

CITY COUNCIL PROCEEDINGS

September 27, 2023

The City Council of the City of David City, Nebraska, met in open public session at 7:00 p.m. in the meeting room of the City Office at 490 "E" Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on September 21, 2023, and an affidavit of the publisher is on file in the office of the City Clerk. The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the Agenda which is a part of these minutes. The advance notice to the Public, Mayor, and Council members conveyed the availability of the agenda, which was kept continuously current in the office of the City Clerk and was available for public inspection on the City's website. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting.

Present for the meeting were: Mayor Jessica Miller, Council members: Pat Meysenburg, Bruce Meysenburg, Keith Marvin, Kevin Woita, Jim Angell, and Deputy City Clerk Lori Matchett. City Attorney Michael Sands joined via zoom. Council Member Tom Kobus and Interim City Administrator/City Clerk Tami Comte were absent.

Also present were Park/Auditorium Supervisor Bill Buntgen, Recreation Coordinator William Reiter, Jerry Kosch, Account Clerk Elizabeth Parker, Assistant Police Chief Devin Betzen, and Aaron Beauclair of JEO Consulting. Brad Swerczek from K-Tech Project Services joined via zoom.

The meeting opened with the Pledge of Allegiance.

Mayor Jessica Miller informed the public of the "Open Meetings Act" posted on the west wall of the meeting room and asked those present to silence their cell phones. She also reminded the public that if they speak tonight in front of the Council that they must state their name and address for the record.

Council member Jim Angell made a motion to approve the minutes of the September 13 & September 20, 2023, meetings as presented. Council member Keith Marvin seconded the motion. The motion carried. Jim Angell: Yea, Tom Kobus: Absent, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea. Yea: 5, Nay: 0, Absent 1.

Aaron Beauclair of JEO Consulting introduced himself. Aaron wanted to give the council a brief overview of the bids that were received. "On September 14, 2023, at 2 p.m. we received 5 bids for the project. One bidder used an incorrect bid form. In the end, Vrba Construction Inc. was the lowest bidder at \$273,883.50."

Council member Pat Meysenburg made a motion to accept the bid from Vrba Construction, Inc. in the amount of \$273,883.50 for the campground sewer extension project. Council member Keith Marvin seconded the motion. The motion carried. Jim Angell: Yea, Tom Kobus: Absent, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea. Yea: 5, Nay: 0, Absent: 1.



September 19, 2023

Tami Comte, City Clerk-Treasurer
City of David City
490 E Street
David City, NE 68632

RE: 2023 Campground Sanitary Sewer Extension
David City, Nebraska
JEO Project No. 220784.00

Dear Ms. Comte:

On September 14, 2023 at 2:00 PM the bid opening was conducted for the 2023 Campground Sanitary Sewer Extension project. A total of five bids were received, with one of the bidders using an incorrect bid form. Of the remaining four bids, prices ranged from \$273,883.50 to \$522,578.08.

The low bid of \$273,883.50 was submitted by Vrba Construction of Schuyler, Nebraska. The engineer's opinion of probable cost for the project was a total of \$340,000. Vrba Construction is a reputable contractor that has performed well on previous projects of similar type and size. JEO recommends that the project be awarded to Vrba Construction.

The bid tabulation is enclosed for your reference. If you have any questions about the information included in this letter or the enclosed, please feel free to call.

Sincerely,

Aaron Beauclair, PE
Senior Project Engineer

Enclosures



Bid Tab

PROJECT | 2023 Campground Sanitary Sewer Extension

JEO PROJECT NO. | 220784.00

LOCATION | David City, Nebraska

LETTING | 09/08/2023 2:00 PM CST

OPINION OF PROBABLE COST | \$340,000

Bidder	Total Group A
Vrba Construction Inc Schuyler, NE	\$273,883.50
General Excavating Lincoln, NE	\$328,071.00
Pat Thomas Construction, Inc. Lincoln, NE	\$339,635.00
Myers Construction Inc Broken Bow, NE	\$522,578.08
K2 Construction Lincoln, NE	Bid Rejected (Incorrect Bid Form)



Tab Sheet

PROJECT | 2023 Campground Sanitary Sewer Extension

JEO PROJECT NO. | 220784.00

LOCATION | David City, Nebraska

Item	Description	Qty.	Unit	General Excavating		K2 Construction		Myers Construction Inc		Pat Thomas Construction, Inc.		Vrba Construction Inc	
				Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total
GROUP A - INSTALL/BUILD SANITARY SEWER SERVICE													
1	Mobilization	1	LS		\$36,750.00		\$0.00		\$45,000.00		\$17,500.00		\$10,000.00
2	Bonding and Insurance	1	LS		\$25,000.00		\$0.00		\$13,543.06		\$5,900.00		\$10,000.00
3	8" PVC Sanitary Sewer Main, SDR 35	1,530	LF	\$66.00	\$100,980.00		\$0.00	\$189.00	\$289,170.00	\$76.00	\$116,280.00	\$72.00	\$110,160.00
4	6" PVC Sanitary Sewer Service, SDR 26	20	LF	\$80.00	\$1,600.00		\$0.00	\$150.00	\$3,000.00	\$50.00	\$1,000.00	\$162.00	\$3,240.00
5	48" Dia. Concrete Manhole	52	VF	\$900.00	\$46,800.00		\$0.00	\$750.00	\$39,000.00	\$1,300.00	\$67,600.00	\$815.50	\$42,406.00
6	8" PVC C900, DR 18, RJ	153	LF	\$70.00	\$10,710.00		\$0.00	\$132.71	\$20,304.63	\$50.00	\$7,650.00	\$75.50	\$11,551.50
7	Connect to Existing Manhole	1	EA	\$4,250.00	\$4,250.00		\$0.00	\$1,750.00	\$1,750.00	\$6,500.00	\$6,500.00	\$1,000.00	\$1,000.00
8	Sill Fence	130	LF	\$6.00	\$780.00		\$0.00	\$10.00	\$1,300.00	\$5.00	\$650.00	\$8.00	\$1,040.00
9	16" Steel Casing, 0.3125" Thickness, Jack and Bore Clear and Grub All Foliage and Trees	106	LF	\$716.00	\$75,896.00	\$716.00	\$75,896.00	\$716.00	\$75,896.00	\$716.00	\$75,896.00	\$716.00	\$75,896.00
10	Plant New Eastern Red Cedar Trees	1	LS		\$13,500.00		\$0.00		\$15,000.00		\$30,000.00		\$5,500.00
11	8" Cap, PVC	4	EA	\$750.00	\$3,000.00		\$0.00	\$3,000.00	\$12,000.00	\$200.00	\$800.00	\$185.00	\$740.00
12	8' x 6" Wye, PVC	1	EA	\$150.00	\$150.00		\$0.00	\$134.04	\$134.04	\$100.00	\$100.00	\$100.00	\$100.00
13	Seeding	1	EA	\$255.00	\$255.00		\$0.00	\$2,280.35	\$2,280.35	\$750.00	\$750.00	\$150.00	\$150.00
14		2100	SY	\$4.00	\$8,400.00		\$0.00	\$2.00	\$4,200.00	\$4.29	\$8,998.08	\$1.00	\$2,100.00
TOTAL GROUP A					\$328,071.00		\$75,896.00		\$522,578.08		\$339,635.00		\$273,883.50

**SECTION 00 51 00
NOTICE OF AWARD**

Date of Issuance: September 14, 2023
Owner: City of David City Owner's Project No.:
Engineer: JEO Consulting Group, Inc. Engineer's Project No.: 220784.00
Project: 2023 Campground Sanitary Sewer Extension
Contract Name: 2023 Campground Sanitary Sewer Extension
Bidder: Vrba Construction, Inc.
Bidder's Address: 1177 Road 11, Schuyler, NE 68661

You are notified that Owner has accepted your Bid dated September 14, 2023 for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

Group A

The Contract Price of the awarded Contract is \$273,883.50. Contract Price is subject to adjustment based on the provisions of the Contract, including but not limited to those governing changes, Unit Price Work, and Work performed on a cost-plus-fee basis, as applicable.

Three (3) unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically.

Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:

1. Deliver to Owner three (3) counterparts of the Agreement, signed by Bidder (as Contractor).
2. Deliver with the signed Agreement(s) the Contract security (such as required performance and payment bonds) and insurance documentation, as specified in the Instructions to Bidders and in the General Conditions, Articles 2 and 6.
3. Other conditions precedent (if any): None.

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within 10 days after you comply with the above conditions, Owner will return to you one fully signed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: City of David City
By (signature): _____
Name (printed): Jessica Miller
Title: Mayor
Copy: Engineer

Council member Jim Angell made a motion to approve the certification of City Street Superintendent and Resolution No. 37-2023 signing of the year-end certificate of City Street Form 2023. Council member Pat Meysenburg seconded the motion. The motion carried. Jim Angell: Yea, Tom Kobus: Absent; Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea. Yea: 5, Nay: 0, Absent: 1.

Do not recreate or revise the pages of this document, as revisions and recreations will not be accepted.
Failure to **return both pages of the original document** by the filing deadline (October 31, 2023) may result in the suspension of Highway Allocation funds until the documents are filed.

RESOLUTION
SIGNING OF THE
MUNICIPAL ANNUAL CERTIFICATION OF PROGRAM COMPLIANCE
2023

Resolution No. 37-2023

Whereas: State of Nebraska Statutes, sections 39-2115, 39-2119, 39-2120, 39-2121, and 39-2520(2), requires an annual certification of program compliance to the Nebraska Board of Public Roads Classifications and standards; and

Whereas: State of Nebraska Statute, section 39-2120 also requires that the annual certification of program compliance by each municipality shall be signed by the Mayor or Village Board Chairperson and shall include the resolution of the governing body of the municipality authorizing the signing of the certification.

Be it resolved that the Mayor Village Board Chairperson of David City
(Check one box) (Print name of municipality)
is hereby authorized to sign the Municipal Annual Certification of Program Compliance.

Adopted this 27th day of September, 20 23 at David City Nebraska.
(Month)

City Council/Village Board Members

<u>Council President Bruce Meysenburg</u>	<u>Council Member Pat Meysenburg</u>
<u>Council Member Kevin Woita</u>	_____
<u>Council Member Tom Kobus</u>	_____
<u>Council Member Keith Marvin</u>	_____
<u>Council Member Jim Angell</u>	_____

City Council/Village Board Member _____
Moved the adoption of said resolution
Member _____ Seconded the Motion
Roll Call: Yes _____ No _____ Abstained _____ Absent
Resolution adopted, signed, and billed as adopted.

Attest:

(Signature of Clerk)

Do not recreate or revise the pages of this document, as revisions and recreations will not be accepted. Failure to **return both pages of the original document** by the filing deadline (October 31, 2023) may result in the suspension of Highway Allocation funds until the documents are filed.

**MUNICIPAL
ANNUAL CERTIFICATION OF PROGRAM COMPLIANCE
TO
NEBRASKA BOARD OF PUBLIC ROADS CLASSIFICATIONS
AND STANDARDS
2023**

In compliance with the provisions of the State of Nebraska Statutes, sections 39-2115, 39-2119, 39-2120, 39-2121, and 39-2520(2), requiring annual certification of program compliance to the Board of Public Roads

Classifications and Standards, the City Village of David City
(Check one box) (Print name of municipality)

hereby certifies that it:

- ✓ has developed, adopted, and included in its public records the plans, programs, or standards required by sections 39-2115 and 39-2119;
- ✓ meets the plans, programs, or standards of design, construction, and maintenance for its highways, roads, or streets;
- ✓ expends all tax revenue for highway, road, or street purposes in accordance with approved plans, programs, or standards, including county and municipal tax revenue as well as highway-user revenue allocations;
- ✓ uses a system of revenue and costs accounting which clearly includes a comparison of receipts and expenditures for approved budgets, plans, programs, and standards;
- ✓ uses a system of budgeting which reflects uses and sources of funds in terms of plans, programs, or standards and accomplishments;
- ✓ uses an accounting system including an inventory of machinery, equipment, and supplies;
- ✓ uses an accounting system that tracks equipment operation costs;
- ✓ has included in its public records the information required under subsection (2) of section 39-2520; and
- ✓ **has included in its public records a copy of this certification and the resolution of the governing body authorizing the signing of this certification by the Mayor or Village Board Chairperson.**

Signature of Mayor Village Board Chairperson (Required) 9/27/2023
(Date)

Signature of City Street Superintendent (Optional) (Date)

Return the completed original signing resolution and annual certification of program compliance by October 31, 2023 to:

Nebraska Board of Public Roads Classifications and Standards
PO Box 94759
Lincoln NE 68509



Council member Keith Marvin made a motion to approve Resolution No. 38-2023 approving the campground rental rates. Council member Pat Meysenburg seconded the motion. The motion carried. Jim Angell: Yea, Tom Kobus: Absent, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea. Yea: 5, Nay: 0, Absent: 1.

RESOLUTION NO. 38-2023

WHEREAS, the City has determined a need to increase in the David City Campground, and set new RV Campground charges.

NOW, THEREFORE BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that the following charges, for the use of the City Municipal Campground, and the RV Campground be hereby adopted.

Municipal Campground

Campground**\$20.00 / day**

RV Campground

RV Campground (full-hookups) **\$45.00 / day**

RV Campground Monthly rate (full-hookups).....**\$1,000 / month**

Monthly rate must be selected and paid in full at the beginning of the calendar month. No refunds will be given for early departure.

Dated this 27th day of September, 2023.

Mayor Jessica J. Miller

City Clerk Tami L. Comte

Recreation Coordinator William Reiter introduced himself and talked about the meeting that was held with the Park Committee and County Members. Jason Bus met with the Park Committee, Jason went through several ways for this project to be paid for. There are grants that are available but to receive funding you need to have a trail master plan. Which is that the proposal here is. We would need to have a master plan completed. We would need to have the plan for the trail in place. What is currently in front of the council is the cost to create a master plan. This trail would run from Washington State to Washington D.C.

Mayor Jessica Miller stated that she thinks we need to find out how we are going to pay for this plan to complete the plan for the master plan for the trails.

Council member Jim Angell made a motion to table the design of a David City Trail Master Plan presented by Schemmer. Council member Bruce Meysenburg seconded the motion. The motion tabled. Jim Angell: Yea, Tom Kobus: Absent, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea. Yea: 5, Nay: 0, Absent: 1.



SCHEMMER

Design with Purpose. Build with Confidence.

August 4, 2023

Ms. Tami Comte
Interim City Administrator
City of David City
490 E Street
David City, NE

c/o Brad Swerczek
Ktech Project Services

Re: David City Trail Master Plan
David City, NE
Schemmer Project No. 01276.MS2

Dear Ms. Comte:

The Schemmer Associates Inc. (SCHEMMER) proposes to render design services to the City of David City (Client) for the design of a master trail plan. SCHEMMER shall render for the Client professional engineering services as outlined in the attached proposed scope. These services will include serving as City's professional engineering representative outlining a process to determine a proposed trail alignment around the community of David City. The Representatives working for SCHEMMER that oversee the execution of this task shall be a registered professional engineer in the State of Nebraska.

The City shall compensate SCHEMMER per the attached labor rates for all services authorized under this agreement. Said services and estimated fee for this task order shall be agreed to in advance before services are rendered.

If the foregoing and attached General Conditions are acceptable, please indicate your acceptance by signing and returning one copy of this proposal/agreement. We will consider the signed proposal an Agreement between the City of David City and The Schemmer Associates Inc. for the services described herein.

Sincerely,

THE SCHEMMER ASSOCIATES INC.



Matt Shimerdla, P.E.
Transportation Manager

ACCEPTED:
City of David City

BY: _____
TITLE: Interim City Administrator

DATE: _____

Attachment (General Conditions)

GENERAL CONDITIONS

1. **REUSE OF DOCUMENTS.** All documents including, but not limited to, drawings, specifications and CADD data on electronic media furnished by The Schemmer Associates Inc. pursuant to this Agreement are Instruments of Service in respect to the project identified in the Agreement. They are not intended or represented to be suitable for use on extensions of this project or on any other project for any purpose without the specific written permission of The Schemmer Associates Inc., which may be withheld in The Schemmer Associates Inc.'s sole discretion. The Schemmer Associates Inc. may, in its sole discretion, condition permission on payment of additional compensation to The Schemmer Associates Inc. Any use without permission shall be at the user's sole risk and without liability to The Schemmer Associates Inc. Client agrees that it will indemnify and hold harmless The Schemmer Associates Inc. from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom.
2. **ESTIMATES.** Since The Schemmer Associates Inc. has no control over the cost of labor, materials or equipment or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, estimates of project cost are made on the basis of experience and qualifications and represent the best judgment of design professionals familiar with the industry, but The Schemmer Associates Inc. cannot and does not guarantee that proposals, bids or project costs will not vary from estimates of cost prepared by The Schemmer Associates Inc.
3. **SUSPENSION OR ABANDONMENT.** If the project is suspended for more than three months or abandoned in whole or in part, The Schemmer Associates Inc. shall be paid compensation for services performed prior to receipt of written notice of such suspension or abandonment, together with reimbursable expenses then due. If, after a period of suspension, the project is restarted, The Schemmer Associates Inc. shall be entitled to payment for any increased costs it incurs as a result of the suspension.
4. **TERMINATION.** This Agreement may be terminated by either party upon seven days' written notice should either party fail substantially to perform in accordance with its terms through no fault of the other. In the event of termination due to the fault of others than The Schemmer Associates Inc., The Schemmer Associates Inc. shall be paid for services performed prior to termination, including reimbursable expenses.
5. **SUCCESSORS AND ASSIGNS.** Each party to this Agreement binds him/herself, his/her partners, successors, assigns and legal representatives to the other party, his/her partners, successors, assigns and legal representatives with respect to all covenants of this Agreement. Neither party shall assign, sublet or transfer his/her interest in this Agreement without the written consent of the other, which consent may be withheld in the sole discretion of the non-assigning party.
6. **PAYMENTS.** Payments due The Schemmer Associates Inc. under this Agreement shall be payable within thirty (30) days of the date of billing. If full payment is not received within sixty (60) days of the date of billing, the unpaid amount shall bear interest at the highest rate permitted by law but not exceeding eighteen percent (18%) from the date of billing.
7. **DELINQUENT PAYMENTS.** If any payment due hereunder remains unpaid for a period of sixty (60) days after invoice, The Schemmer Associates Inc. may, in its sole discretion, cease providing services and not resume providing services until all amounts owing have been paid in full. Cessation of service for nonpayment shall not constitute breach by The Schemmer Associates Inc. of this agreement, or an election of remedies, and Client shall fully indemnify The Schemmer Associates Inc. for any liability or damages caused thereby. All mechanics lien rights available to The Schemmer Associates Inc. may be exercised within the time period allowed by law.
8. **TAX.** The amount of any excise, gross receipts or sales tax that may be due as a result of the work performed by The Schemmer Associates Inc. shall be invoiced to Client as a reimbursable expense.
9. **HAZARDOUS MATERIALS.** Unless otherwise provided in this Agreement, The Schemmer Associates and The Schemmer Associates' consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. Client shall indemnify and hold The Schemmer Associates Inc. harmless from and against all claims arising out of or related in any way to hazardous materials.
10. **NOTICE OF LIMITATION OF AGENTS' AUTHORITY.** Client understands and agrees that no agent, officer, or principal of The Schemmer Associates Inc. is authorized to vary the terms of this

agreement in any way except by a writing, expressly varying the terms of this Agreement.

11. **INVALIDATION OF PROFESSIONAL LIABILITY INSURANCE.** The Schemmer Associates Inc. agrees that it shall not knowingly take any action which shall cause loss of The Schemmer Associates' professional liability insurance coverage for this project or any aspect of it.
12. **LIMITATION OF LIABILITY.** To the fullest extent permitted by law, the Client agrees that The Schemmer Associates Inc.'s liability to Client for damages arising out of or in any way related to its work in connection with the project or any error or deficiency in the Instruments of Service for the project, whether arising in contract, tort or otherwise, including, but not limited to, claims for indemnity or contribution shall be limited to the sum of \$50,000 or the amount paid to The Schemmer Associates Inc. as fees under this Agreement, whichever is greater. This limitation shall apply regardless of the cause of action or legal theory asserted.
13. **COMPUTER AIDED DESIGN/DRAFTING (CADD).** CADD may be utilized to prepare drawings, specifications, calculations, and other instruments of service prepared by The Schemmer Associates Inc. Submitted data files are intended to work only as described in the agreement and are compatible only with the original hardware and software used to create the files.
 - 13.1 Electronic files will be submitted to the Client for a 30-day acceptance period ("the Acceptance Period"). During this period, the Client may review and examine the files. Any errors discovered during the Acceptance Period will be corrected by The Schemmer Associates Inc. at no additional cost to Client. Any work associated with errors discovered or changes requested after the Acceptance Period will be considered additional services and will be performed on a time and materials basis, at The Schemmer Associates Inc.'s customary charge for the work requested. The Schemmer Associates Inc. will not maintain copies of the electronic files beyond the end of the Acceptance Period.
 - 13.2 Because data stored on electronic media can deteriorate undetected or be modified without the knowledge of The Schemmer Associates Inc., Client agrees to accept responsibility for the completeness, correctness, and readability of the electronic media after the end of the Acceptance Period. Client agrees that it will indemnify and save harmless The Schemmer Associates Inc. from any and all claims, losses, costs, damages, awards, or judgments arising from use of the electronic media files or output

generated from them. Upon the expiration of the Acceptance Period, The Schemmer Associates Inc. agrees that it is responsible for the accuracy of the sealed hard copy drawings that are submitted by it to Client. "Accuracy" as used in this paragraph is defined as meeting the care and skill ordinarily used by members of the professional practicing under similar conditions at the same time and in the same locality.

- 13.3 The Owner shall be permitted to retain copies of the drawings and specifications prepared in CADD format for the Owner's information. Due to the potential that the information set forth on the electronic media can be modified by the Owner, unintentionally or otherwise, The Schemmer Associates Inc. reserves the right to remove all indicia of its ownership and/or involvement from each electronic file.
- 13.4 Any use or reuse of electronic files by the Owner or others without written authorization from The Schemmer Associates Inc. for the specific purpose intended will be at the Owner's risk. The Schemmer Associates Inc. may refuse authorization in its sole discretion or condition authorization on CADD adaptation by The Schemmer Associates Inc. Any such authorization or CADD adaptation by the Owner will entitle The Schemmer Associates Inc. to additional compensation at the rates established as part of the agreement for the project. Owner will, to the fullest extent permitted by law, defend, indemnify and hold The Schemmer Associates Inc. harmless from any and all claims, suits, liability, demands, or costs arising out of or resulting from use or reuse of electronic files without written authorization from The Schemmer Associates Inc.
14. **LIMITATION OF WARRANTY.** The Schemmer Associates Inc. makes no warranties, express or implied, under this agreement or otherwise, in connection with the services provided.
15. ~~**GEOTECHNICAL MATERIALS TESTING SERVICE.** In the case that geotechnical and/or materials testing services are provided by The Schemmer Associates Inc., our supplementary General Conditions for Geotechnical and Materials Testing shall be considered a part of this document.~~
16. ~~**CONSTRUCTION STAKING.** In the case that construction staking services are provided by The Schemmer Associates Inc., our supplementary General Conditions for Construction Staking shall be considered a part of this document.~~



This is **EXHIBIT A**, consisting of 4 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated August 4th, 2023.

Owner's Consultant's Services

ARTICLE A.1 – BASIC SERVICES

Article 1 of the Agreement is amended and supplemented to include the following agreement of the parties. Engineer shall provide Basic and Additional Services as set forth below.

DAVID CITY TRAIL MASTER PLAN (Project Description)

The OWNER has identified improvements to be designed in future years and constructed in the future based on funding priorities and trail design plan development.

1. **David City Master Plan** – Develop documentation related to a trails master plan for the community of David City. This document would outline proposed routes for trails throughout the community and develop high-level cost estimates for improvements outlined in the trail plan.

Information Provided by the OWNER or Others

The OWNER will provide all available information including studies, reports, mapping, as-built plans, and data. The OWNER will also provide the following:

- a. Maps of all City utilities
- b. As-Built plans of all adjacent and affected infrastructure including existing trail network, storm and sanitary sewers, watermain, etc.
- c. GIS Information
- d. Current list of utility companies and contact information

Submittals

The following formal submittals are anticipated:

- a. Alternatives analysis and potential route summary
- b. David City Trails Draft Plan
- c. David City Trails Final Plan

Project Tasks

The following tasks are anticipated to complete the work for this project:

TASK 1. Project Management

a. Project Management

The Engineer's Project Manager, Matt Shimerdla will serve as point of contact, maintain project schedule and budget, and be responsible for coordinating work of project team. Provide regular progress reports with invoices.

b. Coordination with Others

The Engineer will coordinate their design with agencies and/or Consultants that are involved with this project or adjacent projects. Coordination includes one-on-one meetings with the agencies or Consultants.

TASK 2. General Project Meetings

a. David City Staff Coordination Meetings

The Engineer will schedule and attend a coordination meeting with David City staff to present alternatives analysis and discuss potential impacts to right of way and utilities.

b. Final Project Meeting - Presentation

The Engineer will schedule and attend a review meeting with David City staff to present final route alternatives and cost estimates for program improvements.

TASK 3. Existing Conditions Survey

This task consists of a review of all existing trail facilities that exist in and around David City. This task also includes a walk ability survey of the community and GIS base map preparation.

a. GIS base survey map preparation

The Engineer will prepare a base map with existing GIS data and outline existing right of way for the community.

b. Site Visit

The Engineer will walk the community to review sidewalk facilities in and around pedestrian destinations as well as residential subdivisions. As part of this task, the Engineer will document connectivity issues as well as existing sidewalk conditions within the community.

c. *Existing Utilities*

The Engineer will call in a One-Call utility locate ticket. Utilities will be shown based on visible, above ground, evidence in the field and utility locator's markings. At this time, it will be assumed that no new utilities have been constructed.

TASK 4. David City Trails Alternatives Analysis

The Engineer will develop alternative routes for pedestrian trail construction throughout the community to address connectivity issues defined in the existing conditions survey. Trail route alternatives will also address public input regarding the location and construction of a trail network for the city.

a. *Trail Standards Summary*

This task includes developing and documenting standards for trail design within the community of David City

b. *Route Location Analysis*

Proposed routes in and around pedestrian destinations within the community will be developed to minimize right of way impacts and reflect public input for trail construction.

c. *Plan Figures and Maps*

A Plan with trail figures and visual location information on a GIS and aerial background will be developed to be included in the draft and final reports.

d. *Alternative Analysis – Preferred Alternative*

The Engineer will review all available alternative trail routes and define a qualitative process to establish a preferred route for the trail network in and around David City.

e. *Opinion of Probable Construction Cost*

Nebraska Department of Transportation bid items and unit prices will be used to compute quantities and submit a preliminary opinion of probable construction cost as part of the draft plan submittal (after selection of preferred design alternative).

TASK 5. Trail Master Plan Public Involvement

This task will include the formation of a stakeholder committee with members of the David City community to meet and discuss trail alternatives and impacts resulting from the construction of a loop trail around the city. This task will also include a public open house to present the draft master plan report and respond to comments from the community.

a. *Stakeholder Meetings*

This task includes the formation of the stakeholder committee and holding three stakeholder meetings at different points during the planning process. The three meetings shall take place at the conclusion of the existing survey conditions survey, during the alternatives analysis and prior to the final submittal of the trail master plan.

b. *Public Open House*

This task shall include holding an open house in the community to present alternatives for the trail network responding to comments and questions from the public.

TASK 6. Trail Master Plan Report Development

This task will include the development of the draft Trail Master Plan Report and a review process for this draft document. This task will also include responding to comments and finalizing the Trail Master Plan Report.

a. *Draft Trail Master Plan*

The Engineer will develop text and create figures and maps that provide clarifying information regarding a trail network for the community of David City. This draft document will be submitted to David City staff and other agencies for review and comment

b. *QA / QC*

Draft document will be reviewed by internal staff prior to submittal to David City staff

c. *Final Trail Master Plan*

The Engineer will respond to comments generated through the review of the Draft Master Plan. The Engineer will finalize the Trail Master Plan and submit the official final document.



Hour Estimate Form
 Master Trail Plan
 David City Nebraska 2024

August 2, 2023

ITEM NO.	TASK DESCRIPTION	PRIN	PROJ MANG	DES ENG	STAFF ENG	CADD TECH	RLS	2 MAN SURV CREW	ADMIN SUPP	TOTAL PER TASK	Task Cost
I.	Project Management										\$ 4,220.00
I.a	Project management	2	8							10	
I.b	Coordination w/ others		6	8						14	
II.	General Project Meetings										\$ 3,240.00
II.a	David City Staff Coordination Meetings		6	6		4				16	
II.b	Final Project Meeting Presentation		2	2		4				8	
III.	Existing Conditions Survey										\$ 5,220.00
III.a	GIS Base Survey map Preparation		2	4		12				18	
III.b	Site Visit		4	4						8	
III.c	Existing Utilities		2	4		8	4			18	
IV.	David City Trails Analysis										\$ 6,960.00
IV.a	Trail Standards Analysis		1	4		6				11	
IV.b	Route Location Analysis		2	4		6				12	
IV.c	Plan Figures and Map		2	4		8				14	
IV.d	Preferred Alternative determination		4	4		6				14	
IV.e	Opinion of Probable Cost		1	4		4				9	
V.	David City Public Involvement										\$ 7,005.00
V.a	Stakeholder Meetings		9	9		8				26	
V.b	Public Open House		6	8		16				30	
VI.	Trail Master Plan Report Development										\$ 7,640.00
VI.a	Draft Trail Master Plan		8	12		12				32	
VI.b	QA / QC		4							4	
VI.c	Final Trail Master Plan		4	8		12				24	
VII.	Reimbursables										\$ 346.00
VII.a	Mileage										\$ 500.00
VII.b	Open House Boards and Advertising										
						600 miles @ \$0.58/mile					
						\$500					
	TOTALS	2	71	85	0	106	4	0	0	268	\$ 35,123.00

**David City, Nebraska
 2024 Trail Master Plan**

BREAKDOWN OF COSTS

I. Project Management			
PRINCIPAL	2	\$215.00	\$430
SENIOR PROJECT MANAGER	14	\$185.00	\$2,590
DESIGN ENGINEER	8	\$150.00	\$1,200
STAFF ENGINEER	0	\$100.00	\$0
CADD TECHNICIAN	0	\$70.00	\$0
RLS	0	\$135.00	\$0
2 MAN SURVEY CREW	0	\$160.00	\$0
ADMINISTRATIVE SUPPORT	0	\$70.00	\$0
		TASK TOTAL	\$4,220
II. General Project Meetings			
PRINCIPAL	0	\$215.00	\$0
SENIOR PROJECT MANAGER	8	\$185.00	\$1,480
DESIGN ENGINEER	8	\$150.00	\$1,200
STAFF ENGINEER	0	\$100.00	\$0
CADD TECHNICIAN	8	\$70.00	\$560
RLS	0	\$135.00	\$0
2 MAN SURVEY CREW	0	\$160.00	\$0
ADMINISTRATIVE SUPPORT	0	\$70.00	\$0
		TASK TOTAL	\$3,240
III. Existing Conditions Survey			
PRINCIPAL	0	\$215.00	\$0
SENIOR PROJECT MANAGER	8	\$185.00	\$1,480
DESIGN ENGINEER	12	\$150.00	\$1,800
STAFF ENGINEER	0	\$100.00	\$0
CADD TECHNICIAN	20	\$70.00	\$1,400
RLS	4	\$135.00	\$540
2 MAN SURVEY CREW	0	\$160.00	\$0
ADMINISTRATIVE SUPPORT	0	\$70.00	\$0
		TASK TOTAL	\$5,220
IV. David City Trails Analysis			
PRINCIPAL	0	\$215.00	\$0
SENIOR PROJECT MANAGER	10	\$185.00	\$1,850
DESIGN ENGINEER	20	\$150.00	\$3,000
STAFF ENGINEER	0	\$100.00	\$0
CADD TECHNICIAN	30	\$70.00	\$2,100
RLS	0	\$135.00	\$0
2 MAN SURVEY CREW	0	\$160.00	\$0
ADMINISTRATIVE SUPPORT	0	\$70.00	\$0
		TASK TOTAL	\$6,950

V. David City Public Involvement

PRINCIPAL	0	\$215.00	\$0
SENIOR PROJECT MANAGER	15	\$185.00	\$2,775
DESIGN ENGINEER	17	\$150.00	\$2,550
STAFF ENGINEER	0	\$100.00	\$0
CADD TECHNICIAN	24	\$70.00	\$1,680
RLS	0	\$135.00	\$0
2 MAN SURVEY CREW	0	\$160.00	\$0
ADMINISTRATIVE SUPPORT	0	\$70.00	\$0
		TASK TOTAL	\$7,005

VI. Trail Master Plan Report Development

PRINCIPAL	0	\$215.00	\$0
SENIOR PROJECT MANAGER	16	\$185.00	\$2,960
DESIGN ENGINEER	20	\$150.00	\$3,000
STAFF ENGINEER	0	\$100.00	\$0
CADD TECHNICIAN	24	\$70.00	\$1,680
RLS	0	\$135.00	\$0
2 MAN SURVEY CREW	0	\$160.00	\$0
ADMINISTRATIVE SUPPORT	0	\$70.00	\$0
		TASK TOTAL	\$7,640

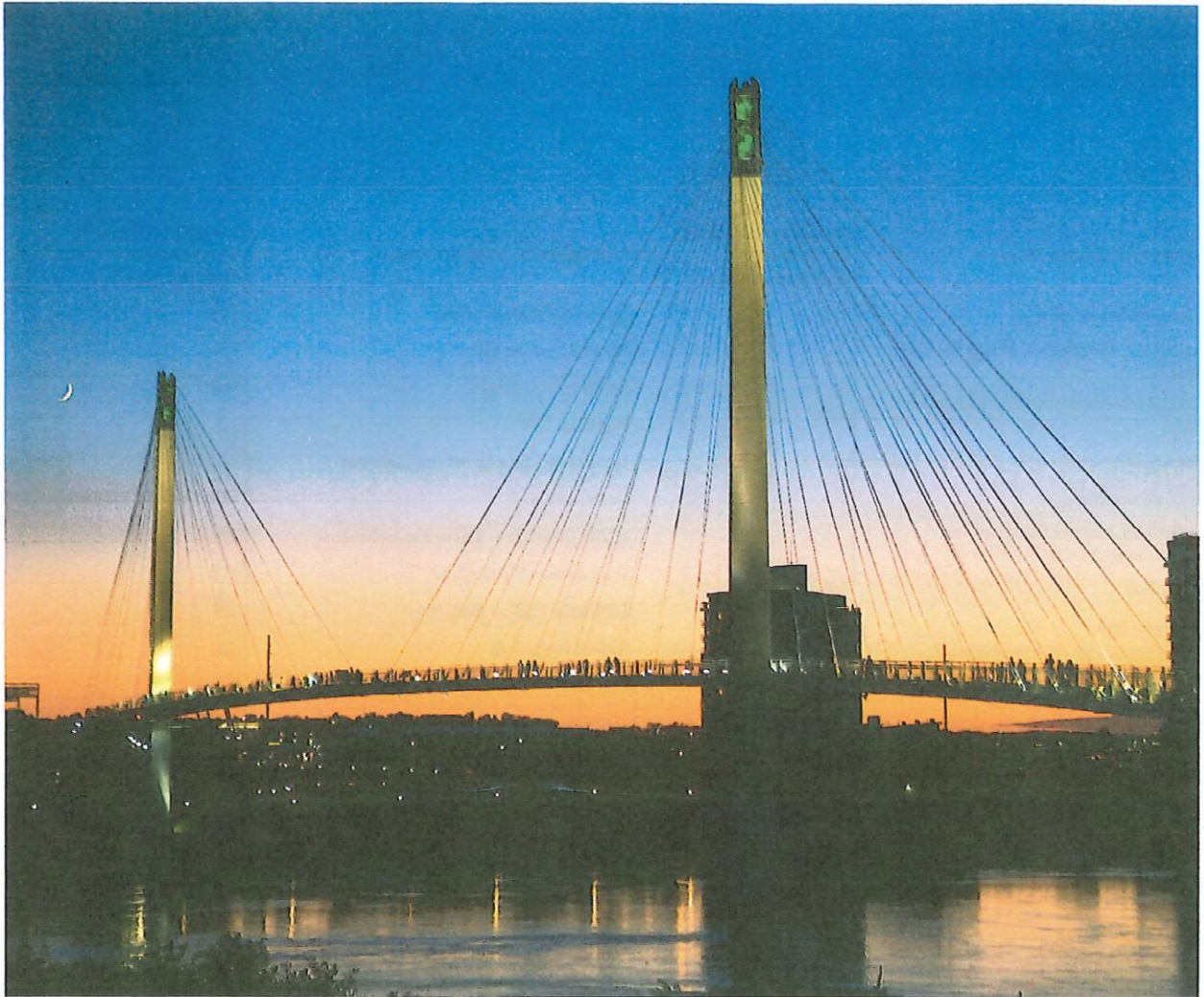
Sub-Total 268 \$34,275

VII. REIMBURSABLES

	No.	Rate (\$)	
Mileage	600	\$0.58	\$ 348.00
Open house materials and advertising	1	\$ 500.000	\$ 500.00
Other			\$ -
Sub-Total			<u>\$ 848.00</u>

TOTAL ESTIMATED FEE \$ 35,123.00

NEBRASKA



Bob Kerrey Pedestrian Bridge connecting Iowa and Nebraska | Photo by Matthew Nissen

ROUTE

The Great American Rail-Trail crosses from Iowa into Nebraska on the iconic Bob Kerrey Pedestrian Bridge. The route weaves through the urban areas of Omaha and Lincoln, connecting these population centers to the more rural western part of the state. The open sections of the Cowboy Recreation and Nature Trail take trail users almost 40% of the way across Nebraska's existing trail miles, with more miles set for construction in the near future.

GREAT AMERICAN RAIL-TRAIL ROUTE ASSESSMENT
 NEBRASKA

TABLE 18 GREAT AMERICAN RAIL-TRAIL MILEAGE IN NEBRASKA

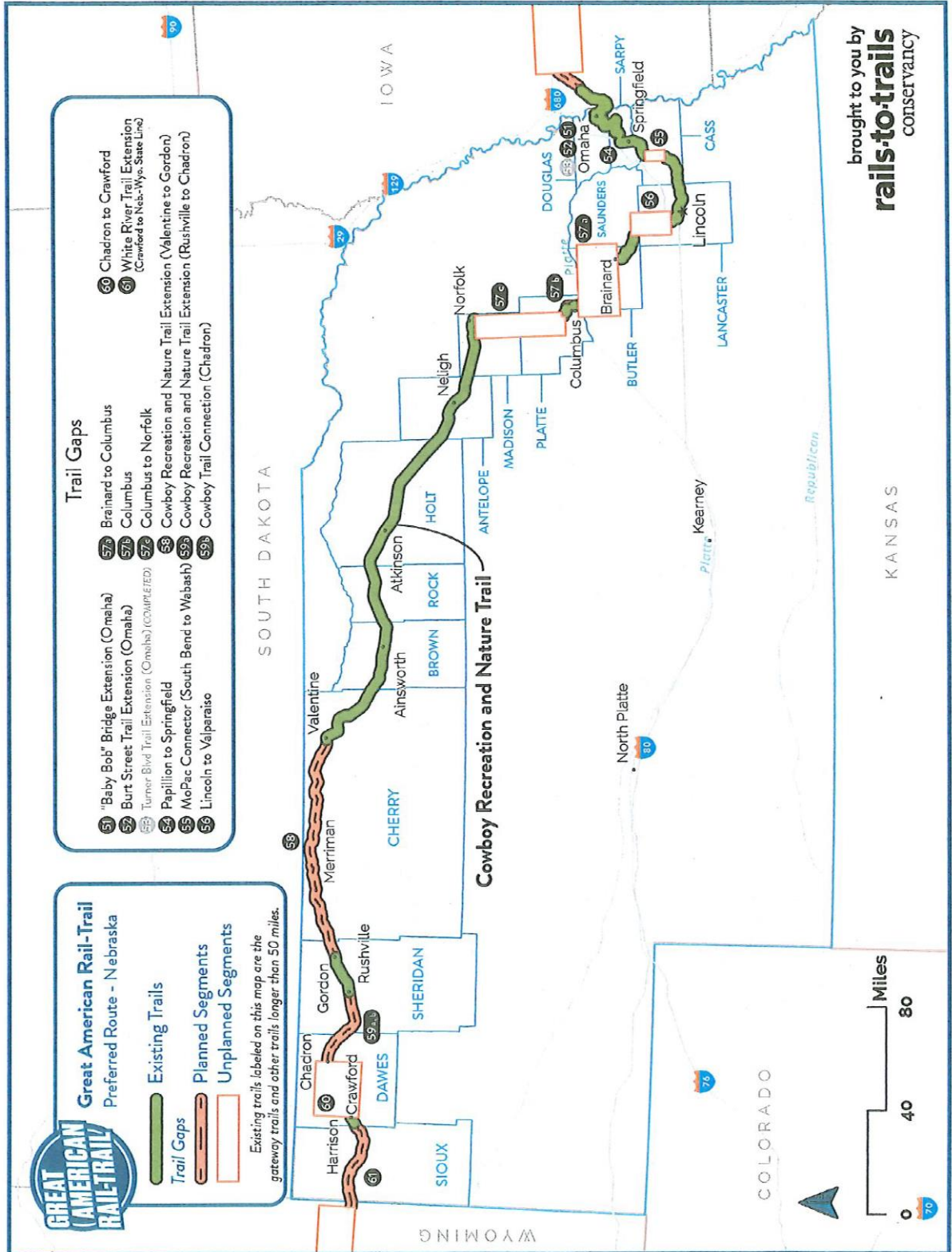
Total Great American Rail-Trail Existing Trail Miles in Neb. (% of Total State Mileage)	307.3 (52.0%)
Total Great American Rail-Trail Trail Gap Miles in Neb. (% of Total State Mileage)	283.2 (48.0%)
Total Trail Gaps in Neb.	10
Total Great American Rail-Trail Miles in Neb.	590.5

TABLE 19 GREAT AMERICAN RAIL-TRAIL ROUTE THROUGH NEBRASKA

Existing Trail or Trail Gap Name	Length in Neb. Along Great American Rail-Trail (in Miles)	Existing Trail or Trail Gap Name	Length in Neb. Along Great American Rail-Trail (in Miles)
Bob Kerrey Pedestrian Bridge	0.2	Oak Lake Connector Trail	0.8
TRAIL GAP 51 – “Baby Bob” Bridge Extension (Omaha)	0.1	North 1st Street Trail	1.5
TRAIL GAP 52 – Burt Street Trail Extension (Omaha)	0.9	Superior Street Trail	0.2
Burt Street Trail	0.7	Highlands Trail	1.3
Turner Boulevard Trail	2.1	TRAIL GAP 56 – Lincoln to Valparaiso	17.4
TRAIL GAP 53 – Turner Boulevard Trail Extension (Omaha) COMPLETED	-	Oak Creek Trail	13.0
Field Club Trail	1.4	TRAIL GAP 57a – Brainard to Columbus	25.7
South Omaha Trail	3.7	Third Avenue Viaduct Trail	0.8
Keystone Trail	5.6	TRAIL GAP 57b – Columbus	3.9
West Papio Trail	5.7	Robert White Trail	1.5
Walnut Creek Lake Trail	2.6	Bob Lake Trail	1.2
TRAIL GAP 54 – Papillion to Springfield	3.5	TRAIL GAP 57c – Columbus to Norfolk	44.4
MoPac Trail (Springfield)	13.2	Cowboy Recreation and Nature Trail (Norfolk to Valentine)	202.1
Platte River Connection	1.5	TRAIL GAP 58 – Cowboy Recreation and Nature Trail Extension (Valentine to Gordon)	90.0
TRAIL GAP 55 – MoPac Connector (South Bend to Wabash)	9.4	Cowboy Recreation and Nature Trail (Gordon to Rushville)	16.6
MoPac East Trail	20.7	TRAIL GAP 59a – Cowboy Recreation and Nature Trail Extension (Rushville to Chadron)	25.2
MoPac Trail West	6.1	TRAIL GAP 59b – Cowboy Trail Connection (Chadron)	6.4
Antelope Valley Trail	1.0	TRAIL GAP 60 – Chadron to Crawford	23.8
Salt Creek Levee Trail	1.0	White River Trail	2.8
		TRAIL GAP 61 – White River Trail Extension (Crawford to Neb.-Wyo. State Line)	32.5
		Total Miles	590.5
		Existing Trail Miles	307.3
		Trail Gap Miles	283.2

GREAT AMERICAN RAIL-TRAIL ROUTE ASSESSMENT 2023

MAP 9: NEBRASKA



GREAT AMERICAN RAIL-TRAIL ROUTE ASSESSMENT NEBRASKA

BOB KERREY PEDESTRIAN BRIDGE

Total Length (in Miles)	0.5
Total Length Along Great American Rail-Trail in Neb. (in Miles)	0.2
Trail Type	Greenway
Surface Type	Concrete
Trail Manager	Council Bluffs Parks & Recreation, Omaha Parks & Recreation, Papio-Missouri River Natural Resources District
Website	<ul style="list-style-type: none"> • councilbluffs-ia.gov/2178/bob-kerrey-pedestrian-bridge • visitomaha.com/bob
TrailLink Map	traillink.com/trail/bob-kerrey-pedestrian-bridge

The Bob Kerrey Pedestrian Bridge, discussed in more detail in the Iowa chapter of this report, has become a major community landmark, with a planned extension into Omaha in the works. The bridge is lit at night to provide a safe and attractive connection throughout the day and night. Visitors taking the bridge into Omaha can travel about a half-mile south along the Omaha Riverfront Trail to the Omaha Visitors Center to learn more about Omaha and what it has to offer. People continuing along the Great American Rail-Trail will head west into Omaha along the planned “Baby Bob” bridge extension, described below.

TRAIL GAP 51 – “BABY BOB” BRIDGE EXTENSION (OMAHA)

The Bob Kerrey Pedestrian Bridge currently ends on the Omaha, Nebraska, side of the Missouri River at Lewis & Clark Landing, connecting trail users to the Omaha Riverfront Trail running along the Missouri River. The current configuration of roads and railroads just to the west of this landing makes it difficult for trail users to access the bridge from downtown Omaha.

The city of Omaha plans to extend the Bob Kerrey Pedestrian Bridge 0.1 mile over Riverfront Drive and the railroad tracks to a planned trail extension along Mike Fahey Street. The North Downtown Riverfront Pedestrian Connector Bridge (or “Baby Bob”) is listed in Omaha’s 2021–2026 Capital Improvement Program. The bridge extension is in the final design stages. Construction is slated to begin in 2022 with a completion date anticipated in 2023.

TRAIL GAP 52 – BURT STREET TRAIL EXTENSION (OMAHA)

The city of Omaha plans to extend the existing Burt Street Trail 0.9 mile from its current western terminus at North 20th Street eastward to connect to the “Baby Bob” bridge extension. The trail will follow Burt Street to CHI Health Center Omaha, where the “Baby Bob” bridge extension is to connect at the end of Mike Fahey Street. Bike Walk Nebraska is working locally to explore an on-street protected bike lane along Burt Street that could also help make this connection.

BURT STREET TRAIL

Total Length (in Miles)	0.7
Total Length Along Great American Rail-Trail in Neb. (in Miles)	0.7
Trail Type	Greenway
Surface Type	Concrete
Trail Manager	Omaha Parks & Recreation
Website	parks.cityofomaha.org/parks/trails
TrailLink Map	traillink.com/trail/burt-street-trail-

The existing Burt Street Trail runs 0.7 mile between North 20th and North 30th streets in Omaha. The trail is a shared-use path that parallels Burt Street on the south side of the road. It is largely wide enough to accommodate both bicycle and pedestrian traffic, though there are small sections that narrow to a normal sidewalk width. This pathway provides a connection on the north side of the Creighton University campus.

TURNER BOULEVARD TRAIL

Total Length (in Miles)	2.2
Total Length Along Great American Rail-Trail in Neb. (in Miles)	2.1
Trail Type	Greenway
Surface Type	Asphalt, concrete
Trail Manager	Omaha Parks & Recreation
Website	parks.cityofomaha.org/parks/trails
TrailLink Map	traillink.com/trail/turner-boulevard-trail

GREAT AMERICAN RAIL-TRAIL ROUTE ASSESSMENT NEBRASKA



MoPac Trail East in Nebraska | Photo by TrailLink user dimitri.hunter

The Turner Boulevard Trail connects to the Burt Street Trail at North 30th Street in Omaha. The Turner Boulevard Trail currently travels 2.2 miles. The Turner Boulevard Trail will host the Great American Rail-Trail for 2.1 miles, spanning the intersection of North 30th and Burt streets to Pacific Street at the Field Club of Omaha. The trail is a shared-use path that runs along the west side of North 30th Street and Turner Boulevard, winding past several parks and neighborhoods and ending at the Field Club of Omaha.

~~TRAIL GAP 53 — TURNER BOULEVARD TRAIL-EXTENSION (OMAHA)~~ **COMPLETED**

A 0.3-mile extension of the Turner Boulevard Trail was completed in 2021 along Pacific Street to connect to the Field Club Trail.

FIELD CLUB TRAIL

Total Length (in Miles)	1.8
Total Length Along Great American Rail-Trail in Neb. (in Miles)	1.4
Trail Type	Greenway, rail-trail
Surface Type	Concrete
Trail Manager	Omaha Parks & Recreation
Website	parks.cityofomaha.org/parks/trails
TrailLink Map	traillink.com/trail/field-club-trail

The Field Club Trail travels 1.8 miles from the intersection of South 39th and Leavenworth streets south to the northern terminus of the South Omaha Trail at Vinton Street. Of this trail, 1.4 miles beginning at the end of the Turner Boulevard Trail Extension will provide a connection through Omaha and the Hanscom Park neighborhood for the Great American Rail-Trail. The Field Club Trail occupies an old railroad bed that runs for 2 miles and lies 30 feet below grade.

SOUTH OMAHA TRAIL

Total Length (in Miles)	3.7
Total Length Along Great American Rail-Trail in Neb. (in Miles)	3.7
Trail Type	Rail-trail
Surface Type	Concrete
Trail Manager	Omaha Parks & Recreation
Website	papiionrd.org/recreation-wildlife/parks-and-trails/metro-omaha-trails
TrailLink Map	traillink.com/trail/south-omaha-trail

The South Omaha Trail connects the Field Club Trail to the Keystone Trail at its crossing of Little Papillion Creek. The South Omaha Trail is built on a former Chicago and North Western Transportation Company corridor with an old trestle crossing South 60th Street. The city of Omaha installed a pedestrian hybrid beacon signal at the busy at-grade crossing of South 50th Street to allow for safer crossing.

GREAT AMERICAN RAIL-TRAIL ROUTE ASSESSMENT NEBRASKA

KEYSTONE TRAIL

Total Length (in Miles)	15.0
Total Length Along Great American Rail-Trail in Neb. (in Miles)	5.6
Trail Type	Greenway, rail-trail
Surface Type	Concrete
Trail Manager	Bellevue Parks Department, Omaha Parks & Recreation, Papio-Missouri River Natural Resources District
Website	papionrd.org/recreation-wildlife/parks-and-trails/metro-omaha-trails
TrailLink Map	trailink.com/trail/keystone-trail

The South Omaha Trail connects to the Keystone Trail at its crossing of Little Papillion Creek, though the Keystone Trail continues several miles north through much of western Omaha. The Keystone Trail partially follows the banks of Papillion Creek atop the flood control levees, while the remaining 2.3 miles are along an old rail corridor. The Great American Rail-Trail will turn west once the Keystone Trail intersects the West Papio Trail near South 36th Street at its crossing of Big Papillion Creek in Bellevue, though the Keystone Trail itself continues south to the Bellevue Loop Trail.

WEST PAPIO TRAIL

Total Length (in Miles)	22.9
Total Length Along Great American Rail-Trail in Neb. (in Miles)	5.7
Trail Type	Greenway, rail-trail
Surface Type	Concrete
Trail Manager	Omaha Parks & Recreation, Papio-Missouri River Natural Resources District
Website	papionrd.org/recreation-wildlife/parks-and-trails/metro-omaha-trails
TrailLink Map	trailink.com/trail/west-papio-trail

The West Papio Trail connects at its eastern end to the Keystone Trail and continues west toward the city of Elkhorn through the city of Papillion, following West Papillion Creek. At the western edge of Papillion, the Great American Rail-Trail will head south along South 96th Street toward the Walnut Creek Lake and Recreation Area to eventually connect to the MoPac Trail. The Great American Rail-Trail will make a brief on-street jog westward along Santa Fe Circle to access a trail underpass to safely cross underneath the busy state Route 370. The West Papio Trail will host the Great American Rail-Trail for 5.7 miles between the Keystone Trail and Papillion.

WALNUT CREEK LAKE TRAIL

Total Length (in Miles)	3.3
Total Length Along Great American Rail-Trail in Neb. (in Miles)	2.6
Trail Type	Greenway
Surface Type	Boardwalk, concrete
Trail Manager	City of Papillion, Papio-Missouri River Natural Resources District
Website	papillion.org/facilities/facility/details/walnut-creekrecreationarea-14
TrailLink Map	trailink.com/trail/walnut-creek-lake-trail

The West Papio Trail connects to a trail system at Walnut Creek Lake, a 105-acre reservoir and mixed-use recreation area in Papillion. The lake and recreation area are under the management of the Papio-Missouri River Natural Resources District. The paved loop around Walnut Creek Lake is 3.3 miles and is complete with amenities including a campground, restrooms, water fountains and an equestrian trail.

TRAIL GAP 54 – PAPILLION TO SPRINGFIELD

The Omaha metropolitan area has long been interested in completing a trail connection between the Walnut Creek Lake Trail and the MoPac Trail. A distinct trail corridor has not yet been identified. In the meantime, people who would like to travel between the trails can use Schram Road. This approximately 3.5-mile connection passes through farmland along an unpaved, low-volume county road. Gravel roads such as this can provide a low-stress bicycling experience and require the same equipment that would be needed on an unpaved rail-trail, such as many of those included in the Great American Rail-Trail route. When a trail connection to fill this gap is identified, the route of the Great American Rail-Trail will be adjusted to use that corridor. In the meantime, Schram Road can provide an appropriate interim on-road connector.

MoPAC TRAIL (SPRINGFIELD)

Total Length (in Miles)	13.2
Total Length Along Great American Rail-Trail in Neb. (in Miles)	13.2
Trail Type	Rail-trail
Surface Type	Crushed stone
Trail Manager	Papio-Missouri River Natural Resources District
Website	papionrd.org/recreation-wildlife/parks-and-trails/metro-omaha-trails
TrailLink Map	trailink.com/trail/mopac-trail-(springfield)

GREAT AMERICAN RAIL-TRAIL ROUTE ASSESSMENT NEBRASKA

The MoPac Trail exists in three segments, starting just north of Springfield to the north and ending in Lincoln to the south and west. Nearly the entire route rests on an abandoned Missouri Pacific Railroad corridor (the MoPac).

Segment 1 – MoPac Trail (Springfield): Beginning at Schram Road in Omaha, the MoPac Trail heads south along state Route 50 through the town of Springfield, where a former gap in the route between Platteview Road and Main Street was recently completed slightly away from the former MoPac rail line, allowing for uninterrupted off-road travel through Springfield. The MoPac Trail continues along the old rail corridor south of the Platte River, just north of the city of Louisville, where the trail heads west to parallel state Route 31. Once the trail reaches the Platte River at South Bend, there is a trailhead with parking as the trail continues to cross the Platte River over the Lied Platte River Bridge.

Segment 2 – MoPac East Trail (discussed below).

Segment 3 – MoPac Trail West (discussed below).

PLATTE RIVER CONNECTION

Total Length (in Miles)	1.5
Total Length Along Great American Rail-Trail in Neb. (in Miles)	1.5
Trail Type	Rail-trail
Surface Type	Crushed stone, concrete
Trail Manager	Lower Platte South Natural Resources District, Papio-Missouri River Natural Resources District
Website	<ul style="list-style-type: none"> · papiord.org/recreation-wildlife/parks-and-trails/platteriverbridgetrail · lpsnrd.org/ried-bridge-platte-river-connection
TrailLink Map	trailink.com/trail/platte-river-connection

A connection across the Platte River at the village of South Bend, Nebraska, was completed in 2002, using an abandoned Chicago, Rock Island and Pacific Railroad bridge. The bridge across the river is now known as the Lied Platte River Bridge, named after the Lied Foundation, a major contributor to the project. The bridge was heavily damaged by flooding in March 2019. Lower Platte South Natural Resources District and the Papio-Missouri River Natural Resources District collaborated to repair and reopen the bridge to the public in July 2021.

TRAIL GAP 55 – MoPAC CONNECTOR (SOUTH BEND TO WABASH)

The Lower Platte South Natural Resources District identifies an interim on-road connector between the Platte River Connection and the MoPac East Trail. Bike Walk Nebraska, the Nebraska Trails Foundation and the

Great Plains Trail Network—collectively, the “MoPac Alliance”—recently announced a partnership to close this 9.4-mile gap and make a multiuse trail between Omaha and Lincoln closer to reality. The MoPac Alliance received a huge boost to its momentum in 2022 with the inclusion of \$8.3 million in funding in the 2022 Nebraska Legislature budget. Advocates are currently working with Cass County and the Lower Platte South Natural Resources District to identify the preferred alignment and move the project toward design and construction.

MoPAC EAST TRAIL

Total Length (in Miles)	20.7
Total Length Along Great American Rail-Trail in Neb. (in Miles)	20.7
Trail Type	Rail-trail
Surface Type	Crushed stone
Trail Manager	Lower Platte South Natural Resources District
Website	lpsnrd.org/mopac-east-trail
TrailLink Map	trailink.com/trail/mopac-trail-east

The second segment of the MoPac Trail, following the old corridor of the Missouri Pacific Railroad’s Omaha Belt Line, travels 20.7 miles between Wabash and Lincoln. This eastern segment of the MoPac Trail is very rural and travels on a crushed stone path through prairie, woodland and farmland. A separate equestrian trail, the Charles L. Warner Equestrian Trail, is provided along the majority of the trail. Here, the MoPac East Trail connects to the MoPac Trail West to make the rest of the voyage into Lincoln.

MoPAC TRAIL WEST

Total Length (in Miles)	6.1
Total Length Along Great American Rail-Trail in Neb. (in Miles)	6.1
Trail Type	Rail-trail
Surface Type	Concrete, crushed stone
Trail Manager	Lincoln Parks & Recreation
Website	lincoln.ne.gov/city/departments/parks-and-recreation/parks-facilities/trails
TrailLink Map	trailink.com/trail/mopac-trail-west

The third segment of the MoPac Trail starts at South 84th Street, east of Lincoln, and travels 6.1 miles into downtown Lincoln. The MoPac Trail West travels through many neighborhoods in Lincoln and helps connect

GREAT AMERICAN RAIL-TRAIL ROUTE ASSESSMENT NEBRASKA

the two campuses of the University of Nebraska–Lincoln. The Great American Rail-Trail will head north at North Antelope Valley Parkway—the westernmost terminus of the MoPac Trail—onto the Antelope Valley Trail.

ANTELOPE VALLEY TRAIL

Total Length (in Miles)	2.1
Total Length Along Great American Rail-Trail in Neb. (in Miles)	1.0
Trail Type	Greenway
Surface Type	Concrete, crushed stone
Trail Manager	Lincoln Parks & Recreation
Website	lincoln.ne.gov/city/departments/parks-and-recreation/parks-facilities/trails
TrailLink Map	traillink.com/trail/antelope-valley-trail

The Antelope Valley Trail runs roughly south to north through downtown Lincoln, with Lincoln High School to the south and Salt Creek to the north. The trail passes Trago Park, Union Park Plaza and the Bob Devaney Center. The Antelope Valley Trail will host the Great American Rail-Trail for 1 mile, connecting the MoPac Trail West to the Salt Creek Levee Trail.

SALT CREEK LEVEE TRAIL

Total Length (in Miles)	4.0
Total Length Along Great American Rail-Trail in Neb. (in Miles)	1.0
Trail Type	Greenway
Surface Type	Crushed stone
Trail Manager	Lincoln Parks & Recreation
Website	lincoln.ne.gov/city/departments/parks-and-recreation/parks-facilities/trails
TrailLink Map	traillink.com/trail/salt-creek-levee-trail

The Salt Creek Levee Trail connects a trail along the levee of Salt Creek from its confluence with Oak Creek down to the Jamaica North Trail. The Great American Rail-Trail will utilize the northern mile of the Salt Creek Levee Trail connecting the Antelope Valley Trail to the Oak Lake Connector Trail at a bridge crossing Salt Creek.

OAK LAKE CONNECTOR TRAIL

Total Length (in Miles)	1.4
Total Length Along Great American Rail-Trail in Neb. (in Miles)	0.8
Trail Type	Greenway
Surface Type	Asphalt
Trail Manager	Lincoln Parks & Recreation
Website	lincoln.ne.gov/city/departments/parks-and-recreation/parks-facilities/trails
TrailLink Map	traillink.com/trail/oak-lake-connector-trail

The Oak Lake Connector Trail travels around Oak Lake Park along Charleston and North 1st streets in Lincoln, connecting to a shared-use path along North 1st Street at U.S. 6/Cornhusker Highway. Oak Lake Park provides two parking lots and a restroom facility, as well as walking trails along Oak Lake.

NORTH 1ST STREET TRAIL

Total Length (in Miles)	1.5
Total Length Along Great American Rail-Trail in Neb. (in Miles)	1.5
Trail Type	Greenway
Surface Type	Concrete
Trail Manager	Lincoln Parks & Recreation
Website	lincoln.ne.gov/city/departments/parks-and-recreation/parks-facilities/trails
TrailLink Map	traillink.com/trail/north-1st-street-trail

A shared-use path runs along the length of North 1st Street from U.S. 6/ Cornhusker Highway northwest to Superior Street. The trail is made of concrete and is approximately 10 feet wide, running along the northbound lane of North 1st Street.

GREAT AMERICAN RAIL-TRAIL ROUTE ASSESSMENT NEBRASKA

SUPERIOR STREET TRAIL

Total Length (in Miles)	4.4
Total Length Along Great American Rail-Trail in Neb. (in Miles)	0.2
Trail Type	Greenway
Surface Type	Asphalt
Trail Manager	Lincoln Parks & Recreation
Website	lincoln.ne.gov/city/departments/parks-and-recreation/parks-facilities/trails
TrailLink Map	trailink.com/trail/superior-street-trail

A 0.2-mile section of the Superior Street Trail will host the Great American Rail-Trail between North 1st Street and a connection to the Highlands Trail at Technology Drive in Lincoln. The Superior Street Trail is primarily a commuter route following its namesake thoroughfare from U.S. 6/Cornhusker Highway to the Highlands neighborhood at the western edge of the city.

HIGHLANDS TRAIL

Total Length (in Miles)	2.6
Total Length Along Great American Rail-Trail in Neb. (in Miles)	1.3
Trail Type	Greenway
Surface Type	Asphalt
Trail Manager	Lincoln Parks & Recreation
Website	lincoln.ne.gov/city/departments/parks-and-recreation/parks-facilities/trails
TrailLink Map	trailink.com/trail/highlands-trail-(ne)

The Highlands Trail offers a pleasant, 2.6-mile loop through Lincoln's Highlands neighborhood, providing the western link of the series of trails that travels through Lincoln. Those following the Great American Rail-Trail can follow the trail 1.3 miles along West Highland Boulevard and connect north along NW 12th Street to the Highlands Trail's terminus near NW 10th Street.

TRAIL GAP 56 – LINCOLN TO VALPARAISO

There are no known corridors that could help complete the 17.4-mile gap between the Highlands Trail in Lincoln and the Oak Creek Trail in Valparaiso. There is an active Union Pacific Railroad corridor connecting Lincoln north to Valparaiso with a low traffic density, according to data from the Federal Railroad Administration in 2014.

While a feasible, off-road multiuse trail option between these two trails continues to be explored, a temporary on-road interim connection can be made using various low-volume county roads in Lancaster and Saunders counties. A new group with representatives from local and statewide organizations has recently formed and is considering opportunities to complete this gap.

OAK CREEK TRAIL

Total Length (in Miles)	13.0
Total Length Along Great American Rail-Trail in Neb. (in Miles)	13.0
Trail Type	Rail-trail
Surface Type	Crushed stone
Trail Manager	Lower Platte South Natural Resources District
Website	lpsnrd.org/oak-creek-trail
TrailLink Map	trailink.com/trail/oak-creek-trail

The Oak Creek Trail occupies a former Union Pacific Railroad corridor between the Nebraska villages of Valparaiso and Brainard. The trail travels 13 miles through Saunders and Butler counties. Across the county line is the tiny community of Loma, where restrooms are located just off the trail near the St. Luke Czech Catholic Shrine in the center of town. An equestrian trail runs adjacent to the Oak Creek Trail for its entire route, and horse trailer parking can be found at the trailheads in Valparaiso and Loma.

TRAIL GAP 57a – BRAINARD TO COLUMBUS

A 25-mile gap exists between Brainard and Columbus. The rail line on which the Oak Creek Trail was constructed between Valparaiso and Brainard extends northwest for an additional 10.5 miles to David City. The rail line is not officially abandoned and is currently under Nebraska Central Railroad Company ownership, though Federal Railroad Administration data from 2014 shows no rail traffic along this corridor. If this section is ever officially abandoned, Butler County and the local natural resource districts should seek to extend the Oak Creek Trail northwest to David City. As the rail line to David City crosses through the jurisdiction of three natural resource districts (Lower Platte South, Upper Big Blue and Lower Platte North, respectively), a partnership on trail development and management could be pursued.

From David City, an active BNSF Railway line continues north through Columbus, Nebraska, and has a traffic density of two out of five, according to 2014 Federal Railroad Administration data. The Lower Platte North Natural Resources District recently approved a letter of support for considering a rail-with-trail opportunity on this section of active rail line between David City and Columbus.

GREAT AMERICAN RAIL-TRAIL ROUTE ASSESSMENT NEBRASKA

THIRD AVENUE VIADUCT TRAIL

Total Length (in Miles)	0.8
Total Length Along Great American Rail-Trail in Neb. (in Miles)	0.8
Trail Type	Greenway
Surface Type	Concrete
Trail Manager	City of Columbus
Website	columbusnetrails.com
TrailLink Map	trailink.com/trail/third-avenue-viaduct-trail-

The 3rd Avenue viaduct was an infrastructure project decades in the making. Prior to its completion, travelers heading north or south along 3rd Avenue between 8th Street and U.S. 30 were forced to cross a tangle of Union Pacific Railroad tracks at street level. The finished viaduct, which opened in August 2018, includes a concrete path between 8th and 19th streets (just south of U.S. 30), ensuring safe passage over the tracks for drivers, bicyclists and pedestrians. The trail is part of a trail network in Columbus known as CART (Columbus Area Recreational Trails).

TRAIL GAP 57b – COLUMBUS

The city of Columbus and CART are working together to complete a network of trails through Columbus, including an approximately 3.9-mile connection between the Third Avenue Viaduct Trail and the Robert White Trail. The new connection would follow 3rd Avenue north and the existing canal northwest before intersecting with the Robert White Trail at the Lake Babcock Reservoir.

ROBERT WHITE TRAIL

Total Length (in Miles)	1.5
Total Length Along Great American Rail-Trail in Neb. (in Miles)	1.5
Trail Type	Greenway
Surface Type	Crushed stone
Trail Manager	City of Columbus
Website	columbusnetrails.com
TrailLink Map	trailink.com/trail/robert-white-trail

In Columbus, the Robert White Trail runs 1.5 miles between 18th Avenue/ Monastery Road and the start of the Bob Lake Trail at the intersection of 65th and 68th streets. The trail follows the southern shore of Lake Babcock for its duration.

BOB LAKE TRAIL

Total Length (in Miles)	1.2
Total Length Along Great American Rail-Trail in Neb. (in Miles)	1.2
Trail Type	Greenway
Surface Type	Crushed stone
Trail Manager	City of Columbus
Website	columbusnetrails.com
TrailLink Map	trailink.com/trail/bob-lake-trail

The Bob Lake Trail runs 1.2 miles between the northern terminus of the Robert White Trail at 65th and 68th streets, south of 83rd Street. The trail follows the southwestern shore of Lake Babcock for part of its route.

TRAIL GAP 57c – COLUMBUS TO NORFOLK

The city of Columbus plans to construct a trail extending from the Bob Lake Trail westward along the canal to at least 63rd Avenue. From 63rd Avenue, the trail would continue north toward Norfolk. 2014 data from the Federal Railroad Administration lists a local Nebraska Central Railroad Company rail line to Norfolk as active, but shows no rail traffic along the corridor. If this section is ever officially abandoned, local natural resource districts should seek to transform it into a trail as well. Alternative options, including low-volume county roads, should be explored in the meantime to make this 44.4-mile connection in the interim.

COWBOY RECREATION AND NATURE TRAIL

Total Length (in Miles)	218.7
Total Length Along Great American Rail-Trail in Neb. (in Miles)	218.7
Trail Type	Rail-trail
Surface Type	Concrete, crushed stone
Trail Manager	Nebraska Game and Parks Commission
Website	<ul style="list-style-type: none"> · outdoornebraska.gov/cowboytrail · bikecowboytrail.com
TrailLink Map	trailink.com/trail/cowboy-recreation-and-nature-trail

GREAT AMERICAN RAIL-TRAIL ROUTE ASSESSMENT NEBRASKA

The Cowboy Recreation and Nature Trail ("Cowboy Trail") is one of the country's longest rail-trails. The Cowboy Trail was designated as a National Recreational Trail as part of the National Park Service's National Trails System in 2001. When it is fully complete, the trail will extend more than 300 miles between the cities of Norfolk and Chadron. Two segments of the Cowboy Trail are currently complete:

Segment 1 – 202.1 miles between Norfolk and Valentine.

Segment 2 – 16.6 miles between Gordon and Rushville.

The Cowboy Trail was created when a major corridor of the Chicago and North Western Transportation Company (originally part of the Fremont, Elkhorn and Missouri Valley Railroad) was abandoned in 1992. RTC purchased the railroad right-of-way and donated it to the state of Nebraska. The Nebraska Game and Parks Commission now owns the entire corridor between Norfolk and mile marker 400, about 5 miles east of downtown Chadron.

Maintenance of the Cowboy Trail has historically been underfunded at the state level. This situation leaves parts of the Cowboy Trail in rough but passable shape, particularly as the trail passes through the more remote sections of completed trail on the western end.⁵ The trail has not been entirely resurfaced since it was first completed in the late 1990s, and short sections could be rough from washboarding. LB981 was introduced to the Nebraska Legislature in January 2022. It would provide a dedicated maintenance fund of \$15 million for the Nebraska Game and Parks Commission to support ongoing maintenance of the Cowboy Trail and other trails within the commission's purview outside of specific state parks. LB981 was unsuccessful in the Nebraska Legislature, and efforts are underway to secure the necessary maintenance funding in other ways.

Flooding in the spring of 2019 severely damaged portions of the Cowboy Trail, with repair costs estimated to top \$7.7 million. The Nebraska Game and Parks Commission has applied for funding from the Federal Emergency Management Agency as well as elected state officials to complete the necessary repairs.

TRAIL GAP 58 – COWBOY RECREATION AND NATURE TRAIL EXTENSION (VALENTINE TO GORDON)

The Nebraska Game and Parks Commission owns a former rail corridor between the existing trailheads in Valentine and Gordon that was never officially surfaced as part of the Cowboy Trail. The commission has been hesitant to complete construction on this 90-mile section of trail until dedicated and stable funding is made available by the Nebraska Legislature for ongoing operations and maintenance of the entire Cowboy Trail.

Between Valentine and Merriman (approximately 61 miles), the bridges are decked and the remaining activities to open the trail include mowing, grading and surfacing with crushed stone. Ballast and railroad ties are still present on the remaining 30 miles between Merriman and Gordon, and the Nebraska Game and Parks Commission is preparing to remove the ballast when resources allow. The bridges along the section between Merriman and Gordon still need to be decked as well. Completing the entire Cowboy Trail will go a long way toward making the Great American Rail-Trail a reality and providing economic development assistance to the small towns that settled along the former rail corridor.

TRAIL GAP 59a – COWBOY RECREATION AND NATURE TRAIL EXTENSION (RUSHVILLE TO CHADRON)

Cowboy Trail West Inc. is working to complete the western 25.2 miles of the Cowboy Trail from Rushville to mile marker 400, east of Chadron. Cowboy Trail West completed and maintains the existing western section of the Cowboy Trail between Gordon and Rushville in Sheridan County. In September 2018, the Nebraska Game and Parks Commission offered Cowboy Trail West \$350,000 in Recreational Trails Program funds for trail development. In partnership with the commission, Cowboy Trail West will use the funds to upgrade the surfacing of the existing trail section and extend it westward toward Hay Springs.

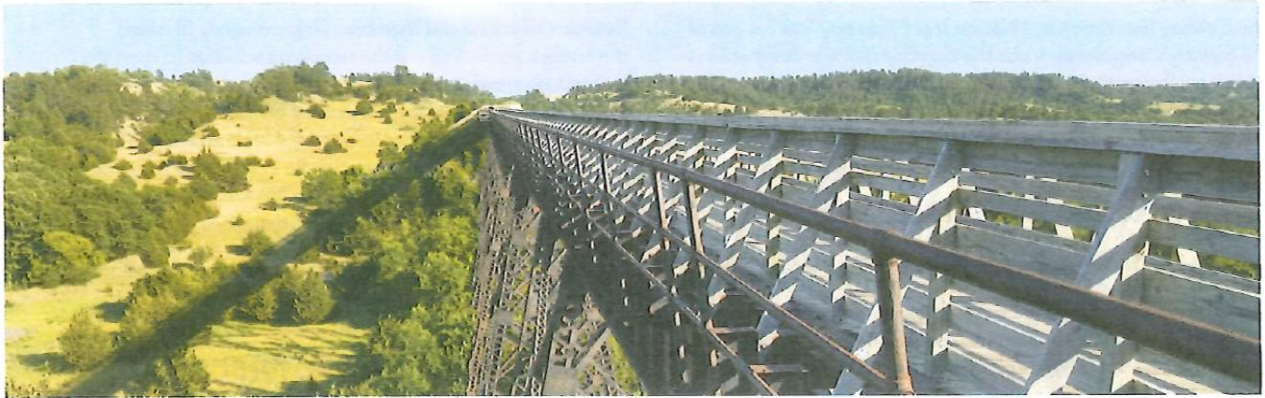
In the spring of 2023, the Nebraska Game and Parks Commission reviewed bids to complete a substantial portion of the work on this gap, which is slated to begin soon.

TRAIL GAP 59b – COWBOY TRAIL CONNECTION (CHADRON)

The Northwest Nebraska Trails Association (NNTA) is working closely with the city of Chadron and Nebraska Northwestern Railroad to complete roughly 6.4 miles of trail to connect the end of the Cowboy Trail at mile marker 400 into downtown Chadron. Nebraska Northwestern Railroad has issued an easement for a rail-with-trail along the active rail line to complete this gap, and NNTA and the city of Chadron have entered into a memorandum of understanding agreement for the eventual completion and management of the trail. Engineering documents were completed in 2021, and NNTA and the city of Chadron are currently raising funds for trail construction. The Nebraska Game and Parks Commission has awarded NNTA \$528,540 in Recreational Trails Program grants for development of this trail gap.

⁵ Cowboy Trail West Inc. provides the labor to maintain the section between Gordon and Rushville, using materials provided by the Nebraska Game and Parks Commission. RTC provided a Doppelt Family Trail Development Fund grant in 2017 to Cowboy Trail West Inc. for trail surfacing in this western section of the trail.

GREAT AMERICAN RAIL-TRAIL ROUTE ASSESSMENT NEBRASKA



Cowboy Trail in Nebraska | Photo by Alex Duryea, courtesy Nebraska Tourism Commission

TRAIL GAP 60 – CHADRON TO CRAWFORD

An active Canadian Pacific Railway corridor runs between the cities of Chadron and Crawford. The line has a low traffic density, according to data from the Federal Railroad Administration in 2014. There is no abandoned rail option to complete an off-road trail between Chadron and the existing White River Trail in Crawford. While a feasible off-road multiuse trail option connecting this 23.8-mile gap continues to be explored, a temporary interim on-road connector can be made using various low-volume county roads in Dawes County.

Fort Robinson is also the site of Crazy Horse's surrender and death in 1877, and visitors can find a historical plaque that marks the location. The Nebraska Game and Parks Commission handles the ongoing operations and maintenance of the White River Trail, while the city of Crawford maintains the portion of the trail outside of Fort Robinson State Park.

WHITE RIVER TRAIL

Total Length (in Miles)	2.8
Total Length Along Great American Rail-Trail in Neb. (in Miles)	2.8
Trail Type	Rail-trail
Surface Type	Ballast
Trail Manager	City of Crawford, Nebraska Game and Parks Commission
Website	outdoornebraska.gov/fortrobinson
TrailLink Map	traillink.com/trail/white-river-trail

The White River Trail runs along a former Chicago and North Western Transportation Company corridor for 2.8 miles, starting in Crawford and ending at Fort Robinson State Park. Fort Robinson encompasses the fort and military camp that was home to the Red Cloud Agency in the 1870s. The agency served as an issuing point for supplies to the Oglala Lakota tribe of the Great Sioux Nation, as well as the Northern Cheyenne and Arapaho tribes, authorized in exchange for land ceded to the United States in 1868.

TRAIL GAP 61 – WHITE RIVER TRAIL EXTENSION (CRAWFORD TO NEBRASKA-WYOMING STATE LINE)

The former Chicago and North Western Transportation Company corridor that traveled along the White River in Nebraska and Niobrara River in Wyoming was severely damaged in a flood in 1991. Twenty miles of track and 45 bridges were destroyed along the corridor, and rail service never recovered after the storm. Local rail advocates were insistent upon the railbed being turned into a trail once it was no longer viable for rail traffic.

The existing 3 miles of the White River Trail are the result of those efforts. The remainder of the rail corridor between Fort Robinson State Park and Van Tassell, Wyoming, is under the ownership of the Friends of the White River Trail, which includes 34 miles in Nebraska. The friends group intends to hold on to the ownership of the rail corridor until resources become available to complete construction of the trail and keep it maintained. Chief Dull Knife College is currently working with the Northern Cheyenne tribe to develop a 3-mile trail from the Cheyenne Breakout barracks at Fort Robinson to the monument created to commemorate the Cheyenne Breakout of January 1879. It will be called the Healing Trail and will incorporate about 2 to 2.5 miles of the railbed west of Fort Robinson. In 2021, the Northern Cheyenne Breakout Committee received a \$149,500 grant from the National Park Service's American Battlefield Protection Program to support the development of the Northern Cheyenne Healing Trail.

Any future trail connecting the 32.5-mile gap from Crawford to the Nebraska-Wyoming border needs to connect to a trail on the Wyoming side. Potential trail connections in Wyoming are discussed in Trail Gap 62a in the Wyoming chapter of this report.

Council member Keith Marvin introduced Ordinance No. 1453 changing the name of Industrial Parkway to Akrs Drive with the amendment to change Akrs Drive to Akrs Parkway. Mayor Jessica Miller read Ordinance No. 1453 by title with the amended change.

Council member Bruce Meysenburg made a motion to suspend the statutory rule requiring that an Ordinance be read on three separate days. Council member Jim Angell seconded the motion. The motion carried. Jim Angell: Yea, Tom Kobus: Absent, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea. Yea: 5, Nay: 0, Absent: 1.

Council member Keith Marvin made a motion to pass Ordinance No. 1453 changing the name of Industrial Parkway to Akrs Parkway on 3rd & Final Reading. Council member Pat Meysenburg seconded the motion. The motion carried. Jim Angell: Yea, Tom Kobus: Absent; Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea. Yea: 5, Nay: 0, Absent: 1.

ORDINANCE NO. 1453

AN ORDINANCE TO RENAME "INDUSTRIAL PARKWAY" TO BE HENCEFORTH KNOWN AS "AKRS PARKWAY". REPEALING ANY ORDINANCE OR RESOLUTION IN CONFLICT THEREWITH; PROVIDING AN EFFECTIVE DATE THEREOF; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

WHEREAS, the Mayor and City Council of the City of David City, Nebraska, have authority by virtue of Section 6-202 of the Municipal Code of the City of David City, Nebraska, to rename any street, and,

WHEREAS, it is the desire of the Mayor and City Council of the City of David City, Nebraska, to rename the street heretofore known as Industrial Parkway to be known henceforth as Akrs Drive.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA that the street heretofore known as "Industrial Parkway" be known henceforth as "Akrs Parkway", and,

BE IT FURTHER ORDAINED that any other ordinance or section of any ordinance passed and approved prior to the passage, approval, and publication or posting of this ordinance and in conflict with its provisions, is hereby repealed.

This Ordinance shall be in full force and effect from and after passage, approval and publication or posting as required by law.

PASSED AND APPROVED THIS 27th day of September, 2023.

Mayor Jessica Miller

City Clerk Tami L. Comte

Council member Bruce Meysenburg made a motion to approve the BNSF Overpass Agreement. Council Member Pat Meysenburg seconded the motion. The motion carried. Jim Angell: Yea, Tom Kobus: Absent, Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea. Yea: 5, Nay: 0, Absent: 1.



Contract Number: BF-20270748

OVERPASS AGREEMENT

BNSF File No.: BF-20270748
Mile Post 54.43
Line Segment 147
U.S. DOT Number 074732S
Bellwood Subdivision

This Agreement ("**Agreement**"), is executed to be effective as of [September 27, 2023] ("**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**BNSF**") and the **CITY OF DAVID CITY**, a political subdivision of the State of NE ("**Agency**").

RECITALS:

WHEREAS, BNSF owns and operates a line of railroad in and through the City of David City, State of NE; and

WHEREAS, Agency desires to construct a new crossing at separated grades to be known as the Road 37 Overpass, D.O.T. No. 074732S.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I) SCOPE OF WORK

- 1) The term "**Project**" as used herein includes any and all work related to the construction of the proposed Road 37 Overpass (hereinafter referred to as the "**Structure**"), more particularly described on the Exhibit A, which is attached hereto and incorporated herein, including, but not limited to, any and all changes to telephone, telegraph, signal and electrical lines and appurtenances, temporary and permanent track work, fencing, grading, alterations to or new construction of drainage facilities, preliminary and construction engineering and contract preparation. During construction of the Structure, vehicular traffic will be excluded from the use of Road 37 between the east and west limits of grading for the Structure. Additionally, temporary controls during construction must comply with Section 8A-08, "Temporary Traffic Control Zones" of the Manual of Uniform Traffic Control Devices ("**MUTCD**"), U.S. Department of Transportation.



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Agency must also install and maintain fencing which will direct pedestrians around the construction site.

ARTICLE II) BNSF OBLIGATIONS

In consideration of the covenants of Agency set forth herein and the faithful performance thereof, BNSF agrees as follows:

- 1) Upon Agency's payment to BNSF of an administrative fee in the sum of Two Thousand Five Hundred and No/100 Dollars (\$2,500), together with the Temporary Construction License Fee in the sum of \$[REDACTED] and No/100 Dollars (\$[REDACTED]), BNSF hereby grants to Agency, its successors and assigns, upon and subject to the terms and conditions set forth in this Agreement, a temporary non-exclusive license (hereinafter called, "Temporary Construction License") to construct the Structure across or upon the portion of BNSF's right-of-way described further on Exhibit A-1, excepting and reserving BNSF's rights, and the rights of any others who have obtained, or may obtain, permission or authority from BNSF, to do the following:
 - A. Operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipelines and other facilities of like character upon, over or under the surface of said right-of-way;
 - B. Construct, operate, maintain, renew and/or relocate upon said right-of-way, without limitation, such facilities as the BNSF may from time to time deem appropriate, provided such facilities do not materially interfere with the Agency's use of the Structure;
 - C. Otherwise use or operate the right-of-way as BNSF may from time to time deem appropriate, provided such use or operations does not materially interfere with the Agency's use of the Structure; and
 - D. Require the Agency or its contractor to execute a Temporary Construction Crossing Agreement, for any temporary crossing requested to aid in the construction of this Project.

The term of the Temporary Construction License begins on the Effective Date and ends on the earlier of (i) substantial completion of the Structure, or (ii) 24 months following the Effective Date. The Temporary Construction License and related rights given by BNSF to Agency in this provision are without warranty of title of any kind, express or implied, and no covenant of warranty of title will be implied from the use of any word or words herein contained. The Temporary Construction License is for construction of the Structure only and shall not be used by Agency for any other purpose. Agency acknowledges and agrees that Agency shall not have the right, under the Temporary Construction License, to use the Structure for any other purpose than construction. In



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the event Agency is evicted by anyone owning, or claiming title to or any interest in said right-of-way, BNSF will not be liable to Agency for any damages, losses or any expenses of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this Agreement, will not impair or interfere with the rights granted to Agency herein.

Upon Agency's payment to BNSF of the additional sum of \$ [REDACTED] and No/100 Dollars (\$ [REDACTED]), such payment to be made within thirty (30) days of issuing the Notice to Proceed pursuant to Article III, Section 17 of this Agreement, and provided further that Agency is in compliance with the term and conditions of this Agreement, BNSF will grant to Agency, its successors and assigns, an easement (hereinafter called, the "Easement") to enter upon and use that portion of BNSF's right-of-way as is necessary to use and maintain the Structure, substantially in the form of Exhibit B attached to this Agreement. If Agency fails to pay BNSF within the thirty-day time period set forth in the preceding sentence, BNSF may stop construction of the Project until full payment is received by BNSF.

2) BNSF will furnish all labor, materials, tools, and equipment for railroad work required for the construction of the Project, such railroad work and the estimated cost thereof being as shown on Exhibit D attached hereto and made a part hereof. In the event construction on the Project has not commenced within six (6) months following the Effective Date, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit D. In such event, the revised cost estimates will become a part of this Agreement as though originally set forth herein. Any item of work incidental to the items listed on Exhibit D not specifically mentioned therein may be included as a part of this Agreement upon written approval of Agency, which approval will not be unreasonably withheld. Construction of the Project must include the following railroad work by BNSF:

- A. Procurement of materials, equipment and supplies necessary for the railroad work;
- B. Preliminary engineering, design, and contract preparation;
- C. Furnishing of flagging services during construction of the Project as required and set forth in further detail on Exhibit C;
- D. Furnishing engineering and inspection as required in connection with the construction of the Project;
- E. Providing a contract project coordinator, at Agency's expense, to serve as a project manager for the Project;



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- F. If required, removal of the existing Road 37 at-grade crossing, including removal of the automatic warning devices, and obliteration of the crossing between the rails and two feet outside thereof; and
 - G. If required, construction of a temporary pedestrian at-grade crossing and installation of automatic warning devices, at Agency's expense.
- 3) BNSF will do all railroad work set forth in Article II, Section 2 above on an actual cost basis, when BNSF, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements.
 - 4) Agency agrees to reimburse BNSF for work of an emergency nature caused by Agency or Agency's contractor in connection with the Project which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of Agency and Agency agrees to fully reimburse BNSF for all such emergency work.
 - 5) BNSF may charge Agency for insurance expenses, including self-insurance expenses, when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the Project. Such charges will be considered part of the actual cost of the Project, regardless of the nature or amount of ultimate liability for injury, loss or death to BNSF's employees, if any.
 - 6) During the construction of the Project, BNSF will send Agency progressive invoices detailing the costs of the railroad work performed by BNSF under this Agreement. Agency must reimburse BNSF for completed force-account work within thirty (30) days of the date of the invoice for such work. Upon completion of the Project, BNSF will send Agency a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit D. Pursuant to this section and Article IV, Section 7 herein, Agency must pay the final invoice within ninety (90) days of the date of the final invoice. BNSF will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past its credit terms. The finance charge continues to accrue daily until the date payment is received by BNSF, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to Agency under this section.



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ARTICLE III) AGENCY OBLIGATIONS

In consideration of the covenants of BNSF set forth herein and the faithful performance thereof, Agency agrees as follows:

- 1) Agency must furnish to BNSF plans and specifications for the Project. Four sets of said plans (reduced size 11" x 17"), together with two copies of calculations, and two copies of specifications in English Units, must be submitted to BNSF for approval prior to commencement of any construction. BNSF will give Agency final written approval of the plans and specifications substantially in the form of Exhibit E, attached to this Agreement and made a part hereof. Upon BNSF's final written approval of the plans and specifications, said plans and specifications will become part of this Agreement and are hereby incorporated herein. Any approval of the plans and specifications by BNSF shall in no way obligate BNSF in any manner with respect to the finished product design and/or construction. Any approval by BNSF shall mean only that the plans and specifications meet the subjective standards of BNSF, and such approval by BNSF shall not be deemed to mean that the plans and specifications or construction is structurally sound and appropriate or that such plans and specifications meet applicable regulations, laws, statutes or local ordinances and/or building codes.
- 2) Agency must make any required application and obtain all required permits and approvals for the construction of the Project.
- 3) Agency must provide for and maintain minimum vertical and horizontal clearances, as required in Exhibit C and as approved by BNSF as part of the plans and specifications for the Project.
- 4) Agency must acquire all rights of way necessary for the construction of the Project.
- 5) Agency must make any and all arrangements, in compliance with BNSF's Utility Accommodation Manual (<http://www.bnsf.com/communities/fags/pdf/utility.pdf>), for the installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project.
- 6) Agency must construct the Project as shown on the attached Exhibit A and do all work ("Agency's Work") provided for in the plans and specifications for the Project, except railroad work that will be performed by BNSF hereunder. Agency must furnish all labor, materials, tools and equipment for the performance of Agency's Work. The principal elements of Agency's Work are as follows:



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- A. Design and construction of the Structure. Design of the new overpass must meet the requirements of the UP/BNSF Joint Guidelines for Grade Separation Projects;
 - B. All necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way;
 - C. Provide suitable drainage, both temporary and permanent;
 - D. Provide BNSF with permanent access for maintenance purposes;
 - E. Provide appropriate pedestrian control during construction;
 - F. Installation and maintenance of an 8-ft. high fence and/or concrete combination (throw fence) on the outside barrier of the Structure;
 - G. Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF;
- 7) Agency must apply and maintain said D.O.T. Crossing number 074732S in a conspicuous location on the Structure.
- 8) Agency's Work must be performed by Agency or Agency's contractor in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.
- 9) For any future inspection or maintenance, either routine or otherwise, performed by subcontractors on behalf of the Agency, Agency shall require the subcontractors to comply with the provisions of the attached Exhibit C and execute the agreement attached hereto as Exhibit C-1. Prior to performing any future maintenance with its own personnel, Agency shall: comply with all of BNSF's applicable safety rules and regulations; require any Agency employee performing maintenance to complete the safety training program at the BNSF's Internet Website " www.BNSFContractor.com "; notify BNSF when, pursuant to the requirements of Exhibit C, a flagger is required to be present; procure, and have approved by BNSF's Risk Management Department, Railroad Protective Liability insurance.
- 10) Agency must require its contractor(s) to notify BNSF's Roadmaster at least thirty (30) calendar days prior to requesting a BNSF flagman in accordance with the requirements of Exhibit C attached hereto. Additionally, Agency must require its contractor(s) to notify BNSF's Manager of Public Projects thirty (30) calendar days prior to commencing work on BNSF property or near BNSF tracks.



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- 11) Agency or its contractor(s) must submit four (4) copies of any plans (including two sets of calculations in English Units) for proposed shoring, falsework or cribbing to be used over, under, or adjacent to BNSF's tracks to BNSF's Manager of Public Projects for approval. The shoring, falsework or cribbing used by Agency's contractor shall comply with the BNSF Requirements for construction of Grade Separation Projects set forth on Exhibit F and all applicable requirements promulgated by state and federal agencies, departments, commissions and other legislative bodies. If necessary, Agency must submit for approval two (2) copies of a professionally engineered demolition plan, as set forth in Exhibit F, with applicable calculations to BNSF's Manager of Public Projects.
- 12) Agency must include the following provisions in any contract with its contractor(s) performing work on said Project:
 - A. The Contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried on BNSF's property or right-of-way. The locations of these Lines have been included on the plans based on information from the telecommunications companies. The Contractor will be responsible for contacting BNSF and the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The Contractor must also mark all Lines shown on the plans or marked in the field in order to verify their locations. The Contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.
 - B. The Contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the construction. The Contractor must cooperate fully with any telecommunications company(ies) in performing such rearrangements.
 - C. Failure to mark or identify these Lines will be sufficient cause for BNSF to stop construction at no cost to the Agency or BNSF until these items are completed.
 - D. In addition to the liability terms contained elsewhere in this Agreement, the Contractor hereby indemnifies, defends and holds harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Contractor, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by Contractor, and/or its subcontractors, agents and/or employees, on BNSF's property or within BNSF's right-of-way, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on BNSF's property or within BNSF's right-of-way, and/or (3) any claim or cause of action for alleged



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loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies). THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.

- 13) Agency must require compliance with the obligations set forth in this agreement, including Exhibit C and Exhibit C-1, and incorporate in each prime contract for construction of the Project, or the specifications therefor (i) the provisions set forth in Article III and IV; and (ii) the provisions set forth in Exhibit C, Exhibit C-1, and Exhibit F attached hereto and by reference made a part hereof.
- 14) Except as otherwise provided below in this Section 14, all construction work performed hereunder by Agency for the Project will be pursuant to a contract or contracts to be let by Agency, and all such contracts must include the following:
 - A. All work performed under such contract or contracts within the limits of BNSF's right-of-way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF;
 - B. Changes or modifications during construction that affect safety or BNSF operations must be subject to BNSF's approval;
 - C. No work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with said work must have (i) executed and delivered to BNSF an agreement in the form of Exhibit C-1, and (ii) delivered to and secured BNSF's approval of the required insurance; and
 - D. To facilitate scheduling for the Project, Agency shall have its contractor give BNSF's representative John Caldwell, john.caldwell2@bnsf.com 6 weeks advance notice of the proposed times and dates for work windows. BNSF and Agency's contractor will establish mutually agreeable work windows for the Project. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the Project.



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- E. The plans and specifications for the Project must be in compliance with the BNSF Requirements for construction of Grade Separation Projects set forth on Exhibit F, attached to this Agreement and incorporated herein.
- 15) Agency must advise the appropriate BNSF Manager of Public Projects, in writing, of the completion date of the Project within thirty (30) days after such completion date. Additionally, Agency must notify BNSF's Manager of Public Projects, in writing, of the date on which Agency and/or its Contractor will meet with BNSF for the purpose of making final inspection of the Project.
- 16) TO THE FULLEST EXTENT PERMITTED BY LAW, AGENCY HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS BNSF, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS 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 AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) (I) THE USE, OCCUPANCY OR PRESENCE OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (II) THE PERFORMANCE, OR FAILURE TO PERFORM BY THE AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS, ITS WORK OR ANY OBLIGATION UNDER THIS AGREEMENT, (III) THE SOLE OR CONTRIBUTING ACTS OR OMISSIONS OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (IV) AGENCY'S BREACH OF THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT GRANTED TO AGENCY PURSUANT TO ARTICLE II OF THIS AGREEMENT, (V) ANY RIGHTS OR INTERESTS GRANTED TO AGENCY PURSUANT TO THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT DISCUSSED IN ARTICLE II OF THIS AGREEMENT, (VI) AGENCY'S OCCUPATION AND USE OF BNSF'S PROPERTY OR RIGHT-OF-WAY, INCLUDING, WITHOUT LIMITATION, SUBSEQUENT MAINTENANCE OF THE STRUCTURE BY AGENCY, OR (VII) AN ACT OR OMISSION OF AGENCY OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER. THE LIABILITY ASSUMED BY AGENCY WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE,



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EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.

IT IS MUTUALLY NEGOTIATED BETWEEN THE PARTIES THAT THE INDEMNIFICATION OBLIGATION SHALL INCLUDE ALL CLAIMS BROUGHT BY CONTRACTOR'S EMPLOYEES AGAINST BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, AND CONTRACTOR EXPRESSLY WAIVES ANY IMMUNITY OTHERWISE PROVIDED UNDER APPLICABLE STATE WORKERS COMPENSATION OR SIMILAR LAWS AND ASSUMES POTENTIAL LIABILITY FOR ALL ACTIONS BROUGHT BY ITS EMPLOYEES.

17) Agency must give BNSF's Manager of Public Projects written notice to proceed ("Notice to Proceed") with the railroad work after receipt of necessary funds for the Project. BNSF will not begin the railroad work (including, without limitation, procurement of supplies, equipment or materials) until written notice to proceed is received from Agency.

18) Agency must perform all necessary work to obtain the permanent closure and vacation of the Road 37 at-grade crossing across BNSF's right-of-way. BNSF will cooperate with Agency to achieve the closure and vacation of Road 37 at-grade and will remove the crossing surface within its right-of-way.

19) Reserved

ARTICLE IV) JOINT OBLIGATIONS

IN CONSIDERATION of the premises, the parties hereto mutually agree to the following:

1) All work contemplated in this Agreement must be performed in a good and workmanlike manner and each portion must be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF's written approval prior to the commencement of any such changes or modifications from the BNSF Engineering Contact, John Caldwell (john.caldwell2@bnsf.com).

2) The work hereunder must be done in accordance with the BNSF Requirements for construction of Grade Separation Projects set forth on Exhibit F and the detailed plans and specifications approved by BNSF.

3) Agency must require its contractor(s) to reasonably adhere to the Project's construction schedule for all Project work. The parties hereto mutually agree that BNSF's failure to complete the railroad work in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this Agreement by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the



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construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the railroad work in the event of an emergency to provide for the immediate restoration of railroad operations of either (BNSF or its related railroads) or to protect persons or property on or near any BNSF owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this Agreement by BNSF.

- 4) BNSF will have the right to stop construction work on the Project if any of the following events take place: (i) Agency (or any of its contractors) performs the Project work in a manner contrary to the plans and specifications approved by BNSF; (ii) Agency (or any of its contractors), in BNSF's opinion, prosecutes the Project work in a manner that is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Agency fails to pay BNSF for the Temporary Construction License or the Easement pursuant to Article II, Section 1 of this Agreement. The work stoppage will continue until all necessary actions are taken by Agency or its contractor to rectify the situation to the satisfaction of BNSF's Division Engineer or until proof of additional insurance has been delivered to and accepted by BNSF. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, BNSF may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have including, but not limited to, actions or suits for damages or lost profits. In the event that BNSF desires to stop construction work on the Project, BNSF agrees to immediately notify the following individual in writing:
- 5) Agency must supervise and inspect the operations of all Agency contractors to ensure compliance with the plans and specifications approved by BNSF, the terms of this Agreement and all safety requirements of BNSF. If BNSF determines that proper supervision and inspection are not being performed by Agency personnel at any time during construction of the Project, BNSF has the right to stop construction (within or adjacent to its operating right-of-way). Construction of the Project will not proceed until Agency corrects the situation to BNSF's reasonable satisfaction. If BNSF feels the situation is not being corrected in an expeditious manner, BNSF will immediately notify for appropriate corrective action.
- 6) Pursuant to this section and Article II, Section 6 herein, Agency must reimburse BNSF in full for the actual costs of all work performed by BNSF under this Agreement (including taxes, such as applicable sales and use taxes, business and occupation taxes, and similar taxes), less BNSF's Share as set forth in Article IV, Section 6 herein. BNSF's Share must be paid upon completion of the Project.



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- 7) All expenses detailed in statements sent to Agency pursuant to Article II, Section 7 herein will comply with the terms and provisions of the Title 23 U.S. Code, Title 23 Code of Federal Regulations, and the Federal-Aid Policy Guide, U.S. Department of Transportation, as amended from time to time, which manual is hereby incorporated into and made a part of this Agreement by reference. The parties mutually agree that BNSF's preliminary engineering, design, and contract preparation costs described in Article II, Section 2 herein are part of the costs of the Project even though such work may have preceded the date of this Agreement.
- 8) The parties mutually agree that neither construction activities for the Project, nor future maintenance of the Structure once completed, will be permitted during the fourth quarter of each calendar year. Emergency work will be permitted only upon prior notification to BNSF's Network Operations Center (telephone number: 800 832-5452). The parties hereto mutually understand and agree that trains cannot be subjected to delay during this time period.
- 9) Subject to the restrictions imposed by Article IV, Section 8 above, the construction of the Project will not commence until Agency gives BNSF's Manager of Public Projects thirty (30) days prior written notice of such commencement. The commencement notice will reference D.O.T. Crossing No. 074732S and must state the time that construction activities will begin.
- 10) In addition to the terms and conditions set forth elsewhere in this Agreement, including, but not limited to, the terms and conditions stated in Exhibit F, BNSF and Agency agree to the following terms upon completion of construction of the Project:
 - A. Agency will own and maintain, at its sole cost and expense, the Structure, the highway approaches, and appurtenances thereto, lighting, drainage and any access roadways to BNSF gates installed pursuant to this Agreement. BNSF may, at its option, perform maintenance on the Structure in order to avoid conflicts with train operations. BNSF will notify Agency prior to performing any such maintenance on the Structure. In the event such maintenance involves emergency repairs, BNSF will notify Agency at its earliest opportunity. Agency must fully reimburse BNSF for the costs of maintenance performed by BNSF pursuant to this subsection (b). Agency and BNSF shall perform the necessary work to obtain the permanent closure of the Road 37 at-grade. Such closure shall be completed by 60 days after the substantial completion of the Structure.
 - B. Agency must, at Agency's sole cost and expense, keep the Structure painted and free from graffiti.
 - C. Agency must provide BNSF with any and all necessary permits and maintain roadway traffic controls, at no cost to BNSF, whenever requested by BNSF to allow BNSF to inspect the Structure or to make emergency repairs thereto.



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- D. It is expressly understood by Agency and BNSF that any right to install utilities will be governed by a separate permit or license agreement between the parties hereto.
- E. Agency must keep the Structure and surrounding areas clean and free from birds, pigeons, scavengers, vermin, creatures and other animals.
- F. If Agency (including its contractors and agents) or BNSF, on behalf of Agency, performs (i) alterations or modifications to the Structure, or (ii) any maintenance or other work on the Structure with heavy tools, equipment or machinery at ground surface level horizontally within 25'-0" of the centerline of the nearest track, or (iii) any maintenance or other work outside the limits of the deck of the Structure vertically above the top of the rail, then Agency or its contractors and/or agents must procure and maintain the following insurance coverage, which may be changed from time to time:

Railroad Protective Liability insurance naming only BNSF as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 12 04 and include the following:

- Endorsed to include the Pollution Exclusion Amendment
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to BNSF 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' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

As used in this paragraph, "BNSF" means "Burlington Northern Santa Fe, LLC", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

In lieu of providing a Railroad Protective Liability Policy, Agency may participate in BNSF's Blanket Railroad Protective Liability Insurance Policy if available to Agency or its contractors. The limits of coverage are the same as above.



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- 11) Agency hereby grants to BNSF, at no cost or expense to BNSF, a permanent right of access from Agency property to BNSF tracks for maintenance purposes.
- 12) Agency must provide one set of as built plans (prepared in English Units) to BNSF, as well as one set of computer diskettes containing as built CAD drawings of the Structure and identifying the software used for the CAD drawings. The "as built plans" must comply with the BNSF Requirements for construction of Grade Separation Projects set forth on Exhibit F and depict all information in BNSF engineering stationing and mile post pluses. The "as built plans" must also include plan and profile, structural bridge drawings and specifications, and drainage plans. All improvements and facilities must be shown.
- 13) Subject to the restrictions imposed by Article IV, Section 8 above and in accordance with the requirements of Article III, Section 9 above, Agency must notify and obtain prior authorization from BNSF's Manager of Public Projects before entering BNSF's right-of-way for **INSPECTION OR MAINTENANCE** purposes, and the BNSF Manager of Public Projects will determine if flagging is required. If the construction work hereunder is contracted, Agency must require its prime contractor(s) to comply with the obligations set forth in Exhibit C and Exhibit C-1, as the same may be revised from time to time. Agency will be responsible for its contractor(s) compliance with such obligations.
- 14) In the event that BNSF shall deem it necessary or desirable in the future, in the performance of its duty as a common carrier, to raise or lower the grade or change the alignment of its tracks or to lay additional track or tracks or to build other facilities in connection with the operation of its railroad, BNSF shall, at its expense, have full right to make such changes or additions, provided such changes or additions do not change or alter the Structure herein proposed to be constructed and provided further, however, that should it become necessary or desirable in the future to change, alter, widen or reconstruct the Structure to accommodate railroad projects, the cost of such work, including any cost incidental to alteration of railroad or highway facilities made necessary by the alteration of the Structure shall be the sole responsibility of Agency.
- 15) Agency may, at Agency's sole expense, alter or reconstruct the highway components of the Structure if necessary or desirable, due to traffic conditions or pedestrian or other recreational traffic, provided, however, that any such alteration or reconstruction must receive BNSF's prior written approval as evidenced by either a supplement to this Agreement, or execution of a new agreement that provides for the termination of this Agreement. Furthermore, any alteration or reconstruction of the highway components of the Structure will be covered by a Commission Order.
- 16) Any books, papers, records and accounts of the parties hereto relating to the work hereunder or the costs or expenses for labor and material connected with the construction will at all



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reasonable times be open to inspection and audit by the agents and authorized representatives of the parties hereto, as well as the State of NE and the Federal Highway Administration, for a period of one (1) year from the date of the final BNSF invoice under this Agreement.

- 17) The covenants and provisions of this Agreement are binding upon and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the preceding sentence, neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party.
- 18) In the event construction of the Project does not commence within 18 months of the Effective Date, this Agreement will become null and void.
- 19) Neither termination nor expiration of this Agreement 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.
- 20) To the maximum extent possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.
- 21) This Agreement (including exhibits and other documents, manuals, etc. incorporated herein) is the full and complete agreement between BNSF and Agency with respect to the subject matter herein and supersedes any and all other prior agreements between the parties hereto.
- 22) Any notice provided for herein or concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:



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BNSF: BNSF's Manager Public Projects
4515 Kansas Ave
Kansas City, KS 66108

Agency: City of David City
490 E Street
David City, NE 68832

SIGNATURE PAGE FOLLOWS



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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first above written.

BNSF RAILWAY COMPANY

By: _____

Printed Name: _____

Title: _____

WITNESS:

AGENCY

CITY OF DAVID CITY

By: _____

Printed Name: Jessica Miller

Title: Mayor

WITNESS:



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Exhibit A

[Insert drawing of the Project and/or Structure]



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EASEMENT AGREEMENT
EASEMENT TO BE COMPLETED WITH CATHY CLUNE (CATHY.CLUNE@JLL.COM) OF
JLL
(C&M Agreement)

THIS EASEMENT AGREEMENT FOR _____ ("Easement Agreement") is made and entered into as of the 27th day of September 2023 ("Effective Date"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Grantor"), and _____, a _____ ("Grantee").

A. Grantor owns or controls certain real property situated at or near the vicinity of _____, County of _____, State of _____, at Mile Post _____, Project # _____, as described or depicted on **Exhibit "A"** attached hereto and made a part hereof (the "Premises").

B. Grantor and Grantee have entered into that certain Construction and Maintenance Agreement dated as of _____ concerning improvements on or near the Premises (the "C&M Agreement").

C. Grantee has requested that Grantor grant to Grantee an easement over the Premises for the Easement Purpose (as defined below).

D. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement and in the C&M Agreement incorporated herein as if fully set forth in this instrument which terms shall be in full force and effect for purposes of this Easement even if the C&M Agreement is, for whatever reason, no longer in effect.

NOW, THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1 **Granting of Easement.**

1.1 **Easement Purpose.** The "Easement Purpose" shall be for the purposes set forth in the C&M Agreement. Any improvements to be constructed in connection with the Easement Purpose are referred to herein as "Improvements" and shall be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the C&M Agreement.

1.2 **Grant.** Grantor does hereby grant unto Grantee a non-exclusive easement ("Easement") over the Premises for the Easement Purpose and for no other purpose. The Easement is granted subject to



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Easement Agreement

Form 704CM; Rev. 03/23/2019

any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) and zoning laws (collectively, "Laws"). Grantee may not make any alterations or improvements or perform any maintenance or repair activities within the Premises except in accordance with the terms and conditions of the C&M Agreement.

1.3 Reservations by Grantor. Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:

- (a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character (collectively, "Lines") upon, over, under or across the Premises;
- (b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; and
- (c) to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose.

Section 2 Term of Easement. The term of the Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual.

Section 3 No Warranty of Any Conditions of the Premises. Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Premises, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Premises. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this Easement Agreement, other than as set forth herein. GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTOR SHALL NOT BE RESPONSIBLE TO GRANTEE OR ANY OF GRANTEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO



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THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED

UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE PREMISES. Grantee has inspected or will inspect the Premises, and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Premises. Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully construct or operate the Improvements.

Section 4 Nature of Grantor's Interest in the Premises. GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

Section 5 Improvements. Grantee shall take, in a timely manner, all actions necessary and proper to the lawful establishment, construction, operation, and maintenance of the Improvements, including such actions as may be necessary to obtain any required permits, approvals or authorizations from applicable governmental authorities. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Improvements shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing. In the event any construction, repair, maintenance, work or other use of the Premises by Grantee will affect any Lines, fences, buildings, Improvements or other facilities (collectively, "Other Improvements"), Grantee will be responsible at Grantee's sole risk to locate and make any adjustments necessary to such Other Improvements. Grantee must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and obtain the owner's written approval prior to so affecting the Other Improvements. Grantee must mark



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all Other Improvements on the Plans and Specifications and mark such Other Improvements in the field in order to verify their locations. Grantee must also use all reasonable methods when working on or near Grantor property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist. The Grantee agrees to keep the above-described premises free and clear from combustible materials and to cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on said premises, said work of cutting and removal to be done at such times and with such frequency as to comply with Grantee and local laws and regulations and abate any and all hazard of fire.

Section 6 Taxes and Recording Fees. Grantee shall pay when due any taxes, assessments or other charges (collectively, "Taxes") levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Grantor or the Premises that are attributable to the Improvements. Grantee agrees to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes, excise taxes and any and all fees incidental to recordation of the Memorandum of Easement. In the event of Grantee's failure to do so, if Grantor shall become obligated to do so, Grantee shall be liable for all costs, expenses and judgments to or against Grantor, including all of Grantor's legal fees and expenses.

Section 7 Environmental.

7.1 Compliance with Environmental Laws. Grantee shall strictly comply with all federal, state and local environmental Laws in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Toxic Substances Control Act (collectively referred to as the "Environmental Laws"). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws.

7.2 Notice of Release. Grantee shall give Grantor immediate notice to Grantor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee's use of the Premises. Grantee shall use its best efforts to promptly respond to any release on or from the Premises. Grantee also shall give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

7.3 Remediation of Release. In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws which occurred or may occur during the term of this Easement Agreement, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to



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Investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises. If during the construction or subsequent maintenance of the Improvements, soils or other materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.

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

7.5 Evidence of Compliance. Grantee agrees periodically to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this Section 7. Should Grantee not comply fully with the above-stated obligations of this Section 7, notwithstanding anything contained in any other provision hereof, Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice of termination upon Grantee. Upon termination, Grantee shall remove the Improvements and restore the Premises as provided in Section 9.

Section 8 Default and Termination.

8.1 Grantor's Performance Rights. If at any time Grantee, or Grantee's Contractors, fails to properly perform its obligations under this Easement Agreement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, or (ii) at Grantee's sole cost, may arrange for the performance of such work as Grantor deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Grantor, or anyone or anything present on the rail corridor or property with the authority or permission of Grantor. Grantee shall promptly reimburse Grantor for all costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee or Grantee's Contractors shall not alter the liability allocation set forth in this Easement Agreement.

8.2 Abandonment. Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice in writing upon Grantee if Grantee should abandon or cease to use the Premises for the Easement Purpose. Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate this Easement Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any section of this Easement Agreement.



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8.3 Effect of Termination or Expiration. Neither termination nor expiration will release Grantee from any liability or obligation under this Easement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date the Premises are restored as required by Section 9.

8.4 Non-exclusive Remedies. The remedies set forth in this Section 8 shall be in addition to, and not in limitation of, any other remedies that Grantor may have under the C&M Agreement, at law or in equity.

Section 9 Surrender of Premises.

9.1 Removal of Improvements and Restoration. Upon termination of this Easement Agreement, whether by abandonment of the Easement or by the exercise of Grantor's termination rights hereunder, Grantee shall, at its sole cost and expense, immediately perform the following:

- (a) remove all or such portion of Grantee's Improvements and all
- (b) appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;
- (c) repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;
- (d) remedy any unsafe conditions on the Premises created or aggravated by Grantee; and
- (e) leave the Premises in the condition which existed as of the Effective Date.

9.2 Limited License for Entry. If this Easement Agreement is terminated, Grantor may direct Grantee to undertake one or more of the actions set forth above, at Grantee's sole cost, in which case Grantee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Grantor. The terms of this limited license include all of Grantee's obligations under this Easement Agreement. Termination will not release Grantee from any liability or obligation under this Easement Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later,



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the date when Grantee's Improvements are removed and the Premises are restored to the condition that existed as of the Effective Date. If Grantee fails to surrender the Premises to Grantor upon any termination of the Easement, all liabilities and obligations of Grantee hereunder shall continue in effect until the Premises are surrendered.

Section 10 Liens. Grantee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Grantee on the Premises or attributable to Taxes that are the responsibility of Grantee pursuant to Section 6. Grantor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by Law to prevent the attachment of any such liens to any portion of the Premises; provided, however, that failure of Grantor to take any such action shall not relieve Grantee of any obligation or liability under this Section 10 or any other section of this Easement Agreement.

Section 11 Tax Exchange. Grantor may assign its rights (but not its obligations) under this Easement Agreement to Goldfinch Exchange Company LLC, an exchange intermediary, in order for Grantor to effect an exchange under Section 1031 of the Internal Revenue Code. In such event, Grantor shall provide Grantee with a Notice of Assignment, attached as Exhibit C, and Grantee shall execute an acknowledgement of receipt of such notice.

Section 12 Notices. Any notice required or permitted to be given hereunder by one party to the other shall be delivered in the manner set forth in the C&M Agreement. Notices to Grantor under this Easement shall be delivered to the following address: BNSF Railway Company, Real Estate Department, 2500 Lou Menk Drive, Ft. Worth, TX 76131, Attn: Permits, or such other address as Grantor may from time to time direct by notice to Grantee.

Section 13 Recordation. It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as Exhibit "B" (the "Memorandum of Easement") subject to changes required, if any, to conform such form to local recording requirements. The Memorandum of Easement shall be



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recorded in the real estate records in the county where the Premises are located. If a Memorandum of Easement is not executed by the parties and recorded as described above within ____ days of the Effective Date, Grantor shall have the right to terminate this Easement Agreement upon notice to Grantee.

Section 14 **Miscellaneous.**

14.1 All questions concerning the interpretation or application of provisions of this Easement Agreement shall be decided according to the substantive Laws of the State of Nebraska without regard to conflicts of law provisions.

14.2 In the event that Grantee consists of two or more parties, all the covenants and agreements of Grantee herein contained shall be the joint and several covenants and agreements of such parties. This instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

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

14.4 If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

14.5 This Easement Agreement and the C&M Agreement, which is incorporated herein, is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Grantee or Grantee's obligation to defend and hold Grantor harmless in any prior written agreement between the parties.

14.6 Time is of the essence for the performance of this Easement Agreement.



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Section 15. Administrative Fee. Grantee acknowledges that a material consideration for this agreement, without which it would not be made, is the agreement between Grantee and Grantor, that the Grantee shall pay upon return of this Easement Agreement signed by Grantee to Grantor's Broker a processing fee in the amount of \$ _____ over and above the agreed upon acquisition price. Said fee shall be made payable to BNSF Railway Company by a separate check.

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

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Name: _____
Title: _____

GRANTEE:

a _____

By: _____
Name: _____
Title: _____



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EXHIBIT "A"

Premises



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EXHIBIT "B"

MEMORANDUM OF EASEMENT

THIS MEMORANDUM OF EASEMENT is hereby executed this _____ day of _____, 201_, by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Grantor"), whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131, and _____, a _____ ("Grantee"), whose address for purposes of this instrument is _____, which terms "Grantor" and "Grantee" shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties:

WITNESSETH:

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

WHEREAS, Grantor and Grantee entered into an Easement Agreement, dated _____, 201_ (the "Easement Agreement") which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across the Premises (the "Easement"); and

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

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

The term of the Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual.

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



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modify, supplement, or supersede any of the provisions of the Easement Agreement and, to the extent there may be any conflict or inconsistency between the Easement Agreement or this Memorandum of Easement, the Easement Agreement shall control.

END OF PAGE – SIGNATURE PAGE FOLLOWS



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

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Name: _____
Title: _____

STATE OF TEXAS

COUNTY OF TARRANT

NOTARY PUBLIC

This instrument was acknowledged before me on the _____ day of _____, 20____,
by _____ (name) as
_____(title) of **BNSF RAILWAY COMPANY**, a Delaware
corporation.

Notary Public

My appointment expires: _____

(Seal)



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GRANTEE:

By: _____
Name: _____
Title: _____

STATE OF _____

§
§
§

COUNTY OF _____

This instrument was acknowledged before me on the _____ day of _____, 20____, by _____ (name) as _____ (title) of _____, a _____.

Notary Public

My appointment expires: _____

(Seal)



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EXHIBIT "C"

CONTRACTOR REQUIREMENTS

1) General

- A. The Contractor must cooperate with BNSF RAILWAY COMPANY, hereinafter referred to as "Railway" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during Road W overpass at LS 147 MP 54.43 DOT #074732S.
- B. The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.
- C. The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- D. The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:



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{CONTACT}

- E. The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to Environmental Laws (as defined below) and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.
- F. The Contractor must notify City of David City at **{CONTACT}** and Railway's Manager Public Projects, Kara Brockamp (kara.brockamp@bnsf.com) at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file BF-**XXXXXXXX**.
- G. For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.
- H. Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor



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will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

2) Contractor Safety Orientation

- A. No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.BNSFContractor.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

3) Railway Requirements

- A. The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- B. The Contractor must notify the Railway's Division Engineer Andrew Wordekemper at Andrew.wordekemper@bnsf.com and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- C. The Contractor must abide by the following temporary clearances during construction:
- 15'-0" Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts



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- D. Upon completion of construction, the following clearances shall be maintained:
- {#/27"} Horizontally from centerline of nearest track
 - {#/23' 6"} Vertically above top of rail
- E. Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the City of David City and must not be undertaken until approved in writing by the Railway, and until the City of David City has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- F. In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.
- G. The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by the Missouri Department of Transportation for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- H. At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
- I. Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the **Railway's Resource Operations Center at 1(800) 832-5452**, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- J. The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any



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Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

4) Contractor Roadway Worker on Track Safety Program and Safety Action Plan

- A. Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.BNSFContractor.com, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.
- B. Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services for Railroad under this Agreement which are determined by Railroad in its sole discretion a) to be on Railroad's property, or b) that require access to Railroad Critical Infrastructure, Railroad Critical Information Systems, Railroad's Employees, Hazardous Materials on Railroad's property or is being transported by or otherwise in the custody of Railroad, or Freight in Transit involving Railroad.
- i) The required background screening shall at a minimum meet the rail industry background screening criteria defined by the e-RAILSAFE Program as outlined at www.eRailSafe.com, in addition to any other applicable regulatory requirements.
 - ii) Contractor shall obtain written consent from all its employees, subcontractors or agents screened in compliance with the e-RAILSAFE Program to participate in the Program on their behalf and to release completed background information to Railroad's designee. Contractor shall be subject to periodic audit to ensure compliance.
 - iii) Contractor subject to the e-RAILSAFE Program hereunder shall not permit any of its employees, subcontractors or agents to perform services hereunder who are not first approved under e-RAILSAFE Program standards. Railroad shall have the right to deny entry onto its premises or access as described in this section above to any of



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Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth in the e-RAILSAFE Program, or who in Railroad's opinion, which may not be unreasonable, may pose a threat to the safety or security of Railroad's operations, assets or personnel.

- iv) Contractors shall be responsible for ensuring that its employees, subcontractors and agents are United States citizens or legally working in the United States under a lawful and appropriate work VISA or other work authorization.

5) Railway Flagger Services

- A. The Contractor must give Railway's Roadmaster Royce Franklin, Royce.franklin@bnsf a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- B. Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
 - i) When, upon inspection by Railway's Representative, other conditions warrant.
 - ii) When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
 - iii) When work in any way interferes with the safe operation of trains at timetable speeds.
 - iv) When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
 - v) Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.



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C. Flagging services will be performed by qualified Railway flaggers.

- i) Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
- ii) Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
- iii) The cost of flagger services provided by the Railway will be borne by the agency as outlined in the Job Special Provisions. The estimated cost for one (1) flagger is approximately between \$1,200.00-\$2,000.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**

The cost of inspector coordinator services provided by the railway will be borne by Contractor. The estimated cost for inspector coordinator services is approximately \$1,200 per day. The agency and contractor shall reimburse the railroad for actual costs of inspection services.

- iv) The average train traffic on this route is [#] freight trains per 24-hour period at a timetable speed [#] MPH and [#] passenger trains at a timetable speed of [#] MPH.

6) Contractor General Safety Requirements

- A. Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.



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- B. Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- C. Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- D. When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railway's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- E. Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- F. Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.
- G. For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- H. All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.BNSFContractor.com, however, a partial list of



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the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats; c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. (NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)

- I. THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S REPRESENTATIVE.
- J. Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- K. Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- L. All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

7) Excavation



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- A. Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF's Field Engineering Representative John Caldwell, john.caldwell2@bnsf.com**. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.
- B. The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- C. All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- D. Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.
- E. Excavations and restoration must be conducted in accordance with all applicable Legal Requirements and the environmental provisions of Section 8.
- F. All fill materials to be imported to Railway's property shall be certified clean fill or from a Railway-approved source, and must otherwise be suitable for its intended purpose as backfill material. Supporting documentation shall be provided to Railway upon request.
- G. Contractor must meet the appropriate compaction requirements for all fills and will be responsible for settlement of all fills, erosion, and embankments that may occur as a result of the placement fill.



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8) Environmental Requirements:

- A. Contractor must comply with all Environmental Laws (as defined below). Contractor must not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Railway Property or the right of way. Contractor will not handle, transport, release or suffer the release of Hazardous Materials (as defined below).
- B. If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any release of Hazardous Materials, non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery; (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties; and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release. Contractor must also give Railway prompt notice of all measures undertaken to investigate, remediate, or respond to any aforementioned condition.
- C. If Railway has notice from Contractor or otherwise of a release or violation of Environmental Laws arising in any way with respect to the work which occurred or may occur during the term of this Agreement, Railway may require Contractor, at Contractor's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Railway's Property.
- D. If during the construction or subsequent maintenance of the work or Structures, or any other soil-disturbing activities, soils or other materials considered to be environmentally impacted are encountered, Contractor will stop work immediately and notify Railway. After consultation with Railway, Contractor shall, at Contractor's expense, characterize any such impacted soils. Upon receiving sampling results, Contractor shall, at Contractor's expense, in consultation with Railway, manage, remove, and/or dispose any such impacted soils offsite at an appropriately-licensed facility in accordance with Environmental Laws. Soil characterization and applicable disposal requirements, shall be in accordance with applicable federal, state, and local Environmental Laws or in consultation with an agency having the capacity and authority to make such a determination.
- E. All soils and materials to be removed from the Railway Property or right of way must be properly characterized, managed, transported, and disposed of at an appropriately-



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licensed facility, at Contractor's expense, in accordance with all Environmental Laws. Contractor shall be the "Generator" of any and all such materials and waste, as such term is defined in Environmental Laws.

- F. Notwithstanding anything in this Section 1.08, Contractor understands that Railway has no duty or obligation to monitor Contractor's use of the property or right of way to determine Contractor's compliance with Environmental Laws, it being solely Contractor's responsibility to ensure that Contractor's use is compliant. Regulatory plans and a minimum of two (2) years of records/inspections shall be readily available. Contractor shall promptly provide the same to the Railroad upon request.
- G. "Environmental Law(s)" shall mean any federal, state, local, or tribal law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, CERCLA 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §8901 et seq.; CERCLA; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 et seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, local, or tribal environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.
- H. "Hazardous Material(s)" shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, local, or tribal governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals," "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.



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9) Personal Injury Reporting

- A. The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.



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NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

(If injuries are in connection with rail equipment accident/incident, highway rail grade crossing accident or automobile accident, ensure that appropriate information is obtained, forms completed and that data entry personnel are aware that injuries relate to that specific event.)

Injured Person Type:

- | | |
|---|--|
| <input type="checkbox"/> Passenger on train (C) | <input type="checkbox"/> Non-employee (N)
<i>(i.e., emp of another railroad, or, non-BNSF emp involved in vehicle accident, including company vehicles)</i> |
| <input type="checkbox"/> Contractor/safety | <input type="checkbox"/> Contractor/non-safety sensitive (G) |
| <input type="checkbox"/> Volunteer/safety sensitive (H) | <input type="checkbox"/> Volunteer/other non-safety sensitive (I) |
| <input type="checkbox"/> Non-trespasser (D) - to include highway users involved in highway rail grade crossing accidents who did not go around or through gates | |
| <input type="checkbox"/> Trespasser (E) - to include highway users involved in highway rail grade crossing accidents who went around or through gates | |
| <input type="checkbox"/> Non-trespasser (J) - Off railroad property | |

If train involved, Train ID:

Transmit attached information to Accident/Incident Reporting Center by:
Fax 1-817-352-7595 or by Phone 1-800-897-8736 or email to: Accident-Reporting.Center@BNSF.com

Officer Providing Information:

(Name)	(Employee No.)	(Phone #)
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REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490



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NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

Please complete this form and provide to the BNSF supervisor, who will input this information into the EHS Star system. For questions, call (817) 350-1287 or email Safety.IncidentReporting@BNSF.com.

Accident City/State: _____ Date: _____ Time: _____

County: _____ Temperature: _____ Weather: _____
(if non-BNSF location)

Name (Last/First/MI): _____

Age: _____ Gender (if available): _____

Company: _____

eRailsafe Badge Number: _____ Expiration Date: _____

BNSF Contractor Badge Number: _____ Expiration Date: _____

Injury: _____ Body Part: _____
(e.g., laceration) (e.g., hand)

Description of accident (including how accident occurred, potential cause, etc.):

Work activity in progress at time of accident: _____

Tools, machinery, or hazardous materials involved in accident: _____

Treatment:
 First Aid Only
 Required Medical Treatment
 Other Medical Treatment: _____

Dr. Name: _____ Date: _____

Dr. Street Address: _____ City: _____ State: _____ Zip: _____

Hospital Name: _____

Hospital Street Address: _____ City: _____ State: _____ Zip: _____

Diagnosis: _____

THIS REPORT IS PART OF BNSF'S ACCIDENT REPORT PURSUANT TO THE ACCIDENT REPORTS STATUTE AND, AS SUCH SHALL NOT BE ADMITTED AS EVIDENCE OR USED FOR ANY PURPOSE IN ANY SUIT OR ACTION FOR DAMAGES GROWING OUT OF ANY MATTER MENTIONED IN SAID REPORT...." 49 U.S.C. § 20903. See 49 C.F.R. § 235.7(b).



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EXHIBIT "C-1"

Agreement Between

BNSF RAILWAY COMPANY

and the

CONTRACTOR

Railway File: **BF-XXXXXXXX**

Agency Project: Road W Overpass at LS 147 MP 54.43 DOT #074732S

[CONTRACTOR], (hereinafter called "Contractor"), has entered into an agreement (hereinafter called "Agreement") dated _____, 20__, with the City of David City for the performance of certain work in connection with the following project: Road W overpass at LS 147 MP 54.43 DOT #074732S. Performance of such work will necessarily require Contractor to enter BNSF RAILWAY COMPANY (hereinafter called "Railway") right of way and property (hereinafter called "Railway Property"). The Agreement provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for the **City of David City** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Agreement, has agreed and does hereby agree with Railway as follows:

1) RELEASE OF LIABILITY AND INDEMNITY

- A.** Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY**



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CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENSIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.

- B. THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.**
- C. Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.
- D. In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE.**
- E. It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.



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2) TERM

- A. This Agreement is effective from the date of the Agreement until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

3) INSURANCE

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

A. Commercial General Liability "CGL" Insurance

- i) The policy will provide 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 the provider. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
- (1) Bodily Injury and Property Damage
 - (2) Personal Injury and Advertising Injury
 - (3) Fire legal liability
 - (4) Products and completed operations
- ii) This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:
- (1) definition of "Insured Contract" will be amended to remove any exclusion or other limitation for any work being done within 50 feet of RAILWAY's property.
 - (2) Waiver of subrogation in favor of and acceptable to RAILWAY; and
 - (3) Additional insured endorsement in favor of and acceptable to RAILWAY and



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include coverage for ongoing operations and completed operations; and

(4) Separation of insureds; and

(5) The policy will be primary and non-contributing with respect to any insurance carried by RAILWAY.

iii) 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 *Railway* employees.

iv) No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

B. Business Automobile Insurance

i) The insurance will provide minimum coverage with a combined single limit of at least \$1,000,000 per accident, and include coverage for, but not limited to the following:

(1) Bodily injury and property damage

(2) Any and all vehicles owned, used or hired

ii) The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:

(1) Waiver of subrogation in favor of and acceptable to RAILWAY;

(2) Additional insured endorsement in favor of and acceptable to RAILWAY;

(3) Separation of insureds;

(4) The policy shall be primary and non-contributing with respect to any



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insurance carried by RAILWAY.

C. Workers Compensation and Employers Liability Insurance

- i) Workers Compensation and Employers Liability insurance including coverage for, but not limited to:
 - (1) Contractor'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.
 - (2) 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.
- ii) This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:
 - (1) Waiver of subrogation in favor of and acceptable to Railway.

D. Railroad Protective Liability insurance

- i) Railroad Protective Liability insurance naming only the *Railway* as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:
 - (1) Endorsed to include the Pollution Exclusion Amendment
 - (2) Endorsed to include the Limited Seepage and Pollution Endorsement.
 - (3) Endorsed to remove any exclusion for punitive damages.
 - (4) No other endorsements restricting coverage may be added.
 - (5) The original policy must be provided to the *Railway* prior to performing any work or services under this Agreement.
 - (6) Definition of "Physical Damage to Property" shall be endorsed to read:



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means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' 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 (if available) in Railway's Blanket Railroad Protective Liability Insurance Policy.

E. Other Requirements:

- i) Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.
- ii) Contractor agrees to waive its right of recovery against *Railway* for all claims and suits against *Railway*. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against *Railway* for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against *Railway* for loss of its owned or leased property or property under Contractor's care, custody or control.
- iii) Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.
- iv) Contractor is not allowed to self-insure without the prior written consent of *Railway*. If granted by *Railway*, any self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all *Railway* liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.
- v) Prior to commencing services, Contractor shall furnish to *Railway* an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following address:



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BNSF Railway Company
c/o CertFocus
P.O. Box 140528
Kansas City, MO 64114
Toll Free: 877-576-2378
Fax number: 817-840-7487
Email: BNSF@certfocus.com
www.certfocus.com

- vi) Contractor shall notify Railway in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.
- vii) Any insurance policy shall be written by a reputable insurance company acceptable to Railway or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- viii) If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.
- ix) Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement.
- x) Not more frequently than once every five years, Railway 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.
- xi) If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance coverage(s) as set forth herein, naming Railway as an additional insured, and shall require that the subcontractor shall release, defend and indemnify



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Railway to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Railway herein.

- xii) Failure to provide evidence as required by this section shall entitle, but not require, Railway to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.
- xiii) The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railway shall not be limited by the amount of the required insurance coverage.
- xiv) In the event of a claim or lawsuit involving Railway arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.
- xv) These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.
- xvi) For purposes of this section, Railway shall mean "Burlington Northern Santa Fe LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

4) SALES AND OTHER TAXES

- A. In the event applicable sales taxes of a state or political subdivision of a state of the United States are levied or assessed in connection with and directly related to any amounts invoiced by Contractor to Railway ("Sales Taxes"), Railway shall be responsible for paying only the Sales Taxes that Contractor separately states on the invoice or other billing documents provided to Railway; *provided, however, that* (i) nothing herein shall preclude Railway from claiming whatever Sales Tax exemptions are applicable to amounts Contractor bills Railway, (ii) Contractor shall be responsible for all sales, use, excise, consumption, services and other taxes



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which may accrue on all services, materials, equipment, supplies or fixtures that Contractor and its subcontractors use or consume in the performance of this Agreement, (iii) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) that Contractor fails to separately state on the invoice or other billing documents provided to Railway or fails to collect at the time of payment by Railway of invoiced amounts (except where Railway claims a Sales Tax exemption), and (iv) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) if Contractor fails to issue separate invoices for each state in which Contractor delivers goods, provides services or, if applicable, transfers intangible rights to Railway.

- B. Upon request, Contractor shall provide Railway satisfactory evidence that all taxes (together with any penalties, fines or interest thereon) that Contractor is responsible to pay under this Agreement have been paid. If a written claim is made against Contractor for Sales Taxes with respect to which Railway may be liable for under this Agreement, Contractor shall promptly notify Railway of such claim and provide Railway copies of all correspondence received from the taxing authority. Railway shall have the right to contest, protest, or claim a refund, in Railway's own name, any Sales Taxes paid by Railway to Contractor or for which Railway might otherwise be responsible for under this Agreement; provided, however, that if Railway is not permitted by law to contest any such Sales Tax in its own name, Contractor shall, if requested by Railway at Railway's sole cost and expense, contest in Contractor's own name the validity, applicability or amount of such Sales Tax and allow Railway to control and conduct such contest.
- C. Railway retains the right to withhold from payments made under this Agreement amounts required to be withheld under tax laws of any jurisdiction. If Contractor is claiming a withholding exemption or a reduction in the withholding rate of any jurisdiction on any payments under this Agreement, before any payments are made (and in each succeeding period or year as required by law), Contractor agrees to furnish to Railway a properly completed exemption form prescribed by such jurisdiction. Contractor shall be responsible for any taxes, interest or penalties assessed against Railway with respect to withholding taxes that Railway does not withhold from payments to Contractor.

5) ENVIRONMENTAL

Contractor shall strictly comply with all Environmental Laws (as defined below). Contractor shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Railway Property or the right of way. Contractor will not handle, transport, release or suffer the release of Hazardous Materials (as



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defined below) on or about the Premises. Small quantities of diesel fuel, engine oil, and hydraulic fluids used in the operation of Contractor's equipment shall not be deemed a violation of this Section 5.

Contractor shall give Railroad immediate notice to Railroad's Resource Operations Center at (800) 832-5452 of any release of Hazardous Materials on, from, or affecting the Premises. Contractor shall use its best efforts to immediately respond to any release on or from the Premises. Any violation of Environmental Laws or any inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Contractor's use of the Premises must be immediately reported to Railroad at EnvironmentalLeases@bnsf.com. Contractor also shall give Railroad prompt notice of all measures undertaken on behalf of Contractor to investigate, remediate, respond to or otherwise cure a release or violation.

If Railway has notice from Contractor or otherwise of a release or violation of Environmental Laws caused by Contractor or arising in any way with respect to Contractor's work which occurred or may occur during the term of this Agreement, Railway may require Contractor, at Contractor's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Railway's Property.

If during the construction or subsequent maintenance of the work or Structures, or any other soil-disturbing activities, soils or other materials considered to be environmentally impacted are encountered, Contractor will stop work immediately and notify Railway. After consultation with Railway, Contractor shall characterize any such impacted soils. Upon receiving sampling results, Contractor shall, in consultation with Railway, manage, remove, and/or dispose any such impacted soils offsite at an appropriately-licensed facility in accordance with Environmental Laws. Soil characterization and applicable disposal requirements, shall be in accordance with applicable federal, state, and local Environmental Laws or in consultation with an agency having the capacity and authority to make such a determination.

All soils and materials to be removed from the Railway Property or right of way must be properly characterized, managed, transported, and disposed of at an appropriately-licensed facility in accordance with all Environmental Laws. Either Contractor or Agency shall be the "Generator" of any and all such materials and waste, as such term is defined in Environmental Laws.

All fill materials to be imported to Railway's property shall be certified clean fill or from a Railway approved source, and supporting documentation shall be provided to Railway upon request.



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Contractor shall promptly report to Railroad in writing any conditions or activities upon the Railroad Property known to Contractor which create a risk of harm to persons, property or the environment and shall take all reasonable actions necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Contractor's reporting to Railroad shall not relieve Contractor of any obligation whatsoever imposed on it by this Agreement. Contractor shall promptly respond to Railroad's request for information regarding said conditions or activities.

Notwithstanding anything in this Section 5, the parties agree that BNSF has no duty or obligation to monitor Contractor's use of the property or right of way to determine Contractor's compliance with Environmental Laws, it being solely Contractor's responsibility to ensure that Contractor's use is compliant. Regulatory plans and a minimum of two (2) years of records/inspections shall be readily available. Contractor shall promptly provide the same to the Railroad upon request.

"Environmental Law(s)" shall mean any federal, state, local, or tribal law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, CERCLA 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §8901 et seq.; CERCLA; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 138y; the Oil Pollution Act, 33 U.S.C. 2701 et seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, local, or tribal environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

"Hazardous Material(s)" shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, local, or tribal governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation



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asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals," "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

6) EXHIBIT "C" CONTRACTOR REQUIREMENTS

- A. The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Agreement, and the Contractor Requirements set forth on Exhibit "C" attached to the Agreement and this Agreement, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site. Contractor shall execute a Temporary Construction Crossing Agreement or Private Crossing Agreement (<http://www.bnsf.com/communities/faqs/permits-real-estate/>), for any temporary crossing requested to aid in the construction of this Project, if approved by BNSF.

7) TRAIN DELAY

- A. Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.
- B. For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.
- C. Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if



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Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

- D. The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. The rate then in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of train delay pursuant to this agreement.
- E. Contractor and its subcontractors must give Railway's representative John Caldwell (john.caldwell2@bnsf.com) 4 weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.
- F. Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

SIGNATURE PAGE FOLLOWS



Contract Number: BF-20270748

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officer the day and year first above written.

{CONTRACTOR}

BNSF RAILWAY COMPANY

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: Kara J Brockamp

Title: _____

Title: Manager Public Projects

Date: _____

Date: _____

Accepted and effective this _____ day of 20__.

Contact Person: _____

Address: _____

City: _____

State: _____

Zip: _____

Fax: _____

Phone: _____

E-mail: _____



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EXHIBIT D

BNSF COST ESTIMATE

**37 Rd Overpass Construction
David City, NE**

37 Rd Overpass
LS 147 - MP 54.43
Bellwood Subdivision
DOT # 0747325

Flagging -	\$
Inspection/Coordination	\$
Contingency @ 10%	\$
Easement and Fees (payable to JLL)	\$
TOTAL	\$

Notes

- A. This is an estimate only. BNSF will bill on an actual cost basis.
- B. Flagging is based on BNSF rates for a 12 hour day with vehicle as of June 2023.
 - a. At BNSF's option, flagging may be provided by a 3rd party contractor. In that case, flagging fees would be paid directly to the contractor at their current rates instead of BNSF.



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Exhibit E

[Public Projects Manager's letterhead]

Date: _____

Mr./Ms. _____ [Name of Agency Here]
_____ [Address for Agency]

Re: Final Approval of Plans and Specifications dated _____, 20__, drafted by
_____ [insert name of architecture or engineering firm here]
(hereinafter called, the "Plans and Specifications")

Dear _____:

This letter serves as BNSF RAILWAY COMPANY's ("BNSF") final written approval of the Plans and Specifications covering the construction of _____ [insert description of the project here]. This final written approval is given to _____ [insert name of Agency here] ("Agency") pursuant to Article III, Section 1 of that certain Underpass Agreement between BNSF and Agency, dated _____, 20__. If the Plans and Specifications are revised by Agency subsequent to the date set forth above, this letter shall no longer serve as final written approval of the Plans and Specifications and Agency must resubmit said Plans and Specifications to BNSF for final written approval.

Regards,

[Public Projects Manager's Name]



Contract Number: BF-20270748

EXHIBIT F

Grade Separations

(FOR USE IN ANY C&M AGREEMENT FOR CONSTRUCTION OF AN OVERPASS OR AN UNDERPASS INITIATED BY A PUBLIC AGENCY)

BNSF PROCESS REQUIREMENTS FOR DESIGN & CONSTRUCTION OF GRADE SEPARATION PROJECTS BY A PUBLIC AGENCY ON BNSF RIGHT OF WAY, WHICH IMPACT BNSF PROPERTY OR OPERATIONS

1.01 General:

- 1.01.01 The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "Railway" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of

- 1.01.02 Definitions:
 - **Operationally Critical, (OC):** defined as Work that requires a submittal and acceptance by BNSF, which impacts, or could impact BNSF operations, on BNSF right-of-way or adjacent to it.
 - **Acceptance:** BNSF's response to plan submittals indicating a notice to proceed with work in the field; **Disclaimer for Acceptance:** *BNSF has reviewed these submittals and no exceptions are taken with regard to BNSF's ability to use or accommodate the project as intended. BNSF has not reviewed the design details or calculations for structural integrity or engineering accuracy. BNSF accepts no responsibility for errors or omissions in the design or execution of the project.
 - **Inspector/Coordinator, (I/C):** A third party consultant which BNSF hires to assist in the coordination of the project on BNSF's behalf. When referenced, "I/C" refers to the I/C team consisting of I/C-I, I/C-II, and the Resident Engineer (RE). The I/C team's role is to ensure the project is constructed per accepted plans and specifications for that portion of the project on BNSF right of way, as it affects BNSF. The I/C will monitor construction activities to ensure that improvements used by BNSF meet all requirements of BNSF, and accommodate railroad operations.
- 1.01.03 The following submittals and actions are required by BNSF prior to Operationally Critical, (OC) Work being performed on BNSF property or above tracks being operated by BNSF Railway:



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2.01 Submittals and Actions Required During the Project Design Phase:

- 2.01.01 The Agency shall be the main contact for BNSF throughout the project. Agency shall be included on all correspondence relating to BNSF.
- 2.01.02 Required Design Submittals: (Allow for 4 weeks for BNSF to review design submittals)

Agency shall refer to the requirements of the UP/BNSF Guidelines on Grade Separation Projects when designing a grade separation which will impact BNSF Railway. Agency will be required to submit plans for BNSF review and comment. Plans shall not be labeled "final" until all comments have been addressed and BNSF has accepted" the plans.

Examples of required design submittals may be, but are not limited to:

Concept, vertical profile of Top of Rail, 30% plans and final plans

The following submittals will require a Professional Engineer, (PE) stamp:

Overpass design

Underpass design

Hydraulic study

Any non-standard design of a structure which will carry train loading

Work covered by a submittal shall not be performed in field without receiving Acceptance from BNSF.

Work windows will not exceed 6 hours, so project should be designed accordingly.



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The following Disclaimer applies to BNSF acceptance of Agency design plans:

"BNSF has reviewed these submittals and no exceptions are taken with regard to BNSF's ability to use or accommodate the project as intended. BNSF has not reviewed the design details or calculations for structural integrity or engineering accuracy. BNSF accepts no responsibility for errors or omissions in the design or execution of the project."

3.01 Submittals and Actions Required During the Construction Phase:

- **3.01.01** The Agency shall be the main contact for BNSF throughout the project. Agency shall be included on all correspondence relating to BNSF. BNSF will NOT accept submittals directly from the Agency's Contractor.
- **3.01.02** BNSF will hire a consultant team to perform the duties of an Inspector/Coordinator, (I/C) on behalf of BNSF for the duration of the field construction of the project. The cost of the I/C will be reimbursable to BNSF by the Agency or their Contractor.

BNSF requires the I/C team be involved in the project throughout the construction phase to represent BNSF.

The I/C has authority to remove a contractor's employee from BNSF property if that employee fails to comply with the BNSF safety policy, does not have proper PPE or otherwise ignores instructions regarding work on BNSF right-of-way. The I/C has authority to shut down work on BNSF right-of-way if the contractor works in a manner that is in violation of BNSF's safety policy or FRA regulations.

Anytime instructions to the contractor by BNSF or the I/C are not complied with, the project may be shut down. All equipment and personnel will be removed from BNSF property until issues causing the shutdown are resolved to BNSF's satisfaction.

- **3.01.03** Agency must hold a pre-construction meeting with contractor and BNSF prior to work beginning on BNSF property.



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The Pre-Construction meeting shall not be held until 30 days after I/C has been selected – this allows time for the I/C to become familiar with the project.

Recommend scheduling two weeks prior to construction commencing to allow for adjustment to work plans, if needed.

- 3.01.04 Required Construction Submittals : (Allow for 4 weeks for BNSF to review submittals)

All submittals should flow from the Contractor to the Agency, to the I/C Consultant, to the BNSF Project Engineer, (PE), and to BNSF Structures with responses back through the same communication chain. BNSF will not accept submittals directly from the Contractor.

Any changes to the work governed by a submittal requires that the submittal be re-accepted* by BNSF before the work commences.

Examples of construction submittals required include but are not limited to:

Contractors Safety Action Plan, Fire Prevention Plan, Proposed Project Schedule, Demolition, Shoring, Falsework and Lifting of Materials.

The following submittals will require a Professional Engineer, (PE) stamp:

Critical Pick Plan (75% of capacity of crane, or multi-crane pick)

Lifted Material Plan (Placement or Removal) – When lift is within temporary construction clearances and when lift is within 25' of the centerline of the nearest track

Demolition Plan

Temporary Shoring Plan

Bracing Design Plan (non-standard only per DOT)



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For overpasses, Agency shall submit as-built plans of the structure, including final clearance dimensions to the I/C. Vertical clearance must be measured from the Top of Rail, horizontal clearance must be measured from the nearest track centerline.

OPERATIONALLY CRITICAL WORK AND SUBMITTALS: (4 to 6 weeks review timeline) All OC work requires a submittal and acceptance" by BNSF.

- Operationally Critical (OC) submittals are those that have the potential to affect the safe operation of trains and will need to be reviewed carefully. Work must be monitored to ensure it conforms to the submitted/accepted" plan.
- In-person safety review meetings will be required with BNSF representative, I/C, Contractor and Agency representative for all OC work and must be documented. The purpose of the meeting is to ensure all parties understand BNSF requirements and are following the applicable submittals. When a track work window is required the meeting shall occur at least 48 hours in advance of work starting.
- Submittals must meet the requirements of the UP Railroad - BNSF Railway Guidelines for Railroad Grade Separation Projects. Submittals must also follow the requirements outlined in BNSF Review Comment Sheets, Use of Cranes & Lifting of Materials Submittal Schedule, BNSF Guidelines for Preparation of Bridge Demolition & Removal Plan and the BNSF-UPRR Guidelines for Temporary Shoring. Some submittals are required to be sealed by a licensed professional engineer.
 - a. See Table 3-1 for Overhead Structures In UP Railroad - BNSF Railway Guidelines for Railroad Grade Separation Projects
 - b. See Table 3-2 for Underpass Structures UP Railroad - BNSF Railway Guidelines for Railroad Grade Separation Projects
 - c. Examples of OC submittals included in the above are:
 - I. Shoring (Follow BNSF-UPRR Guidelines for Temporary Shoring)
 - II. Falsework
 - III. Demolition (Need plans for substructure and superstructure. Follow BNSF Guidelines for Preparation of Bridge Demolition & Removal Plan)
 - IV. Erection (overhead and underpass structures)
 - v. Construction Phasing Plans
 - d. Additional OC submittals required, but not included in the Guidelines are:
 - I. All work plans that remove tracks from service (track outage windows require a detailed Gantt chart when greater than 2 hours)



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II. Contingency plans

III. Additional OC submittals may be required on a project by project basis.

For underpasses and other railroad bridges, as required in Sections 4.11 and 4.12 of the UP Railroad - BNSF Railway Guidelines for Railroad Grade Separation Projects, a RE will be on site full-time during construction, at the cost of the project. At the discretion of the RE, as accepted by BNSF, an I/C-I or I/C-II may be assigned for field duties where the work is not critical to ensuring the bridge is built to accepted project plans and specification.

- BNSF requires temporary and new track and railroad bridges be inspected by an FRA qualified BNSF employee prior to being placed into service. Two week advanced notice to BNSF structures department is required. For underpasses, all pile driving records are to be provided within 3-days of driving to the BNSF PE.
- Agency shall submit an as-built survey of shoo-fly final alignments. Alignments must conform to BNSF Shoo-fly procedures.
- 3.01.05 Prior to any work commencing on BNSF right of way:

Contractors C/C-1 or Right of Entry must be fully executed and their insurance must be approved before they can perform work on BNSF property.

Proof of Contractors Insurance approval must be produced to the BNSF PE and the I/C.

- 3.01.06 Contractor must adhere to all other BNSF policies and procedures not specifically mentioned in this agreement.

Mayor Jessica Miller stated that the next item on the agenda was Ordinance No. 1454 adding a Police Sergeant to the pay scale. This will allow us to have a supervisor on every shift to allow growth of the department and be able to make a decision when needed.

Council member Bruce Meysenburg introduced Ordinance No. 1454 adding a line for Police Sergeant to the pay plan. Mayor Jessica Miller read Ordinance No 1454 by title.

Council member Keith Marvin made a motion to suspend the statutory rule requiring that an Ordinance be read on three separate days. Council member Jim Angell seconded the motion. The motion carried. Jim Angell: Yea, Tom Kobus: Absent, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea. Yea: 5, Nay: 0, Absent: 1.

Council member Bruce Meysenburg made a motion to pass Ordinance No. 1454 adding a line for Police Sergeant to the pay plan on 3rd & Final Reading. Council Member Jim Angell seconded the motion. The motion carried. Jim Angell: Yea, Tom Kobus: Absent, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea. Yea: 5, Nay: 0, Absent: 1.

ORDINANCE NO. 1454

AN ORDINANCE ADOPTING A NEW PAY SCALE / SALARY BY UPDATING A POLICE SERGEANT LINE TO THE PAY PLAN; REPEALING ALL ORDINANCES OR PORTIONS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING FOR PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM; AND PROVIDING FOR A TIME WHEN THIS ORDINANCE SHALL TAKE EFFECT.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA:

SECTION 1. The Mayor and City Council of David City, Nebraska, do hereby establish and fix the pay scales and salaries attached for the attached positions for the appointed officers and employees of the City of David City, Nebraska.

SECTION 2. Any Cost-of-Living Adjustments (COLA) shall be given as approved by the City Council.

SECTION 3. Any and all ordinances or sections thereof, passed and approved prior to the passage, approval and publication or posting of this ordinance, and in conflict with its provisions, are hereby repealed.

SECTION 4. This ordinance shall be published in pamphlet form and shall be in full force and effect on September 24, 2023 following its passage, approval, and publication as provided by law and city ordinance.

PASSED AND APPROVED this 27th day of September, 2023.

Mayor Jessica Miller

City Clerk Tami Comte

City Council Proceedings
 September 27, 2023
 Page #103

Department										
Position	1	2	3	4	5	6	7	8	9	10
<u>City Hall</u>										
Clerical I	\$13.88	\$14.41	\$14.92	\$15.43	\$15.96	\$16.46	\$16.98	\$17.49	\$18.01	\$18.53
Acct Clerk I	\$19.86	\$20.42	\$20.97	\$21.52	\$22.06	\$22.61	\$23.16	\$23.70	\$24.26	\$24.80
Human Resources	\$21.78	\$22.47	\$23.13	\$23.81	\$24.48	\$25.15	\$25.82	\$26.50	\$27.17	\$27.84
Acct Clerk II	\$23.70	\$24.51	\$25.29	\$26.10	\$26.89	\$27.69	\$28.48	\$29.29	\$30.07	\$30.88
(incl .50/hr if CMC; Ord. 1192)	\$24.20	\$25.01	\$25.79	\$26.60	\$27.39	\$28.19	\$28.98	\$29.79	\$30.57	\$31.38
<u>Power Plant</u>										
Power Plant Op I	\$23.88	\$24.85	\$25.84	\$26.81	\$27.79	\$28.77	\$29.74	\$30.71	\$31.70	\$32.67
Power Plant Supervisor	\$33.91	\$35.01	\$36.10	\$37.20	\$38.28	\$39.38	\$40.45	\$41.55	\$42.64	\$43.74
<u>Electric</u>										
Apprentice Lineman	\$23.72	\$24.49	\$25.25	\$26.02	\$26.78	\$27.55	\$28.32	\$29.08	\$29.85	\$30.61
Lineman 2nd Class	\$26.39	\$27.04	\$27.68	\$28.33	\$28.98	\$29.64	\$30.28	\$30.92	\$31.57	\$32.22
Lineman 1st Class	\$31.19	\$31.99	\$32.78	\$33.60	\$34.39	\$35.20	\$35.99	\$36.79	\$37.58	\$38.39
Line Foreman	\$36.80	\$37.45	\$38.11	\$38.76	\$39.42	\$40.07	\$40.73	\$41.36	\$42.02	\$42.67
Electric Supervisor	\$41.10	\$42.07	\$43.02	\$43.98	\$44.95	\$45.90	\$46.86	\$47.82	\$48.78	\$49.74
<u>Water/Wastewater</u>										
Water/Wastewater Operator I	\$21.51	\$22.23	\$22.93	\$23.65	\$24.37	\$25.08	\$25.80	\$26.52	\$27.23	\$27.95
Water/Wastewater Operator II	\$25.27	\$25.91	\$26.57	\$27.22	\$27.86	\$28.53	\$29.17	\$29.82	\$30.48	\$31.13
Water/Wastewater Data Manager	\$26.57	\$27.22	\$27.86	\$28.53	\$29.17	\$29.82	\$30.48	\$31.13	\$31.79	\$32.45
Water Field Supervisor	\$25.34	\$25.99	\$26.62	\$27.26	\$27.90	\$28.54	\$29.17	\$29.82	\$30.45	\$31.09
Water Supervisor	\$31.01	\$32.04	\$33.07	\$34.10	\$35.13	\$36.16	\$37.18	\$38.22	\$39.24	\$40.28
Wastewater Supervisor	\$30.19	\$31.17	\$32.16	\$33.13	\$34.12	\$35.10	\$36.08	\$37.05	\$38.03	\$39.10
<u>Street</u>										
Maintenance Worker I	\$19.08	\$20.31	\$20.79	\$21.30	\$21.79	\$22.30	\$22.79	\$23.30	\$23.79	\$24.30
Maintenance Worker II	\$21.28	\$21.83	\$22.37	\$22.91	\$23.45	\$23.99	\$24.53	\$25.07	\$25.62	\$26.16
Street Foreman	\$24.97	\$25.51	\$26.04	\$26.58	\$27.11	\$27.65	\$28.18	\$28.72	\$29.24	\$29.77
Street Supervisor	\$28.92	\$29.70	\$30.49	\$31.27	\$32.05	\$32.84	\$33.63	\$34.41	\$35.19	\$35.97
<u>Parks</u>										
Park Laborer	\$18.48	\$19.13	\$19.79	\$20.44	\$21.09	\$21.75	\$22.40	\$23.05	\$23.70	\$24.36
Parks & Auditorium Supervisor	\$21.73	\$22.47	\$23.21	\$23.95	\$24.68	\$25.45	\$26.19	\$26.92	\$27.66	\$28.40
<u>Recreation</u>										
Recreation Coordinator	\$23.55	\$24.30	\$25.05	\$25.83	\$26.58	\$27.33	\$28.08	\$28.84	\$29.59	\$30.34
Recreation Director	\$26.94	\$27.64	\$28.36	\$29.06	\$29.78	\$30.50	\$31.20	\$31.91	\$32.63	\$33.34
<u>Part-Time</u>										
Part-Time Workers	\$15.34	\$15.75	\$16.15	\$16.55	\$16.97	\$17.38	\$17.79	\$18.20	\$18.60	\$19.01
Summer Help	\$11.09	\$11.70	\$12.32	\$12.94	(No more than 4 steps)					
<u>Police Department</u>										
Police Officers	\$23.00	\$23.50	\$24.00	\$24.50	\$25.00	\$25.60	\$26.20	\$26.80	\$27.40	\$28.00
Police Sergeant	\$26.00	\$26.75	\$27.50	\$28.25	\$29.00	\$29.75	\$30.50	\$31.25	\$32.00	\$32.75
Asst. Police Chief	\$27.40	\$28.16	\$28.92	\$29.68	\$30.44	\$31.20	\$31.96	\$32.72	\$33.48	\$34.25
Salaried Staff Pay Plan (Annual Rate of Pay)										
<u>Position</u>		<u>Minimum</u>			<u>Mid-Point</u>			<u>Maximum</u>		
Clerk/Treasurer		\$71,086			\$84,291			\$97,396		
Police Chief		\$62,400			\$78,000			\$93,600		

Council member Keith Marvin made a motion to adjourn. Council member Pat Meysenburg seconded the motion. The motion carried and Mayor Jessica Miller declared the meeting adjourned at 7:37 p.m. Jim Angell: Yea, Tom Kobus: Absent: Keith Marvin: Yea, Bruce Meysenburg: Yea, Pat Meysenburg: Yea, Kevin Woita: Yea. Yea: 5, Nay: 0, Absent: 1.



CERTIFICATION OF MINUTES
September 27, 2023

I, Lori Matchett, duly qualified and acting Deputy City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of September 27, 2023; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that the minutes of the meeting of the City Council of the City of David City, Nebraska, were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

Lori Matchett, Deputy City Clerk