



# **City of Grand Island**

**Tuesday, November 29, 2011**

**Study Session**

## **Item -1**

**Discussion Concerning Burlington Northern Railroad Double  
Track Project Contract**

Staff Contact: Tim Luchsinger

# **Council Agenda Memo**

**From:** Timothy Luchsinger, Utilities Director

**Meeting:** November 29, 2011

**Subject:** Discussion Concerning the Burlington Northern Railroad Double Track Project Contract

**Item #'s:** 1

**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 Burlington Northern Santa Fe Railway 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 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.

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 and BNSF project management staff is scheduled to be present to discuss the details of the agreement as may be required by Council.

## **Conclusion**

This item is presented to the City Council in a Study Session to allow for any questions to be answered and to create a greater understanding of the issue at hand.

It is the intent of City Administration to bring this issue to a future council meeting for the consideration of approval of the Master Utility Relocation Agreement with the Burlington Northern Santa Fe Railway.



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](mailto: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**

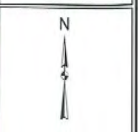


Figure 2. Georgia Ashlar Cut Sheet Image





**Tran Systems**  
 2400 PERRINE RD.  
 SUITE 100  
 KANSAS CITY, MO 64108  
 PHONE: 816-525-9000  
 FAX: 816-525-9002



CONSULTANTS:

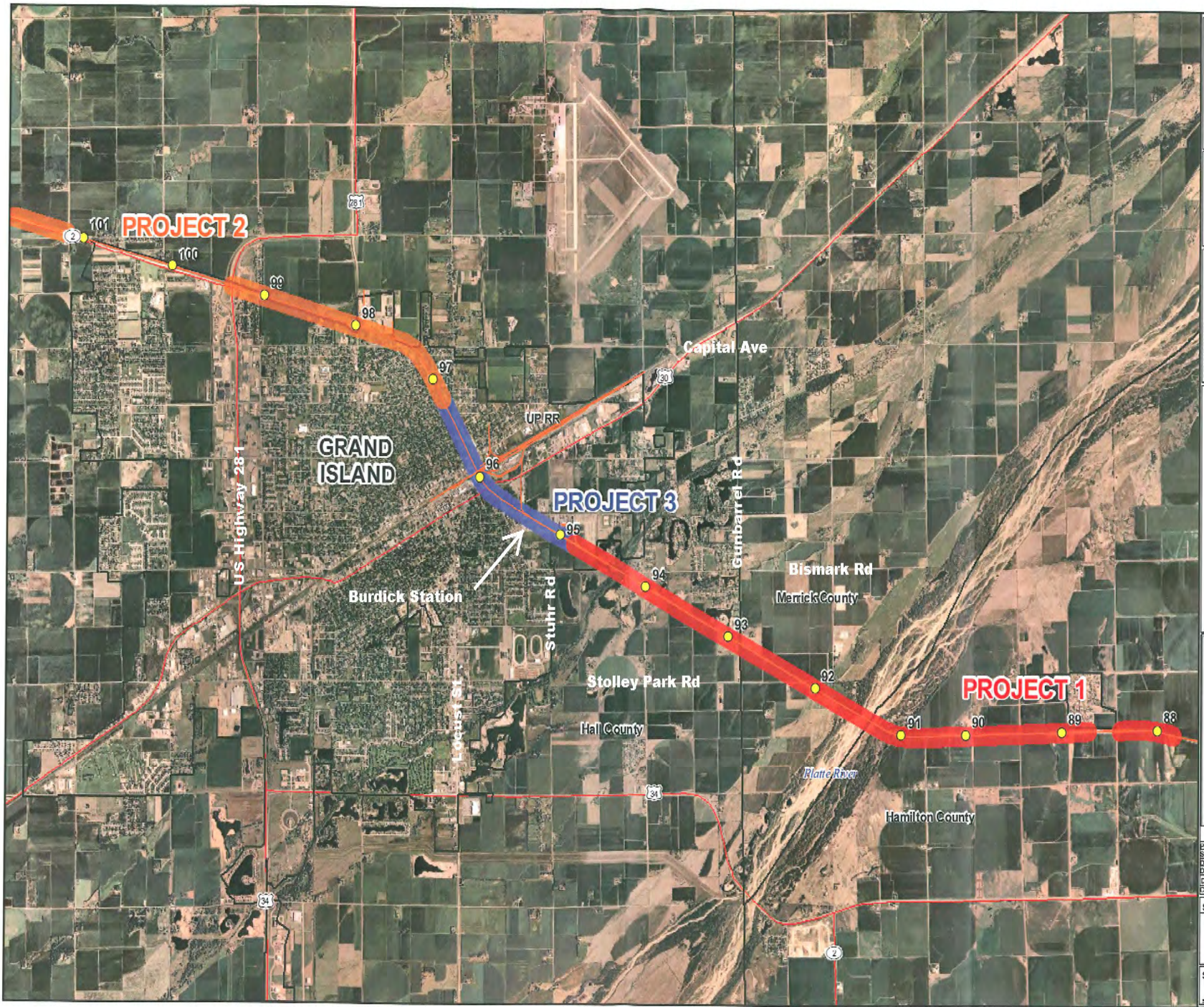
PHILLIPS TO McDONALD  
 DOUBLE TRACK PROJECT  
 (GRAND ISLAND)  
**BNSF**  
 RAILWAY

| REVISIONS | DATE | BY | CHK | APP |
|-----------|------|----|-----|-----|
|           |      |    |     |     |
|           |      |    |     |     |
|           |      |    |     |     |
|           |      |    |     |     |

PROJ NO: 1000000000  
 SCALE: 1"=100'  
 DATE: 12/11/11  
 DESIGNED BY: JAW/J  
 DRAWN BY: JAW/J  
 CHECKED BY: JAW/J

SHEET TITLE:  
 OVERALL  
 PROJECT  
 EXHIBIT

SHEET NO.  
 0001











Phase I





**Burdick Station  
Power Plant**

**Phase III**





# 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**

\_\_\_\_\_  
**(Signature)**

\_\_\_\_\_  
**(Name Printed)**

\_\_\_\_\_  
**(Title)**

**BNSF RAILWAY COMPANY**

\_\_\_\_\_  
**(Signature)**

\_\_\_\_\_  
**(Name Printed)**

\_\_\_\_\_  
**(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 |
|------------------|--|---------------------|---------------------------|
| <b>PROJECT 1</b> |  |                     |                           |
| **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                  |
| <b>PROJECT 2</b> |  |                     |                           |
| 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                  |
| <b>PROJECT 3</b> |  |                     |                           |
| 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<br>(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         |
|                | <b>Totals from Prior Agreements</b>                                  | <b>\$142,000.00</b>      | <b>\$115,734.00</b> | <b>\$24,266.00</b> |
| 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             |
|                | <b>Totals Under This Master Agreement</b>                            | <b>\$57,637.00</b>       | <b>\$57,637.00</b>  | <b>\$0.00</b>      |

**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

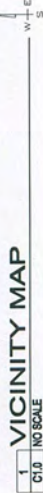
**City of Grand Island Master Agreement  
Land Schedule**

| <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         |
| <b>TOTAL</b>                                  | <b>4.90</b>  | <b>EST. TOTAL</b>      | <b>\$ 24,500.00</b> |

**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            |





|      |          |
|------|----------|
| C1.0 | NO SCALE |
|------|----------|

A tract of land located in the Northwest Quarter of the Southwest Quarter of Section 1, Township 1 North, Range 10 West of the 3rd P.M. 1st Quad. Dakota, more particularly as described as follows:

Commencing at the E. corner of said Section 1, thence on an assumed bearing of South 85° 50' 30" East a distance of 33.50 feet to a point on the western Right of Way line of North West 3rd Street, thence South 01° 25' 00" East along said Right of Way line a distance of 81.30 feet to the intersection of said Right of Way line with the center line of the 1st Quad. of Dakota, thence South 01° 25' 00" East along said center line a distance of 100.00 feet to the intersection of said center line with the center line of the 2nd Quad. of Dakota, thence North 85° 04' 30" East along the BENSF. Right of Way line a distance of 500.70 feet to the intersection of said Right of Way line with the center line of the 3rd Quad. of Dakota, thence South 14° 30' 10" East a distance of 311.50 feet to the Point of Beginning.

Together with and subject to covenants, easements and restrictions of record.

See tract of land contained in Subsequent Exhibit C-8 above or back.

The location of utilities shown hereon are from obtained evidence of above ground appearances and markings by DigPro's field locations (not all utility companies respond).

The surveyor has not physically located the underground utilities and additional underground utilities may be present.

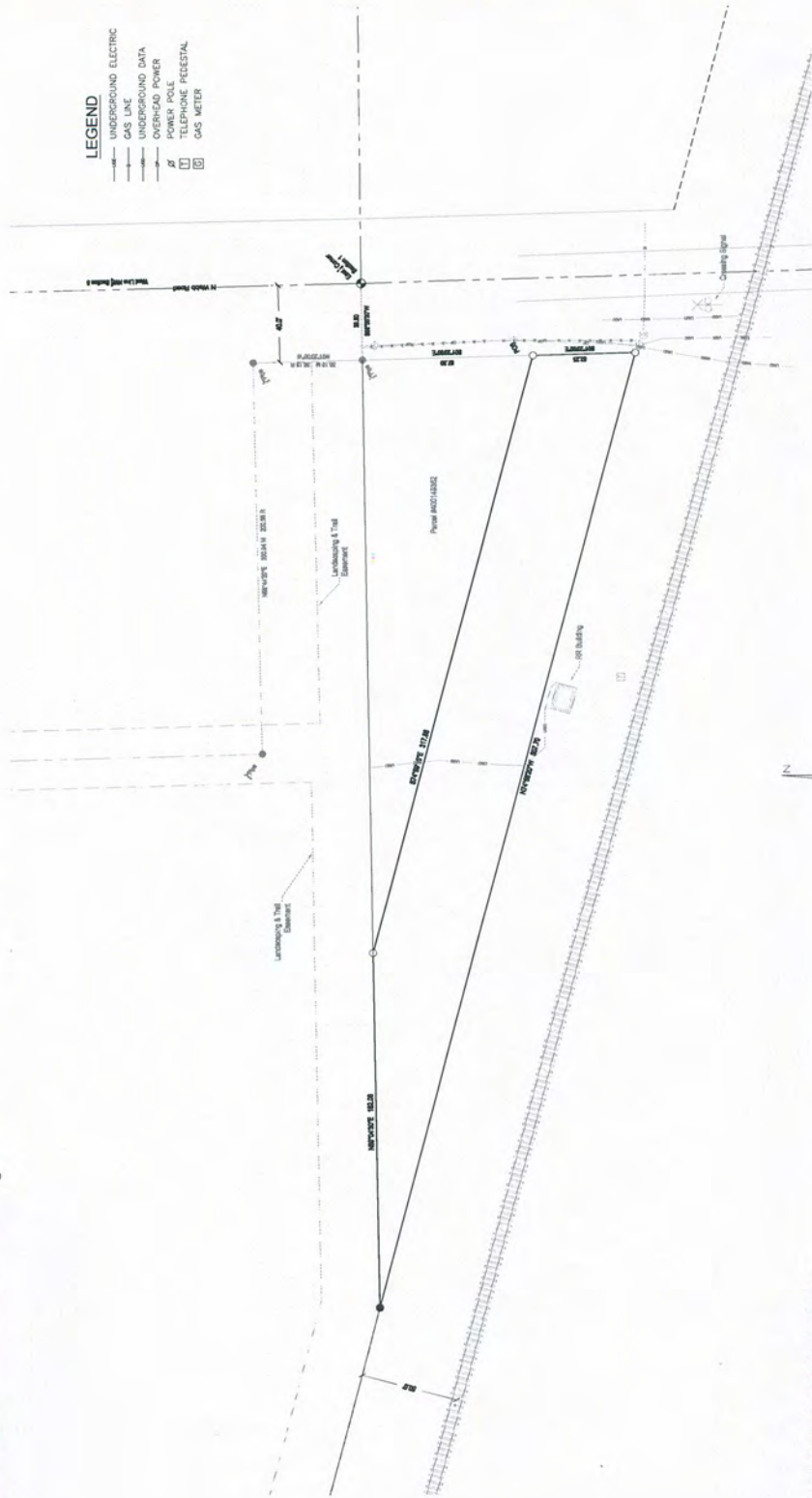
The surveyor does not warrant that the utilities are in the exact location indicated, although the surveyor does certify that they are located as accurately as possible from the information made available.

1-3A Standard Schedule B, Section II Exceptions

I hereby certify to BNSF Railway Company, Oil Refining National Title Insurance Company, National Title Insurance Company, and to their heirs, successors and assigns, that I have surveyed on the premises hereby described, the boundaries of the land therein described, and that the plat of survey is a true, correct, and accurate drawing and representation of said property and the boundaries thereof; that this plat of survey was made by me or under my direction and supervision, and that I am a duly qualified and licensed surveyor under the laws of the State of North Carolina. I have caused this plat of survey to be recorded as required by law in the Office of the State Register of Deeds, and the same is duly recorded and indexed in the Office of the State Register of Deeds, and the same is duly established and adopted by the Deed Records for FATA/NCSD Land Titles 1, A, 11b and 13 of "Table A" thereof, and meets the Attorney Statute (as adopted by FATA and ACSO) and in effect on the date of this Certification) of an Rural Survey, as defined therein, and that in issuing of this plat of survey, I have complied with the provisions of the laws of the State of North Carolina relating to the Title Company having an effective date of February 15, 2011 and bearing on my number 00370268.

1. Dimensions on this plate are expressed in feet and decimal parts thereof unless otherwise noted.
2. No observable signs of encroachments.

—•— UNDERGROUND ELECTRIC  
 —•— GAS LINE  
 —•— UNDERGROUND DATA  
 —•— OVERHEAD POWER  
 ⚡ POWER POLE  
 [1] TELEPHONE PEDESTAL  
 [G] GAS METER



|      |               |
|------|---------------|
| C1.0 | SCALE: 1"=30' |
|------|---------------|

C1.0

ALTA/ACSM  
SURVEY  
PARCEL 4

|             |          |
|-------------|----------|
| PROJECT NO  | 11-571   |
| DATE        | 9/6/2011 |
| DESIGNED BY | MAN      |
| DRAWN BY    |          |
| CHECKED BY  | RWF      |

10

111

### Consultant

Consultant

Owner

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2011

Joel S. Jacobson, RLS  
Licensed Land Surveyor

**ENGINEERING & SURVEYING**

BNSF Right of Way  
Acquisition  
Hall County, Nebraska



## VICINITY MAP

|      |          |
|------|----------|
| C1.0 | NO SCALE |
|------|----------|

LEGAL DESCRIPTION:

[illegible]

Together with and as a

**UTILITY NOTES:**  
The location of utilities shown herein are from observed evidence of above ground appearances and markings by Doggers Hotline locations (not all utility companies respond).  
The surveyor has not physically located the underground utilities and additional underground utilities may be present.

Said tract of land contains

**UTILITY NOTES:**

The location of utilities shown hereon are from observed evidence of above ground appearances and markings by Dogbert Hefline locations (not all utility companies respond).

The surveyor has not physically located the underground utilities and additional underground utilities may be present.

The surveyor does not warrant that the utilities are in the exact location indicated, although the surveyor does certify that they are located as accurately as possible from the information made available.

## SCHEDULE B-SECTION II EXCEPTIONS

**4-39 Standard Schedule B, Section II Exceptions**

|    |   |
|----|---|
| C. | Terms and conditions of <i>Consent No. 3034</i> , approving the <i>Plan of Industrial Addition</i> , recorded January 21, 1963, in <i>Book 101</i> , Page 545, records of Hall County, Nebraska (Affect the subject property - Not probable)      |
| D. | Easements and restrictions reserved in and shown in the <i>Plan of Occupation of Industrial Addition</i> , recorded January 21, 1963 in <i>Book 101</i> , Page 545, records of Hall County, Nebraska (Affect the subject property - Not probable) |
| E. | Terms and conditions of <i>Resolution No. 2030-247</i> , recorded November 4, 2000 as <i>Init. No. 20000077</i> , records of Hall County, Nebraska (Affect the subject property - Not probable)   |

## MISCELLANEOUS NOTES:

1. Dimensions on this plot are expressed in feet and decimal parts thereof unless otherwise noted.
2. No observable signs of encroachments.

**SURVEYOR'S CERTIFICATION:**

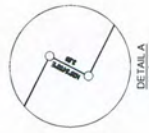
Hereto certify to BNSF Railway Company, Inc. Old Republic National Title Insurance Company, and the insured herein, that the survey and the accompanying plat have been surveyed on the ground, the property hereby described contains the true and correct boundaries thereof, that the plat of accurate drawing and representation of said property and the boundaries thereof, that this plat of accurate drawing and the survey on which it is based were made in accordance with "Minimum Standard Surveying Practices" as set forth in the "Surveying Manual" of the American Society of Civil Engineers, and that the same were surveyed, drawn, and adopted by the duly qualified and licensed Surveyors named herein, to wit: J. A. Venable and J. A. Venable, Jr., both of ALTA and NSPS in 2010, and including the same in the title of "Venable & Venable, P.C. Accuracy Standards (as adopted by ALTA and ASCEM and in effect on the date of the Certification) of a Rural Survey, As defined therein, and that in locating or reflecting recorded easements or other interests in the property herein described, the Surveyors herein named have been guided by Old Republic National Title Insurance Company's "Standard and Recommended Practices" for Title Insurance having an Effective date of March 17, 2011 and bearing order number 00031206.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2011

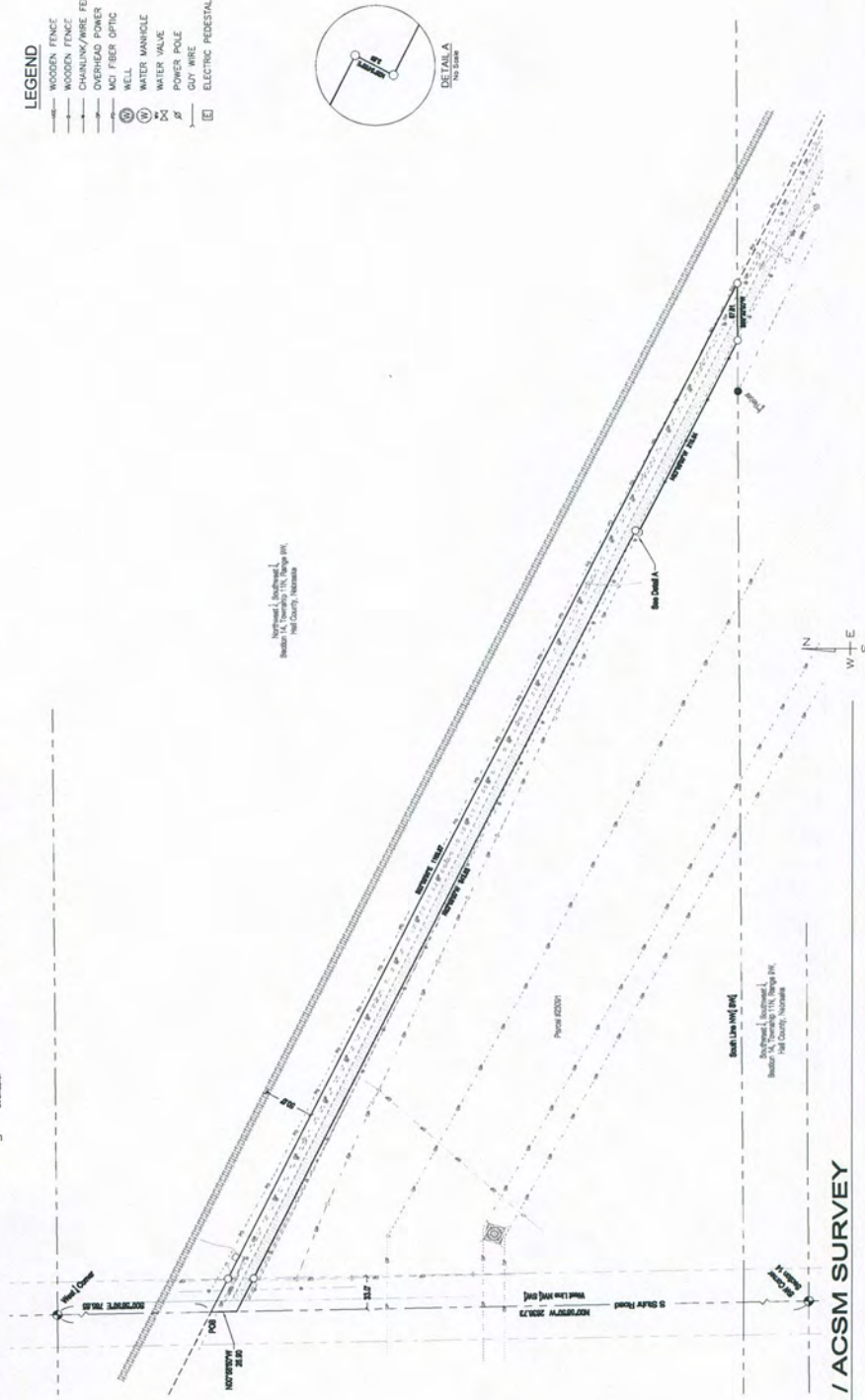
Joel S. Jacobson, RLS  
Licensed Land Surveyor

## LEGEND

- LEGEND**
- |   |                      |
|---|----------------------|
| — | WOODEN FENCE         |
| — | WOODEN FENCE         |
| — | CHAINLINK/WIRE FENCE |
| — | OVERHEAD POWER       |
| — | MCI FIBER OPTIC      |
| ⊙ | WELL                 |
| ⊙ | WATER MANHOLE        |
| ⊙ | WATER VALVE          |
| ⊙ | POWER POLE           |
| — | GUY WIRE             |
| ⊞ | ELECTRIC PEDESTAL    |



Northwest 1/4, Southeast 1/4,  
Section 14, Township 11N, Range 9W,  
Hill County, Nebraska



2 ALTA / ACSM SURVEY  
C1.0 SCALE 1"=60'

|      |               |
|------|---------------|
| C1.0 | SCALE: 1"=60' |
|------|---------------|

C1.0

BNSF Right of Way  
Acquisition  
Hall County, Nebraska



ALTA/ ACSN  
SURVEY  
PARCEL 6

|             |           |
|-------------|-----------|
| PROJECT NO  | 11-571    |
| DATE        | 8/23/2011 |
| DESIGNED BY | MDW       |
| DRAWN BY    | RAW       |
| CHECKED BY  |           |



**RW**  
ENGINEERING  
& SURVEYING

181 402-673-2205 • WWW.LINCOLNIA.COM

Researcher's name

Journal









|     |          |
|-----|----------|
| C10 | NO SCALE |
|-----|----------|

A tract of land located in Lots 102, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, Industrial Addition to the City of Grand Island Section 14, Township 11 North, Range 9 West of the 6th P.M., Hall County, Nebraska, more particularly described as follows:

[illegible]

Said tract of land contains 1.07 acres more or less.

## 1.38 Standard Schedule B, Section II Exceptions

3C. Terms and conditions of Ordinance No. 3934, enacted January 24, 2005 in Book 4, Chapter 1, Section 1.

(Affects the subject property - Not plotable)

30. Easements and restrictions reserved and shown in the Plat and Dedication of Industrial

Nebraska.  
(Affects the subject property - Not plottable)  
Additional recorded January 26, 1963 in Book 104, Page 670, Records of Hall County.

MISCELLANEOUS NOTES:

1. Dimensions on this plate are expressed in feet and decimal parts thereof unless otherwise noted.
2. No observable signs of encroachments.

The location of station shown between two lines above

and markings by Diggers Hotline locations (not all utility companies respond).

The surveyor has not p

The surveyor does not warrant that the utilities are in the exact location indicated, although the surveyor does certify that they are located as accurately as possible from the information made available.

Nebaska Title Company and its heirs, successors and assigns, that I have surveyed, on ground, the property hereby described therein, that the plat of survey is a true, correct, and accurate drawing and representation of said property and the boundaries thereof; that this plat of survey and the survey on which it is based were made in accordance with "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," as jointly established and adopted by the American Land Title Association (ALTA) and the National Automated Clearing House Association (NACHA), dated January 1, 1988, and amended by ALTA and NPSIS in 2000, and includes items 1, 4, 11b and 13 of "Title Insurance and Settlement Services Manual" published by the American Land Title Association, Inc., dated February 1, 2006, and meets the requirements set forth in the Uniform Standards of Professional Practice promulgated by the American College of Trust and Estate Counsel, dated September 1, 2007. The Commission hereby certifies my survey.

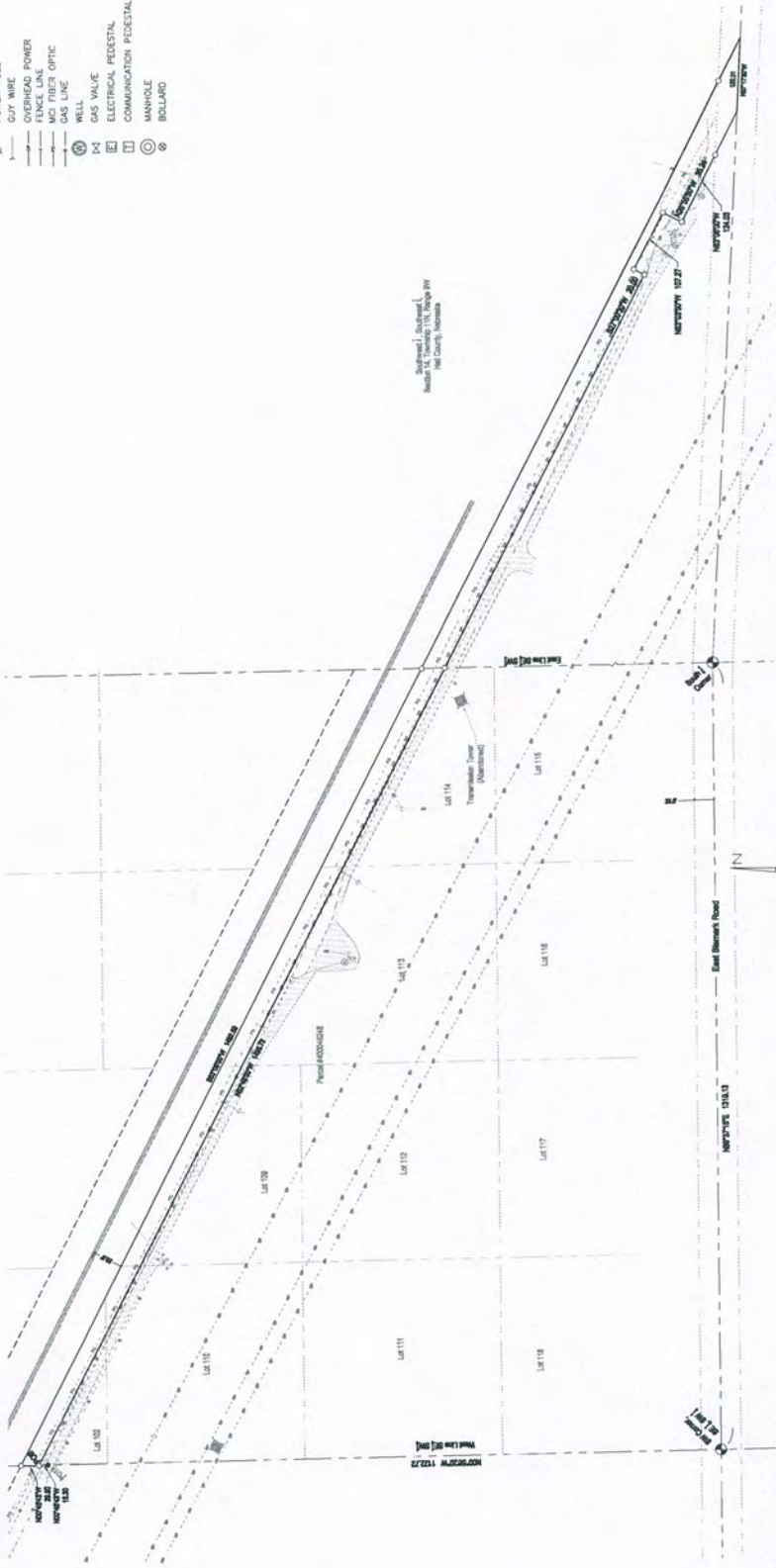
I, \_\_\_\_\_, being duly sworn, depose and say that the above recited matters have been asked upon Committed to the Title Insurance issued by Old Republic National Title Insurance Company, by its agent, Nebraska Title Company having an effective date of February 15, 2011 and bearing order number: 000370592.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2011

Joel S. Jacobson, RLS

Licensed Land Surveyor:

POWER POLE  
GUY WIRE  
OVERHEAD POWER  
FENCE LINE  
MCJ FIBER OPTIC  
GAS LINE  
WELL  
GAS VALVE  
ELECTRICAL PEDESTAL  
COMMUNICATION PEDESTAL  
MANHOLE  
BOX LAMP



2 ALTA / ACSM SURVEY

C1.0

BNSF Right of Way  
Acquisition  
Hall County, Nebraska

ALTA/ACSM  
SURVEY  
PARCEL 9

|              |             |           |
|--------------|-------------|-----------|
| PROJECT INFO | PROJECT NO  | 11-079    |
|              | DATE        | 07/2/2011 |
|              | DESIGNED BY |           |
|              | CHECKED BY  |           |
|              | DATE        |           |

REVISED: NOVEMBER 1997











## **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 of and acceptable to *Licensors*.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by *Licensors*.



- C. Workers Compensation and Employers Liability Insurance. This insurance shall include coverage for, but not limited to:
- ◆ Licensee's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
  - ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee. This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:
    - ◆ Waiver of subrogation in favor of and acceptable to *Licensors*.
- D. Railroad Protective Liability Insurance. This insurance shall name only the Licensors as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Electric Supply Line. **THE CONSTRUCTION OF THE ELECTRIC SUPPLY LINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Electric Supply Line is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:
- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
  - ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
  - ◆ Endorsed to include Evacuation Expense Coverage Endorsement.
  - ◆ No other endorsements restricting coverage may be added.
  - ◆ The original policy must be provided to the 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's 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 Licensors or the Premises that are attributable to the Improvements.

## **TERMINATION**

30. 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' 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, 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.]**

31. 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 § 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 Licensors'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 Licensors'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, Licensor 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 Licensor. 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 Licensor 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 Licensor, which may be withheld in Licensor'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 Licensor 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 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. – 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



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 Licensors 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 Licensors 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 Licensors. 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 Licensors, or the safe operation and activities of Licensors. If ordered to cease using the Premises at any time by Licensors personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensors, the parties agree that Licensors has no duty or obligation to monitor Licensees use of the Premises to determine the safe nature thereof, it being solely Licensees responsibility to ensure that Licensees use of the Premises is safe. Neither the exercise nor the failure by Licensors 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 Licensors, or the safe operation and activities of Licensors. Licensors 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 Licensors personnel due to non-compliance with the same or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensors, the parties agree that Licensors has no duty or obligation to observe or inspect, or to halt work on, the PIPELINE, it being solely Licensees 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 Licensors 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 Licensors, fail to properly perform its obligations under this Section, Licensors may, at its option and at Licensees 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. Licensors 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 Licensors, 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 Licensors Premises to their former state as of the Effective Date of this License.
14. If at any time during the term of this License, Licensors shall desire the use of its rail corridor in such a manner as would, in Licensors reasonable opinion, be interfered with by the PIPELINE, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensors to such effect, make such changes in the PIPELINE as in the sole discretion of Licensors may be necessary to avoid interference with the proposed use of Licensors 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, Licensors will provide Licensee any information that Licensors has in the possession of its Engineering Department concerning the existence and approximate location of Licensors 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. Licensors 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 Licensors 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 Licensors reasonable opinion that granular material is present, Licensors may select a new location for Licensee's use, or may require Licensee to furnish for Licensors 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



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 or 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 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.

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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:**



- (i) remove all of Licensee's Improvements and all appurtenances thereto from the Premises at Licensors'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, 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'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 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

Form 424; Rev. 08/03/09



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 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: \_\_\_\_\_







# Master Utility Relocation Agreement

**Todd Kuhn, P.E.  
Manager, Engineering**

**Grand Island City Council Study Session  
Tuesday, November 29, 2011**



**BNSF**  
RAILWAY

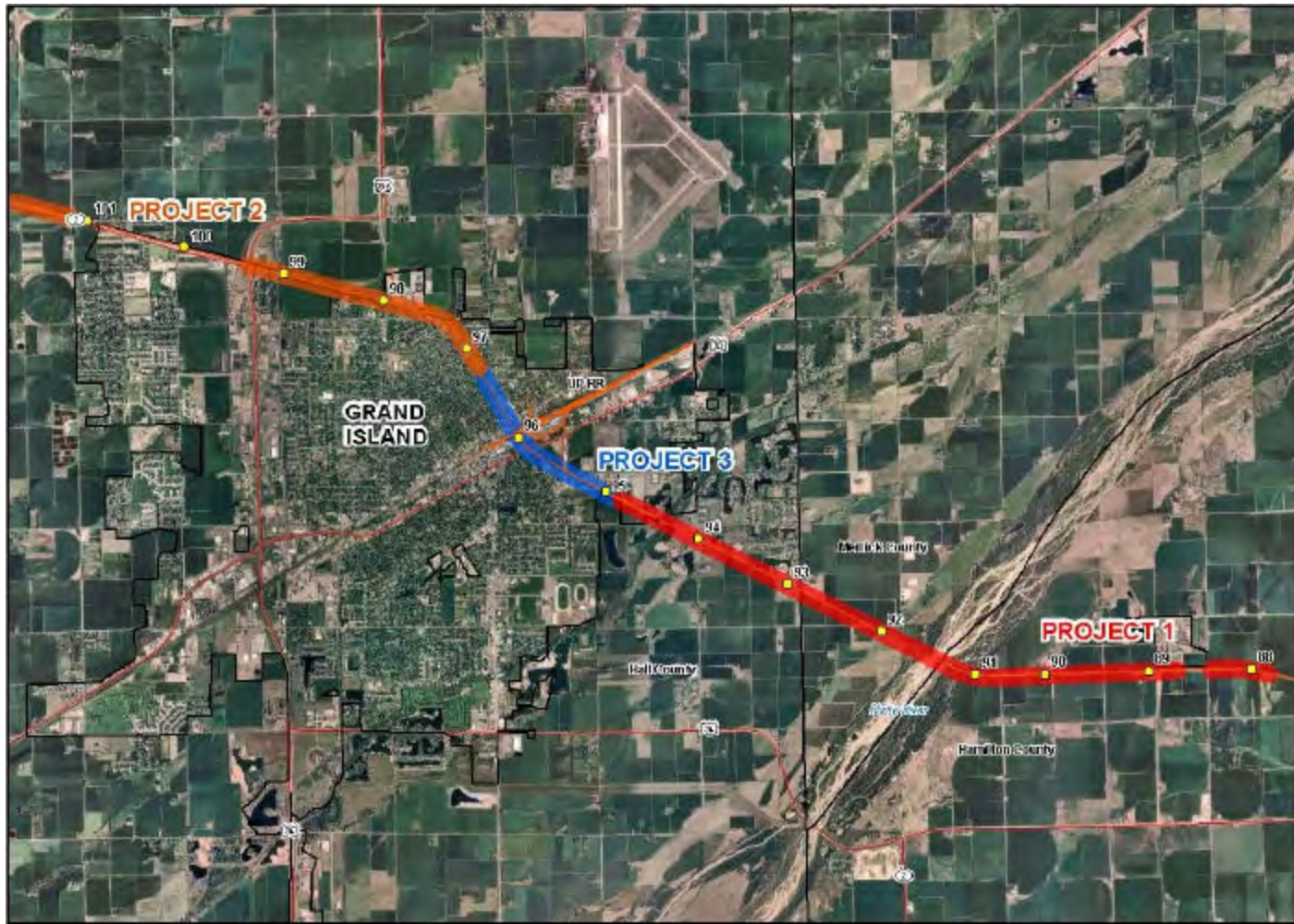


# Project Overview

- **BNSF's primary route for coal trains headed to the Midwest and East runs through Grand Island**
- **On this 360-mile route between Alliance and Lincoln, 58 miles of single track remain**
- **BNSF plans to construct 10 miles of new 2<sup>nd</sup> main track between Phillips and McDonald (Hwy 281 & 2) through Grand Island**
- **Overall plan is divided into 3 smaller project segments**



# Project Overview





# Project Overview

- **Construction on Projects 1 and 2 started in October**
- **Substantial completion and in-service of Projects 1 and 2 are expected near the end of 2012**
- **Construction schedule for Project 3 is unknown at this time, but will follow completion of Projects 1 and 2**



# City Utilities

- **There are 57 City of Grand Island utilities that are impacted by this project (water, sanitary, storm & power/electrical)**
- **These utilities will need to be either adjusted, encased, or relocated in order for the 2<sup>nd</sup> track to be constructed**
- **Many of these utilities currently lie on BNSF right-of-way – some have existing railroad permits and others do not**



# Existing Utility Permits

- **Relocation clause from a City of Grand Island waterline permit (7/31/63, Q-47977):**

“If the Railroad Company, for itself or on behalf of its lessees or grantees, should at any time or from time to time find it necessary or desirable to make changes in any existing building, track, structure, or overhead or underground installation, or place any additional building, track, structure, or overhead or underground installation, on any premises where said pipe line is located, the Licensee [City] agrees that it will promptly, at its own cost and expense and without cost or expense to the Railroad Company or the Railroad Company’s lessees or grantees, upon receipt of written notice from the Railroad Company so to do, relocate, change/encase, or remove said pipe line as requested or required by the Railroad Company.”



# Master Utility Agreement

- **For such utilities with existing permits, BNSF provided the City with the proper notices and requested relocation of those utilities in conflict with the 2<sup>nd</sup> main project**
- **Due to budgetary and resource constraints, the City will not be able to either fund or perform the required utility relocations in the timeframe to support the 2<sup>nd</sup> main project**
- **As such, BNSF is proposing a Master Utility Relocation Agreement to cover the costs of City utilities affected by the 2<sup>nd</sup> main project in exchange for City cooperation, timely review & approval, and small amounts of property**



# BNSF's Funding Offer

- **Following agreement execution, BNSF will fund 100% of all City utility relocations, including design, construction, and oversight**
- **This funding includes affected City utilities that currently have existing Railroad permits with relocation or termination clauses**
- **The estimated savings to the City based on these prior permits is approximately \$1.3 million**
- **Funding of these relocations by BNSF is voluntary and the terms of the existing permits will still govern in the future.**
- **City forces will perform some electrical and power relocations at BNSF's expense, but the majority of the work will be performed and managed by BNSF**

# City Obligations - Utilities

- **Cooperation with BNSF and timely resolution to construction issues which may arise during the 2<sup>nd</sup> main project**
- **Timely review and approval of utility designs submitted by BNSF**
- **Within 6 months, execute BNSF Utility Crossing Agreements for all utilities being relocated and all utilities currently existing without agreements or permits. New agreements will not impose any additional permit fees than exist today.**
- **For City utilities being relocated off BNSF right-of-way, exercise its power of eminent domain if BNSF is not able to secure easements on the City's behalf**



# City Obligations - Property

- **Within 1 month, provide to BNSF, all necessary City property rights to accommodate the 2<sup>nd</sup> main project.**
- **Total property involved is 4.9 acres and is valued at approximately \$24,500.**
- **Property involved are strips of land along BNSF right-of-way between Bismark Road and Stuhr Road, adjacent to Burdick Power Station, and at Webb Road.**
- **Avoids BNSF filing condemnation for these property rights**

# BNSF Retaining Walls

- In order to avoid significant property impacts, BNSF will be constructing new retaining walls along the west side of the right-of-way between the Union Pacific tracks and Capital Avenue
- Pending City approval of the Utility Master Agreement, BNSF will proceed with an aesthetic block treatment and graffiti protection on these walls
- The Georgia Ashlar concrete formliner creates the appearance of a natural stacked stone wall
- Graffiti protection prevents paint from being absorbed into the concrete for easier cleanup



# BNSF Retaining Walls



# Master Utility Agreement

- In summary, provides benefits to both the City of Grand Island and BNSF
- Key highlights:
  - City avoids significant costs (approximately \$1.3 million) of utility relocations governed by the terms of existing Railroad permits
  - BNSF and City avoid significant utility relocation timelines so that the 2<sup>nd</sup> main project can be completed quickly
  - BNSF and City avoid costs and timelines associated with property condemnation



