



## LOWER PLATTE SOUTH natural resources district

3125 Portia Street | P.O. Box 83581 • Lincoln, Nebraska 68501-3581  
P: 402.476.2729 • F: 402.476.6454 | www.lpsnrd.org

### MEMORANDUM

Date: September 16, 2020  
To: Lower Platte South Natural Resources District Board of Directors  
From: Ariana Kennedy, Resources Conservationist *AK*  
Subject: Minutes for Recreation, Forestry & Wildlife Subcommittee Meeting

On Tuesday, September 15, 2020, the Recreation, Forestry and Wildlife subcommittee met via GoToMeeting at 4:15 p.m. Subcommittee members present were; Anthony Schutz – Chair, Gary Aldridge, Deb Eagan, Luke Peterson, Mark Spangler, Ray Stevens and Sarah Wilson. Others present were Larry Ruth, Paul Zillig, Dan Schulz, and Ariana Kennedy. There were two agenda items to consider.

First, on the agenda was Easement for Bicycle Path/Pedestrian Walkway for Rosa Parks Way Trail project. This trail project is located near 1<sup>st</sup> and J Streets and will traverse under Burlington Northern Santa Fe (BNSF) railroad tracks (map of project area attached to Memorandum). This project is an 80/20 cost share between Federal Highway Administration (FHWA) and Lower Platte South Natural Resources District (LPSNRD). Nebraska Department of Transportation (NDOT) is administering the project. Easement requires signature and approval by BNSF, LPSNRD and NDOT prior to construction. The Easement contains various BNSF fees; \$14,850 easement fee for use of the premises, \$11,327.13 for Railroad Protective Liability Insurance, and \$2,000 for processing fee of Easement. These fees will likely be eligible for 80% cost share from FHWA, LPSNRD would cover the remaining 20%. Easement is attached to Memorandum.

**It was moved by Stevens and seconded by Eagan to recommend the Lower Platte South NRD Board of Directors approve the General Manager to sign the Easement for Bicycle Path/Pedestrian Walkway between Burlington Northern Santa Fe (BNSF), Lower Platte South Natural Resources District and Nebraska Department of Transportation for the Rosa Parks Way Trail project near 1<sup>st</sup> and J Streets; and pay BNSF an easement fee for use of premises in the amount of \$14,850.00, pay BNSF for Railroad Protective Liability Insurance in the amount of \$11,327.13, and pay BNSF for the processing fee of the Easement in the amount of \$2,000.00.**

Motion passed; 6 voting yes, 1 not voting.

Second, on the agenda was the Memorandum of Easement for the Rosa Parks Way Trail project. This Easement is between LPSNRD and BNSF and will be the document recorded with the Lancaster County Assessor/Register of Deeds. Exhibit "A" will be attached to this Easement when recorded. Easement is attached to Memorandum.

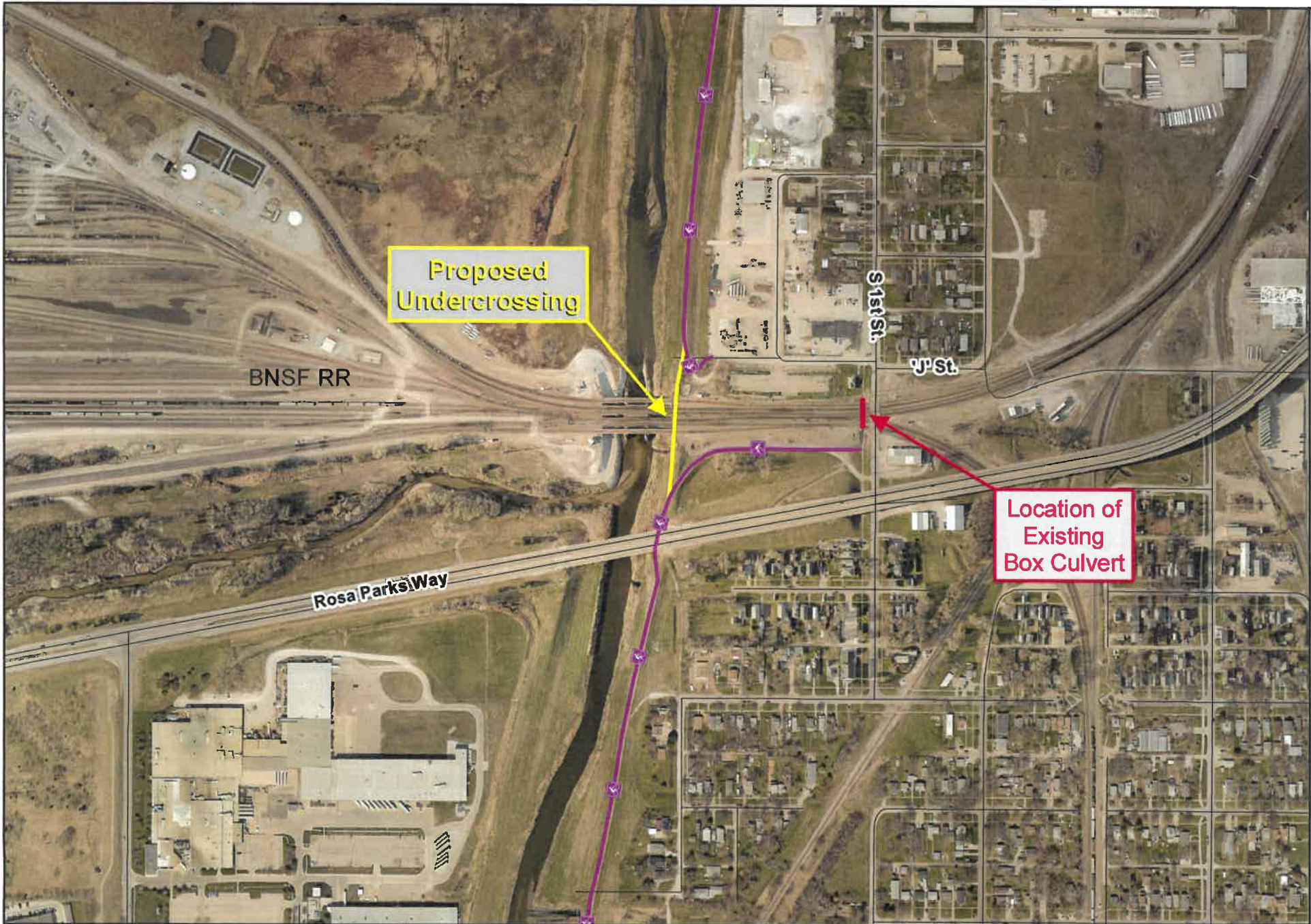
**It was moved by Eagan and seconded by Stevens to recommend the Lower Platte South NRD Board of Directors approve the General Manager to sign the Memorandum of Easement between Burlington Northern Santa Fe and the Lower Platte South Natural Resources District for the Rosa Parks Way Trail project near 1<sup>st</sup> and J Streets.**

Motion passed; 6 voting yes, 1 not voting.

Meeting adjourned at 5:13 p.m.

PC: RF&W subcommittee file

Attachments



Proposed Undercrossing

BNSF RR

S 1st St

J St

Rosa Parks Way

Location of Existing Box Culvert

**Salt Creek Levee Trails**

- Existing Trails
- Proposed Trails



**Lower Platte South NRD**

Updated: September 2020  
By: Shaula D. Ross



## EASEMENT FOR BICYCLE PATH/PEDESTRIAN WALKWAY

THIS EASEMENT FOR BICYCLE PATH/PEDESTRIAN WALKWAY ("**Easement**"), is made to be effective \_\_\_\_\_, 20\_\_ (the "**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Grantor**"), the Lower Platte South, Nebraska Natural Resources District (NRD), hereinafter referred to as the "grantee", and for federal aid funding purposes only, the State of Nebraska, Department of Transportation, hereinafter referred to as the "State".

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

### GENERAL

1. ~~Grant of Easement.~~ Grantor hereby grants Grantee a non-exclusive easement, 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 Grantor as part of Grantee's application process (the "**Drawings and Specifications**"), a pedestrian walkway/ bicycle path (the "**Trail**") across and along Grantor's rail corridor and underneath the BNSF bridge structures near the 1<sup>st</sup> and J Street intersection, Lincoln, NE; Line Segment 4, Mile Post 0.94, relevant DOT No. 977803G, County of Lancaster, State of Nebraska, as shown on the attached Drawing No. ENH-55(164), dated 9/14/2017, attached hereto as **Exhibit "A"** and incorporated herein by reference (the "**Premises**"). The Grantee 's contractor will construct a 10 foot wide, 900 foot long concrete trail connecting the two ends of the Salt Creek Levee Trail north and south of the Grantee's property and construct a 145 foot long protective structure beneath the BNSF bridge structures. All design plans and construction submittals must meet the requirements set forth in the UP Railroad-BNSF Railway Guidelines for Railroad Grade Separation Projects.
2. Term. This Easement shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.
3. ~~Existing Improvements.~~ Grantee shall not disturb any improvements of Grantor or Grantor's existing lessees, Grantees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.
4. ~~Use of the Premises.~~ Grantee shall use the Premises solely for construction, maintenance and use of the Trail in accordance with the Drawings and Specifications. Grantee shall not use the Premises for any other purpose.
5. ~~Alterations.~~ Except as set forth in this Easement, Grantee 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 Grantor's prior written consent.

### COMPENSATION

6. ~~Easement Fee.~~ Grantee shall pay Grantor, prior to the Effective Date, the sum of Fourteen Thousand Eight Hundred Fifty Dollars and No/100 Dollars (\$14,850.00) as compensation for the use of the Premises.
7. ~~Costs and Expenses.~~
  - 7.1 For the purpose of this Easement, "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 Grantee agrees to reimburse Grantor (pursuant to the terms of **Section 8** below) for all costs and expenses incurred by Grantor in connection with Grantee's use of the Premises, or the presence, construction and maintenance of the Trail including but not limited to the furnishing of Grantor's flaggers and any vehicle rental costs incurred. Grantee shall bear the cost of flagger services and other safety measures provided by Grantor, when deemed necessary by Grantor'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 thirty (30) days after the date of invoice. If Grantee fails to pay any monies due to Grantor within thirty (30) days after the invoice date, then Grantee 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.

#### **GRANTOR'S RESERVED RIGHTS**

9. Reserved Rights of Use. Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:
- 9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Trail) 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 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 purpose specified in **Section 4** above.
10. Right to Require Relocation. If at any time during the term of this Easement, Grantor desires the use of its rail corridor in such a manner as would, in Grantor's reasonable opinion, be interfered with by the Trail, Grantee shall, at its sole expense, within thirty (30) days after receiving written notice from Grantor to such effect, make such changes in the Trail as in the sole discretion of Grantor may be necessary to avoid interference with the proposed use of Grantor's rail corridor, including, without limitation, the relocation of Trail or the construction of a new Trail to replace the Trail. Notwithstanding the foregoing, Grantee agrees to make all emergency changes and minor adjustments, as determined by Grantor in its sole discretion, to the Trail promptly upon Grantor's request.

#### **GRANTEE'S OPERATIONS**

11. Construction and Maintenance of the Trail.
- 11.1 Grantee shall notify Grantor's Roadmaster, Kenneth "Barry" Keys at telephone (402) 458-7538, at least ten (10) business days prior to entry onto the Premises for construction of the Trail and prior to entering the Premises for any subsequent maintenance thereon. In the event of emergency, Grantee shall notify Grantor of Grantee'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 Grantee's on-site supervisors shall retain/maintain a fully executed copy of this Easement at all times while on the Premises.
  - 11.3 While on the Premises, Grantee shall use only public roadways to cross from one side of Grantor's tracks to the other.
  - 11.4 Any contractors or subcontractors performing work on the Trail or entering the Premises on behalf of Grantee shall be deemed servants and agents of Grantee for purposes of this Easement.
  - 11.5 Under no conditions shall Grantee 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 Grantee has obtained prior written approval from Grantor. Grantee 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 Grantor, (ii) the safe operation and

activities of Grantor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Grantor's personnel due to any hazardous condition, Grantee shall immediately do so. Notwithstanding the foregoing right of Grantor, the parties agree that Grantor has no duty or obligation to monitor Grantee's use of the Premises to determine the safe nature thereof, it being solely Grantee's responsibility to ensure that Grantee's use of the Premises is safe. Neither the exercise nor the failure by Grantor to exercise any rights granted in this Section will alter the liability allocation provided by this Easement.

11.6 Grantee shall, at its sole cost and expense, construct and maintain the Trail in such a manner and of such material that the Trail will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Grantor, (ii) the safe operation and activities of Grantor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Trail 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 Trail or the performance of any subsequent maintenance thereon, Grantee shall, at Grantee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Grantor in writing. On or before expiration or termination of this Easement for any reason, Grantee shall, at its sole cost and expense, surrender the Premises to Grantor pursuant to the terms and conditions set forth in **Section 24** hereof.

11.7 Grantor may direct one or more of its field engineers to observe or inspect the construction and/or maintenance of the Trail 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 Trail by Grantor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Grantee shall immediately do so. Notwithstanding the foregoing right of Grantor, the parties agree that Grantor has no duty or obligation to observe or inspect, or to halt work on, the Trail, it being solely Grantee's responsibility to ensure that the Trail 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 Grantor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this Easement. If at any time Grantee shall, in the sole judgment of Grantor, fail to properly perform its obligations under this **Section 11**, Grantor may, at its option and at Grantee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Grantee shall promptly reimburse Grantor for all costs and expenses of such work, pursuant to the terms of **Section 8**. Grantor's failure to perform any obligations of Grantee shall not alter the liability allocation hereunder.

## 12. Boring and Excavation.

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

12.2 For all bores greater than twenty-six (26) inch diameter and at a depth less than ten (10) feet below bottom of rail, a soil investigation must be performed by Grantee and 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 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 shall, at Grantee'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 Grantee shall be safely covered and secured at all times when Grantee 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 Grantee 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 Grantor's property for more than ten (10) days, but must be properly disposed of by Grantee in accordance with applicable Legal Requirements.

## **LIABILITY AND INSURANCE**

### **13. Liability and Indemnification.**

13.1 For purposes of this Easement: (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, Grantees, 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, GRANTEE 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 **THIS EASEMENT, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**

13.2.2 **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS EASEMENT,**

13.2.3 **GRANTEE'S OCCUPATION AND USE OF THE PREMISES,**

13.2.4 **THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY GRANTEE, OR**

13.2.5 **ANY ACT OR OMISSION OF ANY GRANTEE PARTY.**

13.3 **TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTEE NOW AND FOREVER WAIVES ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS EASEMENT, 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. NOTHING IN THIS EASEMENT IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS EASEMENT SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS EASEMENT 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. IN NO EVENT AS BETWEEN GRANTOR AND GRANTEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS EASEMENT SHALL GRANTOR BE RESPONSIBLE TO GRANTEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**

13.4 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 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 GRANTEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.

13.6 Upon written notice from Grantor, Grantee 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 Easement for which Grantee has an obligation to assume liability for and/or save and hold harmless any Indemnatee. 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.

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 GRANTEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.

15. Insurance. Grantee shall, at its sole cost and expense, procure and maintain during the life of this Easement 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 \$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 Grantee. Coverage must be purchased on a post 1998 ISO occurrence or equivalent and include coverage for, but not limited to, the following:

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

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

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to 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 with regard to the work being performed under this Easement.

- 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
  - Bodily injury and property damage
  - Any and all vehicles owned, used or hired
  - 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.

- 15.3 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.

- 15.4 Railroad Protective Liability Insurance. The Grantee or Grantee's Contractor shall obtain obtain Railroad Protective Liability Insurance. 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 coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Trail. **THE CONSTRUCTION OF THE TRAIL SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Trail is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:
- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
  - Endorsed to include the Limited Seepage and Pollution Endorsement.
  - Endorsed to include Evacuation Expense Coverage Endorsement.
  - No other endorsements restricting coverage may be added.
  - The original policy must be provided to the Grantor prior to performing any work or services under this Easement

In lieu of providing a Railroad Protective Liability Policy, Grantee may participate in Grantor's Blanket Railroad Protective Liability Insurance Policy available to Grantee or its contractor. The limits of coverage are the same as above. The cost is \$\_\_\_\_\_.

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

15.6 Other Requirements:

- 15.6.1 Where allowable by law all policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.
- 15.6.2 Grantee agrees to waive its right of recovery against Grantor for all claims and suits against Grantor. In addition, its insurers, through policy endorsement, waive their right of subrogation against Grantor for all claims and suits. The certificate of insurance must reflect waiver of subrogation endorsement. Grantee further waives its right of recovery, and its insurers also waive their right of subrogation against Grantor for loss of its owned or leased property or property under its care, custody, or control.
- 15.6.3 Grantee is not allowed to self-insure without the prior written consent of Grantor. If granted by Grantor, any deductible, 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, be covered by Grantee's insurance will be covered as if Grantee elected not to include a deductible, self-insured retention, or other financial responsibility for claims.

- 15.6.4 Prior to commencing the 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. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Grantor in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. In the event of a claim or lawsuit involving Railroad arising out of this Easement, Grantee will make available any required policy covering such claim or lawsuit.
- 15.6.5 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.
- 15.6.6 If coverage is purchased on a "claims made" basis, Grantee hereby agrees to maintain coverage in force for a minimum of three years after expiration or termination of this Easement. Annually, Grantee agrees to provide evidence of such coverage as required hereunder.
- 15.6.7 Grantee represents that this Easement 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. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.
- 15.6.8 Not more frequently than once every five (5) years, Grantor 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.
- 15.6.9 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.
- 15.6.10 Failure to provide evidence as required by this **Section 15** shall entitle, but not require, Grantor to terminate this Easement immediately. Acceptance of a certificate that does not comply with this Section shall not operate as a waiver of Grantee's obligations hereunder.
- 15.6.11 The fact that insurance (including, without limitation, self-insurance) 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. Damages recoverable by Grantor shall not be limited by the amount of the required insurance coverage.
- 15.6.12 These insurance provisions are intended to be a separate and distinct obligation on the part of the Grantee. Therefore, these provisions shall be enforceable and Grantee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable.
- 15.6.13 For purposes of this **Section 15**, Grantor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

## **COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS**

### 16. Compliance with Laws, Rules, and Regulations.

- 16.1 Grantee 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 Trail and the use of the Premises.

- 16.2 Prior to entering the Premises, Grantee shall and shall cause its contractor(s) to comply with all Grantor's applicable safety rules and regulations. Grantee 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](http://www.BNSFcontractor.com)" (the "**Safety Orientation**") within one (1) year prior to entering upon the Premises. Additionally, Grantee must ensure that each and every employee of Grantee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Grantee must renew the Safety Orientation annually.
- 16.3 Grantee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of way, easements, easements 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, easements, 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 Grantee to construct, maintain, own and operate the Trail and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.
- 16.4 Grantee 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 Easement 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 Easement, Grantee 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 Easement.
- 16.5 Upon the expiration or termination of any Right that is necessary in order for Grantee to own, operate or use the Trail in accordance with the terms and conditions of this Easement, this Easement thereby shall automatically expire upon such expiration or termination of the Right.
- 16.6 While this Easement is personal to Grantee and its invitees, it is recognized that the Trail may be used by unauthorized persons, and Grantee agrees that for the purposes of this Easement all persons using the Trail shall be deemed the agents or invitees of Grantee.

## 17. Environmental.

- 17.1 Grantee 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**"). Grantee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Grantee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.
- 17.2 Grantee 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 Trail on Grantor's property. Grantee agrees periodically to furnish Grantor with proof, satisfactory to Grantor that Grantee is in compliance with the provisions of this **Section 17.2**.
- 17.3 Grantee shall give Grantor immediate notice to Grantor'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 Grantee's use of the Premises. Grantee shall use the 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.

- 17.4 If Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Trail which occurred or may occur during the term of this Easement, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Grantor's right-of-way.
- 17.5 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, property or the environment 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. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

#### **DISCLAIMER OF WARRANTIES**

18. No Warranties.

- 18.1 **GRANTOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS EASEMENT AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY GRANTOR OTHER THAN THOSE CONTAINED IN THIS EASEMENT. GRANTEE 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 **GRANTOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE EASEMENT OR OTHER RIGHTS GRANTED HEREUNDER TO GRANTEE OR (B) WHETHER OR NOT GRANTEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE TRAIL 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. **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.**

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

#### **LIENS**

21. Liens and Charges. 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 Premises. Grantor 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 Grantor to take any such action shall not relieve Grantee of any obligation or liability under this **Section 21** or any other Section of this Easement.

#### **DEFAULT, TERMINATION, AND SURRENDER**

23. Default and Termination. In addition to and not in limitation of Grantor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of **Section 15**, the following events are also deemed to be events of default pursuant to which Grantor has the right to terminate as set forth below:

- 23.1 If default shall be made in any of Grantee's covenants, agreements, or obligations contained in this Easement and Grantee fails to cure said default within thirty (30) days after written notice is provided to Grantee by Grantor, or in case of any assignment or transfer of this Easement in violation of **Section 26**

below, Grantor may, at its option, terminate this Easement by serving five (5) days' notice in writing upon Grantee. Notwithstanding the foregoing, Grantor shall have the right to terminate this Easement immediately if Grantee fails to provide evidence of insurance as required in **Section 15**.

- 23.2 Should Grantee not comply fully with the obligations of **Section 17** regarding the handling or transporting of hazardous waste or hazardous material, notwithstanding anything contained in any other provision of this Easement, Grantor may, at its option, terminate this Easement by serving five (5) days' notice of termination upon Grantee.
- 23.3 Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate this Easement 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. The remedy set forth in this **Section 23** shall be in addition to, and not in limitation of, any other remedies that Grantor may have at law or in equity.
- 23.4 In addition to and not in limitation of Grantor's rights to terminate this Easement for failure to provide evidence of insurance or occurrence of defaults as described above, this Easement may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from any liability or obligation under the Easement, 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 Easement it is provided that anything shall or may be done after termination hereof.

24. Surrender of the Premises.

- 21.1 This Easement may be terminated by Grantor, at any time, by serving thirty (30) days' written notice of termination upon Grantee. This Easement may be terminated by Grantee upon execution of Grantor's Mutual Termination Letter Agreement then in effect. Upon expiration of the time specified in such notice, this Easement and all rights of Grantee shall absolutely cease.
- 21.2. If Grantee fails to surrender the Premises to Grantor upon any termination of this Easement, all liabilities and obligations of Grantee hereunder shall continue in effect until the Premises are surrendered. Termination shall not release Grantee from any liability or obligation, whether of indemnity or otherwise, resulting from any events happening prior to the date of termination

**MISCELLANEOUS**

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

26. Assignment.

- 26.1 Grantee may not sell, assign, transfer, or hypothecate this Easement or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Grantor, which consent may not be unreasonably withheld or delayed by Grantor. Any attempted assignment by Grantee in violation of this **Section 26** shall be a breach of this Easement and, in addition, shall be voidable by Grantor in its sole and absolute discretion.
- 26.2 For purposes of this **Section 26**, the word "assign" shall include without limitation (a) any sale of the equity interests of Grantee following which the equity interest holders of Grantee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Grantee, (b) any sale of all or substantially all of the assets of (i) Grantee and (ii) to the extent such entities exist, Grantee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Grantee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Grantee 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 Grantee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. THIS EASEMENT SHALL NOT RUN WITH THE LAND

WITHOUT THE EXPRESS WRITTEN CONSENT OF GRANTOR, SUCH CONSENT TO BE IN GRANTOR'S SOLE DISCRETION.

26.3 Notwithstanding the provisions of **Section 26.1** above or anything contained in this Easement to the contrary, if Grantee sells, assigns, transfers, or hypothecates this Easement or any interest herein in contravention of the provisions of this Easement (a "**Purported Assignment**") to another party (a "**Purported Transferee**"), the Purported Transferee's enjoyment of the rights and privileges granted under this Easement shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this Easement, 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, Grantee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Grantor 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 Easement.

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 Grantor: Jones Lang LaSalle Brokerage, Inc.  
4200 Buckingham Road, Suite 110  
Fort Worth, TX 76155  
Attn: Permits/Easements

with a copy to: BNSF Railway Company  
2301 Lou Menk Dr. – GOB – 3W  
Fort Worth, TX 76131  
Attn: Senior Manager Real Estate

If to Grantee: Lower Platte South NRD  
3125 Portia St  
Lincoln, NE 68521  
Attn: Ariana Kennedy

28. Survival. Neither termination nor expiration will release either party 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 when the Trail and the other Improvements are removed and the Premises are restored to its condition as of the Effective Date.

29. Recordation. It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. 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.

30. Applicable Law. All questions concerning the interpretation or application of provisions of this Easement shall be decided according to the substantive laws of the State of Nebraska without regard to conflicts of law provisions.

31. Severability. To the maximum extent possible, each provision of this Easement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Easement 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 Easement.

32. Integration. This Easement 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.
33. Joint and Several Liability. If 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.
34. Waiver. The waiver by Grantor of the breach of any provision herein by Grantee shall in no way impair the right of Grantor to enforce that provision for any subsequent breach thereof.
35. Interpretation.
- 35.1 This Easement 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 Easement 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 Easement 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 Easement or other documents are as amended, modified or supplemented from time to time.
36. Counterparts. This Easement 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 Easement 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. Grantor's Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.
38. Processing Fee. Grantee acknowledges that a material consideration for this agreement, without which it would not be made, is the agreement between Grantee and Grantor, that the Grantee shall pay upon return of this Agreement signed by Grantee to Grantor's Broker a processing fee in the amount of **\$2,000.00** over and above the agreed upon Acquisition Price. Said fee shall be made payable to BNSF Railway Company by a separate check.

**END OF PAGE – SIGNATURE PAGE FOLLOWS**

This Easement 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.

**GRANTOR:**

**BNSF Railway Company**, a Delaware corporation

By: \_\_\_\_\_

Name: Blaine Bilderback

Title: Director

Date: \_\_\_\_\_

**GRANTEE:**

**LOWER PLATTE SOUTH NRD**, a State of Nebraska Natural Resources District

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Approved as to Form:**

**STATE OF Nebraska, DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibit "A"



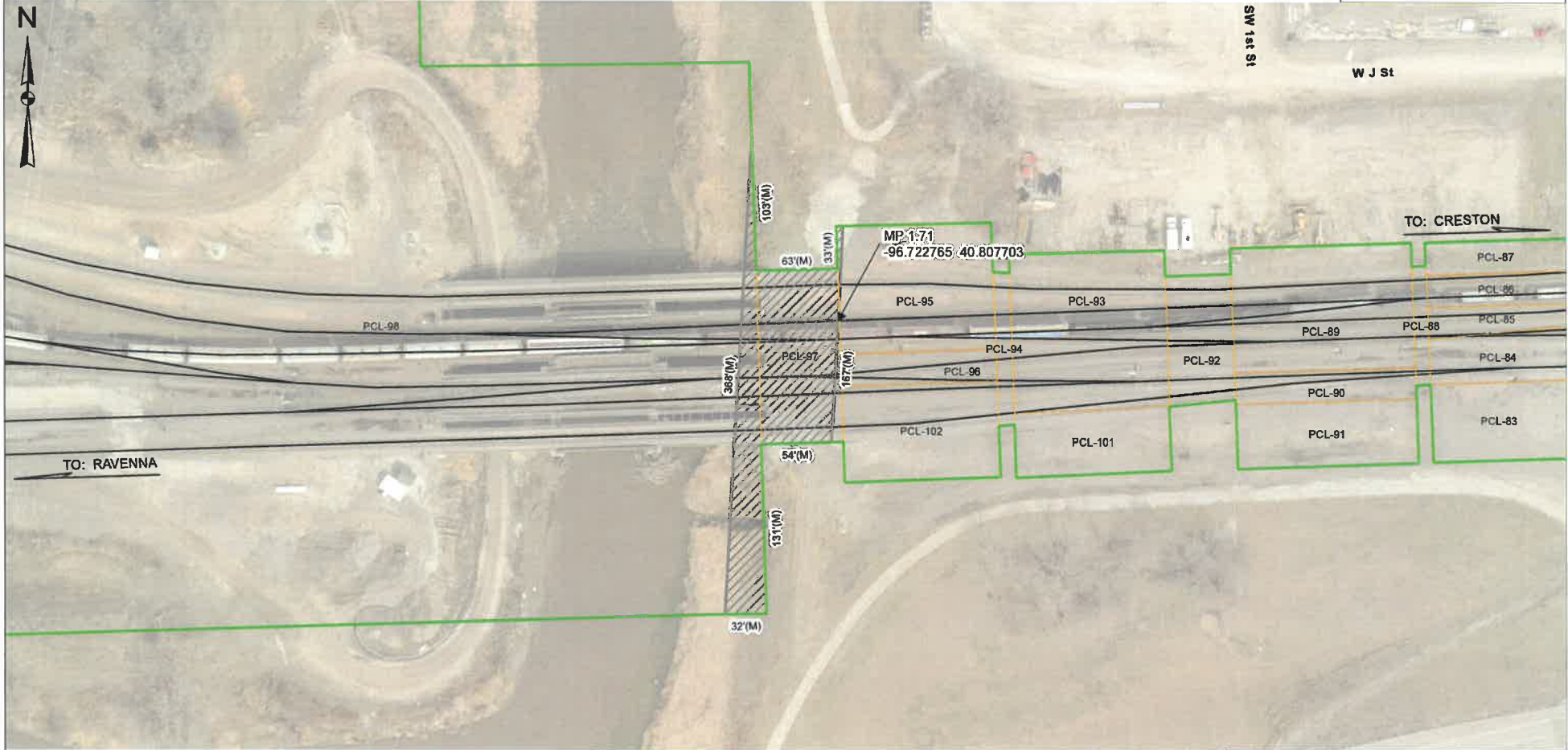
COORDINATE SYSTEM: NE

# EXHIBIT "A"

SCALE: 1 IN = 75 FT

JLL T1: -  
BW Proj. No.: 12196.003  
MAP REFERENCE:  
STA. = 670719  
R/W = -

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.



TO: NEBRASKA DEPARTMENT OF ROADS  
AT: LINCOLN  
LANCASTER COUNTY,  
NE

### LEGEND:

- EASEMENT AREA
- RIGHT OF WAY LINE
- PARCEL LINES
- TRACK



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

POWDER RIVER DIVISION  
CRESTON SUBDIVISION - L.S. 0004-1  
VAL. SEC. 70015  
CB&Q RR NE-08, MAP 06  
SEC. 27, T10N, R6E 6PM  
DATE: 3/18/2019  
MP 1.71

DRAWN BY: JNC DRAWING NO. 75032

EXHIBIT "B"

### Memorandum of Easement

**THIS MEMORANDUM OF EASEMENT** is hereby executed this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**Grantor**"), whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131, and LOWER PLATTE SOUTH, NEBRASKA NATURAL RESOURCES DISTRICT (NRD) ("**Grantee**"), whose address for purposes of this instrument is 3125 Portia Street, Lincoln NE 68521, which terms "Grantor" and "Grantee" shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties:

#### **WITNESSETH:**

**WHEREAS**, Grantor owns or controls certain real property situated in Lancaster County, Nebraska as described on Exhibit "A" attached hereto and incorporated herein by reference (the "**Premises**");

**WHEREAS**, Grantor and Grantee entered into an Easement Agreement, dated \_\_\_\_\_ (the "**Easement Agreement**") which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across a portion of the Premises (the "**Easement**"); and

**WHEREAS**, Grantor and Grantee desire to memorialize the terms and conditions of the Easement Agreement of record.

For valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor does grant unto Grantee and Grantee does hereby accept from Grantor the Easement over and across the Premises.

The term of the Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual. Provisions regulating the use and purposes to which the Easement shall be limited, are set forth in detail in the Easement Agreement and Grantor and Grantee agree to abide by the terms of the Easement Agreement.

All the terms, conditions, provisions and covenants of the Easement Agreement are incorporated herein by this reference for all purposes as though written out at length herein, and both the Easement Agreement and this Memorandum of Easement shall be deemed to constitute a single instrument or document. This Memorandum of Easement is not intended to amend, modify, supplement, or supersede any of the provisions of the Easement Agreement and, to the extent there may be any conflict or inconsistency between the Easement Agreement or this Memorandum of Easement, the Easement Agreement shall control.

[Signature page follows]

**IN WITNESS WHEREOF**, Grantor and Grantee have executed this Memorandum of Easement to as of the date and year first above written.

**GRANTOR:**

BNSF RAILWAY COMPANY, a Delaware corporation

By: \_\_\_\_\_  
Name: Blaine Bilderback  
Title: Director Real Estate

STATE OF \_\_\_\_\_ §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_ (name) as \_\_\_\_\_ (title) of BNSF RAILWAY COMPANY, a Delaware corporation.

\_\_\_\_\_  
Notary Public

(Seal)

My appointment expires: \_\_\_\_\_

**GRANTEE:**

THE LOWER SOUTH PLATTE, Nebraska Natural Resources District

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_ (name) as \_\_\_\_\_ (title) of \_\_\_\_\_, a \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

(Seal)

My appointment expires: \_\_\_\_\_