

MASTER UTILITY RELOCATION AGREEMENT

THIS UTILITY RELOCATION AGREEMENT (this "Agreement") is entered into and effective as of this _____ day of _____, 2014 (the "Effective Date"), by and between the **CITY OF LA CROSSE, WISCONSIN** (the "City"), and **BNSF RAILWAY COMPANY**, a Delaware corporation ("BNSF").

RECITALS

- A. BNSF plans to construct approximately four miles of second main track on the Aurora and St. Croix Subdivisions passing through La Crosse, Wisconsin between BNSF Control Points Graf and North La Crosse (the "Project").
- B. BNSF has notified the City that certain of its utility facilities and appurtenances (the "Utilities") are in locational conflict with the Project and has requested that the City relocate the Utilities in order to accommodate the Project.
- C. With respect to certain Utilities under permits obligating the City to undertake relocations and other Utilities without existing permits between the City and BNSF and/or its predecessors, BNSF desires to cause the design of such relocations to occur at its cost.
- D. Due to budgetary and other resource restraints, the City has been unable to initiate design of relocation of the Utilities; therefore, BNSF has requested that the City allow BNSF to undertake the design of the relocation of the Utilities (the "Work") as necessary to accommodate the Project.
- E. The parties desire to enter into this Agreement to outline their respective obligations regarding the cost and timely execution of the Work.

NOW, THEREFORE, for the mutual covenants contained herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1) BNSF Obligations

- a) BNSF shall fund one hundred percent (100%) of the cost of the Work required by the Project and initiated after the Effective Date. The execution of this Agreement shall in no way impair preexisting agreements between the parties as to Work commenced prior to the Effective Date. Funding obligations assumed by BNSF under this Section 1(a) shall also include funding for Work that the City is obligated to fund under the terms of existing utility permits between the parties as well as Utilities encroaching on BNSF property without permits. However, voluntary payment by BNSF for Work which it otherwise has no contractual payment

obligation shall in no way be construed as a waiver of any of its other rights with respect to the City under existing and future utility permits.

- b) For all Work funded by BNSF in accordance with subsection (a) above, BNSF shall be free to use a consultant of its choosing.

2) City Obligations

- a) The City agrees to cooperate in all respects with BNSF throughout the course of the Project and otherwise refrain from causing any delay in the execution of Work whatsoever. The City further agrees to grant BNSF any required construction approvals and acquire any third party approvals required for the Work under this Agreement.
- b) The City shall expeditiously review and approve all utility designs submitted by BNSF. The City further agrees to provide a one week turnaround time for review and approval of progress utility designs submitted to it by BNSF. BNSF will submit 30%, 60%, and 90% progress plans and specifications for City review prior to finalizing bid documents for the Work. In the event that the City has not completed its review and approval of any utility design within one week of its submission by BNSF, such design will be deemed approved by the City.
- c) No later than six (6) months following the completion of the bid documents for the Work, the City shall execute BNSF's standard Utility Crossing Agreement for (1) all Utilities to be relocated on BNSF property for which Utility Crossing Agreements exist and (2) all Utilities present and existing on BNSF property for which no Utility Crossing Agreements exist. Copies of BNSF's standard Utility Crossing Agreements, the forms of which depend on the particular type of Utility, are included as Exhibit A, which are attached hereto and incorporated by this reference.
- d) For Utilities to be relocated outside of BNSF's right of way, the City shall be primarily responsible for acquiring any and all property rights which the City needs but does not currently hold. In the event that the acquisition of property rights under this subsection threatens to delay the Project for any reason, the City shall exercise its power of eminent domain in order to acquire necessary property rights.

3) Terms and Conditions of Existing Permits Govern

- a) To the extent not inconsistent with this Agreement, the terms and conditions of any and all existing utility permits between the parties shall continue in full force and effect. The execution of this Agreement by the parties will in no way, shape, or form alter or impair the current rights and obligations of the parties as set forth in those instruments, except for those changes made herein.
- b) For Utilities existing on BNSF property without Utility Crossing Agreements prior to the execution of this Agreement, BNSF hereby

agrees that the Utility Crossing Agreements to be executed by the City shall in no way, shape, or form obligate the City to pay to BNSF any amount as a fee for the right to have such Utilities located on BNSF property.

4) Release and Indemnification

a) *Personal Injury and Property Damage Claims*

- i. The City agrees to release, indemnify, defend, and hold harmless BNSF, its officers, employees, agents, and contractors for all losses, damages, expenses, injuries, or death to the City, its employees, agents, and contractors, arising in any manner from the performance of this agreement, except to the extent of BNSF's gross negligence or intentional misconduct.
- ii. The City further agrees to release, indemnify, defend, and hold harmless BNSF, its officers, employees, agents, and contractors for all losses, damages, expenses, injuries, or death to any person, including BNSF, which arise in any manner from the construction, maintenance, relocation, use, state of repair, or presence of the Utilities.

b) *Utility Design and Utility Interruption Claims*

- i. The City agrees to release, indemnify, defend, and hold harmless BNSF, its officers, employees, agents, and contractors for any and all losses, damages, expenses, injuries, or death to any person arising from or relating to (i) the design of and/or function of Utilities undertaken by BNSF and/or its agents and (ii) service interruptions in any Utility, except to the extent caused by BNSF's gross negligence or misconduct.

5) Term and Termination; Survival

- a) This agreement shall remain in effect until the completion of the Project.
- b) The obligations set forth in Section 4 (release and indemnification) shall survive any termination of this agreement.

6) General

- a) *Counterparts.* This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one agreement, but in making proof hereof it shall only be necessary to produce one such counterpart.
- b) *Assignments.*
 - i. The City may not assign its rights and obligations under this Agreement without the prior written consent of BNSF. All assignments made without the written consent of BNSF are VOID.

- ii. BNSF may assign its rights or obligations under this agreement without the City's consent, but BNSF shall provide notice of such assignment to the City.
- c) *Modification.* This Agreement may be modified or amended only by a writing signed by each party hereto.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized representative.

THE CITY OF LA CROSSE, WISCONSIN

BNSF RAILWAY COMPANY

(Signature)

(Signature)

(Name Printed)

(Name Printed)

(Title)

(Title)