

MASTER RELOCATION AGREEMENT

THIS MASTER RELOCATION AGREEMENT ("**Master Agreement**") is made to be effective the 9th day of February, 2015 ("**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**BNSF**"), and the **CITY OF LA CROSSE, WISCONSIN**, a Wisconsin municipal corporation ("**City**"). City and BNSF, respectively, are sometimes referred to in this Master Agreement each as a "**Party**" and collectively as the "**Parties**".

RECITALS

A. BNSF plans to construct approximately four (4) miles of second main track (such second main track and related appurtenances being referred to hereinafter as the "**Project**") within its existing right-of-way located in or near the City of La Crosse, County of La Crosse, State of Wisconsin, in the area shown in red (the "**Project Area**") on the map attached hereto as **Exhibit A** and incorporated herein by reference.

B. Construction of the Project will necessitate relocation, reconfiguration and other modifications, as described in more detail below (collectively, the "**Relocation Work**"), of certain City utilities and other infrastructure and facilities (collectively, the "**City Facilities**") located within or adjacent to the Project Area. The Relocation Work includes, but is not limited to: (i) relocation of certain City water and sewer utility installations (collectively, "**City Utilities**"); (ii) reconfiguration and modification of certain portions of the City-owned golf course adjacent to the Project Area ("**Golf Course**"), including without limitation relocation of a tee box, green, and pathway, construction of a cart path, underpass bridge, and related drainage facilities beneath the BNSF right of way, and closing of two existing at-grade crossings; and (iii) expansion and modification of railroad crossings of certain City streets (collectively, "**Street Crossings**").

C. The Parties desire to enter into this Master Agreement to set forth their respective rights and obligations with respect to the Relocation Work.

AGREEMENTS

NOW, THEREFORE, for the mutual covenants contained herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, and incorporating all of the above referenced Recitals into the agreements below as if fully set forth therein, the Parties do hereby agree as follows:

Section 1. RELOCATION WORK. The "**Relocation Work**" consists of the following items, together with full execution of the necessary ancillary agreements described in **Sections 1.4 and 3.4** below (the "**BNSF Relocation Work**" consists of the BNSF Utility Relocation Work, BNSF Golf Course Work, and BNSF Crossing Work, as such terms are defined below, and the "**City Relocation Work**" consists of the City Utility Relocation Work, City Golf Course Work, City Crossing Work, and issuance of all City Permits, as all such terms are defined below):

1.1 Utility Relocation Work. The "**Utility Relocation Work**" consists of the BNSF Utility Relocation Work and the City Utility Relocation Work, which are more particularly described as follows:

1.1.1 Except as described in Section 1.1.2 below, the "BNSF Utility Relocation Work" includes all design, engineering, construction, and installation work necessary for the relocation of such City Utilities as BNSF, in its sole discretion, deems necessary for the Project. All such relocations shall be completed in accordance with City's customary specifications, which shall be provided to BNSF on or before the Effective Date in hard copy or electronically at Shane.Krueger@am.jll.com, and BNSF's Utility Accommodation Policy at <http://bnsf.com/communities/faqs/pdf/utility.pdf>. At the Effective Date, relocation of ten (10) City Utilities is anticipated to be required for the Relocation Work, with the location of each City Utility to be relocated being depicted on Exhibit A-1 attached hereto and incorporated herein by this reference. Notwithstanding the foregoing, however, the Parties acknowledge and agree that more or fewer City Utilities may actually need to be relocated based on the Final Plans and Specifications (as defined below).

1.1.2 The "City Utility Relocation Work" includes coordination of the construction and installation of the City Utilities, including shutting down, cutting over, review and approval of any Change Orders (as defined below) to the Final Plans and Specifications to accommodate the Timeline, and restarting the City Utilities as necessary to accommodate other elements of the Relocation Work. The City shall not contract with any contractor for construction or relocation of any utilities nor shall the City construct or relocate any utilities using City employees (such work is to be performed by BNSF as part of the BNSF Utility Relocation Work), but shall promptly perform (or cause to be performed) incidental support activities that may be necessary to facilitate the BNSF Utility Relocation Work.

1.2 Golf Course Work. The "Golf Course Work" consists of the BNSF Golf Course Work and the City Golf Course Work, which are more particularly described as follows:

1.2.1 The "BNSF Golf Course Work" includes all design, engineering, demolition, reconfiguration, relocation, construction and installation work necessary to: (i) construct a railway bridge ("Bridge") to enable construction by the City of the Underpass Pathway (defined below) to replace the two (2) existing at-grade track crossings (the "At-Grade Crossings"), (ii) close the At-Grade Crossings within thirty (30) days after BNSF has notified City of Completion (as hereinafter defined) of the Bridge, and (iii) design and construct natural gravity flow surface drainage ("Underpass Surface Drainage") in BNSF's preferred location north of the northernmost At-Grade Crossing for the Underpass Pathway (provided that if City desires that the Underpass Surface Drainage be modified from BNSF's design and/or relocated to a different location, and additional enhancements to the Underpass Surface Drainage and/or Underpass Pathway are necessary to create positive drainage ("Mechanized Underpass Drainage Facilities"), BNSF shall, at its cost, be responsible for the initial modification, relocation and/or construction; provided that the City shall be responsible for maintaining, repairing, reconstruction and/or modifying the Underpass Surface Drainage and Mechanized Underpass Drainage Facilities, if any, after Completion (as defined below) pursuant to the provisions of Section 3.4.2).

1.2.2 The "City Golf Course Work" includes all design, engineering, demolition, reconfiguration, relocation, construction and installation work necessary to: (i) relocate and reconfigure the fairways, greens and related appurtenances (including but not limited to golf cart pathways) of holes 1 and 18 of the Golf Course to the east side of BNSF's right-of-way, (ii) construct a pathway from the existing golf course club house facilities to the underpass beneath the Bridge, including signage requiring users to remain on such pathway and to keep off BNSF's right-of-way, and any fencing the City deems necessary in relation to such pathway and approach to the underpass beneath the Bridge (collectively the "Clubhouse Pathway"), (iii) construct a pathway beneath the Bridge to allow golf carts and pedestrians to travel under the Bridge (the "Underpass Pathway"), and (iv) eliminate any use or

elements of the driving range or remainder of the Golf Course that require crossing BNSF's right-of-way in any manner other than via the Underpass Pathway.

1.3 Crossing Work. The "Crossing Work" consists of the BNSF Crossing Work and the City Crossing Work, which are more particularly described as follows:

1.3.1 The "BNSF Crossing Work" includes all design, engineering, demolition, reconfiguration, relocation, construction and installation work necessary to conform the Street Crossings at Cass Street, Farnam Street and Main Street to Project requirements, including removal and replacement of existing improvements disturbed by the Project with improvements similar in quality to the removed improvements. The BNSF Crossing Work shall include (i) all necessary relocation of existing gates, crossing lights and signs and (ii) the installation of appropriate crossing surfaces on the new track and patching and repair of the impacted streets. The BNSF Crossing Work expressly excludes any Quiet Zone Work (as defined below), which shall be the City's responsibility as part of the City Crossing Work.

1.3.2 The "City Crossing Work" includes all design, engineering, demolition, reconfiguration, relocation, construction and installation work necessary to maintain the Street Crossings in compliance with applicable Laws (as hereinafter defined), including all work necessary to maintain such Street Crossings as designated "Quiet Zones" in compliance with "Quiet Zone" regulations (the "Quiet Zone Work").

1.4 Temporary Rights of Entry.

1.4.1 Prior to BNSF's initial entry onto City property to the extent entry may be necessary for performance of any portion of the BNSF Relocation Work, BNSF and City agree to enter into a temporary right of entry agreement with the City ("BNSF Right of Entry") in the form attached hereto as Exhibit B.

1.4.2 Prior to City's initial entry onto BNSF property to the extent entry may be necessary for performance of any portion of the City Relocation Work, City and BNSF agree to enter into a temporary right of entry agreement with BNSF ("City Right of Entry") in the form attached hereto as Exhibit J; provided further if City contracts with any contractor for performance of any City Relocation Work, City shall require each such contractor to execute the document attached hereto as Exhibit C-1 and comply with the "Contractor Requirements" set forth on the related Exhibit C (collectively, Exhibits C and C-1 are referred to hereinafter as the "C Documents"). City further agrees to comply with the Contractor Requirements set forth on Exhibit C (other than Section 1.01.02; subsections (iii) and (iv) of the second sentence of subsection 1.01.04; the fourth sentence of subsection 1.01.04; and the last sentence of subsection 1.01.08 of Exhibit C) for any City Relocation Work performed by City's own forces.

Section 2. PLANS AND SPECIFICATIONS.

2.1 BNSF Relocation Work.

2.1.1 Promptly after the execution of this Master Agreement, BNSF, at BNSF's sole cost and expense, shall cause detailed plans and specifications (the "Plans and Specifications - BNSF Relocation Work") to be prepared for the BNSF Relocation Work, including but not limited to the Bridge. The Plans and Specifications - BNSF Relocation Work must include all details required for construction of such elements of the BNSF Relocation Work, and must take into reasonable consideration all work which will be

required to satisfy the intent of the BNSF Relocation Work, and must be sufficient to obtain all Permits (as hereinafter defined) from all applicable Governmental Authorities (as hereinafter defined) to enable the BNSF Relocation Work to commence.

2.1.2 BNSF shall deliver a set of the Plans and Specifications - BNSF Relocation Work to City as soon as they are available (and in any case within fifteen (15) business days after the Effective Date) for review and approval or disapproval by City, and City shall give written notice of approval or disapproval within seven (7) business days following its receipt of the draft Plans and Specifications - BNSF Relocation Work (the "**BNSF Relocation Work Plan Review Period**"), and City agrees to act reasonably and in good faith with respect thereto. The draft Plans and Specifications - BNSF Relocation Work may also include a construction schedule or other adjustments to the Timeline (as defined below). If City does not give written notice of approval or disapproval or otherwise fails to respond within the BNSF Relocation Work Plan Review Period, the Plans and Specifications - BNSF Relocation Work shall be deemed approved. If City reasonably disapproves of any elements of the Plans and Specifications - BNSF Relocation Work within the BNSF Relocation Work Plan Review Period, City shall include with such disapproval specific details regarding its objections together with proposed reasonable modifications that would address such objections to the City's satisfaction. Following receipt of any disapproval by the City within the BNSF Relocation Work Plan Review Period, BNSF shall cause the Plans and Specifications - BNSF Relocation Work to be modified to address City's concerns and re-submit same to City within seven (7) business days after City's disapproval; and City shall either approve or disapprove the re-submission within five (5) business days after such re-submission following the same parameters set forth above (including without limitation that the re-submission shall be deemed approved if no disapproval is provided within the time period specified); and such process shall continue as necessary until Plans and Specifications - BNSF Relocation Work have been established that are acceptable to both Parties. Both Parties agree and acknowledge the need to arrive at final mutually approved Plans and Specifications - BNSF Relocation Work as soon as possible, and both Parties agree to act diligently and in good faith exercising reasonable judgment throughout the above process to finalize approved Plans and Specifications - BNSF Relocation Work as soon as practical, and will refrain from requiring unnecessary or unreasonable revisions, and in any case the Parties concur they will agree upon the final Plans and Specifications - BNSF Relocation Work on or before the date that is 45 days after the Effective Date.

2.1.3 The Plans and Specifications - BNSF Relocation Work which are ultimately approved by BNSF and City pursuant to the foregoing are referred to herein as the "**Final Plans and Specifications - BNSF Relocation Work**." The date on which BNSF and City approve in writing the Final Plans and Specifications - BNSF Relocation Work (or the date the BNSF Relocation Work Plan Review Period expires without City's written approval or disapproval of the draft Plans and Specifications - BNSF Relocation Work such that the draft Plans and Specifications - BNSF Relocation Work are deemed approved as Final Plans and Specifications - BNSF Relocation Work by City) is referred to as the "**BNSF Relocation Work Design Approval Date**".

2.2 City Relocation Work.

2.2.1 Promptly after the execution of this Master Agreement, City, at City's sole cost and expense, shall cause detailed plans and specifications (the "**Plans and Specifications - City Relocation Work**") to be prepared for the City Relocation Work. The Plans and Specifications - City Relocation Work must include all details required for construction of such elements of the City Relocation Work, and must take into reasonable

consideration all work which will be required to satisfy the intent of the City Relocation Work, and must be sufficient to obtain all Permits (as hereinafter defined) from all applicable Governmental Authorities (as hereinafter defined) to enable the City Relocation Work to commence.

2.2.2 City shall deliver a set of the Plans and Specifications - City Relocation Work to BNSF as soon as they are available (and in any case within forty-five (45) business days after the Effective Date) for review and approval or disapproval by BNSF, and BNSF shall give written notice of approval or disapproval within seven (7) business days following its receipt of the draft Plans and Specifications - City Relocation Work (the "City Relocation Work Plan Review Period"), and BNSF agrees to act reasonably and in good faith with respect thereto. The draft Plans and Specifications - City Relocation Work may also include a construction schedule or other adjustments to the Timeline. If BNSF does not give written notice of approval or disapproval or otherwise fails to respond within the City Relocation Work Plan Review Period, the Plans and Specifications - City Relocation Work shall be deemed approved. If BNSF reasonably disapproves of any elements of the Plans and Specifications - City Relocation Work within the City Relocation Work Plan Review Period, BNSF shall include with such disapproval specific details regarding its objections together with proposed reasonable modifications that would address such objections to BNSF's satisfaction. Following receipt of any disapproval by the BNSF within the City Relocation Work Plan Review Period, City shall cause the Plans and Specifications - City Relocation Work to be modified to address BNSF's concerns and re-submit same to BNSF within five (5) business days after BNSF's disapproval; and BNSF shall either approve or disapprove the re-submission within five (5) business days after such re-submission following the same parameters set forth above (including without limitation that the re-submission shall be deemed approved if no disapproval is provided within the time period specified); and such process shall continue as necessary until Plans and Specifications - City Relocation Work have been established that are acceptable to both Parties. Both Parties agree and acknowledge the need to arrive at final mutually approved Plans and Specifications - City Relocation Work as soon as possible, and both Parties agree to act diligently and in good faith exercising reasonable judgment throughout the above process to finalize approved Plans and Specifications - City Relocation Work as soon as practical, and will refrain from requiring unnecessary or unreasonable revisions, and in any case the Parties concur they will agree upon the final Plans and Specifications - City Relocation Work on or before the date that is sixty (60) days after the Effective Date. For the portion of the City Relocation Work that must be co-designed with the BNSF Relocation Work or that may impact BNSF property or facilities in any way, including but not limited to the Bridge, the City will diligently and in good faith expedite the delivery of said portion of the draft Plans and Specifications - City Relocation Work to BNSF within fifteen (15) business days after the Effective Date.

2.2.3 The Plans and Specifications - City Relocation Work which are ultimately approved by BNSF and City pursuant to the foregoing are referred to herein as the "Final Plans and Specifications - City Relocation Work." The date on which BNSF and City approve in writing the Final Plans and Specifications - City Relocation Work (or the date the Plan Review Period expires without BNSF's written approval or disapproval of the draft Plans and Specifications - City Relocation Work such that the draft Plans and Specifications - City Relocation Work are deemed approved as Final Plans and Specifications - City Relocation Work by BNSF) is referred to as the "City Relocation Work Design Approval Date".

2.3 **Final Plans and Specifications.** As used in this Master Agreement, the term "Final Plans and Specifications" shall mean the Final Plans and Specifications - BNSF

Relocation Work, the Final Plans and Specifications - City Relocation Work, or both, as may be amended by any Change Orders (as defined below), and as applicable in the context.

2.4 Change Orders. If change orders or other revisions (collectively, "Change Orders") to any Final Plans and Specifications are necessary, the Party responsible for that segment of Relocation Work agrees to promptly prepare, at its sole cost and expense, such Change Orders and submit same to the other Party for review and approval in accordance with the time periods and requirements set forth in **Section 2.2** above, including but not limited to the Parties' agreement to: (i) act diligently and in good faith exercising reasonable judgment throughout the above process to finalize any Change Orders as soon as practical, and (ii) refrain from requiring unnecessary or unreasonable revisions.

Section 3. CONSTRUCTION; STANDARDS; COMPLETION; OBLIGATIONS UPON COMPLETION.

3.1 Construction.

3.1.1 Promptly after the BNSF Relocation Work Design Approval Date, BNSF shall (or shall cause its contractors to) commence and diligently pursue to Completion the BNSF Relocation Work in accordance with the Final Plans and Specifications - BNSF Relocation Work, the Standards (as hereinafter defined), all applicable Permits, and the Timeline.

3.1.2 Promptly after the City Relocation Work Design Approval Date, City shall (or shall cause its contractors to) commence and diligently pursue to Completion the City Relocation Work in accordance with the Final Plans and Specifications - City Relocation Work, the Standards, all applicable Permits, and the Timeline.

3.2 Standards. Each Party shall commence and Complete its Relocation Work obligations in accordance with the following requirements (the "Standards"): (i) in a good and workmanlike manner, (ii) in conformance with the Final Plans and Specifications, (iii) in accordance with accepted industry standards of care, skill and diligence for such work, (iii) in conformance with all Permits, and (iv) in compliance with all applicable federal, state, municipal, or other laws, statutes, codes, restrictions, regulations, ordinances and orders promulgated by any governmental or judicial body or agency (collectively, "Laws"), subject to **Section 9** below.

3.3 Completion. For purposes of this Master Agreement, the words "Complete", "Completed", "Completion" or any variations thereof shall mean that: (i) all components of the given portion of Relocation Work have been substantially completed in accordance with the Final Plans and Specifications, (ii) BNSF and City have entered into the BNSF Right of Entry and the City Right of Entry, (iii) all other applicable necessary ancillary agreements described in **Section 3.4.2** below have been fully executed, and (iv) all applicable Governmental Approvals have been obtained.

3.4 Obligations upon Completion. Upon Completion of a given portion of the Relocation Work, ownership and responsibility for future maintenance, repair, reconstruction, modification and removal shall be apportioned among the Parties in the following manner:

3.4.1 BNSF shall own and be responsible, at its sole cost and expense, for maintaining, repairing, reconstructing and modifying the BNSF Crossing Work and the Bridge.

3.4.2 City shall own and be responsible, at its sole cost and expense, for maintaining, repairing, reconstructing and modifying the City Utilities, City Crossing Work (including without limitation all Quiet Zone Work), Underpass Surface Drainage,

Mechanized Underpass Drainage Facilities (if any), Underpass Pathway, and the remainder of the Golf Course on either side of BNSF's right-of-way, including the Clubhouse Pathway.

(a) As part of Completing the Utility Relocation Work, for any City Utilities located in BNSF's right-of-way, City and BNSF shall promptly execute a license ("Utility License") for each such City Utility (or amend an existing license, as applicable), such Utility License to be in the form attached hereto as Exhibit D.

(b) As part of Completing the Crossing Work, City and BNSF shall promptly execute an easement ("Crossing Easement") for each such Street Crossing (or amend an existing license or easement, as applicable), such Crossing Easement to be in the form attached hereto as Exhibit E.

(c) As part of Completing the Underpass Pathway and Mechanized Underpass Drainage Facilities (if any), City and BNSF shall promptly execute an easement ("Underpass Easement") for the Underpass Surface Drainage, Mechanized Underpass Drainage Facilities (if any), Underpass Pathway and for pedestrian and golf cart use, such Underpass Easement to be in the form attached hereto as Exhibit F.

Section 4. TIMELINE. The Parties acknowledge and agree that time is of the essence with respect to the Relocation Work, and that but for this Master Agreement BNSF would have no legal obligation to pay for substantial portions of the Relocation Work that BNSF is agreeing to pay for hereunder. The City agrees and acknowledges that BNSF is agreeing to pay for substantial portions of the Relocation Work hereunder as an accommodation to the City to mitigate perceived impacts to the City that may arise from the Project, and to expedite completion of the Project in accordance with the Timeline. Accordingly, the Parties agree to use the utmost diligence and their best efforts to cause their respective work to be Completed on or before the dates established in the Timeline. The timeline set forth on Exhibit G attached hereto and incorporated by reference herein ("Timeline") is the proposed timeline for Completion of the Relocation Work. City and BNSF agree that the Timeline may need further refinement based on the Final Plans and Specifications and other matters including, but not limited to, specific project sequencing consensus reached by the Parties and all key third parties including, but not limited to, the U.S. Army Corps of Engineers ("USACE"), Wisconsin Department of Natural Resources ("WDNR"), Wisconsin Office of the Commissioner of Railroads ("WOCR"), Ho Chunk Nation ("HCN") and La Crosse County ("County").

Section 5. PERMITS AND APPROVALS.

5.1 Permits. In connection with the Relocation Work and related activities, BNSF may seek to obtain certain licenses, permits, and other approvals (collectively, "Permits") from various governmental authorities that may have jurisdiction over the Relocation Work, "Governmental Authorities").

5.2 City Permits. City hereby covenants and agrees to actively expedite all Permits that BNSF may seek from City ("City Permits"), and to cooperate with BNSF in BNSF's efforts seeking Permits from any other Governmental Authorities.

5.3 BNSF Right of Way. The City further agrees and acknowledges that it has completed its review of title to the portion of the BNSF right of way running through the Golf Course, and agrees and acknowledges that such right of way is described in BNSF's recorded property acquisition documents and a subsequent recorded survey as one hundred (100) feet in width and will allow for construction of the Project. BNSF and City agree to work in good faith to

identify any portions of BNSF's right-of-way abutting the Golf Course that the City desires to continue using following Completion of the Relocation Work, and BNSF will reasonably consider requests by the City to use such areas, subject to entering into a lease agreement in form and substance reasonably acceptable to both parties, and BNSF's prior consent to City's use of portions of BNSF's right-of-way shall be replaced with such lease agreement. This Section 5.3 shall survive the termination or expiration of this Master Agreement.

Section 6. OTHER COVENANTS. In addition to and not in limitation of any other covenants and obligations set forth in this Master Agreement, the following covenants apply to this Master Agreement:

6.1 City Covenants. Without limiting the other requirements set forth in this Master Agreement, City hereby covenants and agrees that it will:

6.1.1 Diligently and reasonably cooperate with BNSF in designing, engineering, constructing, and installing the Relocation Work in order to minimize costs of the Relocation Work.

6.1.2 Promptly prepare, review and approve draft Plans and Specifications in accordance with the provisions of Section 2.

6.1.3 Not oppose BNSF's crossing petitions filed with WOCR for the Street Crossings, the nature and scope of which is described in the documents attached hereto as Exhibit H (collectively, the "OCR Documents"). City shall notify BNSF of any concerns City may have with respect to such crossing petitions, and BNSF shall use good faith efforts to revise its petitions in response to such requests.

6.1.4 Expeditiously commence and perform to Completion the City Relocation Work in accordance with the Timeline and in coordination with the BNSF Relocation Work.

6.1.5 Actively and reasonably cooperate with BNSF in coordinating the timing and sequencing of the Relocation Work, including avoiding interference with BNSF's rail operations.

6.1.6 Promptly execute all licenses or entry agreements for BNSF property required by this Master Agreement, including the City Right of Entry, the Utility Licenses, the Crossing Easements and the Underpass Easement.

6.2 BNSF Covenants. BNSF hereby covenants and agrees that it will:

6.2.1 Promptly prepare, review and approve draft Plans and Specifications in accordance with the provisions of Section 2.

6.2.2 Expeditiously commence and perform to Completion the BNSF Relocation Work.

6.2.3 Actively and reasonably cooperate with City in coordinating the timing and sequencing of the Relocation Work, including using commercially reasonable efforts to avoid material interference with the City Facilities.

6.2.4 Promptly execute the BNSF Right of Entry.

6.2.5 Close the At-Grade Crossings as soon as practicable after Completion of the Bridge and Underpass Pathway, but in any event no later than thirty (30) days after Completion of such Project elements.

6.2.6 Not oppose City's crossing petitions to be filed with WOCR for pedestrian sidewalks at an already existing street crossings at Main, Farnam and Cass Streets, so long as such petitions meet all BNSF, Federal Railroad Administration ("FRA") and other regulatory requirements and are otherwise in conformance with current railroad industry best practices. City shall provide drafts of all such crossing petitions to BNSF reasonably in advance of filing with WOCR to allow BNSF adequate time to evaluate such drafts for conformance with the above-referenced BNSF requirements and current railroad industry best practices. BNSF shall notify City of any concerns BNSF may have with respect to such draft petitions, and City shall use good faith efforts to revise its petitions in response to such requests.

6.2.7 Support City's request ("City Mitigation Request") to the WDNR and Governor's Office to use wetland mitigation monies in the City for wetland mitigation projects ("City Mitigation Project") on the terms and conditions set forth herein. If the City Mitigation Request (including applicable funding and timelines): (i) is approved by the WDNR, the Governor's Office and any other applicable Governmental Authorities; (ii) is in executable form promptly after approval by such Governmental Authorities; and (iii) does not impact the timing, scope, or other aspects of the Project and/or Relocation Work (the foregoing requirements (i) – (iii) inclusive are the "BNSF Support Conditions"), BNSF will support such City Mitigation Project. Additionally, if all of the BNSF Support Conditions are satisfied, BNSF will also contribute up to a maximum of Two Hundred Thousand Dollars (\$200,000) ("Additional Mitigation Payment") towards the costs of the City Mitigation Project, above and beyond any in lieu payment that WDNR may require BNSF to make in connection with the Project. If the City Mitigation Project does not satisfy all of the BNSF Support Conditions, BNSF will have the right, in its sole discretion to work to address any wetland mitigation issues associated with the Project and/or Relocation Work in any manner as BNSF may see fit, whether through a fee in lieu payment or otherwise, and BNSF will have no obligation whatsoever to make the Additional Mitigation Payment to City. Without limiting the generality of the Parties' covenants and obligations set forth elsewhere in this Agreement, the City agrees that if the City Mitigation Request is not successful the City will take no action to delay BNSF's ability to obtain any Permits, including without limitation the City Permits, or to execute the Project and/or Relocation Work.

Section 7. COSTS; INCENTIVE PAYMENT.

7.1 Costs. Except to the extent otherwise expressly set forth in this Master Agreement, costs for the Relocation Work shall be allocated among the Parties as follows:

7.1.1 BNSF shall bear all costs for performance of the BNSF Utility Relocation Work, BNSF Golf Course Work, and BNSF Crossing Work.

7.1.2 City shall bear all costs for performance of the City Utility Relocation Work, City Golf Course Work, and City Crossing Work.

7.2 Incentive Payment.

7.2.1 Notwithstanding the provisions of Section 7.1, however, BNSF agrees to pay to City the amount of Eight Hundred Thirty-Thousand Three Hundred Sixty-Five and

No/100 Dollars (\$830,365.00) (the "Incentive Payment") for the timely Completion of the City Relocation Work in accordance with the Timeline (the "Target Completion Date").

7.2.2 Within thirty (30) days after the Effective Date, BNSF and City will mutually agree upon an escrow agent ("Escrow Agent") to hold the Incentive Payment in an escrow account (the "Escrow Account"), such Incentive Payment to be held and disbursed pursuant to joint escrow instructions to be mutually negotiated and agreed to by Escrow Agent, City and BNSF ("Escrow Agreement"). The Escrow Agreement shall direct Escrow Agent to deposit, hold in trust for City's benefit, and periodically disburse the funds in the Escrow Account according to the Payment Schedule (as defined below). BNSF shall be solely responsible for all costs and expenses associated with the Escrow Account; however, interest accrued on the Escrow Account shall be for BNSF's benefit. Prior to the parties' approval of the Final Plans and Specifications, BNSF shall deposit the Incentive Payment into the Escrow Account.

7.2.3 The Escrow Agreement will direct Escrow Agent to disburse the Incentive Payment from the Escrow Account to City in two (2) installments in accordance with the following schedule (the "Payment Schedule"):

(a) A lump sum of \$415,000 ("Initial Installment") within thirty (30) days after the latest to occur of all of the following: (i) City's approval of the Final Plans and Specifications - BNSF Relocation Work, (ii) BNSF's approval of the Final Plans and Specifications - City Relocation Work, (iii) BNSF's and City's full execution of the BNSF Right of Entry, and (iv) City's and BNSF's full execution of the City Right of Entry. The Initial Installment is non-refundable except in the event this Master Agreement is terminated because of City's default pursuant to Section 10 below.

(b) A lump sum of \$415,365 ("Final Installment") within thirty (30) days after the date that is the earlier to occur of: (i) City's Completion of all City Relocation Work or (ii) City's Completion of all elements of the City Relocation Work necessary for BNSF, in BNSF's reasonable discretion, to Complete the BNSF Relocation Work and eliminate interference by City with BNSF's railroad operations and right-of-way, including without limitation (x) closure and removal of the At-Grade Crossings, and (y) BNSF's ability to operate its second main line track; provided, however, that City's right to receive the full Final Installment to City is contingent on City's Completion of the City Relocation Work on or before the Target Completion Date. If City does not Complete the City Relocation Work on or before the Target Completion Date, subject to extension for Force Majeure as set forth below, the Final Installment shall be reduced by a daily amount of Ten Thousand and No/100 Dollars (\$10,000.00) for each calendar day that passes after the Target Completion Date until the City's Completion of the City Relocation Work.

7.2.4 City expressly acknowledges and agrees that it will accept BNSF's payment of the Incentive Payment (which assumes that City Completes the City Relocation Work on or before the Target Completion Date, subject to extension for Force Majeure and as may be adjusted pursuant to Section 7.2.3(b) above) as the full and complete payment for all of City's costs, expenses and fees for the City Relocation Work. Any costs to Complete the City Relocation Work in excess of the Incentive Payment shall be the sole responsibility of City. In addition to and not in limitation of the foregoing or anything else set forth in this Master Agreement: (i) City hereby expressly waives any and all claims against BNSF for consequential, special or punitive damages allegedly suffered by City because of any delays in Completion of the Relocation Work, including lost profits and business interruption related to the City Golf Course or otherwise, and (ii) BNSF hereby expressly waives any

and all claims against City for consequential, special or punitive damages allegedly suffered by BNSF because of any delays in Completion of the Relocation Work in excess of an amount equal to three times the Incentive Payment (Two Million Four Hundred Ninety-One Thousand Ninety-Five and No/100 Dollars (\$2,491,095.00)).

Section 8. FORCE MAJEURE. In the event that BNSF or City is delayed from the performance of any actual construction work required under the terms of this Master Agreement by an act of God, flood, inclement weather materially exceeding typical weather patterns for the area, governmental action (other than action or inaction by the City), labor strikes, act of war, riot, and civil commotion, or by any similar cause beyond the control of BNSF or City, as the case may be, (taking into account the parties' obligations to use the utmost diligence and best efforts to comply with the Timeline as set forth in Section 4 above) (as used herein, "Force Majeure"), such failure shall not be deemed to be a breach of this Master Agreement or a violation of any such covenants and the time within which BNSF or City must perform any such act shall be extended by a period of time equal to the period of delay arising from any said causes; provided that the Party declaring such Force Majeure event must promptly notify the other Party of such event and work with the utmost diligence and use its best efforts to promptly overcome any such event. For avoidance of doubt, delays in review and approval of Plans and Specifications, cooperation with coordination, execution of licenses and other agreements, payment of monetary obligations, and any other obligations hereunder that do not constitute actual construction work shall not be subject to relief on grounds of Force Majeure.

Section 9. NO WAIVER. Nothing in this Master Agreement shall be deemed a submission by BNSF to the jurisdiction of any state or local body or a waiver of the preemptive effect of any state or federal law; provided further that this Master Agreement is not to be construed as a consent or submission by BNSF to the jurisdiction of the City or any other agency over its proposed actions, or as a waiver of BNSF's right to withdraw and/or assert preemption with regard to any permit application or other approval that BNSF may seek.

Section 10. DEFAULT AND TERMINATION.

10.1 If either Party fails to perform any of its obligations under this Master Agreement, and, after written notice is given by the non-defaulting Party to the defaulting Party specifying the default, the defaulting Party fails either to promptly commence to cure the default, or to complete the cure expeditiously but in all events to complete the cure within thirty (30) days after the default notice is given, then the non-defaulting Party may (i) seek specific performance of the unperformed obligations; (ii) at defaulting Party's sole cost, perform or arrange for the performance of unperformed obligations, in which event the defaulting Party will be deemed to have granted a right of entry over its property as necessary to complete such obligations, on the same terms and conditions as provided for in Section 1.4 above; or (iii) bring a claim for damages. The remedies set forth in this Section 10.1 shall not be in limitation of any other remedies that a Party may have at law or in equity.

10.2 Any waiver by either Party of any default or defaults under this Master Agreement or any delay of either Party in enforcing any remedy set forth herein shall not constitute a waiver of the right to pursue any remedy at a later date or terminate this Master Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect such Party's ability to enforce any section of this Master Agreement.

10.3 The term of this Master Agreement shall begin on the Effective Date and continue until Completion of the Relocation Work, unless sooner terminated as set forth herein, except for those provisions that expressly survive termination.

11. NOTICE. 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 BNSF: BNSF Railway Company
2500 Lou Menk Dr.
Fort Worth, TX 76131
Attn: AVP Engineering Services

With a copy to:

BNSF Railway Company
2500 Lou Menk Dr., AOB-3
Fort Worth, TX 76131
Attn: Vice President and General Counsel – Regulatory

If to City: City of La Crosse
400 La Crosse St.
La Crosse, WI 54601-3374
Attn: City Clerk

With a copy to:

City of La Crosse
400 La Crosse St.
La Crosse, WI 54601
Attn: City Attorney

Section 12. MISCELLANEOUS.

12.1 Time is of the essence of this Master Agreement.

12.2 INTENTIONALLY OMITTED.

12.3 This Master Agreement binds and is for the benefit of both Parties and their permitted successors and assigns. No Party may assign its rights and obligations hereunder without the prior written consent of the other Party. Any permitted assignment shall not terminate the liability of the assigning Party, unless a specific release of such liability in writing is given and signed by the other Party.

12.4 Each Party and its counsel have reviewed and revised this Master Agreement. The Parties agree that the rule of construction that any ambiguities are to be resolved against the drafting party must not be employed to interpret this Master Agreement or its amendments or exhibits.

12.5 If any clause or provision of this Master Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Master Agreement, then and in that event, it is the intention of the Parties that the remainder of this Master Agreement

shall not be affected thereby, and it is also the intention of the Parties that in lieu of each clause or provision of this Master Agreement that is illegal, invalid or unenforceable, there be added, as a part of this Master Agreement, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

12.6 This Master Agreement, and, to the extent executed, the licenses and/or easements described herein, contain the entire agreement between BNSF and City with respect to the Relocation Work. Oral statements or prior written matters not specifically incorporated into this Master Agreement are superseded hereby. No variation, modification, or change to this Master Agreement shall bind either Party unless set forth in a document signed by both Parties. No failure or delay of either Party in exercising any right, power or privilege hereunder shall operate as a waiver of such Party's right to require strict compliance with any term of this Master Agreement. The captions next to the section numbers of this Master Agreement are for reference only and do not modify or affect this Master Agreement.

12.7 No director, officer, elected or appointed official, attorney or employee of either of the Parties shall be personally liable in the event of any default under this Master Agreement.

12.8 This Master Agreement may be executed in any number of counterparts and either Party may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. This Master Agreement shall become binding when one or more counterparts taken together shall have been executed and delivered by the Parties. It shall not be necessary in making proof of this Master Agreement or any counterpart hereof to produce or account for any of the other counterparts. Delivery of this Master Agreement or an executed counterpart by facsimile, electronic mail, or in .pdf format shall be deemed a good and valid execution and delivery thereof.

12.9 All aspects of this Master Agreement shall be governed by the laws of the State of Wisconsin. To the fullest extent permitted by law any dispute arising under or in connection with this Master Agreement or related to any subject matter which is the subject of this Master Agreement shall be subject to the sole and exclusive jurisdiction of the United States District Court for the Western District of Wisconsin. The aforementioned choice of venue is intended by the Parties to be mandatory and not permissive. Each Party hereby irrevocably consents to the jurisdiction of the United States District Court for the Western District of Wisconsin in any such dispute and irrevocably waives, to the fullest extent permitted by law, any objection that it may now have or hereafter have to the laying of venue in such court and that any such dispute which is brought in such court has been brought in an inconvenient forum.

12.10 By signing below, the Parties affirm they have the legal authority to enter into this Master Agreement.

12.11 Each Party will, whenever it shall be reasonably requested to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such reasonable further confirmations, instruments, or further assurances and consents as may be reasonably necessary or proper in order to effectuate the covenants and agreements herein provided. Each Party shall reasonably cooperate in good faith with the other and shall do any and all other acts and execute, acknowledge and deliver any and all documents so reasonably requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Master Agreement.

12.12 The following Exhibits are attached to this Master Agreement and incorporated herein by reference:

Exhibit A	Project Area
Exhibit A-1	Locations of City Utilities
Exhibit B	Form of BNSF Right of Entry
Exhibit C-1	C Documents
Exhibit D	Form of Utility License
Exhibit E	Form of Crossing Easement
Exhibit F	Form of Underpass Easement
Exhibit G	Timeline
Exhibit H	OCR Documents
Exhibit I	<i>Intentionally omitted</i>
Exhibit J	Form of City Right of Entry

END OF PAGE – SIGNATURE PAGE FOLLOWS

Signature Page - Master Relocation Agreement

IN WITNESS WHEREOF, the Parties have executed this Master Agreement to be effective as of the Effective Date above.

CITY OF LA CROSSE, WISCONSIN, a Wisconsin municipal corporation

By: Timothy Kohl

Title: MAYOR

Jeri Lehman
City Clerk

BNSF RAILWAY COMPANY, a Delaware corporation

By: SM Anderson

Title: VP. Engr

EXHIBIT A

Project Area

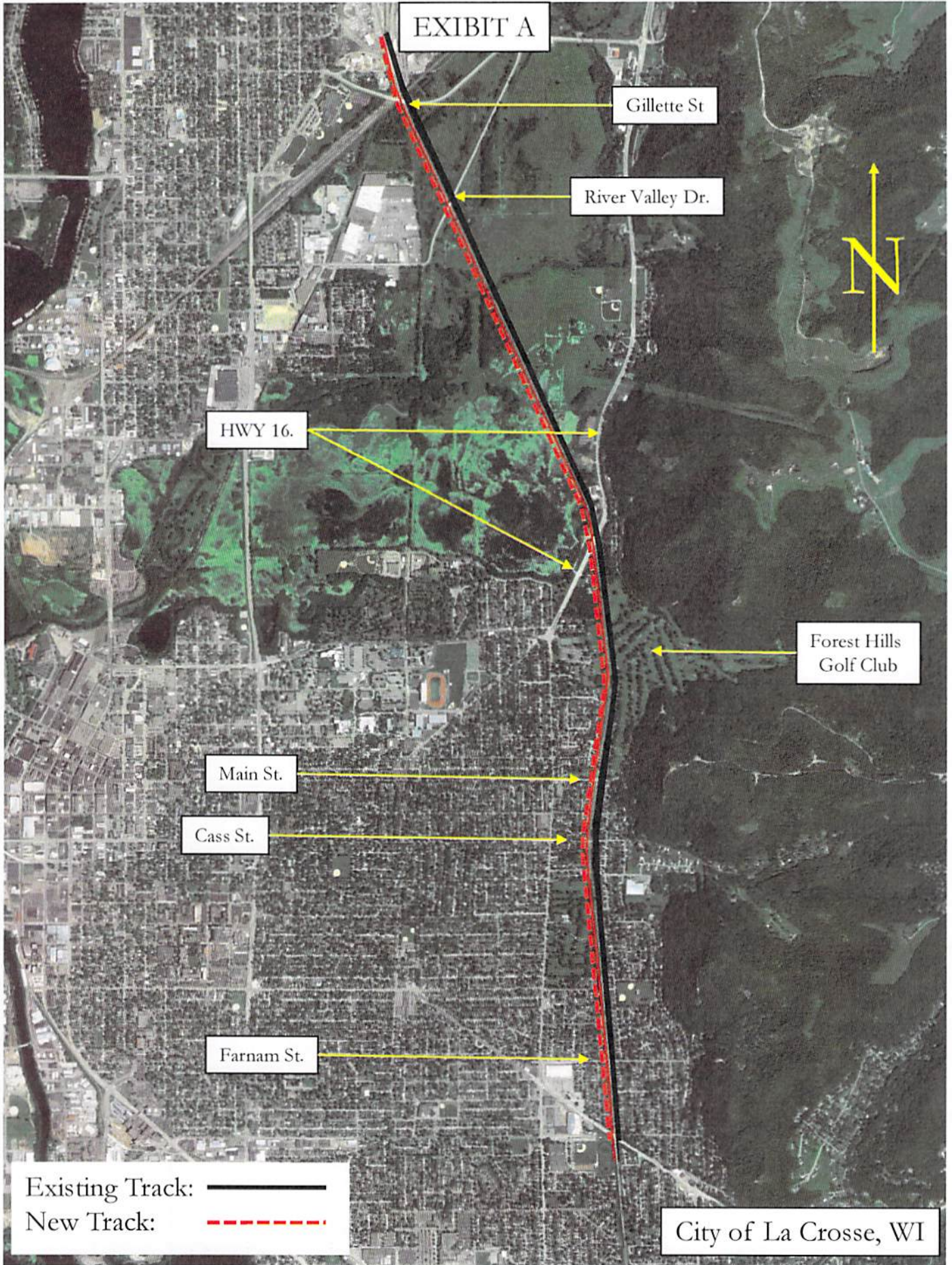


EXHIBIT A-1

Locations of City Utilities

EXHIBIT A-1

Drop Pin	Mile Post	Station	Contract No.	Utility Co.	Utility Type	Direction
4	296.36	15647+50	<u>Q-45098</u>	City of La Crosse	Storm Sewer	Crossing
7	296.52	15693+00 to 15695+00	<u>Q-44472</u>	City of La Crosse	Storm Sewer	Parallel/ Crossing
9	297.22	15693+00	<u>LC-218168</u>	City of La Crosse	Storm Sewer	Crossing
15	297.42 and 297.22	15703+00 and 15693+10	<u>NONE</u>	City of La Crosse	Water	Crossing: 2 locations Main & Cass St.
38	297.14 to 297.22	15689+00 to 15703+00	<u>Q-203717</u>	City of La Crosse	Storm Sewer	Parallel
52	297.52	15710+90	<u>NONE</u>	City of La Crosse	Water Main	Crossing
58	297.22 to 297.44	15693+00 to 15730+00	<u>NONE</u>	City of La Crosse	Storm Sewer	Parallel/Crossing

EXHIBIT B

Form of BNSF Right of Entry

TEMPORARY OCCUPANCY PERMIT (BNSF)

THIS TEMPORARY OCCUPANCY PERMIT ("License"), is made to be effective _____, 20__ (the "Effective Date") by and between CITY OF LA CROSSE, WISCONSIN, a Wisconsin municipal corporation ("Licensor") and BNSF RAILWAY COMPANY, a Delaware corporation ("Licensee").

In consideration of the mutual covenants contained herein, the parties agree to the following:

GENERAL

1. **Grant of License.** 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 temporarily occupy, in strict accordance with the Final Plans and Specifications (as defined and described in that certain Master Relocation Agreement between Licensee and Licensor dated _____ ["Master Agreement"]), for the purposes specified in Section 4 below, Licensor's property within the City of La Crosse, County of La Crosse, State of Wisconsin, as shown on the attached Drawing No. _____, dated _____, attached hereto as **Exhibit "A"**, and incorporated herein by reference (the "Premises").
2. **Term.** This License shall commence on the Effective Date and, subject to prior termination as hereinafter described, shall continue until completion of the uses permitted in Section 4 below, but in no event later than the date that is the earliest to occur of: (i) the Completion of all Relocation Work (as those terms are defined and described in the Master Agreement), or (ii) _____, 20__.
3. **Existing Improvements.** 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.
4. **Use.** Licensee shall use Premises exclusively as a site for the BNSF Relocation Work (as defined in the Master Agreement). Licensee shall not use the Premises for any other purpose.
5. **Alterations.** Except as set forth in this License, 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.

COMPENSATION

6. **License Fee.** This License is given in partial consideration for Licensee's agreement to enter into the Master Agreement. Therefore, no separate fee is being charged as compensation for this License.
7. **Costs and Expenses.** For the purpose of this License, "cost" or "costs" and "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.
8. **Payment Terms.** All invoices are due forty-five (45) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within forty-five (45) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2½%), or (ii) the maximum rate permitted by law.

LICENSOR'S RESERVED RIGHTS

9. **Reserved Rights of Use.** Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:
 - 9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date; or
 - 9.2 to use the Premises in any manner as 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 4** above.

LICENSEE'S OPERATIONS

10. Use of the Premises.

- 10.1 Licensee shall notify Licensor's _____ at _____, at least ten (10) business days prior to entering the Premises. In the event of emergency, Licensee shall notify Licensor of Licensee's entry onto the Premises at the telephone number above as soon as practicable and shall promptly thereafter follow up with written notice of such entry.
- 10.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.
- 10.3 Any contractors or subcontractors performing work on the Premises, or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.
- 10.4 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 endanger or interfere with (i) operation and activities of Licensor or existing third parties, or (ii) the rights or interests of third parties. 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.

LIABILITY AND INSURANCE

11. Liability and Indemnification.

- 11.1 For purposes of this License: (a) "**Indemnitees**" means Licensor and Licensor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Licensee Parties**" means Licensee or Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.
- 11.2 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):**
- 11.2.1 **LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**
- 11.2.2 **THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR**
- 11.2.3 **ANY ACT OR OMISSION OF ANY LICENSEE PARTY.**
- 11.3 **THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE CAUSED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES (AS SUCH TERM IS DEFINED ABOVE IN SECTION 11.1).**

11.4 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 and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments. Nothing in this License shall be construed to waive either parties' limitations of liability and/or immunities available to it pursuant to Wisconsin Statutes or other applicable federal or state law. The aggrieved party shall promptly notify the indemnifying party in writing of any Liabilities for which indemnification is sought (which written notification shall in any case be within one (1) year after the occurrence of the event giving rise to such Liabilities). The indemnifying party shall have sole control of, and the aggrieved party shall reasonably cooperate in all respects, in the defense of any Liabilities for which indemnification is sought. The aggrieved party shall not make any admission or disclosure or otherwise take any action with respect to the Liabilities for which indemnification is sought that would be prejudicial to the indemnifying party except as required by law. Licensor represents that, as of the Effective Date to the current actual knowledge of _____(name), _____(title) of Licensor, Licensor has no notice or knowledge of any Liabilities asserted or threatened by any third party with respect to the matters contemplated by this License. Licensee represents that, as of the Effective Date to the current actual knowledge of James A. Ball, Senior Manager - Real Estate of Licensee, Licensee has no notice or knowledge of any Liabilities asserted or threatened by any third party with respect to the matters contemplated by this License.

12. **Personal Property Risk of Loss.** 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, EXCEPT TO THE EXTENT CAUSED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE.

13. **Insurance.** During the term of this License, Licensee shall maintain insurance in the amount and to the extent Licensee deems necessary to cover its activities on the Premises, which coverage Licensee may provide through its program of self-insurance. Licensor acknowledges that BNSF Railway Company is insured under Burlington Northern Santa Fe, LLC's Excess Property and Liability Policies. Licensee's self-insured retention is in keeping with its net worth and cash flows and is consistent with that of other corporations of similar operations and size. Adequate reserves are maintained for claims within its retention.

COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS

14. **Compliance with Laws, Rules, and Regulations.** Licensee shall observe and comply with any and all applicable laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to Licensee's use of the Premises; provided that nothing in this License shall be deemed a submission by BNSF to the jurisdiction of any state or local body or a waiver of the preemptive effect of any state or federal law.

15. **Environmental.**

15.1 Licensee shall strictly comply with all applicable federal, state and local environmental Legal Requirements 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, and 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.

15.2 Except as required in the performance of the Relocation Work, 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 on Licensor's property. Licensee agrees periodically to furnish Licensor with proof, satisfactory to Licensor that Licensee is in compliance with the provisions of this Section 15.2.

- 15.3 Licensee shall give Licensor immediate notice to Licensor's _____ at _____ of any known (i) release of hazardous substances on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) 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, from, or affecting 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.
- 15.4 If Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Premises which occurred or may occur during the term of this License, Licensor may require Licensee to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises that is caused by or contributed to by Licensee or a Licensee Party.
- 15.5 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, property, or the environment 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.

DISCALIMER OF WARRANTIES

16. **No Warranties.**

16.1 **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.**

16.2 **LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE BNSF RELOCATION WORK WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.**

17. **Disclaimer of Warranty for Quiet Enjoyment. LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

18. **Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damage Licensee sustains in connection with the eviction.**

DEFAULT, TERMINATION, AND SURRENDER

19. **Default and Termination. The following events are deemed to be events of default pursuant to which Licensor has the right to terminate as set forth below:**

19.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Licensor, or in case of any assignment or transfer of this License in violation of **Section 21** below, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon

Licensee.

- 19.2 Should Licensee not comply fully with the obligations of **Section 15** regarding the handling or transporting of hazardous waste or hazardous material, notwithstanding anything contained in any other provision of this License, Licensor may, at its option, terminate this License by serving five (5) days' notice of termination upon Licensee.
- 19.3 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 19** shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.
- 19.4 Termination of this License shall not release either party hereto from any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.

20. Surrender of the Premises.

- 20.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:
- 20.1.1 remove all of its equipment from the Premises;
- 20.1.2 report and restore any damage to the Premises or Licensor's other property arising from, growing out of, or connected with Licensee's use of the Premises;
- 20.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
- 20.1.4 leave the Premises in the condition which existed as of the Effective Date of this License.
- 20.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensor or if Licensee fails to complete its obligations under **Section 20.1** above (the "**Restoration Obligations**"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee 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, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.
- 20.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licensor may, at its option, either: (i) complete such Restoration Obligations, and Licensee will reimburse Licensor for all costs related thereto, (ii) specifically enforce Licensee's obligation to restore, and/or (iii) pursue any remedy at law or in equity against Licensee for failure to so restore.

MISCELLANEOUS

21. Successors and Assigns. All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.
21. Assignment.
- 21.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Licensor, which consent may not be unreasonably withheld or delayed by Licensor. Any attempted

assignment by Licensee in violation of this **Section 21** shall be a breach of this License and, in addition, shall be voidable by Licensor in its sole and absolute discretion.

21.2 For purposes of this **Section 21**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least fifty percent (50%) of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. **THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.**

21.3 Notwithstanding the provisions of **Section 21.1** above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "**Purported Assignment**") to another party (a "**Purported Transferee**"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation to comply with the provisions of **Section 13** above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Licensor for all 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) a Purported Assignment.

21.4 The provisions of this **Section 21** shall survive the expiration or earlier termination of this License.

22. **Notices.** Any notice, invoice, or other writing 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: City of La Crosse
400 La Crosse St.
La Crosse, WI 54601-3374
Attn: City Clerk

With a copy to: City of La Crosse
400 La Crosse St.
La Crosse, WI 54601
Attn: Director of Public Works

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

23. **Survival.** 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 Premises are restored to its condition as of the Effective Date.

24. **Recordation.** It is understood that this License is a public record subject to disclosure under the Wisconsin Public Records Law.

25. **Applicable Law.** All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Wisconsin without regard to conflicts of law provisions. To the fullest extent permitted by law any and all disputes arising under or in connection with this License or related to any subject matter which is the subject of this License, whether sounding in contract or in tort, shall be instituted and litigated in United States District Court for the Western District of Wisconsin; provided, however, that if jurisdiction is not proper in such federal district court, such disputes shall be instituted and litigated in the courts of the State of Wisconsin, located in La Crosse County, Wisconsin. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive. Each party hereto hereby irrevocably consents to the aforementioned choice of venue in any such dispute and irrevocably waives, to the fullest extent permitted by law, any objection that it may now have or hereafter have to the laying of venue in such court and that any such dispute which is brought in such court has been brought in an inconvenient forum.
26. **Severability.** 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.
27. **Integration.** This License, together with the Master Agreement, 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.
28. **Joint and Several Liability.** If 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.
29. **Waiver.** 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.
30. **Interpretation.**
- 30.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.
- 30.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.
32. **Counterparts.** This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged via email or electronic facsimile machines and any email or electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

This License has been duly executed by the parties hereto to be effective as of the Effective Date first set forth above.

LICENSOR:

City of La Crosse, Wisconsin, a Wisconsin municipal corporation

By: _____

Name: _____

Title: _____

LICENSEE:

BNSF Railway Company, a Delaware corporation

By: _____

Name: _____

Title: _____

EXHIBIT C-1

C Documents



EXHIBIT "C"

CONTRACTOR REQUIREMENTS

1.01 General:

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "**Railway**" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during _____ the _____ construction _____ of _____

_____.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to



any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement; provided, however, the foregoing obligations of Contractor shall not apply to the extent such fines or penalties are proximately caused by the negligence or willful misconduct of any Railway.
- **1.01.06** The Contractor must notify City at _____ and Railway's Manager Public Projects, telephone number (Calvin Nutt at (763) 782-3495) at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file _____.
- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations



must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.

- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.contractororientation.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the City.



- **1.03.02** The Contractor must notify the Railway's Division Engineer Brian Ferencak at (773) 579-5239 and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
 - 15'-0" Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained: [Note to Drafter: The vertical clearance should mirror the final negotiated design clearance]
 - 25' Horizontally from centerline of nearest track
 - 23' 6" Vertically above top of rail
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the City and must not be undertaken until approved in writing by the Railway, and until the City has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the City.
- **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by City for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- **1.03.08** At other than public road crossings, the Contractor must not move any



equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.

- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan:

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.contractororientation.com, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.
- **1.04.02** Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services for



Railroad under this Agreement which are determined by Railroad in its sole discretion a) to be on Railroad's property, or b) that require access to Railroad Critical Infrastructure, Railroad Critical Information Systems, Railroad's Employees, Hazardous Materials on Railroad's property or is being transported by or otherwise in the custody of Railroad, or Freight in Transit involving Railroad.

The required background screening shall at a minimum meet the rail industry background screening criteria defined by the e-RAILSAFE Program as outlined at <http://www.e-railsafe.com>, in addition to any other applicable regulatory requirements.

Contractor shall obtain written consent from all its employees, subcontractors or agents screened in compliance with the e-RAILSAFE Program to participate in the Program on their behalf and to release completed background information to Railroad's designee. Contractor shall be subject to periodic audit to ensure compliance.

Contractor subject to the e-RAILSAFE Program hereunder shall not permit any of its employees, subcontractors or agents to perform services hereunder who are not first approved under e-RAILSAFE Program standards. Railroad shall have the right to deny entry onto its premises or access as described in this section above to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth in the e-RAILSAFE Program, or who in Railroad's opinion, which may not be unreasonable, may pose a threat to the safety or security of Railroad's operations, assets or personnel.

Contractors shall be responsible for ensuring that its employees, subcontractors and agents are United States citizens or legally working in the United States under a lawful and appropriate work VISA or other work authorization.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's Roadmaster (telephone (608) 781-7438) a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.



- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
 - **1.05.02a** When, upon inspection by Railway's Representative, other conditions warrant.
 - **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
 - **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
 - **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
 - **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
 - **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
 - **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
 - **1.05.03c** The cost of flagger services provided by the Railway will be borne by City. The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 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, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. 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.**

- **1.05.03d** The average train traffic on this route is 50-60 freight trains per 24-hour period at a timetable speed of 45 MPH and -0- (zero) passenger trains at a timetable speed of N/A MPH.

1.06 Contractor General Safety Requirements

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railway's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.



- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.
- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.contractororientation.com, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats; c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**
- **1.06.09 THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S REPRESENTATIVE.**
- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)



- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation:

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact BNSF's Field Engineering Representative (John Stilley at (913) 551-4519). All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be



covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

1.08 Hazardous Waste, Substances and Material Reporting:

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.



NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

(If injuries are in connection with rail equipment accident/incident, highway rail grade crossing accident or automobile accident, ensure that appropriate information is obtained, forms completed and that data entry personnel are aware that injuries relate to that specific event.)

Injured Person Type:

- Passenger on train (C) Non-employee (N)
(i.e. emp of another railroad, or, non-BNSF emp involved in vehicle accident including company vehicles)
- Contractor/safety sensitive (F) Contractor/non-safety sensitive (G)
- Volunteer/safety sensitive (H) Volunteer/other non-safety sensitive (I)
- Non-trespasser (D) - to include highway users involved in highway rail grade crossing accidents who did not go around or through gates
- Trespasser (E) - to include highway users involved in highway rail grade crossing accidents who went around or through gates
- Non-trespasser (J) - Off railroad property

If train involved, Train ID:

Transmit attached information to Accident/Incident Reporting Center by:

Fax 1-817-352-7595

or by Phone 1-800-697-6736

or email to: Accident-Reporting.Center@BNSF.com

Officer Providing Information:

(Name)

(Employee No.)

(Phone #)

REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490



NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IT IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St: _____ 2. Date: _____ Time: _____
County: _____ 3. Temperature: _____ 4. Weather: _____
(if non BNSF location)

Mile Post / Line Segment: _____

5. Driver's License No (and state) or other ID: _____ SSN (required): _____

6. Name (last, first, mi): _____

7. Address: _____ City: _____ St: _____ Zip: _____

8. Date of Birth: _____ and/or Age: _____ Gender: _____
(if available)

Phone Number: _____ Employer: _____

9. Injury: _____ 10. Body Part: _____
(i.e. Laceration, etc.) (i.e. Hand, etc.)

11. Description of Accident (To include location, action, result, etc.): _____

12. Treatment:

First Aid Only _____

Required Medical Treatment _____

Other Medical Treatment _____

13. Dr. Name: _____ Date: _____

14. Dr. Address: _____
Street: _____ City: _____ St: _____ Zip: _____

15. Hospital Name: _____

16. Hospital Address: _____
Street: _____ City: _____ St: _____ Zip: _____

17. Diagnosis: _____



EXHIBIT "C-1"

Agreement Between BNSF RAILWAY COMPANY and the CONTRACTOR

Railway File: _____

City Project: _____

<%Contractor.LegalName%> [Insert contractor's legal name here](hereinafter called "Contractor"), has entered into an agreement (hereinafter called "Agreement") dated _____, 201_, [***Drafter's Note: insert the date of the contract between the City and the Contractor here] with the **CITY OF LA CROSSE, WISCONSIN** ("City") for the performance of certain work in connection with the following project: _____ Performance of such work will necessarily require Contractor to enter **BNSF RAILWAY COMPANY** (hereinafter called "Railway") right of way and property (hereinafter called "Railway Property"). The Agreement provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for the City (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Agreement, has agreed and does hereby agree with Railway as follows:

1) RELEASE OF LIABILITY AND INDEMNITY

A. For purposes of this Agreement: (a) "**Indemnitees**" means Railway and Railway's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Contractor Parties**" means Contractor or Contractor's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.



B. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):

- (i) CONTRACTOR'S OCCUPATION AND USE OF THE PREMISES,**
- (ii) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY CONTRACTOR, OR**
- (iii) ANY ACT OR OMISSION OF ANY CONTRACTOR PARTY.**

C. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR NOW AND FOREVER WAIVES ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS AGREEMENT, RAILWAY IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). CONTRACTOR WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS CAUSED BY OR CONTRIBUTED TO BY CONTRACTOR. NOTHING IN THIS AGREEMENT IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS AGREEMENT SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS AGREEMENT TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, CONTRACTOR AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS AGREEMENT. IN NO EVENT AS BETWEEN RAILWAY AND CONTRACTOR AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS AGREEMENT SHALL RAILWAY BE RESPONSIBLE TO CONTRACTOR FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

D. IF ANY EMPLOYEE OF ANY CONTRACTOR PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, 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.

E. THE FOREGOING OBLIGATIONS OF CONTRACTOR SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES.



F. Upon written notice from Railway, Contractor 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 Agreement for which Contractor has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Contractor shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments. Nothing in this Agreement shall be construed to waive either parties' limitations of liability and/or immunities available to it pursuant to Wisconsin Statutes or other applicable federal or state law. The aggrieved party shall promptly notify the indemnifying party in writing of any Liabilities for which indemnification is sought. The indemnifying party shall have sole control of, and the aggrieved party shall reasonably cooperate in all respects, in the defense of any Liabilities for which indemnification is sought. The aggrieved party shall not make any admission or disclosure or otherwise take any action with respect to the Liabilities for which indemnification is sought that would be prejudicial to the indemnifying party except as required by law. Railway represents that, as of the Effective Date to the current actual knowledge of James A. Ball, Senior Manager - Real Estate of Railway, Railway has no notice or knowledge of any Liabilities asserted or threatened by any third party with respect to the matters contemplated by this Agreement. Contractor represents that, as of the Effective Date to the current actual knowledge of _____(name), _____(title) of Contractor, Contractor has no notice or knowledge of any Liabilities asserted or threatened by any third party with respect to the matters contemplated by this Agreement.

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

2) TERM

This Agreement is effective from the date of the Agreement until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

3) INSURANCE

Contractor 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 Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limit 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 Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

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 **Railway** employees.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

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

The 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 Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ Contractor'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 Railway.

D. Railroad Protective Liability insurance naming only the **Railway** as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the **Railway** prior to performing any work or services under this Agreement
- ◆ Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Contractor may participate (if available) in Railway's Blanket Railroad Protective Liability Insurance Policy.

Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

Contractor agrees to waive its right of recovery against **Railway** for all claims and suits against **Railway**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railway** for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railway** for loss of its owned or leased property or property under Contractor's care, custody or control.

Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

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



Prior to commencing services, Contractor shall furnish to **Railway** an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following address:

BNSF Railway Company
c/o CertFocus
P.O. Box 140528
Kansas City, MO 64114
Toll Free: 877-576-2378
Fax number: 817-840-7487
Email: BNSF@certfocus.com
www.certfocus.com

Contractor shall notify **Railway** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.

Any insurance policy shall be written by a reputable insurance company acceptable to **Railway** 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, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement.

Not more frequently than once every five years, **Railway** 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 Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance coverage(s) as set forth herein, naming **Railway** as an additional insured, and shall require that the subcontractor shall release, defend and indemnify **Railway** to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify **Railway** herein.

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



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

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

These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

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

4) SALES AND OTHER TAXES

In the event applicable sales taxes of a state or political subdivision of a state of the United States are levied or assessed in connection with and directly related to any amounts invoiced by Contractor to Railway ("Sales Taxes"), Railway shall be responsible for paying only the Sales Taxes that Contractor separately states on the invoice or other billing documents provided to Railway; *provided, however*, that (i) nothing herein shall preclude Railway from claiming whatever Sales Tax exemptions are applicable to amounts Contractor bills Railway, (ii) Contractor shall be responsible for all sales, use, excise, consumption, services and other taxes which may accrue on all services, materials, equipment, supplies or fixtures that Contractor and its subcontractors use or consume in the performance of this Agreement, (iii) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) that Contractor fails to separately state on the invoice or other billing documents provided to Railway or fails to collect at the time of payment by Railway of invoiced amounts (except where Railway claims a Sales Tax exemption), and (iv) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) if Contractor fails to issue separate invoices for each state in which Contractor delivers goods, provides services or, if applicable, transfers intangible rights to Railway.

Upon request, Contractor shall provide Railway satisfactory evidence that all taxes (together with any penalties, fines or interest thereon) that Contractor is responsible to pay under this Agreement have been paid. If a written claim is made against Contractor for Sales Taxes with respect to which Railway may be liable for under this Agreement, Contractor shall promptly notify Railway of such claim and provide Railway copies of all correspondence received from the taxing authority. Railway shall have the right to contest, protest, or claim a refund, in Railway's own name, any Sales Taxes paid by Railway to Contractor or for which Railway might otherwise be responsible for under this Agreement; *provided, however*, that if Railway is not permitted by law to contest any such Sales Tax in its own name, Contractor shall, if requested by Railway at Railway's sole cost and expense, contest in Contractor's own name



the validity, applicability or amount of such Sales Tax and allow Railway to control and conduct such contest.

Railway retains the right to withhold from payments made under this Agreement amounts required to be withheld under tax laws of any jurisdiction. If Contractor is claiming a withholding exemption or a reduction in the withholding rate of any jurisdiction on any payments under this Agreement, before any payments are made (and in each succeeding period or year as required by law), Contractor agrees to furnish to Railway a properly completed exemption form prescribed by such jurisdiction. Contractor shall be responsible for any taxes, interest or penalties assessed against Railway with respect to withholding taxes that Railway does not withhold from payments to Contractor.

5) EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Agreement, and the Contractor Requirements set forth on Exhibit "C" attached to the Agreement and this Agreement, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site. Contractor shall execute a Temporary Construction Crossing Agreement or Private Crossing Agreement (<http://www.bnsf.com/communities/faqs/permits-real-estate/>), for any temporary crossing requested to aid in the construction of this Project, if approved by BNSF.

6) TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties



or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. The rate then in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of train delay pursuant to this agreement.

Contractor and its subcontractors must give Railway's representative (_____) _____ () weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.



IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officer the day and year first above written.

<%Contractor.LegalName%>

BNSF Railway Company

By: _____

By: _____

Printed Name: _____

Name: _____
Manager Public Projects

Title: _____

Accepted and effective this _____ day of 20__.

Contact Person: _____

Address: _____

City: _____

State: _____ Zip: _____

Fax: _____

Phone: _____

E-mail: _____

EXHIBIT D

Form of Utility License

PIPELINE LICENSE

THIS PIPELINE LICENSE ("License") is made to be effective _____, 20__ (the "Effective Date") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Licensor") and **CITY OF LA CROSSE, WISCONSIN**, a Wisconsin municipal corporation ("Licensee").

In consideration of the mutual covenants contained herein, the parties agree to the following:

GENERAL

1. **Grant of License.** 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"), _____ (___) [number of pipes] pipeline[s], _____ (___) inches in diameter inside a(n) _____ inch (___) [size of casing pipe] _____ [casing material] casing (collectively, the "Pipeline"), across or along Licensor's rail corridor 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 incorporated herein by reference (the "Premises").
2. **Term.** This License shall commence on the Effective Date and shall continue for a period of one hundred (100) years, subject to prior termination as hereinafter described.
3. **Existing Improvements.** 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, repair, maintenance or replacement of such improvements.
4. **Use of the Premises.** Licensee shall use the Premises solely for construction, maintenance, and use of the Pipeline in accordance with the Drawings and Specifications. The Pipeline shall carry _____, and Licensee shall not use the Pipeline to carry any other material or use the Premises for any other purpose.
5. **Alterations.** Except as set forth in this License, 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.

COMPENSATION

6. **License Fee.** This License is given in partial consideration for Licensee's agreement to enter into that certain Master Relocation Agreement between Licensee and Licensor dated _____ ("Master Agreement"). Therefore, no separate fee is being charged as compensation for this License.
7. **Costs and Expenses.**
 - 7.1 For the purpose of this License, "cost" or "costs" and "expense" or "expenses" includes, but is not limited to, actual reasonable labor and material costs including all assignable additives, and material and supply costs at current value where used.
 - 7.2 Subject to Wis. Admin. Code § PSC 132, Licensee agrees to reimburse Licensor (pursuant to the terms of Section 8 below) 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 flaggers and any vehicle rental costs incurred. Licensee shall bear the cost of flagger services and other safety measures provided by Licensor, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes

authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this Section 7.

8. **Payment Terms.** All invoices are due forty-five (45) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within forty-five (45) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

LICENSOR'S RESERVED RIGHTS

9. **Reserved Rights of Use.** Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:
 - 9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Pipeline) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;
 - 9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or
 - 9.3 to use the Premises in any manner as 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 4 above.
10. **Right to Require Relocation.** If at any time during the term of this License, Licensor desires the use of its rail corridor for rail operations in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Pipeline, Licensee shall, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Pipeline as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the Pipeline, or the construction of a new pipeline to replace the Pipeline; provided, however, if such changes cannot reasonably be made within such 30-day period, Licensee agrees to commence to making the changes within such 30-day period and diligently pursue the changes to completion within a total of ninety (90) days. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensor in its sole discretion, to the Pipeline promptly upon Licensor's request. Licensee shall bear the cost of all changes to the Pipeline, including but not limited to costs for emergency changes, minor adjustments and relocation, unless the Pipeline to be relocated serves only Licensor.

LICENSEE'S OPERATIONS

11. **Construction and Maintenance of the Pipeline.**
 - 11.1 Licensee shall notify Licensor's Roadmaster at 1645 Oak Street, La Crosse, WI 54603, telephone (608) 781-7438, at least ten (10) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon. In the event of emergency, Licensee shall notify Licensor of Licensee's entry onto the Premises at the telephone number above as soon as practicable and shall promptly thereafter follow up with written notice of such entry.
 - 11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.
 - 11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other. If access to and from the Premises can be accomplished only through use of Licensor's property adjacent to the Premises, such use is granted for ingress and egress only and on a non-exclusive basis, subject to such restrictions and conditions as Licensor may impose by notice to Licensee. Licensor shall have the right to designate the location or route to be used. Licensee understands and agrees that all of the terms and obligations under this License applicable to Licensee shall also be applicable to Licensee with respect to Licensee's use of any property adjacent to the Premises which Licensee may use just as though the property has been specifically described as part of

the Premises, including, without limitation, the indemnity provisions of **Section 13**. Notwithstanding anything to the contrary herein, this **Section 11.3** shall not grant Licensee any right to cross any of Licensor's tracks. Any such crossing rights may only be granted by a separate written agreement between Licensor and Licensee.

- 11.4 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.
- 11.5 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 endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. 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.
- 11.6 Licensee shall, at its sole cost and expense, construct and maintain the Pipeline in such a manner and of such material that the Pipeline will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Pipeline shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Pipeline or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Licensor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Licensor pursuant to the terms and conditions set forth in **Section 24** hereof.
- 11.7 Licensor may direct one or more 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 and Legal Requirements (defined below). If ordered at any time to halt construction or maintenance of the Pipeline by Licensor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so subject to Wis. Admin. Code § PSC 132. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Pipeline, it being solely Licensee's responsibility to ensure that the Pipeline is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, 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 11**, 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. Subject to Wis. Admin. Code § PSC 132, Licensee shall promptly reimburse Licensor for all costs and expenses of such work, pursuant to the terms of **Section 8**. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

12. Boring and Excavation.

- 12.1 Prior to Licensee conducting any boring, excavation, or similar 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, 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. Licensee may request information from Licensor concerning the existence and approximate location of Licensor's underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline by contacting Licensor's Telecommunications Helpdesk at least thirty (30) business days prior to installation of the Pipeline. Upon receiving Licensee's timely request, Licensor will provide Licensee with the information Licensor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline and, if applicable, identify the location of such lines on the Premises pursuant to Licensor's standard procedures. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.

- 12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by 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 Licensor's sole discretion, a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
- 12.3 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:
 - 12.3.1 filled in to surrounding ground level with compacted bentonite grout; or
 - 12.3.2 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.

LIABILITY AND INSURANCE

13. Liability and Indemnification.

- 13.1 For purposes of this License: (a) "Indemnitees" means Licensor and Licensor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "Liabilities" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "Licensee Parties" means Licensee or Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.
- 13.2 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):**
 - 13.2.1 **LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**
 - 13.2.2 **THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR**
 - 13.2.3 **ANY ACT OR OMISSION OF ANY LICENSEE PARTY.**
- 13.3 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF**

THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). LICENSEE WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS CAUSED BY OR CONTRIBUTED TO BY LICENSEE. NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

13.4 IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, 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.

13.5 THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE CAUSED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES (AS SUCH TERM IS DEFINED ABOVE IN SECTION 13.1).

13.6 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 and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments. Nothing in this License shall be construed to waive either parties' limitations of liability and/or immunities available to it pursuant to Wisconsin Statutes or other applicable federal or state law. The aggrieved party shall promptly notify the indemnifying party in writing of any Liabilities for which indemnification is sought (which written notification shall in any case be within one (1) year after the occurrence of the event giving rise to such Liabilities). The indemnifying party shall have sole control of, and the aggrieved party shall reasonably cooperate in all respects, in the defense of any Liabilities for which indemnification is sought. The aggrieved party shall not make any admission or disclosure or otherwise take any action with respect to the Liabilities for which indemnification is sought that would be prejudicial to the indemnifying party except as required by law. Licensor represents that, as of the Effective Date to the current actual knowledge of James A. Ball, Senior Manager - Real Estate of Licensor, Licensor has no notice or knowledge of any Liabilities asserted or threatened by any third party with respect to the matters contemplated by this License. Licensee represents that, as of the Effective Date to the current actual knowledge of _____(name), _____(title) of Licensee, Licensee has no notice or knowledge of any Liabilities asserted or threatened by any third party with respect to the matters contemplated by this License.

14. Personal Property Risk of Loss. 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, EXCEPT TO THE EXTENT CAUSED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE.

15. Insurance. Subject to the provisions of Section 15.6.3 below, Licensee shall, at its sole cost and expense, procure and maintain during the life of this License the following insurance coverage:

- 15.1 **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 Licensee. Coverage must be purchased on a post 2004 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 or language, which shall be indicated on the certificate of insurance:

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

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

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

- 15.2 **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.

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

- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

- 15.3 **Workers' Compensation and Employers' Liability Insurance.** This insurance shall include coverage for, but not limited to:
- Licensee's statutory liability under the workers' compensation laws of the state(s) in which the services are to be performed. If optional under state laws, the insurance must cover all employees anyway.
 - Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

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

- Waiver of subrogation in favor of and acceptable to Licensor.

- 15.4 **Railroad Protective Liability Insurance.** This insurance shall name only Licensor 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 12 03 and include the following:
- Endorsed to include the Pollution Exclusion Amendment.

- 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 Licensor prior to performing any work or services under this License.
- Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control arising out of the acts or omissions of the contractor named on the Declarations."

If available and in lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$_____.

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

15.5 Other Requirements:

- 15.5.1 Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.
- 15.5.2 Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor, per the indemnity provisions of this License. In addition, Licensee's insurers, through the terms of the policy or a policy endorsement, must waive their right of subrogation against Licensor for all claims and suits, and the certificate of insurance must reflect the waiver of subrogation endorsement. Licensee further waives its right of recovery, and its insurers must also waive their right of subrogation against Licensor for loss of Licensee's owned or leased property, or property under Licensee's care, custody, or control.
- 15.5.3 Prior to entering the Premises, 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 (or written evidence of its self-insurance program in accordance with Section 15.6). Licensee shall notify Licensor in writing at least 30 days prior to any cancellation, non-renewal, substitution, or material alteration. In the event of a claim or lawsuit involving Licensor arising out of this License, Licensee will make available any required policy covering such claim or lawsuit.
- 15.5.4 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.
- 15.5.5 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 or termination of this License. Annually, Licensee agrees to provide evidence of such coverage as required hereunder.
- 15.5.6 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 License. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.
- 15.5.7 Not more frequently than once every five years, Licensor and Licensee may reasonably agree to modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- 15.5.8 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.

- 15.5.9 Failure to provide evidence as required by this Section 15 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.
- 15.5.10 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.
- 15.5.11 For purposes of this Section 15, Licensor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.
- 15.5.12 If the "Licensee" is subject to statute(s) limiting its liability, insured or otherwise, and/or limiting its ability to obtain or provide insurance as required by this License, those statutes shall apply.
- 15.6 **Self-Insurance.** Notwithstanding anything in this Section 15 to the contrary, Licensee is allowed to self-insure for the coverages required under this Section 15. Prior to commencing work, Licensee will furnish written evidence of its self-insurance program to Licensor. Licensee's self-insured retention is consistent with that of other municipal corporations of similar operations and size. Any 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 License, be covered by Licensee's insurance will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims. For the avoidance of doubt, requirements noted in subsections 15.5.1 - 15.5.12 of Section 15.5 above apply to all Licensee Parties (other than Licensee) required to obtain insurance under this License; provided, however, to the extent Licensee self-insures for the coverages required under this Section 15, Licensee shall not be required to comply with subsection 15.5.1, the second sentence of subsection 15.5.2, subsections 15.5.3 - 15.5.6 and subsection 15.5.9 of Section 15.5 above for so long as Licensee self-insures such coverages.

COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS

16. Compliance with Laws, Rules, and Regulations.

- 16.1 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.
- 16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensor's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "www.BNSFcontractor.com" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew the Safety Orientation annually.
- 16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "**Rights**") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Pipeline and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.
- 16.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial

stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.

- 16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Pipeline in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right, unless otherwise provided in Wis. Admin. Code § PSC 132.

17. Environmental.

- 17.1 Licensee shall strictly comply with all federal, state and local environmental Legal Requirements 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, and 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.
- 17.2 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 compliance with the provisions of this Section 17.2.
- 17.3 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any known (i) release of hazardous substances on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) 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, from, or affecting 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.
- 17.4 If 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 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 that is caused by or contributed to by Licensee or a Licensee Party or is otherwise Licensee's responsibility under Section 13.2.
- 17.5 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, property, or the environment 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.

DISCLAIMER OF WARRANTIES

18. No Warranties.

- 18.1 **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.

18.2 **LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE PIPELINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.**

19. **Disclaimer of Warranty for Quiet Enjoyment. LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

20. **Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damage Licensee sustains in connection with the eviction.**

LIENS AND TAXES

21. **Liens and Charges. 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. Licensor 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 Licensor to take any such action shall not relieve Licensee of any obligation or liability under this Section 21 or any other Section of this License.**

22. **Taxes. Licensee shall pay when due any taxes, assessments or other charges (collectively, "Taxes") levied or assessed by any governmental or quasi-governmental body upon the Pipeline or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "Improvements") or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.**

DEFAULT, TERMINATION, SELF-HELP AND SURRENDER

23. **Default and Termination.**

23.1 In addition to and not in limitation of Licensor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of **Section 15**, Licensor has the right to terminate this License by serving five (5) business days' written notice to Licensee if:

23.1.1 Licensee fails to keep or perform any of Licensee's covenants, agreements, or obligations contained in this License, and such failure continues for more than thirty (30) days after written notice thereof is provided to Licensee by Licensor; provided, however, if such failure cannot reasonably be cured within such 30-day period, Licensee shall not be deemed in default so long as Licensee commences to cure within the 30-day period and diligently pursues such cure to completion within a total of ninety (90) days; or

23.1.2 This License is assigned or transferred in violation of **Section 26** below.

23.2 Any waiver by Licensor or Licensee 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 or Licensee's ability to enforce any Section of this License. The remedy set forth in this **Section 23** shall be in addition to, and not in limitation of, any other remedies that Licensor or Licensee may have at law or in equity.

23.3 This License may be terminated by Licensee, at any time, by serving thirty (30) days' written notice of termination upon Licensor.

23.4 In addition to and not in limitation of any other remedies that Licensor may have under this License, at law or in equity, upon the occurrence of an event of default, Licensor may, at its option, pursue any or all of the following remedies:

23.4.1 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.

23.4.2 Licensor may apply to the Wisconsin Public Service Commission regarding the dispute pursuant to Wis. Admin. Code Section 132.10 or Section 196.04(4).

24. Surrender of the Premises.

24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:

24.1.1 if so directed by Licensor in writing, remove the Improvements, the Pipeline and all appurtenances thereto, or, at the sole discretion of Licensor, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to Licensor;

24.1.2 report and restore any damage to the Premises or Licensor's other property arising from, growing out of, or connected with Licensee's use of the Premises;

24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and

24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date.

24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensor or if Licensee fails to complete its obligations under Section 24.1 above (the "Restoration Obligations"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee 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, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.

24.3 If Licensee fails to complete the Restoration Obligations within ninety (90) days after the date of such termination of its tenancy, then Licensor may, at its election, either: (i) remove the Pipeline and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within forty-five (45) days after receipt of bill therefor, reimburse Licensor for reasonable costs incurred, (ii) upon written notice to Licensee, take and hold the Pipeline and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licensor has consented to the Pipeline and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Licensor, provide a bill of sale in a form acceptable to Licensor conveying the Pipeline and the other Improvements to Licensor.

MISCELLANEOUS

25. Successors and Assigns. All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.

26. Assignment.

26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of

Licensor, which consent may not be unreasonably withheld or delayed by Licensor. Any attempted assignment by Licensee in violation of this Section 26 shall be a breach of this License.

26.2 For purposes of this Section 26, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.

26.3 Notwithstanding the provisions of Section 26.1 above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "Purported Assignment") to another party (a "Purported Transferee"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation to comply with the provisions of Section 15 above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Licensor for all 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) a Purported Assignment.

26.4 The provisions of this Section 26 shall survive the expiration or earlier termination of this License.

27. Notices. Any notice, invoice, or other writing 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 Brokerage, Inc.
4300 Amon Carter Blvd., Suite 100
Fort Worth, TX 76155
Attn: Permits/Licenses

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

If to Licensee: City of La Crosse
400 La Crosse St.
La Crosse, WI 54601-3374
Attn: City Clerk

with a copy to: City of La Crosse
400 La Crosse St.
La Crosse, WI 54601
Attn: City Engineer

28. Survival. 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 the other Improvements are removed and the Premises are restored to its condition as of the Effective Date.

29. **Recordation.** It is understood that this License is a public record subject to disclosure under the Wisconsin Public Records Law.
30. **Applicable Law.** All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Wisconsin without regard to conflicts of law provisions. To the fullest extent permitted by law any and all disputes arising under or in connection with this License or related to any subject matter which is the subject of this License, whether sounding in contract or in tort, shall be instituted and litigated in United States District Court for the Western District of Wisconsin; provided, however, that if jurisdiction is not proper in such federal district court, such disputes shall be instituted and litigated in the courts of the State of Wisconsin, located in La Crosse County, Wisconsin. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive. Each party hereto hereby irrevocably consents to the aforementioned choice of venue in any such dispute and irrevocably waives, to the fullest extent permitted by law, any objection that it may now have or hereafter have to the laying of venue in such court and that any such dispute which is brought in such court has been brought in an inconvenient forum.
31. **Severability.** 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.
32. **Integration.** This License, together with the Master Agreement, 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. Nothing herein is intended to terminate any surviving obligation of Licensor or Licensor's obligation to defend and hold Licensee harmless in any prior written agreement between the parties.
33. **Joint and Several Liability.** If 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.
34. **Waiver.** The waiver by Licensor or Licensee of the breach of any provision herein by the other party shall in no way impair the right of the non-breaching party to enforce that provision for any subsequent breach thereof.
35. **Interpretation.**
- 35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.
- 35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.
36. **Counterparts.** This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages

from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged via email or electronic facsimile machines and any email or electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

37. Licensor's Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

END OF PAGE – SIGNATURE PAGE FOLLOWS

This License has been duly executed by the parties hereto as of the date below each party's signature; to be effective, however, as of the Effective Date.

LICENSOR:

BNSF Railway Company, a Delaware corporation

By: Jones Lang LaSalle Brokerage, Inc.
4300 Amon Carter Blvd., Suite 100
Fort Worth, TX 76155

By: _____

Name: _____

Title: _____

Date: _____

LICENSEE:

City of La Crosse, Wisconsin, a Wisconsin municipal corporation

By: _____

Name: _____

Title: _____

Date: _____

Exhibit "A"

EXHIBIT E

Form of Crossing Easement

CROSSING EASEMENT AGREEMENT

THIS CROSSING EASEMENT AGREEMENT ("**Easement Agreement**") is made and entered into as of the ____ day of _____ 20__ ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**Grantor**"), and CITY OF LA CROSSE, WISCONSIN, a Wisconsin municipal corporation ("**Grantee**").

RECITALS

A. Grantor owns or controls certain real property situated at or near the vicinity of City of La Crosse, County of La Crosse, State of Wisconsin, at Mile Post _____, as described or depicted on **Exhibit "A"** attached hereto and made a part hereof (the "**Premises**").

B. Grantor and Grantee have entered into that certain Master Relocation Agreement dated as of _____ concerning improvements on or near the Premises (the "**Master Agreement**"). The Master Agreement is attached hereto as **Exhibit "D"**.

C. Grantee has requested that Grantor grant to Grantee an easement over the Premises for the Easement Purpose (as defined below).

D. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement Agreement.

AGREEMENTS

NOW, THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1 Granting of Easement.

1.1 Easement Purpose. The "**Easement Purpose**" shall be the construction, maintenance and use of a public roadway crossing and related improvements, including but not limited to all work necessary to maintain such crossing and related improvements as designated "Quiet Zones" in compliance with "Quiet Zone" regulations (collectively, "**Improvements**") to be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the Master Agreement. Grantee expressly acknowledges and agrees that the Easement Purpose does not include, and no rights are granted hereunder, for an elevated roadway or related improvements or any subsurface rights.

1.2 Grant. Grantor does hereby grant unto Grantee a non-exclusive easement ("**Easement**") over the Premises for the Easement Purpose and for no other purpose. The Easement is granted subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all Laws (as hereinafter defined), including without limitation zoning laws, regulations, and ordinances of municipal and other governmental authorities, if any.

1.3 Reservations by Grantor. Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:

- (a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character (collectively, "**Lines**") upon, over, under or across the Premises;

- (b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; and
- (c) to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose.

1.4 Term of Easement. The term of the Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual.

Section 2 Compensation. This Easement is given in partial consideration for Grantee's agreement to enter into the Master Agreement. Therefore, no separate fee is being charged as compensation for this Easement.

Section 3 No Warranty of Any Conditions of the Premises. Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Premises, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Premises. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this Easement Agreement, other than as set forth herein. GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTOR SHALL NOT BE RESPONSIBLE TO GRANTEE OR ANY OF GRANTEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE PREMISES. Grantee has inspected or will inspect the Premises, and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Premises. Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully construct or operate the Improvements.

Section 4 Nature of Grantor's Interest in the Premises. GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

Section 5 Construction of Improvements. As more particularly described in the Master Agreement, the Improvements shall be constructed by Grantee in accordance with the terms and conditions of the Master Agreement and this Easement Agreement, including without limitation the Final Plans and Specifications (as defined in the Master Agreement) reviewed and approved by the parties.

Section 6 Improvements.

6.1 Construction of Improvements. Grantee, and Grantee's Contractors, at Grantee's sole cost and expense, shall locate, configure and construct the Improvements: (i) in a good and workmanlike manner and in strict accordance with the Final Plans and Specifications approved by Grantor, (ii) in conformance with applicable building uses and all applicable engineering, safety and other Laws, (iii) in accordance with the highest accepted industry standards of care, skill and diligence, and (iv) in such a manner as shall not adversely affect the structural integrity or maintenance of the Premises, any structures on or near the Premises, or any lateral support of structures adjacent to or in the proximity of the Premises. The construction of the Improvements within the Premises shall be completed by Grantee and Grantee's Contractors within one (1) year

after the Effective Date. Grantee shall provide as built drawings of all Improvements to Grantor promptly upon completion of construction and shall use its best efforts to cause such as built drawings to be electronically accessible to Grantor.

6.2 Maintenance of Improvements.

- (a) Upon Completion (as defined in the Master Agreement) of construction of the Improvements, Grantee shall at all times during the term of this Easement Agreement, at Grantee's sole cost and expense, keep and maintain the Improvements located upon the Premises in a structurally safe and sound condition, in good repair and in compliance with the Final Plans and Specifications, the Master Agreement and this Easement Agreement. Grantee shall also promptly repair any damage to the Premises or the Improvements caused, either in whole or in part, by Grantee Parties (as hereinafter defined). Grantee shall not cause or permit another person to cause any damage to the Premises or the Improvements, and Grantee shall be responsible for any such damage which may occur as a result of any act or omission of any Grantee Party; provided the foregoing obligation of Grantee shall not apply to the extent any damage is proximately caused by the negligence or willful misconduct of any Indemnitee. Grantee shall not permit the existence of any nuisance or the accumulation of junk, debris or other unsightly materials on the Premises and shall keep the Premises in a clean and safe condition. Grantee shall, at its sole cost and expense, remove ice and snow from the Premises. Grantee shall keep the Premises free and clear from combustible materials and to cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on the Premises, said work of cutting and removal to be done at such times and with such frequency as to comply with local Laws and regulations and abate any and all hazard of fire. Grantor shall have no obligation whatsoever, monetary or non-monetary, to maintain the Improvements in the Premises.
- (b) If Grantee contracts with a Grantee Party for any maintenance or repair of the Improvements, Grantee shall require such Grantee Party to execute the "C Documents" attached hereto as Exhibit "C-1". Grantee must require Grantee's Contractors to notify Grantor's Roadmaster at least thirty (30) calendar days prior to requesting Grantor's flagman in accordance with the requirements of the C Documents attached hereto. Additionally, Grantee must require Grantee's Contractors to notify Grantor's Manager of Public Projects thirty (30) calendar days prior to commencing work on Grantor's property or near Grantor's tracks.
- (c) Prior to performing any maintenance with its own personnel, Grantee shall: (i) comply with all of Grantor's safety rules and regulations, (ii) require any Grantee employee performing maintenance to complete the safety training program at www.BNSFcontractor.com, (iii) notify Grantor when, pursuant to the requirements of the C Documents, a flagger is required to be present, and (iv) procure, and have approved by Grantor's Risk Management Department, Railroad Protective Liability insurance.

6.3 No Interference. During the construction of, and any subsequent maintenance performed on, operation of, or removal of, all or any portion of the Improvements, Grantee, at Grantee's sole cost, shall perform all activities and work on or near Grantor's rail corridor or property and/or the Premises in such a manner as to preclude injury to persons or damage to the property of Grantor, or any party on or with property on Grantor's rail corridor or property, and shall ensure that there is no interference with the railroad operations or other activities of Grantor, or anyone present on Grantor's rail corridor or property with the authority or permission of Grantor. Grantee shall not disturb any improvements of Grantor or Grantor's existing lessees, licensees, license beneficiaries or lien holders, if any, or interfere with the use of such improvements. Grantor may direct one of its field engineers to observe or inspect the construction, maintenance, operation or removal of the Improvements, or any portion thereof, at any time to ensure such safety and noninterference, and to ensure that the Improvements comply with the Final Plans and Specifications. If any Grantee Party is ordered at any time to leave the Premises or to halt any activity on the Premises, then the party conducting that activity immediately shall cease such activity and leave the Premises, if the order was issued by Grantor's personnel to

promote safety, such noninterference with other activities or property, or because the Improvements were not in compliance with this Easement Agreement. Notwithstanding the foregoing right of Grantor, Grantor has no duty or obligation to observe or inspect, or to halt work on, the Premises, it being solely Grantee's responsibility to ensure that the Improvements are constructed, maintained, operated and removed in strict accordance with all Laws, safety measures, such noninterference and the Final Plans and Specifications and in compliance with all terms hereof and those terms and conditions of the Master Agreement. Neither the exercise nor the failure by Grantor to exercise any right set forth in this Section 6.3 shall alter the liability allocation set forth in this Easement Agreement.

6.4 No Alterations. Except as may be shown in the Final Plans and Specifications, Grantee may not make any alterations to the Premises, or permanently affix anything to the Premises, without Grantor's prior written consent. If Grantee desires to change either the location of any of the Improvements or any other aspect of the Final Plans and Specifications of any of the Improvements, Grantee shall submit such change and modified Plans and Specifications to Grantor in writing for its approval in the same manner as provided for in Section 2.2 of the Master Agreement. Grantee shall have no right to commence any such change until after Grantee has received Grantor's approval of such change in writing.

6.5 Approvals; Compliance with Laws and Safety Rules.

- (a) In addition to requirements under the Master Agreement, Grantee shall take, in a timely manner, all actions necessary and proper to the lawful establishment, construction, operation, and maintenance of the Improvements, including such actions as may be necessary to obtain any required permits, approvals or authorizations from applicable governmental authorities.
- (b) Prior to entering the Premises for any work, Grantee shall comply, and shall cause its contractor, any subcontractor, any assignee, and any contractor or subcontractor of any assignee performing work on the Premises or entering the Premises on behalf of Grantee (collectively, "**Grantee's Contractors**"), to comply, with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) (collectively, "**Laws**"), and all of Grantor's applicable safety rules and regulations including those noted below in Section 6.5(c).
- (c) No Grantee Party may enter the Premises without first having completed Grantor's safety orientation found on the website: www.BNSFcontractor.com.

6.6 Other Improvements. In the event any construction, repair, maintenance, work or other use of the Premises by Grantee will affect any Lines, fences, buildings, improvements or other facilities (collectively, "**Other Improvements**"), Grantee will be responsible at Grantee's sole risk to locate and make any adjustments necessary to such Other Improvements. Grantee must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and obtain the owner's written approval prior to so affecting the Other Improvements. Grantee must mark all Other Improvements on the Final Plans and Specifications and mark such Other Improvements in the field in order to verify their locations. Grantee must also use all reasonable methods when working on or near Grantor property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist.

6.7 Flagging and Other Costs. Grantee shall not conduct any activities on, or be present on, any portion of the Premises or Grantor's rail corridor or property that is within twenty-five (25) feet of any active railroad track, except in the presence of a flagman. In any case where a flagman or flagmen are required in connection with the presence of individuals on Grantor's rail corridor or the Premises, Grantee shall provide as much advance notice as possible prior to any entry upon the Premises. Grantor shall arrange for the presence of the flagman or flagmen as soon as practicable after receipt of such notice from Grantee. Grantee shall reimburse to Grantor, within forty-five (45) days following Grantee's receipt of each bill therefor, Grantor's costs in arranging for and providing the flagman or flagmen, which shall be billed to Grantee at Grantor's then applicable standard rate. The estimated cost of one flagger as of the Effective Date is \$600 for an eight hour basic day with time and one-half or double time for overtime, rest days and holidays, plus the cost of any vehicle

rental costs or other out-of-pocket costs. Grantee agrees to reimburse Grantor (within forty-five (45) days after receipt of a bill therefor) for all other costs and expenses incurred by Grantor in connection with Grantee's use of the Premises or the presence, construction, maintenance, and use of the Improvements situated thereon.

6.8 No Unauthorized Tests or Digging. Grantee, and Grantee's Contractors, must not 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 Grantor's rail corridor or property (whether or not such centerline is located within the Premises), except after Grantee has obtained written approval from Grantor, and then only in strict accordance with the terms and any conditions of such approval.

6.9 Boring. Prior to conducting any boring work on or near Grantor's rail corridor or property (which shall only be permitted within the Premises), Grantee and Grantee's Contractors 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, Grantee 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 Grantee's written request, which shall be made thirty (30) business days in advance of Grantee's proposed construction or modification of Improvements, Grantor will provide to Grantee any information that Grantor has in the possession of its Engineering Department concerning the existence and approximate location of Grantor's underground utilities and pipelines at or near the vicinity of the proposed Improvements. Prior to conducting any boring work, Grantee, and Grantee's Contractors, shall review all such material. Grantor does not warrant the accuracy or completeness of information relating to subsurface conditions and Grantee's, and Grantee's Contractors', operations at all times shall be subject to the liability provisions set forth herein. For all bores greater than 20 inches in diameter and at a depth less than ten (10) feet below the bottom of a rail, Grantee, and Grantee's Contractors, shall perform a soil investigation which must be reviewed by Grantor 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 Grantor's reasonable opinion that granular material is present, Grantor may select a new location for Grantee's use, or may require Grantee, and Grantee's Contractors, to furnish for Grantor's review and approval, in Grantor's sole discretion, a remedial plan to deal with the granular material. Once Grantor has approved any such remedial plan in writing, Grantee, and Grantee's Contractors, at Grantee's sole cost, shall carry out the approved plan in accordance with all terms thereof and hereof. Any open hole, boring or well constructed on the Premises by Grantee, or Grantee's Contractors, shall be safely covered and secured at all times when anyone who is not creating it, working in it or using it as permitted hereunder is present in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises shall be promptly filled in by Grantee and Grantee's Contractors to surrounding ground level with compacted bentonite grout, or otherwise secured or retired in accordance with any applicable Laws. No excavated materials may remain on Grantor's rail corridor or property for more than ten (10) days, and must be properly disposed of by Grantee and Grantee's Contractors in accordance with applicable Laws.

6.10 Drainage of Premises and Property. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Premises shall be made and maintained by Grantee in such manner, form and to the extent as will provide adequate drainage of and from the Premises and Grantor's adjoining right of way; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from the Property and Grantor's adjoining right of way, Grantee shall construct and maintain such culverts or drains within the Premises as may be requisite to preserve such natural and pre-existing drainage. Grantee shall wherever necessary, construct extensions of existing drains, culverts or ditches through or along the Premises, such extensions to be of adequate sectional dimensions to preserve flowage of drainage or other waters, and/or material and workmanship equally as good as those now existing.

6.11 Taxes and Recording Fees. Grantee 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 Grantor or the Premises that are attributable to the Improvements. Grantee agrees to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes, excise taxes and any and all fees

incidental to recordation of the Memorandum of Easement. In the event of Grantee's failure to do so, if Grantor shall become obligated to do so, Grantee shall be liable for all costs, expenses and judgments to or against Grantor, including all of Grantor's legal fees and expenses.

6.12 **Modification, Relocation or Removal of Improvements.** If at any time, Grantor desires the use of its rail corridor in such a manner that, in Grantor's reasonable opinion, would be interfered with by any portion of the Improvements or the Easement, Grantor, at Grantor's sole cost, has the right to make such changes in the Improvements and/or Premises that, in the sole discretion of Grantor, are necessary to avoid interference with the proposed use of Grantor's property, including, without limitation, modifying or relocating the Improvements on the Premises or onto Grantor's adjacent property; provided further, however, that any modification and/or relocation of the Improvements will be made by Grantor in such a manner as to provide the same access and functionality as before any modification and/or relocation of the existing Improvements. Grantee hereby waives any rights that it may have to use condemnation Laws to keep Improvements in place and not relocate or remove the Improvements where relocation or removal is required by Grantor.

Section 7 Indemnification.

7.1 For purposes of this Easement Agreement: (a) "**Indemnitees**" means Grantor and Grantor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Grantee Parties**" means Grantee or Grantee's officers, agents, invitees, licensees, employees, or Grantee's Contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.

7.2 TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTEE SHALL, AND SHALL CAUSE GRANTEE'S CONTRACTORS TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):

- (i) GRANTEE'S OCCUPATION AND USE OF THE PREMISES;**
- (ii) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY GRANTEE; OR**
- (iii) ANY ACT OR OMISSION OF ANY GRANTEE PARTY.**

7.3 TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTEE NOW AND FOREVER WAIVES ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS EASEMENT AGREEMENT, GRANTOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). GRANTEE WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS CAUSED BY OR CONTRIBUTED TO BY GRANTEE. NOTHING IN THIS EASEMENT AGREEMENT IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS EASEMENT AGREEMENT SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS EASEMENT AGREEMENT TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, GRANTEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS EASEMENT AGREEMENT. IN NO EVENT AS BETWEEN GRANTOR AND GRANTEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS EASEMENT AGREEMENT SHALL GRANTOR BE RESPONSIBLE TO GRANTEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

7.4 IF ANY EMPLOYEE OF ANY GRANTEE PARTY ASSERTS THAT HE OR SHE IS AN

EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTEE SHALL, AND SHALL CAUSE GRANTEE'S CONTRACTORS TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, 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.

7.5 THE FOREGOING OBLIGATIONS OF GRANTEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE CAUSED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES (AS SUCH TERM IS DEFINED ABOVE IN SECTION 7.1).

7.6 Upon written notice from Grantor, Grantee 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 Easement Agreement for which Grantee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Grantee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments. Nothing in this Easement Agreement shall be construed to waive either parties' limitations of liability and/or immunities available to it pursuant to Wisconsin Statutes or other applicable federal or state law. The aggrieved party shall promptly notify the indemnifying party in writing of any Liabilities for which indemnification is sought (which written notification shall in any case be within one (1) year after the occurrence of the event giving rise to such Liabilities). The indemnifying party shall have sole control of, and the aggrieved party shall reasonably cooperate in all respects, in the defense of any Liabilities for which indemnification is sought. The aggrieved party shall not make any admission or disclosure or otherwise take any action with respect to the Liabilities for which indemnification is sought that would be prejudicial to the indemnifying party except as required by law. Grantor represents that, as of the Effective Date to the current actual knowledge of James A. Ball, Senior Manager - Real Estate of Grantor, Grantor has no notice or knowledge of any Liabilities asserted or threatened by any third party with respect to the matters contemplated by this Easement Agreement. Grantee represents that, as of the Effective Date to the current actual knowledge of _____(name), _____(title) of Grantee, Grantee has no notice or knowledge of any Liabilities asserted or threatened by any third party with respect to the matters contemplated by this Easement Agreement.

Section 8 Insurance. Subject to Grantee's right to self-insure described below in Section 8.6, Grantee shall, at its sole cost and expense, procure and maintain during the life of this Easement Agreement the following insurance coverage:

8.1 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 Grantee. Coverage must be purchased on a post 2004 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 or language, 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 Grantor.

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

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 Grantor employees.

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

8.2 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

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 Grantor.
- ◆ Additional insured endorsement in favor of and acceptable to Grantor.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Grantor.

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

- ◆ Grantee'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 Grantor.

8.4 Railroad Protective Liability Insurance. This insurance is required if there is any construction or demolition activities. This insurance shall name only the Grantor as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 12 03 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 Grantor prior to performing any work or services under this Easement Agreement
- ◆ Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control arising out of the acts or omissions of the contractor named on the Declarations."

If available and in lieu of providing a Railroad Protective Liability Policy, Grantee may participate in the Grantor's Blanket Railroad Protective Liability Insurance Policy available to Grantee or Grantee's Contractor. The limits of coverage are the same as above.

8.5 Other Requirements.

- (a) Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.
- (b) Grantee agrees to waive its right of recovery against Grantor for all claims and suits against Grantor, per the indemnity provisions of this Easement Agreement. In addition, Grantee's insurers, through the terms of the policy or a policy endorsement, must waive their right of subrogation against Grantor for all claims and suits, and the certificate of insurance must reflect the waiver of subrogation endorsement. Grantee further waives its right of recovery, and its insurers must also waive their right of subrogation against Grantor for loss of its owned or leased property or property under its care, custody, or control.
- (c) Prior to commencing work, Grantee shall furnish to Grantor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments (or written evidence of its self-insurance program in accordance with **Section 8.6**). Grantee shall notify Grantor in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. In the event of a claim or lawsuit involving Grantor arising out of this Easement Agreement, Grantee will make available any required policy covering such claim or lawsuit.
- (d) Any insurance policy shall be written by a reputable insurance company acceptable to Grantor 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.
- (e) Grantee represents that this Easement Agreement has been thoroughly reviewed by Grantee's insurance agent(s)/broker(s), who have been instructed by Grantee to procure the insurance coverage required by this Easement Agreement. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.
- (f) Not more frequently than once every five years, Grantor and Grantee may reasonably agree to modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- (g) If any portion of the operation is to be subcontracted by Grantee, Grantee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Grantor as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Grantor to the same extent and under the same terms and conditions as Grantee is required to release, defend and indemnify Grantor herein.
- (h) Failure to provide evidence as required by this **Section 8** shall entitle, but not require, Grantor to terminate this Easement immediately. Acceptance of a certificate that does not comply with this **Section 8** shall not operate as a waiver of Grantee's obligations hereunder.
- (i) The fact that insurance (including, without limitation, self-insurance in accordance with **Section 8.6**) is obtained by Grantee shall not be deemed to release or diminish the liability of Grantee including, without limitation, liability under the indemnity provisions of

this Easement Agreement. Damages recoverable by Grantor shall not be limited by the amount of the required insurance coverage.

- (j) For purposes of this Section 8, Grantor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.
- (k) If the "Grantee" is subject to statute(s) limiting its liability, insured or otherwise, and/or limiting its ability to obtain or provide insurance as required by this Easement Agreement, those statutes shall apply.

8.6 Self-Insurance. Notwithstanding anything in this Section 8 to the contrary, Grantee is allowed to self-insure for the coverages required under this Section 8. Prior to commencing work, Grantee will furnish written evidence of its self-insurance program to Grantor. Grantee's self-insured retention is consistent with that of other municipal corporations of similar operations and size. Any self-insured retention or other financial responsibility for claims shall be covered directly by Grantee in lieu of insurance. Any and all Grantor liabilities that would otherwise, in accordance with the provisions of this Easement Agreement, be covered by Grantee's insurance will be covered as if Grantee elected not to include a self-insured retention or other financial responsibility for claims. For the avoidance of doubt, requirements (a) - (k) in Section 8.5 above apply to all Grantee Parties (other than Grantee) required to obtain insurance under this Agreement; provided, however, to the extent Grantee self-insures for the coverages required under this Section 8, Grantee shall not be required to comply with requirement (a), the second sentence of requirement (b), requirements (c) - (e) and requirement (h) of Section 8.5 above for so long as Grantee self-insures such coverages.

Section 9 Environmental.

9.1 Compliance with Environmental Laws. Grantee shall strictly comply with all federal, state and local environmental Laws 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, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Toxic Substances Control Act (collectively referred to as the "Environmental Laws"). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws.

9.2 Notice of Release. Grantee shall give Grantor immediate notice to Grantor'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 Grantee's use of the Premises. Grantee shall use its best efforts to promptly respond to any release on or from the Premises. Grantee also shall give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

9.3 Remediation of Release. If Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Premises which occurred or may occur during the term of this Easement Agreement, Grantor may require Grantee to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Grantor's right-of-way that is caused by or contributed to by Grantee or a Grantee Party or is otherwise Grantee's responsibility under Section 7.2.

9.4 Preventative Measures. Grantee shall promptly report to Grantor in writing any conditions or activities upon the Premises known to Grantee 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 Grantee's reporting to Grantor shall not relieve Grantee of any obligation whatsoever imposed on it by this Easement Agreement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

9.5 Evidence of Compliance. Grantee agrees periodically to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this Section 9.

Section 10 PERSONAL PROPERTY WAIVER. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF GRANTEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, EXCEPT TO THE EXTENT CAUSED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE.

Section 11 Default and Termination.

11.1 Grantor's Performance Rights. If at any time Grantee, or Grantee's Contractors, fails to properly perform its obligations under this Easement Agreement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, or (ii) at Grantee's sole cost, may arrange for the performance of such work as Grantor 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 Grantor, or anyone or anything present on the rail corridor or property with the authority or permission of Grantor. Grantee shall promptly reimburse Grantor for all costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee or Grantee's Contractors shall not alter the liability allocation set forth in this Easement Agreement.

11.2 Grantor's Termination Rights. Grantor may, at its option, terminate this Easement Agreement by serving five (5) business days' notice in writing upon Grantee: (i) if Grantee fails to keep or perform any of Grantee's covenants, agreements, or obligations contained in this Easement Agreement, and such failure continues for more than thirty (30) days after written notice thereof is provided to Grantee by Grantor; provided, however, if such failure cannot reasonably be cured within such 30-day period, Grantee shall not be deemed in default so long as Grantee commences to cure within the 30-day period and diligently pursues such cure to completion within a total of ninety (90) days; (ii) in case of any assignment or transfer of the Easement by operation of law; or (iii) if Grantee should abandon or cease to use the Premises for the Easement Purpose. Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate this Easement Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any section of this Easement Agreement.

11.3 Effect of Termination or Expiration. Neither termination nor expiration will release Grantee 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 expiration, or, if later, the date the Premises are restored as required by Section 12.

11.4 Non-exclusive Remedies. The remedies set forth in this Section 11 shall be in addition to, and not in limitation of, any other remedies that Grantor may have under the Master Relocation Agreement, at law or in equity.

Section 12 Surrender of Premises.

12.1 Removal of Improvements and Restoration. Upon termination of this Easement Agreement, whether by abandonment of the Easement or by the exercise of Grantor's termination rights hereunder, Grantee shall, at its sole cost and expense, immediately perform the following within one hundred twenty (120) days:

- (a) remove all or such portion of Grantee's Improvements and all appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;
- (b) repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;
- (c) remedy any unsafe conditions on the Premises created or aggravated by Grantee; and

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

12.2 Limited License for Entry. If this Easement Agreement is terminated, Grantor may direct Grantee to undertake one or more of the actions set forth above, at Grantee's sole cost, in which case Grantee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Grantor. The terms of this limited license include all of Grantee's obligations under this Easement Agreement. Termination will not release Grantee from any liability or obligation under this Easement Agreement, 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 Grantee's Improvements are removed and the Premises are restored to the condition that existed as of the Effective Date. If Grantee fails to surrender the Premises to Grantor upon any termination of the Easement, all liabilities and obligations of Grantee hereunder shall continue in effect until the Premises are surrendered.

Section 13 Liens. Grantee 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 Grantee on the Premises or attributable to Taxes that are the responsibility of Grantee pursuant to **Section 6**. Grantor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by Law to prevent the attachment of any such liens to any portion of the Premises; provided, however, that failure of Grantor to take any such action shall not relieve Grantee of any obligation or liability under this **Section 13** or any other section of this Easement Agreement.

Section 14 Tax Exchange. Grantor may assign its rights (but not its obligations) under this Easement Agreement to Goldfinch Exchange Company LLC, an exchange intermediary, in order for Grantor to effect an exchange under Section 1031 of the Internal Revenue Code. In such event, Grantor shall provide Grantee with a notice of assignment ("**Notice of Assignment**"), and Grantee shall execute an acknowledgement of receipt of such Notice of Assignment.

Section 15 Notices. 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 Grantor: BNSF Railway Company
2500 Lou Menk Dr. – AOB3
Fort Worth, Texas 76131
Attn: Director of Real Estate

With a copy to: BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, Texas 76131
Attn: Law Department

If to Grantee: City of La Crosse
400 La Crosse St.
La Crosse, WI 54601-3374
Attn: City Clerk

With a copy to: City of La Crosse
400 La Crosse St.
La Crosse, WI 54601
Attn: _____

Section 16 Recordation. As of the Effective Date, a legal description of the Premises is not available. Grantee and Grantor shall work together in good faith to establish the legal description for the Premises. Once Grantor and Grantee have approved the legal description, Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as Exhibit "B" (the "Memorandum of Easement"). The Memorandum of Easement shall be recorded in the real estate records in the county where the Premises are located. If a Memorandum of Easement is not executed by the parties and recorded as described above within thirty (30) days of the Effective Date, Grantor shall have the right to terminate this Easement Agreement upon notice to Grantee. Grantor and Grantee agree to work in good faith and cooperate in executing and recording the Memorandum of Easement.

Section 17 Miscellaneous.

17.1 All aspects of this Easement Agreement shall be governed by the laws of the State of Wisconsin. To the fullest extent permitted by law any dispute arising under or in connection with this Easement Agreement or related to any subject matter which is the subject of this Easement Agreement shall be subject to the sole and exclusive jurisdiction of the United States District Court for the Western District of Wisconsin. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive. Each party hereby irrevocably consents to the jurisdiction of the United States District Court for the Western District of Wisconsin in any such dispute and irrevocably waives, to the fullest extent permitted by law, any objection that it may now have or hereafter have to the laying of venue in such court and that any such dispute which is brought in such court has been brought in an inconvenient forum.

17.2 In the event that Grantee consists of two or more parties, all the covenants and agreements of Grantee herein contained shall be the joint and several covenants and agreements of such parties. This instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

17.3 Intentionally Deleted.

17.4 If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

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

17.6 Time is of the essence for the performance of this Easement Agreement.

END OF PAGE – SIGNATURE PAGE FOLLOWS

Witness the execution of this Easement Agreement as of the Effective Date first set forth above.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Name: _____
Title: _____

GRANTEE:

CITY OF LA CROSSE, a Wisconsin municipal corporation

By: _____
Name: _____
Title: _____

EXHIBIT "A"

Premises

EXHIBIT "B"

Memorandum of Easement

EXHIBIT "C-1"

C Documents

EXHIBIT "D"

Master Relocation Agreement

EXHIBIT F

Form of Underpass Easement

UNDERPASS EASEMENT AGREEMENT

THIS UNDERPASS EASEMENT AGREEMENT ("Easement Agreement") is made and entered into as of the ____ day of _____ 20__ ("Effective Date"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("Grantor"), and CITY OF LA CROSSE, WISCONSIN, a Wisconsin municipal corporation ("Grantee").

RECITALS

A. Grantor owns or controls certain real property situated at or near the vicinity of City of La Crosse, County of La Crosse, State of Wisconsin, at Mile Post _____, as described or depicted on Exhibit "A" attached hereto and made a part hereof (the "Premises").

B. Grantor and Grantee have entered into that certain Master Relocation Agreement dated as of _____ concerning improvements on or near the Premises (the "Master Agreement"). The Master Agreement is attached hereto as Exhibit "D".

C. Grantee has requested that Grantor grant to Grantee an easement over the Premises for the Easement Purpose (as defined below).

D. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement Agreement.

AGREEMENTS

NOW, THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1 Granting of Easement.

1.1 Easement Purpose. The "Easement Purpose" shall be the maintenance, repair and use of the Underpass Pathway, Underpass Surface Drainage and Mechanized Underpass Drainage Facilities (as such terms are more particularly defined and described in the Master Agreement and, together with any related improvements, collectively referred to hereinafter as the "Improvements") by Grantee in strict accordance with the terms of this Easement Agreement and the Master Agreement. The Improvements for which Grantee is responsible under this Easement Agreement expressly exclude the Bridge (as defined in the Master Agreement). Grantee expressly acknowledges and agrees that the Easement Purpose does not include, and no rights are granted hereunder, for an elevated roadway or related improvements or any subsurface rights.

1.2 Grant. Grantor does hereby grant unto Grantee a non-exclusive easement ("Easement") over the Premises for the Easement Purpose and for no other purpose. The Easement is granted subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all Laws (as hereinafter defined), including without limitation zoning laws, regulations, and ordinances of municipal and other governmental authorities, if any.

1.3 Reservations by Grantor. Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:

- (a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character (collectively, "Lines") upon, over, under or across the Premises;

- (b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; and
- (c) to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose.

1.4 **Term of Easement.** The term of the Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual.

Section 2 Compensation. This Easement is given in partial consideration for Grantee's agreement to enter into the Master Agreement. Therefore, no separate fee is being charged as compensation for this Easement.

Section 3 No Warranty of Any Conditions of the Premises. Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Premises, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Premises. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this Easement Agreement, other than as set forth herein. GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTOR SHALL NOT BE RESPONSIBLE TO GRANTEE OR ANY OF GRANTEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE PREMISES. Grantee has inspected or will inspect the Premises, and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Premises. Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully operate the Improvements.

Section 4 Nature of Grantor's Interest in the Premises. GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

Section 5 Construction of Improvements. As more particularly described in the Master Agreement, the Underpass Pathway shall be constructed by Grantee, and the Underpass Surface Drainage and Mechanized Underpass Drainage Facilities (if any) will be constructed by Grantor, all in accordance with the terms and conditions of the Master Agreement, including without limitation the Final Plans and Specifications (as defined in the Master Agreement) reviewed and approved by the parties.

Section 6 Maintenance of Improvements.

6.1 **Maintenance Upon Completion of Construction.**

- (a) Upon Completion (as defined in the Master Agreement) of construction of the Improvements, Grantee shall at all times during the term of this Easement Agreement, at Grantee's sole cost and expense, keep and maintain the Improvements located upon the Premises in a structurally safe and sound condition, in good repair and in compliance with the Final Plans and Specifications, the Master Agreement and this

Easement Agreement. Grantee shall also promptly repair any damage to the Premises or the Improvements caused, either in whole or in part, by Grantee Parties (as hereinafter defined). Grantee shall not cause or permit another person to cause any damage to the Premises or the Improvements, and Grantee shall be responsible for any such damage which may occur as a result of any act or omission of any Grantee Party; provided the foregoing obligation of Grantee shall not apply to the extent any damage is proximately caused by the negligence or willful misconduct of any Indemnitee. Grantee shall not permit the existence of any nuisance or the accumulation of junk, debris or other unsightly materials on the Premises and shall keep the Premises in a clean and safe condition. Grantee shall, at its sole cost and expense, remove ice and snow from the Premises. Grantee shall keep the Premises free and clear from combustible materials and to cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on the Premises, said work of cutting and removal to be done at such times and with such frequency as to comply with local Laws and regulations and abate any and all hazard of fire. Grantor shall have no obligation whatsoever, monetary or non-monetary, to maintain the Improvements in the Premises.

- (b) If Grantee contracts with a Grantee Party for any maintenance or repair of the Improvements, Grantee shall require such Grantee Party to execute the "C Documents" attached hereto as **Exhibit "C-1"**. Grantee must require Grantee's Contractors to notify Grantor's Roadmaster at least thirty (30) calendar days prior to requesting Grantor's flagman in accordance with the requirements of the C Documents attached hereto. Additionally, Grantee must require Grantee's Contractors to notify Grantor's Manager of Public Projects thirty (30) calendar days prior to commencing work on Grantor's property or near Grantor's tracks.
- (c) Prior to performing any maintenance with its own personnel, Grantee shall: (i) comply with all of Grantor's safety rules and regulations, (ii) require any Grantee employee performing maintenance to complete the safety training program at www.BNSFcontractor.com, (iii) notify Grantor when, pursuant to the requirements of the C Documents, a flagger is required to be present, and (iv) procure, and have approved by Grantor's Risk Management Department, Railroad Protective Liability insurance.

6.2 No Interference. During any subsequent maintenance performed on, operation of, or removal of, all or any portion of the Improvements, Grantee, at Grantee's sole cost, shall perform all activities and work on or near Grantor's rail corridor or property and/or the Premises in such a manner as to preclude injury to persons or damage to the property of Grantor, or any party on or with property on Grantor's rail corridor or property, and shall ensure that there is no interference with the railroad operations or other activities of Grantor, or anyone present on Grantor's rail corridor or property with the authority or permission of Grantor. Grantee shall not disturb any improvements of Grantor or Grantor's existing lessees, licensees, license beneficiaries or lien holders, if any, or interfere with the use of such improvements. Grantor may direct one of its field engineers to observe or inspect the maintenance, operation or removal of the Improvements, or any portion thereof, at any time to ensure such safety and noninterference, and to ensure that the Improvements comply with the Final Plans and Specifications. If any Grantee Party is ordered at any time to leave the Premises or to halt any activity on the Premises, then the party conducting that activity immediately shall cease such activity and leave the Premises, if the order was issued by Grantor's personnel to promote safety, such noninterference with other activities or property, or because the Improvements were not in compliance with this Easement Agreement. Notwithstanding the foregoing right of Grantor, Grantor has no duty or obligation to observe or inspect, or to halt work on, the Premises, it being solely Grantee's responsibility to ensure that the Improvements are maintained, operated and removed in strict accordance with all Laws, safety measures, such noninterference and the Final Plans and Specifications and in compliance with all terms hereof and those terms and conditions of the Master Agreement. Neither the exercise nor the failure by Grantor to exercise any right set forth in this Section 6.2 shall alter the liability allocation set forth in this Easement Agreement.

6.3 No Alterations. Except as may be shown in the Final Plans and Specifications, Grantee may not make any alterations to the Premises, or permanently affix anything to the Premises, without Grantor's prior written consent. If Grantee desires to change either the location of any of the Improvements or any other aspect

of the Final Plans and Specifications of any of the Improvements, Grantee shall submit such change and modified Plans and Specifications to Grantor in writing for its approval in the same manner as provided for in Section 2.2 of the Master Agreement. Grantee shall have no right to commence any such change until after Grantee has received Grantor's approval of such change in writing.

6.4 Approvals; Compliance with Laws and Safety Rules.

- (a) In addition to requirements under the Master Agreement, Grantee shall take, in a timely manner, all actions necessary and proper to the lawful establishment, operation, and maintenance of the Improvements, including such actions as may be necessary to obtain any required permits, approvals or authorizations from applicable governmental authorities.
- (b) Prior to entering the Premises for any maintenance of the Improvements, Grantee shall comply, and shall cause its contractor, any subcontractor, any assignee, and any contractor or subcontractor of any assignee performing work on the Premises or entering the Premises on behalf of Grantee (collectively, "Grantee's Contractors"), to comply, with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) (collectively, "Laws"), and all of Grantor's applicable safety rules and regulations including those noted below in Section 6.4(c).
- (c) No Grantee Party may enter the Premises without first having completed Grantor's safety orientation found on the website: www.BNSFcontractor.com.

6.5 Other Improvements. In the event any repair, maintenance, work or other use of the Premises by Grantee will affect any Lines, fences, buildings, improvements or other facilities (collectively, "Other Improvements"), Grantee will be responsible at Grantee's sole risk to locate and make any adjustments necessary to such Other Improvements. Grantee must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and obtain the owner's written approval prior to so affecting the Other Improvements. Grantee must mark all Other Improvements on the Final Plans and Specifications and mark such Other Improvements in the field in order to verify their locations. Grantee must also use all reasonable methods when working on or near Grantor property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist.

6.6 Flagging and Other Costs. Grantee shall not conduct any activities on, or be present on, any portion of the Premises or Grantor's rail corridor or property that is within twenty-five (25) feet of any active railroad track, except in the presence of a flagman. In any case where a flagman or flagmen are required in connection with the presence of individuals on Grantor's rail corridor or the Premises, Grantee shall provide as much advance notice as possible prior to any entry upon the Premises. Grantor shall arrange for the presence of the flagman or flagmen as soon as practicable after receipt of such notice from Grantee. Grantee shall reimburse to Grantor, within forty-five (45) days following Grantee's receipt of each bill therefor, Grantor's costs in arranging for and providing the flagman or flagmen, which shall be billed to Grantee at Grantor's then applicable standard rate. The estimated cost of one flagger as of the Effective Date is \$600 for an eight hour basic day with time and one-half or double time for overtime, rest days and holidays, plus the cost of any vehicle rental costs or other out-of-pocket costs. Grantee agrees to reimburse Grantor (within forty-five (45) days after receipt of a bill therefor) for all other costs and expenses incurred by Grantor in connection with Grantee's use of the Premises or the presence, construction, maintenance, and use of the Improvements situated thereon.

6.7 No Unauthorized Tests or Digging. Grantee, and Grantee's Contractors, must not 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 Grantor's rail corridor or property (whether or not such centerline is located within the Premises), except after Grantee has obtained written approval from Grantor, and then only in strict accordance with the terms and any conditions of such approval.

6.8 Boring. Prior to conducting any boring work on or near Grantor's rail corridor or property (which shall only be permitted within the Premises), Grantee and Grantee's Contractors 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, Grantee 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 Grantee's written request, which shall be made thirty (30) business days in advance of Grantee's proposed construction or modification of Improvements, Grantor will provide to Grantee any information that Grantor has in the possession of its Engineering Department concerning the existence and approximate location of Grantor's underground utilities and pipelines at or near the vicinity of the proposed Improvements. Prior to conducting any boring work, Grantee, and Grantee's Contractors, shall review all such material. Grantor does not warrant the accuracy or completeness of information relating to subsurface conditions and Grantee's, and Grantee's Contractors', operations at all times shall be subject to the liability provisions set forth herein. For all bores greater than 20 inches in diameter and at a depth less than ten (10) feet below the bottom of a rail, Grantee, and Grantee's Contractors, shall perform a soil investigation which must be reviewed by Grantor 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 Grantor's reasonable opinion that granular material is present, Grantor may select a new location for Grantee's use, or may require Grantee, and Grantee's Contractors, to furnish for Grantor's review and approval, in Grantor's sole discretion, a remedial plan to deal with the granular material. Once Grantor has approved any such remedial plan in writing, Grantee, and Grantee's Contractors, at Grantee's sole cost, shall carry out the approved plan in accordance with all terms thereof and hereof. Any open hole, boring or well constructed on the Premises by Grantee, or Grantee's Contractors, shall be safely covered and secured at all times when anyone who is not creating it, working in it or using it as permitted hereunder is present in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises shall be promptly filled in by Grantee and Grantee's Contractors to surrounding ground level with compacted bentonite grout, or otherwise secured or retired in accordance with any applicable Laws. No excavated materials may remain on Grantor's rail corridor or property for more than ten (10) days, and must be properly disposed of by Grantee and Grantee's Contractors in accordance with applicable Laws.

6.9 Drainage of Premises and Property. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Premises shall be made and maintained by Grantee in such manner, form and to the extent as will provide adequate drainage of and from the Premises and Grantor's adjoining right of way; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from the Property and Grantor's adjoining right of way, Grantee shall construct and maintain such culverts or drains within the Premises as may be requisite to preserve such natural and pre-existing drainage. Grantee shall wherever necessary, construct extensions of existing drains, culverts or ditches through or along the Premises, such extensions to be of adequate sectional dimensions to preserve flowage of drainage or other waters, and/or material and workmanship equally as good as those now existing. The parties acknowledge that construction of the Underpass Surface Drainage and Mechanized Underpass Drainage Facilities (if any) on the Premises is addressed in the Master Agreement.

6.10 Taxes and Recording Fees. Grantee 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 Grantor or the Premises that are attributable to the Improvements. Grantee agrees to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes, excise taxes and any and all fees incidental to recordation of the Memorandum of Easement. In the event of Grantee's failure to do so, if Grantor shall become obligated to do so, Grantee shall be liable for all costs, expenses and judgments to or against Grantor, including all of Grantor's legal fees and expenses.

6.11 Modification, Relocation or Removal of Improvements. If at any time, Grantor desires the use of its rail corridor in such a manner that, in Grantor's reasonable opinion, would be interfered with by any portion of the Improvements or the Easement, Grantor, at Grantor's sole cost, has the right to make such changes in the Improvements and/or Premises that, in the sole discretion of Grantor, are necessary to avoid interference with the proposed use of Grantor's property, including, without limitation, modifying or relocating the

Improvements on the Premises or onto Grantor's adjacent property; provided further, however, that any modification and/or relocation of the Improvements will be made by Grantor in such a manner as to provide the same access and functionality as before any modification and/or relocation of the existing Improvements. Grantee hereby waives any rights that it may have to use condemnation Laws to keep Improvements in place and not relocate or remove the Improvements where relocation or removal is required by Grantor.

Section 7 Indemnification.

7.1 For purposes of this Easement Agreement: (a) "Indemnitees" means Grantor and Grantor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "Liabilities" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "Grantee Parties" means Grantee or Grantee's officers, agents, invitees, licensees, employees, or Grantee's Contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.

7.2 TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTEE SHALL, AND SHALL CAUSE GRANTEE'S CONTRACTORS TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):

- (i) GRANTEE'S OCCUPATION AND USE OF THE PREMISES;**
- (ii) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY GRANTEE; OR**
- (iii) ANY ACT OR OMISSION OF ANY GRANTEE PARTY.**

7.3 TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTEE NOW AND FOREVER WAIVES ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS EASEMENT AGREEMENT, GRANTOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). GRANTEE WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS CAUSED BY OR CONTRIBUTED TO BY GRANTEE. NOTHING IN THIS EASEMENT AGREEMENT IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS EASEMENT AGREEMENT SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS EASEMENT AGREEMENT TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, GRANTEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS EASEMENT AGREEMENT. IN NO EVENT AS BETWEEN GRANTOR AND GRANTEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS EASEMENT AGREEMENT SHALL GRANTOR BE RESPONSIBLE TO GRANTEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

7.4 IF ANY EMPLOYEE OF ANY GRANTEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTEE SHALL, AND SHALL CAUSE GRANTEE'S CONTRACTORS TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, 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.

7.5 THE FOREGOING OBLIGATIONS OF GRANTEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE CAUSED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES (AS SUCH TERM IS DEFINED ABOVE IN SECTION 7.1).

7.6 Upon written notice from Grantor, Grantee 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 Easement Agreement for which Grantee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Grantee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments. Nothing in this Easement Agreement shall be construed to waive either parties' limitations of liability and/or immunities available to it pursuant to Wisconsin Statutes or other applicable federal or state law. The aggrieved party shall promptly notify the indemnifying party in writing of any Liabilities for which indemnification is sought (which written notification shall in any case be within one (1) year after the occurrence of the event giving rise to such Liabilities). The indemnifying party shall have sole control of, and the aggrieved party shall reasonably cooperate in all respects, in the defense of any Liabilities for which indemnification is sought. The aggrieved party shall not make any admission or disclosure or otherwise take any action with respect to the Liabilities for which indemnification is sought that would be prejudicial to the indemnifying party except as required by law. Grantor represents that, as of the Effective Date to the current actual knowledge of James A. Ball, Senior Manager - Real Estate of Grantor, Grantor has no notice or knowledge of any Liabilities asserted or threatened by any third party with respect to the matters contemplated by this Easement Agreement. Grantee represents that, as of the Effective Date to the current actual knowledge of _____(name), _____(title) of Grantee, Grantee has no notice or knowledge of any Liabilities asserted or threatened by any third party with respect to the matters contemplated by this Easement Agreement.

Section 8 Insurance. Subject to Grantee's right to self-insure described below in Section 8.6, Grantee shall, at its sole cost and expense, procure and maintain during the life of this Easement Agreement the following insurance coverage:

8.1 **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 Grantee. Coverage must be purchased on a post 2004 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 or language, 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 Grantor.
- ◆ Additional insured endorsement in favor of and acceptable to Grantor and Jones Lang LaSalle Brokerage, Inc.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Grantor.

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 Grantor employees.

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

8.2 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

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 Grantor.
- ◆ Additional insured endorsement in favor of and acceptable to Grantor.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Grantor.

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

- ◆ Grantee'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 Grantor.

8.4 Railroad Protective Liability Insurance. This insurance is required if there is any construction or demolition activities. This insurance shall name only the Grantor as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 12 03 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 Grantor prior to performing any work or services under this Easement Agreement
- ◆ Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control arising out of the acts or omissions of the contractor named on the Declarations."

If available and in lieu of providing a Railroad Protective Liability Policy, Grantee may participate in the Grantor's Blanket Railroad Protective Liability Insurance Policy available to Grantee or Grantee's Contractor. The limits of coverage are the same as above.

8.5 Other Requirements.

- (a) Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.
- (b) Grantee agrees to waive its right of recovery against Grantor for all claims and suits against Grantor, per the indemnity provisions of this Easement Agreement. In addition, Grantee's insurers, through the terms of the policy or a policy endorsement, must waive

their right of subrogation against Grantor for all claims and suits, and the certificate of insurance must reflect the waiver of subrogation endorsement. Grantee further waives its right of recovery, and its insurers must also waive their right of subrogation against Grantor for loss of its owned or leased property or property under its care, custody, or control.

- (c) Prior to commencing work, Grantee shall furnish to Grantor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments (or written evidence of its self-insurance program in accordance with **Section 8.6**). Grantee shall notify Grantor in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. In the event of a claim or lawsuit involving Grantor arising out of this Easement Agreement, Grantee will make available any required policy covering such claim or lawsuit.
- (d) Any insurance policy shall be written by a reputable insurance company acceptable to Grantor 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.
- (e) Grantee represents that this Easement Agreement has been thoroughly reviewed by Grantee's insurance agent(s)/broker(s), who have been instructed by Grantee to procure the insurance coverage required by this Easement Agreement. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.
- (f) Not more frequently than once every five years, Grantor and Grantee may reasonably agree to modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- (g) If any portion of the operation is to be subcontracted by Grantee, Grantee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Grantor as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Grantor to the same extent and under the same terms and conditions as Grantee is required to release, defend and indemnify Grantor herein.
- (h) Failure to provide evidence as required by this **Section 8** shall entitle, but not require, Grantor to terminate this Easement immediately. Acceptance of a certificate that does not comply with this **Section 8** shall not operate as a waiver of Grantee's obligations hereunder.
- (i) The fact that insurance (including, without limitation, self-insurance in accordance with **Section 8.6**) is obtained by Grantee shall not be deemed to release or diminish the liability of Grantee including, without limitation, liability under the indemnity provisions of this Easement Agreement. Damages recoverable by Grantor shall not be limited by the amount of the required insurance coverage.
- (j) For purposes of this **Section 8**, Grantor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.
- (k) If the "Grantee" is subject to statute(s) limiting its liability, insured or otherwise, and/or limiting its ability to obtain or provide insurance as required by this Easement Agreement, those statutes shall apply.

8.6 Self-Insurance. Notwithstanding anything in this **Section 8** to the contrary, Grantee is allowed to self-insure for the coverages required under this **Section 8**. Prior to commencing work, Grantee will furnish

written evidence of its self-insurance program to Grantor. Grantee's self-insured retention is consistent with that of other municipal corporations of similar operations and size. Any self-insured retention or other financial responsibility for claims shall be covered directly by Grantee in lieu of insurance. Any and all Grantor liabilities that would otherwise, in accordance with the provisions of this Easement Agreement, be covered by Grantee's insurance will be covered as if Grantee elected not to include a self-insured retention or other financial responsibility for claims. For the avoidance of doubt, requirements (a) - (k) in Section 8.5 above apply to all Grantee Parties (other than Grantee) required to obtain insurance under this Agreement; provided, however, to the extent Grantee self-insures for the coverages required under this Section 8, Grantee shall not be required to comply with requirement (a), the second sentence of requirement (b), requirements (c) - (e) and requirement (h) of Section 8.5 above for so long as Grantee self-insures such coverages.

Section 9 Environmental.

9.1 **Compliance with Environmental Laws.** Grantee shall strictly comply with all federal, state and local environmental Laws 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, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Toxic Substances Control Act (collectively referred to as the "Environmental Laws"). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws.

9.2 **Notice of Release.** Grantee shall give Grantor immediate notice to Grantor'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 Grantee's use of the Premises. Grantee shall use its best efforts to promptly respond to any release on or from the Premises. Grantee also shall give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

9.3 **Remediation of Release.** If Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Premises which occurred or may occur during the term of this Easement Agreement, Grantor may require Grantee to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Grantor's right-of-way that is caused by or contributed to by Grantee or a Grantee Party or is otherwise Grantee's responsibility under Section 7.2.

9.4 **Preventative Measures.** Grantee shall promptly report to Grantor in writing any conditions or activities upon the Premises known to Grantee 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 Grantee's reporting to Grantor shall not relieve Grantee of any obligation whatsoever imposed on it by this Easement Agreement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

9.5 **Evidence of Compliance.** Grantee agrees periodically to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this Section 9.

Section 10 PERSONAL PROPERTY WAIVER. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF GRANTEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, EXCEPT TO THE EXTENT CAUSED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE.

Section 11 Default and Termination.

11.1 **Grantor's Performance Rights.** If at any time Grantee, or Grantee's Contractors, fails to properly

perform its obligations under this Easement Agreement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, or (ii) at Grantee's sole cost, may arrange for the performance of such work as Grantor 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 Grantor, or anyone or anything present on the rail corridor or property with the authority or permission of Grantor. Grantee shall promptly reimburse Grantor for all costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee or Grantee's Contractors shall not alter the liability allocation set forth in this Easement Agreement.

11.2 Grantor's Termination Rights. Grantor may, at its option, terminate this Easement Agreement by serving five (5) business days' notice in writing upon Grantee: (i) if Grantee fails to keep or perform any of Grantee's covenants, agreements, or obligations contained in this Easement Agreement, and such failure continues for more than thirty (30) days after written notice thereof is provided to Grantee by Grantor; provided, however, if such failure cannot reasonably be cured within such 30-day period, Grantee shall not be deemed in default so long as Grantee commences to cure within the 30-day period and diligently pursues such cure to completion within a total of ninety (90) days; (ii) in case of any assignment or transfer of the Easement by operation of law; or (iii) if Grantee should abandon or cease to use the Premises for the Easement Purpose. Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate this Easement Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any section of this Easement Agreement.

11.3 Effect of Termination or Expiration. Neither termination nor expiration will release Grantee 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 expiration, or, if later, the date the Premises are restored as required by Section 12.

11.4 Non-exclusive Remedies. The remedies set forth in this Section 11 shall be in addition to, and not in limitation of, any other remedies that Grantor may have under the Master Relocation Agreement, at law or in equity.

Section 12 Surrender of Premises.

12.1 Removal of Improvements and Restoration. Upon termination of this Easement Agreement, whether by abandonment of the Easement or by the exercise of Grantor's termination rights hereunder, Grantee shall, at its sole cost and expense, immediately perform the following within one hundred twenty (120) days:

- (a) remove all or such portion of Grantee's Improvements and all appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;
- (b) repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;
- (c) remedy any unsafe conditions on the Premises created or aggravated by Grantee; and
- (d) leave the Premises in the condition which existed as of the Effective Date.

12.2 Limited License for Entry. If this Easement Agreement is terminated, Grantor may direct Grantee to undertake one or more of the actions set forth above, at Grantee's sole cost, in which case Grantee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Grantor. The terms of this limited license include all of Grantee's obligations under this Easement Agreement. Termination will not release Grantee from any liability or obligation under this Easement Agreement, 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 Grantee's Improvements are removed and the Premises are restored to the condition that existed as of the Effective Date. If Grantee fails to surrender the Premises to Grantor upon any termination of the Easement, all liabilities and obligations of Grantee hereunder shall continue in effect until the Premises are surrendered.

Section 13 **Liens.** Grantee shall promptly pay and discharge any and all liens arising out of any alterations or repairs done, suffered or permitted to be done by Grantee on the Premises or attributable to Taxes that are the responsibility of Grantee pursuant to **Section 6**. Grantor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by Law to prevent the attachment of any such liens to any portion of the Premises; provided, however, that failure of Grantor to take any such action shall not relieve Grantee of any obligation or liability under this **Section 13** or any other section of this Easement Agreement.

Section 14 **Tax Exchange.** Grantor may assign its rights (but not its obligations) under this Easement Agreement to Goldfinch Exchange Company LLC, an exchange intermediary, in order for Grantor to effect an exchange under Section 1031 of the Internal Revenue Code. In such event, Grantor shall provide Grantee with a notice of assignment ("**Notice of Assignment**"), and Grantee shall execute an acknowledgement of receipt of such Notice of Assignment.

Section 15 **Notices.** 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 Grantor: BNSF Railway Company
2500 Lou Menk Dr. – AOB3
Fort Worth, Texas 76131
Attn: Director of Real Estate

With a copy to: BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, Texas 76131
Attn: Law Department

If to Grantee: City of La Crosse
400 La Crosse St.
La Crosse, WI 54601-3374
Attn: City Clerk

With a copy to: City of La Crosse
400 La Crosse St.
La Crosse, WI 54601
Attn: Director of Parks and Recreation

Section 16 **Recordation.** As of the Effective Date, a legal description of the Premises is not available. Grantee and Grantor shall work together in good faith to establish the legal description for the Premises. Once Grantor and Grantee have approved the legal description, Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as **Exhibit "B"** (the "**Memorandum of Easement**"). The Memorandum of Easement shall be recorded in the real estate records in the county where the Premises are located. If a Memorandum of Easement is not executed by the parties and recorded as described above within thirty (30) days of the Effective Date, Grantor shall have the right to terminate this Easement Agreement upon notice to Grantee. Grantor and Grantee agree to work in good faith and cooperate in executing and recording the Memorandum of Easement.

Section 17 **Miscellaneous.**

17.1 All aspects of this Easement Agreement shall be governed by the laws of the State of

Form 703; Rev. 07/01/14

Wisconsin. To the fullest extent permitted by law any dispute arising under or in connection with this Easement Agreement or related to any subject matter which is the subject of this Easement Agreement shall be subject to the sole and exclusive jurisdiction of the United States District Court for the Western District of Wisconsin. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive. Each party hereby irrevocably consents to the jurisdiction of the United States District Court for the Western District of Wisconsin in any such dispute and irrevocably waives, to the fullest extent permitted by law, any objection that it may now have or hereafter have to the laying of venue in such court and that any such dispute which is brought in such court has been brought in an inconvenient forum.

17.2 In the event that Grantee consists of two or more parties, all the covenants and agreements of Grantee herein contained shall be the joint and several covenants and agreements of such parties. This instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

17.3 Intentionally Deleted.

17.4 If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

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

17.6 Time is of the essence for the performance of this Easement Agreement.

END OF PAGE – SIGNATURE PAGE FOLLOWS

Witness the execution of this Easement Agreement as of the Effective Date first set forth above.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Name: _____
Title: _____

GRANTEE:

CITY OF LA CROSSE, a Wisconsin municipal corporation

By: _____
Name: _____
Title: _____

EXHIBIT "A"

Premises

EXHIBIT "B"

Memorandum of Easement

EXHIBIT "C-1"

C Documents

EXHIBIT "D"

Master Relocation Agreement

EXHIBIT G

Timeline

EXHIBIT G

Estimated Project Timeline

La Crosse, WI – BNSF Second Main Track Installation

- **Utilities**
 - November 7, 2014 – City approves BNSF utility relocation plans
 - November 10, to November 14, 2014 – BNSF Contractor confirms utility material procurement
 - November 18, to March 23, 2014 – BNSF Contractor relocates City utilities
- **Golf Course**
 - November 14 to December 19, 2014 – City relocates golf course tee boxes
 - December 22 to December 30, 2014 – City consolidates of golf course crossings to one crossing
 - December 22, 2014 to February 6, 2015 – BNSF Contractor constructs golf course underpass bridge beneath second main track while also working on grade for second main track in other project areas
 - February 6 to April 25, 2015 – BNSF Contractor constructs grade for second main track through golf course area while also working on grade for second main track in other project areas
 - April 25 to June 15, 2015 – BNSF Contractor finishes grade for second main track in other project areas
 - September 3 to November 25, 2015 – BNSF constructs track and signal
 - September 3 to October 1, 2015 – BNSF Contractor constructs golf course underpass bridge beneath existing main track
 - October 1 to October 30, 2015 – City completes golf cart path beneath underpass and removes remaining golf course crossing
- **Public Grade Crossings**
 - November 18, 2014 to May 19, 2015 – BNSF and BNSF Contractor construct second main track and crossing profile adjustments at Farnam, Cass, and Main Streets
 - May 22, 2015 to June 20, 2015 – City constructs additional improvements for quiet zones and sidewalks

EXHIBIT H

OCR Documents



Michael G. Gibson
Project Engineer
Chicago Division

BNSF Railway Company
3611 W. 38th St.
Chicago, IL 60632
C: 312-485-7073
O: 773-579-5092
michael.gibson3@bnsf.com

December 2, 2013

Jeff Plale, Commissioner
Office of the Commissioner of Railroads
PO Box 7854
Madison, WI 53707

Subject: BNSF Track Expansion Project – La Crosse, WI

Commissioner Plale,

BNSF is planning a double track project on the Aurora Sub-Division which runs through the City of La Crosse. Between Railroad Milepost 300.1 and 296.3, the proposed track will be located on the west side of the existing main line with 15 feet track centers. BNSF would like to petition the Wisconsin Office of the Commissioner of Railroads (OCR) to alter the public at grade crossings at Main Street, Cass Street, and Farnam Street. The following changes are to be made to these respective crossings:

Main Street, DOT #: 079889P:

- Install a new concrete crossing surface
- Remove 18 feet of the concrete median
- Protect existing overhead line running north and relocate overhead line running east
- Relocate existing cantilever signal

Cass Street, DOT #: 079887B:

- Install a new concrete crossing surface
- Remove 16 feet of the concrete median
- Relocate the existing active warning devices
- Protect existing overhead line running north and relocate overhead line running east
- Protect existing underground electric line
- Raise existing man hole with precast concrete rings

Farnam Street, DOT #: 079886U:

- Install a new concrete crossing surface
- Protect existing overhead line running north and relocate overhead line running east
- Relocate existing active warning device
- Remove 16 feet of the concrete median



Plans for these crossings' alterations are included in this letter as supplemental information (see plans).

BNSF expects to incur the following charges: track and grading work, removal and replacement of sidewalks and roadway pavement, relocation of the active warning devices to accommodate the second main line and relocation of any existing power poles assuming that any existing contracts don't provide for the owners to relocate their material. The City of La Crosse will be responsible for any modifications or improvements needed at the crossings to maintain compliance with the Federal Railroad Administration's Train Horn Rule. This includes any modifications or extensions of the medians at each crossing.

Tentatively the grading work for this project is slated to commence in 2014; any changes to the aforementioned crossings will occur in 2015.

Respectfully,

Michael Gibson
Project Engineer
Chicago Division

Cc: Lynn Leibfried, David Johnson, Kyle Williams, Douglas Perry, Thomas Schmidt, Ryan Ringelman

EXHIBIT I

Intentionally omitted

EXHIBIT J

Form of City Right of Entry

TEMPORARY OCCUPANCY PERMIT (CITY)

THIS TEMPORARY OCCUPANCY PERMIT ("License") is made to be effective _____, 20__ (the "Effective Date") by and between BNSF RAILWAY COMPANY, a Delaware corporation ("Licensor") and CITY OF LA CROSSE, WISCONSIN, a Wisconsin municipal corporation ("Licensee").

In consideration of the mutual covenants contained herein, the parties agree to the following:

GENERAL

1. **Grant of License.** 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 temporarily occupy, in strict accordance with the Final Plans and Specifications (as defined and described in that certain Master Relocation Agreement between Licensee and Licensor dated _____ ["Master Agreement"]), for the purposes specified in Section 4 below, Licensor's rail corridor at or near the City of La Crosse, County of La Crosse, State of Wisconsin, Line Segment _____, Mile Post _____ as shown on the attached Drawing No. _____, dated _____, attached hereto as **Exhibit "A"**, and incorporated herein by reference (the "Premises").
2. **Term.** This License shall commence on the Effective Date and, subject to prior termination as hereinafter described, shall continue until completion of the uses permitted in Section 4 below, but in no event later than the date that is the earliest to occur of: (i) the Completion of all Relocation Work (as those terms are defined and described in the Master Agreement), or (ii) _____, 20__.
3. **Existing Improvements.** 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.
4. **Use.** Licensee shall use Premises exclusively as a site for the City Relocation Work (as defined in the Master Agreement). Licensee shall not use the Premises for any other purpose.
5. **Alterations.** Except as set forth in this License, 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.

COMPENSATION

6. **License Fee.** This License is given in partial consideration for Licensee's agreement to enter into the Master Agreement. Therefore, no separate fee is being charged as compensation for this License.
7. **Costs and Expenses.**
 - 7.1 For the purpose of this License, "cost" or "costs" and "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.
 - 7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of Section 8 below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred. Licensee shall bear the cost of flagger services and other safety measures provided by Licensor, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this Section 7.
8. **Payment Terms.** All invoices are due forty-five (45) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within forty-five (45) days after the invoice date, then Licensee shall pay interest on such

unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2½%), or (ii) the maximum rate permitted by law.

LICENSOR'S RESERVED RIGHTS

9. **Reserved Rights of Use.** Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:
- 9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;
 - 9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or
 - 9.3 to use the Premises in any manner as 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 4 above.

LICENSEE'S OPERATIONS

10. **Use of the Premises.**
- 10.1 Licensee shall notify Licensor's Roadmaster at 1645 Oak Street, La Crosse, WI 54603, telephone (608) 781-7438, at least ten (10) business days prior to entering the Premises. In the event of emergency, Licensee shall notify Licensor of Licensee's entry onto the Premises at the telephone number above as soon as practicable and shall promptly thereafter follow up with written notice of such entry.
 - 10.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.
 - 10.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.
 - 10.4 Any contractors or subcontractors performing work on the Premises, or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.
 - 10.5 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 endanger or interfere with (i) the existence or use of present or future tracks, roadbeds or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. 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.

LIABILITY AND INSURANCE

11. **Liability and Indemnification.**
- 11.1 For purposes of this License: (a) "Indemnitees" means Licensor and Licensor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "Liabilities" means all claims, liabilities, fines, penalties, costs, damages, losses, liens,

causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "Licensee Parties" means Licensee or Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.

- 11.2 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):**
- 11.2.1 **LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**
- 11.2.2 **THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR**
- 11.2.3 **ANY ACT OR OMISSION OF ANY LICENSEE PARTY.**
- 11.3 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). LICENSEE WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS CAUSED BY OR CONTRIBUTED TO BY LICENSEE. NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**
- 11.4 **IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, 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.**
- 11.5 **THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE CAUSED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES (AS SUCH TERM IS DEFINED ABOVE IN SECTION 11.1).**
- 11.6 **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 and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments. Nothing in this License shall be construed to waive either parties' limitations of liability and/or immunities available to it pursuant to Wisconsin Statutes or other applicable federal or state law. The aggrieved party shall promptly notify the indemnifying party in writing**

of any Liabilities for which indemnification is sought (which written notification shall in any case be within one (1) year after the occurrence of the event giving rise to such Liabilities). The indemnifying party shall have sole control of, and the aggrieved party shall reasonably cooperate in all respects, in the defense of any Liabilities for which indemnification is sought. The aggrieved party shall not make any admission or disclosure or otherwise take any action with respect to the Liabilities for which indemnification is sought that would be prejudicial to the indemnifying party except as required by law. Licensor represents that, as of the Effective Date to the current actual knowledge of James A. Ball, Senior Manager - Real Estate of Licensor, Licensor has no notice or knowledge of any Liabilities asserted or threatened by any third party with respect to the matters contemplated by this License. Licensee represents that, as of the Effective Date to the current actual knowledge of _____(name), _____(title) of Licensee, Licensee has no notice or knowledge of any Liabilities asserted or threatened by any third party with respect to the matters contemplated by this License.

12. **Personal Property Risk of Loss.** 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, EXCEPT TO THE EXTENT CAUSED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE.

13. **Insurance.** Subject to the provisions of Section 13.6.3 below, Licensee shall, at its sole cost and expense, procure and maintain during the life of this License the following insurance coverage:

13.1 **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 Licensee. Coverage must be purchased on a post 2004 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 or language, which shall be indicated on the certificate of insurance:

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

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

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

13.2 **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.

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

- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor.
- Separation of insureds.

- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

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

- Licensee's statutory liability under the workers' compensation laws of the state(s) in which the services are to be performed. If optional under state laws, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

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

- Waiver of subrogation in favor of and acceptable to Licensor.

13.4 Railroad Protective Liability Insurance. This insurance shall name only Licensor as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the City Relocation Work. If further maintenance of the City Relocation Work 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 12 03 and include the following:

- Endorsed to include the Pollution Exclusion Amendment.
- 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 Licensor prior to performing any work or services under this License.
- Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control arising out of the acts or omissions of the contractor named on the Declarations."

If available and in lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$_____.

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

13.6 Other Requirements:

13.6.1 Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

13.6.2 Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor, per the indemnity provisions of this License. In addition, Licensee's insurers, through the terms of the policy or a policy endorsement, must waive their right of subrogation against Licensor for all claims and suits, and the certificate of insurance must reflect the waiver of subrogation endorsement. Licensee further waives its right of recovery, and its insurers must also waive their right of subrogation against Licensor for loss of Licensee's owned or leased property, or property under Licensee's care, custody, or control.

13.6.3 Prior to entering the Premises, 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 (or written evidence of its self-insurance program in accordance with Section 13.7). Licensee shall notify Licensor in writing at least 30 days prior to any cancellation, non-renewal, substitution, or material alteration. In the event of a claim or

lawsuit involving Licensor arising out of this License, Licensee will make available any required policy covering such claim or lawsuit.

- 13.6.4 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.
- 13.6.5 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 or termination of this License. Annually, Licensee agrees to provide evidence of such coverage as required hereunder.
- 13.6.6 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 License. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.
- 13.6.7 Not more frequently than once every five years, Licensor and Licensee may reasonably agree to modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- 13.6.8 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.
- 13.6.9 Failure to provide evidence as required by this Section 13 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.
- 13.6.10 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.
- 13.6.11 For purposes of this Section 13, Licensor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.
- 13.6.12 If the "Licensee" is subject to statute(s) limiting its liability, insured or otherwise, and/or limiting its ability to obtain or provide insurance as required by this License, those statutes shall apply.
- 13.7 **Self-Insurance.** Notwithstanding anything in this Section 13 to the contrary, Licensee is allowed to self-insure for the coverages required under this Section 13. Prior to commencing work, Licensee will furnish written evidence of its self-insurance program to Licensor. Licensee's self-insured retention is consistent with that of other municipal corporations of similar operations and size. Any 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 License, be covered by Licensee's insurance will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims. For the avoidance of doubt, requirements noted in subsections 13.6.1 - 13.6.12 of Section 13.6 above apply to all Licensee Parties (other than Licensee) required to obtain insurance under this License; provided, however, to the extent Licensee self-insures for the coverages required under this Section 13, Licensee shall not be required to comply with subsection 13.6.1, the second sentence of subsection 13.6.2, subsections 13.6.3 - 13.6.6 and subsection 13.6.9 of Section 13.6 above for so long as Licensee self-insures such coverages.

COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS

14. Compliance with Laws, Rules, and Regulations.

- 14.1 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 Licensee's use of the Premises.
- 14.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensor's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the website "www.BNSFcontractor.com" (the "Safety Orientation") within one (1) year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew the Safety Orientation annually.

15. Environmental.

- 15.1 Licensee shall strictly comply with all federal, state and local environmental Legal Requirements 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, and 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.
- 15.2 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 on Licensor's property. Licensee agrees periodically to furnish Licensor with proof, satisfactory to Licensor that Licensee is in compliance with the provisions of this Section 15.2.
- 15.3 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any known (i) release of hazardous substances on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) 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, from, or affecting 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.
- 15.4 If Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Premises which occurred or may occur during the term of this License, Licensor may require Licensee 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 that is caused by or contributed to by Licensee or a Licensee Party or is otherwise Licensee's responsibility under Section 11.2.
- 15.5 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, property, or the environment 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.

DISCALIMER OF WARRANTIES

16. No Warranties.

- 16.1 **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.

- 16.2 **LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE CITY RELOCATION WORK WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.**
17. **Disclaimer of Warranty for Quiet Enjoyment. LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**
18. **Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damage Licensee sustains in connection with the eviction.**

DEFAULT, TERMINATION, AND SURRENDER

19. **Default and Termination. In addition to and not in limitation of Licensor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of Section 13, the following events are also deemed to be events of default pursuant to which Licensor has the right to terminate as set forth below:**
- 19.1 **If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Licensor, or in case of any assignment or transfer of this License in violation of Section 21 below, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Licensor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in Section 13.**
- 19.2 **Should Licensee not comply fully with the obligations of Section 15 regarding the handling or transporting of hazardous waste or hazardous material, notwithstanding anything contained in any other provision of this License, Licensor may, at its option, terminate this License by serving five (5) days' notice of termination upon Licensee.**
- 19.3 **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 19 shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.**
- 19.4 **Termination of this License shall not release either party hereto from any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.**
20. **Surrender of the Premises.**
- 20.1 **On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:**
- 20.1.1 **remove all of its equipment from the Premises;**
- 20.1.2 **report and restore any damage to the Premises or Licensor's other property arising from, growing out of, or connected with Licensee's use of the Premises;**
- 20.1.3 **remedy any unsafe conditions on the Premises created or aggravated by Licensee; and**

- 20.1.4 leave the Premises in the condition which existed as of the Effective Date of this License.
- 20.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensor or if Licensee fails to complete its obligations under **Section 20.1** above (the "**Restoration Obligations**"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee 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, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.
- 20.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licensor may, at its option, either: (i) complete such Restoration Obligations, and Licensee will reimburse Licensor for all costs related thereto, (ii) specifically enforce Licensee's obligation to restore, and/or (iii) pursue any remedy at law or in equity against Licensee for failure to so restore.

MISCELLANEOUS

21. **Successors and Assigns.** All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.
21. **Assignment.**
- 21.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Licensor, which consent may not be unreasonably withheld or delayed by Licensor. Any attempted assignment by Licensee in violation of this **Section 21** shall be a breach of this License and, in addition, shall be voidable by Licensor in its sole and absolute discretion.
- 21.2 For purposes of this **Section 21**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least fifty percent (50%) of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. **THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.**
- 21.3 Notwithstanding the provisions of **Section 21.1** above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "**Purported Assignment**") to another party (a "**Purported Transferee**"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation to comply with the provisions of **Section 13** above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Licensor for all 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) a Purported Assignment.

21.4 The provisions of this Section 21 shall survive the expiration or earlier termination of this License.

22. **Notices.** Any notice, invoice, or other writing 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 Brokerage, Inc.
4300 Amon Carter Blvd., Suite 100
Fort Worth, TX 76155
Attn: Permits/Licenses

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

If to Licensee: City of La Crosse
400 La Crosse St.
La Crosse, WI 54601-3374
Attn: City Clerk

With a copy to: City of La Crosse
400 La Crosse St.
La Crosse, WI 54601
Attn: Director of Public Works

23. **Survival.** 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 Premises are restored to its condition as of the Effective Date.
24. **Recordation.** It is understood that this License is a public record subject to disclosure under the Wisconsin Public Records Law.
25. **Applicable Law.** All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Wisconsin without regard to conflicts of law provisions. To the fullest extent permitted by law any and all disputes arising under or in connection with this License or related to any subject matter which is the subject of this License, whether sounding in contract or in tort, shall be instituted and litigated in United States District Court for the Western District of Wisconsin; provided, however, that if jurisdiction is not proper in such federal district court, such disputes shall be instituted and litigated in the courts of the State of Wisconsin, located in La Crosse County, Wisconsin. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive. Each party hereto hereby irrevocably consents to the aforementioned choice of venue in any such dispute and irrevocably waives, to the fullest extent permitted by law, any objection that it may now have or hereafter have to the laying of venue in such court and that any such dispute which is brought in such court has been brought in an inconvenient forum.
26. **Severability.** 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.
27. **Integration.** This License, together with the Master Agreement, 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.

28. Joint and Several Liability. If 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.
29. Waiver. 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.
30. Interpretation.
- 30.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.
- 30.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.
32. Counterparts. This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged via email or electronic facsimile machines and any email or electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.
33. Licensor's Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

END OF PAGE – SIGNATURE PAGE FOLLOWS

This License has been duly executed by the parties hereto to be effective as of the Effective Date first set forth above.

LICENSOR:

BNSF Railway Company, a Delaware corporation

**By: Jones Lang LaSalle Brokerage, Inc.
4300 Amon Carter Blvd., Suite 100
Fort Worth, TX 76155**

By: _____

Name: _____

Title: _____

Date: _____

LICENSEE:

City of La Crosse, Wisconsin, a Wisconsin municipal corporation

By: _____

Name: _____

Title: _____

Date: _____