

## EASEMENT AGREEMENT

### FOR CONSTRUCTION OF A PEDESTRIAN OVERPASS & RECREATIONAL TRAIL (Overpass Agreement)

THIS EASEMENT AGREEMENT FOR CONSTRUCTING A PEDESTRIAN OVERPASS & RECREATIONAL TRAIL ("Easement Agreement") is made and entered into as of the 24 day of March 2015 ("Effective Date"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("Grantor"), and the CITY OF LA CROSSE, a Wisconsin municipal corporation ("Grantee").

- A. Grantor owns or controls certain real property situated at or near the vicinity of La Crosse, County of La Crosse, State of Wisconsin, at Mile Post 302.19 & Mile Post 301.54 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 Overpass Agreement dated as of March 17, 2014 concerning improvements on or near the Premises (the "Overpass Agreement").
- C. Grantee has requested that Grantor grant to Grantee a permanent and a temporary 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 and in the Overpass Agreement incorporated herein as if fully set forth in this instrument which terms shall be in full force and effect for purposes of this Easement even if the Overpass Agreement is, for whatever reason, no longer in effect.

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 for the purposes set forth in the Overpass Agreement. Any improvements to be constructed in connection with the Easement Purpose are referred to herein as "Improvements" and shall be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the Overpass Agreement.
- 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 with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) and zoning laws (collectively, "Laws"). Grantor may not make any alterations or improvements or perform any maintenance or repair activities within the Premises except in accordance with the terms and conditions of the Overpass Agreement.
- 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.

**Section 2 Term of Easement.** The term of the Permanent Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual. The term of the Temporary Easement, unless sooner terminated under provisions of this Easement Agreement, shall expire on the date that is one year after the Effective Date.

**Section 3 Compensation.** Grantee shall pay Grantor, prior to the Effective Date, the sum of One Hundred Three Thousand Five Hundred and No/100 Dollars (\$103,500.00) as compensation for the grant of this Easement.

**Section 4 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 5 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 6 Improvements.** 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. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Improvements shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing. 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 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. The Grantee agrees to keep the above-described 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 said premises, said work of cutting and removal to be done at such times and with such frequency as to comply with Grantee and local laws and regulations and abate any and all hazard of fire.

**Section 7 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.

**Section 8 Environmental.**

8.1 **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.

8.2 **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.

8.3 **Remediation of Release.** In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws 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. If during the construction or subsequent maintenance of the Improvements, soils or other materials considered to be environmentally contaminated that is caused by or contributed to by Grantee or a Grantee Party or is otherwise Grantee's responsibility are exposed, Grantee will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.

8.4 **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.

8.5 Evidence of Compliance. Grantee agrees periodically to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this **Section 8**.

## **Section 9 Default and Termination.**

9.1 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.

9.2 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 the 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 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.

9.3 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 10**.

9.4 Non-exclusive Remedies. The remedies set forth in this **Section 9** shall be in addition to, and not in limitation of, any other remedies that Grantor may have under the Overpass Agreement, at law or in equity.

## **Section 10 Surrender of Premises.**

10.1 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:

- (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.

**10.2 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 11 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 7. 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 10 or any other section of this Easement Agreement.

**Section 12 Intentionally deleted.**

**Section 13 Notices.** Any notice required or permitted to be given hereunder by one party to the other shall be delivered in the manner set forth in the Overpass Agreement. Notices to Grantor under this Easement shall be delivered to the following address: BNSF Railway Company, Real Estate Department, 2500 Lou Menk Drive, Ft. Worth, TX 76131, Attn: Permits, or such other address as Grantor may from time to time direct by written notice to Grantee. Notices to Grantee under this Easement shall be delivered to the following address: City of La Crosse, Attn: City Clerk, 400 La Crosse Street, La Crosse, WI 54601, or such other address as Grantee may from time to time direct by written notice to Grantee.

**Section 14 Recordation.** It is understood and agreed that this Easement Agreement is a public record subject to disclosure under the Wisconsin Public Records Law; however, the Easement Agreement shall not be placed on public record recorded in the public real property records of La Crosse County. Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as **Exhibit "B"** (the "Memorandum of Easement") subject to changes required, if any, to conform such form to local recording requirements. 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 90 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 15 Miscellaneous.**

**15.1** All questions concerning the interpretation or application of provisions of this Easement Agreement 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 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 laws, 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.

**15.2** 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.

**15.3 Intentionally Deleted.**

**15.4 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.**

**15.5 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.**

**15.6 Time is of the essence for the performance of this Easement Agreement.**

**Signature page follows**

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

**GRANTOR:**

BNSF RAILWAY COMPANY,  
a Delaware corporation

By:   
Name: KURT GERINGER  
Title: General Director Real Estate

**GRANTEE:**

CITY OF LA CROSSE

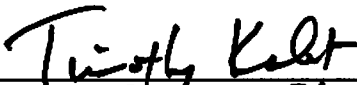
By:   
Name: MAYOR TIMOTHY KUBIT  
Title: MAYOR

EXHIBIT "A"

Premises

RECORDED

*[Faint, illegible text]*

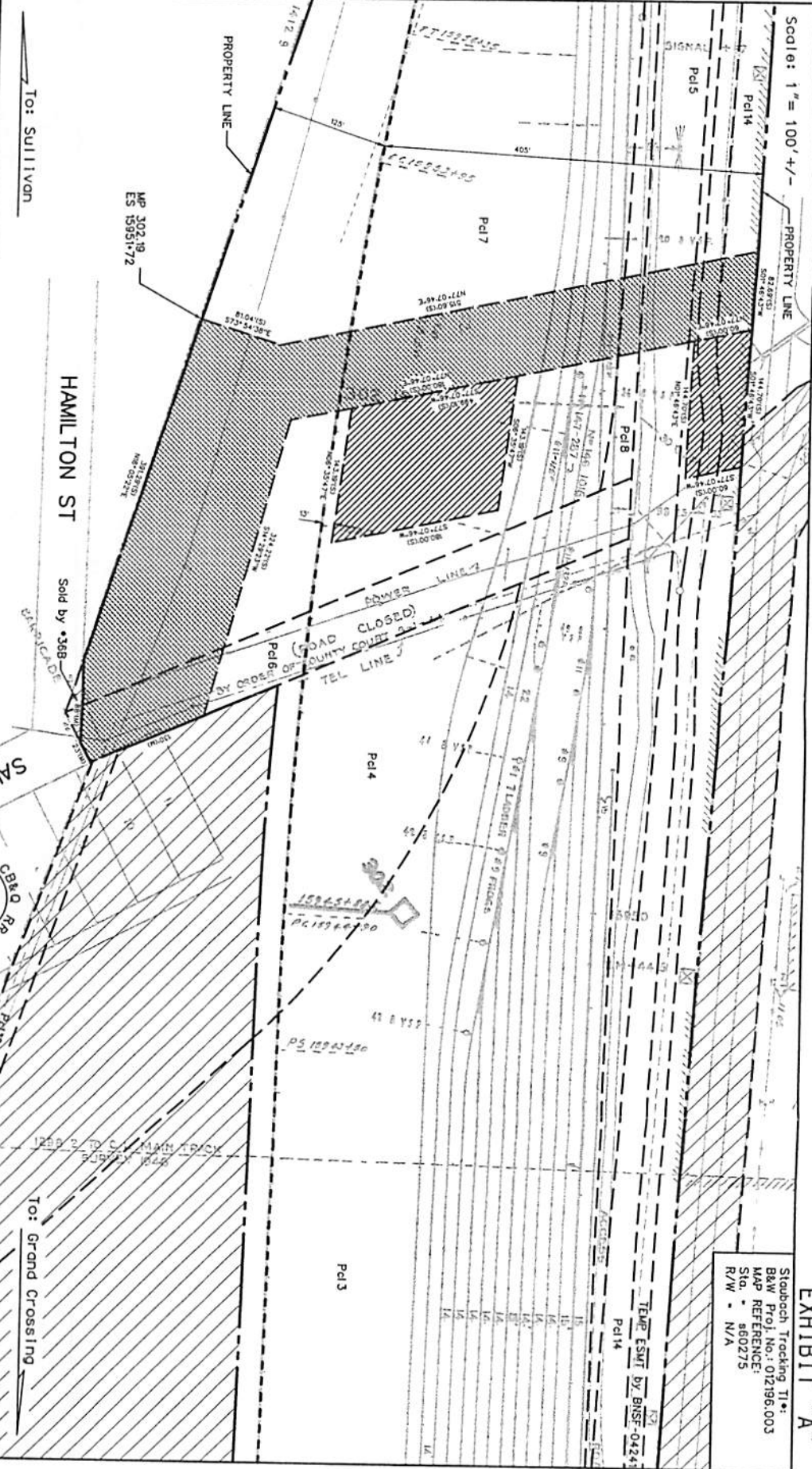


This map used by BNSF RAILWAY COMPANY in the ordinary course of business, but it is subject to audit and should be used only with the expressed understanding the BNSF make no representations whatsoever about the quality, accuracy, errors or omissions relating to this map.

Scale: 1" = 100' +/-

EXHIBIT "A"

Staubach Tracking T1\*  
 B&W Proj. No.: 012196,003  
 MAP REFERENCE:  
 Sta. : 860275  
 R/W : N/A



To: City of La Crosse  
 At: La Crosse County  
 Wisconsin

Legend:  
 Permanent Easement Area  
 Temporary Easement Area



MEASUREMENTS BASED ON PROVIDED SURVEYS  
 (S) MEASUREMENTS TAKEN OFF SURVEY  
 (M) MEASUREMENT

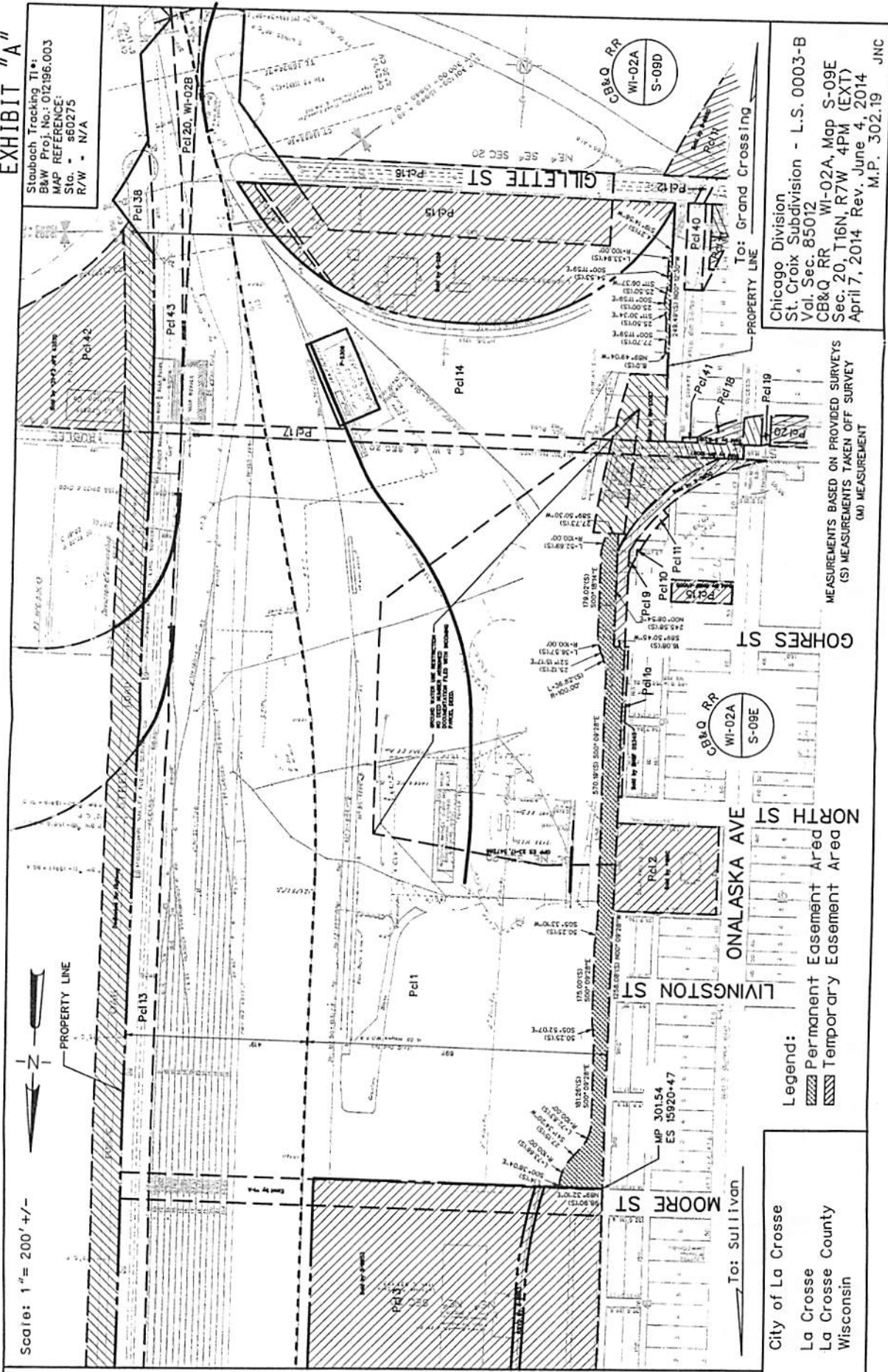
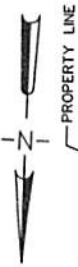
To: Grand Crossing

Chicago Division  
 St. Croix Subdivision - L.S. 0003-B  
 Vol. Sec. 85012  
 CB&Q RR WI-02A, Mpp S-09E  
 Sec. 20, T16N, R7W, 4PM (EXT)  
 April 7, 2014 Rev. June 4, 2014  
 M.P. 302.19 JNC

**EXHIBIT "A"**

Staubach Tracking TI:  
 B&W Proj. No.: 012196.003  
 MAP REFERENCE:  
 Sta. - 860275  
 R/W - N/A

Scale: 1" = 200' +/-



Chicago Division  
 St. Croix Subdivision - L.S. 0003-B  
 Vol. Sec. 85012  
 CB&Q RR WI-02A, Map S-09E  
 Sec. 20, T16N, R7W 4PM (EXT)  
 April 7, 2014 Rev. June 4, 2014  
 M.P. 302.19 JNC

MEASUREMENTS BASED ON PROVIDED SURVEYS  
 (S) MEASUREMENTS TAKEN OFF SURVEY  
 (M) MEASUREMENT

**Legend:**  
 Permanent Easement Area  
 Temporary Easement Area

To: City of La Crosse  
 At: La Crosse  
 La Crosse County  
 Wisconsin

To: Sullivan

MP 301.54  
 ES 15920+47

This map used by BNSF RAILWAY COMPANY in the ordinary course of business, but it is subject to audit and should be used only with the expressed understanding the BNSF make no representations whatsoever about the quality, accuracy, errors or omissions relating to this map.