



City of Grand Island

Tuesday, April 10, 2012

Council Session

Item G9

#2012-90 - Approving Supplemental Agreements with Burlington Northern Santa Fe Railroad - Double Track Project

Staff Contact: Tim Luchsinger; John Collins; Robert Sivick

Council Agenda Memo

From: Timothy Luchsinger, Utilities Director
John Collins, Public Works Director
Robert Sivick, City Attorney

Meeting: April 10, 2012

Subject: Burlington North Santa Fe Supplemental Agreements –
Double Track Project

Item #'s: G-9

Presenter(s): Timothy Luchsinger, Utilities Director

Background

Burlington Northern Santa Fe (BNSF) is in the process of constructing a second track through Grand Island. To facilitate that construction and as a result of the Agreement entered into between the City and BNSF on December 6, 2011, a number of supplemental agreements will need to be approved.

The next five agreements to come before City Council for approval are as follows:

1. MP 95.15 water line crossing for the 30" transmission line along Stuhr Road.
2. MP 97.14 water line crossing and extension of casing of the 10" line north of 18th Street.
3. MP 97.96 water line crossing and extension of casing on the 6" line along Broadwell Avenue.
4. MP 97.96 sewer line crossing and extension of casing on the 8" sewer line along Broadwell Avenue.
5. MP 99.06 water line crossing and extension of casing of the 20" line along Webb Road.

Discussion

The extension of the sanitary sewer line and water line casings are to be done and paid for by BNSF. The supplemental agreements also include insurance requirements and working conditions for parties performing activities on railroad property.

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 five supplemental agreements with BNSF for the water and sewer crossings.

Sample Motion

Move to approve the five supplemental agreements with BNSF for the Double Track Project.

SUPPLEMENTAL AGREEMENT

This **SUPPLEMENTAL AGREEMENT**, made this _____ day of _____, 2012, 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 **CITY OF GRAND ISLAND** (hereinafter called "Licensee").

RECITALS:

Licensor and Licensee are now parties to an agreement dated February 25, 1963, Licensor's Contract No. Q47518, together with any and all modifications, supplements and amendments thereto (hereinafter called "Original Contract"), relating to an underground water pipeline.

AGREEMENT:

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

1. **PREMISES.** That property at or near the station of Grand Island, County of Hall, State of Nebraska, Line Segment 0004, Mile Post 95.15, shown by bold line upon the print No. 1-53211, dated November 10, 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 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 \$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 Roadmaster at telephone 402-362-5501, at least five (5) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon.

3. The following new Section shall be added to the Original Contract:

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

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

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

- B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:
- ◆ Bodily injury and property damage
 - ◆ Any and all vehicles owned, used or hired
 - ◆ Waiver of subrogation in favor of and acceptable to **Licensor**.
 - ◆ Additional insured endorsement in favor of and acceptable to **Licensor**.
 - ◆ Separation of insureds.
 - ◆ The policy shall be primary and non-contributing with respect to any insurance carried by **Licensor**.

- C. Workers Compensation and Employers Liability Insurance. This insurance shall include coverage for, but not limited to:
- ◆ Licensee's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
 - ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee. This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:
 - ◆ Waiver of subrogation in favor of and acceptable to **Licensors**.
- D. If further maintenance of the Pipeline is needed at a later date, a 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

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 Licensors. If granted by Licensors, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licensors 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 Licensors 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 Licensors 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 Licensors, a certified duplicate original of any required policy shall be furnished.

Any insurance policy shall be written by a reputable insurance company acceptable to Licensors 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, Licensors 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 Licensors as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Licensors to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensors herein.

Failure to provide evidence as required by this section shall entitle, but not require, Licensors 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 Licensors shall not be limited by the amount of the required insurance coverage.

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

- 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 PIPELINE FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LICENSEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LICENSEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL NOT IN ANY WAY SUBJECT LICENSOR TO CLAIMS THAT LICENSOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL

LICENSOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

- (c) **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE FURTHER AGREES, AND SHALL CAUSE ITS CONTRACTOR TO REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF LICENSEE OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**
- (d) Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnatee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnatee. Licensee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

PERSONAL PROPERTY WAIVER

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

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

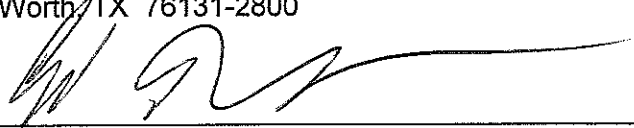
Staubach Global Services, Inc. is acting as representative for BNSF Railway Company.

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

BNSF RAILWAY COMPANY

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

By:



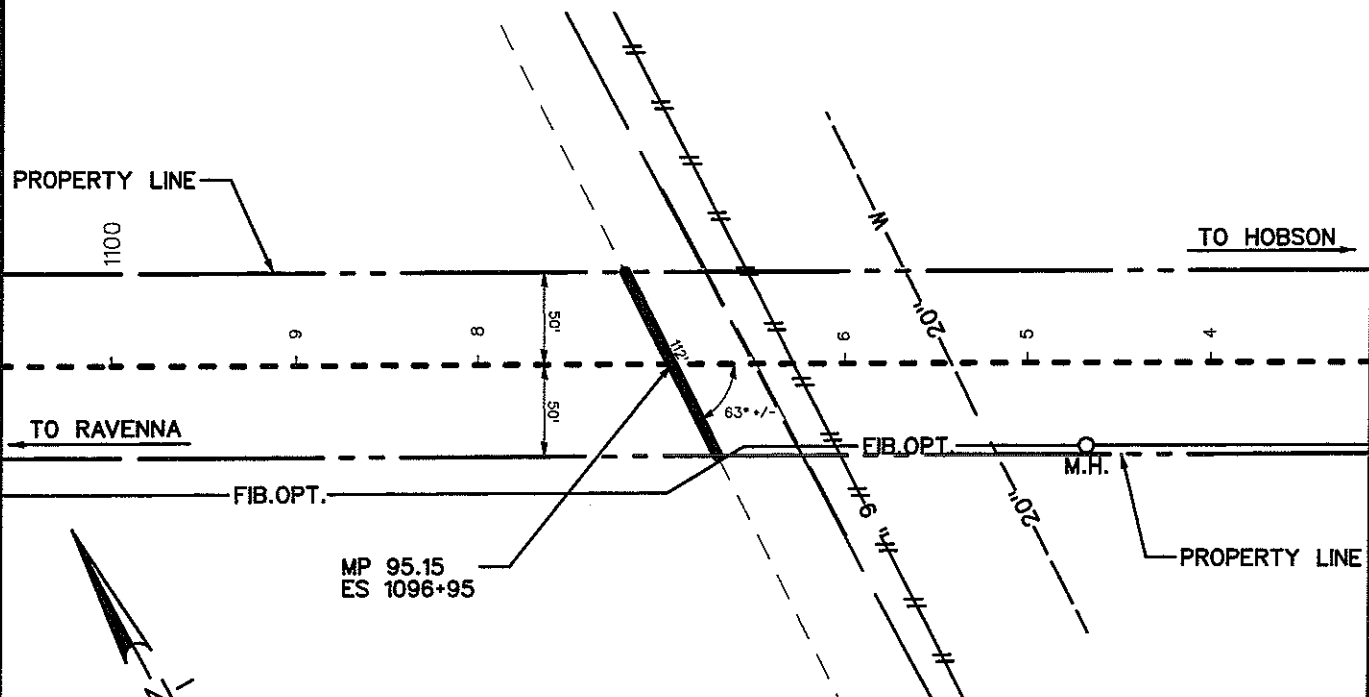

Ed Darter,
Vice President – National Accounts

CITY OF GRAND ISLAND

By: _____

Title: _____

CITY OF GRAND ISLAND



	CARRIER PIPE	CASING PIPE		CARRIER PIPE	CASING PIPE
SIZE:	30"	—	LENGTH ON R/W:	112'	—
CONTENTS:	WATER	—	WORKING PRESSURE:	—	—
PIPE MATERIAL:	DIP	—	BURY: BASE/RAIL TO TOP OF PIPE	—	—
SPECIFICATION/GRADE:	—	—	BURY: NATURAL GROUND	—	—
WALL THICKNESS:	—	—	BURY: ROADWAY DITCHES	—	—
COATING:	—	—	CATHODIC PROTECTION	—	—

NOTE: PIPE IS EXISTING IN PLACE

STATE OF NE

SUPPLEMENTAL AGREEMENT

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RECITALS:

Licensor and Licensee are now parties to an agreement dated April 29, 1935, Licensor's Contract No. Q-200787, together with any and all modifications, supplements and amendments thereto (hereinafter called "Original Contract"), relating to an underground water pipeline.

AGREEMENT:

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

1. PREMISES. That property at or near the station of Grand Island, County of Hall, State of Nebraska, Line Segment 0004, Mile Post 97.14, shown by bold line upon the print No. 1-53257, dated November 14, 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 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 \$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.

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3. The following new Section shall be added to the Original Contract:

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

- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Waiver of subrogation in favor of and acceptable to **Licensor**.
- ◆ Additional insured endorsement in favor of and acceptable to **Licensor and Jones, Lang, LaSalle Global Services RR, Inc.**
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by **Licensor**.

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

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

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- D. If further maintenance of the Pipeline is needed at a later date, a 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)
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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 Licensors. If granted by Licensors, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licensors 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 Licensors 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 Licensors 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.

- 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 PIPELINE FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LICENSEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LICENSEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL NOT IN ANY WAY SUBJECT LICENSOR TO CLAIMS THAT LICENSOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL

LICENSOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

- (c) **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE FURTHER AGREES, AND SHALL CAUSE ITS CONTRACTOR TO REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF LICENSEE OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**
- (d) Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnatee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnatee. Licensee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

PERSONAL PROPERTY WAIVER

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


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

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

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

BNSF RAILWAY COMPANY

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

By: 

Ed Darter,
Vice President – National Accounts

CITY OF GRAND ISLAND

By: _____

Title: _____

EXHIBIT "A"

ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
 AND

CITY OF GRAND ISLAND

SCALE: 1 IN. = 400 FT.

NEBRASKA DIV.

RAVENNA SUBDIV. L.S. 0004

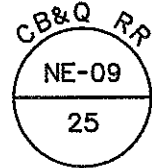
DATE 11/14/2011

SECTION: 09

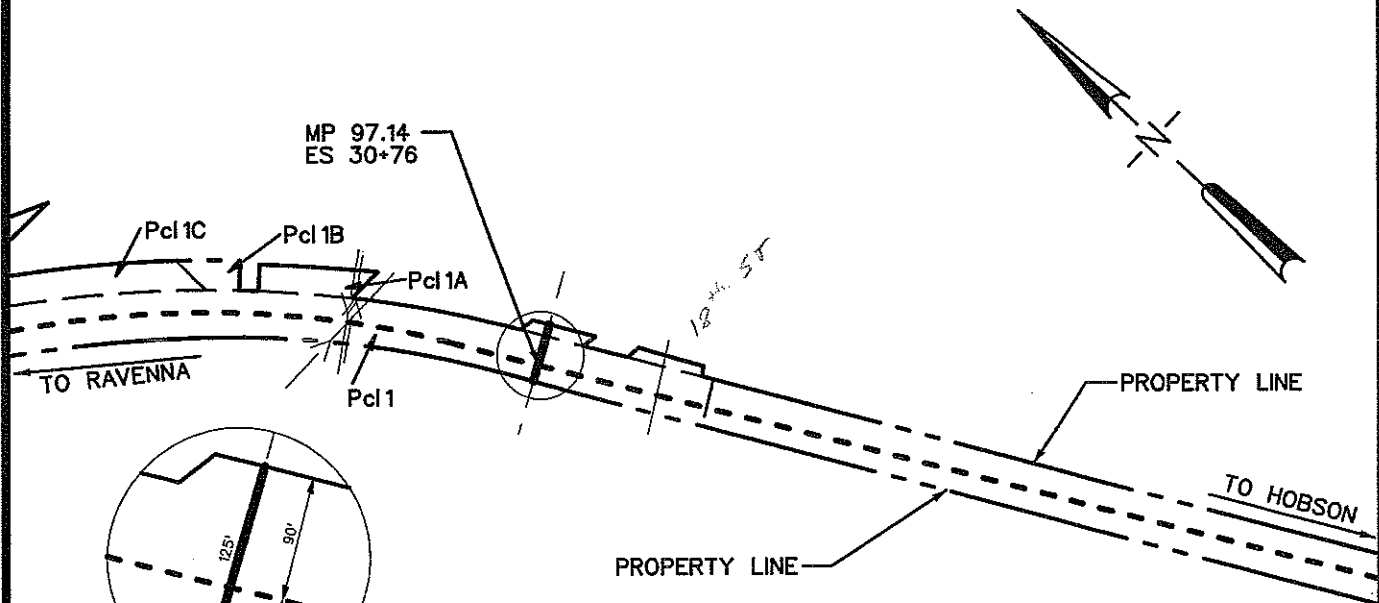
TOWNSHIP: 11N

RANGE: 09W

MERIDIAN: 6PM



MAP REF. R77094



DESCRIPTION OF PIPELINE
PIPELINE SHOWN BOLD

	CARRIER PIPE	CASING PIPE		CARRIER PIPE	CASING PIPE
SIZE:	10"	-	LENGTH ON R/W:	125'	-
CONTENTS:	WATER	-	WORKING PRESSURE:	-	-
PIPE MATERIAL:	DIP	-	BURY: BASE/RAIL TO TOP OF PIPE	-	-
SPECIFICATION/GRADE:	-	-	BURY: NATURAL GROUND	-	-
WALL THICKNESS:	-	-	BURY: ROADWAY DITCHES	-	-
COATING:	-	-	CATHODIC PROTECTION	-	-

VENTS: NUMBER - SIZE - HEIGHT OF VENT ABOVE GROUND -

NOTE: PIPE IS EXISTING IN PLACE

AT GRAND ISLAND

SUPPLEMENTAL AGREEMENT

This SUPPLEMENTAL AGREEMENT, made this _____ day of _____, 2012, 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 **CITY OF GRAND ISLAND** (hereinafter called "Licensee").

RECITALS:

Licensor and Licensee are now parties to an agreement dated November 23, 1948, Licensor's Contract No. Q-30322, together with any and all modifications, supplements and amendments thereto (hereinafter called "Original Contract"), relating to an underground water pipeline.

AGREEMENT:

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

1. PREMISES. That property at or near the station of Grand Island, County of Hall, State of Nebraska, Line Segment 0004, Mile Post 97.96, shown by bold line upon the print No. 1-53255, dated November 14, 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 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 \$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 Roadmaster at telephone 402-362-5501, at least five (5) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon.

3. The following new Section shall be added to the Original Contract:

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

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

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

- B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:
- ◆ Bodily injury and property damage
 - ◆ Any and all vehicles owned, used or hired
 - ◆ Waiver of subrogation in favor of and acceptable to **Licensor**.
 - ◆ Additional insured endorsement in favor or and acceptable to **Licensor**.
 - ◆ Separation of insureds.
 - ◆ The policy shall be primary and non-contributing with respect to any insurance carried by **Licensor**.

- C. Workers Compensation and Employers Liability Insurance. This insurance shall include coverage for, but not limited to:
- ◆ Licensee's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
 - ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee. This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:
 - ◆ Waiver of subrogation in favor of and acceptable to **Licensors**.
- D. If further maintenance of the Pipeline is needed at a later date, a 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

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 Licensors. If granted by Licensors, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licensors 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 Licensors 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 Licensors 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 Licensors, a certified duplicate original of any required policy shall be furnished.

Any insurance policy shall be written by a reputable insurance company acceptable to Licensors 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, Licensors 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 Licensors as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Licensors to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensors herein.

Failure to provide evidence as required by this section shall entitle, but not require, Licensors 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 Licensors shall not be limited by the amount of the required insurance coverage.

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

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 PIPELINE FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LICENSEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LICENSEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL NOT IN ANY WAY SUBJECT LICENSOR TO CLAIMS THAT LICENSOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL

LICENSOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

- (c) **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE FURTHER AGREES, AND SHALL CAUSE ITS CONTRACTOR TO REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF LICENSEE OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**
- (d) **Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnatee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnatee. Licensee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.**

PERSONAL PROPERTY WAIVER

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

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

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

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

BNSF RAILWAY COMPANY

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

By: _____


Ed Darter,
Vice President – National Accounts

CITY OF GRAND ISLAND

By: _____

Title: _____

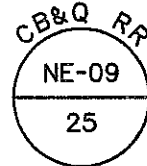
EXHIBIT "A"

ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
 AND

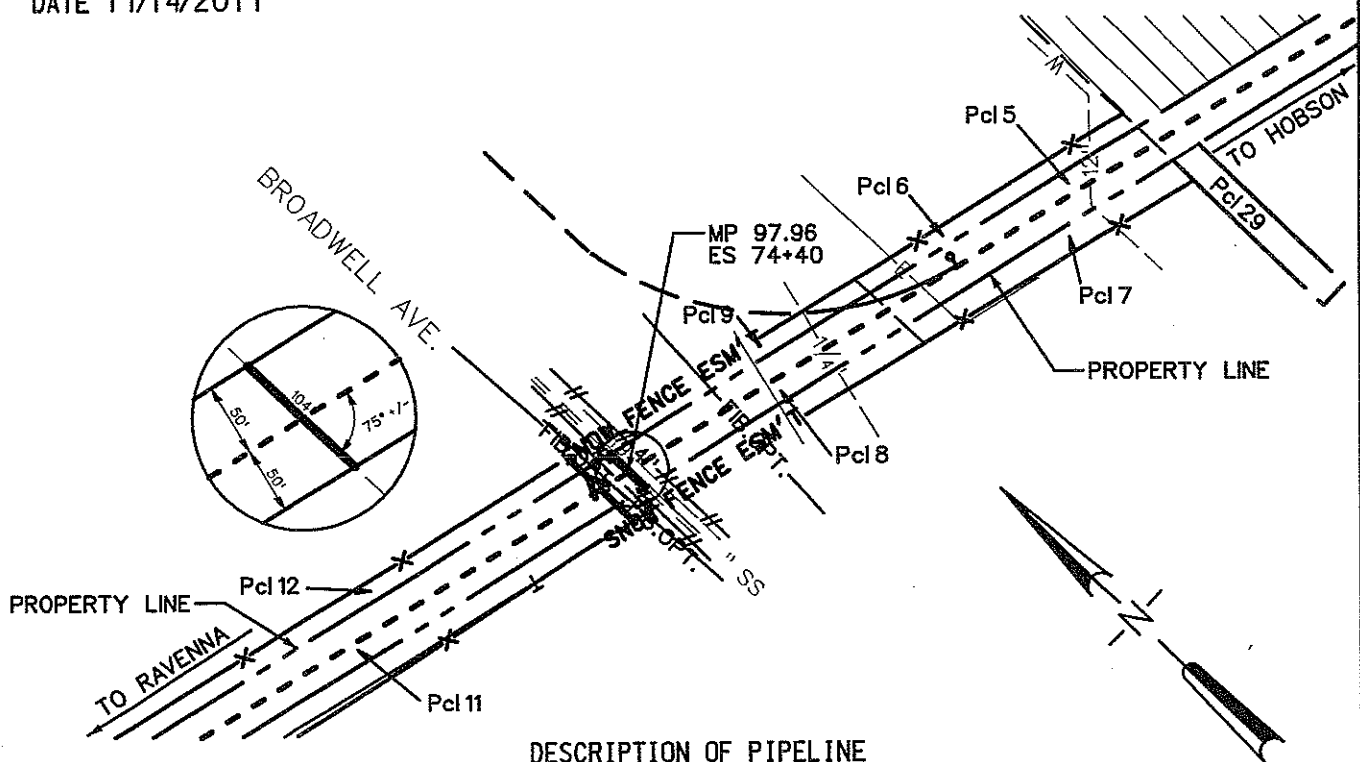
CITY OF GRAND ISLAND

SCALE: 1 IN. = 400 FT.
 NEBRASKA DIV.
 RAVENNA SUBDIV. L.S. 0004
 DATE 11/14/2011

SECTION: 04
 TOWNSHIP: 11N
 RANGE: 09W
 MERIDIAN: 6PM



MAP REF. R77094



DESCRIPTION OF PIPELINE
 PIPELINE SHOWN BOLD

	CARRIER PIPE	CASING PIPE		CARRIER PIPE	CASING PIPE
SIZE:	6"	12"	LENGTH ON R/W:	104'	104'
CONTENTS:	WATER		WORKING PRESSURE:		
PIPE MATERIAL:	IRON	STEEL	BURY: BASE/RAIL TO TOP OF CASING		
SPECIFICATION/GRADE:			BURY: NATURAL GROUND		
WALL THICKNESS:			BURY: ROADWAY DITCHES		
COATING:			CATHODIC PROTECTION		

VENTS: NUMBER — SIZE — HEIGHT OF VENT ABOVE GROUND —

NOTE: PIPE IS EXISTING IN PLACE

NEAR GRAND ISLAND

SUPPLEMENTAL AGREEMENT

This **SUPPLEMENTAL AGREEMENT**, made this _____ day of _____, 2012, 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 **CITY OF GRAND ISLAND** (hereinafter called "Licensee").

RECITALS:

Licensor and Licensee are now parties to an agreement dated November 23, 1948, Licensor's Contract No. Q30316, together with any and all modifications, supplements and amendments thereto (hereinafter called "Original Contract"), relating to an underground sanitary sewage pipeline.

AGREEMENT:

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

1. **PREMISES.** That property at or near the station of Grand Island, County of Hall, State of Nebraska, Line Segment 0004, Mile Post 97.96, shown by bold line upon the print No. 1-53256, dated November 14, 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 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 \$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 Roadmaster at telephone 402-362-5501, at least five (5) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon.

3. The following new Section shall be added to the Original Contract:

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

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

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

- B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:
- ◆ Bodily injury and property damage
 - ◆ Any and all vehicles owned, used or hired
 - ◆ Waiver of subrogation in favor of and acceptable to **Licensor**.
 - ◆ Additional insured endorsement in favor of and acceptable to **Licensor**.
 - ◆ Separation of insureds.
 - ◆ The policy shall be primary and non-contributing with respect to any insurance carried by **Licensor**.

- C. Workers Compensation and Employers Liability Insurance. This insurance shall include coverage for, but not limited to:
- ◆ Licensee's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
 - ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee. This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:
 - ◆ Waiver of subrogation in favor of and acceptable to **Licensors**.
- D. If further maintenance of the Pipeline is needed at a later date, a 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

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 Licensors. If granted by Licensors, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licensors 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 Licensors 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 Licensors 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.

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 PIPELINE FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LICENSEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LICENSEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL NOT IN ANY WAY SUBJECT LICENSOR TO CLAIMS THAT LICENSOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL

LICENSOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

- (c) **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE FURTHER AGREES, AND SHALL CAUSE ITS CONTRACTOR TO REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF LICENSEE OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**
- (d) Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnatee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnatee. Licensee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

PERSONAL PROPERTY WAIVER

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

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

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

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

BNSF RAILWAY COMPANY

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

By: _____


Ed Darter,
Vice President – National Accounts

CITY OF GRAND ISLAND

By: _____

Title: _____

EXHIBIT "A"

ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
AND

CITY OF GRAND ISLAND

SCALE: 1 IN. = 400 FT.

NEBRASKA DIV.

RAVENNA SUBDIV. L.S. 0004

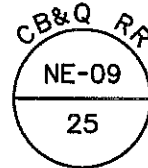
DATE 11/14/2011

SECTION: 04

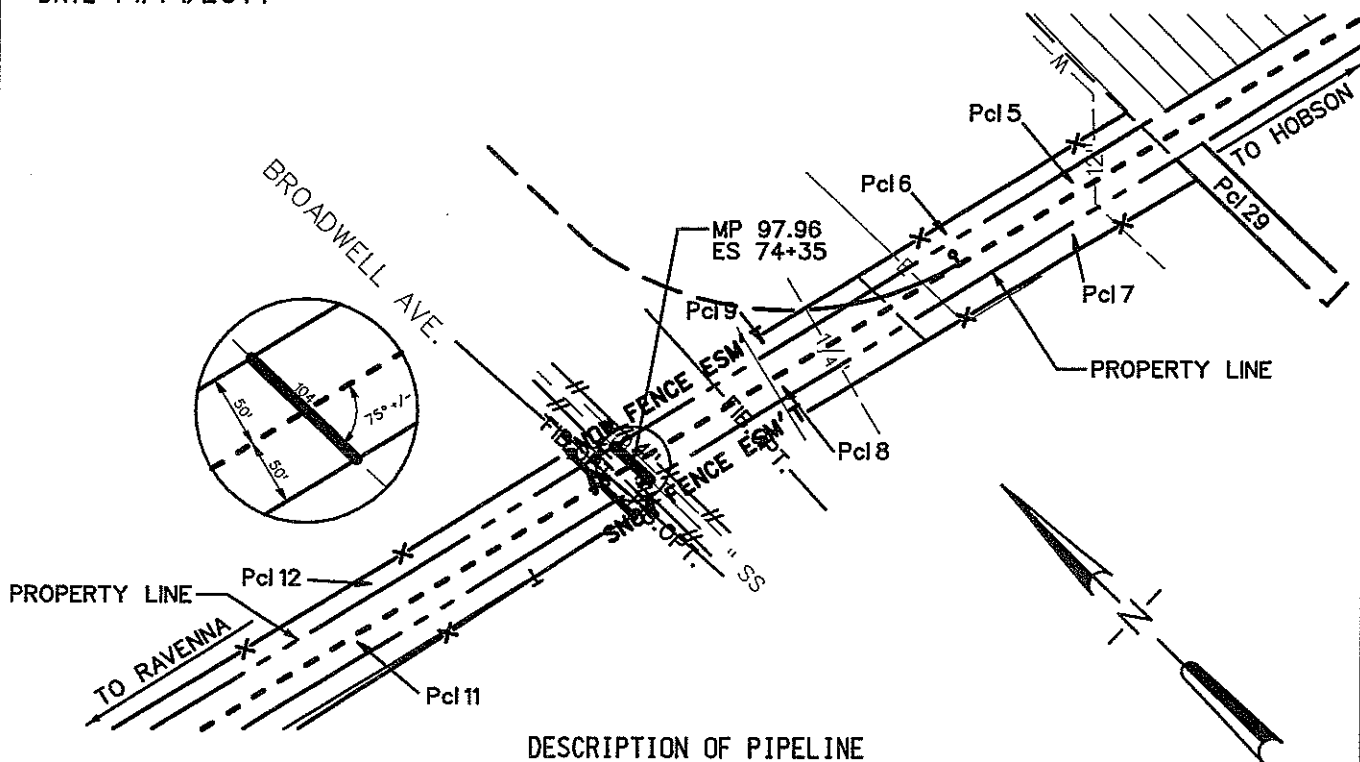
TOWNSHIP: 11N

RANGE: 09W

MERIDIAN: 6PM



MAP REF. R77094



DESCRIPTION OF PIPELINE
PIPELINE SHOWN BOLD

	CARRIER PIPE	CASING PIPE		CARRIER PIPE	CASING PIPE
SIZE:	6"	12"	LENGTH ON R/W:	104'	104'
CONTENTS:	SANITARY SEWER		WORKING PRESSURE:		
PIPE MATERIAL:		STEEL	BURY: BASE/RAIL TO TOP OF CASING		
SPECIFICATION/GRADE:			BURY: NATURAL GROUND		
WALL THICKNESS:			BURY: ROADWAY DITCHES		
COATING:			CATHODIC PROTECTION		

VENTS: NUMBER — SIZE — HEIGHT OF VENT ABOVE GROUND —

NOTE: PIPE IS EXISTING IN PLACE

NEAR GRAND ISLAND

SUPPLEMENTAL AGREEMENT

This **SUPPLEMENTAL AGREEMENT**, made this _____ day of _____, 2012, 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 **CITY OF GRAND ISLAND** (hereinafter called "Licensee").

RECITALS:

Licensor and Licensee are now parties to an agreement dated June 1, 1993, Licensor's Contract No. PX93-8028, together with any and all modifications, supplements and amendments thereto (hereinafter called "Original Contract"), relating to an underground water pipeline.

AGREEMENT:

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

1. **PREMISES.** That property at or near the station of Grand Island, County of Hall, State of Nebraska, Line Segment 0004, Mile Post 99.06, shown by bold line upon the print No. 1-53258, dated November 14, 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 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 \$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 Roadmaster at telephone 402-362-5501, at least five (5) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon.

3. The following new Section shall be added to the Original Contract:

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

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

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

- B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:
- ◆ Bodily injury and property damage
 - ◆ Any and all vehicles owned, used or hired
 - ◆ Waiver of subrogation in favor of and acceptable to **Licensor**.
 - ◆ Additional insured endorsement in favor or and acceptable to **Licensor**.
 - ◆ Separation of insureds.
 - ◆ The policy shall be primary and non-contributing with respect to any insurance carried by **Licensor**.

- C. Workers Compensation and Employers Liability Insurance. This insurance shall include coverage for, but not limited to:
- ◆ Licensee's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
 - ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee. This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:
 - ◆ Waiver of subrogation in favor of and acceptable to **Licensors**.
- D. If further maintenance of the Pipeline is needed at a later date, a 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

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 Licensors. If granted by Licensors, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licensors 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 Licensors 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 Licensors 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.

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- (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,

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- (d) Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

PERSONAL PROPERTY WAIVER

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

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

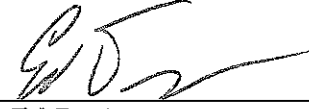
Staubach Global Services, Inc. is acting as representative for BNSF Railway Company.

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

BNSF RAILWAY COMPANY

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

By: _____



**Ed Darter,
Vice President -- National Accounts**

CITY OF GRAND ISLAND

By: _____

Title: _____

EXHIBIT "A"

ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
 AND

CITY OF GRAND ISLAND

SCALE: 1 IN. = 400 FT.

NEBRASKA DIV.

RAVENNA SUBDIV. L.S. 0004

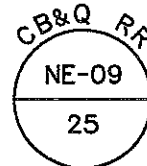
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SECTION: 01

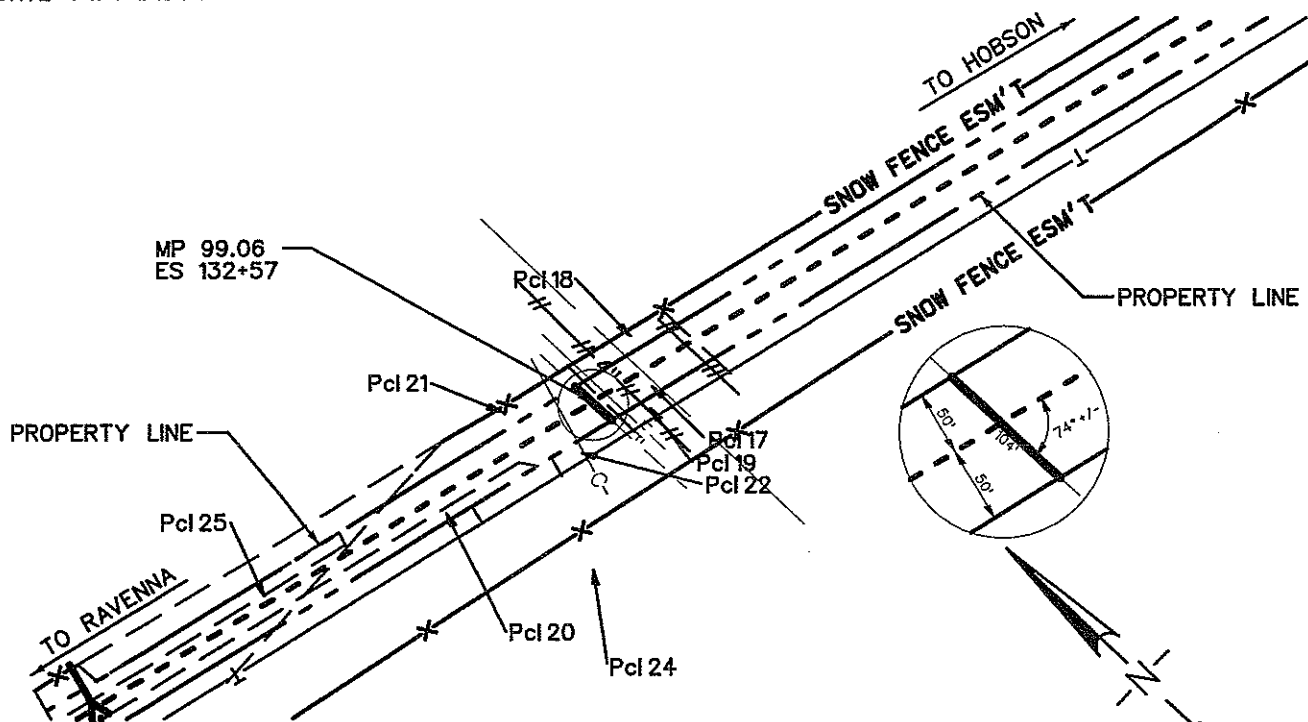
TOWNSHIP: 11N

RANGE: 10W

MERIDIAN: 6PM



MAP REF. R77094



DESCRIPTION OF PIPELINE
PIPELINE SHOWN BOLD

	CARRIER PIPE	CASING PIPE		CARRIER PIPE	CASING PIPE
SIZE:	20"	32"	LENGTH ON R/W:	104'	104'
CONTENTS:	WATER		WORKING PRESSURE:	-	-
PIPE MATERIAL:	DIP	STEEL	BURY: BASE/RAIL TO TOP OF CASING	-	-
SPECIFICATION/GRADE:	-	-	BURY: NATURAL GROUND	-	-
WALL THICKNESS:	-	-	BURY: ROADWAY DITCHES	-	-
COATING:	-	-	CATHODIC PROTECTION	-	-

VENTS: NUMBER - SIZE - HEIGHT OF VENT ABOVE GROUND -

NOTE: PIPE IS EXISTING IN PLACE

NEAR GRAND ISLAND

RESOLUTION 2012-90

WHEREAS, in April of 2011, the City was advised by Burlington Northern Santa Fe (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, the BNSF entered into an Agreement to pay for the modifications; and

WHEREAS, the contract requires the City's passage of supplemental agreements for each crossing; and

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

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the five Supplemental Agreements presented at this meeting are hereby approved, and that the Mayor is authorized to sign the agreements on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, April 10, 2012.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk