

FINAL

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| Agreement No. _____ | Amount _____ | Attorney _____ | Code _____ |
| Project/CIP No. _____ | Finance _____ | | |
| Dept. No./MOU _____ | City Engineer _____ | | |
| Agenda Title _____ | | | |

BNSF RAILWAY COMPANY

REAL ESTATE PURCHASE AND SALE AGREEMENT

This Real Estate Purchase and Sale Agreement (“**Agreement**”) is entered into as of the Effective Date (defined below) between **CITY OF SIOUX FALLS (“Buyer”)** and **BNSF RAILWAY COMPANY (“Seller”)**. This Agreement shall not be binding upon either party unless and until both parties have executed and delivered this Agreement. The submission of this document by Seller to Buyer shall not constitute an offer to sell by Seller.

In consideration of the mutual covenants set forth in this Agreement and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

GENERAL TERMS AND DEFINITIONS

1. The following terms shall have the meanings set forth below:

Closing The consummation of the transaction contemplated by this Agreement, which shall be deemed to have occurred when both parties have delivered the items contemplated in Section 4 of this Agreement.

Closing Date Notwithstanding anything herein to the contrary, the sale contemplated by this Agreement shall close on or before sixty (60) days following execution of this Agreement; provided, however, that Seller shall have the right to extend the closing up to an additional one hundred eighty (180) days thereafter, at Seller’s sole judgment.

Earnest Money The cash sum of Two Hundred Thousand and no/100s Dollars (\$200,000.00) made payable to The Bank of New York Mellon Trust Company, NA.

Effective Date The date of the last dated signature to this PSA.

Property That parcel of land situated in or near the City of Sioux Falls, County of Minnehaha and State of South Dakota, shown and described on survey marked Exhibit “A” dated May 27, 2015, together with any revisions or amendments thereto, attached hereto and made a part hereof, subject to revision as set forth below in Section 3.

Purchase Price The sum of Twenty-Seven Million, Three Hundred and Thirty-four Thousand, Five hundred and no/100s Dollars (\$27,334,500.00).

Review Period The period commencing on the Effective Date and expiring at 5:00 p.m. central time on the date that is 30 days after the Effective Date.

PURCHASE AND SALE

2. (a) Subject to the terms and conditions set forth in this Agreement, Seller agrees to sell to Buyer, and Buyer agrees to purchase and accept from Seller, for the Purchase Price, all of Seller's right, title and interest (if any), in and to the Property.

(b) Seller may assign its rights (but not its obligations) under this Agreement to Goldfinch Exchange Company LLC, ("**Goldfinch**") an exchange intermediary, in order for Seller to effect an exchange under Section 1031 of the Internal Revenue Code. In such event, Seller shall provide Buyer with a Notice of Assignment, attached as **Exhibit "H"**, and Buyer shall execute an acknowledgement of receipt of such notice. Buyer may also assign its rights (but not its obligations) under this Agreement to an exchange intermediary in order for Buyer to effect an exchange under Section 1031 of the Internal Revenue Code.

(c) Upon submission by Buyer to Seller of this Agreement signed by Buyer, Buyer shall deposit the Earnest Money with Goldfinch as escrow agent. Goldfinch shall hold the Earnest Money in escrow pursuant to the terms and conditions of this Agreement. The Earnest Money shall be refunded to Buyer if this Agreement is not executed and delivered by Seller within forty five (45) days after the date Buyer delivers this Agreement fully executed by Buyer and deposits the Earnest Money. Buyer shall not be entitled to any interest on the Earnest Money held by Goldfinch pursuant to this Agreement. Buyer acknowledges that receipt by Goldfinch of the Earnest Money shall not constitute acceptance of this Agreement or Buyer's offer provided, however, that Goldfinch shall return the Earnest Money to Buyer if Seller does not execute and deliver this Agreement within forty-five (45) days after Buyer deposits the Earnest Money. Goldfinch shall deliver the Earnest Money to the party entitled thereto pursuant to this Agreement, provided, however if there is a dispute between Buyer and Seller as to who is so entitled, Goldfinch may deposit the Earnest Money with a court of competent jurisdiction pending resolution of such dispute.

(d) The Purchase Price for the sale of real property may include payment by Buyer to the Seller for Seller's construction of railroad facilities as necessary to make BNSF's interests whole. The parties have entered into the FONSI Compliance Agreement attached hereto as **Exhibit "G"**. Of the Purchase Price, \$100,000.00 shall be retained by the Buyer pending Seller's certification that it has completed the obligations agreed upon in the FONSI Compliance Agreement according to the terms thereof. The obligations under the FONSI Compliance Agreement are independent obligations that survive the closing.

(e) The balance of the Purchase Price shall be paid at Closing as provided below in Section 4.

(f) Also at Closing, pursuant to Section 4, below, among other closing documents, the parties shall enter into a lease-back agreement as to the Property in favor of Seller, a bill of sale as to the trackage located on the Property and the Freight Building (as defined below) located on the Property and Seller's adjacent property in favor of Buyer, and a temporary occupancy permit for Buyer's demolition of the Freight Building located on the Property and Seller's adjacent property.

(g) As partial consideration for the sale of the Property, Buyer shall de-construct, demolish, and remove the freight building located partially on the Premises between 6th and 8th Streets, on the west side of Licensor's mainline, and partially on Seller's remaining property (the "**Freight Building**"). Buyer shall de-construct, demolish, and remove the Freight Building (i) at Buyer's sole cost and expense, (ii) in a good and workmanlike manner, (iii) to Seller's reasonable satisfaction, and (iv) within 180 days after the date of expiration or termination of the Temporary Easement Agreement (defined below) (the "**Building Removal Date**"). As part of the removal of the Freight Building, Buyer, at Buyer's sole cost and expense, shall restore Seller's remaining property under and adjacent to the Freight Building to a condition clear of improvements, including foundations and debris, reasonably acceptable to Seller. If Buyer has not completed all of its obligations under this Section 2(f) to Seller's reasonable satisfaction by the Building Removal Date, Seller may complete

me or all of Buyer's remaining obligations at the sole cost of Buyer and Buyer shall pay Seller all associated costs within 30 days of receipt of bills related thereto. Buyer's obligations under this Section 2(f) shall survive both Closing and the termination of the Temporary Easement Agreement.

(h) As partial consideration for the Purchase Price, BNSF will execute a recordable Agreement and Waiver wherein BNSF will waive, on behalf of itself and its successors and assigns, any right or option to repurchase the Property under SDCL 11-7-22.2 in the form attached hereto as Exhibit "J".

INSPECTION

3. (a) Buyer shall cause to be prepared a survey of the Property certified to Seller, Buyer and such other parties as Buyer may choose showing the boundaries of the Property and any improvements located thereon (the "Survey"). Said Survey shall be delivered to Seller no later than thirty (30) days after the Effective Date. Seller shall have the right to review and approve or request changes to the Survey and provide said change requests within twenty (20) days of receipt of Survey. In the event a city, county, or other governing authority where the Property is located (a "**Municipality**") requires a survey or plat to quitclaim the Property (a "**Plat**"), Buyer shall obtain, at Buyer's sole cost and expense, such Plat and the approval of such Municipality. Seller's obligations hereunder are conditioned upon Seller's approval of the Plat approved by the Municipality. Buyer shall provide the proposed Plat to Seller prior to submission to the Municipality and prior to the expiration of the Review Period.

(b) Buyer shall have until the end of the Review Period to examine title to the Property. If Buyer elects to obtain a title commitment for the Property Buyer may deliver to Seller no later than the expiration of the Review Period written notice of any objections to the status of title or matters reflected on the Survey that Buyer may have together with a copy of such title commitment, Survey and all matters referenced therein. Seller shall have no obligation to cure any such objection. If Seller notifies Buyer in writing that Seller will cure any such objection Seller (i) shall make good faith efforts to cure such matter by the Closing Date and if not cured by such date Buyer may terminate this Agreement in which case the Earnest Money shall be refunded to Buyer and neither party shall have any further obligation hereunder except those that expressly survive termination, and (ii) may effect such cure by causing the title company issuing the title commitment to remove such matter as an exception from coverage by paying additional premium therefor or otherwise. If Seller at any time notifies Buyer in writing that Seller is not willing or able to cure any of the such objections (including those which Seller has previously endeavored to cure) then Buyer or Seller may terminate this Agreement by written notice to the other delivered within five (5) days after Seller so notifies Buyer that Seller is unwilling or unable to cure such objection. In the event of such termination, the Earnest Money shall be refunded to Buyer and neither party shall have any further obligation hereunder except those that expressly survive termination. If this Agreement is not so terminated, the parties shall proceed to Closing according to the remaining provisions of this Agreement.

(c) Prior to any entry upon the Property by Buyer, the surveyor preparing the Survey or other individuals on behalf of Buyer, Buyer shall execute and deliver to Seller an Entry and Confidentiality Agreement in the form attached hereto as Exhibit "B" and incorporated herein (the "**Entry Agreement**"). The terms and provisions of the Entry Agreement are incorporated herein, shall survive the Closing, shall not be merged into the Deed (defined below) or any document delivered at Closing and shall survive any termination of this Agreement. Any breach by Buyer of its obligations under the Entry Agreement shall be deemed a breach by Buyer under this Agreement. Notwithstanding anything in this Agreement to the contrary, including the provisions of Section 6(a), nothing in this Agreement or the exercise of any remedy by Seller under this Agreement shall limit or affect in any manner any remedy available to Seller under the Entry Agreement in the event of a breach of Buyer's obligations under the Entry Agreement.

(d) Notwithstanding the foregoing provisions of Section 3(b), Buyer shall not be entitled to object to any judgment against Seller which may appear of record as a lien against the Property. Seller shall pay such lien if and when it is judicially determined to be valid, and Seller hereby indemnifies Buyer for all loss arising out of Seller's failure to have a judgment lien settled and satisfied.

(e) Notwithstanding the foregoing provisions of Section 3(b), Buyer shall not be entitled to object to any lien of any of Seller's mortgages. Seller shall deliver to Buyer, who shall place of record, good and sufficient releases of the liens of any mortgages on the Property securing indebtedness to which Seller is obligated to pay within one hundred eighty (180) days after the first meeting of Seller's Board of Directors held after the Closing. BNSF further agrees to indemnify and save harmless the Buyer against and from any loss or damage, to the maximum of the full Purchase Price, arising solely out of any valid claim or claims by the mortgage trustees because of the failure to obtain and furnish good and sufficient releases of the liens of such mortgages on the Property. The indemnity shall survive the Closing and will terminate upon the recording of good and sufficient releases of such mortgages on the Property. In the event Seller shall be unable to obtain said releases for any reason, Seller shall have the right to repurchase the Property from Buyer for the Purchase Price and Buyer shall reconvey the Property to Seller free and clear of defects or objections arising after the Effective Date upon which this Agreement shall terminate and neither party shall have any further rights or obligations hereunder except those that expressly survive termination.

(f) Seller shall use commercially reasonable efforts to secure a release from Ellis & Eastern Company of its right of first refusal for the Property (the "**Right of First Refusal Release**"). At least 7 days prior to Closing, Seller will provide, for review by the Buyer, a copy of the proposed Release of Right of First Refusal for review. At or prior to Closing, Seller will provide the Buyer with the executed Release of Right of First Refusal, together with documentation evidencing the authority of the signing party to act on behalf of Ellis & Eastern Company ("**Authority Documentation**"). Buyer has already received a letter of intention from Ellis & Eastern Company that it intends to relinquish its right of first refusal for the Property. If Seller shall be unable to obtain the Right of First Refusal Release and Authority Documentation for any reason prior to Closing, then Buyer or Seller may terminate this Agreement by written notice to the other. In the event of such termination, the Earnest Money shall be refunded to Buyer and neither party shall have any further obligation hereunder except those that expressly survive termination. If this Agreement is not so terminated, the parties shall proceed to Closing according to the remaining provisions of this Agreement.

(g) If the approval of any governmental agency is required for all or part of the sale of the Property contemplated hereunder, including, and without limitation, any approval or exemption from approval, of part or all of the Yard Relocation by the Surface Transportation Board and funding related requirements from South Dakota DOT and Federal Highway Administration, it is understood and agreed that the obligations of the parties under this Agreement will be conditioned upon obtaining any such approvals on terms acceptable to the parties. If either party shall be unable to obtain necessary governmental agency approval for any reason, then Buyer or Seller may terminate this Agreement by written notice to the other. In the event of such termination, the Earnest Money shall be refunded to Buyer and neither party shall have any further obligation hereunder except those that expressly survive termination. If this Agreement is not so terminated, the parties shall proceed to Closing according to the remaining provisions of this Agreement. Nothing in this Agreement or any other document specific to this project shall be deemed a submission by Seller to the jurisdiction of any state or local body or a waiver of the preemptive effect of any state or federal law.

CLOSING

4. (a) Subject to the terms of this Agreement, the Closing shall occur on the Closing Date. Buyer shall (i) pay the Purchase Price (except for the sum retained by the Buyer to fulfill its post-closing obligations under the separate FONSI Compliance Agreement attached hereto as Exhibit "G" and described in Section 3 above), less the Earnest Money to Seller in cash, by certified check made payable to Seller or by wire transfer to Seller's account as designated by Seller and the Earnest Money shall become the property of Seller and no longer subject to the terms of this Agreement and the Assignment (defined) in Section 4(b) below, and (ii) complete such other affidavits or certificates as are reasonably necessary or customary to consummate the transaction, including documents required by Title Company evidencing the authority of the signing parties to act on behalf of Buyer. After Buyer has delivered the foregoing items, Seller shall deliver to Buyer (1) a quitclaim deed in the form attached hereto as Exhibit "I", subject to all matters of record and restating the exceptions and reservations set forth in Section 8 (the "**Deed**") quitclaiming to Buyer Seller's interest, if any, in and to the Property, (2)

counterparts of the Assignment and the Exchange Assignment, and (3) such other affidavits and certificates as are reasonably necessary or customary to consummate the transaction in form and substance acceptable to Seller, including documents required by Title Company evidencing the authority of the signing parties to act on behalf of Seller.

(b) On or before the Closing Date, the parties shall execute and deliver an assignment and assumption agreement whereby Seller shall assign to Buyer, and Buyer shall assume the obligations of Seller from and after the Closing Date, in and to the leases, permits, licenses, and other agreements affecting the Property as listed or described on Exhibit "C" attached hereto (the "Assignment"). At least 7 days prior to Closing, however, Seller will provide, for review by the Buyer, a proposed draft of the Assignment as well as copies of all such leases, permits, licenses, and other agreements. All rent due and payable under such leases after the Closing Date shall belong to Buyer. Buyer shall receive a refund post-Closing equal to the amount of rents in excess of \$500.00 per lease received by Seller prior to the Closing Date that are attributable to periods after Closing. Rents received by Seller attributable to periods after Closing but less than \$500.00 per lease, or attributable to periods prior to Closing shall be retained by Seller.

(c) At Closing, the parties shall enter into the following as a contingency to Closing:

(i) A temporary easement agreement for a period of two (2) years, whereby Buyer shall grant a temporary easement for freight rail operating purposes over, upon, along and across the Property back to Seller for a period of two (2) years commencing on the Closing Date unless extended by mutual written agreement of the parties, in substantially the same form and substance as Exhibit "D" attached hereto (the "Temporary Easement Agreement").

(ii) A bill of sale for: (i) approximately 11,770 feet of trackage, together with all materials and appurtenances, including rails, ties, wires, signals and other track materials associated therewith and (ii) the Freight Building (collectively, the "Personal Property"), in substantially the same form as Exhibit "E" attached hereto (the "Bill of Sale"). All of Seller's rights, title and interests, if any, in and to the Personal Property thereon as of the Closing Date shall be deemed abandoned in place by Seller and quitclaimed by Seller to Buyer under the Bill of Sale in an "as-is", with all faults condition, without any covenants of warranty whatsoever and without recourse to Seller, and Buyer agrees to assume all obligations thereto, including dismantling costs if Buyer decides to remove the Personal Property from the Property.

(iii) A temporary occupancy permit, allowing Buyer to enter upon a portion of Seller's adjacent property necessary for the removal of the Freight Building, in substantially the same form as Exhibit "F" attached hereto (the "Temporary Occupancy Permit").

(iv) An Agreement and Waiver wherein BNSF waive, on behalf of itself and its successors and assigns, any right or option to repurchase the Property under SDCL 11-7-22.2 in the form attached hereto as Exhibit "J".

PRORATIONS AND CLOSING COSTS

5. (a) Real estate taxes and assessments payable or paid in the year of Closing shall be prorated by Seller and Buyer as of the Closing Date on the basis of the most recent ascertainable taxes assessed against the Property. If the Property is not separately assessed for tax purposes then there shall be no proration of taxes between Buyer and Seller, the parties shall cooperate post-Closing to cause the Property to be separately assessed and each party shall indemnify the other for any failure to pay real estate taxes and assessments due with respect to the properties constituting the tax parcel to which the Property is a part. Notwithstanding the foregoing, there shall be no proration for taxes to the extent the payment of same has been assumed by a tenant under an existing lease to be assigned to Buyer. All outstanding assessments on the Property levied or due in the year of Closing and afterward shall be paid by Buyer.

(b) The parties shall cooperate so that utilities serving the Property that are not the responsibility of a tenant under a lease to be assigned to Buyer at Closing, to the extent feasible, shall be switched into the name of Buyer as of the Closing Date, so that a final statement can be issued to Seller for the billing period ending on the Closing Date, and so that the first

Jay of the first billing cycle in Buyer's name can begin on the Closing Date. If, however, the final statement covering the final period of ownership by Seller also includes periods of ownership by Buyer, Buyer shall pay Seller at Closing the amount attributable to Buyer's period of ownership. Buyer shall be responsible to pay all utilities serving the Property due after Closing.

(c) Buyer shall pay all closing costs associated with Closing including, but not limited to, any escrow fees, documentary stamps and other recording costs associated with this transaction, excise taxes, the cost of any state, county or local transfer taxes, the cost of the Survey, and the costs associated with any title insurance obtained by Buyer.

(d) If any real estate broker or agent can establish a valid claim for commission or other compensation as a result of Buyer having used their services in connection with the purchase of the Property, all such commission or other compensation shall be paid by Buyer. Seller shall not be liable for any real estate commissions or finder's fees to any party with respect to the sale of the Property, except amounts due to Jones Lang LaSalle Brokerage, Inc. ("**Broker**") pursuant to a separate agreement. Buyer acknowledges that Broker has advised, and hereby advises, Buyer that Broker is acting as such on behalf of Seller, with the duty to represent Seller's interest, and Broker is not the agent of Buyer. If a policy of title insurance is to be obtained, Buyer should obtain a commitment for title insurance which should be examined prior to closing by an attorney of Buyer's choice. Prior to the execution of this Agreement, Broker has advised and hereby advises the principals of this transaction, that this Agreement is binding on them, and the principals hereby acknowledge that they have been so advised. Broker has no authority to execute any document on behalf of Seller, make representations on behalf of Seller or bind Seller in any manner.

(e) The obligations of the parties in this Section 5, to the extent incurred, shall survive any termination of this Agreement.

DEFAULT AND REMEDIES

6. (a) In the event of a default by Buyer under the terms of this Agreement, Seller's sole and exclusive remedies shall be: (i) terminate this Agreement whereupon the parties shall have no further obligations hereunder except those that expressly survive termination, (ii) waive such default and proceed to Closing, or (iii) obtain specific performance of this Agreement. If Seller terminates this Agreement as provided in the previous sentence, Seller shall be entitled to retain the Earnest Money. Notwithstanding the foregoing, nothing contained herein shall waive or diminish any right or remedy Seller may have at law or in equity for Buyer's default or breach of any obligation hereunder to be performed by Buyer after Closing. It is hereby agreed that Seller's damages in the event of a default by Buyer hereunder are uncertain and difficult to ascertain, and that the Earnest Money constitutes a reasonable liquidation of such damages and is intended not as a penalty, but as liquidated damages.

(b) In the event of a default by Seller under the terms of this Agreement, Buyer's sole and exclusive remedies hereunder shall be to terminate this Agreement and receive a refund of the Earnest Money plus an additional amount from Seller not to exceed ten percent of the Purchase Price equal to the out-of-pocket expenses (including attorneys' fees and costs and expenses associated with any environmental assessment) incurred by Buyer in connection with this Agreement as evidenced by copies of third party invoices delivered to Seller. Upon such termination and the payment of such sums by Seller the parties shall have no further obligations hereunder except those that expressly survive termination. Notwithstanding the foregoing, nothing contained herein shall waive or diminish any right or remedy Buyer may have at law or in equity for Seller's default or breach of any obligation hereunder to be performed by Seller after Closing.

NATURE OF SALE

7. Buyer has been allowed to make an inspection of the Property. **BUYER IS PURCHASING THE PROPERTY ON AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, INCLUDING THOSE RELATING TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY, AND IS NOT RELYING ON ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND**

WHATSOEVER FROM SELLER AS TO ANY MATTERS CONCERNING THE PROPERTY, including, but not limited to the physical condition of the Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Property with Environmental Laws (defined below) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Property; the presence of any Hazardous Substances (defined below), wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, under, or in proximity to the Property; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Property; the condition of title to the Property, and the leases, easements, permits, orders, licenses, or other agreements, affecting the Property (collectively, the **"Condition of the Property"**). Buyer represents and warrants to Seller that Buyer has not relied and will not rely on, and Seller is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Property or relating thereto (including specifically, without limitation, property information packages distributed with respect to the Property) made or furnished by Seller, the manager of the Property, or any real estate broker or agent representing or purporting to represent Seller, to whomever made or given, directly or indirectly, orally or in writing. Buyer assumes the risk that Hazardous Substances or other adverse matters may affect the Property that were not revealed by Buyer's inspection and indemnifies, holds harmless and hereby waives, releases and discharges forever Seller and Seller's officers, directors, shareholders, employees and agents (collectively, **"Indemnitees"**) from any and all present or future claims or demands, and any and all damages, losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort or asserting a constitutional claim) costs and expenses (including, without limitation fines, penalties and judgments, and attorneys' fees) of any and every kind or character, known or unknown, arising from or in any way related to the Condition of the Property or alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Property. Losses shall include without limitation (a) the cost of any investigation, removal, remedial, restoration or other response action that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) capital expenditures necessary to cause Seller's remaining property or the operations or business of Seller on its remaining property to be in compliance with the requirements of any Environmental Law, (c) losses for or related to injury or death of any person, (d) losses for or related to injury or damage to animal or plant life, natural resources or the environment, and (e) losses arising under any Environmental Law enacted after transfer. The rights of Seller under this section shall be in addition to and not in lieu of any other rights or remedies to which it may be entitled under this document or otherwise. This indemnity specifically includes the obligation of Buyer to remove, close, remediate, reimburse or take other actions requested or required by any governmental agency concerning any Hazardous Substances on the Property. Buyer does not indemnify or hold Seller harmless or agree to payment of any of Seller's attorney's fees, costs, fines, penalties or fees relating to (a) any criminal actions or (b) any refusal or failure of Seller to produce documents or respond to subpoenas in response to any court of competent jurisdiction or governmental entity charged with enforcement of Environmental Laws, including any refusal or failure to produce environmental audits, evaluations, assessments, studies or tests which were prepared previous to closing and are in the custody of the Seller (or which with reasonable efforts could be within the possession or control of the Seller). The term **"Environmental Law"** means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law relating in any way to human health, occupational safety, natural resources, plant or animal life or the environment, including without limitation, principles of common law and equity, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law. The term **"Hazardous Substance"** means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions. The provisions of this Section 7 shall be binding on Buyer, and its heirs, successors and assigns, shall be included in the Deed and shall be covenants running with the land.

RESERVATIONS

The obligations in this Section 8 shall be binding upon Buyer and its heirs, successors and assigns, shall be included in the Deed and shall be covenants running with the land benefiting Seller and Seller's successors and assigns. For purposes

of this Section 8, Grantor shall mean Seller and Grantee shall mean Buyer. Buyer may object to the reservations set forth in Section 8(a) below in accordance with the provision of Section 3, and if Seller is unwilling or unable to cure such objection either party may terminate this Agreement as set forth in Section 3.

(a) Grantee's interest shall be subject to the rights and interests of Grantor, Grantor's licensees, permittees and other third parties in and to all existing driveways, roads, utilities, fiber optic lines (including, but not limited to, US Sprint Communications Company's fiber optic line referenced in Grantor's records as agreement number BF-41866 dated August 15, 1986), wires, facilities, and easements of any kind whatsoever on the Property whether owned, operated, used or maintained by Grantor, Grantor's licensees, permittees or other third parties and whether or not of public record. Grantor shall have a perpetual easement on the Property for the use of such existing driveways, roads, utilities, fiber optic lines, wires, facilities (including telecommunication facilities) and easements by Grantor and Grantor's licensees, permittees and customers. This easement will not require the Grantee to maintain existing roads or driveways for the sole benefit of the Grantor or its licensees, permittees, or customers, but Grantee will provide reasonable access for relocated roads and driveways.

(b) Grantee's interest shall be subject to a reservation to Grantor of all coal, oil, gas, casing-head gas and all ores and minerals of every kind and nature, including sand and gravel underlying the surface of the Property, together with the full right, privilege and license at any and all times to explore, or drill for and to protect, conserve, mine, take, remove and market any and all such products in any manner which will not damage structures on the surface of the Property, provided, however, that Grantor expressly waives any right to use the surface or the first two hundred (200) feet of the subsurface of the Property to explore for the minerals and other products herein reserved.

(c) Any improvements constructed or altered on the Property after the date Grantor quitclaims its interest to Grantee shall be constructed or altered in such a manner to provide adequate drainage of water away from any of Grantor's railroad tracks on nearby property.

(d) Grantee acknowledges and affirms that Grantor may not hold fee simple title to the Property, that Grantor's interest in all or part of the Property, if any, may rise only to the level of an easement for railroad purposes. Grantee is willing to accept Grantor's interest in the Property, if any, on this basis and expressly releases Grantor, its successors and assigns from any claims that Grantee or its successors may have as a result of an abandonment of the line of rail running over or adjacent to any portion of the Property. In light of Grantor's disclosure that it may not hold a fee interest in all or part of the Property, Grantee agrees to indemnify, defend and hold Grantor harmless from any suit or claim for damages, punitive or otherwise, expenses, attorneys' fees, or civil penalties that may be imposed on Grantor as the result of any person or entity claiming an interest in any portion of the Property or claiming that Grantor did not have the right to transfer all or part of the Property to Grantee.

(e) Grantee acknowledges that Grantor, at Grantor's sole discretion, will continue (i) to operate on its remaining downtown mainline railroad tracks, and (ii) to maintain local and regional service of Grantor. Grantee further acknowledges and agrees that a protective boundary fence between the mainline and the Property is necessary. Within 180 days after the date of expiration or termination of the Temporary Easement Agreement, Grantee shall, at its sole cost and expense, construct a protective boundary fence (the "**Fence**") a minimum of six (6) feet in height across the Property, on the Property's eastern boundary, between the Property and Grantor's remaining adjacent property. Grantee shall construct the Fence (i) in accordance with plans which have been approved in writing in advance by Grantor, (ii) using new materials of a type and manufacturer satisfactory to Grantor, (iii) in conformity with all applicable federal, state and local laws, codes, ordinances, rules and regulations, and (iv) in a good and workmanlike manner, free from defects in materials and workmanship. If the Fence is not constructed to Grantor's reasonable satisfaction within this time frame, Grantor may construct the Fence at the sole cost of Grantee and Grantee shall pay Grantor all associated costs within 30 days of receipt of bills related thereto. Grantee shall thereafter, at Grantee's sole cost and expense, repair, maintain, replace and renew the Fence in a good and workmanlike manner and to Grantor's reasonable satisfaction, so as to perpetually keep same in good repair. If the Fence is not repaired, maintained, replaced and renewed to Grantor's reasonable satisfaction within 180 days of

Receipt of notice from Grantor, Grantor may repair, maintain, replace or renew the Fence at the sole cost of Grantee and Grantee shall pay Grantor all associated costs within 30 days of receipt of bills related thereto. All or a portion of the Fence may be eliminated or removed upon mutual written agreement between the Grantor and Grantee.

(f) Grantee also agrees that should any future owner, developer or tenant of any portion of the Property construct any building or other structure on the Property, then such owner, developer or tenant shall be subject to an easement, permitted, administered and enforced by the City of Sioux Falls, with respect to the Property, whereby all present or future property owners and tenants within the Property shall sign a written acknowledgment stating that such owners and tenants:

- have been notified that Grantor, and its successors and assigns have the right to full railroad and railroad-related operations on Grantor's property; and
- waive any and all injunctive claims and claims for damages due or related to nuisance, noise, disturbance, vibration, loss of use, reduction in value, and/or emissions, whether caused directly or indirectly by Grantor's operations.

The restrictions set forth herein shall be binding upon the heirs, successors and assigns of Grantee and shall be covenants running with the land, for so long as Grantor continues to operate on Grantor's property or has not abandoned its rights to operate.

REPRESENTATIONS

9. Buyer represents and warrants to Seller that Buyer is a validly formed political subdivision under the laws of the State of South Dakota; that it is in good standing in the state of its organization and in the state in which the Property is located; that it has all requisite authorizations to enter into this Agreement; and that the parties executing this Agreement on behalf of Buyer are duly authorized to so do. Buyer represents and warrants to Seller that it is not subject to any bankruptcy proceeding. Seller represents and warrants to Buyer that it is a validly formed corporation under the laws of the State of Delaware; that it is in good standing in the state of its organization and in the state in which the Property is located; that it is not subject to any bankruptcy proceeding; that it has all requisite corporate authorizations to enter into this Agreement; and that the parties executing this Agreement on behalf of Seller are duly authorized to so do. It shall be a condition of each party's obligations to close this transaction that the representations and warranties of the other party contained herein are true and accurate as of Closing, provided, however that if one party waives such condition by proceeding to Closing with knowledge that any of the second party's representations or warranties are inaccurate, the second party shall have no liability with respect to such inaccuracy known by the first party.

MISCELLANEOUS

10. (a) Any notice under this Agreement must be written. Notices must be either (i) hand-delivered; (ii) placed in the United States certified mail, return receipt requested, addressed to the recipient; (iii) deposited with a nationally recognized overnight delivery service, addressed to the recipient as specified below; or (iv) telecopied by facsimile transmission to the party at the telecopy number listed below, provided that such transmission is followed with a copy sent by overnight delivery or regular mail to the address specified below. Any notice is effective upon deposit with the U.S. Postal Service or with the overnight delivery service, as applicable; all other notices are effective when received. All notices shall be addressed to the address of the recipient indicated below the signature of such party below. Either party may change its address for notice by proper notice to the other party.

(b) If the approval of any governmental agency is required for the sale of Seller's interest (if any) in the Property, it is understood and agreed that Seller's obligations under this Agreement are conditioned upon obtaining such approval and that both parties shall use good faith efforts to obtain such approval. If such approval cannot be obtained by the Closing Date, Seller may elect to extend the Closing Date to a date no later than ninety (90) days after the original Closing Date. In event said approval cannot be obtained by such extended date, either party may terminate this Agreement without

liability to the other, except that the Earnest Money shall be refunded to Buyer and thereafter neither party shall have any obligation hereunder except those that expressly survive termination.

(c) Nothing in this Agreement shall prevent Seller from discontinuing service over any railroad line or lines by which rail service may be provided to the Property.

(d) If, prior to Closing, the Property or any portion thereof is destroyed or damaged, or becomes subject to a taking by virtue of eminent domain to any extent whatsoever then either party may terminate this Agreement by written notice to the other within thirty (30) days after notice of such fact (but in any event prior to Closing). If so terminated, the Earnest Money shall be refunded to Buyer and neither party shall have any further obligations hereunder except those that expressly survive termination. If not so terminated the parties shall proceed with the Closing.

(e) Time is of the essence of each of the party's respective obligations under this Agreement. Whenever a date specified in this Agreement falls on a Saturday, Sunday, or federal holiday, the date will be extended to the next business day.

(f) This Agreement and, to the extent executed, the Entry Agreement, contains the entire agreement between Seller and Buyer with respect to the Property. Oral statements or prior written matters not specifically incorporated into this Agreement are superseded hereby. No variation, modification, or change to this Agreement or the Entry Agreement shall bind either party unless set forth in a document signed by both parties. No failure or delay of either party in exercising any right, power or privilege hereunder shall operate as a waiver of such party's right to require strict compliance with any term of this Agreement. The captions above the section numbers of this Agreement are for reference only and do not modify or affect this Agreement. Each party has had the opportunity to have counsel review this Agreement and the Entry Agreement and, therefore, no rule of construction that any ambiguities are to be resolved against the drafting party is to be employed to interpret this Agreement, the Entry Agreement or any closing document. This Agreement and the Entry Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute the same Agreement. This Agreement and the Entry Agreement are intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any term or provision of this Agreement or the Entry Agreement or the application thereof to any person or circumstance shall for any reason and to any extent be held to be invalid or unenforceable, then such term or provision shall be ignored, and to the maximum extent possible, this Agreement and the Entry Agreement (to the extent executed) shall continue in full force and effect, but without giving effect to such term or provision.

(g) Buyer may not assign its interest in this Agreement or the Entry Agreement without Seller's prior written consent. The provisions of this Agreement and, to the extent executed, the Entry Agreement, shall bind Seller, Buyer, and their heirs, executors, administrators, successors and assigns and shall inure to the benefit of Seller, Buyer and their heirs, executors, administrators, permitted successors and assigns. If Buyer is more than one person or entity, Buyer's obligations under this Agreement and, to the extent executed, the Entry Agreement, shall be joint and several.

(h) Seller shall not have to remove any improvements or fixtures for which an easement has been reserved hereunder or in the Deed.

(i) Seller is not a foreign person as the term is used and defined in Section 1445 of the Internal Revenue Code of 1986, as amended and the regulations promulgated thereunder. Seller shall, upon request of Buyer, complete an affidavit to this effect and deliver it to Buyer on or before closing of said sale.

(j) The provisions of Sections 5-8 and Section 10 of this Agreement shall survive Closing and shall not be merged into the Deed or any other document delivered at Closing. The provisions of Section 9 of this Agreement shall survive Closing for a period of one year and shall not be merged into the Deed or any other document delivered at Closing. Nothing in this section shall alter any requirement in any other Section of this Agreement for the provisions of such section to be incorporated into the Deed, such as Sections 7 and 8.

(k) If any action at law or in equity is necessary to enforce or interpret this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, costs, and discovery or investigation expenses in addition to any other relief to which that party may be entitled.

(l) SELLER AND BUYER IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO, THIS AGREEMENT.

ADMINISTRATIVE FEE

11. Buyer acknowledges that a material consideration for this Agreement, without which it would not be made, is the agreement between Buyer and Seller, that Buyer shall pay upon receipt of an invoice from Seller or Seller's Broker a processing fee in the amount of \$2,000.00 over and above the agreed-upon Purchase Price. Said fee shall be made payable to BNSF Railway Company by a separate check.

EXHIBITS

12. The following Exhibits are attached to this Agreement and incorporated herein by reference:

| | |
|-----------|---|
| Exhibit A | Property |
| Exhibit B | Form of Entry and Confidentiality Agreement |
| Exhibit C | Listing of Agreements to be Assigned to Buyer |
| Exhibit D | Form of Temporary Easement Agreement |
| Exhibit E | Form of Bill of Sale |
| Exhibit F | Form of Temporary Occupancy Permit |
| Exhibit G | Executed FONSI Compliance Agreement |
| Exhibit H | Form of Notice of Assignment |
| Exhibit I | Form of Quitclaim Deed |
| Exhibit J | Form of Agreement and Waiver of Right to Repurchase |

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IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement to be effective as of the Effective Date.

BUYER:

CITY OF SIOUX FALLS

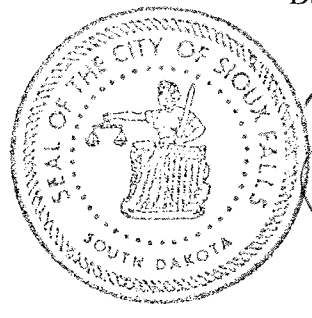
By: _____
Mike T. Huether, Mayor

Buyer's Address:

City of Sioux Falls
224 W. Ninth St.
P.O. Box 7402
Sioux Falls, SD 57117-7402
Attn: Mike T. Huether, Mayor
Fax: (605) 367-8490
Phone: (605) 367-8800

Buyer's EIN: 46-60000425

8-31-15
Date of Buyer's Execution




Attest:

Topic Hoepstal
City Clerk

SELLER:

BNSF RAILWAY COMPANY

By: 
Print Name: Roger N. Johnson
Title: SVP Law + Corp Affairs

Seller's Address:

c/o Jones Lang LaSalle Brokerage, Inc.
4105 Lexington Avenue North, Suite 200
Arden Hills, MN 55126
Attn: Cathy Clune
Fax: (651) 481-9361
Phone (651) 415-2706

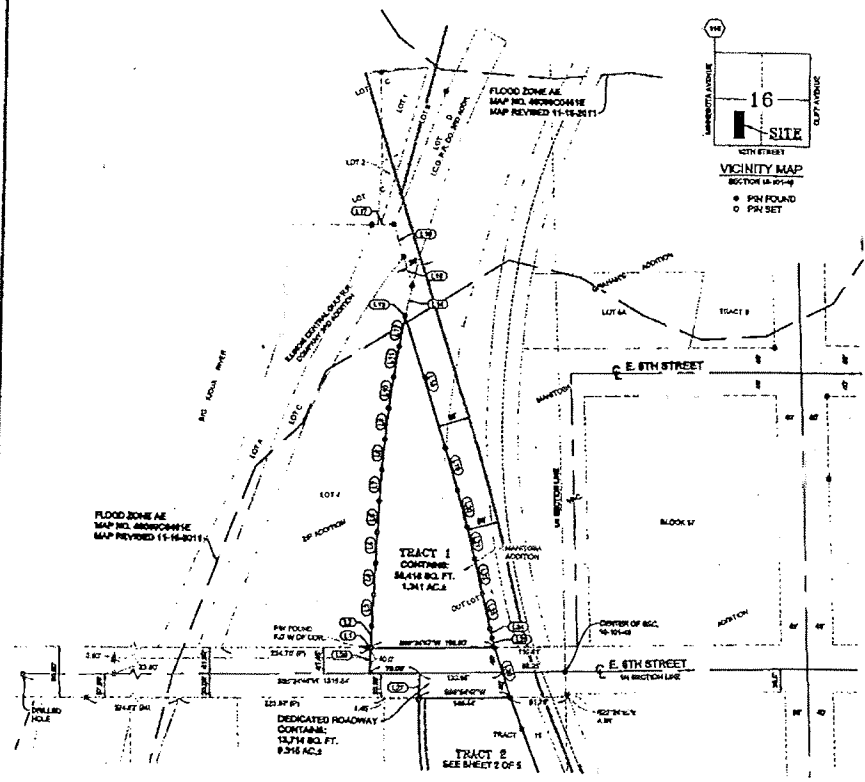
8-31-15
Date of Seller's Execution

EXHIBIT "A"

Property

[see attached]

TRACTS 1, 2, 3 AND 4 OF BURLINGTON NORTHERN SANTA-FE 4TH ADDITION TO THE CITY OF SIOUX FALLS, MINNEHAHA COUNTY, SOUTH DAKOTA



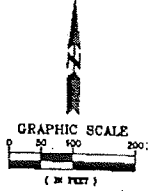
| LINE # | BEARING | DISTANCE |
|--------|---------------|----------|
| L1 | N 02°14'17" E | 1.31 |
| L2 | N 02°19'11" E | 34.87 |
| L3 | N 02°19'58" E | 49.87 |
| L4 | N 02°19'52" E | 80.02 |
| L5 | N 02°19'52" E | 80.04 |
| L6 | N 02°20'01" E | 49.37 |
| L7 | N 02°20'01" E | 49.37 |
| L8 | N 02°20'01" E | 49.37 |
| L9 | N 02°19'51" E | 49.37 |
| L10 | N 02°19'51" E | 49.37 |
| L11 | N 02°19'51" E | 49.37 |
| L12 | N 02°20'01" E | 49.37 |
| L13 | N 02°20'01" E | 49.37 |
| L14 | N 02°20'01" E | 49.37 |
| L15 | N 02°19'51" W | 49.37 |

| LINE # | BEARING | DISTANCE |
|--------|---------------|----------|
| L16 | N 11°10'22" W | 63.87 |
| L17 | S 88°21'57" W | 54.37 |
| L18 | S 87°32'41" E | 216.37 |
| L19 | S 17°09'58" E | 70.47 |
| L20 | S 18°38'08" E | 80.47 |
| L21 | S 14°08'17" E | 82.87 |
| L22 | S 13°02'22" E | 88.87 |
| L23 | S 12°42'01" E | 98.37 |
| L24 | S 14°02'32" E | 15.87 |
| L25 | S 14°02'32" E | 15.87 |
| L26 | S 17°42'44" E | 63.37 |
| L27 | N 02°20'10" E | 40.87 |
| L28 | N 02°19'35" E | 40.87 |

NOTE: The bearing system for this plat is based on the UTM Zone 14 North.

- Legend**
- - Denotes 5/8 inch by 1/8 inch rebar set and marked by License No. 4478
 - ⊗ - Denotes found monument
 - ⊗ - Denotes found chiseled "C"
 - (R) - Parcel Distance
 - (D) - Measured Distance

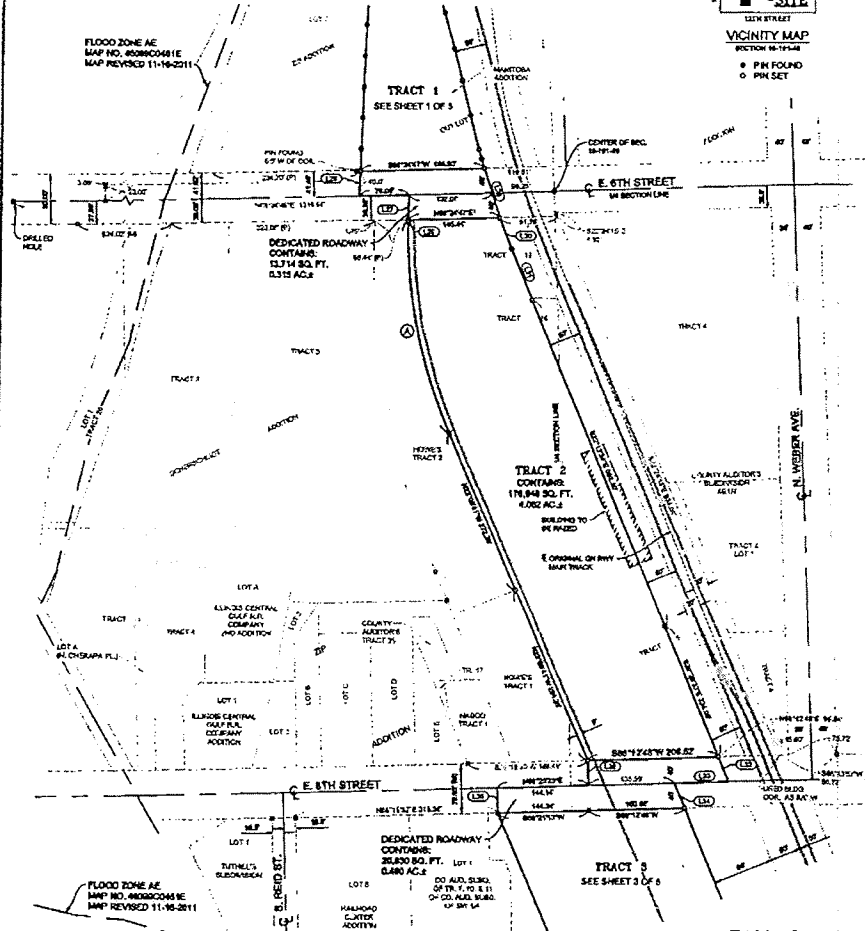
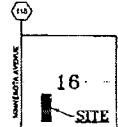
Total Area Surveyed: 11,204 Acres.



Sayre Associates
 214 E. DASH AVENUE • SIOUX FALLS, SD 57104
 PHONE: (605) 533-7111 • FAX: (605) 533-7228
 Engineers • Surveyors

EXHIBIT "A"

TRACTS 1, 2, 3 AND 4 OF BURLINGTON NORTHERN SANTA-FE 4TH ADDITION TO THE CITY OF SIOUX FALLS, MINNEHAHA COUNTY, SOUTH DAKOTA



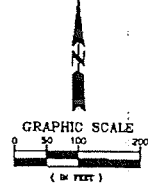
Total Area Surveyed:
11.304 Acres.

| LINE # | BEARING | DISTANCE |
|--------|---------------|----------|
| L25 | S 17°42'44" E | 63.30 |
| L77 | N 00°56'57" E | 40.87 |
| L36 | N 02°13'37" E | 40.09 |
| L26 | N 06°53'07" E | 1.87 |
| L30 | S 21°15'56" E | 83.07 |
| L31 | S 21°14'27" E | 89.82 |
| L32 | S 22°28'56" E | 42.37 |
| L33 | S 09°14'17" W | 86.12 |
| L34 | S 22°36'31" E | 42.74 |
| L35 | N 81°26'31" W | 38.97 |
| L39 | N 81°47'11" W | 40.07 |

① CURVE DATA
 Δ = 34°20'34"
 R = 827.53'
 T = 178.73'
 L = 246.29' (A)
 348.87' (C)
 N 11°00'30" W

NOTE:
The bearing system for this plat is based on the LTM Zone 14 North.

- Legend**
- - Diameter 80 inch by 16 inch rubber seal and marked by License No. 4475
 - o - Denotes found monument
 - x - Denotes found offsetted "X"
 - (R) - Record Distance
 - (M) - Measured Distance

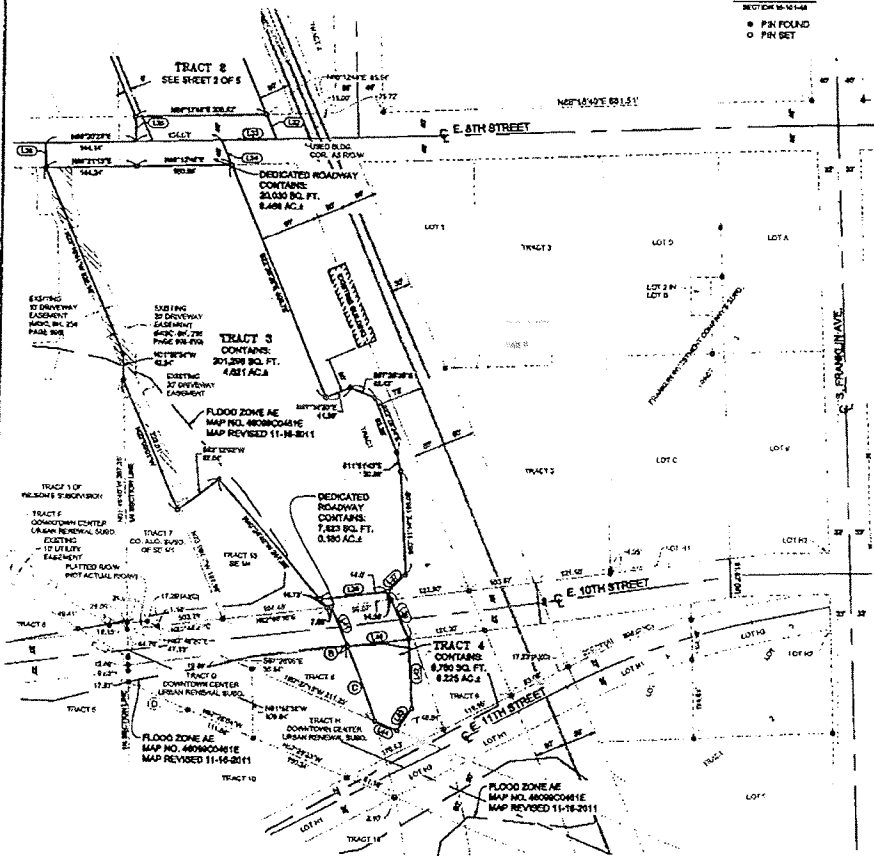
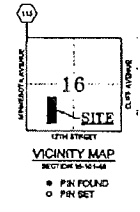


Sayre Associates

118 E. 6th Avenue • Sioux Falls, SD 57104
 Phone: 605.336.7711 Fax: 605.336.0202
 Engineers • Surveyors

EXHIBIT "A"

TRACTS 1, 2, 3 AND 4 OF BURLINGTON NORTHERN SANTA-FE 4TH ADDITION TO THE CITY OF SIOUX FALLS, MINNEHAHA COUNTY, SOUTH DAKOTA



| LINE # | BEARING | DISTANCE |
|--------|---------------|----------|
| L32 | S 22°28'30" E | 42.75' |
| L33 | S 08°14'47" W | 86.12' |
| L34 | S 22°28'30" E | 42.74' |
| L35 | N 01°58'51" W | 32.87' |
| L36 | N 01°47'11" W | 43.00' |
| L37 | S 43°27'25" W | 37.80' |
| L38 | S 87°46'15" W | 109.30' |
| L39 | S 25°09'02" E | 33.32' |
| L40 | N 82°48'02" E | 86.07' |
| L41 | N 25°09'02" E | 66.16' |
| L42 | S 03°11'18" E | 110.00' |
| L43 | S 20°13'08" W | 41.00' |
| L44 | N 67°27'17" W | 36.00' |

| Δ | R | T | L |
|-----------|----------|--------|------------|
| 00°00'13" | 1362.40' | 0.25' | 2.30 (A) |
| 08°14'22" | 1362.40' | 0.25' | 2.30 (C) |
| 81°58'36" | 1440.40' | 51.60' | 102.73 (A) |
| 25°09'02" | 1440.40' | 51.60' | 102.73 (C) |

Notes:
 The bearing system for this plat is based on the UTM Zone 14 North.
Legend:
 O - Denotes 5/8 inch by 7/8 inch iron set and marked by License No. 4478
 B - Denotes found monument
 X - Denotes found or placed "X"
 (R) - Record Distance
 (M) - Measured Distance



Sayre Associates
 218 S. Duffin Avenue • Sioux Falls, SD 57104
 Phone: (605) 332-7511 • Fax: (605) 332-7522
 Engineers • Surveyors

EXHIBIT "A"

TRACTS 1, 2, 3 AND 4 OF BURLINGTON NORTHERN SANTA-FE 4TH ADDITION TO THE CITY OF SIOUX FALLS, MINNEHAHA COUNTY, SOUTH DAKOTA

PLATING CERTIFICATE

EUGENE F. MAURICE, A REGISTERED LAND SURVEYOR OF THE STATE OF SOUTH DAKOTA, DO HEREBY CERTIFY THAT I DO ON OR BEFORE AUGUST 1, 2015, SURVEY AND REPLAT A PART OF OUT LOT NO. 1 OF MANITOBA ADDITION TO SIOUX FALLS, SOUTH DAKOTA, PLAT A PART OF RAILROAD ROW IN THE NW 1/4, REPLAT A PART OF TRACTS 1 & 2 OF COUNTY AUDITOR'S SUBDIVISION OF THE SE 1/4 AND PLAT A PART OF RAILROAD ROW IN THE SE 1/4, ALL IN SECTION 18, TOWNSHIP 181 NORTH, RANGE 48 WEST OF THE 4TH PRINCIPAL MERIDIAN, MINNEHAHA COUNTY, SOUTH DAKOTA, INTO TRACTS AND DEDICATED TO HIGHWAYS AS SHOWN, THE SAME SHALL HEREAFTER BE KNOWN AND DESCRIBED AS TRACTS 1, 2, 3 AND 4 OF BURLINGTON NORTHERN SANTA-FE 4TH ADDITION TO THE CITY OF SIOUX FALLS, MINNEHAHA COUNTY, SOUTH DAKOTA.

DATED THIS _____ DAY OF _____, 20____

BY, REGISTERED LAND SURVEYOR NO. 4478



OWNER'S STATEMENT

WE, BNSF RAILWAY COMPANY, A DELAWARE CORPORATION, DO HEREBY STATE THAT IT OWNS OR CONTROLS THE LAND INCLUDED IN THE ABOVE PLAT AS TRACTS 1, 2, 3 AND 4 AND THAT SAID PLAT HAS BEEN MADE AT OUR REQUEST AND IN ACCORDANCE WITH OUR INSTRUCTIONS FOR THE PURPOSES OF TRANSFER.

TO THE EXTENT NOT ALREADY DONE SO, WE HEREBY DEDICATE TO THE PUBLIC FOR PUBLIC USE FOREVER, THE STREETS, ROADS AND ALLEYS, PARKS, AND PUBLIC GROUNDS, IF ANY, AS SHOWN ON SAID PLAT, INCLUDING ALL SEWERS, CULVERTS, BRIDGES, WATER DISTRIBUTION LINES, SIDEWALKS AND OTHER IMPROVEMENTS ON OR UNDER THE STREETS, ALLEYS, PARKS, AND PUBLIC GROUNDS WHETHER SUCH IMPROVEMENTS ARE SHOWN OR NOT.

WE FURTHER CERTIFY THAT THIS PLATING OF SAID DESCRIBED TRACTS 1, 2, 3 AND 4 OF BURLINGTON NORTHERN SANTA-FE 4TH ADDITION TO THE CITY OF SIOUX FALLS, MINNEHAHA COUNTY, SOUTH DAKOTA, DOES HEREBY VACATE THE FOLLOWING PLATINGS: PART OF OUT LOT NO. 1 OF MANITOBA ADDITION TO SIOUX FALLS, SOUTH DAKOTA, ON FILE AT THE REGISTER OF DEEDS OFFICE IN BOOK 1, PAGE 42; VACATES A PART OF TRACTS 1 & 2 OF COUNTY AUDITOR'S SUBDIVISION OF THE SW 1/4 OF SECTION 18, TOWNSHIP 181 NORTH, RANGE 48 WEST OF THE 4TH PRINCIPAL MERIDIAN, MINNEHAHA COUNTY, SOUTH DAKOTA, ON FILE AT THE REGISTER OF DEEDS OFFICE IN BOOK 3, PAGE 12, AND VACATES A PART OF TRACTS 3 AND PART OF TRACT 4 OF COUNTY AUDITOR'S SUBDIVISION OF THE SE 1/4 OF SECTION 18, TOWNSHIP 181 NORTH, RANGE 48 WEST OF THE 4TH PRINCIPAL MERIDIAN, MINNEHAHA COUNTY, SOUTH DAKOTA, ON FILE AT THE REGISTER OF DEEDS OFFICE IN BOOK 3, PAGE 11. SAID PLAT AND PORTION OF PLATS HEREBY VACATED, ARE SITUATED WITHIN DESCRIBED TRACTS 1, 2, 3 AND 4 OF BURLINGTON NORTHERN SANTA-FE 4TH ADDITION TO THE CITY OF SIOUX FALLS, MINNEHAHA COUNTY, SOUTH DAKOTA, AS SURVEYED.

DATED THIS _____ DAY OF _____, 20____

OWNER: BNSF RAILWAY COMPANY, A DELAWARE CORPORATION

BY: _____

TITLE: _____

STATE OF _____)

COUNTY OF _____) SS

ON THIS _____ DAY OF _____, 20____, BEFORE ME, THE UNDERSIGNED OFFICER, APPEARED _____, KNOWN TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE EXECUTED THE SAME FOR THE PURPOSES THEREIN CONTAINED.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND OFFICIAL SEAL THIS _____ DAY OF _____, 20____.

MY COMMISSION EXPIRES: _____

NOTARY PUBLIC, _____ COUNTY, STATE OF _____

CITY ENGINEER'S CERTIFICATE

I, CHAD HAWL, CITY ENGINEER OF THE CITY OF SIOUX FALLS, DO HEREBY CERTIFY THAT THIS PLAT HAS BEEN REVIEWED BY ME OR MY AUTHORIZED AGENT AND THAT THIS PLAT IS RECOMMENDED FOR APPROVAL BY THE CITY COMMISSION.

SIGNED ON THIS _____ DAY OF _____, 20____.

CITY ENGINEER, CITY OF SIOUX FALLS, SOUTH DAKOTA

CITY PLANNING COMMISSION CERTIFICATE

APPROVAL OF THE PLAT KNOWN AND DESCRIBED AS TRACTS 1, 2, 3 AND 4 OF BURLINGTON NORTHERN SANTA-FE 4TH ADDITION TO THE CITY OF SIOUX FALLS, MINNEHAHA COUNTY, SOUTH DAKOTA, IS HEREBY GRANTED BY THE CITY PLANNING COMMISSION ON THIS _____ DAY OF _____, 20____.

CHAIR, CITY PLANNING COMMISSION

CITY DIRECTOR OF PLANNING AND BUILDING SERVICES CERTIFICATE

I, MIKE COOPER, CITY DIRECTOR OF PLANNING AND BUILDING SERVICES OF THE CITY OF SIOUX FALLS, DO HEREBY CERTIFY THAT THE CURRENT ZONING IS AS LISTED BELOW AND THAT THIS PLAT HAS BEEN REVIEWED BY ME OR MY AUTHORIZED AGENT AND THAT THIS PLAT IS RECOMMENDED FOR APPROVAL.

| CURRENT ZONING CLASSIFICATION | ACRES |
|--|--------|
| IS INDUSTRIAL & UNZONED (RAILROAD ROW) | 11.264 |

DATE: _____

CITY DIRECTOR OF PLANNING AND BUILDING SERVICES, CITY OF SIOUX FALLS, SOUTH DAKOTA



216 S. DAKOTA AVENUE, SIOUX FALLS, SD 57104
Phone: (605) 227-7211 • Fax: (605) 267-7222
Engineers • Surveyors

TRACTS 1, 2, 3 AND 4 OF BURLINGTON NORTHERN SANTA-FE 4TH ADDITION TO THE CITY OF SIOUX FALLS,
MINNEHAHA COUNTY, SOUTH DAKOTA

MAYOR'S CERTIFICATE

I, MIKE T. WETHER, MAYOR OF THE CITY OF SIOUX FALLS, DO HEREBY CERTIFY THAT THIS PLAT HAS BEEN APPROVED BY ME OR MY AUTHORIZED AGENT AND THAT THE CITY CLERK IS HEREBY DIRECTED TO CERTIFY THE SAME THEREON.

APPROVED THIS _____ DAY OF _____, 20____.

MAYOR, CITY OF SIOUX FALLS, SOUTH DAKOTA

CITY CLERK'S CERTIFICATE

I, LORNE HOESTAD, THE DULY APPOINTED, QUALIFIED AND ACTING CITY CLERK OF THE CITY OF SIOUX FALLS, SOUTH DAKOTA, HEREBY CERTIFY THAT THE CERTIFICATES OF APPROVAL ARE TRUE AND CORRECT INCLUDING THE SIGNATURES THEREON, AND THAT ANY SPECIAL ASSESSMENTS WHICH ARE LIENS UPON THE LAND SHOWN IN THE ABOVE PLAT, AS SHOWN BY THE RECORDS IN MY OFFICE, ON THIS _____ DAY OF _____, 20____, HAVE BEEN PAID IN FULL.

CITY CLERK OF RECORDS, SIOUX FALLS, SOUTH DAKOTA

COUNTY TREASURER'S CERTIFICATE

I, TREASURER OF MINNEHAHA COUNTY, SOUTH DAKOTA, DO HEREBY CERTIFY THAT ALL TAXES WHICH ARE LIENS UPON ANY LAND INCLUDED IN THE ABOVE (AND THE FOREGOING) PLATS, AS SHOWN BY THE RECORDS OF MY OFFICE, HAVE BEEN FULLY PAID.

DATED THIS _____ DAY OF _____, 20____.

TREASURER OF MINNEHAHA COUNTY, SOUTH DAKOTA

DIRECTOR OF EQUALIZATION

I, DIRECTOR OF EQUALIZATION OF MINNEHAHA COUNTY, SOUTH DAKOTA, DO HEREBY CERTIFY THAT A COPY OF THE ABOVE PLAT HAS BEEN FILED AT MY OFFICE.

DIRECTOR OF EQUALIZATION, MINNEHAHA COUNTY, SOUTH DAKOTA

REGISTER OF DEEDS

FILED FOR RECORD THIS _____ DAY OF _____, 20____, AT _____ O'CLOCK _____ M., AND RECORDED IN BOOK _____ OF PLATS ON PAGE _____.

REGISTER OF DEEDS, MINNEHAHA COUNTY, SOUTH DAKOTA

Sayre
Associates

214 E. DAWK Avenue | Sioux Falls, SD 57104
Phone: (605) 332-7211 | Fax: (605) 332-7222
Engineers • Surveyors

EXHIBIT "B"

Form of Entry and Confidentiality Agreement
Relative to Buyer's Property Inspection

[see attached]

ENTRY AND CONFIDENTIALITY AGREEMENT

THIS ENTRY AND CONFIDENTIALITY AGREEMENT (“Agreement”) is made as of the Effective Date (defined below) by **BNSF RAILWAY COMPANY**, a Delaware corporation (“**Railroad**”) and _____ (“**Permittee**”).

WHEREAS, Permittee as Buyer and Railroad as Seller have entered into that certain Real Estate Purchase and Sale Agreement (the “**Sale Contract**”) dated as of _____ [Insert Effective Date of Purchase and Sale Agreement] concerning the property(ies) set forth therein (the “**Property**”). Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Sale Contract.

WHEREAS, in order to evaluate the acquisition of the Property, Permittee has requested access to the Property to inspect the condition of the Property.

WHEREAS, Railroad is willing to permit such access only on the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated herein, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following:

1. RIGHT OF ENTRY. In accordance with the provisions of this Agreement, Railroad hereby grants Permittee a non-exclusive, revocable license, subject to all rights, interests, and estates of third parties including, without limitation, any leases, licenses, easements, liens, or other encumbrances, to enter the Property for the purpose of inspecting the Property for said potential acquisition and for no other purpose or use.

2. RESTRICTIONS CONCERNING ENTRY.

(a) Permittee shall enter the Property only during normal business hours and may inspect the condition thereof and conduct such surveys and to make such engineering and other inspections, tests and studies as Permittee shall determine to be reasonably necessary, all at Permittee's sole cost and expense. Notwithstanding the foregoing, Permittee shall not conduct or allow any physically intrusive testing of, on or under the Property and under no circumstances shall Permittee 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 Property unless Permittee has obtained prior written approval from Railroad, which approval may be withheld in Railroad's sole discretion.

(b) Permittee agrees to give Railroad notice at least five (5) business days prior to any such entry, examinations or surveys and Railroad has the right to be present during any such entry, examination or survey. Such notice shall be made to Railroad's Roadmaster, Randy Berghorst, at 503 East 8th Street, Sioux Falls, SD 57102, phone number 605.373.4310. Permittee agrees to conduct all examinations and surveys of the Property in a manner that will not interfere with the operations or improvements of Railroad or other lessees, Permittees or license holders and in such a manner and not at any time to be a source of danger to or interference with the existence or use of present of future tracks, roadbed or property of Railroad, or the safe operation and activities of Railroad.

(c) Permittee shall comply with, and cause its agents to comply with, any and all laws, statutes, regulations, ordinances, rules, orders, common law, covenants or restrictions (“**Legal Requirements**”) applicable to the Property and their activities thereon and any and all safety requirements of Railroad and if ordered to cease any activities upon the Property by Railroad's personnel Permittee shall immediately do so. Notwithstanding the foregoing right of Railroad, the parties agree that Railroad has no duty or obligation to monitor Permittee's activities on the Property to determine the safe nature thereof, it being solely the Permittee's responsibility to ensure that

Permittee's activities on the Property are safe. Neither the exercise nor failure by Railroad to exercise any rights granted in this Section will alter the liability allocation provided by this Agreement.

- (d) Permittee shall not harm or damage the Property or cause any claim adverse to Railroad.
- (e) Permittee shall promptly reimburse Railroad for any additional costs/expenses incurred by Railroad in connection with such safety requirements (including, but not limited to, furnishing flaggers if Railroad determines that furnishing flaggers is necessary during any such examinations or surveys).
- (f) Permittee shall not contact any governmental or quasi governmental authorities concerning the Property without Railroad's prior written consent and Railroad shall have the right to be present during any such contacts; provided, however, Railroad acknowledges that Permittee is in discussions with the agencies listed as follows: South Dakota Department of Transportation, the Federal Highway Administration and SHPO. Permittee agrees to keep Railroad timely informed of the status and substance of Permittee's discussions with these agencies.
- (g) Permittee will not have more than 5 persons present on any individual Property at a one time. Any officer, employee, agent, contractor, consultant, lender, surveyor or attorney entering the Property on behalf of or at the direction of Permittee, shall be deemed agents of Permittee for purposes of this Agreement.

3. TERM. This Agreement shall commence on the date Railroad executes this Agreement as indicated below its signature (the "**Effective Date**") and shall be in effect until the earlier of the date the Sale Contract is terminated pursuant to its terms, or the Closing Date. No expiration or termination of this Agreement shall release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events occurring prior to the date of termination or expiration.

4. COVERAGE. Permittee shall obtain and maintain the coverage required below:

(a) Commercial General Liability Coverage. This coverage shall contain broad form contractual liability with a combined single limit of a minimum of \$1,000,000 each occurrence and an aggregate limit of at least \$2,000,000, but in no event less than the amount otherwise carried by Permittee. Coverage must be purchased on a post 2004 ISO occurrence form 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

(b) Business Automobile Coverage. This coverage 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

(c) Workers' Compensation and Employers' Liability Insurance. Permittee is self insured for worker's compensation coverage. This insurance shall include coverage for, but not limited to:

- Permittee's statutory liability under the workers' 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.

Other Requirements:

Permittee agrees to waive its right of recovery against Railroad and Indemnitees (defined below) for all Liabilities (defined below) that could be insured against by the insurance/coverage required to be maintained hereby. In addition, its insurers/risk pool, through the terms of the policy or policy endorsement, must waive their right of subrogation against Railroad for all claims and suits. The certificate of insurance/certificate of coverage must reflect the waiver of subrogation endorsement. Permittee further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under Permittee's care, custody or control.

All policy(ies) required above (excluding Workers' Compensation) shall include a severability of interest endorsement and shall name Railroad and Jones Lang LaSalle Brokerage Inc. as additional parties with respect to work performed under this Agreement. Severability of interest and naming Railroad and Jones Lang LaSalle Brokerage Inc. as additional parties shall be indicated on the certificate of insurance.

Prior to commencing any work or entering the Property, Permittee shall furnish to Railroad an acceptable certificate(s) of coverage including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the entity providing coverage to notify Railroad 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 coverage. In the event of a claim or lawsuit involving Railroad arising out of this Agreement, Permittee will make available any required policy or coverage document covering such claim or lawsuit.

Acceptance of a certificate that does not comply with this Section 4 shall not operate as a waiver of Permittee's obligations hereunder.

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

For purposes of this Section 4, *Railroad* shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

5. COMPLETION OF INSPECTION. Upon completion of any inspection by Permittee or its agents on the Property or upon the expiration or termination of this Agreement, whichever shall occur first, Permittee shall, at its sole cost and expense:

- (a) remove all of its equipment from the Property;
- (b) report any damage to the Property arising from, growing out of, or connected with Permittee's entry upon the Property and restore the Property to their condition immediately prior to such entry by Permittee or its agents; and
- (c) remedy any unsafe conditions on the Property created by Permittee or its agents.

6. INDEMNITY. TO THE FULLEST EXTENT PERMITTED BY LAW, PERMITTEE SHALL INDEMNIFY, RELEASE, DEFEND AND HOLD HARMLESS RAILROAD AND RAILROAD'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES,

OSSES, LIENS, CAUSES OF ACTION, SUITS DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) (COLLECTIVELY "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) ANY BREACH OF THIS AGREEMENT BY PERMITTEE INCLUDING, BUT NOT LIMITED TO, PERMITTEE'S OBLIGATION TO COMPLY AND CAUSE ITS AGENTS TO COMPLY WITH LEGAL REQUIREMENTS INCLUDING, BUT NOT LIMITED TO, WORKERS' COMPENSATION AND CERCLA,**
- (b) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS AGREEMENT,**
- (c) PERMITTEE'S OR ITS AGENTS ACTIVITIES UPON OR USE OF ANY OF THE PROPERTY, OR**
- (d) ANY ACT OR OMISSION OF PERMITTEE OR PERMITTEE'S AGENTS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER,**

EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH PERMITTEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.

7. CONFIDENTIALITY. Except to the extent otherwise required by Legal Requirements, including but not limited to the South Dakota Public Records Law, S.D. Codified Laws Section 1.27 *et seq.*, Permittee shall not disclose to any third parties any information Permittee discovers or obtains concerning the Property as a result of any inspections, surveys, tests or other activities conducted with respect to the Property ("**Confidential Information**") including, but not limited to, any oral, electronic or written information provided by Railroad or on Railroad's behalf. Notwithstanding the foregoing, Buyer may disclose Confidential Information to those of Buyer's agents directly involved with Permittee with respect to the acquisition of the Property, provided such individuals and firms have agreed to maintain the confidentiality of Confidential Information pursuant to this Agreement and provided further that Permittee shall be liable hereunder for any breach by such parties of such obligation. Confidential Information shall not include information that is or becomes in the public domain other than as a result of a breach by Permittee or its agents. If Permittee or any of its agents receive a request to disclose any part of the Confidential Information, Permittee shall (a) notify Railroad immediately of the existence, terms and circumstances of such request, (b) consult with Railroad on the advisability of taking legally available steps to resist or narrow such requests, and (c) if disclosure of such Confidential Information is required to prevent Permittee being held in contempt or subject to other penalty, shall (i) furnish only such information as is legally required to be so disclosed, and (ii) use its best efforts to obtain an order or other reliable assurance that confidential treatment will be afforded to the disclosed Confidential Information. If the transaction contemplated in the Sale Contract does not close for any reason then Permittee shall, promptly upon Railroad's request, forward to Railroad all Confidential Information without keeping any copies thereof.

8. DEFAULT. Permittee acknowledges and agrees that in the event of a breach of this Agreement, Railroad would be irreparably harmed and could not be made whole by monetary damages. Accordingly, in addition to any other remedy to which it may be entitled at law, in equity or under this Agreement, Railroad shall be entitled to injunctive relief (without the posting of any bond and without proof of actual damages) to prevent such breach and/or to compel specific performance. Permittee and its agents shall not oppose the granting of such relief. In the event of any breach by Permittee or its agents under this Agreement, Railroad may terminate this Agreement and shall be entitled to any other remedy

available at law, in equity or under this Agreement. No failure or delay of either party in exercising any right, power or privilege hereunder shall operate as a waiver of such party's right to require strict compliance with any term of this Agreement.

9. GOVERNING LAW, JURY WAIVER. All questions concerning the interpretation or application of provisions of this Agreement shall be decided according to the laws of the State of Texas without regard to principles of conflicts of law. Any action relating to this Agreement may be brought in the courts of Tarrant County, Texas, Permittee hereby consenting to the jurisdiction and venue of such courts. PERMITTEE AND RAILROAD IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO, THIS AGREEMENT.

10. SALE CONTRACT. The provisions of this Agreement shall be deemed incorporated into the Sale Contract, shall survive the closing thereunder and shall not be merged into the deed quitclaiming the Property or any other closing document, provided, however that nothing in the Sale Contract shall limit or modify any remedy available to Railroad under this Agreement for a breach by Permittee of its obligations under this Agreement. All notices hereunder shall be delivered in the manner set forth in the Sale Contract.

IN WITNESS WHEREOF, this Agreement has been duly executed as of the Effective Date.

PERMITTEE:

By: _____
Print Name: _____
Title: _____

RAILROAD:

BNSF RAILWAY COMPANY

By: _____
Print Name: _____
Title: _____

Date of Execution by Railroad (**Effective Date**)

EXHIBIT "C"

Leases, permits, licenses, and other agreements Affecting the Property to be Assigned

To be partially assigned:

| Contract Number | Contractor | Description | Location | DATE |
|-----------------|------------------------|------------------------------------|-----------------|------------|
| M-133 | South Dakota, State of | Construction of 10th St. Viaduct | Sioux Falls, SD | 10/18/1902 |
| BN-39566 | Sioux Falls Gas Co | Gas line 8th Street | Sioux Falls, SD | 5/28/1913 |
| BN-39583 | Sioux Falls, City of | Viaduct on 10th Street | Sioux Falls, SD | 11/13/1929 |
| M-829 | South Dakota, State of | Install AFLS 8th Street Grade xing | Sioux Falls, SD | 4/29/1941 |
| GN-41749 | Central Electric & Gas | Natural Gas Pipeline | Sioux Falls, SD | 11/13/1950 |
| GN-47526 | Central Electric & Gas | Gas Pipe | Sioux Falls, SD | 1/4/1956 |
| M-2209 | South Dakota, State of | Construction of State Hwy 38 ov | Sioux Falls, SD | 3/10/1978 |
| BN-39553 | South Dakota, State of | Communications pole adjst. | Sioux Falls, SD | 8/5/1982 |
| BN-18529 | South Dakota, State of | Improve Crossing, 6th Street | Sioux Falls, SD | 3/5/1984 |
| BN-39992 | South Dakota, State of | Upgrade signal circuitry at 2 xing | Sioux Falls, SD | 8/31/1995 |
| BF-9562 | South Dakota, State of | Rehab of crossing at 6th Street | Sioux Falls, SD | 1/12/1999 |
| BF-20760 | South Dakota, State of | Replace public crossing surface | Sioux Falls, SD | 2/14/2002 |

To be fully assigned:

| Contract Number | Contractor | Description | Location | DATE |
|-----------------|---------------------------|-----------------------------------|-----------------|------------|
| M-9263 | Consumers Power Company | Electric Power Line Crossing | Sioux Falls, SD | 4/22/1915 |
| BN-39650 | Sioux Falls, City of | Resolution to provide for install | Sioux Falls, SD | 11/13/1916 |
| BN-39579 | Sioux Falls, City of | underground 10 inch cast iron | Sioux Falls, SD | 9/2/1926 |
| BN-39582 | Sioux Falls, City of | Overhead electric line | Sioux Falls, SD | 4/1/1929 |
| BN-39588 | Wilson Storage & Transfer | underground gas pipeline | Sioux Falls, SD | 2/24/1947 |
| BN-39589 | Central Electric & Gas | underground gas pipeline | Sioux Falls, SD | 9/13/1947 |
| BN-39592 | Central Electric & Gas | underground gas pipeline | Sioux Falls, SD | 9/27/1948 |
| BN-39555 | South Dakota, State of | upgrade automatic signals | Sioux Falls, SD | 1/28/1977 |
| BN-39554 | South Dakota, State of | upgrade signals | Sioux Falls, SD | 11/8/1977 |
| BF-22245 | Sioux Falls, City of | Electric wire line | Sioux Falls, SD | 6/7/2002 |
| BF-22251 | Sioux Falls, City of | 12 Inch Water Pipeline | Sioux Falls, SD | 6/7/2002 |
| BF-22252 | Sioux Falls, City of | Two 36 Inch Arch storm water | Sioux Falls, SD | 6/7/2002 |

PARTIAL ASSIGNMENT AND ASSUMPTION OF PERMITS

(Partially Assigned Permits)

THIS PARTIAL ASSIGNMENT AND ASSUMPTION OF PERMITS (this "**Assignment**") is entered into to be effective as of the Effective Date (defined below) by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Assignor**"), and **CITY OF SIOUX FALLS**, a municipality chartered under the South Dakota Constitution ("**Assignee**").

RECITALS

A. Assignor and Assignee are parties to that certain Real Estate Purchase and Sale Agreement ("**Agreement**") with an effective date of _____, 2015, pursuant to which Assignee has agreed to purchase and Assignor has agreed to sell certain real property (the "**Property**") situated in Minnehaha County, South Dakota.

B. Assignor is a party to those certain permits between Assignor and other third parties as shown on the attached **Exhibit A** (collectively, the "**Permits**").

C. Pursuant to the terms of the Agreement, Assignor wishes to assign, and Assignee wishes to assume, in accordance with the terms of this Assignment, a portion of Assignor's right, title and interest in and to the Permits.

AGREEMENTS

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor, and Assignee hereby agree as follows:

1. **Definitions.** All capitalized terms used in this Assignment that are not defined herein shall have the meanings assigned to them in the Agreement.

2. **Partial Assignment.** As of the Effective Date, Assignor hereby assigns, grants, transfers and sets over, conveys and delivers unto Assignee Assignor's right, title and interest in and under the Permits solely with respect to that portion of the Premises (as defined in the Permits) located within the Property actually acquired by Assignee pursuant to the Closing under the Agreement (the "**Assignee Premises**"), which Assignee Premises is limited to the portions of the Premises lying within the Property depicted on **Exhibit "B"** attached hereto and incorporated herein by this reference. Notwithstanding anything else herein to the contrary, Assignor shall retain all rights, title

and interest in and under the Permits with respect to any and all portions of the Premises under the Permits that are outside the boundaries of the Property actually acquired by Assignee pursuant to Closing under the Agreement.

3. **Assumption; Succession.** As of the Effective Date, Assignee hereby assumes all of Assignor's duties and obligations under the Permits with respect to the Assignee Premises arising and accruing from and after the Effective Date of this Assignment and Assignee succeeds to the interests of Assignor under the Permits with respect to the Assignee Premises. Assignee hereby agrees to indemnify, defend and hold Assignor harmless from and against any and all claims of any kind or nature arising from or related to such Permits with respect to the Assignee Premises on or after the Effective Date hereof. Assignor hereby agrees to indemnify, defend and hold Assignee harmless from and against any and all claims of any kind or nature arising from or related to such Permits with respect to the Assignee Premises prior to the Effective Date hereof.

4. **Effective Date.** For purposes of this Assignment, the "**Effective Date**" is the Closing Date of the quitclaim of the Property from Assignor to Assignee under the Agreement. If for any reason the Closing under the Agreement does not occur, this Assignment shall be null and void.

5. **Binding Effect.** This Assignment shall be binding upon and shall inure to the benefit of the parties thereto and their respective successors and assigns.

6. **Execution in Counterparts.** This Assignment may be executed in counterparts, each of which shall constitute an original and all of which together shall be deemed a single document, and counterparts of this Assignment may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Assignment to be effective as of the Effective Date.

ASSIGNOR:

BNSF RAILWAY COMPANY

By: _____

Print Name: _____

Title: _____

Seller's Address:

c/o Jones Lang LaSalle Brokerage, Inc.
4105 Lexington Avenue North, Suite 200
Arden Hills, MN 55126
Attn: Cathy Clune
Fax: (651) 481-9361
Phone (651) 415-2706

ASSIGNEE:

CITY OF SIOUX FALLS

By: _____

Mike T. Huether, Mayor

Buyer's Address:

City of Sioux Falls
224 W. Ninth St.
P.O. Box 7402
Sioux Falls, SD 57117-7402
Attn: Mike T. Huether, Mayor
Fax: (605) 367-8490
Phone: (605) 367-8800

ATTEST:

By: _____

Its: Assistant City Clerk

EXHIBIT A

List of Permits to be Partially Assigned

| Contract Number | Contractor | Description | Location | DATE |
|-----------------|------------------------|------------------------------------|-----------------|------------|
| M-133 | South Dakota, State of | Construction of 10th St. Viaduct | Sioux Falls, SD | 10/18/1902 |
| BN-39566 | Sioux Falls Gas Co | Gas line 8th Street | Sioux Falls, SD | 5/28/1913 |
| BN-39583 | Sioux Falls, City of | Viaduct on 10th Street | Sioux Falls, SD | 11/13/1929 |
| M-829 | South Dakota, State of | Install AFLS 8th Street Grade xing | Sioux Falls, SD | 4/29/1941 |
| GN-41749 | Central Electric & Gas | Natural Gas Pipeline | Sioux Falls, SD | 11/13/1950 |
| GN-47526 | Central Electric & Gas | Gas Pipe | Sioux Falls, SD | 1/4/1956 |
| M-2209 | South Dakota, State of | Construction of State Hwy 38 ov | Sioux Falls, SD | 3/10/1978 |
| BN-39553 | South Dakota, State of | Communications pole adjst. | Sioux Falls, SD | 8/5/1982 |
| BN-18529 | South Dakota, State of | Improve Crossing, 6th Street | Sioux Falls, SD | 3/5/1984 |
| BN-39992 | South Dakota, State of | Upgrade signal circuitry at 2 xing | Sioux Falls, SD | 8/31/1995 |
| BF-9562 | South Dakota, State of | Rehab of crossing at 6th Street | Sioux Falls, SD | 1/12/1999 |
| BF-20760 | South Dakota, State of | Replace public crossing surface | Sioux Falls, SD | 2/14/2002 |

EXHIBIT B

Assignee Premises

PROPERTY DESCRIPTION

TRACTS 1, 2, 3 AND 4 OF BURLINGTON NORTHERN SANTA-FE 4TH ADDITION TO THE CITY OF SIOUX FALLS, MINNEHAHA COUNTY, SOUTH DAKOTA, CONTAINING 10.249 ACRES, MORE OR LESS, AND ADJOINING 0.955 ACRES, MORE OR LESS, DEDICATED ROADWAY TO THE PUBLIC FOR PORTIONS OF EAST SIXTH STREET, EAST EIGHTH STREET, AND EAST TENTH STREET, filed for record on _____, 2015 and recorded in Book _____ of Plats on Page _____, Register of Deeds in said County.

ASSIGNMENT AND ASSUMPTION OF PERMITS

(100% Assigned Permits)

THIS ASSIGNMENT AND ASSUMPTION OF PERMITS (this "**Assignment**") is entered into to be effective as of the Effective Date (defined below) by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Assignor**"), and **CITY OF SIOUX FALLS**, a municipality chartered under the South Dakota Constitution ("**Assignee**").

RECITALS

A. Assignor and Assignee are parties to that certain Real Estate Purchase and Sale Agreement ("**Agreement**") with an effective date of _____, 2015, pursuant to which Assignee has agreed to purchase and Assignor has agreed to sell certain real property (the "**Property**") situated in Minnehaha County, South Dakota.

B. Assignor is a party to those certain permits between Assignor and other third parties as shown on the attached **Exhibit A** (collectively, the "**Permits**").

C. Pursuant to the terms of the Agreement, Assignor wishes to assign, and Assignee wishes to assume, in accordance with the terms of this Assignment, a portion of Assignor's right, title and interest in and to the Permits.

AGREEMENTS

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor, and Assignee hereby agree as follows:

1. **Definitions.** All capitalized terms used in this Assignment that are not defined herein shall have the meanings assigned to them in the Agreement.
2. **Assignment.** As of the Effective Date, Assignor hereby assigns, grants, transfers and sets over, conveys and delivers unto Assignee Assignor's right, title and interest in and under the Permits.
3. **Assumption; Succession.** As of the Effective Date, Assignee hereby assumes all of Assignor's duties and obligations under the Permits arising and accruing from and after the Effective Date of this Assignment and Assignee succeeds to the interests of Assignor under the Permits. Assignee hereby agrees to indemnify, defend and hold Assignor harmless from and against any and all claims of any kind or nature arising from or related

to such Permits on or after the Effective Date hereof. Assignor hereby agrees to indemnify, defend and hold Assignee harmless from and against any and all claims of any kind or nature arising from or related to such Permits prior to the Effective Date hereof.

4. **Effective Date.** For purposes of this Assignment, the "**Effective Date**" is the Closing Date of the quitclaim of the Property from Assignor to Assignee under the Agreement. If for any reason the Closing under the Agreement does not occur, this Assignment shall be null and void.

5. **Binding Effect.** This Assignment shall be binding upon and shall inure to the benefit of the parties thereto and their respective successors and assigns.

6. **Execution in Counterparts.** This Assignment may be executed in counterparts, each of which shall constitute an original and all of which together shall be deemed a single document, and counterparts of this Assignment may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Assignment to be effective as of the Effective Date.

ASSIGNOR:

BNSF RAILWAY COMPANY

By: _____

Print Name: _____

Title: _____

Seller's Address:

c/o Jones Lang LaSalle Brokerage, Inc.
4105 Lexington Avenue North, Suite 200
Arden Hills, MN 55126
Attn: Cathy Clune
Fax: (651) 481-9361
Phone (651) 415-2706

ASSIGNEE:

CITY OF SIOUX FALLS

By: _____

Mike T. Huether, Mayor

Buyer's Address:

City of Sioux Falls
224 W. Ninth St.
P.O. Box 7402
Sioux Falls, SD 57117-7402
Attn: Mike T. Huether, Mayor
Fax: (605) 367-8490
Phone: (605) 367-8800

ATTEST:

By: _____

Its: Assistant City Clerk

EXHIBIT A

List of Permits to be Fully Assigned

| Contract Number | Contractor | Description | Location | DATE |
|-----------------|---------------------------|-----------------------------------|-----------------|------------|
| M-9263 | Consumers Power Company | Electric Power Line Crossing | Sioux Falls, SD | 4/22/1915 |
| BN-39650 | Sioux Falls, City of | Resolution to provide for install | Sioux Falls, SD | 11/13/1916 |
| BN-39579 | Sioux Falls, City of | underground 10 inch cast iron | Sioux Falls, SD | 9/2/1926 |
| BN-39582 | Sioux Falls, City of | Overhead electric line | Sioux Falls, SD | 4/1/1929 |
| BN-39588 | Wilson Storage & Transfer | underground gas pipeline | Sioux Falls, SD | 2/24/1947 |
| BN-39589 | Central Electric & Gas | underground gas pipeline | Sioux Falls, SD | 9/13/1947 |
| BN-39592 | Central Electric & Gas | underground gas pipeline | Sioux Falls, SD | 9/27/1948 |
| BN-39555 | South Dakota, State of | upgrade automatic signals | Sioux Falls, SD | 1/28/1977 |
| BN-39554 | South Dakota, State of | upgrade signals | Sioux Falls, SD | 11/8/1977 |
| BF-22245 | Sioux Falls, City of | Electric wire line | Sioux Falls, SD | 6/7/2002 |
| BF-22251 | Sioux Falls, City of | 12 Inch Water Pipeline | Sioux Falls, SD | 6/7/2002 |
| BF-22252 | Sioux Falls, City of | Two 36 Inch Arch storm water | Sioux Falls, SD | 6/7/2002 |

EXHIBIT "D"

Form of Temporary Easement Agreement

[see attached]

WHEN RECORDED MAIL TO:

BNSF Railway Company
% Jones Lang LaSalle
4300 Amon Carter Blvd., Ste 100
Ft. Worth, TX 76155

RECORDED AT THE REQUEST OF:

BNSF Railway Company
2500 Lou Menk Drive
Ft. Worth, TX 76131-2830

Exempt from Transfer Fee pursuant to SDCL § 43-4-22(2)

TEMPORARY EASEMENT

THIS EASEMENT is granted this day of , 20 , by the City of Sioux Falls, South Dakota (the "City") to BNSF Railway Company ("BNSF").

WHEREAS, the City has purchased the Downtown Sioux Falls Rail Yard (the "Yard"), which has been previously owned and used by BNSF for freight rail operating purposes, and the City will cooperate with BNSF to temporarily continue utilizing the yard for freight rail operating purposes.

NOW, THEREFORE, the City hereby grants to BNSF a temporary easement for freight rail operating purposes upon the following legally described real estate in Minnehaha County, South Dakota:

The property as described in Exhibit A, attached to and made part of this easement.

THE City shall not interfere with or disturb the freight rail operating within the easement area without written approval of BNSF or its authorized representatives.

THE FOLLOWING CONDITIONS are a part of this easement:

1. BNSF agrees to hold harmless the City from any claims arising out of BNSF's use of the temporary easement area to the extent such claims are directly caused by BNSF's negligence or willful misconduct.

2. BNSF will furnish all utilities to perform its freight rail operations.

THIS EASEMENT shall be effective for two (2) years after the execution of this easement unless extended by mutual written agreement between BNSF and the City.

ACCEPTED:

BNSF RAILWAY COMPANY,
a Delaware corporation

By: _____
Julie A. Piggott
Its: Executive Vice President and
Chief Financial Officer

ATTEST:

By: _____
Tammy K. Herndon
Its: Assistant Secretary

STATE OF TEXAS §
 § ss.
COUNTY OF TARRANT §

On this the _____ day of _____, 2015, before me, _____, the undersigned officer, personally appeared, Julie A. Piggott, who acknowledged herself to be the Executive Vice President and Chief Financial Officer of **BNSF RAILWAY COMPANY**, a corporation, and that she, as such Executive Vice President and Chief Financial Officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by herself as Executive Vice President and Chief Financial Officer.

IN WITNESS WHEREOF, I have hereto set my hand and official seal.

Notary Public

My commission expires: _____

This Instrument Prepared by:

BNSF Railway Company
LAW Department
2500 Lou Menk Drive, AOB 3
Fort Worth, Texas 76131-2830

EXHIBIT A

PROPERTY DESCRIPTION

TRACTS 1, 2, 3 AND 4 OF BURLINGTON NORTHERN SANTA-FE 4TH ADDITION TO THE CITY OF SIOUX FALLS, MINNEHAHA COUNTY, SOUTH DAKOTA, CONTAINING 10.249 ACRES, MORE OR LESS, AND ADJOINING 0.955 ACRES, MORE OR LESS, DEDICATED ROADWAY TO THE PUBLIC FOR PORTIONS OF EAST SIXTH STREET, EAST EIGHTH STREET, AND EAST TENTH STREET, filed for record on _____, 2015 and recorded in Book _____ of Plats on Page _____, Register of Deeds in said County.

EXHIBIT "E"

Form of Bill of Sale

[see attached]

BILL OF SALE

BNSF RAILWAY COMPANY, a Delaware corporation (formerly known as The Burlington Northern and Santa Fe Railway Company and formerly known as Burlington Northern Railroad Company) (formerly known as The Burlington Northern and Santa Fe Railway Company and successor by merger to The Atchison, Topeka and Santa Fe Railway Company), whose mailing address is 2500 Lou Menk Drive, Fort Worth, Texas 76131-2830, hereinafter called "**Grantor**", in consideration of **TEN DOLLARS AND NO/100 DOLLARS (\$10.00)** and other good and valuable consideration to it paid by **CITY OF SIOUX FALLS**, a municipality chartered under the South Dakota Constitution, whose mailing address is 222 W. Ninth Street, P. O. Box 7402, Sioux Falls, SD 57117-7402, hereinafter called "**Grantee**", receipt whereof is hereby acknowledged, has sold, assigned, transferred and delivered and by these presents does hereby sell, assign, transfer and deliver unto the Grantee, without any covenants of warranty whatsoever and without recourse to the Grantor, all its right, title and interest, if any, in and to the following described personal property presently situated in the County of Minnehaha, State of South Dakota, to-wit:

(i) Approximately 11,770 feet of Trackage, together with all materials and appurtenances, including rails, ties, wires, signals and other track materials associated therewith in an "as-is" condition (collectively, "**Personal Property**"), and

(ii) A freight building, together with all appurtenances thereto in an "as-is" condition (collectively, "**Freight Building**"), such Freight Building being located partially on the Premises (defined below) between 6th and 8th Streets, on the west side of Grantor's mainline, and partially on Grantor's remaining property.

The Personal Property and Freight Building lie within that portion of a parcel of land situated in Section 16, Township 101N, Range 49W, Minnehaha County, South Dakota, the Personal Property and Freight Building being more particularly shown red on attached **EXHIBIT "D-1"**, and by this reference made a part hereof (the "**Premises**"). Grantee agrees to assume all obligations thereto, including dismantling costs if Grantee decides to remove the Personal Property and Freight Building.

1. Grantee has fully examined and inspected the Personal Property and the Freight Building, and has in all respects accepted and approved the same and all parts and appurtenances thereof and accepts this Bill of Sale with the understanding that Grantor has made no representations or warranties respecting the nature or condition of the Personal Property, the Freight Building, or any of its appurtenances. **GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF THE PERSONAL PROPERTY AND FREIGHT BUILDING, THEIR RESPECTIVE MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE PERSONAL PROPERTY OR FREIGHT BUILDING, THE CONFORMITY OF THE PERSONAL PROPERTY OR FREIGHT BUILDING TO THEIR RESPECTIVE INTENDED USES, OR THE QUALITY OF THE TITLE TO THE PERSONAL PROPERTY AND FREIGHT BUILDING. GRANTOR SHALL NOT BE LIABLE TO GRANTEE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT LIABILITY IN TORT) WITH RESPECT TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, OF THE PERSONAL PROPERTY OR FREIGHT BUILDING OR THE CONFORMITY OF THE PERSONAL PROPERTY OR FREIGHT BUILDING TO THEIR RESPECTIVE INTENDED USES. GRANTEE ACCEPTS THE PERSONAL PROPERTY AND FREIGHT BUILDING IN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION.**

2. Grantor does not purport to own any interest in signaling or grade crossing equipment or property located on the Premises to the extent that such equipment or property may be owned by a third party, such as a governmental authority or municipality. Grantor does convey and transfer whatever rights and obligations it may have to possess or use such signaling or grade crossing equipment, if included in the Personal Property or Freight Building.

3. Grantee acknowledges and affirms that Grantee's assumption of the Personal Property and Freight Building in no way entitles Grantee to any right, title, interest or use in, to and of any BNSF trademark, service mark, or other intellectual property.

TO HAVE AND TO HOLD, together with all appurtenances thereunto belonging to the Grantee its successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor has caused this Bill of Sale to be signed by its duly authorized officers this _____ day of _____, 2015.

BNSF RAILWAY COMPANY

By: _____

Its: _____

CITY OF SIOUX FALLS

By: _____

Mike T. Huether

Its: Mayor

ATTEST:

By: _____

Its: Assistant City Clerk

EXHIBIT "F"

Form of Temporary Occupancy Permit for Removal of Freight House Building

[see attached]

TEMPORARY OCCUPANCY AGREEMENT

THIS TEMPORARY OCCUPANCY AGREEMENT ("Agreement"), made this _____ day of _____, 2015, ("Effective Date") by and between BNSF RAILWAY COMPANY, a Delaware corporation (hereinafter called "Licensor") and _____ (hereinafter whether one or more persons or corporations called "Licensee").

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to the following:

GENERAL

1. Licensor hereby grants Licensee a non-exclusive license (subject to all rights, interests, estates of third parties, including, without limitation, any leases, licenses, easements, liens, or other encumbrances), and upon the terms and conditions set forth below, to enter Licensor's property described on Exhibit "E-1" (attached hereto and incorporated by reference herein, the "Premises"), in strict accordance with a plan approved by Licensor, solely for the purposes of temporarily accessing the Premises (that is adjacent to Licensor's rail corridor) for de-construction and removal purposes of the freight building located partially on the Premises between 6th and 8th Streets, on the west side of Licensor's mainline (which de-construction and removal activities shall be done in a good and workmanlike manner by Licensee).
2. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use of such improvements.
3. Licensee, without expense to Licensor, will take any and all necessary action to preserve the character of the Premises and restore the Premises to its natural state.
4. In the event Licensor determines that Licensee has in any way breached the terms or conditions of this Agreement, Licensor shall have the right to terminate this Agreement in accordance with **Section 26**.
5. Any contractors or subcontractors performing work on the Premises, or entering the Premises on behalf of Licensee, shall be deemed agents of Licensee for purposes of this Agreement.

TERM

6. This Agreement shall commence on the Effective Date and shall continue for a period of _____ months, subject to prior termination as hereinafter described. Licensee agrees to notify Licensor upon completion of Licensee's construction activities and agrees to mutual termination of this License immediately thereafter.

COMPENSATION

7. No fee shall be charged to Licensee as compensation for the license granted hereunder.

COMPLIANCE WITH LAWS

8. Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("Legal

Requirements”) relating to the de-construction, removal, and the general use taking place on the Premises.

9. Prior to entering the Premises, Licensee shall and shall cause its contractor to comply with all Licensor’s applicable safety rules and regulations. Prior to commencing any work on the Premises, Licensee shall complete and shall require its contractor to complete the safety training program at the Website “contractororientation.com”. This training must be completed no more than one year in advance of Licensee’s entry on the Premises.

DEFINITION OF COST AND EXPENSE

10. For the purpose of this Agreement, “cost” or “costs” “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.
11. All invoices are due thirty (30) days after the date of invoice. In the event that Licensee shall fail to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by Licensee at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2 1/2%), and for the period July 1 through December 31, the prime rate last published in *The Wall Street Journal* in the preceding June plus two and one-half percent (2 1/2%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

RIGHT OF LICENSOR TO USE

12. Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:
 - (a) to maintain, renew, use, operate, change, modify and relocate any existing pipe, power, communication lines and appurtenances and other facilities or structures of like character upon, over, under or across the Premises;
 - (b) to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; or
 - (c) to use the Premises in any manner as the Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 1** above.

LICENSEE’S OPERATIONS

13. Licensee, at its own expense, shall keep the rail flange ways of its project clear of all snow, dirt, or any other obstructions whatsoever, which may accumulate by virtue of vehicles, equipment, or from machinery crossing thereover or otherwise, and shall remove and keep removed any vegetation along the rail corridor on each side of the project so that the motorists' line of sight to approaching trains is not impaired or obstructed by any aspect of the project.
14. It is specifically understood that cables, pipelines, and other electric and/or fiber optic transmission lines may be on, about, along, or under the Premises and Licensee agrees that under no

circumstances will Licensee dig in or disturb the surface of the Premises without the express written consent of Licensor.

15. Licensee shall construct and maintain, at its own expense, any necessary roadway (to end of railroad ties) and related roadway drainage in a manner acceptable to Licensor, and safe for use by any vehicles or equipment related to this project. Prior to such construction or maintenance, five (5) days advance notice must be given to Licensor's Roadmaster at 503 East 8th Street, Sioux Falls, SD 57102, telephone number 605.373.4310.
16. Licensee agrees to keep any crossing gates, farm gates or barriers (consisting of a bar, cable gate or chain between posts on both sides of the Railroad rail corridor and straddling the roadway), closed and securely fastened, except when being opened to allow access upon said rail corridor.
17. While this Agreement is personal to Licensee, it is recognized that there is a possibility of the Premises being used by unauthorized persons, and Licensee agrees that for the purposes of this Agreement all persons using the Premises in connection with this License, or for or on behalf of Licensee, or as otherwise permitted by Licensee during the term shall be deemed the agents or invitees of Licensee.
18. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to be a source of danger to or interference with the existence or use of present or future tracks, roadbed or property of Licensor, or the safe operation and activities of Licensor. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this Agreement.
19. If at any time during the term of this Agreement, Licensor shall desire the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the project of Licensee, then Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in its project as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the existing operations of Licensee on the Premises.
20. Upon termination of this Agreement, Licensor may restore the rail corridor to the condition as of the Effective Date of this Agreement at Licensee's sole cost and expense and without incurring any liability to Licensee. Licensee shall within thirty (30) days after bill is rendered therefor, reimburse Licensor for all costs and expenses, which Licensor may incur in connection therewith.

LIABILITY

21. (a) **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LICENSOR AND LICENSOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES,**

PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "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):

- (i) THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
- (ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS AGREEMENT,**
- (iii) LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**
- (iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED BY LICENSEE, OR**
- (v) ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER,**

EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH LICENSEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.

- (b) FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN SECTION 21(a), LICENSEE SHALL AND SHALL CAUSE ITS CONTRACTOR TO NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS WHETHER BASED ON STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT LICENSOR IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE PREMISES FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LICENSEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LICENSEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS AGREEMENT SHALL NOT IN ANY WAY SUBJECT LICENSOR TO CLAIMS THAT LICENSOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL LICENSOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**

- (c) TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE FURTHER AGREES, AND SHALL CAUSE ITS CONTRACTOR TO AGREE, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF LICENSEE OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO 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.
- (d) Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnatee by any entity, relating to any matter covered by this Agreement for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnatee. Licensee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

PERSONAL PROPERTY WAIVER

22. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.

RISK COVERAGE

23. Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following coverage:

- (a) Commercial General Liability Coverage. This coverage shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000, but in no event less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence or equivalent and include coverage for, but not limited to, the following:
- ◆ Bodily Injury and Property Damage
 - ◆ Personal Injury and Advertising Injury
 - ◆ Fire legal liability
 - ◆ Products and completed operations

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

- ◆ The coverage shall not include any exclusion or other limitation for any work being done within 50 feet of railroad property.

- ◆ Waiver of subrogation in favor of and acceptable to Licensor.
- ◆ Additional party endorsement in favor of and acceptable to Licensor and Jones Lang LaSalle Brokerage, Inc.
- ◆ Separation of covered parties.
- ◆ The policy shall be primary and non-contributing with respect to any coverage carried by Licensor.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability coverage required herein are intended to apply to employees of the coverageholder and shall not apply to Licensor employees.

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

- (b) Business Automobile Coverage. This coverage shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:
- ◆ Bodily injury and property damage
 - ◆ Any and all vehicles owned, used or hired

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

- ◆ Waiver of subrogation in favor of and acceptable to Licensor.
- ◆ Additional party endorsement in favor of and acceptable to Licensor.
- ◆ Separation of covered parties.
- ◆ The policy shall be primary and non-contributing with respect to any coverage carried by Licensor.

- (c) Workers' Compensation and Employers' Liability Insurance. The Licensee is self insured for workers' compensation. This insurance shall include coverage for, but not limited to:
- ◆ Licensee's statutory liability under the workers' compensation laws of the state(s) in which the 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.

- (d) Railroad Protective Liability Insurance. This insurance shall name only Licensor as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during de-construction and removal. 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 Licensor prior to performing any work or services under this Agreement.
 - ◆ Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control arising out of the acts or omissions of the contractor named on the Declarations."

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

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

Other Requirements:

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

Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, its insurers, through policy endorsement, waive their right of subrogation against Licensor for all claims and suits. The certificate of insurance must reflect waiver of subrogation endorsement. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Licensor for loss of its owned or leased property or property under its care, custody or control.

Licensee's insurance policies or coverage through policy endorsement, must include wording which states that the policy shall be primary and non-contributing with respect to any insurance or coverage carried by Licensor. The certificate of insurance or coverage must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers' Compensation and if applicable, Railroad Protective) shall include a severability of interest endorsement and shall name Licensor and Jones Lang LaSalle Brokerage Inc. as additional parties with respect to work performed under this Agreement. Severability of interest and naming Licensor and Jones Lang LaSalle Brokerage Inc. as additional parties shall be indicated on the certificate of insurance.

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

Prior to commencing any work, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance or coverage 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) or coverage provider to notify Licensor 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 or certificate of coverage. In the event of a claim or lawsuit involving Licensor arising out of this Agreement, Licensee will make available any required policy or coverage document covering such claim or lawsuit.

Licensee represents that this Agreement has been thoroughly reviewed by Licensee's risk manager who is authorized to obtain or issue the certificates of coverage as provided in this Agreement. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above. Not more frequently than once every five years, Licensor may reasonably modify the required insurance or coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

Failure to provide evidence as required by this **Section 23** shall entitle, but not require, Licensor to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this **Section 23** shall not operate as a waiver of Licensee's obligations hereunder.

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

For purposes of this **Section 23**, Licensor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

ENVIRONMENTAL

24. (a) Licensee shall strictly comply with all federal, state and local environmental laws 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, CERCLA (collectively referred to as the "**Environmental Laws**"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.
- (b) Licensee shall give Licensor immediate notice to Licensor'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 Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any release on or from the Premises. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- (c) In the event that Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Premises which occurred or may occur during the term of this Agreement, Licensor may require Licensee, at Licensee'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 Licensor's right-of-way.

- (d) Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this Agreement. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

DEFAULT

25. If default shall be made in any of the covenants or agreements of Licensee contained in this document, or in case of any assignment or transfer of this Agreement by operation of law, Licensor may, at its option, terminate this Agreement by serving five (5) days' notice in writing upon Licensee. Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this Agreement. The remedy set forth in this **Section 25** shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

TERMINATION

26. This License may be terminated in accordance with **Section 25** above. This License may be terminated by Licensee upon execution of Licensor's Mutual Termination Letter Agreement then in effect. Upon expiration of the time specified in such notice, this License and all rights of Licensee shall absolutely cease.
27. If Licensee fails to surrender to Licensor the Premises, upon any termination of this Agreement, all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered. Termination shall not release Licensee from any liability or obligation, whether of indemnity or otherwise, resulting from any events happening prior to the date of termination.

ASSIGNMENT

28. Neither Licensee, nor the heirs, legal representatives, successors or assigns of Licensee, nor any subsequent assignee, shall assign or transfer this Agreement or any interest herein, without the prior written consent and approval of Licensor, which may be withheld in Licensor's sole discretion.

NOTICES

29. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Jones Lang LaSalle Brokerage, Inc.
3017 Lou Menk Drive, Suite 100
Fort Worth, TX 76131-2800

Attn: Licenses/Permits

with a copy to:

BNSF Railway Company
2500 Lou Menk Dr. – AOB3
Fort Worth, TX 76131
Attn: Manager – Land Revenue Management

If to Licensee:

SURVIVAL

30. Neither termination nor expiration will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Premises are restored to its condition as of the Effective Date.

RECORDATION

31. It is understood and agreed that this Agreement shall not be placed on public record.

APPLICABLE LAW

32. All questions concerning the interpretation or application of provisions of this Agreement shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.

SEVERABILITY

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

INTEGRATION

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

MISCELLANEOUS

35. In the event that Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
36. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.

IN WITNESS WHEREOF, this License has been duly executed, in duplicate, by the parties hereto as of the day and year first above written.

BNSF RAILWAY COMPANY

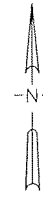
By: Jones Lang LaSalle Brokerage, Inc.
3017 Lou Menk Drive, Suite 100
Fort Worth, TX 76131-2800

By: _____
Ed Darter
Title: Vice President – National Accounts

**&LICENSEE&
&ADDRESS&**

By: _____
Title: _____

EXHIBIT "E-1"
ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
AND

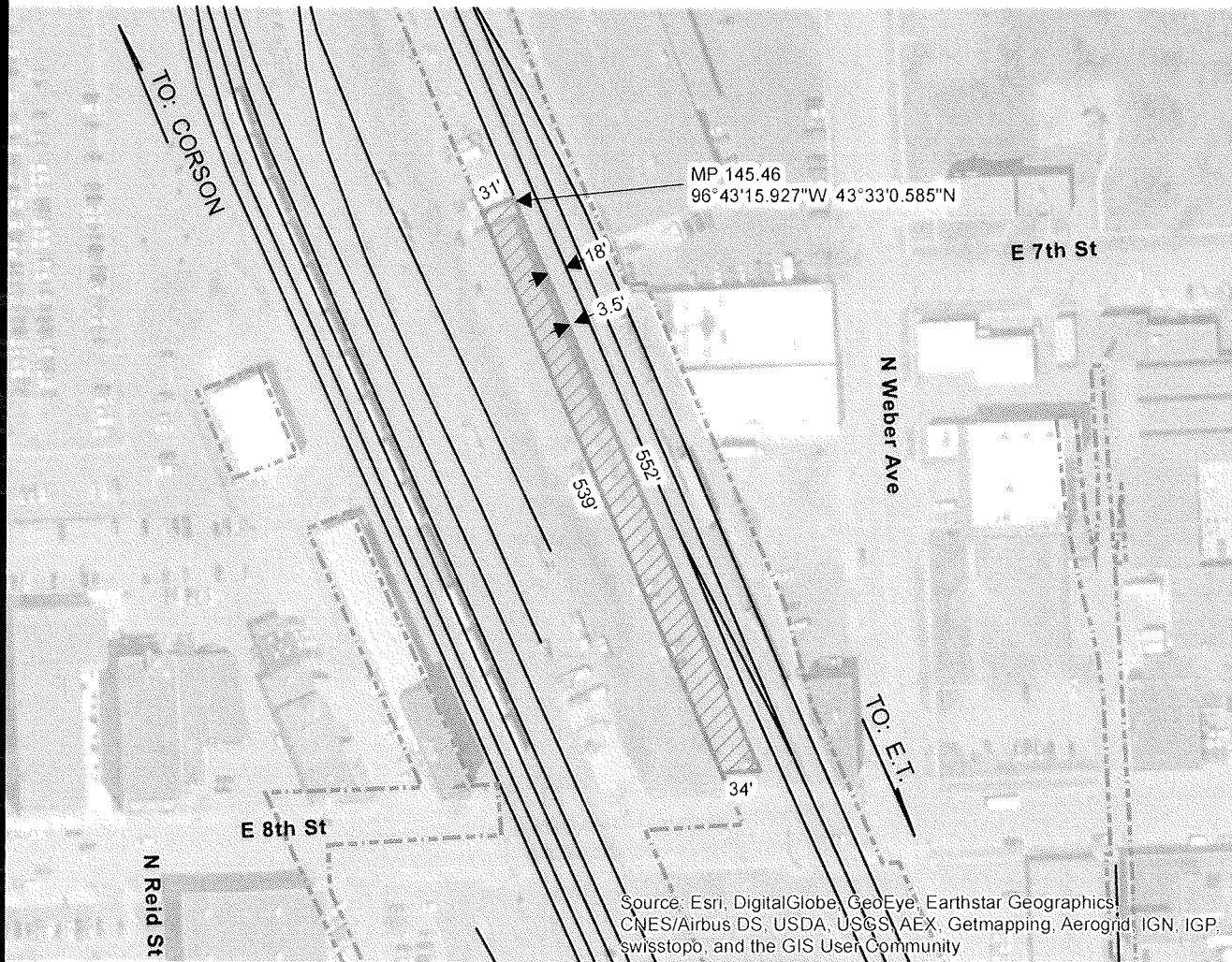


CITY OF SIOUX FALLS

SCALE: 1 IN. = 150 FT.
TWIN CITIES DIV.
CORSON SUBDIV. L.S. 0198
DATE 08/21/2015

SECTION: 16
TOWNSHIP: 101N
RANGE: 49W
MERIDIAN: 5PM

MAP REF. s50351



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

LEGEND:

- PREMISES
- RIGHT OF WAY LINE
- TRACK

DESCRIPTION:

A PARCEL OF LAND CONTAINING A TOTAL OF 17,205 SQ FT. (0.39 A.C.) MORE OR LESS SHOWN HATCHED. TO BE USED FOR REMOVAL OF FREIGHT BUILDING, AFTER THE SALE OF PROPERTY.

AT: SIOUX FALLS
COUNTY OF MINNEHAHA

STATE OF SD

JNC

EXHIBIT "G"

Executed FONSI Compliance Agreement

[see attached]

FONSI COMPLIANCE AGREEMENT

1. General

The City of Sioux Falls ("City") and BNSF Railway Company ("BNSF") intend to enter into a separate Purchase and Sale Agreement (PSA) for railroad property associated with the Downtown Sioux Falls Rail Yard Redevelopment Project ("Project"). Because the Project is funded by an earmark in the Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users (SAFETEA-LU) which is administered by South Dakota Department of Transportation (SDDOT) and the Federal Highway Administration (FHWA), the Project has been reviewed pursuant to the National Environmental Policy Act, resulting in a September 26, 2013 Finding of No Significant Impact and Section 4(f) Evaluation (FONSI). City, BNSF, SDDOT and FHWA shall collectively be referred to herein as the "Parties."

Exhibits 5 and 6 of the FONSI identify Mitigation Measures and Commitments and anticipated Permit requirements, which City and/or BNSF are expected to meet. Copies of Exhibits 5 and 6 from the FONSI are attached hereto with red numbering added for clarification.

SDDOT and FHWA require City and BNSF to commit to comply with the FONSI Exhibit 5 and 6 requirements before releasing funds for the Project. In addition, FHWA and SDDOT recently notified the City and BNSF that they must commit to comply with the following additional requirements related to the Northern Long Eared Bat ("NLEB Requirements") before the FHWA and SDDOT will release funds to the City to complete the purchase from BNSF as agreed upon in the PSA:

Field surveys and a Biological Assessment (if necessary) will be conducted by the City in accordance with policies defined by the United States Fish and Wildlife Service (FWS) prior to removal of any abandoned buildings undertaken as part of the Project. Completed surveys and any Biological Assessment with affects and recommendations will be supplied to SDDOT/FHWA. SDDOT/FHWA will coordinate with FWS to obtain a determination that will include the appropriate avoidance and minimization measures (AMM) required for an affects determination. The City will adhere to all AMM's required by the NLAA determination. The FONSI will be reevaluated by the SDDOT/FHWA, adding the Bat finding and AMM's to the FONSI.

If any trees will be removed for any projects, such tree removal will occur only between October 1 and March 31 in accordance with FHWA's Programmatic Consultation Agreement for the NELB and the USFWS South Dakota field office's recommended seasonal tree clearing restrictions.

The intent of this agreement is to provide a clarification to the FONSI on who the responsible party will be for each item listed in Exhibits 5

and 6 and the NLEB Requirements. As such, the City and BNSF each agrees and represents to the SDDOT and FHWA that it will meet the commitments and permit requirements from Exhibits 5 and 6 and the NLEB Requirements assigned to it herein. SDDOT and FHWA each agrees and represents that, in light of receiving the City's and BNSF's respective commitments to complete each of these requirements through execution of this agreement, SDDOT and FHWA will release the funds to the City to complete the purchase from BNSF as agreed upon in the PSA. Where there is a conflict between the responsible party identified for any Mitigation Measure or Commitment in Exhibit 5 or any Permit in Exhibit 6 of the FONSI and the responsible party identified in this Compliance Agreement, the Parties agree that this Compliance Agreement shall control.

2. Scope

This Agreement applies to work to be performed for all three components of the Sioux Falls Rail Yard Redevelopment Project, each of which is described in the selected alternative in the Environmental Assessment dated July 18, 2013 and Finding of No Significant Impact dated September 26, 2013 and which are summarized as follows: a) BNSF construction of replacement interchange sidings outside the downtown Rail Yard area ("BNSF Sidings"), b) BNSF reconfiguration of connections between the E&E tracks and BNSF tracks within other downtown rail yard property not purchased by the City ("BNSF/E&E Connection"), and c) City preparation of purchased Rail Yard property for redevelopment including removal of tracks and an existing freight building ("City Site Preparation"). The attached **Table 1** identifies the requirements in Exhibits 5 and 6, the responsible party, and which of the three components of the Project is/are involved.

3. Agreement

City agrees that it (and its officers, agents, employees and contractors) will undertake the items listed in the attached **Table 1** for which the City is listed as the Responsible Party, to the extent it applies to City's portion of the Sioux Falls Redevelopment Project.

BNSF agrees that it (and its officers, agents, employees and contractors) will undertake the items listed in the attached **Table 1** for which BNSF is listed as the Responsible Party, to the extent it applies to BNSF's portion of the Sioux Falls Redevelopment Project.

4. Assurances

Upon obtaining any Permits and completing the Mitigation Measures and Commitments required of it hereunder, BNSF will certify to the City that BNSF has complied with all requirements of this agreement to which it is subject. Within one hundred twenty days (120) days of receipt of BNSF's certification, the City of Sioux Falls will pay BNSF \$100,000, subject to confirmation by the City that no investigation, audit, enforcement, or claim for repayment of federal funds is pending against the City arising from any failure by BNSF to properly complete its obligations as listed in Table 1.

In the event that any such audit, enforcement, or claim for repayment of federal funds is brought against the City, the City will retain the \$100,000 pending resolution of such dispute and the sum may thereafter be applied as follows: (a) by City to complete the BNSF obligations listed in Table 1 or to undertake any remediation or mitigation required as a result of BNSF's failure to properly complete its obligations, or (b) by City for expenses in resolving claims relating to BNSF's failure to complete its obligations as listed in Table 1 (including attorney's fees and costs).

The City of Sioux Falls will comply with all applicable environmental requirements for this project. In an attempt to expedite federal funds being obligated and eventually reimbursed to the City, the City will also submit a list of items (with accompanying estimates) that the City is anticipated to request expense reimbursement to SDDOT for determination of reimbursement eligibility prior to the end of the two year temporary easement for freight rail operations. Actual reimbursement will not occur until the City has incurred expenses and then submits reimbursement payment to DOT. In addition, in the event that an audit is conducted and ineligible costs are identified, the City will be responsible for repayment of those ineligible costs.

The foregoing obligations constitute contractual obligations. Other than the obligations expressly agreed to by BNSF in this FONSI Compliance Agreement, BNSF does not agree to the jurisdiction of any state or local government body or waive the preemptive effect of any state or federal law with respect to its portion of the Project.

If the approval of any governmental agency is required for all or part of the Project, including, and without limitation, any approval or exemption from approval, of part or all of the Project by the Surface Transportation Board, it is understood and agreed that the obligations of the parties under this Agreement will be conditioned upon obtaining any such approvals on terms acceptable to the parties.

This Agreement shall commence on the date of final signature below (the "Effective Date") and shall be in effect until the Project has been completed as set forth in the FONSI. The Parties' obligations under this FONSI Compliance Agreement shall survive the Closing of the sale of rail yard property by BNSF to City as described in the Purchase and Sale Agreement referenced above.

5. Signatures

Date: 7-21-15



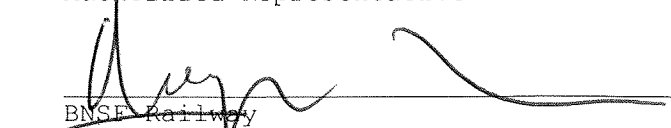
South Dakota Department of Transportation
Authorized Representative

Date: 7-21-15



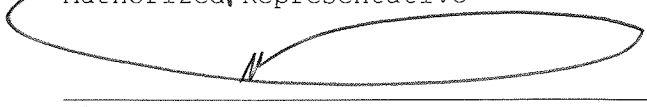
Federal Highway Administration
Authorized Representative

Date: 8/31/15

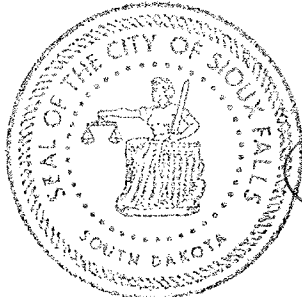


BNSF Railway
Authorized Representative


Date: 8/31/15



City of Sioux Falls
Authorized Representative



Attest:



Tavia Hoptel
City Clerk

Table 1 - Responsible Parties for Mitigation Measures, Commitments, and Permits

| Mitigation Measure, Commitment, and/or Permit per Exhibits 5 and 6 | Responsible Party for BNSF Sidings | Responsible Party for BNSF/E&E Connection | Responsible Party for City Site Preparation |
|--|------------------------------------|--|---|
| 5.1: All money generated from the sale of the Downtown Yard property acquired as part of the Selected Alternative will be applied to future projects eligible for funding under Title 23 USC. | Not required. | Not required. | City |
| 5.2: The specific amount of ROW and temporary easements will be determined during final design and all ROW acquisition will be conducted in accordance with the Uniform Act | BNSF | Not required. | Not required. |
| 5.3: Sidewalks and trails will be kept open during construction. Existing sidewalks would be replaced along 6 th Street and 8 th Street after the rails and crossings are removed. Signage, detours, and temporary paving would be used during construction, in compliance with ADA. | Not required. | BNSF/City. BNSF will make every effort to not block the bike trail. If a closure is needed, BNSF will coordinate with the City and the City will install a detour. | City |
| 5.4: If there is an inadvertent discovery of a historic property during construction of the undertaking, the City will stop construction of the undertaking and immediately notify FHWA. FHWA will notify the appropriate authorities and follow the procedures outlined in 36 CFR 800.13. | BNSF | BNSF | City |

| | | | |
|---|--|--|----------------------|
| <p>5.5: A formal delineation will need to be conducted to determine the boundaries of the wetlands and Waters of the U.S. A Section 404 NWP will be obtained for these impacts during final design and an alternatives analysis will be submitted and demonstrates that the preferred alternative is the least environmentally damaging practicable alternative. Construction will implement BMPs, and the general and special conditions required. No compensatory mitigation is proposed. If the impacts to the streams or wetlands exceed the threshold, mitigation will be necessary.</p> | <p>BNSF</p> | <p>Not required.</p> | <p>Not required.</p> |
| <p>5.6: Impacts to water quality are expected to be minor and temporary, and would be mitigated by implementing BMPs as required by City of Sioux Falls, SDDENR, and USACE. A General Permit for Storm Water Discharges Associated with Construction Activities would be required, including a SWPPP.</p> | <p>BNSF</p> | <p>BNSF</p> | <p>City</p> |
| <p>5.7: Soil erosion and sediment control practices as detailed in a SWPPP will be incorporated. Construction activities will be permitted and will limit post construction to pre-construction levels.</p> | <p>BNSF</p> | <p>BNSF</p> | <p>City</p> |
| <p>5.8: The proper floodplain permits for floodplain impacts in both study areas will be obtained, which will certify that the construction activities are in compliance with South Dakota floodplain regulations, prior to construction.</p> | <p>City/BNSF. The City will obtain the floodplain permit. BNSF's obligations are limited to providing design information to the City for the permit and providing as-built information</p> | <p>City/BNSF. The City will obtain the floodplain permit. BNSF's obligations are limited to providing design information to the City for the permit and providing as-built</p> | <p>City</p> |

| | to verify that construction was performed as permitted. | information to verify that construction was performed as permitted. | |
|---|--|--|---|
| 5.9: After construction, any disturbed areas will be re-vegetated. | BNSF | BNSF | City |
| 5.10: Weed free and approved plant materials will be used to re-vegetate disturbed areas. Chemical and biological control, along with any other coordination will be used as needed. | BNSF will follow the requirements of the SWPPP to re-vegetate disturbed areas. | BNSF will follow the requirements of the SWPPP to re-vegetate disturbed areas. | City |
| 5.11: If any trees are removed for the project, they will be removed outside the primary migratory bird nesting season (April 1 through September 1), or field surveys will be conducted in accordance with policies defined by the USFWS. | BNSF | BNSF if any trees are to be removed. | Not required by FONSI for this project component. No trees removed for this portion of the project. |
| NLEB Requirements (as stated above) | BNSF. Any tree clearing will occur only between October 1 and March 31. | BNSF. Any tree clearing will occur only between October 1 and March 31. | City |
| 5.12: Utility providers will be coordinated with prior to construction and removal activities. Where relocations are required due to conflict with the Selected Alternative, designs to relocate the utility would be developed by the utility company. | BNSF | BNSF | City |
| 5.13: Adverse effects to historic properties will be mitigated in accordance with the MOA between FHWA and SHPO, that includes stipulations for 1) a redevelopment plan to maintain the historic integrity of the | Not required. | Not required. | City |

| | | | | |
|---|---|--|----------------------|----------------------|
| <p>surrounding historic structures; 2) signage regarding the historic railroad and its role in the development of downtown Sioux Falls to be placed for public consumption; and 3) recordation of the current state of the rail yard prior to any changes taking place to the tracks or the freight house building.</p> | <p>5.14: Temporary noise abatement measures will be implemented during construction of the E&E Interchange (e.g. no night-time work).</p> | <p>BNSF will avoid night-time construction activity 10:30pm - 6:00am, except as determined necessary by BNSF to protect safety or preserve train operations.</p> | <p>Not required.</p> | <p>Not required.</p> |
| <p>5.15: The top six inches of soil will be excavated from the BNSF property and dispose of it in accordance with a properly prepared Soils Management Plan.</p> | <p>Not required.</p> | <p>Not required.</p> | <p>Not required.</p> | <p>City</p> |
| <p>5.16: Future developers of the Downtown Yard property will abide by the regulations of the Overlay District in the City's zoning ordinances (i.e. retaining an environmental consultant, preparing a Soils Management Plan for any excavation and grading activities, and working with the City and SDDENR to maintain compliance with State of South Dakota regulations).</p> | <p>Not required.</p> | <p>Not required.</p> | <p>Not required.</p> | <p>City</p> |
| <p>5.17: Any existing structures within the Study Area 1 and 2 that will be acquired and demolished prior to construction of the rail yard should be inspected for the presence of asbestos-containing material and abated, if</p> | <p>Not required.</p> | <p>Not required.</p> | <p>Not required.</p> | <p>City</p> |

| | | | | |
|---|---|---|---------------|--|
| necessary, prior to the demolition, in compliance with federal and state requirements. | | | | |
| 6.1: CWA - Section 404 (Wetlands and Waters) | BNSF | | Not required. | Not required. |
| 6.2: Clean Water Act - Section 401 (Water Quality Certification), and Article 74:51 of the State of South Dakota Administrative Code (SD Surface Water Quality Standards) | BNSF | | BNSF | City |
| 6.3: Floodplain Development Permits | City/BNSF. The City will obtain the floodplain permit. BNSF's obligations are limited to providing design information to the City for the permit and providing as built information to verify that construction was performed as permitted. | City/BNSF. The City will obtain the floodplain permit. BNSF's obligations are limited to providing design information to the City for the permit and providing as built information to verify that construction was performed as permitted. | | City |
| 6.4: Clean Water Act - Section 402 (NPDES for grading) | BNSF | | BNSF | City |
| 6.5: CWA - Section 402 (NPDES for Industrial Activities) | Not required. | | Not required. | City will not be using Project area for industrial use as defined in rules implementing Section 402. 40 CFR 122.26(b) (14) (vii) since it does |

| | | | |
|---------------------------------|----------------------|----------------------|--|
| | | | <p>not engage in transportation activities or other industrial use.</p> |
| <p>6.6: Construction Permit</p> | <p>Not required.</p> | <p>Not required.</p> | <p>Not required by FONSI for this project component. No buildings are planned to be constructed. City will comply with its local demolition permit requirements for freight building to be demolished.</p> |

Exhibit 5 – Mitigation Measures and Commitments

| | Mitigation Measure or Commitment | Responsible Party |
|-------------|---|--------------------------|
| 5.1 | All money generated from the sale of the Downtown Yard property acquired as part of the Selected Alternative will be applied to future projects eligible for funding under Title 23 USC. | City of Sioux Falls |
| 5.2 | The specific amount of ROW and temporary easements will be determined during final design and all ROW acquisition will be conducted in accordance with the Uniform Act. | BNSF/Contractor |
| 5.3 | Sidewalks and trails will be kept open during construction. Existing sidewalks would be replaced along 6 th Street and 8 th Street after the rails and crossings are removed. Signage, detours, and temporary paving would be used during construction, in compliance with ADA. | BNSF/Contractor |
| 5.4 | If there is an inadvertent discovery of a historic property during construction of the undertaking, the City will stop construction of the undertaking and immediately notify FHWA. FHWA will notify the appropriate authorities and follow the procedures outlined in 36 CFR 800.13. | BNSF/Contractor |
| 5.5 | A formal delineation will need to be conducted to determine the boundaries of the wetlands and Waters of the U.S. A Section 404 NWP will be obtained for these impacts during final design and an alternatives analysis will be submitted demonstrates that the preferred alternative is the least environmentally damaging practicable alternative. Construction will implement BMPs, and the general and special conditions required. No compensatory mitigation is proposed. If the impacts to the streams or wetlands exceed the threshold, mitigation will be necessary. | BNSF/Contractor |
| 5.6 | Impacts to water quality are expected to be minor and temporary, and would be mitigated by implementing BMPs as required by City of Sioux Falls, SDDENR, and USACE. A General Permit for Storm Water Discharges Associated with Construction Activities would be required, including a SWPPP. | BNSF/Contractor |
| 5.7 | Soil erosion and sediment control practices as detailed in a SWPPP will be incorporated. Construction activities will be permitted and will limit post construction erosion to pre-construction levels. | BNSF/Contractor |
| 5.8 | The proper floodplain permits for floodplain impacts in both study areas will be obtained, which will certify that the construction activities are in compliance with South Dakota floodplain regulations, prior to construction. | BNSF/Contractor |
| 5.9 | After construction, any disturbed areas will be re-vegetated. | BNSF/Contractor |
| 5.10 | Weed free and approved plant materials will be used to re-vegetate disturbed areas. Chemical and biological control, along with any other coordination will be used as needed. | BNSF/Contractor |
| 5.11 | If any trees are removed for the project, they will be removed outside the primary migratory bird nesting season (April 1 through September 1), or field surveys will be conducted in accordance with policies defined by the USFWS. | BNSF/Contractor |
| 5.12 | Utility providers will be coordinated with prior to construction and removal activities. Where relocations are required due to conflicts with the Selected Alternative, designs to relocate the utility would be developed by the utility company. | BNSF/Contractor |

| | Mitigation Measure or Commitment | Responsible Party |
|------|--|---------------------|
| 5.13 | Adverse effects to historic properties will be mitigated in accordance with the MOA between FHWA and SHPO, that includes stipulations for 1) a redevelopment plan to maintain the historic integrity of the surrounding historic structures; 2) signage regarding the historic railroad and its role in the development of downtown Sioux Falls to be placed for public consumption; and 3) recordation of the current state of the rail yard prior to any changes taking place to the tracks or the freight house building. | City of Sioux Falls |
| 5.14 | Temporary noise abatement measures will be implemented during construction of the E&E Interchange (e.g. no night-time work). | BNSF/Contractor |
| 5.15 | The top six inches of soil will be excavated from the BNSF property and dispose of it in accordance with a properly prepared Soils Management Plan. | City of Sioux Falls |
| 5.16 | Future developers of the Downtown Yard property will abide by the regulations of the Overlay District in the City's zoning ordinances (i.e. retaining an environmental consultant, preparing a Soils Management Plan for any excavation and grading activities, and working with the City and SDDENR to maintain compliance with State of South Dakota regulations). | Future Developers |
| 5.17 | Any existing structures within the Study Area 1 and 2 that will be acquired and demolished prior to construction of the rail yard should be inspected for the presence of asbestos-containing material and abated, if necessary, prior to demolition, in compliance with federal and state requirements. | BNSF/Contractor |

Exhibit 6 – Anticipated Permits

| Permit Name/Type | Permit Description | Issuing Agency | Permit Requirements |
|---|--|----------------------------------|---|
| 6.1 CWA– Section 404 (Wetlands and waters) | Regulates discharge of dredged or fill material into Waters of the United States | USACE | A formal delineation will need to be conducted. Submit plans and proposed impacts to USACE along with an alternatives analysis, if required by the USACE. |
| 6.2 Clean Water Act – Section 401 (Water Quality Certification), and Article 74:51 of the State of South Dakota Administrative Code (SD Surface Water Quality Standards) | Water quality verification and compliance with state statutes | SDDENR | Submit plans and proposed impacts to SDDENR. If impacts are authorized by a NWP from the USACE that is pre-certified by SDDENR, no further action is required. Otherwise follow conditions in Individual water quality certification. |
| 6.3 Floodplain Development Permits | Regulates construction within floodplains | Sioux Falls and Minnehaha County | Submit permits for both study areas for construction within the Big Sioux River floodplain. |
| 6.4 Clean Water Act – Section 402 (NPDES for grading) | Regulates discharges of pollutants from non-point sources and construction sites greater than 1 acre | SDDENR | Submit design plans and a SWPPP to SDDENR along with a Notice of Intent (NOI). Follow up during construction with inspections as required by the permit, and then submit a Notice of Termination (NOT) following construction. |
| 6.5 CWA – Section 402 (NPDES for Industrial Activities) | Regulates discharges of pollutants from non-point sources and industrial activities | SDDENR | Submit design plans and a SWPPP to SDDENR along with a NOI and how run-off will be controlled and to reduce pollutants. |
| 6.6 Construction Permit | General City permit required for construction activities | City of Sioux Falls | Complete permit application and submit any required documentation and fees. |

EXHIBIT "H"

Form of Notice of Assignment

[see attached]

Goldfinch Exchange Company LLC
A Delaware limited liability company
40 Lake Bellevue Drive, Suite 101
Bellevue, WA 98005
425-646-4020
425-637-2873 fax


NOTICE OF ASSIGNMENT

TO: CITY OF SIOUX FALLS
and any assignees or exchange intermediaries of Buyer


CITY OF SIOUX FALLS ("City") and BNSF Railway Company ("BNSF") have entered into the Real Estate Purchase and Sale Agreement, dated 0-31-15 for the sale of the real property described therein. City is hereby notified that BNSF has assigned its rights as seller, but not its obligations, to Goldfinch Exchange Company LLC for the purpose of effecting a tax deferred exchange under Internal Revenue Code Section 1031. This is an assignment of rights only and BNSF will deed the property directly to City.

ACKNOWLEDGED:

CITY OF SIOUX FALLS


By: Mike T. Huetzel
Title: Mayor of Sioux Falls

Attest:


City Clerk

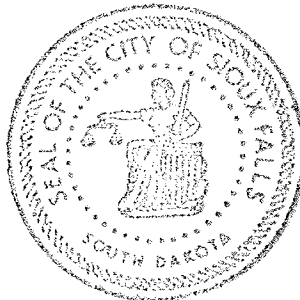


EXHIBIT "I"

Form of Quitclaim Deed

[see attached]

WHEN RECORDED MAIL TO:

Real Estate Office
City of Sioux Falls
224 West Ninth Street
Sioux Falls, SD 57104-7402

RECORDED AT THE REQUEST OF:

City of Sioux Falls
224 West Ninth Street
Sioux Falls, SD 57104-7402

Exempt from Transfer Fee pursuant to SDCL § 43-4-22(2)

QUITCLAIM DEED

BNSF RAILWAY COMPANY, a Delaware corporation, (formerly known as The Burlington Northern and Santa Fe Railway Company and formerly known as Burlington Northern Railroad Company), of 2500 Lou Menk Drive, Fort Worth, Texas 76131-2830, hereinafter called "Grantor", for Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, conveys and quitclaims, without any covenants of warranty whatsoever and without recourse to the Grantor, its successors and assigns, to **CITY OF SIOUX FALLS**, a municipality chartered under the South Dakota Constitution, of 224 West Ninth Street, Sioux Falls, SD 57104-7402, hereinafter called "Grantee", all its right, title and interest, if any, in and to that certain parcel of land (exclusive of any improvements thereon), subject, however, to all existing interests, including but not limited to all reservations, rights-of-way and easements of record or otherwise, located in the County of Minnehaha, South Dakota, hereinafter called "Property", being more particularly described on **EXHIBIT "A"** attached hereto and by this reference made a part hereof as well as all its right, title, and interest, if any, in and to section line rights of way, dedicated streets, roadways, sidewalks or other similar rights of way for street or pedestrian traffic as described in Exhibit "A".

Grantee covenants and agrees as follows:

(a) Grantee's interest shall be subject to the rights and interests of Grantor, Grantor's licensees, permittees and other third parties in and to all existing driveways, roads, utilities, fiber optic lines (including, but not limited to, US Sprint Communications Company's fiber optic line referenced in Grantor's records as agreement number BF-41866 dated August 15, 1986), wires, facilities, and easements of any kind whatsoever on the Property whether owned, operated, used or maintained by Grantor, Grantor's licensees, permittees or other third parties and whether or not of public record. Grantor shall have a perpetual easement on the Property for the use of such existing driveways, roads, utilities, fiber optic lines, wires, facilities (including telecommunication facilities) and easements by Grantor and Grantor's licensees, permittees and customers.

This easement will not require the Grantee to maintain existing roads or driveways for the sole benefit of the Grantor or its licensees, permittees, or customers, but Grantee will provide reasonable access for relocated roads and driveways.

(b) Grantee's interest shall be subject to a reservation to Grantor of all coal, oil, gas, casing-head gas and all ores and minerals of every kind and nature, including sand and gravel underlying the surface of the Property, together with the full right, privilege and license at any and all times to explore, or drill for and to protect, conserve, mine, take, remove and market any and all such products in any manner which will not damage structures on the surface of the Property, provided, however, that Grantor expressly waives any right to use the surface or the first two hundred (200) feet of the subsurface of the Property to explore for the minerals and other products herein reserved.

(c) Any improvements constructed or altered on the Property after the date Grantor quitclaims its interest to Grantee shall be constructed or altered in such a manner to provide adequate drainage of water away from any of Grantor's railroad tracks on nearby property.

(d) Grantee acknowledges and affirms that Grantor may not hold fee simple title to the Property, that Grantor's interest in all or part of the Property, if any, may rise only to the level of an easement for railroad purposes. Grantee is willing to accept Grantor's interest in the Property, if any, on this basis and expressly releases Grantor, its successors and assigns from any claims that Grantee or its successors may have as a result of an abandonment of the line of rail running over or adjacent to any portion of the Property. In light of Grantor's disclosure that it may not hold a fee interest in all or part of the Property, Grantee agrees to indemnify, defend and hold Grantor harmless from any suit or claim for damages, punitive or otherwise, expenses, attorneys' fees, or civil penalties that may be imposed on Grantor as the result of any person or entity claiming an interest in any portion of the Property or claiming that Grantor did not have the right to transfer all or part of the Property to Grantee.

(e) Grantee acknowledges that Grantor, at Grantor's sole discretion, will continue (i) to operate on its remaining downtown mainline railroad tracks, and (ii) to maintain local and regional service of Grantor. Grantee further acknowledges and agrees that a protective boundary fence between the mainline and the Property is necessary. Within 180 days after the date of expiration or termination of that certain Temporary Easement Agreement between Grantor and Grantee recorded _____, 20__ as Document _____ in the Minnehaha Count Register of Deeds' office, Grantee shall, at its sole cost and expense, construct a protective boundary fence (the "**Fence**") a minimum of six (6) feet in height across the Property, on the Property's eastern boundary, between the Property and Grantor's remaining adjacent property. Grantee shall construct the Fence (i) in accordance with plans which have been approved in writing in advance by Grantor, (ii) using new materials of a type and manufacturer satisfactory to Grantor, (iii) in conformity with all applicable federal, state and local laws, codes, ordinances, rules and regulations, and (iv) in a good and workmanlike manner, free from

defects in materials and workmanship. If the Fence is not constructed to Grantor's reasonable satisfaction within this time frame, Grantor may construct the Fence at the sole cost of Grantee and Grantee shall pay Grantor all associated costs within 30 days of receipt of bills related thereto. Grantee shall thereafter, at Grantee's sole cost and expense, repair, maintain, replace and renew the Fence in a good and workmanlike manner and to Grantor's reasonable satisfaction, so as to perpetually keep same in good repair. If the Fence is not repaired, maintained, replaced and renewed to Grantor's reasonable satisfaction within 180 days of receipt of notice from Grantor, Grantor may repair, maintain, replace or renew the Fence at the sole cost of Grantee and Grantee shall pay Grantor all associated costs within 30 days of receipt of bills related thereto. All or a portion of the Fence may be eliminated or removed upon mutual written agreement between the Grantor and Grantee.

(f) Grantee also agrees that should any future owner, developer or tenant of any portion of the Property construct any building or other structure on the Property, then such owner, developer or tenant shall be subject to an easement, permitted, administered and enforced by the City of Sioux Falls, with respect to the Property, whereby all present or future property owners and tenants within the Property shall sign a written acknowledgment stating that such owners and tenants:

- have been notified that Grantor, and its successors and assigns have the right to full railroad and railroad-related operations on Grantor's property; and
- waive any and all injunctive claims and claims for damages due or related to nuisance, noise, disturbance, vibration, loss of use, reduction in value, and/or emissions, whether caused directly or indirectly by Grantor's operations.

(g) Grantee has been allowed to make an inspection of the Property. **GRANTEE IS PURCHASING THE PROPERTY ON AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, INCLUDING THOSE RELATING TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY, AND IS NOT RELYING ON ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM GRANTOR AS TO ANY MATTERS CONCERNING THE PROPERTY,** including, but not limited to the physical condition of the Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Property with Environmental Laws (defined below) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Property; the presence of any Hazardous Substances (defined below), wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, under, or in proximity to the Property; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Property; the condition of title to the Property, and the leases, easements, permits, orders, licenses, or other agreements, affecting the Property (collectively, the "**Condition of the Property**"). Grantee represents and warrants to Grantor that Grantee has not relied and will not rely on, and Grantor is not liable for or bound by, any

warranties, guaranties, statements, representations or information pertaining to the Property or relating thereto (including specifically, without limitation, property information packages distributed with respect to the Property) made or furnished by Grantor, the manager of the Property, or any real estate broker or agent representing or purporting to represent Grantor, to whomever made or given, directly or indirectly, orally or in writing. Grantee assumes the risk that Hazardous Substances or other adverse matters may affect the Property that were not revealed by Grantee's inspection and indemnifies, holds harmless and hereby waives, releases and discharges forever Grantor and Grantor's officers, directors, shareholders, employees and agents (collectively, "**Indemnitees**") from any and all present or future claims or demands, and any and all damages, losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort or asserting a constitutional claim) costs and expenses (including, without limitation fines, penalties and judgments, and attorneys' fees) of any and every kind or character, known or unknown, arising from or in any way related to the Condition of the Property or alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Property. Losses shall include without limitation (a) the cost of any investigation, removal, remedial, restoration or other response action that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) capital expenditures necessary to cause Grantor's remaining property or the operations or business of Grantor on its remaining property to be in compliance with the requirements of any Environmental Law, (c) losses for or related to injury or death of any person, (d) losses for or related to injury or damage to animal or plant life, natural resources or the environment, and (e) losses arising under any Environmental Law enacted after transfer. The rights of Grantor under this section shall be in addition to and not in lieu of any other rights or remedies to which it may be entitled under this document or otherwise. This indemnity specifically includes the obligation of Grantee to remove, close, remediate, reimburse or take other actions requested or required by any governmental agency concerning any Hazardous Substances on the Property. Grantee does not indemnify or hold Grantor harmless or agree to payment of any of Grantor's attorney's fees, costs, fines, penalties or fees relating to (a) any criminal actions or (b) any refusal or failure of Grantor to produce documents or respond to subpoenas in response to any court of competent jurisdiction or governmental entity charged with enforcement of Environmental Laws, including any refusal or failure to produce environmental audits, evaluations, assessments, studies or tests which were prepared previous to closing and are in the custody of the Grantor (or which with reasonable efforts could be within the possession or control of the Grantor). The term "**Environmental Law**" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law relating in any way to human health, occupational safety, natural resources, plant or animal life or the environment, including without limitation, principles of common law and equity, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law. The term "**Hazardous Substance**" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed

or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

The covenants and restrictions set forth in paragraphs (a) through (g) above, shall be binding upon Grantee and its heirs, successors and assigns, and shall be covenants running with the land benefiting Grantor and its heirs, successors and assigns, for so long as Grantor continues to operate on Grantor's property or has not abandoned its rights to operate.

TO HAVE AND TO HOLD the Property unto the said Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the said Grantor has caused this instrument to be signed by its authorized representative, attested by its Assistant Secretary, and its corporate seal to be affixed hereto on the _____ day of _____, 2015.

BNSF RAILWAY COMPANY,
a Delaware corporation

By: _____
Julie A. Piggott
Its: Executive Vice President and
Chief Financial Officer

ATTEST:

By: _____
Tammy K. Herndon
Its: Assistant Secretary

STATE OF TEXAS §
 § ss.
COUNTY OF TARRANT §

On this the _____ day of _____, 2015, before me, _____, the undersigned officer, personally appeared, Julie A. Piggott, who acknowledged herself to be the Executive Vice President and Chief Financial Officer of **BNSF RAILWAY COMPANY**, a corporation, and that she, as such Executive Vice President and Chief Financial Officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by herself as Executive Vice President and Chief Financial Officer.

IN WITNESS WHEREOF, I have hereto set my hand and official seal.

Notary Public

My commission expires: _____

This Instrument Prepared by:

BNSF Railway Company
LAW Department
2500 Lou Menk Drive, AOB 3
Fort Worth, Texas 76131-2830

FORM APPROVED BY LAW

| | |
|-------------------------|--|
| APPROVED DESCRIPTION | |
| APPROVED FORM | |
| APPROVED | |

EXHIBIT "A"

PROPERTY DESCRIPTION

TRACTS 1, 2, 3 AND 4 OF BURLINGTON NORTHERN SANTA-FE 4TH ADDITION TO THE CITY OF SIOUX FALLS, MINNEHAHA COUNTY, SOUTH DAKOTA, CONTAINING 10.249 ACRES, MORE OR LESS, AND ADJOINING 0.955 ACRES, MORE OR LESS, DEDICATED ROADWAY TO THE PUBLIC FOR PORTIONS OF EAST SIXTH STREET, EAST EIGHTH STREET, AND EAST TENTH STREET, filed for record on _____, 2015 and recorded in Book _____ of Plats on Page _____, Register of Deeds in said County.

EXHIBIT "J"

Agreement and Waiver of Right to Repurchase

[see attached]

Prepared by:

Diane Best, Assistant City Attorney
City of Sioux Falls
224 West Ninth Street
Sioux Falls, SD 57104-7402

WHEN RECORDED RETURN TO:

Real Estate Office
City of Sioux Falls
224 West Ninth Street
Sioux Falls, SD 57104-7402

AGREEMENT AND WAIVER OF RIGHT TO REPURCHASE

As partial consideration for payment by City of Sioux Falls to BNSF Railway Company (Seller) for the property described below and pursuant to the Real Estate Purchase and Sale Agreement between the parties for said property, Sellers expressly waive, on behalf of themselves and their successors and assigns, any right or option to repurchase the property, to the full extent such right applies to Seller under SDCL 11-7-22.2:

See property description on Exhibit "A" attached.

Seller expressly agrees that any repurchase of said property, should it ever occur, would be as mutually agreed by the parties without regard to SDCL 11-7-22.2.

SDCL 11-7-22.2 states: No county, municipality, or housing and redevelopment commission, as provided for in this chapter, may transfer any fee interest in property acquired by the use or threat of eminent domain within seven years of acquisition to any private person, nongovernmental entity, or public-private business entity without first offering to sell such fee interest back to the person who originally owned the property, or such person's heirs or assigns, at current fair market value, whether the property has been improved or has remained unimproved during the interval, or at the original transfer value, whichever is less.

Seller acknowledges it is entering into this Agreement freely and voluntarily, it has consulted with legal counsel, it has ascertained and weighed all the facts and circumstances likely to influence its judgment, it has given due consideration to the provisions contained herein, and it thoroughly understands and consents to all provisions herein.

Dated this _____ day of _____, 2015.

BNSF RAILWAY COMPANY

By: _____

Its: _____

Subscribed and sworn to before me this _____ day of _____, 2015, before me, the undersigned officer, personally appeared _____, known to me or satisfactorily proven to be the person(s) whose name(s) appears above, and subscribed to the within instrument and acknowledged that _____ he _____ executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereto set my hand and official seal.

Notary Public

My commission expires: _____

EXHIBIT "A"

PROPERTY DESCRIPTION

TRACTS 1, 2, 3 AND 4 OF BURLINGTON NORTHERN SANTA-FE 4TH ADDITION TO THE CITY OF SIOUX FALLS, MINNEHAHA COUNTY, SOUTH DAKOTA, CONTAINING 10.249 ACRES, MORE OR LESS, AND ADJOINING 0.955 ACRES, MORE OR LESS, DEDICATED ROADWAY TO THE PUBLIC FOR PORTIONS OF EAST SIXTH STREET, EAST EIGHTH STREET, AND EAST TENTH STREET, filed for record on _____, 2015 and recorded in Book _____ of Plats on Page _____, Register of Deeds in said County.