	36" Water Line crossing	BNSF	12/31/2012
95.42	OH Power Line crossing	BNSF	12/31/2012
95.44	84" Storm Sewer crossing	BNSF	12/31/2012
95.46	34.5 kv overhead power	BNSF	12/31/2012
95.71	2 33kv overhead power crossings	BNSF	12/31/2012
95.9	10" Water Line crossing at 2nd Street	BNSF	12/31/2012
96.03	UGD Electric line crossing	BNSF	12/31/2012
96.05	30" Water Line crossing	BNSF	12/31/2012
96.05	6" Water Line crossing	BNSF	12/31/2012
96.15	8" CIP Sanitary Sewer	BNSF	12/31/2012
96.17	6" Water Line crossing at 4th Street	BNSF	12/31/2012
96.25	12" Sanitary Sewer Line crossing @ 5th Street	BNSF	12/31/2012
96.25	18" Water Line crossing @ 5th Street	BNSF	12/31/2012
96.26	UDG Electric	BNSF	12/31/2012
96.27	6" Water Line crossing at 5th Street	BNSF	12/31/2012
96.34	Power Cable	BNSF	12/31/2012
96.34	6" Water Line crossing at 8th Street	BNSF	12/31/2012
96.41	6" Water Line crossing at 7th Street	BNSF	12/31/2012
96.44	8" Sanitary Sewer Line	BNSF	12/31/2012
96.52	6" Water Line crossing at 9th Street	BNSF	12/31/2012
96.73	6" Water Line crossing	BNSF	12/31/2012
12th Street	6" Water Line crossing at 12th Street	BNSF	12/31/2012
7th & 8th Street	6" Water Line parallel between 7th St & 8th St.	BNSF	12/31/2012
96.60 - 97.07	10" Water Line parallel to and south of existing rail	BNSF	12/31/2012

** Utility work has been completed under prior utility relocation agreements

Exhibit B

City Reimbursement Schedule

EXHIBIT B
CITY REIMBURSEMENT SCHEDULE

BNSF MILE POST	CITY UTILITY (RELOCATION PERFORMED BY CITY)	TOTAL (Not to Exceed)	BNSF Cost	City Cost
**92.13	OH Power Line crossing AND perpendicular service on Kruse property	\$100,000.00	\$100,000.00	\$0.00
**92.27	UDG 120/240 Power	\$11,000.00	\$1,200.00	\$8,800.00
**92.58	UG power 120/240 volt xing tied to transformer	\$11,000.00	\$1,200.00	\$8,800.00
**94.02	OH Power, west R/W Shady Bend Rd; BNSF service drop; Pole relocation	\$20,000.00	\$13,334.00	\$6,666.00
	Totals from Prior Agreements	\$142,000.00	\$115,734.00	\$24,266.00
92.77	Guy wire	\$1,000.00	\$1,000.00	\$0.00
94.7	OHD Power Line crossing 115kV multi-wire 43' VCL	\$46,137.00	\$46,137.00	\$0.00
97.3	Light Pole	\$1,500.00	\$1,500.00	\$0.00
97.4	Power Pole	\$3,000.00	\$3,000.00	\$0.00
97.82	13.8 kv 4 wire overhead power line	\$6,000.00	\$6,000.00	\$0.00
	Totals Under This Master Agreement	\$57,637.00	\$57,637.00	\$0.00

Total BNSF Reimbursement to City for Work Performed Under This Master Agreement: \$57,637.00

** Utility work has been completed under prior utility relocation agreements

Exhibit C

(Reserved)

Exhibit D

Additional Properties Required for Completion of the Project

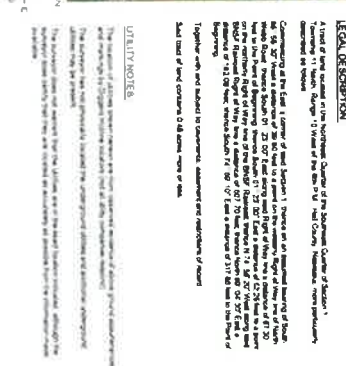
**City of Grand Island Master Agreement
Land Schedule**

<u>City Parcel</u>	<u>Acres</u>	<u>Est. Value/Acre</u>	<u>Est. FMV</u>
Parcel 04	0.48	\$5,000/Acre	\$ 2,400.00
Parcel 06	0.61	\$5,000/Acre	\$ 3,050.00
Parcel 07 (City Esmt See Industrial Add Plat)	0.22	\$5,000/Acre	\$ 1,100.00
Parcel 08	1.97	\$5,000/Acre	\$ 9,850.00
Parcel 35	1.40	\$5,000/Acre	\$ 7,000.00
Parcel 36	0.22	\$5,000/Acre	\$ 1,100.00
TOTAL	4.90	EST. TOTAL	\$ 24,500.00

COMPARABLE LAND SALES SUMMARY TABLE

<u>No.</u>	<u>Location</u>	<u>Sale Date</u>	<u>Price</u>	<u>Size in Acres</u>	<u>Price/ Acre</u>
1.	Near Old Potash Highway and 90th Road	12/28/2010	\$1,096,262	209.40	\$5,235
2.	NWC Schminner Drive and 90th Road	05/28/2010	\$796,000	156.70	\$5,080
3.	NEC Schimmer Road and 130th Street	05/05/2010	\$600,000	118.30	\$5,072
4.	NEC Airport Road and North Road	12/13/2010	\$826,038	196.76	\$4,198

VIC
1
CHD NO ISSUE



A total of 1000 samples of the *Artemia* Schrankii of the 1955-56 season were examined at the University of California, Berkeley, and were previously frozen at -10°C for 24 hr. The following table summarizes the results.

20 * terms and conditions of license and use (as amended to the District Health Center Company, received June 11, 1975 in Book 1, Page 136 assigned to the City of Orange Island by assignment of August 1975 received August 19, 1975 in Book 20 Page 715 records of Post County, Indiana
(Alphabetic by subject property - this problem)

1. Derivatives on the spot are exchanged in kind and deferred parts transfer virtual currencies.

[illegible]

☐ UNDERGROUND ELECTRICAL
☐ GAS LINE
☐ UNDERGROUND DATA
☐ OVERHEAD POWER
☐ WORM HOLE
☒ TELEPHONE PEDESTAL
☒ GAS METER



2	VAL 17
C10	SCALE 700



LEGAL DISCUSSION

A third of the population in the United States is of African American descent. The African American population is the largest minority group in the United States and is the fastest growing. The African American population is also the most economically disadvantaged. The African American population is the most likely to live in poverty and the least likely to have a college degree. The African American population is the most likely to be unemployed and the least likely to be employed in a professional or managerial occupation. The African American population is the most likely to be in a low-paying job and the least likely to have a pension plan. The African American population is the most likely to be in a low-paying job and the least likely to have a pension plan. The African American population is the most likely to be in a low-paying job and the least likely to have a pension plan.

UTILITY NOTES

The surveyor does not require that the addressee in the actual location receives, although the addressee does not have to be located at all, as it is not a condition for the information to be received.

WORTHINGTON EFFECTIVENESS OF ACETIC ACID

- C. Tarnes and C. Longmire, in *Chronic Ills: AIDS* (Springer, the *Flag of the Red Cross* edition), second edn, May 21, 1985, in Chap. 11, Page 19, students of New County, Indiana.
- C. Tarnes and C. Longmire, in *Chronic Ills: AIDS* (Springer, the *Flag of the Red Cross* edition), second edn, May 21, 1985, in Chap. 11, Page 19, students of New County, Indiana.
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- C. Tarnes and C. Longmire, in *Chronic Ills: AIDS* (Springer, the *Flag of the Red Cross* edition), second edn, May 21, 1985, in Chap. 11, Page 19, students of New County, Indiana.

MISCELLANEOUS NOTE B

3 No observable signs of encumbrance

SURVIVORS CERTIFICATION

Many early OTC trading companies, such as CMC Markets, have been successful in becoming listed on the NYSE and other exchanges. The company and its team, investors and managers, have been rewarded on the public market for the value they have created. The company has been able to raise capital from the public market to support its growth and has been able to pay dividends to its shareholders. The company has also been able to attract top talent and has been able to build a strong brand. The company has been able to create a strong culture and has been able to build a strong relationship with its customers. The company has been able to create a strong competitive advantage and has been able to build a strong market position. The company has been able to create a strong financial performance and has been able to build a strong reputation. The company has been able to create a strong future and has been able to build a strong legacy.

Date: Aug 3 201

Don S. Johnson, Ed.

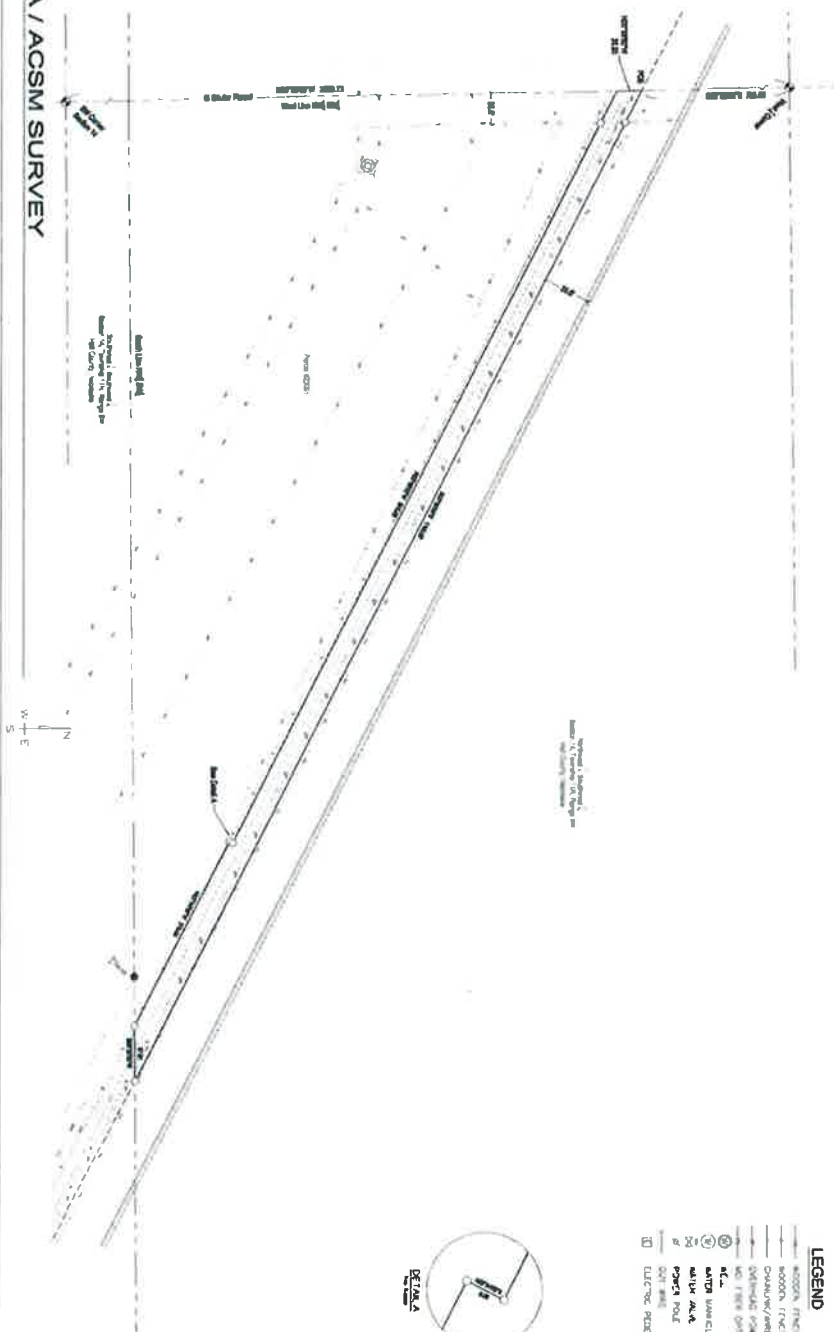
Journal of Management Education

LEGEND

- ☐ MODERN TRUCK
☐ BOONEN TRUCK
☐ CHAUNCEY/WEIR FENCE
☐ GREENFIELD FENCE
☐ NO. 10000 DRIVE
☒ AC
☒ WATER WARE/CLE
☒ MILLER AC
☒ POWER POLE
☐ OUT WEST
☐ ELECTRIC PIEDISTAL



ALTA / ACSM SURVEY





LEGAL DESCRIPTION

A spot of level located in the Southwest Quarter of the Southwest Quarter of Section 14 Township 11 North, Range 2 West of the 6th P.M. East Containing more particularly described as follows:

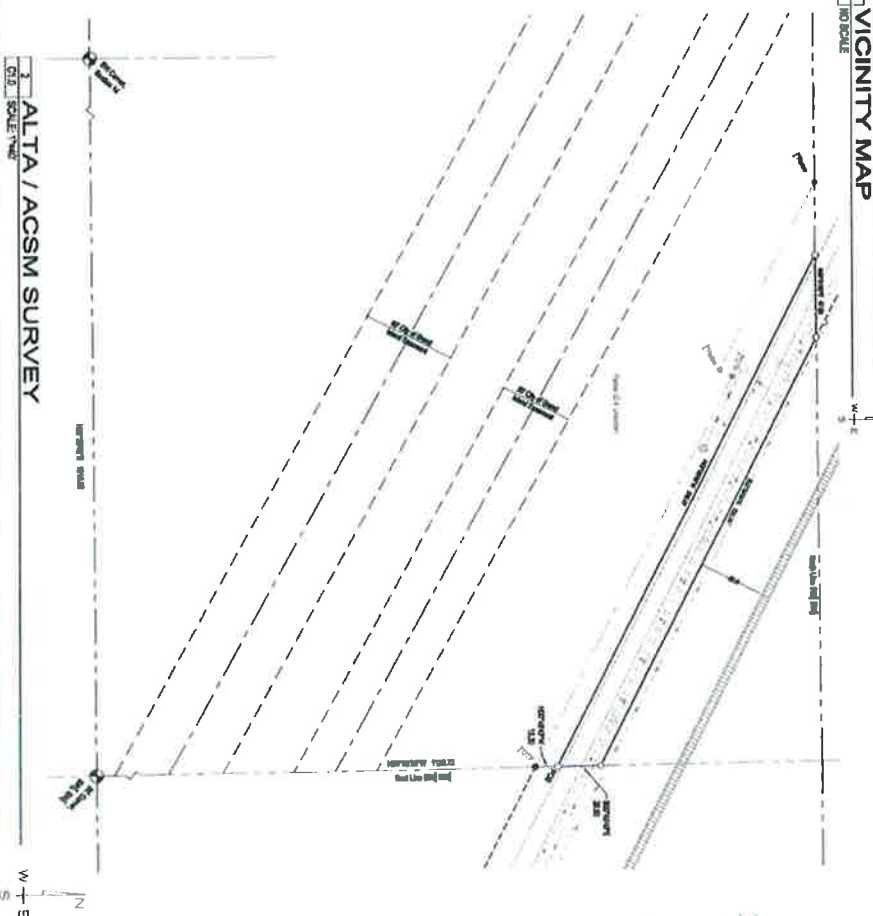
[†] Together are and subjected to stereotypes, standards and/or sanctions by society.

UTILITY NOTES

The adoption of Udding's theory appears to have been influenced in part by the growing realization that the use of the term "Udding's theory" is not only confusing but also misleading. The Udding's theory section (not all using parentheses required).

The Udding's theory has not previously existed as a separate Udding's theory and separate Udding's theory. The Udding's theory has not previously existed as a separate Udding's theory and separate Udding's theory.

The Udding's theory does not contain the Udding's theory in the word Udding's theory. Although the Udding's theory does contain the Udding's theory, it is possible that the information under available.



LEGEND

- WOODEN FENCE
OVERHEAD POWER
NO FIBER OPTIC
WELL
WATER MAIN/OUT
SEWER WAVE
POWER POLE
CUR MARK
ELECTRIC PENETRA

MISCELLANEOUS NOTES

1. *Concentrations are low (are represented in bold and italicized parts) typical of natural concentrations*

SCENARIO 1: REGIONAL DISLOCATION

[illegible]

Dated this ____ day of _____, 2011.

and 3. according to the following:

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ENGINEERING & SURVEYING

8225 North 99th Avenue • Omaha, Nebraska 68133
Tel: 402.972.2000 • www.henryhugoburns.com

**BNSF Right of Way
Acquisition
Hall County, Nebraska**



ALTA/ACSM
SURVEY
PARCEL UNKN

C1.0

VICINITY MAP
☐ 1
☐ G19 NO SCALE

LEAD DESCRIPTION

[illegible]

SPECIAL RELATIONSHIPS

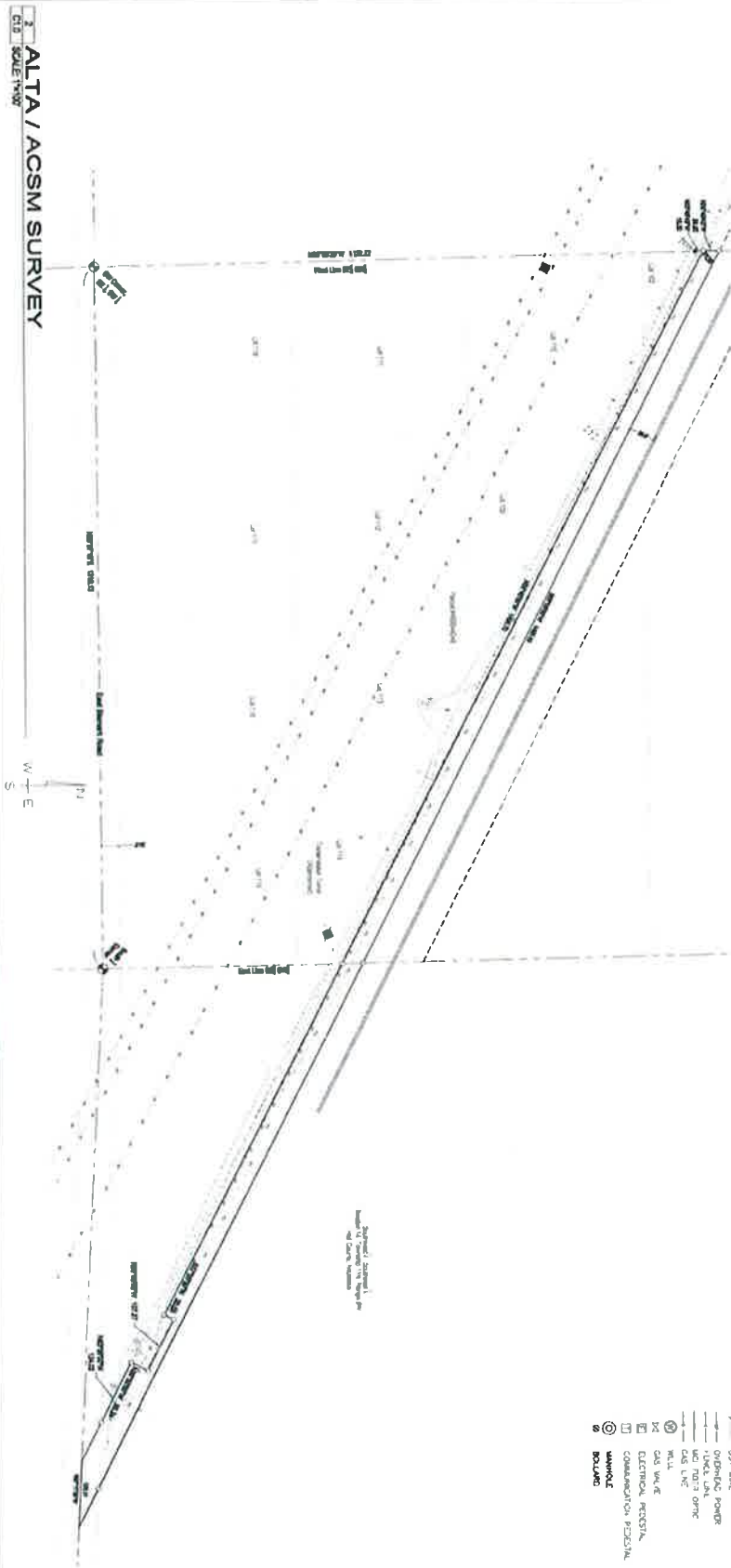
- 418 Stephens Building, 8 "Suites" 7 (England)
- 3C "same old conditions" of *Cheney*, but 2001 agreement by *Paul v. Natural Habitat* (1992) 160 F.2d 1111, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1270, 1271, 1272, 1273, 1274, 1275, 1276, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1292, 1293, 1294, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1342, 1343, 1344, 1345, 1346, 1347, 1348, 1349, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1387, 1388, 1389, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1440, 1441, 1442, 1443, 1444, 1445, 1446, 1447, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473, 1474, 1475, 1476, 1477, 1478, 1479, 1480, 1481, 1482, 1483, 1484, 1485, 1486, 1487, 1488, 1489, 1490, 1491, 1492, 1493, 1494, 1495, 1496, 1497, 1498, 1499, 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1523, 1524, 1525, 1526, 1527, 1528, 1529, 1530, 1531, 1532, 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1550, 1551, 1552, 1553, 1554, 1555, 1556, 1557, 1558, 1559, 1560, 1561, 1562, 1563, 1564, 1565, 1566, 1567, 1568, 1569, 1570, 1571, 1572, 1573, 1574, 1575, 1576, 1577, 1578, 1579, 1580, 1581, 1582, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1590, 1591, 1592, 1593, 1594, 1595, 1596, 1597, 1598, 1599, 1600, 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1616, 1617, 1618, 1619, 1620, 1621, 1622, 1623, 1624, 1625, 1626, 1627, 1628, 1629, 1630, 1631, 1632, 1633, 1634, 1635, 1636, 1637, 1638, 1639, 1640, 1641, 1642, 1643, 1644, 1645, 1646, 1647, 1648, 1649, 1650, 1651, 1652, 1653, 1654, 1655, 1656, 1657, 1658, 1659, 1660, 1661, 1662, 1663, 1664, 1665, 1666, 1667, 1668, 1669, 1670, 1671, 1672, 1673, 1674, 1675, 1676, 1677, 1678, 1679, 1680, 1681, 1682, 1683, 1684, 1685, 1686, 1687, 1688, 1689, 1690, 1691, 1692, 1693, 1694, 1695, 1696, 1697, 1698, 1699, 1700, 1701, 1702, 1703, 1704, 1705, 1706, 1707, 1708, 1709, 1710, 1711, 1712, 1713, 1714, 1715, 1716, 1717, 1718, 1719, 1720, 1721, 1722, 1723, 1724, 1725, 1726, 1727, 1728, 1729, 1730, 1731, 1732, 1733, 1734, 1735, 1736, 1737, 1738, 1739, 1740, 1741, 1742, 1743, 1744, 1745, 1746, 1747, 1748, 1749, 1750, 1751, 1752, 1753, 1754, 1755, 1756, 1757, 1758, 1759, 1760, 1761, 1762, 1763, 1764, 1765, 1766, 1767, 1768, 1769, 1770, 1771, 1772, 1773, 1774, 1775, 1776, 1777, 1778, 1779, 1780, 1781, 17

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2. National & the Commission and to the

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ALTA / ACSM SURVEY
2
CID SCALE 1990

A trail of sand boulders in the North half of Section 12, Township 1° North, Range 8 West of
 T1N R8W, Madison County, Nebraska, more specifically described as follows:

[illegible]

The analysis of studies where farmers are often considered as producers of solid-ground agricultural waste and manure by Dijkster Houten et al.¹ (not at all) compares regions).

The authors have not previously studied the underground situation and whether underground farming may be present.

The authors also do not mention that the studies are in the exact location indicated although the authors do state clearly that they are located at 80-90 cm below the surface from the information made available.

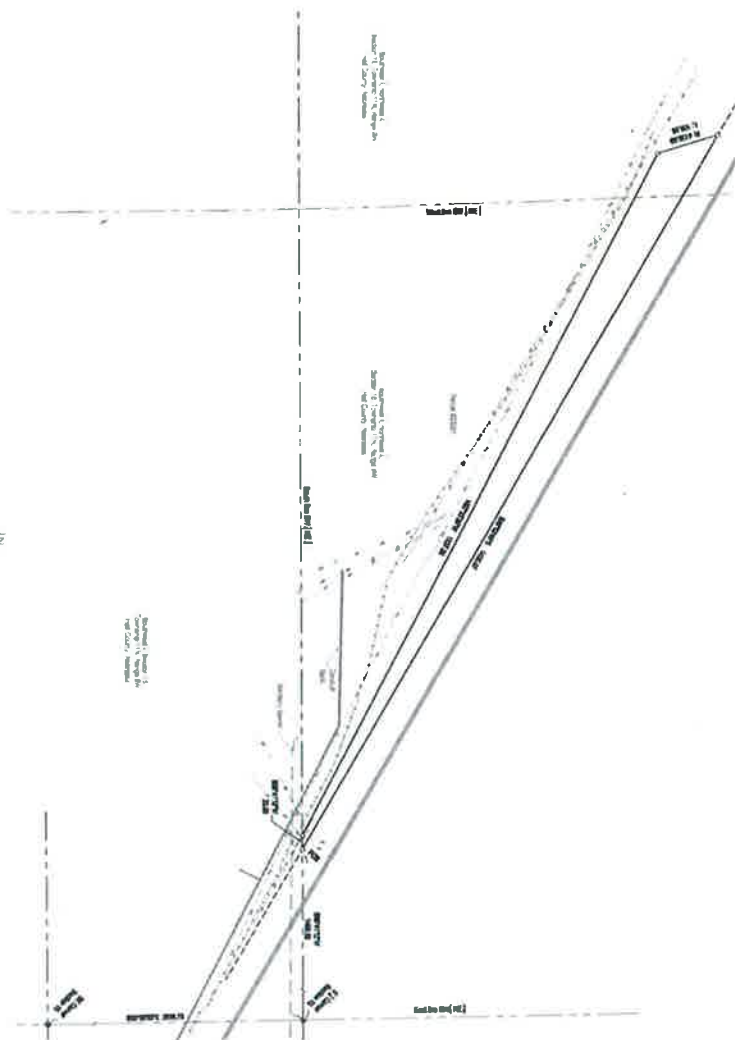
1. *Demagogy* is the use of inflammatory or sensational language to arouse emotions.
2. *My democratic belief* is that every citizen has the right to participate in the political process.

10. Classification of signals as indicated in Table 4 and Figure 4 (signal classification) is 100%.

[illegible]

1. *Formal* Large Surveyor

- ⑤ FIBER OPTIC WALT
- POWER POLE
- ◎ MANHOLE
- CUY WIRE
- GAS LINE
- DEFINED POWER
- WATER LINE
- INTERCOM LINE
- FIBER OPTIC LINE
- PHONE LINE



ALTA / ACSM SURVEY



VICINITY MAP

UNITARIES

The Unitaries of America have written you, and obtained evidence of doing so. Please acknowledge this by filling in the space below and returning it to the Unitaries of America, 10000 Wilshire Blvd., Suite 1000, Beverly Hills, CA 90210. Please include the name of the Unitarian Universalist Church you are affiliated with, and the name of the minister or minister-in-charge. Please include the name of the minister or minister-in-charge of the Unitarian Universalist Church you are affiliated with, and the name of the minister or minister-in-charge of the Unitarian Universalist Church you are affiliated with.

LE GUL DE BOGRAPHION

A portion of Units A-1 and A-2 includes Addition to the City of Grand Island Building "C" located at 1100 West 1st St., Grand Island, Nebraska, more particularly described as follows:

WORLDWIDE SCIENCE

conductor) is provided by a computer to a subject. When

- [illegible]

MISCELLANEOUS NOTES

Discussions for this paper are supported in part by a research grant awarded through the National Science Foundation.

2. The information signs at each entrance

SCIENTIFIC CREDENTIALS

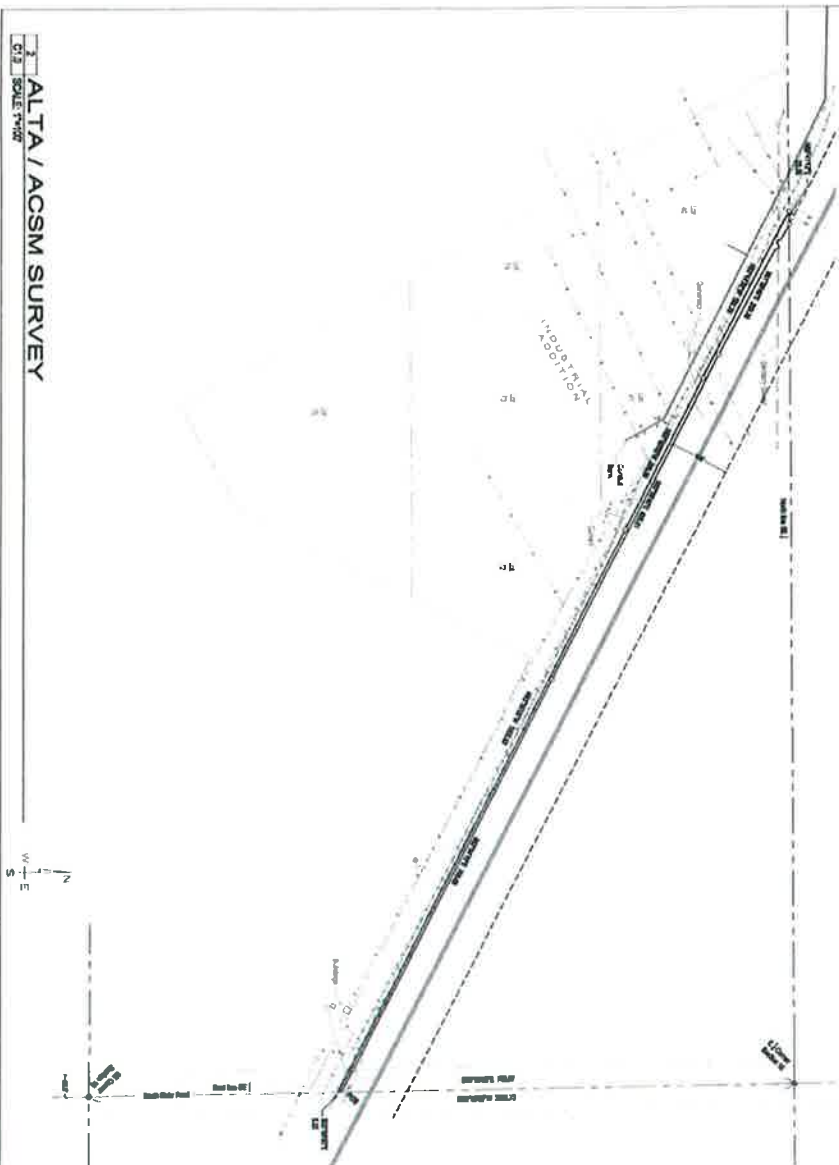
[illegible]

1000

Licensee Last Name _____

LEGEND

- ① LEFT POLE
- ② ELECTRIC BOX
- ③ FIBER OPTIC WALL
- ④ BOLLARD
- ⑤ POWER POLE
- ⑥ VALVE
- ⑦ UNWOUND
- ⑧ SURF WIRE
- ⑨ WELL
- ⑩ GAS LINE
- ⑪ DEWATER PUMP
- ⑫ WATER LINE
- ⑬ UNDERGROUND ELECT
- ⑭ FIBER OPTIC LINE
- ⑮ POLE UNIT



2	ALTA / ACSM SURVEY
C12	SCALE: 1"=100'

C1.0

ALTA/ACSM
SURVEY
PARCEL 36

**BNSF Right of Way
Acquisition
Hall County, Nebraska**



RW ENGINEERING
& SURVEYING

E725 Name _____ Date _____ • Chapter: _____ Section: _____

Exhibit E

Samples of BNSF's Standard Utility Crossing Agreements

Exhibit E-1

**Sample Supplemental Agreement
(amendment for any existing permit)**

SUPPLEMENTAL AGREEMENT

This **SUPPLEMENTAL AGREEMENT**, made this _____ day of _____, 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. 1-52739 dated September 7, 2011 marked "Exhibit A", attached hereto and made a part hereof ("Premises").

2.(a) Licensee agrees to reimburse Licensor (within thirty (30) days after receipt of bills therefor) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction, maintenance, and use of the Fiber Optic Line, including but not limited to the furnishing of Licensor's Flagman and any vehicle rental costs incurred. The cost of flagger services provided by the Railway, when deemed necessary by the Railway's representative, will be borne by the Licensee. The estimated cost for one (1) flagger is \$800.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, 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 actual or estimated flagging rates. The flagging rate in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of flagging pursuant to this paragraph.

(b) Prior to entering the Premises, Licensee shall and shall cause its contractor to comply with all Licensor's applicable safety rules and regulations. Prior to commencing any work on the Premises, Licensee shall complete and shall require its contractor to complete the safety-orientation program at the following Internet Website "<http://contractororientation.com>". This program must be completed no more than one year in advance of Licensee's entry on the Premises.

(c) Licensee shall notify Licensor's Engineer, Todd Kuhn at telephone 303-480-6582, at least five (5) business days prior to installation of the Electric Line and prior to entering the Premises for any subsequent maintenance thereon.

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 *Licensors*.
- ◆ 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 or 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 Licensors prior to performing any work or services under this Agreement

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate in Licensors' 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 Licensors' Blanket Policy;
- ☐ I elect not to participate in Licensors' 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 Licensors for all claims and suits against Licensors. In addition, its insurers, through policy endorsement, waive their right of subrogation against Licensors 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 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 E-2

Sample Electrical License
(new permit for electrical or OH power)

**LICENSE FOR ELECTRIC SUPPLY LINE
ACROSS OR ALONG RAILWAY PROPERTY**

(Electric Light, Power Supply, Irrespective of Voltage, Overhead or Underground)

THIS LICENSE ("License"), made as of the ____ day of _____, 20__ ("Effective Date") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Licensor") and _____, a _____ corporation ("Licensee").

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to the following:

[If changed to an Easement, globally change "License" to "Easement".]

GENERAL

1. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties including, without limitation, any leases, use rights, easements, liens or other encumbrances, and upon the terms and conditions set forth below, to construct, maintain, and use in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process ("the Drawings and Specifications") an electric supply line containing a maximum of _____ conductors, together with its supporting or containing structures ("Electric Supply Line") across or along the premises of Licensor at or near the station of _____, County of _____, State of _____, Line Segment _____, Mile Post _____, shown by bold line upon the print No. _____, dated _____ marked "Exhibit A", attached hereto and made a part hereof ("Premises").
2. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, Licensees, easement beneficiaries or lien holders, if any, or interfere with the use of such improvements.
3. Licensee shall use the Premises solely for construction, maintenance, and use of an Electric Supply Line in accordance with the Drawings and Specifications. Licensee shall not use the Premises for any other purpose. Licensee shall not use or store hazardous substances, as defined by the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA") or petroleum or oil as defined by applicable Environmental Laws on the Premises.
4. In case of the eviction of Licensee by anyone owning or claiming title to or any interest in the Premises, Licensor shall not be liable to refund Licensee any compensation paid hereunder or for any damage Licensee sustains in connection therewith.
5. Any contractors or subcontractors performing work on the Electric Supply Line or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.

TERM

6. This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.

[If changed to a perpetual easement, replace with "Intentionally Deleted" and delete the heading "Term".]

COMPENSATION

7. (a) Licensee shall pay Licensor, prior to the Effective Date, the sum of _____ and No/100 Dollars (\$ _____) as compensation for the use of the Premises.
- (b) Licensee agrees to reimburse Licensor (within thirty (30) days after receipt of bills therefor) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction, maintenance, and use of the Electric Supply Line, including but not limited to the furnishing of Licensor's Flagman and any vehicle rental costs incurred. The cost of flagger services provided by the Railway, when deemed necessary by the Railway's representative, will be borne by the Licensee. The estimated cost for one (1) flagger is \$600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, 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 actual or estimated flagging rates. The flagging rate in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of flagging pursuant to this paragraph.
- (c) All invoices are due thirty (30) days after the date of invoice. In the event that Licensee shall fail to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by Licensee at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2 1/2%), and for the period July 1 through December 31, the prime rate last published in *The Wall Street Journal* in the preceding June plus two and one-half percent (2 1/2%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

COMPLIANCE WITH LAWS

8. (a) Licensee shall observe and comply with any and all laws, statutes, regulations,

ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("Legal Requirements") relating to the construction, maintenance and use of the Electric Supply Line and the use of the Premises.

- (b) Prior to entering the Premises, Licensee shall and shall cause its contractor to comply with all Licensor's applicable safety rules and regulations. Prior to commencing any work on the Premises, Licensee shall complete and shall require its contractor to complete the safety-orientation program at the following Internet Website "<http://contractororientation.com>". This program must be completed no more than one year in advance of Licensee's entry on the Premises.

DEFINITION OF COST AND EXPENSE

- 9. For the purpose of this License, "cost" or "costs" "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.

RIGHT OF LICENSOR TO USE

- 10. Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:
 - (a) to maintain, renew, use, operate, change, modify and relocate any existing pipe, power, communication lines and appurtenances and other facilities or structures of like character upon, over, under or across the Premises;
 - (b) to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; or
 - (c) to use the Premises in any manner as the Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in Section 3 above.

LICENSEE'S OPERATIONS

- 11. (a) Licensee shall notify Licensor's Roadmaster, _____ at _____, telephone _____, at least five (5) business days prior to construction of the Electric Supply Line and prior to entering the Premises for any subsequent maintenance thereon.
- (b) In performing the work described in Section 3, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.

12. (a) Licensee shall, at its sole cost and expense, construct and at all times maintain the Electric Supply Line in accordance with the National Electric Code.
- (b) If the operation or maintenance of said Electric Supply 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 the Licensor or of any lessee or Licensee of the Licensor, or in any manner interfere with the operation, maintenance, or use by the Licensor of its right-of-way, tracks, structures, pole lines, signal and communication lines, radio, or other equipment, devices, other property or appurtenances thereto, Licensee agrees immediately to make such changes in its Electric Supply Line and furnish such protective devices and/or replacement equipment to Licensor and its lessees or Licensees as shall be necessary, in the judgement of the Licensor's representative, to eliminate such interference. The cost of such protective devices and their installations shall be borne solely by Licensee. If any of the interference covered by this paragraph shall be, in the judgement of the Licensor, of such importance to the safety of the Licensor's operations as to require immediate corrective action, Licensee, upon notice from the Licensor, shall either, at the Licensor's election, cease using said Electric Supply Line for any purpose whatsoever and remove same, or reduce the voltage or load on said Electric Supply Line, or take such other interim protective measures as the Licensor may deem advisable, until the protective devices and/or replacement equipment required by this paragraph have been installed, put in operation, tested, and found to be satisfactory to correct the interference.
13. (a) Under no conditions shall Licensee 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 twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises 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 Licensor, or the safe operation and activities of Licensor. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- (b) Licensee shall, at its sole cost and expense, and subject to the supervision of Licensor's Roadmaster, locate, construct and maintain the Electric Supply Line in such a manner and of such material that it will not at any time be a source of danger to or interference with the existence or use of present or future tracks,

roadbed or property of Licensor, or the safe operation and activities of its railroad. Further, the Electric Supply Line shall be constructed, installed and maintained in conformity with the plans and specifications shown on the print attached hereto as Exhibit A and made a part hereof (which, if present, are to be deemed part of the Drawings and Specifications). Licensor may direct one of its field engineers to observe or inspect the construction and/or maintenance of the Electric Supply Line at any time for compliance with the Drawings and Specifications. If ordered at any time to halt construction or maintenance of the Electric Supply Line by Licensor's personnel due to non-compliance with the same or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Electric Supply Line, it being solely Licensee's responsibility to ensure that the Electric Supply Line is constructed in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise nor the failure by Licensor to exercise any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this Section, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, upon receipt of an invoice for the same. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

14. Licensee shall, at its sole cost and expense, remove all combustible material from around wooden poles and will at all times keep the space around such poles free of such material, and if removal of such combustible material shall not be attended to within fifteen (15) days after having been requested by Licensor to do so, Licensor shall have the right itself to perform the work and Licensee hereby agrees to reimburse Licensor for the expense so incurred.
15. During the construction and any subsequent maintenance performed on Electric Supply Line, Licensee shall perform such work in a manner to preclude damage to the property of Licensor, and preclude interference with the operation of its railroad. The construction of the Electric Supply Line shall be completed within one (1) year of the Effective Date. Upon completion of the construction of the Electric Supply Line and after performing any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore Licensor's premises to their former state as of the Effective Date of this License.
16. If at any time during the term of this License, Licensor shall desire the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Electric Supply Line, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Electric Supply Line as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without

limitation, the relocation of the existing or the construction of new a Electric Supply Line.

17. (a) Prior to Licensee conducting any boring work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, the Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Upon Licensee's written request, which shall be made thirty (30) business days in advance of Licensee's requested construction of the Electric Supply Line, Licensor will provide Licensee any information that Licensor's Engineering Department has in its possession concerning the existence and approximate location of Licensor's underground utilities and pipelines at or near the vicinity of the proposed Electric Supply Line. Prior to conducting any such boring work, the Licensee will review all such material. Licensor does not warrant the accuracy of information relating to subsurface conditions and Licensee's operations will be subject at all times to the liability provisions herein.
 - (b) For all bores greater than 26-inch diameter' and at a depth less than 10.0 feet below bottom of rail, a soil investigation will need to be performed by the Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in its sole discretion a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at its sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
18. Any open hole, boring or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
 - (a) filled in to surrounding ground level with compacted bentonite grout; or
 - (b) otherwise secured or retired in accordance with any applicable Legal Requirement. All excavated materials shall not remain on Licensor's property for more than ten (10) days and shall be properly disposed of by Licensee in accordance with applicable Legal Requirements.

19. Upon termination of this License, Licensee shall, at its sole cost and expense:
- (a) remove all of its equipment from the Premises;
 - (b) remove the Electric Supply Line at Licensor's sole discretion;
 - (c) report and restore any damage to the Premises arising from, growing out of, or connected with Licensee's use of the Premises;
 - (d) remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
 - (e) leave the Premises in the condition which existed as of the Effective Date of this License.
20. Licensee's on-site supervision shall retain/maintain a fully-executed copy of this License at all times while on the Premises.

LIABILITY

*****Use bracketed language when dealing with a governmental entity**

21. (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

- 22. 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.**

INSURANCE

- 23. 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 *Licensors*.
- ◆ 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*.

[[**OPTIONAL: ADD SECTION C. IF NO EMPLOYEES]]

- C. Licensee hereby agrees to waive any Workers' Compensation subrogation claims, liens, or demands, which could be asserted against *Licensors* by the Licensee, and further agrees to indemnify and save harmless *Licensors* and its employees, regardless of *Licensors*' negligence, for any and all Workers' Compensation subrogation claims, liens, or demands asserted by the Licensee's agents or employees, or the Licensee's insurance carrier.

[[**OPTIONAL: ADD SECTION C. IF EMPLOYEES]]

- 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 Licensors prior to performing any work or services under this Agreement

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

- ☐ I elect to participate in Licensors' Blanket Policy;
- ☐ I elect not to participate in Licensors' 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 Licensors for all claims and suits against Licensors. In addition, its insurers, through policy endorsement, waive their right of subrogation against Licensors 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 Licensors 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.

ENVIRONMENTAL

24. (a) Licensee shall strictly comply with all federal, state and local environmental laws and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA (collectively referred to as the "Environmental Laws"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.
- (b) Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any release on or from the Premises. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- (c) In the event that Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Electric supply Line which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.
- (d) Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

ALTERATIONS

25. Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensors prior written consent.

NO WARRANTIES

26. LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

QUIET ENJOYMENT

27. LICENSOR DOES NOT WARRANT ITS TITLE TO THE PROPERTY NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.

DEFAULT

28. If default shall be made in any of the covenants or agreements of Licensee contained in this document, or in case of any assignment or transfer of this License by operation of law, Licensors may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Any waiver by Licensors of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensors ability to enforce any Section of this License. The remedy set forth in this Section 28 shall be in addition to, and not in limitation of, any other remedies that Licensors may have at law or in equity.

LIENS AND CHARGES

29. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on Premises. Licensors is hereby authorized to post any notices or take any other action upon or with respect to Premises that is or may be permitted by law to prevent the attachment of any such liens to Premises; provided, however, that failure of Licensors to take any such action shall not relieve Licensee of any obligation or liability under this Section 29 or any other Section of this License. Licensee shall pay when due any taxes, assessments or other charges (collectively, "Taxes") levied or assessed upon the Improvements by any

governmental or quasi-governmental body or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.

TERMINATION

30. This License may be terminated by Licensor, at any time, by serving thirty (30) days' written notice of termination upon Licensee. This License may be terminated by Licensee upon execution of Licensor's Mutual Termination Letter Agreement then in effect. Upon expiration of the time specified in such notice, this License and all rights of Licensee shall absolutely cease.

[If changed to an easement, replace § 30 with the following language:

If at any time Licensee fails to properly perform its obligations under this Easement, Licensor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, (ii) terminate this Easement if Licensee fails to perform such obligation within 30 days after written notice thereof from Licensor to Licensee, or (iii) at Licensee's sole cost, arrange for the performance of such work as Licensor deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Licensor, or anyone or anything present on the rail corridor or property with the authority of permission of Licensor. Licensee shall promptly reimburse Licensor for all costs of work performed on Licensee's behalf upon receipt of an invoice for such costs. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation set forth in this Easement.]

31. If Licensee fails to surrender to Licensor the Premises, upon any termination of this License, all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered. Termination shall not release Licensee from any liability or obligation, whether of indemnity or otherwise, resulting from any events happening prior to the date of termination.

[If changed to an easement, replace § 31 with the following language:

- 31(a) Removal of Improvements and Restoration. Upon termination of this Easement, whether by abandonment of the Easement or by the exercise of Licensor's termination rights hereunder, Licensee shall, at its sole cost and expense, immediately perform the following:**

- (i) remove all of Licensee's Improvements and all appurtenances thereto from the Premises at Licensor's sole discretion;**
- (ii) repair and restore any damage to the Premises arising from, growing out of, or connected with Licensee's use of the Premises;**
- (iii) remedy and unsafe conditions on the Premises created or aggravated by**

Licensee; and

(iv) leave the Premises in the condition which existed as of the Effective Date.

(b) Limited License for Entry. If this Easement is terminated, Licenser may direct Licensee to undertake one or more of the actions set forth above, at Licensee's sole cost, in which case Licensee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Licenser. The terms of this limited license include all of Licensee's obligations under this Easement. Termination will not release Licensee from any liability or obligation under this Easement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee's Improvements, if any, are removed and the Premises is restored to its condition as of the Effective Date. If Licensee fails to surrender the Premises to Licenser upon any termination of the Easement, all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises is surrendered.]

ASSIGNMENT

32. Neither Licensee, nor the heirs, legal representatives, successors, or assigns of Licensee, nor any subsequent assignee, shall assign or transfer this License or any interest herein, without the prior written consent and approval of Licenser, which may be withheld in Licenser's sole discretion.

[If changed to an easement, replace with following language:

No assignment of Licensee's rights hereunder shall be effective unless the proposed assignee assumes in writing all of Licensee's obligations under this Easement. Subject to the foregoing, this Easement shall inure to the benefit of and be binding upon Licenser and Licensee's successors and assigns.]

NOTICES

33. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licenser: Jones Lang LaSalle Global Services - RR, Inc.
3017 Lou Menk Drive, Suite 100
Fort Worth, TX 76131-2800
Attn: Licenses/Permits

with a copy to: BNSF Railway Company
2500 Lou Menk Dr. – AOB-3
Fort Worth, TX 76131
Attn: _____ - Land Revenue Management

[[with a copy to: FILL IN ADDITIONAL ADDRESS OF REGIONAL JONES
LANG LASALLE OFFICE IF DOCUMENT IS ORIGINATING
FROM THAT OFFICE**]]**

If to Licensee: _____

SURVIVAL

34. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Electric Supply Line and improvements are removed and the Premises are restored to its condition as of the Effective Date.

RECORDATION

35. It is understood and agreed that this License shall not be placed on public record.

[If changed to an easement, add the following sentence: A memorandum of this Easement may be recorded at either party's written request.]

APPLICABLE LAW

36. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the state of Texas without regard to conflicts of law provisions.

[If changed to an easement, then replace with following:

All questions concerning any interest in real property created or affected by this Easement shall be governed by the law of the state in which the Premises are located, all other questions concerning the interpretation or application of provisions of this Easement shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.]

SEVERABILITY

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

INTEGRATION

38. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.

MISCELLANEOUS

39. In the event that Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
40. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.

*******USE ONLY FOR NEW MEXICO*******

41. In conformance with and limited to the applicable effect of the Laws of 1971 (Ch. 107, Sec. 1, Laws of New Mexico § 56-7-1 N.M.S.A., 1978), insofar as the indemnity provisions set forth in any of the preceding sections or any rider, amendment or addendum hereto, to indemnify any Indemnatee, or the agents or employees of any Indemnatee, or any legal entity for whose negligence, acts or omissions any of them may be liable, from liability, claims, damages, losses or expenses, including attorney fees, arising out of, in whole or in part, the negligence of any Indemnatee, or of the agents or employees of any Indemnatee, or of any legal entity for whose negligence, acts or omissions any of them may be liable for, such indemnity provisions shall not extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of:
- (a) The preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications by any Indemnatee, or the agents or employees of any Indemnatee; or
 - (b) The giving of or the failure to give directions or instructions by any Indemnatee, or the agents or employees of any Indemnatee, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to rail corridor.

[Intentionally left blank]

Jones Lang LaSalle Global Services – RR, Inc. is acting as representative for BNSF Railway Company.

IN WITNESS WHEREOF, this License 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.
3017 Lou Menk Drive, Suite 100
Fort Worth, TX 76131-2800

By: _____
_____, _____

**&LICENSEE&
&ADDRESS&**

By: _____

Title: _____

Exhibit E-3

Sample Pipeline License
(new permit for water, sewer, or storm water lines)

PIPELINE LICENSE

THIS LICENSE ("License"), made as of the ____ day of _____, 20__ ("Effective Date") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Licensor") and _____, a _____ corporation ("Licensee").

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to the following:

[If changed to an Easement, globally change "License" to "Easement".]

GENERAL

1. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "Drawings and Specifications"), _____ (__) Pipeline(s), _____ inches in diameter inside a _____ [Size of Casing Pipe] inch _____ [Casing Material] casing ("PIPELINE"), across or along the rail corridor of Licensor at or near the station of _____, County of _____, State of _____, Line Segment _____, Mile Post _____ as shown on the attached Drawing No. _____, dated _____, attached hereto as Exhibit "A" and made a part hereof ("Premises").
2. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, Licensees, easement beneficiaries or lien holders, if any, or interfere with the use of such improvements.
3. Licensee shall use the Premises solely for construction and maintenance of a PIPELINE in accordance with the Drawings and Specifications carrying _____. Licensee shall not use the PIPELINE to carry any other commodity or use the Premises for any other purpose.

Licensee covenants that it will not handle or transport "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any federal, state, or local governmental agency or body through the PIPELINE on Licensor's property. Licensee agrees periodically to furnish Licensor with proof, satisfactory to Licensor that Licensee is in such compliance. Should Licensee not comply fully with the above-stated obligations of this Section, notwithstanding anything contained in any other provision hereof, Licensor may, at its option, terminate this License by serving five (5) days' notice of termination upon Licensee. Upon termination, Licensee shall remove the PIPELINE and restore Licensor's property as herein elsewhere provided.

4. In case of the eviction of Licensee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or for any damage Licensee sustains in connection therewith.
5. Any contractors or subcontractors performing work on the PIPELINE or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.

TERM

6. This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.

[If changed to a perpetual easement, replace with "Intentionally Deleted" and delete the heading "Term".]

COMPENSATION

7. (a) Licensee shall pay Licensor, prior to the Effective Date, the sum of _____ and No/100 Dollars (\$) _____ as compensation for the use of the Premises.
- (b) Licensee agrees to reimburse Licensor (within thirty (30) days after receipt of bills therefor) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the PIPELINE, including but not limited to the furnishing of Licensor's Flagman and any vehicle rental costs incurred. The cost of flagger services provided by the Railway, when deemed necessary by the Railway's representative, will be borne by the Licensee. The estimated cost for one (1) flagger is \$600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, 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 actual or estimated flagging rates. The flagging rate in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of flagging pursuant to this paragraph.
- (c) All invoices are due thirty (30) days after the date of invoice. In the event that Licensee shall fail to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by Licensee at an annual

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rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2 1/2%), and for the period July 1 through December 31, the prime rate last published in *The Wall Street Journal* in the preceding June plus two and one-half percent (2 1/2%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

COMPLIANCE WITH LAWS

8. (a) Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("Legal Requirements") relating to the construction, maintenance, and use of the PIPELINE and the use of the Premises.
- (b) Prior to entering the Premises, Licensee shall and shall cause its contractor to comply with all Licensor's applicable safety rules and regulations. Prior to commencing any work on the Premises, Licensee shall complete and shall require its contractor to complete the safety-orientation program at the following Internet Website "<http://contractororientation.com>". This program must be completed no more than one year in advance of Licensee's entry on the Premises.

DEFINITION OF COST AND EXPENSE

9. For the purpose of this License, "cost" or "costs" "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.

RIGHT OF LICENSOR TO USE

10. Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:
 - (a) to maintain, renew, use, operate, change, modify and relocate any existing pipe, power, communication lines and appurtenances and other facilities or structures of like character upon, over, under or across the Premises;
 - (b) to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; or
 - (c) to use the Premises in any manner as the Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in Section 3 above.

LICENSEE'S OPERATIONS

11. (a) Licensee shall notify Licensor's Roadmaster, _____ at _____, telephone _____, at least five (5) business days prior to installation of the PIPELINE and prior to entering the Premises for any subsequent maintenance thereon.
- (b) In performing the work described in Section 3, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.
12. (a) Under no conditions shall Licensee 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 twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises 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 Licensor, or the safe operation and activities of Licensor. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- (b) Licensee shall, at its sole cost and expense, construct and maintain the PIPELINE in such a manner and of such material that it will not at any time be a source of danger to or interference with the existence or use of present or future tracks, roadbed or property of Licensor, or the safe operation and activities of Licensor. Licensor may direct one of its field engineers to observe or inspect the construction and/or maintenance of the PIPELINE at any time for compliance with the Drawings and Specifications. If ordered at any time to halt construction or maintenance of the PIPELINE by Licensor's personnel due to non-compliance with the same or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the PIPELINE, it being solely Licensee's responsibility to ensure that the PIPELINE is constructed in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise nor the failure by Licensor to exercise any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this Section, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse

Licensors for all costs and expenses of such work, upon receipt of an invoice for the same. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

13. During the construction and any subsequent maintenance performed on the PIPELINE, Licensee shall perform such work in a manner to preclude damage to the property of Licensor, and preclude interference with the operation of its railroad. The construction of the PIPELINE shall be completed within one (1) year of the Effective Date. Upon completion of the construction of the PIPELINE and after performing any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore Licensor's Premises to their former state as of the Effective Date of this License.
14. If at any time during the term of this License, Licensor shall desire the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the PIPELINE, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the PIPELINE as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the existing or the construction of new a PIPELINE(s).
15. (a) Prior to Licensee conducting any boring work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, the Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Upon Licensee's written request, which shall be made thirty (30) business days in advance of Licensee's requested construction of the PIPELINE, Licensor will provide Licensee any information that Licensor has in the possession of its Engineering Department concerning the existence and approximate location of Licensor's underground utilities and pipelines at or near the vicinity of the proposed PIPELINE. Prior to conducting any such boring work, the Licensee will review all such material. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions and Licensee's operations will be subject at all times to the liability provisions herein.
- (b) For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation will need to be performed by the Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and

approval, in its sole discretion a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at its sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.

16. Any open hole, boring or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
 - (a) filled in to surrounding ground level with compacted bentonite grout; or
 - (b) otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Licensor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.
17. Upon termination of this License, Licensee shall, at its sole cost and expense:
 - (a) remove the PIPELINE and all appurtenances thereto, or, at the sole discretion of the Licensor, fill and cap or otherwise appropriately decommission the PIPELINE with a method satisfactory to Licensor;
 - (b) report and restore any damage to the Premises arising from, growing out of, or connected with Licensee's use of the Premises;
 - (c) remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
 - (d) leave the Premises in the condition which existed as of the Effective Date of this License.
18. Licensee's on-site supervisions shall retain/maintain a fully executed copy of this License at all times while on the Premises.

LIABILITY

*****Use bracketed language when dealing with a governmental entity**

19. (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,**

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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 19(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 PIPELINE FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LICENSEE WILL INDEMNIFY, DEFEND

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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 AGREE] 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

- 20. ALL PERSONAL PROPERTY, 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.**

INSURANCE

21. 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 \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 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 *Licensors*.
- ◆ 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*.

[OPTIONAL: ADD SECTION C. IF NO EMPLOYEES]**

- C. Contractor hereby agrees to waive any Workers' Compensation subrogation claims, liens, or demands, which could be asserted against Railroad by the Contractor, and further agrees to indemnify and save harmless Railroad and its employees, regardless of Railroad's negligence, for any and all Workers' Compensation subrogation claims, liens, or demands asserted by the Contractor's agents or employees, or the Contractor's insurance carrier.

[OPTIONAL: ADD SECTION C. IF EMPLOYEES]**

- 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 \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the PIPELINE. THE CONSTRUCTION OF THE PIPELINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the PIPELINE 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 Licensors 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 \$_____.

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

HE B N L SE NE F LL S RE RE N HE F R N E

E. Contractor's Pollution Legal Liability (CPL) Insurance. This insurance shall be in an amount of at least FIVE MILLION DOLLARS (\$5,000,000) per occurrence and TEN MILLION DOLLARS (\$10,000,000) in the aggregate including but not limited to coverage for the following:

- ◆ bodily injury, sickness, disease, mental anguish, or shock sustained by any person, including death;
- ◆ property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed;
- ◆ defense costs including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.
- ◆ Coverage shall apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in BODILY INJURY, PROPERTY DAMAGE, or Remediation Expense.
- ◆ If coverage is purchased on a "claims made" basis, lessee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation, or termination of this contract. Annually contractor agrees to provide evidence of such coverage as required hereunder.
- ◆ Delete any bodily injury exclusions resulting from lead or asbestos.
- ◆ Amend the Contractual Liability exclusions and employers' liability exclusion to provide coverage for liability assumed under contract.
- ◆ Amend the definition of Property Damage to provide coverage for natural resource damage.

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. In the event of a claim or lawsuit involving Railroad arising out of this agreement, Licensee will make available any required policy covering such claim or lawsuit.

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.

ENVIRONMENTAL

22. (a) Licensee shall strictly comply with all federal, state and local environmental laws and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA (collectively referred to as the "Environmental Laws"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.
- (b) Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any release on or from the Premises. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- (c) In the event that Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the PIPELINE which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.

- (d) Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

ALTERATIONS

23. Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

NO WARRANTIES

24. **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

QUIET ENJOYMENT

25. **LICENSOR DOES NOT WARRANT ITS TITLE TO THE PROPERTY NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

DEFAULT

26. If default shall be made in any of the covenants or agreements of Licensee contained in this document, or in case of any assignment or transfer of this License by operation of law, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedy set forth in this Section 26 shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

LIENS AND CHARGES

27. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on Premises. Licensors is hereby authorized to post any notices or take any other action upon or with respect to Premises that is or may be permitted by law to prevent the attachment of any such liens to Premises; provided, however, that failure of Licensors to take any such action shall not relieve Licensee of any obligation or liability under this Section 27 or any other Section of this License. Licensee shall pay when due any taxes, assessments or other charges (collectively, "Taxes") levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Licensors or the Premises that are attributable to the Improvements.

TERMINATION

28. This License may be terminated by Licensors, at any time, by serving thirty (30) days' written notice of termination upon Licensee. This License may be terminated by Licensee upon execution of Licensors's Mutual Termination Letter Agreement then in effect. Upon expiration of the time specified in such notice, this License and all rights of Licensee shall absolutely cease.

[If changed to an easement, replace § 28 with the following language:

If at any time Licensee fails to properly perform its obligations under this Easement, Licensors, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, (ii) terminate this Easement if Licensee fails to perform such obligation within 30 days after written notice thereof from Licensors to Licensee, or (iii) at Licensee's sole cost, arrange for the performance of such work as Licensors deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Licensors, or anyone or anything present on the rail corridor or property with the authority of permission of Licensors. Licensee shall promptly reimburse Licensors for all costs of work performed on Licensee's behalf upon receipt of an invoice for such costs. Licensors's failure to perform any obligations of Licensee shall not alter the liability allocation set forth in this Easement.]

29. If Licensee fails to surrender to Licensors the Premises, upon any termination of this License, all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered. Termination shall not release Licensee from any liability or obligation, whether of indemnity or otherwise, resulting from any events happening prior to the date of termination.

[If changed to an easement, replace § 29 with the following language:

- 29(a) Removal of Improvements and Restoration. Upon termination of this Easement, whether by abandonment of the Easement or by the exercise of Licensors's termination rights hereunder, Licensee shall, at its sole cost and expense, immediately perform the following:**

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- (i) remove all of Licensee's Improvements and all appurtenances thereto from the Premises at Licensors sole discretion;
 - (ii) repair and restore any damage to the Premises arising from, growing out of, or connected with Licensee's use of the Premises;
 - (iii) remedy and unsafe conditions on the Premises created or aggravated by Licensee; and
 - (iv) leave the Premises in the condition which existed as of the Effective Date.
- (b) **Limited License for Entry.** If this Easement is terminated, Licensors may direct Licensee to undertake one or more of the actions set forth above, at Licensee's sole cost, in which case Licensee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Licensors. The terms of this limited license include all of Licensee's obligations under this Easement. Termination will not release Licensee from any liability or obligation under this Easement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee's Improvements, if any, are removed and the Premises is restored to its condition as of the Effective Date. If Licensee fails to surrender the Premises to Licensors upon any termination of the Easement, all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises is surrendered.]

ASSIGNMENT

30. Neither Licensee, nor the heirs, legal representatives, successors, or assigns of Licensee, nor any subsequent assignee, shall assign or transfer this License or any interest herein, without the prior written consent and approval of Licensors, which may be withheld in Licensors sole discretion.

[If changed to an easement, replace with following language:

No assignment of Licensee's rights hereunder shall be effective unless the proposed assignee assumes in writing all of Licensee's obligations under this Easement. Subject to the foregoing, this Easement shall inure to the benefit of and be binding upon Licensors and Licensee's successors and assigns.]

NOTICES

31. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address

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as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Jones Lang LaSalle Global Services - RR, Inc.
3017 Lou Menk Drive, Suite 100
Fort Worth, TX 76131-2800
Attn: Licenses/Permits

with a copy to: BNSF Railway Company
2500 Lou Menk Dr. – AOB3
Fort Worth, TX 76131
Attn: Senior Manager Real Estate

[[with a copy to: FILL IN ADDITIONAL ADDRESS OF REGIONAL JONES LANG LASALLE OFFICE IF DOCUMENT IS ORIGINATING FROM THAT OFFICE**]]**

If to Licensee: _____

SURVIVAL

32. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the PIPELINE and improvements are removed and the Premises are restored to its condition as of the Effective Date.

RECORDATION

33. It is understood and agreed that this License shall not be placed on public record.

[If changed to an easement, add the following sentence: A memorandum of this Easement may be recorded at either party's written request.]

APPLICABLE LAW

34. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.

[If changed to an easement, then replace with following language:

All questions concerning any interest in real property created or affected by this Easement shall be governed by the law of the state in which the Premises are located, all other questions concerning the interpretation or application of provisions of this Easement shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.]

SEVERABILITY

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

INTEGRATION

36. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.

MISCELLANEOUS

37. In the event that Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
38. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.

*******USE ONLY FOR NEW MEXICO*******

39. In conformance with and limited to the applicable effect of the Laws of 1971 (Ch. 107, Sec. 1, Laws of New Mexico § 56-7-1 N.M.S.A., 1978), insofar as the indemnity provisions set forth in any of the preceding sections or any rider, amendment or addendum hereto, to indemnify any Indemnitee, or the agents or employees of any Indemnitee, or any legal entity for whose negligence, acts or omissions any of them may be liable, from liability, claims, damages, losses or expenses, including attorney fees, arising out of, in whole or in part, the negligence of any Indemnitee, or of the agents or employees of any Indemnitee, or of any legal entity for whose negligence, acts or omissions any of them may be liable for, such indemnity provisions shall not extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of:

- (a) The preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications by any Indemnatee, or the agents or employees of any Indemnatee; or
- (b) The giving of or the failure to give directions or instructions by any Indemnatee, or the agents or employees of any Indemnatee, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to rail corridor.

[Intentionally left blank]

Jones Lang LaSalle Global Services – RR, Inc. is acting as representative for BNSF Railway Company.

IN WITNESS WHEREOF, this License 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.
3017 Lou Menk Drive, Suite 100
Fort Worth, TX 76131-2800

By: _____

**&LICENSEE&
&ADDRESS&**

By: _____
Title: _____

RESOLUTION 2011-364

WHEREAS, in April of this year, the City was advised by BNSF that they were proceeding with a project to widen the elevated rail overpass to a double track to alleviate train traffic congestion; and

WHEREAS, as a result of this project, multiple electrical, water and sewer utility crossings by the City across the BNSF right-of-way will need to be modified to accommodate the track improvement project; and

WHEREAS, these modifications include either relocating utilities or encasement of the utilities to current railroad crossing standards, and

WHEREAS, BNSF would also like to acquire portions of Utilities Department properties adjoining BNSF property south of the JBS facility and at the Burdick Station; and

WHEREAS, BNSF would like to expedite this process, and has offered to undertake the design and relocation of all utility crossings at their expense in exchange for transfer of the required Utilities Department property and other consideration.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the BNSF Master Utility Agreement is hereby approved, and that the Mayor is authorized to sign the agreement on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, December 6, 2011.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk