

CITY OF HILLSBORO

Commission Members:

Levi Reese, President

Dave Sather, Vice President

Mike Kress, Paul Geray & Nicole Evans

19 S Main, PO Box 400

Hillsboro, ND 58045

Phone: (701) 636-4620 Fax (701) 636-4621

Auditor: Ashley Frederick

Public Works Director: Jim Anderson

City Attorney: John Juelson & J.R. Strom

REGULAR CITY COMMISSION MEETING

December 5, 2022, 6:30PM at MSCC

A G E N D A

- 1. Open with Pledge of Allegiance**
- 2. Reading of Minutes** – November 21, 2022, Regular Meeting Minutes
- 3. Presentation of Bills**
- 4. City Commissioners Reports**
- 5. Report of City Officers**
 - a. Superintendent
 - b. Attorney
 - c. Auditor
 - d. Sheriff's Office
 - e. City Engineer
- 6. BC Ticket Items – See Attachment**
- 7. Old Business**
 - a. Railroad Park - Update
 - b. FEMA Disaster Relief
 - c. Mobile Home Utility Rates
 - d. Special Assessment Committee
 - e. Procurement Policy Proposal
 - f. New Snow/Parking Ordinance
- 8. New Business**
 - a. Building Permit Fee's and Penalties Resolution approval
 - b. Naastad Brothers Riverwalk Letter of Acceptance for Completion of Contract - Approval
- 9. Citizens Addressing the Commission**
- 10. Adjournment**

**NEXT REGULAR MEETING:
Monday December 19, 2022, 6:30 PM
MAIN STREET COMMUNITY CENTER**

HBC Ticket's

- a. HBC Ticket #2021001 – 318 2nd St SE– Referred to Sheriff Department
- b. HBC Ticket #2021002 – 206 4th Ave SE- Referred to Sheriff Department/ motion was made to close this ticket.
- c. HBC Ticket # 2021003 – 222 4th Ave SE – Referred to Sheriff Department
- d. HBC Ticket # 2021004 – 103 4th St NE– Waiting on finalization from District court.
- e. HBC Ticket # 2021005- 13 S Main St- New deadline set for December 1, 2022
- f. HBC Ticket #2021007- 322 1st Ave NW- Property has been sold/ motion was made to close this ticket for now.
- g. HBC Ticket # 2022001- 203 4th St SW- Referred to Sheriff Department
- h. HBC Ticket # 2022002- 205 4th St SW- Property is up for sale, Kumar is willing to work with city.
- i. HBC Ticket # 2022003- 310 E Caledonia- Motion was made to refer to City Commission.
- j. HBC Ticket # 2022004- 218 4th St NE- Referred to Sheriff Department

DATE: 11/21/2022

TIME: 6:30 PM

THE HILLSBORO BOARD OF CITY COMMISSIONERS HELD A REGULAR MEETING AT MAIN COMMUNITY CENTER AT THE ABOVE DATE AND TIME.

Commissioners present: Reese, Sather, Kress, Geray, Evans

Commissioners Absent: none

Commissioner Reese opened the meeting with the Pledge of Allegiance at 6:30 PM.

Reading of the Minutes:

Commissioner Sather moved to approve the November 7, 2022, Regular City Commission Meeting Minutes. Commissioner Kress seconded. None voted no. Motion carried.

Presentation of Bills

AP to be approved on 11/21/2022	PAID on 11/22/2022	Amount	Check #
AE2S	Hillsboro I29 TA sidewalk	\$5,337.55	26091
Alicia's Cleaning Services	cleaning services, city Hall, Armory, MSCC	\$500.00	26092
Aramark	mop handles, mats, nitrile gloves	\$136.39	26093
Border State Electric	ALCU sec sleeves	\$620.44	26094
Brian Hall	Coat	\$101.58	26103
Brite-Way Window Cleaning	City Hall windows 11/02	\$51.00	26095
Butler Equipment	Wheel type loader Model SB5231218	\$27,595.00	26096
Core & Main	lpearl	\$3,720.00	26097
Dakota Natural Gas	12 5th Ave NW utility bill	\$55.95	26098
Evans Properties	BES- Lights	\$663.96	26099
Ewing Oil	fuel charges	\$437.04	26100
Ferguson Waterworks	curb BX	\$80.59	26101
Grainger	Power bit, stretch wrap	\$41.16	26102
Hawkins Inc	chemicals	\$354.51	26104
HBA	2023 Membersip dues	\$100.00	26105
JP Morgan	Oct bill	\$236.21	825E
KRJB - FM	YLE services, Q4 Public Power PGMS	\$638.00	26106
Larson Welding	snow blower repair	\$2,897.74	26107
Lowry Engineering	Professional Services - construction documents, weed killer	\$8,481.38	26108
Missouri River energy Services	October 2022 billing	\$120,411.89	826E
Missouri River energy Services	Misc services October 2022	\$5,429.36	26109
Naastad Brothers	72" RCP repair	\$22,040.00	26110
ND State Chemistry Lab	water testing	\$397.20	26113
ND Department of Transportation	New Title Request for 1992 Ford Pumper	\$10.00	26112
ND environmental quality	Operator certification exam fees- Zach Anderson	\$100.00	26111
Northern Fire Equipment Service	fire extinguishers City Hall	\$931.85	26114
Premium Waters Inc	shop water service	\$92.57	26115
RMB Environmental Laboratories	Water Treatment plant Inv D039784	\$277.71	26116

RS Electric	substation work - materials, rentals	\$7,021.00	26117
Sandbo Plumbing	Rhonda Howlzer city water control box	\$135.00	26118
Valley Plains	parts	\$29.95	26119
Verizon Wireless	cell phone service October	\$1,235.02	26120
		\$210,160.05	

Commissioner Geray moved to pay bills as presented. Commissioner Kress seconded. None voted no. Motion carried.

Monthly Disconnects -November –

Commissioner Geray made a motion to approve the November 2022 Disconnects. Commissioner Sather seconded.

In a roll call vote:

Yes – Evans, Geray, Kress, Sather, Reese

Motion Carried.

City Commissioners Reports:

Commissioner Reese – Grow Hillsboro Event on November 22 is open to the public. There will be Music and Tammy Miller from Governor Burgum’s Cabinet is speaking.

-City Inventory needs to be taken. Reese would like the commission to consider keeping the temporary employee on PRN. Commissioner Kress and Sather will also be able to help with inventory.

Commissioner Geray – HEDC is working on putting together a couple grants for demoing property and grants for businesses to help with repairs or old infrastructure repairs.

Commissioner Evans - nothing to report

Commissioner Kress – P&Z would like to see more consequences for citizens building, or remodeling without a building permit. Strom will work on a resolution with steps for the city to be able to fine citizens \$100 per day if they do not get a building permit.

-Wooded area by County shop has an interested buyer for a law/snow removal business. P&Z is willing to rezone that parcel from R2 to C1 if the sale goes through. Nothing will be rezoned until a purchase has been decided upon and completed.

Commissioner Sather – Nothing to report.

City Officers Reports:

Public Works Director Anderson – Nothing to report.

City Attorney Strom - Nothing to report

City Auditor Frederick – Nothing to report.

City Engineer Swanson – Nothing to report.

Sheriff’s Office - Nothing to report

BC Ticket Items – nothing to report.

Old Business:

RR Park – Waiting to hear back from BNSF Lawyers.

FEMA Disaster Relief – Need a procurement policy to send them and waiting on a few documents from the County.

BCBS Dental & vision – Next year’s open enrollment Commissioners would like other options to be looked at for comparison.

Commissioner Geray made a motion to go with the Blue Vision Premium for \$12/month/Individual plan, \$27.60/month/family plan and Blue Dental Preferred+ at \$45.10/month/Individual plan, \$112.80/month/Family plan. Commissioner Sather seconded.

In a roll call vote:

Yes – Kress, Geray, Sather, Evans, Reese

Motion Carried.

Mobile Home Utility Rates –

Commissioner Geray made a motion to send out one final letter requesting the bill be paid in full within ten business days of the date of the letter or it will be turned over to collections. Commissioner Sather Seconded.

In a roll call vote:

Yes – Evans, Sather, Kress, Geray, Reese

Motion Carried.

Special Assessment Committee – Frederick and Reese spoke with new homeowner out in Riverwalk to see if they would be interested in being on the committee. No decision has been made. They will think about it.

New Business:

Battig (Breen) Payment Arrangement –

Commissioner Kress made a motion to approve a payment arrangement with Austin and Annie Battig in the amount of \$196.03 per month for the next 10 years, with Attorney Strom writing up a contract with a clause of how the project will be paid in full if Battig's ever decided to sell. Commissioner Geray Seconded.

In a roll call vote:

Yes – Kress, Geray, Sather, Evans, Reese

Motion Carried.

HBA Christmas Carnival Street Closure on December 11th –

Commissioner Sather made a motion to close Main Ave from Caledonia Ave to 1st Ave SW on December 11th for the HBA Christmas Carnival. Commissioner Evans seconded.

In a roll call vote:

Yes – Geray, Evans, Sather, Kress, Reese

Motion Carried.

Procurement Policy Proposal – Tabled for more review

New RAM 1500 Reg Cab Quote for PW Pickup – Tabled until after the first of the year.

Trailer parked on the Street/snow removal – Sheriff Hunt addressed the commission about some suggested changes that may need to be changed with the parking ordinance 9.1410 and 9.1413. Attorney Strom made notes of the changes needed and will bring the ordinance in front of the commission when the changes have been made and are ready for approval. The Changes will consist of hour limit changes from 24hrs to 48hrs and the fines that will go along with ticketing vehicles.

Citizens Addressing the Commission:

Adjournment:

Commissioner Sather moved to adjourn the meeting at 8:13pm. Commissioner Kress seconded. Motion carried.

Ashley Frederick
City Auditor

Levi Reese
Commission President

**The next regular meeting of the Hillsboro Board of City Commissioners
will be at 6:30 PM on Monday, December 5, 2022, at Main Street Community Center.**

EOM to be approved on 11/07/2022	PAID on 10/31/2022	Amount	Check #
Nicole Evans	Payroll	\$831.15	26154
Terry A Wika	Payroll	\$192.18	26160
Paul A Geray	Payroll	\$831.15	26155
Levi A Reese	Payroll	\$1,108.20	26158
Micheal G Kress	Payroll	\$831.15	26156
David R Sather	Payroll	\$831.15	26159
Candice Monroe	Payroll	\$1,832.22	26157
James P. Baumgartner	Payroll	\$3,434.23	26153
Jay J. Alfson	Payroll	\$2,852.31	500540e
James M. Anderson	Payroll	\$5,017.05	500541e
Zachary Anderson	Payroll	\$2,959.23	500542e
Julie H. Bjorklund	Payroll	\$2,824.89	500543e
Ashley D. Frederick	Payroll	\$3,453.27	500544e
Bryan D. Hall	Payroll	\$2,825.28	500545e
Jonthan E. Hams	Payroll	\$3,526.14	500546e
Sara Myers	Payroll	\$2,383.60	500547e
Taxes Federal	Payroll taxes	\$9,149.16	827e
Blue Cross Blue Shield of ND	Dental & Vision Ins	\$1,047.00	828e
Bell State Bank & Trust	Profit Sharing Plan	\$2,715.16	829e
Microsoft Online	Oct 2022 Services	\$390.00	830e
ND Pers	Health Ins	\$12,679.60	831e
Total Accounts Payable		\$61,714.12	

A P to be approved on 12/05/2022		Amount	Check #
A & J Willison LLC	blade gravel Anchor 10/24 and 11/08/22	\$660.00	
APWA	membership - Jim A	\$222.00	
Allegiant	Load management project	\$4,327.40	
American Water Works Association	Jim Anderson membership renewal	\$75.00	
Butler Machinery	Inv 00PS0603777 parts/Inv 00W00251423	\$17,899.41	
Core & Main	Inv R414899	\$4,215.36	
East Central Regional Water District	water	\$8,770.33	
GreenEarth Landscaping	Riverwalk addition	\$71,437.96	
Halstad Telephone Company	Inv 100437011	\$38.15	
Halstad Telephone Company	Inv 100437329	\$15.00	
Halstad Telephone Company	inv 100735924	\$28.95	
Halstad Telephone Company	Inv 100434592	\$892.17	
Hawkis	chemicals	\$6,009.99	
Hillsboro Banner	Church service Sponsorship October/November	\$1,717.12	
Loffler	copier usage November 2022	\$134.48	
Microsoft Online	online services 10/27/22-11/26/22	\$390.00	ACH
Midwest Pest control	ND Fresh air	\$12.00	
Miller's Fresh Foods	Grocery items 11/14/22	\$5.97	
Naastad Brothers Inc	Riverwalk	\$2,935.00	
Naastad Brothers Inc	equipment hauling	\$589.50	
Nodak Electric Cooperative	repair transformer feeding the Breen house	\$478.80	
ND OneCall, Inc	November service	\$63.35	
Olsen Hardware	Inv A93454	\$327.59	
sorum Oil	fuel	\$3,921.88	
Traill County Treasurer	Traill County sheriff policing contract	\$17,254.08	
Water Environment Federation	Jim Anderson membership renewal	\$90.00	
Vonnie Manthey	reimbursement for plumbing issues from street work	\$324.56	

\$142,836.05

**INDEFINITE TERM LEASE
LAND**

THIS INDEFINITE TERM LEASE FOR LAND ("Lease") is made and entered into to be effective as of the _____ day of _____, 2022 ("Effective Date"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Lessor") and **CITY OF HILLSBORO** ("Lessee").

RECITALS

A. Lessor is in the railroad transportation business and owns or controls a system of rail tracks ("Lessor's Track(s)") and various real properties associated therewith, including certain Premises as described below which Lessee desires to lease from Lessor.

B. Lessor has agreed to lease to Lessee the Premises, subject to the terms, conditions and limitations provided herein.

AGREEMENTS

In consideration of the mutual covenants herein, Lessor and Lessee hereby agree as follows:

Section 1. Premises and Term.

A. Lessor leases to Lessee and Lessee leases from Lessor, subject to the covenants, agreements, terms, provisions and conditions of this Lease, that certain parcel of real property, situated in the City of Hillsboro, County of Traill, State of ND, along Line Segment 0220, Mile Post 62.21 and constituting the shaded area shown upon Print No. 85106, dated 7/8/2022 a copy of which is attached hereto as Exhibit "A" and made a part hereof ("Premises").

B. Lessee leases the Premises from Lessor beginning October 1st, 2022 ("Commencement Date") and shall continue until terminated by either party as provided in this Section 1(B). This Lease may be terminated by Lessee, at any time, without cause, for convenience, by serving upon Lessor written notice of termination at least thirty (30) days in advance. Upon the expiration of the time specified in such notice, this Lease and all rights of Lessee shall absolutely cease. If Lessor shall require the Premises for a railroad purpose or activity, this Lease may be terminated by Lessor by serving upon Lessee written notice of termination at least ninety (90) days in advance. Upon the expiration of the time specified in such notice, this Lease and all rights of Lessee shall absolutely cease.

C. Upon termination, either (i) Lessor may retain from prepaid rent, as an additional charge for use of the Premises, a sum equal to three (3) months Base Rent (as defined below), and any unearned portion of the annual Base Rent, in excess of such retainage, paid in advance shall be refunded to Lessee or (ii) if Lessor has not been paid sufficient Base Rent to satisfy the above retainage, then Lessee shall pay Lessor a sufficient sum so that, together with sums already held by Lessor, Lessor shall hold a sum equal to three (3) months Base Rent which Lessor shall retain as an additional charge for use of the Premises, and such additional sum shall be paid by Lessee within thirty (30) days of termination of the Lease.

D. Each consecutive twelve-month period this Lease is in effect, beginning with the Effective Date of this Lease, is herein called a "Lease Year."

Lessee acknowledges that it is assuming all risks associated with Lessor's right to terminate this Lease provided above, and (i) Lessor gives no assurance that Lessor will delay termination of this Lease for any length of time whatsoever, and (ii) Lessee may expend money and effort during the term of this Lease which may not ultimately

be of any benefit to Lessee if Lessor terminates this Lease as provided herein, the Premises are required for a railroad purpose or activity, and (iii) in no event shall Lessor be deemed to have any legal obligations to continue to lease the Premises for any length of time.

Section 2. Use and Compliance.

A. Lessee may use the Premises for the sole and exclusive purpose of public park and conservation area and for no other purpose without the prior written consent of Lessor. Lessee shall respond to Lessor's reasonable inquiries regarding the use or condition of the Premises.

B. Lessee shall comply with all Laws applicable to Lessee, the Premises, this Lease and Lessee's activities and obligations hereunder, and shall have the sole responsibility for costs, fees, or expenses associated with such compliance. As used herein, the term "Laws" shall mean any and all statutes, laws, ordinances, codes, rules or regulations or any order, decision, injunction, judgment, award or decree of any public body or authority having jurisdiction over Lessee, the Premises, this Lease, and/or Lessee's obligations under this Lease, and shall include all Environmental Laws (as defined in Section 4(A)).

C. If any governmental license or permit is required or desirable for the proper and lawful conduct of Lessee's business or other activity in or on the Premises, or if the failure to secure such a license or permit might in any way affect Lessor, then Lessee, at Lessee's expense, shall procure and thereafter maintain such license or permit and submit the same to inspection by Lessor. Lessee, at Lessee's expense, shall at all times comply with the requirements of each such license or permit.

Section 3. Rent.

A. Lessee shall pay as rental for the Premises, in advance, an amount equal to zero dollars (\$0.00) annually during the term of the Lease, ("Base Rent"). Base Rent shall increase 3% annually during the term of the Lease. Lessor reserves the right to change rental rates as conditions warrant. Billing or acceptance by Lessor of any rental shall not imply a definite term or otherwise restrict either party from canceling this Lease as provided herein. Either party hereto may assign any receivables due it under this Lease; provided, however, such assignments shall not relieve the assignor of any of its rights or obligations under this Lease. All rent and other monetary payments under this Lease from Lessee to Lessor shall be delivered solely to the following address:

**BNSF Railway Company
PO Box 676160
Dallas TX 75267-6160**

Lessor shall have the right to designate at any time and from time to time a different address for delivery of such payments by written notice to Lessee pursuant to the notice provisions of Section 36 below. No rent or other payment sent to any other address shall be deemed received by Lessor unless and until Lessor has actually posted such payment as received on the account of Lessee, and Lessee shall be subject to all default provisions hereunder, late fees and other consequences as a result thereof in the same manner as if Lessee had failed or delayed in making any payment.

B. Lessee acknowledges that Lessor utilizes the rental collection system involving direct deposit of monies received through a financial institution selected by Lessor, which precludes Lessor's ability to exercise rejection of a rental payment before Lessee's check is cashed. Lessee agrees that as a condition of Lessor granting this Lease Lessee hereby waives any rights it may have under law to force continuation of this Lease due to Lessor having accepted and cashed Lessee's rental remittance. Lessor shall have the option of rejecting Lessee's payment by refunding to Lessee the rental amount paid by Lessee, adjusted as set forth in this Lease, and enforcing the termination provisions of this Lease.

C. Lessee shall pay the Base Rent and all additional amounts due pursuant to Section 9 as and when the same become due and payable, without demand, set-off, or deduction. Lessee's obligation to pay Base Rent and all amounts due under this Lease is an independent covenant and no act or circumstance, regardless of whether such act or circumstance constitutes a breach under this Lease by Lessor, shall release Lessee of its obligation to pay Base Rent and all amounts due as required by this Lease.

D. If any Base Rent or any payment under Section 9 or any other payment due by Lessee hereunder is not paid within five (5) days after the date the same is due, Lessor may assess Lessee a late fee ("Late Fee") in an amount equal to 5% of the amount which was not paid when due to compensate Lessor for Lessor's administrative burden in connection with such late payment. In addition to said Late Fee, Lessee shall pay interest on the unpaid sum from the due date thereof to the date of payment by Lessee 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.

Section 4. Environmental.

A. Lessee shall strictly comply with all federal, state and local environmental laws and regulations in its occupation and use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Clean Air Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, and CERCLA (collectively referred to as the "Environmental Laws"). Lessee shall not maintain any treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws, on the Premises. Lessee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws, on or about the Premises.

B. Lessee shall give Lessor immediate notice to Lessor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises and to Lessor's Manager Environmental Leases at (785) 435-2386 for any violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Lessee's use of the Premises. Lessee shall use its best efforts to promptly respond to any release on or from the Premises. Lessee also shall give Lessor's Manager Environmental Leases immediate notice of all measures undertaken on behalf of Lessee to investigate, remediate, respond to or otherwise cure such release or violation and shall provide to Lessor's Manager Environmental Leases copies of all reports and/or data regarding any investigations or remediations of the Premises.

C. In the event that Lessor has notice from Lessee or otherwise of a release or violation of Environmental Laws on the Premises which occurred or may occur during the term of this Lease, Lessor may require Lessee, at Lessee'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 Lessor's right-of-way.

D. Lessee shall promptly report to Lessor in writing any conditions or activities upon the Premises 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 Lessee's reporting to Lessor shall not relieve Lessee of any obligation whatsoever imposed on it by this Lease. Lessee shall promptly respond to Lessor's request for information regarding said conditions or activities.

E. Hazardous Materials are not permitted on the Premises except as otherwise described herein. Lessee expects to use on the Premises the following Hazardous Materials: None and to store on the Premises the following Hazardous Materials (as defined in Section 4(F) below): None; provided, however, that Lessee may

only use and store the listed Hazardous Materials in such amounts as are necessary and customary in Lessee's industry for the permitted uses hereunder ("Permitted Substances"). All such Permitted Substances shall be placed, used, and stored in strict accordance with all Environmental Laws. Use or storage on the Premises of any Hazardous Materials not disclosed in this Section 4(E) is a breach of this Lease.

F. For purposes of this Section 4, "Hazardous Materials" means all materials, chemicals, compounds, or substances (including without limitation asbestos, petroleum products, and lead-based paint) identified as hazardous or toxic under Environmental Laws.

G. Lessor may, at its option prior to termination of this Lease, require Lessee to conduct an environmental audit of the Premises through an environmental consulting engineer acceptable to Lessor, at Lessee's sole cost and expense, to determine if any noncompliance or environmental damage to the Premises has occurred during Lessee's occupancy thereof. The audit shall be conducted to Lessor's satisfaction and a copy of the audit report shall promptly be provided to Lessor for its review. Lessee shall pay all expenses for any remedial action that may be required as a result of said audit to correct any noncompliance or environmental damage, and all necessary work shall be performed by Lessee prior to termination of this Lease.

Section 5. Access to Adjacent Property by Lessee.

If access to and from the Premises can be accomplished only through use of Lessor's property adjacent to the Premises, such use is granted for ingress and egress only and on a non-exclusive basis, subject to such restrictions and conditions as Lessor may impose by notice to Lessee. Lessor shall have the right to designate the location or route to be used. Lessee understands and agrees that all of the terms and obligations under this Lease applicable to Lessee shall also be applicable to Lessee with respect to Lessee's use of any property adjacent to the Premises which Lessee may use just as though the property has been specifically described as part of the Premises, including, without limitation, the indemnity provisions of Section 13. Notwithstanding anything to the contrary herein, this Section 5 shall not grant Lessee any right to cross any of Lessor's Tracks. Any such crossing rights may only be granted by a separate written agreement between Lessor and Lessee.

Section 6. Access to Premises by Lessor.

A. Lessor and its contractors, agents and other designated third parties may at all reasonable times and at any time in case of emergency, in such manner as to not unreasonably interfere with Lessee's use of the Premises as allowed hereunder, (i) enter the Premises for inspection of the Premises or to protect the Lessor's interest in the Premises or to protect from damage any property adjoining the Premises, (ii) enter the Premises to construct, maintain, and operate trackage, fences, pipelines, communication facilities, fiber optic lines, wireless towers, telephone, power or other transmission lines, or appurtenances or facilities of like character, upon, over, across, or beneath the Premises, without payment of any sum for any damage, including damage to growing crops, (iii) take all required materials and equipment onto the Premises, and perform all required work therein, for the purpose of making alterations, repairs, or additions to the Premises as Lessor may elect if Lessee defaults in its obligation to do so, (iv) enter the Premises to show the Premises to holders of encumbrances on the interest of Lessor in the Premises, or to prospective purchasers or mortgagees of the Premises, and all such entries and activities shall be without any rebate of rent to Lessee for any loss of occupancy of the Premises, or damage, injury or inconvenience thereby caused.

B. For purposes stated in this Section 6, Lessor will at all times have keys with which to unlock all of the doors and gates on the Premises, and Lessee will not change or alter any lock thereon without Lessor's permission.

C. In an emergency, Lessor will be entitled to use any and all means that Lessor may deem proper to open doors, gates, and other entrances to obtain entry to the Premises. Any entry to the Premises by Lessor as described in this Section 6 shall not under any circumstances be construed or deemed to be a forcible or

unlawful entry into, or a detainer of, the Premises, or any eviction of Lessee from the Premises, and any damages caused on account thereof will be paid by Lessee.

Section 7. Warranties.

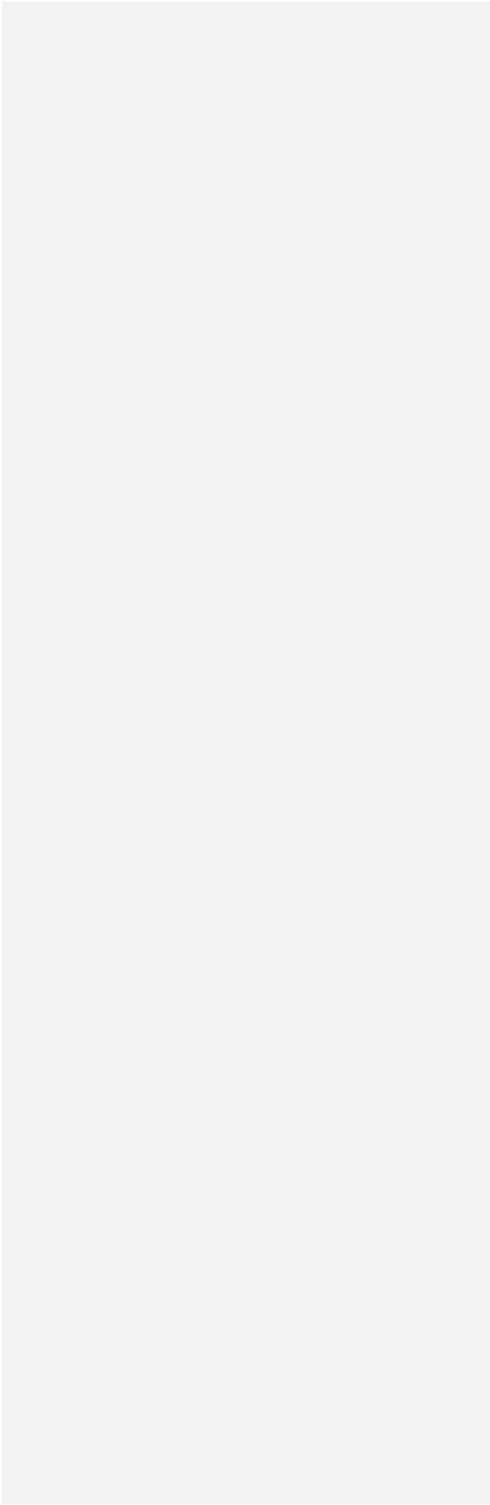
LESSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LESSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. This Lease is made subject to all outstanding rights or interests of others. If the Premises are subsequently found to be subject to prior claim, this Lease shall terminate immediately on notice to that effect from Lessor. Lessee accepts this Lease subject to that possibility and its effect on Lessee's rights and ownership of the Lessee Improvements. In case of eviction of Lessee by anyone other than Lessor, or anyone owning or claiming title to or any interest in the Premises, Lessor shall not be liable to Lessee for damage of any kind (including any loss of ownership right to Lessee's Improvements) or to refund any rent paid hereunder, except to return the unearned portion of any rent paid in advance.

Section 8. Premises Condition; Lessee Improvements.

A. Lessee represents that the Premises, the Lessee owned caboose placed on concrete foundation, the title thereto, any subsurface conditions thereof, and the present uses thereof have been examined by the Lessee. Lessee accepts the same in the condition in which they now are, without representation or warranty, expressed or implied, in fact or by law, by the Lessor, and without recourse to the Lessor as to the title thereto, the nature, condition or usability thereof, or the uses to which the Premises may be put. By taking possession or commencing use of the Premises, Lessee (i) acknowledges that it is relying on its own inspections of the Premises and not on any representations from Lessor regarding the Premises; (ii) establishes conclusively that the Premises are at such time in satisfactory condition and in conformity with this Lease and all zoning or other governmental requirements in all respects; and (iii) accepts the Premises in its condition as of the Commencement Date on an "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis, subject to all faults and infirmities, whether now or hereafter existing. Nothing contained in this Section 8 affects the commencement of the term of the Lease or the obligation of Lessee to pay rent as provided above. Lessee represents and warrants to Lessor as follows: (i) Lessee does not intend to, and will not, use the Premises for any purpose other than as set forth in Section 2; (ii) Lessee has previously disclosed in writing to Lessor all special requirements (but Lessor shall have no responsibility relative to any such special requirement), if any, which Lessee may have in connection with this intended use; and (iii) Lessee has undertaken and has reasonably and diligently completed all appropriate investigations regarding the suitability of the Premises for Lessee's intended use. Lessee shall comply with any covenants, conditions or restrictions now or hereafter affecting the Premises, and acknowledges that Lessor may place any covenants, conditions or restrictions of record affecting the Premises prior to or during the term of the Lease. In such event, this Lease will be subject and subordinate to all of the same without further action by either party, including, without limitation, the execution of any further instruments. Lessee acknowledges that Lessor has given material concessions for the acknowledgements and provisions contained in this Section 8, and that Lessor is relying on these acknowledgments and agreements and would not have entered into this Lease without such acknowledgements and agreements by Lessee.

B. If improvements are necessary for Lessee's use of the Premises, Lessee, at Lessee's sole cost and expense, shall, on or after the Commencement Date, construct and install such improvements to the Premises which are necessary for Lessee's use of the Premises and are acceptable to Lessor in Lessor's sole discretion ("Lessee Improvements"). The term Lessee Improvements includes the following improvements: playground and caboose, however fencing will be added. The construction and installation of any Lessee Improvements shall be subject to Lessor's prior written approval of plans and specifications for such Lessee Improvements to be prepared by Lessee and submitted to Lessor for approval as set forth below, such approval to be in Lessor's sole and absolute discretion. Within one hundred eighty (180) days after the Commencement Date, Lessee shall submit detailed plans and specifications, and the identity of Lessee's proposed general contractor for the Lessee Improvements for Lessor's review and approval. Lessor shall either approve or disapprove the plans and specifications and general contractor (in its sole and

absolute discretion) by written notice delivered to Lessee



within sixty (60) days after receipt of the same from Lessee. In the event of any disapproval, Lessor shall specify the reasons for such non-approval. If Lessor fails to deliver notice to Lessee of Lessor's approval or disapproval of the plans, specifications, and proposed general contractor within the time period discussed above, Lessee's plans, specifications and proposed contractor shall be deemed disapproved. If Lessor specifies objections to the plans and specifications or general contractor as herein provided and Lessor and Lessee are unable to resolve the objections by mutual agreement within a period of thirty (30) days from the date of delivery of written notice thereof, Lessee, as its sole remedy, to be exercised not later than ten (10) days after the expiration of said thirty (30) days period, may terminate this Lease by written notice to Lessor. Upon approval of the plans and specifications by Lessor, Lessor and Lessee shall sign the same, and they shall be deemed a part hereof. All Lessee Improvements shall be constructed and installed in accordance with the terms and conditions of Exhibit "B" attached to the Lease and all applicable terms and conditions of the Lease regarding alterations and improvements. Lessee shall not construct any other alteration or improvement to the Premises without Lessor's prior written consent. The Lessee Improvements constructed pursuant to the above provisions shall be owned by Lessee during the term of the Lease and removed from the Premises or surrendered to the Lessor pursuant to Section 20 below upon termination of this Lease.

C. Lessee agrees to reimburse Lessor for all costs and expenses incurred by Lessor in connection with Lessee's use of the Premises, including but not limited to the furnishing of Lessor's flaggers and any vehicle rental costs incurred. Lessee shall bear the cost of flagger services and other safety measures provided by Lessor, when deemed necessary by Lessor's representative. Flagging costs shall include, but not be limited to the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs. To arrange flagger services, contact BNSF's Scheduling Agent at wilsoncompany.utility.ic@wilsonco.com or (816) 556-3624 at least fifteen (15) days in advance of entry and BEFORE YOU DIG, CALL (800) 533-2891 (option 7).

Section 9. Taxes and Utilities.

A. In addition to Base Rent, Lessee shall pay all taxes, utilities, and other charges of every kind and character, whether foreseen or unforeseen, ordinary or extraordinary, which are attributable to the term of this Lease and may become due or levied against the Premises, against Lessee, against the business conducted on the Premises or against the Lessee Improvements placed thereon during the term hereof, even though such taxes, utilities or other charges may not become due and payable until after termination of this Lease provided; however, that Lessee shall only be responsible for the payment of property taxes levied against the Premises to the extent such taxes are separately assessed by the applicable taxing authority as a result of this Lease. Lessee agrees that Lessor shall not be required to furnish to Lessee any utility or other services. If this Lease is a transfer of an existing lease, Lessee must make arrangements with the present lessee for payment of any delinquent and current taxes, utilities, and other charges prior to taking possession. If such arrangements are not made, Lessee agrees to pay all such taxes, utilities, and other charges. If Lessor should make any such payments, Lessee shall promptly upon demand reimburse Lessor for all such sums.

B. Should the Premises be subject to special assessment for public improvements in the amount of Five Hundred Dollars (\$500.00) or less during any Lease Year, Lessee shall promptly reimburse Lessor the amount in full. Should the assessment exceed Five Hundred Dollars (\$500.00) during any Lease Year then such excess shall be paid by Lessor, but the Base Rent herein shall be increased by an amount equal to twelve percent (12%) of such excess payable for each Lease Year such amounts are payable.

Section 10. Track Clearance.

A. Lessee shall not place, permit to be placed, or allow to remain, any permanent or temporary material, structure, pole, or other obstruction within (i) 8½ feet laterally from the centerline of any of Lessor's Tracks on or about the Premises (nine and one-half (9-1/2) feet on either side of the centerline of any of Lessor's Tracks which are curved) or (ii) 24 feet vertically from the top of the rail of any of Lessor's Tracks on or about the Premises ("Minimal Clearances"); provided that if any law, statute, regulation, ordinance, order, covenant or restriction ("Legal Requirement") requires greater clearances than those provided for in this Section 10, then Lessee shall strictly comply with such Legal Requirement. However, vertical or lateral clearances which are less than the Minimal Clearances but are in compliance with Legal Requirements will not be a violation of this Section 10, so long as Lessee strictly complies with the terms of any such Legal Requirement and posts a sign on the Premises clearly noting the existence of such reduced clearance. Any such sign shall be painted with black and white reflective paint.

B. Lessor's operation over any Lessor's Track on or about the Premises with knowledge of an unauthorized reduced clearance will not be a waiver of the covenants of Lessee contained in this Section 10 or of Lessor's right to recover for and be indemnified and defended against such damages to property, and injury to or death of persons, that may result therefrom.

C. Lessee shall not place or allow to be placed any freight car within 250 feet of either side of any at-grade crossings on Lessor's Tracks.

Section 11. Repairs; Maintenance.

A. Lessee shall, at its sole expense, take good care of the Premises (including all Lessee Improvements) and shall not do or suffer any waste with respect thereto and Lessee shall promptly make all necessary or desirable Repairs to the Premises. The term "Repairs" means all reasonable repair and maintenance necessary to keep the Premises (including all Lessee Improvements) in good condition and includes, without limitation, replacements, restoration and renewals when necessary. Lessee shall keep and maintain any paved areas, sidewalks, curbs, landscaping, and lawn areas in a clean and orderly condition, and free of accumulation of dirt and rubbish.

B. Lessor shall not have any liability or obligation to furnish or pay for any services or facilities of whatsoever nature or to make any Repairs or alterations of whatsoever nature in or to the Premises, including but not limited to structural repairs, or to maintain the Premises in any manner. Lessee acknowledges that Lessor shall have no responsibility for management of the Premises.

C. Within two hundred seventy (270) days of the effective date of the agreement, Lessee shall, at its sole cost and expense, construct a protective chain link or other approved fence minimum of six (6) feet in height along the east side of the Premises as shown by a solid line with X's on Exhibit "A" of this agreement. Lessee shall thereafter repair, maintain, and renew said fence, so as to keep in good repair at the sole cost to the Lessee. If fence is not constructed within this time frame, Lessor may construct said fence at the sole cost of Lessee and Lessee shall pay Lessor all associated costs within 10 days of receipt of bills. In no event may Lessee use the Premises for any purpose other than the construction of the fence contemplated by this section, until the construction of said fence is complete.

Section 12. Safety; Dangerous and Hazardous Conditions.

A. It is understood by Lessee that the Premises may be in dangerous proximity to railroad tracks, including Lessor's Tracks, and that persons and property, whether real or personal, on the Premises will be in danger of injury, death or destruction incident to the operation of the railroad, including, without limitation, the risk of derailment, fire, or inadequate clearance (including sight clearance or vision obstruction problems at grade

crossings on or adjacent to the Premises), and Lessee accepts this Lease subject to such dangers, and acknowledges that its indemnification obligations hereunder extend to and include all such risks.

B. Prior to entering the Premises, Lessee shall and shall cause its contractor(s) to comply with all of Lessor's applicable safety rules and regulations. Lessee must ensure that each of its employees and contractors entering upon the Premises completes the safety orientation program at the website "www.BNSFcontractor.com" (the "**Safety Orientation**") within one (1) year prior to entering upon the Premises. Additionally, Lessee must ensure that each and every employee of Lessee and its contractors possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Lessee must renew the Safety Orientation annually. Lessor acknowledges that Lessee intends to use the Premises as a public park and that Lessee's invitees and other park patrons are not required to complete the Safety Orientation.

Section 13. Indemnity.

A. TO THE FULLEST EXTENT PERMITTED BY LAW, LESSEE SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LESSOR AND LESSOR'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 LEASE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS;
- (ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LEASE;
- (iii) LESSEE'S OCCUPATION AND USE OF THE PREMISES;
- (iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY, AGGRAVATED BY, OR CONTRIBUTED IN WHOLE OR IN PART, BY LESSEE; OR
- (v) ANY ACT OR OMISSION OF LESSEE OR LESSEE'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 LESSEE'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 13(A), LESSEE SHALL NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT RAILROAD IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE PREMISES FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LESSEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LESSEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS LEASE SHALL NOT IN ANY WAY SUBJECT LESSOR TO CLAIMS THAT LESSOR IS OTHER THAN A COMMON CARRIER FOR

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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 LESSOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

C. TO THE FULLEST EXTENT PERMITTED BY LAW, LESSEE FURTHER AGREES, 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 LESSEE 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 Lessor, Lessee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this Lease for which Lessee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Lessee 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.

Section 14. Equal Protection.

It is agreed that the provisions of Sections 10, 12, and 13 are for the equal protection of other railroad companies, including, without limitation, the National Railroad Passenger Corporation (Amtrak), permitted to use Lessor's property, and such railroad companies shall be deemed to be included as Indemnitees under Sections 10, 12, and 13.

Section 15. Assignment and Sublease.

A. Lessee shall not (i) assign or otherwise transfer this Lease or any interest herein, or (ii) sublet the Premises or any part thereof, without, in each instance, obtaining the prior written consent of Lessor, which consent may be withheld in Lessor's sole and absolute discretion. For purposes of this Section 15, in the event that there are aggregate transfers or other changes in the ownership interests of Lessee resulting in a change of more than 20% of the ownership interests as held on the date hereof, a transfer shall be deemed to have occurred hereunder. Any person or legal representative of Lessee, to whom Lessee's interest under this Lease passes by operation of law, or otherwise, will be bound by the provisions of this Lease.

B. Any assignment, lease, sublease or transfer made pursuant to Section 15(A) may be made only if, and shall not be effective until, the assignee cures all outstanding defaults of Lessee hereunder and executes, acknowledges and delivers to Lessor an agreement, in form and substance satisfactory to Lessor, whereby the assignee assumes the obligations and performance of this Lease and agrees to be personally bound by and upon all of the covenants, agreements, terms, provisions and conditions hereof on the part of Lessee to be performed or observed. Lessee covenants that, notwithstanding any assignment or transfer, whether or not in violation of the provisions of this Lease, and notwithstanding the acceptance of rent by Lessor from an assignee or transferee or any other party, Lessee will remain fully and primarily liable along with the assignee for the payment of the rent due and to become due under this Lease and for the performance of all of the covenants, agreements, terms, provisions, and conditions of this Lease on the part of Lessee to be performed or observed.

Section 16. Liens.

Lessee shall promptly pay, discharge and release of record any and all liens, charges and orders arising out of any construction, alterations or repairs, suffered or permitted to be done by Lessee on the Premises. Lessor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of Lessor to take any such action shall not relieve Lessee of any obligation or liability under this Section 16 or any other Section of this Lease.

Section 17. Insurance.

Lessee shall, at its sole cost and expense, procure and maintain during the life of this Lease the following insurance coverage:

A. All risks property insurance covering all of **Railroad's** property including property in the care, custody, or control of Lessee. Coverage shall include the following:

- ◆ Issued on a replacement cost basis.
- ◆ Shall provide that in respect of the interest of **Railroad** the insurance shall not be invalidated by any action or inaction of Lessee or any other person and shall insure the respective interests of **Railroad** as they appear, regardless of any breach or violation of any warranty, declaration or condition contained in such policies by Lessee or any other person.
- ◆ Include a standard loss payable endorsement naming **Railroad** as the loss payee as its interests may appear.
- ◆ Include a waiver of subrogation in favor of **Railroad**.

B. Commercial General Liability Insurance. This insurance 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 Lessee. 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

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

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

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

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

C. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

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

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

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

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

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

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

- ◆ Waiver of subrogation in favor of and acceptable to **Railroad**.

E. If construction is to be performed on the Premises by Lessee, Lessee or Lessee's contractor shall procure Railroad Protective Liability insurance naming only the **Railroad** as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 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.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the **Railroad** prior to performing any work or services under this Lease.

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 \$633.00.

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

Other Requirements:

All policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

Lessee agrees to waive its right of recovery against **Railroad** for all claims and suits against **Railroad**. In addition, its insurers, through the terms of the policy or through policy endorsement, waive their right of subrogation against **Railroad** for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Lessee 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 Lessee's care, custody, or control.

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

Prior to accessing the Premises, Lessee shall furnish to **Railroad** an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify **Railroad** in writing at least 30 days prior to any cancellation, renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon request from **Railroad**, a certified duplicate original of any required policy shall be furnished.

Any insurance policy shall be written by a reputable insurance company acceptable to **Railroad** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the Premises is located.

Lessee represents that this Lease has been thoroughly reviewed by Lessee's insurance agent(s)/broker(s), who have been instructed by Lessee to procure the insurance coverage required by this Lease. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, **Railroad** may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

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

Failure to provide evidence as required by this Section 17 shall entitle, but not require, **Railroad** to terminate this Lease immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Lessee's obligations hereunder.

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

For purposes of this Section 17, **Railroad** shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

Section 18. Water Rights and Use of Wells.

This Lease does not grant, convey or transfer any right to the use of water under any water right owned or claimed by the Lessor which may be appurtenant to the Premises. All right, title, and interest in and to such water is expressly reserved unto Lessor, and the right to use same or any part thereof may be obtained only by the prior written consent of the Lessor. Lessee shall not use, install or permit to be installed or used any wells on the Premises without the prior written consent of Lessor.

Section 19. Default.

A. An "Event of Default" by Lessee shall have occurred hereunder if any of the following shall occur:

(i) if Lessee violates any safety provision contained in this Lease;

(ii) if Lessee fails to pay rent or any other monetary payment hereunder when due or fails to perform any other obligations under this Lease and such failure continues thirty (30) days after written notice from Lessor to Lessee of Lessee's failure to make such payment or perform such obligations;

(iii) if a decree or order of a court having jurisdiction over the Premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Lessee or over all or a substantial part of the property of Lessee shall be entered; or if Lessee becomes insolvent or makes a transfer in fraud of creditors; or an interim receiver, trustee or other custodian of Lessee or of all or a substantial part of the property of Lessee shall be appointed or a warrant of attachment, execution, or similar process against any substantial part of the property of Lessee shall be issued and any such event shall not be stayed, dismissed, bonded or discharged within thirty (30) days after entry, appointment or issuance;

(iv) if the Premises is abandoned or vacated by Lessee.

B. If an Event of Default occurs as provided above, Lessor may, at its option, (i) terminate this Lease by serving five (5) days notice in writing upon Lessee, in which event Lessee shall immediately surrender possession of the Premises to Lessor, without prejudice to any claim for arrears of rent or breach of covenant, (ii) proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by Lessee of the applicable provisions of this Lease or to recover damages for a breach thereof, (iii) cure the default by making any such payment or performing any such obligation, as applicable, at Lessee's sole expense, without waiving or releasing Lessee from any obligation, or (iv) enter into and upon the Premises or any part thereof and repossess the same without terminating the Lease and, without obligations to do so relet the Premises or any part thereof as the agent of Lessee and in such event, Lessee shall be immediately liable to Lessor for all costs and expenses of such reletting, the cost of any alterations and repairs deemed necessary by Lessor to effect such reletting and the full amount, if any, by which the rentals reserved in this Lease for the period of such reletting exceeds the amounts agreed to be paid as rent for the Premises for the period of reletting. The foregoing rights and remedies given to Lessor are and shall be deemed to be cumulative and the exercise of any of them shall not be deemed to be an election excluding the exercise by Lessor at any time of a different or inconsistent remedy. If, on account of breach or default by Lessee of any of Lessee's obligations hereunder, it shall become necessary for the Lessor to employ an attorney to enforce or defend any of Lessor's rights or remedies hereunder, then, in any such event, any reasonable amount incurred by Lessor for attorneys' fees shall be paid by Lessee. Any waiver by Lessor of any default or defaults of this Lease or any delay of Lessor in enforcing any remedy set forth herein shall not constitute a waiver of the right to pursue any remedy at a later date or terminate this Lease for any subsequent default or defaults, nor shall any such waiver in any way affect Lessor's ability to enforce any Section of this Lease. The remedies set forth in this Section 19 shall be in addition to, and not in limitation of, any other remedies that Lessor may have at law or in equity, and the applicable

statutory period for the enforcement of a remedy will not commence until Lessor has actual knowledge of a breach or default.

Section 20. Termination.

Upon the termination of Lessee's tenancy under this Lease in any manner herein provided, Lessee shall relinquish possession of the Premises and restore the Premises to substantially the state and environmental condition in which it was prior to Lessee's use ("Restoration Obligations"). If Lessee shall fail within thirty (30) days after the date of such termination of its tenancy to complete the Restoration Obligations, then Lessor may, at its election (i) restore the Premises, and in such event Lessee shall, within thirty (30) days after receipt of bill therefor, reimburse Lessor for cost incurred, (ii) upon written notice to Lessee may take and hold any Lessee personal property as its sole property, without payment or obligation to Lessee therefor, or (iii) specifically enforce Lessee's obligation to restore and/or pursue any remedy at law or in equity against Lessee for failure to so restore. Upon termination and upon the Lessor's election, all Lessee Improvements, as defined in Section 8, may be purchased from Lessee for fair market value by Lessor. In the event Lessor decides to purchase the Lessee Improvements remaining on the Premises following termination, Lessee shall, upon request by Lessor, provide a Bill of Sale in a form acceptable to Lessor conveying such Lessee Improvements to Lessor. In the alternative, Lessor may require Lessee to remove all Lessee Improvements from the Premises. In the event of such removal, Lessor shall pay to Lessee an amount equal to the actual cost of removal of such Lessee Improvements, less any reasonable salvage or reuse value of any removed Lessee Improvements.

Commented [DLS4]: Reject all edits.

Section 21. Survival of Obligations.

Notwithstanding any expiration or other termination of this Lease, all of Lessee's indemnification obligations and any other obligations that have accrued but have not been satisfied under this Lease prior to the termination date shall survive such termination.

Section 22. Holding Over.

If Lessee fails to surrender the Premises to Lessor upon the termination of this Lease, and Lessor does not consent in writing to Lessee's holding over, then such holding over will be deemed a month-to-month tenancy. Lessee's holdover will be subject to all provisions of this Lease.

Section 23. Multiple Party Lessee.

In the event that Lessee consists of two or more parties, all the covenants and agreements of Lessee herein contained shall be the joint and several covenants and agreements of such parties.

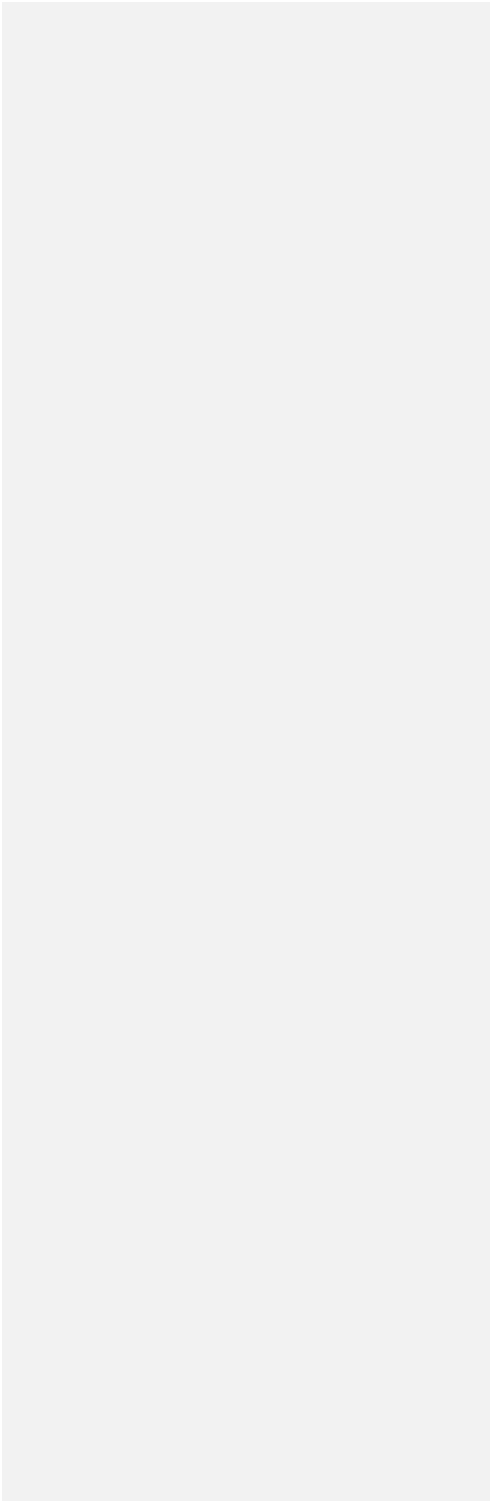
Section 24. Damage or Destruction.

If at any time during the term of this Lease, the Premises are damaged or destroyed by fire or other casualty, then Lessor may terminate this Lease or repair and reconstruct the Premises to substantially the same condition in which the Premises existed immediately prior to the damage or destruction, except that Lessor is not required to repair or reconstruct any Lessee Improvements, personal property, furniture, trade fixtures, or office equipment located on the Premises and removable by Lessee under the provisions of this Lease.

Section 25. Eminent Domain.

If any part of the Premises is taken by eminent domain, Lessor may either terminate this Lease or continue the Lease in effect. If Lessor elects to continue the Lease, rent will be reduced in proportion to the area of the Premises taken by eminent domain, and Lessor shall repair any damage to the Premises resulting from the taking. All sums awarded or agreed upon between Lessor and the condemning authority for the taking of the interest of Lessor or Lessee, whether as damages or as compensation, will be the property of Lessor; without

prejudice, however, to claims of Lessee against the condemning authority for moving costs and the unamortized cost of leasehold improvements paid for by Lessee taken by the condemning authority. If this Lease is terminated



under this Section 25, rent will be payable up to the date that possession is taken by the condemning authority, and Lessor shall refund to Lessee any prepaid unaccrued rent less any sum then owing by Lessee to Lessor.

Section 26. Representations.

Neither Lessor nor Lessor's agents have made any representations or promises with respect to the Premises except as herein expressly set forth.

Section 27. Signs.

No signs are to be placed on the Premises without the prior written approval of Lessor of the size, design, and content thereof.

Section 28. Consents and Approvals.

Whenever in this Lease Lessor's consent or approval is required, such consent or approval shall be in Lessor's sole and absolute discretion. If Lessor delays or refuses such consent or approval, such consent or approval shall be deemed denied, and Lessee in no event will be entitled to make, nor will Lessee make, any claim, and Lessee hereby waives any claim, for money damages (nor will Lessee claim any money damages by way of set-off counterclaim or defense) based upon any claim or assertion by Lessee that Lessor unreasonably withheld or unreasonably delayed its consent or approval.

Section 29. Captions.

The captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Lease nor the intent of any provision thereof.

Section 30. Public Record.

It is understood and agreed that this Lease shall not be placed of public record.

Section 31. Governing Law.

All questions concerning the interpretation or application of provisions of this Lease shall be decided according to the laws of the state in which the Premises are located.

Section 32. No Waiver.

One or more waivers of any covenant, term, or condition of this Lease by Lessor shall not be construed as a waiver of a subsequent breach of the same covenant, term, or condition. The consent or approval by Lessor to or of any act by Lessee requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

Section 33. Binding Effect.

All provisions contained in this Lease shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Lessor and Lessee to the same extent as if each such successor and assign was named a party to this Lease.

Section 34. Force Majeure.

Except as may be elsewhere specifically provided in this Lease, if either party is delayed or hindered in, or prevented from the performance required under this Lease (except for payment of monetary obligations) by reason of earthquakes, landslides, strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God or other reason of the like nature not the fault of the party delayed in performance of its obligation, such party is excused from such performance for the period of delay. The period for the performance of any such act will then be extended for the period of such delay.

Section 35. Entire Agreement/Modification.

This Lease is the full and complete agreement between Lessor and Lessee with respect to all matters relating to lease of the Premises and supersedes any and all other agreements between the parties hereto relating to lease of the Premises. If this Lease is a reissue of an existing agreement held by Lessee, it shall supersede and cancel the previous lease or leases, without prejudice to any liability accrued prior to cancellation. This Lease may be modified only by a written agreement signed by Lessor and Lessee.

Section 36. Notices.

Any notice or documents required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given or shall be deemed to have been served and given if (i) delivered in person to the address hereinafter set forth for the party to whom the notice is given, (ii) placed in the United States mail, certified - return receipt requested, addressed to such party at the address hereinafter set forth, or (iii) deposited into the custody of any reputable overnight carrier for next day delivery, addressed to such party at the address hereinafter set forth. Any notice mailed as above shall be effective upon its deposit into the custody of the U. S. Postal Service or such reputable overnight carrier, as applicable; all other notices shall be effective upon receipt. All rent and other payments due to Lessor hereunder shall also be made as provided in Section 3(A) above, and delivery of such rental and other payments shall only be effective upon actual receipt by Lessor. From time to time either party may designate another address or telecopy number within the 48 contiguous states of the United States of America for all purposes of this Lease by giving the other party not less than fifteen (15) days' advance written notice of such change of address in accordance with the provisions hereof.

If to Lessee:

City of Hillsboro
P.O. Box 400
Hillsboro, ND 58045

If to Lessor:

BNSF Railway Company
2650 Lou Menk Drive, MOB-2
Fort Worth, Texas 76131-2828
Attn: Director Real Estate

With a copy to:

Jones Lang LaSalle Brokerage, Inc.
2650 Lou Menk Drive, MOB-2
Fort Worth, Texas 76131-2828
Attn: Director Lease

Section 37. Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this Agreement 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.

Section 38. Relationship.

Notwithstanding anything else herein to the contrary, neither party hereto shall be construed or held, by virtue of this Lease, to be the agent, partner, joint venturer, or associate of the other party hereto, it being expressly understood and agreed that the relationship between the parties hereto is and at all times during the term of this Lease, shall remain that of Lessor and Lessee.

Section 39. Severability.

If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term of this Lease, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

Section 40. Transferability; Release of Lessor.

Lessor shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this Lease and in the Premises, and upon such transfer, Lessor shall be released from any further obligations hereunder, and Lessee agrees to look solely to the successor in interest of Lessor for the performance of such obligations.

Section 41. Tax Waiver.

Lessee waives all rights pursuant to all Laws to protest appraised values or receive notice of reappraisal regarding the Premises (including Lessor's personalty), irrespective of whether Lessor contests the same.

Section 42. Attorneys' Fees.

If any action at law or in equity is necessary to enforce or interpret the terms of this Lease, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any relief to which it may be entitled.

Executed by the parties to be effective as of the Effective Date above.

LESSOR

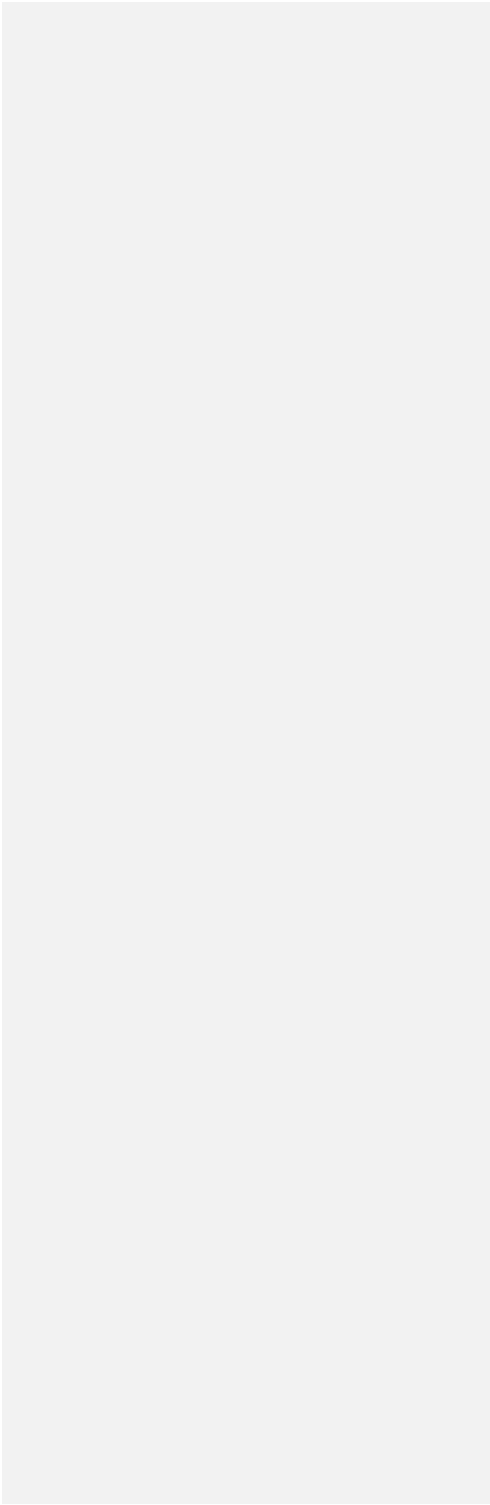
BNSF Railway Company

By: _____
Name: Dean Ferris
Title: Director of Right of Way and Real Estate Management

LESSEE

City of Hillsboro

By: _____
Name: _____
Title: _____



COORDINATE SYSTEM: ND N

TRACKING NO.

EXHIBIT "A"
ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
AND

CITY OF HILLSBORO

TRIM LINE

SCALE: 1 IN = 75 FT
TWIN CITIES DIV.
HILLSBORO SUBDIV. L.S. 0220
DATE: 7/8/2022

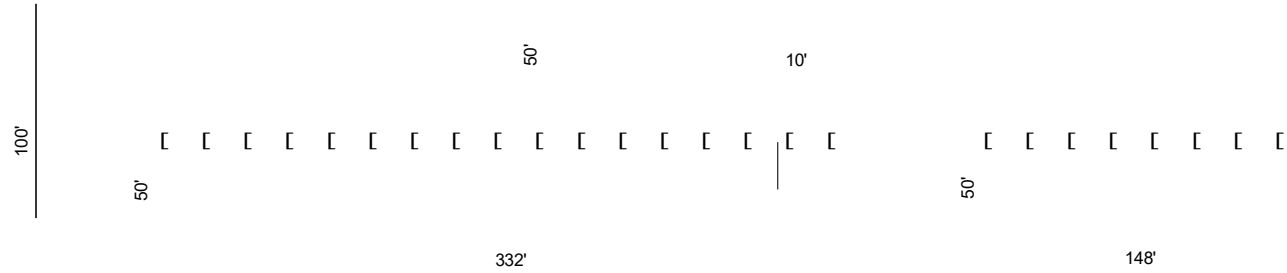
SECTION: 5
TOWNSHIP & RANGE:
145N 50W
MERIDIAN: 5PM

MAP REF. s60968

E Caledonia
Ave

TO: GRAND FORKS

TO: FARGO



MP 62.21
47.401825 -97.060670

N Main St

S Main St



[FENCE

1st Ave SW

Ave SW

LEGEND:

- PREMISES
- RIGHT OF WAY LINE
- TRACK

DESCRIPTION:
2

PARCELS OF LAND CONTAINING A TOTAL OF 24,000 SQ FT. (0.55
A.C.) MORE OR LESS SHOWN HATCHED.

2nd

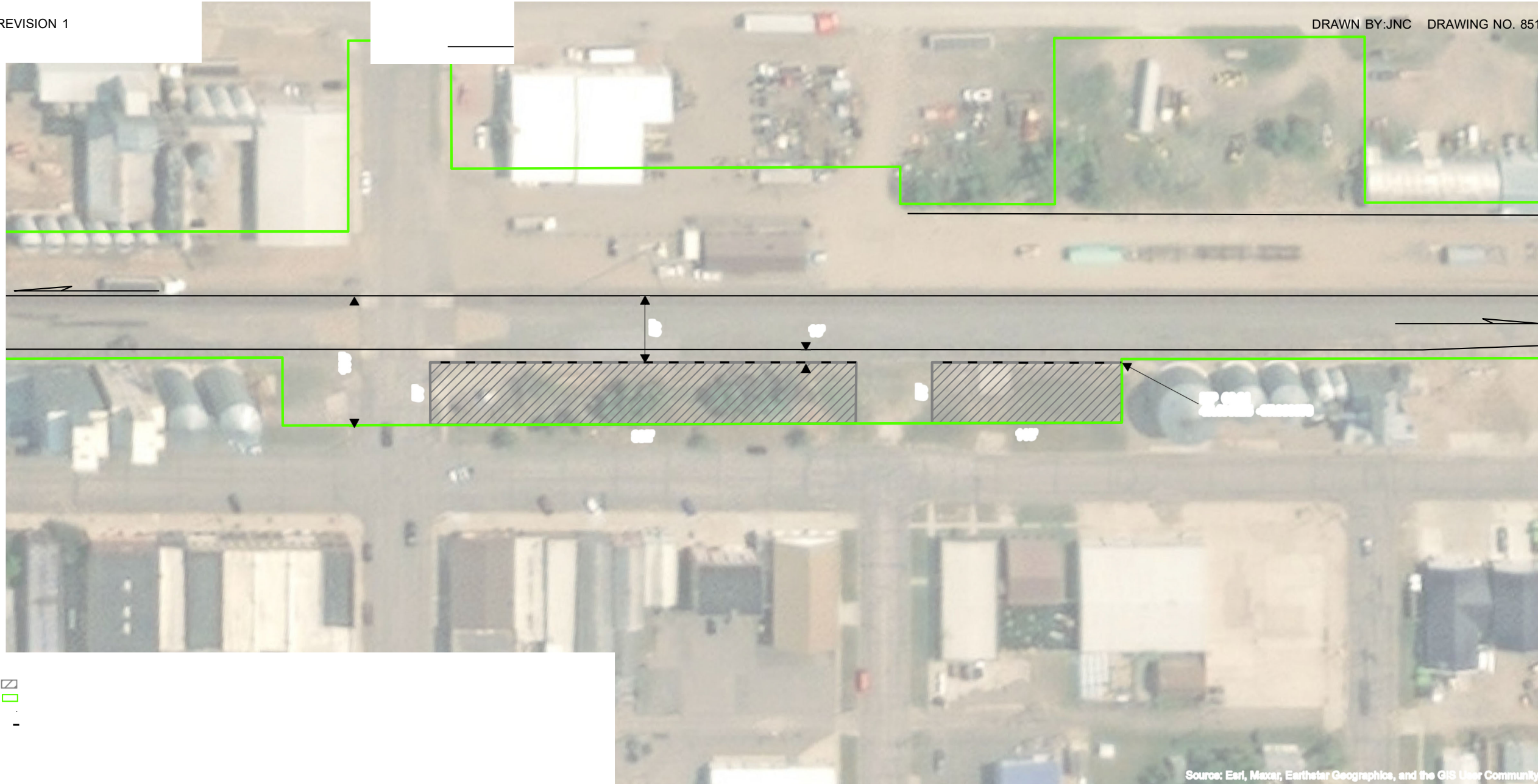
HILLSBORO
COUNTY OF TRAIL

STATE OF ND

Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community

REVISION 1

DRAWN BY: JNC DRAWING NO. 85106



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Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community

EXHIBIT "B"

WORK LETTER AGREEMENT

THIS WORK LETTER AGREEMENT (the "Agreement") supplements that certain Indefinite Term Lease for Land ("Lease") dated _____, _____ by and between **BNSF Railway Company**, a Delaware corporation ("Lessor") and _____, a(n) _____ ("Lessee"). In the event of

any conflict between the provisions of this Agreement and the provisions of the Lease, the provisions of this Agreement shall control. Unless the context otherwise requires, capitalized terms not defined herein shall have the meaning assigned to such terms in the Lease.

In the event Lessee uses one or more general contractors or subcontractors ("Contractor(s)") for any improvements, alterations, build out, finish out, or other similar work on the Premises ("Work"), Lessee agrees to and accepts the following:

1. Prior to performing any Work, Lessee shall obtain Lessor's approval of each Contractor and any Work to be performed by such Contractor shall be performed pursuant to a written contract between Lessee and the Contractor ("Work Contract") approved in advance by Lessor.

2. Prior to commencing any Work, Lessee shall submit for Lessor's review and approval Lessee's plans, specifications and/or drawings for such Work (collectively, "Plans") in accordance with the procedure set forth in the Lease.

3. All Work must be performed at Lessee's sole cost and expense and in accordance with the Plans which have previously been approved by Lessor.

4. Lessee shall cause its Contractors to meet all insurance and indemnification requirements required of Lessee under the Lease and shall obtain indemnification and insurance provisions from its Contractors in favor of Lessor and in the same form as set forth in the Lease.

5. Prior to the commencement of the Work, all required local building, fire, health and other departments must approve all Plans requiring approval by local building codes. In addition, the Work shall be performed, installed and/or constructed in accordance with all applicable federal, state and local laws, codes, ordinances, rules and regulations, including without limitation, the Americans With Disabilities Act of 1990, 42 U.S.C.A. 12101 et seq.

6. Lessee shall be responsible for obtaining all municipal and other governmental licenses or permits for the Work with copies furnished to Lessor prior to commencement of any construction.

7. Lessee shall furnish Lessor, for Lessor's approval, a copy of its schedule of the Work. Lessee shall perform the Work in accordance with the schedule approved by Lessor, and any changes in such schedule must be approved by Lessor in writing in advance.

8. Notwithstanding the status of the completion of the Work, Lessee's obligation for payment of Base Rent and other amounts due under the Lease shall commence on the Commencement Date provided in the Lease. Notwithstanding anything herein to the contrary, Lessor may, in Lessor's sole discretion, permit Lessee and Lessee's Contractors to enter the Premises prior to the Commencement Date in order to commence Work; provided, however, that Lessee agrees that such early entry or occupation of the Premises shall be governed by all of the terms and conditions of the Lease and this Agreement (including the insurance and indemnity requirements therein), as such terms and conditions are more specifically set forth in the Lease and this Agreement.

9. During construction, Lessor reserves the right to inspect the Work at any time upon reasonable notice to Lessee.

10. Lessee's Contractors shall keep the Premises reasonably clean at all times during the performance of the Work.

11. All Work must be performed in a good and workmanlike manner, free from defects in materials and workmanship.

12. If any materialman's, mechanic's, laborer's or any other liens for any work claimed to have been undertaken for Lessee or at Lessee's request is filed against the Premises, Lessee shall indemnify, defend and hold harmless Lessor from any such liens filed during the term of the Lease and shall, at Lessee's own expense, cause all such liens to be removed within ten (10) days after written notice from Lessor to Lessee of the filing thereof.

13. Lessee must obtain Lessor's reasonable approval that the Work has been completed in substantial accordance with the approved plans and specifications. Lessor shall receive copies of all Certificates of Occupancy and as-built drawings (electrical, mechanical, fire and architectural) prior to approving the Work.

14. All guarantees and warranties provided by Lessee's Contractors shall be issued to Lessee and, for Work which is or will at the termination of this Lease be Lessor's property, also to Lessor.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first set forth above.

LESSOR:

BNSF Railway Company

By: _____
Name: _____
Title: _____

LESSEE:

By: _____
Name: _____
Title: _____

Sample

ORDINANCE No. 532

AN ORDINANCE AMENDING TITLE 9 OF THE 2020 REVISED ORDINANCES OF THE CITY OF HILLSBORO.

Be it ordained by the City Commission of the City of Hillsboro, State of North Dakota:

Section 9.1410 and 9.1413 of Chapter 9.14 of the 2020 Revised Ordinances of the City of Hillsboro are hereby amended to read as follows:

9.1410 Stopping - Parking - Overnight and 2448 Hour Limitation

1. No motor vehicle or trailer, including but not limited to cars, trucks, commercial vehicles, tractors, contractor's equipment, semitrailers, campers, boats, fishhouses, RVs, and transport motor vehicles, shall be left continuously standing upon any of the streets, avenues, highways, public ways, public property or alleys of the City on the hereinafter described areas from 2:30 a.m. to 6:00 a.m., it being the intent of the City to prohibit the continuous parking of vehicles from 2:30 a.m. to 6:00 a.m. in the following areas excepting therefrom private property: two (2) blocks south of Caledonia Avenue on Main Street and two (2) blocks north of Caledonia Avenue on Main Street and one block east of Main Street on Caledonia Avenue and three (3) blocks west of Main Street on Caledonia Avenue.
2. Except in those areas above described where continuous parking from specified hours is prohibited, no motor vehicle or trailer including but not limited to cars, trucks, commercial vehicles, tractors, contractor's equipment, semitrailers, campers, boats, fishhouses, RVs, and transport motor vehicles shall be left continuously standing upon any of the streets, avenues, highways, public ways, public property or alleys of the City for a period longer than twenty-four (24) forty-eight (48) hours, it being the intent to limit the parking of vehicles at any place in the City except in those areas above described where continuous parking from specified hours is prohibited and except on private property.
3. A vehicle that has not moved at least three hundred (300) feet shall be considered to have remained stationary and parked in enforcing the above parking limitations.
4. The restrictions set forth in this Section shall not apply to a motor vehicle used in the repair, maintenance, or construction project on any of said streets, avenues, highways, public ways, public property or alleys of the City.
5. Anyone found in violation of this ordinance shall be subject to a ten-twenty dollar (\$20.00) parking ticket.

9.1413 Parking for Snow Removal or Street Cleaning

1. Beginning 48 hours after the end of any snow fall totaling three inches or more, as determined by the U.S. Weather Bureau or other weather service. After a notice has been given by the Hillsboro Street Department or other department that vehicles and trailers shall not be parked on any streets, avenues, highways, public ways, public property or alleys in the City while snow removal or street cleaning occurs. Parking of vehicles or trailers on city streets may resume in locations where the snow has been cleared on both sides of the street for the length of the entire block, no vehicles shall be parked thereon during the period specified. The notice required herein shall be given by personal notice or by signs posted on the thoroughfares at least six (6) hours prior to the time when the prohibition of parking shall be in effect. The City, its agents, or law enforcement shall work to provide notice by tagging vehicles parked in areas that require snow clearing. Such notice is provided as a courtesy and is not required for the owner of any vehicle to be subject to any fines, penalties, or having their vehicle or trailer towed.

Style Definition: List Paragraph: Font: (Default) Times New Roman, 10 pt, Justified, Space After: 10 pt, Add space between paragraphs of the same style, Line spacing: single, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

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~~2. Whenever the City Commission President or Public Works Superintendent finds, on the basis or threat of falling or blowing snow, sleet or freezing rain, or on the basis of a forecast by the U.S. Weather Bureau or other weather service, of snow, sleet or freezing rain that weather conditions will make it necessary that parking on city streets, alleys or public ways be prohibited or restricted for snow plowing and other purposes, he or she shall put into effect a parking prohibition as necessary by making a public declaration. This declaration shall be publicly announced by press, radio, television, newspaper, the City website, or social media, depending on feasibility. Each announcement shall describe the action taken including the time it became or will become effective. Such notice shall constitute due and proper notice.~~

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~~2.3. Once in effect, a prohibition under this Section shall remain in effect until terminated by public declaration of the City Commission President or Public Works Superintendent in accordance with this Section, except that any street area which has become substantially clear of snow and ice on both sides of the street for the length of entire block shall be automatically excluded therefrom. While the prohibition is in effect, no person shall park or allow to remain parked any motor vehicle or trailer, including but limited to cars, trucks, commercial vehicles, tractors, tractor's equipment, semitrailers, campers, boats, fishhouses, RVs, and transport motor vehicles on any portion of any streets, avenues, highways, public ways, public property or alleys in the City which the prohibition applies. However, nothing in this section shall be construed to permit parking at any time or place where it is forbidden by any other provision of law.~~

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~~3.4. Any vehicles or trailers found parked after such notice in violation of this ordinance may be removed and the owner charged the cost of towing or may be removed and impounded and the owner charged the cost of towing and storage, which, In addition, the owner of the vehicle or trailer may be charged a fine of \$20.00. All towing and storage charges along with all fines assessed for any violation or violations shall be paid prior to release of the vehicle or any vehicles or trailers.~~

Levi Reese
President of Board of City Commissioners

ATTEST:

Ashley Frederick, City Auditor

First Reading Date: _____, 2022

Second and Final Reading: _____, 2022

Publication: As required by law

Commissioner _____ introduced the following resolution and moved its adoption:

RESOLUTION SETTING BUILDING PERMIT FEES AND PENALTIES

WHEREAS, the City of Hillsboro desires to maintain orderly construction of properties within the City limits and under the City's ordinances.

WHEREAS, it is deemed necessary to establish a schedule of fees and penalties for building permits in the City of Hillsboro.

NOW THEREFORE BE IT RESOLVED as follows:

That the schedule of fees and penalties for building permits in the City of Hillsboro be set as shown on the attached Exhibit A:

APPROVED:

Levi Reese
President of Board of City Commissioners

ATTEST:

Ashley Frederick, City Auditor

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner _____. On roll call vote the following commissioners voted aye: Levi Reese, Dave Sather, Michael Kress, Paul Geray, and Nicole Evans. The following commissioners voted nay: none. The following commissioners were absent and not voting: none. The majority having voted aye, the motion carried and the resolution was duly adopted.

EXHIBIT A

November 28, 2022

Naastad Brothers, Inc
1755 149th Ave NE
PO Box 206
Hatton, ND 58240

RE: Riverwalk Addition Final Acceptance Letter

Dear Naastad Brothers, Inc,

You are hereby notified that the above project has been accepted by the City of Hillsboro and upon the final signature of Change Order 1 and Pay Application 2 is considered closed out. The project was considered substantially complete on 10/14/2022.

The date of Substantial Completion marks the commencement of the contractual correction period and applicable warranties required by the Contract. This does not however waive the Owner's legal rights outlined in Section 105.16 of the NDDOT Standard Specifications.

Please let us know if you have any questions or concerns.

Sincerely,



Signature

Danielle Houts

Print Name

Lowry Engineering

Signature

Print Name

City of Hillsboro