

Memorandum of Understanding

This Memorandum of Understanding ("MOU") is entered into this ^{23rd} day of December, 2014, between the City of La Crosse, Wisconsin, a municipal corporation ("City of La Crosse"), and BNSF Railway Company ("BNSF") for (1) the use, storage and maintenance of one foam and two spill response trailers owned by BNSF and (2) BNSF's three-year commitment to fund certain training for members of the La Crosse Fire Department ("La Crosse Fire Department").

Whereas BNSF owns a foam trailer presently located at the manufacturer's facility in Fort Worth, TX ("Foam Trailer").

Whereas BNSF has issued requests for proposal to acquire two spill response trailers ("Spill Response Trailers"), which it anticipates acquiring by December 2014.

Whereas the La Crosse Fire Department has space at one of its facilities to store the Foam Trailer indoors and the Spill Trailers either indoors or outdoors.

Whereas the parties agree that public health and safety would be best served by locating the Foam Trailer and the Spill Response Trailers (collectively, "Trailers") at a La Crosse Fire Department facility.

Whereas the La Crosse Fire Department desires and BNSF is willing to provide certain assistance for spill response training for La Crosse Fire Department firefighters.

Accordingly, the parties agree as follows:

1. BNSF will provide all of the necessary equipment to operate the Foam Trailer, including but not limited to the trailer itself, hose, pump, master stream device and 550 gallons of AR-AFFF foam. An inventory of the Foam Trailer is attached as Exhibit 1 to this MOU.
2. BNSF will provide all of the necessary equipment to operate the Spill Response Trailers, including 4500 feet of boom and a boom vane. An inventory of the Spill Response Trailers is attached as Exhibit 2 to this MOU.
3. BNSF will provide all routine maintenance of the Trailers and their contents, and will repair, replace and maintain all equipment as needed, except as provided in Paragraph 9 below. La Crosse Fire Department agrees to conduct weekly inspections of the trailers and report any exceptions to BNSF HazMat at 763-782-3350.
4. The Foam Trailer will be stored at the Station #1 - 726 5th Avenue South in La Crosse; the Boom Trailer will be stored at the fire department's cold storage on Marcou Drive in La Crosse. If La Crosse Fire Department desires to store the Trailers at another facility, it will request BNSF's consent at least seven-days in advance, which consent cannot be unreasonably withheld. La Crosse Fire Department will provide BNSF immediate access to the Trailers on a continuous, 24-hours per day, 7-days per week, basis. BNSF will secure access to the Trailers by contacting the on duty Battalion Chief at 608-789-7260.
5. BNSF will license and insure the Trailers while they are stored at the La Crosse Fire Department facility.
6. La Crosse Fire Department will store the Trailers at no cost to BNSF.

7. La Crosse Fire Department is permitted to use the Trailers for purposes of training La Crosse Fire Department firefighters. La Crosse Fire Department will give notice to BNSF HazMat when any of the Trailers will be used in training and will include applicable BNSF personnel in such training when available.

8. Apart from training as specified in Paragraph 7, La Crosse Fire Department's use of the Trailers is limited to an as needed basis, as part of the Regional Response contract with the State of Wisconsin, which is attached as Exhibit 3 to this MOU.

9. BNSF shall replace used products and equipment, repair any damage, and otherwise return the Trailers to their existing condition, when needed, following either party's use of the Trailers. Nothing in this Paragraph 9 shall be construed to impose any liability on BNSF to the City or to third parties.

10. La Crosse Fire Department will notify BNSF within twelve (12) hours of its use of any of the Trailers in accordance with Paragraph 8 by calling BNSF's Service Interruption Desk at (817) 352-2832 and requesting contact with BNSF's Hazmat Manager.

11. City of La Crosse, on behalf of itself and La Crosse Fire Department, and BNSF agree to indemnify and hold each other harmless from and against any and all liabilities, damages, claims, costs and expenses caused by, contributed to, or arising out of each of their respective uses of the Trailers and their contents. Nothing in this MOU shall be construed to waive either parties' limitations of liability and/or immunities available to it under Wisconsin Statutes or other applicable state or federal law.

12. BNSF agrees starting January 1, 2015 through December 31, 2017 to pay tuition and travel expenses for (a) nine (9) La Crosse Fire Department firefighters per year to attend the Tank Car Specialist course at the Security and Emergency Response Training Center (SERTC) in Pueblo, CO and (b) nine (9) La Crosse Fire Department firefighters per year to attend either SERTC's 3-day Crude by Rail firefighting course or Texas A&M Engineering Extension's (TEEX) flammable liquid firefighting course. BNSF will pay tuition directly to the above-referenced training facilities and will pay travel expenses pursuant to the instructions and conditions identified in Exhibit 4. If a La Crosse Fire Department firefighter registers for and cancels one of the above classes for any reason and tuition and travel expenses cannot be fully reimbursed to BNSF, such cancellation will count towards BNSF's commitment to fund training pursuant to this Paragraph.

13. All aspects of this MOU shall be governed by the laws of the State of Wisconsin. By signing below, the parties affirm they have the legal authority to enter into this MOU.

Executed this 23rd day of December 2014

City of La Crosse, a municipal Corporation



Tim Kabat, Mayor

Attest:

Joni Lehman

City Auditor Clerk

Executed this 7th day of JANUARY 2015
~~October 2014~~

BNSF Railway Company

Allen M. Siedman

ALLEN M. SIEDMAN

GENERAL DIRECTOR ENV. + HAZ MAT